IN THE COURTS OF THE NATIONS: JEWS, MUSLIMS, AND LEGAL PLURALISM
IN NINETEENTH-CENTURY MOROCCO

Jessica M. Marglin

A DISSERTATION
PRESENTED TO THE FACULTY
OF PRINCETON UNIVERSITY
IN CANDIDACY FOR THE DEGREE
OF DOCTOR OF PHILOSOPHY

RECOMMENDED FOR ACCEPTANCE
BY THE DEPARTMENT OF
NEAR EASTERN STUDIES

Adviser: Mark R. Cohen

January 2013
Abstract

This dissertation examines the participation of Jews in Morocco’s legal system during the long nineteenth century (up to 1912). It constitutes the first study of Jews’ legal strategies in pre-colonial Morocco based on archival evidence. I examine three sets of non-Jewish legal orders which Jews frequented. Part One draws on court records from *sharī’a* (Islamic law) courts in order to understand when and why Jews made use of these institutions and how they were treated there. Part Two uses the archives of the *Makhzan* (the Moroccan central government) to discuss how Jews appealed to the state when they felt they had been denied justice at the local level. Part Three draws on consular archives to trace the ways in which Jews with foreign protection made use of consular courts. Throughout the dissertation, I make comparisons with the medieval and early modern periods in order to situate this study in the *longue durée* of Jews’ experience in the Islamic Mediterranean.

My analysis of Jews’ place in the Moroccan legal system contributes to Jewish and Islamic historiography in three ways. First, I propose an approach to the socio-legal history of the Islamic Mediterranean which emphasizes the perspective of legal actors and the interactions among various legal orders—two aspects of law in action which have hitherto largely been ignored. Second, I offer an alternative to dominant narratives of the history of Jews in the Islamic world. Rather than argue that Jews either benefited from the tolerance of Islamic societies or suffered from the discriminatory nature of Islamic rule, I focus instead on understanding the quotidian interactions among Jews, Muslims, and the various non-Jewish legal institutions which Jews frequented. Third, I suggest a different way of discussing the question of Jewish legal autonomy in the Islamic world. Previous scholarship has argued either that Jews
were essentially legally independent or that their autonomy was largely imagined. This
dissertation employs the framework of legal pluralism to understand how Jews simultaneously
maintained their own legal order and made frequent use of the non-Jewish legal orders available
to them.
# Table of Contents

Abstract ........................................................................................................................................ iii

Acknowledgements ...................................................................................................................... vi

Note on Transliteration and Names ............................................................................................... x

Introduction ..................................................................................................................................... 1

**Part I: Sharī‘a Courts**

Chapter 1: Between Batei Din and Sharī‘a Courts ................................................................. 43

Chapter 2: Jews and Muslims in Sharī‘a Courts ...................................................................... 68

Chapter 3: Crossing Jurisdictional Boundaries ....................................................................... 118

**Part II: The Makhzan as a Legal Forum**

Chapter 4: The Role of the Makhzan in the Moroccan Legal System .................................... 150

Chapter 5: Appeals to the Ministry of Complaints .................................................................. 181

Chapter 6: Collective Appeals to the Makhzan ...................................................................... 227

**Part III: Consular Courts**

Chapter 7: Foreign Protection and Consular Jurisdiction ...................................................... 271

Chapter 8: Jews, Muslims, and Foreigners in Consular Courts ............................................. 294

Chapter 9: The Intervention of Foreigners ............................................................................. 330

Epilogue ....................................................................................................................................... 371

Glossary of Arabic and Hebrew Terms ......................................................................................... 379

Archives Consulted ....................................................................................................................... 382

Bibliography ................................................................................................................................. 384
Acknowledgements

I owe thanks to many people for helping make this dissertation possible. My first debt of gratitude is to Susan Gilson Miller, who introduced me to the study of Moroccan Jews when I was a sophomore at Harvard. I accepted Susan’s invitation to do an independent study with her, and found myself falling in love with the study of Jewish-Muslim relations. I am eternally grateful to Susan for setting me on this path, and for her enduring good counsel and friendship.

At Princeton, Mark Cohen has offered excellent guidance and unflagging support. In addition to introducing me to the world of the Geniza, he has wisely encouraged me to think broadly and comparatively. Michael Cook provided a rigorous and thrilling introduction to classical Islamic sources and has read every page of this dissertation with unparalleled attention to detail. Molly Greene ensured that I was versed in Ottoman historiography and asked questions early on which have been of great help throughout. Hossein Modarressi introduced me to the study of Islamic law and generously answered a number of queries which arose in the course of writing. Andras Hamori was my guide to classical Arabic literature and assisted me in some difficult translations. I was also fortunate to study with Bernard Haykel, Muhammad Qasim Zaman, Philip Nord, Abraham Udovitch, Şükrü Hanioğlu, Shaun Marmon, Helen Tilley, and Erika Gilson.

My work has been shaped by scholars of Jews in Morocco whose numbers may be small but whose influence has been boundless. I am deeply grateful to Daniel Schroeter, both for agreeing to serve as second reader and for his interest in and support of my project from a very early stage. His extensive comments greatly improved the dissertation and his enthusiasm
throughout the process was vital to its success. Emily Gottreich, Aomar Boum, Oren Kosansky, and Yaron Tsur have provided excellent conversation and sage advice over the years.

Across the Atlantic, my colleagues in Morocco have been unflagging sources of support and knowledge. Mohammed Kenbib, Khalid Ben-Srirh, and Jamaâ Baïda encouraged me early on to pursue the study of Moroccan Jewry and generously shared their time, expertise, and friendship. Mohammed Hatmi, Karima Dirèche, Rita Aouad, and Frédéric Abécassis became valued friends and interlocutors. In Paris, I was lucky to study under the expert guidance of François Pouillon. In Jerusalem, I learned to read Maghribi Hebrew manuscripts with Yaron Ben-Naeh and was introduced to medieval Jewish history by Menahem Ben-Sasson.


I could never have completed the research for this dissertation without the generosity of the private collectors, archivists, and scholars who helped me locate the sources on which I drew. Paul Dahan opened his collection and his home, supplying precious documents and fascinating conversation. Yosef Tobi generously shared both his collection and his living room, where I spent many weeks taking notes on the Assarraf family archive in the delightful company of Tzivia Tobi. Emily Gottreich kindly shared her notes from her own research in Moroccan archives. At the Direction des Archives Royales in Rabat, the director Bahija Simou welcomed me warmly and ‘Abd al-‘Azīz Tilānī helped guide my research; Hassaniya, Asma, and Iman were all patient and kind présidentes de salle. At the Bibliothèque Hassaniya in Rabat, I was welcomed by the director, Ahmed Chaouqui Binebine, and benefited from the advice of Khalid Zahri and the ministrations of the many excellent staff members, including Hisham and ‘Abd al-Qādir. Nanette Stahl and Julie Cohen made it possible for me to use Yale’s collection of North African manuscripts before it had been fully catalogued. Anne-Sophie Cras at the Archives de la Ministère des Affaires Etrangères in Nantes went above and beyond the call of duty. Arnoud Vrolijk oriented me to the collection of Moroccan Jewish documents at the University of Leiden. I also thank all the staff at the archives listed at the end of this dissertation.

My friends and family have been unending sources of love and support. I am grateful to Sare Aricanli and Anna Berman, old friends whose companionship I was fortunate enough to enjoy in Princeton; to Kelly Sullivan, my adopted sister and bosom buddy; and to Minda Arrow, Lexi Atiya, Ethan and Nadya Bair, Barbara Gingold, Judy Greenberg, Sara Houghteling, Shira Kieval, Shoshana Lew, Daniel Mason, Frédéric Masson, Kyle McCarthy, Amy Pasternack, Jason...
and Arielle Rubenstein, Stephanie Saldaña, Ilana Sichel, and Burt Visotzky. I thank my siblings
and their families, my grandmother Monica Lopez, my aunts and uncles, and my cousins
throughout the globe. I am particularly sorry that my uncle Arnold Marglin and my grandmother
Madeleine Apffel did not live to see the completion of this dissertation; I hope they would have
been proud. Deborah Rosenthal and Jed Perl are unflagging in their encouragement and I am
immensely lucky to have been embraced by these two most discerning people, as well as adopted
by their respective families. My parents Frédérique Apffel-Marglin and Steve Marglin have not
only showered me with love but have enthusiastically included me in their intellectual
discussions from a young age; it is their faith in the power of ideas and their unflagging
dedication to their own beliefs—even when those beliefs go against the prevailing wisdom—that
have made me the scholar and the person I am today.

Suzanne Milkah Perl-Marglin appeared on the scene rather late in the process of
completing this dissertation, but she nonetheless endured hours of writing in utero and revising
during the first four months of her life. She has been a source of joy from the moment she was
born and watching her grow and learn is a privilege and an honor.

I dedicate this dissertation to Nathan Perl-Rosenthal, who more than anyone has made it
possible and whose influence is felt on every page. The patience with which Nathan perfects his
own work has been a constant source of inspiration, and his ability to suss out the essential in my
confused, drafty chapters continues to astound me. If completing a dissertation is like giving
birth, then Nathan has been the best midwife and the most skilled doula imaginable. His humor,
sweetness, and unconditional love have not only made the years of researching and writing
feasible, but also delightful beyond anything I could have wished for. I can only hope to be
blessed to spend many more years in his company.
Note on Transliteration and Names

Words in Arabic and Judeo-Arabic are transliterated according to the system used by the *International Journal of Middle East Studies*. Words in Hebrew are translated to reflect the pronunciation of Modern Hebrew: ' is used to denote the letter ‘ayin, ḥ for ḥet, k for a hard kaf, kh for a soft kaf, q for a quf, ṭ for a ṭet, and tz for a tzadi. A final hei is marked by an h, and double consonants represent a dagesh ḥazaq.

I have standardized the transliterations of both Arabic names that appear in Hebrew documents and Hebrew names that appear in Arabic documents. The names of Muslims given in Hebrew sources vary considerably in their spelling, as do Hebrew names in Arabic sources. For the sake of consistency, I have transliterated Arabic names following their standard spelling in Arabic (such as Masʿūd) and Hebrew names following their standard spelling in Hebrew (such as Shalom). However, for Jews whose names had an equivalent in Arabic (such as Ibrāhīm for Avraham), I have used the Hebrew spelling. I have preserved the spelling used for Moroccan names written out in European languages as they appear in the original sources, except in cases where the sources also provide the Arabic or Hebrew form or when these forms are obvious. In citing archival sources, however, I use the spelling found in the documents themselves.
Introduction

This dissertation examines the ways in which Jews used the different legal institutions available to them in nineteenth-century Morocco. It focuses on three kinds of non-Jewish legal institutions: 1) *shari'a* courts, which applied Islamic law (*shari'a*), and operated as courts of first instance at the local level: 2) the *Makhzan* (the Moroccan central government) as a legal arbiter, and especially the central court of appeals created in the 1860s: 3) and consular courts, which were run by the consulates of foreign nations and were open to foreign subjects and those Moroccans who had acquired foreign protection. The jurisdiction of these consular courts was governed by the treaties that Morocco had signed with foreign states, allowing foreigners and protégés a measure of extraterritorial legal status.

The socio-legal history of nineteenth-century Morocco remains largely unexplored. Although some scholarship exists on the legal history of Jews in Morocco before 1912, this work has heretofore been based on literature by rabbinic authorities and thus focuses on how elites envisioned the legal lives of Jews. In contrast, the present study is the first to draw on archival

---

1 By socio-legal, I mean the study of law as it was practiced in society, rather than the development of law itself. Socio-legal history seeks to write a social and cultural history of law and legal institutions. For those who have used a socio-legal approach, see, e.g., Leslie P. Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003); Iris Agmon, *Family and Court: Legal Culture and Modernity in Late Ottoman Palestine* (Syracuse, NY: Syracuse University Press, 2006); Ido Shahar, “Practicing Islamic Law in a Legal Pluralistic Environment: The Changing Face of a Muslim Court in Present-Day Jerusalem” (Ph.D. Dissertation, Ben-Gurion University of the Negev, 2006); Avi Rubin, *Ottoman Nizamiye Courts: Law and Modernity* (New York: Palgrave Macmillan, 2011).

evidence and thus the first to focus on how individuals actually interacted with the various legal institutions to which they had access. Whereas much legal history of the pre-modern Islamic Mediterranean has tended to focus on the functioning of a single type of legal institution, especially shari'a courts, this dissertation seeks to understand how the multiple legal orders functioned alongside and, at times, in cooperation with one another. I am principally interested in understanding law from the perspective of legal actors rather than institutions; I use the experience of Jews as a case study to explore how individuals in nineteenth-century Morocco made choices in a legally pluralist environment.

Additionally, I contribute to two conversations in the history of Jews in the Islamic world. On the one hand, I argue for the need to go beyond a narrative of either tolerance or persecution and focus instead on how Jews as individuals with agency responded to the social and legal circumstances in which they found themselves. On the other hand, I propose a new approach to the study of Jewish legal autonomy; rather than asking whether or not Jews were legally independent, I employ the concept of legal pluralism to understand how Jews navigated among multiple legal orders. While my focus is on Morocco, I draw comparisons with the experience of Jews under Islamic rule during the medieval period (based largely on the Cairo Geniza) and in the early modern Ottoman Empire. This diachronic approach allows me to make claims about the history of Jews under Islamic rule in the longue durée, as well as to explore the specificities of the Moroccan case.

Underlying the questions asked in this dissertation is an approach to the history of Jews which emphasizes their participation in the broader society in which they lived, rather focusing
Jews’ use of non-Jewish legal institutions was a natural extension of their participation in Moroccan society more generally, especially in the commercial sphere. To this end, I do not view the history of Jews in Morocco as in any way separate from the history of Morocco more broadly; rather, my focus on Jews is a case study in one aspect of Moroccan society. I thus intend this dissertation to be relevant to scholars of North Africa who are not interested in Jews per se. This is particularly important since so much of the legal history of nineteenth-century Morocco has yet to be written; much what follows seeks simply to understand the workings of sharī’a courts, Makhzan courts, and consular courts in Morocco, in addition to the ways in which Jews used them.

Morocco in the Long Nineteenth Century

Throughout the nineteenth century Morocco was an independent monarchy governed by a sultan from the ‘Alawī dynasty, which came to power in the seventeenth century and still governs Morocco today. The ‘Alawī sultans ruled from the three capital cities of Fez, Marrakesh, and Meknes. Although in many ways highly decentralized, the pre-colonial Moroccan state was run by a central government (known as the Makhzan) which claimed (and to some degree exercised) authority over much of the territory of present-day Morocco. The country remained independent until 1912, when the French established a protectorate over most of Morocco, and Spain established its own protectorate in the north.


4 Boum makes a similar observation: “Jews were not seen as outsiders to the legal system because they were active members in the social and economic dealings of the community” (Boum, “Muslims Remember Jews,” 248).
While politically there was more continuity than change during the nineteenth century, Morocco nonetheless experienced significant transformations in almost all areas of state and society. Most important was the increasing influence of Western states on economic and political developments in Morocco. Although scholars have shown that the image of Morocco as isolated prior to the nineteenth century is incorrect, there is no question that the degree and intensity of financial and political ties between Morocco and the Western world increased dramatically after 1800. The French colonization of Algeria, which began in 1830, was an important watershed for the region. Morocco was perhaps even more affected by the signing of a free trade agreement with Britain in 1856 and by Spain’s occupation of the northern city of Tetuan from 1860-2. Both events precipitated increased trade with merchants from Europe and the Americas, as well as greater political involvement in Morocco’s internal and external affairs by foreign governments.

Morocco’s Jews participated in and were affected by these changes to a disproportionate degree given their small number. Although demographic statistics for pre-colonial Morocco are notoriously unreliable, Jews made up something between 2% and 7% of the entire population. This relatively small ratio belies the fact that Jews were concentrated in cities, where in some

---


7 Estimates put Morocco’s total population at between 2,750,000 and 10 million, and the most reliable estimates put the Jewish population at around 180,000 (Frederick V. Parsons, *The Origins of the Morocco Question, 1880-1900* (London: Duckworth, 1976), 539).
cases they made up close to half of the urban population. Jews also played an outsized role in society, especially on the economic and political levels. They were particularly well-connected to networks of international trade and often occupied privileged positions among the country’s commercial elite. These financial ties involved Jews more directly in the increasingly important diplomatic relationships among the Makhzan and foreign powers with interests in Morocco. Jews acted as intermediaries, often working as interpreters and even consuls, and their role in international trade put them at the front and center of many of the political issues of the day.

Starting in the mid-nineteenth century, Jews in Morocco were also increasingly well-connected to Jews in the West, particularly in France, Britain, and the United States. In all three countries Jews developed organizations whose goal was to assist Jewish communities that had not yet been emancipated. The most famous of these was the Alliance Israélite Universelle (AIU), a French-Jewish organization created in 1860 which both advocated on behalf of Jewish causes worldwide and created a network of Jewish schools in the Mediterranean basin and beyond with the intent of bringing enlightenment values to “backwards” Jewish communities. The budding network of AIU schools in Morocco, and Moroccan Jews’ increasingly close ties to their coreligionists in

---

8 This was true of cities like Demnat (where in the late nineteenth century Jews constituted about a third of the total population: Sarah Frances Levin, “Demnat,” in Encyclopedia of Jews in the Islamic World, ed. Norman Stillman (Leiden: Brill, 2010)) and Sefrou (where in 1905 the Jewish population was estimated as constituting half of the total population: Thomas Kerlin Park and Aomar Boum, Historical Dictionary of Morocco (Lanham, MD: Scarecrow Press, 2006), 318). In Marrakesh in 1926, Jews made up about 9% of the total population (P. de Cenival, “Marrākush,” in Encyclopedia of Islam, ed. P. Bearman, et al. (Leiden: Brill, 2003)).
11 On the AIU in Morocco, see Michael M. Laskier, The Alliance Israélite Universelle and the Jewish Communities of Morocco, 1862-1962 (Albany: State University of New York Press, 1983). The other organizations were the Anglo-Jewish Association and the Board of Delegates of American Israelites.
Europe and the Americas more generally, marked an important turning point in the nature of the Moroccan Jewish community.12

In what follows I examine Jews’ legal strategies during this turbulent time in Moroccan history. Although some of my sources date from the early part of the nineteenth century, the vast majority are from the period between 1850 and 1912. It is necessary to end in 1912 because of the changes brought about by French colonization, not only socially and economically but, more importantly for our purposes, in the organization of law. (I touch briefly on the nature of law in colonial Morocco in the Epilogue.) Despite the fact that the period I cover was one of immense change in Morocco, not all aspects of the Moroccan legal system underwent profound transformation during this time. The changes affecting Morocco in the second half of the nineteenth century form the backdrop for the questions I ask about legal history, rather than the focus of those questions.

Law in the Islamic Mediterranean

The aim of this dissertation is to capture the quotidian lives of Jews and Muslims as they navigated their way through the different legal venues that existed in pre-colonial Morocco. Through a focus on the strategies of legal actors and an examination of the interactions among the various legal orders in pre-colonial Morocco, this dissertation proposes a new approach to the socio-legal history of the Maghrib and, by extension, the Islamic Mediterranean. While the

---

study of law in the Islamic world was once relegated to the analysis of legal literature written by jurists, the past few decades have witnessed a surge in research on law in action. This historiographical turn was both spurred and facilitated by the opening of Ottoman archives to researchers over half a century ago. The relative wealth of archival sources from the Ottoman Empire has also meant that the majority of research on law as it was practiced (rather than as it was imagined by jurists) has been conducted by Ottomanists.

Nonetheless, the study of law in Morocco has spurred an important debate whose implications for scholarship extend beyond the Maghrib. The principal participants are Lawrence Rosen, who conducted ethnographic research on the sharī‘a court in Sefrou in the 1960s and 1970s, and David Powers, whose research has focused on a collection of ḥāfatū (legal responsa) by the jurist Aḥmad b. Yaḥyā al-Wansharīsī (d. 1508). Both structure their work in part as a response to Max Weber’s conception of Islamic law as a paradigm of arbitrary justice (what he terms “kadijustiz”). Rosen rejects the view of the qāḍī (Islamic judge) as inherently arbitrary, asserting that Islamic law follows “a logic and order of its own” which lies “in the fit between the decisions of the Muslim judge and the cultural concepts and social relations to

---

13 For many years the most influential work on Islamic law was that of Joseph Schacht (esp. Joseph Schacht, An Introduction to Islamic Law (Oxford: Clarendon Press, 1964)), which remains an important reference. Of course, the study of Islamic jurisprudence has by no means been eclipsed. In more recent years, the historiography of Islamic jurisprudence has in large part focused on the extent to which jurists engaged in independent legal reasoning after the medieval period, rather than simply following the precedent of previous generations (often referred to as the closing of the gates of ijtihād): on this, see, e.g., Wael B. Hallaq, “Was the Gate of Ijtihad Closed?,” International Journal of Middle East Studies 16, no. 1 (1984); Sherman A. Jackson, “Taqiṣ, Legal Scaffolding and the Scope of Legal Injunctions in Post-Formative Theory Muṭlaq and ‘Āmm in the Jurisprudence of Shihāb al-Dīn al-Qarafī,” Islamic Law and Society 3, no. 2 (1996).


which they are inextricably tied.” Yet ultimately Rosen echoes Weber in arguing that Islamic law does not depend on careful adherence to a doctrine and body of laws, emphasizing instead the role of culture and custom. Powers, on the other hand, argues that qādīs’ decisions were bound by legal doctrine. He disputes Rosen’s image of the Moroccan qāḍī drawing on his personal knowledge of custom and local society and stresses the extent to which legal authorities followed the internal logic of Islamic law as set forth in juridical literature.

Ultimately, however, both Rosen and Powers are primarily interested in how qāḍīs make legal decisions. Their approach tells us little about how shārī’a courts functioned as institutions or about the experience of the individuals who frequented those courts. Rosen’s focus on judicial discretion was a choice, since as an ethnographer he could have asked different kinds of questions during his time observing the qāḍī’s court in Sefrou. But for Powers’s study, this focus is largely determined by his source base. Since archival records are not available for the late medieval period, Powers had to rely exclusively on juridical literature. Yet even for the early modern period, for which archival sources are available, the historiography of law in Morocco has yet to navigate the archival turn which so transformed Ottoman legal history.

Without an examination of the documentation produced by courts, the operation and significance

17 Rosen understands the role of the qāḍī as putting individuals back into situations in which they can regulate their own social relations, rather than applying a complex body of juridical literature. He argues that qādīs oversee a judicial process determined by Islamic law; the content of that process, however, is supplied by local custom (ibid., 67). See also idem, The Justice of Islam: Comparative Perspectives on Islamic Law and Society (New York: Oxford University Press, 2000), 13, 22-33.
18 Powers, Law, Society, and Culture, esp. Chapter 1.
19 This is also true of Jacques Berque’s influential work on law: Jacques Berque, Les Nawâzîl el muzâra’â du Mi’yâr Al Wazzânî; étude et traduction (Rabat: Editions Felix Moncho, 1940); idem, Essai sur la méthode juridique maghrébine (Rabat: 1944).
of these institutions remain opaque. The importance of the present study, then, lies partly in its use of archival documents to reconstruct the functioning of Moroccan legal institutions.

In addition to undertaking the first institutional history of courts in pre-colonial North Africa, this dissertation also suggests new directions for the study of law in the Islamic Mediterranean. The historiographical context in which I intervene is that of Ottoman history, where historians interested in law have been drawing on archival sources for decades. Whereas the first studies based on Ottoman sharī‘a court records mined them for details about quotidian life and social history, historians soon became interested in law itself and began drawing on the Ottoman archives to reconstruct the functioning of sharī‘a courts. Yet interest in the functioning of law itself—rather than using legal sources to write social history—has translated into a focus on institutional history which largely ignores the experiences of legal actors. My approach instead examines how individuals engaged with Moroccan legal institutions and made decisions about which legal forums to use and when. This does not mean that I ignore the institutional history of courts in Morocco, nor that I am uninterested in the ways in which these courts interacted with the central government; on the contrary, these are both topics which I


23 In recent years, there has been fruitful attention to the culture of Ottoman courts and an effort to situate the archival records in the historical context in which they were created. See esp. Dror Ze‘evi, “The Use of Ottoman Sharī‘a Court Records as a Source for Middle Eastern Social History: A Reappraisal,” *Islamic Law and Society* 5, no. 1 (1998); Iris Agmon, “Recording Procedures and Legal Culture in the Late Ottoman Sharī‘a Court of Jaffa,” *Islamic Law and Society* 11, no. 3 (2004); idem, *Family and Court*, esp. Chapter 3. Boğaç Ergene is one of the few scholars to call for more attention to the perspective of legal actors: Boğaç Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Çankırı and Kastamonu (1652-1744)* (Leiden: Brill, 2003). Ultimately, however, Ergene’s most powerful arguments concern the nature of the courts, rather than the experience of individuals (see, e.g., Chapters 3, 4, and 5).
address throughout the dissertation. However, this project focuses on which kinds of cases individuals brought to which legal institutions and the nature of their experience in those institutions.

The focus on institutional histories has also meant that few scholars have explored how different legal institutions fit together in a legal system with various coexisting and overlapping legal orders. The relative abundance of shari’a court records from many parts of the Ottoman Empire has meant that shari’a courts have garnered the lion’s share of scholarly attention, to the exclusion of other legal institutions such as the divan-i hümayun (which functioned as a central court of appeal) and, starting in the nineteenth century, the nizamiye courts (created as part of the reforms known as the Tanzimat).24 Those scholars who are interested in the plurality of Ottoman law have tended to focus on the ways in which the shari’a was modified or supplemented by the qanûn (or kanun, law enacted by the state) at the level of substantive law.25 However, few historians have examined how the multiple legal institutions existing in the Ottoman Empire worked alongside one another and, at times, together.26 While Ottoman subjects certainly used shari’a courts extensively, they also had a number of other options for resolving their legal disputes, such as petitioning the sultan, turning to provincial administrators for legal decisions,

24 Important exception include Rubin, Ottoman Nizamiye Courts, and Omri Paz, “Crime, Criminals, and the Ottoman State: Anatolia between the late 1830s and the late 1860s” (Ph.D. Dissertation, Tel Aviv University, 2010). 25 See, e.g., Jennings, “Limitations of the Judicial Powers of the Kadi,” 164-71; Gerber, “Sharia, Kanun and Custom in the Ottoman Law,” 137-9; idem, State, Society, and Law, Chapter 2; Colin Imber, Ebu’s-su’ud: The Islamic Legal Tradition (Edinburgh: Edinburgh University Press, 1997); Rudolph Peters, Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century (Cambridge: Cambridge University Press, 2005), 74-5, 92-102. Haim Gerber even goes so far as to imply that shari’a courts were the exclusive arenas for dispute resolution (in Gerber, State, Society, and Law). 26 Although Ergene discusses the need to focus on the existence of multiple paths to legal resolution, his chapter on this subject is more of a preliminary exploration than a comprehensive account: Ergene, Local Court in the Ottoman Empire, Chapter 9. Exceptions to this trend include Uriel Heyd, Studies in Old Ottoman Criminal Law (Oxford: Oxford University Press, 1973), Chapter 2 and James E. Baldwin, “Islamic Law in an Ottoman context: Resolving Disputes in Late 17th/ Early 18th-Century Cairo” (Ph.D. Dissertation, New York University, 2010).
and, for some individuals, appealing to the consulates of foreign states—not to mention the
courts run by religious minorities, including Jews and various Christian sects.

The sheer complexity of the Ottoman context makes it difficult to understand how these
various legal fora fit together. The size of the empire and the diversity of its subjects, both
ethnically and religiously, make generalizing almost impossible. Even a micro-historical
approach can pose challenges, including the sparse evidence for the functioning of non-sharī‘a
courts and the large number of languages required to work with sources from the empire’s many
religious communities. 27 Morocco, on the other hand, presents a far more simplified case. It is
smaller in size and less religiously diverse than the Ottoman Empire (since indigenous Christians
had either left or converted to Islam by the late medieval period), making it feasible to study the
various legal institutions which coexisted in Morocco at once. I further reduce the scope of my
inquiry by focusing on Jews, which allows me to understand how one category of legal actors
navigated the multiple legal orders available to them.

In order to explore the intersections between the different legal orders that existed in
Morocco I draw on the framework of legal pluralism. (I discuss my approach to legal pluralism
in detail below.) I am especially interested in the ways in which sharī‘a courts interacted with
the other legal institutions with which they coexisted and to some extent competed. In my
exploration of Jews’ use of sharī‘a courts, I examine how Jews moved back and forth between
these institutions and batei din (Jewish courts which applied halakhah, Jewish law). I argue that
not only did these two legal orders provide parallel services—often simultaneously—they also
actively cooperated with one another by upholding each other’s legal doctrines. In looking at the

---
27 On the scarcity of sources for non-sharī‘a courts, see idem, “Islamic Law in an Ottoman context,” 3-4. A study of
all the legal orders that existed in Ottoman Istanbul, for instance, would require knowledge of Ottoman, Hebrew,
Judeo-Spanish, Greek, Armenian, and various European languages.
state as a legal arbiter, I pay particular attention to how the Makhzan relied on sharī‘a courts to resolve certain kinds of disputes. Finally, in my study of the functioning of consular courts, I argue that diplomatic officials adapted to and even drew on Islamic legal practices in their administration of consular courts. While my specific conclusions are not necessarily applicable to other parts of the Islamic Mediterranean, my methodology is relevant to understanding the complex nature of law in Islamic societies more generally.

**Beyond tolerance and persecution**

In addition to offering a new approach to the history of law in the Islamic world, I use legal history as a particularly fruitful lens onto the daily lives of Jews and the ways they were integrated into the Moroccan society in which they lived. By “integrated,” I do not mean to say that Jews were always well treated by Muslims. On the contrary, the legal history of Jews in nineteenth-century Morocco points to many instances of discrimination. Rather, I mean that Jews were able and willing to use Islamic legal institutions more or less in the same ways that their Muslim counterparts used them. In fact, Jews often turned to Islamic legal venues in order to address instances of anti-Jewish bias. Jews’ regular use of Islamic courts integrated them into the Moroccan legal system, and it was an important ingredient in the glue which bound them to the broader non-Jewish society.

In looking at how Jews’ experiences in Moroccan legal institutions can inform us about their integration into Moroccan society, I seek to move away from the dominant paradigms shaping how historians have viewed Jews living under Islamic rule. Rather than attempting to answer whether or not Jews were well treated, I seek to shift the focus back to Jews as legal
actors with agency and to understand the ways in which they navigated amongst the various legal orders available to them.

The history of Jews in the Islamic world is often told in one of two ways, reflecting two ends of the historiographical spectrum that stretches between the poles of tolerance and persecution. The first generation of historians to engage in the scientific study of Jewish history (members of the *Wissenschaft des Judentums* school) invented what Mark Cohen has coined the “myth of an interfaith utopia.” These scholars focused on medieval Spain and were particularly interested in culture and literature as evidence of Jews’ successful assimilation into the broader Islamic society in which they lived—a picture which reflected their own hopes of assimilating into nineteenth-century German society. In the twentieth century scholars further developed this approach to the history of Jews in Islamic Spain and beyond; the term “Convivencia” came to epitomize a view in which Jews flourished under the relative tolerance of their Muslim rulers and Jews and Muslims forged close social, intellectual, and cultural bonds.

---


Historians on the persecution end of the spectrum did not gain prominence until after the Six-Day War of 1967, when Jewish scholars began to espouse what Cohen has coined a “neo-lachrymose conception of Jewish-Arab history.”\(^{32}\) Adopting what Salo Baron first termed a “lachrymose” approach to Jewish history,\(^{33}\) these historians pushed back against what they saw as rose-tinted idealism; instead, they argued that Muslim tolerance of Jews was nothing more than a myth. These historians portray Jews as oppressed victims of Islamic states which were fundamentally unjust towards non-Muslims.\(^{34}\) An important variation on this neo-lachrymose approach is that taken by a number of scholars who argue that Islam during the medieval period was fairly tolerant of Jews, but that the early modern period initiated a decline in Jews’ status and began a long era of Jews’ persecution under Islamic rule.\(^{35}\) Significantly for our purposes,

---


many of those who espouse the neo-lachrymose view single out early modern Morocco (from the fifteenth century until French colonization in 1912) as being one of the least secure places in the Islamic world for Jews.36

The legal status of Jews is particularly important to the neo-lachrymose view of Jews’ experience in the Islamic world. Scholars often invoke Islam’s conception of religious hierarchy and its concomitant restrictions on non-Muslims—especially the inadmissibility of testimony by non-Muslims—as proof that Muslims treated Jews badly.37 Most historians of the interfaith-utopic persuasion either claim that the technicalities of religious hierarchy were most often observed in the breach or largely avoid the question of legal history altogether.38

Most of the historiography on Moroccan Jews to emerge in opposition to the neo-lachrymose narrative has come from Moroccan historians.39 In the case of Morocco, the myth of interfaith utopia is more subtle than a direct assertion that Jews were always well-treated under Islamic rule. Nonetheless, a rose-tinted historiography is evident in the view advocated by many Moroccan scholars that Jews and Muslims (and by extension, Jews and the Makhzan) generally

---


37 Chouraqui, Condition juridique, 59-61; Bat Ye’or, The Dhimmi: Jews and Christians under Islam, 56-57; Gilbert, In Ishmael’s House, 32. The implication of this viewpoint is that Jews were only treated with justice once the legal system was reformed by European colonizers. On this, see also Bernard Lugan, Histoire du Maroc (Perrin/Critérion, 2000), 253-4.

38 See, e.g., Haim Zafrani, Deux mille ans de vie juive au Maroc : Histoire et culture, religion et magie (Casablanca: Editions Eddif, 2000), 14; Menocal, Ornament of the World, 72-3. An exception is Kemal Çiçek, “A Quest for Justice in a Mixed Society: The Turks and the Greek Cypriots before the Sharia Court of Nicosia,” in The Great Ottoman-Turkish Civilization, ed. Kemal Çiçek (Ankara: Yeni Türkiye, 2000); Çiçek uses the history of Christians in the kadı court of Cyprus to argue that Christians were treated well by Ottoman officials and came to trust in the local Islamic institutions even more than in their own church.

39 Concerning Morocco and North Africa more broadly, many Maghrbi historians are reacting to the prevalence of narratives which emphasize the oppression and degradation of Jews, narratives which originated with travel accounts of Europeans starting in the seventeenth century: see Zytnicki, Les Juifs du Maghreb, 25-35.
got along before their good relations were ruined by Western powers. Starting in the 1980s, a generation of historians began to draw extensively from the Moroccan state archives to write the history of Jews in Morocco. These scholars focus largely on the role of the state, in part because of the nature of the archives (which consist mainly of official correspondence). They adopt a narrative in which Western interference—which they see as beginning in the nineteenth century and culminating in colonization—was largely to blame for dealing the death blow to the harmonious coexistence of Jews and Muslims. Such an interpretation fits well with a nationalist narrative that pinpoints Western imperialism as the source of Morocco’s troubles.

This Moroccan historiography is distinct from that of Arab authors writing in the Mashriq who largely blame Zionism for disrupting the good relations among Jews and Muslims. Nor do Moroccan historians incorporate anti-Semitic stereotypes into their scholarship. While there is no question that Moroccan scholars of Jewish history have made significant contributions to the field, this historiography nonetheless perpetuates the view that tolerance more or less reigned supreme among Jews and Muslims in early modern Morocco until it was ruined by an outside force.

40 See especially Germain Ayache, “La recherche au Maroc sur l’histoire du judaïsme marocain,” in Identité et dialogue : Juifs du Maroc (Paris: La pensée sauvage, 1980), 34-5, where Ayache both calls for more researchers to use Moroccan archives in studying the history of Jews in Morocco and asserts that doing so will present a counter-narrative to the neo-lachrymose histories of Moroccan Jews.


42 See Cohen, Under Crescent and Cross, 6-8.

43 See also Abdelhamid Largueche, Les ombres de la ville : pauvres, marginaux et minoritaires à Tunis, XVIIIème et XIXème siècles (Manouba: Centre de publication universitaire, Faculté des lettres de Manouba, 1999), 347-92.
In recent years, the neo-lachrymose approach has gained prominence, especially in the field of Jewish studies (as indicated by a number of new publications by historians who espouse this view and by the lasting impact of older works in this vein). Consequently, parts of this dissertation will focus more on claims made by proponents of the neo-lachrymose school.

Ultimately, however, the two opposing positions have a similar effect on historical methodology. Both share a focus on how Jews were treated by Muslims, and thus seek to answer the question of whether or not Jews were victims of Islamic rule. On the one hand, seeing Jews only as victims obscures any agency that Jews had by reducing them to objects of oppression. On the other, asserting that Jews and Muslims generally “got along” ignores the real religious and social inequalities inherent in Islamic society and tends to shift the emphasis of historical analysis to the problems created by Western imperialism rather than the internal history of Islamic societies.

My goal in what follows is to recover the day to day lives of Jews in their broader Islamic, Mediterranean, and Moroccan environment. In so doing, I set aside the prevailing historiographical spectrum entirely and move away from the question of “was it good for the Jews?” Rather than asking how Jews were treated, I aim to understand the ways in which they interacted with Muslims and non-Jewish legal institutions on a quotidian basis. Instead of seeing Jews as passive—either passive victims of Islamic oppression or as passively benefiting from Islamic tolerance—I explore how Jews made decisions about the legal venues they frequented.

Larguèche’s synthetic discussion of the history of Jews in Tunis strikes a remarkable balance between rose and neo-lachrymose approaches and provides a nuanced analysis of the place of Jews in the broader Tunisian society. For recent publications, see especially Andrew G. Bostom, ed. The Legacy of Islamic Antisemitism: From Sacred Texts to Solemn History (Amherst, NY: Prometheus Books, 2008); Gilbert, In Ishmael’s House; Fenton and Littman, L’exil au Maghreb. Older publications in this school remain among the most popular books on the subject, especially Stillman, The Jews of Arab Lands and Lewis, The Jews of Islam.

Jonathan Ray makes a similar suggestion, though he proposes a solution based on understanding medieval Jews’ attitudes towards Convivencia and a focus on individual, rather than group, identity: Ray, “Beyond Tolerance and Persecution,” 4.
This dissertation shifts the focus onto Jews as resourceful individuals who developed strategies to navigate the legal institutions available to them. In so doing, I offer an alternative to either the lachrymose or rosy views of Jewish history.

Rethinking Jewish legal autonomy

Understanding how Jews participated in the broader Moroccan legal system requires a discussion of the relationship between batei din and the various non-Jewish courts which existed in Morocco. The application of halakhah in a context in which Jews possessed only limited political power—which was the case throughout most of Jewish history—necessarily leads to the question of how much authority Jewish leaders exerted over other Jews. This conversation is broader than legal history alone, as it covers all aspects of the relationship between Jewish communal leaders and non-Jewish authorities. Yet the law and its application are at the heart of the matter; the ability of Jews to maintain their own legal system, and hence the degree of authority over other Jews which Jewish legal officials possessed, are central to almost any discussion of how much independence Jews had from their rulers.

The present study seeks to move away from prevailing paradigms of Jewish communal autonomy. Rather than focusing on the extent to which the Jewish legal system was independent, I attempt to understand how Jewish courts functioned alongside non-Jewish legal institutions and within the context of a non-Jewish state. I suggest legal pluralism as an

---

46 For a useful re-thinking of Jewish autonomy which does not focus on the legal dimension, see Marina Rustow, *Heresy and the Politics of Community: The Jews of the Fatimid Caliphate* (Ithaca: Cornell University Press, 2008), Chapter 3.
alternative framework to that of autonomy, one which allows us to understand how multiple legal orders coexisted not only in nineteenth-century Morocco but throughout Jewish history.\footnote{Uriel Simonsohn has also used legal pluralism to great advantage: Uriel I. Simonsohn, A Common Justice: The Legal Allegiances of Christians and Jews under Early Islam (Philadelphia: University of Pennsylvania Press, 2011).}

The historiography on Jewish legal autonomy has generally fallen on one of two sides of a spectrum; an older generation which stresses the near-complete independence of Jewish courts, and a newer generation which counters this view by proposing the near-complete powerlessness (or even non-existence) of Jewish legal institutions. Jacob Katz’s description of the interplay between Jewish and non-Jewish law is perhaps the most famous articulation of the approach espoused by an earlier generation of Jewish historians.\footnote{Jacob Katz, Exclusiveness and Tolerance: Studies in Jewish-Gentile Relations in Medieval and Modern Times (Springfield, NJ: Behrman House, Inc., 1961), Chapter 5.} Katz was most interested in how jurists navigated the challenge posed to Jewish law by non-Jewish legal systems and the ways in which rabbinic authorities attempted to prevent Jews from violating the Talmudic prohibition on bringing other Jews before non-Jewish courts.\footnote{Ibid., 52-5. See also Simḥa Assaf, Batei ha-din ve-sidreihem aharei hatimat ha-Talmud (Jerusalem: Defus ha-po‘alim, 1924), 11-24; Louis Finkelstein, Jewish Self-Government in the Middle Ages (New York: P. Feldheim, 1964). David Shohet takes a somewhat different approach and stresses the relative openness of early medieval Jewish jurists towards non-Jewish courts, claiming that this attitude changed after the Crusades (David Menahem Shohet, The Jewish Court in the Middle Ages: Studies in Jewish Jurisprudence According to the Talmud, Geonic and Medieval German Responsa (New York: Hermon Press, 1931), 82-4, 95-104). For a more recent study of this question in greater detail, see Edward Fram, Ideals Face Reality: Jewish Law and Life in Poland, 1550-1655 (Cincinnati: Hebrew Union College Press, 1997).} Katz wrote that “an appeal to a non-Jewish court made with the consent of both parties was not always ruled out,” but that such an appeal was only permitted with the express permission of the rabbis.\footnote{Katz, Exclusiveness and Tolerance, 52. See also idem, Tradition and Crisis: Jewish Society at the End of the Middle Ages (Syracuse, NY: Syracuse University Press, 2000), 83.} He all but ignored the question of how Jews used non-Jewish courts when the matter at hand involved a non-Jew.\footnote{Katz passes over the subject in a single sentence: “Relationships between Jews and non-Jews were, of course, entirely subject to non-Jewish authorities” (idem, Exclusiveness and Tolerance, 52).}

The first generation of historians to examine the role of non-Jewish courts in the Islamic world did not stray far from Katz’s approach. These scholars drew primarily on responsa
literature, particularly from the Ottoman Empire, as a source for the social history of Jews. Like Katz, this first generation attempted to understand the scope and functioning of Jewish legal autonomy by focusing on how rabbinic authorities faced the challenges posed by the availability of non-Jewish courts. Although these scholars recognized that Jews used non-Jewish courts, the majority concluded that Jewish legal autonomy was alive and well in the medieval and early-modern Islamic world—an observation they linked to the ability of these Jewish communities to thrive (in contrast to other places where Jews enjoyed less autonomy). Even Shlomo Dov Goitein, who was the first scholar to draw extensively on documentary evidence from the Cairo Geniza, ultimately concluded that the Jewish community constituted a “state beyond the state.”

As with his work in general, Goitein’s meticulous study offers a picture of Jewish legal life that was far more textured, detailed, and nuanced than previous scholarship on the subject. Yet while he recognized that Jews used non-Jewish courts, Goitein’s understanding of the society which produced the Cairo Geniza was one in which the Jewish community provided the institutions—


53 Epstein, *The Responsa of Rabbi Simon ben Zemah Duran*, 44, 46-7; Goodblatt, *Jewish Life in Turkey*, 87; Goldman, *Rabbi David Ibn Abi Zimra*, 92, 153-5. Aryeh Shmuelevitz was something of an exception to this trend. Although Shmuelevitz drew solely on rabbinic responsa, he focused on legal (rather than social) history. Shmuelevitz thus paints a more complex picture of the legal history of Jews, drawing on the responsa literature to discuss the interplay between Jewish and Islamic law in the early modern Ottoman Empire: Aryeh Shmuelevitz, *The Jews of the Ottoman Empire in the Late 15th and the 16th centuries: Administrative, Economic, Legal and Social Relations as Reflected in the Responsa* (Leiden: Brill, 1984), especially Chapter 2.

including courts—which were of primary importance in Jews’ lives.\textsuperscript{55} The scholarship on Moroccan Jewish legal history similarly emphasizes the great degree of legal autonomy afforded Jews, as well as rabbinic leaders’ success in preventing non-Jewish courts from eroding their authority.\textsuperscript{56}

The most direct challenge to previous paradigms of Jews’ relationship to non-Jewish law comes from historians working on Ottoman legal history.\textsuperscript{57} Joseph Hacker makes a particularly

\textsuperscript{55} One reason that Goitein’s view of Jewish courts hewed more closely to that of his predecessors is that Goitein generally did not incorporate the Arabic-script sources into Mediterranean Society. On these sources, see esp. Geoffrey Khan, Arabic Legal and Administrative Documents in the Cambridge Genizah Collections (Cambridge: Cambridge University Press, 1993).

\textsuperscript{56} See esp. Chouraqui, Condition juridique, 119-21; Zafrani, Les juifs du Maroc, esp. 117; idem, “Judaïsme d’occident musulman. Les relations judéo-musulmanes dans la littérature juridique. Le cas particulier du recours des tribunaux juifs à la justice musulmane et aux autorités représentatives de l’état souverain,” Studia Islamica, no. 64 (1986): 129-31; idem, Two Thousand Years of Jewish Life in Morocco (New York: Sephardic House, 2005), 126, 75. Haim Zafrani echoed Goitein’s formulation, writing that Jews in Morocco constituted “a state not only within the Islamic state but sometimes beyond its frontiers” (ibid., 6). Shlomo Deshen discusses the limits of the authority of Jewish courts, but not in the context of being threatened by gentile legal institutions: Deshen, The Mellah Society, 51-3. Jane Gerber offers a more nuanced view in her discussion of the ways in which Moroccan rabbis were at times forced to accommodate the use of non-Jewish courts in order to preserve the authority of their own legal institutions (Gerber, Jewish Society in Fez, 60-2). Yet even Gerber, much like Goitein, ultimately concludes that batei din functioned with a “large degree of autonomy granted under Islam” (ibid., 101). Eliezer Bashan comes to a similar conclusion: Bashan, Yahadut Maroko, 80-4, esp. 82-3.

\textsuperscript{57} In fact, Amnon Cohen was the first Jewish historian to make extensive use of Islamic court records (\textit{sijillāt}): Amnon Cohen, Yehudei Yerushalayim ba-me’ah ha-shesh-‘esreh le-fi te’udot Turkiyot shel beit ha-din ha-shara’i (Jerusalem: Hotza’at Yad Yitzhak Ben-Ẓvi, 1976) (translated as Jewish Life under Islam: Jerusalem in the Sixteenth Century (Cambridge: Harvard University Press, 1984)) and idem, A World Within: Jewish Life as Reflected in Muslim Court Documents from the Sijil of Jerusalem (XVIth Century), 2 vols. (Philadelphia: Center for Judaic Studies, University of Pennsylvania, 1994). (See also Haim Gerber, “Arkhiyon beit-ha-din ha-shara’i shel Bursah ke-meqor histori le-toldot yehudei ha-‘ir,” Mi-qedem u-mi-yam 1 (1981), which is more of an introduction to the sources than a full-fledged analysis of social history.) However, Cohen is not particularly interested in legal history per se; rather, he uses the \textit{sijillāt} primarily as a lens onto the social history of Jews in early modern Palestine (although he devotes one chapter to legal history: Cohen, Jewish Life under Islam, Chapter 6). Cohen went on to publish an extensive collection of documents pertaining to Jews from the Ottoman shari‘a court of Jerusalem, though again these publications focus on the documents as sources for social history and do little to interpret their bearing on the legal history of Jews in Ottoman Palestine: Amnon Cohen and Elisha Ben Shim‘on-Pikali, eds., Yehudim be-veit ha-mishpat ha-muslami: Ḥevrah, kalkalah, ve-irgun qehilati be-Yerushalayim ha-Otomanit, ha-me’ah ha-16 (Jerusalem: Yad Elazar Ben-Zvi, 1993); idem, eds., Yehudim be-veit ha-mishpat ha-muslami: Ḥevrah, kalkalah, ve-irgun qehilati be-Yerushalayim ha-Otomanit, ha-me’ah ha-18 (Jerusalem: Yad Elazar Ben-Zvi, 1996); Amnon Cohen, ed. Yehudim be-veit ha-mishpat ha-muslami: Ḥevrah, kalkalah, ve-irgun qehilati be-Yerushalayim ha-Otomanit, ha-me’ah ha-19 (Jerusalem: Yad Elazar Ben-Zvi, 2003); Amnon Cohen and Elia Sheva Ben Shim‘on-Pikali, eds., Yehudim be-veit ha-mishpat ha-muslami: Ḥevrah, kalkalah, ve-irgun qehilati be-Yerushalayim ha-Otomanit, ha-me’ah ha-17, 2 vols. (Jerusalem: Yad Elazar Ben-Zvi, 2010). In his focus on social history, Cohen’s use of shari‘a court records followed a broader trend in Ottoman historiography: see, e.g., Raymond, Artisans et commerçants au Caire; Abraham Marcus, The Middle East on the Eve of Modernity: Aleppo in the Eighteenth
influential argument based on internal sources from Ottoman Jewish communities (especially responsa literature), showing that although Jews may have had some *de jure* autonomy, their *de facto* autonomy was quite limited and subject to curtailment at any time.⁵⁸ Hacker concludes that this lack of *de facto* autonomy helps explain Jews’ “very considerable use of Muslim courts.”⁵⁹ Najwa Al-Qattan goes one step further, expressing skepticism that non-Muslim legal institutions even existed in the Ottoman Empire.⁶⁰ She argues that not only did Jews (and Christians) receive “consistent and fair treatment” in the sharī’a courts, constituting a positive explanation of their attraction to Islamic legal institutions, but that the almost certain absence of their own courts of law provides a second, negative explanation.⁶¹ The picture Al-Qattan paints is one in which non-Muslims made extensive use of sharī’a courts, both by choice and by necessity.⁶²

---

⁵⁸ Joseph Hacker, “Jewish Autonomy in the Ottoman Empire, its Scope and Limits: Jewish Courts from the Sixteenth to the Eighteenth Centuries,” in *The Jews of the Ottoman Empire*, ed. Avigdor Levy (Princeton: The Darwin Press, 1994), especially 165-6. Hacker traces a number of cases in which Jews appealed to the Islamic authorities in order to curtail the jurisdictional powers of a local Jewish judicial official. The response of the authorities was typically to deny the Jewish judge the ability to rule on a range of subjects. (Hacker goes into detail concerning the case of Rabbi Benjamin b. Matityah from Arta, though he also points out similar cases from Aleppo, Safed, Jerusalem, Izmir, Istanbul, and Salonica.)

⁵⁹ Ibid., 181. Nonetheless, he acknowledges that all scholarship had thus far “fall[en] short of explaining the dimensions of this phenomenon, i.e., turning to the Muslim courts…. …” (ibid., 182).

⁶⁰ Najwa Al-Qattan, “Dhimmis in the Muslim Court: Legal Autonomy and Religious Discrimination,” *International Journal of Middle Eastern Studies* 31, no. 3 (1999): 430-2. For the dissertation, see idem, “Dhimmis in the Muslim Court: Documenting Justice in Ottoman Damascus, 1775-1860” (Ph.D. Dissertation, Harvard University, 1996). Al-Qattan argues that responsa literature, the main source of evidence for the existence of Jewish courts, “is problematic and restricted to one century.”⁶⁰ While this particular claim is inaccurate—there is extensive responsa literature from the Ottoman Empire from much of the early modern and modern periods—her general argument might, at first, appear compelling. Al-Qattan refers only to Aryeh Shmuelevitch’s study of responsa literature from the sixteenth century; since she does not read Hebrew, it seems likely that she was simply unaware of the existence of literature from later periods. For a similar argument concerning Christian courts in Ottoman Kayseri, see Ronald C. Jennings, “Zimmis (Non-Muslims) in Early 17th Century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri,” *Journal of the Economic and Social History of the Orient* 21, no. 3 (1978): 271.

⁶¹ Al-Qattan, “Dhimmis in the Muslim Court,” 436.

Recently scholars working on the medieval Mashriq have offered more nuanced models of the interactions between Jewish and Islamic courts. Gideon Libson’s work asks a new kind of question; how did the possibility of recourse to Islamic courts influence the development of Jewish law? Libson argues that despite Jews’ right to judicial autonomy, Islamic law “considered the rabbinical courts to be part of the overall Muslim legal system….” The constant availability of Islamic courts pushed the geonim to adapt to the reality that Islamic courts always provided an alternative to Jewish courts. Additionally, Uriel Simonsohn uses the framework of legal pluralism to argue for a complex interaction between Jewish and Islamic courts. Ultimately, however, Libson and Simonsohn draw primarily on geonic literature; their...
studies thus focus more on law as it was imagined by jurists and less on law as it was practiced by litigants.67

The historiography of Jews in Islamic courts is, uncharacteristically, more developed than that of Jews in the gentile courts of Europe.68 Although a few scholars of European Jewish history have investigated Jews’ use of non-Jewish courts in detail, these studies are few and far between. Nor have these historians offered alternative paradigms with which to understand the relationship between Jewish and non-Jewish courts.69 More recently, scholars working on European Jewry are turning to legal archives in order to write a new socio-legal history of Jews in Europe.70 Yet this research largely remains in its infancy and represents only the beginnings of a historiographical turning point for historians of Ashkenazi Jews.71

67 See also Tamer El-Leithy, “Coptic Culture and Conversion in Medieval Cairo, 1293-1524 A.D.” (Ph.D. Dissertation, Princeton University, 2005), 412-22; although El-Leithy stresses the threat to dhimmī autonomy posed by recourse to Islamic courts, he also notes that this was a common practice despite the existence of dhimmī courts. El-Leithy’s relatively brief discussion does not, however, offer an alternative model of dhimmī autonomy.

68 This is not to suggest that European Jewish historians have not asked how Jewish religious authorities faced the existence of non-Jewish legal institutions; Salo Baron, for instance, addressed this topic in his comprehensive work on Jewish history: Salo W. Baron, A Social and Religious History of the Jews, 3 vols. (New York: Columbia University Press, 1937), v. 3, 118.


71 There are a number of scholars currently working on more detailed studies of Jewish law as it functioned in Europe based on archival documents, including Jay Berkovitz (whose current research examines the records of the rabbinic court of Metz from the late eighteenth century) and Edward Fram (who is writing about a diary from the rabbinic court of Frankfurt from the late eighteenth century).
We are left with two models of Jewish legal autonomy—the Jewish “state beyond the state” and a picture of Jewish leaders lacking in any real legal authority. We can immediately dismiss the second model as inapplicable to the Moroccan context, where the batei din were vibrant legal institutions to which Jews turned on a regular basis (discussed in Chapter One). This model is similarly inappropriate for the case of medieval Egypt, whence the Geniza preserves thousands of legal documents produced by Jewish courts which clearly had some measure of authority. In fact, I suspect this model is inapplicable for most, if not all, of the history of Jews in the Islamic world. Yet regardless of their accuracy, both historiographical models boil down to an assessment of the degree of Jews’ legal independence. That is, they answer the question “how independent was the Jewish legal system” either by asserting that it was largely independent or that its functioning was mainly determined by the non-Jewish state.

The complexity of the relationship between the Jewish legal system in Morocco and the Makhzan defies a simple categorization of nearly total or nearly absent independence. On the one hand, Jews in Morocco ran their own courts and had a large degree of authority over internal Jewish affairs. On the other hand, Jews always had the option of resorting to non-Jewish legal authorities, either by appealing cases to sharī‘a courts, to the Makhzan, or—for those Jews with foreign protection or nationality—to consular courts. Similarly, Jewish legal institutions ultimately derived their authority from the state. Jewish communal leaders in Morocco were

---

73 See Libson, *Jewish and Islamic Law*, 45, 103. Jacob Katz makes a similar point concerning Jewish communities in early modern Europe: “For all that it was based on powerful elements within the Jewish consciousness and ethic, the authority of the communal leaders would have been impossible without government backing and enforcement of compliance” (*Katz*, *Tradition and Crisis*, 77).
well aware of this power differential; when they thought their authority was threatened, they appealed to the Makhzan to bolster it (see Chapter Six).  

Legal pluralism: A New Model

A new model for understanding how Jewish courts existed within the context of non-Jewish legal institutions and the non-Jewish state is called for. This dissertation uses the framework of legal pluralism as an alternative to the debate on autonomy. Legal pluralism easily accommodates an approach to Moroccan Jewish legal institutions which sees them as one legal order among many. Employing legal pluralism offers a theoretical apparatus for understanding how and why Jews lived their legal lives well beyond the boundaries of Jewish law and Jewish courts—courts which themselves existed within a complex web of relationships binding them to non-Jewish courts and the Islamic state. Legal pluralism provides a framework within which to examine how Moroccan Jews navigated among all the judicial institutions available to them. This includes instances in which Jews followed the jurisdictional boundaries outlined by Islamic law—that is, going to Jewish courts for intra-Jewish cases and Islamic courts for inter-religious cases—and those in which Jews engaged in “forum shopping” by choosing Islamic courts for matters concerning only Jews. This is particularly important in light of the fact that many studies of Jews in Ottoman sharī‘a courts focus on their voluntary use of Islamic legal institutions for intra-Jewish cases while ignoring the ways in which Jews used Islamic courts for matters concerning Muslims.

---

74 Nor is this delicate balance among Jewish legal institutions, the state, and individual legal actors unique to Morocco; work by scholars like Libson and Simonsohn demonstrates that the degree of legal independence alone is not sufficient to account for the nature and functioning of Jewish courts.

75 This is especially true of Al-Qattan, “Dhimmis in the Muslim Court” and Wittmann, “Before Qadi and Vizier.”
Legal pluralism is an approach to understanding the law which argues that legal systems are never (or very rarely) completely unified and centralized.\textsuperscript{76} Rather, legal pluralism asserts that multiple legal orders exist within a given society’s overarching legal system. These multiple (or plural) legal orders exist alongside, and to some extent overlap with, one another. Legal pluralism counters the assumptions of legal centralism, which understands law as emanating solely from the state and which dominated legal theory until at least the 1970s.

Scholars have pointed out a number of weaknesses with legal pluralism as a theoretical framework. Perhaps the strongest challenge is that if legal pluralism is everywhere—since according to scholars who adopt legal pluralism as a framework, all societies are legally pluralist to some degree—the concept loses much of its effectiveness except as a counterweight to the now generally abandoned view of legal centralism.\textsuperscript{77} One proposed solution has been to identify societies with stronger or weaker degrees of legal pluralism. The initial understanding of strong vs. weak legal pluralism, proposed by John Griffiths, identifies weak legal pluralism as characteristic of those societies in which the state mandates different legal orders for different sectors of the population.\textsuperscript{78} Strong legal pluralism, on the other hand, occurs when the state does not control the various legal orders within a given society and when a single population can draw on more than one of these available legal orders.\textsuperscript{79} Griffiths (and many others) conclude that

\textsuperscript{76} The most oft-cited articulation of legal pluralism is John Griffiths, “What is Legal Pluralism,” \textit{Journal of Legal Pluralism} 24 (1986). Legal pluralism was first proposed by legal anthropologists to describe law in colonial situations, though it has since been expanded to relate to all kinds of societies (see Brian Z. Tamanaha, \textit{A General Jurisprudence of Law and Society} (Oxford: Oxford University Press, 2001), 115-16).


\textsuperscript{78} Griffiths, “What is Legal Pluralism,” 5-8. Griffiths considers weak (or “juristic”) legal pluralism to be a sub-set of legal centralism.

\textsuperscript{79} Ibid., 5, 8.
only strong legal pluralism is worthy of empirical study, and thus essentially ignores weaker forms of legal pluralism.

Yet scholars have raised a number of objections to Griffiths’ approach.\(^{80}\) Ido Shahar points out that Griffiths’ distinction between strong and weak legal pluralism leads scholars away from using legal pluralism as a theoretical framework in Islamic societies, where the state generally does grant some form of recognition to multiple legal orders (such as those of non-Muslims).\(^{81}\) Shahar proposes another meaning to the distinction between strong and weak legal pluralism, one focused on institutions and legal actors rather than normative law. In Shahar’s schema, strong legal pluralism occurs when an individual can engage in forum shopping—that is, has the ability to choose a legal forum on the basis of where she thinks she will get the most favorable outcome. Weak legal pluralism occurs when an individual is only able to appeal to the particular legal forum to which she is assigned (presumably by the state) for a given case.\(^{82}\)

While Shahar’s conceptions of strong and weak legal pluralism are certainly more useful for the purposes of this dissertation, I am most concerned with his emphasis on the viewpoint of legal actors and institutions as opposed to normative law.\(^{83}\) Rather than focusing exclusively on how the state engaged with the various legal orders which existed under its auspices, I also ask how these legal orders functioned in relation to one another and how individuals navigated among them. Shahar suggests that we use legal pluralism to understand sharī‘a in the context of non-sharī‘ī legal orders; I take this proposition one step further by including non-Muslim legal

---

\(^{80}\) The most influential objection to legal pluralism, and particularly to Griffiths’ conception of it, was made by Brian Tamanaha: Brian Z. Tamanaha, “The Folly of the ‘Social Scientific’ Concept of Legal Pluralism,” *Journal of Law and Society* 20, no. 2 (1993). Tamanaha’s main point is that legal pluralists mischaracterize legal centralism, largely by refusing to recognize the role of the state in determining what constitutes law (see esp. ibid., 201).


\(^{82}\) Ibid., 123-4.

\(^{83}\) In this, he is influenced by Jacques Vanderlinden, “Return to Legal Pluralism: Twenty Years Later,” *Journal of Legal Pluralism* 28 (1989).
orders. I also turn the focus from how lawmakers managed the existence of multiple legal orders to how legal consumers moved among different and often competing legal institutions.

Ultimately, I am not particularly concerned with arriving at a new (and presumably better) definition of law or legal pluralism. In identifying what law was in the case of nineteenth-century Morocco, I follow Brian Tamanaha’s approach that “law is what people within social groups have come to see and label as ‘law.’”84 I am principally interested in using legal pluralism as a tool to shift the debates on the history of law and of Jews in the Islamic Mediterranean, rather than using the legal history of Jews in Morocco to influence the ways in which scholars think about legal pluralism.

In employing legal pluralism as a theoretical framework, I follow in the footsteps of scholars who have employed legal pluralism as an organizing principle to understand how various legal orders coexist in Islamic society.85 Ido Shahar has articulated the benefits of legal pluralism for the study of shari‘a courts, though as discussed above his insights should be extended to include law in Islamic societies broadly speaking.86 Similarly, Uriel Simonsohn argues that the legal history of Jews under early Islam is best understood from the point of view of legal pluralism.87 Yet as Sarah Stein has pointed out, scholars of Jewish studies have not engaged with legal pluralism as much as one might expect.88 Given the inherent plurality present in any situation in which Jews exercised some sort of judicial power, legal pluralism seems to be a particularly fruitful framework with which to investigate the history of Jewish law.

84 Tamanaha, “Understanding Legal Pluralism,” 396.
86 Shahar, “Legal Pluralism and Shari'a Courts.”
87 Simonsohn, A Common Justice, 11-14.
The concept of forum shopping—that is, “the practice of choosing the most favorable jurisdiction or court in which a claim may be heard”—is of particular relevance to this dissertation.\(^8^9\) I argue that Moroccan Jews were able and willing to choose among different legal orders in which to register their legal deeds and resolve their legal disputes. As Ido Shahar has pointed out, our understanding of forum shopping in practice—as opposed to theory—remains fairly limited; there have been relatively few studies by anthropologists or historians that examine how legal consumers actually engaged in forum shopping.\(^9^0\) Shahar notes that many studies of forum shopping by legal theorists are based on a model of rational choice, that is, the idea that legal actors choose whichever legal forum will best serve their rational (which usually implies economic) interests. This view of forum shopping has been particularly influential in the work of Timur Kuran, who argues that minorities in the Ottoman Empire bypassed their Muslim peers economically because they were better at forum shopping by virtue of their experience navigating among communal and Islamic courts.\(^9^1\) Kuran’s model paints a picture of Ottoman Jews and Christians as carefully calculating their legal choices to maximize profits. There is certainly some truth to Kuran’s argument; undoubtedly Jews and Christians did at times pick legal forums based purely on financial considerations. Yet his model oversimplifies and thus misrepresents historical reality; Jews, Christians, and Muslims made legal choices for a variety of motives, including communal pressure, religious considerations, and their levels of comfort with different types of institutions.

---

\(^9^0\) Ido Shahar, “Forum Shopping Among Civil and Religious Courts: Maintenance Suits in Present-Day Jerusalem,” in Religion in Dispute (Halle, Germany, 2010), 1-4.
Nonetheless, the tendency of forum shopping to veer towards rational choice theory does not mean that the concept is inherently flawed. Shahar proposes a different understanding of forum shopping: “Rather than being a free choice taken under conditions of full knowledge, clear priorities, and unlimited resources, forum shopping is bounded by partial information and uncertain priorities and results.” As he explains, there were significant limits to legal consumers’ ability to determine which forum might prove most beneficial. Moreover, other considerations affect the decisions of legal consumers, such that forum shopping is also determined “by a different, broader kind of rationality that is morally and ideologically informed.”

Shahar’s critique of forum shopping also bears on models of society which put the individual—rather than communal allegiances such as religion or tribe—at the center of understanding people’s actions, including their legal choices. Such an individual-based model has been articulated for the Moroccan case by Lawrence Rosen. This model is particularly important in studies of religious minorities in Islamic societies, since it allows scholars to shed the assumption that social bonds are mainly determined by communal structures. Yet just as theories of forum shopping which are equated with rational self-interest fail to capture the ways in which individuals actually make legal decisions, an understanding of society which downplays the role of communal organizations, pressures, and interests fails to account for the full complexity of individuals’ social ties. Legal consumers’ decisions about which legal forum to visit when resulted partly from their place in a particular religious community (not to mention

---

93 Ibid.
social class, family, region, etc.), partly from their own individual networks which transcended those larger social groups (such as business relations, ties to judicial officials, etc.), and partly from what they perceived to be their financial self-interest.

In using the concept of forum shopping, I pay close attention to the ways in which an individual’s ability to choose among different legal fora stood in tension with the convergence of different legal orders. By legal convergence, I mean “the tendency of legal systems, or parts of legal systems, to evolve in parallel directions.”\textsuperscript{96} Forum shopping is based on the premise that one will get different results in different legal orders—that is, that a sharī’a court and a bēit din will not rule identically or produce equivalent legal deeds. Yet the different legal orders in Morocco did not always act in competition with one another. As we will see, Jews sometimes sought out the services of sharī’a courts and bātei din simultaneously (Chapter Three). Jews often appealed to the judicial branch of the Makhzan to bolster the authority of Jewish legal institutions (Chapter Six). Even consular courts adapted to the legal conventions of sharī’a courts, often to the point of adopting Islamic legal norms (Chapter Eight). In other words, Moroccan Jews did not always obtain a different result by turning to a different legal institution; on the contrary, at times distinct legal orders worked cooperatively to complement or even bolster one another’s authority. The convergence of legal orders in Morocco did not erase the advantages of forum shopping, but it did at times limit them; the tension between forum shopping and legal convergence represents another way in which the legal decisions of Moroccan Jews were far more complex than a simple pursuit of self interest.

Legal pluralism does not explain when and why Jews turned to non-Jewish legal institutions; rather, it gives us analytical tools for understanding how Jews coped with the existence of multiple legal orders which we can use in tracing Jews’ legal strategies in nineteenth-century Morocco (and beyond). Legal pluralism also allows us to move away from the spectrum of greater or lesser autonomy which asks only about Jews’ degree of independence. Rather, legal pluralism focuses our attention on the ways in which Jewish legal orders coexisted, cooperated, and converged with the other legal orders present in a given society.

**Methodology**

This study relies primarily on three different source bases corresponding to the three parts of the dissertation. In Part One, where I examine sharī‘a courts and batei din, I rely mainly on legal documents produced by these courts. The sharī‘a court documents are entirely in Arabic, while the batei din documents are mostly in Hebrew with some partially in Judeo-Arabic and Haketia (the Moroccan dialect of Judeo-Spanish). Part Two, which looks at the role of the Makhzan in the Moroccan legal system, relies principally on correspondence among Makhzan officials preserved in Moroccan archives. In Part Three, which traces the functioning of consular courts and the impact of consular officials on Jews’ legal strategies, I draw primarily on consular courts and the impact of consular officials on Jews’ legal strategies, I draw primarily on

---

97 I introduce the sources more fully in each section.


99 This correspondence is all in Arabic.
consular archives preserved in the various countries which had a diplomatic presence in Morocco.

In relying almost exclusively on sources produced by institutions in Morocco—especially sources in Arabic generated by shari’ā courts and the Makhzan—I follow the spirit of what Jacques Berque dubbed an internal history of the Maghrib. Berque stressed the importance of relying on internal sources, by which he meant mostly chronicles, juridical literature, biographical dictionaries, and other such writings. Undoubtedly, though, Berque would have welcomed the use of archival sources as well, although these were hardly available (or not at all) when he was active as a scholar. Since Berque’s pioneering work, a number of scholars have called for a similar emphasis on internal sources for the history of Moroccan Jews. I follow in the footsteps of historians who have pioneered the use of Moroccan archival material to write the history of Jews.

Although my sources come from all over Morocco, the major cities are far better represented than are rural areas or small towns. Large urban centers like Fez, Marrakesh, Tetuan, and Essaouira—which all had significant Jewish populations—appear repeatedly in the documents I examined. Some smaller cities also appear more often than their size might suggest; this is usually because the Jewish communities of these cities were relatively large, such as in the case of Demnat where Jews made up about a third of the total population. Morocco during the nineteenth century was a highly diverse society with important regional differences and the

---

102 I have in mind the work of Mohammed Kenbib, Daniel Schroeter, and Emily Gottreich in particular.
103 Levin, “Demnat.”
Jewish communities were no less varied, which makes it difficult to generalize about the whole of Morocco or all of Moroccan Jews. I am particularly reticent to make claims regarding the experience of Jews in rural areas, since so many of my sources are from urban centers. Nonetheless, the story I tell about Jews’ legal strategies and their use of the various legal orders within the Moroccan legal system is one that is more similar than distinct in different parts of Morocco. Most of the institutions I examine were more or less uniform across regions. In looking at Morocco as a whole, I provide a necessary counterweight to the trend in much of nineteenth-century Moroccan history to focus on detailed micro-histories of a single city or small region. While these local histories make important contributions to the historiography of Morocco, failing to also examine Morocco as a whole can obscure crucial themes in the social, political, economic, and legal history of the country.

Similarly, I do not claim that my conclusions apply equally to Jews of all socio-economic strata. Since most of the cases which brought Jews to non-Jewish courts pertained to commercial matters, those Jews with more extensive commercial dealings found themselves in non-Jewish courts most often. The more successful (and thus wealthier) merchants appear far more often in the sources I examine than either merchants with a smaller clientele or artisans. This is especially true for consular courts, to which few but the elite of the Jewish community had access. The parts of the dissertation which deal with non-commercial cases (Chapters Five, Six, and Nine), especially theft, murder, and abuses committed by Makhzan officials, tend to

104 I say “more or less” because there were undoubtedly differences in the functioning of shari‘a courts from one city to another. While the sources I examined suggest that they were more similar than different, a thorough study of these differences is beyond the scope of this dissertation.

represent Jews from a larger variety of socio-economic backgrounds. Even when it comes to commercial matters, I do not suggest that only wealthy Jews used non-Jewish courts in the ways I describe. On the contrary, I believe that the patterns I observe largely held true for most Jews, regardless of their socio-economic status; wealthier Jews merely came into more frequent contact with non-Jewish courts because their commercial ventures necessitated doing so. Nonetheless, the legal sources do not offer a perfect cross-section of society or a truly comprehensive picture of the Jewish community. On the contrary, the individuals we will meet in the course of this dissertation come disproportionately from the upper and upper-middle classes.

Throughout the dissertation I draw comparisons with the history of Jews in the Islamic world during the medieval period (largely based on the Cairo Geniza) and in the early modern Ottoman Empire. Many of my conclusions point to continuities across time and space. Contextualizing my observations about nineteenth-century Morocco in the longue durée points to the fact that much of what determined Jews’ experience was the fact of living in an Islamic society. This does not mean either that Islam was the same throughout the Mediterranean or that Islamic societies did not change over time. Rather, it points to the importance of an Islamic tradition with significant temporal and geographical continuity.¹⁰⁶

Nonetheless, there were important differences between the experiences of Jews in nineteenth-century Morocco and those of Jews in other parts of the Islamic world. While an exhaustive comparison is beyond the scope of this dissertation, one difference is particularly important for legal history: Jews in Morocco had an unprecedented degree of autonomy compared to that of either Jews in medieval Egypt or in the early modern Ottoman Empire. This

---

is perhaps best attested by the fact that Moroccan Jews in some cities (such as Fez and Marrakesh) operated their own prisons. The *shaykh al-yahūd* in these cities (who acted as the secular head of the Jewish community and was responsible for relations with the Muslim authorities) had the power to imprison Jews who broke the law. For instance, in a document in Judeo-Arabic from 1816, a group of Jews testified that they accepted Shmuel b. ‘Ayūsh as their shaykh, and that Shmuel would have the authority to “judge over great and small, and to imprison (*yakhum fi-’l-kabīr wa-ṣaghīr wa-yusajjin*).” In many other contexts, including medieval Cairo and in the Ottoman Empire, Jewish leaders relied on Islamic authorities to imprison those they wanted punished. Although far more research is required to fully understand how these Jewish prisons worked in Morocco, it seems safe to hazard a guess that their existence was due in large part to the generally high level of decentralization which characterized the Moroccan state before French colonization.

Given the relatively greater degree of autonomy afforded to Jews in Morocco, one might expect that Moroccan Jews would turn to non-Jewish legal institutions less frequently than their coreligionists in other contexts. We have too little information to make any systematic

---

107 Avraham ben Mordekhai Ankawa, ed. *Kerem Hemer: Taqanot Ḥakhmei Qastilah ve-Tulitulah* (Jerusalem: Ha-Sifriyah ha-Sefaradit Benei Yisakhar, 2000), Number 53; John V. Crawford and Charles H. Allen, *Morocco: Report to the Committee of the British and Foreign Anti-Slavery Society* (London: British and Foreign Anti-Slavery Society, 1886), 21; Gerber, *Jewish Society in Fez*, 88; Gottreich, *The Mellah of Marrakesh*, 73. Few sources exist on these Jewish prisons; at this point, it is not clear whether they existed outside of Fez and Marrakesh or whether they existed for a specific period of time or were a feature of Morocco throughout the early modern period.

108 PD, 8 Kislev 5577.

109 Goitein, *A Mediterranean Society*, v. 2, 35; Rustow, *Heresy and the Politics of Community*, 73; Yaron Ben-Naeh, *Jews in the Realm of the Sultans: Ottoman Jewish Society in the Seventeenth Century* (Tübingen: Mohr Siebeck, 2008), 191. Although Ben-Naeh notes that there are mentions of prison cells which seem to have belonged to Jews, he concludes that in general Jewish leaders had to rely on the Muslim authorities to implement physical punishments, including imprisonment. See also the observations of a rabbi from Fez who visited the Ottoman Empire in the sixteenth century and noted that Jewish judges there had far less authority than in Morocco because they could not enforce their own punishments (Hacker, “Jewish Autonomy in the Ottoman Empire,” 170). Simḥa Assaf argues that a number of medieval Jewish communities had their own prisons, including in Spain and Poland (Simḥa Assaf, *Ha-‘Onshin aharei hatimat ha-Talmud : Homer le-toldot ha-mishpat ha-‘ivri* (Jerusalem: Defus ha-Po'el ha-Tza’ir, 1922), 25-30). However, it is not always clear that the prisons discussed in the teshuvot and taqanot on which Assaf draws were Jewish prisons; he does not entertain the possibility that Jews relied on non-Jewish authorities to enforce prison sentences.
comparisons between the frequency of Jews’ use of Islamic courts in the Ottoman Empire versus Morocco (in fact, such comparisons may be inherently impossible). Nonetheless, my general impression is that Jews in Morocco tended to use Islamic courts for intra-Jewish matters somewhat less often than did Jews in the Ottoman Empire. Nonetheless, my general impression is that Jews in Morocco tended to use Islamic courts for intra-Jewish matters somewhat less often than did Jews in the Ottoman Empire.  Yet even when Jews had significantly more control over their own affairs, they still used Islamic courts with great frequency, both for inter- and intra-religious matters. Given the relatively greater degree of legal independence in Morocco, the fact that Jews navigated among a variety of different legal orders is even more significant that it would be had their judicial institutions possessed less authority.

Organization of the Dissertation

The three parts of this dissertation are organized thematically rather than chronologically. Instead of starting in 1830 and progressing linearly to French colonization in 1912, I have chosen to examine each type of legal institution (sharī‘a courts, the Makhzan as legal arbiter, and consular courts) in turn. This is not because each operated to the exclusion of the others; Jews did not frequent sharī‘a courts or appeal to the Makhzan or submit cases for adjudication in a consular court. Indeed, Jews appeared in all three legal venues, sometimes even for the same cases. Yet I examine each legal order separately in order to best elucidate the kinds of cases that Jews brought to each kind of court as well as their respective institutional histories. This approach necessarily shifts the focus of my analysis somewhat away from change over time. In order to avoid obscuring the important transformations in legal institutions and legal practice which took place over the course of the nineteenth century, throughout the dissertation I discuss changes in the functioning and usage of these legal orders.

110 My understanding of how often Jews brought intra-Jewish cases to Ottoman sharī‘a courts comes mainly from Al-Qattan, “Dhimmis in the Muslim Court,” and Wittmann, “Before Qadi and Vizier,” Chapter 1.
To help remind readers that the three legal orders existed in parallel to one another, I weave the story of one family, the Assarraf family, through all three parts of the dissertation. The Assarraf family were Jews living in Fez at the end of the nineteenth century. I glean most of my information about them from their archive of sharī’a court documents—now in private hands—which traces their presence in the sharī’a courts of Fez from about 1850 to 1912 (I introduce the family and their archive at greater length in Chapter One). Part One, which examines sharī’a courts, draws most heavily on the Assarraf collection and thus focuses more on the Assarraf family themselves. Yet the family’s history runs throughout the dissertation as an example of how individuals moved among the three legal systems I discuss. Although this dissertation is not a micro-history of the Assarraf family’s legal lives, I use elements of micro-history to tie its different sections together.

I begin with the legal orders which operated at the local level, that is, the courts of first instance where individuals fulfilled most of their quotidian legal needs. Part One thus examines sharī’a courts and, to a lesser extent, batei din. Chapter One sets the stage; I orient readers to the jurisdictional rules which theoretically governed the respective spheres of authority of batei din and sharī’a courts. I briefly look at the functioning of batei din in order to contextualize Jews’ use of sharī’a courts in the array of legal options available to them. Finally, I introduce the sources and especially the Assarraf family.

The following two chapters in Part One look more closely at Jews’ use of sharī’a courts. Chapter Two asks how Jews used sharī’a courts for cases involving Muslims—that is, according to the jurisdictional guidelines outlined by Islamic law. I discuss how Jews were treated in sharī’a courts, arguing that their experience did not differ greatly from that of Muslims. Drawing mainly on the Assarraf collection, I trace which matters brought the Assarraf family and their Jewish
associates to the sharī‘a courts most often, looking in particular at the notarial functions of the courts. I also demonstrate that Jews like the Assaraf family were quite familiar with Islamic law and legal procedure, so much so that Muslims sometimes appointed Jews to represent them in sharī‘a court. Chapter Three turns to the ways in which Jews used sharī‘a courts and batei din without regard for the jurisdictional boundaries established by Islamic law. In particular, I show that at times Jews went to sharī‘a courts for intra-Jewish matters (which they had the right to adjudicate in batei din). They also went to batei din for matters involving Muslims (which strictly speaking should only have been adjudicated in sharī‘a courts). This chapter explores how the coexistence of Jewish and Muslim legal orders enabled Jews (and to a lesser extent Muslims) to engage in forum shopping, while also fostering a certain amount of cooperation among the different legal institutions.

Part Two moves from the local level to that of the state, examining how Jews engaged the central government to meet their legal needs. Chapter Four again sets the stage, discussing the role of the Makhzan in the administration of justice in Morocco and the unique relationship between Jews and the central government. It also introduces the sources used in the rest of this section, in particular the registers of the Ministry of Complaints. Since historians have yet to discuss the origins and functioning of this ministry in any detail, I provide a brief history and an introduction to its functioning. Chapter Five turns to the ways in which Jews appealed to the Ministry of Complaints, arguing that this was an important forum to which Jews could appeal when they felt local courts had failed them. I argue that the Ministry of Complaints responded to Jews’ petitions in largely the same way as they did to those of Muslims, that is, as complaints submitted by subjects of the sultan without much regard for their religious affiliation. Chapter Six examines collective petitions submitted by Jews to the Makhzan, particularly regarding
abusive Makhzan officials, infringements of Jewish autonomy, and other Jews whom the petitioners found problematic. These collective petitions indicate that Jews held the Makhzan accountable for perceived injustices committed by its representatives. The Makhzan’s response, in turn, shows that it felt responsible for the well being of its Jewish subjects, even to the point of ensuring the proper functioning of Jewish legal institutions.

Part Three goes from the national to the transnational through an examination of courts operated by foreign consulates in Morocco. Chapter Seven provides the necessary background information for understanding the functioning of the consular courts and their evolution over the course of the nineteenth century. Chapter Eight looks more specifically at how Jews with consular protection or foreign nationality, and thus access to consular courts, made use of these legal institutions. This chapter argues that consular courts operated to a large extent in cooperation with sharī‘a courts and the Makhzan, showing that Jews with access to consular courts did not definitively abandon the Islamic legal orders which they had previously used. I also demonstrate that Jews with access to consular courts engaged in forum shopping, sometimes choosing sharī‘a or Makhzan courts over foreign ones when those proved more favorable to their interests. Finally, Chapter Nine takes a broader view of the role of foreigners in Jews’ legal strategies in Morocco, looking at how foreign diplomats and Jewish organizations intervened in the legal lives of Moroccan Jews. This chapter seeks to understand Jews’ appeals to foreigners in the context of their often simultaneous appeals to Moroccan legal institutions, especially the Makhzan. I argue that the dominant historiography misrepresents Jews’ relationship with foreigners as one of victim and savior; rather, I present a more fluid model in which Jews’ ties to the Makhzan, foreigners, and even other Jews shifted according to the circumstances of a given case.
The epilogue brings us briefly into the colonial period, providing a sketch of how the French transformed the Moroccan legal system and how these changes affected Jews’ (and Muslims’) legal strategies. It points the way towards further research on the socio-legal history of Morocco under French rule, a field that remains wide open to future scholars.

*   *   *

When Jewish jurists referred to the legal institutions of non-Jews, they used the term ‘arkaot shel goyim.' The word goy (pl. goyim) can be translated as “nation,” such that the phrase literally means “the courts of [the] nations”—although goyim had come to denote non-Jews more generally and, more specifically in the Moroccan context, Muslims. When Moroccan Jewish legal authorities discussed the use of shari‘a and Makhzan courts, they described them as ‘arkaot shel goyim. For our purposes, the courts of the nations also evoke the consular courts which were run by the various nations with diplomatic representation in Morocco. Most fitting about this idiom is the multiplicity of legal venues it suggests. The courts of the nations encompassed all non-Jewish legal institutions, capturing the legal pluralism which characterized nineteenth-century Morocco and, indeed, the legal history of Jews in the Islamic Mediterranean more broadly.

---

111 The term ‘arkaot shel ovdei kokhavim (“courts of idol worshippers”) was initially used in the Babylonian Talmud (Gittin 9b), but in later halakhic literature the term ‘arkaot shel goyim became standard.
Chapter One: Between Batei Din and Sharī‘a Courts

In early 1907, Muḥammad b. Muḥammad Fathān al-Miṣḥūrī owed his landlord rent. The landlord was none other than Ya‘aqov Assarraf, son of the prominent merchant Shalom Assarraf and one of the most influential (and wealthy) Jews of Fez.¹ On February 25, 1907, the two went to a sharī‘a court where they recorded that Muḥammad had sold two silver bracelets which he had given Ya‘aqov as surety, and had handed over the proceeds in order to pay the overdue rent.² Seventeen days later, on March 14, Ya‘aqov went to court again. This time, though, he appeared before Jewish notaries to draw up a bill of sale according to Jewish law. He sold a donkey (described as green!) to a fellow Jew named Yehudah b. Eliyahu Agiri.³ The following month, Ya‘aqov was back in a sharī‘a court twice for more contracts with Muslims. On April 10 he had ‘udūl notarize a bill of debt which testified to money he was owed by a Muslim.⁴ On April 15 he went back to notarize a lease for the usufruct rights of a store in the millāḥ (the Jewish quarter); he rented the property to Muḥammad b. Laḥsan al-Filālī and his son Idrīs for two riyāls a month.⁵

¹ The previous spring, Muḥammad had rented the usufruct rights to a store in the millāḥ from Ya‘aqov, agreeing to pay a monthly rent of one riyāl and three dirhams (TC, File #1, 1 Rabī‘ I 1324/ 8 May 1906). The store itself was owned by a hubs (pious endowment), but the usufruct rights could be bought, sold, and leased much like normal property; see the discussion in Chapter Two.
² This is written on the back of the above-cited rental document, dated 12 Muḥarram 1325. Muḥammad sold the bracelets for ten riyāls, six mithqāls, and one dirham, which amounted to at least ten months’ rent. Riyāls were actually a separate currency from mithqāls and dirhams, made of silver. The riyāl referred to here probably corresponded to the French riyāl; one French riyāl equaled five francs (this was the riyāl more commonly used after 1896, as opposed to the Spanish riyāl: see Thomas Kerlin Park, “Inflation and Economic Policy in 19th Century Morocco: The Compromise Solution,” The Maghreb Review 10, no. 2-3 (1985): 54). There were ten dirhams in a mithqāl. The relationship between riyāls and dirhams changed quite a bit over the course of the second half of the nineteenth century, so it is difficult to say precisely how much 10 riyāls, 6 mithqāls and one dirham were worth. In 1863, one riyāl equaled 32.5 dirhams, though undoubtedly this had changed by 1906. See Germain Ayache, Etudes d’histoire marocaine (Rabat: Société Marocaine des Éditeurs Réunis, 1979), 128-31.
³ JTS, Box 5, Folder #2, 28 Adar 5667.
⁴ TC, File #9, 26 Ṣafar 1325.
⁵ TC, File #5, 2 Rabī‘ I 1325.
These appearances in both Jewish and Islamic courts were actually quite ordinary for Ya‘aqov. The many hats he wore as a businessman, including merchant, money lender, and landlord, meant that he was in regular need of the services of legal institutions. These courts enabled him to draw up contracts according to the legal standards of Jewish and Islamic law. They also offered a forum where he could adjudicate his legal disputes—that is, where he could sue his business associates, should the need arise.

All this might seem quite banal to the average reader. In fact, that is exactly what it should seem—ordinary, unexceptional, part of the everyday rhythm of Ya‘aqov’s life. One week in the beit din, another in the sharī‘a court, and undoubtedly some weeks in both. Yet most histories of Jews in Morocco (or in most parts of the Islamic world) would offer little insight into Ya‘aqov’s appearances in both batei din and sharī‘a courts. One might read about the existence of batei din, how they functioned, and the scope of their jurisdiction. One might even read about the fact that Jews sometimes went to Islamic courts, though usually as an example of something the rabbis opposed. But the ways in which Jewish and Islamic courts played a role in the daily lives of Jews in Morocco is a history that for the most part has yet to be written. This dissertation is concerned with these kinds of unexceptional aspects of life; Part One specifically looks at the roles of sharī‘a courts and, to a lesser extent, of batei din in Jews’ quotidian activities.

Going to court in nineteenth-century Morocco was not quite the kind of experience we think of today—that is, an exceptional event that one avoids if possible. Moroccan courts did function in roles closer to those we might imagine for them based on today’s legal systems; Jews

6 These studies tend to be inwardly focused on the Jewish community, which is largely a reflection of their exclusive reliance on Jewish sources: see, e.g., Zafrani, Les juifs du Maroc, 112-17; Gerber, Jewish Society in Fez, 59-65; Deshen, The Mellah Society, 70-7; David Ovadyah, Kehilat Tzafaru, 5 vols. (Jerusalem: Makhon le-ḥezer toldot gehilot Maroko, 1974-92), v. 3, 45-7.
7 See the discussion of historiography below.
went to batei din and sharī‘a courts to sue and to be sued, to accuse others of crimes and to defend themselves against accusations of criminality. Yet in addition to being forums for the adjudication of disputes, sharī‘a courts and batei din also provided the services of notary publics, that is, places where individuals went to notarize documents. Even this function is somewhat misleading if equated with present-day notary publics, which most people frequent only if someone (the government, a company, a court) requires that a document be officially notarized. Other than the expense, the act of going to a notary can often seem unnecessary since notarization rarely transforms a document in any significant way. However, notaries in nineteenth-century Morocco—as in pre-modern societies more generally—played a far more important role. In addition to making sure that documents would hold up as evidence in a court of law, notaries were also responsible for producing the documents in the first place. They held the knowledge of legal formulas (often contained in written formularies of sample documents) which ensured that a contract would be binding according to Jewish and Islamic law respectively. Not only was their signature powerful, but their ability to write the contracts in the first place was central to the way law—and business—worked in pre-colonial Morocco.

This dissertation is concerned with recovering the history of Jews in non-Jewish courts; Part One looks mainly at sharī‘a courts and how Jews used them. In the present chapter, I lay the necessary groundwork for a detailed investigation into when, why, and how Jews frequented sharī‘a courts. I introduce the jurisdictional frameworks governing how Jews used Jewish and non-Jewish courts as well as the sources on which I draw to reconstruct the functioning of these legal institutions. I spend some time examining the ways Jews use batei din—not in order to offer a full account of the functioning of Jewish courts, but to properly contextualize Jews’ use of sharī‘a courts in terms of their other legal choices. Finally, I introduce the Assarraf family
and the sharī’a courts of Fez which they frequented. With this framework in place, the following two chapters look closely at how Jews used sharī’a courts and what this can tell us about their legal strategies and, more broadly, their relations with Muslims and the Islamic society in which they lived.

*Jurisdictions and Sources*

Before embarking on an analysis of how Jews used sharī’a courts in Morocco, a brief introduction to the nature of legal autonomy in the Islamic legal system is in order. Under Islamic law, *dhimmīs*—non-Muslims living under Islamic rule—enjoyed a large degree of judicial autonomy.8 Dhimmīs had the right to enforce their own legal systems by establishing communal courts; for Jews, this meant a beit din ideally composed of three men, usually persons learned in Jewish law.9 Dhimmī courts had jurisdiction over all intra-communal civil affairs, although they were not competent to judge criminal cases. Despite this considerable legal autonomy, Jews were required to appear in sharī’a courts for a variety of cases. Because Islamic law alone had jurisdiction over Muslims, any case involving Jews and Muslims had to be adjudicated in a sharī’a court. Islamic law also granted dhimmīs the right to bring intra-dhimmī cases to sharī’a courts in most cases, though the legal schools differed as to whether the qāḍī was required to hear such cases or could choose to send them back to a Jewish judge.10 (The only

---


9 It was permissible for a court to be composed of one expert and two non-experts, or even one expert alone, although three experts were preferable (Assaf, *Batei ha-din ve-sidreihem*, 46-8).

10 The majority of jurists across the four schools of Islamic law rule that a judge should accept a case brought to him by two dhimmīs (Libson, *Jewish and Islamic Law*, 81-2; see also Fattal, *Statut légal*, 353-8). Only in the Hanafī school is the judge always compelled to accept an intra-dhimmī case and unable to return it to a dhimmī court (Gideon Libson, “Otonomiyah shifutit ve-peniyyah le-’arakaot mi-tzad bnei ḥasot ‘al pi meqorot muslamiyim be-tequfat ha-geonim,” in *Ha-Islam ve-’olamot ha-shezurim bo; qovetz ma’marim le-zekharah shel Ḥavah Latzarus-
school relevant for our purposes is the Mālikī school, since in the nineteenth century all Moroccan Muslims were Mālikīs.) If a Mālikī qāḍī accepted an intra-dhimmī case, he was required to adjudicate according to the precepts of Islamic law.11

The batei din and sharī‘a courts whose functioning I examine in this section dealt primarily with civil cases and only on occasion with criminal cases. Batei din technically had jurisdiction only over civil matters. Although sharī‘a courts in Morocco did sometimes adjudicate criminal affairs, and certainly played an important role in the resolution of criminal cases, the vast majority of records from sharī‘a courts concerning Jews deal only with civil cases.12 I discuss criminal cases in greater depth in Part Two.

Yafeh (Jerusalem: Makhon Ben Tzvi, 2002), 385-6. Mālikī jurists differ as to whether a judge has to accept intra-dhimmī cases. Fattal notes that Mālikī judges were free to refuse to take an intra-dhimmī case in the first place and send it back to a dhimmī court (Fattal, Statut légal, 354-5). Santillana claims that Mālikī qāḍīs have no jurisdiction whatsoever over intra-dhimmī cases: “se la causa si svolge tra non Musulmani, il ‘qāḍī’ non è competente” (although he does not cite a source for this: Santillana, Istituzioni di diritto musulmano malichita, v. 2, 568). Aḥmad b. Yaḥyā al-Wansharīsī (d. 1508), author of the most famous collection of Mālikī fatāwā, records four different opinions (all from Cordoban jurists) concerning a case in which a woman sued her father in a sharī‘a court (in Aḥmad b. Yaḥyā al-Wansharīsī, Al-Mi’yār al-mu’rib wa-‘l-jāmi’ al-mughrīb ‘an fatāwā ‘ulamā’ Ifrīqiya wa-‘l-Andalus wa-‘l-Maghrib, 13 vols. (Beirut: Dār al-Gharb al-Islāmī, 1981), v. 10, 128-30. Two jurists (Ibn ‘Abd Rabbihi, d. 940, and Ibn Maysūr, d. ?) rule that concerning civil matters, if one Jew sues his coreligionist in a Jewish court and the other does so in an Islamic court, then the case falls under Jewish jurisdiction; only if they both approach a sharī‘a court must the qāḍī take the case (for which he cites Quran 5:42). Ibn Hārith (d. 981) agrees, though he adds that even if only one party brings the case to a sharī‘a court the qāḍī is required to adjudicate if Jewish law does not prescribe a ruling on the matter. Ibn Zarb (d. 991) argues that the ruling of the Jewish court should only be overturned if there is proven enmity between one of the parties and the Jewish judges, or between a party and the Jewish witnesses. Only Aṣbagh b. Sa‘īd (d. 968/9) argues that the qāḍī must accept the case regardless of the preferences of the two Jews involved. (On this case, see H. R. Idriss, “Les tribunaux en occident musulman médiéval, d’après le “Mi’yār” d’Al-Wansharīshī,” in Mélanges d’Islamologie : Volume dédié à la mémoire de Armand Abel par ses collègues, ses élèves et ses amis, ed. Pierre Salmon (Leiden: Brill, 1974), 177; Zafrani, “Les relations judéo-musulmanes dans la littérature juridique,” 142; Matthias B. Lehmann, “Islamic Legal Consultation and the Jewish-Muslim ‘Convivencia’: Al-Wansharīsī’s Fatwā Collection as a Source for Jewish Social History in al-Andalus and the Maghrib,” Jewish Studies Quarterly 6 (1999): 51-3.)

11 The majority of jurists (including, it seems, Mālikī jurists) agree that Islamic law should be applied: Libson, “Otonomiyah,” 351-2. There is a dissenting opinion (attributed to Mālik b. Anas and Abū Ḥanīfa) which states that dhimmīs should be judged according to their law (ibid.). The Shāfi‘ī school, on the other hand, considers a qāḍī judging a case among non-Muslims to be acting only as an arbiter; therefore the qāḍī is not necessarily expected to apply Islamic law (Fattal, Statut légal, 353-4).

12 This is partly because many criminal cases were adjudicated primarily in Makhzan courts presided over by local government officials. Generally these courts did not keep written records of their activities at all, making it very difficult to reconstruct their functioning; however, I address the role of the Makhzan in the functioning of the Moroccan legal system in Part Two.
I use the terms “beit din” and “sharī’a court” rather loosely to mean not only the tribunals presided over by (up to) three rabbis or a qāḍī, but also the services of notaries (called sofrim, s. sofer in Hebrew and ‘udūl, s. ‘adl in Arabic). Notaries were essential to the functioning of both Islamic and Jewish law. Moreover, while some of the documents I examine record actual lawsuits—over non-payment of debts, for instance—the vast majority of the Jewish and Islamic legal documents that survive were notarized contracts of one sort or another. These contracts were notarized by sofrim according to the standards of halakhah, or by ‘udūl according to the standards of the sharī’a. These strict guidelines were observed precisely so that notarized documents could be upheld as evidence in court in the event of a lawsuit. In Morocco, individuals were technically required to have the signatures of the two ‘udūl who had witnessed a given document legalized by a qāḍī—even if this did not always happen in reality. There is also some evidence that Moroccan batei din at times similarly required that a rabbi legalize the signatures of the two sofrim attesting to the document, though most Jewish legal documents only have the signatures of two (or even one or three) sofrim and none from a rabbi. Although notaries and judges provided different services, they made up two complementary parts of the

---


14 Many of the ‘uqūd from the Assarraf collection (described below) are legalized by a qāḍī, though probably an even greater number are missing the qāḍī’s signature and have only the signatures of the two ‘udūl. On the requirement to have legal documents notarized by ‘udūl and legalized by a qāḍī, see, e.g., the discussion in AGA, Caja M 9, Exp. no. 1 (81/9), Diario del Tribunal Marroqui, p. 4, 23 November 1871 (discussed further in Chapters Seven and Eight).

15 On the possible requirement that Jewish legal documents be legalized by a rabbi, see, e.g., FO 636/2, p. 17b, 29 July 1858 (in which John Drummond Hay certifies a Hebrew legal document containing the signatures of two sofrim, as well as that of Rabbi Isaac Bengualid); MAE Nantes, Tanger F 1, 29 January 1891 (which concerns a case involving documents confirmed by “les sofer (notaires) Israélites de Tanger, dont les signatures ont été légalisées par le grand Rabbin de cette ville”). Needless to say, if this were, indeed, an accepted practice in Morocco, it would be interesting to investigate whether Jewish legal practice borrowed from Islamic legal practice in this instance; my instinct is that this was the case at least to a certain extent.
Jewish and Islamic legal systems respectively. I thus view notaries as integral parts of batei din and sharī'a courts broadly speaking.

Reconstructing the history of Jews’ use of Jewish and Islamic courts in nineteenth-century Morocco is made more challenging by the fact that neither of these judicial institutions kept systematic records. Unlike sharī'a courts in the Ottoman empire, sharī'a courts in Morocco did not maintain their own archives. Rather, ‘udūl drew up legal documents (‘uqūd or rusūm) which they gave to the individual plaintiffs, who then preserved these documents in their own private collections. The majority of batei din similarly did not keep records of their judgments, only producing legal documents for the use of individuals who then preserved them in family archives. The fact that neither sharī'a courts nor batei din kept official records of their functioning also means that Jews would not have been attracted to sharī'a courts because they kept better records than batei din—an argument sometimes made by scholars trying to explain

---


17 As far as I know, no other scholars have written about the archival practices of Jewish communities in Morocco. Nonetheless, I have not found any extant registers of court decisions from batei din from before the colonial period; on the contrary, Jewish legal documents seem to have survived in largely the same ways as Islamic legal documents, that is, through private collections. Although some archives and libraries are confused as to the nature of certain documents which they mistakenly label as records of batei din, I am quite convinced that no such records existed in any systematic way before the colonial period. (See, e.g., CAHJP, P.141/1: this is labeled as a pingas (register) from the beit din of Fez, but in fact is a collection of copies of legal documents which one particular family had made for their own personal use. See also P.141/2 and P.141/3.) The one exception is for the city of Tangier, where records of the Junta (the communal governing body) were kept starting in the mid-nineteenth century. However, as far as I am aware, no such records were kept for Tangier’s beit din. If such records were kept, they undoubtedly remain in the archives of the Jewish community of Tangier, which are closed to researchers. The only indication I found that other communities might have kept some sort of legal archive is from FO 631/14, A. Nicolson to Maclean Madden, 24 October 1902 and 21 November 1902, in which the sofrim of Safi were able to find a marriage contract (ketubbah) of a Jew named Solomon Sananes in their records. However, it is possible that communities like the one of Safi kept records of matters like marriages and divorces but not of court judgments.
non-Muslims’ tendency to frequent Islamic courts.\textsuperscript{18} On the contrary, the notarial practices of Jewish and Islamic courts in Morocco were strikingly similar.

Scholars have yet to fully explore the reasons behind the lack of central record-keeping practices in either type of court. While this is not the place for a full discussion of why sharī‘a courts did not keep systematic records, it is important to consider some factors that may have contributed to Moroccan courts’ notarial culture. Despite increasing efforts to consolidate the state’s authority and centralize its government in the mid-nineteenth century, the Makhzan nonetheless remained weak—especially compared to the Ottoman Empire, which had far more extensive judicial record-keeping practices. One must also consider the possibility that the approach of Moroccan sharī‘a courts to legal procedure simply did not include centralized record keeping. Introducing archival practices like those of the Ottomans would thus have been an innovation—one that there might have been no reason to initiate.

Nonetheless, both sharī‘a courts and batei din did produce written records of their activities, which makes it possible to reconstruct their functioning on the basis of documentary evidence. When the majority of Jews living in Morocco left for places like Israel, France, and the Americas, many brought their family archives with them.\textsuperscript{19} Of the documents that were left

\begin{flushleft}\textsuperscript{18} See the oft-quoted line of the Radbaz (Rabbi David b. Solomon Avi Zimra, d. 1573, who served as chief rabbi of Egypt under the Ottomans): “All that happened is written in the sicil (Ottoman court records), and is kept for many days, and every man can seek justice on the basis of what had been written” (quoted in Shmuelevitz, The Jews of the Ottoman Empire, 51). See also arguments about the greater efficiency and enforceability of Ottoman courts, which was at least to some extent linked to the keeping of records (e.g. Al-Qattan, “Dhimmis in the Muslim Court,” 433).

\textsuperscript{19} Many, however, did not bring these documents with them or even destroyed them while they were still in Morocco. I had a conversation with a Moroccan Jewish gentleman in his sixties still living in Casablanca who explained to me that after his father died, he and his siblings found a safe (“coffre fort”) in his father’s house which, when opened, turned out to be filled with legal documents from Jewish and Islamic courts. The children agreed that these documents were now useless and discarded them—to the future chagrin of many historians like myself! Undoubtedly this story could be told of countless Moroccan Jewish families, especially those who left Morocco and thus would no longer have any use for these sorts of legal documents.
\end{flushleft}
behind, a large number were undoubtedly destroyed, though others were discovered by dealers who knew the value they could fetch with collectors and libraries in Europe, Israel, and America. Today, legal documents from Jewish and Islamic courts in Morocco are literally scattered throughout the world; I consulted collections in Israel, Belgium, Morocco, the Netherlands, and the United States. The fact that most Moroccan Jews no longer live in Morocco actually makes it easier to study how Jews used Moroccan sharī‘a courts than to study how Muslims used these institutions; most of the legal documents concerning Muslims remain in the hands of families still living in Morocco who have no interest in donating such documents to archives or libraries and rarely make them available to researchers.

The fact that sources for the functioning of sharī‘a courts and batei din come not from state archives but from portions of family archives which have ended up in larger collections has necessarily shaped the nature of my research. While scholars have reflected constructively on ways to read different kinds of state archives, we cannot assume similar kinds of logic inhered in

20 Concerning the destruction of such legal documents, Professor Leon Buskens explained to me that he had found two large boxes full of manuscript documents in Hebrew, Arabic, and Judeo-Arabic—including many legal documents—in a scrap paper heap in Marrakesh; luckily Professor Buskens was able to buy the lot, which is now preserved in the Special Collections division of the Library of the University of Leiden under the catalogue numbers Or.26.543 (1 and 2) and Or.26.544. Undoubtedly, however, the majority of such manuscripts which ended up in scrap heaps were not discovered by either scholars or dealers, and were simply used as scrap paper or otherwise discarded.

21 Paul Dahan, of the Centre de la Culture Judéo-Marocaine in Brussels, has built up an impressive personal collection of Judaica and Jewish manuscripts from Morocco, including a large number of Jewish and Islamic legal documents. Dahan acquired the vast majority of his collection from dealers in Morocco, Europe, and Israel. Similarly, the Judaica Collection at Yale Library recently acquired a large number of Jewish manuscripts from North Africa, including legal documents from Morocco (mostly in Hebrew but some in Arabic): this collection was bought from dealers in Jerusalem. Finally, Yosef Tobi, a professor emeritus of Jewish history at the University of Haifa, bought a collection of nearly 2,000 Islamic legal documents and a large number of Hebrew manuscripts from a dealer in Fez; I discuss Tobi’s collection of Islamic legal documents in further detail below.

22 See the list of archives consulted at the end of the dissertation. There are, of course, yet more private collections, to which I have not managed to gain access; one in particular is that of the Erzini family from Tetuan. Nadia Erzini, an historian in her own right, is currently the custodian of the family’s archives but has not as yet given scholars permission to do research in the collection.

23 Besides the fact that few archives or libraries find it valuable to collect such documents (the library of al-Qarawiyyin in Fez is an exception as they are supposedly in the process of cataloging a large collection of Islamic legal documents), many families might still find legal use for such documents, such as to prove their claim to property. Unlike for Jews living outside of Morocco, Islamic legal documents belonging to families still in Morocco might potentially still be of use.
the personal archives on which I rely. Yet we are not spared the need to consider how these collections were constructed in the first place; the fact that families were the ones who preserved legal documents says much about the importance of legal documents in daily life as well as the decentralized nature of the legal system in Morocco. Although the central government certainly played an important role in Morocco’s legal system (as we will see in Part Two), the sharī‘a courts and batei din operating at the local level were largely independent of state oversight.

Perhaps most importantly, my research shows that despite the scattered nature of Jewish and Islamic legal documents, these sources exist in sufficient numbers to reconstruct the functioning of batei din and sharī‘a courts in pre-colonial Morocco. Drawing on both Jewish and Muslim sources allows us to better understand the intersection, overlap, and competition among the two types of legal institutions.

**Batei Din**

Jews used batei din for a wide variety of legal matters. I draw here from a sample of 267 shtarot (legal documents) and pisqe‘i din (legal rulings) from seven different collections to give a sense of the functioning of batei din. While this collection is not necessarily representative of

---


25 These collections include that of the Direction des Archives Royales in Rabat, Morocco (in the file Yahūd); the collection at the University of Leiden, which belonged to the Corcos family of Marrakesh (call numbers Or.26.543 (1), Or.26.543 (2), and Or.26.544); Paul Dahan’s private collection; the special collections library of JTS (Archive #87, Morocco Jewish Communal Records); the collection of North African Jewish Manuscripts at Yale (housed in the Judaica Collection); the National Library of Israel (held in the kitvei yad section of the library and called Shtarot u-Ma‘asei Beit Din from Morocco, filed under the box number ARC. 4* 1532); the collections at Yad Ben Zvi in Jerusalem (held in the collection of Te‘udot); and the Central Archives for the History of the Jewish People, also in
batei din generally, it does reflect a wide range of cities and dates (from the late eighteenth century to 1912). Naturally, my research into Jews’ use of sharī‘a courts has been more extensive than my research on Jews in batei din, since this fits more squarely within the topics addressed by this dissertation. Nonetheless, my preliminary examination of how Jews used Jewish courts provides the beginnings of a picture of the functioning of Morocco’s batei din, which is integral to understanding how Jews navigated other legal institutions in Morocco.

Table 1.1

Table 1.1 shows the distribution of the different kinds of batei din documents in the collections I examined in order to give a sense of how Jews used these courts. The vast majority of documents from Jewish courts concern intra-Jewish affairs, that is, legal matters involving Jerusalem. I should specify that by 267 documents, I mean specifically 267 separate entries, since at times a single page has multiple entries (almost always concerning the same subject).

The cities most widely represented include Fez, Meknes, Sefrou, Tetuan, Marrakesh, and Rabat. Other cities include al-Jadida, Casablanca, Debdou, Essaouira, Iligh, and Ouezzane. All the collections I consulted include documents from the period of the French Protectorate, but I have not included these in my analysis.
only Jews. I also found nineteen documents from batei din which concern Jews and Muslims, which I address in Chapter Three. However, I did not include these documents in the table because this aspect of the sample is not random; I was more careful to note instances in which Muslims appeared in batei din than I was to note other types of documents, and thus they are over-represented among the Jewish legal documents I discuss.

Most often, Jews sought out the services of sofrim in order to draw up legally binding contracts with other Jews—that is, they employed the court for its notarial services. 80% of the documents I examined are notarial, while only 20% are litigious.27 The majority of notarial documents concern either property transactions or some sort of debt arrangement. 19% (52 total) of the documents refer to money owed among Jews, either as a debt or a partnership.28 Mortgages, a particular kind of debt, make up 6% (16 total) of the documents. 29% (76 total) of the documents concern either the rental, sale, or gifting of real estate, including rooms in houses, courtyards, stores, etc. Matters relating to marriage constitute 5% (12 total) of the documents, including amounts of a dowry, promises of betrothal, and ketubbot (marriage agreements). Finally, the remaining notarial documents, which constitute 15% (40 total) of the documents, concern a number of miscellaneous issues, such as releases, powers of attorney, matters relating to communal charity, wills and other inheritance agreements, divorce agreements, etc.

27 All of the documents involving Muslims were notarial documents relating either to debts or to property transactions.
28 However, in some collections documents relating to debts seem to be even more common relative to other documents. This is particularly true of the documents belonging to Haim and Yeshu’a Corcos of Marrakesh, which are preserved at the University of Leiden. Although I did not do a systematic analysis of all the Hebrew legal documents in this collection, there are dozens—if not hundreds—of shtarot attesting debts owed among Jews. The relatively larger percentage of documents relating to debts in this collection makes sense given that many of the documents are pasted or copied into record books which the Corcos family used to keep track of their commercial activities. In addition, the loose documents seem mostly related to these commercial activities (except for a large number of personal letters in Judeo-Arabic). The commercial nature of this collection, then, explains the higher proportion of debt documents.
Jews used batei din not only as notary publics, but also as tribunals where they sued—and were sued by—their coreligionists. The remaining 20% of the documents (54 total) concern litigious matters—that is, pisqei din regarding lawsuits ranging from debts to inheritance to disputes over privacy, as well as questions of judicial procedure and jurisdiction. The notarial documents which individuals previously had written up by sofrim constituted the evidence they brought to these courts. A bill of debt, for example, served to prove that a Jew was indeed owed the sum of money he claimed, and a bill of sale confirmed a Jew’s ownership of a piece of real estate she asserted was hers.

These Jewish legal documents show that not only did Jewish legal institutions exist in nineteenth-century Morocco, but that they were vibrant institutions which Jews frequented for a range of matters. Batei din served as notary publics for all manner of contracts among Jews, from marriage to debts to transfers of real estate to inheritance. They were also the courts of first instance where Jews usually brought other Jews to resolve legal disputes.

No formal hierarchy existed among batei din in different cities of Morocco. While the decision of a beit din was binding, it could be revoked by appeal to other halakhic authorities. Jews sometimes appealed to the courts of other cities in the hopes of receiving a more favorable ruling. Despite efforts to prevent this kind of appeal, rabbis in Morocco generally seem to have accepted that their decisions might be overturned by their peers. Undoubtedly, the authority of a given beit din had much to do with the prestige of its judges, the importance of the city in

---

29 I have included in this category those documents which record the testimony of Jews about criminal matters, such as theft, though strictly speaking these are not decisions regarding a legal case.
30 The batei din of different cities sometimes cooperated on a given case, especially if it was important: Bashan, *Yahadut Maroko*, 81.
32 An exception occurred in cases in which the litigants swore an oath to accept the ruling of the judge they had chosen: ibid., 77-8.
which it was convened, and the power dynamics among different Jewish communities in Morocco at the time.

In most instances, Jewish and Muslim courts provided different services and coexisted alongside one another without threatening each others’ authority. Jews primarily used Jewish courts for intra-Jewish matters, and—as I discuss in the following chapter—they primarily used shari‘a courts for matters involving Muslims. Yet this arrangement did not mean that Jews stayed within the confines of their autonomous jurisdiction, or that Jews mainly availed themselves of the services of Jewish courts to the exclusion of Islamic legal institutions. On the contrary, as the next two chapters show, Jews regularly frequented shari‘a courts. In order to fully understand how Jews navigated all the legal institutions available to them in nineteenth-century Morocco, it is necessary to look beyond the Jewish communal institutions that have heretofore constituted the focus of most Moroccan Jewish legal history.

*The Assarrafs and their Archive*

The Assarrafs were one of Fez’s wealthiest and most prominent merchant families. However, their importance to this dissertation—and to historians more generally—lays not so much in who they were, but in the richness of the archive they left behind. Like most Jewish and Muslim families in Morocco, the Assarrafs preserved the legal deeds documenting their commercial, personal, and litigious affairs in their own family archive. However, unlike the private archives of most Moroccan Jewish families, much of the Assarrafs’ archive has survived intact and has made its way into the hands of Professor Yosef Tobi, a private collector in
Jerusalem. The collection consists of 1,930 legal documents from sharī’a courts which the Assarraf family acquired over the course of their commercial endeavors between 1834 and 1929—though the vast majority of documents are from the years 1854-1912. Of course, there were many more of the Assarraf family’s legal documents which did not make their way into this collection. The Assarraf family frequented the beit din in addition to the sharī’a court, as mentioned above and as documented by deeds in other collections; yet the Assarraf archives in Professor Tobi’s collection are from the sharī’a court alone. The nearly two thousand legal documents in the Assarraf collection represent a uniquely rich source for the legal history of nineteenth-century Morocco.

At the end of this chapter, Figure One shows a partial reconstruction of the Assarraf family tree. Unfortunately, much information is missing—including birth dates, most death dates, the names of spouses in almost all cases, etc. Nonetheless, the tree gives a sense of some of the major figures in the family and how they were related to one another.

The most important individuals as far as we are concerned are Shalom b. Yehudah Assarraf and his son Ya’aqov, who are mentioned in over three-fourths of the documents in the collection. Shalom’s father Yehudah b. Ya’aqov, the original patriarch of the family, appears in

33 Professor Yosef Tobi happened upon the Assarraf family’s archive during a trip to Fez, where he bought the collection and brought it back to his home in Jerusalem. He has generously shared the collection with a select number of scholars. The only scholar to have written about the collection before me is Yehoshoua Frenkel, who published a short article describing the collection and its promise for Moroccan Jewish history: Yehoshoua Frenkel, “Jewish-Muslim Relations in Fez at the Turn of the 19th Century in light of Juridical Documents,” Maghreb Review 29, no. 1-4 (2004). The documents are kept (in no particular order) in ten unmarked folders, which I have provisionally numbered one through ten: throughout the dissertation, I use these numbers to identify the folder in which a given document is found.

34 Two documents are from before 1854 and eleven are from after 1912. In addition, I was unable to read the dates of seven documents, though the nature of the documents makes it very likely that they are from between 1854 and 1912.

35 In addition, there is no way to tell whether Professor Tobi’s collection represents the entirety of the Assarraf family archive of sharī’a court documents, though it is unlikely that additional documentation would significantly change the conclusions I draw in this section.

36 The only name of a spouse which I was able to find is that of David b. Ya’aqov Assarraf’s wife, Hannah bat ‘Ayush ‘Atiya (see PD, Register of Shtarot from Fez, entry #7, 12 Tammuz 5694/ 25 June 1934).
only three documents.\textsuperscript{37} Yehudah died after 1862, by which time Shalom had already become active as a businessman.\textsuperscript{38} Yehudah’s two other sons, Eliyahu and Mordekhai, also appear in the collection, though far less often than Shalom—undoubtedly the collection ended up in the hands of Shalom’s branch of the family, and thus primarily concerns him and his direct heirs. Shalom had three sons, Ya’aqov, Yehudah,\textsuperscript{39} and Moshe, all of whom are represented in the collection—although documents concerning Ya’aqov far outnumber those relating to his brothers.\textsuperscript{40} The legal documents also include the names of Jews outside the Assarraf family who were undoubtedly the Assarrafs’ business associates. People such as Eliyahu b. ‘Azūz Kohen, Ḥaim b. Ya’aqov Harosh, Maymon b. Shawīl b. Sūsān, and Shmuel b. Yosef Marsiano appear regularly in the collection, probably due to their frequent commercial relations with the Assarrafs.

Shalom Assarraf was a prominent businessman and a pillar of his community. We know something about how he looked: in 1885 he was described as “Mostly white-haired, large nose, [partially] bald, sunken (eyes or cheeks), of middling stature (kātharahu al-shaybu ḍakhmu al-anfi majlan asīlun ghā’irun rab’atun).”\textsuperscript{41} From another document, we know he had blue eyes

\textsuperscript{37} TC, File #2, 15 Sha’bān 1250; 18 Rajab 1278: File #7, 23 Jumādā I 1279.
\textsuperscript{38} See the following chapter for a discussion of when Shalom was most active commercially.
\textsuperscript{39} I suspect that Yehudah survived some accident or illness, since by 1934 there are references to a Ḥaim Yehudah b. Shalom Assarraf, who is clearly the son of our own Shalom b. Yehudah Assarraf and almost certainly the same person as the Yehudah found in the Assarraf collection (see, e.g., PD, Register of Shtarot from Fez, entry #4, 12 Tammuz 5694/ 25 June 1934; entry #127, 7 Tevet 5695/ 13 December 1934; and entry #129, 7 Tevet 5695/ 13 December 1934). I believe that Yehudah took the additional name of Ḥaim in order to ensure his own healing; it has been a common practice since medieval (and possibly Talmudic) times for Jews to add a name bringing good luck, such as Ḥaim (meaning “life”), in order to help or ensure their recovery (see, e.g., “Names, Personal,” in \textit{The Jewish Encyclopedia}, ed. Cyrus Adler (New York: Funk & Wagnalls Company, 1906)).
\textsuperscript{40} There are 458 documents concerning Ya’aqov, 66 concerning Yehudah, and only 8 concerning Moshe.
\textsuperscript{41} TC, File #2, 27 Rabī I 1303. \textit{Majlan asīlun} literally means that “the fore parts of the head” are smooth, that is, bald (on majlan, see Edward Lane, \textit{An Arabic-English Lexicon}, 2 vols. (London: Williams and Norgate, 1863), 448). The word ghā’ir means sunken, and can refer to either eyes or cheeks (Hans Wehr, \textit{A Dictionary of Modern Written Arabic} (Urbana, IL: Spoken Language Services, Inc., 1979), 805).
(azraqu al-'aynayn)—a trait for which the Assarrafs of Fez are known until today.  

Shalom, like his son Ya'aqov, was most likely only literate in Judeo-Arabic, though we know nothing about his education.  

At some point in the late nineteenth century, Shalom acquired American protection; the fact that he was a protégé is further indication of his elite status.

Shalom’s main occupation, and that of Ya’aqov after him, was as a middleman selling goods bought in bulk to individuals in Fez and the surrounding area. The family specialized in the textile trade; the Assarrafs bought foreign textiles and sold them on credit, mostly to Muslims.  

They also sold other goods, such as wheat, olive oil, silk, and wool, though there are far fewer documents attesting to trade in these items than in foreign textiles.

The nature of these foreign textiles merits further discussion. The textiles are described in the documents as kattān, kattān marikān (American kattān), or simply marikān. “Kattān” means “flax” or “linen” in classical Arabic. However, it is almost impossible that kattān could have referred to flax in the context of late nineteenth-century Morocco. It is much more likely that kattān, as used in Morocco, was an adaptation of the English and/or French “cotton/coton,”

---

42 TC, File #7, 11 Rabī’ II 1302. Concerning the Assarrafs’ reputation for blue eyes, I spoke with a descendant of the Assarraf family who explained that “les Assarrafs sont les blonds avec les yeux bleus” (conversation with Alice Oliel, née Hatchuel, 21 July 2011).

43 I surmise Shalom’s level of literacy from the fact that he wrote summaries in Judeo-Arabic on the back of most of his Islamic legal documents, explaining what the document was for and whom it concerned. This was a common practice among Jews which allowed them to remind themselves of the contents of their legal archives without resorting to a translator each time they needed to interpret a document.

44 I discuss Shalom’s protection further in Chapter Seven.

45 Yehoshoua Frenkel is, I believe, mistaken in asserting that the bills of debt concerning textiles all refer to partnerships for “the manufacture of cloth in Fez” (Frenkel, “Jewish-Muslim Relations in Fez,” 75). Frenkel seems to think that the bills of debt in which the Assarrafs sold Muslims foreign textiles on credit are, in fact, agreements in which a Muslim who possessed raw materials agreed to process these materials into finished cloth. The vast majority of documents in the Assarraf collection do not provide any evidence that Muslims agreed to process raw materials into finished textiles; it is possible that Frenkel based his observations on one or two documents which did not prove to be representative of the entire collection (since he consulted only a small number of documents). Nor does Frenkel account for the fact that the textiles are described as “American,” as I discuss below.

46 Frenkel simply translated kattān as “flax,” which, given the context, is clearly a mistake (ibid., 73).
The fact that *kattān* was often paired with—and even interchangeable with—“American” suggests two possible interpretations. *Marikān* might have referred to “Americano,” the Moroccan term for raw calico. Alternatively, “American” might have indicated the origin of the material in question. During the nineteenth century, America exported far more cotton than any other textile (including flax). Similarly, cotton was a far more common import to Morocco than linen (or than any other textile). If this is the case, then “American” was probably used to describe the origin of the cotton rather than where it was milled, meaning that the Assarafs might have traded in textiles made from American cotton but milled in England. Given the ambiguity of the term I prefer to translate it simply as “cotton textiles.” What is clear, however, is that the Assarafs were involved in the expanding trade in imported goods, and

---


48 Jean Louis Miège, “Coton et cotonnades au Maroc au XIXe siècle,” *Hésperis* 47 (1959): 227, fn 4. Miège does not give the Arabic term, thus it is difficult to know whether *kattān marikān* is the Arabic for “Americano.”


51 This is particularly likely given that exports of American manufactured cotton textiles were relatively unimportant until World War I, while exports of raw cotton (especially to the UK) were consistently high from at least the middle of the nineteenth century. (See Census, *Historical Statistics of the U.S.*, 546-47, 55-6.) The statistics generally suggest that it was far more common for America to export raw cotton to countries with more advanced textile industries, such as Britain, which in turn exported cloth to places like Morocco. Moreover, there was a small but active community of Moroccan businessmen (both Muslim and Jewish) living in Manchester who facilitated trade in cotton goods between the UK and Morocco (see Fred Halliday, “The Millet of Manchester: Arab Merchants and Cotton Trade,” *British Journal of Middle Eastern Studies* 19, no. 2 (1992): 161-4). For a report by the American ambassador on the importation of cotton goods from Manchester in which no mention is made of imported textiles from America, see USNA, reg. 84, v. 47, Felix A. Mathews, “Report on the trade, commerce, and navigation of the Empire of Morocco for the year 1880-81,” 21 September 1881. On the importation of cotton to Morocco generally, see Miège, “Coton et cotonnades.”

52 I am grateful to Daniel Schroeter for his help with the definition of *kattān*. 

60
undoubtedly made much of their money capitalizing on Moroccans’ growing taste for cotton textiles imported from abroad.53

Shalom was not only a successful merchant, but a prominent leader in his community. In March of 1873 the ma’amad (council of community leaders) appointed him nagid, or secular head of the Jewish community of Fez.54 The nagid’s responsibilities included acting as liaison with the Muslim authorities, as well as administering fines and prison sentences within the Jewish community.55 This position was always filled by Jews of considerable wealth and ties with the Makhzan, though not necessarily significant Jewish learning.56 Shalom’s letter of appointment specifically noted that should he be required to appear before the non-Jewish authorities (serarah), the community agreed to provide five or six communal leaders (mi-rashei ha-qehillah) to accompany him. It is not clear how long Shalom served as nagid of Fez, although in 1885 he signed a collective petition along with other “leaders of the community”; presumably he retained a leadership position then even if he was no longer nagid.57 The fact that Shalom occupied this post indicates that his was a position of considerable authority among the Jews of Fez.

54 See the document of appointment in PD, first tenth (or first ten days: ṭūr [sic] rishon) of Adar 5633. The letter was signed by the rabbis Matityahu Serero, Shlomoh Eliyahu Ibn Tzur, Rafael Ibn Tzur, and twenty-five members of the ma’amad.
56 Another indication of Shalom’s standing with the Makhzan can be found in a document from 3 Ramaḍān 1297 (9 August 1880), in which Shalom appears as a witness along with other Jewish notables testifying about the applicability of the rule that Jews must go barefoot outside of the millāḥ; the question was raised when a group of Jews went to the palace wearing shoes to bring a petition to the sultan (quoted in Paul Paquignon, “Quelques documents sur la condition des juifs au Maroc,” Revue du Monde Méditerranéen 9 (1909): 121).
57 This letter is translated in Fenton and Littman, L'exil au Maghreb, 540-2 and discussed further in Chapter Nine.
When Shalom passed away in 1917, his son Ya’aqov had already been active in the family business for many years (starting in the 1870s). In addition to continuing the family business in textiles and other goods, Ya’aqov expanded their interests in real estate. Shalom had already been active as a landlord to Jewish tenants, renting out stores and rooms in a number of houses in the millāḥ. Presumably Ya’aqov continued to rent these properties after his father’s retirement. In addition, Ya’aqov bought land, stores, and an oven which he rented to Muslims. In addition to real estate ventures, the family at some point acquired a large house with nineteen rooms in the new millāḥ which was originally known as Dār Shalom Assarraf (the house of Shalom Assarraf), and later came to be known as Dār Ya’aqov Assarraf.

Like his father, Ya’aqov was a prominent member of the community, although he never served as nagid. He did, however, take a leadership role during the months following the pillage of the millāḥ in April, 1912. France declared its protectorate soon after, and the French authorities assured the Jewish community that they would be indemnified for their losses. They appointed a committee headed by Amram Elmaleh, the director of the AIU school. Ya’aqov helped lead a protest against Elmaleh’s handling of the indemnities, claiming that Elmaleh was

---

58 The legal documents concerning Ya’aqov begin in 1874 and start to become numerous in 1877.
59 See the record book of properties which Shalom rented out from the summer of 1903 to the winter of 1904 (kayitz 5663 to ḥoref 5664), in PD. The record book includes a copy of each lease as it was drawn up by sofrim, and in many cases a record of payments received. Presumably Shalom had such record books for other years, although this is the only one that I have found.
60 I have not found any such record books for Ya’aqov, although it is quite likely that they existed.
61 There are nine documents concerning the rental of real estate to Muslims, starting in 1890. Only a single document attests to Shalom’s involvement in renting out property to Muslims: TC, File #9, 16 Dhū al-Qa’d 1294.
62 I learned the location of the house from a conversation with Albert Sabbagh, currently the rabbi of the community of Fez (21 July 2011).
63 See PD, Manuscript of Avner ha-Tzarfatī, Yahuas Fas, p. 25b: see also a full transcription in Hebrew in David Ovadyah, Fas ve-hakhameha, 2 vols. (Jerusalem: Hotza’at Bayt Oved, 1979), v. 1, 87-171. (The mention of Dār Shalom Assarraf is on p. 129.) This work also lists two miṣrīyas (storehouses) belonging to Shalom Assarraf, one with three rooms and one with nine. The house and the miṣrīyas are in the part of the millāḥ known as al-Khadiya. On this manuscript, see Y. D. Sémaich, “Une chronique juive de Fès : le ‘Yahas Fès’ de Ribbi Abner Hassarfati,” Hésperis 19 (1934). The Jews of Fez still know the house as Dār Ya’aqov Assarraf (conversation with Albert Sabbagh, 21 July 2011).
64 Known as the “trīl” (meaning “pillage” in Judeo-Arabic); see Mohammed Kenbib, “Fez Riots (1912),” in Encyclopedia of Jews in the Islamic World, ed. Norman Stillman (Leiden: Brill, 2010).
preventing members of the community from being properly compensated for their losses.\textsuperscript{65} The French commander of the region of Fez believed that the indemnity claims of Ya‘aqov and his allies were falsified; he noted that Ya‘aqov had requested a compensation of 900,000 \textit{pesetas hassani}, “even though his building was one of the few that escaped damage during the pillage.”\textsuperscript{66} It is impossible to know for sure whether Ya‘aqov inflated his claims for damages.\textsuperscript{67} Nonetheless, the fact that he led a group of Jews against the French-appointed administrator suggests that he possessed considerable influence in his community. Ya‘aqov died at some point between 1920 and 1934, leaving behind four sons and two daughters.\textsuperscript{68}

\textit{The Sharī‘a Courts of Fez}

By the second half of the nineteenth century, three different sharī‘a courts operated in Fez. Two of these courts were located in the heart of Fez, the part of the city known as Fās al-Bālī (or old Fez). The \textit{qāḍī al-quḍā} (chief judge, also known as the \textit{qāḍī al-jamā‘a}) presided over the city’s most important court in Fās al-Bālī (“Old Fez,” the main walled city). This court was located near the Qarawīyīn mosque, Fez’s greatest religious establishment and the premier institution of Islamic learning in Morocco.\textsuperscript{69} Specifically, this court was convened in a small

\begin{footnotesize}
\textsuperscript{65} Ya‘aqov was elected as one of fifteen representatives to speak directly with the French authorities in order to counter Elmaleh’s claims: Ovadyah, \textit{Fas ve-hakhameha}, 234. See also AIU, Maroc III C 10, g.07, Giveron to Lyautey, 7 August 1913.
\textsuperscript{66} Ibid.
\textsuperscript{67} There is some further evidence that the Assarraf’s were stolen from during the pillage. On June 14, 1912 Ya‘aqov’s son Eliyahu requested that the pasha of Fez, Sa‘īd b. Muḥammad al-Sharādī, appoint two ‘udūl to record all the items that had been stolen from the family’s two houses during the pillage. The resulting document survives in the Assarraf collection: TC, File #5, 28 Jumādā II 1330.
\textsuperscript{68} Although I have not found a death date for Ya‘aqov, he is mentioned as living in documents from 1920 (see, e.g., PD, Register of Shtarot from Fez 1920-22, entry #162, 26 Kislev 5681). By 1934, Ya‘aqov’s name is followed by the phrase \textit{nuho eden}, meaning “may [his soul] rest in Eden” (see, e.g., PD, Register of Shtarot from Fez 1934, entry #104, 4 Kislev 5695).
\textsuperscript{69} On the Qarawīyīn, see A. Péretié, “Les medrasas de Fès,” \textit{Archives Marocaines} 18 (1912): 346-56; Roger Le Tourneau, \textit{Fès avant le protectorat : étude économique et sociale d’une ville de l’occident musulman} (Rabat:...
chamber (known as a *maqṣūra*) adjacent to the mosque, near the row of shops belonging to ‘udūl (known as *smat al-‘udūl*). Mawlāy Ḥasan (reigned from 1873-94) appointed a second qādī whose court was located near the Raṣīf mosque (usually spelled Rcif in transliteration), near the Bāb al-Raṣīf (Rcif gate) on the other side of the river known as the Wādī Fās which bisects Fās al-Bālī. The third court was located in Fās al-Jadīd, a smaller walled city nearly a kilometer away from Fās al-Bālī; Fās al-Jadīd housed the grounds of the palace, the military barracks, and the millāḥ. A qādī known as *qādī al-jaysh* (the military judge, although the court’s jurisdiction was not limited to the army alone) presided over this court, which was located at the entrance to the administrative quarters of the palace (*dār al-makhzan*). Courts were normally in session during the early afternoon, though exceptionally they could remain open until the evening prayer.

In addition to Fez’s three qāḍīs, approximately three hundred ‘udūl served the legal needs of the city’s inhabitants. The qādī al-quḍā was responsible for appointing ‘udūl, who were usually locals with a modest level of education. Some ‘udūl were mobile (known as *sāriḥūn*), working either in their own homes or in those of their clients. Others, working in pairs, occupied one of about twenty stores that “crowd[ed] round the Karaouiyin” in the area known as *smat al-*

---

Editions La Porte, 1987), 453-71. The qāḍī al-quḍā was also responsible for appointing qāḍīs throughout Morocco, directing the madrasa of the Qarawīyīn mosque, and administering the ḥubūs of Fez (ibid., 214).


73 Ibid., 266. For reasons I do not understand, Yehoshoua Frenkel claims that the qāḍī of Fās al-Jadīd and the qāḍī of al-Raṣīf were the same (Frenkel, “Jewish-Muslim Relations in Fez,” 72). Both Le Tourneau and Péretié assert that the qāḍī of Fās al-Jadīd had a third court, separate from that of the two qāḍīs presiding in Fās al-Bālī.

74 Audiences occurred between *zuhr* (noon, the second prayer of the day) and *’asr* (mid-afternoon, the third prayer of the day). If necessary, sessions were extended until *maghrib* (after sunset, the fourth prayer of the day): Le Tourneau, *Fès avant le protectorat*, 216.

75 Ibid., 215.
'udūl. These ‘udūl, whose livelihood came from the fees they charged for their services, were integral to the functioning of sharī‘a courts. They drew up the notarized legal documents attesting to contracts and other deeds, and recorded the proceedings of trials heard by the various qādīs of the city.

When the Assarraf family was in need of the services of a qāḍī (as opposed to ‘udūl alone), they usually frequented the court presided over by the qāḍī al-quḍā in Fās al-Bālī; on some occasions, they also obtained documents signed by the qāḍī of Fās al-Jadīd, whose court was far closer to their home in the millāḥ. It is possible that the Assarrafs went all the way to the qāḍī al-quḍā—a trek of at an extra three to four kilometers—because they had personal connections to that judge which might have ensured them more favorable outcomes in his court. It is also possible that they found themselves in that part of Fās al-Bālī in any case for their business pursuits and thus that it was simply more convenient to visit the qāḍī there.

Alternatively, their choice of qāḍī could have been determined by the other party, such that the Assarrafs were not always free to choose before which qāḍī they appeared.

It is not entirely clear where the Assarrafs engaged the services of ‘udūl. There do not seem to have been permanent offices occupied by ‘udūl near the millāḥ in Fās al-Jadīd, though it is possible that some of the mobile ‘udūl came to this part of the city to ply their trade. The Assarrafs may also have made the trip into Fās al-Bālī to seek out the ‘udūl working near the

---

76 Ibid., 215-16, 21.
77 For those bearing the signature of the qāḍī al-quḍā (always referred to as the qāḍī al-jamā‘a in these documents) or his representative, see, e.g.: TC, File #1, 15 Dhū al-Qa‘da 1275; 1 Rabī‘ I 1297; File #5, 8 Muharram 1299; 26 Rabī‘ I 1297. There are far fewer documents in the Assarraf collection bearing the signature of the qāḍī of Fās al-Jadīd or his representative: see, e.g. TC, File #2, 8 Ṣafar 1294; File #9, 14 Ḥumādā I 1324. One document curiously refers to the “representative of the qāḍī al-jamā‘a in Fās al-Jadīd” (nā‘ib qāḍī al-jamā‘a bi-fās al-‘ulyā: TC, File #7, 10 Sha‘bān 1307). It is possible that the qāḍī al-jamā‘a had a designated representative in Fās al-Jadīd, though it is hard to imagine that this post would not have overlapped with that of the qāḍī of Fās al-Jadīd. Another possibility is that this is merely an error, and that the word “al-jamā‘a” was included mistakenly.
Qarawīyīn, especially since we know that they often went there for the services of the qāḍī al-
quḍā.

   *   *   *

   The peregrinations of Jews like Ya‘aqov Assarraf from sharī‘a court to beit din and back again in many ways encapsulate the kinds of legal choices which Jews made in nineteenth-century Morocco. Although Jews frequently turned to their own legal institutions for their quotidian legal needs, this did not preclude visits to other venues. The remainder of Part One explores how Jews used sharī‘a courts and what their experience in those courts was like. Approaching Jews’ legal strategies from a lens which assumes the existence of multiple and competing legal venues allows us to escape the old paradigm of Jewish legal autonomy. Ya‘aqov Assarraf clearly was not isolated within the jurisdictional walls of the Jewish legal system. In order to understand the full range of his legal activities and those of his coreligionists, we must follow him outside the millāḥ and into the legal institutions of the society in which he lived.
Figure 1: The Assarraf Family Tree
Chapter Two: Jews and Muslims in Sharī‘a Courts

On May 20, 1880, Shalom Assarraf appeared in the sharī‘a court of Fez.¹ On this particular Thursday, Shalom was acting as the legal representative of his nephew Maymon ben Mordekhai Assarraf. It seems Maymon had gotten in a bit over his head on a business deal. According to Shalom’s deposition, Maymon had bought a pair of earrings from Aḥmad b. Muḥammad Fatḥan al-‘Alawī al-Imrānī for the not inconsiderable sum of twenty French riyāls.² Maymon had been under the impression that the earrings were made of gold; in fact, in his initial plea Shalom even claimed that this was a condition of the sale. But after Maymon took possession of the earrings, he “discovered that they were in fact made of copper (zahara annahā min al-nuḥās).” One can easily imagine what might have taken place; the younger and more inexperienced Maymon eagerly showed off what he thought was a great bargain—a pair of gold earrings for twenty riyāls!—only to be told by those with more expertise, perhaps even Shalom himself, that the earrings were made of relatively worthless copper. One can further imagine Maymon’s relief when his uncle Shalom, a man so expert in the workings of sharī‘a courts that even Muslims had appointed him as their lawyer, agreed to represent him in court to sue Muḥammad. Shalom accused Muḥammad of having tricked Maymon, to which Muḥammad responded that he had indeed sold the earrings to Maymon, but that he had only sold them for four riyāls and ten ‘uqīyas³—presumably a reasonable sum for a pair of copper earrings. After the initial depositions, the parties reached an agreement that Maymon would return the earrings

¹ TC, File #4, 10 Jumādā II 1297. Because the qaḍī’s signature is missing, it is impossible to know in which of Fez’s three sharī‘a courts the lawsuit took place.
² In 1880, one French riyāl (five francs) was equal to approximately 8 mithqāls in Essaouira (although the exchange rate varied from one city to another: Schroeter, Merchants of Essaouira, 143, 49).
³ One ‘uqīya was equal to 10 mithqāls, so at the exchange rate current in Essaouira at the time, this would have amounted to 48 ‘uqīyas (instead of 160).
and Muhammad would return the money (although it is not clear what price was ultimately settled upon).\(^4\) At the very least, Maymon recuperated some of his losses thanks to the lawsuit. This was due in part to the power of the sharī‘a court to convince individuals to settle cases. Maymon’s success was probably also due to his uncle’s expertise in Islamic law and legal procedure; as we shall see in what follows, Shalom was quite familiar with the workings of sharī‘a courts and undoubtedly drew on this knowledge in helping to get his nephew a fair settlement.

The fate of Maymon Assarraf’s copper earrings is ultimately of less import than what this case tells us about how Jews like Maymon and Shalom used the sharī‘a court to facilitate their commercial endeavors. This chapter and the next explore the ways in which Jews in nineteenth-century Morocco engaged the services of sharī‘a courts on a day-to-day basis. In this chapter I address how Jews frequented sharī‘a courts within the limits of the jurisdictional divisions mandated by Islamic law, which required that all cases involving Jews and Muslims be judged according to the precepts of the sharī‘a. Inter-religious matters were by far the most common cases which brought Jews to sharī‘a courts. Although the blurring of jurisdictional lines was by no means rare, it was nonetheless the norm for Jews to bring most intra-Jewish cases to rabbinic courts and most inter-religious cases to sharī‘a courts.

The Assarraf collection provides a glimpse of how one Jewish family—and especially the family’s patriarch, Shalom—employed the services of the local qāḍīs and ‘udūl. In analyzing this collection, I show that Jews were a regular presence in sharī‘a courts. I also demonstrate that their experiences before qāḍīs and ‘udūl were not dramatically different from those of Muslims. Islamic law was largely applied to dhimmīs in the same way it was applied to

\(^4\) The settlement is recorded on the back of the lawsuit; I infer that it is a settlement rather than a judgment both because the document does not include the qāḍī’s decision or the qāḍī’s signature (it is only signed by ‘udūl).
Muslims, despite certain inequalities. Moreover, Jews used sharī’a courts with proficiency; Shalom Assarraf was even employed by Muslims to represent them in sharī’a court. The services of qādīs and ‘udūl facilitated Jews’ economic endeavors, especially the commercial relations that bound them to their Muslim business associates.

Why Go to Court?

Jews engaged the services of qādīs and ‘udūl for a variety of reasons. A relatively complete collection such as that of the Assarrafs gives us a picture of a Jewish family’s use of the court over a period of more than sixty years. The patterns discernible in the collection tell us about the legal services for which Jews turned to sharī’a courts most often. Table 2.1 shows the distribution of types of entries in the Assarraf collection. The collection includes a total of 1,930 documents. 5 98% of the documents concerned matters in which one or more Jews were involved with one or more Muslims. 6 Although the documents concerning matters among Jews generally do not differ in form or content from those concerning Jews and Muslims, I treat these separately (in the following chapter) and thus have chosen to keep them as a distinct category.

---

5 I should specify that by 1,930 documents, I mean 1,930 separate entries. At times, a single page has multiple entries, almost always concerning the same subject. However, I did not count two entries from the same date on a single document as two separate documents because it was clear that the proceedings happened at the same time and were simply recorded separately out of compliance with a standard format. I discuss such documents at greater length in the section on lawsuits. I also did not include a handful of documents which concerned only Muslims and did not explicitly mention Jews at all; while these documents undoubtedly had some relationship to the Assarraf family (since they ended up in their personal archive), it is impossible to know exactly how any given intra-Muslim document related to Jews’ use of sharī’a courts. Most of these documents are powers of attorney, which undoubtedly wound up in the Assarrafs’ hands because the family was somehow involved in a lawsuit with the Muslim being represented. Others concern the settlement of a theft indemnity (from Rajab 1274), a debt owed by one Muslim to another (13 Jumādā I 1290), etc.

6 I counted 39 entries which concerned only Jews (about 2% of the total).
The vast majority of documents, about 73% of the total, are notarial—that is, contracts of one sort or another which Jews and Muslims brought to ‘udūl to have formalized according to Islamic legal standards. The single largest category of these notarial documents concerns debts (64% of the total\(^7\)), that is, money owed by Muslim debtors either to members of the Assarraf family or their Jewish business partners. Most of these debts are for goods sold on credit, rather than straightforward money lending. Other notarial documents include: releases,\(^8\) in which Jews and Muslims in some sort of business relationship attest that they have fulfilled their obligations towards one another and no longer owe one another any money; contracts for the sale or rental of property;\(^9\) and other “miscellaneous” types such as partnerships, attestations to the (often partial)

\(^{7}\) 1,229 entries.
\(^{8}\) I counted 97 releases, about 5% of the total.
\(^{9}\) I counted 32 sale or rental agreements, about 2% of the total.
collection of debts, testimonials concerning inheritance, and the like.\textsuperscript{10} Overall, the documents suggest that the Assarraf family, their associates, and indeed most Moroccan Jews used sharī’a courts primarily for notarial purposes.\textsuperscript{11} This is not surprising for a number of reasons. Most commercial relationships did not require litigation in court. Moreover, scholars working on the medieval and early modern periods have also observed that Jews mainly used sharī’a courts for notarial purposes.\textsuperscript{12} Finally, Muslims, like their Jewish neighbors, also primarily employed the notarial services of sharī’a courts.\textsuperscript{13}

The remaining documents (about 25%) are litigious—that is, entries related to lawsuits. All of these lawsuits also concerned some sort of commercial transaction—usually debts—and thus are intimately linked to the notarial documents which make up the rest of the collection. Nonetheless, they represent a different kind of experience in court, one in which Jews appeared as plaintiffs or defendants rather than as neutral parties in contracts. Nearly half of the litigious documents concern guarantees, an integral part of the litigation process in Moroccan sharī’a courts:\textsuperscript{14} debtors provided guarantors that they would pay their debts and defendants provided guarantors that they would appear in court. Other types of litigious documents include the initial

\footnotesize{\textsuperscript{10} I labeled a total of 43 entries as “miscellaneous,” or 2% of the total.\\
\textsuperscript{11} The documents I examined from other collections also reflect the primacy of notarial use. Out of a total of 295 documents from three different collections, I counted only six which concerned lawsuits and can be thought of as litigious; the rest were all notarial documents (again, mostly debts, but also property rentals and sales, partnerships, releases, etc.).\\
\textsuperscript{12} For instance, Richard Wittmann looks at how Jews in seventeenth-century Istanbul used the local sharī’a court; although he limits his inquiry to intra-Jewish cases, it is nonetheless significant that the records he examines shows Jews appearing in court for notarial matters 59% of the time: Wittmann, “Before Qadi and Vizier,” 71. Najwa al-Qattan also observes that non-Muslims in Damascus used the sharī’a court for notarial purposes, though she does not indicate the relative frequency of this type of use: Al-Qattan, “Dhimmis in the Muslim Court,” 429. Amnon Cohen does not discuss the relative frequency of notarial vs. litigious documents; in his synthesis he emphasizes the litigious functions of the court (Cohen, \textit{Jewish Life under Islam}, 110-13). However, his four volumes of documents about Jews culled from the archives of the sharī’a court of Ottoman Jerusalem contain many notarial documents. For the medieval period, see Goitein, \textit{A Mediterranean Society}, v. 2, 400; Moshe Gil, \textit{A History of Palestine, 634-1099} (Cambridge: Cambridge University Press, 1992), 168.\\
\textsuperscript{13} Although no extensive research on the socio-legal history of Moroccan Muslims exists, scholars working on the legal history of the Ottoman Empire have shown that the notarial functions of the qādī courts were just as important, if not more so, than their litigious functions. See, e.g., Peirce, \textit{Morality Tales}, 88-9.\\
\textsuperscript{14} There are a total of 249 entries related to guarantees (about 13% of the total).}
allegation or deposition in a case (called the *maqāl* in Arabic). The rest of the litigious documents usually followed the initial allegation in a case and were recorded on the same sheet of paper as the maqāl; these include the plea of the defendant, the rulings of the court (such as requesting more evidence, demanding proof, etc.), and testimony concerning facts of the case.¹⁵

*A Year at Court with Shalom Assarraf*

The frequency with which Jews appeared in sharī‘a court naturally depended on a number of factors, especially profession and social class. The Assarraf collection offers a glimpse of how Shalom Assarraf used his local sharī‘a courts over nearly forty years. I focus on Shalom’s use of the court because he appears far more often than any other individual in the documents from the Assarraf collection: Shalom is mentioned in 1,013 out of a total of 1,930 separate entries.¹⁶ His son Ya‘aqov is a distant second with only 458 entries to his name. It is possible that the family acquired more sharī‘a court documents which did not end up in the collection in Professor Tobi’s possession. Yet missing documents would only mean that Shalom frequented the sharī‘a court even more often than our collection indicates.

---

¹⁵ I counted a total of 235 such litigious documents that were not guarantees (about 12% of the total).

¹⁶ By “concerned,” I mean that Shalom was defendant, plaintiff, or party to a contract and was thus present when the document was drawn up. This is somewhat less clear for individual documents in which a guarantor is provided for Shalom’s adversary in court; in these cases, Shalom is mentioned by name though it is not always made explicit that he was present when the document was drawn up. Nonetheless, I am treating even these documents as instances in which Shalom was also present at court, since the fact that he came into possession of the document implies that he was present during the proceedings.
Table 2.2

Table 2.2 illustrates the distribution of documents concerning Shalom by year. The earliest document is from December 16, 1854 (25 Rabī‘ I 1271), and the latest is from April 15, 1892 (17 Ramadān 1309). The number of entries per year which concerned Shalom increased steadily until about 1864-5 (1281 AH). After 1864-5, Shalom’s appearances in court remained relatively consistent until 1882-3 (1300 AH), at which point the number of entries per year dropped significantly. At this point, the number of entries for Ya’aqov increases, making it clear that Shalom ceded much of his commercial activity to his son. Aside from a few markedly low years (from 1868-9/1285, 1872-5/1289-91, 1876/1293, and 1881-2/1299), between 1864 and 1883 Shalom averaged about 49 visits to a shari‘a court per year. Including the remarkably low years, Shalom averaged 39 entries per year between 1281 and 1300 AH.

In other words, during the height of his commercial activity, he was in
court approximately once a week, either to have a legal document drawn up and notarized by 'udūl or to pursue a lawsuit in which he was involved.¹⁹

Let us follow Shalom through a few months at the local sharī‘a court to get a sense of how these averages played out in reality. In the year 1283 AH (1866-7), Shalom appeared before ‘udūl—and occasionally before a qāḍī as well—a total of 42 times. Most of these appearances were in order to notarize bills of debt. For instance, he went before ‘udūl to testify that a Muslim owed him money—and receive a legal document attesting this—on Wednesday, May 16, 1866; again on Friday, June 1; twice on Wednesday, June 20;²⁰ again on Thursday, July 19; again on Thursday, August 9; and once again on Wednesday, August 15. Then, on August 29, Shalom sued Ibn al-Dīn (?) b. ‘Āmir al-Ḥasāwī al-‘Agabī in the sharī‘a court, claiming that al-Ḥasāwī owed him 125 mithqāls.²¹ On Thursday, September 13, a Muslim guaranteed the appearance of another Muslim in court with Shalom—presumably one against whom Shalom had a claim of some sort. Before May 4, 1867 (the last day of 1283 AH), Shalom would return to the court 33 more times—for debts, lawsuits, guarantees, and once to release a Muslim associate from further claims (though I will not bore readers with the details of each of these appearances).

The fact that Shalom Assarraf appeared before ‘udūl or a qāḍī on average once a week during his most active years as a businessman should not be surprising given that scholars have long noted that Jews used sharī‘a courts for commercial transactions involving Muslims.

¹⁹ Of course, it is also possible that Shalom went to a sharī‘a court even more often than these documents show, since this collection may be incomplete (perhaps because Shalom did not always conserve a paper record of his activities in court and/or because some of these documents have subsequently been lost).
²⁰ I did not record the names of the debtors for these particular documents, thus there is no way to know whether both bills of debt were for the same person. Although I found some instances in the Assarraf collection in which a Jewish creditor drew up multiple bills of debt for the same debtor on a single day, I also found many cases in which the creditor appeared before ‘udūl to notarize debts owed by different debtors on a single day.
²¹ In fact, Shalom claimed that al-Ḥasāwī owed him the money for a debt originally owed by al-Sahāli b. ‘Abdallāh al-Ḥimyānī; presumably al-Ḥasāwī had agreed to guarantee the debt, although this was not specified in the document itself.
Nonetheless, many histories of Jews continue to portray Jewish courts as the main, if not sole, legal institutions which Jews utilized on a quotidian basis. Shalom’s weekly appearances in court makes it impossible to ignore the importance of the sharī‘a courts in the legal history of Jews.

The limited number of years spanned by the Assarraf collection makes it difficult to trace changes over time in how Shalom Assarraf, his relatives, and his associates used the sharī‘a courts of Fez. Nonetheless, an important development occurred over the sixty-year period covered in the collection. Starting in the early 1880s, a new clause came to be added to many of the bills of debt notarized in the sharī‘a courts. Although the formula varied, the most common version stipulated that the creditor “would not claim protection, and if the matter goes to trial, then it will fall under the jurisdiction of the sharī‘a court.”

Protection referred to consular protection; depending on the exact circumstances of the case, if one of the parties was a protégé, lawsuits might have fallen under the jurisdiction of consular courts. (I discuss the role played by consular courts in the Moroccan legal system in Chapters Seven and Eight.) This clause first appears in the Assarraf collection in documents from 1880; by 1883 the clause was included in the majority of bills of debt.

---

22 See the very brief mention of this clause in Miège, Le Maroc et l’Europe, v. 3, 193. The French ambassador to Morocco noted this development in a letter from 1887: “Aussi avons-nous trouvé beaucoup de titres portant dans le corps de l’acte la mention qu’en cas de discussion, le paiement, bien que passé au profit de protégés français ou de Français, ne serait pas réclamé par l’intermédiaire de la Légation de France, mais serait soumis au Chrâ, tribunal du Cadi, le Français ou protégé français renonçant pour le circonstance à sa qualité” (MAE Courneuve, CP Maroc 53, Féraud to Flourens, 28 September 1887).

23 Lā yadda‘ī ḥimāyatān fī hādhihi al-μu‘āmalati wa-īftaghara fīhī li-da‘ wā fa-marqi‘uḥu lil-shar‘. The verb ʿiftaghara comes from the root ʿfaghara, which literally means “to open.” I have not found a definition for the eighth form of this root in any classical dictionaries (or in Dozy), nor is it found in Colin’s dictionary of Moroccan Arabic. Nonetheless, the word as it is used here clearly refers to a case being brought to court. I suspect this is a meaning current in nineteenth-century Morcco which has since fallen out of usage.

24 I have only come across the Arabic word ḥimāya as meaning “consular protection” in the context of nineteenth-century Moroccan texts.

25 Out of a sample of 150 bills of debt which are post-1883, only 32 (21%) did not have the protection clause. Sharī‘a court documents from the other collections I examined never have the protection clause before 1880; after
The introduction of the “protection clause,” as I shall refer to it, was necessitated by the increasing numbers of foreign protégés who brought their lawsuits to consuls instead of qāḍīs. Jews were over-represented among foreign protégés, though it is important to stress that it was not only Jews who acquired patents of protection. Because of the nature of the Assarraf collection, the majority of documents with the protection clause concern a Jewish creditor and a Muslim debtor. However, the collection contains some bills of debt among Muslims which also include the protection clause, suggesting that ‘udūl did not insert this clause only for transactions with Jews. The appearance of the protection clause not only indicates the extent to which consular courts became an important feature of the Moroccan legal system, but also shows that Jews and Muslims with access to consular courts continued to frequent sharī‘a courts as well (a point to which I return in Part Three).

Distinguishing Jews in the Sharī‘a Court

The documents in the Assarraf collection suggest that Jews’ experience in sharī‘a courts was not radically different from that of Muslims. Legal procedure and the production of legal proof worked largely along the same lines for members of both faiths. Moreover, Islamic law applied mostly in the same way for both religious groups, except concerning the rules of evidence. The application of Islamic law with little variation across confessional lines

the mid-1880s, it became quite common. The protection clause also appears in bills of guarantee, though I only found two such instances (TC, File #4, 2 Shawwāl 1306 and File #3, 12 Ramadān 1308).

26 See, e.g., TC, File #2, 3 Jumādā I 1325. See also a bill of sale among Muslims in which one party testifies that he does not have any foreign protection (File #10, 10 Rajab 1317). Nonetheless, given the large number of Jewish protégés and the perception of Jews as having more extensive connections with foreign consulates, the protection clause may have been more commonly included when Jews were involved.

27 As Gideon Libson has observed, Islamic law guaranteed Jews equal treatment to Muslims in many areas of private law (including partnership, personal status, etc.): Libson, Jewish and Islamic Law, 81.
challenges much of the historiography on Jews in the Islamic world which has emphasized the unequal treatment to which Jews were subjected by Islamic law.

The similarity in Jews’ and Muslims’ experiences in court does not mean that sharī’a courts were blind to religion; on the contrary, Jews were almost always marked as Jews in legal documents. In describing Jews, the ‘udūl usually prefaced their names with “al-dhimmī” or, less frequently, “al-yahūdī.”28 Certain titles were sometimes added to Jews’ names, usually after “al-dhimmī”: the most common was “al-ḥazān,” which comes from the Hebrew ḥazan and functions in Moroccan Judeo-Arabic to denote a learned person (and as an equivalent of faqīh).29 I found one instance in which the name of a Jew (preceded by al-dhimmī) was followed by the expression “may God curse him (la’anahu Allāh),” but this document was—significantly, I think—from the colonial period.30 At times Jews were simply described as “al-tājir” (the merchant), a title which almost always occurs in documents from the first decade of the twentieth century.31 It is possible that an increasing European presence and changes in Jews’ overall social status were responsible for the occasional absence of the term dhimmī. Yet the few documents which do not preface a Jew’s name with either “al-dhimmī” or “al-yahūdī” are exceptions to the

28 I cannot discern any pattern in the use of al-yahūdī vs. al-dhimmī. There are some instances in which a Jew’s name was not preceded by any sort of title, but this was quite uncommon (see, e.g., TC, File #6, 10 Sha‘bān 1330). Compare to Arabic legal documents found in the Cairo Geniza, in which Jews were usually referred to as “al-yahūdī” or “al-isrā’īlī,” but rarely as “al-dhimmī”: Khan, Arabic Legal Documents, 13.


30 See, e.g., CAHJP, MA.24, 3 Sha‘bān 1371/ 28 April 1952. See also Daniel J. Schroeter, “Views from the Edge: Jews in Moroccan Rural Society (Ighil n’Ogho, 1917-1998),” in Ḥikrei Ma’arav u-Mizrah: Studies in Language, Literature and History Presented to Joseph Chetrit, ed. Yosef Tobi and Dennis Kurzon (Jerusalem: Carmel Publishing, 2011), 182-3; I believe it is significant that the legal document in which Schroeter found the phrase al-dhimmī la’anat Allāh ‘alayhi is from the colonial period. Schroeter also notes the rarity of this sort of phrase in notarial documents. He further stresses the significance of the fact that the curse comes after al-yahūdī rather than al-dhimmī, suggesting that al-yahūdī was less respectful. The document I found suggests that either title could be combined with a curse.

31 See, e.g., TC, File #9, 14 Muḥarram 1313; File #2, 10 Dhu al-Ḥijja 1326; File #5, 8 Ṣafar 1327; File #9, 6 Shawwāl 1328; File #3, 21 Rajab 1329; File #5, 2 Ṣa’man 1329; File #8, 2 Jumādā II 1330; File #3, 26 Rajab 1332; File #5, 10 Dhu al-Qa‘da 1334; File #5, 11 Ṣafar 1335; File #3, 5 Ṣafar 1336.
rule; the ‘udūl almost always took care to mark Jews as such in the legal documents they produced.

In addition to distinct titles, a slightly different concluding formula was often used at the end of documents concerning Jews. Notarized documents typically ended with the two ‘udūl testifying to their having witnessed the agreement to which the document pertains. The standard formula is: “[The ‘udūl] testify that they [the parties to the contract] know the content [of the contract] and testify concerning them completely” (‘arafū qadrahu shahida bihi ‘alayhim bi-akmalih). However, when a Jew was concerned, the formula specified that “the dhimmī is in an acceptable state,” (al-dhimmi wa-huwa bi-’l-hālati al-jā’izati). The manual for legal documents from nineteenth-century Fez does not include any examples of a special concluding formula for Jews, nor have I found any mention of this formula elsewhere. More research is needed in order to determine the origins of this formula and how common it was in pre-colonial Morocco and beyond.

Besides prefacing Jews’ names with markers such as “dhimmī” and slight variations in the concluding formulae, the basic form of sharī‘a court documents was mostly similar

32 See, e.g., Binānī, al-Wathā‘iṣq al-fāsiya, 26. However, the shurūṭ manual has the verb “know” in the dual (‘arafū), since presumably contracts normally refer to two parties, whereas the formulation I quote here (from TC File #1, 11 Muḥarram 1298) refers to three people involved in the contract. For the translation, see Ahmed Attif, “Court Judgments and Decisions and Adul’s Deeds: Translation and Commentary” (Thesis, Diplôme de Traducteur, Université Abdelmalek Essadi, Ecole Supérieure Roi Fahd de Traduction, 1990-1), e.g. 98-103; Attif translates ‘arafū qadrahu shahida bihi ‘alayhim as “The Aduls testify that both parties know the content and legal importance of the present” (100). In other words, the verb ‘arafū (and the subsequent ‘alayhim) refers to the parties concerned (although it is not clear why, in the document Attif translates here, the parties are dual while the verb is in the plural; one would expect it to be in either the singular or the dual), whereas the verb shahida refers to the ‘udūl (and can be in the singular even to refer to a dual subject since the verb precedes the subject).

33 See, e.g., TC File #1, 11 Muḥarram 1298. For a slightly different version of this, see, e.g. TC, File #1, 6 Shawwāl 1283, which reads: “They testified about them completely regarding the Muslim…and regarding the dhimmī he is in a proper…and acceptable state” (shahida bihi ‘alayhim bi-akmalih bi-‘l-nisbati li-l-muslimi…wa-fī hāli šīhkati…wa-jawāzin bi-‘l-nisbati li-l-dhimmi). I also found this formula in documents from Marrakesh (see, e.g., UL, Or.26.543 (1), 15 Safar 1292, 5 Rabi‘ I 1293, 19 Shawwāl 1295, etc.). See also documents from Tetuan in which the formula states that the ‘udūl “know the Jew” (‘arafa al-yahūdīya): PD, 21 Muḥarram 1314, 21 Dhū al-Hijja 1315, etc. However, I did not find this formula in any shurūṭ manuals that I consulted.

34 I also consulted ‘uqūd from the Cairo Geniza (found in Khan, Arabic Legal Documents).
regardless of whether a Jew was involved or not. This is best seen in those documents in the Assarraf collection which concern only Muslims and mention nothing about Jews. In these notarial documents, the same general formulae are reproduced as in contracts among among Muslims and Jews.\textsuperscript{35} Similarly, the intra-Muslim documents recording lawsuits follow the same general procedures and employ the same formulae.\textsuperscript{36} Of course, it is possible that nearly identical documents might have concealed significantly different treatment; there were undoubtedly instances in which qāḍīs discriminated against Jews based on their creed (as I discuss in Chapter Six). Nonetheless, the resemblance among Islamic legal documents regardless of whether or not a case involved Jews suggests that in theory, at least, Islamic law was mostly applied identically to Muslims and non-Muslims.

Yet there are important areas of Islamic law which treat Muslims and non-Muslims differently, especially concerning the laws of evidence. Islamic law requires testimony from two adult Muslim men who fit the requirements of probity (‘adl), or from one man and two women.\textsuperscript{37} By the early modern period, this requirement had developed into a reliance on professional notaries to act as “just witnesses” (‘adl, pl. ‘udūl). These ‘udūl were responsible for testifying to all written documents which constituted valid evidence in a shari‘a court. Jews could not serve as ‘udūl by virtue of being Jewish; neither could Muslim women, slaves, minors, Muslim men considered to lack the qualities of uprightness and justice, or, in Morocco after 1877, Muslims who had acquired foreign protection.\textsuperscript{38} What this meant in practice was that Jews had to rely on the services of professional ‘udūl to attest to the validity of their contracts so that these

\textsuperscript{35} For bills of debt among Muslims only, see TC, File #9, 12 Jumādā II 1279; File #5, 10 Jumādā I 1283; File #7, 13 Jumādā I 1290; File #8, 23 Rabi‘ I 1296; File #10, 21 Dhū al-Qa‘da 1316. For bills of sale of real estate, see File #10, 18 Jumādā I 1302 and 10 Rajab 1317.

\textsuperscript{36} For a lawsuit among Muslims, see TC, File #5, 10 Dhū al-Hijja 1314.

\textsuperscript{37} Schacht, \textit{An Introduction to Islamic Law}, 192-3.

\textsuperscript{38} Mawlāy Ḥasan established a rule that Muslims who had acquired foreign protection were ineligible to serve as ‘udūl: see Müdiriyat al-Wathā’iq al-Mālikīya, \textit{Al-Wathā’iq, Volume 4} (Rabat: al-Maṭba‘a al-mālikīya, 1977), 426-7.
documents would stand up as evidence in a sharī'a court. In their reliance on ‘udūl, however, Jews were no different from Muslims who also had to use the services of notaries to render their written contracts valid in court. Ultimately, it was the documents notarized by ‘udūl which formed the basis of most evidence in sharī'a courts; the claims of both plaintiffs and defendants had to be backed up by notarized documents.39 Qāḍīs—at least in Morocco—rarely called in witnesses to testify verbally.40 In the Ottoman Empire, on the other hand, verbal testimony played a much more important role in trials;41 there is evidence that Jews in Ottoman sharī'a courts were able to testify, though usually only in cases that concerned other non-Muslims.42 In other words, since the role of ‘adl was professionalized in nineteenth-century Morocco, the prohibition on Jews serving as ‘udūl did little to make their experience in court different from that of Muslims.43

The invalidity of non-Muslims’ testimony also meant that Jews were ineligible to testify in a laffīf, a form of witnessing particular to the Maghrib in which twelve men who were not

39 This is contrary to the strict doctrine of Islamic law, which considers oral testimony the only definitive form of proof. Nonetheless, written documents are considered acceptable because they are signed by ‘udūl whose signatures stand in for the oral testimony of witnesses: see Tyan, Le notariat, 3-14, 72-92.
40 I found a single reference to a qāḍī asking for verbal testimony from witnesses in court (see FO, 636/3, Carstensen to Hay, 10 March 1866). This case concerned the theft of merchandise from the store of Joseph Crespo, a Jew under British protection, in which another Jew, a Moroccan subject, was the suspect. The governor of Essaouira initially tried the case, but decided that because the evidence was circumstantial it should be adjudicated in a sharī'a court. The qāḍī refused to hear the oral testimony of Jews and Christians (as well as Muslims considered to be impious). However, given the fact that this case concerned goods belonging to a Jew with protection, I suspect that the qāḍī might have presented obstacles to the resolution of the case in order to inconvenience the protégé and his consul. This is corroborated by the fact that reference to verbal testimony from either Muslims or Jews in sharī'a courts is almost entirely absent from the archives.
41 Ronald Jennings explains that in the kādi court of seventeenth-century Kayseri, written evidence was only used if witnesses could not be found: Jennings, “Limitations of the Judicial Powers of the Kadi,” 173.
42 Concerning sixteenth-century Ottoman Palestine, Amnon Cohen writes: “In summary, the testimony of Jews in the Muslim court was acceptable evidence against Jews and Christians and served as supporting evidence to the testimony of Muslims. It was not, however, acceptable as exclusive evidence against Muslims, and in such cases sufficed only when accompanied by some further proof, either a document or the testimony of a Muslim witness” (Cohen, Jewish Life under Islam, 122). See also al-Qattan’s findings that only on rare occasions did the testimony of dhimmīs outweigh that of Muslims in the sharī’a court of Damascus; in most instances, dhimmīs preferred to engage Muslims to bear witness for them: Al-Qattan, “Dhimmis in the Muslim Court,” 437. Rossitsa Gradeva makes a similar argument concerning Sofia: Gradeva, “Orthodox Christians in the Kadi Courts,” 67.
43 On the fact that notarized documents could stand in for testimony (and thus make it possible for a Jew to prove his case without actually testifying), see also Boum, “Muslims Remember Jews,” 259.
‘udūl testified to something based on their personal knowledge. This sort of testimony was commonly used in proving that a debtor was destitute, as discussed below. If Jews wanted to make use of a lafīf as evidence in a sharī‘a court, they had to gather twelve Muslim men who would testify on their behalf. It is likely that this requirement put Jews at something of a disadvantage since Muslims could more easily muster Muslim friends and relatives to participate in a lafīf. Nonetheless, this challenge was not insurmountable. Shalom Assarraf used a lafīf as evidence at least once; in a lawsuit against Aḥmad b. ‘Abd al-Jalīl al-Qamrī, Shalom produced a lafīf of twelve Muslim men who testified thus: “About a month ago, [Aḥmad] obligated himself to [Shalom to pay a debt] for his wife (‘an zawjatihi) Zaynab b. Mulūk al-Qamrī al-Bashīshī for what she guaranteed to [Shalom] for her brothers Idrīs and Bū Sitta.” The qāḍī apparently accepted the validity of this lafīf since he ruled that Aḥmad had to find someone else to guarantee the loan that he, as guarantor, owed to Shalom.

Moreover, the fact that Jews could not serve as ‘udūl or as witnesses in a lafīf did not mean that Jews’ testimony was by definition unacceptable in a sharī‘a court. Jews—and in fact non-Muslims generally—were eligible to take the judicial oath concerning the facts of a case.

This is clearly documented in studies of the medieval period and the early modern Ottoman

---

44 Santillana, *Istituzioni di diritto musulmano malichita*, v. 2, 603. Although twelve was the standard number for a lafīf, it was possible to have more or less. For a discussion about whether the testimony of six witnesses counted as a lafīf, see the fatwā in TC, File #5, lawsuit beginning on 17 Rabi‘ II 1291. However, see also a lafīf in which only six Muslims testified, but which does not seem to have been contested: File #5, 15 Muḥarram 1291.

45 Many of the lafīf documents I found recorded the testimony of twelve men who were related to one another (this was noted by the word “al-nasab” (the relation) after the witnesses’ names: see, e.g., TC, File #5, lafīf from 18 Rabi‘ II 1291 and File #10, 23 Sha‘bān 1294). Undoubtedly these kinship ties made it much easier to find twelve men to bear testimony, and put Muslims at an advantage over Jews when it came to employing lafīf testimony.

46 TC, File #1, 1 Rabi‘ I 1297.

47 This is from an entry on the same page dated 19 Rabi‘ I 1297.

Empire. A document in the Assarraf collection gives a particularly vivid description of how Jews took oaths according to Islamic law:

When the creditor on the back [of this document, that is, Shalom Assarraf] decided to leave this city, he asked the exalted sharī‘a [i.e. the sharī‘a court], may God elevate and strengthen it, to administer the oath which was required of him by his aforementioned debtor in the transaction on the back concerning payment (qaḍā’), for what the debtor might request of the creditor, [so] that [the creditor might] appoint an agent to collect the amount from [the debtor]…[Then,] with the official Mālik b. Laḥsan al-Sūsī [who] went with the creditor to their great place in their synagogue in the millāh of this city, the creditor took the book of the Torah in his hand and swore, saying, ‘[I swear] by God, there is no God but Him, he sent down the Torah through our lord Moshe, that the transaction on the back is as it seems (ẓāhiruhā ka-bāṭinihā), and that I have not collected any of it except the amount specified in the last [entry] on the back and that the rest is still owed at this time.’

It seems to have been the standard practice of sharī‘a courts in Morocco for Jews to take the oath in a synagogue. In another document, a Muslim specified that he wanted the Jew to swear his oath on Saturday, though not all documents specify the Jewish Sabbath as the preferred day for taking oaths. Presumably, it was believed that Jews would be more likely to tell the truth if they were made to swear in a place they regarded as holy and on their own sacred book.

The restrictions on Jews’ ability to testify had far less impact on Jews’ actual treatment in sharī‘a courts than most scholars claim. The tendency to draw misinformed conclusions about Jews’ inability to testify in sharī‘a courts runs through much of the literature on dhimmī status.

49 On Jews taking oaths in Islamic courts during the medieval period, see Libson, Jewish and Islamic Law, 115. On Jews and Christians in the Ottoman Empire being allowed to take the oath, see Goldman, Rabbi David Ibn Abi Zimra, 155; Cohen, Jewish Life under Islam, 122-3; Al-Qattan, “Dhimmis in the Muslim Court,” 438; Çiçek, “A Quest for Justice,” 477; Ben-Naeh, Jews in the Realm of the Sultans, 239.
50 TC, File #1, 6 Jumādā II 1299 (on the back of a bill of debt dated 1 Rabī’ II 1295).
51 For another reference to Jews taking oaths in their synagogue, see File #7, 12 Dhū al-Qa‘da 1297. This was, it seems, standard in Mālikī law: Santillana, Istituzioni di diritto musulmano malichita, v. 2, 628. In the Ottoman Empire, however, it seems that a Torah scroll or a set of phylacteries were brought to the sharī‘a court and the Jew took his oath there (Ben-Naeh, Jews in the Realm of the Sultans, 239). On special formulas used by Christians and Jews in their oath-taking, see Santillana, Istituzioni di diritto musulmano malichita, v. 2, 629 and Al-Qattan, “Dhimmis in the Muslim Court,” 438. The shurūṭ manual from nineteenth-century Fez only includes a standard formula for a Muslim to take the oath: Binānī, al-Wathā’iq al-fāsīya, 68.
52 File #1, 6 Shawwāl 1283.
53 On this more broadly, see the discussion in the Introduction.
In general, foreigners writing about Morocco before 1912 and many contemporary scholars emphasize that the testimony of non-Muslims was unacceptable in sharī‘a courts.\textsuperscript{54} Even among those who present a more nuanced view, there is much confusion about what non-Muslims could and could not do according to Islamic law. For instance, a French observer writing in 1900 first stated that only the oaths of Muslims were acceptable under Islamic law, then went on to explain that when called to take oaths, Jews took their oaths on the Torah.\textsuperscript{55} Scholars have yet to observe that legal procedure as it was practiced in Morocco meant that Jews effectively could bear witness as long as they did so through documents notarized by ‘udūl and that their judicial oaths bore equal weight to those of Muslims.

Although the testimony of Jews is not acceptable under certain circumstances, this did not mean that Jews were never able to give their word as evidence. On the contrary, Jews’ oaths were always considered legitimate and Jews could submit written evidence drawn up by ‘udūl even when these documents were based on oral testimony by dhimmīs. Nonetheless, the restrictions on the testimony of non-Muslims did have an effect on Jews’ experience in Moroccan sharī‘a courts; Jews were barred from serving as notaries and from offering their testimony as part of a lafīf. However, the fact that Jews could not serve as ‘udūl and thus had to seek the services of professional notaries did not distinguish them from most Muslims. Jews were treated fundamentally differently in their inability to testify in a lafīf, but this aspect of

\textsuperscript{54} See, e.g., “Differences between the Assassination of a Muslim and that of a Jew according to Muslim law,” Anglo-Jewish Association Seventeenth Annual Report (1888), p. 20-21, in Fenton and Littman, L’exil au Maghreb, 343-4: Chouraqui, Between East and West, 44; Ye’or, The Dhimmi: Jews and Christians under Islam, 56-7: C. R. Pennell, Morocco since 1830 (New York: New York University Press, 2000), 83. Eliezer Bashan concludes that the restriction on testimony meant that Jews were at constant risk of becoming victims of Muslims’ false testimony, since their own word did not hold up against that of a Muslim (Bashan, Yahadut Maroko, 61). On the testimony of dhimmīs in Mālikī law more generally, see Santillana, Istituzioni di diritto musulmano malichita, v. 2, 100-1.

\textsuperscript{55} Albert Maeterlinck, “Les institutions juridiques au Maroc,” Journal de droit international privé (1900): 479.
legal procedure was relatively minor. 56 These nuances are crucial to understanding Jews’ experience in sharī‘a courts, especially given the confusion surrounding the testimony of non-Muslims.

Bills of Debt

To get a better sense of how the Assarraf family used the sharī‘a court, it is necessary to delve deeper into the business which this family conducted before qāḍī and ‘udūl. As mentioned above, the Assarraf family turned to the sharī‘a court to notarize legal documents far more often than for litigious pursuits. A few kinds of notarial documents are especially common in the Assarraf collection, particularly bills of debt, contracts for the rent or sale of property, and releases; their abundance indicates that these were the kinds of transactions which most frequently brought the Assarraf family to the sharī‘a court.

Bills of debt constitute the majority of notarial documents in the collection (about 64% of the total). The preponderance of bills of debt was not limited to the Assarraf family. Among the other sharī‘a court documents I examined, about 52% were also bills of debt. 57 It was in Jews’ interest to notarize their bills of debt with ‘udūl because contracts which conformed to Islamic legal standards were far more likely to be considered authoritative in case of litigation. As we will see shortly, qāḍīs consistently demanded legal proof of claims made in court, which essentially meant documents notarized by ‘udūl. In the event that a debtor did not repay his debts, the

56 As will be discussed further below, the testimony of a lafīf was almost always used to prove that a recalcitrant debtor was bankrupt and thus unable to pay his debts; since Jews were rarely indebted to Muslims, they more rarely needed the services of a lafīf. Of course, it is possible that lafīfs are relatively rare in the Assarraf collection precisely because Jews were unable to testify in them, and thus resorted to their use more infrequently than did Muslims. Only further research in collections of sharī‘a court documents belonging to Muslim families will answer this question definitively.

57 That is, 154 out of 295.
creditor was at a distinct advantage if he could prove his suit for payment with the original bill of
debt signed by ‘udūl.

Almost every bill of debt I examined in the Assarraf collection concerned a Jewish
creditor and a Muslim debtor.58 This reflects the fact that Jews in Morocco were over-
represented as moneylenders during the nineteenth century.59 Nonetheless, there were instances
in which Jews borrowed money from Muslims, although the Assarraf collection does not
preserve legal documents attesting these kinds of transactions.60

Bills of debt generally followed standard formulae and resembled one another except for
minor variations. These formulae were elaborated in scribal manuals providing templates for
various types of legal documents.61 All bills of debt specify the name of the debtor (or debtors,
as many concern debts owed by multiple people) and that of the creditor (or, at times, creditors).
The debtor’s name is usually preceded by the phrase “owed by” (bi-dhimmati wa-māli). The
following is a typical beginning of a bill of debt: “Owed by Sīdī Muḥammad b. ‘Allāl al-Shargī
al-Shaja‘ī al-Ḥamrānī, to the dhimmī Shalom b. Yehudah Assarraf (Shalūm b. Yehūda
Ṣarrāf)….“62 Many also include a physical description of the debtor, though this seems to have

58 The single exception is a bill of debt from December 19, 1848 (23 Muḥarram 1265 TC, File #5), in which two
Jews, Yitzḥaq b. Maymon b. Mamān and Shmuel b. Rūšā (?), b. Sa‘dūn, testify that they owed money to the
merchant al-Ḥājj al-Madaṇī b. Muḥammad Banīs. The Jewish debtors mortgaged property they owned as surety for
the loan, and then ended up selling al-Madaṇī the property as partial payment; eventually, on April 10, 1886 (6
Rajab 1303), Ya‘aqov Assarraf bought the mortgaged property from al-Madaṇī’s heirs, which is recorded on the
same document as the initial debt (and why the initial debt is included in the Assarraf collection).
59 However, in Ottoman Palestine during the seventeenth century, Jews borrowed money from Muslims far more
often than they lent money to Muslims (Cohen and Ben Shim’on-Pikali, Yehudim be-veit ha-mishpat, ha-me’ah ha-
17, v. 1, 538). By the eighteenth century, though, it was more common for Jews to lend to Muslims (idem, Yehudim
be-veit ha-mishpat, ha-me’ah ha-18, 355-6).
60 See, e.g., Bension Collection of Sephardic Manuscripts, University of Alberta, Ms. 188 (p. 248a), described in
Saul I. Aranov, A Descriptive Catalogue of the Bension Collection of Sephardic Manuscripts and Texts (Edmonton:
The University of Alberta Press, 1979), 108. In the Ottoman Empire, it was far more common for Jews to borrow
from Muslims: see, e.g., Gerber, Crossing Borders, Chapter 6.
61 Particularly relevant for nineteenth century Fez is the manual composed by Muḥammad b. Aḥmad Binānī (d.
1261/1845), who was a muwaththiq—that is, a legal scribe—and who recorded the legal conventions of
contemporary Fez: Binānī, al-Wathā’iʿq al-fāsīya. See also the brief discussion in Buskens, “Mālikī Formularies.”
62 TC, File #1, 25 Ramadān 1281.
been optional as not all bills of debt offer this type of identifying information. All legal
documents, bills of debt included, were dated at the bottom and signed by two ‘udūl.

The bills of debt in the Assarraf collection reflect a variety of types of debt contracted
with the Assarrafs and their associates. A full analysis of every one of the 1,229 bills of debt in
the collection is beyond the scope of this dissertation. Nonetheless, I recorded the details of a
sample of 166 bills of debt in order to get a sense of what kinds of transactions normally brought
the Assarrafs to the ‘udūl. The vast majority of bills of debt in this sample are for goods sold on
credit—about 83% of the sample.63 The Assarrafs and their associates were mostly involved in
the textile trade, thus by far the greater part of the goods they sold on credit consisted of milled
cotton textiles from abroad.64 In addition to cotton textiles, the Assarrafs also sold silk, wool,
olives, wheat, coffee, and a number of other items on credit.

The bills of debt for goods sold on credit typically specified a number of conditions of the
transaction. Almost all notarized contracts for the sale of goods on credit specify the goods sold
and their amount, the price to be paid, and the time limit within which the debtor will pay. For
instance, the bill of debt cited above for money owed to Shalom by Muḥammad b. ‘Allāl al-
Shargī specified that Muḥammad bought a single taraf (a common unit of measurement for
textiles in nineteenth-century Morocco)65 of cotton cloth for 14 mithqāls.66 Muḥammad was to

63 That is, 138 out of 166—including fifteen bills of debt which do not specify what kind of transaction was
concerned (that is, they only list an amount owed, but not what goods were exchanged for this amount, if any).
For the formula for this type of bill of debt (which Binānī calls mu‘āmalat min ghayri rahnin, or “a transaction
without a mortgage”) see Binānī, al-Wathā‘iq al-fāsīya, 43-4.
64 Of the 138 bills of debt for goods sold on credit, 106 (or 77%) were for foreign textiles.
65 It is not clear exactly how much a taraf was: see De Premare, Dictionnaire arabe-français, v. 10, 291. Ṭaraf is
the most common unit of measurement in the Assarraf documents, and was used for imported cotton textiles as well
as local goods such as olives and wool. Other units of measurement found in the Assarraf documents include: qulla,
used for olive oil (literally a jug or pitcher, weighing approximately 9.5 kilos full: Le Tourneau, Fēs avant le
protectorat, 278); qintār, used for wool (a weight of one hundred rafi‘l, equaling between 63 and 126 kilos depending
on whether the wool was spun or raw: ibid., 280; in 1914, the value for both kinds of wool was fixed at 100 kilos:
‘Umar Afa, Al-ṭijāra al-maghribiya fī al-qarn al-tāsi‘ ‘ashar : al-bīnūyā wa-‘l-taḥawwulāt, 1830-1912 (Rabat:
Maṭba‘at al-karāma, 2006), 342); milaff (reel, spool, or coil), used for coffee and foreign textiles; and mudd, used for
pay this (rather small) amount back within six months from the date of the document. Some bills of debt also included the name of a guarantor who ensured payment of the debt in the event that the debtor defaulted; in this case, ‘Abd al-Salām, Muḥammad’s relative (al-nasab), guaranteed the debt. Not all bills of debt included a guarantor in the text of the agreement itself; in some cases, a guarantor for payment was specified at a later date.67

Besides bills of debt for goods sold on credit, two other types of money lending appear in the Assarraf collection. The first was known as a salaf, which technically means an interest-free loan.68 In salaf bills of debt, the documents specify that the amount was loaned “as a salaf” (‘alā wajhi al-salafī) and when the loan was due.69 The exact parameters of a salaf loan varied according to local custom, but it is likely that many (if not most) salaf loans incorporated hidden interest into the agreement.70 The second type was called a salam, and connotes the prepayment for goods which were to be delivered by the debtor at a later date. These documents specified that the debtor had received the “capital” (ra’s al-māl) from the creditor, and agreed to deliver a certain amount of goods by such and such a date. For instance, in a bill of debt from 16 Dhū al-

---

66 A mithqāl was originally a silver coin weighing 29 grams, but by the end of the eighteenth century a mithqāl simply designated a monetary unit (Schroeter, Merchants of Essaouira, 142). The exchange rate between mithqāls and foreign currency (most notably French francs by the end of the nineteenth century) fluctuated considerably; one French riyāl (five francs) was equal to about 12 mithqāls in 1883 (at least in Essaouira: ibid.) and by 1908 one French riyāl was worth between eight and fourteen mithqāls (Le Tourneau, Fès avant le protectorat, 283-4).

67 For instance, a bill of debt owed to Ya’aqov and dated 15 Muḥarram 1310 was guaranteed exactly four years later by the debtor’s son (on 15 Muḥarram 1314). There are dozens of examples of this sort of guarantee, which I discuss further in the section on litigious documents below. There were formulas for a guarantor both as part of the original bill of debt and as a separate document: see Binānī, al-Wathāʾiq al-fāsīya, 47.


69 Out of the 166 bills of debt I analyzed in detail, I found eight which were for a salaf loan. See, e.g., TC, File # 1, bill of debt owed by Muḥammad b. Idrīs al-Miknāsī to Shalom (for 65 riyals), dated 17 Ramaḍān 1309.

70 See below for a discussion of accusations that Shalom had doubled the amount of a loan recorded, thus effectively charging 100% interest. In other words, Shalom would loan 50 riyāls to a person, but would have a notarized bill of debt drawn up which attested that he had lent him 100 riyāls; thus when it came time to pay the loan, the debtor would be obligated to pay back 100 riyāls instead of the original 50 he had received. This is one method of charging interest without appearing to contradict the sharī’a.
Qa‘da 1309 (June 12, 1892), two ‘udūl testified that Ya‘aqov Assarraf had paid al-Ḥājj Muḥammad b. al-mu‘allim ‘Īsā al-Hajrāwī twenty riyals. In return, Muḥammad promised to deliver 4 qintārs of wool to Ya‘aqov’s house in the millāḥ of Fez within three months.71

Despite the large number of notarized bills of debt in the Assarraf collection, the Assarrafs did not have ‘udūl notarize a contract every time they sold goods on credit or loaned someone money. The collection also preserves a few informal bills of debt, which to some extent mirror the form of those legalized before ‘udūl but lack much of the legal terminology and, of course, the signatures of the ‘udūl themselves.72 One such informal bill of debt reads:

“The Shaykh Mawlāy al-Ṭayyib b. al-sharīf Mawlāy Arrashīd [sic] al-ʿAlāwī [sic] Ismaʿīlī owes the dhimmī Shalom b. Yehudah Assarraf thirty-nine French riyals, [which he must pay within] twenty-six days.”73 The Assarrafs clearly had a choice about whether to have their bills of debt notarized by ‘udūl. It is possible that a qāḍī would have given some credence to an informal bill of debt such as that between the shaykh al-Ṭayyib and Shalom, though technically evidence had to be accompanied by notarization to be upheld in court.74 Little wonder, then, that the Assarrafs—like most Moroccans, both Jewish and Muslim—felt more secure bringing their bills of debt to ‘udūl to ensure that their evidence would be accepted in case of litigation.75

71 TC, File #10. Among the 166 bills of debt analyzed in detail I found no more than four which concerned salam loans.
72 I found a total of eight such unofficial bills of debt in the entire Assarraf collection.
73 TC, File #4, no date.
74 For more on this requirement, see the discussion of the Mixed Court in 1871-2 in Chapter Eight.
75 In writing about the Jews of DemnAT, however, Pierre Flamand noted that Jews loaning money or selling goods on credit to Muslims rarely obtained documental records of their transactions (Pierre Flamand, Un mellah en pays berbère : Demnate (Paris: Librairie générale de droit et de jurisprudence, 1952), 142). Yet Flamand himself includes a facsimile of a notarized document in which a Jew sells a Muslim twenty rials of tea for ten douros and two pesetas, dated 11 Ṣafar 1310/ 4 September 1892 (ibid., 143): Flamand, however, interprets this documentation as confirmation of his theory that debts were usually made “sans papiers” because “le papier ne porte pas le mot ‘prêt’, il ne mentionne pas d’intérêts. Le prêt y est en quelque sorte camouflé en vente” (ibid., 142, fn 2). Needless to say, Flamand seems to have misunderstood the nature of Islamic law and legal documentation. (This is not surprising given Flamand’s lack of Arabic or Hebrew; on the context in which he wrote his study, see Schroeter, “Views from the Edge,” 177-8.) One could argue that individuals in rural areas were less likely to notarize their
The bills of debt found in the Assarraf collection conform to Islamic legal prescriptions against the outright charging of interest. While it seems that at times the Assarafs and other Jews did charge hidden interest on loans (see the discussion below and in Chapter Five), they were careful to ensure that their bills of debt did not reflect anything that could be considered usury. At least according to the official documentation, Jews’ lending practices were largely similar to those of Muslims. Nonetheless, Jews were overrepresented as moneylenders in nineteenth century Morocco. Much of the historiography has explained Jews’ predominance as moneylenders as a result of Islam’s absolute prohibition on lending at interest, while Jewish law permitted Jews to lend at interest to non-Jews. Yet the legal documents indicate that Jews did not charge interest openly; if this is so, then the fact that Jews were permitted by their own law to charge interest was irrelevant since in any case they followed the prescriptions of Islamic law.

We must look for other reasons to explain Jews’ overrepresentation as moneylenders in nineteenth-century Moroccan society. The fact that, at least for the Assarafs, lending money commercial transactions since the services of ‘udūl would presumably have been harder to find than in big urban centers like Fez. However, there is strong evidence from the pre-colonial and colonial periods that Jews and Muslims in rural areas did employ the services of ‘udūl: see Boum, “Muslims Remember Jews,” 232-44 and Schroeter, “Views from the Edge,” 181-5.


Much of the historiography has explained Jews’ predominance as moneylenders as a result of Islam’s absolute prohibition on lending at interest, while Jewish law permitted Jews to lend at interest to non-Jews. Yet the legal documents indicate that Jews did not charge interest openly; if this is so, then the fact that Jews were permitted by their own law to charge interest was irrelevant since in any case they followed the prescriptions of Islamic law.

We must look for other reasons to explain Jews’ overrepresentation as moneylenders in nineteenth-century Moroccan society. The fact that, at least for the Assarafs, lending money commercial transactions since the services of ‘udūl would presumably have been harder to find than in big urban centers like Fez. However, there is strong evidence from the pre-colonial and colonial periods that Jews and Muslims in rural areas did employ the services of ‘udūl: see Boum, “Muslims Remember Jews,” 232-44 and Schroeter, “Views from the Edge,” 181-5.


Much of the historiography has explained Jews’ predominance as moneylenders as a result of Islam’s absolute prohibition on lending at interest, while Jewish law permitted Jews to lend at interest to non-Jews. Yet the legal documents indicate that Jews did not charge interest openly; if this is so, then the fact that Jews were permitted by their own law to charge interest was irrelevant since in any case they followed the prescriptions of Islamic law.

We must look for other reasons to explain Jews’ overrepresentation as moneylenders in nineteenth-century Moroccan society. The fact that, at least for the Assarafs, lending money commercial transactions since the services of ‘udūl would presumably have been harder to find than in big urban centers like Fez. However, there is strong evidence from the pre-colonial and colonial periods that Jews and Muslims in rural areas did employ the services of ‘udūl: see Boum, “Muslims Remember Jews,” 232-44 and Schroeter, “Views from the Edge,” 181-5.


Much of the historiography has explained Jews’ predominance as moneylenders as a result of Islam’s absolute prohibition on lending at interest, while Jewish law permitted Jews to lend at interest to non-Jews. Yet the legal documents indicate that Jews did not charge interest openly; if this is so, then the fact that Jews were permitted by their own law to charge interest was irrelevant since in any case they followed the prescriptions of Islamic law.

We must look for other reasons to explain Jews’ overrepresentation as moneylenders in nineteenth-century Moroccan society. The fact that, at least for the Assarafs, lending money commercial transactions since the services of ‘udūl would presumably have been harder to find than in big urban centers like Fez. However, there is strong evidence from the pre-colonial and colonial periods that Jews and Muslims in rural areas did employ the services of ‘udūl: see Boum, “Muslims Remember Jews,” 232-44 and Schroeter, “Views from the Edge,” 181-5.


Much of the historiography has explained Jews’ predominance as moneylenders as a result of Islam’s absolute prohibition on lending at interest, while Jewish law permitted Jews to lend at interest to non-Jews. Yet the legal documents indicate that Jews did not charge interest openly; if this is so, then the fact that Jews were permitted by their own law to charge interest was irrelevant since in any case they followed the prescriptions of Islamic law.

We must look for other reasons to explain Jews’ overrepresentation as moneylenders in nineteenth-century Moroccan society. The fact that, at least for the Assarafs, lending money commercial transactions since the services of ‘udūl would presumably have been harder to find than in big urban centers like Fez. However, there is strong evidence from the pre-colonial and colonial periods that Jews and Muslims in rural areas did employ the services of ‘udūl: see Boum, “Muslims Remember Jews,” 232-44 and Schroeter, “Views from the Edge,” 181-5.


Much of the historiography has explained Jews’ predominance as moneylenders as a result of Islam’s absolute prohibition on lending at interest, while Jewish law permitted Jews to lend at interest to non-Jews. Yet the legal documents indicate that Jews did not charge interest openly; if this is so, then the fact that Jews were permitted by their own law to charge interest was irrelevant since in any case they followed the prescriptions of Islamic law.

We must look for other reasons to explain Jews’ overrepresentation as moneylenders in nineteenth-century Moroccan society. The fact that, at least for the Assarafs, lending money commercial transactions since the services of ‘udūl would presumably have been harder to find than in big urban centers like Fez. However, there is strong evidence from the pre-colonial and colonial periods that Jews and Muslims in rural areas did employ the services of ‘udūl: see Boum, “Muslims Remember Jews,” 232-44 and Schroeter, “Views from the Edge,” 181-5.
mostly meant extending credit on goods suggests that money lending in general was deeply intertwined with consumption patterns. Jews’ prominence as peddlers, middlemen, and—increasingly as the nineteenth century wore on—import/export merchants goes a long way in explaining Jews’ overrepresentation as moneylenders.\textsuperscript{79}

The predominance of bills of debt is not surprising given that individual extension of credit was the only way most Jews and Muslims in nineteenth-century Morocco could borrow money. A formal banking system only began to develop in the late nineteenth century, and even then it was largely limited to the coasts where more foreign nationals and protégés resided.\textsuperscript{80} In places like Fez, however, the economy relied on merchants’ ability to sell goods on credit; merchants, in turn, relied on the services of shari‘a courts to ensure that their loans would be honored. In this sense, the services of ‘udūl both helped the Moroccan economy run and helped tie Jewish businessmen to their Muslim clients.

\textit{Partnerships, Releases, Sales, Leases, and Powers of Attorney}

Although bills of debt brought the Assarraf family and their associates to shari‘a courts most often, there were a number of other types of transaction which they and other Moroccan Jews typically had notarized. The most common kinds of documents found in the collection consist of releases, sales (mostly of animals), leases of real estate, and powers of attorney.

When the Assarraf family entered into formal partnerships with Muslims, they went to the shari‘a court to notarize contracts detailing the nature of the arrangement. For instance, in the summer of 1898, Ya‘aqov notarized a document attesting to the fact that he and a Muslim were

\textsuperscript{79} On Jews’ overrepresentation as merchants in rural areas in particular, see Deshen, \textit{The Mellah Society}, 32-9.

\textsuperscript{80} Starting around 1890, some Jews in Tangier opened European-style banks and extended credit to merchants in Fez. However, this was on a very limited scale before 1912 and did not disrupt the older forms of credit extension (\textit{Le Tourneau, Fès avant le protectorat}, 289-90).
the joint owners of a cow. Such partnership contracts are actually relatively rare in the Assarraf collection. However, I found many more Jewish-Muslim partnership contracts in other archival collections—suggesting that notarizing partnerships was a relatively common reason that Jews went to shari'a courts. Some of these contracts specified that they attested a qirāḍ (a commenda in Latin), a type of partnership common in the medieval period.

When a partnership was dissolved, the parties involved generally signed a release (ibrā’a or barā’a). These documents were drawn up to confirm that the two (or more) parties concerned had no further claims on one another. They could also attest the payment of a debt.

For instance, a document from July 13, 1884 reads:

The murābiṭ šīdī Abū al-Qāsim b. al-walī al-shahīd ‘Allāl b. ‘Abd al-‘Ālī al-Kandaṣī (?) testified that he released Shalom Assarraf and his son Ya’aqov from all lawsuits, sales, and oaths concerning the partnerships between them, and he no longer has any claim against them either small or large. And the two dhimmīs testified that they released him [Abū al-Qāsim] from all the partnerships between them, both those [attested to] in legal documents and those not [attested to], and all lawsuits either small or great, and they have absolutely no claim against him either small or great, in the long-term or in the short-term.

---

81 TC, File #5, 15 Rabī’ I 1316. I found five more such partnership contracts in the Assarraf collection.
82 I found a total of 34, or 12% of the documents I examined.
84 Releases make up about 5% of the total. In other collections, I counted thirteen releases (about 4% of the total number of documents examined). For a formula for a standard release document, see Binānī, *al-Wathā’iq al-fāsiya*, 57. See also Schacht, *An Introduction to Islamic Law*, 148.
85 TC, File #1, 19 Ramaḍān 1301. Although the exact wording of releases varied, these documents all conveyed the idea that the parties agreed they had no further claims on one another. For instance, in a release from 10 Ramaḍān 1294 (TC, File #2), Qudur b. ‘Ālī al-Himyānī and Shalom Assarraf and his son Ya’aqov released one another and added that any future claims that one of the parties may bring against the other were null and void (bāṭila). The Assarraf collection also includes legal documents which attest to partial payments of debts but which are not technically releases: I found eleven such documents in the collection.
Other release documents specify that a Jew had held some object of value—usually jewelry—as security or mortgage for a loan, and that upon payment the Jewish creditor had returned the mortgaged item. For instance, the mu’allim Bū Shitta b. al-Mādī borrowed twenty mithqals from Shalom Assarraf. As surety for this loan, Bū Shitta gave Shalom a bracelet (dumlūj [sic]). After Bū Shitta had repaid Shalom the twenty mithqals and Shalom had returned the bracelet, Bū Shitta released Shalom from the obligation to give back the bracelet.

These kinds of releases do not give any indication that they were drawn up after a lawsuit was heard in court. Rather, it seems that in these cases parties involved in business dealings would take the precaution of drawing up a release to prove that they had fulfilled all their obligations to one another, thereby preventing future lawsuits. Releases proved crucial when one party contested the financial obligations in a given relationship. For instance, if a creditor claimed that his debtor had yet to pay him, the debtor could refute the suit by producing a release proving that he had no further financial obligations towards the creditor.

Yet some releases were clearly drawn up after a case was heard in court and constitute the notarization of the settlement reached. For instance, a release of March 1, 1909, records a

---

86 A few documents exist in the Assarraf collection which simply record this type of mortgage arrangement: for instance, on 28 Rabī’ I 1293 (TC, File #4), Avraham b. Shalom Marsiano testified that he had received jewelry as security (‘alā wajhi al-hifzi wa-‘l-amānī) from a Muslim.

87 TC, File #7, 10 Jumādā I 1280. For similar releases from goods held as surety, see TC, File #10, 3 Safar 1280; File #7, 10 Jumādā I 1280; File #3, 18 Dhū al-Qa’dā 1284; File #5, 2 Dhū al-Hijja 1284; File #8, 21 Dhū al-Ḥijja 1284; File #6, 7 Muḥarram 1285; File #5, 22 Muḥarram 1285; File #9, 12 Dhū al-Ḥijja 1287 and 22 Dhū al-Ḥijja 1287 (both these documents are releases from Mansūr b. Aḥmad al-Sharādī al-Dūblālī al-‘Ālāwī for Shalom after Shalom returned Mansūr’s silver bracelets; it is not clear whether they represent two different loans made ten days apart, or whether the two separate documents refer to the same transaction); File #2, 14 Dhū al-Ḥijja 1299; File #7, 17 Shawwāl 1305 (this is the only such release in which two titles to real estate were mortgaged instead of jewelry). For examples of such release documents from other collection, see UL, Or.26.543 (1), 4 Sha‘bān 1288 (for Yeshu’a Corcos from Marrakesh).

88 See, for instance, the case of Joseph Suiry vs. Menahem Nahon and Judah Benguigui (in MAE Nantes, Tanger A 159), in which Suiry sued Nahon and Benguigui for money they supposedly owed him. Nahon and Benguigui produced what they claimed was a release which Suiry had signed confirming that Nahon and Benguigui had fulfilled all their financial obligations. The qāḍī of Tangier ruled in Nahon and Benguigui’s favor (on the basis of this release), though Suiry subsequently brought the matter to the French consul. (See Chapter Eight for further discussion of this case.)
settlement among Ya‘aqov Assarraf, his business associate Eliyahu b. ‘Azūz Kohen, and the Muslim Idrīs b. Ya‘īsh al-Najjāri. Ya‘aqov and Eliyahu claimed that Idrīs owed them 6,945 riyāls—a large sum—for debts which Idrīs had guaranteed to the two Jews. Idrīs’s sons came to court and demanded that “the dhimmīs take an oath (yamīn al-qāḍā’ wa-ṣīḥhat al-mu‘āmalāt) concerning the signature of their father that they [the two dhimmīs] presented.” Instead, two Jewish mediators (man ašlaḥa baynahum), al-ḥazān Wīdāl b. al-ḥazān Abnīr al-Sal‘ātī al-Fāsī, and the merchant Zūbīl b. Ya‘aqov b. Samḥūn al-Fāsī, arrived in court. With the mediators’ help, Ya‘aqov and Eliyahu agreed to a reduced payment of 4,000 riyals and “forgave” (yusāmiḥ) the remaining 2,945 riyals. The resulting release attested that the two Jews received the 4,000 riyals settled upon and that they had no further claims on their debtor. It is significant that the mediators among Jewish and Muslim disputants were both Jewish; given Jews’ lower social status, one might expect Muslims to be called upon to mediate. Perhaps these two Jews had relationships with the Muslim debtors. In any case, this particular release was clearly arrived at only after some disagreement, an appearance in court, and engaging outside parties to help resolve the dispute.

In a few instances, releases specified that the Jewish creditor not only released his debtor from any further claims, but also authorized the debtor’s physical release from prison. For instance, in a document from February 5, 1885, Shalom Assarraf released al-Ḥājj Muḥammad b.

---

89 TC, File #6, 8 Ṣafar 1327.
90 In fact, Idrīs had guaranteed a total of 8,000 riyals but had already paid 1,055 riyals in four separate payments.
91 For another case in which a release was made after appearances in court, see the release from 30 Muḥarram 1309 (TC, File #3), in which two dhimmīs, Mas‘ūd b. Shlomoh Shīnigū and Ḥaim b. Ya‘aqov b. Harosh released al-Mu’tī b. al-Bashīr al-Jāmi‘ī b. al-Ma‘ṣūḥī, the brother of the late Idrīs b. al-Bashīr al-Jāmi‘ī b. al-Ma‘ṣūḥī. Mas‘ūd and Ḥaim sued al-Muṭī in court (majālis al-ḥkām) claiming that he had taken bills of debt which were owed to his late brother Idrīs; the two Jews wanted al-Mu’tī to return the documents to Idrīs’s heirs so that they could be paid (presumably for debts which Idrīs had owed to them at the time of his death). The release document specifies that the two Jews and al-Mu’tī settled for approximately half of the amount the creditors originally demanded (111 riyals out of 218). See also the releases from TC, File #5, 16 Dhū al-Ḥijja 1292 and 27 Sha’bān 1309 (both of these are written on the same physical document as the lawsuits which they resolved); File #5, 9 Shawwāl 1332.
al-faqīh Aḥmad al-Fīlālī al-Maṣlūḥī after Muḥammad paid fifty riyals of his debt (attested to in legal documents) and agreed to pay the rest (an unspecified amount) within three months.

Shalom “permitted the Makhzan authorities to release [Muḥammad] from prison immediately.”

Presumably Shalom had asked the local government officials to have Muḥammad arrested for non-payment of his debts. (I discuss the role of Makhzan officials in imprisoning recalcitrant debtors in Chapter Five.) Now that Muḥammad had paid at least part of what he owed, Shalom authorized his release from prison. In this particular case, the legal function of the document is not entirely clear given that Muḥammad still owed Shalom money—and thus the release did not actually attest that Muḥammad had fulfilled all his obligations to his creditor. Instead, this release served as proof that Muḥammad had paid part of his debt and could be released from prison, rather than as a final release from all obligations.

The third most common type of notarial document in the Assarraf collection is contracts for the lease or sale of property, of which there are a total of thirty-two (about 2% of the entire collection). Of these, seventeen are for leases and fifteen are for sales. All sale and lease contracts followed a relatively fixed formula: they specified the seller/landlord and the buyer/tenant, the property to be bought or leased (with a description), and the amount paid (or the amount to be paid per month in the case of a lease).

92 *Wa-annahu adhina man lahu al-ahkāmu al-makhzanīyatu fi tasrīḥihi min al-sijni min al-ān:* (TC, File #10, 19 Rabīʿ II 1302). For other releases which specified that the debtor should be physically released from prison, see File #5, 16 Jumādā I 1302 and File #6, 7 Jumādā II 1303. In both these releases, Shalom specified that he was still owed some of the debt by the imprisoned debtors, but permitted their release from prison upon their agreement to pay the rest of what they owed.

93 In other collections I counted 32 contracts for sales or leases (about 11% of the total).

94 Binānī includes formulas for the sale and lease of specific goods or types of property, though they are mostly identical: Binānī, *al-Wathāʿiq al-fāsīya*, 26-30, 52-54.
All of the sale contracts attested to transactions in which one of the Assarrafs bought something—almost always an animal—from a Muslim. Mules were the most commonly traded beast, but there are also documents concerning the sale of cows, donkeys, and horses (surprising given that dhimmīs were not allowed to ride horses under Islamic law). The descriptions of the animals usually includes their sex, color, and other identifying features. For instance, on May 23, 1871, Shalom bought a male mule from Jafār b. Muḥammad al-Dalīmī al-‘Asharī for 150 mithqāls. The mule was described as “red in color, five years old, with white under its hindquarters.” Only two documents concern the sale of something other than animals; in one, Ya‘aqov bought a room from a Muslim. In another, Shalom bought a knife for thirteen mithqāls. However, the fact that the Assarrafs mostly bought animals from Muslims is not necessarily representative of broader patterns; in the other collections I examined, it was far more common for Jews to buy and sell property from Muslims than to acquire beasts of burden.

95 Of the sixteen sale contracts, thirteen were for animals.
96 See TC, File #8, 14 Sha‘bān 1297, in which Shalom bought a white, male horse from al-Ḥājj ʿAbd al-Raḥmān b. al-mu‘allam ʿAlī al-Sūsī for 157 mithqāls and five ūqīyas. See also TC, File #10, 2 Muharram 1323, in which the Jew Rafael b. Aharon al-Sukūrī bought a red work horse (birdhawn) from a Muslim. (I am grateful to Professor Michael Cook for this translation.)
97 TC, File #10, 3 Rabīʿ I 1288.
98 Ḥumaru al-lawni, rabāʾu al-sinni al-waqti [sic], bayādan [sic] taḥta zahrīhi. Lane translates rabāʾ as “shedding its tooth called the rabāʾiya, q. v.; applied to the sheep or the goat in the fourth year, and to the bull and cow and the solid-hoofed animal in the fifth year, and to the camel in the seventh year” (Lane, An Arabic-English Lexicon, 1018). I assume that a mule counts as a solid-hoofed animal, and thus rabāʾu al-sinn means that the mule in question is five years old.
99 TC, File #5, 6 Rajab 1303.
100 TC, File #2, 14 Jumādā II 1288.
101 For documents in which Jews bought or sold real estate from Muslims, see UL, Or.26.543 (1), 8 Rabīʿ I 12?? (Ḥaim Corcos, Marrakesh); UL, Or.26.543 (2), 14 Shawwāl 1331 (Yeshu’a Corcos, on a long document including many other transactions of the same property); YBZ, 280, 30 Dhū al-Ḥijja 1302 (ʿAzīzī b. David al-Dabdūwī, no city mentioned); PD, 30 Ṣafar 1274 (Makhlūf b. Shalom b. Ghazlān al-Ṣayraffī, Fez); PD, 20 Rabīʿ II 1266 (Ya‘aqov b. Avraham Sabbāgh, Fez); PD, 19 Ṣafar 1295 (Makhlūf b. Shalom b. Ghazlān al-Ṣayraffī, Fez); PD, 1317 (no further date: Avraham ha-Kohen, Tetuan); PD, 2 Rajab 1274 (Yeshu’a b. Yehudah al-Lībī, Tetuan); PD, 8 Jumādā II 1271 (Ḥaim b. Shmuel, Fez).
Lease contracts, on the other hand, uniformly concerned real estate. In all the lease contracts found in the collection, the Assarrafs were the landlords renting property to Muslims—never the other way around.\footnote{The single rental contract in which a Jew was the tenant concerned Ḥaim b. Ya’aqov Harosh, an associate of the Assarrafs; Ḥaim rented the usufruct rights (zīna) to a store from al-‘Isāwī b. al-‘Adal (TC, File #6, 4 Dhū al-Qa’da 1320).} Again, this is not representative of broader trends, since legal documents held in other collections preserve examples of Jews renting property from Muslims.\footnote{See, for instance, UL, Or.26.543 (1), 18 Rajab 1302 (in which Masān b. Harān, the agent of Yeshu’a Corcos, rented part of a house in Marrakesh from the Muslim al-‘Abbās b. al-Mahdī al-Sharādī); Or.26.543 (2), 11 Rabī’ II 1320 (in which ‘Akān b. Ḥaim Corcos rented a funduq from the Makhzan in Essaouira); PD, 30 Rabī’ II 1366 (in which Ya’aqov b. Avraham Sabbāgh rented a room in Fez from a Muslim).}

Most of the leases in the Assarraf collection were for the usufruct rights—that is, the right to occupy the property in question—to stores which belonged to a pious endowment (ḥubs or waqf).\footnote{Eleven of the seventeen lease contracts were for the zīna of a store.} The usufruct rights to a ḥubs property were owned separately from the property itself. There were a number of different kinds of usufruct titles, though the only one used in the Assarraf documents is zīna.\footnote{See Louis Milliot, Démembrements du Habous : menfa‘ā, gzā, guelsā, zīnā, istighrāq (Paris: Editions Ernest Leroux, 1918); on zīna in particular, see 57-59. See also G. Baer, “Ḥikr,” in Encyclopedia of Islam, ed. P. Bearman, et al. (Leiden: Brill, 2003); J. Abribat, “Essai sur les contrats de quasi-aliénation et de location perpétuelle auxquels l’institution du hobous a donné naissance,” Revue Algérienne et Tunisienne de Législation et de Jurisprudence 17 (1901).} Specifically, one acquired a zīna on a ḥubs property by “filling the property with equipment, windows, or similarly useful accessories.”\footnote{“…garnir le local du matériel meublant, vitrines ou accessoires analogues utiles” (Milliot, Démembrements du Habous, 57).} Subsequently, the usufruct right was transferable, inheritable, and could be leased separately from a lease on the property itself.\footnote{Ibid., Chapter 1.} (The zīna was not so different from the hazaqah in Jewish law, which I discuss further in the following chapter.) The Assarrafs owned the zīna of at least three different stores in the millāḥ of Fez, stores that belonged to a pious endowment.\footnote{One was across from the Funduq al-Diwān, another was the second store on the left of the same funduq, and the last was the third store on the left of the same funduq. The first such lease contract is from 5 Muḥarram 1301 (TC, 97).}
the right to occupy these stores to Muslims, who presumably used them to conduct business in the millāḥ. For instance, on April 25, 1906, Ya'aqov had a rental contract notarized by 'udūl in which he rented the zīna for a store across from the Funduq al-Diwān in the millāḥ to Muḥammad b. Muḥammad Fathān al-Mīshūrī for a year. Muḥammad agreed to pay one riyāl and three Ḥasanī dirhams every month, in addition to the payments for the guards (al-‘assa).

In addition to renting out the usufruct rights on ḥubs properties, the Assarraf family also rented out an oven in the millāḥ, known as the “Oven of the Fāsīs” (furān [sic] al-fāsiyīn). In the first such lease contract, Ya'aqov and his associate Shalom b. Yosef rented out the oven to al-Hāshimī b. al-Ḥājj al-Filālī (a Muslim), Avraham b. Mas'ūd b. ‘Aniyū and Ḥabīb b. Shmuel b. Sa'dūn (both Jews). Four years later, Ya'aqov owned the oven in partnership with a different Jew (Shalom b. Shaul Kohen), and they rented it to al-mu'allim Idrīs b. al-muqaddam ‘Abd al-Karīm al-Tawālī. Having Muslims operate an oven in the Jewish quarter meant that Jews could use the oven on the Sabbath in order to keep their food warm for the midday meal (the famed dafina, Moroccan Jews’ version of chulent), since Jewish law does not permit Jews to light or feed a fire during the Sabbath. Having a Muslim operate the communal oven could potentially violate the prohibition against bishul akum, or “the cooking of a non-Jew.” Nonetheless, it is possible that rabbinic authorities in Morocco permitted Jews to use an oven

---

109 TC, File #1, 1 Rabī’ I 1324.
110 In this case, Muḥammad also gave Ya’aqov two silver bracelets as surety for the rent; Ya’aqov agreed to return the bracelets upon full payment of the rent.
111 See TC, File #4, 12 Ṣafar 1322 and File #2, 7 Rabī’ I 1326.
112 The Muslim and his two Jewish partners rented the oven for thirteen months for four riyāls per month.
113 Idrīs agreed to pay ten riyāls per month (six riyāls more than the fee four years earlier), and rented the oven for twelve months.
114 See the Shulḥan ‘Arukh, Yoreh De’ah, 113. There are a number of exceptions to bishul akum, including the type of food and whether a Jew participated in the cooking (such as by lighting the fire), and legal authorities disagree as to exactly how the prohibition on bishul akum is to be observed. More research into Moroccan jurists’ opinions on bishul akum is required before we can say whether this principle affected Muslims’ operation of ovens in the millāḥ.
which was operated by Muslims during the Sabbath rather than risk having Jews operate the
oven themselves.

Finally, Jews notarized documents in which they agreed to lease agricultural land to
Muslims. In 1912, Ya‘aqov rented land he owned outside the city of Fez to Muslims who agreed
to cultivate it in exchange for a portion of the harvest. The lease reads:

Muḥammad b. al-Zajzān al-Zarhūnī al-Sakhīrāṭī, called Jabīlū, and the dhimmī Ya‘qūb b.
Shālūm al-Ṣarrāf both testified that the dhimmī gave (dafa‘a) five plots of land (aqsām
min al-bi{lād}) which he owns in Skhīrāt in partnership with the Awlād b. ‘Ayād al-
Skhīrāṭī to the aforementioned Muslim … [describes the exact location of the plots of
land], so that [Muḥammad] will cultivate the land for two years from today—on
condition that he cultivate it for one year with wheat and for the second year after that
with chickpeas. The dhimmī will take one-fourth of the harvest and the Muslim will take
three-fourths of it. And the fourth [of the harvest] that belongs to the dhimmī should be
brought to him at his home in the millāḥ of Fez (vakūn wāṣilan li-maḥallih bi-millāḥi
Fās).\footnote{115 TC, File #3, 1 Dhū al-Qa‘da 1330 (October 12, 1912). See also TC, File #5, 30 Shawwāl 1326; File #2, 5 Dhū
al-Qa‘da 1328.}

This type of lease is of particular interest because it demonstrates that Jews owned agricultural
land, contrary to claims that Jews were not allowed to own any property outside of the millāḥ.\footnote{116 See, e.g., José Bénech, Essai d’explication d’un mellalah (ghetto marocain) ; un des aspets du judaïsme (Paris: Larose, liminaire, 1940), 58; Chouraqui, Between East and West, 131. See also Flamand, Un mellah en pays
berbère, 141, in which Flamand describes a similar arrangement for shared ownership of animals: “Ces rapports [entre juifs et musulmans], sont en effet ceux d’individus économiquement égaux et complémentaires…les Juifs
demnati souvent lui confiaient [au musulman] — et c’est encore la pratique courant — du bétail : beuufs, vaches,
moutons, chèvres, dans les conditions suivantes : l’Arabe assure leur nourriture et a le droit de s’en servir pour
labourer son champ, le lait le beurre la laine qui en proviennent sont partagés en parts égales entre les deux
associés…L’Arabe est souvent de mauvaise foi dans ce genre d’affaires. Si une bête vient à mourir, il prétend que
c’est celle du Juif ; celui-ci n’a aucun moyen de contrôle.”}

Moreover, it demonstrates the diversity of the Assarraf’s business ventures; though mainly
involved in trade, they also leased land in order to collect rent in kind. This might also have
been a way to ensure a supply of staples such as wheat and chickpeas for the entire family.

Finally, Jews went before ‘udūl to draw up powers of attorney (wakāla). Representatives
(wukalā’, s. wakīl) could conduct business (including collecting debts) on their clients’ behalf.

Wukalā’ could also represent someone in court, which often caused them to be compared to

---

\footnote{115 TC, File #3, 1 Dhū al-Qa‘da 1330 (October 12, 1912). See also TC, File #5, 30 Shawwāl 1326; File #2, 5 Dhū
al-Qa‘da 1328.}

\footnote{116 See, e.g., José Bénech, Essai d’explication d’un mellalah (ghetto marocain) ; un des aspets du judaïsme (Paris: Larose, liminaire, 1940), 58; Chouraqui, Between East and West, 131. See also Flamand, Un mellah en pays
berbère, 141, in which Flamand describes a similar arrangement for shared ownership of animals: “Ces rapports [entre juifs et musulmans], sont en effet ceux d’individus économiquement égaux et complémentaires…les Juifs
demnati souvent lui confiaient [au musulman] — et c’est encore la pratique courant — du bétail : beuufs, vaches,
moutons, chèvres, dans les conditions suivantes : l’Arabe assure leur nourriture et a le droit de s’en servir pour
labourer son champ, le lait le beurre la laine qui en proviennent sont partagés en parts égales entre les deux
associés…L’Arabe est souvent de mauvaise foi dans ce genre d’affaires. Si une bête vient à mourir, il prétend que
c’est celle du Juif ; celui-ci n’a aucun moyen de contrôle.”}
However, it is unclear to what extent they acted only in the absence of the person being represented or more like lawyers today who are hired for their expertise even when one can appear in court oneself. The Assarrafs and their Jewish associates only appointed other Jews to represent them in court (I discuss these documents further in the following chapter). However, I found six powers of attorney in which Muslims appointed Shalom to represent them. These were all drawn up between May 1872 and August 1874, though I cannot explain why this type of document only appears during these two years. These powers of attorney are particularly surprising since Mālikī law prohibited Muslims from appointing non-Muslims as their wakīl. The documents at hand suggest that this rule was ignored at least some of the time. The fact that Shalom represented Muslims in court implies that his relationships with his Muslim business associates were fairly intimate. It also indicates that these associates deemed

117 For a contemporary claim, see, e.g., Maeterlinck, “Les institutions juridiques au Maroc,” 480. For an example in the secondary literature, see Cohen, Yehudim be-veit ha-mishpat, ha-me’ah ha-19, 191 (although in a different volume, Cohen simply refers to wakāla as yippui koḥo, “power of attorney”: Cohen and Ben Shim’on-Pikali, Yehudim be-veit ha-mishpat, ha-me’ah ha-18, 489). Goitein, however, translates wakīl as “agent” or “representative” (see, e.g., Goitein, A Mediterranean Society, v. 3, 103, 295). The wakīl of our documents is somewhat different from the wakīl al-tujjār which Goitein describes from the medieval period (ibid., v. 1, 186-92). The wakīl al-tujjār held a semi-permanent position as representative of foreign merchants in a given town, though Goitein specifies that this was useful primarily for those merchants who could not appoint a friend as their personal wakīl.

118 Eliezer Bashan claims that Jews did not have the right to represent other Jews in a sharī‘a court, and that Jews were required to appoint Muslims to represent them or to appear in court themselves; he does not, however, cite any sources for this claim (Bashan, Yahadut Maroko, 61). It is possible that this claim is based on the fact that Islamic law does not permit employing an agent who is a different religion from that of the legal adversary (see Santillana, Istituzioni di diritto musulmano malichita, v. 2, 337). According to this principle, Jews would not be able to appoint a Jew to represent them in a case involving a Muslim (although there should still be no problem with a Jew representing another Jew in an intra-Jewish case). In any case, the evidence I have found suggests exactly the opposite—that normally Jews appointed other Jews to represent them in sharī‘a courts, most likely for cases involving Jews as well as Muslims. There is also evidence that Jews in the Ottoman Empire appointed Muslims as their legal representatives; see, e.g., the document in Cohen and Ben Shim’on-Pikali, Yehudim be-veit ha-mishpat, ha-me’ah ha-18, 489.

119 TC, File #7, 12 Rabī’ I 1289; File #8, 15 Rabī’ I 1289; File #9, 15 Rabī’ I 1289; File #5, 16 Ramaḍān 1289; File #8, 2 Dhū al-Hijja 1289; File #8, 17 Rajab 1291. In each power of attorney a different Muslim appointed Shalom as his agent.

120 Santillana, Istituzioni di diritto musulmano malichita, v. 2, 337; Bashan, Yahadut Maroko, 61. However, it is clear that the prohibition on having a Jew act as a Muslim’s agent (i.e., the active partner) in a qirāḍ (commenda)—which is quite similar to the general prohibition on having a Jew represent a Muslim—was ignored, at least in the context of medieval Spain and the Maghrib (see Lehmann, “Islamic Legal Consultation,” 45-6).
Shalom’s knowledge of Islamic law and legal procedure sufficient to trust him as their representative, even in a sharī‘a court. It is possible that those Muslims who employed Shalom as their agent felt that he was more knowledgeable about Islamic law than they were, despite the fact that he was Jewish.121 This is perhaps one of the most eloquent testimonies to the fact that sharī‘a courts were in many ways as accessible to Jews as they were to Muslims.

Litigious Documents

Although the Assarraf s—and indeed Moroccan Jews more generally—mostly went to sharī‘a courts in order to notarize documents before ‘udūl, they also “went to court” in the more traditional sense of the term as both plaintiffs and defendants in civil litigation. (Sharī‘a courts did have some sort of jurisdiction over criminal cases, though these were mostly adjudicated by Makhzan courts, which I discuss in Part Two.) Understanding how litigation played out in the Moroccan context and Jews’ experience in litigious cases allows us to see how sharī‘a courts served as fora for resolving legal disputes among Jews and Muslims.

Although litigious entries make up about twenty-five percent of the Assarraf collection, many of these entries represent only parts of longer cases. This is because hearings took place over a period of days, weeks, months or even years, and each appearance in court produced a separate entry (some of which were recorded on the same document as the initial hearing while others were written on separate documents). Of the 485 litigious entries in the Assarraf collection, there are only seventy lawsuits for which the initial claims are preserved. The other

121 See also an example of a Jew acting as legal representative for a Muslim from early twentieth-century Jerusalem: Cohen, Yehudim be-veit ha-mishpat, ha-me‘ah ha-19, 191-3.
415 entries are either subsequent hearings related to these suits, documents attesting to guarantors for the appearance of defendants in court, or depositions of witnesses.\textsuperscript{122} One of the most striking patterns in these seventy cases is that Jews were plaintiffs far more often than they were defendants, about 86\% of the time.\textsuperscript{123} It is possible that this pattern reflects the particular situation of the Assarrafs,\textsuperscript{124} and does not tell us anything about Jews’ experience suing and being sued in shari‘a courts more generally.\textsuperscript{125} However, it seems more likely that Jews were plaintiffs more often because they acted as creditors more often than debtors in their business relations with Muslims. This was the case for the Assarrafs, whose collection does not contain a single document attesting debts which an Assarraf owed to a Muslim. The vast majority of lawsuits in which Jews were the plaintiffs were for unpaid debts.\textsuperscript{126} Conversely, not a single one of the ten lawsuits in which Jews were defendants concerned unpaid debts. The fact that Jews were more likely to lend money to Muslims naturally meant that they were more likely to sue those Muslims in order to ensure payment.

These lawsuits are also of interest because Muslim women appeared in them more than in any other type of legal document. For instance, Shalom sued two different Muslim women in court, both for having guaranteed debts owed to him by their male relatives.\textsuperscript{127} One of these women, Zaynab b. Mulūk al-Qamrī, appeared in court with Shalom a number of times (discussed

\textsuperscript{122}Furthermore, the litigious entries which were not recorded directly on the same documents as the initial claims might be related to other lawsuits whose initial claims are not preserved in the collection.

\textsuperscript{123}Sixty cases concerned Jews as plaintiffs, while only ten concerned Jews as defendants.

\textsuperscript{124}In fact, only sixty-one cases concerned the Assarrafs (Shalom and his son Ya‘aqov); the other nine concerned other Jews who were, presumably, their business associates. Nonetheless, the proportion of cases in which the Assarrafs were plaintiffs remains overwhelming (88\% of the cases concerning Assarrafs).

\textsuperscript{125}The evidence from other collections supports this hypothesis to some extent. Although I only found five lawsuits in other collections, the overwhelming pattern from the Assarraf collection was not apparent among these documents: there were three in which the Jew was the plaintiff (UL, Or.26.543 (1), 27 Dhū al-Hijja 12??, Haim Corcos, Marrakesh; 7 Sha‘bān 1298, Ḥaim Corcos, Marrakesh; YBZ, 280, 6 Muharram 1234, Shlomoh b. Menāḥem b. Walīd) and two in which the Jew was the defendant (UL, Or.26.543 (1), 18 Jumādā I 1295, ‘Amrān Corcos, Marrakesh; YBZ, 280, 17 Dhū al-Qa‘da 1308, Rafael b. ‘Azīz Harosh).

\textsuperscript{126}56 out of 60, or 93\%.

\textsuperscript{127}TC, File #8, 25 Rabī‘ I 1271, in which Shalom sued Fāṭima bint Qudūr al-Ūdī al-Sūsī.
Although the majority of lawsuits in the Assarraf collection are among men only, the Assarrafs’ commercial relations with Muslim men often involved these men’s female relatives as well.

80% of the lawsuits concern Jews suing Muslims for unpaid debts—either for debts the defendants themselves had contracted or for ones they had guaranteed for other Muslims (or both). The amounts of the unpaid debts varied widely, from four mithqāls (which, in 1908, could buy approximately thirteen grams of raw wool) to 3,000 riyāls (worth approximately seventy-six kilos of raw wool), though most were for amounts in the hundreds of riyāls. In addition to claiming unpaid debts, Shalom sued Muslims for three other kinds of claims: in one, he sued a Muslim debtor who had said he was bankrupt, but who Shalom later learned had a servant (waṣīf) and a slave girl (ama) in his possession; in a second, he sued a Muslim who had sold his nephew what he said were gold earrings but which turned out to be made of copper (the case with which this chapter began); and in a third, Shalom sued a Muslim who allegedly had a mule in his possession which belonged to one of Shalom’s debtors (and which Shalom presumably wanted as payment for the debt).

Muslims, on the other hand, sued Shalom and his associates for a wide variety of matters. On December 7, 1875, a Muslim named al-Taraghī b. al-Ghazwānī al-Faqālī sued Shalom for unpaid debts. Two of these were lawsuits against the heirs of deceased debtors (TC, File #5, 14 Muḥarram 1315 and File #3, 21 Rajab 1329). The value of these sums in terms of amounts of wool is, I admit, extremely approximate. I base my estimations on Le Tourneau’s valuation of raw wool before 1912, which he valued at twenty-five riyāls for 632.5 grams: the mithqāl in 1908 was worth between 8 and 14 riyāls. See Le Tourneau, Fès avant le protectorat, 279-80, 84.

128 56 out of 70 concerned unpaid debts. Two of these were lawsuits against the heirs of deceased debtors (TC, File #5, 14 Muḥarram 1315 and File #3, 21 Rajab 1329).
129 See TC, File #6, 12 Dhū al-Ḥijja 1291 (in which Shalom Assarraf claimed four mithqāls from al-Ḥilālī b. Ḥamm al-Ḥayānī al-‘Imrānī al-‘Isāwī, who had guaranteed a debt owed by his relative Mas‘ūd b. Aḥmad); File #6, 19 Rabī’ II 1292 (in which Shalom Assarraf claimed 3,000 riyāls from al-‘Arabī b. Ḥāsan al-Dūblālī al-Ya’qūbī, who had guaranteed them for al-Mu‘ṭī b. Ḥamm al-Dūblālī al-‘Ajīwī and al-Ḥājj ʿAbdallah b. Muḥammad al-Shayzamī). The value of these sums in terms of amounts of wool is, I admit, extremely approximate. I base my estimations on Le Tourneau’s valuation of raw wool before 1912, which he valued at twenty-five riyāls for 632.5 grams: the mithqāl in 1908 was worth between 8 and 14 riyāls. See Le Tourneau, Fès avant le protectorat, 279-80, 84.
130 TC, File #8, 8 Jumādā I 1297.
131 TC, File #4, 10 Jumādā II 1297; in the ensuing settlement, Shalom agreed to return the earrings to the Muslim, and the Muslim returned Shalom’s money.
132 TC, File #8, 18 Muḥarram 1302. The other lawsuit in which a Jew was a plaintiff was brought by Ḥaim b. Ya‘aqov Harosh (File #9, 1 Rabī’ I 1301), discussed below.
having agreed to buy two silver bracelets, sugar, tea and wax from him for 153 mithqāls and then refusing to pay the agreed-upon amount. A settlement on the back of this document recorded a month later notes that Shalom pledged to pay the entire amount he owed al-Faqālī. In other instances, Muslims accused Jews of keeping mules in their possession which did not belong to them; of refusing to return property which they held on security or as a mortgage, even after the debt had been repaid; and for failing to deliver goods they had agreed to sell the plaintiff.

Lawsuits brought before the qāḍī usually took place over a period of weeks or even months and almost always followed the same procedure. The first step was for the plaintiff (al-muddā‘ī) to bring an accusation against the defendant (al-muddā‘ā ’alayhi); this accusation was referred to as the maqāl (literally, a piece of writing). In most of the maqāls in the Assarraf collection, a Jewish creditor accused a Muslim of owing him money, either for debts the Muslim had contracted for himself or for those he had guaranteed for others. The plaintiff would then ask the defendant to “acknowledge” the claim (iqrār), or to provide an “answer” to the claim (jawāb). Subsequent steps in the litigation of civil cases usually took place days or even

133 TC, File #5, 9 Dhū al-Qa‘da 1292.
134 Dated 16 Dhū al-Ḥijja 1292. For more such cases, see also File #5, 14 Muḥarram 1277 and File #2, 29 Dhū al-Qa‘da 1291.
135 TC, File #8, 15 Jumādā I 1296 and 5 Ramaḍān 1301.
136 TC, File #1, 18 Ṣafar 1297 and File #8, 3 Dhū al-Qa‘da 1317.
137 TC, File #5, 15 Rabī‘ II 1292. See also one last type of suit, in which a Muslim sued Shalom for failing to record a payment he made on his debt: File #7, 12 Dhū al-Qa‘da 1297.
139 Of the seventy maqāls in the collection, nineteen concern defendants who have only guaranteed debts for others and thirty-five are for debts owed by the defendant himself (though sometimes the defendant might also have guaranteed a debt in addition to the debts he owed personally).
140 This plea was sometimes included as part of the original maqāl, though at other times it was written in a separate entry, almost always of the same date. One exception is the maqāl from TC, File #3, 21 Rajab 1329: this very long, drawn-out case was brought by Ya‘aqov and his associate Eliyahu b. ʿAzūz Kohen against al-Jilālī b. ʿAbd b. al- ʿAzār b. al-Asārī. Before pleading, al-Jilālī had a number of questions about the claim, and it was not until 4 Ramaḍān (six weeks later) that he finally pleaded not guilty. The standard procedure followed in
weeks after the plaintiff filed the maqāl. Before the next appearance in court, the defendant had to provide a guarantor for his presence (ḍāmin al-wajh) to ensure that he did not flee. 141 A guarantor for the presence of the defendant in court was different from a guarantor for the payment of a debt; his only responsibility was to ensure that the defendant appeared when summoned. It is not entirely clear what responsibilities fell to the guarantor of presence should the defendant fail to come to court.

About half of the lawsuits preserved in the Assarraf collection do not indicate how the shari‘a court ruled. 142 Sometimes, we do not even know how the defendant pleaded. 143 In other cases, we know only that the defendant pleaded not guilty and the qāḍī ordered the plaintiff to prove his claim. Presumably, proof consisted of notarized documents that recorded the debt, which indicates why it was so important for businessmen like the Assarrafs to have their financial transactions notarized by ‘udūl. 144 It is possible that these lawsuits did not end there; the qāḍī might even have ruled one way or another, although these rulings for whatever reason did not survive in the Assarraf collection. Another possibility is that these disputes were resolved outside of court, which is why their resolution does not appear as part of the lawsuit itself. In fact, we can safely assume that suing someone in court was just one strategy among many with which individuals pursued their legal claims. Jews and Muslims might have used the threat of legal action to force their business associates to reach a settlement, and filing a lawsuit

---

141 The documents attesting to the fact that an individual guaranteed the presence of another in court were often written on separate pieces of paper from the rest of the lawsuits, though at times they were entered below the maqāl along with the other court appearances. There are a total of 209 such guarantees which are not written as entries after a maqāl (about 11% of the total collection). On the legal basis of this practice, see Santillana, Istituzioni di diritto musulmano malichita, v. 2, 493-4; Schacht, An Introduction to Islamic Law, 197.

142 Thirty-seven of the seventy lawsuits do not have a resolution.

143 Twelve maqāls in the collection do not include the defendant’s plea. This could be because the parties resolved their dispute outside of court and thus never bothered to pursue the case further. It might also be that the rest of the court case was recorded elsewhere and thus became separated from the original maqāl.

144 There are fourteen such cases.
was a way to prove that one was serious about the claim. At this point we run up against the limits of our evidence; one must keep in mind that sharī‘a court documents often only tell part of the story, leaving historians to extrapolate about the rest.

While the resolutions of many cases remain a mystery, there are a number of cases in which the qāḍī’s decision is recorded in the documents. Naturally, things were simplest when the defendant acknowledged the charge. The vast majority of such pleas in the Assarraf collection were made by Muslims. When a defendant acknowledged the plaintiff’s claim, the qāḍī usually ruled that the defendant had to pay his outstanding debts. The Assarrafats and their Jewish associates thus had at least some success in getting qāḍīs to rule in their favor.

However, an acknowledgment of the debt did not always represent an unqualified success for the creditor. Quite often when a defendant acknowledged his debt, he also claimed that he was destitute (‘adīm) and thus had nothing with which to pay his debt. If this was the case, the qāḍī typically ordered the defendant to prove his bankruptcy. Proving one’s bankruptcy was usually done by means of a lafīf, that is, twelve men attesting to their personal knowledge of the debtor’s poverty. If a defendant was required to prove that he was destitute, he commonly

---

145 Defendants pleaded guilty in twenty-six of the seventy lawsuits; in only one of these cases was the defendant a Jew (TC, File #5, 9 Dhū al-Qa‘da 1292, in which Shalom pleaded guilty to owing a Muslim money for goods he had bought; the resolution states that he paid back what was demanded of him).

146 Of the twenty-six cases in which the defendant pleaded guilty, the defendant was ordered to pay in twelve cases. Some of these cases were not quite so straightforward, such as one in which the court ordered the defendant to find a guarantor for the amount he owed (TC, File #3, 16 Shawwāl 1300) or the one in which the defendant was ordered to pay part of the debt and Shalom Assarraf was ordered to prove the rest (TC, File #5, 27 Ṣafar 1297).

147 Of the twenty-six cases in which the defendant pleaded guilty, the defendants claimed they were destitute in twelve cases.

148 See, for instance, the lawsuit from TC, File #5, 14 Muḥarram 1297, in which Shalom sued Zaynab bint Mulūk al-Qamrī al-Ya’kūbī [sic] for a debt which she had guaranteed for her brothers Idrīs and Bū Shitta. Zaynab pleaded guilty to owing Shalom 196 riyāls, but said that she had no money. In a separate entry from the same day, the qāḍī (literally “the sharī‘a which is obeyed”) ruled that Zaynab must prove that she was destitute (al-shar‘ al-muṭā‘ ḥakama ‘alayhā bi-ithbāt ‘adamihā) within eight days.

149 See especially Muḥammad b. Yūsif al-‘Arabī, Shahādat al-lafīf (Rabat: Markaz iḥyā‘ al-turāth al-maghribī, 1988). There is a formula for declaring oneself destitute in Binānī’s manual which does not specify that it is a lafīf, but does indicate that there must be twelve witnesses (Binānī, al-Wathā‘iq al-fāṣiya, 65). René Bouvet, in his study of bankruptcy in Mālikī law, does not mention the use of a lafīf in declaring a person bankrupt; rather, he observed
gathered twelve men who testified that they personally knew he was poor, owned nothing, was destitute, etc.\textsuperscript{150} The qāḍī might then order the defendant to provide a copy of this proof (that is, of the lafīf document itself) to the plaintiff.\textsuperscript{151} At this point, the creditor had little choice but to request that his destitute debtor be imprisoned until he paid, unless he chose to contest the validity of the lafīf (such as by requesting a fatwā, discussed below). The qāḍī’s role ended at ordering the destitute debtor to prove he had no money; after this, it was the responsibility of a Makhzan official to imprison the debtor or otherwise try to extract payment from him.

Having a destitute debtor who acknowledged his debt was in many ways preferable to facing a debtor who denied owing the debts with which he was charged. In most such cases the defendants’ arguments for why they did not in fact owe the money claimed by their creditors are not preserved.\textsuperscript{152} Yet in some instances the defendants did specify the reasons behind their claims. A particularly interesting argument made in four separate lawsuits was that the loan was usurious. In each of these cases the defendant claimed that the Jewish creditor lent him a certain amount of money, but drew up a bill of debt for an amount at least twice as large. Significantly, not one of these lawsuits used the word \textit{ribā}, the classical term for usury in Islamic jurisprudence. For instance, on November 3, 1891, Ya’aqov sued Aḥmad b. al-Ḥājj Mūbārak al-Sharādī al-Dalīmī al-Shangilī for 350 riyāls owed to him in three separate bills of debt (for 200,

---

\textsuperscript{150} There are twenty-five such lafīf testimonies in the Assarraf collection, most of them testifying to the fact that a particular person is destitute. Many of these lafīf testimonies, however, are on separate sheets of paper from the lawsuits to which they related, making it hard to trace exactly how many of the lawsuits in the collection also produced lafīfs.

\textsuperscript{151} See, for instance, TC, File #3, 4 Rabī’ I 1297, in which Shalom sued Bū Shittā b. ‘Abd al-Jalīl al-Qamrī al-Bashīmī for debts which Bū Shittā had guaranteed (amounting to 2,094 riyāls). Bū Shittā pleaded guilty and claimed he was destitute. A separate entry from the same day reads: “After a lafīf testified to what was said above [presumably that Bū Shittā was destitute], the shari‘a rules that the plaintiff must produce a copy of the proofs with the intention of investigating \textit{(bi-qaṣdi al-bahthī)} within fifteen days from tomorrow.”

\textsuperscript{152} Some exceptions include TC, File #3, 8 Jumādā II 1320, in which Ya’aqov accused al-Ḥājj Mūhammad b. Mūsā al-Zarhūnī al-Musāwī of owing him 240 riyāls. Al-Zarhūnī claimed that he had already paid 95 riyāls of the debt which, it seems, Ya’aqov refused to recognize.
100, and 50 riyāls respectively). Aḥmad responded that he had only received eight riyāls in the transaction recorded as fifty: only twenty riyāls in the transaction recorded as 100: and only sixty riyāls in the transaction recorded as 200. In other words, while Ya’aqov sued for a debt of 350 riyāls, Aḥmad claimed that he had only received eighty-eight riyāls. This sort of inflation of amounts in bills of debt was a common way of charging hidden interest without appearing to violate the prohibition on charging outright interest.

Moreover, the presiding qāḍī did not seem particularly perturbed by this sort of allegation. On the contrary, in three of the four cases the judge did not attempt to verify the defendant’s claim concerning illegal interest. The exception is a case concerning a debt of 3,000 riyāls, an amount significantly larger than most debts. In this case, Shalom claimed that al-ʻArabī and his two guarantors al-Muʻṭī and al-ʻAjīwī and al-Ḥājj ‘Abdallāh b. Muḥammad al-Shayzamī owed him 3,000 French riyāls. First al-ʻArabī, and then al-Muʻṭī his guarantor, testified that Shalom had only given him half the amount he claimed—which had been paid already—even though he wrote the bill of debt for the full amount (i.e. 3,000 riyāls). One month after the initial lawsuit was filed, al-ʻArabī and al-Muʻṭī voluntarily produced proof in the form of a laffit testifying that the debt was for only 1,500 riyāls, which they had already paid (I gather that this was voluntary because the qāḍī never demanded such proof). The documentation trails off at this point, making it hard to know

153 TC, File #1, 30 Rabī‘ I 1309. See also File #7, 4 Sha‘būn 1284; File #6, 19 Rabī‘ II 1292; File #8, 26 Ṣafar 1293.
154 See especially the discussion of this type of hidden interest in MAE Courneuve, CP Maroc 53, Féraud to Flourems, 28 September 1887: "Les sommes accusés dépassaient en général du double, souvent des deux tiers les avances réelles. Ce mode d’agir est, d’ailleurs, général dans un pays où la loi religieuse qui est en même temps la loi civile n’admet pas le prêt à intérêt. Le prêteur prend ses précautions en conséquence et les prend largement.” A similar strategy was used to hide interest on loans made in the Ottoman Empire: Gerber, Crossing Borders, 154-5. On other ways to avoid the outright charging of interest in Morocco, see also Ghislaine Lydon, On Trans-Saharan Trails: Islamic Law, Trade Networks, and Cross-Cultural Exchange in Nineteenth-Century West Africa (Cambridge: Cambridge University Press, 2009), 315-18; Schroeter, “Views from the Edge,” 186.
155 TC, File #6, 19 Rabī‘ II 1292.
whether the qāḍī accepted al-‘Arabī and al-Mu‘ṭī’s proof of their claim. Perhaps the fact that the qāḍī never requested proof of claims that a loan involved hidden interest means that the qāḍī did not object to charging interest as long as the documentation was in order. If so, then these were quite advantageous arrangements for Jewish creditors, since all they needed was documentation of the loan which hid its usurious nature. Whatever the exact circumstances, it is significant that qāḍīs did not immediately presume that a Jewish creditor accused of usury was guilty as charged. Evidence of qāḍīs’ acceptance of the practice of charging interest is also found in the records of the Ministry of Complaints (discussed in Chapter Five).

Pleas and supporting evidence at times constituted merely the initial stages of litigation, especially when one of the parties produced a fatwā (plural fatāwā), or legal responsum, concerning some aspect of the case. Anyone had the right to seek a fatwā from a qualified muftī (a jurist who wrote fatāwā), although this advice did not come free; in Fez at the turn of the twentieth century, fatāwā cost between one and one hundred douros each, depending on the complexity of the case and the reputation of the muftī. The Assarraf collection contains eight separate lawsuits in which either the plaintiff or the defendant submitted fatāwā to bolster his case. It is not surprising that Jews in Morocco sought out the services of a muftī; historians have noted that in the Ottoman Empire, Jews (and Christians) mustered fatāwā to improve their chances of winning a lawsuit. In Shalom’s case in particular, the fact that he sought out

157 In some instances the fatāwā were preserved on separate sheets of paper, making it impossible to know to which lawsuits they pertained. In most cases, a single fatwā was copied as part of the proceedings in a lawsuit. In two instances, two or three separate fatāwā concerning the same case were copied by the same hand. Undoubtedly the individual who had requested the fatāwā thought it preferable to muster support from multiple muftīs rather than relying on the opinion of just one: see, e.g., TC, File #2, copy of three fatāwā (no date); File #9, copy of two fatāwā (no date).
158 On non-Muslims submitting fatāwā to the divan-i ḥumayun (the sultan’s Imperial Council), see Wittmann, “Before Qadi and Vizier,” 146-7. Wittmann did not, however, find cases of non-Muslims submitting fatāwā to shari’a courts (125). It is not clear whether Jews during the medieval period appealed to muftīs for fatāwā concerning their legal cases; Goitein notes one instance in which Jews requested a fatwā to uphold their end of an
fatāwā provides further evidence that he was knowledgeable about Islamic law and legal
procedure.

Jews and Muslims turned to a wide range of muftīs for legal opinions, including:
Muḥammad ‘Abd al-‘Azīz al-Filālī. Of these, the most famous by far was al-Wazzānī, author
of the best-known fatwā collection of modern Morocco, called al-Mi’yar al-jadīd (after al-
Wansharīsī’s fifteenth-century Mi’yar). Muḥammad al-‘Irāqī was also prominent in his day
and served as a qāḍī in Fez in the late nineteenth-century. It is not always clear which fatāwā
were solicited by Jews and which by their Muslim opponents. Yet whether Jews or Muslims
solicited responsa from authorities such as al-Wazzānī and al-‘Irāqī, the fact that they are present

110
in the Assarraf collection indicates the importance attributed to cases involving Jews and the seriousness with which they were treated by both sides.

The fatāwā preserved in the Assarraf collection mostly concern the validity of testimony, that is, they call into question testimonials submitted as evidence by one of the parties to the lawsuit.\(^{166}\) For instance, in a particularly complicated case between Shalom and Aḥmad b. ‘Abd al-Jalīl al-Qamrī which began on February 9, 1880, Shalom sued Aḥmad for a debt which he had guaranteed for his wife, Zaynab bint Mulūk al-Qamrī.\(^{167}\) Aḥmad denied the charge, claiming that he had only guaranteed Zaynab’s presence in court and not payment of the debt she owed.\(^{168}\) In response, Shalom produced a lafīf in which twelve Muslim men testified that they personally knew that Aḥmad had guaranteed Zaynab’s debt to Shalom.\(^{169}\) Shalom clearly hoped that this testimony would constitute proof that Aḥmad did indeed owe him 196 riyāls. However, Aḥmad consulted the muftī Aḥmad b. ‘Abd al-Jalīl al-Ṣanhājī concerning this lafīf, who wrote a fatwā claiming that it was null and void.\(^{170}\) Al-Ṣanhājī raised three reasons for declaring the lafīf invalid, including that the witnesses did not specify the amount being guaranteed; that the witnesses did not specify the source of their knowledge (mustanad al-‘ilm);\(^{171}\) and finally that

---

\(^{166}\) See also TC, File #5, from lawsuit beginning 15 Muḥarram 1291 and from lawsuit beginning 17 Rabī’ I 1291; File #1, from lawsuit beginning 1 Jumādā I 1292; File #2, from lawsuit beginning 20 Jumādā II 1294; File #10, from lawsuit beginning 23 Shaʾbān 1294; File #2, copy of three fatwās (no date). The only fatwā I found which does not concern the validity of testimony discusses the nature of rights to a ḥūbs property (from File #9, copies of two fatwās with no date).

\(^{167}\) TC, File #5, 27 Ṣafar 1297. The continuation of this lawsuit (including the relevant fatwā) is on a separate document found in File #1, starting with a lafīf from 1 Rabī’ I 1297.

\(^{168}\) In fact, Shalom sued Aḥmad for two separate debts. One was for 196 riyāls which was originally owed to him by Idrīs and Bū Shitta, Zaynab’s brothers, and for which Zaynab had guaranteed payment. This is the debt which Aḥmad denied having guaranteed. However, Aḥmad also acknowledged owing 29 riyāls for a debt he had guaranteed for his relative Ḥamīd b. Qudūr b. ‘Ayād. The qāḍī ruled that he must pay the 29 riyāls, which he presumably did.

\(^{169}\) Presumably Shalom did not have in his possession a legal document which recorded the guarantee of the debt; otherwise, one assumes, he would not have needed to provide the testimony of a lafīf.

\(^{170}\) A copy of this fatwā, as well as the others cited in connection to this case, is reproduced on the back of the lafīf from 1 Rabī’ I 1297 (File #1).

\(^{171}\) This is a point mentioned in two other fatwās (see File #2, from lawsuit beginning 20 Jumādā II 1294 and File #10, from lawsuit beginning 23 Shaʾbān 1294).
one should only resort to the testimony of a lafīf out of necessity (al-

Darūra), such as in rural areas where ‘udūl (in the sense of notaries as well as upright men) were unavailable, but that in a capital city such as Fez the testimony of a lafīf is a priori unacceptable. Al-Ṣanhājī cited a number of jurists in support of his position, including Muḥammad b. Muḥammad Ibn ʿĀsim (d. 829/1426, author of Tuḥfat al-hukkām fī nukat al-ʿaql wa'l-ahkām), Aḥmad b. Yaḥya al-Wansharīsī (d. 914/1508, author of al-Miʿyar), and the commentary by Muḥammad b. Qāsim al-Sījilmāsī al-Ribāṭī (d. 1214/1799) on ʿAmal al-Fāsī, the influential collection of Moroccan custom used widely by early modern and modern jurists.

Despite al-Ṣanhājī’s authoritative-sounding fatwā, Shalom did not give up. On the contrary, he went to two more muftīs (whose signatures are illegible) and engaged them to write opposing fatāwā dismissing al-Ṣanhājī’s arguments. The first muftī whom Shalom consulted produced a comprehensive rebuttal. He began by arguing that it was not necessary to specify the exact amount when the sum in question pertained to a guarantee, because “ignorance [of the sum] of guarantees is forgiven” (al-jahlu fi bābi al-ḍamāni mugtafar). He further noted that it was not necessary to specify the witnesses’ source of knowledge if their testimony seemed “likely and was valid” (idh al-rājiḥu wa-ʾl-maʾmūlu bihi); for this he cited ‘Alī b. ʿAbd al-Salām al-Tusūlī’s (d. 1258/1842-3) well-known commentary on Ibn ʿĀsim’s Tuḥfa. Finally, the muftī attacked al-Ṣanhājī’s claim about the permissibility of a lafīf in a city like Fez. He countered that if the claimant had intentionally planted the twelve men in order to testify, their testimony would be problematic. However, because they had been present “accidentally”

---

172 This point is also mentioned in another fatwā (see File #5, from lawsuit beginning 15 Muḥarram 1291).
(ittiḥāqīyan) and were testifying about something they had happened to witness, it was permissible.\textsuperscript{175} The second fatwā in Shalom’s support made a similar point, arguing that “all scholars” have agreed that the testimony of a laffīf was acceptable at all times and in all places, irrespective of the availability of ‘udūl.\textsuperscript{176} The qāḍī eventually ruled that Aḥmad must guarantee the amount he owed to Shalom—presumably meaning the contested 196 riyāls—indicating that Shalom had successfully proven his suit.\textsuperscript{177} More important than the resolution of this particular case is its illustration of how both Jews and Muslims deployed fatāwā during litigation.

Oaths constitute a final element of judicial procedure which played an important role in Jews’ experience in court. As already discussed, dhimmīs were able to take oaths under Islamic law. In standard legal procedure, the defendant was asked to take an oath if he denied the charges and the plaintiff could not produce evidence of his claim.\textsuperscript{178} However, there were also instances in which the plaintiff, or even both parties, might be asked to take the oath. For instance, concerning debts owed by an absentee (or deceased) debtor, the creditor could be asked to take an “oath of payment” or “oath of liberation” (\textit{yamīn al-qadā‘}) confirming that he had not received payment for the debt he claimed was still outstanding.\textsuperscript{179} In one case, Ya‘aqov was

\textsuperscript{175} I am very grateful to Professor Hossein Modarressi for his help in clarifying this part of the fatwā.

\textsuperscript{176} Between the copies of these two fatwās is another fatwā in support of Aḥmad’s position, though it does not seem to make any substantively different claims from those of al-Ṣanhājī. (This is signed by a muftī named Muḥammad but the rest of his name is not given.)

\textsuperscript{177} See entry from 19 Rabī’ I 1297. A month later, on 18 Rabī’ II 1297, Aḥmad’s brother Bū Shitta and his wife Mubāraka bint Ibn Qudūr al-Qamrī al-Ya’qūbī (presumably Zaynab’s sister) guarantee the payment of Aḥmad’s debt to Shalom.

\textsuperscript{178} Schacht, \textit{An Introduction to Islamic Law}, 190-1.

\textsuperscript{179} Santillana, \textit{Istituzioni di diritto musulmano malichita}, v. 2, 624-5; Almenour Kellal, “Le serment en droit musulman (école malékite),” \textit{Rivue Algérienne, Tunisienne et Marocaine de Législation et de Jurisprudence} 74 (1958): 26-7. See also Alhaji, “Oath,” 31-2. The basic premise was that since the debtor was unable to speak for himself to say whether or not he had paid the debt, in the event that his representatives claimed not to know whether or not he had paid, the creditor had to swear that he had not yet been paid as the only way to establish that the debt was still outstanding.
made to swear the oath of payment despite the fact that the defendant pleaded guilty to owing the outstanding debt, even though this went against all apparent rules of Islamic legal procedure.\footnote{File #5, 15 Rajab 1296.}

Studies of law in pre-colonial and colonial North Africa noted the extent to which Muslims generally sought to avoid swearing oaths,\footnote{See, e.g., Maeterlinck, “Les institutions juridiques au Maroc,” 479; Kellal, “Le serment,” 19-20. Maeterlinck and Kellal both observe that the oath became a tool for blackmail since individuals were so eager to avoid it.} an observation that held just as true for Jews.\footnote{See, for instance, DNA, 2.05.15.15.81, George P. Hunos to John Drummond Hay, 25 July 1877, in which Humos observed that forcing a certain Jew from Safi to take an oath “is considered prejudicial to his social position, for he is considered one of the influential elders of the Jewish community of this town.” See also Goitein’s discussion of Jews’ reluctance to take oaths during the medieval period: Goitein, \textit{A Mediterranean Society}, v. 2, 340.} Lawrence Rosen’s account of the reluctance to take oaths in twentieth-century Morocco may shed some light on the considerations shaping the decisions of actors in the nineteenth century. Rosen notes that in addition to the simple fear of divine judgment should one swear falsely, Moroccans are wary to take oaths because even appearing to swear falsely could reduce a man’s social capital and “risk his overall attractiveness as a partner” in future commercial relations.\footnote{Rosen, \textit{The Anthropology of Justice}, 34-5.} There is evidence in the Assarraf collection that oaths were more often threatened than actually required. For instance, on January 31, 1880, Zaynab b. Mulūk al-Qamrī sued Shalom, claiming that she had given him two silver bracelets as security for her husband’s presence in court.\footnote{TC, File #1, 18 Ṣafar 1297. Shalom sued Zaynab’s husband, Ahmad b. ‘Abd al-Jalīl al-Qamrī al-Bashīmī, on February 9 of the same year (TC, File #5, 27 Ṣafar 1297) about a loan that he had guaranteed for Zaynab, which she in turn had guaranteed for her brothers Idrīs and Bū Shitta. However, it is likely that Zaynab had guaranteed Ahmad’s presence in court for yet an earlier case (one not preserved in the Assarraf collection), since usually guarantees for the presence of the defendant in court were made in the midst of a trial. Thus, Zaynab would have given Shalom the bracelets as security long before the court case of February 9.} At first Shalom denied that he had the bracelets; Zaynab responded by threatening to make him take an oath in support of his plea. Three weeks later, Shalom admitted that he had the bracelets after all and that he was keeping them until he settled with Zaynab’s husband—and thus avoided having to take an oath.\footnote{This was recorded in an entry of 10 Rabī’ I 1297, under the initial maqāl.}
In another instance of oath avoidance, the Jew Ḥaim b. Ya‘aqov Harosh sued the Muslim Aḥmad b. ‘Abd al-Mālik al-Tabrānī over ownership of a mechanized mill (probably for grinding flour). Ḥaim claimed that he owned the mill even though it was in Aḥmad’s possession, but he could not prove his case. Ḥaim resorted to demanding that Aḥmad take an oath establishing that he—and not Ḥaim—was the true owner of the mill. Although Aḥmad could have easily ended the case in his favor by taking an oath to this effect, Aḥmad and Ḥaim instead reached a compromise (ṣulḥ). They agreed to have the machine’s value appraised by an expert (mu’allim mawākinā) and whoever kept the machine would pay the other half its price. It is essential to point out that Aḥmad’s advantage of having the possibility of taking an oath had nothing to do with the fact that his opponent was a Jew. Rather, the dénouement of this case followed the procedural guidelines laid out in Islamic law, which stipulated that if the plaintiff could not provide proof then he could demand an oath from the defendant. Nonetheless, Aḥmad refused to take an oath against the word of a Jewish plaintiff. This is another instance in which Jews’ experience in sharī‘a court owed more to the nature of Islamic law than to the fact that they were Jews.

Despite their shared aversion to oath-taking, Jews and Muslims appearing in the Assarraf collection did sometimes take oaths. For instance, in a case in which Shalom had to confirm that his debtor, Mālik b. Laḥsan al-Sūsī, still owed him an outstanding debt, Shalom went to the

---

186 TC, File #9, 1 Rabi‘ I 1301. In fact, the nature of the contested item is somewhat unclear; it was referred to as a “French machine” (al-majānna afrānsīsī [sic]): in the Moroccan context, “machine” (usually written as mākīna) typically meant an automated mill for grinding wheat into flour, olives into oil, etc. (see Holden, *The Politics of Food in Modern Morocco*, 48). On the introduction of mechanized mills in Morocco more generally, see ibid., Chapter 2.

187 This is recorded in an entry on the reverse of the document.

188 For more instances of oath avoidance, see File #10, 7 Muḥarram 1302; File #1, 22 Dhū al-Qa‘da 1323. See also the incident discussed above (in the discussion of releases), File #6, 8 Ṣafar 1327. At times, the legal document specifically says that one or both parties dropped the requirement of the oath from the other: File #10, 9 Rabi‘ I 1296; File #2, 25 Rabi‘ I 1298; File #4, 13 Ṣafar 1302; File #1, 14 Dhū al-Qa‘da 1322; File #5, 9 Shawwāl 1332.
synagogue and swore an “oath of payment” (yamīn al-qāḍā'). At times Muslims similarly acquiesced in Jews’ demands that they take an oath. Overall, there was little difference in how Jews and Muslims used the oath as a legal tool.

The litigious documents in the Assarraf collection show that Jews used the sharī’a court not only as a notary public, but also as a tribunal. They pursued recalcitrant debtors, sued guarantors for the sums they had guaranteed, and were, in turn, sued for sums they owed others. As non-Muslims in an Islamic system of justice, Jews were in some ways disadvantaged; in Morocco, their religious identity particularly affected their ability to testify as part of a laffīf. However, most aspects their experience in a sharī’a court were not fundamentally different from that of Muslims. Jews submitted documents signed by ‘udūl as evidence, took oaths, and even solicited muftīs for fatāwā in support of their pleas in the same ways as did Muslims.

* * *

Sharī’a courts in nineteenth-century Morocco were institutions which applied Islamic law and were staffed by Muslims, but they were far from exclusively Muslim. On the contrary, Jews were habitual patrons of sharī’a courts, availing themselves of the services of qāḍīs and ‘udūl on a regular basis. As businessmen, Jews fostered countless commercial relations with Muslims. In the case of the Assarraf family, as for many other Jewish merchants, this mostly meant selling goods on credit. It was in Jews’ interest to ensure that each of these relationships was attested by legally binding documentation—that is, notarized by ‘udūl. Producing this kind of documentation meant that Jews could rely on sharī’a courts to enforce the contracts they signed, should they need to sue pursue litigation.

---

189 TC, File #1, 6 Jumādā II 1299 (on the back of a bill of debt dated 1 Rabī’ II 1295). For an instance in which a Jew agreed to take an oath, see File #1, 6 Shawwāl 1283.
190 See, e.g., File #1, 29 Dhū al-Qa’da 1291; File #9, 4 Ṣafar 1294 (in which Shalom demanded that a Muslim swear that Shalom had given him a mule: the Muslim swore that this was true, and that the mule had subsequently died).
Sharī'a courts provided a crucial ingredient in the glue of commercial relations which bound Jews and Muslims to one another. The records produced by sharī'a courts for Jewish businessmen like the Assarrafs preserve a slice of life in Morocco that was at the center of Jewish-Muslim encounters. They also allow us a unique view of how Jews used sharī'a courts—a dimension of Jewish experience in the Islamic world which has hitherto received too little attention.
Chapter Three: Crossing Jurisdictional Boundaries

Shalom Assarraf passed away in the fall of 1917. As a prominent businessman, a savvy lawyer, a leader of his community, and—perhaps most important of all—the patriarch of a large and prosperous family, Shalom’s death almost certainly had an impact beyond the walls of Dar Assarraf, the familial abode. Practically, Shalom’s relatives had to sort out what was undoubtedly a large and fairly complex estate. Shalom was survived by three sons who, according to Jewish inheritance law, were his sole heirs.\(^1\) The brothers divided up their late father’s estate so that each would get his fair share, and almost certainly had sofrim draw up a record of the ensuing settlement so that no one could dispute it in the future.\(^2\) But the Assarraf brothers were not satisfied with this assurance of their agreement. After having notarized the division of inheritance in a beit din, Shalom’s sons also went to a sharī‘a court to record the settlement before ‘udūl.\(^3\) For good measure they brought along one of the leading rabbis of Fez, who testified that the three brothers were Shalom’s only heirs according to Jewish law.

Islamic law granted Jews the right to adjudicate succession according to Jewish law and without the interference of Islamic legal institutions. This meant that had the Assarraf brothers so desired, they could have had their inheritance settlement recorded in a Jewish court and left it at that—no need at all to go to a sharī‘a court. Yet the Assarraf heirs chose to have their

---

\(^1\) Although I do not know if Shalom had daughters, Jewish law allows for all the inheritance to go to sons even if a man is survived by daughters (daughters only inherit if there are no sons); similarly, it is not clear if Shalom was survived by a wife (or wives), but in any case she would not have inherited (except the amount of her ketubbah, were that still unpaid). See Menachem Elon, “Succession,” in *Encyclopaedia Judaica*, ed. Fred Skolnik and Michael Berenbaum (Detroit: Macmillan Reference, 2007).

\(^2\) I say “almost certainly” because I have not actually found a legal document drawn up in a beit din attesting to the division of Shalom’s estate. However, I have found many such documents for other families (see Chapter One), and venture to hazard an educated guess that given the importance of the estate, Shalom’s heirs would have done the same.

\(^3\) TC, File #3, 5 Ṣafar 1336.
agreement notarized according to Islamic law as well. What motivated them to bring this sort of
intra-Jewish affair before a sharī‘a court? And what does their decision tell us about the kinds of
borders separating one jurisdiction from another in nineteenth-century Morocco?

Thus far, we have examined the ways in which Jews used batei din and sharī‘a courts
largely according to the jurisdictional boundaries established in Islamic law. However, there
were also a number of instances in which Jews—and Muslims, for that matter—crossed these
boundaries; Jews went to sharī‘a courts for intra-Jewish matters, and Muslims went to Jewish
courts to notarize contracts they had with Jews. At other times, Jews used both legal systems
simultaneously, such as by having a contract notarized both according to Jewish law and
according to Islamic law (as did Shalom Assarraf’s heirs). These overlapping uses of Jewish and
Islamic courts are crucial to understanding how the two legal systems functioned alongside each
other in pre-colonial Morocco. Jews and Muslims’ crossing of jurisdictional boundaries also
reveal the extent to which individuals chose the court in which they decided to notarize their
contracts or adjudicate their disputes. This was especially true for Jews, who moved between
Jewish and Islamic courts for their day to day legal needs more easily than did Muslims.
Naturally, it is necessary to keep in mind that Moroccans both Jewish and Muslim generally
observed the jurisdictional divisions allotting certain cases to sharī‘a courts and others to batei
din. Individuals did not have complete freedom in their navigation of the available legal orders.
Nonetheless, even if intra-Jewish cases in sharī‘a courts and Muslims in batei din were
somewhat exceptional, they were neither rare nor insignificant.

The fact that Jews chose to adjudicate intra-Jewish matters in Moroccan sharī‘a courts
fits with patterns observed by historians working on law in other parts of the Islamic world.
(Muslims appearing in Jewish courts, on the other hand, is a phenomenon almost entirely
unmentioned in the secondary literature.) Scholars drawing on sources from the Cairo Geniza have shown that during the medieval period Jews in North Africa, Egypt, and the Levant brought matters involving other Jews to sharī’a courts to be notarized or adjudicated according to Islamic law with some frequency. This was also true of Jews living in the Ottoman Empire, where Jews (much like their Christian neighbors) regularly brought their intra-religious contracts and litigation to the kadi courts.

In some ways it is unsurprising that the legal practices of Moroccan Jews were related to those of their coreligionists in different places and times. Yet as discussed in the Introduction, Moroccan Jews had relatively more autonomy than did Jews in other contexts—as indicated by the fact that Jews had their own prisons in at least a few Moroccan cities. One might think that the relatively greater degree of control over their own affairs which prevailed among Jews in Morocco would make them less inclined to use non-Jewish courts for matters which could be adjudicated in Jewish courts. Yet Islamic legal documents show that Moroccan Jews brought their intra-Jewish cases to sharī’a courts. Since quantitative analysis is difficult for any of these historical contexts, it is hard to know how much more or less Moroccan Jews availed themselves of Islamic legal institutions for intra-religious matters than did Jews in medieval Cairo or the Ottoman Empire. Nonetheless, the fact that even Moroccan Jews engaged in the sort of jurisdictional boundary crossing found in circumstances where Jews had much less ability to run their own affairs suggests an important degree of continuity across both space and time. This continuity is closely related to the nature of legal pluralism across historical contexts, since the

---


ability and desire to move among different jurisdictions often goes hand in hand with having multiple and overlapping jurisdictions available.⁶

*Intra-Jewish Cases in Sharī‘a Courts*

The most common type of jurisdictional boundary crossing occurred when Jews went to a sharī‘a court for intra-Jewish matters. Most of the time, Jews used sharī‘a courts to notarize intra-Jewish contracts—just as Jews who used sharī‘a courts for matters concerning Muslims mostly relied on the notarial function of these courts.

Both Islamic and Jewish law accepted the idea that Jews had the right to notarize their intra-Jewish contracts in Jewish courts. As mentioned earlier, Mālikī jurists agreed that two dhimmīs who brought a case to a sharī‘a court should be judged according to Islamic law. Having contracts written and notarized by ‘udūl did not endanger their value in a beit din since Jewish law recognized the validity of most notarial documents drawn up in non-Jewish courts. According to a statement in the Babylonian Talmud (Gittin 10b), all legal documents drawn up in non-Jewish courts were valid except for writs of divorce (*get*) and bills of manumission. Later, this principle was extended such that non-Jewish legal documents (and indeed non-Jewish law more broadly) were acceptable as long as they did not concern ritual matters (*issur ve-ḥeter*).⁷ Halakhah recognized the authority of the state to rule on all things related to monetary law (*mamona*), meaning that bills of debt, real estate transactions, and almost any contract falling under the categories of civil and criminal law (as opposed to family or ritual law) could be notarized in non-Jewish courts.

---

⁶ See, e.g., Tamanaha, “Understanding Legal Pluralism,” 385, 400-1.
The Assarraf collection provides a good starting point for understanding why Jews decided to bring their intra-Jewish cases to ‘udūl.\(^8\) As mentioned earlier, approximately 2\% of the documents in the Assarraf collection concern intra-Jewish notarial contracts. The majority of these (about two-thirds) are powers of attorney in which one Jew grants another Jew agency to represent him in all legal matters.\(^9\) Often such powers of attorney were drawn up among family members; for instance, on June 21, 1874, Ya‘aqov made his father Shalom his agent.\(^10\) Others were among friends or business associates, such as when Maymon b. Sūsān made Shalom his agent.\(^11\) It is no surprise that Jews drew up such powers of attorney with ‘udūl; if a Jew wanted to represent another Jew in a sharī‘a court, only an Islamic legal document would constitute proof that he had power of attorney to do so.\(^12\) In this case, the services of Jewish and Islamic courts were not competing, since Jews could not use sofrim to draw up intra-Jewish powers of attorney if they wanted a qāḍī to consider these documents valid.

Most types of contracts did, however, engender direct competition between sofrim and ‘udūl since both types of notaries provided equivalent services. Even in these cases, Jews sometimes chose notarization in a sharī‘a court. This was especially true for real estate transactions, particularly sales of property. Real estate transactions constituted about 20\% of the intra-Jewish documents in the Assarraf collection.\(^13\) Among the other collections I consulted, real estate transactions made up over two-thirds of the intra-Jewish contracts notarized by

---

\(^8\) Since the other intra-Jewish contracts notarized by ‘udūl which I found are not part of larger collections from one family, they cannot inform us about how individuals or families chose this kind of jurisdictional boundary crossing as a general rule.

\(^9\) That is, 26 out of a total of 39.

\(^10\) TC, File #5, 6 Jumādā I 1291.

\(^11\) TC, File #4, 21 Dhū al-Qa‘da 1291.

\(^12\) For an intra-Jewish power of attorney outside of the Assarraf collection, see PD, 29 Dhū al-Qa‘da 1305, power of attorney from Avraham b. al-Shaykh Ya‘aqov and his son Moshe.

\(^13\) That is, 8 out of 39.
Most real estate transactions concerned the sale of property. For instance, on June 16, 1859, Shalom bought a room in a house near the entrance to the millāḥ from Mardūkh b. Hārūn b. Dūkh b. Salīn, his full brother Ḥayim, and their mother Manānū bint Ṣadūq b. Zāzūn for the sum of 375 mithqāls. The Jewess Manānū’s participation in this sale was not atypical; property transactions registered in shari’a courts often involved women, sometimes as the sole buyers or sellers. Other types of real estate transactions included buying the usufruct rights on property from other Jews; on July 7, 1913 Ya‘aqov bought the usufruct rights (zīna) to a store in the spice market (ḥānūt al-‘attārīya) from his uncle, Eliyahu b. Yehudah Assarraf, for 120 silver riyāls.

Jews also registered gifts of real estate to other Jews, including to their own family members. In the summer of 1860, a Jewess named Yael bat Meir Pinto gave a small house in the millāḥ of Essaouira to her three children Maṣ‘ūd, Jawhara, and Ajnina, and notarized the gift in a shari’a court.

The frequency with which Jews (and Muslims, as discussed below) crossed jurisdictional boundaries regarding real estate transactions suggests that there was something special about landed property. In medieval Egypt, Jews similarly registered real estate transactions in shari’a courts more often than other types of contract. Scholars have posited that this was because the Fātimid state required subjects to pay a special tax on transfers of real estate, such that notarizing the bill of sale in a shari’a court would also ensure that a record was kept of the tax having been

---

14 Out of a total of twenty-nine intra-Jewish contracts found in three different archives (the private collection of Paul Dahan, the University of Leiden, and the manuscript collection of Yad Ben Zvi), twenty concerned real estate transactions.

15 TC, File #1, 15 Dhū al-Qa‘da 1275. Five other documents in the Assarraf collection concern the sale of a room or a house.

16 See, e.g., PD, 16 Ramaḍān 1267: YBZ, 13 Jumādā I 1268.

17 TC, File #9, 14 Muḥarram 1313. On zīna, see Milliot, Démembrements du Habous, 57-9. See also G. Baer, “Ḥikr.”

18 PD, 20 Muḥarram 1277. See also the subsequent entry on this document in which one son mortgages his third of the house to another Jew for 500 mithqāls, also registered in a shari’a court (on 25 Rajab 1287).
Yet Jews in nineteenth-century Morocco were similarly inclined to register their real estate transactions in a sharī‘a court even when no tax on such transactions existed. It seems that real estate lent itself to extra caution in contexts across time and space; perhaps this was due to the greater sums often involved in transferring immoveable property, or to the fact that investments in real estate tended to be more long-term than other types of investments.

Although powers of attorney and real estate transactions were the most common types of intra-Jewish contracts registered in sharī‘a courts, they were not the only kinds. The Assarraf collection preserves a contract for the rental of an oven in the millāḥ owned by the brothers Ya‘aqov, Yehudah, and Moshe Assarraf, to Rafael b. Hārūn al-Sakūrī, as well as a business partnership between two Jews. In other collections, I found contracts notarized by ‘udūl for the sale of a donkey among Jews; the guarantee of a Jew’s presence in sharī‘a court; testimony concerning injuries inflicted by one Jew upon another; bills of debt among Jews; and a release for all claims between a woman and her recently divorced husband. Commercial transactions were the most common kind of intra-Jewish contract that Jews had notarized by ‘udūl, though the release document between a recently divorced couple indicates that at times Jews also turned to the sharī‘a court for questions of family law.

Fundamentally, having intra-Jewish contracts notarized by ‘udūl was attractive because Islamic law did not recognize evidence drawn up in a Jewish court. Any time that a case might

---

19 Gil, A History of Palestine, 165: Khan, Arabic Legal Documents, 1.
20 TC, File #4, 2 Jumādā II 1330.
21 TC, File #5, 28 Ramaḍān 1312.
22 DAR, Yahūd, 18197, 9 Rajab 1311; DAR, Marrakesh, 23 Muḥarram 1314.
23 PD, 3 Ramaḍān 1314.
25 YBZ, 280, 26 Ṣafar 1298 and UL, Or26.543 (1), 9 Jumādā I 1270. On intra-Jewish debts in sharī‘a courts in seventeenth- and eighteenth-century Ottoman Palestine, see Cohen and Ben Shim’on-Pikali, Yehudim be-veit ha-mishpat, ha-me‘ah ha-17, v. 1, 540 and idem, Yehudim be-veit ha-mishpat, ha-me‘ah ha-18, 355.
26 YBZ, 280, 6 Rabī‘ II 1256. It is possible that this document amounts to a divorce effected in an Islamic court, but the wording suggests that the couple had already divorced according to Jewish law and wanted an Islamic legal document confirming that they had no further claims on each other.
require or benefit from adjudication in a sharī‘a court, it was advantageous to ensure that all the relevant evidence met the standards of Islamic law. There were many reasons why an intra-Jewish matter might be adjudicated in a sharī‘a court and it is nearly impossible to determine exactly what motivated Jews to do so in a given case. A number of factors can be identified as contributing in some way to Jews’ choices to have certain contracts notarized by ‘udūl.

One motive for having intra-Jewish contracts conform to Islamic law stemmed from the limits of enforcement in Jewish courts. The ability of Jewish judicial authorities to threaten recalcitrant Jews was generally limited to fiscal and moral persuasion. The authors of communal ordinances threatened fines for minor offenses and excommunication (herem) for more serious ones—yet at times neither proved as convincing as the possibility of physical punishment.27 Though Jews in Fez and Marrakesh ran their own prisons, the extent of their ability to use violence was nonetheless limited.28 Thus if a Jew wanted to make sure that his Jewish debtor actually paid his debts, it might be more effective to have the bill of debt drawn up by ‘udūl so that the recalcitrant debtor could eventually be sued in a sharī‘a court. The desire to better ensure a contract’s enforceability was undoubtedly a motive that at times pushed Jews to notarize their contracts in sharī‘a courts.

The possibility that their rights would be unjustly challenged by Muslims might also have influenced Jews’ decisions to bring their intra-Jewish contracts to ‘udūl. Property rights were, it seems, particularly subject to false claims by Muslims who wanted to take advantage of Jews’ inferior social standing to claim real estate belonging to another as their own.29 Possession of a

27 On excommunication in Morocco see Zafrani, Les juifs du Maroc, 18.
28 See the discussion in the Introduction.
29 See, e.g., NLI, B861 (8-5165-6), Teshuvah pp. 11b-12b (no date or signature), concerning what to do when a Jew inherits land which is then also claimed by a Muslim. The teshuvah further discusses the fact that the Muslims of Debdou made a practice of stealing land from Jews by forging legal documents in sharī‘a courts saying that they owned the land.
deed signed by ‘udūl which attested to a Jew’s ownership of the property in question did not necessarily guarantee that the Jewish owner’s rights would be respected. Yet having such a document was certainly preferable to facing a qāḍī with no proof of one’s ownership that would be recognized in a sharī‘a court.

In fact, rather than asking why Jews notarized their intra-Jewish contracts in sharī‘a courts, perhaps a better question is why Jews bothered notarizing these documents in Jewish courts. In other words, if Jewish courts recognized the validity of legal contracts drawn up according to Islamic law, could not Jews have simply used the sharī‘a court for all legal needs which did not fall under the category of ritual law (issur ve-heter)? The fact that Jews so overwhelmingly used Jewish courts for the majority of their intra-Jewish transactions suggests that the Jewish legal system did successfully meet the needs of Jews most of the time. Jewish courts might have been more attractive due to their convenience and familiarity, especially for those Jews who were in less frequent commercial relations with Muslims and thus were less knowledgeable about sharī‘a courts.30 Even if there were instances in which the difficulty of enforcement or the false claims of Muslims chipped away at the authority of Jewish courts, these were exceptional cases. The significant degree of independence which characterized Jewish courts in Morocco is part of what makes Jews’ jurisdictional boundary crossings all the more noteworthy; even with Morocco’s robust Jewish legal system, Jews still chose to use sharī‘a courts for intra-Jewish matters.

30 There might also have been differences in the cost of notarization at each court, although unfortunately we do not know enough about how much different courts charged for these services to make any systematic comparison.
Simultaneous Use of Jewish and Islamic Courts

The use of sharī‘a courts for intra-Jewish matters could represent direct competition among the two legal systems. Yet at times, Jews used sharī‘a courts in tandem with batei din—that is, they had the same contracts notarized in both courts or drew up confirmations of a contract notarized by sofrim with ‘udūl (or vice versa). There is some evidence that Jews adopted similar practices in medieval Cairo and in the early modern Ottoman Empire. This kind of simultaneous use of Jewish and Islamic courts further demonstrates that batei din and sharī‘a courts could function cooperatively. Far from always imperiling the independence and thus success of Jewish communities, sharī‘a courts could also work in harmony with the very batei din with which—according to most scholars—they were in competition.

Moroccan Jewish legal authorities were central to this successful harmonization. Not only did rabbis and communal leaders recognize the validity of contracts drawn up in Islamic courts; at times they went even further by enacting communal ordinances (taqqanot, s. taqqanah) actually requiring Jews to register their legal transactions in a sharī‘a court. In seventeenth-century Fez the council of elders passed a series of taqqanot requiring the city’s Jews to register marriages, leases, and property transactions before the qāḍī as well as in a Jewish court. Their motive in doing so was to prevent Jews from taking advantage of the simultaneous existence of the Jewish and Islamic legal orders. For instance, some Jews would sell a house to a Jew in a beit din and then sell the same house to a Muslim in sharī‘a court. Since ultimately Islamic law was the law of the land, the beit din would be unable to enforce the sale made under its auspices. When the unfortunate Jewish buyer went to the sharī‘a court with his bill of sale drawn up in

---

32 Ankawa, Kerem Hemer, Numbers 52-55.
Hebrew, the qāḍī could refuse to recognize the document as valid proof since it did not conform to Islamic legal standards. These seventeenth-century taqqanot were still relevant two-hundred years later; manuscript copies of earlier taqqanot continued to be produced in the nineteenth-century, although it is unclear to what extent these requirements were enforced.

Indeed, the most common kind of contract which Jews notarized in both batei din and shari‘a courts were those concerning the sale or rental of real estate. Often, a piece of paper would have a shtar written in Hebrew on one side, and on the other side an ‘aqd written in Arabic—both attesting to the same contract. For instance, on February 18, 1864, Avraham Miran, a Jew, went to the sofrim of Marrakesh to register the fact that he had bought two spice stores from his coreligionist Avraham Ḥazan for 550 mithqāls. Four days later, the two Avrahams went to the local shari‘a court and registered the same sale, on the same piece of paper, with two ‘udūl. This document and others like it provide a striking example of how Jews covered all their bases by having a transaction notarized in both the Beit din and the shari‘a court.

Given that no complete legal records (from either Jewish or Islamic courts) survive for any of Morocco’s Jewish communities, it is impossible to know for sure whether Jews systematically notarized certain kinds of contracts with both ‘udūl and sofrim. As for marriages and mortgages—also included in the taqqanah requiring double notarization—I did not find any

---

33 See in particular ibid., Number 53, dated Shvat 5345 (January 1585).
34 For our purposes, see in particular NLI, Ms. B 195 (356=8), pp. 63b-64a, which contains copies of taqqanot numbers 53, 54, and 55 from Kerem Ḥemer. The manuscript is undated, but clearly dates from the nineteenth century.
35 UL, Or.26.543 (2), 11 Adar 5624 and 14 Ramadān 1280
36 For more such examples, see UL, Or.26.543 (2), 4 Iyar 5597 and 11 Safar 1253; 6 Tevet 5655 and 10 Rajab 1312; UL, Or.26.544, 16 Iyar 5642 and 18 Jumādā II 1299; PD, 11 Elul 5573 and 23 Rabī‘ II 1229; 6 Rabī‘ II 1317 (the other side has a Hebrew document but since the document is pasted into a record book it is impossible to see it); 19 Kislev 5569 and 2 Sha‘bān 1229; DAR, Yahūd, 2 Jumādā II 1298 (back in Hebrew) and 17 Jumādā I 1306 (back also in Hebrew); Yale, Ms.1825.0048, 13 Ḥeshvan 5636 and 11 Shawwāl 1292.
evidence from the nineteenth century that Jews bothered to have these contracts notarized in both
types of court. Yet Jews did follow the requirement to register real estate transactions in both
courts. It is possible that this practice was even more widespread than the relatively small
numbers of documents I found which have two versions of the same contract on a single sheet of
paper. Perhaps the intra-Jewish real estate transactions notarized by ‘udūl were in fact the
Islamic versions of bills of sale which had also been notarized by sofrim, but on separate
documents. These hypothetical corresponding Jewish legal documents might not have
survived, might exist in private collections, or might even be preserved in one of the collections I
examined yet remain unidentified due to the absence of comprehensive catalogs. Either way, the
existence of Islamic legal documents which duplicated a contract already notarized by sofrim
shows that the practice of simultaneously using both legal systems existed, even if we do not
know how widespread it was.

Notarizing a document with both ‘udūl and sofrim was only one way in which Jews made
simultaneous use of both legal orders. Jews also had ‘udūl draw up documents which attested to
points of Jewish law. I began this chapter with a brief discussion of the legal actions taken
around Shalom Assarraf’s death as an example of this kind of strategy. The document which
Shalom’s heirs drew up in the sharī‘a court concerning the inheritance from their late father is
worth quoting at some length:

When the dhimmī merchant Shalom b. Yehudah Assarraf died, it was necessary to
specify his inheritance. So at that time al-ḥazān al-ḥazān Abnīr al-Ṣarfātī, who
is among the religious experts of the Jews who knows which Jews inherit and which do
not according to their religion (huwa min asāqifati al-yahūdi al-‘ārifina bi-man yarithu
min al-yahūdi minman lā yarithu minhum fī millatihim), came before two witnesses:

37 I found some documents which clearly indicate that another version of the contract at hand existed, written in
the other religion’s court but on a separate piece of paper: UL, Or.26.544, 19 Ṣafar 1318 and PD, Shvat 5556.
38 Al-ḥazān is a title used in Arabic and Judeo-Arabic to denote a respected Jewish elder, sometimes a rabbi though
not necessarily.
39 Literally, “bishops” (asaqifa); the language here is taken from a Christian context.
This document and others like it demonstrate another way in which Jewish and Islamic courts could work together. Shalom’s heirs had already divided up their inheritance according to Jewish law and presumably had had this agreement notarized by sofrim (although I have not found such a document). Yet they wanted to make sure that their agreement could not be challenged in a shari’a court. The best way to do so was to have an Islamic legal document drawn up which confirmed that the division of inheritance had been made in accordance with Jewish law and with the approval of the relevant rabbinic authorities. Once in possession of this document, Ya’aqov, Yehudah, and Moshe could rest assured that no one would bypass the beit din and challenge their claim to their father’s inheritance in a shari’a court. It is particularly interesting to note that a rabbi—in this case, Vidal ha-Tzarfati, a dayyan in Fez42—was summoned in order to testify about Jewish inheritance laws, and that the ‘udūl cited his authority in the Islamic legal document.

_Intra-Jewish Lawsuits in Sharī’a Courts_

Jewish and Islamic courts did not always interact as harmoniously as when Jews simultaneously notarized real estate transactions in both kinds of institution. When Jews chose

---

40 TC, File #3, 5 Ṣafar 1336.
41 The other document from the Assarraf collection concerns the inheritance of Maymon b. Ya’aqov al-Ḥayyānī: TC, File #4, 4 Dhū al-Qa’dā 1326. See also similar documents preserved in DAR, Safi, 6, 11, and 30 Jumādā II 1294 (which included the testimony of a laffif concerning the inheritance) and in JTS, box 2, folder #7, 24 Dhū al-Ḥijja 1330.
42 On Tzarfati, see Ovadyah, _Fas ve-ḥakhameha_, v. 1, 359. Tzarfati (lived 1862-1921) came from a long lineage of rabbis originally from Spain (see ibid., 358-9); he became a dayyan in 1891 and was nominated as the head of the beit din in 1919.
to sue other Jews in shari’a courts, their legal disputes could threaten to overturn the delicate balance which otherwise generally reigned between the two legal orders. Jewish law expressly forbade forcibly suing a Jew in a non-Jewish court and this prohibition was taken seriously by Moroccan judicial authorities. Although I argue that the historical influence of this prohibition has been misinterpreted, it nonetheless did have an impact when it came to intra-Jewish lawsuits in non-Jewish courts.

Moroccan Jewish communities were no strangers to instances in which Jews sued other Jews in a shari’a court against the wishes of their rabbinic leaders and in ways which directly threatened the authority of Jewish courts. This is clear from a taqqanah passed in 1603, when the rabbis of Fez prohibited Jews from suing their coreligionists in Islamic courts, unless they had the permission of the beit din to do so. The taqqanah explains that some Jews wanted to take advantage of their personal ties with powerful Muslims by bringing cases to Islamic courts. Rabbinic leaders were understandably opposed to this sort of behavior as it undermined both communal solidarity and their own authority.

Nonetheless, deliberate disregard for Jewish legal authority rarely appears in nineteenth-century documents. Such an absence might indicate that the practice was relatively rare or, alternatively, that Jews did not preserve the documentation concerning this kind of strategy since

---

43 See especially the Babylonian Talmud, Gittin 98b and Rashi’s (Rabbi Shlomo Yitzhaki, d. 1105) commentary on Exodus 21:1, which paraphrases the Talmud. On this, see also Katz, Exclusiveness and Tolerance, 53.
44 Ankawa, Kerem Hemer, Number 77. An exception is made for those instances in which a Jew (referred to as a gavra alma) refuses to submit to the authority of the beit din; in these cases, the beit din will give the Jewish plaintiff permission to appear in a non-Jewish court. This taqqanah closely followed the ruling set out in Moses Maimonides’ Mishneh Torah, Hilkhot Sanhedrin 26:7. In medieval Egypt, there was a special court (called the “Jewish court for informers”) which determined which such cases could be sent to non-Jewish courts: on this, see Mark R. Cohen, “Correspondence and Social Control in the Jewish Communities of the Islamic World: A Letter of the Nagid Joshua Maimonides,” Jewish History 1, no. 2 (1986): 45-6.
45 The taqqanah discusses cases in which a Jew with a patron forces his coreligionist to go to the non-Jewish court. The word used for patron is the Arabic ‘ināya (see Shalom Bar-Asher, Sefer ha-Taqqanot: Yehudei Sefarad ve-Portugal be-Maroko (1492-1753) (Jerusalem: Akademon, 1990), 131), implying that the patron in question is a Muslim and is somehow involved in the Jew’s ability to force a decision in an Islamic court.
it was against Jewish law. However, I did find sources attesting the fact that Jews at times sued their coreligionists before Makhzan officials (in Makhzan courts, which are discussed in the following chapter) against the wishes of the defendant and, presumably, the Jewish legal authorities. For instance, in the spring of 1902 al-Mizmīzī, a Makhzan official in Marrakesh, wrote to Yeshu’a Corcos, the shaykh al-yahūd (secular head of the Jewish community) concerning an intra-Jewish lawsuit that a Jew had brought to his court. Al-Mizmīzī reported that when he sent some underlings to bring the Jewish defendant to trial, the Jew resisted and attacked the messengers sent to fetch him. The Jewish defendant even wrote to the sultan, claiming that al-Mizmīzī had sent soldiers to beat him. When the sultan’s representative arrived to investigate the situation, the Jews of the millāḥ testified that the Jewish defendant’s claim was false. They supported al-Mizmīzī’s version of events, saying that al-Mizmīzī had simply been acquiescing in the request of another Jew that he act as judge. Although the particular facts of this case are somewhat murky—we do not even know what the lawsuit was about—the dénouement shows that the Jewish defendant did not want to be tried in the Makhzan court. In Chapter Six I discuss collective petitions written by Jews to the sultan, some of which attest to similar situations in which Jews were being sued regarding intra-Jewish affairs in the courts of local Makhzan officials. Although the sultan upheld Jews’ right to adjudicate their disputes in their own courts, these incidents make it clear that intra-Jewish lawsuits in non-Jewish courts could pose a real threat to the authority of Jewish legal institutions.

---

46 I also intend to conduct further research in responsa literature from the nineteenth century to see if this ruling was re-issued—which would be a sure sign that it was observed in the breach.  
47 PD, 1 Dhū al-Ḥijja 1319.  
48 See also the letter of complaint written in 1880 by the nasi of Fez to three local rabbis (Rafael Ibn Tzur, Yitzḥaq Ibn Danan, and Shlomoh Ibn Danan) complaining that many Jews were suing their coreligionists in Makhzan courts (from the Bension Collection, Ms. 156, summarized in Aranov, Catalogue of the Bension Collection, 98).
But what about intra-Jewish lawsuits in sharī‘a (as opposed to Makhzan) courts? Did these happen, and if so, did they similarly threaten the balance between the two legal orders? In the one intra-Jewish lawsuit adjudicated in a sharī‘a court which I came across, the qāḍī upheld the previous ruling of a Jewish court. This lawsuit concerned inheritance, and thus was probably just the kind of claim about which the Assarraf brothers (and other Jews who registered their inheritance agreements in sharī‘a courts) were worried. On August 19, 1802, Nathan b. Ḩayim b. Nathan Māšānū, a Jew living in the millāḥ of Fez, sued his cousin, Eliyahu b. Manuel b. Nathan (the same Nathan Māšānū who was the plaintiff’s grandfather). 49 Nathan (the younger) had earlier gone to a beit din in order to dispute Eliyahu’s claim to property inherited from their shared grandfather. The two had reached a settlement by which Nathan would take a fourth of the jointly-owned synagogue and a fifth of the rest of the property. Nathan, eager to uphold this settlement—presumably out of a fear that Eliyahu would challenge it in a sharī‘a court—preemptively brought Eliyahu to a sharī‘a court with the approval of other Jews (who were probably the rabbinic authorities of Fez, though the document does not specify). 51 He demanded that Eliyahu acknowledge the previous settlement or otherwise explain his actions. Eliyahu responded that he had only agreed to the settlement out of fear, implying that it had been invalid from the start. 52 The presiding qāḍī ruled that Eliyahu had to respect the terms of the settlement reached in a beit din, quoting the Mālikī jurist Muḥammad b. Muḥammad Ibn ‘Āsim (d. 1426/829 AH). 53

49 YBZ, 287:37, 19 Rabī’ II 1217.
50 Yurīdu tanassūra al-faṣl.
51 The document explains that “the dhimmīs wrote [a document saying] that [Eliyahu] does not have any [grounds for a] claim against [Nathan] (fa-kataba lahu ahlu al-dhimmati bi-annahu lā rujū‘a lahu ‘alayhi), and all this is in the [Hebrew] script of the dhimmīs (kullu dhālika bi-khuṭūṭi ahli al-dhimmati).”
52 ‘Alā wajhi al-khawf.
53 Ibn ‘Āsim is the author of Tuhfat al-ḥukkām fī nukat al-‘uqūd wa-‘l-āhkām, simply referred to as “al-Tuḥfa” in our document.
In this case the qāḍī upheld the agreement reached in a Jewish court and the rabbis’ authority was maintained. Eliyahu and Nathan’s dispute is a textbook example of how Jews used non-Jewish courts to reinforce the authority of Jewish courts. When Eliyahu threatened to ignore the rabbis’ ruling, Nathan got permission from local Jewish leaders to bring the case to a sharī‘a court where the earlier agreement sanctioned by the beit din was upheld. This case demonstrates that even while intra-Jewish lawsuits adjudicated in Islamic courts could threaten Jewish legal autonomy, they did not always do so.

Jews chose to adjudicate their intra-Jewish lawsuits in sharī‘a courts relatively rarely, perhaps out of deference to the guidelines set forth by halakhah and the taqqanot. Nonetheless, the fact that some Jews did sue their coreligionists in non-Jewish courts shows that jurisdictional boundary crossing could have negative consequences. While most of the time Jews moved relatively freely among the different jurisdictions available to them in Morocco’s legally pluralist environment, doing so could cause problems for the judicial authorities concerned.

Muslims in Batei Din

Perhaps most surprising of all the jurisdictional boundary crossings in Morocco is that of Muslims using Jewish courts for their legal needs. As we have seen, when Jews and Muslims were involved in commercial affairs they nearly always went to the sharī‘a court for whatever legal matters might arise—including notarizing contracts and adjudicating disputes. Nonetheless, Muslims did at times make use of batei din as notary publics, engaging sofrim to notarize their legal contracts with Jews for transactions like property sales, leases, and bills of debt. (I have never come across a case of Muslims using Jewish courts for an intra-Muslim matter.) An Ottoman historian has noted instances of Muslims using Jewish courts in passing,
but for the most part this is a heretofore forgotten aspect of the history of the Islamic world. muslims’ choice to ignore the prevailing jurisdictional boundaries challenges accounts of law in the Islamic world that reduce law to its Islamic iteration and ignore the legal pluralism which was relevant to all members of society, including Muslims.

Muslims mostly appeared in Jewish courts in order to notarize the sale or lease of real estate to or from Jews. Muslims’ choice to sometimes draw up documents attesting to their real estate transactions with sofrim rather than ‘udūl in some ways mirrors Jews’ decisions to register their intra-Jewish property transfers with ‘udūl rather than sofrim. As discussed above, it is possible that the particular nature of real estate made Moroccans, both Jewish and Muslim, want to have all their bases covered by obtaining proof of ownership in both legal systems. One Muslim in particular, named Abū Bakr al-Ghanjāwī, went to the beit din on a number of occasions to register his acquisitions of real estate in the millāḥ of Fez. Al-Ghanjāwī was almost certainly interested in acquiring these properties as investments; it is nearly unthinkable that a Muslim like him would have lived in the millāḥ. Rather, he probably rented out the properties to Jews, thus earning monthly returns on his investment. On January 16, 1889, al-

---

54 Marcus, *The Middle East on the Eve of Modernity*, 109. Similarly, I have not come across detailed discussions of Christians using Jewish courts in Europe, though there is evidence that Christians went to batei din both for matters involving Jews and for intra-Christian cases: see, e.g., Assaf, *Batei ha-din ve-sidreihem*, 16-17.

55 J. Goulven mentions briefly that some Muslims preferred to adjudicate their disputes with Jews in batei din, but does not examine this phenomenon in detail: J. Goulven, *Traité d’économie et de législation marocaines* (Paris: Librairie des sciences économiques et sociales, 1921), 15, fn 1.

56 Of the nineteen documents concerning Muslims’ appearance in Jewish courts which I found, fourteen of these concerned the buying or leasing of real estate.

57 Al-Ghanjāwī was a British protégé, worked for the British Legation in Tangier, and began life as a camel driver (which indicates his humble origins). On al-Ghanjāwī, see Ben-Srhir, *Britain and Morocco*, 171.

58 After 1912, when the French decreed that Jews could own property and live outside of the millāhs, there were instances in which Muslims moved into formerly Jewish quarters; however, as far as I know this was unheard of in the pre-colonial period.
Ghanjāwī bought a building with a courtyard (ḥatzer) from Avraham Nahmiash, his wife Ḥavivah, Avraham’s brother David, and David’s wife Esther—and notarized the bill of sale in a Jewish court. On April 9 of the same year, al-Ghanjāwī bought another building from Jews, again with a bill of sale in Hebrew. He would return to the beit din to register at least three more bills of sale between 1889 and 1908. It is possible that he was also having these contracts drawn up simultaneously in sharī’a courts, but that those documents are lost (or at least not available in the archives). We do know that on other occasions al-Ghanjāwī used the sharī’a court to register his real estate transactions with Jews. For instance, on November 1, 1892, he sent his representative (nā’ib), a Jew named Dasān b. al-Qara’, to buy four rooms in a house in the millāḥ of Fez from a Jewish woman and her two children, and had this sale notarized by ‘udūl. Yet it is also possible that al-Ghanjāwī considered notarization by sofrim sufficient under certain circumstances, and chose the beit din over the sharī’a court for some of his legal needs.

Muslims also used batei din in order to notarize leases, either to or from Jews. In the spring of 1904, Muḥammad b. Ḥamu leased three upper rooms in the millāḥ of Marrakesh to Yeshu’a Corcos, the shaykh al-yahūd of the community, for two years. On March 26, 1912, Yosef Ḥazan b. Shlomo agreed to rent a room in a small house to Muḥammad b. Muḥammad b. Mulūd for thirteen months starting from April 18 (which corresponded to the first of Iyar), for

59 DAR, Yahūd, 14 Shvat 5649.
60 DAR, Yahūd, 8 Nisan 5649. It is possible that a document in Arabic from April 18 in which the same Jews (Massan (?) b. David and his wife Zahra) sold al-Ghanjāwī a courtyard is simply a reiteration of this earlier sale but in an Islamic court. However, the first sale was for 600 duoros while the second sale was for 300 riyāls: see DAR, Yahūd, 17 Sha’bān 1306.
61 DAR, Yahūd, 10 Ḥeshvan 5653; 1 Iyar 5668; and one document with no date.
62 DAR, Yahūd, 10 Rabī’ II 1310. The nā’ib’s name is difficult to read, but it appears to be Dasān.
63 For other instances in which Muslims notarized their real estate sales in batei din, see: University of Alberta, Bension Collection, Ms. 14 (described in Aranov, Catalogue of the Bension Collection, 44), Nisan 5517; UL, Or.26.543 (2), 15 Av 5624; Or.26.544, 27 Shvat 5645, 5 Nisan 5664, and 18 Adar 5670; CAHJP, MA/P/12, Shvat 5517; PD, Shvat 5556.
64 UL, Or.26.544, 10 Iyar 5664.
the sum of three duoros per month. Again, presumably these lease contracts could have been registered just as easily in a sharī‘a court; as we saw in the previous chapter, Jews like the Assarafs had ‘udūl notarize their lease contracts with Muslims. Yet Muslims like Muḥammad b. Mulūd and Muḥammad b. Ḥamu went to sofrim instead. What is particularly interesting about these leases is that even though they were between Jews and Muslims, they followed the Jewish practice of starting a lease from the Jewish month of Iyar, which falls in the spring. This suggests that by notarizing their lease contracts with sofrim, Muslims were not only entering into the world of Jewish law, but also that of Jewish custom. At least in the world of real estate rentals, both the legal and commercial customs of the millāḥ were applied not only to Jews but to Muslims as well.

Beyond real estate transactions, Muslims also notarized debts owed to or by Jews with sofrim instead of ‘udūl. For instance, on July 10, 1908, Sulṭana bat David b. David u-Yosef b. Sulaymān lent eight Hasanī duoros to the Muslim Ḥamad Zarīgī al-Falālī, which Ḥamad agreed to pay back at the rate of 2 pesetas per week. There were also cases in which Muslims who lent money to Jews had these debts recorded in Hebrew in a beit din. The notarization of bills

---

65 JTS, Box 2, Folder 3, 8 Nisan 5672.
66 For more lease contracts among Jews and Muslims notarized by sofrim, see: UL, Or.26.543 (2), 4 Iyar 5656; Or.26.544, 10 Iyar 5664 (the same document is also found, in the original, in the Yale collection); JTS, Box 2, Folder 3, 17 Kislev 5673.
67 Three of the four documents recording Jewish-Muslim lease contracts notarized by sofrim started in Iyar: JTS, Box 2, Folder 3, 8 Nisan 5672 and 17 Kislev 5673; UL, Or.26.543 (2), 4 Iyar 5656. One started in Sivan, the following month: UL, Or.26.544, 10 Iyar 5664. For the custom among Jews of renting properties starting from the month of Iyar, see, e.g., the record book in which Shalom Assarraf recorded the contracts of lease to Jews for his properties in the millāḥ of Fez, drawn up from the summer of 1903 to the winter of 1904 (in PD). The vast majority (if not all) of the lease contracts start in the month of Iyar.
68 JTS, Box 3, Folder 3, 11 Tammuz 5668. For another bill of debt involving a Muslim but drawn up by sofrim, see UL, Or.26.544, 6 Shvat 5658.
69 YBZ, 280, 6 Muḥarram 1234. This document concerns a dispute between Shlomoh b. Menāḥem b. Wafīd, from Rabat, and the Muslim ‘Abdallāh Ammār al-Mamnūn. Shlomoh claimed that ‘Abdallāh owed him money on outstanding debts; as part of the settlement, ‘Abdallāh “also allowed [Shlomoh] to collect some debts he [presumably ‘Abdallāh] was owed by Jews, some recorded in documents written in Hebrew and others not recorded in documents (kāma adhinahu an yaqbiḍa lahu [sic] duyūnā kāna lahu ‘alā aqwāmi minhā mā huwa bi-rusūmī bi-khāṭṭi ahli al-dhimmati wa-minhā mā huwa bi-ghayri rusūmī).” Although the pronouns are somewhat ambiguous
of debt among Jews and Muslims by sofrim is perhaps even more surprising than that of real
estate transactions, given the frequency with which Jews had ‘udūl notarize their documents
attesting debts owed by Muslims. While real estate had a somewhat special status giving rise to
exceptional notarization practices, inter-religious debts, on the other hand, were regularly
notarized in sharī‘a courts (as indicated by the hundreds of bills of debt which the Assarrafū had
notarized by ‘udūl, discussed in the previous chapter).

In many cases there is no obvious reason why Muslims had their bills of sale, lease, or
debt drawn up by sofrim. As we have seen, sales, leases, and debts among Jews and Muslims
were regularly notarized by ‘udūl according to Islamic law. Perhaps the choices of someone like
al-Ghanjāwī—a Muslim who invested in property in the millāh—stemmed from his desire to be
able to produce bills of sale notarized according to Jewish law in the event that the property was
contested in a Jewish court. Of course, it would seem that a Muslim would be able to bring any
dispute in which he was involved to a sharī‘a court, and thus that a document notarized by ‘udūl
would suffice. Yet there might have been advantages to adjudicating such questions in a Jewish
court. Perhaps some Muslims had close relations with the dayyanim presiding over the local beit
din and felt that these ties would help them get a more favorable ruling than they might find in a
qāḍī’s court. It is also possible that certain batei din had reputations for being easily corruptible
with bribes, and that Muslims turned Jewish judges’ immorality to their own advantage.70

Sometimes the motives of Muslims who availed themselves of the services of Jewish
courts were very clear, such as when they wanted to take advantage of a legal device that existed

in the Arabic text, I believe the only sensible interpretation is one in which ‘Abdallāh was owed money by Jews—
debts which were recorded in Jewish legal documents—and allowed Shlomoh to collect these debts on his behalf as
part of the payment of the outstanding debt.
70 There is evidence that Jews in the medieval period turned to sharī‘a courts which they knew were easily
corruptible (see Goitein, *A Mediterranean Society*, v. 2, 365), and it seems plausible that batei din functioned
similarly at times.
only in Jewish law. This happened in Morocco with ḥaẓaqot (s. ḥaẓaqah), the usufruct rights to real estate. One could own the ḥaẓaqah on a piece of real estate separately from the ownership of the real estate itself. While ḥaẓaqot were originally designed to keep the occupants of certain properties Jewish, in Morocco they had evolved to guarantee the owner of the ḥaẓaqah usufruct rights to the property in question. In a case in which one person owned a building itself and another owned the ḥaẓaqah, a tenant would pay rent to both the owner of the building and the owner of the ḥaẓaqah. Ḥaẓaqot functioned much like their Islamic equivalents zīna and jalsa (although these were only attached to ḥubs properties). However, a ḥaẓaqah did not replace a zīna or a jalsa; on the contrary, a single building could have both a ḥaẓaqah and the Islamic version of usufruct rights simultaneously, each owned by a different person.

Owning a ḥaẓaqah could be a lucrative investment, much like owning property. Because ḥaẓaqot did not exist in Islamic law, if a Muslim wanted to invest in a ḥaẓaqah he had to acquire it through a beit din. However, things were not quite so simple from the rabbis’ point of view. According to Jewish law, only Jews were allowed to acquire a ḥaẓaqah, since the entire premise of this legal instrument was to keep property in Jewish hands. In a collection of responsa (teshuvot, s. teshuvah) published in 1812, Avraham Qoriaṭ discussed the problem posed by the sale of a ḥaẓaqah to a non-Jew. Although Qoriaṭ admitted that technically speaking it was impossible to sell a ḥaẓaqah to a Muslim, he ultimately ruled that Jews must uphold such sales:

But when there is [a question of] defaming God’s name we let the matter drop, so that one would not say that if a Jew came with a Muslim to be judged it would be said to the

---

73 Abribat, “Les contrats de quasi-aliénation,” 143. The article discusses Tunisia in particular, but it seems likely that the same situation also existed in Morocco.
74 Avraham Qoriaṭ, Zekhut ‘Avot (Piza: 1812), Number 80, 47a-48a.
Muslim that in your law one does not buy a ḥazaqah, and thus the ḥazaqah is still in the hands of [the] Jew, and he has usufruct rights, [such that] it is found, God forbid, that Jewish courts deceive Muslims by writing them false bills of sale that do not have any legal value…. God forbid that Jewish judges should elicit such words from their mouths. Rather, on the contrary, we are obligated to uphold the claim of the Muslim [literally, strengthen his hand] who bought [the ḥazaqah] and to uphold his transaction in order to strengthen the great religion [Judaism] and exalt it, such that all the nations will know that “the Remnant of Israel do not commit any wrong,”75 and this is not out of [fear of] the Muslims’ violence but rather so that, God forbid, the Holy Name will not be defamed.76

In other words, Qoriat ruled that batei din must recognize sales of ḥazaqot to Muslims even though such sales were illegitimate according to Jewish law. This was in order to prevent the bad image of Jewish courts which would result from having Muslims think that they wrote “false bills of sale.” Althgouh Qoriat claims that his ruling has nothing to do with fear of “the Muslims’ violence,” I suspect that this actually did factor into his decision. Jews in Morocco were in a weak position relative to their Muslim rulers, and risked retaliation or worse if they were perceived to be deceiving Muslims. Although it is not clear to what extent Qoriat’s view of the situation was shared by other Moroccan jurists, this teshuvah demonstrates how Jewish legal authorities faced the realities of being a minority and administering batei din in the context of an Islamic society.77

Indeed, we find legal documents showing that Muslims did successfully buy ḥazaqot from Jews. Abū Bakr al-Ghanjāwī, whom we encountered earlier buying real estate in a Jewish court, also invested in ḥazaqot on properties in the millāḥ of Fez.78 We also find the same Muḥammad b. Ḥamū we encountered earlier buying the ḥazaqot on three upper rooms (‘aliyot)

75 She‘erit Yisrael lo ya‘asu ‘avlah (Zephaniah 3:13).
76 Qoriat, Zekhut Avot, 48a.
77 More research on the teshuvot literature from nineteenth-century Morocco, while beyond the scope of this dissertation, might help determine how other rabbinic authorities viewed this question.
78 DAR, Yahūd, no date. (This document, in Hebrew and signed by sofrim, attests to the fact that David al-Falatz sold a ḥazaqah on a courtyard to al-Ghanjāwī; the portion preserved in the DAR is clearly part of a longer document, as the date given is “the above date,” but unfortunately the first part of the document is not preserved.)
in the millāḥ of Marrakesh on April 25, 1904. Muḥammad bought the rooms and their ḥāzaqot from the Jew Yitzḥaq b. Masʿūd Paṭlon and immediately rented all three to Yeshuʿa Corcos (attested in a document notarized by sofrim). Clearly, Muḥammad had bought both the rooms and their ḥāzaqot as an investment.

Even Muslims who were not buying or selling the ḥāzaqah on properties in the Jewish quarters were certainly aware of their existence. For instance, a Muslim (whose name is illegible) in commercial relations with Yeshuʿa Corcos wrote him a letter concerning a house that he owned in the millāḥ of Marrakesh. This Muslim landlord wanted Yeshuʿa to find someone to rent the house for him, but he did not want anyone to claim the ḥāzaqah on the property. As he explained to Yeshuʿa: “If you find that [the representative of Ibn Sūsān—presumably a rival] claims the ḥāzaqah on [the property] and you are totally unable to prevent him from doing so, then inform us [about it] so that we know what to do.” We do not know why this Muslim did not simply buy the ḥāzaqah outright, or who its rightful owner was. Yet we do know that this Muslim was aware of the existence of a ḥāzaqah on the property and wanted to make sure it did not fall into the wrong hands.

---

79 Yale, 10 Iyar 5664. See also a copy of this document in UL, Or.26.544.
80 Additionally, it seems that Yeshuʿa rented the rooms as an investment, since less than a month later he sublet them to Yahya b. Eliyahu al-Zaraʾ (although the contract of sub-lease seems to indicate that Yahya was paying the same amount of rent that Yeshuʿa paid, which makes it unclear how Yeshuʿa profited from the investment): see the document immediately below the original lease dated 4 Sivan 5664. In the end, however, it seems that Muḥammad’s purchase was controversial; ten days later the previous owner of the rooms, Yahya b. Eliyahu al-Zaraʾ, testified that he had sold the ḥāzaqot on the properties to Yitzḥaq, who had sold them to Muḥammad, and that Muḥammad was indeed the owner of the ḥāzaqot—implying that his ownership had been questioned (Yale, 20 Iyar 5664; in the UL collection, this document is copied on the same page as the other two documents).
81 UL, Or.26.543 (2), ?? to Corcos, 15 Rabi’ I 1320.
83 See also David Cazenés, *Essai sur l’histoire des Israélites de Tunis ; depuis les temps les plus reculés jusqu’à l’établissement du protectorat de la France en Tunisie* (Paris: A. Durlacher, 1888), 112. Cazenés wrote: “La plus extraordinaire dans cette combinaison est que les musulmans propriétaires finirent par reconnaître le droit de Hazzaka et par s’y conformer.”
Given the extent to which the Jewish and Islamic legal systems in Morocco overlapped, we should not be surprised to learn that Muslims at times chose batei din over sharī‘a courts. Nonetheless, the interests and presumptions of Jewish and Islamic history respectively have largely obscured these kinds of overlaps in the legal history of Jews and Muslims. The model of legal pluralism, however, easily accommodates these kinds of jurisdictional overlaps; for those familiar with legally pluralist situations elsewhere, the fact of Muslims going to Jewish courts might in fact seem quite ordinary. This perspective can be refreshing and helpful in changing the way we think about law and religious minorities, not only in Morocco but throughout the Islamic world.

Jewish Law in Sharī‘a Courts

Fundamentally, the phenomenon of Jews crossing jurisdictional boundaries arose from the fact that the various legal orders at work in Morocco were at least to some extent mutually exclusive. In particular, evidence drawn up in Hebrew according to Jewish law was technically inadmissible in a sharī‘a court; for a Jew to present a qāḍī with a contract signed by sofrim was not so different from presenting an informal note without any notarization whatsoever, since Jewish legal documents did not carry any inherent legal weight.84

Nonetheless, Morocco’s sharī‘a courts did not entirely reject Jewish law as invalid or irrelevant to the practice of Islamic law. Many sharī‘a court documents indicate that qāḏīs were

---

84 The best indications of how sharī‘a courts responded when faced with evidence that was not drawn up according to Islamic legal standards comes from the consular courts records. When foreign subjects or protégés tried to present evidence drawn up in consular chanceries or Jewish courts during disputes being adjudicated in a sharī‘a courts, their non-Islamic legal documents were dismissed. The fact that the main evidence for the inadmissibility of Jewish legal documents in Islamic courts comes from consular archives is almost certainly because most Moroccan Jews would not have bothered to bring legal documents that had not been notarized by ‘udūl to sharī‘a courts, knowing they would be rejected. Foreigners, on the other hand, were unfamiliar with Islamic legal procedure, and might have done so out of ignorance. (I discuss the inadmissibility of non-Islamic legal documents in sharī‘a courts at greater length in Chapter Eight, but see especially MAE Nantes, Tanger B 461, Emsellem v. Roffē, 1904.)
aware of Jewish law and sometimes took it into account in their decisions. There is even
evidence to suggest that Makhzan courts—though not necessarily sharī‘a courts—at times
disregarded the invalidity of Jewish legal documents and in fact accepted them as evidence.
Similar observations have been made concerning sharī‘a courts in the Ottoman Empire, though
more research remains to be done on this question.85 Certainly, the extent to which Islamic legal
institutions knew about and even recognized Jewish law as valid is vital to understanding the
intersecting and overlapping nature of Jewish and Islamic law in Morocco.

It is not surprising that some qāḍīs were aware of the existence of a parallel Jewish legal
system and even referred to it in their judgments concerning Jews. Yet the extent of this
awareness and how it affected the application of Islamic law in Morocco remains unclear. One
case, from the spring of 1856, demonstrates that Muslim legal authorities knew about the
existence of ḥazaqot in Jewish law.86 The resulting legal document—notarized by ‘udūl—
records a sale of part of a house in Tetuan by a Jew, Shū‘a (Yeshu‘a) b. Yūdhā (Yehudah) Lībī
(Levi) to a Muslim, Aḥmad b. Aḥmad al-Razīnī.87 The sale included the following clause:

The seller, the aforementioned Yeshu‘a, excepted the buyer from the ḥazāqah practiced
by the dhimmīs, such that the aforementioned sale does not include it [the ḥazaqah] for
him who was mentioned [ie the buyer], and does not apply to him; rather, it remains his
[seller’s] property, which he rightfully owns, part of his property, according to the
custom (‘urf) of the dhimmīs, as a complete exception.88

In other words, although Yeshu‘a sold Aḥmad part of a house in Tetuan, he did not sell him the
ḥazaqah on the house. One would not expect ownership of the ḥazaqah to be mentioned in an

85 Cohen, Jewish Life under Islam, 124. Cohen notes that most of the Jewish documents accepted as evidence in
sharī‘a courts were marriage contracts, but that at times bills of debt and other commercial contracts were also
accepted.
86 PD, 2 Rajab 1272.
87 On the al-Razīnī family, see Ḥajjī, Ma‘lamāt al-Maghrib, v. 13, 4326-8. On Aḥmad al-Razīnī, see ibid., 4328.
88 Wa-istathnā al-bā‘i Shū‘a [sic] al-madhkhūru min mabī‘ihi al-madhkhūri al-hazāqa al-ma‘yū‘a ‘inda ahli al-
dhimmati bi-ḥaythu lā yashmaluhā al-bay‘u al-madhkhūru li-man dhukira wa-lā yansaḥib ‘alayhā bal lā zālat [sic]
fi mulkihi māla‘ min mālihi wa-mulkan šāfi‘i kan khāliṭan min jumlati amlākihi ‘alā ‘urfī ahli al-dhimmati istithnā‘ an
tāmman.
Islamic legal document at all, since according to Islamic law there was no such thing as a ḥazaqah. Yet this document not only recognized the existence of a ḥazaqah, but officially notarized the fact that the ḥazaqah remained in the hands of the Jewish seller. It was signed by two ‘udūl and a qāḍī, all in the presence of al-Razīnī, \(^{89}\) suggesting that the qāḍī knew about the clause exempting the ḥazaqah from the sale. Were the qāḍī’s signature absent, one could argue that the ‘udūl had simply agreed to draw up a somewhat unorthodox document without full knowledge of what Islamic law would have to say about the matter. Presumably, however, the qāḍī was aware that Islamic law did not recognize the existence of something called a ḥazaqah and yet decided to notarize the document anyway.

Sharī‘a courts also tacitly recognized and reinforced Jewish law in their reliance on rabbis as expert witnesses. \(^{90}\) We have already seen this in the cases in which Jews who had arrived at inheritance agreements in a Jewish court notarized these agreements in a sharī‘a court as well. For instance, when Shalom Assarraf passed away, his three sons had ‘udūl draw up a document confirming the inheritance division. \(^{91}\) A prominent dayyan, Vidal ha-Tzarfati, came and testified “that [Shalom’s] heirs are his three sons, the full brothers Ya‘aqov, Yehudah, and the bachelor Moshe—[and that Shalom] has no other heir according to their religion (fi millatihim).” \(^{92}\) Ha-Tzarfati was described in this document as one of “the religious experts (asāqifā) of the Jews who know which Jews inherit and which do not according to their religion.” In this and in other such inheritance cases, the qāḍī and ‘udūl drew upon the expertise

---

\(^{89}\) This is a somewhat exceptional addition since most legal documents did not specify that either of the parties to the contract was present; perhaps it reflects the unusual nature of the document.


\(^{91}\) TC, File #3, 5 Ṣafar 1336.

\(^{92}\) *Al-‘ārifin bi-man yarithu min al-yahūdi mimman lā yarithu minhum fī millatihim.*
of a rabbi to determine the proper division of inheritance according to Jewish law. The purpose of the document was precisely to create a record according to Islamic law of what Jewish law had ruled in a particular case. While the qāḍī was not familiar with the relevant halakhah himself, he did know whom to summon to provide that information.

In fact, rabbis served as expert witnesses in cases concerning a range of matters. In the summer of 1909, a rabbi was involved in the sale of real estate among Jews in Fez. Shmuel b. Moshe Būṭbūl and his nephews Maymon and Shlomoh wanted to sell part of a house in the millāḥ to Benjamin b. Moshe b. Samḥūn, and had a bill of sale drawn up in a sharī‘a court. As part of the proceedings, “al-ḥażān Shlomoh b. al-ḥażān Moshe b. Danan came and confirmed that the sellers owned the property in question, and that [their ownership] was established in their [law] through what establishes ownership for the dhimmīs in their religion (millatihim) and according to their custom (‘urf).” Again, this document—also signed by two ‘udūl and a qāḍī—drew on the expertise of a rabbi to confirm what was proper according to Jewish law, and then notarized this contract according to Islamic law. The issue at hand in this case was whether Shmu’vel, Maymūn and Shlomoh were in fact the owners of the property in question, and thus whether they had the right to sell it to Benjamin. Rather than ask for Islamic legal documentation concerning their ownership, the qāḍī instead summoned a rabbi to confirm that the three sellers were indeed the true owners according to Jewish law.

A possible explanation for the recognition of Jewish law in Islamic legal documents stems from the place of custom in Islamic law. Custom (‘urf) was not formally considered one

---

93 For another instance of using a rabbi as an expert witness in an inheritance case, see JTS, Box 2, Folder #7, 24 Dhū al-Ḥijja 1330.
94 PD, 12 Jumādā II 1327.
of the sources of jurisprudence (uṣūl al-fiqh) during the formative years of Islamic law.

Nonetheless, custom played an important role in Islamic jurisprudence and by the early-modern period was often recognized as a de facto source of law. In early modern Morocco, custom and judicial practice (‘amal) were especially central to the development of Mālikī jurisprudence. This is relevant to understanding how Jewish law and legal documents fit into Islamic legal practice because custom could be particular to communities, such as the customary laws of guilds or merchants. It seems that in this instance, the qāḍī treated Jewish law as a form of customary law particular to a specific group. Scholars have yet to explore in detail whether non-Muslim law was consistently considered a form of customary law in Islamic jurisprudence.

The evidence from the legal documents I have examined here suggests that this may be a clue to understanding the ways in which Islamic judicial authorities approached Jewish law in Morocco. I have yet to find instances in which a qāḍī actually relied on Jewish legal documents as evidence in a sharī‘a court, although it is clear that Makhzan officials presiding over state courts did at times rely on evidence drawn up according to Jewish law. For instance, in 1847 a Jew named Ya’aqov b. Halīl was accused of being in possession of contraband wax. The umanā’ (customs officials) of Rabat/Salé had contacted the English consul, a Jewish protégé named Ibn

---


98 See, e.g., idem, al-‘Urf wa-‘l-‘amal, 99; Marcus, The Middle East on the Eve of Modernity, 104-5; Frank H. Stewart, “‘Urf,” in Encyclopedia of Islam, ed. P. Bearman, et al. (Leiden: Brill, 2003), 888. This is derived from the legal maxim al-ma’rūfu ‘urfan ka-‘l-mashrūṭ shartan (“what is known as customary is as binding as a condition in a contract,” on which see, e.g., ‘Abd al-Wahhāb Khallāf, Maṣādir al-tashrī‘ al-Islāmī fīmā lā naṣṣa fihi (Kuwait: Dār al-qalam, 1972), 146-7). I am grateful to Professor Hossein Modarressi for his help on this subject.

99 In addition to the documents discussed above (PD, 2 Rajab 1272 and PD, 12 Jumādā II 1327), see JTS, box 2, folder #7, 24 Dhū al-Ḥijja 1330 for an example of referring to Jewish law as ‘urf.

‘Aṭṭār, in order to find out who was the owner of the contraband. Ibn ‘Aṭṭār proved to the umanāʾ that it belonged to Yaʿaqqōv by producing a document written in Hebrew.101 Although there is no precise record of the trial, it seems that the evidence was enough to convict Yaʿaqqōv of smuggling; certainly the discussion of the case did not call into question the fact that the evidence was in Hebrew.

Makhzan officials similarly drew upon Jewish legal documents in their investigations into Jews’ petitions concerning abuse at the hands of their Muslim administrators. In the summer of 1864, the Jews of Demnat complained about mistreatment by their governor. A Makhzan official charged with resolving the case included the testimonies of two Jews from Marrakesh who had witnessed instances of abuse which were drawn up in Hebrew and, presumably, according to Jewish law.102 In fact, Makhzan officials even used Jewish legal documents in their complaints about the misdeeds of their Jewish charges. In 1881, the governor of Marrakesh wrote to the sultan Mawlāy Ḥāasan complaining about Jews who had broken the dhimma contract through various abuses.103 Among the legal documents the governor sent to the sultan as proof of his claims, he included a document in Hebrew—presumably signed by sofrim and drawn up according to Jewish law.104 When relying on evidence in Hebrew, Makhzan courts engaged Jews to read the documents and translate them (apparently viva voce, since there

101 This document had both Yaʿaqqōv’s signature as well as the identifying mark which the umanāʾ had found on the contraband. For more instances of reliance on Jewish legal documents, see DAR, Demnat, Ahmad b. Muḥammad al-Murābī to Muḥammad b. al-ʿArabi (possibly al-Tūris), 22 Shawwāl 1302; DAR, Marrakesh, 24807, Muḥammad al-Hāḍī b. ʿAbd al-Nabī al-Ṭāṣi to Mawlāy Ḥāṣan, 20 Ṣafar 1309; DAR, Yahūd, al-Ḥājj Muḥammad b. al-Jilālī to Ahmad b. Muḥammad b. al-ʿArabi Tūris, 13 Rajab 1323.
102 DAR, Demnat, al-Ṭayyīb al-Mayānī to Muḥammad Bargāsh, 30 Muḥarram 1281.
103 DAR, Marrakesh, 5605, Ahmad Amālik to Mawlāy Ḥāṣan, 13 Jumādā II 1298.
104 See also DAR, Yahūd, 10 Iyar 5671; this is a Jewish legal document which includes testimony about the robbery of a funduq belonging to a Jew. Although the document itself does not indicate that it was used as evidence in a Makhzan court, the fact that it ended up in the Makhzan archives suggests that it might have been relied upon by a Makhzan official. This is especially plausible considering how few Jewish legal documents wound up in the Makhzan archives, and that most of these documents concern transactions among Jews and Muslims; it seems likely that this Jewish legal document was also preserved in the Makhzan archives because of its connection to Muslims through trial in a Makhzan court.
is no mention of written translations). This system seems to have been relatively informal, probably because the relative rarity of Hebrew documents in Makhzan courts precluded the need for professional translators.¹⁰⁵

There could be a number of different explanations for why Makhzan courts sometimes deemed Jewish legal documents legitimate evidence. Perhaps the fact that Makhzan courts did not follow the procedural and evidential requirements of Islamic law as carefully as did sharī‘a courts made it possible for Makhzan judicial authorities to draw on extra-legal material. Another possibility is that sharī‘a courts did accept Jewish legal documents as evidence on exceptional occasions, although rarely enough that I have not found any records of this practice. Either way, it is clear that Islamic judicial authorities—including both qādīs and Makhzan officials—were aware of Jewish law and even at times understood rather complex aspects of halakhah, such as the existence of ḥazaqot. The fact that Jewish law inserted itself into the legal proceedings of sharī‘a courts demonstrates yet another way in which the two legal systems did not only function alongside each other, but were entwined together in a complex web of overlapping jurisdictions and legal practice.

*   *   *

When Shalom Assarraf’s sons went to the sharī‘a court to notarize the division of their father’s estate at which they had arrived according to Jewish law, they were in some ways making an unusual choice. The jurisdictions assigned to Jews and Muslims gave the Assarraf brothers the right to adjudicate matters such as inheritance strictly within the Jewish legal system, with Jewish notary publics and Jewish judges. A sharī‘a court had no place in resolving how Jews inherited from one another. Yet when understood in the broader context of Jews’ and

¹⁰⁵ See DAR, Demnat, al-Ṭayyīb al-Mayānī to Muḥammad Bargāsh, 30 Muḥarram 1281, which discusses the need to find someone to read the Hebrew documents in question.
Muslims’ jurisdictional boundary crossings, the fact that the Assarraf brothers brought such a matter to a šārīʿa court was not all that unusual. Given the extensive evidence that Jews at times elected to use šārīʿa courts for their legal dealings with other Jews, the Assarraf’s choice to notarize their inheritance agreement in both courts fits into a broader pattern of how Jews used Islamic legal institutions.

The fact that Jews and Muslims at times elected to cross jurisdictional borders is not surprising given what we know about legally pluralist contexts across time and space. In situations in which different jurisdictions overlap and even compete to some extent, individuals learn to navigate their various legal options in ways that fit their needs. In Morocco, Jews knew that having certain kinds of intra-Jewish contracts notarized in šārīʿa courts (or in both batei din and šārīʿa courts) was at times advantageous. Even Muslims sometimes took advantage of Jewish courts, such as when they wanted to profit from a legal arrangement which only existed according to Jewish law. Yet shopping among different forums was not the only result of the existence of multiple legal orders in Morocco. Additionally, Jews could notarize documents in šārīʿa courts which merely summarized the ruling of a beit din on a given matter, and qāḍīs at times relied on rabbis as expert witnesses concerning Jewish law. While forum shopping in the Moroccan context should not be surprising to anyone familiar with legally pluralist societies, the extent of legal convergence among the Jewish and Islamic legal orders is more unexpected. Further research on the interactions among different legal orders in Islamic societies is necessary before it is possible to determine how unusual Morocco was in this respect.
Chapter Four: The Role of the Makhzan in the Moroccan Legal System

The Assarrafs were clearly successful businessmen, attested to by the significant wealth they amassed and the numerous commercial endeavors in which they took part. Much of this success stemmed from their ability to sell goods on credit and subsequently collect the money they were owed. As we have seen, when Shalom and Ya‘aqov sued someone in a sharī‘a court, they almost always did so in order to reclaim unpaid debts. While at times suing their debtors before the qādī was sufficient, in other instances collecting payment required further action on the part of the Assarrafs.

Enter the Makhzan; when Jews (and Muslims, for that matter) were unable to resolve their legal disputes at the local level, many turned to the central government for help. The Assarrafs were no different; if they failed for whatever reason to collect their debts even with the threat of litigation in a sharī‘a court, they at times chose to write to the Makhzan asking for its intervention. Over the course of three years (from March 20, 1890 to 12, 1893) the Ministry of Complaints recorded no less than seventeen items of correspondence concerning Ya‘aqov Assarraf’s appeals to the Makhzan to help him settle his outstanding debts.¹

Sometimes Ya‘aqov’s appeals to the central government paid off rather quickly; once the Makhzan had instructed its local officials to settle Ya‘aqov’s debts, many wrote back to report

¹ Because of the nature of the Ministry of Complaints records (discussed below), it is impossible to know how many times Ya‘aqov wrote to the Makhzan asking for its intervention. The seventeen items of correspondence are letters written by twelve different local Makhzan officials back to the Minister of Complaints concerning instructions they were given in response to Ya‘aqov’s appeals. It is possible that Ya‘aqov submitted only one appeal per local Makhzan official; we can thus surmise that Ya‘aqov submitted between twelve and seventeen appeals over three years. Another letter concerns a complaint submitted by Mordekhai Assarraf, Shalom’s brother (BH, K 181, p. 108, 5 Rajab1309). The archives also preserve a letter from Mawlāy Hasan to Sa‘īd b. Farajī, the governor of Fez, concerning a complaint submitted by Shalom Assarraf about outstanding debts he was owed (although the letter refers to Shlūmū (Shlomoh), the fact that the Jew concerned is described as al-Fāsī and is prominent enough to warrant the sultan’s personal attention suggests that this is merely a scribal error): DAR, Fez, 29 Jumādā II 1298.
that they had successfully done so. In March, 1890, a Makhzan official named Ibn al-Shalīḥ reported that Ya‘aqov’s representative (nā‘ib) had come to his region to collect the debts owed to Ya‘aqov and “had been paid in full by the debtors,” after which he “went on his way cheerfully.” Nearly two years later, another official named al-Takānī wrote to say that Ya‘aqov’s representative had collected what Ya‘aqov was owed according to the legal documents he had brought. In one case, a Makhzan official reported that he had summoned the debtor and was waiting for Ya‘aqov to send a representative with the bill of debt so that he could settle the claim. Yet another Makhzan official wrote to say that he had imprisoned one of Ya‘aqov’s debtors—a common method to convince recalcitrant debtors to pay. Clearly, much of the time writing to the Makhzan was enough to ensure that Ya‘aqov’s debts were paid, or at least that steps were taken towards this end.

Naturally, things were not always so simple; often, various complications arose in Makhzan officials’ attempts to make Ya‘aqov’s debtors pay. In a letter from March 20, 1890, the Makhzan official al-Zarārī reported that he had found one of Ya‘aqov’s debtors trying to escape—presumably to avoid paying his debts—and that the other one had died. Two years later, the official al-Dalīmī wrote to say that two of Ya‘aqov’s debtors had successfully fled while the other two had passed away. It was not uncommon for debtors to try and flee to avoid having to pay their creditors; we can imagine that when this happened, Ya‘aqov—being unable to find his debtor, much less bring him to a šarī‘a court—would have asked the Makhzan to intervene in the hope that local Makhzan officials would be able to locate the escapees (as al-

---

2 BH, K 171, p. 16, 28 Rajab 1307 (istawfā min al-ghuramā‘ī... wa-tawajjahu li-hālihi ‘an ṭayyibī nafsīhi).
3 BH, K 181, p. 92, 12 Jumādā II 1309. See also BH, K 181, p. 134, 17 Sha‘bān 1309 and BH, K 181, p. 347, 12 Sha‘bān 1310.
4 BH, K 181, p. 343, 2 Sha‘bān 1310. See also BH, K 181, p. 343, 2 Sha‘bān 1310.
5 BH, K 181, p. 108, 5 Rajab 1309. On imprisonment see Chapter Five.
6 BH, K 171, p. 16, 28 Rajab 1307.
7 BH, K 181, p. 123, 29 Rajab 1309.
Zarārī had). In the case of debtors who passed away, Ya‘aqov was probably unable to confirm whether his debtors were alive without the Makhzan’s help; once he knew they had died, he could pursue their heirs for the outstanding debts. In a rather extreme case, the Makhzan official reported that one of Ya‘aqov’s debtors, one Shaykh al-Ḥilāqī Ibn al-Balāḥ, not only refused to pay, but was harboring other recalcitrant debtors and had driven away the Makhzan’s soldiers who were sent to collect payment. The Makhzan official requested permission to attack the shaykh and to confiscate his goods, presumably in the hopes of recovering the money owed to Ya‘aqov. It is hard to imagine that Ya‘aqov would have been able to convince this shaykh to pay him without the Makhzan’s intervention; while Ya‘aqov may have been a successful businessman and well-versed in the workings of the sharī‘a court, he did not have soldiers and the use of force at his beck and call.

Ya‘aqov Assarraf’s appeals to the Makhzan and Makhzan officials’ resulting efforts to help him collect his unpaid debts demonstrate an important way in which Moroccan Jews—and Moroccans more generally—engaged the central government in their attempts to resolve legal disputes. This section looks at the Makhzan as a legal actor, especially in its role in responding to petitions by Jews regarding their unresolved legal affairs. Historians have yet to address the ways in which Moroccan Jews petitioned the government for redress when they felt that their rights had been violated. Yet before delving into the nature of these petitions and the Makhzan’s response, the present chapter explains the role of the Makhzan in the functioning of

---

9 Ṭāliban al-idhna bi-‘l-harakati lahu wa-‘l-akli li-mutā‘ihi [sic].
10 For the remaining correspondence about Ya‘aqov’s complaints, see BH, K 181, p. 108, 5 Rajab 1309; p. 133, 16 Sha‘bān 1309; p. 150, 9 Ramaḍān 1309; p. 200, 15 Dhū al-Qa‘da 1309; p. 304, 9 Jumādā I 1310; loose sheet, 10 Jumādā I 1310; and p. 352, 23 Sha‘bān 1310.
11 Although Bensoussan does not discuss Jews’ petitions to the government in Morocco in particular, he does briefly address Jews’ petitions elsewhere in the nineteenth-century Arab world. However, he dismisses Jews’ appeals as falling on deaf ears (Bensoussan, Juifs en pays arabes, 35).
the Moroccan legal system more broadly. Such a seemingly basic task is necessary given how little we know about Morocco’s legal history. Understanding how Jews engaged the state to help them address legal matters requires some comprehension of the Makhzan’s legal obligations and capacity.

The Makhzan generally played two kinds of roles in the Moroccan legal system. Locally, Makhzan officials held tribunals whose jurisdictions to some extent overlapped with those of qāḍīs. At the level of the central government, the sultan (and the Makhzan more broadly) acted as a court of appeals. Moroccan subjects, including Jews, could petition the state when they felt that justice had been denied them at the local level in any kind of tribunal—including sharī‘a courts, batei din, and Makhzan courts. In this section, I examine how Jews (and to a lesser extent Muslims) appealed to the Makhzan for judicial redress. While it would be fascinating to look at the functioning of local Makhzan courts, there are very few sources that record the activities of these institutions.12 Evidence about the Makhzan as a forum for appeal, however, is relatively abundant. Understanding the legal responsibilities of Makhzan officials enables us to contextualize how the central government addressed petitions in general, and the origins and functioning of the Ministry of Complaints in particular.

*Makhzan Courts and Sharī‘a Courts*

The existence of extra-sharī‘a tribunals presided over by administrative officials was a feature of many Muslim governments. Although qāḍīs’ jurisdiction theoretically extended to all areas of life, much like the sharī‘a itself, the difficulty of prosecuting criminal cases under

---

12 Moroccan Makhzan courts did not keep written records of their proceedings. Moreover, unlike sharī‘a courts—which issued written legal documents to the individuals involved in a case—Makhzan courts did not seem to produce any sort of written record.
Islamic law meant that most governments supplemented the justice of the qāḍī with that of a local administrative official. In the early modern Ottoman Empire, for instance, governors exercised judicial functions which varied according to time and place. The Makhzan similarly had a network of courts administrated by local officials which in many ways paralleled the courts of Ottoman administrative officials. In Fez, for instance, the pasha’s tribunal (called a mahakma in colloquial Arabic) was situated in Dār Bū ‘Alī, a house in one of Fez’s more prestigious quarters. These courts did not produce any written records of their judgments. In some Berber areas compilations of customary law were written down starting in the nineteenth century and acted as guidelines for local councils whose judicial roles functioned alongside sharī’a courts at the local level. The legal strategies of Jews in these regions deserve further study, but the evidence I found for Jews’ legal appeals to the state comes predominantly from cities where such customary codes were not in force.

It is tempting to link the geographic extent of these Makhzan courts with the older conception of the divide between bilād al-Makhzan and bilād al-sība, which can be loosely

14 There remain many questions about the precise judicial functions of Ottoman governors; nonetheless, it is clear that they had some sort of judicial authority. See, e.g., Eyal Ginio, “The Administration of Criminal Justice in Ottoman Selânik (Salonica) during the Eighteenth Century,” Turcica 30 (1998); Baldwin, “Islamic Law in an Ottoman context,” Chapter 1.
15 Le Tourneau, Fès avant le protectorat, 212. Other personnel working in the pasha’s court included the khalīfa (the pasha’s assistant, or “adjoint”), as well as a number of “mokhzanis” (soldiers) who executed the pasha’s orders and were paid directly by the plaintiffs.
16 This was also true of early modern Ottoman administrators who exercised judicial functions: Marcus, The Middle East on the Eve of Modernity, 114.
17 E. Margot, “Organisation actuelle de la justice à Figuig,” Bulletin trimestriel de la Société de Géographie et d’Archéologie de la Province d’Oran 29 (1909). Margot notes that the jamā’a, or the communal council which exercised many of the functions of a qā’dī, was responsible for all criminal cases, while the qā’dī ruled in civil matters (495). On the interplay of customary and Islamic law in Berber areas, see also Berque, Ulémas, fondateurs, insurgés, 195-6.
translated as the territories under the Makhzan’s control and those “in revolt” (sība) against the Makhzan.\(^\text{18}\) The Makhzan/sība divide has been convincingly challenged by a number of scholars who argue that a rigid separation between Makhzan and sība obfuscates the fluid relationship between the sultan and tribes or regions normally classified as bilād al-sība.\(^\text{19}\) Nonetheless, the presence of Makhzan courts was undoubtedly an important instantiation of the Makhzan’s authority; more research into the functioning of these courts would certainly add to our understanding of the nature and reach of Makhzan rule.

The parallel system of Makhzan courts and sharī‘a courts was reflected to some extent in Jewish legal practice. In some cities, the nagid (or shaykh al-yahūd, the secular head of the Jewish community) administered justice separately from the batei din.\(^\text{20}\) These more informal, administrative courts adjudicated disputes among Jews, levied fines, and imprisoned those guilty of offenses—all without recourse to a formal compilation of custom and without any sort of record keeping. These Jewish administrative courts also deserve more study, though the sources offer very little in the way of clues about their functioning.

An important feature of the relationship among sharī‘a and administrative courts in different contexts was the extent to which the two jurisdictions were never completely demarcated during the early modern period. According to the Ottoman historian Uriel Heyd,\(^\text{21}\)


\(^{20}\) Deshen, The Mellah Society, 53-5. See also a document in Judeo-Arabic from 1816, in which a group of Jews testify that they accept Shmuel b. al-ḥazan ‘Ayīsh as their shaykh, and that Shmuel will have the authority to “judge over big and small, and to imprison (yahkum fi-‘l-kabīr wa-saghīr wa-yusajjin)” (PD, 8 Kislev 5577). The qā‘id of the Jews in Tunisia exercised a similar judicial role: Larguèche, Les ombres de la ville, 353.
“The supreme judicial authority was, at least theoretically, vested in the Sultan himself…. What part each [judicial official] played in fact cannot easily be established. Not until the reforms of the nineteenth century was any attempt made to introduce a clear division of powers, unknown to traditional Islam, between the executive and the judiciary.”

Some scholars have found that Ottoman kadıs (qādis) normally had sole jurisdiction (or nearly so) over even criminal cases, though it seems that there was a fair amount of variation according to place and time.

A similarly loose division of jurisdictions between shari'a courts and Makhzan courts existed in Morocco. A. Péretié, who wrote one of most detailed studies of the Moroccan judicial system before 1912, contrasted the strict division between the judicial and administrative branches in Europe with the “state of anarchy” which reigned in Morocco. Contemporary European observers tended to conclude that the Makhzan tribunals were responsible for criminal cases and some commercial matters, mostly consisting of unpaid debts. Subsequently, the

---

21 Heyd, Studies in Old Ottoman Criminal Law, 208. Heyd notes that theoretically, Islamic law required that administrative authorities only punish and judge when cases were clear cut—otherwise they were supposed to submit the case to a qāḍī. However, this was rarely observed in practice (211). On nineteenth century judicial reforms, see Rudolph Peters, “Islamic and Secular Criminal Justice in Nineteenth-Century Egypt: The Role and Function of the Qadi,” Islamic Law and Society 4, no. 1 (1997); Rubin, Ottoman Nizamiye Courts.

22 Jennings notes that military governors seemingly had little involvement in judicial proceedings in seventeenth-century Kayseri: Jennings, “Kadi, Court, and Legal Procedure,” 162-64. He also observes that in many places during the seventeenth century, the kādis were relatively independent from the rest of the state and that the sultan avoided interfering in the judgments of kādi courts (idem, “Limitations of the Judicial Powers of the Kadi,” 152-3, 65). Michael Hickok observes that governors and kādis had complementary and to some extent overlapping jurisdiction over murder cases in eighteenth-century Bosnia, but that there was a trend to increase the scope of the kādi’s jurisdiction: Michael Hickok, “Homicide in Ottoman Bosnia,” in The Ottoman Balkans, ed. Frederick F. Anscombe (Princeton: Markus Wiener Publishers, 2006), 40, 44. The jurisdictions of the governor and the kādi in early modern Salonica were similarly blurred: Ginio, “Criminal Justice in Ottoman Salonica,” 200. In eighteenth-century Egypt, the pasha’s diwān functioned as a court whose jurisdiction overlapped significantly with that of the local shari'a courts: Baldwin, “Islamic Law in an Ottoman context,” 39-44. Even more interesting is the fact that the Egyptian pasha’s diwān applied shari'a and followed its rules of procedure and evidence (ibid., 44).


24 Maeterlinck, “Les institutions juridiques au Maroc,” 477: Péretié, “L’organisation judiciaire au Maroc,” 516, 24. European observers in the sixteenth century drew similar conclusions: see Fernando Rodriguez Mediano, “Justice, crime et châtiment au Maroc au 16e siècle,” Annales. Histoire, Sciences Sociales 51, no. 3 (1996): 616. Aubin wrote that the Makhzan official was responsible for “all matters that do not enter the province of the religious law” (Aubin, Morocco of To-Day, 216). Louis Mercier is an exception in noting that some criminal cases were judged by qādis: “La compétence du qāḍī, en tant que juge, est des plus étendues ; toutefois, il ne juge, en matière de simple police et en matière criminelle, que les causes que le qāḍī veut bien lui confier” (Louis Mercier, “L’administration
relatively scant work on the legal history of nineteenth-century Morocco has tended to echo this view—that is, that Makhzan courts presided over all criminal and some commercial cases.\textsuperscript{25}

The evidence from the Makhzan archives, and especially the Ministry of Complaints records, suggests that it would be a mistake to impose any strict division of jurisdiction between sharī‘a courts and Makhzan courts. Rather, criminal cases such as theft and murder were dealt with by both Makhzan officials and sharī‘a courts. Similarly, the sultan often sent cases of debt—which earlier scholars agreed were largely under the purview of the qā‘ids—to be settled by a qāḍī. Some cases ended up first in one kind of court and then in another.\textsuperscript{26} Although the sources do not permit conclusive statements about the exact role played by Makhzan courts, it is clear that the fuzziness separating Makhzan and qāḍī courts was even more pronounced than scholars have indicated. Perhaps the best understanding we can reach of the state’s role in the Moroccan legal system is that many types of cases, both civil and criminal, could be brought before both sharī‘a and Makhzan courts.\textsuperscript{27}

marocaine à Rabat,” Archives Marocaines 7 (1906): 394). Rober-Raynaud similarly claimed that while the Makhzan courts had jurisdiction over criminal affairs, individuals could always request to be judged in a sharī‘a court—a request which could not be refused: Rober-Raynaud, “La justice indigène au Maroc,” Renseignements coloniaux 35 (1925): 582.


\textsuperscript{26} See, e.g., FO, 174/221, 15 July 1849 (concerning a Jew named Abram Bensadon who was initially imprisoned by the pasha, released, and then subsequently summoned by the qāḍī and sentenced to prison once again); DAR, Fez, 12 Rabī‘ II 1301 (a legal document which explains that the case at hand was originally brought before the pasha, and then subsequently before a sharī‘a court).

\textsuperscript{27} The relationship between the Makhzan as a judicial authority and sharī‘a courts in some ways relates to the debate in Moroccan historiography concerning the relationship among ‘ulamā‘ (religious scholars) and the Makhzan. (See especially Jacques Berque, Al-Yousi : problèmes de la culture marocaine au XVIIème siècle (Paris: Mouton, 1958); Clifford Geertz, Islam Observed: Religious Development in Morocco and Indonesia (New Haven: Yale University Press, 1968), 29-55; Henry Munson, Religion and Power in Morocco (New Haven: Yale University Press, 1993), Chapter 1; Bazzaz, Forgotten Saints.) That debate, however, focuses mainly on ‘ulamā‘ and the sultan as political actors, whereas my interest here is in the Makhzan and ‘ulamā‘ as legal actors—that is, as legal authorities in their roles as judges and arbiters of appeal. Nonetheless, my work bears on the broader debate inasmuch as it suggests a heretofore largely ignored dimension of the relationship among Makhzan officials and the ‘ulamā‘—that is, in their respective roles as judicial authorities.
There are other ways in which the observations of Europeans have colored our understanding of the Makhzan’s role in the judicial system to this day. Many foreigners denounced the Makhzan courts as arbitrary, corrupt, and devoid of any semblance of true justice. Péretié described the nature of Makhzan tribunals thus: “The justice of the governor is very simple. If someone is accused, he is seized without worrying about whether he is guilty or not, because one must always pay a certain sum to get out of prison.” He concluded that “cupidity, injustice, exactions, and theft are the basis of this organization.”28 Budgett Meakin concurred with Péretié’s observations, and noted that Jews especially suffered from the injustice of their governors. Meakin began his chapter, ironically entitled “Justice for the Jew,” with a witty quip: “The kaïd sat in his seat of office, or one might rather say reclined, for Moorish officials have a habit of lying in two ways at once when they are supposed to be doing justice.”29 Péretié explained that the Makhzan courts were “arbitrary by nature, since they did not follow the Quranic law.”30

Although these observations were clearly informed by considerable prejudice against Muslims and Islam itself, one cannot ignore entirely the repeated accusations of arbitrariness leveled at Makhzan courts. Unlike qāḍīs, who theoretically at least ruled according to the elaborate rules of Islamic law, Makhzan officials dispensed a more informal kind of justice.31 Nonetheless, there were instances in which Makhzan officials invoked the standards of Islamic

30 “…arbitraire par essence, puisqu’étrangère à la loi coranique” (Péretié, “L’organisation judiciaire au Maroc,” 524). See also Rober-Raynaud, “La justice indigène au Maroc,” 582, where Rober-Raynaud noted that the Makhzan’s incursions into the jurisdiction of the qāḍīs were against Islam.
31 In eighteenth-century Aleppo, at least, governors were often accused of corrupting justice by their subjects, making it likely that at times they, too, failed to follow formal procedures in their courts: Marcus, The Middle East on the Eve of Modernity, 114-15.
law, even if they did not consistently adhere to them.\textsuperscript{32} Undoubtedly Makhzan officials did not think of themselves as arbitrarily perpetrating injustice, but rather saw their rulings as within the parameters of sharī‘a, custom, and the sultan’s authority.

Beyond their role as judges in extra-sharī‘a courts, administrative officials were also involved in the judicial system in their capacity as enforcers of qāḍīs’ decisions. Ottoman historians have noted that kadıs normally engaged local officials to carry out any orders other than the very basic function of arresting suspects, which a muhzir (Arabic, muḥḍir or bailiff) who worked for the kadi would take care of.\textsuperscript{33} It seems that this arrangement generally held in Morocco as well, where Makhzan officials were responsible for carrying out the punishments imposed by the qāḍī. It was the governor who would imprison, bastinado, or fine those accused of crimes, as well as imprison debtors who had defaulted on their debts.\textsuperscript{34} As for the types of punishments used, the Ministry of Complaints records tell us much about the use of imprisonment, both as a punishment and as a way to convince the guilty to fulfill their

\textsuperscript{32} For instance, in one case from 1830, a Makhzan official judging a case (concerning the claim of Moshe Benchimol that he was struck by a Muslim muleteer) refused to hear the testimony of Jewish witnesses on the grounds that oral testimony by non-Muslims was inadmissible according to the sharī‘a. I have discussed the fact that oral testimony was rarely heard in sharī‘a courts, which relied on notarized documents instead—making the testimony of non-Muslims acceptable as long as it was recorded by ‘udūl (see Chapter Two). Nonetheless, the Makhzan official in this case seems to have stuck to the letter of Islamic law prohibiting testimony by non-Muslims. However, my suspicion is that this appeal to Islamic law was largely a ruse to avoid ruling in favor of the Jewish plaintiff, and was not necessarily representative of procedure in Makhzan courts.

\textsuperscript{33} Jennings, “Kadi, Court, and Legal Procedure,” 158; Hickok, “Homicide in Ottoman Bosnia,” 45. Hickok writes that the legal codes technically made the kadi responsible for enforcement, though if force was required the kadi either engaged a member of the governor’s administration or turned the matter over to the governor himself. Jennings also notes that the state was involved in the investigations of crimes even when these were being judged by the kadi (Jennings, “Kadi, Court, and Legal Procedure,” 159). James Baldwin argues that this may have been one of the reasons that individuals chose to adjudicate in the pasha’s diwān rather than the sharī‘a court: Baldwin, “Islamic Law in an Ottoman context,” 46.

\textsuperscript{34} Péretié, “L’organisation judiciaire au Maroc,” 516, 525. Evidence from the Makhzan archives likewise suggests that Makhzan officials were responsible for executing the qāḍīs’ rulings: see, for instance, DAR, Safi, 4718, al-Ṭayyib b. Hīma to Muhammad Bargāş, 25 Rabi‘ I 1280. This letter is about the famous case in which four Jews were accused of poisoning a Spanish customs official in Safi (discussed in Chapter Nine). According to Ibn Hīma, the sultan had ordered a qāḍī to try the murder suspects. Once the qāḍī ruled that the suspects’ testimony was valid (they pleaded guilty), the sultan ordered that one of the suspects (who was an Ottoman subject) be sent to the qā‘id of Tangier to be executed. This arrangement also seems to have applied to batei din, which sometimes asked the nagid to enforce a punishment they had decreed (Deshen, The Mellah Society, 55).
obligations, including paying debts or compensating victims of murder or theft (discussed at length in Chapter Five).\textsuperscript{35} The use of the bastinado—striking the soles of a person’s feet—is widely attested in pre-colonial Morocco.\textsuperscript{36} Very little is said about fines in the Makhzan archives; while this does not indicate that Makhzan officials never demanded fines from convicted criminals, it is difficult to know when and why fines were imposed based on the sources at hand.\textsuperscript{37}

In addition to the question of the Makhzan’s idealized or even symbolic functions in the Moroccan legal system, we must also examine the Makhzan’s effectiveness in carrying out its perceived role. The sources preserved in the Makhzan archives challenge the view of the legal system as dominated by corrupt local officials over whom the central government had no effective control. This image is particularly misleading for Mawlāy Ḥasan’s reign (1873-94), during which the Makhzan asserted its authority with greater success than during most periods of Moroccan history.\textsuperscript{38} In some ways, Mawlay Ḥasan’s achievements were the culmination of a process which began decades earlier, one that was in large part a response to European imperialism in North Africa. France’s invasion of Algeria marked a turning point in the Makhzan’s approach to centralization, inspiring a number of state reforms aimed at strengthening the central government (of which the creation of the Ministry of Complaints was one, as discussed shortly). Mawlāy Ḥasan did not depart dramatically from the efforts or strategies of his predecessors; rather, he simply had greater success in his attempts to create a more powerful central government. Many of his achievements were brought to a somewhat

\textsuperscript{35} For an evocative description of a Moroccan prison, see Meakin, \textit{Life in Morocco}, 233-5.
\textsuperscript{37} On the use of fines see also ibid., 256.
abrupt end after his death, as the Makhzan was notably less successful at imposing its will during the reigns of his sons Mawlāy ‘Abd al-‘Azīz (1894-1908) and Mawlāy Ḥafīḍ (1908-12).39 The reforms of the second half of the nineteenth century not only changed the Makhzan’s theoretical role in the Moroccan legal system, but also increased the Makhzan’s ability to fulfill that role.

The older view of a chaotic government is certainly untrue for Mawlāy Ḥasan’s reign, and at the very least misleading for those of his predecessors. Although there were certainly some local officials who resisted the sultan’s authority—or even escaped it entirely—the Moroccan state in the nineteenth century was not entirely devoid of means by which to enforce its will. Rather, sultans sent letters to their subordinates throughout Morocco ordering them to conform to the state’s conception of justice. When an individual felt that he had been wronged at the hands of local authorities, or simply that the local official had failed to help him resolve his legal disputes, he had the option of appealing directly to the central state. In hundreds of instances, the sultan responded to such petitions with instructions to the local official either to render justice himself, to hand the case over to a qāḍī, or to send the parties concerned to the sultan who would personally ensure that justice was done. Although it is not always clear to what extent the sultan’s instructions were followed, there is evidence that the sultan followed up with officials whom he suspected had ignored his orders. While there were undoubtedly many instances in which local officials mistreated their charges and got away with it, correspondence preserved in the Makhzan archives tempers the picture of near total anarchy painted by so many European observers. The Makhzan’s role as an effective court of appeal despite the Moroccan state’s relatively high level of decentralization has largely been ignored. Yet decentralization did not mean the complete absence of central government, nor did it mean that arbitrariness always

reigned with impunity. The Makhzan archives provide an important corrective to previous conceptions of the nature of the Moroccan state.⁴⁰

The Makhzan’s role as judicial authority over Jews was shaped by two opposing elements of the relationship between Jews and the Makhzan. On the one hand, Jews were subjects of the Makhzan just like Muslims, and thus could stake a claim to the Makhzan’s justice like any other individuals under the sultan’s authority. On the other, there were particular aspects of Jews’ legal and symbolic status that added incentive to the sultan’s interest in responding to Jews’ petitions for redress.

The legal basis for the status of Jews and other non-Muslim monotheists under Islam is a reciprocal contract (or pact—referred to as the Pact of ‘Umar or the dhimma contract).⁴¹ Dhimmīs agreed to pay a special head tax and to abide by certain restrictions, which mostly sought to guarantee that Muslims remained at the top of the social and religious hierarchy. In return, the Muslim ruler agreed to protect dhimmīs (dhimma literally means protection). As the supreme ruler of Morocco, the sultan had a personal responsibility to ensure the well being of his dhimmī subjects.⁴² This duty is an instance of the broader expectation that the ruler must ensure justice and the rule of Islamic law.⁴³ (I discuss the specific nature of the dhimma contract in nineteenth-century Morocco further in Chapter Six.)

Indeed, throughout Islamic history dhimmīs took it upon themselves to ensure that their rights were respected by petitioning the Islamic state under which they lived.⁴⁴ As one historian

⁴⁰ An important source for the Makhzan’s relationship with local officials is Ennaji and Pascon, Le Makhzen et le sous al-aqsa.
⁴¹ For an overview of the Pact of ‘Umar, see Cohen, Under Crescent and Cross, Chapter 4.
⁴² Schroeter, The Sultan’s Jew, 11-12.
put it, “in all medieval Muslim states, subjects with a grievance had the right to approach the ruler and submit to him, or his deputies, their petitions; this was an important means of making justice prevail, which was, theoretically at least, the chief raison d’être of rulership.” In petitioning their sovereign, dhimmīs were not very different from their Muslim neighbors, except that the state was in some ways doubly obligated to protect the rights of its non-Muslim subjects as reflected in the dhimma contract.

The symbolic power of successfully protecting the weak provided an additional motive for ensuring justice for dhimmīs. Protecting Jews was an important way in which the ruler demonstrated his strength. ʿĀḥmad b. Khālid al-Nāṣirī, Morocco’s most famous nineteenth-century historian, summed up the success of Mawlāy Ismāʿīl’s reign (1684-1727) in these words:

When a woman or a dhimmī traveled from Oujda [in the northeast] to Wādī Nūl [in the southwest], they would not find anyone asking them from where they had come or where they were going… not a thief nor a highway robber was found in the country during this time.46

In other words, according to al-Nāṣirī, a sultan demonstrated his power by his ability to guarantee even the safety of dhimmīs, who, like women, were among the most vulnerable members of society. Of course, al-Nāṣirī had his own motivations for penning this description of

---


the ‘Alawī’s greatest ruler; it can certainly be read as a veiled critique of the current situation in Morocco which, in 1897 when he finished his chronicle, was anything but stable.\textsuperscript{47} Nonetheless, al-Nāṣirī’s idealized ruler and his emphasis on security are closely related to the more general notion that the sultan had a special responsibility to protect the weak, including Jews. Responding to Jews’ petitions was one way in which the sultan fulfilled this obligation.

Some Jews had a particularly privileged relationship with the Makhzan which at times might have contributed to the sultan’s interest in protecting Jews more generally. The sultan singled out some extremely wealthy Jewish merchants and gave them special status. Scholars usually refer to this group of the ultra-elite as tujjār al-sulṭān (merchants of the sultan), although this term rarely if ever appears in Makhzan correspondence.\textsuperscript{48} Most of the Jews who petitioned the state were not members of this elite class. In fact, it is likely that such powerful individuals would have had other avenues available to engage the sultan in protecting their interests. Nonetheless, it was not unheard of for prominent Jews to petition the state on behalf of their less well-connected coreligionists. At times, the sultan might have addressed Jews’ appeals in order to avoid conflict with these powerful Jews or to do them favors.

Shifts in the international balance of power during the nineteenth century also changed the relationship among Jews and the Makhzan. As western states gained more economic and military influence over Moroccan internal affairs, the Makhzan became increasingly concerned

---


about its image in the eyes of foreigners, particularly foreign diplomats and Jewish activists (such as the AIU). These foreigners criticized the Makhzan’s treatment of religious minorities, especially Jews.\textsuperscript{49} Moreover, Jews took advantage of new connections with foreigners to call on consular officials and international Jewish organizations when they felt their rights had been violated.\textsuperscript{50} Ensuring that Jews felt they were able to resolve their legal disputes helped the sultan refute accusations that his state discriminated against non-Muslims. Addressing Jews’ appeals would also prevent his Jewish subjects from turning to foreign consular officials or international Jewish organizations when they felt they had been denied justice—a strategy that more and more Jews adopted.\textsuperscript{51} In most instances, there is no way to tell to what extent the Makhzan was motivated by a more traditional role as protector of Jews and to what extent the Moroccan state simply wished to avoid providing a pretense for foreign nations to meddle in its internal affairs. Yet there is little question that the changing dynamics of international relations had an impact on the Makhzan’s relationship with its Jewish subjects.\textsuperscript{52}

\textit{The Ministry of Complaints in Morocco}

Scholars have written next to nothing about the history and functioning of the Moroccan Ministry of Complaints (\textit{wizārat al-shikāyāt}), also referred to as \textit{wizārat al-‘adl} (the Ministry of

\textsuperscript{49} See, e.g., Laskier, \textit{The Alliance Israélite Universelle}, 43-61; Kenbib, \textit{Juifs et musulmans}, esp. 130-42, 94-224. See also examples of this sort of attitude in Fenton and Littman, \textit{L’exil au Maghreb}, esp. 245-6, 57-9, 84-5, 319-20, 43-6, etc.

\textsuperscript{50} On the changing relationship among Jews and the Makhzan in general, see Laroui, \textit{Origines}, 310-14.

\textsuperscript{51} See DAR, Yahūd, 15118, Mawlāy Ḥasan to Muḥammad Bargāsh, 22 Jumādā II 1297, in which Mawlāy Hasan instituted a new policy whereby Jewish subjects of the Makhzan had to first bring their complaints to Moroccan authorities, through Bargāsh, before the sultan would entertain the intercession of foreigners on their behalf. Three months later, Bargāsh reported that he was inundated with complaints sent by Jews (DAR, Yahūd, 24355, Muḥammad Bargāsh to Mawlāy Ḥasan, 15 Ramadān 1297).

\textsuperscript{52} Some contemporary observers interpreted the improving condition of Jews in Morocco as a result of pressure from western diplomats; see, e.g., Stephen Bonsal, \textit{Morocco as it Is: With an Account of Sir Charles Euan Smith’s Recent Mission to Fez} (New York: Harper and Brothers Publishers, 1893), 323-5.
Justice) and wizārat al-maẓālim (the Ministry of maẓālim, a term discussed shortly). The ministry had a rather short history—it was created between 1859 and 1873 and was abolished under the French Protectorate in 1912—which is perhaps why scholars have largely ignored it.

In order to understand the ways in which Jews appealed to the Ministry of Complaints, it is first necessary to trace the origins of this institution and how it functioned.

The Ministry of Complaints had much in common with the maẓālim courts which were a feature of many Islamic states since the ‘Abbāsid period. Maẓālim (singular maẓlima) refers to

---

53 The only discussion of the Ministry of Complaints is a paper by Wilfred Rollman delivered at the Middle East Studies Association annual meeting in November 2008 entitled “The Ministry of Complaints and the Administration of Justice in Pre-Colonial Morocco.” Rollman’s study focuses on refuting claims made by Michaux Bellaire about this institution (in Edouard Michaux Bellaire, “Un rouage du gouvernement marocain ; la beniqat ech chikaïat de Moulay Abd el Hafid,” Revue du Monde Musulman 5, no. 6 (1908)), and does not seek to write a general history of the institution. I am deeply grateful to Professor Rollman both for alerting me to the existence of the Ministry of Complaints registers at the Bibliothèque Hassaniya in Rabat and for sharing his paper with me. Other than Michaux Bellaire’s article, there are few contemporary accounts of this ministry. Al-Nāṣirī does not mention the institution in his Kitāb al-istiqṣā. Ibn Zaydān mentions it only briefly: Ibn Zaydān, Iḥāf a lām al-nās, v. 2, 513, 16 and v. 3, 69 and idem, Al-‘izz wa- l-sawla fi maẓālim nazm al-dawla. 2 vols. (Rabat: al-Maṭba’a al-Mālikīya, 1961), v. 2, 50-54, in which he includes some examples from the Ministry of Complaints records (from 1311 AH). Aubin seems to have thought that the Ministry of Complaints was responsible only (or primarily) for complaints submitted by Makhzan officials (Aubin, Morocco of To-Day, 165). See also al-Ḥasan b. al-Ṭayyib b. al-Yamānī Bū ‘Ishrīn, al-Tanbīh al-Mu’rib ‘ammā ‘alayhi al-ān ḥāl al-Maghrib (Rabat: Dār nashr al-ma‘rifa, 1994), 44-5. For mentions of the ministry in secondary literature, see Goulven, Traité d’économie, 22; Caillé, Organisation judiciaire, 18; Mohamed Lahbabi, Le gouvernement marocain à l’aube du XXe siècle (Rabat: Editions techniques nordafricaines, 1958), 173-81; al-Manūnī, Maẓāhir, v. 1, 43; Cabanis, “La justice du chārā et la justice makhzen,” 60; Pennell, Morocco since 1830, 79. Lahbabi is the only scholar to devote more than a few sentences to the institution, though most of his analysis is about al-Māwardī’s theory of maẓālim and the little he says about the Moroccan Ministry of Complaints is, I believe, misleading. Cabanis mistakenly states that the Ministry of Complaints disappeared after Mawlāy Ḥasan’s reign. Pennell inexplicably writes that Mawlāy Ḥasan founded this ministry; I have found no evidence to support this.

54 I have found no precise date for the founding of this ministry.

an injustice or an act of oppression. The maẓālim courts were audiences during which the ruling authorities (either the caliph or sultan himself, or one of his designated ministers) heard complaints from subjects on a range of matters. The functioning of maẓālim courts was theorized most famously by ‘Alī b. Muḥammad al-Māwardī (d. 1058) in his al-Aḥkām al-sultānīya. However, scholars have convincingly argued that al-Māwardī’s theories were largely descriptive of an ideal which was not always realized in the actual functioning of these courts. Rather, the term maẓālim covers a broad range of ways in which states responded to the obligation to ensure justice by opening avenues of direct appeal to the highest authority. I am thus not particularly interested in seeing to what extent the Moroccan Ministry of Complaints matched up with al-Māwardī’s ideal type, since it is clear that each state organized maẓālim courts quite differently. Yet in invoking the term maẓālim, Morocco’s administrators undoubtedly had the history of this institution in mind, though probably in its more general sense of “the personal intervention of the sovereign (or his vizier).”

Nonetheless, there is no question that the kind of justice dispensed in maẓālim courts—as well as by the Ministry of Complaints—was quite different from that of the qāḍīs. Whereas


56 For a summary of al-Māwardī’s theory of maẓālim courts, see Amedroz, “The Maẓālim Jurisdiction.”
57 See especially Nielsen, Secular Justice in an Islamic State, 17, 31. See also Wittmann, “Before Qadi and Vizier,” 141.
58 Mohamed Lahbabi is particularly concerned with comparing the Moroccan Ministry of Complaints to al-Māwardī, which is perhaps why he draws the rather strange and misleading conclusions that he does (in particular that the Ministry of Complaints did not serve a judicial role at all and was strictly administrative): see Lahbabi, Le gouvernement marocain, 177. It is also possible that Lahbabi simply did not have access to the same registers which I examined; although he refers to the “Archives du ministère” he does not cite any sources.
shari'īa courts were strictly bound by elaborate rules of procedure and evidence, the authorities presiding over maẓālim hearings had far more leeway. The nature of the judicial process in maẓālim courts has often been compared to secular justice because it was not directly rooted in Islamic law. I hesitate to use a term like secular to describe any aspect of the functioning of the Moroccan state, in which the sultan was considered the commander of the faithful and as much a religious authority as a political one. While not bound by jurisprudence (fiqh) as expounded by jurists, the Ministry of Complaints was nevertheless part of a legal system which theoretically, at least, conformed to Islamic law.

The origins of this ministry lie in broader efforts at state reform in nineteenth-century Morocco. After France’s conquest of Algeria in 1830, the Moroccan government became increasingly aware that a new kind of European imperialism threatened Moroccan independence. This perception sharpened after the Makhzan’s defeat at the Battle of Isly in 1844, and again after Spain’s occupation of Tetuan from 1860 to 1861. As in the Ottoman Empire, the Moroccan reforms began with the army, where the state attempted a complete reorganization.

---


61 Nielsen’s title for his book on maẓālim asserts his belief that secular justice and maẓālim were essentially one and the same: Nielsen, *Secular Justice in an Islamic State*. See also Tyan’s discussion of the relationship between maẓālim, siyāsa, and siyāsa shar’īya (Tyan, *Organisation judiciaire*, v. 1, 162-64).

62 On this, see especially Hammoudi, *Master and Disciple*.

63 See Ibn Zaydān’s brief account of the Ministry of Complaints, in which he describes the role of the minister as “answering the complaints in their various forms and issuing the orders about them from what the sultan ordered according to the rules of the shari‘a” (Ibn Zaydān, *Ithāf a‘lām al-nās*, v. 2, 513).


In designing its new army, the Makhzan looked to a number of sources of inspiration, including the Ottoman Empire (especially Egypt), France, Britain, and ‘Abd al-Qādir’s rebel army in neighboring Algeria.66

Mawlāy Muḥammad (IV, reigned 1859-1873) created the Ministry of Complaints as part of this broader overhaul of the government.67 Scholars working on other places and periods have observed that the right to petition the central authority for redress had a centralizing and state-building effect since it helped assert the authority of the central government and undermine the power of local elites.68 Governments who wanted to accelerate their efforts at centralization often established a national court of appeal to facilitate this sort of direct access to the government. Although clearly the sultan’s role as ultimate arbiter of justice was nothing new in the 1860s, the Makhzan did have an increased incentive to assert its authority and consolidate its power. It seems quite likely that the creation of the Ministry of Complaints was a reform particularly aimed at increasing the Makhzan’s control over events at the local level, while also improving its image in the eyes of the populace.69

Yet the creation of the Ministry of Complaints was not only part of a broader reform movement; the impetus for implementing a centralized system to handle petitions seems to have stemmed at least in part from the Makhzan’s desire to convince western diplomats that it was

---

66 Bennison, “The ‘New Order’ and Islamic Order,” 599.
67 al-Manūnī, Maẓāhir, v. 1, 43. Mawlāy Muḥammad also created the Ministry of War (wizārat al-ḥarb).
68 It is possible that the absence of a maẓālim tribunal in Morocco previous to the mid-nineteenth century is related to the attitude of the Mālikī jurists towards maẓālim; Tyan claimed that because Mālikī qāḍīs were entitled to practice siyāsa (discretionary punishment), they did not have any need for maẓālim, which explains the absence of this institution from Mālikī states (Tyan, Organisation judiciaire, v. 1, 163).
69 Lex Heerma van Voss has observed, “even if the idea of a good person heading the state was a myth, it may well have been recognized as a useful myth at both the writing and reading ends of the petitioning process” (van Voss, “Introduction: Petitions in Social History,” 5).
actively upholding justice in Morocco, especially for its Jewish subjects. Foreigners were highly critical of the functioning of justice in Morocco during the nineteenth century, as we have seen (and will discuss further in Chapter Nine). Letters dating from Mawlāy Ḥasan’s rule explicitly invoke the role of the Ministry of Complaints in addressing the concerns of foreign officials. In January 1881, Muḥammad Bargāsh, the foreign minister, wrote a collective letter to the foreign ambassadors in Tangier concerning their alarm about fourteen murders of Jews in recent months.70 Bargāsh explained that the sultan was worried about his subjects’ claims of mistreatment (maẓālim), and that in order to address their appeals, “he had appointed a special minister to [address] their claims…and that anyone who brought a complaint to the sultan would [have his complaint] addressed according to justice and the law.”71 This letter almost certainly referred to the Minister of Complaints whom the sultan had already appointed (rather than a new position he had created).72 It was intended to inform the foreign ambassadors about the ministry as a way to convince them that justice—especially for the murdered Jews—would be done. Admittedly this letter, and others like it, are from at least a decade after the founding of the ministry, and it is possible that the reasoning they cite for the appointment of a minister to hear the appeals of Moroccan subjects had nothing to do with Muḥammad IV’s decision to create a Ministry of Complaints. Nonetheless, given that the kinds of concerns they address were already present in the 1860’s, it seems more likely that the motivations expressed during Mawlāy Ḥasan’s reign were similar if not identical to those driving the reforms of Mawlāy Muḥammad.

---

70 DAR, Yahūd, 36069, Muḥammad Bargāsh to Ambassadors in Tangier, 6 Ṣafar 1298.
71 Kallafa bi-da’āwīhim wasīran mustaqīlim khāṣṣan…wa-anna kullu man ra’ā’i a shikāyatahu li-ḥadratihī al-‘āliyati bi-Llāhī tajrī‘alā tariqī al-ḥaqqī wa-’l-shar‘.
72 This is especially likely since Muḥammad Ṣaffār was the Minister of Complaints at the time and remained so until his death in the middle of Dhū al-Qa‘da 1298—ten months after this letter was written. See also DAR, Fez, 20647, Muḥammad al-Ṭūrīs to Muḥammad b. al-ʿArabī b. al-Mukhtār, 4 Jumādā II 1302; in this letter, concerning the French ambassador’s complaints about the treatment of a Moroccan subject, al-Ṭūrīs (Torres) conveys that the sultan “settled all [appeals] that came from his subjects, both Muslim and non-Muslim” (bi-annahu taqarrara lahu jamī‘a mā yāsduru min ra’yatihim al-muslimati wa-’l-ghayri muslimati).
The Ministry itself, although in continuous existence until French colonization, underwent two distinct phases of operation. The biographies of the ministers who oversaw this institution reveal much about its trajectory. Mawlāy Muḥammad appointed Muḥammad al-Ṣaffār as the first Minister of Complaints.\(^73\) Al-Ṣaffār, a native of Tetuan, had studied at the Qarawīyīn in Fez and worked as an ‘adl (notary), a teacher, and a muftī.\(^74\) Later, he became tutor to the sultan’s children. Al-Ṣaffār first became a government minister in 1853-4 (1270 AH) under ‘Abd al-Raḥmān, until he was appointed Minister of Complaints—a post he retained until his death in 1881 (during the reign of Mawlāy Ḥasan).\(^75\)

Al-Ṣaffār’s successor, ‘Alī al-Misfīwī, had a remarkably similar trajectory.\(^76\) Born in Marrakesh to a scholarly family, he too went to Fez to study and later became tutor to the sultan’s children.\(^77\) Al-Misfīwī served as Minister of Complaints from 1881 until his death in 1898, during the reign of Mawlāy ‘Abd al-‘Azīz (reigned 1894-1908). Both al-Ṣaffār’s and al-Misfīwī’s training in Islamic law undoubtedly helped prepare them for the responsibility of

---


\(^{74}\) Ibn Zaydān noted that al-Ṣaffār had “knowledge of nawāzil [similar to fatāwā]” and had memorized the *Mukhtaṣar* (undoubtedly of Khalīl b. Isḥāq): Ibn Zaydān, *Itḥāf a’lām al-nās*, v. 3, 569. As a scribe for Muḥammad Ash’āsh, al-Ṣaffār accompanied his employer on a diplomatic mission to Paris in 1845-6 and wrote an account of his travels for the sultan Mawlāy ‘Abd al-Raḥmān (translated in Miller, *Disorienting Encounters*).


\(^{77}\) Al-Misfīwī’s father, Muḥammad (d. 1280/ 1863-1864)—known as Ḥammū—was a qāḍī who taught at the Ibn Yūṣuṭ mosque (the most prestigious institution of higher learning in Marrakesh): al-Marrākushi, *al-ʾlām bi-man ḥalla Marrākush*, v. 9, 264. Al-Misfīwī was reputed for his scholarship, including a mastery of logic, rhetoric, Arabic, the biography of the Prophet, history, and law (ibid., 263). He began tutoring the sultan’s children during the reign of Mawlāy ‘Abd al-Raḥmān (Ibn Zaydān, *Itḥāf a’lām al-nās*, v. 5, 482). Upon Mawlāy Muḥammad’s accession to the throne, he appointed al-Misfīwī as vizier to his son Ḥasan (the future sultan) and then as a vizier in the Ministry of the Interior. Misfīwī was also assigned to undertake a mission to the minister of France in Tangier on Mawlāy Ḥasan’s behalf around 1880, in an attempt to convince the French to agree to limitations on consular protection and other diplomatic points (see MAE Nantes, Tanger A 158, ?? to ‘Alī al-Misfīwī, 6 February 1880).
overseeing maẓālim, and gave them legitimacy not only as politicians but as ‘ulamā’, learned scholars worthy of dispensing justice.

Yet the prestige of the Ministry of Complaints declined towards the end of al-Misfīwī’s tenure. Bā Aḥmad, Mawlāy ‘Abd al-‘Azīz’s regent who effectively held power from 1894 until his death in 1900, reduced the scope of this ministry and deprived its minister of any real authority. The next Minister of Complaints seems to have been a purely political appointee. Muḥammad al-Mahdī b. Gharrīṭ (or Gharrīt, d. 1944) was the brother of Muḥammad Mufaḍḍal (known as Faḍūl) b. Gharrīṭ, who was the grand vizier at the time (wazīr al-aʾẓam). Otherwise al-Mahdī b. Gharrīṭ was rather unremarkable; he rose from the ranks of scribes in Marrakesh and, though clearly somewhat educated, did not possess the prestige of either al-Ṣaffār or al-Misfīwī. The next minister suggests that the institution had declined even further: ‘Abd al-Mālik al-Mutugī (d. 1928), who was one of the great qā’ids of the south, occupied the post under the sultan ‘Abd al-Ḥafīẓ he ruled from Marrakesh, from September 1907 to the spring of 1908. Al-Mutugī was not a scholar, nor was he trained in service to the Makhzan; Mawlāy ‘Abd al-Ḥafīẓ probably appointed him to help consolidate his rule among the tribes al-Mutugī controlled. When Mawlāy ‘Abd al-Ḥafīẓ arrived in Fez he appointed a “Ben Kabbour” as

---

78 Bū ‘Ishrīn, al-Tanbīḥ al-Muʿrib, 44-5; al-Marrākushī, al-lʿlām bi-man ḥalla Marrākush, v. 9, 264, fn. 22; Gharrīṭ, Kitāb fawāṣ il al-jumān, 107. On the decline of the ministry, see also Goulven, Traité d’économie, 22; Caillé, Organisation judiciaire, 18. 
81 Although Michaux Bellaire described al-Mutugī as completely illiterate (Michaux Bellaire, “La beniqat ech chikaïat,” 242-43), other sources suggest that he did complete at least a minimal study of the Quran as a child.
Minister of Complaints, a man about whom almost nothing is known. The Ministry was abolished altogether once France established its protectorate in 1912.

Despite this later decline, the registers of the Ministry of Complaints from Mawlāy Hasan’s reign paint a picture of a vibrant institution. Our best evidence for the functioning of the Ministry of Complaints is from the registers themselves—a source which, to the best of my knowledge, no one has thus far used to write its history. The records for the Ministry of Complaints only survive from four years—from April 22, 1889 to April 28, 1893. It is not clear whether such registers were kept at other points during the existence of the ministry. Although it is possible that subsequent registers were kept that have since been lost, irregular record keeping was typical of the Moroccan state in the nineteenth century. In the short introductions at the beginning of each register, they are described as “the writings of the royal orders (makātīb al-tawqī’ al-sharīf) answered by the scholar, the vizier, Sīdī ‘Alī al-Misfīwī.”

Neither the introduction nor the colophons of the registers give any indication that they emanated from the Ministry of Complaints; the word tawqī’ is a general term denoting official responses to


83 Although Rollman consulted some of these registers, his research was partial and his discussion of the history of the ministry relies mainly on secondary sources.

84 That is, 21 Sha’bān 1306 to 11 Shawwāl 1310. The registers are found in the Bibliothèque Hassaniya under the call numbers K (for kunnāsh, or register) 157, K 171, K 174, and K 181.

85 There is some indication that the register beginning in April 1889 was the first of its kind, at least for the time that al-Misfīwī was in office. Registers 171, 174, and 181 (the second, third, and fourth registers chronologically) are identified in the introductions as the second, third, and fourth registers in this series—indicating that the one preceding (i.e. K 157) was the first such register. However, other ministers also had registers which were identified as part of a series. See, for instance, BH, K 159, a register of the correspondence of the minister Muḥammad al-Ṣanhājī, identified as the third in the series. (Others in this series include K 165, K 166, K 172, K 175, K 468, dating from 1306 to 1309.)

86 See, for instance, BH, K 157, p. 2.
petitions which is also used to describe the registers of official correspondence from other ministries.\textsuperscript{87}

The geographic distribution of petitioners who appeared in the Ministry of Complaints records was quite extensive. Much of the time the location of a particular case was not given and only the local Makhzan official’s name was recorded; at other times, the name of the tribe was mentioned.\textsuperscript{88} The few indications of location show that cases came from all over Morocco, and from both urban and rural areas.\textsuperscript{89} In the case of Jews’ appeals, it is often difficult to tell where the Jewish petitioners actually lived; since many Jews traveled far from their homes in order to peddle goods, the incidents which led them to appeal to the Makhzan often occurred while they were traveling.\textsuperscript{90} The entries in the Ministry of Complaints registers normally gave the location of the crime, not the victim’s home. There were considerable differences between inland and coastal cities, between rural and urban areas, and among different Jewish communities in Morocco—differences which undoubtedly informed the kinds of cases brought to the Ministry of Complaints. Unfortunately, we rarely have enough geographic data to systematically trace the impact of location on how Jews used the Ministry of Complaints.

\textsuperscript{87} Muhammad Murtaḍā al-Zabīḍī, \textit{Tāj al-‘arūs min jawāhir al-qāmūs}, 20 vols. (Beirut: Dār al-fikr, 1994), v. 11, 525; Stern, “Petitions from the Mamluk Period,” 263. See also A. de Biberstein Kazimirski, \textit{Dictionnaire arabe-français}, 4 vols. (Cairo: Imprimerie V. R. Egyptienne, 1875), v. 4, 933-4. Dozy specifically associates \textit{tawqī‘} with notes taken at the audience of a qāḍī (Dozy, \textit{Supplément aux dictionnaires arabes}, v. 2, 830). A number of other registers preserved in the Makhzan archives are described as \textit{makātīb al-tawqī‘}, and have nothing to do with the Ministry of Complaints (including BH, K 159, K 165, K 166, K 172, K 175, K 185, K 195, K 204, and K 205).

\textsuperscript{88} See, for instance, BH, K 181, p. 242, 23 Muḥarram 1310; this entry concerns debts owed to dhimmī Kohen al-Tawīl (“The Tall”) by the Banī Yāzīgha (a tribe in the region of Fez).

\textsuperscript{89} Cases range from Oujda in the northeast (BH, K 174, p. 124, 15 Shawwāl 1308) to Essaouira in the southwest (BH, K 181, p. 236, 13 Muḥarram 1310). Many of the entries concern rural areas, such as a case pertaining to two insolvent debtors under the jurisdiction of the governor of Taza (BH, K 181, p. 253, 8 Ṣafar 1310).

\textsuperscript{90} Deshen, \textit{The Mellah Society}, Chapter 3.
It is not entirely clear whether the complaints submitted to the Makhzan were heard in person by the sultan in addition to being entered in the registers of the Ministry of Complaints. The historian Ibn Zaydān (d. 1946) wrote that Mawlāy Ḥasan spent two days a week receiving māẓālim petitioners. However, the registers include entries written on all days of the week, which suggests that the ministry functioned even when the sultan was not formally holding an audience to receive petitioners. The sultan also responded to complaints when he went on military expeditions. Sometimes the Minister of Complaints followed him, as is indicated by the colophon of the second register in the series of four which records that it was completed “at the royal encampment in Abū Jaʿad [Boujad] in the presence of the sultan.” However, it is unlikely that petitioners were always able to follow the sultan on his peregrinations; it is thus probable that the petitions which the sultan addressed while away from large cities were mostly (if not all) presented only in writing. There is clear evidence that at least some petitions were

---

91 Mazālim courts in the Mamluk period normally received petitioners in person, though sometimes the petitioners sent their written requests through intermediaries: Nielsen, Secular Justice in an Islamic State, 63.
92 Ibn Zaydān, Al-ʿIzz wa-ʾl-ṣawla, v. 2, 50. (Ibn Zaydān reported in another work that Mawlāy Ḥasan only heard mazālim on Sundays: idem, Iṭḥāf aʿlām al-nās, v. 2, 516.) Ibn Zaydān further explained that the sultan would be presented with a list of the complainants and would then summon them forth one by one to investigate (yabḥāth) their claims. His minister (presumably the Minister of Complaints) would stand behind him with an identical list of the complainants.
93 The registers are organized in chronological order, noting the date, the day of the week, and whether the session was in the morning or the evening.
94 Ibn Zaydān, Al-ʿIzz wa-ʾl-ṣawla, v. 1, 240.
95 Khutima hādhā al-kūnāshu al-mubāraku bi-mukhayyami al-maḥallati al-saʿīdati bi-Abī al-Jaʿad fī wujhāti mawlānā: BH, K 174, p. 134, 10 Muḥarram 1308. On Boujad, see Dale F. Eickelman, Knowledge and Power in Morocco: The Education of a Twentieth-Century Notable (Princeton: Princeton University Press, 1985). Similarly, al-Nāṣīrī reported that Mawlāy Ḥasan was on an expedition and thus away from Fez between Shawwāl 1306 and some point in early 1307 (al-Nāṣīrī only wrote that the sultan entered Tetuan on 8 Muḥarram 1307, spent fifteen days there, then visited Tangier and Larache on his way back to Fez; he remained in Fez until Shawwāl 1307, when he again set out on campaign: al-Nāṣīrī, Kitāb al-istiqṣā, v. 8, 213-14 and idem, “Kitāb Elistiqṣā li-akhbāri doual elmāgrib elaqṣā, translated by Eugène Fumey,” Archives Marocaines 9 & 10 (1906-1907): 370-1). The colophon of the first register (BH, K 157) notes that it was completed in Fez on 16 Rajab 1307, so presumably the sultan had returned to Fez by that time.
96 This is supported by Ibn Zaydān’s description of the sultan hearing mazālim during the ḥaraka, which he described as consisting of reading letters about complaints (Ibn Zaydān, Al-ʿIzz wa-ʾl-ṣawla, v. 1, 240).
written and sent to the minister without the petitioner appearing in person. My own surmise, based largely on the volume of cases recorded in the Ministry of Complaints registers and the fact that the cases concerned people from all over Morocco, is that relatively few petitioners appeared in person.

Although the Ministry of Complaints records do not preserve the petitions themselves, these petitions were almost certainly written in Arabic. However, very few Jews in nineteenth-century Morocco were literate in Arabic; we can presume that most employed Muslim scribes to write their letters for them (probably translated from spoken Arabic). Unfortunately there is little evidence concerning the nature of these transactions, although scribes unquestionably played a role in shaping the language and structure of Jews’ petitions.

Once a matter ended up on the desk of the Minister of Complaints it was passed to the sultan who, in theory at least, adjudicated the claims. The sultan then had his minister—or, more probably, the minister’s scribes—write to the local official under whose jurisdiction the case fell with instructions for how to proceed. The registers of the Ministry of Complaints contain only the responses of these local officials, from which we must infer the contents of the

---

97 In some entries, instead of giving the name of the person making the complaint, it simply says “a letter whose author is not named” (kitāb lam yusamma ʿāhibuḥu). See for instance BH, K 181, p. 87, 2 Jumādā II 1309.
98 The archives do preserve collective petitions sent by Jews to the Makhzan which are written in Arabic (and which I discuss in Chapter Six); it seems safe to presume that individual petitions which ended up on the desk of the Minister of Complaints were similarly written in Arabic.
99 I surmise this from the frequency with which the sultan’s opinion was recorded (see below). In addition, Michaux Bellaire noted that in principle the sultan supervised all government business directly; thus the letters nominally came from him even if they went through the Ministry of Complaints. The secretaries used different sizes of seals depending on the importance of the case (there were three sizes in all—small, medium, and large): Michaux Bellaire, “La beniqat ech chikaïat,” 246-7.
100 Each minister had a number of scribes associated with his office (banīqa): al-Manūnī, Mazāhir, v. 1, 44.
101 This is different from the procedure in the Ottoman Empire (at least during the seventeenth century, and probably for much of the early modern period), where the sultan sent orders about his subjects’ petitions to the local qāḍīs: see Jennings, “Limitations of the Judicial Powers of the Kadi,” 152-53.
The convention among Makhzan officials of summarizing the previous letter of a given exchange is helpful in reconstructing the full picture. In many entries, the author of the letter to the Minister of Complaints first recapitulated the letter he had received from the minister, and then stated his response. One such example begins: “The governor of Oujda concerning [the letter he received with the] command that he arrest Ibn al-Bashīr al-‘Atīqī and Ramaḍān b. ‘Alī who refused to pay the debt [they owed] to the Jew Dāwīd.” The entry went on to describe the governor’s response to the letter in which he was commanded to arrest al-‘Atīqī and Ramaḍān, saying he would do so when he finds the debtors.

Most entries began by identifying the author of the letter. Usually the author’s name was given, though sometimes he was described by his function, such as “the governor of Oujda” or “the Pasha of Meknes.” The entries went on to describe the complaint and the author’s response.

A typical entry of July 10, 1889, reads:

Laḥsan al-Būmīdmānī concerning the complaint of the dhimmī Isḥāq Bū Sitta about the debt he [Isḥāq] is owed by the Ayt Būmīdmān [tribe]. He [al-Būmīdmānī] requests a delay of [the payment] until he returns from the haraka [military service]; at that time he will bring them [the debtors from Ayt Būmīdmān] to face him [Isḥāq] in a sharī‘a court.

In this case, the Jew Isḥāq Bū Sitta was owed debts by members of the Ayt Būmīdmān tribe. Isḥāq must have submitted a petition about the non-payment of these debts, since al-Būmīdmānī refers to his “complaint.” However, it is not entirely clear to whom Isḥāq appealed; he might

---

102 There are a number of examples of letters sent from the sultan to local Makhzan officials preserved in the DAR which give an idea of what these initial letters looked like. They are, for the most part, quite similar to the summaries provided in the Ministry of Complaints registers. See, for instance, DAR, Fez, 23074, Mawlāy ‘Abd al-Rahmān to his son Muḥammad, 2 Rabī‘ I, 1261; 35002, Mawlāy Muḥammad to Muḥammad b. al-Madani Banīs, 24 Ramaḍān 1289; Mawlāy Ḥasan to ‘Abdallāh b. Aḥmad, 13 Shawwāl 1296; Mawlāy Ḥasan to Saʿīd b. Farajī, 29 Rabī‘ I 1298.

103 BH, K 174, p. 124, 15 Shawwāl 1308.

have written directly to the Minister of Complaints, or he might have written to some other Makhzan official either in his place of residence or in one of the capital cities. The precise channels through which complaints liked this one reached al-Misfīwī and thus were entered into the registers of the Ministry of Complaints are usually impossible to trace. Nonetheless, we can gather from this entry that at some point a scribe from the Ministry of Complaints wrote to al-Būmīdmānī concerning Isḥāq’s request. The letter recorded here was most likely al-Būmīdmānī’s reply to the initial letter about the debts. He responded that he would settle the matter when he returned from his participation in the sultan’s military campaign, at which point he would send the case to a sharī‘a court.

Many entries preserve the sultan’s response to the official’s letter. These entries end with “our lord says,” followed by his opinion or command. Most of the time the sultan answered with a directive—perhaps most commonly that the case should be “settled” (yufāṣal, or simply al-fāṣl).105 Often the sultan asked for more information or requested documentation of the matter at hand.106 The sultan sometimes responded “it is ordered,” acquiescing in the request of the author.107 At other times, the sultan rejected the official’s request or claim—as in the case in which al-Tusūlī was commanded to settle the debts of Ḥayyim b. Ṭāṭā.108 Al-Tusūlī pleaded that the case fell under the jurisdiction of another Makhzan official, but Mawlāy Ḥasan did not accept this excuse and ordered al-Tusūlī to investigate, since he had appointed al-Tusūlī as his representative. Finally, a number of entries have no answer whatsoever recorded; it is not clear

105 There are innumerable such cases: see, for instance, BH, K 181, p. 270, 12 Rabī‘ I 1310.
106 See in particular the discussion in the following chapter of the common response from the sultan that the matter had to be settled with “legal proof” (mūjib: on this word, see Sinaceur, Dictionary Colin, v. 8, 2028).
107 See, e.g., BH, K 174, p. 102, 18 Ramadān 1308.
108 BH, K 181, p. 110, 9 Rajab 1309. For another case in which the sultan refused to believe an official’s claim, see BH, K 181, p. 83, 25 Jumādā I 1309.
whether the sultan simply failed to respond to these letters, or if his response was never recorded.109

The Ministry of Complaints was more than just an audience for hearing maẓālim; it also served as an administrative bureau for disseminating the sultan’s orders to lower functionaries scattered throughout Morocco. Fundamentally, its task was to facilitate the right of every subject to petition the sovereign directly. In this sense, the creation of the ministry did not signal a rupture in the functioning of the Moroccan state, but rather a modification in its organization. Yet given the lack of evidence regarding the period prior to the creation of the Ministry of Complaints, it is difficult to know the extent to which this institution changed the way individuals related to the state. It seems safe to surmise that centralizing the responses to petitions in a single ministry improved the efficiency with which the state responded to its subjects’ complaints, though it is not clear whether this increased efficiency encouraged more Moroccans to appeal to the Makhzan in the first place. We do know that individual Jews and Muslims petitioned the state for redress both before and after the period for which we have records from the Ministry of Complaints.

*   *   *

The next two chapters explore the role of the Makhzan as a forum to which Jews appealed when they could not resolve their legal disputes at the local level. Chapter Five examines individual petitions made by Jews to the state through the registers of the Ministry of Complaints. Chapter Six looks at collective petitions in which groups of Jews appealed to the Makhzan.

---

109 There were also instances in which the sultan’s response was abbreviated with the letters jīm shīn, which probably stand for “answer [and] explanation” (jawāb sharḥ). I am quite certain that jīm stands for “answer positively,” as it was quite common for the sultan to respond by saying “it should (or will) be answered positively, or granted” (yujāb). I am less certain about what shīn stands for: perhaps it means “explanation” as there are a number of entries which specify that the matter must be explained (tushraḥ): see, for instance, BH, K 157, p. 84, 18 Muḥarram 1306 (first and third entries).
sultan on behalf of their local community. I examine individual and collective appeals to the state separately in part because the vast majority of cases recorded in the registers of the Ministry of Complaints concern individuals alone. While some petitions by groups of Jews are recorded in the registers of the Ministry of Complaints, these represent a minority; most are found elsewhere in the Makhzan archives. Perhaps more importantly, the subject matter differs rather markedly between the two types of appeal. Individual Jews mostly wrote about civil matters, especially debts. Though criminal cases appear frequently in the registers, they almost always concerned the desire to be paid an indemnity for a crime—which ultimately made the case resemble a civil claim in many respects. Collective petitions, on the other hand, almost always concerned criminal cases, such as the mistreatment of Jews by government officials. Together, individual and collective petitions demonstrate the range of ways in which Jews called on the Makhzan to ensure that their rights were respected and that justice was served.

110 I found only fourteen cases recorded in the registers of the Ministry of Complaints in which Jews collectively appealed to the state—compared to 511 cases of individual appeals.
The Pasha of Meknes [says] that Ya`aqov Ohana (Ya`qūb Uḥanā) and some of the Jewish merchants there [in Meknes] sent a number of riyāls carried by two mules with two mule drivers, one Muslim and one Jew. The Muslim stole two bags¹ with 1,100 riyāls in them, and buried them in a room in a funduq [warehouse] in the [neighborhood of] the palace. Then, when they [the Jewish merchants] had left,² the Muslim returned and took the two bags. Since then, [the Jews] have been searching for [the money], until they were informed that [the Muslim mule driver] was in the Gharb [a region in northern Morocco] and that he had married in the jurisdiction of [the qāʿid] al-Sufyānī for [a dower of] 200 riyāls with the daughter of Wuld al-Kaḥala al-Ghabwī, and with the rest [of the money] he bought cattle and jewelry. So [the Jews] wrote to al-Sufyānī and he sent [the Muslim mule driver, presumably to Meknes] and he confessed to some of [his crime]; they interrogated him and he informed them that he left [the rest of the money] with Ṣahra Wuld al-Kaḥala. Now [the Jewish merchants] ask that the sultan command al-Sufyānī to give them their due. Our lord [the sultan] says: it is ordered.³

This episode was recorded in the register of the Ministry of Complaints on April 27, 1891. The case is in some ways extraordinary. A Muslim mule driver—one of the most poorly paid professions in Morocco at the time⁴—made off with two bags of money belonging to Jewish merchants in Meknes. He moved dozens of miles away and promptly set about pursuing a lifestyle worthy of his means.⁵ But his taste of the good life was short lived. The Jewish merchants eventually found out what had happened to their erstwhile employee and wrote to al-Sufyānī, the governor of the region where the mule driver had moved. Al-Sufyānī sent the mule driver to Meknes so he could be interrogated about his crime, presumably by the local Makhzan authorities. The mule driver confessed to the theft, and the sultan commanded al-Sufyānī to make the mule driver return the 1,100 riyāls that he had stolen.

Yet colorful details aside, this case is much like hundreds of others recorded in the registers of the Ministry of Complaints in which Moroccan Jews appealed to the state when they

---

¹ Khanshatayn: khansha means “cloth bag” in Moroccan colloquial Arabic (Sinaceur, Dictionnaire Colin, v. 2, 479).
² Literally, “traveled” (sāfarū).
³ BH, K 174, p. 102, 18 Ramaḍān 1308.
⁴ On mule drivers, see Le Tourneau, Fès avant le protectorat, 246.
⁵ On the value of riyāls (Spanish currency popular in nineteenth-century Morocco), see ibid., 283-5.
believed that their legal claims had not been properly addressed. These registers remain an untapped treasure trove for the history of Morocco in the nineteenth century. I draw on these rich sources to understand how Jews engaged the state when they felt they had been denied justice at the local level. The state’s responses to Jews’ complaints demonstrate that the Makhzan took Jews’ claims seriously. The Ministry of Complaints registers certainly do not paint a rosy picture of Jewish life in Morocco, since many of the records concern Jews being stolen from, murdered, or unable to collect money they were owed. Yet Jews’ ability to petition the state and their relative success in getting the state to act in response to their appeals show that Jews were not powerless victims. Moreover, while Makhzan officials often questioned the validity of Jews’ claims, they rarely did so in ways that specifically targeted Jews as untrustworthy or deceitful. In fact, the confession of the petitioner made little difference in the Makhzan’s response to complaints submitted by its subjects. The Ministry of Complaints records suggest that when it came to its responsibility to ensure justice, the Makhzan’s relationship with Jews differed little from its relationship with Muslims.

In reconstructing a heretofore unknown aspect of the history of the Makhzan’s interactions with Jews, I bring to light new information about the functioning of the Moroccan state in the nineteenth century. On the one hand, the Ministry of Complaints records demonstrate that the centralizing government of Mawlāy Ḥasan (reigned 1873-94) made concerted efforts to address the claims of Moroccans who felt they had been victims of injustice. On the other hand, the persistent weakness of the central state meant that there were a number of obstacles to resolving subjects’ petitions, such as difficulty controlling individuals’ movements and the challenge of asserting the Makhzan’s authority in areas which remained beyond the reach of the state.
Jews and the Ministry of Complaints

Between 1889 and 1893, the scribes employed at the Ministry of Complaints recorded a total of 511 cases involving individual Jews.\(^6\) The vast majority of these cases concerned Jews who were Moroccan subjects; only seven were related to the claims of Jews under the consular protection of foreign states (I discuss Jewish protégés at length in Part Three).\(^7\) Drawing on this discrete set of records allows me to discuss what kinds of cases and resolutions occurred most often, how the Makhzan went about responding to individual petitions, and the kinds of obstacles that Makhzan officials faced in their attempts to settle Jews’ claims. I discuss examples of similar complaints preserved in the Moroccan archives which were not included in the ministry’s registers, though for the sake of brevity I relegate most of these discussions to footnotes.\(^8\)

Nearly all claims made by Jews fall under three categories: debt, theft, and murder (see Figure 5.1). The vast majority of cases found in the registers of the Ministry of Complaints concern debts (362, or about 71%), for which Jews were almost always the creditors. Incidents in which Jews were victims of theft constitute about 15% of the total (75 cases), and those in which Jews were murdered make up about 8% (42 cases); the remaining 32 cases (6%) are either of an indeterminate nature or concern miscellaneous matters.\(^9\)

---

\(^6\) This number includes all claims in which a Jew (or Jews) were involved, either as complainant or as the object of a complaint. The actual number of entries is higher (541), since some cases had multiple entries devoted to them. I am not including appeals brought by groups of Jews, which I address in the next chapter.

\(^7\) As far as I can tell, the Ministry of Complaints was reserved for petitions from Moroccan subjects, since at least one register concerning appeals survives which was exclusively devoted to the petitions of foreigners and foreign subjects (BH, K 551; see the introduction to the volume on p. 4).

\(^8\) I found references to only two petitions from individual Jews before the creation of the Ministry of Complaints (DAR, Fez, 22986, al-Ḥusayn Rafrāfī to Abū ʿAbdallāh Muḥammad b. Idrīs, 28 Muḥarram 1261 and 23074, Mawlāy ʿAbd al-Raḥmān to his son Muḥammad, 2 Rabī‘ I 1261). In addition, I found two letters pertaining to complaints from the period covered by the Ministry of Complaints registers, but which did not appear in the registers (DAR, Marrakesh, Ahmad Amālik to Mawlāy Ḥasan, 9 Shaʿbān 1307; DAR, Yahūd, ʿAbdallāh al-Baydāwī to Muhammad Tūrīs, 6 Shaʿbān 1308).

\(^9\) By indeterminate, I mean that the nature of the case is not stated in the entry. It is instructive to compare these percentages to the conclusions drawn by Mansoureh Nezam-Mafi in his study of petitions to the Council for the Investigation of Grievances in nineteenth-century Iran. He found that 41% of petitions related to financial matters—
It is important to note here that Jews rarely appealed to the Ministry of Complaints concerning intra-Jewish matters. Of the approximately five hundred cases, I found only five that concerned complaints against other Jews (about 1%). However, I do not think that this percentage accurately reflects the frequency with which Jews turned to the state to resolve legal disputes with other Jews. Other correspondence preserved in the Makhzan archives contains a much higher proportion of intra-Jewish cases which Jews sought to resolve by appealing to the state. I thus rely less on the registers of the Ministry of Complaints records in discussing the ways in which Jews used the Makhzan to resolve their intra-communal disputes.

---

Table 5.1

<table>
<thead>
<tr>
<th>Types of Cases</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debts</td>
<td>71%</td>
</tr>
<tr>
<td>Theft</td>
<td>15%</td>
</tr>
<tr>
<td>Murder</td>
<td>8%</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>6%</td>
</tr>
</tbody>
</table>


10 On non-Muslims petitioning the Ottoman state concerning other non-Muslims, see Ursinus, *Şikayet in an Ottoman Province*, 28-30.

11 In my research in the DAR, I found a total of seventy-five cases in which individual Jews appealed to the state (including cases of debts, theft, murder, and other matters); thirteen of these concerned intra-Jewish matters, or approximately 17%. However, the incompleteness of the archives makes it impossible to know whether this
The nature of these sources prevents us from fully answering a number of questions which arise in the course of this chapter. In particular, there is rarely enough information given about either the Jewish petitioners or the local Makhzan officials who were given orders regarding Jews’ complaints. While some Jews appear repeatedly in connection with cases of unpaid debts, most appear only once—making it difficult to surmise anything about the socio-economic background of the Jewish petitioners. Similarly, the Makhzan officials are rarely identified by their full names or their places of residence, which renders it hard to trace the geographical contours of the cases.

Although I focus on Jews’ use of the Ministry of Complaints, I nonetheless draw comparisons between their experience and that of Muslims. The number of entries concerning Jews suggests that they petitioned the Ministry of Complaints as often as Muslims, if not somewhat more frequently. Jews appear in approximately six percent of the total number of entries in the Ministry of Complaints registers.\(^\textit{12}\) Although population statistics for nineteenth-century Morocco are notoriously unreliable, estimates put Jews at between one and five percent of the total population.\(^\textit{13}\) While I hesitate to draw firm conclusions from such partial data, the available evidence suggests that Jews turned to the Ministry of Complaints in relatively similar proportions to Muslims.

---

\(^{12}\) This percentage is based on a calculation of the average number of cases per page for each register (since each register is a different size), which produces: 10.8 cases per page for K 157, 7.2 cases per page for K 171, 7.9 cases per page for K 174, and 11.8 cases per page for K 181. Multiplied by the number of pages in each register, this yields an approximate total of 8,358 cases.

While Muslims appealed to the Makhzan for many of the same kinds of issues—such as theft and murder—there are ways in which Jews and Muslims differed in the types of petitions they sent to the Ministry of Complaints. Jews were much more likely to petition the Makhzan concerning unpaid debts than were Muslims because Jews acted more often as money lenders. Muslim *shurafā’* (descendants of the Prophet Muḥammad), on the other hand, show up in the Ministry of Complaints registers for extra-judicial matters such as asking for charity, something which Jews never did.\(^{14}\)

The Ministry of Complaints registers suggests that a petitioner’s religious affiliation was not of primary importance in determining how the Makhzan responded to his appeal. This does not mean that the state did not distinguish between Jews and Muslims—on the contrary, as with sharī’a court documents, the Makhzan scribes who recorded the registers normally signaled Jews with the epithet “al-dhimmi” or “al-yahudi,” whereas they simply wrote the names of Muslim males without any identifying features.\(^{15}\) Yet as we will see, the fact that Jews were subjects of the sultan, and thus entitled to seek redress from their sovereign, was generally more determinative than the fact that they were Jews in defining their experience with the Ministry of Complaints.

---

\(^{14}\) There are entries of this kind throughout the registers: see, for instance, BH, K 157, p. 37, 29 Ramaḍān 1306 and p. 56, 12 Dhū al-Qa’dā 1306. Presumably Jews were ineligible for state charity as Jews. This hypothesis is further supported by the fact that the only letter I found from a Jew asking the sultan for charity was from a Jewish convert to Islam (DAR, Yahūd, 34661, Muḥammad b. Muḥammad al-‘Ūfīr and his wife Raḥma al-Islāmiyya to Mawlāy ‘Abd al-‘Azīz, 7 Shawwāl 1315).

\(^{15}\) In this context, “al-dhimmi” can be translated as “the Jew,” since Jews were the only indigenous dhimmīs in Morocco. Christians were described as *al-nasrānī* or *al-rūmī*, and their nationality (*al-injilīzī, al-franṣīsī*) was often also specified. Since Christians in Morocco lived under extraterritorial privileges granted by the treaties of capitulation, their legal status was not that of dhimmīs who had accepted the sovereignty of Islam. As discussed in Chapter Two, there does not seem to be any pattern to the use of dhimmī vs. yahudi, though dhimmī appears far more in the Ministry of Complaints records.
Causes for Complaint

Most of the appeals to the Makhzan made by Jews involved unpaid debts. While the records rarely specify the exact nature of the debts, it seems safe to assume that the loans discussed in the registers of the Ministry of Complaints were similar to those practiced by the Assarraf family and their associates (discussed in Chapter Two). On all types of loans, creditors normally charged interest; however, this was usually disguised in ways that conformed to the stipulations of Islamic law.

In the cases recorded in the Ministry of Complaints registers, Jews were almost exclusively the creditors and Muslims almost always the debtors. This does not mean that Jews only loaned money to Muslims; Jews also extended credit to other Jews. For the most part, these types of intra-Jewish disputes did not arrive on the desk of the Minister of Complaints (although I discuss petitions concerning intra-Jewish debts in the final section of this chapter). Muslims rarely loaned money to Jews, although it was not uncommon for them to loan money to other Muslims. Overall, it is important to emphasize that Jews were overrepresented as

---

16 The Assarraf family and their business associates mostly loaned money by selling goods on credit. Additionally, some debts were incurred from sales in kind, such as when peasants sold their crops to Jews before the harvest out of a need for cash. Jews would wait to re-sell the crops until shortly before the next harvest, when supply was low and prices were high. Peasants, meanwhile, would run out of money by the end of the agricultural year and again have to sell early, before the next harvest when prices were low. Some moneylenders amassed considerable fortunes in this way. For an explanation of how this type of moneylending worked in Marrakesh, see Bénech, *Explication d’un mellah*, 36-39. At other times, Jews (including the Assarraf family) made straightforward loans of cash; this type of loan became more common in the nineteenth century as Moroccans’ demand for foreign goods rose and they became increasingly impoverished: Miège, *Le Maroc et l’Europe*, v. 2, 533-45; Kenbib, *Juifs et musulmans*, 254.


18 I came across only two cases in which Jews owed debts to Muslims: BH, K 181, p. 138, 23 Sha’bān 1309; p. 236, 13 Muḥarram 1310. See also a case in which a Jew and a Muslim in partnership together were jointly owed money by another Muslim: BH, K 181, p. 138, 23 Sha’bān 1309. In addition to the Ministry of Complaints registers, see DAR, Yahūd, Ya’aqov b. Sa’īd to Muḥammad Tūrīs, 3 Muḥarram 1325, concerning the claim of Ṭūrīs b. Manṣūr al-‘Alawī al-Ribāṭī that Ya’aqov (a Jew) owed him money for a transaction involving cattle (the exact nature of which is not specified).

19 Although the registers of the Ministry of Complaints certainly contain cases in which Muslims petitioned about the debts they are owed by other Muslims, I did not conduct a thorough search for such entries since I am primarily concerned with Jews. But see, for instance, BH, K 157, p. 31, 14 Ramaḍān 1306; p. 39, 4 Shawwāl 1306; BH, K 181, p. 13, 28 Qa’dā 1308; p. 304, 9 Jumādā I 1310.
moneylenders in the Ministry of Complaints records. This comes as no surprise since during the second half of the nineteenth century Jews became increasingly involved in lending money. This was partly a result of changing economic patterns in Morocco which caused peasants to be more and more in need of cash.\textsuperscript{20} Although scholarly treatments of Jewish moneylenders have tended to focus on the role of protégés, the Ministry of Complaints records show that Jews without foreign protection were also active as creditors.\textsuperscript{21}

As a general rule, Jewish creditors legalized their commercial transactions with ‘\textit{udūl}, Islamic notaries (as discussed in Part One). The legal documents (\textit{rusūm} or ‘\textit{uqūd}) they produced constituted proof of the money they were owed, legal proof (\textit{mūjib}) that would stand up in Islamic court. Normally, the Makhzan only came into the picture when something went wrong—that is, when the debtors did not pay their debts and for whatever reason the creditor had been unable to collect by suing in the local sharī‘a court. Jews who wrote to the Ministry of Complaints might have done so only after appealing to the local Makhzan authorities. Jews who were owed money by Muslims in rural areas, on the other hand, might have written directly to the central government when they could not collect their debts, rather than appealing to the local Makhzan official with whom they might not have had personal ties.

The most straightforward means to settle cases of unpaid debt was for the creditor to be paid in cash.\textsuperscript{22} In other instances, debts were paid in kind, either in livestock or agricultural


\textsuperscript{22} For cases in which the debtor paid in cash, see BH, K 174, p. 121-122, 15 Shawwāl 1308; BH, K 181, p. 162, 25 Ramaḍān 1309; p. 230, 29 Dhū al-Ḥijja 1309; p. 260, 23 Ṣafar 1310; p. 301, 3 Jumādā I 1310; p. 314, 28 Jumādā I 1310; p. 325, 23 Jumādā II 1310; p. 336, 17 Rajab 1310; p. 347, 12 Sha‘bān 1310. See also DAR, Fez, 35002, Mawlāy Muḥammad to Muḥammad b. al-Madānī Banīs, 24 Ramaḍān 1289. In this case the sultan ordered Banīs to pay a Jew from Salé 2,000 riyāls that he was owed by the Makhzan (after the umanā‘ of Rabat-Salé investigated and found that the Jew’s original claim that he was owed 2,900 riyāls was exaggerated).
products (such as barley).\textsuperscript{23} This, however, could cause controversy as Jewish creditors sometimes refused to accept payments in kind.\textsuperscript{24} Some entries mention that the creditors released the debtors after they had paid what they owed, meaning that they had a release (\textit{ibrā'}) notarized before ‘udūl (as discussed in Chapter Two).\textsuperscript{25}

It is difficult to know much about the identity of the Jewish creditors who petitioned the Makhzan about their unpaid debts. As mentioned above, most of the Jews recorded in the registers appear only once, and without enough information to trace them. However, there are a few instances in which it is possible to know more about the Jews concerned. In particular, a number of entries concern the Assarraf family (as discussed at the beginning of Chapter Four).\textsuperscript{26}

The Jewish name Ibn al-Baḥar also appears repeatedly in the Ministry of Complaints registers. There were at least two Ibn al-Baḥars (Yosef and Masʿūd), both of whom were protégés (French and Portuguese respectively).\textsuperscript{27} The Ibn al-Baḥars’ repeated claims in the Ministry of

\begin{enumerate}
\item For debts paid fully or partially in kind, see BH, K 157, p. 125, 27 Rabī’ II 1307; p. 164, 20 Jumādā II 1307; BH, K 181, p. 299, 1 Jumādā I 1310; p. 361, 6 Ramaḍān 1310.
\item The Jewish creditor refused to accept payment in kind in two of the four cases: BH, K 157, p. 125, 27 Rabī’ II 1307 and BH, K 181, p. 299, 1 Jumādā I 1310.
\item I found a letter which suggests that sometimes the sultan demanded proof of settlement: DAR, Fez, Mawlāy Ḥasan to Saʿīd b. Farajī, 6 Jumādā I 298. Mawlāy Ḥasan specified that Saʿīd should send him a copy of the release documents for those debts that were settled, and that for those which were only partially settled he should write the amount paid on the back of the original bill of debt and have it signed by ‘udūl until the debt was paid in full. However, it is possible that this procedure was exceptional and that in most instances the sultan did not require such stringent proof of settlement.
\item Unfortunately Assarraf was a common Jewish name in Morocco, and the Ministry of Complaints registers do not always preserve the first name of the particular Assarraf concerned (thirteen merely mention the “dhimmī al-Ṣarrāf”). Nonetheless, one entry names Yaʿqūb b. Shālūm al-Ṣarrāf (Yaʿaqov b. Shalom Assarraf) (BH, K 181, p. 92, 12 Jumādā II 1309), and a number of others mention a Yaʿqūb b. al-Ṣarrāf who was probably the same person: BH, K 181, p. 108, 5 Rajab 1309; p. 123, 29 Rajab 1309; p. 133, 16 Shaʿbān 1309; p. 134, 17 Shaʿbān 1309. Another entry mentions Mardūkh al-Ṣarrāf, who was probably Mordekhai b. Yehudah Assarraf, Shalom’s brother: BH, K 181, p. 108, 5 Rajab 1309.
\item Some entries clearly refer to Masʿūd Ibn al-Baḥar (either including his first name or describing him as a Portuguese protégé): see BH, K 171, p. 80, 4 Shawwāl 1307; BH 181, p. 201, 17 Dhū al-Qaʿda 1309. See also DAR, Fez, 730, Mawlāy Ḥasan to ‘Abdallāh b. Ahmad, 26 Rajab 1301; Saʿīd b. Farajī to Muḥammad b. al-ʿArabī, 15 Muḥarram 1302. On Yūsīf b. al-Baḥar, see DAR, Fez, Mawlāy Ḥasan to Saʿīd b. Farajī, 2 Muḥarram 1301 and, Mawlāy Ḥasan to Saʿīd b. Farajī, 15 Rajab 1301. The name Ibn al-Baḥar appears in a total of 24 entries concerning 18 cases. In most of these, the first name is not specified, so it is impossible to know whether the case concerned Yosef or Masʿūd: see BH, K 174, p. 80, 3 Shaʿbān 1308 (two entries); BH, K 181, p. 34, 4 Ṣafar 1309; p. 56, 15 Rabī’ II 1309; p. 73, 11 Jumādā I 1309; p. 90, 8 Jumādā II 1309; p. 117, 16 Rajab 1309; p. 127, 4 Shaʿbān 1309; p.
\end{enumerate}
Complaints registers suggest that they were active moneylenders with numerous debtors and that they were sufficiently well-connected to have their complaints heeded by the Makhzan. It thus seems safe to assume that both Ibn al-Baḥars, like the Assarrafs, were wealthy and relatively powerful.

However, the repeated petitions of the Ibn al-Baḥars and the Assarrafs do not mean that all or even most of the Jewish creditors who appear in the Ministry of Complaints records were rich. Rather, the fact that only a few names appear repeatedly suggests that these families were exceptional—probably because they were exceptionally wealthy. In fact, the paucity of names which are frequently repeated in the registers suggests that most of the Jewish creditors who appealed to the Makhzan were not extremely wealthy. Additionally, we know from other sources that wealthy Jews had other means by which to ensure the payment of their debts. For instance, a creditor with sufficient resources could make a loan to a qāʿid in exchange for the qāʿid’s agreement that he would force any recalcitrant debtors to pay. It seems safe to conclude that few of the Jewish creditors who appear in the Ministry of Complaints records were members of the wealthiest class.

Similarly, although the Ibn al-Baḥars boasted foreign protection, most of the Jews who appear in the Ministry of Complaints registers were not protégés. Firstly, the Makhzan kept a separate register solely devoted to the complaints of protégés (where Masʿūd Ibn al-Baḥar

---

168, 5 Shawwāl 1309; p. 226, 24 Dhū al-Hijja 1309; p. 271, 16 Rabiʾ I 1310; p. 304, 9 Jumādā I 1310; loose sheet, 10 Jumādā I, 1310; loose sheet, 30 Ramaḍān 1310. Some of the entries that mention Ibn al-Baḥar refer to the same cases: see, BH, K 174, p. 80, 3 Shaʿbān 1308; BH, K 181, p. 34, 4 Ṣafar 1309; p. 65, 2 Jumādā I 1309. In these entries Mawlāy Ismāʿīl reported concerning the debts owed to Ibn al-Baḥar by Ibn al-Zīzūn. See also BH, K 181, p. 166, 1 Shawwāl 1309; p. 226, 21 Dhū al-Hijja 1309; p. 264, 29 Ṣafar 1310; p. 272, 19 Rabiʾ I 1310; p. 297, 30 Rabiʾ II 1310; p. 347, 11 Shaʿbān 1310 (for a case dealt with over time by al-Ḥibāsī); BH, K 181, p. 174, 11 Shawwāl 1309; p. 262, 25 Ṣafar 1310 (for a case dealt with by al-Hilālī) and BH, K 181, p. 265, 29 Ṣafar 1310; p. 297, 30 Rabiʾ II 1310; p. 340, 23 Rajab 1310 (for a case dealt with by al-Zarārī). See also DAR, Yahūd, 20411, Mawlāy Ḥasan to Qaid Ḥammun b. Ḥulālī, 29 Dhū al-Hijja 1310.

appears numerous times). While the Ministry of Complaints registers do not specify that they were reserved for Moroccan subjects, the existence of a separate register for foreign subjects and protégés suggests that the Ministry of Complaints was intended to serve those Moroccans without protection. Secondly, the fact that Jews were explicitly identified as protégés in only a few instances suggests that this was relatively rare in the cases with which the Ministry of Complaints dealt.

After unpaid debts, theft was the second most common matter about which Jews wrote to the Ministry of Complaints. Jews who were victims of theft tended to petition the Makhzan only when they did not receive proper compensation through the normal channels. Compensation usually meant some sort of indemnity (in cash) or the return of the stolen goods. Under normal circumstances, the local Makhzan official was responsible for making sure that victims of theft were properly compensated. It was only when individuals felt that justice had not been done at the local level that they appealed to the central government.

The fact that punishment beyond financial compensation was not usually requested by either the Jewish victims or the Makhzan is somewhat at odds with the way theft is understood in Islamic law. According to Islamic law, theft cases can fall under the category of ḥudūd (singular ḥadd), that is, crimes for which a mandatory punishment is outlined in the Quran or the Sunna.

The Quran prescribes cutting off of the right hand of a thief. However, as Rudolph Peters observes, “The jurists define the ḥadd crime of theft very narrowly.” Most cases of theft did

---

29 BH, K 551 (see the introduction to the register on p. 4). For mentions of Mas‘ūd Ibn al-Baḥar in this register, see: p. 41, 19 Jumādā I 1307; p. 74, 15 Ramaḍān 1307; p. 79, 25 Ramaḍān 1307; p. 83, 4 Shawwāl 1307; p. 85, 11 Shawwāl 1307; p. 90, 10 Dhū al-Qa‘da 1307; p. 93, 28 Dhū al-Qa‘da 1307.


31 On ḥadd crimes generally, see Peters, Crime and Punishment in Islamic Law, 53-65. On sariqa (theft) as a ḥadd crime, see Schacht, An Introduction to Islamic Law, 179-80; Peters, Crime and Punishment in Islamic Law, 55-57.

32 Ibid., 56. Peters further notes that “A salient feature of the law of ḥadd crimes is that the doctrine has made it very difficult to obtain a conviction,” (54). Among the requirements for considering theft a ḥadd crime are: the theft
not qualify for the *ḥadd* punishment, and were treated like torts requiring the return of the stolen object or the payment of an indemnity. Although there is some evidence that the *ḥadd* punishment was applied in Morocco in the nineteenth century, it is never mentioned in the Ministry of Complaints records.\(^{33}\) It seems that most cases of theft were considered torts, and their remedy was to return the property or its value to the victim.\(^{34}\) Moreover, because theft was treated as a tort, there was no difference in the way Muslims and non-Muslims were compensated.

It is important to note that unlike debt cases, about which Jews complained much more often than Muslims because Jews were overrepresented as moneylenders, Jews and Muslims appear in the registers as victims of theft with similar regularity. Although I did not systematically examine entries concerning Muslims, even a cursory investigation shows that they, too, were victims of theft.\(^{35}\) Nor is there evidence that Jews were consistently singled out to be stolen from; rather, it seems that thieves preyed on people traveling in isolated areas no

\(^{33}\) See, for instance, DAR, Safi, 4769, Mawlāy Sulaymān to ‘Abd al-Khāliq b. Ibrāhīm, 12 Dhū al-Qa’dā 1224.

\(^{34}\) See, for instance, the notarized document attesting to the payment of an indemnity for theft: “Muḥammad, called al-Aḥal, b. Ḥamūdā b. al-Bashīr b. Zarūq al-Ya’qūbī, who lives in Bū Mu‘āwiya, testifies that he received from Muḥammad Fathān b. al-Mutawakkil b. al-Khadrī, his relative, all that he (Muḥammad Fathān) had paid to his fellow tribesmen [literally, brothers], the Bū Mu‘āwiya, from his personal wealth (*mālihi al-ḫāṣṣ*) for the female camel (*fārsā*) which his aforementioned brothers stole from the children of Muḥammad b. Muḥammad, [which was worth] 50 French riyāls. And he [Muḥammad] released him [Muḥammad Fathān], and there will be no investigation afterwards (*lā ta‘aqqub ba‘dāhā*),” (TC, File #4, Rajab 1274). The entries in the Ministry of Complaints registers rarely specify whether the victim of theft was to receive the goods or an indemnity. In one instance the Makhzan official reported having returned the stolen goods to the Jewish victim (BH, K 181, p. 340, 23 Rajab 1310). In another instance from a few years earlier the sultan specified that the Jew should receive the equivalent of his stolen goods (rather than the goods themselves): DAR, Fez, ‘Abdallāh b. Aḥmad to Mawlāy Ḥasan, 29 Rabī‘ I 1301. For a similar settlement, see also FO, 631/3, Elton to Hay, 10 October 1864.

\(^{35}\) In order to give a sense of the frequency of theft cases involving Muslims, I looked through a random sample of entries from Ramaḍān 1306 to Muḥarram 1307 and found a number of instances in which Muslims were victims of theft: BH, K 157, p. 31, 14 Ramaḍān 1306; p. 31, 17 Ramaḍān 1306 (two separate entries on this page); p. 35, 22 Ramaḍān 1306; p. 39, 30 Ramaḍān 1306; p. 40, 5 Shawwāl 1306; p. 40, 7 Shawwāl 1306; p. 85, 20 Muḥarram 1307.
matter what their religious background. The fact that in some instances thieves stole from Jews
and Muslims together suggests that the perpetrators did not care much about the confession of
their targets.36 There are, however, two factors which made Jews more vulnerable to theft than
Muslims. The first is that as dhimmīs, Jews were not permitted to own weapons, and thus were
more likely to be unable to defend themselves.37 Secondly, and probably more importantly,
many Jews made a living by peddling goods from village to village; it was common for these
peddlers to be absent from their hometowns for long spans of time, often returning home only for
the High Holidays in the fall and Passover in the spring.38 The fact that Jews might have been
easier targets is thus in part connected to their religious identity, but it does not mean that
Muslim thieves stole from Jews out of an express desire to harm Jews.

Although the vast majority of the Jewish victims of theft were men, I found one case
concerning a Jewish woman who was stolen from named Esther (Īstīr) al-Ṭanjawīya (from
Tangier), described as “al-dhimmīya.”39 We know little about what happened except that the
theft occurred in the jurisdiction of al-Sufyānī (who was the governor of the Gharb and the same
official involved in the case of the mule driver with which this chapter began). The only other
information we have about Esther is that the Makhzan assigned her a house in Tangier.40 The
Makhzan often gave houses to important merchants, government officials, and foreign diplomats.

It is possible that Esther was a merchant of some sort, though this would have been unusual for a

36 BH, K 157, p. 69, 11 Dhū al-Ḥijja 1306; BH, K 171, p. 11, 24 Rajab 1307. See also DAR, Yahūd, ?? to ʿUmar Barrāda (no date).
37 On the prohibition against dhimmīs carrying weapons, see the Pact of ʿUmar in Abū Bakr Muḥammad b. al-Walīd
38 For a discussion of Jewish peddling in Morocco, see Schroeter, Merchants of Essaouira, Chapter 5.
39 There are five separate entries about this case: BH, K 157, p. 171, 1 Rajab 1307 (two entries); BH, K 171, p. 47, 3
Ramadaṇ 1307; p. 48, 3 Ramadaṇ 1307 (two entries).
40 See BH, K 171, p. 81, 4 Shawwāl 1307, in which the governor of Tangier reported that the house assigned to “al-
dhimmīya Īstīr”—who was probably the same person as the victim of the theft—was still being repaired.
woman in nineteenth-century Morocco. Perhaps a more likely explanation is that Esther came from an influential and wealthy family and was robbed of precious possessions while traveling on Morocco’s notoriously dangerous roads.

Cases concerning Jews who were murdered are the least common among the entries in the Ministry of Complaints registers (forty-two cases, or about 8% of the total). Islamic law treats murder cases much like theft cases; only the relatives of the deceased (and not the state) can prosecute the murderers. Murder cases are settled with the payment of blood money (diya) or retribution killing.41 Although theoretically the murderers were responsible for paying the blood money, there is evidence that Makhzan officials sometimes paid murder indemnities out of their own pockets and only later tried to recover the cost from the murderers themselves.42 Most schools of Islamic law, including the Mālikī school, do not permit retribution killing for a dhimmī killed by a Muslim.43 Jews’ appeals to the Makhzan concerning murder cases thus only sought blood money. Additionally, most schools rule that the relatives of the murdered dhimmī can claim only half the blood money which would be paid for a murdered Muslim.44 Since amounts of blood money are not given consistently in the Ministry of Complaints registers, it is difficult to know the extent to which this principle was observed. Moreover, in those instances

---

41 Schacht, *An Introduction to Islamic Law*, 181-87. The private nature of murder crimes also governed their treatment in the Ottoman Empire: Heyd, *Studies in Old Ottoman Criminal Law*, 309: Hickok, “Homicide in Ottoman Bosnia,” 47-48. Hickok notes that after the eighteenth century reforms gave the state the right to investigate murders, but before these reforms took effect the governor’s only possibility for involvement was declaring a murder case to be brigandage, over which he had jurisdiction. For a Jewish legal discussion from Meknes concerning which relatives can collect the blood money from a murdered Jew, see NLI, Ms. B861 (8=5165-6), p. 173a, Adar 5641/February 1881, signed by Rafael Ibn Tzur and Ya’aqv Berdugo.


43 Fattal, *Statut légal*, 116-18. The only school which permits retaliation killing for dhimmīs is the Ḥanafi school. Fattal notes that Mālik did permit the murderer of a dhimmī to be killed as punishment, however this does not seem to be the dominant view of the Mālikī school.

44 Ibid., 116-18.
when amounts are specified they tend to vary widely: in one case the blood money for a Jew amounted to 500 riyāls, in another to 1,300 riyāls, and in a third to 2,500 riyāls.  

Like theft cases, those who murdered Jews do not seem to have been motivated by anti-Jewish sentiment. The nature of the murder cases suggests that Jews were often killed in order to steal their goods rather than out of any personal or religious motivation. Indeed, Jews and Muslims were at times murdered under similar circumstances. The fact that many Jews travelled long distances peddling goods probably made them better and easier targets for murder, as for theft. It is also possible that the prohibition on Jews owning weapons contributed to their greater vulnerability.

Relatives of the deceased were usually the ones to report the case to the Makhzan and complain that they had not yet been compensated. The compensation which relatives demanded comprised blood money and, in some cases, the return of whatever goods had been stolen (or their value). As relatives of victims, Jewish women appear in the Ministry of

---

45 BH, K 174, p. 51, 21 Jumādā I 1308; BH, K 181, p. 345, 6 Sha‘bān 1310; BH, K 181, p. 260, 23 Šafar 1310. In one case the murderer’s family paid only 212 riyāls, but this was only part of the total amount of blood money (BH, K 181, p. 275, 27 Rabī’ I 1310). This sum was paid by only one of the murderers; it is not clear how many others still had to pay and whether they would have paid the same amount.
46 Daniel Schroeter made the same observation for the area around Essaouira: Schroeter, Merchants of Essaouira, 171-2.
47 Although only nine out of the forty-two cases specifically mention that goods were stolen at the time of murder, the vast majority of cases occurred in rural areas and many specify that the Jewish victims were from elsewhere (usually a larger city). Also, the elliptical nature of the entries is such that many details of the murder cases are left out—making it likely that other cases also involved theft even if this was not specified in the entry. For a case which specifies that Jews generally came to rural regions to sell wares and to loan money, see BH, K 181, p. 200, 16 Dhū al-Qa‘da 1309. See also DAR, Tetuan, 20829, ‘Abd al-Qādir Ash‘āsh to Mawlāy ‘Abd al-Raḥmān, 1 Muharram 1265. In this case the murderer’s motive is unclear; at one point he claimed he killed the Jewish victim because the Jew had been sleeping with his wife, though at another point he claimed that he only killed him in order to steal his goods.
48 See, for instance, BH, K 157, p. 39, 2 Shawwāl 1306; p. 56, 12 Dhū al-Qa‘da 1306 (in this case the Muslim victim was murdered and robbed). There is also some evidence that Muslims were killed for personal or political reasons more often than Jews. For instance, in one entry a qā‘id was accused of killing a notable (who was a brother of Ibn ‘Atīq al-Tusūlī); although it is possible that the qā‘id simply happened to kill a notable, it seems more likely that he did so for political reasons (BH, K 157, p. 39, 2 Shawwāl 1306).
49 The relationship between the petitioners and the victim is not always specified. In one instance the uncle of the murdered Jew petitioned (BH, K 171, p. 61, 17 Ramadān 1307). In another case it was the victim’s cousin (BH, K 181, p. 69, 6 Jumādā I 1309). See also DAR, Yahūd, 34484, Muḥammad al-Ṣafīlār to Muḥammad Bargāsh, 6 Jumādā II 1293, in which the brother of the victim pursued the case.
Complaints registers for murder cases relatively more frequently than for debt or theft cases. This is not surprising given that many women depended on their husbands or male relatives to support them, and thus would be faced with poverty without the payment of blood money.  

Instructions to Local Officials

The Ministry of Complaints registers reveal three major ways in which the Makhzan responded to petitions concerning cases of unpaid debts, theft, and murder. The most common was to order the local official to “settle” (yufāṣ) the case at hand—that is, by bringing about some sort of payment, either through mediation or force. The second procedure was to instruct the local Makhzan official to send the individuals involved to the sultan, who would personally settle the case. Finally, the third option was to refer cases to a sharī’a court, after which the Makhzan official would presumably enforce the qāḍī’s ruling.

The Ministry of Complaints most commonly ordered local officials to settle cases themselves. For instance, an entry from March 22, 1890, reads: “Bū Garīr concerning the complaint of the dhimmi Ibn al-Ṣabākh who was robbed [literally, cut off, al-maqṭūʿ ‘alayhi] in Umm Janība, and the command that he [Bū Garīr] investigate and settle [the case].” Some

---

50 Two entries specify that the mother of a murdered Jew complained about not having received any compensation: BH, K 174, p. 30, 23 Rabī’ I 1308 and BH, K 181, p. 57, 20 Rabī’ II 1309.

51 On the whole, the Ministry of Complaints charged local Makhzan officials with resolving about 84% (303) of the cases concerning unpaid debts which were reported to the Ministry.

52 BH, K 171, p. 19, 30 Rajab 1307. For similar entries see BH, K 174, p. 79, 29 Rajab 1308; BH, K 181, p. 183, 20 Shawwāl 1309. Although the registers themselves do not preserve the text of the letters from the ministry (sent in the sultan’s name), we do have examples of these from other collections. See, for instance, MAE Nantes, Tanger A 161, Mawlāy Ḥasan to Laḥsan b. al-'Arabī, 4 Rabī’ II 1301. There are also a number of cases in which the local official reported that he had settled, or was in the process of settling, a case, which suggests that the sultan sometimes ordered settlement even when the entry does not record the sultan’s command to settle in so many words. For examples of entries in which the official had clearly received orders to settle a case and was reporting on his progress in doing so, see: BH, K 157, p. 113, 3 Rabī’ II 1307; BH, K 171, p. 14, 26 Rajab 1307; p. 26, 6 Sha'bān 1307 (second and third entries); p. 104, 7 Dhū al-Qa‘da 1307; BH, K 174, p. 13, 5 Şa‘ār 1308; BH, K 181, p. 12, 25 Dhū al-Qa‘da 1308; 34, 4 Şa‘ār 1309; p. 65, 2 Jumādā I 1309; p. 108, 5 Rajab 1309; p. 121, 19 Rajab 1309; p. 123, 29 Rajab 1309 (fifth and seventh entries); p. 133, 16 Sha'bān 1309; p. 163, 26 Ramaḍān 1309; p. 219, 9 Dhū al-Ḥijja
cases which were ultimately settled by local Makhzan officials were nonetheless considered important enough for the sultan to send officials to investigate the case in person or, more often in cases of debt, to make sure the debtors actually paid.\textsuperscript{53} For instance, when Ya‘aqov Assarraf claimed he was owed 300 riyāls by three Muslims, the sultan sent soldiers to ensure compliance with his command that the debtors pay.\textsuperscript{54}

Less commonly, the sultan instructed the local Makhzan official to send some or all of those involved in a case to him to resolve the dispute himself.\textsuperscript{55} In some debt cases, sending debtors to the sultan seemed to be a sort of last resort to force them to pay their outstanding debts.\textsuperscript{56} An entry from January 16, 1893, notes that Ḥām al-Yāzighī was commanded to settle the debts owed to the dhimmī Sam‘ūn Furiyāṭ [sic: should be Qoriat] from Sefrou.\textsuperscript{57} Al-Yāzighī

\textsuperscript{53} See BH, K 171, p. 61, 17 Ramaḍān 1307; BH, K 181, p. 179, 16 Shawwāl; p. 82, 23 Jumādā I 1309; p. 231, 30 Dhū al-Ḥijja 1309. See also DAR, Fez, Idrīs b. Muhammad to Muhammad b. al-Madani Banīs, 8 Dhū al-Qa‘da 1289: in this case the author of the letter was sent to settle a debt owed to a Jewish creditor.

\textsuperscript{54} BH, K 181, p. 351, 18 Sha‘bān 1310. The Makhzan official charged with settling the case said that one of the debtors had driven away the Makhzan soldiers (al-makhāzinīya), and “requests permission to attack them and to confiscate their possessions” (ṭāliban al-idhna fī al-ilhām lahu wa-l-akli li-matā‘ihi).

\textsuperscript{55} For murder cases, see: BH, K 171, p. 9, 23 Rajab 1307; BH, K 181, p. 102, 28 Jumādā II 1309; p. 186, 27 Shawwāl 1309. For theft cases, see: BH 157 p131, 9 Jumādā I 1307; BH, K 171, p. 171, 1 Rajab 1307; BH, K 171, p. 107, 11 Dhū al-Qa‘da 1307. For debt cases, see BH, K 157, p. 171, 1 Rajab 1307; BH, K 181, p. 91, 11 Jumādā II 1309; p. 187, 27 Shawwāl 1309. See also DAR, Fez, Mawāliyya Ḥasan to Sa‘īd b. Farajī, 6 Jumādā I 1298, in which the sultan ordered Sa‘īd either to settle the debts of the Jewish creditor Moshe ‘Amūr himself, or to send the debtors to settle with Moshe in the sultan’s presence. The Ottoman sultan similarly ordered that some cases be sent to him to resolve (Ginio, “Coping with the State’s Agents”).

\textsuperscript{56} BH, K 171, p. 51, 8 Ramaḍān 1307; BH, K 174, p. i, 27 Jumādā II 1308; BH, K 181, p. 83, 25 Jumādā II 1309; p. 131, 13 Sha‘bān 1309; p. 255, 13 Ṣafar 1310; p. 270, 12 Rabi‘ I 1310. I found two cases in which the Makhzan official was given the choice of sending the debtors to the sultan or settling the debt in some other way: BH, K 181, p. 119, 21 Rajab 1309; p. 219, 9 Dhū al-Ḥijja 1309. In the second case, the sultan specified that the Makhzan official should either settle the case himself or send it to the sultan so that it could be settled by a sharī‘a court; this formulation is rather unusual, since most cases that were settled in a sharī‘a court went to the local qāḍī, rather than first being sent to the sultan. See also DAR, Fez, Mawāliyya Ḥasan to ‘Abdallāh b. Aḥmad, 13 Shawwāl 1296, in which the sultan reprimanded ‘Abdallāh b. Aḥmad, writing that he had ordered ‘Abdallāh to settle a Jewish creditor’s debts numerous times; he concluded by saying that either ‘Abdallāh should finally settle the debts or send the debtors to him. For similar instructions from the sultan, see DAR, Fez, Mawāliyya Ḥasan to Sa‘īd b. al-Farajī, 9 Muharram 1301; 730, Mawāliyya Ḥasan to ‘Abdallāh b. Aḥmad, 26 Rajab 1301; 6037, Mawāliyya Ḥasan to ‘Abdallāh b. Aḥmad, 29 Rajab 1301.

\textsuperscript{57} BH, K 181, p. 326, 27 Jumādā II 1310. Furiyāṭ might be a misspelling of Quriyāṭ, since Qoriat was a prominent Jewish family in nineteenth-century Morocco (and the difference between fā and qāf is only a matter of writing the
“insisted upon settlement with [the debtors] (shaddada ‘alayhim fī al-faṣālī58), and those who were able to pay paid.” However, he did not know what to do with the rest of the debtors. The sultan responded that al-Yāzighī should arrest those who had yet to pay and send them to him (presumably in Fez, Marrakesh, or Meknes).59 In these cases the Ministry of Complaints acted as a high court of appeal with the sultan as its judge.

Finally, some cases concerning unpaid debts and murder were remanded to a sharī‘a court to be resolved, either at the request of the local official, of one of the parties involved, or at the sultan’s command.60 Theft cases, on the other hand, were rarely remanded to a sharī‘a court.61 It seems that qāḍīs believed it was the Makhzan’s responsibility to handle cases of theft.

In 1876 the sultan Mawlāy Ḥasan wrote to Mawlāy ‘Uthmān concerning the complaint of two
Jews who had been robbed. The sultan had ordered the case to be judged by a sharī‘a court, but the qāḍī decided that the case fell under the Makhzan’s jurisdiction and sent the matter back to Mawlāy ‘Uthmān. Mawlāy Ḥasan insisted that the case be settled by the qāḍī and ordered that it be submitted to a sharī‘a court once again. This suggests that the norm was for Makhzan officials to handle theft cases, and that the sultan’s command to judge this matter in a sharī‘a court was exceptional.

It is tempting to explain the paucity of theft cases referred to sharī‘a courts as related to the tendency of Islamic judicial systems to assign criminal cases to administrative officials. As discussed in the previous chapter, Moroccan qā’ids and pashas held courts which were at least partially responsible for criminal matters, including theft. Yet murder cases were often remanded to a sharī‘a court for resolution. I suspect that the need to determine the amount of blood money to be payed to a murder victim helps explain why murder cases were often dealt with by a qāḍī. Theft cases, on the other hand, did not generally carry any punishment beyond returning the stolen goods or compensating the victims for their value. The punishment for theft prescribed by sharī‘a—the hadd punishment of cutting off the right hand—was not normally applied, and thus the qāḍī’s intervention was unnecessary.

Those debt and murder cases which prompted requests for settlement in a sharī‘a court tended to be complex, hence the need for a qāḍī’s judgment. For instance, in the case recorded

---

62 DAR, Marrakesh, Mawlāy Ḥasan to Mawlāy ‘Uthmān, 28 Jumādā II 1293.
65 There are, however, many cases in which it is difficult to tell why a case was sent to a sharī‘a court: see BH, K 157, p. 56, 12 Dhū al-Qa‘da 1306; p.146, 27 Jumādā I 1307; BH, K 171, p. 52, 9 Ramaḍān 1307; p. 66, 24 Ramaḍān 1307; BH, K 174, p. 52, 30 Jumādā I 1308; p. 99, 12 Ramaḍān 1308; p. 114, 5 Shawwāl 1308; BH, K 181, p. 83, 24
on September 7, 1892, a cousin of the debtor accused the Jewish creditor of falsifying
documents:

The leader (naqīb) of Zāwiyat al-Jānīya says that one of his cousins whom he named [in
the original letter] died five years ago, and that the dhimmī Hārūn al-Tāzī came with a
falsified document [showing that his cousin owed al-Tāzī] 50 riyāls. And when the royal
command was given to the governor to force his son [the son of the deceased cousin] to
settle, the governor (al-ʿāmil) seized [the son’s] cattle and sent them to the qāʾid of the
mashwar,66 and [the cattle] are now in [the qāʾid’s] possession. [The leader of the
zāwiya] asks that the matter be taken to the sharīʿa court and that the cattle be returned to
their owner.67

This case has a number of elements which make it more complicated than many. Firstly, the
debtor had been dead for five years, meaning that any payment would have to be made as part of
a belated settlement of the inheritance.68 Secondly, the leader of Zāwiyat al-Jānīya believed that
the Jewish creditor Hārūn forged the bills of debt in the first place.69 Thirdly, the governor of the
region had already ruled in the Jew’s favor and seized the debtor’s son’s cattle. It seems likely
that some of the governor’s motivation for requesting settlement in a sharīʿa court stemmed from
the desire to make sure such a complicated case was judged by experts.70 Similarly, in a case

Jumādā I 1309; p. 85, 29 Jumādā I 1309; p. 118, 17 Rajab 1309; p. 229, 28 Dhū al-Hijja 1309; p. 253, 8 Șafar 1310;
p. 346, 10 Shaʿbān 1310; p. 352, 23 Shaʿbān 1310. In one instance Mawlāy Ḥasan’s son, the governor of
Marrakesh, wrote directly to a qāḍī with instructions to settle a case and report the outcome: DAR, Marrakesh,
25551, [Mawlāy] ʿUthmān to Qāḍī al-Ḥājj ʿAlī al-Rajrājī, 16 Rabīʿ II 1302.
66 The mashwar is the public part of the sultan’s palace compound where the offices of the different ministries were
located. The qāʾid of the mashwar was responsible for keeping order and for the presentation of people to the
sultan. See Michaux Bellaire, “La beniqat ech chikaïat,” 248-50; Park and Boum, Historical Dictionary of
Morocco, 227.
67 BH, K 181, p. 255, 14 Șafar 1310.
68 For another case sent to the sharīʿa court which involved inheritance, see BH, K 181, p. 126, 1 Shaʿbān 1309.
69 There were a number of cases sent to a sharīʿa court in which the Jewish creditor was accused of lying: see, for
instance, BH, K 174, p. 30, 21 Rabīʿ I 1308; BH, K 181, p. 151, 10 Ramadān 1309.
70 For other complicated cases with a number of variables involved in their settlement, see, for instance, BH, K 171,
p. 58, 14 Ramadān 1307. In this case, the Makhzan official reported that the debtors had escaped, and that their
guarantor was imprisoned in Oujda. The sultan responded that a sharīʿa court should determine whether the
guarantor had to pay or not. See also DAR, Marrakesh, Ahmad b. al-Ṭāhir to Muḥammad b. ʿAzūz, 24 Jumādā I
1282. In this case, a Jew named Ibn Shaqūrūn had rented a fundūq to Sāliḥ b. ʿAlī, who was now imprisoned
 presumably for not paying his rent). Sāliḥ provided a guarantor for the lease, but Ibn Shaqūrūn did not accept the
guarantor and the case went to a sharīʿa court. See also DAR, Fez, Mawlāy Ḥasan to Saʿīd b. Farajī, 29 Rabīʿ I
1298, in which the sultan instructed Saʿīd to help a Jewish creditor collect his debts and to send anyone who resisted
to the sharīʿa court to settle.
from July 28, 1892, a group of Jews from Meknes complained about the murder of some of their coreligionists.\footnote{BH, K 181, p. 232, 3 Muharram 1310.} The Jews had twice disagreed with the tribe from which the murderers hailed concerning the amount of blood money.\footnote{The word used is \textit{tadmiya}, which is the \textit{masdar} (verbal noun) of form two of the verb “damā”—meaning to strike someone until he bleeds (Lane, \textit{An Arabic-English Lexicon}, 916). However, in this context \textit{tadmiya} clearly means responsibility for the murder generally, and thus for the blood money.} The Makhan official responsible for settling the case requested that it be sent to the appropriate qāḍī and ‘udūl for resolution, to which the sultan agreed.\footnote{For another example of a complicated murder case, see BH, K 181, p. 345, 5 Sha‘bān 1310, in which the Jewish plaintiffs were accused of lying about their claim. Perhaps the Makhzan official resorted to the sharī‘a court to sort out the competing testimonies.}

Sometimes the sultan gave the local Makhzan official a choice between resolving the case himself and sending it to a sharī‘a court.\footnote{For cases in which the local official could choose between sending the matter to a sharī‘a court or resolving it himself, see: BH, K 157, p. 123, 25 Rabī‘ II 1307; BH, K 181, p. 68, 4 Jumādā I 1309; p. 123, 29 Rajab 1309; p. 155, 18 Ramadan 1309; p. 200, 15 Dhū al-Qa‘da 1309; p. 219, 9 Dhū al-Ḥijja 1309; p. 265, 30 Ṣafar 1310; p. 334, 12 Rajab 1310.} On November 26, 1889, al-‘Arabī b. al-Sharafī al-Ḥimānī wrote concerning the case of a Jewish creditor.\footnote{The creditor was named in al-‘Arabī’s letter but not in the entry (the phrase is \textit{al-dhimmī al-musammā dākhilahu}, literally “the dhimmi named inside it [the letter]”): BH, K 157, p. 99, 2 Rabī‘ II 1307.} The sultan instructed him either to settle the Jew’s case (\textit{bi-faṣli al-dhimmī}) or to send the Jew and his debtors to a sharī‘a court (\textit{awṣarfihim lil-shar‘}); al-‘Arabī chose to send the case to the sharī‘a court. Although al-‘Arabī’s motives for recusing himself are not clear, his choice reflects those of most Makhzan officials who, when given the option to choose between a sharī‘a court and settling the matter himself, generally opted to send the case to a qāḍī.\footnote{The single exception is BH 181, p. 219, 9 Dhū al-Ḥijja 1309, in which the Makhzan official settled the case himself. In BH 181, p. 200, 15 Dhū al-Qa‘da 1309, it is not clear whether the Makhzan official decided to send the case to a sharī‘a court or settle it himself.} As in the two cases above, it was also fairly common for a local Makhzan official to request that a case be resolved in a sharī‘a court.\footnote{BH, K 174, p. 23, 29 Ṣafar 1308; BH, K 181, p. 126, 1 Sha‘bān 1309; p. 212, 27 Dhū al-Qa‘da 1309; p. 242, 23 Muharram 1310; p. 255, 14 Ṣafar 1310; p. 334, 12 Rajab 1310.}
Individuals directly involved in a given case could also request to have the matter settled in a sharī’a court. It is unsurprising that Muslim debtors sometimes wanted to bring their Jewish creditor before the qādī. More unexpected is that in one instance, the Makhzan official refused to allow two Muslim debtors to appeal to a sharī’a court concerning the settlement of a debt they owed a Jew. In the end, despite the local Makhzan official’s refusal to let them settle the matter before a qādī, they went anyway, “without his knowledge.” In one instance a Jewish creditor requested that a case be brought before a sharī’a court. An entry recorded on March 14, 1891, concerns the complaint of the Jew Ibn al-Baḥar, who was owed money by the late Barīk b. Muḥammad al-Zīzūn. Ibn al-Baḥar “requests that the heirs be brought to the sharī’a court.” Undoubtedly Ibn al-Baḥar believed his case would hold up before a qādī, which is why he wanted the matter judged according to sharī’a.

Nonetheless, it was more common for Jews to refuse to bring a case to a sharī’a court. Although I only found four instances of Jews attempting to avoid settling a matter before a qādī, this is one of the rare instances in which Jews expressed preferences for the venue of settlement. It is, however, significant that I also found an entry in which a Muslim refused to go to a sharī’a court, suggesting that Jews’ reticence was not always based on the religious
nature of sharī’a courts. In some instances it is clear that Jews preferred not to settle in a sharī’a court because they felt their legal documents would not hold up to the scrutiny of a qāḍī. In a case from March 4, 1891, the Jew Yūsif b. al-Ḥazān al-Qayḍābī refused to go to a sharī’a court to sanction a release of his debtors. This is undoubtedly because Yūsif never produced the legal documents proving his debt, claiming that they were in the possession of his partner and, more implausibly, that it was not customary to present such documents. Just as Ibn al-Bahar probably knew that a qāḍī would judge his case favorably and thus requested settlement in a sharī’a court, Yūsif knew that he was bound to lose before a qāḍī without legal proof of his claim.

*Reaching a Settlement*

Two basic tasks faced Makhzan officials who were charged with settling complaints. On the one hand, they had to verify that the petitioner’s claims were indeed valid—which frequently involved requiring notarized documentation of the case at hand. On the other, they had to convince (or force) the recalcitrant debtors, theifs, or murderers to pay what they owed in debt, compensation for theft, or blood money. When all these conditions were met, Makhzan officials could report to the Ministry of Complaints that a case was settled.

---

83 BH, K 157, p. 31, 17 Ramaḍān 1306.
84 BH, K 174, p. 75, 23 Rajab 1308.
85 In another case (BH, K 181, p. 126, 2 Sha’bān 1309), the Jewish creditor Ḥaim b. Yosef al-Qasrī did not completely refuse to go to the sharī’a court but rather insisted that the case be judged by the qāḍī of the city (presumably where Ḥaim lived), rather than the qāḍī of the region where the debtors lived (which would have been the more customary practice). The Makhzan official responsible for the case noted that Ḥaim was known for falsifying documents and forging the signatures of qāḍīs and ‘udūl. It seems likely that Ḥaim had better connections with the qāḍī in his hometown, and thus thought he would have a better chance there.
Making sure that the petitioner’s claims were valid was usually accomplished by ordering that a case be settled “with legal proof” (*bi-mūjib*). An entry from May 22, 1890, reads: “Al-Zarārī concerning the complaint of the dhimmī Ibn Sūsān about what is owed to him by those whom he named [i.e. in the letter, though the names are not recorded in the register]. [Al-Zarārī] says that he sent [the debtors] to meet [with Ibn Sūsān]. Our lord says: settlement with legal proof (*bi-mūjib*).” Legal proof here refers to bills of debt written according to Islamic law and signed by two ‘udūl and, sometimes, a qāḍī. As discussed in Chapter Two, these bills of debt were central to the commercial activities of Jews and Muslims. The records of the Ministry of Complaints show that this sort of documentation was important not only when it came to proving one’s case in a sharī‘a court, but also when individuals wanted a case resolved by the Makhzan. Similarly, in many theft cases the sultan specified that the case must be settled with legal proof (*bi-mūjib*), meaning notarized documents which recorded what was stolen and when. (Murder cases, on the other hand, rarely involved notarized documents.) While normally the sultan ruled that legal proof was necessary in a particular case, there were also debt cases in which the local Makhzan official or even the debtors themselves requested the Jewish creditor to produce

---

86 De Premare defines *mūjib* as “moyt plausible, raison légale” or “acte notarié établi sur le témoignage de vingt quatre témoins pour faire cesser un état de chose préjudiciable à la collectivité” (De Premare, *Dictionnaire arabe-français*, v. 12, 141). Although neither definition corresponds exactly to the way in which *mūjib* is used in our documents (that is, to mean simply “legal proof”), it is clear that the word as it was used in Morocco meant a legal document.

87 BH, K 171, p. 80, 2 Shawwāl 1307.

88 See also BH, K 181, p. 322, 18 Jumādā II 1310, in which the sultan specified that the Makhzan official was to “settle [the case] with sharī‘a legal proof” (*bi-l-fiṣāl bi-mūjibin shar’īyyin*).

89 BH, K 171, p. 107, 11 Dhū al-Qa‘da 1307; BH, K 181, p. 107, 4 Rajab 1309; p. 361, 6 Ramaḍān 1310. This last entry did not specify that the case must be settled with “legal proof,” but rather that the parties must settle “for the money which is established,” presumably through legal proofs. In another instance, the Makhzan official actually reported having settled the case without proof, but requested that legal proof be sent subsequently: BH, K 181, p. 315, 30 Jumādā I 1310 (two relevant entries). See also BH, K 157, p. 144, 25 Jumādā I 1307, in which the Makhzan official reported that the Jewish defendant declared his losses before ‘udūl. See also DAR, Demnât, Mawlāy Ḥasan to al-Ḥājj al-Jīlānī al-Dimnātī, 27 Shawwāl 1300, in which the sultan first reprimanded al-Dimnātī for failing to settle a theft case and then demanded that he do so after obtaining legal proof of the Jew’s claim.

90 See, however, the case discussed in BH, K 171, p. 1, 18 Rajab 1307 and p. 72, 28 Ramaḍān 1307.
legal proof of his claim. It is likely that most cases were expected to be settled with legal proof, and that specifically mentioning this requirement amounted to re-stating a common practice. This is further evidence of the degree to which sharī‘a courts were central to Jews’ lives even beyond the walls of the sharī‘a courthouse.

Even if a petitioner’s claim was unquestionably valid, it was not always simple for the Makhzan official to extract the money necessary to settle a case. One of the most common methods employed was to imprison the debtors, thieves, or murderers until they paid. Imprisonment was not typically seen as a punishment, but rather as a way to force recalcitrant debtors to pay.

91 For cases in which the sultan ordered that legal proof be produced, see, e.g.: BH, K 171, p. 13, 25 Rajab 1307; BH, K 181, p. 83, 25 Jumādā I 1309; p. 322, 18 Jumādā II 1310; p. 365, 19 Ramaḍān 1310. See also DAR, Fez, 6007, Muḥammad b. al-Ṣarabī b. al-Maḥbūr to ‘Abd al-Wāḥid al-Mas‘ adī, 20 Rabī‘ II 1301; DAR, Yahūd, ‘Abd al-Haθīfī to al-Madānī al-Ajlāwī, 29 Shawwāl 1324. For cases in which the local Makhzan official requested legal proof, see: BH, K 181, p. 158, 21 Ramaḍān 1309; p. 119, 21 Rajab 1309; p. 154, 16 Ramaḍān 1309; p. 157, 21 Ramaḍān 1309; p. 265, 29 Ṣafar 1310; p. 336, 17 Rajab 1310; p. 343, 2 Sha‘bān 1310; p. 347, 11 Sha‘bān 1310. Makhzan officials also requested legal proof when they did not believe that the claim was justified: BH, K 181, p. 274, 24 Rabī‘ I 1310 and p. 340, 24 Rajab 1310. For cases in which the debtors requested that the creditor produce legal proof of his claim, see: BH, K 171, p. 76, 30 Ramaḍān 1307; BH, K 174, p. 112, 3 Shawwāl 1308.

92 See DAR, Yahūd, ‘Abdallāh al-Bayḍāwī to al-Tūrīs, 6 Sha‘bān 1308, in which al-Bayḍāwī simply reported that he had inspected the legal proofs of the Jewish creditor and that they were in order, suggesting that this was the standard practice.

93 I found a total of thirty-eight entries which mention that one or more debtors of Jewish creditors were imprisoned for their debts (approximately 11% of the total number of cases). See also DAR, Fez, Mawlāy Ḥasan to Sa‘īd b. Farajī, 6 Jumādā I 1301; 2216, ‘Abdallāh b. Aḥmad to Mawlāy Ḥasan, 6 Ṣafar 1303. In one case, a Jew and a Muslim were both imprisoned—though it is not entirely clear why. The Jew entrusted some livestock to the Muslim; presumably the disagreement arose when the Muslim did not return the livestock or share the revenue with the Jew (DAR, Marrakesh, Muḥammad b. ‘Azūz to Aḥmad b. al-Ṭāhir, 11 Rabī‘ II 1282). For a colorful (if biased) description of the imprisonment of debtors, see Maeterlinck, “Les institutions juridiques au Maroc,” 478. There is very little written about the history of prisons in Morocco: see Aḥmad Miftāḥ al-Baqālī, Mu‘assasat al-sujūn fī al-Maghrib (Rabat: Mata‘īthāq, 1979), 75-81, although al-Baqālī’s work is overly idealized and more of an apology than a reliable history. Another method which Makhzan officials used to make sure debtors paid was simply to confiscate their goods and hand them over as payment or sell them and give the proceeds to the creditor: see BH, K 181, p. 127, 3 Sha‘bān 1309; p. 213, 29 Dhū al-Qa‘da 1309; p. 233, 7 Muḥarram 1310; p. 252, 4 Ṣafar 1310; p. 346, 10 Sha‘bān 1310. See also DAR, Fez, [Mawlāy] Ismā‘īl to Mawlāy Ḥasan, 23 Jumādā I 1303. In this case a Makhzan official arrested the debtors who came into the city (presumably Fez) and confiscated their goods in order to pay their debts. At the time of writing he still had the goods in his possession. It is interesting to note that the Jewish creditor requested that the amounts confiscated be recorded on the bills of debt. For murder cases, see: BH, K 157, p. 37, 29 Ramaḍān 1306; BH, K 171, p. 78, 30 Ramaḍān 1307; BH, K 181, p. 69, 6 Jumādā I 1309; p. 107, 4 Rajab 1309; p. 127, 4 Sha‘bān 1309; p. 176, 13 Shawwāl 1309; p. 212, 29 Dhū al-Qa‘da 1309; p. 275, 27 Rabī‘ I 1310; p. 314, 28 Jumādā I 1310; p. 345, 5 Sha‘bān 1310; p. 345, 6 Sha‘bān 1310. See also DAR, Fez, Mawlāy Ḥasan to Sa‘īd b. Farajī, 5 Rabī‘ II 1298. In this case Farajī specified that the suspects in the murder of a Jew had secured guarantors for their presence in court so he released them from prison. On guarantors, see Chapter Two. For theft cases, see BH, K 157, p. 74-75, 25 Dhū al-Hijja 1306; BH, K 181, p. 58, 21 Rabī‘ II 1309. See also DAR, Fez, Mawlāy Ḥasan to Sa‘īd b. Farajī, 15 Dhū al-Qa‘da 1294.
debtors, thieves, or murderers to pay up.⁹⁴ Often this method was successful in ensuring that the petitioner’s request was granted.⁹⁵

Yet imprisonment did not always produce such positive results. Some debtors who paid their debts were still not allowed to leave prison.⁹⁶ In one case recorded on April 26, 1892, a man named ‘Abd al-Qādir was imprisoned for debts he and some of his tribesmen (ikhwānuhu) owed to Jewish creditors.⁹⁷ ‘Abd al-Qādir claimed that he and the other debtors had already paid, and that the creditors refused to give them a release. “When the Jews wanted to go away for their holiday,” the creditors promised to come back “when their holiday was over”⁹⁸ and settle with them—that is, give them a release so they could be freed from prison. Yet the holiday had passed and the Jews had still failed to return to release their debtors, leaving these unfortunate men to remain in prison even after fulfilling their financial obligations. On the other hand, in some theft cases the perpetrators were imprisoned and then released before a settlement was reached. Although the sultan could then subsequently order the thieves re-imprisoned until

---

⁹⁴ This was also the case in the Ottoman Empire where imprisonment was not typically considered a method of punishment; there recalcitrant debtors were imprisoned, presumably until they paid: Heyd, Studies in Old Ottoman Criminal Law, 301.

⁹⁵ For cases of imprisoned debtors who paid, see: BH, K 157, p. 155, 10 Jumādā II 1307; p. 172, 4 Rajab 1307; BH, K 181, p. 133, 17 Sha‘bān 1309; p. 165, 28 Ramadān 1309. See also DAR, Marrakesh, Aḥmad Amālik to Mawlāy Ḥasan, 4 Shawwāl 1301 and DAR, Yahūd, Bū Bakr b. Bū Zayd to Muḥammad Tūrīs, 18 and 25 Muharram 1325. The latter two letters discuss a case in which a man was only imprisoned for about a week. For cases of imprisoned thieves who returned the stolen goods, see BH, K 174, p. 80, 2 Sha‘bān 1308; BH, K 181, p. 300, 2 Jumādā I 1310.

⁹⁶ See, for instance, BH, K 157, p. 31, 15 Ramadān 1306; BH, K 171, p. 121, 14 Dhū al-Ḥijja 1307; p. 129, 27 Dhū al-Ḥijja 1307; BH, K 174, p. 89, 23 Sha‘bān 1308. This seems also to have been the case with murderers: in one instance the local Makhzan official asked for permission to release the suspects who had been imprisoned because of the murder of a Jew. This might suggest that the case had been settled but the prisoners had not yet been released, as with certain debt cases in which prisoners languished in jail even after their debts were paid (BH, K 157, p. 37, 29 Ramadān 1306).

⁹⁷ BH, K 181, p. 165, 28 Ramadān 1309.

⁹⁸ Lammā arāda ahlū al-dhimmat li-‘īdhīm …’inda muḍīyy ʿīdhīm. Given that this entry was recorded a week after the Jewish holiday Passover ended, there is little doubt that this was the holiday the Jews wanted to go home to celebrate.
the Jewish victims were compensated, this indicates that initially, at least, imprisonment did not
always have the desired effect.99

When it came to unpaid debts, imprisonment often ended up functioning as a punishment
in itself without securing the repayment of the debt when bankrupt debtors in prison were unable
to pay back the money they owed.100 The bankrupt and the poor sometimes languished in jail
until they died.101 It even occurred that when a debtor died in prison without having paid his
debts, members of his family—such as his brothers or his sons—were imprisoned, presumably
until they paid the debts in question.102 Perhaps it was believed that imprisoning bankrupt
debtors would eventually convince their family or friends to pay for them. Meanwhile, their
imprisonment might have served as a deterrent to others who were considering defaulting on
their debts.103

Yet despite the challenges of ensuring that a claim was valid and extracting payment,
there were many cases which did reach some kind of settlement. It is difficult to know with any

99 BH, K 157, p. 85, 20 Muḥarram 1307; BH, K 181, p. 300, 2 Jumādā I 1310. See also BH, K 181, p. 259, 20 Ṣafar
1310. In this case, the Makhzan official reported that another official had released the thief “out of greed” (‘alā
tama’), but the sultan did not specifically order the thief re-imprisoned.
100 BH, K 157, p. 99, 2 Rabī’ II 1307; BH, K 174, p. 23, 29 Ṣafar 1308; BH, K 181, p. 153, 13 Ramaḍān 1309. See
also DAR, Fez, Mawlāy Hasan to Sa‘īd b. Farajī, 6 Rabī’ II 1298, in which four Muslims imprisoned for debts owed
to a Jew were unable to pay. In this case, however, the sultan commanded that they be sent to Tangier along with
their creditor, presumably to settle their debts (though there is no indication of why they were sent to Tangier to do
so). A European traveler in the sixteenth century observed that there were two prisons in Fez, one for debtors and
those responsible for minor crimes and another for murderers (Mediano, “Justice, crime et châtiment au Maroc,”
614), though by the nineteenth century this separation does not seem to have existed.
101 See, for instance, BH, K 157, p. 99, 2 Rabī’ II 1307; p. 178, 16 Rajab 1307; BH, K 181, p. 127, 4 Sha‘bān 1309;
p. 262, 25 Ṣafar 1310.
102 For brothers being imprisoned, see BH, K 181, p. 153, 13 Ramaḍān 1309. For sons being imprisoned, see BH, K
181, p. 262, 25 Ṣafar 1310. However, I also found cases in which it was recorded that the debtors had died without
leaving any inheritance with which to pay the debts, but with no mention of imprisoning their heirs: BH, K 181, p.
121, 19 Rajab 1309 and p. 271, 16 Rabī’ I 1310.
103 There are a few instances in which the shari‘a court was somehow involved in the imprisonment of a debtor. In
one case (BH, K 157, p. 178, 16 Rajab 1307), a Muslim was put in prison by a shari‘a court in Meknes for eight
days because of outstanding debts he owed to several Jewish creditors. In another case (BH 181, p. 242, 23
Muḥarram 1310), a Makhzan official was trying to settle a debt owed to a Jew named Kohen the Tall (Kūhīn al-
Ṭawīl) whose debtors were imprisoned in Sefrou. The official managed to get 200 riyāls out of the debtors, but
Kohen refused to settle until the rest was paid. The official asked the sultan to force Kohen to settle the matter in a
shari‘a court, presumably in order to have the prisoners released.
certainty what percentage of the cases reported in the registers of the Ministry of Complaints were actually settled. It was relatively rare for Makhzan officials to report that they had completely settled a case; this happened in about fifteen percent of the cases concerning Jews.\footnote{Forty-nine debt cases (about 13\%) were recorded in which the local Makhzan official settled once and for all. Of the seventy-five cases concerning Jewish victims of theft, sixteen (about 21\%) were reported as completely settled. Eight out of forty-two (about 19\%) murder cases were reported settled.}

Sometimes officials wrote that they had reached a partial settlement—for instance when some of the debtors repaid their debts while others did not.\footnote{Thirty-four debt cases (about 9\%) were partially settled, in addition to one theft case; I did not find any murder cases which were partially settled.} Yet the fact that few cases were reported settled does not necessarily mean that settlements were rare. It is possible that local officials did not always follow up on their correspondence with the Ministry of Complaints and thus settled cases without informing the Makhzan. In addition, some cases which local officials claimed to be in the process of settling might have been resolved after 1893 when the registers end.\footnote{I found twenty-two debt cases which the local official claimed to be in the process of settling. In addition, I have in mind entries in which the Makhzan official promised to settle the case after a delay, caused either by an inability to pay the debt or indemnity or by the absence of one of the parties (discussed below).}

Ultimately it seems that enough cases were settled to inspire reasonable hope that Jews’ appeals to the Makhzan might be successful.

\textit{Obstacles to Settlement}

In addition to the basic requirements for settling a case, local Makhzan officials encountered a number of obstacles in their attempts to resolve the claims of Jewish petitioners. These obstacles stemmed in large part from the nature of a weak central government which could only exercise limited control on its subjects. There is no question that the Makhzan significantly increased its ability to assert its authority due to the centralizing reforms undertaken by sultans starting in the mid-nineteenth century—especially those of Mawlay Ḥasan. Nonetheless, the
central government could only do so much, especially in areas that had not submitted to the Makhzan’s rule. This reality also suggests the limitations of scholarship which emphasizes the bad faith of Makhzan officials in their treatment of Jews. While a few officials deliberately obstructed the settlement of Jewish claims, many others were hindered by obstacles beyond their control.

Determining the jurisdiction of a case could pose problems for the Makhzan in addressing Jews’ complaints. As we have seen, the normal procedure was for the Minister of Complaints to write to the Makhzan official who had jurisdiction over those responsible for the crime or the unpaid debt. However, the central government sometimes wrote to the wrong local official. In these cases, the official wrote back to the Ministry of Complaints saying that the case at hand fell under someone else’s jurisdiction and that he could do nothing to resolve it. In addition, with theft and murder cases it was often difficult to determine where the crime had taken place and thus under which Makhzan official’s jurisdiction it fell. One murder case, to

---

107 For debt cases, see: BH, K 174, p. 37, 22 Rabī’ II 1308; BH, K 181, p. 110, 9 Rajab 1309; p. 119, 21 Rajab 1309; p. 127, 4 Sha’bān 1309; p. 200, 15 Dhū al-Qa‘da 1309; p. 253, 6 Ṣafar 1310; p. 253, 8 Ṣafar 1310; p. 274, 25 Rabī’ I 1310; p. 373, 29 Ramaḍān 1310. For murder cases, see BH, K 181, p. 176, 13 Shawwāl 1309; p. 260, 23 Ṣafar 1310. For theft cases, see BH, K 181, p. 212, 29 Dhū al-Qa‘da 1309, two entries. In one case the Ministry of Complaints wrote to two Makhzan officials, both of whom responded that yet a third had jurisdiction over the murderers. One of the local Makhzan officials involved in this case, ‘Alī al-Shaghrūshī, also wrote twice to say that a murder had taken place among the Ayt Yūsū tribe (though it is not clear whether these were two separate incidents as the entries provide few details): BH, K 181, p. 137, 23 Sha‘bān 1309 and p. 232, 1 Muharram 1310. In some instances, local Makhzan officials simply reported that another official was handling the case: BH, K 181, p. 131, 15 Sha‘bān 1309; loose sheet, 4 Ramaḍān 1310. Finally, it also happened that the debtors were unknown to the Makhzan officials involved and thus impossible to find: BH, K 171, p. 13, 25 Ramaḍān 1307; BH, K 174, p. 91, 29 Sha‘bān 1308; BH, K 181, p 6, 2 Dhū al-Qa‘da 1308; p. 90, 8 Jumādā II 1309; p. 101, 25 Jumādā II 1309; p. 153, 13 Ramaḍān 1309; p. 340, 23 Rajab 1310.

108 In most cases the Makhzan officials specified that the theft occurred in someone else’s region, and thus that they were not responsible: BH, K 157, p. 35, 22 Ramaḍān 1306; BH, K 171, p. 126, 20 Dhū al-Ḥijja 1307; BH, K 181, p. 19, 14 Dhū al-Ḥijja 1308; p. 82, 23 Jumādā I 1309; p. 222, 15 Dhū al-Ḥijja 1309; p. 254, 9 Ṣaḥar 1310. See also the case of Esther al-Ṭanjawīya, in which a number of letters were exchanged to determine the location of the theft; BH, K 157, p. 171, 1 Rajab 1307 (two entries); BH, K 171, p. 47, 3 Ramaḍān 1307; p. 48, 3 Ramaḍān 1307 (two entries). In one case the Makhzan official responded by saying that he forwarded the case to two other officials—probably because the thieves were not under his jurisdiction: BH, K 181, p. 307, 14 Jumādā I 1310. See also DAR, Yahūd, 32719, Muhammad b. ‘Abd al-Salām to Muhammad Bargāsh, 4 Dhū al-Ḥijja 1297, in which the author claimed that his tribe had already paid its share of the theft indemnity and that the rest was the responsibility of another tribe.
which four entries over a period of five weeks were dedicated (from January 16 to February 22, 1891), concerned the confusion over where David b. Dinār was killed. ‘Īsā b. Mubārak al-Raḥmānī claimed that the murder occurred in the region of the Tījānīya, which al-Misfīwī (the governor of Misfīwa), confirmed.\textsuperscript{109} Originally al-Raḥmānī had been ordered to split the indemnity with al-Misfīwī and al-Tījānī, but the sultan now wanted him to carry the entire burden\textsuperscript{110}—probably because another official claimed that the murder had occurred in al-Raḥmānī’s region.\textsuperscript{111} In the end, al-Raḥmānī grudgingly paid an indemnity of five-hundred riyāls, though it seems that the Makhzan never fully resolved where David had been murdered.

When it came to theft cases, it was not always entirely clear who was responsible for paying the indemnity even if everyone agreed on the location of the theft. An entry concerning a theft in Demnat involved deciding whether the governor or the night watchmen were responsible for paying the indemnity. In the first entry concerning this incident, recorded on May 6, 1889, al-Ḥājj al-Jīlālī al-Dimmāṭī reported that a hole was drilled through a Jew’s wall (probably his storehouse), and money was stolen from him.\textsuperscript{112} Another official claimed that “the custom was to fine the official [al-Jīlālī] al-Dimmāṭī [for] what they [the Jews] lost [because the theft] fell under the bailiwick of the guards.”\textsuperscript{113} As the governor of the city, al-Jīlālī was presumably responsible for the quality of the watchmen, and thus for reimbursing a theft caused by their ineptitude. But al-Jīlālī declared that this argument was unfounded because each individual Jew

\textsuperscript{109} BH, K 174, p. 54, 5 Jumādā II 1308 and p. 55, 7 Jumādā II 1308. Al-Raḥmānī also claimed that David’s wife Esther had confirmed this location.

\textsuperscript{110} BH, K 174, p. 60-61, 24 Jumādā II 1308.

\textsuperscript{111} BH, K 174, p. 70b, 13 Rajab 1308.

\textsuperscript{112} BH, K 157, p. 27: 6 Ramadān 1306.

\textsuperscript{113} Anna al-‘ādata hiya ghermu al-khadīmi al-Dimmāṭī mā dā’a lahun wa-rujū’ uhu ‘alā al-‘asāsa [sic]. The word khadīm is an unusual form in Arabic (for example, it is not found in the dictionaries of either Wehr or Lane). A colloquial Moroccan dictionary translates khadīm as “servant bénévole,” usually serving a zāwiya or a saint (De Premare, Dictionnaire arabe-français, v. 4, 31). However, in the context of this letter—and indeed Makhzan correspondence more generally—khadīm referred to a Makhzan official, that is, a servant of the sultan.

210
and Muslim was responsible for arranging his own guards. In an entry three months later, the Jews of Demnat again complained about al-Jīlālī’s refusal to pay the indemnity, saying that he “broke with custom in this [argument], and that the guards have been his responsibility for a long time…and that the Jews pay 750 (riyāls? mithqāls?) [for the guards].”114 The sultan responded that where there were guards, they were responsible for paying—which seemingly confirms that al-Jīlālī was liable for the indemnity.115 Significantly, the appeal to custom won out in the end; since Jews paid collectively for the guards, the guards’ failure to protect the store was al-Jīlālī’s responsibility. This case shows that simply determining who was liable in a given case could be cause for significant confusion.

It was sometimes similarly difficult to determine who was responsible for paying an overdue debt. An entry from March 12, 1890 records the response of Ibn ʿAmāra al-Dasūlī about the complaint of Yaʿaqov Assarraf concerning a debt he was owed.116 Al-Dasūlī reported that after an investigation, he found that the debt was contracted “by the previous governor Ibn al-ʿAzīzī and those with him, and that he had made this transaction [in order to pay] the Makhzan’s taxes (kāna ṣarafa dhālika fī al-kulaf al-makhzaniyya).” It is likely that the previous governor had borrowed money when taxes came due either because he had failed to collect sufficient funds or because he had already spent the money. In any case, by this time Ibn al-ʿAzīzī had died. The sultan finally ruled that the entire region was responsible for paying the debt. Even though neither al-Dasūlī nor anyone still living in his region had contracted the debt, al-Dasūlī was held responsible for payment as the local Makhzan official in charge.117

---

114 BH, K 157, p. 67-8, 8 Dhū al-Ḥijja 1306. (fā-qad kharaqa al-wāqiʿa fī dhālika wa-anna al-ʿassata hiya ʿalā yadihi min qadīmin...wa-ʿl-yahūd yuʿṭūna 750.)
115 Qāla mawlānā ḥaythu al-ʿassatu waqaʿaʾyu addīna.
116 BH, K 171, p. 6, 20 Rajab 1307.
117 For similar types of confusion, see BH, K 181, p. 222, 15 Dhū al-Ḥijja 1309. I also found one instance in which the debtor requested that the case be handled by an official other than the one under whose jurisdiction he fell...
Even in cases where the identity of those responsible was clear, the final settlement often had to be delayed for a variety of reasons. Some debtors requested a delay in payment until after a major Muslim holiday—presumably either because they expected to earn income in preparation for the holiday or because preparations for the holiday prevented them from mustering the sums beforehand. Delays were also caused by the absence of one of the parties to the case. It was not uncommon for a debtor to be temporarily missing from a region or to have fled permanently—both of which were strategies to avoid paying their creditors or, if they were unable to pay, to escape imprisonment. Similarly, it could prove difficult to locate suspects in murder cases. As for absent creditors, it was often the case that Jewish moneylenders lived in a different city from their debtors, and thus would have to travel to another region both to loan money and to collect payments. In these instances, settlement could be delayed until the creditor arrived in the region where his debtors lived. Finally,

(though the debtor’s motivation for doing so is not clear): BH, K 181, p. 232, 1 Muḥarram 1310. See also DAR, Yahūd, 23293, Qudūr Ibn ‘Alī al-Ḥamārī to Mawlāy ‘Abd al-‘Azīz, 26 Sha‘bān 1318. In this case, Qudūr reported on his progress in trying to collect payment on the debts owed to the Jew Yisrael al-Asafī. He noted that the previous governor had taken the original bills of debt, and suggested that the payment should be his predecessor’s responsibility since only he had proof of the original amounts.

118 All the instances I found in which Muslim debtors requested a delay until after a holiday occurred around Ḥīd al-Adhā 1309 (10 Dhū al-Ḥijja, corresponding to July 6, 1892): BH, K 181, p. 154, 12 Ramaḍān 1309; p. 166, 1 Shawwāl 1309; p. 193, 4 Dhū al-Qa‘da 1309; p. 212, 28 Dhū al-Qa‘da 1309; p. 256, 15 Șafar 1310. In this case, Qudūr reported on his progress in trying to collect payment on the debts owed to the Jew Yisrael al-Asafī. He noted that the previous governor had taken the original bills of debt, and suggested that the payment should be his predecessor’s responsibility since only he had proof of the original amounts.

119 For cases in which the debtor was temporarily absent, see BH, K 157, p. 56, 12 Dhū al-Qa‘da 1306; p. 158, 13 Jumādā II 1307; BH, K 171, p. 44, 23 Sha‘bān 1307; BH, K 181, p. 90, 8 Jumādā II 1309; p. 153, 12 Ramaḍān 1309; p. 156, 18 Ramaḍān 1309; p. 158, 21 Ramaḍān 1309; p. 343, 2 Sha‘bān 1310; p. 352, 23 Sha‘bān 1310; loose sheet, 18 Rabī‘ I 1310. For cases in which the debtor fled, see BH, K 157, p. 174, 7 Rajab 1307; BH, K 171, p. 16, 28 Rajab 1307; p. 109, 16 Dhū al-Qa‘da 1307; p. 134, 8 Muḥarram 1308; BH, K 174, p. 29, 18 Rabī‘ I 1308; BH, K 181, p. 56, 15 Rabī‘ II 1309; p. 108, 5 Rajab 1309; p. 115, 15 Rajab 1309; p. 249, 3 Șafar 1310; p. 253, 6 Șafar 1310; p. 257, 16 Șafar 1310. See also Meakin, Life in Morocco, 237.

120 BH, K 157, p. 162, 19 Jumādā II 1307; BH, K 181, p. 107, 4 Rajab 1309; p. 260, 23 Șafar 1310. The last entry specified that the suspects escaped, while the first two simply stated that the Makhzan official was searching for the suspects.

121 See, for instance, BH, K 181, p. 274, 25 Rabī‘ I 1310; p. 352, 23 Sha‘bān 1310. In other instances the Jewish creditor sent a representative to collect his debts: BH, K 171, p. 13, 25 Rajab 1307. It also seems possible that in certain instances the debtors were sent to the creditor’s place of residence to resolve the outstanding debt: see BH, K 157, p. 123, 26 Rabī‘ II 1307; BH, K 181, p. 319, 6 Jumādā II 1310; p. 332, 6 Rajab 1310.
sometimes the Makhzan officials’ absence was the cause of delay. When officials traveled to participate in the ḥaraka (the sultan’s expedition on a military campaign), for instance, they pledged to resolve the cases upon their return.\textsuperscript{122}

When it came to repaying debts, a settlement could also be delayed by the poverty of the debtors. Scholars have documented the rapid impoverishment of Moroccan peasants during the nineteenth century, due partly to the opening of Morocco’s economy to global trade, partly to increased taxes, and partly to severe droughts and other natural disasters.\textsuperscript{123} The registers of the Ministry of Complaints reflect this reality; many Makhzan officials reported that debtors were unable to pay and requested a delay to accommodate them.\textsuperscript{124} In one particularly striking entry, al-Būmūmānī wrote that the debtors in question “possess nothing [literally, neither much nor little] and have plowed [the land] with their animals in order to restore the region (\textit{laysa ‘indahum qalīl wa-lā kathīr wa-innamā yahruthu kullu wāḥidin minhum bi-bahīmatihi bi-qaṣdī ta’mīrī al-bilād}).”\textsuperscript{125} However, the sultan did not accept this excuse: “Our lord says: he [al-Būmūmānī] lied. The majority of them are not destitute. Let them settle.”\textsuperscript{126}

More surprising is the fact that some cases could not be resolved because the Jewish petitioner refused to cooperate with the Makhzan official in charge of reaching a settlement. At times, a creditor refused to collect his debts or send a guarantor to do so.\textsuperscript{127} In other cases the

\textsuperscript{122} BH, K 181, p. 134, 17 Sha‘bān 1309; p. 244, 25 Muḥarram 1310; p. 262, 25 Šafar 1310. At times, however, the reason for the official’s absence was not mentioned: BH, K 181, p. 52, 7 Rabī’ II 1309.

\textsuperscript{123} Ennaji, \textit{Expansion européenne}, Chapter 3.

\textsuperscript{124} BH, K 157, p. 174, 6 Rajab 1307; BH, K 181, p. 86, 1 Jumādā II 1309; p. 108, 5 Rajab 1309; p. 153, 13 Ramaḍān 1309 (two relevant entries on this page); p. 158, 21 Ramaḍān 1309; loose sheet, 10 Jumādā I, 1310 (two relevant entries on this page). See also DAR, Fez, Mawlāy Ḥasan to Sa‘īd b. Farajī, 25 Jumādā I 1295: DAR, Yahūd, 28207, Muḥammad b. Karūm al-Jahābī to Mawlāy ‘Abd al-‘Azīz, 6 Jumādā I 1312.

\textsuperscript{125} BH, K 181, p. 83, 25 Jumādā I 1309. Presumably, the debtors were plowing land that had previously yielded no crops, which was a sign of their destitution.

\textsuperscript{126} \textit{Qāla sayyidunā, kadhaba, julluhum lam yu’kal, yufāṣ il}.

\textsuperscript{127} BH, K 157, p. 63, 25 Dhū al-Qa‘da 1306; BH, K 171, p. 35, 14 Sha‘bān 1307; BH, K 181, p. 351, 18 Sha‘bān 1310. For more cases of debts which the Jewish creditor refused to settle, see BH, K 181, p. 108, 5 Rajab 1309; p. 118, 17 Rajab 1309; p. 121, 22 Rajab 1309; p. 133, 16 Sha‘bān 1309; p. 271, 16 Rabī’ I 1310.
petitioner turned down a proposed settlement: one Jewish creditor would not accept livestock as payment for a debt. 128 In another case, two Jewish victims of theft rejected the thieves’ offer to compensate them with ninety-four riyāls for two donkeys; presumably the Jews believed the donkeys were worth more. 129

Corrupt Makhzan officials could also hinder the settlement of Jews’ complaints, although reports of this kind were relatively rare. 130 I found a handful of cases in which officials kept the indemnity they had seized from the murderers or the thieves—such as a murder case in which the Makhzan official reportedly refused to hand over the blood money “out of greed” (ṭama‘an). 131 In another instance, two Jewish creditors accused their local Makhzan official of taking a cut of the debt owed to them by two Muslim debtors. 132 The official’s vehement denial—he swore that he was innocent before ‘udūl, qāḍī, two soldiers, and the two debtors—suggests that such accusations were taken seriously.

128 BH, K 157, p. 125, 27 Rabī’ II 1307. See also BH, K 174, p. 100, 14 Ramadān 1308; p. 299, 1 Jumādā I 1310. In addition to the Ministry of Complaints records, see DAR, Fez, 35356, Idrīs b. Muḥammad to Muḥammad b. al-Madānī Banīs, 8 Dhū al-Qa‘da 1289, in which the Jewish creditor refused to settle (though the details of the case are not included).

129 BH, K 174, p. 90, 28 Sha‘bān 1308 and BH, K 181, loose sheet, 11 Shawwāl 1308 (the second entry seems to repeat what was recorded in the first). For other examples of a Jew refusing settlement, see BH, K 181, p. 219, 9 Dhū al-Hijja 1309; p. 279, 6 Rabī’ II 1310.

130 See, e.g., BH, K 181, p. 231, 30 Dhū al-Hijja 1309 (in which the governor incites the debtors not to pay). A similar type of case is recorded in BH, K 181, p. 147, 5 Ramadān 1309, and in the follow up on p. 161, 22 Ramadān 1309, in which the Makhzan official assigned to settle a debt owed to the Jew Ibn ‘Amūr asked to be relieved from his responsibility; the sultan responded rhetorically, asking why he had appointed this official in the first place if not to make sure that the people under his jurisdiction obeyed the law.

131 BH, K 171, p. 7, 20 Rajab 1307. For theft cases see BH, K 181, p. 164, 27 Ramadān 1309 (in which the official failed to hand over the indemnity, though it seems that this was caused by a lack of information about the case); BH, K 181, p. 253, 5 Ṣafar 1310 and p. 275, 28 Rabī’ I 1310 (in which another Makhzan official wrote to the sultan on behalf of a Jew who lived under his jurisdiction and requested that the sultan order the recalcitrant governor to give the Jewish victims their due). See also DAR, Marrakesh, Muḥammad b. ‘Azūz to Aḥmad b. al-Ṭāhir, 16 Jumādā I 1282, in which the šāḥib of the duwār (collection of houses or tents typical of Moroccan tribal regions) where a Jew had been stolen from refused to hand over what he had confiscated from the thief (either the stolen goods or their equivalent in cash—the letter does not specify). In another case from 1905, Mawlay ‘Abd al-Ḥafīẓ, who was then governor of Marrakesh (and later became sultan), sent a total of eight letters to the qā‘īd al-Madānī al-Ajlāwī trying to force al-Ajlāwī to settle the theft case of the Jew ‘Azīz Rūzā—suggesting that al-Ajlāwī’s refusal to cooperate posed a serious obstacle to settlement (DAR, Yahūd, ‘Abd al-Ḥafīẓ to al-Madānī al-Ajlāwī, 10 Jumādā II 1323; see also letters of 14 Jumādā II, 10 Rajab, 29 Shawwāl, 23 Ramadān, 8 Dhū al-Qa‘da, 15 Dhū al-Qa‘da, and 25 Dhū al-Qa‘da).

A more formidable obstacle to settlement occurred when the criminals or recalcitrant debtors resided in regions which did not submit to the Makhzan’s authority (most notably by refusing to pay any taxes). These regions were considered guilty of “corruption” (fasād). This was most problematic in settling theft cases, since many Jews were robbed in regions beyond the sultan’s control. In an entry from February 8, 1892, the Jew Shmūyil b. Ṭāṭā complained that he was robbed by the Awlād Bū Ziyān. The Makhzan official responsible for this area said that he attempted to force the tribe to pay an indemnity, but they refused due to their “corruption” (li-fasādihim), meaning disobedience to the sultan. In another instance, the Jewish victim, Ibn al-Fāsī, complained that he was robbed of 130 riyāls by the al-Rusūl tribe. The Makhzan official noted that the tribe was “corrupt” and that he had warned Ibn al-Fāsī not to travel in their region—a warning Ibn al-Fāsī ignored. This case shows that Jews sometimes traveled to insecure places knowing the risks, and yet nonetheless appealed to the Makhzan for redress when they were robbed in these areas. Ultimately, if the perpetrators of a crime lived in a region guilty of corruption, there was little the Makhzan could do to secure an indemnity for the victims.

---

133 Nonetheless, this also occurred in some debt cases: see, e.g., BH, K 181, p. 252, 4 Ṣafar 1310 and p. 315, 28 Jumādā I 1310. Other entries did not specify that the corruption of the debtors caused them to ignore the Makhzan’s instructions, but nonetheless reported that the debtors absolutely refused to cooperate in reaching a settlement: BH, K 157, p. 140, 17 Jumādā I 1307 and BH, K 181, p. 271, 16 Rabī’ I 1310. See also DAR, Fez, ‘Abdallāh b. Aḥmad to Mawlāy Ḥasan, 13 Shawwāl 1301. In this case ‘Abdallāh reported about money owed to some unnamed Jews by the Zarāhina (a tribe from Zerhoun). ‘Abdallāh explained that one of the shaykhs of the tribe, who had promised to pay the debt, was two-faced, claiming to obey the Makhzan while inciting his tribe to rebellion.

134 BH, K 181, p. 110, 9 Rajab 1309.

135 For a similar case, see also BH, K 181, p. 368, 24 Ramaḍān 1310.


137 See also BH, K 181, p. 50, 30 Rabī’ I 1309, in which Jews ignored the warning to travel only on the main road.
Questioning Jews’ Claims

In addition to the obstacles which could delay or prevent the settlement of Jews’ petitions, Makhzan officials sometimes refused to accept Jews’ claims at face value. Local officials accused Jews of deceiving the Makhzan for their own personal gain. Significantly, Makhzan officials’ questioning of Jews’ claims rarely stemmed from anti-Jewish sentiment. Rather, the weakness of the central government, and the resulting difficulties in determining the truth of legal claims, was a more important factor in Makhzan officials’ skepticism.

Some local Makhzan officials wrote back to the Minister of Complaints explaining that a Jew’s claim had already been settled, implying that the Jewish petitioner was trying to deceive the Makhzan in order to collect twice. The official might even mention that the perpetrators had been formally released from their obligations to the victims, or that the creditor had released his debtors from their debt. It is possible that in some cases which were reported already settled, the Jewish petitioner’s complaint had only been processed after he had received payment and thus that the local Makhzan official was merely updating the central government. Yet in other instances, the Makhzan officials explicitly accused Jews of bad faith, such as a case in which a local official claimed that the debtor had already paid and been released from his debt.

138 For debts, see: BH, K 181, p. 92, 12 Jumādā II 1309; p. 107, 4 Rajab 1309; p. 111, 10 Rajab 1309; p. 226, 24 Dhū al-Ḥijja 1309; p. 264, 29 Ṣafar 1310; p. 297, 30 Rabī’ II 1310. In some instances the Jewish creditor denied having received payment: BH, K 157, p. 169, 28 Jumādā II 1307 and BH, K 181, p. 137, 21 Sha’bān 1309. For theft, see BH, K 157, p. 144, 25 Jumādā I 1307; BH, K 171, p. 65, 21 Ramaḍān 1307; BH, K 181, p. 55, 14 Rabī’ II 1309; p. 69, 6 Jumādā I 1309. See also DAR, Yahūd, 14467, Mawlāy Ḥasan to Ghalāl b. Muhammad, 13 Jumādā I 1297, in which Ghalāl claimed that he had already settled the case concerning the theft of six loads of goods belonging to Jewish merchants in Essaouira; Mawlāy Ḥasan, however, ordered him take what the dhimmī was due (his ḥaqq) from the perpetrators, suggesting that he did not believe the claim that the case was already settled. 139 For theft, see BH, K 157, p. 84, 19 Muḥarram 1307; BH, K 171, p. 54, 11 Ramadān 1307; BH, K 181, p. 209, 24 Dhū al-Ḥijja 1309. For debts, see BH, K 157, p. 149, 29 Jumādā I 1307; BH, K 181, p. 191, 2 Dhū al-Ḥijja 1309; p. 196, 9 Dhū al-Ḥijja 1309; p. 222, 15 Dhū al-Ḥijja 1309. In other cases, it was simply stated that the debtor had a “legal document” (rasm) attesting to payment of the debt; undoubtedly this was either a release or the equivalent. See BH, K 171, p. 6, 20 Rajab 1307; p. 117, 3 Dhū al-Ḥijja 1307. 140 BH, K 171, p. 2, 18 Rajab 1307.
The Jewish creditor, however, requested payment again. When the debtor refused, the creditor used forgery in order to support his claim to further payment.141

One particularly detailed case demonstrates the kind of competing claims made by Makhzan officials and Jewish petitioners. The case concerns a Jewish woman’s complaint that her son Ibrāhīm was killed by two men under the jurisdiction of an official named al-Shaʿshūʿī:

[Al-Shaʿshūʿī responded] that the two suspects are not from his region, rather they are a man and a boy… who were accompanying [Ibrāhīm], and when they arrived at the river the dhimmī drowned while they were safe. They left the dhimmī’s donkey and what he had with him [that is, they did not steal his possessions]. When al-Sayyid ʿAbd al-Wārith al-Wazzānī [another official] saw [the suspects] from where he was, facing the river, he commanded that they be brought back and sent to the sultan out of fear that the dhimmīs would wrongly bring a claim against him.142 Then the son of the [deceased] dhimmī took what he left (matrūkahu), through the aforementioned al-Wazzānī, and released them [i.e. the suspects from any further claims] (wa-waqaʿ al-ibrāʿ)….

[Written below the entry in pencil:] He presented this to [Ibrāhīm’s mother] and she denied the claim that there was a release… as is in a proof (ḥujja) in her possession, and if you have proof [then send it], and if not then settle.143

According to Ibrāhīm’s mother, her son had been murdered and she deserved compensation. But al-Shaʿshūʿī reported that Ibrāhīm had died an accidental death. In fact, al-Shaʿshūʿī’s associate al-Wazzānī was so concerned that “the dhimmīs” would bring a claim for the blood money despite the absence of a crime that he made sure to capture the two men who had last seen Ibrāhīm. This in itself is an interesting commentary on the effectiveness of Jews’ petitions to the Makhzan, suggesting that they were successful enough of the time to make local officials wary of getting into a situation in which Jews might bring a claim against them. Although it is difficult to know with certainty how Ibrāhīm died and whether his mother deserved the blood money, it is clear that al-Shaʿshūʿī believed the matter had already been resolved.

141 For another case in which it seems the Jewish creditor intentionally lied about having settled the debt, see BH, K 181, p. 260, 23 ʿṢafar 1310. Here the Makhzan official wrote that the Jewish creditor did not mention the settlement of the case in his letter of complaint to the sultan. For a similar case concerning theft, see BH, K 181, p. 209, 24 Dhūlosure da 1309.
142 Khīfatan an yadʾū ahlū al-dhimmatiʿalayhi bi-ʾl-bāḥīlī.
143 BH, K 181, p. 57, 20 Rabīʿ II 1309.
Makhzan officials also charged Jews with lying outright about their claims.\textsuperscript{144} For instance, the leader of the Zāwiyat al-Jāniyya reported that the dhimmī Hārūn al-Tāzī brought a falsified document saying that his deceased cousin owed al-Tāzī fifty riyāls.\textsuperscript{145} The sultan ordered the deceased man’s son to pay the alleged debt; when he could not, the governor confiscated his cattle and sent them to the Makhzan as payment.\textsuperscript{146} The leader of the zāwiya requested that the matter be taken to a sharī’a court where, one assumes, the falsified documents would be identified as such and the cattle returned to their owner.\textsuperscript{147} In another case, the pasha Ḥamar argued that the Jewish victim must have been lying about the robbery since he was traveling with both goods and animals, but claimed that only his goods were stolen; if the robbery had actually happened, his animals would have been taken as well.\textsuperscript{148} It is important to note that Jews were not the only ones accused of lying about theft cases; in at least one entry the Makhzan official claimed that a Muslim lied because the region in which he claimed to have been robbed was extremely remote and impossible to reach.\textsuperscript{149}

\textsuperscript{144} For theft cases, see BH, K 171, p. 29, 8 Sha’bān 1307; BH, K 174, p. 30, 24 Rabī’ I 1308; BH, K 181, p. 271, 16 Rabī’ I 1310. In two cases the Makhzan official noted that the Jews had no proof of their claim (BH, K 181, p. 12, 27 Dhū al-Qa‘da 1308; p. 105, 1 Rajab 1309). For debt cases, see BH, K 181, p. 55, 14 Rabī’ II 1309; p. 340, 23 Rajab 1310; p. 368, 25 Ramaḍān 1310. For murder cases, see BH, K 171, p. 49, 4 Ramaḍān 1307; BH, K 174, p. 30, 23 Rabī’ I 1308.

\textsuperscript{145} BH, K 181, p. 255, 14 Ṣafar 1310.

\textsuperscript{146} The entry specified that the cattle were sent to the qā‘id al-mashwar, who was responsible for the mashwar in Fez—that is, the part of the palace in which the viziers of various ministries had their offices. Presumably the qā‘id al-mashwar was to give either the cattle or their price in cash to al-Tāzī as payment.

\textsuperscript{147} For another case of falsified documents, see BH, K 181, p. 326, 27 Jumādā II 1310. Here, the Makhzan official reported that the Jewish creditor had increased the amounts owed to him in his documents—that is, when he was owed 10 he wrote 100, and when he was owed 50 he wrote 500 (similar to the kind of hidden interest which Shalom Assarraf was accused of charging—discussed in Chapter Two). The sultan responded to this accusation cryptically; “it [the amount of the debt] reached whatever it amounted to, and it cannot exceed [the amount] that was attested to [presumably in the original documents] (balaghat mā balaghat lā tajāwi za al-mashhūda ‘alayhi).”

\textsuperscript{148} BH, K 157, p. 162, 18 Jumādā II 1307. See also BH, K 174, p. 31, 11 Rabī’ II 1308, in which the official responded that the petition must have been made under false pretences since there was no road which gives access to the place in which the Jews claimed to have been robbed. See also BH, K 174, p. 38, 28 Rabī’ II, 1308, in which the official noted that the area where the robbery supposedly occurred was safe and that nothing could have happened there.

\textsuperscript{149} BH, K 157, p. 173, 5 Rajab 1307.
The practice of exaggerating the value of stolen goods was widespread enough that it prompted the sultan to pass a law requiring Jews to register their goods with ‘udūl before traveling in the countryside.\textsuperscript{150} Yet records from the Ministry of Complaints suggest that this measure was not always effective. In an entry from August 20, 1892, the pasha of Meknes reported on the complaint of the Jew al-Lībī (Levy) and his partner Ibrāhīm Gasūs.\textsuperscript{151} Al-Lībī and Gasūs had registered a certain number of goods with ‘udūl before departing, but after they were robbed they claimed an amount much higher than that which they had originally declared. In another case, the Jews simply refused to register their goods with ‘udūl.\textsuperscript{152}

An accusation made against some Jewish creditors attempting to collect debts was that they were in fact charging interest, which was strictly illegal according to Islamic law.\textsuperscript{153} There is little doubt that Jewish (and Muslim) creditors charged hidden interest in ways permissible under Islamic law. European observers and diplomats particularly emphasized the usurious nature of Jewish moneylending in nineteenth-century Morocco, painting a picture in which Jews regularly charged exorbitant rates of interest.\textsuperscript{154} These observations were undoubtedly colored by anti-Semitic stereotypes about Jews as usurers prevalent in Europe at the time. However, the Ministry of Complaints registers preserve only three instances in which Jews were accused of

\textsuperscript{150} On this regulation, see FO, 636/5, Nahon to Hay, 21 December 1885. See also Schroeter, Merchants of Essaouira, 173-74. Mawlāy Ḥasan also instructed the governors of cities to appoint a certain number of ‘udūl to specialize in registering Jews’ goods, depending on the size of the city (for instance, Marrakesh had eight while Tetuan had four). For responses to this order, see DAR, Yahūd, 15600, Ahmad Amālik to Mawlāy Ḥasan, 18 Ṣafar 1303; 2255, Muḥammad b. al-Ḥasan al-Yūlī to Mawlāy Ḥasan, 1 Rabī’ I 1303; 2260, Muḥammad b. ‘Abdallāh to Mawlāy Ḥasan, 4 Rabī’ I 1303; DAR, Tetuan, Muḥammad ‘Azīmān to Mawlāy Ḥasan, 10 Rabī’ I 1303.

\textsuperscript{151} BH, K 181, p. 246, 26 Muḥarram 1310.

\textsuperscript{152} BH, K 181, p. 50, 30 Rabī’ I 1309.

\textsuperscript{153} See, for instance, BH, K 171, p. 91, 22 Shawwāl 1307, in which the official noted that of the 300 (the currency is not recorded) owed to the Jewish creditor, only 150 was the original debt (āṣl) and the rest was interest (riḍā).

\textsuperscript{154} Laurent-Charles Féraud, French ambassador from 1884 to 1888, was particularly outspoken about what he saw as the prevalence of usury among Jewish protégés: see, for instance, MAE Courneuve, C.P. Maroc 48, Féraud to Freycinet, 13 June 1885; C.P. Maroc 50, Féraud to Freycinet, 6 January 1886, 16 February 1886, and 22 April 1886; C.P. Maroc 51, Féraud to Freycinet, 15 July 1886; C.P. Maroc 53, Féraud to Flourens, 25 September 1887. Budgett Meakin did not explicitly single out Jews as usurious creditors, focusing instead on European protégés; nonetheless, the only creditor whose religion he identified was Jewish (Meakin, Life in Morocco, 235-37). See Kenbib, Juifs et musulmans, 253-62.
charging interest, suggesting that European assessments of the extent of exorbitant interest rates charged by Jews were exaggerated.¹⁵⁵

Perhaps even more interestingly, it seems that accusing Jews of charging interest was not always as grave an allegation as one might have expected.¹⁵⁶ In two cases the Makhzan official concerned seemingly accepted the idea of charging interest. In an entry from March 4, 1892, Ibn Zayna reported that the debtors settled all their debts except those owed to the Awlād al-Wīrī from Meknes.¹⁵⁷ The al-Wīrī brothers “refused to determine the [amount of] interest [al-intirīs]¹⁵⁸ according to the custom of the merchants, [that is,] to add half to the original debt.”¹⁵⁹ The phrasing of this sentence suggests that the interest was not the problem in and of itself—since after all it was the custom of the merchants to charge half of the original debt in interest. In other words, the fact of charging interest was accepted; the bone of contention was that the Jewish creditors refused to charge the customary amount.¹⁶⁰

Although the second guessing of Jews’ claims might suggest that Makhzan officials mistrusted Jews on principle, the instances in which anti-Jewish sentiment motivated accusations against Jewish petitioners were relatively rare. I found only one case in which a Makhzan

¹⁵⁵ Nonetheless, see Boum, “Muslims Remember Jews,” in which Boum discusses the fact that in present-day southern Morocco Jews still have a reputation for usury.
¹⁵⁶ In one entry, a Makhzan official reported that the Jewish creditor denied having charged interest and in fact said that doing so was condemned (mal‘ūn); the official seemingly took this report at face value, although the sultan was more skeptical and demanded an investigation into the matter (BH, K 157, p. 127, 28 Rabī‘ II 1307). See also BH, K 181, p. 241, 23 Muḥarram 1310, in which a Muslim debtor attempted to charge his Jewish creditor with exacting interest, and the Makhzan official refused to accept his accusation.
¹⁵⁷ BH, K 181, p. 127, 4 Sha‘bān 1309.
¹⁵⁸ The word al-intirīs is clearly derived from a Western word for interest (probably either from English or Spanish). For another use of this term, see the letter from 1893 in Boum, “Muslims Remember Jews,” 243-4, Case 16. It does not appear in Colin’s dictionary of Moroccan Colloquial Arabic.
¹⁵⁹ Abaw min ja‘li ta‘wilī fī al-intirīs ‘alā ‘ādati al-tujjāri min ziyādatihim al-nisfī ‘alā ašli daynihim. (In translating ta‘wil, I rely on Kazimirski, Dictionnaire arabe-français, v. 1, 89, who gives “Définir, déterminer quant à la quantité ou à la mesure” as a translation for form two.)
¹⁶⁰ Another entry similarly recorded that the debtors were willing to pay the interest on a debt they owed to a Jewish creditor (BH, K 181, p. 212, 28 Dhū al-Qa‘da 1309). In this document, the Makhzan official reported that the debtors had paid the principal of the debt (ašl al-dayn) and that they only owed the interest (wa-lam yabqa illā ribāhu), which they would pay when the qā‘id returned.
official accused a Jew of falsifying documents and implied that doing so was a common practice among Jews. Moreover, in this case the official himself was the debtor in question, suggesting that his anti-Jewish statement may have stemmed from personal vindictiveness. Additionally, Makhzan officials also accused Muslims of making false claims, which suggests that officials did not single out Jews for this charge. In a letter dated March 31, 1890, Ahmad Amâna, a qâ’id in Marrakesh, wrote to the sultan about a Muslim named Shaykh Laḥsan who had sold a large amount of olive oil to three Jews. The sultan subsequently ordered the sales to be annulled; Laḥsan was to return the money to the Jews, who in turn were to give the olive oil back to Laḥsan. Laḥsan then attempted to cheat the Jews out of a relatively large sum of money by claiming that they had paid him less than what was recorded in the bills of sale, which were examined by a qâḍî. Although some Makhzan officials may have questioned Jews’ claims out of a general mistrust of Jews, the fact that officials also charged Muslims like Laḥsan with falsifying their claims indicates that their skepticism did not always arise from anti-Jewish sentiment.

---

161 BH, K 181, p. 151, 10 Ramaḍān 1309. The official wrote that “it is not hidden that all the documents of the Jews are doubled (muda ‘af).”
162 DAR, Marrakesh, Ahmād Amâlik to Mawlāy Ḥasan, 9 Sha’bān 1307. For a similar accusation against a Muslim, see BH, K 157, p. 37, 28 Ramaḍān 1306.
163 The sultan ordered the transaction canceled because Laḥsan had been imprisoned and forced to pay 1,500 riyałs to the Makhzan unjustly. Laḥsan had originally sold the olive oil in order to raise this amount, but after he complained the sultan rescinded the payment and ordered the umanā’ in Marrakesh to return to the money to Laḥsan so that he could give it back to the Jews. See also DAR, Marrakesh, Mawlây Ḥasan to Umanā’ of Marrakesh, 20 Dhū al-Qa’dâ 1307, in which the sultan instructed the umanā’ to return the money Laḥsan had paid them so that he could repay the Jews.
164 In the sale to Haim Corcos, Laḥsan claimed that he had received 300 riyałs while the document recorded the sale at 450 riyałs. Laḥsan claimed he received 1,200 riyałs from Dawūd b. al-‘Akarî, while the amount recorded was 4,515 riyałs. Finally, Laḥsan claimed that he had not sold any olive oil to Shmûyil b. al-Ṭanjî, while the document recorded a sale of 525 riyaļs. It seems then that Laḥsan attempted to cheat the Jews out of 3,990 riyaļs.
Intra-Jewish Complaints

Thus far I have looked exclusively at Jews’ complaints concerning cases involving Muslims. Yet Jews also wrote to the Makhzan in order to lodge complaints against other Jews. 165 (I further discuss how Jews collectively petitioned the state on intra-Jewish matters in the following chapter.) Although intra-Jewish complaints are relatively rare in the Ministry of Complaints registers, they are more common in other parts of the Makhzan archives. 166 I believe that this difference stems from the nature of the Ministry of Complaints rather than the nature of Jews’ relationship to the state, since Jews clearly wrote to the Makhzan concerning intra-Jewish matters. It is possible that the Ministry of Complaints was simply not held responsible for intra-Jewish complaints, so such petitions were not sent to this office. 167 The few intra-Jewish complaints which did wind up in the registers of the Ministry of Complaints concern a range of issues, though it is difficult to find any sort of pattern connecting these cases.

Debts which Jewish debtors owed to Jewish creditors were a common cause for complaint. 168 In at least one instance a Jewish debtor was imprisoned for his unpaid debts. 169 One particularly detailed case illustrates why Jewish creditors at time petitioned the state to

---

165 This is familiar from other times and places in the history of Jews under Islam: see, e.g., Wittmann, “Before Qadi and Vizier,” Chapter 2.
166 Out of the 511 cases I found in the Ministry of Complaints registers which concerned Jews, only four (1%) involved individual complaints against other Jews. However, in the DAR, where I looked at a much broader range of correspondence with the Makhzan, I found a higher instance of Jews petitioning the state to intervene in matters concerning other Jews. Out of a total of eighty-six cases concerning individual Jews’ complaints to the state, twelve (approximately 14%) were about intra-Jewish matters.
167 This hypothesis is supported by the fact that at least one complaint from a Jew concerning an intra-Jewish matter which reached the Makhzan during the period covered by the Ministry of Complaints registers did not show up in those registers (DAR, Yahūd, 16936, Ḥammu b. al-Jīlālī to Mawlāy Ḥasan, 29 Dhū al-Qa’dā’ 1306).
168 One such case is found in the Ministry of Complaints records and relates to a debt owed to a Jew by three other Jews and a man who was not identified as Jewish (and thus was probably Muslim): BH, K 157, p. 158, 12 Jumādā II 1307. See also DAR, Tetuan, 22068, ‘Abd al-Qādir Ash’āsh to Mawlāy ‘Abd al-Raḥmān, 3 Jumādā I 1265; DAR, Marrakesh, Muḥammad b. Dānī b. Aḥmad b. al-Ṭāhir, 30 Muḥarram 1283; Muḥammad b. Ṣāliḥ to Aḥmad b. al-Ṭāhir al-Samlālī, 11 Rabī’ I 1283; DAR, Yahūd, al-‘Arabī b. al-Sharīqī to Muḥammad Tūrīs, 4 Jumādā I 1319; Muḥammad b. Qāsim to Muḥammad Tūrīs, 24 Jumādā II 1320; Muḥammad b. al-Baghdādī to Muḥammad al-Miṣrī, 27 Rabī’ I 1327.
resolve disputes with their Jewish debtors. On April 26, 1849, the governor of Tetuan, ‘Abd al-Qādir Ash‘āsh, wrote to the sultan, Mawlāy ‘Abd al-Raḥmān, on behalf of the Jew Yehudah b. Shlomoh ha-Levi (Yūda b. Shlūmū al-Lībī).170 Yehudah claimed that two Jews, Mas‘ūd b. Halīl and Māyir (Meir) Ḥuyūt, both of whom lived in Rabat, owed his late father Shlomoh 2,500 mithqāls. Both these Jews had been Shlomoh’s representatives (nā’ib), Mas‘ūd in Essaouira and Meir in Rabat. But after their partner’s death, Mas‘ūd and Meir refused to pay the money they owed Shlomoh’s heirs. In order to ensure that they would not have to pay, they “forged a document against [Shlomoh] with the Jews in Marrakesh”—probably meaning that they had the Jewish sofrim in Marrakesh produce a counterfeit document absolving them of their debts.171 Yehudah wanted the sultan to send Mas‘ūd and Meir to settle the accounts with him, either in Tetuan or Fez; undoubtedly he hoped to bring the defendants to a place where the Jewish legal officials would be on his side. Mawlāy ‘Abd al-Raḥmān promptly responded with instructions to send the recalcitrant debtors to Tetuan or Fez in order to settle with Yehudah in a Jewish court.172 Yehudah’s story reveals the central role played by the Makhzan in enforcing Jewish law. His strategy was ultimately not that different from those of other creditors whose petitions are recorded in the registers of the Ministry of Complaints. Jews who were owed money and were unable to make their debtors pay appealed to the Makhzan to intervene, even when those debtors were other Jews.173

171 Innahumā zawwarā ‘alayhi rasman bi-‘l-yahūd bi-Marrākusha [sic].
172 DAR, Tetuan, 22072, Mawlāy ‘Abd al-Raḥmān to ‘Abd al-Qādir Ash‘āsh, 10 Jumādā II 1265.
173 See also two cases concerning business transactions among Jews which were not straightforward debts: DAR, Yahūd, 22361, ‘Amrān al-Malīḥ to Mawlāy ‘Abd al-Raḥmān, 13 Ṣafar 1264 (in which al-Malīḥ accused his Jewish business partner of deceiving him and stealing his money) and DAR, Meknes, Ḥammū b. al-Jīlālī to Mawlāy Ḥasan, 5 Sha‘bān 1303 (in which a Jew in Meknes who bought the monopoly on the minting of coins charged the Jews of Fez who owned the monopoly on minting coins there with attempting to prevent him from running his mint).
Debts were not the only intra-Jewish complaint which led Jews to petition the Makhzan. Jews also complained about intra-Jewish theft, such as the case of Sa‘ādā bint Dāwūd (of Tangier) who accused her coreligionist Sulayka (from Casablanca) of stealing from her.\footnote{174} Muḥammad b. Qāsim, a Makhzan official in Casablanca, investigated the matter and imprisoned Sulayka in the woman’s prison until she settled with Sa‘ādā, after which he released her. Other cases concerned property disputes amongst Jews.\footnote{175} Some Jews even petitioned the Makhzan about their marital woes, as in the case of Simḥah bint Makhlūf Tībrūt who complained that her husband, Yitzḥaq b. ‘Atīya, had disappeared and had not sent her anything with which to support herself.\footnote{176} Simḥah wanted Yitzḥaq to either pay her maintenance (nafaqa) or divorce her. But when the local Makhzan official confronted Yitzḥaq, the supposedly delinquent husband “produced a legal proof signed by Jewish notaries and a Jewish judge (adlā bi-ḥujjatin thābitatin bi-‘udūli al-yahūdi wa-qādihim)” stating that Simḥah had stolen “all his belongings.” Yitzḥaq “requested her to proceed with him according to [Jewish] law (yaṭlubu minhā al-sulūka ma‘ahu ‘alā sabīli shar‘ihim),” which is how the matter was settled.\footnote{177} It seems that Simḥah’s motivation for writing to the Makhzan was to evade the jurisdiction of the Jewish court which had already sided with her husband in notarizing a document proving that she had stolen his

\begin{footnotes}
\footnote{174}{DAR, Yahūd, Muḥammad b. Qāsim to Muḥammad Tūris, Safar 1326. In another case, a Jew from Demnat accused two other Jews of drilling a hole through his store and robbing him: BH, K 157, p. 27, 6 Ramaḍān 1306.}
\footnote{175}{One case concerns a Jewish protégé from “the east” (ahl al-sharg) who opposed selling a store to a Jewish buyer (BH, K 181, p. 270, 10 Rabī‘ I 1310). In another case, the qā‘id of Meknes transmitted the complaint of Ya‘aqov Oḥānā from Meknes about the behavior of another Jew from Fez who was mishandling a funduq belonging to the endowment which the sultan gave for poor Jews. This Jew had put a stable and a winepress in the funduq—both of which presumably interfered with the endowment’s original purpose (DAR, Yahūd, 16936, Ḥammū b. al-Jīlālī to Mawlāy Ḥasan, 29 Dhū al-Qa‘da 1306). See also DAR, Yahūd, al-Mas‘ūdī to al-Ḥājj Muḥammad, 25 Muḥarram 1314, in which the Jew Salām b. al-Shaykh Hāyim b. al-Dayān claimed that the Makhzan gave his sister’s late husband a piece of property in the millāḥ, but that a number of Jews had illegally built on this property.}
\footnote{176}{DAR, Yahūd, al-Ḥājj Muḥammad b. al-Jīlālī to Aḥmad b. Muḥammad b. al-‘Arabī Tūris, 18 Shawwāl 1323.}
\footnote{177}{DAR, Yahūd, al-Ḥājj Muḥammad b. Aḥmad (?: last name unreadable) to Aḥmad b. Muḥammad b. al-‘Arabī Tūris, 13 Rajab 1323. Al-Ḥājj Muḥammad reported that Yitzḥaq and Simḥah reached a settlement (ṣulḥ) with the shaykh al-yahūd.}
\end{footnotes}
property. In this case, the Makzhan official ruled to uphold Jewish law by accepting the validity of Yitzḥaq’s Jewish legal document—a practice which was not in itself uncommon, as discussed in Chapter Three.

Jews turned to the Makhzan to resolve intra-Jewish disputes far less frequently than they did to resolve legal cases with Muslims. The default for Jews in most instances was to use Jewish courts for intra-Jewish matters. Nonetheless, at times Jews chose to engage the state even when they could have appealed to Jewish legal authorities. Such strategies suggest that at times Jews considered the Makhzan to be a more effective forum in which to pursue their claims.

*   *   *

The registers of the Ministry of Complaints are a rich and hitherto untapped source for both the quotidian functioning of the Moroccan state and the nature of Jews’ relationships with the Makhzan. The Ministry of Complaints acted as one forum among many in which Jews and Muslims could resolve their legal grievances. The Ministry of Complaints, and the Makhzan more broadly, functioned as a court of appeal when individuals felt that justice at the local level had not been served. Jewish creditors who could not collect their debts, Jewish victims of theft who had not been paid an indemnity, and the relatives of murdered Jews who had not collected 

---

178 In principle, Simḥah should also have been able to claim her maintenance from a Jewish court, as under Jewish law husbands are obligated to support their wives financially even when they are absent from the home (Ben-Zion Schereschewsky and Moshe Drori, “Maintenance,” in *Encyclopaedia Judaica*, ed. Michael Berenbaum and Fred Skolnik (Detroit: Macmillan Reference, 2007), 399-401). In the case of failure to support his wife, a husband can sometimes be compelled to give her a divorce (David L. Lieber, Ben-Zion Schereschewsky, and Moshe Drori, “Divorce,” in *Encyclopaedia Judaica*, ed. Michael Berenbaum and Fred Skolnik (Detroit: Macmillan Reference, 2007), 713). Nonetheless, Islamic law may have proved more inclined to grant Simḥah’s request. Islamic law similarly obligates a husband to provide maintenance for his wife, but Mālikī law also enables the qāḍī to grant a woman a divorce if her husband fails to provide maintenance (Rudolph Peters, “Nafaqa,” in *Encyclopedia of Islam*, ed. P. Bearman, et al. (Leiden: Brill, 2010)). For other instances of Jews appealing to the Makhzan to resolve a marital dispute, see: BH, K 157, p. 65, 5 Dhū al-Ḥijja 1306 (In this case, Yaʿqov al-Ṭāṣī complained that he had been waiting to marry the daughter of Ibn Ḥayā al-Ṣwārī (from Essauira), and had decided to petition the Makhzan in order to make al-Ṣwārī agree to let the marriage take place; the sultan ordered that the case be taken to a sharīʿa court); MAE Nantes, Tanger B 461, Muḥammad al-Ṭūris to Paténôtre, 24 July 1890 (In this case, Avraham Suissa wanted to take his wife to the beit din but she refused; he appealed to the Makhzan, asking the local authorities to force her to go with him to the beit din).
blood money all wrote to the Makhzan in an effort to ensure that they received their due. Many of these claims were settled, either by a local Makhzan official, the sultan, or a sharī‘a court. However, the limited ability of a weak central government to impose its will meant that not all Jews’ petitions resulted in a successful settlement. Nonetheless, the Makhzan clearly felt responsible for addressing Jews’ complaints—a responsibility held towards all subjects of the sultan, regardless of religion.
Chapter Six: Collective Appeals to the Makhzan

According to [the Jews of Marrakesh], there is only one way to end their suffering: this is to make the state of affairs known to His Majesty [the sultan] and to address their complaints to him.¹

On April 10, 1877, the Jews of Casablanca wrote a letter complaining about the “foul day” on which their qā’id ‘Abdallāh al-Ḥaṣār denied them justice.² The Jews of Casablanca described an incident in which “two Jewish women got into a fight in the millāḥ (the Jewish quarter).” The fight spread, first to the women’s husbands as “each woman’s husband came to help his wife.” More Jews joined in, “each trying to restrain his friend” from escalating the fight further.³ Although the Jews seemed to have things under control, “many of the qā’id’s personal guards came and began attacking the Jews without regard to those who were fighting ... and some Jews were injured.” Finally a number of Muslim bystanders joined in the brawl. When a group of Jews went to ‘Abdallāh’s residence to complain about their ill treatment, he not only refused to hear their plea but imprisoned some of them and put them in chains. A subsequent group of Jews who appealed to ‘Abdallāh were equally unsuccessful; when they asked him to “judge the matter justly” (taḥkumu fīhī bi-’l-ḥaqq), he replied that they would have to pay him to do so. The Jews of Casablanca finally decided to appeal to the sultan for justice; Mawlāy Ḥasan ordered ‘Abdallāh to send the imprisoned Jews to him for judgment.⁴ Unfortunately we do not know what happened to ‘Abdallāh or his Jewish prisoners. But the very fact that the Jews of

¹ Joseph Halévy, Bulletin de l’Alliance Israélite Universelle, 2ème sémestre 1877.
² DAR, Yahūd, 15587, Jews of Casablanca to Jews of Tangier, 26 Rabī’ I 1294. (The Jews of Casablanca originally wrote to the Jews of Tangier, who then passed their letter on to a high-ranking vizier: on the choice of writing to fellow Jews, see below.)
³ Yaruddu kullu wāḥidin ‘an ṣāhibīhi.
⁴ DAR, Yahūd, 34155, Ḥājj ‘Abdallāh al-Ḥaṣār to Muḥammad Bargāsh, 16 Jumādā I 1294. Al-Ḥaṣār claimed that he had subsequently received orders from a vizier (he did not specify which one) to keep the prisoners in jail, and asked Bargāsh for clarification.
Casablanca appealed to the sultan to give them justice tells us much about Jews’ relationship with the state and their strategies when faced with a perceived injustice.

This chapter examines how Moroccan Jews collectively appealed to the Makhzan when they felt their communal rights had been violated. As discussed in the previous chapter, evidence preserved in the Makhzan archives shows that Jews felt entitled to the state’s intervention, and conversely that the state believed it was responsible for providing justice to its Jewish subjects. In what follows I draw on previously untapped correspondence in order to reconstruct how groups of Jews appealed to the state and for what reasons. Because the majority of Jews’ collective petitions concerned legal matters, these avenues of appeal are a crucial piece of the puzzle in reconstructing how Jews navigated the various legal orders available to them in Morocco.

My evidence consists primarily of correspondence among Jews and Makhzan officials preserved in the Moroccan archives. Because the Makhzan did not keep systematic records until the colonial period, these sources are often fragmentary; we usually have only one side of the story, and rarely know the outcome of Jews’ appeals. Like the petitions to the Ministry of Complaints, these collective petitions come from all over Morocco. Nonetheless, some communities wrote to the Makhzan with complaints more often than did others. The Jews of Demnat, for instance, petitioned the state repeatedly between 1864 and 1892 to complain about their treatment at the hands of their governor and, on one occasion, the local qāḍī. It is quite possible that the Demnati Jews’ recurring complaints stemmed in part from the fact that they successfully engaged foreign diplomats and Jewish organizations to lobby on their behalf—an aspect of this story which I discuss in detail in Chapter Nine. Yet despite variation in the
frequency of Jews’ petitions across Morocco, the context and content of these appeals show similar patterns.

I call these petitions “collective” because they were usually signed by a group of Jews (such as “the Jews of Casablanca” in the petition with which this chapter opened). It is likely that these letters were written by the Jewish elites of given towns who held leadership roles and claimed the authority to speak on behalf of their communities. These petitions were written in Arabic, a language in which few Jews were literate (most knew Judeo-Arabic); it is probable that Jews hired Muslim scribes when they wanted to present a petition to the state. Though the scribes whom Jews engaged undoubtedly played an important role in shaping the language, form, and even content of petitions and other legal documents, I have found little evidence which sheds light on the nature of their involvement.

I address petitions submitted by individual Jews separately from those submitted by groups of Jews in large part because of the nature of the complaints. When individual Jews wrote to the Makhzan, the vast majority of their complaints concerned unpaid debts; only a quarter of the cases from the Ministry of Complaints registers concerning Jews had to do with theft or murder. Collective petitions, on the other hand, almost never concerned debts or theft and only a small number of them were about murders. Rather, the majority of the collective petitions were efforts to gain redress from the abuse of government officials. On the other hand, individuals rarely petitioned the Makhzan concerning abuse by officials—I found one such case

---

which seems to be the exception that proves the rule. Finally, the type of evidence available for individual and collective petitions differs; while the Ministry of Complaints registers contain only the responses by local Makhzan officials to individual Jews’ petitions, we have the original letters sent by groups of Jews as well as the Makhzan’s responses.

The bulk of the evidence about Jewish collective petitions comes from the late nineteenth century, especially Mawlay Hasan’s reign (1873 to 1894), although I discuss incidents from as early as 1828 and as late as 1904. There is little indication that Jews’ appeals to the Makhzan changed significantly over the course of the nineteenth century, despite the fact that these were undeniably years of significant transformation in Morocco. What did change was the organization of the central government (i.e., the creation of the Ministry of Complaints, discussed in Chapter Four) and the availability of a new avenue of appeal—that is, foreign consular officials and international Jewish organizations (such as the Alliance Israélite Universelle); I discuss their role in Jews’ relationship to the state in Chapter Nine.

---

7 DAR, Fez, 23074, Mawlay ‘Abd al-Rahman to [his son] Muhammad, 2 Rabi’ I 1261. This letter refers to a complaint brought by Yitzhaq b. Makhluf from Fez, who claimed that the Makhzan official al-Bahlul forced him to lend al-Bahlul 800 mithqals. When Yitzhaq could not produce the money, al-Bahlul seized money and jewelry from his partner in Casablanca—which al-Bahlul subsequently refused to pay back, even though he forced Yitzhaq to sign a release as if he had paid the debt. The sultan informed his son that he was displeased with al-Bahlul’s actions, instructed Muhammad to reprimand al-Bahlul, and ended the letter with a Quranic verse (2:41: “[Allah will certainly help] those who, were We to bestow authority on them in the land…[will establish prayers, render zakat, enjoin good and forbid evil. The end of all matters rests with Allah.”]. I do not discuss individual petitions concerning abuses of minor officials, such as umanā’ (tax officials), since these are closer in nature to complaints about debts—for instance, that the umanā’ of a particular port did not allow a Jew’s goods to pass through customs. See DAR, Yahud, 2250, Mawlay ‘Abd al-‘Aziz to ‘Abdallah b. Ahmad, 28 Muharram 1303; Ya’qub b. Sa’id to umanā’ of Casablanca, 3 Muharram 1329.

8 Although documents from the Moroccan archives only begin to be plentiful in the early nineteenth century, there is some evidence that these types of collective appeals to the Makhzan were practiced even earlier: see, for instance, Ankawa, Kerem Hemer, 7a, Number 39. In this taqqanah from 5361/1600, the rabbis of Fez appealed to the sultan to reverse an earlier decree in which he permitted polygamy to Jews under any circumstances (the rabbis wanted to limit the circumstances to particular cases). See also ibid., 13a, Number 77. In this taqqanah from 5363/1603, the authors cited a decree from the sultan that any legal matter between two Jews should be judged in a beit din. There is little question that this decree was obtained at the request of Jews—probably the same rabbis who wrote the taqqanah.
The concentration of petitions during the reign of Mawlāy Ḥasan is in part a consequence of the Moroccan archives’ incomplete nature; it is likely that collective petitions from earlier and later periods existed but were not as well preserved. Mawlāy Ḥasan was known for his energetic efforts at centralization, including more rigorous archival practices, while the three sultans preceding Mawlāy Ḥasan did not keep nearly as stringent records. Yet it is also possible that the number of petitions to the Makhzan increased over time. In this case, the fact that relatively few petitions survive from the reign of Mawlāy Ḥasan’s son and successor, Mawlāy ‘Abd al-‘Azīz (1894 to 1908), could be explained by the fact that this was a period of notorious political instability which translated into less rigorous record keeping. Finally, Mawlāy Ḥasan had a reputation as being particularly concerned for the well being of his Jewish subjects, which might have made Jews more likely to appeal to the Makhzan during his reign.

This chapter begins with an attempt to understand the language used by Makhzan officials and Jews to describe the rights at stake in appeals for justice. I argue that Jews and the state largely shared a language of rights and a framework of expectations concerning what Jews were entitled to. I then discuss which avenues of appeal were open to Jews and how the state responded. This reconstruction is necessary because historians have yet to describe the ways in which the state addressed appeals by its subjects. Finally, I look at specific types of complaints raised by Jews and what these tell us about Jews’ relationship to Islamic legal institutions and to the government which oversaw them.

---

9 Administrative reforms began under Mawlāy Muḥammad following the war with Spain in 1861. Among them was a reorganization of record-keeping (Pennell, Morocco since 1830, 78-9). However, it was Mawlāy Ḥasan who instituted a major reform in scribal practice, which undoubtedly explains the increase in archival material under his reign (al-Manūnī, Maẓāhir, v. 1, 43-4).

10 On increasing political instability during the reign of Mawlāy ‘Abd al-‘Azīz, see Burke, Prelude to Protectorate, 42-9. Burke takes pains, however, to show that this instability was not due solely to Mawlāy ‘Abd al-‘Azīz’s incompetence—rather, it reflected the increasing threats of European imperialism and internal unrest.

11 Gottreich, The Mellah of Marrakesh, 39-41: see also Bénech, Explication d’un mellah, 27.
The Language of Rights

All the actors concerned in these appeals used a particular language when talking about the legal rights at stake. Both Jews and Makhzan officials invoked the dhimma contract—the basis of non-Muslims’ legal status in the Islamic world—as the basic arbiter of Jews’ rights. The commonality of this language implies a shared understanding of the legal framework that prevailed in Morocco. This language also challenges a propensity among neo-lachrymose historians to depict the dhimma contract as representing the oppression of non-Muslims under Islamic law, while ignoring how dhimmī status also delineated a set of rights to which non-Muslims were entitled.12

A few key words occur repeatedly in the correspondence concerning Jews’ petitions to the state. Perhaps the most common word which both Jewish subjects and state actors invoked is ḥaqq. Ḥaqq has a wide variety of meanings in Arabic; the best translations of the word ḥaqq as it appears in Makhzan correspondence are “right, one’s due” and “justice, fairness.”13 Sometimes authors used ḥaqq to describe the ideal way in which a judge should mete out judgment, as in the incident with which this chapter began when the Jews of Casablanca requested that their qāʾid judge their case fairly or justly (taḥkumu fīhī bi-ʾl-ḥaqq).14 Here, ḥaqq simply connotes “justice.” This meaning is also evident in Mawlāy ʿAbd al-Raḥmān’s order to the qāʾid Aḥmad al-Muʿṭī to make sure that “pure justice” (ṣarīḥ al-ḥaqq) is done with regard to the Jews under al-Muʿṭī’s jurisdiction.15 At other times, ḥaqq was used more in the sense of a

---

12 See especially Bat Ye’or’s discussion of “dhimmitude”: Ye’or, The Dhimmi: Jews and Christians under Islam, Chapters 2 and 3.
13 Lane, An Arabic-English Lexicon, 607-08. For a discussion of the meanings of ḥaqq in the Moroccan context, see Geertz, Local Knowledge, 187-9.
14 DAR, Yahūd, 15587, Jews of Casablanca to Jews of Tangier, 26 Rabī’ I 1294.
15 DAR, Yahūd, 23088, Mawlawy ʿAbd al-Raḥmān to Aḥmad al-Muʿṭī, 27 Rabī’ I 1261. See also DAR, Demnat, al-Ṭayyib al-Yamānī to Muhammad Bargāsh, 24 Muḥarram 1281 (in which al-Yamānī commanded Bargāsh to do justice on behalf of the sultan (izhār al-ḥaqqi min jānibī sayyidinā)); DAR, Fez, 5991, Mawlawy Ḥasan to Saʾīd b.
“right”—as in, the rights to which individuals and collectives were entitled under Islamic law. For instance, the Jews of Safi registered a complaint that their governor (‘āmil) did not permit them to obtain their rights from their legal adversaries (‘adam al-idh‘ān li-akhdhi al-ḥaqiq lahum min khuṣamā ‘ihim).16

Another verb commonly used to invoke justice is anṣafa, meaning “to do justice to someone, to give someone his right or due,” in the sense of treating someone with fairness.17 Makhzan officials used the verb anṣafa to describe the ideal of justice, such as in a letter from Mawlāy Ḥasan to an official in Meknes in which he accused the official of not giving justice (lam tunṣīfhu) to a Jew whose donkey was stolen by a gatekeeper.18

Although neither Jews nor Makhzan officials were consistently explicit about the legal framework within which justice was conceived, the evidence indicates that the dhimma contract provided the legal basis for Jews’ rights. Dhimma, based largely on the Pact of ‘Umar (thought to have been authored in the eighth or ninth century), guarantees non-Muslims a number of rights in exchange for some restrictions on their social and religious lives and the payment of a head tax called the jizya.19 Dhimma literally means “protection,” and refers to the guarantee of protection for non-Muslim monotheists—known as dhimmīs—who accept the sovereignty of the

---

16 BH, K 157, p. 107, 23 Rabī’ I 1307. See also DAR, Yahūd, 15118, Mawlāy Ḥasan to Muḥammad Bargāsh, 22 Jumādā II 1297.
17 Lane, An Arabic-English Lexicon, 3033.
18 DAR, Meknes, 2250, Mawlāy Ḥasan to ‘Abdallāh b. Ahmad, 28 Muḥarram 1303.
19 On the Pact of ‘Umar and dhimmī status, see Fattal, Statut légal, 60-9; Cohen, Under Crescent and Cross, Chapter 4; Milka Levy-Rubin, Non-Muslims in the Early Islamic Empire: From Surrender to Coexistence (Cambridge: Cambridge University Press, 2011). On the form of the pact, see Mark R. Cohen, “What was the Pact of ‘Umar? A Literary-Historical Study,” Jerusalem Studies in Arabic and Islam 23 (1999). Arthur Tritton was the first to suggest that the pact probably dated from the period of ‘Umar b. ‘Abd al-‘Azīz (who ruled in the early eighth century), as opposed to the traditional ascription to ‘Umar b. al-Khattāb (d. 644): Arthur Stanley Tritton, Caliphs and their Non-Muslim Subjects (London: Oxford University Press, 1930).
Islamic state in which they live. This legal arrangement, with its roots in the first two centuries of Islam, was still relevant in nineteenth-century Morocco. In some ways this is not surprising given the traditional Islamic character of the Moroccan government. Yet already in 1856 the Ottoman Empire had abolished the dhimma by declaring equality for Muslims and non-Muslims. The Moroccan state had done nothing of the sort, and Jews technically remained dhimmis even after French colonization in 1912. The importance of the dhimma for the legal claims of Moroccan Jews in the second half of the nineteenth century should not be taken for granted as the norm—in fact, Morocco was one of the few places where appeals to the dhimma of the sultan were still applicable and effective at this time.

The Pact of ‘Umar’s continued relevance for Jews’ status in nineteenth-century Morocco is evident in an exchange between Mawlāy Ḥasan and a number of Islamic legal scholars in Fez. In 1883, the sultan wrote to the chief qāḍī in Fez and five other prominent jurists asking their opinion on a new law passed by the Jews of Fez. The Jews had decided to modify their legal system; instead of having three rabbis preside as judges, they would have both rabbis and

---

20 Wehr, *Dictionary of Modern Arabic*, 312.
22 Although the dhimma was never technically abolished, the French did away with most of the disabilities associated with dhimmī status.
24 The other jurists addressed are: al-Ḥājī Muḥammad Janūn, Jaʿfar b. Idrīs al-Kattānī, Aḥmad b. al-Ḥājj, al-Ḥamīd Banānī, and ‘Abdallāh al-Wadghīrī (?). Only three of the six jurists signed the response, penned by Aḥmad b. Muḥammad b. al-Ḥājj (the other two signatories were Jaʿfar b. Idrīs al-Kattānī and al-Ḥamīd Banānī). Since the letter is a copy, however, it is possible that other signatures (including that of the qāḍī Muḥammad b. ‘Abd al- Raḥmān) were omitted. Jaʿfar b. Idrīs al-Kattānī offered another, far lengthier reply to this question in his book on laws pertaining to dhimmis, though there he did not quote the pact of ‘Umar and his reply does not seem to be preserved in the Makhzan’s archives (idem, *Aḥkām Ahl al-Dhimma*, 47-67).
merchants serve as judges on a rotating basis (changing monthly). The sultan asked for advice about whether this new law broke the conditions of the dhimma contract. In their reply, which was a resounding “yes,” the scholars cited the Pact of ʿUmar in its entirety as the legal framework governing Jews’ rights. The text of the Pact cited in the letter from the Fāsī scholars is extremely close to that of al-Ṭūṭīshī (d. 1126) in his Sirāj al-Mulūk—the most widely-cited version. The differences are slight—mostly without consequence for the meaning, but occasionally demonstrating an adaptation of the text to the Moroccan context. For instance, instead of “We shall not display our crosses or our books anywhere in the Muslims’ streets or markets,” our text reads “We shall not display our prayer (ṣalātanā)”…" Indigenous Christians had not lived in North Africa since the medieval period, so the restriction on displaying crosses was irrelevant for Morocco’s Jewish population.

Ultimately, this exchange demonstrates that the dhimma contract was in full force in nineteenth-century Morocco. It is thus unsurprising that petitions and decrees relating to the treatment of Jews often used the language of the dhimma contract. Letters by Jews explicitly mentioned that they were under the dhimma of the sultan or even of the Prophet. For instance, in November 1847, the Jews of an unspecified town complained to Mawlāy ʿAbd al-Raḥmān (reigned 1822-59) about their mistreatment at the hands of two sharīfs (descendents of the Prophet Muhammad). In their closing plea for the sultan’s help, they invoked his protection (ḥuram) and the protection (dhimma) of the Prophet.

25 “Give the matter its due consideration, contemplation, and investigation, and check if they [the Jews] are allowed to do this according their pact of dhimma,” (wa-tuṭūḥā ḥaqqāhā min al-naẓari wa-ʾl-taʾammuli wa-ʾl-baḥthi wa-ʾamrājaʾatiʾaqd dhimmatihim hal hum muʾāhidūna fīhi bi-ḥuram akhūna lā).
27 Ibid., v. 2, 543.
28 DAR, Yahūd, 19415, Jews of unnamed city to Mawlāy ʿAbd al-Raḥmān, Dhū al-Ḥijja 1262. For the meaning of ḥuram see Lane, An Arabic-English Lexicon, 555, in which he notes that ḥuram can be a synonym of dhimma.
The Makhzan similarly referred to the dhimma pact in addressing the complaints of Jews. In one letter from 1892, the minister of foreign affairs, Muḥammad Gharrīṭ, addressed the Jews of Marrakesh, who had complained about their qāʿid’s treatment of them. Gharrīṭ noted that the sultan was displeased to hear that his appointed official was mistreating Jews, since the Jews are under his protection (ahl dhimmatihi) and among his subjects (wa-min raʿīyatihi). In another letter from 1892, Mawlāy Ḥasan affirmed that Jews have certain rights as dhimmīs—in this case, the right to appeal to Islamic legal authorities. The sultan reiterated that these rights were tied to the Jews’ obligation to fulfill their part of the dhimma contract:

[They have the aforementioned rights on condition that they fulfill] the obligations they had from before, which are conditions of their dhimma [status] and the treaties [we have with them] (maʿa luzūmihim mā kānū ʿalayhi qadīman alladhī huwa sharṭun fī dhimmatihim wa-muʿāhadatihim)—namely, not raising their voices, or screaming a lot, or spitting, or wearing shoes in places where they are not allowed to wear them, [as well as] paying the debts they owe ... and paying their taxes.

The stipulation that Jews must pay “their taxes” probably refers to the jizya, an obligation mentioned in the Quran. The agreement not to raise their voices echoes a provision in the Pact of ‘Umar in which dhimmīs consent not to “raise our voices…when in the presence of Muslims.” Islamic law did not ubiquitously require non-Muslims to go barefoot in certain places but this provision was often customary in Morocco. (I have not found any precedent for a prohibition on spitting.) Not only did Mawlāy Ḥasan clearly spell out the provisions for Jews’ legal rights, he specifically linked these rights to their observance of the dhimma contract.

29 DAR, Yahūd, 18152, Muḥammad Mufaḍḍal Gharrīṭ to Jews of Marrakesh, 7 Jumādā II 1310. See also DAR, Yahūd, 15118, Mawlāy Ḥasan to Muḥammad Bargāsh, 22 Jumādā II 1297.
30 DAR, Fez, al-ʿArabī wuld Abī Muḥammad to Mawlāy Ḥasan, 4 Shaʿbān 1301. Although al-ʿArabī was actually the author, it is clear from the context that in this section he was simply repeating what Mawlāy Ḥasan wrote to him in an earlier letter—thus it is safe to assume that these words were in fact those of the sultan.
31 Quran 9:29. It is also possible that this clause is more general, meaning that Jews were required to pay all the taxes they owed—including the jizya.
32 This quotation is taken from the widely used text found in al-Ṭūṭūshī, Sirāj al-Mulūk, translated in Stillman, The Jews of Arab Lands, 157-58.
33 For a nuanced account of how this restriction was actually applied, see Gottreich, The Mellah of Marrakesh, 94-6.
Makhzan officials at times evoked the dhimma contract in a more general way when discussing the rights to which Jews were entitled under Islamic rule. In 1828 Mawlāy ‘Abd al-Raḥmān wrote to the governor of Tetuan, Muḥammad Ash‘āsh, about the responsibility of respecting the religious rights of Jews. Although the sultan did not use the term dhimma specifically, he clearly invoked the principle of the dhimma contract as the basis for Jews’ status in Morocco. Mawlāy ‘Abd al-Raḥmān reminded Ash‘āsh that Jews should not be made to work on their Sabbaths or on their holidays—neither by the Makhzan nor by anyone else—since these were days on which their religion prohibited Jews from working. The sultan explained that the Jews should not be subject to this violation of their religion precisely because “they pay the jizya in exchange for [the right to] maintain their religion.”

Jews also made reference to the dhimma contract in discussing their relationship to the sultan. In a legal document dated January 14, 1880 and signed by ‘udūl, most of the Jews of Meknes testified that they were not foreign protégés. (This excluded the five Jews who did have foreign protection and who specified as much in the document.) These non-protégés declared that “they have no protection except that of the sultan, may God make him victorious (lā ḥimāyatā lahum ills bī-mawlānā naṣarahu Allāh).” It is clear that the authors of the document, and presumably the Jews who agreed to it, deliberately contrasted the protection of foreign states with that of the sultan. They used a word normally reserved for consular protection (ḥimāya) in order to invoke the protection of the sultan. The use of the term ḥimāya

34 DAR, Tetuan, 19457, Mawlāy ‘Abd al-Raḥmān to Muḥammad Ash‘āsh, 23 Dhū al-Qu’dā 1243.
35 Innamā yu’ṭūna al-jizyata ‘alā al-baqā’i ‘alā dinihim. For other instances in which the sultan clearly referred to the Pact of ‘Umar in his instructions regarding the treatment of Jews without specifically mentioning the dhimma, see DAR, Yahūd, 23218, zahīr from Mawlāy ‘Abd al-‘Azīz, 5 Dhū al-Qu’dā 1321. In this long letter addressed to qa‘ids, pashas, and other local officials, Mawlāy ‘Abd al-‘Azīz berated his representatives for failing to protect the Jews’ quarters from being pillaged. He thus invoked the responsibility of the state to ensure the safety of its Jewish subjects, one of the most important elements of the dhimma contract.
36 DAR, Meknes, 9738, 1 Ṣafār 1297.
emphasized a rejection of foreign protection and a reaffirmation of these Jews’ acceptance of the sultan’s dhimma.37

Jews and the Makhzan had a common language with which to talk about the rights of Morocco’s non-Muslims. This language was rooted in a shared conception of the basis of these rights in the dhimma contract. What remains to be seen is how Jews used the framework provided by Islamic law in order to ensure that their rights were respected. Jews’ collective appeals to the Makhzan suggest that they took the sultan’s claim to ensure justice seriously.

Avenues of Appeal

Jews had a number of options in how they petitioned the state for redress against injustice; appealing to the Makhzan was not necessarily as simple as writing a letter and receiving a reply. The avenue Jews chose depended largely on the nature of the senders’ connections, for the sultan was more likely to answer a petition delivered through favorable channels. This feature of statecraft was hardly unique to this period; the importance of personal connections in getting one’s case heard has been demonstrated in contexts as disparate as medieval Egypt and twentieth-century Morocco, not to mention present-day America.38

---

37 This document uses ḥimāya to refer both to Muslims being under the protection of God, the Prophet, and the sultan, as well as Jews being under the protection of the sultan (though not of God or the Prophet). One could read this as indicating that the dhimma contract—a pact between the state and non-Muslims alone—was not what the authors of the document had in mind. However, given the fact that the sultan’s protection of Jews was entirely bound up with the idea of dhimma, it seems more likely that the specific protection of Jews implied in the Pact of ‘Umar was intended.

The evidence of Jews’ appeals to the Makhzan come in a variety of forms, largely because the Moroccan archives do not preserve a complete record of correspondence with the state. Nonetheless, it is clear that the standard way in which a petition initially reached the Makhzan was through a collective letter, often signed by a group of Jewish leaders or written in the name of “all” the Jews of a particular place. In the cases in which these petitions are preserved, the basic form of the letters contained many of the same features found in medieval petitions.\(^{39}\) They began with an introduction that varied according to the addressee.\(^{40}\) The authors then went on to describe the matter at hand, after which they requested the addressee’s intervention.\(^{41}\) It is possible that the petitioners traveled to one of the capitals to deliver their petition in person, though it seems to have been more common to send letters.\(^{42}\) In many cases,

\(^{39}\) Stern, “Three Petitions of the Fatimid Period,” 186-92: Geoffrey Khan, “The Historical Development of the Structure of Medieval Arabic Petitions,” *Bulletin of the School of Oriental and African Studies* 53, no. 1 (1990). Khan is concerned with formulas which are rarely present in the Moroccan documents (such as the protasis-apodosis construction in which the author of the petition asks the addressee to grant his request and suggests the good outcome that will result). However, the basic form of the petitions he analyzes—that is, the introduction, followed by an exposition, followed by a request—is found in the Moroccan letters. One of the major differences is that the *tarjama* (the name of the supplicant) is not included either in the upper left-hand corner (as it was during the Fāṭimid period) or after the predicate “kisses the earth” (as it was during the Ayyūbid and Mamlūk periods): see Stern, “Petitions from the Ayyubid Period,” 7-8. Rather, in our petitions the authors signed their names at the end, after the date.

\(^{40}\) When the petition was addressed to the sultan it was standard to include a more elaborate introductory formula. See, for example, DAR, Yahūd, 19415, Jews of unknown place to Mawlāy ‘Abd al-Raḥmān, Dhū al-Hijja 1262. After the basmala and the blessing of the Prophet, the letter begins: *adāma Allāh ‘izza mawlānā al-imāmi wa-‘illi Allāh ‘alā al-anāmi nāsirī al-su’bat wa-ma’wā al-aytāmi mudāfi’u al-mazlimati qāhiru al-zullām.* (“May God perpetuate the strength of our lord, the imam, and the shadow of God upon humanity, vanquisher of difficulties and refuge of orphans, repeller of injustice and subduer of wrongdoers.”) It is also interesting to note that letters addressed to the sultan never actually mentioned the sultan’s name; they referred to him by his titles only. The closest one could come to actually naming the sultan was to invoke his ancestors by name. Petitions addressed to viziers tended to be simpler. See, for instance, DAR, Yahūd, 33481, Jews of Meknes to Muḥammad b. Aḥmad al-Ṣanhājī, 28 Ramaḍān 1304. The letter begins: *ba’d taqbīl yadi sayyidīnā al-faqīhi al-‘allāmati nā’ibi wazīri al-ḥadrati bi-‘llāh sayyidī Muḥammad b. ‘Aḥmad al-Ṣanhājī…* (“After kissing the hand of our lord the learned scholar, the deputy of the vizier of the one who is exalted by God [i.e. the sultan], our lord Muḥammad b. Aḥmad al-Ṣanhājī…”)

\(^{41}\) This is quite similar to the Fatimid petitions described in Stern, “Three Petitions of the Fatimid Period,” 191-2.

\(^{42}\) I surmise this from the fact that complaints which ended up in the Ministry of Complaints registers were clearly sent as letters. See, for instance, BH, K 181, p. 87, 2 Jumādā II 1309, in which the petitioner’s name was unknown and the appeal was described as “a letter whose author was not named (*kitāb lam yusamma ṣāḥibuhu*).” It seems likely that other petitions went through similar channels since we know that they resembled complaints directed to the *wizārat al-shikāyāt* in other ways. During the Fatimid period petitioners either delivered their appeals in person or as a letter: ibid., 187, 96-7 and idem, “Petitions from the Mamluk Period,” 242.
however, the archives preserve only the response of the sultan to a complaint, either in a letter to the local governor accused of abuse or in a letter asking other officials for more information. Sometimes only the responses of the accused officials survive—in which case we must imagine the petitions and subsequent rebukes which engendered these letters of self-justification.

Some of these appeals show up in the registers of the Ministry of Complaints, often specifying that, for instance, “the Jews of Fez” or “a group of Jews from Demnat” wrote with the following complaint. It is not entirely clear to whom these groups of Jews initially wrote; it is possible that petitions recorded in the Ministry of Complaints registers were sent directly to the this ministry. It is also possible that Jews initially addressed their petitions to other Makhzan officials, who passed them along to the appropriate ministry. Such collective complaints are relatively rare in the Ministry Complaints registers where appeals by individuals are far more common. The collective appeals by Jews which were recorded in the Ministry of Complaints registers do not differ significantly from those found in other parts of the Makhzan archives.

The advantage of the Ministry of Complaints registers is that they show the approximate frequency with which groups of Jews appealed to the Makhzan. During a typical span of two years, Jews submitted collective petitions about abuse at the hands of Makhzan officials at least every six months. For instance, in the summer of 1889, the Jews of Demnat complained about the harm to which they were exposed at the hands of an unspecified official. Six months later, the Jews of Debdou complained that their qā’id had taken their money illegally. The following summer (1890) the Jews of Ūrīka complained about their khalīfa (the representative of the

---

43 Ideally, I would be able to compare the frequency of Jewish collective appeals to the Ministry of Complaints with Muslim ones; however, research has yet to be done on Muslims’ collective petitions to the Makhzan.
44 BH, K 157, p. 44, 12 Shawwāl 1306.
45 BH, K 157, p. 94, 16 Ṣafar 1307 and BH, K 157, p. 97, 24 Ṣafar 1307.
The next winter the Jews of Radānā appealed to the sultan to curb the abuse of their governor. These cases show the regularity with which Jews submitted complaints to the Makhzan. Although the registers of the Ministry of Complaints are only preserved from the years 1889 through 1893, the numerous petitions found in other parts of the archives suggest that the frequency of collective complaints registered during these years was typical of Mawlāy Ḥasan’s reign.

In certain cases Jews did not appeal directly to the sultan or his viziers, requesting instead that local Makhzan officials press their case with the central government. For instance, in 1885 the Jews of Meknes complained to the local muṭḥasib (market inspector) that their commercial goods were being tithed twice, and that they were thus paying twice the amount of taxes they owed. The muṭḥasib communicated their complaint to the tax collector, who then wrote to the sultan on their behalf. It is likely that Jews of Meknes initially chose to approach the muṭḥasib because they already had good relations with him and were confident that he would transmit their complaint to the proper authorities.

A group of Jews sometimes chose to write to another Jewish community, requesting their coreligionists to ask for the sultan’s intervention on their behalf. In the incident which began this

46 BH, K 171, p. 115, 1 Dhū al-Ḥijja 1307.
47 BH, K 174, p. 79, 29 Rajab 1308.
48 See also: BH, K 157, p. 35, 22 Ramaḍān 1306; BH, K 181, p. 16, 5 Dhū al-Ḥijja 1308; p. 120, 22 Rajab 1309; p. 137, 21 Sha‘bān 1309; p. 285, 11 Rabī‘ II 1310.
49 The incomplete nature of the archives makes it impossible to definitively establish with what frequency Jews petitioned the Makhzan. I explain why a greater proportion of petitions date from Mawlāy Ḥasan’s reign in the introduction to this chapter.
50 DAR, Meknes, Muḥammad b. Bil’īd al-Radānī to Mawlāy Ḥasan, 15 Muḥarram 1303.
51 Muḥammad b. Bil’īd al-Radānī was the tax collector (amīn al-mustafādāt) of Meknes. It makes sense that the tax collector would be the one to bring the matter to the sultan’s attention since he was ultimately responsible for tithing commercial goods. See also, for instance, DAR, Marrakesh, Mawlāy Ḥasan to Muṭḥasib Mawlāy ‘Abdallāh b. Ibrahīm, 14 Dhū al-Ḥijja 1296. Here the sultan wrote that Ahmad Amālik, pasha of Marrakesh, complained to him that ‘Abdallāh was infringing upon his jurisdiction by mistreating Jews in the millāḥ. Although the sultan did not specify that Jews were the ones who originally brought this complaint to Amālik, this is clear from the circumstances of the case.
chapter, the Jews of Casablanca wrote to the Jews of Tangier when they wanted the sultan to punish their city’s governor. They requested that the Jews of Tangier write to the minister of foreign affairs, Muḥammad Bargāsh, who was responsible for such petitions submitted by Jews, in the hope that he would convince the sultan to order the Jewish prisoners released. Indeed, the letter eventually reached Bargāsh and he passed the matter along to the sultan. It is likely that the Jews of Casablanca did not have any connections with high-ranking officials, and thus did not think it would be effective to write directly to a vizier or to the sultan. They knew, however, that the Jews of Tangier came into regular contact with Muḥammad Bargāsh—not only because Bargāsh lived in Tangier but also because so many Jews were foreign protégés whose legal cases Bargāsh oversaw. In this instance their strategy successfully convinced the sultan to attend to their case.

Although uncommon, it was not unheard of for groups of Jews to submit legal documents notarized by ‘udūl in support of their claims. (This was in fact the standard practice when individual Jews appealed to the Makhzan concerning legal matters, as discussed in the previous chapter.) In 1887, a group of Jews in Meknes wrote to the vizier Muḥammad b. Aḥmad al-Ṣanhājī concerning the outrageous actions of the city’s muḥtasib. The Jews reported that the muḥtasib had cut off supplies of flour, first to the millāḥ and then to the Muslim quarters. He only permitted a few individuals to sell flour at exorbitant prices, forcing Jews to travel to Fez to obtain this staple. The Jews requested that al-Ṣanhājī transmit their complaint to the sultan,

---

52 DAR, Yahūd, 15587, Jews of Casablanca to Jews of Tangier, 26 Rabī‘ I 1294.
53 See DAR, Yahūd, 34155, Ḥājj ‘Abdallāh al-Ḥaṣār to Muḥammad Bargāsh, 16 Jumādā I 1294, in which the qā’id Ḥaṣār responded to Bargāsh concerning the Jews’ complaint. Ḥaṣār mentioned orders from the sultan regarding the imprisoned Jews, showing that both Bargāsh and the sultan were eventually involved.
54 For other examples of Jews of one city writing to Jews in another city, see DAR, Yahūd, 32977, Rabbi Abnīr and the Jews of Fez to Muḥammad b. al-‘Arabī al-Mukhtar, 2 Dhū al-Qa‘da 1297. The Jews in Meknes wrote to the Jews in Fez, asking them to request the Makhzan’s intervention concerning their qā’id’s infringement on Jewish legal autonomy.
The Makhzan’s Response

Although we cannot know with certainty what percentage of petitions resulted in the Makhzan taking action—the archives are too incomplete for such an analysis—we can nonetheless discern the different ways in which the Makhzan addressed Jews’ claims. The response of the central government ranged from acting as arbiter in order to bring about a settlement between the parties concerned, to reprimanding the officials accused of misbehavior, to replacing problematic officials with others who would presumably refrain from mistreating Jews. In some instances the accused official responded by defending his actions and calling into question the Jewish petitioners’ version of events. Needless to say, there were undoubtedly many petitions that received no response whatsoever. This could have been a result of the petitioners’ inadequate connections with the Makhzan or because their petition simply fell through the cracks of an inefficient bureaucracy.  

On a number of occasions the sultan was able to bring about reconciliation between Jews and the Makhzan officials they had accused of abuse. Upon hearing of an incident which merited his attention, the sultan would send a representative to the petitioners’ city, both to investigate the various claims and to try to bring about a settlement. This is how Mawlāy Ḥasan

---

56 The significance of the number ten is not clear; normally, one would only need the testimony of two ‘udūl to ensure that a document would stand up as evidence under Islamic law (although it is possible to have more ‘udūl sign a given document: see Tyan, Le notariat, 55). It seems that the Meknesi Jews in this case included the testimony of ten ‘udūl for added impact.

57 On petitions from Jews in medieval Egypt which did not receive responses, see Rustow, “A Petition to a Woman at the Fatimid Court,” 6.
approached an incident which took place in Marrakesh on Friday July 24, 1891. The matter began when a group of Jews accused Zaydān, a deaf man from the Sūs region, of trying to kidnap a young Jewish boy. The Jews were heading to the pasha Aḥmad Amālik with Zaydān in tow, attempting to bring him to justice, when they were intercepted by three men from the Aḥmar (or Ḥmar) tribe who attempted to stop them from prosecuting Zaydān. A brawl ensued; in one version of the story the Aḥmarīs wounded seven Jews, and in another the Jews wounded two of the Aḥmarīs. Both versions agree that the third Aḥmarī fell off his horse, causing the nearby Jews to burst into laughter. Despite all the commotion, the Jews would have reached the pasha without incident had not Muslim passers-by noticed the Aḥmarī man who had fallen from his horse lying on the ground and presumed that the Jews had killed him. In retaliation, a number of Muslim onlookers began to call for an attack on the millāḥ, but the pasha Amālik was able to close the gates of the Jewish quarter before anyone was seriously hurt. In the meantime, Amālik arrested the seven Jews involved in the brawl, as well as the three Aḥmarīs and Zaydān.


59 It is not clear what Zaydān was planning to do with the boy, though it is possible that he wanted to convert him to Islam.

60 The Aḥmar tribe is located between Safi and Marrakesh; see Ḥajjī, *Ma‘lamāt al-Maghrib*, v. 1, 177-78.

61 The Jews claimed that their coreligionists who were still in the madīna when the attack on the millāḥ was announced had to run back to their quarter while being pelted by stones (DAR, Marrakesh, 20268, Muḥammad al-Hādī b. ‘Abd al-Nabī al-Fāsī to Mawlāy Ḥasan, 24 Safr 1309). Al-Fāsī accused the Jews of exaggerating and said that no Jews were wounded on their way back to the millāḥ (DAR, Marrakesh, 20266, Muḥammad al-Hādī b. ‘Abd al-Nabī al-Fāsī to Mawlāy Ḥasan, 20 Safr 1309).

62 Yet another man from the Sūs was arrested at the same time; it seems that he was accused of stealing a Jewish boy some days earlier, though he does not seem to have been directly involved in this particular incident. Interestingly, the sultan’s representative Muḥammad noted that Zaydān had letters with him attesting to his identity and his sound character—presumably because he was unable to speak for himself (DAR, Marrakesh, 20268, Muḥammad al-Hādī b. ‘Abd al-Nabī al-Fāsī to Mawlāy Ḥasan, 24 Safr 1309).
Following this escalation of violence, the sultan’s intervention was requested—most likely by the Jewish leaders of Marrakesh. Mawlāy Ḥasan sent his representative Muḥammad al-Hādī b. ‘Abd al-Nabī al-Fāsī to Marrakesh, armed with letters and instructions to investigate the matter and settle the various claims. Two months after the incident occurred, al-Fāsī wrote to the sultan from Marrakesh explaining that he had successfully brokered a settlement among the Jews and the pasha Amālik. The Jews agreed to sign releases retracting their complaint against the three Aḥmarīs and testified accordingly before Amālik and the qāʾid Ibn Dawūd. Then they presented documents signed by sofrim and translated into Arabic, saying they would settle the claims of the seven Jews arrested with their own Jewish judges (yet another instance of Jewish legal documents being accepted as evidence in Makhzan courts). Al-Fāsī kept everyone—Zaydān, the three Aḥmarīs, and the seven Jews—in prison until further orders from the sultan, though this was a formality; in essence, the claims had been addressed.

Yet the sultan decided that some cases could not be left to Makhzan officials to resolve on site and required him to personally settle the matter. In these instances the sultan had the individuals involved sent to him. In order to resolve complaints about the brawl in Casablanca with which this chapter began, Mawlāy Ḥasan ordered the qāʾid ‘Abdallāh al-Ḥaṣār to send the Jewish prisoners to him for questioning.

Despite the centrality of the sultan to the system of judicial appeals, the sultan’s direct intervention was not always necessary. For instance, in 1890 a petition from the Jews of Ūrika, near Marrakesh, reached the Ministry of Complaints. The Jews claimed that their khalīfa had...
imprisoned them and beaten them without just cause. In response, the sultan sent someone to investigate the claim; nearly two months later, the Minister of Complaints was informed that the Jews had appeared before the khalīfa of Īrika in court to voice their concerns. The khalīfa later sent a release which the Jews had given him following their settlement. The khalīfa and the Jews under his jurisdiction resolved their dispute without the sultan giving any specific orders regarding the case.

Often the Makhzan officials suspected of mistreating Jews proclaimed their innocence, accusing the Jewish petitioners either of lying or of exaggerating their claims. This occurred when the Jews of Demnat charged their governor with mistreating them in the summer of 1864. Mawlāy Muḥammad (reigned 1859-73) sent a representative, al-Ṭayyib al-Yamānī, to Demnat to investigate the complaints. Al-Yamānī informed the sultan that the Jews did not have any legal proof (bayyina) with which to verify their accusations, so Mawlāy Muḥammad ordered al-Yamānī to drop the case. Although at first the Jews refused to be appeased until their governor was dismissed, they eventually agreed to sign a document saying they had no further complaints.

---


68 In another instance, the Jews of Debdou had complained about their qāʾid, but subsequently settled the matter before the qāʾid of al-Rashidiyya: BH, K 157, p. 94, 16 Ṣafar 1307.


70 Al-Yamānī was an important vizier; in 1864 he was already 68 years old (see Ḥajjī, Maʾlamāt al-Maghrib, v. 6, 1796–7).

71 For similar accusations, see: BH, K 157, p. 62, 24 Dhū al-Qaʿda 1306 (in this case a group of Jews (their residence is not given) complained that their governor had cut off their access to water; the governor responded that the stream providing water to the city reaches the Jews before the Muslims—implying that their accusation was groundless); DAR, Marrakesh, 24807, Muḥammad al-Hāḍī b. ‘Abd al-Nabī al-Fāṣī to Mawlāy Ḥasan, 20 Ṣafar 1309 and 20266, Muḥammad al-Hāḍī b. ‘Abd al-Nabī al-Fāṣī to Mawlāy Ḥasan, 20 Ṣafar 1309 (in these letters, about an incident in Marrakesh discussed above, al-Fāṣī accused the Jews of lying and exaggerating the nature of the mistreatment they suffered; in particular, he noted that the Jews’ accusations against the Muslims who tried to plunder the millāḥ were inconsistent, and that their claims about the number of Jews injured while attempting to return to the millāḥ were greatly exaggerated); DAR, Yahūd, Jalūl b. Muḥammad al-Misfīwī to Mawlāy ‘Abd al-
The governor of Debdou similarly protested his innocence when the Jews of this city claimed that he had illegally seized their money and possessions in 1889. In his response to their accusation, the governor asserted that he only confiscated the equivalent of the taxes that the Jews owed and had been unwilling to pay—much as the Internal Revenue Service has the authority to force American citizens to pay their taxes (although the IRS does not typically seize the property of recalcitrant taxpayers). Without any further information it is difficult to know whether the governor was merely collecting taxes at a fair rate or unjustly depriving Jews of their lawful property.

Taxes were not the only source of disagreement over whether Jews’ claims of abuse were valid. In early 1892 the Jews of Demnat accused their qāḍī of unjustly obstructing their access to the ‘udūl, and thus to the adjudication of the sharī‘a court. The qāḍī replied that he had done nothing of the sort; in fact, he had “helped them with what is permitted by the sharī‘a (bi-annā yusā‘ iduhum fīmā adhina al-shar‘u fīhī).” The qāḍī explained that the Jews only wanted him to uphold the claims in which they charged outright interest to Muslims—a clear violation of Islamic law. The sultan agreed with Demnat’s qāḍī that bills of debt which provided for the

‘Aẓīz, 22 Shawwāl 1318 (in this case, al-Misfīwī was accused of harming the Jews under his jurisdiction (almost certainly in Misfīwa) by preventing them from harvesting their olives; al-Misfīwī replied that the accusations were all lies and that he had never prevented Jews from harvesting their olives, and that in fact, the Jews were currently using all the town’s presses in order to make olive oil with their newly-harvested crop!).

72 BH, K 157, p. 97, 24 Ṣafar 1307. The name of the governor is not given.

73 See also DAR, Fez, 5955, ?? to Muḥammad al-Ṣaffār, 18 Dhū al-Qa‘da 1288: the Jews of Fez complained that they were being taxed on their commercial goods twice—presumably outside the city and when they came to the city gates. However, the gatekeepers responsible for collecting the taxes (who paid 4,400 mithqāls per year for this privilege) pointed out that if they exempted Jews from being taxed, then this would “open the door” to Muslims temporarily entrusting their goods to Jews to avoid being taxed as well. The Jews came to an agreement with the gatekeepers on how to split the taxes fairly. See also DAR, Fez, 5961, Mawlāy Ḥasan to Muḥammad b. al-Madānī Banīs, 20 Rabī‘ I 1290: in this incident, the Jews complained again of being taxed twice (this time on cotton), claiming they were being taxed both at the ports and at the entrance to the city. The umanā‘ came to an agreement with the Jews that in Fez they would pay half the new tax (except for those goods destined for Taza or Oujda, which would be taxed at the full rate), and in Sefrou Jews would only be taxed on goods that they wanted to sell there, but goods they brought there without the intention to sell would not be taxed. On complaints about unfair taxation addressed by Egyptian peasants to the khedive in the mid-nineteenth century, see Chalcraft, “Engaging the State,” 310-11.

74 BH, K 181, p. 120, 22 Rajab 1309.
payment of interest did not deserve to be notarized by the ‘udūl and instructed the qādī not to help the Jews in such cases.

Makhzan officials sometimes explained Jews’ disobedience as a result of their close ties to other government representatives. In late 1879 Aḥmad Amālik, the pasha of Marrakesh, wrote to Mawlāy Ḥasan to convey complaints that the city’s muḥtasib, ‘Abdallāh b. Ibrāhīm, was falsely accusing Jews of crimes that were not under his jurisdiction.\(^{75}\) The sultan chastised ‘Abdallāh, but he responded that he had not accused anyone falsely nor was he overstepping his jurisdiction.\(^{76}\) Rather, ‘Abdallāh reported, he had rightfully arrested the brother and two sons of a Jewess who lived in the home of the pasha Amālik—presumably Amālik’s sexual companion. These three Jews had illegally slaughtered a female cow, despite ‘Abdallāh’s warnings not to do so.\(^{77}\) ‘Abdallāh clearly felt that his actions were justified and that the Jews were abusing their sister’s and mother’s intimacy with the pasha to flout the law. A case from Radānā also involved accusations that the Jewish petitioners were abusing their relationship with local officials. A group of Jews claimed that their governor, al-Rāshidī, was mistreating them by demanding that they engage in forced labor and imposing his own choice of shaykh on the Jewish community.\(^{78}\) Al-Rāshidī responded, not without some exasperation, that he was treating the Jews according to

\(^{75}\) DAR, Marrakesh, Mawlāy Ḥasan to ‘Abdallāh b. Ibrāhīm, 14 Dhū al-Ḥijja 1296.

\(^{76}\) DAR, Marrakesh, 5601, ‘Abdallāh b. Ibrāhīm to Mawlāy Ḥasan, 17 Muḥarram 1297.

\(^{77}\) During “most of the drought-prone late nineteenth and early twentieth centuries,” the Makhzan enforced a ban on slaughtering female animals in order to preserve Morocco’s livestock (Holden, *The Politics of Food in Modern Morocco*, 82). The ban was clearly enforced in 1879. Holden addresses this incident and explains that female livestock was cheaper because Moroccans preferred the meat of male animals. The Jewish butchers in this case sought to sell female meat, which cost them less, at the same price as male meat—both undercutting their competitors and deceiving their clients. (It is not clear to me why Holden writes that the “muḥtasib concluded that the butcher’s relatives, and not a shohet [Jewish ritual slaughterer], had sacrificed a cow....” (ibid.), since the muḥtasib specified that the three Jews who slaughtered the cow were butchers: see DAR, Marrakesh, 5601, ‘Abdallāh b. Ibrāhīm to Mawlāy Ḥasan, 17 Muḥarram 1297.)

\(^{78}\) BH, K 174, p. 79, 29 Rajab 1308.
custom and the sultan’s command.\textsuperscript{79} The Jews, however, were engaging in a number of illicit activities at the instigation of their shaykh and the qāḍī of Radānā, who were in league with each other. In particular, the Jews’ shaykh had convinced them not to pay the jizya and was selling them forged patents of foreign protection.\textsuperscript{80}

Although the archives do not always preserve the outcome of Jews’ collective petitions to the Makhzan, the incidents discussed above show that the Moroccan state felt responsible for the well-being of its Jewish subjects. Even in those instances when local officials protested their innocence in the face of Jews’ allegations of abuse, the very fact that they bothered to write defensive letters to the sultan indicates that the Makhzan as a whole took those accusations seriously.

\textit{Crimes Posing a Communal Threat}

Some of the collective appeals to the Makhzan concerned injustices committed against individual Jews. Jews generally wrote such appeals when a crime committed against one of their coreligionists posed a sufficient threat to the entire Jewish community of a given place. In these instances, representatives of the Jewish community concerned petitioned the Makhzan collectively on behalf of their unfortunate coreligionist.\textsuperscript{81} While these cases are in many ways

\textsuperscript{79} “And that he did not govern over them except according to what the sultan ordered in his royal decree…and he did not break with custom [in his treatment of them].” (\textit{Wa-annahu lam yuwalla illā mā adhinahu mawlānā bitawliyatihī ‘alayhim hasabamā bi-’l-ẓahīr al-sharīf…wa-lam yakhriq ‘alayhim ādatan.})

\textsuperscript{80} Additional cases include: DAR, Yahūd, 36147, al-Jīlānī b. Ya’qūb to Muḥammad Bargāsh, 9 Rabī’ II 1298 (in this letter, al-Jīlānī responded to accusations that he had mistreated the Jews in his city; he countered that the Jews were lying, and that the true motive behind their complaint was his arrest of a Jew who had poisoned a shaykh—similarly implying that his actions were completely justified); BH, K 157, p. 121, 24 Rabī’ II 1307 (in which the Jews of Safi complained about mistreatment at the hands of their governor, ‘Abd al-Khāliq b. Ḥīma; Ibn Ḥīma responds that the Jews’ true motive was their displeasure at his arrest—at the sultan’s command—of Yehudah b. Ḥaim and his son, following Ibn Ḥīma’s cousin’s complaint against them).

\textsuperscript{81} It is not always clear exactly who the petitioners representing the community were; often letters were simply signed by the Jews of a particular town, such as “the Jews of Safi.” It is possible that communal officials, such as the \textit{ma’amad} (council of elders) of a particular city, officially represented the local Jews. Another possibility is that
similar to the individual petitions discussed in the previous chapter, there are a number of
elements which distinguish them. The Makhzan official’s actions (or lack thereof) in a particular
case had to threaten the entire Jewish community of a city in order to merit collective action.
Most of these cases concern violent crimes like murder, indicating that the Jewish petitioner
believed that their resolution would have implications for the treatment of Jews more generally.\(^{82}\)
Cases about which individuals petitioned, on the other hand, mostly concerned civil matters like
the non-payment of debts—problems which were troublesome for individual Jews but rarely
threatened the entire Jewish community.

Nonetheless, the murder cases about which Jews petitioned the Makhzan collectively did
not differ drastically from those found in the Ministry of Complaints registers. In these cases,
the victims’ coreligionists appealed to the central government, usually after attempting to resolve
the case through their local Makhzan official. The insecurity of rural areas meant that it was
fairly common for Jews traveling in the countryside on business to be attacked and even
murdered (as discussed in Chapter Five). A number of collective petitions concerned the murder
of Jews far from urban centers.\(^ {83} \) For instance, in the summer of 1880, Muḥammad Bargāsh, the
influential Jews took it upon themselves to write on their coreligionists behalf without any official position
designating them as communal authority figures.

\(^{82}\) I have found only one case which concerned civil litigation, yet even in this case it is clear that the entire Jewish
community was threatened. In 1909 the Jews of Fez wrote to al-Madinī al-Mazwārī concerning their
impoverishment over the last seven years, which was caused in part by their inability to collect the money owed to
them by their debtors. Even the richest Jew among them was unable to collect the money he was owed, which
prevented him from paying the taxes owed by the community. The Jews suggested that legal proceedings were
necessary—implying that their local officials were not enabling them to pursue these debts in court: DAR, Yahūd,
Jews of Fez to al-Madinī al-Mazwārī, 12 Shawwāl 1327. See also Michael Hickok’s observation that Ottoman
officials made a similar distinction between homicide cases in Ottoman Bosnia which threatened public safety and
those that did not. Ottoman state officials described those cases which threatened public security as “brigandage” so
that the governor would have jurisdiction over them: Hickok, “Homicide in Ottoman Bosnia.”

\(^{83}\) DAR, Fez, 5987, Mawlāy Ḥasan to Saʿīd b. Farajī, 1 Rabī’ II 1299 (in which the Jews of Fez complained about
the lack of security on the roads leading from the Bāb al-Ḥadīd and the Bāb Sīdī Bū Nāfī’—which had led to a
number of robberies and murders of Jews; the sultan commanded the governor of Fez to station guards along these
roads to prevent the crimes); BH, K 171, p. 30, 8 Shaʿbān 1307 (in which the Jews of Meknes complained that the
governor of a tribe murdered one of their coreligionists while on his way back home after five months spent selling
goods in Zemmour; the sultan ordered that the governor be reprimanded and that he return the money he took from
minister of foreign affairs, received a complaint from the Jews of Marrakesh. The petitioners reported that two of their coreligionists were murdered while collecting debts in the Sunday market of Akantarn. The murderers also made away with the victims’ money and the legal documents in their possession attesting debts they were owed. The Jews had appealed to their pasha, Aḥmad Amālik, over the course of seven months, but all he had done was to arrest five suspects in the murder and then release three of them. The victims’ relatives had not received an indemnity, nor had any of the stolen goods been returned. Bargāsh asked the sultan to send two or three of his representatives to Amālik to force him to investigate the case and settle with the Jewish victims.

In early 1885, the Jews of Safi wrote to Muḥammad b. al-Mukhtarī, one of the sultan’s viziers, about the murder of Am’amar b. Yaḥyā, a Jew who had been selling merchandise in the country market of the Awlād ‘Imrān. Am’amar left the market with four Muslims who then killed him and stole the goods in his possession. The Jews initially wrote to their qāʿid al-Ḥājj al-Jilālī about the lack of action on the part of Sīdī al-Ṭayyib, qāʿid of the region where the murder took place (and the official responsible for prosecuting the murderers). Al-Jilālī had to write to al-Ṭayyib twice; only after the second time did al-Ṭayyib respond that the murderers were absent (and thus that he was unable to punish them). However, the Jews claimed

---

84 DAR, Yahūd, 24355, Muḥammad Bargāsh to Mawlāy Ḥasan, 15 Ramaḍān 1297. Mawlāy Ḥasan had recently appointed Bargāsh as the official intermediary for the complaints of Jews about mistreatment by Makhzan officials, although not all subsequent complaints went directly to Bargāsh. In this case, the Jews went to the Italian consul first, but he responded that the matter was under Bargāsh’s jurisdiction.

85 Bargāsh noted that Akantarn (possibly Akantarf) is between Tansaghat and Ayt ‘Alī, that is, to the south of Marrakesh near Asni.

86 DAR, Safi, 5020, Jews of Safi to Muḥammad b. al-Mukhtarī, 12 Rabī’ II 1302. See also DAR, Safi, 31539, 3 Jews of Safi to Muḥammad b. al-Mukhtarī, Shaʾbān 1302: this is the same letter as the one from 12 Rabī’ II, indicating perhaps that the initial letter did not reach al-Mukhtarī.
otherwise, saying that they had learned that the murderers were in fact present in the region under al-Ṭayyib’s jurisdiction. Even after Safi’s Jews sent a delegation to al-Ṭayyib he refused to prosecute the murderers. Finally the Jews wrote to al-Mukhtarī in the hopes that he would pass the case on to the sultan. In an attempt to express how dire the situation was, the Jews of Safi also noted that Am’amar left behind a widow and four young daughters who were now destitute.

In February 1893 the Jews of Marrakesh again complained about a murder, though this time the incident happened in the city itself.\(^{87}\) The community first began to worry when two Jews, a tailor and a goldsmith, went missing from the millāḥ. Everyone, both men and women, was looking for them, but to no avail—until someone heard that a few days before Mawlāy Qudūr had asked the two missing Jews to come to his residence to sell him their wares. The leaders of the Jewish community received permission to search Qudūr’s house and sent two ‘udūl and three sofrim to record their findings (another instance of using both Jewish and Islamic courts simultaneously). During the investigation they found the bloody shirt of one of the missing Jews in a ditch behind Qudūr’s house. Qudūr then took refuge (ḥurm) in the tomb of al-Ghazwānī, a local saint, presumably due to the overwhelming evidence against him. The Jews wrote to the sultan to make sure that Qudūr was properly punished and that the murdered Jews’ families received some sort of compensation.\(^{88}\)

\(^{87}\) DAR, Yahūd, 18182, ‘Abbās b. Dawūd to Mawlāy Ḥasan, 24 Rajab 1310 and DAR, Yahūd, 18186, Jews of Marrakesh to Mawlāy Ḥasan, 28 Rajab 1310. On this incident see also Gottreich, The Mellah of Marrakesh, 102. Gottreich has it “Qadur,” though I think “Qudūr” is more likely.

\(^{88}\) The following are additional complaints concerning murders, which upon further investigation were determined to be accidents: BH, K 174, p. 90, 28 Sha’bān 1308 (in which the Jews of Misfīwa complained about a tribe (the Ait al-Ḥājj) who they claimed had killed the sister of a local Jew; when the sultan’s representative Mawlāy ʿUṭmān investigated he found that the Jewess had died from a stone falling on her while she was sleeping, and the Jews accepted his formal testimony by signing a release absolving the Ait al-Ḥājj of any responsibility); BH, K 174, p. 118, 13 Shawwāl 1308 (in which the Jews of Rabat claimed that the murder of a Jew was never investigated; Muhammad b. Muḥammad al-Swīsī, the qā’id of Rabat, responded that the death occurred during the sultan’s stay in
Yet murder cases were not the only ones which spurred Jews to collectively appeal to the Makhzan on behalf of crimes against individual Jews. In December 1905, a group of Jews wrote to ‘Abd al-Ḥafīẓ, the governor of Marrakesh (and future sultan) about the abuse of a Jew by a government official. The petitioners reported that Ḥaim b. Susan, a Jew from Marrakesh, was in the Tuesday market in Misfīwa and bought two chickens. No sooner had he paid his two pesetas than a local Muslim objected and started beating Ḥaim, eventually bringing him to the local governor’s khalīfa. The khalīfa summarily imprisoned Ḥaim, put him in chains, and took all his money (a total of 169 riyāls)—for no apparent reason whatsoever. Ḥaim was only released two days later when another Jew from Marrakesh came to Misfīwa and paid the khalīfa to let him go. The Marrakshī Jews who complained to ‘Abd al-Ḥafīẓ wanted the khalīfa in Misfīwa to restore Ḥaim’s money and, presumably, to be admonished not to repeat such actions. In response, ‘Abd al-Ḥafīẓ wrote to the governor of Misfīwa asking him to investigate the matter and, if the Jews’ claims proved true, to force the khalīfa to reach a settlement.

Finally, some collective petitions concerned cases in which Jews were the suspects instead of the victims. In the summer of 1891, the Jews of Safi submitted a petition regarding a Jewish couple who rented a house from a Muslim and who had become suspects in their landlord’s murder. The husband took refuge in the sanctuary (ribāṭ) of Abū Muḥammad Ṣāliḥ, the city—a period during which he would not have had time for such matters—and when he finally did manage to investigate, he found that the Jew had died naturally (on al-Swīsī, see Ḥajjī, Ma’lamāt al-Maghrib, v. 15, 5198)).


90 Ḥaim’s savior was named Hananiah b. al-Dayyan. Hananiah paid five riyāls to get Ḥaim out of prison and two riyāls and six gurush for the chain.

91 For a similar case involving theft, see DAR, Yahūd, Jews of Debdou to Mawlāy ‘Abd al-‘Azīz, 15 Jumādā II 1314. In this letter the Jews of Debdou complained that three of their coreligionists had been robbed of thousands of riyāls by the Awlād ‘Abdallah. The sultan had sent al-Yazid, the qa’id of Taza, to settle their claims, but he only returned a small fraction of the stolen money to one of the Jews and then left Debdou without resolving the case. The Jews asked that the sultan appoint a governor over them to deal with issues like this; they also noted that they appealed only to the sultan for such matters—no doubt implying that they did not seek the aid of foreigners, as did some of their coreligionists.

92 BH, K 181, p. 16, 5 Dhū al-Ḥijja 1308.
while his wife was imprisoned. Subsequently, the deceased Muslim’s relatives settled with the Jewish leaders, who presumably agreed to pay the victim’s blood money. The Jews obtained a legal document releasing the two suspects from any further responsibility. Yet despite this settlement, the Jewess remained in prison and the husband continued to hide in the zāwiya of the local saint. The Jews requested the release of their two coreligionists, to which the sultan acceded as long as there were no further claims against them.

The instances in which groups of Jews petitioned the Makhzan on behalf of individual Jews demonstrate the blurry lines separating individual and communal concerns. These instances suggest that Jews were not always willing to leave the pursuit of justice to those directly involved in the case at hand, especially when criminal matters were involved.

The Malfunctioning of Islamic Legal Institutions

Another matter which spurred Jews to collectively petition the Makhzan concerned the malfunctioning of their local Islamic legal institutions. Jews wrote to complain about the corruption of legal officials, their prejudice against Jews, or their attempts to prevent Jews from accessing Islamic legal institutions. These petitions tell us much about Jews’ integration into the

---

93 There are indications that Jews regularly took refuge in Muslim sanctuaries. See, e.g., MAE Courneuve, C.P. Maroc 47, Ordega to Freycinet, 20 July 1882, in which Ordega discussed a zāwiya in Essaouira to which Jews fled to escape prosecution: “Cette Zouaïa, située au centre de la ville, est entourée d’une vingtaine de maisons—formant un quartier sacré, dont l’accès est permis à tous, sans distinction de race et de religion. Les Israélites de Mogador ne se font pas faute de recourir eux-mêmes à cette abusive protection pour se mettre à l’abri des poursuites de leurs créanciers et échapper à l’action de la justice locale.”

94 The entry does not specifically explain that the Jews paid the blood money; however, since it is mentioned that the Jews settled with those responsible for avenging the murder (awliyā’ al-dam), the settlement must have involved a payment of bloodmoney.

95 For another case in which Jews protested the unfair imprisonment of their coreligionists, see DAR, Fez, 21720, Ismā’īl to Mawlāy Ḥasan, 6 Rajab 1303. Ismā’īl, the governor of Fez, transmitted a complaint from the Jews of Manī that the qā’id of Meknes, Ḥammū b. al-Jilālī, had unjustly imprisoned some Jews from Manī while they were in Meknes as suspects in the murder of two Jews in Sāyis. However, the Jews argued, their imprisoned coreligionists were not guilty of the murder; they asked that other people from Manī be arrested. Al-Jilālī defended himself saying that the sultan had ordered him to arrest some Jews from Manī in relation to the Jews killed in Sāyis, and that these were the Jews he found in Meknes.
Moroccan legal system. On the one hand, they indicate that Islamic legal institutions were important enough to Jews that they deemed it worthwhile to petition the Makhzan when these institutions malfunctioned. On the other, they show that Jews were willing and able to weigh in on the functioning of Islamic law. As the highest legal authority of the state, the Makhzan was held accountable by Jews for flaws in the execution of justice, even when that justice was Islamic and its beneficiaries were non-Muslims.

Jews were aware of their right to access the services of Islamic legal institutions, including sharī'a courts and Makhzan courts, and felt entitled to petition the Makhzan when they encountered obstacles to using these institutions. For instance, in the fall of 1889, the Jews of Safī wrote to the Makhzan accusing their governor of preventing them from using the services of the city’s ‘udūl in order to notarize their legal contracts.96 The inability to access Islamic notaries would have severely limited Jews’ commercial transactions, especially those with Muslims; as we have seen, Jews relied on legal documents notarized according to Islamic law to conduct their quotidian business.

At other times, Jews claimed that local Makhzan officials obstructed justice by consistently ruling against Jews or otherwise preventing them from obtaining a just outcome. In the spring of 1885, the Jews of Demnat complained to Mawlāy Ḥasan about their governor, al-Ḥājj al-Jilālī al-Dimnātī.97 The Jews were mainly concerned about al-Jilālī’s refusal to “give [the Jews] their rights in their lawsuits which were close to settlement, [in addition to] other

---

96 BH, K 157, p. 107, 23 Rabi‘ 1 1307. See also BH, K 157, p. 121, 24 Rabi‘ II 1307; in this entry recorded one month later, it was again reported that the Jews of Safī had complained about their governor. This time, they specified that whenever Jews had lawsuits with Muslims, a group of Muslims physically assaulted the Jew concerned.

97 DAR, Demnat, Mawlāy Ḥasan to al-Ḥājj al-Jilālī al-Dimnātī, 1 Sha‘bān 1302. In this case a group of Jews from Demnat had appeared before the sultan in person when he was in Marrakesh.
lawsuits such as [those concerning] murder." The Jews’ complaint implied that al-Jilālī was specifically targeting Jews and denying them justice in the Makhzan court. Although this probably concerned only lawsuits in which al-Jilālī judged directly, the sultan wrote to the qāḍī of Demnat commanding him to be present at the settlement of this petition. It seems the sultan was concerned enough about the accusation to want as many trustworthy officials involved in its resolution as possible.

In another instance the target of Jews’ complaints was the qāḍī himself—who, although semi-independent, was nonetheless subject to the Makhzan’s supervision. In the summer of 1897 the Jews of Rabat protested against their qāḍī’s unwillingness to settle their cases. The nature of their complaint indicated that the qāḍī was transgressing jurisdictional boundaries. Normally, a distinction was made between cases to be judged by the qāḍī in a sharī’i court (shar’ī) from those which were to be judged by either a qā’id or a pasha in a Makhzan court (makhzanī). It is unclear exactly how the qāḍī was violating “law and custom” (qānūn wa-‘urf), though it seems that he had refused to adjudicate Jews’ lawsuits deemed to fall under his jurisdiction. The petition indicates that Jews placed much stock in the right to obtain a just ruling in a sharī’i court, and that they were willing to appeal to the Makhzan when they believed this right was threatened.

---

99 DAR, Demnat, Mawlāy Ḥasan to qāḍī of Demnat, 1 Sha’bān 1302. For another incident in which Jews appealed to the sultan about unfair judgment from their governor, see Mawlāy Ḥasan to Ḥammū b. al-Jilālī, 29 Ṣafar 1302 (in Ibn Zaydān, Al-‘Izz wa-‘l-ṣawla, v. 2, 138).
100 DAR, Yahūd, 14885, Muḥammad al-Ṭūris to Muḥammad al-Swīṣī, 6 Ṣafar 1315. This case eventually reached al-Ṭūris, the Minister of Foreign Affairs; it is unclear whether the Jews wrote to him directly, or whether the case was forwarded to him as the minister responsible for collective complaints of Jews.
101 For another case in which Jews complained about their qāḍī, see BH, K 181, p. 120, 22 Rajab 1309. Here the Jews of Demnat accused their qāḍī of preventing them from using the services of ‘udūl when they came to notarize their legal documents.
In 1884 the Jews of Fez appealed to the sultan against their nāʿib on similar grounds.\textsuperscript{102} (Nāʿib literally means “representative” or “deputy” and in this case probably indicates the representative of the qāʿid in charge of the millāḥ.) The Jews claimed that their nāʿib was judging them harshly (\textit{shaddada ʿalayhim fī al-akhām}). Mawlāy Ḥasan wrote to al-ʿArabī wuld Abī Muḥammad, the qāʿid of Fez, rebuking him and reminding him of the Jews’ right to bring their cases to whomever they wanted. (Presumably, the sultan meant that Jews were entitled to the legal services of both the qāḍī and the local Makhzan official.) Mawlāy Ḥasan also ruled that in order to enjoy this privilege, the Jews had to agree that they would complete a case with whomever had initially adjudicated it and execute the decision of that judge (\textit{wa-mā ḥakama bihi ʿalayhim yunfidhūnahu}). The sultan’s response suggests that the nāʿib had defended himself by claiming that the Jews were also misbehaving. The sultan thus ruled that the Jews’ right to bring their legal cases to the nāʿib was conditional upon their agreeing to continue adjudication in the same court and accepting the nāʿib’s ruling. In his resolution of the dispute, the sultan emphasized both sides’ obligations; he instructed the Jews to respect the authority of the various legal venues open to them, and reminded the nāʿib and al-ʿArabī of their responsibility to treat the Jews justly.\textsuperscript{103}

Finally, Jews also complained about their local Makhzan officials’ failure to follow the precepts of Islamic law. Such behavior not only harmed the individual victims, it threatened to undermine the entire legal system by suggesting that the government officials were somehow above the law. In 1846, a group of Jews wrote to Mawlāy ‘Abd al-Raḥmān complaining that

\textsuperscript{102} DAR, Fez, al-ʿArabī wuld Ab Muḥammad to Mawlāy Ḥasan, 4 Shaʿbān 1301. The letter does not specify the name of the nāʿib.

\textsuperscript{103} The sultan also enjoined al-ʿArabī to treat the Jews according to the legal document he had enclosed (presumably a set of guidelines for just treatment).
they were being mistreated by various Makhzan officials. In particular, the muḥtasib was confiscating their goods without justifying his actions through legal proof (mūjib)—either Islamic legal proof (šarʿī) or proof according to “natural” law (jib ī, the exact meaning of which is unclear). The petitioners objected to his actions, arguing that confiscating goods in the absence of any legal proof was against Islamic law.

Jews appealed to the Makhzan when they felt that their local šarīʿa and Makzhan courts were not functioning properly in part because these institutions were central to Jews’ lives. These petitions show not only that Jews were able to appeal to the Makhzan when their access to Islamic legal institutions was threatened, but also that non-Muslims were willing to weigh in on the functioning of Islamic law.

Violations of Jewish Legal Authority

Jews not only protested when Islamic legal institutions malfunctioned, but also when their own legal system was put at risk—usually by a Makhzan official who had overstepped his jurisdiction or otherwise interfered in Jews’ self-government. As discussed in Chapters One and Three, Islamic law guaranteed Jews the right to judge intra-Jewish affairs according to Jewish law. Jews deprived of this privilege petitioned the Makhzan when they felt their rights to legal autonomy were being threatened.

104 DAR, Yahūd, 19415, Jews of unspecified city to Mawlāy ʿAbd al-Raḥmān, Dhū al-Ḥijja 1262.
105 Perhaps by “natural” proof the petitioners meant proof that complied with the demands of common sense, though it is difficult to tell since this is not a term that occurs often in the Makzhan archives.
106 See also DAR, Yahūd, 23088, Mawlāy ʿAbd al-Raḥmān to Aḥmad al-Muṭī, 27 Rabīʿ I 1261. In 1845 Mawlāy ʿAbd al-Raḥmān responded to the complaint that the qāʿid of Casablanca had forced the Jew Hārūn to give him 481 riyals without any legal proof (mūjib) that Harūn actually owed this money. The sultan ordered al-Muṭī, qāʿid of Casablanca, to assemble the ‘udūl and the ‘umanāʿ and have them testify about the case, and to see that justice was done. Although this complaint was submitted by an individual Jew (from Fez), I include it here since it concerns the same sort of abuse about which Jews normally petitioned collectively.
Although at first these appeals might seem directly at odds with those concerning the malfunctioning of Islamic legal institutions, these two kinds of petition were in fact opposite sides of the same coin. The position of Jews under Islamic law meant that they were constantly negotiating between Jewish and Islamic legal orders. On the one hand, it was in Jews’ interest to ensure that they had access to sharī‘a courts—not only for their commercial transactions with Muslims which required legal ratification, but also for those intra-Jewish cases which they chose to adjudicate before a qāḍī. On the other hand, it was also in Jews’ interest to maintain their own judicial system, both in order to bolster the authority of their communal leaders and to ensure their ability to conduct their lives according to Jewish law. The fact that Jews held the Makhzan responsible for the maintenance of Jewish judicial autonomy further confirms the extent to which Jewish legal institutions relied on the state to bolster their authority. The guarantee of Jewish judicial autonomy did not stop at permitting Jews the free exercise of their legal system. Rather, the Makhzan played an active role in ensuring the authority of Jewish law for intra-Jewish matters.

In one case, the threat to Jewish judicial autonomy came from within the Jewish community. In 1896, the Jews of Fez appealed to Muḥammad al-Ṭūris (Torres), the minister of foreign affairs, about the jurisdiction of a case being considered in the Makhzan court.\footnote{DAR, Yahūd, 36412, Jews of Fez to Muḥammad al-Ṭūris, 5 Dhū al-Qa’da 1313.} The lawsuit concerned a house located in the millāḥ of Fez; the property originally belonged to a Jew named Ya‘qūb al-Ṣabbāgh. Over forty years earlier Ṣabbāgh had left Fez for Algeria and became a French citizen.\footnote{In fact, Ṣabbāgh was described as an “Algerian,” but due to the Crémieux Decree of 1870, as a Jew he was automatically a French citizen.} Before leaving Fez, Ṣabbāgh appointed an agent to sell his property in his absence, which the agent dutifully did. When Ṣabbāgh returned to Fez four decades later
he tried to claim his erstwhile property, but the house’s current owner claimed that he had bought it years ago (presumably from Ṣabbāgh’s agent). Ṣabbāgh denied ever having received any money for the house, arguing that it therefore remained his property. Ṣabbāgh died without having resolved his claim, and after his death his heirs took up the case.

Ṣabbāgh’s heirs added a new twist to the case, arguing that the legal document in which Ṣabbāgh had appointed his agent was invalid because it was drawn up in a Jewish court. They claimed that since both Ṣabbāgh and his Jewish agent were subjects of the Moroccan sultan at the time, the deed should have been drawn up in a sharī‘a court. The Jewish petitioners pointed out that the heirs’ reasoning explicitly contradicted the sultan’s orders on such matters, namely, that intra-Jewish legal affairs should be adjudicated in a Jewish court. Nor did this argument follow the Islamic legal principle that intra-Jewish civil matters—such as a document designating a legal agent—should be dealt with by Jewish courts. In fact, the logic of the heirs’ claim reflected the view that legal status was based on nationality rather than religion; since Ṣabbāgh and his agent were Moroccan nationals, they should have drawn up their contract in a Moroccan—that is, Islamic—court, regardless of their Jewish faith. The introduction of nationality to law in Morocco is something I discuss in detail in subsequent chapters; suffice it to say that for the purposes of this case, nationality was legally irrelevant and Ṣabbāgh’s heirs were clearly flouting the law of the land. They nonetheless brought the case to the local Makhzan court, no doubt hoping that their argument might find favor with the presiding khalīfa. The Jewish petitioners requested that Torres (or the sultan himself) return the case to Fez’s Jewish court, the only legal institution with jurisdiction over such matters according to the sultan’s command.
The Jews of Meknes appealed to the sultan concerning a similar threat to Jewish autonomy twice in a single decade, eliciting sharp rebukes from Mawlay Hasan to Hammu al-Jilali, qā’id of Meknes. The first incident occurred in 1880: two Jewish residents of Meknes went to a Jewish court to adjudicate a disagreement. However, the plaintiff was dissatisfied with the decision. Instead of accepting his fate, the plaintiff decided to take the matter to the Makhzan court. To ensure a more favorable ruling, he struck a deal with the qā’id al-Jilālī in which they agreed to split the proceeds of the lawsuit in exchange for the qā’id’s promise to judge the matter in the plaintiff’s favor. Sure enough, al-Jilālī ruled in favor of his co-conspirator. Word of the deal leaked to the broader Jewish community, who became incensed at their coreligionist for daring to flout the authority of Jewish law. However, this matter did not concern internal Jewish affairs alone. While the qā’id al-Jilālī abused his authority in accepting a bribe from the Jewish plaintiff, he also threatened the legal autonomy of the Jews of Meknes by accepting a case which fell under Jewish jurisdiction. While this sort of forum shopping among Jewish and Islamic legal institutions was not uncommon (as discussed in Part one), it undermined the authority of Jewish courts. The Jewish leaders of Meknes understandably wanted the sultan to reinforce the jurisdictional boundaries and prevent the qā’id from stepping on the toes of the city’s Jewish judges.

In 1890, the Jews of Meknes again appealed to the Makhzan complaining that al-Jilālī was overstepping his authority. Less than a week later Mawlay Hasan wrote to al-Jilālī

---

109 DAR, Yahūd, 32977, Rabbi Abnir and the Jews of Fez to Muḥammad b. al-ʿArabī al-Mukhtār, 2 Dhū al-Qaʿda 1297. The Jews in Meknes wrote to the Jews in Fez asking them to request the Makhzan’s intervention in this matter. (The letter does not mention the names of the plaintiff or the defendant.)

110 DAR, Yahūd, 26098, dayyanim of Meknes to Muhammad b. Ahmad al-Ṣanhājī, 20 Jumādā I 1307. In fact, the authors of this letter complained that the sultan had already written to al-Jilālī—presumably upon their request—instructing him not to interfere with the exercise of Jewish law, but that the qā’id had ignored the sultan’s warning. It is possible that the dayyanim were referring to Mawlay Hasan’s reaction to their complaint of 1880.
reminding him of his duties regarding the Jewish courts. In particular, the sultan commanded al-Jīlālī to assist the Jewish judges in settling intra-Jewish lawsuits, to help enforce the Jewish judges’ rulings, and to refrain from interfering in the Jewish legal system except in order to upholding the authority of the Jewish judges. Mawlāy Ḥasan’s command to ensure that Meknes’ Jewish judges could implement their rulings speaks directly to the question of enforcement, which was a constant challenge for Jewish legal systems in Islamic lands. It was the Makhzan’s responsibility not only to leave Jewish judges alone to run their own legal affairs, but also to play an active role in ensuring that Jews adhered to the rulings of their dayyanim. In this sense, Jewish judges were treated as part of the overall Moroccan legal system. Makhzan officials were responsible for enforcing the decisions of qāḍīs, who themselves did not possess the authority to imprison, beat, or otherwise force people to comply with their rulings. Mawlāy Ḥasan’s letter suggests that he also held local Makhzan officials accountable for the enforcement of the decisions of Jewish courts.

111 DAR, Yahūd, Mawlāy Ḥasan to qā’id Ḥammu al-Jīlālī, 26 Jumādā I 1307. See also what seem to be two drafts of this letter: DAR, Yahūd, Mawlāy Ḥasan to qā’id Ḥammu al-Jīlālī, 23 Jumādā I 1307. These drafts, written only three days after the Jews’ initial complaint to the sultan’s vizier, suggest that the matter was urgent enough to require immediate attention.

112 This was one of a number of occasions on which Mawlāy Ḥasan reminded his local representatives that they were responsible for safeguarding Jewish legal autonomy, even in the face of Jews who actively undermined the authority of Jewish courts: see, for instance, the initial complaint of the Jews of Meknes to the sultan’s vizier, in which they reported that the sultan had already reprimanded al-Jīlālī for this very behavior (DAR, Yahūd, 26098, 20 Jewish judges from Meknes to Muḥammad b. Aḥmad al-Ṣanhājī, Jumādā I 1307). See also DAR, Yahūd, 18152, Muḥammad Muḥammad al-Gharīṭī to Jews of Marrakesh, 7 Jumādā II 1310 and 18151, Mawlāy Ḥasan to Qā’id Muḥammad (in Marrakesh), 7 Jumādā I 1310. These letters concern a complaint of the Jews of Marrakesh about the qā’id Muḥammad. Mawlāy Ḥasan reprimanded Muḥammad and instructed him to send intra-Jewish lawsuits to Jewish courts and to help the dayyanim rule on intra-Jewish matters.

113 See also DAR, Yahūd, 18151, Mawlāy Ḥasan to Muḥammad, 7 Jumādā II 1310 (in which Mawlāy Ḥasan specified that if a Jew refused to be judged by a Jewish court, Muḥammad, the qā’id of Marrakesh, should write up a proof (ḥujja) of the Jew’s refusal and send it to the sultan to resolve); DAR, Demnat, al-Ṭayyib al-Yamānī to Muhammad Bargāsh, 30 Muḥarram 1281 (in which the sultan reminded the governor of Demnat “not to interfere in [the Jews’] religious or legal affairs” (an lā yadhkula bi-unūrī dīnihim wa-sharʿihim); it is particularly significant that the sultan responded thus since the investigation preceding his letter to the governor of Demnat had shown that the Jews’ protests were without legal proof (bayyina), suggesting that Mawlāy ‘Abd al-Raḥmān considered the maintenance of Jewish legal autonomy important enough to admonish his representative in Demnat just in case).
In other instances, Makhzan officials went out of their way to ensure the smooth functioning of Jewish law. In 1903, the Jews of Casablanca chose a new chief rabbi to serve as dayyan in their community.\(^{114}\) Muḥammad al-Ṭūris (or Torres) wrote to Aḥmad, the qāʾid of Casablanca, instructing him to support the new judge and aid him in enforcing Jewish law. Although Aḥmad was ready and willing to assist the new rabbi, he reported to al-Ṭūris that a group of Jews had approached him seeking his help in broaching divisions within the community about the new dayyan. One faction wanted to return to the previous judge, while those Jews who had sought Aḥmad’s help wanted to retain the new dayyan. They requested that Aḥmad write to al-Ṭūris and ask him to consult with Rabbi Mordekhai in Tangier about who should be occupy the post of dayyan in Casablanca. Presumably, these Jews felt that Rabbi Mordekhai’s opinion would be influential enough to settle the matter.\(^{115}\) Aḥmad asked al-Ṭūris to send him Rabbi Mordekhai’s answer so he could help the Jews enforce the decision and resume their legal affairs. Not only did both Aḥmad and al-Ṭūris take responsibility for facilitating the functioning of Jewish courts, they made extra efforts to ensure that the Jews of Casablanca were satisfied with their new judge.

Jews’ petitions also concerned infringement on other aspects of Jewish autonomy, such as the privilege of electing the shaykh al-yahūd (secular head of the Jewish community).\(^ {116}\) For instance, in 1884, Demnat’s Jews appealed to the Makhzan about the abuses of their governor; included in their litany of complaints was the fact that al-Jilālī had chosen the shaykh al-yahūd

\(^{114}\) DAR, Yahūd, Ahmad (qāʾid in Casablanca) to Muḥammad al-Ṭūris, 9 Rabī’ II 1321.
\(^{115}\) Undoubtedly the Jews who asked Ahmad to write this letter did not feel they had sufficient clout with Tangier’s Jewish community to write to Rabbi Mordekhai directly, and felt that a letter from al-Ṭūris would carry more weight.
\(^{116}\) On the shaykh al-yahūd (also called the nagid), see the discussions in the Introduction and Chapter One.
without their consent.117 The sultan chastised al-Jilālī and ordered him to treat the Jews well (an...yuḥsina al-sīrata maʿahum) as was customary with Jews in other cities. Mawlāy Ḥasan also assured al-Jilālī that he had reminded the Jews that they, in turn, should not exceed the boundaries of behavior allotted them—that is, the conditions of the dhimma contract.118 Nearly a year later, Mawlāy Ḥasan wrote another letter to al-Jilālī in response to the Jews’ repeated complaint that al-Jilālī had prevented them from nominating their own shaykh.119 The sultan ordered al-Jilālī to convene the Jews along with the qāḍī and the tax collector—to whom he also sent letters—to ensure that the Jews were able to choose a shaykh to act as their intermediary with the Makhzan.120

When Jews felt that the right to their own legal system was threatened, they appealed to the state to ensure that their judicial autonomy was respected. Moreover, the state responded by affirming the jurisdictional boundaries which determined the authority of Jewish courts. These appeals demonstrate the extent to which the functioning of Jewish law depended on and was inherently embedded in the state.

**Collective Appeals against Jews**

Although the vast majority of Jews’ collective petitions to the Makhzan concerned the abuses of Makhzan officials, there were also instances in which groups of Jews complained...
about their own coreligionists. These appeals are not unlike those intra-Jewish complaints registered by individual Jews discussed in the previous chapter. Yet in their collective appeals against other Jews, the petitioners claimed that the objects of their complaint posed a threat to the Jewish community as a whole. The practice of collectively petitioning the state to resolve intra-religious disputes was hardly unique to nineteenth-century Morocco; Jews across the Islamic world from the Middle Ages to modern times similarly turned to their Islamic rulers even when their quarrel lay with members of their own community.121

In 1884, the Jews of Demnat recorded complaints about their coreligionists in two Islamic legal documents which were sent to the sultan.122 (Undoubtedly the Jews had their testimony notarized by ‘udūl in order to bolster the legitimacy of their claim.) The legal documents, although only a few months apart, concerned two distinct issues. Firstly, the Jews of Demnat complained about their coreligionist Mordekhai Azulay. They accused Azulay of making false accusations against fellow Jews and submitting complaints to Christians and to the sultan that he was owed debts by the people of Misfīwa, despite the fact that Azulay was penniless (and thus, according to the Jews, in no position to be a creditor).123 Azulay seems to have been a fairly influential person; the fact that he submitted complaints to Christians suggests that he was himself a protégé, since otherwise it is hard to imagine why foreign consular officials would have paid him any heed. Even more significantly, it is hard to imagine that the Jews of Demnat would have felt compelled to appeal to the sultan against an inconsequential member of their community. Secondly, the petitioners complained that a group of fellow Demnati Jews had

---

121 On the Geniza, see Goitein, *A Mediterranean Society*, v. 2, 405-7; Rustow, “At the Limits of Communal Autonomy.” On the Ottoman Empire, see Hacker, “Jewish Autonomy in the Ottoman Empire.” On twentieth-century Yemen, see Wagner, “Halakhah through the Lens of Sharī‘a.”
123 Misfīwa is the name of a tribe located near Demnat, to the south of Marrakesh.
traveled to Casablanca and “slaughtered” (dhabahū) an animal before the Christians there (most likely the consular officials). Slaughtering an animal on a person’s doorstep was a way of obligating that person to protect the one who made the sacrifice. These Demnati Jews almost certainly performed this ritual hoping to gain European protection. The document went on to describe these rebellious Jews as being involved in issues that were none of their business, engaging in insolent behavior, and having “transgressed the limits of the laws that had been contracted with their ancestors permanently [regarding] their governor (taʿaddaw al-hudūda fī l-qawānīnī al-maʿhūdati li-aslāfihim ʿalā al-dawāmi maʿa ʾāmilihim).” It seems that these Jews had appealed to the consular officials to intercede against their governor, even though they were the ones guilty of transgressing the law.

The following November, the Jews of Demnat again complained about their coreligionists, this time accusing them of having thrown stones at Muslims and attacking a fellow Jew. The Jewish petitioners brought their story to the qāʿid al-Jilālī al-Dimnātī, explaining that these misbehaving Jews had received letters from Jews elsewhere in the country who claimed to have done similar things without being punished. Given the short amount of time elapsed between the two documents, it seems likely that the group of insolent Jews who went to Casablanca were the same ones later accused of mistreating their Muslim neighbors. These Jews might have acquired a sense of invincibility from their newfound association with

---

124 Slaughtering an animal at the doorstep of someone’s house was a widespread ritual which invoked ʿār (best translated as shame) on a given party if he did not fulfill one’s request: Kenneth Brown, “The ‘Curse’ of Westermarck,” Acta Philosophica Fennica 34 (1982). It was not unknown for Moroccans to invoke ʿār with Europeans, particularly consuls, in an attempt to gain consular protection. See, e.g., FO, 174/221, Diary of the British Consulate in Tangier, pp. 49-50, 23 August 1849.
Europeans—a sentiment that at other times caused Jews to challenge their position in the Islamic social order.\(^{125}\)

In a different kind of case, Jews appealed to the Makhzan acusing other Jews of breaking Jewish law. In the summer of 1895, the rabbi Shalom b. al-Wīrī petitioned the sultan on behalf of the Jews of Meknes; he claimed that his coreligionist Ya’aqov Ohana (Uḥanā) refused to hand over the tax on meat (known as the gabella) to the Jewish communal leaders so that it could be re-distributed to the poor.\(^{126}\) Mawlāy ‘Abd al-‘Azīz ordered the qā’id of Meknes to make sure that Ohana no longer kept the tax for himself, “like the other Jewish butcher shops.”\(^{127}\) While Jews in similar circumstances might have attempted to discipline Ohana through the intervention of Jewish officials, the Jews of Meknes in this instance chose instead to ask the Makhzan to bring Ohana in line.

The Question of Anti-Jewish Sentiment

After reading such a long litany of petitions, one might get the impression that Jews constantly suffered from the prejudice and persecution of their local officials even if they were able to appeal to the central government for redress. There is little question that at times

\(^{125}\) For instance, when Moses Montefiore came to Morocco in 1864 to appeal to the sultan to improve his treatment of Moroccan Jews, a number of Jews took the resulting zahīr, which essentially reiterated the terms of the dhimma pact, as license to abuse their Muslim neighbors (discussed in Chapter Nine). For another example of a collective complaint against Jews whose association with Christians had caused harm to the community, see BH, K 181, p. 340, 25 Rajab 1310. In this case, the Jews of Marrakesh petitioned the local qā’id Muḥammad Wīda concerning a Jew named Qurqūz (Corcos—most likely either Ḥaim or his son Yeshu’a). Corcos had rented a house in the millāḥ to a Christian for an exorbitant price (twenty riyals instead of the usual two); now the Christian wanted to set up a machine for grinding olives in the house. The Jews argued that the Christian came with the intention of being a guest only; presumably his desire to introduce a mechanical olive press threatened the livelihood of those Jews involved in the old method of olive oil production.

\(^{126}\) 10 Rabī’ I 1313, Mawlāy ‘Abd al-‘Azīz to Ḥammu b. al-Jīlālī (in Ibn Zaydān, Al-‘Izz wa-‘l-ṣawla, v. 2, 141-2).

\(^{127}\) For another case of petitions concerning other Jews, see DAR, Yahūd, ?? to Mawlāy ‘Abd al-‘Azīz, 2 Rabī’ II 1312.
Makhzan officials’ abuse of Jews stemmed from anti-Jewish sentiment. Yet local officials’ treatment of Jews did not always reflect systematic hatred against Jews. Although the motivations of Makhzan officials are not always discernible, it is possible to measure the impact of anti-Jewish sentiment in part by comparing officials’ abuse of Jews to their abuse of Muslims. A comprehensive study of Muslims’ appeals to the Makhzan concerning their mistreatment at the hands of local government representatives is beyond the scope of this dissertation. Nonetheless, there is evidence that like their Jewish neighbors, Moroccan Muslims were at times badly treated by Makhzan officials.

Soundings in the Makhzan’s correspondence and the registers of the Ministry of Complaints suggest that Muslims often suffered at the hands of local officials—and, like Jews, appealed to the Makhzan to right the wrong. In 1873, the Zarhūn tribe complained about their governor, whom they accused of taxing them unfairly (and thus illegally confiscating their possessions). In March, 1890, the Makhzan addressed the appeal of the Muslims of Radānā who complained about their qāḍī. In 1887, the Jews of Meknes wrote to the sultan’s vizier to

---

128 I deliberately avoid the term anti-Semitism because it denotes a particular form of racism that originated in Europe, based originally on Christian anti-Jewish myths and later drawing on scientific ideas about race. Islamic and Arab anti-Semitism certainly existed, though scholars have convincingly argued that anti-Semitism in the Middle East drew principally on European anti-Semitism. Anti-Semitism began to take hold among Arab Christians and Muslims in the nineteenth century, and spread to Morocco after colonization. (On anti-Semitism in the Middle East, see Mark R. Cohen, “Modern Myths of Muslim Anti-Semitism (in Hebrew),” Politiqah 19, no. Spring (2009).) Thus whatever anti-Jewish sentiment Makhzan officials displayed in the nineteenth century drew on a tradition of prejudice indigenous to the Islamic tradition and the Moroccan context.

129 DAR, Meknes, 35078, Muḥammad b. (??) and 'Abdallāh b. Muḥammad Banāna to Muḥammad b. al-Madānī Banīs, 6 Jumādā II 1290. For more complaints by Muslims against a Makhzan official, see 28 Shawwāl 1300, Mawlāy Ḥasan to 'Abdallāh b. Ṭāhir, in Ibn Zaydān, Al- Ḳīzz wa- Ṽ-sawālā, v. 2, 115-16 (in which the notables of the Raḥwīyīn complained about their muḥtasib); DAR, Ḥimāyāt, 20646, Bū Shaz (?) al-Baghdādī to Mawlāy Ḥasan, 13 Jumādā II 1301 (in which he reported that both the Jews and Muslims of Ouezzane had complained to him about mistreatment at the hands of their governor); BH, K 181, p. 285, 11 Rabī‘ II 1310 (in which Muslims from Meknes complained about mistreatment at the hands of their pasha).

130 BH, K 171, p. 26, 6 Sha‘bān 1307. However, the nature of their complaint was not recorded. See also BH, K 181, p. 175, 11 Shawwāl 1309; here Bin‘īmī al-‘Abarī reported that the qāḍī of his region had been preventing Muslims from accessing the services of the ‘udīl. When locals went to the ‘udīl of Sufyān instead, the qāḍī refused to sign their documents. For more examples of Muslims who complained about their treatment at the hands of Makhzan officials, see BH, K 157, p. 39, 30 Ramaḍān 1306; p. 62, 24 Dhū al-Qa‘da 1306.
complain about their muḥtasib, emphasizing that the Muslims of Meknes were equally harmed by the muḥtasib’s actions. 131 These examples of how Makhzan officials also mistreated Muslims suggest that further research in the Makhzan archives would reveal many more instances of such claims. The fact that Makhzan officials also mistreated the Muslims under their authority indicates that not all instances in which Jews experienced abuse were the result of anti-Jewish sentiment.

In addition, certain kinds of abuse were almost certainly free of any prejudice. A recurring theme in Jews’ complaints concerned the meddling of Makhzan officials in intra-Jewish affairs, particularly in the functioning of Jewish law. As discussed above, Makhzan officials agreed to hear cases that fell under the jurisdiction of Jewish courts—thereby weakening the authority of Jewish judges. In such cases it is unlikely that the Makhzan officials acted out of any malicious intention towards the Jews of their city. On the contrary, most seemed motivated by personal gain. This is particularly evident in the case from 1880 in Meknes, when Jews complained that their qāʾid had accepted a bribe in order to judge an intra-Jewish case in the plaintiff’s favor. 132 Nonetheless, there is little doubt that at times Makhzan officials did target Jews, possibly related to some sort of anti-Jewish sentiment.

* * *

In 1877, Joseph Halévy, an instructor for the Alliance Israélite Universelle, noted that Jews’ most important recourse against “suffering” was to petition the sultan for justice. Halévy was certainly correct in identifying appeals to the state as central to Jews’ strategies for resolving

131 DAR, Yahūd, 33481, Jews of Meknes to Muḥammad b. Ḥamad al-Ṣanhājī, 28 Ramadān 1304. See also: DAR, Marrakesh, 17462, Yeshu’a Corcos to Muḥammad al-Mufaḍḍal Gharrīt, 4 Dhū al-Qa’dā 1321, in which Corcos reported that the Kharaza tribe entered Marrakesh and terrorized the city’s inhabitants, both Jews and Muslims. He also noted that although the khilīfa successfully protected the millāḥ from being pillaged, the Jews are still unable to move freely outside their quarter.

132 DAR, Yahūd, 32977, Rabbi Abnīr and the Jews of Fez to Muḥammad b. al-ʿArabī al-Mukhtār, 2 Dhū al-Qa’dā 1297.
their legal disputes. Jews petitioned the Makhzan collectively when they believed that the misbehavior of local officials endangered the entire community, when local Islamic legal institutions denied them justice, or when their legal independence was threatened. The fact that Jews protested when they were mistreated in local Islamic legal institutions shows the importance of Islamic law to the functioning of their daily lives. Jews’ readiness to petition the state when they believed their legal autonomy was threatened demonstrates the extent to which the Moroccan government was responsible for ensuring the proper functioning of even Jewish legal institutions. It is difficult to say whether Halévy was correct in saying that Jews’ ability to “address their complaints” to the central government was their most important recourse against suffering, since as we have seen sending collective petitions to the Makhzan was just one tactic among many. Nonetheless, Halévy clearly understood that petitioning the state was a key strategy upon which Jews relied to resolve their legal disputes.
Chapter Seven: Foreign Protection and Consular Jurisdiction

Shalom Assarraf had been active as a businessman since the 1850s; by the following decade his business was growing rapidly and he was well on his way to building the modest commercial empire which helped earn him a prominent role as a leader of his community.¹ In 1871, Shalom took a step that increasing numbers of his fellow Moroccans were taking; he acquired a patent of foreign protection. This patent gave him a degree of extraterritoriality; he was no longer required to pay taxes to the Makhzan, and, in theory at least, he could not be prosecuted in a Moroccan court of law (including both sharī‘a and Makhzan courts). Shalom’s patent of protection came from the United States of America, where a relative of his (described as a Mr. Azeraf of New York) was living and had appointed him as his agent.²

Shalom leveraged his status as a foreign protégé to have the American ambassador, Felix A. Mathews, intervene on his behalf with the Makhzan concerning legal disputes in which he was involved. In one incident, Shalom was attacked by some soldiers as he arrived at his store in Fās al-Jadīd.³ The soldiers “arrested him, beat him, and were about to kill him; were it not for the Muslims who removed him and took him to his house, they would have killed him.”⁴ Mathews wrote to the sultan demanding that he order his officials to make sure that Shalom “got his due,” by which he presumably meant that Shalom wanted to be compensated financially for

¹ I have in mind Shalom’s election as nagid of the Jewish community of Fez in 1873: see Chapter One.
² USNA, reg. 84, v. 48, “List of Individuals (not citizens of the US) under the jurisdiction or protection of the U.S. Consulate in the Empire of Morocco according to ancient custom and treaty stipulations” (p. 81). I have not yet been able to locate any information about Mr. Azeraf of New York, but presumably he was a relative of Shalom who had moved to the United States.
³ USNA, reg. 84, v. 141A, Felix A. Mathews to Mawlāy Ḥasan (letter #26), 26 Dhū al-Ḥijja 1301.
the incident and to have the soldiers punished.\(^5\) While the archives do not preserve the outcome of Shalom’s request, we can safely guess that the American ambassador’s letter helped ensure that his case was attended to by the Makhzan.\(^6\)

More commonly, Shalom had Mathews write to Makhzan officials asking them to ensure that Shalom’s debtors paid their outstanding debts.\(^7\) In one such letter, Mathews explained that Shalom was owed 17,500 riyāls by a member of the Barrāda family in Fez, but that “the qa’id ‘Abdallāh b. ʿAḥmad imprisoned someone else in Barrāda’s stead as a trick.”\(^8\) Mathews requested that Barrāda be arrested in order to force him to pay what he owed Shalom. In general, Makhzan officials made concerted efforts to ensure that Shalom’s debtors repaid their debts. Some debtors were arrested while others had their property confiscated in an attempt to satisfy the American protégé and his ambassador.\(^9\)

These exchanges between Mathews and the Makhzan were not so different from the instances examined in Part Two in which Jews appealed directly to the Makhzan. However, the fact that Shalom had the backing of a foreign official made his petitions all the more effective. Even though we do not have any court records attesting Shalom’s appearance in consular court, it is clear that Shalom was able to use his foreign protection to his advantage in addressing his legal needs.

---

\(^5\) An ya’mura bi-akhdhi al-ḥaqqi li-ʾl-yahūdī al-madhkūr.

\(^6\) Unfortunately, I did not find any further information about this case in either the American or the Makhzan archives.

\(^7\) I suspect that Mathews wrote to the same effect on other occasions since the Makhzan archives preserves correspondence about efforts to recover Shalom’s debts from before the first such letter I found (from Ṣafar 1302/December 1884), although I did not find such correspondence in the archives.

\(^8\) Bi-mahalli Barrāda wa-hadhā min al-qāʾid talāʿaba [sic]: USNA, reg. 84, v. 141A, Felix A. Mathews to Muḥammad b.-Ṭūris (letter #60), 17 Ṣafar 1302.

Perhaps most important, however, is the fact that as a protégé, Shalom Assarraf continued to utilize all the other legal fora discussed in this dissertation thus far. Acquiring a patent of American protection did not entirely remove Shalom from the jurisdiction of batei din, sharī’a courts, or the Makhzan—even while he gained access to consular courts. The legal lives of the Assarraf family remind us that all four legal orders operated simultaneously and with overlapping spheres of authority, and that individual Jews (and Muslims, for that matter) moved among these distinct legal institutions with relative ease.

Part Three explores the functioning of consular courts in the Moroccan legal system and, more broadly, the influence of foreigners on Moroccan Jews’ legal strategies. To this end, I draw on records and correspondence from a number of diplomatic archives (including those of France, the Netherlands, Spain, the United Kingdom, and the United States), as well as the Makhzan archives in Morocco. The French, British, and Spanish archives are particularly crucial to the legal history of protection in Morocco as these three nations had the largest number of protégés. The archives of the Netherlands and the United States allow for comparison with states whose diplomatic and commercial representation in Morocco was less significant. My evidence includes consular court records, though I also draw heavily on correspondence preserved in the consular archives in order to fill the significant gaps in the records of the consular courts. Before embarking on an analysis of how Jews appealed to consular courts and

\[10\] These include: the MAE Nantes, the MAE Courneuve, the AGA, the DNA, the FO, and the USNA. The Moroccan archives consulted include the DAR and the BH.

\[11\] Furthermore, the fact that a country had little political clout in Morocco did not necessarily reduce its ability to extend protection to Moroccans and thus to participate in the consular court system (for a humorous account of this, see R. B. Cunninghame Graham, *Mogreb El-Acksa: A Journey in Morocco* (Evanston, IL: Northwestern University Press, 1985), 43-4). I could have consulted a number of other archival collections preserved in countries that had consulates in nineteenth-century Morocco, including Italy, Portugal, Brazil, and Belgium, among others. However, given the fact that the consular records I consulted include cases involving protégés from all these states, my strong conviction is that my conclusions would not have changed significantly had I consulted more consular archives.

\[12\] The state of the consular archives makes it clear that either the consular courts in Morocco did not keep consistent records of their activities, or that such records have been lost. For contemporary observations that the archives were
foreign diplomats, the present chapter traces the history of foreign intervention in Morocco and the evolution and functioning of consular courts in the nineteenth century.13

**Protection and Politics in Morocco**

Morocco underwent profound political changes during the nineteenth century. Foreign nations gained more and more influence in Moroccan internal affairs, and the imperial ambitions of states like France, Britain, and Spain became increasingly evident. The system of consular protection was among the most important ways in which foreign states demonstrated their power and chipped away at the authority of the Makhzan.14 Following the capitulation treaties first signed with the Moroccan sultan in the eighteenth century, Western nations extended their official protection to growing numbers of Moroccan Jews and Muslims.15 The practice of extending extraterritoriality to locals was not unique to Morocco; the Ottoman Empire had signed treaties of capitulation with foreign nations starting in the sixteenth century and a system

---

13 Although the system of consular protection has been treated extensively in the historiography of Morocco (see most notably Kenbib, Les protégés), there is only a single, brief article about the nature of consular courts and the jurisdictions governing them: Albert Lourde, “Les juridictions consulaires dans le Maroc pré-colonial,” in *La justice au Maroc*, ed. François-Paul Blanc (Toulouse: Presses Universitaires de Perpignan et Presse de l’Université des sciences sociales de Toulouse, 1998). For an analysis of one particular case, see also Jacques Caillé, “Un procès consulaire à Mogador en 1867,” *Hésperis* 40, no. 3e et 4e trimestres (1953).


of consular courts functioned throughout the empire.\footnote{Maurits H. Van Den Boogert, *The Capitulations and the Ottoman Legal System; Qadis, Consuls, and Beratlıs in the 18th Century* (Leiden: Brill, 2005).} Beyond the Mediterranean, similar regimes existed in East and Southeast Asia.\footnote{For a global approach to the basis of extraterritoriality, see Richard S. Horowitz, “International Law and State Transformation in China, Siam, and the Ottoman Empire during the Nineteenth Century,” *Journal of World History* 15, no. 4 (2005): 448-55.}

Consular protection gave Moroccan subjects more or less the same legal status as foreign nationals, although protection and nationality remained distinct. Protégés were exempt from taxation by the Makhzan, could only be prosecuted in a consular court, and were entitled to the help of their consular officials in all their disputes (especially those with Moroccan subjects). In addition, foreign subjects and protégés regularly submitted lists of unpaid debts which they were owed by Moroccan subjects to their consuls, who then demanded payment directly from the sultan.\footnote{Kenbib, *Les protégés*, 96.} This rather unusual arrangement was based on the premise that the sultan bore ultimate responsibility for the debts of his subjects. This policy made protection even more attractive for Moroccan subjects engaged in moneylending, like our own Shalom Assarraf.

Consular protection was originally intended to benefit those Moroccans who worked for foreign consulates or who were in business relations with foreigners. However, the political and economic advantages of protection soon encouraged many to seek protection illegally, such as by buying patents of protection from corrupt consular officials. Other Moroccans sought naturalization abroad, only to return to Morocco as nationals of foreign states—a status that gave them the same extraterritorial rights as protégés.\footnote{Bowie, “The Protégé System in Morocco,” 261-74; Jessica Marglin, “The Two Lives of Mas’ud Amoyal: Pseudo-Algerians in Morocco, 1830-1912,” *International Journal of Middle East Studies* 44, no. 4 (2012).} The spread of consular protection and the increasing numbers of Moroccans claiming foreign nationality led to more opportunities for foreign states to intervene with the Makhzan on behalf of their protégés. Many diplomatic
officials saw their intervention on behalf of foreign nationals and protected persons as a useful tool with which to increase their influence in Morocco. The Makhzan, on the other hand, became increasingly concerned about the threat to its authority posed by the growing ranks of protégés. This conflict came to something of a head during the Madrid Conference of 1880, when representatives of eleven foreign nations and the Makhzan’s minister of foreign affairs convened with the stated goal of preventing abuses of protection. Despite the adoption of a new treaty regulating diplomatic relations and the nature of extraterritoriality in Morocco, the status quo hardly shifted. The Makhzan continued to protest the abuses of protection until colonization in 1912.

The fact that so many Moroccan Muslims acquired patents of protection made the protégé system in Morocco distinct. In the Ottoman Empire, the vast majority of protégés were non-Muslims. This is part of what leads Timur Kuran to argue that Muslims could not reap the advantages of forum shopping in consular courts, since for Muslims to acquire foreign protection would have signaled “a radical challenge to the Islamic legal system, which required them to live by Islamic law.” In Morocco, some jurists argued that Muslims who acquired patents of protection were in violation of Islamic law. Yet these protests this did not stop large numbers

20 On the Madrid Conference, see Bowie, “The Protégé System in Morocco”; Parsons, The Origins of the Morocco Question; Kenbib, Les protégés, 57-66. The eleven nations represented include: Austria-Hungary, Belgium, Germany, Great Britain, France, Italy, the Netherlands, Portugal, Spain, Sweden-Norway, and the United States (ibid., 59).
22 In fact, historiographical discussions of protection in the Ottoman Empire tend to describe all protégés as being non-Muslim (see Salahi R. Sonyel, “The Protégé System in the Ottoman Empire,” Journal of Islamic Studies 2, no. 1 (1991); Van Den Boogert, The Capitulations and the Ottoman Legal System). Yet it seems to me unlikely that there were absolutely no Ottoman Muslims who acquired foreign protection (I am thinking in particular of guards and other employees of consulates), even if most protégés were non-Muslims.
23 Kuran, The Long Divergence, 204.
24 On the opposition of ‘ulamā’ to protection, see Ja’far b. Idrīs al-Kattānī, Al-Dawāḥī al-madhiyya li-‘l-firaq al-maḥmiyya : fi al-walā’ wa-‘l-barā’ (Amman: Dār al-Bayāriq, 1998); Laroui, Origines, 315-17; al-Manūnī, Maẓāhir, 276
of Muslims from becoming protégés or nationals of foreign states. Much like Jews, Moroccan Muslims who acquired patents of protection abused their status in order to further their own pecuniary interests. Kuran’s theory about the impact of protection on the legal choices of Ottoman subjects is inapplicable to the Moroccan case, where Jews and Muslims both had access to consular courts and thus to the expanded opportunities for forum shopping which they provided.

Nonetheless, while protection was not an exclusively Jewish issue, there is little question that Jews acquired patents of protection or became naturalized abroad in disproportionate numbers compared to their Muslim neighbors. Jews’ acquisition of protection was particularly disruptive to the social order because of its implicit challenge to the dhimma pact which had heretofore guided the relationship between the sultan (and by extension the Moroccan state) and his non-Muslim subjects. Indeed, Jewish protégés came to form something of a new aristocracy and a patent of protection became practically de rigueur for membership in the elite echelons of Moroccan Jewish society.

Protection was far more than a legal status which gave access to consular courts; it was a ticket to social advancement, permission to avoid taxes, a tool to more effectively collect unpaid debts, and an excuse for foreign diplomats to chip away at the Makhzan’s authority. In many ways the system of protection was the defining controversy of nineteenth-century Moroccan politics. The impact of protection on the Moroccan legal system was anything but negligible,


25 There are numerous examples of this in the archives: see, e.g., DAR, Tetuan, 825, Muhammad Ash’āsh to Muhammad Bargāsh, 14 Rabi’ II 1281 (about a Muslim who abused his Portuguese protection); Fez, 23322, Mawlāy Ḥasan to Muhammad Bargāsh, 28 Ṣafar 1302 (about a Muslim who abused his French protection).

26 Kenbib, Juifs et musulmans, 193-252; idem, Les protégés, 225-44.

27 See Laroui, Origines, 310-14.

despite the scant attention paid to it in the historiography. Without a solid understanding of the nature and functioning of consular courts and the ways in which they interacted with the other legal orders present in Morocco, we cannot understand how protection affected the daily lives of the Moroccans—both protégés and non-protégés—whom it touched.

The Evolution and Functioning of Consular Courts

The first point to be made about the nature of consular courts and the extent of their jurisdiction is that the system was highly complex and its rules often observed in the breach. Despite efforts on the part of consular and Makzhan officials to regulate the place of consular courts in the Moroccan legal system, the divisions among jurisdictions were blurry at best and everyone—protégés, foreigners, Moroccan subjects, and both Makhzan and consular officials—at times crossed the lines supposedly separating different jurisdictions. Nonetheless, it is useful to trace the evolution of the treaties governing the scope of consular courts’ jurisdiction to get a sense of the rules which, in theory at least, regulated the functioning of the various legal institutions.

Consular courts could be convened in any foreign consulate and were presided over by the consul himself (sometimes along with others acting as jurors or assessors).29 Consular courts applied the law of the country they represented; a French consular court applied French law, a Spanish court applied Spanish law, etc.30 A consular court had exclusive jurisdiction over all

---

29 British and French consular courts technically required the presence of two assessors and, after 1889, juries made up of five individuals: Clercq and Vallat, *Guide pratique des consulats*, v.1, 528-30; Lourde, “Les juridictions consulaires,” 25-7. However, consuls sometimes had trouble finding appropriate people to serve in these roles, especially earlier in the century when fewer foreigners lived in Morocco: see, e.g., MAE Nantes, Tanger A 138, Méchain to MAE in Paris, 19 November 1837.

30 The definitive handbook for French consulates was published in 1880 and included a discussion of the French laws concerning the judicial functions of consular courts: Clercq and Vallat, *Guide pratique des consulats*. On this,
cases between its own nationals or protégés; if foreign subjects or protégés of two nations were concerned, the jurisdiction of the trial was determined by the status of the defendant (*actor forum sequitur rei*).\(^{31}\) While at times consuls cited law codes and regulations in their rulings, they more commonly ruled without invoking any specific laws.\(^{32}\) Consuls even incorporated local law (Islamic, Jewish, or customary) into their rulings.\(^{33}\) The first consular law code specifically designed for Morocco was promulgated by Great Britain in 1889.\(^{34}\) However, even in British consular courts after 1889, it is not entirely clear to what extent consul-judges followed the letter of the law.

The first capitulation treaty between Morocco and a European state was signed with France in 1767. This treaty specified that cases involving a French subject (or protégé) and a Moroccan subject fell under Moroccan jurisdiction—a clause which other nations subsequently emulated in their treaties with Morocco.\(^{35}\) Although the treaties required that the consul be present at the trial, all cases involving Moroccans were supposed to be judged by the “Moroccan authorities” (as they were usually referred to)—meaning either a Makhzan official, a qāḍī, or, for some cases involving Jews, a beit din.\(^{36}\) The French treaty of 1767 included an exception to this

---


\(^{32}\) See, e.g., MAE Nantes, Tanger F 2, Moses Israel v. Ducors, 19 May 1893. French consular courts in Alexandria during the late nineteenth and early twentieth centuries were more consistent about citing law codes (Hanley, “Foreignness and Localness in Alexandria, 1880-1914,” 179).

\(^{33}\) This will be explored further throughout the chapter. See also Antoine Acquaviva, *La condition civile des étrangers au Maroc* (Montpellier: Imprimerie Mari-Lavit, 1936), 38.

\(^{34}\) The Morocco Order in Council (Lourde, “Les juridictions consulaires,” 24). A similar code for the Ottoman Empire was first promulgated in 1844 (called *The Ottoman Order in Council*), and then revised in 1873, 1899, and 1910: see Hanley, “Foreignness and Localness in Alexandria, 1880-1914,” 180-1.


\(^{36}\) To the best of my knowledge, the fact that Jews could be sent to a beit din was not mentioned explicitly in any of the treaties. However, as will be discussed below, Jewish courts continued to have some jurisdiction over cases involving foreigners. See especially FO, 631/3, Carstensen to Hay, 21 November 1866 (in which a British subject sued Rabbi Yahya Ben Sassi and his brother Aharon in the beit din of Mogador, and then appealed the decision to the beit din of Tangier): FO, 631/5, Beaumier to White, 10 September 1874 (in which the local Makhzan authorities sent a case concerning a Muslim woman who had pressed charges against Ḥaim Assor, a British subject, to the beit
rule, specifying that any case involving a French subject or protégé could only be tried by a Makhzan official and not by a qāḍī in order to avoid the perceived bias of sharī‘a courts.\footnote{Ibid., 17. Interestingly, both the British treaty of 1856 and the Spanish treaty of 1861 specified that British and Spanish subjects could be judged in a qāḍī court (see Mūdirīyat al-Wathā‘iq al-Mālikīya, Al-Wathā‘iq, v. 4, 148-9, 77-8). However, both British and Spanish consular officials seem to have thought that their treaties explicitly excluded the qāḍī from jurisdiction over commercial matters. See, e.g., AGA, M 9, 81/9, “Estado de los créditos consignados en documentos pura y esencialmente comerciales, que, según el texto español del parrafo 2do del Artículo 11 del Tratado de Comercio, no pertenecen a la jurisdicción del Kadi (Shra),” no date (from 1874-5); FO, 631/3, p. 125b-126a, Carstensen to Hay, 8 June 1868 (in which Carstensen asked Hay to remind Muhammad Bargāsh that purely commercial matters were not to be sent to the qāḍī).}

However, this rule, too, was often observed only in the breach. Various French consular officials wrote to the Ministry of Foreign Affairs in Paris complaining that French subjects were being sent to sharī‘a courts against the stipulations of the treaties.\footnote{MAE Courneuve, C.P. Maroc 37, Tissot to de Rémusat, 1 June 1871, 13 July 1871, and 12 August 1871; MAE Nantes, Tanger A 157, Tissot to Decazes, 11 September 1873. See also MAE Courneuve, C.P. Maroc 53, Féraud to Florens, 9 June 1887 (in which Féraud explained the need to set up “mixed” courts to rule on commercial matters since the qāḍīs were not qualified to do so). We also find complaints against such infractions from a British consul, despite the fact that the British treaty gave qāḍīs jurisdiction over British subjects and protégés in some cases: the qāḍī of Essaouira, about whom Carstensen had complained frequently during the years 1865-70, was eventually replaced by one whom Carstensen dubbed “impartial in his judgment of Christians, Moors, and Jews....” (FO, 631/5, p. 64a-65a, Carstensen to Hay, 13 March 1873). Unsurprisingly, Carstensen did not complain about British subjects having to appear before the new qāḍī.}

In 1799 Spain modified the status quo established by the French treaty of 1767 by specifying that any case in which a Spanish subject was the defendant would be tried in a Spanish consular court.\footnote{Lourde, “Les juridictions consulaires,” 20-1.} However, this innovation was limited to Spain; other nations continued to follow the rule that foreign subjects and protégés would be subject to Moroccan jurisdiction if the case involved a Moroccan subject.

The 1856 treaty with Great Britain marked a watershed in Morocco’s relations with foreign powers. Most importantly, by expanding the scope of free trade in Morocco this treaty ushered in an era of even greater European influence.\footnote{On this treaty see Ben-Srhir, Britain and Morocco, 24-61.} It also further enlarged the jurisdiction
of consular courts by specifying that the legal status of the defendant would determine the jurisdiction of cases involving Moroccan subjects (*actor sequitur forum rei*).\(^4^1\) Although the Spanish had introduced this principle half a century earlier, it was only after 1856 that other nations adopted it as well.\(^4^2\) Hereafter, if a Moroccan plaintiff sued a foreign national or protégé, the case would be tried in the appropriate consular court. When a foreign national or protégé wanted to sue a Moroccan subject, however, he would still have to appeal to the Moroccan authorities, although his consul retained the right to be present at these trials. Criminal cases generally followed the same jurisdictional guidelines outlined above, with minor exceptions for cases in which a Moroccan was accused of killing a foreigner.\(^4^3\) However, murder trials were relatively rare; most criminal cases involved theft, and even those were far outnumbered by civil cases.

In some instances, special “commercial tribunals” were set up to rule on strictly commercial disputes in which foreign subjects and protégés were involved; the local Makhzan official presided over these courts, which were also composed of the consul concerned, merchants (foreign and Moroccan), and sometimes *umanā’* (tax and customs officials) or a

\(^{41}\) Ibid., 51-2; Kenbib, *Les protégés*, 49; Lourde, “Les juridictions consulaires,” 21-2. This was specified in Article Nine of the treaty (see Mūdirīyat al-Wathā’iṣ al-Mālikīya, *Al-Wathā’iṣ*, v. 4, 148-9).


\(^{43}\) See the letter from Aymé d’Aquin, the French ambassador, to Muhammad Bargāsh, the sultan’s minister of foreign affairs, proposing that in cases where Moroccan subjects were accused of murdering French subjects, the trials would take place in Tangier and be judged by the Makhzan’s minister of foreign affairs along with two other officials. The French minister would also be present, and all testimony would be recorded by ‘udūl but signed by the governor (and not the qāḍī, presumably in order to maintain the secular nature of the proceedings): MAE Nantes, Tanger A 158, Aymé d’Aquin to Bargāsh, 7 Sha’bān 1282 (26 December 1865). The Spanish minister seems to have made the same proposal in a nearly identical letter to Bargāsh dated July 1865. See also MAE Courneuve, C.P. Maroc 53, Féraud to Florens, 12 September 1887. On criminal cases generally, see also Lourde, “Les juridictions consulaires,” 28.
rabbi. british consuls reported that local makhzan officials were not referring cases to commercial tribunals, suggesting that these special courts did not always run as smoothly as they were intended to. the commercial tribunals did not consistently keep archival records, which makes it difficult to say much about how they functioned. nonetheless, the very fact of their existence suggests a significant interweaving of consular and moroccan jurisdiction.

in 1880, the conference of madrid introduced some relatively minor modifications to the status quo. during the years preceding the conference, the makhzan’s frustration with the many abuses of the system of protection grew. due to the efforts of the makhzan and of some diplomatic officials (most notably the british ambassador, sir john drummond hay), the foreign powers with the strongest presence in morocco gathered for an international congress in madrid. although the makhzan’s hope was that the conference of madrid would significantly reform the nature of consular protection and the jurisdiction of consular courts, the resulting treaty did little to change the norm.

nonetheless, the conference of madrid had an impact on some aspects of the moroccan legal landscape. the ensuing treaty formally introduced the concept of moroccan nationality, a legal and political category first set down in international law in 1880. although in retrospect

44 FO, 631/3, carstensen to hay, 4 and 10 february 1869; FO, 635/4, p. 117b-118b, 5 february 1879. for cases in which umanā’ were present, see MAE Nantes, Tanger B 1002, dossier Edouard allard vs. Jacob hazan ben soussi, February 1888 and affaire israel lalouz, March 1888. for a case in which a rabbi was present, see MAE Nantes, Tanger A 161, “Scéances d’examen de créances,” 22 May 1887.
45 FO, 631/5, hay to hay, 10 january 1876. in addition, frederick carstensen (the british vice-consul in essouira) complained about the bias of certain qāḍīs against british subjects in commercial cases, despite the fact that such cases should not have been referred to the qāḍī court in the first place: FO, 636/3, p. 64a-65a, carstensen to hay, 23 June 1865, 8 June 1868, and 17 August 1868.
46 on the conference of madrid, see: Miège, Le Maroc et l’Europe, v. 3, 277-92; bowie, “the protégé system in morocco,” chapter 1; parsons, the origins of the morocco question; ‘abd al-wahhab ibn mansūr, Mushkilat al-ḥimāya al-qansuliyya bi-‘l-Maghrib (rabat: al-maṭbaʻa al-mālikīya, 1985), 77-114; kenbib, Les protégés, 57-66; Ben-Srhir, Britain and Morocco, 185-92;
47 Chouraqui, Condition juridique, 61; Bowi, “The Protégé System in Morocco,” 262-3. the naturalization clause in the treaty of madrid (article fifteen) was introduced in order to limit the numbers of moroccans who were naturalized as foreign subjects abroad and then returned to morocco as foreigners: “Every moroccan subject
an important moment in the history of the Moroccan state, the creation of Moroccan nationality did not practically alter the functioning of legal institutions in Morocco. More importantly, Article 11 of the treaty specified that legal matters related to real estate would be subject to the exclusive jurisdiction of the “laws of the country,” which effectively meant sharīʿa courts. (Part of the motivation for subjecting all cases involving real estate to sharīʿa courts was to better control foreigners’ acquisition of real estate in Morocco.) Between 1880 and 1912, few changes were made to the treaties regulating consular courts and their jurisdiction in Morocco.

The majority of cases involving protégés and foreigners were civil matters; unpaid debts and other financial disputes most frequently brought protégés to court (as with the cases examined in Chapters Two and Five). There were a limited number of criminal cases involving protégés, including a number of theft cases and some concerning murder (which were also naturalized abroad who shall return to Morocco must, after a period of residence equal in time to that which was legally necessary to obtain [foreign] naturalization, choose between his complete submission to the laws of the [Moroccan] Empire and the obligation to leave Morocco” (ibid., 262). On the context of this clause, see Marglin, “The Two Lives of Masʿud Amoyal.”

48 The full text of the article is as follows: “Le droit de propriété au Maroc est reconnu à tous les étrangers. L’achat de propriété devra être effectué avec le consentement préalable du gouvernement, et les titres de ces propriétés seront soumis aux formes prescrites par les lois du pays. Toute question qui pourrait surgir sur ce droit sera décidée d’après les mêmes lois, avec l’appel au Ministre des Affaires étrangères, stipulé dans le traité.” For a full text of the treaty, see the appendices in Ibn Mansūr, Mushkilat al-ḥimāya, 193-209. This article was introduced in order to ensure that foreigners had the right to buy real estate in Morocco, which had previously been limited or nonexistent (although there were certainly exceptional cases in which foreigners were able to acquire property: see Kenbib, Les protégés, 95-6).

49 This was especially important given the large number of cases concerning ḥubs properties, that is, pious endowments that were managed by an appointed official known as the nāẓir. For a clear indication that Makhzan officials wanted to prevent foreigners from owning property, see, for example, DAR, Tetuan, 1226, Muḥammad b. Ahmad al-Khadar to Mawlāy Ḥasan, 15 Jumādā II 1298.

50 Another article in the Treaty of Madrid had a limited effect on protection: Article Five stipulated that shaykhs and other Makhzan officials could not become protégés. However, this had little effect on the overall system regulating consular jurisdiction.

51 See, e.g., DAR, Tetuan, 1215, Muḥammad b. Ahmad al-Khadir to Muḥammad Bargāsh, 29 Rabiʿ II 1296; DAR, Meknes, ?? to Governor of Meknes, 8 Rajab 1296; DAR, Himāyāt, Tūrīs to Mawlāy Ḥasan, 10 Shawwāl 1301; DAR, Rabat/Salé, 16841, Green to Muḥammad Tūrīs, 30 August 1889/ 3 Muharram 1307.

52 DAR, Himāyāt, Tūrīs to Mawlāy Ḥasan, 10 Shawwāl 1301; DAR, Fez, 26405, Montfraix to Muḥammad Tūrīs, 26 Ramaḍān 1302.
similar to those cases recorded in the Ministry of Complaints registers). Questions of personal status (such as marriage, divorce, and inheritance) almost never came before consular courts, although there are a few exceptions which prove the rule.

The regulations that governed cases involving protégés were fairly straightforward. However, confusion about the rules and deliberate rule-breaking often made cases more complicated than they might otherwise have been. The simplest cases were those involving subjects or protégés of the same state, which were adjudicated by the consul of the country concerned. Yet most cases involved subjects or protégés of different states, which meant that the jurisdiction of the case was decided by the nationality of the defendant (after 1856). Moreover, there were instances in which consuls agreed to overlook jurisdictional guidelines, for example by trying cases involving a defendant who was a protégé in a Makhzan or shari'a court.

For the British, and later the French as well, a plaintiff with foreign nationality or protection could not press charges directly, either at a consulate if the defendant was a protégé or in a shari'a or Makhzan court if the defendant was a Moroccan subject. Rather, British subjects

---

53 In addition to theft and murder cases, other criminal charges either brought by or made against protégés and foreigners also surface in the consular archives. See, e.g., FO, 631/1, p. 26b, 25 August 1832 (in which the qā'id of Tetuan imprisoned and gave 200 lashes to a Moroccan Jew who was accused of insulting a British subject, also a Jew).

54 See, e.g., FO, 174/221, p. 67, 18 March 1850 (the registration of the marriage of Judah Leon and Hamaa Benzaquen in the chancellery of the British consulat); FO, 631/2, p. 107b-108a, 1868 (a marriage solemnized at the British vice consulate between Job Jean Dahan and Rahma Nahon); USNA, Reg. 84, v. 001, 22 November 1864 (which concerns an order by the American vice-consul in Essaouira that Moshod Sabah “keep the peace to the Public and towards his wife….”). Finally, there is some evidence that Muslims used consular courts for personal status issues: see, e.g., MAE Nantes, Tanger F 2, 20 August 1895 (in which Fatma Asseuwi was granted a divorce by the French consular court in Tangier).

55 In some instances determining the nationality of the defendant proved challenging, such as in a case from 1876 in which the umanā’ of Essaouira wanted to press charges against the British agent of a Spanish firm. The British consul in Essaouira, R. Drummond Hay (John Drummond Hay’s son), reported that he had sent the case to the Spanish consular court, presumably because the principal on which the British subject was trading belonged to Spanish subjects (FO, 631/5, R. Drummond Hay to John Drummond Hay, 10 December 1876).

56 See, e.g., FO 636/2, 3 November 1909, p. 38b, in which the British and American consuls in Tetuan agreed to send a case in which the defendant was an American protégé to a Makhzan court. See also Lambert v. El-Hasnaoui; Lambert was a French subject suing al-Hasnawi, a British protégé, but the French consul suggested that the matter should be adjudicated in a shari’a court (Caillé, “Un procès consulaire à Mogador,” 339).
were required to notify their consular authorities, who would in turn initiate legal proceedings.\textsuperscript{57} This meant that if a British protégé wanted to bring a lawsuit against a Moroccan subject, he could not go directly to the qāʾid or qāḍī; rather, he had to go through the nearest British consul, who would write to the appropriate Moroccan legal authority.\textsuperscript{58} In 1872 Accan Levy, an interpreter at the British consulate in Essaouira, was dismissed from his post for violating just this rule. British subjects and protégés bribed Levy to take their legal cases directly to the Moroccan authorities, bypassing the British consul entirely.\textsuperscript{59}

In 1879, Mawlāy Ḥasan made this procedure standard for all of Morocco, ruling that foreign subjects and protégés must go through their consular representatives in order to bring cases before Moroccan legal authorities.\textsuperscript{60} While the foreign consuls nominally accepted this new rule, it was not consistently followed.\textsuperscript{61} French subjects and protégés in particular tended to apply directly to the competent Moroccan court. Only if their initial efforts failed did they apply to their consul, who would then intervene with the local Makhzan official or the qāḍī.\textsuperscript{62} For instance, in 1884, Haim Herkoz, a French protégé, wrote to Ordega, the French ambassador to Morocco.\textsuperscript{63} Herkoz explained that he was robbed while staying in a duwār (a small village) in the Dukkāla region. He initially appealed to the local qāʾid for compensation; when that was unsuccessful, he wrote directly to the sultan. After he had tried and failed to resolve his case

\textsuperscript{57} For an explanation of this rule, see, e.g., FO 631/7, p. 3b-4a, 21 April 1879.
\textsuperscript{58} In some cases, the requirement of going through one’s consular official extended even to informal resolutions among parties. See, for instance, DAR, Ḥimāyāt, Mūsā b. Aḥmad to ʿAbdallāh b. Aḥmad, 14 Rabī’ I 1295, in which Mūsā explained that a Jewish protégé (he does not specify of which state) and his Muslim associate had settled a legal dispute out of court, but that the Jew insisted that he had to get the permission of his consul (who was temporarily absent) before they signed the agreement.
\textsuperscript{59} FO, 635/4, Public Acts, Mogador, p. 32a-b, 11 April 1872. This episode is discussed further in Chapter Eight.
\textsuperscript{60} See, e.g., Mawlāy Ḥasan to Muḥammad Bargāsh, 10 Rabī’ I 1296, in Mūdirīyat al-Wathāʾiq al-Mālikīya, Al-Wathāʾiq, v. 4, 452-3.
\textsuperscript{62} Although this is the procedure which I surmised from reading the French consular archives, I have yet to find explicit instructions outlining these rules.
\textsuperscript{63} MAE Nantes, Tanger A 161, Herkoz to Ordega, 18 August 1884.
both at the local and state level did Herkoz write to the French minister as a “last recourse,” requesting that Ordega write to the Makhzan authorities and ensure that they pursued his case.\(^{64}\)

A slightly different rule existed for cases involving real estate, which were subject to the jurisdiction of the sharī‘a courts after 1880. In such cases, plaintiffs had to appeal to the consulate of the defendant if they wanted to press charges against a foreign subject or protégé. The consulate would then send the case to the sharī‘a court to be judged by a qāḍī.\(^{65}\)

As mentioned above, the capitulation treaties included the provision that foreigners who pursued cases in a Moroccan court had the right to have their consul (or another diplomatic representative) present. Yet this rule, too, was often disregarded; in 1868, the British vice consul in Essaouira, Fred Carstensen, wrote to the pasha of the city concerning a case in which a British subject (Omar el Kessool [sic]) was suing a Moroccan subject. Carstensen complained that the case had gone to the sharī‘a court without any British representative present.\(^{66}\) Although Carstensen clarified that “our desire is to settle the matter in the sharī‘a court,” he insisted that a British representative (literally, “one of our friends (aṣḥābinā)”) be in attendance.

Despite the apparent clarity of the rules governing procedure for disputes involving foreign subjects or protégés, the reality of Morocco’s legal system meant that cases often played out in ways that deviated from official guidelines.\(^{67}\) Consuls and Makhzan officials sometimes

---

\(^{64}\) There are a number of similar letters from French protégés to Ordega from September and October 1884 (see, e.g., MAE Nantes, Tanger A 161, Joseph Cohen to Ordega, 2 September 1884). This suggests that Ordega informed French subjects and protégés that they should write to him if they had any claims pending with the Moroccan authorities; this was in preparation for a demand that the Makhzan pay indemnities for a number of French reclaims (which was settled in October 1884: see Miège, *Le Maroc et l’Europe*, v. 4, 63-4). See also MAE Nantes, Tanger A 164, Ben Malka to le Comte d’Aubigny, 28 July and 30 August 1892.

\(^{65}\) For an example of a case in which a Moroccan subject applied directly to a qāḍī for a real estate suit she had against a French subject, see MAE Nantes Tanger B 1325, Dossier Azancot v. Elazar, 1891-1892. In this instance, the qāḍī refused to hear the case since it had not been sent to him by the French consul.

\(^{66}\) DAR, Himāyāt, 15048, Carstensen to al-Hājj ‘Amāra b. ‘Abd al-Sādiq, 24 Rabī‘ I 1285/ 15 July 1868. See also FO, 631/3, Carstensen to Hay, 17 August 1868.

\(^{67}\) This is part of what makes it difficult to determine whether other states followed the British or French procedure for filing cases.
dealt with cases by means other than convening the parties in trial. That is, Makhzan officials “settled” cases involving foreigners, much in the same way they settled cases sent to the Ministry of Complaints. If a foreign subject or protégé claimed that he was owed outstanding debts, the Makhzan official would be asked to ensure that the debtors paid what they owed, using many of the same techniques discussed in Chapter Five.\textsuperscript{68} However, unlike with debts owed to Moroccan subjects, consular officials periodically pressured the sultan into paying outstanding debts owed to foreign subjects and protégés himself, directly out of the Makhzan’s treasury.\textsuperscript{69} Given the difficulty of recovering unpaid debts in nineteenth-century Morocco, this was undoubtedly one of the greatest advantages of acquiring foreign protection or nationality.

In many cases involving foreign subjects or protégés and Moroccan subjects, the consul concerned wrote a letter to a Makhzan official asking for his help in making sure the protégé could successfully pursue his case.\textsuperscript{70} For instance, on December 13, 1880, Charles A. Payton, the British consul in Essaouira, wrote to al-Ḥājj ‘Amāra b. ‘Abd al-Sādiq, governor of Essaouira, concerning debts owed to the Jews Yeshu’a and Moshe Pinto, both British protégés.\textsuperscript{71} Payton informed ‘Amāra that the Pinto brothers were owed debts by their business associate in Marrakesh, but that the governor of Marrakesh falsely claimed that the debtor had already paid. Payton asked ‘Amāra to write to the governor of Marrakesh asking him to make sure that the Pinto brothers were paid in full. In this instance, as in many others, Payton did not initiate a

\textsuperscript{68} These included imprisoning the debtors and confiscating their goods. See, e.g., DAR, Fez, Saʿīd b. Farajī to Mawlāy Ḥasan, 6 Ramaḍān 1301; 28800, ‘Abdallāh b. Ahmad b. Muḥammad b. al-ʿArabī, 21 Ramaḍān 1301; BH, K 551, p. 52, 28 Jumādā II 1307; p. 58, 21 Rajab 1307; p. 82, 30 Ramaḍān 1307; p. 85, 11 Shawwāl 1307.

\textsuperscript{69} Kenbib, \textit{Les protégés}, 96.

\textsuperscript{70} There were also instances in which individual foreign subjects or protégés wrote to the Makhzan asking for help in settling their legal claims, but this was more infrequent. See, e.g., DAR, Marrakesh, Juan Damonte to Aḥmad b. al-Ṭāhir, 28 Muḥarram 1282.

\textsuperscript{71} DAR, Marrakesh, 17247, Payton to al-Ḥājj ‘Amāra, 13 December 1880.
formal lawsuit against the Pinto brothers’ debtor; rather, he alerted the local Makhzan authority
with the aim of enlisting the help of another Makhzan official in Marrakesh.\(^72\)

It was in the Makhzan officials’ interest to comply with consuls’ requests for help settling
the legal claims of foreign subjects and protégés in order to avoid confrontations between foreign
states and the Moroccan government. As Muḥammad Bargāsh, the Moroccan minister of foreign
affairs, instructed the governor of Fez in 1876, “do not create quarrels for us with this nation or
with any other nations (lā taj’al lanā mushāhanata ma’a hādhā al-jinsi wa-lā ma’a ghayrihi min
al-ajnās).”\(^73\) In order to avoid such quarrels, Bargāsh instructed the governor to make sure that
“everyone got their due (fa-kullu wāḥidin yatawaṣṣalu bi-ḥaqiqihi).” However, naturally the
resolution of claims was not always swift, and sometimes produced large volumes of
correspondence among consular and Makhzan officials. This was the case with Masʿūd Ibn al-
Bahār (whom we encountered in Chapter Five), whose efforts to collect his unpaid debts dragged
on over a number of years.\(^74\)

\(^72\) DAR, Fez, 32553, Guagneus to Muḥammad b. al-Madānī Banīs, 4 Jumādā I 1290; DAR, Safi, Ya’aqov b. Zakar
to Ibn Hīma, 25 Safar 1295/ 28 February 1878 (in this case Ya’aqov was actually trying to recover debts owed to
him by the customs officials of Safi, but as the American consul in that city he wrote directly to the governor); DAR,
Marrakesh, Makhluf al-Harār to Muhammad Wīda, 16 Jumādā II 1314. In some cases, the archives preserve letters
written among Makhzan officials at the request of foreign consuls. See, e.g., DAR, Marrakesh, al-Mahdī b. al-
Mushāwarī to Ahmad b. al-Ṭāhir, 28 Jumādā I 1282; DAR, Tetuan, 1215, Muḥammad b. Ahmad al-Khaḍar to
Muḥammad Bargāsh, 29 Rabī’ II 1296; DAR, Meknes, ?? to Governor of Meknes, 8 Rajab 1296; 33480,
Muḥammad Bargāsh to Ḥammū b. al-Jilālī, 26 Rabī’ II 1301; BH, K 551, p. 71, 3 Ramaḍān 1307:

\(^73\) DAR, Fez, 5978, Muḥammad Bargāsh to al-Ḥājī Sa’īd b. al-Qādir Farajī, 17 Jumādā I 1293.

\(^74\) See especially BH, K 551, p. 41, 19 Jumādā I 1307; p. 74, 15 Ramaḍān 1307; p. 79, 25 Ramaḍān 1307; p. 83, 4
Shawwāl 1307; p. 85, 11 Shawwāl 1307; p. 90, 10 Dhū al-Qa’da 1307; p. 93, 28 Dhū al-Qa’da 1307. See also DAR,
Fez, 730, Mawlāy Ḥasan to ʿAbdallāh b. Ahmad, 26 Rajab 1301; Sa’tīd b. Farajī to Muḥammad b. al-ʿArabī, 15
Muharram 1302; BH, K 171, p. 80, 4 Shawwāl 1307; BH, K 181, p. 201, 17 Dhū al-Qa’da 1309. Although it is not
clear whether Ibn al-Bahār ever collected the money he was owed, it is likely that research in the Portuguese
archives would provide information as to the resolution of Ibn al-Bahār’s claims. For an example of a similar claim
concerning theft, see the correspondence regarding the Nahon family from Salé: BH, K 551, p. 52, 28 Jumādā II
1307; p. 58, 21 Rajab 1307; p. 82, 30 Ramaḍān 1307; p. 83, 5 Shawwāl 1307; p. 87, 24 Shawwāl 1307 (two entries).
In this case, the Nahon brothers (who were foreign protégés, though it is not clear of what state) did receive
compensation for the goods they claimed had been stolen from them.
In other instances, consuls wrote to Makhzan officials with specific requests that a trial be initiated; this was especially common in criminal cases. For instance, in 1879, Muḥammad b. Ḥāmid al-Khaḍir, a Makhzan official in Tetuan, wrote to Muḥammad Bargāsh concerning the theft of property belonging to a Spanish protégé, Shalom b. Ḥārush. Shalom had sent some gold thread (ṣqalī) to Fez through a messenger (raqāṣ), but later learned that the messenger had instead sold the gold thread for his own profit in al-Kasr al-Kabir, a city in northern Morocco. Shalom’s consul pressed the local officials to produce compensation for the stolen goods. Khaḍir convinced the governor of al-Kasr to bring the seller (presumably the messenger) and the buyer of the thread to court; the governor ruled that they must return the thread to Ḥārush. The Spanish consul was mollified once assured that his protégé would be compensated for his loss.

In 1871-2, consular and Makhzan officials experimented with a new type of legal institution with jurisdiction over foreign nationals and protégés. They convened a “mixed court” to examine and judge claims made by foreign subjects and protégés concerning unpaid debts that they were owed by “shaykhs and governors,” that is, Makhzan officials and rural administrators. This mixed court, which has yet to be discussed by scholars, was largely an

---

75 However, for an instance in which the consul requested a trial for a civil case (a matter of unpaid debts), see USNA, Register 84, v. 29, Corcos to al-ʿArabī Faraj, 28 Rajab 1300/ 4 June 1883.
76 DAR, Tetuan, 1215, Muḥammad b. Ḥāmid al-Khaḍir to Muḥammad Bargāsh, 29 Rabīʿ II 1296.
78 In fact, originally the Spanish consul suggested that the amīn al-raqāṣ (postmaster) should pay the indemnity, but al-Khaḍir’s representative explained that the messenger’s only responsibility was to carry letters, and thus that the postmaster could not be held responsible since Shalom had asked the messenger to transport goods.
79 It seems that when this letter was written the thread had still not been returned to Shalom, as Khaḍir asked Bargāsh to make sure that Shalom received the compensation due to him. For more such cases, see DAR, Fez, 33858, Mawlāy Ḥasan to Saʿīd b. Faraj, 9 Muḥarram 1300; DAR, Ḥimāyāt, Muḥammad al-Ṭūris to Mawlāy Ḥasan, 10 Shawwāl 1301; DAR, Yahūd, 8539, Muḥammad al-Ṭūris to Ḥammu b. al-Ḥilālī, 15 Dhū al-Ḥijja 1311.
80 The main documentation for this mixed court comes from the court’s records, found in AGA, Caja M 9, Exp. no. 1 (81/9), Diario de los Sesiones de la Comisión Mixta Internacional (libro primero y segundo), and the record book of the Tribunal Marroquí, 1871-2.
exception to the normal functioning of consular courts in Morocco. Nonetheless, it represents an important episode in the legal history of Morocco that reveals much about how consular jurisdiction worked. The Moroccan mixed court came out of an agreement between the Makhzan and the diplomatic representatives of Spain, the United States, France, Great Britain, Italy, and Portugal. It resembled the commercial tribunals set up to hear claims of a purely commercial nature, but on a much larger scale. Rather than having such claims settled on an individual basis, these six states worked together to form an international tribunal whose purpose was to definitively address the unpaid debts owed to their subjects.

The court actually consisted of two different tribunals which both met in Tangier. The first, called the “International Mixed Commission” (Comisión Mixta Internacional), initially convened on October 10, 1871 and was composed of the ambassadors representing the six participating nations, with no Moroccan legal authorities present. The commission was responsible for examining the claims presented by individual foreign nationals or protégés. This involved inspecting the supporting evidence presented, which mainly consisted of bills of debt. The claims of each individual were recorded in a “diario,” which included a description of every supporting document presented and the amount claimed. On October 31, for instance, Yuda Hasan (Yehudah Ḥasan), the representative of Avraham Migran of Safi (a Jew with Swedish protection), presented four documents: a document “authorized by two ‘udūl and legalized by the

---


82 In fact, Mawlāy Muḥammad initially wanted the tribunals to meet in Azzemour, but the consuls refused because it would be too difficult for them and the merchants making claims to travel there: see Muhammad Bargāsh to Mawlāy Muḥammad, 29 Ṣafar 1288, and Mawlāy Muḥammad to Muḥammad Bargāsh, 24 Rabī’i 1288, in al-Wathā’iq al-Mālikīya, *Al-Wathā’iq* v. 4, 390-4.

83 See the first page of AGA, Caja M 9, Exp. no. 1 (81/9), Diario de los Sesiones de la Comisión Mixta Internacional, libro primero.
qāḍī” attesting a debt owed to Migran by the qā’id El Ham Ben Ham El Harari El Faryani for “406 Napoleons of sugar, tea, etc., dated 27 Dhū al-Qa’da 1283 (2 March 1867).”84 The entry included three more bills of debt owed by Faryani to Migran, two legalized by ‘udūl and one signed only by Faryani himself.85 Judah returned with more claims on Migran’s behalf on November 2, 7, 9, 14, and 16.86 There were twenty-nine such sessions in all, the last one held on January 18, 1872.87 The commission examined a total of 149 documents presented by twenty-three foreign subjects and protégés—eleven of whom were Jewish—from all six participating states (in addition to Migran the Swedish protégé).

Alongside the work of the commission, Makhzan officials convened a “Moroccan Tribunal” (Tribunal Marroquí) to rule on the claims presented by foreign subjects and protégés. The qāḍī of Azzemour, Aḥmad b. al-Ṭālib b. Sūda,88 presided over the tribunal. The other legal authorities present were the muftīs ‘Abdallāh al-Bagrāwī89 and ‘Abd al-Salām b. Hamū (or Ḥasūn, or Ḥasam) al-Wazzānī,90 the qāḍī of Rabat Muḥammad b. Ibrāhīm,91 and two unnamed

84 AGA, Caja M 9, Exp. no. 1 (81/9), Diario de los Sesiones de la Comisión Mixta Internacional, libro primero, p. 20. Note that the Hijrī date actually corresponds to 2 April 1867; it is likely that the Hijrī date was correct and that someone made an error in converting it to the Gregorian calendar.
85 These were from 5 Rabī‘ II 1284 (6 August 1867), and two from 17 Dhū al-Qa’da 1283 (23 March 1867, though mistakenly recorded as 22 April 1867) (p. 21-2).
86 AGA, Caja M 9, Exp. no. 1 (81/9), Diario de los Sesiones de la Comisión Mixta Internacional, libro primero, p. 23-7, 30-8, 43-5, 47-50.
87 AGA, Caja M 9, Exp. no. 1 (81/9), Diario de los Sesiones de la Comisión Mixta Internacional, libro segundo, p. 102.
89 Abū Sālim ‘Abdallāh b. Idrīs b. ‘Abdallāh al-Bagrāwī (d. 29 Dhū al-Hijja 1316/ 10 May 1899) was from an important Fāsī family and was known as one of the great scholars of his day. He lived and taught in Fez his whole life. See al-Fāsī, Mu’jam al-shuyūkh, 220-2. See also Berque, L’intérieur du Maghreb, 492.
90 See the brief mention of him as participating in the Mixed Tribunal in al-Fāsī, Mu’jam al-shuyūkh, 81, 221.
91 See the brief mention of him as participating in the Mixed Tribunal in ibid.
‘udūl (“notaries publicos”). Finally, the qāḍī of Tangier, al-‘Arabī, attended when the other jurists deemed his help necessary.\textsuperscript{92} In addition, all the foreign states participating in the Mixed Court sent a representative. The tribunal held its first meeting on November 23, 1871, and met five times between then and its last meeting on June 27, 1872. It ultimately failed to resolve any claims, although it is not clear whether the Moroccan jurists deliberately sabotaged the effort or whether it simply proved too difficult to align the consular and Islamic legal systems effectively. Yet the consuls were convinced that the tribunal had failed due to the Muslim jurists’ bad faith. They wrote a scathing letter of complaint to the sultan explaining why they were no longer willing to participate in the mixed court:

The undersigned, after a detailed and mature examination of each of the cases which was presented, have become firmly convinced that it is impossible to get justice for their nationals by applying the Muslim laws (the sharī‘a) in the decision of these claims.\textsuperscript{93}

After the mixed court project fell apart, the jurisdictional guidelines regulating the functioning of consular courts reverted back to the status quo. However, the proceedings of the Moroccan Tribunal and the difficulties encountered there were, in many ways, a microcosm of the interactions among consular and Islamic courts throughout the nineteenth century and something of a turning point in consular officials’ relationship with Moroccan legal institutions, as discussed in the following chapter.

\* \* \* 

The treaties and laws governing the jurisdiction of consular courts and the procedures they followed tell only part of the story. Consular courts’ day-to-day functioning and the impact of foreign diplomats on Moroccan politics were far more complex than these treaties suggest.

\textsuperscript{92} AGA, Caja M 9, Exp. no. 1 (81/9), Record book of the Tribunal Marroquí, p. 1.

\textsuperscript{93} “En ellas los infrascritos, después de un detenido y maduro examen de cada uno de los casos que se iban presentando, han adquirido la firme convección de que es imposible alcanzar justicia para sus nacionales aplicando las leyes musulmanes (el Sharaa) a la decisión de estas reclamaciones,” AGA, Caja M 9, Exp. no. 1 (81/9), Declaration by the members of the International Commission, 12 July 1872.

292
The following two chapters examine how Jews turned to foreigners in their attempts to resolve legal disputes. Chapter Eight discusses Jews’ use of consular courts, arguing that Jews who acquired patents of protection did not definitively leave the jurisdiction of Moroccan courts (either sharī’a or Makhzan), but rather moved fairly fluidly among the various legal institutions in Morocco, including consular courts. Chapter Nine looks at how Jews petitioned foreign officials and international Jewish organizations when they felt their collective rights had been denied, arguing that Jews appealed to foreigners alongside their petitions to the Makhzan. Overall, these chapters argue that the spread of consular protection and the increasing political influence of foreign officials did not signify a dramatic transformation in the day to day legal lives of Moroccan Jews. While there is no question that Morocco’s legal system underwent profound transformations over the course of the nineteenth century, I argue that Jews’ quotidian interactions with legal institutions were characterized more by continuity than by change.
Chapter Eight: Jews, Muslims, and Foreigners in Consular Courts

Shalom Assarraf acquired a patent of protection from the United States in 1871. His status as a protégé afforded a number of advantages; exemption from taxation, the intervention of the American consular authorities on his behalf, and —theoretically, at least—the jurisdiction of the American consular court for all cases in which Shalom was the defendant. Yet the Assarraf collection preserves seven separate lawsuits in which Shalom was sued in the sharīʿa court of Fez while under American protection.

On January 31, 1880, the Muslim woman Zaynab bint Mulūk al-Qamrī sued Shalom as part of their ongoing legal dispute involving unpaid debts. Zaynab claimed that Shalom had taken two silver bracelets from her as security to ensure that her husband, who had guaranteed the debt, showed up in court. Shalom at first denied being in possession of the bracelets, but three weeks later—after Zaynab formally requested that he take an oath to this effect—Shalom acknowledged that he had acquired the two bracelets as security. He eventually returned the bracelets to Zaynab, and she had ‘udūl draw up a formal writ of release to that effect.

Four years later, on June 29, 1884, a Muslim named al-Ṭayyib b. Aḥmad al-Jāmiʿī sued Shalom on behalf of Aḥmad b. Qudūr al-Qamrī. Al-Ṭayyib claimed that Shalom had taken a red, female mule which belonged to Aḥmad, and that Aḥmad wanted the mule back. Shalom seemed not to have remembered the incident and in court the next day he asked al-Ṭayyib to...
clarify when and why he had taken the mule. Al-Ṭayyib responded that about a year ago Shalom had taken the mule to ride it, but that even when he had asked for its return Shalom had delayed. Shalom then declared that he denied the charges, to which al-Ṭayyib responded that he wanted Shalom to take an oath to that effect. We do not know the outcome of this case or the fate of the disputed red mule. But these unknowns do not change the fact that Shalom was sued in a shari‘a court after he acquired American protection.

Suing a protégé in shari‘a court was contrary to all the stated rules of jurisdiction outlined in Morocco’s treaties with foreign nations; according to these agreements, anyone (whether a Moroccan subject, foreigner, or protégé) who wanted to sue Shalom should have brought the case to the American consular court in Tangier. Yet as noted in the previous chapter, these rules were often observed in the breach. Perhaps the contracts which formed the basis of the above lawsuits included the “protection clause,” that is, a statement saying that the creditor would not claim foreign protection and any dispute would be adjudicated in a shari‘a court. Even if this was the case, such a clause would have violated the jurisdictional boundaries established by the relevant treaties.

Shalom’s experience points to a larger truth about the nature of protection and consular courts in Morocco; on the one hand, protégés like Shalom did not frequent consular courts exclusively once they obtained patents of protection. On the contrary, shari‘a courts (as well as batei din and Makhzan courts) remained important in the daily lives of even those Jews who had

---

6 See entry dated 6 Ramaḍān 1301.
7 See entry dated 7 Ramaḍān 1301. In fact, al-Ṭayyib did not recall when Shalom had taken the mule until two weeks later: see entry dated 21 Ramaḍān 1301.
8 Recorded in two separate entries dated 22 Ramaḍān 1301.
9 For the other cases, see TC, File #2, 29 Dhū al-Qa‘da 1291; File #5, 15 Rabī‘ II 1292; File #5, 9 Dhū al-Qa‘da 1292; File #8, 12 Jumādā I 1296; File #7, 12 Dhū al-Qa‘da 1297.
10 I discuss this clause in Chapter Two. Since we do not have the original contracts which formed the basis of these lawsuits, it is impossible to know for sure whether this clause was included.
acquired foreign protection or nationality. On the other hand, because individuals in Morocco were constantly moving among Islamic and consular courts, the nature of law as applied in consular courts became influenced by Islamic legal practice. This legal convergence between Islamic and consular courts stood in tension with the continued reality that the two legal systems often offered different outcomes, and thus opportunities to engage in forum shopping.

The fact that Jews moved fluidly among Jewish, Islamic, and consular courts goes against the prevailing wisdom about Jews’ legal choices in nineteenth-century Morocco. By the late nineteenth century, many European Jewish activists and diplomatic officials argued that foreign protection was necessary to prevent Moroccan Jews from being subject to the inherent bias of Islamic courts.11 Subsequently, many historians adopted this line of reasoning and argued that Jews wanted to escape a discriminatory legal system for one which treated them as equals.12 These scholars see the progression from inequality to equality before the law as partly culminating under the French Protectorate, when Jews became exclusively subject either to Jewish courts or non-religious (and thus theoretically non-discriminatory) “native” courts.13

---


13 On the judicial status of Jews under the Protectorate, see Chouraqui, *Condition juridique*, especially 121-2. See also David G. Littman, “Mission to Morocco,” in *The Century of Moses Montefiore*, ed. Sonia Lipman and V. D.
Even scholars who argue against seeing consular protection as Jews’ savior from the bias of Islamic law have refrained from discussing how consular courts operated as legal institutions, focusing instead on consular protection as a stalking horse for European imperialism.\textsuperscript{14}

In what follows I offer the first study of the quotidian functioning of consular courts and the ways in which Jews used them on a day to day basis. I argue that Islamic legal norms and institutions were central to the ways in which consular courts administered the law. I further show that Jewish protégés did not flee the Islamic legal system for the supposed equality and impartiality of Western courts. On the contrary, Islamic (and Jewish) legal institutions continued to be relevant to the legal strategies of Jewish protégés. On the one hand, Islamic courts had jurisdiction over a large portion of legal affairs in Morocco, even for foreigners or those with foreign protection. On the other, many Jewish (and Muslim) protégés engaged in forum shopping, choosing Islamic courts over consular courts when doing so proved advantageous to their interests.\textsuperscript{15}

**Moroccan Legal Institutions and Consular Courts**

Although increasing numbers of Moroccans gained access to consular courts through the acquisition of foreign nationality or protection, this did not mean that they abruptly stopped using Islamic (and Jewish) legal institutions. On the contrary, Islamic law remained the default

---

\textsuperscript{14} On this critique, see Clancy-Smith, *Mediterraneans*, 200. For an example of this historiography, see Kenbib, “Structures traditionnelles,” and idem, *Les protégés*.

even for those with foreign protection or nationality, and Jewish law continued to apply to Jewish protégés in many cases. This meant that indigenous legal institutions retained an important role even for those individuals subject to consular jurisdiction. Despite the transformations brought about by the spread of protection and Moroccans increasing use of consular courts, continuity rather than change characterized law in Morocco before 1912.

Sharī’a courts continued to function as notary publics even for those Jews and Muslims who had access to consular courts. Although ‘udūl produced documents intended to function as legal evidence in sharī’a courts, notarization by ‘udūl became the common standard of proof in consular courts as well. This was first and foremost because so many of the protégés’ legal disputes involved Moroccan subjects; as we have seen, cases in which a Moroccan subject was the defendant fell under Moroccan jurisdiction. However, neither sharī’a nor Makhzan courts accepted evidence produced according to foreign law, just as they normally did not accept evidence drawn up according to Jewish law. Foreign nationals and protégés recognized this element of Islamic legal procedure relatively early on. In 1840, Marius Rey, a French subject, wrote to the French ambassador in Tangier concerning a contract he had signed with Solomon Benzecri, a Jewish Moroccan subject. Rey explained that he initially believed Benzecri was a British subject, since he described himself as a “merchant of Gibraltar, which implies the status and the rights of a businessman living in the said city [Gibraltar] who is subject to English law…. ” Rey thus drew up a commercial contract with Benzecri privately, confident that both French and British law would uphold the validity of such an agreement. Rey later discovered, however, that Benzecri was in fact a Moroccan subject, and that a Moroccan court would not

---

17 There were, however, instances in which Makhzan officials accepted Hebrew legal documents notarized by sofrim, but these were the exceptions to the rule: see the full discussion in Chapter Three.
18 MAE Nantes, Tanger A 138, Affaire Rey et Benzecri, 1840.
19 MAE Nantes, Tanger A 138, Rey to the Ambassador of France, 24 December 1840.
recognize their contract since “they only recognize contracts notarized by ‘udūl.”²⁰ Had Rey realized that Benzecri was a Moroccan subject, he clearly would have had their contract notarized by ‘udūl to ensure that it would be upheld under Islamic law.²¹

It was thus in the interest of foreign nationals and protégés to make sure that all their commercial transactions with Moroccan subjects were documented according to Islamic law. Indeed, this became the standard of legal proof regardless of nationality. Foreign subjects and protégés regularly brought their civil contracts to ‘udūl to be notarized for a wide variety of matters, including debts, partnerships, and real estate transactions.²² Protégés often emphasized the fact that their commercial documents were signed by ‘udūl in their attempts to press their legal claims with a consulate, thereby preempting any doubts that their case would not hold up in a sharī‘a court.²³ Jewish protégés even had their documents notarized by ‘udūl for intra-Jewish commercial exchanges. For instance, on July 19, 1882, Aaron b. Makhlūf Rabūḥ from Essaouira guaranteed the presence of his coreligionist Aharon b. Avraham Ohana to face the British subject Georges Broome; the legal document attesting to the guarantee was drawn up by ‘udūl in the sharī‘a court of Essaouira.²⁴

²⁰ “…elle ne reconnaît que les actes dresses par les adduls [sic]” (ibid.).
²¹ Others under foreign jurisdiction faced similar problems when they failed to notarize legal documents with ‘udūl: see, e.g., FO, 631/3, p. 139b-140a, Carstensen to Hay, 4 February 1869; FO, 631/7, p. 28b, David Corcos vs. Ester Penyer, 29 September 1879; MAE Nantes, Tanger A 161, ‘Abd al-Salām al-Swīsī to Craveri, 1 Jumādā I 1301/ 16 February 1885.
²² See, e.g., DNA, 2.05.119, Guagnins to Le Chevalier de Rappard, 26 July 1909. This letter concerns the dispute between Judah Castiel, a Moroccan Jew who worked as the official interpreter for the Dutch consulate in Larache (and thus had Dutch protection), and the Makhzan over a store that Castiel had been renting from the Makhzan for many years. In his claim, Castiel included a document notarized by ‘udūl which permitted him to make repairs on the disputed store (dated 13 Shawwāl 1326), and which, according to Castiel, justified his leasing the store at a higher rate than he was paying to the Makhzan for rent.
²³ See, e.g., MAE Nantes, Tanger A 161, Messaoud Ben Hlouz to Ordega, 28 February 1884 and Amsellem to Ordega, 1 Oct 1884; USNA, Reg. 84, v. 150, Coriat to Burke, 8 September 1896 and Coriate to Gummere, 9 February 1900.
²⁴ PD, 2 Ramaḍān 1299. See also a second notarized document from this collection, dated 3 Ramaḍān 1299, in which Georges Broome and Aharon b. Avraham Ohana came to a settlement concerning their business accounts. See also DAR, Marrakesh, 5 Rabī‘ II 1282 (in this document a Jew guaranteed the presence of another Jew, not in the court of a qāḍī but in that of the British consul in Essaouira).
Even foreigners used the services of ‘udūl to notarize their commercial transactions. The Englishman George Broome, for instance, had ‘udūl notarize a document attesting to his ownership of a female mule, green in color, in partnership with Aḥmad b. Muḥammad al-Māsī al-Ḥarātī. Broome took care to write a summary in English of the document in question on the back of a number of legal documents notarized by ‘udūl, probably since he was unable to read Arabic. This practice mirrors that of Moroccan Jews who wrote summaries in Judeo-Arabic or Haketia (Moroccan Judeo-Spanish) on the back of their Islamic legal documents in order to remind them of their contents.

Many documents notarized by ‘udūl were also registered in the consulate of the foreign subject or protégé concerned or counter-signed by his consul. As early as 1849, the prominent Muslim merchant Muḥammad al-Razīnī owed debts to a number of Christian merchants which were attested in legal documents signed by both ‘udūl and the relevant consuls. Later this sort of practice became more common; one finds many copies of Islamic legal documents in the chancellery records of foreign consulates, often with summaries or translations in the relevant European language. Undoubtedly these were recorded in consular chancelleries at the request of the foreign consulates.

---

25 A number of legal documents describe animals (especially donkeys and mules) as green; see the discussion of sales in Chapter Two.
26 PD, 15 Ramaḍān 1303. This document includes an interesting variation on the protection clause discussed in Chapter Two, specifying that “[Broome] accepts the jurisdiction of the shari’a if he becomes weak or destitute [that is, unable to uphold his end of the partnership] (ba’d an rādiya al-tājiru al-madhkūru dhimmata al-‘āmilī wa-ḥukmata al-shar’i idhā ḥaṣala da’fun aw ‘adamun lahu).” For other examples of (Christian) foreigners who used the services of ‘udūl to notarize their legal transactions, see, e.g., FO 635/4, p. 51a, 10 February 1875; MAE Nantes, Tanger A 160, Dossier Canepa, 1896; PD, 15 Dhū al-Qa‘da 1287 and 27 Sha‘bān 1320.
27 PD, 6 Muḥarram 1301 and 12 Jumādā I 1304. The first document records that a Jew, al-ḥazān Yahya, Broome’s legal agent, bought two cows from the Muslim ‘Abdallāh b. Muḥammad, and that another Jew, Shmuel b. Avraham b. Haim, guaranteed the sale for the buyer. On the back is written in English: “Purchase of 2 Bullocks, Nov. 6th, 1883. Old age.” The second document records a partnership between a Muslim named Ahmad and Broome “the Englishman.” On the back is written: “Feb 6th 1887, 1 cow with Hamed $15.”
28 See the discussion in Chapter Two.
29 DAR, Tetuán, 20868, Mawlāy ‘Abd al-Rahmān to ‘Abd al-Qādir Ash‘āsh, 3 Ramadān 1265.
30 See, e.g., FO, 631/7, p. 188a, 24 July 1912 (two copies of Arabic legal documents with no translations); USNA, reg. 84, v. 16, p. 29ff, 28 Dhū al-Qa‘da 1327; see also reg. 84, v. 39, legal deed in Arabic from 30 April 1898 (concerning Ion Perdicaris) and throughout.
of the individuals concerned. Presumably these Islamic legal documents were registered at consulates because they would also have held up as evidence in a consular court; notarization by ‘udūl became the gold standard for legal evidence even outside of sharī’a courts.

In addition to civil cases, Islamic legal documents were just as central to the functioning of consular law in criminal cases. The standard procedure for recording oral testimony in consular courts was to have a legal official from the witness’ nationality notarize the document. That is, a Spanish subject would record his testimony before a Spanish consul, a French subject before a French consul, etc. Muslim Moroccan subjects normally testified before ‘udūl, while Jewish Moroccan subjects usually testified before sofrim and/or a beit din. It was thus no surprise that in 1864, when the British subject Juan Damonte was attacked by a Muslim, a Jewish witness to the crime recorded his testimony before a beit din. In a case from Essaouira involving a missing case of pearls, ‘Umar b. Muhammad al-Kasūl, a Muslim Moroccan subject, testified before ‘udūl that he did not know anything about the whereabouts of the pearls. Avraham Bendahan, a British subject, swore to the same effect before the acting British vice-consul, and Bernardo Blanco, a Spanish subject, did so before the Spanish consul.

However, if the case were to be tried in a Moroccan court—which did not accept documents from consulates or batei din—it was often in the interest of foreign nationals and protégés to have their testimony recorded before ‘udūl. For instance, in 1909, the store of Judah

---

31 For French consulates, this practice probably fell under the regulations for “réception de dépôts de pièces”: Clercq and Vallat, Guide pratique des consulats, v. 1, 421.
32 FO, 631/3, William James Elton to John Drummond Hay, 1 March 1864. See also MAE Nantes, Tanger B 986, P. Achille Gambaro to Auguste Beaumier, 10 January 1870.
33 MAE Nantes, Tanger B 1002, 16 Rajab 1291.
34 The testimonies of Bendahan and Blanco, from 29 and 28 August 1874 respectively, were copied into the registers of the French consulate in Essaouira (in MAE Nantes, Tanger B 1002).
Castiel, a Jewish Dutch protégé, was broken into. As soon as Castiel realized what had happened, he summoned two ‘udūl as well as the Dutch consul. The ‘udūl proceeded to record his testimony and notarized it according to Islamic law. Castiel probably chose to record his evidence before ‘udūl because he suspected that the perpetrators were Muslim Moroccan subjects and that the case would be tried in either a Makhzan or a sharī‘a court, requiring evidence notarized by ‘udūl. It was particularly common for foreign subjects and protégés to submit Islamic legal documents in support of claims that their agents had been robbed. In a case from 1882, the French subject Joseph Bensimon, a Jew from Morocco living in Marseille, reported to the French Ministry of Foreign Affairs in Paris that the store of his agent in Fez had been robbed. Bensimon included a legal document signed by ‘udūl which recorded the testimony of the night guard who witnessed the theft.

Sharī‘a legal documents were used even in criminal cases in which the defendant was a foreign subject or protégé. For instance, in 1880, Jack b. Rūmīya, an English Jew, was accused of violently hitting Ḥaim b. Bakkash, a Jewish Moroccan subject living in Marrakesh. As an English subject, Jack could only be tried at the British consulate in Essaouira (the closest one to Marrakesh). Nonetheless, the local Makhzan officials had two ‘udūl draw up a legal document

35 DNA, 2.05.119, Guagnins to Rappard, 11 May 1909. Guagnins reported that the pasha came and instructed the ‘udūl to include in the document that there was a spider web in the space where the thieves supposedly entered, thus making it impossible that they could have actually got in; it seems, however, that the ‘udūl did not write this down.
36 The dossier includes a translation of this document, which was written on 21 Ṣafar 1327.
37 MAE Nantes, Tanger A 140, Ben Simon to Gambetta, 31 March 1882. It was unusual for a French subject to write directly to the Ministry of Foreign Affairs in Paris, rather than going through the local consul or the ambassador in Tangier. It is possible that Bensimon wrote directly to Gambetta because he was living in Marseille, and thus felt more connected to the officials in metropolitan France than to the French consular officials in Morocco.
38 USNA, Reg. 84, Box no. 1, Benatuil Case, 1901; v. 13A, Mimon Dahan to Toel, 18 August 1904; v. 150, Dossier of Mimon Dahan, 1907; MAE Nantes, Tanger B 487, G. Berenaudat to Malpertuy, 1909. For instances in which Islamic legal documents were used as evidence in cases of crimes against foreign subjects or protégés themselves (and not their agents), see: DAR, Safī, Italian consul in Safī to al-Ṭayyib b. Ḥimā, 10 and 11 Rabī‘ II 1299, and four legal documents from 3 Rajab 1299; DAR, Ḥimāyat, 35509, Muhammad Bargāsh to Mawlāy Ḥasan, 27 Muḥarram 1301; MAE Nantes, Tanger A 165, Dossier Eliahu Tordjman, 1895; USNA, Reg. 84, v. 150, Dossier of Meir Cohen, 1896-8. For an instance in which the testimony of a lafīf was submitted concerning the robbery of Rafael Kohen, a French subject, see MAE Nantes, Tanger A 161, ?? to Ordega, 11 September 1884. (On lafīf, see Chapter Two.)
39 About this case, see DAR, Yahūd, 32594, Mawlāy Ḥasan to Muḥammad Bargāsh, 5 Dhū al-Ḥijja 1297.
concerning the incident, which they sent to the British consulate in Essaouira as part of the
evidence against Jack.\textsuperscript{40}

The short-lived attempt at establishing a Mixed Court in 1871-2 serves as a poignant
example of the importance of sharī‘a courts as notary publics for foreign subjects and protégés.
As discussed in the previous chapter, the International Mixed Commission examined and
recorded the documentary evidence supporting the claims of creditors with foreign nationality or
protection. From October 1871 to January 1872, twenty-three foreign subjects and protégés
brought a total of 149 documents as evidence of the debts they were owed. The commission
carefully noted which documents were notarized by ‘udūl and countersigned by a qāḍī.\textsuperscript{41} While
most of the documents complied with the standards of Islamic notarization, some documents
were informal bills of debt signed only by the debtor.\textsuperscript{42} For instance, on October 12, Ysac
(Isaac) Benzacar (also spelled Ben Zacar and Bezacar), a Jew with American protection,
presented three bills of debt attesting a total of 11,400 napoleons and 36,000 “ducados morunos”
that he was owed by the qā‘id Abd el Selam Ben Haman el-Abdi.\textsuperscript{43} Although these bills of debt
were signed by the qā‘id, none of the documents had been notarized by ‘udūl. Nonetheless, the
International Mixed Commission recorded the bills of debt with every indication that they
expected them to be honored alongside those that were notarized by ‘udūl and countersigned by
a qāḍī.\textsuperscript{44}

\textsuperscript{40} DAR, Marrakesh, 24082, al-Ṭayyib b. Hīma to Aḥmad Amālik, 29 Ramaḍān 1297.
\textsuperscript{41} In the description of the documents, the commission noted that a given contract was, for instance, a “Declaración
ante dos adules y legalizado por el Cadi” (AGA, Caja M 9, Exp. no. 1 (81/9), Diario de los Sesiones de la Comisión
Mixta Internacional, libro primero, p. 6, 19 October 1871).
\textsuperscript{42} This type of informal contract is also found in the Assarraf collection: see the discussion in Chapter Two.
\textsuperscript{43} AGA, Caja M 9, Exp. no. 1 (81/9), Diario de los Sesiones de la Comisión Mixta Internacional, libro primero, p. 5,
12 October 1871. In fact, Benzacar’s legal representative, Mesod Abecasis, presented these documents on
Benzacar’s behalf.
\textsuperscript{44} During the session which examined Benzacar’s documents, the claims of Paul Lambert (a French subject) were
presented first. Lambert’s documents, unlike Benzacar’s, were notarized by ‘udūl. Nonetheless, the commission
records treated them identically: “Todos los seis documentos examinados en esta sesión han sido devueltos
However, when Benzacar presented his case to the Moroccan Tribunal (which was entrusted with ruling on the claims examined by the International Mixed Commission), Ibn Süda, the tribunal’s president, refused to accept the bills of debt as legal evidence. Ibn Süda observed that “the documents presented in this session lack the requirements of the sharī‘a, that is, the seal and signature of the qā‘id Haman are not legalized by two ‘udūl, whose signatures in turn should be legalized by a qāḍī.” Nor was Benzacar the last protégé to have this problem. Faced with the refusal to recognize contracts lacking the signatures of ‘udūl, the consuls agreed to a three-month pause in the proceedings in order to give plaintiffs enough time have the un-notarized documents signed by ‘udūl so that they would conform with “the requirements of the sharī‘a.”

In February of 1872, Mawlāy Ḥasan reportedly sent a letter to the qāḍīs of the port cities instructing them to help facilitate the notarization of bills of debt belonging to foreign subjects and protégés who had claims against Makhzan officials and shaykhs.

However, when the Moroccan Tribunal reconvened in June it soon became clear that very few creditors had been successful in their efforts to notarize their bills of debt. Bernardino Borras, a Spanish subject and one of the creditors, made the following remark to the International Mixed Commission: “Mister President, the legations and consulates in Tangier have learned from the agents on the coast that it is not possible to obtain any kind of legalization [of documents]. All of us who have reclamations have tried to do so in vain.”

immediatamente à los señores Lambert y Abecasis debidamente numerados y firmados los tres primeros por el Señor Don Julio Monge y los tres últimos por el Señor Don Antonio M. Orfíla,” (AGA, Caja M 9, Exp. no. 1 (81/9), Diario de los Sesiones de la Comisión Mixta Internacional, libro primero, p. 5-6, 12 October 1871). This is the case, as far as I can tell, for all the documents recorded in the commission’s registers.

45 AGA, Caja M 9, Exp. no. 1 (81/9), Diario del Tribunal Marroquí, p. 4, 23 November 1871.
46 AGA, Caja M 9, Exp. no. 1 (81/9), Diario del Tribunal Marroquí, p. 19, 4 December 1871.
47 AGA, Caja M 9, Exp. no. 1 (81/9), Diario del Tribunal Marroquí, p. 33, 11 February 1872. Mawlāy Ḥasan’s instructions specified that the notarizations had to take place before June 15, presumably in order to be ready for the next session of the Moroccan Tribunal.
48 AGA, Caja M 9, Exp. no. 1 (81/9), Diario del Tribunal Marroquí, p. 39, 24 June 1872. On the refusal of ‘udūl and qāḍīs to notarize the documents of foreign subjects and protégés, see also AGA, Caja M 9, Exp. no. 1 (81/9),
speculated that the reluctance of the ‘udūl and qāḍīs to notarize foreigners’ documents was due to “secret orders from the sultan that they oppose the legalization of said documents.” A consular official in Safi reported that the qāḍī of that city never received orders from the sultan regarding the notarization of these documents. Given that foreign subjects and protégés later filed complaints about ‘udūl and qāḍīs who similarly refused to notarize their documents (discussed shortly), it seems unlikely that the obstacles encountered in the spring of 1872 were the result of secret orders from the sultan. It seems more probable that the Makhzan never sent local qāḍīs orders to legalize such documents in the first place, or that local qāḍīs and ‘udūl simply refused to comply with these orders.

In any case, the difficulty of obtaining notarizations by ‘udūl—who along with a number of other complaints about the conduct of the Moroccan Tribunal—led the consular officials participating in the Mixed Court to pull out of the effort entirely. After only four sessions, they declared that it was impossible “to obtain justice in the court appointed to resolve these

Muḥammad b. al-Ṭayyib b. Ḥīma to ??, 21 Rabī‘ 1 1289/ 29 May 1872, and the Spanish vice-consul in Mazagan to Francisco Merry y Colom, 7 July 1872. It seems that none of the British subjects in Essaouira had this problem—though there were no British subjects from this city who had claims to bring before the Mixed Court (see FO, 631/5, p. 39a-b, Carstensen to White, 6 July 1872).
49 AGA, Caja M 9, Exp. no. 1 (81/9), Diario del Tribunal Marroquí, p. 39, 24 June 1872.
50 AGA, Caja M 9, Exp. no. 1 (81/9), José Butler to Francisco Merry y Colom, 4 June 1872. Butler further reported that the current qāḍī refused to recognize the signature of his predecessor when it came to the documents of foreign subjects and protégés, despite the fact that the qāḍī clearly knew the signature.
51 Perhaps the other most common obstacle was that the Moroccan Tribunal refused to recognize the signature of qāḍīs who were not one of the thirteen officially sanctioned judges appointed by the Makhzan (see the discussion on AGA, Caja M 9, Exp. no. 1 (81/9), Diario del Tribunal Marroquí, p. 44, 26 June 1872). It is not entirely clear who the other qāḍīs who had legalized some of the bills of debt were, and whether the demand that the qāḍīs be among the thirteen enumerated was in fact a Makhzan policy or merely a tactic to avoid honoring the bills of debt presented to the Tribunal. Another disagreement stemmed from the consuls’ objection to the procedure for taking the oath in a sharī’a court. During another session of the court, Bernardino Borras presented evidence of bills of debt owed to him; however, Ibn Sūda did not know the qāḍī who had countersigned the notarized document, and thus refused to accept the evidence as valid. Ibn Sūda explained that at this point Borras’s only option was to demand the oath from the defendant. The consuls wanted to know if Borras could then take a counter oath, and Ibn Sūda explained that, in demanding the oath, Borras “se supine que lo ha exigido para atenerse a los resultados de lo que esta jure” and had no other recourse. The consuls clearly assumed that Borras’ inability to take a counter oath was related to the sharī’a’s inherent bias against non-Muslims. See AGA, Caja M 9, Exp. no. 1 (81/9), Diario del Tribunal Marroquí, p. 52, 29 June 1872.

305
claims.”

On July 12, 1872, the consuls wrote a joint declaration explaining why they refused to continue their participation in the Mixed Court. The consuls also claimed “That the Moroccan sharī’a court does not admit the declarations of Christians or Jews as valid [evidence],” despite the lack of any substantiation of this assertion. Ultimately, the consuls recognized the importance—indeed necessity—of notarizing legal documents before ‘udūl.

What caused them to protest was the near impossibility of actually notarizing legal documents given the resistance posed by ‘udūl and qāḍīs throughout Morocco. The Moroccan Tribunal’s refusal to recognize documents lacking notarization served as a strong reminder to foreign officials, subjects, and protégés to ensure that any documents they wanted to use as evidence in Moroccan courts were notarized by ‘udūl and qāḍī.

After the Mixed Court debacle, the central role played by ‘udūl in the functioning of consular law became even more prominent. Islamic legal documents were used for matters outside the strict jurisdiction of sharī’a courts, such as in cases where the legal status of an individual came into question. For instance, in 1885 the Spanish consul in Safi wrote to the pasha of that city, ‘Abd al-Khāliq b. Hīma: the consul wanted to register a Muslim (Qudūr b. ‘Alī al-Najafī) as the “mokhalet” (the business partner of a protégé who also benefitted from foreign

52 AGA, Caja M 9, Exp. no. 1 (81/9), Diario del Tribunal Marroqui, p. 50, 27 June 1872.
53 AGA, Caja M 9, Exp. no. 1 (81/9), Declaration by the members of the International Commission, 12 July 1872.
54 Ibid. In addition, the consuls’ objected to the limitation of officially recognized qāḍīs to the thirteen enumerated; to the tribunal’s refusal to recognize powers of attorney drawn up abroad (and thus notarized by ‘udūl) even when the plaintiff did not reside in Morocco; and finally, to the procedure for oaths. Concerning oaths, the consuls maintained that, “el solo juramento del deudor musulmán negando la deuda invalida los títulos y documentos legales que en prueba de la misma deuda presentan los reclamantes cristianos o hebreos, sin que a estos se admita el juramento conforme a su religión.” In this instance it is clear that the consuls misunderstood the nature of the Mixed Tribunal’s procedure, assuming that the plaintiff could not take a counter-oath because of his religion. However, as discussed in Chapter Two, sharī’a courts admitted the oaths of non-Muslims just as they admitted those of Muslims. Rather, the Mixed Tribunal followed Islamic legal procedure, which at times prevented a plaintiff from taking the oath.
55 This does not include evidence presented to commercial tribunals, which accepted documents drawn up in consulates (see, e.g., FO, 631/3, p. 139b-140a, Carstensen to Hay, 4 February 1869). However, as mentioned above, commercial tribunals seem to have been relatively rare; the norm remained notarization by ‘udūl for all commercial contracts involving Moroccan subjects.
protection) of Yitzḥaq b. Nissim ha-Levy (Iṣḥaq b. Nisīm al-Lībī), a Spanish protégé. Qudūr’s local qā’id had earlier refused to register Qudūr as a mokhalet, claiming that Qudūr was a shaykh and thus ineligible for foreign protection. However, the Spanish consul sent a legal document notarized by ‘udūl which recorded the testimony of a lafīf (twelve Muslim men) who all swore that Qudūr was not a shaykh, as well as eight other legal documents notarized by ‘udūl proving the partnership between Qudūr and Yitzḥaq. By so doing, the Spanish consul employed the tools of Islamic law to ensure the rights of his protégé.

Perhaps most importantly, the services of ‘udūl as notary publics were used for cases among foreign subjects and protégés. There is no question that consular courts upheld contracts legalized in the chancelleries of their own consulate or by other foreign consulates. Yet consular courts also relied on the notarization of ‘udūl as a method of legal proof for cases only concerning foreigners. A case from 1895 nicely illustrates the extent to which Islamic legal documents had become a regular feature of consular courts in Morocco. Moshe Bendahan, a Jew with French protection living in Casablanca, sued El Maati ben Fatmi, a Muslim with Spanish protection, for unpaid debts which Fatmi had guaranteed. Fatmi’s guarantee of the debt was recorded in a legal document notarized by ‘udūl. However, Enrique Ruiz, the Spanish consul in Casablanca, argued that the guarantee was invalid because it was drawn up by ‘udūl.

---

57 See also the legal document dated 10 Rabī‘ 1 1305/ 26 November 1887 (in DAR, Ḥimāyāṭ) attesting to the fact that “the pasha al-‘Arabī wuld Abī Muḥammad took away the patent of American protection from the Jew Maymon b. Shawīl b. Sūsān, from Fez, and that the aforementioned dhimmī has no foreign protection but rather is under the protection of the sultan.”
58 For examples of contracts notarized in consular chancelleries, see, e.g., MAE Nantes, Tanger A 139, Dossier Benaim et Judah Delevante, 1848; FO, 635/4, p. 73a-b, 6 July 1876. For examples of legal documents relevant to criminal cases, see: MAE Nantes, Tanger A 161, Jacob de Aron Cohen to Ortega, 4 November 1884; AGA, Caja M 12, exp. no. 1 (81/12), Dossier of Lorenzo Gomez Garcia, 1910. There are entire chancellery record books preserved in a number of archives, such as in Archivo Histórico de Protocolos in Madrid (for Spanish consulates, including those of Tangier, Rabat, Casablanca, Larache, Essaouira, Safi and Tetuan) and in MAE Nantes (in the series “Actes de Chancellerie”).
59 MAE Nantes, Tanger A 164, Dossier Bendahan vs. El Maati ben Fatmi, 1895.
and, since it only concerned protégés, should have been notarized by the Spanish or French consulate. Collombe, the French consul in Casablanca, was outraged by this argument:

He [Ruiz] cannot be ignorant of the fact—and he is not ignorant of it—that the deeds drawn up by ‘udūl are perfectly valid. Do we not make use of them every day, and are our reclamations not based on these deeds [drawn up] by ‘udūl? Do not European merchants themselves have the acknowledgements that the censal-protégés deliver to them concerning the sums they have received drawn up by ‘udūl? Has one ever thought to contest the legality of these deeds?60

Collombe went on to explain that it was necessary to rely on the notarization of ‘udūl because censals (business associates of foreigners or protégés who had a status much like that of protégés) were liable to change their protection often. “Today the protégé of one power, tomorrow he can be under Moroccan jurisdiction, which only recognizes deeds [drawn up] by ‘udūl. What would happen to the owner of a deed of guarantee that was drawn up by a consulate in such a case?”61 Yet Collombe’s argument was not only based on the fact that censals were liable to change nationalities at any moment; he ultimately emphasized practice, noting that consular courts had consistently relied on legal documents notarized by ‘udūl without questioning their validity for at least as long as Collombe could remember. In the end, Collombe’s reasoning prevailed and Fatmi was forced to pay Bendahan what he owed according to the Islamic bill of debt.62

Foreign nationals’ and protégés’ may have been willing to rely on Islamic legal documents, but they were not always able to secure the notarization of ‘udūl and qāḍī which made these documents valid.63 In some cases it is clear that qāḍīs explicitly ordered ‘udūl not to

60 MAE Nantes, Tanger A 164, Collombe to de Monbel, 19 April 1895.
61 Ibid.
62 MAE Nantes, Tanger A 164, Collombe to de Monbel, 27 September 1895.
63 See, e.g., USNA, Reg. 84, v. 29, Abraham Corcos to ‘Amāra b. ‘Abd al-Ṣādiq, 9 Rabī’ I 1298/ 9 February 1881; MAE Nantes, Tanger A 161, Isaac Alioua to Ordega, 3 September 1884; DAR, Yahūd, Mawlāy Ismā’īl to ‘Abdallāh b. Aḥmad, 21 Shawwāl 1303; MAE Nantes, Tanger A 160, Marcily to Monbel, 19 October 1894; USNA, Reg. 84, v. 150, Broome to Gummere, 27 July 1900. See also MAE Nantes, Tanger A 161, Liste détaillée des affaires
cooperate with foreigners’ requests. In others, the ‘udūl seem to have refused their services on their own initiative. Although the majority of complaints along these lines came from Christians and Jews, there were some instances in which Muslim protégés were similarly prevented from using the services of ‘udūl. At some point before 1891, Mawlawy Ḥasan issued an order that ‘udūl and qāḍīs were only permitted to notarize the documents of foreign subjects and protégés with the permission of the local pasha or qā’id. Although consular officials protested this policy, claiming that it went against the treaties governing relations among Morocco and foreign nations, their objections seem to have fallen on deaf ears. Of course, qāḍīs and ‘udūl at times refused to serve foreigners despite permission from local Makhzan representatives. The reticence of ‘udūl and qāḍīs to notarize the documents of foreign subjects and protégés was undoubtedly related to the increasing sentiment among Moroccans that these

françaises dites “de Casablanca,” Eliyahu b. Dahan contre le Makhzan, 1892, in which the qāḍī of Casablanca refused to send the ‘udūl from his city to rural tribes (which was necessary because documents legalized by the ‘udūl from tribes themselves did not constitute acceptable legal proof).

64 BH, K 551, p. 30, 10 Rabī’ I 1307 (in this case the qāḍī of Rabat explained that he had refused to legalize a document belonging to an Italian subject because it had the seal of a Christian consulate on it, to which he objected in principle); FO, 631/7, p. 146a-b, 30 July 1891.

65 USNA, Reg. 84, Box # 1, John Cobb to J. Judson Barclay, 28 December 1894. In this instance, a Makhzan official agreed to send Cobb ‘udūl to record testimony about the theft of his property. However, Cobb reported to Barclay, the American consul in Tangier, that the Makhzan official “brought in twenty four men whose declarations the Adools listened to and on hearing the names of the invaders called out, they remarked we will not take down names save those who are under Foreign protection. That ended their usefulness.”

66 BH, K 551, p. 96, 4 Dhū al-Ḥijja 1307 and DNA, 2.05.15.15.49, Baron Mentzigen to Muḥammad al-Ṭūris, 14 November 1899. In the second case, a Muslim working as a soldier for Alfred Redman, the Dutch vice-consul in Larache, was on his death bed and wanted to make a will granting some of his inheritance to his employer. However, when the ‘udūl discovered that the testament was in favor of a Christian, they refused to draw up the legal document. It is possible that in this case, the ‘udūl were adhering to the rule in Islamic law that dhimmīs are not allowed to inherit from Muslims (see Fattal, Statut légal, 137). However, it could also be the case that the ‘udūl were simply reluctant to draw up any legal documents for a foreigner.

67 I have not been able to find a date when these instructions were sent to Makhzan officials. For the first reference to this policy, see FO, 631/7, p. 64a-b, 26 March 1881; here, the British consul of Mogador noted that a Jew named Hadan Bitton (who, presumably, was a Moroccan subject) wanted to record his accounts with the British subject W. Grace. However, the qāḍī refused to allow this without an express order from the local qā’id. For a more explicit reference to this order, see DAR, Ḥimāyāt, 23317, Mawlāy Ḥasan to ‘Abd al-Rahmān Bargāsh, 17 Dhū al-Qa’dā 1309/ 13 June 1892, which concerns the sultan’s order that qāḍīs should not allow the recording of testimony about bills of debt for foreigners except with the permission of the governor of the region.

68 DAR, Ḥimāyāt, 23317, Mawlāy Ḥasan to ‘Abd al-Rahmān Bargāsh, 17 Dhū al-Qa’dā 1309/ 13 June 1892.

69 USNA, Reg. 84, Box # 1, Affair of Miguel Benshaya, 1897.

309
foreigners were to blame for the economic and political problems of the time. 70 ‘Udūl and qāḍīs expressed their opposition to the growing influence of foreign states on Moroccan internal affairs by refusing their legal services to foreign nationals and protégés, whose commercial endeavors they thus obstructed. This protest was even more striking given that ‘udūl and qāḍīs undoubtedly forewent fees they would have otherwise collected by refusing their services to foreign subjects and protégés.

Just as Islamic legal institutions retained their central role in the lives of those who had acquired foreign nationality or protection, Jewish courts similarly remained relevant for Jews with extraterritoriality. First and foremost, many Jews who had acquired foreign protection or nationality continued to use Jewish courts to notarize their legal documents. This was especially so in intra-Jewish cases. 71 Similarly, Jewish legal documents were also presented as evidence in criminal cases involving Jewish protégés or foreign subjects, even when these cases were being tried in Islamic courts—despite the fact that such documents did not technically meet the requirements for Islamic legal proof. 72

Jewish foreign subjects and protégés continued to notarize documents with sofrim (Jewish notaries) even for their transactions involving Christians or Muslims—cases that would not have fallen under rabbinic jurisdiction. For instance, in 1882 a Jew named Dinar (probably

70 On this, see especially al-Manūnī, Mazāhir, v. 1, 326-34 and Laroui, Origines, 310-20.
71 FO 830/1, Protest by Nathan Cohen Solal, 11 January 1847; FO, 631/7, p. 12b-14a, Simha Elmaleh vs. George Broome, 13 June 1879; MAE Nantes, Tanger A 140, Affaire Ben Shrit, October 1880; USNA, Reg. 84, v. 29, David and Haim Corcos to Meyer Corcos, 19 November 1883; MAE Nantes, Tanger F 1, Liquidation of Semtob and A. H. Cohen Co., 29 January 1891; USNA, Reg. 84, v. 24, Broome to Russi, 15 August 1892 and Abraham Rozelio vs. Abraham Bensabat, 6 July 1893; MAE Nantes, Tanger F 4, Hadra Sicsu, Messody Sicsu, Hadra Sicsu (a different woman from the first Hadra Sicsu), and Preciada Sicsu vs. Haim Benchimol, 6 and 8 November 1899. In some cases, Jews either had their Hebrew legal documents recorded in the registers of consulates, or had them counter-signed by consular officials: see, e.g., FO, 442/8, Diary Entry from 14 July 1857; FO, 636/2, p. 17b, 29 July 1858; p. 35b, 13 June 1859; p. 49a-55b, 16 March 1866; FO, 631/7, p. 71b-72a, 23 March 1882; MAE Nantes, Tanger F 2, Serfaty et Altit contre David Medina, 15 September 1896.
72 See, e.g., FO, 631/3, p. 179a-b, Carstensen to Hay, 1 August 1870; MAE Nantes, Tanger A 165, Dossier of Rabbi Mansour Setton, 1895. It is not clear how either of these cases ended, which is why it is difficult to know whether the Jewish legal documents were accepted by Moroccan legal authorities.
Dinar Ohana), an American protégé, went to the American consul in Essaouira claiming that he was owed a debt by Ḥājj Ibrāhīm al-Bū Darārī. Dinar presented the consul with Hebrew legal documents proving the debt. Strictly speaking, both the local Makhzan authorities and the qāḍī of Essaouira should have rejected this evidence since it did not meet Islamic standards of proof; yet as we have seen, Makhzan courts sometimes did accept Jewish legal documents as evidence. Perhaps Dinar was counting on this sort of exception in submitting Jewish bills of debt for his caes against Ibrāhīm. There were even cases in which Christians had their commercial transactions with Jews notarized by sofrim.

Dayyanim were also typically responsible for administering oaths sworn by Jews, including Jews with foreign protection. In one instance, the French commercial firm Jourdan Buy et Co. demanded that Samuel and Pinchas Toledano, Moroccan Jews with French protection, swear on the Torah scroll concerning their declaration of bankruptcy. The Toledano brothers refused to swear on the Torah, offering instead to swear before the French consul. Buy, however, insisted that they take an oath according to Jewish law, presumably

---

73 USNA, Reg. 84, v. 29, Abraham Corcos to ‘Amāra, Rabī’ I 1299/ 30 January 1882.
74 See also FO, 631/7, p. 102b, 24 August 1885.
76 MAE Nantes, Tanger A 138, Affaire Decugis contre Pinhas Bendahan, 1845; MAE Nantes, Tanger A 163, Jordan Buy to Ordega, 22 November 1882. See also FO 631/2, public protest by Moses Penyer, 3 February 1859. In this protest, Penyer attempted to discredit the oath taken by Eliezer Davila, a Moroccan Jewish subject whom Penyer accused of owing him money. Although Davila took an oath that he did not owe Penyer anything, Penyer argued that according to Jewish law this oath was invalid: “And he [Penyer] further declares that said oath was illegal as it was taken after the Jewish sabbath had commenced and by order of the governor who when the rabbis to whom the said Eliezer Davila had been sent by the governor to take the oath declared that on account of being sabbath the oath could not be taken the governor ordered that it should be…. ” This is an interesting instance of a protégé invoking halakhah to argue his case.
77 Tanger, B 1326, Vernouillet to Jourdan Buy, 20 October 1880 and 14 December 1880.
because he felt that the Toledanos were more likely to tell the truth if they swore on the scrolls of their sacred text.  

Finally, Jewish foreign subjects and protégés sometimes chose to cover all their bases by obtaining legal documentation notarized by both ‘udūl and sofrim. For instance, Jewish protégés submitted proofs of real estate ownership from both Jewish and sharī’a courts. This is not surprising given the relative frequency with which Jews notarized their real estate transactions in both legal systems. Jews also drew on both ‘udūl and sofrim for proof in criminal cases. Ya’aqov Siboni, a French protégé, employed this strategy when trying to prove his claim that he was robbed; he presented a deposition notarized by ‘udūl and another one notarized by sofrim to the French ambassador as evidence supporting his case.  

Close examination of the quotidian functioning of consular courts shows the extent to which Islamic and even Jewish legal documents remained central to the legal lives of foreign subjects and protégés. This was so in part because so many cases fell under Moroccan jurisdiction, and in part because the notarization of ‘udūl became the standard by which legal documents were judged to be reliable.  

There is little question, then, that even without actually bringing their cases before sharī’a or Makhzan courts, foreign subjects and protégés continued to make extensive use of Islamic legal institutions even after they obtained extraterritorial status. Yet in many instances, Jews with foreign nationality or protection deliberately tried to have their legal disputes adjudicated in Makhzan or sharī’a courts. The following two sections look closely at select instances in which

---

78 In the end, Buy and the Toledanos came to a settlement without the Toledanos swearing on the Torah: see Tanger B 1326, Buy to Vernouillet, 8 January 1881.
79 USNA, Reg. 84, v. 24, Broome to Mathews, 22 November 1891; USNA, Reg. 84, Box # 1, Bensusan v. Meir Cohen, 1897.
80 MAE Nantes, Tanger A 161, Siboni to Ordega, 20 September 1884. For similar criminal cases, see also MAE Nantes, Tanger A 165, Touhoul to Ḥājj Ḥamādī al-Wujdī (the French consul in Fez), 2 Av 5646/ 3 August 1886; Réclamation Zekri, 1893-6; MAE Nantes, Tanger A 164, Elie Signoret to Féraud, 31 July 1888.
Jews tried to ensure a fortuitous outcome in court by bringing their cases to the forum they thought would prove most favorable.

**Real Estate Disputes**

Jews with foreign protection were particularly likely to find themselves subject to the jurisdiction of sharīʿa courts when they became involved in disputes concerning real estate. After the Conference of Madrid in 1880, all cases involving the rent or sale of real estate in Morocco fell under the jurisdiction of sharīʿa courts.81 Despite this requirement, Jews made efforts either to ensure that their case was heard in the sharīʿa court or to obtain an exception to the sharīʿa’s jurisdiction. These strategies demonstrate how Jewish protégés advocated for particular legal forums based on what they perceived to be most advantageous to their cause.

Many Jewish protégés were clearly eager to appear before a qāḍī to settle their real estate disputes.82 In 1891 Sol Azancot, a Jew with French protection, sued Avraham Elazar, a Jew with Brazilian protection, concerning a disagreement about their adjacent properties.83 Azancot

---

81 Concerning the legal disputes of foreign subjects and protégés involving real estate before 1880, which were sometimes judged by a qāḍī and sometimes by a Makhzan official, see, e.g., FO, 631/3, Elton to Hay, 28 September 1864 and Carstensen to Hay, 8 April 1865; MAE Nantes, Tanger A 157, Paul Lambert v. Joshua Toledano, 1870. Despite the clause in the Treaty of Madrid, there were real estate cases after 1880 which were not submitted to the sharīʿa courts, though it is not clear why. For instance, the case of Benchimol v. Abraham and Saul Azancot (MAE Nantes, Tanger B 461, 1903-5) was judged by a beit din, despite the fact that the case involved ḥubs properties and legal proof in Arabic (see Pasha of Tangier to Saint René Taillandier, 27 August 1903). Another case concerning a complaint about destroyed property was judged in the American consular court (USNA, Reg. 84, v. 289, Hadj Thamy Ben Taib Haddawwe v. Bertram Israel Darmond, August 1910). Yet a third case, involving disputed ownership of a house, was judged by the French consular court (MAE Nantes, Tanger F 5, Joseph Kanouï v. de Maindreville et Buzenet, no date (after 1911)).

82 See, e.g., FO, 831/8, Protest of William Henry Chambers Andrews on behalf of Moses Corcos, 20 March 1900. In this instance, Chambers, a British subject, protested against Avraham Sebasi, a Spanish “subject or protégé,” for attempting to build a building that would obstruct the light into Corcos’ property. Chambers requested that the matter be judged by a shariʿa court, “as is usual in such cases.” See also MAE Nantes, Tanger F 2, Schott v. Cohen, 8 October 1894. Ferdinand Schott, a British subject, claimed that he was the rightful owner of a building inhabited by Avraham Haim Kohen, a French subject. He noted that shariʿa was the only law with the right to rule in this case, and also that the shariʿa court had already ruled in his favor—little wonder, then, that he wanted the shariʿa’s ruling to stand!

83 MAE Nantes Tanger B 1325, Dossier Azancot contre Elazar, 1891-1892.
claimed that Elazar had illegally opened a window in his house which violated her privacy, as well as damaging her home in the course of his renovations. She requested that the case be brought before the qāḍī, as he was the “only one competent [to judge] this matter, according to the international treaties governing real estate in Morocco.” When the French minister did not act quickly enough for her taste, Azancot decided to appeal to the qāḍī directly. The qāḍī, however, informed her that he was required to try the case in the presence of both parties, and that only the Brazilian consul could summon Elazar to court. Azancot was finally mollified more than six months later when the case was tried in the sharī'a court (after fierce resistance on the part of the Brazilian consul). The qāḍī ruled in Azancot’s favor and forced Elazar to block the offending window.

A number of property cases were particularly entwined with the Islamic legal system because they involved a ḥubs (a pious endowment, also called a waqf). In the case of Assayag v. Zagury, which lasted from 1887 to 1888, Aron (or Haroun) Zagury attempted to sue Judah Assayag for non-fulfillment of a rental contract in Casablanca. Both Assayag and Zagury had consular protection: Assayag from the French and Zagury from the Portuguese. The case concerned a store which Zagury had sublet to Assayag. This store was part of a ḥubs, which meant that Zagury was himself renting the property from the administrator of the endowment (the nāẓir). Zagury, however, was charging Assayag more than he himself paid the nāẓir. When the nāẓir found out that Zagury was making a profit from subletting the pious endowment, he

---

84 MAE Nantes Tanger B 1325, Azancot to Souhart (French minister), 30 July 1891.
85 MAE Nantes Tanger B 1325, Azancot to Souhart, 26 August 1891.
86 See MAE Nantes Tanger B 1325, Calaço (Portuguese minister) to Souhart, 4 April 1892.
87 MAE Nantes Tanger B 1325, French Minister to Calaço, 19 August 1892.
88 MAE Nantes, Tanger B 1325, Dossier Assayag v. Zagury.
ordered Assayag to stop paying Zagury and instead pay the higher rent directly to the ḥubs. 89

Assayag complied with the nāżir’s request. Zagury, however, sued Assayag for allegedly
breaking their sublease agreement. Assayag wrote to the local French consul and requested that
the case be brought before a sharī’a court:

According to the laws of property established in Morocco, [and] in my quality of French
subject, which I have the honor to be due to [my involvement in] the real estate business,
it seems to me that the case should be judged by the Muslim sharī’a; I thus desire that
justice be executed morally.90

The French vice-consul in Casablanca and Laurent-Charles Féraud, the French ambassador to
Morocco, concurred that the case should go before a qāḍī since it involved real estate.91

However, their colleague the Portuguese consul did not agree and attempted to force Assayag to
pay Zagury the rest of the money Assayag allegedly owed without recourse to a sharī’a court.92

The Portuguese minister and Zagury protested that the contract was signed between two
foreigners, and thus had nothing to do with the Islamic legal system.93 Nonetheless, the French
vice-consul, Assayag, and the nāẓir succeeded in bringing the case before the local qāḍī, who
ruled in Assayag’s favor.94 The verdict hinged on the fact that it was the nāẓir’s duty to pursue
the best interests of the endowment with which he was charged. The nāẓir thus had no choice
but to rent the store to the person who would pay a higher sum.95

The case of Assayag v. Zagury indicates the ways in which treaties regulating consular
jurisdiction often coincided with the interests of the individuals concerned. It is likely that

89 The nāẓir and Assayag claimed that Zagury’s contract to rent the ḥubs store expired at the same time as the
contract between Zagury and Assayag, which allowed them to switch the initial contract from Zagury to Assayag.
90 MAE Nantes, Tanger B 1325, Assayag to Callomb, 30 August 1887.
91 MAE Nantes, Tanger B 1325, Féraud to Callomb, 15 December 1887.
92 Ibid.
93 MAE Nantes, Tanger B 1325, Portuguese Consul to Féraud, 31 December 1887.
94 MAE Nantes, Tanger B 1325, Callomb to Féraud, 26 December 1887. The qāḍī was ‘Abd al-Rahmān al-Barīs.
95 MAE Nantes, Tanger B 1325, ‘Abd al-Rahmān al-Barīs to Muḥammad Slama, 19 December 1887; ‘Abd al-
Assayag was aware that Islamic law would call for a decision in his favor, which is undoubtedly why he so ardently wanted the case judged in a shari’a court. It was also in the interests of the French vice-consul to bring the case before a qāḍī, since he too desired a ruling in favor of his protégé. As for Zagury, it is likely that he was aware he would lose in a shari’a court, which is why he was so eager to avoid appearing before the qāḍī.

Similarly, in the case of Kohen v. Pariente each side advocated for the court he felt would best serve his interests. The case, which lasted from 1904-9, concerned a dispute over a funduq (warehouse) in Fez. In August, 1904, Avraham Kohen, a resident of Tangier and a French protégé, forcibly took possession of the disputed funduq from Moshe Pariente, a native of Fez and a British protégé. Kohen claimed that the funduq was his but that he had given it as security on a debt to Bu Bakr Elghendjaoui (Abū Bakr al-Ghanjāwī, whom we encountered visiting batei din in Chapter One). Kohen claimed that he had repaid this debt, and thus that the funduq should revert to his possession. Pariente, however, claimed that he had bought the funduq outright from al-Ghanjāwī. Six months later, the French consul instructed Kohen and Pariente to appear before the shari’a court of Fez; the qāḍī ruled in Pariente’s favor based on the milkiya (proof of ownership according to Islamic law) that he produced.

At this point, Kohen attempted to play all sides of the issue. On the one hand, he asked the local pasha for permission to obtain his own milkiya proving his ownership, but the pasha

90 MAE Nantes, Tanger B 459, Affaire Cohen Pariente and Affaire Cohen-Boubkeur Elghendjaoui, 1904-1909. All subsequently cited documents pertaining to this case are from one of these two dossiers unless otherwise noted.
91 This occurred on 14 August 1904.
92 Al-Ghanjāwī’s heirs supported this in arguing that Kohen had sold them the disputed property outright in 1894: see Abensur to Lister, 5 February 1909.
93 This was on 27 February 1905: see Abensur to White, 14 July 1905. The qāḍī ruled that Kohen had to leave the disputed property and that he had fifteen days to present his proof of ownership, and that Pariente had to give Kohen copies of his proof (to which Pariente objected; it is not clear whether he ever furnished said copies). In June the parties appeared before the qāḍī again, and again the qāḍī ruled that Kohen had fifteen days to prove his ownership of the property, which he again failed to do. On the milkiya, see Carter V. Findley, “Mulkiyya,” in Encyclopedia of Islam, ed. P. Bearman, et al. (Leiden: Brill, 2003) and A. M. Delcambre, “Milk,” in Encyclopedia of Islam, ed. P. Bearman, et al. (Leiden: Brill, 2003).
refused. Faced with this dead end, Kohen argued that the sharī‘a court procedure had been corrupted:

Concerning our refusal to appear in a sharī‘a court, it is impermissible for a sensible man to claim that a plaintiff must accept, and even regularize by his presence, a procedure which forbids him the use of witnesses recognized as necessary [to the case]. Of course, we respect Islamic law, but on the condition that it is applied in its entirety and without any impure additions.

Kohen and his lawyer called into question the legitimacy of Pariente’s legal documents and requested permission to examine the two ‘udūl who had signed the milkīya. The French consular officials also tried to ensure that the qāḍī would permit the examination of the ‘udūl; Saint René Taillandier, the French ambassador, cited a discussion in the Mukhtaṣar of Khalīl b. Isḥāq (d. 776/1374)—a standard reference work of Islamic law—concerning the permissibility of conducting a special interrogation of ‘udūl when there is confusion about a case. He tried to convince the qāḍī that the case of Kohen v. Pariente was such an instance of confusion.

Pariente, on the other hand, was eager to keep the case in a sharī‘a court, undoubtedly because he knew his milkīya gave him a distinct advantage over Kohen. In October, 1905, Pariente objected to a suggestion that the case be appealed in a consular court: “…he has made it impossible for me to reappear before this tribunal and…it would be a real denial of justice for the

---

100 The pasha refused Kohen’s request because, according to the qāḍī, Pariente had already produced proof that he owned the property in question (Abensur to White, 14 July 1905).
101 Daniel Saurin (Kohen’s lawyer) to Saint René Taillandier, 24 July 1905.
102 See the note (probably written by Saint René Taillandier himself) dated 15 August 1905. It is possible that Saint René Taillandier had in mind a passage from Perron’s translation of the Mukhtaṣar which discusses situations in which one is obligated to question the ‘udūl (see M. Perron, Précis de jurisprudence musulmane; ou, Principes de législation musulmane civile et religieuse selon le rite malékite, par Khalil ibn-Ishak, 6 vols. (Paris: Imprimerie Nationale, 1848-52), v. 5, 203). Perron’s translation draws from a number of commentaries, including those of Muhammad al-Kharashī (d. 1689), ‘Abd al-Bākī al-Zurqānī (d. 1688), and Ibrāhīm al-Shibrakhī (d. 1694)—all of whom lived in Egypt (see ibid., v. 1, xxii-xxiii).
103 Ultimately, however, Saint René Taillandier was unable to interrogate the ‘udūl because one was missing. He attempted to have the qāḍī rule concerning whether it was permitted to interrogate one of the ‘udūl in the event that the other was missing, but the qāḍī refused to give an opinion on this matter.
French civil and penal laws to apply….“104 A year later, he repeated his insistence on having the

A year later, he repeated his insistence on having the case judged in a sha‘rī‘a court: “We are under the jurisdiction of the sha‘rī‘a; I was not the one who asked to appear before this court, it was the French consular court [which directed the case to the sha‘rī‘a court]…”105 Ultimately the qāḍī’s decision was appealed before a special tribunal of five ‘ulamā‘ (Muslim scholars) convened in 1909.106 Although the archival records trail off before a decision was recorded, for our purposes the significance of the case lies in the fact that both Pariente and Kohen tried to ensure adjudication in the tribunal they felt would be most amenable to their interests.

In some real estate disputes, Jews with foreign nationality or protection appealed the decision of a sha‘rī‘a court in a consular court, hoping to get a more favorable ruling.107 In 1904, Moshe (Moise) Emsellem, a French protégé residing in Tangier, filed a complaint with the French ambassador (Saint René Taillandier) against Meir Benhaim, a Belgian protégé. Emsellem informed Saint René Taillandier that Benhaim had refused to pay the rent for a store that Emsellem had sublet to him.108 In the course of the investigation it turned out that the store actually belonged to the shurafā‘ (descendents of the Prophet Muḥammad) of Ibn Masar, a Muslim family, and that the nāẓir of a nearby mosque was in charge of the rent.109 The nāẓir

104 Pariente to Wyldbore Smith, 5 October 1905.
105 Pariente to White, 2 October 1906.
106 One of the last letters, from Kohen to le Comte de Saint Aulaire (the French ambassador to Morocco), dated 23 June 1909, expressed Kohen’s objections to the way the council of ‘ulamā‘ was conducting the trial; it is possible that Kohen simply refused to proceed and, essentially, dropped the case. See also Cohen to Saint Aulaire, 22 June 1909.
107 In most such cases, consular officials upheld the decision of the sha‘rī‘a court. See, e.g., MAE Nantes, Tanger F 2, Schott vs. Cohen, 8 October 1894. Schott claimed that a building belonged to him while Kohen refused to recognize Schott’s ownership. The French consular court in Tangier ruled in Schott’s favor since he was the only one who produced documents according to “local law.”
108 MAE Nantes, Tanger B 461, Emsellem to Saint René Taillandier, 3 November 1904.
109 MAE Nantes, Tanger B 461, Belgian consul to Saint René Taillandier, 19 November 1904. The details in this paragraph all stem from this letter. The store in question was most likely part of the pious endowment of a mosque; although this was never explained explicitly, the fact that the nāẓir of the nearby mosque was in charge of the rent for the store suggests that this was the case.
claimed that Emsellem had no right to the property in question. Instead, the Ibn Masar family had rented the store to Salomon Roffé, a Jewish American protégé. Roffé was in possession of documents drawn up before ‘udūl and signed by a qāḍī testifying to his having leased the property. It was thus Roffé, not Emsellem, who leased the store to Benhaim. Benhaim had ceased paying rent to Emsellem and had begun paying rent exclusively to Roffé on the order of the nāẓir.\textsuperscript{110}

The confusion arose because Emsellem’s claim to the property was based on documents drawn up according to Jewish law in a beit din. Emsellem had previously gone to the qāḍī in an attempt to collect the rent he felt was due to him—probably because he was aware that property-related cases fell exclusively under Islamic jurisdiction. As proof of his claim, Emsellem had shown the Hebrew legal documents—which supposedly gave him the right to lease the property in question—to the qāḍī. He claimed that his father had purchased the right to lease the property (referred to as “the keys” to the property) from another Jew, who himself had purchased this right from a Jew.\textsuperscript{111} It is likely that the right to lease in question was a hazaqah, a legal arrangement that existed exclusively in Jewish law by which Jews purchased the right to inhabit a property separately from the property itself (discussed in Chapter Three). However, legal documents drawn up according to Jewish law were not recognized by Islamic law: “…the nāẓir declared that these purchases are not valid, since they are not based—as they should be—on a contract in Arabic between the owners of the mosque and the first holder [of the lease].”\textsuperscript{112} It is interesting that Emsellem even attempted to use documents drawn up by sofrim as evidence in a

\textsuperscript{110} It is not clear why Benhaim would have contracted subleases with both Roffé and Emsellem, or why he was paying both Jews rent. Unfortunately, the sources do not elucidate this matter further.

\textsuperscript{111} “Il déclare posséder des papiers, également en hébreu, prouvant que son père a acheté la clef à un israélite, lequel l’avait acheté à un autre israélite” (ibid.).

\textsuperscript{112} MAE Nantes, Tanger B 461, Belgian consul to Saint René Taillandier, 19 November 1904.
sharī’a court. As a Jew living in Morocco, it is hard to imagine that he was unaware of the fact that Islamic law did not recognize contracts drawn up according to Jewish law.

The most likely explanation of this case is that Roffē had contracted his own lease with the Ibn Masars, probably in order to outwit Emsellem by obtaining a lease which would supersede his in a sharī’a court. By so doing, Roffē used the fact that Islamic law did not recognize the validity of a ḥazaqah in order to obtain usufruct rights that, according to Jewish law, already belonged to someone else. Emsellem appealed the qāḍī’s decision to the French consul because he believed he might have a chance to win his case outside of a sharī’a court. However, both the Belgian and the French consul upheld the qāḍī’s ruling and Emsellem was unable to recover the rent he claimed was owed him.

Real estate disputes illustrate how Jews with foreign nationality or protection did their best to ensure the most favorable ruling possible, even when the rules governing jurisdiction clearly assigned these cases to sharī’a courts. For some Jews, this meant attempting to avoid appearing before a qāḍī or appealing a qāḍī’s decision in a consular court. For others, it meant working to make sure a case was heard in a sharī’a court. The frequency with which individuals tried to change the jurisdiction of real estate disputes suggests that jurisdictional boundaries were often observed in the breach, making forum shopping worth trying even if it proved impossible.

Further Forum Shopping

Jews adopted a number of strategies in order to change the legal forum in which a variety of cases were heard. One of the most straightforward ways to switch the jurisdiction under which a case fell was to change one’s nationality. The law did not formally permit changing one’s nationality in order to switch jurisdictions. Nevertheless, this was a strategy used by a
number of foreign subjects and protégés, especially earlier in the nineteenth century when the rules of jurisdiction seem to have been more fluid.\(^{113}\) The case of Rey v. Gassal and Benchimol, which lasted from 1836 to 1841, involved a Jewish protégé who claimed to be a Moroccan subject in order to use Muslim courts to his advantage.\(^{114}\) In this case, Marius Rey, a French businessman, attempted to sue ‘Abd al-Qarīm Gassal and Avraham Benchimol, a Moroccan Muslim and a Moroccan Jew respectively who were business partners. Rey initially assumed that Benchimol was a French protégé, due to Benchimol’s employment as an interpreter for the French consulate.\(^{115}\) However, at least for the purposes of this suit, both Benchimol and Gassal declared themselves Moroccan subjects.\(^{116}\) According to Morocco’s treaty with France at the time, this meant that the case would be tried in an Islamic court.\(^{117}\)

\(^{113}\) For examples of this strategy, see: MAE Nantes, Tanger A 139, Affaires Joseph Souery avec divers: Mustapha Dukkalay, Bakery, etc., 1851 (especially Shakery to Hay, 29 April 1851, in which Shakery warned the British ambassador that Souery, a British protégé, would probably try to acquire some other foreign protection and pleaded that “he ought not now to be allowed to repudiate it [his British protection] and avail of that of some other foreign power of which he is not properly subject”); FO, 631/3, Elton to Hay, 16 April 1864 (in which a British subject threatened to appeal to the Swedish consul against the rules of jurisdiction). See also MAE Nantes, Tanger F 5, trial of Michel Mazzella, Gaëtan Ortéga, and François Amores, 11 September 1911. In this case, the presiding judge remarked, “Attendu qu’il n’échappe pas au tribunal que dans les milieux de la chicane à Tanger, le premier soin des hommes d’affaires en prévision des discussions ou procès est de rechercher une première complication en opposant des intérêts dépendant des nationalités diverses, par conséquent des juridictions différentes.” This suggests that as late as 1911, when it was significantly more difficult to change one’s nationality or protection, individuals in Morocco (including foreigners and Moroccan subjects) thought it advantageous to involve people of various nationalities in their business dealings in order to change the jurisdiction of a given case. For a slightly different though related strategy, see USNA, reg. 84, v. 13A, Jacob Bibas to J. Toel, 22 December 1904 (in which Bibas, an American protégé, sued one of his mokhalets (business partner who benefited from foreign protection); Bibas intended to fire this mokhalet, but did not want to do so until the lawsuit had run its course lest the mokhalet, upon returning to Moroccan jurisdiction, bring the case before the local qā’id).

\(^{114}\) MAE Nantes, Tanger A 138, Dossier Rey v. Gassal and Benchimol. Interestingly, it is possible that Marius Rey was himself Jewish, or at least from a Jewish family that was originally from Gibraltar or North Africa. On Rey as a Maghribi Jewish name, see Todd M. Endelman, “The Checkered Career of ‘Jew’ King: A Study in Anglo-Jewish Social History,” Association of Jewish Studies Review 7/8 (1982-3): 71-2.

\(^{115}\) Benchimol had been working for the French consulate since 1815: see MAE Nantes, Tanger A 138, Dossier “Affaire Abraham Benchimol avec le Gouvernement Française,” 1833.

\(^{116}\) MAE Nantes, Tanger A 138, Rey to Méchain, 16 October 1837.

\(^{117}\) Before the 1856 treaty with Britain, any case involving a European and a Moroccan subject could only be judged in a Moroccan court (see the discussion in Chapter Seven). Even after 1856, however, this case would have gone to a šarī‘a court because the defendants—Benchimol and Gassal—were Moroccan subjects.
Benchimol’s motives for bringing the case before Muslim judicial authorities became clear as the case unfolded. Initially, Rey attempted to sue Benchimol in the French consular court; however, the consul refused to hear the case (probably because Benchimol had declared himself a Moroccan subject). Rey was forced to resort to “Moorish” law. Yet, as Rey complained to his consul, he was at a total loss in his attempts to navigate the Islamic legal system. Rey pleaded with the consul to enlighten him about the workings of Islamic law in his case:

Undoubtedly in a civilized country where the laws are collected in a code that everyone can consult, [and] where foreigners and nationals alike can claim their rights, the judge is not required to instruct the parties concerning the reciprocal guarantees that they can require; [rather], the parties themselves are responsible for taking whatever measures about which they know. However, in a country like this, where the foreigner—despite the written conventions which grant him extraterritoriality—vainly appeals to this arbitrary jurisdiction [that is, a sharī’a court] and suddenly finds himself forced to submit to a legislation and to formalities which are unfamiliar to him, it seems natural that the person who is charged with protecting [the foreigner’s] interests, not as a judge but as a defendant, might indicate to him which laws protect him.

This letter makes clear both Rey’s frustration at his inability to understand the relevant Islamic law as well as his consul’s unwillingness to help educate him. Rey was angry that his case was submitted to Moroccan jurisdiction despite the “written conventions” which he believed gave him the privilege of resorting exclusively to French courts. When Rey eventually learned that he had to have his agreements with Benchimol notarized by ‘udūl, he had trouble executing this requirement. The ‘udūl who drew up a version of Rey’s agreement with Benchimol in Arabic made several mistakes—due, it seems, to faulty translation by Rey’s Jewish interpreter.

---

118 MAE Nantes, Tanger A 138, Rey to Méchain, 30 August 1837.
119 “déclarer sur leurs droits”: the intention of this phrase is unclear.
120 MAE Nantes, Tanger A 138, Rey to Méchain, 21 October 1837.
121 MAE Nantes, Tanger A 138, Rey to Méchain, 29 December 1837.
By subjecting the suit to Moroccan jurisdiction, Benchimol managed to put his adversary at a considerable disadvantage. Whereas Benchimol was certainly familiar with the workings of sharī‘a courts, Rey was completely ignorant of Islamic law. Similarly, Benchimol had a linguistic advantage over Rey, who was dependent on interpreters for all his dealings with Muslim judicial authorities. The resolution of the case puts Benchimol’s strategy into even sharper relief. In 1840, the case was finally brought before the Tribunal de commerce (commercial tribunal) in Marseille.122 The Marseille court ruled that Gassal and Benchimol had to pay Rey 21,872 francs, which included the interest on the money they owed. Benchimol appealed the ruling through his lawyer in Marseille, but it does not seem that he was successful in overturning the court’s decision.123 Although Benchimol may not have known that the Marseille court would rule against him, he almost certainly was aware of his advantage over Rey in a sharī‘a court. There is little doubt that Benchimol declared himself a Moroccan subject in an attempt to have the dispute adjudicated by a qāḍī.

In other instances, Jews who believed that they would get a more favorable ruling in a sharī‘a or Makhzan court chose to appeal to Moroccan legal institutions even though the case fell under the jurisdiction of a consular court. In 1884, Avraham b. Sa‘ūd, a Moroccan Jew and a British protégé living in Essaouira, summed up the reasons for avoiding a consular court thus: “If you rely upon the English Consul to get you your right, your case is spoilt. For he has no judiciousness (ḥukm).”124 While in this instance Ibn Sa‘ūd was referring to problems with the

---

122 MAE Nantes, Tanger A 138, Extrait du registre du greffe du tribunal de commerce de Marseille, 22 December 1840. There is no explanation preserved in the archives for why the case was appealed in Marseille; it seems likely that the French consular officials put sufficient pressure on both the French and Moroccan governments to concedeto Rey’s demands despite the conventions spelled out in the treaties.

123 MAE Nantes, Tanger A 138, Benchimol to Méchain, 15 July 1841. At this point the archival trail peters out and it is not clear whether Benchimol and Gassal ever actually paid the money they owed to Rey.

124 In ittakalta ‘alā qūnṣ al-injilizi yaqifu ma‘aka wa-ya khudhu laka ḥaqqaka fa-qad dā‘a ḥaqquka li-anahu lā ḥukma lahu (FO, 631/7, Statement recorded in Arabic, translated in English, and signed by the British consul in
English consul generally, foreign subjects and protégés might also choose to avoid consular courts because the details of their case meant it was likely to be “spoilt” in a consular court.125 This type of strategy also worked in the other direction; foreign subjects and protégés attempted to avoid shari‘a and Makhzan courts when they felt they would get an unfavorable ruling in these institutions.126

The case of Corcos v. Shedmi illustrates the kind of situation in which foreign subjects and protégés found it more advantageous to bring their cases before Moroccan judicial authorities. In 1867, Avraham Corcos, a Moroccan Jew and the American consul in Essaouira,
sued Maš'ūd al-Shayządī (Mesod Shedmi), a Muslim Moroccan subject. Corcos claimed that he “…paid into the hands of Seed Mesod Shedini [sic] the sum of Eight thousand five hundred French dollars to be exchanged for Spanish Doubloons, and that Seed Mesod after receiving the money refused to give up the doubloons.” Naturally, al-Shay zadī denied ever having received the 8,500 French dollars (undoubtedly francs) that Corcos claimed to have given him. The jurisdiction of this case fell under British consular law, since al-Shay zadī was a British protégé. Nonetheless, Fred Carstensen, the British consul in Essaouira, went out of his way to protect his protégé from even facing Corcos in a trial. Corcos responded thus: “Under these circumstances and seeing that I could not obtain justice at your hands, I have followed the only course which was open to me namely to prove my case before all the Moorish Authorities [probably meaning the Makhzan court] of this Town.” Corcos even appealed to Muḥammad Bargāsh, the Moroccan minister of foreign affairs and the highest Makhzan authority in charge of matters involving foreign subjects and protégés. He clearly made every effort to ensure that Makhzan officials, rather than the British consul, adjudicated his case.

---

127 See the correspondence about the case in USNA, reg. 84, v. 1, 14 June 1867 to 22 September 1868. See also DAR, Safi, 28690, al-Ṭayyib b. al-Malānī to Muḥammad Bargāsh, 22 Dhū al-Ḥijja 1284. Daniel Schroeter also discusses this case: Schroeter, Merchants of Essaouira, 178-80.
128 USNA, reg. 84, v. 1, Frederick Carstensen to Abraham Corcos, 14 June 1867.
129 “Seed Mesod declares that you must be mistaken, as he has not received from you the sum you mention, and has not even seen you or communicated with you for several weeks” (ibid.).
131 In particular, Carstensen seems to have arranged for al-Shay zadī to sue Corcos’ chief witness before Corcos could bring his witness to testify in his favor (see USNA, reg. 84, v. 1, Carstensen to Corcos, 15 June 1867). Corcos finally had a hearing scheduled at the British consulate for 4 November 1867, although he did not attend this trial for unknown reasons (USNA, reg. 84, v. 1, Carstensen to Corcos, 28 and 29 November 1867). Carstensen did not actually rule in the trial until December, at which point he decided the case in favor of al-Shay zadī (USNA, reg. 84, v. 1, McMath to Corcos, 15 December 1867).
132 Ibid.
133 DAR, Safi, 28690, al-Ṭayyib b. al-Malānī to Muḥammad Bargāsh, 22 Dhū al-Ḥijja 1284/ 16 April 1868.
134 Ultimately it was the American ambassador in Tangier who had Corcos’ money returned to him: USNA, reg. 84, v. 1, McMath to Corcos, 22 September 1868.
It seems that Corcos was not the only protégé who preferred to avoid Carstensen’s consular court. In 1872, Carstensen dismissed Accan Levy, a Moroccan Jew who had been working as the interpreter for the British vice-consulate in Essaouira for a number of years.\(^\text{135}\) His explanation of his decision was brief but telling: “…proofs were obtained of Accan Levy being in the habit of applying to the local authorities, and of arranging cases of litigation without the vice-consul’s knowledge and consent; as also of his exacting unlawful remunerations and fees from persons in town.” In other words, Carstensen accused Levy of arranging for cases which concerned British subjects or protégés to be tried in shari'a or Makhzan courts. Most such cases would normally have been subject to British jurisdiction; this was the case for a dispute between Levy and Baruch Ohayon, a Moroccan Jew working as a commercial agent for the Englishman Grace.\(^\text{136}\) Although Ohayon benefited from British protection as the associate of a British merchant, Levy wanted to avoid having their case tried by Carstensen because he was convinced that Carstensen would rule against him. Levy instead brought the case before the local pasha. However, Carstensen found out what Levy had done and insisted on trying the case since Ohayon was a British protégé. We can surmise that many of the cases which Levy redirected to “the local authorities” were similar to his dispute with Ohayon—that is, they were cases that should have been subject to British consular jurisdiction. It is also important to note that, like Levy, the vast majority of people with access to British jurisdiction in Essaouira at this time were Jewish.\(^\text{137}\) This makes it likely that a significant number of those bribing Levy to bring their cases to Islamic courts were Jews.

\(^{135}\) FO 635/4, p. 32a-b, 11 April 1872 and FO, 631/5, Carstensen to Hay, 26 April 1872.

\(^{136}\) FO, 631/5, Carstensen to Hay, 13 March 1873. Presumably this letter refers to an incident before April 1872, when Levy was dismissed from his post.

\(^{137}\) Though there were some British subjects (merchants, ship captains, and sailors) as well as some Muslim protégés, these were far outnumbered by the many Jewish merchants who had obtained British protection: Schroeter, Merchants of Essaouira, especially Chapter 3.
Foreign subjects and protégés were not the only ones who attempted to avoid the jurisdiction of consular courts. Some Moroccan subjects, when faced with the opportunity to be judged in a consular court, chose instead to bring their disputes before a qāḍī or a Makhzan official. Melal Bonina, a Moroccan Jew, was the plaintiff in one such case. In 1899 Bonina sued Louis Constant Pouteau (or Poutot) for allegedly attacking her, both physically and verbally, and for throwing her out of his house.\(^{138}\) Pouteau was a French subject living in Tangier. The treaties regulating jurisdiction of cases involving foreigners clearly stipulated that any cases against French subjects such as Pouteau could only be tried in French consular courts. Nonetheless, Bonina initially took her case to a Moroccan court—although the case was eventually decided in a French consular court.\(^{139}\) While Bonina might have been unaware that the French consulate had sole jurisdiction in this case, given the prevalence of foreigners in Tangier at the time it seems unlikely that she was completely ignorant of the rules governing jurisdiction.\(^{140}\) A more likely explanation for Bonina’s actions is that she felt she would get a more favorable hearing in a local court. Bonina would have almost certainly been more familiar with the Islamic legal system than Pouteau. Perhaps of equal concern was the likelihood that a French consular court would favor French subjects, since consuls were specifically charged with protecting the interests of their state’s subjects and protégés.\(^{141}\)

---

\(^{138}\) MAE Nantes, Tanger F 3, 6 March 1899.  
\(^{139}\) The dossier does not specify whether Bonina brought her case to a qāḍī or to the governor of the city. Since jurisdiction over criminal affairs was shared between these two judicial authorities, it is not possible to guess to which court she appealed.  
\(^{140}\) The population statistics are highly unreliable; however, the *Annuaire du Maroc* for the year 1905 estimated that the total population of the city was 44,000, of which 9,115 were Europeans and 10,000 were Jews (see Albert Cousin and Daniel Saurin, *Annuaire du Maroc* (Paris: Comité du Maroc, 1905), 408).  
\(^{141}\) See, for instance, Kenbib, *Les protégés*, 54-5. There are too many cases which demonstrate the consul’s support for his subjects and protégés to cite them all; see, for example, the case of Abraham Corcos vs. Mesod Shedini (discussed above). For an example of a French subject who did not feel his consul was sufficiently defending his interests in court, see MAE Nantes, Tanger A 138, Rey vs. Benchimol and Ghassal, esp. Rey to Méchain, 30 August 1837 and 21 October 1837.
A case from 1885 clearly indicates why some Moroccan subjects preferred a qāḍī’s ruling to that of a consul. In 1885, a British firm based in Gibraltar called Glassford and Co. sued three Jews in Tetuan (J. Benmerqui, J. Cohen y Garzon, and Bendahan) for unpaid debts. Initially Glassford and Co. wanted to pursue the case in a British consular court. In fact, they threatened to sue in Gibraltar—presumably if the defendants did not agree to be tried in the British consular court in Morocco. These Moroccan subjects thus had the opportunity to avoid the Moroccan judicial system if they so wished. However, all three declared that they wanted the case tried in a sharī‘a court, which was their right as Moroccan subjects. Nahon, the British consul, reported thus:

…I spoke with the said gentlemen [Benmerqui, Cohen y Garzon, and Bendahan] and told them about the reclamations of [Glassford and Co.]; but these [men], refusing to pay the interest [on the loan], notified Glassford and Co. how they pleaded, and that as Moroccan subjects, they intended to bring the case to the sharī‘a court, where they believed they would not be obliged to pay interest.

In other words, the three Jews preferred to take the case before a qāḍī because in Islamic law they would not be charged the interest on the loan. Nahon pleaded before the pasha of Tetuan that the case was a commercial matter and therefore did not fall under the jurisdiction of the sharī‘a court. He tried instead to have the case judged by the pasha, who might have proved more favorable to Glassford and Co. The pasha, however, replied that since the Jews had asked that the case be tried in a sharī‘a court, he was legally bound to grant their request. He

---

142 FO 636/3, Nahon to White, 13 October 1885.
143 Isaac Nahon, the vice-consul in Tetuan, was not entirely clear in his letter describing the case, which is why I am hesitant to provide a definitive version of the facts.
144 Ibid.
145 Islamic law does, in fact, accommodate a number of ways of charging hidden interest, but a contract which stipulated outright interest would have been null and void in a sharī‘a court (see the discussions in Chapters Two and Five).
146 Islamic law on this issue is somewhat complicated. In the Mālikī school of law, a judge has the right to refuse a case brought to him by two dhimmīs of the same confession. Yet other schools (such as the Ḥanafi school) rule that the judge must accept such a case. The pasha might have been referring to this principle in his declaration that once
confirmed that this meant the Jews would not be charged interest. While we do not know if their strategy worked, the Jews’ motives were clear enough; they preferred a sharī‘a court over a consular court because they knew that Islamic law would not require them to pay interest.

*   *   *

While the spread of consular protection certainly changed Morocco’s legal system, Jews with foreign protection or nationality did not cease to interact with the courts which existed in Morocco prior to the capitulation treaties. On the one hand, consular officials increasingly recognized Islamic legal procedure—especially notarization by ‘udūl—as the gold standard of evidence in their courts. On the other, Jews sometimes chose to adjudicate their disputes in sharī‘a courts or before Makhzan authorities when they felt that doing so would prove advantageous. This does not mean that foreign protection was not a valuable asset in nineteenth-century Morocco; on the contrary, its value arguably increased as the century progressed. Rather, foreign protection was not exactly the kind of asset historians have thought it to be. Obtaining a patent of protection or foreign nationality was useful in legal pursuits not so much because it definitively moved individuals from one jurisdiction to another, but rather because it added yet another set of legal institutions in which Moroccans could adjudicate their disputes. Jews who obtained foreign protection thus expanded their legal options; besides batei din, sharī‘a courts, and Makhzan courts, they now also had access to the consular courts of their protecting nation. Although the acquisition of foreign nationality or protection changed their legal status, it did not radically change the nature of their legal strategies. Jews continued to make every effort to pick and choose the legal forums to which they appealed according to what they thought would best serve their interests.

the dhimmīs requested Islamic law, they must be given their choice. For a summary of these issues, see Fattal, Statut légal, 351-8.
Chapter Nine: The Intervention of Foreigners

On July 12, 1885, Shalom Assarraf—in his role as one of the leaders of the Jews of Fez—signed a collective petition on behalf of his city’s Jewish community. He and nine other representatives described incidents of injustice committed against Jews, including murders that remained unpunished and the ongoing struggle between the Jews of Demnat and their governor. The petitioners explained that “our coreligionists, most of whom conduct their business outside of the city, are afraid to leave the city walls and thus are falling into poverty.” Shalom and his fellow Jewish leaders wrote this petition because they felt that the events they described represented a threat to the Jewish communities of Fez and Demnat.

However, unlike the petitions we have examined thus far, the letter that Shalom signed was not addressed to the sultan or another Makhzan representative. Rather, it was addressed to the Central Committee of the Alliance Israélite Universelle (AIU) in Paris. The AIU had become an increasingly important presence in Morocco through its growing network of primary schools. In addition to its educational activities, the AIU played a role in Moroccan politics by lobbying on behalf of Jews in Morocco who it believed were in distress. Often the AIU went through diplomatic channels; local teachers enlisted the help of foreign consular officials to petition the Makhzan about specific incidents, or the Central Committee wrote letters to diplomats and Makhzan officials in Morocco. In many cases, Moroccan Jews brought certain events to the

---

1 The letter, dated 29 Tammuz 5645, can be found in Fenton and Littman, *L’exil au Maghreb*, 540-2, and is preserved in the archives of the AIU (Maroc IV, C 2 131).
2 The murders discussed in this petition include that of Makhluf Shalush in Fez, Maymon Tordjman and Rubin Azzerad near Marrakesh, and Shalom Attia (a French citizen) near Fez. The incidents in Demnat concerned the claim of the Demnati Jewish delegates that when they returned to their city after a trip to petition the sultan in person they were greeted by Muslim inhabitants and soldiers who attacked them and injured eleven Jews in the process.
3 Ibid., 541.
AIU’s attention either through personal appeals or through collective petitions like the one signed by Shalom.

Yet Shalom’s signature on this petition must be understood in the context of his family’s multiple engagements with Moroccan legal authorities. This chapter seeks to re-think the ways in which Jews sought the intervention of foreign consular officials and international Jewish organizations in their legal affairs. As we have seen, consular officials became intimately involved in the legal matters of Moroccan Jews and Muslims who had acquired foreign nationality or protection. Foreign diplomats also increased their advocacy on behalf of Jews who were Moroccan subjects and had no consular protection. Many foreign officials justified their intervention on Jews’ behalf in the name of lofty ideals such as justice and religious equality, although often they were just as interested in meddling in internal Moroccan affairs. Jews, too—including those without protection—increasingly turned to foreign diplomats and international Jewish organizations when they felt their rights were threatened. The history of foreign intervention on behalf of Moroccan Jews is far better documented in the secondary literature than the subjects discussed hitherto in this dissertation. Nonetheless—and perhaps especially because there is a relative wealth of scholarship on foreigners’ intervention—it is worthwhile revisiting foreign advocacy on behalf of Moroccan Jews in the context of Jews’ participation in the Moroccan legal system and new evidence from the Moroccan archives.

I argue that the dominant historiography misrepresents the often fluid relationship among Jews, foreigners, and the Makhzan; it portrays Jews as powerless victims of an oppressive Moroccan state who sought to alleviate their suffering through the benevolent protection of foreign officials. This depiction has its roots in the arguments Western diplomats used to justify
their imperial intentions in Morocco. Law and “justice” were particularly central to France’s justification of its protectorate over Morocco: as one French journalist put it, “We know that justice is our best argument concerning the Muslims that we administer. It is through this that our regime differs from that of the Beys, Deys, Emirs, and Sultans…” Many historians, especially those focused on Jews, have adopted this rhetoric nearly without modification. In their descriptions of the encounter between consular officials and the Moroccan state, these scholars paint a portrait of the Makhzan as an anachronistic government stuck in a medieval mindset. For them, foreigners (mostly Europeans and Americans) represent the ideals of justice, religious tolerance, and emancipation, faced with the intransigence of Islamic rule. In their view, whatever improvements in the lives of Jews that came about in the years preceding the French protectorate were mostly due to foreign intervention. This depiction of righteous foreigners saving Jews from their Muslim rulers is an important expression of the neo-lachrymose approach to the history of Jews in the Islamic world

---

4 On Western diplomats’ use of Jews to justify their intervention in Morocco, see especially Kenbib, Juifs et musulmans, 4-6 and Chapter 3; idem, Les protégés, 225; idem, “Muslim-Jewish Relations,” 153, 159. For some particularly colorful examples, see USNA, reg. 84, v. 001, McMath to Corcos, 12 June 1864; reg. 84, v. 47, Felix A. Mathews to Lucius Fairchild, 11 April 1880.
6 See, e.g., Parsons, The Origins of the Morocco Question, 4-7; Ye’or, The Dhimmi: Jews and Christians under Islam, especially 78-86, 305-8; Littman, “Mission to Morocco”; Stillman, The Jews of Arab Lands in Modern Times, 6-8, 14-15; Tudor Parfitt, “Dhimma versus Protection in Nineteenth Century Morocco,” in Israel and Ishmael: Studies in Muslim-Jewish Relations, ed. Tudor Parfitt (Richmond: Curzon Press, 2000), esp. 150; Laskier and Bashan, “Morocco,” 482-3; Eliezer Bashan, “New Documents regarding Attacks upon Jewish Religious Observance in Morocco during the Late Nineteenth Century,” in The Legacy of Islamic Antisemitism: From Sacred Texts to Solemn History, ed. Andrew G. Bostom (Amherst, NY: Prometheus Books, 2008); Fenton and Littman, L’exil au Maghreb; Gilbert, In Ishmael’s House, Chapter 8. When these scholars do introduce nuance into their accounts, it is usually in the form of distinguishing among those consular officials who more consistently championed Jewish causes and those who were deemed unfriendly to Jews and, perhaps, anti-Semitic; John Drummond Hay (British ambassador from 1845-86) and Laurent-Charles Féraud (French ambassador from 1884-8) are both accused of lacking commitment to helping Moroccan Jews. See, e.g., Laskier, The Alliance Israélite Universelle, 53; Fenton and Littman, L’exil au Maghreb, 51, 468-77, 90-1, 502-3.
A competing narrative of Moroccan Jewish history has developed mostly among Moroccan historians. This scholarship does not take Western views of Moroccan Jews at face value; it draws instead on material from the Moroccan archives to present a narrative in which Jews were more or less well-treated by the Makhzan—and indeed Muslims more generally—until the intervention of foreigners drove a wedge between Jews and Muslims. In this view, foreigners’ intervention on Jews’ behalf was a divide-and-conquer strategy to which Jews (perhaps unwittingly) fell prey. These historians have done a great service to the field by introducing sources in Arabic (especially those from Moroccan archives) into the historiography of Jews in Morocco. Nonetheless, their approach can be just as misleading as the one which paints the Makhzan as the villain and foreigners as the heroes. Ultimately, however, this Moroccan school of Jewish history is far less developed than the neo-lachrymose approach. Perhaps more importantly, my disagreement with this school is about big conclusions rather than interpretations of historical events. For the most part I do not dispute these historians’ portrayal of how Jews interacted with either the Makhzan or with foreigners. Rather, I disagree with their conclusions about how to understand the relationship between Jews and the Makhzan before and after the intervention of foreigners became widespread.

Ultimately, both schools see foreigners as more or less successfully inserting themselves between Jews and the Makhzan. The neo-lachrymose historians posit a relationship in which foreigners placed themselves between an oppressive state and its Jewish victims, whereas Moroccan historians of Jews portray one in which foreigners drove a wedge between a benign Makhzan and its fortunate Jewish subjects. Instead, I propose a more flexible relationship

---

among Jews, the Makhzan, and foreign officials. My approach replaces a linear model of foreigners inserting themselves in between the Makhzan and Jews with a fluid model in which the relationships among Jews, the Makhzan, and foreigners shifted depending on the circumstances of the case at hand.\(^8\) I also focus on recovering the strategies of Jews at the local level and contextualizing them within the broader framework of Moroccan legal history.

In the model I propose, Jews neither passively fell victim to the Makhzan nor were unwittingly duped by the divide-and-rule tactics of Europeans. On the one hand, as we saw in Part Two, Jews were able to petition the Makhzan for redress when they felt their rights had been violated; it was in the context of broader strategies which also included appeals to the Makhzan that Jews asked foreigners to intervene in their legal affairs. On the other hand, when Jews’ grievances concerned foreign subjects or protégés, they tended to appeal to the Makhzan rather than foreigners. Jews’ appeals were not aimed exclusively at foreign diplomats and Jewish organizations; as with their choices of legal venues, Jews shopped among the various options to maximize the chances that their legal disputes would be addressed. At times, groups of Jews adopted different solutions for how to address their grievances, which could lead to disagreements among Jewish communities about which path of appeal to take.

Another corrective to the neo-lachrymose narrative is the fact that foreigners’ perception of the Makhzan as arbitrary oppressor was not always accurate. On the contrary, what foreigners perceived as persecution was often merely the normal functioning of Islamic law and/or the state. Through a close examination of two “celebrity” cases which captured the interest of Jewish and

---

\(^8\) In so doing, I build on the work of Mohammed Kenbib, who argues that Europeans intervened on behalf of Jews as a way to interfere in Morocco’s internal affairs and thus extend their influence in the region; see especially *Juifs et musulmans* and *Les protégés.*
non-Jewish Westerners alike, I argue against a portrayal of an abusive Makhzan as a justification for foreigners’ intervention.

Finally, I argue that the relationships among Jews, the Makhzan, and foreign diplomats and Jewish organizations changed in important ways during the second half of the nineteenth century. Foreigners’ intervention on behalf of Jews did not fall entirely on deaf ears. On the contrary, Jews’ appeals to foreigners and foreign intervention with the Makhzan on Jews’ behalf had an important effect on how the Moroccan state portrayed itself—to foreign officials, to Jews, and to its own functionaries. Through an examination of the changing language used in Makhzan correspondence during the late nineteenth century, I show that foreigners’ intervention was partly responsible for a transformation in the Makhzan’s own understanding of its relationship to Jews.

Covering All the Bases

The first step in re-thinking the relationship among Jews, foreigners, and the Makhzan is to view Jews’ appeals to foreigners in the context of their legal strategies more generally. As the nineteenth century progressed, Jews increasingly wrote to foreign consuls and international Jewish organizations when they felt they were victims of injustice; usually, these Jews hoped foreigners would successfully apply pressure on the Makhzan to grant them redress. However, in many instances—especially those that are better documented—Jews appealed to both foreigners and the Makhzan, more or less simultaneously. ⁹ In the cases where the object of their

---

complaints was a foreign subject or protégé, Jews directed their appeals exclusively to the Makhzan.

When Jews’ petitions were successful it is usually impossible to know whether their appeals to foreigners caused the Makhzan to heed their claims or whether the Makhzan would have acted without foreign pressure. Yet identifying the ultimate motive for the Makhzan’s actions is not necessary for the purposes of my argument. It would be disingenuous to contend that foreign pressure on the Moroccan state had absolutely no effect on the Makhzan’s relationship with its Jewish subjects. (On the contrary, I argue below that foreign intervention had a significant impact on how the Makhzan portrayed the status of Jews in Morocco.) In most cases, it seems likely that the Makhzan heeded foreign advocacy on behalf of Moroccan Jews to some degree in its resolution of Jews’ legal problems. However, my argument is not that the Makhzan would have treated Jews exactly the same way without foreign intervention, but rather that Jews did not perceive foreigners as their only bulwark against injustices committed by the state or its representatives. Rather, Jews collectively appealed for redress to foreigners and to the Makhzan in order to maximize their chances of obtaining their desired goal, just as individual Jews shopped among the different legal institutions available to them in the hopes of finding the most favorable venue.

The long and stormy relationship among the Jews of Demnat and their governor, al-Ḥājj al-Jilālī al-Dimnātī, is a good example of the ways in which Jews attempted to cover all their bases in their appeals for redress. In Chapter Six, I examined instances in which the Jews of Demnat appealed to the Makhzan between 1864 and 1889 concerning al-Jilālī’s abusive behavior. Here, I discuss these Jews’ often simultaneous appeals to diplomatic officials and foreign Jewish organizations—appeals which garnered significant interest, including in the
international press. Demnat might seem an unlikely place for Jews to receive so much attention from the Makhzhan as well as from foreign diplomats and Jewish organizations given its relatively small size and lack of political importance. The fact that Demnat was one of the few towns in Morocco where the Jewish population equaled or exceeded the Muslim population helps explain the considerable stir caused by Jews’ complaints.\(^{10}\)

Most of the scholarship on relations between Demnati Jews and the Makhzhan emphasizes the role of European diplomats and Jewish organizations such as the AIU and the Anglo-Jewish Association (the AJA, based in London) in convincing the Makhzhan to intervene on the Jews’ behalf. For instance, in Paul Fenton and David Littman’s recent book on Jews in the Maghrib, the authors reprint a royal decree (ẓahīr) from July 7, 1864, in which the sultan, Mawlāy Muḥammad, ruled that the governor of Demnat must treat the Jews of his city justly.\(^{11}\) This ẓahīr was printed on November 14, 1884 in *The Jewish Chronicle*, a Jewish newspaper published in London. The *Chronicle* wrote that Mawlāy Muḥammad proclaimed the ẓahīr in response to Moses Montefiore’s intercession on behalf of Moroccan Jews during his visit to Morocco in 1883-4. Fenton and Littman do not contradict the *Chronicle*’s claim, nor do they offer any other contextualization for this source, suggesting that they also believe the ẓahīr was solely a response to Montefiore’s visit.\(^{12}\) In order to fully understand Mawlāy Muḥammad’s ẓahīr, however, it is

\(^{10}\) In 1879, Demnat’s Jewish population was estimated at 1,000 individuals: see Ben-Srhir, *Britain and Morocco*, 196.

\(^{11}\) Fenton and Littman, *L’exil au Maghreb*, 327-9. The ẓahīr specifically mentions that the governor should refrain from the following abuses: throwing Jews into prison unjustly; forcing Jews to host people against their will; making rich Jews pay the jizya for the poor (since everyone should pay equally); forcing Jews to work on the Sabbath; subjecting Jews to corvée labor; and forcing Jews to buy things against their will. I did not find a copy of this ẓahīr in the Moroccan archives, though this is not surprising given the incompleteness of the archives. However, there is evidence that the sultan issued a ẓahīr to al-Jilālī: in al-Mayānī’s letter to Bargāsh of 30 Muḥarram 1281/ 5 July 1864 (in DAR, Demnat), he noted that the sultan ordered the governor of Demnat “not to intervene in [the Jews’] religion or their law (an lā yadkhula fī umūri dīnihim wa-shar‘ihim).”

\(^{12}\) See also Littman’s discussion of the events in Demnat in which he only addresses Jews’ appeals to foreigners: Littman, “Mission to Morocco,” 197. Bashan makes the same argument: Eliezer Bashan, *Moshe Montefiore ve-
important to note that Jews had earlier petitioned the Makhzan directly, in addition to appealing to foreign consuls and the AIU.\textsuperscript{13} It is also pertinent that the Makhzan issued a warning to al-Jilālī despite the fact that Makhzan officials concluded that the Jews did not have enough evidence to support their claims of abuse.\textsuperscript{14} In agreeing to address the Jews’ claims, it is not clear whether the Makhzan was responding to pressure instigated by Montefiore’s visit or whether the Jews’ direct appeals had more influence on the final resolution of the matter.\textsuperscript{15}

Similar patterns are found in the second major confrontation between Demnati Jews and their governor twenty years later.\textsuperscript{16} The incidents in 1884 were something of a cause célèbre, and the Moroccan and European press reported on the purported abuses which al-Jilālī levied against Jews.\textsuperscript{17} The Demnati Jews’ complaints resulted in a ẓāhir from Mawlāy Ḥasan (issued on September 14, 1884) ordering al-Jilālī to cease his abuses of the Jews.\textsuperscript{18} Many accounts

\begin{flushleft}
\textsuperscript{13} See DAR, Demnat, al-Ṭayyib al-Mayānī to Muḥammad Bargāsh, 24 Muḥarram 1281 and 30 Muḥarram 1281. In both these letters, al-Mayānī referred to Demnati Jews’ earlier appeals to the Makhzan about their governor. In the letter from 30 Muḥarram 1281, al-Mayānī instructed Bargāsh to inform the British ambassador and the other consuls about the measures being taken on behalf of Jews, indicating that the Demnati Jews had appealed to both foreign consuls and the Makhzan. On the Demnati Jews’ petitions to the AIU, see AIU, Maroc III C 10 E5, Jews of Demnat to AIU, 25 May 1864 and Maroc III C10, E25.05, Rabbi Mimon Ifran (representative of the Jewish Community of Demnat) to the Junta of Tangier, 25 May 1864.
\textsuperscript{14} See DAR, Demnat, al-Ṭayyib al-Mayānī to Muḥammad Bargāsh, 30 Muḥarram 1281 and Muḥammad Bargāsh to Mawlāy Muḥammad, 27 Rabī’ I 1281. The representatives of the Jews of Demmat signed a statement attesting the fact that their complaints had been addressed: DAR, Demmat, Muḥammad Bargāsh to Mawlāy Muḥammad, 27 Rabī’ I 1281.
\textsuperscript{15} In fact, the Jews of Demmat petitioned the Makhzan twice more between 1864 and 1884, though the lack of documentation about these petitions suggests that they concerned more minor incidents. See DAR, Demmat, Mawlāy Muḥammad to Sīdī Ḥasan, 14 Ramāḍān 1282 (concerning a disagreement among the Muslim cobbler and the Jewish tanners of Demnath) and DAR, Demmat, Mawlāy Ḥasan to al-Jilālī al-Dimmānī, 30 Rabī’ I 1296 (concerning the Jews’ complaint that they were afraid because there were no walls separating their quarter from that of the Muslims; Mawlāy Ḥasan instructed al-Jilālī to post guards in the Jewish quarter to assuage the Jews’ fears).
\textsuperscript{16} The 14 November 1884 article from \textit{The Jewish Chronicle} cited above (and found in Fenton and Littman, \textit{L’exil au Maghreb}, 327-9), in which the ẓāhir of 1281 was reprinted, was primarily about the events of 1884. See also “Horrible Persecution of Jews,” \textit{The Times of Morocco}, 18 December 1884 and articles in \textit{Jewish Intelligence}, March 1885, in ibid., 336-40.
\textsuperscript{17} DAR, Demmat, 15598, ẓāhir from Mawlāy Ḥasan, 23 Dhū al-Qa’da 1301. See also DAR, Demmat, Mawlāy Ḥasan to al-Ḥajj al-Jilālī al-Dimmānī, 1 Sha’bān 1302 (in which Mawlāy Ḥasan essentially repeated his earlier instructions). Mawlāy Ḥasan eventually relieved al-Jilālī of his authority over the Jews of Demnath, transferring this responsibility
\end{flushleft}
attribute the Makhzan’s efforts to address the complaints of Demnat’s Jews to foreign intervention. Fenton and Littman, for instance, depict this incident as evidence of the Italian ambassador’s effective advocacy on behalf of Moroccan Jews. 19 Aḥmad Tawfīq is one of the few scholars to argue that European intervention was not the motivating factor in Mawlāy Ḥasan’s decision to grant the Jews of Demnat redress. 20

Yet whatever the motivations behind the sultan’s response, omitting any mention of the numerous appeals sent by Demnat’s Jews directly to the Makhzan leaves out a crucial part of the story. While there is little question that the Jews of Demnat appealed to foreign consuls and Jewish organizations, the Demnati Jews also appealed to the Makhzan about their complaints. 21 Significantly, the petitions to the Makhzan suggest that opinion was severely divided among the Jews of Demnat, both as to the nature of the complaints and how to address them. In a legal document sent to Mawlāy Ḥasan from August 7, 1884, a number of Demnati Jews complained not about their governor, but about fellow Jews who had sought the protection and intervention of foreigners. 22 That fall, the sultan sent a representative, al-Bāshīr al-Ḥabash, to Demnat to investigate claims made by Demnati Jews that their governor was mistreating them. 23 The Jews who had originally complained about al-Jilālī refused to cooperate with al-Ḥabash. However, some Jews who had remained in Demnat came before al-Ḥabash and al-Jilālī and testified that

---

20 Tawfīq, “Les Juifs de Demnate,” especially 156-8; idem, İnältän, 310-14. While Kenbib discusses Jews’ appeals to the Makhzan, he accords more importance to the Demnati Jews’ overtures to European consular officials (Kenbib, Juifs et musulmans, 235-40). See also Ben-Srirh, Britain and Morocco, 196-200.
21 On appeals to consular officials, see, e.g., DAR, Yahūd, 36130, Mathews to Mawlāy Ḥasan, 7 Dhū al-Ḥijja 1301. On appeals to the AJA, see the letter from the Jews of Demnat to the AJA published in The Jewish Chronicle on 6 February 1885, p. 11 (reprinted in Fenton and Littman, L’exil au Maghreb, 332-6). On appeals to the Makhzan, see Mawlāy Ḥasan’s account of Jews’ complaints to him in DAR, Demnat, Mawlāy Ḥasan to al-Ḥajj al-Jilālī al-Dimnāṭī, 1 Sha’bān 1302.
22 DAR, Yahūd, 15597, 14 Shawwāl 1301. This petition is discussed at greater length in Chapter Six.
“there was no basis to this claim” (lā aṣla liḥādhihi al-daʿwā). Two opposing camps had developed among Demnat’s Jews, one that felt they were being oppressed by their governor and appealed to the Makhzan and foreigners to gain redress, and another that disapproved of their coreligionists’ actions and appealed to the sultan to stop them.

The acrimonious relationship among Demnati Jews and their governor was not resolved in 1884 and Jews continued to appeal to the Makhzan and foreigners for redress. In 1887, Mawlāy Ḥasan made a personal visit to Demnat and ordered the building of a new millāḥ at the request of the city’s Muslim and Jewish notables. This episode is also of interest in that it indicates that walled Jewish quarters were at times perceived by Jews as advantageous to their security—especially in light of an earlier petition in which Demnati Jews complained to the sultan that the lack of walls separating them from Muslims made them fear for their safety. Needless to say, the story of Demnat’s Jews and their relationship with al-Jilālī was far more complex than one in which foreign intervention protected them from the abuses of their governor. Demnati Jews maximized their chances of gaining redress by appealing to both foreigners and the Makhzan.

24 Ibid.
25 See also a legal document from 3 Safar 1302/ 22 November 1884 (DAR, Yahūd, 15599), in which a group of Jews testified concerning their coreligionists who, seeing that Jews in other towns were not punished for attacking Muslims, had thrown stones at Muslims and attacked them. The Jews testifying in this document clearly disapproved of their coreligionists’ actions.
26 For petitions to the Makhzan, see BH, K 157, p. 35, 22 Ramadān 1306 and p. 44, 12 Shawwāl 1306. For petitions to the AIU, see AIU, Maroc III C10 E2, Elihu Moshe Panisel to AIU, Av 5645 (received 28 August 1895).
27 See the legal document from 17 Shaʿbān 1304/ 11 May 1887 with lists of Muslim and Jewish notables noted on the side of the document. Although the document was framed in terms of the annoyances caused to Muslims by the mingling of Jews and Muslims, the Jews present declared that they accepted the place assigned for the new millāḥ and pledge to move their cemetery and to leave their present houses once the new millāḥ was constructed (in Flamand, Un mellah en pays berbère, 161-4). See also the zahīr from the same date (in ibid., 159-60) in which the sultan ordered the construction of the new millāḥ. Of course, this did not prevent at least some of the Jews from refusing to move to the new millāḥ: see DAR, Yahūd, 27937, al-Ṭayyib (al-Yamanī?) to Mawlāy Ḥasan, 8 Rabī’ I 1308. On the sultan’s visit to Demnat, see also Berque, L’intérieur du Maghreb, 477.
28 DAR, Demnat, Mawlāy Ḥasan to al-Jilālī al-Dimmātī, 30 Rabī’ I 1296. See also Flamand, Un mellah en pays berbère, 20. Flamand claimed that the new millāḥ was completed in 1894, though he does not cite a source for this date.
The events in Demnat were not the only ones which prompted Jews to appeal to both foreigners and the Makhzan. When the Jews of Casablanca sent a letter to the Jews of Tangier asking them to transmit their complaint about the abuses of their governor to the Makhzan in 1877 (discussed in Chapter Six), the Casablancan Jews had already made two other attempts to resolve the matter. They first tried to convince their qā’id to release their unjustly-imprisoned coreligionists. When this failed, they requested assistance from the British consul in Casablanca. The British consul spoke to the qā’id on their behalf, but with no luck. It was only after trying and failing with local Makhzan officials and a foreign consul that the Jews of Casablanca brought the matter to the sultan’s attention.

In the summer of 1878, when the trash was piling up in the streets of the millāḥ of Fez and the putrid smell of cow dung was literally sickening its residents, the Jews opted for two strategies to improve the situation. On the one hand, they complained to some foreign consular officials, hoping that they would be able to exert influence on the Makhzan. The consular officials’ protégés and “friends” (aṣḥāb) wrote a letter to Muḥammad Bargāsh, asking him to write to their local qā’id, Sa’īd b. al-Farajī, with instructions to help the Jewish shaykhs and rabbis clean up the millāḥ. The Jewish elders (ḥazānūn) wrote a separate letter directly to al-Farajī with the same complaint. Though it is not clear which letter came first, it is possible that the Jews wrote to al-Farajī and the foreign consuls simultaneously in order to maximize their chances of getting a response. Ultimately it seems that the appeal to Bargāsh proved effective, since he ordered al-Farajī to gather the Jewish leaders and aid them in sanitizing the millāḥ.

29 DAR, Yahūd, 15587, Jews of Casablanca to Jews of Tangier, 26 Rabī‘a I 1294.
30 DAR, Fez, 6078, Muḥammad Bargāsh to Sa’īd b. Farajī, 11 Sha‘bān 1295.
31 The letter mentioning this incident does not specify to which consular officials the Jews appealed, nor where they were (since at the time there were no foreign consulates in Fez).
32 Ibid.: Bargāsh asked al-Farajī to send this letter to him.
Nonetheless, we cannot understand the strategy of the Jews of Fez without accounting for their appeals to both foreign consular officials and the Makhzan.

Given what we have seen of Moroccan Jews’ forum shopping, it should come as no surprise that Jews similarly wrote collective appeals to both the Moroccan state and foreigners. The strategy of “covering all the bases” is particularly important because it exposes the weakness of the argument that Jews saw foreigners’ intervention as their only hope to obtain justice. We should be even less surprised, then, that Jews collectively petitioned the Makhzan when the object of their complaint was a foreign subject or protégé. Yet the historiography of Jews’ relations with consular officials and international Jewish organizations has largely ignored Jews’ appeals to the Makhzan against foreigners.

One such incident occurred in 1868 when the Jews of Tetuan appealed to Muḥammad al-Slāwī with a complaint against a local Spaniard.33 The unnamed Spaniard, described as a Christian (nasrānī), lived in the millāḥ.34 He had rented a house there from the Makhzan, as well as a store in the abutting oxen market (ṣūq al-faddān). Rather than taking the normal route from his house to his store, which would have taken him through the millāḥ’s sole gate, the Spaniard instead opened a door connecting his house directly to his store. The Jews of Tetuan explained that the Spaniard was allowing a number of Muslims to enter the millāḥ through this new door, adding that when they “saw the Muslims entering the millāḥ through [this door], and especially the troublemakers (fāsidūn) among them, they became afraid.”35 Al-Slāwī spoke to the Spanish consul in Tetuan asking him to make the Spaniard close up the door, but the consul claimed that the door had been there when he arrived and thus that he was powerless to seal it. Al-Slāwī

---

33 DAR, Tetuan, 26945, Muḥammad al-Slāwī to Muḥammad Bargāsh, 26 Dhū al-Ḥijja 1284. Al-Slāwī was probably a Makhzan official in Tetuan, though I was unable to find any information about him.
34 It was common for foreign Christians in many Moroccan cities to live in the Jewish quarter.
finally wrote to Muḥammad Bargāsh, the Makhzan’s minister of foreign affairs, asking him to communicate the Jews’ complaint to the Spanish ambassador in Tangier, hoping that this would succeed in getting the door blocked.

In a well-documented incident from 1877, the Jews of Essaouira complained to ‘Amāra b. ‘Abd al-Ṣadīq, the city’s governor, about a group of British missionaries led by J. B. Crighton Ginsburg who had come to Morocco to convert the Jews to Protestantism. Essaouira’s Jews were incensed at these proselytizers, and especially at Ginsburg, a Jewish convert to Protestantism. After a local Jewish woman converted to Christianity, her father sacrificed two bullocks in the square in front of the Dār al-Makhzan (the administrative headquarters of the city), in a plea to convince the governor to stop the missionaries. A group of Jews explained to ‘Amāra that the missionaries were trying to “corrupt their religion.” These proselytizers, the Jews claimed, “incited their children and their poor people to change their religion for the new religion and gave them money [to do so].” This language was carefully chosen (either by the Jews themselves or by Bargāsh, their intermediary with the sultan) to invoke the prohibition on dhimmīs changing their religion to anything but Islam. The Jews “requested that [the Makhzan officials] remove this harm from them by forbidding [the proselytes] from living with them.”

---

When ‘Amāra wrote to Sir John Drummond Hay, the British ambassador to Morocco, about the Jews’ demands, he was not initially very receptive. Later, Jews appealed again to the Makhzan authorities as well as to the local British consul. Eventually the British consulate withdrew its protection from Ginsburg.

A few years later, the Jews of Fez came to their governor with a complaint about yet another Spaniard. The trouble started when a man described as a renegade (‘ilj) drew a knife during an argument with an Algerian Jewish shopkeeper. Other Jews who had witnessed the incident came to their coreligionist’s defense. They brought the man—who was reportedly drunk and who wore a red tarbush, a jellāba (Moroccan robe), and yellow babouches (slippers)—to the gatekeeper to be imprisoned. Al-‘Arabī wuld Abī Muḥammad, the qā’id of Fez, reported thus on his efforts to interrogate the prisoner:

I asked him where he was from, and he answered me but I did not understand his language. So someone who spoke his language came and spoke to him, and [the Spaniard] said that he was a Christian. Then I asked him where he was staying, and he said he was renting a house from ‘Alāl al-Shūsī [a Jew]… I asked him why he was

42 Hay responded to ‘Amāra’s letter by saying that the British subjects had denied trying to convert any Jews, and that they reported having been the victims of abuse by Jews (DAR, Yahūd, 17240, John Drummond Hay to ‘Amāra b. ‘Abd al-Ṣadīq, 8 Muḥarram 1294).
43 See the documents in Bashan, Ha-misyon ha-anglikani, 167-72.
44 Ginsburg, who was born in Poland, had been naturalized as a British citizen, but John Drummond Hay concluded that this was not sufficient to afford him extraterritorial status in Morocco (see ibid., 69-70). This argument was highly unusual; Hay’s desire to strike Ginsburg from the list of British protégés was clearly a response to Jewish (and probably Makhzan) pressure to rein in his activities. Needless to say, this did not spell the end of Ginsburg’s efforts to convert the Jews in Morocco; Ginsburg continued to travel and proselytize in Morocco until 1886 (ibid., 100-12).
45 Spaniards were over-represented among the Europeans against whom Moroccan Jews lodged complaints with the Makhzan. (See the incident from Tetuan discussed above, as well as DAR, Fez, Muḥammad Bargāsh to Mawlāy Ḥasan, 12 Sha‘bān 1296.) One possible explanation for this is that after the Spanish occupation of Tetuan in 1860-1, the number of Spaniards living in Morocco increased—especially those who were from the lower strata of society, who were probably easier targets for Jews’ complaints than were wealthy merchants who enjoyed connections to both foreign and Moroccan officials.
46 ‘Ilj could also mean “lout,” however, given the fact that the Makhzan authorities originally believed the Spaniard was Muslim and then “found that he was not an ‘ilj but a Christian (bi-annahu nasrānīyan wa-lā ‘iljan),” it seems likely that they are using ‘ilj to mean “renegade” in this context. De Premare’s dictionary of colloquial Moroccan Arabic translates ‘ilj as both “chrétien renégat converti à l’Islam” and as “homme de rien, individu dégradé,” (De Premare, Dictionnaire arabe-français, v. 9, 199).
47 DAR, Fez, al-‘Arabī wuld Abī Muḥammad to Muḥammad b. al-‘Arabī, 17 Muḥarram 1299.
wearing Muslim clothing and told him to change his clothes so that [people] would know him and would know what he was about, [to which] he replied that he wanted it that way.48

Al-‘Arabī pursued the case with the pasha of Fez (Sa‘īd b. Farajī), and sent two legal documents about the incident; one document was drawn up by Jews, presumably in Hebrew, and the other, written in Arabic, contained the testimony of a lafīf that they knew the Spaniard as ‘Abdallāh and that they had heard him say he was a Muslim.49 It is likely the Jews who brought the Spaniard to the Makhzan officials knew he was a foreigner since he was living in the millāḥ and renting lodgings from a Jewish landlord—despite the fact that a number of Muslims seem to have been under the impression that the Spaniard was a Muslim. When the Spanish ambassador found out that the pasha had imprisoned the Spaniard at the request of a group of Fasi Jews, he not only wanted the pasha dismissed, but also insisted that the Jews be punished.50 This incident is of particular interest because the victim of the Spaniard’s assault, an Algerian Jew, was himself a foreign national.51 One might have expected this type of incident to result first in an appeal to the French consul in Fez, or even to the Spanish consul. However, the Jews of Fez chose to appeal to their local qā‘id, presumably in the belief that he would prove more effective in getting the Spaniard restrained and punished.52

48 Fa-sa‘altuhu min ayna huwa fa-ajābanī fa-lam naṣham lisānahu fa-ḥaddara man ‘arafa lisānahu wa-kallamahu fa-qāla annahu naṣrānīya fa-sa‘altuhu ‘an al-maḥallī alladhī yanzilu fihi fa-qāla annahu yaskunu fi dāri ‘Alāl al-Shūsī...fa-qultu lahu lima anta lābisun libāsa muslimīni wa-taraka libāsaka li-su‘rafa bihi wa-yakūn al-nāsu minka ‘alā bālin, fa-qāla annahu arāda dhālika (ibid.).
49 The Jewish document is not preserved in the archives. The Arabic legal document is also dated 17 Muḥarram 1299.
50 DAR, Fez, 36520, Muhammad Bargāsh to Mawlāy Ḥasan, 6 Ṣafar 1299. The Spanish ambassador also insisted on an indemnity of 500 riyāls and punishment of the guard who had helped the Jews bring the Spaniard to the pasha.
51 The discussion about this Spaniard’s transgression through fashion and the implications for the symbolism attached to clothing is also fascinating, but less relevant to the argument at hand.
52 The archives do not preserve the resolution of this case. See also DAR, Fez, 5992, ?? to Mawlāy Ḥasan, 27 Shawwāl 1299, which discusses a Spaniard who was beaten and wounded (or beat and wounded someone—the syntax is not clear)—although even if this letter does discuss the case at hand, it does not give any further clues about a resolution to the matter.
These and other incidents in which Jews turned to the Makhzan with complaints about foreign subjects and protégés disrupt the linear understanding of the relationship among Jews, foreigners, and the Moroccan state. Jews did not only appeal to foreign consuls and international Jewish organizations to save them from an oppressive state. At times, Jews petitioned that very state for redress against foreign subjects and protégés. Nor were Jews exclusive in their strategies of appeal; they often chose to cover all their bases by petitioning both foreigners and the Makhzan at the same time.

Reexamining Cause Célèbre I: Safi

In the second half of the nineteenth century, two cases became causes célèbres among foreign officials in Morocco, Jewish organizations in Europe, and beyond. The incidents were reported in newspapers around the world as evidence of the barbarity of the Moroccan state and the sorry condition of the persecuted Jews living there. While most instances in which Jews appealed to foreigners for aid against Makhzan officials were too minor to have left much of a trace in the archives, the broad interest in these two cases produced a relatively long archival trail which can be used to reconstruct the incidents in some detail. It is precisely these details which belie the simple picture of oppressed Jews being saved by enlightened Europeans.

The Safi case is undoubtedly the better known of the two, largely because it occasioned the visit of the British Jewish philanthropist Sir Moses Montefiore to Morocco in 1863-4. Briefly, the affair revolved around the death of a Spanish customs official in Safi in the summer

---

53 For more instances in which Jews appealed to the Makhzan concerning offenses committed by foreign subjects and protégés, see DAR, Fez, Muḥammad Bargāsh to Mawlāy Ḥasan, 12 Sha'bān 1296 (concerning a Spaniard who had eight Jews unjustly imprisoned by falsely accusing them of robbing his house; the Jews complained to the qā’id of Fez, who then transmitted their complaint to Muḥammad Bargāsh); DAR, Safi, 24082, Ibn Hīma to Sayyid Aḥmad, 29 Ramāḍān 1297 and Mawlāy Ḥasan to Muḥammad Bargāsh, 29 Shawwāl 1297 (in Müdiriyat al-Wathā‘iq al-Mālikīya, Al-Wathā‘iq, v. 4, 511-13) (concerning a Jew named Ḥaim b. Bakkash who complained to Ibn Hīma, the governor of Safi, that he had been beaten by a British Jew named Jack b. Rūmāya).
of 1863. Four Jews were accused of poisoning the Spaniard; two were executed, and the other two were eventually pardoned. The Safi affair has received considerable attention in the secondary literature. David Littman’s 1985 article on Montefiore’s mission to Morocco was the first extensive treatment of the case. Littman stresses the cruelty and oppression experienced by Jews in Morocco. While he deems Montefiore’s mission largely unsuccessful, there is little question that he believes foreign intervention was the only hope for improving Jews’ condition.

Muhammad Kenbib is the first scholar to have offered a very different interpretation, emphasizing the Spanish role in the execution of the Jewish suspects and portraying the Makhzan as largely powerless to resist Spanish demands. Kenbib was also the first to include documents from the Moroccan archives in his account of the affair. However, recent scholarship reverts to the approach adopted by Littman. Martin Gilbert writes “[A]ll the accused were executed without even the charade of a trial.” In a book dedicated to Montefiore’s intercession on behalf of Moroccan Jews, Eliezer Bashan emphasizes the bad faith of the Moroccan authorities and lionizes Montefiore and his European allies for their role in saving

---

54 Littman, “Mission to Morocco.”
55 See especially his conclusion (ibid., p. 202).
Moroccan Jews. Most surprising is Bashan’s complete neglect of relevant documents from the Moroccan archives, despite the fact that he was aware of Kenbib’s work.

In their 2011 book, *L’exile au Maghreb*, Fenton and Littman offer an even less nuanced argument than in Littman’s original 1985 study. Fenton and Littman’s bias is demonstrated in their misunderstanding of a letter sent by Moshe Pariente on behalf of the Jewish community of Tangier to international Jewish organizations; this letter describes the execution of the two Jewish suspects in the Safi affair and requests their coreligionists’ intervention to save the two suspects still awaiting execution (I discuss this letter at length further below). The letter repeatedly mentions a certain “S.E. le Ministre de S.M.C.” who demanded the execution of the two Jews and staunchly resisted all pleas for mercy. Fenton and Littman misinterpret this key abbreviation, rendering it as “S.E. le Ministre de S[a] M[ajesté] C[hérifienne],” that is, the sultan’s minister. However, the letter makes no sense with this interpretation; the abbreviation clearly means “S.E. le Ministre de S[a] M[ajesté] C[atholique],” referring to the Spanish minister (the Spanish queen’s title was “Catholic Majesty”). Although Fenton and Littman undoubtedly

---

59 He begins the book by explaining that “local Muslims hate Jews and despise them. The source of this hatred is in the Quran” (Bashan, *Moshe Montefiore ve-yehudei Maroko*, 2).
60 Bashan cites Kenbib’s *Juifs et musulmans au Maroc* in his bibliography (ibid., 185), yet he presents the entire incident only as it was seen from the British archival documents, of which he includes transcriptions in an appendix. In fact, much of the book consists of a short analysis of each document; Bashan nonetheless makes his position clear by adding conclusions such as “there is no doubt that the Jews were found guilty, were arrested, and two of them were put to death despite their innocence” (ibid., 36).
61 See especially Fenton and Littman, *L’exil au Maghreb*, 397-412. As the book is mostly a collection of primary sources, Fenton and Littman refrain from extensive commentary on the incident. However, the selection of sources they present clearly outlines an argument in which Moroccan Jews were powerless in the face of the Makhzan’s oppression and their only hope was European intervention. For instance, in addition to a letter from the Jewish community of Tangier to the AIU, Fenton and Littman include two other letters from the Jews of Chefchaouen and Demnat describing the oppression they had suffered.
62 Stillman, *The Jews of Arab Lands*, 397-401. This letter is dated 17 September 1863.
63 Ibid., 398. “S.E.” stands for “Son Excellence.”
made an honest mistake, the effect of their error is to create the impression that the sultan’s minister was intent on executing the two Jewish suspects. In reality, however, much of the letter revolves around the Spanish ambassador’s demand that all four Jews be executed. The Jews’ complaints about the Spanish minister are entirely lost in Fenton and Littman’s rendering; instead, they depict the Makhzan as ruthlessly intent on executing two innocent Jews. The clear message in this recent historiography is that the Safi case was an example of the oppression of Jews by a regime that dispensed an arbitrary form of justice and was largely motivated by anti-Jewish sentiment.

It is worthwhile examining the case in some detail. The first mention of the incident in the Moroccan archives is from August 10, 1863, when the sultan, Mawlāy Muḥammad, wrote to Muḥammad Bargāsh, minister of foreign affairs. Mawlāy Muḥammad explained the basic facts of the case to Bargāsh, who would shortly be meeting with the Spanish ambassador to discuss the trial. He explained that two Jews from Essaouira had poisoned a Spanish customs official named Montilla in Safi, who subsequently died. The two Jews “confessed that [they had been helped by] two other Jews, one from our territory [that is, a Moroccan subject] and the other who purports to be from the territory of the Turks.” The sultan explained that all four were currently in prison. The two who were Moroccan subjects and who had “confessed” (aqarrū) would be killed; the Turkish subject fell under the jurisdiction of the English consul, but the English consul had surrendered the suspect to be imprisoned by the Moroccan authorities; the fourth suspect (also a Moroccan subject) would not be killed because he “had not confessed

65 DAR, Safi, 4722, Mawlāy Muḥammad to Muḥammad Bargāsh, 24 Ṣafar 1280.
66 Miège gives the Spaniard’s name, which is absent from the Moroccan documents: Miège, Le Maroc et l’Europe, v. 2, 564.
67 Wa-aqarra bi-yahūdiyayn ākharayn ma’ahu fī dhālika aḥaduhumā min iyālatinā wa-‘l-ākharu muḍāfun li-iyālati al-Turk (DAR, Safi, 4722, Mawlāy Muḥammad to Muḥammad Bargāsh, 24 Ṣafar 1280).
68 Fa-amruhum ilā qunṣū al-infalīzī.
Although the Makhzan correspondence did not name the Jewish suspects, we learn from elsewhere that they were Jacob (Akkan) Ben Yehudah (or Benhuda), Makhluf Aflalo, Sa’diah Ben Moyal (Saïdo, Shido)—all Moroccan subjects—and Eliyahu Lalouche (or Elias Beneluz), an Ottoman subject probably from Tunisia.69

It soon became clear, however, that capital punishment had in fact been demanded by the Spanish authorities: “The Spanish ambassador requested that the two dhimmīs who are imprisoned in Safi be killed, just as their [the Spanish] official who was poisoned [was killed].”70 The Spanish had even threatened the Makhzan with attack should the sultan fail to execute the Jewish suspects.71 This explanation makes sense given that Moroccan courts rarely sentenced murderers to death. Rather, as discussed in Chapter Five, the normal punishment for murder was the payment of blood money to the heirs of the deceased. Some of the foreign newspapers reporting on the affair even noted that the Spanish were in this instance more bloodthirsty than the Moroccans.72

Before the Makhzan authorities could fully comply with the Spanish ambassador’s request, a complication arose concerning the validity of the Jews’ confessions. One of the Jews

---

69 Littman, “Mission to Morocco,” 178-9; Kenbib, Juifs et musulmans, 124; Fenton and Littman, L’exil au Maghreb, 397. Kenbib gives the names of two more Jews (Chalom el-Qaïm and Jacob Benharroche) who were also implicated but, it seems, imprisoned only briefly. Lalouche is described as a Turkish subject in the Moroccan sources. His father apparently had a passport issued in Gibraltar by Cardoza, the Tunisian consul there (Littman, “Mission to Morocco,” 181). However, Littman seems to think that Lalouche had been granted protection by Frederick Carstensen, the British consul in Safi. The Moroccan sources, on the other hand, clearly indicate that the British consular authorities were involved because they had agreed to look after the interests of Ottoman subjects in Morocco; see especially DAR, Safi, 4713, al-Ṭayyib b. Ḥima to Muḥammad Bargāsh, 11 Rabī’ I 1280.


71 Kenbib, Juifs et musulmans, 126. Littman reports that Merry y Colom, the Spanish ambassador, sent a warship to Safi to demand Akkan’s execution; however, he does not come to the conclusion that the pressure to execute the Jews came primarily from Spain: Littman, “Mission to Morocco,” 188.

72 See, for instance, the article in The Jewish Chronicle, 6 November 1863, p. 6 (cited in Littman, “Mission to Morocco,” 180). Yet before Kenbib’s discussion of the Safi affair, historians tended to ignore this observation made by contemporaries in favor of an explanation that blamed the Moroccan authorities.
retracted his initial testimony claiming that he had confessed under duress. Because the confession was now questionable, Mawlāy Muḥammad “sent the matter to the qāḍīs and the ‘ulamā’ (Muslim scholars).” Although there was some disagreement among them, the scholars eventually “rendered a legal opinion (aftaw) that their [the two suspects’] confession was valid and that they were guilty of the murder.” Because the original testimony of Jacob Ben Yehudah and Eliyahu Lalouche was upheld, they were both sentenced to death; Ben Yehudah, a Moroccan subject, was executed in Safī on September 3. On September 9, Ibn Hīma reported that he had asked the British consul whether he wanted to claim jurisdiction over Lalouche, an Ottoman subject. The British consul replied that “in such a grave matter, he does not speak for him [literally, about him—that is, for the Ottoman subject], rather, the jurisdiction of the Gharb [Morocco] should prevail in this matter; and he gave his signature to this effect.”

On September 13, Lalouche was beheaded in Tangier.

As for Aflalo and Ben Moyal, the other two suspects, the ‘ulamā’ consulted by Mawlāy Muḥammad ruled that their confessions did not constitute sufficient evidence and that they should be pardoned (i’dhār). The sultan ordered that the matter be judged in a sharī’a court, either by the qāḍī of Safī or of Tangier (according to the preference of the Spanish ambassador).

---

73 See DAR, Safī, 4720, Mawlāy Muḥammad to Muḥammad Bargāsh, 9 Rabī’ I 1280.
75 Safī, 4715, Mawlāy Muḥammad to Muḥammad Bargāsh, 17 Rabī’ I 1280. The letter does not specify the nature of the disagreement.
76 DAR, Safī, 4718, al-Ṭayyib b. Hīma to Muḥammad Bargāsh, 25 Rabī’ I 1280. Kenbib relates that the matter was solved by having a lafīf testify that Ben Yehudah was a “voyou et un malfaiteur,” which was intended to “contrebalancer la rétraction du condamné” (Kenbib, Juifs et musulmans, 127).
77 DAR, Safī, 4716, al-Ṭayyib b. Hīma to Muḥammad Bargāsh, 19 Rabī’ I 1280. However, another source indicates that Ben Yehudah was executed on 14 September (see FO, 99/117, Frederick Carstensen to Thomas Reade, 14 September 1863, reprinted in Bashan, Moshe Montefiore ve-yehudei Maroko, 220).
79 Wa-dhakara anna lā yatakallamu ‘alayhi fī mithli hādhihi al-da’wā li-‘izamiḥā wa-inmāmā yatawallā al-ḥukūmatu ‘alayhi fī hādhihi al-nāzilatī wilāyatu al-gharbi wa-a’tā khaṭṭa yaddihi bi-dhālikā (ibid.).
81 DAR, Safī, 4720, Mawlāy Muḥammad to Muḥammad Bargāsh, 9 Rabī’ II 1280.
He wrote to Bargāsh explaining that “I am telling you all this so that you will understand and know how to answer, should someone say that we judged the first Jew who was killed in Safi one way and judged the matter of the [other] aforementioned Jew another way.” Meanwhile, the two suspects were to be kept in prison.

Following Lalouche’s execution, Moshe Pariente wrote a letter to Moses Montefiore, the AIU, and the Board of Delegates of American Israelites on behalf of the Jewish leaders of Tangier (introduced above). The letter urgently pleaded with the representatives of international Jewish organizations to intervene with their respective governments to save the “innocent” suspects: “A recommendation from these governments to their representatives, to this effect, would be a great reprieve and breath [of relief] for the Jewish communities of Morocco.” On the one hand, Pariente argued that Ben Yehudah and Lalouche had been executed without a proper trial; he reminded his western Jewish addressees that “these Muslim countries lack the laws familiar in Europe, and there is no tribunal where one can appeal a case to have it justified by judicial examination.” On the other hand, Pariente clearly placed much of the blame for the executions on the Spanish government (contrary to the interpretation offered by Fenton and Littman). He recounted how the Junta of Tangier repeatedly appealed to Merry y Colom, the Spanish ambassador, in an attempt to convince him to pardon Lalouche—without any success. Pariente also explained that after Lalouche was executed, the Jews of Safi first approached local Makhzan officials in the hopes that they would agree to stay the executions of

82 Wa-a’lamnāka li-takūna ‘alā baṣīratin wa-ta’rifatu mā tujību bihi man ‘asā an yaqūla mā lanā ḥakamnā fī al-maqṭūli bi-Asafti awvalan bi-shay’īn wa-ḥakamnā bi-nāziliati hādhā al-yahūdi al-madhkūri bi-shay’īn ākhar (ibid.).
83 The letter is reproduced in the original Spanish in Bashan, Moshe Montefiore ve-yehudei Maroko, 221-5, and in a contemporary French translation in Fenton and Littman, L’exil au Maghreb, 397-401. See also Littman, “Mission to Morocco,” 177-8. The Board of Delegates of American Jews was founded in New York in 1859, and had already sent funds to support Moroccan Jewish refugees from the Spanish occupation of Tetuan in 1860 (Kenbib, Juifs et musulmans, 140).
84 Bashan, Moshe Montefiore ve-yehudei Maroko, 225.
85 Ibid.
the remaining two subjects. Only after this failed did the Jews appeal once again to foreign representatives, including those of France and Britain.  

Mawlāy Muḥammad was correct in assuming that foreign diplomats would question the Makhzan’s handling of the matter. On October 6, the British consul Thomas Reade wrote to Bargāsh insisting that an investigation take place and claiming that “the two Jews who were executed in Safi and Tangier [Akkan and Lalouche] as suspects in the death of the Spaniard [had been executed] without a proper investigation.” Bargāsh reassured Reade that the sultan had already stayed the execution because the suspects’ guilt had not been firmly established, since one of them denied any involvement and the other had recanted his confession. Nonetheless, the British ambassador wrote to his superiors about plans for Britain to take all Moroccan Jews under its protection if he deemed this necessary.

In late November, Aflalo and Ben Moyal were released from prison following Montefiore’s visit to the Queen of Spain in Madrid, whom he convinced to drop Spain’s demands for the execution of the perpetrators. In Morocco, Montefiore went on to have two audiences with Mawlāy Muḥammad, during which he obtained a famous ẓahīr on behalf of Moroccan Jews, dated February 5, 1864/ 5 Sha'bān 1280. The ẓahīr reiterated the principles of the dhimma contract, albeit with new language that was undoubtedly a response to foreign intervention on Jews’ behalf; for instance, the ẓahīr declared that “all people are equal in

---

86 Ibid., 224.
87 Al-yahūdiyayn al-maqtūlayn fī Aṣṣafi wa-ﬁ Tanja ’alā tuhmati mawti al-isbanyūlī dūna tahaqquqin ’alayhim (DAR, Yahūd, 17018, Thomas Reade to Muhammad Bargāsh, 6 October 1863/ 22 Rabī’ II 1280).
88 DAR, Safi, 16349, Muhammad Bargāsh to Thomas Reade, 24 Rabī’ II 1280.
89 Kenbib, Juijs et musulmans, 145.
justice.”⁹² (I discuss this sort of change in language in greater detail below.) Although Mawlāy Muḥammad’s ṣāhīr did little to change the status of Jews in Morocco, news of Montefiore’s purported success travelled throughout the Jewish world. Jews from all over Europe and as far as Iran congratulated Montefiore on his success and, through his mission, gained a new consciousness of their connection to Jews in Morocco.⁹³

These events make it clear that, contrary to the claims of much of the scholarship on the Safi Affair, Ben Yehudah and Lalouche were not put to death “without even the charade of a trial.”⁹⁴ In fact, the sultan consulted experts in Islamic law to determine whether the confessions of the four suspects were valid given the possibility that they been obtained under torture. Nor was the Makhzan acting entirely freely when it decided to put Ben Yehudah and Lalouche to death; the Spanish ambassador’s threats made it hard for the sultan to ignore his demands. Moreover, the Jews of Tangier who spearheaded the efforts to save Lalouche, Aflalo and Ben Moyal from meeting the same fate as Ben Yehudah did not only petition foreign diplomatic officials. On the contrary, after Lalouche’s execution, their first appeal was to the local Makhzan official. Whether or not Lalouche and Ben Yehudah were executed unjustly, the evidence from the Moroccan archives suggests that this was hardly an example of the Makhzan oppressing Jews and Europeans coming to save them.

Reexamining Cause Célèbre II: Ntifa

The Ntifa case is less widely remembered than the Safi affair, though at the time it garnered nearly as much attention from foreign consular officials, international Jewish

---

⁹² Al-nās kulluhum ‘indanā fī al-ḥaqiqi sawā’ (ibid.).
⁹³ See Green, Moses Montefiore, 313-15.
⁹⁴ Gilbert, In Ishmael’s House, 117.
organizations, and the foreign press in Morocco and beyond. In the summer of 1880, not long
after representatives from Europe, the Americas, and Morocco gathered at the Conference of
Madrid, a Jew named Jacob Dahan died in the high-Atlas town of Ntifa. The circumstances
surrounding his death were unclear; some claimed he was killed by the local governor, while
others argued that he died of natural causes. Foreign officials and Jewish organizations generally
took the view that Dahan had been murdered by the qā’id and demanded the punishment of the
Makhzan official.

Much like the Safi affair, Jewish historians writing about the Ntifa case emphasize the
Makhzan’s oppression of Jews and the role of foreigners as their champions. Fenton and
Littman portray the incident only from the viewpoint of foreign officials and Jewish
organizations. Martin Gilbert’s brief mention of the matter is limited to the observation that
“Jacob Dahan was then taken outside, nailed to the ground and beaten so severely that he
died.”

Moroccan historiography, on the other hand, largely exonerates the Makhzan from any
responsibility. In his important early work on protection, ‘Abd al-Wahhāb Ibn Manṣūr mentions
the Ntifa incident almost in passing:

The press of Europe wanted … to make the governor of Demnat responsible for the death
of the Jew Ya‘qūb al-Dahān, who died in Hantīfa [sic] under mysterious conditions …
despite the Jewish community of Demnat’s denial (takdhīb) of these claims, and their
acquitting the Moroccan governor from the allegation that he had killed him [Dahan].

Ibn Manṣūr argues that Ntifa’s governor was guiltless in Dahan’s death, and that the foreign
press had unfairly framed an innocent Makhzan official. He mentions (without, however, citing
his source) that the Jews of Ntifa denied claims that Dahan was murdered by their governor.

95 Fenton and Littman, L'exil au Maghreb, 503, 519-20.
96 Gilbert, In Ishmael’s House, 117.
97 Ibn Manṣūr, Mushkilat al-ḥimāya, 55.
Mohammed Kenbib and Khalid Ben Srhir, on the other hand, explain that the Makhzan had simply followed the law in punishing Dahan for having illegal sexual relations with a Muslim woman.98

The details of this case are worth exploring, especially since two distinct narratives of the Ntifa events emerged following Dahan’s death. All agreed that Jacob Dahan was in the habit of distributing food to indigent Jews and Muslims during the famine of 1878-9.99 After the famine, a Muslim woman chose to remain in his household as a sort of domestic servant. This arrangement aroused suspicions that Dahan had become sexually intimate with her, which would have constituted a violation of Islamic law (since Muslim women were not allowed to marry non-Muslim men, much less engage in extra-marital sexual acts with them). When the qā’id of Ntifa, ‘Abdallāh b. al-Ḥasan al-Ntīfī, found out about this, he summoned Dahan and punished him, either by beating him or by imprisoning him. At this point, the narratives diverge.

One interpretation of events, promulgated by a group of Jews in Ntifa, their foreign allies, and the press, claimed that Dahan was severely beaten by al-Ntīfī and that he died from his wounds. The Jews of Ntifa were not even permitted to bury Dahan’s body until they sacrificed seven bulls to the Ntifa tribe and paid them eighty riyāls.100 Dahan’s son initiated an appeal to foreigners by traveling to Tangier; once there, he earned the sympathies of the Italian, French, and British ambassadors.101 Haim Benchimol, among the most prominent Jews in Tangier and indeed all of Morocco, mentioned Dahan’s murder in a letter to the AIU concerning recent mistreatment of Jews.102 As with the Safi affair, the foreign press (including *Le Petit*...

Foreign consular officials eagerly championed Dahan’s cause. The French ambassador, Vernouillet, wrote to the grand vizier objecting to the qāʿid’s actions. Vernouillet explained that this case was worse than the incident a few months earlier in which a Jewish man named Alluf was burned alive by a mob in Fez.104 Dahan’s death was “even more odious” because it was committed by a “kaid representing the sultan.”105 Vernouillet concluded:

It is necessary that His Majesty set an example, because otherwise all of Europe will take the oppressed Jews under its protection, and we will be obligated to act officially to suppress crimes that today we only raise unofficially with His Cherifian Majesty.106

In particular, foreign officials insisted that al-Ntīfī be dismissed from his post and punished, as an “example” to other Makhzan officials of the consequences of oppressing Jews. Vernouillet threatened the Makhzan with extending European (or, in another version, just French)107 protection to all Jews, much as Russia had threatened to do with Russian Orthodox Christians living in the Ottoman Empire a few decades earlier.108 These threats did not fall on deaf ears; Makhzan officials—including the sultan—exchanged an unusually large number of letters about the matter.109

---

103 Kenbib, Juifs et musulmans, 225.
104 This, too, was something of a cause célèbre: see ibid., 209-13.
105 MAE Nantes, Tanger A 140, Vernouillet to Grand Vizier, no date. See also DAR, Yahūd, 32491, Muḥammad Bargāsh to Mawlāy Ḥasan, 21 Shawwāl 1297, in which Bargāsh transmitted Vernouillet’s wishes to the sultan. For the American consul’s involvement, see USNA, reg. 84, v. 47, Felix A. Mathews to William M. Evarts (US Secretary of State), 29 September 1880 and 15 December 1880.
106 MAE Nantes, Tanger A 140, Vernouillet to Grand Vizier, no date.
107 Bargāsh reported to the sultan that the French ambassador told him secretly that if the qāʿid of Ntīf was not punished, he would take all the Jews under his protection (DAR, Yahūd, 32491, Muḥammad Bargāsh to Mawlāy Ḥasan, 21 Shawwāl 1297).
109 DAR, Yahūd, 32491, Muḥammad Bargāsh to Mawlāy Ḥasan, 21 Shawwāl 1297; 32510, Mawlāy Ḥasan to Muhammad Bargāsh, 26 Shawwāl 1297; 32715, Muḥammad Bargāsh to Mawlāy Ḥasan, 8 Dhū al-Qāʿda 1297; 32716, Muḥammad Bargāsh to Mawlāy Ḥasan, 10 Dhū al-Qaʿda 1297; 35132, Muhammad Bargāsh to Mawlāy
Al-Ntīfī offered a different explanation of the events in question, a version echoed by another group of Jews from Ntifa. Al-Ntīfī explained to Mawlāy Ḥasan that his tribe had become incensed at Dahan’s flagrant flaunting of Islamic law by living with a Muslim woman. The fellow members of his tribe, the Ntifa, were so incensed that they threatened to expel all the Jews, reasoning that since one Jew had broken the dhimma contract, all dhimmīs had lost their rights to protection from their Islamic rulers. Al-Ntīfī even claimed that the surrounding tribes (including the Banī Manṣūr, the Ayt Ghatāb, and the Tadla) were threatening rebellion, including attacking the millāḥ, if Dahan went unpunished. In order to avoid this, al-Ntīfī “imprisoned him [Dahan] and gave him 100 lashes…and then released him after [someone’s] intercession on his behalf (ba’ada al-shafā‘a fīhi)...and he went to his house safe and sound (ṣaḥīḥan sāliman).” After some time, Dahan died a natural death, one that had nothing to do with the wounds he received from al-Ntīfī’s punishment. Al-Ntīfī concluded by saying that “he obeys the sultan’s command to settle with the dhimmī’s relatives,” presumably by offering blood money to Dahan’s heirs. Although al-Ntīfī’s agreement to pay blood money to Dahan’s heirs might indicate that he was guilty of Dahan’s murder, it is also possible that al-Ntīfī was simply obeying the sultan’s orders in order to avoid further controversy.

Al-Ntīfī’s claims were corroborated by some of the Jews of Demnat, who wrote a letter to al-ḥazān Avner, a Jewish notable in Fez, giving their version of events. On October 3, 1880, Avner wrote to the sultan’s vizier, Muḥammad b. al-‘Arabī al-Mukhtār, explaining his

---

111 Wa-‘l-ān ḥīna amaranī sīdī bi-faṣli al-qadiyyati ma’a avliyā‘i al-dhimmi...fa-na’am sīdī wa-sam’an wa-fa’atan (ibid.). Al-Ntīfī explained that he was unable to settle with Dahan’s heirs since Dahan’s sons had left Ntifa for Marrakesh; al-Ntīfī had contacted Corcos (presumably Yeshu’a Corcos, the shaykh al-yahūd of Marrakesh) and was awaiting a reply.
coreligionists’ position. Avner related that at first he had received a report from a group of Demnati Jews outlining the events as they were transmitted to foreign consuls—that is, that al-Ntifī had murdered Jacob Dahan. However, more recently Avner had received a second letter from Demnati Jews with a different version of the story. This letter described al-Ntifī as:

…one skilled in affairs [and] of good conduct. He only arrested the aforementioned Jew [Dahan] after he was suspected of [having sexual relations with] the aforementioned Muslim woman; and he only gave him 100 lashes, and [Dahan] did not die until he became sick in his house after being released.

Avner went on to say that the Jews of Demnat did not want al-Ntifī’s dismissal, since this would have harmed both Jews and Muslims. Avner asked al-Mukhtar to transmit the Demnati Jews’ request to the sultan and to intercede with him on behalf of Ntifa’s governor.

In the end, al-Ntifī was not dismissed from his post, although the sultan allocated Jacob Dahan’s son 5,000 riyāls (not a paltry sum at the time). The Makhzan justified itself to the foreign consular officials who had lobbied to have al-Ntifī fired by invoking the rule of law. In a letter to John Drummond Hay, the British ambassador, a Makhzan official explained that the Jews had been insolent towards their local governor. The Makhzan official did not claim that Dahan had died of natural causes, perhaps suggesting that this was a weak argument and difficult or impossible to uphold. Instead, the Makhzan official chose clarified the drawbacks of firing al-Ntifī. Were al-Ntifī to be dismissed, “governors will cease to pass sentence against [Jews] for fear of their evil and their lies, the Jews will come out on top and violators of the law will be

---

112 DAR, Yahūd, 32511, al-ḥazān Abnīr to Muḥammad b. al-ʿArabī b. al-Mukhtār, 28 Shawwāl 1297.

113 Wa-huwa sadīdu [sic; should be shadīdu] al-raʿyi ḥasanu al-sīratā wa-lā qabaḍa al-dhimmiyya al-madhkūra ḥattā ittahamūhu bi-ʿl-muslimati al-madhkūratī wa-aʿtāhu mlātan min al-ʿaṣā faqāṭ wa-lā māta ḥattā maraḍa bi-manzilīhi baʿda tasrīhihi (ibid.).

114 DAR, Yahūd, 15589, Muḥammad Bargāsh to Mawlāy Ḥasan, 7 Jumādā II 1298.

115 Ben-Srhir, Britain and Morocco, 194.

116 One reason that the author of this letter might not have even attempted proving al-Ntifī’s innocence is that, according to Bargāsh, the version of events which claimed that Dahan had died of the blows which al-Ntifī administered had by this point been accepted by all the foreign consuls (see DAR, Yahūd, 32715, Muḥammad Bargāsh to Mawlāy Ḥasan, 8 Dhū al-ʿQaʿda 1297).
This letter expressed the Makhzan’s frustration at some Jews’ attempts to challenge the social order through the intervention of foreigners. It also captured the fear that if the Makhzan acceded to foreigners’ demands, the rule of law would break down.

It is not clear which version of the Ntifa story to believe; did al-Ntīfī savagely beat Jacob Dahan to death? Or did he administer a punishment that was acceptable according to the standards of the day? Either way, two points emerge which counter the narrative of Jews being saved from the oppressive Makhzan by foreign intervention. Firstly, the Makhzan felt that al-Ntīfī was within his rights to punish Dahan for having transgressed Islamic law. Although the Makhzan took responsibility for Dahan’s death (by paying his heirs an indemnity), it nonetheless felt that Dahan had merited punishment. Secondly, and most importantly for our purposes, the Jews of Demnat were themselves divided. One group, spearheaded by Dahan’s son, argued that al-Ntīfī had murdered Dahan, while another group upheld al-Ntīfī’s version of events. This second group even went so far as to lobby the Makhzan, through their connections to the Jewish community in Fez, to retain al-Ntīfī in his post. To them, al-Ntīfī was an excellent governor, “skilled in affairs and of good conduct.” These competing narratives demonstrate that, far from uniformly perceiving themselves as victims of the Makhzan, Jews often disagreed about who the culprit was in a given case.

A New Language of Equality

The Makhzan reacted to foreigners’ intervention on behalf of Jews in a number of ways. At times, Makhzan officials attempted to justify themselves to foreigners by arguing that they...
had been following the standard practice, or that their actions conformed to Islamic law. In other instances, the Makhzan conducted detailed investigations, as in the Safi and Ntifa affairs. The adoption of a new kind of language concerning the place of Jews in Moroccan society constituted an important and hitherto overlooked dimension of the Makhzan’s response to foreign intervention.

The inequality of Jews and Muslims in Morocco was a subject of great concern to many consular officials and international Jewish organizations. AIU teachers and members of the Comité Central, usually through their connections with foreign consular officials, pressured the Moroccan government to recognize Jews and Muslims as equals. Consular officials repeatedly remarked on the lack of equality before the law between Muslims and non-Muslims, expressing indignation that there was no freedom of religion in Morocco.

In the wake of increasing foreign intervention on behalf of Jews, Makhzan officials began evoking the importance of treating Jews and Muslims equally. This emphasis reflected changing notions of justice introduced by the AIU and diplomatic representatives. The idea of religious equality is alien to the Islamic tradition and the dhimma contract. As we have seen, Islamic law granted non-Muslims who submit to the authority of an Islamic state a number of rights, including the right to practice their religion. However, these rights were bound up with the recognition that Islam was the superior religion. Moreover, the Pact of ‘Umar includes a number

---

117 See, e.g., DAR, Yahūd, 21348, Mawlāy ‘Abd al-Rahmān to al-Ṭālib Bū Salhām, 23 Shawwāl 1264 and 8 Dhū al-Qa‘da 1264; USNA, reg. 84, v. 001, Calipha Houssain of the Haha province to Elmahdee (governor of Essaouira), sent 19 July 1864; DAR, Yahūd, 15595, Muḥammad Bargāsh to ’Amāra, 16 Rabī’ I 1298.

118 For another example, see the correspondence about the attack on Jews in Chefchaouen in 1890; after this attack was brought to the Makhzan’s attention by foreign officials, Mawlāy Ḥasan ordered the local qā‘id to investigate the matter, find the perpetrators, arrest them, and inform the sultan of his findings. See especially DAR, Tetuan, 17208, Mawlāy Ḥasan to Muḥammad b. Aḥmad al-Khaḍar, 18 Dhū al-Hijja 1306. See also DAR, Yahūd, Italian ambassador to Muḥammad b. Muḥammad al-Dżarrīt, 9 May 1889/ 9 Ramaḍān 1306 and Muḥammad Bargāsh to Italian ambassador, 18 Dhū al-Hijja 1306; FO, 636/5, p. 31b-32b, Nahon to Green, 20 May 1890.


120 See, for instance, USNA, reg. 84, v. 001, Jesse McMath to Abraham Corcos, 12 June 1864; MAE Courneuve, C.P. Maroc 37, 12 August 1871, Tissot to MAE.
of provisions to ensure the social superiority of Muslims, such as forbidding non-Muslims symbols of social standing such as riding horses and using saddles. In addition, Islamic scholars institutionalized certain legal inequalities between Muslims and dhimmīs, such as the ability to testify as an ‘adl or as part of a laffī. Although Islamic law provided for the just treatment of Jews, there was little in the tradition to suggest that Jews and Muslims deserved equal status. Aḥmad al-Nāṣirī, Morocco’s most famous historian in the nineteenth century, offered a succinct interpretation of the difference between the rights of non-Muslims as envisioned by the dhimma contract and the equality of religion preached by foreigners. He explained that the Western perception of “freedom” (ḥurrīya) amounted to atheism and social anarchy. The Islamic conception of rights (ḥuqūq) and “lawful freedom” (al-ḥurrīya al-shara‘īya), on the other hand, were laid out in the divine texts of the Quran and Hadith—as explicated by qualified jurists—and ensured that God’s will would be done on earth.

Yet despite the differences between Islamic and Western conceptions of minority rights, the Makhzan’s new language of equality was not mere lip service to European ideals of justice. On the contrary, the fact that Islamic law emphasizes the need to treat all with justice, regardless of religion, means that an emphasis on the equal treatment of Jews and Muslims did not necessarily betray the principles of the dhimma contract. Even if Jews and Muslims were not equal, Islamic ideals of justice were to be applied equally regardless of religion. The Makhzan

121 See the discussion on the Pact of ‘Umar and the dhimma contract in Chapter Six. On the provisions for Muslim social superiority, see Albrecht Noth, “Problems of Differentiation between Muslims and non-Muslims: Re-reading the “Ordinances of ‘Umar’ (al-Shurūṭ al-‘Umarīyya),” in Muslims and Others in Early Islamic Society, ed. Robert Hoyland (Burlington: Ashgate Variorum, 2004).
122 See Friedmann, Tolerance and Coercion, Chapter 1. Friedmann suggests that early Islamic scholars were more open to the idea of Muslim and non-Muslim equality before the law, but that this increasingly disappeared from the tradition as Islam gained more political power (50).
124 al-Nāṣirī, Kitāb al-istiqṣā, 130.
did not declare that Jews and Muslims were equal, but rather that they must be treated equally before the law. Still, there is no question that this was a new language with which to express the relationship among Jews and Muslims, and that it indicated a response on the part of the Makhzan to European pressure—even if this new language of equality did not necessarily contradict the traditional understanding of Jews’ rights in Islamic society.

At first, expressions of the Makhzan’s commitment to the equal treatment of Jews and Muslims came in the context of letters to foreign officials. One of the earliest such expressions is from an 1837 letter in which Mawlāy ‘Abd al-Raḥmān wrote to Méchain, the French ambassador.125 The sultan’s letter concerned a trial in which a Jewish subject of the sultan was suing a French merchant for 2,000 piastres. The sultan explained that “people are equal before us: as for the justice that one is required to provide, there is no difference between [people of different religions], whether Muslim, Christian, or Jewish, because it is a duty to provide justice in all religions.”126 In other letters to foreign officials, the Makhzan similarly emphasized its commitment to justice for all subjects regardless of religion. After Montefiore’s visit to Marrakesh, the grand vizier, al-Ṭayyib al-Yamānī, wrote to assure him that “God the Most High forbids injustice towards people professing our religion, and He likewise forbids injustice toward people professing any other religion.”127 During the Ntifa affair, Bargāsh asked Mawlāy Ḥasan

---

126 “…les hommes sont égaux devant nous; ce que pour la justice qu’il y a à leur rendre, il n’y a entr’eux aucune différence soit pour un musulman, soit pour un chrétien, ou pour un juif, car dans toutes les religions c’est un devoir de rendre la justice” (ibid.). This assertion came in the context of the sultan’s justification of sending the case to the French consul to be tried; he explained that, “si l’eussions décidé par un jugement vous auriez cru que nous eussions protégé le juif pour qu’il était un de nos sujets…” Although such cases would normally have fallen under the Makhzan’s jurisdiction, in this instance the sultan referred the case to the French consul.
for permission to inform the foreign consuls that the sultan always ensures justice for all his subjects.\textsuperscript{128}

The Makhzan also expressed its commitment to the equal treatment of Jews and Muslims in internal correspondence intended only for Makhzan officials. For instance, in 1880, Mawlāy Ḥasan sent a letter to Muḥammad Bargāsh in which he expressed displeasure at the news that many of his governors and other local officials were not treating Jews justly.\textsuperscript{129} The sultan noted that his Jewish subjects were entitled to the same rights from the Makhzan as Muslims.\textsuperscript{130} Mawlāy Ḥasan wrote this letter in the context of discussing the increasing numbers of Jews who were appealing to foreigners (including international Jewish organizations and consular officials) when they were abused or were to unable to resolve their legal disputes.\textsuperscript{131} Although this letter was not addressed to these foreigners directly, his language was clearly intended to counter their claims that Jews were treated unjustly under Islamic rule.

Similarly, in late 1892, Mawlāy Ḥasan wrote a letter to one of the qā’ids of Marrakesh, named Muḥammad.\textsuperscript{132} The sultan rebuked Muḥammad for mistreating the Jews of that city and ordered him “to treat them just as he does Muslims.”\textsuperscript{133} Mawlāy Ḥasan specified that Muḥammad should judge the Jews’ “Makhzanī” claims (meaning those legal cases which fell

\textsuperscript{128} DAR, Yahūd, 32716, Muhammad Bargāsh to Mawlāy Ḥasan, 10 Dhū al-Qa’dā 1297. See also DAR, Fez, 6070, ?? to John Drummond Hay, 3 Rabi’ I 1294: here, the author informed Hay that “the sultan sees his subjects, both Jews and Muslims, as his children and does not want harm to come to them (sayyidunā naṣarahu Allāh yanzuru ra’ īyatahu min al-muslimīn wa- l-yahūdī mithlu awlādīhi wa-lā yardā lahum al-ḍurūr).”

\textsuperscript{129} DAR, Yahūd, 15118, Mawlāy Ḥasan to Muḥammad Bargāsh, 22 Jumādā II 1297.

\textsuperscript{130} Lahum mithlu mā lā yarḍā lahum al- ḍurūr (ibid.).

\textsuperscript{131} The sultan instituted a new policy whereby Jewish subjects of the Makhzan had to first bring their complaint to Moroccan authorities, through Bargāsh, before the sultan would entertain the intercession of foreigners on their behalf. Three months later, Bargāsh reported that he was inundated with complaints sent by Jews (DAR, Yahūd, 24355, Muhammad Bargāsh to Mawlāy Ḥasan, 15 Ramadān 1297).

\textsuperscript{132} DAR, Yahūd, 18151, Mawlāy Ḥasan to Qā’id Muḥammad, 7 Jumādā II 1310. See also DAR, Yahud, 18152, Muhammad Muḥāḍal Gharrīt to Jews of Marrakesh, 7 Jumādā II 1310, in which Gharrīt informed the Jews that the sultan had ordered the qā’id in question to treat the Jews as he treats the Muslims.

\textsuperscript{133} ‘Āmilhum bi-mithli mā tu’āmilu bihi man ilā naṣarika min al-muslimīn (DAR, Yahūd, 18151, Mawlāy Ḥasan to Qā’id Muḥammad, 7 Jumādā II 1310).
under the jurisdiction of Makhzan officials) with justice, just as he judged the cases of
Muslims.134 This reprimand came on the heels of the British consulate’s intervention on behalf
of Marrakshi Jews.135 Mawlāy Ḥasan apparently felt compelled to send his message of equal
treatment to his own officials in addition to reassuring foreigners of his good intentions.136 He
also made sure that his foreign minister wrote to the Jews of Marrakesh informing them that he
had sent a letter of rebuke to the governor who mistreated them. The sultan reassured the Jews
that they were “under his protection and among his subjects (ahl dhimmatihi wa-min
raʾātihi)”.137

However, the Makhzan’s new language of equality did not signal a wholesale rejection of
the dhimma contract or a complete adoption of Western concepts such as freedom of religion.
Quite the contrary; as evidenced in the letter just cited, Jews were still very much considered to
be under the dhimma, or protection, of the sultan. Equally importantly, in a number of instances
in which Moroccan Jews and/or foreigners attempted to push the envelope by challenging the
precepts of Islamic law concerning the rights of non-Muslims, the Makhzan pushed back by
reasserting the limits on equality demanded by its understanding of Islamic law. Although the

---

135 We know this because the Minister of Foreign Affairs, Muḥammad Mufaḍḍal Gharrīt, wrote separately to the
British consul to assure him that the sultan had received the consul’s letter urging that the abuse of the Jews of
Marrakesh be ended, and that the sultan was taking care of the matter: DAR, Marrakesh, Muḥammad al-Mufaḍḍal
Gharrīt to British Consul, 24 Jumādā II 1310. In addition, a copy of the sultan’s letter was sent to the British consul
(probably in Tangier); this can be inferred from the fact that the copy of the letter in the DAR is from the archives of
the Foreign Office, indicating that the British consulate received a copy.
136 For another instance of intra-Makhzan correspondence discussing the equality of Jews and Muslims, see Mawlāy Ḥasan to Ḥammu b. al-Jīlālī, 29 Ṣafar 1302 (in Ibn Zaydān, Al-ʿIzz wa-ʾl-sawla, v. 2, 138). In this letter the sultan
instructed the qāʿid of Meknes to treat Jews and Muslims equally since “Muslim and dhimmī are equal before the
law (al-muslimu wa-ʾl-dhimmiyyu fī al-haqgi sawāʾ).” See also DAR, Yahūd, Shalom b. Harūsh to Muḥammad al-
Madani Banīs, 5 Jumādā II 1284, in which Harūsh recounted the plight of the Jews of Taza who came to Fez to seek
redress from mistreatment at the hands of their governor. Shalom wrote that the sultan did not discriminate between
his Muslim and non-Muslim subjects. (The word used for non-Muslim here is nasarāʾ [sic; it should be nasārā],
which literally means Christians but in this case was used to mean both Jews and Christians, since the sultan did not
have any Christian subjects.)
137 DAR, Yahūd, 18152, Muḥammad Mufaḍḍal Gharrīt to Jews of Marrakesh, 7 Jumādā II 1310.
Makhzan’s conception of the position of Jews was changing, it was not so totally transformed that it abandoned the framework of dhimma entirely. In this sense, Morocco differed significantly from the Ottoman Empire, which formally abolished dhimmī status as part of the Tanzimat reforms starting in 1839—a model which many European diplomats and activists had in mind in their quest to change the treatment of Jews in Morocco.138

In 1876, Tissot, the French ambassador, wrote to the Makhzan requesting that an Algerian Jew (and thus a French subject) living in Fez be allowed to build a bath (ḥammām) in his house.139 The question of whether Jews were permitted to build their own bathhouses had arisen some decades earlier in Fez. A leading jurist of the time, ‘Abd al-Hādī b. ‘Abdallāh b. al-Tuhāmī, ruled that it was against the principles of the dhimma—and thus against Islamic law—for Jews to build a bathhouse of their own.140 The Makhzan still considered this principle binding in 1876, and responded to Tissot’s request with a resounding “no”: “It is clear that this matter is one pertaining to religion [such that] we are not permitted to allow them to do this [i.e. build a bathhouse] because it would open doors that are closed in sharī‘a law.”141 The Makhzan’s representatives felt strongly that allowing Jews to build a bathhouse constituted a violation of Islamic law in a way that declaring that Jews and Muslims should be treated in the same way did not.

A similar challenge to the principles of Islamic law occurred during the Conference of Madrid when a number of Europeans proposed that the Makhzan adopt a policy of religious

---

138 See, e.g., Donald Quataert, The Ottoman Empire, 1700-1922 (Cambridge: Cambridge University Press, 2000), 65-6. Moses Montefiore invoked the model of the Ottoman Empire in his effort to convince the Moroccan sultan to declare Jews equal to Muslims: Abitbol, Le passé d’une discorde, 168.
139 DAR, Yahūd, 14039, Mūsā b. al-Ḥadd to Tissot, 4 Rabī’ II 1293.
140 This fatwā is found in al-Wazzānī, Nawāzil, v. 3, 109-12. See also a translation of this fatwā in Fenton and Littman, L’exil au Maghreb, 269-72.
141 Fa-lā yakhfā annahu amrūn min umūrī al-dīni lā yasāġhu lanā al-idhnu lahum fihi limā fihi min faṭḥi al-abwābi al-masdūdati bi-qānūnī al-shar’ (DAR, Yahūd, 14039, Mūsā b. al-Ḥadd to Tissot, 4 Rabī’ II 1293).
tolerance.\textsuperscript{142} Such a policy would not only secure the rights of non-Muslims to observe their
religion, but also institute formal equality between Jews, Christians, and Muslims. The question
was referred to the qāḍī of Fez, Muḥammad b. ‘Abd al-Raḥmān al-‘Alawī al-Mdaghrī,\textsuperscript{143} who
responded that freedom of religion (\textit{ḥurriyat al-dīn}) was not permitted by the sharī‘a.\textsuperscript{144} Al-
Mdaghrī explained that the sharī‘a permitted certain kinds of equality (\textit{al-musāwā}) before the
law—such as the guarantee that people of different confessions be treated the same and be secure
from arbitrary abuse.\textsuperscript{145} Declaring complete freedom of religion, however, was another matter.

Foreigners intervening on behalf of Jews met with mixed success in their attempts to
change the laws regulating when and where Jews were permitted to wear shoes. In many cities
in Morocco, Jews were prohibited from wearing shoes when passing before a mosque or, in more
extreme cases, when outside the millāḥ.\textsuperscript{146} Although the enforcement of this law varied
considerably depending on time and place, there is little question that Jews perceived the
prohibition on wearing shoes as a considerable disability.\textsuperscript{147} The question of Jews’ footwear was
a contentious issue running through discussions among foreigners and Makhzan officials about
the place of Jews in Moroccan society.\textsuperscript{148} Jews who had acquired foreign protection or
nationality often attempted to challenge this prohibition, either by petitioning their consular

\textsuperscript{142} Kenbib, \textit{Juifs et musulmans}, 218-24.
\textsuperscript{143} On al-Mdaghrī (d. 17 Ramaḍān 1299), see Muḥammad b. Ja‘far al-Kattānī, \textit{Salwat al-anfās wa-muhādatha al-
akyās bi-man uqbirā min al-ulāmā‘ wa-‘l-sūlahā‘ bi-fās}, 4 vols. (Casablanca: Dār al-thaqāfa, 2004), v. 1, 226. Al-
Mdaghrī was appointed qāḍī of Fez on 7 Ṣafar 1274, a post he held until his death.
\textsuperscript{144} al-Manūnī, \textit{Mazāhir}, v. 1, 405-14.
\textsuperscript{145} Ibid., v. 1, 412.
\textsuperscript{146} Gottreich, \textit{The Mellah of Marrakesh}, 93-6.
\textsuperscript{147} For an indication that the prohibition on wearing shoes was often observed in the breach, see, e.g., MAE Nantes,
Tanger A 164, Ḥamdī al-Wujīdī to Féraud, 2 Muḥarram 1306.
\textsuperscript{148} See, e.g., FO 636/1, p. 3a-b, 2 October 1830. On reactions of nineteenth-century European travelers to the
representative for an exception to the rules or by simply asserting their right to wear shoes since they were now “Europeans.”

In 1884, the debate about whether or not Jews were permitted to wear shoes came to a head in Wazzān, a town north of Fez whose inhabitants had a reputation for being particularly religious. The local officials had traditionally prohibited Jews from wearing shoes. The American ambassador asked Muḥammad Bargāsh to allow the Jews of Wazzān to wear shoes, undoubtedly at the request of a Jewish resident. Mawlāy Ḥasan refused to grant this request and sent a letter affirming the “previous custom” (al-ʾāda al-maʿlūfa qabl). Six weeks after this letter was read to the Jews of Wazzān, the Réveil du Maroc (the leading French newspaper published in Morocco) ran a story claiming that ʿAbd al-Salām b. al-ʿArabī, the sharīf of Wazzān—a descendent of the holy lineage associated with the town’s zāwiya—had overlooked the sultan’s orders and had permitted the Jews of his town to wear shoes. The French had extended consular protection to al-ʿArabī in January of that year. Al-ʿArabī wanted to prove to his new benefactors that he was an open-minded and enlightened notable; in addition to foreswearing the slave trade, he made a statement permitting the Jews of his city to wear shoes. Allowing Jews to wear shoes was also intended to set al-ʿArabī apart from Mawlāy Ḥasan, whom most foreign observers considered to be overly traditional. In this instance, the Makhzan was overridden by a local actor whose own position made it advantageous for him to

---

149 DAR, Yahūd, 35036, Felix Matthews to Muḥammad al-Madanī Banīs, 24 Shawwāl 1289.
150 DAR, Yahūd, 710, 14 Rabīʿ II 1301. The name of the Jew who initially got permission from the American ambassador to wear shoes was Ibn Shāwshū, though the document refers to others “like him” (amṭhāluhu) who also claimed the right to wear shoes. It seems likely, however, that Ibn Shāwshū initially requested permission to wear shoes from the American consul because he was an American protégé.
151 The fact that the practice of not permitting Jews to wear shoes is referred to as a custom (ʿāda), as opposed to a law (sharʿ), suggests that this prohibition was merely customary (which would make sense since it is particular to Morocco). However, more systematic research would have to be done to determine this.
152 This story ran on 2 April 1884 (see Miège, Le Maroc et l’Europe, v. 4, 52).
153 Pennell, Morocco since 1830, 90.
concede to the American ambassador’s requests. The Makhzan, however, remained committed to maintaining the status quo in this and other cases which challenged the traditional restrictions which applied to Jews.155

Notwithstanding the instances in which Makhzan officials refused to accept alterations to Jews’ place in Moroccan society, the picture of the Makhzan as run by religious fanatics unwilling to deviate from their understanding of tradition is misleading. In fact, the Makhzan adopted a new language exhorting the equal treatment of Jews and Muslims, both in its correspondence with foreigners and in its internal communications. The extent to which the new language of equal treatment was a genuine expression of the Makhzan’s changed views on Jews—versus an effort to please Westerners—is, of course, another matter. While it is impossible to evaluate the Makhzan’s motivations with any certainty, the fact that Makhzan officials used this new language in internal correspondence suggests a certain level of genuineness.

* * *

In re-examining the role of foreigners’ interventions on behalf of Moroccan Jews, I offer an alternative to a linear model in which foreign consuls and international Jewish organizations intervened between passive Jews and a Moroccan state that was either bent on oppressing its Jewish subjects or a victim of Euroean divide-and-conquer strategies. Rather, I submit that the

155 See, e.g., a legal document from 3 Rama ḏān 1297 signed by the qāḍīs al-Ḳābir b. al-Ḥāshim al-Ḳattānī and al-Ḥādī b. Ahmad al-‘Alamī (in Paquignon, “La condition des juifs au Maroc,” 121-2 and Fenton and Littman, L’exil au Maghreb, 318-19). This document testifies to an incident in which Jews came before the sultan with shoes on, thus breaking the established tradition. See also USNA, reg. 84, v. 29, no. 1, Abraham Corcos to ‘Amr b. ‘Abd al-Ṣādiq, 27 Ṣafar 1298/ 28 January 1881 and ‘Amāra to Abraham Corcos, 4 Rabī’ I 1298/ received 8 February 1881. These letters concern an incident in which Yīṭḥaq ‘Amar violated the norms of Jewish-Muslim interactions when visiting the pasha of Marrakesh. ‘Amar, an American protégé, not only refused to remove his shoes but also insisted on standing (rather than sitting with the other Jews who were present). The resolution of this incident is not clear, but there is little question that the Makhzan official was unwilling to accept this sort of behavior from a Jew even if he was an American protégé.
relationship among Jews, foreigners, and the Makhzan shifted according to the nature of the case. At times, Jews appealed to foreigners to intervene on their behalf. Often such appeals were made simultaneously with appeals to the Makhzan. In other instances, Jews only petitioned the Makhzan, especially for redress from injustices committed by foreigners. Jews, too, were often divided on whom to petition and for what purpose. Finally, the Makhzan’s own representation of the position of Jews in Moroccan society shifted in response to foreigners’ intervention on Jews’ behalf. Makhzan officials increasingly adopted a language of equal treatment to describe the proper behavior towards Jews. The ties linking Jews, foreigners, and the Makhzan were fluid and changed according to the particular circumstances of the time.
Epilogue

On March 30, 1912, France declared a protectorate over most of present-day Morocco, and later that year Spain established its own protectorate over the north. In designing their colonial policies, the French authorities followed a different path from that taken in Algeria, which France had annexed in 1848. The protectorate instead followed the model they had created in Tunisia (colonized in 1881), which theoretically preserved the indigenous government alongside that of the French colonial authorities.\(^1\) Hubert Lyautey, France’s first resident general in Morocco, was particularly intent on maintaining at least the appearance of the “traditional” Morocco alongside the changes introduced by the colonial regime’s modernization efforts.\(^2\) Of course, the appearance of continuity was largely an illusion; in reality, the French colonial authorities held nearly all the political power, and their far-reaching reforms constituted a significant departure from what had existed before. Although Morocco had changed profoundly in the nineteenth century, 1912 represented a rupture unlike any the country had experienced for centuries.

The legal regime instituted by the protectorate authorities followed the pattern of appearing to preserve the status quo. The French made a point of declaring Moroccan Jews “indigènes” (natives) alongside Muslims, in contrast to the policy in Algeria which had granted Jews citizenship in 1870.\(^3\) Many, especially the AIU, lobbied hard for Jews to be naturalized as French citizens en masse like their Algerian coreligionists, but to no avail.\(^4\) In their reform of


the courts, begun in 1913, the French set up a system that superficially reflected the spheres of jurisdiction which had existed before colonization. They instituted French courts which had jurisdiction over French subjects, although Moroccan protégés reverted to the status of indigènes;\(^5\) they preserved batei din and sharī‘a courts, although the jurisdiction of these institutions was limited to matters of personal status and inheritance; and they created a system of indigenous courts which had jurisdiction over civil and criminal matters concerning Muslims and Jews alike.\(^6\) In 1918, the French promulgated a more detailed law concerning the organization of the Jewish community and its legal institutions, instituting six rabbinic courts of first instance and a high court of appeal in Rabat.\(^7\)

Through their judicial reforms, the French sought to instill order in what they perceived as a chaotic system without fundamentally changing the logic of jurisdictions in Morocco as they were understood. Jews continued to fall under the jurisdiction of batei din, Muslims under that of sharī‘a courts, and all Moroccan subjects—Muslim and Jewish alike—under the jurisdiction of Makhzan courts for criminal affairs. However, this schema of jurisdictional spheres was based on a highly simplified and fundamentally inaccurate understanding of the nature of the Moroccan legal system. The colonial regime’s decision to reduce the jurisdiction of sharī‘a

\(^5\) Caillé, *Organisation judiciaire*, 141-5. The process of abolishing protection granted by other states, however, was far slower and some countries maintained consular courts in Morocco decades into the Protectorate: see Mouillefarine, *Condition juridique des juifs*, 94-7; Caillé, *Organisation judiciaire*, 129-30; Chouraqui, *Condition juridique*, 140-1; Kenbib, *Juifs et musulmans*, 416-20; Rivet, *L’institution du Protectorat*, 227.

\(^6\) This was through the dahir of 12 August 1913: Mouillefarine, *Condition juridique des juifs*, 80-1; Chouraqui, *Condition juridique*, 121-2, 31-9; Cabanis, “La justice du chrâa et la justice makhzen,” 62-75; Schroeter and Chetrit, “Emancipation and its Discontents,” 180. On Morocco’s legal system during the Protectorate in general, see Caillé, *Organisation judiciaire*, 18-122.

\(^7\) The French employed Nahum Slouschz, a prominent scholar of North African Jewry, to study the organization of Morocco’s Jewish community and submit a proposal for a new dahir, although the law that was ultimately passed differed significantly from his suggestions: see Schroeter and Chetrit, “Emancipation and its Discontents,” 181-90. On the law itself, see Mouillefarine, *Condition juridique des juifs*, 115-19, 126-38; Chouraqui, *Condition juridique*, 123-4, 128. The law also seems to have required courts to keep systematic archives of their proceedings, as this is the earliest date from which registers of rabbinic courts survive: see, e.g., PD, register of the beit din of Fez, 1920-2 and 1934; CAHJP, MA/Mg1-36, registers of the beit din of Mogador, 1919-66.
courts to matters of personal status—a category alien to Islamic law as it had developed through the early modern period—reflects a trend that had swept much of the Islamic world starting in the nineteenth century.\(^8\) Clearly, the jurisdiction of sharī‘a courts in pre-colonial Morocco was far wider than family law, encompassing not only civil and commercial matters but even criminal cases. The parallel restriction of the jurisdiction of batei din to matters of personal status similarly curtailed the scope of these institutions.\(^9\) While the French appeared to preserve a system of existing sharī‘a courts and batei din, in fact their reforms attempted to radically change the nature of these judicial institutions.

The colonial reforms also signaled a rupture in the relationship among the different legal orders in Morocco. As we have seen throughout this dissertation, the lines demarcating jurisdictions were never as clear as French observers imagined them to be. While batei din had jurisdiction over intra-Jewish affairs, they also served the legal needs of Muslims in commercial relations with Jews. And while sharī‘a courts were supposedly reserved for cases involving Muslims, many Jews brought their intra-communal deeds and disputes before ‘udūl and qāḍīs rather than dayyanim. In declaring that sharī‘a courts and batei din would henceforth only serve the needs of Muslims and Jews respectively, the French broke with years of precedent.

Moreover, the colonial authorities’ attempts to instill rigid separations among jurisdictions proved far from successful in reality.\(^10\) Batei din overstepped the bounds of their

---


\(^10\) There are some indications in the secondary literature that the Protectorate’s jurisdictional boundaries were not as rigid as they seemed. For instance, Chouraqui claimed that although theoretically Jews fell under the jurisdiction of the rabbinic courts and the indigenous courts alone, in reality they could still be called before the sharī‘a court, such as in cases concerning personal status or real estate involving a Jew and a Muslim (Chouraqui, *Condition juridique*, 129).
theoretical jurisdictions to hear commercial and civil affairs that did not fall under the category of personal status law. Jews continued to go to the beit din to register their commercial deeds—transactions which did not fall under the competence of the batei din as it was envisioned by the French. Once again, the Assarraf family serves as our guide through the workings of the Moroccan legal system. The Assarrafs continued to use the beit din to notarize their commercial transactions even after 1912. For instance, on July 23, 1920, Ḥaim Yosef b. Mordekhai Assarraf (Shalom’s nephew) and Makhluf b. Mas‘ūd Ḥamu registered their commercial partnership in the beit din of Fez. On August 11 of the same year, Ya‘aqov Assarraf rented a funduq to Moshe Aharon b. Mas‘ūd Buṭbol for 125 francs per month. More than a decade later, on June 25, 1934, David b. Ya‘aqov Assarraf and his wife Hanah bat ‘Ayush ‘Atiya sold three portions of a mortgage on a room they owned to Moshe b. Avraham Qadosh for 1,125 francs. Similarly, shari‘a courts—which were also limited in theory to personal status law—continued to hear cases involving civil and commercial affairs. Nor does this continuity seem to have been limited to cities like Fez; as Daniel Schroeter has observed about Ighil n’Ogho, a small town in southern Morocco, the notarial practices of Jews and Muslims changed little after the French established colonial rule there in the 1930s. Although much research remains to be conducted on the Moroccan legal system during the Protectorate, there is little question that Moroccans continued to use their local legal institutions in much the same ways as before 1912 despite the French authorities’ efforts to rationalize law in Morocco.

11 Schroeter and Chetrit, “Emancipation and its Discontents,” 195. The evidence I found in the registers of batei din contradicts Chouraqui’s observation that Jewish courts did not deal with civil and commercial cases, even while shari‘a courts did (Chouraqui, Condition juridique, 129).
12 PD, register of the beit din of Fez 1920-2, #28, 23 July 1920.
13 PD, register of the beit din of Fez 1920-2, #58, 27 Av 5680.
14 PD, register of the beit din of Fez 1934, #7, 12 Tammuz 5694/ 25 June 1934.
15 Chouraqui, Condition juridique, 129.
This sort of continuity in legal practice was not limited to a rejection of the new boundaries dividing the jurisdictions of sharīʿa courts and batei din. Muslims and Jews also continued to violate the rules governing the respective jurisdictions of Jewish and Islamic courts even after the French tried to impose stricter divisions among Morocco’s various legal orders. A brief examination of the registers of the beit din of Fez from 1920 indicates that Muslims were a regular presence in the Jewish court, where they came to register real estate sales, leases of property, and loans in much the same way they did before 1912. On July 16, 1920, Muḥammad b. ‘Abd al-Qādir al-Yūbī bought a house (ḥatzer) from a group of Jews for the steep price of 7,600 francs.\(^\text{17}\) The house was number 455 (a sign of the changes brought about by the Protectorate, since houses in pre-colonial Morocco did not have numbers) in the new neighborhood of al-Qadiya in the millāḥ.\(^\text{18}\) In addition to the house itself, Muḥammad bought the ḥazaqah—the usufruct rights to the property—for an additional 200 francs.\(^\text{19}\) The sale of the ḥazaqah is a clue as to why Muḥammad and the Jewish sellers went to a beit din to record this sale, since a sharīʿa court would not have recognized this claim to usufruct rights which existed only in Jewish law (as discussed in Chapter Three).

Muslims also continued to appear in batei din to draw up bills of debt and leases of property—both of which they could have notarized in Muslim courts. A record dated July 13, 1920 attests that Muḥammad b. Muḥammad b. Yaḥya lent one hundred riyāls to Matityahu b. Yitzḥaq Butbol.\(^\text{20}\) Ten days later, Avraham b. Aharon Harosh rented a room in the house known as the ḥatzer of Tzvi b. Azulai to two different Muslims: ‘Abd al-ʿAzīz b. Muḥammad al-Zārī

\(^{17}\) PD, register of the beit din of Fez 1920-2, #6, 16 July 1920. The Jews involved included Yaʿaqov b. Shalom Qadosh and his brother Avraham, Yosef b. Shlomo Samḥun and his mother Sulṭana bat Yosef Qadosh, Yedidiah b. Binyamin b. Samḥun, and Yehudah b. Moshe b. Samḥun and his brother Yosef.

\(^{18}\) See Le Tourneau, *Fès avant le protectorat*, 269.

\(^{19}\) For a similar case in which two Jews sold part of a house and its ḥazaqah to a Muslim, see PD, register of the beit din of Fez 1920-2, #135, 16 Ḥeshvan 5681.

\(^{20}\) PD, register of the beit din of Fez 1920-2, #29, 27 Tammuz 5680.
rented a third of the room for nine francs and four centimes per month, and Muḥammad b. Muḥammad al-Qārī rented the remaining two-thirds of the same room for eighteen francs and three centimes per month. The two Muslim tenants would pay their rent at the beginning of each Jewish month, starting in Iyar of that year (which fell in April).

Similarly, Jews continued to appear in sharīʿa courts for intra-Jewish commercial transactions. For instance, on March 16, 1920, a Jew named David b. Ḥaim bought a house in the millāḥ of Marrakesh from three of his coreligionists through his agent Yehudah b. Menahem al-Sharfā. Three weeks later, David b. Ḥaim sold half of this house to Yitzḥaq b. Moshe b. Ohayon. Both of these transactions were recorded in Arabic and signed by two ‘udūl and a qāḍī. Again, these were deeds that, according to the new laws governing jurisdiction in Morocco, should not have been recorded in a sharīʿa court in the first place. The fact that David b. Ḥaim made sure his real estate transactions were notarized by ‘udūl further suggests that he thought his claim to the property might be challenged in a sharīʿa court—which also should not have been possible according to the new French laws.

Preliminary research suggests that the French eventually succeeded in imposing a more rigid demarcation of jurisdictional boundaries separating Jewish and Muslim courts. The frequency with which Muslims elected to appear in Jewish courts seems to have petered off, if not stopped entirely, by the 1930s. An examination of about 150 documents entered in a register of the beit din of Fez covering the year 1934 did not yield a single case involving Muslims. It is likely that a study of sharīʿa court registers would similarly reveal that Jews brought their

---

21 PD, register of the beit din of Fez 1920-2, #35 and #36, 23 July 1920.
22 Yale, MS. 1825.1333, 25 Jumādā II 1338 and 17 Rajab 1338. I am grateful to Aomar Boum for bringing this document to my attention.
23 PD, register of the beit din of Fez 1934.
intra-Jewish cases to these courts less often by the 1930s. However, more research is required before this hypothesis can be verified.24

*   *   *

While there is little question that French colonization marked a significant rupture in the nature of the Moroccan legal system, legal strategies of individual Moroccans showed remarkable continuity. Both before and after 1912, Jews and Muslims continued to seek out the legal forum that would best serve their interests, which often entailed crossing jurisdictional boundaries. Yet this dissertation raises almost as many questions as it answers. Further research in the legal history of the colonial period could constitute an entire dissertation in itself. More broadly, this study demonstrates the richness of available documentary evidence for Moroccan social history. Many of the sources on which I draw could and should be tapped for studies of women in Moroccan society, the economy in the nineteenth century, the history of the family, and the development of Jewish and Islamic law, among other topics. My hope is that scholars will conduct further research on Moroccan history using the remarkable legal sources I have employed here.

Finally, my methodology holds promise not only for the history of Jews in North Africa or even the Islamic Mediterranean, but also for Mediterranean and Jewish history more broadly. My interest in law as it was experienced by legal consumers is an approach which would enhance the field of socio-legal history. Attention to the interactions among different legal orders in a legally pluralist system is a promising subject of inquiry for law as it was practiced— not only in the Islamic world, but also wherever Jewish courts existed alongside non-Jewish ones. Employing legal pluralism as a framework can help scholars go beyond the question of

24 This would also match what Daniel Schroeter has observed for Ighil n’Oghlo, where it took the French many years before they successfully changed the notarial practices of the courts there: Schroeter, “Views from the Edge,” 184.
how much legal autonomy Jews had and begin to understand how Jews engaged with a number of coexisting legal orders. By studying the ways in which Jews and Muslims used various kinds of courts on a quotidian basis, we can move beyond either a neo-lachrymose conception of Jewish history or one which views the past with rose-tinted lenses. Instead, we can begin to grasp how the legal and confessional pluralism of the Islamic Mediterranean fostered a society into which Jews could be fundamentally integrated in the absence of emancipation or religious equality.
Glossary of Arabic and Hebrew Terms:


Beit din: Jewish law court (pl. batei din).

Dayyan: Jewish judge.

Dhimma: Literally, “protection.” The contract by which non-Muslim monotheists were granted certain rights in an Islamic state.

Dhimmī: protected non-Muslim monotheist. In the Moroccan context, dhimmī was synonymous with Jew.

Duwār: a small village.

Fatwā: Islamic responsum.

Funduq: warehouse.

Halakhah: Jewish law.

al-Ḥazān: title used in Arabic for distinguished Jews.

Ḥazaqah: usufruct rights on a property (as stipulated by Jewish law).

Ḥubs: Islamic pious endowment (pl. hubūs, also called a waqf, pl. awqāf).

Ketubbah: Jewish marriage contract (pl. ketubbot).

Khalīfa: provincial viceroy or deputy of another official. In Morocco, this term did not connote “caliph” but rather any deputy—usually of the Sultan.

Lafīf: type of testimony in which twelve Muslim men testified to something about which they had personal knowledge.

Makhzan: Moroccan central government.

Maqāl: the initial allegation or deposition in a lawsuit in a sharī‘a court.

Maẓālim: refers to a kind of tribunal in which the ruling authorities (the sultan or one of his ministers) heard appeals from subjects about instances of injustice (maẓlima).

Millāḥ: Jewish quarter.
Mokhalet: business partner of a protégé who also benefited from foreign protection to a degree (from the Arabic mukhāliṭ, meaning “business associate”).

Muftī: Muslim jurist who wrote responsa (fatāwā).

Muḥtasib: inspector of markets.

Nā‘ib: representative (either political or commercial).

Nāẓir: administrator of a pious endowment.

Pasha: urban governor. Often appointed along with one or more qā’ids.

Psaq Din: legal ruling issued by a beit din (pl. pisqei din).

Qāḍī: judge in a sharī’a court (spelled kadi in Ottoman).

Qāḍī al-quḍā: chief judge, located in Fez (also known as the qāḍī al-jamā’a).

Qā’id: urban or rural governor. Sometimes a number of qā’ids (and a pasha) governed simultaneously in the same city.

Sharī’a: Islamic law.

Sharīf: descendent of the Prophet Muḥammad (pl. shurafā’).

Shaykh al-yahūd: the secular head of a city’s Jewish community whose main task was to be the intermediary between the Jewish community and the Makhzan at the local level.

Shtar: Jewish legal document notarized by sofrim (pl. shtarot).

Sofrim: Jewish notaries (singular sofer).

Taqqanah: Jewish communal ordinance (pl. taqqanot).

Teshuvah: Jewish responsum

‘Udūl: Islamic notaries (singular ‘adl).

‘Ulamā’: Muslim scholar (s. ‘ālim).

Wizārāt al-Shikāyat: Ministry of Complaints, created by Mawlāy Muḥammad (reigned 1859 to 1873). This ministry consisted of a minister and his staff appointed to address the complaints of Moroccan subjects, almost always concerning legal issues.
Ẓahīr: Royal decree (spelled “dahir” in French).

Zāwiya: Tomb of a Muslim saint, often used as a sanctuary by both Muslims and Jews. Also referred to as ribāṭ and hurm.
Archives Consulted

Belgium:
Paul Dahan Collection, Centre de Culture Judéo-Marocaine, Brussels (PD).

France:
Archives du Ministère des Affaires Etrangères, Nantes (MAE Nantes).
Archives du Ministère des Affaires Etrangères, Courneuve (MAE Courneuve).
Archives de l’Alliance Israélite Universelle, Paris (AIU).

Israel:
Manuscripts Department, National Library of Israel, Jerusalem (NLI).
Manuscripts Department, Yad Ben Zvi, Jerusalem (YBZ).
Central Archives for the History of the Jewish People, Jerusalem (CAHJP).
Private collection of Professor Yosef Tobi, Jerusalem (TC).

Morocco:
Bibliothèque Hassaniya (also called the Bibliothèque Royale, al-Khizāna al-Ḥasanīya or al-Maktaba al-Mālikīya), Rabat (BH).
Direction des Archives Royales (Mudirīyat al-Wathāʾiq al-Mālikīya), Rabat (DAR).
Bibliothèque Nationale du Royaume du Maroc, Rabat (BNRM).
Qarawīyīn Library, Fez (Qarawīyīn).

The Netherlands:
The Dutch National Archives (Nationaal Archeif), The Hague (DNA).
Oriental Manuscripts and Rare Books, University of Leiden Library, Leiden (UL).

Spain:
Archivo General de la Administración, Madrid (AGA).
Archivo Histórico de Protocolos, Madrid (AHP).

United Kingdom:
United States:
United States National Archives II, College Park, Maryland (USNA).

North African Jewish Manuscript Collection, Manuscripts and Archives, Yale University Library (Yale).

Special Collections, Library of the Jewish Theological Seminary of America, New York (JTS).
Bibliography


385


Bénech, José. Essai d’explication d’un mellallah (ghetto marocain) ; un des aspabt du judaïsme. Paris: Larose, liminaire, 1940.


Epstein, Mark. *The Ottoman Jewish Communities and Their Role in the Fifteenth and Sixteenth Centuries.* Freiburg: K. Schwarz, 1980.


Lafi, Nora. “Petitions and Accommodating Urban Change in the Ottoman Empire.” In Istanbul as seen from a distance: Centre and Provinces in the Ottoman Empire, edited by Elisabeth Özdalga, M. Sait Özervarlı and Feryal Tansuğ. Istanbul: Swedish Research Institute, 2011, 73-82.


Loewe, L. Diaries of Sir and Lady Montefiore. 2 vols. Chicago: Bedrod-Clarke, 1890.


Wagner, Mark S. “Halakhah through the Lens of Sharī‘a: The Case of the Kuhlnî Synagogue in Ṣan‘ã‘, 1933-1944.” In *The Convergence of Judaism and Islam: Religious, Scientific, and


