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Ahl al Kitab: Mechanisms of Social Cohesion Among Monotheisms of the Iberian Convivencia

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Ahl al Kitab: Mechanisms of Social Cohesion Among Monothisms of the Iberian Convivencia

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I. Prelude

History supplies numerous examples of invaders who conquered territories, dominated local populations, and produced fresh ethnic blends through cultural exchange and intermarriage. This process of invasion, domination, and ethnic blending characterized the evolution of medieval Iberian society. From the eighth-century Arab invasions until the Christian expulsion of Muslims and Jews in the fifteenth century, there reigned among the three monotheistic communities a spirit of tolerance, designated in Spanish as la convivencia. Although adherents of the three faiths jointly lived the convivencia, their status as either victors or vanquished assured that their respective experiences differed markedly, and they did not assign the term convivencia to their experience.
The term *convivencia* seems to have first appeared among Spanish historians of the last century. A philologist, Menendez Pidal used the term *convivencia de normas* to characterize the contemporaneous existence of variant forms in Iberia’s early Romance languages. A student of Menendez Pidal, Americo Castro attached the term *convivencia* to a socio-cultural phenomenon of medieval Spain. In Castro’s lexicon, *convivencia* became a “linguistic vehicle for explaining the reciprocal cultural interactions of diverse groups of medieval Spain.”

Though the term's origins have receded from memory, it has come over decades to signify an enduring collaboration among the three faiths in a variety of disciplines including finance, law, medicine, grammar, science, architecture, mathematics, philosophy, and the arts.
A. Convivencia Promoted by Islamic Esteem for Ahl al Kitab

(Arabic: Peoples of Scripture)

The spirit of convivencia stemmed from a Quranic injunction to honor Jews and Christians as “peoples of scriptural revelation” and “keepers of the covenant” (mu’ahid). Implemented through protective alliances with Jews and Christians (dhimmi,) traditional Islamic patterns of patronage and clientage assured the autonomy of each religious community. Granted the right to select leaders and administrators distinct from those of their rulers, Christian and Jewish communities enjoyed Muslim protection as long as they respected requirements imposed by Muslim authorities and refrained from stirring up rebellion against them. Wellsprings of mutual respect irrigated the dhimmitude of Christians and Jews. In turn, dhimmitude produced a milieu hospitable to social interactions among the three faiths.
Some scholars may object to the utopian cast of this description of the convivencia. They could justifiably argue that a highly selective Muslim policy of tolerance broadly restricted interactions among the three groups. Dhimmitude did not routinely protect Jews and Christians against abuse at the hands of many Muslims who regarded them as infidels. During the reign of the fanatical Almoravids, the daily experience of Jews and Christians grew increasingly dystopic. Alongside dignified sobriquets that recalled the continuities of the dhimmis' religious traditions, pejoratives such as “the enemy” (al aduw), “enemy of Allah” (aduw Allah), and “rebel against God's law” (kafara) stigmatized Christians in particular. But verbal abuse was preferable to physical violence. If Islamic doctrine had not characterized the three faiths as branches of a single great theological tree, Iberian Jews and Christians would have suffered the fate of polytheistic
groups who routinely endured humiliation and violence at the hands of their Muslim rulers.

B. Meaning of Ahl al Kitab

As the Arabic word kitab (writing; book) suggested, the foundation of the three faiths was a belief in scriptural revelation embodied in the Old Testament, the New Testament, and the Quran. As the youngest of the three monotheisms, Islam was best situated to have considered and adapted beliefs and practices from the older religions. From the dawn of Islam, Muslim teachers encouraged their followers to consult Jewish and Christian learning and experience. As Judith Wegner has pointed out, the Quran enjoined Muslims to seek guidance in interpreting the Quran “from those who read the scriptures before you.” This Quranic injunction seems to have inspired Muhammed’s study of the more ancient monotheisms. His explorations enabled him to sharpen his universal message and demonstrate Islam’s affinity with its older sister religions.
Wegner has also suggested that Islam posited analogies such as Umar’s equation of a written Sunna with the Jewish Mishnah, a sacred commentary that forms part of the Talmud. Muslim dietary restrictions (hallal)\(^9\) followed Jewish prescriptions for kashrut. A Muslim ban against usury was virtually identical to counterpart Jewish and Christian bans.\(^{10}\) All three religions shared a deep commitment to charity for the poor, and Jews and Muslims used nearly identical terms for charity (Hebrew: tzedakah; Arabic: sadakah; zakah).\(^{11}\) Muslims believed that Jesus was a prophet who would preside as the supreme judge on Judgment Day.

Although all three faiths grew from a single theological tree, the three branches also competed for dominance. Antagonisms among the three faiths spawned a polemical literature in which scholars of each religion claimed that their particular sacred books enshrined the most authentic expression of God’s providence.\(^{12}\) The spirit
of Ahl al kitab also animated territorial conflicts in the Middle East. Though Islam had unique holy sites such as Mecca, Muslims revered Jerusalem as the place where Muhammed ascended into heaven. Jerusalem was also the sacred site of the Jews’ holy temple and the place where God's presence was most intense. Christians honored Jerusalem as the site of Jesus’s grave and his resurrection. In view of a shared reverence for Jerusalem, the city would predictably become a cherished prize for European crusaders dedicated to recovering the holy land from the Muslims.

C. Protective Pacts Dominant in Ahl al Kitab

Among the precepts embraced by the three faiths, perhaps none was more prominent than fidelity to one’s engagements, for they were believed to mirror solemn pledges recounted in scripture. Each monotheistic faith rested upon a pact in which God promised to protect his followers if they fulfilled his commandments. The ideal of
a personal God animated a protective covenant with the Jews, whom the Old Testament designated as people of the “b’rith” (pact; covenant). Over forty times, the Quran illustrated protective alliances (ahd) by reference to pacts between God and biblical Hebrew figures. Adopting a similar formulation of a pact with the almighty, the church depicted itself as protector and shepherd of Christ’s obedient flock. Christian doctrine urged the faithful flock to seek God’s protection by glorifying him.

Allah’s promised protection of his followers was secured in an alliance communicated by Muhammad. Deeply embedded in Arab tradition, clans and tribes were so important as primordial social units that each tribe’s consent to the alliance was required for Allah’s holy struggle. Muhammad’s engagement of each tribe in a common campaign for Allah was animated by a desire to overcome longstanding tribal hostilities.\(^\text{15}\)
The Quran identified Muhammad’s pacts with both contemporary allies and enemies. Denouncing those who broke faith with Islamic communities, the Quran taught that one who repudiated his pledges jeopardized the harmony of the world and forfeited eternal life. The Quran also encouraged Muslims to grant non-Muslims protection so long as they honored their engagements. Such protective alliances were crucial for the success of the convivencia. This was so because the Arabs, though politically and militarily dominant in Iberia, could not by raw power alone have dominated the indigenous Hispanic peoples who significantly outnumbered them. Power-sharing agreements reinforced Muslim dominance and protected the autonomy of other socio-religious communities. Once the Christian kings had launched the Reconquista and recovered control of the peninsula, similar agreements also recognized royal authority and safeguarded the autonomy of defeated Muslim communities.
D. Convivencia Not Animated by Social Contract Among Equals

Disappointment awaits us if we expect to discover in the medieval *convivencia* a democratic society anchored in a social contract that promoted mutual tolerance among equals. A legacy of the eighteenth century enlightenment, this contractarian social vision was informed by ideals of an individualistic society in which citizens were seen to bargain privately with one another to improve their lives. Recognizing that private agreements could not satisfy all social needs, citizens were said to have made a social contract that delegated to a state or government certain collective functions (e.g., military protection) deemed beyond the ability of individual citizens. Associated with the philosophies of Thomas Hobbes, John Locke, and Jean Jacques Rousseau, this contractarian vision lay many centuries in the future.

Let us recall, however, that the period under consideration stretched from 642 to 1492. The first year
marks the date of the Lex Visigothorum, a Romanized code that regulated Iberian society before the Muslim invasions. Occurring near the beginning of the Inquisition, the second date marks the year in which the Christian monarchs reconquered Granada and expelled the Muslims and Jews from Iberia. Instead of judging the spirit of the convivencia against contractarian ideals of social equality and religious harmony, we should see in this social phenomenon a medieval “ethos of storied tolerance and mutuality in which Muslims, Christians, and Jews long enjoyed . . . civilized coexistence that might have served as a model for the continent.”

Unchecked by a moderating ethos, Iberian groups typically preferred to settle scores through bloodletting, not mediation. Though the spirit of the convivencia did not halt such violence, it tamped the violence down enough to permit the three communities to work together on many cultural projects. But as Robert Burns has observed, the
tolerant spirit of the convivencia should not be confounded with a post-Enlightenment spirit of tolerance aimed at cultural assimilation. Informed by a policy of humiliating dhimmi for having rejected Islam, the ethos of the convivencia prohibited public challenges to the Quran’s authority, intermarriage among adherents of the three faiths, and ostentatious Jewish and Christian celebrations of religious festivals.

Robert Burns’s account of the Mudejar experience during the Reconquest also evokes the anti-assimilation policy that characterized Arab rule from the earliest invasions:

Medieval minority communities, within Islam or Christendom, were not modern minorities striving to assimilate in all but a single element such as color, residual ethnicity, or compartmentalized privatized religion. Each in his community shrank from the other, despised the inseparable
religio-cultural package the other represented, and actively resisted assimilation. Tolerance might well have meant to the Mudejar the retention of the exclusionary factors we most deplore: Arabic unilanguage, community walls, dietary obligations, separate schools and courts, and everything that turned him from the general Christian context and so by our standards oppressed him. He was an accomplice in his own exclusion . . . and wary of compromise.  

E. Roman Patronate a Template for Protective Alliances in the Convivencia

1. The Enduring Roman Patronate

Our study investigates an array of protective alliances that promoted social cohesion for the three monotheistic communities (Ahl al Kitab) in the absence of stabilizing institutions typical of a nation-state. Located at an intersection of social organization and law,
the alliances may be understood as versions of the patronate, a client-patronus diad bound together by reciprocal bonds of allegiance and protection. Classical Roman jurists considered the patronate a subtopic of slavery. On manumission, a slave became a libertus or freedman, and the former dominus became a patronus (one who replaced the father). The designation of libertus implied that the ex-slave became a client of his patronus and continued to owe his patronus a duty akin to filial piety.

Prevalent in Hispania for as long as the peninsula had belonged to the Roman Empire, the patronate endured among Iberian communities for centuries after Christian monarchs launched their peninsular Reconquest in 722. A similar institution of clientship endured among indigenous Jewish communities whose presence dated from the Roman Empire. From the beginning of the Arab invasions in 711, the conquerors relied upon a third form of clientship (wala) to govern indigenous populations.
In opposition to slavery’s institutionalized inequalities, the Roman patronate improved the lives of men who would otherwise have remained slaves. Despite its virtues, however, the Roman patronate did not address a number of obstacles that men could face. For example, a libertus who wished to leave one patron for another would find his path blocked by the rule that the libertus had to remain with his patron for life. In a second example, a free man who felt vulnerable to a stranger’s abuse might desire the personal security of a patron or protector. But the man’s free status made him ineligible to acquire a patron by means of manumission. To address the first circumstance, the Visigothic code in force in Hispania, though generally continuing the Roman patronate, also authorized a libertus, now deemed a client, to leave his first protector for a second. By the time of the eighth-century Arab invasions, another Roman institution, the commendatio, produced for a vulnerable yet free man in the
second example a protective clientship akin to the patronate. Like a libertus, a commended man owed his protector obedience and loyalty in exchange for the latter’s protection against strangers’ threats.

Different forms of clientship, the patronate, and the commendatio prefigured the feudal bonds of homage and protection characteristic of protective alliances between seigneurs and vassals. In its several versions, clientship was animated by a need for personal security in a society in which state-authorized guarantors of such security were too feeble to be counted upon. Characteristic of Iberian social and religious organization, the commendatio and the patronate, identified by either their Latin names or by Arabic and Hebrew terms, prevailed among Jews, Muslims, and Christians during the convivencia. Even when the nomenclature of the patronate was not used, the broad outlines of the institutions were usually identifiable. Compared with indigenous populations, the Arab invaders’
relatively small numbers made negotiated alliances essential for Iberian rule.

According to Molins:

The Muslims achieved mastery of the Iberian peninsula by means of negotiated agreements. The pacts were of two different sorts: those [author: akin to commendatio] proposed by both parties and negotiated voluntarily by indigenous leaders with Muslims, and others [author: akin to the Roman patronate] that concluded military confrontations that ended in the surrender of the indigenous side.²⁰

Deeply embedded in the Arab tradition long before the Iberian invasions, both kinds of agreements identified by Molins characterized the Pax Islamica under the patronage of generals and caliphs. Like a peace treaty or truce entered voluntarily, the first agreement (Arabic:sulh) resembled the commendatio in the sense that an indigenous
leader commended his group to a Muslim protector in exchange for the former`s obedience and payment of tribute. Like the Roman patronate, the second agreement (Arabic:\textit{anwa})\textsuperscript{21} contemplated an indigenous leader`s surrender after combat because he preferred that outcome over enslavement. For our narrative, distinguishing \textit{sulh} from \\underline{anwa} is not crucial, for both institutions contemplated clientship for vulnerable peoples. Because the Arab invaders preferred the surrender of local communities without a fight, it would be an academic exercise to distinguish too sharply a community`s voluntary assent to a peace treaty from its coerced entry into a pact of surrender. Both kinds of alliances were achieved with the threat of a sword.\textsuperscript{22} Whether the sword was drawn or sheathed is of secondary importance.\textsuperscript{23}

\textbf{II. Organization of study}
To lay the groundwork for our investigation, we first recount briefly the eighth-century Arab invasions. We next examine in further detail the Roman patronate, including its Hispano-Roman and Visigothic versions; the Arab patronate; and its Jewish counterpart. There follows an exploration of the role of clientship among dhimmi i.e. Christians and Jews whose status as believers in the revelation of the holy books entitled them to special protective alliances with Arab rulers. We next identify the patronate’s influences upon charters of several individual alliances, including the oldest surviving pact between an Arab governor and a Hispano-Roman prince.

Coming directly to the announced theme of social cohesion, we have identified ways in which the patronate animated certain institutions of the convivencia that channeled and formalized interactions among the three monotheisms. Spanish monarchs, Arab communities, and their Jewish counterparts communicated their interests and
concerns by means of the aljama, a special form of protective alliance of Arab provenance.

Finally, turning to Iberian financial innovations, we speculate about the patronate’s imprint upon business organizations typically used by adherents of the three faiths. The Coda recalls the main themes of our inquiry, and then evokes the modern day dilemma of ahl al kitab.

Readers may identify resonances between our study and Patricia Crone’s Roman Provincial and Islamic Law: The Origins of the Islamic Patronate.24 Beginning before the birth of Islam in the seventh century A.D., Crone’s inquiry investigated the origins and functions of wala, an Arabic term for social solidarity among pre-Islamic Arab kinship groups. She studied the Arab patronate as an institution of social cohesion and found it deeply indebted to a counterpart Roman provincial institution. By contrast, our inquiry focuses narrowly upon Iberia after Islam’s rise, and assumes the presence of wala among the Arab invaders.
Distinctive features of the Arab invasions and the invaders’ patterns of settlement make it difficult to demonstrate that the Roman patronate had a unidirectional influence upon its Arab counterpart. Nonetheless, the two patronates were linked by terminological continuities; and a future inquiry may disclose details of their accommodation to each other.

For the present study, we have concluded that demographic factors discouraged the Arabs invaders from substituting their patronate for that of the Hispano-Roman. Though the balance of military power tilted in favor of the Arab invaders, Hispano-Roman strength in numbers enabled indigenous groups to resist wholesale imposition of the Arab patronate. Even when Arab invaders might have fully imposed their own patronate upon the defeated Hispano-Romans in isolated regions, they seldom seem to have done so, perhaps because they wished to pacify the newly
conquered peoples whose cooperation they needed for successful governance.

In alliances negotiated by Arab victors and vanquished Hispano-Roman populations, distinguishing Arab elements from Roman ones requires some guesswork. Several factors have prompted this conclusion. First, the fog of war likely distorted chroniclers’ perceptions of Arab and Hispano-Roman demands. Second, surrender charters from the Arab invasions through the Reconquista (700-1492) were often irreconcilable. The full texts of many charters have been lost; others were modified or composed long after the events they memorialized. Third, the languages of the rival groups were very different: a key term in Arabic might have no precise correspondence in Latin. For example, the Arabic mawala, though often translated as “client,” actually corresponded more closely to “ally” than “client.” Derived from wala, an Arabic term for solidarity or kinship, mawala could also mean “protector.”
as in Quranic verses that identify Mohammed as a mawala of Muslim believers.\textsuperscript{26} Voluntarily established in a process akin to \textit{commendatio}, \textit{wala} denoted reciprocal rights of inheritance for both protector and mawala.\textsuperscript{27} Fourth, in keeping with the principle that victors write the history of conflicts, a majority of accounts were written by Latinized Christians rather than Arabs. Religious biases understandably figured in both Christian and Muslim chroniclers.

The patronates of the rival Iberian groups seem to have yielded contrasting social patterns. Informed by Roman practices codified in the Visigothic Code, the Hispano-Romans seem to have embraced a pre-feudal social hierarchy characterized by a high degree of vertical and lateral cohesion and accompanying patterns of land distribution dependent upon subinfeudated tenements. By contrast, the Arab patronate seems to have been associated with a fragmented polity characterized by relatively
independent Arab clans as well as land distribution patterns that did not depend upon subinfeudated tenements. Professor Pierre Guichard has helpfully described an Arab tribal milieu in which one’s political influence reflected the prestige of his clan or protector more than land under his control:

Unlike . . . pre-feudal and feudal Europe, it does not seem that in Muslim Spain, riches or . . . land were the primary source of power, even if these factors favored, within a particular clan, one family’s rise above another. At the origin of the majority of influential families of the caliphal and post-caliphal epochs, there seems to have been a more ancient clan chefferie.²⁸
III. In the Beginning: Umayyad Invasions and the Caliphate of Al Andalus; Iberian Convivencia

In 711 A.D., Al Walid I (668-715 A.D.), the Umayyad caliph of Damascus dispatched a force of Berber warriors, newly converted to Islam, from North Africa across the Strait of Gibraltar. Coming ashore on the southern bank of the peninsula known among the Romans as Hispania or Iberia, the invaders, led by Tarif ibn Talib al Muafire, had by 717 A.D. conquered nearly the entire Iberian peninsula except Galicia, Asturias, the Basque region, and the Pyrenees zones.

Joined by successive waves of warriors from Yemen, Iraq, and Syria, the Umayyads, between 929-1031 A.D. centralized their peninsular administration in Al Andalus, a caliphate that extended from Iberia’s Mediterranean coast to a line north of Salamanca and Lerida. By the eleventh century, the European footprint of the nascent Islamic
empire had become roughly co-extensive with that of the Roman Empire in about 200 A.D.

Relying upon a succession of viziers and emirs, the Umayyads dominated Hispania for three centuries. Gradually, the Umayyads and successor dynasties transmitted their language, religious practices, and administrative structures to the indigenous communities of Hispania. As decades accumulated into centuries, daily interactions among indigenous Hispano-Romans, Jews, and Muslims produced a cultural alloy that has endured in a Spanish lexicon rich in both Arabic and Latin vocabulary. Traces of the alloy can also be found in a nomenclature of Spanish officialdom that still includes the alguazil (al wazir=vizier), and a Spanish geography in which Arabic names adorn many celebrated places (e.g., Guadalquivir; Alhambra; Cadiz; Madrid, Andalucia).
A. Pacts of Protection Established Bonds of Metaphoric Kinship in Mediterranean Basin

Absent governmental structures that guaranteed a degree of physical security, a man of humble station entered a pact of protection with a stronger man immediately above him on the social ladder. Usually identified by the Latin term commendatio, pacts of allegiance and protection figured prominently in the social fabric of medieval communities of Jews, Muslims, and Christians alike. Easily adapted to specific political circumstances, a commendatio might perform a variety of functions, both menial and lofty. A medieval monarch, for example, might commend his realm and his subjects as spiritual vassals or clients to the papacy. In return, the papacy as feudal lord agreed to protect the clients from attack. Sensing their vulnerability to marauders, residents of a medieval commune might commend themselves to the protection of a nearby town. In yet another instance,
a Jewish community isolated in France pledged fealty to an Avignonese pope in exchange for protection and a measure of political autonomy.\textsuperscript{31} Judging by the Visigothic Code’s regulation of patrons and clients, the social fabric of Visigothic Iberia was woven to a notable extent from pacts of protection. Iberian pacts designated as benefactoría or behetría a client’s tangible fiefdom and an intangible protective shield that his protector had erected around him.\textsuperscript{32}

B. Slavery a Social Norm Throughout Ahl al Kitab

In the Mediterranean basin servile populations consisted largely of slavs from as far away as the Crimea, and the term “slave” came to designate laborers who toiled on great estates. Roman regulation of slaves has figured early in our account of the patronates, for the patron-client diad was a consequence of a slave’s manumission. Despite his humble origins, a slave might rise high in his owner’s family. As his owner’s agent, he might perform
tasks in his owner’s stead. If the slave negotiated a contract with another person, his contractual capacity derived from his status as his owner’s mandatary. Even if he had risen in the owner’s family to the rank of trusted adviser and tutor of the owner’s children, he nonetheless lacked personal autonomy and contractual capacity. This lack of civil attributes kept his servile condition uppermost in his mind.

C. Metaphorical Kinship Animates Roman Patronate:
Continuity of Patronate in Medieval Mediterranean

Pervasive in Roman Hispania, patronage ties bound a manumitted slave (libertus) in a status inferior to his former dominus, even though the wider Roman society no longer considered him a slave. In turn, the former dominus, now a patronus, owed the libertus his support. He became responsible for promoting his ex-slave’s interests over those of other members of society. If the freedman’s
rights were infringed, the patron became his advocate. If the freedman fell upon hard times, the patron was expected to tide him over his difficulties. The libertus or freedman owed his patronus respect (reverentia, obsequium), service in his retinue, and a certain number of days of work (operae). By fulfilling these duties a libertus recognized his status as former slave and his enduring dependence upon his patronus.36

Characteristic of the relationship between a Roman father and his son, filial piety also animated the reciprocal duties of libertus and patronus. As the son was in the father’s potestas, the freedman was said to be in tutela to the patronus. “The two were supposed to form one family whose unity it was sacreligious to dissolve by force.”37 Like filial piety, obsequium restrained a freedman from bringing a civil action against his patronus. He could not sue his patron for fraud or initiate criminal complaints against him. Nor could the freedman legally
complain of injury inflicted upon him by the patronus unless the injury were grave. Officium embraced a number of duties: for example, a patronus might demand small personal services from his libertus. He could appoint the latter guardian of his children or even their teacher and companion. The freedman could be asked to assume the tasks of dispensator or steward of the patron’s estate, and to support his patron if the latter were in need. 38

Links between a patronus and his libertus supplied a template for other relationships in Roman society. As Professor Jerome Carcopino observed: “From the parasite do-nothing up to the great aristocrat there was no man in Rome who did not feel himself bound to someone more powerful above him by the same obligations of respect . . . obsequium, that bound the ex-slave to the master who had manumitted him.” 39

In a culture that esteemed personal honor, bonds of dependence ran in both directions. By vigorously promoting
the interests of his libertus, a Roman patronus also defended his own honor and proved that he deserved his lofty reputation. For his part, the libertus eagerly sought social and financial advantage by invoking the name of his patronus among all whom he met and by seeking the latter’s exercise of influence on his behalf. Toga-clad clients could be seen scurrying each morning to the home of their patronus, sometimes in quest of the latter’s dole, and at other times merely to bid him good morning or to ask him to endorse a new venture.40

As Arnold Duff has observed:

It pleased the patron’s vanity to have a throng of clients paying the official morning call (salutatio), joining his procession to the city and applauding his legal speeches or his literary recitations. Pride showed itself in another way. Many a master on the point of death would console himself with the thought of a pretentious funeral
and would free a number of slaves by his will, in
order that his body might be followed to its last
resting place by a crowd of grateful
freedmen. . . . [S]imple gratitude or benevolence
might impel a generous master to bestow freedom
on a faithful servant. Nurses and teachers were
often recompensed in this way. . . . There was a
particular interest taken in slaves who were born
in the house. Such vernae, as they were called,
won their freedom in large numbers, while the
bond of affection that could subsist between
master and slave was well exemplified in that
exquisite epigram of Martial where a dying
amantuensis [was] freed in order that he may go to
the other world a free man.41

The ancient patronates seemed to lie behind Professor
Samuel Goitein's description of ties of dependence forged
among medieval actors in the Mediterranean:
A man could subsist only when he occupied a strong position or at least had connections with a person of high rank. The internal security, administration, and judiciary of the states in those days were weak. Even if a man had a very good case, his right could rarely be secured without a letter of recommendation or the personal intervention of an influential dignitary or notable. Thus, social position was a means of survival.42

D. Visigothic Code’s Regulation of Patronate

Dating from about 642, the Visigothic Code (Lex Visigothorum Regum Hispaniae) continued a patron’s authority over his client in terms of a familiar Latin nomenclature.43 With few modifications, the Roman patronate endured among indigenous populations once they came under Arab rule. Arab authorities, presuming the Visigothic code “the recognized legal authority of Christian magistrates,”
permitted Christians to apply their laws to controversies arising among them as long as their laws did not conflict with those of the conquerors.\textsuperscript{44}

A client’s ancient duties of \textit{obsequium} and \textit{servitium} to his patron endured during both the Visigothic and Arab periods. Designating clients as “defensi,” Spanish charters accorded them a strong man’s protection because they were vulnerable to an outsider’s attack. Other charters collected a patron’s duties to his client under the rubrics “defensio” and “tuitio.” The latter term assimilated a client to a ward and the patron to a tutor or guardian. Although we have not found in Spanish charters the terms “dhimmi” and “client” together, the Arabic term \textit{mawali} occurred often with “client,” a Latin approximation.\textsuperscript{45}

The Visigothic Code’s regulation of the patronate diverged in some respects from that of the early Romans. In Rome, for example, the condition of clientship could not
be renounced. Once established, the relationship endured until the client died or lost his freedom for insolence or misconduct toward the patron. By contrast, in Visigothic Iberia, the libertus could leave one patronus for another, provided he returned half the assets he had received from the first patronus.  

(In contrast with its Visigothic counterpart, the Islamic patronate authorized dissolution of a bond of wala unless the protector had paid blood money on behalf of the mawala). Both the Roman and Visigothic versions of the patronate used the term “client” to designate generally someone under a protector’s authority, but the Roman version used the term “client” more narrowly than its Visigothic counterpart. In the Roman regulation, “client” denoted only a manumitted slave. The Visigothic Code conflated the patronate and the commendatio: the term “client” included both a manumitted slave and, as in the commendatio, a free man who had voluntarily commended himself to the care of a superior.
Arabic and Latin nomenclatures sometimes combined to produce distinctive rubrics absent from classical Roman regulation of the patronate. During the Christian Reconquest of Iberia, for example, defeated Muslims were classified as *sarracenus captivus* (Arab slave) and *sarracenus liber* (Arab freedman). Sometimes, Arabic wholly supplanted Latin. According to Samuel Scott, a translator of the Visigothic Code, the *bucelarius* served in a Roman patron’s armed retinue. In medieval Iberia, the *alguazil* (*al wazir*: trustee) assumed the function of the *bucelarius*. The term *alguazil* identified an armed Iberian officer whose function endures today in modern Spanish judicial administration.

E. Jewish Patronate

For Iberian Jews, slavery constituted a paradox: while both official pronouncement and church doctrine categorized Jews as royal slaves, Jews also owned slaves. Fearing that Iberian Jews’ ownership of non-Jewish slaves
would facilitate their conversion to Judaism, both the church and Visigothic rulers such as Sisebut (circa 610) and Recarred (ca 587) prohibited Jews from owning or employing Christians. 48 Issued by church councils and synods, these bans became incorporated into canon law whence they spread widely across Europe. The Jews themselves became targets of conversion. Sisebut’s decrees resulted in massive forced conversions of Jews and seizure of their children for Christian baptism. After the Arab invasions, Arab authorities joined the church in enforcing its decrees. 49 According to Goitein, the incidence of Jewish freedmen and freedwomen in the Geniza records suggests a broad disregard of bans against Jewish slaveholding. 50 Unusual circumstances could give rise to a Jewish owner’s holding a Jewish slave. For example, an impoverished Jew might have commended himself to a Jewish protector because he lacked meaningful alternative paths to survival.
As in Roman law, a Jewish slave lacked contractual capacity, and property acquired by a Jewish slave became vested in his owner. Jewish doctrine enjoined the master to act toward his Jewish slave in a brotherly manner, and to provide him rations and lodging comparable with those enjoyed by the owner and his family. Like a Hispano-Roman dominus, a Jewish master could voluntarily manumit his slaves; owing to a presumption of Jewish law in favor of a slave’s freedom, a slave could be manumitted by operation of law if his owner abused him, or had him perform religious rituals normally assigned free Jewish men. Once manumitted, a Jewish slave could marry a Jewish woman, conclude business transactions with free men, and appear as an attorney in court. Emancipated slaves were imbued with the social and religious notions of the community that they joined. A slave’s manumission before a Jewish court secured his personal autonomy, including exercise of all religious obligations as a Jew. As under Roman regulation,
familial bonds endured between freed male slaves and the houses of their former masters.

Within his community, a Jewish freedman typically enjoyed greater autonomy than a Muslim freedman in his counterpart community. According to Goitein, a Jewish libertus was excused from most of the duties he had owed his former master. In documents from medieval Mediterranean societies, Goitein found evidence of the Arabic patronate’s influence in descriptions of Jewish freedmen and their sons as “mawalas.” But Jewish law also seems to have equivocated about the designation “mawala.” For example, in a court record from Fustat (Egypt), dated June 28, 1080, the freedman Mubarak (the name meant “blessed” in Arabic and Hebrew) was characterized as mawala of Joseph Ben Joshiah. The Arabic term mawala was stricken from the record and replaced by the Hebrew words “freed by.”
F. Themes of Allegiance and Protection Echoed in Las Siete Partidas

A celebrated legal compilation commissioned by the Christian king, Alfonso el Sabio, Las Siete Partidas, composed around 1250, projected a Roman and Arabic ethos that linked a man’s personal security with his loyalty to a protector. The Partidas distinguished a leader’s sworn enemies from traitors who feigned friendship toward him. According to ancient sages quoted in the Partidas, a man could suffer no greater “pestilence” than the harm inflicted upon him by a trusted companion. Designated in the Partidas by the Latin term defensores, loyal protectors of the monarch formed a militia of noblemen of good lineage. A royal emphasis upon lineage recalled the Arab rulers’ selection of their strongest warriors based upon their kinship and the blood lines of agnatic tribes. By the mid thirteenth century, the era of the Siete Partidas,
the figures of the Iberian patronate had been transformed into feudal lords and vassals.

Vassals owe their seniores great duties; they must love, honor, protect, and advance to their benefit and ward off harm in all ways that they can. For the benefit that they receive, they must serve well and loyally. For his part, a lord must love, honor, and defend his vassals and do them right and mercy. Defending them from harm and dishonor, and when these duties are well performed, each does what he should, and love between them grows and endures.55

IV Arab Pacts of Protection Stabilize a Fragmented Polity

To identify the patronate’s contours among members of Ahl al kitab during the convivencia, it will help us to recall the enduring social realities that informed their
practices and institutions. According to Norman Calder,

“[t]here was no room in near Eastern society of this period for the nuclear family or the isolated individual. People lived in and owed allegiance to groups, which, in the case of Muslims, were traditionally demarcated by reference to tribal lineage.”

Long before Mohammed’s rise as Allah’s prophet, the Arabic term wala denoted a social glue that helped to bind together Arab protectors and clients. Wala designated a tie of mutual support and solidarity between two parties, whether of equal or unequal status. The term Mawala, deriving from wala could signify either a client or a protector. In the Quran, the term usually signified “protector” or “kinsman” as in the declaration that “Allah was mawala of all believers.” Among men, the term Mawala implied kinship as in an aphorism mawal al qawm min hum (the mawali of a tribe or clan is its member). A non-Arab could acquire Arab kinship by affiliating with a
tribe, taking its name, and adopting tribal loyalties. Calder captured the leveling function of *wala*:

Distinguishing Arab, meaning descended from . . . inhabitants of the Arabian peninsula, and Arab, meaning an Arabic speaking inhabitant of the Fertile Crescent might be a matter of theoretical importance for third century writers, but the notion of *wala* (affiliation) made it unreal and soon irrelevant.\(^58\)

Like Roman and feudal patterns of clientship, the Arab pattern could be established by virtue of either a slave’s manumission or an agreement of commendation between two men endowed with contractual capacity. Unlike their hispano-roman counterparts, however, Arab alliances did not originate in a feudal hierarchy that linked social status directly with landed wealth.\(^59\) This disjunction seems to have occurred even when Arab protectors and mawali were
identified in terms of a familiar feudal nomenclature of lords and vassals.

A. Mawali min fawq (superior; mawali from above); mawali min t’hat (mawali from below)  

To sharpen the meaning of the word mawala, additional qualifiers modified it. For example, a protector was designated mawala min fawq (superior; mawala from above) and a client mawali min t’hat (inferior; mawala from below)

Wala al itq, a servile relationship consisting of a former slave owner and his ex-slave, denoted bonds of solidarity and allegiance arising upon the former’s manumission of the latter.  

B. Wala al muwalat

Alongside wala al itq, Arab practice also recognized wala al muwalat, a term denoting a bond of clientage agreed upon by free men with contractual capacity. In the Quran, wala al muwalat also designated friendship or affiliation between Mohammed and Muslim converts. Unlike wala al itq,
wala al muwalat did not signal a slave’s manumission and his becoming a mawala as an incident of his former servitude. Like the commendatio among Hispano-Romans, a protective relationship of wala al muwalat could comfort a non-Arab who sensed his vulnerability among Arab tribes. By means of wala al muwalat, a non-Arab might normalize his relationship with an Arab tribe and become a mawala of an Arab protector. Upon joining the clan, the mawala typically assumed his protector’s name and minimized his cultural differences from his Arab hosts.

C. Illustration of Mawala’s Social Advantages in Umayyad Caliphate

The Umayyad invaders would have been puzzled by a meritocratic society anchored in a social contract. For their part, citizens of a contractarian society today would likely have found the social dynamic of the Umayyad dynasty difficult to understand. Traditional Arab society consisted of collections of tribes and clans who warred
among themselves when they were not making war against strangers.\textsuperscript{62} Animated by \textit{wala}, a social nexus based upon trustworthiness, Umayyad military rulers deemed individuals unequal by definition. A man’s talent and skill mattered little if he were not first a loyal Umayyad ally or a member of a clan favored by the Umayyad rulers.

\textbf{D. Mawali’s Importance in Umayyad Caliphate}

Umayyad \textit{mawali} were crucial to the success of the Muslim invasions and administration of the caliphate of \textit{al-Andalus}. Chronicles of Umayyad campaigns in Iberia routinely depicted an Arab leader with a retinue consisting of his blood relatives and his clients identified as the \textit{kawm}.\textsuperscript{63} A sketch of one particularly successful \textit{mawali}, Hashim ibn Abd al Aziz, permits us to generalize about the role and function of mawali. At each step in Hashim’s career, his personal connections with more powerful men, by either lineage or protective agreement, were indispensable to his success.
A trusted counselor of Uthman ibn ‘Affan, Hashim ibn Abd Aziz, was a mawala in Emir Muhammad’s court.

Instrumental in establishing the Umayyad dynasty in al-Andalus, Hashim controlled a number of administrative posts requiring loyal and trustworthy clients answerable to him. Kinship or clientship was the main criterion for one’s selection to a post. Unaffiliated outsiders need not have applied. A post was coveted because it brought an appointee and his allies considerable wealth and power. Besides a salary, an appointee enjoyed access to tax collections from terrain the emir had allocated to him. Though the appointee could siphon off some of these taxes for his personal use, he was expected to funnel a certain percentage back to Hashim, who in turn remitted a portion to the emir. Unlike a feudal vassal, a mawala was not a client in the sense that he held land of a protector in exchange for services to the latter. If a taxpayer cheerfully paid his taxes, the mawala advocated the
former’s interests to the ruler. If the taxpayer resisted payment, then the mawala, as the ruler’s lieutenant, coerced the payment from the taxpayer.

To illustrate Hashim’s value to both family and tribe, the chroniclers recorded that he was once captured in a military campaign by an Asturian king who would later become instrumental in the Christian Reconquest.

Reportedly linked to Hashim by kinship ties, a rural governor increased taxes on his population to pay the high ransom demanded for Hashim.

E. Clan Loyalties a Foundation of Arab Political Administration

Diffusing clan loyalties throughout his political administration, an important Umayyad emir, Abd Rahman III, recruited his court largely from his family and his retinue of mawali. Among the emir’s most important counselors was his mawala, Badr, who became first hayib (chancellor) and visir, and later head of the Cavalry (juttataljayl). To
Badr’s sons, Abd al Rahman and Abd Allah, the emir gave the office of hayib (chancellor). A brother, Ismail Ibn Badr, was put in charge of the secretariat. In about 600, the emir named as inspector the decedent’s brother, though he was a prepubescent child. A functionary who lost his ruler’s confidence could be demoted and then executed for treason or fraud.  

V. Dhimmi: Templae for Kinship Bonds Among Iberian Peoples of the Book

By assigning the spoils of war to Allah’s believers, the Quranic *sura al anfal* (spoils of war) anticipated by several centuries the English motto, “to the victors belong the spoils.” Such spoils routinely embraced booty and slaves. Like Roman expeditions, Arab invasions typically
yielded large numbers of slaves. To exploit fully the newly conquered Iberian territory, the Umayyads and their successors could have enslaved large numbers of indigenous Hispano-Romans and visigoths. Indeed, enslavement and conversion of defeated pagan populations typified Arab humiliations of defeated populations in their caliphate.

If Arab rulers had not been reined in by the Quran’s instruction to accord dhimmi status to peoples of the book (ahl al kitab), then they could have heaped similar abuse upon Jews and Christians.

Heeding a Quranic injunction, Muslim rulers granted the other other peoples of the book a privilege unavailable to pagan populations. Jews and Christians benefited from a special dhimmi status that assured both their social autonomy and their continued right to practice their religion. In return for Muslim protection, dhimmi paid specified taxes (gizya, harag), and fulfilled duties not owed by pagan populations. A Muslim invitation to a
Hispano-Roman to become a client likely resonated for the latter who would have recognized in the proposed relationship a familiar Roman pattern in which a slave, manumitted by his dominus, became a libertus and the former owner his patronus. A prospective Arab protector likely viewed the protective pact in terms of wala; if a prospective client had previously been a protector’s slave, the bond was likely wala al itq. If he had not previously been a slave, the bond was likely wala al muwalat.\(^6\)

A. Muslim Persecution of Dhimmi

Although dhimmi enjoyed relative tranquility under Umayyad rulers, they were increasingly persecuted by each dynasty that succeeded the Umayyads. For example, Hishan I (788-796) outlawed the Hispano Latin language, and ordered the universal study of Arabic. More humiliatingly, another caliph inaugurated a maliki school of law, whose fundamentalist ethos featured a strict and oppressive interpretation of Islamic precepts. As the maliki school
gained influence in society, Muslim persecution of dhimmi became pervasive. Increasingly stigmatized as infidels, swelling numbers of Christians and Jews were tortured and executed by Muslims. Some brilliant and influential Jews enjoyed protection at the apex of Islamic administrations, as well as in philosophy, grammar, mathematics and science. But a Jew of humble station likely would have endured great humiliation at Muslim hands, assuming he had survived persecution by visigothic Christians.

B. Early Example of Muslim Protective Pact Consisting of Muslim Protector and Christian Client; Post Reconquista Pacts Consisting of Christian Protectors and Muslim clients.

The Visigothic Code testified to the vigor of the Roman patronate and Romanized pacts of protection in the Iberian social fabric until the Arabs’ eighth century invasions. Claudio Sanchez-Albornoz detailed five circumstances in which Visigothic law authorized a slave’s
manumission and his protective alliance with a patronus. Despite these legal justifications for manumission, however, Sanchez-Albornoz showed that slaveowners’ personal decisions likely accounted for more manumissions than did Visigothic legal texts.\textsuperscript{68}

From the early Arab invasions through the fifteenth century, Iberian charters evidenced the enduring vigor of protective pacts. To govern large vanquished populations through negotiated settlements rather than violence, early Arab rulers seem to have blended features of their pacts with Roman elements that persisted among defeated populations.\textsuperscript{69} This blending might have continued an absorption of Roman mores begun centuries earlier when Syria and Arabia were client states of the Roman empire.\textsuperscript{70} During the eight centuries of the Reconquista, as increasing numbers of Arabs came under Christian authority,
Christian monarchs’ pacts of capitulation with them often blended Roman and Arab features of the patronate. To identify these blended features we shall first examine a pact in which an Arab governor received a Christian prince as his client.

C. Pact of Theodomiro

Negotiated by a victorious Muslim ruler and a defeated Hispano-Roman prince, the oldest surviving pact dated from 713 AD. In it, Theodomiro ben Gobdux, a Hispanic prince, surrendered to the first Arab governor, Abdel Aziz ben Musa ben Nossair, and became Abdel’s client. Nominally concerned only with these two figures, the pact in reality transferred to Umayyad authority a large number of indigenous peoples who were formerly subject to Visigothic rule. On behalf of seven towns in southern Iberia, Theodomiro surrendered to Abdel Aziz and
assumed patronage bonds “like those between God and the Prophet (con quien Allah sea fausto y propicio.”)\textsuperscript{71}

\textsuperscript{70} In exchange for Theodomiro’s subjection, his new Muslim protector agreed to respect Theodomiro’s pre-existing relationship with his own subjects. In consequence of this covenant, Theodomiro, though newly subordinated to the Muslim ruler’s authority, retained his feudal relationship with his own followers and continued as their señor (lord).\textsuperscript{70}

Abdel Aziz pledged protection of Theodomiro’s dependents in both their persons and religion.\textsuperscript{71} In exchange, Theodomiro covenanted not to give asylum to deserters and enemies of the Muslim ruler. Finally, Abdel Aziz confirmed that he would not intimidate the people “living under our protection.” In consideration of these engagements, Theodomiro agreed to pay a dinar annually\textsuperscript{72} and
make periodic delivery to Abdel Aziz of certain agricultural products.

D. Obligations of Dhimmitude Animated Theodomiro’s Pact

Inspired by the Quran, Abdel Aziz’s covenant drew inspiration from a constellation of implied duties and rights associated with dhimmitude. For example, though dhimmi could maintain their cults, they could not build new churches or synagogues. Nor could they conduct boisterous and ostentatious religious observances. Christians could not display crucifixes in public. To set themselves apart from Muslims, Jews and Christians were obliged to wear distinctive badges and clothing. In recognition of these limitations, the Muslims covenanted not to interfere in the religious worship of dhimmi. Evidencing the importance of slavery for the Muslim community, Jews and Christians promised not to conceal fugitive slaves from their Muslim owners. Christians and Jews themselves were strictly
prohibited from owning Muslim slaves, converting Muslims to their faiths, bearing weapons, serving as soldiers, and participating in the political life of the Muslim caliphate. Evoking a traditional Roman duty of reverence akin to that owed by a libertus to his patron, a dhimmi was forbidden to strike a Muslim. To encourage dhimmi to convert to Islam, the Muslim rulers exempted them from taxes that they would have owed if they continued to practice their original religions.

E. Theodomiro’s Pact a Prototype for Alliances

Establishing Christians’ Status Under Arab Sovereignty; Speculations on the Pact’s Failure To Protect Christian communities

A programmatic instrument for solidifying both Arab authority and the Christian communities’ political status and cultural identity in Iberia, Theodomiro’s pact, according to Mikel Epalza, embraced all subjects who left Hispano-Roman authority and became subject to Umayyad
sovereignty. Despite the scope and terms of the pact, however, its successes were uneven. Within about three centuries, the church had lost many Christian communities. According to Epalza, “Hispania was officially Christian when conquered by Islam at the beginning of the . . . eighth century; yet, by the eleventh century, it was overwhelmingly Muslim, with only a few scattered (documentary) references found to Christians. Arabic and Christian sources alike preserve an inexplicable silence over the conversion of these Hispanic masses.”

The atrophy of the Christian communities cannot be blamed entirely upon the Muslim rulers, for they had sound theological reasons to protect the Christian communities in Iberia so long as they complied with the rulers’ restrictions and bans. The large size of the Christian population also likely explained the Muslims’ interest in power-sharing arrangements with the large indigenous populations. In view of these probable Muslim motivations
for preserving the Christian communities, one may wonder why the communities seem to have rapidly shrunk and sometimes disappeared altogether.

According to Epalza, features of the Christian communities and their relationship with the church doomed their continuing prosperity under Muslim rule. The vigor of Christian communities hinged upon there being sufficient clerics, and clerical staff was in short supply. For the continuity of a Christian community, baptism was a crucial rite, for it provided the congregants’ essential route into the fold of the church. In principle, an unbaptized child was lost to the church. Priests were needed to perform baptisms. Since the Visigothic period, Christian communities were organized around bishops who administered them internally and represented them externally before the Muslim authorities.

Following their Syrian ancestors' practice of keeping Christian communities as symbols of their political
sovereignty, Arab rulers themselves pressed for continuity of Christian communities. The pressure often originated in cooperation between bishops and Muslim governors. For example, some bishops, concerned over their dwindling communities, reported their congregants to Muslim authorities to assure that they appeared as Christians on the Arab census. If these Christians, who were in many instances actually Mozarabs, were unregistered, had no bishop to speak on their behalf, nor priests to baptize new congregants, then they had no reasonable option but officially to become Muslims. They often reached this decision even if they privately hoped to continue their Christian rites.

F. Christian Pacts of Protection (Parie)

A desultory progress, the Christian kings’ reconquest of the peninsula lasted six centuries. According to some historians, the Battle of Covadonga (722) marked the beginning of the Christian reconquest in Asturias.
Christian rulers regained Navarre and Aragon between 914-1080; Castilla between 1080-1130; al Andalus, the center of the Iberian caliphate, between 1210-1250; Mallorca in 1229; and Valencia between 1233 and 1244. The Christian kings finally ousted the Arabs from Granada in 1492, the year in which Jews were also expelled from Iberia. As Christians regained dominance over Spain, they proposed patronage arrangements adapted to their new status as rulers. Christian pacts authorized Muslims, now as clients rather than protectors, to retain both their property and their religious autonomy. Like Christian clients under early pacts with Muslim protectors, Muslim clients in a rechristianized Iberian administration, were now also obligated to pay a tax or tribute (paria).

According to Martinez, “the system of paria that Christians set up during the Reconquista was the Christian counterpart, the quid quo pro of the dhimma or Muslim tolerance.” A mirror of the Muslim policy that prevailed
during Arab rule, the Christian policy favored a negotiated settlement over one reached after aggression and surrender. If a city was conquered by force, its residents were deprived of their possessions, expelled from their homes, and reduced to slaves. Without conquest and surrender, the Muslims could retain their homes, their possessions, and their religious freedoms. In a real sense, Las Siete Partidas codified a policy of leniency toward the Muslims that was analogous to the protective system extended by the caliphates across ahl al kitab.

G. Behetría; maullatus

In Estudios Sobre Las Instituciones Medievales Españolas, Sanchez-Albornoz analyzed a number of charters that designated a protégé as a client or maulado. In these charters, the Arabic term wala usually designated the patrocinio or patron’s interest in the relationship. Consistently with Roman patterns, heirs of Iberian patrons and clients could inherit the patrocinio or wala. In
general, consistently with Arabic tradition, an Iberian
patron succeeded to a deceased client’s assets if the
decedent did not leave agnates or asib (Arab: male kinsmen)
or agnates.\textsuperscript{76}

The term mawali or maulado indicated the client’s
subordination to his patron. Given an ordinary man’s
ambition to boost his prestige by claiming links to a more
powerful man, however, maulado could also be an honorific,
for it suggested that a Muslim ruler had named him to a
prestigious office. [For example, “era cliente (maula) de
la hija de (Caliph) Abderrahmen I” (he was the client or
maula of Abderrahmen’s daughter); “fué el primer cliente
maula que ejerció el cargo de juez de la aljama, nombrado
por los califas”. (He was the first client (maula) who
exercised the office of judge of the aljama, named by the
caliphs).\textsuperscript{77}

According to Sanchez-Albornoz, the Mozarabes latinized
the term maula into maullatus. Associated with the Latin
commendatio, maulatus designated encomendados. Evocative of the commendatio, this last term designated someone affected by a protection pact either by virtue of his own agreement with another man, or by virtue of his parents’ status as mawali of the señor.

Commenting upon a Muslim practice of entering into client-patron relationships with Islamic converts, Sanchez-Albornoz speculated that the term maladia designated a convert who then entered the protection of a clan or a tribe. Well into the thirteenth century and thus near the end of the reconquista, the terms commenda and maladia often appeared as synonyms in Iberian charters. Among the behetría, the maladia, and encomendado there was a notable congruence: in all of these arrangements, a vulnerable figure, whether because of his age, poverty, or health, sought protection by commending his parcel to a lord (dominus; senor), and continuing to farm it. He paid rent to the lord and owed him services in exchange for the
latter's protection. According to Thomas Glick, the commendado was in reality partly dependent, though legally free. As under the Visigothic Code, he could break his contract and transfer rights in his plot of land provided his acquirer assumed the obligations to serve the señor, and to farm and pay dues. The incidence of behetrias gained momentum as seigneurs consolidated their feudal holdings beginning in the eleventh century. With the passage of time, behetrias tended to become hereditary arrangements, and by the thirteenth century, they had become collective contracts affecting formerly free villages.  

VI. PROTECTIVE ALLIANCE A TEMPLATE FOR JEWISH AND ARAB ALJAMAS

By means of an Arab innovation in sectarian organization, Christian rulers during the Reconquest enhanced the social cohesion inherent in protective pacts for entire Jewish and Muslim communities. The term “aljama” (Arabic: jama=gathering, assembly; Spanish:...
reunión, ayuntamiento) identified self-governing Jewish and Moorish communities in medieval Spain once the Christian rulers had returned to power. Designating the institutional framework in which Jews and Arabs lived in their separate quarters, aljama was also understood as a district of residence.

A. Jewish Aljama

The Jewish aljama’s jurisdiction coincided with that of the kehillah (congregation) as conceived in Jewish practice. Associated with la judería (Jewry, Jewish quarter), the aljama permitted Jews to live in proximity to their synagogue and to make purchases needed for observance of religious dietary laws.

Identifying the ancient people of Jerusalem, early references to an aljama appeared in a thirteenth century Poem of Alexander, in the “Milagros de Nuestra Señora,” and the Duelo de la virgen of Gonzalo de Berceo. More sharply defined when the Reconquista reestablished Christian rule,
the Jewish aljama reflected an enduring paradox for Iberian Jews. In conformity with church doctrine, Spanish kings considered Jews royal chattels that lacked a separate legal personality of their own. Recognizing the monarchy’s authority over the Jews, thirteenth-century councils of Spanish officials and Jewish representatives established rates of taxation for Jewish communities, and devised efficient collection methods. Royal recognition of Jewish communities as autonomous bodies invited episcopal assumption of authority over them. In conjunction with Jewish representatives, the bishops enacted rules for governing the communities. Elections of rabbis and judges occurred at prescribed intervals, and their names were submitted to the presiding bishop for approval. By the fifteenth century the crown regularly selected a rabbi or judge from the royal court (rab de la corte) to represent the aljama. This royal link to the Jewish community
accentuated the Jews’ image as royal chattels under the monarch's protection. .

Both territorial organization and religious jurisdiction, the aljama assured the freedom of Jewish “royal chattels” to practice their religion and conduct their affairs with little interference from the crown officers or other communities. The Jewish aljama typically combined judicial, legislative, and administrative functions. To fulfill a legislative role, the aljama’s elders (mukaddumim; adelantados) governed the Jewish community by means of ordinances or resolutions of the council meeting (takhanot), a term that long usage had lodged in the Spanish language. The mukaddumim also convened meetings of the community, administered tax collections, and financed communal buildings such as the synagogue, yeshiva, butchery and cemetery.

Functioning as a collegial tribunal, aljama judges (dayanim) settled disagreements among community members
under Jewish law, and deliberated along with Christian judges if a controversy concerned both a Jew and a Christian. Endowed with both administrative and judicial functions, the dayanim were empowered to convene meetings of the Jewish community. Though the Jewish religion did not recognize excommunication for serious offense to the Jewish religion, a Jew who harmed the reputation of his aljama could be subjected to herem, which entailed severe corporal punishment and exile. In 1294, for example, the aljama of Valencia banned from its midst Esther bat na Bayla for ten years. But the Infante of Valencia revoked the ban because no formal complaint had been brought against Esther. The Infante’s decision suggested that the resolution of serious issues for the aljama depended ultimately upon the monarchy, not the authority of the Jewish elders of the aljama.
B. Moorish Aljama

As the Reconquista gradually restored the peninsula to Christian rule, Christian communities repopulated Iberia and waves of Iberian Arabs returned to Muslim countries of North Africa. But some Arab groups remained in Iberia. To stabilize these communities, Christian rulers relied increasingly upon a Moorish aljama. Like its Jewish counterpart, the Moorish aljama constituted a nerve center for administrative, fiscal, and judicial functions of the Arab community. As the Arabs during their ascendancy had protected the dhimmi, so during the Reconquista the Christian monarchs extended protection to Arab inhabitants, as well as communal buildings that supported the mosque and Islamic observance (waqf).

Elected by an Arab community, a qadi played a role analogous to that of the dayanim in the Jewish aljama. As the Muslim community’s intellectual, the qadi
was a trustee for philanthropic foundations, as prestigious intellectual and theologian, as influential judicial officer and friend of the mighty, and often as a man endowed with literary gifts, holiness, and family connections. During crises he was a local power. He belonged not merely to the judicial and religious moral furniture but to the wider world of public affairs.

Deliberating in conjunction with a sahib al madina, an amin, and local sheiks, the qadi exercised jurisdiction over criminal and civil controversies. He imposed penalties for blasphemous acts against the names of Muhammad, Christ, the virgin, and the prophets. The qadi also adjudicated controversies over wills and inheritances, business contracts, and plural wives. The amin, an administrator of the aljama with general authority like that of a Christian municipal justiciar, presided over the local aljama
council. The amin conducted routine activities of the aljama, and sometimes decided minor cases, including tax disputes. The sahib al madina, an urban prefect, represented a special form of non sharia justice, the police function. Alongside a sahib al madina, a sahib al suq (prefect of the market), like the Greek agoranomos and the roman curule aedile, assured the probity of weights and measures as well as the quality of artisanal manufactures. According to Burns, the sahib acquired prestige under the Umayyads by exercising control over government dignitaries. A muhtasib exercised a hisba jurisdiction that promoted piety and good works. As supervisor of community morality, he ranged over community concerns from liturgy to bad moral examples. A muhtasib also enforced sound building and health practices, particularly in public places.

Regulation of interactions with Christians and Jews varied among the aljamas. The precise character of such
interactions often depended upon specific concessions and privileges negotiated between Muslim and Christian leaders. In Valencia city, for example, Christians were allowed to reside in the Mudejar quarter. In Jativa, by contrast, Christians were excluded from living in the Arab quarter and prohibited from operating baths or bakeries because these activities risked bringing them into daily contact with Arabs and Jews.

C. Patronate and Commendatio as Templates for Mercantile Arrangements

According to a venerable Arab motto, "in mobility there is blessing." (F’il haraka baraka). In the medieval Mediterranean, traveling to advance one’s knowledge was regarded as a pious activity that helped one’s chances of gaining paradise. Travel, especially for business, was remarkably free, and merchants often had homes in Iberia on the western end of the sea and to the east in Morocco or Tunisia. In a responsum, Maimonides noted that Jews
regularly traveled on boats commuting between Seville and Alexandria. A merchant's regional origin did not usually cause legal confusion, for the prevailing concept of law was personal, not territorial. A person was judged according to the law of his religious community, not his language or region of origin.

As Goitein has remarked about medieval Mediterranean trade, “business . . . had to rely largely on personal confidence and was therefore concentrated within a family, a clan, a close knit circle of friends, or a religious community far more than it is in our times.”

Prevalent across ahl al kitab, the patronate and the commendatio supplied Iberian merchants templates for a number of their business associations. Conflated with social links, commercial bonds linked traders around the Mediterranean in a network of patrons and clients. Upon arriving in an Egyptian town, for example, a Persian merchant might present a letter of introduction authored by his patron
back home, or even by a religious leader in Jerusalem. The recommendation typically asked distant addressees to accord the visitor courtesies normally extended to the letter writer and his family. The wayfarer would likely have sought both business relationships and hospitality among members of the Egyptian business community.  89

D. Partnership

According to Goitein, “Jewish, Muslim and Christian mercantile families dealt with each other in partnerships, and “formal friendships” characterized business relationships. . . . The family was considered the ideal form of business partnership, with ties of blood superseding ties of marriage.”  90 Partnership arrangements prevalent in the Mediterranean resembled protective alliances that we have previously examined, except that the partners' allegiances were anchored in fiduciary duties, rather than pledges of military service. Like a client in a protective alliance, a passive or limited
partner confided his interests to a managing or general partner who usually traveled on behalf of the partnership, represented it vis-à-vis other merchants, and protected the limited partner from liability to third parties.

E. Commenda; 'Isqa; Mudaraba

These partnership organizations addressed several social and religious issues that we have previously noted. By entering a partnership with Muslims and Christians, for example, a Jewish trader could participate in business conducted on Saturday, the Jewish sabbath." Sidestepping church bans against Jewish employment of Christians, such a multi-faith partnership allowed traders to avoid a stigma associated with a dependent status embodied in a relationship of master and servant. Whatever the financial reality of a business relationship, the formal equality of a partnership seemed preferable to a man’s personal subordination in a status of a wage earner.
F. Partnership Forms Accommodate Usury Ban

A partnership enabled members of ahl al kitab to join in business ventures and still sidestep a universal usury ban. The three faiths defined usury as a lender’s collecting interest on a loan from a co-religionist. A Jew could not charge another Jew interest, although he could collect interest from both Muslims and Christians. Similar intra-faith bans on usury applied to both Muslims and Christians. But if a borrower matched his labor contribution with capital from a lender in a common venture, then there was no violation of the usury ban because no interest return was stipulated. Instead, the partners divided the profits at the conclusion of the venture according to a formula that recognized each partner’s contribution in capital or labor.
G. Jewish ‘Isqa,: Accommodating Ban on Jewish Employment of Christians and Jewish work on Sabbath

To appreciate the way in which Jewish traders accommodated their religious prescriptions to a partnership arrangement, let us recall that Jewish tradition forbade them from working on the Sabbath. The Jew could not labor indirectly by employing someone of a different faith to perform tasks for him. Nor was the Jew to handle money on his sabbath. From the church’s early years, edicts further reinforced a ban against Jewish employment of Christians. The Islamic invaders later imposed a similar ban against Jews employing Muslims.

According to Jewish doctrine, a Jewish merchant could participate as a partner in a partnership with Christians and Muslims, and members of the other faiths could work on the Jewish sabbath. As a result, even though a Jew could not have employed directly a man of another confession on the Jewish sabbath, the partnership to which he belonged...
could trade on the Sabbath. The main limitation on the
Jewish partner’s activity was that he could not accept
partnership profits earned on his day of rest.\textsuperscript{93}

H. Usury Ban Accommodated by 'Isqa

The usury ban was evidently a motive for the Jewish
‘isqa, an arrangement that the Talmud characterized as
“semi-loan and semi trust.” Maimonides approved the
organization of the 'isqa, finding it in conformity with
the usury ban, if the traveling partner’s share of profits
proportionally exceeded his liability. According to
Weingort, the 'isqa resembled a partnership in commendam
(société en commandite) in which the traveling partner
according to the Talmud, was a guardian of the capital for
the benefit of the passive investor. For the benefit of
the venture, the traveling partner administered the
entrusted half of the capital. Because the agreement for
the loaned capital stipulated no fixed return, it did not
run afoul of the usury ban.\textsuperscript{94}
I. Commenda

Widely in use across ahl al kitab, the commenda involved a commendator as passive partner, who confided his capital to a tractator as managing or active partner. Contributing his labor, the tractator travelled on behalf of the venture. The commendator bore exclusively any loss on his capital; and was shielded from liability exceeding his contribution. The tractator lost the reward for his labor if no profit were made. As in the isqa, the profit and loss formula of the commenda did not run afoul the usury loan because there was, strictly speaking, no loan and thus no percentage charged for its use. Unlike a lender of a loan, the investor risked losing his entire advance if the enterprise failed. A profitable venture might earn him a premium for his contribution, but to accommodate the usury ban, the reward was not calculated as a percentage of the advance.
J. Mudaraba (Qirad)

Like the Hispano-Roman commenda and the Jewish ‘isqa, the Muslim mudaraba separated capital from labor, on one hand, and distinguished unlimited liability from limited liability. Muslim scholars characterized the mudaraba as a commenda that consisted of a contract between an investor (rabb al mal) and an agent manager (mudarib). The former entrusted funds to the latter who was to trade with them in an agreed manner and return to the investor the principal and an agreed share of the profits, keeping for himself the remainder of such profits. To comply with the usury ban, the two parties divided profits in accordance with a ratio, inasmuch as their earnings could not be formulated as either a lump sum or a guaranteed return. Like a commendator in the Christian commenda, the rabb al mal was not liable for losses beyond the capital he had advanced. Conversely, because the mudarib did not routinely invest his personal funds, he bore no share of capital losses.
But he lost the value of his time and effort if the venture failed.  

VII. Coda

An important aid to social cohesion among the communities of ahl al kitab, the patronate appealed to men’s universal sense of vulnerability and their yearning for security. This judgment is plausible even for the Roman patronate; a liberated slave, having depended for years upon his owner for his identity and his daily needs, sought a father figure to promote his interests and to allay his sense of vulnerability. If United States security institutions failed today, ordinary men would surely look tomorrow for personal protectors as well.

As our inquiry has shown, the patronate had several dimensions. Originally a subtopic of slavery among Roman jurists, the institution created complex links between a Roman citizen and his former slave. Filling in a middle ground between Roman citizens and slaves, the institution
also contributed flexibility to a Roman society that would have been too rigid had it consisted only of discrete classes of citizens and slaves. An Arabic term associated with the patronate, wala constituted a crucial device by which Arab tribes expanded and ordered themselves. A similar patronate promoted similar results among Jewish groups.

For the three faiths of ahl al kitab, the patronate had long roots in scriptural passages that depicted God as a steadfast protector of the faithful. In return for God’s protection, faithful followers showed him loyalty and glorified him through good works and obedience to his commandments. Branching out from the religious realm, the figures of a patronus and a libertus prefigured a number of other diads: a victorious Arab governor and a hispano roman prince; a monarch and his subjects, a seigneur and his vassal, a protector and a mawala, a vulnerable village and a strong neighboring city. In a commercial setting, a
traveling merchant’s patron introduced him to colleagues in a distant land by means of a recommendation letter. Commerce brought together religious leaders with traders located at great distances from one another: A palpable expression of the motto urging travel for one’s improvement, a letter might communicate a recommendation by the Gaon of Jerusalem of a merchant from Persia. A patron-client diad also provided the foundations for a commenda partnership in which a merchant forged allegiance with his counterparts and advanced their financial interests.

Despite a remarkable multi-faceted collaboration characteristic of the convivencia, bitter antagonisms plagued relationships among the three monotheisms. For each faith, the patronate joined a promise of divine protection with a conviction that it was God’s chosen people. Among the three faiths, centuries-long controversies raged about which religion most authentically
represented God’s covenant with men. Crescendoing during the last centuries of the convivencia, polemical invective culminated during the Inquisition. If the spirit of the convivencia, despite its blemishes, occupied the zenith of Iberian intra-faith collaboration, then the Inquisition’s cruelty lay at the nadir.

The centuries-long Iberian trajectory of ahl al kitab has prefigured the current dilemma of the faiths, for they still seem suspended between the zenith and the nadir that we have identified. Embraced at the birth of each faith, the promised land remains a cherished goal, but it is also a battleground. As if marching off to crusades and jihads, soldiers of the faiths often seem unable to reach even an uneasy truce, let alone an enduring peace or a harmonious collaboration channeled through mechanisms of social cohesion. Those mechanisms withered long ago, along with human confidence in social hierarchy as an organizing principle. That ancient principle awaits a new, broadly
acceptable successor for setting our houses in order. As organizing principles, both theocratic and democratic visions compete for acceptance, but there is no clear winner. Like Matthew Arnold’s spiritual wayfarers, adherents of the faiths seem to “wander between two worlds, one dead/ the other powerless to be born.”

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1 For a summary of cultural achievements credited to the convivencia, see James Carroll, Constantine's Sword: The Church and the Jews 322-332 (Boston: Houghton Mifflin; 2002).

2 For the evolution of the term convivencia, see H. Salvador Martinez, La Convivencia de la Espana del Siglo XIII: Perspectivas Alfonsies 13-14 (Madrid:Polifemo; 2006(author's translation) 13-14. According to Thomas
Glick, “castas” likely designated for Castro the three
faiths or closed endogamous groups. T. Glick, Islamic and
Christian Spain in the Early Middle Ages (Leiden: Brill;
2005) 7-8.

Having received revealed scripture ... Jewry, Christians, and Sabians who ... believe in God and the
Last Day and do righteousness ... their wage awaits them
with their Lord (2:50, 5:69). Concise Encyclopedia of
Islam (ed Cyril Glassé;1989) 27

1 For a summary of the cultural achievements of the
convivencia, see James Carroll, Constantine’s Sword: The
Church and the Jews: A History (Boston: Houghton Mifflin;
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6 On close affinities among the three faiths as well as their important differences, see S. D. Goitein, Studies in Islamic History and Institutions (Leiden:E. J. Brill;1968)3-35. “Muhhamad’s familiarity with the Jewish and Christian heritage was very great. . . . A scrutiny of the religious phraseology of the Koran reveals an astonishing similarity to that used in Christian and Jewish literature. This can be explained only by prolonged and intimate personal contacts coming on top of the influence exercised on pre-Islamic Arabic through missionary activities.” Goitein, Studies in Islamic History 17. According to Goitein, if Muhammad confused the biblical stories, this was likely because he absorbed the rabbinic
literature from "sermons of the Syrian fathers of the church, who mentioned in one breath a number of haughty men . . . who were condemned because they revolted against God. . . . The Quran stories are exempla, . . . moral lessons to drive home a point." Goitein, Studies in Islamic History 18.


8 Goitein, Studies in Islamic History 18.

9 Hallal denotes meat from ritually slaughtered animals. Concise Encyclopedia, 133.
On the role of the usury ban in Iberian financial organizations, see below notes 91-95.

One of five pillars of Islam, zakah signified “to thrive,” and “to be pure.” Islamic doctrine deems alms beyond the prescribed minimum as sadakah, a noun derived from the term for “righteous.” Concise Encyclopedia, 430.

For an account of polemical tracts that attacked each of the three monotheisms, see generally Martinez.


“The almost permanent contact with God, established through innumerable little injunctions which accompany the believer throughout life create in him the confidence that he is constantly watched and provided for.” Goitein, Studies in Islamic History 21.
Word play on the Arabic terms aman and amana, deriving from the same root as Amen and emunah, (Hebrew: faith) illuminates a strategy for enlisting all Arab tribes behind the banner of Islam. Muhammad’s early followers were designated mu’minum (believers); the term also identified mutual guarantors who established a pact of reciprocal defense in case any of them suffered aggression. The pact was said to mirror Allah’s pact with his followers. The Quran described Allah as Al mumin (protector of believers one and all) and al Muhaymin (guarantor). DePrémare, 92-93. The prophet was reported to trust in the mu’minum and to condemn those who found pretexts for not committing themselves fully to jihad in pursuit of Allah’s goals. DePrémare, 93-94.

On specific methods of humiliation, see De Prémare, 188-93.


“Hispania, the complementary peninsula at the western end of the map, was the mirror image of Rome itself. Its provinces contained the empire’s most Latinate populations outside Italy. . . . Roman highways covered Hispania like veins in a membrane, circulating commerce, culture and the legions to cosmopolitan cities such as Caesaraugusta (Zaragoza), Augusta Emerita (Mérida) and Valentia (Valencia) The Roman empire’s great highway, the Via Augusta, ran thirteen thousand miles from Cadiz to the Eternal City.” Lewis, 109 . On the debt of Spanish law to Roman law and culture from the time of the Empire, see

2


3

21. On the roles of *sulh* and *anwa* in establishing a Pax Islamica, see De Prémare, 183-184.

22. Signifying a surrendering party’s status outside the Arab polity, his subjugation typically included humiliation, imposition of heavy capitation, and deprivation of his religion. According to De Prémare, Arab nomads and Christians, known as Taghlib, had to pay a heavy tribute, under the Caliph's threat of annihilation. Although Omar allowed the Taghlib to remain Christians, they could not baptize their children, and this ban
signified the end of their Christianity. De Prémare, 190-192.

23 Images of sheathed and unsheathed swords recur in the lore of Islamic conquests. “Khalid delivered into the fire people who were apostates; then Omar said to Abu Bakr: ‘Will you permit the infliction of a punishment reserved to God?’ Abu Bakr answered: I shall not resheath a saber that God has unsheathed against the non Muslims (pagans).” De Prémare, 127. (author's translation). The sword image also appears in Isaiah 21:15: “Because they fled before the unsheathed sword, the drawn bow, and the rigors of combat.” The distinction between voluntary and coerced agreements was implied in Muhammad’s inconsistent approach to the Jews. He “drew a distinction between . . . Jews with whom he was willing to contract treaties, deeming them descendants of Abraham who had been granted a partial revelation, and those who had to be subjugated because they
were an ignoble people with a rebellious malevolent spirit.” Jane S. Gerber, *The Jews of Spain: A History of the Sephardic Experience* (New York: Free Press; 1992) 22. Muhammad’s contradictory view of the Jews has been attributed to the fact that he early courted the Jews of Medina for conversion, and when they rejected him, he excoriated them as corrupters of scripture and enemies of Islam. Gerber, 22.

24 Patricia Crone, *Roman Provincial and Islamic Law: The Origins of the Islamic Patronate* (Cambridge: Cambridge University Press; 1987). Crone's thesis has prompted controversy among scholars. But its accuracy is not crucial for our study because she investigated a different region and period than we have. For a critical assessment of Crone’s study, see Wael B. Hallaq, “The Use and Abuse of Evidence: Provincial and Roman Influences Upon Early Islamic Law,” in *Law and Legal Theory in Classical and*
This is consistent with Hallaq’s statement that in contractual clientage, either party can be a protector or a client, because their alliance linked equals, rather than a superior and an inferior. The terms “patron” and “client” designate the offeror and offeree of the proposal to enter an alliance. Hallaq, Chapter 9, page 11.


29 From Damascus, the preeminent Arab trading center, the Ummayads projected their power throughout the known world. “Damascus presided over . . . virtually a free trade zone from one end of the known world to the other. . . .” Lewis 99. According to Lewis, Damascus was a strategically located ecumene. Her merchants exported all manner of products and slaves, moving them south from the Mediterranean to the Sahara, north from the Indian Ocean to the Black Sea, east from the Maghreb where the sun rose out of China. Lewis, 99.

30 In 732, Charles Martel’s forces temporarily stopped the Arab forces outside Tours as they sought control of Roman Gaul. According to Maurice Mercier and André Seguin, the decisive battles occurred on a plain outside Moussais

31 On King John’s commendation of his kingdom to the papacy in 1213, see Shael Herman, “Trusts Sacred and Profane: Clerical, Secular, and Commercial Uses of the Medieval Commendatio,” Tulane Law Review 71 (1997) 869, 882. On the surrender by a commune to the city of Genoa and the regrant of the commune for defensive reasons, Herman, 886. For commendation of Jewish communities, see Herman, 885, n.52.

32 See below text accompanying notes 77-80.

33 For formularies authorizing manumission of slaves and their transformation into liberti, see Claudio Sanchez Albornoz, Viejos y Nuevos Estudios Sobre las Instituciones Medievales Españolas 1 (Madrid: 1976) 1601.
On the Spanish debt to Roman law and civilization from the time of the Empire, see Sanchez-Albornoz, 1011-65.

Dupont, 66.


Duff, 40.


On reciprocal duties of patronus and client, see Carcopino, 170-72.

Duff, 18-20.

Goitein, *Studies in Islamic History* 253-54.

Visigothic Code, (S. P. Scott ed.) Preface, xxv.

For reasons why the terms are not fully equivalent, see below text accompanying notes 61–63.

Visigothic Code, (S. Scott ed) bk. 5, Concerning Business Transactions, Title 3, Notes for Book 5.

Saracenus, derived from Greek sarakenoi, meaning “people of the tents.” Lewis, 24.


Jewish law accorded nearly the same rights and duties to freedmen and other proselytes as to born Jews.

Encyclopedia Judaica (1971) s.v slavery.

Goitein, *Mediterranean Society*, 246. We have followed Goitein’s convention of embracing medieval Mediterranean traders of all three faiths within a single great commercial society. According to Goitein’s study of documents in the Cairo Geniza, Jews, Christians, and Muslims, usually organized in extended families, traveled almost continuously over great distances to conduct their trades. The location of the documents in the Cairo Geniza was a happenstance in determining their legal and cultural context, for an individual trader’s activities as memorialized in documents were regulated by personal laws anchored in his own religion. Hence, among the Geniza documents are many opinions by the celebrated Sefardic Jewish philosopher, Moses Maimonides, who judged all manner
of Jewish business arrangements, generally without regard for the regional origins of the Jewish traders.

53 On Alfonso’s promotion of the values of the convivencia and his composition of Las Siete Partidas, see generally H. Salvador Martinez, Alfonso X El Sabio, Una Biografía (2003)

54 Spanish nobility cherished noble lineage long after the Arab invasions. For example, as King Jaume led the Iberian Reconquest, he repeatedly expressed admiration of Muslims of “good lineage” whom he encountered in Valencia. But among Muslims, unlike feudal figures, lineage depended upon ancestry more than territory. The Muslims were not a landed baronage as would be found in a feudal polity. Rather, a Muslim had “nobility and prestige” because of his noble ancestors even if the family line was doubtful.

Robert I. Burns, Islam Under the Crusaders: Colonial
Survival in the Thirteenth Century Kingdom of Valencia

chapters 6-7 (Princeton: Princeton University Press; 1973)

55 Alfonso X (El Sabio), Las Siete Partidas Antologia

305 (prologue and notes by F. Lopez Estrada & M I Lopez

Garcia-Berdoy; 1992). (Author's translation of Partida IV,

Law 6)

56 Norman Calder, Studies in Early Muslim Jurisprudence


57 Calder, 207.

58 Calder 192 (quotation attributed to Amir b Bahr al

Jahiz).

59 But some historians have identified evidence of such

links. See, e.g. C. Sanchez Albornoz, Viejos y Nuevos

Estudios Sobre las Instituciones Medievales Españoles 1316

(1976) (“The Hispano-Muslims of al Andalus continued the

institution of patrocinio personal that in the Christian

north gave rise to benefactoría and behetría. There were
maintained in force systems of rental payment close to the juridical Muslim and the contract al partionem of Roman tradition. We can document the continuity of the regime of exploitation of the great owners and not only during the eighth century." (Author's translation).

60 This and the next section are based upon Hallaq, nn.20-28.


62 Pierre Guichard has characterized the result of this tribal aggression as "segmentarité patrilinéaire" (patrilineal segments). Guichard, 23-27.

("Ethnologues call 'segmentary' a society in which there is
no centralized power and where political organization is based upon the equilibrium of lineages (or territorial groups.”) Id at 23. (author's translation)

63 Guichard, 221-222.

64 Joaquin Vallve, El Califato de Cordoba (1992; Madrid: Editorial MAPFRE 75-78.

65 “They ask you, O Mohammed, about the spoils of war. Say ‘the spoils are for Allah and the Messenger . . . obey Allah and his messenger Mohammed if you are believers.’” Surah al anfal, (the Spoils of War) 8:1, Quran, at NobleQuran.com (last visited July 12, 2009)

66 According to Crone, “throughout the Umayyad period (661-750), . . . non-Arabs who wished to join the ranks of the conquerors had to find an Arab . . . patron, who, upon their declaration of conversion or allegiance, obtained very much the same rights and duties vis a vis them as had
a Roman manumitter vis-a-vis his former slave.” Crone, 40.

According to Goitein, the almohads committed wholesale slaughter of Christians, Jews, and even dissenting Muslims: “Very many Jews, given the choice between the sword and Islam, abandoned their religion. . . . [T]here developed a phenomenon of Muslim crypto-Jews. . . similar to that of the Marranos in Christian Spain of later centuries: their conversion to Islam did not protect them against ceaseless vexations and sometimes even outright destruction.” Goitein, Mediterranean Society, 300–301.

C. Sanchez Albornoz, 1 Viejos y Nuevos Estudios Sobre Las Instituciones Medievales Españolas (1976) 331 (examples of manumission by operation of law: a slave could be manumitted if he were tortured in a trial and were acquitted; a slave sold outside the kingdom could be freed upon his return; a fugitive slave acquired freedom by
prescription of fifty years; consistent with church
doctrine, Christians freed from their Jewish masters).

For the Arabic text of the pact and a Spanish
translation, see Francisco Javier Simonet, Historia de los
Mozarabes de España deducida de los mejores y más
auténticos testimonios de los escritores árabes y
cristianos (1903) 797-798. For an English version of the
pact, see Medieval Iberia: Readings from Christian, Muslim
and Jewish Sources (Philadelphia: University of
pact's preamble invoked concepts of clientship and
patronate, though we cannot say confidently whether these
were of Arab or Roman inspiration. A combination of
"Dios," "Allah" and "su profeta" suggests a blend of
elements of the Arabic and Roman patronates. In the name
of God, the clement and merciful (a standard Arabic
The pact declares that Theodomir “capitulates, accepting the patronate and clientage of God and that of his prophet with whom may Allah be fortunate and propitious (“Que este se aviene o se somete a capitular, aceptando el patronato y clientela de Dios y la clientela de su profeta con quien Allah sea fausto y propicio.”) The pact also declares that “lordship will not be imposed upon them (author: Theodomir's followers) nor will those under our protection be intimidated.” (“que no se impondrá domini que no intimidará a los que vivan bajo la protección nuestra.”) (Author's translations.)

70 Id. The pact granted Theodomir and his community considerable autonomy, probably because Theodomir’s children had already married Umayyads and their clients. After surrendering to the Arab prince, Theodomir remained
lord of Orihuela. His wealth was suggested by his gift of two villages to the fiancée of an Umayyad warrior. Guichard, 146-47. Sanchez-Albornoz has confirmed that Theodomir retained his feudal status after the pact was entered. C. Sanchez Albornoz, *Estudios Visigodos* (Roma: Istituto Storico Italiano per il Medio Evo) (1971) 114.


71 Nor would Theodmiro's followers be captured or separated from their families. Nor would the protector interfere with their religion or harm them in their churches.

72 This could have been a symbolic consideration like the familiar English "rose at midsummer delivered by a vassal
to his lord. By paying the dinar and regularly delivering
the required products, Theodomiro confirmed his continuing
subjection to the Muslim prince’s authority.

73  Epalza, 191.

74  Martinez, 40.

75  Martinez, 40.

76  Sanchez Albornoz, 70 n.222.

77  Sanchez Albornoz. 70.

78  Sanchez Albornoz, 71.

79  Thomas Glick, 150-151. For the behetría, see B
    Clavero, “Behetría 1255-1356: crisis de una institución de
    señorío y de la formación de un derecho regional de
    Castilla.” 44 Anuario de Historia del Derecho Español 201-
    342 (1974). For legal incidents of the behetría as an
    inherited interest, see Las Siete Partidas, 304.
Martinez 121. In recognition of the monarch’s ownership of the Jews, one who injured or killed a Jew owed a penalty to the monarchy, not to the victim’s family. J. Perez, Los Judíos de España 66 (2005)

For activities of crown rabbis and their role as fiscal intermediaries between Christian authorities and the Jewish community, see Jonathan Ray, *The Sefardic Frontier: The Reconquista and the Jewish Community in Medieval Iberia* 113-130 (2006). For regulation of the *aljama* by means of crown decrees and rabbinic responsa, see Ray, 98-112. For royal grants of land to Jewish *aljamas*, see Ray, 145-60. For a brief account of the aljama, see *Jewish Encyclopedia* 400-401 (1961).

The Takana [Tekana] of Valladolid, written partly in Hebrew and partly in Spanish with Hebrew characters, is conserved in the French National Library. For a summary of its contents, see *The Jewish Encyclopedia* 401 (1961). This
account details Jews’ relationship with the crown.

According to the Takkanah, since the Spanish crown granted permission to decide civil and criminal cases before Jewish judges and because “Christians, though well versed in law, (knew) nothing of Jewish law,” no Jew could plead before a Christian judge, whether religious or civil. The rule did not apply where the taxes claimed by a ruler were disputed, or where the dayan, the chief judge of the Jewish aljama, had granted special exemption. If a Jew was arrested by another Jew with the aid of a Christian, he was to be apprehended by the dayan; for a second offense, he was to be branded on his forehead and expelled, and for the third offense he was punishable by execution. Jewish Encyclopedia, 401. On legal proceedings in the Jewish aljamas, see Enrique Canteras Montenegro, La justicia en las aljamas castellanas a fines del siglo XV; la frontera

83 Burns, 118.

84 Burns, 375.

85 For an account of the functions of the Moorish aljama’s officers, see Burns, 230-39; Glick, 122.

86 Burns, 119.

87 Gerber, 32. “The Islamic conquest. . . . opened the Mediterranean, previously a Roman lake, and by connecting it with the Indian Ocean, converted it into a route of world trade. . . . Western Europe, the Byzantine Empire and the Islamic World formed an interdependent economic system, the dynamics of which can be seen in the flow of gold from the Islamic world to western Europe (in exchange for raw materials and then to the Byzantine East (for luxury items and spices.)” Thomas Glick, 19-20 (1972).

For a letter of recommendation in which the writer commended two trustworthy persons to a colleague in a distant town and asked the addressee to welcome the wayfarers and confide merchandise to them, see Goitein, 296. The letter writer promised the addressee that his help to the newcomers would strengthen his “reputation and give me reason to be grateful to you.” Goitein, 296.

Gerber, 33.

Goitein, Mediterranean Society Abridgment 299.

See Goitein, Mediterranean Society Abridgment 299. On the commercial commenda as a mask for usurious lending, see Herman, 889–892.

These particular facts were presented hypothetically to Moses Maimonides, the greatest Jewish philosopher of the Jewish golden age in Spain. In a
responsum dated about 1190, Maimonides ruled that the Jewish partner’s participation in such a partnership did not violate Jewish religious proscriptions. Goitein, Mediterranean Society, 299. For the responsum itself, see Moses B Maimon, *Responsa* (ed. J. Blau (1960) 360.

According to Maimonides, the ‘isqa did not run afoul of the usury ban so long as the share of the agent (i.e. the traveling partner) from the partnership's profit exceeded his share of liabilities. Moses Maimonides, *Mishneh Torah* bk. XII, pt. Iv, ch. 6, pts. 4-5 (“The Book of Acquisition”). Here Maimonides referred to a “qirad in the manner of the gentiles,” that is, a transaction in which a Jewish partner joined forces with Arab partners.

Nabil A. Saleh, *Unlawful Gain and Legitimate Profit in Islamic Law: Riba, Gharar and Islamic Banking* (Cambridge: Cambridge University Press; 1986) 102-03. For a study of Jewish, Islamic, and Byzantine commenda, see A.L.
Udovitch, "At the Origins of the Western Commenda: Islam, Israel, Byzantium," Speculum 37 (1962) 198. Chibli Mallat has traced the Islamic commenda to the Hammurabi Code. "The Babylonian partnership (Bab tapputum) . . . is not the ordinary partnership of English law where persons become partners in some business for a long term of years. It is a societas unius rei, a joint adventure for carrying out of some particular piece of business, e.g. for a definite 'commercial journey.' " (citing G Driver & J Miles, 1 Babylonian Laws 187 (1953) Mallat, 699.

Wandering between two worlds, one dead
the other powerless to be born,
with nowhere yet to rest my head

Like these on earth I wait forlorn. (Grande Chartreuse)