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The Hermeneutical Christian in Ḥanbalī Thought

A dissertation submitted in partial satisfaction of the
requirements for the degree of Doctor of Philosophy
in Near Eastern Languages and Cultures

by

Christopher Prejean

2021

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ABSTRACT OF THE DISSERTATION

The Hermeneutical Christian in Ḥanbalī Thought

by

Christopher Prejean

Doctor of Philosophy in Near Eastern Languages and Cultures

University of California, Los Angeles, 2021

Professor Michael David Cooperson, Chair

This dissertation helps us understand how the *ḥadīth* teacher Ibn Ḥanbal (d. 855 C.E.) sought to resolve difficult legal problems that arose from Muslim and Christian coexistence. The arguments presented are based on a legal work titled *Non-Muslim Religious Communities* (NMRC), an early Ḥanbalī question-and-answer (*masāʾil*) text compiled by Abū Bakr al-Khallāl (d. 923), a second-generation student of Ibn Ḥanbal, which many historians of the Middle East have seen as indicative of quotidian social reality; that is, it tells us something about Christians and their interactions with Muslims. My goal in this dissertation, by contrast, is to show that legal discussions about Christians—and other non-Muslims—tell us something about Muslims: Christians are interpretive devices and hermeneutical subjects in arguments that shed light on Muslim concepts of identity, theology, and legal authority. A close reading of NMRC's discussion of contracts, women, children, and divorce oaths (*īlāʾ*, *zihār*, and *liʿān*) will

substantiate this contention. This approach to legal hermeneutics might profitably be applied to other legal teachers and schools of law in the premodern period.

The dissertation of Christopher Lee Prejean is approved

Jeffrey J. Guhin

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Alexandre Roberts

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Michael David Cooperson, Committee Chair

University of California, Los Angeles

2021

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My academic pursuit began before UCLA when I was given the opportunity to study biblical Hebrew as an undergraduate with Professor Roy Hayden, whose generosity and kindness have always turned my head upwards and to the horizon. His lessons proved useful and helped me in the study of Arabic. For that, among many other things, he holds a dear place in my memory. To Martha Brantley, for her generosity in funding my studies with Dr. Hayden in memory of her husband. I cannot express enough gratitude and thanks for believing in me.

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Professor Yarbrough arrived at UCLA, I knew how fortunate I was to study with him given his expertise in the fields this dissertation covers. Actually, what I said was that he was “heaven-sent.” He has provided me with critical thinking and writing skills that were (and still are) much needed. He has always treated me with a sincere, solemn, and at times, witty disposition, looking upon me as an equal and a future professional. He never cuts corners. I aspire to treat texts with the same precision, accuracy, and delicacy, and to produce books as he does. I also hope to teach as he does. He has always had my best interest in mind, a rare quality outside of my family. *Alf shukr, yā ustādh.*

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INTRODUCTION

For many years, I attempted to understand the legal literature of the Ḥanbalīs as indicative of quotidian social reality. Lord knows I tried hard. But as I did so, I came to realize that, with the guidance of too many to thank, there is more to gain from Islamic legal texts than social or cultural history. That is not to say, however, as will be seen throughout this dissertation, that social history or cultural history cannot be inferred from legal texts, or that the cultural contexts in which legal works were compiled and composed are not important. It is to say that, for me, there is a more fruitful and rewarding approach to studying Ḥanbalī legal texts, particularly those that belong to the genre of question-and-answer (*masā'il*): namely, to study Christians as legal subjects rather than social beings. In a life with more time, more space, and greater intellectual prowess, I could have perhaps written something attaining to a cultural or social history. Maybe one day I will. But for now, I hope that this contribution will provide some interesting perspectives on Christians and other non-Muslims as seen through the eyes of Ibn Ḥanbal (d. 855 C.E.) and as organized by his second-generation student Abū Bakr al-Khallāl (d. 923 C.E.)

This dissertation seeks to understand some of what can be known about Muslims from discussions of Christians from one collection of questions and answers (*masā'il*) compiled during the late ninth and early tenth century. This collection is entitled *Ahl al-milal wa-l-riddah wa-l-zanādiqa wa tārik al-ṣalāh wa-l-farā'id*, or *Non-Muslim Religious Communities, Apostates, Heretics, and the Unscrupulous*,¹ which I refer to as NMRC throughout.² Because Ibn Ḥanbal

¹ The phrase *tārik al-ṣalāh wa-l-farā'id* means “those who don’t do the prayer and required religious duties,” which I think is summed up by the term “unscrupulous.”

² There are two modern editions of the text, only one of which provides adequate information about the manuscripts used to prepare the edition. This is the 1996 edition is edited by Ibrāhīm b. Muḥammad al-Sulṭān and spans 504

never systematized his responses to the many questions he was asked in the course of a long and active life, al-Khallāl's compilation, organization, and discussion of this material is of critical importance. NMRC lends coherence to Ibn Ḥanbal's views of Christians and other non-Muslims. It organizes more than 1500 questions and their respective answers in a way that reveals al-Khallāl's ideological or theological intervention into his sources. In doing so, it articulates what Ibn Ḥanbal evidently intended to be a definitive view of non-Muslim individuals and their communities for the emerging Ḥanbalī school. And it does so in a way Ibn Ḥanbal never did. It articulates an idea of Christians that help that tell us something other than the legal topic at hand in any responsa: the figure of the Christian is a hermeneutical device that tells us more about Muslims.

The Goal and Contribution of This Dissertation

This dissertation seeks to explore the characteristics of the hermeneutical Christian as a legal subject rather than a social being. The concept of the hermeneutical Christian is adapted from Jeremy Cohen's monumental study on the Christian idea of the Jew in the late antique and medieval periods. In his book *Living Letters of the Law: Ideas of the Jew in Medieval Christianity*, Cohen coherently and convincingly argues that the Church fathers such as Augustine (d. 430) and Aquinas (d. 1274) saw Jews only as a means to understand Christian eschatological and soteriological views; that is, as an interpretive device in discussions of Christian theology. The figure of the Jew, from this perspective, served to confirm the Christian

pages with an excellent index and end matter. I only use this version, citing the numbers of the entries without offering the page numbers. The other version, however, is readily available in printing presses and has received more attention despite its shortcomings.

view that Christians are the heirs of salvation through Jesus Christ.³ In teasing out the theological meaning of hermeneutical Jews, Cohen shows that the representation of the Jews in Christian literature are as “they were *supposed* to be, not who they actually *were*,”⁴ indicating that Christians wrote about Jews based on literary images of them. In another of Cohen’s works, he argues that Christian writers brought Muslims into the conversation, characterizing Jews and Muslims together for the same purpose.⁵ Cohen’s contribution to Christian and Jewish studies is exceptionally helpful for understanding the representation of Jews in the exegetical and patristic works of Christians. More than two and a half decades after it was introduced, his concept of the hermeneutical Jew continues to inform religious studies and related fields. For example, recent studies on race theory and the representation of Jews in European art and literature use Cohen’s conception of the hermeneutical Jew.⁶ Part of what this dissertation seeks to do is to adapt Cohen’s insights to a new context.

³ Jeremy Cohen, *Living Letters of the Law: Ideas of the Jew in Medieval Christianity* (Los Angeles: University of California Press 1999), 1-22. The term was first coined by Cohen in a paper he gave in 1993, the contents of which are published in “The Muslim Connection, or, On the Changing Role of the Jew in High Medieval Theology,” in *From Witness to Witchcraft: Jews and Judaism in Medieval Christian Thought*, ed. Jeremy Cohen (Wiesbaden, Germany: Otto Harrassowitz Publishers, 1996), 141-62. For other studies on the theological representations of Jews in Christian literature, see Daniel Boyarin, *A Radical Jew: Paul and the Politics of Identity* (Berkeley: University of California Press, 1997).

⁴ Jeremy Cohen, *Living Letters of the Law*, 2.

⁵ Jeremy Cohen, “The Muslim Connection,” 141-62.

⁶ The impact of Cohen’s work is too vast to mention here, but some of its impact can be seen in the following studies. For religious studies, see Suzanne Conklin Akbari, *Idols in the East: Representation of Islam and the Orient, 1100-1450* (Ithaca: Cornell University Press, 2009), 112-54. For literature, see Lee Patterson, “‘The Living Witness of Our Redemption’: Martyrdom and Imitation in Chaucer’s Prioress’s,” *Journal of Medieval and Early Modern Studies* 31, no. 3 (2001): 542. For political thought, see Robert Meister, *After Evil: A Politics of Human Rights* (New York: Columbia University Press, 2011), 4. For race theory, see Geraldine Heng, “The Invention of Race in the European Middle Ages II: Locations of Medieval Race,” *Literature Compass* 8 (2011): 332-50, <https://doi.org/10.1111/j.1741-4113.2011.00795.x>; Lisa Lampert, “Race, Periodicity, and the (Neo-) Middle Ages,” *MLQ: Modern Language Quarterly* 65, no. 3 (2004): 400. For the image of the hermeneutical Christian in European art, see Leonid Livak, *The Jewish Persona in the European Imagination* (Redwood City: Stanford University Press, 2020), 9-10, <https://doi.org/10.1515/9780804775625>.

I hope to introduce Cohen's concept to Islamic studies by adopting and adapting his view of Christian literature's hermeneutical Jew to the hermeneutical Christian as found in Islamic legal texts. My main contribution to the field of Islamic studies is to exemplify a new approach to Islamic legal literature, one that may help us understand what discussions about Christians tell us about Muslims. Just as Cohen reads the hermeneutical Jew as a device for Christians to understand their own salvation, I likewise show how the Christian we meet in the pages of NMRC tells us about the legal, social, economic, and theological notions of Muslim piety, identity, salvation, and legal authority. The concept of the hermeneutical Christian might also be adopted to understand the Christian, Jew, *dhimmī*, or *kitābī* more broadly in other legal schools of thought throughout the late antique and medieval period.

By implication, this approach challenges the sometimes-over-credulous use of NMRC and other *masā'il*⁷ collections by social historians of the Middle East. Al-Khallāl's work, I think, has too often been used as a repository of fact rather than a work of *fiqh* and an ideological intervention into *sunnah*. The bread and butter of the text is, as far as I can see, its contribution to Ḥanbalī thinking about God's law for Christians and other non-Muslim individuals or communities. That is not to say, of course, that previous studies undertaken using the question-and-answer genre are without merit or that they do not make major contributions to their respective fields. I will discuss some of the recent studies that use NMRC as they arise throughout the dissertation either through direct engagement or in footnotes.

One of the main reasons I approach the Christians of NMRC as hermeneutic devices is that the *masā'il* are so varied. Throughout the text of NMRC, there is no attempt to differentiate between the lived social or cultural experience of a Christian of the ninth century—the time the

⁷ I use *mas'alah* to refer to an individual question or *masā'il* to a set of questions posed to Ibn Ḥanbal, and I use the capitalized *Masā'il* to refer to entire collections.

original interlocutors asked Ibn Ḥanbal their questions—from a hypothetical Christian of the Islamic past. Rather, the *masā'il* throw together glimpses of Christian life from different times and places. The questions posed to Ibn Ḥanbal may refer to any time between the early Islamic conquests and Ibn Ḥanbal's own ninth century. Most of the *masā'il* in NMRC are rooted in discussions taking place at least a century before, some of which have little bearing on social circumstances except perhaps as pedagogical principles for issuing legal determinations. The hermeneutical Christian that emerges from the text corresponds to no particular Christian of history: rather, he or she is an asynchronous conglomeration of events, experiences, and characteristics spanning centuries of Christian interaction with Muslims, with an emphasis on earlier interactions. What is crucial for Ibn Ḥanbal's interlocutors, and consequently al-Khallāl, is how Christians are to be governed according to the delegated authority given by God to Muslims. Suffice it to say for now that no individual Christian ever acted in all the ways his hermeneutical counterpart does in *Non-Muslim Religious Communities*, even if many Christians at many different times and places may have. The Christian of NMRC is the Christian who never was and the Christian who never will be.

Treating the Christian as a hermeneutical construct in Ḥanbalī thought is my way of giving the Christian we find in the text a legal body. We will see the way Muslim legal arguments formed and shaped the figure of the Christian, which consequently tells us how Muslims understood their own lives. This Christian might be called a prototypical Christian, a hypothetical Christian, and interpretive Christian, or one of many other terms. In Arabic, he has one name: *al-naṣrānī*. This Christian behaves in a particular way and ultimately serves as a representative of the Christians of all times and periods insofar as he is the subject of Islamic law. Of course, Muslims would have distinguished between real life and legal thought, but the

fact remains that the Christian is representative of how Muslims ought to determine normative behavior in their own lives as it relates to Christians. That the hermeneutical Christian may not conform to real life is beside the point. None of this implies, by the way, that Ibn Ḥanbal or al-Khallāl's approach to Christians as legal subjects is specific to proto- and early Ḥanbalī thought. It certainly is not. The hermeneutical Christian is discussed in different ways by many schools of Islamic thought. Each used a variety of sources to formulate the law about Christians, and each formulation might yield different and interesting results about Muslims. The Christian of Ḥanbalī law specifically is deeply rooted in the tradition of the *ahl al-ḥadīth*, as we will see in Chapter One when we discuss the *Masā'il* collections attributed to other scholars in the eighth and ninth century.

Studying the Ḥanbalī version of the hermeneutical Christian helps us better understand the changing shape and body of the Christian as a legal subject in Islamic law, giving us a deeper appreciation for the Ḥanbalī construction of Christians as legal subjects. By appreciation, I mean we can understand the idea of the Christian without expressing approval, especially as it relates to the image of women and children, which may be distasteful. A larger study would of course be welcome, and perhaps I will venture to produce a larger intellectual history in a future project. As it stands, my research covers only a flight of case studies and serves as an introductory study.

Background and Guiding Questions

To understand the implicit shape and figure the hermeneutical Christian serves for Ibn Ḥanbal and early Ḥanbalī thought, I seek to answer two main questions. First, what can we know about how the early Ḥanbalīs viewed Christians as legal subjects (as opposed to social ones)? I will do this by treating *Non-Muslim Religious Communities* as a work of intellectual

understanding of God's law as that law relates to Christians; that is, as a work of *fiqh*. Reading NMRC as a work of *fiqh*, we see al-Khallāl piecing together an image of Christians as Ibn Ḥanbal saw them. This image is significant because it underlies how Ibn Ḥanbal and the later Ḥanbalīs dealt with religious pluralism. I work from the presumption that, for Ibn Ḥanbal, the will of God, and thus the law, can be known with a high degree of certainty. Thus, analyzing his *masā'il* will tell us more about his method, pedagogy, and didactic approach than about quotidian social reality. That is not to say that *de novo* questions are not asked or that there are no socially significant questions posed or answered. In fact, the presumption throughout NMRC is that Christians (as *kitābīs* and *dhimmīs*) are under a pact of *dhimmah*, which informs all of Ibn Ḥanbal's rulings. The rights and obligations of Christians living under Islamic governance are restricted as a result of the pact of *dhimmah*, which provides a pretext for, and presumptively legitimizes, his authority to issue rulings that might affect their lives. What Christians can and cannot do, ought or ought not to do, is framed within the idea of the pact. For Christians not under a pact—that that is, those encountered in war—we see how Ibn Ḥanbal makes sense of the Muslim role in their conversion and salvation. Whether under a pact or not, Christians are the recipients of God's universal message of salvation, and so the question arises: Does Islamic law, for Ibn Ḥanbal, apply to Christians, and under what circumstances? Have we been thinking of Christians wrong? Are they actually worshippers of God subject to his law? To what extent they can fulfill the obligations of Islamic law?

This, then, is the second question: To what extent are Christians responsible for fulfilling the obligations or enjoying the rights of Islamic law? Can they, for example, undergo Islamic marital or divorce procedures, or are these only reserved for Muslims? What about Muslim women integrating into a Muslim household? Can they marry Muslims, serve as midwives, or

testify in cases of law that come up within a household? And what about Muslim men engaging in commercial partnerships with Christians who live by a different set of commercial norms? The extent to which Christians can fulfill Islamic law or when they can be judged by it will occupy some of my analysis of *masā'il*, which I use to show how Ibn Ḥanbal's rulings imply a preoccupation with larger legal, social, economic, or theological concerns, as outlined in my chapter organization.⁸

Chapter Organization

In Chapter One, I offer a general overview of the ninth-century context of the *masā'il* posed to Ibn Ḥanbal as found in NMRC, as it is the main data set for this dissertation. Ibn Ḥanbal spent the majority of his life in Baghdad, and thus offering a brief, non-comprehensive overview of the city helps the reader understand that despite its cosmopolitanism, his responses to students are focused on the technical aspects of legal discussion that often transcend social or cultural events of the ninth century. That is not to say that all *Masā'il* collections are devoid of cultural or

⁸ To be clear, by Islamic law I mean two things. First, I mean the broad Ḥanbalī conception of *sharī'ah* as the immutable law of God that can be known with a degree of certitude through literal readings of the divine revelation in the Quran and precedents of the Prophet Muhammad as given in the *sunnah* (of the Companions). I will work to show in what ways God has made his perfect and holy law attainable and fulfill-able by Christians. Second, by Islamic law I mean al-Khallāl's attempt to know God's will and intent through studying Ibn Ḥanbal's *masā'il*; that is, as a *faqīh* who produced a work of *fiqh*; al-Khallāl's understanding of *sharī'ah* is evident in his organization of Ibn Ḥanbal's *aḥkām*, as will be seen in great detail below. A key point here is that *fiqh* is undertaken by al-Khallāl, not by Ibn Ḥanbal. Al-Khallāl, as the pioneering *faqīh* of the Ḥanbalī school, attempts to arrive at an authoritative determination of Ibn Ḥanbal's *aḥkām* and his intent throughout NMRC, resulting in what he hopes will be a clear view of the legal obligations or duties of Muslims toward Christians and vice versa. For the ways Islamic law or *sharī'ah* might be defined, see Khaled Abou El Fadl, *Reasoning with God: Reclaiming Shari'ah in the Modern Age* (New York: Rowan & Littlefield, 2014), xxxi-iii; Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (London: Oneworld, 2003), 32ff. For the adoption and slight critique of Abou El Fadl's definition, see Anver Emon, *Religious Pluralism and Islamic Law: Dhimmīs and Others in the Empire of Law* (Oxford: Oxford University Press, 2012), 7-12.

political commentary, as one recent study points out.⁹ After a brief overview, I give a snapshot of Ḥanbalism during the ninth and tenth century to show the reasons al-Khallāl might have compiled NMRC in the first place, and then offer a glimpse of the impact the work had on the Ḥanbalīs of later centuries. This brings me to my discussion of the genre of *masāʿil* as one of the distinctive features of Ḥanbalī law. I show how NMRC, as an excerpt of a larger work of al-Khallāl’s, fits into the well-known category of questions-and-answer texts in the late ninth century in and outside of Arabic legal texts. Al-Khallāl takes the Ḥanbalī school in a new direction by offering a definitive view of Ibn Ḥanbal’s rulings on *masāʿil* through his commentary on them. Al-Khallāl’s work, I argue, displays his editorial hand in the production and organization of *masāʿil*. He is primarily a *faqīh* shaping the Christian for students of Ibn Ḥanbal’s *fiqh*. For this reason, it will be necessary to examine the types and content of questions found in NMRC. Knowing if a question arises from age-old discussions familiar to legal students helps us know what is at stake: a student’s question about legal method, or a layman’s question brought before the *faqīh* in real time? In the first case, a question may represent a student’s attempt to get an authoritative response from Ibn Ḥanbal to see if his view aligns with those of earlier legal teachers. In the second case, the answer may shed light on Ibn Ḥanbal’s reasoning, and so I use such answers even though I am not concerned with their social-historical implications.

In Chapter Two, I show that hypothetical, technical questions about commercial law are really about Ibn Ḥanbal’s imagining Christians as untrustworthy in partnership contracts, a view based on the Quran and *sunnah*. Islamic law is superior, and true Muslims are trustworthy and

⁹ Al Sarhan, “Aḥmad b. Ḥanbal’s Legal Opinions on the Fight against Bābak’s Uprising: ‘I don’t know of anyone who is more harmful to Islam than he, the evil wretch,’” *Journal of Abbasid Studies* 6 (2019): 86-105.

pious. The untrustworthiness of Christians, by contrast, makes it impossible for Muslims to hand over capital to them when a partnership is formed. Not only are they untrustworthy, but they bring uncertainty into Islamic contracts. As Christians, they cannot fulfill the requirements of contract law particularly as it relates to the types of practices endemic to *ḥalāl* fair trade practices. Christian practices are, from his point of view, illicit and corrupt by their very nature, a point which is explained with reference to *ribā* and reinforced through Ibn Ḥanbal's ascetic and renunciant piety. His piety and practice shows us that he issued some severe rulings, but was evidently content with students not listening to him, that is, he exerted lenience (*rukḥṣah*). The law, for him, was flexible either because Islam is supposed to be simple or because he made practical concessions to living in an intercommunal place. The law permits, for example, Muslims to form partnerships with Christians under certain conditions, though he would never engage with Christians himself. It is in this regard that we see NMRC as a text that offers what he told others to do, not what he did himself. For this reason, I offer some examples from an anecdote of Ibn Ḥanbal with the famous Christian doctor Ibn Māsawayh and some pious statements he knew about Jesus. These go to show that he sees Christians as utterly despicable and to be avoided at all costs.

In Chapter Three, I develop the idea that implicit to Ibn Ḥanbal's discussion of Christians is that he is telling his questioners what a Muslim world would be like without non-Muslims while conceding that non-Muslims live in God's world. His rulings reveal that it would be nice if Christian women, slaves, and concubines were not part of the Muslim household because, as Christians, they bring sin and corruption into it. The crucial point is that Ibn Ḥanbal is not just rulings to keep Christian and other non-Muslim women out of the household, but to give a vision of a better world where no Christians or non-Muslims exist. He rules from a position of an ideal

Muslim world where Christians aren't involved in it. Yet Muslims had since the earliest period taken Christian and other non-Muslim women into their households. Ibn Ḥanbal, aware of this, argues that it is licit to take a Christian concubine, slave, or wife into the household based on precedents, but he views them as a threat to Muslim piety and practice. The worst of all acts a Christian or Jewish woman might bring into the household is the sin of blaspheming against Muḥammad. Here, we see Ibn Ḥanbal and the early Ḥanbalīs using the story of a Jewish *umm walad* to express caution against bringing a Jewish or Christian woman into the household despite its presumptive permissibility in the Quran and *sunnah*. Ibn Ḥanbal's rulings on midwifery and wet-nursing imply circumspection with regard to the pollution unavoidably produced by women acting in those roles. A better world where Christian women don't exist shows that Muslims should try to make the world more Muslim, which is where Christian children come into play.

Chapters Four and Five focus on the hermeneutical Christian child, and each chapter addresses a specific theological point. In these two chapters, discussions about Christian children serve to explain the mechanics of salvation and conversion for all mankind, including Muslims. As for salvation, in Chapter Four, we learn that Ibn Ḥanbal makes a potential path for Christian children to go to Paradise based on his view that only God can decide the actions they would have committed had they lived a full life. In other words, Ibn Ḥanbal is unwilling to guarantee or disqualify any child, whether Christian or Muslim, from entering Paradise, whereas his view of Christian adults is indiscernible except to say that he has a dim view of their fate. As for conversion, in Chapter Five, we learn that Ibn Ḥanbal's discussion about captive children—non-*dhimmi*s and foreigners—are really about the mechanics of conversion and how taking children from foreign lands to make them Muslim justifies, in part, *jihād*. Muslims have the legal

authority delegated to them by God to convert foreigners, with some conditions, as will be discussed. Both of the theological points presume the innocence of children and their corruption by a Christian parent or parents. Children are axis points for understanding the ideal Islamic world implicit in Ibn Ḥanbal's rulings. The discussion of Christian children shows that Muslims can rescue them from the sin and corruption of Christianity. In doing so, it justifies *jihād* as an agent of conversion within the scope of Islamic legal authority given to Muslims by God.

In Chapter Six, I discuss the delegation of Islamic legal authority over the Christians living under Islamic governance. I argue that discussions about Christians who resort to the quranic divorce oaths of *īlā'*, *ḡihār*, and *li'ān* in their own marriages serve as a test case for the applicability of Islamic law to Christians. Though Ibn Ḥanbal and his interlocutors never likely knew of any Christians using quranic divorce procedures, the cases go to show that Muslims can issue rulings on them, thereby affirming that the delegation of legal authority over Christian cases is sanctioned by God: Muslims can accommodate Christians who make oaths that are given in the Quran. The Quran, according to Ibn Ḥanbal, makes oaths applicable and valid when undertaken by Christians and other protected individuals and communities. Christians can fulfill the requirements of Islamic legal oaths associated with marital and divorce law. At the same time, Ibn Ḥanbal's rulings--understandably given their origin as responsa--cannot always be read as reflective of a single consistent vision. I discuss how in the case of *li'ān* Ibn Ḥanbal's view breaks down, since he says they can swear the oaths of *li'ān* only to later say that they cannot actually testify legally before an *imām* or *ḡākim*, a requirement of the procedure of *li'ān*. This apparent contradiction goes to show the tentativeness of the figure of the hermeneutical Christian, a point that ends the main body of the dissertation. Here, we are left in some tension

about how the hermeneutical Christian might be understood by later generations of Ḥanbalī students in a different way, a task that awaits further study.

CHAPTER 1: IBN ḤANBAL, ABŪ BAKR AL-KHALLĀL, AND NON-MUSLIM RELIGIOUS COMMUNITIES

Introduction

Ibn Ḥanbal (b. 780, d. 855) lived in one of the most exciting times of intercommunal, interfaith relations between Muslims and non-Muslims. During his lifetime, he saw Baghdad become a prominent economic and social hub with increased proximity between Muslims, Jews, Christians, and Zoroastrians. During his lifetime, Baghdad was the capital of the Abbasid Caliphate, and the city was inextricably linked to the daily social, cultural, political, religious, and economic lives of those living in the eastern Mediterranean, North Africa, East Africa, and Iran. Baghdad lay at the convergence of trade routes between these regions, and in which people from all over the Mediterranean world migrated in search of better fortune. There peoples of diverse ethnicities, religions, and languages interacted on a daily basis, and some came to learn of each other's cultural and intellectual legacies.¹⁰ Christian churches and monasteries were dispersed throughout the city of Baghdad, and clergyman and laypersons visited or inhabited many of the city's quarters in large numbers. Christians were also among the prisoners of war settled in Baghdad; the population totals are uncertain.¹¹

It is in this milieu that Ibn Ḥanbal began to work out the injunctions of Islamic law. As a renunciant and mild ascetic who deliberately avoided contact with those who lived differently, a point discussed later. Ibn Ḥanbal inhabited the tension between engaging the world and forsaking

¹⁰ Portions of this paragraph are set to be published in my forthcoming article, "Between Baghdad and the Mediterranean," in *Windows into the Medieval Mediterranean*, ed. Jeanete M. Fregulia (Abingdon: Taylor and Francis).

¹¹ For a layout of the city, its churches and monasteries, see Guy Le Strange, *Baghdad During the Abbasid Caliphate* (London: Curzon Press, reprint 1972), 207-16; and Jacob Lassner, *The Topography of Baghdad in the Early Middle Ages* (Detroit: Wayne State University Press, 1970), 155-77. For an overview of the Christians of Baghdad, see Michel Allard, "Les Chrétiens à Bagdād," *Arabica* 9, no. 3 (1962): 380 passim, <http://www.jstor.org/stable/4055273>.

it, and earned a place of special esteem among the many students and scholars who struggled to apply the law, or indeed to know what it was, in a world often seemed to fall short of the ideal. Formulating and (possibly) applying Islamic law to non-Muslim communities raised some challenges as *de novo* social and legal circumstances presented themselves. How might precedents of centuries past inform ninth-century circumstances, and how might they apply to novel circumstances? How does the law accommodate or regulate non-Muslims living as *dhimmīs*, and how does the law justify making the world more Muslim through *jihād*? For Ibn Ḥanbal, the only way to live is by the *sunnah* and the Quran, which could address the circumstances of ninth-century life only through interpretation.

The *sunnah* of the generation of the Prophet Muhammad (d. 632) guided Ibn Ḥanbal's piety and personal devotion to God. As we will learn, although he insisted on living more strictly than the law required (in order to avoid inadvertent sins), he did not hold his questioners to the same high standard. Living in a world with regular Christian and other non-Muslim interaction, he answered questions about their quotidian practices and behaviors as if concerned not with the particulars of any given case, but with his concern directed instead to understanding the implications of a non-Muslim presence in a world governed by Quran and *sunnah*. Although actual Christians probably played a peripheral role in his life, he had very definite views about the figure of the Christian. Christians lie about God and they attribute a son to him.¹² On this view, Christians live a life apart from God. But at the same time, their religious beliefs and practices must be accommodated because they live under a pact of protection that guarantees protection of their lives; religious practices, though to a limited degree; and general well-being so long as they do not break the pact, issues which I discuss in the following chapters.

¹² Quran 5:73; 11: 18-19.

Ibn Ḥanbal's strict devotion to the *sunnah* won him the praise of the common people, many of whom saw him as a fearless leader in the face of political overreach, legal diversity, and impious Muslim behavior. He fought against the theological rationalism espoused and imposed by the Caliph al-Ma'mūn (r. 813-833), which put him in shackles and brought him to be tried by the Caliph, who was leading the *jihād* on the Syrian frontier. Al-Ma'mūn's sudden death allowed Ibn Ḥanbal to return to Baghdad, where he was eventually flogged to the point of death for upholding a view that the Quran was un-created, a view which seemed too close to the Christian belief in Jesus' un-createdness as the Word of God.¹³ His alleged refusal to declare the Quran created made him famous as a defender of what was then proto-Sunni dogma. But his major importance is as a teacher of *ḥadīth*. By the mid-ninth century, the reports he endorsed, as well as his responsa, had been collected by followers such as Abu Bakr al-Marrūdhī (d. 888) to serve as material for the practice of *fiqh* (jurisprudence). These books are evidence of a burgeoning community developing around his teachings, a community that grew into a popular movement by the time of al-Khallāl in the late ninth and early tenth century.¹⁴ Ḥanbalism was characterized by its focus on the Quran and *sunnah* as the primary sources for knowing God's will for mankind against the efforts of other Muslims who espoused views to the contrary. Ḥanbalism of the late ninth and early tenth century was one of political and religious quietism,¹⁵ but other adherents of

¹³ Michael Cooperson, *Classical Arabic Biography: The Heirs of the Prophets in the Age of al-Ma'mūn* (Cambridge: Cambridge University Press, 2000) 109-10; and Christopher Melchert, *Ahmad ibn Hanbal* (London: Oneworld), 10.

¹⁴ Simha Sabari, *Mouvements Populaires a Bagdad A époque 'Abbasside IX-XI Siècles* (Paris: Librairie D'Amérique et D'Orient, 1981), 101-20; Nimrod Hurvitz, "From Scholarly Circles to Mass Movements," *The American Historical Review* 108, no. 4 (October 2003) 985-1008; Nimrod Hurvitz, "Schools Of Law And Historical Context: Re-Examining The Formation Of The Hanbalī Madhhab," *Islamic Law and Society* 7, no. 1 (2000): 37-64, doi: <https://doi.org/10.1163/156851900507562>; and Wilfred Madelung, "The Vigilante Movement of Sahl b. Salāma al-Khurasānī and the Origins of Hanbalism reconsidered," in *Studies in Medieval Muslim Thought and History*, ed. Sabine Schmidtke (Abingdon: Routledge, 2013).

¹⁵ Michael Cook, *Commanding Right and Forbidding Wrong in Islamic Thought* (Cambridge: Cambridge University Press, 2000), 87-113. See also Hurvitz, "Schools of law," 46 passim.

Ibn Ḥanbal's fomented popular revolt. One of these activists was a student of al-Marrūdhī named al-Barbahārī (d. 940-941), who rallied Ḥanbalīs to pour out wine, break instruments, provoke sectarian violence, and regulate what was seen as public immorality between men and women. The resulting unrest led to a caliphal decree condemning Ḥanbalism by al-Rādī (d. 940) in 935.¹⁶ Such activism remained an element of some strains of Ḥanbalism for the next two centuries. But when al-Khallāl compiled *masā'il* sometime in the late ninth or early tenth century, many Ḥanbalīs, al-Khallāl included, did not support political or religious activism against the Caliphate, seemingly content to continue the political and religious quietism of Ibn Ḥanbal.¹⁷ As this cursory survey shows, Ḥanbalism was not united under one doctrine or set of teachings. One of al-Khallāl's purposes in compiling *masā'il* was to create a definitive collection of Ibn Ḥanbal's responsa to help create a communal identity for the emerging legal school.¹⁸ It is in this

¹⁶ Henri Laoust, "Les premières professions de foi Hanbalites," in *Mélanges*, ed. Louis Massignon (Damas: Institut François de Damas, 1957), 16-19; Louis Gardet, "L'importance Historique Du ḥanbalisme D'après Un Livre Récent," *Arabica* 6, no. 3 (1959): 225-32, <http://www.jstor.org/stable/4055362>; Marius Canard, "Baḡdād Au IVe Siècle De L'Hégire (Xe Siècle De L'ère Chrétienne)," *Arabica* 9, no. 3 (1962): 276-278, <http://www.jstor.org/stable/4055266>; Michael Cook, *Commanding*, 116-118; Christopher Melchert, "The Ḥanābila and the Early Sufis," *Arabica* 48, no. 3 (2001): 364-367, <http://www.jstor.org/stable/4057727>.

¹⁷ In Cook's *Commanding*, 121-127, he hints, without directly saying it, that if the community of Hanbalīs has been larger during Ibn Ḥanbal's life, or if Ibn Ḥanbal was less-ascetic and more socially engaged, or if there the Abbasid state had only been weaker, then his early community of followers would have had the potential to be more politically active. It is difficult to imagine a more tumultuous political time than early- to mid-ninth century Baghdad, where in the course of a lifetime Ibn Ḥanbal saw the division of the Caliphate between al-Amīn and al-Ma'mūn, with the latter's rationalist inclination and religious imposition of the creation of the Quran doctrine resulting in Ibn Ḥanbal's torture and imprisonment. If there were any time for the early Ḥanbalīs to engage in active rebellion or forceful imposition of their beliefs against the Caliph, it seems that an appropriate time would be during his life regardless of the size of the Ḥanbalī community. In his *Violence and Belief in Late Antiquity: Militant Devotion in Christianity and Islam* (Philadelphia: University of Pennsylvania Press, 2009), 237, 240-41, 254, Thomas Sizgorich rightly suggests that it was not necessary for Ibn Ḥanbal to impose his beliefs because of his unwavering faith, his ability endure torture, and his ascetic practices reminded the community of believers of the early Islamic *umma* and the warriors like Ibn al-Mubārak who protected the boundaries of the Islamic community in the *futuh*-era. In other words, Ibn Ḥanbal was revered not because he was viewed from a larger narrative of upholding the proper boundaries that were imagined to be the same ones of the earlier Islamic *ummah*. The goal was not to impose belief, but to defend the boundaries of those who were living like they imagined the Islamic past to be.

¹⁸ Other Ḥanbalīs of the early tenth century other than al-Barbahārī engaged in active violent exploits. For example, Abū Bakr b. Abī Dawūd (d. 929) led the blockade of al-Ṭabarī's house and preventing his funeral from taking place. His violent exploits against al-Ṭabarī's students carried on after his death. For this issue, and how al-Khallāl was not a violent leader, see Melchert, "The Ḥanābila," 363, 365.

sense that al-Khallāl played a crucial role in making Ḥanbalism into a formal *madhhab*, a development Christopher Melchert associates with al-Khallāl's biographical dictionary of Ibn Ḥanbal's students.¹⁹

Al-Khallāl's life, works, and compilation of NMRC, with all of its content, also played a crucial role in offering a comprehensive view of the Christian as a legal subject. His collection, as we will see, provides us an access point for understanding what discussions of Christians tells us about Muslims, which can only be explained by understanding the compiler, compilation, organization, genre, and content of NMRC.

Non-Muslim Religious Communities: Compiler and Sources

Abū Bakr al-Khallāl

Aḥmad b. Muḥammad b. Hārūn Abū Bakr al-Khallāl al-Ḥanbalī al-Baghdādī (b. circa 846, d. 923) was born during the period of the formation of many schools of Islamic law. As a young man he studied records of the Prophet Muhammad's exemplary words and deeds, called *ḥadīth*. Notably, he studied with several prominent figures who had learned *ḥadīth* or heard *masā'il* or read *Masā'il* collections of students of Ibn Ḥanbal, including Ibn Ḥanbal's sons 'Abd Allāh and Ṣāliḥ, as well as from his own teachers, such as al-Marrūdhī (d. 888), among many others.²⁰

¹⁹ Melchert, "The Ḥanābila," 362-63.

²⁰ For the sources on al-Khallāl's life and the community of Ibn Ḥanbal's students he knew and collected reports from, see al-Dhahabī, *Siyar al-a'lām al-nubalā'*, ed. Sh. Arnā'ūt, Beirut, 1985, 14:297-98; al-Dhahabī, *Tadhkirah al-huffāz*, ed. 'A. al-Mu'allimī, Hyderabad, 1958, 3:785-86; al-Khaṭīb al-Baghdādī, *Tārīkh Baghdād*, ed. Bashār 'Awwād Ma'rūf, Beirut, 2001, 6: 302-4; Abī Ya'lā Ibn al-Farrā', *Ṭabaqāt al-ḥanābilah*, Cairo, n.d., 2: 12-15.

Before or just after Ibn Ḥanbal's death (d. 855 CE), 'Abd Allāh and other first-generation followers of Ibn Ḥanbal began to write down the *ḥadīth* Ibn Ḥanbal knew. Some followers organized and wrote them down according to the way they were studied, that is, by the original (first or oldest) transmitter, later organized and compiled by *isnād* into volumes called *musnads*. Due to this organization, the resulting compilations were difficult to use. In the mid-ninth century, when Ibn Ḥanbal was still alive, collections of *Masā'il* were already well-known, some of which were topically organized into *muṣannaḥs*, as will be seen in more detail later. The shift from *musnad* to *muṣannaḥ*, which had been taking place in *ḥadīth* organization for over a century, culminated in al-Khallāl's collection of the *Compendium of Ibn Ḥanbal's Learning* (*al-Jāmi' li-'ulūm Aḥmad b. Ḥanbal*, also known as *al-jāmi' al-kabīr*). His organization of Ibn Ḥanbal's rulings by topic in the *Compendium* produced one of the early easy-to-use compilations of legal opinion tracing its origins back to Ibn Ḥanbal.²¹

The Compendium (al-Jāmi') and Non-Muslim Religious Communities

The *Compendium* is partially lost, and originally contained NMRC as an excerpt of it. NMRC often includes an initial *aḥkām* tagged on at the beginning of the title, as in *Aḥkām ahl al-milal*. The extant manuscripts refer to the excerpt interchangeably as *Kitāb ahl al-milal* and *Aḥkām ahl-al-milal*.²² Perhaps the excerpt enjoyed many names after its detachment from the

²¹ al-Khallāl is credited with writing a book on prophetic precedent titled *al-Sunnah* that some scholars see as a part of the *Compendium*. Al-Khallāl wrote several other works, on taxation, the reliability of *ḥadīth*, among others. He authored the first biographical dictionary of students, scholars, and transmitters who looked to Ibn Ḥanbal for authoritative views on legal practice and jurisprudence, which is an indication that the Ḥanbalī school had been formalized. On the latter, see Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th-10th Centuries C.E.* (Leiden: Brill, 1997), 137-155.

²² MS Cairo 1 is the mother copy of all of the manuscripts I have. See the bibliography for more details. Suffice it to say that the manuscripts use *Kitāb ahl al-milal* and *Aḥkām ahl al-milal* interchangeably.

Compendium. The term *aḥkām* serves to tell what kind of book it was: a book of Ibn Ḥanbal’s legal rulings or opinions that might be used by his students in issuing positive or substantive legal determinations rulings.²³ Ibn Ḥanbal’s *aḥkām* are legal determinations that are not enforceable except by way of personal application or judicial solicitation, and thus might serve as a handbook for knowing how to do so.

Non-Muslim Religious Communities, Disjuncture from the Compendium

As part of the *Compendium*, NMRC might be expected to be found along with it. But as history has it, and for reasons now lost to us, the book became separated, uncoupled, or disjointed from the *Compendium*, and is a post-facto excerpt from it. We do not know if the *Compendium* was ever copied in total more than once. But we do know that NMRC has come down to us independently. The existing manuscripts I am aware of all seem to have been copied from a mother manuscript dated to 1187 C.E.—that is, 250 years after its original publication—which I have not been able to locate.²⁴ In the manuscripts we have, NMRC is copied along with other Ḥanbalī works, such as *Kitāb al-tarajjul*, *Kitāb al-nisā’*, *Kitāb al-wuqūf*, each of which was originally part of the *Compendium*, and in one instance, a part of al-Mardāwī’s (d. 1058 C.E.)

²³ For a view that “positive law” is not the correct term to use in the premodern period, see Wael Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009), 116, 175, where he observes that positive law has to do with state implementation. There are other types of *aḥkām* books. An *aḥkām* book was typically a one volume black letter-of-the law legal book, or as Professor Abou El Fadl put it, if such a comparison can be made, like a modern Hornbook or “nutshell” book. This is not what we have here. The problem with calling *Ahl al-milal* an *aḥkām* text, if I understand *aḥkām* texts correctly, is that it was in fact part of a larger *fiqh* work, that is, art of a multivolume work in the *Compendium*. See below for more.

²⁴ MS Cairo 1 is said to have been copied by an 1187 manuscript that is purported to be in the Library of Hadith in Makkah, but I have not been able to track this down or determine if the manuscript was transferred to another library. I do want to thank Saud al-Sarhan and the KFCRIS team for helping me locate all of the other known manuscripts. By “publishing,” I mean that a written work is presented to a study circle for the students of Ibn Ḥanbal’s teachings, which is described below. See Gregor Schoeler, *The genesis of literature in Islam: From the Aural to the Read*, trans. Shawkat M. Toorawa (Edinburgh: Edinburgh University Press, 2009), 107, 112, 116-20, <https://hdl.handle.net/2027/mdp.39015078780106/>.

Inṣāf. We do not know if the later collations of works in the *Compendium* was the result of later compilers. NMRC was ever read on its own as a single independent source. But it has served for later Ḥanbalīs as a primary source for the study and legal thinking about non-Muslims, making it appear to have been used as a sort of monograph.²⁵

Citations as an Independent Text in Later Legal Literature

Al-Khallāl's NMRC was likely cited by his student Ghulām al-Khallāl (d. 974 C.E.) in *Zād al-musāfir*. In his *Zād al-musāfir*, Ghulām al-Khallāl referred to a work entitled *Aḥkām ahl al-dhimma* by saying, "That was made clear to us in *Aḥkām ahl al-dhimma*."²⁶ The editors of the modern edition of *Zād al-musāfir* speculate that references to *Aḥkām ahl al-milal* might not refer to an excerpt at all, or if it did, then it is a section of a book such as one of the sections of *Kitāb al-kharāj*.²⁷ But it seems to me that Ghulām al-Khallāl is referring to *Ahl al-milal* because the content and *isnāds* he offers are similar to that of his teacher's. For example, in his reference to *Aḥkām ahl al-dhimma* regarding inheritance of converts to Islam or manumitted slaves, Ghulām al-Khallāl offers similar content and transmitters as those found in NMRC ruling:²⁸

From al-Maymūnī: *man alsлама 'alā mīrāth (Ahl al-milal)*

²⁵ Cf. Antonia Bosanquet, "Minding their Place. Space and Religious Difference in Ibn al-Qayyim's *Aḥkām ahl al-dhimma*," (PhD dissertation, Freie Universitaet, 2016), 54. See also Saud Al Sarhan, "The Responsa of Aḥmad Ibn Ḥanbal and the Formation of Ḥanbalism," *Islamic Law and Society* 22 (2015): 34.

²⁶ Ghulām al-Khallāl, *Zād al-musāfir*, ed. A.J. al-Muṣṭafā, Jeddah, 2016, 4:123.

²⁷ Ghulām al-Khallāl, *Zād al-musāfir*, 1:160.

²⁸ Compare Ghulām al-Khallāl, *Zād al-musāfir*, 4:123 (nos. 3841-42) with al-Khallāl, *Ahl al-milal*, nos. 941 and 946.

From al-Maymūnī: *man aslama 'alā mīrāth qabla an yuqsama qusima laha (Zād al-musāfir)*

From Ḥarb: *man alsлама 'alā mīrāth qabla an yuqsama (Ahl al-milal)*

From Ḥarb: *wa in u'tiqa 'alā mīrāth lam yaqsam lahu (Zād al-musāfir)*

The similarity in transmitters and language, despite being generic, in conjunction with the same transmitters from *Ahl al-milal*, convinces me that Ghulām al-Khallāl drew from his teacher's work in his composition of *Zād al-musāfir*, and thus his reference to *Aḥkām ahl al-dhimma* refers to NMRC. It is not possible to say whether Ghulām al-Khallāl had a copy of al-Khallāl's NMRC or if he learned it directly from him, or if possessed some portion of a copy of the *Compendium* or other notes.

Four hundred years after its compilation, the content of NMRC is extensively used by Ibn Qayyim al-Jawziyyah (d. 1350) in his *Aḥkām ahl al-dhimma*. Antonia Bosanquet has comprehensively studied the use of al-Khallāl's *Ahl al-milal* in Ibn al-Qayyim's production and publication *Aḥkām ahl al-dhimma*. To give a brief synopsis of her study, she argued that NMRC was one if not the primary source for Ibn al-Qayyim's work, but that their organizational structure widely differed despite Ibn al-Qayyim's heavy reliance on the *Masā'il*.²⁹ She showed that some individual *masā'il* were intentionally left out or adapted for Ibn al-Qayyim's own purposes.³⁰ Ibn al-Qayyim, she observed, never actually referred to al-Khallāl's book by title,³¹ which might indicate that the book did not have a consistent title or was later given a name or

²⁹ Bosanquet, "Minding Their Place," 77-78, 168-169, 185ff.

³⁰ Bosanquet, "Minding Their Place," 165-66.

³¹ Bosanquet, "Minding Their Place," 83.

that it was not yet disjointed from the *Compendium*, the latter title being the most likely way al-Khallāl's larger work and thus NMRC was referred to, that is, as an independent work; the phenomenon of books not having titles, as far as I understand, was common in early collections of books.³²

What is the Genre of *Non-Muslim Religious Communities*?

NMRC belongs to the rather broad genre of *masā'il* (literally, “questions”) works in the Islamic literary and legal tradition. The *masā'il* genre was incipient in Arabic when the *Compendium* was compiled, but its roots are in other literary traditions. In fact, the genre “was perhaps the most prevalent dialectical form in the Late Antique and Early Islamic Middle East...employed in almost every area of scholarship.”³³ It permeated the genres of law, exegesis, theology, medicine, and philosophy in Jewish and Christian writings.³⁴ From the sixth century onward, the *masā'il* genre—sometimes called *responsa*—was used in Jewish traditions to document the answers of teachers and rabbis to questions of quotidian life and biblical exegesis, not to mention fields of astronomy and geography, to name just a few; the impact of the genre can be seen in its shaping the content of the Babylonian Talmud. From the mid-sixth century through the ninth century, the question-and-answer format was used by Syriac Christians in

³² Gregor Schoeler, *The genesis*, 72-76. Schoeler makes the point that early compilations are referred to by the name of the author, which, in this case of al-Khallāl, *al-Jāmi'*. The name of the sections of a book might be appended later on by students in the school, but it is not known if or when this happened, if at all; See also Schoeler, *The Oral and the Written*, tr. Uwe Vagelpohl and ed. James E. Montgomery (New York: Routledge, 2006), 7, 52 passim. Norman Calder, *Studies in early Muslim jurisprudence* (Oxford: Clarendon Press, 1993).

³³ Robert Hoyland, *Seeing Islam as Others Saw It: A Survey and Evaluation of Christian, Jewish, and Zoroastrian Writing on Early Islam* (Princeton: The Darwin Press, 1997), 45.

³⁴ There are also Zoroastrian writings that fit within this genre, but I did not include them here. I hope to include them in the future.

biblical exegesis. It was also used by Christian scholars to devise rational arguments against imagined opponents.³⁵ In theology, to give one of many examples, Theodore bar Koni (c. 792) employed the question-and-answer format to show the rationality of Christian ideas and practices.³⁶ Syriac law books from the seventh to the ninth century, too, made use of the question-and-answer format to resolve tensions arising from quotidian social realities between Christians and Muslims.³⁷ All of these traditions apparently derive in part or in proximity to dialectical and didactic methods of Greek philosophers, such as Aristotle. Suffice it to say that the genre had become ubiquitous in late antiquity and the early medieval period.

By the time the *Compendium* was compiled in the late ninth or early tenth century—with NMRC as an excerpt of it—Arabic literature had seen the genre of *masā'il* employed in a broad range of works. Beginning in the first Islamic century, some Muslims wanting to know the meaning of difficult words found in the Quran raised questions to more knowledgeable Muslims, who in turn cited pre-Islamic poetry to explain their meanings. Other Arabic works used a dialectical form of the *masā'il* genre. These works were formatted in a question-and-answer format, which set a learned Muslim up to persuasively answer questions about Islam to refute the

³⁵ Adam Becker, *Fear of God and the Beginning of Wisdom: The School of Nisibis and the Development of Scholastic Culture in Late Antique Mesopotamia* (Philadelphia: University of Pennsylvania Press, 2006), 96.

³⁶ Sidney Griffith, *The Church in the Shadow of the Mosque: Christians and Muslim in the World of Islam* (Princeton: Princeton University Press, 2008), 81-5. Here, he also briefly discusses the question-and-answer format as used by Christians in the eighth and ninth century.

³⁷ For many other examples of the question-and-answer format in the Church of the East's legal writings, see Isho 'bokht's rulings throughout Eduard Sachau, *Syrische Rechtbücher*, 3:60-117, and Lev Weitz, *Between Christ and Caliph: Law, Marriage, and Christian Community in Early Islam* (Philadelphia: University of Pennsylvania Press, 2019), 51-2 passim. For the 99 question-and-answer rulings of Timothy I, see Eduard Sachau, *Syrische Rechtbücher*, volume 2, and some analysis in Lev Weitz, "The Shaping of East Syrian Law in Abbasid Iraq," *Le Muséon* 129 (2016): 79, doi: 10.2143/MUS.129.1.3154606. For West Syriac, see Jacob of Edessa's work, as cited in Hoyland, *Seeing Islam*, 161. More general overviews of the sources can be found in Hubert Kaufhold, "Sources of Canon Law in the Eastern Churches," in *The History of Byzantine and Eastern Canon Law to 1500*, ed. Wilfried Hartmann and Kenneth Pennington (Washington, DC: Catholic University Press, 2012), 215-342; and Kaufhold, "Der Richter in den syrischen Rechtsquellen," *Oriens Christianus* 85 (2004): 91-113.

claims of other religions.³⁸ Most important for this study is the use of the question-and-answer format in Islamic law. From early on in Islamic history, Muslims sought advice about religious devotion or quotidian practice. They asked more learned members of the Muslim community about their problems, resulting in the issuance of a non-binding legal opinions, called *fatāwā*. These *fatāwā* were in the earliest period based on the Quran, *sunnah*, or personal opinion. By the eighth century, groups of adherents to the prophetic precedents and the reports from Companions and Followers of the Prophet emerged. When an answer to a question could not be found in the prophetic precedents or reports from the Companions or Followers, they asked their teachers, who in turn provided responses. The responses to questions were later compiled by the teacher's students, which resulted in the *masā'il* genre being used by adherents of the *sunnah*, a group sometimes referred to in this period as traditionalists.³⁹

It should be noted that the genre of *masā'il* is only one of two different types of question-and-answer books of the eighth and ninth centuries, and might be categorized under the umbrella term *aḥkām*. The first type of *aḥkām* is *masā'il*, which consist of questions posed to a teacher by a legal student, himself sometimes a master such as in the case of Ibn Ḥanbal, and are usually of highly technical nature. The second type are *fatāwā* books. These books consist of questions posed to a teacher by an individual from the public. The questions in *fatāwā* books often relate to quotidian life and might serve to assist a person in their devotional practices, even if the opinion offered is non-binding. At the same time, a *fatwā* given by a *mufī*, the teacher giving an opinion, might be solicited by a judge to help him rule in a case of law. The difference between a *masā'il* text and a *fatāwā* text lies in the difference between the purpose of the question: formal and

³⁸ *Encyclopaedia of Islam*, 2d ed., s.v. “*Masā'il Wa-Adjwiba*.”

³⁹ Saud Al Sarhan, “The Responsa,” 1-2.

technical questions are asked by legal scholars and students and might contain methodological or didactic material, whereas informal or personal questions are asked by the public and might contain general non-technical knowledge even if it has some legally useful information in it. The boundaries between *masāʿil* and *fatāwā* works, as far as I understand them, are not always clear, since one group of questions and answers might fall into one or both categories at the same time. But the *Masāʿil* collections that became popular in the eighth and ninth centuries informed the collection of the *Masāʿil* of Ibn Ḥanbal as collected by his students, many of whom based their questions to him on earlier authorities, such the *Masāʿil* texts of Mālik (d. 795), al-Awzāʿī (d. circa 773), Sufyān al-Thawrī (d. 778), and Ibn Abī Dhiʿb (d. circa 775).⁴⁰ The questions we find in the *Masāʿil* of the *Compendium* are often based on questions posed to these earlier scholars. And it is within these collections that we get the sense that Ibn Ḥanbal was mainly a teacher of law to students of law, and less of a *muftī* directly engaging with common people, though he was undoubtedly approached by laypersons or government officials to issue *fatāwa*, and by distressed common people whom he wrote incantations for.⁴¹ Bernard Weiss eloquently describes this when remarking, “To the extent that Malik, Abu Hanifa, Shafiʿi, and Ibn Ḥanbal produced opinions to guide others...they were acting as muftis as much as they acting merely as teachers of legal doctrine.”⁴²

⁴⁰ Saud Al Sarhan, “The Responsa,” 2.

⁴¹ See *Ahl al-milal*, no. 969; Luke B. Yarbrough, *Friends of the Emir: Non-Muslim State Officials in Premodern Islamic Thought* (Cambridge: Cambridge University Press, 2019), 104. There is one example of the Caliph al-Mutawakkil soliciting an opinion from Ibn Ḥanbal about non-Muslim sanctuaries. Ibn Ḥanbal responds to him with authoritative *ḥadīth*. Students in the Ḥanbalī school later made use of the *Masāʿil* collections to issue *fatāwā*; for example, Ibn Taymiyyah, *al-Fatāwā al-kubrā*, ed. M. ʿAbd al-Qādir and Muṣṭafā ʿAbd al-Qādir, Lebanon, 1987.

⁴² Bernard Weiss, *The Spirit*, 130.

As a collection of responses to legal questions embodied by the term *masā'il*, NMRC portrays Ibn Ḥanbal as a teacher of technical legal knowledge. He rarely if ever asks his students questions except in rhetorical form, but never, as far as I know, as a type of *munāẓarah*, a form of questioning akin to the Socratic method, and endemic to other teaching methods. In his teaching circles, students of law and commoners could perhaps have asked him anything they wanted about *ḥadīth*, *sunnah*, or questions that relate recurring or *de novo* issues of intercommunal life. But these types of questions are rarely found in NMRC, and other collections of *Masā'il* can be consulted for relevant information.⁴³ It is surprising that the questions we have in NMRC are not more detailed or specific to quotidian life given the diversity of religious practice and variety of interreligious interaction in ninth-century Baghdad, where Ibn Ḥanbal did most of his teaching. What we find in NMRC is rather predictable when compared with other ninth- and tenth-century legal books, at least in content. One might get the impression from reading through it that not much new took place between Christians and Muslims as they moved into closer living quarters, which we know was not really the case.

How is Non-Muslim Religious Communities Similar to or Different from Other *Masā'il* Collections?

The *Compendium* of al-Khallāl can be viewed as a culmination and a definitive collection of the *Masā'il* collected by earlier students of Ibn Ḥanbal. Saud al-Sarhan has noted that the *Compendium* represents a second stage of legal development in the Ḥanbalī school.⁴⁴ During this stage, al-Khallāl compiled *masā'il* from many known collections of *Masā'il*, in addition to

⁴³ Saud Al Sarhan, "Responsa," 20, where he discusses Ibn Ḥānī's *Masā'il*.

⁴⁴ Saud Al Sarhan, "The Responsa," 44.

collecting reports first-hand. From this view, the contents of al-Khallāl's works resemble the collections of his predecessors insofar as he collects the same *masā'il* included in them. It also resembles other collections in that it is dedicated exclusively to the teachings of Ibn Ḥanbal.⁴⁵ Of the eight collections studied by al-Sarhan, only three are devoted explicitly to Ibn Ḥanbal's legal opinions, whereas the others include information from other teachers of law.⁴⁶

But NMRC differs from some of the earlier collections of *Masā'il*. NMRC goes beyond them not just as a definitive collection of *masā'il*, but in organizing a collection thematically devoted to non-Muslims. No other early Ḥanbalī text of this time, as far as I know, went to such a length to sort out Ibn Ḥanbal's teachings with a clear theme and objective. Other collections, by contrast, might have been topically arranged such as the *Masā'il* of 'Abd Allāh or al-Athram, but none arranges a section or devotes an entire book to non-Muslims.

NMRC also stands out as organizationally different than other collections: he inserts *ḥadīth* to frame sections of *masā'il* on a particular substantive legal topic. When he does, there is no indication that Ibn Ḥanbal ever linked a *ḥadīth* to the topic at hand. For example, al-Khallāl frames Ibn Ḥanbal's discussion about recording angels writing down the deeds of Christians in order to show that Ibn Ḥanbal believed God sets angels to record the deeds of Christians as he does for Muslims.⁴⁷ We simply do not know in this case and others like it whether Ibn Ḥanbal discussed the reports at other times. Al-Khallāl certainly feels comfortable framing *masā'il* in such a manner and using *ḥadīth* he thinks are authoritative or appropriate. Perhaps the precedent

⁴⁵ Saud Al Sarhan, "Responsa," 20, where Al Sarhan has pointed out that copyists of *Masā'il* manuscripts omitted content not directly attributed to Ibn Ḥanbal.

⁴⁶ Saud Al Sarhan, "The Responsa," 30.

⁴⁷ al-Khallāl, *Ahl al-milal*, no. 11. For other examples, see nos. 500, 502, 772, among many others.

set in other *Masā'il* collections, such as the *Masā'il* of al-Athram, are informative here. Al-Athram framed his *Masā'il* by opening a topical section with a *ḥadīth* or report from the Companions or Followers, a strategy he borrowed from his own teacher Ibn Abī Shaybah.⁴⁸ But al-Khallāl also closes some sections of substantive legal topics in way that, as far as I know, differs from the organization of earlier *Masā'il* legal collections, and in a haphazard and non-standardized manner.

The opening or closing of a substantive topic of law with *ḥadīth* or reports of Companions or Followers, I think, demonstrates that there is a good deal of subtext that only trained or experienced students knew. An experienced student might have immediately made connections that are not present to us but were obvious or accessible to students of the time, especially as it relates to weak or strong *ḥadīths* or reports from the Companions and Followers. The one thing it does tell us is that al-Khallāl works as a *faqīh* who arranged and organized the work of NMRC with an explicit purpose of reaching an authoritative position for the emerging Ḥanbalī school of thought.

The biggest difference between al-Khallāl's organization of NMRC—and the *Compendium* as a whole—is his intervention and commentary on *masā'il*. Al-Khallāl inserts his own commentary about one or a series of *masā'il*, designated by “Abū Bakr al-Khallāl commented.” This is a new move for the Ḥanbalīs, one that expands the scope and use of the genre of earlier Ḥanbalī *Masā'il* and one that al-Khallāl sees as necessary given the Ibn Ḥanbal's vast and widely disseminated knowledge, not to mention the inconsistencies or apparent contradictions in his rulings. Al-Khallāl seeks to clarify and establish consistency and continuity of Ibn Ḥanbal's teachings, setting up the later school with an authoritative collection. To do so,

⁴⁸ Saud Al Sarhan, “Responsa,” 11-12.

he often engages in employing juristic instruments resembling what other legal school termed *takhrīj* or *tarjīh*.⁴⁹ *Takhrīj* is an instrument used in legal schools for determining a precedent and extracting a ruling while *tarjīh* is used to weigh conflicting evidence with other legal schools.⁵⁰ But for the Ḥanbalīs, the only legal precedent that mattered was Ibn Ḥanbal's, and the other teachers' legal rulings often did not matter. Al-Khallāl was concerned with knowing what Ibn Ḥanbal had said. If Ibn Ḥanbal gave a conflicting legal ruling, then al-Khallāl seeks to clarify the most recent of Ibn Ḥanbal's opinions or to weigh the evidence in favor of what Ibn Ḥanbal most likely believed. The more recent of Ibn Ḥanbal's ruling outweighs his older ones.⁵¹

Ibn Ḥanbal gave his responses to questions at a particular point in time. No person should be hasty in trying to understand them. It is just as Ibn Ḥanbal says: 'I may retain my opinion from even twenty years ago.' What he means is that he only held one view, be it from 10 to 30 years prior, until he discovered a more correct one. Indeed, I have explained all of this here on this subject [of the legal testimony of non-Muslims]. Those who follow anything from the learning of Ibn Ḥanbal's *madhhab* will not be hasty in understanding his rulings, but will examine them with patience and prudence.⁵²

The preponderant ruling is the most authoritative; sometimes seemingly contradictory rulings arise from a misunderstanding of its interpretation.⁵³ Other times, al-Khallāl views a

⁴⁹ Christopher Melchert, "Ibn Hanbal, Ahmad," in *The Oxford International Encyclopedia of Legal History* (Oxford University Press, 2009). Christopher Melchert notes that later Ḥanbalīs apparently engaged in this procedure of *takhrīj*.

⁵⁰ For the hierarchical role of jurists in the Ḥanbalī tradition as opposed to other traditions, see Bakr Abū Zayd, *al-Madkhal al-mufaṣṣal ilā fiqh al-imām Aḥmad b. Ḥanbal wa takhrījāt al-aṣḥāb* (Jeddah: Dār al-Āṣima, 1417 AH), 1:304ff. A basic hierarchy exists in which only the highest of the four ranks, called a *muta'ahhal*, one "qualified," can weigh evidence from foundational texts and their principles.

⁵¹ al-Khallāl, *Ahl al-milal*, no. 381. For Sāliḥ's chronological organization in helping determine the more recent of Ibn Ḥanbal's rulings, see Saud Al Sarhan, "Responsa," 15-16.

⁵² al-Khallāl, *Ahl al-milal*, no. 381. For more examples of Ibn Ḥanbal changing his position, see nos. 713, 745.

⁵³ al-Khallāl, *Ahl al-milal*, no. 40, where al-Khallāl clarifies that though one of the four interlocutors who says Ibn Ḥanbal ruled that Muslims should leave Christian children behind in war, instead of taking them captive. As will be seen below, al-Khallāl explains that Ibn Ḥanbal means only a child has parents with him or nearby in a fort.

preponderance of evidence based on the transmitters of Ibn Ḥanbal's rulings to be authoritative. For example, al-Khallāl states that Ḥanbal (Ibn Ḥanbal's uncle) is wrong in saying that Ibn Ḥanbal disallows the *ahl al-kitāb* to testify against one another in a Muslim court,⁵⁴ based on the preponderance of evidence to the contrary: "Twenty men transmitted this information from Ibn Ḥanbal, and Ḥanbal is the only who differed."⁵⁵ For al-Khallāl, deciding a precedent (*takhrīj*) and weighing the evidence (*tarjīh*) is a combined process that establishes principles of deduction for the later school only insofar as it served as a means understanding what Ibn Ḥanbal taught.⁵⁶ We will see that al-Khallāl only rarely if ever deals with the divine sources to derive a ruling.⁵⁷ Only later would other principles of legal jurisprudence be developed.⁵⁸

Other times the process of *takhrīj* and *tarjīh* are a bit more complicated. Al-Khallāl in one instance has to weigh conflicting evidence offered by Ibn Ḥanbal's students in detailed fashion. For example, he lists a series of *masā'il* from many different interlocutors on what a Christian or non-Muslim has to say to become a Muslim. Al-Khallāl states, "I will confine myself to those among them" whom reported *masā'il* on this topic. Then, he goes on to explain that "if someone prays and utters the *shahādah* and says 'I am a Muslim,' then he certainly is. If he returns to God before after three chances to recant, he will not be killed."⁵⁹ According to one of the *masā'il*, Ibn Ḥanbal notes that Abū Ḥanīfah required converts to say, "I am leaving Judaism and entering into

⁵⁴ al-Khallāl, *Ahl al-milal*, no. 362, and his rather long commentary after nos. 213-16 and no. 381.

⁵⁵ al-Khallāl, *Ahl al-milal*, no. 378.

⁵⁶ For the rules of jurisprudence in the Ḥanbalī school and their own instrumentalizes, see Bakr Abū Zayd, *al-Madkhal*, 1:48-52, 1:289-320.

⁵⁷ See, for example, his weighing evidence about *ḥadīth*, *Ahl al-milal*, nos. 544 and 993.

⁵⁸ For the principles of *tarjīh*, see Ibn Muflīh, *Usul al-fiqh*, ed. F. M. al-Sadḥān, Riyadh, 1999, 4:1581ff.

⁵⁹ al-Khallāl, *Ahl al-milal*, no. 849.

Islam” as a sort of formal declaration. Ibn Ḥanbal rejects this position, and the irony of the situation is an incidental Jewish convert sitting with Ibn Ḥanbal at the time.⁶⁰ The point here is that al-Khallāl, by offering Ibn Ḥanbal’s authoritative determination, asserts what seems to be an authoritative opinion for the Ḥanbalī school of his time, and does so as a jurist implementing the legal instruments of *takhrīj* and *tarjīh*.

Furthermore, al-Khallāl has difficulty at times trying to resolve inconsistencies in Ibn Ḥanbal’s rulings. Consider for example al-Khallāl’s attempt to figure out Ibn Ḥanbal’s position on a Christian convert to Islam returning to an already-converted wife during her *‘iddah* period. Without getting into all of the historical details of precedents on this topic, al-Khallāl says, “I will explain it here once and for all (*bayānan wa shāfiyyan*). I have examined it, pondered it, reflected on it, and now have come to the believe that Ibn Ḥanbal meant...”⁶¹ He then goes on to examine the pertinent *masā’il*, saying that that he has cited all of the differences in order to help men of the *madhhab* arrive at an authoritative conclusion based on the given evidence. What is noticeable here is that al-Khallāl at a very early point in the formation of Ḥanbalism compiled *masā’il* with the objective of sorting out Ibn Ḥanbal’s authoritative position. And herein lies a main difference and advancement in the development of the Ḥanbalī school of law.

Al-Khallāl intervenes in the *masā’il*, demonstrating a subjective purpose in compiling them, if he can be said to have written his comments down himself.⁶² One logical intervention is his theological purpose, for example, in the opening chapter of the NMRC where he includes

⁶⁰ al-Khallāl, *Ahl al-milal*, no. 845.

⁶¹ al-Khallāl, *Ahl al-milal*, no. 545.

⁶² Whether al-Khallāl or his students wrote down his comments on the reports is unknown. It is possible that later students recorded his teachings or interventions into the text at a later time. For this practice, see Schoeler, *The Oral and the Written*, 36 and Schoeler, *The genesis*, 72-76.

ḥadīth not applied to a topic of the salvation of non-Muslims, the consequence of which shows that they have a potential path to Paradise. Why does he logically intervene in such a manner? Perhaps because questions about Christian children carried a lot of weight both within and outside of the Muslim community. Such questions might have been of interest to Christians or would-be converts of the ninth century, considering they might want to know what happened to a deceased child or children, a converted child, or children from a previous marriage. Some might even want to know what happened to a child taken captive or enslaved after a battle. Questions might have also been of interest to Muslims who wanted to appeal to potential converts: A God who does not punish children or condemn them to hell might appeal to them, but a God who made it possible for children to enter Paradise in the Hereafter might seem fair or just. Whatever the case, al-Khallāl is responsible for assembling and organizing the material in a way that reveals the true value of the discussion of the Christian as an interpretive figure in Ḥanbalī thought since the discussion provides a neat way to narrow the shape of the Christian's perceived behaviors, and that in accordance with Islamic legal categories.

How is *Non-Muslim Religious Communities* Organized?

Al-Khallāl organizes the text into convenient chapters (*kitāb*) followed by sections (*bāb*, pl. *abwāb*) according to Islamic legal categories. The untitled first chapter contains a wide variety of responses to disparate topics. Some entries discuss how a Muslim should behave in regards to Christian burial, prayer, fasting, festivals, conversion, education, and enslavement. The subsequent chapters are entitled Alms and Charity, Commerce, Marriage, Divorce, Funerals, Military Expeditions, Manumission, Punishments, Bloodwit, Land Rights, Conquests, *ʿAqīqah*, Sacrifices, Social Conduct and Conventions, and Apostasy. Each chapter discusses aspects of

how Christians are seen as legal subjects or how Muslims ought to interact with them. With a few exceptions, al-Khallāl tends to follow a similar format as contemporary substantive topical collections of *ḥadīth*.⁶³ The reasons the opening untitled first chapter might have deviated from this pattern will be discussed in the chapter on children. I should note that, with the exception of the (untitled) first chapter, all of the other chapter names are given in the manuscripts. It seems very probable that the chapter headings are those given by al-Khallāl. As for the section titles, without a doubt these are from al-Khallāl himself, as he often references them in the text.⁶⁴ The organization of the book into categories native to Islamic legal thought means that Christians are bound and limits of Islamic legal discourse. The Christian figure is constructed and categorized according to the Islamic legal categories, but never categories of Christian legal thought; what this means is that the Christian of NMRC cannot go beyond the Islamic construction of him: he is bound to Islamic legal categories despite the fact that quotidian one lived outside its boundaries.

The categorization and characterization of Christians under chapter headings are deceptive because the content oftentimes overlaps without being duplicated. For example, the stipulations for what a Christian woman can wear after marrying a Muslim is found in the chapter on conquests, but could have been placed in the chapter on marriage. The sections can also be misleading. Sometimes a section claims to be about Jews, but then discusses Christians or *dhimmīs* more generally. For example, in a section titled “The section on a Jew reviling a Muslim,” the ensuing entries discuss a Christian man doing so, and then a *dhimmī* doing so, without mentioning Jews at all. This might be due to the fact that the previous chapter discussed

⁶³ Wael Hallaq, *Introduction*, 29-20.

⁶⁴ al-Khallāl, *Ahl al-milal*, no. 162, 545, 786, among others.

Ibn Ḥanbal’s view about a *ḥadīth* in which a Jewish woman slandered the Prophet.⁶⁵ But, as we will see below, it also likely has something to do with the way the book was originally taught: in a teaching circle or copied through dictation. Al-Khallāl seems to slap some haphazard or at least ambiguous section headings on some sections, such as one pertaining to women converts, which he named “The section on everything else about this.”⁶⁶ Sometimes, too, al-Khallāl separates material that might have been included together, such as the separation between the *masā’il* in war as it relates to children and adults. There does not seem to be any consistent pattern of organization under section heading. Sometimes al-Khallāl opens or closes a section with a *ḥadīth*, other times there is a discernible general-to-specific pattern,⁶⁷ and other times there does not seem to be a noticeable reason I can discern at all, as has already been mentioned. What this means for the interpretive Christians is that a reader or hearer of the text might have to synthesize material found on one topic with material found on another topic, an endeavor I undertake in later chapters.

The hermeneutical Christian originally took shape in legal discussions about a variety of topics. The sequence of *masā’il* we have from Ibn Ḥanbal in any given chapter or section come from teaching circles that were not chronological, synchronous, or clearly associated with one another in the sessions where they were first raised. Some came from a time before Ibn Ḥanbal’s imprisonment, a point which al-Khallāl underscores perhaps to clarify which of his rulings were determinative and which were not.⁶⁸ In other words, since Ibn Ḥanbal decided not to teach *ḥadīth*

⁶⁵ al-Khallāl, *Ahl al-milal*, no. 736.

⁶⁶ al-Khallāl, *Ahl al-milal*, nos. 541-552.

⁶⁷ See, for example, the general-to-specific organization in *Ahl al-milal*, no. 326.

⁶⁸ al-Khallāl, *Ahl al-milal*, nos. 77, 79, 82.

after his imprisonment, his refusal to give a ruling on a topic might have been non-determinative. This is where Ibn Ḥanbal's son Ṣāliḥ's *Masā'il* is informative, because he seems to have organized his work chronologically.⁶⁹ What we have in NMRC are very short *masā'il* and Ibn Ḥanbal's often-one-line responses that were woven together by the organizing, editorial mind of al-Khallāl. There is no coherent argument or dissent articulated by Ibn Ḥanbal regarding his views toward Christians or other non-Muslims. Any appearance of consistency is the work of al-Khallāl. Thus, though an individual report might have significance on its own, the *masā'il* are best read as al-Khallāl's attempt to offer a coherent view of Ibn Ḥanbal's ruling. For this reason, the *masā'il* need to be read and understood as collective units of meaning, and thus cherry-picking them might be counterproductive at best or irresponsible at worst. The shape of the hermeneutical Christian as a collection of fragments of him from discussions serves to show us the artificialness of his construction in Ḥanbalī thought, a point made clear when looking at the way *masā'il* were originally asked or taught.

We must keep in mind that the *masā'il* al-Khallāl collected come from an indeterminate amount of teaching circles in public mosques or informal sessions at Ibn Ḥanbal's house or elsewhere. The content of these study circles came from hundreds of students who had since attending a circle dispersed throughout Baghdad and beyond. An *isnād* tells us how a student of Ibn Ḥanbal passed down information that al-Khallāl recovered. In some cases, students who attended a session were still alive and offered what they knew to al-Khallāl, and other times they were not. Still other times, al-Khallāl took *masā'il* from written notes or books available during his life. Those who had died had sometimes passed down what they knew from Ibn Ḥanbal to their own students or to companions of theirs, and thus al-Khallāl could recover it. The *isnād* is

⁶⁹ Saud Al Sarhan, "Responsa," 15-16.

important because it tells us the name the interlocutor(s), if identified, or the person(s) who heard an undisclosed interlocutor pose a question to Ibn Ḥanbal, usually designated by *su'ila*.⁷⁰ It also tells us how al-Khallāl learned a *mas'alah*. Take the following *isnāds*, for example:⁷¹

‘Abd Allāh b. Aḥmad (b. Ḥanbal) reported to *us that he said to his father...* (no. 107)

‘Abd Allāh b. Aḥmad (b. Ḥanbal) reported to *me, ‘I asked my father...’* (no. 117)

‘Abd Allāh b. Aḥmad (b. Ḥanbal) reported to *me, ‘I heard my father saying...’* (no. 991)

In these cases, Ibn Ḥanbal’s sons are the original interlocutors who shared this information with al-Khallāl. We don’t know if they were alone with their father from these examples. But we know that al-Khallāl notated how he received this information by saying “me” or “us” in each *isnād*. When he says “us” in the first example, he means that he and group of students heard it from ‘Abd Allāh in a teaching session. When he says “me,” he means that he heard it from ‘Abd Allāh when no one else was there. In the third example, we see that ‘Abd Allāh “heard” his father saying something to another student or group of students, or perhaps even his own brother. We have rather strong indications about how *masā’il* were transmitted which can provide for rich studies for communities of learning. But we should keep in mind that teaching sessions typically do not tell us much about when, where, or how long they took place. Thus, in most instances, we do not know much about at what point in life Ibn Ḥanbal held the session, how many students were there, or how long a study session was. Some internal indicators let us know when Ibn Ḥanbal hosted a student at his home, such a converted Jew who

⁷⁰ al-Khallāl, *Ahl al-milal* no. 30: “Yūsuf b. Mūsā reported to me that Ibn Ḥanbal was asked...” The point here is that Yūsuf heard another student asking a question.

⁷¹ al-Khallāl, *Ahl al-milal*, nos. 107, 117, 991.

sat with him while students came in intermittently.⁷² We also know that Ibn Ḥanbal often went to the mosque to hold teaching sessions, even when no one showed up.

Only after considering al-Khallāl's organizational structure can we begin to think, as I seek to do in this dissertation, about Ibn Ḥanbal's conception of the hermeneutical Christian, however artificial such an endeavor might seem to be. The ninth- and early tenth-century reader knew that reports came from teaching circles. Thus, a look at NMRC gives us an opportunity to see how al-Khallāl constructed an image of the hermeneutical Christian from the short glimpses of them from Ibn Ḥanbal's legal opinions, opinions which appear in a variety of different types of questions.

What Types of Questions Are Found in *Non-Muslim Religious Communities*?

The hypothetical nature of most of the questions in NMRC seems to be a case in point of what Professor Abou El Fadl argues are questions that “developed from factual scenarios that were stated as hypotheticals.”⁷³ The key discussion for Muslims asking questions to Ibn Ḥanbal are pedagogical: how might Muslims conceptualize or approach the sources for understanding God's omnipotence and divine foreknowledge about, for example, Christian children the Hereafter? How might Muslims conceptualize Christians as legal subjects who are bound to fulfill certain requirements of Islamic law but not others? And the discussion was also practical: how might a student following in the tradition of Ibn Ḥanbal issue a *fatwā* to Muslim questioners looking for answers about their non-Muslim children, family members, or friends? This might be

⁷² See fn58.

⁷³ Abou El Fadl, *Speaking in God's Name*, 170.

particularly important for those Ḥanbalīs who took positions of judgeships. But how do we tell the difference between the pedagogical and hypothetical or the practical and anecdotal, and how might this inform us about the shape and construction of the Christian?

Many of the questions NMRC reflect pedagogical legal questions about Christians and other non-Muslims that are primarily concerned with the method Ibn Ḥanbal used to issue a *ḥukm* rather than the content of the questions themselves. For example, one of Ibn Ḥanbal's students Ishāq b. Manṣūr al-Kawsaj (d. 855) traveled from Khurasan to Baghdad to ask him word-for-word legal questions based directly on al-Thawrī's (d. 778) *masā'il* collection.⁷⁴ Al-Kawsaj followed a protocol: he asked Aḥmad the same questions found in Sufyān al-Thawrī's collection, followed by asking his primary teacher Ibn Rāhawayh (d. 853),⁷⁵ eventually recording and comparing both of their responses in his own book.⁷⁶ About 13% of the entire text of NMRC is based on al-Kawsaj's hypothetical questions, at least some of which were relevant to Sufyān al-Thawrī in a previous generation in the city of Kufa. This approach, though I have not tested all 13% of al-Kawsaj's questions, helps narrow down the kinds and types of questions we find in NMRC. Much of the same could be applied to questions posed to Ibn Ḥanbal from other interlocutors. For example, the questions of Ḥanbal (Ibn Ḥanbal's uncle, d. 886) typically come from questions asked to Mālik b. Anas; the questions of al-Maymūnī (d. 887-888) and Muhannā

⁷⁴ See Alsarhan, "Early Muslim Traditionalism: A Critical Study of the Works and Political Theology of Aḥmad Ibn Ḥanbal," (PhD dissertation, University of Exeter, 2011), 50, 57-8. He cites Ibn Taymiyyah and Ibn Rajab's assertion of this. Also, see his comments on the popularity of other traditionalists such as al-Awzā'ī especially since his *masā'il* occur often in *Ahl al-milal*.

⁷⁵ There are several examples within *Ahl al-milal* that attest to this as well, such as no. 703 where the protocol is followed. For the other transmitters al-Kawsaj bases his questions on, see Alsarhan, "Early Muslim Traditionalism," 63-7.

⁷⁶ The resulting publication was his *Masā'il al-imām Aḥmad b. Ḥanbal wa Ishāq b. Rāhawayh*. See Ishāq b. Manṣūr Al-Kawsaj, *Masā'il al-imām Aḥmad b. Ḥanbal wa Ishāq b. Rāhawayh*, Madinah, 2004.

al-Shāmī (d. unknown) from al-Awzā‘ī; and questions of Ismā‘īl b. Sa‘īd al-Shalanjī (d. circa 844) from the Ḥanafīs.⁷⁷ Excluding these questions and others like them, we are left with *masā’il* that come from the ninth century, which are more likely reflective of quotidian social reality. And knowing that many of the interlocutors such as al-Kawsaj, Ḥanbal, al-Maymūnī, Muhannā, and al-Shalanjī were asking questions relevant to other authorities helps us see that some students wanted to know how Ibn Ḥanbal’s rulings and methods differed from other legal authorities. The Christian that emerges from these discussions is one from past discussions, and help us understand the role of the Christian in fitting a larger purpose in Ḥanbalī thought, as will be seen later.

There are some *masā’il*, however, that reflect practical matters related to quotidian social reality. Take for example one about whether Muslims should allow a Christian or Jewish woman to wash the body of a Muslim woman who dies.⁷⁸ This *mas’alah* is based on the *muṣannaf* of ‘Abd al-Razzāq,⁷⁹ Ibn Ḥanbal’s teacher, who himself cited an earlier report that a Christian or Jewish woman could wash the body of a Muslim woman. Ibn Ḥanbal’s exclamation, “Train (plural) them!” or perhaps “Go ahead and train them, then!”⁸⁰ suggests that he is addressing a quotidian social situation in Baghdad. Similar examples abound, such as when asked “What do you think about a Christian neighbor sharing our cooking pots” or “us [Muslims] using theirs,”

⁷⁷ See Ibn Taymiyyah, *Jāmi‘ al-masā’il*, ed. Muḥammad ‘Azīz Shams, Jeddah 1422 AH, 1:402; and Al Sarhan, “Responosa,” 2-3.

⁷⁸ al-Khallāl, *Ahl al-milal*, no. 1093.

⁷⁹ ‘Abd al-Razzāq, *Muṣannaf*, ed. Ḥabīb al-Raḥmān al-‘Azamī, South Africa, 1970, 3:410-11.

⁸⁰ al-Khallāl, *Ahl al-milal*, no. 58. In this example, Ibn Ḥanbal is pushed further to explain the Quranic verse on whether these kinds of women can look upon the nakedness of a Muslim’s body. The resulting questions discuss previous teachers, notably one from Syria, on this tradition.

Ibn Ḥanbal says that he sees “no harm in it.”⁸¹ That they were neighbors in circumstances where body washers were needed, or neighbors had to share cooking ware, or in examples where a Muslim could hear his Christian neighbor “beckoning [a Muslim] for help,” tell us about some of their interactions. Other examples on midwifery, everyday bargaining in the marketplace, the death of a child before conversion, Christian women wearing Islamic clothing, among many others, evoke the same immediacy, and seem to characterize contemporary, local issues of social relations in Baghdad or general quotidian interactions of everyday life. But these are limited and their social impact is unknown to us. And, lastly, these difficult to support by using legal literature without the help of other sources. We will see that the remarks reflecting quotidian life are not often used in this dissertation since they often do not tell us anything about the way Ḥanbalīs discussed Christians that accomplish a larger purpose.

There are several anecdotes in the text, and these can be treated in a straight-forward manner, though they help us little in discovering the use of the interpretive Christian. Take for example an anecdote about a time when Ibn Ḥanbal accidentally returns a greeting to a Christian with “*alaykum al-salām*,” a greeting he would never have issued knowingly, and to which his companion has to point out the man’s *dhimmī* status.⁸² The fact that Ibn Ḥanbal made this mistake has substantial implications about visible, public culture, and the daily life of common people in Baghdad. It seems plausible then that hypothetical questions about Christian women wearing Islamic garments (*thiyāb*) embroidered with a quranic verse or the Prophet’s name⁸³

⁸¹ al-Khallāl, *Ahl al-milal*, nos. 1038-41.

⁸² al-Khallāl, *Ahl al-milal*, no. 1099. Jack Tannous, *The Making of the Medieval Middle East: Religion, Society, and Simple Believers* (Princeton: Princeton University Press, 2018), 445. Tannous suggests that negotiating religious difference was difficult because of religiously mixed household.

⁸³ al-Khallāl, *Ahl al-milal*, nos. 1125-26. For Muslim selling charms with quranic verses, see ‘Abd Allāh b. Ḥanbal, *Masā’il Ibn Ḥanbal*, ed. Z. al-Shāwīsh, Beirut, 1981, 291 (nos. 1083-85).

instead of the yellow girdle (*zunnār*), or Muslim men asking if they should buy their Christian wife's clothing themselves,⁸⁴ arose from contemporary local situations in Baghdad. Did Christian women wear Islamic garments because there was easier access or availability or because they often married Muslim men? Does it have to do with accessibility and traveling the shortest distance to a market? Whatever the case, some of the anecdotal examples provide support for the hypothetical. But these, too, do not tell us how the hermeneutical Christian was incidentally constructed, and seem like incidental remarks al-Khallāl saw as unnecessary to comment upon.

We can discern the shape of the hermeneutical Christian and the purpose he serves in Ḥanbalī law by examining both hypothetical and practical questions, the latter to a limited extent, or a combination thereof. The hypothetical and pedagogical questions are by far the most frequent, and will serve as the main source of analysis the chapters below. At the same time, there are instances when Ibn Ḥanbal comments on social Christian practice that help us understand the immediacy of his ruling. We should keep in mind that it is helpful to know what type of question is being asked when writing a history of Christians or other non-Muslims, be it social or intellectual. The superficial treatment—assuming that just because something was asked then it must be taking place—of the text has resulted in overlooking, ignoring, or assuming what kind of text it is: a *masāʾil* that often has an interlocutor or interlocutors asking questions about circumstances they were ignorant of, had interest in debates about, had insufficient knowledge of, or that simply did not have a ready-made or easy answer in the *sunnah*. These questions tell us about the transmission and reception of ideas about the Christian throughout

⁸⁴ al-Khallāl, *Ahl al-milal*, no. 1002.

time, and the different shapes he took in different schools of thought. On the other hand, we cannot look over the types of questions and pass them off as socially or intellectually irrelevant.⁸⁵

I think that most of the historians of the Middle East would agree that many of the questions are hypothetical and that is difficult if not impossible to determine when a situation is otherwise. Using Ḥanbalī legal literature for social history cannot on its own help us know a great deal without other literary or extra-literary material. To seek socially significant information from Ḥanbalī *masāʿil* is of course a worthy endeavor, one I will at different points mention throughout this dissertation. For one, it is possible that some of the hypothetical *masāʿil* are *de novo* legal questions arising from quotidian interactions between Muslims and Christians. But to make NMRC a source of quotidian social behavior is, I think, not a practical approach on at least two levels. First, it misses the point that many other Ḥanbalī collections include information about non-Muslims. Second, it is to miss one of al-Khallāl’s and the Ḥanbalīs’ main points: to preserve the image of a Christian as he existed in the past in order to inform the present; that is, to discuss the Christian as a static legal subject as he exists in the Quran and *sunnah* rather than address ninth- or tenth-century social or cultural issues; they could be used to address social issues only insofar as the rulings confirm to the *sunnah*. It is this Christian legal subject tell us what purpose the Christian serves in reinforcing Islamic ideas of the self and community, not to mention salvation, legal authority, and theology.

⁸⁵ Or recent studies that use NMRC in one or both of these manners, see Thomas Sizgorich, *Violence and Belief in Late Antiquity*, 231-71; Luke B. Yarbrough, *Friends of the Emir*, 28; Anna Chrysostomides, “Ties that Bind: The Role of Family Dynamics in the Islamization of the Central Islamic Lands, 700-900 CE,” (PhD dissertation, Oxford University, 2017), 180-212, as well as 1-5, 39-40, 139-140; Christian Sahner, *Christian Martyrs*, 61; Jack Tannous, “Between Byzantium and Islam: Making Incommensurables Speak,” (PhD dissertation, Princeton University, 2010), 451-52; and Saud al-Sarhan, “Aḥmad b. Ḥanbal’s Legal Opinions on the Fight against Bābak’s Uprising,” 86-105. For a study on the issues of writing social history from legal sources, see R. Stephen Humphreys, *Islamic History: A Framework for Inquiry* (Princeton: Princeton University Press, 1991), 209ff.

Hypothetical or Not, Who Are the Questions About?

The non-Muslim individuals and communities are not often differentiated in NMRC. NMRC tells how Ibn Ḥanbal addressed individuals of Christian, Christian-Arab, Jewish, Magian, and Sabian confessions. As a record of Christians and other non-Muslim communities of the past, NMRC indiscriminately applies the terms People of the Book (*ahl al-kitāb*), Protected People (*ahl al-dhimmah*), and polytheists (*mushrikūn*) in reference to non-Muslims, reflecting that the terms were still undergoing the process of being defined, and would continue to do so in legal texts of ensuing periods. Christian communities are directly discussed under the generic term Christians (*naṣrānī*, pl. *naṣārā*) more often than other *dhimmi* individuals, but it is not readily apparent whether any of the entries in the text have in mind a specific Christian community.

NMRC never identifies the Christians whom many of the interlocutors would have had in mind, if any, or whom would have been in close contact with Ḥanbalī Muslims in the ninth century. But internal evidence suggests that in some cases it was the Persian-speaking Church of the East or “Nestorian” Christians. Take for example Ibn Ḥanbal’s solution on how Muslims should greet another Muslim’s Christian family: by speaking in Persian.⁸⁶ Otherwise, there is no way of knowing which individuals or communities a hypothetical question might have originally referred to unless Christian source and studies of Christianity in Baghdad during this period are consulted. As legal subjects, perhaps it does not matter at all, given that so much of what is said

⁸⁶ al-Khallāl, *Ahl al-milal*, no. 1110.

about Christians has little to do with Christians as they actually were, but who Muslims wanted them to be to better understand themselves.

Interestingly, a section on Muslim apostates who neglect religious duties is included, perhaps indicating that they were categorized along the same lines as or even worse than *dhimmīs*. There is also some mention of pagan Arab communities, but the discussion of them is limited to a handful of entries.⁸⁷

When and How Was *Non-Muslim Religious Communities* Collected and Compiled?

NMRC was likely collected throughout the late ninth century and possibly into the early tenth, but we know very few details about the process. As a teacher in Baghdad, Ibn Ḥanbal left a large footprint, and many students wrote down and recorded what he has said during teaching sessions. But by the very nature of knowledge-seeking in the ninth-century world, many students, after traveling to Baghdad to learn from Ibn Ḥanbal, took their knowledge of what he said back home with them. His son Ṣāliḥ even became a judge in Nishapur sometime in the late ninth century. Others who lived in Baghdad retained a reservoir of Ibn Ḥanbal's teachings. Al-Khallāl attempts, quite successfully, to recover some of that knowledge by traveling to collect them from or by writing to students. His collection of Ibn Ḥanbal's *masā'il* was supported by letters of recommendation written by al-Marrūdhī.⁸⁸ He traveled extensively to collect *masā'il*, apparently to Fāris, Khurasān, Egypt, Syriac, and al-Jazīrah,⁸⁹ though he was able to acquire

⁸⁷ See, for example, *Ahl al-milal*, nos. 474, 475, and indirectly in no. 1027.

⁸⁸ Saud Al Sarhan, "Responsa," 32.

⁸⁹ Saud Al Sarhan, "Responsa," 32.

many in Baghdad where he lived. In Baghdad, for example, al-Khallāl collected around 78 *masā'il* from al-Marrūdhī alone, or about 5% of the total questions asked in NMRC. Additionally, we know that al-Khallāl wrote and received *masā'il* through written communication.⁹⁰ He also had access to the written notes of some late ninth or early tenth century students of Ibn Ḥanbal, who were also likely students of al-Khallāl.⁹¹ Little to nothing is known, as far as I can tell, about how al-Khallāl collected notes or received funds to embark on his journeys to recover the teachings of Ibn Ḥanbal. One might speculate that there were libraries or a *waqf* institution established that al-Khallāl could access or fund his work. Perhaps they were self-funded.

When and How Was *Non-Muslim Religious Communities* Taught or Dictated?

Al-Khallāl is said to have taught in the Mosque of al-Mahdī within the Round city of Baghdad where he hosted teaching circles. In a time of pre-*madrasah* learning and instruction, and as a forerunner of the *madrasah*,⁹² these teaching circles were a way for Ibn Ḥanbal's knowledge to be disseminated.⁹³ Al-Khallāl also taught in a mosque somewhere near the Ḥarbiyyah Gate where he met his soon-to-be-student Ghulām al-Khallāl,⁹⁴ who was at the time serving as a guard at the Gate. But what type of material did he teach? Did he teach *Ahl-al-milal* to his students after organizing it? Unfortunately, we do not know with surety exactly what al-

⁹⁰ al-Khallāl, *Ahl al-milal*, no. 51.

⁹¹ al-Khallāl, *Ahl al-milal*, no. 22.

⁹² George Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981), 10-12.

⁹³ Saud Al Sarhan, "Responsa," 37.

⁹⁴ Ghulām al-Khallāl, *Zād al-musāfir*, 1:24.

Khallāl taught in his teaching circles. Whether he taught NMRC in a large gathering or a small study circle is up for debate, but he, at the very least, dictated it to students who copied the lessons down.

It should be clear by now that the collection and compilation of Ibn Ḥanbal's rulings about Christians was an attempt to create a definitive collection of *masā'il*, most of which are hypothetical, for the students of al-Khallāl in ninth-century Baghdad. The Christian who emerges in the text never existed, and is confined to the categories of Islamic law. The nature of the questions asked tell us that at stake in discussions about Christians is the attempt to know God's will for them as textual or legal constructions, but not social beings. In the following chapter, we will see that the artificial shape of the Christian in Ḥanbalī thought is evident: Ibn Ḥanbal's opinions about Islamic commercial law and Muslim practice shows that Muslims are superior to Christianity and Christian practice. The best approach to forming commercial partnerships with Christians is to avoid them. If Muslims do, they are subject to breaking the law and disqualifying themselves from the benefits of God's law: salvation.

CHAPTER 2: IBN ḤANBAL AND THE HERMENEUTICAL CHRISTIAN COMMERCIAL TRANSACTION

Introduction

In the wake of the Islamic conquests of the seventh and eighth centuries, Christians of the former Byzantine and Sasanian empires began to forge new economic relations with nascent Muslim communities across the conquered territories. As contact between Christians and Muslims became increasingly common, so did commerce between them. Since Muslims observe distinct regulations that, in principle, governed their commercial transactions in ways distinct from non-Muslims, a long tradition of legal discussion and debate emerged about how Muslims were to transact with Christians and other non-Muslims. But we know very little about the prophetic precedents regarding the contracts formed and business transacted between Christians and Muslims, and more about social practices such as those in Egypt.⁹⁵ Arabic legal sources tell us that the Prophet Muḥammad traded with non-Muslims during his life, permitting crop-sharing partnerships or the exchanging of goods with them, and vice versa. We know reports about the lived tradition of the Prophet, such as his prohibition of contracts where a Christian had managerial authority over Muslim material wealth. One thing was for sure: God condemned illicit uses of money.⁹⁶ But there are not many anecdotes or precedents specifically regarding commercial interactions with Christians that trace back to the Prophet in legal literature. What

⁹⁵ Lev Weitz, “Islamic Law on the Provincial Margins: Christian Patrons and Muslim Notaries in Upper Egypt, 2nd-5th/8th-11th Centuries,” *Islamic Law and Society* 27, 1-2 (2019): 5-52, doi: <https://doi.org/10.1163/15685195-00260A07>; Naïm Vanthieghem and Lev Weitz, “Monks, Monasteries, and Muslim Scribes: Three Parchment House Sales from the 4th/10th-Century Fayyūm,” *Arabica* 67, 5-6 (2020): 461-501, doi: <https://doi.org/10.1163/15700585-12341567>; Phillip Ackerman-Lieberman, “Commercial Forms and Legal Norms in the Jewish Community of Medieval Egypt,” *Law and History Review* 30, no. 4 (2012): 1007-052, doi:10.1017/S0738248012000685; and Luke Yarbrough, review of *The Business of Identity: Jews, Muslims, and Economic Life in Medieval Egypt* by Philip Ackerman-Lieberman, *Speculum* 94/4 (October 2019): 1116-17.

⁹⁶ Wael Hallaq, “Groundwork of the Moral Law,” *Islamic Law and Society* 16, 3-4 (2009): 239-279. Hallaq argues that illicit uses of money like *ribā* were condemned already in the Meccan period of revelation, which in turn laid the groundwork for later legal debates.

we do have leaves a lot of question marks over how Muslims were to conduct business with Christians, and how that might differ from one region or jurist to another.

Despite the scarcity of anecdotes and precedents in the Islamic legal tradition, Christians and non-Muslims are viewed as dishonest in or threatening to Islamic contracts, and Muslims are discouraged from transacting with them. In ninth-century Iraq, Ibn Ḥanbal's students want to know how the earliest Muslims engaged in commerce with Christians—though they did not ask it directly—and if the few precedents available stand the test of time in an increasingly complex commercial society like Baghdad. What types of commercial contracts can Muslims form with Christians or other non-Muslims, what types of marketplace exchanges can they engage in within the *dār al-Islām*,⁹⁷ and how might contractual conditions work? Although these questions are on the surface about technical points of law, Ibn Ḥanbal's students seem to care less about the actual contracts and more about the religious and legal implications of engaging in business with Christians.

In this chapter, we will see how Ibn Ḥanbal characterizations of Christians and other non-Muslims in the Quran and later reports of Followers implicitly helps him interpret them as dishonest in contracts, and how they bring uncertainty to them. He understands Christians as economically corrupt and spiritually contaminated. I will begin the discussion by analyzing *masā'il* about contracting partnerships with Christians, showing that Ibn Ḥanbal viewed them as unable to fulfill the requirements of Islamic law because they bring uncertainty and illicit practices to them. Ibn Ḥanbal interprets contractual relations with Christians as a springboard to demonstrate the superiority of Muslims in commercial practices and the superiority of the

⁹⁷ Ibn Ḥanbal does rule on what happens outside the *dār al-Islām*. In one *mas'alah*, he opines that Muslims can take interest in commerce in the *dār al-ḥarb*, for which see Ṣāliḥ b. Ḥanbal, *Masā'il*, ed. F. Muḥammad (Delhi: Dār al-'Ilmiyyah, 1988), 2:2,89. Cf. al-Mardāwī, *al-Inṣāf fī ma'rifah al-rājiḥ min al-khilāf*, ed. Muḥammad Ḥāmid al-Fiḳī, n.p., 1955, 5:52-3.

Islamic legal system, a system where only a Muslim can act in a manner required by the law. The interpretive Christian, on the other hand, cannot live up to the broad legal requirements of Islamic contract law,⁹⁸ and do not, cannot, and never will serve as honest partners in fair economic exchange.

That Christians are unable to fulfill the requirements of contract law is supported in Ibn Ḥanbal's personal piety and devotion to God. Christians, from his perspective, bring corruption and contamination to Muslims more generally. As for their corruption, I will show how Ibn Ḥanbal's imagines Jesus as a renunciant, and how this view of Jesus stands in stark contrast the characterization of Christians as given in the Quran and *sunnah*, though a full analysis is not given. As for their spiritual contamination, I will give one example that showcases his experience with a Christian doctor employed by the Caliphate, and how this exemplifies the contamination Christians might bring to economic interactions with Muslims. These two points help show how Ibn Ḥanbal's personal piety as an ascetic renunciant go beyond the requirements of the *sunnah*, explaining how his personal practice transcends it.

Ibn Ḥanbal, Commerce, and the Hermeneutical Christian

We will look to three types of commercial partnership contracts found in NMRC to discuss the interpretive Christian: joint-partnerships (*sharikah, sharikāt*), *commenda* (*muḍārabah, muḍārabāt*), and sharecropping partnerships, the latter typically considered a *muḍārabah* in Ḥanbalī law.⁹⁹ The questions ninth-century students raise about these

⁹⁸ This point is in agreement with Abraham Udovitch's analyses in *Partnership and Profit in Medieval Islam* (Princeton: Princeton University Press, 1970), 227-30.

⁹⁹ There is no comprehensive or systematic account of contractual partnerships or commercial law between Muslims and *dhimmīs* in early Ḥanbalī legal books. This does not mean Ibn Ḥanbal is unaware of *sunnah* about contract law.

partnerships are in part about the nature and legality of honest exchange. Their questions are about morality and legality, the former not a native category for Ibn Ḥanbal. The two categories cannot be separated: law dictates legality for Ibn Ḥanbal since he views the Quran and *sunnah* as the basis of all upright behavior, and following the *sunnah* leads to salvation.¹⁰⁰ This is evident in Ibn Ḥanbal’s response discouraging Muslims from

He does have a vast knowledge of it, as later collections make clear. He is less interested in the nuances of contract law, and more focused on the application of *sunnah* in his personal life: they are inseparable. Later books in the Ḥanbalī school do not always comprehensively deal with Christians and other non-Muslims contracting partnerships or *commenda* with Muslims any more than al-Khallāl’s *Ahl al-mīlāl*. A robust analysis could be undertaken on Ḥanbalī contract law based on Ibn Qudāmah, *al-Mughnī*, ed. al-Turkī and al-Ḥilū, Riyadh, n.d., 4:1-50, 7:109ff; and al-Mardāwī, *al-Inṣāf*, 5:11ff.

The lack of comprehensive treatment in early and later books is probably in part the result of a simple concept: once it is established that *dhimmī* non-Muslims cannot legally manage capital or commodities (for example, buying and selling in the marketplace) in commercial contracts, and that Muslims can, all of the applicable rules of contracts are the Muslim’s responsibility. Perhaps this is why Ibn Qudāmah in his commentary on al-Khiraqī’s work opts to mention Christians in the beginning of his discourse without needing to mention them again (*al-Mughnī*, 7:109). Put another way, once it is established that non-Muslims are not able to manage purchases or sales because they deal in *ribā*—and despite their money being a valid legal tender and that they deal in *ribā* with one another—Muslims are the only option for doing so, and all of the subsequent contract law legal for Muslims applies to their contracts with Christians. Not all contract law applies to Christians such as in contract laws about selling slaves to Christians. They are not applicable since Muslims should not sell to them for fear of spreading unbelief and *shirk*: enslavement is assumed to be an agent of conversion. Christians could, of course, own slaves, for which, see Ṣāliḥ, *Masā’il*, 2:458. *Ahl al-mīlāl* for its part treats partnerships and *commenda* with Christians as formal substantive topics of law, while other ninth- and tenth- century legal books from Ibn Ḥanbal’s students and children have scattered references to them. For a brief comment on the lack of studies on Ḥanbalī contract law, see Udovitch, *Partnership and Profit*, 7. For an early account of Ibn Ḥanbal’s view on money and money exchange, see *Zād al-musāfir*, 4:174-180.

¹⁰⁰ Law shapes morality according to the *ahl al-hadīth*. Revelation and *sunnah* direct morality and reinforce it at every turn. Although “morality” does seem evident in Ibn Ḥanbal’s rulings, at least insofar as morality is implicit to rigorously following the *sunnah*, the term itself might not constitute a category for Ibn Ḥanbal. For him, legality is the ever-present category: following the law, *sunnah*, means a chance for salvation. I use the term “legality” and “licit” to convey this idea without imposing the category of “morality” onto Ibn Ḥanbal and his rulings. For more on the relationship between legality and morality, see Patricia Crone, *God’s Rule: Government and Islam: Six Centuries of Islamic Political Thought* (New York: Columbia University Press, 2006), 9, 259-85. The study of Ḥanbalism has often been couched in moral terms, as is evident in *Encyclopaedia of Islam*, 2d edition, s.v. “Ḥanābila”; Sabari, *Mouvements*, 101, where the term social-moral is used. Melchert, *Ahmad ibn Hanbal*, 77-78; Nimrod Hurvitz, “Schools of Law,” 46-51 for a survey of sources that use morality, and his own use of it in 51ff; Hurvitz, *The Formation of Ḥanbalism: Piety into Power* (New York: Routledge, 2002) 68 passim; and Hurvitz, “Biographies and Mild Asceticism: A Study of Islamic Moral Imagination,” *Studia Islamica*, no. 85 (1997): 41-65, doi:10.2307/1595871.

Morality and economics have been a much-discussed topic in the premodern Islamic and Mediterranean world, particularly across the Christian east and west and the caliphate. For the role of morality in economic transactions in Eastern and Western Christendom, see Diana Wood, *Medieval Economic Thought* (Cambridge: Cambridge University Press, 2004), 159-205 (chapters 7 and 8 on usury); and Angeliki A. Laiou, “God and Mammon: Credit, Trade, Profit and the Canonists,” in *Byzantium in the 12th Century*, ed. N. Oikonomides, 261-300. For Islamic legal thought, see Maxime Rodinson, *Islam and Capitalism*, trans. Brian Pearce (New York: Pantheon,

forming joint-partnerships with Christians and Jews, saying they may only “form a joint-partnership as long as the Muslim does the purchasing and selling, because they [Christians and Jews] engage in *ribā*, and deal illicitly with material wealth.”¹⁰¹ After a short pause, apparently thinking on it a bit, he then cites Quran 3:75, a verse invariably implicating Christians as dishonest in contracts. His three reasons—*ribā*, illicit treatment of wealth, and the Quran—discouraging Muslims from forming partnerships warrant some analysis because each helps us understand the way Ibn Ḥanbal uses fixed characterizations of Christians in the Quran and *sunnah* to explain why Muslims are best not to contract with them. And we will discuss these in turn—but not exactly in this order—to understand the ways Ibn Ḥanbal views Christians as inviable partners in contracts. They are dishonest. Even if they could be honest, they still would not be able to fulfill God’s requirements for contracts, and they are *ḥarām* by definition, since they engage in practices that God permits but that invalidate Muslim contracts.

The nature of honest exchange in contracts includes two interrelated and overlapping concepts implicit to Ibn Ḥanbal’s legal rulings on contracts. The first is the nature of intercommunal commercial exchange between individuals of communities with different legal, social, religious, customary, and economic practices, albeit ones still undergoing development. Ibn Ḥanbal’s students want to know how he interprets God’s

1973); Louis Baeck, *The Mediterranean Tradition in Economic Thought* (New York: Routledge, 1994); Yassine Essid, *A Critique of the Origins of Islamic Economic Thought* (Leiden: Brill, 1995); S.M. Ghazanfar, ed., *Medieval Islamic Economic Thought: Filling the Great Gap in European Economics* (New York: Routledge, 2003); Charles Tripp, *Islam and the Moral Economy: The Challenge of Capitalism* (New York: Cambridge University Press, 2006); and Avner Greif, *Institutions and the Path to the Modern Economy: Lessons from Medieval Trade* (Cambridge: Cambridge University Press, 2006). For immorality and religion in (tax) contracts contributing to the decline of Abbasid political power based on al-Ṭabarī’s history, see Ulrika Martensson, “It’s the Economy, Stupid,” *JESHO* 54 (2011): 203-238.

¹⁰¹ al-Khallāl, *Ahl al-milal*, no. 296.

law about contracts as cooperating, clashing with, integrating, or superseding Christian practice. The second is the nature of honest exchange, and whether a Christian can be seen as a licit partner in a commercial contract or business arrangement. How, for example, might a Christian fulfill the larger legal imperatives or civic values or virtues of the law? This, as we will see, is important for partnerships in which trust and legality are key components. These two concepts have made up a central point of discussion in this and other Islamic legal discourse that continues into the present.¹⁰²

The Nature of Intercommunal Commercial Exchange

Ḥanbalī discussions of Christians tend to focus on their inability to honestly deal with material wealth because of their religious disposition. A baseline understanding of Ibn Ḥanbal's view is that Christians are dishonest in contracts, appoint which should be kept in mind when discussing the nature of honest exchange, as this view permeates and underlies all discussions, and seems to imprint Christians with an inescapable legal persona inevitably and implicitly used to show the superiority of Muslims and the Muslim economic legal system. By virtue of being Christian, they deal with material wealth according to their native categories of practice or custom, which, from Ibn Ḥanbal's perspective, are inevitably and unavoidably unethical and illicit, though never defined or discussed. The extent to which Ibn Ḥanbal is familiar with the Christian categories of practice and custom or their state of commercial law is unclear, but is insignificant. Even if he did know, he would not find much in the way of a written code

¹⁰² Charles Tripp, *Islam and the Moral Economy*, 4.

on contracts.¹⁰³ For him, Christian civil and commercial law or practice is nullified by the existence of *sunnah*, as well as his own preference to avoid contact with Christians by all means. That is why he says that, for example, even if a Muslim with a business partner on his deathbed, he should not visit him.¹⁰⁴ In other words, Ibn Ḥanbal is not concerned with how Christians actually live or contract business deals except when Muslims are considered, and then only from their characteristics in the Quran and *sunnah*, as we will see.

To illustrate the nature of intercommunal commercial exchange, we may look at an example of the pitfalls of contracting with Christians. Christians, from Ibn Ḥanbal's view, cannot be entrusted to manage economic affairs because of their worldliness, and their penchant for wine and money. If, for example, a Christian purchased grapes to make wine or purchased wine, both of which are illicit for all Muslims, or if he purchased pigs with a Muslim partner's money, also illicit, the Muslim is implicated in the sale, and cannot receive profit from the transaction.¹⁰⁵ If a Muslim transacts with a Christian and gives him authority over a commercial enterprise, the Muslim is implicated too because

¹⁰³ The Christian communities of the Caliphate were, for the most part, the Church of the East and the (West) Syriac Church, both of whom only began to formulate contract, inheritance, marital, and divorce law prior to and with more momentum after the Islamic conquests. But even with the development of laws by Christians on material wealth, such as inheritance and property, little is said about commercial contracts. For a brief and informative introduction to the types and kinds of civil law, see Uriel Simonsohn, "The Introduction and Formalization of Civil Law in the East Syrian Church in the Late-Sasanian-Early Islamic Periods," *History Compass* 14/5 (2016): 231-243. For civil laws on marriage, inheritance, see Lev Weitz, *Between Christ and Caliph*, 109-220. In Sachau, *Rechtsbücher*, canons 88-89, 2:156-159, there is also some mention in the Patriarch of the Church of the East Ishobarnun's law book about Christians taking interest. Though not recommended, he says, if they do, they should take between 12-20 percent a year, and no more. Mention is also made about how a creditor and debtor might deal with one another, mainly through mercy and good judgment. For more on this collection, see Weitz, "The Shaping of East Syrian Law," 71-116. It suffices to say that the lack of law on commercial transactions such as partnerships, loans, and debts is worthy of its own study.

¹⁰⁴ al-Khallāl, *Ahl al-milal*, no. 607.

¹⁰⁵ al-Khallāl, *Ahl al-milal*, no. 312.

of the suspicious behaviors Christians exhibit. This suspicion applies to many parts of a transaction, such as purchasing and selling, appraising, transporting, packing, storing, and unloading goods. Further, there are issues about what types and how much money can be received in coin or in credit. All of these factors, implied and internal to partnership contracts, at any stage of the commercial partnership, might result in the breaking of the requirements of fair legal exchange if undertaken with Christians. Christians cannot be in authority over Muslims in commerce because the former are likely not to observe the law, from the Muslim view, that applies to such contracts. In short, Christians are characterized as engaging in *ḥarām* activities not native to proper Muslim practice, and thus serve to show their inability to participate in fair exchange with Muslims. The static representation of Christians in contracts helps demonstrate the superiority of the Islamic legal system, idealizing it and the Muslims who ought to engage with it through *ḥalāl* practices.

The interpretive concept of Christians as untrustworthy or dishonest in commercial transactions is also supported in Ibn Ḥanbal's appeal to their illicit behavior, which is too common to even need to cite a proof text. His saying that Christians deal "illicitly with material wealth" seems to mean that they deal in commodities illicit for Muslims, such as wine and pork. This is evident in Ibn Ḥanbal's responses on another type of partnership, the *muḍārabah*. A *muḍārabah* is a contract in which one or more partners fund a business venture by supplying money or a commodity to another partner or partners who in turn exchange or sell it for a profit. When asked about whether a Muslim can form a *muḍārabah* with Christians, Ibn Ḥanbal replies that, as with joint-partnerships, a Muslim

must be in charge of the purchasing and selling in the enterprise.¹⁰⁶ This is simply another way of saying Christians are legally disqualified by the very nature of their lifestyles of growing, drinking, eating, or selling wine, or raising, selling, buying, or eating pork. But it is also extended to mean that a Muslim cannot know how money is dealt with if a Christian is managing it. In other words, the contract becomes uncertain once it is under Christian control and management.

Uncertainty in contracts is by its very definition illicit. It is here that we see that the nature of honest exchange includes the uncertainty Christians bring into contract partnerships. They might, for example, lead the Muslim into partnering in wine-production, which other *masā'il* on a type of *muḍārabah* called sharecropping partnerships (*muzāra'ah*) demonstrate.¹⁰⁷ Sharecropping involves the combining of capital to rent land, tools, animals, seeds, or other materials for the crop share, with the goal of turning a profit, usually on the local level, and is one of the precedents discussed in the *sunnah* as being an economic contract the Prophet made with Jews of Khaybar.¹⁰⁸ In one *mas'alah*, a Christian is said to dupe a Muslim in their equal-investment sharecropping partnership by engaging in *ḥarām* practices (i.e., selling grapes to make wine) since he is being dishonest. Ibn Ḥanbal says that the Christian is to pay the Muslim

¹⁰⁶ al-Khallāl, *Ahl al-milal*, nos. 310-11, 314-15. For problems posed about Christians who are in partnerships or giving loans to one another having to do with illicit commodities, see nos. 314-18.

¹⁰⁷ al-Khallāl, *Ahl al-milal*, nos. 313-14. For the legal arrangements of a crop share between Muslims, which seem as if they would apply to Christians as well, see Ghulām al-Khallāl, *Zād al-musāfir*, 2: 462-467 (nos. 1394-1406). For an overview and analysis of problems on share-cropping, see Ziaul Haque, *Landlord and Peasant in Early Islam. A Study of the Legal Doctrine of Muzāra'a or Sharecropping* (Islamabad: Islamic Research Institute, 1977).

¹⁰⁸ Ibn al-Qayyim, *Aḥkām ahl al-dhimmah*, ed. Abī Barā' al-Bakrī and Abī Aḥmad al-Ārūrī, Dammam, 1997, 1:552.

what was originally agreed upon before the sharecropping partnership was undertaken.¹⁰⁹ In such a circumstance, Ibn Ḥanbal likely would have discouraged such an arrangement in the first place, even if there was precedent, because of the uncertainty that might result from forming such a partnership. Perhaps al-Khallāl summarizes this all neatly when he explains at the end of the sub-section on *muḍārabahs* that “the foundation of Ibn Ḥanbal’s view [on *sharikahs* and *muḍārabahs*] is that these communities deal with money illicitly,” meaning they bring to the table uncertainty and potential unfair or dishonest acts.¹¹⁰

The main point in all of this is to say that, for Ibn Ḥanbal, conversation about the nature of legality in honest exchange in partnerships serves as a site of discussion of Christian dishonesty. Ibn Ḥanbal’s view of Christians, in this light, is a way for him to define who Muslims are in contrast to Christians or at least how Muslims ought to be in relation to them: it is a way to define the pious Muslim as legally upright compared to essentialized Christians as legally incompetent. In other words, debates about economic exchange and contract are, for Ibn Ḥanbal and his students, a Muslim assertion of identity: Muslims who by virtue of following the *sunnah* (on which more below) closely emulate the Prophet and the Companions, and are thus ideally more legally upright and trustworthy in business.¹¹¹ And it is not the only characterization of their persona Ibn Ḥanbal draws upon to understand the illicitness and untrustworthiness of Christians in

¹⁰⁹ al-Khallāl, *Ahl al milal*, nos. 313. Here, a crop-share is not specified, but is implicit.

¹¹⁰ al-Khallāl, *Ahl al-milal*, after no. 311.

¹¹¹ That is not to say that all Islamic morals or ethics lead to just and equitable legal norms. Not allowing a Christian to contract with a Muslim might actually lead to inequity or injustice.

economic contracts, he also draws from other sources that help us see how he views them as a threat to Islamic contracts.

The Nature of Legality in Honest Exchange: Christians and *Ribā*

Closely linked to idea that Christians treat money illicitly is the view that *ribā* is endemic to Christian economic practices in commerce. We will recall that Ibn Ḥanbal opines that Christians and Jews are not to manage capital in a partnership because they engage in *ribā*. One of the great difficulties for understanding *ribā* is that it eludes definition, at least as far as its application to Christians and Jews, for its meaning does not seem to be explicitly defined or anchored in *ḥadīth* or anecdotes from the lived tradition of the Prophet; when it does, the application of the term differs. Ibn Ḥanbal for his part does not cite precedents of Companions when equating Christian commercial practice with *ribā*, but simply confirms the rulings of later generations of Followers who discuss Christians and *ribā*. As far as I can tell, there is no mention is made of *ribā* in historical anecdotes between Muslims and Christians.¹¹²

Ribā is simple enough to translate as “interest” or “usury,” both of which mean that Christians charge interest on loans or want unfair advantages in partnerships and economic contracts. The Christian historiographic tradition tells us plenty about Christians dealing usuriously in wealth, revealing to us something about a cultural or intellectual belief about the nature of Christian legality in honest exchange with other Christians. So too do Christian canonists who discuss the complexity of usury and who

¹¹² Ibn al-Qayyim, *Aḥkām*, 1:552. Ibn Qayyim tells us that of Jews contracting share-cropping partnerships with the Prophet in Khaybar.

can practice it.¹¹³ But without getting into the details here, it will suffice to say that the idea of the Christians as unfair, dishonest, and untrustworthy in matters of honest economic exchange is also perpetuated in Christian legal and historiographic sources as well as Islamic ones.¹¹⁴

When describing *ribā*, Ibn Ḥanbal does seem to have in mind *ḥadīth* that might help us understand his characterization of Christians as dishonest or unable to meet the requirements of contract law in honest exchange. By *ribā*, he seems to mean, as opposed to simple “usury” or “interest,” any unfair advantage that might take place in different economic exchanges or contracts. This might mean dealing dishonestly behind the scenes of a business deal or not paying what is owed of a debt in a timely manner. But he also means something different. As for economic exchanges, he seems to mean the unfair advantage in trading particular commodities, a point which requires us to look beyond NMRC to another *Masā’il* collection: the work of Ghulām al-Khallāl entitled *Zād al-musāfir*. Here, we are told that Ibn Ḥanbal holds to a *ḥadīth* stipulating six types of commodities, if traded for each other, that must take place immediately and with present money, and in equal amounts.¹¹⁵ Trading or exchanging these goods with other

¹¹³ For an overview of discussion on canon law and its restrictions on usury in the western Christian tradition, see Angeliki A. Laiou “God and Mammon,” 261-300. For legal discussions on contract law in the Church of the East’s tradition, with little to no mention of usury, see index of Sachau, *Rechtsbücher*, 2:217-218. For the western Syriac tradition, see Arthur Vööbus, *The Synodicon in the West Syrian Tradition*: for contracts, 2:101, 140. For usury, 2:65, 266, where clergy and church elites are not to engage in usury, and 2:59, where being usurious is seen as a pagan, non-Christian practice.

¹¹⁴ Claude Cahen, “Fiscalité, Propriété, Antagonismes Sociaux En Haute-Mésopotamie Au Temps Des Premiers ‘Abbāsides, D’après Denys De Tell-mahré,” *Arabica* 1, no. 2 (1954): 142-150, <http://www.jstor.org/stable/405524>. Cahen notes that the Chronicle of Zuqnin tells how Christian writers attributed sickness, poverty, and the enslavement of Christian children to Christian greed. Merchants exploited rural farmers by buying their crops for less than the market rate, and then reselling at a higher price. For Christian clergy taking advantage of common people, see ‘Amr b. Mattā and Mārī b, Sulīmān, *al-Majdal*, ed. Louis Saliba (Jubayl: Dār wa Maktabah Bibliion, 2012), 287-289. See also Michael the Syrian’s story of the greed of the Patriarch Isaac, in J.-B. Chabot, *Chronique de Michel le Syrien* (Paris, 1899-1963), 2:523.

¹¹⁵ Ghulām al-Khallāl, *Zād al-musāfir*, 4:174-180, nos. 3963-3992. The following are commodities that must in Ibn Ḥanbal’s view be traded in this manner: gold for gold, silver for silver, dates for dates, salt for salt, wheat for wheat,

goods is tantamount to committing *ribā*, because, for one, the *ḥadīth* says so, but also because on an unfair advantage one might have in trading by weight or volume.¹¹⁶ If trading grain for flour by volume, for example, the one trading the flour exerts a great advantage given that the volume of flour is much greater than the grain it is made from. Ibn Ḥanbal applies this *ḥadīth* to similar goods, citing the cause of trading like-for-like commodities has to do with the scale of measurability, whether by weight or volume: “A copper coin cannot be traded for two copper coins (*fiḥs*). . . because it is a weighed [commodity]” but “one watermelon can be traded for two because it is [a commodity] measured neither by weight nor by volume.”¹¹⁷ He applies the same rules to (for example) trading one slave for two, or *lūbiyyā*’ for chick-peas, to name a couple, as these are commodities that are not conventionally, according to Ibn Ḥanbal’s view, measured by equal weight or volume, and so cannot be the object of *ribā*.¹¹⁸ In other words, Ibn Ḥanbal’s appeal to *ḥadīth* about particular commodities helps us understand that there is more than just dishonesty or trustworthiness at stake in questions about *ribā*, but it is also about their inability to fulfill the requirements laid out in the *sunnah* as given in reports about honest exchange in transactions with Muslims. What we can say is that *ribā*, whatever its definition, invites uncertainty into a contract that disqualify Christians from fair exchange with Muslims, just as in the uncertainty brought up in partnerships discussed above. In short, the *ḥalāl* elements endemic to contracts cannot be fulfilled by Christians. Moreover, his view that Christians do not deal

barley for barley (*sha’īr*). The only exception, according to Ibn Ḥanbal, is when wheat and barley are indistinguishable by appearance or color (no. 3980). See other *ḥadīth* on the topic in Ibn Ḥanbal, *Musnad*, ed. Arna’ūt, Beirut, 1996, nos. 162, 238, 314. Only the numbers are given Ibn Qudāmah, *al-Mughnī*, 6:51-52 passim.

¹¹⁶ *Zād al-musāfir*, 4:178-179 (nos. 3983-3986). This is called in other sources *ribā al-faḍl*, or the “increase of surplus.”

¹¹⁷ For his ruling on copper coins, see *Zād al-musāfir*, 4:180 (no. 3991); for watermelons, 4:178 (no. 3983).

¹¹⁸ Ghulām al-Khallāl, *Zād al-musāfir*, 4:174-180 (nos. 3963-3992). They can presumably be measured in weight or volume, but they need not be equivalent as is required of other commodities.

honestly and licitly with material wealth is another way of saying that Christians do not know Islamic contract law, and are best left out of commercial dealings where they might not represent what is upright and good in the sight of Muslims. To put this another way, Christians do not know the rules of the game, and thus, even if they could be upright in contracts, they would fail in fulfilling the obligations of a contract because of their ignorance about the complex workings of commercial and contract law. In fact, Ibn Ḥanbal never even conceives that Christians could know Islamic law or learn it well enough to act in accordance with it or its requirements, at least in commerce.

The legal elements endemic to questions about contracts go to show that Christians are inferior to Muslims: the Christian by definition fails to full contractual requirements. The Christian is unable to promote a system of honest exchange that is in accord with Muslim standards at any time or place, and in any state or polity, at least not without the guidance of a Muslim to control conditions of a contract and reduce any uncertainty or *ribā*. In taking this position, the Christian is unable to uphold an economic legal order dictated by the law of God, and he puts Muslims at risk of transgressing the law. And Muslims, in Ibn Ḥanbal's view, should protect themselves at all costs from the possibility that sin is committed as a result of their association with Christians. After all, the wages of illicit dealings with material wealth are dire.

We might be surprised that Ibn Ḥanbal permits these partnerships at all given his dim view of Christians and their treatment of material wealth. Other renunciants, for example, saw any profit-making as *ḥarām*.¹¹⁹ Ibn Ḥanbal, by contrast, views payment for hard work as just, and thinks that profit is fair. But we would likely never catch him engaging in a partnership with Christians. He permits his students to do so feasibly because he does not hold them to the same standard of

¹¹⁹ Christopher Melchert, *Before Sufism: Early Islamic Renunciant Piety* (Boston: De Gruyter, 2020), 140-158 passim.

scrupulosity and devotion to God. Islamic law as he understands it makes room for profit, as is evident in the *sunnah*. But permitting a Muslim to engage with a Christian is not without conditions. Despite his reluctance to permit Muslims to contract with Christians and Jews, he does in fact allow it, and in this regard is in agreement with the *sunnah* of Followers.

Ibn Ḥanbal agrees with Followers and Followers of Followers of the Prophet who urge caution and transparency in partnerships with Christians. Consider for example his agreement with a report he cites on the ultimate authority of Iyās b. Mu‘āwiyah (*qādī* of Baṣrah, 718-720, d. 739), which says that Muslims must have full agency (*taṣarruf*) in the purchasing and selling of commodities in a partnership with Christians. Ibn Ḥanbal also agrees with a report Iyās cited from Sufyān al-Thawrī, which says that Muslims should not deal with Christians except when there is transparency in their contracts, and when Muslims are in charge of the buying and selling of commodities.¹²⁰ Al-Khallāl, apparently acknowledging the lack of evidence offered from the Quran and *sunnah*, and preemptively answering his audience’s counter arguments, cites three reports in order to buttress Ibn Ḥanbal’s rulings. The first is a *mursal* report from the Follower ‘Aṭā’ b. Rabāḥ (d. 732), which says, “The Messenger of God forbade the *mushārikah* of a Jew and a Christian except when the purchasing and selling is done by the Muslim.”¹²¹ But it is unclear to me why al-Khallāl cites it except to show that it is less reliable than a later report attributed to ‘Aṭā’—though I am not certain—which has a more reliable *isnād*. This report, that is, the second of the three total reports al-Khallāl cites, states that ‘Aṭā’ and Ṭāwūs (d. 724)

¹²⁰ al-Khallāl, *Ahl al-milal*, no. 299; Al-Kawsaj, *Masā’il*, 7:2717 (no. 1925).

¹²¹ al-Khallāl, *Ahl al-milal*, no. 306. In his *Aḥkām*, 556, Ibn al-Qayyim, notes that this has weak *isnād*, as explained by ‘Alī.

“discouraged the *sharikah* with the Christian.”¹²² Al-Khallāl cites a third report from al-Ḥasan (al-Baṣrī? d. 728) which has a more reliable chain of transmission, though the content is nearly the same: “Do not form a partnership with a Jew or Christian [if they do] the purchasing and selling.”¹²³ The more reliable reports serve to show that there is precedent for discouraging partnerships with Christians because of their dishonesty in economic contracts. But the reports al-Khallāl offers are never cited by Ibn Ḥanbal. Al-Khallāl seems to think Ibn Ḥanbal would agree with this application of the reports. The other factors governing al-Khallāl’s citations of these three reports are unclear to me, but they indicate, for my purposes, that although Christians and Jews appear in many reports, both lived and textually transmitted, the reports tell us little about what they were actually doing to earn their reputation, and only what their static persona might do.

Ibn Ḥanbal seems to permit contracts with Christians only when their money or material wealth is not impure or ill-gotten. We see this in a discussion on for-hire contracts. In one case, Iṣḥāq b. Maṣṣūr al-Kawsaj recalls a time that Ibn Ḥanbal was asked whether a Muslim could hire himself out to work (*yasta`jiru nafsahu*) for a Christian. Ibn Ḥanbal responds that that he sees “no harm in it,” and adds the affirmative “yes” after to make his position absolutely clear.¹²⁴ In a different instance, al-Kawsaj asked him if the prominent Syrian *ḥadīth* transmitter al-Awzā‘ī (d. 774) spoke correctly when ruling that a Muslim should not work on or supervise a Christian’s vineyard. Ibn Ḥanbal agrees, but adds an addendum that they could indeed work on their farms

¹²² al-Khallāl, *Ahl al-milal*, no. 307; Ibn Abī Shaybah, *Muṣannaḥ*, ed. Kamāl Yūsuf al-Ḥūt, Beirut, 1989, 4:269 (no. 19984).

¹²³ al-Khallāl, *Ahl al-milal*, no. 308; Ibn Abī Shaybah, *Muṣannaḥ*, 4:268 (no. 19982).

¹²⁴ al-Khallāl, *Ahl al-milal*, no. 335. Also see the subsequent examples nos. 336-337 for other instances that Ibn Ḥanbal was asked this same question and offers the same response as it particularly applies to other Magians and all *dhimmi*s.

as long as the grapes would not be turned into wine. Here, Ibn Ḥanbal makes it clear that the Christian must not be dealing in wine or other illicit commodities if a Muslim is to work for him. We see that Ibn Ḥanbal views working for Christians as presumptively permissible as long as illicit commodities are not being dealt with. Christians can, from this view, potentially deal honestly in agricultural relationships with Muslims and in for-hire arrangements because it fits the Ḥanbalī legal method of ensuring a Muslim can supervise and take responsibility for what is being worked on, even if only in part as a hired laborer, and only because the contract is on Christian terms, not Muslim ones. It seems to me that the difference is that, as would be expected, Muslims working for money that is earned licitly and transparently do not pose a question of its legality. In a for-hire arrangement, a Christian may pay a Muslim because the latter can accept money without fear of polluting himself or transgressing the law: honest, clean work was undertaken. Perhaps this can all be summed up by saying that the material wealth of Christians is not evil or intrinsically contaminated, whereas ill-gained wealth, if known, of any kind is. A Muslim involved in a financial relationship where ill-gain is a component is, according to Ibn Ḥanbal, implicated by association. And being implicated in an illicit financial relationship is a sin: ill-gotten or dirty money contaminates Muslims. Ibn Ḥanbal avoids any possible corruption of a Muslim, be it through an economically coercive or cunning Christian or one with good intentions but ignorant of the requirements of the complex system of Islamic contract law.

But Ibn Ḥanbal does not forbid Christians to deal illicitly with material wealth as long as it is with other Christians. Permitting Christians to deal in an unfair or dishonest manner with material wealth with one another does not seem to translate to corruption of Muslims since

Muslims are not involved, raising interesting questions about how Ibn Ḥanbal might have viewed the larger role of Christians in the Muslim economic, social, and legal order.¹²⁵

The Nature of Legality in Honest Exchange: The People of the Book in the Quran

The legal persona of Christians as dishonest with material wealth is rooted in Ibn Ḥanbal's view of the Quran. In response to his students' questions about partnerships, Ibn Ḥanbal cites Quran 3:75, which explicitly states that People of the Book cannot be trusted with money in loans and debts:¹²⁶

“Among the People of the Book are some who, if entrusted with a *qinṭār*, will pay it back to you. There are others who, if entrusted with a *dinār*, will not pay it back to you unless you continually stand over them. That is because they believe, ‘There is nothing to stop us when it comes to *al-ummiyyīn*.’”

No matter how this verse might be interpreted or what the verse's intended meaning was to Muslims of different theological or legal orientations, our interest here is Ibn Ḥanbal's application of it to Christians and Jews. The verse tells us about two different types of People of the Book. Some are given a large loan (a *qinṭār*) or are entrusted with some commodity and will pay it back, but others will be given a small loan (a *dinār*) or commodity, and will put up a fight in paying it back. Those People of the Book who will not pay it back do so under the

¹²⁵ Ibn Ḥanbal, for example, does not prescribe any punishment if a Muslim pours out barrels of Christian wine. This is because, for him, wine has no value and thus cannot result in a punishment. Thus, the idea is that a Muslim should not lose a hand for removing wine from the hands of Christians. But if other things of value are stolen from Christians, the same punishment incumbent on stealing from a Muslim is prescribed. See al-Khallāl, *Ahl al-milal* nos. 818-821 for encouragement of pouring out wine in transit; for his ruling that no punishment should result from pouring out wine or destroying pigs or pork, nos. 820-827; for punishments for grave-robbing or stealing grave-items like expensive textiles, no. 829. Interestingly, we also find Ibn Ḥanbal's repudiation of the *ahl al-ra'y* in no. 827.

¹²⁶ Quran 3:75. I consulted the English translations of Yusuf Ali, Shakir, Pickthall, Arberry, but the translation is mine.

presupposition that they need not deal the same with *al-ummiyyīn*, that is, other religious communities, as they would their own community.¹²⁷ To put it simply, they only deal honestly with their own community, and even then, from a standard that does not quite measure up to one revealed to the Prophet in the Quran. Either their contract laws or standards are corrupt or they are, or both. Ibn Ḥanbal applies the verse indiscriminately to Jews and Christians. People of the Book, in his view, come in two shapes and sizes. There are those who deal honestly with material wealth and those who do not.¹²⁸ Those who deal honestly will make good on the deals they make and loans they receive, no matter how large, without looking for excuses to exploit or dupe their creditor or partner.

Although the Quran presupposes that some Christians can deal honestly with material wealth, in Ibn Ḥanbal's view the Quran only does insofar as it sets a bar for honesty that everyone ought to follow. Generally speaking, the point of Ibn Ḥanbal's citation of Quran 3:75 is that Christians and Jews are those who do not deal honestly with non-Christians or non-Jews (that is, Muslims) when it comes to material wealth. And their holding back of their share of payment on a loan results in God holding back their share in the Hereafter, as the following verses contend (Quran 3:76-77). For Ibn Ḥanbal, the Quran makes this a general claim of truth, one that permeates other discussions of contracts about Christians. Christians are bound to a quranic characterization.

To be sure, Ibn Ḥanbal affirms other legal rulings demonstrating a similar view of Christians needing to be "stood over" in contracts, as Quran 3:75 says. Take for instance Ibn Ḥanbal's agreement that Christians can only form partnerships with Muslims on the condition of

¹²⁷ In works of *tafsīr*, the verse is typically applied to Jews who did not want to make good on loans given to or debts contracted. There is a good deal of dispute about the meaning of this verse, from the occasion of its revelation to the definition of *al-ummiyyīn*. But these need not concern us here.

¹²⁸ Ghulām al-Khallāl, *Zād al-musāfir*, 1:325.

transparency: if a Christian is in a partnership with a Muslim, the Christian cannot engage in any financial contracts—purchasing or selling commodities—without a Muslim there with him: “The Jew and Christian [in a partnership with a Muslim] cannot transact in material wealth without the Muslim.”¹²⁹ When a student cites Sufyān al-Thawrī’s ruling that Christians can form partnerships with Muslims as long as “nothing is hidden from him [the Muslim],” Ibn Ḥanbal agrees.¹³⁰ What this seems to mean is that as long as a Muslim approves to oversee a transaction, then the transaction can proceed. Christians cannot be trusted from a quranic perspective as supported by earlier generations of *muḥaddithūn* such as Sufyān al-Thawrī without a Muslim watching over them to ensure the law is fulfilled. Ibn Ḥanbal’s response seems to tell us that Christians ought not be given the benefit of the doubt in a contract, and do not belong to the honest group of People of the Book in Quran 3:75. And that Christians cannot be given room to act dishonestly in business dealings with Muslims.

Ibn Ḥanbal presumptively views Christians as acting illicitly with money and material wealth, and only a Muslim guided by God can manage money in a contract. Further, Ibn Ḥanbal uses the quranic characterization of Christians as dishonest with money as justification for caution when dealing with them. And so long as Christians remain, the Quran speaks authoritatively about them: their persona is one that exudes dishonesty. He is a Christian that forms over centuries of debate and discussion, yielding a legal view of Christians as untrustworthy and dishonest in commercial partnerships. What can we make of such a characterization of Christians as unable to fulfill to law or act honestly in fair exchange with

¹²⁹ al-Khallāl, *Ahl al-milal*, no. 298: *lā yakhlū al-yahūdī wa-l-naṣrānī bi-māl dūnahu*; Ibn al-Qayyim, *Aḥkām*, 1:552: al-Kawsaj, *Masā’il*, 7: 2712.

¹³⁰ al-Khallāl, *Ahl al-milal*, no. 299.

Muslims? One way to help us understand his position is to see him as a pious ascetic holy man in the tradition of the prophet Jesus.

Ibn Ḥanbal and Jesus: Ascetic Holy Men

Ibn Ḥanbal's view of the Christian as untrustworthy and unable to fulfill the conditions of Islamic contract law as given in the Quran and *sunnah* might be explained by his view of Jesus. Ibn Ḥanbal is an ascetic holy man who is more aligned with the holy men of the past, including, most notably for this study, Jesus. As opposed to Christians of the Quran and *sunnah*, Jesus stands as a renunciant who puts aside worldly pleasure and sin for a life not of the world. Peter Brown associated the late antique holy man as a stranger-to-the-world deriving no personal benefit or interest in its affairs,¹³¹ and as an objective legal mediator serving communal interests,¹³² who helps during times of trouble or violence. Others, too, have gone to great lengths describe Ibn Ḥanbal as a pious, scrupulous renunciant distant from the world much like the holy men of late antiquity.¹³³ For Ibn Ḥanbal and the early Ḥanbalīs, piety is the goal, which means staying away from the world and those who might impinge on their devotion to God. We

¹³¹ Peter Brown, "The Rise and Function of the Holy Man in Late Antiquity," in *Society and the Holy in Late Antiquity* (Los Angeles: UC Press, 1982): 131-134.

¹³² Peter Brown, "The Rise and Function of the Holy Man in Late Antiquity," in *Society and the Holy in Late Antiquity* (Los Angeles: UC Press, 1982): 126-131. Christopher Melchert, *Before Sufism*, 108ff.

¹³³ For Ibn Ḥanbal as an ascetic, renunciant, scrupulous holy man, see Cooperson, *Biography*, 112-117. For more on terminology used here, or my deviation from it, see Nimrod Hurvitz, "Biographies and Mild Asceticism, 41-65, doi:10.2307/1595871; Christopher Melchert, "The Piety of Hadith Folk," *IJMES* 34, no. 3 (Aug., 2002): 425-439; and Melchert, "The Ḥanābila," 352-67. For similarities and differences in holy men in late-antiquity, see Jack Tannous, *The Making of the Medieval Middle East*, 423-24. For the differences between ascetics like Ibn Ḥanbal and his contemporary Bishr b. al-Ḥārith, see Cooperson, *Biography*, 154ff. Ibn Ḥanbal is devoted to *ḥadīth* transmission, but Bishr b. al-Ḥārith to ascetic practice rather than transmission.

should keep in mind here that, as Michael Cooperson has noted, (proto) Sunnis—like Ibn Ḥanbal—exhibited scrupulosity which “tended to isolate the community from the economic mainstream.”¹³⁴ This means that Ḥanbalī discussion of economic transactions is not about profit, as we might expect, but instead is about remaining pious and engaging in *ḥalāl* trade practices. It means, for Ibn Ḥanbal, avoiding Christians who deal illicitly in material wealth or what might cause one to transgress the law.¹³⁵ In this way, Ḥanbalī discussions on economic contracts serve to contrast true piety and devotion to God as embodied in the teachings of Ibn Ḥanbal with the characterization of Christians as those who have strayed from the teachings of Jesus, the exemplar of living a *ḥalāl* life in matters of money and piety.

Ibn Ḥanbal’s view of Jesus is given in a collection of wise sayings attributed to renunciants compiled in a book by Ibn Ḥanbal’s son, called *Zuhd*. In this book, the overarching theme is a repugnance for worldliness and worldly gain.¹³⁶ Through the reports in *Zuhd*, we gain some insight into how Ibn Ḥanbal imagines Jesus that, albeit in short reports without interpretation or explanation, helps us understand the chasm between Jesus and the Christians of legal discussion and substantive law, at least in so far as Ibn Ḥanbal characterizes them. Ibn Ḥanbal seems to imagine Jesus as a pious renunciant who separated himself from the world and rejected the pleasures of drinking wine. He recalls a teaching of Jesus that says, “Love of the world is the cardinal sin (*raʿs*

¹³⁴ Cooperson, *Biography*, 113.

¹³⁵ It is of course possible that some of Ibn Ḥanbal’s students had real interest in commerce, but there is more at stake in the questions they pose than actually forming contracts or engaging in commerce with Christians.

¹³⁶ Christopher Melchert, “Aḥmad Ibn Ḥanbal’s Book of Renunciation,” *Der Islam: Journal of the History and Culture of the Middle East* 85, no. 2 (2011): 345-59.

al-khatī'ah)” and wine is “the gateway of all evil (*miftāh kull sharr*).”¹³⁷ I cannot imagine a clearer contrast of Jesus with Christians that elucidates a divide between the Christians of the Quran and the *sunnah*. Legal traditions tend to characterize Christians as dealers in wine and worldliness, as shown in the reports above. The Christians of the Quran and *sunnah* display behaviors contrary to their founder Jesus who, from Ibn Ḥanbal’s view, put off wine and worldliness; that is, the Christians of the Quran and *sunnah* live opposed to the teachings of Jesus: they have gone astray.

Suffice it to say for now that Ibn Ḥanbal imagines Jesus as one who sees Satan as the great tempter of humankind. Satan lures humankind into his traps by provoking them to fulfill their desires for the world and worldly wealth. This is made clear when Ibn Ḥanbal quotes Jesus as saying, “Satan is in the world, his guile is in wealth, his beauty is in desire, and his accomplishment is by greed.”¹³⁸ Ibn Ḥanbal, like Jesus, sees wealth as a consequence of greed rooted in the love of money that is so characteristic of Satan. In other words, temptations and desires for wealth are the works of Satan, not God. Only Muslims, from Ibn Ḥanbal’s view, can please God by living according to the law. From his view, Christians are unable to do so. Further, according to Ibn Ḥanbal, Jesus says that the love of money is an “all-consuming disease” that spares no expense in stopping one from serving it and not God.¹³⁹ In alignment with Jesus, Ibn Ḥanbal views money and material wealth as distracting one from what is really important: devotion to God. Money

¹³⁷ Ibn Ḥanbal, *al-Zuhd*, Cairo, 1992, 117.

¹³⁸ Ibn Ḥanbal, *al-Zuhd*, 120: *al-shayṭān ma‘ al-dunyā wa makruhu ma‘ māl, wa tazyīnhu ‘ind al-hawā wa istikmālhu ‘ind al-shahawāt*. Cf. Quran 6:43; 5 :39; and 27:24 for Satan's role in making what is wrong seem right.

¹³⁹ Ibn Ḥanbal, *al-Zuhd*, 117. The whole passage reads: *ḥubb al-dunyā aṣl kull khatī'ah wa-l-māl fihi dā' kathīr qālū wa-mā dā' hu qāl lā yusallim ṣāhibhu min al-fakhr wa-l-khuyalā' qālū sallam qāl yashgalhu iṣāriḥhu ‘an dhikr Allāh ta‘ālā*.

and material wealth are valuable only insofar as they are a means to acquire the basic necessities of life or to promote the well-being of the poor, but little more. It should not, according to Ibn Ḥanbal's characterization of Jesus, be used to exploit others or to engage in illicit behaviors or uses of wealth such as *ribā*. For Ibn Ḥanbal, Jesus is not the wine-drinker the gospels make him out to be. He is the imagined Jesus who, just as the pious Ibn Ḥanbal, avoids wine since it is a gateway to sin and evil: the imagined Jesus conforms to Ibn Ḥanbal's standard of piety and devotion whereas the Christians of the Quran and *sunnah* do not.

Ibn Ḥanbal quotes a gospel verse—though it is not clear if he knows it—that says a follower of God is no longer valuable if he does not do the good things God prescribes for him. Ibn Ḥanbal cites Jesus as saying, “Salt of the earth, if it loses its saltiness, is no longer good for anything.”¹⁴⁰ One might interpret his quotation of Jesus' saying as an expression of repugnance for Christians who have lost their saltiness and made a mockery of Jesus' teachings on poverty, wealth, and greed. Unfortunately, however, Ibn Ḥanbal never explains how he views the gospel verse or to whom it applies. I think it is fairly clear that it means something within the range of doing good for God at all costs, but it is impossible to say with precision. However we might interpret his citation of the verses, Christians are, in his view, lost because that they assign Jesus as God's son, which for Ibn Ḥanbal is the greatest sin. Everything else that Christians do might as well just be additional sin. The imagined Jesus, on the other hand, conforms to Islamic law by avoiding the drinking of wine and the pleasures of the world, at least as Ibn Ḥanbal sees him. The fact that Ibn Ḥanbal exalts Jesus and, as will be seen, caricaturizes Christians

¹⁴⁰ Ibn Ḥanbal, *al-Zuhd*, 118, 120. Cf. Matthew 5: 13-16, Mark 9:50, Luke 14: 34-35.

as wine-loving world-lovers is interesting because it shows the impiety of Christians in comparison to Jesus. For Ibn Ḥanbal, Christians serve as the antithesis of the renunciation of Jesus who Ibn Ḥanbal quotes as saying: “The foremost sin is love of the world...and wine opens doors of all evil things.”¹⁴¹ Christians, unlike Jesus, have come to love the world and have opened the valve (or floodgates) of sin and transgression by dealing in wine and other worldly pleasures.

We will see in the following discourse one example of a Christian doctor posing a risk to Muslims, albeit not in a contract. The example serves to show how Ibn Ḥanbal conceived of interactions with Christians as potentially tainting one’s ritual purity, which reinforces my idea that of his reluctance to permit contracting with Christians. We will see that Ibn Ḥanbal’s piety and personal practice in addition to the Quran and *sunnah*’s characterization of Christians is a factor in his reluctance to engage in contracts with Christians.

The Ascetic Ibn Ḥanbal and the Amiable Doctor Ibn Māsawayh

One anecdote exemplifies the contamination Christians might bring to economic interactions with Muslims. After being summoned to the capital of Samarra by the Caliph al-Mutawakkil, Ibn Ḥanbal becomes ill. Al-Mutawakkil daily sent the learned and famed Christian doctor Ibn Māsawayh (d. 857) to treat him for exhaustion and constipation, apparently due to frequent fasting or poor health.¹⁴² In one encounter, we see the doctor express tenderness toward Ibn

¹⁴¹ Ibn Ḥanbal, *al-Zuhd*, 117.

¹⁴² *Encyclopaedia of Islam*, 2d edition, s.v. “Ibn Māsawayh.” Abū Zakariyyā’ Yuḥannā Ibn Māsawayh. For the influence of this doctor on the Caliph al-Mutawakkil’s stance on Christians, at least according to “Nestorian” history, see Yarbrough, *Friends of the Emir*, 107-108.

Ḥanbal, addressing him by his *kunya* and speaking to him with care: ‘*Yā Abā ‘Abd Allāh*, I like you and I like the people you have with you [one was Ibn Ḥanbal’s son Ṣālih]. There is nothing wrong with you except inanition and infrequent bowel movements.’¹⁴³ Here, we get a rare glimpse of a famous Christian doctor outside of court, tending to a patient and addressing him with fondness. Ibn Māsawayh, trying to help Ibn Ḥanbal, offers him a solution to his health problems by suggesting a natural remedy: ‘You know, we often tell our monks to eat sesame oil to relax the bowels.’¹⁴⁴ When Ibn Māsawayh brings Ibn Ḥanbal a liquid concoction the next day, Ibn Ḥanbal pours it out. He pours out the solution because he considers Ibn Māsawayh to be a *mushrik*, and Muslims must not drink the medicine of *mushriks* until they become Muslims.¹⁴⁵ The medical prescriptions of Christians are *ḥarām* and contaminate Muslims. It might as well have been wine. But it should be mentioned that Ibn Ḥanbal did not typically consider the food of Christians illicit, except under certain circumstances. He does not think there is anything wrong with eating the foods slaughtered by Christians nor does he believe that Muslims must refrain from sharing a meal with them. The *ḥarām* foods are those slaughtered on an altar; all Magian meat; Ethiopian food cooked in incense; and generally suspect food. If Muslims and Christians share cookware, Ibn Ḥanbal says that a Muslim need only wash it in water to purify it from contamination.¹⁴⁶

¹⁴³ Ibn al-Jawzī, *The Virtues of the Imām Aḥmad ibn Ḥanbal*, ed. and trans. Michael Cooperson (New York: NYU Press, 2013), 2:190-91.

¹⁴⁴ Ibn al-Jawzī, *Virtues*, 190-1; Cooperson, *Biography*, 111-12.

¹⁴⁵ Ghulām al-Khallāl, *Zād al-musāfir*, 4:264 (no. 4215).

¹⁴⁶ Al-Khallāl, *Ahl al-milal*: for permissible food laws, nos. 1009-37; for exceptions, such as eating food scarified (for the Eucharist or at a festivals), nos. 1042-48, or Ethiopian food cooked in incense, no. 1049, or food in which is suspect, no. 1052, or the general prohibition against eating Magian food sacrificed, see nos. 1053-80; for sharing cookware, nos. 1038-41. There is also the possibility here that he did not trust the doctor’s medical judgment or did not know what was in the drink exactly, in which case he might think the drink is forbidden. He advises his students, for example, not to eat any food which has the potential to be forbidden in no. 1052. A convincing view of the

Ibn Māsawayh is apparently impressed by Ibn Ḥanbal’s fasting and self-denial, practices which are familiar to the amiable doctor. But Ibn Ḥanbal likely did not want this unsolicited attention, and surely would not have wanted to be confused with a Christian monk. And the doctor also seems to confuse—or at least connect—Christian piety with Muslim piety, a point that Ibn Ḥanbal seems to disdain, perhaps which is another underlying cause of his pouring out the medicine brought to him. We should be struck here by the contrast between what Ibn Ḥanbal views as proper devotion to God and what the amiable doctor considers proper devotion. Here is a Christian doctor espousing and supporting piety yet ironically working in the service of the state. Can caliphal power and Christian service ever be compatible? Can piety serve power? For Ibn Ḥanbal, the issue of a Christian serving the state has nothing to do with a Christian being kind to him, but it has to do with a Christian (or Muslim) serving the interest of the state. Caliph and Christian alike engage in *ḥarām* acts consistent with breaking God’s law, drawing one away from God. His pouring out of the remedy is because he did not like to accept gifts or help from the Caliph which makes him ritually impure: he did not want to be bought and he did not want to court power.¹⁴⁷ This refusal is fairly common in the biographies of his life, which tell of his refusing money from the Caliph or government, or, when accepting it, redistributing it to the poor.¹⁴⁸ To put this all succinctly, Ibn Ḥanbal’s refusal of the remedy is, in addition to refusing medicines from *mushriks*, because it comes from a Christian in cahoots with a Caliph, one who

politics of food is given in David M. Freidenreich, *Foreigners and Their Food: Constructing Otherness in Jewish, Christian, and Islamic Law* (Los Angeles: University of California Press, 2014).

¹⁴⁷ Cooperson, *Biography*, 113. Also see Hurvitz, *The Formation of Hanbalism*, 93-98. According to the biography of Ibn Ḥanbal’s life, he did not like to be given gifts by anyone, ever. It was not only about contamination in every case, but also about receiving help from anyone but God.

¹⁴⁸ For his love of poverty, see Ibn al-Jawzī, *Virtues*, 2:2-5; for his generosity, see 1: 452-457; for his rejection of help even in dire need, see 1: 424-451. See Cooperson, *Biography*, 114, where in a previous stay, this time at the caliphal palace in Baghdad, Ibn Ḥanbal demonstrates similar behavior, refusing to eat all but the bare minimum.

likens him to a Christian monk at that. But Ibn Ḥanbal does not seem to have any qualms with Christian doctors outside court, which is why we hear him letting a doctor know he is about to enter his presence by his *kunyā*, perhaps the only time he speaks to one: “*Yā Abā Ishāq*.”¹⁴⁹ This incidental remark is made in passing in a *khobar* of which we do not know the context. Whatever the reason for his visit, seeing a doctor is quite different than accepting treatment from a doctor associated with a caliph. Still, Ibn Ḥanbal would have loathed being associated with any Christians. His health and well-being come from following God’s *sunnah*, not from a Christian’s medical treatments or concoctions.

Ibn Ḥanbal’s view of following the *sunnah* means denying himself too much food. After all, God speaks clearly to the Prophet when he says that filling the belly much brings illness, and that eating little brings a good bill of health: “God did not create any vessel as evil as filling the stomach, but if [eating] is necessary, let it [be filled] with a third of food, a third of drink, and a third of air.”¹⁵⁰ Ibn Ḥanbal seems to have followed this precedent, eating only flat bread every other day during his stay at the caliphal palace,¹⁵¹ and, as was common, eating only minimally throughout this life. Interestingly, later tradition has it that Ibn Ḥanbal and Ibn Māsawayh knew this *ḥadīth*, and the latter said that if people knew the truth of it, “Pharmacists and pharmacies would be put out of business!”¹⁵² If we are to believe the sources, this is a bold statement that tells us the

¹⁴⁹ al-Khallāl, *Ahl al-milal*, no. 1117. This is an incidental remark used to support the position that Christians can adopt *kunyās*.

¹⁵⁰ Ibn Ḥanbal, *Musnad*, no. 17186; Ibn Rajab, *Jāmi‘ al-‘ulūm wa-l-ḥukm*, ed. al-Arna‘ūt, Beirut, 2001, 2:467-68.

¹⁵¹ Ibn al-Jawzī, *Virtues*, 2:190-191.

¹⁵² Ibn Rajab, *Jāmi‘ al-‘ulūm*, 2:467-68. Ibn Māsawayh was known to have a comedic personality and often joked, apparently even about Islam, which might mean that he did not mean this literally.

admiration Ibn Māsawayh had for a poverty-loving, self-denying Ibn Ḥanbal whose wisdom transcends medical knowledge. But it also tells us the degree to which Ibn Ḥanbal was careful not to break God's law. He is careful to avoid implicating himself in sin and contamination, even when it simply means taking medicine from a state-approved Christian doctor.

There is no way to tell if Ibn Ḥanbal knew the real wealth and power of the caliphal doctors like Ibn Māsawayh, his contemporaries, or his predecessors. There is also no way to know if Ibn Ḥanbal was aware that Ibn Māsawayh was very close to the caliph to the point that some sources mention that he used to joke about Islam, and that he medically examined a Muslim woman, the very sister of the Caliph Ḥārūn al-Rashīd. But it does seem clear enough that some Christian caliphal doctors dressed in rich clothing and held considerable amounts of power with caliphs. Some Christian doctors even had the power over electing church patriarchs.¹⁵³ Certainly, Ibn Ḥanbal would not have imagined Jesus to ever work for a government or dress lavishly while doing so. To be sure, in Ibn Ḥanbal's view, the doctor Ibn Māsawayh can recognize a stranger to the world, but is not one himself.

Ibn Ḥanbal as a sort of late-antique holy man provides context for his rulings on topics of contract law as embodied in substantive law. He is a man upholding a high standard of ritual observance and legal prescription. He is different than Peter Brown's holy man in that he usually mediates between man and God (for example, in giving *responsa*) as opposed to serving as an

¹⁵³ Silke Abele, *Der politisch gesellschaftliche Einfluss der nestorianischen Ärzte am Hofe der Abbasidenkalifen von al-Manṣūr bis al-Mutawakkil* (Hamburg: Verlag Dr. Kovac, 2008), 74-76. Ibn Māsawayh apparently had monks at his disposal in the caliphal palace whom he brought to the caliphal palace, in one instance, to discuss the Christian secretary Ibrāhīm b. Nūh's conversion to Islam. For his relationship with Harūn al-Rashīd, 80 for his having concubines, 116ff for his relationship with al-Mutawakkil, the dress and decorum of other doctors, and their choosing candidates for the Patriarchate. For a Christian view about corrupt doctors serving in court and exploiting Christians, see 'Amr b. Mattā and Mārī b. Sulīmān, *al-Majdal*, ed. Louis Saliba (Jubayl: Dār wa Maktabah Bibliion, 2012), 287-289.

intermediary between common people and the government. Instead, his challenge of the government and its contamination of Muslims is a critique of it. His role as a holy man is one factor governing his personal preference to stay away from forming partnerships with Christians. Christians are characterized as unethical, illicit dealers in material wealth who do not fulfill the requirements of living a *ḥalāl* life or the requirements of Islamic legal contracts. And their inability stems from their position as errant members of a perverted religious community: they belong to a community of those who lie about God.

Ibn Ḥanbal's strong discouragement of forming partnerships and contracts with Christians serves to how Islamic commercial practices supersede Christian commercial practices. He leads his students away from the temptations of the world and the possibility of contamination, as he did with Caliph and the amiable doctor Ibn Māsawayh. His deep piety and estrangement from the world while living in the midst of a big city is a testament to the enduring role of holy men in late antique society, and their role of arbitration between the common person and God in worldly affairs despite not engaging in them, whether directly or indirectly. He is concerned for the salvation of the Muslim community, which can only be attained by living according to the *sunnah*. As far as Christians are concerned, Ibn Ḥanbal upholds a boundary in economic matters that would otherwise corrupt Muslims and implicate them in sin and contamination, and perhaps a loss of salvation. This is, in fact, how Ibn Ḥanbal define *zuhd*: "Fear of not entering heaven."¹⁵⁴ Most evident of Ibn Ḥanbal's view that Christians have traded in their salvation for wealth and wine is in his quotation of Jesus's metaphor from the gospels and its allusion in the Quran that "Heaven will not receive the rich, for it is easier

¹⁵⁴ Cooperson, *Biography*, 115; and Hurvitz, *The Formation of Hanbalism*, 94.

for a camel to enter the eye of the needle than a rich man to enter heaven.”¹⁵⁵ From this view, the hermeneutical Christian as a greed-stricken, untrustworthy, and dishonest partner in commerce and contracts serves as a rapprochement and supersession of Christian personhood and practice. By the same token, it serves as an exaltation of Muslim piety and purity which Christians cannot ever attain to or fulfill because they bring uncertainty and dishonesty into Muslim contracts.

Ibn Ḥanbal’s practice of avoiding Christians at all costs explains his rulings to avoid contracts with Christians, though the *sunnah* does in fact make room for it. That he goes above and beyond the requirements of the law is exemplified in his avoidance of taking Christian wives, slaves, concubines into the Muslim household. The Christian woman, we will see, is one who invites contamination and legal uncertainty into the Muslim household, not to mention slanderous words against the Prophet Muḥammad, and shows how Ibn Ḥanbal’s discussion of her to keep her at a distance.

¹⁵⁵ Ibn Ḥanbal, *al-Zuhd*, 117. Cf. Quran 7:40. The language used in *Zuhd* is more similar to the Quran than to the Arabic gospels, as far as I can tell, but I have not had a chance to examine it closely. The quotation of Jesus does serve a double purpose. On the one hand, it repudiates the rich, making it difficult for them to go to Paradise, in line with the message in the synoptic gospels. On the other hand, it serves the purpose of showing that Christians are those who deny the signs of God, as the quranic version of the metaphor puts: “Truly those who deny our *signs* and wax arrogant against them, the gates of heaven shall not be opened for them, nor shall they enter the Garden till the camel pass through the eye of the needle. Thus do We recompense the guilty.” In other words, Christians deny the signs of God that would otherwise lead them to salvation and heaven.

CHAPTER 3: IBN ḤANBAL, THE MUSLIM HOUSEHOLD, AND THE HERMENETICAL CHRISTIAN WOMAN

Introduction

The Prophet Muḥammad and the early Muslim community viewed the enslavement of and marriage to Christian and Jewish women as licit. Muslim men could legally take Christian or Jewish women into their households.¹⁵⁶ Muḥammad apparently had a Christian concubine, Māriyyah, as did members of the early community of believers, as well as a Jewish wife Ṣafiyyah bt. Ḥuyyay, the latter of which Ibn Ḥanbal cites to show that *kitābīs* married to

¹⁵⁶ By household, I mean the space where Christian women are imagined to live with or in proximity to a Muslim enslaver or husband. The primary sense in which I use the term “Muslim household” is to denote a space where a Muslim male is viewed as its authority figure, and one whose responsibility is to secure the sanctity of the household. Ibn Ḥanbal maintains, it seems, a household based on kinship and traditional Muslim male authority, but also aligns himself associatively through a particular belief in the one true God, breaking ties with any who go beyond the sources of the Quran and *sunnah* as the primary means to know God’s will. Christians do not meet this standard and are thus, as will be seen, to be excluded from the household of Muslims despite precedent to make room to marry or take them as slaves. At the same time, he advocates for the enslavement of foreigners, but does not tell us how he thinks they should be assimilated to the Muslim household, a tension that is brought out in his rulings and goes unresolved. The way in which the complex relations of any household is affected by or integrated with the wives, slaves, or extended family members is an ongoing development in scholarship, as Julia Bray succinctly points out in “The Family in the Medieval Islamic World,” *History Compass* 9/9 (2011): 731-742, <https://doi.org/10.1111/j.1478-0542.2011.00793.x>. For another study on the *Mamlūk* household and how associative relations were extended by gift-giving and other means, especially to win political loyalty see M. Chamberlain, *Knowledge and Social Practice in Medieval Damascus, 1190–1350* (Cambridge: Cambridge University Press, 1994), 114-116.

The definition of the term “household” is not an easy one to define, and lacks consistency in the scholarly use of it. The household might refer to a royal or dynastic family or a position within its power structure, such as the “household” of caliph. In this definition, the children, slaves, and the *wazīr*, among other administrative positions associated with a caliph, not to mention the upper-ranking military positions and the entertainers of the household, are included in it. Studies on the dynastic household can be found in many works, an it will suffice to mention a few here: R. S. Humphreys, *From Saladin to the Mongols: The Ayyubids of Damascus, 1193–1260* (Albany, NY: State University of New York Press, 1977); J. E. Bencheikh, “Les secrétaires poètes et animateurs de cénacles aux IIe et IIIe siècles de l’Hégire. Contribution à l’analyse d’une production poétique,” *Journal Asiatique* 263 (1975): 265–315; and L. Massignon, *La Passion d’al-Hallâj, martyr mystique de l’islam*, rev. edn., (Paris: Gallimard, 1975, repr. 2010). The term “household” also connotes, in the sense I use it, a family and its kin relations, such as wives, family members, *mawlās*, and others, as financial obligations exist between them, as well as the domestic slaves and concubines brought into the household, and the wider network still of those slaves’ families. Yet it also means, in this dissertation, the women who might enter it to perform a domestic duty, such as serving as a midwife or wetnurse; that is, associative relations. The women who might enter the household, even if temporarily, bring their own social practices into it, real or perceived, raising issues of assimilation and religious association, something despised by Ibn Ḥanbal. For an earlier account of kinship and associative relations, see Michael Morony, *Iraq After the Muslim Conquest* (Piscataway, New Jersey: Gorgias Press, 2005).

Muslims can bequeath to their blood relatives.¹⁵⁷ From some of the earliest reports about Muslims and non-Muslims, we get the sense that Muslims often took non-Muslim women into their homes, and apparently some Muslims even preferred to marry them over Muslim women.¹⁵⁸ But non-Muslim women moving into Muslim households posed several problems in the earliest period of Islamic history that found their way into legal discussions in the ninth century. One problem was how individuals of different religious backgrounds and confessions could freely practice their religion in the same household. We saw in the previous chapter that Christians pose a threat to fair exchange with Muslims because they bring uncertainty to contracts and contamination and corruption to Muslims. In contracts, the agreements are between individual Christians and Muslims, but a whole new set of issues about the compatibility of practices associated with religion arise when they live in close quarters, especially as involves contamination, corruption, and illicit practices. Do non-Muslim women bring uncertainty of religious practice and sin into the Muslim household? Ibn Ḥanbal's default view seems to have been that Christian and Jewish women could practice their religion freely if living in or near the Muslim household. But how does their presence in the Muslim household affect Muslim piety? And what happens when they do not respect one another's religion, such as when a Jew or Christian blasphemes the Prophet in the presence of her Muslim enslaver or husband? Or what

¹⁵⁷ Ibn al-Jawzī, *Ṣifāh al-safwāh*, ed. Aḥmad b. 'Alī, Cairo, 2000, 1:329-30; Ibn Sa'd, *Ṭabaqāt al-Kubrā*, ed. Muḥammad 'Abd al-Qādir 'Aṭā, Beirut, 1990, 8:95-102; Yohanan Friedmann, *Tolerance and Coercion in Islam: Interfaith Relations in the Muslim Tradition* (Cambridge: Cambridge University Press, 2003), 183-184; Jack Tannous, *The Making of the Medieval Middle East*, 438; and *Encyclopaedia of Islam*, 2d edition, s.v. "Ṣafīyya." For Ibn Ḥanbal's ruling that *kitābīs* can bequeath based on the report of Ṣafīyyah, see al-Kawsaj, *Masā'il*, 8:4350, and also, for other information he knew about Ṣafīyyah, see 5:2220. In Tannous, *The Making of the Medieval Middle East*, 447-448, he discusses her bequeathal to a Jewish relative as one of the challenges raised by religiously mixed households and coexistence.

¹⁵⁸ See al-Khallāl, *Ahl al-milal*, nos. 484-7. For example, al-Khallāl titles a subchapter with the heading, "Preferring marriage to a Christian or Jewish woman over a Muslim woman." For a tendency of Muslim to want to marry Christian women, see Tannous, *The Making of the Medieval Middle East*, 438. For a thrilling account of the desire some Muslim men had for (foreign) Christian women see Nadia Maria El Cheikh, *Women, Islam, and Abbasid Identity* (Cambridge: Harvard University Press, 2015), 7-8, 17-37, and below.

happens when Jewish or Christian women from inside or outside of the household are called upon to be a witness as a midwife to establish the viability of a fetus, and therefore the financial obligations to the fetus involving the household of her Muslim husband, enslaver, or children? Ibn Ḥanbal upholds the view that Muslims can take Christian and Jewish free women or slaves into their household as a concession of lenience afforded by Islamic law, but he discourages it on grounds that they pose a threat to it. And herein lies my main argument: Ibn Ḥanbal's idea of the Christian and Jewish woman as threats to the household helps him accomplish his goal of relegating them and their communities as a whole to the sidelines of Muslim life, a view that goes beyond the injunctions of Quran and *sunnah*. Even further, his rulings imply that he is ruling from a place that envisions a world without them at all. His idea of the Christian and Jewish woman helps him avoid the problems that arise from coexistence.

In what follows, I will establish Ibn Ḥanbal's default view that the Christian and Jewish woman can freely practice their religion in the Muslim household, but that he avoids it in his personal practice because of the legal and contamination issues it brings up. But it is also because he rules from a stance that implicitly views a perfect world where no Christians exist. I will then discuss the legal implications of reports about a Jewish blasphemer, and how Ibn Ḥanbal uses them to caution against bringing Jewish or Christian women into the household. The reports caution Muslims against taking non-Muslims as domestic wives, slaves, and concubines, and are compelling because they discuss three overlapping categories: gender, religion, and slavery. The stories of a Jewish woman blasphemer from the first Islamic century are an access point for discussing the imagined social practices and gendered norms of women, both enslaved and free, in the Muslim household. After discussing the stories of the Jewish woman blaspheming the Prophet, I will discuss the report's authenticity, social context, and later

reception by the Ḥanbalī school of thought. Here, I will show how the story is applicable to Christian women, and that Ibn Ḥanbal personally prefers to keep Christian and other non-Muslim women away from the Muslim household despite it being presumptively permissible in the *sunnah*. They are liabilities because they challenge or threaten the social and legal values and practices of Muslim households, especially as it regards the legal standing of women. I will then discuss Jewish and Christian midwives and wetnurses as case studies of how women are legal liabilities to the household, and how their role in the Muslim household is perceived as leading to problems in paternity disputes or inheritances. In what follows I am not making a case that Ibn Ḥanbal views the hermeneutical Christian woman in only this way. His views of her in other contexts await further research.

Ibn Ḥanbal and the Free Practice of Religion in the Muslim Household

Ibn Ḥanbal's default position about Muslims and Christians living in the same household is that they can freely practice their religion without interference, but that doing so brings up issues about Muslim ritual purity and authority over them. There is a problem when a concubine is fasting as part of her religious devotions. Christian women of Syriac (east or west) confession might observe one of several religious fasts requiring abstinence during various religious celebrations or devotions.¹⁵⁹ Consider for example that in the Muslim household, a Christian sex slave, be she a domestic slave or an *umm walad*, is subject to her owner's authority in matters of coitus. When asked if a Muslim can compel his slave girl to break her fast because he wants to

¹⁵⁹ Here is not the place to examine the exact fast the Christian woman might undertake while married or enslaved to a Muslim man. Lent is one example of a time a woman might fast from sex for a longer period of time. So, too, is the practice of remaining abstinent before taking communion.

have sex with her, he says, “No, but don’t have sex with her until she washes from her fast.”¹⁶⁰ The big question for law is whether the Muslim man can compel the enslaved Christian woman (or girl) to break her fast in order to have sex with him, since compelling a woman to break her fast would interfere with her religious devotions. Ibn Ḥanbal does not think a Muslim man can interrupt or disrupt her religious devotions, and he should only have sex with her after she cleanses. Ibn Ḥanbal’s response seems to have confused his later audience to the point that Abū Bakr al-Marrūdhī, his longtime companion, is mentioned to have said, “I don’t know the reason for him saying not to have intercourse until she washes after fasting.”¹⁶¹ Ibn Ḥanbal’s ruling is strange because Muslim women do not need to wash after fasting, but only before their morning ritual prayers after breaking a fast. In other words, Ibn Ḥanbal rules that a Christian should do things not even a Muslim woman has to do. Why would a Christian woman need to wash after her fast? Perhaps Ibn Ḥanbal considers the Christian woman ritually impure after performing a Christian fast, and wants her to be washed clean of any pollution or idolatrous impurities. We simply do not know based on this *mas’alah*.¹⁶² Confusion in the early Ḥanbalī school aside, we can say that the default position Ibn Ḥanbal holds is that Muslims might prefer that women

¹⁶⁰ al-Khallāl, *Ahl al-milal*, no. 121.

¹⁶¹ al-Khallāl, *Ahl al-milal*, no. 121. Ibn Ḥanbal does not seem to know much about the practices of Christians, only that their rituals should not be interrupted. Especially interesting in connection with fasting is Ibn Ḥanbal’s acknowledgement that Quran 2:222 prescribes a complete ritual washing (*ghusl*) for Christian women after menstruation.

¹⁶² The question about having sex with Christian women during their fasting also comes up in al-Kawsaj, *Masā’il*, 6:3065. Here, al-Kawsaj offers the views of al-Awzā’ī about a range of issues related to a *dhimmī* woman’s purity. He argues, for example, that *dhimmī* women should be commanded to do what is right (*al-amr*) by performing *ghusl* after sex and fasting, but that he does not know what God says about having sex with them during their fasts. For more on the issue of *ghusl*, see below. For the Syriac tradition on refraining from sex during night fasting, see Gianmaria Gianazza, ed., *Kitāb Uṣūl ad-Dīn* (Beirut: CEDRAC, 2005), 2:366-67. I want to thank Gianmaria Gianazza and Davide Righi for this reference. See also 415, where having sex with a spouse on Sundays or during festivals incurring a penalty. Also see fasting during Easter Lent and on Sundays, Arthur Vööbus, *Syrische Kanonessammlungen* (Leuven: CSCA, 1970), 415. I want to thank Simon Birol for this and other references which I did not include here. One might also consult the many references to fasting, many of which I did not have access to here: <http://www.csc.org.il/db/browse.aspx?db=SB&sL=F&sK=fast&sT=keywords>.

cleanse after a fast, but that their fast cannot be interrupted for her Muslim owner's pleasure. An enslaved Christian or Jewish woman can practice her religion freely and without compulsion from her enslaver. And this seems as if it would apply to Christian wives, too, though the reports do not state it.

Ibn Ḥanbal's view that a Christian or Jewish woman cannot be compelled to conform to a Muslim husband's standard of religious practice is further evidenced in his views that Christians and Jews need not wash as Muslim women do. Muslim women must wash their bodies after a sexual act because it causes a major ritual impurity, putting them in a state called *junub* in which a woman becomes ritually unclean and unable to perform a valid prayer or complete a valid fast. The only way for a Muslim woman to purify herself from this state of ritual impurity is to complete a thorough washing of her entire body, or *ghusl*. The question for legal students is whether this applies to Christian women owned by or married to a Muslim man. One of Ibn Ḥanbal's students asks him, "What about a newly purchased [Jewish or Christian] slave girl, should she be compelled to cleanse herself from ritual impurity (*janābah*)?" Ibn Ḥanbal replies, apparently in the negative, with "She should be compelled to *tanzīf*."¹⁶³ The concern is that a previously owned slave would come to a new Muslim owner impure, at least by Muslim standards, because she is assumed to have had sex with her previous owner or, more generally, another man. But Ibn Ḥanbal only says she needs to clean her body by doing *tanzīf*, a term implying a general washing rather than *ghusl*. In his eyes, a slave girl need not complete the ritual cleansing, and she need not conform to Muslim standards of ritual practice. She does not need to fulfill the requirements of Islamic ritual law.

But the problem for Ibn Ḥanbal is that a Christian woman in the Muslim household might not

¹⁶³ al-Khallāl, *Ahl al-milal*, no. 118.

obey her Muslim husband’s authority over her in matters of coitus. In a question about a Jewish or Christian wife, Ibn Ḥanbal is asked if a Muslim husband should compel her to perform *ghusl*. Ibn Ḥanbal’s response is that “it seems best to do that” but later says, “I haven’t heard any reports about it.” In other words, Ibn Ḥanbal tells his students that it seems like non-Muslim women should clean themselves as Muslim women do, but there is no evidence in the sources, at least not to his knowledge. Al-Khallāl helpfully includes Ibn Ḥanbal’s preferred interpretation of *dhimmī* cleansing in another response. Here, Ibn Ḥanbal’s student says that, “One scholar says she should be discouraged from doing a full cleansing after menstruation, but encouraged to do a full body wash (*ighṭisāl*) after entering the state of *junub*.” Ibn Ḥanbal responds by saying, “That is what Sufyān [al-Thawrī] says.” The interlocutor replies, “Do you agree?” to which Ibn Ḥanbal replies, “I tell you that the preferred interpretation (*ta’wīl*) is as God says, ‘Do not approach them [menstruating women] until they are clean. If they clean...’”¹⁶⁴ The verse goes on to say that a man can then have sex with her. Based on his citation of the Quran, Ibn Ḥanbal seems to think that Christian and Jewish women are to cleanse themselves after menstruation and after sex, meaning a Muslim man should not come near her until she does so. But he does not think a Muslim can compel a Christian or Jewish woman to do such cleansing, as clarified in a later response. Asked if he can compel her to perform *ghusl* or if he can command her to do what is right regarding it, he says, “He should not have sex with her until she does it,” and that “there is no doubt about that [he can command her to do what is right].” But the student wants to know more. He wants to know if what happens if the woman refuses to do as the Muslim enslaver or husband—though not specified in this *mas’alah*—asks. Ibn Ḥanbal says that if she refuses, “He

¹⁶⁴ al-Khallāl, *Ahl al-milal*, no. 119. Ibn Ḥanbal is citing Quran 2:222. *Ighṭisāl* is the full cleansing usually undertaken before Friday prayer, and is similar to *ghusl*.

cannot neglect her (*lā yatrūkuhā*).”¹⁶⁵ A Muslim man might want a Christian or Jewish woman to mimic Muslim religious behavior, and in fact should not have sex with her until she does, but if she refuses his command to do what is right (to wash), he cannot force her. A Muslim man might want her to perform the cleansing acts not for the benefit to the woman, but for his own personal piety. After all, if he has sex with a woman who is ritually unclean, he too becomes unclean, as he does if he has sex with a woman who is, in his eyes, still menstruating or unclean from blood from her menses. For a pious Muslim like Ibn Ḥanbal, this is simply intolerable as it pollutes him and affects his personal piety. A Muslim cannot interrupt her religious practices within the Muslim household whether for menstruation or for her religious devotion of fasting. That she might not conform to his command to do right brings uncertainty of Muslim authority over women in the household, a right afforded to him by God.

Likewise, Ibn Ḥanbal imagines Christian women as bringing *shirk* into the household, further showing his disdain for bringing them into it. He rules that a Muslim can command what is right regarding the display of religious idols in the household. The cross, for Ibn Ḥanbal, is a vulgarity of religious innovation and is an idol. But on one occasion, a student asks him whether a Muslim man may forbid a Christian wife from bringing a cross into the house. Interestingly, Ibn Ḥanbal says that Muslims should “command what is right, but as for prohibiting her, he cannot.”¹⁶⁶ This is another way of saying that Muslims legally have to allow what they consider to be idols into their household. His idea of the Christian and Jewish woman is that she is ever a threat to the integrity of the oneness of God. She brings in idols and *shirk* into the household, which Muslims,

¹⁶⁵ al-Khallāl, *Ahl al-milal*, no. 120. I am not sure exactly what is meant here except that he cannot compel her or leave her, and he must not neglect her from her right to have intercourse. Further investigation awaits research.

¹⁶⁶ al-Khallāl, *Ahl al-milal*, no. 997.

legally speaking, cannot get around. This is expressly made clear when Ibn Ḥanbal is asked about selling or renting a house to a *dhimmī*: “Can Muslims rent or sell houses to a *dhimmī* if it still has *mihrab* inside of it?” Acknowledging that this would indeed be a testimony to the greatness of Islam, Ibn Ḥanbal goes on to say that, “It shouldn’t be sold to them because they will strike the *nāqūs* and raise up a cross in it.”¹⁶⁷ In other words, Ibn Ḥanbal discourages Muslims from selling or renting their properties to those who will falsely worship God in them: they do abominable acts inside the home. He does not like the fact that they do it in their own homes much less that they might do it in a Muslim’s home, whether he lives in it or not. Al-Khallāl explains to us that the real reason for disallowing selling houses to them is based on the sanctity of the Muslim household even when it leaves Muslims hands, commenting that, “In my opinion, this means that it should not be sold or rented to them,”¹⁶⁸ a comment meaning that they corrupt it through their unsanctified practices.

Ibn Ḥanbal’s view that Christian women pose a threat to the Muslim household can be seen in his view that their practices sometimes affect a Muslim husband or child in the household. A Christian woman, in Ibn Ḥanbal’s view, might drink wine in the household or outside of it, an action unconditionally prohibited to all Muslims. If married to a Muslim man, a Christian woman cannot be prohibited from drinking wine, though a Muslim man might command what is right to urge her not to: “He should command what is right,” but if she refuses, he cannot forbid her.¹⁶⁹ Ibn Ḥanbal’s interlocutor on this subject, Muhannā, says that another jurist had argued that a pre-

¹⁶⁷ al-Khallāl, *Ahl al-milal*, no. 345. For drinking wine inside of the house, also see *Ahl al-milal*, no. 342. For the general rulings about renting and selling houses to *dhimmīs*, see nos. 342-46.

¹⁶⁸ See al-Khallāl’s comments after *mas’alah* no. 346.

¹⁶⁹ al-Khallāl, *Ahl al-milal*, no. 997.

marital agreement should be stipulated in which the Christian woman agrees not to drink wine. This evokes a laugh from Ibn Ḥanbal, though we do not know if he agreed. It is unclear when, where, or how a Christian woman married or sexually enslaved to a Muslim man might drink wine. One can only speculate as to how or how much Christian women drank wine at all while married or enslaved to Muslim men. Perhaps it was for church services and receiving the Eucharist, presuming Christian women could go to church at all while married or enslaved to a Muslim man.¹⁷⁰ But this is beside the point, as the *masā'il* tell us that Ibn Ḥanbal's idea of the Christian is that her free practice of religion by virtue of her Christianity means that she drinks wine in the household. In so doing, she contaminates it and causes a Muslim to sin, not the husband or enslaver, but his potential unborn child. If she drinks wine, she causes the Muslim child in her belly to sin or to be polluted by the wine, which transfers to the child. The woman's illicit behavior, religious or not, causes a Muslim harm, even to sin, and perhaps even puts the father's lineage at risk. For Ibn Ḥanbal, the problem is that her religious acts cannot be restricted even when her free practice of religion endangers a Muslim's life, even if the Muslim is only a fetus in the womb. For this reason, Ibn Ḥanbal sees the Christian woman as a threat to the piety and safety of the Muslim household and its lineage.

Though a Muslim man can only verbally command his wife to do what is right as far as drinking wine, he can restrict her ability to go outside of the house and to a church. This workaround is one way a Muslim might, from Ibn Ḥanbal's view, limit her religious practices without breaking Islamic law, since only by his permission can she leave; he can confine her to

¹⁷⁰ See al-Khallāl, *Ahl al-milal*, nos. 997-1001. Ibn Ḥanbal opines that a Muslim man cannot forbid Christian slaves (and presumably a wife) from going to church, but he can stop her from going out into public. Only with his permission can she leave the house at all. It is unclear to me whether this applies also to free Christian women. If it does not, then it might make more sense that Christian women drinking wine refers to free Christian women who might take the Eucharist. See also Tannous, *The Making of the Medieval Middle East*, 448-49.

the home: “It is not beneficial that she goes out to church, and he should forbid her, since she is not to leave without his permission.”¹⁷¹ His right to confine her to the house is to preserve public virtue even if private decorum is tainted behind the walls of the house. But this work-around solution is not Ibn Ḥanbal’s preference. For him, these perceived and imagined Christian practices invite sin into the household. Since he cannot restrict her religious practice and he does not advocate controlling and policing a Christian slave’s or wife’s body in regards to purity, he sees them as liabilities to the Muslim household that are best to keep at a distance.

The idea of the Christian and Jewish woman freely practicing their religion by displaying their religious symbols means that they bring in elements foreign to Muslim life and worship. The idea of the Christians and Jews in Ḥanbalī thought is that they simply do things that Muslims are not to associate with, and they constantly break the law by definition of their religious disposition while in the Muslim household. The household is where sin goes to hide. Or, more precisely, the household is where violations of the law are invisible to most observers. They are not violations for the Christians or Jews, but they are for Muslims, a point that Ibn Ḥanbal views as reprehensible. Ibn Ḥanbal’s reservations about Christian women reinforce religious difference and assert the incompatibility of Muslims and Christians in the household, even if he has to permit it as licit before the law. In fact, his rulings imply that he envisions a world in which Christian women are not part of it at all. His lenience toward other Muslims is only because the law affords them this lenience. How can a Muslim invite such a lawbreaker in to the household? Most if not all of Ibn Ḥanbal’s rulings about Christian and Jewish women point to the view that they are not to.

¹⁷¹ al-Khallāl, *Ahl al-milal*, no. 997. See also al-Kawsaj, *Masā’il*, 6:3065 for al-Awzā’ī’s permissive view about allowing them to go to church. For views of Christian women wielding their bodies for control of their most valuable resource, see Caroline Bynum, *Holy Feast ad Holy Fast: The Religious Significance of Good to Medieval Women* (Los Angeles: University of California Press, 1988), 189ff.

Ibn Ḥanbal abides by a legal code that keeps Christian women at a distance even if he does not expect others to hold themselves to the same standard. Muslim are not, in Ibn Ḥanbal’s view, to buy Christian slaves or marry Christian women. That he does not find marriage to them beneficial is evident when his students ask about Muslim men marrying Christian or Jewish women. He responds to one of his students saying, “I don’t prefer [a Muslim] does that (*mā uḥibbu an yaf’ala dhālik*). But if he does, well, the Companions did too.”¹⁷² In other words, he tells his students what to do without doing it himself. Another time, he mentions that there is, legally speaking, nothing presumptively illicit with it (*lā ba’s bihi*), even if it is not preferable for him.¹⁷³ Ibn Ḥanbal, despite his awareness of the *sunnah*’s injunctions about the legality of

¹⁷² al-Khallāl, *Ahl al-milal*, no. 454. An alternative reading of the beginning of the saying is: “It is not preferred that it be done (*mā uḥibbu an yaf’ala dhālik*).”

¹⁷³ al-Khallāl, *Ahl al-milal*, nos. 455 and 469, but also no. 467 where he simply answers “Yes.” In a different *mas’alah* on Muslims preferring to marry Christian and Jewish women over Muslim women, see no. 485. But not all *dhimmīs* are treated equally. Muslims, for example, cannot marry Magians. Ibn Ḥanbal expressly forbids Muslim men from marrying Magian women on grounds that they do not have a book—they are not *kitābīs*—and are unclean. They are impure people who can never be fully cleansed from their dealings with food, sacrifices, or contact with the dead: see nos. 454-457. They are a major liability to the ritual purity of the Muslim household. Al-Khallāl inserts his comments in the text to emphasize that Ibn Ḥanbal forbids it. Many of the subsequent entries, such as nos. 458-466 are on the disputes about a Companion marrying a Magian. In no. 470 and several following entries, Ibn Ḥanbal cites Quran 5:5 which says Muslim men can only marry chaste women (*muḥsināt*) who have a Book (a *kitābī*), which Magian women are not. The term *muḥsināt* is a quranic term meaning “married woman” or “chaste women,” terms which have been disputed among Muslim exegetes and modern scholars for more than a millennium. Some see the use of *muḥsināt* Quran 4:24 to mean “married woman,” which fits the context of Quran 4:22-23 if read as an extension of it: “Do not marry your father’s wives...[v. 24] also forbidden to you are your mothers, daughters, sisters...*Al-muḥsināt min al-nisā* [are forbidden].” The term could mean “chaste women,” as Joseph Witzum argues, for which see below. Some see the use of *muḥsināt* Quran 5:5 to mean “chaste women,” as the verse says: “Today, all good things are made lawful unto you. The food of those who have been given a Book is lawful to you, and your food is lawful unto them. And likewise, the chaste women of the believers [Muslims], and the *muḥsināt* of those who were given the Book [*kitābīs*] before you... [but] not as paramours.” Here, it would not make sense for *muḥsināt* to mean married women, because it is illicit to marry already-married women; it means chaste women. The term *muḥsināt* might refer to slave or free women, a contested point in exegesis, and a point which might mean for some that Muslims only have access to free women of the People of the Book, but not slaves. In NMRC, Ibn Ḥanbal only opines that Muslims can marry the women of the people of the Book without telling us if he means enslaved or free or both, but the free women are certainly included. The dispute about the meanings of *muḥsināt* are part of a long tradition of discourse and analysis among exegetes, which Joseph Witzum discusses at length, with relevant sources, in “Q 4:24 revisited,” *Islamic Law and Society* 16, 1 (2009): 1-33, doi: <https://doi.org/10.1163/156851908X413748>. Witzum interprets *muḥsināt* in Quran 4:24 to be the start of a new sentence rather than a continuation of the previous verse, making it seem as if it means “married woman” instead of “chaste woman,” the latter its original meaning. In al-Khallāl, *Ahl al-milal*, nos. 474, 475 and 477, Ibn Ḥanbal says Muslims cannot marry Arab women on grounds that they are idol worshippers, as the Quran 2:221 indicates. For the permissibility of marrying Arab Christians, however, see no. 478.

Muslim men marrying Muslim women, opts to stay as far away from them as possible. For Ibn Ḥanbal, it is simply best to avoid proximity to someone whose ideas are hateful and whose habits are impure. As a renunciant ascetic, he thinks of Christian women as hindrances to his closeness to God and obstacles to salvation. Others might marry or enslave them in the household at their own risk. Christian wives and slaves pose a legal risk not because of the marriage or enslavement themselves, but the potential illicit behaviors they bring to the household perhaps much like the women of the old religious and political order of pre-Islamic Arabia who celebrated the death of the Prophet.¹⁷⁴ Perhaps there is no greater example of the threat Christian women pose to the household and how the household is better imagined to not have Christian women in it at all is seen in their imagined disrespect and blasphemy of the Prophet. In the next section, we will see how Ibn Ḥanbal's rulings imply that the blasphemy of the prophet by Christian and Jewish women is another way of characterizing them as threats to the Muslim household, and, more critically, how his rulings imply an ideal world where only Muslims make up the household.

Non-Muslim Women and Blasphemy Against the Prophet

What has been said thus far is that Ibn Ḥanbal's idea of the Christian and Jewish woman is that they pose a threat to the piety and authority of the Muslim household. His ideas about them come from the legal characterizations of them rooted in the past and expressed as binding in the

¹⁷⁴ Nadia Maria El Cheikh, *Women, Islam, and Abbasid Identity*, 2, 17-37. El Cheikh argues that Hind bt. 'Utbah, the mother of the Mu'awiyah b. Abī Sufyān (r. 661-680 C.E.), was ideologically constructed to contrast proper Muslim behavior with improper Muslim behavior, and to contrast the new Arab Muslim political order with the old pre-Islamic order: she is the prototype of the age and mindset of ignorance and arrogance. One might say the same to the literary figure Ḥubbā (lived seventh century), the exemplar of sexual prowess, for which, see Fedwa Malti-Douglas, *Woman's Body, Woman's Word: Gender and Discourse in Arabo-Islamic Writing* (Princeton: Princeton University Press, 1991), 45-48; and for criticism on this point, see Julie Scott Meisami, "Writing medieval women: Representations and mis-representations," in *Writing and Representation in Medieval Islam: Muslim horizons*, ed. Julie Bray (Abingdon: Routledge, 2006), 61.

present. Their imagined practices help him make his points that they bring sin and impurity to the Muslim household because, for one, Muslims cannot control their religious practices within it. But there are instances in which he rules that their religious beliefs break the law and require punishment. In the following account I argue that, in support of the previous points about the free practice of religion and the threat it poses to Muslim households, women might go beyond practicing illicit or sinful religious acts to doing outright disrespectful and hateful acts toward Islam or its Prophet: they do things that the law must punish. It is here that we see Ibn Ḥanbal's idea of the Christian and Jewish woman as blasphemers, and how his discussions of blasphemy go beyond the *sunnah* and urge Muslims to avoid marrying or purchasing Christian or Jewish female slaves. The biggest threat Christians and Jews bring to the household is their blasphemous tongue, a fact which serves to show that he views a world in which Christians do not exist.

Blasphemy against the Prophet Muḥammad is a grave sin in Islamic legal thought. The Quran does not offer a specific ruling about the punishments for blasphemy, but many reports attributed to the Prophet discuss them.¹⁷⁵ Legal scholars took centuries, nearly seven according to one observation, to write treatises dedicated to the topic.¹⁷⁶ There is a long history of legal discussion and debate about the punishments for blasphemy, its genesis, and its development, too. Legal discussion about blasphemy covers many different topics. Some discussions cover the

¹⁷⁵ Sahner, *Martyrs*, 118ff.; Intisar A. Rabb, "Society and Propriety: The Cultural Construction of Defamation and Blasphemy as Crimes in Islamic Law," in *Accusations of Unbelief in Islam*, eds. Camilla Adang, Hassan Ansari, Maribel Fierro, and Sabine Schmidtke (Leiden: Brill, 2016), 434-464, doi: https://doi.org/10.1163/9789004307834_019; Rabb, "Negotiating Speech in Islamic Law and Politics: Flipped Traditions of Expression," in *Islamic Law and International Human Rights Law*, eds. Anver M. Emon, Mark S. Ellis, and Benjamin Glahn (Oxford: Oxford University Press, 2012), 158ff; and John Tolan, "Blasphemy and Protection of the Faith: Legal Perspectives from the Middle Ages," *Islam and Christian-Muslim Relations* 27:1 (2016): 35-50, doi: 10.1080/09596410.2015.1087671.

¹⁷⁶ Sahner, *Martyrs*, 125.

religious status of a blasphemer and whether he or she should still be considered a Muslim. Other discussions focus on the punishment and the conditions, and whether it should result in execution of the blasphemer or include a call to repentance. Still other discussions are framed in legal and social terms, that is, the extent to which God's rights, man's rights, or public decorum is the cause for punishing blasphemers.¹⁷⁷ Plaited into discussions about blasphemy are the differences and similarities between blasphemy against the Prophet, his Companions, his family, or God. Discussions on blasphemy and how to punish it become more complex as they embed themselves in different regions, polities, and social contexts. The complexity is compounded as the issue becomes entangled with government administration, juridical processes, and civil institutions. In early Islamic history, the state apparatus was limited in its ability to enforce the law; authority, legal legitimacy, and arbitration derived from the Prophet or from trustworthy arbitrators.¹⁷⁸ Even then, the definition of what constitutes blasphemy against the Prophet, his Companions, or God, or how one can prove that another person blasphemed at all is difficult for us to understand given the nature of our legal and literary sources.¹⁷⁹

Discussions about blasphemy are common among jurists and students of law of the ninth century, and although the debates take different forms and shapes according to different legal scholars and their respective legal methods, our focus here is on how Ibn Ḥanbal conceives of non-Muslims blaspheming the Prophet in the past, and how his conception informs or is informed by the ninth-century world he lives in. On many occasions, Ibn Ḥanbal's students ask

¹⁷⁷ Sahner, *Martyrs*, 118-123; Intisar Rabb, "Society and Propriety," 434-464; and Rabb, "Negotiating Speech," 158ff.

¹⁷⁸ Mathieu Tillier, "Women before the *qāḍī* under the Abbasids," *Islamic Law and Society* 16 (2009): 280-301.

¹⁷⁹ Christian Sahner has looked to examples of blasphemy in the earliest periods, and makes convincing arguments for blasphemy punishments being carried out against Christians. See Sahner, *Martyrs*, 118-159. Most of the examples come from al-Andalus due to a lack of evidence in Iraq and other parts of the Caliphate.

him what the punishments for blaspheming (*shatm*) the Prophet are. Ibn Ḥanbal states that anyone, regardless of religion, status, or sex should be killed, as long as there is sufficient evidence.¹⁸⁰ For *dhimīs*, committing blasphemy means breaking an agreed-to pact (*‘ahd*) which does not allow them such liberty, though this does not seem to have been included in the earliest pacts.¹⁸¹ This extends to all Christians, priests as well as laypersons, and thus Christian monks who blaspheme the Prophet should be killed, as reports about Christian blasphemers make clear.¹⁸² And it extends to all People of the Pact, or *dhimīs*. Ibn Ḥanbal’s preferred penalty for blasphemy is clear: execution. But we should pause for a moment to consider the ways in which non-Muslim women are imagined to have blasphemed, and how such an idea of the non-Muslim woman exudes repugnance for them. Some of the earliest reports purporting to tell us about blasphemy come from stories about a Jewish woman blaspheming the Prophet and consequently being killed.

¹⁸⁰ al-Khallāl, *Ahl al-mīlāl*, nos. 729, 735, 739. Also see nos. 731-732 about a Christian monk blaspheming the Prophet, and nos. 737-738 for a report about Khālīd b. al-Walīd (d. 642) and the killing of a blaspheming woman. For the latter, also see ‘Abd al-Razzāq, *Muṣannaḡ*, 5:307 (no. 9705); Ibn Taymiyyah, *al-Ṣārim al-maslūl ‘alā shātim al-rusūl* (Saudi Arabia: al-Ḥaras al-Watanī al-Sa‘ūdī, 1983), 134. For a ruling about a Jewish man passing in front of a muezzin during the call to prayer interpreted as blasphemy, and Ibn Ḥanbal’s doubt about such a case, see al-Khallāl, *Ahl al-mīlāl*, no. 728.

¹⁸¹ al-Khallāl, *Ahl al-mīlāl*, nos. 730-31. For Ibn Ḥanbal’s understanding of a pact of protection, see nos. 969-91. None of these entries mention speaking ill of the Prophet or Islam, nor do the earliest pacts. But other pacts as recorded by later authors apparently did. For examples of pacts made with Christians and that mention the breaking of the pact defined as defamation or blasphemy of the Prophet, the Quran, or Islam, see Milka Levy-Rubin, *Non-Muslims in the Early Islamic Empire: From Surrender to Coexistence* (New York: Cambridge University Press, 2011): Abū Yūsuf’s version, 77-78; al-Shāfi‘ī’s version, 78-84 and 173-76. There are many other references to other pact agreements (e.g., *ṣulḥ*, *‘ahd*) that can be found in Levy Rubin’s bibliography. A short bibliography might include: Arthur S. Tritton, *The Caliphs and their Non-Muslim Subjects* (London: Frank Cass and Co, 1970), and Tritton’s final word on the subject, which was in agreement with his claims from earlier writings, in Tritton, “Islam and Protected Religions,” *The Journal of Royal Asiatic Studies* no. 2 (April, 1931): 311-38; Albrecht Noth, *The Early Arabic Historical Tradition* (Princeton: Darwin Press, 1994); Noth, “Problems of Differentiation Between Muslims and Non-Muslims: Re-reading the ‘Ordinances’ of ‘Umar” in *Muslims and Others in Early Islamic Society*, ed. Robert Hoyland (Burlington, VT: Ashgate, 2004), 103-124; Aziz Atiya, *A History of Eastern Christianity* (Millwood, NY: Kraus, 1980, reprint), 268; Robert Hoyland, *Seeing Islam*, 121-22; and Mark R. Cohen, “What was the Pact of ‘Umar?” *Jerusalem Studies in Arabic and Islam* 23 (1999) 100-57.

¹⁸² al-Khallāl, *Ahl al-mīlāl*, nos. 731 and 732. There are no instances of Christians blaspheming God or the Companions in NMRC.

Hudūd and the Muslim Household

The stories and the details found within early reports about blaspheming Jewish women help us understand how Ibn Ḥanbal imagines and extends this characterization to other non-Muslim women. The stories, as we will see, negatively characterize non-Muslim behavior toward Islam, its Prophet, and the sanctity of the patriarchal Muslim household. Men too are important to our discussion since they are subject to the same consequences if they blaspheme. And there are many anecdotes about Christian men blaspheming the Prophet and the Quran from the ninth century.¹⁸³ But women stand out as quite different from men because of their relationships to Muslim households. Women might suffer the same consequences as men for blasphemy, but they pose an additional liability to the household. They, unlike men, more frequently move into Muslim households and into the private and devotional lives of Muslim men and families, as we saw in some examples above.¹⁸⁴ Women stand out as a special case not only because of their religion, but because of their gender and the gendered roles in social practices. For Ibn Ḥanbal, Christian and Jewish women are liabilities because of the assumptions made about their gendered roles in the household.¹⁸⁵

The circumstances of the following reports about a female Jewish blasphemer are perhaps as

¹⁸³ Sahnner, *Martyrs*, 118-159; John Tolan, “Blasphemy and Protection of the Faith,” 42-43.

¹⁸⁴ I borrow the conception of women as liabilities or assets from Julia Bray, “Men, women and slaves in Abbasid society,” in *Gender in the Early Medieval World: East and west, 300-900*, eds. Leslie Brubaker and Julia M. H. Smith (Cambridge: Cambridge University Press, 2004), 133.

¹⁸⁵ For comments on the focus of religious disposition as an analytical category in historiography, see Lev Weitz, “Slavery and the Historiography of non-Muslims in the Medieval Middle East,” *IJMES* 49 (2017): 139. For the relationship between slave women and gender, see Kecia Ali, *Marriage and Slavery in Early Islam* (Cambridge: Harvard University Press, 2010), 8, where she points out that being both female and slave are disabilities, and are categories foundational to jurists’ worldviews.

relevant to ninth-century Baghdad as any other time in Islamic history up to that point. Earlier periods in Arabia saw close contact between Jews and Muslims, and in ninth-century Baghdad intercommunal exchange is even more frequent. The proximity in which they lived to one another remained the same, if at only a higher frequency in densely populated cities. Muslims likely married or took non-Muslims as *umm walads* at higher frequencies, but the contact and the resulting threats non-Muslims posed to Muslim households remained the same, at least as perceived by Ibn Ḥanbal. If any of the quotidian realities experienced by Ibn Ḥanbal in the ninth century indicated a change to relationships between Muslims and non-Muslims, they are not evident from the idea of the Christian or Jew in Ibn Ḥanbal's attitude. For him, the quotidian realities have little bearing on his view that the *sunnah* is true and applicable in all time periods and locations: the consequences and circumstances of blasphemy of the seventh century are the same as blasphemy in the ninth century. And the threat non-Muslims posed in the seventh century is the same as the threat they pose in the ninth century.

The Strangler

The characterization of non-Muslim women as threats to the Muslim household are clear in a story about Jewish woman blasphemer from the first Islamic century. In one report, which I call the "Strangler," Ibn Ḥanbal says that a blind Muslim man has a Jewish woman in his house. We are not told if he is married to her or if she is some sort of caretaker or if she is an *umm walad*. We are told that she "is kind to him and feeds him (*tuḥsin ilayhi wa-tuṭ'imuhu*)." The story then pivots to discuss a major problem: she consistently blasphemes the Prophet in his presence. Day after day, he patiently puts up with her blasphemy until he gives in to anger and strangles her to death. The next day, the Prophet calls the people (e.g., the Muslims) together, though we are not

told where or when this story takes place, and asks who is responsible, in a manner suggesting that he approves. The man stands up and gives his reasons, recounting her blasphemy. And the Prophet, preemptively answering the man's concern, responds that no blood price or recompense is required for her.¹⁸⁶

In his *Sunan*, Abī Dawūd records an abbreviated form of this report with similar content and a similar *isnād*. His shorter version includes an unnamed Muslim man strangling a Jewish woman who “used to blaspheme the Prophet . . . until one day the man strangled her to death.”¹⁸⁷ This version contains some marked differences. The Muslim man in this version is not blind and the woman, though Jewish, is not a caretaker and is not said to be kind to him and feed him. We are not told any details about the woman except her religious identity as a Jew. We are also never told, as we are in Ibn Ḥanbal's narration of the report, that the Prophet convened a meeting afterwards. But the two stories share a similar narrative structure. In Abī Dawūd's version, like Ibn Ḥanbal's, a Jewish woman blasphemes, a Muslim man kills her, and the Prophet declares that no blood price is required of the Muslim man.¹⁸⁸

¹⁸⁶ al-Khallāl, *Ahl al-milal*, no. 736. A shorter version is given in Ibn Abī Shaybah, *Muṣannaf*, 7:301 (no. 36279). Another version of the report identifies the blind man as ‘Abd Allāh b. Umm Maktūm, a companion of the Prophet, and the event taking place in Madīnah, for which see Ibn Sa’d, *al-Ṭabaqāt*, 4:158. For more on the authenticity of the report in later Islamic tradition, including the Ḥanbalī school, see below. For the Ḥanbalī view that blasphemy is about an individual's personal right to invoke a blood price as retaliation rather than about breaking of the rights of God (*ḥuqūq Allāh*), see Rabb, “Society and Propriety,” 442-443. Rabb discusses blasphemy by Muslims, but I wonder how this might be different when a Christian blasphemes the Prophet.

¹⁸⁷ Abī Dawūd, *Sunan*, ed. Muḥammad Muḥayy al-Dīn ‘Abd al-Ḥumayd, n.d., 4:129 (no. 4362).

¹⁸⁸ Ibn Ḥanbal's report is *mursal*, a technical term meaning one link is missing in the chain of transmission (*isnād*) between the Prophet and the first transmitter of the story. That Ibn Ḥanbal considers the story trustworthy is likely for the same reasons given by Ibn Taymiyyah and Ibn al-Qayyim, for which see below. I provide the *isnād* here for quick reference:

Ibn Ḥanbal from Jarīr, from Mughīrah, from al-Sha‘bī (NMRC)
Abī Dawūd from ‘Uthmān b. Abī Shaybah and ‘Abd Allāh b. Al-Jarrāḥ from Jarīr, from Mughīrah, from al-Sha‘bī, from ‘Alī (*Sunan*)

The Strangler story is interesting because it claims that a Jewish woman is kind to the man. She also feeds him licit food, a fact in the story that cannot be overlooked given the revelational food laws in the Quran for Muslims to follow. The relationship between her doing what is licit for him can be read as in conversation with the Quran, the apparent subtext of the Strangler report. Early in the nascent Muslim community, food was a source of serious discussion, since according to revelation, some foods are permissible to Muslims and others are forbidden, depending on religion. According to the traditional narrative of the Quran's revelatory chronology, in a time before 622 C.E., that is, during the Makkan period, the food of Jews is said to have been deemed permissible. And the Quran even goes so far as to define what is not permissible: carrion, blood, pork, and improperly blessed food.¹⁸⁹ During the Madinan period of revelation, traditionally from 622 C.E. to near the end of the Prophet's life in 632 C.E., a verse is given instructing that, "Today, *all good things* are made lawful unto you. The *food* of those who have been given a Book is *lawful* to you, and your food is lawful unto them. And likewise, the chaste women of the believers, and the chaste women of those who were given the Book before you.... [but] not as paramours (*lā muttakhidhī akhdān*)."¹⁹⁰ This verse mentions that "all the good things" are lawful for Muslims, here meaning the food practices of Christians or Jews (e.g., people that have a Book) as well as their women in marriage, as long as they are not taken as "paramours," that is, women whom they might fornicate with illicitly. Of interest to us is the mention of "good things" and "food" and the "paramours" because these are the elements of the Quran that we find in the Strangler story.

The Strangler story seems to show that the Jewish woman fulfills that which the Quran

¹⁸⁹ Quran 16:115 (also Quran 5:3). David Freidenreich, *Foreigners and their Food*, 132-33.

¹⁹⁰ I consulted the translations of Shakir, Yusuf Ali, Pickthall, and Arberry, but the translation is mine.

makes licit: she is licit for him and feeds him licit food, that is, she is not a paramour.¹⁹¹ If we read the story to mean that she is a Christian or Jewish *umm walad*, as we will see in the next section, then she is in a licit relationship with him and can provide him licit foods (properly slaughtered). The parallels between the Quran and the Strangler story are clear. The content of the Strangler story meets the requirements of the quranic injunctions and therefore the Muslim man of the Strangler story is not acting outside of the normative, presumptively permissible behavior of a Muslim. He is held to be upright and pious, and is not to blame for bringing in someone illicit into house nor for eating illicit foods. In other words, the Strangler report goes the extra mile in establishing the credibility and conformity of the man to Quranic requirements, in addition to his relationship with the woman. The parallel between them seems to be a way for the Strangler report to preemptively answer any questions about the licit-ness of the woman in his house as well as the legality of his behavior.

The Stabber

In a second report Ibn Ḥanbal cites in NMRC, which I call the “Stabber,” we see that a Muslim man lives with or in close proximity to an *umm walad* who has borne him children. We are not told whether the woman is Jewish or of another religious disposition. And we are not told if the man is blind. The woman blasphemes the Prophet, and the Muslim man kills her, but no details are given about how he does so. At this point in the short report, the Prophet is said to “inquire about her,” though no indication is given as to if it was in a group setting, as we saw in the Strangler story. The Muslim man, in order to justify his actions, explains to the Prophet that

¹⁹¹ The “good things” in Quran 5:5 refers to food and women, as is clear in the context. And “good things” also refers to other foods such as those caught from hunting, (see Quran 5:4). The point here seems to be that the woman was good or licit for him, and that he was in no way breaking the law.

she “was blaspheming you.” The Prophet responds that the woman’s blood price or any recompense is quite unnecessary (*alā inna dam fulāna hadar*) given the circumstances. The story follows a similar narrative pattern of the two versions of the Strangler story, but with different, if not fewer, details.¹⁹²

In his *Sunan*, Abī Dawūd reports an extended version of Stabber, with similar narrative content and *isnād*. His longer version says that the man is blind and the woman is a Jewish *umm walad*, bringing together all of the elements of the Strangler reports cited above: her gender, her religion, and her relationship to the Muslim man. Here, we are told that the Jewish *umm walad* consistently and frequently blasphemes the Prophet in the presence of the blind Muslim man. Day after day he puts up with it, warning her over and over, until he becomes fed up. One night, we are told, she really digs in and disparages and defames the Prophet, leading him to pull out his small dagger (*mighwal*) and place it on her belly. He leans on it, killing her. Incidentally, it seems, one of their children is resting between her legs on the bed when she is killed, and is spattered with blood from the stabbing. The reason for this detail being included is unclear, but perhaps it is to establish that she is indeed an *umm walad* and he is indeed blind enough not to notice the child between her legs.¹⁹³ The Prophet, after being informed of the event, calls the people together to ask who is responsible for stabbing and killing her. The blind man nervously stands up, stumbles through the crowd, and tells his side of the story, apparently worried about being disciplined. He explains to the Prophet how his *umm walad* bore him two “pearls of sons” and that she “was a companion to me,” meaning, we might speculate, that she was kind to him.

¹⁹² al-Khallāl, *Ahl al-milal*, no. 734 and also no. 733.

¹⁹³ See Wael Hallaq, *Shari’a Theory, Practice, and Transformations* (Cambridge: Cambridge University Press, 2009), 349. The meta-discourse here is that a blind man is thought to not be able to give valid testimony. Others, such as the Ḥanbalīs, believe that in cases in which hearing is required a blind man can give valid testimony.

But, the blind man recounts, she would not stop blaspheming the Prophet, and thus he stabbed her in the belly, killing her. After he finishes giving his testimony, the Prophet declares that no blood price is required, just as he does in the other versions of this story.¹⁹⁴

Are the Strangler and the Stabber the Same Story?

The discrepancies in the Strangler and Stabber stories seem to be obvious conflation of one or possibly two independent events. Though we are not told where these events took place, the context of the Strangler and the Stabber would make us believe that it is in Arabia, probably Madinah, after the Prophet had immigrated there, since this is where Jews lived alongside Muslims. The narrative structures between the Strangler and Stabber stories are likely misremembered or confused at some point in the history of their transmission, a fact that does not escape later Ḥanbalī tradition.

Ibn Taymiyyah, and later his student Ibn al-Qayyim, describes the differences and the apparent discrepancies between the accounts of the Strangler and the Stabber. He asserts the possibility that the reports of the Stabber as cited by Ibn Ḥanbal and Abī Dawūd are one and the same.¹⁹⁵ He goes on to say that Ibn Ḥanbal's report of the Stabber is perhaps a later account of Abī Dawūd's narration, and thinks that they might have been mixed up along the way as

¹⁹⁴ Abī Dawūd, *Sunan*, 4:129 (no. 4361). The *isnād* is given here for reference:

Rawḥ from 'Uthmān al-Shahḥām from 'Ikrama the *mawlā* of Ibn 'Abbās (NMRC)
'Abād b. Mūsā from Ismā'il al-Madanī from Isrā'il, from 'Uthman al-Shahḥām (Basran) from 'Ikrima from Ibn 'Abbās

¹⁹⁵ Ibn Taymiyyah, *al-Ṣārim*, 61ff. Ibn Taymiyyah describes this *ḥadīth* as good (*jayyid*) based on the trustworthiness of al-Sha'bī, the transmitter of the report, as well as on the invocation of it by Companions of the Prophet and other jurists within Islamic tradition. Ibn al-Qayyim, *Aḥkām*, 3:1398-1400. Ibn al-Qayyim says the report is authentic based on the transmitter al-Sha'bī who knew 'Alī and had transmitted reports about the stoning of Shurāḥah al-Hamdāniyyah, the *mawlat* of a certain Sa'īd b. Qays. See also Ibn Ḥanbal, *Musnad*, no. 1185.

evidenced in the misremembering of the way the woman was killed, that is, either by strangling or by stabbing. Ibn Taymiyyah argues that no matter how the story is viewed—whether the Strangler or the Stabber is the original, or whether the two form a composite or conflated story—the event involves a blind man and a woman who is kind to him yet repeatedly blasphemes the Prophet. For Ibn Taymiyyah, some event of this kind did take place but was described differently during the process of transmission.

Ibn Taymiyyah also says that the woman is likely Jewish, despite it not being mentioned explicitly in every version, because all of the other narrative elements of the story align: the repeated blasphemy, the murder, the inquiry about the killer, and the final declaration about the blood price. But he cautiously makes room for there to be two different stories that take place at two different times.¹⁹⁶ Either way, for him, the woman is Jewish. She is a *dhimmī* from Madinah. And she is from the tribe the Banū Qaynuqā' before the tribe was expelled from the city sometime around 624.¹⁹⁷

The interpretive tools used by Ibn Taymiyyah and Ibn al-Qayyim are the result of later developments in the Ḥanbalī school, which Ibn Ḥanbal would not have conceived of nor implemented. He would not, for example, subject the chronology of the report to criticism, even if it contradicted another report, unless the *isnād* was dubious. For him, the report is authoritative apart from its chronology or substantive content. The story is one that shapes the boundaries of the law: it makes licit the punishment for blaspheming the Prophet. But it also, and more pertinently for this chapter, serves as a cautionary tale against inviting non-Muslims into the

¹⁹⁶ Ibn Taymiyyah, *al-Ṣārim*, 68ff; and Ibn al-Qayyim, *Aḥkām*, 3:1403-4.

¹⁹⁷ Ibn Taymiyyah, *al-Ṣārim*, 65ff; and Ibn al-Qayyim, *Aḥkām*, 3:1404-10. These back projections of the story might be read as one way Jews were imagined by later Muslims. For the Qaynuqā', see *Encyclopaedia of Islam*, 2d edition, s.v. "Qaynuqā'."

Muslim household despite the legality of doing so.

What Can We Learn from the Strangler and the Stabber Stories?

The Jewish woman conceived of as a caretaker or *umm walad* serves as one archetype of non-Muslim behavior in the Muslim household used to express caution against bringing them into the household. Ibn Ḥanbal simply reports the stories about the blasphemous woman in the Muslim household as fact, as does al-Khallāl. The stories of blasphemy are an axis of discussion of the role of Christian and other non-Muslim women in the Muslim household: they are a first step in showing how non-Muslim women are liabilities that invite more harm than help into the Muslim household. In turn, discussions about *ḥudūd* punishments for blasphemy—as they are categorized in NMRC—reflect a broader notion of hermeneutical Christian women and the complications that arise when Muslims and non-Muslim come to live or coexist in close proximity to one another.

In a story of a renunciant's relationships with a Christian slave, the woman did not always make it inside of the Muslim household despite a Muslim man's best efforts. In the case of one narrative Abbasid account of the threat Christian slave girl pose to the household, a pious ascetic (*zāhid*) becomes infatuated with a (foreign) Christian slave, apparently in the Byzantine city of Amorium, and is beaten for approaching her. He comes back, unable to stop himself. She says that she will marry him on the condition that he converts, and he refuses. The story ends with the man beaten to death by a group of Christian men. The moral of the story is that women are a threat and that "Muslim men would do well to keep away from them, as involvement with them

ends in a sure road to perdition.”¹⁹⁸ Here, we might see the Abbasid narrative construction of a Christian slave as similar to the Abbasid legal construction of the Christian slave (and wife) by Ibn Ḥanbal. Ibn Ḥanbal, himself a *zāhid*, would not make the error of getting involved with Christian women since they invite fear, uncertainty, and doom into a Muslim’s life.

The sensational nature of the Strangler and Stabber might make it seem as if I am taking an exceptional anecdote and making it ordinary or normative, so as to mis-characterize Muslim views about non-Muslim women. I am not. I am using it to show how Ibn Ḥanbal conceives of women in alignment with other views he upholds as I stated above, and how al-Khallāl compiled his views as a definitive collection for understanding the legal representation of women.¹⁹⁹ Ibn Ḥanbal sees the free practice of religion as a general rule unless non-Muslims break the rules of a prior pact stipulating that they are not to blaspheme. The Strangler and Stabber stories provide context to his ideas of the Christian and Jewish woman in the Muslim household: they demonstrate that Christian and Jewish women are legal liabilities to the Muslim household, because they do things in it that discredit the Prophet. I cannot speculate as to the commonly held attitudes of Muslims, jurists, or others toward Christian women. And I cannot speculate as to the social circumstances, legal views, or perceptions other Muslims might espouse during the ninth and tenth centuries, though historiographical sources characterize one Coptic Christian as inviting drama and tension in to the Prophet’s household.²⁰⁰ We do not know how Ibn Ḥanbal

¹⁹⁸ Nadia Maria El Cheikh, *Women, Islam, and Abbasid Identity*, 8.

¹⁹⁹ For criticism of using ḥadīth collections to create ideal-types of women as an attempt to represent male misogyny in Islamic religious works, see Julie Scott Meisami, “Writing medieval women,” 73.

²⁰⁰ In the ninth century, Muslim historians documented stories of domestic scandal and tension arising from stories about Muḥammad’s sex slave Māriyyah the Copt. Reportedly, Muḥammad was so sexually attracted to her that he had sex with her in his wife Ḥafṣah’s house. And to make matters worse, he did so on the day typically allotted to his wife (he rotated time spent with his multiple wives). In deference to his wives, who later found out about his act, he swears not to have sex with Māriyyah again, occasioning the revelation of Quran 66:1-4. These verses say that Muḥammad need not abstain from having sex with her since concubines are licit. What is important to us about the

conceives of these stories as bearing on formal litigation or the judicial process, though there are some legal implications of bringing non-Muslims wives or slaves into the household from outside of it, as will be seen. We also do not know if the actions of the Muslim man in the Strangler and Stabber story set a normative precedent or an exceptional rule. Still, we do not know if the ruling should be applied differently during his life than in earlier periods; that is, if he thinks a man can take the law into his own hands or if he thinks arbitration or formal legal rulings are needed to justify the killing of a blasphemer.²⁰¹ My purpose has been to discuss the

events occasioning the revelation of the Quran is not the historicity or the authenticity of the reports nor their incidental social details, but the way ninth-century Muslims wrote and thought about Māriyyah. The problems associated with Māriyyah are many, but it will suffice to mention a few here. One problem is that she invited a Coptic eunuch into her private apartment which caused Muḥammad's wives to accuse her of adultery, which is one reason false claims of infidelity are typically found in early legal books with chapter on *umm walads* (see, for example, Ghulam al-Khallāl, *Zād al-musāfir*, 3:469. Another problem is that if she converted to Islam before arriving to Muḥammad, then Muḥammad would be said to own a Muslim slave (which is frowned upon unless they are manumitted, but not a hard and fast rule). Another problem arises about her birthing Muḥammad a son, Ibrāhīm, implying that the heir of the Prophet might come through a Christian woman. Making her a Muslim is the most convenient way to resolve both of these issues, not to mention many others that await research. Faithful or not, convert or not, the Coptic Christian woman is imagined as a threat to the Muslim household insofar as she might act without private decorum or bring sin into the households of the Prophet. This does not prove, of course, that she did or did not become a Muslim, only that her story of becoming one had to be invented, true or not, to sidestep any legal issues associated with the Prophet. Much of the same can be said of Muḥammad's purported Jewish wife Ṣafiyyah, who was the object of ridicule by Muḥammad's wives for her Jewish religious roots and what they perceived as a tentative conversion to Islam. The tension the Christian or Jewish woman brought into the household shaped the historiography and legal writing of ninth-century Muslims. For more on Māriyyah, see Aysha Hidayatullah, "Māriyya the Copt: gender, sex and heritage in the legacy of Muhammad's *umm walad*," *Islam and Christian-Muslim Relations*, 21:3 (2010): 221-243, doi: 10.1080/09596410.2010.500475; Elizabeth Urban, "Hagar and Mariya: Early Islamic Models of Slave Motherhood," in *Concubines and Courtesans: Women and Slavery in Islamic History*, eds. Matthew S. Gordon and Kathryn A. Hain (Oxford: Oxford University Press, 2017), 225-243, doi:10.1093/oso/9780190622183.003.0012; and Leila Ahmed, *Women and Gender in Islam*, 56, 60.

²⁰¹ Ghulām al-Khallāl provides two cases that Ibn Ḥanbal rules on where an *umm walad* kills her enslaver. The prescription is that if she killed him intentionally, the man's sons born to another wife or slave—but not from his killer—are responsible for killing her: see Ghulām al-Khallāl, *Zād al-musāfir*, 3:469 (no. 3019). But in another ruling, he says that there are two ways to go about ruling on a case like this. One is that she becomes free after he dies, since that is the fulfillment of the condition for freedom for an *umm walad*. In such a case, she is free, making her responsible for her own crime instead of the penalty for her crimes passing to her enslaver which would be the case had she killed someone else while he was alive. The second ruling, the one Ibn Ḥanbal prefers, is that she takes on the debt of killing him to pay what is owed for it, the presumption being she killed him accidentally: see *Zād al-musāfir*, 3:469 (no. 3020) and al-Kawsaj, *Masā'il*, 7:3433 (no. 2469), 7:3721 (no. 2722), 9:4777 (no. 3320); see also in al-Kawsaj's *Masā'il* cases where Christians are viewed as having *umm walads*, 9:4393 (no. 3138). For the ruling on *umm walads* more generally, see Ghulam al-Khallāl, *Zād al-musāfir*, 3:464-70 (though the pages are improperly numbered); 'Abd Allāh, *Masā'il*, nos. 1308, 1355, 1426; Ṣāliḥ, *Masā'il*, nos. 109, 745, 848, 1509, 1597, 1676; There are also many *masā'il* found in al-Kawsaj, *Masā'il*, nos. 927, 1054, 1101, 1081, 1160, 1300, 1362, 2491, 2492, 2599, 2666, 3167, 3206, 3207, 3215, 3249, 3320.

attitude Ibn Ḥanbal has toward Christian and other non-Muslim blasphemers, and how stories about blasphemy are recalled to remind Muslims about the potential threat non-Muslim women pose to Muslim households. The idea of the Christian women is one of caution. And the threat extends beyond their religious practices within the Muslim household to practices brought into in from the outside, such as when Christians serve as midwives or wetnurses. It is through his imagined ideas of the Christian and Jewish woman that we see the legal risks he believes they pose to the Muslim household from the outside in.

Midwifery and the Hermeneutical Christian Woman

Ibn Ḥanbal's rulings on midwifery show the legal threat of allowing Christians and Jews into the Muslim household. His views invite us into his conceptual world where the Christian and Jewish midwife fail to uphold the religious requirements of the Muslim household, and how their perceived practices pose a threat to Muslim piety and to the social organization of the household and its members. Accordingly, his rulings imply a world where Christian and Jewish women are non-existent and the household is populated by Muslims only.

In the Muslim household, from Ibn Ḥanbal's perspective, Christian and Jewish women are not look upon a Muslim woman's hair or genital region (*'awra*), making it difficult or impossible for them to serve as midwives. A Muslim woman's hair and body should only be seen by her husband, trusted family members, or other Muslim women, among others, based on Ibn Ḥanbal's reading of Quran 24:31. Women should not expose their hair to anyone except:

their husbands, or their fathers, or their husbands' fathers, or their sons, or their husbands' sons, or their brother or their brothers' sons, or their sisters' sons, or *their women*, or those to whom their right hands possess, or male attendants free of desire, or children who are innocent of the nakedness of women (Quran 24:31).

Of interest to us is Ibn Ḥanbal's interpretation of "their women" in the verse because he does not view it as referring to *dhimmīs*. Ibn Ḥanbal interprets "their women" as follows:

"Some [jurists] follow the view that she [the Muslim woman] should not remove her head covering (*khimār*) in the presence of Jewish or Christian women on grounds that they are not of 'our women.' As for myself, however, I follow the view that Jewish and Christian women are not to look upon a Muslim woman's nakedness (*al-farj*) nor look upon her [nakedness] when bearing a child. As for the Muslim woman exposing her hair, there is no harm in it."

The interlocutor then interjects, saying that perhaps what Ibn Ḥanbal had said was that he "hopes there would be no problem with doing so," meaning the issue is about looking upon their nakedness, not their hair.²⁰² More typical of Ibn Ḥanbal, however, is his interpretation of the content of verse, "their women," as indicating that *dhimmīs* are not to look upon the exposed hair of a Muslim woman: "It is not licit for a [Muslim woman] to expose her head in the presence of the women of the people of protection, because God says, 'or their women.'"²⁰³ The inconsistency in his rulings seem to represent potential minority and majority positions in the school, and thus al-Khallāl provides both. But more important for this study is Ibn Ḥanbal is that consistent in discouraging Christian and Jewish women from looking upon the nakedness of a woman during childbirth, a ruling he consistently gives. It seems to set a boundary between Muslims and Christian and Jewish women. His discouragement of Christian and Jewish women

²⁰² al-Khallāl, *Ahl al-milal*, nos. 1085, 1094. For general prohibitions of Christian women looking upon Muslim women's hair based on Quran 24:31, see nos. 1084, 1086, 1087, 1088; Avner Giladi, *Muslim Midwives: The Craft of Birthing in the Premodern Middle East* (Cambridge: Cambridge University Press), 116, 127. al-Khallāl, *Ahl al-milal*, no. 1093. Here is perhaps one of the only times we hear Ibn Ḥanbal affirming that Christian women can come into the Muslim home from the outside is in the absence of Muslim women to wash a dead woman. If a Muslim woman dies and there are no Muslim women to wash her body then Christian women can wash her body, Ibn Ḥanbal says, "Let them train her how to wash her [the Muslim woman]," but after thinking a while comments, "I prefer they do not look upon her nakedness, though." We do not know if such examples had a Christian family member of a Muslim woman in mind. What we do know is that Ibn Ḥanbal conceives of Christian woman as being able to learn to wash the dead in accordance with Islamic law. For more on his views, also see no. 611. For the training of midwives through familial apprenticeship, see Avner Giladi, *Muslim Midwives*, 59.

²⁰³ al-Khallāl, *Ahl al-milal*, no. 1086, and also nos. 1084, 1087.

from serving as midwives tells us that he does not want Christians to serve as midwives to Muslim women in the Muslim household. For him, inviting a Christian or Jewish midwife into the house (or from within it) translated to an opportunity for disobedience of God's instruction that *dhimmī* women not look upon a Muslim's woman's hair or nakedness. He is preemptively cautious. But what about a circumstance in which Christian woman serves as a midwife to a Muslim woman who is a family member? In such cases, al-Khallāl provides a report from Muḥannā ruling that a Christian or Jewish woman cannot be a midwife for her Muslim family members: Blood is not thicker than religion.²⁰⁴ Ibn Ḥanbal's characterization of Christian women implicitly shows how Muslims ought to keep social practices of child birthing within the Muslim community, or at least away from the Christians and Jews because they threaten to make Muslims break the law by inappropriately and illicitly looking upon Muslim women's bodies.²⁰⁵

²⁰⁴ al-Khallāl, *Ahl al-milal*, nos. 1089-1090. For other prohibitions of Christian women serving as midwives, see nos. 1092, 1094, 1095. Avner Giladi, *Muslim Midwives*, 70ff., and 115. We do not know much about Ibn Ḥanbal's opinion about male doctors looking upon pregnant Muslim women. Male doctors, regardless of religion, likely had some restrictions about how they could view a woman's nakedness, and perhaps only did so when absolutely necessary.

²⁰⁵ See Avner Giladi, *Muslim Midwives*, 2, 24, 33, 66, 79, 84ff. We are not given context to Ibn Ḥanbal's questions or the types of interactions a Christian midwife might have with a Muslim woman. We do know a bit about midwifery in the ninth century, even if we are mostly left without strong evidence for a professionalized or institutionalized professional role of midwifery. What we do know is that by the ninth century, midwives seem to have played a key role in a pregnant woman's life from the prenatal to postnatal stages, in addition to the social prestige associated with the job. Practically speaking, this means there must be continued care and frequent interactions between the midwife and the pregnant woman. The midwife offers obstetric care in the prenatal stage, and provides medical treatments such as medical prescriptions and hygiene care. Midwives were often entrusted to carry out the birth whereas doctors cared for other, more serious birth-related issues. When a baby is born, she might massage the Muslim woman or the baby, assist in female circumcision, or stay with the woman in the period of her post-natal confinement. She might provide emotional and psychological support (particularly if she is a family member). Midwives even take over some of the household duties of pregnant women, and if the same is transposed onto the Christian women in the Muslim household, then we might see them as a liability to ritual purity in that they might contaminate the household. If we are to see these practices as necessitating sustained interactions between a Christian midwife and a Muslim woman, we might see some of the problems it raises outside of simply a Christian woman viewing the hair or genitals of a Muslim woman. Christian women entering the Muslim household from the outside to serve as midwives pose a direct threat to social decorum and power. The birth of Muslim children is a social concern of Islamic society that resonates within and outside of the Muslim household. Birthing a child is a particularly powerful means of keeping balance in the family, as children eventually take care of parents and inherit their property. What's more, a Muslim midwife is an esteemed member of society ushering in another Muslim into the world. How could such an honor be bestowed upon to a Christian woman? For Ibn Ḥanbal, it seems that a midwife has the responsibility of taking care of a woman and her Muslim child, and the pregnancy should be

The idea that a Christian or Jewish woman will look upon a Muslim woman is enough to convince Ibn Ḥanbal that they are best kept at a distance, and that accommodating a Christian or Jewish woman in the household is out of the question.

Perhaps one of the most significant reasons Ibn Ḥanbal understands Christian and Jewish midwives as posing a threat to the household is how he describes a midwife's role in court. When asked if a Christian woman can testify in court about a Muslim child being born alive or dead, Ibn Ḥanbal says, "No, but the testimony of one Muslim woman, if she is upright, is accepted."²⁰⁶ This does not include a Christian or Jewish woman as she is not an acceptable witness: her testimony given in court is not accepted as evidence. This goes for all Christians and Jews, and is based on the fact that they are not just and upright. They do not bear witness that Muḥammad is the Messenger of God, and they go back on their oaths, so how could their testimony in court be accepted? They are not valid witnesses, according to Ibn Ḥanbal's interpretation of the Quran: "Their testimony is not accepted for anything; they are not upright, and they are not among those who act equitably... God says: 'of the upright [witnesses]' and 'call to witness two men of equity among you.'"²⁰⁷ These verses are cited as prooftexts disqualifying a *dhimmī* man or woman from testifying in court on behalf or against a Muslim. They are not just or upright, since, he affirms, "they are not Muslims,"²⁰⁸ and they cannot give valid testimony against one another in court cases.²⁰⁹ The consequences of the invalidation of a Christian or

handled with the utmost care by a trusted individual or individuals within or outside of a family unit.

²⁰⁶ al-Khallāl, *Ahl al-milal*, no. 417.

²⁰⁷ Quran 2: 282 and 65:2, as cited by Ibn Ḥanbal on the validity of *dhimmī* testimony in court in al-Khallāl, *Ahl al-milal*, no. 366, and nos. 360-404 more generally.

²⁰⁸ al-Khallāl, *Ahl al-milal*, no. 367.

²⁰⁹ al-Khallāl, *Ahl al-milal*, nos. 368-379.

Jewish woman's testimony in court might have dire consequences if she serves as a midwife to Muslims. The testimony of Muslim women in cases of the birth of a child and the financial consequences thereof is valid without the need of male witnesses.²¹⁰ Most significantly for this study, a midwife's testimony might be essential to establishing whether a child is born alive or dead. Her testimony is interwoven into several aspects of money and property. A stillborn child might incur financial penalties (*ghurrah*) on the appropriate party if it was the result of an intentional abortion.²¹¹ If that child is born moving, and then dies, then a larger financial penalty is due.²¹² From Ibn Ḥanbal's view, a Christian midwife would not be able to legally testify on cases of abortion whereas a Muslim would. In other words, her social role as midwife might lead to a legal problem: she cannot fulfill the role of witness in Islamic law or fulfill its obligations by virtue of her religious confession if she serves as a midwife.²¹³

Another consequence of allowing a Christian midwife to serve in the Muslim household is that she might invalidate an inheritance dispute resulting from a childbirth. For Ibn Ḥanbal, a child must cry after being born for it to have rights of inheritance from a father and family members. If the child only moves but does not cry, then dies, the child is not a valid heir.²¹⁴ A

²¹⁰ *Encyclopedia of Women & Islamic Cultures*, s.v. "Law: Women as Witnesses Overview."

²¹¹ See Ghulām al-Khallāl, *Zād al-musāfir*, 4:306-8 (nos. 4310-4316). Abortions before four months (when the child becomes a person) are licit, but they incur a monetary penalty. For example, if a Muslim man hits a Christian woman in her belly, killing his child, he must pay a monetary compensation, called *ghurrah*. The same goes for the woman drinking poison or undertaking other abortion procedures. Also see Ibn al-Mundhir, *al-Ijmā'*, ed. Fu'ād 'Abd al-Mun'im Aḥmad, 2004, 120; Ibn Qudāmah, *al-Mughnī*, 12:59-69; Al-Kawsaj, *Masā'il*, 7:3562; Al-Muwaffiq al-Dīn Ibn Qudāmah al-Maqdisī, Ibn Qudāmah al-Maqdisī, and al-Mardāwī, *al-Muqni'*, *al-Sharḥ al-Kabīr*, *al-Inṣāf*, eds. 'Abd Allāh 'Abd al-Muḥsin al-Turkī and 'Abd al-Fattāh Muḥammad al-Ḥulw, 1995, 3:395, 25: 411ff.

²¹² See Ghulām al-Khallāl, *Zād al-musāfir*, 4:119-20 (no. 3830). The complete blood price (*diyyah*) is incurred if a child is born moving but not crying. It does not have inheritance rights, however.

²¹³ Avner Giladi, *Muslim Midwives*, 113-18. Midwives cannot serve as witnesses in court cases involving legal disputes about a pregnancy, such as abortions, sexual abuse, and breastfeeding.

²¹⁴ Ghulām al-Khallāl, *Zād al-musāfir*, 4:119-20 (nos. 3827-29), 4:306-8 (nos. 4310-16). Ibn Qudāmah, *al-Mughnī*, 12:55-6.

child born crying immediately upon birth becomes an heir and property owner, affecting household wealth.²¹⁵ The stakes are high. The stakes are also high for an enslaved Christian or Jewish woman bearing a child to her enslaver; that is, becoming an *umm walad*. She only becomes free upon the conception of a child, not a stillborn child. In other words, she only gets the chance of freedom if the violability of a fetus can be proven (e.g., crying or body formation, but the rulings are not specific).²¹⁶ An enslaved Christian or free Christian wife of a Muslim man might benefit from the testimony of a Muslim midwife in ways she would not benefit from a Christian midwife. The testimony of a Muslim midwife of a Christian's (Muslim) child serves as evidence for her bearing a child and thus becoming an *umm walad*, for example. Her freedom might theoretically hinge on valid testimony. A midwife's testimony in a case requires the midwife's expertise and integrity, two things Ibn Ḥanbal cannot conceptualize a Christian to possess, if only because she cannot be expected or trusted to know the law or to even fear the consequences of breaking it. In short, her presence in the Muslim household as a midwife puts the financial condition of the household at risk, and is not economically feasible in every circumstance. In this light, we might see Ibn Ḥanbal's interpretation of Christian women as liabilities to the Muslim as a social critique of social forms of power. And we might see that his characterization of the inability of Christian women to serve as witnesses helps us understand why they cannot serve as midwives. Christian women are, for Ibn Ḥanbal, a legal and financial liability.

²¹⁵ If a child is born crying, he is an heir. If he dies in childhood sometime later, any property bequeathed and passed down through heirship would then pass on to appropriate parties.

²¹⁶ Ghulam al-Khallāl, *Zād al-musāfir*, 3:424 (nos. 2998-99).

Wetnurses and the Hermeneutical Christian Woman

It is not just legal liability that Christian women pose, but the potential to transmit *shirk*. Christian women transmit their *shirk* to the household not through their abhorrent religious practices, but through their bodies. Ibn Ḥanbal views Christians wetnurses in a Muslim household as a threat to the household because their breastmilk transmits their essence to Muslim children. NMRC only tells us that Muslim women can feed Christian and Jewish women's children, but al-Khallāl never tell us about Christian women feeding Muslim children.²¹⁷ We must turn to al-Khallāl's student Ghulām al-Khallāl to understand the reasons Ibn Ḥanbal forbids Christians and Jews from breastfeeding Muslim children. Ibn Ḥanbal does not permit the milk of Christians because her milk passes down the very essence of her being. A Christian woman should not breastfeed a Muslim child, Ibn Ḥanbal reports, because "Umar b. al-Khaṭṭāb and 'Umar b. 'Abd al-Azīz said, 'One becomes like [the woman] who suckles it.'"²¹⁸ This is a common Muslim belief about breastmilk: it transmits the physical, and mental, and spiritual attributes of a woman to a child.²¹⁹ It is difficult to pin down exactly how a woman's milk makes the child she suckles more like her, but Ibn Ḥanbal's belief that milk transmits the qualities of a person is because it is part of *sunnah*. It is for this reason that a Christian or Jewish *umm walad* does not have the right to breastfeed a Muslim son she bears to a Muslim enslaver: the Christian woman of the household contaminates Muslim children and makes them more like Christians or Jews. Further, and based on the same report, Ghulām al-Khallāl tells us, Ibn Ḥanbal discourages

²¹⁷ al-Khallāl, *Ahl al-milal*, no. 1097.

²¹⁸ Ghulām al-Khallāl, *Zād al-musāfir*, 3:254 (nos. 2526-27). Ibn Qudāmah, *al-Mughnī* 11:346. See also Lane's Lexicon, 1500.

²¹⁹ Avner Giladi, *Infants, Parents, and Wetnurses: Medieval Views on Breastfeeding and their Social Implications* (Leiden: Brill, 1999), 36.

a Christian or Jewish woman from breastfeeding Muslim children because it exposes Muslim women's hair to Christian or Jewish women: they would view the forbidden body parts of the Muslim women.²²⁰ As for Muslim women breastfeeding a Christian or Jewish child, Ibn Ḥanbal permits it, though he does not give a reason.²²¹ We might surmise it is because a Muslim woman's milk does not create a social bond between the Muslim woman and the Christian child in the same way it would if a Christian woman breastfeeds a Muslim child. It actually makes the child better, and more Muslim. In other words, a Muslim woman breastfeeding a Christian or Jewish child does not give her access to the child in the same ways a Christian woman would have access to a Muslim child's life. Ibn Ḥanbal's idea of the Christian or Jewish wetnurse is that she is the embodiment of sin so much so that even her breastmilk transmits her essence. The milk of her body represents all that is wrong with the Christian or Jewish woman. But it is not that her body is inherently impure: only when she is carrying milk does it make her impure. Her role in the household shows the perceived threat of non-Muslim women in the Muslim household.²²² Ibn Ḥanbal's view of Christian wetnurses supports his overarching conception of the Christian woman. She is a liability to the Muslim household and puts Muslims at risk of sin, and Ibn Ḥanbal imagines the Christian and Jewish woman in ways involving her passing down *shirk*, the

²²⁰ Ghulam al-Khallāl, *Zād al-musāfir*, 3:254 (nos. 2526-27). In al-Khallāl, *Ahl al-milal*, no. 1097, he rules that Muslim women can breastfeed Christian children. Though he rules that the reason for forbidding Christian women from breastfeeding Muslim children is because they might look upon the hair of a Muslim woman, there is likely more to the case than he lets on. The bond formed between a Christian wet nurse and a Muslim child establishes a familial bond that is difficult to break. The relationship between a Christian wet nurse is one in which creates asymmetrical social relationships between a Muslim child and a Christian wet nurse. A Christian wet nurse might gain social access to a Muslim man or woman whom she breastfed as a child: Christian women become extended family through milk kinship. Practically speaking, this means she might be perceived as having access to the Muslims in ways that only Muslim family members ought to, at least from Ibn Ḥanbal's perspective. And Christian women might then be perceived as reorienting the Muslim household family structure and familial relationships in ways inappropriate.

²²¹ al-Khallāl, *Ahl al-milal*, no. 1097.

²²² For the influence of non-Muslim on Muslim households, see Tannous, *The Making of the Medieval Middle East*, 453.

worst of all sins. Her breastmilk is dangerous. As with a Christian woman drinking wine and polluting a Muslim fetus in her belly, so too does a Christian woman's breastmilk pollute a Muslim child. His rulings exemplify that they are best kept out, or, more ideally, that they do not exist at all to bring corruption to the household or pose a risk of making it more Christian.

His hesitancy to marry or bring non-Muslim women into the household does not mean that he views all Christians as lost. They have a chance of becoming Muslim and going to Paradise if only they can be detached from their parents or breastfed by Muslim women after being captured in war. One way this is discussed by Ibn Ḥanbal is through legal discussions about taking captive adults and children through *jihād*. Here, we move outside of the Muslim household and outside of the domain of Islam altogether. What does Ibn Ḥanbal have to say about the children of Christian families and the role of parents in corrupting them, just as Christian women in the Muslim household might corrupt the children and the whole household along with them while living as *dhimmi*s? Whereas the issue of conversion and salvation of Christian children living as *dhimmi*s rarely comes up about Christian children living as *dhimmi*s in NMRC, they occupy a focal point of discussions when discussed as foreigners who are taken on *jihād* expeditions. Muslims have the opportunity to save children from the sin and corruption of their parents and return them their original state submission to God, the way they were born. If children are not taken by Muslims in foreign lands, then they are left to the *shirk* of their parents. It is the duty of Muslims to rescue Christians by saving those in foreign lands from the corruption of Christians in a way that he cannot or does not for those already under protection. The unintended consequence of discussing foreign Christian children is that they help us understand Ibn Ḥanbal Ibn Ḥanbal's view of the mechanics of salvation and conversion for all children, making a potential path for them to go to Paradise all the while justifying the impetus behind *jihād*.

Discussions about children are on the surface about their salvation, but, more importantly, they are about the mechanics of salvation for all children.

CHAPTER 4: IBN ḤANBAL AND THE HERMENEUTICAL CHRISTIAN CHILD: THE MECHANICS OF SALVATION

Introduction

In the ninth century, legal scholars (*fuqahāʾ*) and theologians (*mutakallimūn*) often discuss what happens to non-Muslim children who die before reaching adulthood. Many first-generation Muslims, before they had converted, lost children. Given this, questions about where their children end up—in Paradise or Hell—eventually come to be a concern. For example, did Khadījah’s children go to Paradise or Hell?²²³ After all, she had converted to Islam after her children died. Does that make her children infidels? The same questions can be posed about Muḥammad’s son Ibrāhīm who died in infancy and children killed in early Muslim raids in Arabia or in the initial Islamic conquests? What about children aborted after illicit intercourse? In what circumstances and under what conditions does a child go to Paradise or Hell?

Prior to and during the life of Ibn Ḥanbal, these questions and their resulting answers began to be applied to Christians and other non-Muslims which inadvertently answer questions about the children of Muslims who died before Islam or after its advent. For him, a Muslim who fulfills the divine law by adhering to the *sunnah* has a chance to go to Paradise, but it is never guaranteed. But can Christian children go to Paradise or Hell? Are they responsible to fulfill the law or stand in judgment before God for sins? Or what happens to the children of Christian

²²³ See al-Khallāl, *Ahl al-milal*, no. 36. Ibn Ḥanbal views the *ḥadīth* given in in NMRC about Khadījah’s children going to hell as weak, at least with the chain cited. For criticism of *ḥadīths* about Khadījah’s children in later Ḥanbalī thought, see Ibn al-Qayyim, 2:1096-1100 and al-Albānī, *Silsilat al-aḥādīth al-ḍaʿīfah* (Riyadh: Dār al-Maʿārif, 1992), 12:640-45 (no. 5791). See also Ibn Ḥanbal, *Musnad*, no. 1131. For reports about Khadījah’s children going to Paradise, see Avner Giladi, *Muslim Midwives*, 31. For children who died during the *jāhiliyyah*, see al-ʿAynī, *Umdat al-qārī*, ed. Muḥammad Aḥmad al-Hallāq, Beirut, n.d., 8:31, and the corresponding entries in al-Bukhārī, *ḥadīth* no. 8421; al-Khallāl, *al-Sunnah*, ed. Abū ʿAṣim al-Ḥasan b. ʿAbbās b. Quṭb, Cairo, 2007, 1:422 (no. 883). For views propounding that children of the *jāhiliyyah* are sent to hell, see Ella Landau-Tasserou, “Reports on Tribal Delegations to the Prophet,” in *Conversion to Islam in the Premodern Age: A Sourcebook*, ed. Nimrod Hurvitz (Los Angeles: University of California Press, 2020), 59, <http://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=2698584&site=ehost-live>.

converts to Islam? One of the main topics of discussion has to do with whether a fetus or child is innocent before God and thus not responsible for sin. Another related topic has to do with whether a child inherits his parents' religious disposition (*fiṭrah*) and is judged accordingly in the Hereafter. Some legal scholars or theologians tend to view all children as innocent, and therefore bound for Paradise, regardless of their sin or religious disposition,²²⁴ others tend to view them as condemned to hell,²²⁵ and still others take an intermediate position.²²⁶

Ibn Ḥanbal views questions about the fate of Christians as problematic because of all of the theoretical questions that they raise.²²⁷ For him, questions about the fate of mankind are answered plainly enough in *ḥadīths* without a need to harmonize them or logically connect them to one another. The problem for students of law is the extent to which *ḥadīth* that seem to apply only to Muslims can be applied to Christians. A big question looming in the background for Ibn Ḥanbal's students is what a child needs to do, if anything, to be considered a Muslim and be

²²⁴ Avner Giladi, *Children of Islam: Concepts of Childhood in Medieval Muslim Society* (London: Palgrave Macmillan, 1992), 84. Giladi notes that the first Zaydī imam Yahyā b. al-Husayn claimed all children go to the Paradise. Also see al-Ash'arī, *Maqālāt al-islāmiyyīn wa ikhtilāf al-muṣallīn*, ed. Helmut Zaytur, Wiesbaden, 1980: some of the *Rawāfiq*, 56; some of the Khawārij (*ṣufriyyah*), 100-1; Qadariyyah, 126; *Mu'tazilah*, 253-57. Also see Josef van Ess, *Theology and Society in the Second and Third Centuries of the Hijra: A History of Religious Thought in Early Islam*, trans. Gwendolin Goldbloom (Leiden: Brill, 2017), 1:23-9 for a discussion of the intellectual development of the certainty of Paradise, and his other discussions of the *Rawāfiq*'s position, 1:320; Bosanquet, "Minding," 288-290, where she discusses the position of Ibn Hazm as viewed by Ibn al-Qayyim, and his lack of criticism for this view, and for the position that they become servants in Paradise, 292-93.

²²⁵ For a long discussion of the different positions taken by other legal schools, see Ibn al-Qayyim, *Aḥkām*, 2:1086-92. Ibn al-Qayyim noted that Abū Ya'la b. al-Farrā' (d. 1066) mistakenly thought Ibn Ḥanbal said the *mushrikūn* end up in hell, but Ibn Taymiyyah does not. For an abridged version of the positions taken, the editor of *Ahl al-milal* gives one in fn. 4, al-Khallāl, *Ahl al-milal*, pp. 72-73. Bosanquet, in *Minding*, also examines these positions on 284-303, and 287-8. Also see al-Ash'arī, 55-56; *Khawārij*, 100-1 and 125-6; *Mu'tazilah*, 253-57; and *Ḥusayniyyah*, 284.

²²⁶ Avner Giladi, *Children of Islam*, 85. Giladi notes that al-Ghazālī took a position where non-Muslim children were not punished in hell, but did not enter Paradise. Also see al-Ash'arī, *Maqālāt: Rawāfiq*, 55-6; *Ahl al-ḥadīth wa al-sunnah*, 290-96. For Ibn Ḥanbal's stance about Muslims, see below and al-Khallāl, *al-Sunnah*, 1:417-18 (nos. 860-866), 1: 422 (no. 884), and 1:424-27 (no. 885-92). For positions taken that they are somewhere between heaven and hell, see Bosanquet, "Minding," 291.

²²⁷ al-Khallāl, *Ahl al-milal*, no. 21.

rewarded salvation.²²⁸ Questions about Christian children serve as a hermeneutical tool for working out the mechanics of salvation for all humankind.

In the following account, I will offer examples of how the early Ḥanbalīs conceived of the Christian child. First, I will show that Ibn Ḥanbal believes God’s knowledge about humankind applies to Christians, not just Muslims. Then, I will show that understanding God’s knowledge about Christians—he creates them—helps determine the process and mechanics of salvation and damnation both for Christians and Muslims. In other words, the process of working out the salvation of Christians tells us how Muslims thought about their own salvation. Most of the confusion among students of Ibn Ḥanbal has to do with *ḥadīths* attributed to Ibn ‘Abbās. We will see how these *ḥadīths* Ibn ‘Abbās cited in the seventh century cause problems for ninth century students, and who Ibn Ḥanbal resolved them. My final argument is that Ibn Ḥanbal does not disqualify Christian children from entering Paradise. He makes a potential path for them, particularly aborted children, embryos, and fetuses, to go to Paradise, telling us a larger soteriological conception of Christians and Muslims in Ḥanbalī thought.

Ibn Ḥanbal’s Conception of Children

Before discussing the Ḥanbalī conception of a hermeneutical Christian child, we should answer how Ibn Ḥanbal defines him (or her). According to NMRC, Ibn Ḥanbal defines a Christian child in contrast to an adult. In one instance, for example, Ibn Ḥanbal defines

²²⁸ For tenth-century Christian discussion of the quranic path for a Christian to attain salvation, see David Bertaina, “An Arabic Christian Perspective on Monotheism in the Qur’ān,” in *Heirs of the Apostles: Studies on Arabic Christianity in Honor of Sidney H. Griffith*, eds. David Bertaina, Sandra Toenies Keating, Mark Swanson, and Alexander Treiger (Leiden: Brill, 2019), 3-21.

adulthood (“maturity”) as a boy reaching puberty.²²⁹ In another instance, he says that a fourteen- or fifteen-year-old male is considered an adult.²³⁰ Al-Khallāl, seemingly aware of the discrepancy in defining adulthood, concludes authoritatively that adulthood is defined by a male fulfilling the following three conditions: reaching fifteen years old, growing pubic hair, and shaving or trimming his pubic hair.²³¹ For girls, however, menstruation is the only indicator of adulthood.²³²

This notion of childhood is applied throughout NMRC without considering a Christian view.²³³ There is good reason for this: questions and their respective answers only arise because an aspect of Christian life intersects with or is bound to an aspect of Muslim life. For example, whether a Christian is a child or an adult determines when he has to pay taxes or when he can legally convert to Islam (e.g., seven years old), or when a girl can marry a Muslim with or without parental consent. In such cases and ones like them, Islamic law overrides or overrules Christian categories of self-understanding and practice. To put this another way, in NMRC, what tends to happen is that Islamic law overrides Christian categories of law and practice when it

²²⁹ al-Khallāl, *Ahl al-milal*, no. 81.

²³⁰ al-Khallāl, *Ahl al-milal*, no. 92.

²³¹ al-Khallāl, *Ahl al-milal*, nos. 242-243. At the end of many of the *bābs*, al-Khallāl demonstrates the *taṣhīḥ* position of the school. In this editorial comment by al-Khallāl, he clarifies the taxable age of non-Muslims, barring dying old men and the poor or crippled. For trimming pubic hair, see *Encyclopaedia of Islam*, 2d edition, s.v. “*shaʿr*.”

²³² al-Khallāl, *Ahl al-milal*, no. 81.

²³³ al-Khallāl, *Ahl al-milal* does not use a wide range of specialized terms for children. For example, it does not use *farāṭ* to refer to children who die before reaching adulthood or dying before their parents. The terms employed by Ibn Ḥanbal, his interlocutors, and al-Khallāl are *al-ṣabiyy* for a child without parents; *ghulām*, *walad*, and *banūn* for a young boy or boys with parents (and *banāt* for girls with parents), *ṣabiyy*, *al-ṣabiyy al-ṣaghīr*, *al-ṣabiyy al-ṣaghīr al-radīʿ*, *al-radīʿ*, and (once) *al-ṭifl* used interchangeably for breastfeeding infants (such as those taken in war); *dhuriyya* for children taken captive from raids; or more generally, *lam yablugh al-idrāk* for “those who are not yet adults.”

intersects with Muslim ones: any ambiguity in law or practice defaults to Islamic legal categories and practices.

Do Angels Record the Deeds of Christian Children?

According to Ibn Ḥanbal, angels record the thoughts and deeds of Christian children just as they do for Muslim ones. Apparently, this is not obvious for Ibn Ḥanbal's students, or perhaps it required some clarification. Ibn Ḥanbal responds to questions about God's knowledge of all humankind's action—which are effectively questions of his omniscience—by citing Quran 50:18. Quran 50:18 describes God as recording the deeds and thoughts of all humans: “No word does he utter without a watcher beside him.”²³⁴ In short, the verse says that ‘he,’ meaning all humankind, has a watcher (e.g., an angel), taking count of his words. Ibn Ḥanbal seems to say that this verse applies to all humans, not just Muslims. And in citing this verse, Ibn Ḥanbal assumes his audience will supply the previous verse stating that God knows what a person's “soul whispers to him.” In other words, God knows not just the actions of Christians and Muslim, but knows their thoughts, too. Consequently, Ibn Ḥanbal disapproves of asking a question that suggests otherwise.²³⁵

Though al-Khallāl includes only one *mas'alah* on Ibn Ḥanbal's view of angels recording the thoughts and deeds of children, he does so with a larger purpose in mind. The *mas'alah* sets a foundation for subsequent chapters on Ibn Ḥanbal's view that a Christian child bears

²³⁴ al-Khallāl, *Ahl al-milal*, no. 11.

²³⁵ al-Khallāl, *Ahl al-milal*, no. 11.

responsibility only for his own sins, if he has sins at all, and does not bear the sins of his forefathers nor their fate in the Hereafter.²³⁶

The Place of Christian Children in the Hereafter and the Mechanics of Salvation

To understand the mechanics of salvation as worked out by al-Khallāl based on the *masā'il* posed to Ibn Ḥanbal, we have to look at the views that caused confusion in the school in the first place. These views show us that the mechanics of salvation are not always clear, but become clearer through discussions of non-Muslims' place in the afterlife.

One of the main threads in the early subchapters of NMRC on children is a view held by Ibn 'Abbās, who argued that Christian and Jewish children necessarily go to hell. According to this view, the mechanics of salvation are straightforward: if a child is born Christian and dies, he goes to hell, and if a child is born Muslim, he goes to Paradise. But his view changes over the course of his life to a belief that judgment of children is suspended until the afterlife. In the wake of conflicting reports from him, he left some unresolved or confusing questions for some of Ibn Ḥanbal's students living two centuries later. The confusion Ibn 'Abbās left behind is due to his replies to questions about the fate of unbelievers. He used to say, "They [*al-mushrikūn*] are with their forefathers [in death] (*hum ma' ābā'ihim*)."²³⁷ This is another way of saying that by the

²³⁶ Between the subchapter on angels recording the thoughts and deeds of unbelievers and the subchapter on the place designated in the Hereafter for children are two misplaced, single-entry chapters on paying a *dhimmī* to convert to Islam and on teaching and compelling Christian children to Islam if they are intermixed with Muslims in a home setting. It seems to me that these subchapters are misplaced. It could be anything from a student not correctly copying the work to al-Khallāl or another Ḥanbalī incorrectly teaching them out of order.

²³⁷ al-Khallāl, *Ahl al-milal*, no. 16, cf. no. 20. There seems to be a subtext to many of these debates. Quran 39:15 says that the "losers" forfeit both their souls and their families on Judgment Day (cf. Quran 103:2; 13: 23; 52:21). In the *ḥadīth* reports, the phrases *ma' ābā'ihim* and *min ābā'ihim* seems to contrast. The former is used for non-Muslims, and the latter for Muslims. The latter phrase *min ābā'ihim* is shared with the Quran 13:23 which says, "Gardens of Eden that they shall enter along with those who were righteous from among their fathers (*min*

virtue of being born an unbeliever such as a polytheist of the *jāhiliyyah* or a Christian or a Jew implicates them in the sins of their forefathers. Sin is, in this view, a child’s burden to bear. A child is a sinner. The expression “They are with their forefathers [in death]” comes from two versions of a *ḥadīth*, both of which have a quranic subtext about the fate of believers and unbelievers.²³⁸ But Ibn Ḥanbal views these as weak, which calls into question the mechanics of salvation for Muslim and Christian alike.

Ibn Ḥanbal comments on one of the two *ḥadīths* cited by Ibn ‘Abbās about the relationship between the sins of parents and their children in NMRC, both of which have the same weak *isnād*.²³⁹ It reports that ‘Ā’ishah and Muḥammad were at a funeral of one of the Muslim children of the *Anṣār*. During the funeral, ‘Ā’ishah confidently states that the child is afforded a spot in Paradise due to his innocence before God. Muḥammad lightly admonishes her, clarifying that it is best not to make any guarantees about one’s fate in the Hereafter since the fate of a person could be otherwise (*ghayr dhālik, yā ‘Ā’ishah*). At the end of the *ḥadīth*, the Prophet goes on to explain that “God created heaven and those destined for it while they were in the loins of their forefathers; he created hell likewise (*inna Allāh khalaqa li-l-jannah ahlan khalaqahum laha wa-hum fī aṣlāb ābā’ihim wa khalaqa Allāh li-l-nār ahlan khalaqahum laha wa-hum fī aṣlāb ābā’ihim*).”²⁴⁰ The *ḥadīth* describes that Paradise (*al-jannah*) is not guaranteed,

ābā’ihim)” to refer to those who will enter paradise. I cannot yet make sense of how the phrases and quranic verses relate, but they seem to be significant for some of the confusion about those who go to Paradise.

²³⁸ My point here is that Ibn Ḥanbal knows reports about unbelievers being with their forefathers in hell, but only engages in one, as will be seen below. For the quranic context of discussions, see Quran 13:23; 22:11; 39:15; 40:8; 43:70; and 52:21.

²³⁹ al-Khallāl, *Ahl al-milal*, no. 16.

²⁴⁰ al-Khallāl, *Ahl al milal*, no. 20. For Ibn Ḥanbal alluding to this or another closely linked *ḥadīth*, see al-Khallāl, *al-Sunnah*, 1: 424 (no. 886). For the weakness in the transmitter Ṭalḥa b. Yaḥyā b. Ṭalḥa al-Taymī (d. 763-765) and his association with reports about Muslim children and the promise of Paradise, see Ibn Ḥanbal’s *al-‘Ilal*, ed. Waṣiyy Allāh Muḥammad ‘Abbās, Riyadh, 2001, 2:11 (no. 1380). More on the weak transmission can be found in *Encyclopedia of Canonical Ḥadīth Online*, s.v. “Ṭalḥa b. Yaḥyā b. Ṭalḥa at-Taymī.”

but that God determines the final destination of every individual without regard to their parentage. There is no guarantee a Muslim child will go to Paradise: no one is guaranteed Paradise because of his parents. In this *ḥadīth*, the Prophet emphasizes a view that lends weight to God's determination of a child's fate. The child's fate has nothing to do with the parents, and everything to do with, as we will see, an individual's responsibility for sin, regardless of age or religion. But Ibn Ḥanbal believes the *ḥadīth* about the child of the *Anṣār* is weak, even if perhaps its content is correct. And this disconnect about Muslim salvation calls into question the salvation of all children, and the *ḥadīth* reports attributed to 'Ā'ishah are not the only ones calling into question the guarantee of salvation for Muslim children and the disqualification of Christian and other non-Muslims from it.

Another of Ibn 'Abbās' reports cause confusion among Ibn Ḥanbal's student, too. In this report, Ibn 'Abbās cites a different *ḥadīth* to support his position that unbelievers inevitably go to hell. Ibn Ḥanbal recalls Ibn 'Abbās as saying about unbelievers that "Their parents make them Jewish or Christian."²⁴¹ Ibn 'Abbās' claim, according to Ibn Ḥanbal, shows that the children of unbelievers go to hell if they die as children. If a child is born with the same religious disposition as their parents who, as adults, confess a religion other than Islam, the child will die in that state of being. The major problem with this position is that it requires the use of *qiyās*: because Christians are born as such, they go to hell just as their parents do. The mechanics of salvation, from this view, are that Christians have no chance to go to Paradise.

Ibn Ḥanbal's ninth-century interlocutors, as did Ibn 'Abbās, presume that these *ḥadīths* could be applied to the fate of non-Muslims, something not implicit to them. They, too, want to know if Christian children can in fact go to Paradise, but based on strong reports from the

²⁴¹ al-Khallāl, *Ahl al-milal*, no. 26. For other references to this *ḥadīth*, see nos. 25, 55, 75, 81.

Companions. Ibn Ḥanbal provides the answer. He describes Ibn ‘Abbās’ later view: “I used to say, ‘They are with their forefathers [in death]’ until I met a Companion who knew another Companion who reported the Prophet as having said, ‘God knows best what they would have done (*allāha a‘lamu bi-mā kānū ‘āmilīn*).’”²⁴² Here, Ibn Ḥanbal tells us that Ibn ‘Abbās changed his view, the point being that his more recent view is the one Ibn Ḥanbal adopts and views as authoritative: there is no guarantee of salvation.²⁴³

The phrase, “God knows best what they would have done” is significant for understanding the early Ḥanbalī position about Christian children potentially going to Paradise because it ultimately explains how the Ḥanbalīs view the sin, responsibility, and the predestination of Christian children in the Hereafter; that is, the mechanics of their salvation. Broadly speaking, in working out the place of Christian children in the Hereafter, the Ḥanbalīs simultaneously work out the mechanics of the salvation of Muslims as well. How could a Christian child, for example, be responsible for sin if he is an embryo, fetus, unborn, aborted, or stillborn? What happens to a child who dies in the womb as a result of his mother’s untimely death? After all, at this point in a child’s life, the child has not lived and has not been born, let alone sinned. But God knows them. According to Ibn Ḥanbal, a child, whether Christian or Muslim, is fully formed after 120 days in the womb, a time during which God breathes life into a

²⁴² While Ibn Ḥanbal does not give the names of the Companions Ibn ‘Abbās met, it might have been Companion who knew Abū Hurayrah, as he seems to be cited most in relation to the report. For more, see the next footnote.

²⁴³ For Ibn Ḥanbal’s description of Ibn ‘Abbās’ change of view, see, al-Khallāl, *Ahl al-milal*, no. 16, but also nos. 20, 26, 29. For the different reports attributed to Ibn ‘Abbās, see Ibn Ḥanbal, *Musnad*, nos. 1845, 3035, 3165, 3367; For those transmitted by Abū Hurayrah, see nos. 7321, 7438, 7512, 7625. For one transmitted by Abū Hurayrah’s student Hammām b. Munabbih (d. 211 or 212h) see no. 8164. For the reports in Bukhārī, see *Ṣaḥīḥ*, Damascus, 2002, nos. 1383, 1384, 6597, 6598, 6599.

child, and writes upon him future deeds upon him, both good and evil.²⁴⁴ In this view, regardless of whether a child is born or has completed actions that might be considered sinful is insignificant; God had already determined, according to Ibn Ḥanbal, what they would do in the future, and thus their place in the Hereafter is predetermined only by God.²⁴⁵ This is clearly shown in discourse on stillborn children, a topic which helps us understand the mechanics of salvation for Muslims and consequently the potential path of paradise extended to Christian and other non-Muslim children.

Ibn Ḥanbal describes children as being resurrected and standing before God on Judgment Day, apparently having matured into their optimal state during the time since their death. In a question about a Muslim child who is stillborn, Ibn Ḥanbal is asked, “What about a stillborn, if the baby is not breathing when born, [will the stillborn] be resurrected [on Judgment Day]?”²⁴⁶ The issue here is that according to the 120-day developmental period, the fetus is only considered a viable person after God has breathed into it. If God never breathes life into a child, can it resurrect? Ibn Ḥanbal, deciding not to answer probably to avoid *qiyās*, points his interlocutor to an abbreviated *ḥadīth* that states that the stillborn comes *muḥbanti’an* (*yaḥī’ al-*

²⁴⁴ See Quran 23:13-14. al-Khallāl, *al-Sunnah*, 1: 425-27 (nos. 890 and 892); Ghulām al-Khallāl, *Zād al-musāfir*, 2:286 (no. 861). Basim Musallam, *Sex and Society in Islam: Birth Control Before the Nineteenth Century* (Cambridge: Cambridge University Press, 1983), 54. Avner Giladi, *Children of Islam*, 19-40.

²⁴⁵ al-Khallāl, *al-Sunnah*, 1:418 (no. 866) and 1:425 (nos. 885 and 886). The pat example Ibn Ḥanbal often used was that God knew Adam’s sin of eating the forbidden fruit before Adam was created.

²⁴⁶ al-Khallāl, *Ahl al-milal*, no. 17. The meaning of the expression “*yaḥī’ al-siqṭ muḥbanti’an*” used here is unclear, but I will make an attempt to explain it below. It seems to indicate that a baby dies before or during childbirth and thus could not survive on its own. For the word *muḥbanti’an*, see Lane’s *Lexicon*, 505. For an explanation of an angel breathing into a child in the womb after the formation of the fetus, see Ghulām al-Khallāl, *Zād al-musāfir*, 2:286 (no. 861). On this latter phenomenon, see Ibn al-Qayyim’s explanation of this phenomenon through a comment on Jesus’ birth narrative in the Quran: “God sent the angel [Gabriel] to his mother [Mary] and blew air into her vagina [lit. between her legs], and she became pregnant with the Messiah,” Ibn al-Qayyim, *Aḥkām*, 2:1058-59. I am not sure exactly why Ibn al-Qayyim says this to demonstrate his point, since it seems that it is counter: the fetus only become viable after 120 days because it gains its spirit/soul; but in this case, it seems like the breathing of the spirit happens before that period, for what reason I am unsure; Basim Musallam, *Sex and Society in Islam*, 54.

ṣiqṭ muḥbanti`an.” Unsure exactly what this means, Abū Bakr (al-Marrūdhī) asks one of his *shaykhs* (whom also knew Ibn Ḥanbal) Tha‘lab the Grammarian (d. circa 904) about it. Tha‘lab explains that there are two meanings to the phrase *yajī` al-ṣiqṭ muḥbanti`an*. The first is that the stillborn will be “angry,” apparently because neither he nor his parents are in Paradise. Here, the point seems to be that the child angrily pleads on behalf of his parents to enter Paradise.²⁴⁷ The second is that the baby will “throw itself down [in prostration] (*alqā nafsuḥu*)” before God; that is, the stillborn will be able to stand and prostrate before God.²⁴⁸ Tha‘labī’s answer to questions about stillborn non-Muslim children suggests that a child will, even in death, grow up and have to stand in judgment before God, and might be judged by God as a believer and enter Paradise. On the other hand, the child might be judged as an unbeliever and be sent to Hell. It is unclear to me exactly if a stillborn child who has not received God’s inbreathing will arrive at the gates of Paradise or prostrate himself before God. The opposite seems to be true: only a God-breathed child can resurrect and plead with God in the first place. It might be that Ibn Ḥanbal only thinks that a God-breathed stillborn child will be able to resurrect.

Whatever Ibn Ḥanbal’s precise stance is on the resurrection of stillborn children, he seems to view that God determines what they would have done had they lived, and that one day

²⁴⁷ For the definitions of *muḥbanti`an*, see Ibn Manẓūr, *Lisān al-‘Arab*, <http://arabiclexicon.hawramani.com/?p=1381#2e111c>, and Ibn Sīda, *al-Muḥkam*, <http://arabiclexicon.hawramani.com/?p=1381#47871f>. *Hadīths* discussing the fate of a stillborn in Paradise are of several different kinds. Some describe a child pleading for its mother, and dragging her to Paradise with him. Others describe a child angrily pleading to God on behalf of his parents, in turn helping them gain access to Paradise. For examples, see Ibn Mājah, *Sunan*, ed. Muḥammad Fu‘ād ‘Abd al-Bāqī, Cairo, n.d., 1:513 (nos. 1608 and 1609). See Ibn Hibbān, *al-Majrūhīn*, ed. Maḥmūd Ibrāhīm Zā’id, Aleppo, 1396 AH, 2:111 (no. 687), and *al-‘Aynī*, *Umdat al-qārī*, 8:28 for examples of a child being a blessing regardless of its nation of birth; it is better than bareness: (*sawdā`u wulūdun khayrun min ḥasnā`a lā talidu innī mukāthirun bi-kumu al-umama ḥatā anna al-ṣiqṭa la-yazullu muḥbanti`an`alā bāb al-jannah*).

²⁴⁸ al-Khallāl, *Ahl al-milal*, no. 17.

they will stand before God for Judgment.²⁴⁹ This also applies to embryos (and presumably fetuses) who die in the womb (beyond 120 days) as a result of their mother’s untimely death.²⁵⁰ Surprisingly, the *ḥadīth* about the resurrection of unborn or stillborn children seems to only have Muslims in mind. This application of the *ḥadīth* about stillborn (Muslim) children to Christian children is the work of al-Khallāl. By applying the *ḥadīth* to Christian children, al-Khallāl places them into the legal rationale of Ibn Ḥanbal, a point which we should not overlook. It indicates that Christian children will stand in God’s judgment just as all mankind will, and might have a path to Paradise. And it shows that al-Khallāl creates a theology of Christian children by applying Ibn Ḥanbal’s responses about them: Christian children are innocent of their deeds, but stand in judgment of God, just as Muslims do, for deeds they would have done had they lived. Christian children, too, stand before God having never sinned in life. It is here we see the working out the fate of Christians as another way of understanding the mechanics of salvation for Muslims more generally. What this all means is that, in addition to the construction of a theological position for the early Ḥanbalī school, God knows what any given Christian child will do or would have done since God himself breathes life into him. The Christian child has a possibility of entering Paradise, but if he does, he has to stand before God for the actions he would have done in the same way any Muslims would. Implicit to al-Khallāl’s organization of Ibn Ḥanbal’s discussions is the accomplishment of a definitive theological position that all children have potential path to Paradise, and that no child is guaranteed Paradise.

²⁴⁹ For the later Ḥanbalī position on the resurrected child having matured, and its implications for Ibn al-Qayyim, see Bosanquet, “Minding Their Place,” 291-305.

²⁵⁰ al-Khallāl, *Ahl al-milal*, no. 18. The position of the early Ḥanbalīs seems to have been that the child should not be separated from the mother if she dies while pregnant. Or other examples, see Ghulām al-Khallāl, *Zād al-musāfir*, 2:290-1 (nos. 872-873). Also see *Zād al-musāfir*, vol 2, 286, where Ghulām al-Khallāl provides other instances in which Ibn Ḥanbal cites a report that a stillborn should be washed and buried, since a recording angel has, in accordance with God’s will, designated whether the child would have done good deeds worthy of Paradise.

Christian children, as with Muslim children, are responsible for the sin they would have committed in accordance with God’s will and foreknowledge had they lived to adulthood. This view seems to be consistent with Ibn Ḥanbal’s frequent saying, “Can anyone be certain they [Muslim children] will enter Paradise?”²⁵¹ This is not to say that Ibn Ḥanbal supports a position that innocent Christian children necessarily go to Paradise or Hell, but it means that he leaves the possibility open-ended, or perhaps even, as the later Ḥanbalī jurist Ibn al-Qayyim put it, suspended (*waqf*), meaning something along the lines of uncertain.²⁵² And this is the key point: viewing Christian children as potentially able to go to Paradise means that Muslims cannot say what God chooses to do with Christian children. We can speculate that God writes conversion (and good deeds) into some Christian children’s souls, meaning that Christian children, like Muslim children, are not guaranteed Paradise or Hell: some are born believers and end up in hell while other are born unbelievers, and end up in heaven.²⁵³ All of this means that Muslims must, by all means possible, though not explicitly stated, take responsibility to care for Christian children: they are not inevitably forsaken by God to enter Hell, a point taken up in the next chapter.

²⁵¹ al-Khallāl, *Ahl al-milal*, no. 16.

²⁵² Ibn al-Qayyim, *Aḥkām 2*:1086-92, and also Bosanquet, *Minding Their Place*, 285-286 and 295-301. In her dissertation, Bosanquet explains how Ibn al-Qayyim did not subscribe to this view based on his criticism of *ḥadīth* and on grounds that God only judges act actually committed. The term “God knows what they would have done” is, for Ibn al-Qayyim, not determinant of their reward or punishment in the Hereafter. In short, since no action has taken place in this life here below, no responsibility is required. Based on his criticism of this interpretation of the phrase, according to Ibn al-Qayyim, this phrase refers not to what they would have done in this world here below, but what they would have done on Judgment Day. Only on Judgment Day will their actions—or more literally their choice—as resurrected and apparently adult beings result in Paradise or Hell. Bosanquet calls this the “post-resurrection moment test,” which results in either a finite, “purifying” punishment in hell after which they go to Paradise, or Paradise.

²⁵³ al-Khallāl, *al-Sunnah*, 1:424 (no. 886). Here, Ibn Ḥanbal made the claim that every person’s actions are predetermined.

By contrast, Christian adults are responsible for their thoughts and actions. Thus, while Christian adults have a choice to be Christian and are fully capable of committing sin, children do not. As a result, there is an emphasis by al-Khallāl on children and not adults. For adults, however, al-Khallāl does not say that they are indefinitely lost; rather, his focus seems to be on the salvation of children. If Muslims are to give Christian adults the choice to convert—or, in the Muslim view, revert back to their original state of religion—they should do so when Christian adults are on their deathbed. In such cases, Ibn Ḥanbal says that a Muslim can enter a dying Christian’s house and lead him to Islam,²⁵⁴ as long as the Muslim thinks there is hope of conversion. Otherwise, Ibn Ḥanbal does not view Muslims as responsible for the conversion of Christian adults, and seems uninterested in converting them to Islam unless they, on their own volition, approach Muslims.²⁵⁵ All of this goes to show that children should, according to Ibn Ḥanbal, be afforded an opportunity to exercise their own agency and have the chance to convert, while adults, though there might be some hope of their conversion, already had their opportunity. One way this might take place is through jihād and the capturing of Christian children.

But the Ḥanbalī discussion of the mechanics of salvation for Christian children leaves some questions unresolved. There is tension about the natural disposition of a child. Is the child born a Muslim and only becomes a Christian because of his parents? What about when the child is in the womb: is he a Christian or a Muslim when God breathes life into him? Relatedly, if the child dies, we do not know if it resorts to its parents’ religious disposition of Christian or if his initial religious disposition is Muslim. We are not told if his religious disposition as an unborn or

²⁵⁴ al-Khallāl, *Ahl al-milal*, nos. 600-608, especially 604.

²⁵⁵ Ibn Ḥanbal did in fact convert one Jew to Islam that we know. *Ahl al-milal*, nos. 81 and 845. This shows to me that at least some Jews were converting to a Ḥanbalī confession of Islam.

stillborn invalidates his inborn natural state of religious disposition, called the first *fiṭrah*.²⁵⁶ This tension is worked out though Ibn Ḥanbal's discourse on rescuing captive children from the perverted religion of their parents. Taking Christian children as captives provides a solution not for salvation but for compelling them to be Muslims; that is, one step closer to God's will for them to be Muslims. Ibn Ḥanbal's ruling on Christian captives helps him accomplish a larger theological goal of making the infidels more Muslim: Muslims are required to care for Christian children captured in war or given over to them by Christian guardians. This is justified because it involves rescuing Christian children from the *shirk* of their parents.

²⁵⁶ al-Khallāl, *Ahl al-milal*, no. 28. Also see Reinhart, "Failures of Practice or Failures of Faith," in *Between Heaven and Hell: Islam, Salvation and the Fate of Others*, ed. Mohammad Hassan Khalil (Oxford: Oxford University Press, 2012), 20, where he discusses Ibn Ḥazm's view that the only non-Muslims spared hell are those who have not heard the good news about Muḥammad and Muḥammad's warning of coming Judgment. There are, however, no such persons, according to al-Ghazālī.

CHAPTER 5: IBN ḤANBAL AND THE HERMENEUTICAL CHRISTIAN CHILD: THE MECHANICS OF CONVERSION

Introduction

The assumption made in Ḥanbalī discourse about war (*jihād*) is that Muslims are mandated to expand the realm of Islam. Those living outside of a pact of protection, foreigners (*ḥarbīs*), are subject to conquest, conversion, or monetary capitulation. In Ibn Ḥanbal’s discussions on *jihād* in NMRC—comprising one of the longest sections of the excerpt—children are discussed as spoils of war that are to be enslaved and converted as long as they are without parents or guardians. The discussions about them bring to the fore issues of whether Muslims are to take them on the battlefield or area of conflict or to leave them behind. What is a Muslim warrior to do, for example, if a child is found without parents or guardians? Does a Muslim warrior have the responsibility to transport him, feed him, and ensure his safety, and if so, why is a Muslim do this for a Christian child? To be sure, the practical implications of such questions are clear: in the absence of a professional military class, any Muslim male might be conscripted to join the military in ongoing *jihād* on the Byzantine frontier; and male Muslim warriors cannot take care of nursing captives by themselves, at least not until they return to their supply lines or arrive back in the abode of Islam.²⁵⁷ Although the content of the questions seems to be about practical application, we learn that more is at stake. Questions about children raise crucial theological questions about the justification for war in the first place: what ontologically happens to children when they are captured? We learned above that all children have a path to Paradise, but how does this actually work? The answer is that *jihād* results in Christian children converting to Islam, the mechanics of which are debated. At the root of discussions about the capture and

²⁵⁷ NMRC does not envisage women as fighting in *jihād*, as they did in the earlier period of Islamic history. See Leila Ahmed, *Women and Gender*, 70-71, 79.

enslavement of Christian children through conquest is a larger argument about the ontological concept of natural religious disposition, or *fiṭrah*. In discussing the relationship of *fiṭrah* with *jihād*, Ibn Ḥanbal's rulings tell us more about his view that every person is born Muslim, and thus taking lone children captive allows Muslims to return them to their rightful place before God as Muslims. God delegates to Muslims the legal authority to convert the world of foreigners, the upshot of which is a world with less *shirk*. The hermeneutical Christian serves as an axis of theological discussion about the mechanics of conversion and natural human disposition, revealing the justification for war. In short, we learn more about how war serves as a catalyst to make the world more Muslim, all the while inadvertently spelling out the mechanics of conversion for all mankind.

In the foregoing argument, I relate how discussions about captive Christian children imply a Ḥanbalī theological view that God makes all mankind Muslim. Since children are only made Christians accidentally through their parents, Muslim have the responsibility to take them and care for them, breastfeed them, and make them Muslim. This explains, I will show, the causes of why children are not to be left to be Christianized in foreign territories. It is in this regard that we see a transition from the theological mechanics of salvation to theological questions associated with their religious disposition. Though these might be linked theological points, neither Ibn Ḥanbal nor al-Khallāl make the connection. I will not venture to make sense of this, but will be content to draw out some of the ways Christians helped Muslims work out their own theology.

Why Take Christian Infants Captive?

Ibn Ḥanbal's legal opinions on *jihād* and taking infant captives and as slaves imply that Muslims have the duty to remove them from being Christianized and to make them Muslim.

Other legal scholars had argued that a Christian infant or any child could be compelled to Islam regardless of whether their parents were with him.²⁵⁸ Some Muslims living in the *thughūr* region of the frontier apparently compelled all captives to embrace Islam, regardless of age or religion. Ibn Ḥanbal, on the other hand, refuses to comment about the people of the *thughūr* claiming that they “do things I know nothing about.”²⁵⁹ The abode of war is, to put it succinctly, devoid of law, and no rights are afforded to infidels.²⁶⁰ Muslims can do as they please, compelling both child and adult to Islam. But as al-Khallāl makes clear, Ibn Ḥanbal takes a different view. For Ibn Ḥanbal and al-Khallāl alike, Muslims have the duty to protect a child’s right to life, especially one born into the perverted religion of Christianity. They cannot, however, compel a child to convert if he is with his parents. Only when the parents are not present can Muslims convert children to Islam.

If a child is alone, then they are no longer anchored to their parents’ religious disposition or authority, giving Muslims legal authority, from their view, to capture them and return them to their proper place before God: in submission to God as Muslims. We see this reflected in al-Khallāl in arrangement of Ibn Ḥanbal’s discussion about a lone Christian child after being taken in a raid or in war. Ibn Ḥanbal is asked about what a Muslim should do with a lone infant child if it is found on a raid or a *jihād* campaign: “What about if a child, still breastfeeding, is taken from Byzantium (*al-rūm*) without anyone to breastfeed it?”²⁶¹ In one response, Ibn Ḥanbal says, “It

²⁵⁸ Such as al-Awzā’ī and the people of the *thughūr* in Syria. See al-Khallāl, *Ahl al-milal*, nos. 49-50, 52, 73, 75, 78; and the Mālīkis, at least as understood by some early students of Ibn Ḥanbal, no. 512.

²⁵⁹ al-Khallāl, *Ahl al-milal*, no. 49.

²⁶⁰ Crone, *God’s Rule*, 362ff.

²⁶¹ al-Khallāl, *Ahl al-milal*, no. 40, but also nos. 37-39.

should be given food and water, and if it dies it dies.”²⁶² In another response, we learn more about his take on a breastfed infant or child. Ibn Ḥanbal affirms that Muslims should take the lone child with them, and “if it dies, [at least] it dies with Muslims. If it lives, it lives likewise with Muslims. If God provides the means for its sustenance, the child belongs to Muslims.”⁴⁹ We can see here that any unaccompanied infant or child captured must be carried along with Muslims and given food or water.²⁶³ Since there is no woman to breastfeed the child, the best Muslim men can do is to give the child what they can until they find a Muslim woman to feed it. This would mean that a child would later be fed by a Muslim woman whose milk would transmit her Muslimness. Whether the lone infant lives or dies, Ibn Ḥanbal says, it belongs to Muslims. The reason for Ibn Ḥanbal’s claim is best explained by al-Khallāl who, in an attempt to explain the cause of the ruling, shows that it is the Muslim’s responsibility to make Christian children Muslims.

Al-Khallāl’s interpretation for Ibn Ḥanbal’s ruling is that Christians must be taken because Muslims cannot leave them to Christians who pervert the world with *shirk*. Al-Khallāl, interpreting Ibn Ḥanbal’s intent, describes leaving infants or children behind as *ḥarām*: “How could a Muslim dare leave a child in the hands of someone who would make him a Christian?”²⁶⁴ The duty of Muslims is to rescue the lone child from his previously unfortunate lot in life and his accidental conversion to Christianity through his parents. Muslims also have the duty to impose Islam upon a child; in fact, it happens naturally according to the original disposition every human is born with, as will be explained in more detail later. When Muslims find a lone child, the child

²⁶² al-Khallāl, *Ahl al-milal*, no. 38.

²⁶³ al-Khallāl, *Ahl al-milal*, nos. 37-40.

²⁶⁴ al-Khallāl, *Ahl al-milal*, no. 40. In this and other entries about captive children, Christians seem to be the subject. See, for example, no. 56 where IH responds to general questions by using Christian children as examples.

becomes a captive, and is later enslaved. After its capture and enslavement, but not before, as this would mean a Muslim enslaved another Muslim, a highly discouraged act, the child's religion reverts to Islam. Muslims following the will of God, then, steward a lone child's best interest. The child is, in short, rescued through *jihād* from the perversion of the religion of his parents or guardians, and is properly brought into the Muslim community.²⁶⁵

There is one problem in Ibn Ḥanbal's responses that no child should be left behind, as al-Khallāl sees it. One of Ibn Ḥanbal's responses seems to contradict the others. Ibn Ḥanbal is remembered as saying that a Muslim can leave a lone child behind or they can be handed over to a nearby Byzantine frontier fort to deal with (*yudfa' ilā ba'd al-ḥuṣūn al-rūm*).²⁶⁶ In seeking to resolve any inconsistencies, al-Khallāl provides a definitive explanation of Ibn Ḥanbal's intent: every *mas'alah* implies that a captured nursing child must be fed and taken care of to the best of Muslims ability.²⁶⁷ In saying that a child can be left behind, Ibn Ḥanbal seems to mean, according to al-Khallāl, that the apparent lone child is under the custody of parents in a nearby fort, and could thus be left for them to take. In this sense, Ibn Ḥanbal does not mean the Muslims should physically hand over a child, but that the child has parents and can therefore be left. In other words, Muslims do not impose Islam on or authority over a child who is under the authority of his parents in the domain of war. How a Muslim soldier might know a child has parents in a nearby fort is not explained. Al-Khallāl's definitive explanation is that there is no reason to ever leave a child to Christians, and Muslims are to, in all circumstances excepting they

²⁶⁵ Patricia Crone, *God's Rule*, 362-364.

²⁶⁶ Al-Khallāl, *Ahl al-milal*, no. 37. The language here is a bit tricky, but the point seems to be that if some children are not taken as booty, then leave them for the enemies to take (literally, hand them over).

²⁶⁷ al-Khallāl, *Ahl al-milal*, nos. 37-40.

have parents, take them. What if a breastfed infant or child has parents with him? What happens then?

Ibn Ḥanbal, in contrast to views that a child can be compelled to Islam even if he is accompanied by his parents, holds that the rights of a Christian child are anchored and inherently linked to his parents' religious disposition and custody. The extent to which conversion as a result of *jihād* is justified is limited. Muslim categories of law become incumbent on captives, both parent and child, at the time of their capture. For Ibn Ḥanbal, this means that by virtue of a child being under the custody of a Christian parent, he is endowed with natural and religiously sanctioned rights, albeit never quite teased out in such a clear manner by Ibn Ḥanbal. A Christian child or children under parental custody share their parents' religious disposition that cannot be taken away except by consent; that is, without compulsion. Children remain in the religious disposition of their parents unless they decide willingly to convert to Islam. In other words, the idea that *jihād* works to bring more converts into Islam is limited when parents are with children. Islamic law does not usurp parental custody rights. Muslim do not have the delegated authority to compel adults to Islam physically or forcefully. And the point of the discussions about this issue is to show the conditions in which conversion of the non-Muslims can take place, and under what circumstances a child can be converted. When does the child become Muslim? The discussions are, in this sense, not only about the rules of war, but the mechanics of conversion.

Christian children become Muslims immediately upon detachment from a religiously perverted parent, a point which will be made clear in the next section. In the next section, we will see that frontier war and raids are justified because they allow Muslims to return children to their initial *fiṭrah* and making the world more Muslim. This theological justification for war underpins the discussions about lone captives, making it more about a theological change to

fiṭrah rather than a practical discussion about what to do with captive children. What actually happens to a child's religious disposition when taken captive, and how do the discussions about them inform us about the Ḥanbalī conception that all humankind's inborn position before God?

Captive Children and the Mechanics of Conversion

We can understand Ibn Ḥanbal's discussion of children implicitly shows the larger theological point that every child is initially a Muslim. *Jihād* is the act that makes the natural process of conversion, or perhaps even reversion, of children to their native, inborn faith. The theological justification for taking captives of war and converting or reverting them to their original *fiṭrah* is seen in cases of children who lose their parents after being taken captive. In some instances, an already-captured-and-enslaved child might later lose his parents. The status of the child might then be contested as he is no longer tethered to a parent's custody or religion. What happens to the child's *fiṭrah* in such cases? There are two cases that help explain an enslaved child's religious disposition in the event his parents die.

I will call the first case the Paternal Uncle Case because it has to do with children whose parents die after enslavement, leaving a potential uncle to be a guardian. In the Paternal Uncle Case, al-Marrūdhī, one of our interlocutors, poses a question about the status of the children to Ibn Ḥanbal. Both al-Marrūdhī and Ibn Ḥanbal had been asked a similar question by communities in Baṣrah (for al-Marrūdhī) and Wāṣit (for both of them) on different occasions. Al-Marrūdhī, acknowledging the difficulty of finding an answer to the question, asks Ibn Ḥanbal, "If a husband and wife die leaving two [non-Muslim] children, and the children have a [paternal]

uncle, do the children come under his custody (*yad ‘ā al-ṭiflayn wa la-humā ‘amm*)?”²⁶⁸ Stumped by the question, and refusing to give an opinion, Ibn Ḥanbal instructs al-Marrūdhī to give him some time to look into it. A month later, Ibn Ḥanbal finally draws the conclusion that the children must become a Muslim since their parents died. Ibn Ḥanbal bases his opinion on the *ḥadīth*: “Their parents make them Jewish or Christian.”²⁶⁹ This issue implicit to his ruling is the natural state of a child’s religious disposition. This *ḥadīth* seems to apply here because the children’s religious disposition is only tied to their parents insofar as the parents are alive to “make them Christian.” In the absence of parents, just like a lone child, they naturally revert to their first *fiṭrah*, the religion of Islam. That the case refers to enslaved Christian children is clear enough. If the children had been free *dhimmi*s, perhaps a Christian uncle could have taken care of them and served as their guardian, in which case the children remain Christian. Or perhaps Ibn Ḥanbal is simply stating the literalist reading of the *ḥadīth* that applies to all children regardless of their status as slaves or free. We can be certain, however, that no uncle can substitute for a parent of an enslaved Christian child. That this is not immediately clear in Ibn Ḥanbal’s citation of the *ḥadīth* is reason why al-Khallāl offers a second case.

The fact that an enslaved child cannot come under the custody of a Christian uncle is made clear in a second case, the Paternal Guardian Case. When asked, apparently at a different time, whether a boy can enter into the custody of an uncle or older brother in the event that his parents die, Ibn Ḥanbal says that he cannot. He says so on grounds the child “becomes a Muslim” upon his parents’ death.²⁷⁰ In other words, the enslaved child cannot enter into the

²⁶⁸ al-Khallāl, *Ahl al-milal*, no. 55.

²⁶⁹ al-Khallāl, *Ahl al-milal*, no. 55.

²⁷⁰ al-Khallāl, *Ahl al-milal*, no. 59.

custody of a non-Muslim male guardian along patrilineal lines because his *fiṭrah* immediately changes to its original state, that is, as a Muslim.²⁷¹ According to Ibn Ḥanbal’s understanding of Islamic law, parental rights and familial custody are removed once the parents are no longer in the picture, and God’s original plan of creating Muslims from the womb is reinstated. The child, only Christian because of his parents, revert back to their state of being and end up just as a lone Christian child discussed above. If a lone Christian child resists converting to Islam after Islam is presented and explained, Ibn Ḥanbal says: “If they refuse, beat them short of death.”²⁷² The mechanics of conversion are the same albeit delayed: conversion is immediate for children who do not have parents because God created them as Muslims, and their refusal is a denial of an ontological fact. Herein lies the real reason to discuss Christian children at all: they are Muslims from the beginning. The mechanics of conversion are immediate and irreversible. Muslims have the legal authority delegated by God to take children in *jihād* or separate children from family members if unaccompanied by parents because it makes the world more Muslim, and fulfills the mandate of Islam to conquer the unprotected areas, the *dār al-ḥarb*, and make more Muslims, if licit. It is a theological argument about *fiṭrah* used to accomplish the conversion of the world mandated by God in his law. God delegates legal authority to Muslims to enslave and capture Christians in war, the result of which is enslavement and subsequent conversion to Islam for children.

Surprisingly, Ibn Ḥanbal rules that a child who finds himself in a case as the Paternal Uncle or Paternal Guardian can still inherit from his parents. Ibn Ḥanbal does not plainly explain

²⁷¹ Confusingly, when discussing a slave girl who has a child but then dies, Ibn Ḥanbal says that, “If no one else can take care of the child, then the child belongs to Muslims.” The only way I can see this making sense is if the father is a Christian slave. See al-Khallāl, *Ahl al-milal*, nos. 67, 68, 70.

²⁷² Al-Khallāl, *Ahl al-milal*, no. 52.

this, but it is evident that if a child is a Christian at the time of his parent's death, according to Islamic law, then is still a Christian and can inherit from his now deceased Christian father. Ibn Ḥanbal is asked, for example, "What happens with the child of a Jewish or Christian man who dies?" Ibn Ḥanbal's response is that the child is a Muslim. Asked further about inheritance, Ibn Ḥanbal says "Yes, he inherits from his parents." Such an inheritance case would ostensibly be applied to any Christian without parents, though the context of the *masā'il* leaves us wondering about the legal status of a child. We are not told whether a child is a slave or free or if he is a *dhimmi* living under Islamic governance or *ḥarbī* brought over to Islamic territory. The point is that only after parent's die does he become a Muslim and receive inheritance. Otherwise, the rule of thumb is that a Muslim child cannot inherit from a Christian parent, and a Muslim more generally cannot inherit from a Christian.²⁷³ All of this goes to show that inheritance hinges on the mechanics of conversion: the child was still technically a Christian when the parent(s) died, and is afforded his inheritance as a legal right according to Muslims. It also shows that Islamic legal categories override or overrule Christian categories of religious self-understanding when it comes to a child's religious disposition.

Ibn Ḥanbal's view is that any unaccompanied child taken in war or raids is subject to conversion regardless of their age. As in the case of infants discussed above, the same rules apply to weaned children. Ibn Ḥanbal responds to numerous questions about a lone child by saying he should be compelled to Islam, as long as he is unaccompanied by parents.²⁷⁴ If a child is accompanied by parents, he is under their custody or guardianship, and they retain their

²⁷³ al-Khallāl, *Ahl al-milal*, no. 59. For Ibn Ḥanbal's view on inheritance between religious communities, see nos. 414, 415, 416, 842, 923-936, among others.

²⁷⁴ al-Khallāl, *Ahl al-milal*, nos. 41-52, 56-58, 60, 61, 73-5, 77-9. These entries seem to relate to free Christian and other non-Muslim children and their parents taken captive. For entries on slaves taken captive, see nos. 91-93, 94-98.

parents' religious disposition, even as slaves, just as with infants and other weaned children, until he reaches the age of adulthood.²⁷⁵ In other examples, Ibn Ḥanbal cites the *ḥadīth*, “Every child is born into the religious disposition (*fiṭrah*) [of his parents]”²⁷⁶ as an explanation that a child should not be compelled to Islam if under the custody of parents. The only exception is when a child of seven years or older decides to convert on his own.²⁷⁷

Given the previous discussion, we know that Ibn Ḥanbal did not take the view that children can be converted to Islam if they are with their parents. In explaining how a child might be “compelled” to Islam after being captured, Ibn Ḥanbal says, “If he is with his father, the child cannot be compelled to Islam until Islam is made known to the child [at the appropriate age], and the child can explain it [on his own accord] (*idhā kāna ma‘a abīhi lam yujbirhu ‘alā al-islām hattā yu‘arrif al-islama wa-yaṣifahū*).”²⁷⁸ Muslims can still explain Islam to a child who is with his parents and verbally compel him to Islam as long as the child is able to explain what it means to be a Muslim. It is unclear exactly what Ibn Ḥanbal means when he says a child has to be able to explain Islam. One clue is found in a chapter al-Khallāl includes about Christians who are willing to claim, in part or in whole, the *shahādah*:

It is *sunnah* for you to tell him [a child] about testifying that there is no God but God and that Muhammad is the Messenger of God. And it is *sunnah* that you tell him to

²⁷⁵ al-Khallāl, *Ahl al-milal*, nos. 45, 49, 51, 52.

²⁷⁶ al-Khallāl, *Ahl al-milal*, nos. 27, 28, 30-33, 35. For another Ḥanbalī view, see Ibn Qayyim’s rejection of the idea that both parents had to be present for the child to remain a Christian in Yohannan Friedmann, *Tolerance and Coercion*, 112-13.

²⁷⁷ al-Khallāl, *Ahl al-milal*, nos. 98-106. See also Sahner, *Martyrs*, 106. Yohannan Friedmann remarks that it is at ten years old that the conversion is valid, but here it seems clear that conversion is valued at seven, and the prayer can be performed at ten. In both cases, the child is held to his conversion and is considered an apostate if, upon coming of age, he reneges.

²⁷⁸ al-Khallāl, *Ahl al-milal*, no. 52. See also Ibn al-Qayyim, *Aḥkām*, 900ff., 952.

put his trust in God and put aside all other religions except Islam. This is the complete presentation offered by the *'ulamā'* ... doing so means converting to Islam.²⁷⁹

Ibn Ḥanbal does not directly connect the idea of teaching a Christian child the *shahādah* and putting aside all religions except Islam as an example of what he might mean by “compelling” a captive child to Islam. We simply do not know how this plays out in social life, at least not from what I have found about Ibn Ḥanbal’s life. But the larger point seems to be what Muslim are to do if their captors remain Christian. Surely, it is presumed, Muslims wanted Christian to convert to Islam, but without an option to physically compel with force or under threat, they are hard-pressed to get the children or their parents to convert. My point here is that Ibn Ḥanbal allows Muslims to compel Christian children to Islam that they might revert them back to their initial *fiṭrah*. The goal, it seems, was to tell them to put off all religions and affirm that Muḥammad is the Messenger of God, among other undefined prescriptions. When the automatic reversion to Islam is impeded by a parent’s religion, Muslims can still seek the child’s benefit by offering or teaching him about Islam. What about when a child does convert but one of his parents forbids it?

At issue is what happens to a family in the event that only one parent converts to Islam. Does the child’s *fiṭrah* change, and who must convert for the change to take place? The mother or the father or both? How do the mechanics of salvation work here? Ibn Ḥanbal says that:

“If one of the parents converts (embraces Islam) and they have young children who have not reached maturity, then they belong to the Muslim [parents]. In this case, the child(ren) should be compelled to Islam until they convert. If the children were mature adults, don’t compel them to Islam because the Prophet said, ‘The parents determine their Christianity or Jewishness.’”²⁸⁰

²⁷⁹ al-Khallāl, *Ahl al-milal*, no. 842. For a brief explanation about a seven-year-old child confessing Islam, see Ibn Ḥanbal’s view that the child need only say the *shahādah* in no. 106. For other entries on Muslims presenting Islam to potential converts, or for a Christian woman converting and presenting Islam to her husband, see nos. 48, 105, 530, 531, 533, 537, 548, 604, 781, 843, and 846.

²⁸⁰ al-Khallāl, *Ahl al-milal*, no. 81. The typical Ḥanbalī position is that the husband can return to his wife only during her required divorce period. After this period, they become divorced. See, for example, al-Khallāl, *Ahl al-milal*, nos. 515-45, and al-Khallāl’s lengthy discussion of Ibn Ḥanbal’s position and confusion about it after no. 545. The

Here, the mother has already converted, and as a result, according to Ibn Ḥanbal, the father cannot prevent his child from converting. In Ibn Ḥanbal's understanding of the law, the child belongs to the mother now, and the father must both surrender his parental rights (except monetary compensation) and is no longer religiously compatible with his wife, meaning they have to divorce.²⁸¹ The mechanics of conversion are such that when any parent converts, the child becomes tethered to that parent, thereby rendering him a Muslim. The religious designation of the child immediately passes from the converted parent to the child. The Christian father not only loses his wife and child if he does not convert to Islam, but he is subject to Islamic categories of marital maintenance for her. The father, whom Ibn Ḥanbal opines loses his rights to the children when the mother converted, might even try to withhold the child or children from her. According to Ibn Ḥanbal, in such a circumstance, the father should “not be struck, but scared enough until he brings the child(ren).”²⁸² The child simply is designated a Muslim from this moment forward: Muslim categories override Christian ones. We can see in all of this that the mechanics of conversion default to Islamic categories of ontological being and status. We learn from discussions about the conversion of a parent the way in which Islamic legal take precedent.

converse is also true, for which see no. 544. See also Yohannan Freidmann, *Tolerance and Coercion*, 110-11. For a dissenting later Ḥanbalī perspective on how the marriage of a female convert can be regulated by Islamic law giving her freedom to remain in the marriage, see Antonia Bosanquet, “The *kitābī* Wife's Conversion to Islam: An Unusual Interpretation by Ibn Qayyim al-Jawziyyah, *Islamic Law and Society* 27 (2020): 185-213, <https://doi.org/10.1163/15685195-00260A05>.

²⁸¹ al-Khallāl, *Ahl al-milal*, no. 81. The typical Ḥanbalī position is that the husband can return to his wife only during her required divorce period. After this period, they become divorced. See, for example, al-Khallāl, *Ahl al-milal*, nos. 515-545, and al-Khallāl's lengthy discussion of Ibn Ḥanbal's position and confusion about it after no. 545. The converse is also true, for which see no. 544. See also Yohannan Freidmann, *Tolerance and Coercion*, 110-111. For a dissenting later Ḥanbalī perspective on how the marriage of a female convert can be regulated by Islamic law giving her freedom to remain in the marriage, see Bosanquet, “The *kitābī* Wife's Conversion to Islam,” 185-213.

²⁸² al-Khallāl, *Ahl al-milal*, no. 81.

It might seem that there is a bit of a conundrum for the early Ḥanbalīs who believe in predestination yet compelled children to Islam. Doesn't God know what they will do? But that is to miss the spirit behind Ibn Ḥanbal's rulings. Compulsion is, according to the early Ḥanbalīs, necessary in cases of children who refuse to convert. It is necessary not because there is compulsion in religion,²⁸³ but because there is compulsion to remain a Muslim and accept the natural religion of mankind: God has designed it this way. If in fact a child converts to Islam but the parents are Christian, the government becomes the legal guardian of the child.²⁸⁴ This goes to show that legal authority is God-given, and that Muslims are justified in taking converted children from the authority of their parents. It is, to put it simply, a Muslim's responsibility and duty to enjoin what is good for the child. For Muslims, according to Ibn Ḥanbal, God's will is for Muslims to take responsibility for Christian children by making them Muslim—or at least allowing their original *fiṭrah* to revert back to Islam—and rescuing them from the perversion of their parents' religion. In turn, the mandate to make subject the world to Islamic rule is fulfilled, and the reason for taking captives of war is justified. Discussions about captive children are a way of discussing the Islamic delegation of authority and the conversion of those from foreign territories.

²⁸³ Cf. Quran 2:256 which prohibits forcibly converting non-Muslims. For the development of juristic thought on compulsion in religion and the change it underwent in discourse, see Crone, *God's Rule*, 373-385. Crone sees the discourse change due to the dissonance between there being no compulsion in religion and a mandate to undertake holy war (*jihād*).

²⁸⁴ al-Khallāl, *Ahl al-milal*, no. 429. The phrasing says that in the absence of parents, a young convert has the government set over her. But the exact implications of the government being set over a convert child is unclear to me. It seems that it applies only in cases where a Muslim guardian is required, such as in marrying a converted daughter off. See for example, nos. 427, 429, 431. In the case a daughter is married off to a Muslim, Ibn Ḥanbal believes the father ought to pay her dowry. If the converted girl has a Muslim brother, the brother can marry her off and serve as her guardian. See nos. 433-435. In no. 434, Ibn Ḥanbal is asked, for example: "If a woman has a Christian father and a Muslim brother, which one can marry her off?" Ibn Ḥanbal replies that the brother can, to which the interlocutor responds, "Don't the infidels have legal authority over their own kindred?" Ibn Ḥanbal replies, "By no means." That Ibn Ḥanbal thinks such cases are hermeneutical is evidenced in his response (no. 428) to Christians marrying off Muslim daughters: "They aren't marrying them off, so how can it be a crime [to do so]?"

Now we will see contrasting cases in which Christian children are given over to Muslims to foster. In such cases, the child becomes a Muslim. We will see that the child fostered by Muslims might not want to remain Muslim when reaching adulthood, and the consequences of a reversion back to Christianity, showing that the mechanics of salvation are such that converts are unable to return to Christianity.

The Mechanics of Conversion: Irreversible

The theological truth that a Christian child taken by Muslims reverts to his initial *fiṭrah* is also applicable to children fostered by Muslims. Discussion about fostered children inevitably brings us back to the theological discussion of *fiṭrah*. When a Christian child is given over to Muslims to foster, he is, from an Islamic view, considered a Muslim. But what happens in the event that a fostered child who comes into Muslim hands as a Christian eventually becomes an adult and refuses Islam? Was such a thing possible? Ibn Ḥanbal says that a child who claims “I am a Christian” upon coming of age is to be treated as harshly as necessary. He should, Ibn Ḥanbal says, be compelled to Islam with severity, and his claim of being a Christian should not be accepted.²⁸⁵ Just as in previous cases, the parents are no longer there to Christianize him. In cases of Christian children handed over to Muslim guardianship, they should be appropriated into a Muslim family.²⁸⁶ What can be said is that, according to the Ḥanbalī view, the child is to

²⁸⁵ al-Khallāl, *Ahl al-milal*, no. 103. See also Yohannan Friedmann, *Tolerance and Coercion*, 110-11. Jack Tannous discusses the reversion back to Christianity, albeit for non-religious, economic reasons in *The Making of the Modern Middle East*, 332-337. I do not yet know what to make of a child converting back to Islam. Could it really be economic? It would make for an interesting study.

²⁸⁶ For more, see Lev Weitz, *Between Christ and Caliph*, 120, and Eduard Sachau, *Rechtsbücher*, canon 75, 2:107, which makes clear that the Church of the East’s Patriarch Timothy allows Muslims to be set as guardians over Christian children as long as he has not had previous financial ties to the Christian family. But the larger concept of “family” is obscured by an ongoing untenable definition of the family unit (especially for those fostered) and the slaves it possessed, let alone what constitutes a family in Abbasid-era large cities. Julia Bray, “The Family in Medieval Islamic Societies” in *Approaches to the Byzantine Family*, eds. Leslie Brubaker and Shaun Tougher (Burlington, VT: Ashgate, 2013), 140.

be cared for by Muslims who can provide right guidance. And a child fostered by Muslims is subject to Islamic law and his foster parents' God-given authority over him. A child raised by Muslims who comes of age and later rejects Islam is accountable for the punishments of Islamic law as an apostate; that is, he is subject to physical compulsion on the one hand, and to the laws of apostasy on the other. The same rule applies for free Christian children who convert at a young age while still accompanied or under the guardianship of Christian parents, thereby showing that no person who has become a Muslim for any reason can recant it. The mechanics of conversion are such that once a child becomes a Muslim, there is not path back to Christianity, and all roads back are prohibited by the law.

In contrast to discussions about enslaved Christian children, discussions of free Christian children make up only a very small portion of NMRC. We saw in the previous section a child raised as a Muslim rejecting Islam. But what about a child raised Christian who embraces it? Ibn Ḥanbal's students pose questions about Christian children converting to Islam despite being raised in a Christian family. We might guess that for Ibn Ḥanbal this simply means the child becomes aware of the truth of Islam or perhaps was presented Islam. Ibn Ḥanbal states that a child is held to his confession as long as he has full knowledge about what it means to convert and is a minimum of seven years old. If he converts and later recants, an issue arises about apostasy. Consider for example a free (male) child, presumably a *dhimmī*, who converts to Islam before adulthood, and then later recants. This child, according to Ibn Ḥanbal, has until adulthood to change his mind, as long as he is properly taught how to pray beforehand. Only upon adulthood time will he be judged as an apostate: His conversion and remaining a Muslim "is obligatory for him if he was taught the prayers at seven. If he recants, wait until he reaches maturity. If he holds fast to his rejection [of Islam], then he will be judged according to the laws

of apostasy until he converts, or he should be killed.²⁸⁷ In other words, his conversion is irreversible on grounds of his childhood confession; and on grounds of irreversible emancipation, if he was formerly enslaved.²⁸⁸ Here, we see that Islamic law and the mechanics of conversion apply to children who convert. Converts are only innocent of their sin until they reach adulthood, at which time they become responsible for their sin and the punishment of illicit behaviors. There is, in other words, no way back from conversion, and a convert who recants will be killed as an apostate, one who, by virtue of accepting and then rejecting Islam, has gone astray from Islam and rejected his initial religious *fiṭrah*.

What is so interesting about the case of a free Christian child converting to Islam is that it shows that he subjected himself to Islamic legal authority. Implicit to his is a case is Ibn Ḥanbal's view of the scope of the law's authority: when Christians convert, Islamic law immediately becomes incumbent on them to the full extent, even if delayed. For the *dhimmī* boy who became a Muslim, it means adhering to Islam or being subjected to *ḥadd* punishments for apostasy. And it works both ways, either through independent assent to Islam, as with the free Christian child, or through imitate childhood conversion, as in the case of lone captive children. The point of discussions is to show conversion is irreversible and once a person becomes a Muslim, however that might have taken place, he becomes subject to the full extent of Islamic law and its punishments. Subjection to Islamic legal authority is part and parcel of conversion.

But when are Christians subject to the requirements of Islamic law if they do not convert? In the next chapter, we will only look at only divorce oaths to see how Christian men and women

²⁸⁷ al-Khallāl, *Ahl al-milal*, no. 106, and nos. 102, 104-5. Though al-Khallāl does not offer instances of a child refusing Islam because of a forced conversion by his parents, Friedmann offers some insightful comments about leniency among the legal schools for such children. See Friedmann, *Tolerance and Coercion*, 134, cf. Sahner, *Martyrs*, 61.

²⁸⁸ al-Khallāl, *Ahl al-milal*, no. 102.

married and living as *dhimmīs* in the *dār al-Islām* are imagined to utilize Muslim divorce procedures, and the extent to which they can or must fulfill the obligations of divorce law. They maintain their Christianity yet want to make use of the Islamic legal system. Is Islamic divorce law available for Christians according to Ibn Ḥanbal, and if so, to what extent? Does Islamic legal authority extend to Christians who want to make use of Muslim legal authority?

CHAPTER 6: IBN ḤANBAL AND HERMENEUTICAL CHRISTIAN DIVORCE OATHS

Introduction

Ibn Ḥanbal discusses three divorce oaths typically associated with Muslims as if they are also available for Christians and other *dhimmīs* to use. The three oaths are *īlā'*, *ḡihār*, and *li'ān*, each of which appears in chapters on divorce in legal books, as they might result in a divorce if they take effect. Oaths are powerful ways to bind a swearer to his word, which compels him to take responsibility for his oath before God, the Hearer of the oath and the one who requires him to fulfill it. Swearing an oath was not to be taken lightly, especially when it came to breaking a contract of marriage, for which the Quran made divorce oaths available.²⁸⁹ In addition to serving as a way to bind oneself to accomplish something, oaths are the primary means of resolving disputes in the absence of the evidence Islamic law requires for valid cases. When there are no witnesses in a case, an oath might serve as evidence. It is crucial to understand the binding power and legal effect of oaths in order to see how Islamic divorce oaths work, since both elements—evidence and oaths—are present in one of the three oaths I will discuss. We must also understand the different options a man or woman had outside of swearing a divorce oath, such as divorce. Why use a divorce oath that *might* result in a divorce instead of getting a divorce, a fairly simple procedure in Islamic law? A Muslim could divorce his wife (or wives) without obligating him to do much except refrain from having sex with her during her divorce period, or *'iddah*, a uniquely Islamic institution of approximately three menstrual cycles. This period is established as just long enough to ensure that she is not pregnant or to give him enough time to realize his mistake

²⁸⁹ For an overview of the power of oaths in the Quran, see Nora K. Schmid, “Oaths in the Qur’an: A Structural Marker Under the Impact of Knowledge Change,” in *Structural Dividers in the Quran*, ed. Marianna Klar (New York: Routledge, 2021), 143-80.

in divorcing her.²⁹⁰ He can divorce her consecutively up to three times for a total period of twelve months, at which time the divorce becomes necessarily and irrevocably final, meaning he cannot return to her or marry her again unless she marries another man and consummates the marriage. Some Muslim men might even utter a “triple divorce,” a divorce procedure where three consecutive divorces are compressed into one, resulting in an immediate divorce.²⁹¹

Divorce oaths, on the other hand, are subject to different rules and are taken under different circumstances, and they might result in a divorce though it is not inevitable. In the present account, I will discuss some reasons a man might opt or find it necessary to swear an oath instead of issuing a verbal declaration (or declarations for a triple divorce) of divorce. Each of the three oaths discussed here has sanction in the Quran, and during Ibn Ḥanbal’s life, the issues surrounding them had become more complex, often going beyond the implications of the relevant quranic verses. Given the widespread discussion of *dhimmī* oaths in legal circles in the eighth century, it is unsurprising to find the topic being discussed in Ḥanbalī legal circles in the ninth century. Given that Ibn Ḥanbal did not like to rule on hypothetical cases, it may be

²⁹⁰ Quran 2:229-32 permits two divorces the maximum amount, as doing otherwise is interpreted as ill intent on behalf of the husband, who might have ill will toward her, or might be seeking to get her to buy herself out of the marriage, the latter a procedure referred to as *khul’*.

²⁹¹ The topic of marriage and divorce is quite complex and its legal rules even more so within Islamic legal thought. I have only provided a very brief introduction to the rules of divorce here. For more in-depth references, see, A.J. Wensinck, “Divorce,” *A Handbook of Early Muhammadan Tradition* (Leiden: Brill, 1927), 56-8; Gertrude H. Stern, *Marriage in Early Islam* (London: Royal Asiatic Society, 1939), 127-50; Susan Spector, *Women in Classical Islamic Law: A Survey of the Sources* (Leiden: Brill, 2009), 102-138. For deviation from jurists view of law and the practice of marriage and divorce in “medieval” Cairo, with descriptions and an analysis of Ḥanbalī divorce law, see Yossef Rapoport, *Marriage, Money and Divorce in Medieval Islamic Society*, (Cambridge: Cambridge University Press, 2005) 74-78 for general marriage and repudiation, and 96-105 on Ibn Taymiyyah’s views on divorce oaths with relevant sources, particularly Ibn Taymiyyah’s *al-Ijtīmā’ wa-l-iftirāq fī-l-ḥilf bi-l-ṭalāq*. Ibn Taymiyyah argued against the validity of a “triple divorce” as being outside of the scope of *sunnah*; That divorce oaths were invoked to assert authority in the household, see Rapoport, *Marriage*, 109. For the triple divorce in Islamic law, see Muhammad Munir, “Triple Ṭalāq in One Session: An Analysis of the Opinions of Classical, Medieval, and Modern Muslim Jurists under Islamic Law,” *Arab Law Quarterly* 27, 1 (2013): 29-49, doi: <https://doi.org/10.1163/15730255-12341247>.

surprising that he was among those who permitted *dhimmīs* to swear these oaths.²⁹² Yet he and his students expend a good deal of effort discussing the oaths and their use by *dhimmīs*. In this chapter, we will see how Ibn Ḥanbal interprets the quranic revelation (*naṣṣ*) about oaths and their application to *dhimmīs* despite there not being a clear-cut interpretation of the relevant verses and no citations of *ḥadīth*. Whether the swearing of oaths is grounded in quotidian social practice is not of concern to us. For one, we do not really know how often these oaths were uttered or if they were obsolete during the lifetime of Ibn Ḥanbal in the mid-ninth-century, or for that matter during the lifetime of al-Khallāl and his students in the late ninth and early tenth centuries. For another, Ibn Ḥanbal never shows any sign of having heard of any Christians swearing a quranic oath in practice. He represents hypothetical Christians and other *dhimmīs* as if they swore such oaths, but only in order to explain how Islamic law should apply in such cases. Although the three divorce procedures may be obscure and may not have been a common practice, at stake in the legal discussions is the applicability of Islamic law to *dhimmīs*.

In this chapter, I will examine the way in which Ibn Ḥanbal and his later community of followers represent divorce oaths if sworn by Christians and *dhimmīs*, and how they imagine their legal standing in personal marital affairs. The Christian serves as a test case for the

²⁹² Ibn Ḥanbal's reluctance to answer hypothetical questions stems from his dislike of using opinion (*ra'y*) to demonstrate the logic of the law. The proponents of this system, the *ahl al-ra'y* often used hypothetical questions to establish the logic of the law and derive practical rules from it, instead of relying on *sunnah*. See Christopher Melchert, *Ahmad ibn Hanbal* (London: Oneworld, 2006) 62; Melchert, "Early Ḥanbalī Creeds," 22, https://www.academia.edu/36259260/Eight_early_Hanbali_creeds_translated; Michael Cook, *Commanding Right*, 11; Abdul-Rahman Mustafa, *On Taqlīd: Ibn Qayyim's Critique of Authority in Islamic Law* (Oxford: Oxford University Press, 2013) 162; and Alsarhan, "Early Muslim Traditionalism," 146, fn7. For al-Shāfi'ī's view, see *al-Umm*, ed. Rifa'at Fawzī 'Abd al-Muṭallib, Manṣūrah, 2001, 5:661-62 and 6:689-90. For more references, see also Ibn al-Mundhir, *al-Awsaṭ fī-l-sunan*, 5:213-14. For the Ḥanafī view, see al-Shaybānī, *al-Aṣl*, ed. Muḥammad Būyūnkālīn, Qatar, 2012, 4:428, 5:39-42, 7: 356-358. In the later *al-Mabsūṭ* of al-Sarakhsī, 7:35, only one entry is given regarding a *dhimmī* forswearing his wife more generally. Forswearing by a *naṣrānī* is noticeably absent from other early sources like al-Nakha'ī and the *muṣannaf* collections of Ibn Abī Shaybah and of Abd al-Razzāq. 'Abd al-Razzāq was inspired by al-Thawrī in his collection of the *Muṣannaf*. Ibn Abī Shaybah and of Abd al-Razzāq do, however, discuss forswearing as a topic broadly applicable to all *dhimmī* communities.

applicability of Muslim law to *dhimmīs*, and the discussion tells us something about the Muslim delegation of legal authority over them, as well as the mandate to accommodate them in private marital matters if they bring a case to Muslims, though Muslims can opt to not take their cases. I will make this argument by first showing that, in the absence of *ḥadīth*, Ibn Ḥanbal reverts to interpreting quranic *naṣṣ* as applicable to *dhimmīs*. I will demonstrate that the oaths of *dhimmīs* are valid for *ilā'* and *ḏihār*, meaning that *dhimmīs* can approach Muslims for adjudication should they make use of them. This requires me to spend some time describing the procedures and the validity of a *dhimmī*'s oath sworn by God. I do this because all of the oaths discussed must be valid before they can be effective. For Ibn Ḥanbal, a valid oath means that the oath is sworn by God (as opposed to, for example, Jesus or another deity), and that the requirements of the oath become binding if in fact the oath is brought before Muslims for adjudication. According to Ibn Ḥanbal, only those individuals of a Christian or Jewish community can swear a valid oath.²⁹³ In other words, a Christian or Jew, if they swear one of the quranic oaths, must fulfill what the Quran requires. I will then look at *li'ān* as a case in which Ibn Ḥanbal gives contradictory rulings. Here we will see that the early Ḥanbalī school did not always have a consistent or clear answer regarding the application of Islamic law to *dhimmīs*. For this reason, I will take time to walk the reader through Ibn Ḥanbal's contradictory rulings on the oaths in order to elucidate the implications for understanding the interpretive Christian. Ibn Ḥanbal's rulings leave us with unresolved tension about how *dhimmīs* might be imagined to fulfill the requirements of Islamic law in divorce cases involving oaths, and how discussion about them informs us about the hypothetical nature of questions in the previous chapters, a point which I discuss in the conclusion.

²⁹³ al-Khallāl, *Ahl al-milal*, nos. 718-23.

Forswearing and *Dhimmīs*

In order to understand how Islamic law applies to Christians who swear a divorce oath of *īlā'*, it is best to give a brief introduction to the procedure itself. The procedure of *īlā'*, or forswearing, is comprehensively dealt with in the Islamic legal literature of the eighth and ninth century. Forswearing is an oath a man takes to abstain from sex with his wife for a period of four or more months. He does so in order to spur himself on to fulfill a personal spiritual commitment—though no specific commitment is mentioned in the legal sources—or to initiate a divorce from one or more wives. But it also is linked with the ill-intent a man is acting upon to cause a wife harm. Having sex with a woman before the required four months is up is equivalent to saying he no longer wants to cause her harm.²⁹⁴ This might happen when a man with several wives wants to have sex with one at the expense of another. He may only want to neglect one, but not divorce her. The oath is also associated with a man, a husband or suitor, who wants to marry or have sex with a woman who is breastfeeding a child, and thus swears he won't touch her until she finishes weaning the child, usually after the child is two years old.²⁹⁵ Ibn Ḥanbal does not mention that breaking the oath, not waiting the full four-month period before having sex, requires expiation, since no formal commitment is required for this oath.

No witnesses are required to validate his oath or verify he makes it. During the eighth and ninth century there is considerable difference between legal schools on the procedure and process of forswearing as it pertains to Muslim marriages. For Ḥanbalī legal circles, the

²⁹⁴ al-Ṭabarī, *Jāmi' al-bayān fī ta'wīl al-qur'ān*, ed. al-Turkī, Cairo, 2001, 4:45ff.

²⁹⁵ al-Ṭabarī, *Jāmi' al-bayān fī ta'wīl al-qur'ān*, 4:44ff.

discussion of forswearing centers around several procedural conditions pertaining to anyone swearing such an oath (that is, to any *mūlī*, or forswearer).²⁹⁶ These procedural conditions for becoming a *mūlī* and for swearing a valid legal oath are based on Quran 2:226-227: “To those who forswear their wives is a waiting period of four months. If they return, God is Forgiver, Merciful One. But if they choose to divorce, God is Hearer, Knower” (my translation). But interpretations vary from one legal teacher to another. One reason for this variability is the lack of prophetic precedent (*sunnah*) to clarify Quran 2:226-227. The *ḥadīths* that do address forswearing report that Muḥammad sprained his ankle and forswore his wives for one month, apparently not for the purpose of fulfilling a commitment or initiating a divorce, but to give him time to recover.²⁹⁷ This type of forswearance is called “metaphorical *īlā*” (*tajawwuzan*).²⁹⁸ Unlike *īlā*’ proper, the metaphorical *īlā*’ lasts for only a month. Quran 2:226-227, by contrast, specifies a four-month period. However—and this is the critical point—neither the Quran nor the *ḥadīth* say whether the oath can be sworn by non-Muslims. Yet some *dhimmi*s are discussed as if they could use it. Although we cannot always verify that such cases occurred, the fact remains that disagreements about how Muslims should swear the oath spill over into discussions about *dhimmi*s doing so. Does God hear their oaths, and can they swear the oath as Muslims do?

Fulfilling an oath of *īlā*’ requires some knowledge of the relevant Islamic legal requirements, and the imagined Christian of Ḥanbalī legal discourse has that knowledge. What’s

²⁹⁶ al-Kawsaj, *Masā’il*, 1877 (no. 1258); Abū al-Khaṭṭāb al-Kalwadhānī, *al-Hidāyah*, 465-67; Ibn Qudāmah, *al-Mughnī*, 11:5-53; and Ibn Rushd, *Bidāyat al-mujtāhid*, Cairo, 1415 AH, 3:187-89.

²⁹⁷ The reasons why he does this as opposed to other available options is unclear to me. It might be because he could not have sex with a wife who was living in the upper level of an apartment. His sprained ankle might have prevented him from seeing her while he was recovering. For Ibn Ḥanbal’s knowledge of reports on this, see Ibn Ḥanbal, *Musnad*, no. 13005. Also see Bukhārī, *Ṣaḥīḥ*, nos. 378, 1910, 2469, 5191, 5201 for other references.

²⁹⁸ Ibn Qudāmah, *al-Mughnī*, 11:5. For other discussions on metaphorical *īlā*’, see al-‘Aynī, *Umdat al-qārī*, 4:106ff and 10:282ff; Ibn Ḥajar, *Fath al-bārī*, ed. Muḥammad ‘Abd al-Bāqī, Beirut, 1379 AH, 9:427-30.

more, Ibn Ḥanbal rules that Christians can, hypothetically, fulfill the requirements of a *mūlī* and issue a valid oath before God. This ability to fulfill the requirements of Islamic divorce law assumes or implies that Muslims have legal authority over *dhimmīs*.

The following account of the factors governing Ibn Ḥanbal's decisions as given by al-Khallāl in NMRC is based in part on *Masā'il Aḥmad b. Ḥanbal wa Ishāq b. Rāhawayh* of Abū Ya'qūb Ishāq b. Manṣūr al-Kawsaj (d. 865). Al-Kawsaj's collection consists of questions posed to either Ibn Ḥanbal or Ibn Rāhawayh (d. 853). Al-Kawsaj typically asks one or the other scholar to give his opinion of a ruling issued by Sufyān al-Thawrī (d. 778). By eliciting Ibn Ḥanbal's opinion of his predecessor's rulings, al-Kawsaj shows how Ibn Ḥanbal agrees with or diverges from the legal precedents and foundational teachings emanating from earlier legal authorities, schools, and centers.

In one *khbar*, al-Kawsaj asks Ibn Ḥanbal if he agrees with an earlier ruling of al-Thawrī. The question is whether conversion to Islam disrupts an oath of *ilā'* taken by a Christian. This Christian is said to have converted to Islam along with his wife either during the period of abstention or after the allotted four months required by the oath. Was he divorced? Al-Thawrī had responded to the question by saying the divorce is "*taṭlīqah bā'inah*," indicating that after four months, the divorce becomes necessarily and irrevocably final.²⁹⁹ Al-Thawrī's response means, in practice, that the woman's *'iddah* period is skipped, the four months already passed having served that purpose, and the new convert no longer has the right or the obligation to take his wife back. Thus, any new marriage between them would require a new marriage gift (a *mahr*) and new conditions. It would also mean that his oath stands fulfilled, and he need not satisfy any of the commitments (such as freeing a slave) he promised since he had not broken his oath to

²⁹⁹ al-Kawsaj, *Masā'il*, 6:1883 (no. 1263). Cf. al-Khallāl, *Ahl al-milal*, no. 578. The two modern English editions read "*taṭlīqah thāniyyah*" but based on other texts that discuss this same issue should be read "*taṭlīqah bā'inah*."

refrain from sex. As far as general principles are concerned, this ruling implies that conversion does not automatically render a previous oath null and void. A Christian man can forswear his Christian wife, and his oath to that effect continues to be binding even after he converts to Islam. In effect, he is acting no differently than if he had been a Muslim all along.

Ibn Ḥanbal agrees with al-Thawrī that, as far as general principles are concerned, forswearing by a Christian is permitted and his conversion does not affect the oath. Just as al-Thawrī ruled, Ibn Ḥanbal declares that the former Christian, by virtue of his conversion, is subject to the same conditions as any other Muslim. But Ibn Ḥanbal disagrees on the immediate effects of the divorce for Muslims and therefore the effects of the divorce for converts: he, now a Muslim, may either return to intercourse with a wife or divorce her. The divorce is not immediate in Ibn Ḥanbal's view as it is in al-Thawrī's view. If the husband does neither, his wife can ask an arbitrator to issue a divorce on his behalf: "If a Christian converts to Islam, [the marriage] falls into suspension as it does in the case of a Muslim [who forswears]."³⁰⁰ This ruling implies that the oath was valid in the first place, and remains so after conversion, a point on which Ibn Ḥanbal and al-Thawrī agree. But according to Ibn Ḥanbal, the new convert must verbally issue a single divorce before the oath is effective whereas for al-Thawrī the fulfillment itself results in a necessary divorce.³⁰¹ For Ibn Ḥanbal and his later students, the marriage is

³⁰⁰ al-Kawsaj, *Masā'il*, 4:1883 (no. 1263).

³⁰¹ In Islamic law, men can divorce their wives up to three times. This was sometimes done in one sweeping statement, "I divorce you, I divorce you, I divorce you," or something equivalent. If this statement is uttered, the man loses the right to return to his wife (have sex with her and continue the marriage). Men can also utter a single divorce formula such as "You are divorced" or "I divorce you", in which case he can return to his wife during her legally allotted divorce period ('*iddah*). Given that Quran 2:227 refers to God as the Hearer (or alternatively the All-hearing), the marriage cannot result in an automatic, immediate divorce if a *mūlī* or arbitrator (*ḥākīm* or *sultān*) has not uttered a divorce formula that has been heard by God. For Ibn Ḥanbal and his followers, then, the marriage falls into suspension after four months, and at which time the *mūlī* can either return to intercourse or utter a statement of divorce. If he does not do either of these, the woman then has the opportunity to appeal to an arbitrator who can intervene on her behalf, eventually even uttering a verbal, single divorce on behalf of her husband. For more on the later Ḥanbalī tradition, see Abū al-Khaṭṭāb al-Kalwadhānī, *al-Hidāyah*, ed. 'Abd al-Laṭīf Jamīm and Māhir Yāsīn al-Fahl, Kuwait, 2004, 466; Ibn Qudāmah, *al-Mughnī*, 11:36-7.

viewed as falling into suspension. Suspension means that the man can either return to intercourse with his wife or utter a statement of divorce. His oath and the fulfillment of it requires nothing else, and divorce is not immediate.

The same *mas'alah* is compiled by Abū Bakr al-Khallāl (d. 923) in NMRC sometime in the late ninth or early tenth century—perhaps around a quarter- to half-century after al-Kawsaj's collection. If it was not already clear that Ibn Ḥanbal thinks a Christian oath is valid based on his response about a former Christian swearing the oath before conversion, al-Khallāl offers *masā'il* about the validity of an unconverted Christian's oath, and the quranic justification behind it. It is here we learn even more clearly about the effectiveness and validity of a *dhimmī* oath of forswearance.

Al-Khallāl tells us in one *mas'alah* that Ibn Ḥanbal's students ask whether a Christian can become a *mūlī*, and this time Ibn Ḥanbal responds by citing Quran 5:42: "If they come to you, judge between them or refuse them" (*fa- 'in jā 'ūka fa-ḥkum baynahum aw 'a 'rid 'anhum*)."³⁰² He apparently understands this verse to mean that if a Christian brings a case involving a divorce oath to Muslims for adjudication, then Muslims have a right to decide whether to take his case. In several other *masā'il*, Ibn Ḥanbal offers similar rulings, applying this same principle (and implicitly the same verse) to questions posed about a Jewish or Magian *mūlī*.³⁰³ As in the case when he affirms the validity of the oath of a Christian before his conversion and its continuation after conversion, here too Ibn Ḥanbal views *dhimmī* oaths as valid. To be valid, for Ibn Ḥanbal, means that it has been sworn by God, as opposed to any other God or person, such as Jesus, and is therefore legitimate and binding. Indeed, their validity

³⁰² al-Khallāl, *Ahl al-milal*, no. 574. The translation is mine.

³⁰³ al-Khallāl, *Ahl al-milal*, nos. 575-577.

(inasmuch as they are sworn in the name of God)³⁰⁴ does not appear to pose any sort of problem. Evidently, then, oaths mentioned in the Quran may be sworn by *dhimmīs*. For Ibn Ḥanbal, we get the impression that oaths in the Quran are universally applicable to *dhimmī* communities. The broader implication is that God has delegated to Muslims authority over Christians. This implication emerges more clearly in the discussion of another oath, called *ḡihār*.

ḡihār and *Dhimmīs*

ḡihār is an oath in which a man swears that his wife is to him “as his mother’s back.” That is, he can no longer have sex with her because it would be as if he is married to his own mother, an illegal act according to Islamic law.³⁰⁵ Whereas with forswearing a man might seek to fulfill an oath he has made for his own pious purpose and without a requirement to be expiated, *ḡihār* is a direct punishment of a spouse and requires specific expiation before returning to her for sex. Likewise, if a husband breaks the oath of *ḡihār* by having sex with his wife, he must expiate it before having sex with her again, as it says in Quran 58: 3-4:

As for those who use *ḡihār* against their wives and have intercourse with their wives, a slave must be set free before they have intercourse again. That is what you all are advised to do. God knows best what you all do. If he cannot, he may fast for two consecutive months before returning to intercourse. Still, those who are not able to fast, feed sixty impoverished people that you might believe in God and his Messenger. These are the rules set by God; the infidels will experience a painful punishment. (my translation)

³⁰⁴ Apparently, swearing in God’s name would not pose an issue given his ruling that *dhimmīs* can swear oaths by God. See also al-Khallāl, *Ahl al-milal*, no. 723, and the discussion below on *li’ān*.

³⁰⁵ Ibn Ḥanbal rules elsewhere that Muslim women, too, can swear the oath against a husband, though he does not mention whether a *dhimmī* wife do so to her Muslim or Christian husband. See Ghulām al-Khallāl, *Zād al-musāfir*, 3:331 (nos. 2746-48).

The verse does not mention *dhimmīs* or imply that they can swear this oath. The Quran presumes that *zihār* was practiced in pre-Islamic Arabia to effect a divorce, but there are no examples left to us of Christians or others swearing such oaths and expiating in the manner laid out in the Quran.³⁰⁶ Ibn Ḥanbal treats *zihār* as he treats forswearing, accepting it as applicable to *dhimmīs* without recourse to the general expression of Quran 58: 3-4. When asked what to do if a *dhimmī* swears the oath of *zihār* to his wife and later converts, Ibn Ḥanbal responds, “If he comes to us [for adjudication], we will inform him that the requirements of *zihār* are incumbent upon him.” In other words, he would have to expiate the way Muslims do. As with forswearing, the Christian’s oath is not affected by conversion. His oath is valid and he can come to Muslims for adjudication, a response alluding to Quran 5:42. But the interlocutor responds to Ibn Ḥanbal by calling upon a *ḥadīth* which says that the “people of the *jāhiliyyah*” were permitted to remain in their marriages or divorce when they converted.³⁰⁷ The interlocutor is apparently confused because the new convert who comes to Muslims and later converts is bound to an oath taken before conversion and could not immediately exercise his option to remain married or get a divorce. He assumes that a convert’s new status as a Muslim expunges his past commitments.

³⁰⁶ See Quran 58:1-4 and Quran 33:4. Pre-Islamic peoples in Arabia are assumed to have practiced this as a punishment of a wife, especially if they got old and were no longer desired sexual partners. A husband could declare that his wife is “like his mother” and not be obligated to have sex with her without having to divorcing her. This could be a long-term oath leaving the woman with no way to remarry or divorce her husband. The first instance of the use of this oath is that led to the revelation of Quran 58:1-4 is the well-known story of Khawlah bt. Tha‘labah, for which, see al-Ṭabarī, *Jāmi‘ al-bayān fī ta’wīl al-qur’ān*, 22:455; and Ibn al-Qayyim, *Tafsīr al-qur’ān al-karīm*, Beirut, 1410 AH, 535-540. But there is nothing explicit said of the practice. In his *Introduction*, 202-203, Schacht sees it as a magical formula but does not provide evidence to support his claim. Gerald Hawting expresses more caution about the oath being practiced in pre-Islamic Arabia, noting that swearing a wife is as a mother as described in the Mishnah, but that it does not mean the oath was taken in pre-Islamic Arabia: Gerald Hawting, “An Ascetic Vow and an Unseemly Oath?: “ilā” and “zihār” in Muslim law,” *Bulletin of the School of Oriental and African Studies, University of London* 57, no. 1 (1994): 125.

³⁰⁷ al-Khallāl, *Ahl al-milal*, no. 579. The *khbar* seems to be in error because if the Christian converted, Ibn Ḥanbal would not have to say that the convert can “come to us,” a phrase designated for non-Muslims approaching Muslims to adjudicate a dispute or case.

Ibn Ḥanbal’s poised response is that “this is not apples to apples (*laysa hādhā min hādhā*).” For one, the *ḥadīth* is not about an oath at all. And it involves an infidel (*mushrik*) whose contracts (such as marital ones) are invalid. The case Ibn Ḥanbal deals with is about *dhimmīs* living in a state of *dhimma* whose contracts and oaths are valid, meaning enforceable in a Muslim court or when brought before Muslims for adjudication. They may use *ḡihār* just as Muslims, even if it is a generally despised practice in any marriage.³⁰⁸

Ibn Ḥanbal’s citation of Quran 5:42 tells us that he believed Islamic law to apply to *dhimmīs* taking oaths of forswearing and *ḡihār*. His citation of the verse asserts the authority of the Quran in instances where neither the Quran itself nor the *sunnah* offers further detail. In asserting the authority of Quran 5:42, he avoids a misapplication of the more directly related verses about forswearing and *ḡihār*; that is, Quran 2:226-27 for forswearing, which does not mention Christians or other *dhimmīs* as its subject, and Quran 58:3-4 for *ḡihār* for the same reason.³⁰⁹ For Ibn Ḥanbal, what is at stake in questions about forswearing and *ḡihār* is not only whether a *dhimmī* can become a *mūlī* or swear that his wife is as his mother, but the delegation of legal authority to God’s chosen community. Ibn Ḥanbal and the early Ḥanbalīs interpret the oaths as showing that when Christians come to Muslims for adjudication for oaths, the requirements of Islamic legal oaths apply them.

Ibn Ḥanbal may or may not be dealing with, nor is it clear that he is aware of, actual *dhimmīs* swearing Islamic divorce oaths to their wives. Neither he nor al-Khallāl talk us through

³⁰⁸ Susan SPECTORSKY, *Women in Classical Islamic Law*, 37.

³⁰⁹ When asked about forswearing by *dhimmīs*, he cites Quran 5:42, but when asked about forswearing by Muslims, he cites Quran 2:226-227 to buttress his overarching argument that *īlā’* does not result in an immediate divorce. For his citation of Quran 2:226-227 when discussing Muslims, see ‘Abd Allāh, *Masā’il*, 363-364 (no. 1336).

the process that would have had to take place if a *dhimmī* indeed swore on the “Islamic” oaths.³¹⁰ But Ibn Ḥanbal speaks of *dhimmīs* as if they were indeed engaged in such a process. His application of Quran 5:42 as a response to questions that *dhimmīs* might swear divorce oaths forces him to imagine *dhimmī* individuals in terms of their legal relationship to Islam rather than to their social or cultural practices. That Christians are perceived to bring their cases to Muslims demonstrates a larger point about the tendency for *dhimmīs* to subordinate themselves to Islamic authority. As Lev Weitz has clearly argued, Christian bishops began to regulate marriage and divorce during this period to create a new sense of communal identity. The Patriarch of the Church of the East, for example, issued 99 canons to address issues of Christians using Islamic courts for inheritance and marital disputes.³¹¹ Whether such cases of divorce oaths were one of the disputes is not addressed explicitly by Timothy (Patriarchate 780-823), but the idea that Christians subordinated themselves to Islamic courts for deeply personal marital disputes seems clear enough. Christians chose to orient themselves toward the Islamic legal community over

³¹⁰ To describe what the process might look like for forswearing, I provide a hypothetical case based on Ibn Ḥanbal’s views about forswearing: A *dhimmī mūlī* (whether he later converts or remains a *dhimmī*) forswears his wife for four months or more and then enters a period of marital suspension, at which point, if he brings his case to Muslims, he is formally declared a *mūlī*. During the period of suspension, he either resumes intercourse with his wife or utters a formula of divorce. If he utters a formula for divorce, he initiates a single divorce, and his wife is, theoretically, subject to an *‘idda* period during which he can return to her. If he does not utter a divorce and decides to abstain from having intercourse, the onus falls on his wife to seek out an arbitrator (*ḥākim*) who can command the man to do what is right, that is, either return to intercourse or divorce her. In such a hypothetical case, a *dhimmī* woman might have recourse to a Muslim arbitrator. If the man refuses to return or have sex with his wife, the arbitrator can then declare a single divorce on his behalf, one that is considered final (*bā’in*, i.e., irreversible except through a new marriage). The arbitrator’s work apparently includes writing a statement of separation. In such a case, the *mūlī*’s *dhimmī* wife, if she remains unconverted, must go through an *‘iddah* period. See Ibn Qudāmah, *al-Mughnī*, 11:5-53 and Abū al-Khaṭṭāb al-Kalwadhānī, *al-Hidāyah*, 468.

³¹¹ Lev Weitz, *Between Christ and Caliph*, 109-222 passim; Chris PreJean, review of *Between Christ and Caliph: Law Marriage and Christian Community in Early Islam* by Lev Weitz by Lev Weitz, *Comitatus: A Journal of Medieval and Renaissance Studies* 50 (2019), 243-48, <https://doi.org/10.1353/cjm.2019.0009>; and Antoine Fattal, “How Dhimmīs Were Judged in the Islamic World,” in *Muslims and Others in Early Islamic Society*, ed. Robert Hoyland (Burlington, VT: Ashgate, 2004), 85. For the West Syriac church’s rulings, see Uriel Simonsohn, “The Christians Whose Force is Hard: Non-Ecclesiastical Judicial Authorities in the Early Islamic Period,” *Journal of the Economic and Social History of the Orient* 53, 4 (2010): 579-620, doi: <https://doi.org/10.1163/156852010X529123>, and Tannous, *The Making of the Medieval Middle East*, 439ff.

their own. And it goes to show that, according to Ibn Ḥanbal, there was an opportunity to bring a case before Muslims. But whether they ever occurred or if Muslims ever received such a case of a divorce oath in reality is probably not possible to say.

We learn from Ibn Ḥanbal's rulings that his macroscopic conception of *dhimmīs*' legal place and status under Islamic law is that Christians are subject to Islamic law when, for reasons not fully clear, they ask Muslims to judge them based on God's law as understood by Muslims. Ibn Ḥanbal and his interlocutors' discussions imply that Muslim jurisdiction prevails over *dhimmīs* in cases where *dhimmīs* swear valid oaths and bring cases to Muslim authorities. Their oaths are presumed valid and they are able to fulfill the requirements of legal oaths. In short, we might see the cases of forswearing as test cases for the applicability of Islamic law to Christians and, more broadly, to other *dhimmī* individuals. In this sense, *dhimmīs* are merely placeholders in an Islamic legal discourse meant to help Muslims work out a broader theory about how God's law works. Ibn Ḥanbal's citation of Quran 5:42 might even be seen as an assertion of his vision of *sharī'ah* in a multi-religious legal order where God has revealed oaths that Muslims and *dhimmīs* alike can fulfill. God has made parts of the Quran general revelation to everyone, and that God's law is the default authority according to Muslim practice. God's law is the perfect realization of Islam.

Li'ān and Dhimmīs

In the previous section, we saw that *dhimmī* oaths are valid, and their validity tells something about how Ibn Ḥanbal envisions or imagines Christians in an Islamic legal order. But another oath is less consistently treated: this is the oath of *li'ān*, or mutual condemnation. To complicate matters, there is no late antique equivalent of mutual repudiation discussed in Syriac Christian

lawbooks, as divorce is, generally speaking, not permitted.³¹² Jewish law, similarly, has no correlating divorce procedure.³¹³ And, more broadly, there is no pre-Islamic history of *li'ān*. The *ḥadīth* and *sunnah* do not help us much in understanding *dhimmīs* taking oaths of *li'ān*,³¹⁴ and later *ikhṭilāfāt* and *masā'il* literature in the Ḥanbalī school offer conflicting reports.

In the following account, we will see that Ibn Ḥanbal views Muslims invoking *li'ān* upon their *dhimmī* wives as both valid and invalid, permissible and impermissible.³¹⁵ The same contradiction arises about *li'ān* in *dhimmī* marriages, where Ibn Ḥanbal offers conflicting responses about the validity of the oath's fulfillment. On the one hand, he says that *dhimmīs* cannot invoke *li'ān* against one another in their marriages, and on the other hand, he says that any spouse of any social status or religion can invoke the curse, and in any intermarital coupling (Muslim man to Christian woman, Muslim slave to Muslim slave woman, etc.)³¹⁶

³¹² For East Syriac law and the role of Islam in shaping its divorce institutions, see Lev Weitz, *Between Christ and Caliph*, 131-44. Weitz sees the Islamic legal system as an inviting option for Christian laypersons.

³¹³ A Jew might do so as penance or to study Torah. But it can only be for a week or two according to some, and indefinitely according to others. If he has no intention of returning to her, he need not be married to her. For Jewish law allowing divorce for a husband not having sex with wife and refusing to have sex with her, see Rachel Biale, *Women and Jewish Law: an Exploration of Women's Issues In Halakhic Sources* (New York: Schocken Books, 1984), 86-7, <https://hdl.handle.net/2027/mdp.39015054016673>. For curses uttered in relation to divorce, see Avigail Manekin-Bamberger, "The Vow-Curse in Ancient Jewish Texts," *Harvard Theological Review* 112, no. 3 (2019): 348-49, doi:10.1017/S0017816019000154.

³¹⁴ Ibn Ḥanbal, *Musnad*, no. 22830; Ghulām al-Khallāl, *Zād al-musāfir*, 3:340-41 (no. 2772), where he cites Sahl b. Sa'd's report about Muslims invoking *li'ān* on one another, and the paternity of the child being upheld or dismissed depending on whether the child looks like the father. See also al-Bukhārī, *Ṣaḥīḥ*, no. 4745. For the two *ḥadīth* on *li'ān* that occasioned the revelation of Quran 24:4, see Ayman Shabana, "Negation of Paternity in Islamic Law between Li'ān and DNA Fingerprinting," *Islamic Law and Society* 20, no. 3 (2013): 157-201, <http://www.jstor.org/stable/43304483>.

³¹⁵ al-Khallāl, *Ahl al-milal*, nos. 583, 584, 585, 585, 589, 593; 'Abd Allāh, *Masā'il*, 375 (no. 1376); Ṣāliḥ, *Masā'il* 1:349 (no. 311), and 3:58 (no. 1333) where Ibn Ḥanbal rules that Muslim men can swear the oath to their Christian or Jewish wives, but not to their slaves, presumably because they should not marry them in the first place, as they are not *muḥṣinah*.

³¹⁶ For Ibn Ḥanbal's rulings on the permissibility of any spouse of any religion or status, see *Ahl al-milal*, nos. 586, 590, 591, 592, 594, 595; Ghulām al-Khallāl, *Zād al-Musāfir*, 3:336 (no. 270); al-Kawsaj, *Masā'il*, 4: 1860 (no. 1241); Al-Muwaffiq al-Dīn Ibn Qudāmah al-Maqdisī, Ibn Qudāmah al-Maqdisī, and al-Mardāwī. *al-Muqni'*, *al-Sharḥ al-Kabīr*, *al-Inṣāf*, 23:392-94, and the discussion below. For Ibn Ḥanbal's rulings that only Muslims can invoke the procedure, without stipulating their status, see al-Khallāl, *Ahl al-milal*, nos. 582, 588. For *li'ān* as an

The Quran describes the procedure of mutual repudiation as a means of contesting the paternity of a child. Quran 24:6-8 states:

“And those who accuse their spouses without having witnesses other than themselves, then the testimony of one of them [the spouses] is four testimonies sworn by God that he is truthful. The fifth [testimony] is a curse that if he is a liar, God’s curse will be upon him. But her punishment is stayed if she gives four testimonies sworn by God that he is a liar. The fifth [testimony] is a curse that the wrath of God will be upon her if he is telling the truth.”

As the verse makes clear, a husband who wants to accuse his wife of adultery and contest the paternity of a child but who does not have four eye witnesses to substantiate his claim—the required amount in Islamic law—may resort to swearing a series of four testimonies and one curse, each of which is comprised of an oath formula (*wa-llāhi*). Without four witnesses, he risks being punished for false accusation, or *qadhf*, and must resort to *li’ān* as a last-ditch effort to maintain her adultery or to contest the paternity of a child and divorce her, allowing him to maintain his reputation and integrity before society. By using *li’ān*, the husband becomes his own witness before God, the Hearer of oaths, and the four testimonies become his witnesses.³¹⁷ Likewise, the woman utters the same testimonies along with the oaths and becomes her own witness before God, allowing her an opportunity to profess her innocence of adultery. The Quran describes a married couple’s mutual condemnation as invoking God’s curse upon themselves to verify their truthfulness and absolve them of guilt.³¹⁸

acceptable practice between two free Muslims only, see ‘Abd Allāh, *Masā’il*, 365 (no. 1373). For the later Ḥanbalī tradition, see Ibn Qudāmāh, *al-Mughnī*, 11:120ff.

³¹⁷ *Li’ān* differs from accusing a wife caught in the act of infidelity. For *qadhf*, there must be four witnesses to the act. *Qadhf* comes with the consequences of the *ḥudūd* punishments (eighty lashes) should the man not be able to produce the witnesses or if the witnesses did not see the penetration.

³¹⁸ The conditions are that, from Ibn Ḥanbal’s view, both supposes are adults, sane, and are not mute. See Ghulām al-Khallāl, *Zād al-musāfir*, 3:338 (nos. 2764-65).

Ibn Ḥanbal’s discussion of mutual condemnation by *dhimmīs* shows us the extent to which Islam protects and accommodates Christians before the law. As with forswearing and *ḡihār*, Ibn Ḥanbal applies Quran 5:42 to Christians bringing a case of mutual repudiation to Muslim courts, albeit the case is to be taken as voluntary and the judge is to rule as an arbitrator. Mutual repudiation, Ibn Ḥanbal says, “may be undertaken between two free people, two slaves, two *dhimmīs*...(*al-li ‘ān bayna kulli zawjayn ḡurrayn kānā ‘aw mamlūkayn ‘aw dhimmiyyayn*)”³¹⁹ all of whom “are treated the same [under the law], in my view (*kulluhu ‘indī sawā’*).”³²⁰ Ibn Ḥanbal’s intention is that everyone living under Islamic governance has an equal opportunity to challenge a child’s paternity.³²¹ Ibn Ḥanbal applies Islamic jurisdiction over *dhimmīs* taking oaths that fall under the substantive legal categories typically focused on regulating the social life of Muslims, just as we saw for forswearing and *ḡihār*. And as with those oaths, *dhimmī* testimonies sworn by one or more oaths are presumed to be valid and acceptable.

What this seems to mean for the interpretive, hermeneutical Christian is that Muslims make the option of mutual repudiation available to *dhimmīs*. As a result, or perhaps even as the cause, Muslims protect the right of a *dhimmī* to challenge the paternity of a child, thereby extending the rights of Muslims to *dhimmīs*. A *dhimmī* is permitted to absolve himself of any social or financial responsibilities and obligations to the child, which might be upheld or enforced by a Muslim court. If successful, he does not carry the financial burden of caring for the child or making the child his heir, and he does not have the social duty to integrate the child into his own family. But only when both spouses swear the oaths and call down the curse of God upon their

³¹⁹ al-Khallāl, *Ahl al-milal*, no. 590.

³²⁰ al-Khallāl, *Ahl al-milal*, no. 592.

³²¹ al-Khallāl, *Ahl al-milal*, no. 594.

heads does the child become legally illegitimated by the father.³²² Otherwise, the man is considered the father and therefore responsible for the child even in cases where the mother refuses to swear the oaths of *li'ān* or she dies before swearing them.³²³ All cases of *li'ān* result in divorce, as there is no solution to the paternity problem: it is unresolvable. It is the *imām* or *ḥākim* or judge's primary responsibility in the case to divorce them since there is no other evidence to help him decide a case.³²⁴

Between *li'ān* and forswearing is one major difference that helps clarify Ibn Ḥanbal's thoughts on whether *dhimmīs* may carry out the divorce procedures described in the Quran. Recall that for forswearing, a Christian becomes a *mūlī* by swearing the oath directly to his wife without the need for a witness to his oath. His oath is seen as valid if he reports it to Muslims, and nothing else is required of him. But for mutual repudiation, an oath is not sworn in private, but in public. And there is disagreement about whether he must be an approved (i.e., Muslim) witness who can give an approved testimony and an oath in the court of law. The rule of thumb in Islamic law is that *dhimmīs* cannot testify in court unless there are extenuating circumstances, such as in cases where a *dhimmī* is the only witness to an event as might happen during travel.³²⁵

³²² Though there is an early case Ibn Ḥanbal cites where Muḥammad ruled that the case would only be resolved once the child was born, because then the child's resemblance to the father would be clear and would establish paternity. See the *ḥadīth* in Ghulām al-Khallāl, *Zād al-musāfir*, 3:341-42.

³²³ Ghulām al-Khallāl, *Zād al-musāfir*, 3:431-32 (2773-75).

³²⁴ For an easy-to-read background to *li'ān*, its occasion of revelation, and its presence in the *ḥadīth*, see Ayman Shabana, "Negation of Paternity in Islamic Law," 157-201. Shabana describes *li'ān* as a "series of five oaths" (p. 161), the fifth of which is the curse. This does not seem to me to accurately reflect early Ḥanbalī doctrine, as will be seen below. Shabana is aware of the various interpretations of the oath.

³²⁵ Ibn Ḥanbal's views can be found in al-Khallāl, *Ahl al-milal*, nos. 360-404. As far as I can tell, al-Khallāl devotes his more space to his own interpretation of Ibn Ḥanbal's rulings than any other in NMRC. The main issue boils down to one transmitter, Ḥanbal, recounting that Ibn Ḥanbal permits the testimony of *dhimmīs* in court. The only time they can, al-Khallāl says, is when Muslims testify on their behalf in a court case a *dhimmī* brought to Muslims, or in a case where a *dhimmī* was the only witness during travel, the latter based on Quran 5:106. Al-Khallāl's discourse on the issue of *dhimmī* testimony is one of the earlier descriptions of Ibn Ḥanbal's legal method, his *uṣūl*:

Although the Quran does not say where the oath needs to be sworn, *ḥadīths* describe the ritual (when performed by Muslims, at least) as taking place in a mosque. There the married couple swears four testimonies (*shahādāt*) and oaths that they are being honest, followed by calling down a curse upon themselves.³²⁶ They must do so in front of a witness such as an *imām* or *ḥākim*. If one spouse refuses to swear the oaths and call down the curse before an *imām* or *ḥākim*, he or she is considered guilty of lying, for which punishment is eighty lashes for men and the possibility of jail or stoning for women (for adultery), the latter seemingly because she would be confessing to have had intercourse with someone other than her husband.³²⁷ The same might take place if he or she confesses to lying about a child's paternity before the oaths are given.³²⁸

The fact that *dhimmīs* must swear an oath in public raises two questions that seem to be the causes of dissonance in Ibn Ḥanbal's rulings. The first is whether a *dhimmī* testimony is valid as evidence as it would be court cases requiring testimony of an approved witness. And the second is the question of whether there is a way for Christians to give testimony in their own sanctuaries. Unfortunately, we cannot answer the latter problem without resorting to speculation, but the first problem has a fairly clear answer.

Dhimmī testimony when swearing the oath of *li'ān* is invalid, says Ibn Ḥanbal, on grounds that a *dhimmī* is not an approved witness because he cannot provide valid testimony (*shahādah*) in Islamic law. Quran 2:282 establishes that a person needs two pieces of evidence to

see *Ahl al-milal*, no. 381. For another early description of his *uṣūl* based on the *Masā'il* of 'Abd Allāh, see Saud Al Sarhan, "Responsa," 40-2.

³²⁶ Though *li'ān* is not specifically mentioned in his work, Matthieu Tillier describes the process of oaths before courts and in mosques in "Women before the *Qādī*," 280-301.

³²⁷ Ghulām al-Khallāl, *Zād al-musāfir*, 3:343-44 (nos. 2776-77).

³²⁸ For more on the procedure in Islamic law, see Susan Spector, *Women in Classical Islamic Law*, 128-31. Spector does not classify *li'ān* as a divorce oath as she does for *ilā'* and *ḡihār* for reasons that are unclear to me.

win a case since no matter how honest and upright an individual litigant may be. Usually this comes from two testimonies of upright Muslim men, or a Muslim man and two Muslim women, or even one testimony of a witness and the oath of the one bringing the case (the plaintiff); they are the acceptable witnesses who can provide evidence in a case.³²⁹ Evidence, a rather complicated topic in Islamic law, might be defined as:

“the epistemological assumptions of jurists as well as the rules and procedures according to which oral and written testimony is adduced and considered probative in a courtroom setting...[fiqh] privileges the oral testimony of witnesses of upright character, the acknowledgement of the defendant and the oaths of the litigant, or their refusal thereof, in court.”³³⁰

Oral court testimony by a witness, what modern readers might call a type of “deposition,” is the most persuasive and trustworthy form of evidence in Islamic law. That Christians cannot give valid testimony is due to their inability to be trusted, but that makes it seem as if Muslim testimony is effectively true by virtue of it coming from a Muslim. That is, of course, not true, as Muslim testimony was subject to scrutiny and weighed for sincerity in court procedure.³³¹ What is so interesting about the oath of *li‘ān* as an oath perceived to be used by *dhimmi*s is that there

³²⁹ There is of course exception, such as in the case of murder without eye witnesses. In such a case, the *qasāmah* oath, a procedure where a communal oath is taken to accuse a person of a crime, can be used as evidence against the accused. There is some debate about the origins of the oath, for example, between Patricia Crone and Rudolph Peters about the origins of the oath in Jewish law. See Patricia Crone, *From Kavād to al-Ghazālī: Religion, Law and Political Thought in the Near East, c. 600-c.1100* (New York: Routledge), 153-201, and Rudolph Peters, “Murder in Khaybar: Some Thoughts on the Origins of the Qasāma Procedure in Islamic Law,” *Islamic Law and Society* 9, no. 2 (2002): 132-67, <http://www.jstor.org/stable/3399323>; For the change in the term *qasāmah*’s meaning in the Mamlūk period to be a court-sworn oath, and its frequency of use, see D.S. Richards, “The Qasāma in Mamlūk Society: Some Documents from the Haram Collection in Jerusalem,” *Annales islamologiques* XXV (1991): 245-284; Yossef Rapoport, *Marriage, Money and Divorce in Medieval Islamic Society* (Cambridge: Cambridge University Press, 2005), 107-8.

³³⁰ Bernard Haykel, “Theme Issue: Evidence in Islamic Law,” *Islamic Law and Society* 9, no. 2 (2002): 129, <http://www.jstor.org/stable/3399322>. The reader might refer to any of the four articles within this cited volume.

³³¹ A judge might investigate the credibility and legitimacy of a Muslim witness, for example, before accepting their evidence in court. But the judge’s ability to issue judgments based on this was subject to skepticism, too. See Baber Johansen, “Signs as Evidence: The Doctrine of Ibn Taymiyya (1263-1328) and Ibn Qayyim Al-Jawziyya (d. 1351) on Proof,” *Islamic Law and Society* 9, no. 2 (2002): 169, <http://www.jstor.org/stable/3399324>.

are no witnesses to a case, which is the reason for invoking the procedure in the first place—it's the only option to contest paternity. What can a Christian do if he has no witnesses and wants to challenge the paternity of a child by taking an oath of *li'ān*? Can he give evidence on his own behalf before Muslims?

The *dhimmī* must stand as his own witness by giving testimony as to the truthfulness of his case. For *li'ān*, the requirement is the four testimonies, which stands as one piece of evidence, and the oath itself, which stands as the second piece of evidence.³³² The problem for Ibn Ḥanbal is that a *dhimmī*'s testimony is, according to one *mas'alah* on *li'ān*, not accepted in Muslim litigation, and thus a *dhimmī*'s oath might be accepted as valid, but his testimony is not.³³³ This ruling seems to stem from a literal reading of the quranic verse that states that a husband or wife seeking a divorce must give four testimonies (*arba' shahādāt*) sworn by an oath to God (*bi-llāhi*). In a forthright response, Ibn Ḥanbal states that a *dhimmī* cannot validly use the oath to challenge the paternity of a child,³³⁴ which he explains in another response: “If they bring

³³² *Encyclopaedia of Islam*, 3rd edition. s.v. “Evidence.”; Mohammad Fadel, “Two Women, One Man: Knowledge, Power, and Gender in Medieval Sunni Legal Thought,” *International Journal of Middle East Studies* 29, no. 2 (1997): 189-198, <http://www.jstor.org/stable/164016>; In his “Signs as Evidence,” 172, 177, 187ff., Baber Johansen argues that Ibn Taymiyyah and Ibn al-Qayyim criticized formal law requiring two witnesses. The better option, according to them, is to accept circumstantial evidence and physical evidence in addition. The main change was that the judge began to find and produce his own evidence rather than weighting the conflicting oral testimony of two parties. New procedures for accepting proof beyond the standard oral testimony became the norm in legal works after the fifteenth century, Johansen claims. For an older study, see Brunschvig, Robert Brunshvig, *Études D'islamologie* (Paris: G.-P. Maisonneuve et Larose, 1976), 210ff.

³³³ Ibn Qudāmah, *al-Mughnī*, 11:122-23. This is al-Shāfi'ī's view, according to Ibn Qudāmah. Ibn Qudāmah remarks that al-Shāfi'ī interprets the verse, “then the testimony of one of them [the spouses] is four testimonies (*arba' shahādāt*) sworn by God” as requiring testimonies to be given only by the *ahl al-shahādah*, or those who can give testimony in court. In 'Abd Allāh, *Masā'il*, 436 (no. 1575), Ibn Ḥanbal says that *dhimmī* testimony is seen as acceptable in court by judges like Abū Mūsā (d. c. 662- 672). Abū Mūsā, for example, allowed the testimony sworn by God of two Christian men whom were apparently bequeathed property by a Muslim man. The man had not formally bequeathed to them, but their testimony sworn by an oath serves, for Abū Mūsā, as enough evidence. They only have to give testimony and swear by God that they are not concealing (*lā katamā*), changing (*lā badalā*), or acting unfaithfully (*mā khānā*) about the bequeathal.

³³⁴ al-Khallāl, *Ahl al-milal*, no. 582.

their issue to the Muslims, judge them according to Islam...[but the Jewish man] is not an approved witness (‘*adl*), and *li‘ān* requires a testimony (*shahādah*).”³³⁵ Here we get a combination of the Quranic sanction that *dhimmīs* can appeal to Muslims, but that their cases would be invalidated on grounds of invalid testimony. The interlocutor was confused, saying, “It is as if he did not think there could be *li‘ān* between them [a Jewish man and his wife.]”³³⁶ In other words, the interlocutor is not quite sure if Ibn Ḥanbal means their testimonies cannot be accepted in cases of mutual repudiation because the latter resembles those proceedings that require testimony from an approved witness. Ibn Ḥanbal seems to suggest that evidence is required in cases needing a testimony about the honesty and integrity of an individual, which non-Muslims could never possess.³³⁷

Suffice it to say that no other evidence is provided in NMRC and we are left a bit baffled about how *li‘ān* works when *dhimmīs* bring cases of *li‘ān* to Muslims. The fact of the matter is that there is no way to harmonize Ibn Ḥanbal’s views about *dhimmīs* and *li‘ān* or the reasons it differs from other oaths. Presumably it is because it requires a testimony, but such a case would then invalidate all court proceedings taken up by one *dhimmī* against one another unless there was a Muslim witness or witnesses. It not evident how Islamic law applies to *dhimmīs* despite al-Khallāl’s best efforts to describe Ibn Ḥanbal’s views, and the reality seems to be that the test

³³⁵ al-Khallāl, *Ahl al-milal*, no. 588.

³³⁶ al-Khallāl, *Ahl al-milal*, no. 588. My emphasis added.

³³⁷ al-Khallāl, *Ahl al-milal*, no. 416, 936, and al-Kawsaj, *Masā’il*, 8: 4124 (no. 2942). In cases where a Christian brings Muslim witnesses to court, for example, his case is valid when Muslims testify on his behalf. A hypothetical case in the Ḥanbalī school is the one where a father dies leaving two sons. One son is a Muslim and the other is a Christian. The Muslim son brings Christian witnesses to court, and the Christian son brings Muslim witnesses to court. Whose case is to supported by acceptable evidence according to Islamic law? For Ibn Ḥanbal, the Christian who brings the Muslim witnesses is the winner of the case. That a *dhimmī* can and cannot offer valid testimony against another *dhimmī* is a point of dissonance attributed to Ibn Ḥanbal, for which, see Antoine Fattal, “How Dhimmīs Were Judged,” 99-102.

cases simply break down upon scrutiny. And this is perhaps what we might expect with hypothetical cases where a *dhimmī* is one who never really existed and is not the *dhimmī* of social practice, but of Islamic legal construction.

Ibn Ḥanbal does not address the second problem where the oath should be sworn. If we were to speculate, we might try to bring in Ibn Ḥanbal's ruling about the validity of a *dhimmī* oath in contract cases. In economic cases of law, Ibn Ḥanbal rules that Christians and Jews can swear valid oaths in their own places of worship, especially when dealing with financial contracts.³³⁸ But Ibn Ḥanbal never allows that a testimony of *li'ān* might be sworn in a church or synagogue, even if later Ḥanbalī jurists do.³³⁹ This goes to show that the Ḥanbalī school's understanding and interpretation of Christians, test cases included, was unclear, and that the early Ḥanbalī school did not have a coherent or rational system for dealing with *dhimmī* oaths. We learn the Christian as a subject of Islamic law is a fluid entity: the hermeneutical *dhimmī* is not a consistently constructed being. The Ḥanbalī attempt to construct a *dhimmī* placeholder fails to result in an a fully coherent legal artifact conforming to legal precedents and quranic revelation.

³³⁸ al-Khallāl, *Ahl al-milal*, nos. 718-723 passim.

³³⁹ Ibn Qudāmah, *al-Mughnī*, 11:174-76, where he argues that *dhimmīs* can perform it but that their oaths must be sworn in their own churches. See also Mālik b. Abas, *al-Mudawwanah*, Beirut, n.a., 2:354 where Abū Yūsuf claims that spouses do not have to attend each other's oath, and that it can be taken in a holy place.

CHAPTER 7: CONCLUSION

This dissertation began from the premise that legal discussions about Christians in *Non-Muslim Religious Communities* tell us something about Muslims. Ibn Ḥanbal's rulings imply a preoccupation with larger legal, social, economic, or theological concerns. Throughout this dissertation we have seen how discussions about Christian commercial contracts, women, children, and divorce oaths (*īlā'*, *ḡihār*, and *li'ān*) give Christians a legal body that in turn tells us how Islamic law envisions them. In doing so, we saw how they reflect an implicit view of an ideal world where Christians do not exist, but that Islamic law must accommodate because they do.

I asked two questions: what can we know about Christians as legal subjects rather than social beings, and to what extent can Christians fulfill Islamic law? I answered these questions by showing that Ibn Ḥanbal's discussions are rooted in the past and are hypothetical. The Christian, I argued, serves as an axis point of Muslim discussion about themselves. The hypothetical nature of questions posed to Ibn Ḥanbal was touched on in Chapter One and elucidated in the final chapter, where it was concluded that Christians using Islamic divorce oaths served as test cases for the applicability of Islamic law to Christians, despite the fact that we have no evidence Christians ever used divorce oaths. The point is that Muslims, from Ibn Ḥanbal's view, had to accommodate Christians by virtue of their being under a pact of protection (that is, they are *dhimmīs*), and by virtue of the Quran's implication that their oaths are valid. All of this goes to show that *Non-Muslims Religious Communities* is a work of *fiqh* that constructs the figure of the Christian legal subject as able to fulfill some of the requirements of Islamic divorce law. They are the recipients of it.

Christians living outside of a pact, too, are the recipients of God's law. I argued that this is evident in Ibn Ḥanbal's view that Christian children were born Muslims as an innate disposition (*fiṭrah*). They only became Christians because of their parents, and discussions about them implicitly serve as site of discussion of the mechanics of salvation: since all children are born Muslim, they are the potential recipients of Islam's message of salvation, and have a potential path to Paradise, though no one, not even Muslims, are guaranteed it. The Muslim responsibility to take Christian unaccompanied children in war implicitly demonstrates Ibn Ḥanbal's preoccupation with the mechanics of conversion and the justification of *jihād*. Muslims who take Christians in war are only returning them to their proper place before God and rescuing them from the perversion of their Christian parents or guardians, a process that makes the world more Muslim, and fits into Ibn Ḥanbal's ideal world.

One theme emerged in the chapters on commercial partnerships and women: Christians are corrupt and the world is best envisioned without them. I argued that Ibn Ḥanbal's hesitancy to allow Muslims to form partnerships with Christians shows his implicit preoccupation with the idea of Muslim supremacy and the assertion of Islamic legal authority over non-Muslims. Muslims are superior and their law superseded and replaced Christian law and practice because Christians by virtue of their religious disposition cannot fulfill it. Ibn Ḥanbal made room to accommodate partnerships not because he agreed with doing so, but because the law (theoretically) allowed for some lenience. For him, the best approach was to stay away from Christians at all costs. We saw this particularly clearly in Ibn Ḥanbal's hesitancy to allow Christian women—as slaves or concubine or wives—into the Muslim household despite legal precedents to do so. This is a crucial point because his rulings imply his imagining of a world in which Christian women do not exist or are no longer part of the equation. Christian women fail

to meet the standards of Islamic law and bring sin and corruption through their religious practices and uncertainty through their inability to testify in paternity cases; they make the Muslim household more Christian. How this correlates with the ability of Christians to fulfill Islamic marital and divorce law can probably be explained by the fact that divorce oaths do not involve Muslims except to delegate authority over them when they bring cases to Muslims for adjudication.

I argued that Christians serve as a site of discussion of issues important to Muslims, and we learn little about Christian social practice or the social life of Christians or their interactions with Muslims. That is not to deny that some rulings arose from quotidian social reality. Yet the point of al-Khallāl's *Non-Muslim Religious Communities* is to give a comprehensive view of the Christian as a legal subject of Islamic law, not from a social perspective, but as a figure of proper legal methodology. In his work, Christian life and practice are distant partly because the image of them is based on the Quran, the *sunnah*, and early legal discussions. Christians are discussed as they were supposed to be, not who they actually were: hence the hermeneutical Christian.

An unintended consequence of discussing the hermeneutical Christian has been a revelation about Ibn Ḥanbal's methodology in discussing them. We see that the *masā'il* genre of Ḥanbalī literature is not what Ibn Ḥanbal did, but what he asked others to do. The fact is that, though he knew the sources better than most, he expresses caution against interacting with Christians. For him, an imagined world where Christians aren't subjects of Islamic law is preferable. This perhaps explains some of the inconsistencies in his rulings, and the reason test cases break down, particularly as it relates to the Islamic divorce oath of mutual repudiation (*li'ān*) where his rulings were contradictory. We are not left with a clear idea of the imagined Christian figure,

leaving us with a *naṣrānī* open to interpretation in later Ḥanbalī discussions and formulations of law.

All of these findings suggest a hitherto unexplored and unsuspected use of seemingly generic legal discussions found in Ḥanbalī texts. Treating non-Muslim subjects as hermeneutical devices implicit to discussions between legal students and teachers can also be applied to other legal texts and schools. When we understand imagined, hypothetical, and interpretive Christians as ones who never existed, it is possible to see the reasons why they are constructed in a particular way: they raise difficult questions about the applicability and scope of Islamic law which have no easy answers, but whose presence as legal subjects reveal the legal, social, economic, or theological implications at stake: in discussing Christian legal subjects, Muslim views about their own identity, theology, and legal authority become clear.

Questions for Future Study

How does the shape and construction of Ibn Ḥanbal's figure of the Christian, as espoused by the early Ḥanbalī school, change shape in the following centuries, and for what reasons? How might the hermeneutical approach to legal subjects be utilized in the study of Christians and other subjects of law in other legal schools and texts? Although this study has been limited to analysis of a handful of topics, it does not exhaust the full potential of viewing legal subjects as hermeneutical devices. Students of Islamic law might adopt this approach to understand what Christians or other legal subjects, *kitābī* and *dhimmī* included, tell us about Muslim law, theology, identity, piety, and legal authority. We must also take into consideration the other areas in which Christians are discussed as substantive legal topics in Ḥanbalī law, a work which I hope to complete at a later time.

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