WERE CUSTOMS DUES LEVIED AT THE TIME OF THE PROPHET MUHAMMAD?

Michael LECKER
The Hebrew University of Jerusalem

When was the customs duty introduced in Islam? According to W. Björkman, writing in the wake of C. H. Becker, it was adopted at about the beginning of the Umayyad period or shortly before it. In what follows it is argued that the levying of this time-old tax in Islam started already at the time of the Prophet Muhammad who continued existing practice in Arabia.

1. MÜHAMMAD’S KHARÄJ-FREE MARKET WAS A MARKET WITHOUT RENT

Before discussing customs dues proper, we should examine the meaning of the term kharäj when it is used in connection with the market of the Prophet in Medina. It will be argued that it did not mean customs but rent, and hence should be eliminated from the discussion of customs in early Islam.

In a seminal though concise article which appeared twenty-five years ago, M. J. Kister drew attention to several reports that shed light on an important aspect of the clash between Muhammad and the Jews of Medina, namely the economic rivalry between them. In

1 EP, s.v. Maks; Becker, C. H., Papyri Schott-Reinhardt, I, Veröffentlichungen aus der Heidelberger Papyri-Sammlung, III, Papyri Schott-Reinhardt, Heidelberg, 1906, 53-54, who argues that customs dues were introduced much later than the poll-tax and land-tax, hence the opposition to them among the pious. But the evidence on the levying of customs from the time of Muhammad onwards quoted later in this study seems to be overwhelming. The opposition of the pious merely meant that certain circles never considered it a legitimate tax (see also below, n. 98), although Muslims paid smaller rates than the Ahl al-Dhimma, not to mention the Ahl al-Harb, i.e., residents of foreign countries.


3 Kister, M. J., «The market of the Prophet», JESHO 8 (1965), 272-76; reprinted, with additional notes, in idem, Studies in Jahiliyya and Early Islam, London, 1980, n. IX (Variorum Reprints); for a Hebrew translation see idem, Meḥqarim be-hithavvat ha-islam (Studies on the
some of these reports we find the term *kharāj* which, as is well-known, has several meanings. The following report appears at the beginning of the chapter in al-Samhūdī’s History of Medina which deals with the markets of this Arabian town:

‘Umar b. Shabba transmitted on the authority of ‘Atâ’ b. Yasār: When the Messenger of God wanted to establish for Medina a market [of his own], he came to the market of the [Jewish tribe] Qaynuqā, then he went to the market of Medina [i.e., to the site on which in due course the market of Medina was established], stamped on it with his foot and declared: «This is your market, let its space not be diminished and let no *kharāj* be taken in it». ^

What is the *kharāj* prohibited by Muḥammad? While Kister rendered it «taxes», it appears that «rent» should be preferred. Two reports included in Kister’s article point in this direction. In one of them we again encounter the term *kharāj*: the governor of Medina at the time of caliph Hishām b. ‘Abd al-Malik reportedly wrote to Hishām, suggesting that the caliph incorporate the market of Medina in a house. In his letter the governor mentioned a precedent: in his time, caliph Mu‘āwiya built in the market of Medina two houses (*dāraynī*) on which he imposed *kharāj*. The mention of the term *kharāj* in the governor’s letter is of course pertinent to the correct understanding of the *kharāj*, the levying of which was forbidden by Muḥammad. Now in the case of Mu‘āwiya’s two houses it is

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^ It denotes tax in general and is also found in connection to various specific taxes, thus causing considerable confusion; *EP*, the beginning of s.v. *kharādī* (Cl. Cahen).


^ See e.g. Kister, «The market of the Prophet», 273; «...and do not impose taxes for it».

^ *Wa-ṣuraba ‘alayhimā l-kharāj*; al-Samhūdī, 750; Kister, «The market of the Prophet», 275 says: «It was Mu‘āwiya who for the first time built two houses in the market: The *Dār al-Qatārīn* and *Dār al-Nuqsān* and levied taxes». Kister remarks that these were pejorative nicknames expressing objection to the building of houses and the levying of taxes.
clear that kharāj meant rent paid for shops and temporary residences used by the merchants.\(^8\) The same is true of the Prophet’s kharāj. In fact, it would not be farfetched to assume that the attribution of the prohibition to the Prophet was only meant as a post-factum criticism of Mu‘awiya’s practice, or even as a protest against Mu‘awiya during his very reign. (In any case, one must not rule out the possibility that the saying attributed to the Prophet reflected his practice with regard to the market of Medina.)

Yet another Umayyad caliph connected to the market of Medina was the pious ‘Umar II who reigned several decades after Mu‘awiya’s time and several years before Hishām’s ascension to the throne.\(^9\) As was often the case, his position (or alleged position) stood in sharp contrast to that of both his predecessors and his successors. Now ‘Umar II is supposed to have written to the people of Medina that the market was a charitable endowment, and hence no rent (kirā‘) should be imposed on it.\(^10\) He considered himself a rectifier of his predecessors’ deviations from the Prophet’s sunna; in the present context, i.e., with regard to Umayyad practice in the market of Medina, the unambiguous term kirā‘ or rent is synonymous with the ambiguous term kharāj: the kirā‘ prohibited by ‘Umar II was identical to the kharāj prohibited by Muhammad, whose conduct was to be followed by later rulers. Indeed caliph Hishām is said to have levied kirā‘ or rent from the merchants who used the shops and lodgings in the house which incorporated the market of Medina.\(^11\)

Further evidence that the kharāj prohibited by Muhammad meant rent is to be found in the attachment to it, probably as a gloss, of yet another synonymous term: the Prophet is said to have prohibited the levying of kharāj or ghalla.\(^12\)

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\(^8\) Shops and residences are also mentioned with regard to the house later built in the market by Hishām: wa-ja‘ala li-dāri l-sīq bawānītī fi ‘asfalīhā wa-‘alālīyya takrā‘ li-l-sakan; al-Samhūdī, 752:4. The singular form of ‘alālī is ‘ullīyya, i.e., an upper chamber, or a chamber in the upper, or uppermost, story; Lane, E. W., Arabic-English Lexicon, Cambridge, 1984 (reprinted in two vols.), s.v., 2147b. One expects to find there storerooms as well. Chalmeta, El «señor de zoco», 64 wonders whether the upper rooms were used as storehouses or as lodgings.

\(^9\) As is well-known, ‘Umar II was a former governor of Medina.

\(^10\) Innamā l-sīq sadaqa fa-lā yudrabanna ‘alā ‘alā ‘alā ‘alā kirā‘; al-Samhūdī, 749; Chalmeta, El «señor de zoco», 64. The formulation is reminiscent of Muḥammad’s injunction quoted above, wa-lā yudrabu ‘alayhi kharāj. The Prophet’s declaration that the markets were charitable endowments (the Prophet reportedly taṣaddaqa ‘alā l-muslimina bi-‘aswāqīthum; al-Samhūdī, 748), may go back to Shi‘ite circles because its isnād ends with Muḥammad b. ‘Abdallāh b. al-Ḥasan b. al-Ḥasan b. ‘Ali b. Abī Talib, better known as al-Naf al-Zakiyya or the Pure Soul who rebelled against al-Mansūr. The rebellion gives this statement a political context since it was diametrically opposed to al-Mansūr’s practice (see below, n. 24, cf. below, n. 116).

will be shown presently, *ghalla* in this context means rent, and the same holds for *kharāj*.

The term *ghalla* appears several times in the context of markets. The evidence quoted below happens to relate to 2nd/8th century Iraq, but this does not mean that the term was not used in this sense elsewhere; it merely reflects the state of the sources. Before turning to *ghalla*, let us examine another derivative of the same root, namely *mustaghallāt*: in the list of caliph al-Walid b. ‘Abd al-Malik’s administrators we find his *mawlā*, Nufay’ b. Dhu’ayb, who was in charge of the caliph’s *mustaghallār* in Damascus; i.e., he managed al-Walid’s income, probably in the form of rent from the caliph’s private property. Indeed Nufay’’s assignment was linked to at least one market: his name appeared in a plaque (*lawḥ*) found in the saddlers’ market in Damascus. The singular form of *mustaghallāt* is *mustaghall*: a resident of Damascus who belonged to the Qurashi clan Banū Jumāḥ, ‘Abdallāh b. ‘Amr b. Ṣafwān b. Umayya, received a grant from the Abbasids as a reward for disclosing the hiding places of certain Umayyads. The details of this grant are to be found in another report: the Jumāḥ was given part of caliph Hishām b. ‘Abd al-Malik’s *mustaghall*. Again there is reference to a market, namely the market of pearl vendors.

Let us turn now to the term *ghalla* itself in the sense of rent. ‘Abdallāh b. ‘Awn (d. 151/768), a rich *mawlā* who was a merchant and a prominent *muḥaddith*, had a Christian agent (*wākil*) who used to levy the rent (*ghalla*) for him. ‘Abdallāh lived in the upper floor of the house, which was located in the market of Baṣra, while his tenants (*sukkān*) lived in the ground floor. These tenants (one assumes that they were traders, just like their landlord) included

14 Al-Jahshiyârî, *Kitâb al-wuzarāʾ wa-l-kuttâb*, ed. al-Saqqâ, al-Abyârî and Shalabî, Cairo, 1401/1980, 47. Duri, A. A., writes regarding the Umayyad period: «A diwān al-mustaghllāt was established, apparently to administer government lands in cities, and buildings, especially shops rented to the people»; *EP*, s.v. *Dīwān*. Cahen, C. L., defines the *mustaghllāt* as a «tax on real estate (other than agricultural land), such as baths, shops, water-mills, and caravanserais, etc.» (in early Qājar times they were estimated at 20% of the annual profit); *EP*, s.v. *Daribah*.
15 *Wa-aqta’ahu l-’abbâsiyyma ... iqṭā’an li-dalālāthi iyyāhum ‘alā Bānī Umayya; Ibn ‘Asākir, XXXI, 237.
16 The boundaries of his grant are specified as follows: *min sūqi l-tu’lu’ illā qanṭarati l-gharābīḥ*; loc. cit. Ibn ‘Asākir suspects that an «‘Abdallāh» is missing between «‘Awn» and «Ṣafwân» in the Jumāḥ’s pedigree.
17 Among the captives taken in Maysan was Arṭābân, the grandfather of ‘Abdallāh b. ‘Awn b. Arṭābân; *EP*, s.v. *Maysan* (Streck, M.-Morony, M.).
both Christians and Muslims. Ibn ‘Awn used to say (perhaps apologetically, to justify his propinquity to Christians): «I would rather have Christians living under me than Muslims». Elsewhere we find the precise location of the house in which he lived: it was not the one he owned in the market of perfumers (fi l-’attārinâ) but the other one he owned, on sikkat al-mirbad or Market Street.

Another example of ghalla in the sense of rent comes from Wasit where a ghalla was imposed on every shop. Iyās b. Mu’āwiya was in charge of the market of Wasit. Sa’îd al-Thaqafi used to sell names to the People of Sham (Ahl al-Shám, i.e., the troops of the Syrian garrison stationed in Wāsit; they are probably being mocked here). Whenever a baby was born to one of them, he would come to Sa’îd and the latter would ask: «A name of Arabs or a name of mawālî?», then he would produce a sheet including names and sell a name to the Shāmî for two dirhams. This Sa’îd had a shop in the market of socks sellers. A rent (ghalla) had to be paid for every shop in Wāsit, so he asked Iyās b. Mu’āwiya, who was in charge of the market of Wāsit, for a reduction in his rent. However, the latter turned the request down, having gauged the shop’s turnover.

The reports on the building of Baghdad in the early Abbasid period provide us with yet another case of ghalla in the sense of rent. Having built the new markets outside his Round City, caliph al-Mansûr imposed a ghalla or rent on the merchants according to their dhar, i.e., power or ability, in other words, according to their means. When the population grew, some people built more shops at their own expense. Their rent was smaller than the one paid by those who used the government’s buildings.

In sum, the kharaj prohibited by Muḥammad in connection with his market in Medina was not linked to customs. Rather, being synonymous with kirā’ and ghalla, it meant rent.
The argument put forward in this article, namely that Muḥammad levied customs dues, is partly based on the fact that customs dues were common in pre-Islamic Arabia. In other words, Muḥammad did not introduce an innovation but merely continued existing practice.

With the exception of ‘Ukāz, customs were levied at the annual fairs which took place in different parts of Arabia. In declaring his new market kharāj-free, Muḥammad was not following the practice in the fair of ‘Ukāz, because as we have seen kharāj in this context meant rent, whereas ‘Ukāz was tax-free in the sense that no customs were imposed in it.

Before discussing the fairs, let us start with the scanty evidence regarding Mecca before Islam and during the first Islamic century. Customs were probably levied from pilgrims carrying merchandise upon their entrance to the}

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According to al-Khaṭṭāb al-Baghdādī, Ta’rikh Baghdad, Cairo, 1349/1931, I, 81, al-Maṣūrī did not impose rent on the markets and this was only done by al-Mahdī when he ascended the throne. The passage on this matter again demonstrates the interchangeability of the terms ghalla and kharāj: wa-lam yada‘i l-Mansūr ‘ala l-aswāq ghalla batti māta fa-lammā stakhlafa l-Mahdī... amara fa-wudḍa‘a ‘ala l-bawānti l-kharāj, wa-waliya dhailika Sa‘īd al-Khursi sanata sab‘in wa-wātinta wa-mi‘ā. Lassner, The topography of Baghdad, 62 again renders kharāj as «tax», but it should be rendered «rent». See also Morony, «Commerce in early Islamic Iraq», 718, n. 238. No involvement of al-Maṣūrī’s regime in the building of shops in mentioned in al-Baladhurī, Futūḥ, 295: wa-ja‘ala majma‘a l-aswāq bi-l-Karkh wa-amara l-tujʒar fa–‘btanawi l-hawānit wa-alzmahum l-ghalla. Yāqūt al-Hamawī, Mujam al-buldān, s.v. Karkh Baghdādī, has that al-Mansūr imposed a ghalla according to the trade (‘ala qadri l-sinā‘a; cf., the term ḏhār’). One assumes that a jeweler paid a higher rent than a butcher.

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25 See below, n. 54.
26 See already, Hussein, F., Das Steuersystem in Ägypten von der arabischen Eroberung bis zur Machtergreifung der Tüllīniden 19-254/659-868 mit besonderer Berücksichtigung der Papyrussurkunden, Frankfurt and Bern 1982, 81. Hence there is no need to assume that the levying of customs in Islam was of foreign origin; cf., Mitter, U., Das frühislamische Patronat. Eine Untersuchung zur Rolle von fremden Elementen bei der Entwicklung des islamischen Rechts, unpublished PhD thesis, Katholieke Universiteit Nijmegen, 1999, 65. Becker, Papyri Schott-Reinhard, I, 53 thought that the Muslims only adopted the customs duty after the conquests, but as we shall see customs dues were common in pre-Islamic Arabia.
27 Cf. Kister, «The market of the Prophet», 276, who said that «the principle to establish a new market without taxes may imply that the Prophet intended to adopt the practice of the market at ‘Ukāz where taxes were not levied»; see also Chalmeta, El «señor de zoco», 64.
Haram or Sacred Territory of Mecca. 28 The scarcity of the evidence on this matter should perhaps be attributed to an apologetic attitude on the part of the Quraysh. The founder of pre-Muhammadan Mecca, Qusayy, 29 is said to have levied customs dues (ya’shuru) from non-Meccans entering Mecca. 30 Some two centuries later, 31 ‘Umar II, as usual rectifying corrupt Umayyad administrative and fiscal practices, reportedly instructed his governor in Mecca, ‘Abd al-‘Aziz b. ‘Abdalläh b. Khälid b. Asîd al-Umawi, to abolish the maks. 32

‘Abd al-‘Aziz did not start his career under ‘Umar but was the governor of Mecca under both ‘Abd al-Malik b. Marwân 33 and Sulaymân b. ‘Abd al-

28 For Ibn Khaldün, the levying of taxes (maghârim) from the pilgrims is among the phenomena heralding the decline of states; see his Muqaddima, ch. 37, entitled: fi darhi l-musâbâ‘ wa-l-muṣâ‘a‘a‘ bi-l-dawla, ‘In the later (years) of dynasties, customs duties are levied’; Ibn Khaldün, The Muqaddimah, tr. Rosenthal, F., Princeton, 1967, II, 91-92 (92: ‘Much of this sort happened in the Eastern cities during the later days of the ‘Abbasid and ‘Ubayyid(-Fâtimid) dynasties. Taxes were levied even upon pilgrims making the pilgrimage’. Cf., Bosworth, C. E., ‘Abî, ‘Abdalläh al-Khawârazmî on the technical terms of the secretary’s art: a contribution to the administrative history of mediaeval Islam’, JESHO 12 (1969), 113-64, at 132; reprinted in idem, Medieval Arabic Culture and Administration, London, 1982 (Variorum Reprints), n.° XV.

29 On whom see Ef., s.v., Kusajj (Levi Della Vida).

30 Ibn Sa’d, Tabaqàt, I, 70: wa-kâna ya’shuru man dakhala Makka siwâ ahlîhâ. This follows after the listing of the sacred offices which he held: wa-kânat ilayhi l-hijâba wa-1-siqûya wa-l-nadwa wa-hukmu Makka kulluhu.

31 Admittedly, there is a large gap in the evidence.


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Malik. Upon 'Umar II’s ascension to the throne, ‘Abd al-‘Azîz remained in office and held it to ‘Umar’s death. Under Yazid b. ‘Abd al-Malik he was still the governor of Mecca.

Members of ‘Abd al-‘Azîz’s family were among the governors of Mecca since the earliest days of Islam. ‘Abd al-‘Azîz’s grandfather was Khâlid b. Asîd whose brother, ‘Attâb, was Muḥammad’s first governor in Mecca; he also held the same office throughout Abû Bakr’s caliphate. Moreover, ‘Abd al-‘Azîz’s father, ‘Abdallah b. Khâlid b. Asîd, officiated as the governor of Mecca under both ‘Uthmân and Mu‘âwiyâ. Unfortunately, no evidence has surfaced so far regarding the levying of customs in Mecca by earlier governors, be they ‘Abd al-‘Azîz’s relatives or others. However, the precious report just quoted about ‘Umar II indicates—even if it is not historical—that customs were levied in Mecca in the early Islamic period. They were probably levied continuously from pre-Islamic times, at least from the time of Quṣây. Although this tax was levied in

34 Ibn ‘Asâkir, XXXVI, 292, 296, 297.
36 Taḥarı, VI, 589 [II, 1394]; VI, 618 [II, 1436]; he was dismissed in 103/721-22; VI, 620 [II, 1437].
37 Al-Balâdhurî, Ansâb al-ashràf, IV, 456: Muḥammad made him the governor of al-Ṭâ‘if too. ‘Attâb’s taxation of its agricultural produce is specifically referred to: the Prophet instructed him that upon the appraisal of the produce of vines (i.e., in computing its quantity by conjecture), he should apply the same rules as those applied regarding the produce of the palm trees: ...an yakhraṣa a‘nâb Thaqîf ka-kharsi l-nakhl. For other letters of ‘Umar II to ‘Abd al-‘Azîz, see al-Fâkihî, Akhbâr Makka, III, 115-16, n.° 1870; 249, n.° 2062.
38 Al-Fâsî (Taqî al-Dîn), al-‘Iqdal-thamin, V, 133; al-Fâsî (Taqî al-Dîn), Shî‘a al-gharâm bi-akhbâr al-balad al-ḥaram, Cairo, 1956, II, 165, 167; op. cit., ed. ‘Umar ‘Abd al-Salâm Tadmund, Beirut, 1405/1985, II, 257, 260. At some time (no doubt together with the governorship of Mecca) ‘Abdallah b. Khâlid was also the governor of al-Ṭâ‘if; see al-Balâdhurî, Ansâb al-ashràf, MS Süleymanie Kütüphanesi (Reisülküttap Mustafa Efendi), 597/598, 1216a: in the entry on al-Hajjàj it is reported that he flogged and dragged on the ground a son of ‘Abdallah b. Khâlid in retaliation for ‘Abdallah’s flogging and dragging of an unspecified member of the Thaqîf when the former had been the governor of al-Ṭâ‘if. A passage from ‘Umar b. Shabba’s Kitâb Makka in Ibn Ḥajar, Isâba, IV, 72 shows ‘Abdallah b. Khâlid interceding with caliph ‘Uthmân for the release of owners of courts adjacent to the Ka‘ba which were demolished in order to enlarge the mosque; they protested loudly and were arrested.

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Mecca and not at a seaport such as Ayla, or at a crossing point between Islamic regions such as Rafah, it was collected on behalf of the central government. It is worthy of note that the Umayyad family in question, at least three members of which were governors of Mecca during the first century of Islam, owned land at one of the boundaries of the Haram: the Shi 'b (road, water-course or pass between two mountains) called after the Banū 'Abdallāh b. Khālid b. Asid (scil. 'Abd al-'Azīz b. 'Abdallāh and his brothers), was located on the old Mecca-al-Ji'rána (or al-Ji’rána) road, on the boundary of the Haram. One is tempted to assume that a customs post was located on their land, but there is no evidence to support this assumption.

While evidence on pre-Islamic (and early Islamic) Mecca is rare, we have relatively abundant evidence regarding the levying of customs dues in the fairs of pre-Islamic Arabia which were for the local potentates a major source of income. As one can expect, the following evidence mainly refers to the period immediately preceding the advent of Islam.

Let us start with the fair of Dūmat al-Jandal (or Dūma) in the north. The recipient of the customs levied there varied according to the prevailing political and military conditions. The control of Dūma was contested between the Sassanians and the Byzantines; the Arabian interests of the former were often connected to trade, and the same must have been true of the latter, although the evidence regarding them is relatively small. On the eve of Islam the two empires were competing –through their proxies– over the control of Dūma’s fair. Now the king of Dūma, al-Ukaydir, was of a subdivision of the Kinda called al-Sakün, was of a subdivision of the Kinda called al-Sakûn, Hussein, Das Steuersystem in Ägypten, 81. Cf. Becker, Papyri Schott-Reinhardt, I, 54, 55, who mentions al-’Ansh. If Ibn Sa’d, Tabaqāt, V, 378: a man called Ayyūb (probably a non-Arab, since his father’s name and his tribal affiliation are not mentioned) who was in charge of Jisr Manbij or the Manbij bridge brought to Sulaymān b. ‘Abd al-Malik the money levied on the bridge. Cf. al-jusūr wa-l-ma ’ābir; above, n. 32. Al-Fākhrī, Akhābār Makka, IV, 186, n.° 2507, n. 2. The editor of this book, Duhaysh, happens to own an estate at the beginning of the Shi ‘b. See also op. cit., V, 89; al-Fāsī (Taṣqīl al-Dīn), al-’iqd al-thalim, V, 135. One wonders whether the location of this land is linked to the fact that ‘Abd al-’Azīz b. ‘Abdallāh transmitted a ḥadīth on the Prophet’s ‘umra from al-Ji’rána. As the placename probably suggests, a customs post was located at some time in al-Darība (which is the modern name of Dhāl ‘Irq); Lecker, M., The Banū Sulaym: A Contribution to the Study of Early Islam, Jerusalem, 1989, 39. Cf. below, n. 70. For customs probably levied by the Ghassânids at Busri see Lecker, M., «The levying of taxes for the Sassanians in Pre-Islamic Medina (Yathrib)», ISAI (forthcoming). Kister, M. J., «al-Hîra: some notes on its relations with Arabian», Arabica 15 (1968), 143-69, passim; reprinted in idem, Studies in Jahiliyya and Early Islam, n.° III; for a Hebrew translation see idem, Mehqarim behithavvat ha-islam, 49-66. On whom see EP, s.v. (Lecker, M.).
while belonging at the same time to the ‘Ibād or the Christian tribal groups of al-
Ḥira. The ‘Ibād and the Ghassāniyyūn competed over the control of Dūma. When the former ruled over it, Ukaydr held sway, and when the latter did, it was Qunāfa al-Kalbi who held sway. 47

It seems that Dūma’s fair took place within the town, which made it possible to collect the customs in a toll-house located at the town gate. It is reported that no merchant from Syria or Iraq could sell his merchandise at Dūma without the king’s permission, and no open trade took place before the king had sold his own goods, namely, everything he wanted to sell. In addition, the king had the right to the market’s customs (‘ushūr). 48 So on the one hand, the king’s monopoly enabled him to sell his own merchandise at a high price and dictate the price to the others. On the other hand, he had the right to levy customs from the goods sold in the fair.

Customs were also levied at three of the other Arabian fairs. Being located along the western shores of the Persian Gulf, the three fairs were clearly within the Sassanian sphere of influence and were controlled by tribesmen loyal to the Sassanians. The fairs were no doubt protected by Sassanian garrisons, in addition to Arab auxiliaries. Ibn Ḥabīb reports that the kings (or lords 49) in the fair of al-Muṣhaqqar in Ḥajar were the Banū ‘Abdallāh b. Zayd of the Tamīm who were appointed by the kings of the Persians, on a par with the Banū Naṣr (i.e., the Lakhmids) in al-Ḥira and the Banū al-Muṣṭakbir in ‘Umān. Their practice in this fair, Ibn Ḥabīb says, was similar to that of the kings of Dūma and they would levy customs from the merchants. 50

In the fairs of Ṣuhār and Dabā further south along the coast customs were levied by al-Julāndā b. al-Muṣṭakbir. 51 In the fair of al-Shīr in Ḥadramawt no customs were levied since it did not belong to a kingdom. 52 In ‘Adān there was direct Sassanian control: customs were levied there by the Abnā’, i.e., the descendants of the Sassanian troops who conquered the Yemen at the time of

47 Ibn Ḥabīb, Muḥabbār, 263-64. Elsewhere Ukaydr is specifically said to have been in allegiance to Heraclius (fi ṣa’at Ḥiraqḥ); al-Marzūqī, al-Tanbih wa-l-īshrāf, ed. de Goeje, Leiden, 1894, 248. One assumes that in the turbulent decades preceding the advent of Islam Ukaydr’s loyalty fluctuated between the rival empires.


49 Note the plural form. This is reminiscent of Yathrib where the Jews were kings; Lecker, «The levying of taxes».

50 Ibn Ḥabīb, Muḥabbār, 265; al-Marzūqā, Azmina, II, 162.

51 Ibn Ḥabīb, Muḥabbār, 265-66.

52 Laysat bi-arḍ mamlaka; op. cit., 266.
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Khusro I Anûshirwân. However, the Abnà’ «did not trade in their fairs» (fi aswāqihim). This formulation seems to indicate that the Abnà’ refrained from trading in the fairs of the Arabs in general, not only in that of ‘Adan. The customs of the fair of Ṣanʿā’ were also levied by the Abnà’. As already mentioned, in the fair of ‘Ukâz there were no customs.

In sum, customs were common in pre-Islamic Arabia. Among other places they were levied in the fairs along the Persian Gulf and in ‘Adan (and of course in the seaports close to these fairs), in addition to Ṣanʿā’. Customs dues were one aspect of the Sassanian involvement in Arabian trade on the eve of Islam.

3. CUSTOMS AT THE TIME OF MUHAMMAD

There is no need to assume that the levying of customs ceased upon the advent of Islam. As is well known, the Muslims took over the state apparatus of the two empires they had vanquished. The takeover actually began at the time of Muḥammad: in Bahrayn, al-Mundhir b. Sàwà of the Banū ‘Abdallah b. Zayd (who have just been mentioned in connection with the fair of al-Mushaqqar) embraced Islam and was made by the Prophet governor of Bahrayn, whereas under the Sassanians he had only been in charge of the Arab tribes of that region.

(There was also continuity with regard to the Sassanian governor in the Yemen, Bādhān/m, who belonged to the above-mentioned Abnà’ and whose seat was naturally in Ṣanʿā’). The levying of customs at the seaports of Bahrayn and in the fair of al-Mushaqqar must have been transferred to the new regime. The evidence regarding al-Mushaqqar is admittedly circumstantial: being a member of the Tamîmî Banū ‘Abdallah b. Zayd b. Abdallah b. Dàrim, a subdivision of the Dàrim, al-Mundhir b. Sàwà belonged to the «kings» who before Islam levied customs in the fair of al-Mushaqqar. This practice presumably continued under Muḥammad.

A comment about the tribal group to which al-Mundhir belonged would be in place here. It included two divisions: on the one hand, ‘Udus b. Zayd, and on the other, ‘Udus’s brothers, i.e., the other children of Zayd, including ‘Abdallah b.

53 Loc. cit., Marzûqî’s information is somewhat more detailed regarding the customs of ‘Adan. They were levied by the kings of Ḥimyar, then by those who ruled the Yemen after them, and finally by the Abnà’; Marzûqî, Azmina, II, 164.
54 Ibn Hābib, Muḥabbbar, 267.
55 See EI, s.v. al-Mundhir b. Sàwà, VII, 570a-572b (Kister, M. J.).
56 Ibn Ḥajar, Isâba, I, 338.
57 EI, s.v., Tamîm, at 173b, bottom right.
Zayd who was nicknamed al-Asbadhî. The latter were «the allies» (al-aḥlāf). They made an alliance against their brother 'Udus, who in his turn joined forces with all his paternal uncles, i.e., the descendants of 'Abdallah b. Dārim. Tribal prestige and leadership were not evenly divided between the two divisions: 'Udus was the father of Zurāra, whose descendants were the leading family of the Tamīm (wa-fihi l-bayt). Zurāra begot many famous descendants, including his renowned son, Ḥājib. 58 This division of the clan was expressed figuratively: 'Udus b. Zayd was «the house» (i.e., the leading family), and the aḥlāf were «the angles of the house upon which it rested» (zawāfir, plural of zāfira). 59 Al-Mundhir b. Sāwā who belonged to the less prestigious division was in the service of the Sassanians and must have been a sedentary. Yet one assumes that he could rely on the military backing of his illustrious nomadic relatives.

As we have seen, 'Abdallah b. Zayd b. 'Abdallah b. Dārim, the eponym of the group to which al-Mundhir belonged, was nicknamed al-Asbadhî. The presumed levying of customs by al-Mundhir should no doubt be linked to the following definition of the Asābīdhh 60 which specifically relates to their military role in the service of the Sassanians:

The Asābīdhh were Persians (nās mina l-furs) 61 who were the garrison (maslaha) of al-Mushaqqar. Al-Mundhir b. Sāwā from the Banū 'Abdallah b. Dārim 62 was one of them, as well as 'Īsā al-Kẖatṭī and Sa'id b. Da'laj. 63

Before discussing further evidence on the levying of customs at the time of Muhammad, let us look at a peculiar report which, while relating to the ridda, reflects conditions which prevailed at the time of Muḥammad.

58 Ibn al-Kalbî, Jamharat al-nasab, 197-201; 276 (a list of his ten children); Ibn Hazn, Jamharat ansāb al-'arab, ed. 'Abd al-Salām Hārūn, Cairo, 1382/1962, 232. Ḥājib died in the twenties of the 7th century, Et, s.v. Ḥāḏjīb b. Zurāra (Kister, M. J.).
60 In Et, s.v., al-Mundhir b. Sāwā, at 570a, the Asābīdhh or al-Isadhiyyūn are identified with the 'Abdallah b. Zayd tribal group. But this contradicts the definition of the Asābīdhh as jummā' or «a group of scattered tribal factions joined together and united» (loc. cit.), which suits them better. On the term jummā' in the Medinan context see Lecker, M., «Muhammad at Medina: a geographical approach», JSAI 6 (1985), 29-62, at 41-43; reprinted in idem, Jews and Arabs in Pre- and Early Islamic Arabia, n. VIII.
61 Wa-l-'arab, «and Arabs» appears to be missing here. It is less likely that al-furs here means «Persian-speaking Arabs».
63 Al-Ḥarbī, Gharīb al-badīth, ed. Sulaymān b. Ibrāhīm al-'Aṭīd, Mecca, 1405/1985, 655. Cf. Lisūn al-'arab, s.v. s.b.d.: kānu maslābaṭan li-ḥṣnī l-Mushaqqar, the singular is Asābdhh and the plural is Asābdhadhh. Ṭafara called the Arabs of Bahrayn 'aḥid Asbadh or «slaves of the commander...
This report (which goes back to Sayf b. ‘Umar) tells of a joint proposition which two leaders from the Tamîm, al-Aqra’ b. Ḥābis and al-Zibriqân b. Badr, made to Abû Bakr during the *ridda:* in return for the *khāraj* of Bahrayn they would guarantee that no one from their tribe will apostatise. The mediator was Ṭalḥa b. ‘Ubaydallâh, and Abû Bakr consented. However, ‘Umar objected to this and destroyed the document written between the caliph and the Tamîmîs.

What was the *khāraj* demanded by the two bedouin leaders? One cannot rule out the possibility that they wanted the poll-tax of Bahrayn, or its land-tax, or both. But it is more likely that they demanded the customs of al-Mushaqqa’ known to have been levied before Islam by the ‘Abdallâh b. Zayd, and assumed to have been levied after the advent of Islam by al-Mundhir b. Sàwâ who was one of them. We probably have here an internal Tamîmî affair. While al-Zibriqân was of the Bahdala b. ‘Awf b. Ka‘b b. Sa‘d Manât, al-Aqra’ was—as was al-Mundhir—of the Dârim (more precisely, al-Aqra’ was of the Mujâshi’ b. Dârim).

Before Islam, the levying of customs was not limited to the fairs but was also carried out on the main roads and in the markets which were located between the desert and the sown. Several such markets are mentioned with regard to the false prophet Musaylima. Before the beginning of his prophetic career, he learned various tricks and occult lore at markets located between the territories of the Arabs and those of the Persians (*dür al-‘arab wa-l-‘ajam*) such as Ubulla, Baqqa, al-Anbâr and al-Ḥîra.

Of some interest in the present context is the place called al-Fârisî which is now within the modern state of Kuwait. It was a *thamad* or a water-place which dries up during the summer, belonging to the Banû 1-Hirmâz of the Tamîm. The following verse is said to relate to al-Fârisî or to another water-place (i.e., in the same area):

of mounted warriors*, i.e., of the Persian mailed cavalrymen, while other poets refer to the Persians settled in eastern Arabia as *Asbadhis; The History of al-Tabari,* V, trans. Bosworth, C. E., New York, 1999, 291, n. 685.

64 On whom see *Ef,* s.v., al-Akra’ b. Ḥābis (Kister, M. J.). As mentioned by Kister, he was a former Zoroastrian; see also Crone, P., *Meccan Trade and the Rise of Islam,* Princeton, 1987, 47, n. 153.

65 On whom see *Ef,* s.v., al-Zibriqân b. Badr (Lecker, M.).

66 *Ij’ al lana kharijja l-Bahrayn wa-naṣṣamnu laka allâ yarji’a min qawminna ahadun.*


68 *Ibn al-Jâ’îr,* al-Ḥayawân, IV, 369 (Baqqa was north of Anbâr and not near al-Ḥîra; *cf. loc. cit., n.* 5).

Near it there are people from the Banû l-Hîrmâz who inherited from the time of Dhî l-Qarnayn the ignobleness of the taxes. The verse seems to relate to the pre-Islamic period. The placename al-Fârisî («the Persian») should possibly be linked to the levying of taxes by Hîrmâzis who were in the service of the Sassanians. In any case, the «taxes» (dârîbî, sing. dârîba) mentioned in the verse are customs.

3.1. là yu'sharûna wa-là yuṭharûna

Several letters of Muḥammad to representatives of certain towns and tribes include the clause là yu'sharûna wa-là yuṭharûna. One assumes that this clause had the same meaning whenever it appeared in one of the Prophet's letters, regardless of whether the party involved was nomadic or settled.

The clause received little attention in the secondary literature. In his 1920 thesis D. C. Baneth suggested that it meant exemption from military service (là yuḥsharûna) and from the payment of tithes (là yu'sharûna). But it is doubtful...


71 The floruit of Lugdha, i.e., the 3rd/9th century, is immaterial here.


73 A variant is found in the letter of 'Abd Yaghûth b. Wâla al-Ḥârîthî (of the Ḥârîth b. Ka'b): wa-là 'ushr wa-là ṣâbr; Ibn Sa'd, Tabaqût, I, 268 = Wellhausen, J., Medina vor dem Islam, Berlin, 1889 (Skizzen und Vorarbeiten, IV), 9, n. 22 («...es sollen kein Zehnten und kein Zusammentreiben der Viehherde statt finden». The letter of his fellow Ḥârîthî, Yâzîd b. al-Muhajjal, has là yuğhâzawna wa-là yuṭharûna; Ibn Sa'd, Tabaqût, I, 268; but Wellhausen, op. cit., 10, n. 22 has correctly: là yu'sharûna... See also the same formula in the letter of Qays b. al-Ḥuṣayn al-Ḥârîthî; Ibn Sa'd, Tabaqût, I, 268.

74 «Sie sollen weder zu Kriegsdiensten noch zum Zehnt herausgezogen werden»; similarly, Sperber, J., «Die Schreiben Muḥammads an die Stämme Arabiens», in Mitteilungen des Seminars für orientalische Sprachen (Berlin) 2. Abt. 19 (1916), 1-93, at 91, n. 2, renders wa-là yuṭharûna là yu'sharûna là yuṭha'u arḍahum jaysh, which according to Balâdhûrî (Futûh, 65) was one of the clauses of the Najrân treaty, as follows: «sie sollen nicht zum Kriegsdienst ausgehoben werden, brauchen nicht den Zehnten zu bezahlen und kein Heer soll ihr Land zerstampfen». Sperber followed de Goeje's interpretation of the phrase; see the Glossarium to the Futûh, 27-28, where other interpretations are quoted; also Sperber, loc. cit., who assumes that in other cases involving nomads another sense of ṣâbr, namely the gathering of livestock from the water-places for the purpose of taxation, may be appropriate. See also Wellhausen's translation in the preceding note.
that 
that la yušharūna was related to military service, and an interpretation relating to a specific tax is preferable. 75 First, several derivatives of the root ḥ.sh.r. are related to various taxes. 76 Second, the other half of the clause, la ya’sharūna, no doubt deals with taxation.

The first derivative is from the pre-Islamic poetry. Jábir b. Ḥunayy al-Taghlibi 77 complained in a Mufaddāliyyāt poem about the practices of tax-collectors sent by the king of al-Ḥira. In the successive verse the poet complained about the taxes imposed on trade in the markets (or fairs) of Iraq: 78

wa-yawman ladā l-hashīdāri man yalwi ḥaqqahu
yuḥbażu ḫa-unṣa’ thawbhuhu wa-yuṣnammī
wa-fī kūlī aswāqī l-‘irāqi itāwātu
wa-fī kūlī mā bā’a mu’rūn maksu dirhamī 79

Al-Jāhiz quotes the latter of these two verses together with the next following one from the same Mufaddāliyyāt poem (XLII, 18), while providing us with a context:


76 Another derivative of this root appears to be irrelevant for us here: ḥashrī is «the inheritance of a person who leaves no heir»; Bosworth, «Abū ‘Abdallāh al-Khawārazmī», 131.

77 On whom see Sezgin, R., Geschichte des arabischen Schrifttums, Leiden, 1967 ff, II, 150.


79 Lyall’s translation reads is follows:
A day, too, I mind when one, delaying to pay his due,
was buffeted, torn his clothes, misused at the taxer’s door.
In all of ‘Iraq’s marts some new tax is imposed to-day
and everything sold therein pays somewhat to sink the price.

However, the ītāwa and maks of the verse just quoted are specific taxes and not «some new tax» and «somewhat to sink the prices», respectively. Cf. below, n. 81.

Hashshā́r is glossed in the source just quoted as ḥāshīr; a variant reading in one of the MSS has: al-jassā́r wa-huwa šīḫība l-jīrī. The editor, Lyall, suggests that it may be a misreading of al-hashshā́r šīḫība l.hashr found in a MS of another source which includes this poem. The same source has a scholion which reads: al-ītāwātu l-ḥārj wa-l-makkāṣī l-‘ašshā́r, yaqūlū: fa-fī kūlī dhā maks, lā budda an yu’khadhā minhu dirham. Al-Jāhiz similarly states that the Jāhilī itāwa
The kings of the Arabs used to levy customs (maks) from the traders on land and sea, and in their markets. This is a tax (qariba) that was taken from them, and upon doing this they used to treat them unjustly.  

Al-Jahiz associates the verse which mentions itāwa and maks with other references to collectors of customs. However, we are concerned here with the ḥashshār of the first verse (not quoted by al-Jahiz). This verse includes a complaint about the brutal methods of the hated ḥashshār, while the one following it protests against the actual tax or taxes exacted by him (or by his assistants), namely the itāwa which was levied in every market (probably at the gate), and the maks of one dirham levied on every item sold. The ḥashshār may have been in charge of both taxes. In any case, this derivative of the root ḥ.sh.r. is no doubt connected to taxation.

Another derivative of the same root which similarly relates to taxation appears in the treaty of Adharbîjān concluded during the early Islamic conquests. One of its clauses assured the people of Adharbîjān that ḥashr leads to an exemption from the jizā’ of the same year: wa-man ḥushirā minhum fi sana wud’i’a ‘anhu jizā’ tilka l-sana. The obvious interpretation of the clause would link it to poll-tax which was to be exacted once a year only. But perhaps both the ḥashr and the jizā’ refer to the payment of customs dues which were to be levied once a year. In fact, this very concept can be traced in the legal literature with regard to the Ahl al-Dhimma.


80 Jahiz, al-Ḥayawān, VI, 148.
81 The latter tax could have been a kind of sales tax. This is exactly how Ibn Sīda understood the verse; see the quotation from his Kitāb al-muhkam in al-Maqzīzī, Khiṭat, II, 121:17: wa-l-maks darāhim kāna tu’khadhu min ba‘i‘i l-sila’ fi l-aswāq fi l-jāhiliyya ... wa-l-maksu ntiqṣu l-thāman fi l-biyā‘a ... wa-maks darīḥam ayy naṣṣ dirīḥam fi bay‘ wa-nahwihi. Perhaps the maks mentioned here was one levied when a transaction, such as the sale of a slave, was registered by the official in charge of the market.

82 Tabarî, IV, 155 [I, 2662]: in The History of al-Ṭabarî, XIV, trans. Rex Smith, G., New York, 1994, 33, this is rendered: «Those who are recruited for military service in any one year are exempt the tribute of that year». In a footnote the translator remarks: «It might also be rendered: “Those who suffer distress”; that is, drought, crop failure, etc.».

83 ‘Umar b. al-Khaṭṭāb and ‘Umar b. ‘Abd al-‘Azīz are said to have prohibited the levying of customs from the Ahl al-Dhimma more than once a year; see Abū Yūsuf, Kharāj, 135-36 and 136-37, respectively. Mālik objected to the liberal ruling ascribed to ‘Umar II with regard to the Ahl al-Dhimma. Unlike ‘Umar II, Mālik did not allow the exemption from customs of Dhimmī merchandise which was below a certain value; and according to Mālik, the Dhimmī had to pay
The third derivative deals with poll-tax. In medieval Egypt, a ḥāšir, plural ḥushshār, was a collector of poll-tax. More precisely, a ḥāšir, «raUier», was one who «summoned the non-Muslims to the offices where they had to pay their taxes». The ḥushshār «were not concerned with the actual collection of the taxes, but formed a kind of auxiliary force whose task it was to let no one escape from fulfilling his duty».

The association of these derivatives of the root ḥ.sh.r. with specific taxes supports an interpretation of the expression lā yuḥsharūna within the sphere of taxation. Let us leave it at that for the time being and discuss the other part of the clause, i.e., lā yu'sharūna.

When D. C. Baneth interpreted the phrase lā yu'sharūna as a reference to tithes (above, n. 74), he may have had in mind the payment of customs. M. J. Kister quotes Baneth with approval and continues: «The Prophet apparently exempted Thaqīf from the prescribed poor tax, ṣadaqa (= zakāt [i.e., lā yu'sharūna]) and jihād» (i.e., lā yuḥsharūna). I submit that the formula lā yu'sharūna specifically relates to customs dues.

Most valuable evidence on this matter is found in the chapter on customs in Abu ‘Ubayd al-Qàsim b. Sallâm’s (d. 224/839) Kitāb al-amwāl. Abu ‘Ubayd is apologetic: customs were levied, he says, by all the Arab and non-Arab kings customs whenever he passed through the customs-post and not just once a year; see e.g. al-Maqrîzî, Khiṭaṭ, II, 121-22.

For jîzya (jīzā’) in the sense of customs see also Ibn Abî Shayba, Musannaf, III, 199 who records a question directed by Ibn Abî Dhi‘b about jîzya of the Christians of the Kalb and Taghlibi tribes. The latter replied: «It became known to us that half a tithe is taken from them, or more precisely, from their flocks».

^4 Cahen, Cl., «Contribution à l’étude de impôts dans l’Égypte médiévale», JESHO 5 (1962), 244-78, at 249-50; al-Makhlûmî, Kitâb al-minhâfî fi ’lm kharîj Miṣr, partial edition by Cahen, Cl., and Râghib, Y., Cairo, 1986 (Supplément aux Annales Islamologiques, cahier n.° 8), 36-38. Similarly, ḥushshār in Dozy, Supplément aux dictionnaires arabes, s.v., means receveur des contributions (while ḥāšir is enrôleur, recruteur).

^5 Goitein, S. D., A Mediterranean Society, Berkeley, 1967-1993, II, 370; see also 379, where Goitein observes that the ḥāšir and other members of the police force «assisted the authorities in the collection of taxes and customs dues», which indicates that «the surveillance of minority groups was facilitated by employing for these tasks persons from their own midst». See also Diem, W., and Radenberg, Hans-Peter, A Dictionary of the Arabic Material of S. D. Goitein’s A Mediterranean Society, Wiesbaden, 1994, 42.

^6 Exemption from the «collecting together» of the livestock for the purpose of taxation (above nn. 73, 74 and the next following note), while being well within this sphere, would be meaningless in the case of the settled Thaqīf, and hence unacceptable with regard to the other parties as well.

^7 Kister, M. J., «Some reports concerning al-Ṭā‘if», JSAI, 1 (1979), 1-18; at 11; see also op. cit., 2-3 (ṣadaqa/poor tax, ṣadaqa/tithe, ‘āshr); 5, 6, 7 (tithe, tithe, tithes); reprinted in idem, Studies in Ḥābīliyya and early Islam, n.° XI. The same expression appears in the letter of the Ju’ayl, a
who took one tenth from the goods carried by the merchants. He adds that this accounts for the lā yuhšarūna wa-lā yu′sharūna clause in the Prophet’s letters to inhabitants of major towns (ahl al-amšar), such as the Thaqīf (who lived in al-Ṭà’if), the inhabitants of Bahrayn and those of Dūmat al-Jandal, and others who converted to Islam. According to Abd al-ʿUbayd, this is one of the many indications that the practice existed in the Jāhilīyya. God abolished it and it was replaced by a zakāt of 2.5%. One who levies this amount is not an ʿāshir (a collector of «tithes», i.e., customs) because he only takes one fourth of an ʿushr. 

Abū ʿUbayd’s passage reveals that the continuation of the Jâhilï practice into Islamic times gave rise to casuistry, and that in a certain context zakāt meant customs. However, this apologetic statement could not of course change the nature of the tax: customs were customs whatever the terms used and the rates applied.

In addition to the Prophet’s letters to town dwellers mentioned by Abū ʿUbayd, the clause in question is also found in letters to bedouin tribes such as the ʿUqayl (a tribe of the Qays ʿAylan group) and the Ghâmid (a tribe of the Azd). In the bedouin context the clause reflects the Arabian ecology in which subdivision of the Bâlî; Ibn Sa′d, Tabaqāt, I. 270. The expression is interpreted by Ibn Sa′d himself as follows (271): they will not be driven from one watering-place to another for the purpose of taxation, and the tenth will only be taken from them once a year (lā yuhšarūna min mā` ilā mā` fi l-sadaqa, wa-lā yu′sharūna, yaqūlu, fi l-sana ilā marratan). In Lecker, M., The Banū Sulaym, 187, the clause is rendered: «They will be exempt from military expeditions and from paying the sadaqa». This translation should be revised now. With regard to the same Ju′ayl, Kister says that «the Prophet granted to them the privileges of being taxed no more than once a year and of not having to bring their livestock and gather at the tax-collection centres (lā yuhšarūna wa-lā yu′sharūna). This explanation, given by Ibn Sa′d seems, however, to be uncertain. There are interpretations which comment that ṣâḥr and ʿushr refer to the Banū Ḫu′ayl being exempted from taxation»; EP, s.v., Ḫudm, at V, 318a. I follow here the slightly modified version in idem, Concepts and Ideas at the Dawn of Islam, n.° III, at 8. 

Abū ʿUbayd’s association of lā yuhšarūna with lā yu′sharūna seems to indicate that he considered them synonymous. 

90 Abū ʿUbayd al-Qāsim b. Sallām, K. al-Amwâl, ed. Muḥammad Khalîl Harrâs, Cairo, 1396/1976, 636, n.° 1639, 1640. Björkman W., EP, s.v., Maks, quotes Ibn Sîda according to whom even in the Jāhilīyya there was a market due known as maks.

91 For zakāt in the sense of taxes in general, including customs, see Qudāmā b. Jaʿfar, K. al-kharâj, 241 = ed. Sezgin et al., 194, who starts the chapter on customs as follows: al-suma fi zakāt l-ayn wa-l-warq anna l-muslimîna muʾtamanūna ʿallā mā yazmamukh minhā, fa-man addâhā wakhidhat minhu, wa-man lam yu′uddâhā fa-huwa ṣâḥq tarakahu, wa-lāšhū min warāʾ ʿllà; fa-ammū ghaṣr yu′addâhā mina l-zaḵawât mithlu ṣâḥqâtī l-mawâshi wa-l-ḫārīl wa-l-ḫârīl wa-l-ḫârīl, fa-īnna man mana′ aḥa ṣaḥra ʿallā adâʾ ʾaḥa wa-jûhîda ʿallā ḥâlîka ṣaṭa′ ṣaṭî yu′addiyyahu. Ibn Ḥajar, Isâba, VII, 88; Ibn Kalbî, Jamharat al-nasâb, 334. See also above, n. 87.

92 Ibn Sa′d, Tabaqāt, I. 279-80; Wellhausen, Medina vor dem Islam, 122-23. n.° 49 (without the text of the letter, the receiver of which was Abū Ṭabīb al-Azdî). Ibn Sa′d’s quotes this report...
bedouin tribes relied in some way or another on their relationships with the towns close to their territories. The bedouin wished to be exempted from customs imposed on the foodstuffs, livestock and raw materials such as hides which they brought to the markets of the towns.

The exemption given to the settled Thaqîf is of special interest. Before he concluded his treaty with them, Muhammad had gained control of the nomadic Hawâzîn under Mâlik b. 'Awf al-Nasrî who were blockading al-Ta'îf. Hence he was in a position to levy customs from the Thaqîf both upon their departure from al-Ta'îf and their arrival at Mecca which was no doubt Thaqîf’s main market for agricultural products. However, other items with which the Thaqîf were trading were more expensive and hence subject to higher customs rates. Exemption gave the Thaqîf an advantage over their non-Meccan competitors.

Contrary to Abu 'Ubayd’s words, the clause was not only included in treaties with those who converted to Islam, but can also be found in the Prophet’s letter to the people of Najrân who remained Christians. 93

The fact that Abu ‘Ubayd is apologetic regarding the levying of customs by Muhammad renders his testimony even more reliable. Muhammad’s exemption of certain parties from customs dues indicates that he generally imposed customs from Ibn al-Kalbî, who in his turn quotes Abû Mihfnaf. For the latter this was family history, because his great-grandfather, Mihfnaf b. Sulaym, was part of the Ghâmid delegation; on Mihfnaf b. Sulaym cf. Sezgin, U., Abû Mihnaf. Ein Beitrag zur Historiographie der umayyadischen Zeit, Leiden 1971, 225n. For the text of the letter see Ibn ‘Asîkîr, XI, 304-305, with an isnâd going back to Abû Zabyân ‘Umayr b. al-Hârîth al-Azdi; the variants between square brackets are from Ibn al-Athîr (‘Izz al-Dîn), Usd al-ghâba, fi ma‘rifat al-ṣaḥâba, Cairo, 1280/1863 (reprint), IV, 141, s.v., ‘Umayr b. al-Hârîth al-Azdi, quoting the Companion dictionary of Abû Hafs Ibn Shâhîn (d. 385/995): ammû bâ‘du, fa-man astama min Ghâmid fa-lahu mî l-muslimîn [lî l-muslimîn], jurnîta [in the Usd al-ghâba: without the tā’ marbûta] mûtî li wa-damihi, wâ-là tuhsharu wa-là tu’sharu [wa-là yu’tsharu wa-là yu’sharu], wa-lahu mî astama ‘alayhi min ard. Ibn al-Athîr adds a variant reading from the Companion dictionary of Abû Mûsâ al-Madînî (d. 581/1185) which has the two verbs in 3rd person plural: là yu’tsharu wa-là yu’sharu. Another letter, given to the Ghâmid delegation, is said to have included the laws of Islam (sharî‘ al-islâm); Ibn Sa’d, Ṭabaqât, I, 345; Wellhausen, Medina vor dem Islam, 183, n.° 128. 93

Al-Maqnzî, Imtâ‘ al-asmâ‘ bi-mâ li-l-rasûl mina l-anbâ‘ wa-l-amsâ‘ wa-l-baṣfâda wa-l-mâtâ‘, I, ed. Mahmîd Muhammad Shâkir, Cairo, 1941, 502: wâ-jâ’ala lahâm ‘alayhi l-sâlâm dhimmata lähî wa-‘ahdahu ‘alâ allâ yaštânu ‘an dinhîm wa-là yu’sharû wa-là yu’tsharu... In the chapter on customs (al-‘ushr) of his famous book Abû Yusuf specifically referred to the levying of customs from the people of Najrân. The rendering «Des impôts du dixième» in Abou Yousof, Le livre de l’impôt foncier, trans. Fagnan, E., Paris, 1921, 204, is slightly misleading, since the chapter deals with customs dues plain and simple: wâ-yu’sharu l-dhimma l-Taghlibî wa-l-dhimmi min ahî Najrân ka-sâ‘irî ahî l-dhimma min ahî l-kîthîb fi akhîdî nigîr l-‘ushr mînhum; Abû Yusuf, Kharajî, 134; Le livre de l’impôt, 206. It was probably felt that the status of these two categories of Christian Arabs needed special clarification. Cf. above, the end of n. 83.
on goods. 94 Had there been no customs, there would have been no need for such an exemption clause. 95

Having established that là yu’sharūna relates to customs, what then is the meaning of là yuṣḥarūna? Rather than look for another tax from which the recipients of the Prophet’s letters were exempted, I submit that là yuṣḥarūna is synonymous with là yu’sharūna. The formula (perhaps fossilized) may have been common in Arabia before Islam; 96 or perhaps the repetition of two synonymous expressions in the same clause aimed at emphasizing the obligation undertaken by Muhammad with regard to customs.

The lack of more solid evidence on the actual levying of customs by Muḥammad could be the result of obscuring terms which replaced the straightforward term maks, i.e., sadaqa, zakāt, kharj/khārāj and above all ‘ushūr, 97 or reports on customs were censored and omitted due to widespread uneasiness about this tax among Muslim scholars. 98

3.2. Was ‘Umar b. al-Khaṭṭāb a customs officer under Muḥammad?

The first official under Islam to be put in charge of the customs was no other than ‘Umar b. al-Khaṭṭāb, or at least this is what we are told in a report which demonstrates the common aversion to the term maks and its replacement by the plural of ‘ushr, namely ‘ushūr: when ‘Umar made Anas b. Malik a collector of customs (musaddiqan li-l-‘ushūr), the latter was not satisfied with the appointment («of all the offices within your power, you chose to put me in charge

95 Qūdāmah b. Ja‘far, K. al-kharāj, 241 ed. Sezgin et al., 195, follows the same reasoning in establishing that the levying of customs goes back to pre-Islamic times: fa-inna dhi’llika law laq yakin sunna jāhiliyya ya’rifunāhā, lam yakinī yatakhawwafina mina l-muslimīn mithla ḥattā yakūna fi amīnāthār ihlālūhā wa ṣa’dhīfūhā, wa-qud ab’tūla lālû dhi’llika bi-l-islām wa-summat l-zakāt... See also Ibn Abī Shayba, Musannaf. III, 197 who mentions the relevant clause in the treaty with the Thaqīf in a section dealing with customs (man qāla laysa ‘alā l-muslimīna ‘ushīr).
96 One has in mind the al-damu l-dam formula used in the ‘Aqaba meeting; Lecker, M., «Yahüd/’uhüd: a variant reading in the story of the ‘Aqaba meeting», Le Muséon 109 (1996), 169-184, at 170n; reprinted in idem, Jews and Arabs in Pre- and Early Islamic Arabia, n.” VI.
97 For the last-mentioned, see Forand, P. G., «Notes on ‘uṣr and maks», Arabica 13 (1966), 137-41; Khresât, «’Ushūr al-tijāra», 21-22.
98 The respectable muhaddith Rib‘ī b. Ḥirāsh whose floruit was in the latter half of the first Islamic century evaded the payment of customs; al-Dhahabī, Siyar a’lām al-nubalā‘, ed. Shu’ayb al-Arnawī et al., Beirut, 1401/1981-1409/1988, IV, 360.
of the maks?'», he complained. 99 ‘Umar assured him that there was nothing humiliating about it: he merely gave him the same office he himself had been entrusted with by the Prophet (qalladani amra l-‘ushur). ‘Umar went on to specify that he had been ordered to take 2.5% from the Muslims, 5% from the Dhimmis and 10% from the Ahl al-Ḥarb. 100

It is doubtful that ‘Umar was Muhammad’s customs collector; probably the report is meant to legitimize the controversial tax. Similarly, little historical value should be attached to the following conversation, supposed to have taken place several decades after ‘Umar’s reign. Ibn al-Zubayr appointed the same Anas b. Mālik as the governor of Baṣra, and Anas in his turn put his own mawla, Anas b. Ṣirin, in charge of the seaport of al-Ubulla which was within the former’s jurisdiction. 101 This was more or less equivalent to an appointment as a customs officer. The appointee, obviously dissatisfied, asked: «Do you want to make me a customs officer (‘āshir)?» The governor’s answer was: «Are you not pleased with ‘Umar b. al-Ḵhaṭṭāb’s letter?», and he produced the letter in question. It said that the Muslim merchants paid 2.5%, the Dhimmis 5% and the Ahl al-Ḥarb 10%. 102 These are apologetics at work: ‘Umar’s reported letter of appointment to Anas b. Ṣirin (as customs officer), which conveniently included the customs rates, was supposed to appease Anas b. Ṣirin and legitimize for him the collection of customs. The main theme in both stories is the defence of the customs against allegations that they were illegal. 103

A factor which probably contributed to the widespread opposition was the lack of effective supervision by the central authorities. It allowed customs collectors to apply arbitrary rates. See also Hussein, Das Steuersystem in Agypten, 83. The discussions of customs in the legal books only reflect a small number of cases.

99 Tuqalliduni l-maksa min ‘amalika?: Cf. below, n. 102.
100 Khlesāt, «‘Ushur al-tijāra», 21=al-Shaybānī, al-Ṣiyār al-kabīr, V, ed. ‘Abd al-‘Azīz Ahmad, Cairo, 1972, 2133. For the testimony of another official appointed by ‘Umar as customs officer, Ziyād b. Hudayr al-Asadī, see e.g. Abū Yūsuf, Khurāj, 135-36. Naturally, Ziyād’s appointment further strengthens the case for the legitimacy of this controversial tax. Morony, «Commerce in early Islamic Iraq», 700 remarks: ‘Internal tolls in fact existed in early Islamic Iraq at city gates, ports, bridges, and where chains were stretched across navigable rivers and canals, and such places were also the location of markets». Ziyād’s post in mentioned in op. cit., 708. At Dayr al-‘Āqūl on the Tigris there was a market at the toll-barrier in the ninth century; op. cit., 707.
102 Ibn Sa’d, Taḥaqāt, VII, 207. In al-Shaybānī, al-Ṣiyār al-kabīr, V, 2135, the embittered Anas b. Ṣirīn asked his master: tuqalliduni ‘alā (sic) l-maksa min ‘amalika?
103 Note Abū Yūsuf’s apologetic formulation regarding this tax: fa-inna ‘Umar b. al-Khaṭṭāb waḍa‘a l-‘ushur fa-lā ba‘sa bi-akhdhīhā idhā lam yutatda fihā ‘alā l-nās wa-yu’khadhi bi-akhṭara minmū yajibu ‘alayhim; Abū Yūsuf, Khurāj, 134; Le livre de l’impôt foncier, 207.
There is yet another link between 'Umar and the levying of customs, this time allegedly going back to pre-Islamic times: he reportedly tried to evade the payment of customs in Filastîn to a collector of the Judham tribe. Whether this is a reliable historical record is another question. In my opinion, this is a fantastic story invented by scholars who opposed the levying of customs. It can be argued that both those who supported the levying of customs and those who opposed it used 'Umar's formidable figure to buttress their conflicting positions.

The customs levied in the market of Medina are referred to elsewhere as 'ushr al-süq: a customs officer appointed by 'Umar b. al-Khaṭṭâb, al-Sâ'îb b. Yazîd (Ibn Ukht Namir) is said to have been in charge of 'ushr al-süq together with Abdallâh b. 'Utba b. Mas'ûd. They levied customs on food supplies brought by the nabat. Abdallâh b. 'Utba and an unspecified man were reportedly levying şadaqât or customs from food supplies brought by the Ahl al-Dhimma. That 'Umar did not introduce this tax but merely continued an existing practice is explicitly stated: when Mâlik b. Anas asked Ibn Shîhâb al-Zuhri why 'Umar levied the 'ushr from the nabat, the latter replied: «This was levied from them in the Jâhiliyya and 'Umar too imposed it on them.»

Finally, let us look at the evidence regarding 'Uthmân b. 'Affân’s practice in the market of Medina. It became a matter of political dispute, hence the relative richness of detail. At the time of 'Uthmân both customs and rent were levied in the market of Medina. One of the accusations leveled at 'Uthmân was that he put his relative, al-Harith b. al-Hakam b. Abi al-'As, in charge of the market of Medina.


105 Ibn Manzûr, Mukhtasar ta'rikh Dimashq, ed. Rûhîyya al-Nahhâs et al., Damascus, 1404/1984-1409/1989, IX, 203. See also Buckley, R. P., «The Muhtasib», Arabica 39 (1992), 59-117, at 60-61 (where the nature of the 'ushr taken from the «Nabateans» is not specified); also 102, n. 166; with regard to the levying of jizya by the muhtasib, Buckley refers to the levying of 'ushr from the nabat by al-Sâ'îb b. Yazîd, which indicates that «the early 'Amîl al-Süq had some connection with the collection of taxes from the non-Muslim population. It is not known what this tax refers to but it could perhaps be identified with the taxes which 'Umar is credited with establishing on certain trades; in this case [it] may be the trade in which the Nabateans were principally employed». However, there is little doubt that the text refers to customs on goods brought to the market. It appears that the term 'ushr was considered problematic, and hence instead of kâha ya'mala... alâ 'ushr al-süq, we are told by al-Sâ'îb: kuntu ghulâmân 'âmilân... 'ala siqâ l-Madina; Mâlik, al-Mawâṣâta', ed. Muḥammad Fu'âd 'Abd al-Baqî, Cairo, 1370/1951, I, 281. See also Ibn 'Asîkîr, XX, 117-18.

106 Ibn Abî Shayba, Muṣānaf, III, 198 (Kitâb al-Zakât).

107 Kâna dhûlîka yu'khadhu minhum fi l-jâhiliyya fa-alzamanahum dhûlîka 'Umar; loc. cit.
so that he would levy customs on the goods sold in it. The circles supporting 'Uthmān provided the following answer to this accusation: it was simply not true, 'Uthmān merely put him in charge of the market of Medina so that he supervise the weights and capacity measures. There is of course no necessary contradiction between the levying of customs and the said supervision. In a harsh accusation directed at 'Uthmān, the control of the market given to al-Ḥārith is referred to as a concession, or rather «a fief of sustenance» (tuʿma). In other words, it is argued that the market was made a source of income for this official. Al-Ḥārith, we are told, dictated his prices upon buying and selling (that is to say, he was an active trader and not a mere supervisor). Moreover, he levied from the traders the rent imposed on the shops (or rather booths, or stalls). We have seen that Muʿawiyah built houses in the market of Medina on which he imposed kharāj, i.e., rent. If indeed al-Ḥārith hired out shops in the market, that would make him the first official in Islam to stray from the Prophet's ruling that the market was a charitable endowment (al-sūq sadaqa).

The abandonment of the Prophet's ruling is emphasized by the Shi'ite author Ibn ʿAbī l-Ḥaḍīfī: the Prophet gave the Muslims as a charitable endowment (taṣaddaqa) the land of the market of Medina (mawḍūʿ sūq l-Madīna, i.e., the site on which the market was later established), which was called Maḥḍūr, and 'Uthmān granted it (aqṭāʿahu) to al-Ḥārith b. al-Ḥakām, Marwān b. al-Ḥakām's brother.

108 Yaʾkudhu minhā ʿashīra mā yubūʿu fiḥā; Dīyārābārī, Khamis, II, 267:7.
109 ...Li-yurṣiʿyā amra l-mathāqil wa-l-mawāzin; op. cit., II, 268:1.
110 Which, if historical, would make al-Ḥārith the first known Islamic official to have undertaken this central duty of the later muṭṭasib; cf. Buckley, «The Muṭṭasib», 63, 83.
111 Al-Baladhuri, Ansāb al-ʾashrāf, IV, 537: atʿamta l-Ḥārith b. l-Ḥakāmi l-sūqa. On the term tuʿma see also Bosworth, «Abū ʿAbdallāh al-Khwārazmi», 133: «...an estate... handed over to a man for him to cultivate and pay tithe on it. It remains his during the period of his lifetime, but when he dies, it is resumed (urrujiʿat) from his heirs».
112 Wa-yajbi maqāʾida l-mutasawwiqīna. This is a reference to al-Maqaʾid, i.e., shops close to 'Uthmān's court; see Lecker, «On the markets of Medina», 145; Chalmeta, El «señor de zoco», 218 («...había tasado los puestos de los comerciantes»).
113 Above, n. 7.
114 Moreover, it would seem that he carried out building activity in the market, transgressing yet another prohibition ascribed to Muḥammad with regard to markets.
115 The correct reading of this placename is probably Maḥḏūr; Lecker, «On the markets of Medina», 53-54.
ABREVIATIONS OF PRIMARY SOURCES QUOTED MORE THAN ONCE

Abû Yusuf, Kharâj, Cairo, 1352, A.H.
al-Diyârbakrî, Ta’rîkh al-khamis, Cairo, 1283/1866 (reprint Beirut, n.d.).
al-Maqnûzî, Khitât, Büliq, 1270, A.H.
al-Marzûqî, Kitâb al-azmîna wa-l-amkîna, Hyderabad, 1332 A.H.
al-Taḫrîr, Ta’rîkh al-aghâmî hâl al-mulîk, ed. Muḥammad Abû l-Faqq Ibrâhîm, Cairo, 1380/1960-1387/1967. References to the Leiden edition were added between square brackets.

ABSTRACT

The levying of customs was common in pre-Islamic Arabia. They were usually levied in the annual fairs and in Mecca, where Muḥammad’s ancestor, Qusayy, repor-
tedly levied them from the non-Meccans entering Mecca. Muhammad continued this age-old practice, hence the phrase \( lā \ yu’ṣharīna \ wā-lā \ yuhṣharīna \) in his letters to certain parties. It exempted these parties from the payment of customs, while all the others had to pay up.

**Resumen**

La leva de impuestos de aduana era práctica común en la Arabia preislámica. Se recaudaban en las ferias anuales y en La Meca, donde el antepasado de Muhammad, Qusayy, los recaudaba entre los no-mequenses que entraban en la ciudad. Muhammad continuó esta práctica ancestral, como atestigua la frase \( lā \ yu’ṣharīna \ wā-lā \ yuhṣharīna \) en algunas cartas, frase por la cual los receptores quedaban exentos de los derechos de aduana, mientras que todo el resto tenía que pagarlos.