

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

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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.¹ In what follows it is argued that the levying of this time-old tax in Islam started already at the time of the Prophet MuḤammad who continued existing practice in Arabia.²

1. MUḤAMMAD'S *KHARĀJ*-FREE MARKET WAS A MARKET WITHOUT RENT

Before discussing customs dues proper, we should examine the meaning of the term *kharāj* 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 MuḤammad and the Jews of Medina, namely the economic rivalry between them.³ In

¹ *El*², s.v. Maks; Becker, C. H., *Papyri Schott-Reinhardt*, I, Veröffentlichungen aus der Heidelberger Papyrus-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 MuḤammad 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-Ḥarb, i.e., residents of foreign countries.

² Valuable information about customs is included in the small book of Mikhā'il 'Awwād, *al-Ma'āšir fī bilād al-rūm wa-l-'arab (Land and Sea Toll Barriers in Byzantine and Moslem Empires)*, Baghdad, 1948. The book is a revised version of a series of articles published by 'Awwād in nine issues of the *Muqtataf* journal in 1944 and 1945. On the term *ma'šir* see *El*², s.v. (Bosworth, C. E.). For a recent article on the same subject see Rex-Smith, G., «Have you anything to declare? Maritime trade and commerce in Ayyubid Aden: Practices and taxes», in *Proceedings of the Seminar for Arabian Studies* 25 (1995), 127-40.

³ Kister, M. J., «The market of the Prophet», *JESHO* 8 (1965), 272-76; reprinted, with additional notes, in idem, *Studies in Jāhiliyya and Early Islam*, London, 1980, n. IX (Variorum Reprints); for a Hebrew translation see idem, *Meḥqarim be-hithavvut ha-islam (Studies on the*

some of these reports we find the term *kharāj* which, as is well-known, has several meanings.⁴

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 'Aṭā' 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».⁵

What is the *kharāj* prohibited by Muḥammad? While Kister rendered it «taxes»,⁶ 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 (*dārayni*) on which he imposed *kharāj*.⁷ 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

Emergence of Islam), trans. A. Amir, ed. Lecker, M., Jerusalem, 1998, 74-76. Bianquis, Th., and Guichard, P., write in *ET*, s.v. *sūk*: 'It is known..., that Muḥammad designated an open space as a *sūk*, forbade any building work on this site, and even had tents erected there». In fact, a report on the Prophet's market mentions one tent only; al-Samhūdī, 747-48; Chalmeta, P., *El «señor del zoco» en España: edades media y moderna. Contribución al estudio de la historia del mercado*, Madrid, 1973, 61. For further details on this and other markets of Medina see Lecker, M., «On the markets of Medina (Yathrib) in pre-Islamic and early Islamic times», *Jerusalem Studies in Arabic and Islam (JSAI)* 8 (1986), 133-47; reprinted in idem, *Jews and Arabs in Pre- and Early Islamic Arabia*, Aldershot, 1998, n.º IX (Variorum Collected Studies Series).

⁴ It denotes tax in general and is also found in connection to various specific taxes, thus causing considerable confusion; *ET*, the beginning of s.v. *kharādj* (Cl. Cahen).

⁵ Al-Samhūdī, 747; an identical text (with a fuller *isnād*) can be found in Ibn Shabba, *Ta'rikh al-Madīna al-munawwara*, ed. Fahīm Muḥammad Shaltūt [Mecca, 1399/1979], I, 304; *op. cit.*, ed. 'Alī Muḥammad Dandal and Yāsīn Sa'd al-Dīn Bayān, Beirut 1417/1996, I, 183; *cf.* Kister, «The market of the Prophet», 174. Other reports in the same chapter (748) have *wa-lā yuḍrabu 'alayhi kharāj* and *wa-lā yuḍrabanna 'alayhi kharāj*. The meaning remains unchanged.

⁶ See e.g. Kister, «The market of the Prophet», 273: «...and do not impose taxes for it».

⁷ *Wa-ḍaraba '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-Qaṭirān* and *Dār al-Nuqṣān* 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'āwiya's practice, or even as a protest against Mu'āwiya 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'āwiya'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 MuḤammad, 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 MuḤammad 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 As

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-sūq ḥawānūt fī asfalihā wa-'alāliyya tukrā 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-sūq ṣadaqa fa-lā yuḍrabanna 'alā aḥād fihī kirā'*; al-Samhūdī, 749; Chalmeta, *El «señor de zoco»*, 64. The formulation is reminiscent of MuḤammad's injunction quoted above, *wa-lā yuḍrabu 'alayhi kharāj*. The Prophet's declaration that the markets were charitable endowments (the Prophet reportedly *taṣaddaqa 'alā l-muslimīna bi-aswāqihim*; al-Samhūdī, 748), may go back to Shī'ite circles because its *isnād* ends with MuḤammad b. 'Abdallāh b. al-Ḥasan b. al-Ḥasan b. 'Alī b. Abī Ṭālib, better known as al-Nafs al-Zakiyya or the Pure Soul who rebelled against al-Manṣūr. The rebellion gives this statement a political context since it was diametrically opposed to al-Manṣūr's practice (see below, n. 24, cf. below, n. 116).

¹¹ Al-Samhūdī, 753:4: *fa-lam tazal, ay tilka l-dār..., wa-fihā l-tujjār fa-yu'khadhu minhumu l-kirā'*.

¹² Abū Hilāl al-'Askarī, *al-Awā'il*, ed. MuḤammad al-Miṣrī and Walīd Qaṣṣāb, Damascus, 1975, 276.

will be shown presently, *ghalla* in this context means rent,¹³ 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-Walīd b. ‘Abd al-Malik’s administrators we find his *mawlā*, Nufay’ b. Dhu’ayb, who was in charge of the caliph’s *mustaghallāt* in Damascus; i.e., he managed al-Walīd’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.¹⁴

The singular form of *mustaghallāt* is *mustaghall*: a resident of Damascus who belonged to the Qurashī 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.¹⁵ The details of this grant are to be found in another report: the Jumāḥī 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.¹⁶

Let us turn now to the term *ghalla* itself in the sense of rent. ‘Abdallāh b. ‘Awn (d. 151/768), a rich *mawlā*¹⁷ who was a merchant¹⁸ and a prominent *muḥaddith*, had a Christian agent (*wakīl*) 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

¹³ Cf. Lane, E. W., *Arabic-English Lexicon*, s.v., 2278c.

¹⁴ Al-Jahshiyārī, *Kitāb al-wuzarā’ wa-l-kuttāb*, ed. al-Saqqā, al-Abyārī and Shalabī, Cairo, 1401/1980, 47. Duri, A. A., writes regarding the Umayyad period: «A *diwān al-mustaghallāt* was established, apparently to administer government lands in cities, and buildings, especially shops rented to the people»; *EP*², s.v. *Diwān*. Cahen, C. L., defines the *mustaghallāt* 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*², s.v. *Darība*.

¹⁵ *Wa-aqta’ahu l-‘abbāsiyyūna ... iqtā’an li-dalālatihi iyyāhum ‘alā Banī Umayya*; Ibn ‘Asākir, XXXI, 237.

¹⁶ The boundaries of his grant are specified as follows: *min sūqi l-lu’lu’ ilā qanṭarati l-gharābil*; *loc. cit.* Ibn ‘Asākir suspects that an «‘Abdallāh» is missing between «‘Amr» and «Ṣafwān» in the Jumāḥī’s pedigree.

¹⁷ Among the captives taken in Maysān was Arṭabān, the grandfather of ‘Abdallāh b. ‘Awn b. Arṭabān; *EP*², s.v. Maysān (Streck, M.-Morony, M.).

¹⁸ On the cooperation between ‘Abdallāh and Muḥammad b. Sīrīn in the former’s *ḥānūt* see Ibn Sa’d, *Ṭabaqāt*, VII, 201. On the term *ḥānūt* cf. Naji, A. J., and Ali, Y. N., «The suqs of Basrah:

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». ¹⁹ 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 (*fī l-'aṭṭārīna*) but the other one he owned, on *sikkat al-mirbad* or Market Street. ²⁰

Another example of *ghalla* in the sense of rent comes from Wāsiṭ where a *ghalla* was imposed on every shop. Iyās b. Mu'āwiya ²¹ was in charge of the market of Wāsiṭ. Sa'īd al-Thaqafī used to sell names to the People of Shām (Ahl al-Shām. i.e., the troops of the Syrian garrison stationed in Wāsiṭ; they are probably being mocked here). Whenever a baby was born to one of them, he would come to Sa'īd and the latter would ask: «A name of Arabs or a name of *mawālī*?», then he would produce a sheet including names and sell a name to the Shāmī for two dirhams. This Sa'īd had a shop in the market of socks sellers. A rent (*ghalla*) had to be paid for every shop in Wāsiṭ, ²² so he asked Iyās b. Mu'āwiya, who was in charge of the market of Wāsiṭ, for a reduction in his rent. However, the latter turned the request down, having gauged the shop's turnover. ²³

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-Manṣūr 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. ²⁴

In sum, the *kharāj* 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.

commercial organization and activity in a medieval Islamic city», *JESHO* 24 (1981), 298-309, at 301.

¹⁹ Ibn Sa'd, *Ṭabaqāt*, VII, 263-64: *wa-kāna lahu wakīl naṣrānī yuḥyī* [read: *yajbī*] *ghallata dārihi*...

²⁰ Ibn 'Asākir, XXXI, 367; Ibn Sa'd, *Ṭabaqāt*, VII, 268. For the location of Market Street see Najī and Ali, «The suqs of Basrah», 303, 306.

²¹ On whom see *EP*, s.v. (Pellat, Ch.).

²² *Wa-kāna li-Sa'īd ḥānūt fī aṣḥābi l-jawārib, wa-kāna 'alā kull ḥānūt bi-Wāsiṭ ghalla*.

²³ Aslam b. Sahl al-Wāsiṭī, *Ta'riḫ Wāsiṭ*, ed. Kurkis 'Awwād, Baghdad, 1387/1967, 92-93 = reprint Beirut, 1406/1986, 84. For an entry on a Sa'īd's son, Mustalim, see al-Mizzī, *Tahdhīb al-kamāl*, XXVII, 429-32. Obviously, the reduction was within the powers of the official put in charge of the market.

²⁴ *Fa-ulzimū mina l-ghalla aqalla mim mā ulzima lladhina nazalū fī binā'i l-sulṭān*; Ṭabarī, VII, 653 [III, 323-24]; in *The History of al-Ṭabarī*, XXIX, trans. Kennedy, H., New York, 1990, 8, '*alā qadri l-dhar'* (var. *dhirā'*) is wrongly rendered: «according to size». See also Lassner, J., *The*

2. CUSTOMS IN MECCA AND IN THE FAIRS OF PRE-ISLAMIC ARABIA

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,²⁵ customs were levied at the annual fairs which took place in different parts of Arabia.²⁶ In declaring his new market *kharāj*-free, Muḥammad was not following the practice in the fair of 'Ukāz,²⁷ 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

topography of Baghdad in the Middle Ages, Detroit, 1970, 185: «...subsequent to the development of al-Karkh, a special tax (*ghallah* and *ujrah*) was fixed, reportedly according to the size of the establishments». For the concept of taxation according to the taxpayer's ability, cf., the term *ḥāqa* in Kister, M. J., «The social and political implications of three traditions in the Kitab al-Kharāj of Yahya b. Adam», *JESHO* 3 (1960), 326-34, at 326-31; also idem, «'An yadin (Qur'ān, IX/29): An attempt at interpretation», in *Arabica* 11 (1964), 272-78, at 278. On the markets of Baghdad see also Morony, M., «Commerce in early Islamic Iraq», *Asien Afrika Lateinamerika* 20 (1993), 699-720, at 707.

According to al-Khaṭīb al-Baḡhdādī, *Ta'riḫ Baḡhdād*, Cairo, 1349/1931, I, 81, al-Manṣūr 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 yaḍa' i l-Manṣūr 'alā l-aswāq ghalla ḥattā māta fa-lammā stakhlafa l-Mahdī... amara fa-wuḍi'a 'alā l-ḥawāniti l-kharāj, wa-waliya dhālika Sa'id al-Khursi sanata sab'in wa-sittina wa-mi'a*. 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-Manṣūr's regime in the building of shops in mentioned in al-Balādhurī, *Futūḥ*, 295: *wa-ja'ala majma'a l-aswāq bi-l-Karkh wa-amara l-tujjār fa-'btanawi l-ḥawānīt wa-alzamaḥumu l-ghalla*. Yāqūt al-Ḥamawī, *Mu'jam al-buldān*, s.v. Karkh Baḡhdād, has that al-Manṣūr imposed a *ghalla* according to the trade (*'alā qadri l-ṣinā'a*; cf., the term *dhar'*). One assumes that a jeweler paid a higher rent than a butcher.

²⁵ See below, n. 54.

²⁶ See already, Hussein, F., *Das Steuersystem in Ägypten von der arabischen Eroberung bis zur Machtergreifung der Tūlūniden 19-254/639-868 mit besonderer Berücksichtigung der Papyrusurkunden*, 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-Reinhardt*, 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 Chalmers, *El «señor de zoco»*, 64.

Ḥaram 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-Muḥammadan Mecca, Quṣayy,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-'Azīz b. 'Abdallāh b. Khālīd b. Asīd al-Umawī, to abolish the *maks*.³²

'Abd al-'Azīz did not start his career under 'Umar II but was the governor of Mecca under both 'Abd al-Malik b. Marwān³³ and Sulaymān b. 'Abd al-

²⁸ For Ibn Khaldūn, the levying of taxes (*maghārim*) from the pilgrims is among the phenomena heralding the decline of states; see his *Muqaddima*, ch. 37, entitled: *fi darbi l-mukūs awākhirā l-dawla*, «In the later (years) of dynasties, customs duties are levied»; Ibn Khaldūn, *The Muqaddimah*², tr. Rosenthal, F., Princeton, 1967, II, 91-92 (92: «Much of this sort happened in the Eastern cities during the later days of the 'Abbāsīd and 'Ubaydid(-Fāṭimid) dynasties. Taxes were levied even upon pilgrims making the pilgrimage». Cf., Bosworth, C. E., «Abū 'Abdallāh al-Khawārazmī 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.º XV.

²⁹ On whom see *EL*², s.v., Quṣayy (Levi Della Vida).

³⁰ Ibn Sa'd, *Ṭabaqāt*, I, 70: *wa-kāna ya'shuru man dakhala Makka siwā ahlihā*. This follows after the listing of the sacred offices which he held: *wa-kānat ilayhi l-ḥijāba wa-l-siqāya wa-l-rifāda wa-l-liwā' wa-l-nadwa wa-ḥukmu Makka kulluhu*.

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

³² Ibn Zanjawayh, *Kitāb al-amwāl*, ed. Shākir Dhīlo Fayyād, Riyadh, 1406/1986, III, 1194, n. 2248: *...sami'tu Ibn Jurayj yaqūlu: kataba 'Umar b. 'Abd al-'Azīz wa-huwa khalīfa ilā 'Abdī l-'Azīz b. 'Abdillāh ani rḥa'i l-maks 'an Makkafa-lammā ruḥi'a jā'ahu l-nās min qibalihim bi-zakāt amwālihīm sab'ati ālāf dīnār fa-ṣarrahā fa-ba'atha bihā ilā 'Umar b. 'Abdī l-'Azīz fa-raddahā 'Umar ilayhi wa-qāla qsimhā fi fuqarā' ahl Makka*. See also Gibb, H. A. R., «The fiscal rescript of 'Umar II», *Arabica* 2 (1955), 1-16, at 7, 14 (7: «As for taxes on trade (*maks*), this is the *baḥs* which God prohibited and said: «Defraud not (*lā tabḥasū*) men in their affairs, and act not corruptly in the land creating mischief» (s. xi, 84); but they have [abusively] called it by another name»); Azeddine Guessous, «Le rescrit fiscal de 'Umar b. 'Abd al-'Azīz: un nouvelle appréciation», *Der Islam* 73 (1996), 113-37, at 127-29 (for an entry on the official mentioned here, who was in charge of the *maks/ushr/ushūr/jawāz* of Egypt, see e.g. Ibn 'Asākir, XVIII, 138-44); Morimoto, K., *The Fiscal Administration of Egypt in the Early Islamic Period*, Kyoto, 1981, 128. See also Ibn Sa'd, *Ṭabaqāt*, V, 345 (*lammā waliya 'Umar b. 'Abd al-'Azīz waḍa'a l-maks 'an kullī arḍ wa-waḍa'a l-jizya 'an kull muslim*); *op. cit.*, 378 (when 'Umar II ascended the throne, he *khallā sabīla l-nās mina l-jusūr wa-l-ma'ābir*). 'Umar II ordered his governor in Baṣra, 'Adī b. Arṭa'a, to abolish the *maks*, among other dues; Ibn Sa'd, *Ṭabaqāt*, V, 383.

For the legal issue involved in the passage from Ibn Zanjawayh quoted above, namely the legitimacy of paying the *zakāt* to the central government, cf., Kister, M. J., «Social and religious concepts of authority in Islam», *JSAI* 18 (1994), 84-127, at 104-105; reprinted in idem, *Concepts and Ideas at the Dawn of Islam*, Aldershot 1997 (Variorum Collected Studies Series), n.º V; for a Hebrew translation see idem, *Mehqarim be-hithavvut ha-islam*, 154-78, at 165. See also below, n. 90.

The editor of Ibn Zanjawayh significantly remarks that he could not find a parallel of this report. He also criticizes the *isnād* which indicates his displeasure with the contents.

³³ Al-Mizzī, *Tahdhīb al-kamāl*, XVIII, 150-51, quoting al-Zubayr b. Bakkār; Muṣ'ab al-Zubayrī, *Kitāb nasab Quraysh*, ed. E. Lévi-Provençal, Cairo, 1953, 191.

Malik.³⁴ Upon 'Umar II's ascension to the throne, 'Abd al-'Azīz remained in office and held it to 'Umar's death.³⁵ Under Yazīd b. 'Abd al-Malik he was still the governor of Mecca.³⁶

Members of 'Abd al-'Azīz's family were among the governors of Mecca since the earliest days of Islam. 'Abd al-'Azīz's grandfather was Khālid b. Asīd whose brother, 'Attāb, was Muḥammad's first governor in Mecca; he also held the same office throughout Abū Bakr's caliphate.³⁷ Moreover, 'Abd al-'Azīz's father, 'Abdallāh b. Khālid b. Asīd, officiated as the governor of Mecca under both 'Uthmān and Mu'āwiya.³⁸ Unfortunately, no evidence has surfaced so far regarding the levying of customs in Mecca by earlier governors, be they 'Abd al-'Azīz's relatives or others. However, the precious report just quoted about 'Umar II indicates –even if it is not historical³⁹– 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 Quṣayy. Although this tax was levied in

³⁴ Ibn 'Asākir, XXXVI, 292, 296, 297.

³⁵ *Loc. cit.*; 'Umar b. Fahd, *Ithāf al-warā bi-akhbār umm al-qurā*, Mecca, 1403/1983-1404/1984, II, 132-33. Cf., Crone, P., «Were the Qays and Yemen of the Umayyad period political parties?», *Der Islam* 71 (1994), 1-57, at 22.

³⁶ Ṭabarī, VI, 589 [II, 1394]; VI, 618 [II, 1436]; he was dismissed in 103/721-22; VI, 620 [II, 1437].

³⁷ Al-Balādhurī, *Ansāb al-ashraf*, IVi, 456: Muḥammad made him the governor of al-Ṭā'if too. 'Attāb'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 yakhruṣa a nāb Thaḳīf ka-kharṣi l-nakhl*. For other letters of 'Umar II to 'Abd al-'Azīz, see al-Fākihī, *Akhbār Makka*, III, 115-16, n.° 1870; 249, n.° 2062.

³⁸ Al-Fāsi (Ṭaqī al-Dīn), *al-'Iqd al-thamīn*, V, 133; al-Fāsi (Ṭaqī al-Dīn), *Shifā' al-gharām bi-akhbār al-balad al-ḥarām*, Cairo, 1956, II, 165, 167; *op. cit.*, ed. 'Umar 'Abd al-Salām Tadmurī, Beirut, 1405/1985, II, 257, 260. At some time (no doubt together with the governorship of Mecca) 'Abdallāh b. Khālid was also the governor of al-Ṭā'if; see al-Balādhurī, *Ansāb al-ashraf*, MS Süleymanīe Küttüphanesi (Reisülküttüp Mustafa Efendi), 597/598, 1216a: in the entry on al-Ḥajjāj it is reported that he flogged and dragged on the ground a son of 'Abdallāh b. Khālid in retaliation for 'Abdallāh's flogging and dragging of an unspecified member of the Thaḳīf when the former had been the governor of al-Ṭā'if. A passage from 'Umar b. Shabba's *Kitāb Makka* in Ibn Ḥajar, *Iṣāba*, IV, 72 shows 'Abdallāh b. Khālid interceding with caliph 'Uthmān 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.

³⁹ Hussein, *Das Steuersystem in Ägypten*, 82 remarks correctly: «Ob Umar II. diesen 'Uṣūr bzw. Mukūs abgeschafft hat, ist zweifelhaft, denn es wird sogar berichtet, daß er einen Brief an seinen Zöllner in Ägypten, nämlich Zuraiq Ibn Ḥayyān, geschrieben haben soll, in dem er ihm befahl, wie er diese Abgabe eintreiben soll: Zuraiq sollte danach auch diese Steuer nur von den Ahl ad-Ḍimma in Höhe von 5% ihrer Handelsgüter eintreiben. Hierzu müsse eine Quittung Barā'a ausgestellt werden». Morony, «Commerce in early Islamic Iraq», 708-709 believes that 'Umar II's abolition of tolls and market taxes was only temporary.

Mecca and not at a seaport such as Ayla, or at a crossing point between Islamic regions such as Rafaḥ,⁴⁰ it was collected on behalf of the central government.⁴¹

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 Ḥaram: the *Shi'b* (road, water-course or pass between two mountains) called after the Banū 'Abdallāh b. Khālid b. Asīd (scil. 'Abd al-'Azīz b. 'Abdallāh and his brothers), was located on the old Mecca-al-Ji'rāna (or al-Ji'r'rāna) road, on the boundary of the Ḥaram.⁴² One is tempted to assume that a customs post was located on their land, but there is no evidence to support this assumption.⁴³

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.⁴⁴

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,⁴⁵ 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,⁴⁶ was of a subdivision of the Kinda called al-Sakūn,

⁴⁰ Hussein, *Das Steuersystem in Ägypten*, 81. Cf. Becker, *Papyri Schott-Reinhardt*, I, 54, 55, who mentions al-'Arīsh.

⁴¹ Cf. Ibn Sa'd, *Ṭabaqāt*, 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.

⁴² Al-Fākihī, *Akhbār 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 (Taḳī al-Dīn), *al-'Iqd al-thamīn*, 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'rāna.

⁴³ As the placename probably suggests, a customs post was located at some time in al-Ḍarība (which is the modern name of Dhāt 'Irq); Lecker, M., *The Banū Sulaym: A Contribution to the Study of Early Islam*, Jerusalem, 1989, 39. Cf. below, n. 70.

⁴⁴ For customs probably levied by the Ghassānids at Buṣrā see Lecker, M., «The levying of taxes for the Sassanians in Pre-Islamic Medina (Yathrib)», *JSAI* (forthcoming).

⁴⁵ Kister, M. J., «al-Ḥīra: some notes on its relations with Arabian», *Arabica* 15 (1968), 143-69, passim; reprinted in idem, *Studies in Jāhiliyya and Early Islam*, n.° III; for a Hebrew translation see idem, *Meḥqarim behithavvut ha-islam*, 49-66.

⁴⁶ On whom see *EP*², s.v. (Lecker, M.).

while belonging at the same time to the 'Ibād or the Christian tribal groups of al-Ḥīra. The 'Ibād and the Ghassāniyyūn competed over the control of Dūma. When the former ruled over it, Ukaydir held sway, and when the latter did, it was Qunāfa al-Kalbī 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 lords⁴⁹) in the fair of al-Mushaqqar in Hajar 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-Ḥīra and the Banū al-Mustakbir 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 Ṣuḥār and Dabā further south along the coast customs were levied by al-Julandā b. al-Mustakbir.⁵¹ In the fair of al-Shiḥr in Ḥaḍramawt no customs were levied since it did not belong to a kingdom.⁵² In 'Adan 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, *Muḥabbar*, 263-64. Elsewhere Ukaydir is specifically said to have been in allegiance to Heraclius (*fi ṭā'at Hiraql*); al-Mas'ūdī, *al-Tanbīh wa-l-ishrāf*, ed. de Goeje, Leiden, 1894, 248. One assumes that in the turbulent decades preceding the advent of Islam Ukaydir's loyalty fluctuated between the rival empires.

⁴⁸ Ibn Ḥabīb, *Muḥabbar*, 64: *wa-lam yabi' bihā aḥad* [al-Marzūqī, *Azmina*, II, 161 adds: *mina l-Shām wa-lā ahlu l-'Irāq*] *shay'an illā bi-idhnihi* [al-Marzūqī adds: *wa-lam yashtari fihā wa-lam yabi'*] *ḥattā yabi'a l-malik kulla mā arāda bay'ahu, ma'a mā yaṣīlu ilayhi min 'ushūrihā* [al-Marzūqī, II, 161-62 has: *min maksihā*].

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

⁵⁰ Ibn Ḥabīb, *Muḥabbar*, 265; al-Marzūqī, *Azmina*, II, 162.

⁵¹ Ibn Ḥabīb, *Muḥabbar*, 265-66.

⁵² *Laysat bi-arḍ mamlaka*; *op. cit.*, 266.

Khusro I Anūshirwān. However, the Abnā' «did not trade in their fairs» (*fī aswāqihim*). This formulation seems to indicate that the Abnā' refrained from trading in the fairs of the Arabs in general, not only in that of 'Adan. The customs of the fair of Ṣan'ā' were also levied by the Abnā'.⁵³ As already mentioned, in the fair of 'Ukāz there were no customs.⁵⁴

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 Ṣan'ā'. Customs dues were one aspect of the Sassanian involvement in Arabian trade on the eve of Islam.

3. CUSTOMS AT THE TIME OF MUḤAMMAD

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 Baḥrayn, al-Mundhir b. Sāwā of the Banū 'Abdallāh 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 Baḥrayn, whereas under the Sassanians he had only been in charge of the Arab tribes of that region.⁵⁵ (There was also continuity with regard to the Sassanian governor in the Yemen, Bādhān/m, who belonged to the above-mentioned Abnā'⁵⁶ and whose seat was naturally in Ṣan'ā'). The levying of customs at the seaports of Baḥrayn 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 Tamīmī Banū 'Abdallāh b. Zayd b. 'Abdallāh b. Dārim, a subdivision of the Dārim,⁵⁷ al-Mundhir b. Sāwā 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 'Abdallāh b.

⁵³ *Loc. cit.*, Marzūqī'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 Abnā'; Marzūqī, *Azmina*, II, 164.

⁵⁴ Ibn Ḥabīb, *Muḥabbar*, 267.

⁵⁵ See *EP*², s.v. al-Mundhir b. Sāwā, VII, 570a-572b (Kister, M. J.).

⁵⁶ Ibn Ḥajar, *Iṣāba*, I, 338.

⁵⁷ *EP*², s.v., Tamīm, at 173b, bottom right.

Zayd who was nicknamed al-Asbadhī. 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 ‘Abdallāh 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-fīhi l-bayt*). Zurāra begot many famous descendants, including his renowned son, Ḥājjib.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, ‘Abdallāh b. Zayd b. ‘Abdallāh b. Dārim, the eponym of the group to which al-Mundhir belonged, was nicknamed al-Asbadhī. The presumed levying of customs by al-Mundhir should no doubt be linked to the following definition of the Asābidh⁶⁰ which specifically relates to their military role in the service of the Sassanians:

The Asābidh were Persians (*nās mina l-furs*)⁶¹ who were the garrison (*maslaḥa*) of al-Mushaqqar. Al-Mundhir b. Sāwā from the Banū ‘Abdallāh b. Dārim⁶² was one of them, as well as ‘Isā al-Khaṭṭī and Sa‘īd b. Da‘laj.⁶³

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

⁵⁸ Ibn al-Kalbī, *Jamharat al-nasab*, 197-201; 276 (a list of his ten children); Ibn Hazm, *Jamharat ansāb al-‘arab*, ed. ‘Abd al-Salām Hārūn, Cairo, 1382/1962, 232. Ḥājjib died in the twenties of the 7th century; *EP*², s.v. Ḥājjib b. Zurāra (Kister, M. J.).

⁵⁹ Ibn al-Kalbī, *Jamharat al-nasab*, 276.

⁶⁰ In *EP*², s.v., al-Mundhir b. Sāwā, at 570a, the Asābidh or al-Ispadhiyyūn are identified with the ‘Abdallāh b. Zayd tribal group. But this contradicts the definition of the Asābidh 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., «Muḥammad 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».

⁶² More precisely, the ‘Abdallāh b. Zayd b. ‘Abdallāh b. Dārim.

⁶³ Al-Ḥarbī, *Gharīb al-ḥadīth*, ed. Sulaymān b. Ibrāhīm al-‘Ayid, Mecca, 1405/1985, 655. Cf. *Lisān al-‘arab*, s.v. *s.b.dh.*: *kānū maslaḥatan li-ḥiṣni l-Mushaqqar*, the singular is Asbadhī and the plural is Asābidha. Ṭafara called the Arabs of Baḥrayn ‘*abid 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 Tamīm, al-Aqra‘ b. Ḥābis⁶⁴ and al-Zibriqān b. Badr,⁶⁵ made to Abū Bakr during the *ridda*: in return for the *kharāj* of Baḥrayn they would guarantee that no one from their tribe will apostatise.⁶⁶ The mediator was Ṭalḥa b. ‘Ubaydallāh, and Abū Bakr consented. However, ‘Umar objected to this and destroyed the document written between the caliph and the Tamīmīs.⁶⁷

What was the *kharāj* demanded by the two bedouin leaders? One cannot rule out the possibility that they wanted the poll-tax of Baḥrayn, or its land-tax, or both. But it is more likely that they demanded the customs of al-Mushaqqar known to have been levied before Islam by the ‘Abdallāh b. Zayd, and assumed to have been levied after the advent of Islam by al-Mundhir b. Sāwā who was one of them. We probably have here an internal Tamīmī affair. While al-Zibriqān was of the Bahdala b. ‘Awf b. Ka‘b b. Sa‘d b. Zayd Manāt, al-Aqra‘ was –as was al-Mundhir– of the Dārim (more precisely, al-Aqra‘ was of the Mujāshi‘ b. Dārim).

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 (*dūr al-‘arab wa-l-‘ajam*) such as Ubulla, Baqqa, al-Anbār and al-Ḥira.⁶⁸

Of some interest in the present context is the place called al-Fārisī which is now within the modern state of Kuwait.⁶⁹ It was a *thamad* or a water-place which dries up during the summer, belonging to the Banū l-Ḥirmāz of the Tamīm. The following verse is said to relate to al-Fārisī or to another water-place (i.e., in the same area):

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

⁶⁴ On whom see *EP*², s.v., al-Aqra‘ 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 *EP*², s.v., al-Zibriqān b. Badr (Lecker, M.).

⁶⁶ *Ij‘ al lanā kharāja l-Baḥrayn wa-naḥmanu laka allā yarji‘a min qawminā ahadun.*

⁶⁷ Ṭabarī, III, 275 [I, 1920]. Cf. *The History of al-Ṭabarī*, X, trans. Donner, F. M., New York, 1993, 97, n. 647, who renders *kharāj* as «tribute».

⁶⁸ Jāhiz, *al-Ḥayawān*, IV, 369 (Baqqa was north of Anbār and not near al-Ḥira; cf. *loc. cit.*, n.° 5).

⁶⁹ Ḥamad al-Jāsir, *al-Mu‘jam al-juḡhrāfi li-l-bilād al-‘arabiyya al-su‘ūdiyya: al-minṭaqa al-sharqiyya (al-Baḥrayn qadīman)*, Riyad, 1399/1979-1401/1981, III, 1279-80.

Near it there are people from the Banū l-Ḥirmāz who inherited from the time of Dhū l-Qarnayn the ignobleness of the taxes⁷⁰

The verse seems to relate to the pre-Islamic period.⁷¹ The placename al-Fārisī («the Persian») should possibly be linked to the levying of taxes by Ḥirmāzīs who were in the service of the Sassanians. In any case, the «taxes» (*ḍarā'ib*, sing. *ḍarība*) mentioned in the verse are customs.

3.1. *lā yu'sharūna wa-lā yuḥsharūna*

Several letters of Muḥammad to representatives of certain towns and tribes⁷² include the clause *lā yu'sharūna wa-lā yuḥsharūna*.⁷³ 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 (*lā yuḥsharūna*) and from the payment of tithes (*lā yu'sharūna*).⁷⁴ But it is doubtful

⁷⁰ *Bihī min Banī l-Ḥirmāzi qawmun tawārathū 'alā 'ahdi Dhī l-Qarnayni lu'ma l-ḍarā'ibi*; Lughda al-Ḥīfahānī, *Bilād al-'arab*, ed. Ḥamad al-Jāsir and Šāliḥ Aḥmad al-'Alī, Riyad, 1968, 319-20. Cf. *EP*, s.v., *ḍarība*. On the Banū l-Ḥirmāz b. Mālik b. 'Amr b. Tamīm see Ibn al-Kalbī, *Jamharat al-nasab*, 265.

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

⁷² On this topic see now Lecker, M., «On the preservation of the letters of the Prophet Muḥammad», in Conrad, Lawrence I. (ed.), *History and Historiography in Early Islamic Times: Studies and Perspectives*, Princeton (forthcoming).

⁷³ A variant is found in the letter of 'Abd Yaghūth b. Wa'la al-Ḥārithī (of the Ḥārith b. Ka'b): *wa-lā 'ushr wa-lā ḥashr*; Ibn Sa'd, *Ṭabaqāt*, I, 268 = Wellhausen, J., *Medina vor dem Islam*, Berlin, 1889 (*Skizzen und Vorarbeiten*, IV), 9, n. 22 («...es solle kein Zehnten und kein Zusammentreiben der Viehherde statt finden»). The letter of his fellow Ḥārithī, Yazīd b. al-Muḥajjal, has *lā yuḥzawna wa-lā yuḥsharūna*; Ibn Sa'd, *Ṭabaqāt*, I, 268; but Wellhausen, *op. cit.*, 10, n. 22 has correctly: *lā yu'sharūna*... See also the same formula in the letter of Qays b. al-Ḥuṣayn al-Ḥārithī; Ibn Sa'd, *Ṭabaqāt*, I, 268.

⁷⁴ «Sie sollen weder zu Kriegsdiensten noch zum Zehnt herangezogen 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-lā yuḥsharūna wa-lā yu'sharūna wa-lā yaṭa'u arḍahum jaysh*, which according to Balādhurī (*Futūḥ*, 65) was one of the clauses of the Najrān 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 *Futūḥ*, 27-28, where other interpretations are quoted; also Sperber, *loc. cit.*, who assumes that in other cases involving nomads another sense of *ḥashr*, 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 *lā yuḥsharūna* 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, *lā yu‘sharūna*, no doubt deals with taxation.

The first derivative is from the pre-Islamic poetry. Jābir b. Ḥunayy al-Taghlibī⁷⁷ complained in a *Mufaḍḍaliyyāt* 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-ḥashsdāri man yalwi ḥaqqahu
yubazbaz wa-yunza‘ thawbuhu wa-yulattami
wa-fi kulli aswāqi l-‘irāqi itāwatun
*wa-fi kulli mā bā‘a mru‘un maksu dirhami*⁷⁹

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

⁷⁵ Cf. however Jābir b. ‘Abdallāh’s commentary on the *ḥashr* clause which similarly refers to *jihād*: *wa-fi ḥadīth Thaḡīf annahumu shtarafū allā yu‘sharū wa-lā yuḥsharū wa-lā yujabbū, fa-qāla: lakum allā tu‘sharū wa-lā tuḥsharū, wa-lā khayra fi dīn laysa fihī rukū’ ... wa-su‘ila Jābir ‘ani shtirāḡ Thaḡīf an lā ṣadaqata ‘alayhā wa-lā jihād fa-qāla: ‘alima annahum sa-yaṣṣaddiqūna (sic) wa-yuḡāhidūna idhā aslamū, wa-lam yurakhkhiṣ lahum fi tarki l-ṣalāt li-anna waqtahā ḥāḍir mutakarrir, bi-khilāf waḡṡi l-zakāt wa-l-jihād; Ibn al-Athīr (Majd al-Dīn), *al-Nihāya fi gharīb al-ḥadīth wa-l-athar*, ed. Ṭāhir Aḥmad al-Zāwī and Maḥmūd Muḥammad al-Ṭanāhī, Cairo, 1385/1965, I, 237-38, s.v., j.b.y.*

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, F., *Geschichte des arabischen Schrifttums*, Leiden, 1967 ff, II, 150.

⁷⁸ Lyall, Ch. J., *The Mufaḍḍaliyyāt: An Anthology of Ancient Arabian Odes*, Oxford, 1921-24, I, 422:2 (*itāwa*), 426; trans., II, 155 (XLII, 16-17).

⁷⁹ Lyall’s translation reads as 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 *itāwa* and *maks* of the second verse are specific taxes and not «some new tax» and «somewhat to sink the price», respectively. Cf. below, n. 81.

Ḥashshār is glossed in the source just quoted as *ḥāshir*; a variant reading in one of the MSS has: *al-jassār wa-huwa ṣāḥibu l-jisr*. The editor, Lyall, suggests that it may be a misreading of *al-ḥashshār ṣāḥibu l-ḥashr* found in a MS of another source which includes this poem. The same source has a scholion which reads: *al-itāwatu l-kharj wa-l-makkāsu l-‘ashshār, yaqūlu: fa-fi kulli dhā maks, lā budda an yu‘khadha minhu dirham*. Al-Jāhiz similarly states that the Jāhili *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 (*darība*) that was taken from them, and upon doing this they used to treat them unjustly.⁸⁰

Al-Jāhiz associates the verse which mentions *itāwa* and *maks* with other references to collectors of customs. However, we are concerned here with the *hashshār* of the first verse (not quoted by al-Jāhiz). This verse includes a complaint about the brutal methods of the hated *hashshār*, 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.⁸¹ The *hashshār* may have been in charge of both taxes. In any case, this derivative of the root *h.sh.r.* is no doubt connected to taxation.

Another derivative of the same root which similarly relates to taxation appears in the treaty of Adharbījān concluded during the early Islamic conquests. One of its clauses assured the people of Adharbījān that *hashr* leads to an exemption from the *jizā'* of the same year: *wa-man ḥushira minhum fī sana wuḍī'a 'anhu jizā' tilka l-sana*.⁸² 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 *hashr* 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.⁸³

became known under Islam as *kharāj*: *taraka l-nās mimmā kāna musta'malan fī l-jāhiliyya umūran kathīra, fa-min dhālika tasmiyatuhum li-l-kharāj itāwa*; Jāhiz, *al-Ḥayawān*, I, 327. See a smoother text in al-Maqrīzī, *Khitaṭ*, II, 121:24: *...fa-min dhālika tasmiyatuhum li-l-itāwa bi-l-kharāj*.

⁸⁰ Jāhiz, *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-muḥkam* in al-Maqrīzī, *Khitaṭ*, II, 121:17: *wa-l-maks darāhim kānat tu'khadhu min bā'i l-sila' fī l-aswāq fī l-jāhiliyya ...wa-l-maksu ntiqāṣu l-thaman fī l-biyā'a ...wa-maks dirham ayy naqṣ dirham fī bay' wa-naḥwihi*. 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 Tabarī, IV, 155 [I, 2662]; in *The History of al-Ṭabarī*, 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 *ḥāshir*, plural *ḥushshār*, was a collector of poll-tax.⁸⁴ More precisely, a *ḥāshir*, «rallier», 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».⁸⁵

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.⁸⁶ 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 Thaḳīf from the prescribed poor tax, *ṣadaqa* (= *zakāt* [i.e., *lā yu'sharūna*]) and *jihād*» ([i.e., *lā yuḥsharūna*]).⁸⁷ 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 Abū 'Ubayd al-Qāsim b. Sallām's (d. 224/839) *Kitāb al-amwāl*. Abū '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-Maqrīzī, *Khiṭaṭ*, II, 121-22.

For *jizya* (= *jizā'*) in the sense of customs see also Ibn Abī Shayba, *Muṣannaḡ*, III, 199 who records a question directed by Ibn Abī Dhi'b to al-Zuhrī about the *jizya* of the Christians of the Kalb and Taghlib tribes. The latter replied: «It became known to us that half a tithe is taken from them, or more precisely, from their flocks».

⁸⁴ Cahen, Cl., «Contribution à l'étude de impôts dans l'Égypte médiévale», *JESHO* 5 (1962), 244-78, at 249-50; al-Makhzūmī, *Kitāb al-minhāfī 'ilm kharāj Miṣr*; partial edition by Cahen, Cl., and Rāghib, Y., Cairo, 1986 (*Supplément aux Annales Islamologiques*, cahier n.º 8), 36-38. Similarly, *ḥashshār* in Dozy, *Supplément aux dictionnaires arabes*, s.v., means *receveur des contributions* (while *ḥāshir* is *enrôleur, recruteur*).

⁸⁵ Goitein, S. D., *A Mediterranean Society*, Berkeley, 1967-1993, II, 370; see also 379, where Goitein observes that the *ḥāshir* 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.

⁸⁶ 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 Thaḳīf, and hence unacceptable with regard to the other parties as well.

⁸⁷ 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, '*ushr*'); 5, 6, 7 (tithe, tithes); reprinted in idem, *Studies in Jāhiliyya and early Islam*, n.º 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 yuḥsharūna wa-lā yu'sharūna* clause in the Prophet's letters to inhabitants of major towns (*ahl al-amṣār*), such as the Thaqīf (who lived in al-Ṭā'if), the inhabitants of Baḥrayn and those of Dūmat al-Jandal, and others who converted to Islam.⁸⁸ According to Abū 'Ubayd, this is one of the many indications that the practice existed in the Jāhiliyya. God abolished it and it was replaced by a *zakāt* of 2.5%. One who levies this amount is not an '*āshir*' (a collector of «tithes», i.e., customs) because he only takes one fourth of an '*ushr*'.⁸⁹

Abū 'Ubayd's passage reveals that the continuation of the Jāhili practice into Islamic times gave rise to casuistry, and that in a certain context *zakāt* meant customs.⁹⁰ 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 'Ubayd, the clause in question is also found in letters to bedouin tribes such as the 'Uqayl (a tribe of the Qays 'Aylān group)⁹¹ and the Ghāmid (a tribe of the Azd).⁹² In the bedouin context the clause reflects the Arabian ecology in which

subdivision of the Balī; Ibn Sa'd, *Ṭabaqāt*, 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 yuḥsharūna min mā' illā mā' fi l-ṣadaqa, wa-lā yu'sharūna, yaqūlu, fi l-sana illā marratan*). In Lecker, M., *The Banū Sulaym*, 187, the clause is rendered: «They will be exempt from military expeditions and from paying the *ṣadaqa*». 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 yuḥsharūn wa-lā yu'sharūn*). This explanation, given by Ibn Sa'd seems, however, to be uncertain. There are interpretations which comment that *ḥashr* and '*ushr*' refer to the Banū Dju'ayl being exempted from taxation»; *EP*², s.v., *Ḳudā'a*, at V, 318a. I follow here the slightly modified version in idem, *Concepts and Ideas at the Dawn of Islam*, n.º III, at 8.

⁸⁸ Abū 'Ubayd's association of *lā yuḥsharūna* with *lā yu'sharūna* seems to indicate that he considered them synonymous.

⁸⁹ Abū 'Ubayd al-Qāsim b. Sallām, *Kitāb al-Amwāl*, ed. Muḥammad Khalīl Harrās, Cairo, 1396/1976, 636, n.º 1639, 1640. Björkman W., *EP*², s.v., Maks, quotes Ibn Sīda according to whom even in the Jāhiliyya there was a market due known as *maks*.

⁹⁰ For *zakāt* in the sense of taxes in general, including customs, see Qudāma b. Ja'far, *K. al-kharāj*, 241 = ed. Sezgin *et al.*, 194, who starts the chapter on customs as follows: *al-sunna fi zakāti l-'ayn wa-l-waraq anna l-muslimīna mu'tamanūna 'alā mā yalzamuhum minhā, fa-man addāhā wukhidhat minhū, wa-man lam yu'addihā fa-huwa ḥaqq tarakahu, wa-'llāhu min warā'ihī; fa-ammā ghayru dhālīka mina l-zakawāt mithlu ṣadaqāti l-mawāshī wa-l-nakhl wa-l-ḥarth, fa-inna man mana'ahā ukriha 'alā adā'ihā wa-jūhida 'alā dhālīka ḥattā yu'addiyahu*.

⁹¹ Ibn Ḥajar, *Iṣāba*, VII, 88; Ibn Kalbī, *Jamharat al-nasab*, 334. See also above, n. 87.

⁹² Ibn Sa'd, *Ṭabaqāt*, I, 279-80; Wellhausen, *Medina vor dem Islam*, 122-23. n.º 49 (without the text of the letter, the receiver of which was Abū Zabyān al-Azdī). Ibn Sa'd 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 Thaqīf is of special interest. Before he concluded his treaty with them, Muḥammad had gained control of the nomadic Hawāzin under Mālik b. 'Awf al-Naṣrī who were blockading al-Ṭā'if. Hence he was in a position to levy customs from the Thaqīf both upon their departure from al-Ṭā'if and their arrival at Mecca which was no doubt Thaqīf's main market for agricultural products. However, other items with which the Thaqīf were trading were more expensive and hence subject to higher customs rates. Exemption gave the Thaqīf an advantage over their non-Meccan competitors.

Contrary to Abū '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 Najrān who remained Christians.⁹³

The fact that Abū 'Ubayd is apologetic regarding the levying of customs by Muḥammad renders his testimony even more reliable. Muḥammad's exemption of certain parties from customs dues indicates that he generally imposed customs

from Ibn al-Kalbī, who in his turn quotes Abū Mikhnaf. For the latter this was family history, because his great-grandfather, Mikhnaf b. Sulaym, was part of the Ghāmid delegation; on Mikhnaf b. Sulaym cf. Sezgin, U., *Abū Miḥnaf. Ein Beitrag zur Historiographie der umayyadischen Zeit*, Leiden 1971, 225n. For the text of the letter see Ibn 'Asākir, XI, 304-305, with an *isnād* going back to Abū Zabyān 'Umayr b. al-Ḥārith al-Azdī; the variants between square brackets are from Ibn al-Athīr ('Izz al-Dīn), *Usd al-ghāba fi ma'rifat al-ṣahāba*, Cairo, 1280/1863 (reprint), IV, 141, s.v., 'Umayr b. al-Ḥārith al-Azdī, quoting the Companion dictionary of Abū Ḥafṣ Ibn Shāhīn (d. 385/995): *ammā ba'du, fa-man aslama min Ghāmid fa-lahu mā li-l-muslimīna [li-l-muslim], ḥurmatu [in the Usd al-ghāba: without the tā' marbūṭa] mālihi wa-damihi, wa-lā tuḥsharū wa-lā tu'sharū [wa-lā yuḥsharu wa-lā yu'sharu], wa-lahu mā aslama 'alayhi min arḍ*. Ibn al-Athīr adds a variant reading from the Companion dictionary of Abū Mūsā al-Madīnī (d. 581/1185) who has the two verbs in 3rd person plural: *lā yuḥsharū wa-lā yu'sharū*. Another letter, given to the Ghāmid delegation, is said to have included the laws of Islam (*sharā'i' al-islām*); Ibn Sa'd, *Ṭabaqāt*, I, 345; Wellhausen, *Medina vor dem Islam*, 183, n.° 128.

⁹³ Al-Maqrīzī, *Imtā' al-asmā' bi-mā li-l-rasūl mina l-anbā' wa-l-amwāl wa-l-ḥafada wa-l-matā'*, I, ed. Maḥmūd Muḥammad Shākir, Cairo, 1941, 502: *wa-ja'ala lahum 'alayhi l-salām dhimmata llāhi wa-'ahdahu 'alā allā yuftanū 'an dīnihim wa-lā yu'sharū wa-lā yuḥsharū...* In the chapter on customs (*al-'ushūr*) of his famous book Abū Yūsuf specifically referred to the levying of customs from the people of Najrān. 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: *wa-yu'sharu l-dhimmi l-Taghlibi wa-l-dhimmi min ahl Najrān ka-sā'iri ahli l-dhimma min ahli l-kitāb fi akhdh niṣfi l-'ushr minhum*; Abū Yūsuf, *Kharāj*, 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 *lā yu‘sharūna* relates to customs, what then is the meaning of *lā yuḥsharūna*? Rather than look for another tax from which the recipients of the Prophet’s letters were exempted, I submit that *lā yuḥsharūna* is synonymous with *lā 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 Muḥammad 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., *ṣadaqa*, *zakāt*, *kharj/kharāj* 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. Mālīk a collector of customs (*muṣaddiqan 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

⁹⁴ Cf. Muḥammad ‘Abd al-Qādir Khresāt, «‘Ushūr al-tijāra fī l-jāhiliyya wa-ṣadr al-islām ḥattā nihāyat al-qarn al-awwal al-hijrī», in *Dirāsāt* (Amman), 15, vii (1988), 18-39, at 29, who assumes that in the case of the Thaḳīf, the *‘ushūr al-zirā‘a* rather than *‘ushūr al-tijāra* are meant. I find this assumption unconvincing.

⁹⁵ Qudāma 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 dhālika law lam yakun sunna jāhiliyya ya ‘rifūnahā, lam yakūnū yatakhawwafūna mina l-muslimīna mīthlahā ḥattā yakūna fī amānātihim ibṭālūhā aw ḥadhifūhā, wa-qad abtala llāhu dhālika bi-l-islām wa-sunnati l-zakāt...* See also Ibn Abī Shayba, *Muṣannaḥ*, III, 197 who mentions the relevant clause in the treaty with the Thaḳīf in a section dealing with customs (*man qāla laysa ‘alā l-muslimīna ‘ushūr*).

⁹⁶ One has in mind the *al-damu l-dam* formula used in the ‘Aqaba meeting; Lecker, M., «Yahūd/‘uhūd: 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; Khresāt, «‘Ushūr al-tijāra», 21-22.

⁹⁸ The respectable *muḥaddīth* 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-Arnāwūṭ *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 (*qalladanī amra l-‘ushūr*). ‘Umar went on to specify that he had been ordered to take 2.5% from the Muslims, 5% from the Dhimmīs and 10% from the Ahl al-Ḥarb.¹⁰⁰

It is doubtful that ‘Umar was Muḥammad’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 *mawlā*, Anas b. Sīrīn, 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 (*‘ashir*)?» The governor’s answer was: «Are you not pleased with ‘Umar b. al-Khaṭṭāb’s letter?», and he produced the letter in question. It said that the Muslim merchants paid 2.5%, the Dhimmīs 5% and the Ahl al-Ḥarb 10%.¹⁰² These are apologetics at work: ‘Umar’s reported letter of appointment to Anas b. Mālik (as customs officer), which conveniently included the customs rates, was supposed to appease Anas b. Sīrīn 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 Ägypten*, 83. The discussions of customs in the legal books only reflect a small number of cases.

⁹⁹ *Tuqallidunī l-maks min ‘amalika?*; Cf. below, n. 102.

¹⁰⁰ Khresāt, «‘Ushūr al-tijāra», 21=al-Shaybānī, *al-Siyar al-kabīr*, V, ed. ‘Abd al-‘Azīz Aḥmad, Cairo, 1972, 2133. For the testimony of another official appointed by ‘Umar as customs officer, Ziyād b. Ḥudayr al-Asādī, see e.g. Abū Yūsuf, *Kharāj*, 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 is 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.

¹⁰¹ For Masjid al-‘Ashshār in al-Ubulla see Khalīfa b. Khayyāt, *Ta’rīkh*, ed. Suhayl Zakkār, Damascus, 1968, I, 115. It is probably identical with Masjid al-Ubulla mentioned earlier on the same page.

¹⁰² Ibn Sa’d, *Ṭabaqāt*, VII, 207. In al-Shaybānī, *al-Siyar al-kabīr*, V, 2135, the embittered Anas b. Sīrīn asked his master: *tuqallidunī ‘alā* (sic) *l-maks min ‘amalika?*

¹⁰³ Note Abū Yūsuf’s apologetic formulation regarding this tax: *fa-inna ‘Umar b. al-Khaṭṭāb waḍa‘a l-‘ushūr fa-lā ba‘sa bi-akhdhihā idhā lam yuta‘adda fihā ‘alā l-nās wa-yu’khdh bi-akthara mim mā yajibu ‘alayhim*; Abū Yūsuf, *Kharāj*, 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 Filastīn to a collector of the Judhām tribe.¹⁰⁴ 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 *'ushūr al-sūq*: a customs officer appointed by 'Umar b. al-Khaṭṭāb, al-Sā'ib b. Yazīd (Ibn Ukht Namir) is said to have been in charge of *'ushūr al-sūq* together with 'Abdallāh b. 'Utba b. Mas'ūd. They levied customs on food supplies brought by the *nabaṭ*.¹⁰⁵ 'Abdallāh b. 'Utba and an unspecified man were reportedly levying *ṣadaqāt* or customs from food supplies brought by the Ahl al-Dhimma.¹⁰⁶ That 'Umar did not introduce this tax but merely continued an existing practice is explicitly stated: when Mālik b. Anas asked Ibn Shihāb al-Zuhrī why 'Umar levied the *'ushr* from the *nabaṭ*, the latter replied: «This was levied from them in the Jāhiliyya and 'Umar too imposed it on them».¹⁰⁷

Finally, let us look at the evidence regarding 'Uthmān b. 'Affān's practice in the market of Medina. It became a matter of political dispute, hence the relative richness of detail. At the time of 'Uthmān both customs and rent were levied in the market of Medina. One of the accusations leveled at 'Uthmān was that he put his relative, al-Ḥārith b. al-Ḥakam b. Abī al-'Āṣ, in charge of the market of Medina

¹⁰⁴ Hasson, I., «Le chef judhāmīte Rawḥ ibn Zinbā'», *Studia Islamica*, 77 (1993), 95-122, at 99-101=Ibn Ḥajar, *Iṣāba*, II, 568-70; Khresāt, «'Ushūr al-tijāra», 23=Abū l-Baqā' Hībat Allāh, *al-Manāqib al-mazydiyya*, ed. Ṣāliḥ Mūsā Darādika and Muḥammad 'Abd al-Qādir Khriṣāt, Amman, 1404/1984, I, 67-68. Incidentally, the expression *fa-aghlaṣa 'alaynā fi l-'ushr*, «and he treated us harshly with regard to the *'ushr*» indicates that *'ushr* no longer meant «tithe».

¹⁰⁵ Ibn Manẓūr, *Mukhtaṣar ta'rīkh Dimashq*, ed. Rūḥiyya al-Naḥḥās *et al.*, Damascus, 1404/1984-1409/1989, IX, 203. See also Buckley, R. P., «The *Muḥtasib*», *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 *muḥtasib*, Buckley refers to the levying of *'ushr* from the *nabaṭ* by al-Sā'ib b. Yazīd, which indicates that «the early *'Āmil al-Sūq* 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 *'ushūr* was considered problematic, and hence instead of *kāna ya'malu... 'alā 'ushūr al-sūq*, we are told by al-Sā'ib: *kuntu gḥulāman 'āmilan... 'alā sūqi l-Madīna*; Mālik, *al-Muwatta'*, ed. Muḥammad Fu'ād 'Abd al-Bāqī, Cairo, 1370/1951, I, 281. See also Ibn 'Asākir, XX, 117-18.

¹⁰⁶ Ibn Abī Shayba, *Muṣannaḥ*, III, 198 (Kitāb al-Zakāt).

¹⁰⁷ *Kāna dhālika yu'khadhu minhum fi l-jāhiliyya fa-alzamahum dhālika 'Umar*; *loc. cit.*

so that he would levy customs on the goods sold in it.¹⁰⁸ 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.¹⁰⁹ There is of course no necessary contradiction between the levying of customs and the said supervision.¹¹⁰ 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» (*tu‘ma*).¹¹¹ 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).¹¹² We have seen¹¹³ that Mu‘āwiya 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 ṣadaqa*).¹¹⁴

The abandonment of the Prophet’s ruling is emphasized by the Shī‘ite author Ibn Abī l-Ḥadīd: the Prophet gave the Muslims as a charitable endowment (*taṣaddaqa*) the land of the market of Medina (*mawḍi‘ sūqi l-Madīna*, i.e., the site on which the market was later established), which was called Mahzūr,¹¹⁵ and ‘Uthmān granted it (*aqta‘ahu*) to al-Ḥārith b. al-Ḥakam, Marwān b. al-Ḥakam’s brother.¹¹⁶

¹⁰⁸ *Ya’khudhu minhā ‘ushūra mā yubā‘u fiḥā*; Diyārbakrī, *Khamīs*, II, 267:7.

¹⁰⁹ *...Li-yurā‘iya 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 *muḥtasib*; cf. Buckley, «The *Muḥtasib*», 63, 83.

¹¹¹ Al-Balādhurī, *Ansāb al-ashraf*, IVi, 537: *aṭ‘amta l-Ḥārith b. l-Ḥakami l-sūqa*. On the term *tu‘ma* see also Bosworth, «Abū ‘Abdallāh al-Khawārazmī», 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 (*urtuji‘at*) from his heirs».

¹¹² *Wa-yajbi maqā‘ida l-mutasawwiqīna*. This is a reference to al-Maqā‘id, 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 Mahrūz; Lecker, «On the markets of Medina», 53-54.

¹¹⁶ *Sharḥ nahj al-balāgha*², ed. Muḥammad Abū l-Faḍl Ibrāhīm, Cairo, 1378/1959-1383/1964, I, 198 (reprint Beirut). I found this quotation in Kister, M. J., «Land property and *Jihād*», *JESHO*, 34 (1991), 270-311, at 306; reprinted in idem, *Concepts and Ideas at the Dawn of Islam*, n.º IV; for a Hebrew translation see idem, *Meḥqarim be-hithavvut ha-islam*, 132-53, at 151. Al-Ḥārith’s appointment is mentioned in Buckley, «The *Muḥtasib*», 61.

ABREVIATIONS OF PRIMARY SOURCES QUOTED MORE THAN ONCE

- Abū Yūsuf, *Kharāj*², Cairo, 1352, A.H.
 al-Balādhurī, *Ansāb al-ashrāf*, IVi, ed. Ihsān ‘Abbās, Beirut, 1400/1979.
 al-Balādhurī, *Futūḥ*, ed. de Goeje, Leiden, 1863-66.
 al-Diyārbakrī, *Ta’rīkh al-khamīs*, Cairo, 1283/1866 (reprint Beirut, n.d.).
 al-Fākihī, *Akhbār Makka*, ed. ‘Abd al-Malik b. ‘Abdallāh b. Duhaysh, Mecca, 1407/1987.
 al-Fāsī (Taḳī al-Dīn), *al-‘Iqd al-thamīn fī ta’rīkh al-balad al-amīn*, ed. Fu’ād Sayyid, Cairo, 1378/1958-1388/1969.
 Ibn Abī Shayba, *Muṣannaf*, ed. ‘Abd al-Khāliq al-Afghānī, Bombay, 1399/1979-1403/1983.
 Ibn ‘Asākir, *Ta’rīkh madīnat Dimashq*, ed. ‘Umar b. Gharāma al-‘Amrawī, Beirut, 1415/1995 ff.
 Ibn Ḥabīb, *Kitāb al-muḥabbar*, ed. Ilse Lichtenstaedter, Hyderabad, 1361/1942.
 Ibn Ḥajar al-‘Asqalānī, *al-Iṣāba fī tamyīz al-ṣaḥāba*, ed. ‘Alī Muḥammad al-Bijāwī, Cairo, 1392/1972.
 Ibn al-Kalbī, *Jamharat al-nasab*, ed. Nājī Ḥasan, Beirut, 1407/1986.
 Ibn Sa’d, *al-Ṭabaqāt al-kubrā*, Beirut, 1380/1960-1388/1968.
 al-Jāhīz, *Kitāb al-Ḥayawān*², ed. Hārūn, Cairo, 1385/1965.
 al-Maqrīzī, *Khiṭaṭ*, Būlāq, 1270, A.H.
 al-Marzūqī, *Kitāb al-azmina wa-l-amkina*, Hyderabad, 1332 A.H.
 al-Mizzī, *Tahdhīb al-kamāl fī asmā’ al-rijāl*, ed. Bashshār ‘Awwād Ma’rūf, Beirut, 1405/1985-1413/1992.
 Qudāma b. Ja’far, *K. al-kharāj wa-ṣinā’at al-kitāba*, ed. Muḥammad Ḥusayn al-Zabīdī, Baghdad, 1981.
 —, ed. F. Sezgin, in collaboration with A. Amawi, A. Jokhosha and E. Neubauer, Frankfurt a.M., 1986.
 al-Samhūdī, *Wafā’ al-wafā bi-akhbār dār al-muṣtafā*, ed. Muḥammad Muḥyi al-Dīn ‘Abd al-Ḥamīd, Cairo, 1374/1955 (reprint Beirut, 1401/1981).
 al-Ṭabarī, *Ta’rīkh al-rusul wa-l-mulūk*, ed. Muḥammad Abū l-Faḍl Ibrāhīm, 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. Muḥammad continued this age-old practice, hence the phrase *lā yu'sharūna wa-lā yuḥsharūna* 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 Muḥammad, Qusayy, los recaudaba entre los no-mequenses que entraban en la ciudad. Muḥammad continuó esta práctica ancestral, como atestigua la frase *lā yu'sharūna wa-lā yuḥsharūna* en algunas cartas, frase por la cual los receptores quedaban exentos de los derechos de aduana, mientras que todo el resto tenía que pagarlos.