ACROSS LEGAL LINES

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JESSICA M. MARGLIN

Across Legal Lines

JEWS AND MUSLIMS IN MODERN MOROCCO

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For Nathan

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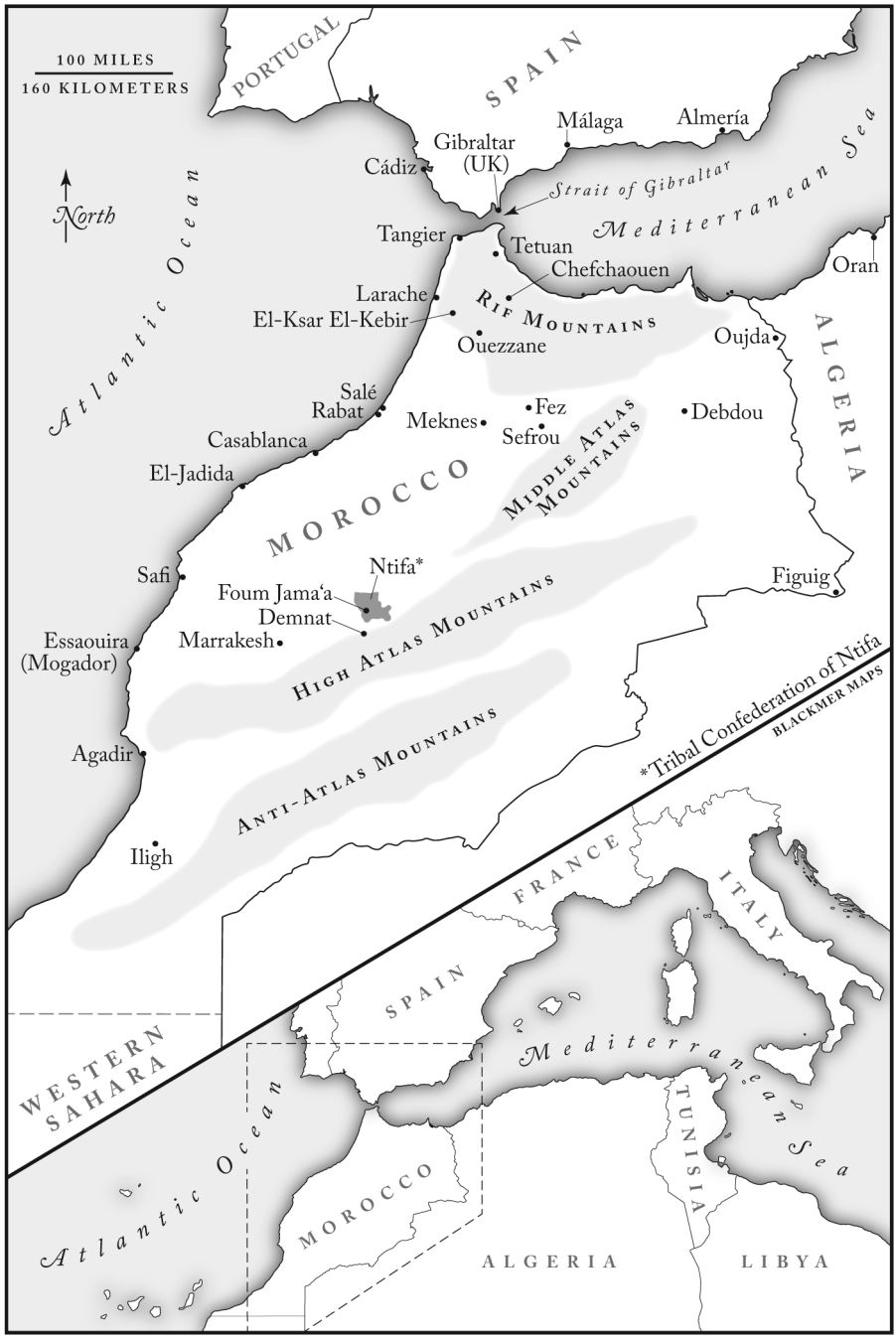
NOTE ON TRANSLITERATION AND SPELLING

WORDS IN ARABIC AND JUDEO-ARABIC are transliterated according to the system used by the *International Journal of Middle East Studies;* words found in standard English dictionaries (such as qadi) are transliterated without diacriticals, although, again following *IJMES*, I have used a single quotation mark to represent the *'ayin,* as in "shari'a." Words in Hebrew are transliterated according to the system used by the *Encyclopaedia Judaica,* except that I again use a quotation mark to represent the 'ayin.

Also following *IJMES*, I have omitted most diacriticals from personal names. For the sake of consistency, I have transliterated Arabic names following their standard spelling in Arabic (such as Mas'ud) and Hebrew names following their standard spelling in Hebrew (such as Ya'akov). I have standardized the transliterations of Arabic names that appear in Hebrew documents, as well as Hebrew names that appear in Arabic documents. The names of Muslims given in Hebrew sources vary considerably in their spelling, as do Hebrew names in Arabic sources. Where names appear only in European languages, I have preserved the original spelling used for Moroccan names, except in cases where the sources also provide the Arabic or Hebrew form or when these forms are obvious. I use contemporary spellings for place names.



Map of Morocco

ACROSS LEGAL LINES

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Introduction

ONE JUNE AFTERNOON IN PARIS, I waited anxiously to meet Yehudah Assaraf. I was trying—against the odds—to pick out a Moroccan Jew from the bustling crowds that engulfed the sidewalk outside the Galeries Lafayette. When we found each other, he suggested we walk a few blocks to the nearest Häagen-Dazs shop. Moroccans are famous for having a sweet tooth; true to form, Yehudah—unconcerned about ruined appetites—insisted we indulge in sundaes.[1]

Although I had never met Yehudah before, sharing ice cream with him was like getting to know the cousin of a dear friend. He is the great-grandson of Shalom Assarraf, a Jewish merchant from Fez who was born in 1830 and passed away in 1910. I had spent months poring over Shalom's personal archive, which is now stored in a living room in Jerusalem. I found traces of the Assarrafs in archival collections in New York, New Haven, and Brussels. But I sought out Yehudah in the hopes that he could fill in some details about his family that I could not cull from the far-flung documentation I had assembled. To my dismay, Yehudah was uncomfortable becoming a source in his own right; he felt he did not know enough about his family, or at least not as much as his siblings. "You should really talk to my brothers—they can tell you about the Assarrafs," he said again and again. As we were walking to the Métro, about to part, I had already written off the interview as a pleasant but

not particularly useful encounter. Then Yehudah asked if I knew how his great-grandfather Shalom had gotten rich. I was all ears.

Shalom Assarraf—so the family legend had it—was a humble cobbler living in Fez's Jewish quarter with his mother. Despite his poverty, he was a pious and generous man, insisting on feeding those Jews even more unfortunate than himself on the Sabbath. One day, a Muslim visited Shalom. But instead of asking to have his shoes fixed, the Muslim requested that Shalom store a large vat for him—the sort commonly used to cure olives. Shalom was too polite to ask any questions and agreed immediately; he put the vat in his basement, and there it sat for months without any sign from its Muslim owner. Finally, when Passover approached, Shalom's mother reminded him about the mysterious vat. They could not possibly leave it unopened lest it contain leaven—or indeed any type of food that was not kosher for Passover. The two agreed to open the vat; to their great astonishment, it was full of *louis d'or*—gold coins amounting to a small fortune. But Shalom was an honest man and a devout Jew; he did not want to claim possession of the money unlawfully. What to do? He decided to bring his conundrum to the *beit din*—a tribunal that applied Jewish law, presided over by Fez's most respected rabbis. The beit din determined that Shalom had every right to keep the money; indeed, the only plausible explanation for Shalom's good fortune was that the Muslim had actually been the prophet Elijah in disguise. The rabbis concluded that Elijah had left the vat of gold behind to reward Shalom for his charity and his piety, and that Shalom could claim the money with a clear conscience. This pot of gold allowed Shalom to build his business as a successful merchant; the Muslim—or, rather, Elijah the Prophet—was never heard from again.

My skepticism about the role of Elijah aside, I was familiar enough with Shalom's personal archive to know that he had worked hard for his fortune. Shalom spent decades buying imported textiles and selling them to a largely Muslim clientele in and around Fez. Like most merchants working in nineteenth-century Morocco, Shalom extended credit to his clients himself, doubling as a moneylender and thus assuming quite a bit of risk. And in order to ensure that his business deals were secured by a modicum of guarantees, Shalom made extensive use of legal institutions—not just the beit din he reputedly visited to inquire about the mysterious vat full of gold, but also an array of non-Jewish

tribunals, including courts that applied Islamic law, state courts, and international courts. But while the Assarraf family tale about this ancestor's wealth reveals more about folklore than economics, its culmination in a court of law touches a central nerve of the Moroccan Jewish experience. Even in their mythic imagination, the Assarrafs understood the crucial role played by law in their family history. Shalom's recourse to a beit din invokes the centrality of law to the everyday lives of Jews in nineteenth-century Morocco.

Yehudah's story about his great-grandfather also points to the extracommunal origins of Shalom's wealth. Knowing what I know about Shalom, I cannot help but read Elijah the Prophet's Muslim disguise as a thinly veiled reference to the fact that Shalom did much of his business with Muslims. In this sense, the tale is correct in identifying the source of the family's fortune outside the Jewish community. What this tale occludes, however, is the extent to which Shalom's business relied on his use of non-Jewish legal institutions—especially Islamic ones—in order to function. The Shalom of the story brought his legal dilemmas to a Jewish court of law, but the historical Shalom inhabited a much larger, more diverse legal world. Like most Jews, Shalom moved among the various legal institutions that coexisted, and to some extent overlapped, in pre-colonial Morocco. Indeed, it was his ability to navigate among a number of legal institutions, most of them non-Jewish, that helped make him a successful businessman, a leader of his community, and the patriarch of a large and prosperous family. The Assarrafs' story is an entry point into a broader history of Jews in the Moroccan legal system during the nineteenth and early twentieth centuries. Tracing the paths of Jews like the Assarrafs reveals a world in which law was a site of encounter among Jews and Muslims and a key ingredient in the glue that bound Jews to the broader society in which they lived.

Shalom Assarraf's life spanned the period during which Morocco—and indeed North Africa more broadly—was propelled onto the world stage to an unprecedented degree. The political and economic repercussions of this process had profound effects on Morocco's legal system. Morocco was not formally colonized until 1912, just two years after Shalom's death; French and Moroccan authorities signed the Treaty of Fez on March 30, 1912, establishing a protectorate over the majority of the country (and

allowing Spain to declare its own protectorate in the north). Yet while Morocco was one of the last holdouts in the "scramble for Africa," the effects of Western imperialism were most certainly felt long before—starting with France's colonization of neighboring Algeria in 1830, the year of Shalom's birth. Morocco's relatively weak central government—known as the *Makhzan*—had been ruled by the 'Alawi dynasty since the seventeenth century and had resisted incursions by the Ottomans, the Spanish, the Portuguese, and the British. But after the French army's resounding victory at the Battle of Isly in 1844 and Spain's occupation of the northern city of Tetuan in 1860–62, the Makhzan realized it faced a new kind of threat to its sovereignty. Successive sultans tried to counter the impending danger of colonization with a series of expensive reforms, many of which took their cue from Egypt and other parts of the Ottoman Empire.[2] Nonetheless, Morocco became a stage on which international rivalry for influence unfolded. Although France and Britain were the frontrunners, many other countries—including those with no hope of actually colonizing Morocco, like the United States—used this corner of the Maghrib to expand their influence abroad.

The Moroccan economy was also increasingly drawn into the web of global capitalism. Until the mid–nineteenth century, the Makhzan managed to keep a fairly firm control over most international trade, but in 1856 the British ambassador hammered through a free trade agreement that thrust Morocco into the open market.[3] The increased volume of foreign commerce buoyed a growing class of merchants who made fortunes exporting raw materials produced in Morocco and importing manufactured goods like the cotton textiles that made the Assarrafs wealthy. Indeed, Morocco's national drink—green tea made with mint and a healthy dose of sugar—relied on tea imported from East Asia, refined sugar from the Americas, and teapots specially designed in Britain for the Moroccan market. In a photograph of Ya'akov Assarraf's son's wedding in 1919, the family gathers around two exquisite tea sets displayed on silver trays—a show of luxury both cosmopolitan and, by this time, unquestionably Moroccan.[4] But this flood of imports had a devastating effect on the majority of Moroccans, undercutting local artisans and creating a growing need for cash among consumers. Morocco in the late nineteenth century was in the midst of tumultuous change that affected everyone from the most humble peasant to the sultan himself.[5]

Wedding of David Assarraf (son of Ya'akov, grandson of Shalom) to his niece Hannah Attias, February 1919. Ya'akov sits on Hannah's right, and Shalom's second son Haim Yehudah sits on her left. (From the collection of Michael Maman, used with permission)

Jews were in many ways at the center of Morocco's willy-nilly plunge into an international political and economic order. Although Jews only made up between 2 percent and 7 percent of the Moroccan population, in urban areas they constituted a much larger minority—in some cities up to 50 percent.[6] Even more than their urban density, Jews occupied an outsized place in Morocco's growing political and economic ties to the Western world. Jews had been Morocco's international intermediaries par excellence since the early modern period. This was in part because Jews were the only indigenous non-Muslim group in Morocco. (Whereas the religious mosaic of the eastern Mediterranean included many Christian sects, Maghribi Christians had either converted or fled by the end of the Middle Ages.) Jews were also particularly well connected across the Mediterranean, in part because of the networks that Sephardi Jews maintained following their expulsion from Spain and lasting into the nineteenth century. Jews were thus semi-neutral parties who occupied a particularly good position from which to link Morocco's markets to those of Europe and beyond.[7]

In the second half of the nineteenth century, Western powers became more and more aggressive in their pursuit of economic opportunities and political influence in Morocco—and many merchants and diplomats continued to rely on Jews to act as their intermediaries. Moroccan Jews staffed consulates as interpreters and even became vice-consuls

in their own right. Some also formed partnerships with foreign merchants or sent their own representatives to manage trade in places like Gibraltar, France, Britain, and even the Americas. Many of these Jewish merchants and consular officials acquired foreign nationality or consular protection, which gave them a measure of extraterritorial status. Shalom, for instance, acted as the agent for a relative in New York, and thus acquired American protection. Jews were by no means the only Moroccans involved in international trade or diplomacy; Muslims also worked for consulates, acted as consular officials, engaged in intensive commerce with foreigners, and acquired foreign nationality or protection. Nonetheless, Jews were overrepresented among the legions of Moroccans who participated in the increasingly strong ties binding Morocco's state and economy to the West.[8]

Despite these transformations, Morocco's Jews retained the same legal status assigned to non-Muslim monotheists since the early Islamic period. Islamic law placed Jews under the protection, or *dhimma,* of the Muslim sovereign, hence the term *dhimmī.* Whereas dhimmī status was abolished in the Ottoman Empire and Tunisia in the 1850s, Jews in Morocco remained dhimmīs *de facto* until 1912, and *de jure* until Moroccan independence in 1956.[9] As dhimmīs, Jews agreed to a series of restrictions designed to remind them of their second-class status in the social hierarchy and paid a special poll tax (called the *jizya*). In exchange, dhimmīs were permitted to observe their religious traditions, including administering their own legal institutions, which applied their own laws. While much changed in nineteenth-century Morocco, successive sultans were firm in their unwillingness to consider reforming Jews' legal status—whether the request to do so came from foreign diplomats, European Jewish activists, or Moroccan Jews themselves.[10]

Morocco's legal system during the nineteenth century—much like the position of Jews—was a curious mix of staunch traditionalism and rapid transformation. Some legal orders were almost, though not entirely, untouched by the increasing presence of international actors on the Moroccan scene. The *shari'a* (Islamic law) courts and Jewish courts operating at the local level continued to function in largely the same ways as they had previously done. The Makhzan administered a national court of appeal that did not fundamentally change in the nineteenth century, although the state did undertake judicial reforms to bolster its

legal authority. But the increasing influence of foreign diplomats and international trade introduced new legal fora to the mix of institutions that operated at the local and national level, thus profoundly altering the way law was practiced in Morocco. The growing numbers of foreign nationals (including Moroccans who had acquired other nationalities) and Moroccans with foreign protection meant more individuals with extraterritorial privileges, as well as an expansion of the legal institutions with jurisdiction over them. Moreover, the increasing influence of foreign diplomats on Moroccan internal politics offered ordinary Moroccans—especially Jews—a new source of influence with their own government.

The great paradox of Jews' status in Morocco during the late nineteenth century was that their very subordination made them particularly mobile in the legal sphere.[11] Indeed, their legal mobility only increased during the decades preceding colonization. This worked in three ways: first, as dhimmīs, Jews were afforded the right to their own courts. Nonetheless, Jews always had the option of using Islamic courts, and regularly moved back and forth between Jewish and Islamic legal institutions for their everyday legal needs. Second, as political outsiders—in that they were not eligible to occupy the highest political positions in a Muslim government—Jews were particularly well placed to act as intermediaries with foreigners. Their work in consulates and international trade provided many with extraterritoriality, which put them under the partial jurisdiction of consular courts. Finally, the perception of Jews' second-class status abroad afforded them yet another privileged point of access to foreign influence; increasingly, Jews in Morocco became a *cause célèbre,* attracting the humanitarian concern of diplomats and international Jewish organizations. These foreigners claimed it was their duty to protect Morocco's Jews from the oppressive and unjust laws under which they lived. Many of the diplomats who chose to intervene with the Makhzan on Jews' behalf did so more out of a desire to use them as an excuse to meddle in Morocco's internal affairs. Nonetheless, these diplomats' motives are to a large degree irrelevant when it comes to understanding the broader impact of foreign intervention on Jews' behalf. Similarly, the extent to which Jews genuinely embraced Enlightenment ideals of religious equality was largely immaterial when it came to the effects of having foreigners intervene on their behalf. Yet Jews' access to foreign intervention and protection did not come without costs. Increasingly,

Muslims perceived Jews as siding with the enemy in the struggle to keep Morocco independent from would-be colonizers.

Jews' increased access to foreign intervention did not mean they transcended their inferiority through law; inequality was real, and there were many—and high—barriers separating them from Muslims. Jews and Muslims rarely intermarried, unless it involved conversion to Islam. In most cities Jews lived in a separate quarter (called a *millāḥ*) which was often walled off from the rest of the city. And Jews faced constant reminders of their lower status; in many cities, they were not permitted to wear shoes outside the millāḥ, a rule involving considerable discomfort in addition to degradation. However, the fact of being unequal is itself not all that interesting in this period; indeed, notions of absolute human equality were just beginning to take root in western Europe, and even places considered very "modern" rarely gave full rights to anyone except white men.[12] Rather, what is worth noting about the position of Moroccan Jews is that even in a situation of inequality and high barriers among religious groups, there was much room for movement across those boundaries.

Indeed, paradoxically, Jews as second-class subjects had a greater ability to move across legal lines than did Muslims.[13] Muslims used both Jewish courts and consular courts, but they did so in spite of stringent prohibitions forbidding Muslims to voluntarily subjugate themselves to any law but that of Islam. Scholars attacked those Muslims with extraterritoriality, accusing them of forsaking Islam and strengthening the enemy (that is, the foreign powers intent on colonizing Morocco). Finally, when Muslims felt they had been denied justice, they could not turn to foreign diplomats claiming they were being systematically oppressed on the basis of their religion. Even if some foreigners recognized that Jews were not the exclusive victims of injustice in Morocco, a consensus emerged around the need to protect Jews that had no parallel for vulnerable Muslims.[14]

With the establishment of the French Protectorate, Jews' legal advantage was dramatically reduced; the coming of colonization signaled the hardening of jurisdictional boundaries—that is, the dividing lines between the jurisdictions of different legal institutions, both theoretical (as imagined by jurists) and real (as they were actually enforced). This meant that neither Jews nor Muslims could move as freely from one legal institution to another as they had before 1912. Indeed, as French

legal reforms gradually succeeded in keeping Jews in Jewish legal institutions and Muslims in Muslim ones, they added one more brick to the invisible wall that increasingly divided Jews from Muslims. Colonial legal reforms were particularly deceptive in their false promise of religious tolerance. The French had built their case for colonization in part on the pledge to improve the lot of the country's Jews—by moving Morocco toward the kind of horizontal equality that was valued, albeit selectively, in Western societies. Yet French legal reforms did not make Jews and Muslims equal. Instead, the window of mobility among different jurisdictions that was opened for Jews during the late nineteenth century swung shut under colonial rule.

Following Jews like the Assarrafs through Jewish, Islamic, and international legal institutions brings us to the intersection of three fields: Jewish, Middle Eastern, and legal history. The Assarrafs' movement between Jewish and shari'a courts is relevant to historians in each of these fields, for somewhat different reasons. For Jewish historians, the experience of Moroccan Jews counters traditional legal histories that focus inwardly on Jewish legal autonomy, instead showing how law in fact acted as a vector of connection and integration into the broader non-Jewish society.[15] For historians of the Middle East and North Africa, this study corrects legal historians' tendency to focus exclusively on shari'a. Shari'a provided only one dimension of law in the Islamic world among many others—including other institutions run by Muslims and non-Muslims. For scholars of law, this book offers a rare glimpse at the functioning of a legally pluralist society that gives equal attention to *all* the different legal institutions that together made up a single legal system, rather than focusing on one institution in a pluralistic setting. Such a bird's-eye view allows us to better understand how legal pluralism not only influences the choices of legal actors, but also affects the functioning of individual legal orders as they seek to accommodate the existence of multiple types of institutions. Finally, the changes over time I observe disrupt the standard narratives of modernity proposed by each field. Jews' experience of the expansion of legal pluralism in the late nineteenth century, and of its contractions at the hand of colonial reformers, suggests that legal modernization was neither a linear process, nor one imbued with the advantages its proponents claimed.

My work builds on recent scholarship that challenges an older view of Jews as isolated within their own legal system. Jewish history, at its best, is a study of the tension between Jews' ability to cohere as an independent community and their interactions with the broader societies in which they lived. Nonetheless, historians of Jewish law traditionally tended toward the narrower end of the historiographical spectrum, focusing on the internal workings of Jewish legal institutions.[16] More recently, a number of scholars have usefully interrogated the extent to which Jews lived their legal lives entirely in their own "state beyond the state."[17] Most such studies have demonstrated that Jews regularly used Ottoman shari'a courts; some scholars of European Jewry have similarly documented Jews' presence in gentile courts. As Rabbi David Ibn Abi Zimra wrote about Ottoman Egypt in the sixteenth century, "All that happened is written in the *sicil* [the archive of the shari'a court] . . . and every man can seek justice on the basis of what was written."[18]

Yet by focusing on intra-Jewish cases in non-Jewish courts, scholars have largely neglected the full extent to which law acted as a vector connecting Jews to the broader society in which they lived.[19] While intra-Jewish cases provide evidence that Jews often *chose* Islamic courts over Jewish ones, they are only the tip of the iceberg; Jews most commonly interacted with non-Jewish legal institutions when they were involved with non-Jews, either in drawing up contracts or in resolving legal disputes. When one looks at the range of legal institutions to which Jews resorted, law appears as a gate that opened the Jewish community up to the wider society, rather than one that closed them in. Jews in Morocco used Islamic courts to support their business dealings with Muslims; their ability to navigate Islamic legal institutions thus facilitated their participation in the broader economy. By relying on the central government to resolve legal disputes that could not be addressed at the local level, Jews bound themselves to the state and its Muslim ruler as the personal guarantor of justice. Finally, the increasing availability of non-Muslim legal fora (principally consular courts and the intervention of foreign diplomats) did not mean that law ceased to promote Jews' integration into Islamic society. On the contrary, Jews continued to use Islamic courts even once they had access to foreign jurisdictions. It was the coming of French colonial reforms that abruptly curtailed Jews' legal mobility.

Although Middle Eastern historians are no longer surprised to hear that non-Muslims made regular use of shari'a courts, few studies examine how Jews and Christians moved between their communal courts and Islamic legal institutions.[20] Most scholars approach the history of Islamic law in practice from the vantage point of a single institution—usually shari'a courts.[21] Thus even those who examine the presence of non-Muslims in Islamic courts acknowledge the role of non-Muslim legal institutions only in passing, or even call their very existence into question as the propaganda of Jewish and Christian scholars, not living, breathing institutions.[22] Scholars rarely discuss the actual functioning of Jewish and Christian courts in relation to shari'a courts, or how Jews and Christians moved among the different legal orders to which they had access. This is due in part to a challenge of sources; in order to study the workings of Muslim and non-Muslim legal institutions, one must read both sets of records. Few are able and willing to do so. It is largely by focusing on both types of archival sources that I am able to recover the movements of individuals among different sets of legal institutions as well as the ways in which these institutions accommodated one another's existence.

Aside from the experience of non-Muslims in Islamic courts, there is a history of law in the Islamic world beyond the shari'a that still remains to be told. The relative abundance of shari'a court records from many parts of the Ottoman Empire has meant that shari'a courts have garnered the lion's share of scholarly attention, to the exclusion of other state legal institutions (such as the *divan-ı hümayun,* the Ottoman central court of appeal and, starting in the nineteenth century, the *nizamiye* courts created as part of the reforms known as the Tanzimat). Those scholars who are interested in the plurality of Ottoman law have tended to focus on the ways in which the shari'a was modified or supplemented by the *qānūn* (or *kanun,* law enacted by the state) at the level of substantive law.[23] Relatively few historians have examined how the multiple legal institutions existing in the Ottoman Empire—or elsewhere in the Middle East—worked alongside one another and, at times, together. This is particularly true for consular courts, whose functioning in the broader Ottoman legal context remains poorly understood, especially for the modern period.[24] By tracing Jews' legal trajectories through Jewish

courts, shari'a courts, the central court of appeal, and consular courts, I show how shari'a functioned as part of a much broader legal system.[25]

In observing the interactions among the various legal orders operating in Morocco, I offer a case study of legal pluralism in action. Legal scholars have long argued that most legal systems encompass multiple legal orders that coexist and to some extent overlap—contrary to an older view of legal centralism which is now largely acknowledged as a myth. Yet legal pluralism tends to be used either as a challenge to theories of state law, or as a way to refine our understanding of a particular legal order. Few historical studies—especially those focused on the Middle East—examine how multiple legal orders fit together. Taking the perspective of the legal consumer allows us to view the full array of legal institutions to which Jews had access and to understand both how individuals moved among them and how these institutions responded to this movement. Part of the problem of looking at a single legal order in a plural context is that doing so obscures the inevitable hierarchies that existed among various legal institutions. Legal pluralism thus comes out as a rather flat model in which all legal orders are equal. This was by no means the case in the Islamic world; shari'a courts had more authority than did Jewish courts, and the sovereign's court of appeal could overturn local shari'a courts in certain instances. Nor was this hierarchy a simple pyramid with the sultan at the top; the spread of consular courts meant that there were multiple sources of sovereignty at once, since the premise of extraterritoriality was that foreign powers could exercise sovereignty over their own nationals on Moroccan soil.[26]

By offering the viewpoints of both legal consumers and legal authorities, I look at legal pluralism from the bottom up, from the top down, and, perhaps most significantly, at how the two perspectives intertwined. Scholars have demonstrated that in response to situations of legal pluralism, individuals engage in forum shopping—that is, seeking out the institution that offers the most advantageous ruling in a given case. But despite the widespread use of the term "forum shopping," there are few studies that actually examine how it worked.[27] One danger is to equate forum shopping with rational choice theory and assume that legal actors made decisions based on pecuniary interests alone and with full knowledge of all the possible outcomes. The reality was far more complicated; as Ido Shahar argues, decisions about legal fora were

made by consumers who could not always know which court would prove most amenable to their interests. Nor were these interests purely financial; values such as communal solidarity and religious observance also weighed in the final calculus about where to go to court.[28] As we will see, Jews in both pre-colonial and colonial Morocco often acquired legal documentation from Jewish notaries even when there was no clear legal advantage to doing so. The descendants of Shalom Assarraf, for instance, continued to register their sales of property in the colonial Jewish courts, even once the French had stripped these courts of their jurisdiction over real estate. One imagines that a desire to participate in the sacredness of Jewish law propelled their decision more than purely economic calculations. The family lore explaining Shalom's wealth hints at the extra-financial motivations behind the use of Jewish courts. According to the story, Shalom consulted a Jewish court to see if he could keep the mysterious vat of louis d'or, even though the archival trail he left behind demonstrates that he relied heavily on shari'a courts for his commercial endeavors.

Moreover, the historical record is quite clear that both legal consumers *and* judicial officials were aware of the coexistence of different sets of laws. This cognizance is more intuitive for "minority" courts; Jewish jurists had to take into account the existence of shari'a courts not only because Jews fell under their jurisdiction for a range of matters, but also because Jewish courts ultimately had less authority than Islamic courts. That Jewish legal authorities adapted their jurisprudence to the norms of the state in which they lived was enshrined in Jewish law from the medieval period in the form of the maxim "the law of the state is the law" (*dina de-malkhuta dina*).[29] But in Morocco (and perhaps elsewhere), this awareness went in the other direction as well; shari'a courts knew about Jewish courts and even took measures to accommodate their functioning—measures that went beyond the strict bounds of Islamic law. Consular courts worked similarly; while these institutions applied the laws of their respective states, they also adopted a number of practices from local Moroccan courts, most notably Islamic law's requirements regarding standards of proof. What all this amounts to is a degree of legal convergence, that is, "the tendency of legal systems, or parts of legal systems, to evolve in parallel directions," in the words of Lawrence Friedman.[30] The kind of convergence I observe in Morocco is a direct

byproduct of legal pluralism. Yet because studies of legal pluralism rarely give equal weight to the full array of institutions operating in a plural field, this sort of convergence usually remains invisible.[31] Observing how legal convergence worked in nineteenth-century Morocco allows us to go beyond acknowledging the fact of legal pluralism to discussing the kinds of law that emerged in legally pluralist settings.

Although my focus on wealthy Jewish merchants to some extent limits what I can say about Jews' consumption of law in Morocco, the differences across class and region were a matter of degree, not of kind. There is little question that the Assarrafs were far richer than the majority of Moroccans; Shalom, who was known as *mūl miyat 'atba,* "the master of a hundred apartments," lived in a luxurious house and rented out extensive properties for profit.[32] Elite merchants like the Assarrafs required the services of legal institutions more often than other Jews, such as peddlers, artisans, or the masses living in abject poverty. These social groups were involved in fewer financial transactions requiring contracts or resulting in legal disputes. Elites' frequent appearances in court, on the other hand, made them more familiar with the workings of legal institutions. Moreover, their wealth undoubtedly put them at an advantage in the often very personal channels through which legal decisions were made. Nonetheless, Jews of all social classes engaged with the full array of legal orders available to them in Morocco, using many of the same strategies exhibited by their wealthier coreligionists.[33] The minority of Moroccan Jews who lived in rural areas, however, had access to a slightly different array of legal institutions; further research into their legal strategies and experiences would be welcome, but is beyond the scope of this book.[34]

Perhaps most significantly, the arc of Jews' experience in Morocco's legal system from the nineteenth to the twentieth centuries disrupts the narratives of modernization advanced by all three fields—Jewish history, Middle Eastern history, and legal history. By modernization, I mean a set of processes that arose conjuncturally across the globe, rather than an older, Western-centered conception of "a virus that spreads from one place to another." Foremost among the developments that characterize modernization are the consolidation of state power and new conceptions of social relationships emphasizing horizontal equality rather than formal and informal hierarchies.[35] Legal modernization occurred

at various points during our period; the Makhzan's attempts to centralize its authority in the mid–nineteenth century included a reform of the central court of appeals. Like most of the Makhzan's reforms, the new Ministry of Complaints drew largely on inspiration from Egypt and the Ottoman Empire. But the centralization of the national court of appeals did not attempt to curb or manage Morocco's legal pluralism; rather, it merely sought to make the state's role in the pluralistic field more efficient. A far more radical move toward legal modernization came with a series of changes instituted by colonial authorities. These reforms not only sought to centralize legal authority in the colonial government, but to reshape Morocco's legal pluralism such that the boundaries between different jurisdictions were clearly and firmly demarcated.

Jews' experience in colonial Morocco indicates that modernized legal systems did not always constitute an improvement over distinctly non-modern ways of doing law. For most Jewish historians, the story of the nineteenth century is one of progress toward emancipation, in which Jews in Europe moved, albeit unevenly, toward full and equal rights. Even if this progress collapsed in the tragedy of the Holocaust, the assumption is that Jews largely benefited from modernization in that it moved them toward equality.[36] I am not the first to observe that this narrative fails to capture the experience of Jews in the Middle East, for whom the very ideal of equality was bound up with westernization and European imperialism (both in the form of diplomatic pressure and formal colonization).[37] Jews' experiences in Moroccan legal institutions indicate that the modernization of law was not necessarily synonymous with greater opportunities for Jews. The expanding pluralism of Morocco's legal system in the second half of the nineteenth century—most notably through consular courts—was decidedly not modern; indeed, it is best understood as a holdover from pre-modern models of sovereignty.[38] Nonetheless, extraterritoriality proved beneficial to Moroccan Jews in particular. And as the Moroccan government's sovereignty weakened, Jews found themselves able to take advantage of the blurry jurisdictional boundaries made possible by a feeble central state. I am not claiming that expanded legal pluralism was always entirely good for Jews, or for all religious minorities in the Middle East.[39] Rather, I am pointing to the ways in which the specific circumstances of late-nineteenth-century Morocco that are generally associated with the pre- or early modern period—

such as rigid religious hierarchies, a weak central state, and multiple, overlapping jurisdictions—actually afforded Jews privileged access to the full range of institutions that made up Morocco's legal system.

It was, paradoxically, the legal modernization of Morocco undertaken by the French that reduced Jews' ability to move across legal lines and put them in what was in some ways a worse legal position than before 1912. The legal history of Jews in modern Morocco was neither a march toward equality nor progress toward opportunity; on the contrary, it was a fitful back-and-forth in which modernization came with high costs. The centralization and rationalization of Morocco's legal system was not as promising for Jews as its proponents claimed. On the contrary, legal modernization curtailed Jews' legal mobility and forced them into more discriminatory courts. Nor were the French alone among their imperialist peers in failing to deliver on their promise that colonization would produce a just and efficient legal system, especially for religious minorities.[40] In questioning the purported advantages of modernization for Jews, I echo Salo Baron, the last great synthetic Jewish historian. Baron argued that "Emancipation meant losses as well as gains for Jewry."[41] For Baron, however, the losses that mattered most were those related to autonomy. Jews' experience in Moroccan legal institutions indicates that it was their very ability to transcend the boundaries of Jewish communal autonomy—to pursue their legal affairs well beyond the purview of Jewish courts—that many regretted losing after 1912.

In preventing Jews and Muslims from moving easily between each other's legal orders, French reforms also helped reify religious difference. This process is closely related to the ways in which colonial law in a number of settings helped create new racial and ethnic categories.[42] Jews and Muslims were clearly already distinct in pre-colonial Morocco, but French legal reforms hardened that difference in new and significant ways. In other words, colonial policies "invented" a new sort of difference—in the sense of transforming and reinterpreting religious, ethnic, and tribal divisions, if not creating them out of whole cloth—even when powerful identitarian and legal distinctions already existed.

Nonetheless, the experience of Jews in Morocco shows that not all forms of imperialism necessarily led to a divergence between Jews and Muslims. Historians of Morocco generally portray Western states as driving a wedge between Jews and Muslims long before colonization,

mainly through the extension of foreign protection and diplomatic intervention on behalf of Jews in the nineteenth century.[43] Another factor in drawing Jews toward the West (and thus away from the Muslims with whom they lived) was the coming of European-style Jewish schools in Morocco and across the Middle East, most notably in the form of the Alliance Israélite Universelle (AIU).[44] But the legal strategies of Jews in Morocco show that the increasing influence of Western states did not necessarily spell the beginning of the end of minorities' integration in the Islamic world. Even as Jews acquired patents of foreign protection, they did not abandon Islamic courts; on the contrary, as I discuss in Chapter 6, many preferred shari'a courts or local Makhzan courts over consular courts. This goes against the argument—made most notably by Timur Kuran—that minorities in the Middle East switched from Islamic courts to European ones starting in the eighteenth century, and that this was part of what set them on a different (and, according to Kuran, more successful) path than Muslims.[45] In Morocco, it was French colonial reforms that restricted Jews' access to shari'a courts and encouraged their legal isolation from Muslims.

The multiplicity of institutions I address in this book is reflected in the sources on which I draw—ranging from legal documents produced by Jewish and Islamic courts to government correspondence to consular archives, and written in Arabic, Hebrew, Judeo-Arabic, Judeo-Spanish, and various European languages (primarily French, Spanish, and English). Although Jewish and Muslim notaries public produced written documents, these remained in the hands of private individuals. The state made no effort to ensure a centralized archive of legal documents like the ones kept by countless shari'a courts in the Ottoman Empire.[46] Instead, individuals preserved their own legal archives—documents that are now scattered across state archives, libraries, and private collections. This is what originally steered me toward the Assarrafs. The personal archives of Shalom and Ya'akov—nearly two thousand legal documents produced by Muslim notaries public in Fez and its environs dating from 1850 to 1912—are now in the hands of Yosef Tobi, professor emeritus of Haifa University.[47] This unusually rich collection led me to seek out traces of the Assarrafs in other archives; although the book is not a history of this family, I weave their story throughout to ground my analysis in a more personal narrative. The sources for the national and

international legal venues are more readily available in state-run archives. To understand the functioning of the Makhzan's central court of appeal, I use official government correspondence as well as a particularly useful set of registers from the Ministry of Complaints, set up in the 1860s to administer judicial appeals (both preserved in Moroccan state archives).[48] My understanding of Jews' use of consular courts and their petitions to foreign diplomats draws further on the Moroccan government archives, as well as those of the foreign ministries of France, Britain, Spain, the United States, and the Netherlands.[49]

This book takes readers through the various legal institutions that Jews like the Assarrafs frequented in nineteenth-century Morocco. Most chapters focus on a single type of institution or on the interaction between two sets of courts. This organization reflects the nature of Moroccan legal pluralism, which was made up of a loose field of legal orders rather than a clearly delineated hierarchy of institutions. Our story begins with a mental map of Morocco's legal system. In order to successfully follow the Assarrafs and other Jews through the different fora in which they consumed law, Chapter 1 offers a topography of courts, notaries, and judicial officials, including both how they functioned and how they fit together. I describe how Jews in particular—as subordinate subjects with increasingly international clout—were received in these institutions. As subsequent chapters explore each type of legal venue in turn, this map will act as a reminder of how the different legal orders functioning in Morocco stood in relation to one another.

The following two chapters look at Jews' use of Islamic and Jewish courts at the local level. Chapter 2 focuses on the Assarrafs and the ways in which they engaged Muslim notaries public and shari'a courts to sustain their quotidian business dealings. I show that Jewish merchants like Shalom and Ya'akov used local Islamic legal institutions frequently because of their extensive commercial relations with Muslims. In the case of Shalom, his regular appearances in shari'a courts made him exceptionally knowledgeable about Islamic law—so much so that some Muslims even appointed this Jewish businessman to represent them in court. Chapter 3 looks more closely at the interplay between Jewish and Islamic courts. I discuss instances in which Jews chose to bring cases to Islamic legal institutions even when they could have remained in Jewish

courts, and when Muslims similarly chose to use Jewish legal institutions rather than stay in Islamic ones. Finally, I argue that Jews' and Muslims' movement across jurisdictional boundaries caused judicial officials from both communities to accommodate the realities of legal pluralism. Islamic law and Jewish law converged toward each other—Islamic law by accommodating the existence and validity of Jewish legal institutions, and Jewish law by accommodating the presence of Muslims in Jewish courts.

At the national level, Jews engaged the central government when they felt their legal disputes could not be resolved locally. Chapter 4 draws on the records of the Ministry of Complaints and other government correspondence to argue that Jews were tied to the state in part through their ability to demand redress from the Makhzan. This bond became particularly crucial for the sultan to reinforce as foreigners questioned the Makhzan's ability to properly protect its Jewish subjects and used the alleged abuses of Jews as an excuse to meddle in Morocco's internal affairs. Jews regularly petitioned the government when they felt they had been denied their rights; doing so forged a practical bond that reaffirmed their link to the sultan as protector of dhimmīs.

Chapters 5 and 6 turn to the growing role of foreigners in Morocco's legal system. In Chapter 5, I use four case studies to illustrate how Jews increasingly saw foreigners—both diplomats and international Jewish organizations—as a resource when they believed they had been victims of abuse. Yet while Jews wrote more and more petitions to powerful figures in Europe and the Americas, they also continued to demand their rights from the Makhzan; outside intervention did not replace Jews' appeals to Moroccan government officials, but it did expand the number of options to which Jews had access and thus change their legal calculus. Similarly, as increasing numbers of Jews acquired foreign protection or nationality, the numbers of Jews using consular courts rose. Chapter 6 argues that Jews frequented consular courts in addition to all the other legal venues available to them—particularly local Jewish and Islamic courts. The movement of individuals between local and consular courts required both sets of officials to adapt to the existence of the other institutions; consular officials relied on Islamic standards of evidence, while shari'a courts attempted to control forum shopping among Islamic and foreign courts.

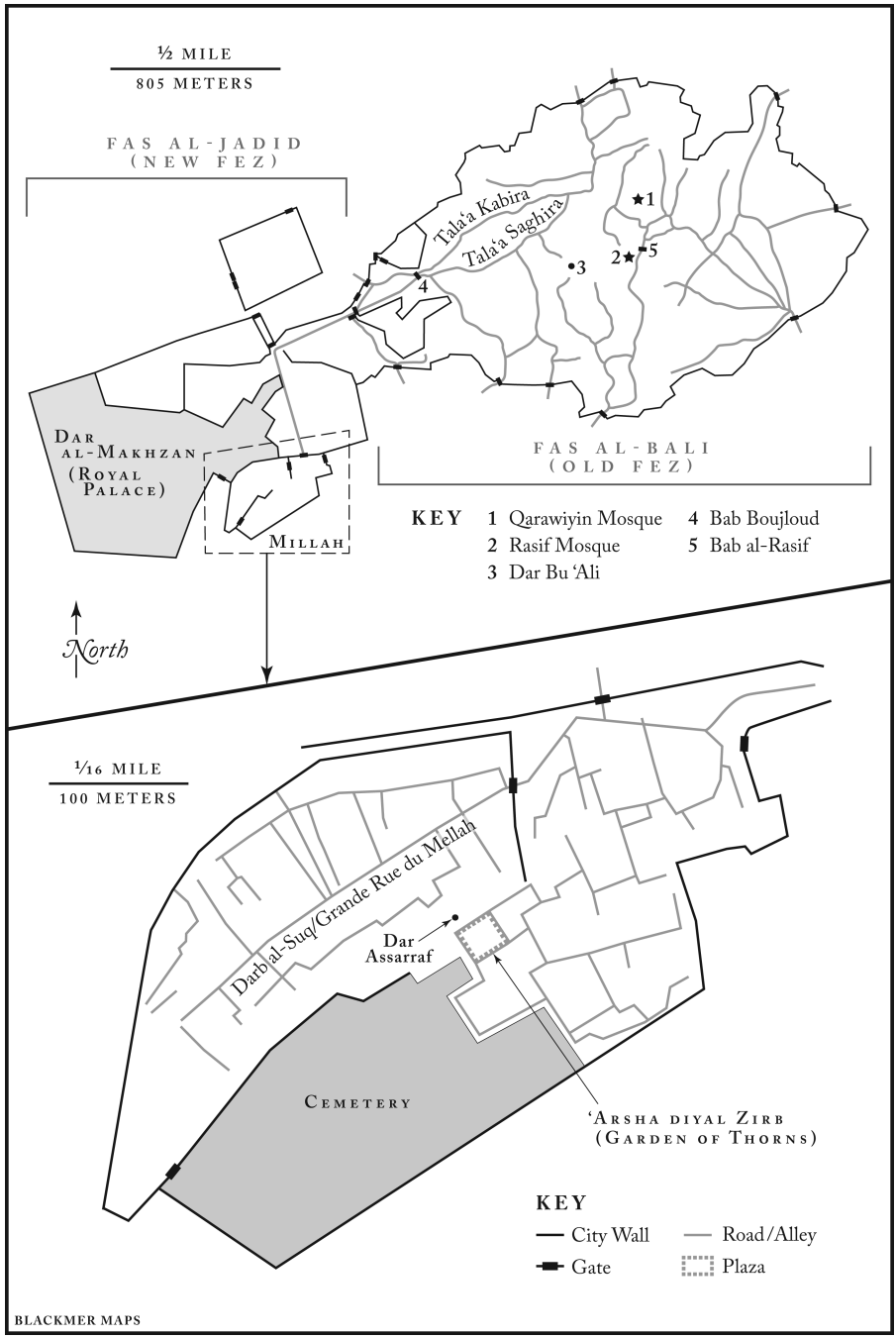
Chapter 7 traces French legal reforms in the early decades of the Protectorate and their impact on Jews' legal strategies. Colonial administrators attempted to harden the jurisdictional boundaries separating Morocco's different legal orders in order to prevent forum shopping and promote the rationalization of the government. In so doing, they reduced the jurisdiction of Jewish and shari'a courts to family law (although shari'a courts also adjudicated matters concerning real estate). The French were not able to implement their legal reforms immediately; both Jews and Muslims initially resisted these far-reaching changes. Nonetheless, the colonial authorities eventually succeeded at imposing firm jurisdictional boundaries among different legal institutions. Yet these reforms had unintended negative consequences for Morocco's Jews—consequences that proved particularly hard to swallow given France's promises to emancipate the country's religious minority.

The Epilogue brings us back to the Assarraf family, tracing some of the descendants' trajectories out of Morocco and across the Moroccan-Jewish diaspora to France, Israel, and the United States. In reflecting on the departure of the vast majority of Morocco's Jews for Israel, Europe, and the Americas, I reinsert law into the broader story of Jews' experience in modern North Africa. Law acted as a vector of integration into Moroccan society in the pre-colonial period despite the increasingly important role played by foreigners in Morocco's legal system. Yet law also contributed to driving Jews and Muslims apart under colonial rule and to setting the stage for Jews' exodus from Morocco. The far-flung traces of Jews' legal lives in nineteenth-century Morocco tell a story about mobility in the context of inequality, about integration in the face of high social and legal barriers, and about the deceptions of colonial modernity. Beyond the experience of Jews like the Assarrafs, these stories make us rethink the nature of interreligious relations and the place of law in both transcending and reinforcing hierarchies of difference.

CHAPTER ONE

The Legal World of Moroccan Jews

WHETHER OR NOT SHALOM ASSARRAF acquired his wealth as a divine reward for his generosity, there is no question that he became a very wealthy man. By the end of his life, he had built a large house—known as Dar Assarraf, "the House of Assarraf"—in Fez's millāḥ.[1] Dar Assarraf is located in the less tony neighborhood of the lower millāḥ, probably because Shalom was a self-made man. From the millāḥ's main thoroughfare (later called the Grande Rue du Mellah), one descended south by way of Darb al-Fard, one of the many small, twisting streets leading into the more residential neighborhoods of the Jewish quarter.[2] Just before Darb al-Fard gives way to the wall encompassing the Jewish cemetery (euphemistically referred to as *beit ha-ḥayyim,* "the house of the living"), it opens onto a small square called the Garden of Thorns. This plaza offers a rare reprieve of green and air amid the tight quarters of the millāḥ.[3] The house stands at the top of the square, four stories high. As with most houses in the Jewish and Muslim quarters of Fez, the structure was not particularly impressive from the outside. Only upon entering did one perceive the elaborate *zulayj* (ornamental tile) decorating the inner courtyard. A small fountain, only about a foot in diameter, bubbled quietly, creating an oasis of refuge from the bluster of the city beyond the house's walls.[4]


½ MILE
805 METERS
FAS AL-JADID
(NEW FEZ)
Tala'a Kabira
Tala'a Saghira
1
2
3
4
5
Dar
al-Makhzan
(Royal
Palace)
Millah
FAS AL-BALI
(OLD FEZ)
KEY
1 Qarawiyin Mosque
2 Rasif Mosque
3 Dar Bu 'Ali
4 Bab Boujloud
5 Bab al-Rasif
North
1/16 MILE
100 METERS
Darb al-Suq/Grande Rue du Mellah
Dar
Assarraf
Cemetery
'Arsha diyal Zirb
(Garden of Thorns)
KEY
City Wall
Road/Alley
Gate
Plaza
BLACKMER MAPS

Map of Fez

But Dar Assarraf not only served as a symbol of the family's wealth and a respite from the outside world; it also housed an archive. This was not an archive in the sense of a state-sponsored institution that held official records, but rather a set of documents preserved for posterity. Stored away in a chest or a strong box of some sort, Shalom Assarraf kept a collection of papers to which his son Ya'akov would continue to add. He included contracts, bills of sale, leases, and court records that offered legal documentation of his commercial endeavors. Taken together, this family archive offers insight not only into the business of the Assarrafs, but into the role played by law and legal institutions in their everyday lives.

In order to follow the Assarrafs and other Jews like them in their encounters with Morocco's legal system, we will require a map. This map walks us through the various institutions that together constituted the

In Dar Assarraf, circa 1940. From left to right: Yosef Assarraf (son of Ya'akov), his wife Rahma Hamou, Hannah née Attias (granddaughter of Ya'akov), her husband David Assarraf (Yosef's brother, also Hannah's uncle), and David and Hannah's daughter Miriam. The two children next to Miriam are probably her siblings Jacqueline and Shalom, and the toddler seated in front of Yosef is probably David and Hannah's son Ya'akov. (From the collection of Michael Maman, used with permission)

legal ecology of nineteenth-century Morocco. It operates at two registers: one to describe the jurisdictions, personnel, and functioning of these legal institutions, and another to guide us through the particular experience of Jews using them. Our map resembles the satellite view of Google Maps, textured and colorful but not always as precise as one might like. The Moroccan legal system in the nineteenth century remains poorly understood; there is no book that can give readers a basic outline of how Morocco's various jurisdictions fit together. In order to follow the movement of Jews and others back and forth across jurisdictions, and the concomitant convergence of different types of law, we must delve into the complexity of each legal order on its own terms.

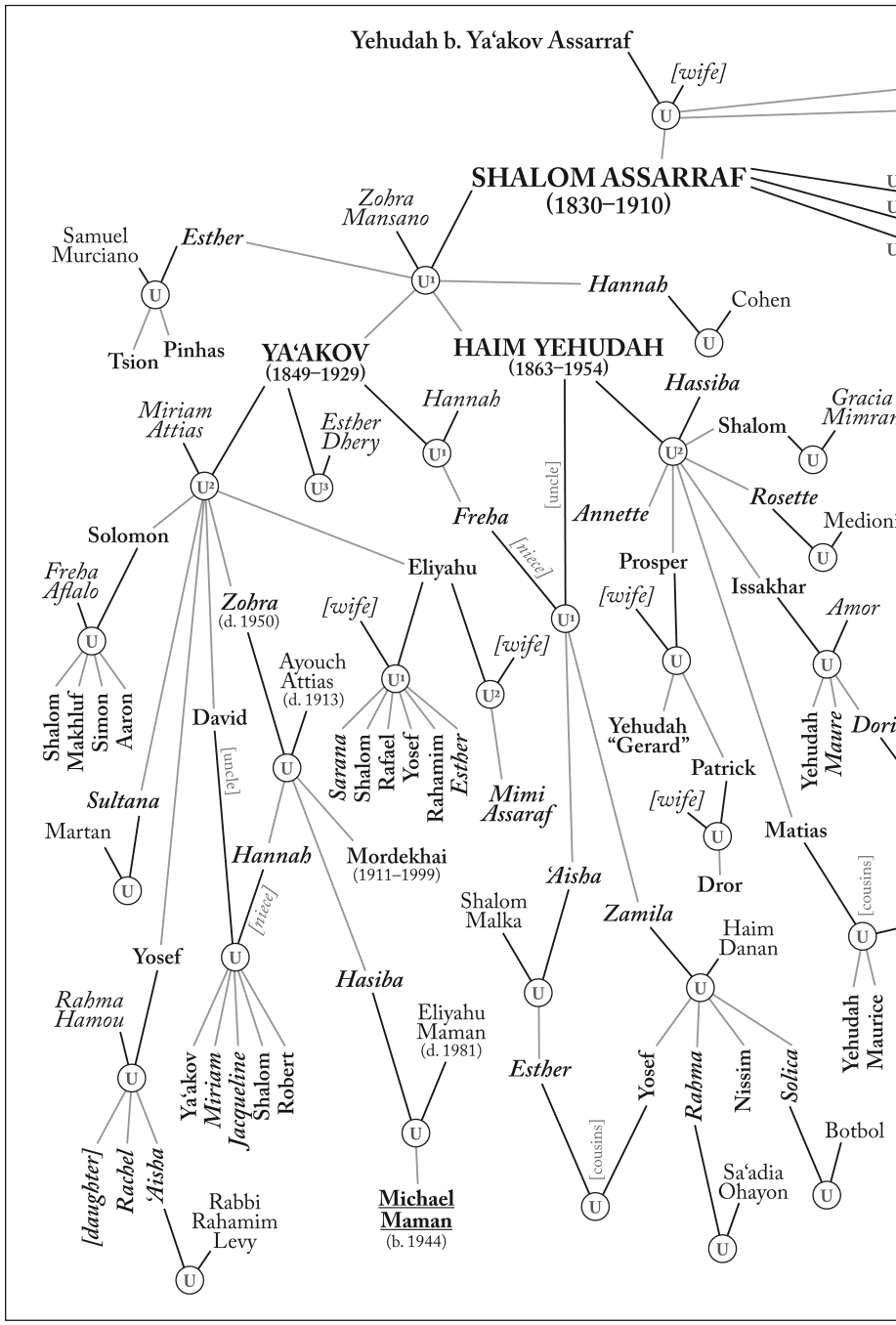
While this map has physical features and landmarks, it is, in essence, a cognitive map. That is, our map traces the ways in which the Moroccan legal system was understood, both by legal authorities and by the individuals who used it. Both perspectives—that of lawmakers and consumers of law—are essential precisely because of the flexible nature of law in Morocco. We are not dealing here with a Civil Code akin to Napoleon's in which each type of institution and each set of laws is clearly and precisely defined. Law in Morocco—and, indeed, in the Islamic world in general—more closely resembles a common law system, in that law emerged from cases and rulings rather than from a central lawgiver.[5] Moreover, and equally importantly, this cognitive map describes a plurality of intersecting and overlapping legal orders, rather than a flow chart.[6] There were differences of power among the distinct legal orders in Morocco; the Makhzan usually had the final word, and shari'a courts were generally better equipped to enforce their rulings than Jewish courts. But no single, rigid hierarchy determined the connections among different types of courts, nor did cases flow automatically from one court to another up a chain of appeal. Rather, individuals brought different types of cases to a particular court depending on jurisdictional boundaries as outlined by Islamic law and custom, the particulars of the situation, and their degree of access to legal institutions or the individuals who presided over them. For this reason, we cannot trace any individual case through all the venues that together constituted the Moroccan legal system. I will, however, remind us how the various parts of our map fit together by returning to the experience of the Assarrafs, who, in this chapter and throughout the book, will act as our guides.

While neither the Assarrafs nor their hometown of Fez can stand in for all Jews or all cities in Morocco, both offer fairly representative examples of the kinds of legal consumers and legal institutions that will concern us.

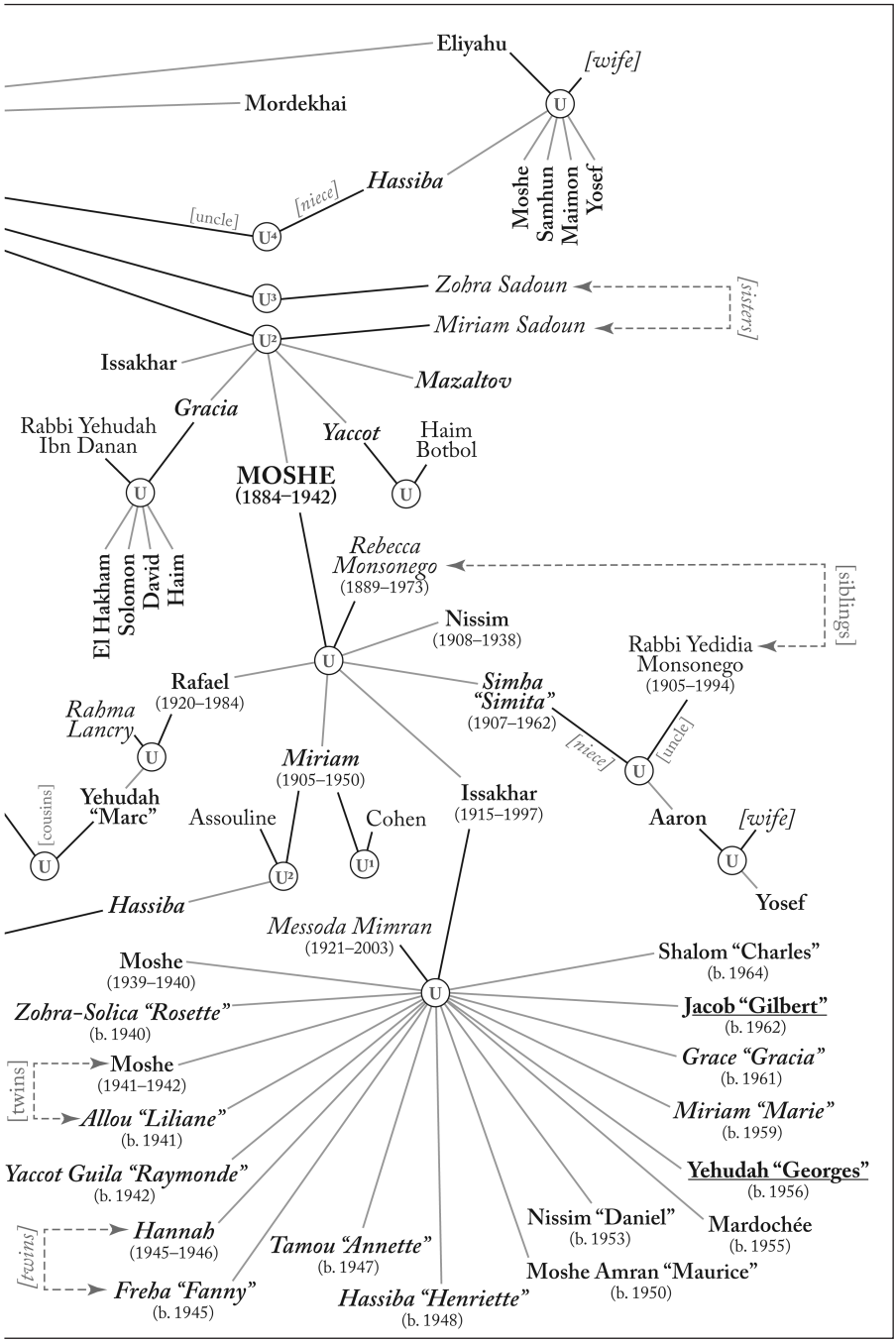
Law in Morocco operated in a series of concentric circles; starting with the local, moving to the national, and then finally to the international. Continuing the Google Maps analogy, the chapter will begin zoomed in on the Jewish quarter where the Assarrafs lived. Starting out from the Assarrafs' home, we will explore the notaries public and Jewish courts that together made up the main institutions applying Jewish law. We will then move laterally northeast to the heart of Fez, where the city's main Islamic legal institutions were situated—including, again, notaries public and tribunals. Here, we will linger on how Jews experienced these institutions, not only because they formed the heart of Jews' encounter with Islamic law but also because so many misconceptions remain concerning the treatment of Jews in Islamic courts. Next we will zoom out to the national scale. The central government, known as the Makhzan, played two roles in the functioning of law—first, locally, the Makhzan operated a series of administrative courts. Second, the sultan presided over a national court of appeal. This central court of appeal is more important for our purposes (largely because we have more sources for it), yet we must nonetheless take the time to examine state-run courts at the local level as they intersected and overlapped with the other legal orders. Finally, we zoom out again, this time to the international scale of consular courts. Most of these courts operated in Tangier, a port city nearly two hundred miles north of Fez. Through them, Morocco was connected to the foreign ministries and legal systems of states across the Mediterranean and the Atlantic.

IN THE MILLĀḤ

Outwardly, Dar Assarraf—and indeed the millāḥ in general—looked very much like the Muslim neighborhoods of Fez. Jews and Muslims in nineteenth-century Morocco dressed in similar clothing, except that many Jews wore black—either because the customary observation of the dhimma demanded it, or because they preferred this color. In one undated photograph, Haim Yehudah, Shalom's second son, wears a dark hooded *jellaba,* the traditional floor-length robe worn by both Jewish and Muslim men in Morocco. On his head is a fez, adopted across faiths and



Assarraf family tree. The names of Shalom and his three sons are in capital letters; women's names are in italics; and the names of family members I interviewed are underlined. (Based in large part on the version shared by Jacob Assaraf; used with permission)


Eliyahu
[wife]
Mordekhai
U
Moshe
Samhun
Maimon
Yosef
Hassiba
[niece]
[uncle]
U4
U3
Zohra Sadoun
Miriam Sadoun
[sisters]
U2
Issakhar
Mazaltov
Gracia
Rabbi Yehudah Ibn Danan
Yaccot
Haim Botbol
MOSHE
(1884–1942)
El Hakham
Solomon
David
Haim
Rebecca Monsonego
(1889–1973)
[siblings]
Nissim
(1908–1938)
Rabbi Yedidia Monsonego
(1905–1994)
Rafael
(1920–1984)
Simha "Simita"
(1907–1962)
Rahma Lancry
Miriam
(1905–1950)
Issakhar
(1915–1997)
[niece]
[uncle]
Yehudah "Marc"
[cousins]
Assouline
Cohen
U1
Aaron
[wife]
Yosef
Hassiba
Messoda Mimran
(1921–2003)
Moshe
(1939–1940)
Shalom "Charles"
(b. 1964)
Zohra-Solica "Rosette"
(b. 1940)
Jacob "Gilbert"
(b. 1962)
Grace "Gracia"
(b. 1961)
[twins]
Moshe
(1941–1942)
Allou "Liliane"
(b. 1941)
Miriam "Marie"
(b. 1959)
Yehudah "Georges"
(b. 1956)
Yaccot Guila "Raymonde"
(b. 1942)
Nissim "Daniel"
(b. 1953)
Mardochée
(b. 1955)
[twins]
Hannah
(1945–1946)
Tamou "Annette"
(b. 1947)
Moshe Amran "Maurice"
(b. 1950)
Freha "Fanny"
(b. 1945)
Hassiba "Henriette"
(b. 1948)

throughout the Middle East as a symbol of modernity.[7] Like Muslims, the Assarrafs spoke colloquial Moroccan Arabic at home—though with a distinctly Jewish accent (which, for instance, confused the *s* and *sh* sounds). But while elite Muslims would have learned to read and write in Arabic, Shalom and Ya'akov had been educated in Hebrew. They wrote only in Judeo-Arabic (Arabic written in Hebrew letters); like the majority of Jews in pre-colonial Morocco, neither knew literary Arabic or any European languages.[8]

But even if its architecture, dress, and language were outwardly quite similar to the rest of Fez, the millāḥ was an intensely Jewish space. Only Jews (and, toward the end of the nineteenth century, a few European Christians) actually lived within the millāḥ's walls. At night, when the quarter's gates were closed to protect its inhabitants, only Jews remained. And Jews governed the day-to-day administration of the millāḥ, from public sanitation to enforcing Jewish ritual observance.[9] The rhythm of the work week was punctuated by the Sabbath's mandated rest and long hours spent in the quarter's many synagogues. From year to year, the High Holidays in the fall and Passover in the spring brought Jewish peddlers home from months on the road where they

Undated photograph of Haim Yehudah Assarraf. (From the collection of Marc Assaraf, used with permission)

eked out a living selling goods to Muslims in the remote countryside.[10] Like most Jews, the Assarrafs' social networks would have been densest among their coreligionists—people with whom they prayed, shared meals, built alliances through marriage, and, of course, did business. Indeed, Shalom and Ya'akov both held leadership positions in the millāḥ. In 1873, Shalom was appointed the secular head of Fez's Jewish community (*nagid*).[11] As such, he was responsible for acting as liaison with the local Makhzan authorities and for meting out fines and even prison sentences within the Jewish community (as Fez was one of the few cities in the world where Jews administered their own prison).[12] And although Ya'akov was never appointed nagid, he too was a communal leader, especially during the months following the pillage of the millāḥ in April 1912.[13]

Most important for our purposes, the millāḥ also housed the Jewish community's legal institutions. There, Jews adjudicated internal affairs according to the precepts of Jewish law. Jews in Morocco—and throughout the Islamic world—were legally classified as dhimmīs, that is, non-Muslim monotheists living under Muslim rule. In exchange for the right to maintain their religious practices, dhimmīs agreed to a set of obligations designed to distinguish them from Muslims and place them lower on the social hierarchy. In exchange for their subservience, dhimmīs garnered a significant degree of autonomy. Islamic law left dhimmīs free to administer themselves in many areas of life—notably the legal domain. This meant that in addition to their spiritual institutions, Jews maintained courts of law, which adjudicated according to *halakhah* (Jewish law).[14]

Although the extent of non-Muslim jurisdiction varied considerably across time and space, Morocco's relatively decentralized state afforded Jews great leeway in running their own judicial affairs. Islamic law permitted dhimmīs to adjudicate intra-dhimmī civil (that is, non-criminal) affairs—which in Morocco meant matters involving only Jews (since there were no indigenous Christians). All cases involving Muslims, even when one party was Jewish, fell under the jurisdiction of Islamic courts. Criminal cases constituted something of a gray area; although technically they fell under the jurisdiction of Islamic law, Jews in Morocco had a limited capacity to adjudicate minor crimes (such as theft)

that occurred within the Jewish community. In large cities like Fez, the nagid administered justice informally—that is, not in strict accordance with the requirements of halakhah.[15] Indeed, it is quite possible that during his tenure as nagid, Shalom Assarraf adjudicated cases among Jews; perhaps he even levied fines or imprisoned those found guilty in the millāḥ's prison (which in Fez was overseen by the nagid).[16] But the nagid's judicial role was relatively minor compared with the religiously sanctioned set of legal institutions responsible for everything from matrimony to moneylending, and much in between.

Shalom and Ya'akov frequently made the short trek into the heart of the millāḥ in order to avail themselves of institutions administering Jewish law. The two most important legal institutions were undoubtedly the notaries public (Hebrew: *sofrim,* s. *sofer*) and the tribunals (Hebrew: *batei din,* s. *beit din*), presided over by *dayyanim* (judges, s. *dayyan*).[17] Together, sofrim and batei din provided the kinds of services that ensured the smooth functioning of commerce and family life in Jewish communities across Morocco. Before 1912, most sofrim and batei din operated in private spaces or, occasionally (and ephemerally) in communal spaces (such as synagogues). It was only during the Protectorate that the French colonial authorities built permanent batei din; Fez's beit din was built above the gate to the millāḥ from New Fez.[18] Nonetheless, the absence of an official building must not fool us into thinking these institutions were entirely informal. On the contrary, both sofrim and batei din played a starring role in constituting the Jewish community as a semi-autonomous entity with legal and political power over Jews.

The Assarrafs' commercial relationships with other Jews gave them plenty of occasions to seek out Jewish notaries public. More than anyone else, sofrim provided the everyday face of Jewish law. They were responsible for drawing up legal documents and notarizing them through their signatures, as well as recording the proceedings of batei din. This meant that sofrim were absolutely essential to the functioning of the economy; Jewish law did not consider contracts valid unless they were written according to the formulae demanded by halakhah and signed by two Jewish male witnesses. Even for ordinary Jews who were fully literate—which was the minority—writing a valid legal contract would have been well beyond their ability. Although bringing a lawsuit to court was something of a rarity even among successful businessmen like the

Assarrafs, getting a document drawn up by sofrim was an ordinary act.[19] Shalom Assarraf had sofrim draw up the leases for his considerable property holdings in the millāḥ that he rented to Jews. When he acquired real estate from Jews, he had sofrim write a bill of sale. Indeed, Jews across Morocco relied on sofrim to draw up bills of debt, mortgages, leases, bills of sale, and partnerships—in other words, the quotidian transactions that fueled the Jewish economy. They also entrusted notaries with producing the documents that regulated Jewish family life, such as marriage contracts, bills of divorce, and wills.[20]

The degree of skill and training among sofrim varied from city to city and from sofer to sofer. Sofrim needed only a minimal level of familiarity with jurisprudence and legal literature, since most of their time was spent copying standard contracts from formularies.[21] They did not receive an official appointment from the Makhzan or from Jewish communal authorities; anyone who believed he was capable to do so could offer his services as a sofer. This meant that the number of sofrim working at any given time varied quite a bit. In the early years of the Protectorate, for instance, seven were operating in Fez, while two worked in Essaouira. Sofrim received no fixed salary; they made their living from the fees they charged for drawing up legal documents.[22] In most cities, sofrim did not keep registers recording the various documents they produced; instead, they simply delivered copies into the hands of the interested parties.[23] Both the lack of a regular salary and the absence of archival records meant that sofrim were susceptible to corruption. The possibility that sofrim could be bribed to produce false documents was a concern for judges, communal leaders, and ordinary Jews alike.[24]

Within the small, crowded space of the millāḥ, Jews also sought out the services of Jewish tribunals. Although sofrim could produce legal documents, they were not competent to adjudicate disputes; in these instances, Jews turned to the dayyanim appointed by communal leaders to pass judgment according to Jewish law. Dayyanim were chosen on the basis of their reputation for learning, piety, and honesty; they represented the apogee of Jewish intellectual achievement. Jews brought a wide range of cases before dayyanim, from unpaid debts to marital strife to quarrels over inheritance to violations of privacy (such as the installation of a new window that overlooked a neighbor's courtyard). Batei din did not keep records of their rulings; they pronounced their decisions

orally, writing them down only at the request of one of the parties. Dayyanim did not charge fees for their services; in addition to a small salary from Jewish communal funds, they received compensation from litigants.[25] These gifts were not necessarily considered bribes; a voluntary donation to a dayyan would be labeled corruption only if it led the dayyan to do something that was against Jewish law.

As with sofrim, the number of dayyanim in a given city varied depending on the size of its Jewish community and its reputation as a center of learning. In 1912, six dayyanim operated in Fez, but only one in the much smaller city of Safi along the coast.[26] Jewish law demanded that ideally three dayyanim sit together in judgment.[27] However, in most Moroccan communities it became customary for a single dayyan to adjudicate ordinary cases; batei din composed of more than one dayyan were convened only for particularly significant or complicated cases.[28] An informal system of appeal operated at both the local and the regional level. Jews who felt they had received an unfair ruling could appeal to a different dayyan in the same city; if the second dayyan disagreed with the ruling of the first, the matter was submitted to a council of dayyanim, which ruled by majority. If the parties failed to resolve a case at the local level, they could appeal to dayyanim of a different community (usually the closest large city) to issue a new ruling.[29]

Batei din were invested with a very limited authority to ensure that their rulings were executed. Excommunication was the most severe punishment they could impose; the ban (as it was known) prevented a Jew from being counted in a quorum or from praying in a synagogue. Beyond the spiritual consequences, other Jews were forbidden to do business with an excommunicated Jew, not to mention to allow him to marry their daughters. But excommunication was a serious matter that dayyanim preferred to avoid when possible. Most of the time, dayyanim relied on local Makhzan authorities to enforce their rulings.[30] This is one of the many ways in which the largely autonomous system of Jewish legal institutions was nonetheless dependent on the Makhzan for a significant portion of its authority; autonomy was possible only because Jewish law in Morocco was deeply intertwined with the state.

Yet while the millāḥ was distinctly Jewish, we must not be fooled into thinking that the Assarrafs encountered only Jews in the millāḥ. Although Muslims did not live there, they came to the Jewish quarter—

some even on a regular basis. As Emily Gottreich has demonstrated, the boundaries separating Jewish and Muslim space in Moroccan cities were real but extremely porous. Morocco's millāḥs functioned as red-light districts, where Muslims could come to imbibe Jews' famous *maḥya* (anise-flavored fig liquor)—forbidden by Islamic law. Others came to pursue related illicit pleasures, like smoking and prostitution.[31] But many Muslims also came for more legitimate reasons, especially to earn a livelihood. Ya'akov Assarraf rented a communal oven to Muslims year after year.[32] (Although according to Jewish law food cooked by non-Jews was not considered kosher, Muslims got around this by having a Jew light the fire every morning—much as commercial kosher kitchens today have Jews participate in the cooking process.)[33] Muslims also entered the millāḥ to sell vegetables or other goods; like many Jewish property owners, the Assarrafs rented a number of their stores to Muslims.

Most important for our purposes, Muslims also availed themselves of the millāḥ's Jewish legal institutions. Although Islamic law formally forbids Muslims to submit to any law other than that of Islam, the advantages of participating in the Jewish legal order were great enough to lure non-Jews to sofrim and batei din. Just as the millāḥ was a primarily but not exclusively Jewish space, so were Jewish legal institutions primarily but not exclusively oriented toward serving Jews.

BEYOND THE MILLĀḤ

Next to Dar Assarraf, Shalom and Ya'akov kept a small stable where they housed their mules, donkeys, and even the occasional horse—another luxurious convenience perhaps best understood as the equivalent of today's three-car garage. Shalom and Ya'akov rode their mounts into the countryside surrounding Fez, where they found eager customers—mostly Muslims—for their imported cotton textiles and an assortment of other goods. Their occupation as merchants linked the Assarrafs to the legal institutions of Fez's Muslim quarters. Since all transactions involving Muslims fell under the jurisdiction of Islamic law, Jews who did business with Muslims entered Muslim spaces and made regular use of their legal institutions. The Assarrafs relied heavily on Islamic notaries public and tribunals for their everyday commercial lives; during the height of his career, Shalom availed himself of their services

nearly once a week. While the Jewish quarter was certainly central to the religious, social, and legal lives of Fez's Jews, the Assarrafs—and many Jews like them—pursued most of their commercial interests beyond the walls of the millāḥ.

We now move about two miles northeast from the millāḥ to the heart of Old Fez, where the city's Islamic legal institutions were concentrated. For Muslims and the Jews who did business with them, notaries public provided the everyday face of the law. These were called *'udūl* (s. *'adl*), a title that literally meant "just" or "upright," but which had come to connote the specific function of a professional witness whose job was to draw up documents according to Islamic law. Like sofrim, 'udūl followed strict guidelines so that the documents they produced would be upheld as evidence in court in the event of a lawsuit.[34] They also produced records of shari'a court deliberations and rulings. Like sofrim, 'udūl were essential to the functioning of the economy, since they possessed the knowledge of legal formulae which ensured that transactions and contracts would be properly documented in the case of a lawsuit. As we will explore in the following chapter, 'udūl played a central role in the legal lives of both Muslims and Jews.

The corps of 'udūl in a given Moroccan city were varied in skill, education, and ambition. For some, the role of 'adl was a lifelong profession; these 'udūl generally acquired the minimum amount of education necessary to draw up legal documents, and often had little knowledge of the intricacies of the law itself. Most of their work consisted of copying standard legal documents from formularies and inserting appropriate details.[35] For others, serving as an 'adl was a step along the path to greater prestige and responsibility; some of Morocco's *'ulamā'* (Muslim scholars) began their careers as 'udūl and ended up as judges or high-level bureaucrats in the Makhzan.[36]

In Fez, approximately three hundred 'udūl served the legal needs of the city's inhabitants, though the number of 'udūl operating in a given city varied considerably. Local judges were responsible for appointing 'udūl, though the amount of control and oversight a given qadi exercised also differed from city to city.[37] 'Udūl earned their living by charging fees for the documents they drew up. These fees were highly flexible, depending largely on how much the customer could pay and on how badly he or she needed the document in question. The general lack of

oversight and the fierce competition for business meant that some ʿudūl resorted to bribes in exchange for drawing up false documents.[38] Indeed, Moroccan notaries public were notoriously suspect of corruption, and the accusation that evidence presented in court was forged came up frequently in judicial proceedings. Some ʿudūl were mobile (known as *sāriḥūn*), working either in their own homes or in those of their clients. Others, working in pairs, rented stores where they plied their trade. In Fez, these ʿudūl occupied twenty or so stores that "crowd[ed] round the Karaouiyin" in Old Fez, in an area known as *smat al-ʿudūl*.[39] Jews like the Assarrafs either depended on the mobile ʿudūl to come to them, or made the trip to Old Fez to seek out the ʿudūl with storefronts near the Qarawiyin.

ʿUdūl operated largely independently of state supervision; thus the state did not have an inherent interest in the documentation they produced. Instead, ʿudūl gave the legal documents they drew up to the individual plaintiffs, who then preserved these documents in their own private collections.[40] This was true of documents that recorded commercial and civil transactions as well as records of court trials and judgments. Some ʿudūl retained records for their own private use, but these were never handed to the state. Indeed, the archiving practices (or lack thereof) of ʿudūl were quite similar to those of sofrim. Scholars familiar with Ottoman archival practices are often taken aback that Morocco had no mechanism to preserve legal documents or court records in a form that was publicly accessible, yet the lack of Moroccan judicial archives makes sense given the political situation of the country. Despite increasing efforts to consolidate the state's authority and centralize its government in the mid–nineteenth century, the Makhzan nonetheless remained quite weak—especially compared with, say, European nation-states or the Ottoman Empire. Moroccan sultans were concerned with more basic manifestations of their authority at the local level, such as collecting taxes and crushing armed insurgents. The imposition of a statewide regime of archival records was far beyond what the Moroccan government was able or willing to accomplish. Nonetheless, ʿudūl *did* produce written records; these were preserved privately, and many of them, such as those in the Assarraf collection, survive until this day.

Muslim notaries public recognized Jews as distinct from Muslims and marked them as such in the documents they wrote. ʿUdūl usually

prefaced Jews' names with "al-dhimmī" or, less frequently, "al-yahūdī."[41] Certain titles specific to Jews were sometimes added after "al-dhimmī," such as "al-ḥazān," a word borrowed from Hebrew (meaning cantor) which in Morocco denoted a learned person.[42] Very rarely, the 'udūl might leave out "al-dhimmī," describing the Jew in question simply as "the merchant" (*al-tājir*)—though this was infrequent enough that it was probably more of an oversight than a sign of changing attitudes toward Jews.[43] Significantly, notaries almost never followed Jews' names with the expression "may God curse him"—a phrase commonly found after the mention of Jews in jurisprudential literature.[44] In addition to Jewish titles, 'udūl often used a slightly different concluding formula at the end of documents concerning Jews. Notarized documents typically ended with the two 'udūl testifying to having witnessed the agreement to which the document pertains. The standard formula is: "[The 'udūl] testify that they [the parties to the contract] know the content [of the contract] and testify concerning them completely."[45] When a Jew was concerned, however, the formula specified that "the dhimmī is in an acceptable state," further signaling Jews as distinct from the norm—considered to be a Muslim male.[46] Nonetheless, beyond these markers of Jewish identity, there was little difference in the way 'udūl prepared legal documents for Jews. Jews were entitled to engage 'udūl to draw up their contracts, bills of sale, and other deeds just like Muslims. The basic form of Islamic legal documents was the same regardless of whether a Jew was involved or not.[47] Of course, identical documents might have concealed significantly different treatment; but in theory, at least, Islamic notaries were charged with producing legal documents in which the parties' religious affiliation mattered little.

In parallel to the everyday services provided by 'udūl, qadis (Muslim judges: *qāḍī,* pl. *quḍā*) presided over the shari'a courts that were responsible for adjudicating conflicts according to Islamic law.[48] Qadis examined evidence and pronounced judgments—all of which 'udūl recorded. Starting in the second half of the nineteenth century, they also countersigned legal documents notarized by 'udūl—an extra precaution introduced by Europeans and adhered to mostly by Moroccans in commercial relations with foreigners.[49] The *qāḍī al-quḍā,* the country's chief judge who presided over the main court of Fez, was responsible for appointing qadis in cities throughout Morocco.[50] The sultan, in turn, appointed the qāḍī

al-quḍā, thus exercising theoretical control over judicial personnel. Yet while local qadis may have received formal appointments from the Makhzan, the degree of control exercised by the central government varied widely. Many qadis also appointed their own delegates (*nā'ib,* pl. *nuwwāb*), especially for rural areas near major cities; the area around Meknes, for instance, had seven different nā'ibs working in 1912—all of whom operated with little supervision. Moreover, much like 'udūl, qadis did not receive a fixed salary from the government; they made a living off the proceeds of *ḥubūs* (religious endowments) and fees for certain services (such as dividing up inheritance), as well as gifts offered by litigants.[51] Perhaps most importantly, qadis did not make efforts to keep records of their judgments; like other legal documents, 'udūl delivered the written accounts of shari'a court trials into the hands of the plaintiffs concerned.

Finally, alongside qadis, a corps of jurisconsults known as muftis worked in Morocco's larger cities. Muftis held no official appointments and their work was not in any way regulated by the state; individuals sought out scholars with a reputation as experts in Islamic law in search of responsa, legal opinions concerning a particular case (Arabic: *fatāwā,* s. *fatwā*). Submitting a responsum to a qadi did not automatically decide a trial—the judge still had the right to adjudicate as he wished. However, producing a responsum—especially from a famous jurist—almost always helped one's chances of a favorable ruling. Anyone, regardless of his faith, had the right to seek a responsum from a qualified mufti, although this advice did not come free; in Fez at the turn of the twentieth century, responsa cost between one and one hundred *douros* each, depending on the complexity of the case and the reputation of the mufti.[52]

Fez boasted three different qadi courts (though most cities in Morocco had only one).[53] Two of these were located in the heart of Old Fez. The Assarrafs most often frequented the court presided over by the qāḍī al-quḍā, located near the Qarawiyin mosque, Fez's most famous religious establishment and the premier institution of Islamic learning in Morocco.[54] This court was convened in a small chamber adjacent to the mosque, near the row of shops belonging to 'udūl.[55] Mawlay Hasan (ruled 1873–94) appointed a second qadi whose court was located in the vicinity of the Rasif (or Rcif) Mosque, near the Bab al-Rasif. This court was probably convened in the qadi's house, a common location when

a court was not held in a mosque or a building owned by the Makhzan.[56] The third court, located at the entrance to the administrative quarters of the palace (*dār al-makhzan*) in New Fez, was presided over by the *qāḍī al-jaysh,* literally the military judge, although the court's jurisdiction was not limited to the army alone. This court was the closest to the Assarrafs' home in the millāḥ, yet while they did avail themselves of its services, they clearly preferred the one in the Qarawiyin.[57] In rural areas, qadis generally heard cases in weekly markets where people from a larger geographical region gathered to buy and sell.[58] There is, however, no evidence that the Assarrafs frequented these rural courts, although the extent to which this was representative of Jewish patterns of legal consumption more broadly is difficult to tell.

The procedure followed in shari'a tribunals rested on the premise that each individual would represent him- or herself. Qadi courts did not accommodate a professional corps of experts who advocated on plaintiffs' behalf. Nonetheless, it was possible to appoint someone else as one's representative (*wakīl*) in court—for instance, if one had to travel for business and could not appear in person. Muslims and Jews went to 'udūl to draw up powers of attorney enabling others to conduct legal business on their behalf; this included collecting debts, releasing debtors, selling and buying property, and representing someone in court. It is this last function which prompted foreign observers to compare wakīls to the lawyers of European courts.[59] Wakīls often did act as lawyers, especially when they were more versed in the workings of shari'a courts than their representees. Indeed, Shalom Assarraf fulfilled just this role, not only for his coreligionists but for some of his Muslim colleagues as well.

Although Islamic law placed certain disadvantages on Jews, the way in which legal procedure worked in Morocco tempered these restrictions to the point of making them nearly obsolete. In order to prove something in court, Islamic law requires testimony from two adult Muslim men who fit the requirements of probity ('adl), or from one Muslim man and two Muslim women. As non-Muslims, Jews were not eligible to testify orally in court except against other non-Muslims.[60] In Morocco, however, these evidentiary requirements had developed into a reliance on professional notaries to act as "just witnesses" ('udūl, s. 'adl). But rather than come to court to testify orally, these 'udūl testified through

their signatures—that is, by writing up legal documents and signing them. By the nineteenth century, written proof had come to equal and in some instances displace oral evidence in Moroccan shari'a courts. Qadis called upon both plaintiffs and defendants to prove their claims by producing notarized documents.[61] This was partly due to the peculiarities of Mālikī jurists, who were exceptional among the four schools of Sunni law in their reliance on written evidence; for Mālikīs, notarized documents stood on par with oral testimony.[62] The fact that Jews could not testify orally in shari'a courts was thus almost irrelevant, since neither Jews nor Muslims were called upon to prove their cases *viva voce*. Moroccan qadis instead asked everyone to present notarized documents, to which Jews and Muslims had equal access.

The fact that Jews and Muslims could both acquire documents notarized by 'udūl meant that the playing field was, at least theoretically, almost entirely level in Moroccan shari'a courts. Jews could not serve as 'udūl by virtue of being Jewish, but neither could Muslim women, slaves, minors, Muslim men considered to lack the qualities of uprightness and justice, or, in Morocco after 1877, Muslims who had acquired foreign protection.[63] Moreover, because the role of 'adl was professionalized in nineteenth-century Morocco, the vast majority of Muslims—even those who were eligible to become 'udūl—had to rely on the services of professional notaries. In their reliance on 'udūl to draw up their legal documents, then, Jews did not differ at all from Muslims. Since the role of witness was professionalized, the prohibition on Jews serving as 'udūl did little to make their experience in court distinct from that of Muslims.

Jews' inability to testify did affect their access to another type of evidence produced on occasion in Moroccan shari'a courts. As non-Muslims, Jews were ineligible to testify in a *lafīf*, a form of witnessing particular to the Maghrib in which twelve ordinary men—that is, Muslims who were not 'udūl—testified to something based on their personal knowledge.[64] Although Jews could present a lafīf as evidence in a shari'a court, they had to find twelve Muslim men who would testify on their behalf. Muslims, on the other hand, could rely on their family members to constitute a lafīf—a practice that was not uncommon.[65] While these requirements certainly put Jews at a disadvantage, they did not prevent them from making use of lafīfs. Shalom Assarraf presented

a lafīf as evidence in a lawsuit against a Muslim named Ahmad b. ʻAbd al-Jalil al-Qamri. He found twelve Muslim men who testified that Ahmad had guaranteed a debt that his wife, Zaynab, owed him. The qadi accepted the validity of the lafīf and ruled in Shalom's favor.[66] Just as Jews were able to seek out the services of (necessarily Muslim) ʻudūl to notarize documents, they managed to find twelve men (also necessarily Muslim) to constitute a lafīf.

Finally, Jews—and non-Muslims generally—were eligible to take the judicial oath concerning the facts of a case.[67] Oaths were a crucial part of Islamic legal procedure. Normally the defendant was asked to take an oath if he denied the charges and the plaintiff could not produce evidence of his claim. There were also instances in which the plaintiff, or even both parties, might be asked to take the oath: concerning debts owed by an absentee (or deceased) debtor, the creditor could be asked to take an "oath of payment" or "oath of liberation" (yamīn al-qaḍāʼ) confirming that the debt he claimed was still outstanding.[68] Both Muslims and Jews took oaths very seriously, though in shariʻa courts they were more often threatened than demanded.

Islamic law preferred individuals to take oaths in ways that would maximize the chances of their telling the truth. This meant that Jews took oaths in synagogues, where their fear of God would be greatest.[69] Oath taking was a spectacle designed to impress the person swearing with the gravity of his actions. A description of an oath taken by Shalom conveys just how dramatic the act was:

> When [the creditor, Shalom Assarraf] decided to leave this city, he asked the exalted shariʻa [court], may God elevate and strengthen it, to administer the oath which was required of him by his aforementioned debtor in the transaction on the back [of this document] concerning payment, for what the debtor might request of the creditor, [so] that [he might] appoint an agent to collect the amount from [the debtor]. . . . [Then,] with the official Malik b. Lahsan al-Susi [who] went with the creditor to their great place in their synagogue in the millāḥ of this city, the creditor took the book of the Torah in his hand and swore, saying (in Arabic), "[I swear] by God, there is no God but Him, he sent down the Torah through our lord

> Moses, that the transaction on the back is as it seems, and that I have not collected any of it except the amount specified in the last [entry] on the back and that the rest is still owed at this time."[70]

Shalom swore his oath with his hand placed on the Torah scrolls—the holiest ritual object among Diaspora Jews. In swearing, he invoked God (*Allāh* in Arabic and Judeo-Arabic), Moses, and the Torah—all in ways that were true to Jewish belief yet common to Islam and Judaism.[71] Taking the oath brought Shalom full circle, from the heart of Old Fez and its shari'a court to his local synagogue, just minutes away from Dar Assarraf.

The Jewish legal institutions of the millāḥ were vibrant, but they did not constitute the horizon of the Assarrafs' legal lives. The Assarrafs, and many Jews like them, were regular patrons of the notaries public and the shari'a courts of Fez's Muslim quarters; these Islamic institutions made up huge parts of their legal world, and the Assarrafs, in turn, helped constitute these institutions' clientele. Just as Jewish and Muslim space was porous, so were the boundaries of Jewish and Islamic legal institutions.

THE STATE AND THE LAW

Zooming out one degree from the local level to that of the state, our map comes into focus on the role of the central government in Morocco's legal system. As we have seen, the Makhzan enabled the existence of Jewish and Islamic legal institutions, both by granting them authority and by enforcing their decisions. But the Makhzan administered its own set of tribunals. State-appointed governors (pashas and *qā'ids*) presided over Makhzan courts with jurisdiction over criminal and some civil cases.[72] Nationally, the sultan himself presided over a central court of appeals to which all subjects could petition when they felt justice had not been carried out at the local level. In the 1860s, in response to the threat of European imperialism, the sultan created a Ministry of Complaints to administer his court of appeals in an effort to centralize and consolidate the Makhzan's authority.

When the Assarrafs ventured to Old Fez on their way to the Qarawiyin and its qadi court, they would have passed near the tribunal of Fez's governor in the prestigious neighborhood of Dar Bu 'Ali.[73] This type of extra-shari'a tribunal presided over by administrative officials

was a feature of many Muslim governments. Qadis' jurisdiction theoretically extended to all areas of life, but the stringent requirements of the shari'a made prosecuting criminal cases extremely difficult. Most Muslim rulers got around this by supplementing the justice of the qadi with that of a local administrative official. Nonetheless, the boundaries separating the jurisdictions of qadi courts and Makhzan courts were quite fluid.[74] On the one hand, marriage, divorce, custody, inheritance, and related concerns fell under the exclusive jurisdiction of shari'a courts. But other civil matters could be adjudicated either by local Makhzan courts or by qadi courts, such as debts, partnerships, and commercial disputes.[75] Moreover, while most criminal matters were dealt with by Makhzan courts, qadis often played a role in resolving these cases—such as by determining the amount of blood money owed to the relatives of a murder victim, or the validity of evidence concerning a crime. Unlike shari'a courts, however, Makhzan courts did not produce any written records of their judgments. Nor did they follow the strict legal procedure to which qadis adhered; indeed, because Makhzan courts usually left judgments up to the instinct of the presiding governor, European observers invariably accused them of being arbitrary and fundamentally unjust institutions.[76] While such sweeping condemnation overstates the case, the fairness of these courts certainly varied according to the character of the presiding judge and the sultan's ability to oversee his operations.

The inadmissibility of Jews' oral testimony put them at a greater disadvantage in Makhzan courts than in shari'a courts. Governor-administered tribunals dispensed a far more informal type of justice than did qadis, and they relied more frequently on oral testimony than on written documents. In these instances, many Makhzan officials prohibited Jews from giving evidence against Muslims. The extent to which all Makhzan courts adhered to the restriction on Jews' oral testimony is not clear. But even the possibility of evoking this rule placed Jews at a considerable disadvantage. Unfortunately, because these courts left no written records, their functioning is difficult to reconstruct from the available archives, and the experience of Jews in these courts remains poorly understood.

Makhzan officials also played an important role in executing the decisions of shari'a courts. Although qadi courts employed bailiffs (known as *makhzānīs*) who were responsible for summoning parties or bringing

them before ʻudūl or the local governor as needed, they did not execute their own judgments. Local Makhzan officials were the ones responsible for actually inflicting punishments.[77] Most of the time, in fact, qadis merely determined the facts of a case—such as whether a particular debtor had to pay his debt. Makhzan authorities took care of confiscating debtors' goods, sending bankrupt debtors to prison, physically punishing criminals (often with the bastinado, a punishment involving beating the soles of a person's feet), or extracting blood money from murderers or their relatives.[78] In other words, Makhzan officials' role as the enforcers of law was largely the same for Jewish and Islamic courts.

Circling back from Old Fez toward the millāḥ, the Assarrafs would have passed by the sultan's sprawling palace compound in New Fez. The palace housed not only the sultan and his retinue, but the administrative offices of the central government—including the Makhzan's central court of appeal, known since the 1860s as the Wizārat al-shikāyāt (the Ministry of Complaints).[79] As commander of the faithful and the country's supreme spiritual and temporal ruler, the sultan himself was the highest authority Jews and Muslims turned to when they could not resolve disputes locally. The sultan's role as judicial arbiter drew on a long tradition across the Islamic world of the ruler personally ensuring justice for his subjects. Since medieval times, individuals could petition their Muslim rulers personally, and rulers' ability to ensure justice was one of the main justifications for their authority.[80] Starting in the Abbasid period (750–1258), many states instituted a special tribunal in which the ruler or his representative heard the petitions of his subjects.[81] Called *maẓālim* courts (*maẓālim,* s. *maẓlima,* refers to injustices or acts of oppression), these tribunals offered a chance for people from all walks of life to lodge complaints about anything from unresolved legal disputes to abuse by government officials. Instead of the formal jurisprudence or procedure followed by shariʻa courts, maẓālim courts offered the sovereign's personal justice.[82] Nonetheless, the sultan was expected to conform to Islamic law, or at the very least not to contravene it openly.[83] This makes it misleading to call the sultan's judicial authority secular; not only did the sultan claim divine authority as both the spiritual and political leader of Morocco, but—like every Muslim—he, too, was bound by the prescriptions of Islamic law.[84]

Individuals from all over Morocco—including cities and rural areas, the coasts and the interior—petitioned the Makhzan. Most claimants asked the central government to intervene in their legal disputes (though a few beseeched the sultan to give them charity or made other non-legal requests). Some submitted their claims in person, and Mawlay Hasan set aside one or two days every week to receive these petitioners.[85] Ya'akov Assarraf, who petitioned the Ministry of Complaints at least a dozen times between March 1890 and March 1893, might have appeared before the sultan while the royal retinue was in Fez to present his case. But given both the difficulty of travel and the sultan's frequent forays on military campaigns, most petitioners chose instead to send written appeals.[86] Many Moroccans would not have been literate enough to write these letters themselves, and thus probably hired scribes to produce the petitions for them.[87] The fact that these petitions were written in Arabic meant that even highly literate Jewish petitioners would have engaged the services of Muslim scribes, since exceedingly few Jews could write in literary Arabic. Undoubtedly these scribes played an important role in shaping the content of the petitions they penned, though unfortunately we know next to nothing about their background, education, or political position.[88]

The premise that the sultan personally guaranteed the reign of justice in his domain meant that petitioners had the right to appeal directly to him; nonetheless, canny individuals sent their petitions to whomever they thought would be most likely to ensure that their case actually reached the sultan.[89] Petitioners with close ties to a minister or a local Makhzan official often found it more effective to send a petition to their contact in the administration with a request that he transmit the letter to the sultan. For instance, in the spring of 1887, Moroccans were suffering from a shortage of basic supplies. The people of Meknes found themselves hit particularly hard because the local market inspector (*muḥtasib*), who was in charge of regulating commerce, had severely limited the sale of flour in the city. The inspector cut off flour from the millāḥ entirely—forcing Jews to buy in the Muslim part of the city, where they were the targets of well-aimed stones thrown by Muslim children. To make matters even worse, he limited the sale of flour anywhere in Meknes to his friends, presumably for a cut of the profits. Me-

knes's Jewish communal leaders wrote a petition asking the sultan to heed their plight and put an end to the inspector's machinations. They emphasized that the muḥtasib's actions were hurting not only them but also their Muslim neighbors. Yet rather than send the letter to the sultan directly, they addressed it to his vizier (or prime minister), Muhammad b. Ahmad al-Sanhaji (vizier from 1886 to 1892), asking him to pass their petition along to Mawlay Muhammad himself.[90] Some members of the Jewish community of Meknes presumably had a personal connection to al-Sanhaji that encouraged them to believe the petition would get a more favorable treatment in his hands than if it arrived directly on the sultan's desk.

Once a matter reached the sultan, he could respond in a variety of ways. For relatively minor cases, the sultan usually delegated the case to a local Makhzan official. In response to Shalom Assarraf's petition for help collecting money he was owed by the Shararda tribe, Mawlay Hasan wrote to the tribe's governor (Sa'id b. Faraji) ordering him to make sure that the recalcitrant debtors appeared in court. For more serious matters, the sultan either sent a representative to investigate the claims or summoned the parties involved in order to question them personally.[91]

For Jews in particular, the court of appeals represented a direct conduit to the sultan, who was particularly bound to secure them justice as his personal protégés (recall that *dhimma* literally means protection). The duty to protect dhimmīs was in some ways simply an instance of the broader expectation that the ruler must ensure justice and the rule of Islamic law.[92] But because they were his dhimmīs, the sovereign was doubly obligated to protect the rights of Jews.[93]

Moroccan sultans also viewed the protection of Jews as a symbolic assertion of their authority. Morocco's most famous nineteenth-century historian, Ahmad b. Khalid al-Nasiri, summed up the success of Mawlay Isma'il's reign (1684–1727) in these words:

> When a woman or a dhimmī traveled from Oujda [in the northeast] to Wadi Nun [in the southwest], they would not find anyone asking them from where they had come or where they were going . . . not a thief nor a highway robber was found in the country during this time.[94]

In other words, according to al-Nasiri, a sultan's ability to guarantee the safety of dhimmīs—who, like women, were among the most vulnerable members of society—was a measure of his power. Al-Nasiri's portrait of an idealized ruler exemplifies the more general notion that the sultan had a special responsibility to protect Jews.

The creation of the Ministry of Complaints was in some ways merely a reorganization of an older institution. But it was also emblematic of the changing political climate during the nineteenth century. After Morocco's defeat by France at the Battle of Isly in 1844, the Makhzan became keener than ever on consolidating its authority in the face of the military and economic threats posed by European states. Mawlay Muhammad (IV, reigned 1859–73) created the Ministry of Complaints as part of his broader efforts to modernize and centralize the state.[95] This was a tactic practiced by rulers the world over. Princes and potentates across the globe asserted their power and undermined the influence of local elites by establishing a direct conduit between themselves and their subjects, often in the form of a central court of appeal.[96]

Mawlay Muhammad's judicial reforms were also aimed at convincing western diplomats that the Makhzan was actively upholding justice in Morocco, especially for its Jewish subjects. Foreigners repeatedly criticized the Makhzan's treatment of non-Muslims.[97] In the face of this criticism, Makhzan officials pointed to the Ministry of Complaints as evidence that the government treated its Jewish subjects fairly. Muhammad Bargash, the foreign minister from 1862 to 1886, wrote a collective letter to the foreign ambassadors in Tangier responding to their alarm about fourteen Jews who were murdered in 1881. Bargash explained that the sultan took his subjects' claims of mistreatment seriously, and that in order to address their appeals, "he had appointed a special minister"—undoubtedly the Minister of Complaints—"to [address] their claims . . . and that anyone who brought a complaint to the sultan would [have his complaint] addressed according to justice and the law."[98] Bargash's reasoning suggests that the ministry served in part to placate foreigners' criticisms of the Moroccan legal system.

Nonetheless, foreign diplomats and international Jewish organizations played an increasingly important role in the resolution of Moroccan Jews' legal disputes as the nineteenth century wore on. Starting in the 1860s—when two Jews from Safi were executed for poisoning a

Spanish consular official, instigating a visit by the British Jewish philanthropist Moses Montefiore—the situation of Moroccan Jews became a humanitarian cause célèbre. Foreigners began regularly petitioning the Moroccan government on behalf of Jews they perceived to be oppressed—often backing up their demands with threats of military action. Jews capitalized on the informal intervention of foreign diplomats and Jewish organizations like the Alliance Israélite Universelle (AIU). They often successfully mobilized international campaigns in order to press their causes with the sultan. Even Shalom Assarraf, in his role as a communal leader in Fez, signed a petition to the AIU asking for its intervention in a number of pending legal matters.[99] These petitions never replaced Jews' appeals to the Makhzan; indeed, Jews often wrote to Makhzan officials and foreigners simultaneously, hoping to cover all their bases. But Jews' mobilization of the humanitarian concerns of foreigners did put them in a privileged position, and expanded the number of available options when they felt they were denied justice at the local level.

The global shifts in power that spurred the Makhzan to create the Ministry of Complaints were also behind the expansion of the system of consular courts, which constitute the fourth and final order in the concentric circles of law that defined Moroccan Jews' legal world. We zoom out one last time from the national to the international level, where a web of legal institutions connected Morocco to the panoply of Western states with extraterritorial privileges in the sultan's domain.

TO TANGIER AND BEYOND: CONSULAR COURTS AND EXTRATERRITORIALITY

In the fall of 1884, Shalom Assarraf fell victim to a violent attack just outside the millāḥ's walls. Upon arriving at his store in New Fez, some soldiers "arrested him, beat him, and were about to kill him; were it not for the Muslims who removed him and took him to his house, they would have killed him."[100] Shalom claimed he was innocent and that the assault was completely unfounded. He might have petitioned the Makhzan directly for redress against these government agents; indeed, this injustice would have been a perfect candidate for a letter to the Ministry of Complaints. But for over a decade—since at least 1871—Shalom had been listed among the ranks of American protégés.[101] His American

protection entitled him to a number of privileges, not least among them extraterritoriality. In this instance, his status enabled him to bypass the normal channels of appeal and write instead to the American ambassador, Felix A. Mathews. Mathews, in turn, wrote to the sultan demanding that Shalom "get his due," that is, be compensated financially for the incident and have the soldiers punished.[102] Shalom Assarraf was not an inconsequential figure in Fez, but his influence could not come close to that of Mathews—who, after all, had the entire United States government (and its warships) backing him. In the second half of the nineteenth century, increasing numbers of Jews took advantage of their extraterritorial status to more effectively pursue their legal claims.

In acquiring American protection, Shalom was part of the growing ranks of individuals granted extraterritoriality in nineteenth-century Morocco. The spread of extraterritoriality had profound effects on Morocco's legal system, notably by expanding the legal pluralism already present in early modern Morocco. Extraterritorial privileges in Morocco had their roots in the capitulation treaties first signed with the Ottoman Empire in the sixteenth century. Morocco signed its first such treaty in 1767 with France, and similar treaties with the majority of Western states followed.[103] By the mid–nineteenth century, the number of individuals with extraterritorial privileges in Morocco began to soar. Many obtained patents of protection on the black market from corrupt consular officials. Others sought naturalization abroad, only to return to Morocco as nationals of foreign states. As the ranks of foreign nationals and protégés soared, extraterritoriality served as an increasingly effective stalking horse for imperialism, offering frequent opportunities for Western diplomats to meddle in the Makhzan's internal affairs.[104]

As a protégé, Shalom enjoyed a range of privileges. Formally speaking, he was exempt from taxation by the Makhzan, could only be prosecuted in a consular court, and was entitled to the help of American consular officials in any disputes (especially those with Moroccan subjects). Moreover, many foreign subjects and protégés submitted lists of unpaid debts they were owed by Moroccan subjects to their consuls, who then demanded payment directly from the sultan. This rather unusual arrangement was based on the premise that the sultan bore ultimate responsibility for the debts of his subjects.[105] By 1912, the practice of demanding direct repayment of debts from the sultan had become not

only commonplace but even institutionalized; some consulates, like that of France, issued printed receipts on which consular officials recorded the amounts that protégés and foreign subjects received from the Makhzan.[106] This policy made protection even more attractive for Moroccan subjects engaged in moneylending (although it is not clear whether Shalom took advantage of this particular perk).

Extraterritoriality was especially attractive to Jews like Shalom, but it was by no means an exclusively Jewish privilege. Moroccan Jews acquired patents of protection or became naturalized abroad in disproportionate numbers compared with Muslims. And Jews' acquisition of protection was particularly disruptive to the social order because of its implicit challenge to the dhimma pact that had heretofore guided the relationship between the sultan and his non-Muslim subjects. Yet many Muslims in Morocco also acquired patents of protection. The large numbers of Muslim protégés made the Moroccan iteration of extraterritoriality distinct from its Ottoman precedent, where the vast majority of those with protection were non-Muslims.[107] Moroccan Muslims with extraterritoriality aroused the ire of some jurists, who argued that voluntarily placing oneself under a non-Muslim jurisdiction was a violation of Islamic law.[108] Nonetheless, many Muslims were too tempted by the legal, pecuniary, political, and even social advantages of extraterritoriality to be dissuaded by the potential transgression of shari'a. As the ranks of foreign subjects and protégés in Morocco rose, consular courts became increasingly important features of the legal landscape.

Shalom Assarraf—like most Jewish and Muslim merchants—pursued the majority of his legal needs in his hometown. But when foreign nationals and protégés found themselves under the jurisdiction of a consular court, they had to go to Tangier, the seat of foreign legations in Morocco and the home of the consular tribunals.[109] The American legation had been situated in a beautiful building in the heart of Tangier since 1821; over the years, it was expanded to become the graceful complex that still stands today. After acquiring American protection, Shalom began traveling to Tangier far more frequently—although the extent of his activities in the consular court there are hard to gauge given the paucity of judicial records.[110] The American consular court in Tangier was, in turn, part of a larger network of judicial institutions; appeals were sent to courts in the United States, just as French consular courts

were connected to appeals courts in France (although it was rare for Moroccans to travel abroad to pursue legal cases).[111]

While consular courts varied in the laws they applied (French consular courts applied French law, Spanish courts applied Spanish law, etc.), they all shared a relatively informal approach to adjudication. Diplomatic officials presided over consular courts; most ambassadors and consuls lacked formal legal training, and they rarely cited law codes in their rulings, especially in the earlier part of the nineteenth century.[112] Theoretically, consular courts had exclusive jurisdiction over all cases between their respective nationals and protégés; if foreign subjects or protégés of two different nations were concerned, the jurisdiction of the trial was determined by the legal status of the defendant (*actor sequitur forum rei*).[113] This meant that a protégé like Shalom could only be prosecuted in his consular court, but when Shalom wished to bring a lawsuit against a Moroccan subject, he had to do so in a local tribunal—either a shari'a or a Makhzan court (although consuls retained the right to be present at such trials). After the 1880 Conference of Madrid, legal matters involving real estate were subject to the exclusive jurisdiction of the "laws of the country," which effectively meant shari'a courts.[114] To make matters even more complicated, the rules governing the jurisdiction of consular courts were often observed in the breach; for instance, Shalom was sued repeatedly in a shari'a court even after acquiring protection.[115]

Unsurprisingly, foreign nationals and protégés shopped among different legal fora in an attempt to find the one most beneficial to their case. Having access to multiple courts was so attractive that many people shaped their business strategies around the ability to move between fora. As one consul-judge remarked in 1911:

> [T]he court is aware that, in the quibbling milieu of Tangier, businessmen's first priority when taking precautions against disputes or court cases is to look [to facilitate] an initial complication by assembling interests that depend on different nationalities, and thus different jurisdictions.[116]

The attractiveness of an expanded array of legal fora meant that Jews like Shalom continued to use local legal institutions even after acquiring protection (as I discuss at length in Chapter 6).

But Shalom did not necessarily have to travel all the way to Tangier to take advantage of his American protection. Indeed, the legal services provided by consuls often consisted of intervention with the Makhzan on behalf of their nationals and protégés, which was mostly orchestrated by correspondence. When foreign subjects or protégés wanted to recover outstanding debts, they often asked their consular representatives to write to the relevant Makhzan official requesting that he ensure the debtors paid what they owed.[117] This worked in much the same way as Moroccan subjects' petitions to the Makhzan, except that consuls had the threat of their respective states' warships to help them persuade the Makhzan to do their bidding. The sultan had little choice but to comply with consuls' requests on their subjects and protégés' behalf in order to avoid confrontations—sometimes violent—with foreign powers. The instructions from Muhammad Bargash, the Moroccan minister of foreign affairs, to the governor of Fez in 1876 are telling: "do not create quarrels for us with this nation or with any other nations."[118] Although the Makhzan was still theoretically the highest authority in the land, government officials often had to bow to pressure from foreign legal actors who, increasingly, could impose their will on the Moroccan government.

The network of consular courts serving the growing ranks of those with extraterritorial privileges added yet another set of legal institutions to those operating in Morocco. This expanded pluralism had a deep impact on the entire legal system. By joining the ranks of foreign protégés, Shalom had access to all the available legal orders in Morocco.

Shalom's legal world stretched from his private archive in Dar Assarraf all the way to Washington, D.C., whence the American government extended him consular protection. Even without leaving Fez, Shalom could engage with four separate legal orders. Each set of legal institutions commanded its own corner of jurisdiction, yet they all overlapped and even, at times, cooperated with one another. In this sense, the map I have drawn of Morocco's legal system is best read not as a set of linear directions through space, but rather as four translucent layers of a single topography. Jewish notaries and courts existed in the predominantly Jewish space of the millāḥ. Yet they intersected with Islamic notaries and courts, housed just a short walk away in the city's Muslim quarters. These shari'a-based institutions rubbed shoulders with the state-administered

courts run by local governors. And all of these institutions answered to the central court of appeal presided over by the sultan himself. Finally, as the influence of foreign powers on Morocco's internal affairs increased, the role of foreign diplomats in the everyday functioning of law in Morocco grew. Jews both appealed for informal intervention on their behalf and acquired extraterritoriality, which gave them access to consular courts. With this multilayered map in mind, we can set out to follow the Assarrafs and other Jews as they moved both along and across legal lines.

CHAPTER TWO

The Law of the Market

ON THE 20TH OF MAY, 1880, Shalom Assarraf appeared in the shari'a court of Fez. By this time he was a wealthy merchant and president of Fez's Jewish community. On this particular Thursday he was acting as the legal representative of his nephew Maymon ben Mordekhai Assarraf. Maymon had gotten in a bit over his head on a business deal. He bought a pair of earrings from Ahmad b. Muhammad Fathan al-'Alawi al-Imrani for the not inconsiderable sum of twenty French *riyāls*. Maymon had been under the impression that the earrings were made of gold and contended that this was a condition of the sale. But after he took possession of the earrings, Maymon "discovered that they were in fact made of copper." One can easily imagine what might have taken place: the younger and more inexperienced Maymon eagerly showing off what he thought was a great bargain—a pair of gold earrings for just twenty riyāls!—only to be told by those with more expertise, perhaps even Shalom himself, that the earrings were copper and thus almost worthless. One can further imagine Maymon's relief when he secured the legal advice of his uncle Shalom, a man so expert in the workings of shari'a courts that even Muslims had appointed him as their lawyer. In court, Shalom accused Ahmad of having tricked his nephew; Ahmad countered that he had only charged four riyāls and ten *'uqīyas*—presumably a reasonable sum for a pair of copper earrings. After the initial depositions,

the parties reached a settlement out of court, agreeing that Maymon would return the earrings and Ahmad would return the money. Although the qadi never issued a ruling, Shalom's lawsuit undoubtedly helped persuade Ahmad to settle. Maymon also had his uncle to thank for the resolution; as a successful merchant who did much of his business with Muslims, Shalom was intimately familiar with the workings of shari'a courts and undoubtedly drew on this knowledge to help get his nephew a satisfactory settlement.[1]

The lawsuit between Shalom and Ahmad reflects Jews' role as economic actors beyond the walls of the Jewish quarter. Shalom was in court because his nephew was doing business with a Muslim—something that was entirely ordinary in nineteenth-century Morocco. Commerce was one of the main ways in which Jews interacted with Muslims; indeed, Jews were so integrated into the broader Moroccan economy that they played a central role in the functioning of trade both in urban centers and in the hinterlands. Moreover, Jews' importance to commerce only grew as the nineteenth century wore on. The increasing internationalization of trade opened up new markets for imported goods throughout Morocco, from the largest urban centers to the most remote tribal areas. Jewish merchants were particularly well positioned to take advantage of this booming import-export economy.

But commerce was not the only tie binding Shalom and Ahmad together; they were linked as litigants who brought their dispute before an Islamic legal forum. There was nothing unusual about Jews like Shalom appearing before a qadi. Islamic law required that all cases concerning Muslims—including those between Muslims and Jews—be adjudicated according to the precepts of the shari'a. The regular commercial ties linking Jews and Muslims meant that Jews had frequent occasion to engage the services of shari'a court officials, especially Jewish merchants like the Assarrafs. Some, like Shalom, acquired an intimate knowledge of Islamic law and legal procedure along the way.

Jews' use of shari'a courts is doubly invisible in scholarly literature: first, because most Jewish historians privileged the internal workings of Jewish communities, and second, because most scholars of Islamic law portrayed shari'a courts as primarily, if not entirely, Islamic institutions. The scholars who have examined Jews' presence in shari'a courts have focused on the relatively rare instances in which Jews brought intra-

Jewish cases before a qadi, cases that should normally have been adjudicated in Jewish courts.[2] Yet the archival record demonstrates that Jews were a regular presence in shari'a courts even without defying the jurisdictional boundaries separating Jewish and Islamic legal institutions. Jews most often went to shari'a courts because they participated in the economic life of Morocco and thus had regular business dealings with Muslims. And Jews' access to Islamic legal documents and shari'a courts facilitated the commercial relationships linking them to Muslims.[3]

The regular use that Jews made of shari'a courts is central to understanding their integration into the Muslim-majority society in which they lived. Jews were separated from Muslims by boundaries both physical and symbolic; the walls surrounding the millāḥ in Fez and other major cities were real, as were the legal and social divisions marking Jews as different, other. But these boundaries were punctuated by doors linking Jews to the world outside the Jewish quarter; each millāḥ had a gate through which Jews passed on their way to the marketplaces and courtrooms of the Muslim quarters. Just as trade constituted a vector connecting Jews and Muslims, so did law. Islamic legal institutions were a central site of Jews' integration into the broader society, and thus key to understanding the nature of Jewish-Muslim relations in Morocco.

Jews' presence in shari'a courts is particularly significant precisely because of the Islamic nature of these institutions. By the nineteenth century the Moroccan economy was highly international, with Jews and foreign Christians playing central roles. Yet shari'a courts have not been viewed as multi-religious institutions. And in some ways rightly so: they were staffed exclusively by Muslims and applied the sacred law of Islam. Nonetheless, as long as non-Muslims agreed to abide by Islamic law, they had the same rights of access to shari'a courts as did Muslims—and the Moroccan case shows that they regularly availed themselves of this right. The mono-religious nature of shari'a courts did not prevent them from serving a multi-religious clientele.

Understanding how law acted as a vector connecting Jews and Muslims requires attention to the intertwined nature of trade and shari'a courts. The absence of a formal banking system and the increasingly short supplies of cash, especially in rural areas, meant that Jewish merchants sold most of their wares on credit. In order to ensure that extending credit would be profitable, Jewish merchants relied on shari'a courts

to document and enforce the debts they accumulated. Islamic legal institutions were thus central to how Jewish merchants did business; they regularly engaged the services of ʻudūl to draw up bills of debt. Jews who were heavily involved in lending money to Muslims often had to sue recalcitrant debtors in qadi courts, an endeavor that required considerable knowledge of Islamic law and legal procedure. Ultimately, some Jewish merchants became so skilled at navigating shariʻa courts that Muslims even engaged them as lawyers. The Assarrafs present a particularly illuminating case study of the ways in which law and commerce drew Jews outside of their community and into the broader Islamic society.

THE MERCHANT OF FEZ

The commercial success of Jews like Shalom Assarraf was due in large part to the changes sweeping the Moroccan economy in the nineteenth century. In particular, Jews played a crucial role in making available—and increasing demand for—imported goods, not only in Morocco's port cities but in the urban centers of the interior and the countryside surrounding them. While Jews had long participated in trade both inside and outside the Jewish community, the internationalization of the economy offered them even more opportunities to do business with Muslims and placed Jews firmly at the heart of the marketplace.

The bustling markets of Morocco's great cities are legendary even today, as growing numbers of foreigners who come to lose themselves in the maze-like streets of Fez or Marrakesh can attest. But in the nineteenth century these markets were nothing like the tourist traps they have become in the past few decades; they were the beating heart of Moroccan society, where people came to sell, buy, borrow, loan, lease, mortgage, etc. Merchants were the lifeblood of the economy. They connected the urban bourgeoisie to the rural tribesmen, the artisanal luxuries of the cities to the agricultural and pastoral riches of the countryside, and increasingly as the nineteenth century wore on, Morocco to the rest of the world—especially Europe and the Americas, from whence more and more items made their way into the households of even the most humble Moroccans. At the center of these vast networks of trade that crisscrossed Morocco like so many veins and arteries stood a cadre of elite Jewish merchants. These shrewd businessmen (for they were nearly all men) might have lived their religious lives squarely within the Jewish community, but

their economic pursuits brought them into the marketplaces where Muslims made up the majority of both buyers and sellers.

The degree to which Moroccan cities and their marketplaces transformed with the influx of European goods and peoples varied considerably. In coastal cities like Tangier and Essaouira, dozens of foreigners from all over Europe and the Americas lived with their families; though many were wealthy import-export merchants, others scraped by in more humble professions such as café owners, maids, construction workers, and even farmers. In cities of the interior like Fez, foreigners were still a rarity. Only six Europeans were permanently settled in Fez in 1889, and their numbers had grown to no more than sixty-four on the eve of French colonization.[4] But European products had penetrated Morocco far earlier and far more thoroughly than Europeans themselves. The consumption of many imports remained limited to the Moroccan elite. As part of its efforts to reform the Moroccan military, the Makhzan's demand for imported firearms and other military equipment grew enormously after the Battle of Isly in 1844. At the turn of the twentieth century, the sultan Mawlay 'Abd al-'Aziz became infamous for his love of imported gadgets such as cameras, bicycles, and fireworks, which he bought at great expense.[5] The tax hikes that helped pay for these imports, and the corruption of many rural governors who demanded extra to pay for their own costly habits, left many Moroccan peasants caught in a cycle of ever-growing debt.

The cash-flow problems created by higher taxes and extortion were compounded by ordinary Moroccans' developing taste for imported goods. Some of these imports merely introduced new habits without necessarily displacing indigenous goods; for instance, green tea brewed with mint and sweetened with sugar, still a quintessentially Moroccan drink, was virtually unknown in the Maghrib before the eighteenth century and in the nineteenth century was still a luxury for most. But manufactured products such as textiles, pottery, and even fezzes increasingly replaced local production, hitting both Jewish and Muslim artisans hard. The 1856 treaty with England was a watershed; in abolishing royal monopolies and high tariffs, it opened Morocco's ports to free trade and to an ever growing deluge of imports. With it came an increasing demand for goods that could not be produced locally—which further heightened the demand for cash among ordinary Moroccans.[6]

While not all the merchants who traded in foreign merchandise were Jewish, Jews were overrepresented among those who made or enlarged their fortunes in the increasingly internationalized market. Jews were especially well positioned to take advantage of the heightened commerce in imported goods. Throughout the early modern period, Jews capitalized on their transnational networks and their multilingualism to act as intermediaries between Europe and Morocco in both trade and diplomacy.[7] In the nineteenth century, as Moroccan markets opened even wider to the outside world and foreign powers increased their diplomatic presence, Jews in particular seized the opportunities provided by the rising demand for individuals who could work with both worlds. Most successful were the merchants living in coastal cities who imported European goods and exported raw materials (such as wool, hides, grain, and livestock). After 1860, most of these merchants (Jews and Muslims alike) had acquired patents of foreign protection or foreign nationality, which facilitated trade considerably. One notch down the socioeconomic ladder, merchants on the coasts and in the interior bought in bulk from these large-scale importer-exporters and sold the imported goods to the masses of Moroccan consumers. Finally, below the class of haut bourgeois merchants were armies of peddlers, almost all Jewish, who sold the same imported goods in far smaller quantities. These small-time salesmen lived off the profits that trickled down from Morocco's wealthiest traders, but they too played a role in changing consumption patterns and bringing imported goods to the most remote areas of the Moroccan hinterland.[8]

Shalom Assarraf was among the most successful of the haut bourgeois middlemen. His business interests were diversified; he owned real estate and traded in a variety of goods including olive oil, wheat, and wool. But by the 1860s he was specializing in imported cotton textiles, particularly raw (that is, undyed) calico.[9] The textile trade in Morocco was one of those most affected by the flood of European imports. More and more Moroccans acquired a taste for cotton textiles milled in European factories, which were of finer quality and cheaper than those produced locally.[10] Selling cotton fabric was the mainstay of the family business; Ya'akov, Shalom's son and successor, traded mainly in imported cotton textiles too.[11] Indeed, Shalom was one of many Jewish merchants in Fez who sold cotton textiles. He bought these goods either

from wholesalers in Fez or from importers in Tangier, the great port city of the north to which he traveled on occasion.[12]

While some Jewish merchants did business in their hometown, it was also common to bring their goods to rural areas where their Muslim clients had little or no access to the splendid markets of cities like Fez and Marrakesh. Jews set out on the backs of mules or, if these were prohibitively expensive, on donkeys. The poorest peddlers often left home for months at a time, only returning to celebrate the holidays of Passover and the Jewish New Year with their families and communities.[13] All traveling salesmen spent much of their time in villages and towns where no Jews were to be found; they often ate, drank, and slept in the homes of their Muslim clients. While these merchants maintained families in exclusively Jewish contexts, they lived most of their daily lives surrounded entirely by Muslims.

Like so many of their coreligionists, the Assarrafs did much of their business with Muslims who lived in the countryside surrounding Fez. The men of the family ventured outside the city walls for extended trips, riding on mules or even horses (despite the prohibition on dhimmīs riding such noble beasts).[14] Shalom might have been the president of the Jewish community, but his commercial life was lived largely among Muslims. When he was not bringing his wares to Muslim clients in nearby rural communities, he spent much of his time trading with Muslims in Old Fez. Nor was Shalom unique in this respect; many successful Jewish merchants in nineteenth-century Morocco became wealthy by selling imported goods to a predominantly Muslim clientele.

LAW AND THE ART OF COMMERCE

Behind the boom in trade that accompanied (largely forced) market liberalization and the development of an increasingly voracious appetite for imports, an elaborate network of Islamic legal institutions quietly facilitated the smooth flow of commerce. Muslim notaries and shari'a courts provided the institutional support linking the markets of Fez and Marrakesh to the cotton mills of Manchester to the most remote dwellers of the Atlas Mountains and the pre-Sahara. 'Udūl documented the web of mutual obligations that tied individuals together, and qadis arbitrated any disagreements about these commitments that might arise—all according to the precepts of Islamic law. Merchants who were heavily

involved in trade necessarily became regular consumers of the services of shari'a courts, regardless of their faith. This was especially true of those merchants who sold most of their goods on credit and engaged in other forms of moneylending. Indeed, more and more inhabitants of the countryside found themselves borrowing cash or buying on credit. Jewish merchants in particular increasingly extended credit to their cash-starved Muslim clients—which brought them before 'udūl and qadis even more frequently. Notarizing bills of debt with 'udūl meant that Jewish merchants could draw on the authority of shari'a courts should their debtors fail or refuse to pay. Islamic legal institutions were thus as central to the commercial lives of Jews as they were to those of Muslims.

As we have seen, the jurisdiction of shari'a courts extended far beyond commerce; they dealt with a wide range of noncommercial matters including marriage, divorce, inheritance, and even aspects of criminal law. But Jews used Islamic courts mainly for commercial purposes. Only rarely did Jews bring matters of family law such as marriage or divorce to 'udūl or qadis, and then only when they concerned other Jews (discussed in the following chapter). Shari'a courts mostly functioned as commercial courts for Jews because commerce was the principal medium connecting Jews with Muslims on a quotidian basis. This is why Jewish women—who rarely entered into commercial relations with Muslims—were largely absent from shari'a courts.

The centrality of 'udūl and qadis to commerce in Morocco stemmed in part from the double role that merchants played as both traders and moneylenders. Many of the Muslims to whom the Assarrafs sold their exotic calicos were humble folk, farmers and shepherds who lived mostly in a subsistence economy. Yet as consumption patterns among even the poorest Moroccans changed, there was an increasing demand for imported goods. People who had little cash on hand still wanted to buy products from abroad, like milled textiles and tea. Morocco had no banks that could lend such people money; in the 1890s a few banks opened in Tangier, but even these catered almost exclusively to foreigners and elite Moroccans involved in international trade.[15] Yet the absence of ready cash did not halt the wheels of commerce in the Moroccan countryside. As happened in countless preindustrial societies, the merchants of nineteenth-century Morocco doubled as bankers.[16] Instead of collecting payment for their goods upon delivery, they sold their wares

on credit. The Assarrafs moved all sorts of merchandise this way: cotton textiles, naturally, but also silk, raw wool, grains, olives, and even coffee. Most clients pledged to come up with the full price of the goods in one to six months, but loan periods ranged from fifteen days to two and a half years.[17] Owing money for goods sold on credit was as normal in nineteenth-century Morocco as charging purchases to a credit card is in much of the world today.

Once merchants were already extending credit for their wares, many also branched out into other types of loans. Jews like the Assarrafs made straightforward loans of cash (known as a *salaf*).[18] They also gave advances to shepherds for their wool and to farmers for their wheat, agreeing to have the items delivered to them by a certain date (a type of loan known as a *salam*).[19] The nature of these advances meant that they often benefited the creditor more than the debtor, since the creditor bought the goods before they were available on the market and thus could set his price. Indeed, many debtors who agreed to salam loans did so out of a desperate need for cash. As the nineteenth century wore on, increasing numbers of peasants found themselves caught in an endless cycle of salam loans—each year selling their produce before the harvest in order to pay off their debts from the previous year.[20]

Extending credit involved a risk that buyers would not repay their debts. Merchants like the Assarrafs needed some assurance that they could extract payment from those unwilling or unable to pay when their debts came due. The services of ʻudūl provided merchants with the documentation necessary to prove that they were owed money, and shariʻa courts served as the fora in which to pursue debtors who failed to pay.

For each sale of goods on credit, the seller and the buyer attested their transaction before ʻudūl, who drew up a bill of debt that conformed to the standards of Islamic law. The resulting document recorded the date, the names of the buyer(s) and the seller(s), the goods exchanged, and the price. Most specified when the loan was to be repaid, and some included a physical description of the debtor, presumably to make it easier to identify him should litigation become necessary. Many bills of debt also included the name of a guarantor who ensured payment of the debt in the event that the debtor defaulted (though in some cases a guarantor for payment was specified at a later date).[21] The ʻudūl's signatures ensured that these legal documents would hold up as evidence in court,

should one of the parties contest the details of the exchange. For a successful merchant like Shalom, then, business meant engaging the services of ʻudūl over and over again—indeed, each time he engaged in a commercial transaction.

Jewish merchants like the Assarrafs found themselves in the offices of Islamic notaries public or courtrooms quite a bit. At the height of his career, Shalom had so many commercial dealings that he sought out either ʻudūl or a qadi on average once a week.[22] Most of the time, he went to ʻudūl to have contracts drawn up and notarized.[23] His appearances before qadis were more infrequent, though not exactly rare. For instance, over the course of a single Islamic year (1283 AH, May 1866 to May 1867), Shalom went to a qadi court three times and to ʻudūl thirty-nine times.[24] Shalom's regular use of Islamic legal institutions was in fact quite common among merchants of his caliber, although he solicited the services of ʻudūl and qadis more often than humbler Jews who pursued fewer commercial transactions.[25] Shariʻa courts and the offices of ʻudūl were not strange places for people like Shalom Assarraf; on the contrary, like today's banks and post offices, they were institutions to which Jewish merchants were thoroughly accustomed.

All these visits to ʻudūl produced hundreds of pieces of paper: the Assarraf collection alone includes 1,229 bills of debt and bills of sale on credit (making up about 64 percent of the collection).[26] In addition to documenting the initial debt agreements, Jewish merchants also obtained written evidence of the fulfillment of financial obligations. These quittances (*ibrāʼa* or *barāʼa*) often followed the payment of a debt in full or the dissolution of a partnership. Like bills of debt, quittances could prove crucial if a case went to court, though they usually worked in the interest of the debtor more than the creditor (if a creditor claimed that his debtor had yet to pay, for instance, the debtor could refute the charge by producing a quittance proving that he had no further financial obligations toward the creditor).[27] Even more astonishingly, the deeds that make up the Assarraf collection represent only a fraction of all the legal documentation the family accumulated during the sixty years before the Protectorate; the collection is manifestly incomplete, and lacks any of the Jewish legal documents that the family acquired (discussed further in Chapter 3).

Keeping track of all this paperwork was no small task. Merchants developed their own filing systems that allowed them to organize their

legal documents so they could be produced in a court should the need arise. But Jews were faced with a particular challenge; while they spoke a dialect of Moroccan Arabic and could thus communicate perfectly well with ʻudūl, qadis, and other court officials, the vast majority could not read the Arabic alphabet. For Jewish merchants, then, the hundreds of Islamic legal documents they accumulated might as well have been written in Sanskrit. They could have asked literate Muslims to read their documents for them, but this was not only a major inconvenience, it risked exposing sensitive business information to individuals outside their inner circles. Jewish merchants solved this problem by writing short summaries of the contents on the backs of the documents in Judeo-Arabic (or, in the north, in Judeo-Spanish). For instance, Shalom's Judeo-Arabic summary of the lawsuit in which he represented his nephew Maymon (and with which this chapter began) reads thus: "This is the record of the trial of the *sharīf* [honorary title denoting descent from the Prophet Muhammad, referring to Ahmad] with the earrings . . . concerning Maymon." He then folded up the document on itself lengthwise until it resembled a long rectangle, with only the Judeo-Arabic summary showing—a standard method for storing and organizing legal records.[28]

While notarization by ʻudūl granted the assurance that contracts would hold up in court, it also bore monetary and opportunity costs. ʻUdūl charged for each legal document they drew up and signed. Moreover, having a contract notarized by ʻudūl meant arranging for both parties to appear in the ʻudūl's offices or having the ʻudūl come to them—either way, a loss of precious time that could be spent in other, more productive ways. Merchants could avoid these costs by relying on informal contracts they wrote up themselves. These contracts, little more than notes, merely outlined the terms of the agreement, without all the "legalese" of notarized documents or the ʻudūl's signatures. One informal bill of debt outlined only the most basic information about money owed to Shalom: "The Shaykh Mawlay al-Tayyib b. al-sharīf Mawlay Arrashid [sic] al-ʻAlawi Ismaʻili owes the dhimmī Shalom b. Yehudah Assarraf thirty-nine French riyāls, [which he must pay within] twenty-six days."[29] The brief note even lacked a date—making it hard to know how Shalom planned to enforce the clause that the debt would be paid in twenty-six days. Such notes did not provide much more guarantee than a verbal

agreement—to which many Jews and Muslims undoubtedly also resorted, though evidence for such arrangements is even more difficult to come by.[30] Ultimately, neither verbal agreements nor informal written contracts were enough to prove a claim in court. Indeed, in a case discussed shortly, Shalom was required to spend large amounts of time and money proving a debt for which he had no notarized document. Little wonder that most Jewish merchants preferred frequent visits to the ʻudūl.

Jewish merchants' reliance on shariʻa courts meant respecting the rules of Islamic law, even though this made extending credit more complicated. Jews did not lend money to hundreds of customers out of the goodness of their hearts; they lent money to make a profit, which they did by charging interest on the principal. But Islamic law strictly prohibits the outright charging of interest (called *ribā* in Arabic). Although Islamic jurists developed elaborate legal fictions to charge hidden interest, Jewish merchants opted for a more straightforward way to get around the prohibition on usury. The general practice was to extend credit for one amount but write out a bill of debt for a much larger sum—sometimes double or more.[31] This way, a moneylender would be paid back far more than he initially lent out—making a profit similar to the one he would make if he charged interest. For instance, Yaʻakov made three separate loans to a Muslim named Ahmad b. al-Hajj Mubarak al-Sharadi al-Dalimi al-Shangili.[32] The bills of debt claimed that Yaʻakov had lent Ahmad 200, 100, and 50 riyāls respectively. But according to Ahmad's deposition in court, Yaʻakov gave him only a fraction of the amount he supposedly owed: Ahmad received eight riyāls in the transaction recorded as fifty; twenty riyāls in the transaction recorded as 100; and sixty riyāls in the transaction recorded as 200. In other words, by inflating the amounts in the bills of debt, Yaʻakov effectively charged Ahmad 250 percent interest on the loan. While Ahmad clearly knew what was going on, the notarized documents made no mention of interest whatsoever, and the bills of debt outwardly conformed to the prohibition on charging interest.

Writing bills of debt for inflated sums was an effective legal ruse precisely because qadis put their faith in the validity of legal documents. As long as the notarized bills of debt showed no signs of usury, most qadis ignored debtors' claims that they had been charged illegal interest. In the spring of 1875, for instance, Shalom sued al-ʻArabi b. Lahsan al-Dublali al-Yaʻqubi and his two guarantors al-Muʻti b. Hamm al-Dublali

al-'Ajiwi and al-Hajj 'Abdallah b. Muhammad al-Shayzami for the enormous sum of 3,000 French riyāls.[33] First al-'Arabi, and then al-Mu'ti his guarantor, testified that Shalom had only given him 1,500 riyāls, and that they had paid this amount already—even though they admitted that the bill of debt had been written for 3,000 riyāls. It was to no avail: the qadi ignored their plea and ordered them to find another guarantor who could pay the full debt recorded in the notarized document.[34] Even when al-'Arabi and al-Mu'ti produced a lafīf—the recorded testimony of twelve Muslim men—attesting that the debt was for only 1,500 riyāls, the qadi was unmoved.[35] Significantly, not one of the claims that the debts had involved illegal interest actually used the word *ribā,* the term for usury in Islamic jurisprudence—possibly because the ways in which Jews charged hidden interest did not resemble those of classical legal texts. Perhaps most important, qadis did not immediately presume that a Jewish creditor accused of usury was guilty as charged, despite the association between Jews and usury in both the Islamic tradition and Moroccan popular culture.[36]

Qadis' attitudes toward accusations of usury were even more surprising given that Jews had largely cornered the market on moneylending by the second half of the nineteenth century.[37] The vast majority of the time that both Jews and Muslims borrowed money, they did so from Jewish merchants—merchants who, like the Assarrafs, combined selling goods on credit with straightforward cash loans and advances on agricultural products.[38] Given these circumstances, one would expect qadis to readily accept claims that Jews were charging illegal interest. And this was not entirely unknown; a qadi in Demnat, a small city near Marrakesh with a high Jewish population, accused the local Jews of charging illegal interest on loans they made to Muslims and refused to enforce their bills of debt in court.[39] Yet this attitude was relatively rare; most of the time, merchants like Shalom could rest assured that their outward compliance with Islamic legal standards would prevail.[40]

The reasons behind Jews' overrepresentation as moneylenders are worth exploring, especially since they have been largely misunderstood in the scholarly literature. Jews living under Islamic rule were never forced into lending money for lack of other economic options, as they were in Europe. Yet historians of the Islamic world have erroneously explained the affinity between Jews and moneylending as stemming

from the differences between Islamic and Jewish law. They point out that Muslims were categorically forbidden to ever lend at interest, while Jewish law permits the lending of money at interest to non-Jews. Jews became the default sources of credit, so this argument goes, because their law permitted what Islamic law prohibited.[41] But this reasoning is fundamentally flawed. The fact that Jewish law permitted Jews to lend to Muslims at interest was irrelevant, since Jews followed Islamic law when doing business with Muslims. The hundreds of bills of debt that merchants like the Assarrafs had drawn up by ʻudūl necessarily conformed to the Islamic prohibition on charging interest. Moreover, Jews were not overrepresented as moneylenders at all times throughout Islamic history: in much of the Ottoman Empire, Jews borrowed from Muslims more often than the other way around.[42]

Why, then, did Jews end up as the moneylenders par excellence of nineteenth-century Morocco? On one hand, this was a result of their prominence as merchants. As we have seen, the lack of a formal banking system meant that trade and the extension of credit went hand in hand. Jews' overrepresentation as peddlers, middlemen, and import-export merchants goes a long way in explaining their specialization as moneylenders.[43] Moreover, as the only indigenous non-Muslim group, Jews occupied a niche as the quintessential "other"—which might have made some Muslims feel more comfortable borrowing money from Jews than from fellow Muslims. Islamic law decreed a clear prohibition on lending at interest; scrupulous Muslims thus refrained from borrowing money at interest from their coreligionists, lest they be led into sin. But whether Jews violated God's law was of little concern even to pious Muslims; by refusing to accept Muhammad as God's prophet, Jews contravened the principles of Islam in any case.[44] One could be an upstanding Muslim and borrow money from Jews without compromising one's religious principles.

Making money in nineteenth-century Morocco required the skillful management of risk. Since merchants sold most of their goods on credit and extended cash loans, their primary concern was that their clients might fail to pay them back. Jewish merchants accumulated mountains of notarized documents recording the debts they were owed, but the paperwork alone was worthless without a mechanism to enforce it. The tribunals presided over by qadis ensured that notarized contracts meant

something more than just pieces of paper. These were the courts of first instance to which merchants turned when their debtors defaulted.

THE PURSUIT OF PAYMENT

The nature of trade in Morocco leaves little question as to the centrality of Islamic law to commercial life. But it was not enough to know how to utilize Islamic notaries; merchants, especially those involved in money-lending, also had to face the more daunting prospect of pursuing litigation in shari'a courts. While the barriers to employing the services of 'udūl were relatively low, suing debtors before a qadi required a more sophisticated knowledge of Islamic law. Whether a businessman was Jewish or Muslim, his success depended in large part on whether he could effectively deploy Islamic law to his advantage. On one hand, Jews' ability to navigate litigation in shari'a tribunals facilitated their participation in the Moroccan economy. On the other, Jews' familiarity with Islamic law and legal institutions offered a way for them to transcend the religious difference demarcating them from the majority of Moroccans.

It is worth following Shalom through a particularly complicated case to get a sense of just how comfortable he was with Islamic law. In the winter of 1879–80, Shalom set about trying to recover a debt of 196 riyāls. This was by no means an extraordinary sum for him; he had sued for as much as 3,000 riyāls and as little as four *mithqāls*.[45] Yet he nonetheless invested much money and time over the next three months in a qadi court trying to secure payment. The basic facts of the case are thus: the brothers Idris and Bu Shitta b. Muluk al-Qamri borrowed 196 riyāls from Shalom. But when the debt came due, Idris and Bu Shitta claimed they were destitute and unable to pay.[46] They asked their sister Zaynab to intervene on their behalf, and she agreed to guarantee the debt—which, given their financial circumstances, essentially meant consenting to pay it for them.[47] Zaynab and Shalom went to 'udūl to have her commitment put down in writing and notarized.

But Zaynab was not forthcoming with the money, and Shalom decided to sue her in court. He made this decision despite knowing that most lawsuits regarding unpaid debts did not end in a ruling from the qadi that forced the debtor to pay. In fact, final rulings were generally rare in premodern courts—including those of Morocco—where litigation was often just one possible step in strategies to resolve a legal dispute,

and resolutions were far more common out of court than at the hands of a judge.[48] Even when creditors did bring a case to court, it was often in order to persuade their debtors to reach an out-of-court settlement or submit to arbitration. Moreover, there were various real and opportunity costs to litigating in qadi tribunals which dissuaded litigants from pursuing a final in-court settlement. Although qadis did not charge official fees for their services, litigants were expected to give the judges gifts of thanks. 'Udūl also had to be paid to draw up a record of the proceedings. Perhaps more seriously, the amount of time invested in bringing a shari'a court trial to an in-court resolution could be quite significant.[49] Given the time and money required to see a case through to the bitter end, it is not surprising that less than a quarter of lawsuits initiated by the Assarrafs and their Jewish business associates ended in the qadi pronouncing a final ruling.

Nonetheless, on December 28, 1879, Shalom summoned Zaynab before a qadi and sued her for the payment of her brothers' debt.[50] Faced with the notarized contract proving that she had guaranteed the loan to Shalom, Zaynab felt she had little choice but to acknowledge the debt. Yet like her brothers, she, too, found herself without the means to pay and pleaded bankruptcy. It was quite common for debtors to acknowledge owing a particular sum and then claim they were destitute and thus unable to pay even a penny.[51] Zaynab was ordered to prove her bankruptcy within eight days. Demonstrating one's inability to pay entailed producing a lafīf—twelve men who testified that they personally knew the debtor and were certain he or she was poverty stricken.[52]

But Zaynab was not exactly forthcoming with proof of her bankruptcy, either. Eight days passed with no sign of a lafīf, then another eight days, then another. Finally, a month and a half later, Zaynab secured an extension of three days from the qadi.[53] The delay proved another empty threat, since two more weeks went by only to produce yet another extension, this time for one day.[54] The qadi was unable to enforce the deadlines he imposed, and seemed perfectly willing to continue granting extensions (perhaps in exchange for gifts); these sorts of delays were part of the reason that lawsuits in shari'a courts could easily drag out over months.

Even before the original deadline by which Zaynab was supposed to have proven her bankruptcy, she threw another wrench into the proceedings. Perhaps as a means to stall, or perhaps in an attempt to intimidate

Shalom, Zaynab brought her own suit against her creditor. Jewish merchants like the Assarrafs rarely appeared in a qadi court as defendants, largely because they were more often creditors than debtors—and creditors were the ones who needed to worry about getting paid. Nonetheless, some Muslims did sue Jews for everything from stealing mules to failing to pay for goods.[55]

On January 31, 1880, Zaynab appeared before a qadi and claimed that Shalom had kept two pairs of silver bracelets she had given him as a pledge to ensure that her husband, Ahmad, would appear in court (presumably for another matter unrelated to the present case).[56] This sort of guarantee was a regular feature of shari'a court procedure; defendants had to provide a guarantor for their presence before the next appearance in court—a precaution meant to ensure that the defendant actually showed up in a country where the government had little ability to police its subjects closely.[57] At first Shalom denied that he had the bracelets; Zaynab responded by threatening to make him take an oath in support of his plea. Islamic law stipulated that if the plaintiff was unable to provide proof then he could demand an oath from the defendant. However, Moroccan Jews and Muslims went to great lengths to avoid swearing oaths.[58] The anthropologist Lawrence Rosen observes that oaths were undesirable both due to the fear of divine judgment should one swear falsely, and to the damage done to one's reputation as a businessman. Even appearing to swear falsely could reduce a person's social capital and "risk his overall attractiveness as a partner" in future commercial relations.[59] Not wanting to take an oath, but being unwilling to concede that the bracelets were in his possession, Shalom did nothing at first. Only after three weeks had passed did he finally admit that he had the bracelets after all and that he was keeping them until he settled with Ahmad.[60]

The delays and countersuits must have dampened any hope Shalom held that Zaynab would either offer proof that she was bankrupt or pay her brothers' debt. Even before the qadi gave Zaynab her first extension, Shalom initiated a second lawsuit against her husband, Ahmad. On February 9, 1880, Shalom claimed that Ahmad had guaranteed the debt of 196 riyāls for his wife (which she had originally guaranteed for her brothers).[61] Ahmad denied the charge, claiming that he had only guaranteed Zaynab's presence in court, not the payment of any of her debts.[62]

The qadi ruled that Shalom had to prove his claim and gave him eight days to do so.

Normally, Shalom would have had such an agreement notarized by ʻudūl, and could have produced this evidence either to Ahmad privately to persuade him to settle out of court, or before the qadi to elicit a ruling. But either Shalom never had ʻudūl record Ahmad's guarantee of his wife's debt, or Ahmad had made no such guarantee.[63] Nonetheless, Shalom refused to give up. Exactly eight days later, he had ʻudūl record the testimonies of twelve Muslim men—constituting a lafīf, which essentially replaced the testimony of two ʻudūl—who purported to have witnessed Ahmad guarantee Zaynab's debt to Shalom. In the absence of a notarized document supporting his claims, Shalom went to the considerable trouble and expense (since such documents had to be drawn up and signed by ʻudūl) of gathering twelve Muslims who could testify on his behalf.

But Ahmad was not to be defeated so easily. Rather than accept the lafīf as definitive proof against him, he solicited a formal responsum (fatwā) calling the lafīf into question. He paid a fee to consult a jurisconsult (*muftī*) named Ahmad b. ʻAbd al-Jalil al-Sanhaji, who wrote a fatwā claiming that the lafīf was null and void.[64] Al-Sanhaji gave three reasons: first, the witnesses did not specify the amount being guaranteed; second, the witnesses did not specify the source of their knowledge; and third, one should resort to the testimony of a lafīf only out of necessity. This meant that while it was legitimate to produce a lafīf in rural areas where ʻudūl were unavailable, in a capital city such as Fez a lafīf was *a priori* unacceptable.[65]

Although things were looking bad for Shalom, he too proved unwilling to be deterred. Rather than accept al-Sanhaji's opinion, Shalom paid a fee to seek the ruling of a different jurist (whose signature is illegible). This jurist produced a point-by-point rebuttal to al-Sanhaji's fatwā. Concerning al-Sanhaji's claim that the lafīf was void because the witnesses did not know the amount of money in question, the jurist argued that witnesses need not specify the amount when the transaction at hand was a guarantee.[66] To al-Sanhaji's point that the witnesses had not identified the source of their knowledge, the author noted that this was not necessary as long as their testimony seemed "likely and was valid."[67] Finally, the jurist attacked al-Sanhaji's claim about the permissibility of a lafīf in a city like Fez. He countered that if Shalom had intentionally

planted the twelve men in order to testify, their testimony would be problematic. However, because they had been present "accidentally" and were attesting something they had happened to witness, it was permissible.[68]

Shalom's religion was no impediment to his ability to seek out the services of a jurist. Islamic law permitted anyone to consult a muftī and request a fatwā; indeed, Jews and Christians submitted fatāwā in other parts of the Islamic world as well.[69] Like the fatāwā presented in Shalom's suit against Ahmad, most responsa brought to bear on debt litigation in Morocco concerned the validity of testimony, especially that of lafīfs.[70] Although consulting a jurisconsult cost yet more money—the fee varied depending on his reputation and the question at hand—it could be a powerful weapon in a contested lawsuit. This was especially true if the muftī was widely respected as a scholar. Some of the fatāwā found in the Assarraf collection were authored by jurists who were quite prominent during their time, including Muhammad al-Ma'mun b. Rashid al-'Iraqi (who also served as a qadi in Fez) and al-Mahdi b. Muhammad al-Wazzani al-Hasani al-'Imrani (author of the most famous fatwā collection produced in the modern Maghrib).[71] Although it is often difficult to tell who sought out a particular fatwā—the Jewish creditor or the Muslim debtor—there is no reason to think that Jews like Shalom would not have had access to the very highest echelons of Islamic learning in Morocco.

Indeed, after Shalom produced his counter fatwā, the qadi ruled that Ahmad must guarantee the debt he owed to Shalom.[72] On one hand, this meant Shalom had successfully proved his case. On the other hand, it did not mean the lawsuit had drawn to a close. Rather than accept the qadi's decision, Ahmad and his wife Zaynab tried one last tactic. This time, Zaynab went in search of another fatwā as a rejoinder to the one brought by Shalom.[73] The third jurist, who signed his name only as Muhammad, gave an unusual response. Rather than focus solely on the legal questions at hand, Muhammad wrote a short summary of the case. He also demonstrated clear contempt for Shalom, accusing him of having "tried to play with the shari'a."[74] The fact that Shalom was Jewish seems to have motivated Muhammad's attitude at least in part; he referred to Shalom repeatedly as "the Jew (*al-yahūdī*)," rather than "the plaintiff" or even "the dhimmī." When he finally got around to making an argument, he merely reiterated al-Sanhaji's third point—that

the testimony of a lafīf in an urban center was invalid. Muhammad's attention to the religious persuasion of the creditor was exceptional; the majority of fatāwā solicited in lawsuits concerning Jews focused exclusively on legal questions and did not so much as mention whether one of the parties involved was Jewish. Nonetheless, Muhammad's fatwā demonstrates that skill and knowledge of the workings of Islamic law did not shield Jews from attacks based on their confession.

But anti-Jewish bias was not to have the last word. In response, Shalom solicited yet a fourth fatwā. The fourth jurist (whose signature is cut off) made a similar rebuttal to the argument that a lafīf was invalid in a city like Fez. He countered that "all scholars" have agreed that the testimony of a lafīf was acceptable at all times and in all places, irrespective of the availability of 'udūl. Moreover, he completely ignored Muhammad's anti-Jewish insinuations and stuck to the legal questions at hand. Although this fatwā added little substance to the debate, we can surmise that Shalom simply did not want Ahmad's second fatwā to stand unchallenged. His strategy eventually paid off, to a degree: exactly three months after his initial lawsuit against Zaynab, Ahmad's brother (also named Bu Shitta) and his wife Mubaraka agreed to guarantee the loan that Ahmad now owed to Shalom.[75]

Whether Shalom was eventually paid or not is impossible to know; in fact, the evidence suggests that he was not in it for the money. The amount of time he spent suing Ahmad and Zaynab in court and the fees he paid for the lafīf and the two fatāwā he presented suggest that Shalom probably had nonpecuniary interests at stake. Daniel Smail has explored how personal feelings of hatred, jealousy, and contempt could fuel medieval creditors to sue their debtors even when doing so made no financial sense.[76] Perhaps Shalom felt particular enmity for Ahmad and Zaynab and wanted to punish them by forcing them to appear in court over and over again, despite the high legal fees. Or perhaps he was sure that the al-Qamri family could afford to pay their debts, and their refusal to do so would set a bad example for his other debtors.[77]

It is worth reflecting on the fact that much of this drawn-out lawsuit involved Shalom's dispute with a Muslim woman. In both the marketplace and the courtroom, Jews mostly encountered Muslim men. This is not because Muslim women were absent from shari'a courts. While we lack in-depth studies for Morocco, it is safe to assume that women most

commonly appeared in court for matters related to family law, such as marriage, divorce, maintenance, custody of children, and inheritance.[78] These issues were necessarily limited to cases involving Muslim men, since Islamic law did not permit Muslim women to marry dhimmīs (nor did Jewish law permit Jewish men to marry non-Jews). Muslim women did appear in shari'a courts, even though they were largely absent from cases involving Jews. Yet as Shalom's dispute with Zaynab shows, Jews did encounter Muslim women in court, usually as the wives or sisters of men they did business with.[79]

Outside of judicial institutions and beyond the city walls, however, the high barriers to intermarriage paradoxically brought Jewish men closer to Muslim women. The prevalence of Jewish peddlers in the countryside was in part facilitated by their neutrality. As non-Muslims, Jewish men did not present a sexual threat to Muslim women; their social inferiority hindered them from seducing, violating, or potentially marrying Muslim women. They could thus interact with women in ways that would be totally unacceptable for Muslim men who were not family members, even entering homes to sell their wares while women were present.[80] Shalom's appearances in court with Zaynab represented a broader pattern of legal and commercial relations among Jewish men and Muslim women that arose both despite and because of the social barriers between them.

Succeeding in commerce meant having a fairly sophisticated understanding of shari'a courts. While having contracts drawn up and notarized by 'udūl was relatively straightforward, pursuing litigation often required a more detailed knowledge of Islamic law. Merchants who became involved in drawn-out lawsuits were often required to produce a lafīf, submit a fatwā (or even a counter-fatwā), or take an oath—all relatively complicated endeavors for anyone, regardless of his faith. Indeed, the ability of Shalom Assarraf and merchants like him to successfully deploy the tools of litigation in shari'a courts demonstrates the extent to which religion was not a barrier to participation in the Islamic legal system.[81] The nature of legal procedure in Moroccan shari'a tribunals meant that Jews were able to submit evidence just as Muslims did, at least according to the letter of the law. This does not mean Jews never faced discrimination in qadi courts. On the contrary, one of the most common complaints Jews presented to the Makhzan was that their local

shari'a court officials—both qadis and 'udūl—were discriminating against them (discussed in Chapter 4). But whatever barriers they faced, the experience of Jews like Shalom demonstrates that it was possible to transcend the disadvantages associated with one's faith by successfully employing the tools of Islamic law to one's advantage.

A JEWISH LAWYER IN AN ISLAMIC COURT

There is little question that Jews were central players in the Moroccan economy and a regular presence in shari'a courts, but how did these roles impact Jewish-Muslim relations beyond the courtroom and the marketplace? We cannot assume that the commercial and legal relationships among Jews and Muslims produced bonds of personal affection. European historians have argued that while most loans among Christians did imply networks of trust, loans between Jews and Christians remained largely impersonal.[82] We must look carefully for clues about the kinds of extra-commercial relationships that developed between Jewish merchants and their Muslim colleagues.

Shalom Assarraf's ability to successfully navigate the complicated procedure adhered to in shari'a courts is remarkable in and of itself; he clearly acquired a familiarity with the requirements of the shari'a, notwithstanding the fact that as a Jew he lacked any formal education in Islamic law, not to mention the ability to read Arabic. But even more striking was the fact that Shalom used his skills in court on behalf of Muslim colleagues. A number of Muslims perceived Shalom as sufficiently knowledgeable that they were willing to invest him with the authority to act as their legal representative (*wakīl*).[83] As a wakīl, Shalom had full power of attorney to collect payments, sign releases, and appear in court on his Muslim clients' behalf—in other words, he did all that lawyers do, though no such institution existed in Islamic law. Shalom was not the only Jew to represent Muslims in court, either.[84] Muslims who chose to invest a Jew with full powers to represent them in an Islamic court of law did so despite the fact that Mālikī law prohibited Muslims from appointing non-Muslims as their wakīl, despite Jews' inferior social status, and despite the religious differences that inhibited social relations.[85]

Granting Shalom power of attorney did not necessarily mean these Muslims considered him their friend. First and foremost, the Muslims who appointed Shalom as their wakīl put their faith in his knowledge of

Islamic law and legal procedure. His frequent visits to both ʻudūl and qadis meant he had acquired quite a bit of knowledge about how to navigate Islamic law as it was applied in Morocco. Shalom was in court more often than many Muslims; indeed, it is quite plausible that these Muslims knew less about Islamic law than he did. Moreover, investing another individual with such wide-ranging authority did require a high level of confidence that the wakīl would act wisely and with one's best interests in mind. The Muslims who invested Shalom with power of attorney must have felt that he would serve them well. Even if Shalom's commercial networks were largely impersonal, in some instances these business relationships developed into bonds of trust. Interreligious trust could work in the other direction as well; on at least one occasion, Shalom chose a Muslim to act as his representative.[86] Jews mostly appointed other Jews as their wakīls, and Muslims usually appointed other Muslims.[87] But the fact that religious difference was not a barrier to choosing a legal representative suggests that the commercial and legal ties linking Jews and Muslims did, at times, bleed into more intimate areas of life.

The possibility that a Jew could represent a Muslim in an Islamic tribunal is perhaps the most eloquent testimony of the degree to which Jews fully participated in Morocco's networks of shariʻa courts. Jews' place in Moroccan society was defined by a delicate and ever-shifting balance between the significant autonomy Jews were granted and their deep integration into the broader economy and the legal order that supported it. In Shalom's case, he was linked to Muslims not only through the goods he had to sell and the capital he could lend, but by virtue of his expertise in the functioning of shariʻa courts. In such instances, Islamic law became the vector connecting Jews to Muslims in and of itself, rather than as an accessory to their commercial encounters.

A dense web of commerce tied urban Jews to their Muslim customers, including the inhabitants of the cities' Muslim quarters and the tribesmen living in the surrounding countryside. Jewish merchants thus spent much of their time in a Muslim-majority marketplace facilitated by Islamic legal institutions. This did not make them any less Jewish, nor did it mean that they started to disappear into the broader Islamic society in which they played such a vital role. On the contrary, Jews remained

highly distinctive, both legally as dhimmīs and in concrete terms as manifestly different—in dress, in manner, in language—from the Muslims with whom they did business. Significant social and legal boundaries separated Jews from Muslims, but like the walls of the millāḥs, these boundaries were porous; crossing their threshold was part of the rhythm of daily life for both Jews and Muslims. Seen in this light, it is no longer possible to imagine Jews as isolated, within either their own communities or their own legal systems. Both commerce and law offered Jews pathways of integration into the broader Islamic society.

Similarly, the presence of Jews in shari'a courts disrupts conventional understandings of Islamic law. Shari'a courts in Morocco and throughout the Islamic world were staffed by Muslims, produced written documents in Arabic, and saw their mission as applying the law revealed by God to his prophet Muhammad. But they were far from exclusively Muslim institutions. On the contrary, Jews were habitual patrons of shari'a courts, availing themselves of the services of qadis and 'udūl on a regular basis. Jewish businessmen fostered countless commercial relations with Muslims, and shari'a courts provided the glue keeping these relationships intact. Indeed, it is only through examining the documents produced by these courts that we realize the extent to which Jewish merchants met many—if not most—of their legal needs outside the walls of the Jewish quarters. It would be erroneous to call Moroccan shari'a courts secular or even ecumenical; on the contrary, they were profoundly religious institutions. Yet the assumption that a confessional court must cater primarily, if not exclusively, to members of its own faith group is entirely misplaced in the Moroccan case. Shari'a courts in pre-colonial Morocco—and indeed in most of the Islamic Mediterranean before the twentieth century—were mono-religious institutions with a multi-religious clientele.

CHAPTER THREE

Breaking and Blurring Jurisdictional Boundaries

SHALOM ASSARRAF PASSED AWAY in the fall of 1910, as a prominent businessman, a savvy lawyer, a leader of his community, and—perhaps most important of all—the patriarch of a large and prosperous family. His death was both an emotional blow to those who loved him and a legal headache. Shalom's relatives had to sort out how to divide up a large and complex estate. Shalom was survived by three sons—Ya'akov, Haim Yehudah, and Moshe—who, according to Jewish inheritance law, were his sole heirs.[1] The brothers divided up their late father's estate so each would get his fair share: Ya'akov, the eldest, received a double portion according to the injunctions laid out in Deuteronomy 21:17.

Shalom's estate was apportioned according to Jewish legal prescriptions. But the legal document attesting this allocation was written up by *Muslim* notaries.[2] Shalom's sons commissioned one of Fez's leading rabbis, Vidal ha-Ṣarfati, to testify before 'udūl that the three brothers were Shalom's only heirs according to Jewish law. As discussed in previous chapters, Jews had the right to adjudicate intra-communal civil cases in their own courts, and inheritance certainly fell under this category. But the Assarraf brothers chose instead to seek out the services of 'udūl to attest the validity of their settlement. The resulting document was remarkable in two ways; first, it represented Jews' voluntary foray out of Jewish courts and into Islamic ones even when the matter at hand fell

squarely under Jewish jurisdiction. Second, it constituted an overt recognition by Islamic legal authorities of the validity of Jewish law; the ʻudūl who signed the document were by no means declaring Judaism to be the one true faith, but they were putting all the spiritual and temporal authority of Islamic law behind the idea that Jewish law was the right law for Jews.

The Assarraf brothers' choice to obtain an Islamic legal document for a purely intra-Jewish matter was part of a larger pattern of jurisdictional boundary crossing practiced by both Jews and Muslims. As we have seen in the previous chapter, Jews were a regular presence in shariʻa courts, mainly because of their frequent commercial dealings with Muslims. But Jews also elected to engage the services of ʻudūl and qadis for matters that did not involve Muslims—and thus fell under the jurisdiction of Jewish courts. Even more surprisingly, some Muslims chose to fulfill their legal needs in Jewish courts, seeking out notarization by sofrim and the adjudication of dayyans. By voluntarily subjecting themselves to the authority of non-Muslim judicial officials, these Muslims blatantly contravened the jurisdictional boundaries assigned by Islamic law. In so doing, they violated the Islamic legal principle that the shariʻa should be the sole arbiter of Muslims' lives.

Jews' and Muslims' voluntary presence in each other's courts facilitated cooperation not only among individual Jews and Muslims, but between the Jewish and Muslim legal orders. Although Jewish and Islamic courts ruled according to different sets of laws and thus fundamentally stood in competition with each other, they also worked in parallel and even in tacit cooperation. This is particularly apparent in the common practice among Jews of notarizing legal documents with both ʻudūl and sofrim simultaneously. It is also evident in how both ʻudūl and qadis upheld the validity of Jewish law to regulate the legal lives of Jews. This sort of mutual accommodation represents a convergence of practice across legal orders—in other words, in certain instances, shariʻa courts applied the same law that Jewish courts would have and vice versa. In this process, the jurisdictional boundaries that separated Jewish and Islamic law were somewhat blurred.[3]

The movement of Jews and Muslims across jurisdictional boundaries reveals both integration from below—at the level of the individual—and from above—at the institutional level. Jews' and Muslims' willingness

to use one another's courts indicates a degree of comfort with the other that accompanied the economic and, to a lesser degree, social integration of Jews. While Jews did not necessarily have to be friendly with the Muslim judicial officials whose services they sought out, they did need to feel that Islamic law was both accessible and attractive enough to merit going outside the more intimate space of Jewish legal institutions. Similarly, Muslims needed to be familiar not only with Jewish law but with Jewish communal norms in order to avail themselves of the services of Jewish judges and notaries. At the institutional level, Jews were able to move among Jewish and Islamic courts in part because Jewish legal institutions adapted to the reality of legal pluralism. This is quite similar to what Jay Berkovitz observes about early modern France, where "the Jewish judicial system was inexorably interconnected with French law and judicial procedure."[4] But my study of law in Morocco shows that this interconnectedness went beyond Jewish courts' adaptation to gentile law. In Morocco, Islamic courts were not only aware of Jewish law, but also adapted their practice to the existence of Jewish courts. And Jewish courts adjusted their practice to accommodate the presence of Muslims.

Despite a growing awareness among historians of the Islamic world that Jews at times elected to use shari'a tribunals, the full implications of jurisdictional boundary crossing have yet to be appreciated.[5] The presence of Muslims in Jewish courts has almost entirely escaped the attention of scholars—although there are indications that this was not unique to Morocco.[6] Even more important, the convergence among legal orders comes into view only if one observes the coexistence of various types of legal institutions.[7]

Although both Jews and Muslims crossed jurisdictional boundaries, it was more common for Jews to bring their intra-communal matters to Islamic courts. Jews most often sought out the services of 'udūl for intra-Jewish commercial matters, especially real estate transactions. When it came to notarizing legal documents, many Jews opted for double notarization, drawing up deeds with both sofrim and 'udūl. Muslim judicial authorities accommodated Jews' movements back and forth between Jewish and Islamic courts by upholding the validity of Jewish law for Jews, which they viewed as a sort of customary law akin to those adopted by tribes or merchants. Muslims also sought out the services

of Jewish courts, though not as frequently. And just as Muslim judicial officials accommodated the presence of Jews in their courts, so did Jewish judicial authorities make concessions to enable Muslims to use their courts. The movement of individual Jews and Muslims between jurisdictions from below engendered cooperation and even convergence between legal institutions from above.

CHOOSING SHARIʿA

Jewish courts and notaries public must have been comfortable places for most Moroccan Jews. When doing business with their coreligionists, Jews like the Assarrafs could have their legal documents notarized by sofrim who lived in the same quarter, spoke the same dialect of Judeo-Arabic, and wrote in a language they could read. Should disputes arise, Jews could seek a settlement with one of the dayyanim whose reputations for learning and piety were widely respected. Moreover, Jews suffered no disabilities due to their religion when they appeared in a Jewish court.

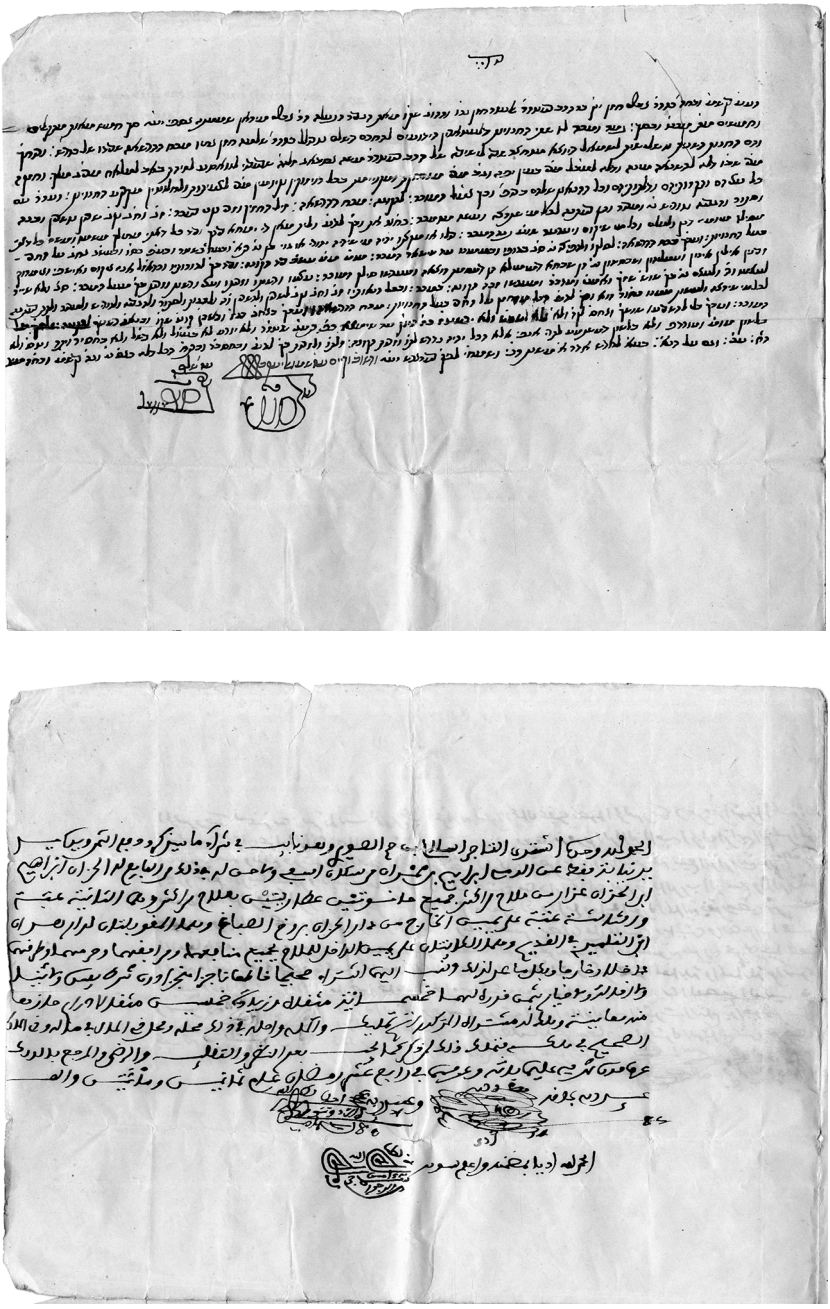
Despite the attractions of staying within Jewish legal institutions, Jews frequently opted to fulfill their legal needs in shariʿa courts. The voluntary presence of Jews in the offices of ʿudūl and the tribunals of qadis in some ways is not particularly surprising, given the coexistence of distinct yet overlapping legal orders. Jews sought out shariʿa courts in order to take advantage of the differences between Islamic and Jewish law. Yet their choice of Islamic law also points us to two important observations. First, power and authority were not distributed equally across different kinds of legal institutions. Because shariʿa courts were more closely tied to the state, and because they applied Islamic law in a Muslim country, they were in a better position to ensure that their rulings were enforced. Second, Jews felt enough confidence in, and familiarity with, shariʿa courts to choose them over Jewish courts—trust and ease that were facilitated by the role these courts played in the daily lives of so many Jews.[8]

In most instances when Jews sought out Muslim judicial officials for legal matters involving other Jews, they turned to ʿudūl to notarize their legal documents. Jews brought all kinds of intra-Jewish contracts to ʿudūl; most attested commercial transactions, such as leases, loans, and business partnerships.[9] More than any other transaction, however, Jews opted to notarize their acquisitions of real estate with ʿudūl, even

when these sales took place among Jews. More infrequently—though in some ways more consequentially—Jews brought matters of family law (marriage, divorce, and inheritance) to Muslim notaries public. These were the cases that brought Jewish women to Islamic legal institutions, places they otherwise had little occasion to seek out due to the dominance of men in the commercial sphere.

We have already seen that the Assarraf brothers did not have to choose between Jewish and Islamic notaries in recording the division of their father's estate—itself evidence of the ease with which Jews moved between Jewish and Islamic legal institutions. Bearing visual testimony to this kind of movement are a number of documents on which the Jewish and Islamic versions of a contract are written on the same page.[10] In these instances, the parties concerned opted to have their deed notarized by *both* sofrim and ʿudūl. The result was a piece of paper with a contract written in Hebrew and signed by sofrim on one side; on the other side was a contract recording the same transaction but written in Arabic and signed by ʿudūl. These were not mere translations from one language to another; rather, the contract drawn up by sofrim complied with the requirements of Jewish law, while the version written by ʿudūl complied with Islamic legal standards. The juxtaposition of Hebrew and Arabic offers a visual symbol of the intertwining of Jewish and Islamic law in Morocco. The majority of these doubly-notarized documents concern real estate transactions. For instance, on February 18, 1864, Avraham Miran went to the sofrim of Marrakesh to register his purchase of two spice stores from his coreligionist Avraham Hazan for 550 mithqāls. Four days later, the two Avrahams went to ʿudūl and registered the same sale, on the same piece of paper.[11]

Although Jewish women rarely did the kind of business with Muslims that brought them to shariʿa courts, they did, at times, use Islamic legal institutions for a range of intra-Jewish transactions. As with Jewish men, women most commonly had ʿudūl notarize property transactions. Some Jewish women of relatively modest means owned real estate, which they generally acquired through inheritance or as part of their dowry.[12] In the summer of 1860, a Jewish woman named Yael bat Meir Pinto notarized the gift of a small house in the millāḥ of Essaouira to her three children Masʿud, Jawhara, and Ajnina in a shariʿa court.[13] More frequently, women owned a fraction of a piece of property—which was



Doubly notarized document concerning the sale of two spice stores from Avraham Hazan to Avraham Miran in Marrakesh, dated 11 Adar 5624/February 18, 1864, and 14 Ramaḍān 1280/February 22, 1864. (From the University of Leiden Library Special Collections, UL, Or.26.543 [2]; used with permission)

quite typical since houses, apartments, and even rooms were often subdivided into multiple shares. Thus on June 16, 1859, Shalom bought a room in a house near the entrance to the millāḥ from Mordekhai b. Aharon b. Dukh b. Salin, Mordekhai's full brother Haim, and their mother Mananu bint Saduq b. Zazun (Sasson?) for 375 mithqāls.[14] The four Jews notarized the sale with 'udūl. The rare appearances of Jewish women in the Muslim-majority marketplace did not entail their absence from Islamic legal institutions; just like Jewish men, Jewish women at times opted to have their intra-Jewish contracts drawn up by Muslim notaries.

A number of motives propelled Jews to pursue their intra-communal cases in shari'a courts. Some Jewish women sought to take advantage of disparities in the laws applied by the two distinct yet overlapping spheres of jurisdiction. This strategy was of particular interest to women who wanted a divorce but could not obtain one in a beit din. For instance, in the summer of 1840, a Jewish woman named Miriam, the daughter of Natan Marsiano, opted to seek a divorce from her unnamed husband according to Islamic law rather than Jewish law.[15] The resulting legal document, notarized by 'udūl, confirmed that the couple was divorced, that Miriam renounced all her financial claims on her husband, and that she agreed to support their daughter until her marriage. In Islamic law, most kinds of divorce were initiated by men (who had the right to divorce their wives unilaterally). But Islamic law also granted women the option to initiate divorce (called *khul'*); in exchange for renouncing money and/or property, a woman could request a divorce from a qadi. Jewish law, on the other hand, only recognized divorce initiated by the husband, who was required to give his wife a writ of divorce (called a *get*). Since the early Islamic period, Jewish women like Miriam who desperately wanted to leave their marriages, but found they could not within the system of Jewish courts, sought out the services of a qadi instead.[16] Although Miriam's Islamic divorce would not have permitted her to remarry according to Jewish law, women sometimes used a khul' divorce to help persuade their husbands to give them a *get*.[17]

Most of the time, however, no relevant disparity between Jewish and Islamic law existed. In these instances, Jews brought their intra-communal matters to Muslim judges and notaries because of the hierarchical nature of Moroccan legal pluralism. According to Islamic law, shari'a tribunals could not recognize evidence drawn up in a Jewish court. Anytime

a matter was contested before a qadi, it was advantageous to ensure that all the relevant evidence met the standards of Islamic law. Had Islamic and Jewish law carved out separate and entirely equal spheres of jurisdiction that were perfectly respected by all Moroccans, both Jewish and Muslim, then crossing jurisdictional boundaries would have been unnecessary. However, the coexistence of multiple legal orders was never quite so neat. In the Islamic world, all laws were not created equal; Islamic law was officially sanctioned by the state and shari'a courts had jurisdiction over both Muslims and Jews, while Jewish courts were invested with limited authority over Jews alone. Islamic law had a certain finality that could not be obtained in a Jewish court.

This is not to say that Jewish courts had no means to enforce their decisions; nonetheless, Islamic courts were in a stronger position to do so. Since at least the medieval period, Jewish judicial officials across the Islamic world threatened those who violated Jewish law with fines and even excommunication (*ḥerem*).[18] In nineteenth-century Morocco, neither dayyanim nor qadis had the authority to use physical punishment to enforce their own rulings—local Makhzan authorities generally carried out whatever decision was reached in shari'a courts and batei din. Nonetheless, qadis had far denser ties to the state; formally, at least, they were appointed by the sultan himself. The Makhzan thus had a greater stake in shoring up the authority of shari'a courts. Islamic courts were understandably more effective at wielding the threat of physical coercion to back up their decisions.

Matters were somewhat different in Fez and Marrakesh, where Jews ran their own prisons; in these cities, dayyanim could hand transgressors over to the nagid, the secular head of the Jewish community who administered the prison.[19] Nonetheless, even in these cities the state often used its authority to override Jewish judges. In a case reported in a responsum (published in 1869), a Jew referred to as Reuven (the real names of neither the people nor the city are given) accused Shim'on—who was married to Reuven's ex-wife—of breaking into his house and stealing from him.[20] Although the nagid initially imprisoned Shim'on in the Jewish jail, the local rabbis insisted that Shim'on be released as there was no compelling evidence of his guilt. Nonetheless, the sultan got wind of the crime and sent men to imprison Shim'on in the municipal jail until he paid a fine of 1,000 mithqāls. Even after Shim'on and

the sultan reached a compromise, agreeing that Shim'on would pay only 130 mithqāls, the sultan handed him over to the governor, who again imprisoned him pending a trial (this time in the governor's house). This case exemplifies how easily Jewish judicial authorities could be overruled by the Makhzan; even the relatively robust autonomy granted Jews in Morocco never amounted to the authority of the state and its judicial officials.

Finally, Jews feared that without legal documentation from both sets of institutions, unscrupulous individuals would attempt to capitalize on the plurality of legal orders to usurp their lawful rights. Real estate was particularly in danger of being compromised this way, either by Jews or by Muslims. For instance, some Jews notarized sales of real estate with sofrim and then sold the same property to a Muslim, this time with a bill of sale notarized by 'udūl.[21] Since ultimately Islamic law was the law of the land, Jewish courts were unable to enforce the contracts drawn up by sofrim. When these unfortunate Jewish buyers went to a shari'a court with bills of sale drawn up in Hebrew, qadis refused to recognize the documents as valid proof and relied instead on the documents drawn up by 'udūl, thus awarding the property to the second, Muslim buyer. Similarly, some Muslims discovered that they could claim real estate belonging to Jews by having a bill of sale forged by 'udūl; if the Jewish owner only had a document in Hebrew to back up his claim, his case was lost.[22] Little wonder that Jews took particular care to have their transactions concerning real estate notarized by 'udūl—or by both sofrim and 'udūl.[23]

Indeed, the threat of having one's property usurped in a shari'a court by either a Jew or a Muslim was so great that in the late sixteenth century the rabbis of Fez passed a series of communal ordinances (*takkanot,* s. *takkanah*) requiring Jews to notarize their contracts concerning the sale, lease, or mortgage of real estate with both sofrim and 'udūl—ordinances that remained in force into the twentieth century. The rabbis were particularly concerned that bills of sale be double-notarized; a Jew who failed to notarize such deeds with 'udūl would be "put in prison and remain there day and night, not leaving either on the Sabbath or on holidays," until he submitted to the takkanah. As many double-notarized bills of sale of real estate attest, the logic of this takkanah was still relevant during Shalom's lifetime, and even after.[24]

Given the advantages of obtaining contracts that held up in an Islamic court of law, the more pressing question is not why Jews chose to

frequent ʻudūl, but rather why they bothered to have their documents notarized by sofrim at all. This is particularly puzzling because Jewish law recognizes the validity of most notarial documents drawn up in non-Jewish courts as long as they do not concern ritual matters (*issur ve-ḥeter*).[25] This meant that real estate transactions, bills of debt, and indeed almost any contract falling under the categories of civil and criminal law could be notarized in non-Jewish courts and still hold up as valid evidence before a dayyan. Nonetheless, Jews continued to engage Jewish notaries to draw up the vast majority of their intra-Jewish contracts, including many that they also had notarized by ʻudūl. One can imagine that for many Jews, especially those who were in less frequent commercial relations with Muslims and thus less knowledgeable about shariʻa courts, having documents notarized by sofrim was simply easier, more familiar, less intimidating. For others, to be truly pious meant documenting one's commercial activities according to halakhah; they preferred to notarize contracts with sofrim because doing so ensured that one was adhering to the principles of Jewish law.[26] Moreover, there is some question whether Moroccan dayyanim consistently upheld the validity of legal documents notarized by ʻudūl, despite their halakhic permissibility. Either way, Jews' reliance on sofrim for the majority of their intra-Jewish contracts speaks to the non-pecuniary considerations that weighed in their legal strategies. The forum shopping in which Jews engaged cannot be reduced to the pursuit of financial gain alone.[27]

While bringing intra-Jewish contracts to ʻudūl was relatively common, it was rare for Jews to sue their coreligionists in shariʻa courts. Jewish law clearly forbids suing another Jew in a non-Jewish court. Jurists only made exceptions for cases in which the local beit din permitted this sort of adjudication (usually when a Jew refused to acknowledge the authority of Jewish courts).[28] Yet we cannot assume that Jews automatically obeyed this injunction. Indeed, despite the infrequency with which Jews sued their coreligionists in Islamic courts, it was not entirely unheard of in the nineteenth century. Intra-Jewish disputes were brought before both qadis and governors.[29] Some Jews had personal ties with Muslim judicial officials and could use these connections to their advantage in a court case.[30] Others knew that certain qadis or pashas were susceptible to bribes and hoped to pay their way to a more favorable ruling.[31] Ultimately, though, the scarcity of intra-Jewish lawsuits in Islamic courts

reflects Muslim judicial officials' accommodation of a vibrant Jewish legal order alongside their own. One of the reasons that relatively few Jews sued their coreligionists in shari'a courts is the convergence that often aligned Jewish and Islamic law in cooperation rather than competition. In many instances, Jewish and Islamic courts worked together to avoid the very discrepancies that made litigation across jurisdictional borders attractive.

LEGAL CONVERGENCE I: ACCOMMODATING JEWISH LAW IN SHARI'A COURTS

Jewish and Islamic legal institutions both applied very different laws and had differing degrees of success in enforcing those laws. Yet these differences were tempered by Muslim judicial officials' efforts to recognize the existence of a Jewish legal order alongside their own and to uphold its authority over Jews.[32] The tacit acknowledgment of Jewish law by 'ulamā' in Morocco confirms recent scholarship suggesting that Muslim scholars and judicial practitioners viewed Jewish (and, in relevant areas, Christian) law as forming part of the broader Islamic legal system.[33] Moreover, by actively upholding the validity of Jewish courts, shari'a courts (and to some degree Makhzan courts) facilitated the convergence of Islamic and Jewish law. This convergence was only partial, of course; in no way did Muslim judicial officials change shari'a such that it came to resemble halakhah. Nonetheless, Muslim judges and notaries were not only aware of the existence of Jewish courts but affirmed the legitimacy of Jewish law for Jews.

At times, qadis made their cooperation with Jewish courts explicit, such as by upholding the previous rulings of dayyanim. Indeed, as an inheritance dispute from Fez shows, some Jews sought out shari'a courts precisely in order to confirm an earlier ruling handed down by a Jewish judge. In 1802, Natan b. Haim Marsiano (the father of Miriam whose divorce was discussed above) sued his cousin in a shari'a court with the express intent of upholding the earlier decision of a beit din.[34] Natan and his cousin Eliyahu shared a grandfather who had recently died. Both were heirs to their grandfather's estate, but Eliyahu tried to claim more than his share. They reached a compromise by which Natan would inherit a fourth of a jointly owned synagogue and a fifth of the rest of his grandfather's property, and a beit din confirmed their

settlement.[35] But Eliyahu had second thoughts and wanted to break the agreement. Natan decided that his best bet was to have the settlement confirmed in a shari'a court and sued his cousin before a qadi. Eliyahu did not dispute Natan's version of events, but claimed that he had been coerced into a settlement and had only agreed to it out of fear. This would have made the settlement invalid had he been able to prove his claim. The case was exceptional enough—or the Marsianos were well-connected enough—that it went all the way to the sultan, Mawlay Sulayman (r. 1792–1822). In his position as Commander of the Faithful and thus ultimate judicial arbiter, Mawlay Sulayman ruled that Eliyahu had to respect the settlement he had reached with Natan in the beit din. And although the sultan affirmed the Jewish court's decision, he supported his ruling by citing the Islamic legal principle that one should not break a settlement.[36] Had Natan expected a different result from a shari'a court, he probably would have stuck to Jewish institutions; instead, he rightly felt he could trust a qadi—or in this case, the sultan—to affirm the authority of the beit din that had already ruled in his favor.

Whereas shari'a courts had to apply Islamic law regardless of the religion of the plaintiffs, Makhzan courts were a different matter. The flexibility inherent in Makhzan courts meant that judges could explicitly rely on Jewish law when adjudicating intra-Jewish lawsuits. Indeed, when Makhzan officials were faced with an intra-Jewish lawsuit, it was common to consult a dayyan to determine how a Jewish court would rule in the matter and then to adjudicate accordingly.[37] In a similar vein, governors were willing to accept Jewish legal documents as evidence, despite the fact that Islamic law technically required the signatures of Muslim witnesses for contracts to be valid.[38] Since Makhzan courts did not follow the procedural and evidentiary requirements of Islamic law as carefully as did shari'a courts, it was possible for Makhzan judicial authorities to draw on evidence that would not have held up in a shari'a court. Even Makhzan officials' inability to read Hebrew or Judeo-Arabic did not prevent them from considering evidence notarized in Jewish courts as valid. When relying on legal documents in Hebrew, Makhzan courts found Jews to read and translate them viva voce.[39]

Even if qadis needed to rely on Islamic law alone, 'udūl were more willing to produce written affirmations of halakhah. At times 'udūl consulted with Jewish authorities to ensure that a particular transaction did

not actively contravene Jewish law, thus avoiding conflicts between the Jewish and Islamic legal orders. In the summer of 1909, a group of Jews chose to draw up a bill of sale for real estate in Fez with 'udūl.[40] Shmuel b. Moshe Butbul and his nephews Maymon and Shlomoh sold part of a house in the millāḥ to Benjamin b. Moshe b. Samhun. As part of the proceedings, "al-ḥazān Shlomoh b. al-ḥazān Moshe Ibn Danan[41] came and confirmed that the sellers owned the property in question, and that [their ownership] was established in their [law] through what establishes ownership for the dhimmīs in their religion and according to their custom."[42] The 'udūl drew on the expertise of a leading dayyan in Fez to confirm that Shmuel, Maymon, and Shlomoh were in fact the owners of the property in question according to Jewish law, and therefore had the right to sell it to Benjamin. These 'udūl could easily have demanded Islamic legal documentation establishing the Butbuls' ownership of the house—something many Jews would undoubtedly have been able to provide. Perhaps the Butbuls volunteered Shlomoh Ibn Danan knowing that they were unable to offer proof according to Islamic legal standards. Or perhaps these 'udūl were particularly eager to avoid drawing up a legal document that would usurp someone's rights established in another court. Either way, it is remarkable that the 'udūl not only bothered to check that the Butbuls truly owned the house in question, but asked an expert on Jewish law to weigh in on the matter. Through their signatures, these 'udūl ensured that the rights of property owners as established in a Jewish court would be respected in Islamic legal institutions.

'Udūl also explicitly acknowledged the existence of Jewish legal tenets that were totally absent from Islamic law. In so doing, they ratified the applicability of Jewish law in the Islamic legal documents they produced. The recognition of Jewish law was particularly salient when it came to *ḥazakot* (s. *ḥazakah*). A ḥazakah gave its owner the usufruct rights to real estate—that is, the right to inhabit the room, house, or store in question.[43] This right was owned separately from the actual property itself; tenants often paid rent to both the owner of the property and the owner of the ḥazakah. And although Islamic law had equivalents to the ḥazakah, such as the *zīna* and the *jalsa,* they were not direct translations of each other and Islamic law did not formally recognize ḥazakot.[44] Nonetheless, Muslim legal authorities not only knew about the existence of ḥazakot on certain properties, in some instances they actively affirmed

an individual's right to a ḥazakah. A document notarized by ʻudūl in the spring of 1856 recorded a sale of part of a house in Tetuan by a Jew, Shuʻa (Yeshuʻa) b. Yudha (Yehudah) Libi (Levi) to a Muslim, Ahmad b. Ahmad al-Razini.[45] The sale included the following clause:

> The seller, the aforementioned Yeshuʻa, exempted the buyer from the ḥazakah practiced by the dhimmīs, such that the aforementioned sale does not include [the ḥazakah] for [the buyer], and does not apply to him; rather, it remains [the seller's] property, which he rightfully owns, part of his property, according to the custom of the dhimmīs, as a complete exemption.[46]

In other words, although Yeshuʻa sold Ahmad part of a house in Tetuan, he retained the ḥazakah as his own property. According to Islamic law there was no such thing as a ḥazakah, which makes it surprising in and of itself to find it mentioned in this notarized document. In recognizing Yeshuʻa's continued claim on the ḥazakah, these ʻudūl lent the authority of the shariʻa to a uniquely Jewish law. Admittedly this sort of bill of sale is unusual; most such documents make no mention of a ḥazakah even though most properties in Jewish quarters had ḥazakot associated with them.[47] Nonetheless, it attests a broader pattern by which ʻudūl acknowledged and even upheld the authority of Jewish courts.

In other instances, ʻudūl went even farther than simply acknowledging the existence of some facet of Jewish law; they explicitly attested the ruling of Jewish law in a particular case. In so doing, they drew on the knowledge of dayyanim, much as they would on that of an expert witness.[48] The resulting documents were a strange hybrid. Outwardly they conformed to the tenets of Islamic law in that they were written in Arabic and signed by two ʻudūl. But their contents made no mention of Islamic law; instead, they described how Jewish law ruled in a given situation. The division of Shalom's estate discussed earlier produced just this sort of Islamic legal document:

> When the dhimmī merchant Shalom b. Yehudah Assarraf died, it was necessary to specify his inheritance. So at that time al-ḥazān Vidal b. al-ḥazān Avner ha-Ẓarfati, who is among the religious experts of the Jews who knows which Jews inherit

> and which do not according to their religion, came before two witnesses [i.e., ʻudūl], may God protect them. And [Vidal ha-Ẓarfati] knows that the aforementioned Shalom died, and that his heirs are his three sons, the full brothers Yaʻakov, Yehudah, and the bachelor Moshe—[and that Shalom] has no other heir according to their religion. And he knows the aforementioned heirs and their aforementioned inheritance.[49]

Shalom's heirs had already divided up their inheritance according to Jewish law; they probably even had this agreement notarized by sofrim. Yet they wanted to make sure their agreement could not be challenged in a shariʻa court. The best way to do so was to have an Islamic legal document drawn up confirming that the division of inheritance had been made in accordance with Jewish law and with the approval of the relevant rabbinic authorities. They summoned one of Fez's dayyanim, Vidal ha-Ẓarfati, as an expert witness ("who knows which Jews inherit and which do not according to their religion"), to confirm the legality of the succession according to halakhah.[50]

The disparities between Jewish and Islamic law regarding the allocation of inheritance made it particularly easy for heirs to fall prey to the existence of multiple legal orders. It was often the case that someone who stood to inherit in one law was given nothing (or much less) in another. For instance, Shalom's daughters might have decided to sue their brothers in a shariʻa court for a share of the estate, since Islamic law allocated daughters one-half the portion given to male descendants. Jewish women in the medieval period pursued exactly this strategy to obtain inheritances they were denied by Jewish law.[51] As we have seen in the case of Natan Marsiano, shariʻa courts could refuse to allow the usurpation of Jewish inheritance law. Nonetheless, seeking an Islamic deed that ratified the division of an estate according to Jewish law gave Jewish families in Morocco an extra layer of protection, for a qadi was bound to recognize a document notarized by ʻudūl.[52] By having ʻudūl draw up a record of how Jewish law carved up their father's estate, the Assarraf brothers avoided the possibility that someone could usurp their inheritance by challenging the division of inheritance in a shariʻa court. In helping the brothers protect their rights, these ʻudūl aligned the practice of Islamic law with that of Jewish law, despite differences in legal doctrine.

But how did these ʻudūl—and other Muslim judicial officials involved in similar cases—justify their accommodation of a sacred law other than that of Islam? In some instances they did not have to; the sultan Mawlay Sulayman cited an Islamic legal authority in his ruling that Eliyahu Marsiano had to abide by the settlement he had reached with his cousin Natan in a Jewish court. But for the ʻudūl who signed notarized documents upholding the validity of Jewish law in the division of Shalom Assarraf's inheritance, what Islamic legal principle could they use to justify their actions? This is a difficult question to answer definitively because the level on which this sort of legal convergence occurred was that of notaries and judges, who rarely recorded their legal reasoning. Nonetheless, the terminology they used offers a hint at how they understood their decisions.

In a number of notarized documents, ʻudūl referred to Jewish law as *ʻurf,* or custom.[53] Custom was not formally considered one of the sources of jurisprudence (*uṣūl al-fiqh*) during the formative years of Islam. Nonetheless, custom played an important role in Islamic law, and by the early modern period it was often recognized as a de facto source of law.[54] In early modern Morocco, custom and judicial practice (*ʻamal*) were especially central to the development of Mālikī jurisprudence.[55] Particularly salient for our purposes is the fact that custom could be peculiar to communities, such as the customary laws of guilds or merchants.[56] It seems that in these cases—and presumably many more—Muslim judicial officials treated Jewish law as a form of customary law particular to Jews. In so doing, they incorporated halakhah into the fold of shariʻa.

The existence of multiple legal orders did not mean that each type of court was isolated from the others. Nor were judicial officials unaware of their counterparts' existence. Not only did Muslim judicial authorities acknowledge the presence of Jewish courts, they actively worked to ensure that the two legal orders functioned in cooperation with each other. By voluntarily crossing the thresholds of qadi courts and ʻudūl's storefronts, Jews stepped outside the familiarity of their own courts and into another religion's legal institutions. These Jews asserted their participation in the broader society in which they lived from below, and their choices were met with the tacit approval of Islamic courts. The Muslim judicial authorities who facilitated the convergence of Jewish and Islamic

law brought Jews' integration into Moroccan society from the social level to the legal one. Not only were Jews present in Islamic courts, but their law was present in the documents and decisions of Muslim judicial authorities.

CHOOSING HALAKHAH

Jews' voluntary presence in Islamic courts is not entirely surprising, given that they constituted a subordinate population living under Islamic rule. But the fact that Muslims sought out Jewish legal institutions is far more unexpected. Not only were Muslims the numerical majority, but their own courts had the full backing of the state. Moreover, whereas Jewish law formally recognized the validity of gentile legal institutions in a number of areas, Islamic law clearly prohibited Muslims from voluntarily subjecting themselves to any law other than the shari'a. Yet we find that Muslims chose Jewish courts for many of the same reasons that brought Jews into Islamic courts. Like their Muslim counterparts, Jewish judicial officials found themselves accommodating the presence of Muslims in their courts by ruling in ways that aligned Jewish and Islamic legal practice. Legal convergence worked both ways in Morocco; as we have seen, Jews' use of shari'a courts for intra-Jewish matters spurred qadis and 'udūl to recognize the authority of Jewish law over Jews. Conversely, Muslims' presence in Jewish courts caused dayyanim and sofrim to adjust their practice of Jewish law to accommodate their Muslim clients.

On occasion, Muslims chose to resolve their legal disputes before a dayyan rather than a qadi. Very little evidence of this practice has survived, probably because it was both relatively rare and because we have access to very few legal documents which remained in the hands of Muslims. In some instances, it seems Muslims chose to adjudicate before a particular dayyan because they respected his reputation for integrity. In others, they opted for a beit din because the trials were speedier and cheaper than those in a qadi court.[57] Undoubtedly, much of the adjudication that took place among Muslims in Jewish courts was informal and left no paper trail whatsoever.

Even more commonly, Muslims brought their contracts involving Jews to be notarized by sofrim. (I did not, however, find any indication that Muslims notarized intra-Muslim contracts with sofrim.) While bills of debt in which Jews extended credit to Muslims were generally nota-

rized by ʻudūl (as discussed in the previous chapter), sofrim also wrote up these kinds of contracts. For instance, on July 10, 1908, Sultana bat David b. David u-Yosef b. Sulayman lent eight *douros Ḥasanī* to the Muslim Hamad Zarigi al-Falali, which Hamad agreed to pay back at the rate of two pesetas per week.[58] As a Jewish woman who almost certainly had little or no experience in an Islamic court, Sultana might have felt more comfortable bringing Hamad before sofrim to notarize their agreement.[59] Yet some Jews who were thoroughly familiar with the workings of shariʻa courts nonetheless ended up notarizing their interreligious contracts in Jewish courts. Yeshuʻa Corcos was an immensely powerful leader of the Jewish community of Marrakesh and had extensive commercial dealings with Muslims, most of which he had notarized by ʻudūl. However, in 1904 Yeshuʻa rented rooms in the millāḥ from a Muslim (Muhammad b. Hamu) and had the lease drawn up by sofrim.[60] Other Jews rented property to Muslims and chose to notarize their leases with sofrim rather than ʻudūl.[61] Of particular interest in these leases is that despite involving Muslims, the agreements followed the practice of starting a lease from the Jewish month of Iyar (which falls in the spring).[62] By notarizing their lease contracts with sofrim, Muslims were not only entering into the world of Jewish law, but also that of Jewish time.

More than any other type of contract, the sale of real estate most often brought Muslims before sofrim. One Muslim in particular, named Abu Bakr al-Ghanjawi, went to the sofrim of Fez on a number of occasions to notarize his acquisitions of real estate in the millāḥ. On January 16, 1889, al-Ghanjawi bought a building in the millāḥ from Avraham Nahmiash, his wife Havivah, Avraham's brother David, and David's wife Esther—and had sofrim notarize the bill of sale. On April 9 of the same year, al-Ghanjawi bought another building from Jews, again with a bill of sale in Hebrew. He returned to sofrim to notarize at least three more bills of sale between 1889 and 1908.[63] Al-Ghanjawi acquired these properties as investments, planning to rent them out to Jewish tenants (since it was unthinkable for a Muslim to live in the millāḥ).[64] It is possible—perhaps even likely—that al-Ghanjawi was also having these contracts drawn up simultaneously in shariʻa courts; we know that on other occasions he had ʻudūl notarize his real estate transactions with Jews.[65] Al-Ghanjawi was an unusual character whose trajectory may provide some clue as to why he became such a keen customer of the services of Fez's

sofrim. He began life as a lowly camel driver working the routes between Marrakesh and the ports of Essaouira, Safi, and al-Jadida; by the 1870s he had started working for a British merchant and in 1873 acquired British protection. He was later commissioned by Mawlay Hasan to transmit confidential correspondence between the British ambassador and the Makhzan. He was even accused of running a string of "houses of ill repute" in the millāḥ of Marrakesh.[66] In other words, al-Ghanjawi was far from the ideal of a pious Muslim devoted to protecting and upholding the faith. Nonetheless, other Muslims with less remarkable backgrounds similarly notarized their real estate transactions with sofrim, and it seems safe to assume that most who did so were not such flamboyant characters.[67]

Some Muslims chose to notarize legal documents with sofrim in order to take advantage of disparities between Jewish and Islamic law. Indeed, the ḥazakah—the right to occupancy that exists only in Jewish law, discussed above—proved attractive enough to Muslim entrepreneurs to prompt notarization in Jewish legal institutions. Although ḥazakot functioned much like their Islamic equivalents, a ḥazakah did not replace a zīna or a jalsa; on the contrary, a single building could have both a ḥazakah and a zīna simultaneously, each owned by a different person.[68] Buying a ḥazakah was an investment, much like buying property itself. Because ḥazakot do not exist in Islamic law, Muslims who wanted to invest in a ḥazakah had to acquire it through a bill of sale drawn up by Jewish notaries. For instance, al-Ghanjawi bought the ḥazakah on at least one of his properties in the millāḥ of Fez—which clearly accounts for his use of sofrim to draw up this bill of sale.[69] Moreover, owning property in the Jewish quarter meant interacting not only with Jews (as buyers, sellers, or tenants) but also with Jewish law.[70] Whether a Muslim bought the ḥazakah on a property or not, ḥazakot were attached to the vast majority of real estate in the Jewish quarter, and even Muslim landlords would have to contend with them. For instance, one Muslim landlord who did not own the ḥazakah on his property took precautions to prevent it from falling into the wrong hands. He wrote to Yeshu'a Corcos, Marrakesh's most powerful Jew, asking him to do all in his power to prevent anyone from claiming the ḥazakah.[71]

But the desire to take advantage of disparities between Jewish and Islamic law cannot explain all instances in which Muslims turned to

sofrim. Muslims also notarized bills of sale with sofrim for properties that did not include the purchase of a ḥazakah, and thus could just as well have been notarized by ʻudūl. One Jewish observer from the early colonial period believed that Muslims chose sofrim because they were considered "more conscientious in drawing up legal documents" than ʻudūl.[72] Some Muslims might have worried about the possibility of their property rights being contested in a Jewish court. This motive paralleled those of Jews who notarized intra-Jewish contracts in Islamic courts to ensure that nobody could contest their claims before a qadi. But theoretically, at least, Jewish law acknowledged the legitimacy of bills of sale that were drawn up in a non-Jewish court, so Muslims should have been able to present documents notarized by ʻudūl before a dayyan. Nonetheless, we have already explored the possibility that batei din in Morocco did not, in fact, accept non-Jewish legal documents. If Muslims did indeed seek out notarization by sofrim to protect their rights from being challenged in a beit din, their strategy would suggest that a bill of sale notarized by ʻudūl might not have been sufficient to prove ownership in a Jewish court.

As a gate connecting Jews and Muslims, jurisdictional border crossing swung both ways. Most of the time, Jews used the services of Islamic legal institutions as a way out of their own community and into the broader society in which they lived. But Muslims also sought out the legal services of Jewish courts, despite Jews' status as a protected and restricted minority. Through their use of sofrim and their appearances before dayyanim, Muslims engaged a legal culture that not only applied different laws but drew its authority from different sacred sources. Jews' regular use of shariʻa courts forces us to see these mono-religious institutions as serving a multi-religious clientele. Similarly, Muslims' presence in Jewish courts forces us to rethink what is often assumed to be the homogenous nature of Jewish legal institutions.

LEGAL CONVERGENCE II: ACCOMMODATING MUSLIMS IN JEWISH COURTS

Scholars have long recognized that Jewish jurists necessarily adapted to the existence of other, more powerful legal orders; nonetheless, little attention has been paid to the question of accommodating the presence of non-Jews in Jewish courts. Even in those places that afforded Jews'

considerable latitude to adjudicate their own legal disputes, their status as a minority group meant that Jewish jurists consistently had to contend with the existence of another, usually more powerful legal order. The Jewish legal maxim *dina de-malkhuta dina* ("the law of the state is the law") summed up the necessity of accommodating the existence of the state and its laws.[73] Naturally, this principle did not mean that Jewish jurists always accepted non-Jewish law as valid; such an approach would have accommodated non-Jewish law to the point of erasing Jewish law. Yet this maxim allowed jurists to ensure that Jewish legal institutions continued to function in the shadow of competing courts. Indeed, Moroccan jurists recognized the need to work in cooperation with Islamic legal institutions in order to retain their authority over Jews, such as in the requirement to double notarize certain intra-Jewish real estate transactions with both sofrim and 'udūl.[74]

The imbalance in power between Jewish and Islamic courts shaped Jewish jurists' attitude to accommodating non-Jews in their courts. Because Jewish law developed in Diaspora—rather than in a context in which Jews ruled over gentiles—mainstream Jewish law was aimed almost exclusively at Jews. Jewish jurists in Morocco thus had to make adjustments when Muslims also wanted to take advantage of their legal institutions. The fact that the majority of Morocco's inhabitants were Muslim and that the state considered itself responsible for upholding Islamic law meant that Jews had a compelling incentive to adapt their legal order to the presence of Muslims. Although Jewish law does not treat non-Jews the same as Jews, it was politically unwise for jurists to allow discrimination against Muslims in Jewish courts.

Some of the changes that Jewish jurists made to accommodate Muslims in Jewish courts were relatively minor. For instance, a problem arose with a standard formula for drawing up bills of sale involving a Muslim.[75] In bills of sale among Jews, sofrim often acquired property on behalf of the buyer (in order to fulfill halakhic requirements concerning contracts). However, since Jewish law prohibits a Jew from acting as a Muslim's agent, this practice became invalid when a Muslim was involved.[76] Instead of writing that the sofrim had acquired the property on his behalf (*ve-kanina minei*), the solution was to write that the non-Jew acquired the property himself (*ve-kanah ha-goy*).[77]

But not all conflicts of law were so easily resolved. Although Muslims in Morocco seem to have bought and sold ḥazakot relatively freely, their participation in the ḥazakah economy was problematic from the point of view of Jewish law. Theoretically, at least, only Jews were allowed to acquire a ḥazakah; this was largely because the original premise of this legal instrument was to keep property in Jewish hands (even though it had ceased to function this way in nineteenth-century Morocco).[78] Nonetheless, jurists recognized the potential difficulties they might face if they prevented Muslims from buying ḥazakot. Avraham Koriat (d. 1806), a dayyan in Essaouira and later in Gibraltar and Livorno, discussed the problem posed by the sale of a ḥazakah to a non-Jew. Although Koriat admitted that, strictly speaking, it was illegal to sell a ḥazakah to a Muslim, he ultimately ruled that Jews must uphold such sales:

> But when there is [a question of] defaming God's name we let the matter drop, so that one would not say that if a Jew came with a Muslim to be judged it would be said to the Muslim that in your law one does not buy a ḥazakah, and thus the ḥazakah is still in the hands of [the] Jew, and he has usufruct rights, [such that] it is found, God forbid, that Jewish courts deceive Muslims by writing them false bills of sale that do not have any legal value. . . . God forbid that Jewish judges should elicit such words from their mouths. Rather, on the contrary, we are obligated to uphold the claim of the Muslim [literally, strengthen his hand] who bought [the ḥazakah] and to uphold his transaction in order to strengthen the great religion [Judaism] and exalt it, such that all the nations will know that "the Remnant of Israel do not commit any wrong,"[79] and this is not out of [fear of] the Muslims' violence but rather so that, God forbid, the Holy Name will not be defamed.[80]

Koriat ultimately ruled that batei din must recognize sales of ḥazakot to Muslims. Even though according to Jewish law sofrim should not be writing such bills of sale in the first place, he expected Muslims to continue buying ḥazakot. The question, then, was how to deal with the resulting claims. Koriat argued that a failure to recognize the Jewish bills of sale in Muslims' possession would establish a negative image of Jewish

courts as institutions that wrote "false bills of sale." In order to avoid this—which would both embarrass and endanger Jews—Koriat declared these bills of sale valid. His assertion that his ruling had nothing to do with the fear of "Muslims' violence" seems implausible, at least in the sense that Jewish jurists' decisions were always made in the context of their relative weakness as members of a religious minority. Even if Koriat did not believe that refusing to accept a Muslim's purchase of a ḥazakah would lead directly to anti-Jewish violence, he undoubtedly did consider the possibility that the reputation of Jewish courts was connected to the well-being of Jews more generally.

Muslims' presence in Jewish courts helped shape the nature of Jewish law as it was applied in Morocco, just as Jews' presence in shari'a courts shaped the nature of Islamic law. The mutual accommodations of Jewish and Muslim jurists did not diminish the distinctiveness of either legal order, but it did move each toward more cooperation with the other. The resulting legal convergence stood in constant and productive tension with the competition that encouraged individuals to cross jurisdictional boundaries in the first place.

When Shalom Assarraf's sons went to the shari'a court to notarize the division of their father's estate—a division according to the principles of Jewish law—they were in some ways making an unusual choice. The jurisdictions assigned to Jews and Muslims gave the Assarraf brothers the right to adjudicate matters such as inheritance strictly within the Jewish legal system. Theoretically, a shari'a court had no place resolving how Jews inherited from one another. Yet when understood in the broader context of Jews' and Muslims' jurisdictional boundary crossing, the fact that the Assarraf brothers had their division of inheritance notarized by 'udūl was not all that unusual. On the contrary, the Assarrafs' choice to notarize their inheritance agreement in an Islamic court fits into broader patterns of how Jews used Islamic legal institutions.

The jurisdictional boundaries laid out by Islamic law were not totally fictional. Yet even in the most centralized legal systems, individuals manage to maneuver among legal orders in ways that contravene the strict letter of the law. Morocco was by no means a highly centralized legal system, and the presence of multiple legal fora at the local level made forum shopping relatively easy. Jews—especially merchants—sought out

the services of ʻudūl and qadis regularly because of their commercial relations with Muslims. And many returned to these same Muslim judicial officials for their dealings with other Jews. Their election of shariʻa courts makes it even more imperative to understand these institutions as Islamic courts with a multi-religious clientele. Moreover, Muslims similarly crossed legal lines to notarize their contracts or adjudicate their disputes in the millāḥ. Just as Islamic courts served non-Muslims, so did Jewish courts serve non-Jews. Finally, Moroccan jurists of both faiths recognized the reality of jurisdictional boundary crossing and for the most part attempted to accommodate it. The resulting legal convergence allowed Jewish and Islamic courts to coexist without necessarily posing a threat to each other. In other words, the forum shopping engaged in from below produced legal convergence from above. The voluntary presence of each religious group in the other's courts and the resulting legal convergence between Jewish and Islamic courts suggests that not only commerce, but law in and of itself, linked Jews and Muslims.

CHAPTER FOUR

The Sultan's Jews

SHALOM ASSARRAF'S FINANCIAL SUCCESS was due at least in part to his familiarity with Islamic law and legal institutions. As we have seen, he was no stranger to shari'a courts. He regularly engaged the services of both 'udūl and qadis in order to make his extensive networks of credit profitable by ensuring that his debtors repaid him. And much of the time, he was successful at collecting his debts—either by arriving at out-of-court settlements or by suing his recalcitrant debtors. But matters did not always proceed so smoothly, especially when debtors resisted attempts made at the local level to extract payment. In the spring of 1881, Shalom found himself stuck; two notables named 'Abb and Bilqasim who boasted a saintly lineage (both from the Shararda tribe to the northeast of Fez near Sidi Kacem) had failed to pay the debts they owed him. The debtors simply refused to appear in a shari'a court, probably betting that their spiritual and temporal authority would protect them from a creditor who was their social and religious inferior. Savvy businessman that he was, however, Shalom had more tricks up his sleeve; he may have exhausted local channels, but he was far from giving up.[1]

When Shalom realized that 'Abb and Bilqasim could not be persuaded to appear in a shari'a court, he turned to the Makhzan for help. Although such a minor matter might seem unworthy of the sultan's attention, the Makhzan's top officials—even the sultan himself—were

regularly in the business of solving seemingly trivial legal problems for both Jews and Muslims. Indeed, in response to Shalom's appeal, Mawlay Hasan himself wrote to the governor of the Shararda ordering him to make sure that 'Abb and Bilqasim appeared in a shari'a court with Shalom to settle their debts. For good measure, he also instructed the governor to be sure to enforce the qadi's ruling.

Shalom's petition to the Makhzan and the sultan's intervention on his behalf are part of a broader pattern in which Moroccans, both Jewish and Muslim, engaged the central government in their attempts to resolve legal disputes. The sultan (and the Makhzan more broadly) acted as a sort of Supreme Court to which cases from all jurisdictions—shari'a courts, Jewish courts, and local Makhzan courts—could be brought, either initially or on appeal. The sultan's responsibility for personally guaranteeing the rights of his subjects was not an abstract concept or a symbolic justification for his rule; it was the organizing principle of the state's role in the Moroccan legal system. Many who were unable to resolve their disputes at the local level asked the Makhzan to intervene.

While individuals could and did write to a variety of Makhzan officials, from local governors to ministers to the sultan himself, it was ultimately the sultan who adjudicated even the most banal matters. (At least in theory; naturally we must assume that the sultan did not dictate every single letter bearing the royal seal, and that many orders given in his name were formulated and overseen by someone else.) While other states were rationalizing their bureaucracies to make matters like judicial appeals more impersonal, the Makhzan was moving in the opposite direction, making the sultan more available and answerable to each and every one of his subjects.[2] The sultan's role as supreme judicial arbiter thus became even more paramount in the second half of the nineteenth century. At the same time, in the 1860s Mawlay Muhammad IV bureaucratized the Makhzan's system of appeals by creating the Ministry of Complaints (*wizārat al-shikāyāt*), which became a central repository for processing both written and oral petitions.[3] The Makhzan's efforts at centralization and consolidation of power reshaped the relationship between state and subject. As the threat of colonization loomed larger, the Makhzan made increasing demands for tax revenue and military participation. But centralization was not only outwardly focused as a defense against invasion; the Makhzan's reforms looked inward as well, aiming to more efficiently

and effectively secure individuals' rights and thus assert the authority of the central government and of the sultan himself.[4]

For Jews in particular, the mechanism of appeal to the state provided access to a formalized judicial hierarchy, as well as an opportunity to affirm their direct link to the sultan. By demanding their rights, Jews asserted their participation in the Moroccan polity—not as equal citizens or subjects, but as dhimmīs under the special protection of the sovereign himself.[5] Indeed, petitioning the Makhzan simultaneously affirmed Jews' direct link to the sultan as their protector (the guarantor of their dhimma) and their inferior status as subordinate protégés. Focusing on Jews' appeals thus makes it possible to go beyond a flat understanding of Jews as eternal victims of an Islamic state. Jews did at times suffer—from debtors who refused to pay, from thieves and murderers who preyed on traveling Jewish salesmen, and from abusive government officials who targeted the weakest sector of society. But they were not passive in the face of their troubles; on the contrary, Jews' petitions to the Makhzan reveal that they were aware of their rights and willing to assert them. Moreover, even if Jews were in some ways particularly vulnerable as dhimmīs, they appealed to the Makhzan in largely the same numbers—and for largely the same reasons—as Muslims.[6]

In the second half of the nineteenth century, the mounting pressure that foreigners put on the Makhzan to treat Jews justly made the sultan's role in guaranteeing the rights of his Jewish subjects even more paramount. The sultans of the second half of the nineteenth century developed an interest in guaranteeing Jews' rights in order to prove themselves to be just and humane rulers to their increasingly vocal foreign critics. Jews' inferior status thus gave them privileged access to the sultan in two ways: first, as his personal protégés, and second, as the emblem of the Makhzan's justice as it was perceived by Western powers. Indeed, the Makhzan's double motive to intervene on Jews' behalf meant that Jews gained a reputation as particularly successful in securing their rights.

Yet despite the Makhzan's vested interest in protecting the legal rights of its subjects—especially its Jewish subjects—the central government often ran up against the limits of its authority in attempting to intervene on Jews' behalf. Try as they might, Makhzan officials could not always locate recalcitrant debtors or fugitive thieves and murderers,

especially when these individuals escaped to regions beyond the Makhzan's control. The successes and failures of the Makhzan's attempts to resolve Jews' legal disputes outline the reach of the Moroccan state in the nineteenth century. Jews were undoubtedly aware of the limited capabilities of the central government, which suggests that Jewish petitioners did not necessarily expect their appeals to result in successful resolutions. The calculus of individual cases is difficult to discern, but Jews must have been sensitive to the social capital gained by mobilizing the state on one's behalf, as well as the symbolic link to the sultan which this reaffirmed.

The nature of Jews' appeals and the state's response also reveals the texture and limits of the Makhzan's involvement in its subjects' everyday legal lives. Jews' petitions concerning commercial disputes were a relatively regular feature of business—even if not quite as common as Jews' visits to 'udūl. Criminal matters occasioned fewer appeals but were more serious both for the petitioners and for the state, and Jews regularly relied on the Makhzan to secure compensation for their losses. These petitions are of particular interest because they cut across class, since many of the Jews most vulnerable to such assaults were poor itinerant peddlers traveling in the remote countryside. Jews also turned to the central government when they believed their local judicial authorities were acting unjustly; in these instances, they looked to the Makhzan to ensure access to the full range of legal institutions that existed at the local level, from shari'a courts to Jewish courts. The state's role in ensuring the smooth functioning of Jewish courts in particular provides further evidence of the extent to which Morocco's legal pluralism was hierarchical. The sultan not only acted as supreme arbiter for courts operating at the local level, but also as ultimate guarantor of Jewish judicial autonomy. Together, these three types of petitions—commercial, criminal, and administrative—outline the range and intensity of the Makhzan's role in Jews' legal lives.

IN SEARCH OF UNPAID DEBTS

Although the daily business of collecting debts might seem far too banal for the likes of a sultan, the politics of law in Morocco meant that the central government regularly intervened even in relatively minor commercial disputes. While other Mediterranean states were trying to rationalize and

bureaucratize their judicial administrations, the Moroccan government chose to invest the sultan with even more personal authority and responsibility for adjudicating appeals. Jews involved in commerce—and thus in the extension of credit—turned to the sultan as the ultimate judicial arbiter. In so doing, they reaffirmed both their rights guaranteed by law and their participation in the Moroccan polity.

Over the course of three years (from March 1890 to March 1893), the Ministry of Complaints recorded no fewer than seventeen items of correspondence concerning Ya'akov Assarraf's appeals to the Makhzan to help him collect outstanding debts.[7] Indeed, most of the petitions to the Makhzan written by Jews were from creditors asking for the sultan's intervention to ensure the repayment of their debts. Naturally, wealthier merchants like the Assarrafs appealed to the Makhzan more often—both because they had more debts to collect and because their socioeconomic status made them more likely to be heard. Nonetheless, many of the petitions received by the Makhzan were from Jews who wrote only once or twice, suggesting that appeals did not come only from the very wealthy.

Much of the time, petitions merely sparked the central government to press local Makhzan officials to pursue debtors more diligently. Once a shari'a court had determined whether a particular debt was in fact outstanding, it was up to the local governor to ensure that the debtor (or his family members) paid up. Yet local officials did not always follow through to the satisfaction of merchants like the Assarrafs. This is when Jews turned to the sultan, asking for measures to ensure that the debtors would be forced to pay. Sometimes the local Makhzan official involved simply needed to imprison recalcitrant debtors. In the winter of 1892, an official named al-Dalimi responded to the Makhzan's inquiry about Ya'akov Assarraf's unpaid debts, saying that he had imprisoned one of the debtors in an attempt to force him to pay. Most of the time, the problem with payment arose because the debtors were difficult to locate; in these cases, local Makhzan officials needed extra prodding to try to find the missing debtors. In a letter from March 20, 1890, a Makhzan official named al-Zarari reported that he had caught one of Ya'akov's debtors trying to escape. Not all officials were so successful; the same al-Dalimi who had earlier imprisoned one of Ya'akov's debtors wrote a few weeks later to report that two more had run away and could not be located.[8]

In some cases, Jews' appeals to the central government paid off rather quickly. Many of Ya'akov's debtors were persuaded to pay once the Makhzan exerted pressure on them through its local representatives. In March 1890, a Makhzan official named Ibn al-Shalih reported that Ya'akov had sent an agent to collect the debts owed to him; the agent "had been paid in full by the debtors," after which he "went on his way cheerfully."[9] It is difficult to tell just how often the Makhzan succeeded in resolving cases of unpaid debts.[10] Presumably, however, Jews would not have found even symbolic value in the act of appealing if the Makhzan's success rate was excessively low.

Creditors also asked the Makhzan to intervene when it was unclear who was responsible for repaying a debt. In 1890, Ya'akov Assarraf wrote to the Makhzan concerning a debt he was owed by a governor named Ibn al-'Azizi.[11] Al-'Azizi had borrowed money in order to pay the taxes he owed to the Makhzan—either because he had failed to collect sufficient funds or because he had already spent the money. Although we do not know how much al-'Azizi borrowed, such loans were normally quite large. In any case, al-'Azizi died before he was able to pay Ya'akov back. The new governor did not want to pay, since he had not contracted the original loan. And Ya'akov undoubtedly knew he would be unable to make al-'Azizi's heirs pay since the loan had been taken out in the governor's official capacity. The sultan ruled that the entire region governed by al-'Azizi had to reimburse Ya'akov, presumably because a loan taken in order to pay taxes became a collective responsibility. Without Ya'akov's petition to the Makhzan, he almost certainly would never have recovered his losses.[12]

Jews also wrote to the sultan collectively when a problem affected the entire community. In the fall of 1909, the Jews of Fez were all having difficulty collecting their debts. Rather than write individually to the sultan, they instead penned a collective petition requesting the Makhzan's intervention—one in which some of the Assarrafs most likely participated.[13] This was a particularly turbulent time in Morocco; the sultan, Mawlay 'Abd al-Hafiz, had usurped his brother's throne less than a year ago, making what increasingly looked like empty promises to turn back the tide of French colonization. The national and international chaos had an impact on business at the local level. The Jews of Fez claimed

that over the past seven years they had become progressively more impoverished, as even the wealthiest among them were unable to collect their debts. Fez's Jews cannily pointed out that their impoverishment hindered them from paying the taxes they collectively owed the treasury—and thus that it was in the sultan's direct interest to help them. They identified a systemic problem with the way law was functioning at the local level and demanded that the sultan act, for their good and for his.

Most of the time, Jews' appeals concerned debts that Jewish creditors were owed by Muslims. But Jews also asked the Makhzan to intervene when intra-Jewish commercial disputes arose, even if doing so could threaten the authority of Jewish officials and legal institutions. Jews were particularly in need of the Makhzan's help when disputes arose among Jews in different cities; in these cases it was often unclear which Jewish community had jurisdiction over a given case. In 1849 Yehudah b. Shlomoh ha-Levi, a Jewish man from Tetuan, petitioned the sultan concerning a debt he was owed by two of his coreligionists.[14] Yehudah claimed that Mas'ud b. Halil and Meir Huyut, both of whom lived in Rabat, were indebted to his late father Shlomoh to the tune of 2,500 mithqāls. Both Mas'ud and Meir had been Shlomoh's representatives, Mas'ud in Essaouira and Meir in Rabat. But after their partner's death, Mas'ud and Meir refused to pay the money they owed to Shlomoh's estate. In order to shore up their case, they "forged a document against [Shlomoh] with the Jews in Marrakesh"—meaning that they had sofrim in Marrakesh produce a counterfeit document absolving them of their debts.[15] Yehudah asked the sultan to force Mas'ud and Meir to settle the accounts in Tetuan or Fez—far from the corrupt notaries of Marrakesh. The sultan promptly responded with instructions to send the recalcitrant debtors to settle with Yehudah in the Jewish court of either Tetuan or Fez.[16] Since the Jewish authorities in Tetuan had no formal—and not much informal—authority over their coreligionists in Marrakesh, Rabat, or any other city, Yehudah called on the sultan to force his debtors to appear in a court he deemed impartial. Significantly, the sultan accepted responsibility for resolving Yehudah's dispute; much like local Muslim officials, the central government was often in the business of enforcing Jewish law for Jews.

Naturally, the Makhzan's willingness to intervene on Jews' behalf was not always sufficient to secure payment. There was little to be done

when the debtors simply could not produce the cash—an increasingly common problem as the impoverishment of Moroccan peasants worsened over the course of the nineteenth century.[17] Pleas of poverty did not always have the desired effect; one Makhzan official wrote that the debtors in his region "possess nothing [lit. neither much nor little] and each one of them has plowed [the land] with his animals in order to restore the land."[18] But Mawlay Hasan did not accept this excuse: "Our lord says: he lied. The majority of them are not destitute. Let them settle."[19] Yet for those debtors who proved truly penniless, dying in prison was often the only future they could hope for. Even death did not always bring relief; at times a debtor's brothers or sons were imprisoned after his demise until someone in the family managed to raise enough money to pay the creditor.[20]

Not all Makhzan officials accepted Jewish creditors' claims at face value. In some cases, local officials accused Jews of lying, forging documents, or trying to collect debts twice.[21] In one such instance, a Jew named Aharon al-Tazi initially managed to collect payment on a debt he had allegedly forged:

> The leader of Zawiyat al-Janiya says that one of his cousins whom he named [in the original letter] died five years ago, and that the dhimmī Aharon al-Tazi came with a falsified document [showing that this cousin owed him] fifty riyāls. And when the royal command was given to the governor to force [the son of the deceased cousin] to settle, the governor seized [the son's] cattle and sent them to the head of the *mashwar* [part of the palace compound], and [the cattle] are now in his possession. [The leader of Zawiyat al-Janiya] asks that the matter be taken to the shari'a court and that the cattle be returned to their owner.[22]

The Jewish creditor al-Tazi claimed he was owed a debt by the unnamed debtor's son. In response, the governor of the region confiscated the debtor's cattle and gave it to al-Tazi in lieu of cash. But the debtor's cousin (identified as the leader of Zawiyat al-Janiya) petitioned the central government, claiming that the original bill of debt had been forged and that al-Tazi had illegally claimed goods that were not his own. The charge leveled at al-Tazi might lead one to believe that the leader of Zawiyat al-Janiya was motivated by anti-Jewish sentiment. Yet there is little indication

that the petitioner accused al-Tazi of lying simply because he was Jewish. Forgery and deceit were regular features of commerce in Morocco, regardless of religious persuasion. Indeed, Muslims were also accused of making false claims.[23] The evidence offers no reason to think that Jews were singled out as particularly liable to this sort of corruption.

Makhzan officials also denounced Jews for illegally charging interest, although even these accusations were generally ignored. One official specified that Jews covertly doubled the amounts of the loans they made—advancing a Muslim 150 riyāls but writing a bill of debt for 300 riyāls—in exactly the same way described in some shari'a court documents.[24] But as with qadis, Makhzan officials mostly turned a blind eye to Jews' usurious practices. Indeed, some even explicitly acknowledged that the debts in question involved the charging of interest, but raised no objection to the practice. In 1892, an official named Ibn Zayna reported that a number of debtors had settled all their debts except those owed to the al-Wiri brothers, a Jewish family from Meknes.[25] The al-Wiri brothers "refused to determine the [amount of] interest according to the custom of the merchants, [that is,] adding half to the original debt."[26] This phrasing suggests that charging interest was not the problem in and of itself—since after all it was the custom of the merchants to add half of the original debt as interest. Rather, the bone of contention was that the Jewish creditors in question refused to charge the customary amount.[27] I found only one case in which a Makhzan official accused a Jew of charging outright interest and implied that doing so was a common practice among Jews in particular.[28] Moreover, in this case the official himself was the debtor in question, which meant he had a personal stake in exposing his creditor as usurious in order to avoid having to pay the interest.

Jews who engaged in lending money or extending credit ran the risk that their debtors would not pay them back, and in nineteenth-century Morocco, securing the repayment of debts was particularly challenging. Shari'a courts lacked the authority to punish recalcitrant debtors and had to rely on Makhzan officials to enforce their rulings. Local Makhzan officials could confiscate debtors' belongings or imprison those who were unwilling to pay, but were often at loose ends if a debtor could not be found. Perhaps more important, local Makhzan officials at times lacked the will to pursue recalcitrant debtors as energetically as

their Jewish creditors might have liked. The sultan proved a potent recourse when other efforts failed, and numerous Jews petitioned the central government to help them recover the debts they were owed. The Makhzan was by no means able to guarantee payment in all instances, and there were real limits to the state's ability to assert its authority. Nonetheless, the central government's intervention on behalf of Jewish creditors proved effective enough—either practically or symbolically—to keep Jews petitioning the sultan.

SECURING COMPENSATION FOR CRIMES

In the course of pursuing their commercial endeavors, Jewish merchants could suffer fates far worse than recalcitrant or impoverished debtors; some fell victim to thieves or even murderers. Jews were particularly vulnerable to violent crime, since so many made a living by selling goods far from major urban centers, where the Makhzan's authority was weaker. Indeed, most cases of theft and murder occurred in the countryside; there, bandits preyed on travelers, especially Jewish peddlers. Some murders clearly took place in order to plunder the Jewish victim's goods. But thieves and murderers rarely targeted Jews qua Jews; rather, they saw Jews as easy targets.[29] Under normal circumstances, local Makhzan authorities took care of ensuring that victims of violent crimes were duly compensated. Jews only appealed to the central government when their local officials proved unable or unwilling to deliver an indemnity for a theft or the blood money for a murder.[30]

The Makhzan treated both theft and murder as torts, that is, as wrongful acts for which the victims had to seek compensation themselves (rather than criminal acts prosecuted by the state). Theft was rectified by returning either the stolen object or its equivalent value. Classifying theft as a tort is at odds with the way it is understood in classical Islamic jurisprudence, which places it under the category of *ḥudūd* (singular *ḥadd*): crimes for which a mandatory punishment is outlined in the Quran or the Sunna (the Quran prescribes cutting off the right hand of a thief). However, as Rudolph Peters observes, "The jurists define the ḥadd crime of theft very narrowly."[31] Most cases of theft did not qualify for the ḥadd punishment.[32] Instead, retribution for theft was normally made by ensuring that the thief (or his relatives) compensated the victim. For instance, in 1858 a man named Muhammad Fatḥan stole a female

camel from members of the Bu Muʿawiya tribe. After Muhammad Fatḥan was caught, one of the tribesmen, a man named Muhammad b. Hamuda, accepted fifty French riyāls as compensation for the theft. Muhammad b. Hamuda testified before ʿudūl that he released Muhammad Fatḥan from any further obligation toward him or his fellow tribesmen, and that "there will be no investigation afterwards."[33] No other punishment was mentioned. The categorization of theft as a tort applied to Jews as well as Muslims; Jewish victims of theft asked for nothing more than to have their goods—or the equivalent value—restored to them.

Although most petitions to the Makhzan concerning stolen goods were sent by Jewish men, some Jewish women who had been victims of theft appealed to the Makhzan for an indemnity. In the winter of 1889–90, Esther from Tangier was robbed while traveling in the Gharb (the fertile region covering most of northwestern Morocco). Although we do not know the exact outcome of the case, the Makhzan later assigned Esther a house in Tangier—probably as some sort of recompense for her losses.[34] Another Jewish woman, Saʿada bint David (also of Tangier), accused her coreligionist Sulayka (from Casablanca) of stealing from her.[35] Following Saʿada's petition, a Makhzan official in Casablanca imprisoned Sulayka in the women's prison until she compensated Saʿada, after which she was released.

Murder, too, was treated as a tort. The resolution of murder cases more closely reflected the treatment of murder in Islamic jurisprudence. Islamic law gave the family of a Muslim murder victim two options: it could either undertake a retribution killing or demand blood money.[36] Jews, however, could claim only half the blood money to which Muslims were entitled. Moreover, most schools of Islamic law, including the Mālikī school, do not permit retribution killing for a dhimmī murdered by a Muslim.[37] Unable to pursue revenge, Jews systematically sought out financial compensation when a relative of theirs was murdered. And because at times the only surviving kin was the victim's mother (or another female relative), women were often the ones who appealed to the Makhzan for help collecting blood money.[38]

Rather than appeal to the Makhzan individually, some relatives of murder victims persuaded local Jewish leaders to write a collective petition on their behalf. In 1885, the Jews of Safi wrote to their governor al-Hajj al-Jilali about the murder of Amʿamar b. Yahya, a Jew who had been

selling merchandise in the country market of the Awlad 'Imran.[39] Four Muslims followed Am'amar out of the market, killed him, and stole the goods in his possession. Am'amar left behind a widow and four young daughters who depended on him for their livelihood; it was undoubtedly their plight that convinced the Jewish leaders of Safi to pursue the case. The petitioners complained to al-Jilali that Sidi al-Tayyib, the official with jurisdiction over the Awlad 'Imran, had refused to do anything about the crime. Al-Jilali had to write to al-Tayyib twice; al-Tayyib finally responded with an excuse that the murderers were absent and he was thus unable to punish them. But the Jews of Safi had conducted their own investigation and learned that the murderers were in fact present in the region under al-Tayyib's jurisdiction. Even after Safi's Jews sent a delegation to al-Tayyib, he still refused to prosecute the murderers. Finally the Jews addressed a petition to Muhammad b. al-Mukhtari, one of the sultan's high-ranking viziers, in the hopes that he would pass the case on to the sultan. Not only were the Jews of Safi concerned about how Am'amar's family would fare without the blood money, they also believed that the conduct of al-Tayyib threatened them all; an official who flouted the law so blatantly could undoubtedly do so again, putting all Jews at risk. The sultan, they hoped, would ensure that al-Tayyib did his duty and that Am'amar's family saw justice.

In February of 1893 the Jews of Marrakesh appealed to the sultan concerning a murder that, rather unusually, had taken place in the city itself.[40] The community first began to worry when two Jews, a tailor and a goldsmith, went missing from the millāḥ. Everyone, men and women alike, helped look for them, but to no avail. Finally, someone heard that a Muslim named Mawlay Qudur had asked the two Jews to come to his residence to sell him their wares just a few days before they disappeared. The leaders of the Jewish community received permission to search Qudur's house and sent two 'udūl and three sofrim to record their findings—another instance of using both Jewish and Islamic legal institutions simultaneously. During the investigation they found the bloody shirt of one of the missing Jews in a ditch behind Qudur's house. Qudur took refuge in the tomb of al-Ghazwani, a local saint, where he was beyond the reach of either the victims' families or the Makhzan. The Jewish leaders of Marrakesh wrote to the sultan asking him to ensure that the murdered Jews' families received the blood money they were owed.[41]

Makhzan officials faced a host of difficulties in their efforts to ensure that the victims of theft and murder were properly compensated. Just determining under whose jurisdiction a crime had taken place could prove quite difficult. When Esther from Tangier complained to the Makhzan of being robbed, it took at least two months to determine that the crime had taken place in an area under the jurisdiction of a man named al-Sufyani.[42] Determining jurisdiction was made particularly thorny by Makhzan officials who tried to fob off the responsibility for tracking down criminals onto their colleagues in charge of other regions.[43]

Even when parties agreed on the location of a crime, it was not always entirely clear who was responsible for paying the indemnity. In 1889, the Jews of Demnat appealed to the Makhzan concerning a hole that had been drilled through a wall in the house of one of their coreligionists in order to steal his money.[44] One Makhzan official claimed that "the custom was to fine the official [the governor, al-Jilali] al-Dimnati [for] what they [the Jews] lost [because the theft] fell under the bailiwick of the guards."[45] But al-Jilali argued that individual Jews and Muslims were responsible for arranging their own guards, and thus that he bore no liability for the theft. Three months later, the Jews of Demnat again complained about al-Jilali's refusal to pay the indemnity, saying that he "broke with custom in this [argument], and that the guards have been his responsibility for a long time . . . and that the Jews pay 750 [riyāls? mithqāls?] [for the guards]."[46] The sultan responded that the guards were responsible for this sort of crime—which presumably confirmed that al-Jilali was liable for the indemnity.[47]

A more formidable obstacle to settlement occurred when criminals resided in regions that did not submit to the Makhzan's authority (most notably by refusing to pay taxes). These regions were considered guilty of "corruption" (*fasād*). Because so many Jews were robbed or murdered in areas beyond the sultan's control, it was relatively common to find that the perpetrators were impossible to apprehend.[48] In 1892, the Jew Shmuel b. Tata complained that he was robbed by tribesmen belonging to the Awlad Bu Ziyan.[49] The Makhzan official responsible for this area said that he attempted to force the tribe to pay an indemnity, but they refused due to their "corruption," that is, their unwillingness to submit to the sultan's authority.[50] In another instance, a Jewish man named

Ibn al-Fasi complained that he was robbed of 130 riyāls by the al-Rusul tribe.[51] The Makhzan official responsible for the case noted that the tribe was "corrupt" and that he had cautioned Ibn al-Fasi not to travel in their region—a warning Ibn al-Fasi ignored. Ultimately, if the perpetrators of a crime lived in a rebellious region, there was little the Makhzan could do to secure an indemnity for the victims.

Some Makhzan officials raised doubts about the legitimacy of petitions from Jews who purported to be victims of theft. Jews were charged with trying to collect indemnities twice—that is, of claiming the right to an indemnity when they had already been compensated for their losses.[52] One Makhzan official accused a Jew of lying outright about his claim. The Jew declared that he had been traveling with both goods and animals, but only reported having his goods stolen; the official argued that the Jew must be lying, since if the robbery had actually happened, the Jew's animals would have been taken as well.[53] Most commonly, Jews were accused of exaggerating the value of the goods that had been stolen from them. This type of deceit became so widespread that Mawlay Hasan enacted a decree requiring Jews to register the value of their goods with 'udūl before traveling in the countryside.[54] He even appointed special 'udūl to register Jews' goods; Marrakesh had eight such notaries and Tetuan had four.[55] Needless to say, this measure was not always effective. In 1892, the pasha of Meknes reported on the complaint of a Jewish man named Levy (al-Libi) and his partner Ibrahim Gasus.[56] Levy and Gasus had registered the value of a certain number of goods with 'udūl before departing, but after they were robbed they claimed an amount much higher than what they had originally declared.[57]

While it is clear that Jews did not hesitate to petition the central government about criminal matters, the spotty archival record makes the success of their appeals more difficult to determine. Nonetheless, anecdotal evidence suggests that petitions to the Makhzan constituted a powerful tool in Jews' legal arsenal. Indeed, Jews clearly gained a reputation as successful petitioners. A particularly telling incident demonstrates just how fearful some officials were of Jews' claims against them. The official concerned, al-Sha'shu'i, responded to the sultan's inquiry about the death of a Jewish man named Abraham. Abraham's mother had appealed to the sultan, claiming that two members of al-Sha'shu'i's tribe

who were both messengers accompanying Abraham on his travels had "drowned her son . . . in a river." Al-Sha'shu'i responded that Abraham's death had actually been an accident: when the three men "arrived at the river, the dhimmī drowned while the two Muslims were safe." The two messengers deliberately left Abraham's donkey and his possessions untouched, presumably to avoid being accused of having drowned him in order to steal his goods. Moreover, al-Sha'shu'i added, another official named al-Sayyid 'Abd al-Warith al-Wazzani had witnessed the entire incident. Al-Wazzani also took precautions to avoid any false murder charges; he took custody of the two messengers and ordered that they be sent to the sultan to confirm their story, "out of fear that the dhimmīs would wrongly bring a claim against him."[58] Finally, al-Sha'shu'i related that Abraham's son had already come to collect his late father's belongings, and had even signed a quittance releasing those involved from any further claims. Yet al-Wazzani's fears proved well-founded; even after being presented with al-Sha'shu'i's testimony, Abraham's mother insisted that no release had been signed (citing "a legal document in her possession") and continued to demand compensation. The officials involved in this case clearly believed that Jews were effective in pursuing their legal claims with the Makhzan, even when those claims were false.[59]

The perception of Jews as successful petitioners might very well have stemmed in part from the growing interest in the welfare of Jews among foreign diplomats and international Jewish organizations. As the Moroccan government came under increasing scrutiny regarding its treatment of non-Muslims, successive sultans made efforts to demonstrate that they took the best interests of all their subjects to heart. Indeed, the creation of the Ministry of Complaints in the 1860s was in part an effort to stifle criticism that the Makhzan was unable to secure justice for Jews in particular.[60] Moreover, as the next chapter explores, Jews became more and more adept at enlisting the intervention of foreigners on their behalf. While the exact reasons behind Jews' success as petitioners are impossible to determine, the growing concern over their welfare in international circles was undoubtedly a factor in some instances. Nonetheless, Jews' appeals to the Makhzan to collect indemnities for violent crimes were also part of a broader pattern common to all subjects of the sultan, by which individuals held the head of state responsible for ensuring their rights.

COMBATING ADMINISTRATIVE ABUSE

The sultan's role as the underwriter of individual rights was particularly important when those rights were threatened not by private individuals—as in commercial disputes or criminal cases—but by government officials. Jews petitioned the sultan concerning all manner of abuses by Makhzan authorities—from confiscating goods to throwing innocent people in prison.[61] Of particular concern to Jews—and of greatest interest for our purposes—was the smooth functioning of local legal institutions, both Jewish and Muslim. Jews petitioned the sultan when they felt that judicial officials had denied them justice or overstepped the bounds of their jurisdiction. In this sense, the Makhzan functioned as both a high court of appeal and a legal administrator, ensuring that lower courts were operating justly.

Because notarization by 'udūl was such an integral part of Jews' commercial endeavors, Jews were particularly indignant when they were denied access to Muslim notaries public. In the fall of 1889, the Jews of Safi penned a petition to the Makhzan claiming that the city's governor was preventing them from frequenting the local 'udūl.[62] In 1892 the Jews of Demnat similarly accused their qadi of obstructing their access to 'udūl.[63] Upon being questioned by the sultan, the qadi of Demnat replied that he had done nothing of the sort; in fact, he had "helped them with what is permitted by law."[64] He explained that Demnat's Jews wanted him to authorize bills of debt in which they charged outright interest to Muslims—a clear violation of Islamic law. Mawlay Hasan agreed with the qadi that such bills of debt should not be notarized by 'udūl and instructed him "not to help [the Jews] in such matters." It is unclear whether the Jews were in fact trying to get away with illegal activities; given what we know about Jews' tendency to collect hidden interest, it would not be surprising if Demnat's merchants-cum-moneylenders were guilty as charged. What is more unusual in this situation is that the qadi objected to a business practice to which most judicial officials turned a blind eye. Either way, the sultan's response implied that while the qadi was correct to obstruct Jews from notarizing usurious bills of debt, he was nonetheless obliged to ensure Jews' access to Islamic notaries public for transactions that conformed to the shari'a.

Jews similarly protested when they were unable to litigate in qadi courts. In 1897, the Jews of Rabat appealed to the Makhzan concerning

their local qadi.[65] They claimed that the qadi refused to adjudicate cases involving Jews that fell under his jurisdiction, preferring instead to send them to a local Makhzan court. The Jews appealed to the Makhzan's conservatism, asking that matters in Rabat be restored to the "laws and customs" that had traditionally determined jurisdictional boundaries.[66] Their request is particularly interesting given that shari'a courts and Makhzan courts overlapped considerably in the cases they could adjudicate. Presumably those Jews who were denied access to the qadi would have been able to take commercial matters to the local pasha instead. It seems that the Rabati Jews were incensed in large part at the inability to move easily among jurisdictions, which they felt was one of the rights guaranteed them by "law and custom."

Finally, Jews appealed when they felt that local Makhzan officials themselves were abusing their judicial powers. A month after the Jews of Safi petitioned the Makhzan concerning their governor's refusal to allow them access to the 'udūl, they wrote again with another complaint.[67] This time, they took issue with the governor's tribunal itself, saying that whenever Jews went to court with Muslim adversaries, a group of Muslims physically assaulted the Jewish plaintiffs. Safi's governor, the Jews suggested, was either directly responsible for this menace to Jews' legal rights, or at the very least condoned it. Just as Jews insisted on their right to notarize their documents with 'udūl, so did they demand unhindered access to the local Makhzan courts.

Jews were unabashed about securing their freedom to forum shop to a certain degree. But the Makhzan was clear in its condemnation of Jews' attempts to work the system by appealing cases from one local court to another in search of a better deal. In 1884, when the Jews of Fez complained that they were being judged harshly in their local Makhzan court, Mawlay Hasan confirmed that Jews had the right to bring their legal disputes before whichever court they wished.[68] However, the sultan conditioned Jews' ability to cross jurisdictional boundaries on their agreeing to comply with the decision of the first judge who adjudicated a given dispute. In other words, a certain amount of forum shopping beforehand was permissible; Mawlay Hasan reprimanded their local governor for judging Jews "harshly" and thus restricting their ability to adjudicate in local Makhzan courts.[69] But forum shopping once a judge had already delivered a ruling undermined the authority of all judicial

officials and threatened to upset the delicate balance among the various courts operating at the local level.[70] Unsurprisingly—given the Makhzan's difficulty in policing local jurisdictions—Mawlay Hasan's attempts to prevent forum shopping after the fact were not entirely successful.

Jews protested not only when Islamic judicial authorities misbehaved, but also when their own legal order was put at risk—usually by a Makhzan official who had overstepped the bounds of his jurisdiction. Although at first these appeals might seem directly at odds with those concerning the malfunctioning of Islamic legal institutions, these two kinds of petition were in fact opposite sides of the same coin. On one hand, Jews wanted to ensure that they had access to shari'a courts—not only for their commercial transactions with Muslims, but also for certain intra-Jewish matters. On the other hand, it was in Jews' interest to maintain their own judicial system, both in order to bolster the authority of their communal leaders and to ensure their ability to conduct their lives according to Jewish law. The fact that Jews held the Makhzan responsible for maintaining Jewish judicial autonomy is further evidence of how legal pluralism in Morocco was fundamentally hierarchical; the sultan's role as supreme judicial administrator meant that the proper functioning of Jewish legal institutions depended on the Makhzan's legal authority. To a great degree, Jewish communities exercised judicial autonomy by the sultan's grace. Jews nonetheless felt entitled to demand that the sultan protect this autonomy when it was put in jeopardy.

In 1880, for instance, the Jews of Meknes appealed to the Makhzan concerning the threat posed to their judicial autonomy by the city's governor. Two Jews had adjudicated a dispute before a local dayyan.[71] But the plaintiff was dissatisfied with the judge's decision and decided to seek a more favorable resolution in the local Makhzan court. Rather than risk losing again, the plaintiff struck a deal with the governor Hamm al-Jilali in which the two agreed to split the proceeds of the lawsuit in exchange for al-Jilali's promise to adjudicate the matter in the plaintiff's favor. Al-Jilali kept his end of the bargain, but word of the deal leaked to the broader Jewish community. The Jewish leaders of Meknes became incensed at their coreligionist for daring to flout the authority of Jewish law. Although Jewish judicial authorities tried to accommodate the existence of Islamic courts alongside their own, there was no way to maintain the authority of Jewish law if the decisions of dayyanim could be

overturned at will. And while Jewish communal leaders could punish the Jewish transgressor (possibly even through excommunication), only the sultan had power over the governor.

Mawlay Hasan, in turn, acknowledged his duty to maintain the autonomy of Jewish courts. In response to the Meknesi Jews' petition, he rebuked al-Jilali and ordered him not to interfere with the exercise of Jewish law.[72] But the temptation to overstep the bounds of his authority—and probably make a little extra money on the side, as he had in 1880—was too great. A decade later, the Jews of Meknes complained again regarding infringements on the authority of their courts.[73] Al-Jilali was up to his old tricks, and had once again adjudicated matters that fell under the jurisdiction of batei din. Mawlay Hasan wrote another letter to al-Jilali instructing him to assist the dayyanim in settling intra-Jewish lawsuits, to enforce their rulings, and to refrain from interfering in the Jewish legal system (except in order to uphold the authority of Jewish courts).[74] Al-Jilali's repeat offense suggests that the Makhzan had difficulty preventing the destructive kind of forum shopping, especially when there were pecuniary interests at stake. Nonetheless, the Meknesi Jews felt sufficiently entitled to their judicial autonomy to request the sultan's intervention a second time. Moreover, Mawlay Hasan felt it was important enough to warrant a second rebuke reminding al-Jilali of his duties.

The Makhzan also intervened in those cases in which the threat to Jewish judicial autonomy came solely from within the Jewish community. In 1896, the Jews of Fez appealed to Muhammad Torres, minister of foreign affairs (from 1886 to 1908), about the jurisdiction of a case being considered in the Makhzan court.[75] The lawsuit concerned a house located in the millāḥ of Fez; the property originally belonged to a Jew named Ya'akov al-Sabbagh. In the 1850s, Sabbagh had left Fez for Algeria. Before leaving, he appointed an agent to sell his property in his absence. Sabbagh never received any money, and assumed the property had never been sold. When he returned four decades later, he sought to recover the property, but the house's occupant claimed that he had bought it years ago (presumably from Sabbagh's agent). Sabbagh denied ever having received any money for the house, arguing that it therefore remained his property. He died before he could pursue his claim any further.

When Sabbagh's heirs took up the cause, they tried a different tactic that challenged the autonomy of the city's Jewish legal institutions. They

argued that the legal document by which Sabbagh had appointed an agent to sell the property was invalid because it was drawn up by Jewish notaries. The heirs claimed that since both Sabbagh and his Jewish agent were subjects of the Moroccan sultan at the time, the deed should have been drawn up in a shari'a court. The heirs based their claim on the preeminence of nationality over religion; since Sabbagh and his agent were Moroccan nationals, they argued, Sabbagh should have drawn up their contract in a Moroccan—that is, Islamic—court. Sabbagh's heirs argued that a national model of law should apply, by which all Moroccan subjects should be under the exclusive jurisdiction of the same legal order. But for the purposes of this case, nationality was legally irrelevant; a power of attorney drawn up by a Jewish court was valid because all parties involved were Jewish. In other words, Sabbagh's heirs were clearly flouting the law of the land. The Jewish communal leaders of Fez pointed out that the Sabbagh heirs' argument explicitly contradicted the sultan's orders on such matters, namely, that intra-Jewish legal affairs should be adjudicated in Jewish courts. They asked the Makhzan to return the case to Fez's beit din, the only legal institution with jurisdiction over this type of intra-Jewish matter.[76]

Not only was Morocco's sultan the supreme arbiter of individual legal disputes, but he was also the highest administrator of an extensive and complex system of local courts. The sultan thus took responsibility for ensuring the smooth functioning of all courts operating at the local level, including Makhzan courts, shari'a courts, and Jewish courts. For Jews who made regular use of all three types of legal institutions, the sultan played an important role as the ultimate guarantor of justice. This was the case whether an injustice had stemmed from a Muslim judicial official or from someone within the Jewish community. In turn, by ensuring that local judicial institutions upheld justice, the sultan asserted his authority over, and responsibility for, all his subjects, regardless of religion.

In 1877, Joseph Halévy, an instructor for the Alliance Israélite Universelle, noted that Jews' most important recourse against "suffering" was to petition the sultan for justice: "According to [the Jews of Marrakesh], there is only one way to end their suffering; this is to make the state of affairs known to His Majesty and to address their complaints to him."[77] While Halévy was being overly reductive, he nonetheless correctly identified

the Makhzan as playing a central role in Morocco's legal system. In petitioning the Makhzan, Jews regularly reaffirmed their reliance on the sultan as the guarantor of justice and the protector of dhimmīs. They also insisted that their rights be respected. Success was certainly not guaranteed, especially because Jews' legal disputes frequently involved individuals beyond the reach of central government. Then again, Jews succeeded often enough to believe petitioning was worthwhile; they even gained something of a reputation as a force to be reckoned with.

By petitioning the state for redress when their rights had been violated at the local level, Jews participated in the most basic premise of the Islamic state—that the ruler guaranteed justice for his subjects. While local legal institutions facilitated individual relationships between Jews and Muslims, the Makhzan's involvement in legal matters shaped Jews' relationship to the state. Jews could claim the rights to which they were entitled on a footing that was in many ways equal to that of Muslims—that is, as subjects of the sultan. In fact, Jews' subordinate status could make their appeals even more powerful than those of Muslims; as dhimmīs, they were under the special protection of the sultan. And as the objects of international concern, they could count on the Makhzan's extra solicitude in attending to their petitions. In addition to helping Jews resolve legal disputes, their appeals served to reassert the strength of the bond between Jews and the Makhzan.

CHAPTER FIVE

Appeals in an International Age

ON JULY 12, 1885, Shalom Assarraf—in his role as one of Fez's leading Jews—signed a collective petition on behalf of his city's Jewish community. He and nine other representatives described incidents of injustice committed against Jews. The petition focused on the travails of the Jews of Demnat (a small city to the east of Marrakesh), who had been enmeshed in a dispute with their governor for nearly a year. A delegation traveled all the way to Casablanca and then to Tangier in the hopes of obtaining justice, which paid off in the form of a royal decree from the sultan guaranteeing their rights. However, upon their return to Demnat, "the [Muslim] inhabitants and some soldiers were laying in wait and met [the Jews] with whips, bludgeons, swords, and lances. They beat ten Jews bloody." In addition, two Jews from Fez and two from Marrakesh had recently been murdered, but the perpetrators had not been punished. The petitioners wrote on behalf of Jews in Fez, Marrakesh, Demnat, and beyond, and made it clear that they felt personally threatened by the misfortunes of their coreligionists. "We are living through a great calamity: fear and apprehension have settled in the depths of our hearts."[1]

Unlike the petitions discussed in the previous chapter, the letter that Shalom signed was not addressed to the sultan or a Makhzan official. Rather, Shalom and the other Jewish leaders of Fez wrote to the Central

Committee of the Alliance Israélite Universelle (AIU) in Paris. The AIU had become an increasingly important presence in the Islamic Mediterranean through its growing network of primary schools; the first AIU school was opened in 1862 in Tetuan, a city in the north of Morocco.[2] In addition to its educational activities, the AIU played a role in international politics by lobbying on behalf of Jews across the world who were believed to be in distress. Morocco was one of the AIU's main fields of activity; local AIU teachers enlisted the help of foreign consuls stationed in Morocco to petition the Makhzan concerning injustices committed against Jews, and the Central Committee wrote letters to government officials in the metropole to do the same. Much of the time, the AIU was alerted to problematic events by Moroccan Jews themselves, either through personal appeals or through petitions like the one signed by Shalom.

Moroccan Jews also found themselves benefiting from the spread of ideas about religious toleration and human rights. Foreign consuls argued that they had a moral obligation to champion the rights of Jews. Even when this argument was primarily an excuse to meddle in Morocco's internal affairs, it nonetheless put powerful players on the side of Jews. Part of this universalizing discourse was a commitment to the *mission civilisatrice* even in the absence of colonization. Organizations like the AIU not only wanted to civilize their Jewish students in the Islamic Mediterranean, they also wanted to civilize the Muslim rulers who, in their view, lacked an enlightened commitment to religious equality. Foreign diplomats used the cause of religious freedom to champion justice as it was conceived of in Enlightenment values, and ultimately to justify both formal and informal imperialism.[3]

The ever increasing weight of international intervention in Moroccan politics constituted a significant shift in the networks to which Moroccan Jews had access. This is not to say that Jews in pre-nineteenth-century Morocco were entirely isolated; they had intellectual, commercial, diplomatic, and philanthropic ties to Jews across the Mediterranean.[4] But the extent to which foreign governments and international organizations based in the West took an interest in the lives of Jews in Morocco changed dramatically in the nineteenth century. For the first time, Western Jewish organizations devoted themselves to the plight of their coreligionists living in what were thought to be far less fortunate conditions—especially

in the Islamic world.[5] For the first time, Moroccan Jews made the pages of European and American newspapers with some frequency. For the first time, foreign diplomats argued that it was their responsibility as believers in human rights to champion the cause of Morocco's Jews. These diplomats' motives were far more mixed than a pure desire to help the downtrodden; many acted on Jews' behalf in large part as an excuse to meddle in Moroccan internal politics.[6] But their motives mattered little when it came to changing the balance of power in Morocco's legal and political system; the fact that foreigners suddenly cared about the plight of Jews had a real impact on how Jews and Muslims perceived the potential power wielded by well-connected Jews. In signing a petition to the AIU, Shalom joined the growing numbers of Jews who enlisted the international community to help address local problems.

Yet Shalom's signature must also be understood in the context of his multiple engagements with Moroccan legal authorities. In the same year that Shalom signed a petition to the AIU, he also sought out the services of 'udūl and qadis at least twenty-two times.[7] During the 1880s and early 1890s, Shalom and his son Ya'akov petitioned the Makhzan repeatedly for help when they were unable to resolve their legal disputes at the local level.[8] Moreover, other representatives of Jewish communities similarly continued to appeal to the Makhzan when they felt their collective rights had been trampled. In other words, writing to the AIU did not mean that the Assarrafs, or Jews like them, had given up on Islamic legal institutions. On the contrary, writing to the AIU was one more option among the plurality of choices that Jews like Shalom faced when trying to secure their rights. The potential to involve foreigners added to the legal pluralism already present in Morocco. But Jews did not abandon one mode of appeals for another; on the contrary, they covered all their bases by appealing to both foreigners and Makhzan officials, often simultaneously.[9]

Petitions like the one Shalom signed to the AIU forged an increasingly dense web of ties linking Jews in Morocco to their coreligionists abroad and to the governments of foreign powers. These networks were strongest with states that had imperial ambitions in Morocco—Britain, France, Spain, and Italy in particular. But they also extended across the Atlantic, where American Jews and diplomats took an interest in a Jewish

community thousands of miles away. It is not always clear just what kind of impact foreign diplomats and international Jewish organizations had on the Makhzan's decisions regarding its Jewish subjects. Nonetheless, the Makhzan took international pressure seriously; the sultan and his ministers—especially the minister of foreign affairs—went to great lengths to appease the foreign officials who wrote letters of complaint on Jews' behalf. This was in large part because looming behind diplomats' demands was the ever present threat of military action; in addition to incursions in Moroccan territory (most notably the occupation of Tetuan in 1860–62), consular officials repeatedly called on their governments to send warships to Morocco's coasts, some of which bombarded the cities of the littoral.[10] Jews who could mobilize the intervention of foreign diplomats on their side thus found themselves in a much stronger position, and increasing numbers of Jews attempted to capitalize on international concern for their welfare. Indeed, Jews were so successful at engaging foreigners to lobby on their behalf that a British journalist commented that "Jews of Morocco as a race were far more often able . . . to obtain justice for their wrongs than were their Moslem neighbors."[11]

This view of Jews' appeals to foreigners as an expansion of preexisting practices, rather than an abrupt turning point, counters the prevailing scholarship on Jews in the Islamic world. Historians have tended to see Jews' appeals to foreigners as an either/or phenomenon; in the Moroccan case, foreign intervention on Jews' behalf severed—or at least severely disrupted—the ties binding Jews to the Makhzan. This break was either for the good—according to lachrymose historians, who portray foreigners as placing themselves between an oppressive state and its Jewish victims[12]—or the bad, according to Moroccan historians who portray foreigners as driving a wedge between a benign Makhzan and its Jewish subjects.[13] What neither of these narratives captures is how appeals to foreigners *coexisted* with appeals to the Makhzan. The rise of petitions to foreigners constituted an expansion of possibilities, rather than an alternative to earlier strategies. The misplaced assumption that Jews uniformly replaced appeals to the Makhzan with appeals to foreigners also elides serious rifts among Jewish communities.[14] Jews often disagreed with one another, both about what constituted justice and about who was in the best position to guarantee it.

Although there are innumerable instances in which Moroccan Jews sought foreign intervention to obtain justice for themselves or their coreligionists, four moments stand out as particularly good illustrations of how Jews understood their options in an increasingly international age of appeals. These episodes, which occurred between 1863 and 1885, offer a sense of how controversies played out, both between Jewish communities and the Makhzan and among different factions of Jews. What emerges is that appeals to foreigners constituted an expansion of the fora to which Jews had access, rather than a replacement of their reliance on the Makhzan as ultimate legal arbiter and guarantor of justice.

SAFI, 1863

Jews in Morocco did not become an object of international concern overnight. In the summer of 1863, for the first time a cause célèbre occasioned an outpouring of indignation from foreign consuls and Jewish organizations. The incident began when a Spaniard was murdered in the small port city of Safi on the Atlantic coast. The Safi affair was a watershed that put Morocco's Jews on the radar of foreign diplomats, and likewise put diplomats on the radar of Moroccan Jews.[15] The Safi affair nicely demonstrates the full range of Jews' strategies of appeal—including both foreigners and the Makhzan. The Makhzan's response showcases its attempt to walk the fine line between appeasing foreign interests and maintaining a relationship with its Jewish subjects that was faithful to Islamic law and custom.

Safi, like most Moroccan ports, had become increasingly cosmopolitan as the nineteenth century wore on; after 1860, it was home not only to foreign merchants and diplomats, but to Spanish customs officials who were charged with collecting import and export taxes as part of the treaty that ended Spain's occupation of Tetuan in 1861.[16] In the dead heat of August, one of these customs officials, a man named Montilla, was found dead—apparently poisoned.[17] Two Jews named Jacob Ben Yehudah and Makhluf Aflalo soon confessed to having killed Montilla, though their motives were never recorded.[18] Ben Yehudah and Aflalo also accused two other Jews—a Moroccan named Sa'adiah Ben Moyal and a Tunisian named Eliyahu Lalouche—of being accessories to the murder. Ben Moyal and Lalouche were questioned; Ben Moyal maintained

that he was innocent, but Lalouche joined Ben Yehudah and Aflalo in confessing his crime.

The local Makhzan authorities promptly imprisoned the suspects. Even had Montilla not been Christian, much less a Spanish customs official, the case would have been exceptional. Jews rarely committed murder—as dhimmīs they simply had too much to lose—and when they did it was usually intra-communal. But Mawlay Muhammad knew he had to proceed with caution given the diplomatic reverberations of the case. Soon, Spain made its wishes clear: "The Spanish ambassador requested that the two dhimmīs who are imprisoned in Safi be killed, just as their official [Montilla] who was poisoned [was killed]."[19] Spanish consular officials were so determined to see the Jews punished by death that they sent a warship to patrol the Moroccan coast, threatening to attack should the sultan refuse to acquiesce to their demands—a threat made even more potent by the burning memory of Spain's occupation of Tetuan just two years earlier.[20]

Before the Makhzan authorities could fully comply with the Spanish ambassador's request, a complication arose concerning the validity of the Jews' confessions. Aflalo retracted his initial testimony, claiming that he had confessed under duress.[21] Because the confession was now questionable, Mawlay Muhammad "sent the matter to the qadis and the *'ulamā'* [Muslim scholars]."[22] Although there was some disagreement among them, the scholars ruled that Aflalo should be pardoned, implicitly accepting his claim that his confession had been made under torture.[23] But the 'ulamā' upheld the original testimony of Ben Yehudah and Lalouche: they "rendered a legal opinion that [the other two suspects'] confession was valid and that they were guilty of the murder."[24] The two Jews were sentenced to death; Ben Yehudah, a Moroccan subject, was executed in Safi on September 3.[25] Because Lalouche was an Ottoman subject, the Makhzan first asked the British consul whether he wanted to claim jurisdiction over the condemned man, since it was common for a European power to volunteer to protect Ottoman subjects outside Ottoman territory. The British consul replied that "in such a grave matter, he does not speak for him [literally, about him—that is, for the Ottoman subject], rather, Moroccan jurisdiction [lit. the jurisdiction of the West] should prevail in this matter; and he gave his signature to this effect."[26] On September 13, Lalouche was beheaded in Tangier.[27]

Mawlay Muhammad realized that despite having partially acquiesced to Spain's demands, the two suspects who remained alive would continue to cause friction with the Spaniards. He wrote to Muhammad Bargash, the minister of foreign affairs, insisting that Aflalo and Ben Moyal stand trial in a shari'a court, either in Safi or in Tangier, according to the preference of the Spanish ambassador. "I am telling you all this," added the sultan, "so that you will understand and know how to answer, should someone say that we judged the first Jew who was killed in Safi one way and judged the matter of the [other] aforementioned Jew another way."[28] The sultan's fears soon proved well founded. On October 6, the British consul Thomas Reade wrote to Bargash insisting that an investigation take place and claiming that "the two Jews who were executed in Safi and Tangier [Ben Yehudah and Lalouche] as suspects in the death of the Spaniard [were executed] without a proper investigation."[29] Bargash reassured Reade that the sultan had already stayed the execution of the remaining suspects because their guilt had not been firmly established, since one of them denied any involvement and the other had recanted his confession.[30] Nonetheless, the British ambassador wrote to his superiors about plans for Britain to take all Moroccan Jews under its protection if he deemed this necessary, much as Russia had threatened to do with Russian Orthodox Christians living in the Ottoman Empire a few decades earlier.[31]

The Jewish community of Safi immediately appealed to the Makhzan in order to save the lives of Aflalo and Ben Moyal. After Ben Yehudah and Lalouche were executed, the Jews of Safi approached local Makhzan officials asking them to preserve the lives of the remaining two suspects. Aflalo and Ben Moyal's families—including their brothers, wives, and children—went to the main mosque in Safi asking the governor for justice.[32] Their complaints were primarily directed against the Spanish consular authorities—the ones everyone knew were behind the demands to execute Aflalo and Ben Moyal. It should come as no surprise that when Jews found themselves at odds with foreigners, their first recourse was to the Makhzan. Indeed, Jews often appealed to the Makhzan to resolve their disputes with foreigners.[33] In this case, however, the Spanish government was too incensed about Montilla's murder to forgive and forget.

It was only after these appeals to the Moroccan government that Jews in Safi and Tangier brought their concerns to foreign diplomats.

When Safi's Jewish leaders became convinced that the Makhzan would not (or could not) hold its ground against Spanish demands for more executions, they asked the local French and British consuls to intervene on their coreligionists' behalf.[34] In Tangier, the *Junta* (governing body) of the Jewish community repeatedly tried to persuade the Spanish ambassador, Merry y Colom, to pardon the remaining suspects.[35] But Merry y Colom continued to demand the execution of the two remaining suspects and staunchly resisted all pleas for mercy.

After hitting these dead ends, the Jews of Tangier decided to extend their appeals beyond the players on the ground in Morocco. Moses Pariente, a prominent member of the community, wrote a letter on behalf of the Jewish leaders of Tangier which he sent to the AIU, Moses Montefiore (a prominent British champion of Jews' rights), and the Board of Delegates of American Israelites.[36] The letter urgently pleaded for its recipients to intervene with their respective governments to save the "innocent" suspects: "A recommendation from these governments to their representatives, to this effect, would be a great reprieve and breath [of relief] for the Jewish communities of Morocco." Pariente's letter played into Western conceptions about Islamic justice, or more precisely the lack thereof; he argued that Ben Yehudah and Lalouche had been executed without a proper trial and reminded his readers that "these Muslim countries lack the laws familiar in Europe, and there is no tribunal where one can appeal a case to have it justified by judicial examination." Nonetheless, Pariente clearly placed much of the blame for the executions on the Spanish government; he emphasized the Junta's failed efforts to persuade Merry y Colom to pardon Lalouche.

Pariente's letter did not fall on deaf ears. Moses Montefiore, the great champion of world Jewry—nearly eighty years old and with five arduous voyages to Palestine already under his belt—personally took on the cause of saving Aflalo and Ben Moyal.[37] Understanding that the Spanish government was the driving force behind the impending executions, Montefiore first headed to Madrid, where he obtained an audience with Her Majesty Isabella II in November of 1863. Where other intercessors had failed, Montefiore succeeded in persuading the queen to pardon the remaining suspects; Aflalo and Ben Moyal were released from prison.[38]

But Montefiore did not consider his work done. He had in mind to do in Morocco what he had accomplished in the Ottoman Empire two

decades earlier: persuade the sultan to issue a decree guaranteeing the rights of his Jewish subjects.[39] He traveled on from Spain to Tangier, where a delegation of local Jewish notables (and indeed most of the town's Jewish community) came to meet him. He then continued to Marrakesh where he was granted two audiences with Mawlay Muhammad. Montefiore's considerable efforts were ultimately rewarded; on February 5, 1864, the sultan issued a decree concerning the proper treatment of Jews in Morocco.[40] The document was, however, a masterpiece of diplomacy. On one hand, it incorporated a new language of equality taken from Western liberalism, proclaiming that "all people are equal in justice."[41] On the other, careful reading and even the barest knowledge of Islamic law reveal that the decree was little more than a reiteration of the principles of the dhimma contract. Nonetheless, while Mawlay Muhammad's decree did nothing to change the legal status of Jews, news of Montefiore's purported success reverberated throughout the Jewish world. Jews from all over Europe and as far as Iran congratulated Montefiore on his mission. They also became conscious of a connection—even an obligation—to their coreligionists in Morocco.[42] The Jews of Morocco, in turn, gained a new appreciation of the possibilities, as well as the limitations, of appealing to foreigners.

Montefiore's visit demonstrated that people outside Morocco cared about the fate of Jews there. The publicity around his mission ensured that as many people as possible knew about his intervention on Jews' behalf. Abraham Corcos—a Jewish merchant, American protégé, and the vice-consul of the United States in Essaouira—printed copies of the sultan's decree and distributed them to Jewish communities across the country; Jews met the news with much rejoicing. Montefiore also had a translation of the decree published in London newspapers. The whole endeavor accrued such fame that he received some two thousand letters from around the world congratulating him on his mission.[43] However, Montefiore's visit did not mean that Jews abandoned their appeals to the Makhzan. Nor should we understand the conflict as one between Jews and the Makhzan alone; on the contrary, Merry y Colom, the Spanish ambassador, was the figure who most strongly insisted on executing all four suspects. Montefiore's visit changed Moroccan Jews' perception of the potential of international appeals. Similarly, the Makhzan became increasingly aware of just how much pressure Jews could exert by appealing

to international actors. Nonetheless, both Jews and the Makhzan continued to believe that the Moroccan state was the ultimate arbiter and guarantor of justice for its Jewish subjects.

DEMNAT, 1864

Not long after Montefiore left Morocco, Jews in Demnat emulated their coreligionists in Tangier and engaged the AIU and the corps of foreign diplomats stationed in Morocco on their behalf. But the stormy relationship between the Jews of Demnat and their governor, al-Hajj al-Jilali al-Dimnati, also occasioned a slew of petitions from Jews to the Makhzan. This incident demonstrates how Jews increasingly mobilized foreign intervention on their behalf in the wake of the Safi affair, yet without abandoning their appeals to the sultan for redress.

Demnat's three thousand inhabitants eked out a living at the foothills of the High Atlas Mountains, more than sixty miles from Marrakesh, the nearest major city. Such a remote location might seem an unlikely setting for Jews to receive so much attention from the Makhzan as well as from foreign diplomats and Jewish organizations. But Demnat's Jews made up about a third of the city's population, and they were quite prominent in the commerce linking Demnat to major trade routes, which made it something of a regional center.[44]

The first signs of acute trouble between Jews and Muslims in Demnat arose in the spring of 1864. Both sides had complaints: the Muslims wrote to the sultan, Mawlay Muhammad, about Jews who they claimed were polluting the water source that fed into the city's main mosque. They asked that the Jews' houses be moved away from the river, presumably so that their pre-worship ablutions would be legitimate.[45] The Jews, too, were unhappy; they petitioned the Makhzan for redress against a Muslim man they accused of sleeping with a Jewish woman. They also charged their governor with meddling in their legal affairs.[46] Things got so bad that, fearing for their safety, a group of Jews left Demnat for Marrakesh, refusing to return until Demnat's governor was dismissed from his post.

In addition to their petitions to the sultan, a group of Demnat's Jewish leaders wrote a letter to the AIU concerning their plight.[47] Some Demnati Jews—though it is not entirely clear who—also petitioned the British ambassador, Sir John Drummond Hay, asking that he intervene on their behalf with the sultan.[48] Following Montefiore's visit, some Jews in

Demnat undoubtedly felt that enlisting foreign support could only help their case.[49] Although it is not entirely clear which petitions came first (and which were most effective in mobilizing the sultan to act), what matters for our purposes is that Jews appealed to both the Makhzan and foreigners nearly simultaneously.

Following the Jews' appeals, the sultan rebuked al-Jilali for meddling in Jews' internal affairs. However, he ultimately ruled that there was not sufficient evidence of wrongdoing to warrant dismissing al-Jilali from his post.[50] Indeed, Muhammad Bargash, the minister of foreign affairs, accused the Jews of fabricating their claims. Nonetheless, he reminded the sultan that had the Jews' accusations proved true, Mawlay Muhammad would have had no choice but to dismiss the governor, "given [the sultan's] propensity for the consideration of the rights of his subjects." Bargash informed the British ambassador and all the other consuls in Tangier about the outcome of the case, explaining that the Jews had "exceeded the bounds of their rights" and that the sultan treats "all his subjects with justice." Indeed, the representatives of the Jews of Demnat ultimately signed a statement that their complaints had been addressed.[51]

The following year, another conflict erupted between Demnat's Muslim cobblers and the city's Jewish tanners. The cobblers had established a boycott against the tanners (although the source of their disagreement remains unclear). The Jews wrote a petition to the sultan, asking him to intervene; he assigned the muḥtasib (market inspector) of Marrakesh to adjudicate the dispute according to the customary law of their respective trades.[52] The Jews did not, however, appeal to foreign consuls to intervene; perhaps Hay's failure to secure al-Jilali's dismissal the previous year discouraged them from pursuing this path.

Relations among Jews and Muslims in Demnat continued to be rocky for another two decades. In the spring of 1879, things got so bad that some Jews in Demnat wrote to the sultan concerning their fears about living in the midst of the Muslim city, rather than in a separate millāḥ.[53] At this point, the sultan responded by ordering al-Jilali to post guards near Jews' homes "so that everyone will remain in safety, and if something happens then the guards will be held responsible." Tensions erupted yet again in 1884, leading to even more international outcry on the Demnati Jews' behalf (discussed below). Nonetheless, the archival record makes it abundantly clear that Jews did not seek to resolve their

disputes by appealing exclusively to foreigners for redress. On the contrary, Demnat's Jews addressed petitions to all the authorities they thought might be persuaded to take up their cause: the sultan, consular officials, and the AIU. And as the conflict between the Muslim cobblers and the Jewish tanners shows, foreign intervention by no means displaced appeals to the sultan; indeed, for some matters, Jews petitioned the sultan exclusively, even once they became aware that consuls and international Jewish organizations would take notice of their plight.

NTIFA, 1880

In the summer of 1880, not long after representatives from Europe, the Americas, and Morocco gathered at the Conference of Madrid, a conflict between Jews and their local governor erupted in a region of the High Atlas Mountains called Ntifa (a tribal confederation about seventy-five miles northeast of Marrakesh). Most of Ntifa's Jews lived in a small regional center called Foum Jama'a, where they traded in the weekly market. In 1883, the French traveler Charles de Foucauld counted two hundred Jews in Foum Jama'a, out of a total population of about fifteen hundred.[54]

Ntifa had been hit hard by the famine of 1878–79, during which both Jews and Muslims scrambled to find enough basic foodstuffs.[55] A Jewish man named Jacob Dahan weathered the storm better than most of his neighbors, and he took it upon himself to distribute food to the indigent. When the famine had subsided, a Muslim woman who had benefited from Dahan's generosity during the worst years—whose name has sadly been erased from the archival record—chose to stay on in his house as a domestic servant of sorts, out of devotion and gratitude to him. This situation immediately aroused the suspicions of neighbors both Jewish and Muslim; it was normal in the Islamic world for men to have sexual intercourse with their female slaves, and perhaps by extension with domestic servants—which would have been fine had Dahan been Muslim.[56] But for a Jewish man to sleep with a Muslim woman was both against Islamic law and deeply threatening to the idealized social hierarchy in which Islam and Muslims were the ones in positions of power over Jews, not the other way around. It was only a matter of time before the governor of Ntifa, 'Abdallah b. al-Hasan al-Ntifi, found out about Dahan's questionable situation. Al-Ntifi summoned Dahan and subjected

him to physical punishment—beating and, perhaps, imprisonment—and then released him. Soon after, Dahan passed away.

Dahan's son contended that his father died of the wounds al-Ntifi inflicted as part of his cruel and inhumane punishment. He even accused the local tribal confederation of preventing the Jewish community from recovering and burying Dahan's body until the Jews slaughtered seven bulls and paid them eighty riyāls.[57] Rather than appealing to the Makhzan, Dahan's son went straight to Tangier, where he convinced the ambassadors of France, Britain, and Italy of the deep injustice that had been done to his father.[58] Haim Benchimol, among the most prominent Jews in Tangier and indeed all of Morocco, mentioned Dahan's murder in a letter he sent to the AIU, as part of a long list of recent infringements on Jews' rights.[59] As with the Safi affair, the foreign press (including *Le Petit Marseillais, The Times* [of London], *The Pall Mall Gazette,* and *The New York Times*) reported on Dahan's alleged murder.[60]

Foreign consular officials expressed their outrage at Dahan's treatment to the Makhzan. The French ambassador, Vernouillet, wrote to the grand vizier objecting to the governor's actions. He explained that this case was worse than the incident a few months earlier in which a Jewish man named Alluf was burned alive by a mob in Fez.[61] Dahan's death was "even more odious" because it was committed by a "*qā'id* (governor) representing the sultan."[62] Vernouillet concluded:

> It is necessary that His Majesty set an example, because otherwise all of Europe will take the oppressed Jews under its protection, and we will be obligated to act officially to suppress crimes that today we only raise unofficially with His Cherifian Majesty.[63]

More specifically, foreign officials insisted that al-Ntifi be dismissed from his post and punished, as an "example" to other Makhzan officials of the consequences of oppressing Jews. Vernouillet threatened the Makhzan with extending European (or, in another version, just French) protection to all Jews, just as the British ambassador had done during the Safi affair.[64] These threats did not fall on deaf ears; Makhzan officials, including the sultan, exchanged an unusually large number of letters about the matter.[65]

But a group of Jews from Ntifa offered a very different explanation of events, one that aligned closely with the narrative told by al-Ntifi himself. They explained that their governor had done nothing wrong. Moreover, they described al-Ntifi as:

> one skilled in affairs [and] of good conduct. He only arrested [Dahan] after he was suspected of [having sexual relations with] the aforementioned Muslim woman; and he only gave [Dahan] 100 lashes, and [Dahan] did not die until he became sick in his house after being released.[66]

The Jews of Ntifa explicitly stated that they did not want al-Ntifi to be dismissed, since this would ultimately harm both Jews and Muslims. According to them, al-Ntifi had acted appropriately: he had merely applied the customary punishment to a man who had broken the law. The fact that Dahan subsequently died was just bad luck, and al-Ntifi was not to blame.[67] Although they did not say it in so many words, this faction of Jews implied that Dahan's son was shamefully exploiting his father's passing for his own personal motives.

Al-Ntifi similarly argued that not only was he innocent of wrongdoing, he had in fact gone out of his way to protect the Jews of Demnat. He explained that his tribe had become incensed at Dahan's flagrant flouting of Islamic law by living with a Muslim woman.[68] His fellow tribesmen were so furious that they wanted to expel all the Jews, reasoning that since one Jew had broken the dhimma contract, all dhimmīs had lost their right to protection. The surrounding tribes had also threatened to attack the millāḥ if Dahan went unpunished.[69] In order to avoid a bloodbath, al-Ntifi "imprisoned [Dahan] and gave him 100 lashes . . . and then released him after [someone's] intercession on his behalf . . . and [Dahan] went to his house safe and sound." After some time, Dahan died a natural death, one that had nothing to do with the wounds he received from al-Ntifi's punishment. Despite his argument that no foul play was involved, al-Ntifi agreed to pay Dahan's relatives the blood money that would be due them had Dahan been murdered.[70] Although al-Ntifi's offer of blood money seems to suggest that he was guilty of killing Dahan, it is also possible that he was simply offering an olive branch to avoid further controversy.

Ultimately, Mawlay Hasan decided not to dismiss al-Ntifi. He justified this decision to the foreign consular officials by invoking the rule of law. In a letter to the British ambassador John Drummond Hay, the Makhzan explained that the Jews had been insolent to their local governor, and pointed out the drawbacks of firing al-Ntifi.[71] Were al-Ntifi to be dismissed, "governors will cease to pass sentence against [Jews] for fear of their evil and their lies, the Jews will come out on top and violators of the law will be widespread."[72] This letter expressed the Makhzan's frustration at some Jews' attempts to challenge the social order through the intervention of foreigners. If the Makhzan acceded to foreigners' demands in this case, the rule of law could break down entirely. Finally, the sultan allocated Jacob Dahan's son a settlement of 5,000 riyāls—a significant sum at the time. This decision can be interpreted either as a tacit recognition that al-Ntifi was in the wrong, or as an attempt to quell tempers and show the sultan's good will.[73]

Over the course of the Ntifa incident, the Jews of this rural community revealed the fissures that divided them, both over what exactly had happened and how to address it. We may never know which version of the Ntifa story is true: did al-Ntifi savagely beat Jacob Dahan to death—as the lachrymose historians would have it?[74] Or did Dahan commit a crime, for which he was appropriately punished, and die a natural death shortly thereafter—as Moroccan historians have argued?[75] But of greatest consequence for our purpose is how the Jews of Ntifa went about addressing this crisis. Significantly, the Jews of Ntifa were themselves divided. One group, spearheaded by Dahan's son, argued that al-Ntifi had brutally murdered their coreligionist and mobilized international opinion on their side. Another group exonerated al-Ntifi of all wrongdoing, even going so far as to lobby the Makhzan to retain their governor in his post.[76] Far from uniformly arguing that foreign intervention was their only hope, the Jews of Ntifa disagreed about the facts of the case as well as about who was in the best position to help them.

Nonetheless, Jews' increasing tendency to see foreigners as the solution to their problems was not lost on the Makhzan. Shortly after Dahan's son brought his initial complaint against al-Ntifi to the foreign consuls in Tangier, Mawlay Hasan wrote to Muhammad Bargash, his trusted minister of foreign affairs, concerning the internationalization

of Jews' appeals. The sultan observed that increasing numbers of his Jewish subjects were petitioning foreigners when they believed they had been the victims of injustice. He insisted that the Makhzan could responsibly resolve Jews' legal disputes, since "they have the same rights as Muslims" when it comes to demanding just treatment from the state.[77] Mawlay Hasan instituted a new policy whereby his Jewish subjects had to first bring their complaints to Bargash before he would entertain the intercession of foreigners on their behalf. Three months later, Bargash reported that he was inundated with petitions sent by Jews.[78] Mawlay Hasan's policy certainly did not stop Jews from appealing to foreigners.[79] Nonetheless, the sultan—and the Makhzan more broadly—had become more convinced than ever that it was good politics to attend to his Jewish subjects' demands. Not only was this what a just and powerful ruler should do, but failing to do so invited unwanted meddling from foreigners who were less and less shy about forcing their will upon the Moroccan government.

DEMNAT, 1884

Our final vignette brings us back to Demnat, where in 1884 the Jews of this remote city found themselves once again appealing for outside intervention. This time tensions ran high between Demnat's Jews and their governor al-Jilali; they again accused al-Jilali of grave violations of their rights. Moreover, as with the Ntifa incident, the events in Demnat revealed rifts between different factions within the Jewish community. The Demnati Jews clearly perceived themselves as having a range of options when it came to making appeals, including the Makhzan, foreign consuls, and international Jewish organizations. And by this point, the choices Jews made about whom they appealed to had themselves become an explicit source of tension—causing divisions not only between Jews and the Makhzan, but also among Jews.

The Jews of Demnat accused their governor of a long list of abuses. According to them, al-Jilali instituted mandatory, unpaid labor for all Jews—including Jewish women—and even for their animals. Moreover, he made the Jews "work on days that are holy in their religion, without being paid."[80] This sort of forced labor on the Sabbath was a clear violation of Jews' rights. As a decree from 1828 put it, "Jews must not be forced to work on their Sabbaths or holy days . . . because they pay the *jizya* in ex-

change for observing their religion."[81] The Demnati Jews also accused the governor of outright theft (specifically of their wool) and of forcing them to "house the governor's guests," presumably free of charge. Finally, the Jews charged al-Jilali with a long list of financial abuses, including "being forced to sell their goods for half price" or "when prices were low," being forced to exchange money at unfavorable rates, and "being made to sell their tanned leather for [a below-market] price."[82] These commercial complaints echoed some of the problems that arose in the 1860s, specifically the question of being forced to sell leather at unfavorable prices, as in the earlier boycott between Jewish tanners and Muslim cobblers in 1865, probably due to a similar dispute about pricing.

In the summer of 1884, matters came to a head when a group of Jews became fed up with al-Jilali's abuses.[83] Rather than write to the sultan with their complaint, they traveled 150 miles to Casablanca, where they ritually slaughtered an animal in front of the foreign consulates of this small city.[84] In Moroccan custom, slaughtering an animal on someone's doorstep was a way of obligating that person to protect the one who made the sacrifice. In all likelihood, the Demnati Jews who traveled all the way to Casablanca performed this ritual in the hopes of gaining European protection.[85] Specifically, they wanted the diplomats to intervene with the sultan concerning their governor.

The Jewish delegation succeeded in getting the Makhzan's attention. Presumably the Demnati Jews' sacrifice had impelled one or more of the consuls to write to the sultan on their behalf. A little over a month later Mawlay Hasan sent a decree to al-Jilali enumerating the Jews' complaints and ordering him to "lift the hand of injustice" with which he had oppressed his Jewish subjects.[86] Yet the decree was not enough to appease this faction of Demnat's Jews. At least some of them went on to Tangier, where they submitted their complaints to more senior consular officials. Both the Italian and the American ambassadors took up their cause.[87] The American ambassador, Felix A. Mathews, wrote an impassioned letter to the sultan on behalf of the Demnati delegation, saying that al-Jilali's treatment of the Jews was "against God's will and against the law (*shari'a*)."[88] He knew that the sultan had already sent al-Jilali a decree ordering him to stop his abuses, but according to the Jews of Demnat, al-Jilali had refused to acknowledge the order and had not changed his ways. Mathews insisted that al-Jilali be removed from his post.

The delegation also managed to make their case a cause célèbre in the international press. Newspapers—including the *Times of Morocco* in Tangier and *Jewish Intelligence* in London—reported on the purported abuses that al-Jilali had committed against Jews.[89] The news reached the desk of the Comité Central of the AIU in Paris, and was reported in the AIU's monthly *Bulletin*.[90] The Demnati Jews also wrote to the AJA in London, which published their letter in *The Jewish Chronicle*.[91] In addition to mobilizing foreign consuls on their behalf and obtaining a decree from the sultan in their favor, the Demnati Jews managed to make the international community care about their plight.

Yet the delegation's relative success was not without controversy; their tactics angered and worried another group of Jews in Demnat. This opposing faction objected to their coreligionists' decision to seek protection from foreigners. They wrote a letter of complaint to the sultan in which they enclosed a document—notarized by 'udūl—recording the actions of their coreligionists. These Jews feared that the delegation to Casablanca would create suspicion of all Demnati Jews; they wanted to stress that they "followed all the laws, quranic and non-quranic, which had been established with their ancestors, and they obeyed their governor and the Muslim rulers of the region."[92] A few months later, these Jews lodged yet more complaints against their coreligionists, this time accusing them of throwing stones at Muslims and attacking a fellow Jew.[93] The Jewish petitioners explained that these misbehaving Jews had received letters from their Jewish allies who had left Demnat to appeal to foreigners on the coast, saying that Jews in other places got away with this sort of behavior. The Jews who appealed to the consuls, as well their sympathizers back in Demnat, had acquired a sense of invincibility from their newfound association with foreigners—a sentiment they used to challenge their position in the Islamic social order.

Not only did the second faction of Jews oppose their coreligionists' decision to appeal to foreigners, but they denied that al-Jilali had been in the wrong at all. That fall, the sultan sent an official named al-Bashir al-Habash to Demnat to investigate the claims that al-Jilali was mistreating his Jewish charges. A group of Jews—presumably those who opposed the delegation to Casablanca and Tangier—testified before al-Habash, al-Jilali, two 'udūl, and two rabbis that "there was no basis" to their coreli-

gionists' claims concerning al-Jilali's abuses. This faction went into some detail concerning a few points in particular. For instance:

> As for their claim that the governor did not give [the Jews] a fair exchange rate on coins, this did, in fact, happen, but it did not consist of abuse against the Jews because they took pesetas and kept these in their possession for a month or two, after which they exchanged them for *riyāls* [at a favorable rate].[94]

Although the math of this account is not entirely clear, the message was: al-Jilali had done nothing wrong. These Jews were unequivocal in opposing their coreligionists' attempts to get rid of him.

Eventually, the sultan opted for a compromise between the two factions of Demnati Jews. The following spring, al-Jilali's Jewish opponents appealed directly to the sultan when he was in Marrakesh. This time they made slightly different claims, informing Mawlay Hasan that al-Jilali refused to "give [the Jews] their rights in their lawsuits which were close to settlement, [in addition to] other lawsuits such as [those concerning] murder."[95] In other words, according to these petitioners, al-Jilali denied his Jewish subjects justice in the Makhzan court. The anti-Jilali faction also continued to mobilize the international community on their behalf; the petition signed by Shalom Assarraf to the AIU, dated July 12, 1885 (discussed at the beginning of this chapter), asked the Comité Central to once again intervene with the Makhzan in favor of the Demnati Jews.[96] Ultimately, the sultan decided it was not worth all the trouble to keep al-Jilali in his position of authority over Demnat's Jewish community. In August 1885, Mawlay Hasan placed the Jews of Demnat under the jurisdiction of a man named Ahmad b. al-'Arabi al-Menebhi.[97] On one hand, the anti-Jilali faction succeeded in having his authority over Demnat's Jews removed. On the other, al-Jilali remained the governor of Demnat despite the objections of foreign consuls, international Jewish organizations, and the international press. It was, by all indications, the kind of compromise that did not entirely satisfy anyone.

Two years later, controversy bubbled up yet again between Demnat's Jews and Muslims. Significantly, however, the Jewish and Muslim elite

agreed on a possible solution: together they petitioned the sultan to build a millāḥ in their city. Up to this point, Jews and Muslims had lived in mixed neighborhoods, but the Jews decided that a separate, walled quarter would better serve their interests. The sultan acquiesced during a brief visit to Demnat in 1887.[98] The Jews' request for a millāḥ demonstrates that Jews at times perceived walled Jewish quarters as advantageous to their security—especially given the Demnatis' earlier petition describing the danger they felt living among Muslims.[99] Although moving to a millāḥ did not resolve all the Demnati Jews' complaints about their governor or their Muslim neighbors, matters never again came to a head in quite the way they had in 1864 and 1884.[100]

We may still wonder why the Makhzan intervened on Jews' behalf in any of these instances—because of foreign pressure or because of Jews' direct appeals? Ultimately, however, this question is both unanswerable and somewhat beside the point.[101] More than deciding which of the Demnati Jews' actions were decisive, I want to emphasize the full range of their strategies—which included appeals to the Makhzan and to foreigners as well. Jews were not in full agreement about what the problem was or how to fix it, either: some Demnati Jews wanted to keep al-Jilali in his position, while others were hell-bent on getting rid of him. Similarly, some Jews expended huge efforts to involve consular officials and international Jewish organizations in their cause, while others believed this route threatened their bond with the Makhzan and the sultan. The possibility of international intervention on Jews' behalf was increasingly attainable for Moroccan Jews as the nineteenth century wore on, but Jews did not perceive this as a replacement for their direct line of appeal to the Makhzan. It was merely one more tool they added to their kit, one more legal forum to which they could turn.

In signing a petition to the AIU, Shalom Assarraf sought to take advantage of this new political landscape, one in which the fate of Jews in a remote mountain town not only interested people across the Mediterranean but could even spur action in their favor. But we know Shalom too well to assume that in writing to the AIU he had somehow switched allegiances or replaced his previous legal strategies for a new one. As a leader of Fez's Jewish community, Shalom undoubtedly felt obligated to do all he could to help his coreligionists. Yet he knew that foreigners

were not the ultimate solution to the problems of Moroccan Jews. Shalom and his family remained frequent patrons of Islamic legal institutions and sent multiple petitions to the Makhzan. Just like the Jews of Safi, Demnat, and Ntifa, Shalom and the Jews of Fez appealed to authorities at home as well as potential intercessors abroad.

The dawn of an international age of appeals was a turning point in Moroccan Jewish history, but it was not an abrupt shift from one regime to another. Rather, Jews' increasing tendency to petition foreigners marked an expansion of techniques in which they already engaged. In other words, appeals to foreigners did not necessarily replace or even weaken the bond between Jews and the Makhzan, a bond forged through the state's involvement in the everyday legal lives of its Jewish subjects. And even if some Jews were perceived as endangering that bond, it was often their own coreligionists who accused them of exhibiting disloyalty to the sultan and undermining his role as the ultimate arbiter of justice for *all* Moroccans, Jews and Muslims alike. For most Moroccan Jews, then, appealing to foreigners was simply an expansion of the legal pluralism that already characterized the legal system in Morocco; this additional forum coexisted, competed, and overlapped with the various other legal institutions available to them.

CHAPTER SIX

Extraterritorial Expansion

IN 1871, SHALOM ASSARRAF ACQUIRED a patent of protection from the United States. One of his relatives, listed as "Mr. Azeraf" in the American consulate's records, moved to New York and made Shalom his agent.[1] This Azeraf might have been one of Shalom's nine brothers; according to family lore, only four of the brothers (including Shalom, Mordekahi, and Eliyahu) stayed in Morocco, while the other five sought their fortunes abroad, in Egypt, Algeria, France, and the United States.[2] Yet however he acquired protection, Shalom's extraterritorial status put him in an enviable position; he was exempt from taxation, he could expect the intervention of the American consular authorities on his behalf, and he gained access to the American consular court in Tangier. Indeed, the terms of the capitulation treaties signed between Morocco and the United States stipulated that any lawsuit against an American protégé like Shalom had to be adjudicated in an American consular court.

Despite these international agreements, Shalom was sued in the shari'a courts of Fez a number of times while under American protection. On January 31, 1880, Zaynab bint Muluk al-Qamri sued Shalom as part of their ongoing legal dispute involving the unpaid debts of her brothers, as we saw in Chapter 2; the case dragged on in the shari'a courts of Fez for three months.[3] Four years later, on June 29, 1884, a Muslim named Ahmad b. Qudur al-Qamri—a relative of Zaynab's husband

(confusingly also named Ahmad)—sued Shalom before a qadi.[4] Ahmad claimed that Shalom had illegally acquired a mule (described as red) that belonged to him, and he wanted the mule back. Shalom denied the charges, and Ahmad's legal representative demanded that his Jewish adversary take an oath to that effect.[5] His extraterritorial status should have put Shalom beyond the reach of such suits filed in shari'a courts. Nonetheless, Shalom appeared as a defendant in a shari'a court at least five more times as an American protégé.[6]

The expansion of extraterritoriality in Morocco during the mid–nineteenth century was part of an international phenomenon that stretched from Latin America to East Asia.[7] As such, the increasing number of individuals with access to consular courts, and their growing importance in the quotidian consumption of law, internationalized Morocco's legal system. Yet the expansion of extraterritoriality did not involve the displacement of local institutions by consular courts—not even for foreign nationals and protégés. Moroccan subjects like Zaynab and Ahmad continued to sue Shalom in shari'a courts. The fact that Shalom agreed to adjudicate these disputes before a qadi demonstrates that protection did not definitively move its beneficiaries from one jurisdiction to another. On the contrary, most protégés continued to navigate among a plethora of legal institutions, including Islamic and Jewish courts.[8] Unsurprisingly, Moroccan Jews continued to shop among legal fora even once the list of institutions to which they had access came to include the courts of countries like France, Spain, Italy, Great Britain, and the United States.

The expansion of legal pluralism to include a growing number of consular courts had an effect on all the legal orders operating in Morocco. Just as Jewish and Islamic legal institutions cooperated in order to accommodate the individuals who moved between them, so did consular courts and Islamic courts shape each other's practices. This was most noticeable in the ways consular courts became Moroccanized—that is, adapted elements of local legal practice. Consular officials aligned their practices more closely with those of Islamic legal institutions, responding to the frequent movements across jurisdictional boundaries in which almost everyone in Morocco engaged. Shari'a courts also instituted new norms, not in order to accommodate consular courts, but in an effort to limit their influence.

The fact that consular courts adapted to the practices of local institutions is particularly surprising given the imbalance of power in favor of Western states. The growing ranks of foreign subjects and protégés posed a serious threat to Moroccan sovereignty. Because extraterritoriality afforded foreign states near-complete authority over their own nationals and protégés even within Moroccan territory, the entire system of consular courts cut into the Moroccan state's ability to rule over its own territory—creating a system akin to Mary Lewis's concept of "divided rule."[9] Moreover, foreign and Moroccan judicial officials did not operate on a level playing field; diplomats always had the threat of force looming over their demands. Nonetheless, consular officials could not simply impose their will on the qadis and governors who adjudicated local courts; on the contrary, diplomats ended up adapting to the requirements of Moroccan judicial officials, not the other way around.

The continued and even voluntary presence of protégés like Shalom in shari'a courts also changes the way we think about the history of Jewish-Muslim relations. Foreign protection—indeed, the intervention of foreigners more broadly—is generally considered to have driven a wedge between Jews and the broader Muslim-majority society in which they lived. By the late nineteenth century, European Jewish activists and some diplomatic officials argued that foreign protection was necessary to shield Moroccan Jews from the inherent bias of Islamic courts.[10] Some historians have echoed this line of reasoning, arguing that Jews acquired protection in part to escape a discriminatory legal system for one that treated them as equals.[11] Scholars taking a rosier view of Moroccan Jewish history in the pre-colonial period similarly see the expansion of extraterritoriality as changing the nature of Jewish-Muslim relations; however, for these historians, consular protection served to disaggregate Jews from the surrounding Islamic society and, ultimately, undermine their relationship to the Moroccan polity.[12] Both approaches, however, overlook the ways in which Jews with extraterritorial privileges continued to frequent Islamic legal institutions. Extraterritoriality did not remove Jews from one type of legal order to another; it merely increased their legal mobility even more.

Tracing Jews' efforts to move among different jurisdictions demonstrates the expanded legal mobility of Jews with extraterritoriality. This movement, in turn, allows us to understand why it was so important for

consular court officials to adapt to the practices of local legal institutions—particularly shari'a courts. Their accommodation of Islamic law came primarily in the form of relying on 'udūl to notarize documents, regardless of the legal status of the individuals involved. Indeed, by the end of the nineteenth century, notarization by 'udūl became the gold standard of evidence in consular courts. By adopting local standards of evidence, consular courts brought their own practices closer to those of Moroccan courts. But shari'a court officials moved in the opposite direction. 'Udūl and qadis attempted to prevent forum shopping among their courts and those of foreign consulates. Moreover, in a spontaneous response to the threat of imperialism implied in the spread of extraterritoriality, many 'udūl and qadis tried to hinder protégés and foreign nationals from using their services. While the coexistence of consular and shari'a courts did not engender mutual accommodation—the accommodation came from consular courts alone—it did shape the practices of each; both sets of judicial officials responded to the existence of the other and adapted their proceedings accordingly.

IN AND OUT OF CONSULAR COURTS

Although extraterritoriality offered access to a growing network of consular courts in Morocco, foreign nationals and protégés did not entirely leave the legal world they had known before. On the contrary; individuals with access to consular courts also found themselves subject to the jurisdiction of local legal institutions—shari'a courts, Makhzan courts, and Jewish courts, depending on the circumstances—both by necessity and by choice. The degree of flexibility and jurisdictional overlap among consular courts and local legal institutions meant that forum shopping was relatively common among protégés and foreign nationals. This forum shopping went in all directions: protégés at times sought to bring cases that fell under the jurisdiction of local courts into consular courts, while in other instances they tried to avoid consular courts in favor of shari'a courts, Makhzan courts, or (to a lesser degree) batei din.[13] In many cases, individuals appealed to various judicial authorities either serially or simultaneously in an effort to cover all their bases.[14] Protégés sought out a particular legal forum for a number of reasons. Some wanted to capitalize on their privileged access to local knowledge or responded to the moral authority invested in certain courts. Others sought to avoid

perceived judicial bias. Most commonly, legal consumers tried to exploit differences in law.

Although we will focus here on voluntary movement among legal fora, much of the back-and-forth between consular courts and local legal institutions was built into the jurisdictional boundaries themselves. The treaties governing the jurisdiction allotted to consular courts built in a certain amount of movement among local and foreign courts. After 1856, the jurisdiction of cases involving foreign subjects and protégés was determined by the principle *actor sequitur forum rei,* meaning that a case was adjudicated in the court of the defendant.[15] Thus if a protégé like Shalom Assarraf sued a Moroccan subject, the case would fall under the jurisdiction of a shari'a court, a Jewish court, or a Makhzan court. But if that same Moroccan subject sued Shalom, only the American consular court would have jurisdiction. Because the majority of both Westerners and Moroccans with extraterritoriality did business with subjects of the sultan, these rules virtually guaranteed that foreign nationals and protégés found themselves under the jurisdiction of local institutions.

Moreover, despite the fact that these jurisdictional rules were broken with some frequency—as we saw in the lawsuits filed against Shalom in the shari'a courts of Fez—they were not irrelevant. On the contrary, the majority of cases concerning protégés and foreign nationals were adjudicated in the forum assigned to them by the relevant treaties. Legal consumers did not have complete freedom to choose the forum in which they adjudicated; this is in part why forum shopping was never a reflection of perfect rational choice theory. Nonetheless, Moroccans involved in commerce with foreign subjects and protégés must have known that these rules were somewhat fungible. Indeed, sometimes it was enough simply to petition one's consul to switch the jurisdiction of a case; although consuls were not always successful in doing so, the general fungibility of jurisdictional boundaries meant that many felt it was worth trying.[16] The blurred lines separating jurisdictions meant that individuals had an incentive to *attempt* to switch courts when doing so would prove advantageous, even if they knew that success was not guaranteed.

Jews with extraterritoriality were often in a privileged position vis-à-vis their European business partners because of their familiarity with local courts. In some instances, Jewish protégés tried to switch jurisdictions in order to capitalize on that advantage. Between 1836 and 1841, the

French merchant Marius Rey pursued a lawsuit against Abraham Benchimol and his Muslim partner 'Abd al-Qarim Gassal.[17] Abraham Benchimol was one of Tangier's most prominent Jews, and had worked for the French consulate as an interpreter since 1815—a job that came with French protection.[18] Rey assumed that since Benchimol was a French protégé, his lawsuit would be pursued in a French consular court. However, for the purposes of this case, Benchimol declared himself a Moroccan subject and demanded the matter be tried in an Islamic court.[19] Shedding or switching one's protection was a sure way to change the jurisdiction of a case. This strategy was particularly attractive in the first half of the nineteenth century, when the rules governing consular protection were still relatively ill-defined (and before consular officials cracked down on such maneuvers).[20]

Benchimol wanted to ensure that a qadi adjudicated his lawsuit with Rey in large part because he knew that Rey was ignorant of Islamic law and at a loss to navigate the requirements of shari'a courts. Rey, too, was conscious of the ways in which Islamic jurisdiction put him at a considerable disadvantage. He contrasted his experiences "in a civilized country where the laws are collected in a code that everyone can consult" with "a country like this, where the foreigner—despite the written conventions which grant him extraterritoriality—vainly appeals to this arbitrary jurisdiction [that is, a shari'a court] and suddenly finds himself forced to submit to a legislation and to formalities which are unfamiliar to him."[21] Whereas Benchimol had experience adjudicating in Islamic courts, Rey was unfamiliar with the "arbitrary jurisdiction" to which he found himself subject. Moreover, Rey did not speak the language used in court, while Benchimol was fluent in the Arabic dialect in which court proceedings were conducted. Ultimately Rey had to rely on hired interpreters—who in the end botched his case.[22] In 1840, Rey finally succeeded in having the case heard by a commercial court (tribunal de commerce) in Marseille, which ruled that Benchimol and Gassal owed him 21,872 francs.[23] Although Benchimol could not have known for sure that the Marseille court would rule against him, he was certainly well aware of his advantage over Rey in a shari'a court; little surprise, then, that he wanted the case to be adjudicated there.

In other instances, one court proved more attractive than another not because of legal differences but because of the different degrees

of moral authority with which they were invested. Jewish protégés at times preferred to avoid Jewish courts in favor of consular ones, precisely because appearing in a Jewish court could have more serious repercussions for one's status within the Jewish community. This came up in a lawsuit from 1880 in which the French firm Jourdan Buy and Company sued Samuel and Pinhas Toledano, two Moroccan Jews with French protection.[24] The Toledano brothers had declared bankruptcy, but Jourdan Buy was suspicious; he wanted them to swear on the Torah that they were indeed penniless, presumably believing that the Jews were more likely to tell the truth if they swore on the scrolls of their sacred text. Indeed, this was the standard practice even in consular courts; dayyanim normally administered oaths sworn by all Jews, including those with foreign protection.[25] The Toledano brothers, however, preferred to swear before the French consul. They argued that in Jewish society it was considered harmful to one's reputation to take an oath, even if one was presumed to have told the truth. In this instance, the French court's relative neutrality vis-à-vis the Jewish community meant that swearing an oath before the consul did not damage one's reputation the way swearing on the Torah might. Ultimately the parties managed to reach a settlement without swearing of any kind—an indication of just how seriously the Toledanos regarded the taking of oaths.[26]

Protégés also considered the biases of the judicial officials involved in trying to decide where to adjudicate a given case. In general, consuls were charged with protecting the interests of their state's subjects and protégés.[27] While theoretically this did not extend toward unjustly favoring them in court, in reality it did sometimes translate into preferential treatment. Indeed, some consuls did everything in their power to ensure a favorable outcome for their nationals. In 1867, Abraham Corcos, a Moroccan Jew serving as the American vice-consul in Essaouira (who distributed printed copies of the royal decree obtained by Montefiore), attempted to sue Mas'ud al-Shayzami, a Moroccan with British protection.[28] Corcos claimed that he "paid into the hands of Seed Mesod Shedini the sum of Eight thousand five hundred French dollars to be exchanged for Spanish Doubloons, and that Seed Mesod after receiving the money refused to give up the doubloons."[29] Al-Shayzami, however, denied ever having received the 8,500 French dollars (undoubtedly francs) that Corcos claimed to have given him.[30] Despite his repeated attempts, Corcos

could not persuade the local British consul, Fred Carstensen, to summon al-Shayzami to trial.[31] Corcos wrote to Carstensen: "Under these circumstances and seeing that I could not obtain justice at your hands, I have followed the only course which was open to me namely to prove my case before all the Moorish Authorities [probably both the Makhzan court and the shari'a court] of this Town."[32] Corcos even appealed to Muhammad Bargash, the Moroccan minister of foreign affairs and the highest Makhzan authority in charge of matters involving foreign subjects and protégés.[33] Given Carstensen's clear favoritism, Corcos preferred to have the case adjudicated by Makhzan officials.[34] Unsurprisingly, when Carstensen finally ruled on the case in December 1867, he decided in al-Shayzami's favor.[35]

Carstensen clearly had a reputation for being partial. Five years later, another protégé endeavored to avoid Carstensen's court—and paid for it with his job. The dispute involved Accan Levy, a Moroccan Jew who had been working as an interpreter for the British vice-consulate in Essaouira for a number of years and was thus under British protection; and Levy's coreligionist Baruch Ohayon, a Moroccan Jew working as a commercial agent for an English merchant, which similarly afforded him British protection.[36] Although both parties were British protégés—a status that should have sent any dispute between them straight to Carstensen's court—Levy and Ohayon agreed to pursue their dispute before the local pasha, presumably because they did not believe that Carstensen would adjudicate fairly. But Carstensen caught on to Levy's strategy and dismissed him from his post. Carstensen explained that Levy was "in the habit of applying to the local authorities, and of arranging cases of litigation without the vice-consuls' knowledge and consent; as also of his exacting unlawful remunerations and fees from persons in town."[37] In other words, Carstensen accused Levy of arranging for cases which fell under British jurisdiction—like his dispute with Ohayon—to be tried in shari'a or Makhzan courts. Moreover, Levy and Corcos were not alone in wanting to avoid Carstensen's court, as people were willing to bribe Levy (the "unlawful remunerations and fees" that Carstensen mentioned) to switch the jurisdiction of their disputes.[38]

Naturally, consul-judges were not the only judicial officials accused of bias; protégés sometimes endeavored to avoid shari'a courts because they felt a particular qadi would not adjudicate fairly. In 1869, Aharon

and Yosef Ben Addi—both British protégés—were robbed while traveling to Safi, a city along the coast about 125 kilometers north of Essaouira.[39] The Ben Addis wanted to avoid suing the perpetrators—who were Moroccan subjects—in the shari'a court of Safi, arguing that the local qadi would be biased. Safi's qadi was a member of the Shedma tribe, and this tribe controlled the area where the robbery took place (we can safely assume that the robbers also belonged to this tribe). In some ways, the assumption that Safi's qadi would protect the members of his own tribe was not that different from the assumption that a French consul would protect his own protégés and nationals. The growing number of legal fora available to Moroccans made it increasingly possible to try to avoid situations in which bias would work against one's interest.

Even more than insider knowledge and judicial bias, differences in substantive law most often shaped legal consumers' choices. Jews with and without protection sought to shift the jurisdiction of their disputes to whichever court would apply the law that most benefited their case. Jews did not systematically prefer consular courts over Islamic ones, any more than they uniformly preferred Jewish courts over Islamic ones. Rather, they sought out the court whose law most closely aligned with their interests in the case at hand.

A case from Tetuan clearly demonstrates how differences in law might make one court far more attractive than another. In 1885, the British firm Glassford and Company, based in Gibraltar, sued three Tetuani Jews (J. Benmerqui, J. Cohen y Garzon, and Bendahan) for unpaid debts. Initially, Glassford and Company's representatives wanted to pursue the case in a British consular court. But all three defendants declared that they wanted the case tried in the local shari'a court, which was their right as Moroccan subjects. The British consul in Tetuan reported thus:

> I spoke with the said gentlemen [Benmerqui, Cohen y Garzon, and Bendahan] and told them about the reclamations of [Glassford and Company]; but these [men], refusing to pay the interest [on the loan], notified Glassford and Co. how they pleaded, and that as Moroccan subjects, they intended to bring the case to the shari'a court, where they believed they would not be obliged to pay interest.[40]

Benmerqui, Cohen y Garzon, and Bendahan were well aware that the charging of outright interest was forbidden in Islamic law. Even if the three defendants were ordered to repay their debts, they would not be required to pay the accumulated interest on the loan. Despite his best efforts, the British consul was unable to avoid having the case adjudicated by the local qadi.[41] The three Tetuani Jews stood to save a significant sum thanks to the differences between Islamic and British law.

A shari'a court proved similarly attractive to a French protégé in Casablanca named Judah Assayag. Assayag had sublet a store from a fellow Jew named Aron Zagury, who was a Portuguese protégé. Zagury himself leased the store from a pious endowment (Arabic, *ḥubs*) and paid rent directly to the administrator (known as the *nāẓir*). But Zagury was not content to simply sublet the store he was not using: he decided to make a small profit on the property by charging Assayag more than he himself paid to the nāẓir, and pocketing the difference. Unfortunately for him, the nāẓir found out about Zagury's scheme. The nāẓir canceled Zagury's lease and drew up a new contract with Assayag, which was notarized by 'udūl on June 1, 1887.[42] Assayag was happy to do this, since it made no financial difference to him. But Zagury was furious; in August he demanded that Assayag vacate the store immediately. Assayag wrote to his vice-consul requesting that the dispute be adjudicated in the local shari'a court:

> According to the laws of property established in Morocco, [and] in my quality of French subject, which I have the honor to be due to [my involvement in] the real estate business, it seems to me that the case should be judged by the Muslim shari'a; I thus desire that justice be executed morally.[43]

Both the French vice-consul in Casablanca and the ambassador in Tangier concurred that the case should go before a qadi, citing Article XI of the Treaty of Madrid, which stipulated that all disputes concerning real estate should be judged according to "the laws of the country."[44] But the Portuguese consul did not agree; he attempted to force Assayag to pay Zagury the rest of the money Assayag allegedly owed without recourse to a shari'a court.[45] The Portuguese consul argued that the contract was signed between two foreigners, and thus had nothing to do with the Islamic legal system.[46] Nonetheless, the French vice-consul succeeded in

bringing the case before the local qadi, who ruled in Assayag's favor.[47] The verdict hinged on the fact that it was the nāẓir's duty to pursue the best interests of the endowment with which he was charged. The nāẓir thus had no choice but to rent the store to the person who would pay a higher sum.[48] While we cannot be sure that Assayag knew Islamic law would call for a decision in his favor, it certainly seems likely given how ardently he insisted that the case be judged in a shari'a court. As for Zagury, it is probable that he, too, was aware he would lose in a shari'a court, which is why he wanted to avoid appearing before the qadi in the first place.[49]

Jewish protégés also reversed the direction of their forum shopping, seeking to adjudicate cases in consular courts when they felt foreign law would be more amenable to their interests.[50] In a case from 1904, Moses Emsellem, a Jewish Moroccan subject, sued Meir Benhaim, a Belgian protégé. Emsellem claimed to own a lease on a store in Tangier that belonged to the Ibn Masars, a Muslim family. He had sublet the store to Benhaim some time earlier, but Benhaim had recently stopped paying the rent. Emsellem initially brought the case before a qadi in Tangier, producing legal documents in Hebrew that attested his right to lease the property in question. He claimed that his father had purchased "the keys"—that is, the right to lease the property—from another Jew, who himself had purchased this right from a Jew.[51] We can safely assume that Emsellem was talking about a ḥazakah. The very fact that Emsellem attempted to use Jewish documents—drawn up in Hebrew and signed by Jewish notaries—as evidence in a shari'a court is significant; he almost certainly was aware that Islamic law did not recognize the validity of documents lacking the signatures of 'udūl. Nonetheless, given the extent of legal convergence among Jewish and Islamic courts and the fuzziness of the boundaries separating different jurisdictions, it might have been reasonable for Emsellem to believe he had a chance at winning in a shari'a court.

As the case unfolded, it became clear that Emsellem's rights had been usurped by one of his coreligionists who used the discrepancy between Jewish and Islamic law to illegally claim the property as his own. Unsurprisingly, the qadi refused to recognize Emsellem's documents drawn up according to Jewish law, "since they are not based—as they should be—on a contract *in Arabic* between the owners of the mosque

[presumably to which the store was attached] and the first holder [of the lease]."[52] Moreover, the Ibn Masars' representative presented a counterclaim, stating that another Jew named Salomon Roffé (an American protégé) had leased the store, as outlined in a contract written in Arabic and signed by two 'udūl. Indeed, Benhaim—the tenant whom Emsellem initially sued—had begun paying rent to Roffé, the rightful landlord, around the time he ceased paying Emsellem. Given the tightly knit nature of the Jewish community of Tangier, it seems safe to assume that Roffé knew about Emsellem's claims on the property. Indeed, his decision to obtain a lease directly from the owners, one drawn up according to Islamic law, was almost certainly in order to subvert Emsellem's claim to the property by mobilizing a different—and ultimately more authoritative—legal order. Roffé almost certainly knew that Islamic law did not recognize the validity of a ḥazakah. He used this discrepancy in order to obtain usufruct rights that, according to Jewish law, already belonged to someone else. This was precisely the sort of strategy that the rabbis in seventeenth-century Fez sought to prevent by requiring Jews to obtain leases in both Jewish and Islamic courts.[53]

Unable to prove his case before a qadi, Emsellem appealed the case in a French consular court.[54] French courts considered Jewish and Islamic documents to be equally valid, and in theory Emsellem might have won the case since his claim was prior to Roffé's. However, since matters relating to real estate fell under the jurisdiction of shari'a courts, the French consul upheld the qadi's ruling. Emsellem surely knew that real estate cases fell under the shari'a court's jurisdiction. But he was probably also aware that the boundaries separating jurisdictions were often blurred and thought it worthwhile to try his hand at appealing in a different court.

Another case from Tangier demonstrates that Jews attempted to switch their cases from Islamic to consular jurisdiction even when there seemed little likelihood they would succeed. In 1891 Sol Azancot, a Jewish woman with French protection, sued her neighbor and coreligionist Abraham Elazar, a Brazilian protégé. Azancot claimed that Elazar had illegally installed a window in his house that violated her privacy, as well as damaging her home in the course of his renovations. She requested that the case be brought before the qadi, as he was the "only one competent [to judge] this matter, according to the international treaties governing

real estate in Morocco" (by which real estate cases fell under the jurisdiction of shari'a courts).[55] The Brazilian consul vigorously resisted demands that he send his protégé to court, almost certainly because Elazar expressed his desire to avoid adjudication before the qadi if at all possible.[56] When the case was finally tried in a shari'a court six months later Azancot won a clear victory. The outcome suggests that Elazar believed Islamic law would rule against him and had therefore hoped to avoid appearing before a qadi in the first place.[57]

In justifying their attempts to secure consular jurisdiction, some Jews accompanied their appeals with disparaging comments about Islamic law and legal procedure. Unsurprisingly, these criticisms echoed those cited by both European Jewish activists and diplomats as justifications for their intervention on Jews' behalf. For instance, in 1904 a dispute arose between Abraham Cohen, a French protégé living in Tangier, and his coreligionist Moses Pariente, a British protégé living in Fez, over the ownership of a warehouse (*funduq*) located in Fez.[58] Trouble began when Cohen forcibly took possession of the warehouse that Pariente had been occupying until that point. Cohen argued that the warehouse was his; that he had pledged it as security on a debt that he owed to Abu Bakr al-Ghanjawi (the British protégé we encountered visiting Jewish courts in Chapter 3); and that he had now repaid his debt to al-Ghanjawi and wanted to take control of his property again. Pariente, however, claimed that he had bought the warehouse outright from al-Ghanjawi in 1894, and that he was now the only rightful owner.[59] When Pariente sued Cohen, the French consul instructed the two protégés to adjudicate their dispute in a shari'a court in Fez (again because the matter concerned real estate). Pariente produced a *milkīya,* a proof of ownership drawn up according to Islamic law, which convinced the qadi that the warehouse was his.[60]

After the qadi ruled against him, Cohen hired a lawyer who argued that the shari'a court procedure was inherently unfair: "Concerning our refusal to appear in a shari'a court, it is impermissible for a sensible man to claim that a plaintiff must accept, and even regularize by his presence, a procedure which forbids him the use of witnesses recognized as necessary [to the case]."[61] In other words, Cohen's lawyer brought up the familiar complaint that because Islamic law did not permit the testimony of non-Muslims, it was "impermissible" for someone like Cohen to accept the shari'a court's ruling.[62] Pariente, on the other hand, wanted

to prevent an appeal in a consular court, writing that "it would be a real *denial of justice* for the French civil and penal laws to apply."[63]

Whether or not Cohen really believed that Islamic law was fundamentally unjust to Jews is beside the point, as is whether Pariente truly thought adjudicating in a French court would be a "denial of justice." Each party used the *language* of justice to ensure adjudication in the court that would be more favorable to his cause. Indeed, Jews could and did play all sides of the issue; when it was advantageous to adjudicate in an Islamic court, a French protégé claimed that the qadi was the only one by whom "justice" could "be executed morally."[64]

The expanding network of consular courts did not introduce a parallel set of legal institutions operating in their own, hermetically sealed sphere. On the contrary, legal consumers of every variety—Jews and Muslims, Moroccan subjects and foreign protégés—moved between local legal institutions and consular courts. Some of this back-and-forth was built in to the jurisdictional boundaries (in that individuals could be prosecuted only in their own national courts). At other times, this movement represented a deliberate strategy of shopping among legal fora. There is no question that law in Morocco came to include the courts of foreign states alongside the Islamic and Jewish legal institutions that had operated locally for hundreds of years. Yet while these courts brought the laws of foreign countries to Morocco, they, too, were shaped by the norms and practices of their host country.

MOROCCANIZING CONSULAR COURTS

The regular back-and-forth between local legal institutions and consular courts meant that both legal consumers and consular court officials always had to contend with the existence of radically different legal orders. Individuals designed their strategies around the presumption that potential disputes might be adjudicated in any number of institutions, depending on who was involved and how stringently the jurisdictional guidelines were followed. Consular officials responded to these strategies by adapting their practices to the realities of a radically pluralist setting. The diplomatic representatives of various foreign states did not usually coordinate their judicial decisions with one another. Nonetheless, consular officials adapted to local circumstances in ways that evolved toward a common set of practices. By the end of the nineteenth

century, the system of consular courts in Morocco had become Moroccanized, introducing a bit of local flavor into an international legal regime.

The most important adaptation made by consular courts was undoubtedly the reliance on shari'a courts—and to a limited extent Jewish courts—as the default notaries public regardless of the jurisdiction of a particular case.[65] A consensus around using documents notarized by 'udūl emerged gradually; by the end of the nineteenth century, consular court officials accepted—even expected—that everyone (Moroccan subjects, protégés, and foreign nationals) could and probably would rely on legal documents in Arabic, even in foreign courts.

Consular officials' increasing reliance on documents notarized by 'udūl was a response to the strategies of legal consumers. Protégés quickly realized that any time they had a dispute with a Moroccan subject, the case might be adjudicated in a local court—either because the Moroccan subject was the defendant, or because the rules governing jurisdiction had been observed in the breach.[66] While consular courts recognized all manner of informal contracts, both Jewish and Muslim protégés knew that shari'a courts only accepted evidence notarized according to Islamic law. Makhzan courts were often less strict in their standards of evidence, but it was not unheard of for a governor to refuse a piece of evidence that was not signed by 'udūl.[67] Thus protégés and foreign nationals came to appreciate the necessity of having contracts notarized by 'udūl when a Moroccan subject was involved. For instance, in 1840, Marius Rey, the French merchant we encountered suing Abraham Benchimol a few years earlier, wrote to the French ambassador in Tangier concerning a contract he had signed with Solomon Benzecri, a Jewish Moroccan subject.[68] Rey explained that he initially believed Benzecri was a British subject, since he described himself as a "merchant of Gibraltar, which implies the status and the rights of a businessman living in the said city who is subject to English law."[69] Rey thus drew up a commercial contract with Benzecri privately, confident that both French and British courts would uphold the validity of such an agreement. But Rey later discovered that Benzecri was in fact a Moroccan subject; he soon realized that a Moroccan court would not recognize their contract since "they only recognize contracts notarized by 'udūl."[70] Had Rey known that Benzecri was a Moroccan subject, he would have had their

contract notarized by ʻudūl to ensure that it would be upheld under Islamic law.[71]

Given that any case involving a Moroccan subject might be adjudicated in a shariʻa court, savvy businessmen hedged their bets by having all kinds of contracts notarized by ʻudūl. Not only Moroccans with protection, but also foreigners—most of whom were entirely unfamiliar with Islamic law when they arrived in Morocco—regularly used the services of ʻudūl to notarize their commercial transactions. The Englishman George Broome, for instance, had ʻudūl notarize a document attesting his ownership of a cow in partnership with a Muslim named Ahmad. On the back Broome wrote "Feb 6th 1887, 1 cow with Hamed $15."[72] This short summary in English mirrors the kinds of summaries in Judeo-Arabic written by Jews like Shalom on the back of Islamic legal documents, enabling those who could not read Arabic to remember the contents of their personal archives. Indeed, many protégés and foreign subjects emphasized the fact that their commercial documents were signed by ʻudūl in their attempts to press their legal claims with a consulate, thereby preempting any doubts that their case would not hold up in a shariʻa court.[73]

In order to hedge their bets, even many protégés double-notarized their documents. In another parallel to strategies for moving between Jewish and Islamic courts, many foreign nationals and protégés had their legal deeds drawn up by ʻudūl and registered in the chancellery of their consulate or countersigned by their consul. This was particularly attractive because some courts situated in the metropoles only accepted evidence that had been notarized in their own chancelleries.[74] For instance, in 1849, the prominent Muslim merchant Muhammad al-Razini owed debts to a number of Christian merchants. These debts were attested in legal documents signed by both ʻudūl and the relevant consuls.[75] Just as individuals of all nationalities sought the notarization of ʻudūl in case a dispute was adjudicated in a shariʻa court, protégés and foreign nationals had these documents registered and translated in their respective chancelleries in the event a dispute was brought to a court in France, Britain, or the United States. Eventually double-notarization in both shariʻa and consular courts became widespread; the chancellery records of foreign consulates are full of copies of Islamic legal documents, often with summaries or translations in the relevant European language.[76]

Jewish courts, too, continued to play a role as notaries public for Jewish protégés. Jews with foreign protection notarized their contracts with sofrim most often when their transactions involved other Jews, and thus there was a possibility that an eventual dispute would be tried in a Jewish court.[77] But many Jewish protégés also had their contracts with Christians and Muslims notarized by sofrim—a strategy that is surprising given how unlikely it was that disputes arising from these relationships would ever be adjudicated in a Jewish court. For instance, in 1882 a Jew named Dinar (probably Dinar Ohana), an American protégé, went to the American consul in Essaouira claiming that he was owed a debt by Hajj Ibrahim al-Bu Darari.[78] Dinar presented the consul with Hebrew legal documents proving the debt, despite the fact that this case should have fallen under the jurisdiction of a shari'a or Makhzan court.[79] Presumably these Jewish protégés did not seek out notarization by sofrim because they felt it would help them accrue legal or financial advantages. As with the Jews who had sofrim notarize their contracts with Muslims, we must assume that Jewish protégés hired sofrim out of a sense of religious obligation, greater comfort with Jewish legal institutions, a commitment to upholding the legal authority of Jewish institutions, or some combination of the three. Given the absence of pecuniary incentives to notarize documents with sofrim, it makes perfect sense that many Jewish protégés hedged their bets by registering their Hebrew legal deeds in the chancelleries of their consulate, or by having their contracts (especially those concerning real estate) notarized by both 'udūl and sofrim.[80]

Notarization by 'udūl (and to a lesser extent by sofrim) became so commonplace among foreign subjects and protégés that Islamic legal documents often intersected with the quotidian functioning of consular courts. Sometimes the lines between the functioning of various courts became blurred through the shared reliance on documents notarized by 'udūl. For instance, in the summer of 1865, a Jew named Mas'ud b. Shalom b. Shabat from Essaouira was summoned to the British consular court. His coreligionist Ya'akov b. David b. Yahya, from Tizguine, agreed to guarantee Mas'ud's presence in the consular court—a type of guarantee that was quite common in shari'a courts. Somewhat paradoxically, Ya'akov guaranteed that his coreligionist would show up in a British consular court through a document in Arabic notarized by 'udūl.[81] It is

not clear what motivated Ya'akov to have Muslim notaries draw up the guarantee, other than, presumably, the fact that notarizing documents with 'udūl was so widespread that it barely mattered for which legal forum the document was intended. Notarization had to some degree become an independent process separate from the jurisdiction of any particular court, and 'udūl had become the default notaries.

Consular officials also became comfortable mobilizing the authority of Islamic legal documents for their own purposes. In 1885, the Spanish consul in Safi wrote to the local governor, 'Abd al-Khaliq b. Hima; he wanted to register a Muslim (Qudur b. 'Ali al-Najafi) as the "mokhalet" (the business partner of a protégé who also benefitted from foreign protection) of Yiẓhak b. Nissim ha-Levy, a Spanish protégé.[82] Qudur's local governor had earlier refused to register him as a mokhalet, claiming that Qudur was a shaykh and thus ineligible for foreign protection. However, the Spanish consul sent a legal document notarized by 'udūl that recorded the testimony of a lafīf, in which twelve men swore that Qudur was not a shaykh, as well as eight other legal documents (also notarized by 'udūl) proving the partnership between Qudur and Yiẓhak. The Spanish consul skillfully employed the tools of Islamic law to ensure the rights of his protégé.[83]

By the end of the nineteenth century, the default position among consular officials was that Islamic legal documents constituted the gold standard of proof, even for cases adjudicated strictly within the network of consular courts. The French consul's reaction to a case from 1895 nicely illustrates the extent to which Islamic legal documents had become a regular feature of consular courts in Morocco. Moses Bendahan, a Jew with French protection living in Casablanca, sued El Maati ben Fatmi, a Muslim with Spanish protection, for unpaid debts which Fatmi had guaranteed.[84] Fatmi's guarantee was recorded in a legal document notarized by 'udūl. However, Enrique Ruiz, the Spanish consul in Casablanca, argued that the guarantee was invalid; since the agreement only concerned protégés, he reasoned, the document should have been notarized in the Spanish or French consulate. Collombe, the French consul in Casablanca, was outraged by this argument:

> [Ruiz] cannot be ignorant of the fact—and he is not ignorant of it—that the deeds drawn up by 'udūl are perfectly valid. Do we

> not make use of them every day, and are our reclamations not based on these deeds [drawn up] by ʻudūl? Do not European merchants themselves have the acknowledgements that the censal-protégés [business associates of foreigners] deliver to them concerning the sums they have received drawn up by ʻudūl? Has one ever thought to contest the legality of these deeds?[85]

Collombe went on to explain that it was necessary to rely on the notarization of ʻudūl because censals, whose status was much like that of protégés, were liable to change their protection often. "Today the protégé of one power, tomorrow he can be under Moroccan jurisdiction, which only recognizes deeds [drawn up] by ʻudūl. What would happen to the owner of a deed of guarantee that was drawn up by a consulate in such a case?" In other words, Collombe was essentially admitting that notarization in the chancellery of a consulate was potentially useless given the reality of law in Morocco, where individuals regularly moved among consular and local jurisdictions. He also emphasized practice, noting that consular courts had consistently relied on legal documents notarized by ʻudūl without questioning their validity for at least as long as he could remember. In the end, Collombe's reasoning prevailed, and Fatmi was forced to pay Bendahan what he owed according to the Islamic bill of debt.[86] By this point, consular court officials had so thoroughly adopted the practice of notarization by ʻudūl that it became unthinkable to "contest the legality" of such deeds.

Consular courts also came to rely on ʻudūl to notarize oral testimonies in criminal cases. The standard procedure for presenting oral testimony in consular courts was to have a legal official from the witness's nationality notarize the document. That is, a Spanish subject would record his testimony before a Spanish consul, a French subject before a French consul, etc. Muslim Moroccan subjects normally testified before ʻudūl and Jewish Moroccan subjects testified before sofrim or a beit din, or both. It was thus no surprise that in 1864, when the British subject Juan Damonte was attacked by a Muslim, a Jewish witness to the crime recorded his testimony before a beit din.[87] In a case from Essaouira involving a missing box of pearls, ʻUmar b. Muhammad al-Kasul, a Muslim Moroccan subject, testified before ʻudūl that he did not know anything about the whereabouts of the pearls.[88] Avraham Bendahan,

a British subject, swore to the same effect before the acting British vice-consul, and Bernardo Blanco, a Spanish subject, did so before the Spanish consul.[89]

But as with civil disputes, criminal cases involving defendants who were Moroccan subjects were normally tried in Islamic courts. Shari'a courts would not accept testimony unless it was notarized by 'udūl, and some Makhzan courts held to the same standards of evidence. This meant that it was in the interest of foreign nationals and protégés to have their testimony recorded before 'udūl. For instance, in 1909, the store of Judah Castiel, a Jewish Dutch protégé, was broken into. As soon as Castiel realized what had happened, he summoned two 'udūl as well as the Dutch consul. The 'udūl proceeded to record his testimony and notarized it according to Islamic law.[90] In all likelihood, Castiel chose to record his evidence before 'udūl because he suspected that the perpetrators were Moroccan subjects. If this proved true, the case would be tried in a local court, and would require evidence drawn up according to Islamic legal standards.

It was particularly common for foreign subjects and protégés to submit Islamic legal documents in support of claims that their agents had been robbed. In a case from 1882, the French subject Joseph Bensimon, a Jew from Morocco living in Marseille, reported to the French Ministry of Foreign Affairs in Paris that the store of his agent in Fez had been robbed.[91] In his missive to Paris, Bensimon included a legal document signed by 'udūl recording the testimony of the night guard who witnessed the theft. Some Jewish protégés covered all their bases by notarizing the testimony of witnesses with both 'udūl and sofrim. Ya'akov Siboni, a French protégé, employed this strategy when trying to prove his claim that he was robbed; as supporting evidence, he presented a deposition notarized by 'udūl and another one notarized by sofrim to the French ambassador.[92]

Consular officials also adapted to local legal norms in more informal ways. Most embraced the practice of appealing to the Makhzan when it proved impossible to resolve legal disputes at the local level. As we saw in Chapter 4, Moroccans who found that they were unable to resolve their legal disputes through local channels—whether concerning unpaid debts, theft, or murder—regularly wrote to the central government asking for the sultan's intervention on their behalf. Needless to

say, protégés, too, were often unable to collect debts or indemnities for crimes through local institutions and found themselves in need of the Makhzan's intervention. As more and more Moroccans acquired patents of protection, it became standard for consuls to take up the role of intermediaries between protégés and the central government. Consular officials' daily schedules were very often filled with writing letters to the sultan demanding that the Makhzan exert itself on their protégés' behalf. Most commonly, consuls asked the sultan to force Moroccan subjects to settle the lawsuits brought against them by protégés—mainly the payment of debts or indemnities for theft.[93]

Our very own Shalom Assarraf took ample advantage of this practice. In 1884, Shalom wrote to Felix A. Mathews, the American ambassador, concerning debts he was owed by a number of Muslims in Fez.[94] Mathews wrote to Mawlay Hasan with a list of the debtors, requesting the Makhzan's intervention on his protégé's behalf. Mawlay Hasan then wrote to two Makhzan officials. He ordered them to find the recalcitrant debtors and arrest those who refused to pay, as well as determine which debtors were bankrupt and document their inability to pay according to Islamic law. Local Makhzan officials proved quite efficient at rounding up Shalom's debtors. A man named 'Abdallah b. Ahmad gathered a number of Jewish merchants—in the presence of two 'udūl, presumably to record the proceedings—and asked them to help locate the missing debtors.[95] Soon Ya'akov Assarraf (Shalom's eldest son) identified the neighborhoods where the debtors lived. 'Abdallah then summoned the leader of each neighborhood (known as the *muqaddam*) and charged them with locating the missing debtors—all twelve of whom either were found in Fez or had their property identified and confiscated. Clearly Shalom had done well to have the American consul contact the Makhzan on his behalf.[96]

In writing to the sultan concerning their protégés' legal claims, consuls took on a role somewhere between personal advocate and judicial official. Most importantly, they more or less adopted the strategies used by Moroccans in dealing with legal disputes—albeit with far more influence and leverage than the vast majority of Moroccan subjects could wield. This sort of correspondence between consular officials and the Makhzan concerning individual cases not only emerged quite organically out of local legal practices. Consular officials consumed much of

their time and energy writing numerous appeals that were very much in the local, personalized mode of the Moroccan legal system.

The spread of consular courts in Morocco disrupted the hierarchy that had previously characterized interactions among the country's multiple legal forums. The increasing military might of foreign nations gave consular officials a new kind of power with which to usurp local structures of legal authority. This does not mean that consular courts simply replaced Islamic law at the top; on the contrary, the fact that consular officials came to rely on notarization by ʻudūl shows that the various legal institutions operating in Morocco were too intertwined to fit within a straightforward pecking order. Even if to some extent sovereignty in Morocco had become divided due to the spread of extraterritoriality, neither the authority of the Moroccan state nor that of its legal institutions had been completely usurped.

MOROCCAN COURTS CONFRONT IMPERIALISM

The ʻudūl and qadis in nineteenth-century Morocco for the most part continued to produce legal documents and adjudicate disputes in the same way they had before European imperialism burst onto the North African scene. But even Muslim legal officials—generally vanguards of tradition—found that they needed to adapt to the increasingly international nature of law in Morocco. The spread of consular protection and the growing number of foreigners doing business in Morocco meant that more and more individuals who used the services of shariʻa courts also had access to an alternative legal order (or orders) beyond the reach of the Makhzan. Shariʻa courts adapted accordingly in the hopes of managing how individuals with extraterritoriality engaged with Islamic law.

The most vexing challenge to the functioning of shariʻa courts was the newfound ability of many Moroccans to bring litigation before consular courts. Starting in the 1880s, ʻudūl added a new clause to many of the documents they produced in an effort to keep litigation within the system of shariʻa courts.[97] Although the formula varied, the most common version stipulated that a given party to the contract "would not claim protection, and if the matter goes to trial, then it will fall under the jurisdiction of the shariʻa court."[98] "Claiming protection" in this context meant bringing a case before a consular court. This clause first appears in legal documents from 1880; by 1883 the clause had become

widespread, and was added to the majority of Jews' bills of debt.[99] To return to the months-long lawsuit between Shalom and Zaynab, this clause might offer a clue as to why Zaynab was able to sue Shalom in a shari'a court even after he acquired American protection (although we do not have the original bills of debt to confirm this hypothesis).[100] Whether or not the protection clause succeeded in keeping disputes confined to shari'a courts is unclear, though given the extensive forum shopping in which Moroccans engaged it would be surprising if the clause was universally respected. Yet the effectiveness of the clause is somewhat beside the point; its introduction signifies the extent to which shari'a courts adapted to the changes brought about by the spread of consular protection.

The attempt to keep disputes under the jurisdiction of qadis stemmed from a deep distrust of consular courts and, more broadly, of the increasing influence of foreigners on Moroccan society. Their qualms were largely a reaction to the blatantly imperial overtones of consular protection; Moroccans knew their country was in danger of being colonized like neighboring Algeria, and feared the political consequences of the unchecked growth in the numbers of protégés.[101] From a legal point of view, jurists were dismayed that Muslims would voluntarily submit themselves to a law other than that of Islam and wrote fatāwā condemning those who accepted the protection of a foreign power.[102] This disapproval had real consequences. After 1877, Muslims who had acquired foreign protection could no longer serve as 'udūl.[103] Being a protégé became in some ways equivalent to being a woman, a slave, or a Jew—all people who were ineligible to act as witnesses.

The distrust of foreigners had a profound if somewhat different effect on Muslims' perception of Jews. On one hand, Jews' acquisition of consular protection did not pose the same theological challenges as did that of Muslims, since they were not expected to live their lives according to Islamic law anyway. Nonetheless, Jews were also affected by the 'ulamā's disapproval of consular courts. Muslims were well aware that Jews in particular sought out consular protection and used it to their advantage. This knowledge was partially responsible for a growing belief among some that Jews had sided with the enemy.[104] This is, of course, a much larger question, but for our purposes it is significant that Jews' disproportionate access to consular courts—and thus their outsized ability to forum shop among Morocco's various legal orders—came at a cost.

As foreign protection became increasingly associated with European imperialist ambitions, ʻudūl and qadis across Morocco developed qualms about facilitating the legal and commercial endeavors of protégés. This discomfort stemmed largely from the belief that foreign subjects and protégés were to blame for Morocco's economic and political problems.[105] ʻUdūl and qadis expressed their opposition to the growing influence of foreign states on Moroccan internal affairs by refusing their legal services to individuals with extraterritoriality. We must keep in mind that this refusal incurred financial losses; when ʻudūl and qadis declined to notarize the legal documents of protégés, they gave up legal fees that constituted their main source of income. By limiting the legal venues in which foreign subjects and protégés could adjudicate, Moroccan legal officials attempted to disrupt the commercial world dominated by those with extraterritoriality—and thus, in a small way, the political influence they wielded.

Although there was never a coordinated attempt among Moroccan judicial officials to refuse their services to foreign subjects and protégés, this strategy of resistance first crystallized during the short-lived attempt at establishing a Moroccan Mixed Court in 1871–72. The Mixed Court, composed of a panel of consular officials called the International Mixed Commission and an adjudicative body called the Moroccan Tribunal, was intended as a temporary measure to address a rash of unpaid debts owed to foreign nationals and protégés. The International Mixed Commission first examined and recorded the evidence supporting creditors' claims. From October 1871 to January 1872, twenty-three foreign subjects and protégés brought a total of 149 documents as evidence of the debts they were owed. The commission carefully noted which documents were notarized by ʻudūl and countersigned by a qadi, and which were merely informal bills of debt signed only by the debtor.[106] For instance, on October 12, Isaac Benzacar, a Jew with American protection, presented three bills of debt attesting a total of 11,400 napoleons and 36,000 "ducados morunos" that he was owed by the governor Abd el Selam Ben Haman el-Abdi.[107] Although Abd el Selam had signed these documents, none of them had been notarized by ʻudūl. When Benzacar presented his case to the Moroccan Tribunal (which was entrusted with ruling on the claims examined by the International Mixed Commission), Ibn Suda, the tribunal's president, refused to accept the bills of

debt as evidence. Ibn Suda observed that "the documents presented in this session lack the requirements of the shari'a, that is, the seal and signature of the governor Haman are not legalized by two 'udūl, whose signatures in turn should be legalized by a qadi."[108] Nor was Benzacar the last protégé to have this problem. Faced with Ibn Suda's refusal to recognize contracts lacking the signatures of 'udūl, the consuls agreed to a three-month pause in the proceedings in order to give plaintiffs enough time to have their informal contracts properly notarized.[109]

However, when the Moroccan Tribunal reconvened, it soon became clear that very few creditors had been successful in their efforts to notarize their bills of debt. Bernardino Borras, a Spanish subject, made the following remark to the International Mixed Commission: "Mister President: the legations and consulates in Tangier have learned from the agents on the coast that it is not possible to obtain any kind of legalization [of documents]. All of us who have reclamations have tried to do so in vain."[110] The difficulty of obtaining notarizations by 'udūl—along with a number of other complaints about the conduct of the Moroccan Tribunal—led the consular officials participating in the Mixed Court to pull out of the effort entirely.[111] After only four sessions, they declared that it was impossible "to obtain justice in the court appointed to resolve these claims."[112] On July 12, 1872, the consuls wrote a joint declaration explaining why they refused to continue their participation in the Mixed Court.[113] The consuls clearly recognized the necessity of notarizing legal documents before 'udūl; what they objected to was the near impossibility of actually notarizing legal documents given the resistance posed by 'udūl and qadis throughout Morocco.

After the Mixed Court experiment, Moroccan legal officials' resistance to facilitating the legal and commercial endeavors of foreign subjects and protégés only intensified. Foreign subjects, protégés, and consular officials continued to complain that they were unable to obtain notarization by 'udūl or the countersignature of qadis.[114] For instance, in 1889 the qadi of Rabat refused to countersign a document concerning an Italian subject; he based his objection on the fact that the document had the seal of a Christian consul on it, to which he objected in principle.[115] The majority of foreign subjects and protégés who encountered difficulties persuading 'udūl and qadis to notarize their documents were Christians or Jews. But there were some instances in which Muslim protégés

were similarly prevented from using the services of ʻudūl. In 1899, a Muslim working as a soldier for Alfred Redman, the Dutch vice-consul in Larache, lay on his deathbed and wanted to make a will leaving some of his estate to his employer. However, when the ʻudūl discovered that the testament was in favor of a Christian, they refused to draw up the legal document.[116]

By 1891, the Makhzan lent official support to the spontaneous resistance of local judicial officials. Mawlay Hasan issued an order forbidding ʻudūl and qadis to notarize the documents of foreign subjects and protégés without the express permission of their local governor. Unsurprisingly, consular officials objected to this policy, claiming that it went against the treaties governing relations among Morocco and foreign nations.[117] In all likelihood, they were mainly concerned that this new rule would make it even harder for foreign subjects and protégés to notarize their legal documents in shariʻa courts. Yet the protests of consular officials largely fell on deaf ears; ʻudūl and qadis continued to express their resistance to imperialism by withholding their services from those they associated with the colonial threat.

Muslim judicial officials naturally perceived extraterritoriality as a menace to their authority. Locally, ʻudūl and qadis saw forum shopping between shariʻa and consular courts as potentially undermining their ability to enforce their judicial rulings. They attempted to control this forum shopping by adding clauses requiring individuals with protection to forgo their access to consular courts. Nationally, the Makhzan understood the spread of protection as one tool in the imperialists' chest; extending their sovereignty over the sultan's subjects offered Western powers a way to expand their influence, both over individuals and over the internal affairs of the Moroccan state. While extraterritorial privileges were by no means the only precursor to the colonization of Morocco in 1912, they constituted an important stalking horse for the establishment of the Spanish and French protectorates.

Yet viewing the spread of extraterritoriality and consular courts as they affected politics from above misses the far less one-sided story that emerges from below. At the level of legal institutions on the ground in Morocco and the individuals who frequented them, consular courts were folded into a pluralist legal order that included Jewish courts,

shari'a courts, Makhzan courts, and even the Ministry of Complaints. Legal consumers—especially Jews—moved back and forth among all these institutions. And consular court officials adapted to this movement by adopting local practices, most significantly the notarization of documents by 'udūl. In other words, on the ground in cities like Tangier, where Moroccans could adjudicate before dayyanim, qadis, Makhzan officials, and consular officials, extraterritoriality was not only a set of privileges negotiated at the diplomatic level among foreign ambassadors and the sultan. Extraterritoriality was also a concrete—and evolving—part of the local legal scene. Even if colonization did eventually alter Morocco's legal system in fundamental ways, we must not project these changes back onto the decades before 1912. On the contrary, from the vantage of individual legal consumers, consular courts only expanded the legal pluralism that already characterized law in Morocco.

CHAPTER SEVEN

Colonial Pathos

ISSAKHAR ASSARRAF, one of Shalom's twenty-six grandchildren, was born in 1915—just five years after Shalom's death and three years after France established its protectorate in Morocco. Issakhar's family lived in the millāḥ until 1956, the year Morocco was granted independence; at this point he moved to the *nouvelle ville,* the European-style neighborhood built alongside Fez's walled city. Issakhar remembered his grandfather as a picture of a modern Jew who had embraced the West while also managing to maintain his devotion to custom and religion. Issakhar was educated in the Alliance Israélite Universelle school, like his father Moshe (Shalom's youngest son). Indeed, Moshe Assarraf was among the first pupils to enroll in the AIU school. According to family lore, he learned French so well that he could give better definitions than the Larousse dictionary. Moshe's branch of the Assarraf family was not as wealthy as that of Ya'akov, however, so Issakhar stayed in school only until the age of nine, at which point he had to start earning a living. He became a mechanic and later worked for the French army. As a young man, he was crowned a swimming champion. His blond hair and blue eyes made him look so European that his wife was at first convinced that he was a *goy,* a gentile. She married him nonetheless, and together they had seventeen children, fourteen of whom survived to adulthood.

From left to right: Issakhar Assarraf, his mother Rebecca (née Monsonego), and his brother Rafael, 1920s. (From the collection of Jacob Assaraf, used with permission)

Yet while Issakhar had a French education and gave his children French names in addition to their Hebrew ones (Zohra-Solica is also Rosette, and Yehudah—whom I met in Paris—is also called Georges), he harbored some resentment against the French colonial administrators who governed Morocco during his formative years. As a child, Issakhar experienced the anti-semitism of French police officers who accosted young Jews, grabbed them by the ears, and shouted "sale juif!" (dirty Jew) while twisting their flesh as hard as possible. These policemen, who were charged with upholding the law, instead used their position of authority to target Jews. In response, Issakhar and his friends threw rotten tomatoes at the police officers, then escaped through the millāḥ's twisting streets and disappeared into Dar Assarraf. During one of these episodes, Issakhar's friend, a boy named Zagury, was caught by one of the police officers who proceeded to twist his ear with particular brutality. Some thirty years later, in 1955—on the eve of Moroccan independence—Zagury became the public prosecutor for the king; his first act was to find the police officer who had treated him so harshly three decades earlier. Zagury handed the officer over to the Moroccan officials and declared that they could have their way with him. When the perplexed officer asked why he was being punished, Zagury explained that he was the boy whose ear had suffered many years ago in the millāḥ of Fez.[1]

This story hints at the ways in which French rule left many Moroccan Jews feeling that the foreigners who before 1912 had professed to be their champions not only disappointed them, but introduced new kinds of hardship into their lives. Naturally, not all Frenchmen in colonial Morocco used their authority to abuse Jews, and we should be wary of reading this tale as a reflection of how most Jews experienced life under colonial rule. Nonetheless, the symbolism of French police officers who purported to uphold justice and the rule of law, yet turned out to be

nothing more than prejudiced brutes, is powerful. It suggests that for Issakhar Assarraf, at least, the memories he considered worth passing down to his children were not of a benevolent France swooping in to save Moroccan Jews. Rather, his recollections of colonialism included suffering humiliation and racism at the hands of the French.[2]

Issakhar's stories about the colonial era must also be understood as part of a broader transformation in the nature of law in Morocco. In 1912, France declared a protectorate over most of present-day Morocco, and Spain established its own colony in the north.[3] French officials almost immediately took control of the major urban centers where most Jews were concentrated. However, the full "pacification" of Morocco took decades; it was not until the 1930s that some rural areas finally submitted to colonial rule.[4] Similarly, the full effect of French legal reforms took decades to sink in; it was also in the 1930s that most Jews and Muslims came to systematically respect the new rules governing Moroccan legal institutions.

In establishing a protectorate, the French claimed they were preserving the state and society they encountered while also bringing Morocco into the modern world. Rather than follow the path taken in Algeria, the Moroccan Protectorate hewed more closely to the model France had created when it colonized Tunisia in 1881.[5] Hubert Lyautey, Morocco's first resident general (from 1912 to 1925), was particularly intent on maintaining at least the appearance of the "traditional" Morocco alongside the changes introduced by the colonial regime's modernization efforts.[6] Superficially, the legal system established by the French hewed to the institutions that had existed before the Protectorate; Jewish courts, shari'a courts, and Makhzan courts continued to share jurisdiction over Moroccan subjects.

But the appearance of continuity was largely an illusion. French colonial authorities held nearly all the political power, and their far-reaching reforms made 1912 a rupture unlike any the country had experienced for centuries.[7] Colonial legal reforms were premised upon French scholars and administrators' understanding of the pre-colonial Moroccan legal system. Coming from the country that invented the civil code, the French perceived law in Morocco as a chaotic and unruly affair. Colonial authorities thought legal reforms were necessary to govern Morocco effectively, since the imposition of sovereignty depended on a strong, centralized legal system. Many colonial officials also genuinely believed that fulfilling

the call of the mission civilisatrice required reforming Moroccan institutions to make them more modern. Like Western imperialists across the globe, the French identified law as one of the most backward aspects of the pre-colonial state.[8] Nor was France alone in claiming to preserve "traditional" legal institutions, while in fact producing radically new kinds of law; indeed, this too was a pattern repeated across colonial contexts.[9]

The French not only imposed new procedural law on Morocco's legal orders, they worked to put an end to the overlapping jurisdictions and forum shopping that had characterized law in Morocco for decades if not centuries. The implementation of legal reforms proceeded gradually; at first, Jews and Muslims failed to understand the new contours of each institution's competence, or deliberately ignored the rigid jurisdictional boundaries. Eventually, however, the changes took root; by the 1930s, the French had largely succeeded in preventing individuals from moving across jurisdictional boundaries. Even more than other reforms, it was the hardening of the divisions among jurisdictions that transformed how Moroccan legal consumers experienced law.[10]

These heightened jurisdictional walls helped to reify the divisions separating Jews and Muslims. Whereas law had previously served as a vector of economic and even social integration for Jews, it increasingly came to be used to delineate the two faiths into hermetically sealed groups. Across the globe, European colonial administrators used law to impose fixed tribal, ethnic, and racial identities onto societies that were previously far more fluid, as part of an effort to "define and rule" their native subjects. The reification of divisions between Jews and Muslims in Morocco is not an exact parallel to the creation of new tribal, racial, and ethnic administrative categories. Whereas the "tribe as an administrative entity . . . did *not* exist before colonialism," religion, on the other hand, *was* the basis of administrative distinctions between social groups in pre-colonial Morocco.[11] Yet even if the differences between Jews and Muslims were not invented by French administrators, they were fundamentally transformed by colonial legal reforms.

For Jews in particular, the success of the reforms involved a certain amount of pathos, restricting their legal mobility and putting them in what was in many ways a worse legal position. Jews found the negative

impacts of colonial legal reforms particularly deceptive because colonization was so often justified as a way to improve the lot of religious minorities.[12] Like so many colonial regimes, the French fell short of their stated goals of saving religious minorities from oppressive native rulers.[13] Issakhar Assarraf's negative memories of French colonial authorities are by no means a perfect reflection of Jews' experience in Protectorate-era legal institutions. Nonetheless, his antipathy toward the policemen who twisted his ear and called him a "dirty Jew" echoes the sour taste that French rule left in the mouths of many Moroccan Jews—a taste that originated, at least in part, in legal institutions.[14]

MOROCCAN LAW THROUGH FRENCH EYES

French administrators arrived in Morocco full of ideas, assumptions, and stereotypes that shaped their approach to establishing colonial rule. Many of these preconceptions stemmed from the broader Maghribi context—in large part because a number of French administrators in Morocco were transferred from posts in Algeria and Tunisia. Their perceptions of Morocco also came from the rather extensive studies conducted by French scholars before 1912. This research formed part of France's policy of "peaceful penetration" (*la pénétration pacifique*), which sought to lay the groundwork for colonization through scholarship, commerce, and education. The functioning of the Moroccan legal system was a subject of great interest to French scholars of Morocco, and a number of publications before 1912 sought to explain how law worked.[15] French observers concluded that Moroccan institutions were desperately in need of reorganization. This approach shaped colonial reform during the early years of the Protectorate; the French saw themselves as responsible for instilling order and rationalizing the Moroccan state.[16]

French observers generally regarded the practice of law in Morocco as chaotic and fundamentally unjust. A. Péritié began his study of the Moroccan legal system by describing the country's judicial institutions as being "in a state of anarchy"; he decried the absence of centralization and the Makhzan's limited ability to control judicial proceedings at the local level.[17] A number of observers also viewed corruption as a major obstacle to justice in Morocco. In his study of Moroccan law published in 1900, Albert Maeterlinck asserted that bribery was rife in shari'a

courts; he claimed that the most popular type of bribe was to give the qadi cones of sugar—an increasingly popular and relatively expensive imported staple that Moroccans used to sweeten their mint tea.[18] According to Maeterlinck, bribes of sugar were so common that the standard weight of a cone of sugar was reduced from three pounds to two in order to relieve some of the financial pressure on litigants. The nature of legal proceedings in Makhzan courts horrified French observers even more. Péritié wrote that Makhzan courts were characterized by "cupidity, injustice, and extortion" and that the "justice" meted out by governors was "arbitrary by nature."[19] Jewish courts were also regarded as suffering from a lack of oversight and a tendency to arbitrariness.[20]

These authors noted the lack of a strict organization separating different legal orders in Morocco. Yet they nonetheless assigned divisions of jurisdiction among Morocco's various types of courts that were largely, if not totally, fictional. Before the Protectorate, European observers tended to conclude that Makhzan tribunals were entirely responsible for criminal cases as well as for most commercial matters (especially unpaid debts).[21] Shari'a courts, many believed, handled only cases concerning personal status, inheritance, and real estate. As we have seen, shari'a courts in fact adjudicated a much wider array of cases, including criminal and commercial matters that also fell under the jurisdiction of Makhzan courts. Similarly, Jewish courts were believed to handle personal status and inheritance, and only among Jews; the possibility that Muslims would attend a Jewish court entirely escaped the vast majority of French observers.[22] This reified understanding of the jurisdictional boundaries existing in nineteenth-century Morocco became more prevalent over time; descriptions of pre-colonial law written during the Protectorate almost invariably asserted that a strict division of jurisdictions had characterized law before colonial rule.[23] This misunderstanding of Moroccan law meant that Protectorate authorities believed their reforms were merely preserving the competence of Morocco's various legal orders. In reality, however, they introduced rigid jurisdictional boundaries that had not existed before.

In addition to preserving indigenous legal institutions as far as possible, French authorities believed it was their mission to save Jews from what they perceived to be the inherent discrimination of Islamic law.

The understanding of Jews as victims of a fundamentally biased legal system had its roots in European perceptions of the Islamic world; in the nineteenth century, many diplomats argued that the mistreatment of Jews (and other non-Muslims) justified the spread of consular protection as a means of combating Islamic injustice, and as a justification for colonization.[24] Now that the French were in charge in Morocco, they saw it as their humanitarian duty to save Jews from Islamic discrimination.

And sure enough, the French repeatedly congratulated themselves on having lifted Moroccan Jews out of their state of inferiority. As early as 1916, an official high up the bureaucratic ladder wrote a memo to Lyautey, the resident general, declaring that the Protectorate had made Jews and Muslims equals.[25] Lyautey echoed this statement two years later in a circular he sent to the regional captains ("commandants de régions") stationed all over Morocco.[26] Early in the tenure of Theodore Steeg (who succeeded Lyautey as resident general from 1925 to 1929), the colonial administration was presented with an anonymous note concerning the "Jewish question" in Morocco. The note began:

> When we arrived in Morocco, we found a population of Jews in the cities that was in a state close to slavery, confined to their millāḥs and suffering from extortion of all kinds, both by the Makhzan authorities and by the Muslim population—as well as, at times, from looting. Not only did we stop this situation, but moreover, the Protectorate devoted itself to improving the moral, material, and social condition of the [Jewish] communities through steady action.[27]

The reforms undertaken on behalf of Jews were seen as the triumph of the republican principle of *égalité* over Islamic intolerance, and French officials waxed eloquent about their exemplary humanitarianism.

Yet the French rhetoric about "improving the moral, material, and social condition" of Jews did not actually involve a declaration of equality between Jews and Muslims. In keeping with their policy of maintaining continuity with pre-colonial practices, the French never formally abolished the dhimma, which had provided the legal framework for Jews' status in the Islamic world for over a millennium.[28] The colonial

administration did abolish most of the legal restrictions associated with the dhimma, such as the payment of the jizya—the special poll tax levied on dhimmīs—and limitations on the building of synagogues, clothing, and so on. And the French Protectorate authorities themselves recognized that the dhimma existed in name only; the premise of the dhimma was that Jews were under the special protection of the sultan, but France's monopoly of violence in Morocco meant that French officials—and not the sultan—were ultimately the masters of Morocco's Jews.[29] Nonetheless, the French refused to declare the dhimma a dead letter. Moreover, colonial administrators were very clear that Moroccan Jews would be considered *indigènes* (natives) alongside Muslims. This was a policy instituted largely in reaction to the situation in Algeria, where the vast majority of Jews had been made French citizens in 1870.[30] Many Jews and Jewish organizations, especially the AIU, lobbied hard for the Moroccan Jewish community to be naturalized en masse like their Algerian coreligionists, but to no avail.[31] The wisdom among French colonial officials in Algeria and Morocco was that the granting of citizenship to Algerian Jews had been premature and had convinced Algerian Muslims of France's preferential treatment of Jews.[32]

French policies toward Jews stemmed from a tension that was fundamental to the mission civilisatrice. On one hand, French authorities prided themselves on introducing universal humanistic values to a deeply hierarchical society; in so doing, they believed they were particularly benefiting the religious minorities who were relegated to a subordinate status under Islamic rule. On the other hand, the French wanted to maintain indigenous legal structures intact, rather than risk imposing reforms too quickly on a population that was either not yet civilized enough, or, in a more extreme version, incapable of being civilized.[33] The French did not want to create a new legal distinction between Jews and Muslims like the one that existed in Algeria. That regretted decision had both emancipated a Jewish population that was deemed not yet ready for citizenship and infuriated a Muslim majority who perceived Jews as benefiting from preferential treatment.[34] The set of legal reforms undertaken during the first decade of colonial rule mirrored this tension between preservation and improvement. The outcome, although clearly related to the ways in which law functioned in pre-colonial Morocco, was a radically altered system of law.

REFORMING MOROCCO'S LEGAL INSTITUTIONS

French authorities lost little time in reorganizing the Moroccan legal system. The first order of business was to institute a clear separation between legal institutions for foreigners—French subjects as well as other Westerners—and those for indigènes, both Jewish and Muslim. This kind of division was echoed in other parts of the colonial project in Morocco, such as the building of "nouvelles villes" (new cities) intended primarily for Europeans next to, but separate from, the existing urban centers where most Moroccans resided (now referred to as "medinas").[35] Administratively, this division led to two separate structures, one overseeing French law and the other overseeing indigenous, or "sharifian" law ("chérifien," referring to the 'Alawi dynasty's status as *shurafā',* descendants of the prophet Muhammad). The dahirs (royal decrees, from the Arabic *ẓahīr*) of August 12, 1913, introduced a comprehensive legal code regulating the new system of French courts.[36]

In order to consolidate their authority, the French abolished the system of capitulations. Protectorate authorities set about negotiating with Western powers to give up the extraterritorial rights that had so severely compromised the sultan's authority during the decades before colonization. Whereas this process had caused considerable difficulty in Tunisia, the precedent set there made it relatively easy to place those foreigners who had previously enjoyed extraterritoriality under the jurisdiction of French courts. Nonetheless, Britain and the United States refused to give up extraterritorial rights for their subjects: Britain only relinquished them in 1937, while the United States held out until Moroccan independence. The end of the capitulations spelled the end of nearly all consular courts—and an abrupt reduction in the number of legal orders operating simultaneously in Morocco.[37]

Yet in maintaining a separate legal order for French and foreign nationals, colonial authorities were also keen to instill a strict hierarchy between "Europeans" and "natives." This meant abolishing the system of protection—through which most Jews had gained access to consular courts. Moroccans who had previously been protégés of a foreign nation were stripped of their consular protection; only those who were foreign *nationals* (as opposed to protégés) had access to the new French courts. Even the British and American consular courts that survived only had jurisdiction over cases among their respective subjects. Had Shalom

survived into the colonial period, he would have been stripped of his American protection and denied access to the consular courts. His numerous coreligionists with protection were similarly excluded from the new French courts. The abolition of protection was particularly meaningful for Jews; most Jews who had gained access to consular jurisdiction did so through protection, not nationality. Not only was the number of legal orders operating in Morocco reduced, but the ranks of Moroccan Jews under the jurisdiction of Western courts were slashed.

The introduction of the French courts meant that the vast majority of Jews fell under the jurisdiction of "native" courts—which included Makhzan courts, shari'a courts, and batei din.[38] These, too, were transformed through a series of laws passed in two stages; the French authorities drafted most of the dahirs concerning Makhzan and shari'a courts before World War I, and reformed Jewish courts in 1918. While minor reforms continued to be introduced in the following years, the broad outlines of the new legal institutions were in place by the beginning of the 1920s.

French colonial authorities first tackled the Makhzan courts presided over by governors. A circular dated January 8, 1913, defined the jurisdiction of Makhzan courts as including minor criminal cases.[39] Most civil and commercial cases also fell under the jurisdiction of local Makhzan courts—except those concerning personal status, succession, and real estate, which were relegated to the shari'a courts.[40] For major crimes like homicide, rebellion against the government, armed robbery, and rape, the French authorities instituted a "Medjless criminel"—a sort of high criminal court.[41] The Makhzan courts had jurisdiction over all indigènes, Jews and Muslims alike. Civil, commercial, and criminal cases involving French subjects or foreigners were relegated to French courts, even if a Moroccan subject was also concerned.[42]

In their attempt to walk the fine line between preserving indigenous Moroccan institutions and introducing comprehensive reforms, the French at first refrained from dictating either the procedure or the laws that applied in Makhzan courts.[43] Only in 1918 did the French impose a set of procedural rules on the tribunals presided over by governors, "such as one would expect from a real court." Governors were required to keep written records of their rulings in official registers. They also introduced the possibility of appeals, which were sent to the

"Haut Tribunal Chérifien"—a High Sharifian court that replaced the Medjless Criminel.[44] But even the reforms introduced in the summer of 1918 did not change the content of the laws applied by Makhzan courts. These continued to be determined by the judges themselves according to custom and their own sense of justice.[45]

Shari'a courts underwent even more dramatic reforms. The dahir of July 10, 1914, was far more detailed than any legislation concerning Makhzan courts; it introduced strict rules of procedure and record keeping. The dahir required litigants to follow procedures that partly reflected those practiced in pre-colonial shari'a courts, but it also involved new regulations that were totally unfamiliar to most Moroccans. Shari'a courts were required to keep six different types of registers—a significant departure from pre-colonial practice.[46] Eventually certain qadis had to take an exam to ensure they were competent interpreters of Islamic law.[47] In 1921 the Protectorate authorities created a "Tribunal d'appel du chrâa" (Shari'a Court of Appeal), which sat in Rabat and heard appeals of rulings delivered by shari'a courts.[48]

The dahir of 1914 also redefined the role of 'udūl. Like qadis, 'udūl were required to keep detailed registers of the legal documents they drew up. The Protectorate authorities reserved the right to limit the number of 'udūl in order to better oversee their activities and combat corruption. The rates that 'udūl could charge for different types of documents were fixed, a departure from the previous system by which 'udūl had negotiated with their clients based largely on the latter's ability to pay.[49] While 'udūl maintained their role as the only Muslim notaries public—and thus continued to be responsible for drawing up all types of legal documents, for both Muslims and Jews—they no longer functioned with the nearly complete autonomy they had enjoyed before 1912.

The French also instituted limitations on the jurisdiction of the shari'a courts. Whereas previously shari'a courts heard all kinds of civil cases and even some criminal cases, the Protectorate authorities considerably shrank their jurisdiction. They restricted the competence of shari'a courts to family law, succession, and real estate. Based both on an erroneous understanding of the pre-colonial Moroccan legal system and a desire to introduce strict boundaries among jurisdictions, colonial reforms reduced shari'a courts to a shadow of their former selves. The colonial regime's decision to confine the jurisdiction of shari'a courts to

matters of personal status—a category alien to Islamic law as it developed through the early modern period—reflects a trend that swept much of the Islamic world starting in the nineteenth century.[50]

French authorities also imposed an elaborate system of oversight to monitor and, ultimately, control the functioning of these institutions, despite their claims to be merely acting alongside Moroccan courts. Colonial reforms stipulated that a *contrôle* must be exercised over both shari'a and Makhzan courts, meaning a system of "inspection" that implied careful and constant review of these courts' functioning. In Makhzan courts, each governor was assigned a "commissaire" who was expected to attend most if not all judicial hearings and who had the power to appeal rulings he believed were flawed.[51] Oversight of shari'a courts was somewhat less intensive; the Ministry of Justice appointed a delegate whose job was to inspect the registers of shari'a courts and to report any suspicious documents or rulings to the Minister of Justice, as well as to act as a conduit for complaints against shari'a court personnel.[52] Although these delegates had the right to be present at trials, they mostly limited themselves to checking the shari'a court registers for irregularities.[53] While governors and qadis theoretically maintained their judicial authority, the reality—as with the Protectorate more generally—was that French officials had the final word.

Above and beyond the supervision that French authorities exercised over Makhzan and shari'a courts, they also tried to ensure that the Moroccans working in these courts were appropriately supportive of French rule. Protectorate officials exchanged correspondence about nearly every judicial appointee, at the heart of which was an evaluation of their attitudes toward the Protectorate. Some judges were lauded as being particularly pro-French—a position that could earn them not only praise and confidence, but also a raise.[54] Others were removed from their posts because they were viewed as having the wrong attitude toward French rule.[55] Whereas before 1912 the sultan appointed governors and qadis he deemed both qualified and loyal, during the Protectorate the French chose judicial officials based on their devotion to the colonial regime.

After World War I, French officials set about reorganizing Jewish legal institutions. On May 22, 1918, the Protectorate issued a dahir that introduced a new system of rabbinic courts and Jewish notaries. The jurisdiction of rabbinic courts was curtailed even more than that

of shari'a courts; rabbinic courts were competent to rule only in cases among Jews which concerned personal status or succession. Whereas before the Protectorate, batei din had the right to rule on all civil and commercial cases among Jews, the new rabbinic courts were limited to disputes regarding marriage, divorce, custody, and inheritance. In addition to having their competence restricted, the number of rabbinic courts was slashed. Whereas before 1918 most cities had boasted a functioning beit din, the French authorized only four (in Casablanca, Fez, Marrakesh, and Essaouira; a court in Meknes was added in 1923). In other cities and in rural areas they appointed "delegate rabbis" (*rabbins délegués*), who provided the services of a notary (sofer) and could act as an arbiter in minor cases. But the delegate rabbis were not permitted to adjudicate formally, so Jews in places without a rabbinic court were forced to travel to the nearest major city if they wanted to bring their dispute before a dayyan—an inconvenience many resisted.[56]

As with shari'a and Makhzan courts, the French refrained from dictating the laws that should apply in rabbinic courts. They did, however, make demands concerning the procedure to be followed and the archival practices of the court. Each court included a clerk among its personnel who was responsible for keeping careful records of the proceedings. Rulings had to be written in Hebrew—a departure from the tradition of writing judgments in a combination of Hebrew, Aramaic, Judeo-Arabic, and/or Judeo-Spanish. Perhaps most importantly, the system of appeals was streamlined: cases could be appealed only to the Haut Tribunal Rabbinique (high rabbinic court) in Rabat, rather than to almost any other beit din or to a council of rabbis, as was common before the Protectorate.[57]

Protectorate authorities also wholly revamped the functioning of sofrim. Whereas Jewish notaries had practiced entirely independently before 1918, they were now appointed by the Grand Vizier and their numbers were limited. They were required to keep careful records of all the legal documents they drew up, and these registers were to be verified by the president of the rabbinic court. As part of the rationalization of the courts, exams were administered to certain rabbis and notaries to determine whether they were adequately knowledgeable about Jewish law to perform their duties. A list of fees for drawing up different documents was promulgated in order to ensure that Jewish notaries were paid a fixed rate for their work, as opposed to negotiating the price as

they had done before. Curiously, the range of documents included in the schedule of fees went far beyond the jurisdiction of rabbinic courts; not only were sofrim expected to draw up marriage contracts and bills of divorce, but they were also empowered to produce bills of sale, partnership contracts, bills of debt, and documents attesting real estate transactions. The disparity between the jurisdiction of rabbinic courts and the competence of sofrim proved to be a source of confusion and controversy for years after the initial reforms of the Jewish legal order were completed (discussed below).[58]

Finally, the French authorities assigned officials to oversee the functioning of rabbinic courts.[59] Although the supervision of rabbinic courts was quite minimal in comparison with other Moroccan legal institutions, each court was nonetheless required to submit a list of its rulings to the Grand Vizier every month.[60] Yet the fact that these summaries were written in French indicates that the true oversight of the functioning of the rabbinic courts lay with the Protectorate authorities, not with the office of the Grand Vizier (which worked in Arabic).[61] But unlike their approach to Makhzan and shari'a courts, French authorities did not seem as concerned about whether the personnel of the rabbinic courts were loyal to the Protectorate. Discussions about nominating functionaries of the court focused on whether these individuals were honest and knowledgeable about Jewish law, not whether they had the right attitude toward French rule.[62] French authorities for the most part perceived Jews as marginal figures with little political power, which made their loyalty to the Protectorate less important. Moreover, most colonial officials believed Jews to be friendlier to the French cause in general.[63]

PLUS ÇA CHANGE . . .

There is little question that the French succeeded in introducing a radically new structure to Morocco's legal system, despite their claims of preserving Moroccan institutions. The Protectorate authorities asserted that they had largely succeeded in rationalizing law in Morocco, eliminating the chaos that had previously characterized the country's multiple jurisdictions and rooting out corruption and injustice from the legal system. But while the French did eventually transform the functioning of Morocco's legal orders, this was not accomplished overnight. During the early years of colonial rule, individuals continued to practice the

legal strategies they had honed during the nineteenth century, even when doing so contravened the new rules imposed by French officials.

The most important innovation introduced by French reforms was the imposition of strict jurisdictional boundaries separating different types of courts. As we have seen throughout this book, the Moroccan legal system during the nineteenth century was characterized by significant overlap among different legal orders; in addition to the common practice of jurisdictional boundary crossing, the lines demarcating the competence of shari'a versus Makhzan courts were fuzzy at best. In attempting to introduce rigid lines separating jurisdictions, the French reforms significantly curtailed the competence of both shari'a and rabbinic courts and expanded that of Makhzan courts.

Yet it took some years for Moroccans to comprehend the new regulations and consent to follow them. Some qadis never understood that their jurisdictions had been severely limited and continued to assume that they were competent to hear a wide range of civil, commercial, and even criminal cases.[64] Others were clearly resentful of the French attempts at reform. After only four years of French rule, a qadi in Mediouna (a town just outside Casablanca) found the steady stream of legislation too much:

> I have exercised judicial functions for more than twelve years, first as an *'adl* and later as a qadi. And for some time now there has been nothing but reforms, registers to maintain, [and] new laws to apply. I am not young and I feel tired. I do not want to drown in work, so I submit my resignation.[65]

Although this qadi claimed to object to the constant reforms—for which he felt too "tired"—it is possible he also harbored substantive opposition to the French overhaul of law in Morocco. Most of the time we do not know qadis' reasons for refusing to observe the new, more stringent restrictions on their jurisdictions; we can, however, imagine that many felt it was their right and even their duty to continue adjudicating all manner of cases that had previously fallen under the jurisdiction of shari'a courts.

Qadis were not the only ones who had trouble accepting the new state of affairs; individuals continued to bring civil and commercial cases that had nothing to do with personal status, inheritance, or real estate to shari'a courts—cases that technically fell under the jurisdiction of Makhzan courts.[66] What is more, Protectorate authorities recognized that this

was the case, yet felt powerless to stop it. For instance, as late as 1931, rather than attempt to prevent shari'a courts from hearing civil and commercial cases, French officials merely encouraged Moroccans to bring such matters before Makhzan courts (which they regarded as more modern and whose procedure they considered simpler and faster).[67] The persistent overlap between the jurisdictions of Makhzan and shari'a courts frustrated the central goals of French judicial reforms.

While French authorities were clear about the competence they had assigned to rabbinic courts, individual Jews found it hard to accept that the jurisdiction of their local batei din had been restricted so radically.[68] The new rabbinic court of Essaouira heard its first case on Monday, March 10, 1919; the dispute concerned Hanania ben Moïse Bouhada, who sued Moïse ben Mardochée Soltan, concerning money he was owed.[69] Hanania claimed that Moïse still owed him eight and a half *douros* for a number of skins. Moïse, on the other hand, argued that he only owed four douros. The three presiding judges arranged an out-of-court settlement (*arrangement à l'amiable,* or *pesharah* in Hebrew), the terms of which were not recorded. Yet the fact that Hanania and Moïse brought their financial dispute to the rabbinic court in the first place violated the terms of the dahir reorganizing rabbinic courts, which specified that these institutions were competent only to hear matters of personal status and inheritance. During its first week of operation, the newly reorganized rabbinic court of Essaouira heard two more such commercial cases.[70] It is not entirely clear if Jews like Hanania and Moïse brought their pecuniary dispute to the beit din because they were confused about the court's newly restricted jurisdiction, or because they refused to recognize the court's recently restricted purview.[71]

The persistence of old jurisdictional boundaries proved tenacious. In 1919, the contrôleur civil in Meknes reported that the Jews of his city "had a tendency to want to submit all their affairs to their rabbi [for adjudication], which ends up creating a state within a state."[72] Three years later, French officials reported that the rabbinic court in Fez was hearing commercial cases concerning collateral, leases, and partnership—all of which fell under the jurisdiction of the Makhzan court.[73] Even the assistance of Jewish judicial officials was not enough to curb the tide of petitioners bringing their commercial affairs before rabbinic courts. The president of the rabbinic court of Fez asked the delegate rabbi in

Meknes to read aloud a letter in the synagogues, informing Meknesi Jews that from now on the rabbinic court's jurisdiction was limited to matters of personal status.[74] Despite their efforts, French authorities continued to receive complaints that Jews were bringing civil, commercial, and even penal cases to rabbinic courts as late as 1938.[75] Old habits died hard among Moroccan Jews, who continued to seek out their local dayyanim to adjudicate all manner of disputes that fell outside the realm of personal status. But French reforms did eventually have an effect: even if the colonial beit din of Essaouira's first week of operation included commercial cases, subsequent registers refer strictly to matters of personal status.[76]

The new limitations on the jurisdiction of rabbinic courts also affected the functioning of Jewish notaries. In reorganizing Jewish notaries public, the French had preserved the right of sofrim to notarize documents concerning the full range of Jewish law, including commercial matters.[77] And sure enough, Jews continued to have their legal documents drawn up by sofrim, even when the matters at hand fell under the jurisdiction of shari'a or Makhzan courts. During the Protectorate, shari'a and Makhzan courts continued to accept only documents in Arabic; this meant that Jews who had their commercial transactions recorded by sofrim had to have them notarized again by 'udūl—thus incurring double fees.[78] Nonetheless, some Jews regularly sought out the services of sofrim to record all manner of transactions, including those that fell under the jurisdiction of non-Jewish courts such as sales of real estate, mortgages, leases, bills of debt, and so on.[79] As in the pre-colonial period, it seems that Jews' motivations for frequenting sofrim were not strictly pecuniary. Some believed that only documents drawn up according to Jewish law were valid in a religious sense (even if they lacked validity in a legal sense).[80] Enforceability was undoubtedly important to Jews, but so was adherence to their understanding of halakhah.

Protectorate authorities found the fact that sofrim drew up commercial documents quite confusing. In the years following the reorganization of Jewish courts, a number of French officials wrote to their superiors enquiring whether Jewish notaries were permitted to draw up documents attesting the sale of real estate, given that these matters fell strictly under the jurisdiction of shari'a courts.[81] Indeed, such documents were considered private agreements (*sous-seings*) without any legal weight.[82]

A bureaucrat in the Protectorate administration in Rabat acknowledged the contradiction inherent in Jewish notaries' ability to draw up legal documents that had no value in court. Nonetheless, the argument went, since Jewish notaries had been drawing up documents recording real estate transactions for centuries, "it seems to me that it would be bad politics to forbid it."[83] Yet some local French officials continued to argue that it made no sense for Jewish notaries to be allowed to draw up documents that lacked any legal standing.[84] Bowing to this logic, in 1926, French authorities briefly withdrew permission from Jewish notaries to draw up documents concerning real estate.[85] Less than a year later, however, they came to the conclusion that it was best to allow Jewish notaries to continue drawing up documents outside their jurisdiction, despite the confusion it caused French administrators.[86]

The new regulations regarding the appointment and qualifications of Jewish notaries also proved extremely unpopular among certain Jewish communities. In 1920, the leaders of the Jewish community of Beni Mellal (a small town at the edge of the Atlas Mountains midway between Fez and Marrakesh) wrote a feisty letter to the Protectorate authorities demanding their right to preserve the pre-colonial status quo.[87] The Direction des Affaires Chérifiennes had wanted to appoint two notaries in Beni Mellal, and had demanded that the Jewish community contribute four hundred francs per month to their salary. The Jews of Beni Mellal responded that they could not afford this sum, and that they were perfectly happy with the state of things as they were; they had an unofficial rabbi who acted as sofer and who took care of writing up marriage contracts, and they submitted their disputes either to the *sheikh al-yahūd* (the secular head of the Jewish community), the *jamā'a* (the Jewish communal council), or the Muslim governor. Beni Mellal's Jews declared that if the Protectorate authorities refused them the right to continue using the services of their local sofer, then they would simply stop getting married "and it would not be our fault." Faced with such intransigence, the Direction des Affaires Chérifiennes gave in, agreeing to allow the local rabbi to continue acting as Beni Mellal's unofficial sofer.[88] Clearly the French felt that some battles were not worth fighting, and they shelved the reform of Jewish law in this part of Morocco for another day.

Jews were not the only ones who found it difficult to abandon the patterns of legal consumption they had followed before the Protectorate;

Muslims, too, violated the new regulations by continuing to engage sofrim to draw up legal documents concerning their commercial affairs with Jews. The activities of the Jewish notaries of Fez during the month of July 1920 demonstrate that in the early years of the Protectorate, it was still relatively common for Muslims to obtain legal documents from Jewish notaries. On July 13, the sofrim recorded that Muhammad b. Muhammad b. Yahya lent one hundred riyāls to a Jewish man named Matityahu b. Yiẓhaq Butbol.[89] Ten days later, they drew up contracts in which Avraham b. Aharon Harosh rented a room to two different Muslims: 'Abd al-'Aziz b. Muhammad al-Zari rented a third of the room for nine francs and four centimes per month, and Muhammad b. Muhammad al-Kattani rented the remaining two-thirds of the same room for eighteen francs and three centimes per month.[90] The two Muslim tenants agreed to pay their rent at the beginning of each Jewish month, starting in Iyar of that year (which fell in April). On July 16, these same notaries drew up a contract attesting that Muhammad b. 'Abd al-Qadir al-Yubi bought a house (*ḥaẓer*) from a group of Jews for the steep price of 7,600 francs.[91] The house was number 455 (a sign of the changes brought about by the Protectorate, since houses in pre-colonial Morocco did not have numbers) in the new neighborhood of al-Qadiya in the millāḥ.[92] In addition to the house itself, Muhammad bought the ḥazakah—the usufruct rights to the property—for an additional 200 francs.[93] The sale of the ḥazakah is a clue as to why Muhammad and the Jewish sellers went to a beit din to record this sale, since a shari'a court would not have recognized usufruct rights that existed only in Jewish law.

By the 1930s, however, far fewer Muslims seem to have engaged the services of Jewish notaries. In a sample of 150 documents entered in the register of the Jewish notaries of Fez covering the year 1934, there was not a single case involving Muslims.[94] Perhaps Muslims came to realize that Jewish legal documents were of little worth since Jewish courts no longer had the authority to enforce them. Or perhaps the French eventually succeeded in preventing the kind of jurisdictional boundary crossing that had characterized the pre-colonial period.

Just as Jews and Muslims persisted in using judicial institutions in the ways they had before 1912, so did they continue to engage in forum shopping. Although Protectorate officials' efforts at rationalization made it more difficult to exploit the variety of legal orders that coexisted in colonial

Morocco, individuals did not give up on the possibility of obtaining a better deal by changing venues. And as they had during the nineteenth century, Jews continued to find that Jewish courts would not always provide the most favorable outcomes.

The motivations for forum shopping remained largely the same during the colonial period; for instance, many Moroccans engaged in forum shopping when they knew that the laws applied in one legal order would give them a better deal than those of another. In 1922, Baruch Ittah was charged with dividing the estate of the late Moïse Elhadad. Elhadad died with no children; of his heirs, one had French nationality and the rest were all Moroccan subjects. Two women who were distant relatives of Elhadad asked Ittah if there was any way for the case to fall under French jurisdiction because of the one heir who was a French national.[95] They clearly hoped for an affirmative answer, because according to Jewish law they had no share in the inheritance, whereas French law gave them part of Elhadad's estate.[96] Haim Ouzana similarly tried to avoid the jurisdiction of the rabbinic courts.[97] He had recently converted from Judaism to Islam. His wife, however, remained Jewish and wanted a divorce, which would have been granted to her according to Jewish law. But Ouzana claimed that, as a Muslim, only the shari'a court had jurisdiction over their marital affairs, and according to Islamic law they could stay married (since Islam permits Muslim men to marry Jewish women).[98] The Protectorate authorities ruled that the case fell under the jurisdiction of the rabbinic court—a significant departure from pre-colonial practice, which would have given supremacy to Islamic law.[99]

While the new jurisdictional boundaries proved hard to swallow for many Jews, others sought to exploit these reforms in order to switch the jurisdiction of a particular case. A Jewish man named Baruch Bitton appealed to Protectorate authorities complaining that the delegate rabbi in Meknes, Salomon Benchetrit, had overstepped his authority in ordering him to evacuate the apartment he was currently renting.[100] According to Bitton, Benchetrit invoked "I don't know what Talmudic procedure which, according to the dahir instituting rabbinic courts in Morocco, is completely outside his jurisdiction." As a delegate rabbi, Benchetrit did not have any judicial authority except as an arbiter; even had he presided over a rabbinic court, he would not have had jurisdiction over a case concerning real estate. It turned out, however, that Bitton was merely

trying to escape the authority of the local governor, who had adjudicated the case even though it technically fell under the jurisdiction of the qadi. When the case was brought before the governor, he consulted with Rabbi Benchetrit to determine how Jewish law would rule in the matter—a common practice in pre-colonial times that persisted under the Protectorate.[101] Based on Benchetrit's opinion, the governor ruled that Bitton had to evacuate his apartment. By trying to portray the rabbi as having overstepped his jurisdiction, however, Bitton attempted to convince the French authorities that the case needed to be re-adjudicated—which would, he hoped, produce a more favorable outcome.

During the pre-colonial period, the fact that shari'a and Makhzan courts both had jurisdiction over commercial cases created a perfect opportunity for forum shopping. Almost immediately after coming to power, French authorities attempted to put an end to this strategy.[102] But by 1920, little had changed; Louis Milliot, who served as the Protectorate's delegate to the Superior Council of 'Ulamā' and the Sharifian Minister of Justice (délégué du Protectorat auprès du Conseil Supérieur d'Ouléma et du Ministre Chérifien de la Justice), observed that forum shopping between shari'a and Makhzan courts was rife among Morocco's Muslims.[103]

Jews also tried to take advantage of the jurisdictional overlap between shari'a and Makhzan courts. In a debt case from 1920, the defendants made every effort to avoid payment by bringing their dispute before multiple jurisdictions. The case concerned a loan of 23,500 francs owed by the brothers Eliyahu and Harun Cohen to the late Rabbi Serero. Before dying, Serero transferred the debt to his son-in-law, Isaac Niddam (who also happened to be the nagid of Fez) as a gift. Niddam sued the Cohen brothers for payment in the Makhzan court, and the governor ruled in his favor.[104] After being told that they were not allowed to appeal the ruling, the Cohen brothers brought the case to the rabbinic court of Fez, where they argued that the transfer of debt from Serero to Niddam had been invalid. The rabbinic court of Fez ruled that the transfer was valid; the decision was later upheld by the Haut tribunal rabbinique.[105] Finally, the Cohen brothers attempted one last change of legal forum by arguing that the case should never have appeared before the Makhzan court and that the qadi should have jurisdiction over the dispute. Their reasoning was suspect, to say the least (they claimed that the

governor was not competent to hear litigation "involving the interpretation of an agreement [or] a partnership, [or] dividing profits or losses"—standard commercial matters that most certainly *did* fall under the jurisdiction of Makhzan courts).[106] In the end, the Cohens' efforts were for naught; the French authorities forced them to pay Niddam the 23,500 francs he claimed he was owed.[107]

The continuity in Moroccans' legal strategies under the Protectorate persisted alongside significant changes introduced by the colonial regime. New and more tightly policed jurisdictional boundaries had an impact on the daily lives of Jews and Muslims. Yet despite the considerable resources Protectorate authorities put into ensuring compliance with their reforms, old habits died hard. Eventually, however, the new contours of institutions' competence came to be accepted by legal consumers, and the boundaries between legal orders were more tightly enforced. By the early 1930s—around the time French authorities finally succeeded in "pacifying" the last holdouts of resistance to the Protectorate—colonial legal reforms had finally taken root.

THE PATHOS OF FRENCH REFORM

Although the French claimed to save Jews from their Muslim oppressors, they never formally abolished the dhimma, nor did they issue legislation that would have guaranteed Jews equal rights under the law.[108] The French were more concerned with maintaining separate administrative and judicial structures for Jews, reforms that ultimately created new and deeper divisions between Jews and Muslims.[109] Yet the tragic irony of the Protectorate was that French reforms not only failed to abolish the inequalities that characterized pre-colonial Moroccan society, they in fact introduced new disadvantages for Jews. Despite the French rhetoric of justice and religious freedom, Jews were excluded from the Moroccan state in myriad ways: they were ineligible to serve as Makhzan officials, or as personnel in either shari'a or Makhzan courts. This meant that for all matters outside the realm of personal status and succession, Jews were judged by Muslims, rather than other Jews—even for intra-Jewish cases. To add insult to injury, Jews lost nearly all of the autonomy they had previously enjoyed under the Makhzan; while communal committees and rabbinic courts preserved the appearance of indepen-

dence, the reality was that these institutions were carefully controlled by the French and allotted little true authority.[110]

Of perhaps even greater consequence, the Protectorate authorities unwittingly drove more Jews into institutions where their testimony was invalid. They accomplished this by putting most civil and commercial matters under the jurisdiction of Makhzan courts instead of shari'a courts. In their reform of the legal system, the French had intended to make indigenous law in Morocco more modern in part by restricting the realms of religious law (shari'a and halakhah) to personal status and succession, and letting "secular" Makhzan courts take care of almost everything else. Indeed, a common trope repeated by countless consular officials before the Protectorate was that shari'a courts were to be avoided at all costs because their religious nature made them inherently discriminatory.[111] Makhzan courts, on the other hand, were considered less intrinsically problematic. But Makhzan courts could be described as secular only in that they did not adhere to a strict application of Islamic law or legal procedure. Tradition demanded that Makhzan officials, as practicing Muslims, run their courts in ways that did not directly contravene Islamic law. Moreover, they would not have considered the justice they imparted void of religious content.[112] Perhaps most importantly, Makhzan courts adhered to custom in both rulings and procedure. This meant that many governors continued to consider the oral testimony of non-Muslims invalid under most circumstances.

The new jurisdictional boundaries gave Makhzan courts jurisdiction over Jews' legal disputes far more often than shari'a courts. Although Jews continued to engage the services of 'udūl to draw up legal documents, the number of disputes they were permitted to adjudicate before qadis plummeted during the colonial period. Most of Jews' legal disputes with Muslims concerned commercial matters, which could only be adjudicated in Makhzan courts. Of course, the invalidity of Jews' oral testimony also held in shari'a courts. But as we have seen, the procedure followed by qadis in Morocco rarely involved oral testimony; rather, shari'a courts relied on written evidence, to which Jews had equal access. In limiting the jurisdiction of shari'a courts to exclude commercial matters, the Protectorate authorities forced Jews into courts whose legal procedure significantly disadvantaged them. Needless to say, this was

an unintended consequence of colonial reforms; the accepted wisdom both before and during the Protectorate was that Jews' testimony was unacceptable in all Islamic courts, and the nuances between procedure in shari'a courts and Makhzan courts as it related to Jews were mostly lost on European observers.

Even if Jews were accustomed to the restrictions placed on their testimony by Makhzan courts, the rhetoric of emancipation and equality espoused by international Jewish organizations made this disadvantage harder to swallow. Before the reorganization of Morocco's legal system, the AIU lobbied Lyautey to ensure that Moroccan Jews would not fall under the jurisdiction of Islamic courts where their testimony was inadmissible.[113] When it became clear that Lyautey had rejected the AIU's request, Jews organized themselves to petition French authorities to either force Makhzan courts to accept Jews' testimony on par with that of Muslims or to permit Jews to avoid Makhzan courts by moving them to the jurisdiction of French courts.

In 1923, the Jewish community of Fez wrote a petition directly to Alexandre Millerand, the president of the French republic, asking him to intervene in order to force governors to accept the testimony of Jews.[114] The response from Urbain Blanc, the delegate of the Ministry of Foreign Affairs and the second most important French official in Morocco (to whom the request was forwarded), was unsurprisingly negative.[115] He claimed that French officials' hands were tied since the colonial administration had decided not to intervene in the laws followed in native courts. Blanc further explained that Jews were required to bring civil disputes to Makhzan courts only if they involved Muslims—implying that this meant Jews would have few occasions to bring cases to these institutions. This statement ignored the restriction of the jurisdiction of batei din to family law. Blanc's curious mistake aside, his retort suggests that he was unaware of the commercial relations linking Jews and Muslims, or that he simply could not imagine that Jews would have much occasion to appear in a Muslim court. For those criminal cases in which Jews had to appear before a governor, Blanc argued that French officials ensured Jews' fair treatment through their oversight of Makhzan courts: "The installation of a *commissaire* of the Sharifian Government at the pasha['s court] offers every guarantee to all [criminal] suspects and

plaintiffs, regardless of their religion." The official line was that while Jews might have suffered from the inequality inherent in Makhzan courts before the Protectorate, the French promised to ensure that they were treated fairly—even if they were not willing to insist that they were treated equally.[116]

But Jews were not mollified by French promises of justice in the absence of equality. They continued to call for reforms that would place them on equal footing with Muslims in Makhzan courts. An article in *L'avenir illustré,* a Moroccan Jewish newspaper published in Casablanca from 1926 to 1940, described "the sad state of the Jews of Meknes."[117] One of the article's main complaints concerned the treatment of Jews in the local Makhzan court. Beyond the obvious fact that their testimony was not accepted, the article claimed that the governor abused Jews and generally treated them with contempt. Jews' attempts to change the procedure in Makhzan courts persisted throughout the Protectorate; in 1944, when World War II was still raging across the Mediterranean, Moroccan Jews prepared a delegation to the World Jewish Congress in New York.[118] The delegates met beforehand to draw up a list of issues they wanted to address. First among these was listed, in capital letters, "URGENT REFORMS OF MAKHZAN JUSTICE (testimony of Jews—better security—elimination of grievances, insults against the [Jewish] religion, etc.)."[119]

The full impact of colonial legal reforms on Moroccan Jews—indeed, on Morocco more broadly—remains something of an open question. Nonetheless, there is little doubt that French reforms of the Moroccan legal system for the most part had negative consequences—largely unintended—for the country's Jews. The new jurisdictional boundaries pushed Jews into Makhzan courts for most civil and commercial disputes; in these courts, Jews' inability to give oral testimony put them at a significant disadvantage—one that was largely absent from shari'a courts. Perhaps most important, colonial authorities both redefined and reinforced the jurisdictional boundaries separating different types of legal institutions, making it harder for Jews to choose among the various legal orders that coexisted in pre-colonial Morocco. The exceptional legal mobility that had served Jews so well in the nineteenth century slowly ground to a halt under the pressure of centralization and rationalization—that is, in the face of France's attempts to modernize law in Morocco.

The legacy of the French Protectorate in Morocco includes both the persistence of pre-colonial realities and the violent rupture brought about by the force of conquest. Morocco's colonial legal system was not invented out of whole cloth, and judicial institutions under French rule in many ways resembled those that existed prior to 1912. Yet the resemblance was often just that; the Protectorate's shari'a and rabbinic courts were a mere shadow of the institutions they had been before colonization, with altered spheres of competence and rigid lines between jurisdictions. Protectorate officials' claims to have preserved the old Morocco while adding modern improvements like legal centralization might have convinced officials in the Ministry of Foreign Affairs in Paris who were wary of repeating the mistakes made in Algeria. But they did not fool Moroccans—or, for that matter, the French officials charged with carrying out reforms on the ground. Even if these reforms took some years to take root, Jews and Muslims soon learned that they could no longer cross the jurisdictional boundaries separating their respective legal institutions with the relative freedom of the nineteenth century. The colonial legal divisions separating Jews and Muslims were not solely responsible for the broader socioeconomic, cultural, and political divergence between the two confessions over the course of the twentieth century. Nonetheless, Protectorate-era legal reforms are an important, and hitherto neglected, part of the story.

Epilogue

AS THIS BOOK HAS ARGUED all along, law is central to the construction of society. In Emmanuelle Saada's bold words, "Law . . . does not reflect the social but produces it."[1] Jews' legal status as dhimmīs in precolonial Morocco determined much about the contours of their legal lives, including both access—if not entirely equal—to Islamic courts and the right to maintain Jewish ones. The particular customs of the Mālikī school of law, which not only accepted but encouraged the use of written evidence, gave Jews greater access to methods of proof than in areas dominated by other schools of law. The freedom with which Jews used Islamic legal institutions shaped their participation in the broader economy. Their ability to choose between Jewish and Islamic law, moreover, offered Jews an extra degree of mobility. And the legal changes introduced by both the expansion of extraterritoriality and the increase in informal intervention on Jews' behalf further increased Jews' ability to choose among legal fora. In the colonial period, legal reform was one of the ways in which Jews were siphoned off from Muslims. The administrative walls separating Jewish courts from those of Muslims suddenly towered far higher than they ever had before. Jews went from being able to triangulate between a plethora of legal orders to having little choice about where to adjudicate their cases. The exceptional legal mobility Jews had acquired in the late nineteenth century—mobility that

had allowed them to traverse the social and legal barriers separating them from Muslims—was cut short by new conceptions of what law should accomplish.

But the colonial period proved a time of both change and continuity. From the perspective of legal history, the changes were undoubtedly more profound than the continuities. Law went from a factor contributing to the integration of Jews into Moroccan society, to a mechanism by which that society was divvied up into separate, contradistinctive groups. Jews' connections to foreign states had provided opportunities for Jews to increase their legal mobility in the nineteenth century. But in the twentieth century, these connections further widened the divide separating Jews and Muslims. Nonetheless, elements of Morocco's pre-colonial legal system survived into the colonial period and even after Moroccan independence in 1956. Much as Jews considered the central government—and especially the sultan—as the ultimate guarantor of justice before 1912, so did many come to view the first king of independent Morocco as a champion of Jews and a defender of their legal rights. The ruptures in the way law shaped Jews' experiences, as well as the persistence of pre-colonial legal models, are essential to understanding the trajectory of Jews in twentieth-century Morocco. And both change and continuity are central to the ways in which Jews of Moroccan origin, like the descendants of Shalom Assarraf, remember their ancestral homeland.

As we have seen, under colonial rule law came to play a part in setting Jews and Muslims on divergent paths. French legal reforms contributed to an understanding of the two communities as administratively, legally, *inherently* different. This is not to say that Jews and Muslims were not distinguished legally and administratively before the Protectorate; on the contrary, Jews were defined as dhimmīs, a category that was structurally subservient to the Muslims who ruled over them. But colonial legal reforms nonetheless erected new kinds of boundaries between Jews and Muslims. Previously, Jews could seek solutions to their most intimate problems in shari'a courts, such as by obtaining a divorce at the hands of a qadi when a beit din proved unequal to the task. And Muslims could participate in the peculiarly Jewish economy of property rights, buying and selling ḥazakot that were not recognized in Islamic

law. Following the successful hardening of jurisdictional lines, Jews and Muslims could no longer blur these legal boundaries at will. This meant lost opportunities for interreligious relationships of trust, such as those that emerged between Shalom Assarraf and the Muslims who hired him as their representative in court. Moreover, at a symbolic level, Jewish law came to be fixed as a sphere entirely for Jews, just as Islamic law came to be seen as a sphere entirely for Muslims.[2] By making religious law monolithic, French reforms helped create an image of both Jews and Muslims as uniformly and immutably distinct. This official endorsement of separate spheres extended into other aspects of life; French authorities actively encouraged Jews and Muslims to pursue different commercial paths, and Jewish merchants increasingly oriented their business toward France. Growing numbers of Jews went into wholesale and fewer developed the close economic ties with Muslim clients and business partners that had characterized Shalom's commercial endeavors.[3] In other words, French colonial policies—legal and otherwise—produced new fissures between Jews and Muslims.

The contacts with foreigners that were previously sources of increased legal mobility instead pushed Jews and Muslims further apart under colonial rule. Soon after the Alliance Israélite Universelle's creation in 1860, Jews used its Central Committee—alongside foreign diplomats—as an additional forum to which they could appeal. Relatively soon after the establishment of the Protectorate, the AIU largely ceased acting as a political intercessor. But the Paris-based organization vastly expanded its educational role and became a fixture of life for Moroccan Jews. In 1924, the Protectorate authorities signed an agreement that put the AIU in charge of all French-funded schooling for Jews in Morocco.[4] Not only did this system enshrine separate schools based on confession, it gave Jews a huge advantage over Muslims; French efforts to open schools for Muslims were far behind those of the AIU, and the vast majority of Muslims never received formal schooling in French. Jews' superior ability to read and write in French positioned them for service as low-level bureaucrats in the French colonial government, for jobs in European-owned businesses, and for success in the settler-dominated economy. Their AIU schooling and their concomitant success in French colonial society made Jews seem close to the colonizers—a reputation that stirred opposition among many Muslims.[5]

Similarly, before 1912, Jews' privileged access to foreign protection and consular courts had provided them with expanded opportunities to shop among legal fora. Already during the pre-colonial period many Muslims had come to view Jewish protégés as disloyal subjects, and some assumed that all Jews were guilty of siding with the enemy. Under French rule, the association between Jews and Western imperialism only intensified. The French had themselves encouraged this association, in a sense, by justifying their colonization in part as a necessary measure to protect the country's Jewish minority. Moreover, Jews had profited from the role of intermediary before colonization, and continued to play a privileged role in the Protectorate economy. And even if some Jews were wary of colonial rule, others welcomed the French with open arms; in 1912, the students of the AIU school in Marrakesh sang the "Marseillaise" to welcome French troops to their city.[6] In other words, the aspects of nineteenth-century Moroccan society that had previously afforded Jews greater legal mobility—jurisdictional boundary crossing, appeals for foreign intervention, and access to consular courts—ceased to offer any legal advantage; moreover, they became a force for further divisions between Jews and Muslims.

But the Protectorate was not characterized entirely by rupture with the past; the pre-colonial image of the sultan as guarantor of justice, especially for his Jewish subjects, was echoed in Jews' lionization of the first ruler of independent Morocco, King Mohammed V. Mohammed V (Muhammad b. Yusuf, reigned 1927–61) emerged from the ashes of World War II as a hero who had resisted the Vichy regime's racist laws in order to protect Moroccan Jews. As we have seen, during the nineteenth century Jews turned to the sultan when they felt their rights were being abused. Jews' image of Mohammed V was merely an echo of the pre-colonial sultans' role; under the Protectorate, sultans were stripped of almost all real authority, and in independent Morocco Jews were no longer dhimmīs dependent on the sultan's personal protection. Nonetheless, the symbolism of continuity was—and continues to be—powerful for Moroccan Jews.

Under Vichy rule, Morocco's Jewish population was subject to legal restrictions of a kind it had never before experienced. Starting in 1940, the Protectorate authorities in Morocco passed a series of anti-Jewish laws, modeled closely on legislation enacted in the metropole. Jews were prohibited from holding most government positions or from working in

the media, finance, or moneylending, and Jewish lawyers and doctors were subject to quotas limiting their numbers.[7] In addition to anti-Jewish legislation, the Protectorate authorities set up detention camps throughout Morocco where political prisoners and foreign Jews were interned (although Moroccan Jews were not, it seems, imprisoned simply for being Jewish).[8] It remains unclear just how strictly these anti-Jewish laws were enforced; yet officially, at least, Moroccan Jews faced a long list of prohibitions they had never before experienced, enacted by the colonizers who had supposedly come to save them.[9] Although Vichy rule in Morocco was relatively brief (the anti-Jewish laws were abolished in March 1943), this short interlude left a lasting impression on Moroccan Jews. While some believed that the true France was co-opted during the Vichy regime and retained their loyalty to French republican ideals, others were increasingly drawn to alternative political paths such as communism or Zionism.[10]

Many Jews expressed their crisis of faith in French rule by lionizing their Moroccan sovereign, Mohammed V. While there are competing accounts of exactly what Mohammed V did or did not do for the Moroccan Jewish community, Jews most commonly credited him with refusing to single them out for legal discrimination. He is often quoted as saying, "There are no Jews in Morocco. There are only Moroccan subjects."[11] Even before the war ended, Jews praised the sultan for protecting them from the evil intentions of Vichy and Nazi officials.[12] Today Moroccan Jews widely regard Mohammed V not just as a beneficent ruler, but as a kind of saint whose tomb merits the pilgrimages and prayers of Moroccan Jews.[13] As the author of a self-published book on Moroccan Jewish saints put it, Mohammed V defended Moroccan Jews from the anti-semitic designs of French and German officials in "the excellent tradition of his ancestors."[14] Indeed, when I first visited Rabat, Morocco's capital, I was researching traditions of saint veneration among Moroccan Jews. The president of the Jewish community at the time graciously offered to show me some of the local saints' tombs, including the mausoleum of Mohammed V. He explained that whenever official delegations came to visit the Jewish community of Rabat, they were brought to the mausoleum as a "pilgrimage" in the king's honor.[15]

This outsized image of Mohammed V was in part a reaction against French colonial officials, whose embrace of anti-Jewish legislation broke

the promises of justice and tolerance they had been making since before 1912. But Jews also made Mohammed V into a hero because they wanted to preserve the symbolism of their pre-colonial position as benefiting from the personal protection of the sovereign. Just as Jews wrote directly to Mawlay Hasan in the nineteenth century when they felt they had been victims of injustice, they came to view Mohammed V as the savior they could rely on when all else failed. This continuity was especially potent after Moroccan independence, when Jews needed a model for their place in society that was connected to the uncorrupted tradition of the pre-colonial Moroccan state.

Although the ruptures of the colonial period were profound, they paled in comparison to the changes in the second half of the twentieth century. Starting in 1948, Jews left Morocco en masse. The country's Jewish population—the largest of any Arab state—decreased from a height of around 250,000 in 1950 to between 3,000 and 4,000 today.[16] Like the vast majority of Moroccan Jews, nearly all the descendants of the Assarraf family now live outside Morocco. Shalom's great-grandson Yehudah Assaraf, whom I spoke with over sundaes in Paris, has thirteen siblings; all of them left Morocco in their teens or twenties. Their trajectories mirror those of Moroccan Jews more broadly; Yehudah and his siblings are spread out among the United States, Israel, Belgium, Switzerland, and France.[17]

The first siblings to leave were Yehudah's two eldest sisters Liliane and Raymonde (also known as Allou and Yaccot Guila), who moved to Israel while still teenagers in 1957.[18] The creation of a Jewish state in 1948 had a profound effect on Jewish-Muslim relations in Morocco. The Moroccan nationalist movement aligned itself more and more closely with Arab nationalism; after independence in 1956, Jews felt increasingly alienated by the assumed Islamic and Arab character of the state and its anti-Israel rhetoric.[19] Although the nascent Moroccan government made a point of including Jews in a number of ministries, calls for economic boycotts and scattered incidents of violence against Jews convinced many that Morocco was not a safe place for them.[20] The next two main waves of departures for the Assarraf siblings closely tracked Israel's major wars with its Arab neighbors; four of them left in 1968, just after the Six Day War (June 5–10, 1967), and four more left in 1973, the year of the

Yom Kippur War (October 6–25). After each of these events, Jews in Morocco felt increasingly nervous about their future prospects in an Arab, Muslim country, and the ranks of those departing surged.[21] The last of the brothers left in 1975; Jacob, whom I met in New York, moved to France at the age of thirteen with his parents, Issakhar and Messoda. The couple had wanted to leave after the Six Day War—indeed, they had sold all of their belongings in preparation for making *aliyah* to Israel—but Issakhar's mother Rebecca (Shalom Assarraf's daughter-in-law) could not bear to abandon her hometown. When she passed away in 1973, Issakhar took two more years to wrap up his affairs and finally departed the city where his grandfather had made his fortune.

As my conversation with Yehudah Assaraf was coming to an end, he asked me how I had become interested in his family's history. I explained that while doing research on the experience of Jews in the Moroccan legal system, I had stumbled across Shalom's personal archive—and that this had come to form the core of my study. Yehudah immediately suggested something I had heard from other Moroccan Jews: perhaps, he mused, these legal documents mentioned property that the family could recover in Morocco. Then he laughed wryly and deemed this a fantasy, impossible to accomplish in reality. "And anyway," he concluded, "the fact that we got out alive was enough." When I asked what he meant by that, he mentioned attacks perpetrated against Jews following Moroccan independence.[22]

Yehudah's feeling that he and his family had escaped a dangerous fate in Morocco stood in tension with the many positive associations he had with his native land, some of them relatively recent. He told me about his niece, who grew up in New York but chose to have her wedding in Casablanca in 1990; he proudly added that the late king, Hassan II, had attended. Yehudah has not returned to Morocco since his niece's wedding, but he was emphatic that he would like to go back. And the connections between Morocco's royal family and the Jewish community was a trope that also came up in my conversation with Yehudah's brother, Jacob. Jacob told me that Hassan II not only kissed the hand of Morocco's chief rabbi (and his uncle by marriage) Yedidiah Monsonego, but asked Rabbi Monsonego to teach the crown prince, now King Mohammed VI.[23]

Yehudah's contrasting sentiments about Morocco—a place of danger his family was lucky to get out of alive, and a beloved homeland to

which his family maintains ties—are typical of the Moroccan Jewish diaspora.[24] They also echo the ruptures and continuities that have characterized Jews' experience in twentieth-century Morocco. The impact of colonization and the rise of Zionism and Arab nationalism set Jews and Muslims on increasingly divergent paths. But the symbolic power of Jews' connection to Morocco is manifested in their attachment to the monarchy and in their continued identification with the distinctive culture of their ancestors. What has been largely forgotten, however, is the role played by law in creating a society into which Jews were integrated in the absence of equality, and how the reform of Morocco's legal system contributed to changing relations between Jews and Muslims.

The departure of Morocco's Jewish community left "a painful rent in the social fabric"—one that tore at the lives of both Muslims and Jews.[25] The Assarrafs rose to prominence thanks to the talent of Shalom, the patriarch who made a fortune in large part because he effectively used Islamic legal institutions to shore up his commercial endeavors. Shalom was so intimate with shari'a courts that Muslims hired him as their legal representative. He also took advantage of the expanded legal opportunities afforded Jews in the late nineteenth century; through a relative in New York, he acquired American protection and benefited from the U.S. consul's intervention on his behalf. His access to international legal fora did not, however, disrupt his regular use of shari'a courts. Shalom's legacy lived on in his sons, who drew up their division of inheritance with Muslim notaries public despite having followed the precepts of Jewish law in allocating the estate.

Two generations later, this family of Jews—so enmeshed in the legal, social, and economic fabric of Fez and the broader Moroccan society they lived in—was scattered across three continents. Not even their personal archives, those testaments to the history of Jews in Morocco's legal system, remain in Morocco; those, too, are dispersed across the globe. All that endures in Morocco is the physical structure of Dar Assarraf, the graves of the generations who died, a small (and ever dwindling) Jewish community, and the memories of absence preserved among an aging population of Muslims who recall what it was like to live with Jews.[26] But the legacy of the Assarrafs lives on—in the stories repeated by their descendants, in the documents preserved in libraries and private collections from New York to Jerusalem, and, I hope, in the pages of this book.

NOTES

Abbreviations of archives appear at the beginning of the Bibliography

INTRODUCTION

1. Interview with Yehudah Assaraf, June 17, 2014. The family name Assarraf (from *al-ṣarrāf* in Arabic) is spelled with a double "r" in the Hebrew and Arabic documents, which is the orthography I use throughout. However, Yehudah's branch of the family chose to spell the name with only one "r." Other variants include Asseraf, Aseraf, Asaraf, Azeraf, etc.
2. *Makhzan* is Arabic for storehouse or treasury. On reform generally see al-Manuni, *Maẓāhir;* Ben-Srhir, "Stratégies économiques." On military reforms in particular, see Laroui, *Origines,* 272–84; Rollman, "Military Reform in Morocco"; Simou, *Les reformes militaires au Maroc;* Bennison, "The 'New Order' and Islamic Order." On Morocco's encounter with Western powers in the nineteenth century, see Burke, *Prelude to Protectorate*.
3. Ben-Srhir, *Britain and Morocco,* 24–61.
4. Miège, "Thé au Maroc"; Miège, *Le Maroc et l'Europe,* 2: 543–45; Erzini and Vernoit, "Imari Porcelain in Morocco," 167–68.
5. Ennaji, *Expansion européenne,* 53–83; Brown, *People of Salé,* 124–25.
6. Estimates put Morocco's total population at between 2.75 million and 10 million, and the most reliable estimates put the Jewish population at around 180,000 (Parsons, *The Origins of the Morocco Question,* 539). In late-nineteenth-century Demnat, Jews constituted about a third of the total population (Levin, "Demnat"); in Sefrou in 1905, the Jewish population was estimated at half of the total population (Park and Boum, *Historical Dictionary of Morocco,* 318); in Marrakesh in 1926, Jews made up about 9 percent of the total population (de Cenival, "Marrākush").

7. On Jews as international intermediaries, see, e.g., Schroeter, *The Sultan's Jew;* García-Arenal and Wiegers, *A Man of Three Worlds;* Brown, *Crossing the Strait,* esp. Ch. 5. On Sephardic networks more broadly, see Oliel-Grausz, "Networks and Communication"; Trivellato, "The Port Jews of Livorno"; Trivellato, *The Familiarity of Strangers,* Ch. 2; Ray, *After Expulsion,* Ch. 3.
8. See esp. Miège, "La bourgeoisie juive du Maroc"; Kenbib, *Juifs et musulmans;* Kenbib, *Les protégés.*
9. Schroeter and Chetrit, "Emancipation and Its Discontents," 180.
10. Ibid., 175; Marglin, "A New Language of Equality." For a lengthy discussion among scholars in response to Mawlay Hasan's question concerning the rules of the dhimma, in which the Pact of 'Umar is reaffirmed as the foundational text granting Jews rights and outlining their restrictions, see DAR, Fez, Mawlay Hasan to Muhammad b. 'Abd al-Rahman, 6 Rabī' II 1300; Ahmad b. Muhammad b. al-Hajj to Mawlay Hasan, 10 Jumādā I 1300. (See also a transcription of this first letter addressed to Muhammad Bargash in Ibn Zaydan, *Itḥāf a'lām al-nās,* 2: 234–35; *Al-'izz wa-'l-ṣawla,* 2: 43–44; al-Kattani, *Aḥkām ahl al-dhimma,* 47.) For another response, see ibid., 47–67.
11. For a similar argument in the Ottoman context, see Barkey, "Legal Pluralism in the Ottoman Empire"; and in the medieval context, see Tolan, "The Infidel Before the Judge," 58.
12. On the general lack of equality in the pre-Emancipation period, see Baron, "Ghetto and Emancipation," 51–52. For a reflection on how law operates as a condition of inequality, see, e.g., Dresch, "Aspects of Non-State Law," esp. 152. On the origins of theories of human rights, see Hunt, *Inventing Human Rights.*
13. This is not entirely unrelated to Baron's observation that the economic restrictions on Jews in medieval Europe were "highly beneficial to Jewish economic development" (Baron, "Ghetto and Emancipation," 59).
14. Al-Kattani, *Al-dawāhī;* Laroui, *Origines,* 315–17; al-Manuni, *Maẓāhir,* 1: 321–34; Kenbib, *Les protégés,* 215–24; Terem, "Al-Mahdī al-Wazzānī"; Terem, *Old Texts, New Practices,* Ch. 4.
15. My use of the term "integration" closely mirrors that of Jay Berkovitz; integration does not imply a situation in which "a minority becomes embedded in the social fabric of the majority culture," but rather describes "areas of close contact with, and even intimate involvement in, the deep structures of the host society" (Berkovitz, *Protocols of Justice,* 80; see also 86). Berkovitz is one of the few scholars who has made an argument for law as a site of Jews' social integration.
16. Historians of Jewish law have tended to take their cue from the well-known rabbinic antipathy toward Jews' use of non-Jewish courts, focusing on how Jewish leaders struggled to maintain the autonomy and authority of Jewish courts: see, e.g., Assaf, *Batei ha-din ve-sidreihem,* 11–24; Epstein, *The Responsa of Rabbi Simon ben Ẓemah Duran,* 44, 46–47; Shohet, *The Jewish Court in the Middle Ages,* 82–84, 95–104; Goodblatt, *Jewish Life in Turkey,* 87;

Katz, *Exclusiveness and Tolerance,* Ch. 5; Finkelstein, *Jewish Self-Government;* Goldman, *Rabbi David Ibn Abi Zimra,* 92, 153–55; Assis, "Yehudei Sefarad be-'arka'ot ha-goyim." For an exception, see Shmuelevitz, *The Jews of the Ottoman Empire,* esp. Ch. 2.

17. The formulation is S. D. Goitein's: Goitein, "Minority Self-Rule," 109; Goitein, *A Mediterranean Society,* 2: 1.
18. Quoted in Shmuelevitz, *The Jews of the Ottoman Empire,* 51. On Jews in Ottoman Islamic courts, see Cohen, *Yehudei Yerushalayim ba-me'ah ha-shesh-'esreh* (translated as *Jewish Life Under Islam*); Cohen, *A World Within;* Cohen and Ben Shim'on-Pikali, *Yehudim be-veit ha-mishpat, ha-me'ah ha-16, Yehudim be-veit ha-mishpat, ha-me'ah ha-17, Yehudim be-veit ha-mishpat, ha-me'ah ha-18;* Cohen, *Yehudim be-veit ha-mishpat, ha-me'ah ha-19;* Gerber, "Arkhiyon beit ha-din ha-shara'i shel Bursah"; Gerber, *Crossing Borders,* Ch. 2; Hacker, "Jewish Autonomy in the Ottoman Empire"; Al-Qattan, "Dhimmis in the Muslim Court"; Wittmann, "Before Qadi and Vizier." On similar studies of Christians in Ottoman shari'a courts, see also Jennings, "Zimmis in the Sharia Court of Kayseri"; Gradeva, "Orthodox Christians in the Kadı Courts"; Çiçek, "A Quest for Justice"; Laiou, "Christian Women in an Ottoman World"; Joseph, "Communicating Justice." On the medieval Mediterranean, see Simonsohn, *A Common Justice;* Marglin, "Jews in Sharī'a Courts"; Lauer, "Venice's Colonial Jews." On Yemen, see Wagner, *Jews and Islamic Law.* On Europe, see Shatzmiller, *La communauté juive de Manosque,* esp. Ch. 3; Gotzmann, "At Home in Many Worlds?"; Ehrenpreis, "Legal Spaces for Jews"; Gotzmann, *Jüdische Autonomie in der Frühen Neuzeit: Recht und Gemeinschaft im deutschen Judentum;* Kasper-Marienberg, "Jewish Women at the Viennese Supreme Court"; Berkovitz, *Protocols of Justice.*
19. See esp. Hacker, "Jewish Autonomy in the Ottoman Empire"; Al-Qattan, "Dhimmis in the Muslim Court"; Wittmann, "Before Qadi and Vizier." This is also true of studies in a European context: Jacob Katz, for instance, passes over the subject in a single sentence: "Relationships between Jews and non-Jews were, of course, entirely subject to non-Jewish authorities" (Katz, *Exclusiveness and Tolerance,* 52). Jay Berkovitz's recent study is one of the few to focus on the intersections between Jewish and non-Jewish courts, and also concludes that law facilitated Jews' integration into the majority society: Berkovitz, *Protocols of Justice,* Ch. 3, esp. 80–81.
20. On the familiarity with Jews' presence in shari'a courts, see, e.g., Bornstein-Makovetsky, "Ottoman Empire: From 1492 to ca. 1650"; Barkey, "Legal Pluralism in the Ottoman Empire," 95–96. In using the term "Islamic law," I do not intend a unified or uniform system, nor a "divine" law that was fixed and unchanging; there has always been considerable diversity, change, and adaptation within the Islamic legal tradition. Nonetheless, there is some degree of unity to Islamic law, in that jurists and officials who consider themselves part of—and bound by—this tradition operate according to principles derived from the sources of Islamic jurisprudence (*'uṣūl al-fiqh*)

and, for the most part, within the confines of a particular school (in Morocco, the Mālikī school).

21. See, e.g., Jennings, "Kadi, Court, and Legal Procedure"; Jennings, "Limitations of the Judicial Powers of the Kadi"; Gerber, "*Sharia, Kanun* and Custom in the Ottoman Law"; Al-Qattan, "Dhimmis in the Muslim Court"; Peirce, *Morality Tales;* Agmon, *Family and Court*. Exceptions include Ergene, *Local Court in the Ottoman Empire;* Baldwin, "Islamic Law in an Ottoman Context"; Goldberg, *Trade and Institutions,* Ch. 5, esp. 150–64; Zarinebaf, *Crime and Punishment,* Ch. 8.
22. Those who question the existence of Jewish and Christian courts include Jennings, "Zimmis in the Sharia Court of Kayseri," 271; Al-Qattan, "Dhimmis in the Muslim Court," 430–32.
23. Jennings, "Limitations of the Judicial Powers of the Kadi," 164–71; Gerber, "*Sharia, Kanun* and Custom in the Ottoman Law," 137–39; Gerber, *State, Society, and Law,* Ch. 2; Imber, *Ebu's-su'ud;* Peters, *Crime and Punishment in Islamic Law,* 74–75, 92–102.
24. On the *nizamiye* courts, see Rubin, *Ottoman Nizamiye Courts*. On criminal courts, see Paz, "Crime and the Ottoman State." The only comprehensive legal history of consular protection is Van Den Boogert, *The Capitulations and the Ottoman Legal System,* which is limited to the eighteenth century. Although Ergene discusses the need to focus on the existence of multiple paths to legal resolution, his chapter on this subject is more of a preliminary exploration than a comprehensive account: Ergene, *Local Court in the Ottoman Empire,* Ch. 9. Exceptions to the exclusive focus on shari'a courts include Heyd, *Studies in Old Ottoman Criminal Law,* Ch. 2; Baldwin, "Islamic Law in an Ottoman Context"; Baldwin, "Petitioning the Sultan."
25. Ido Shahar makes a call for a similar approach: Shahar, "Legal Pluralism and Shari'a Courts," esp. 126, 141.
26. The foundational account of legal pluralism remains Griffiths, "What Is Legal Pluralism." Subsequent influential work includes Merry, "Legal Pluralism"; Tamanaha, "The Folly of Legal Pluralism"; Tamanaha, "Understanding Legal Pluralism." The notion of legal pluralism as flat and without hierarchy is closely related to Griffiths's concept of "strong" versus "weak" pluralism. Strong pluralism is present when each legal order sees itself as sovereign, whereas in a situation of weak pluralism, one sovereign entity assigns limited jurisdictions to various legal orders. Because Griffiths and his followers felt that only strong legal pluralism was of interest, many scholars have tended to associate legal pluralism with a fundamental equality of legal orders. However, concrete examples of strong legal pluralism are few and far between (though see Stone, "Sinaitic and Noahide Law," for an example of two different and to some extent competing theories of law within Judaism)—which is why it is so important to reintroduce hierarchy into our understanding of legal pluralism. For the concept of multiple sovereignties, see esp. Lewis, *Divided Rule*.

27. Exceptions include von Brenda-Beckmann, "Forum Shopping"; Sharafi, "Marital Patchwork."
28. Shahar, "Forum Shopping."
29. Shilo, *Dina de-malkhuta dina;* Schachter, "Dina de-Malkhuta Dina: A Review"; Graff, *Separation of Church and State.*
30. Friedman, "Borders," 72. See also Merryman, "Convergence of Civil Law and Common Law."
31. Although Lauren Benton's discussion of what she calls "jurisdictional complexity" addresses the question of the coexistence of multiple legal orders, she is more interested in the ways in which colonial and imperial states attempted to assert their sovereignty by imposing jurisdictional order (and does not discuss whether or how legal pluralism produced convergence among legal orders): Benton, *Law and Colonial Cultures,* Ch. 3.
32. On Shalom's real estate holdings, see the record book of properties that he rented out from the summer of 1903 to the winter of 1904 (*kayiẓ* 5663 to *ḥoref* 5664), in PD. Shalom's nickname was related to me in an interview with Michael Maman, September 11, 2013.
33. On social class and poverty among Moroccan Jews, see Marglin, "Poverty and Charity." Even Jews of modest means did business with Muslims that necessitated visits to Muslim notaries and shari'a courts and appeals to the Makhzan. Although class is often difficult to determine from isolated legal documents, see, e.g., DAR, Yahūd, Bu Bakr b. Buzayd to Muhammad Torres, 13 Dhū al-Qa'da 1324 for an example of a case concerning a very small loan (13 riyāls), which might reflect the modesty of the parties involved. The majority of Jewish victims of robbery and murder were humble peddlers traveling in the countryside; these Jews and their relatives petitioned the central court of appeal for redress in much the same way as their wealthier coreligionists. The lower rungs of the socioeconomic ladder also occasionally ended up in consular courts when they brought cases against foreigners: see, e.g., FO, 631/7, pp. 16a-17b, July 12, 1879; BH, K 551, p. 129, 13 Jumādā I 1308; CADN, Tanger F1, Benguiat and Holchard v. le Comte Maurice de Chavagnac, December 25, 1884, and judgment concerning Hyacinthe Joseph Maucomble, January 12, 1883; CADN, Tanger F3, Melal Bonina v. Louis Constant Pouteau or Poutot, March 6, 1899.
34. On the legal history of Jews in rural areas, see Boum, *Memories of Absence,* 43–55. On law in rural Algeria near the Moroccan border (which probably had many similarities with rural Morocco), see Scheele, "Councils Without Customs"; Scheele, "Rightful Measures." On colonial Morocco, see Hoffman, "Berber Law by French Means."
35. Subrahmanyam, "Hearing Voices," 99–100. See also "Connected Histories."
36. See, e.g., Birnbaum and Katznelson, "Emancipation and the Liberal Offer."
37. See, e.g., Schroeter, "A Different Road to Modernity"; Stein, *Making Jews Modern;* Marglin, "Modernizing Moroccan Jews."

38. Extraterritoriality is perhaps best understood as reflecting a pre-modern notion of sovereignty, in which rulers exercised control over individual subjects rather than over discrete territories: Scully, *Bargaining with the State,* 21–22; Cassel, *Grounds of Judgment,* 8.
39. Timur Kuran makes the type of overly generalized claim I am arguing against; he concludes that Islamic law held the Muslim world back and that non-Muslims' privileged access to international courts allowed them to escape the backwardness of their Muslim neighbors: Kuran, "The Economic Ascent of Religious Minorities"; Kuran, *The Long Divergence*.
40. See Merry, "Law and Colonialism," 890; Mamdani, *Citizen and Subject,* 16–23; Grimshaw, Reynolds, and Swain, "The Paradox of 'Ultra-Democratic' Government"; Benton, *Law and Colonial Cultures,* 174–76; Kolsky, *Colonial Justice in British India,* esp. 1–16, 23; Mamdani, *Define and Rule,* esp. 27–31.
41. Baron, "Ghetto and Emancipation," 60.
42. See, e.g.: Dirks, *Castes of Mind,* 5–6, 12–18; Benton, *Law and Colonial Cultures,* 182–83; Mamdani, *Saviors and Survivors,* 146–55; Mamdani, *Define and Rule,* esp. 43–46; Saada, *Empire's Children*. Most work on the role of law in creating identities in the North African context has focused on the emergence of a distinct Berber identity: see, e.g., Burke, "The Image of the Moroccan State"; Lorcin, *Imperial Identities;* Hoffman, "Berber Law by French Means"; Wyrtzen, "Colonial State-Building."
43. Moroccan historians tend to view the wedge that imperialism drove between Jews and the Makhzan in negative terms: Kenbib, *Juifs et musulmans;* Kenbib, "Muslim-Jewish Relations"; Afa, *Tārīkh al-Maghrib al-Muʿāṣir,* 189–92; Laghmaʾid, "Jamāʿāt yahūd Sūs," 4–6, 128; Ben-Srhir, *Britain and Morocco,* 158–66; Chahlane, *Al-Yahūd al-Maghāriba,* 82–89. Jewish historians of a lachrymose persuasion, on the other hand, tend to view it positively: Parsons, *The Origins of the Morocco Question,* 4–7; Bat Yeʿor, *The Dhimmi: Jews and Christians Under Islam,* esp. 78–86, 305–8; Littman, "Mission to Morocco"; Stillman, *The Jews of Arab Lands in Modern Times,* 6–8, 14–15; Parfitt, "Dhimma Versus Protection," esp. 150; Laskier and Bashan, "Morocco," 482–83; Bashan, "Attacks upon Jewish Religious Observance"; Fenton and Littman, *L'exil au Maghreb:* Gilbert, *In Ishmael's House,* Ch. 8. On the lachrymose—or neo-lachrymose—school of the history of Jews in the Islamic world, see Cohen, "Islam and the Jews." On the effects of imperialism on Jewish-Muslim relations in the Middle East more broadly, see, e.g., Beinin, *The Dispersion of Egyptian Jewry;* Masters, *Christians and Jews;* Schroeter, "A Different Road to Modernity"; Schroeter and Chetrit, "Emancipation and Its Discontents"; Gottreich, "Arab Jews in the Maghrib"; Schreier, *Arabs of the Jewish Faith*.
44. The AIU was founded in Paris in 1860 and opened its first school in Tetuan in 1862. On the AIU in Morocco, see Laskier, *The Alliance Israélite Universelle;* Miller, "Gender and the Poetics of Emancipation"; Boum, "Schooling in the 'Bled' "; Marglin, "Modernizing Moroccan Jews"; Katz, *" 'Les Temps*

Héroïques.'" On the AIU more broadly, see Rodrigue, *French Jews, Turkish Jews;* Rodrigue, *Images of Sephardi and Eastern Jewries;* Leff, *Sacred Bonds,* Ch. 5.

45. Kuran, "The Economic Ascent of Religious Minorities"; Kuran, *The Long Divergence*. See also Barkey, "Legal Pluralism in the Ottoman Empire," 97.
46. On the lack of record keeping in Moroccan shari'a courts, see Mercier, "L'administration marocaine à Rabat," 394–96; Caillé, *Organisation judiciaire,* 19; Buskens, "Mālikī Formularies," 140. See also DAR, Safi, Italian consul in Safi to al-Tayyib b. Hima, 10 Rabī' II 1299/March 1, 1882. When it came to Jewish courts, Safi and Essaouira were exceptions in that the notaries public of these cities did keep semipublic registers: CADN, 1MA/300/106A, Marion to Lyautey, April 29, 1915; FO, 631/14, A. Nicolson to Maclean Madden, October 24, 1902, and November 21, 1902.
47. Even the Assarraf archive is by no means complete: many of the Assarrafs' legal documents did not make their way into Professor Tobi's collection. The Assarrafs frequented the beit din in addition to the shari'a court, as documented by deeds in other collections, yet the Assarraf archives in Professor Tobi's collection are from the shari'a court alone. Ironically, as scattered as legal documents belonging to Jews may be, they are generally more accessible than those still preserved by Moroccan Muslim families—many of whom are reticent to share records that might contain sensitive information. Aomar Boum gained exceptional access to the personal archives of a number of Muslim families in the south of Morocco (see Boum, *Memories of Absence,* 31–32).
48. The records for the Ministry of Complaints survive from only four years—from April 22, 1889, to April 28, 1893, that is, 21 Sha'bān 1306 to 11 Shawwāl 1310. (The registers are found in the Bibliothèque Hassaniya under the call numbers K 157, K 171, K 174, and K 181.) It is not clear whether such registers were kept at other points during the existence of the ministry, although the register beginning in April 1889 seems to have been the first of its kind; registers 171, 174, and 181 are identified in their respective introductions as the second, third, and fourth registers in this series, indicating that the one preceding (K 157) was the first such register.
49. I consulted consular archives in France, Britain, Spain, the United States, and the Netherlands. The Moroccan archives consulted include the Direction des Archives Royales and the Bibliothèque Hassaniya.

CHAPTER 1. THE LEGAL WORLD OF MOROCCAN JEWS

1. See PD, Manuscript of Avner ha-Ẓarfati, *Yaḥas Fas,* p. 25b: see also a full transcription in Hebrew in Ovadyah, *Fas ve-ḥakhameha,* 1: 87–171. (The mention of Dar Shalom Assarraf is on p. 129.) This work also lists two *miṣrīya* (storehouses) belonging to Shalom Assarraf, one with three rooms and one with nine. The house and the misrīyas are in the part of the millāḥ known as al-Qadiya. On this manuscript, see Sémach, "Une chronique juive de

Fès." The Jews of Fez still know the house as "Dar Ya'akov Assarraf" (interview with Albert Sabbagh, July 21, 2011).

2. *Darb* means "alley" or "lane" and *fard* means "single" or "solitary." All details about Dar Assarraf are gleaned from an interview with Michael Maman, November 11, 2013.
3. The plaza's name in colloquial Moroccan Arabic is *'Arsha diyal Zirb*.
4. On the architecture of houses in Fez's Jewish quarter, see Miller, Petruccioli, and Bertagnin, "Inscribing Minority Space."
5. See, e.g., Fadel, "Social Logic of *Taqlīd*," 196; Rosen, *The Justice of Islam,* Ch. 3.
6. This is reminiscent of Sally Falk Moore's concept of law as a set of "semi-autonomous social fields," although Moore's definition of law is too non-hierarchical and potentially broad for my purposes; see Moore, "Law and Social Change."
7. On regulations concerning the dress of dhimmīs, see Stillman, *Arab Dress,* Ch. 5. On Morocco in particular, see Besancenot, *Costumes of Morocco,* 139–40, 178–79; Schroeter, *The Sultan's Jew,* 88–89. On the Fez in the Ottoman Empire, see Juhasz, "Material Culture," 211–12.
8. I surmise Shalom's level of literacy from the fact that he wrote summaries in Judeo-Arabic on the back of most of his Islamic legal documents, explaining what the document was for and whom it concerned. This was a common practice among Jews, as discussed later in this chapter.
9. DAR, Fez, 6078, Muhammad Bargash to Sa'id b. Faraji, 11 Sha'bān 1295; Deshen, *The Mellah Society,* 54–55.
10. Ibid., 32, 88–89; Schroeter, *Merchants of Essaouira,* Ch. 5; Boum, *Memories of Absence,* 34–35.
11. See the document of appointment in PD, first tenth (or first ten days: *'īsūr* [sic] *rishon*) of Adar 5633. The letter was signed by the rabbis Matityahu Serero, Shlomoh Eliyahu Ibn Ẓur, Rafael Ibn Ẓur, and twenty-five members of the ma'amad. On Shalom's prominence in the community, see also Paquignon, "La condition des juifs au Maroc," 121; Fenton and Littman, *L'exil au Maghreb,* 540–42.
12. On the position of nagid (also called the *shaykh al-yahūd*) in Morocco, see Gerber, *Jewish Society in Fez,* 86–94; Zafrani, *Mille ans de vie juive au Maroc,* 126–27; Deshen, *The Mellah Society,* 53–61. On the medieval period, see Cohen, *Jewish Self-Government*. On Jewish prisons in Fez and Marrakesh, see PD, Appointment of Shmuel b. 'Ayush as *shaykh al-yahūd,* 8 Kislev 5577; Ankawa, *Kerem Ḥemer,* 2: 9a-b, #53; Crawford and Allen, *Morocco: Report to the Committee,* 21; Gerber, *Jewish Society in Fez,* 88; Gottreich, *The Mellah of Marrakesh,* 73. Salonica also had a Jewish prison (I am grateful to Devin Naar for bringing these references to my attention): Molho, *Kontribusion ala Istoria de Saloniko,* 17–18; Emmanuel, *Histoire des Israélites de Salonique (140 avant J.-C. à 1640),* 14.
13. Known as the "trītl" (meaning "pillage" in Judeo-Arabic): see Kenbib, "Fez Riots (1912)." The French appointed a committee headed by Amram Elmaleh, the director of the AIU school, to oversee compensation for Jews'

losses during the pillage. Ya'akov was elected as one of fifteen representatives to speak directly with the French authorities in order to counter Elmaleh's version of events, claiming that Elmaleh was preventing members of the community from being properly compensated for their losses (Ovadyah, *Fas ve-ḥakhameha,* 234; AIU, Maroc III C 10, g.07, Giveron to Lyautey, August 7, 1913).

14. On the status of non-Muslims in Islamic law, see Fattal, *Statut légal,* 344–48. On the Mālikī school in particular, see Santillana, *Istituzioni di diritto musulmano malichita,* 98–107.
15. Deshen, *The Mellah Society,* 53–55; Goldish, *Jewish Questions,* 77–82. For another discussion of the same responsum discussed and translated by Goldish, see also Ankawa, *Kerem Ḥemer,* 1: #142, pp. 87a-88a. See also a document in Judeo-Arabic from 1816, in which a group of Jews testify that they accept Shmuel b. al-ḥazān 'Ayush as their shaykh, and that Shmuel will have the authority to "judge over big and small, and to imprison (*yaḥkum fi-'l-kabīr wa-saghīr wa-yusajjin*)" (PD, 8 Kislev 5577). The qā'id of the Jews in Tunisia exercised a similar judicial role: Larguèche, *Les ombres de la ville,* 353.
16. Deshen, *The Mellah Society,* 55.
17. My account of the functioning of Jewish courts is based in part on a sample of 267 *shtarot* (legal documents) and *piskei din* (legal rulings) from seven different collections, including the Direction des Archives Royales (in the file Yahūd); the collection at the University of Leiden, which belonged to the Corcos family of Marrakesh (call numbers Or.26.543 (1), Or.26.543 (2), and Or.26.544); Paul Dahan's private collection; the special collections library of JTS (Archive #87, Morocco Jewish Communal Records); the collection of North African Jewish Manuscripts at Yale (housed in the Judaica Collection); the National Library of Israel (held in the *kitvei yad* section of the library and called *Shtarot u-Ma'asei Beit Din* from Morocco, filed under the box number ARC. 4* 1532); the collections at Yad Ben Zvi in Jerusalem (held in the collection of Te'udot); and the Central Archives for the History of the Jewish People, also in Jerusalem. While these collections are not necessarily representative of batei din generally, they do reflect a wide range of cities (Fez, Meknes, Sefrou, Tetuan, Marrakesh, Rabat, al-Jadida, Casablanca, Debdou, Essaouira, Iligh, and Ouezzane) and include documents from the late eighteenth century through 1912.
18. Interview with Michael Maman, November 11, 2013.
19. Eighty percent of the documents I examined are notarial, while only 20 percent are litigious—that is, piskei din regarding lawsuits as well as questions of judicial procedure and jurisdiction.
20. For Shalom's use of sofrim, see, e.g., PD, Record book of leases from summer 1903/5663 to winter 1904/5664; Yale, MS.1825.0070, 9 Sivan 5664/May 23, 1904. Among the other collections I examined, 19 percent (52 total) of the documents refer to money owed among Jews, either as a debt or a partnership; 6 percent (16 total) concern mortgages; and 29 percent (76 total)

concern the sale, rental, or gifting of real estate. Matters relating to marriage constitute 5 percent (13 total) of the documents I consulted.

21. Indeed, some individuals acting as sofrim were incompetent even at copying formulae: CADN, 1MA/300/101B, Nahum Slousch, "Tribunal Rabbinique," 4. For an example of a printed formulary, see *'Et Sofer* in Ankawa, *Kerem Ḥemer,* v. 2.
22. CADN, 1MA/300/101B, Benzimra, "Fonctionnement du chrâa rabbinique" (no date); Henri Bruno, "Réforme des institutions juives; notes de l'enquête de M. Bruno à Marrakesh, Mogador, Safi et Mazagan," 1918.
23. In a few cities, such as Safi and Essoauira, sofrim began to keep records in the late nineteenth century—probably under the influence of the numerous Jews involved in international trade who witnessed the archival practices of their business associates abroad: see FO, 631/14, A. Nicolson to Maclean Madden, October 24, 1902, and November 21, 1902; CADN, 1MA/300/106A, Marion to Lyautey, April 29, 1915.
24. See, e.g., DAR Tetuan, 22068, Mawlay 'Abd al-Rahman to 'Abd al-Qadir Ash'ash, 3 Jumādā II 1265.
25. CADN, 1MA/300/101B, André Réveillaud, "Réforme des institutions juives; Notes Réveillaud au sujet de Meknès" (no date); Nahum Slousch, "Tribunal Rabbinique" (no date); Benzimra, "Fonctionnement du chrâa rabbinique" (no date); Henri Bruno, "Réforme des institutions juives; notes de l'enquête de M. Bruno à Marrakesh, Mogador, Safi et Mazagan," 1918; Hazan, "Batei ha-din be-Maroko," 466.
26. CADN, 1MA/300/101B, Henri Bruno, "Réforme des institutions juives; notes de l'enquête de M. Bruno à Marrakesh, Mogador, Safi et Mazagan," 1918; Benzimra, "Fonctionnement du chrâa rabbinique" (no date); Hazan, "Batei ha-din be-Maroko," 466. Even though Marrakesh had the single largest Jewish population in Morocco before 1912, there were only two dayyanim working there—probably because the city did not have much of a reputation as a center of Jewish learning (see CADN, 1MA/300/101B, Henri Bruno, "Réforme des institutions juives; notes de l'enquête de M. Bruno à Marrakesh, Mogador, Safi et Mazagan," 1918). Moreover, not all cities had batei din of their own; Jews in smaller communities traveled to the nearest large city when they required the adjudication of a dayyan to resolve their disputes. For instance, the Jews of Ouezzane and El-Ksar El-Kebir traveled to Meknes: CADN, 1MA/300/106A, Jewish community of Meknes to Lyautey, August 12, 1918.
27. It was permissible for a court to be composed of one dayyan and two laymen, or even one dayyan alone, although three dayyanim were preferable (Assaf, *Batei ha-din ve-sidreihem,* 46–48).
28. CADN, 1MA/300/101B, André Réveillaud, "Réforme des institutions juives; Notes Réveillaud au sujet de Meknès" (no date); Benzimra, "Fonctionnement du chrâa rabbinique" (no date); Henri Bruno, "Réforme des institutions juives; notes de l'enquête de M. Bruno à Marrakesh, Mogador, Safi et Mazagan," 1918; Bruno, "Réforme des institutions juives; notes Bruno (Meknès et

Fès)," 1918. The beit din of Essaouira was exceptional in that all three dayyanim normally adjudicated together: see CADN, 1MA/300/101B, Henri Bruno, "Réforme des institutions juives; notes de l'enquête de M. Bruno à Marrakesh, Mogador, Safi et Mazagan," 1918.

29. Although no formal hierarchy existed among Morocco's various batei din, the sages of certain cities were recognized as being more authoritative than those of others: Deshen, *The Mellah Society,* 76–78; Hazan, "Batei ha-din be-Maroko," 466; CADN, 1MA/300/101B, Raphael Ankawa, "Note," April 28, 1920; CADN, 1MA/300/101B, Henri Bruno, "Réforme des institutions juives; notes de l'enquête de M. Bruno à Marrakesh, Mogador, Safi et Mazagan," 1918; CADN, 1MA/300/101B, André Réveillaud, "Réforme des institutions juives; Notes Réveillaud au sujet de Meknès" (no date).
30. DAR, Yahūd, Mawlay Hasan to qā'id Hamm al-Jilali, 26 Jumādā I 1307; CADN, 1MA/300/101B, André Réveillaud, "Réforme des institutions juives; Notes Réveillaud au sujet de Meknès" (no date); Nahum Slousch, "Tribunal Rabbinique" (no date); Benzimra, "Fonctionnement du chrâa rabbinique" (no date).
31. Gottreich, *The Mellah of Marrakesh,* 78–82.
32. TC, File #4, 12 Ṣafar 1322; File #2, 7 Rabī' I 1326; File #4, 2 Jumādā II 1330.
33. *Shulḥan 'Arukh,* Yoreh De'ah, 113. The practice of having Jews light the fire is gleaned from an interview with Michael Maman, November 11, 2013.
34. On notarized documents in Islamic law generally, see Tyan, *Le notariat.* For an anthropological perspective on the role of 'udūl in Moroccan shari'a courts, see Geertz, *Local Knowledge,* 190–94.
35. On Moroccan legal formularies (*shurūt*), see Buskens, "Mālikī Formularies." Particularly relevant for nineteenth-century Fez is the manual composed by Muhammad b. Ahmad Binani (d. 1261/1845), who recorded the legal conventions of contemporary Fez: Binani, *al-Wathā'iq al-fāsīya*. There was, however, great diversity in formularies from different regions in Morocco (Buskens, "Mālikī Formularies," 138–39), although no other formularies have yet been printed.
36. Such as Muhammad al-Saffar, the first minister of complaints: see Miller, *Disorienting Encounters.* See also the proposed promotion of 'udūl to qadis just before and after the establishment of the Protectorate: CADN, 4MA/900/63D, Renseignements sur Si Ali ben el hadj Ahmed Chtouki, December 5, 1911, and Redier to ??, July 30, 1912.
37. For instance, sixty-three 'udūl operated in Meknes in 1912 (CADN, 4MA/900/63D, Rapport du Chef de Bataillon Bussy sur l'organisation de la Magistrature Chérifienne, January 30, 1913). In Fez, the qāḍī al-quḍā, Morocco's highest judicial official, oversaw the city's corps of 'udūl: Péretié, "L'organisation judiciaire au Maroc," 522; Le Tourneau, *Fès avant le protectorat,* 215.
38. Péretié, "L'organisation judiciaire au Maroc," 522; CADN, 4MA/900/63D, Rapport du Chef de Bataillon Bussy sur l'organisation de la Magistrature Chérifienne, January 30, 1913.

39. Le Tourneau, *Fès avant le protectorat,* 215–16, 221. See also Péretié, "L'organisation judiciaire au Maroc," 522. On the meaning of *smat* in colloquial Moroccan Arabic, see Dozy, *Supplément aux dictionnaires arabes,* 1: 684.
40. On the lack of record keeping in Moroccan shari'a courts, see Mercier, "L'administration marocaine à Rabat," 394–96; Caillé, *Organisation judiciaire,* 19; Buskens, "Mālikī Formularies," 140. See also DAR, Safi, Italian consul in Safi to al-Tayyib b. Hima, 10 Rabī' II 1299/March 1, 1882.
41. There are some instances in which a Jew's name was not preceded by any sort of title, but this was quite uncommon (see, e.g., TC, File #6, 10 Sha'bān 1330).
42. See Sinaceur, *Dictionnaire Colin,* 2: 319. "Al-ḥazān" is more or less the equivalent of *faqīh* in Arabic. I am grateful to Professors Daniel Schroeter and Joseph Chetrit for sharing their expertise on the translation of this word.
43. This almost always occurs in documents from the first decade of the twentieth century: see, e.g., TC, File #9, 14 Muḥarram 1313; File #2, 10 Dhū al-Ḥijja 1326; File #5, 8 Ṣafar 1327; File #9, 6 Shawwāl 1328; File #3, 21 Rajab 1329; File #5, 2 Ramaḍān 1329; File #8, 2 Jumādā II 1330; File #3, 26 Rajab 1332; File #5, 10 Dhū al-Qa'da 1334; File #5, 11 Ṣafar 1335; File #3, 5 Ṣafar 1336.
44. See, e.g., al-Kattani, *Aḥkām ahl al-dhimma.* For a legal document that did contain this phrase (and which was—significantly, I think—from the colonial period), see CAHJP, MA.24, 3 Sha'bān 1371/April 28, 1952. See also Schroeter, "Views from the Edge," 182–83.
45. *'Arafū qadrahu shahida bihi 'alayhim bi-akmalihi:* see, e.g., Binani, *al-Wathā'iq al-fāsīya,* 26. For the translation, see Attif, "Court Judgments and Decisions," e.g. 98–103.
46. *Al-dhimmī wa-huwa bi-'l-ḥālati al-jā'izati:* see, e.g., TC, File #1, 11 Muḥarram 1298. For a slightly different version, see, e.g. TC, File #1, 6 Shawwāl 1283, which reads: "They testified about them completely regarding the Muslim . . . and regarding the dhimmī he is in a proper . . . and acceptable state" (*shahida bihi 'alayhimā bi-akmalihi bi-'l-nisbati li-'l-muslimi . . . wa-fī ḥāli ṣiḥḥati . . . wa-jawāzin bi-'l-nisbati li-'l-dhimmī*). I also found this formula in documents from Marrakesh (see, e.g., UL, Or.26.543 (1), 15 Ṣafar 1292, 5 Rabī' I 1293, 19 Shawwāl 1295, etc.). See also documents from Tetuan in which the formula states that the 'udūl "know the Jew" (*'arafa al-yahūdīya*): PD, 21 Muharram 1314, 21 Dhū al-Ḥijja 1315, etc. The manual for legal documents from nineteenth-century Fez does not include any examples of a special concluding formula for Jews, nor have I found any mention of this formula elsewhere (see, e.g., Ebied and Young, *Legal Documents of the Ottoman Period;* Khan, *Arabic Legal Documents*).
47. There are a number of such documents in the Assarraf collection: see, e.g., TC, File #9, 12 Jumādā II 1279; File #5, 10 Jumādā I 1283; File #7, 13 Jumādā I 1290; File #8, 23 Rabī' I 1296; File #10, 21 Dhū al-Qa'da 1316.
48. Shari'a courts were referred to as *shra'a* in Moroccan dialect, a variation on shari'a.

49. Péretié, "L'organisation judiciaire au Maroc," 522; see also the discussion in AGA, Caja M 9, Exp. no. 1 (81/9), Diario del Tribunal Marroquí, p. 4, November 23, 1871.
50. Le Tourneau, *Fès avant le protectorat,* 214. However, by the second half of the nineteenth century the authority of the qāḍī al-quḍā had been reduced to appointing qadis in Morocco's large cities; elsewhere, governors (pashas or qā'ids) either appointed qadis directly or suggested names to the sultan, who appointed them himself: Péretié, "L'organisation judiciaire au Maroc," 516–17.
51. Mercier, "L'administration marocaine à Rabat," 394–95; CADN, 4MA/900/63D, Général Dalbiez to Général de Division commandant les Troupes Débarquant au Maroc, August 1, 1912; Rapport du Chef de Bataillon Bussy sur l'organisation de la Magistrature Chérifienne, January 30, 1913.
52. Péretié, "Les medrasas de Fès," 314; Le Tourneau, *Fès avant le protectorat,* 216. For an in-depth case-study of the functioning of Morocco's most famous nineteenth-century mufti, see Terem, *Old Texts, New Practices*. On the role of muftis in Islamic law, see Masud, Messick, and Powers, *Islamic Legal Interpretation*.
53. One qadi was appointed for the city of Meknes and one for Casablanca, though again, many nā'ibs worked in the surrounding areas: see CADN, 4MA/900/63D, Tableau des Circonscriptions judiciaires avec indication des Mahakmas ou endroits où siègent les qadis, et des jours d'audience des qadis, July 22, 1912, and Rapport du Chef de Bataillon Bussy sur l'organisation de la Magistrature Chérifienne, January 30, 1913.
54. See, e.g.: TC, File #1, 15 Dhū al-Qa'da 1275; 1 Rabī' I 1297; File #5, 8 Muḥarram 1299; 26 Rabī' I 1297.
55. This chamber was known as a *maqsūra:* Aubin, *Morocco of To-Day,* 220; Le Tourneau, *Fès avant le protectorat,* 216. Fez's qadi courts were normally in session during the early afternoon, though on occasion they remained open until the evening prayer: ibid.
56. Aubin, *Morocco of To-Day,* 220; Le Tourneau, *Fès avant le protectorat,* 216. Bab al-Rasif is on the other side of the river known as the Wadi Fas, which bisects Old Fez. The second qadi was appointed at the request of the qāḍī al-quḍā, Mawlay Muhammad al-Filali al-'Alawi, though exactly when is unclear (ibid., 214, and Péretié, "Les medrasas de Fès," 315). On where this qadi held his court, see CADN, 4MA/900/63D, Tableau des Circonscriptions judiciaires avec indication des Mahakmas ou endroits où siègent les qadis, July 22, 1912. See also Mercier, "L'administration marocaine à Rabat," 395; Marty, "Justice civile musulmane I," 354. "Mawlāy," meaning "my master," is the honorific usually preceding a sultan's name.
57. Le Tourneau, *Fès avant le protectorat,* 266. For reasons I do not understand, Yehoshoua Frenkel erroneously claims that the qadi of New Fez and the qadi of al-Raṣīf were the same (Frenkel, "Jewish-Muslim Relations in Fez," 72).

For the Assarrafs' use of this court, see, e.g. TC, File #2, 8 Ṣafar 1294; TC, File #7, 10 Shaʿbān 1307 (which curiously refers to the "representative of the qadi al-jamāʿa in New Fez" [*nāʾib qāḍī al-jamāʿa bi-fās al-ʿulyā*]); File #9, 14 Jumādā I 1324.

58. CADN, 4MA/900/63D, Tableau des Circonscriptions judiciaires avec indication des Mahakmas ou endroits où siègent les qadis, July 22, 1912.
59. See, e.g., Maeterlinck, "Les institutions juridiques au Maroc," 480.
60. Schacht, *An Introduction to Islamic Law,* 192–93; Santillana, *Istituzioni di diritto musulmano malichita,* 100–101. There is evidence that Jews and other dhimmīs in Ottoman shariʿa courts were able to provide oral testimony in cases concerning other non-Muslims: Cohen, *Jewish Life Under Islam,* 122; Gradeva, "Orthodox Christians in the Kadı Courts," 67; Al-Qattan, "Dhimmis in the Muslim Court," 437.
61. Milliot, *Recueil de jurisprudence,* 1: 1, 40–42; Marty, "Justice civile musulmane I," 512–14. See also Boum, "Muslims Remember Jews," 259. I found a single reference to a qadi asking for verbal testimony from witnesses in court (see FO, 631/3, Carstensen to Hay, March 10, 1866).
62. Tyan, *Le notariat,* 74–75; Bargaoui, "Les titres fonciers," esp. 171–72. See also Rapoport, "Royal Justice and Religious Law," 78. Despite Baber Johansen's argument that Ḥanafī scholars in Central Asia did rely on written proof in many contexts, Ḥanafī qadis did not accept documents notarized by ʿudūl as equivalent to oral testimony (Johansen, "Formes de langage," esp. 365, 370–71). Indeed, it seems that in the Ottoman Empire (where the administration officially adhered to the Ḥanafī school of law) shariʿa court trials consistently privileged oral testimony (Jennings, "Limitations of the Judicial Powers of the Kadi," 173; Ergene, "Evidence in Ottoman Courts," 473–74). In Yemen, however, written documents seem to have been more central to shariʿa court procedure: Messick, *The Calligraphic State,* Ch. 11. More research into the history and specificity of written proof in Morocco, and Mālikī courts more broadly, remains necessary.
63. Mawlay Hasan established a rule that Muslims who had acquired foreign protection were ineligible to serve as ʿudūl: see al-Wathāʾiq al-Mālikīya, *Al-Wathāʾiq,* 4: 426–27.
64. Santillana, *Istituzioni di diritto musulmano malichita,* 2: 603. The practice of relying on a lafīf instead of two ʿudūl became widely accepted in the Maghrib over the course of the fifteenth and sixteenth centuries (Milliot, *Recueil de jurisprudence,* 1: 119).
65. There are many such lafīf documents in the Assarraf collection: see, e.g., TC, File #5, lafīf from 18 Rabīʿ II 1291 and File #10, 23 Shaʿbān 1294.
66. TC, File #1, 1 Rabīʿ I 1297 (and the entry on the same page dated 19 Rabīʿ I 1297): discussed further in Chapter 2.
67. See, e.g., Brunschvig, *Etudes d'islamologie,* 211–12; Melchert, "The History of the Judicial Oath in Islamic Law," 311–12. This is clearly documented in studies of the medieval period and the early modern Ottoman Empire: Goldman,

Rabbi David Ibn Abi Zimra, 155; Cohen, *Jewish Life Under Islam,* 122–23; Al-Qattan, "Dhimmis in the Muslim Court," 438; Çiçek, "A Quest for Justice," 477; Libson, *Jewish and Islamic Law,* 115; Ben-Naeh, *Jews in the Realm of the Sultans,* 239. Even non-monotheists seem to have been able to take the oath: see Alhaji, "Oath," 30.

68. Santillana, *Istituzioni di diritto musulmano malichita,* 2: 624–25; Kellal, "Le serment," 26–27; Schacht, *An Introduction to Islamic Law,* 190–91. See also Alhaji, "Oath," 31–32.
69. For another reference to Jews taking oaths in their synagogue, see File #7, 12 Dhū al-Qa'da 1297. This was standard in Mālikī law: Santillana, *Istituzioni di diritto musulmano malichita,* 2: 628. In the Ottoman Empire, however, a Torah scroll or a set of phylacteries was brought to the shari'a court and the Jew took his oath there (Ben-Naeh, *Jews in the Realm of the Sultans,* 239). On special formulas used by Christians and Jews in their oath-taking, see Santillana, *Istituzioni di diritto musulmano malichita,* 2: 629, and Al-Qattan, "Dhimmis in the Muslim Court," 438. Jewish jurists in medieval Spain felt similarly about the oaths of non-Jews, and Jewish law permitted Jews to demand that their non-Jewish adversaries take oaths in their own courts and upon their own God(s): see Assis, "Yehudei Sefarad be-'arka'ot hagoyim," 428.
70. TC, File #1, 6 Jumādā II 1299 (on the back of a bill of debt dated 1 Rabī' II 1295).
71. Although the Islamic tradition also considers Moses a prophet and considers him to have delivered the Torah to Jews, Muslims believe that Moses and the Torah were superseded by Muhammad and the Quran.
72. Pashas governed cities while qā'ids administered rural regions. In early modern England, mayors and aldermen also acted as judges of local courts: see Muldrew, "The Culture of Reconciliation," 939.
73. Le Tourneau, *Fès avant le protectorat,* 212. Other personnel working in the pasha's court included the *khalīfa* (the pasha's assistant, or "adjoint"), as well as a number of "mokhzanis" (soldiers) who executed the pasha's orders and were paid directly by the plaintiffs.
74. On extra-shari'a courts in early modern Tunisia, see Brunschvig, "Justice religieuse et justice laïque dans la Tunisie." On other parts of the Ottoman Empire, see Heyd, *Studies in Old Ottoman Criminal Law,* especially 208–20; Marcus, *The Middle East on the Eve of Modernity,* 107–8; Ginio, "Criminal Justice in Ottoman Salonica"; Ursinus, *Şikayet in an Ottoman Province,* 5–7; Baldwin, "Islamic Law in an Ottoman Context," Ch. 1. The jurisdictional boundaries in the Ottoman Empire were also quite fluid until the reforms of the nineteenth century: Heyd, *Studies in Old Ottoman Criminal Law,* 208–11; Jennings, "Kadi, Court, and Legal Procedure," 162–64; Jennings, "Limitations of the Judicial Powers of the Kadi," 152–53, 165; Ginio, "Criminal Justice in Ottoman Salonica," 200; Hickok, "Homicide in Ottoman Bosnia," 40, 44; Baldwin, "Islamic Law in an Ottoman Context," 39–44. On nineteenth-century

judicial reforms, see Peters, "Islamic and Secular Criminal Justice"; Rubin, *Ottoman Nizamiye Courts*.

75. Moreover, some commercial disputes were adjudicated in an informal customary court run by merchants, who ruled by *'urf al-tujjār,* or "the custom of the merchants." As with qadi courts, the local governor executed the sentences of these informal courts. See Le Tourneau, *Fès avant le protectorat,* 403; Lahlou, "La banque à Fès," 232.
76. Meakin, *Life in Morocco,* 242–46, 252; Péretié, "L'organisation judiciaire au Maroc," 524–25. Early modern Ottoman administrators also did not keep written records: Marcus, *The Middle East on the Eve of Modernity,* 114.
77. Mercier, "L'administration marocaine à Rabat," 395. This was also the case in the Ottoman Empire: Jennings, "Kadi, Court, and Legal Procedure," 158; Hickok, "Homicide in Ottoman Bosnia," 45.
78. Péretié, "L'organisation judiciaire au Maroc," 516, 525. See also DAR, Safi, 4718, al-Tayyib b. Hima to Muhammad Bargash, 25 Rabī' I 1280. For an evocative description of a Moroccan prison, see Meakin, *Life in Morocco,* 233–35. On the bastinado, see Leared, *Morocco and the Moors,* 254–55; Meakin, *Life in Morocco,* 255–56.
79. On the history of this institution, also called the Ministry of Justice (*wizārat al-'adl*) and the Ministry of *maẓālim* (*wizārat al-maẓālim*), see Chapter 4. The only discussion of the Ministry of Complaints is an unpublished paper by Wilfred Rollman delivered at the Middle East Studies Association annual meeting in November 2008: Rollman, "The Ministry of Complaints and the Administration of Justice in Pre-Colonial Morocco," in *Middle East Studies Association Annual Meeting* (Washington, D.C., 2008). I am deeply grateful to Professor Rollman both for alerting me to the existence of the Ministry of Complaints registers at the Bibliothèque Hassaniya in Rabat and for sharing his paper with me. For the few contemporary accounts, see Aubin, *Morocco of To-Day,* 165; Michaux Bellaire, "La beniqat ech chikaïat"; Ibn Zaydan, *Itḥāf a'lām al-nās,* 2: 513, 516, and 3: 569; Ibn Zaydan, *Al-'izz wa-'l-ṣawla,* 50–54; Bu 'Ishrin, *Al-tanbīh al-mu'rib,* 44–45. For brief (and often misleading) mentions in the secondary literature, see Goulven, *Traité d'économie,* 22; Caillé, *Organisation judiciaire,* 18; Lahbabi, *Le gouvernement marocain,* 173–81; al-Manuni, *Maẓāhir,* 1: 43; Cabanis, "La justice du chrâa et la justice makhzen," 60; Pennell, *Morocco Since 1830,* 79.
80. Stern, "Petitions from the Mamluk Period," 237; Darling, *Social Justice*. On petitions to Muslim rulers, see Ursinus, *Şikayet in an Ottoman Province,* 3–5; Chalcraft, "Engaging the State"; Baldwin, "Islamic Law in an Ottoman Context," Ch. 2; Baldwin, "Petitioning the Sultan."
81. On the maẓālim courts, see Amedroz, "The Maẓālim Jurisdiction"; Tyan, *Organisation judiciaire,* 433–525; Nielsen, *Secular Justice in an Islamic State;* Nielsen, "Maẓālim"; Müller, "Redressing Injustice"; Tillier, "The Mazalim in Historiography." On the Ottoman *divan-ı hümayun* (which functioned as

the equivalent of a maẓālim court), see Heyd, *Studies in Old Ottoman Criminal Law,* 227; Zarinebaf, "Women, Law, and Imperial Justice"; Wittmann, "Before Qadi and Vizier," Ch. 2 and 3; Ginio, "Coping with the State's Agents." See also Ursinus, *Şikayet in an Ottoman Province,* esp. 18, 23, which describes the existence of a localized divan-ı hümayun. Although the divan-ı hümayun dwindled into insignificance in the eighteenth century (Lewis, "Dīwān-i Humāyūn"), the central government continued to receive and address petitions until the dissolution of the empire: see Ben-Bassat, "Justice"; Ben-Bassat, "'Al ṭelegraf ve-ẓedeq"; Lafi, "Petitions and Urban Change."

82. Tyan, *Organisation judiciaire,* 1: 156; Amedroz, "The Maẓālim Jurisdiction," 641–42.
83. See, e.g., Ibn Zaydan, *Itḥāf aʿlām al-nās,* 2: 513; Müller, "Redressing Injustice," 100.
84. On the sultan's spiritual authority, see especially Hammoudi, *Master and Disciple*.
85. Ibn Zaydan, *Itḥāf aʿlām al-nās,* 2: 516; Ibn Zaydan, *Al-ʿizz wa-'l-ṣawla,* 50.
86. Some entries of the Ministry of Complaints records simply say "a letter whose author is not named" (*kitāb lam yusamma ṣāḥibuhu*); see for instance BH, K 181, p. 87, 2 Jumādā II 1309. See also Ibn Zaydan, *Itḥāf aʿlām al-nās,* 1: 240. The sultan responded to complaints when he went on military expeditions, and it appears that the Minister of Complaints followed him, as is indicated by the colophon of the second register in the series of four which records that it was completed "at the royal encampment in Abu Jaʿad [Boujad] in the presence of the sultan" (*khutima hādhā al-kunnāshu al-mubāraku bi-mukhayyami al-maḥallati al-saʿīdati bi-Abī al-Jaʿad fī wujhati mawlānā*): BH, K 174, p. 134, 10 Muḥarram 1308.
87. Literacy rates for the nineteenth century are difficult to judge, but even in 1980 only 28 percent of the population was literate (Pennell, *Morocco Since 1830,* 359).
88. In the cases in which these petitions are preserved, the basic form of the letters contained many of the same features found in medieval petitions: Stern, "Three Petitions of the Fatimid Period," 186–92; Khan, "Medieval Arabic Petitions."
89. When the petition was addressed to the sultan it was standard to include a more elaborate introductory formula. See, for example, DAR, Yahūd, 19415, Jews of unknown place to Mawlay ʿAbd al-Rahman, Dhū al-Ḥijja 1262. After the basmala and the blessing of the Prophet, the letter begins: *adāma Allāh ʿizza mawlānā al-imāmi wa-ẓilli Allāh ʿalā al-anāmi nāṣiri al-ṣuʿbati wa-maʾwā al-aytāmi mudāfiʿu al-maẓlimati qāhiru al-ẓullām.* ("May God perpetuate the strength of our lord, the imam, and the shadow of God upon humanity, vanquisher of difficulties and refuge of orphans, repeller of injustice and subduer of wrongdoers.")

90. DAR, Yahūd, 33481, Jews of Meknes to Muhammad b. Ahmad al-Sanhaji, 28 Ramaḍān 1304. Petitions addressed to viziers tended to have simpler introductions than those addressed directly to the sultan. Our letter begins: *ba'd taqbīl yadi sayyidinā al-faqīhi al-'allāmati nā'ibi wazīri al-ḥaḍrati al-'āliyati bi-llāh sayyidī Muḥammad b. 'Aḥmad al-Ṣanhājī* . . . ("After kissing the hand of our lord the learned scholar, the deputy of the vizier of the one who is exalted by God [i.e. the sultan], our lord Muhammad b. Ahmad al-Sanhaji . . .").
91. See, e.g., DAR, Yahūd, 34155, Hajj 'Abdallah Hasar to Muhammad Bargash, 16 Jumādā I 1294.
92. See, for instance, Crone, *God's Rule,* 292–97; Darling, *Social Justice,* esp. 7.
93. Indeed, throughout Islamic history dhimmīs petitioned their Muslim rulers to ensure their rights were respected. For the Fatimid period, see Goitein, "Petitions to the Fatimid Caliphs"; Stern, "Three Petitions of the Fatimid Period"; Stern, "A Petition to the Fāṭimid Caliph"; Cohen, *Jewish Self-Government,* 261–63; Rustow, "At the Limits of Communal Autonomy." On collective petitions in particular, see Goitein, "Petitions to the Fatimid Caliphs," 32–38, and Stern, "A Petition to the Fāṭimid Caliph," 212–13. On petitions by Christian monks during the Ayyubid and Mamluk periods, see Stern, "Petitions from the Ayyubid Period," and Stern, "Petitions from the Mamluk Period." On a petition by Jews during the Mamluk period, see Cohen, "Jews in the Mamluk Environment." On petitions by Jews to the Ottoman central government, see Ursinus, *Şikayet in an Ottoman Province,* 27–30; Wittmann, "Before Qadi and Vizier," Ch. 2.
94. Al-Nasiri, *Kitāb al-istiqṣā,* 7: 97. Of course, al-Nasiri had his own motivations for penning this description of the 'Alawis' greatest ruler; it can and should be read as a veiled critique of the situation in Morocco in 1897 when he finished his chronicle, which was anything but stable: Pennell, *Morocco Since 1830,* 109; Kenbib, "Changing Aspects of State and Society," 11–12. Al-Nasiri was also quite critical of Jews and how they had taken advantage of opportunities presented by the internationalization of Morocco's economy: see, e.g., Laroui, *Origines,* 311. On al-Nasiri generally, see Brown, "Portrait"; Calderwood, "The Beginning of Moroccan History," esp. 399–403.
95. Al-Manuni, *Maẓāhir,* 1: 43. On state reform more broadly, see Burke, *Prelude to Protectorate,* esp. Ch. 2–3; Ben-Srhir, "Stratégies économiques." This is similar to contemporaneous modernization efforts in Tunisia and Iran (Darling, *Social Justice,* 166–67). The Makhzan's reorganization of the Ministry of Complaints also echoed the modernization of the petitioning process in the Ottoman Empire following the 1839 Gülhane Decree (ibid., 162).
96. Van Voss, "Introduction: Petitions in Social History," 4–5. See also Ginio, "Coping with the State's Agents."
97. See, e.g., Laskier, *The Alliance Israélite Universelle,* 43–61; Kenbib, *Juifs et musulmans,* esp. 130–42, 194–224; Marglin, "A New Language of Equality." See also examples of this sort of attitude in Fenton and Littman, *L'exil au Maghreb,* esp. 245–46, 257–59, 284–85, 319–20, 343–46, etc.

98. *Kallafa bi-da'āwīhim wazīran mustaqillan khāṣṣan . . . wa-anna kullu man rafa'a shikāyatahu li-ḥaḍratihi al-'āliyati bi-llāhi tajrī 'alā tarīqi al-ḥaqqi wa-'l-shar'* (DAR, Yahūd, 36069, Muhammad Bargash to Ambassadors in Tangier, 6 Ṣafar 1298). The word used for claims of mistreatment is *maẓālim*. Bargash did not mean that the sultan had founded a new ministry or appointed a new minister, since Muhammad Saffar was the minister of complaints at the time and remained so until his death ten months after this letter was written. See also DAR, Fez, 20647, Muhammad Torres to Muhammad b. al-'Arabi b. al-Mukhtar, 4 Jumādā II 1302. On Bargash, see Kably, *Histoire du Maroc,* 487.
99. Fenton and Littman, *L'exil au Maghreb,* 540–42. This is discussed further in Chapter 5.
100. *Qabaḍūhu ba'ḍu al-'askari wa-ẓarabūhu wa-kādū an yaqtalūhu wa-law lā āl al-muslimīn naza'ūhu wa-ḥamalūhu li-dārihi la-qatalūhu* (NARA, reg. 84, v. 141A, Felix A. Mathews to Mawlay Hasan [letter #26], 26 Dhū al-Ḥijja 1301).
101. NARA, reg. 84, v. 48, "List of Individuals (not citizens of the US) under the jurisdiction or protection of the U.S. Consulate in the Empire of Morocco according to ancient custom and treaty stipulations" (p. 81).
102. *An ya'mura bi-akhadhi al-ḥaqqi li-'l-yahūdī al-madhkūr.*
103. On capitulations in the Ottoman Empire, see esp. Van Den Boogert, *The Capitulations and the Ottoman Legal System*. On the 1767 treaty, see Kenbib, *Les protégés,* 37. On the legal basis for the protection of foreigners, see, e.g., Clercq and Vallat, *Guide pratique des consulats,* 1: 355–56.
104. Bowie, "The Protégé System in Morocco," 261–74; Kenbib, "Structures traditionelles"; Kenbib, *Les protégés;* Marglin, "The Two Lives of Mas'ud Amoyal"; Walther, *Sacred Interests,* 128–32.
105. Kenbib, *Les protégés,* 96. This practice may have been related to the perceived need to hold "backward" countries more responsible for harm that came to U.S. citizens (and thus demand indemnities for murder and theft directly from the government): see Borchard, *Diplomatic Protection,* 406.
106. See CADN, Tanger B 488, printed register with the heading "Certificat d'indemnité" on each page (those filled out are dated 1910).
107. Laroui, *Origines,* 310–14; Kenbib, *Juifs et musulmans,* 193–252; Kenbib, *Les protégés,* 225–44. In fact, historiographical discussions of protection in the Ottoman Empire tend to describe all protégés as being non-Muslim (see Sonyel, "The Protégé System in the Ottoman Empire"; Van Den Boogert, *The Capitulations and the Ottoman Legal System*). The nature of extraterritoriality in Morocco meant that Timur Kuran's argument about non-Muslims' access to protection as providing a basis for their economic advantage over Muslims is inapplicable: Kuran, *The Long Divergence,* 204.
108. al-Kattani, *Al-dawāhī;* Laroui, *Origines,* 315–17; al-Manuni, *Maẓāhir,* 1: 321–34; Terem, "Al-Mahdī al-Wazzānī."

109. The exception to this rule was Essaouira, a city on Morocco's Atlantic coast due west of Marrakesh, where the British consul presided over a consular court for at least part of the nineteenth century, as described in Chapter 6.
110. The state of the consular archives makes it clear that either the consular courts in Morocco did not keep consistent records of their activities, or that such records have been lost. See, e.g., FO, 631/3, Carstensen to Hay, November 29, 1869; MAE Courneuve, CP Maroc 50, Féraud to de Freycinet, March 9, 1886; MAE Courneuve, CP Maroc 53, Féraud to Flourens, September 28, 1887.
111. In fact, it is not clear where appeals from American consular courts in Morocco were adjudicated; U.S. consular courts in China sent appeals to the U.S. Court of Appeals for the Ninth Circuit in San Francisco (see Scully, *Bargaining with the State*). Cases tried in French consular courts could be appealed in Aix-en-Provence (Clercq and Vallat, *Guide pratique des consulats,* 552–53, 590–91).
112. The definitive handbook for French consulates was published in 1880 and included a discussion of the French laws concerning the judicial functions of consular courts: Clercq and Vallat, *Guide pratique des consulats,* 526–98. The first consular law code specifically designed for Morocco was promulgated by Great Britain in 1889, called *The Morocco Order in Council* (Lourde, "Les juridictions consulaires," 24). A similar code for the Ottoman Empire was promulgated in 1844 (called *The Ottoman Order in Council*), and then revised in 1873, 1899, and 1910: see Hanley, "Foreignness and Localness in Alexandria, 1880–1914," 178–81. On the rarity of citing law codes, see, e.g., CADN, Tanger F 2, Moses Israel v. Ducors, May 19, 1893. After 1880, the French began keeping far more detailed records of the proceedings of the consular court of Tangier and also began systematically citing law codes: see CADN, Tanger F 1–4, Tribunal consulaire de Tanger; Actes de procédure civile et criminelle, justice de paix, conciliations, 1877–1903.
113. Clercq and Vallat, *Guide pratique des consulats,* 1: 535. This rule was only adopted uniformly following the 1856 treaty with Britain: Ben-Srhir, *Britain and Morocco,* 51–52; Kenbib, *Les protégés,* 49; Lourde, "Les juridictions consulaires," 21–23.
114. Previously, foreigners had been formally banned from acquiring real estate in Morocco, with only a few exceptions (Kenbib, *Les protégés,* 95–96).
115. Discussed further in Chapter 6; on the regularity with which consuls ignored rules of jurisdiction, see, e.g., FO, 636/2, November 3, 1909, p. 38b; Caillé, "Un procès consulaire à Mogador," 339.
116. CADN, Tanger F 5, trial of Michel Mazzella, Gaëtan Ortéga, and François Amores, September 11, 1911. See also NARA, reg. 84, v. 13A, Jacob Bibas to J. Toel, December 22, 1904.
117. Techniques used by Makhzan officials to enforce the law are described in Chapter 4. For examples of correspondence among Makhzan officials concerning the requests of diplomats on their protégés' behalf, see, e.g.,

the case of Mas'ud Ibn al-Bahar: BH, K 551, p. 41, 19 Jumādā I 1307; p. 74, 15 Ramaḍān 1307; p. 79, 25 Ramaḍān 1307; p. 83, 4 Shawwāl 1307; p. 85, 11 Shawwāl 1307; p. 90, 10 Dhū al-Qa'da 1307; p. 93, 28 Dhū al-Qa'da 1307. See also that of the Nahon family from Salé: BH, K 551, p. 52, 28 Jumādā II 1307; p. 58, 21 Rajab 1307; p. 82, 30 Ramaḍān 1307; p. 83, 5 Shawwāl 1307; p. 87, 24 Shawwāl 1307 (two entries).

118. *Lā taj'al lanā mushāḥanata ma'a hādhā al-jinsi wa-lā ma'a ghayrihi min al-ajnās:* DAR, Fez, 5978, Muhammad Bargash to al-Hajj Sa'id b. al-Qadir Faraji, 17 Jumādā I 1293.

CHAPTER 2. THE LAW OF THE MARKET

1. TC, File #4, 10 Jumādā II 1297. The settlement is recorded on the back of the document recording the lawsuit, though it does not specify what price the two litigants eventually agreed upon. In 1880, one French riyāl (five francs) was equal to approximately eight mithqāls in Essaouira (although the exchange rate varied from one city to another: Schroeter, *Merchants of Essaouira,* 143, 149).
2. See, e.g., Al-Qattan, "Dhimmis in the Muslim Court"; Wittmann, "Before Qadi and Vizier."
3. Jay Berkovitz makes a similar argument for the Jews of Metz: see esp. Berkovitz, *Protocols of Justice,* 97–98, 102–3.
4. Miège, *Le Maroc et l'Europe,* 2: 473–500, 4: 285–302; Le Tourneau, *Fès avant le protectorat,* 160.
5. Miller, *Modern Morocco,* 58–60. On military reform in Morocco, see Rollman, "Military Reform in Morocco"; Simou, *Les reformes militaires au Maroc;* Bennison, "The 'New Order' and Islamic Order."
6. René-Leclerc, "Le commerce à Fez," 229–44; Miège, "Thé au Maroc"; Miège, *Le Maroc et l'Europe,* 2: 135, 534–47; Hémardinquer, "Le thé à la conquête de l'Occident"; Brown, *People of Salé,* 124–25, 129–35; Le Tourneau, *Fès avant le protectorat,* 430–37.
7. See, e.g., Schroeter, *The Sultan's Jew;* García-Arenal and Wiegers, *A Man of Three Worlds.*
8. Schroeter, *Merchants of Essaouira,* 26, 86–87, 212–13.
9. The textiles are described in the documents as *kattān, kattān marikān* (American kattān), or simply *marikān. Kattān* means "flax" or "linen" in classical Arabic (Frenkel translates it as "flax," which, given the context, is clearly a mistake: Frenkel, "Jewish-Muslim Relations in Fez," 73), whereas the classical Arabic word for cotton is *quṭn.* Nonetheless, *kattān* as used in Morocco was an adaptation of the English and/or French "cotton/coton"; indeed, most names of foreign commercial goods were simply borrowed from foreign languages (see De Premare, *Dictionnaire arabe-français,* 10: 528). Moreover, cotton was a far more common import to Morocco than linen (or any other textile: see Miège, "Coton et cotonnades"; Miège, *Le Maroc et l'Europe,* 2: 75–77, 135, 535–37, 4: 391). *Marikān* almost certainly referred to

"Americano," the Moroccan term for raw calico (Miège, "Coton et cotonnades," 227, fn 4, although Miège does not give the Arabic for this word; René-Leclerc describes "Malikan" as "cottonade jaune": René-Leclerc, "Le commerce à Fez," 239). It is also possible that *marikān* indicated the origin of the material in question, though in that case it would have referred to the place where the cotton was grown and not where it was milled, since nearly all cotton textiles imported to Morocco came from Britain (ibid., 234; Miège, "Coton et cotonnades"). I am grateful to Daniel Schroeter for his help with the definition of this term.

10. Kenbib, "Changing Aspects of State and Society," 15; Ben-Srhir, *Britain and Morocco,* 130.
11. Out of a sample of 117 bills of sale in which members of the Assarraf family sold goods to Muslims, 86 (or 74 percent) were for cotton textiles.
12. The sales contracts of at least eleven other Jewish merchants from Fez involved in the cotton textile trade appear in the Assarraf collection. Imported textiles were sold wholesale in one of Fez's markets known as the *qaysarīya* (René-Leclerc, "Le commerce à Fez," 296). For Shalom's presence in Tangier, see, e.g., TC, File #2, 17 Rabīʿ I 1302; File #4, 19 Ṣafar 1302 and 8 Ṣafar 1308; File #5, 15 Jumādā I 1302 and 21 Rabīʿ II 1309. Most imports in Fez arrived via Tangier (see Lahlou, "La banque à Fès," 223). I infer that he bought the goods from Jewish importers because none of the bills of sale for bulk items survive in the Assarraf collection. Bills of sale for transactions with Jews would normally have been drawn up by Jewish notaries, but since the collection consists solely of shariʿa court documents, these bills of sale would necessarily be absent. It is also possible that the Assarrafs bought some or all of their wares from foreign importers (though this type of arrangement was more unusual).
13. Eickelman, "Religion and Trade," 339–40; Brown, "Mellah and Madina," 267–70; Schroeter, *Merchants of Essaouira,* 86; Deshen, *The Mellah Society,* 32–36.
14. On the Assarrafs' ownership of horses, see TC, File #8, 14 Shaʿbān 1297, in which Shalom bought a white male horse from al-Hajj ʿAbd al-Rahman b. al-muʿallam ʿAli al-Susi for 157 mithqāls and five ūqīyas. See also TC, File #10, 2 Muḥarram 1323, in which the Jew Rafael b. Aharon al-Sukuri bought a red work horse (*birdhawn*) from a Muslim. (I am grateful to Professor Michael Cook for this translation.) A number of bills of sale attest the purchase of mules from Muslims: TC, File #2, 29 Rabīʿ I 1286; File #10, 3 Rabīʿ I 1288; File #9, 26 Jumādā I 1296; File #1, 12 Dhū al-Qaʿda 1307; File #10, 27 Shaʿbān 1324; File #5, 1 Dhū al-Qaʿda 1327; File #5, 13 Muḥarram 1328; File #9, 6 Shawwāl 1328. My information concerning the family's stable is from an interview with Michael Maman, September 11, 2013. There is some indication that in Morocco, Jews were permitted to ride horses outside the city walls (though not inside them): Romanelli, *Travail in an Arab Land,* 90.

15. There were a limited number of banks in Tangier after 1900, including those established by Moroccan Jews and branches of foreign banks. However, these mainly served to send money abroad or change currency and did not disrupt older forms of credit extension in Fez (Lahlou, "La banque à Fès," 228–30; Le Tourneau, *Fès avant le protectorat,* 289–90).
16. On merchants as bankers in medieval Europe, see Jordan, *Women and Credit,* 19.
17. Fifteen days is the shortest period of time I found (e.g. TC, File #10, 18 Muḥarram 1306); the longest involved a debt of 360 riyāls which the buyer agreed to pay back at the rate of 12 riyāls every month (TC, File #10, 9 Dhū al-Ḥijja 1299).
18. On *salaf,* see Latham, "Salaf." See also Schroeter, *Merchants of Essaouira,* 109, 112–13. For formulas for a salaf loan, see Binani, *Al-wathā'iq al-fāsīya,* 43. Out of the 166 bills of debt I analyzed in detail, I found eight that were for a salaf loan. See, e.g., TC, File #1, bill of debt owed by Muhammad b. Idris al-Miknasi to Shalom (for 65 riyals), dated 17 Ramaḍān 1309.
19. See, e.g., TC, File #10, 16 Dhū al-Qa'da 1309. Among the 166 bills of debt analyzed in detail I found no more than four that concerned *salam* loans. On salaf and salam loans, see also Lydon, *On Trans-Saharan Trails,* 317–18; Schroeter, "Views from the Edge," 186.
20. Ennaji, *Expansion européenne,* 60–64.
21. For instance, a bill of debt owed to Ya'akov and dated 15 Muḥarram 1310 was guaranteed exactly four years later by the debtor's son (on 15 Muḥarram 1314). There were formulas for a guarantor both as part of the original bill of debt and as a separate document: see Binani, *Al-wathā'iq al-fāsīya,* 47.
22. Between 1864 and 1882 (1281–1300 AH), Shalom is mentioned in an average of thirty-nine documents per year. However, if one disregards the years during which his activities were markedly low (1868–69/1285, 1872–75/1289–91, 1876/1293, and 1881–82/1299), then Shalom averaged forty-nine visits to court per year. The Assarraf collection preserves far more documents concerning Shalom than for any other member of the family: he is mentioned in 1,013 out of a total of 1,930 separate entries (his son Ya'akov is a distant second with only 458 entries to his name).
23. Of the documents in the Assarraf collection, 73 percent are notarized contracts, as are 98 percent of the documents in other collections I consulted. Scholars working on the medieval and early modern periods have also observed that Jews mainly used shari'a courts for notarial purposes: see, e.g., Goitein, *A Mediterranean Society,* 2: 400; Gil, *A History of Palestine,* 168; Wittmann, "Before Qadi and Vizier," 71. Studies of how Muslims used shari'a courts in Morocco have yet to be conducted, though the anecdotal evidence I gathered in the course of my research suggests that they, too, frequented 'udūl far more than qadi courts.
24. About 12 percent (239 total) of the documents in the Assarraf collection concern appearances before a qadi.

25. For instance, Yeshu'a Corcos of Marrakesh was an even more successful merchant; the documents from his personal archives held at the University of Leiden—which represent only a small fraction of his papers (others are held by Yale, for instance)—include dozens of Islamic legal documents attesting his regular use of shari'a courts. Nor was frequent recourse to 'udūl unique to non-Muslims in Morocco; an Ottoman formulary for Islamic legal documents from the nineteenth century was written entirely with Christian clients in mind (see Ebied and Young, *Legal Documents of the Ottoman Period,* 2–5; Hallaq, "Model Shurūṭ Works," 116–17).
26. Among the other shari'a court documents I examined, about 52 percent were also bills of debt (154 out of 295).
27. Releases make up about 5 percent of the Assarraf collection; they constituted about 4 percent of the documents I examined from other collections. For a formula for a standard release document, see Binani, *Al-wathā'iq al-fāsīya,* 57. See also Schacht, *An Introduction to Islamic Law,* 148. On the use of quittances in court, see, for instance, the case of Joseph Suiry v. Menahem Nahon and udah Benguigui (in CADN, Tanger A 159), in which Suiry sued Nahon and Benguigui for money they supposedly owed him. Nahon and Benguigui produced what they claimed was a release signed by Suiry which confirmed that Nahon and Benguigui had fulfilled all their financial obligations. The qadi of Tangier ruled in Nahon and Benguigui's favor on the basis of this release.
28. *Hādhā l-maqāl di-sharīf mūl l-khurṣa . . . di-Maymon:* TC, File #4, 10 Jumādā II 1297.
29. TC, File #4, no date. There are seven more such informal bills of debt in the Assarraf collection.
30. See, e.g., Flamand, *Un mellah en pays berbère,* 142, though it seems that Flamand largely misunderstood the nature of Islamic law and legal documentation in Morocco, making his claims somewhat questionable. (On Flamand, see Schroeter, "Views from the Edge," 177–78.)
31. See, e.g., MAE Courneuve, CP Maroc 53, Féraud to Flourens, September 28, 1887. This seems to be more or less what Ghislaine Lydon describes as *muḍ'āf* in the Saharan trade (Lydon, *On Trans-Saharan Trails,* 315–17). A similar strategy was also used to hide interest in loans made in the Ottoman Empire: Gerber, *Crossing Borders,* 154–55. On legal ways to charge interest, see Saeed, *Islamic Banking and Interest,* esp. 37–39. The Mālikī school was generally less tolerant of such legal fictions (see Khan, "The Mohammedan Laws Against Usury"; Schacht, "Riba").
32. TC, File #1, 30 Rabī' I 1309. For similar claims that the Assarrafs charged hidden interest, see File #7, 4 Sha'bān 1284; File #6, 19 Rabī' II 1292; File #8, 26 Ṣafar 1293.
33. TC, File #6, 19 Rabī' II 1292.
34. Al-'Arabi's brother 'Ali guaranteed the debt on 2 Jumādā I 1292.
35. Indeed, in another case in which one of Ya'akov's creditors claimed he had been charged an even higher rate of hidden interest, the qadi completely

ignored the creditor's claims and ruled that he had to guarantee the entire debt as it was recorded in the legal document (TC, File #1, 30 Rabīʿ I 1309). See also TC, File #7, 4 Shaʿbān 1284 and File #8, 26 Ṣafar 1293.

36. See, e.g., Boum, "Muslims Remember Jews," 255.
37. Schroeter, *Merchants of Essaouira,* 110, 172–73; Kenbib, *Juifs et musulmans,* 253–62; Ennaji, *Expansion européenne,* 60–65. This seems not to have been the case in the medieval Islamic world or in most parts of the early modern Ottoman Empire, where Jews were just as likely to borrow from Muslims as were Muslims from Jews: Goitein, *A Mediterranean Society,* 1: 256–58; Gerber, "Jews and Money-Lending"; Gerber, "Muslims and Zimmis."
38. This does not mean that Jews never borrowed from Muslims, only that they did so far less than Muslims borrowed from Jews; see, e.g., TC, File #5, 23 Muḥarram 1265; Bension Collection of Sephardic Manuscripts, University of Alberta, Ms. 188 (p. 248a), described in Aranov, *Catalogue of the Bension Collection,* 108.
39. BH, K 181, p. 120, 22 Rajab 1309.
40. Indeed, this qadi's actions were considered problematic enough to prompt a petition from the Jewish community of Demnat directly to the sultan asking for his intervention (discussed further in Chapter 5).
41. See, e.g., Baron, *History of the Jews,* 4: 197–202; Bowie, "The Protégé System in Morocco," 242; Laskier and Simon, "Economic Life," 32. On the permissibility of lending at interest to non-Jews, see the *Shulkhan ʿArukh,* Yoreh Deʿah, 159.
42. Gerber, *Crossing Borders,* Ch. 6; Cohen and Ben Shimʿon-Pikali, *Yehudim beveit ha-mishpat, ha-meʾah ha-17,* 1: 538.
43. On Jews' overrepresentation as merchants in rural areas in particular, see Deshen, *The Mellah Society,* 32–39.
44. Boum, "Muslims Remember Jews," 255–57.
45. TC, File #6, 12 Dhū al-Ḥijja 1291; File #6, 19 Rabīʿ II 1292.
46. I glean this from the third fatwā on the back of the maqāl in TC, File #1, 1 Rabīʿ I 1297.
47. See ibid., as well as TC, File #5, 14 Muḥarram 1297.
48. Le Goff and Sutherland, "The Revolution in Eighteenth-Century Brittany," 102–6; Kagan, *Lawsuits and Litigants,* 82–84; Muldrew, "The Culture of Reconciliation"; Smail, *The Consumption of Justice,* 62, 138; Ergene, *Local Court in the Ottoman Empire,* Ch. 9.
49. For a contemporary description of procedure in shariʿa courts see Maeterlinck, "Les institutions juridiques au Maroc," 478–79. The plea was almost always made on the same day of the initial accusation (both of which were recorded in the *maqāl,* literally, a piece of paper): for an exception see TC, File #3, 21 Rajab 1329 (in which the defendant pleaded not guilty six weeks later). This procedure was quite similar to that observed in kadı courts of the Ottoman Empire: see, e.g., Jennings, "Limitations of the Judicial Powers of the Kadi," 172–73; Ergene, "Evidence in Ottoman Courts," 473. A good example

of using a qadi court to settle out of court occurred in March 1909, when Ya'akov Assarraf and his business associate Eliyahu b. 'Azuz Kohen reached an amicable settlement with the Muslim Idris b. Ya'ish al-Najjar after suing him in a qadi court (TC, File #6, 8 Ṣafar 1327). Ya'akov and Eliyahu claimed that Idris owed them 6,945 riyāls—a huge sum—for debts that Idris had guaranteed. Idris's sons came to court and demanded that "the dhimmīs take an oath concerning the signature of their father [Idris] that [the two dhimmīs] presented." Instead of taking the oath—something to be avoided if at all possible—the parties summoned two Jewish mediators (*man aṣlaḥa baynahum*): al-ḥazān Vidal b. al-ḥazān Avner al-Sal'ati al-Fasi and the merchant Zubil b. Ya'akov b. Samhun al-Fasi. With the mediators' help, Ya'akov and Eliyahu agreed to a reduced payment of 4,000 riyāls. Even if such settlements meant that creditors did not collect the full sum they had initially claimed, the amount saved in court expenses and time must have made up for much, if not all, of their losses. See also TC, File #3, 30 Muḥarram 1309; File #5, 16 Dhū al-Ḥijja 1292, 27 Sha'bān 1309, and 9 Shawwāl 1332.

50. TC, File #5, 14 Muḥarram 1297.
51. About half of the cases in the Assarraf collection in which the debtor pleaded guilty resulted in his claiming bankruptcy (eleven out of twenty-three).
52. See especially al-'Arabi, *Shahādat al-lafīf*. Binani offers a formula for declaring bankruptcy which, though not explicitly called a lafīf, nonetheless indicates that there must be twelve witnesses (Binani, *Al-wathā'iq al-fāsīya,* 65). René Bouvet, in his study of bankruptcy in Mālikī law, does not mention the use of a lafīf in declaring a person bankrupt; rather, he observed that the person must both produce witnesses and take an oath to that effect (Bouvet, *Faillite en droit musulman,* 18). Qadis often ordered the defendant to provide a copy of the lafīf document to the plaintiff: see, e.g., TC, File #3, 4 Rabī' I 1297.
53. On the same maqāl as above, dated 28 Ṣafar 1297.
54. Dated 10 Rabī' I 1297.
55. Jews were plaintiffs in 86 percent (sixty out of seventy) of the cases in the Assarraf collection. I located only five lawsuits in other collections, in which Jews were the plaintiff in three: see UL, Or.26.543 (1), 27 Dhū al-Ḥijja 12??, Haim Corcos, Marrakesh; 7 Sha'bān 1298, Haim Corcos, Marrakesh; YBZ, 280, 6 Muḥarram 1234, Shlomoh b. Menahem b. Walid. (For the two cases in which Jews were the defendant, see UL, Or.26.543 (1), 18 Jumādā I 1295, 'Amran Corcos, Marrakesh; YBZ, 280, 17 Dhū al-Qa'da 1308, Rafael b. 'Aziz Harosh.) The vast majority of the lawsuits initiated by Jews concerned unpaid debts (fifty-six out of sixty in the Assarraf collection, or 93 percent). For cases in which Muslims sued Jews concerning mules, see TC, File #8, 5 Ramaḍān 1301; File #8, 12 Jumādā I 1296. For failure to pay for goods, see File #2, 29 Dhū al-Qa'da 1291; File #5, 15 Rabī' II 1292; File #5, 9 Dhū al-Qa'da 1292.

56. TC, File #1, 18 Ṣafar 1297.
57. Called a *ḍāmin al-wajh*. On the legal basis of this practice, see Santillana, *Istituzioni di diritto musulmano malichita,* 2: 493–94; Schacht, *An Introduction to Islamic Law,* 197.
58. Maeterlinck, "Les institutions juridiques au Maroc," 479; Kellal, "Le serment," 19–20; DNA, 2.05.15.15.81, George P. Hunos to John Drummond Hay, July 25, 1877; TC, File #9, 1 Rabīʿ I 1301; File #10, 7 Muḥarram 1302; File #1, 22 Dhū al-Qaʿda 1323; File #6, 8 Ṣafar 1327. This was not unique to Morocco; in pre-modern times most Jews' religious sensibilities meant that they took oaths quite seriously: see, e.g., Goitein, *A Mediterranean Society,* 2: 340; Fram, *A Window on Their World,* 63–64. Naturally, there were some instances in which Jews and Muslims acquiesced to the request that they swear an oath. On Jews taking oaths, see TC, File #1, 6 Shawwāl 1283; File #1, 6 Jumādā II 1299 (on the back of a bill of debt dated 1 Rabīʿ II 1295). On Muslims taking oaths, see File #1, 29 Dhū al-Qaʿda 1291; File #9, 4 Ṣafar 1294.
59. Rosen, *The Anthropology of Justice,* 34–35.
60. This was recorded in an entry dated 10 Rabīʿ I 1297, under the initial maqāl.
61. TC, File #5, 27 Ṣafar 1297. The continuation of this lawsuit (including the relevant fatāwā) is on a separate document found in File #1, starting with a lafīf from 1 Rabīʿ I 1297.
62. In fact, Shalom sued Ahmad for two separate debts. One was for 196 riyāls, which was originally owed to him by Idris and Bu Shitta, Zaynab's brothers, and for which Zaynab had guaranteed payment. This is the debt Ahmad denied having guaranteed. However, Ahmad also acknowledged owing 29 riyāls for a debt he had guaranteed for his relative Hamid b. Qudur b. ʿAyad. The qadi ruled that he must pay the 29 riyāls, which he presumably did.
63. See the third fatwā on the back of the maqāl in TC, File #1, 1 Rabīʿ I 1297.
64. Al-Sanhaji was not particularly well known; he came from an elite Fasi family that originally belonged to the Sanhaja tribe (Hajji, *Maʿlamāt al-Maghrib,* 16: 5566). A copy of this fatwā, as well as the other three solicited in connection to this case, is reproduced on the back of the lafīf from 1 Rabīʿ I 1297 (File #1).
65. Al-Sanhaji referred to the "source of their knowledge" as *mustanad al-ʿilm*. This is a point mentioned in two other fatāwā (see File #2, from lawsuit beginning 20 Jumādā II 1294 and File #10, from lawsuit beginning 23 Shaʿbān 1294). The argument about the acceptability of a lafīf in a city like Fez is also mentioned in another fatwā (see File #5, from lawsuit beginning 15 Muḥarram 1291). Al-Sanhaji cited a number of jurists in support of his position, including Muhammad b. Muhammad Ibn ʿAsim (d. 829/1426, author of *Tuḥfat al-ḥukkām fī nukat al-ʿuqūd wa-'l-aḥkām*), Ahmad b. Yahya al-Wansharisi (d. 914/1508, author of *Al-miʿyar*), and the commentary by Muhammad b. Qasim al-Sijilmasi al-Ribati (d. 1214/1799) on *ʿAmal al-Fāsī,* the influential collection of Moroccan custom used widely by early modern and

modern jurists, compiled by ʻAbd al-Rahman b. ʻAbd al-Qadir al-Fasi (d. 1096/1675).

66. He explained that this was because "ignorance [of the sum] of guarantees is forgiven" (*al-jahlu fī bābi al-ḍamāni mughtafar*).
67. *Idh al-rājiḥu wa-'l-maʻmūlu bihi.* For this he cited ʻAli b. ʻAbd al-Salam al-Tusuli's (d. 1258/1842–43) well-known commentary on Ibn ʻAsim's *Tuḥfa, Al-Bahja fī sharḥ al-tuhfa.*
68. *Ittifāqīyan.* I am grateful to Professor Hossein Modarressi for his help in clarifying this part of the fatwā.
69. On non-Muslims submitting fatāwā to the divan-ı hümayun (the Ottoman sultan's Imperial Council), see Wittmann, "Before Qadi and Vizier," 146–47. Wittmann did not, however, find cases of non-Muslims submitting fatāwā to shariʻa courts (125). On the medieval period, see Goitein, *A Mediterranean Society,* 2: 406.
70. See also TC, File #5, from the lawsuit beginning 15 Muḥarram 1291 and from the lawsuit beginning 17 Rabīʻ II 1291; File #1, from the lawsuit beginning 1 Jumādā I 1292; File #2, from the lawsuit beginning 20 Jumādā II 1294; File #10, from the lawsuit beginning 23 Shaʻbān 1294; File #2, copy of three fatāwā (no date). The only fatwā I found which does not concern the validity of testimony discusses the nature of rights to a pious endowment (from File #9, copies of two fatāwā with no date).
71. Al-ʻIraqi was born in 1275/1858, and studied in Fez with numerous prominent scholars (including Jaʻfar b. Idris al-Kattani). He was first nominated as qadi in Tetuan in 1303/1885–86, and later became qadi in New Fez and then in Fez in 1326/1908. He authored a number of works, including two books about the *Mukhtaṣar* of Khalil b. Isḥaq that were printed on the lithographic press in Fez. He died in Fez in 1348/1929: Hajji, *Maʻlamāt al-Maghrib,* 18: 6027–28. See also al-Manuni, *Maẓāhir,* 2: 337–38, and Ibn Zaydan, *Itḥāf aʻlām al-nās,* 2: 391. Al-Wazzani was born in the town of Ouezzane in 1266/1849 to a sharīfī family. He moved to Fez to study at the Qarawiyin, where he later taught. His most famous work is a collection of fatāwā called *Al-miʻyar al-jadīd,* after al-Wansharisi's fifteenth-century *Miʻyar.* He died on 1 Ṣafar 1342/September 13, 1923. On al-Wazzani, see Terem, *Old Texts, New Practices,* Ch. 2. The fatāwā by al-ʻIraqi and al-Wazzani are found on a loose, undated document from TC, File #2. Another prominent mufti found in the Assarraf collection is al-ʻAbbas b. Ahmad al-Tazi (d. 1337/1919), who taught at the Qarawiyin: Hajji, *Maʻlamāt al-Maghrib,* 6: 2047–48.
72. See the entry dated 19 Rabīʻ I 1297.
73. See the entry dated 10 Rabīʻ I 1297, in which the ʻudūl record that "the woman" (presumably Zaynab) took a copy of the second fatwā and was granted eight days in which to respond.
74. *Wa-ḥāwala an yalʻabu bi-'l-sharīʻa.*
75. See the entry dated 18 Rabīʻ II 1297.
76. Smail, *The Consumption of Justice,* Ch. 3.

77. A clue to this effect is found in the third fatwā signed by Muhammad, who says that Shalom "refused to accept" the claims of bankruptcy of Bu Shitta and Idris, the original debtors, or of Zaynab. On the difficulty of knowing the motives behind litigation from legal records alone, see Roberts, "The Study of Disputes," 23.
78. See, e.g., Tucker, *Women in Islamic Law*. As with Jews, Muslim women's oral testimony was not deemed equal to that of Muslim men; yet presumably the predominance of notarized documents in Moroccan shari'a courts meant that women could present written evidence on an equal footing with men.
79. See also TC, File #8, 25 Rabī' I 1271 and 12 Jumādā I 1296.
80. Eickelman, "Religion and Trade," 339; Schroeter, *Merchants of Essaouira,* 86. See also Brown, "Mellah and Madina," 267.
81. Berkovitz similarly observed that Jews in eighteenth-century Metz were often comfortable navigating French courts: Berkovitz, *Protocols of Justice,* esp. 99–100.
82. Jordan, *Women and Credit,* 25–26; Smail, *The Consumption of Justice,* 137, 157.
83. TC, File #4, 4 Ramaḍān 1273; File #4, 23 Ramaḍān 1286; File #7, 12 Rabī' I 1289; File #8, 15 Rabī' I 1289; File #9, 15 Rabī' I 1289; File #5, 15 Rabī' I 1289; File #5, 16 Ramaḍān 1289; File #8, 2 Dhū al-Ḥijja 1289; File #8, 17 Rajab 1291. In each power of attorney a different Muslim appointed Shalom as his agent. See also an example of a Jew acting as legal representative for a Muslim from early-twentieth-century Jerusalem: Cohen, *Yehudim be-veit ha-mishpat, ha-me'ah ha-19,* 191–93.
84. See, e.g., DAR, Yahūd, 10 Rabī' II 1310, in which a Jew named Dasan b. al-Qara' acted as the wakīl for Abu Bakr al-Ghanjawi, a Muslim living in Fez (who is discussed further in Chapter 3).
85. Santillana, *Istituzioni di diritto musulmano malichita,* 2: 337; Bashan, *Yahadut Maroko,* 61. However, it is clear that the prohibition on having a Jew act as a Muslim's agent (i.e., the active partner) in a *qirāḍ* (commenda)—which is quite similar to the general prohibition on having a Jew represent a Muslim—was ignored, at least in the context of medieval Spain and the Maghrib (see Lehmann, "Islamic Legal Consultation," 45–46).
86. TC, File #7, 4 Sha'bān 1284. The term used here is *nā'ib* as opposed to wakīl, though it seems to denote the same legal meaning (in this case, a Muslim represents Shalom in a shari'a court). There is also evidence that Jews in the Ottoman Empire appointed Muslims as their legal representatives; see, e.g., Cohen and Ben Shim'on-Pikali, *Yehudim be-veit ha-mishpat, ha-me'ah ha-18,* 489.
87. In the Assarraf collection, Jews appointed other Jews as agents the vast majority of the time (all of the powers of attorney issued by Jews appointed other Jews as agent, and in all of the lawsuits, Jews represented other Jews). Eliezer Bashan claims that Moroccan Jews did not have the right to represent other Jews in a shari'a court (Bashan, *Yahadut Maroko,* 61). Though he does not explain this assertion, he was probably referring to the fact that

Mālikī law prohibits employing an agent who is a different religion from that of the legal adversary (see Santillana, *Istituzioni di diritto musulmano malichita,* 2: 337). I found seventeen examples of powers of attorney among Muslims in the Assarraf collection (as opposed to six in which Muslims appointed Jews), though this is almost certainly not representative since the collection is from the personal archives of a Jewish merchant and thus naturally would overrepresent the extent to which Muslims appointed Jews as their wakīls.

CHAPTER 3. BREAKING AND BLURRING JURISDICTIONAL BOUNDARIES

1. Shalom had five daughters (Hanna, Esther, Gracia, Yaccot, and Mazaltov); however, Jewish law allows daughters to inherit only if there are no surviving sons. Shalom also had a fourth son, Issakhar, who died as a child. Shalom married four times: the family memory is that his first three wives passed away during his lifetime. His fourth wife, Hassiba Assarraf (who was also his niece—the daughter of his brother Eliyahu), was quite young when she married Shalom and the couple had no children. According to Jacob Assaraf (interview on June 16, 2015), Hassiba moved to Palestine in 1912, two years after Shalom's death. It is not entirely clear why the inheritance settlement makes no mention of paying her ketubah (which is all a widow is entitled to from her husband's estate: Elon, "Succession"); presumably, Hassiba's ketubah had already been deducted from the estate when the three Assarraf brothers recorded their settlement.
2. TC, File #3, 5 Ṣafar 1336.
3. Lauren Benton and Jay Berkovitz also write about "blurring" jurisdictional boundaries: Benton, *Law and Colonial Cultures,* 41 (see also her discussion of Jews in the Ottoman Empire and "the fluidity of jurisdictional boundaries" governing the various legal orders at work, pp. 102–14; quote on p. 114); Berkovitz, *Protocols of Justice,* 133. Francisco Apellaniz discusses the ways in which Islamic and Frankish legal devices were used together and in some instances complemented each other in the late medieval Middle East: Apellaniz, "Judging the Franks." Aomar Boum discusses similar issues in the context of twentieth-century Morocco, using the term "legal syncretism" (Boum, *Memories of Absence,* Ch. 2, esp. 30–31). Jessica Goldberg examines how Jews moved between Jewish and Islamic legal institutions as well as Jewish and Islamic modes of partnership: Goldberg, *Trade and Institutions,* Ch. 5, esp. 160–64.
4. Berkovitz, *Protocols of Justice,* 116; see also ch. 3. Moreover, Berkovitz argues that "Conformity with prevailing systems of justice constituted a significant type of attachment to the larger society" (ibid., 81). For a more limited study of a similar process, see Soloveitchik, "Jewish and Provençal Law." This is in some ways related to what Michael Gilsenan calls translation from one legal regime to another: see Gilsenan, "Translating Colonial Fortunes."

5. On the medieval period, see Goitein, *A Mediterranean Society,* 2: 398–401; Gil, *A History of Palestine,* 168; Khan, *Arabic Legal Documents;* Ben Sasson, *Ẓemiḥat ha-kehilah ha-yehudit,* 309–15; Libson, *Jewish and Islamic Law,* 111. On the early modern Ottoman Empire, see Jennings, "Zimmis in the Sharia Court of Kayseri"; Gerber, "Arkhiyon beit-ha-din ha-shara'i shel Bursah"; Cohen, *Jewish Life Under Islam,* 115–19; Wittmann, "Before Qadi and Vizier," Ch. 1. On the modern Middle East, see Al-Qattan, "Dhimmis in the Muslim Court."
6. Goulven, *Traité d'économie,* 15, fn 1; Marcus, *The Middle East on the Eve of Modernity,* 109; Wagner, *Jews and Islamic Law,* 25. Similarly, there is evidence that Christians went to batei din both for matters involving Jews and for intra-Christian cases, although historians have yet to discuss this in detail: see, e.g., Assaf, *Batei ha-din ve-sidreihem,* 16–17; Assis, "Yehudei Sefarad be-'arka'ot ha-goyim," 428; Klein, *Deeds of Catalan Jews,* 19.
7. One challenge that remains is the difficulty of observing change over time when it comes to how Jews and Muslims moved between Jewish and Islamic courts. On one hand, there is little question that Jews elected to use shari'a courts in early modern Morocco, as elsewhere in the pre-modern Middle East (see, e.g., Deshen, *The Mellah Society,* 27–28). One imagines that Muslims similarly used Jewish courts before the nineteenth century. Yet the relative paucity of sources makes it difficult to determine how (and whether) these practices shifted in response to the transformation of the Moroccan legal system in the nineteenth century.
8. For an exploration of similar issues in France, see Berkovitz, *Protocols of Justice,* Ch. 4.
9. On real estate, see below. For other types of sales, see DAR, Yahūd, 18197, 9 Rajab 1311; DAR, Marrakesh, 23 Muḥarram 1314. For a lease contract, see TC, File #4, 2 Jumādā II 1330. For bills of debt, see YBZ, 280, 26 Ṣafar 1298, and UL, Or.26.543 (1), 9 Jumādā I 1270. For a business partnership, see TC, File #5, 28 Ramaḍān 1312.
10. See Marglin, "Cooperation and Competition." There is some evidence that Jews adopted similar practices in medieval Cairo and in the early modern Ottoman Empire: Goitein, *A Mediterranean Society,* 2: 400; Khan, *Arabic Legal Documents,* 1; Simonsohn, *A Common Justice,* 178; Wittmann, "Before Qadi and Vizier," 112–13. Indeed, the practice of drawing up deeds with both Jewish and Muslim notaries is attested even in Europe. See Schwab, "Un acte de vente hébreu du XIVe siècle," 58 (I am grateful to Pinchas Roth for sharing this reference with me). Rabbi Isaac ben Sheshet Prefet (Spain-Algeria, d. 1408) wrote about such deeds in his responsa: Isaac ben Sheshet Prefet, *She'elot u-teshuvot,* #148, #266 (I am grateful to Chanoch Goldberg for sharing this reference with me). As with the Assarraf brothers' division of inheritance, some Jews had the second version of a contract written out on a separate sheet of paper (see, e.g., UL, Or.26.544, 19 Ṣafar 1318, and PD, Shvat 5556). Indeed, this indicates that the practice of double notarization was

even more prominent than the contracts with both Hebrew and Arabic versions on a single document would alone suggest.

11. UL, Or.26.543 (2), 11 Adar 5624 and 14 Ramaḍān 1280. For more such examples, see UL, Or.26.543 (2), 4 Iyar 5597 and 11 Ṣafar 1253; 6 Tevet 5655 and 10 Rajab 1312; UL, Or.26.544, 16 Iyar 5642 and 18 Jumādā II 1299; PD, 11 Elul 5573 and 23 Rabīʿ II 1229; 6 Rabīʿ II 1317 (the other side has a Hebrew document but since the document is pasted into a record book it is impossible to see it); 19 Kislev 5569 and 2 Shaʿbān 1229; DAR, Yahūd, 2 Jumādā II 1298 (back in Hebrew) and 17 Jumādā I 1306 (back also in Hebrew); Yale, Ms.1825.0048, 13 Ḥeshvan 5636 and 11 Shawwāl 1292. This is similar (though not entirely identical) to what Jay Berkovitz observed in the Jewish courts in Metz, France, namely the practice of having Jewish legal documents "translated from Hebrew and formally produced in French so they could be filed at the appropriate government office" (Berkovitz, *Protocols of Justice,* 92).
12. Bashan, *Nashim yehudiot be-Maroko,* 42–60.
13. PD, 20 Muḥarram 1277. See also the subsequent entry on this document in which one son mortgages his third of the house to another Jew for 500 mithqāls, also registered in a shariʿa court (on 25 Rajab 1287), as well as, e.g., PD, 16 Ramaḍān 1267: YBZ, 13 Jumādā I 1268.
14. TC, File #1, 15 Dhū al-Qaʿda 1275. Five other intra-Jewish documents in the Assarraf collection concern the sale of a room or a house.
15. YBZ, 280, 6 Rabīʿ II 1256. Although I found only one instance of this sort of wife-initiated divorce in Morocco, I suspect there were many more that simply did not leave behind a written record.
16. On the medieval period, see Gil, *A History of Palestine,* 164; Libson, "Otonomiyah," 336; Libson, *Jewish and Islamic Law,* 111; David, "Girushin be-yozmat ha-ishah," 37–39; Simonsohn, *A Common Justice,* 178–80. On the Ottoman period see Al-Qattan, "Dhimmis in the Muslim Court," 434–35; Laiou, "Christian Women in an Ottoman World," 248–50; Wittmann, "Before Qadi and Vizier," 80–84. It is not clear why I did not find more such documents recording wife-initiated divorces in Moroccan Islamic courts; it is possible this was not as widespread as in other parts of the Islamic world, though I suspect that the reason has more to do with the partial nature of Moroccan archives.
17. See, e.g., Goldish, *Jewish Questions,* 150–52.
18. See, e.g., Wittmann, "Before Qadi and Vizier," 73; Simonsohn, *A Common Justice,* 141–42; Deshen, *The Mellah Society,* 84.
19. Ibid., 55.
20. Ankawa, *Kerem Ḥemer,* v. 1, Ḥoshen ha-Mishpat, #142, pp. 97a-98a. Reuven and Shimʿon are standard names given to anonymous actors in Jewish responsa.
21. Ankawa, *Kerem Ḥemer,* 2: #52–55, pp. 9a–b.
22. See, e.g., NLI, B861 (8-5165-6), Teshuvah pp. 11b-12b (no date or signature), concerning what to do when a Jew inherits land which is then also claimed

by a Muslim. The teshuvah further discusses the fact that the Muslims of Debdou made a practice of stealing land from Jews by forging legal documents in shari'a courts saying that they owned the land.

23. Real estate transactions constituted about 20 percent of the intra-Jewish documents in the Assarraf collection, that is, eight out of thirty-nine. Among the other collections I consulted, real estate transactions made up over two-thirds of the intra-Jewish contracts notarized by 'udūl (twenty out of twenty-nine). In medieval Egypt, Jews similarly registered real estate transactions in shari'a courts more often than other types of contract. Scholars have posited that this was because the Fatimid state required subjects to pay a special tax on transfers of real estate, such that notarizing the bill of sale in a shari'a court would also ensure that a record was kept of the tax having been paid (Gil, *A History of Palestine,* 165; Khan, *Arabic Legal Documents,* 1), but no such tax existed in Morocco.
24. Ankawa, *Kerem Ḥemer,* 2: #52–55, pp. 9a-b. The quote is from #53 (p. 9b), dated Shvat 5345 (January 1585). On the continued relevance of the takkanot from early modern Fez in nineteenth-century Morocco, see Toledano, *Ner ha-Ma'arav,* 106–7, quoted in Westreich, "Dinei ha-mishpaḥah," 166. Rabbis in early modern France were similarly aware that recourse to non-Jewish courts could, at times, be warranted: Berkovitz, *Protocols of Justice,* 110–11.
25. This is originally laid out in the Babylonian Talmud, Gittin 10b. See Walzer et al., *The Jewish Political Tradition,* 434.
26. See, e.g., CADN, 1MA/300/106A, Watin to Directeur des Affaires Chérifiennes, July 27, 1921.
27. Shahar, "Forum Shopping." On the ambiguity regarding legal documents from non-Jewish courts, see Berkovitz, *Protocols of Justice,* 112.
28. See especially the Babylonian Talmud, Gittin 98b (as well as Rashi's [Rabbi Shlomo Yiẓhaki, d. 1105] commentary on Exodus 21:1, which paraphrases the Talmud), and Moses Maimonides' *Mishneh Torah,* Hilkhot Sanhedrin 26: 7. In medieval Egypt, there was a special court (called the "Jewish court for informers") that determined which cases should be sent to non-Jewish courts: on this, see Cohen, "Correspondence and Social Control," 45–46. See also Katz, *Exclusiveness and Tolerance,* 53; Rosman, "The Role of Non-Jewish Authorities," 54.
29. See, e.g., YBZ, 287:37, 19 Rabī' II 1217; Ankawa, *Kerem Ḥemer,* 1: #92, p. 85a; PD, 1 Dhū al-Ḥijja 1319; Bension Collection, Ms. 156, summarized in Aranov, *Catalogue of the Bension Collection,* 98.
30. See, e.g., a takkanah passed by the rabbis in Fez in 1603 prohibiting Jews from bringing a coreligionist before an Islamic court without the express permission of a beit din; Ankawa, *Kerem Ḥemer,* 2: #77. The takkanah discusses a case in which a Jew forces his coreligionist to go to the non-Jewish court with the help of his patron. The word used for patron is the Arabic *'ināya* (see Bar-Asher, *Sefer ha-Takkanot,* 131), implying that the patron in question is a Muslim and is somehow involved in the Jew's ability to force a decision in an Islamic court.

31. See, e.g., DAR, Yahūd, 32977, Rabbi Avner and the Jews of Fez to Muhammad b. al-ʻArabi al-Mukhtar, 2 Dhū al-Qaʻda 1297.
32. Similar observations have been made concerning shariʻa courts in the Ottoman Empire, though more research remains to be done on this question. Amnon Cohen notes that most of the Jewish documents accepted as evidence in shariʻa courts were marriage contracts, but that at times bills of debt and other commercial contracts were also accepted (Cohen, *Jewish Life Under Islam,* 124). For an example of a Jewish document from Ottoman Egypt that was essentially translated and confirmed by a qadi and six ʻudūl, see Shtuber, "Mi-beit ha-din ha-yehudi."
33. Libson, *Jewish and Islamic Law,* 103; Müller, "Non-Muslims," esp. 21, 38–41; Wasserstein, "Families, Forgery and Falsehood," 335.
34. YBZ, 287:37, 19 Rabīʻ II 1217.
35. The word used for compromise is *ṣulḥ*. The document explains that "the dhimmīs wrote [a document saying] that [Eliyahu] does not have any [grounds for a] claim against [Natan] (*fa-kataba lahu ahlu al-dhimmati bi-annahu lā rujūʻa lahu ʻalayhi*), and all this is in the [Hebrew] script of the dhimmīs (*kullu dhālika bi-khuṭūṭi ahli al-dhimmati*)."
36. In his ruling, the sultan quoted the Mālikī jurist Muhammad b. Muhammad Ibn ʻAsim (d. 1426/829 AH), who was the author of *Tuḥfat al-ḥukkām fī nukat al-ʻuqūd wa-'l-aḥkām,* simply referred to as *al-Tuḥfa* in our document.
37. CADN, 1MA/300/106A, Watin to Directeur des Affaires Chérifiennes, March 22, 1920, and Commissaire du Gouvernement près le tribunal de pacha (Meknes) to Chef des Services Municipaux (Meknes), June 3, 1919.
38. DAR, Rabat/Salé, 19147, umanā' of Rabat/Salé to Muhammad b. Idris, 15 Rabīʻ II 1263; DAR, Demnat, al-Tayyib al-Yamani to Muhammad Bargash, 30 Muḥarram 1281; DAR, Marrakesh, 5605, Ahmad Amalik to Mawlay Hasan, 13 Jumādā II 1298; DAR, Demnat, Ahmad b. Muhammad al-Murabi to Muhammad b. al-ʻArabi (possibly Torres), 22 Shawwāl 1302; DAR, Marrakesh, 24807, Muhammad al-Hadi b. ʻAbd al-Nabi al-Fasi to Mawlay Hasan, 20 Ṣafar 1309; DAR, Yahūd, al-Hajj Muhammad b. al-Jilali to Ahmad b. Muhammad b. al-ʻArabi Torres, 13 Rajab 1323; DAR, Yahūd, 10 Iyar 5671. There is even some evidence that Mawlay Hasan ordered pashas and qā'ids to accept Jewish legal documents as equivalent to those drawn up by ʻudūl in all commercial cases: see CADN, 1MA/300/101B, André Réveillaud, "Réforme des institutions juives; Notes Réveillaud au sujet de Meknès" (no date). For a similar practice in the royal courts of medieval Spain see Assis, "Yehudei Sefarad be-ʻarka'ot ha-goyim," 428.
39. This system seems to have been relatively informal, probably because the relative rarity of Hebrew documents in Makhzan courts precluded the need for professional translators: see DAR, Demnat, al-Tayyib al-Mayani to Muhammad Bargash, 30 Muḥarram 1281, which discusses the need to find someone to read the Hebrew documents in question.
40. PD, 12 Jumādā II 1327.

41. Shlomoh b. Moshe Ibn Danan (b. 1848, d. 1928) belonged to a famous family of scholars in Fez. In 1919 he was appointed to the Haut Tribunal Rabbinique in Rabat: see Ben Naim, *Malkhei rabanan,* 114b.
42. *Ḥaḍara al-ḥazān Shlūmū b. al-ḥazān Mūshī b. Danān wa-i'tarafa li-'l-mālikīna al-bā'i'īni bi-'l-mulki al-madhkūri wa-annahu thābitun ladayhim bi-mā yuthbitu al-mulka li-ahli al-dhimmati fī millatihim wa-'alā ḥasabi al-'urfi al-jārī ladayhim.*
43. Benayahu, "Haskamot ḥazakot"; Zafrani, "Les relations judéo-musulmanes dans la littérature juridique," 138–41.
44. Abribat, "Les contrats de quasi-aliénation," esp. 145–46; Milliot, *Démembrements du Habous,* esp. Chapters 1–2.
45. PD, 2 Rajab 1272. On the al-Razini family, see Hajji, *Ma'lamāt al-Maghrib,* 13: 4326–28.
46. *Wa-istathnā al-bā'i Shū'a [sic] al-madhkūru min mabī'ihi al-madhkūri al-ḥazāqa al-ma'rūfata 'inda ahli al-dhimmati bi-ḥaythu lā yashmaluhā al-bay'u al-madhkūru li-man dhukira wa-lā yansaḥibu 'alayhā bal lā zālat [sic] fī mulkihi mālan min mālihi wa-mulkan ṣaḥīḥan khāliṭan min jumlati amlākihi 'alā 'urfi ahli al-dhimmati istithnā'an tāmman.*
47. The fact that a qadi countersigned the document in the presence of the Muslim buyer further suggests the exceptional nature of this bill of sale.
48. On expert witnesses in Islamic law, see Shaham, *The Expert Witness,* 27–98.
49. TC, File #3, 5 Ṣafar 1336. The quote concerning ha-Ẓarfati reads: *Huwa min asāqifati* (literally, "bishops"; the language here is taken from a Christian context) *al-yahūdi al-'ārifīna bi-man yarithu min al-yahūdi mimman lā yarithu minhum fī millatihim.* Ha-Ẓarfati (b. 1862, d. 1921) came from a long lineage of rabbis originally from Spain; he became a dayyan in 1891 and was nominated as the head of the beit din in 1919 (Ovadyah, *Fas ve-ḥakhameha,* 1: 358–59). Yehudah here refers to Haim Yehudah (he was probably given the additional name of Haim, meaning "life," following an illness—a common practice to ward off the evil eye).
50. On using a dayyan as an authority in Islamic law, see al-Kattani, *Aḥkām Ahl al-Dhimma,* 61.
51. Marglin, "Jews in Sharī'a Courts," 214–15.
52. For similar cases, see DAR, Safi, 6, 11, and 30 Jumādā II 1294; TC, File #4, 4 Dhū al-Qa'da 1326; JTS, box 2, folder #7, 24 Dhū al-Ḥijja 1330.
53. PD, 2 Rajab 1272; PD, 12 Jumādā II 1327; JTS, box 2, folder #7, 24 Dhū al-Ḥijja 1330.
54. Libson, "On the Development of Custom as a Source of Law," esp. 133–42. See also Schacht, *An Introduction to Islamic Law,* Ch. 11; Gerber, *Islamic Law and Culture,* Ch. 6.
55. On custom and law in Morocco, see Berque, *La méthode juridique maghrébine;* Schacht, *An Introduction to Islamic Law,* 61–62; Jidi, *Al-'urf wa-'l-'amal;* Rosen, "Law and Custom"; Rosen, *The Justice of Islam,* Ch. 5.
56. See, e.g., Jidi, *Al-'urf wa-'l-'amal,* 99; Marcus, *The Middle East on the Eve of Modernity,* 104–5; Stewart, "'Urf," 888. This is derived from the legal maxim

al-ma'rūfu 'urfan ka-'l-mashrūṭi sharṭan ("what is known as customary is as binding as a condition in a contract," on which see, e.g., Khallaf, *Maṣādir al-tashrī' al-islāmī,* 146–47). I am grateful to Professor Hossein Modarressi for his help on this subject.

57. 1MA/300/101B, "Note sur les juifs de Meknes" (no date or author); Ankawa, *Kerem Ḥemer,* 2: 14.
58. JTS, Box 3, Folder 3, 11 Tammuz 5668.
59. Jewish men also brought such contracts with Muslims to be notarized by sofrim: see, e.g., UL, Or.26.544, 6 Shvat 5658 and YBZ, 280, 6 Muḥarram 1234. This last document concerns a dispute between Shlomoh b. Menahem b. Walid, from Rabat, and the Muslim 'Abdallah 'Ammar al-Mamnun. Shlomoh claimed that 'Abdallah owed him money on outstanding debts; as part of the settlement, 'Abdallah "also allowed [Shlomoh] to collect some debts he [presumably 'Abdallah] was owed by Jews, some recorded in documents written in Hebrew and others not recorded in documents (*kamā adhinahu an yaqbiḍa lahu* [sic] *duyūnan kānat lahu 'alā aqwāmi minhā mā huwa bi-rusūmi bi-khaṭṭi ahli al-dhimmati wa-minhā mā huwa bi-ghayri rusūmin*)." Although the pronouns are somewhat ambiguous in the Arabic text, I believe the only sensible interpretation is that 'Abdallah was owed money by Jews—debts recorded in Jewish legal documents—and allowed Shlomoh to collect these debts on his behalf as part of the payment of the outstanding debt.
60. UL, Or.26.544, 10 Iyar 5664 (the same document is also found, in the original, at Yale). See also UL, Or.26.543 (2), 4 Iyar 5656. Part of Yeshu'a Corcos's personal archive is preserved at the University of Leiden, including numerous Islamic legal documents.
61. JTS, Box 2, Folder 3, 8 Nisan 5672 and 17 Kislev 5673.
62. Three of the four documents of Jewish-Muslim lease contracts notarized by sofrim started in Iyar: JTS, Box 2, Folder 3, 8 Nisan 5672 and 17 Kislev 5673; UL, Or.26.543 (2), 4 Iyar 5656. One started in Sivan, the following month: UL, Or.26.544, 10 Iyar 5664. For the custom among Jews of renting properties starting from the month of Iyar, see, e.g, the record book in which Shalom Assarraf recorded the contracts of lease to Jews for his properties in the millāḥ of Fez, drawn up from the summer of 1903 to the winter of 1904 (in PD). The vast majority (if not all) of the lease contracts start in the month of Iyar.
63. DAR, Yahūd, 14 Shvat 5649, 8 Nisan 5649, 10 Ḥeshvan 5653, 1 Iyar 5668, and one document with no date.
64. After 1912, when the French decreed that Jews could own property and live outside the millāḥs, there were instances in which Muslims moved into formerly Jewish quarters; however, as far as I know this was unheard of in the pre-colonial period.
65. For instance, on November 1, 1892, he sent his representative (*nā'ib*), a Jew named Dasān (?) b. al-Qara', to buy four rooms in a house in the millāḥ of Fez from a Jewish woman and her two children, and had this sale notarized by 'udūl: DAR, Yahūd, 10 Rabī' II 1310.

66. Ben-Srhir, *Britain and Morocco,* 171–75; Ben-Srhir, "The Life of El-Ghanjaoui"; Gottreich, *The Mellah of Marrakesh,* 82.
67. Of the nineteen documents concerning Muslims' appearance in Jewish courts that I found, fourteen concerned the buying or leasing of real estate. See also 1MA/300/101B, André Réveillaud, "Réforme des institutions juives; Notes Réveillaud au sujet de Meknès" (no date); University of Alberta, Bension Collection, Ms. 14 (described in Aranov, *Catalogue of the Bension Collection,* 44), Nisan 5517; UL, Or.26.543 (2), 15 Av 5624; Or.26.544, 27 Shvat 5645, 5 Nisan 5664, and 18 Adar 5670; CAHJP, MA/P/12, Shvat 5517; PD, Shvat 5556.
68. Abribat, "Les contrats de quasi-aliénation," 143. The article discusses Tunisia in particular, but it seems likely that the same situation also existed in Morocco.
69. DAR, Yahūd, no date. (This document, in Hebrew and signed by sofrim, attests to the fact that David al-Falaẓ sold a ḥazakah on a courtyard to al-Ghanjawi; the portion preserved in the DAR is clearly part of a longer document, as the date given is "the above date," but unfortunately the first part of the document is not preserved.) See also UL, Or.26.544, 10 Iyar 5664: Here, Muhammad b. Hamu bought the ḥazakot on three upper rooms (*'aliyot*) in the millāḥ of Marrakesh. It seems that Muhammad's purchase was challenged; ten days later the previous owner of the rooms, Yahya b. Eliyahu al-Zara, testified that he had sold the ḥazakot on the properties to Yiẓhak, who had sold them to Muhammad, and that Muhammad was indeed the owner of the ḥazakot (20 Iyar 5664).
70. Writing on Tunisia in the 1880s, David Cazès observed: "La plus extraordinaire . . . est que les musulmans propriétaires finirent par reconnaitre le droit de *Hazzaka* et par s'y conformer" (Cazès, *L'histoire des Israélites de Tunis,* 112).
71. UL, Or.26.543 (2), ?? to Corcos, 15 Rabī' I 1320.
72. CADN, 1MA/300/101B, André Réveillaud, "Réforme des institutions juives; Notes Réveillaud au sujet de Meknès" (no date).
73. On this maxim, see especially Shilo, *Dina de-malkhuta dina;* Elon, "Dina de-Malkhuta Dina."
74. See also, e.g., Ankawa, *Kerem Ḥemer,* 1: #92, p. 85a. A full analysis of Jewish jurists' approach to accommodating Islamic law is beyond the scope of this book, though this would be a worthy subject for future research. On the medieval period, see Libson, *Jewish and Islamic Law;* on eighteenth-century France, see Berkovitz, *Protocols of Justice,* Ch. 4. Additionally, see Phillip Ackerman-Lieberman's discussion of Jewish deeds that were written such that they would be valid in an Islamic court: Ackerman-Lieberman, "Legal Writing in Medieval Cairo," 13–14.
75. See the discussion of a text by Haim Moda'i (b. 1720 in Istanbul, d. 1793 in Safed) in *'Et Sofer,* in Ankawa, *Kerem Ḥemer,* 2: 52b, #30.
76. See Moses Maimonides, *Mishneh Torah,* Sefer Kinyan, Hilkhot Sheluḥin ve-Shutafin, Ch. 2, Law 1.

77. The bills of sale I examined do not seem to follow this practice, thus the solution is not necessary. However, the fact that Ankawa included this text in *'Et Sofer* suggests that at least some sofrim did follow this custom.
78. Benayahu, "Haskamot ḥazaqot."
79. *She'erit Yisrael lo ya'asu 'avlah* (Zephaniah 3:13).
80. Koriat, *Zekhut Avot,* #80, pp. 47a-48a. On Koriat, see Corcos, "Coriat Family."

CHAPTER 4. THE SULTAN'S JEWS

1. DAR, Fez, Mawlay Hasan to Sa'id b. Faraji, 29 Jumādā II 1298. The debtors are referred to as *murābiṭayn*.
2. The Ottoman Empire, for instance, instituted the Islamic world's first legal code starting in 1869, called the *Mecelle* (see, e.g., Findley, "Medjelle"). This was part of a broader reform of the legal system that also included the institution of administrative courts (called *nizamiye* courts), where most civil cases previously under the jurisdiction of shari'a courts were transferred: see Rubin, *Ottoman Nizamiye Courts*.
3. On the simultaneous personalization and bureaucratization of petitioning, see Shaw, "Writing to the Prince," 81.
4. Indeed, rulers the world over asserted their authority and undermined the influence of local elites by establishing a direct conduit between themselves and their subjects, often in the form of a national court of appeal (van Voss, "Introduction: Petitions in Social History," 4–5; see also Ginio, "Coping with the State's Agents"). In Europe, this process most commonly took place in the early modern period (see, e.g., Shaw, "Writing to the Prince," esp. 57, 62; Tazzara, "Managing Free Trade," 508–10).
5. I use the term "rights" as a translation of *ḥaqq* (pl. *ḥuqūq*), which can mean "right," "due," or "legal claim" (Wehr, *Dictionary of Modern Arabic,* 192). This term is invoked frequently in the Makhzan's correspondence concerning the legal claims of its subjects (both Jewish and Muslim). Naturally, the concept of rights in Islamic law was not exactly the same as modern European notions of the rights of man or the rights of citizens. Nonetheless, under Islamic law, individuals were entitled to certain things—like the protection of private property—which are best understood as rights.
6. Jews appear in approximately 6 percent of the total number of entries in the Ministry of Complaints registers (511 out of approximately 8,358 cases; the total number of cases is based on a tally of average cases per page across the four registers). Although population statistics for nineteenth-century Morocco are notoriously unreliable, estimates put Jews at between 2 and 7 percent of the total population. Most appeals by Jews concerned commercial cases and crimes that affected Jews and Muslims in largely similar ways. Like Jewish creditors, Muslim creditors who could not collect the money they were owed wrote to the Makhzan asking for its intervention: see, e.g., BH, K 157, p. 31, 14 Ramaḍān 1306; p. 39, 4 Shawwāl 1306; BH, K 181, p. 13, 28 Dhū al-Qa'dā 1308; p. 304, 9 Jumādā I 1310. Indeed, sometimes

Muslims even petitioned the Makhzan concerning money they were owed by Jews: see, e.g., BH, K 181, p. 138, 23 Sha'bān 1309; p. 236, 13 Muḥarram 1310. DAR, Yahūd, Ya'qub b. Sa'id to Muhammad Torres, 3 Muḥarram 1325. Like Jews, Muslims who were victims of violent crimes appealed to ensure that they were properly compensated: see, e.g., BH, K 157, p. 31, 14 Ramaḍān 1306; p. 31, 17 Ramaḍān 1306 (two separate entries on this page); p. 35, 22 Ramaḍān 1306; p. 39, 30 Ramaḍān 1306; p. 40, 5 Shawwāl 1306; p. 40, 7 Shawwāl 1306; p. 69, 11 Dhū al-Ḥijja 1306; p. 85, 20 Muḥarram 1307; BH, K 171, p. 11, 24 Rajab 1307; DAR, Yahūd, ?? to 'Umar Barrada (no date). Finally, Muslims also found themselves the victims of abuse by local authorities: see, e.g., DAR, Meknes, 35078, Muhammad b. (?) and 'Abdallah b. Muhammad Banana to Muhammad b. al-Madani Banis, 6 Jumādā II 1290; 28 Shawwāl 1300, Mawlay Hasan to 'Abdallah b. Ahmad, in Ibn Zaydan, *Al-'izz wa-'l-ṣawla*, 2: 115–16; DAR, Ḥimāyāt, 20646, Bu Shaz (?) al-Baghdadi to Mawlay Hasan, 13 Jumādā II 1301; BH, K 157, p. 39, 30 Ramaḍān 1306; p. 62, 24 Dhū al-Qa'da 1306; BH, K 171, p. 26, 6 Sha'bān 1307; BH, K 181, p. 175, 11 Shawwāl 1309; BH, K 181, p. 285, 11 Rabī' II 1310.

7. Because of the nature of the Ministry of Complaints records, it is impossible to know how many times Ya'akov wrote to the Makhzan asking for its intervention. The archives preserve seventeen letters written by twelve different Makhzan officials back to the Minister of Complaints concerning instructions they were given in response to Ya'akov's appeals.
8. BH, K 171, p. 16, 28 Rajab 1307; BH, K 181, p. 108, 5 Rajab 1309; p. 123, 29 Rajab 1309.
9. BH, K 171, p. 16, 28 Rajab 1307 (*istawfā min al-ghuramā'i . . . wa-tawajjahu li-ḥālihi 'an ṭayyibi nafsihi*). See also BH, K 181, p. 92, 12 Jumādā II 1309; p. 134, 17 Sha'bān 1309; p. 343, 2 Sha'bān 1310; p. 347, 12 Sha'bān 1310.
10. In the Ministry of Complaints registers for 1889–93, Jews wrote concerning 362 cases of unpaid debts (about 71 percent of the total number of petitions submitted by Jews). Of the debt cases sent to the Ministry of Complaints, Makhzan officials reported having settled (or partially settled) about 21 percent of them (eighty-three out of 362). However, many of the cases trail off without any indication of how they ended, which suggests that more of them were settled than those reported as such.
11. BH, K 171, p. 6, 20 Rajab 1307.
12. See also BH, K 181, p. 222, 15 Dhū al-Ḥijja 1309; DAR, Yahūd, 23293, Qudur Ibn 'Ali al-Hamari to Mawlay 'Abd al-'Aziz, 26 Sha'bān 1318.
13. DAR, Yahūd, Jews of Fez to al-Madini al-Mazwari (grand vizier), 12 Shawwāl 1327. The petition is simply signed "the Jews of Fez."
14. DAR, Tetuan, 22068, 'Abd al-Qadir Ash'ash (governor of Tetuan) to Mawlay 'Abd al-Rahman (reigned 1822–59), 3 Jumādā II 1265.
15. *Innahumā zawwarā 'alayhi rasman bi-'l-yahūd bi-Marrākusha* [sic].
16. DAR, Tetuan, 22072, Mawlay 'Abd al-Rahman to 'Abd al-Qadir Ash'ash, 10 Jumādā II 1265. See also DAR, Yahūd, 22361, 'Amran al-Malih to Mawlay

ʻAbd al-Rahman, 13 Ṣafar 1264; DAR, Tetuan, 22068, ʻAbd al-Qadir Ashʻash to Mawlay ʻAbd al-Rahman, 3 Jumādā II 1265; DAR, Marrakesh, Muhammad b. Dani to Ahmad b. al-Tahir, 30 Muḥarram 1283; Muhammad b. Salih to Ahmad b. al-Tahir al-Samlali, 11 Rabīʻ II 1283; DAR, Meknes, Hamm b. al-Jilali to Mawlay Hasan, 5 Shaʻbān 1303; BH, K 157, p. 158, 12 Jumādā II 1307; DAR, Yahūd, al-ʻArabi b. al-Sharqi to Muhammad Torres, 4 Jumādā I 1319; Muhammad b. Qasim to Muhammad Torres, 24 Jumādā II 1320; Muhammad b. al-Baghdadi to Muhammad al-Miyas, 27 Rabīʻ II 1327.

17. Ennaji, *Expansion européenne,* Ch. 3.
18. *Laysa ʻindahum qalīl wa-lā kathīr wa-innamā yaḥruthu kullu wāḥidin minhum bi-bahīmatihi bi-qaṣdi taʻmīri al-bilād:* BH, K 181, p. 83, 25 Jumādā I 1309.
19. *Qāla sayyidunā, kadhaba, julluhum lam yuʼkal, yufāṣil.* See also DAR, Fez, Mawlay Hasan to Saʻid b. Faraji, 25 Jumādā I 1295; BH, K 157, p. 174, 6 Rajab 1307; BH, K 181, p. 86, 1 Jumādā II 1309; p. 108, 5 Rajab 1309; p. 153, 13 Ramaḍān 1309 (two relevant entries on this page); p. 158, 21 Ramaḍān 1309; loose sheet, 10 Jumādā I, 1310 (two relevant entries on this page); DAR, Yahūd, 28207, Muhammad b. Karum al-Jahabi to Mawlay ʻAbd al-ʻAziz, 6 Jumādā I 1312.
20. For cases in which the debtor died in prison, see BH, K 157, p. 99, 2 Rabīʻ II 1307; p. 178, 16 Rajab 1307; BH, K 181, p. 127, 4 Shaʻbān 1309; p. 262, 25 Ṣafar 1310. For brothers being imprisoned, see BH, K 181, p. 153, 13 Ramaḍān 1309. For sons being imprisoned, see BH, K 181, p. 262, 25 Ṣafar 1310. However, I also found cases in which it was recorded that the debtors had died without leaving any inheritance with which to pay the debts, but with no mention of imprisoning their heirs: BH, K 181, p. 121, 19 Rajab 1309 and p. 271, 16 Rabīʻ I 1310.
21. BH, K 171, p. 2, 18 Rajab 1307; BH, K 181, p. 260, 23 Ṣafar 1310. In most cases, the officials did not clarify whether they believed that the Jewish creditor was trying to collect payment twice or whether he had simply been paid since sending his initial petition to the sultan. See DAR, Yahūd, 14467, Mawlay Hasan to Ghalal b. Muhammad, 13 Jumādā I 1297; BH, K 157, p. 149, 29 Jumādā I 1307; BH, K 171, p. 6, 20 Rajab 1307; p. 117, 3 Dhū al-Ḥijja 1307; BH, K 181, p. 92, 12 Jumādā II 1309; p. 107, 4 Rajab 1309; p. 111, 10 Rajab 1309; p. 191, 2 Dhū al-Qaʻda 1309; p. 196, 9 Dhū al-Qaʻda 1309; p. 222, 15 Dhū al-Ḥijja 1309; p. 226, 24 Dhū al-Ḥijja 1309; p. 264, 29 Ṣafar 1310; p. 297, 30 Rabīʻ II 1310. In some instances the Jewish creditor denied having received payment: BH, K 157, p. 169, 28 Jumādā II 1307 and BH, K 181, p. 137, 21 Shaʻbān 1309.
22. BH, K 181, p. 255, 14 Ṣafar 1310.
23. BH, K 157, p. 37, 28 Ramaḍān 1306; DAR, Marrakesh, Ahmad Amalik to Mawlay Hasan, 9 Shaʻbān 1307.
24. BH, K 171, p. 91, 22 Shawwāl 1307.
25. BH, K 181, p. 127, 4 Shaʻbān 1309.
26. *Abaw min jaʻli taʼwīlin fī al-intirīsi ʻalā ʻādati al-tujjāri min ziyādatihim al-niṣfi ʻalā aṣli daynihim.* The word used for interest is *al-intirīs,* one clearly

derived from a Western language (probably either English or Spanish). For another use of this term, see the letter from 1893 in Boum, *Memories of Absence,* 47 (for the original Arabic, see Boum, "Muslims Remember Jews," 243–44, Case 16). It does not appear in Colin's dictionary of Moroccan Colloquial Arabic. In translating *ta'wīl,* I rely on Kazimirski, *Dictionnaire arabe-français,* 1: 89, who gives "Définir, déterminer quant à la quantité ou à la mesure" as a translation for form two.

27. See also BH, K 157, p. 127, 28 Rabīʿ II 1307; BH, K 181, p. 212, 28 Dhū al-Qaʿda 1309; p. 241, 23 Muḥarram 1310.
28. BH, K 181, p. 151, 10 Ramaḍān 1309. The official wrote that "it is not hidden that all the documents of the Jews are doubled (*muḍaʿʿaf*)."
29. Nine of the forty-two murder cases in the Ministry of Complaints records specifically mention that goods were stolen at the time of murder. Moreover, the vast majority of cases occurred in rural areas and many specify that the Jewish victims were from elsewhere (usually a larger city). See also DAR, Tetuan, 20829, ʿAbd al-Qadir Ashʿash to Mawlay ʿAbd al-Rahman, 1 Muḥarram 1265; Ankawa, *Kerem Ḥemer,* 1: #125, p. 82b-83a. On Jews as easy targets, see Schroeter, *Merchants of Essaouira,* 171–72. Muslims also fell victim to the same types of violent crimes as Jews, sometimes even at the hands of Jews: see, e.g., BH, K 157, p. 39, 2 Shawwāl 1306; p. 56, 12 Dhū al-Qaʿda 1306; DAR, Fez, 21720, Ismaʿil to Mawlay Hasan, 6 Rajab 1303; BH, K 181, p. 16, 5 Dhū al-Ḥijja 1308.
30. About 23 percent of petitions from Jews addressed in the Ministry of Complaints registers concern theft or murder (seventy-five theft cases and forty-two murder cases).
31. Peters, *Crime and Punishment in Islamic Law,* 56; see also Santillana, *Istituzioni di diritto musulmano malichita,* 2: 454–55. On *sariqa* (theft) as a *ḥadd* crime, see Schacht, *An Introduction to Islamic Law,* 179–80; Peters, *Crime and Punishment in Islamic Law,* 55–57. Peters further notes, "A salient feature of the law of ḥadd crimes is that the doctrine has made it very difficult to obtain a conviction," (54). Among the requirements for considering theft a ḥadd crime are: the theft must be surreptitious and taken from a place which is locked or guarded; the goods taken must be movable property worth more than a minimum value (defined as 8.91 grams of silver or 1.06 grams of gold by Mālikīs); and the victim of theft must be the full owner of the stolen goods.
32. There is some limited evidence that the ḥadd punishment was applied in Morocco in the nineteenth century: see, for instance, DAR, Safi, 4769, Mawlay Sulayman to ʿAbd al-Khaliq b. Ibrahim, 12 Dhū al-Qaʿda 1224.
33. TC, File #4, Rajab 1274. It is rare for the records to specify whether the Jewish victim received the stolen goods themselves (as in BH, K 181, p. 340, 23 Rajab 1310) or merely their value (as in DAR, Fez, ʿAbdallah b. Ahmad to Mawlay Hasan, 29 Rabīʿ I 1301 and FO, 631/3, Elton to Hay, October 10, 1864).

34. BH, K 157, p. 171, 1 Rajab 1307 (two entries); BH, K 171, p. 47, 3 Ramaḍān 1307; p. 48, 3 Ramaḍān 1307 (two entries); p. 81, 4 Shawwāl 1307. The Makhzan often gave houses to important merchants, government officials, and foreign diplomats.
35. DAR, Yahūd, Muhammad b. Qasim to Muhammad Torres, Ṣafar 1326.
36. Schacht, *An Introduction to Islamic Law,* 181–87. The private nature of murder crimes also governed their treatment in the Ottoman Empire: Heyd, *Studies in Old Ottoman Criminal Law,* 309; Hickok, "Homicide in Ottoman Bosnia," 47–48. For a discussion by Rafael Ibn Ẓur and Ya'akov Berdugo, Jewish jurists from Meknes, concerning which relatives can collect the blood money from a murdered Jew, see NLI, Ms. B861 (8-5165-6), p. 173a, Adar 5641/February 1881.
37. Fattal, *Statut légal,* 116–18. Only the Ḥanafī school permits retaliation killing for dhimmīs. It is difficult to know the extent to which the principle of dhimmīs receiving half the blood money paid to Muslims was observed in Morocco: the amounts paid as blood money for murdered Jews were not consistently recorded, and those that were vary widely (in one case 500 riyāls, in another 1,300 riyāls, and in a third 2,500 riyāls): BH, K 174, p. 51, 21 Jumādā I 1308; BH, K 181, p. 345, 6 Sha'bān 1310; BH, K 181, p. 260, 23 Ṣafar 1310. In one case the murderer's family paid 212 riyāls, but this was only part of the total amount of blood money (BH, K 181, p. 275, 27 Rabī' I 1310).
38. Two entries specify that the mother of a murdered Jew complained about not having received any compensation: BH, K 174, p. 30, 23 Rabī' I 1308 and BH, K 181, p. 57, 20 Rabī' II 1309.
39. DAR, Safi, 5020, Jews of Safi to Muhammad b. al-Mukhtari, 12 Rabī' II 1302. See also a second copy of this letter dated four months later: DAR, Safi, 31539, 3 Jews of Safi to Muhammad b. al-Mukhtari, Sha'bān 1302.
40. DAR, Yahūd, 18182, 'Abbas b. Dawud to Mawlay Hasan, 24 Rajab 1310 and DAR, Yahūd, 18186, Jews of Marrakesh to Mawlay Hasan, 28 Rajab 1310. On this incident see also Gottreich, *The Mellah of Marrakesh,* 102. Gottreich has it "Qadur," though I think "Qudur" is more likely.
41. See also: DAR, Fez, 5987, Mawlay Hasan to Sa'id b. Faraji, 1 Rabī' II 1299; BH, K 171, p. 30, 8 Sha'bān 1307; BH, K 181, p. 36, 11 Ṣafar 1309; BH, K 181, p. 137, 21 Sha'bān 1309. Mawlay Qudur was not the sultan: the honorific "Mawlay" can also be used for notables.
42. BH, K 157, p. 171, 1 Rajab 1307 (two entries); BH, K 171, p. 47, 3 Ramaḍān 1307; p. 48, 3 Ramaḍān 1307 (two entries).
43. DAR, Yahūd, 32719, Muhammad b. 'Abd al-Salam to Muhammad Bargash, 4 Dhū al-Ḥijja 1297; BH, K 157, p. 35, 22 Ramaḍān 1306; BH, K 171, p. 126, 20 Dhū al-Ḥijja 1307; BH, K 181, p. 19, 14 Dhū al-Ḥijja 1308; p. 82, 23 Jumādā I 1309; p. 222, 15 Dhū al-Ḥijja 1309; p. 254, 9 Ṣafar 1310. See especially the case of a murdered Jew named David: BH, K 174, p. 54, 5 Jumādā II 1308; p. 55, 7 Jumādā II 1308; p. 60–61, 24 Jumādā II 1308; p. 70b, 13 Rajab 1308.
44. BH, K 157, p. 27: 6 Ramaḍān 1306.

45. *Anna al-ʿādata hiya ghurmu al-khadīmi al-Dimnātī mā ḍāʿa lahum wa-rujūʿuhu ʿalā al-ʿasāsa* [sic]. The word *khadīm* is an unusual form in Arabic (for example, it is not found in the dictionaries of either Wehr or Lane). A colloquial Moroccan dictionary translates *khadīm* as "servant bénévole," usually serving a *zāwiya* or a saint (De Premare, *Dictionnaire arabe-français*, 4: 31). However, in the context of this letter—and indeed Makhzan correspondence more generally—*khadīm* referred to a Makhzan official, that is, a servant of the sultan.
46. BH, K 157, p. 67–68, 8 Dhū al-Ḥijja 1306. (*Fa-qad kharaqa al-wāqiʿa fī dhālika wa-anna al-ʿassata hiya ʿalā yadihi min qadīmin . . . wa-ʾl-yahūd yuʿṭūna 750*.)
47. *Qāla mawlānā ḥaythu al-ʿassatu waqaʿa yuʾaddūna*.
48. Nonetheless, this also occurred in some debt cases: see, e.g., BH, K 181, p. 252, 4 Ṣafar 1310, and p. 315, 28 Jumādā I 1310. Other entries did not specify that the corruption of the debtors caused them to ignore the Makhzan's instructions, but nonetheless reported that the debtors absolutely refused to cooperate in reaching a settlement: BH, K 157, p. 140, 17 Jumādā I 1307, and BH, K 181, p. 271, 16 Rabīʿ I 1310. See also DAR, Fez, ʿAbdallah b. Ahmad to Mawlay Hasan, 13 Shawwāl 1301. In this case ʿAbdallah reported about money owed to some unnamed Jews by the Zarahina (a tribe from Zerhoun). ʿAbdallah explained that one of the shaykhs of the tribe, who had promised to pay the debt, was two-faced, claiming to obey the Makhzan while inciting his tribe to rebellion.
49. BH, K 181, p. 110, 9 Rajab 1309.
50. For a similar case, see also BH, K 181, p. 368, 24 Ramaḍān 1310.
51. BH, K 157, p. 144, 25 Jumādā I 1307.
52. DAR, Yahūd, 14467, Mawlay Hasan to Ghalal b. Muhammad, 13 Jumādā I 1297; BH, K 157, p. 84, 19 Muḥarram 1307; p. 144, 25 Jumādā I 1307; BH, K 171, p. 54, 11 Ramaḍān 1307; p. 65, 21 Ramaḍān 1307; BH, K 181, p. 55, 14 Rabīʿ II 1309; p. 69, 6 Jumādā I 1309; p. 209, 24 Dhū al-Qaʿda 1309.
53. BH, K 157, p. 162, 18 Jumādā II 1307. See also BH, K 174, p. 31, 11 Rabīʿ II 1308 and p. 38, 28 Rabīʿ II, 1308.
54. FO, 636/5, Nahon to Hay, December 21, 1885. See also Schroeter, *Merchants of Essaouira*, 173–74.
55. DAR, Yahūd, 15600, Ahmad Amalik to Mawlay Hasan, 18 Ṣafar 1303; 2255, Muhammad b. al-Hasan al-Yuli to Mawlay Hasan, 1 Rabīʿ I 1303; 2260, Muhammad b. ʿAbdallah to Mawlay Hasan, 4 Rabīʿ I 1303; DAR, Tetuan, Muhammad ʿAziman to Mawlay Hasan, 10 Rabīʿ I 1303.
56. BH, K 181, p. 246, 26 Muḥarram 1310.
57. In another case, the Jews simply refused to register their goods with ʿudūl: BH, K 181, p. 50, 30 Rabīʿ I 1309. Moreover, as with debt cases, Jews were not the only ones accused of lying; in at least one instance a Makhzan official claimed that a Muslim lied about having been the victim of a theft: BH, K 157, p. 173, 5 Rajab 1307.
58. *Khīfatan an yadʿū ahlu al-dhimmati ʿalayhi bi-ʾl-bāṭili*.

59. BH, K 181, p. 57, 20 Rabīʿ II 1309. See also BH, K 555, p. 67, 16 Shaʿbān 1307, concerning an initial report about this case which emphasizes that the Muslim suspects had been cleared of guilt and that Abraham had drowned accidentally.
60. On the Makhzan's attempt to demonstrate its just treatment of Jews, see Marglin, "A New Language of Equality."
61. See, e.g.: DAR, Yahūd, 15587, Jews of Casablanca to Jews of Tangier, 26 Rabīʿ I 1294; DAR, Yahūd, 36147, al-Jilani b. Yaʿqub to Muhammad Bargash, 9 Rabīʿ II 1298; DAR, Meknes, Muhammad b. Bilʿid al-Radani to Mawlay Hasan, 15 Muḥarram 1303; BH, K 157, p. 44, 12 Shawwāl 1306; p. 94, 16 Ṣafar 1307; p. 121, 24 Rabīʿ II 1307; BH, K 171, p. 115, 1 Dhū al-Ḥijja 1307; BH, K 174, p. 79, 29 Rajab 1308; DAR, Yahūd, ʿAbd al-Hafiz to Ibn al-Madani al-Ajlawi, 6 Shawwāl 1323.
62. BH, K 157, p. 107, 23 Rabīʿ I 1307.
63. BH, K 181, p. 120, 22 Rajab 1309.
64. *Bi-annā yusāʿiduhum fīmā adhina al-sharʿu fīhī.*
65. DAR, Yahūd, 14885, Muhammad Torres to Muhammad al-Swisi, 6 Ṣafar 1315.
66. *Qānūn wa-ʿurf.*
67. BH, K 157, p. 121, 24 Rabīʿ II 1307.
68. DAR, Fez, al-ʿArabi wuld Ab Muhammad to Mawlay Hasan, 4 Shaʿbān 1301.
69. The term used to describe the Jews' ill treatment by their nāʾib (presumably the deputy of their governor) was *shaddada ʿalayhim fī al-aḥkām*.
70. Jews also petitioned the Makhzan when their local Makhzan officials failed to conform to Islamic legal standards of proof: see, e.g., DAR, Yahūd, 23088, Mawlay ʿAbd al-Rahman to Ahmad al-Muʿti, 27 Rabīʿ I 1261; DAR, Yahūd, 19415, Jews of unspecified city to Mawlay ʿAbd al-Rahman, Dhū al-Ḥijja 1262.
71. DAR, Yahūd, 32977, Rabbi Abnir and the Jews of Fez to Muhammad b. al-ʿArabi al-Mukhtar, 2 Dhū al-Qaʿda 1297. (The letter does not mention the names of the plaintiff or the defendant.)
72. DAR, Yahūd, 26098, dayyanim of Meknes to Muhammad b. Ahmad al-Sanhaji, 20 Jumādā I 1307.
73. DAR, Yahūd, Mawlay Hasan to qāʾid Hamm al-Jilali, 26 Jumādā I 1307. See also what seem to be two drafts of this letter: DAR, Yahūd, Mawlay Hasan to qāʾid Hamm al-Jilali, 23 Jumādā I 1307. These drafts, written only three days after the Jews' initial complaint to the sultan's vizier, suggest that the matter was urgent enough to require immediate attention.
74. For similar types of rebukes, see DAR, Demnat, al-Tayyib al-Yamani to Muhammad Bargash, 30 Muḥarram 1281; DAR, Yahūd, 18152, Muhammad Mufaddal Gharrit to Jews of Marrakesh, 7 Jumādā II 1310, and 18151, Mawlay Hasan to qāʾid Muhammad (in Marrakesh), 7 Jumādā II 1310. For instances in which the Makhzan upheld Jewish autonomy in non-legal matters, see DAR, Demnat, 15598, copy of an ordinance from Mawlay Hasan, 23 Dhū

al-Qa'da 1301; DAR, Demnat, Mawlay Hasan to al-Hajj al-Jilali al-Dimnati, 1 Sha'bān 1302; BH, K 174, p. 79, 29 Rajab 1308; DAR, Yahūd, Ahmad (qā'id in Casablanca) to Muhammad Torres, 9 Rabī' II 1321.

75. DAR, Yahūd, 36412, Jews of Fez to Muhammad Torres, 5 Dhū al-Qa'da 1313.
76. For further examples, see DAR, Yahūd, al-Hajj Muhammad b. al-Jilali to Ahmad b. Muhammad b. al-'Arabi Torres, 13 Rajab 1323; DAR, Yahūd, al-Hajj Muhammad b. Ahmad (last name unreadable) to Ahmad b. Muhammad b. al-'Arabi Torres, 18 Shawwāl 1323; CADN, Tanger B 461, Muhammad Torres to Paténôtre, July 24, 1890.
77. Joseph Halévy, *Bulletin de l'Alliance Israélite Universelle,* 2ème sémestre 1877.

CHAPTER 5. APPEALS IN AN INTERNATIONAL AGE

1. The letter, dated 29 Tammuz 5645, can be found in Fenton and Littman, *L'exil au Maghreb,* 540–42, and is preserved in the archives of the AIU (Maroc IV, CII 131). The murder victims were Makhluf Shalushin and Shalom Attia (a French citizen) from Fez, and Maymon Tordjman and Rubin Azzerad from Marrakesh.
2. On the AIU in Morocco, see Laskier, *The Alliance Israélite Universelle*.
3. Mahmood, "Religious Freedom."
4. See, e.g., Romanelli, *Travail in an Arab Land;* Schroeter, *The Sultan's Jew;* García-Arenal and Wiegers, *A Man of Three Worlds;* Brown, *Crossing the Strait,* esp. Ch. 3–5; Lehmann, *Emissaries,* 39, 114–15, 207–11; Marglin, "Mediterranean Modernity."
5. See, e.g., Frankel, *The Damascus Affair;* Leff, *Sacred Bonds*.
6. On Western diplomats' use of Jews to justify their intervention in Morocco, see especially Kenbib, *Juifs et musulmans,* 4–6 and Ch. 3; Kenbib, *Les protégés,* 225; Kenbib, "Muslim-Jewish Relations," 153, 159; Walther, *Sacred Interests,* Ch. 3–4. For some particularly colorful examples, see NARA, reg. 84, v. 001, McMath to Corcos, June 12, 1864; reg. 84, v. 47, Felix A. Mathews to Lucius Fairchild, April 11, 1880.
7. The Tobi Collection has twenty-two documents (mainly bills of debt and quittances) from shari'a courts concerning Shalom's transactions with Muslims between January 1, 1885/14 Rabī' I 1302, and January 1, 1886/25 Rabī' I 1303.
8. Shalom wrote at least once in 1881 (DAR, Fez, Mawlay Hasan to Sa'id b. al-Faraji, 29 Jumādā II 1298), and there are at least twenty items of correspondence concerning Ya'akov's appeals to the Makhzan between 1890 and 1893 alone (in BH, K 171 and K 181).
9. For similar arguments, see Schroeter, "La découverte des juifs berbères," 177–79; Shaw, "Writing to the Prince," 73.
10. Kenbib, *Les protégés,* 51–53, 77–92.
11. Harris, *Morocco That Was,* 312. Harris did not identify foreign intervention as the main source of this disparity, but rather attributed it more generally to Jews' "friendships at Court and with the viziers" (ibid.) and the fact that

Jews had become, "as bankers and money-lenders, indispensable to the country" (311).

12. See, e.g., Parsons, *The Origins of the Morocco Question,* 4–7; Bat Ye'or, *The Dhimmi,* esp. 78–86, 305–8; Littman, "Mission to Morocco"; Stillman, *The Jews of Arab Lands in Modern Times,* 6–8, 14–15; Parfitt, "Dhimma Versus Protection," esp. 150; Laskier and Bashan, "Morocco," 482–83; Bashan, "Attacks upon Jewish Religious Observance"; Fenton and Littman, *L'exil au Maghreb;* Gilbert, *In Ishmael's House,* Ch. 8. When these scholars do introduce nuance into their accounts, it is usually in the form of distinguishing among those consular officials who more consistently championed Jewish causes and those who were deemed unfriendly to Jews and, perhaps, antisemitic; John Drummond Hay (British ambassador, 1845–86) and Laurent-Charles Féraud (French ambassador, 1884–88) are both accused of lacking commitment to helping Moroccan Jews. See, e.g., Laskier, *The Alliance Israélite Universelle,* 53; Fenton and Littman, *L'exil au Maghreb,* 51, 468–77, 490–91, 502–3.
13. See especially Laroui, *Origines,* 310–13; Tawfiq, "Les Juifs de Demnate"; Ben-Srhir, *Britain and Morocco,* 162–66, 193–200; and, to a lesser extent, Kenbib, *Juifs et musulmans;* Kenbib, *Les protégés,* esp. 225–28.
14. On these rifts, see ibid., 238–40.
15. Miller, *Modern Morocco,* 46. Historians of the lachrymose school see this affair as proof that foreigners were required to save Jews from Morocco's purported barbarism: see Abitbol, "Sheliḥut le-'ezrat yehudei Maroko"; Littman, "Mission to Morocco"; Abitbol, *Le passé d'une discorde,* 168–72; Bashan, *Moshe Montefiore ve-yehudei Maroko;* Gilbert, *In Ishmael's House,* 117. A counter-narrative exonerates the Makhzan and paints Spain as the culprit: Kenbib, *Juifs et musulmans,* 124–47; Parfitt, "Dhimma Versus Protection," esp. 147–48; Ben-Srhir, *Britain and Morocco,* 160–62. For a relatively balanced account (albeit one that focuses on Montefiore's role), see Green, *Moses Montefiore,* Ch. 14; Walther, *Sacred Interests,* 115–25.
16. Miège, *Le Maroc et l'Europe,* 2: 383–84.
17. DAR, Safi, 4722, Mawlay Muhammad to Muhammad Bargash, 24 Ṣafar 1280.
18. Littman, "Mission to Morocco," 178–79; Kenbib, *Juifs et musulmans,* 124; Fenton and Littman, *L'exil au Maghreb,* 397. Kenbib gives the names of two more Jews (Chalom el-Qaïm and Jacob Benharroche) who were also implicated but, it seems, imprisoned only briefly. Lalouche is described as a Turkish subject in the Moroccan sources. His father apparently had a passport issued in Gibraltar by Cardoza, the Tunisian consul there (Littman, "Mission to Morocco," 181). However, Littman seems to think that Lalouche had been granted protection by Frederick Carstensen, the British consul in Safi. The Moroccan sources, on the other hand, clearly indicate that the British consular authorities were involved because they had agreed to look after the

interests of Ottoman subjects in Morocco: see especially DAR, Safi, 4718, al-Tayyib b. Hima to Muhammad Bargash, 25 Rabīʿ I 1280.

19. *Mā ṭalabahu bāshadūr al-ṣbanyūl* [sic] *min qatli al-dhimmīyayn al-maḥbūsayn bi-sijni Asafī fī mithli* [sic] *qatli amīnihim alladhī summima* (DAR, Safi, 4713, al-Tayyib b. al-Yamani to Muhammad Bargash, 11 Rabīʿ I 1280). See also DAR, Safi, Muhammad Bargash to al-Tayyib b. al-Yamani, 27 Ṣafar 1280.
20. Littman, "Mission to Morocco," 188; Kenbib, *Juifs et musulmans,* 126.
21. See DAR, Safi, 4720, Mawlay Muhammad to Muhammad Bargash, 9 Rabīʿ II 1280.
22. DAR, Safi, 4718, al-Tayyib b. Hima to Muhammad Bargash, 25 Rabīʿ I 1280.
23. DAR, Safi, 4715, Mawlay Muhammad to Muhammad Bargash, 17 Rabīʿ I 1280. The letter does not specify the nature of the disagreement; DAR, Safi, 4720, Mawlay Muhammad to Muhammad Bargash, 9 Rabīʿ II 1280.
24. DAR, Safi, 4718, al-Tayyib b. Hima to Muhammad Bargash, 25 Rabīʿ I 1280. Kenbib relates that the matter was solved by having a lafīf testify that Ben Yehudah was a "voyou et un malfaiteur," which was intended to "contrebalancer la rétraction du comdamné" (Kenbib, *Juifs et musulmans,* 127).
25. DAR, Safi, 4716, al-Tayyib b. Hima to Muhammad Bargash, 19 Rabīʿ I 1280. However, another source indicates that Ben Yehudah was executed on September 14 (see FO, 99/117, Frederick Carstensen to Thomas Reade, September 14, 1863, reprinted in Bashan, *Moshe Montefiore ve-yehudei Maroko,* 220).
26. *Wa-dhakara anna lā yatakallamu ʿalayhi fī mithli hādhihi al-daʿwā li-ʿiẓamihā wa-innamā yatawallā al-ḥukūmatu ʿalayhi fī hādhihi al-nāzilati wilāyatu al-gharb wa-aʿṭā khaṭṭa yaddihi bi-dhālika* (DAR, Safi, 4718, al-Tayyib b. Hīma to Muhammad Bargash, 25 Rabīʿ I 1280).
27. Littman, "Mission to Morocco," 182; Littman cites FO, 99/117, Reade (British consul in Tangier) to Earl Russell (British foreign secretary), October 10, 1863. See also DAR, Safi, 4716, al-Tayyib b. Hima to Muhammad Bargash, 19 Rabīʿ I 1280.
28. *Wa-aʿlamnāka li-takūna ʿalā baṣīratin wa-taʿrifa mā tujību bihi man ʿasā an yaqūla mā lanā ḥakamnā fī al-maqtūli bi-Asafī awwalan bi-shayʾin wa-ḥakamnā bi-nāzilati hādha al-yahūdī al-madhkūri bi-shayʾin ākhar* (DAR, Safi, 4720, Mawlay Muhammad to Muhammad Bargash, 9 Rabīʿ II 1280).
29. *Al-yahūdiyayn al-maqtūlayn fī Asafī wa-fī Ṭanja ʿalā tuhmati mawti al-isbanyūlī dūna taḥaqquqin ʿalayhim* (DAR, Yahūd, 17018, Thomas Reade to Muhammad Bargash, October 6, 1863/22 Rabīʿ II 1280).
30. DAR, Safi, 16349, Muhammad Bargash to Thomas Reade, 24 Rabīʿ II 1280.
31. Kenbib, *Juifs et musulmans,* 145. On the extension of collective protection to Christians in the Ottoman Empire, see Baer, "Imtiyāzāt."
32. Fenton and Littman, *L'exil au Maghreb,* 400. See also Walther, *Sacred Interests,* 119. Pariente reports that the pasha responded to these demands by sending soldiers to imprison the protesters, and threatening to torture them if they did not keep quiet. However, given the emphasis in his letter on

the barbarism of law in Morocco—discussed below—I am inclined to take this report with a grain of salt.

33. For other instances of Jews appealing to the Makhzan concerning foreigners, see DAR, Tetuan, 26945, Muhammad al-Slawi to Muhammad Bargash, 26 Dhū al-Ḥijja 1284; DAR, Yahūd, 17240, John Drummond Hay to ʻAmara b. ʻAbd al-Sadiq, 8 Muḥarram 1294 (and on this incident, see also Bashan, *Hamisyon ha-anglikani,* 155–56 and 167–72); DAR, Fez, Muhammad Bargash to Mawlay Hasan, 12 Shaʻbān 1296; DAR, Fez, al-ʻArabi wuld Abi Muhammad to Muhammad b. al-ʻArabi, 17 Muḥarram 1299; DAR, Fez, 36520, Muhammad Bargash to Mawlay Hasan, 6 Ṣafar 1299.
34. Bashan, *Moshe Montefiore ve-yehudei Maroko,* 224.
35. Fenton and Littman mistakenly interpret the official who demanded the Jewish suspects' execution as being "S.E. le Ministre de S[a] M[ajesté] C[hérifienne]," that is, the sultan's minister, as opposed to "S.E. le Ministre de S[a] M[ajesté] C[atholique]," referring to the Spanish minister (the Spanish queen's title was "Catholic Majesty")—which is the only reading that makes sense: Fenton and Littman, *L'exil au Maghreb,* 397–412. On the Spanish monarchs' title, see Drummond, "Titles of Honor" 23: 445. The correct interpretation is further clarified in the Spanish original, reprinted in Bashan, *Moshe Montefiore ve-yehudei Maroko,* 221–25, where the abbreviation is rendered "S. E. el Representante de S. M. C.ª," in which "C.ª" clearly indicates "Catolica" (223). Needless to say, Fenton and Littman's mistake fits perfectly into their narrative, in which the Makhzan is portrayed as either maliciously oppressive of Jews or simply powerless to protect them.
36. The letter was dated September 17, 1863, and is reproduced in the original Spanish in Bashan, *Moshe Montefiore ve-yehudei Maroko,* 221–25, and in a contemporary French translation in Fenton and Littman, *L'exil au Maghreb,* 397–401. See also Littman, "Mission to Morocco," 177–78. The Board of Delegates of American Jews was founded in New York in 1859, and had already sent funds to support Moroccan Jewish refugees from the Spanish occupation of Tetuan in 1860 (Kenbib, *Juifs et musulmans,* 140).
37. On Montefiore, see Green, *Moses Montefiore.*
38. DAR, Safi, 4736, al-Tayyib al-Yamani to Muhammad Bargash, 18 Rajab 1280. See also Littman, "Mission to Morocco," 184–87.
39. Green, *Moses Montefiore,* Ch. 14; Ben-Srhir, *Britain and Morocco,* 161.
40. The decree is published in al-Nasiri, *Kitāb al-istiqṣā,* 8: 129, and translated into English in Stillman, *The Jews of Arab Lands,* 371–73.
41. *Al-nās kulluhum ʻindanā fī al-ḥaqqi sawā'.* On the language of the decree, see Marglin, "A New Language of Equality."
42. See Green, *Moses Montefiore,* 313–15.
43. Miège, *Le Maroc et l'Europe,* 2: 564–65; Ben-Srhir, *Britain and Morocco,* 161; Green, *Moses Montefiore,* 313–14.
44. In 1879, Demnat's Jewish population was estimated at one thousand individuals: Ben-Srhir, *Britain and Morocco,* 196.

45. Tawfiq, "Les Juifs de Demnate," 155–56; the letter Tawfiq cites is dated 6 Dhū al-Ḥijja 1280.
46. DAR, Demnat, al-Tayyib al-Yamani to Muhammad Bargash, 30 Muḥarram 1281.
47. AIU, Maroc III C10, E5, Jews of Demnat to AIU, May 25, 1864; Maroc III C10, E25.05, Rabbi Mimon Ifran (representative of the Jewish Community of Demnat) to the Junta of Tangier, May 25, 1864.
48. DAR, Demnat, al-Tayyib al-Yamani to Muhammad Bargash, 30 Muḥarram 1281; Tawfiq, "Les Juifs de Demnate," 167.
49. For similar cases in which Jews appealed to both foreigners and the Makhzan, see DAR, Yahūd, 15587, Jews of Casablanca to Jews of Tangier, 26 Rabī' I 1294; DAR, Fez, 6078, Muhammad Bargash to Sa'id b. Faraji, 11 Sha'bān 1295.
50. DAR, Demnat, al-Tayyib al-Yamani to Muhammad Bargash, 30 Muḥarram 1281.
51. DAR, Demnat, Muhammad Bargash to Mawlay Muhammad, 27 Rabī' I 1281.
52. DAR Demnat, Mawlay Muhammad to Sidi Hasan, 14 Ramaḍān 1282 (*fa-ḥakamū baynahum bi-'l-qānūni al-jāri bi-fannihim*). See also Tawfiq, "Les Juifs de Demnate," 156. Tawfiq cites a letter from 12 Ramaḍān, and says that the conflict was between Muslim cobblers and Jewish cobblers; I am not certain whether he misread the text or whether Demnat's Jewish cobblers were also involved.
53. DAR, Demnat, Mawlay Hasan to al-Hajj al-Jilali al-Dimnati, 30 Rabī' I 1296.
54. Boum, "Ntifa."
55. On this famine, which lasted until 1884, see Holden, *The Politics of Food in Modern Morocco,* 7, 24–25.
56. El Hamel, *Black Morocco,* 300–301.
57. DAR, Yahūd, 32511, al-ḥazān Avner to Muhammad b. al-'Arabi b. al-Mukhtar, 28 Shawwāl 1297.
58. See DAR, Yahūd, 32491, Muhammad Bargash to Mawlay Hasan, 21 Shawwāl 1297.
59. Fenton and Littman, *L'exil au Maghreb,* 509–11. The letter is dated October 7, 1880.
60. Kenbib, *Juifs et musulmans,* 225.
61. This, too, was something of a cause célèbre: ibid., 209–13.
62. CADN, Tanger A 140, Vernouillet to Grand Vizier, no date. See also DAR, Yahūd, 32491, Muhammad Bargash to Mawlay Hasan, 21 Shawwāl 1297, in which Bargash transmitted Vernouillet's wishes to the sultan. For the American consul's involvement, see NARA, reg. 84, v. 47, Felix A. Mathews to William M. Evarts (U.S. Secretary of State), September 29, 1880, and December 15, 1880.
63. CADN, Tanger A 140, Vernouillet to Grand Vizier, no date.
64. Bargash reported to the sultan that the French ambassador told him secretly that if the qā'id of Ntifa were not punished, he would take all the Jews under his protection (DAR, Yahūd, 32491, Muhammad Bargash to Mawlay Hasan, 21 Shawwāl 1297).

65. DAR, Yahūd, 32491, Muhammad Bargash to Mawlay Hasan, 21 Shawwāl 1297; 32510, Mawlay Hasan to Muhammad Bargash, 26 Shawwāl 1297; 32715, Muhammad Bargash to Mawlay Hasan, 8 Dhū al-Qa'da 1297; 32716, Muhammad Bargash to Mawlay Hasan, 10 Dhū al-Qa'da 1297; 35132, Muhammad Bargash to Mawlay Hasan, 13 Muḥarram 1298; 35177, Mawlay Hasan to Muhammad Bargash, 16 Muḥarram 1298; 15589, Muhammad Bargash to Mawlay Hasan, 7 Jumādā II 1298; ?? to Muhammad Bargash, no date.
66. DAR, Yahūd, 32511, al-ḥazān Avner to Muhammad b. al-'Arabi b. al-Mukhtar, 28 Shawwāl 1297. The Jews of Ntifa had written to a Jewish notable in Fez named Avner, asking him to write on their behalf to the Makhzan (al-Mukhtar was the sultan's vizier). Avner related that at first he had received a report from a group of Jews from Ntifa outlining the events as they were transmitted to foreign consuls—that is, that al-Ntifi had murdered Dahan. However, more recently Avner had received a second letter from Ntifa's Jews with this very different version of the story.
67. See, however, a letter from Haim Benchimol (a prominent Jew in Tangier) to the Comité Central of the AIU (dated December 27, 1880) in which he argues that al-Ntifi forced the Jews under his jurisdiction to write a letter exonerating him (in Fenton and Littman, *L'exil au Maghreb,* 519–20).
68. DAR, Yahūd, 24351, 'Abdallah b. al-Hasan al-Ntifi to Mawlay Hasan, 16 Ramaḍān 1297.
69. These tribes included the Bani Mansur, the Ayt Ghatab, and the Tadla.
70. *Wa-'l-ān ḥīna amaranī sīdī bi-faṣli al-qaḍīyati ma'a awliyā'i al-dhimmī . . . fa-na'am sīdī wa-sam'an wa-ṭā'atan* (ibid.). Al-Ntifi explains that he was unable to settle with Dahan's heirs since Dahan's sons had left Ntifa for Marrakesh; al-Ntifi had contacted Corcos (presumably Yeshu'a Corcos, the shaykh al-yahūd of Marrakesh) and was awaiting a reply.
71. Ben-Srhir, *Britain and Morocco,* 194. The (anonymous) author of this letter did not, however, attempt to prove al-Ntifi's innocence—probably because, according to Bargash, all the foreign consuls had by this time accepted the version of events which claimed that Dahan had died of the blows al-Ntifi administered (see DAR, Yahūd, 32715, Muhammad Bargash to Mawlay Hasan, 8 Dhū al-Qa'da 1297).
72. Ibid.
73. DAR, Yahūd, 15589, Muhammad Bargash to Mawlay Hasan, 7 Jumādā II 1298.
74. Fenton and Littman, *L'exil au Maghreb,* 503, 519–20; Gilbert, *In Ishmael's House,* 117.
75. Ibn Mansur, *Mushkilat al-ḥimāya,* 55; Kenbib, *Juifs et musulmans,* 224–29; Ben-Srhir, *Britain and Morocco,* 193–96.
76. It makes perfect sense that the Jews who disagreed with Dahan's son petitioned the Makhzan, instead of foreign consuls who had already made formal complaints about al-Ntifi. For an instance in which a Moroccan Jewish subject appealed to the Makhzan—rather than foreigners—against a Jew under British protection, see DAR, Safi, 24082, Ibn Hima to Sayyid Ahmad,

29 Ramaḍān 1297, and Mawlay Hasan to Muhammad Bargash, 29 Shawwāl 1297 (in Mūdirīyat al-Wathā'iq al-Mālikīya, *Al-Wathā'iq,* 4: 511–13).

77. *Lahum mithlu mā li-'l-muslimīn min al-ḥaqq 'alaynā* (DAR, Yahūd, 15118, Mawlay Hasan to Muhammad Bargash, 22 Jumādā II 1297/June 1, 1880).
78. DAR, Yahūd, 24355, Muhammad Bargash to Mawlay Hasan, 15 Ramaḍān 1297.
79. See, e.g., DAR, Yahūd, Jews of Debdou to Mawlay 'Abd al-'Aziz, 15 Jumādā II 1314, in which the Jews of Debdou noted that they appealed only to the sultan for redress, tacitly implying that others among their coreligionists were less scrupulous about seeking the aid of foreigners.
80. DAR, Demnat, ordinance from 23 Dhū al-Qa'da 1301.
81. DAR, Tetuan, 19457, Mawlay 'Abd al-Rahman to Muhammad Ash'ash, 23 Dhū al-Qa'da 1243.
82. DAR, Demnat, ordinance from 23 Dhū al-Qa'da 1301.
83. See Tawfiq, "Les Juifs de Demnate," 156–57; Tawfiq's interpretation differs slightly from my own.
84. DAR, Yahūd, 15597, 14 Shawwāl 1301 (the word used for "slaughter" is *dhabaḥū,* which connotes a ritual sacrifice). See also Kenbib, *Juifs et musulmans,* 236–37. The text does not specify where they slaughtered the animal, only saying they did so "before the Christians."
85. This ritual invoked *'ār* (often translated as shame) on a given party if he did not fulfill one's request: Brown, "The 'Curse' of Westermarck." It was not unknown for Moroccans to invoke *'ār* with Europeans, particularly consuls, in an attempt to gain consular protection. See, e.g., FO, 174/221, Diary of the British Consulate in Tangier, pp. 49–50, August 23, 1849.
86. DAR, Demnat, ordinance from 23 Dhū al-Qa'da 1301.
87. Fenton and Littman, *L'exil au Maghreb,* 327–29.
88. DAR, Yahūd, 36130, Felix Mathews to Mawlay Hasan, 7 Dhū al-Ḥijja 1301.
89. *The Jewish Chronicle,* November 14, 1884 (in Fenton and Littman, *L'exil au Maghreb,* 327–29); "Horrible Persecution of Jews," *The Times of Morocco,* December 18, 1884, and *Jewish Intelligence,* March 1885 (in ibid., 336–40).
90. "Israélites du Maroc," *Bulletin de l'Alliance Israélite Universelle,* no. 9 (1884–85), 29–31.
91. February 6, 1885, p. 11 (reprinted in Fenton and Littman, *L'exil au Maghreb,* 332–36).
92. DAR, Yahūd, 15597, Legal Document, 14 Shawwāl 1301. "Quranic and non-Quranic" is my translation of *ḥudūd wa-qawānīn.*
93. DAR, Yahūd, 15599, Legal Document, 3 Ṣafar 1302.
94. DAR, Demnat, Muhammad b. Musa al-Ribati to Mawlay Hasan, 22 Dhū al-Ḥijja 1301.
95. *Tumkinuhum mimmā 'asā 'an yakūn lahum min al-ḥuqūqi fī da'āwīhim al-qarībati al-faṣāl wa-ammā ghayruhā min da'āwīhim al-mutasha''iba ka-da'awāt al-dam* (DAR, Demnat, Mawlay Hasan to al-Hajj al-Jilani al-Dimnati, 1 Sha'bān 1302). On *faṣāl* with the meaning of "settlement," see Sinaceur, *Dictionnaire Colin,* 6: 1468.

96. Fenton and Littman, *L'exil au Maghreb,* 540–42.
97. DAR, Demnat, Ahmad b. Muhammad al-Murabi to Muhammad b. al-'Arabi, 22 Shawwāl 1302.
98. See the legal document from 17 Sha'bān 1304/May 11, 1887 with a list of Muslim and Jewish notables noted on the side of the document (in Flamand, *Un mellah en pays berbère,* 161–64). See also the ordinance from the same date in which the sultan ordered the construction of the new millāḥ (in ibid., 159–60.). Flamand claims that the new millāḥ was completed in 1894, though he does not cite a source for this date (ibid., 20). On the sultan's visit to Demnat, see also Berque, *L'intérieur du Maghreb,* 477; Gottreich, *The Mellah of Marrakesh,* 53.
99. DAR, Demnat, Mawlay Hasan to al-Jilali al-Dimnati, 30 Rabī' I 1296. Of course, this did not prevent at least some of the Jews from refusing to move to the new millāḥ: see DAR, Yahūd, 27937, al-Tayyib (al-Yamani?) to Mawlay Hasan, 8 Rabī' I 1308. On various motivations ascribed to the building of millāḥs in a number of cities in 1807, see Schroeter, *The Sultan's Jew,* 91–92.
100. For further appeals made by Demnati Jews, see BH, K 157, p. 35, 22 Ramaḍān 1306, and p. 44, 12 Shawwāl 1306; AIU, Maroc III C10 E2, Elihu Moshe Panisel to AIU, Av 5645 (received August 28, 1895).
101. Needless to say, scholars disagree about the relative importance of Demnati Jews' appeals to foreigners versus their petitions to the sultan. Some indicate that the resolution of the Demnati Jews' appeals was due mainly to foreign intervention on their behalf: Kenbib, *Juifs et musulmans,* 235–40; Fenton and Littman, *L'exil au Maghreb,* 327–29. Others argue that Jews' appeals to the Makhzan did more to influence the course of events: Tawfiq, "Les Juifs de Demnate," esp. 156–58; Tawfiq, *Īnūltān,* 310–14; Ben-Srhir, *Britain and Morocco,* 196–200.

CHAPTER 6. EXTRATERRITORIAL EXPANSION

1. NARA, reg. 84, v. 48, "List of Individuals (not citizens of the US) under the jurisdiction or protection of the U.S. Consulate in the Empire of Morocco according to ancient custom and treaty stipulations" (p. 81).
2. Interview with Jacob Assaraf, April 18, 2014.
3. TC, File #1, 18 Ṣafar 1297: discussed at length in Chapter 2.
4. TC, File #8, 5 Ramaḍān 1301.
5. Recorded in two separate entries dated 22 Ramaḍān 1301.
6. For other cases, see TC, File #2, 29 Dhū al-Qa'da 1291; File #5, 15 Rabī' II 1292; File #5, 9 Dhū al-Qa'da 1292; File #8, 12 Jumādā I 1296; File #7, 12 Dhū al-Qa'da 1297.
7. See esp. Scully, *Bargaining with the State;* Benton, *Law and Colonial Cultures,* Ch. 6; Van Den Boogert, *The Capitulations and the Ottoman Legal System;* Cassel, *Grounds of Judgment;* Ruskola, *Legal Orientalism.*
8. For a similar argument on a smaller scale, see Pennell, "Law on a Wild Frontier."

9. Lewis, *Divided Rule*.
10. See, for instance, Alliance Israélite Universelle, *25ème anniversaire de l'AIU:* Bonsal, *Morocco as It Is,* 325–26; Leven, *Cinquante ans d'histoire,* 237–60. On this, see also Chouraqui, *L'Alliance Israélite Universelle,* 111–13; Kenbib, *Juifs et musulmans,* 214–18. For an exception to this rule, see, for instance, Maeterlinck, "Les institutions juridiques au Maroc," 482–83.
11. For a general evaluation along these lines, see Stillman, *The Jews of Arab Lands in Modern Times,* 4–5; Abitbol, "Jews and Arabs in Colonial North Africa," 130, 132. On Morocco and Jews' search for protection, see Laskier, *The Alliance Israélite Universelle,* 20; Pennell, *Morocco Since 1830,* 83; Stillman, "The Moroccan Jewish Experience," 553; Bensoussan, *Juifs en pays arabes,* 55.
12. Laroui, *Origines,* 310–13; Kenbib, *Juifs et musulmans,* 193–252; Kenbib, *Les protégés,* 225–32; Ben-Srhir, *Britain and Morocco,* 151–205.
13. For efforts to move a case into a consular court, see, e.g., DAR, Tetuan, 1130, al-Hajj al-Madani al-Duyuri to al-Hajj Muhammad al-Madani, 14 Jumādā II 1289; CADN, Tanger B 459, Makhzan contre Ben Amar, 1908. For efforts to move a case out of consular courts, see, e.g., CADN, Tanger A 138, Affaire Abraham Benchimol avec le gouvernement Français, 1833; CADN, Tanger A 138, Affaires de M. Benaim de Marseille, 1842; FO, 830/1, Grace to Hay, December 27, 1851.
14. See, e.g., CADN, Tanger A 159, Affaire Joseph Suiry v. Menahem Nahon et Judah Benguigui, 1857; NARA II, reg. 84, v. 13A, Muhammad b. al-'Arabi to J. Toel, 19 Ṣafar 1322.
15. Ben-Srhir, *Britain and Morocco,* 51–52; Kenbib, *Les protégés,* 49; Lourde, "Les juridictions consulaires," 21–22. This was specified in Article Nine of the treaty (see Mūdirīyat al-Wathā'iq al-Mālikīya, *Al-Wathā'iq,* 4: 148–49). On the treaty more broadly, see Ben-Srhir, *Britain and Morocco,* 24–61.
16. See, e.g., FO, 636/2, November 3, 1909, p. 38b, and Lambert v. El-Hasnaoui (in Caillé, "Un procès consulaire à Mogador," 339).
17. CADN, Tanger A 138, Dossier Rey v. Gassal and Benchimol. Interestingly, it is possible that Marius Rey was himself Jewish, or at least from a Jewish family with roots in Gibraltar or North Africa. On Rey as a Maghribi Jewish name, see Endelman, "The Checkered Career of 'Jew' King," 71–72.
18. See CADN, Tanger A 138, Dossier "Affaire Abraham Benchimol avec le Gouvernement Française," 1833.
19. CADN, Tanger A 138, Rey to Méchain, October 16, 1837. Before the 1856 treaty with Britain, any case involving a European and a Moroccan subject had to be judged in a Moroccan court (Kenbib, *Les protégés,* 38; Lourde, "Les juridictions consulaires," 16–18).
20. As consular and Makhzan officials became increasingly attentive to—and wary of—protégés' strategies for changing jurisdiction, they made it far more difficult to simply change one's nationality mid-dispute: see, e.g., CADN, Tanger A 139, Affaires Joseph Souery avec divers: Mustapha Dukkaly, Bakery, etc., 1851 (especially Shakery to Hay, April 29, 1851).

21. CADN, Tanger A 138, Rey to Méchain, October 21, 1837.
22. CADN, Tanger A 138, Rey to Méchain, December 29, 1837.
23. CADN, Tanger A 138, Extrait du registre du greffe du tribunal de commerce de Marseille, December 22, 1840.
24. Tanger, B 1326, Vernouillet to Jourdan Buy, October 20, 1880, and December 14, 1880.
25. CADN, Tanger A 138, Affaire Decugis contre Pinhas Bendahan, 1845; FO, 631/2, public protest by Moses Penyer, February 3, 1859; CADN, Tanger A 163, Jordan Buy to Ordega, November 22, 1882.
26. Tanger B 1326, Buy to Vernouillet, January 8, 1881.
27. See, for instance, Kenbib, *Les protégés,* 54–55.
28. See the correspondence about the case in NARA, reg. 84, v. 1, June 14, 1867, to September 22, 1868. Al-Shayzami acquired British protection by working for the Englishman John al-Malti (probably from Malta, then under British rule) after moving to Essaouira (DAR, Safi, 28690, al-Tayyib b. al-Malani to Muhammad Bargash, 22 Dhū al-Ḥijja 1284). Daniel Schroeter also discusses this case: Schroeter, *Merchants of Essaouira,* 178–80.
29. NARA, reg. 84, v. 1, Fred Carstensen to Abraham Corcos, June 14, 1867.
30. "Seed Mesod declares that you must be mistaken, as he has not received from you the sum you mention, and has not even seen you or communicated with you for several weeks" (ibid.).
31. Carstensen arranged for al-Shayzami to sue Corcos's chief witness before Corcos could bring his witness to testify in his favor (see NARA, reg. 84, v. 1, Corcos to Carstensen, June 15, 1867). Corcos finally had a hearing scheduled at the British consulate for November 4, 1867, although he did not attend this trial for unknown reasons (NARA, reg. 84, v. 1, Carstensen to Corcos, November 28 and 29, 1867).
32. NARA, reg. 84, v. 1, Corcos to Carstensen, June 15, 1867.
33. DAR, Safi, 28690, al-Tayyib b. al-Yamani to Muhammad Bargash, 22 Dhū al-Ḥijja 1284/April 16, 1868.
34. Ultimately the American ambassador in Tangier had Corcos's money returned to him: NARA, reg. 84, v. 1, McMath to Corcos, September 22, 1868.
35. NARA, reg. 84, v. 1, McMath to Corcos, December 15, 1867.
36. FO, 631/5, Carstensen to Hay, March 13, 1873.
37. FO, 635/4, p. 32a-b, April 11, 1872, and FO, 631/5, Carstensen to Hay, April 26, 1872. For yet another complaint about the British consul in Essaouira, see FO, 631/7, statement recorded in Arabic, translated in English, and signed by the British consul in Essaouira, April 22, 1884.
38. It is also important to note that, like Levy, the vast majority of people with access to British jurisdiction in Essaouira at this time were Jewish; although there were some British subjects (merchants, ship captains, and sailors) as well as Muslim protégés, these were far outnumbered by the many Jewish merchants who had obtained British protection: Schroeter, *Merchants of Essaouira,* esp. Ch. 3.

39. FO, 631/3, Carstensen to Hay, March 29, 1869.
40. FO, 636/3, Nahon to White, October 13, 1885. It is not entirely clear whether the plaintiffs wanted to pursue the case in a British consular court in Morocco or in a British court in Gibraltar.
41. The consul also tried to have the case adjudicated by the local pasha, arguing that commercial matters should not fall under the jurisdiction of sharī'a courts. The pasha replied that since the Jewish defendants had requested a sharī'a court, the law guaranteed them the right to adjudicate before a qadi—and confirmed that they would not be required to pay interest in the qadi's court.
42. CADN, Tanger B 1325, legal document dated 10 Ramaḍān 1304 (the French translation gives the incorrect date of 10 Ramaḍān 1303/June 12, 1886); Laurent-Charles Féraud to Callomb, December 15, 1887; Callomb to Féraud, December 26, 1887.
43. CADN, Tanger B 1325, Judah Assayag to Callomb, August 30, 1887.
44. CADN, Tanger B 1325, Féraud to Callomb, December 15, 1887.
45. This was not entirely unprecedented since a number of real estate cases continued to be adjudicated in consular courts even after 1880: see, e.g., NARA, reg. 84, v. 289, Hadj Thamy Ben Taib Haddawe v. Bertram Israel Darmond, August 1910, and CADN, Tanger F 5, Joseph Kanouï v. de Maindreville et Buzenet, no date (after 1911).
46. CADN, Tanger B 1325, Portuguese Consul to Féraud, December 31, 1887.
47. CADN, Tanger B 1325, Callomb to Féraud, December 26, 1887. The qadi was named 'Abd al-Rahman al-Baris.
48. CADN, Tanger B 1325, 'Abd al-Rahman al-Baris to Muhammad Slama, December 19, 1887; 'Abd al-Rahman al-Baris to Muhammad Torres, January 16, 1888.
49. Zagury had another run-in with the nāẓir two years later about a different store he was renting, for which he refused to pay: see BH, K 551, p. 10, 15 Shawwāl 1306, and p. 23, 27 Muḥarram 1307. See also two other cases concerning the opening of windows in neighboring buildings in which the plaintiffs sought to adjudicate in shari'a courts; perhaps the plaintiffs felt that Islamic law would favor the rights of property owners to privacy more than those of consular courts: CADN, Tanger B 1325, Dossier Azancot vs. Elazar, 1891–92; FO, 831/8, Protest of William Henry Chambers Andrews on behalf of Moses Corcos, March 20, 1900.
50. See also BH, K 551, p. 129, 13 Jumādā I 1308; CADN, Tanger F 2, Schott v. Cohen, October 8, 1894.
51. "Il déclare posséder des papiers, également en hébreu, prouvant que son père a acheté la clef à un israélite, lequel l'avait acheté à un autre israélite" (CADN, Tanger B 461, Belgian consul to Saint René Taillandier, November 19, 1904).
52. CADN, Tanger B 461, Belgian consul to Saint René Taillandier, November 19, 1904.

53. Ankawa, *Kerem Ḥemer,* 2: #52–55, pp. 9a-b.
54. CADN, Tanger B 461, Emsellem to Saint René Taillandier, November 3, 1904.
55. CADN, Tanger B 1325, Azancot to Souhart, July 30, 1891.
56. CADN, Tanger B 1325, José Daniel Colaço to Souhart, April 4, 1892.
57. CADN, Tanger B 1325, French Minister to Calaço, August 19, 1892. See also CADN, Tanger F 3, Melal Bonina v. Louis Constant Pouteau, March 6, 1899.
58. CADN, Tanger B 459, Affaire Cohen Pariente and Affaire Cohen-Boubkeur Elghendjaoui, 1904–1909. A strikingly similar dispute arose between Abraham Cohen and a British subject named Ferdinand Schott a decade earlier, in which Cohen similarly endeavored to avoid the jurisdiction of the shari'a court: see CADN, Tanger F 2, Schott v. Cohen, October 8, 1894.
59. CADN, Tanger B 459, Abensur to Lister, February 5, 1909.
60. The trial took place on February 27, 1905: see CADN, Tanger B 459, Abensur to White, July 14, 1905. On *milkīya,* see Findley, "Mulkiyya" and Delcambre, "Milk."
61. CADN, Tanger B 549, Daniel Saurin to Saint René Taillandier, July 24, 1905.
62. The lawyer added, somewhat confusingly, "Of course, we respect Islamic law, but on the condition that it is applied in its entirety and without any impure additions" (CADN, Tanger B 549, Daniel Saurin to Saint René Taillandier, July 24, 1905). It is not clear what Saurin meant by "impure additions," but my guess is that he did not understand how Islamic legal procedure worked and was merely trying to avoid accusations of bias by stating his "respect" for Islamic law.
63. CADN, Tanger B 459, Pariente to Wyldbore Smith, October 5, 1905. See also Pariente to White, October 2, 1906. Ultimately the qadi's decision was appealed before a special tribunal of five *'ulamā'* (Muslim scholars) convened in 1909 (CADN, Tanger B 459, Cohen to le Comte de Saint Aulaire, June 22 and 23, 1909).
64. CADN, Tanger B 1325, Assayag to Callomb, August 30, 1887.
65. See, e.g., Caillé, "Un procès consulaire à Mogador," 340–41.
66. In addition to the lawsuits against Shalom Assarraf with which this chapter began, see PD, legal documents dated 2 Ramaḍān 1299 and 3 Ramaḍān 1299 (concerning a dispute between Aharon b. Avraham Ohana and Georges Broome).
67. For an instance of Makhzan authorities accepting documents notarized by a consulate, see, e.g., BH, K 551, p. 35, 8 Rabī' II 1307. For instances in which Makhzan court officials insisted on documentation like that required by shari'a courts, see, e.g., CADN, Tanger A 140, Ben Simon to Ministre des Affaires Etrangères, March 31, 1882; CADN, Tanger A 161, 'Abd al-Salam al-Swisi to the Vice-Consul of France in Mazagan and Rabat, 1 Jumādā I 1301; MAE Courneuve, Maroc CP 50, Laurent-Charles Féraud to Ministre des Affaires Etrangères, January 6, 1886. There are numerous examples of Makhzan authorities relying on documents notarized by 'udūl; see, e.g., DAR,

Yahūd, 32594, Mawlay Hasan to Muhammad Bargash, 5 Dhū al-Ḥijja 1297; DAR, Marrakesh, 24082, al-Tayyib b. Hima to Ahmad Amalik, 29 Ramaḍān 1297; DAR, Safi, Italian Consul to al-Tayyib b. Hima, 10 Rabīʿ II 1299.

68. CADN, Tanger A 138, Affaire Rey et Benzecri, 1840.
69. CADN, Tanger A 138, Rey to the Ambassador of France, December 24, 1840.
70. ". . . elle ne reconnait que les actes dressés par les adduls [*sic*]" (ibid.).
71. Others under foreign jurisdiction faced similar problems when they failed to notarize legal documents with ʿudūl: see, e.g., FO, 631/3, p. 139b-140a, Carstensen to Hay, February 4, 1869: FO, 631/7, p. 28b, David Corcos v. Ester Penyer, September 29, 1879: CADN, Tanger A 161, ʿAbd al-Salam al-Swisi to Craveri, 1 Jumādā I 1301/February 16, 1885.
72. PD, 12 Jumādā I 1304. For other contracts which Broome had notarized by ʿudūl, see PD, 6 Muḥarram 1301 and 15 Ramaḍān 1303. For other examples of contracts which (Christian) foreigners had notarized by ʿudūl, see, e.g., FO, 635/4, p. 51a, February 10, 1875; CADN, Tanger A 160, Dossier Canepa, 1896; PD, 15 Dhū al-Qaʿda 1287 and 27 Shaʿbān 1320.
73. See, e.g., CADN, Tanger A 161, Messaoud Ben Hlouz to Ordega, February 28, 1884, and Amsellem to Ordega, October 1, 1884; NARA, reg. 84, v. 150, Coriat to Burke, September 8, 1896, and Coriat to Gummere, February 9, 1900.
74. This was true of France: see, e.g., MAE Courneuve, Direction Commerciale, Recueil des lois, ordonnances, instructions et circulaires concernant l'organisation du service des consuls, 2: 558, instruction spéciale approuvée par le roi, relativement aux actes et contrats reçus dans les chancelleries consulaires, November 30, 1833. I am grateful to Arnaud Bartolomei for bringing this material to my attention.
75. DAR, Tetuan, 20868, Mawlay ʿAbd al-Rahman to ʿAbd al-Qadir Ashʿash, 3 Ramaḍān 1265.
76. See, e.g., FO, 631/7, p. 188a, July 24, 1912 (two copies of Arabic legal documents with no translations); NARA, reg. 84, v. 16, p. 29ff, 28 Dhū al-Qaʿda 1327; see also reg. 84, v. 39, legal deed in Arabic from April 30, 1898 (concerning Ion Perdicaris) and throughout. For French consulates, this practice probably fell under the regulations for "réception de dépôts de pièces": Clercq and Vallat, *Guide pratique des consulats,* 1: 421.
77. FO, 830/1, Protest by Nathan Cohen Solal, January 11, 1847; FO, 631/7, p. 12b-14a, Simha Elmaleh v. George Broome, June 13, 1879; CADN, Tanger A 140, Affaire Ben Shtrit, October 1880; NARA, reg. 84, v. 29, David and Haim Corcos to Meyer Corcos, November 19, 1883; CADN, Tanger F 1, Liquidation of Semtob and A. H. Cohen Co., January 29, 1891; NARA, reg. 84, v. 24, Broome to Russi, August 15, 1892, and Abraham Rozelio v. Abraham Bensabat, July 6, 1893; CADN, Tanger F 4, Hadra Sicsu, Messody Sicsu, Hadra Sicsu (a different woman from the first Hadra Sicsu), and Preciada Sicsu v. Haim Benchimol, November 6 and 8, 1899.
78. NARA, reg. 84, v. 29, Abraham Corcos to ʿAmara, Rabīʿ I 1299/January 30, 1882.

79. See also FO, 631/7, p. 102b, August 24, 1885. For cases in which Jews notarized contracts with Christians in a Jewish court, see, e.g., FO, 631/7, p. 55a-56b, September 20, 1880; DAR, Yahūd, 29230, Muhammad b. Sa'id to Mawlay Hasan, 22 Dhū al-Qa'da 1307; BH, K 551, p. 93, 27 Dhū al-Qa'da 1307.
80. For documents registered in consular chancelleries, see FO, 442/8, diary entry from July 14, 1857; FO, 636/2, p. 17b, July 29, 1858, p. 35b, June 13, 1859, and p. 49a-55b, March 16, 1866; FO, 631/7, p. 71b-72a, March 23, 1882; CADN, Tanger F 2, Serfaty et Altit contre David Medina, September 15, 1896. For doubly notarized documents, see NARA, reg. 84, v. 24, Broome to Mathews, November 22, 1891; NARA, reg. 84, Box #1, Bensusan v. Meir Cohen, 1897.
81. DAR, Marrakesh, legal document dated 5 Rabī' II 1282. Tizguine is a small community near Amizmiz, about sixty-five kilometers southwest of Marrakesh.
82. DAR, Safi, 4853, Spanish consul in Safi to 'Abd al-Khaliq b. Hima, 17 Muḥarram 1303/October 27, 1885.
83. See also the legal document dated 10 Rabī' I 1305/November 26, 1887 (in DAR, Ḥimāyāt), attesting to the fact that "the pasha al-'Arabi wuld Abi Muhammad took away the patent of American protection from the Jew Maymon b. Shawil b. Susan, from Fez, and that the aforementioned dhimmī has no foreign protection but rather is under the protection of the sultan."
84. CADN, Tanger A 164, Dossier Bendahan v. El Maati ben Fatmi, 1895.
85. CADN, Tanger A 164, Collombe to de Monbel, April 19, 1895.
86. CADN, Tanger A 164, Collombe to de Monbel, September 27, 1895.
87. FO, 631/3, William James Elton to John Drummond Hay, March 1, 1864. See also CADN, Tanger B 986, P. Achille Gambaro to Auguste Beaumier, January 10, 1870.
88. CADN, Tanger B 1002, 16 Rajab 1291.
89. The testimonies of Bendahan and Blanco, from August 29 and 28, 1874, respectively, were copied into the registers of the French consulate in Essaouira (in CADN, Tanger B 1002).
90. DNA, 2.05.119, Guagnins to Rappard, May 11, 1909. Guagnins reported that the pasha came and instructed the 'udūl to include in the document that there was a spider web in the space where the thieves supposedly entered, thus making it impossible that they could have actually got in; it seems, however, that the 'udūl did not write this down. The dossier includes a translation of this document, which was written on 21 Ṣafar 1327.
91. CADN, Tanger A 140, Ben Simon to Gambetta, March 31, 1882. It was unusual for a French subject to write directly to the Ministry of Foreign Affairs in Paris, rather than going through the local consul or the ambassador in Tangier. It is possible that Bensimon wrote to Gambetta because he was living in Marseille, and thus felt more connected to the officials in metropolitan France than to the French consular officials in Morocco.
92. CADN, Tanger A 161, Siboni to Ordega, September 20, 1884. For similar criminal cases, see also CADN, Tanger A 165, Touboul to Hajj Hamadi

al-Wujdi (the French consul in Fez), 2 Av 5646/August 3, 1886; CADN, Tanger A 164, Elie Signoret to Féraud, July 31, 1888; CADN, Tanger A 165, Réclamation Zekri, 1893–96.

93. Indeed, consuls levied so many complaints on their protégés' behalf that from 1889 to 1891 the Makhzan maintained a separate register devoted entirely to the appeals of foreigners and those with foreign protection: BH, K 551, 22 Rabīʿ I 1306/November 26, 1889, to 14 Jumādā II 1308/January 25, 1891. See, e.g., p. 41, 19 Jumādā I, 1306; p. 71, 3 Ramaḍān 1307. There are countless examples of such letters in other archives as well: see, e.g., DAR, Fez, 32553, A. Guagneus (Italian consul in Larache) to Muhammad b. al-Madani Banis, 4 Jumādā I 1290; DAR, Safi, Yaʿakov b. Zakar (American consul in Safi) to al-Tayyib b. Hima, 25 Ṣafar 1295; DAR, Marrakesh, 17247, Charles A. Payton (British consul) to al-Hajj ʿAma, December 13, 1880; NARA, reg. 84, vol. 29, Abraham Corcos to al-ʿArabi Faraj, 28 Rajab 1300; DAR, Fez, 26405, Montfraix (French ambassador) to Muhammad Torres, 26 Ramaḍān 1302; DAR, Rabat/Salé, 16841, Green (British consul in Tangier) to Muhammad Torres, August 30, 1889.
94. I did not find the original letter in the archives, but it is clear from subsequent correspondence that Shalom contacted Mathews, who wrote to the sultan on his behalf. See, e.g., NARA, reg. 84, vol. 141A, Felix A. Mathews to Mawlay Hasan, 26 Dhū al-Ḥijja 1301 and 17 Ṣafar 1302.
95. DAR, Fez, Saʿid b. Faraji to Mawlay Hasan, 6 Ramaḍān 1301; ʿAbdallah b. Ahmad to Muhammad b. al-ʿArabi, 13 Ramaḍān 1301.
96. For additional correspondence exchanged among Makhzan officials about the debts owed to Shalom, see DAR, Fez, 28800, ʿAbdallah b. Ahmad to Muhammad b. al-ʿArabi, 21 Ramaḍān 1301; 6060, Muhammad b. al-ʿArabi to ʿAbdallah b. Ahmad, 26 Ramaḍān 1301; Mawlay Hasan to ʿAbdallah b. Ahmad, 1 Dhū al-Qaʿda 1301; Saʿid b. al-Faraji to Mawlay Hasan, 4 Dhū al-Qaʿda 1301.
97. See the very brief mention of this clause in Miège, *Le Maroc et l'Europe,* 3: 193. The French ambassador to Morocco noted this development in a letter from 1887: "Aussi avons-nous trouvé beaucoup de titres portant dans le corps de l'acte la mention qu'en cas de discussion, le paiement, bien que passé au profit de protégés français ou de Français, ne serait pas réclamé par l'intermédiaire de la Légation de France, mais serait soumis au Chrâ, tribunal du Cadi, le Français ou protégé français renonçant pour le circonstance à sa qualité" (MAE Courneuve, CP Maroc 53, Féraud to Flourens, September 28, 1887).
98. *Lā yaddaʿī ḥimāyatan fī hādhihi al-muʿāmalati wa-in iftaghara fīhi li-daʿwā famarjiʿuhu lil-sharʿ*. The verb *iftaghara* comes from the root *faghara,* which literally means "to open." I have not found a definition for the eighth form of this root in any classical dictionaries (or in Dozy), nor is it found in Colin's dictionary of Moroccan Arabic. Nonetheless, the word as it is used here clearly refers to a case being brought to court. I suspect this meaning was current in nineteenth-century Morocco but has since fallen out of usage.

99. Out of a sample of 150 bills of debt from the Assarraf collection which are post-1883, only thirty-two (21 percent) did not have the protection clause. In notarized documents from the other collections I examined, the protection clause becomes quite common in documents produced after the mid-1880s. I also found the protection clause in guarantees (TC, File #4, 2 Shawwāl 1306 and File #3, 12 Ramaḍān 1308). There is also evidence that the clause was applied to Muslims: see, e.g., TC, File #2, 3 Jumādā II 1325.
100. Moreover, four of the seven lawsuits took place before the protection clause became widespread (between 1874 and 1879).
101. Kenbib, *Les protégés,* 93–210.
102. On the opposition of 'ulamā' to protection, see al-Kattani, *Al-Dawāhī;* Laroui, *Origines,* 315–17; al-Manuni, *Maẓāhir,* 1: 321–34; Terem, "Al-Mahdī al-Wazzānī."
103. Mawlay Hasan established a rule that Muslims who had acquired foreign protection were ineligible to serve as 'udūl: see Mūdirīyat al-Wathā'iq al-Mālikīya, *Al-Wathā'iq,* 4: 426–27; DAR Tetuan, 34709, Muhammad 'Aziman to Muhammad Bargash, 24 Rajab 1294.
104. Laroui, *Origines,* 310–13.
105. See esp. al-Manuni, *Maẓāhir,* 1: 326–34; Laroui, *Origines,* 310–20.
106. In the description of the documents, the commission noted that a given contract was, for instance, a "Declaración ante dos adules y legalizado por el Cadi" (AGA, Caja M 9, Exp. no. 1 [81/9], Diario de los Sesiones de la Comisión Mixta Internacional, libro primero, p. 6, October 19, 1871).
107. AGA, Caja M 9, Exp. no. 1 (81/9), Diario de los Sesiones de la Comisión Mixta Internacional, libro primero, p. 5, October 12, 1871.
108. AGA, Caja M 9, Exp. no. 1 (81/9), Diario del Tribunal Marroquí, p. 4, November 23, 1871.
109. AGA, Caja M 9, Exp. no. 1 (81/9), Diario del Tribunal Marroquí, p. 19, December 4, 1871. In February 1872, Mawlay Hasan reportedly sent a letter to the qadis of the port cities instructing them to help facilitate the notarization of bills of debt belonging to foreign subjects and protégés who had claims against Makhzan officials and shaykhs (AGA, Caja M 9, Exp. no. 1 [81/9], Diario del Tribunal Marroquí, p. 33, February 11, 1872).
110. AGA, Caja M 9, Exp. no. 1 [81/9], Diario del Tribunal Marroquí, p. 39, June 24, 1872. On the refusal of 'udūl and qadis to notarize the documents of foreign subjects and protégés, see also AGA, Caja M 9, Exp. no. 1 (81/9), Muhammad b. al-Tayyib b. Hima to ??, 21 Rabī' I 1289/May 29, 1872, and the Spanish vice-consul in Mazagan to Francisco Merry y Colom, July 7, 1872. It seems that no British subjects in Essaouira had this problem—though there were no British subjects from this city who had claims to bring before the Mixed Court (see FO, 631/5, p. 39a-b, Carstensen to White, July 6, 1872).

111. The other most common complaint was that the Moroccan Tribunal refused to recognize the signature of qadis who were not among the thirteen officially sanctioned judges appointed by the Makhzan (see the discussion in AGA, Caja M 9, Exp. no. 1 [81/9], Diario del Tribunal Marroquí, p. 44, June 26, 1872).
112. AGA, Caja M 9, Exp. no. 1 (81/9), Diario del Tribunal Marroquí, p. 50, June 27, 1872.
113. AGA, Caja M 9, Exp. no. 1 (81/9), Declaration by the members of the International Commission, July 12, 1872. The consuls also claimed that "the Moroccan shari'a court does not admit the declarations of Christians or Jews as valid [evidence]," despite the lack of any substantiation of this assertion.
114. See, e.g., NARA, reg. 84, v. 29, Abraham Corcos to 'Amara b. 'Abd al-Sadiq, 9 Rabī' I 1298/February 9, 1881; CADN, Tanger A 161, Isaac Alioua to Ordega, September 3, 1884; DAR, Yahūd, Mawlay Isma'il to 'Abdallah b. Ahmad, 21 Shawwāl 1303; FO, 631/7, p. 146a-b, July 30, 1891; CADN, Tanger A 161, Liste détaillée des affaires françaises dites "de Casablanca," Eliyahu b. Dahan contre le Makhzan, 1892; CADN, Tanger A 160, Marcily to Monbel, October 19, 1894; NARA, reg. 84, Box #1, John Cobb to J. Judson Barclay, December 28, 1894; NARA, reg. 84, v. 150, Broome to Gummere, July 27, 1900.
115. BH, K 551, p. 30, 10 Rabī' I 1307. See also BH, K 551, p. 56, 13 Rajab 1307, and p. 96, 4 Dhū al-Ḥijja 1307.
116. DNA, 2.05.15.15.49, Baron Mentzigen to Muhammad Torres, November 14, 1899. It is possible that in this case, the 'udūl were adhering to the Islamic legal principle that dhimmīs are not allowed to inherit from Muslims (see Fattal, *Statut légal,* 137). However, it seems likely that the 'udūl were also—or even primarily—simply reluctant to draw up any legal documents on behalf of a protégé and in favor of a foreign Christian. See also BH, K 551, p. 96, 4 Dhū al-Ḥijja 1307.
117. I have not been able to find a date when these instructions were sent to Makhzan officials. For the first reference to this policy, see FO, 631/7, p. 64a-b, March 26, 1881; here, the British consul of Mogador noted that a Jew named Hadan Bitton (who, presumably, was a Moroccan subject) wanted to record his accounts with the British subject W. Grace. However, the qadi refused to allow this without an express order from the local qā'id. For a more explicit reference to this order, see DAR, Ḥimāyāt, 23317, Mawlay Hasan to 'Abd al-Rahman Bargash, 17 Dhū al-Qa'da 1309/June 13, 1892, which concerns the sultan's order that qadis should not allow the recording of testimony regarding bills of debt for foreigners except with the permission of the governor of the region. Of course, qadis and 'udūl at times refused to serve foreigners despite permission from local Makhzan representatives (see, e.g., NARA, reg. 84, Box #1, Affair of Miguel Benshaya, 1897).

CHAPTER 7. COLONIAL PATHOS

1. Interview with Jacob Assaraf, April 18, 2014.
2. Indeed, Jacob Assaraf's father explained to him that the French were the ones who had organized the "Tritel," an anti-Jewish pogrom perpetrated by Muslims on the eve of colonization in 1912, as a ploy to convince international opinion that they should be allowed to establish a protectorate in Morocco. Although this interpretation lacks support in the scholarly literature, it is valuable as further evidence of Issakhar's anti-colonial attitude.
3. The history of the Spanish Protectorate in Morocco is less well studied than that of the French; see, e.g., Ayache, *Les origines de la guerre du Rif;* Bachoud, *Los españoles ante las campañas de marruecos;* Nogué and Villanova, *España en Marruecos*. On Jews in the Spanish Protectorate, see Kenbib, *Juifs et musulmans,* 437–58; Dieste, "Paradojas de la pertenencia comunitaria" (which discusses the Spanish colonial legal system on p. 111). This chapter will focus on the French Protectorate since it encompassed far more of present-day Morocco, including the majority of Morocco's Jewish population.
4. As with the rest of this book, this chapter will not discuss the experience of Jews in rural areas. On the impact of colonial reforms on rural Jews, see, e.g., Boum, "Schooling in the 'Bled' "; Schroeter, "Views from the Edge."
5. On the colonization of Tunisia, see esp. Perkins, *A History of Modern Tunisia,* Ch. 2; Lewis, *Divided Rule,* Ch. 1–2.
6. On Lyautey in Morocco, see esp. Rivet, *L'institution du Protectorat*.
7. Moreover, the illusion of continuity was one that Moroccan historians upheld for many years after independence because it served a narrative in which colonial rule's impact on the "authentic" Morocco was minimal (Miller, *Modern Morocco,* 2–3).
8. Cohn, *Colonialism,* 62–65; Ruskola, *Legal Orientalism*.
9. Ranger, "The Invention of Tradition in Colonial Africa"; Chanock, *Law, Custom, and Social Order;* Moore, *Social Facts and Fabrications;* Merry, "Law and Colonialism," 897; Mamdani, *Citizen and Subject,* 110, 116, 125; Conklin, *A Mission to Civilize,* 89–90.
10. This observation is analogous to Lauren Benton's analysis of the shift from "truly plural legal orders to state-dominated legal orders" (Benton, *Law and Colonial Cultures,* 28). I would argue that "true" legal pluralism might include a role for the state (such as in pre-colonial Morocco). Nonetheless, I agree with Benton's point that modern Western states insisted on rigid boundaries between jurisdictions as part of the struggle between ecclesiastical and secular authorities for legal power (pp. 33–45, based in large part on her reading of Berman, *Law and Revolution*).
11. Mamdani, *Define and Rule,* 73. See also Mamdani, *Saviors and Survivors,* 146–55; Dirks, *Castes of Mind,* 5–6, 12–18; Benton, *Law and Colonial Cultures,* 182–83; Weiss, *In the Shadow of Sectarianism,* 28–33, 97–98. In North Africa, scholars have observed this process in the emergence of a distinct Berber identity: Burke, "The Image of the Moroccan State"; Lorcin, *Imperial*

Identities; Hoffman, "Berber Law by French Means"; Wyrtzen, "Colonial State-Building."

12. Mahmood, "Religious Freedom." On how the very concept of religious (and ethnic, racial, tribal, etc.) minorities emerged as a category and its relation to colonial governance, see White, *The Emergence of Minorities*.
13. Merry, "Law and Colonialism," 890; Mamdani, *Citizen and Subject,* 16–23; Grimshaw, Reynolds, and Swain, "The Paradox of 'Ultra-Democratic' Government"; Benton, *Law and Colonial Cultures,* 174–76; Kolsky, *Colonial Justice in British India,* esp. 1–16, 23; Mamdani, *Define and Rule,* esp. 27–31.
14. Very little has been written about the legal history of Jews in Protectorate Morocco: on Morocco's legal system during the Protectorate in general, see Caillé, *Organisation judiciaire,* 18–122. On Jewish doctrinal evolution, see Westreich, "Dinei ha-mishpaḥah." On colonial legal regimes in the Islamic world more broadly, see Sartori and Shahar, "Legal Pluralism." Needless to say, the history of legal reform in colonial Morocco and its impact on Jews could constitute a book in and of itself; this chapter offers preliminary observations about the legal history of France's Protectorate in Morocco, and is not intended as the final word on the subject.
15. See, e.g., Maeterlinck, "Les institutions juridiques au Maroc"; Mercier, "L'administration marocaine à Rabat"; Michaux Bellaire, "La beniqat ech chikaïat"; Margot, "Organisation de la justice à Figuig"; Péretié, "L'organisation judiciaire au Maroc."
16. Burke, "The Image of the Moroccan State"; Lorcin, *Imperial Identities,* Ch. 10; Rivet, *L'institution du Protectorat,* 1: 20–26; Miller, *Modern Morocco,* Ch. 4.
17. Péretié, "L'organisation judiciaire au Maroc," 510, 530.
18. Maeterlinck, "Les institutions juridiques au Maroc," 479.
19. Péretié, "L'organisation judiciaire au Maroc," 524–25.
20. CADN, 1MA/250/19, Jacques Caillé, "La justice israélite dans la zone française de l'empire chérifien," 1944.
21. Maeterlinck, "Les institutions juridiques au Maroc," 477; Aubin, *Morocco of To-Day,* 216; Péretié, "L'organisation judiciaire au Maroc," 516, 524. European observers in the sixteenth century drew similar conclusions: see Mediano, "Justice, crime et châtiment au Maroc," 616. Louis Mercier is an exception in noting that some criminal cases were judged by qadis: "La compétence du qadi, en tant que juge, est des plus étendues; toutefois, il ne juge, en matière de simple police et en matière criminelle, que les causes que le qāïd veut bien lui confier" (Mercier, "L'administration marocaine à Rabat," 394). Rober-Raynaud similarly claimed that while the Makhzan courts had jurisdiction over criminal affairs, individuals could always request to be judged in a shari'a court—a request that could not be refused: Rober-Raynaud, "La justice indigène au Maroc," 582.
22. Maeterlinck, "Les institutions juridiques au Maroc," 477, 480–81. An exception is Goulven, *Traité d'économie,* 15, fn 1.

23. Arin, "Les juridictions 'Makhzen' au Maroc," 496; Encyclopédie mensuelle d'outre mer, *Morocco 54,* 50–52; Rivière, *Précis de législation marocaine,* 90–92.
24. Mahmood, "Religious Freedom."
25. CADN, 1MA/5/666/1, Conseiller du gouvernement cherifien to Lyautey, April 25, 1916.
26. CADN, 1MA/5/666/1, Lyautey to commandants des régions, et al., May 30, 1918.
27. BNRM (accessed at the USHMM), Acc.2009.32.20, "Note pour M. le résident général au sujet de la question juive," March 23, 1926. See also CADN, 1MA/250/19, Jacques Caillé, "La justice israélite dans la zone française de l'empire chérifien," 1944, p. 3; 1MA/300/101B, "Note" (no date or author), which reads: "Depuis l'établissement du Protectorat, nous les [Jews] avons mis sur le pied d'égalité avec eux [Muslims], au point de vue social, civil, administratif et judiciaire."
28. Schroeter and Chetrit, "Emancipation and Its Discontents," 197.
29. See, e.g., CADN, 1MA/250/12, "Note" (no author), May 15, 1933.
30. Kenbib, *Juifs et musulmans,* 407–11; Schroeter and Chetrit, "Emancipation and Its Discontents," 188. On the Crémieux decree, which made most Algerian Jews French citizens, see Uran, "Crémieux Decree."
31. Laskier, *The Alliance Israélite Universelle,* 163–71.
32. See, e.g., CADN, 1MA/300/101B, "La justice indigène et les israélites marocains" (no author), February 1916. See also Schroeter and Chetrit, "Emancipation and Its Discontents," 174–75.
33. Here I am particularly influenced by Wilder, "Colonial Ethnology," and Wilder, *The French Imperial Nation-State.* See also Betts, *Assimilation and Association.* On the British case, see Mantena, *Alibis of Empire,* esp. the introduction.
34. Indeed, when the French conquered the Mzab in the 1890s, they decided not to emancipate its Jewish inhabitants for these (and other) reasons: see Stein, *Saharan Jews.*
35. Wright, *Politics of Design,* Ch. 3; Rabinow, *French Modern,* Ch. 9.
36. Bulletin officiel de l'empire chérifien: Protectorat de la république française au Maroc (hereafter Bulletin officiel), September 12, 1913, dahir of August 12, 1913/9 Ramaḍān 1331, 9–215. See Mouillefarine, *Condition juridique des juifs,* 80–81; Chouraqui, *Condition juridique,* 121–22, 131–39; Cabanis, "La justice du chrâa et la justice makhzen," 62–75; Schroeter and Chetrit, "Emancipation and Its Discontents," 180.
37. Caillé, *Organisation judiciaire,* 141–45. The process of abolishing protection granted by other states, however, was far slower and some countries maintained consular courts in Morocco decades into the Protectorate: see Mouillefarine, *Condition juridique des juifs,* 94–97; Caillé, *Organisation judiciaire,* 129–30; Chouraqui, *Condition juridique,* 140–41; Kenbib, *Juifs et musulmans,* 416–20; Rivet, *L'institution du Protectorat,* 227. On Tunisia, see Lewis, *Divided Rule.* On British and American extraterritoriality, see Encyclopédie mensuelle d'outre mer, *Morocco 54,* 50.

38. In 1930, the French authorities promulgated what came to be known as the "Berber dahir," which created customary tribunals that were granted jurisdiction over individuals living in regions categorized as Berber. Because few Jews lived in these largely rural areas, these customary courts fall largely outside the scope of this study. See Guerin, "'Beneath the Muslim Peel'"; Hoffman, "Berber Law by French Means."
39. Crimes were defined as minor when they incurred a maximum fine of 1,000 pesetas hassani or one year of prison. On the sequence of reforms, see the helpful summary in CADN, 14MA/900/257–58, "Note sur la réorganisation de la justice chérifienne au Maroc" (no date or author). See also Essafi, *Recueil des juridictions cherifiennes,* 17–23, 50–67.
40. Bulletin officiel, September 2, 1918, dahir du 4 août 1918/26 Shawwāl 1336, 838, Article 2.
41. The Medjless criminel was presided over by the Grand Vizier, who ruled in consultation with three other Makhzan officials: Bulletin officiel, February 6, 1914, 83–84, dahir dated 11 Dhū al-ḥijja 1331/November 11, 1913.
42. An exception was made for American and, before 1937, British subjects, who, because they retained access to their consular courts, did not fall under the jurisdiction of French courts. See CADN, 14MA/900/257–58, Raoul Marc, "Justice Makhzen: mahakmas de pachas ou caids, fonctionnant sans l'assistance de Comissaires du Gouvernement Chérifien: Note relative à l'application, par MM. les contrôleurs civiles et officiers des affaires indigènes remplissant les fonctions de Commissaires du Gouvernement, du Dahir du 23 avril 1926 et du Dahir du 4 août 1918 complété par le Dahir du 24 mars 1920," July 6, 1928, p. 7.
43. On the absence of a codified procedure in Makhzan courts, see Arin and Bruno, "La réorganization de la justice indigène," 187; Bulletin officiel, September 2, 1918, "Réorganisation des juridictions Makhzen: Exposé des motifs," 837–38.
44. Bulletin officiel, September 2, 1918, dahir du 4 août 1918/26 Shawwāl 1336.
45. While further reforms were suggested in the 1920s, the dahir of 1918 continued to be the main source of legislation regulating Makhzan courts for most of the Protectorate. On proposed reforms, see, e.g., CADN, 14MA/900/257–58, Résidence Générale, inspection générale des affaires indigènes to Premier Président près la cour d'appel, December 29, 1926. In 1953, a series of further reforms were passed that included a comprehensive penal code and a code of criminal procedure. See Encyclopédie mensuelle d'outre mer, *Morocco 54,* 52.
46. Bulletin officiel, July 17, 1914, dahir of 13 Sha'bān 1332/July 10, 1914, 582, Part II, Article 6. The next article (Article 7, p. 582–83) specified that all the registers must be kept at the court itself and could not be retained by the qadi after leaving his post—which suggests that before the Protectorate reforms, those records kept by qadis and 'udūl were often retained as their personal property, rather than remaining the property of the state.

47. Bulletin officiel, October 26, 1914, "Avis du ministère de la justice chérifienne," 797. This notice explained that "cadis de campagnes" (qadis in rural areas) would from now on be required to take exams before being appointed by the grand vizier.
48. Bulletin officiel, March 8, 1921, dahir of February 7, 1921/28 Jumādā I 1339, 396. See also Essafi, *Recueil des juridictions cherifiennes,* 32. This court replaced the more informal council of 'ulamā' that had previously heard appeals from local shari'a courts.
49. Bulletin officiel, July 17, 1914, dahir of 13 Sha'bān 1332/July 10, 1914, 579–86. See also Essafi, *Recueil des juridictions cherifiennes,* 28–31, 70–90. 'Udūl were required to obtain an official letter of appointment ("arrêté") from the Ministry of Justice and qadis were responsible for verifying the aptitude of the 'udūl in their city.
50. Arabi, "Orienting the Gaze"; Hallaq, *An Introduction to Islamic Law,* 115, 118–26; Cuno, *Modernizing Marriage,* Ch. 5. On the reform of personal status law in Mandate Syria, see White, *The Emergence of Minorities,* Ch. 6; and for Mandate Lebanon, see Weiss, *In the Shadow of Sectarianism,* Ch. 3.
51. Bulletin officiel, September 2, 1918, dahir du 4 août 1918/26 Shawwāl 1336, 840, Articles 21–26. See also Essafi, *Recueil des juridictions cherifiennes,* 26–27. In fact, only the courts in Rabat, Salé, Casablanca, Mazagan, Meknes, Oujda, Safi, Marrakesh, and Fez (and after 1936, Taza and Kenitra) had dedicated commissaires to oversee the judicial roles of their pashas. Other Makhzan courts had "contrôleurs civiles" who, in addition to their other duties, were responsible for overseeing their local pashas and qā'ids. See Rivière, *Précis de législation marocaine,* 103.
52. Bulletin officiel, July 17, 1914, dahir of 13 Sha'bān 1332/July 10, 1914, 584, Part III.
53. Rivière, *Précis de législation marocaine,* 108.
54. See, e.g., CADN, 1MA/300/131, Sciard to Lyautey, August 10, 1917.
55. See, e.g., CADN, 1MA/300/131, Henrys to Lyautey, January 13, 1914.
56. Bulletin officiel, May 27, 1918, dahir of May 22, 1918/11 Sha'bān 1336, 523–24; Bulletin officiel, July 1, 1918, dahir of June 9, 1918/29 Sha'bān 1336, 632; Bulletin officiel, May 29, 1923, dahir of May 9, 1923/22 Ramaḍān 1341, 662–63. See also Essafi, *Recueil des juridictions cherifiennes,* 33–34, 91–96; Hazan, "Batei ha-din be-Maroko," 466–67; Schroeter and Chetrit, "Emancipation and Its Discontents," 191, 194–95. On the deliberations leading up to the reorganization of batei din, see ibid., esp. 181–89. Colonial officials also reorganized the administration of Jewish communities: see Bulletin officiel, May 27, 1918, dahir of May 22, 1918/11 Sha'bān 1336, 525.
57. Bulletin officiel, May 27, 1918, dahir of May 22, 1918/11 Sha'bān 1336, 524, Articles 16–20. The internal reforms of Jewish law undertaken by the judges of Moroccan rabbinic courts is beyond the scope of this book, but see, e.g., Westreich, "Dinei ha-mishpaḥah"; Westreich, "'Iyunim Rishonim." For a comparative case of the internal reform of Jewish law in Mandate Palestine, see Radzyner, "Reishitan shel takkanot"; Radzyner, "Milḥamot ha-yehudim."

58. Bulletin officiel, May 27, 1918, dahir of May 22, 1918/11 Sha'bān 1336, 524, Articles 21–24; Bulletin officiel, April 13, 1920, dahir of March 31, 1920/10 Rajab 1338, 625; CADN, 1 MA/300/106A, ?? to M. Blanc, 30 Rabī' I 1338 (December 23, 1919); Haim Maman to Commissaire Délegué pour la région de Chaouia, May 12, 1919.
59. Unlike for shari'a and Makhzan courts, this requirement was not spelled out in the dahir itself. Nonetheless, the same commissaires and contrôleurs civils who oversaw the other Moroccan courts were also responsible for overseeing the rabbinic courts. See, e.g., CADN, 1MA/250/4, Marchat to Commissaires du Gouvernement Chérifien, et al., February 15, 1938.
60. Bulletin officiel, May 27, 1918, dahir of May 22, 1918/11 Sha'bān 1336, 523, Article 11.
61. See the numerous examples of these lists for the courts of Casablanca and Marrakesh in CADN, 1MA/300/104 and for Essaouira, Fez, and Meknes in 1MA/300/105.
62. See, e.g., CADN, 1MA/300/104, Yahya Zagury to Leclere [*sic*], August 3, 1918; Beigbeder-Calay to Commandant de la region, July 2, 1918, and August 26, 1918; 1MA/300/105, Watin to Directeur des Affaires Chérifiennes (service judiciaire), February 5, 1921.
63. On this, see, e.g., Wyrtzen, "Constructing Morocco," 221–23.
64. See, e.g., the letter for a qadi in Salé, dated 24 Rajab 1336/May 5, 1918, in Milliot, *Recueil de jurisprudence,* 1: 246–47.
65. Ibid., 1: 249. The letter is from 1916.
66. Ibid., 1: 245–46; CADN, 14MA/900/257–58, Raoul Marc, "Justice Makhzen: mahakmas de pachas ou caids, fonctionnant sans l'assistance de Comissaires du Gouvernement Cherifien: Note relative à l'application, par MM. les contrôleurs civiles et officiers des affaires indigènes remplissant les fonctions de Commissaires du Gouvernement, du Dahir du 23 avril 1926 et du Dahir du 4 août 1918 complété par le Dahir du 24 mars 1920," July 6, 1928, p. 6. For examples of such cases, see Milliot, *Recueil de jurisprudence,* 1: 286–93, 322–29, 337–48.
67. See Marty, "Justice civile musulmane I," 384, 391–92. On the "retrograde" nature of shari'a courts, see, e.g., Arin and Bruno, "La réorganization de la justice indigène," 185.
68. Schroeter and Chetrit, "Emancipation and Its Discontents," 194–95.
69. CAHJP, MA/Mg16, #1, p. 399.
70. CAHJP, MA/Mg16, #3, pp. 397–95 (the pages are numbered backward since the register runs from right to left, following the direction of Hebrew script), and #4, pp. 395–94.
71. For more such cases, see, e.g., CADN, 1 MA/300/106A, Jewish communal leaders of Meknes to Lyautey, August 12, 1918.
72. CADN, 1MA/300/104, Reveillaud to Directeur des affaires chérifiennes, February 24, 1919.
73. CADN, 1MA/300/104, Le Guevel to Lyautey, August 2, 1922.

74. CADN, 1MA/300/104, Reveillaud to Directeur des affaires chérifiennes, February 24, 1919. See also 1MA/300/104, Yahya Zagury to Conseiller du gouvernement chérifien, August 16, 1922.
75. CADN, 1MA/250/4, Marchat to Commissaires du gouvernement chérifien et al., February 15, 1938. It seems that even if the rabbinic courts continued to hear cases outside their jurisdiction, they quickly learned to stop recording such cases in their registers. See, for instance, the register recording all the cases heard by the rabbinic court of Mogador between March 1919 and January 1920 (CAHJP, MA/Mg16); not a single case after March 11, 1919, concerned commercial or civil matters outside the court's jurisdiction. While it is possible that this court limited itself to matters of personal status, it seems more likely that the clerk came to understand the necessity of refraining from recording commercial and civil cases.
76. Similarly, in a collection of rulings by Yehoshu'a Berdugo, a dayyan in the colonial beit din of Meknes, every case concerns matters related to personal status or inheritance: Berdugo, *Beit dino shel Yehoshu'a*. This collection is controversial, as Moshe Amar, a rabbi and scholar of Moroccan Jewry, claims that the book's material was stolen from him: see Elisha Ben-Kimon, "Tirgem ketavim historiyim u-shemo hushmat me-ha-sefarim," Mynet, February 15, 2015 (http://www.mynet.co.il/articles/0,7340,L-4625702,00.html, retrieved July 15, 2015).
77. This is acknowledged implicitly in the schedule of fees Jewish notaries were allowed to charge, published in the Bulletin officiel, April 13, 1920, dahir of March 31, 1920/10 Rajab 1338, 625.
78. See, e.g., CADN, 1MA/300/106A, Watin to Directeur des Affaires Chérifiennes, July 27, 1921. An exception was made for documents drawn up by Jewish notaries before 1918 (when the system of rabbinic courts was reorganized): if a Jew needed to present such documents before a qadi or a Makhzan court, he could ask the clerk of the High Rabbinic Court to translate them into Arabic (CADN, 1MA/250/4, Lyautey to Haut Commissaire du Gouvernement à Oujda, et al., July 1, 1919).
79. CADN, 1MA/300/106A, Watin to Directeur des Affaires Chérifiennes, July 27, 1921. For registers of shtarot drawn up by Jewish notaries, see, e.g., CAHJP, MA/Mg2; PD, Sefer ha-shtarot, Fez, 1920–22 and Sefer ha-shtarot, Fez, 1934.
80. CADN, 1MA/300/106A, Watin to Directeur des Affaires Chérifiennes, July 27, 1921.
81. See, e.g., CADN, 1MA/300/106A, Watin to Directeur des Affaires Chérifiennes, May 24, 1921; Yahya Zagury to Conseiller du Gouvernement Chérifien, September 10, 1923.
82. CADN, 1MA/300/106A, Yahya Zagury to Conseiller du Gouvernement Chérifien, September 10, 1923. See also "Note sur l'obligation pour les Israélites marocains d'avoir recours aux notaires musulmans dans les transactions immobilières intervenues entre eux" (no date).

83. CADN, 1MA/300/106A, Conseiller du Gouvernement Chérifien to Watin, July 19, 1921. See also Conseiller du Gouvernement Chérifien to Watin, August 23, 1921.
84. CADN, 1MA/300/106A, Watin to Directeur des Affaires Chérifiennes, July 27, 1921; Yahya Zagury to Conseiller du Gouvernement Chérifien, September 10, 1923, note by the Contrôleur Civil, chef de la région de Chaouïa, September 12, 1923; Branly to Secrétaire Général du Protectorat, March 27, 1924.
85. CADN, 1MA/250/4, Circular, September 14, 1926.
86. CADN, 1MA/250/4, Circular, July 18, 1927.
87. CADN, 1MA/300/106A, Jewish community of Beni Mellal to Conseiller des Affaires Chérifiennes, 2 Iyar 5680/ April 20, 1920.
88. CADN, 1MA/300/106A, Direction des Affaires Chérifiennes to Tarrit, November 20, 1920.
89. PD, Sefer ha-shtarot, Fez, 1920–22, #29, 27 Tammuz 5680.
90. PD, Sefer ha-shtarot, Fez, 1920–22, #35 and #36, July 23, 1920.
91. PD, Sefer ha-shtarot, Fez, 1920–22, #6, July 16, 1920. The Jews involved included Ya'akov b. Shalom Kadosh and his brother Avraham, Yosef b. Shlomo Samhun and his mother Sultana bat Yosef Kadosh, Yedidiah b. Binyamin b. Samhun, and Yehudah b. Moshe b. Samhun and his brother Yosef.
92. See Le Tourneau, *Fès avant le protectorat,* 269.
93. For a similar case in which two Jews sell part of a house and its ḥazakah to a Muslim, see PD, Sefer ha-shtarot, Fez, 1920–22, #135, 16 Ḥeshvan 5681.
94. PD, Sefer ha-shtarot, Fez, 1934.
95. CADN, 1 MA/300/104, Baruch Ittah to Directeur des Affaires Chérifiennes, February 24, 1922.
96. Unfortunately we do not know whether Elhadad's two female relatives succeeded in changing the jurisdiction of the case. For similar attempts at forum shopping based on contested nationality, see Wyrtzen, "Constructing Morocco," 228–30.
97. CADN, 1 MA/300/104, Commissaire du Gouvernement près le tribunal du pacha de Casablanca to Conseiller du Gouvernement Chérifien, June 12, 1920.
98. Esposito, *Women in Muslim Family Law,* 20.
99. CADN, 1MA/300/104, Direction des Affaires Chérifiennes to Commissaire du Gouvernement près le tribunal du pacha de Casablanca, June 29, 1920. For more examples of forum shopping, see, e.g., Vidal Ẓarfati v. the Bensimhon brothers (CADN, 1MA/300/104, Watin to Lyautey, July 5, 1919; Direction des Affaires Cherifiennes to Caquiere, July 17, 1919; Caquiere to Lyautey, September 15, 1919) and Castiel v. Amar (CADN, 1MA/300/106A, Ychoua Berdugo to Rodier, 19 Rabī' I 1339).
100. CADN, 1MA/300/106A, Baruch Bitton to Bruneau, May 7, 1919.
101. CADN, 1MA/300/106A, Commissaire du gouvernement près le tribunal de pacha de Meknes to Chef des services municipaux Meknes, June 3, 1919.

On pashas and qā'ids asking rabbis for advice concerning cases involving Jews, see CADN, 1MA/300/106A, Watin to Directeur des Affaires Chérifiennes, March 22, 1920, and Délegué à la résidence générale to Watin, April 8, 1920.

102. Milliot, *Recueil de jurisprudence,* 1: 246. For an example of this type of forum shopping, see, e.g., CADN, 1MA/100/245, Ahmed ben Abd Allah Zniber Es S[aid] to Lyautey, no date (concerning a case from the 1920s which began in a shari'a court but was subsequently brought before "plusieurs autres Magistrats"—presumably including the local pasha).
103. Milliot, *Recueil de jurisprudence,* 1: 245. Milliot was an expert on Islamic law and authored the *Introduction à l'étude du droit musulman* (Paris: Sirey, 1953). On Milliot's official position in Morocco, which he held at some point between 1914 and 1920, see ibid., 1: 21; Esmein, "Nécrologie: Louis Milliot."
104. CADN, 1MA/300/106A, Direction des Affaires Politiques et Commerciales to Ministère des Affaires Etrangères, received November 24, 1920.
105. CADN, 1MA/300/106A, Watin to Directeur des Affaires Chérifiennes, December 30, 1920; Bruno to Directeur des Affaires Chérifiennes, January 11, 1921.
106. CADN, 1MA/300/106A, "Note établie par M. Cohen de Fez" (no date).
107. CADN, 1MA/300/106A, Watin to Directeur des Affaires Chérifiennes, January 25, 1921.
108. On the gap between perceptions of Jews' "emancipation" under French colonial rule and the reality of their continued status as second-class subjects, see Levy, *Histoire et civilisation judéo-marocaines,* 129; Schroeter and Chetrit, "Emancipation and Its Discontents," 171–75.
109. See, e.g., Chouraqui, *Between East and West,* 174; Levy, *Histoire et civilisation judéo-marocaines,* 117–19, 126–27.
110. Schroeter and Chetrit, "Emancipation and Its Discontents," 193–94.
111. FO, 636/3, Mogador, Carstensen to Hay, June 23, 1865, and March 10, 1866; CADN, Tanger A 158, Tribunal spécial, 1865–66, Aymé d'Aquin to Bargash, December 26, 1865; FO, 631/3, Mogador, Carstensen to Hay, June 8, 1868, August 17, 1868, and June 25, 1870; MAE Courneuve, CP Maroc 37, Tissot to Favre, June 1, 1871, July 13, 1871, and August 12, 1871; CADN, Tanger A 157, De Rémusat to Tissot, September 11, 1873; AGA, Caja M 9, Exp. no. 1 (81/9), no date (1874 or 1875), "Estado de los créditos consignados en documentos pura y esencialmente comerciales, que, segun el texto español del parrafo 2do del Artículo 11 del Tratado de Comercio, no pertenecen a la jurisdiccion del Kadi (Shra)"; MAE Courneuve, CP Maroc 53, Féraud to Flourens, September 12, 1887; DAR, Ḥimāyāt, #33505, 'Ali al-Rashidi to Mawlay 'Abd al-'Aziz, 16 Sha'bān 1312; FO, 831/1, Safi, Hunot to Maclean, December 20, 1895; NARA, reg. 84, Tangier, Morocco, Box #1, Nathan to Gummere, August 6, 1904.
112. For a similar assessment of French misunderstandings of law in Morocco, see Chouraqui, *Condition juridique,* 122.
113. Schroeter and Chetrit, "Emancipation and Its Discontents," 179.

114. CADN, 1MA/5/666/1, Ministre des Affaires Etrangères to Lyautey, January 17, 1923.
115. CADN, 1MA/5/666/1, Urbain Blanc to Ministre des Affaires Etrangères, March 24, 1923.
116. See also CADN, 1MA/5/666/1, Conseiller du Gouvernement Chérifien to Chef du Cabinet Diplomatique, Résidence Générale, March 26, 1923.
117. *L'avenir illustré: revue juive marocaine et nord-africaine,* November 30, 1927, 2: no. 44–45, 2–3. On *L'avenir illustré,* see Cohen, *La presse juive au Maroc,* 178–94.
118. BNRM (accessed at the USHMM), reel 20, Conseiller du Gouvernement Chérifien to Directeur des Affaires Politiques, Secrétaire Général du Protectorat, February 24, 1944.
119. See also CADN, 1MA/5/666/2, Lemaire, "Note au sujet de la situation des israélites au Maroc," August 6, 1945; YBZ, Private Archive of Rafael Azeraf, box 37, documents 2–45, Prosper Cohen, "La condition juridique des juifs marocains," 1947, p. 30; Chouraqui, *Condition juridique,* 134.

EPILOGUE

1. Saada, *Empire's Children,* 5.
2. Shari'a courts did have jurisdiction over some matters regarding Jews because they had partial jurisdiction over real estate, but this was seen as something of an exception to the rule (instituted because of the prevalence of properties belonging to pious endowments). Moreover, even though Jews were subject to Makhzan courts—run exclusively by Muslims—these were seen as secular institutions, even though they did not operate as such (discussed in Chapter 7).
3. Brown, "Mellah and Madina," 270; Ouaknine-Yekutieli, "Corporatism." On the economic occupations of Jews at the end of the Protectorate, see Tsur, *Kehilah keru'ah,* 36–43.
4. Laskier, *The Alliance Israélite Universelle,* 160.
5. Ibid., Ch. 8.
6. Chouraqui, *Histoire des Juifs en Afrique du Nord,* 118. On Jews' ambivalence about colonial rule, see, e.g., Marglin, "Modernizing Moroccan Jews," 598–601.
7. Bulletin officiel, November 8, 1940, dahir of October 31, 1940/29 Ramaḍān 1359, 1054; August 8, 1941, dahir of August 5, 1941, 794–98; September 26, 1941, arrêté viziriel of August 18, 1941, 947; March 6, 1942, arrêté viziriel of February 24, 1942, 187. The only government positions that remained open to Jews were specifically Jewish (such as rabbinical courts and Jewish schools). Exceptions were made for Jews who had served in the French military during World War I or had been decorated for subsequent service. On Jews' experience in Morocco under Vichy, see Abitbol, *Jews of North Africa,* 62–83; Kenbib, *Juifs et musulmans,* 604–10; Kenbib, "Moroccan Jews and the Vichy Regime," esp. 545.

8. Abitbol, *Jews of North Africa,* 96–101; Baïda, "'Réfugiés' juifs au Maroc." Baïda gives the number of camps in Morocco as fourteen (ibid., 58), while Satloff lists thirty (Satloff, *Among the Righteous,* 210). These were not death camps; they consisted of prisons or work camps where inmates were forced to labor on projects such as the Trans-Saharan railroad.
9. For a contemporary source that views the measures as having been applied strictly, see YBZ, Private Archive of Rafael Benazeraf, Box 18, documents 1–67, Raphael Benazeraf, "L'application du statut des juifs et des dispositions raciales à la population juive du Maroc" (February 1943). Michel Abitbol argues that they were enforced strictly relative to Tunisia, but his archival evidence is thin: Abitbol, *Jews of North Africa,* 78–80. Mohammed Kenbib, on the other hand, concludes that many measures were not enforced or that their enforcement was delayed (Kenbib, *Juifs et musulmans,* 628–29; Kenbib, "Moroccan Jews and the Vichy Regime," 547–49). An internal memo written in 1945 describes the measures as having barely been enforced at all (BNRM, accessed at the USHMM, reel 20, "Note sur l'application au Maroc des mesures prises en France, de 1940 a 1942, à l'encontre des israélites," April 1945). However, this memo could easily have been written to exonerate French authorities of accusations of anti-semitism. Further research in Moroccan archives—such as police records—is required to determine exactly how anti-Jewish laws were enforced.
10. Abitbol, *Jews of North Africa,* 83–85; Serfaty and Elbaz, *L'insoumis,* 96–100; Heckman, "Radical Nationalists." For the abolition of the Vichy anti-Jewish laws, see Bulletin officiel, no. 1588, April 2, 1943, dahir of March 31, 1943/24 Rabī' I 1362, 280; no. 1591, April 23, 1943, arrêté résidentiel of April 22, 1943, 321.
11. Wagenhofer, "Contested Narratives," 1. The dahirs enacting anti-Jewish legislation have Mohammed V's seal on them. Of course, laws passed during the Protectorate were written almost exclusively by French authorities and the sultan's seal was a formality; nonetheless, putting his seal on the dahir did signify his tacit approval. There is some evidence that Mohammed V displeased Vichy officials by making his opposition to anti-Jewish measures known (Zafrani, *Deux mille ans de vie juive,* 296–97). For a summary of the scholarly debate on Mohammed V, see Wagenhofer, "Contested Narratives," 4–5.
12. See, e.g., YBZ, Private Archive of Rafael Benazeraf, Box 18, documents 1–67, Raphael Benazeraf, "L'application du statut des juifs et des dispositions raciales à la population juive du Maroc" (February 1943), p. 9.
13. See, e.g., Benaïm, *Le pèlerinage juif,* 120–24. On the veneration of holy men and women by Jews in Morocco, see Ben-Ami, *Saint Veneration;* Kosansky, "All Dear unto God."
14. Benaïm, *Le pèlerinage juif,* 122.
15. Interview with Mr. Assayag, July 12, 2004. Assayag used the verb "pèleriner."
16. On the departure of Jews from Morocco, see Kenbib, *Juifs et musulmans,* 653–95; Levy, *Histoire et civilisation judéo-marocaines,* 132–44; Bin-Nun, "L'évacuation des Juifs du Maroc"; Baïda, "The Emigration of Moroccan Jews."

17. Interview with Jacob Assaraf, April 18, 2014.
18. The vast majority of Jews who left Morocco before or just after independence went to the new Jewish state; between 1948 and 1956 alone, 131,143 Jews arrived in Israel from Morocco: Bin-Nun, "Jewish Emigration from Morocco," 53. See also Hatimi, "Al-jamā'āt al-yahūdīya," 254–93.
19. Kenbib, *Juifs et musulmans,* 668–77; Pennell, *Morocco Since 1830,* 276–77; Tsur, *Kehilah keru'ah,* 76–78; Berdugo, *Juives et juifs,* 91–92.
20. Kenbib, *Juifs et musulmans,* 677–87; Tsur, *Kehilah keru'ah,* 87–91; Berdugo, *Juives et juifs,* 81–82, 97–100. Indeed, some international organizations also encouraged Jews' emigration as a solution to the discrimination they faced in Morocco: Kurz, "A Sphere Above the Nations?," 218–46.
21. Laskier and Bashan, "Morocco," 502; Miller, *Modern Morocco,* 160.
22. Interview with Yehudah Assaraf, June 17, 2014.
23. Interview with Jacob Assaraf, April 18, 2014.
24. See, e.g., Lévy, "Nostalgia and Ambivalence"; "To Morocco and Back."
25. Miller, *Modern Morocco,* 159.
26. Boum, *Memories of Absence.*

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