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SOME JĀHILĪ ORIGINS OF THE ḤISBA

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1. Introduction

Abū Ḥāmid al-Ghazālī described *ḥisba* in theoretical and comprehensive terms as being a religious and moral obligation to be performed by every Muslim. For him *ḥisba* is an all-inclusive expression of commanding right and forbidding evil (*al-amr bi-'l-maʿrūf wa-'l-nahy ʿan al-munkar*), which is the great axis of religion (*al-quṭb al-aʿẓam fī al-dīn*).[1] Al-Ghazālī used *ḥisba* in its broad sense as the religious principle set by God that obligates everyone, rulers as well as individuals.[2] Al-Māwardī opens his chapter on *ḥisba* in similar terms: "It commands doing good when it is neglected and forbids wrongdoing when it is clearly done. [This is] all in accordance with God's saying (Qurʾān 3:104) 'Let there become of you a community that shall call for all that is good, enjoining what is right and forbidding what is wrong'." ([...] *yaʾmurūna bi-'l-maʿrūf wa-yanhawna ʿan al-munkar*). Nevertheless, as 'a political scientist', al-Māwardī stressed that *ḥisba* requires the existence of a religious office that should exist in every Islamic regime: a *muḥāsib*, supervising the markets as well as the religious, moral and social affairs in the Islamic city.[3]

There is a consensus that *ḥisba* in the sources should be understood primarily as a religious duty derived directly from the repeated call of the Qurʾān to all Muslims to enjoin what is right and forbid what is wrong. Jurisprudents and authors of *ḥisba* manuals derived their views on *ḥisba* from the relevant Qurʾānic verses.[4]. They all saw *ḥisba* as a

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[1]Ghazālī, *Iḥyāʾ*, vol. 2, pp. 306, 312.

[2]These two meanings are expounded by Buckley in his introduction to the translation of *Shayzarī's Nihayāt al-rutba fī ṭalab al-ḥisba*, called *The book of the Islamic market inspector* (Oxford University Press, 1999), p. 1.

[3]Māwardī, *al-Aḥkām al-sulṭāniyya* (Beirut, 1402/1982), pp. 240–259.

[4]Such as Qurʾān 3:104, 110, 114; 7:157; 9:67, 71; 22:41; 31:17. See for example Ghazālī, *Iḥyāʾ*, vol. 2, pp. 306–357. He considered *ḥisba* as a part of the larger issue of *al-amr bi-'l-maʿrūf wa-'l-nahy ʿan al-munkar.* See also Māwardī, *al-Aḥkām al-sulṭāniyya* (Beirut, 1402/1982), pp. 240–259; Saqaṭī, *Fī ādāb al-ḥisba*, pp. 1–3;

religious duty, or, as the Fāṭimīs classified it, *khidma dīniyya* (a religious service);[5] Ibn al-Ukhuwwa called it *min qawāʿid al-umūr al-dīniyya,* (one of the foundations of religious affairs).[6]

An Indian Ḥanafī author of a *ḥisba* manual, ʿUmar b. Muhammad al-Sunāmī (13th–14th centuries), explained *ḥisba* as *tadbīr iqāmat al-sharʿ fīmā bayna al-Muslimīn wa-summiya bihi li-annahu aḥsan wujūh al-tadbīr*, meaning the especially good management and performance of the *sharīʿa* laws which serve best the interests of the Muslim community. After that he listed fifty duties and prohibitions that fall under the heading of *ḥisba*.[7] Ibn Khaldūn expressed this more clearly by declaring that *ḥisba* is a *waẓīfa dīniyya,* a religious post to which the Muslim ruler must appoint an appropriate official, the *muḥtasib*.[8]

In the eyes of almost all Muslim theologians, *ḥisba* is a legal issue and the *muḥtasib* should be a Muslim who is well acquainted with *aḥkām al-sharīʿa*.[9] Consequently, in most cases such an appointment was to be made by the judicial authority, represented by the chief *qāḍī* (the ʿAbbāsī *qāḍī al-quḍāt*), but always with the authorization of the caliph.[10] Therefore, the theological views on *ḥisba*, especially those of scholars such as al-Māwardī, were the model according to which the *ḥisba* manuals were composed.

Thus, in Islam, the *muḥtasib* was entrusted with the mission of *ḥisba*, but in reality he became an urban magistrate granted the authority to control the daily affairs of the city and to settle any religious and secular disputes that arose. He was responsible for a variety of matters, such as the punctual performance of prayers, the maintenance of mosques, public health and commercial activities in the market.[11]

Many modern scholars were of the opinion that the office of the *muḥtasib* was the direct successor to the Greco-Byzantine *agoranomos*.[12]

Ibn al-Ukhuwwa, *Maʿālim*, pp. 7–14; Ibn Taymiyya, *al-Ḥisba*, pp. 11–19; Nuwayrī, *Nihāya*, vol. 6, pp. 291–315.

[5]Maqrīzī, *al-Khiṭaṭ*, vol. 1, pp. 463–464.

[6]Ibn al-Ukhuwwa, *Maʿālim*, p. 6.

[7]Al-Sunāmī, *Niṣāb*, pp. 81–84. See also the study and the English translation of this treatise by M. Izzi Dien, *Theory and practice.*

[8]Ibn Khaldūn, *Muqaddima*, pp. 225–226

[9]See Māwardī, *al-Aḥkām al-sulṭāniyya* (Beirut, 1402/1982), pp. 420–421; Shayzarī, *Nihāya*, p. 6; ʿUqbānī, *Tuḥfa*, p. 7.

[10]Qalqashandī, *Ṣubḥ*, vol. 10, pp. 273–284 related that the ʿAbbāsī caliph al-Mustarshid (12th century) authorized his new *qāḍī al-quḍāt* Abū al-Qāsim b. al-Ḥusayn al-Zaynabī (d. 543/1148) to appoint an appropriate *muḥtasib.*

[11]Bianquis and Guichard, "Sūḳ," *EI*[2], s.v.

[12]The first to reach this conclusion was Gaudefroy-Demombynes in his "Un magistrat," pp. 33–40, and in *Muslim institutions*, pp. 154–157. He was followed by others: Schacht, first in his critique of E. Tyan's *Histoire*, pp. 515–518; he asserted this again in his *Introduction to Islamic law*, pp. 51–52 saying: "The Abbasids while

This theory was first seriously criticized by Foster, who rejected any possible connection between the two.[13] Some scholars suggested other Greek, Roman and even Rabbinic offices as possible origins of *ḥisba*, such as Eastern or Semitic versions of the *agoranomos*, the *astynomos* and the Jewish *ḥashban, baʿal hashūq* and *rav hashūq*.[14] G. Vercellin showed that there were many officials of the Byzantine world who could be suggested as precedents of the Islamic *ḥisba*, such as the *aedile, logistes, eirenarch, astynomas, eprax, censor* and *episcopos*.[15]

In this article, I intend to present some traditions and practices, ascribed by Muslim sources to Jāhilī times, in which we may find similarities with the practices of the Muslim *muḥtasib*. I wish to examine whether it is possible that at least some aspects of the office of the *muḥtasib* had their origin in Jāhilī society. If we accept the assumption that the Jāhilī tribal structures persisted into the Islamic period,[16] could we not suppose that some of their social, moral and economic customs were Islamized?

In order to answer these questions, we need to extract from the history of pre-Islamic Arabia those practices that might be relevant. We are, however, hindered by a well-known problem: the data at our disposal is chronologically (and geographically) imprecise and dubious. I will attempt to compensate for this by consulting some Classical and Jewish sources, as well as several pioneering studies of pre-Islamic Arabia.

It is well known that the *muḥtasib* spent most of his working time in the market area where the commercial, industrial and most of the religious and social activities (all of which had moral dimensions) took place.[17] This close connection with the *sūq* should lead us to investigate the possible roots of *ḥisba* in similar spheres before or during the Islamic

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maintaining his functions, superficially Islamicized this office." An enthusiastic supporter of the Greco-Byzantine origin of *ḥisba* is Floor, "The office of the *muḥtasib*," pp. 53–74. There he refuted one by one the contentions of B. Foster (see next note) and reasserted the pre-Islamic Byzantine origin of *ḥisba*. See also Cahen and Talbi, "Ḥisba," *EI*[2], s.v.

[13] Foster, "*Agoranomos*," pp. 128–144.

[14] For the various suggested origins of *ḥisba* see: Crone, *Roman*, appendix *muḥtasib*, pp. 107–108; Glick, "*Muḥtasib* and Mustasaf," pp. 59–64; Sperber, "*Agoranomos*," pp. 227–243.

[15] See Vercellin, "*Ḥisba*," pp. 67–96.

[16] Ibn Ḥabīb, *al-Muḥabbar*, pp. 309–340 has a long chapter describing many social, religious and judicial Jāhilī practices and regulations that Islam cancelled and others that were accepted. See Cahen, "Economy, society, institutions," pp. 511–514. Some scholars have called the transition of pre-Islamic — including Jāhilī — customs into Islam as "Islamization." See Hawting, "Disappearance," pp. 44–54; *idem*, "The sacred offices," pp. 62–84; Lazarus-Yafeh, "Ha-problematika ha-datit," pp. 222–243 [Hebrew]; Simon, *Trade*, appendix 3, pp. 115–119.

[17] Essid, *Critique*, pp. 135–137.

period. In doing this, it is helpful to refer first to the term *ḥisba* and its derivations.

Ḥisba, *iḥtisāb* and *muḥtasib* are all derived from the root *ḥ-s-b*. The lexicons contain numerous meanings and uses of the term and its derivations. There are two principal meanings of the verb in the first form: *ḥasaba* "to calculate" and "to suffice," while in the eighth form *iḥtasaba* the verb also means "to seek reward". Most of the lexicons also give a third meaning: *tadbīr* (management); from this we have *muḥtasib al-balad*, the one who effectively managed the affairs of a city.[18] A different meaning was offered by al-Zabīdī, who suggested that *muḥtasib al-balad* was a person who disapproved of the wrongdoing of the people in his town.[19]

It should be noted here that, for some unknown reason, none of the lexicons gives a full and detailed definition of *ḥisba* in its institutional sense, and almost none of the manuals of *ḥisba* referred to the lexical derivations of the term.

Only ʿUmar b. Muḥammad al-Sunāmī made the connection between *ḥ-s-b* in all its derivatives. He concluded that the institution of the *ḥisba* was derived either from *iḥtisāb*, in the sense of commanding right and forbidding wrong, or from *iḥtasaba ʿalayhi*, meaning disapproval of wrongdoing.[20]

In my view, the essence of institutional *ḥisba* combined religious, moral, public and administrative elements. This office entailed the obligation to ensure adherence to the *sharīʿa* in daily life.[21] It was, therefore, said that administration of the land is part of the *ḥisba* (*al-qaḍāʾ bāb min abwāb al-ḥisba wa-qīla al-qaḍāʾ juzʾ min ajzāʾ al-iḥtisāb*).[22]

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[18]These meanings can be found in the various lexicons under the root *ḥ-s-b*. For example see Farāhīdī, *Kitāb*, vol. 3, pp. 148–150; *Lisān al-ʿArab*, s.v. *ḥ-s-b*, vol. 1, pp. 310–317; Fayrūzabādī, *Qāmūs*, vol. 1, pp. 56–57; Fayyūmī, *Miṣbāḥ*, pp. 134–135; Zamakhsharī, *Asās al-balāgha*, vol. 1, p. 172; Ibn Sīda, *al-Muḥkam*, vol. 3, pp. 151–152; Zabīdī, *Tāj*, vol. 1, pp. 418–423; Yāqūt, *Muʿjam*, vol. 1, pp. 171–172. Most of these meanings were adopted also by modern lexicons: Maʿtūq, *Niẓām*, pp. 27–29; *al-Mawsūʿa al-fiqhiyya*, s.v. "ḥisba," vol. 17, p. 223.

[19]Zabīdī, *Tāj*, vol. 1, p. 423.

[20]Al-Sunāmī, *Niṣāb*, pp. 81–84, see also the study and English translation of this treatise by Dien, *Theory and practice*.

[21]See al-ʿArīnī, "al-Ḥisba wa-'l-muḥtasibūn," p. 157.

[22]Māwardī, *Adab al-qāḍī*, vol. 1, p. 135; al-Sunāmī, *Niṣāb*, pp. 83–84.

2. The context of pre-Islamic Arabian trade in the fifth and sixth centuries

Without going into the details of the 'classical' debate between scholars on the question of the local or international nature of the Meccan trade and its role in the rise of Islam,[23] we can posit that western Arabia was able to participate in both the overland and maritime trade on a large scale. This was due to its location on the trade route between Yemen and Byzantium, and to the ongoing conflict between the Sassanian and Byzantine empires.[24]

Shahīd attributed this role to the ancient civilization of the South Arabians, saying that they contributed "a measure of organization in the life of the — Northern — Bedouin and a degree of purposefulness in his mobility;" they gave the impetus to the "urbanization of western Arabia that proved to be the most decisive".[25] Above all, we should remember that Bedouins, wherever they lived, had intermittent economic relations with the settlements in their neighborhood. In addition to getting their vital supplies from the sedentary population (by purchase or raids), they also provided the town dwellers with services such as ensuring the safety of travelers and merchants.[26] Against this background of nomad-sedentary relations and according to Arab reports concerning the Arabian pre-Islamic markets, one can assume with high level of certainty that most of the population of Arabia, both settlers and nomads, "participated to some degree in the local trade, that is, in the exchange of commodities of Arabian origin and destined for consumption in Arabia itself or in on its fringes."[27]

According to Simon and others, this mercantile role was played by the two powers: the Romans and later the Byzantines, and the Parthians and later the Sasanians, apparently with the mediation of Ḥīra and Ghassān,

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[23]I refer here to the lively scholarly debate which has been going on for the past forty years or so concerning the role (or absence thereof) of Mecca in the transit trade during the fifth–seventh centuries. On the one hand, Simon (*Trade*), Watt (*Muhammad at Mecca*), Serjeant's review "Meccan trade," Ibrahim, (*Merchant capital*), Heck, ("Arabia without spices"), Heck, ("Gold mining") and Saḥāb, (*Īlāf*) all ascribed to Mecca a certain role in the international trade and the subsequent rise of Islam. Others disagree that Mecca played such a role (or at least minimize it); see Crone's controversial *Meccan trade* as well as Crone and Cook's *Hagarism* and Peters' "The commerce of Mecca before Islam."

[24]Simon, *Trade*, pp. 24–58, especially p. 26. See also the works of ʿAlī, *Mufaṣṣṣal*, vol. 7, pp. 261–330; Ibrahim, *Merchant capital*, pp. 27–33; Saḥāb, *Īlāf*, pp. 99–176.

[25]Shahīd, "Pre-Islamic Arabia", pp. 16–17.

[26]Hoyland, *Arabia*, pp. 96–102.

[27]Hoyland, *Arabia*, pp. 109–110.

who occasionally played an important role on behalf of the Byzantines and Sasanians.[28] The Lakhmids of Ḥīra, supported by the Sassanians, built a system of alliances with the tribes of North Arabia through which they exerted significant control over the trade routes from Yemen to Iraq and probably also over parts of West Arabia.[29] Thus, we have seen that the overland trade routes from Yemen to the Byzantine and Persian territories in the first 70 years of the 6th century were largely under the control of external powers. After 570 the Persian and Lakhmid influence over North Arabia decreased, ending with the victory of the Arab tribes over the Persians in the battle of Dhū Qār (between 604–610). The Byzantine efforts to establish some sort of influence in Mecca failed. From then on, the people of West Arabia were able to exploit this "peculiar world historical situation" for their benefit and, as Simon put it, "Mecca was able to seize control of the trade passing through Arabia and trade became the dominant economic activity."[30]

In spite of the considerable legendary elements in the Arabic sources about the genesis of Meccan history, there are some indications that there was a development that began and grew with the gradual joining of Quraysh to the transit trade. Ibrahim put it thus: "The merchants transformed Mecca from a relatively insignificant settlement into an economically and politically powerful center in western Arabia."[31] Furthermore, even Crone, based on an ʿUqla inscription dated between 270–278, concluded that Qurayshī women (*Qrishtin*) could have been guests in the court of a Ḥaḍramawt king, meaning that Quraysh was

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[28]Simon, *Trade*, pp. 24–31; Ibrahim, *Merchant capital*, pp. 30–33; Saḥāb, *Īlāf*, pp. 150–160. Hoyland, *Arabia*, pp. 107–108 claims that among them, "probably the most famous of the great Arabian merchant peoples were the Palmyrenes" in the first two centuries CE.

[29]Kister, "al-Ḥīra", p. 144 described the systems of *ridāfa* and *Dhū al-Ākāl*, according to which the head of a tribe represented his tribe in the Ḥīra court and received a quarter of the spoils (*ridāfa*) while *Dhū Ākāl* was a tribal noble who received an estate from the Lakhmid king. Abū al-Faraj al-Iṣfahānī (*al-Aghānī* [Beirut, 1412/1992], vol. 13, p. 143) reported that ʿAttāb b. Harmī b. Riyāḥ was a *ridf* of Ibn al-Mundhir and Qays, his son, was a *ridf* of al-Nuʿmān and (vol. 13, p. 146) that Banū Tamīm were *Dhawū al-Ākāl*; see also Marzūqī, *Kitāb al-azmina*, vol. 2, pp. 189, 191. Such systems, in addition to other tribal alliances, were used by the Lakhmids to build, according to Simon (*Trade*, p. 28), "solid bridgehead-stations" that enabled them to control the trade routes from Yemen to Iraq and even those of West Arabia. It should be noted that the archeological discoveries have proved the far-reaching influence of the Lakhmids in Oman, Bahrain, Yamāma and Hijāz; see Simon, "L'inscription," pp. 331–332; Smith, *Events*, p. 442; Shahid, "The Arabs," pp. 185–194; Saḥāb, *Īlāf*, pp. 193–200.

[30]Simon, *Trade*, pp. 28,30, 59. See also Ibrahim, *Merchant capital*, pp. 49–50.

[31]Ibrahim, *Merchant capital*, pp. 34–35. Before him Simon, *Trade*, pp. 61–63 argued that "without trade we cannot speak about a permanent large settlement in the territory of Mecca, the history of Mecca as a city is essentially the history of how the Quraysh tribe gradually joined transit trade."

engaged in trade early in the third century and, certainly, before its settlement of Mecca.[32]

To this we can add al-Ansary's discovery in the 1970s of the site of Qaryat al-Faw on the north-western edge of al-Rubʿ al-Khālī in Saudi Arabia. Qaryat al-Faw (historically Qaryat Dhāt Kahl), located on the trade route between east and south Arabia, was the capital of the kingdom of Kinda that flourished between the second and the fifth centuries. The findings at the site included Arabic inscriptions in Sabaean script that included names and terms of northern origin, supposedly, Qurashī or Nabatean. Also found were various buildings such as a palace, market, temple and houses, and fine frescoes and statues of wealthy notables who certainly consumed the various imported high-quality objects of which samples were found as well. All this constitutes another proof of the existence of pre-Islamic Arabian trade and of Mecca's role in it.[33]

3. The pre-Islamic Arabian markets

According to the Arab sources, Arabia was the home to many trade markets such as ʿUkāẓ, al-Ḥijr, al-Ḥīra, Dūmat al-Jandal, al-Hajar, al-Mushaqqar, al-Majāz and many others listed in the sources.[34] These *sūq*s, mostly annual fairs, were centers of domestic barter trade and cultural gatherings for the tribes of Arabia and it is very likely that they were one of the first financial institutions that the mostly nomad people of Arabia developed in the Jāhiliyya.[35] Until Muḥammad's great-grandfather's time — Hāshim supposedly lived sometime during the first half of the sixth century — all of the nomads were under the control of the tribes or of the buffer-states.[36]

These sources lead to the conclusion that the *sūq*s undoubtedly constituted an important institution in the economic, religious and cultural

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[32]Crone, *Meccan trade*, pp. 169–170 and Ibrahim, *Merchant capital*, p. 27, both referred to the ʿUqla inscription studied by Albert Jamme, *The al-ʿUqla texts* (Washington D.C.: Catholic University Press, 1963).

[33]Ansary, *Qaryat al-Faw*, pp. 16–32. See also Hoyland, *Arabia*, pp. 50–51, 232–233, and plates 8, 33, 36.

[34]See the complete lists of the pre-Islamic *sūq*s in Ibn Ḥabīb, *al-Muḥabbar*, pp. 263–268; Yaʿqūbī, *Taʾrīkh*, vol. 1, pp. 270–271; Tawḥīdī, *al-Imtāʿ*, vol. 1, pp. 83–85; Marzūqī, *Kitāb al-azmina*, vol. 2, pp. 161–170.

[35]See Afghānī, *Aswāq*, especially pp. 231–442; Ibrahim, *Merchant capital*, pp. 54–55; Saḥab, *Īlāf*, pp. 355–408.

[36]Simon, *Trade*, p. 62 concluded this according to Marzūqī, *Kitāb al-azmina*, vol. 2, pp. 161–171.

life of the Arabian tribes in arid Arabia.[37] They were well-regulated and orderly: they were held at specified times (*mawsim*, i.e. pilgrimage seasons), mostly during the holy months; tithes were paid by traders to the market leaders; security and protection (*khafāra*) were provided by the tribes mostly to Meccan caravans; some kind of tribunal was held to administer justice and to prevent bloodshed and wrongdoing (*munkar*).[38]

Of special interest is the punitive measure by which the attendants of the market of ʿUkāẓ used to defame anyone who betrayed or sinned, by running up a "flag of betrayal" in the market. One of the people delivers a speech about his betrayal urging all the people of the market to point out the betrayer and to boycott him.[39]

Actually, this measure was not necessarily applicable only to events that occurred in the market; it was more the case that market days, which were the occasion for large gatherings, were used as an opportunity to publicly humiliate offenders. For example, Ibn Ḥabīb related that ʿAbdullāh b. Judʿān threatened ʿĀmir b. Qurṭ to raise for him a "flag of betrayal" if he reneged on his decision to marry off his daughter.[40] It is also related that the tribal group of Khuzāʿa declared the repudiation of its poet and knight Qays b. al-Ḥidādiyya in ʿUkāẓ for his shameful deeds,[41] and Kinda raised a "flag of betrayal" for ʿĀmir b. Juwayn because he betrayed Imruʾ al-Qays when he travelled to meet the Byzantine emperor.[42]

By this act the tribe expels (*khalʿ*) the transgressor from its domain. This is one mechanism by which the moral standards of the tribal society were enforced. In all cases, the aforementioned Jāhilī practices should not be isolated from those of other neighboring communities. Later on, we will see that Semitic communities, especially the Jews of the ancient Near East, retained even more complex practices and that some of the Arabs were aware of them. More interesting for us in this punitive

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[37]Marzūqī, *Kitāb al-azmina*, vol. 2, p. 161. See also Simon, *Trade*, p. 62; Ibrahim, *Merchant capital*, pp. 54–55.

[38]The existence of such a mechanism might be deduced from the information given in some sources, such as Marzūqī, *Kitāb al-azmina*, pp. 161–170; Yaʿqubi, *Tarīkh*, vol. 1, pp. 270–271; Tawḥidī, *al-Imtāʿ*, vol. 1, pp. 83–85; Afghānī, *Aswāq*, pp. 47–87; Saḥāb, *Īlāf*, pp. 380–400. Buckley. "The *Muḥtasib*," p. 59 put forward, I believe correctly, such supposition but said that it is not identified in the sources.

[39]*Wa-kānū idhā ghadara al-rajul aw janā jināyatan ʿaẓīma inṭalaqa aḥaduhum ḥattā yarfaʿa lahu rāyata ghadrin bi-ʿUkāẓ fa-yaqūmu rajulun yakhṭub bi-dhālika al-ghadr fa-yaqūlu: alā inna fulān ibn fulān ghadara faʾʿrifū wajhahu wa-lā tuṣāhirūhu wa-lā tujālisūhu wa-lā tasmaʿū minhu qawlan fa-in aʿtab wa-illā juʿila lahu mithlu mithālihi fī rumḥ fanuṣiba bi-ʿUkāẓ fa-luʿina wa-rujima*; Marzūqī, *Kitāb al-azmina*, vol. 2, p. 170.

[40]Ibn Ḥabīb, al-*Munammaq* (Beirut, 1405/1985) p. 225.

[41]*Aghānī* (Beirut, 1412/1992), vol. 14, pp. 142–143.

[42]Marzūqī, *Kitāb al-azmina*, vol. 2, p. 170.

measure is the public defamation of the transgressor. Such measures were used by the *muḥtasib* in order to punish offenders.

4. The commercial practices of Quraysh

It is almost certain that religiously, politically and economically, Mecca was the predominant power in Arabia at the turn of the seventh century. According to Kister, the rise of Mecca followed the rise in the power of the Arab tribes after the decline of the Sassanian empire and its buffer state, the Lakhmid kingdom, especially after the defeat in the battle of Dhū Qār in 608. Against this background the Arab tribes "began to look for a body politic of their own with a competent leadership. This was created by the emergence of a new idea of an equalitarian association, based on common interest: 'The Commonwealth of Mecca'."[43] Quraysh, in order to extract maximum benefits from this position or from a "peculiar world historical situation," as Simon puts it,[44] took internal and external measures in order to secure its supremacy in both the local and wider spheres of trade in Arabia. In Watt's opinion, the first step was taken earlier, around the beginning of the 5th century, when Quṣayy b. Kilāb, the Qurashī founder of Mecca, occupied the city with Byzantine assistance, apparently intending to develop trade with Syria.[45] His next step, establishing the Meccan institutions — feeding the pilgrims (*rifāda*), providing water for them (*siqāya*) and establishing the council of the clans (*dār al-nadwa*) "should be understood within the context of the changed political and economic circumstances in Mecca."[46] In any case, it seems that the actions of Quṣayy served the internal barter-trade of the Meccans who acted only within the limits of the Ḥaram.[47] Therefore, the Meccans needed additional and far-reaching steps in order to utilize their commercial skills outside Mecca and in wider markets. To achieve this, they first had to secure the trade caravans passing in the

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[43]Kister, "Mecca and Tamīm", pp. 115–116.

[44]Simon, *Meccan trade*, p. 59. Shahid, "The Arabs," pp. 185–192, strongly adopted this theory of a "world historical situation" that enabled the shift of the trade routes to West Arabia, saying that one of the most important reasons was the rise of Mecca and its ability to utilize the trade situation after the fall of Ḥimyar.

[45]Watt, *Muhammad at Mecca*, p. 13. See the tradition in Ibn Qutayba, *Kitāb al-maʿārif*, pp. 640–641. Simon, *Meccan trade*, pp. 61–62 denied this claim saying that Quṣayy's act can be accepted only as a possible first step in the transformation of Mecca into a city.

[46]Ibrahim, *Merchant capital*, p. 39.

[47]See Ibn Ḥabīb, *Munammaq* (Beirut, 1405/1985), pp. 41–42.

territories of the neighboring tribes. They also had to acquire the right
to trade in local and foreign markets and territories.[48]

Thus, their growing commercial needs required appropriate leader-
ship and organization. This leadership, according to the sources, was
vested in Quraysh. Quraysh had acquired this status due to the ac-
tions of the Prophet's great-grandfather, Hāshim b. ʿAbd Manāf, who
took a crucial step: according to the Arabic sources, he obtained from
the Byzantine Emperor a letter of safe conduct for the merchants from
Mecca visiting Syria. Following him, three of his brothers each obtained
similar charters from the rulers of Yemen, Abyssinia and Persia. Thus,
according to this story, Hāshim and his brothers laid the foundations for
the international trade of Quraysh. Making use of this opportunity, on
their way back to Mecca they also laid the foundations for the internal
trade inside Arabia: they secured *īlāf*, a multilateral security pact from
the tribal chiefs.[49] In general, the *īlāf* pact "was a joint enterprise of the
clans of Quraysh with the family of ʿAbd Manāf. The *īlāf* agreements
were set up on the basis of a share in profit for the heads of the tribes
and, apparently, employment of the men of the tribes as escorts of the
caravans."[50]

In addition, Quraysh formed a large network of unique alliances
(*aḥlāf*) with other tribes in Arabia based on mutual defense in order
to establish the *Pax Meccana*, thus supporting, among others, the com-
mercial interests of all parties. Such *ḥilf* existed between Mecca and
the tribe of Tamīm in north-east Arabia. Due to this alliance, Mecca
entrusted in the hands of Banū Tamīm the running of the market of

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[48]Some of these security arrangements will be discussed soon. See the profound
analysis of Kister in his articles "Mecca and Tamīm," pp. 113–162 and "Some re-
ports," pp. 61–92.

[49]The story of Hāshim and his brothers is reported in several versions with differ-
ent names for the charters and *īlaf* pacts. See, for instance, Qālī, *Dhayl al-Amālī*,
pp. 199–200; Ibn Ḥabīb, *al-Munammaq*, (Beirut, 1405/1985) pp. 41–45, *idem*, *al-
Muḥabbar*, pp. 162–163; Ibn Saʿīd, *Nashwat*, pp. 328–329; Yaʿqūbī, *Taʾrīkh*, vol. 1,
pp. 242–244; Ṭabarī, *Taʾrīkh al-umam* (Beirut ed.) vol. 1, p. 504. Ibn Saʿd, *Ṭabaqāt*,
vol. 1, p. 78, told in one version that the charters and the *īlāf* pacts were achieved by
Hāshim. See also Kister, "Mecca and Tamīm," p. 17, and note 2 on the same page.
Many researchers considered the story of the *īlāf* as the opening of the Meccan par-
ticipation in international commerce, but they differed in its date and chronological
order with the four sides. For example, Simon, *Trade*, pp. 63–70 and note no. 39, p.
157 considered the story of *īlāf* only as an indication for a long gradual process by
the Meccans to build far-reaching trade relations with Syria, Yemen and Iraq, but
not with the Abyssinians. Others, like Hamidullah, "Īlāf," p. 303; Kister, "Mecca
and Tamīm," pp. 116–118; Ibrahim, *Merchant capital*, pp. 42–45 and Saḥab, *Īlāf*, pp.
201–226 accepted the traditional story of *īlāf*. For more on *īlāf* see Anon., "Īlaf,"
EI², s.v. and A. Tyan, "*Ḥilf*," *EI²*, s.v.

[50]Kister, "Mecca and Tamīm," p. 120.

ʿUkāẓ (*mawsim*) and deciding on disputes (*qaḍāʾ*).[51] We have here another mechanism for organizing and managing the affairs of the Jāhilī markets.

A somewhat similar function was fulfilled by the *sayyid* of Banū Ḥanīfa, Hawdha b. ʿAlī who used to safeguard the Persian caravans in his land and to set up a market (*yuqīm al-sūq*) in al-Mushaqqar in Baḥrain in his capacity as the governor (*ṣāḥib*) of al-Yamāma on behalf of the Persian king after 572.[52] He was thus responsible for the setting up and the orderly running of the market. Of interest here is the term *ṣāḥib*, a very common title in the Arabic sources that indicated friendship (such as friend of the Prophet) or ownership. In Jāhilī and Islamic contexts, it occurred frequently in different indications of sovereignty.[53] Thus, Simon's understanding of *ṣāḥib* al-Yamāma as "one of the officials who were called *ṣāḥib* or ʿ*āshir* (tithes receiver) of the market" is reasonable.[54]

The multiplicity of offices in Mecca indicates the commitment of its leaders to the people of Mecca and to those who visited Mecca for religious or commercial purposes. Second, it seems that some practices were enforced for the benefit of the Meccan merchants' economic interests.[55]

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[51]Ibn Ḥabīb, *al-Muḥabbar*, pp. 181–183; Marzūqī, *Kitāb al-azmina*, vol. 2, pp. 167–168. Kister, "Mecca and Tamīm," pp. 146–147 adduced the list of persons from Tamīm who were responsible for the *qaḍāʾ* in ʿUkāẓ.

[52]The role of Hawdha in Yamāma on behalf of the Persian king has been referred to in the Arab sources within an episode describing how the tribe of Tamīm plundered the caravan of the Persian king Wahraz. See the story in its different versions in: Ṭabarī, *Taʾrīkh al-rusul* (Beirut ed.), vol. 1, pp. 460–461; Ibn al-Athīr, *al-Kāmil*, p.173; Bakrī, *Muʿjam*, vol. 3, pp. 1059–1060. In the version of *Aghānī* (Beirut, 1412/1992), vol. 17, pp. 318–322 it is said that Hawdha propositioned the Persian king to set up a market for Banū Tamīm as a trap to avenge their attack on the caravan. See also the discussion of Simon, *Trade*, pp. 89–87 on this episode.

[53]For instance, Hawdha b. ʿAlī as *ṣāḥib* al-Yamāma was its Sayyid or ruler, the Byzantine emperor was called by the Arabs *ṣāḥib* al-Rūm, the governor of Damascus, al-Mundhir b. al-Ḥārith al-Ghassānī, was called *ṣāḥib* Dimashq, the governor of Egypt was called *ṣāḥib* al-Iskandariyya, Asībakht *ṣāḥib* and ʿ*āmil* al-Baḥrain and the Arab al-Mundhir b. Sāwā was *ṣāḥib* al-Baḥrain. See Ṭabarī, *Taʾrīkh* (Beirut ed.), vol. 1, p. 436, vol. 2, p. 131. He repeated this expression 23 times; Balādhurī, *Futūḥ*, p. 307; Ibn Saʿd, *Ṭabaqāt*, vol. 3, p. 7; Hamidullah, *Majmūʿat al-wathāʾiq*, pp. 110, 138, 153; Masʿūdī, *Tanbīh*, p. 236.

[54]Simon, *Trade*, p. 87.

[55]For example, Kister considered *īlāf* pacts as a "complementary system for the Ḥums", and concluded that "the fundamental principles of the Ḥums were the inviolability of the area of the Ḥaram, the independence and neutrality of Mecca." Kister, "Mecca and Tamīm," pp. 134, 140. Simon went further, saying: "Ḥums united tribes which controlled various sections of the Quraysh trade route, in a religion of peculiar and common rites." Simon, *Trade*, p. 63. Ibrahim, interestingly, interpreted the ritual of the Ḥums to abide in sunny locations around the Kaʿba as implying a "new distribution of the market space in Mecca", thus encouraging the merchants to exhibit their merchandise also in shadeless areas. Ibrahim, *Merchant capital*, pp. 52–53. For more about the rituals of the Ḥums, see al-Azraqī, *Akhbār*, vol. 1, pp. 120–123;

Such a complex array of internal and external mechanisms and institutions raises the question of their efficacy. In other words, how did the Meccans ensure that these mechanisms attained their intended goals?

Some Meccan practices offer us some interesting clues. For instance, a report states that a confederate of Banū Umayya, Ḥakīm b. Umayya b. Ḥāritha al-Sulaymī, was appointed by Quraysh as a *muḥtasib* in Mecca commanding right and forbidding wrong. It seems that the main source of this report is Ibn al-Kalbī (d. 204/819).[56] We find other versions of this report: Quraysh used Ḥakīm to supervise its vulgar or hot-blooded youths (*fastaʿmalathu Quraysh ʿalā sufahāʾihā*),[57] or Ḥakīm was a *muḥtasib* enjoining good and proscribing wrong, as well as chastising profligates, jailing and expelling them (*wa-kāna Ḥakīm muḥtasiban fī al-Jāhiliyya yaʾmur bi-'l-maʿrūf wa-yanhā ʿan al-munkar wa-yuʾaddib al-fussāq wa-yaḥbisuhum wa-yanfīhim.*)[58] A frequently quoted verse reads: "I am roaming the valleys every day // for fear that Ḥakīm will expel me." (*Uṭawwifu fī al-abāṭiḥi kulla yawmin // makhāfata an yusharri-danī Ḥakīmu.*)[59] All versions of this verse emphasize that Ḥakīm was firm and behaved with great authority towards the *sufahāʾ* of Quraysh, which estranged them from him. (Compare this with the Jewish inspector mentioned below).

In any case, our interest in Ḥakīm's report in all its versions should be focused on the nature of this 'office'. According to all the versions, Ḥakīm's role was to forbid the impudent behavior of the youths of Quraysh and Ibn al-Kalbī and Balādhurī both gave him the title

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Ibn Ḥabīb, *al-Munammaq* (Beirut, 1405/1985), pp. 127–129; *idem*, *al-Muḥabbar*, pp. 187–181; Ibn Hishām, *al-Sīra*, vol. 1, pp. 199–204.

[56]Ibn al-Kalbī, *Jamharat al-nasab*, vol. 2, pp. 100–104. This report was noted first, without comment, by ʿAlī, *al-Mufaṣṣal*, vol. 4, p. 518 and later by Kister, "Some reports," pp. 82–83 and a reprint of his article in *Studies in Jāhiliyya and early Islam*, item 2, p. 93 and add. 83, no. 1. See also Lecker, *The Banū Sulaym*, pp. 120–122 and note 73; Lecker, "Sulaym," *EI*[2], s.v.

[57]This is the version of Ibn Ḥabīb, *Munammaq* (Ḥaydarābād ed.), pp. 285–286 and of Fākihī, *Taʾrīkh Makka*, MS Leiden Or. 463, fol. 444b, according to Kister, "Some reports." Apparently, Ibn Ḥajar al-ʿAsqalānī, also quoted Fākihī in his *Iṣāba*, vol. 1, p. 349. Fākihī gave a more detailed and specific version saying: *wa-kāna Ḥakim qabla al-baʿtha qāʾiman ʿala sufahāʾ Quraysh, yardaʿuhum wa-yuʾaddibuhum bi-'ttifāq min Quraysh ʿalā dhālik*, while Azraqī (d. 245), *Akhbār Makka* (ed. Wüstenfeld), p. 454, said only that Quraysh appointed (*ammarat*) Ḥakim over its impetuous youths.

[58]This is the version of Balādhurī, *Ansāb al-ashrāf* as quoted by Kister, "Some reports," *op. cit.*, and of Ibn Ḥazm, *Jamharat ansāb*, p. 263.

[59]Ibn Ḥazm, *Jamharat ansāb*, p. 263. Other versions have *maṭābikh* instead of *abāṭih* (compare Ibn al-Kalbī's version with those of Balādhurī and Ibn Ḥazm) or *uqarrir* instead of *uṭawwif* (compare Azraqī, *Akhbār*, p. 454 and Zubayr b. Bakkar, *Jamhara*, p. 162 with the others) and *yusharridanī* instead of *yusharrida bī* (compare Ibn Ḥabīb, *Munammaq* with the others. See also *Lisān al-ʿArab*, "shrd". These differences do not affect the main meaning of the verse).

muḥtasib. Ḥakīm, according to Kister, attained this post in Mecca because of his high position as *ḥalīf* of Quraysh. Consequently, Kister believed that Ḥakīm was a real *muḥtasib*. Cook, on the other hand, attributing the similar wording of this report in the sources to a single source, assumes that they retrojected "Islamic usage onto a Jāhilī phenomenon which happens to remind them of an Islamic one."[60] Cook's assumption of anachronistic use could be right, but it does not rule out the possibility that this was an official post aimed at protecting the Meccans' public interests.

Accordingly, we should ask how the Meccans managed to protect their different institutions and interests. No matter how far their economic activity went, certainly they should have done every possible act in order to secure their religious and economic leadership in Jāhilī Arabia such as the 'post' of Ḥakīm that Kister considered as a kind of official activity rather than the duty of an individual.[61]

The reports described Ḥakīm as the defender of morals and traditions during a period of decay and corruption in Mecca, or as the 'supervisor of law and order' who had the power to punish, to jail and even to exile wrongdoers.[62] This is reminiscent of the punitive measures of the Jewish *agoranomos* and the Muslim *muḥtasib* which will be discussed below. Additional support for Kister's view is found, I believe, in the practice of *ḥilf al-fuḍūl* between the main tribes of Quraysh about the end of the sixth century (590 or 595).[63] Following a case in which a merchant in Mecca was cheated, the clans of Quraysh (except Banū ʿAbd Shams and Banū Nawfal) gathered and concluded an alliance in the following terms: "If anyone is wronged in Mecca, we will all take his part against the wrongdoer until we recover his due from the one who has wronged him, whether he be of noble or of humble birth and whether he be one of us or not".[64]

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[60]Cook, *Commanding*, pp. 564–565.

[61]Kister, "Some reports," op. cit.; Cook, *Commanding*, pp. 564–565 see also note 16, p. 565.

[62]See ʿAmad, "Nuṣūṣ," pp. 62–73; Lecker, *The Banū Sulaym*, p. 120.

[63]See Ibn Ḥabīb, *al-Munammaq*, (Ḥaydarābād ed.) p. 218; Masʿudi, *Murūj* (Beirut ed. 1402/1982), vol. 1, pp. 564–565.

[64]The translation is by Cook, *Commanding*, p. 565. The story of the alliance is reported in many sources; see Ibn Ḥabīb, *al-Munammaq*, (Beirut, 1405/1985), pp. 41–45; Ibn Abī al-Ḥadīd, *Sharḥ*, vol. 14, pp. 224–228; Yaʿqūbī, *Tarīkh*, vol. 2, pp. 17–18; Masʿūdī, *Murūj* (Beirut ed. 1402/1982), vol. 1, pp. 564–565; *Aghānī* (Beirut ed. 1412/1992), vol. 17, pp. 288–295; Ibn Hishām, *al-Sīra*, vol. 1, pp. 133–134; Thaʿālibī, *Thimār*, pp. 140–141; Nuwayrī, *Nihāya*, vol. 16, pp. 94–95; Ibn Saʿd, *Ṭabaqāt*, vol. 1, pp. 128–130; Zubayrī, *Nasab*, p. 291. It should be noted that some researchers interpreted this alliance as part of the conflict between the Qurayshī clans, especially, Banū Hāshim and Banū ʿAbd Shams; for more on this see, Watt, *Muḥammad at Mecca*, p. 6; Ibrahim, *Merchant capital*, pp. 71–72. For Simon, *Trade*, p. 67, this

Two points should be mentioned regarding this alliance. First, it represented a Qurashī attempt to uphold 'commercial integrity' in Mecca.[65] The alliance was a success because of the absence of serious opposition and because of its ability to resolve commercial conflicts, thereby defending Mecca's reputation and guaranteeing security and peace for the merchants.[66] According to the sources, the alliance was effective before Islam and even during the early Muslim period. After all, Muhammad himself witnessed it a few years before his call to prophethood and later praised it saying, "If I were called to join it now or to resolve conflicts by it, I would do so". Therefore, no matter what the real motives behind this alliance were, it is clear that it was a necessary mechanism for ensuring the integrity of the Meccan trade. The second point concerning this alliance is that it offered justice for anyone who happened to be in Mecca, whether of noble or humble birth, Meccan or foreigner, freeman or slave, including the allies of Quraysh, the Aḥābīsh.[67] In most of the versions, the key word is *ẓulm* (injustice) in all its forms. The clans decided to assist every wronged person (*maẓlūm*) and to oppose every wrongdoer (*ẓālim*). Al-Zubayr b. Bakkār, in a unique version, added *al-amr bi-'l-maʿrūf wa-'l-nahy ʿan al-munkar* to the conditions of the alliance.[68] Perhaps, this is the reason it was called the alliance of the virtuous (*fuḍūl* pl. of *faḍl*).[69] In this case, Cook is right in thinking that the use of this term is anachronistic,[70] but was the idea of the Meccan institutions offering justice for every *maẓlūm* inside Mecca impossible? The pre-Islamic Meccans, I believe, were sufficiently aware of such a necessity. There was, of course, an internal impetus: it was necessary to restrain and punish criminals. Quraysh, being responsible

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probable alliance could be interpreted as the final act of the lengthy process of the development of Meccan trade.

[65]See Watt, *Muhammad at Mecca*, p. 9. He believes that the alliance reflected also commercial disagreements, concerning the Yemenite trade in Mecca, between the clans of Quraysh.

[66]See Afghānī, *Aswāq al-ʿArab*, p.181; Saḥāb, *Īlāf*, pp. 226–330; Ḥaqqī, *Aswāq*, pp. 184–190.

[67]According to Ibn Ḥabīb, *al-Munammaq*, (Ḥaydarābād ed.) pp. 252, 276, 278 the Aḥābīsh are the tribes of Banū al-Muṣṭaliq, Banū al-Hūn and Banū Khuzayma who allied with Quraysh in a place near Mecca, perhaps a mountain, called Ḥubshī after which the were called. See also Yāqūt, *Muʿjam*, vol. 2, p. 214; *Lisān al-ʿArab*, s.v. ḥ-b-sh.

[68]See Ibn Abī al-Ḥadīd, *Sharḥ*, vol. 15, pp. 225–226; *Aghānī* (Beirut ed. 1412/1992), vol. 17, p. 292.

[69]The sources gave several interpretations to the naming of this alliance; see *Aghānī* (Beirut ed. 1412/1992), vol. 17, p. 292. Thaʿālibī, *Thimār*, p. 140 insisted that it was named *fuḍūl* after its honor and virtuousness. See also Watt, *Muhammad at Mecca*, p. 6. Ibrahim, *Merchant capital*, p. 72 rejected the meaning "virtuous" and suggested the meaning "last, superfluous".

[70]Cook, *Commanding*, pp. 565–566.

for the Kaʿba used to prohibit sins, quarrels and injustice[71] (*yunkirūna al-fawāḥish wa-ʾl-taqāṭuʿ wa-ʾl-taẓālum wa-yuʿāqibūna ʿalā al-jarāʾim*.) The Meccans also might have been aware of similar mechanisms through their contacts with neighboring communities such as the Jews of Arabia and of Mesopotamia and Syria. Therefore, it would be worthwhile to glance at some other sources — mainly Jewish — of the contemporary pre-Islamic period.

5. The Jewish context

The office of the *agoranomos* is familiar from classical literature: it is mostly described as a Hellenic office that also existed in Near Eastern towns.[72] What chiefly attracts one's attention is its appearance as a familiar figure in other ancient sources of the Near East. Oppenheim pointed out the existence of the "overseer of the merchants" (*akil tamkārē*) in Mesopotamian cities between 1894–1595 BC.[73] Foster, accepting this, stated that "market supervision had a venerable tradition in the Near East, and market inspection was certainly going on right up to the time of the Arab conquests and beyond"[74] As I noted earlier, some scholars raised the idea that the origin of the office of Muslim *ḥisba* is the Hellenistic *agoranomos*, but the Muslims borrowed it indirectly from Jewish practices.

Glick was one of the first scholars to raise this idea. First, he translated the term *agoranomesanta* on a bilingual Palmyrene inscription (dated 242–43) into the Aramaic *rab sūq*, the Arabic equivalent of which is *ṣāḥib al-sūq*.[75] The title was given to the *strategos* Julius Aurelius Zabdilah, apparently an Arabian official who served under the Arabian dynasty of Udhayna in Palmyra. Glick then delved into the contemporary Jewish literature, especially the Talmud, and found numerous references to the Jewish *agoranomoi*. His main conclusion was that the Jewish market supervisor acted in the traditional Greek fashion as a

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[71]See al-Yaʿqūbī, *Taʾrīkh*, vol. 1, p. 254; Marzūqī, *Kitāb al-azmina*, vol. 2, p. 166; Ibn Abī al-Ḥadīd, *Sharḥ*, vol. 19, p. 305.

[72]Sperber, "*Agoranomos*," p. 227 gave in note no. 1 a list of the relevant sources.

[73]Oppenheim, "Mesopotamia," pp. 8–9 and Oppenheim, "A new look," pp. 5–6.

[74]Foster, "*Agoranomos*," p. 136. He, in note 1, explained Oppenheim's statement as the official who "was responsible for taxes, rebuilding of canals, repairs of the city wall, the communal granary, etc".

[75]Glick, "*Muḥtasib* and Mustasaf," pp. 63–64 and note no. 17 in the same page. See also Sperber, "*Agoranomos*," p. 231, note no. 17. It should be noted that the Aramaic name *rab* became most familiar in ancient Arabic and one of its meanings is *ṣāḥib* (owner of something), see *Lisān al-ʿArab*, s.v. *r-b-b*.

communal official who "complemented municipal legislation with religious law". This office, he continues, could have been preserved up to the time of Arab conquests and, probably, those who held this office were not the successors of a Greek magistrate, but of a "native official of the eastern Semitic communities" whose inspection duties stemmed from religious motivation.[76] Glick found a clue in the Babylonian Talmud to the existence of the *agoranomos* among Arab communities living in the Euphrates area in the fourth century:[77]

> [We must] therefore [act] like R. Papa and R. Huna the son of R. Joshua who gave judgment in an action about coins, according to [the information of] an Arabian agoran, that the debtor should pay for ten old coins [only] eight new ones.[78]

As a matter of fact, we have more evidence from the ancient rabbinic literature on the existence of market inspections among the Jewish and non-Jewish communities in the Near East in the second and third centuries. Sperber, in his excellent article, showed that the *agoranomos* was deeply rooted in the Jewish practices. It appeared in different forms. *Agoronomin, agardamis, hagronimos, logistes* (calque), *istononsin* (identified as *astynomoi*), *ḥashban* and *baʿal hashūk* were all engaged in weights and measures inspection, price and quality of goods, import licensing and punishment of transgressors.[79] Certainly, the official appearing frequently in Jewish religious sources acted in accordance with the Jewish religious laws. In the same Jewish sources there are clear indications of the existence of heathen (*ʿovdei kokhavim*) inspectors of weights.[80] It is important that Semitic communities in the third and fourth centuries were familiar with the office of market inspection. It was either of native Near Eastern or Greek origin. It is true that the Eastern *agoranomos* under his various names was involved in the 'classical' commercial activities, in addition to the civic services that he performed, at least in the Jewish communities, as *astynomoi*.[81] Thus, Arabs who were familiar with the Jewish communities' practices in these areas before the Islamic period had the opportunity to adopt them. However,

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[76]Glick, "*Muḥtasib* and Mustasaf," p. 64. References are cited in the same page, notes 20–21.

[77]Glick, "*Muḥtasib* and Mustasaf," p. 64.

[78]Babylonian Talmud (ed. I. Epstein, London, 1935), *Baba Kamma* 98a.

[79]Sperber, "*Agoranomos*," pp. 227–243. Many sources are cited. See for example, the Babylonian Talmud, *Baba Bathra*, 89a; Tosefta, *ʿAbodah Zarah*, ed. Zuckermandel, 7.5, p. 471.

[80]In ancient Hebrew such inspector was called דאגרדמים עובד כוכבים, see Babylonian Talmud, *ʿAbodah Zarah*, 58a.

[81]Sperber, "*Agoranomos*," p. 241–242.

one must admit that it is not easy to prove such transference; the documentation for this period is poor. Still, comparing some practices of the tribal society of the pre-Islamic Arabs illuminates some similarities. First, the tribal leaders of Arabia were aware of the need to safeguard and control their economic activity in the annual markets. One can guess that controlling the market meant, among others, securing commercial transactions, preventing all kinds of cheating, controlling the weights and measures and preventing injustice. These duties and others were carried out by the Jewish *agoranomos*. Second, we should consider the proximity of Arab tribes to society in the Euphrates region and along the Roman, and later Byzantine, borders.

In fact, an examination of the Jewish sources reveals striking similarities between the practices of the Jewish market inspector and that of the Muslim *muḥtasib*. In Sperber's third/fourth century quotation from *Yalkut Shimoni* we are told that in Palestine an *agordemis* (*agoranomos*) beat a shopkeeper who wanted to prevent his inspection; consequently, the others opened their shops for this purpose.[82] In another source we find an analogous tale of a shopkeeper who hid himself from *ba'al hashūk* in fear of his strict inspection.[83] Practices such as public beatings as a means of instilling fear of the market inspector are repeated in the manuals of *ḥisba*.[84] Another striking practice comes from the duty of the Jewish *agoranomos* to assure the "regular and adequate supply of basic food products, such as wheat and bread". In Talmud Yerushalmi 2.1, on the authority of Sperber, the *agronimos* should be sufficiently strong to force those merchants who hoard food products for speculative profits to sell their stocks at a high price.[85] In another case the *ḥashban* (*logistes*) forgave two bakers who baked their bread using ingredients of inferior quality only because they supplied the market with bread in time of need, saying: "You really deserve to have the axe laid across your necks and you should be paraded around the whole city. But what can I do to you since you have filled the city [with food] in the hour of need?"[86] In this report we see that the *ḥashban*, whose role, according to Sperber, corresponds to that of *ba'al hashūk*, was responsible for ensuring an adequate supply of bread in the market, as well as with its

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[82]Sperber, "*Agoranomos*," p. 229 and note 8 in the same page.

[83]*Pesikta de Rav Kahana*, Mandelbaum (ed.), New York, 1962, '*Asser Te-'asser* 1, pp. 162–163. I borrowed this analogy from Sperber, "*Agoranomos*," p. 229.

[84]For instance, see Shayzarī, *Nihāya*, pp. 108–110; Ibn al-Ukhuwwa, *Ma'ālim*, pp. 190–194.

[85]Sperber, "*Agoranomos*," pp. 234–235. See also the Hebrew version, תלמוד ירושלמי, מסכת דמאי, פרק ב׳, הלכה א׳.

[86]Sperber, "*Agoranomos*," pp. 237–238; see also notes 44–45 on the same pages where he gave the location of this report and of his own additional discussion of the term *ḥashbān*.

quality and the adequate and firm punishment of offending bakers. In comparison, the Muslim *muḥtasib* must ensure the good maintenance of the bread shops and their ovens, control the ingredients kneaded in the bread in order to prevent adulteration, register the names of the bakers and their locations in a special notebook and allocate a certain quantity of bread to be baked by each shop every day in order to meet the city's needs.[87] Certainly, he must act against offenders, such as parading them humiliatingly in the market or deporting them.[88]

Summing up the Jewish context, it becomes clear that Jewish communities second, third and fourth centuries in Babylon, Palestine or anywhere else in the ancient Near East, were largely familiar with market inspection in its broadest aspects: weights, measures, quality of products and goods, supply and monopolization, lawful exchanges, prices, civic stresses (water supply, drainage system, street lighting, etc.)[89] All these concerns are also traceable in the manuals of Islamic *ḥisba*. A possible explanation for this similarity, I believe, is to be found in the need of these two religious communities to regulate the so-called 'secular' day-to-day life within their religious systems. In both religions, matters of this world are to be subjected to those of the hereafter. Therefore, they both have complex systems of commandments (*mitsvot*, *farā'iḍ*), permissions, prohibitions, *kosher* or *ḥalāl*, rituals etc., that needed to be implemented in all the domains of the life of their communities. Thus, it seems that the office of market inspection, the Greek *agoranomos* was absorbed into Jewish practices and totally subjected to their religious style of life. The pre-Islamic Arabs, I believe, had enough contacts with the Jewish communities, inside Arabia and in Mesopotamia, Palestine and Syria, to be acquainted with the idea of market inspection.

6. Similarities between the Jāhilī customs and Islamic *ḥisba*

The rise of Islam among the Arabs transferred them from a world of political disunity to a world in which all the tribes were united under the umbrella of Islam and its new political structure, the caliphate. For the first time they were totally opened to the great civilizations of the Near East and most of its achievements were at their disposal. Consequently, we should also examine possible similarities between the Muslim office of *ḥisba* and pre-Islamic institutions.

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[87]See Shayzarī, *Nihāya*, pp. 22–24; Ibn al-Ukhuwwa, *Ma'ālim*, pp. 91–92.
[88]See Shayzarī, *Nihāya*, pp. 108–110.
[89]Sperber, "*Agoranomos*," p. 241.

Pre-Islamic society in Arabia was mainly nomadic, with several set-
tled communities. The entire population participated in local trade that
took place in *mawāsim* or a*swāq* set up at different times of the year
in different parts of Arabia. The safety in these markets was guar-
anteed either by the holiness of the place — such as the inviolability
of the Ḥaram — or by their occurrence in the holy months (*al-ashhur
al-ḥurum*).[90] Their orderly running was in the hands of different func-
tionaries: the one who set up the market (*yuqīm al-sūq*) was usually the
leader of a strong tribe called *ṣāḥib* of an area and, as tithe collector in
the market. He was called also *ʿāshir*. In the market of ʿUkāẓ there was
also a functionary who was responsible for resolving disputes.[91]

In the Islamic state, we find similar institutions, though more formal-
ized and permanent. As far as the markets are concerned, it stands to
reason that the early converts to Islam, after moving to Medina, would
like to continue their commercial activity.[92] Apparently aware of this, it
is said on the authority of Ibn Shabba, that the Prophet, a short time
after his arrival, established a market in Medina. The Prophet "came to
the market of the Jewish Banū Qaynuqāʿ, then he went to the market
of Medina. He stamped the ground there with his foot and said: This
is your market; let it not be narrowed (*fa-lā yuḍayyaq*) and let no tax
(*kharāj*) be taken on it"[93]

Based on these reports, Kister stated that "the principle to establish a
new market without taxes may imply that the Prophet intended to adopt
the practice of the market at ʿUkāẓ, where taxes were not levied." He
based this interpretation on another tradition from Ibn Shabba accord-
ing to which the Prophet granted the Muslims their markets (*taṣaddaqa
ʿalā al-muslimīn bi-aswāqihim*) as a charitable endowment.[94] All this
supports the idea that this specific practice persisted into the Islamic

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[90]See Hoyland, *Arabia*, pp. 109–110.

[91]Marzūqī, *Kitāb al-azmina*, vol. 2, pp. 167–168.

[92]Bukhārī, *Ṣaḥīḥ*, vol. 1, pt. 2, pp. 2–5, 13–14, for example, cited traditions about
well-known *Muhājirūn* like ʿUmar b. al-Khaṭṭāb and ʿAbd al-Raḥmān b. ʿAwf who,
after their arrival in Medina, looked for the market in which to continue their previous
occupations in Mecca.

[93]Al-Samhūdī, *Wafāʾ*, vol. 2, p. 747; Ibn Shabba, *Taʾrīkh al-Madīna*, vol. 1, pp.
304–306. The translation is after Kister, "The market of the Prophet," p. 274. Ac-
tually, the report is related in other sources in slightly different versions. See for
example, Ibn Māja, *Sunan, Tijārāt* 40, no. 2233. See also Kister, "The market of the
Prophet," pp. 272–276 who discussed them in the context of Muhammad's relations
with the Jews of Medina and supplied many references for this report; Lecker, "The
markets of Medina," pp. 133–147. For more about the market of the Prophet in
Medina, see al-ʿAlī, *al-Ḥijāz fī ṣadr al-Islām*, pp. 310–313; al-Nuʿmān, "Min taʾrīkh
aswāq al-Madīna," pp. 177–204.

[94]Kister, "The market of the Prophet," p. 276. See the tradition in Ibn Shabba,
Taʾrīkh al-Madīna, vol. 1, p. 204.

period. The event itself also indicates the Prophet's interest, as a religious and political leader, in setting up and running the market, thereby complying with the needs of the new community, including its 'Meccan traders'. Another important point regarding this event is the instruction of the Prophet not to encroach upon the market and not to levy taxes and, or in another version, not to allow private construction within the market (*lā tataḥajjarū*). This, as Kister said,[95] was understood by the people of Medina as an order to leave the marketplace empty of any private building and not to impose any kind of taxes in it. The market thus became a public space that the Prophet gave as *ṣadaqa*. Both the Prophet and ʿUmar considered any private action — such as encamping in the market space — as constituting an encroachment on the public space dedicated to the common good.[96] For this reason, immediately after the death of Hishām[97] the people of Medina destroyed the buildings of Muʿāwiya and Hishām in the market because they considered them unlawful. Thus, the Prophet, beside his concern for the economic welfare of his young community, also brought about the continuation of some pre-Islamic practices such as the setting up of markets, defining and publicizing their location, managing and regulating their running and freeing them of taxes.

Furthermore, in the early period of Islam, the *ḥisba* was designated by terms such as *ʿāmil* or *ṣāḥib* which was used for many officials during the period of the Prophet and of the first four caliphs.[98] The title was used widely and attached to officials such as *ṣāḥib al-ṣadaqāt*, *ṣāḥib al-shurṭa*, and *ṣāḥib al-madīna*. For example, Ibn Ḥabīb gave a long list of *aṣḥāb al-shuraṭ* (pl. of *shurṭa*, i.e. police) that begins with the reign of ʿUthmān and ends with the reign of the ʿAbbāsī al-Mutawakkil. Ibn Ḥazm listed seven descendants of al-ʿAbbās b. ʿAbd al-Muṭṭalib who officiated in the ʿAbbāsī era as *ṣāḥib*s (in the sense of governors) of Baṣra, Ḥijāz, al-Shām, Egypt, Persia, al-Jazīra and Kūfa.[99] Undoubtedly, *ṣāḥib*

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[95]See the version of Ibn Kaysān in Samhūdī, *Wafāʾ*, vol. 2, pp. 747–748. Probably *lā tataḥajjarū* means "do not narrow it by dividing its space or by erecting private buildings." See Ibn Manẓūr, *Lisān*, art ḥ-j-r. Kister, "The market of the Prophet,", p. 275

[96]Samhūdī, *Wafāʾ*, vol. 2, p. 749.

[97]Samhūdī, *Wafāʾ*, vol. 2, p. 749–753. He related also that Mūʿāwiya and Hishām intended to levy the *kharāj* unlawfully.

[98]For the meaning of the term, see *Lisān* al-ʿArab, s.v. ʿa-m-l. See also Dūrī, "ʿĀmil," *EI*², s.v. According to Fasawī, *al-Maʿrifa*, vol. 1, p. 164, the term was first mentioned in the Muslim East in the second half of the second century. It is related that in 173/789 there was in Mecca an *ʿāmil* over the market and a *ṣāḥib al-sūq*. In al-Andalus and the Maghrib, such an official was mentioned at the end of the second century AH. See Ibn ʿIdhārī, *al-Bayān al-mughrib*, vol. 2, p. 72 and Buckley, "The Muḥtasib," p. 62.

[99]Ibn Ḥabīb, *Muḥabbar*, pp. 373–377; Ibn Ḥazm, *Jamharat ansāb*, pp. 19–20.

indicated an official who has authority over a place or over some administrative tasks in that place. Therefore, it is not odd that one of the first titles given to the market official in the Islamic town was *ṣāḥib* or *ʿāmil al-sūq*. After all, these practices reflected the centrality of the market in the Muslim city. It was the duty of the future *muḥtasib* to set up the market in an appropriate location, to manage and control it, to enable free access and to prevent the allocation of its space for private buildings.[100] Here one may ask: if "the historical role of the basic type — of markets — was brought to perfection by Muḥammad's Islam which, though preserving the intrinsic nature of those local markets, institutionalized them and passed them into the Arab empire born in the course of Muslim conquest,"[101] is it not possible that *ṣāḥib al-sūq*, as the beginning of market inspection in Islam, was, at least partially, derived from pre-Islamic legacy?

The Jāhilī Arabs, certainly, had a kind of tribunal to administer justice, to prevent bloodshed and wrongdoing (*munkar*) and to maintain the moral standards of the tribal society.[102] According to Yaʿqūbī, Quraysh, being responsible for the Kaʿba, used to act against sinners, and prevent quarrels and injustice.[103] Presumably, Ḥakīm b. Umayya was involved in punishing immoral behaviour in Mecca. In early Islam, some personal conflicts were resolved by invoking the terms of the pre-Islamic *ḥilf al-fuḍūl*, such as the financial dispute between al-Ḥusayn b. ʿAlī and al-Walīd b. ʿUtba, the amīr of al-Madīna, or the land dispute between the latter and Muʿāwiyya. In both cases al-Ḥusayn b. ʿAlī threatened his adversaries by calling loudly to settle the dispute with the terms *ḥilf al-fuḍūl*.[104] By this, he intended to gain support for his just claims, in accordance with pre-Islamic treaties of Quraysh and the Prophet's approval thereof. The *muḥtasib* acted as a 'field tribunal' for dispensing speedy justice concerning public and private claims in the marketplace and resolved trade and moral disputes between clients and traders.

As to Mecca, the multiplicity of its institutions indicates the commitment of of the city's leaders to its people and to those who visited Mecca for religious or commercial purposes. Earlier we noticed that similar commitment towards the Muslim community had been shown by the Prophet during his first steps in Medina; this was continued by

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[100]See for example, Shayzarī, *Nihāya*, pp. 11–14; Ibn al-Ukhuwwa, *Maʿālim*, pp. 77–79.

[101]Simon, *Trade*, p. 86

[102]See above, n. 38.

[103]See al-Yaʿqūbī, *Taʾrīkh*, vol. 1, p. 254; Marzūqī, *Kitāb al-azmina*, vol. 2, p. 166; Ibn Abī al-Ḥadīd, *Sharḥ*, vol. 19, p. 305.

[104]These traditions are reported repeatedly with the whole story of *ḥilf al-fuḍūl*; see, for example, *Aghānī* (Beirut ed. 1412/1992), vol. 17, pp. 290–297; Ibn Abī al-Ḥadīd, *Sharḥ*, vol. 15, pp. 226–229.

his successors in in the form of various offices such as the *qāḍī*, *ṣāḥib al-sūq*, *ʿāmil al-sūq* and the *muḥtasib*. The institution of Ḥums implied "new distribution of the market space in Mecca", thus, encouraging the merchants to exhibit their merchandise also in areas where there was no shade.[105] For the orderly running of the Meccan trade, Quraysh established the *ḥilf al-fuḍūl* which represented an attempt to organize and defend commercial activity i.e. to uphold 'commercial integrity' inside Mecca.[106] To ensure its trade, at least that with the Arabs inside Arabia, Quraysh secured the *īlāf*, a multilateral security pact, from the tribal chiefs and made arrangements for security and protection provided by the tribes mostly to Meccan caravans (*khafāra*). These arrangements bring to mind the concern of the Prophet to set up the market and regulate its running as we saw above. Gradually, these concerns were institutionalized in the different offices of the Muslim city, mainly the *ḥisba* and in Islamic jurisprudence (*fiqh*).

Closer similarities existed in the punitive measures taken against the transgressors. As we saw above, the attendants of the *sūq* of ʿUkāẓ used to defame publicly anyone who betrayed or sinned in the market or among his tribal community, by raising a "flag of betrayal" in the *sūq*: one of the people delivers a speech about his betrayal urging all the people of the market to point out the betrayer and to boycott him totally. Expulsion from the tribe (*khalʿ*) was of the most severe punishments that the tribes used against transgressors and declared it during the market gatherings.

Public defamation, though in different ways, was one of the most popular means that the *muḥtasib* used against transgressors. He could use penalties called *taʿzīr* (punishing someone without exceeding the bounds) when dealing with an offender who had not committed a sin for which he deserved a *ḥadd*. For example, he could condemn the convicted offender to wear the *ṭarṭūr* (a conical cap "made of felt, variegated with colored pieces of cloth, adorned with onyx, seashells, belts and the tails of foxes and cats")[107] and make him ride backwards on a donkey or a camel.[108] Transgressors of high ranks were defamed, according to

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[105]Ibrahim, *Merchant capital*, pp. 52–53. For more about the rituals of the Ḥums see al-Azraqī, *Akhbār*, vol. 1, pp. 120–123; Ibn Ḥabīb, *al-Munammaq* (Beirut, 1405/1985), pp. 127–129; *idem*, *al-Muḥabbar*, pp. 187–181; Ibn Hishām, *al-Sīra*, vol. 1, pp. 199–204.

[106]See Watt, *Muhammad at Mecca*, p. 9. He believes that the alliance reflected also commercial disagreements between the Quraysh clans concerning the Yemenite trade in Mecca.

[107]Shayzarī, *Nihāya* , p. 108. See Buckley, *The book of Islamic market*, p. 154.

[108]Shayzarī, *Nihāya*, p. 109; Ibn al-Ukhuwwa, *Maʿālim*, p. 194; Ibn Bassām, *Nihāya* (Beirut, 1990), pp. 477–478; Sunamī, *Niṣāb*, p. 108. For more about the *ṭarṭūr*, see Buckley, "The *Muḥtasib*," pp. 108–109 and Buckley, *The book of Islamic market*,

the Zaydī sect (Yemen, from the beginning of the 5th century AH), by removal of their turban in public (*isqāṭ al-ʿamāma fī al-malaʾ*).[109] Obviously, the purpose of this penalty was to defame the culprit publicly: the *ṭarṭūr* with its elongated shape, its variegated colors and worthless pieces of material, the animal (the camel for its height or the donkey as a lower-class indicator) and the backwards riding — all serve as means of defamation similar to the function of the Jāhilī "flag of betrayal" (*rāyat ghadr*). Furthermore, the *muḥtasib* could order the convicted offender to confess his offence publicly.[110] He also had the authority to banish cheating artisans and traders from the marketplace and to deport adulterers and suspicious persons from the city.[111] Though similar punishment existed in other cultures, it should remind us of the Jāhilī *khalʿ* (deportation) orders that the tribes used to impose on their own transgressors during the market gatherings. Undoubtedly, in both cases, the forms of *taʿzīr* by the *muḥtasib* and the flag of *ghadr* and *khalʿ* accompanied by ignominious parading (*tashhīr*) are referred to as common means of deterrence and chastisement.[112]

7. Conclusions

The Arabian Peninsula, located between East and West, was of great commercial significance and was consequently coveted by external powers, especially the Persians, the Byzantines and the Abyssinians. Internally, the relationship of the Bedouin majority and the settled population was what Simon called "forced reciprocity"[113] based on barter trade that took place in the many local markets of Arabia. In the course of the second half of the sixth century, a gradual rise in the Meccan trade took place, by means of which Mecca became both politically and economically the dominant power in Arabia. Undoubtedly, this state of affairs in the nomadic and Meccan society necessitated the development of a

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editorial note no. 7, p. 126.

[109]See Nūnū, *Niẓām*, pp. 177–178.

[110]Ibn Ṭalḥa *al-ʿIqd al-farīd* , p. 182: Jarsīfī, *Risāla*, pp. 127–128; Ibn ʿAbd al-Raʾūf, *Risāla*, p. 110.

[111]Shayzarī, *Nihāya*, p. 110; Ibn al-Ukhuwwa, *Maʿālim*, p. 186; Ibn Taymiyya, *al-Ḥisba* (Dār al-Fikr, Beirut, 1992), pp. 45–47; Ibn Qayyim, *Ṭuruq* (Cairo, 1423/2003), pp. 225–226.

[112]Such measures were also taken by other officials against various kinds of offenders. See Buckley, "The *Muḥtasib*," p. 110 and note n. 200. On the legal meaning of *tashhīr*, see Lange, "Aspects," pp. 81–109.

[113]Simon, *Trade*, pp. 79, 80, 90

kind of institutional structure by which this economic activity could be managed.

First, the Bedouins acted within numerous local, mostly seasonal, markets (*mawsim*) held during the sacred months and in these markets systems of tribal tribunals with punitive measures were implemented to settle moral, social and economic disputes. Every market was under the protection and the control of a certain tribal chieftain who also collected tithes from the traders. Second, the Meccans established adequate systems to regulate commerce. Indeed, though we cannot speak of permanent and institutionalized systems or posts concerning market inspection, we have seen that there is a certain amount of evidence indicating that the Meccans and the Bedouin tribes established some authority by means of which market disputes and claims of unfair treatment were resolved. Third, the terminology of *muḥtasib* and *al-amr bi-'l-maʿrūf* was probably unknown to the pre-Islamic Arabs,[114] but the idea behind it did exist. It is the idea of assisting the wronged person (*maẓlūm*) and restraining the wrongdoer (*ẓālim*) or of chastising profligates and deceivers and jailing and expelling them. Putting such an idea into practice was undoubtedly necessary in the religious, social, moral and commercial spheres of the Arabs, especially those of Mecca. The pacts of Hāshim and of his brothers, Ḥakīm b. Umayya's post and *ḥilf al-fuḍūl* and the punitive measures used by the tribes when the market was open reflected the real life of the pre-Islamic Arabs. It is to be expected therefore that the Muslim authors who recorded the *Jāhilī* traditions did so while comparing them with Islamic ideas and terms. However, this does not negate the idea of some mechanism that the people of Jāhiliyya were familiar with and made use of to protect their religious, moral and commercial life. Therefore, those who used the terms *muḥtasib* and *al-amr bi-'l-maʿrūf* saw similarities between them and those of the Muslim *muḥtasib*; after all, relying on our knowledge the first mention of the *muḥtasib* in Islam was at the beginning of the second century AH.[115] This coincidental comparison, I suggest, was aimed at indicating some Jāhilī origins of *ḥisba*, at least of its duties. I end this article with an open question: If, as Simon said previously, Muhammad's Islam institutionalized local markets and passed them to the Arab empire, is it not possible that the local controlling mechanisms of these markets were also passed on and modified in accordance with the new needs?

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[114]Cook, *Commanding*, p. 566 thinks that such terms came through 'anachronistic' reports.

[115]See Balādhurī, *Ansāb al-ashrāf* (ed. Khalil Athamina), 6/2: 197; Balādhurī, *Jumal*, vol. 11, p. 338.

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