INTRODUCTION

Twentieth-century events and concerns have fostered interest in the treatment of social and religious minorities in the past. As a consequence, medievalists have also set out to unravel both what was perceived or constructed as difference, and how groups regarded as different were treated. These studies have started to reveal the complexity of non-Christian positions in the Middle Ages. The analysis of the place of Jews in medieval Europe, for example, modified not only the interpretation of Jewish history, abandoning its ‘lachrymose conception’,¹ but also that of the dynamics of state formation and of developments within Christian theology and practice in medieval society.² The debate about the role and function of non-Christians in medieval Spanish history has enriched our understanding of Spanish culture.³ There has been both an efflorescence of case-studies on local interaction between Christians and

non-Christians in regions such as Spain, Sicily or Scandinavia, and an increased interest in a comparative perspective: thus, comparison between the situation of Jews under Christian and under Muslim rule has yielded insight into the origins of the persecution of Jews. New approaches have created new debates as well, on the nature of medieval society, on the ‘other’, on ethnicity.

This book compares the fate of three groups, Jews, Muslims and ‘pagan’ Cumans, in medieval Hungary. Its aim is twofold: first, to present a case-study that contributes to our knowledge about non-Christian populations living in medieval European, integrating non-western European developments into analyses of the medieval world; second, to examine a variety of issues relating to the position of religious minorities in what was, as I argue in chapter 1, a frontier society. The fact that Hungary incorporated three non-Christian groups enables me to compare the treatment of the different groups by both lay and ecclesiastical authorities within one socio-economic and legal framework. Hungary is also unique in that its non-Christians settled there voluntarily. Elsewhere in this period non-Christian groups were incorporated into Christian realms as a result of conquest, as were Muslims in Reconquest Spain or ‘pagans’ in Livonia.

Hungary, an area of Christianization only since the late tenth century, and perched precariously, it often seemed – on the frontier between Christendom and the ‘pagan’ world, was characterized by a distinctive background of opportunities and tension. On the one hand, frontier existence affected the possibilities open to, and policies towards, non-Christians. On the other hand, the notion that Hungary might be detached from Christendom and integrated into the nomadic world generated apprehension about Hungarian policies towards non-Christians.

Issues raised in this book relate in part to the way in which non-Christians interacted with Christian society. What roles and what

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6 I use ‘pagan’ in quotation marks as it is not an objective or coherent category; it covers a variety of experience and belief, from polytheism to shamanism, and was used by Christians and not in self-designations. Thus it reflects Christian prejudices. Cumans held animistic–shamanistic beliefs, but this was not recognized in medieval Christian texts.
7 There were some exceptions. For example, Jews migrated from Al-Andalus to Christian Spain, but in no other Christian kingdom was the voluntary immigration of non-Christians the main form of their incorporation.
functions did non-Christians have? Were they outcasts and outsiders? Were they marginalized or were they integral parts of society? How were they seen and defined by society around them? Analysing the history of the various non-Christian groups together, thematically, as opposed to separating the material into chapters on Jews, Muslims and 'pagans', highlights similarities and differences between the three groups and allows more general conclusions to be drawn concerning the place of non-Christians in medieval society. The chapters concentrate on economic, social, legal and religious aspects of their existence. This composite approach is a means of avoiding a mono-causal explanation of non-Christian status. It also precludes reliance on preconceived notions of what determined medieval ideas and realities concerning non-Christians. Further, these problems illuminate mechanisms within Christian society. Investigating the policies of lay and ecclesiastical powers towards non-Christians leads us to questions of economic, religious and political motivation, which cannot be encapsulated by reference to a persecuting mentality, or to tolerance.

Designating the relations between Christians and non-Christians as 'coexistence' is not an attempt to refer to some golden age of harmonious or tolerant interaction. It does, however, signal that the story I tell is not simply one of persecution. As I shall show, non-Christians were not uniformly excluded 'others'. Coexistence, in its primary meaning of 'exist together (in time or place)' seems to me to describe the realities well. It subsumes both peaceful and hostile relations, until the eradication of the minorities, either by assimilation or expulsion.

A brief discussion of my choice of chronology is necessary. My starting point for the analysis of the status of non-Christians in a Christian polity is the eleventh century, when the Christian kingdom of Hungary, the framework of this study, came into being. The first two centuries, however, provide much less material than the thirteenth century. Early medieval institutions in Hungary did not produce many documents, whereas the thirteenth-century production of privileges, letters and chronicles was abundant. To cite a striking example: we possess only seven extant royal charters from the eleventh century, whereas the registers of royal charters from the thirteenth century fill almost three volumes. Later centuries offer an even richer harvest of documents. Yet the problem addressed in this study – non-Christians in a Christian
society – cannot be observed so well during later centuries despite the richer general documentation. The thirteenth is the last century in which all three groups (Jews, Muslims and ‘pagans’) lived in medieval Hungary; it is therefore the last to be treated systematically in this study. The structure and life of non-Christian groups in Hungary were transformed in the fourteenth century, as the economic and social framework changed. Moreover, the Angevin rulers of Hungary, who came to the throne in the early fourteenth century, inaugurated policies much closer to western European models in their treatment of non-Christians. The Muslim community disappeared completely. The Cumans were integrated into local society. The Jews remained the only non-Christian group in Hungary, with changing roles. Naturally, these transformations occurred over time, and not abruptly in 1301. But as a symbolic date, 1301, the extinction of the Árpád dynasty (whose members ruled the kingdom from its beginnings), signals the end of a period. Thus only brief descriptions of the later developments are included, either to indicate how thirteenth-century trends culminated or to highlight thirteenth-century specificities.

Finally, a few words concerning the limitations imposed by the nature of the primary sources are pertinent. The main methodological problems are, on the one hand, the scarcity of documentation and, on the other, the more or less ‘mute’ nature of the non-Christian groups analysed in this study. The more abundant output of written sources in the thirteenth century still cannot compare with, for example, the richness of Spanish archives on Jews and Muslims. It is possible to alleviate this first problem in two ways. First, to gain additional information, it is necessary to rely not only on written sources, but also on the testimony of personal and topographical names, linguistics, iconography and archaeological finds. The latter include gravestones and coins in the case of the Jews, finds from the excavation of the one Muslim village in Hungary that has been uncovered to date, and information regarding armament, costume and religious practices that the excavation of Cuman graves has yielded. Second, the use of comparative material provides perspectives which reveal either the uniqueness of the Hungarian case, or its similarities to Christian interaction with non-Christians elsewhere. None the less, it is impossible to achieve a completely balanced analysis; for each topic there is an unequal amount of information on the three groups. Thus Jews will feature more prominently in some of the chapters, Cumans in others; the sources concerning Muslims are consistently the most fragmentary. The second problem directs the focus of this study. Many aspects of the life of medieval non-Christians, indeed their very existence in Christian countries, ultimately depended on powers external to their communities. It is
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Ironic that our own knowledge of the non-Christian communities of medieval Hungary should also be so dependent on Christian sources. Although the narrative of the Latin texts is supplemented by information from the onomastic and material evidence I have described above, and occasionally by texts produced by non-Christians, the bulk of the sources reflect Christian perspectives. This work, therefore, primarily treats the ways in which non-Christians fit into an economic, legal and cultural framework created by Christians. While it can address Christian views, concepts and fears, the equivalent non-Christian experience is almost totally absent. The daily life of Hungary’s non-Christian communities is irretrievably lost; apart from a few shreds of information, it is most vividly captured when assimilation had already started. The history of Christian relations with non-Christians in medieval Hungary can only be uncovered through ‘the cautious inching forward by the dim light of probability and the intermittent flicker (in this remote region) of scientific method’.

Next, even when the majority, belatedly and after a tour of all the issues belonging to the merits of the claim, reverts to the Caveat, it refuses to apply it in the Case. The precedent of the Tribunal on the subject is, as suggested before, too clear for the majority to ignore. What it does, instead, is to try to distinguish the present Case on the basis of a most unsatisfactory argument.

When read together, says the majority, Articles 988 and 989 of the Civil Code of Iran permit an Iranian national who in violation of the law acquires a second nationality to retain for a period of one year any real property he owns in Iran. And since the measures for which the present claim is pursued were adopted by the Respondent State in less than a year after the Claimant’s acquisition of the United States’ nationality, the question of the Caveat need not be addressed here. In other words, since the Claimant was entitled, according to the majority, to legitimately continue to own his real property in Iran within that one-year grace period, the issue of whether or not he improperly used his nationality of origin does not fall for decision.

This argument is based not only on a misinterpretation of the pertinent laws of Iran, but on a misrepresentation of the facts of the Case. The first will be dealt with here, and the second in the next section of this Dissent, where factual issues are addressed.

Under Article 988 of the Civil Code:

Iranian nationals may not abandon their nationality except on the following conditions:

1- They should have reached the age of twenty-five.

2- The Council of Ministers allow them to abandon their nationality.

3- They undertake in advance to transfer in one way or another to Iranian nationals, within one year from the date of abandoning their nationality, their rights to immovable property they own in Iran or may come to own by inheritance, even if Iranian law permits their ownership by foreign nationals. . . .

The Article, it will be readily seen, lays down the conditions which must be met by any Iranian who wishes to lawfully abandon his Iranian nationality.

(Footnote continued from p. 3)
On all these matters, the Court has studied the written pleadings and oral arguments of the Parties, and has also given consideration to the question of the order in which the various issues would fall to be dealt with. In this connection, there was one matter that appertained to the merits of the case but which had an antecedent character, namely the question of the Applicant’s standing in the present phase of the proceedings, – not, that is to say, of their standing before the Court itself, which was the subject of the Court’s decision in 1962, but the question, as a matter of the merits of the case, of their legal right or interest regarding the subject-matter of their claim. . . . South West Africa, Second Phase, Judgment, I.C.J. Reports (1966) 6, 18.

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These are three. He must have attained the age of twenty-five, received the consent of the Council of Ministers, and given an undertaking in advance to transfer to Iranian nationals his immovable property in Iran within one year from the date of abandoning the Iranian nationality. The Article then goes on to provide that if these prerequisites are properly met by the national, he will no longer be regarded as an Iranian; his acquired foreign nationality will be recognized by Iran; and the one-year grace period for disposing of the immovable property, undertaken by the national, will be respected.

It will be further observed from the provisions of the said Article that, with regard to the ownership of immovable property in Iran, the case of an Iranian national who with full observance of the law abandons his nationality may be more restricted than that of a foreign national (there will be no such right for the former “even if Iranian law permits [such] ownership by foreign nationals”); and that the national may continue to enjoy ownership of his property for one year only if he fulfills the necessary conditions referred to in the Article, including the making of a specific commitment to dispose of his property within that period. The one-year period is, in other words, clearly an incentive for compliance with the law.10

There is then Article 989, which deals exclusively with an utterly different – indeed the very opposite – case of an Iranian national who acquires a new nationality in defiance of the requirements set by the law. Here, the national’s acts of abandoning his Iranian nationality and acquiring a new one will not be recognized by Iran (“he shall be regarded as an Iranian subject” and “the acquired nationality shall be regarded as void”). His immovable property, however, will nevertheless be sold under the supervision of the public prosecutor of the place:

Any Iranian national who has acquired foreign nationality after the solar year 1280 A.H. (1901-2) without observing the law’s requirements shall have his foreign nationality declared null and void and shall be regarded as an Iranian subject. At the same time, however, his immovable property shall be sold under the supervision of the Public Prosecutor of the place and the proceeds shall be paid to him after the deduction of the expenses of the sale. . . .

Such being the simple and unambiguous terms of the said two Articles – the first dealing with a lawful act and its consequences and the second with an unlawful act and its wholly different consequences – there can be no justification, none whatsoever, for any attempt at importing the one-year grace period provided under Article 988 into Article 989, in which there is no

10. An example of such incentive can be found in many taxation laws which provide for reduced tax rates when a tax payer chooses to pay his dues prior to a given date.
mention of such period. In the case covered by Article 988, the national undertakes, in conformity with the law’s requirements, to dispose of his property within one year, and the law naturally respects its promise not to interfere with the property throughout that period. In the case covered by Article 989, the national makes no such undertaking, despite the law’s mandate.

It would, therefore, be a very strange law if it still provided the national with a similar respite. Indeed, once this notion of a one-year grace period is artificially introduced into Article 989, the very purpose of the two Articles would be entirely defeated. That purpose, invariably adopted by the lawmakers all over the world, is to differentiate between a lawful and an unlawful act, to encourage the former and to discourage the latter, by providing different consequences for each. The proposed introduction of a grace period into Article 989 would mean this, that under the Iranian law, as reflected in Articles 988 and 989 of the Civil Code, a national of Iran who wishes to abandon his Iranian nationality in favor of a foreign nationality must fulfill certain conditions, in which case he would be allowed to retain his immovable property in Iran for a maximum of one year. However, if he refuses to do so, he would likewise be allowed to retain his property for the same length of time! Such a policy cannot lightly be attributed to any sane legislator.

Besides, a glance at the subjects with which Article 989 exclusively deals will at once demonstrate the untenability of the majority’s interpretation of the Article. That Article, unlike Article 988, does not address the issue of the required undertaking by the national to dispose of his real property in Iran, so as to allow one to speculate about the existence in there of a grace period. What Article 989 speaks of is the law’s refusal to recognize the subject’s acts of abandoning his Iranian nationality and acquiring a foreign nationality, together with the duty of the local public prosecutor to sell the national’s immovable property.

The only way, therefore, that this notion of a one-year grace period can be introduced into Article 989 is by placing a time restriction on the prosecutor’s duty to sell, so as to make the Article read: The national’s acts of abandoning his Iranian nationality and acquiring a foreign nationality shall not be recognized, and yet his immovable property shall be sold by the local public prosecutor after one year from the date the foreign nationality is acquired. This is so, simply because once it is admitted, as it must, that the prosecutor’s authority to sell is vested in him as from the date of the national’s unlawful acquisition of a foreign nationality, the existence of any grace period may no longer be advocated. And yet the placing of such a restriction, under Article 989, on the prosecutor’s duty to sell cannot, I suggest, be justified by any known canon of interpretation.
There is yet another equally strong reason why the one-year grace period may not be read into Article 989. It is to be found in Proviso “A” to Article 988, added in February 1970:

Those who, in accordance with this Article, seek to abandon their Iranian nationality and to acquire a foreign nationality must, in addition to implementing the provisions of Clause 3 of this Article, leave Iran within three months from the date of the issuance of the certificate of abandonment of nationality. If they do not leave Iran within the said period, competent authorities shall issue order for their expulsion and the sale of their assets. . . .

The relevance of this to the present enquiry will not be missed. As already explained, Article 988 determines the requirements for a lawful abandonment of Iranian nationality, while Article 989 addresses itself to the consequences of a failure to meet those requirements; and the question before us is whether a one-year grace period, granted in a case in which the requirements are met, may be extended to a case in which those requirements are not met.

To this question, the Proviso provides a negative answer, as will now be explained. Adding a fourth requirement – the national having to leave Iran within three months – to the three requirements laid down in the text of Article 988, the Proviso proceeds to itself determine, as against leaving it to Article 989, the consequence of a failure: the issuance of an order by competent authorities for the expulsion of the national and the sale of his property. The reference to a single order, and the absence of any reference to a grace period, make it abundantly clear that both sanctions will be applied simultaneously and immediately upon the national’s failure to leave the country. There is, in other words, no room in the Proviso for a piecemeal imposition of the sanctions: by an order for the immediate expulsion of the national, and by another, issued a year after, for the sale of his property.

If, then, the result of a failure to meet only one of the four requirements – to leave Iran within three months – is the issuance of an order for the immediate sale of the national’s immovable property, the consequence of a failure to meet all of the law’s other requirements cannot possibly be a permission granted to the national to retain his property for a year.

Indeed, the national who fails to leave Iran within three months after the issuance of “the certificate of abandonment of nationality” has already complied with the requirement to undertake to sell his property within one year; for, otherwise, “the certificate” would not have been issued to him in the first place. Yet the order for the immediate sale of his property will be issued if he nevertheless fails to leave Iran within three months. Hence, even where the national undertakes to, and is duly granted, a one-year respite, this will be withdrawn at once if he fails to meet a further requirement of the law: to leave
by the dual dynamics of war and peaceful interaction. It is often asserted that the situation was different in central areas. Sometimes ‘frontier institutions’ were indeed clearly distinct from those of central areas. There are, however, more questionable links between other institutions and the ‘frontier’: not only the military orders, but also parish organization in the frontier zone, have been described as ‘frontier’ institutions, and McCrank even talked about a frontier religion brought to the newly Christianized lands of Catalonia. Some scholars emphasize the different quality of life: a greater freedom, feelings of self-reliance, social fluidity, the fragmented nature of society and multiple loyalties in frontier zones. This may be true for some areas, but in many frontier territories settlers’ lives were directed by the authorities, while other frontier regions were even under condominium, that is authorities from both sides tried to extend their rule to the region. The peculiar nature of frontier life has been used to explain the development of literary genres and sacred objects, and even political structures such as the Ottoman Empire.

‘Frontier interaction’ also came to mean acculturation or religious syn-


