Fatwās on Jihād from Premodern Morocco: 
Introduction and Critical Edition of an Excerpt
from al-Zayyātī’s Selected Jewels*

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Abstract
This article provides an Arabic critical edition of one section of an important but unpublished source for the history of late fifteenth-century Morocco: al-Jawāhir al-mukhtāra fī-mā waqaftu ‘alayhi min al-nawāzil bi-jībāl Ghumāra (Selected jewels: Legal cases I encountered in the Ghumāra Mountains) by the Mālikī jurist ʿAbd al-ʿAzīz b. al-Ḥasan al-Zayyātī (d. 1055/1645). Although this multivolume collection of legal opinions (fatwās) was compiled in the mid-seventeenth century, it includes numerous fatwās from the fifteenth century onward that do not appear in earlier works, including Aḥmad al-Wansharīsī’s (d. 914/1508) famous collection of fatwās, al-Mīʿyār al-muʿrib. This excerpt from the chapter on jihād sheds substantial light on Maghribī legal responses to the Portuguese occupation of Moroccan ports beginning in the fifteenth century. An introduction to the Arabic edition explains the importance of this period and offers an English summary of the Arabic text.

In his 1978 book The Forgotten Frontier: A History of the Sixteenth-Century Ibero-African Frontier, the Ottoman historian Andrew C. Hess argued that the sixteenth-century Mediterranean was characterized by an increasingly stark border between Latin Christendom and Islamdom. According to him, social and cultural forces produced a widening gap between these two civilizations at the same time as the military conflict between the Spanish Habsburgs and the Ottomans reached its culmination. Shortly after the Battle of Lepanto in 1571,1 the maritime frontier between these two empires ceased to

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1. Where only one date appears, it refers to the Common Era. Both CE and AH dates are given for the death dates of premodern Muslim scholars, at the first mention of their names, and for some premodern events.
be of primary concern to either power and was subsequently “forgotten.” In making this argument, Hess was contesting Fernand Braudel’s vision of the Mediterranean, advanced in his monumental work *The Mediterranean and the Mediterranean World in the Age of Phillip II* (1949), as a fundamentally unified space shaped by a common geography.

What I would like to draw attention to here is not the merits of either position but rather Hess’s contention that Braudel’s conclusions were hampered by a lopsided source base. While a sophisticated history could be written for the Latin Christian lands of the Mediterranean, Hess argued, the wealth of documents in the Ottoman archives remained insufficiently explored for the purpose of a comparative or common history. As Hess put it, Braudel made a “valiant attempt to include the preliminary results of research among the mountains of documents held within the Ottoman archives. But modern Turkish historians were in no position to accomplish overnight what their European colleagues had taken centuries to do.” Braudel’s conclusions about the Mediterranean as a whole were therefore grounded in predominantly European sources. In the conclusion to *The Forgotten Frontier*, Hess returned to this point, lamenting that “Mediterranean history during the early modern era is still approached from a European angle,” a problem he attributed to the fact that “Ottoman data remain largely inaccessible to most scholars.”

More than half a century later, Mediterranean studies is booming, boasting multiple academic societies, journals, book series, annual workshops, and tenure-track positions. The Renaissance Society of America, although predominantly associated with late medieval and early modern Europe, has long since redefined its object of study as the entire world during the period between 1300 and 1700. Most recently, the field of medieval studies, often associated exclusively with Western Europe, has embarked on a very promising “global turn.” All the while, scholars have been hard at work cataloging, editing, and translating the rich manuscript and archival resources of the medieval and early modern Islamic West, alongside those of the Ottoman Empire. As a result of these developments, is Hess’s complaint regarding the availability of sources now happily outdated? Are we no longer bound to approach Mediterranean history from a “European angle”?

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5. I am grateful to Carla Zecher, executive director of the Renaissance Society of America, for answering my questions regarding the society’s history.

6. Several medieval studies programs have adopted a global focus, including the Global Medieval and Renaissance Studies program at the University of Pennsylvania, the Global Medieval Studies program at Georgetown University, and the Program in Global Medieval Studies at Rutgers University. The new academic journal *The Medieval Globe* published its first issue in 2015 (a special issue on the Black Death as a global pandemic), and the history journal *Past & Present* published a special issue, “Towards a Global Middle Ages,” in 2018.
Although studies based on Ottoman and other Muslim “data” have indeed proliferated, it would be difficult to argue that studies from a North African, Egyptian, or Levantine (or Arab, or Amazigh, or Muslim) “angle” are as well represented in the study of the Mediterranean in any time period as are those that focus on European soil or on European subjects. This imbalance is not fully explained by a lack of sources, since valuable new editions of Arabic primary texts are produced each year, alongside a steady output of academic studies published in Arabic and other non-European languages. Yet a wealth of Arabic primary sources remain inaccessible or unknown, especially for medieval and early modern North Africa. In the conclusion to his recent book on the natural sciences in early modern Morocco, Justin Stearns laments that “the vast majority of our materials remain in manuscript, are laborious to access and read . . . the problem of sources is a serious one and explains a good deal of the lag of Middle East intellectual history behind that of its European counterpart: a great deal of work remains to be done simply describing extant materials before broader analytical narratives can be established.” The resemblance of Stearns’s observation to that of Hess, written more than four decades earlier, attests to the persistent gap in our source base.

The attempt to remedy this imbalance and to inform the rapidly expanding fields of Mediterranean studies and global medieval studies is only one reason to encourage the production and dissemination of critical editions, translations, and studies pertaining to this region. The medieval Maghrib featured a religious landscape of notable sectarian diversity in the ninth and tenth centuries (including the Sharīfīan Idrīsids, the Ibadī Rustamids, the Sunnī Aghlabids, and the Shi‘ī Fāṭimids), witnessed the rise and fall of two of Islamdom’s most important empires in the twelfth and thirteenth centuries (the Almoravids and the Almohads), and shared a religious and cultural milieu with both al-Andalus and the Sahara. Too often seen as peripheral—to the Middle East, to Africa south of the Sahara, and to Europe—the Maghrib was also a central crossroads joining civilizations, cultures, peoples, and goods. The more accessible the Maghrib’s rich manuscript heritage becomes, the more fully we will appreciate the centrality and dynamism of this region as well as its interconnections with the broader Islamic, African, and Mediterranean worlds.

7. English-language studies on the Mediterranean have favored European-language sources. Nabil Matar has recently pointed out that Fernand Braudel encouraged later scholars to consult Arabic and Ottoman Turkish sources, acknowledging his own inability to do so in The Mediterranean and the Mediterranean World. Yet as Matar notes, more than fifty years later, Peregrine Horden and Nicholas Purcell cited only European-language sources in The Corrupting Sea: A Study of Mediterranean History (Malden, MA: Blackwell, 2000). This is a nearly eight-hundred-page volume that the authors describe as a history of (and not just in) the entire Mediterranean basin, over half of which is populated by Arabic speakers. A more recent tome, David Abulafia’s The Great Sea: A Human History of the Mediterranean (2011), also of nearly eight hundred pages, cites only a small handful of Arabic sources, in English translation. See Nabil Matar, “The ‘Mediterranean’ through Arab Eyes in the Early Modern Period: From Rūmī to the ‘White In-Between Sea,’” in The Making of the Modern Mediterranean: Views from the South, ed. Judith Tucker, 16–35 (Oakland: University of California Press, 2019), 17. For Horden and Purcell’s description of their work, see Corrupting Sea, 2.

In this article, I offer an Arabic edition of one section of an important but unpublished source for the history of late fifteenth-century Morocco: al-Jawāhir al-mukhtāra fī-mā waqaffu ʿalayhi min al-nawāzil bi-Jibāl Ghumāra (Selected jewels: Legal cases I encountered in the Ghumāra Mountains, henceforth Selected Jewels), a multivolume collection of legal opinions (fatwās) by the Mālikī jurist ʿAbd al-ʿAzīz b. al-Ḥasan al-Zayyātī (d. 1055/1645). Although al-Zayyātī’s compilation dates from the seventeenth century, he includes in it numerous fatwās from the fifteenth century onward that do not appear in earlier works, including Aḥmad al-Wansharīsī’s (d. 914/1508) famous collection of fatwās, al-Miʿyār al-muʿrib. This critical edition presents one continuous excerpt from the chapter on jihād, which sheds substantial light on Maghribī legal responses to the Portuguese occupation of Moroccan ports that began in the fifteenth century. A summary of the contents of this excerpt will follow a brief introduction to the importance of this period, to this fatwā compilation, and to the compiler.

Iberian Expansion into the Maghrib

When Hess used the phrase “forgotten frontier,” he was referring to the Habsburg and Ottoman empires’ relative neglect of their shared frontier in favor of more pressing matters after the sixteenth century. Yet the phrase can be aptly applied to historians’ neglect of another Ibero-African frontier: that created by Portuguese incursions into the Maghrib in the fifteenth century. Whereas the sixteenth-century Christian-Muslim frontier, with its pirates, captives, and renegades, has attracted ample scholarly as well as popular attention, the paucity of scholarship on the fifteenth-century Luso-Maghribī frontier suggests that we have perhaps not so much “forgotten” this period as never known it. This is particularly true of English-language scholarship: it would appear that just four English-language monographs focus on the fifteenth century for all of the Maghrib (Morocco, Tunisia, and Algeria), and of these only two pay substantial attention to Portuguese conquests in what is now Morocco.

9. Several Arabic terms commonly appear in the relevant primary sources as synonyms of fatwā (Ar. singular) or fatāwā (Ar. plural). In this article I use fatwā (which I pluralize as fatwās) because this word has entered the English lexicon and because it is the most common technical Arabic term for a legal opinion issued by a qualified jurist in response to a question. The other terms used include nāzila (occurrence, pl. nawāzil), as in al-Zayyātī’s title; jawāb (answer, pl. ajwiba); and masʾala (issue, pl. masāʾil). Occasionally ḥukm (ruling or judgment, pl. aḥkām) is also seen in conjunction with legal opinions, but this term is more properly and commonly used for court judgments.

10. These four books are Jonathan G. Katz, Dreams, Sufism and Sainthood: The Visionary Career of Muhammad al-Zawâwî (Leiden: Brill, 1996); Vincent Cornell, Realm of the Saint: Power and Authority in Moroccan Sufism (Austin: University of Texas Press, 1998); Scott Kugle, Rebel between Spirit and Law: Ahmad Zarruq, Sainthood, and Authority in Islam (Bloomington: Indiana University Press, 2006); and Jocelyn Hendrickson, Leaving Iberia: Islamic Law and Christian Conquest in North West Africa (Cambridge, MA: Program in Islamic Law and Harvard University Press, 2021). Cornell devotes substantial attention to the Portuguese conquests, as do I in Leaving Iberia. Most studies on Luso-Maghribī relations in the fifteenth century are in Portuguese or French; a more limited number have been published in Spanish and Arabic. The sixteenth century receives far better coverage. The best overall introduction in English to the Portuguese in Morocco is Weston Cook, Jr., The Hundred Years War for Morocco: Gunpowder and the Military Revolution in the Early Modern Muslim World (Boulder, CO:
An overview of these conquests and their impact on the Maghrib will offer a sense of the importance of this period and provide the historical context for the legal opinions preserved by al-Zayyātī. Following the conclusion of a peace treaty with Castile in 1411, King João I (r. 1385–1433) launched Portugal’s overseas empire by conquering Ceuta, on Morocco’s Mediterranean coast, in 1415. Historians have attributed this first conquest to a range of strategic, economic, and ideological motivations. Ceuta gave Portugal a port on the Mediterranean side of the Strait of Gibraltar, from which to defend against Muslim pirates or Castilian incursions; it was a major trading center and destination for West African gold caravans; and the “reconquest” of Muslim African territory enhanced João’s status as a Catholic king in the eyes of the pope and the populace. Finally, the expedition provided an arena for the attainment of military honors: three of João’s sons were knighted in Ceuta once the congregational mosque had been reconsecrated as a church.

Despite the prestige this conquest brought to the House of Avis, Ceuta would remain Portugal’s only possession in Morocco for several decades. The isolated port city proved costly to defend and difficult to supply. King Duarte I (r. 1433–38) attempted to expand Portugal’s foothold on Morocco’s northern coast by attacking Tangier in 1437, supported by a papal bull authorizing a crusade. Yet Abū Zakariyā’ Yahyā I (d. 1448), the Waṭṭāsid regent for the Marinid sultan ‘Abd al-Ḥaqq II (b. 1419, r. 1420–65), not only defended Tangier successfully but also extracted a promise from Duarte to relinquish Ceuta. Duarte’s death the following year left the Portuguese throne to six-year-old Afonso V (r. 1438–81) and raised serious questions about Portugal’s future direction in the Maghrib. Duarte’s brother, the Infante Dom Fernando, remained in Marinid captivity pending Portugal’s promise to withdraw from Ceuta; when that promise went unfulfilled, he eventually died in captivity in 1443.

After Afonso V came of age, Portuguese expansion in Morocco resumed and would continue for nearly a century, until nearly all of Morocco’s Mediterranean and Atlantic ports were under Christian Iberian control. In the north, Afonso V conquered Ksar es-Sghir (al-Qaṣr al-Ṣaghīr, Alcacér-Ceguer) in 1458, Asilah (Aṣīla, Arzila) and Tangier in 1471, and Larache (al-ʿArāʾish) in 1473. Portugal’s twin victories over Asilah and Tangier in 1471, which Afonso V celebrated by adopting a new title and commissioning a series of four monumental tapestries, were particularly devastating for Maghribīs.11 An estimated two thousand Maghribīs were killed in the battle for Asilah, and an additional five thousand were taken captive as a result of the conquest.12


11. Afonso V’s new title was “Rei de Portugal e dos Algarves d’aquem e d’alem mar” (“King of Portugal and the Algarves, both here and across the sea”). The Algarves, from the Arabic for “the west” (al-gharb) is the southernmost region in Portugal. On this title, see Racine, A Most Opulent Iliad, 15. On the tapestries, see Fundación Carlos de Amberes, The Invention of Glory: Afonso V and the Pastrana Tapestries (Madrid: Ediciones El Viso, 2011).

Tangier was abandoned and captured without a fight in the wake of the brutal conquest of Asilah given the clear inability of any central Muslim power to defend it against the Portuguese. In the interval between the conquests of Ksar es-Sghir and Tangier, the Marinid dynasty had come to an end. ‘Abd al-Haqq II, the nominal Marinid sultan since ascending the throne in his infancy in 1420, finally wrested control from a series of Watāṣid viziers in 1459. Although he successfully defended Tangier against a substantial attack in 1460, a revolt in Fez led to ‘Abd al-Haqq’s assassination in 1465. For the next few years, Fez alone was ruled by Muḥammad al-Jūtī, leader of the city’s sharīf community (those claiming descent from the Prophet Muḥammad), while Muḥammad al-Shaykh, a Watṭāsid who had survived the murder of most of his family in Fez, sought to establish power over northern Morocco. Muḥammad al-Shaykh signed a peace treaty with Afonso V in 1471, recognizing the king’s sovereignty over Asilah, Tangier, and all other Portuguese holdings. The treaty allowed Muḥammad al-Shaykh to overthrow al-Jūtī and become the first sultan (r. 1472–1504) of the Watṭāsid dynasty (1472–1554). It also left the armed jihād to recover Portuguese-held territory in the hands of irregular mujāhidūn (warriors), who established bases of operation in northern towns such as Chefchaouen.

Portugal’s sway over Morocco’s Atlantic coast was not limited to direct conquests and port cities. It also included commercial agreements and treaties, as well as the extraction of taxes from the interior. As early as the 1450s, the cities of Salé, Anfa (modern Casablanca), Safi, and Azemmour begin to negotiate commercial partnerships and treaties with Lisbon. Safi formally seceded from Morocco to ally with Portugal in 1460. Treaties preserved in the Portuguese archives show the state of these agreements for Azemmour as of 1486, Safi as of 1488, and Massa (just south of modern Agadir) as of 1497. In each case, the local inhabitants of these cities agreed to provide annual tributes including gold, horses, or fish, in addition to allowing free trade and safe passage to Portuguese vessels and merchants. In return, the Maghribis were promised protection and commercial opportunities, including free passage to Portugal for trade.

By the sixteenth century these relatively peaceful agreements gave way to conquests. Anfa was destroyed in 1468–69 in retaliation for an embargo on Portuguese grain purchases. Under Manuel I (r. 1495–1521), Portugal took direct control of Agadir in 1505, Safi in 1508, and Azemmour in 1513. In 1514, Portugal began construction of a new fortress at Mazagan (Mazagão, modern El Jadida) that would remain in their hands until 1769, over 350 years after the conquest of Ceuta and long after the Portuguese had withdrawn from all other holdings in the Maghrib. Meanwhile, Spain had begun to acquire a series of Mediterranean territories.
ports stretching across northern Africa, in the (unfulfilled) hope of reaching Jerusalem. These included Melilla (1497), Oran (1509), Algiers (1510), and Tripoli (1511). Ceuta and Melilla remain Spanish possessions today.\textsuperscript{14}

Portugal’s withdrawal began in 1541, when the Sa’dians won a decisive victory at Agadir. The Sa’dians arose in the early sixteenth century as one of four powers competing for control in southern Morocco alongside the Portuguese, the Waṭṭāsids, and the Hintāta, a tribal confederation that controlled the area around Marrakesh. Their religious and political authority rested on their claims to prophetic descent, the support of a powerful Sufi order founded by Muḥammad al-Jazūlī (d. 869/1465), and their successful campaigns against the Portuguese. The Sa’dians took Marrakesh from the Hintāta in 1525, helped drive the Portuguese out of southern Morocco in the 1540s, then defeated the Waṭṭāsids in Fez to rule a unified Morocco from 1554. The Portuguese king Sebastião (r. 1557–78) made one final attempt to establish Portuguese control in Morocco, but he was killed in the Battle of Three Kings in 1578, along with two rivals for the Sa’dian throne.\textsuperscript{15}

This summary has extended beyond the late fifteenth- and early sixteenth-century time frame of the \textit{fatwās} preserved by al-Zayyātī in order to show the broader arc of Iberian conquests in the Maghrib as well as the shift from Marinid to Sa’dian rule, a transition that reflected lasting changes in the dominant bases of political legitimacy in the Maghrib. The better-known events of the sixteenth century (their fame due in part to witnesses such as Leo Africanus) also help bring into relief, yet again, the relative obscurity of those of the fifteenth. Fifteenth-century Morocco represents both a geographic periphery and a temporal incongruity, so to speak—a temporal “incongruity” because Portugal’s conquests in Morocco preceded and extended well beyond the 1492 surrender of Granada to Castile, an event normally taken to represent the endpoint to the Christian reconquest of Muslim territory in the western Mediterranean. Portugal’s first overseas conquests in Morocco also preceded Vasco da Gama’s successful voyage to India by way of the Cape of Good Hope in 1498, an achievement that marks the beginning of the Age of Discovery and, in many textbooks, the advent of the early modern world. Iberian conquests in the Maghrib represent a precursor to this age of global empire and long-distance seafaring. Fortunately, this period at the cusp of the late medieval and early modern worlds also provides us with some of the earliest recorded indigenous responses to European empire.

\textbf{Life and Times of al-Zayyātī}

We know little about ʿAbd al-ʿAzīz al-Zayyātī (d. 1055/1645), the compiler of \textit{Selected Jewels}. The earliest published sources for his biography appear to be Muḥammad al-Ṣaghīr al-Ifrānī’s (d. ca. 1154/1741) \textit{Ṣafwat man intashara min akhbār ṣulaḥāʾ al-qarn al-ḥādī ʿashar} and Muḥammad al-Qādirī’s (d. 1187/1773) \textit{Nashr al-mathānī li-ahl al-qarn al-ḥādī ʿashar}.
wa-l-thānī.¹⁶ Both notices are short, but additional details may be gleaned from later sources as well as from the biographical notices for Al-Zayyātī’s more prominent family members.

The place and date of Al-Zayyātī’s birth are not mentioned, but he was probably born in Fez in the late 1580s or, more likely, the 1590s.¹⁷ His maternal grandfather was Abū al-Maḥāsin al-Fāsī (d. 1013–14/1604), who founded a zāwiya (Sufi lodge) named for his family (al-Zāwiya al-Fāsiyya) in Fez in the late tenth/sixteenth century.¹⁸ The al-Fāsī family produced generations of religious scholars and Sufis, and the zāwiya became a major center for the Shādhili-affiliated Jazūliyya Sufi order in Fez.¹⁹ One of Al-Zayyātī’s earliest teachers was his maternal uncle, Abd Allāh Muḥammad al-ʿArabī al-Fāsī (d. 1052/1642), best known for composing a hagiography of his father, Abū al-Maḥāsin.²⁰


¹⁷. This suggested birth date is based on the recorded birth date of al-Zayyātī’s maternal uncle Muḥammad al-ʿArabī al-Fāsī, 988/1580. To have served as one of his nephew’s primary teachers, Muḥammad must have been at least five years older than ‘Abd al-ʿAzīz but was likely closer to ten years older. Al-Zayyātī’s father, born in 964/1557, would have been thirty-three in 1590. Biographical sources for al-Zayyātī’s uncle and father appear below.

¹⁸. On the al-Fāsī family, see Bettina Dennerlein, “Al-Fāsī,” in Encyclopaedia of Islam, 3rd ed. (EI3) and Chibli Pellat, “Al-Fāsī,” in Encyclopaedia of Islam, 2nd ed. (EI2), and the bibliographies offered therein. Al-Zayyātī does not appear as a member of the al-Fāsī family, as they are his maternal relatives. On al-Zayyātī’s grandfather, see E. Lévi-Provençal, “Abū’l-Maḥāsin Yūsuf b. Muḥammad b. Yūsuf al-Fāsī,” in EI2. Abū al-Maḥāsin’s family emigrated from Malaga to northern Morocco around 880/1473. They acquired the nisba “al-Fāsī” in this case referred to their city of origin, a distinguishing feature in their new town. The family retained the name even after Abū al-Maḥāsin settled in Fez in 988/1580.

¹⁹. On the Jazūliyya Sufi order, see Cornell, Realm of the Saint.

Following his initial education in Fez, al-Zayyātī traveled to Marrakesh and then to Egypt to continue his studies. He became particularly well trained in the ten “readings” or traditions of Qurʾān recitation. Upon completing his education, al-Zayyātī settled in Tetouan, where he devoted himself to teaching and writing. He also served as the imām of the city’s Jāmiʿ al-Qaṣaba.\(^\text{21}\) Al-Zayyātī composed several works, including a commentary on a qaṣida (poem) on zakāt (almsgiving) written by his uncle Muḥammad al-ʿArabī, a work on Qurʾān recitation, and Selected Jewels.\(^\text{22}\) In Ṣafwat man intashara, al-Ifrānī seems concerned to explain away some additional writings in al-Zayyātī’s hand pertaining to incantations and the summoning and use of jinn. He explains that these texts were written at a time when al-Zayyātī was trying to regain some money that he had lost and of which he was in great need. His efforts did not go as planned. Instead, he learned that he had been protected from harm on multiple occasions, from the very jinn he was trying to summon, by a figure whose description matched that of al-Shaykh al-Majdhūb. By telling this story, al-Ifrānī provides al-Zayyātī with a special connection to this saint, who was the spiritual master of his grandfather Abū al-Maḥāsin.\(^\text{23}\) The tale also allows al-Ifrānī to emphasize al-Zayyātī’s great piety, asceticism, and persistent devotion to the straight path after this incident and for the remainder of his life. Al-Zayyātī died in Tetouan in 1055/1645 and was buried outside of Bāb al-Maqābir, where a domed shrine marks his burial site. Al-Ifrānī notes that his shrine is well known and much visited.

Whereas the al-Fāsī family’s zāwiya is said to have maintained good relations with the central government, the same cannot be said of al-Zayyātī’s father, Abū al-Ṭayyib al-Ḥasan al-Zayyātī (d. 1023/1614).\(^\text{24}\) Al-Ḥasan was born in 964/1557 in a village near Tetouan shortly after the Ottoman incorporation of Tlemcen into the Regency of Algiers; his family belonged to the Banū ʿAbd al-Wād, the Zanāta tribe that had ruled Tlemcen as the Zayyānid dynasty (1235–1557) until its dissolution by the Ottomans. Once in Morocco, the family joined the Banū Zanāta tribe from the Ghumāra region in the north. Al-Ḥasan’s family settled in Fez, where he obtained a thorough education in the religious sciences and authored a number of treatises on Qurʾān recitation and other topics. He also compiled a number of works on the Zayyānid dynasty and its history, including a biography of al-Qādirī, Nashr al-mathānī, which is the source for much of what we know about al-Zayyātī’s life and works.


\(^{22}\) Curiously, Selected Jewels is not mentioned in the earliest biographies for al-Zayyātī. The earliest mention of this work that I have found appears in Muḥammad Dāwūd’s Mukhtaṣar Tarikh Tiṭwān (279–80), where Dāwūd notes the presence of a four-hundred-page copy in his own library, al-Khizāna al-Dāwūdiyya in Tetouan. Kahhāla records a compilation of nawāzil among al-Zayyātī’s works without naming it, while al-Ziriklī gives the title (al-Jawāhir al-mukhtāra) and cites Dāwūd. In a passage that he attributes to al-Qādirī, al-Simlālī also mentions a compilation of nawāzil, but this must have been added by al-Simlālī; the mention does not appear in my edition of al-Qādirī’s Nashr al-mathānī. The Fondation du Roi Abdul Aziz Al Saoud in Casablanca holds four copies of al-Zayyātī’s commentary on his uncle’s qaṣida: two lithograph copies published in Fez in 1901 (197 Litho and 234 Litho) and two manuscript copies (MS 563.1 and MS 549.3).


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of commentaries on legal and other works. Al-Ḥasan was a close follower of Abū al-Maḥāsin and married one of his daughters, then married a second daughter following the death of the first. The daughters are unnamed in the sources, so it is unclear which one was ʿAbd al-ʿAzīz’s mother.

Al-Ḥasan’s fortunes changed for the worse after the death of the Saʿdian sultan Aḥmad al-Manṣūr in 1012/1603. While three of the sultan’s sons fought for control of the Saʿdian state, one of them, Muḥammad al-Shaykh II al-Maʾmūn, traveled to Spain to negotiate an alliance. Al-Maʾmūn signed an agreement with King Phillip III ceding Larache to Spain in 1019/1610 in exchange for military assistance. Al-Maʾmūn returned to Morocco and summoned the scholars of Fez to Badis, where, backed by Spanish ships, he intimidated them into recognizing his authority. He also demanded that they produce a fatwā declaring it permissible for him to have surrendered Larache in order to ransom his sons, who had been left behind in Spain. The chronicler Aḥmad al-Nāṣirī remarks in his Kitāb al-Istiqṣā that those jurists who complied and composed an opinion justifying the exchange of a city for the ruler’s sons did so only after Larache had been surrendered and only out of fear for their lives.25 Other jurists fled so as not to be implicated in the sultan’s request for a fatwā. Al-Ḥasan al-Zayyāṭī was in this group; al-Ifrānī and al-Qādirī leave the circumstances vague, stating only that that he fled to preserve his life and religion when the Maghrib came to be in turmoil and the situation in Fez became grave. According to al-Ifrānī, in 1022/1613 al-Ḥasan left for Jabal Kurt (northwest of Fez), where he lived alone until he fell ill and died the following year, in 1023/1614. Al-Qādirī notes that he is buried in a known location at the zāwiya of al-Habṭī in Jabal Kurt.26 Al-Nāṣirī states more directly that al-Ḥasan was among those jurists who fled Fez because of the 1610 fatwā.

Al-Ḥasan was in good company. Among the scholars who had left Fez for the same reason was Aḥmad al-Maqqarī (d. 1041/1632), the famous compiler of Nafḥ al-ṭīb, as well as another of al-Zayyāṭī’s uncles, al-Ḥāfiẓ Abū al-ʿAbbās Aḥmad b. Yūsuf al-Fāsī (d. 1021/1612).27 These jurists had reason to fear for their lives: one scholar who harshly condemned al-Maʾmūn for ceding Larache to the Christians, al-Ḥājj al-Aghsāwī al-Baqqāl, was beaten to death on


26. Al-Qādirī, Nashr al-mathānī, 1:199. This may be a zāwiya associated with the reformist Jazūlī Sufi scholar ʿAbd Allāh al-Habṭī (d. 963/1555).

27. Aḥmad al-Maqqarī was born in Tlemcen and settled for a time in Fez, but he wrote most of his works in Cairo after leaving Fez. He is the author of, among other works, Nafḥ al-ṭīb, which consists of a history of Islamic Iberia and a biography of Lisān al-Dīn b. Ibn al-Khaṭīb (known as Ibn al-Khaṭīb; in this article, I spell out “Ibn” when it begins the part of the name by which an individual is best known). On al-Maqqarī, see Sabahat Adil, “Memorializing al-Maqqarī: The Life, Work, and Worlds of a Muslim Scholar” (PhD diss., University of Chicago, 2015). Al-Maqqarī appears to have left Fez long enough to avoid al-Maʾmūn’s request, then returned before leaving permanently for the East. Al-Qādirī reports that Abū al-ʿAbbās (referring to al-Zayyāṭī’s uncle, a son of Abū al-Maḥāsin) left Fez in 1020/1611, before the delegation from the sultan could reach him. See al-Qādirī, Nashr al-mathānī, 1:156–57.
al-Maʾmūn’s orders in 1019/1610. Al-Maʾmūn himself was killed in 1022/1613, the same year in which al-Ḥasan fled Fez; al-Maʾmūn’s son ʿAbd Allāh then assumed control of Fez but continued to be shunned by many of the city’s leaders.

This crisis faced by al-Zayyātī’s father and uncle is indicative of the sultan’s reliance on the scholars as a source of legitimacy. It demonstrates the scholars’ vulnerability to coercion but also their limited ability to resist through public critique or by refusal to lend their authority to rulers, processes, and opinions they found reprehensible. As we consider al-Zayyātī’s compilation, it is worth keeping in mind the high stakes of being a prominent jurist in times of political intrigue and civil war.

Selected Jewels and the Chapter on Jihād

What we know of ʿAbd al-ʿAzīz al-Zayyātī’s historical context sheds considerable light on the curatorial decisions he made in compiling his chapter on jihād. A typical chapter on jihād in a legal manual contains rules governing the conduct of war in non-Muslim territory (dār al-ḥarb), travel to dār al-ḥarb for trade or transit, and a variety of issues related to Christian and Jewish communities living as dhimmīs subordinate to Muslim rule within Muslim territory. Al-Zayyātī’s chapter contains some of this same material, but also a remarkable concentration of fatwās concerned with the Christian occupation of Muslim territory, including the permissibility of armed resistance without a sultan’s order, the status of Muslims living under Christian authority, and various types of Muslim cooperation with Christian occupiers. Many of these fatwās reveal, directly or indirectly, complicated relationships between the state, society, and the scholarly class.

The fatwā crisis that followed the 1610 handover of Larache was likely the impetus for al-Zayyātī to collect and preserve the cluster of legal opinions edited here relating to Portuguese and Spanish occupation of parts of Morocco in the late fifteenth and sixteenth centuries. It appears that al-Zayyātī is our only extant source for many of these opinions, so he clearly took a special interest in this material. Not only do these earlier fatwās pertain to the Christian occupation of Muslim ports in Morocco; many of them were issued by the most prominent jurists of the Waṭṭāsid state. Moreover, they seem to have run counter to the interests of the Waṭṭāsid sultan at the time, Muḥammad al-Shaykh (r. 1472–1504), who had also ceded territory to Christian conquerors in order to pursue control of Fez. It is quite possible that al-Zayyātī viewed these opinions as worth preserving not only for their practical relevance but also out of a personal resonance with the circumstances of the jurists.

More will be said of these particular fatwās below, but here it is worth taking a step back.
to place al-Zayyātī’s compilation in the broader context of fatwās and fatwā compilations in the Maghrib. As most readers will be aware, fatwās are a question-and-answer legal genre in which professional jurists (muftīs) issue nonbinding opinions in response to legal questions posed to them by individuals, judges, or representatives of the state. This genre is quite diverse: a lay person might pose a simple question about ritual observance to a local scholar and receive an immediate, oral, yes-or-no answer (e.g., “Is my fast invalidated by menstrual spotting?”); a judge might consult a muftī on a point of law and receive a formal, written advisory opinion that will inform the court judgment (e.g., “What law applies when one farmer cuts off another farmer’s access to an irrigation channel?”); or a ruler might seek religious sanction for a course of action by framing the issue as a question and asking one or more prominent scholars to respond with an authoritative statement, often in support of a specific policy (e.g., “What is more important for the people of al-Andalus, performing the pilgrimage or waging jihād?”). Professional guidelines were developed for the practice of fatwā-giving (iftāʾ), covering such topics as the qualifications required to serve as a muftī and the proper way to respond to different types of questioners. For example, lay persons should receive straightforward answers, whereas fellow jurists should be provided with a fuller accounting of the legal reasoning and evidence shaping the response.

When al-Zayyātī made the decision to compile Selected Jewels, he was following a well-worn path, especially within the Mālikī school of law. Mālikī scholars began to compile fatwās as early as the tenth century, at first bringing together the fatwās of a single jurist (such as Ibn Rushd al-Jadd) or of a single city or region (such as the scholars of Granada).

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The primary impetus for these compilations was to leave an instructive record for later scholars and legal students. In the ninth/fifteenth century, a third type of collection arose: large, comprehensive collections that aimed to assemble the opinions of Mālikī jurists from across the Maghrib over several centuries. The earliest extant example of this type is Abū al-Qāsim al-Burzulī’s (d. 841/1438) Jāmiʿ masāʾil li-mā nazala min al-qadāyā bi-l-muftiyaʿīn wa-l-ḥukkām, which comprises seven volumes in its modern printed edition. The best known example of this type of compilation is Aḥmad al-Wansharīsī’s al-Miʿyār al-muʿrib wa-l-jāmiʿ al-mughrib ‘an fatāwī ahl Ifrīqiyā wa-l-Andalus wa-l-Maghrib, which contains more than five thousand fatwās issued by hundreds of jurists in Andalus and North Africa between about 1000 and 1500 CE. Al-Wansharīsī’s compilation became an incredibly influential, authoritative text within the Mālikī legal tradition and retained this status for hundreds of years, and it has been the subject of numerous studies. Yet fatwā compilations of all three types have continued to be produced through the modern day. Many remain unpublished, and most have received very little scholarly attention. In his survey of Mālikī fatwā compilations, both extant and not, Mubārak Jazāʾ al-Ḥarbī lists nearly eighty Maghribī collections; about three dozen of them date from the fifteenth century and later. Mohamed Mezzine, who lists more than twenty collections dating from the


late fifteenth through seventeenth centuries, argues that compilatory activity increased during times of political crisis. This increased activity may be explained by three factors: the advent of unprecedented circumstances that raise unanswered questions, the need to reaffirm existing values and doctrines in the face of new challenges, and the desire of political authorities to bolster their own legitimacy by extracting supportive opinions from the religious scholars.

Al-Zayyātī’s *Selected Jewels* fits Mezzine’s model of a compilation that clearly reflects the political crises of the early seventeenth century. In addition to the Larache controversy of 1019/1610 described above, a second crisis arose around 1630 when jurists were asked to provide potentially high-stakes *fatwās* backing rival political factions. The background to this incident was the expulsion of approximately three hundred thousand Moriscos from the Iberian Peninsula between 1609 and 1614. Many of these Moriscos went, at least initially, to the Maghrib. They were in many cases descended from Muslims who had been forcibly converted to Christianity in the previous century, and they were perceived as cultural and religious others by Maghribī Muslims. Although the Iberian refugees identified as Muslims, they spoke a variety of Romance languages and had adopted a range of Christian practices. Two distinct groups of Moriscos formed an autonomous republic together in Rabat and Salé, where they engaged in piracy against European ships but were also suspected of conspiring with the Christian enemies of Morocco.

At a short remove from the *fatwās* pertaining to the Portuguese conquests of the fifteenth century, al-Zayyātī’s chapter on *jihād* also contains a cluster of legal opinions relating to the Moriscos of Salé-Rabat. These include two lengthy *fatwās* issued by al-Zayyātī’s uncle ʿAbd Allāh Muḥammad al-ʿArabī al-Fāsī in response to questions posed to “the scholars of Fez” around 1040/1630. At least one of these questions was posed by Sīdī al-ʿAyyāshī (d. 1051/1641), a former governor of Azemmour who declared independence from the Saʿdīan sultan Mawlāy Zīdān (r. 1603–27) in 1036/1627. Al-ʿAyyāshī led armed campaigns against the Spanish, including in al-Māʾmūra (now Mehdia) just north of Salé-Rabat. Al-Fāsī provided the sanction that al-ʿAyyāshī was hoping for, authorizing him to attack the Moriscos of Salé-Rabat on the grounds that they had “turned away from God and his prophet, sympathized with the infidel and given them counsel.” Al-Zayyātī also includes a counter-*fatwā* by

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40. I am drawing on Mezzine (“al-Adab al-fiqḥī,” 64) here, but modifying his argument.

41. Mezzine places al-Zayyātī in the center of a group of nine jurists who are credited with compiling or issuing a large number of *fatwās*. Of this group, only the compilation of al-Zayyātī’s cousin ʿAbd al-Qādir has been published: ʿAbd al-Qādir b. ʿAlī al-Fāsī (d. 1091/1680), *al-Ajwiba al-kubrā*, ed. Jābir b. ʿAlī al-Ḥawsanī (Rabat: Dār Abī Raqrāq li-l-Ṭibāʿa wa-l-Nashr, 2016).


Abū Mahdī ʿĪsā al-Suktānī (d. 1062/1651), judge of Marrakesh, who defended the Moriscos against al-ʿAyyāshī. Although these fatwās appear to be better known than the Portuguese fatwās edited below, they remain unedited and untranslated.

Al-Zayyātī’s compilation is undated but must have been completed in the final years of his life, most likely between 1642 and 1645. When mentioning his uncle ʿAbd Allāh Muḥammad al-ʿArabī al-Fāsī, who died in 1642, he consistently uses the pious phrase for someone who has passed away; al-Zayyātī’s own death followed just three years later. Al-Zayyātī also reports finding materials of his uncle’s, suggesting that he was reviewing his uncle’s papers after the latter’s passing and that he was motivated by a desire to preserve his legacy. Muḥammad al-ʿArabī al-Fāsī’s opinions are particularly well represented in Selected Jewels.

In his introduction, al-Zayyātī says very little about his motivation.44 He notes only that he gathered fatwās issued by later jurists from Fez and from other places, and that he added some of the legal opinions that al-Wansharīsī had collected in the Miʿyār, as well as opinions from some other sources. He reports that he arranged his own compilation following the order of subjects in the Mukhtaṣar of Khalīl Ibn Ishāq (d. 776/1374), though he did not include all of the subjects that appear in that work. He then gives the work’s title, al-Jawāhir al-mukhtāra fī-mā waqaftu ʿalayhi min al-nawāzil bi-Jibāl Ghumāra.

The title suggests that al-Zayyātī’s compilation is limited to the opinions of jurists from a particular region in northwestern Morocco, where a group of Ghumāra tribes belonging to the Maṣmūda confederacy inhabited the western portion of the Rif mountain range. However, although Selected Jewels does have a special focus on northern Morocco, the compilation contains a broader range of material than the title suggests. For example, it includes quite a few of the opinions of the Granadan chief judge Ibn Sirāj (d. 848/1444–45), as well as of other Granadan scholars whose opinions al-Zayyātī found in the nawāzil of the Almerian judge Ibn Ṭarkāṭ (d. after 854/1450). The primary focus of Selected Jewels is on the fifteenth through seventeenth centuries, but it also contains ample material from before this period. Moreover, the authoritative opinions of earlier Mālikī scholars are frequently cited in the fatwās that al-Zayyātī includes, and he occasionally adds relevant excerpts to further elaborate on an issue at hand.

Al-Zayyātī’s compilation is divided into two volumes of comparable size. The first begins with purification for ritual observance (ṭahāra) and contains fourteen subject categories; the second begins with jihād and contains six subject categories. Though the various manuscript copies vary in page count, depending on their size and layout, the chapter on jihād represents about 10.5 percent of the total material in Selected Jewels.45 The material


45. General Library and Archives of Tetouan MS 178 combines both volumes, for a total of 412 pages; the jihād chapter takes up pages 239–281, or about forty-two pages. Hasaniyya MS 5862, also two volumes in one, contains 401 pages, with the jihād chapter occupying pages 225 to 267, or forty-two pages. Moroccan National Library (Bibliothèque nationale du Royaume du Maroc, BNRM) MS 1698D consists of two separate volumes. Volume 1 contains 398 pages and volume 2 contains 318 pages, for a total of 712 pages; the chapter on jihād is on
in this chapter thus makes up an outsized share of the total compilation, given that *jihād* is just one of al-Zayyātī’s twenty chapters.

At least five full copies of *Selected Jewels* are found in Moroccan manuscript libraries, which further hold additional copies of the individual volumes.\(^{46}\) Two additional full copies are known to exist outside of Morocco, one each in Algeria and Dubai.\(^ {47}\) Of those that bear copy dates, the earliest was copied in 1100/1689 (Ḥasaniyya MS 5862) and the latest was copied in 1313/1895 (Amīr ʿAbd al-Qādir University). In addition to circulating independently, al-Zayyātī’s compilation was incorporated into ʿAlī b. ʿAbd al-Salām al-Tasūlī’s (d. 1258/1842) vast, unpublished *fatwā* compilation *al-Jawāhir al-nafīsa fi-mā yatakarraru min al-ḥawādith al-gharība* (Precious jewels concerning unusual, recurring cases).\(^ {48}\) Muḥammad al-Mahdī al-Wazzānī (d. 1342/1923) also reproduced many of the fifteenth- and sixteenth-century *fatwās* from *Selected Jewels* in his two collections, *al-Miʿyār al-jadīd* (The new *Miʿyār*) and *al-Nawāzil al-ṣughrā* (The minor collection of legal cases), both of which have been published.\(^ {49}\)

Unsurprisingly for an unpublished compilation, relatively little scholarship has focused on al-Zayyātī’s *Selected Jewels*. Mohamed Mezzine was perhaps the first to draw attention

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\(^{46}\) The BNRM holds three full copies (MSS 1698D, 3832D, and 66D); the Ḥasaniyya (Royal) Library holds one full copy (MS 5862), three copies of volume 1 (MS 2500, 2837, and 2476), and one copy of volume 2 (MS 8509); the General Library and Archives of Tetouan holds one full copy (MS 178) and three partial copies (MSS 12/913, 897, and 1041); and the Dāwudiyya Library in Tetouan and the ʿAllāl al-Fāsī Institute in Rabat (MS 621) each hold a copy according to their catalogs, but I have not consulted these copies and cannot confirm the specific volumes. Finally, the Fondation du Roi Abdul Aziz Al Saoud in Casablanca holds one copy of volume 2, available online through its digital manuscript library. Mohamed Cherif provides additional details on many of these copies in Cherif [Muḥammad al-Sharīf], “Mulāḥiẓāt ḥawl kitāb ‘al-Jawāhir al-mukhtāra’ li-ʿAbd al-ʿAzīz al-Zayyātī wa-nusakhihi al-makhṭūṭa,” in *Abḥāth fī al-kitāb al-ʿarabī al-makhṭūṭ*, 157–95 (Rabat: Manshūrāt Wizārat al-Thaqāfa, [2018]).

\(^{47}\) One full copy is held by Amīr ʿAbd al-Qādir University of Islamic Sciences in Constantine, Algeria (MS 3/7/217). This is one of three copies used by Ghaniyya ʿAṭwī in her MA thesis (cited below), defended at the University of Constantine 2 in 2013. According to a database maintained by the Juma Almajid Center for Culture and Heritage, another copy is held by the Mudīriyyat Awqāf (directorate of religious endowments) in Dubai. Ahmadūn also describes a complete, two-volume, privately held copy that he used in researching his article on reprehensible innovations (*bidaʿ*). As the copy Ahmadūn describes was copied in the same month and year (Rabīʿ I, 1237/November 1821) and by the same person (Muḥammad b. ʿAbd al-Raḥmān al-Ṣbiḥī) as the Dubai copy, it is likely that these are one and the same. Ahmadūn, “al-Bidaʿ,” 251.

\(^{48}\) Al-Tasūlī’s multivolume collection is unpublished, and I am unaware of any studies that offer an inventory or overview of its contents. In his introduction, al-Tasūlī mentions al-Zayyātī as one of his primary sources, and the title seems to have been inspired by al-Zayyātī’s title. As noted below, I have consulted two copies of al-Tasūlī’s chapter on *jihād*: Ḥasaniyya Library MS 12574, and Tunisian National Library MS 5354.

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to the importance of this source, in an award-winning 1979 dissertation on Fez and its environs in the sixteenth and seventeenth centuries.⁵₀ Later, in the 1980s and 1990s, Mezzine published a series of articles drawing on particular portions of al-Zayyātī’s compilation, including a study on funeral practices and beliefs regarding death in fifteenth-century Morocco, as well as two articles related to jihād.⁵¹ In the first of these two articles, Mezzine offers a useful overview of al-Zayyātī’s chapter on jihād, noting that most of the cases date to the sixteenth century and concern such topics as the conduct of raids, the sincerity of converts to Islam who return to enemy territory, the sale of cows and weapons to the Christians, the purchase of wine and Arabic books from them, and the treatment of Jewish traders suspected of espionage.⁵² Mezzine argues that although warfare, in the form of raids and ambushes, was a constant reality in northern Morocco during this period, Christian and Muslim communities also adapted to one another over time and were concerned to maintain mutually beneficial exchanges.⁵³ In his second article, Mezzine draws on Selected Jewels and other sources to argue that the mountainous Ghumāra region, long seen as a refuge for rebels fleeing defeat or fomenting revolt, witnessed a shift in the sixteenth and seventeenth centuries from a center of rebellion against the central state to one of jihād against the foreign enemies of the Waṭṭāsid, Saʿdian, and ‘Alawī dynasties.⁵⁴ He also argues that this jihād developed from independent efforts led by local marabouts to a more regularized movement justified and promoted by the elite juristic class, which attempted

50. Mezzine defended his dissertation at the Mohammed V University in Rabat in 1979. Awarded the Maghrib Prize by the Ministry of Cultural Affairs, the dissertation was published in two volumes in 1986: Mohamed Mezzine, Fās wa-bādiyyatuhā: Musāhima fi tārīkh al-Maghrib al-Saʿdī, 1549 m–1637 m (Rabat: Jāmiʿat Muḥammad al-Khāmis, Manshūrāt Kulliyyat al-Ādāb wa-l-ʿUlūm al-Insāniyya, 1986). In this work, Mezzine uses Selected Jewels primarily for questions of economic history, especially currency. Ten years after Mezzine, Omar Bennira also defended a dissertation at the same university, likewise drawing on al-Zayyātī but only as one of many sources. Bennira’s study focuses on land and water use in central Morocco in the fourteenth and fifteenth centuries. His study was published posthumously: Omar Benmira, al-Nawāzil wa-l-mujtamiʿ: Musāhima fī dirāsāt tārīkhiyya bi-l-Maghrib al-wasīṭ (Rabat: Jāmiʿat Muḥammad al-Khāmis, Manshūrāt Kulliyyat al-Ādāb wa-l-ʿUlūm al-Insāniyya, 2012).


to balance the interests of the warriors (muḥāhidūn) with those of the central state. More detailed studies of these texts would help us explore both of these arguments.

Four further scholars have addressed the ṣafāwās preserved in al-Zayyātī’s collection that relate to the Portuguese occupation of parts of Morocco. Hossain Bouzineb was the first to put these ṣafāwās in conversation with those of al-Wansharīsī and others on the subject of Muslims living under Christian rule, in 1989. Unfortunately, he assumed that these opinions pertained to the situation in al-Andalus, not Morocco. Laḥsan al-Yūbī discusses many of the opinions preserved in Selected Jewels in his 1998 monograph al-Fatāwā al-fiqhīyya fī aḥamm al-qadāyā min ‘ahd al-Saʿdiyyīn ilā mā qabla al-ḥimāya (Legal opinions on the most important issues from the Saʿdian era until just before the [French] protectorate). Though an excellent introduction to a number of fascinating, pressing legal issues in this period, al-Yūbī’s study is of limited utility because of his reliance on later sources in lieu of direct consultation of Selected Jewels. He also breaks multipart ṣafāwās into discrete components that are addressed in separate sections of the book, according to the specific legal issue at hand, instead of presenting each ṣafāwā as a coherent whole. More recently, Mohamed Cherif has published two articles (in 2018 and 2021), one with Salwa al-Zāhirī, placing a subset of these opinions (those of Ibn Barṭāl) in the larger context of the Portuguese conquests in Morocco. Finally, in my 2021 monograph, Leaving Iberia: Islamic Law and Christian Conquest in North West Africa, I devote substantial attention to these ṣafāwās and their historical context. The book contains my translations of many of these opinions, but not the original Arabic.

To help put this body of scholarship into perspective, it is worth highlighting two sources that do not mention al-Zayyātī’s Selected Jewels. First, the most substantial and prominent Arabic-language monograph on the Portuguese conquests in Morocco is Moroccan historian Ahmed Bouchareb’s Dukkāla wa-l-istiʿmār al-Burtughālī ilā sanat ikhlāʾ Āsafī wa-Āzammūr, 1481–1541 (Dukkāla and Portuguese colonization through the year Safi and Azemmour were relinquished, 1481–1541). In the introduction to this five-hundred-page study,
Bouchareb discusses the major sources for the study of this period. Foremost among these are Portuguese chronicles as well as the documents preserved in Portuguese archives, especially those compiled, translated, and introduced in French as part of the series _Les sources inédites de l’histoire du Maroc_. Although Bouchareb’s focus is on the southern Dukkāla region, it is nonetheless striking that _Selected Jewels_ is not mentioned in the work.

Second, Hossain Bouzineb published a volume of primary documents related to the Moriscos of Salé-Rabat in the seventeenth century. The book contains an invaluable historical introduction and transcriptions of fifty-one documents from the Simancas archive in Spain. This is a fantastic resource, but it is regrettable that such a volume does not include the available Arabic fatwās regarding this population that are preserved in al-Zayyātī’s chapter on _jihād_, especially when the author is also one of the few scholars who has written on this compilation.

In _The History of the Maghrib: An Interpretive Essay_, Abdallah Laroui portrayed the two centuries between the death of Marīnid sultan Abū ʿInān (d. 759/1358) and the defeat of the Portuguese at the Battle of Three Kings in 1578 as a period of regression and weakness. “Nothing is more indicative of the decadence of this period than the extreme aridity, and even futility, of contemporary historiography,” he lamented. In the absence of a strong central state and its accompanying court historians, historical narratives in this period became scattered and localized, focused on the achievements of more minor tribal and religious leaders. Yet legal writing continued to flourish. Laroui argued not only that Islamic legal works are among our only sources for the political and social conditions of this period, but moreover that “an adequate interpretation of [the] Iberian sources requires a knowledge of the Arabic juridical literature.” Writing a decade later, Ahmed Bouchareb cited Laroui’s lament and added his own assessment that two genres flourished in this period of Iberian conquests: hagiography and legal opinions (_nawāzīl_).

Historians have yet to explore either of these genres adequately, although Vincent Cornell’s groundbreaking _Realm of the Saint: Power and Authority in Moroccan Sufism_ is a masterful study of sainthood in the fifteenth and sixteenth centuries. Here I offer a critical edition of a portion of al-Zayyātī’s _Selected Jewels_ as a window onto the unpublished legal

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62. Aḥmad Būsharb, _Dukkāla wa-l-istiʿmār al-Burtughālī ilā sanat ikhlāʾ Āsafī wa-Āzammūr, 1481–1541_ (Casablanca: Dār al-Thaqāfa, 1984), 11–29. There are multiple series and volumes within the _Les sources inédites de l’histoire du Maroc_ (SIHM) project, classified by time period and by the European country in which the documents are found. The volume most relevant here is de Cenival, _Juillet 1486–Avril 1516_.


65. Laroui, _History of the Maghrib_, 228.

material that remains to be studied. A brief English summary of the contents of this edition will be followed by a methodological preface and the edition itself.

**English Summary of the Contents**

This summary follows the order of the edition and offers a rough guide rather than a paraphrase or translation of the contents. As in the edition itself, the titles are my own editorial additions. Biographical and other important references will be given in the footnotes to the edition.

1. First *Fatwā* of Ibn Barṭāl (d. ca. 901/1495), Fez

   **Question:** A group has agreed to a treaty with the Christians. They pay them tribute and are allowed to remain in their lands. Some of them spy for, trade with, or fight for the enemy. Some only pay the tribute; others are exempted from doing so. What is the status of these people’s lives, property, and fitness to lead prayer and offer witness?

   **Answer:** This group is disobedient to God and violates the *sunna* of His prophet. Those who pay the tribute transgress by doing so and by living under Christian rule. They are disqualified from leading prayer or giving testimony, but their lives and property remain inviolable. The acknowledged doctrine regarding those who spy for the enemy is that their lives are licit and their killers are rewarded. Those who fight for the Christians have deviated from the religion, and their status is that of the Christians in terms of their lives and property. Those who trade with them sin by doing so. Religious functionaries and callers to prayer who remain under Christian rule sin by doing so, especially as others emulate them. They are disqualified from leading prayer or giving testimony. They must repent and move away from those areas that have been conquered by the infidels.

2. *Fatwā* of al-Waryāglī (d. 894/1488–89), Fez

   **Question:** What is the status of our Muslim brothers who live under infidel laws and who have not moved to the adjacent Muslim lands? May Muslims shed their blood, or take their women or their property? Are their religious observances valid?

   **Answer:** These people are vile, contemptible, and weak in faith. They glorify infidels and expose the word of God to scorn. Our learned authorities agree that it is necessary to kill these people and seize their property. Their wives must also be taken and returned to Muslim territory, where they will be divorced from these men and remarried to others. These people are not our brothers; they are our enemies.

3. *Fatwā* of al-Māwāsī (d. 896/1491), Fez

   **Question:** A group of people continue to live in their homeland, where they are subject to infidel rule, even though they have the means to move elsewhere. Is this permissible for

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them? Some of them pay tribute to the enemy, while others trade with them. Others spy for them, and yet others fish with them, saying “May God prolong this period and this hour.” What is the status of each of these groups?

Answer: It is not permissible for Muslims to remain under infidel rule or to sign a treaty requiring the payment of tribute to infidels. These people have lost their religion. Their testimony is not accepted, nor is their leading of prayer. Those who trade with the enemy are even worse. There is scholarly disagreement as to the punishment for spying and as to the acceptance of repentance from those who spy for the enemy. Those who show affection toward the infidels are malicious and repugnant. Love for the infidel and praying for his strength and power over the Muslims are among the signs of unbelief.

4. Second Fatwā of Ibn Barṭāl (d. ca. 901/1495), Fez

Question: A group of people live in the vicinity of the Christians. Some of these Muslims engage them in war. Others have concluded a treaty with the Christians to the effect that they will pay tribute to them at a later date; members of this group intend to flee to the lands of Islam rather than to pay. A third group intends to remain and pay the tribute to the Christians for as long as the world remains. What is the status of each group?

Answer: This horrifying affair has threatened the pillars of Islam and blotted out the very days and nights. The first third are engaged in a powerful act of devotion to God. They are among the Muslims whose intercession is accepted. The actions of the second group are reprehensible; it is not permissible to live under infidel control. If they fulfill their pledge to escape, they will nonetheless be among the saved. The members of the third group have lost their religion and deserve a severe punishment. The commonly accepted doctrinal position is that they should be killed without an opportunity to repent. It is also not permissible to empower the Christians through trade.

5. Excerpts from the Fatwā Collection of Abū al-Qāsim al-Burzulī (d. 841/1438), Ifrīqiyyā, and from a Fatwā by Ibn Rabīʿ (d. 719/1319), al-Andalus

The first text was found in the same notebook as the preceding one. It comes from the chapter on jihād in al-Burzulī’s fatwā compilation. When the issue of Muslims living under polytheist rule (as a result of conquest) arose, it was assimilated to the case of a non-Muslim who lives outside of Muslim territory (a ḥarbī) and converts to Islam but remains in non-Muslim territory (dār al-ḥarb). According to several Mālikī authorities, the convert’s property remains licit for seizure by Muslims; his property is not granted inviolability until he brings it to Muslim territory. The convert is required to emigrate to Muslim territory as soon as possible.

Ibn Rabīʿ was asked about Muslims who choose to remain resident in lands that have been conquered by Christians. Such Muslims are subject to Christian laws, they pay taxes to the Christians, and they are exposed to humiliation. Ibn Rabīʿ answered that the phenomenon of Muslims being subject to Christian power arose only after the first centuries of Islam, after the passing of the founding masters of the Islamic schools of law. Only the cases of converts to Islam and dhimmīs (Christians or Jews living under Muslim rule) had been
discussed. Only once this new phenomenon arose in the fifth/eleventh century, when Christians conquered Sicily and parts of al-Andalus, were Maghribī jurists questioned about it. They determined that the case of the conquered Muslims follows the same rules as does the case of those who convert to Islam in ḏār al-ḥarb. The jurists saw no difference between these two groups with respect to their property and children, which are not inviolable and may be taken as booty. For al-Shafiʿī, being Muslim is sufficient to provide inviolability of person and property, but for Mālik, inviolability of property must be established in Muslim territory. If a Muslim fights for the enemy against Muslims, his life is additionally forfeit. If he aids the enemy war effort financially, his women and children should be taken and his children raised as Muslims, free from religious corruption.

6. Third Fatwā of Ibn Barṭāl (d. ca. 901/1495), Fez

Question: Some Muslims live near the Christians. A group of these Muslims is at odds with the Christians and secretly cultivates land at the edges of the area under Christian control, profiting thereby at the expense of the Christians. A second group of these Muslims has signed a treaty with the Christians, but they do not intend to pay the tribute that will be due in October. Instead, the members of this group will remain where they are, hoping to be at the forefront of a jihād against the Christians if the Muslims come to aid them; if not, they will relocate to Muslim territory before paying the tribute. A third group has signed a treaty and intends to remain where they are and to pay the tribute.

Another question: A man from Christian-occupied Asilah owes a debt, but he has been captured by the enemy. Can the creditor claim his debt from the debtor’s property (in Muslim territory), or must the man be ransomed first?

Answer: This horrifying affair has threatened the pillars of Islam and blotted out the very days and nights. The members of the group that is prepared for jihād with the Christians are engaged in a powerful act of devotion to God. They are among the Muslims whose intercession is accepted. The actions of the second group are reprehensible; it is not permissible to live under infidel control. If they fulfill their pledge to escape, they will nonetheless be among the saved. The members of the third group have lost their religion. It is not permissible to conclude a treaty that requires Muslims to pay tribute to infidels. It is obligatory for you (the questioner) and other respected masters who reside in this area to inform these people of their error and to rebuke those among them who hold power and authority. If they do not heed these warnings, they must be rebuked and you must not attend to their legal affairs. You mentioned earlier that within this third group are Muslims who spy for the Christians. They deserve a severe punishment. The commonly accepted doctrinal position is that they should be killed without an opportunity to repent. You also mentioned that they pay tribute to the Christians and trade with them. We answered you: it is not permissible to empower the Christians through trade, especially in goods that strengthen them. Islam must be elevated.

Answer to the other question: The creditor must establish the amount he is owed before a judge. Then he may retrieve his due from the debtor’s property. No need to delay in order to pay the man’s ransom.
7. Al-Wansharīsī’s (d. 914/1508) “Berber” Fatwā, Fez

Question: A group of Berbers (al-barābir) live in their lands, under infidel rule. They have the means to leave. Is it permissible for them to remain? Some of them merely reside under infidel rule, while others also trade with the enemy. Yet others convey information about the Muslims to the enemy. Another group fishes with them and says to them, “May God prolong your time.”

Another question: If the infidels seize Muslim property, is it legitimate for other Muslims to then buy that property? A religious functionary has been buying books from them, so that they are not in the possession of infidels.

Answer: Submission to infidel rule is not permitted. Those who have the ability to emigrate to Muslim territory are required to do so. Evidence for this obligation to emigrate (to perform hijra) is found in the Qurʾān, the sunna of the prophet Muḥammad, and the scholarly consensus of the jurists. Qurʾān 4:97–99 (in which the angels ask those who claim to have been abased in the land why they did not migrate, as God’s earth is spacious) is evidence of this obligation. This passage also indicates that those who are unable to emigrate will be forgiven for remaining under infidel rule. As for the sunna, Muḥammad said that he is not responsible for any Muslim who lives among the polytheists. The Qurʾān, sunna, and scholarly consensus all affirm that a convert to Islam in non-Muslim territory is obligated to emigrate from there to Muslim territory, so that he is not subject to infidel laws. This same obligation to emigrate applies to Muslims whose lands are conquered, even if emigration proves very costly. Those who are able to emigrate but do not do so compromise their inviolability and forfeit their integrity.

Mālikī scholars have disagreed as to the property rights of Mudéjars (ahl al-dajn, Muslims subject to Christian rule). At issue is whether their ownership over their property is valid and inviolable, as is the case with Muslims living in Muslim territory, or whether they lack valid ownership over their property, because that property is in dār al-ḥarb. One scholar stated that other Muslims should not interact with Mudéjars. Another scholar held that no blood money is owed for the accidental killing of a Mudéjar. Other scholars refused to accept written documents from Mudéjar judges.

Entering infidel-ruled territory for trade is not permissible and results in the loss of legal probity (one may not lead prayer or offer testimony). The only permissible reason to travel to enemy territory is to ransom Muslim prisoners.

The leaders of the Muslims as well as the community must prevent entry into dār al-ḥarb. They must place observation posts along the route to block anyone from entering. This is especially important to prevent anyone from providing the enemy with contraband materials that would aid them militarily against Muslims. Such materials include horses, weapons, saddles, copper, iron, furnishings, and leather; they also include banners and garments that might be used to intimidate Muslims. Slaves must also not be sold to them, as they may serve as informants.

As for spying: some early Mālikī authorities held that those convicted of spying must be killed, without an opportunity to repent. Others held that they should be whipped, imprisoned, and then exiled. Another jurist suggested differentiating between those who
commit a single offense versus those who are regular informants for the enemy. Others were in favor of excusing an act of espionage if done out ignorance, or recommended referring all such decisions to the ruler. The Mālikī debates on this issue are too complex to be summarized here.

As for those who fish with the enemy and take their legal disputes to the enemy’s courts: these acts are extremely reprehensible and result in a loss of probity. This behavior humiliates Islam and Muslims. Praying for the infidel to remain and for this period to be prolonged is a sign of apostasy. Such a prayer indicates contentment with unbelief, and contentment with unbelief is unbelief. These people should be beaten and punished in the hope that they will repent.

As for the question about purchasing the former property of other Muslims from a non-Muslim resident of non-Muslim territory (a ḥarbī): the original Muslim owner of a slave or other property has the right to buy that slave or property back from the current owner, who has recovered the property from dār al-ḥarb. The original owner must pay to the current owner the same purchase price that the current owner paid to the ḥarbī in order to acquire the slave or goods. This rule applies to the case of entering dār al-ḥarb in order to recover books. In this case, the person entering dār al-ḥarb for this purpose should prioritize the books in order of importance: copies of the Qurʾān, then hadith, law (fiqh), jurisprudence and theology (uṣūl al-fiqh and uṣūl al-dīn), Arabic, linguistics, medicine, first-rate exegesis, and finally recitation of the Qurʾān.

8. Fatwā of Ḥamdūn (d. 1071/1660–61), Fez

Question: A Sunnī, Mālikī man lives among Muslims whose doctrines differ significantly from those of the four recognized Sunnī schools of law. For example, this group holds that congregational Friday prayers are not obligatory at this time, because there are no just rulers in our time. They also deny that the prophet Muḥammad made the night journey to the heavens, and they hold that those who enter hellfire suffer there eternally. Is it permissible for this Sunnī man to continue residing in this area? He has immovable property and possessions there; must he sell them and perform hijra in order to move away from this group? They do not impose their doctrine on him or call him to it; he has his doctrine (Mālikī) and they have theirs.

Answer: If this man is able to identify a land free of these beliefs and can move there without difficulty, he must do so. If the widespread corruption of our times leaves him unable to find a more suitable location in which to reside or uncertain of his ability to do so, he should remain where he is and keep to his house, making his home his refuge. This is if the heretical group is discreet and does not expose the man or his family to religious corruption (fitna). But if these people openly implicate themselves in infidelity, they are infidels. In that case, the prohibition on living in their midst is no different from that on living among infidels; in that case, the man must sell his property and emigrate.
9. Excerpt on the Categories of Hijra

An excerpt describing several categories of *hijra*, emigration. Muslims have a continuing obligation to emigrate from infidel territory, or from areas of widespread heresy and disobedience to God, to Islamic territory. The evidence for this obligation includes Qurʾān 4:97–100, which exempts only the weak from emigrating away from oppression, and the *ḥadīth* according to which Muḥammad declared himself free of any Muslim living among the polytheists. Scholars are particularly obligated to emigrate because God has honored them with knowledge, and it is not permitted for them to disgrace themselves.

10. *Fatwā* of al-Bijāʾī (d. ca. 901/1495), Fez

Question: There is a location full of evildoers and oppressors, where unlawful acts and taxes are widespread. Muslims are debased and infidels are glorified, but the virtuous men in this area are too afraid to condemn reprehensible acts. What should a seeker of knowledge who is compelled to study with the scholars of this region do? May the student remain in this region, even though it is not possible to correct these reprehensible behaviors? Is it permissible for such a student to buy goods there, despite the taxes Muslims are required to pay? Or must he move from this region to another region in order to remain safe from corruption?

Answer: A true believer must flee from corruptions with his religion and settle only where exemplary practices are upheld. He must seek knowledge only from worthy teachers. He must travel if needed to seek this knowledge, but the obligation to emigrate is conditional on the ability to do so and on the presence of a suitable destination.

If he does not meet the condition of being able to migrate, or there is no suitable, virtuous destination or no rightly guided teacher to study with in another region, then he may remain where he is. In this case, he may be considered among those who are exempt from the obligation to emigrate. The man should patiently persevere, gathering what knowledge he can from anyone who has something to teach him. He may also buy goods, but he must practice discretion in order to contribute as little as possible to a system of unjust taxes. He must be wary not to allow himself too many dispensations from religious requirements. If he can limit himself to the necessities, his religion will not be adversely affected.

11. First *Fatwā* of al-Zawāwī (d. 815/1412–13), Bijāya

Question: Are those who live in Christian territory (*ard al-Naṣārā*) obligated to emigrate?

Answer: According to Ibn Rushd, the scholars have come to a consensus that Muslims are prohibited from remaining voluntarily in infidel territory, where they are subject to infidel laws. Those who are able to flee must do so.

12. Second *Fatwā* of al-Zawāwī (d. 815/1412–13), Bijāya

Question: A man lives in Christian territory and wants to emigrate, but he is forbidden to do so by one or both of his parents. May he leave without their permission, against their wishes? Does the answer depend on whether or not he fears losing them? Or on whether they have other children?
Answer: The man does not need his parents’ permission to depart, as he owes no obedience to them in disobeying God. No textual precedent clarifies the issue of the man’s fear of losing his parents. This would no doubt constitute a conflict of obligations, so the principle to be followed is to prioritize the stronger obligation. If the parents have other children, the rule is the same as above: the man’s obligation is to flee, without seeking their permission.

13. Third Fatwā of al-Zawāwī (d. 815/1412–13), Bijāya

Question: Please explain the meaning and virtues of hijra.

Answer: The well-known hijra was the obligation to emigrate to the prophet Muḥammad prior to the conquest of Mecca. After the conquest of Mecca, that particular hijra lapsed, but the obligation remained to flee from places where one fears for the soundness of one’s religion, or where there is no one to teach the essentials of the religion. It is especially necessary to flee from lands that have been seized by the infidels and from anywhere where infidel laws are applied to Muslims.

14. First Fatwā of Ibn Zakrī (d. 899/1493–94), Tlemcen

Question: What is your view of a certain sharīf (descendant of the prophet Muḥammad) who is undertaking command of the jihād now in the Far Maghrib, in the environs of Ceuta and her sister cities? Are this man’s actions permissible, considering that the sultan of these lands has signed a peace treaty with the polytheists? Is the treaty, which was signed for a term exceeding twenty years, legitimate?

Answer: This man may continue to fight the infidels if he is safe from those who might try to prevent him from combating the enemy, and if he believes that the enemy is also fighting Muslims elsewhere. The treaty in question is invalid because such treaties may only be signed for a period of two or three years, and because it strengthens the enemy at the expense of Muslims.

15. Second Fatwā of Ibn Zakrī (d. 899/1493–94), Tlemcen

Question: What is your view concerning the tribes of the Far Maghrib near Ceuta, Tangier, Asilah, and Ksar es-Sghir that have intermingled their affairs with those of the Christians? When the Muslims plan a raid, these Maghribi tribes inform the Christians, who are able to prepare a defense. Sometimes these tribes fight for the Christians against other Muslims. What is the legal status of their lives, property, women, and children? Should they be exiled from these lands? May they be fought?

Answer: This group, considering this description, must be fought and killed like the infidels with whom they have allied. Whoever allies with the infidels is one of them.
Manuscripts and Methodology

As noted above, this critical edition presents one continuous excerpt from the chapter on jihād in al-Zayyātī’s Selected Jewels (al-Jawāhir al-mukhtāra). This compilation remains unpublished, but at least three partial critical editions that include the chapter on jihād have been produced as student theses. Although I have obtained copies of two of these, an MA thesis defended in 2013 by Ghaniyya ʿAṭwī and a PhD dissertation defended in 2019 by ʿAbd Allāh al-Amin, I have made no attempt to note the many discrepancies between our editions. As specified below, some of these fatwās also appear in an abridged form in al-Wazzānī’s two published fatwā collections, al-Mīʿār al-jadīd and al-Nawāzil al-ṣughrā.

I have based this edition on the following three manuscripts of Selected Jewels: Moroccan National Library MS 1698D, 2:40–49 (hereafter BNRM); Ḥasaniyya Library MS 5862, 247–53 (hereafter Ḥ); and General Library and Archives of Tetouan MS 178, 262–68 (hereafter T). The Ḥasaniyya and Tetouan manuscripts were both copied by Muḥammad b. Masʿūd al-Tazrūtī al-Waryāglī within two years of each other. The colophon in the Ḥasaniyya manuscript offers a copy date of 4 Jumādā II, 1100 (February 24, 1689), while the Tetouan manuscript was copied in 1102/1691.

I have drawn on all three manuscripts equally in establishing the Arabic text, and I note each manuscript’s discrepancies from this established text in the footnotes. Arabic words and phrases are given in parentheses in the notes to avoid confusion when they are combined with English punctuation. In the main Arabic text, numbers in brackets indicate page transitions in the BNRM manuscript, since it is the most frequently cited in scholarship on this text. The titles in italics are my own editorial additions.

I have emended al-Zayyātī’s text occasionally on the basis of the versions of these fatwās that appear in the following sources: (1) an unpublished edition of a fatwā by the Andalusī

68. Ghanīyya ʿAṭwī, “al-Jawāhir al-mukhtāra mimmā waqaftu ‘alayhi min al-nawāzil bi-Jibāl Ghumāra” (MA thesis, University of Constantine 2, Algeria, 2013). ʿAṭwī based her edition on three manuscript copies, one held by the University of Constantine 2 and two held by the Moroccan National Library (BNRM 1698D and BNRM 3832D).

69. ʿAbd Allāh al-Amin, “al-Jawāhir al-mukhtāra mimmā waqaftu ‘alayhi min al-nawāzil bi-Jibāl Ghumāra” (PhD diss., University of Sidi Mohammed ben Abdellah, Fez, Morocco, 2019). Al-Amin, who also consulted ʿAṭwī’s thesis, based his critical edition on the following four manuscript copies: Tetouan MS 178, the copy held by the al-Khizāna al-Dāwūdiyya in Tetouan, BNRM 1698D, and the copy of volume 2 held by the Fondation du Roi Abdul Aziz Al Saoud in Casablanca (MS 584). I am grateful to Dr. Muhammad Wassu for his assistance in obtaining a copy of this dissertation.

70. The third thesis that includes al-Zayyātī’s chapter on jihād is mentioned in Cherif, “Mulāḥizāt,” 167, n. 38. Cherif notes that he is in the process of completing a full edition of both volumes of Selected Jewels (177).

71. This excerpt represents a small portion of al-Zayyātī’s chapter on jihād. As noted above, the page range for the full chapter in the various manuscripts is as follows: BNRM, 2:1–74; Ḥ, 225–67; T, 239–81. All three manuscripts are numbered by pages, not folios.

72. The colophon for the Ḥasaniyya manuscript is located on page 224, at the end of the first volume (ṣafr). Both of al-Zayyātī’s volumes were copied into a single bound volume as MS 5862. There is no additional colophon at the beginning or end of the second volume, which begins on page 225 with the chapter on jihād. For the Tetouan manuscript, I have seen only the chapter on jihād and am relying on the copy date and copyist name recorded in al-Kharshāfī, “Dalīl al-makhṭūṭāt al-maghribiya,” 120.
Mālikī jurist Ibn Rabī‘ (d. 719/1319) prepared by Sjoerd van Koningsveld, Gerard Wiegers, and Umar Ryad;\(^{73}\) (2) al-Wazzānī’s aforementioned fatwā collections (al-Mi‘yār al-jadīd and al-Nawāzīl al-ṣughrā); and (3) ‘Alī b. ʿAbd al-Salām al-Tasūlī’s fatwā compilation, al-Jawāhir al-nafīsa fī-mă yatakarraru min al-ḥawādith al-gharība. I have consulted two manuscript copies of the latter text, which remains unpublished: Ḥasaniyya Library MS 12574, volume 2, and Tunisian National Library MS 5354.\(^{74}\) I also consulted additional sources cited by the jurists in Selected Jewels and have noted any emendations made on that basis. Biographical references are provided for the jurists who issued the fatwās recorded here, as well as for most of the jurists mentioned in the text. Finally, I provide references for verses of the Qur‘ān as well as ḥadīths that are cited or alluded to in the text.

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\(^{73}\) I am very thankful to these scholars for generously sharing their unpublished work with me.

\(^{74}\) This manuscript number for the Ḥasaniyya copy (MS 12574) corresponds to six volumes of al-Tasūlī’s compilation (however, this is not a complete set; the full compilation is longer). The Ḥasaniyya card catalog (now replaced by a General Index) referred to this work only as “nawāzīl,” while Tunisian National Library MS 5354 is catalogued under the title al-Turjumān al-mu‘rib ʿan fatāwā mutaʾakhkhirī ʿulamā’ al-Maghrib. The title given above (al-Jawāhir al-nafīsa, hereafter Precious Jewels) is found in al-Tasūlī’s introduction. In his critical edition of al-Tasūlī’s responses to the Algerian resistance leader Amīr ‘Abd al-Qādir, ʿAbd al-Laṭīf Ṣāliḥ confirms this title, records a portion of al-Tasūlī’s introduction to Precious Jewels, and discusses MS 5354 in particular. See ‘Alī b. ʿAbd al-Salām al-Tasūlī, Ajwībat al-Tasūlī ʿan masā’il al-Amīr ‘Abd al-Qādir fi al-jihād, ed. ʿAbd al-Laṭīf Ṣāliḥ (Beirut: Dār al-Gharb al-Islāmī, 1996), 54–58.
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Selected Jewels:
Legal Cases I Encountered in the Ghumāra Mountains

‘Abd al-ʿAzīz b. al-Ḥasan al-Zayyātī (d. 1055/1645)

1. First Fatwā of Ibn Barṭāl

[BNRM, 2:40–41; H, 247; T, 262. This is the first of three fatwās by Ibn Barṭāl in this portion of al-Zayyātī’s Selected Jewels. Al-Wazzānī appears to have condensed all three of these texts into a single composite fatwā attributed to Ibn Barṭāl in his al-Nawāzil al-ṣughrā (1:419). Two recent articles introduce and reproduce Ibn Barṭāl’s three fatwās as they appear in the Tetouan manuscript of Selected Jewels. See Cherif and al-Zāhirī, “Fatāwā Ibn Barṭāl,” 47–72; Cherif, “Qaḍāyā ḥarija,” 51–71.]

67. This fatwā begins on line 27 of 33. As noted above, page transitions in brackets refer to the BNRM manuscript.

75. BNRM, 2:40–41; H, 247; T, 262. This is the first of three fatwās by Ibn Barṭāl in this portion of al-Zayyātī’s Selected Jewels. Al-Wazzānī appears to have condensed all three of these texts into a single composite fatwā attributed to Ibn Barṭāl in his al-Nawāzil al-ṣughrā (1:419). Two recent articles introduce and reproduce Ibn Barṭāl’s three fatwās as they appear in the Tetouan manuscript of Selected Jewels. See Cherif and al-Zāhirī, “Fatāwā Ibn Barṭāl,” 47–72; Cherif, “Qaḍāyā ḥarija,” 51–71.

76. This fatwā begins on line 27 of 33. As noted above, page transitions in brackets refer to the BNRM manuscript.

77. I have standardized the spelling of words such as this, which are written without a hamza in the original.

78. I have emended (م) from BNRM and T on the basis of the spelling of Ibn Barṭāl’s name in the other two fatwās attributed to him in this section. This word is illegible in H.

79. Abū al-Ḥasan ‘Alī b. ʿAbd Allāh al-Aghsāwī, known as Ibn Barṭāl (d. ca. 901/1495), a Mālikī jurist active in Fez. I have not found any bibliographical notices dedicated to Ibn Barṭāl, but the notices for other jurists list him as a contemporary of al-Waryāglī (d. 894/1488–89; see below) and of Mūsā b. al-ʿUqda al-Aghsāwī (d. 911/1506); the latter is further said to have studied with al-ʿAbdūsī (d. 849/1446) and al-Māwāsī (d. 896/1491). On the basis of these details, I place Ibn Barṭāl in Fez and estimate his death date as falling between those of his two known contemporaries. See the entry for Mūsā b. al-ʿUqda al-Aghsāwī in Muḥammad Ibn ʿAskar (d. 986/1578), Dawḥat al-nāshir li-maḥāsin man kāna bi-l-Maghrib min mashāyikh al-qarn al-ʿāshir, ed. Muḥammad Ḥajji, 3rd ed. (Casablanca: Manshūrāt Markaz al-Tūrāth al-Thaqāfī al-Maghribī, 2003), 37; Muḥammad b. Jaʿfar al-Kattānī, Salwat al-anfās wa-muḥādathat al-akyās bi-man uqbira min al-ʿulamāʾ wa-l-ṣulaḥāʾ bi-Fās, ed. ʿAbd Allāh al-Kāmil al-Kattānī et al. (Casablanca: Dār al-Thaqāfa, 2004), 3:109. Al-Wazzānī mistakenly has “al-Anṣārī” in place of “al-Aghsāwī” (al-Wazzānī, al-Nawāzil al-ṣughrā, 1:419). Al-Yūbī repeats this mistake and also writes “Ibn Qarṭāl” instead of “Ibn Barṭāl” (al-Yūbī, al-Fatāwā al-ṣafiyya, 212).

Al-ʿUṣūr al-Wusṭā 31 (2023)
2. Fatwā of al-Waryāglī

Wael al-Qabili, Abu Muhammad ‘Abd Allah al-Waryāglī,85 وأظنه من فقهاء طنجة - رحمه الله - ما تقول أئمة الهدى في إخواننا المسلمين المستوطنين ببلادهم، حيث يتبين أن هناك تعارض بين الفتوى على الإسلام، ولم يبقوا من البلقان إلا غيره من بلدان الإسلام، حيث لا يجري عليهم من الكرمة عدل ولا أحكام؟ هل يحكم الجنّ للمسلمين - أعطى الله - سفك دمائهم وpiryهم نسائهم؟ وأصحاب،86 أما رأيكم؟ هل تنص من تقيصهم في قيام الصلاة وإلتزام الزكاة وصوم رمضان أم لا؟

فأجاب: ما أدركه من هذه الطائفة الرديئة الخصبة التي طمس الله بصائرها بعده الإبصار، وأظنه أهالي الكفر إلى قلوبهم بعد الاستبصار، ورضوا بالاستيمران تحت الكرمة الأشخاص الذين يفوقون بالبرم، ويستثنى نبأهم ومؤلامهم - عليه أفضل الصلاة وأركان السلام - وعمري، فقيل هذا لا يضر إلا من ضعف الإنسان، ومن سبق له من الله الغواة والخرم. هذا مع تعليمهم للفكر، وتعديهم فلا إنه إلّا الله لإستيراد عباد الأمساكم، وكل هذا باتبةهم من غير إكراه. فالمحترم في حق هؤلاء لا لائحتهم، والفتاوا الصادرة فيهن،87 فضلاً علّمهن بجديد قلائهما وأخذ مالمه على حكم الفي، لأنّ الدار دار الكفر، ومجمل...

80. In all three manuscripts: (أoğم). I have emended this word on the basis of the text in the other fatwās.
81. In all three manuscripts: (ئم). I have emended this word for grammatical consistency.
82. In all three manuscripts: (موارد). I have emended this word on the basis of grammatical consistency.
83. In all three manuscripts: (أنتهى). I have preserved the abbreviation (أنتهى) as it appears in the text, indicating the end of a quotation or paraphrase from another text.
84. BNRM, 2:41; H, 247–48; T, 262–63.
86. In all three manuscripts: (أنتهى). I have emended this word on the basis of the context.
87. In BNRM and H: (ب).
3. *Fatwā of al-Māwāsī*\(^95\)


97. In H, this portion reads

(عَلَيْهِ رَحْمَةُ اللَّاهِ،) فِي مَعْلُومِهِ، وَقُسَمَ يَرْدَدَ إِلَيْهِمْ لِلْجَرَّةِ لَأَلَا لَعْلَمُهُمْ مَوْعِدًا، وَقُسَمَ يَرْدَدَ إِلَيْهِمْ لِلْجَرَّةِ لَأَلَا لَعْلَمُهُمْ مَوْعِدًا، وَقُسَمَ يَرْدَدَ إِلَيْهِمْ لِلْجَرَّةِ لَأَلَا لَعْلَمُهُمْ مَوْعِدًا.

BNRM and H each list four categories, which are fairly (but not entirely) consistent across the two copies, whereas T lists only three categories. Although none of these three versions of the question corresponds

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لنا حكم هذه الأقسام بياناً شافياً. فَاجَابَ: أمَّا مقام المسلمين اختياراً تحت إبادة الكفار فحرام. وإن من تركد إلى منازم خسر. فأمره مولاه، إذ لا يُلْحَدُ لله مُسْلَمَةً، فإن يقيم له، فهل يجب أن يتعبد في مذهب مالك. فَنَفَعَ ذلِكَ لا يُرَدَّدُهُمُّ إِبَادةً. فَجَزَى شهادته ولا إمامته. فَلَوَّعَهُ وَلَا حَيَبَتَهُ. أَمَّا حُكْمُ القسم الأوَّل، والإسلام يعلو ولا يعلى عليه.

فهو أسوأ حالًاً من القسم الأوَّل وأقبح منزلًاً.

أَمَّا حُكْمُ القسم الثاني، وهو من يتردد إلى منازلهم للتجر، فهذا أفتح الفرق الثلاثة وأشبه حالًاً بالجاسوس الذي على عورات المسلمين. وهو يkees على مصدر المصلحة، التي توجب من قام بها التجر، فهل يقتضي تلقيته، ومسؤولياته؟ وهو نظر من قام بقتل الجاسوس. أم لا يتم وقوعه في عقوبة وزجره. أو يفرز بين من اتخذ ذلك فنطة واحدة، خلاف معروف. وهل تقبل توبته أم لا؟ يشبه إلى ذمة، أو إجابة من قتل، درءًا لمضرّته ومفسدة. أو هو نظر من قال بقتل الجاسوس.

وهو أقرب إلى الكافروين من المؤمنين، فإن الحب للكافروين، والدعاء بعزّة لـه والاستطالة على المسئلون، هو أسوأ حالًا من القسم الأول، وأقبح منزلًا.

من القسم الثالث، وهو الذي يتردد إلى منازلهم للتجري، فهناك أببس الفرق، وهو الذي يكرس الله، وليمبهم بالآلام في الدنيا، ولهو يعرّفهم بالخيانة، وهو أسوأ حالًا من القسم الأوَّل، وأقبح منزلًا.

وأمثال الحكم بالعرق، وهو من يتردد إلى منازم للتجري، فهل يقتل ويجتهد إمامه في مسلمه، أو إجابة من قتل جاسوس؟ أو هو نظر من قال بقتل الجاسوس.

وهو فيفرص بن من اتخاذ ذلك فنطة واحدة، خلاف معروف. وهل تقبل توبته أم لا؟ يشبه إلى الدين، أو هو أقرب إلى الكافروين من المؤمنين، فإن الحب للكافروين، والدعاء بعزّة لـه والامتناع على المسئلون، هو أسوأ حالًا من القسم الأول، وأقبح منزلًا، ويتّبَأ الاعتقاد.\\n
perfectly with the text of the answer, the BNRM version offered above makes the most sense.

98. In Ḥ and T: (هذه لدته وودده في الدنيا).

99. In Ḥ and T: (الساعة). In BNRM, a mark above (may indicate a mistake, but there is similarly a mark under (الدنيا).

100. In Ḥ and T: (حراب).

101. Emended; all three manuscripts read (خير).

102. In Ḥ: (ينوي). In T: (سم).

103. In Ḥ and T omit (سم).

104. The portion in brackets appears only in al-Tasūlī’s Precious Jewels (Hasaniyya MS 12574, 2:234; Tunisian National Library MS 5354, fol. 240b).

105. All three manuscripts read (من).

106. In BNRM: (وله يكون به). In T, the end of (خيره) appears crossed out, such that it may read (خيره) or (خيره).

107. In Ḥ: (خير).

108. In all three manuscripts: (النصابية). Emended based on al-Tasūlī’s text, but see next note.

109. This sentence contains a number of grammatical inconsistencies and unclear phrases. I suggest reading the passage roughly as follows:

(وله يكون إخبارهم بالضرر، الذي توجب له من القتل، هل يقتضي ذلك فنطة واحدة، خلاف معروف. وهل تقبل توبته أم لا؟ يشبه إلى الدين، أو هو أقرب إلى الكافروين من المؤمنين، فإن الحب للكافروين، والدعاء بعزّة لـه والامتناع على المسئلون، هو أسوأ حالًا من القسم الأول، وأقبح منزلًا، ويتّبَأ الاعتقاد.)

110. In BNRM: (ينوي).

111. I have emended this word to fit the context. In Ḥ, the word is (يدعو). In BNRM and T: (يجتهد). In both manuscripts of Precious Jewels: (يَدَعَوْ). In al-Wazzānī: (يَدْعُو).\\n
112. In BNRM and Ḥ: (فيه).

113. In Ḥ: (يسار)، meaning (أيسر). Illegible in T.

114. In Ḥ and T: (تيم).

115. In Ḥ and T: (منائم).

116. In T: (استباب).

117. In all three manuscripts: (الائتلاة). I have emended this word on the basis of the context.
4. Second *Fatwā* of Ibn Barțāl

And the third fatwā of Abu l-husna on Ibn Abd Allah bin Brṭāl - may Allah accept him - is about three conditions: if the conditions are fulfilled, and if the condition is met; if the condition is fulfilled, and if the condition is met. If the conditions are fulfilled, and if the condition is met. If the conditions are fulfilled, and if the condition is met.

And it was narrated by Ibn Barțāl that he asked Abū Ḥusna bin ʿAbd Allāh bin Brṭāl what to do when the peace was concluded with the Christians, and they were divided into three sections: the section of the people of discord and war with the kuffars as the people of Mount Zabīb, they will seek them and ask for their safety. If they were not able to resolve the dispute, they went to the Muslims, so they asked him: What is your opinion about their remaining in their land and paying the tribute?

He replied: If the people of discord and war with the kuffars as the people of Mount Zabīb, they will seek them and ask for their safety. If they were not able to resolve the dispute, they went to the Muslims, so they asked him: What is your opinion about their remaining in their land and paying the tribute?

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5. Excerpts from the fatwā collection of Abū al-Qāsim al-Burzulī and from a fatwā by Ibn Rabīʿ:


وقال الفقيه أبو الحسن محمد بن يحيى بن ربيعة: «رحمه الله» – وقَد سُئل عن الإقامة مع الروم في البلاد [139]. وجيء إلى هذا الإقليل [140]. وقد سُئل عن الإقامة مع الروم في البلاد [141]. وجيء إلى هذا الإقليل [142]. وجيء إلى هذا الإقليل [143].


133. The Mudawwana was composed by ‘Abd al-Salām Saḥnūn b. Saʿīd (d. 240/854), known as Saḥnūn. In this foundational Mālikī text, Saḥnūn records the answers given to him by ʿAbd al-Raḥmān Ibn al-Qāsim (d. 191/806). Ibn al-Qāsim is said to have spent twenty years in Medina with the Mālikī school’s eponymous founder, Mālik b. Anas (d. 179/795). See M. Talbi, “Saḥnūn,” in EI 3; Jonathan Brockopp, “Ibn al-Qāsim,” in EI.

134. In H: (النار) (النار).

135. On Ibn al-Qāsim (d. 191/806), see above.

136. Aṣbagh b. al-Faraj b. al-Saʿīd al-Nāfiʿ (d. 225/839) was a prominent Egyptian Mālikī student of Ibn al-Qāsim and other early Mālikī scholars. See Jonathan Brockopp, “Aṣbagh b. al-Faraj,” in EI.

137. Abū al-Walīd Muḥammad b. Ahmad Ibn Rushd (d. 520/1126) was a prominent Mālikī jurist from Córdoba. He is referred to as Ibn Rushd “al-Jadd” (“the grandfather”) to distinguish him from his grandson of the same name, who was the famous philosopher and jurist known in the west as Averroes. See Delfina Serrano Ruano, “Ibn Rushd al-Jadd (d. 520/1126),” in Islamic Legal Thought: A Compendium of Muslim Jurists, ed. Oussama Arabi, David S. Powers, and Susan A. Spectorsky, 295–322 (Leiden: Brill, 2013).

138. Abū ʿAbd Allāh Muḥammad b. Muḥammad Ibn ʿArafa al-Warghammī (d. 803/1401), known as Ibn ʿArafa, was an important Mālikī scholar and muftī of the Great Mosque of Tunis. On him, see Mohammad Fadel, “Ibn ʿArafa al-Warghammī,” in EI.

139. Although this name is spelled Ibn Rabīʿa in all three manuscript copies, van Koningsveld and Wiegers note that this is a misspelling of Ibn Rabīʿ. Van Koningsveld and Wiegers, “Islamic Statute,” 20.

140. In H and T: (النار).

141. BNRM omits (النار).

142. In T: (النار).

143. In H: (النار) (المшелجة) ( 들 적오) (출판하여) (출판하여).
في أحكام تنفيذها، وهو من والدته من ذلالة صاغًا في ذمننا وعهدنا معظمًا لدينا، وعليه معترض.

145. In Ḥ: (َّلَّنِ). In van Koningsveld, Wiegers, and Ryad’s edition, this sentence continues, ending as follows: (. . .).  

146. Emended. In all three manuscripts: (َّتَسْتَفْوَهَا).  

147. All three manuscripts read (بًأَرْتَكَبُهَا). Emended on the basis of the text in Ibn Rabī‘, which reads (فَأَجَابُوا أَنْ أَحْكَامُهُمْ).  

148. All three manuscripts of al-Zayyātī’s text read (فَأَجَابُوا أَنْ أَحْكَامُهُمْ); I have emended this sentence on the basis of Ibn Rabī‘s text, which omits (فَأَجَابُوا).  

149. In Ḥ: (أَلْحِقُوهَا). In all three manuscripts read (فَأَلْحِقُوهَا). In Ibn Rabī‘: (فَأَجَابُوا أَنْ أَحْكَامُهُمْ).  

150. All three manuscripts read (أسْوَى). In Ibn Rabī‘: (فَأَجَابُوا أَنْ أَحْكَامُهُمْ).  

151. All three manuscripts of al-Zayyātī’s text read (فَأَجَابُوا أَنْ أَحْكَامُهُمْ); I have emended this sentence on the basis of Ibn Rabī‘s text, which omits (فَأَجَابُوا).  

152. All three manuscripts of al-Zayyātī’s text read (فَأَجَابُوا أَنْ أَحْكَامُهُمْ); I have emended this sentence on the basis of Ibn Rabī‘s text, which omits (فَأَجَابُوا). This longer phrase makes (فَأَجَابُوا أَنْ أَحْكَامُهُمْ) redundant.  

153. Muhammad b. Idrīs al-Shāfi‘ī (d. 204/820), eponymous founder of the Shāfi‘ī school of law.  

154. In Ḥ: (إِلَى العاصِم).  


156. Qur‘ān 8:72.  


159. I have emended this sentence on the basis of Ibn Rabī‘s text. All three manuscripts read (بًالَّذِينَ نَفَسَتْهُما).
6. Third *Fatwā* of Ibn Bartāl

and the *precious jewels* of the fatwās

6. Third Fatwā of Ibn Bartāl

وسلم الفقيح أبو الحسن علي بن عبد الله بن علي الأغصاوي، وأظهَر المعروف بابن برطال – رحمه الله – عن

أئمّة بسَلَماء قريبين من النصارى، فهنا على أقسام: قسم مكَّن على الفتحة مع النصارى وتخْروَن في أطراف

بلاد الصلح على وجه السرقة، إذ العدوّ لا يعرف حدود البلاد ولا ابن حُرِّتهم.

وقسم صاحبنا ولكن نَبْههم أفهم لا يُؤوِّنَ مغزاً لأن النصارى كانوا أخَروُن بالمغزاء إلى شهرين أكتوبر وعندما يُؤوِّنُونه

[2:44] هم فأَصَمروهُ  

في نفسهم أُمّهُن يُتَكَّون في بلادهم إلى ذلك الأجل، فإذا أنكَن عليهم المسلمون، فيكونون هم الأوَّلون.

في الجهاد، فإما أن لا يُؤوِّنُوهُ، فإنَّهم فخروا إليهم. فما حكم الله في أصحاب هذا الفساد؟

ومقسم صاحبنا وبيِّنه السكَّن فوجه التأبيد وتأدية المغرم كذلك. فما حكم الله على هذا الوجه المذكور؟

ومسألة أخرى: رجُل من أهل أصيلة – أعاده الله تعالى للإسلام – ترَتُب عليّه دين لرجل، ثم أسره العدوّ وله هذا المالي فتَنَتقي ضرب الدين من هذا المال دين أبي ففدييُه وآثاقل، إنا أن نبيّن ذلك.

فأجاب: الحوار عن المسألة المئوية التي هوّل  

بما أزرقهم الإسلام وطمسّت بما أعيين  

التلثّث السكَّن على مجاهمة العدوّ والتأهِّب لجهادهم، وإن كانهم قد يفتيهم المسلمون المشغّعون بِإسلامهم الذين يجب عليهم التأخير بِغبار

أقدامهم فأنّهم في عبادة ما أعظمها عبادةً. فليبني كنّهم فأثقلوا فؤاداً عظِّيمًا.

وأما الثلث الثاني السكَّن بنيّة أنّه إن أضطهده العدوّ من غيره فيه كره وغلبتهم واستميتهم، فإنَّهم إذا إن وفّي بما عقد عليه بيبته، فإنه من الناجين إن شاء الله.

فاعلى، إذا فطعت العموم عليهم رأساً لأنهم غز وسلم.

وأما الثلث الثالث، فليس الثلث لأنه خسر دينه ودُنها، وخلاف ما أمر به مولاه، أنه لا يُحَل للسلم أن يُعمد الصلح

مع الكفار على أن يُعَزُّهُم، بتأفك في مذهب مالك. فمن فعل ذلك كان عاصيًا لله تعالى ومخالفًا لرسوله صلى الله عليه وسلم. ووُلِّاج عليه وعلى ساداتنا المستوطنين هالكتكم أن يُعرِّفو هذا الثلث خبطه، وأن يزرعوا أهل الحق والعقد من ذلك...

In BNRM: (من ذلك).

171. In BNRM: (فإنهم).

172. Emended on the basis of al-Tasūlī’s text; all three manuscripts of Selected Jewels read (كذَٰلِك).

173. In Ḥ and T: (بم).

174. In T: (ويخبرونّهم عوراتهم).

175. In BNRM: (لا).

176. T omits (لا). As in Ibn Barṭāl’s second fatwā above, something appears to be missing from this sentence. The meaning is that although a Muslim’s life is normally inviolable, the Muslims in this group have rendered their lives violable through their actions.

177. In Ḥ and T: (ف).

178. This sentence, unique to Ibn Barṭāl’s third fatwā, appears to be corrupted. All three manuscripts of Selected Jewels (BNRM 2:44, H 249, and T 264) and the Hasaniyya Library manuscript of Precious Jewels (MS 12574, 2:238) read (الصادق بن مرين) but no Marinid ruler was known by that name and Ibn Barṭāl lived in the late fifteenth century, in the (post-Marinid) Waṭṭāsid era. The mention of events upcoming in October and the reference to occupied Asilah reinforce the conclusion that the fatwā addresses Portuguese occupation in late fifteenth-century Morocco; Portugal captured Asilah in 1471. The Tunisian National Library manuscript of Precious Jewels (MS 5354, fol. 241b) records a blank space instead of ʿImād, indicating a particular problem with this name or word. A fourth manuscript copy of Selected Jewels, recently made available online through the digital manuscript library of the Fondation du ROI Abdoul Aziz Al Saoud in Casablanca, also reads ʿImād al-Marīnī (MS 584, p. 47; full fatwā 46–47). I suggest emending the text to read (علماء مرين) (Uthmān al-Marīnī). Although the reference to a Marinid ruler remains anachronistic, the Marinid sultan Abū Saʿīd ʿUthmān III (r. 1398–1420) was in power in 1415 when Portugal captured Ceuta. It may be that part of a legal response to that earlier conquest was inserted into this fatwā. On this point, see Hendrickson, Leaving Iberia, 275, n. 16.

179. In BNRM: (ومن ذلك).

180. In Ḥ: (عثمان المريي) makes more sense (Ḥasaniyya Library MS 12574, 2:38). This passage appears as follows in BNRM:

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7. Fatwā of al-Wansharīsī (the “Berber Fatwā”)

وسن الإمام حافظ زمانه أبو العباس أحمد بن يحيى الونشرسي – رحمه الله ورضي عنه – عن قوم من البرابر:

أقاموا بأوطان تحت طاعة العدو الكافر، فهم يجدون سبيلاً إلى الخروج من تلك الأوطان. هل يجوز لأي واحد منهم هكذا أم لا؟

وهم ومع العدو على أقسام: منهم من يقيم بطنه ولا يذهب إليهم، لا للتجارة ولا غيرها. ومنهم من يذهب إليهم لقصد التجارة لا غيرة. ومنهم من يذهب إليهم لقصد التجارة وتعريفهم بأهل المسلمين. ومنهم من يصطاد معهم وميسرون بألوطن المسلمين، وينشكون إليهم ويدعونهم «الله يطيل مدةكم».

وما الحكم سيدي فيما استولى عليه العدو الكافر من أموال المسلمين؟ هل يجوز شراءهم منهم أم لا؟ فإن بعض الطلبة يذهب إليهم لاستخلاص الكتب من أيديهم بالشراء. يتنزها لنا ذلك، ولهما الأخلاق، والسلاط عليهم.

فأجاب: حاص السؤال بما استحل عليه من الأنواع يرجع إلى أسلحة: الأول المقام بأرض الحرم والدخول تحت إبالة الكفر. والثاني الدخول إليهم للتجارة والإخبار بعورة المسلمين. والثالث الأصطباب معهم وتركهم بينهم ويدعوا لهم بالبقاء. وهذا الخاص في حكم ما استخلص من أموال المسلمين.

(وعماد المرسي قائم الدين، مرحوا الانتصار، بجود الحرص على استخلاص بلاده، حملوا الأفتصاد، أسهأ مضموءاً، فارحب واكترينا)

Variant in BNRM, 2:45(a)–2:45(b); H, 249–51; T, 264–66. BNRM MS 1698 repeats page numbers 45 and 46.

Al-Wansharīsī’s fatwā begins on the first instance of page 45, which I refer to as 45(a) here (2:45 in the Arabic text). The fatwā continues through the first instance of page 46 and ends on the second instance of page 45, which I refer to as 45(b). An abbreviated version of this fatwā is included in al-Wazzānī’s al-Miʿyār al-jadīd, 3:28–31.


181. إملاء مثال الجمع، وإن يحمله.

182. In BNRM: (م).


184. H omits (م). In T (م) has been corrected from (م). In BNRM: (م).

185. In BNRM: (من).
فأما الأول، فجوابه - والله سبحانه وتعالى - أن الدخول تحت طاعة الكفر والمقام بدار الحرب مع اللمكي من النحلة عنها والبعد عنها حرام، لا يجوز طرفة عين ولا ساعة من غير. والواجب المحتلم اللزوم أن يجري بقاء الكفر ينتمي عنها إلى الإسلام بحيث لا يجري أحكامهم، والدليل على ذلك الكتاب والسنة الإجماع.

أما الكتاب، فإن قوله تعالى: {أن الذين أنفقوهم الملائكة ظالمي} قالوا: {كل من مستضعف من الرجال}. 

وأما السنة، فإن قوله - صلى الله عليه وسلم - {وإلى الذين والنساء والولدان}، لا يسifique حيلة ولا يتورث لبلا عفراء. فأولئك على الله أن يعفو عنهم، وكان الله عفوٌ غفورًا.

وأما السنة، فإن قوله - صلى الله عليه وسلم - {أنا بريء من كل مسلم يقيم مع المشركين}. 

فإذا وجب، بالكتاب والسنة وإجماع الأئمة، على من من أسلم يخرج بهورا ويلحق بدار الإسلام، ولا ينوي أو يقيم بين أظهرهم لئلا يجري عليه أحكامهم، فإن يجب في حق المسلم الأصلي أحرى وأولى. وقد كره 199 مالك رضي الله عنه - السكنى - في أرد لأنهم

وفي الأثر عن ابن ماجة: {ههنا قام الله في الأرض} قالوا: {أين ما كنتم؟}. 

لفوى أو يقيم بين أظهرهم لئلا يجري عليه أحكامهم، فإن يجب في حق المسلم الأصلي أحرى وأولى.

ومن هذه الأئمة على أنه لا يوجد سبيل إلى التنقل من حباب الكفر إلا ببذل ما له من المال، أو بناء عليه جويا م turbulently. قال: {فإن لم يفعل، لم تكن حرمت مئوا بل تقبل شهادته، ولم يكن له حق في الغني، والممسك}. ولهذا 200 اختلف المذهب في أموال الدجن.

وأما الديانة فعلى {الله عليه وسلم} {أنا بريء من كل مسلم يقيم مع المشركين}. 

وأما السنة، فإن قوله - صلى الله عليه وسلم - {أنا بريء من كل مسلم يقيم مع المشركين}.
السلام عليه، كأحلى الأهواء، ونص القاضي أبو الوليد الباجي 204 – رحمه الله – على أن المسلم، إذا أقام بدار الحرب مع القدرة على الخروج، وقيل خطأ، أهله لا دية 205 له، ونص أهل المذهب أيضًا على امتثال قول مهاتر 206 أهل الدين، كقضية دجن بن نسبة 2:46 [وقطعه 207 وقحه 208 وليكوس 209 وعليهم مسألة قتل 210 القاضي صحبة ولايتهم مقتضب JOHN.]

وأما الداخلي إليه ممن تمكن وطلب الدنيا وجمع خطأها، وهو النوع الأول من نواع السؤال الثاني من تقييسنا، وهو مجموع السؤال الثاني من الأصل، وأحد نوعي الثالث منه. فنص – رحمه الله – أن جرحته فيه، تستحق إما إمامة وشهادة إذا لا يجوز لأحد دخول أرض الشرك، إلا لمفاداة أسبا أسبار المسلمين. والواجب على أئمة المسلمين وجماعتهم – وفقهم 211 للسلام – أن يمنعوا من الدخول إلى أرض الحرب للتجارة ويضعوا لهم المراصد في الطريق لذلك حتى لا يجد أحد سبيل إلى ذلك، لا سيما إذا كان خشي أن يحمل 212 إليه ما لا يحل بيعه منهم، مما هو قوة على أهل الإسلام، لاستعانتهم 213 به في حروبهم.

قال في المدونة: وشدد مالك الكراهية في التجارة إلى أرض الحرب. قال: يجري حكم المشتركون عليهم، ولا يباع من الحربيين آلة الحرب من كراع أو سلاح وسروج وغيره، مما يقونه به في الحرب، من نحاس وخرثي وغيره.

وفي الواضح عن مطرف وابن الماجشون وكره أن يباع لهم الكراع والسلاح والحديد والنحاس والخرثي، وكل ما يساعون به في الحرب. وكذلك لا يجوز أن يباع منهم الطعام ولا غيرهم، من كل ما هو قوة لهم في دار حربهم.

وفي المقدم 214 لا يجوز أن يباعوا 215 شيئاً مما يستعينون به في حروبهم من كراع أو سلاح أو حديق أو حديق، ولا سيما مما يرشون به على الإسلام في تقاتهم، مثل الرآيات 216 وما يبقى من حربهم، فيباعون بما على الإسلام، وكذلك النحاس، لأث فيه يعملون منه الطبول، فيرشون به على المسلمين، وكذلك لا يجوز أن يباع من العبد النصير، لأنه يكون ديلة.

204. Abū al-Walīd al-Bājī (d. 474/1081) was an Andalusī judge and jurist. On him, see Makhlūf, Shajarat al-nūr, 1:178.
205. Ḥ repeats (لا دية).
206. In BNRM: (الخاطبة).
207. In H: (وقطعه).
208. In BNRM: (وقطعه).
209. In H: (وقطعه).
210. In BNRM: (وقطعه).
211. In H: (بيهم (بوجه (بوجه (بوجه (بوجه).
212. In H: (بيهم).
213. Emended; all three manuscripts read.
214. In BNRM and H: (بعدد). In T, this word has been corrected but appears to be (عمل ), a reading supported by the text in Ibn Rushd’s al-Muqaddimāt al-mumahhidāt (2:154).
215. In T: (الرسائل).
216. In all three manuscripts: (فسوا له). I have emended the text on the basis of Ibn Rushd’s al-Muqaddimāt al-mumahhidāt (2:154).
217. This text is al-Wāḍiḥa fī al-fiqh wa-l-sunna, composed by the Andalusi jurist ʿAbd al-Mālik b. Ḥabīb al-Sulami (d. 238/853). The two jurists mentioned here are Muṭarrif b. ʿAbd Allāh b. Muṭarrif (d. 220/835) and ʿAbd al-Mālik b. ʿAbd al-ʿAzīz b. al-Mājishūn (d. 212/827 or 214/829), both students of Mālik b. Anas.
218. This text is Ibn Rushd’s al-Muqaddimāt al-mumahhidāt, cited above.
219. In BNRM: (باباهم).
220. In BNRM: (نايهم).

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على المسلمين، وعمرة عليهم. وإنما يجوز أن يباح منهم من العروض ما لا يتقوى به في الحرب ولا يرهب به في القتال، ومن الكسوة ما يفي الحر وبرد، لا أكثر. ومن الطعام، ما لا يتقوى به مثل الملح والزيت، وما أشبه ذلك.

وأما النوع الثاني من نوع السؤال الثاني، وهو الذي يدخل في الحرب ولًا يرهب به في القتال، ومن الاستمرار، وأعورة عليهم. وإنما يجوز أن يباع منهم من العروض لما يتقوى به، مثل الملح والزيت، وما أشبه ذلك.


وأما النوع الأول من نوع السؤال الثالث، وهو الدعاء للملاعن الكفراء، ولأصلاته ما يتقوى به في الحرب ولا يقلع، ويعلوا ولًا يعلى عليه. وإن كان معتادًا، قتل. قاله ابن الماجشون. وقيل: يقتل إلا أن يبين جهله. وقيل: يتوب إلا أنه يعذر بجهله. وقيل: يجتهد فيه الإمام، وهي رواية العتي واللخمي.

وأما النوع الأول من نوع السؤال الثالث، وهو الدعاء للملاعن الكفراء، ولأصلاته ما يتقوى به في الحرب ولا يقلع، ويعلوا ولًا يعلى عليه. وإن كان معتادًا، قتل. قاله ابن الماجشون. وقيل: يقتل إلا أن يبين جهله. وقيل: يتوب إلا أنه يعذر بجهله. وقيل: يجتهد فيه الإمام، وهي رواية العتي واللخمي.
فتّشير عليه

يسلم على يديك،

ومنه عنده القرافي تأخير من أتى

شريعته

مع اعتقاد صحة رسالته، لأن إرادة إبقاء الكفر، يريد إرادة بقائه، كفر

أماته «

أن رجلاً قال لآخر

– رحمه الله – وهى

في

من هذى المعنى مسألة وقعت في أيام شهاب الدين القرافي

بكفره، لمما تضمنه من إرادة الكفر. وهى في مسألتكم أوضح وأبى،

فأخبر الشيخ شرف الدين الكركى

الله البعيد كافرًا،

حتى يتوبوا، كما فعّل عمر - رضي الله عنه - بصبيغ المتهم

يا أمير المؤمنين، إن كنت تريد دوائى، فقد بلغت موضع الداء، وإن كنت تريد

في اعتقاده، من ضربه إياه، حتى قال

فخلّى سبيله»

وقاتلهم

وأما السؤال الرابع، وهو ابتاع ممأوّل من أموال المسلمين، ما حكمه؟ جوابه: قال في المدونة، ومثله في العتبية

إليه، أو

من سماع ابن القاسم، واللفظ للمدونة: وإذا دخلت دار الحرب بأمان، فابعت عبد المسلمين من حربي أسره أو أبى

وهمي الحربي للكفاح، فكميراً عليه، فلنسببه أخذه بعد أن يدفع إلى ما أديته

وهبه الحربي لك، فكافاهه

ربه بغير شيء. اهـ.

وإلى اختصار حكم المسألة أشار الشيخ أبو عمرو ابن الحاجب

إليه، أو

من ثمن أو عرض. وإن لم تثب واهبه

عليه، فلسويده أخذه بعد أن يدفع إليك ما أديته

وهبته الحربي لك، فكافاه

ربه بغير شيء. اهـ.

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ربه بغير شيء. اهـ.

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عليه، فلسويده أخذه بعد أن يدفع إليك ما أديته

وهبته الحربي لك، فكافاه

ربه بغير شيء. اهـ.

وإلى اختصار حكم المسألة أشار الشيخ أبو عمرو ابن الحاجب

إليه، أو

من ثمن أو عرض. وإن لم تثب واهبه

عليه، فلسويده أخذه بعد أن يدفع إليك ما أديته

وهبته الحربي لك، فكافاه

ربه بغير شيء. اهـ.

وإلى اختzar حكم المسألة أشار الشيخ أبو عمرو ابن الحاجب

إليه، أو

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وهبته الحربي لك، فكافاه

ربه بغير شيء. اهـ.

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وهبته الحربي لك، فكافاه

ربه بغير شيء. اهـ.

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وهبته الحربي لك، فكافاه

ربه بغير شيء. اهـ.

وإلى اختzar حكم المسألة أشار الشيخ أبو عمرو ابن الحاجب

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ربه بغير شيء. اهـ.

وإلى اختzar حكم المسألة أشار الشيخ أبو عمرو ابن الحاجب

إليه، أو

من ثمن أو عرض. وإن لم تثب واهبه

عليه، فلسويده أخذه بعد أن يدفع إليك ما أديته

وهبته الحربي لك، فكافاه

ربه بغير شيء. اهـ.

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وهبته الحربي لك، فكافاه

ربه بغير شيء. اهـ.
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258. In BNRM: (بامعاً).

259. In Ḥ and T: (بمالك).


261. Ḥ omits (غيره).

262. T omits (ربّه إن أشبه).

263. In T: (وملكه).


265. In H: (بإذن).

266. In BNRM: (بديل).

267. In Ḥ: (بامعاً).


269. In T and Ḥ: (مستفسر).

270. In H: (طاهرة).

271. T omits (لا).

272. In BNRM: (الأصول).

273. In T: (المؤلف).

274. ʿAbd al-Ḥaq b. Ghālib Ibn ʿAṭiyya (d. 541/1147) was an Andalusī Mālikī exegete. The full title of his exegesis of the Qurʾān is al-Jāmiʿ al-muḥarrar al-wajīz fī tafsīr al-Kitāb al-ʿAzīz, better known as Tafsīr Ibn ʿAṭiyya. It has been published in numerous editions.

275. In T: ( ø ) In BNRM: ( ø ).
8. *Fatwā of Ḥamdūn*⁷²⁶

وسئل الفقيه الأجل أبو العباس أحمد بن محمد الأزور الغامسي المدعو Ḥamdūn بن مالك المدعو شاكلٌ، فيما نصّه، حفظه الله، بحمدون.

وفقد يشدكون ببعض آخر خارج من المذاهب الأربعة المعروفة في هذا الزمان، وأثقل هذا الوجه المسؤول عن حاله أن كانت سكاكاه مع أهل القسم الثاني، وأنه هو رجل سنيّ، والطلب المذهب، كاهل القسم الأول، إلا أن سكاكاه حيث ذكر فقط.

فما نقل سبيلتهم في سكاكاه مع هؤلاء القوم المذكورين؟ هل هي ممنوعة أو جائزة؟⁷²⁸ والفرض أن ألاء لا يجبرون بشيء من مذهبهم، ولا يجرون بشيء عليه، ولا يدعون إلى ذلك، بل هم على مذهبهم وهو كذلك، ولله القسم الذي هو ساكك به أصول وأعماله، إن رجل منها، قدصد واندلعت.⁷⁸⁸ وإن أقام عليها، أقام مع هؤلاء القوم المذكورين.⁷⁴⁶ فهذه تجب عليه الهجرة ويبع أملاكه ويجيب مثله بذلك في سكاكاه مع هؤلاء القوم المذكورين.

فلما تجبر عليه النصوص في صلاة الظهر والعصر، وأتّفقت بينه وبينهم في مذهب مالك في الفروع، وأنه طوال الوقت، بل كلهم أهل ظلم وجرم، وأن النبي صلى الله عليه وسلم لم يقع له إسرا إلى السماء، وأنا من دخل النار من عصاة هذه الأمة، فهو مكتمل فيها، لا يخرج منها أحدًا. هذا ما أخبر به الرجل السائل عن حال إقامته بالبلاد المذكورة. فتأمل ذلك سبدي وأجنبنا بما يخشى الغليل إن شاء الله. ولكم الأجر والسلام.

**جاواب**: إن شاء الله.

⁷²⁶. BNRM, 2:45(b)–46(b); Ḥ, 251–52; T, 266–67. This *fatwā* is included in al-Wazzānī’s *al-Miʾyār al-jadīd*, 3:36–38, with only slight differences. I do not translate this *fatwā* in *Leaving Iberia*.

⁷²⁷. In Ḥ: (هندس).


⁷²⁹. Emended slightly, all three manuscripts omit the (لا) in (ومعكم).

⁷³⁰. In Ḥ and T: (ما).


⁷³⁴. Emended on the basis of al-Tasūlī’s *Precious Jewels*; all three manuscripts read (ومعكم).

⁷³⁵. This is the second instance of page 46 in the second BNRM volume.

⁷³⁶. In Ḥ: (بدين).


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The Fatwa on Jihad from Premodern Morocco

In this regard, the Muslims seek to establish law and order in the domains of the Muslims and to protect their properties. They also seek to defend the religion of Islam and to spread its teachings. However, some Muslims may Electronically transmitted by a person from the University of Texas at Austin, on condition that the recipient agrees not to distribute it further without the consent of the publisher.


9. Excerpt on the Categories of Hijra

We found that in the practice of migration to Allah's Command and seclusion from creation, it is necessary—according to the initial conditions, to fulfill three types of migration to Allah:

1. Migration from the house of disbelief to the house of Islam,
2. Migration from a place that abounds in innovations and disobedience, and
3. Migration from creation to the kingdom of the Deity.

Whoever was made witness to them by the angels was cursed.

Qurʾān 2:47. To whom did the angels witness? (Points)

Qurʾān 4:98. Kuff is not a place. The battle was not after the conquest, but... (Points)

Al-Wazzānī includes this excerpt in al-Miʿyār al-jadīd, 3:38–39, with only slight differences.

305. BNRM, 2:46–47; H, 252; T, 267. Al-Wazzānī includes this excerpt in al-Miʿyār al-jadīd, 3:38–39, with only slight differences.

306. In H: (نحوه). In T: (حكمها).


308. In H: (أصد). In T: (تعت).

309. Qurʾān 4:97.

311. ʿAbd al-Rahmān b. Muhammad Abī Zayd al-Thaʿlabī (d. 875/1470–71) was a Mālikī exegete born in what is now Algeria. For his exegesis of these verses, see al-Thaʿlabī, Tafsīr al-Thaʿlabī, al-musammā bi-l-Jawāhir al-ḥisān fī tafsīr al-Qurʾān, ed. ʿAlī Muḥammad Muʿawwaḍ, ʿĀdil Aḥmad ʿAbd al-Mawjūd, and ʿAbd al-Faṭṭāḥ Abū Sunna (Beirut: Dār Iḥyāʾ al-Turāth, 1997), 2:287–89.

312. Qurʾān 4:100.

313. Qurʾān 5:51.

314. T omits (سبحانه).


316. For the sources for this ḥadīth, see above, note 195.


318. In H and BNRM: (من المستضعفين والنساء والولدان).

319. Qurʾān 4:98.

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10. Fatwā of Bijāʾī

وأريد 325 أن أثبت سؤال وجوباً لبعض العلماء، لواقتله معدّ لما تقدم. كتب 326 القيه الزاهد سيدي أحمد البجائى

- رحمه الله ورضي عنه - للفقيه العالم العلامة سيدي أحمد بن الحاج البدوي 327 - رحمه الله - سؤال، هذا نصه:

المحمد لله سيدي، رضي الله عنكم وآدم بعث فيه ضيافتك وفتح دين المسلمين بفاعلكم، جوابكم بنو ضيافتك في موضع كبر في الفقه، والنصر والانتشار الفي الباطل والمكان كل الاستنكار، وذل 328 به المسلمون وعزه به الكفار، وارتفع فيه أهل الجور والظلم وانفع فيه


328. In H: (القبيه). In BNRM, the name is closer to (البطاي). Abū al-ʿAbbās Aḥmad b. Muhammad al-Ḥājj al-Bijāʾī (d. ca. 901/1495) was a Mālikī jurist who is described as being “from Bijāya, then Tlemcen,” but who spent much of his career in Fez. The dates of his birth and death are not recorded, but Ibn ʿAskar states that he died at the beginning of the tenth/sixteenth century. On the basis of this information, Muhammad Ḥajjī estimates his death date as 901/1495. Al-Bijāʾī is said to have studied with the Fez-based scholar ʿAbd Allāh al-ʿAbdūsī (d. 849/1446), and al-Wansharīsī includes in the Miʿyār a response by al-Bijāʾī to a question posed to the scholars of Fez (al-Wansharīsī, al-Miʿyār, 7:305). See Ibn ʿAskar, Dawḥat al-nāshir, 114–15; Ḥajjī, Mawsūʿat aʿlām al-Maghrib, 1:345; Ibn al-Qāḍī al-Miknāsī, Jadhwhat al-ḥiqābās, 1:122; al-Tinbukti, Nayl al-ibtiḥāj, 1:121.

329. I have not located a biographical notice for this jurist (Aḥmad b. al-Ḥājj al-Baydawi or al-Baydawi), who must have posed the question to al-Bijāʾī and then received his response. His name may also be (ابن البدوي) or a similar variant. In al-Tasūlī, this jurist’s given name is Muḥammad instead of Aḥmad. Ibn ʿAskar identifies the questioner as an Abū al-ʿAbbās al-Bijāʾī; I have not been able to locate a biographical notice under this name, either.

330. T omits (الله). 331. This world is unclear in BNRM. In H: (الله). 332. In H: (الله).
ناكـر
ولم يظهـر مـن فضائـه
وهـل يظـهر عـلى المسـلمن وأشـكل الأمـر عـلى المسرشـدين
لمنكـر، فلا أدري أخوفًـا عـلى أنفسـهم أو اسـتهزاًء بًالأثـر. ثمّ إنّ إنسـانًا اضـطرّ إـلى أخـذ العلـم مـن علمـاء الموضـع المذكور وخشـي
بذلـك الموضـع، مـع عـدم قدرتـه عـلى تغيـر المنكـر إلًاّ عـلى نفسـه ممّـا هـو قبـل مسـطور. فهـلـ أعزّكـم اللهـ يسـوغ لـه المكـث
أضطّـر إلى ذلـك، ويكـون
قلـيلاً؟ ويكـون بذلـك لأمـر ربّـه ممـثلاً؟ وهـل يسـوغ لـه الشـراء مـن بعـض المبيعـات الممكّـسـات
فإن تعـذّر عليـه ذلـك، واشـتدّت عليـه المسـالك، ولم يجـد موضعًـا صـالحًا مرضيًّـا، ولـًا معلّمًـا ناصحًـا مهـدياًّ، فليقـم هنالـك
لفن يأخـذ مـن العلـم مـا يضطـرّ إـليه مـن كلّ متصـدّر للأخـذ عـنـه، فـربّ حامـل عـلـم إلى مـن هـو
}

333. In Ḥ: (ناكـر).
334. Emended from (ناكـر) in all three manuscripts.
335. In Ḥ and BNRM: (كتب).
336. In T: (كتبات).
337. In Ḥ and T: (إن).
338. The question alludes to a hadith preserved by al-Bukharī and Muslim that emphasizes the need to refrain from actions that are of questionable morality. See al-Bukhārī, Ṣaḥīḥ, 1:28–29 (kitāb al-īmān, bāb fadl man istabraʾa li-dīnih, ḥadīth 52); Muslim b. al-Ḥajjāj, Ṣaḥīḥ, 3:1219–20 (kitāb al-musāqā, bāb akhdh al-ḥalāl wa-tark al-shubuhāt, ḥadīth 107 [1599]).
339. Ḥ and BNRM omit (نا).
340. All three copies read (لا). I have emended the text on the basis of the context and the text in al-Tasūlī’s Precious Jewels and Ibn ʿAskar’s Dawḥat al-nāshir.
341. In BNRM: (ولأ يأخذ إلاّ).
342. In Ḥ and T: (تظهره).
343. In Ḥ: (نواحيه).
344. Qurʾān 4:97.
345. This word is replaced by a line in BNRM.
346. Qurʾān 4:98.
347. In T: (ب)، with a mark that may indicate a correction.
348. Qurʾān 4:75.

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11. First Fatwā of al-Zawāwī

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أعلمنا منه، وقد بسطت الطريق بدواء الطبيب الكافر، وقد يُركب الله الدين بالرجل الفاجر. 350 ويستري من المبيعات ما يضطر إليه ليست في وطاعتانا ولكن لا يخفش المعيبة غشماً، ولبعض الورع حقه ويعمل في ذلك، وفقهه. 353 ويستري شراء الجزء المأخوذ من المالع من غاصبه، ويستري ما يضطر على ملك صاحبه، على 354 مراجعة قوانين الشريعة المقررة ومسائل الفقه المسطرة، والوقوف على حدّ الضرورة وعدم استسلام في الشهوات المباحة، فضلاً عن المحظورات. 355 فأن أقتصر على ضرورياته. 356

ويسعى من المبيعات ما يضطر، 350 وقد يتعالج المريض بدواء الطبيب الكافر، ويدعم الله الدين بًالرجل الفاجر أي يعليم منه، ويستري شراء الجزء يغشم المعيشة غشماً، وليعط الورع حقه ويسعى في ذلك، 352 لاي له لبسّا وطعامّا ولكن مراعاة قواعد الشريعة المقررّة ومسائل الفقه المسطرة، 354 المس لم اقتصر عليه ضرورياته، 355 والوقوف على حدّ الضرورة وعدم استسلام في الشهوات المباحة، فضلاً عن المحظورات.

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ويسعى من المبيعات ما يضطر، 350 وقد يتعالج المريض بدواء الطبيب الكافر، ويدعم الله الدين بًالرجل الفاجر أي يعليم منه، ويستري شراء الجزء يغشم المعيشة غشماً، وليعط الورع حقه ويسعى في ذلك، 352 لاي له لبسّا وطعامّا ولكن مراعاة قواعد الشريعة المقررّة ومسائل الفقه المسطرة، 354 المس لم اقتصر عليه ضرورياته، 355 والوقوف على حدّ الضرورة وعدم استسلام في الشوات المباحة، فضلاً عن المحظورات.

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ويسعى من المبيعات ما يضطر، 350 وقد يتعالج المريض بدواء الطبيب الكافر، ويدعم الله الدين بًالرجل الفاجر أي يعليم منه، ويستري شراء الجزء يغشم المعيشة غشماً، وليعط الورع حقه ويسعى في ذلك، 352 لاي له لبسّا وطعامّا ولكن مراعاة قواعد الشريعة المقررّة ومسائل الفقه المسطرة، 354 المس لم اقتصر عليه ضرورياته، 355 والوقوف على حدّ الضرورة وعدم استسلام في الشوات المباحة، فضلاً عن المحظورات.

أعلم من هن، وقد بسطت الطريق بدواء الطبيب الكافر، وقد يُركب الله الدين بالرجل الفاجر. 350 ويستري من المبيعات ما يضطر إليه ليست في وطاعتانا ولكن لا يخفش المعيبة غشماً، ولبعض الورع حقه ويعمل في ذلك، وفقهه. 353 ويستري شراء الجزء المأخوذ من المالع من غاصبه، ويستري ما يضطر على ملك صاحبه، على 354 مراجعة قوانين الشريعة المقررة ومسائل الفقه المسطرة، والوقوف على حدّ الضرورة وعدم استسلام في الشوات المباحة، فضلاً عن المحظورات. 355 فأن أقتصر على ضرورياته. 356

ويسعى من المبيعات ما يضطر، 350 وقد يتعالج المريض بدواء الطبيب الكافر، ويدعم الله الدين بًالرجل الفاجر أي يعليم منه، ويستري شراء الجزء يغشم المعيشة غشماً، وليعط الورع حقه ويسعى في ذلك، 352 لاي له لبسّا وطعامّا ولكن مراعاة قواعد الشريعة المقررّة ومسائل الفقه المسطرة، 354 المس لم اقتصر عليه ضرورياته، 355 والوقوف على حدّ الضرورة وعدم استسلام في الشوات المباحة، فضلاً عن المحظورات.
12. Second Fatwā of al-Zawāwī

Jocelyn Hendrickson (2023, 31:31) states that Fatwā of al-Zawāwī is the second one mostly concerned with migration and the requirement of a guardian’s consent.

13. Third Fatwā of al-Zawāwī

The third Fatwā of al-Zawāwī deals with the meaning of hajj and its preference.

14. First Fatwā of Ibn Zakrī

Ibn Zakrī’s first Fatwā is discussed in detail, mentioning the case where an eminent scholar of the time asked the Imam about the duties and rights during hajj.

Notes:
- `BNRM` refers to the source where the original text is from.
- `H` refers to the hadith number in the reference.
- `T` refers to the reference text in the translation.
- `3:1025` refers to the page number of the reference text.
- `7:1b` refers to the note number in the notes section.
- `3:1040` refers to the hadith number in the reference text.
- `3:1488` refers to the hadith number in the reference text.
- `2:595` refers to the hadith number in the reference text.
- `2631` refers to the hadith number in the reference text.
- `86` refers to the hadith number in the reference text.
- `1693` refers to the hadith number in the reference text.
- `267` refers to the page number of the reference text.
- `252–53` refers to the page number range of the reference text.
- `268` refers to the page number of the reference text.
- `253` refers to the page number of the reference text.
- `255–68` refers to the page number range of the reference text.
- `42–43` refers to the page number range of the reference text.
- `3:1025` refers to the hadith number in the reference text.
- `3:1488` refers to the hadith number in the reference text.
- `2:595` refers to the hadith number in the reference text.
- `2631` refers to the hadith number in the reference text.
- `86` refers to the hadith number in the reference text.
- `1693` refers to the hadith number in the reference text.
- `252–53` refers to the page number range of the reference text.
- `255–68` refers to the page number range of the reference text.
- `42–43` refers to the page number range of the reference text.
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المغرب الأقصى من حوز سنة وأحواضه؟ هل فعله اليوم جائر شرعًا لكون سلطان تلك [الأوطان] صاحب المشتركون، والوضع الذي هو فيه الشريف داخل في عامة السلطان المذكور؟ والفرض أن هذا الصلح لم يقع إلّا بعد إطلاع العدوّ على [2:49] عوارت المسلمين إطلاعاً كابناً، وأخذوا البلاد المذكورة في عباءة قوة الجند والسلاح، وبيت 375 المال على خبر. هل فعل هذا الشريف مباح لأجل هذا المعنى؟ أم لا؟ والفرض أن الصلح المذكور 376 له مدة تنيف على العشرين سنة. هل يسوء ذلك، أم لا؟

فأجاب: إن كان الرجل القائم بالجهاد أمّا في حزب نفسه أمّا من غائبة من يمنعه من جهد العدوّ، جاز له قنال الكفار حيث يؤمن العدوّ أن يقاتله 377 المسلمين في غير وضع الشريف المذكور. وأما الصلح الواقع، فغير ماضٍ لما فيه من تقوّي العدوّ وضعف المسلمين في تلك المدة، وغاية ما يقع الصلح بين المسلمين وعدوهم السنتان والثلاثة - والله الموفّق للصواب - بمّة وفضله.

اه من بعض التقليد.

15. Second Fatwā of Ibn Zakrī779

وسل أيضًا: ما تقولون في قبائل من المغرب الأقصى، تلي سنة وطنجة وأصياب الفصيرة، امترحوه عموماً مع النصارى، وصارت بينهم عبّبة حتى أن المسلمين، إذا أرادوا الغزو، أخبروا هؤلاء القبائل من المغرب النصارى، فلا يجهم المسلمون إلا متحدادين من بينهم، والفرض أن المسلمين لا يتوصلون إلى الهجاء في هؤلاء القبائل إلاّ من بلاد هؤلاء القبائل، وهب قانوناً المسلمين مع النصارى. ما حكم الله في دمائهم وأمواتهم ونسائهم وأولادهم؟ وهل ينفون من تلك البلاد أم لا؟ كيف إن أبوا من النفى إلا بالقتال، فهل يقاتلون أم لا؟

فأجاب: ما وصف به القوم المذكورون يوجب قنالهم وقتلهم كالكفار الذين يتولون. ومن يتولى الكفار فهو منهم، والله أعلم.

اه من التقليد المذكور.

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373. Emended. In BRNM: (لِكن السِّلَّكَانَ دَلَّا صَحِيحًا). In Ĥ and T: (السلطان صَحِيحًا).
374. In T: (النَّادِيَةَ).
375. In Ĥ: (وَبِنِيَتَهَا).
376. In Ĥ and T: (المَكَارِهِ).
377. In Ĥ: (مَهْمَارِيَة).
378. In Ĥ: (وَيَغْتَلِبُ).
379. BNRM, 2:49; Ĥ, 253; T, 268. Al-Wazzānī includes a version of this fatwā in al-Nawāzil al-ṣughrā, 1:419; this version omits all of the city names.

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Example Pages from the Manuscripts

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Moroccan National Library MS 1698D (BNRM 2:44)
Hasaniyya (Royal) Library MS 5862 (H 249)
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