

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This article provides an Arabic critical edition of one section of an important but unpublished source for the history of late fifteenth-century Morocco: al-Jawāhir al-mukhtāra fi-mā waqaftu ‘alayhi min al-nawāzil bi-Jibāl Ghumāra (Selected jewels: Legal cases I encountered in the Ghumāra Mountains) by the Mālikī jurist ‘Abd al-‘Azīz 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-Mi‘yār al-mu‘rib. 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.”² 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.”³

More than half a century later, Mediterranean studies is booming, boasting multiple academic societies, journals, book series, annual workshops, and tenure-track positions.⁴ 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 1700.⁵ Most recently, the field of medieval studies, often associated exclusively with Western Europe, has embarked on a very promising “global turn.”⁶ 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”?

2. Andrew C. Hess, *The Forgotten Frontier: A History of the Sixteenth-Century Ibero-African Frontier* (1978; repr., Chicago: University of Chicago Press, 2010), 2.

3. Hess, *Forgotten Frontier*, 208.

4. Societies include the Mediterranean Studies Association (founded 1994), the Society for the Medieval Mediterranean (founded 1997), the Mediterranean Seminar (founded 2004), and the Asian Federation of Mediterranean Studies Institutes (founded 2016). An example of a book series is Palgrave’s Mediterranean Perspectives series, which published its first volume in 2016. Journals include *Al-Masāq*, the journal of the Society for the Medieval Mediterranean.

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.⁷ 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.”⁸ 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 Sharīfian Idrīsids, the Ibāḍī Rustamids, the Sunnī Aghlabids, and the Shī‘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.

8. Justin K. Stearns, *Revealed Sciences: The Natural Sciences in Islam in Seventeenth-Century Morocco* (Cambridge: Cambridge University Press, 2021), 237.

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 waqaftu ‘alayhi 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 ‘Abd al-‘Azīz b. al-Ḥasan al-Zayyātī (d. 1055/1645).⁹ 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-Mi‘yār al-mu‘rib*. 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.¹⁰

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 *mas’ala* (issue, pl. *mas’al*). 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-Zawāwī* (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 Waṭṭāsīd regent for the Marīnid 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 Marīnid 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, Alcacer-Ceguer) in 1458, Asilah (Aṣīla, Arzila) and Tangier in 1471, and Larache (al-‘Arā’ish) 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

Westview Press, 1994). See also Matthew Racine, *A Most Opulent Iliad: Expansion, Confrontation and Cooperation on the Southern Moroccan Frontier, 1505–1542* (San Diego, CA: Lake George Press, 2012).

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).

12. The Amazigh poet Muḥammad b. Yaggabsh al-Tāzī (d. 920/1514) composed a moving lament for the captives as part of his *Kitāb al-Jihād*, a call to armed resistance against the Portuguese. On him, see Abū Bakr al-Būkhaybī, *Aḍwā’ ‘alā Ibn Yaggabsh al-Tāzī* (Casablanca: Maṭba‘at al-Najāḥ al-Jadīda, 1976). Nabil Matar

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 Marīnid dynasty had come to an end. ‘Abd al-Ḥaqq II, the nominal Marīnid sultan since ascending the throne in his infancy in 1420, finally wrested control from a series of Waṭṭāsid viziers in 1459. Although he successfully defended Tangier against a substantial attack in 1460, a revolt in Fez led to ‘Abd al-Ḥaqq’s assassination in 1465. For the next few years, Fez alone was ruled by Muḥammad al-Jūṭī, leader of the city’s *sharīf* community (those claiming descent from the Prophet Muḥammad), while Muḥammad al-Shaykh, a Waṭṭāsid 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-Jūṭī and become the first sultan (r. 1472–1504) of the Waṭṭāsid 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 1497.¹³ 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 Maghribīs 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

translates a portion of al-Tāzī’s lament in his *Europe through Arab Eyes, 1578–1727* (New York: Columbia University Press, 2009), 146–47. On al-Tāzī’s book on *jihād*, see Manuela Ceballos, “Sufi Lovers as Sufi Fighters: Militant Piety in Muhammad Ibn Yaggabsh al-Tāzī’s *Book of Jihād*,” *Journal of Religion and Violence* 2, no. 2 (2014): 333–51.

13. Malyn Newitt introduces and translates an agreement between Manuel I and the inhabitants of Massa in Newitt, ed., *The Portuguese in West Africa, 1415–1670: A Documentary History* (Cambridge: Cambridge University Press, 2010), 31–35. All three of these agreements may be found in Pierre de Cenival, ed., *Juillet 1486–Avril 1516*, vol. 1 of *Les sources inédites de l’histoire du Maroc*, ser. 1: *Dynastie sa’dienne: Archives et bibliothèques de Portugal* (Paris: Paul Geuthner, 1934), 1–35.

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.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.¹⁵

This summary has extended beyond the late fifteenth- and early sixteenth-century time frame of the *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.

Life and Times of al-Zayyātī

We know little about ‘Abd al-‘Azīz al-Zayyātī (d. 1055/1645), the compiler of *Selected Jewels*. The earliest published sources for his biography appear to be Muḥammad al-Ṣaghīr al-Ifrānī's (d. ca. 1154/1741) *Ṣafwat man intashara min akhbār ṣulaḥā' al-qarn al-ḥādī ‘ashar* and Muḥammad al-Qādirī's (d. 1187/1773) *Nashr al-mathānī li-ahl al-qarn al-ḥādī ‘ashar*

14. Portugal was controlled by the Spanish crown from 1580 to 1640 in the wake of the Battle of Three Kings (noted below). When Portugal regained its independence in 1640, Ceuta remained a Spanish possession.

15. On this battle, see Mercedes García-Arenal, *Ahmad al-Mansur: The Beginnings of Modern Morocco* (Oxford: Oneworld, 2009), 6–21.

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 Shādhilī-affiliated Jazūliyya Sufi order in Fez.¹⁹ One of al-Zayyātī's earliest teachers was his maternal uncle, 'Abd Allāh Muḥammad al-'Arabī al-Fāsī (d. 1052/1642), best known for composing a hagiography of his father, Abū al-Maḥāsin.²⁰

16. Muḥammad al-Ṣaghīr al-Ifrānī, *Ṣafwat man intashara fī akhbār ṣulāḥā' al-qarn al-ḥādī 'ashar*, ed. 'Abd al-Majīd Khayyālī (Casablanca: Markaz al-Turāth al-Thaqāfī al-Maghribī, 2004), 157 (entry no. 88); Muḥammad al-Qādirī, *Nashr al-mathānī li-ahl al-qarn al-ḥādī 'ashar wa-l-thānī*, ed. Muḥammad Ḥajjī and Aḥmad al-Tawfiq (Rabat: Dār al-Maghrib li-l-Ta'līf wa-l-Tarjama wa-l-Nashr, 1977–82), 2:30. Al-Ifrānī's notice appears to be the basis of a contemporaneous entry in Muḥammad al-Ḥudaygī (d. 1189/1775), *Ṭabaqāt al-Ḥudaygī*, ed. Aḥmad Bū Mazgū (Casablanca: Maṭba'at al-Najāh al-Jadīda, 2006), 2:513–14 (entry no. 668). Al-Qādirī's notice is reproduced in Muḥammad Ḥajjī, ed., *Mawsū'at al-'ālam al-Maghrib* (Beirut: Dār al-Gharb al-Islāmī, 1996), 4:1421. Biographical notices for 'Abd al-Azīz al-Zayyātī in the following modern works largely repeat the details found in *Ṣafwat man intashara* and *Nashr al-mathānī*: Muḥammad Ḥajjī, *al-Ḥaraka al-fikriyya bi-l-Maghrib fī 'ahd al-Sa'diyyīn* (Rabat: Dār al-Maghrib li-l-Ta'līf wa-l-Tarjama wa-l-Nashr, 1977–78), 2:421; Khayr al-Dīn al-Ziriklī, *al-'Ālam: Qāmūs tarājīm li-ashhar al-rijāl wa-l-nisā' min al-'arab wa-l-musta'ribīn wa-l-mustashriqīn*, 14th ed. (Beirut: Dār al-'Ilm li-l-Malāyīn, 1999), 4:16; 'Umar Riḍā Kaḥḥāla, *Mu'jam al-mu'allifīn* (Beirut: Mu'assasat al-Risāla, 1993), 2:159; al-'Abbās b. Ibrāhīm al-Simlālī, *al-'Ālam bi-man ḥalla Marrākush wa-Aghmāt min al-'ālam*, ed. 'Abd al-Wahhāb b. Maṣṣūr, 2nd ed. (Rabat: al-Maṭba'a al-Malakiyya, 2002), 8:442–43.

17. This suggested birth date is based on the recorded birth date of al-Zayyātī's maternal uncle Muḥammad al-'Arabī 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-'Azīz 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. (*EI*³) and Chibli Pellat, "Al-Fāsī," in *Encyclopaedia of Islam*, 2nd ed. (*EI*²), 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 *EI*². Abū al-Maḥāsin's family emigrated from Malaga to northern Morocco around 880/1473. They acquired the *nisba* "al-Fāsī" when the family moved from Fez to al-Qaṣr al-Kabīr, where Abū al-Maḥāsin was born ("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*.

20. Biographical notices for Muḥammad al-'Arabī al-Fāsī (d. 1052/1642) appear in al-Ifrānī, *Ṣafwat man intashara*, 142–43 (entry no. 72); al-Qādirī, *Nashr al-mathānī*, 2:10; Muḥammad Makhluḥ, *Shajarat al-nūr al-zakiyya fī ṭabaqāt al-Mālikiyya*, ed. 'Abd al-Majīd Khayyālī (Beirut: Dār al-Kutub al-'Ilmiyya, 2003), 1:437–38 (entry no. 1188). Muḥammad al-'Arabī al-Fāsī's biography of his father (and al-Zayyātī's grandfather), for which he is best known, has been published: Muḥammad al-'Arabī b. Yūsuf al-Fāsī al-Fihri, *Mir'āt al-maḥāsin min akhbār al-Shaykh Abī al-Maḥāsin: Wa-nubdha 'an nash'at al-taṣawwuf wa-l-ṭarīqa al-Shādhilīyya bi-l-Maghrib*, ed. Muḥammad Ḥamza b. 'Alī al-Kattānī (Casablanca: Markaz al-Turāth al-Thaqāfī al-Maghribī and Beirut: Dār Ibn Ḥazm), 2008.

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 Qur’ān 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 Jāmi‘ al-Qaṣaba.²¹ Al-Zayyātī composed several works, including a commentary on a *qaṣīda* (poem) on *zakāt* (almsgiving) written by his uncle Muḥammad al-‘Arabī, a work on Qur’ān recitation, and *Selected Jewels*.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-Maḥāsīn.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).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 ‘Abd 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

21. Abū al-‘Abbās Aḥmad al-Rahūnī, *‘Umdat al-rāwīn fī tārikh Tiṭṭāwīn*, ed. Ja‘far b. al-Ḥājī al-Sulamī (Tetouan: Manshūrāt Jam‘iyyat Tiṭṭāwīn Asmīr, 1998–2006), 4:77; Muḥammad Dāwūd, *Mukhtaṣar Tārikh Tiṭṭāwīn* (Tetouan: Ma‘had Mawlāy al-Ḥasan, 1953), 279–80.

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 Tārikh Tiṭṭāwīn* (279–80), where Dāwūd notes the presence of a four-hundred-page copy in his own library, al-Khizāna al-Dāwūdiyya in Tetouan. Kāhhāla 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 *qaṣīda*: two lithograph copies published in Fez in 1901 (197 Litho and 234 Litho) and two manuscript copies (MS 563.1 and MS 549.3).

23. On al-Majdhūb, see Chibli Pellat, “Al-Maḍjdhūb,” in *IE²*, and Fernando Rodríguez Mediano, “Al-Majdhūb, ‘Abd al-Raḥmān,” in *IE³*.

24. Biographical notices for Abū al-Ṭayyib al-Ḥasan b. Yūsuf b. Maḥdī al-Zayyātī (d. 1023/1614) appear in al-Fāsī, *Mir‘āt al-maḥāsīn*, 337–42; al-Ifrānī, *Ṣafwat man intashara*, 156–57 (entry no. 87); al-Qādirī, *Nashr al-mathānī*, 1:198–99; and Ḥajjī, *Mawsū‘at a‘lām al-Maghrib*, 3:1218–19 (reproduction of al-Qādirī’s notice).

of commentaries on legal and other works. Al-Ḥasan was a close follower of Abū al-Maḥāsīn 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 ‘Abd al-‘Azīz’s mother.

Al-Ḥasan’s fortunes changed for the worse after the death of the Sa’dian sultan Aḥmad al-Manṣūr in 1012/1603. While three of the sultan’s sons fought for control of the Sa’dian state, one of them, Muḥammad al-Shaykh II al-Ma’mūn, traveled to Spain to negotiate an alliance. Al-Ma’mūn signed an agreement with King Phillip III ceding Larache to Spain in 1019/1610 in exchange for military assistance. Al-Ma’mūn 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-Istiṣā* 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-Zayyātī 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-Zayyātī’s uncles, al-Ḥāfiẓ Abū al-‘Abbās Aḥmad b. Yūsuf al-Fāsī (d. 1021/1612).²⁷ These jurists had reason to fear for their lives: one scholar who harshly condemned al-Ma’mūn for ceding Larache to the Christians, al-Ḥājj al-Aghsāwī al-Baqqāl, was beaten to death on

25. On these events, see al-Qādirī, *Nashr al-mathānī*, 1:156–57; Aḥmad al-Nāṣirī al-Salāwī (d. 1897), *Kitāb al-Istiṣā li-akhbār duwal al-Maghrib al-Aqṣā*, ed. Muḥammad Ḥajjī, Ibrāhīm Bū Ṭālib, and Aḥmad al-Tawfīq (Casablanca: Manshūrāt Wizārat al-Thaqāfa wa-l-Ittiṣāl, 2001), 5:238; Cook, *Hundred Years War*, 273–79; and Jamil M. Abun-Nasr, *A History of the Maghrib in the Islamic Period* (Cambridge: Cambridge University Press, 1987), 219–20.

26. Al-Qādirī, *Nashr al-mathānī*, 1:199. This may be a *zāwiya* associated with the reformist Jazūlī Sufi scholar ‘Abd 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 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-Ma’mūn’s request, then returned before leaving permanently for the East. Al-Qādirī reports that Abū al-‘Abbās (referring to al-Zayyātī’s uncle, a son of Abū al-Maḥāsīn) left Fez in 1020/1611, before the delegation from the sultan could reach him. See al-Qādirī, *Nashr al-mathānī*, 1:156–57.

al-Ma'mūn's orders in 1019/1610.²⁸ Al-Ma'mūn himself was killed in 1022/1613, the same year in which al-Ḥasan fled Fez; al-Ma'mūn's son 'Abd 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 'Abd al-'Azīz 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,²⁹ 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

28. This jurist's full name is Abū 'Abd Allāh Muḥammad b. Abī al-Ḥasan, known as al-Ḥajj al-Aghsāwī al-Baqqāl. This report appears in Ḥājji, *al-Ḥaraka al-fikriyya*, 2:471. Ḥājji gives the date of al-Aghsāwī's death as 1019/1613, but the AH and CE dates are inconsistent; he likely means 1019/1610, the year in which al-Ma'mūn ceded Larache to Spain. Laḥsan al-Yūbī repeats the error in *al-Fatāwā al-fiqhiyya fī aḥamm al-qaḍāyā min 'ahd al-Sa'diyyīn ilā mā qabla al-ḥimāya* ([Rabat]: Wizārat al-Awqāf wa-l-Shu'ūn al-Islāmiyya, 1998), 133.

29. Some of these opinions appear in later collections, most notably those of 'Abd al-Salām al-Tasūlī (d. 1258/1842) and Muḥammad al-Mahdī al-Wazzānī (d. 1342/1923), but these later jurists identify al-Zayyātī's compilation as their source.

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.³⁰ 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*?").³¹ Professional guidelines were developed for the practice of *fatwā*-giving (*iftā'*), 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.³²

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).³³

30. The best overview of *fatwās* as a legal genre remains Muhammad Khalid Masud, Brinkley Messick, and David S. Powers, "Muftis, Fatwas, and Islamic Legal Interpretation," in *Islamic Legal Interpretation: Muftis and Their Fatwas*, ed. Masud, Messick, and Powers, 3–32 (Cambridge, MA: Harvard University Press, 1996).

31. On *muftīs* serving as advisors to courts, see Manuela Marín, "Šūrā et al-šūrā dans al-Andalus," *Studia Islamica* 62 (1985): 25–51. On the specific *fatwā* used in the third example concerning pilgrimage, see Jocelyn Hendrickson, "Prohibiting the Pilgrimage: Politics and Fiction in Mālikī *Fatwās*," *Islamic Law and Society* 23, no. 3 (2016): 161–238, esp. 175–82 and 218–22. Jakob Skovgaard-Peterson offers useful typologies of *fatwās* and *muftīs* that extend to the contemporary period; see Skovgaard-Peterson, "A Typology of Fatwas," *Die Welt des Islams* 55 (2015): 278–85; and idem, "Historical Retrospective on Muftiship: Muftis, State Muftis and Official Muftis," in *Islamic Leadership in the European Lands of the Former Ottoman and Russian Empires: Legacy, Challenges and Change*, ed. Egdunas Raciūnas and Antonina Zhelyazkova, 12–37 (Leiden: Brill, 2018).

32. On the conventions of *fatwā*-giving, see Sherman Jackson, "The Second Education of the *Muftī*: Notes on Shihāb al-Dīn al-Qarāfī's Tips to the Jurisconsult," *Muslim World* 82, no. 3–4 (1992): 201–217; and Alexandre Caeiro, "The Shifting Moral Universes of the Islamic Tradition of *Iftā'*: A Diachronic Study of Four *Adab al-Fatwā* Manuals," *Muslim World* 96, no. 4 (2006): 661–85.

33. On types of *fatwā* compilations, see Muḥammad al-Ḥabīb al-Hīla, "Classification of Andalusian and Maghribi Books of *Nawāzil* from the Middle of the Fifth to the End of the Ninth Century AH," in *The Significance of Islamic Manuscripts: Proceedings of the Inaugural Conference of Al-Furqān Islamic Heritage Foundation (30th November–1st December 1991)*, ed. John Cooper, 71–78 (London: Al-Furqān Islamic Heritage Foundation, 1992). More recently, Maribel Fierro has traced the development of Mālikī *fatwā* collections up to the fifteenth century: Fierro, "Compiling *Fatāwā* in the Islamic West (Third/Ninth–Ninth/Fifteenth Centuries)," *Jerusalem Studies in Arabic and Islam* 50 (2021): 43–100. Ibn Rushd al-Jadd (d. 520/1126), the grandfather ("al-Jadd") of the Ibn al-Rushd known as Averroes, was a prominent jurist in Córdoba under the Almoravids. His *fatwās*, compiled by one of his students, have been published: Ibn Rushd al-Jadd, *Fatāwā Ibn Rushd*, ed. al-Mukhtār b. al-Ṭāhir

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) *Jāmi' masā'il al-aḥkām li-mā nazala min al-qaḍāyā bi-l-muftiyyīn wa-l-ḥukkām*, which comprises seven volumes in its modern printed edition.³⁴ The best known example of this type of compilation is Aḥmad al-Wansharīsī's *al-Mi'yār al-mu'rib wa-l-jāmi' al-mughrib 'an fatāwī ahl Ifrīqiyyā wa-l-Andalus wa-l-Maghrib*, which contains more than five thousand *fatwās* issued by hundreds of jurists in al-Andalus and North Africa between about 1000 and 1500 CE.³⁵ 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.³⁶ 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.³⁷ In his survey of Mālikī *fatwā* compilations, both extant and not, Mubārak Jazā' al-Ḥarbī lists nearly eighty Maghribī collections; about three dozen of them date from the fifteenth century and later.³⁸ Mohamed Mezzine, who lists more than twenty collections dating from the

al-Talīlī (Beirut: Dār al-Gharb al-Islāmī, 1987). The second example here is an anonymously compiled collection of *fatwās* issued by jurists working in fourteenth- and fifteenth-century Granada: *al-Ḥadīqa al-mustaḥilla al-naḍra fī al-fatāwā al-ṣādira 'an 'ulamā' al-ḥaḍra*, ed. Jalāl 'Alī al-Qadhdhāfī al-Juhānī (Beirut: Dār Ibn Ḥazm, 2003).

34. Abū al-Qāsim al-Burzulī, *Jāmi' masā'il al-aḥkām li-mā nazala min al-qaḍāyā bi-l-muftiyyīn wa-l-ḥukkām*, ed. Muḥammad al-Ḥabīb al-Hīla (Beirut: Dār al-Gharb al-Islāmī, 2002).

35. Aḥmad al-Wansharīsī, *al-Mi'yār al-mu'rib wa-l-jāmi' al-mughrib 'an fatāwī ahl Ifrīqiyyā wa-l-Andalus wa-l-Maghrib*, ed. Muḥammad Ḥajjī et al. (Rabat: Wizārat al-Awqāf wa-l-Shu'ūn al-Islāmiyya, 1981–83). These are David Powers's estimates for the total number of *fatwās* and the date range for al-Wansharīsī's collection. See the introduction to David S. Powers, *Law, Society, and Culture in the Maghrib, 1300–1500* (Cambridge: Cambridge University Press, 2002).

36. On al-Wansharīsī and his compilation, see Powers, *Law, Society and Culture*; Francisco Vidal Castro, "Aḥmad al-Wansharīsī (m. 914/1508): Principales aspectos de su vida," *Al-Qanṭara* 12, no. 2 (1991): 315–52; idem, "El *Mi'yār* de al-Wansharīsī (m. 914/1508) I: Fuentes, manuscritos, ediciones, traducciones," *Miscelánea de estudios árabes y hebreos* 42–43, no. 1 (1993–94): 317–61; and idem, "El *Mi'yār* de al-Wansharīsī (m. 914/1508) II: Contenido," *Miscelánea de estudios árabes y hebreos* 44, no. 1 (1995): 213–46.

37. An example of a modern comprehensive collection is Muḥammad al-Mahdī al-Wazzānī, *al-Nawāzil al-jadīda al-kubrā fī-mā li-ahl Fās wa-ghayrihim min al-badw wa-l-qurā, al-musammā bi-l-Mi'yār al-jadīd al-jāmi' al-mu'rib 'an fatāwī al-muta'akhhirīn min 'ulamā' al-Maghrib*, ed. 'Umar b. 'Abbād ([Rabat]: Wizārat al-Awqāf wa-l-Shu'ūn al-Islāmiyya, 1996–2000).

38. Mubārak Jazā' al-Ḥarbī, "Namādhij min juhūd fuqahā' al-Mālikiyya al-Maghārība fī tadwīn al-nawāzil al-fiqhiyya," *Majallat al-sharī'a wa-l-dirāsāt al-islāmiyya* 21, no. 64 (2006): 281–364. See also the earlier list compiled by 'Umar al-Jidī in his *Muḥāḍarāt fī tārikh al-madhab al-Mālikī fī al-Gharb al-Islāmī* ([Rabat]: Manshūrāt 'Ukāz, 1987). These two scholars list compilations known to have existed, whether or not a known copy remains extant. Idrīs al-Kharshāfī has also published a list of Mālikī *fatwā* compilations in which he includes only those that are listed in the manuscript catalogs of the most prominent Moroccan libraries: Idrīs al-Kharshāfī, "Dalīl al-makhtūṭāt al-maghribiyya fī 'ilm al-nawāzil," in *al-Nawāzil al-fiqhiyya wa-atharuhā fī al-fatwā wa-l-ijtihād*, 79–148 (Casablanca: Jāmi'at al-Ḥasan al-Thānī, Manshūrāt Kullīyyat al-Ādāb wa-l-'Ulūm al-Insāniyya, 2001).

late fifteenth through seventeenth centuries, argues that compilatory activity increased during times of political crisis.³⁹ 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.⁴⁰

Al-Zayyātī's *Selected Jewels* fits Mezzine's model of a compilation that clearly reflects the political crises of the early seventeenth century.⁴¹ 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 1614.⁴² 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 'Abd Allāh Muḥammad al-'Arabī 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-'Ayyāshī (d. 1051/1641), a former governor of Azemmour who declared independence from the Sa'dian sultan Mawlāy Zīdān (r. 1603–27) in 1036/1627. Al-'Ayyāshī led armed campaigns against the Spanish, including in al-Ma'mūra (now Mehdia) just north of Salé-Rabat. Al-Fāsī provided the sanction that al-'Ayyāshī 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."⁴³ Al-Zayyātī also includes a counter-*fatwā* by

39. Mohamed Mezzine, "al-Adab al-fiqhī wa-l-azma (q 17)," in *al-Iṣṭighrāfiyā wa-l-azma: Dirāsāt fī al-kitāba al-tārīkhiyya wa-l-thaqāfa*, ed. 'Abd al-Ahad al-Sabtī, 61–74 (Rabat: Jāmi'at Muḥammad al-Khāmis, Manshūrāt Kulliyāt al-Ādāb wa-l-'Ulūm al-Insāniyya, 1994).

40. I am drawing on Mezzine ("al-Adab al-fiqhī," 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 'Abd al-Qādir has been published: 'Abd al-Qādir b. 'Alī al-Fāsī (d. 1091/1680), *al-Ajwiba al-kubrā*, ed. Jābir b. 'Alī al-Ḥawsanī (Rabat: Dār Abī Raqrāq li-l-Ṭibā'a wa-l-Nashr, 2016).

42. On this period, see, for example, Mercedes García-Arenal, "The Moriscos in Morocco: From Granadan Emigration to the *Hornacheros* of Salé," in *The Expulsion of the Moriscos from Spain: A Mediterranean Diaspora*, ed. Mercedes García-Arenal and Gerard Wiegers, 286–328 (Leiden: Brill, 2014).

43. Al-Fāsī, as quoted in Eric Staples, "Intersections: Power, Religion, and Technology in Seventeenth-Century Salé-Rabat" (PhD diss., University of California, Santa Barbara, 2008), 164.

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

44. ʿAbd al-ʿAzīz b. al-Ḥasan al-Zayyātī, *al-Jawāhir al-mukhtāra fī-mā waqaftu ʿalayhi min al-nawāzil bi-Jibāl Ghumāra*, Ḥasaniyya Library, MS 5862, 2. ʿAbd al-Khālīq Aḥmadūn reproduces al-Zayyātī's introduction in Aḥmadūn, "al-Bidaʿ bi-bādiyat al-shamāl min khilāl Alfīyyat al-Habṭī wa-nawāzil al-Zayyātī," *Dafātīr al-baḥṭh* 1, no. 1 (1422/2001): 251–52.

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. Ḥasaniyya 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 'Abd al-Qādir University). In addition to circulating independently, al-Zayyātī's compilation was incorporated into 'Alī b. 'Abd al-Salām al-Tasūlī's (d. 1258/1842) vast, unpublished *fatwā* compilation *al-Jawāhir al-nafisa 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-Mi'yār al-jadīd* (The new *Mi'yār*) and *al-Nawāzil al-ṣuḡhrā* (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

pages 1–74 of the second volume. Note that these three manuscripts all bear page numbers instead of the more common folio numbers (of which there would be half as many, because each folio comprises the front and back of a physical page).

46. The BNRM holds three full copies (MSS 1698D, 3832D, and 66J); the Ḥasaniyya (Royal) Library holds one full copy (MS 5862), three copies of volume 1 (MSS 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 'Allāl 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-'Abd al-'Azīz al-Zayyātī wa-nusakhihi al-makhtūṭa," in *Abḥāth fi al-kitāb al-'arabī al-makhtūṭ*, 157–95 (Rabat: Manshūrāt Wizārat al-Thaqāfa, [2018]).

47. One full copy is held by Amīr 'Abd al-Qādir University of Islamic Sciences in Constantine, Algeria (MS 3/7/217). This is one of three copies used by Ghaniyya 'Aṭwī 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 Mudiriyyat Awqāf (directorate of religious endowments) in Dubai. Aḥmadūn also describes a complete, two-volume, privately held copy that he used in researching his article on reprehensible innovations (*bida'*). As the copy Aḥmadūn describes was copied in the same month and year (Rabī' I, 1237/November 1821) and by the same person (Muḥammad b. 'Abd al-Raḥmān al-Ṣbiḥī) as the Dubai copy, it is likely that these are one and the same. Aḥmadūn, "al-Bida'," 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.

49. These are the commonly used short forms of al-Wazzānī's two titles. For the full title of *al-Mi'yār al-jadīd*, see note 37 above; the shorter text is Muḥammad al-Mahdī al-Wazzānī, *al-Nawāzil al-ṣuḡhrā, al-musammā al-Minaḥ al-sāmiyya fi al-nawāzil al-fiqhiyya*, ed. Wizārat al-Awqāf wa-l-Shu'ūn al-Islāmiyya ([Rabat]: Wizārat al-Awqāf wa-l-Shu'ūn al-Islāmiyya, 1992–93). The Beirut publisher Dār al-Kutub al-'Ilmiyya published editions of both texts in 2014, but my references are to the earlier, Moroccan editions.

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 Waṭṭāsīd, Saʿdian, and ʿAlawī 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 fī tārikh 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 Benmira also defended a dissertation at the same university, likewise drawing on al-Zayyātī but only as one of many sources. Benmira'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 tārikh al-bādiyya bi-l-Maghrib al-wasīṭ* (Rabat: Jāmiʿat Muḥammad al-Khāmis, Manshūrāt Kulliyyat al-Ādāb wa-l-ʿUlūm al-Insāniyya, 2012).

51. The article on funerals and death is Mezzine, "al-Mawt fī Maghrib al-qarn al-ʿāshir min khilāl kitāb 'al-Jawāhir' li-l-Zayyātī," in *al-Tārikh wa-adab al-nawāzil: Dirāsāt tārikhiyya muhdāh li-l-faqīd Muḥammad Zunaybar*, ed. Muḥammad al-Manṣūr and Muḥammad al-Maghrāwī, 107–17 (Rabat: Jāmiʿat Muḥammad al-Khāmis, Manshūrāt Kulliyyat al-Ādāb wa-l-ʿUlūm al-Insāniyya, 1995). Aḥmadūn's article on reprehensible innovations, mentioned above, focuses primarily on ʿAbd Allāh al-Habṭī's (d. 963/1556) poem *al-Alfiyya al-saniyya*, but it includes some material from *Selected Jewels*, especially from al-Zayyātī's chapter on funerals; see Aḥmadūn, "al-Bidaʿ," 251–55. One additional study based on *Selected Jewels* is Mohamed Monkachi's short article analyzing seven *fatwās* from *Selected Jewels* that pertain to rural women: Mohamed Monkachi, "Lecture des mœurs de la femme rurale marocaine à travers les nawāzil de Ziyati: La région de Ghomara au XVII^e siècle," in *Femmes rurales*, ed. Aïcha Belarbi et al., 119–26 (Casablanca: Fennec, 1996).

52. Mohamed Mezzine, "Les relations entre les places occupées et les localités de la région de Fès aux XVI^{ème} siècles, à partir de documents locaux inédits: Les Nawāzil," in *Relaciones de la Península Ibérica con el Magreb, siglos XIII–XVI: Actas del coloquio celebrado en Madrid, 17–18 de diciembre de 1987*, ed. Mercedes García-Arenal and Maria Viguera, 539–60 (Madrid: Consejo Superior de Investigaciones Científicas, 1988).

53. Mezzine, "Les relations," 545–46, 549.

54. Mohamed Mezzine, "Jihād au pays Jbala (XVI^{ème} siècles): Effervescence et regulation," in *Jbala: Histoire et société, études sur le Maroc du Nord-ouest*, ed. Ahmed Zouggar et al., 61–87 (Paris: Editions du CNRS, 1991).

to balance the interests of the warriors (*mujāhidūn*) with those of the central state.⁵⁵ More detailed studies of these texts would help us explore both of these arguments.

Four further scholars have addressed the *fatwās* preserved in al-Zayyātī's collection that relate to the Portuguese occupation of parts of Morocco. Hossain Bouzineb was the first to put these *fatwās* 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.⁵⁶ Laḥsan al-Yūbī discusses many of the opinions preserved in *Selected Jewels* in his 1998 monograph *al-Fatāwā al-fiqhiyya fī aḥamm al-qaḍāyā min 'ahd al-Sa'diyyīn ilā mā qabla al-ḥimāya* (Legal opinions on the most important issues from the Sa'dian era until just before the [French] protectorate).⁵⁷ 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*.⁵⁸ He also breaks multipart *fatwās* into discrete components that are addressed in separate sections of the book, according to the specific legal issue at hand, instead of presenting each *fatwā* 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.⁵⁹ Finally, in my 2021 monograph, *Leaving Iberia: Islamic Law and Christian Conquest in North West Africa*, I devote substantial attention to these *fatwās* and their historical context.⁶⁰ The book contains my translations of many of these opinions, but not the original Arabic.⁶¹

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-isti'mār al-Burtughālī ilā sanat ikhlā' 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,

55. Mezzine, "Jihād," 81–84. As part of this argument, Mezzine discusses the abovementioned *fatwā* issued by Muḥammad al-ʿArabī al-Fāsī in response to al-ʿAyyāshī's question in 1040/1630.

56. Hossain Bouzineb, "Respuestas de juriconsultos maghrebíes en torno a la inmigración de musulmanes hispánicos," *Hespéris tamuda* 16–17 (1988–89): 53–67. The author's last name, spelled Bouzineb elsewhere, appears as Buzineb in this article.

57. Laḥsan al-Yūbī, *al-Fatāwā al-fiqhiyya fī aḥamm al-qaḍāyā min 'ahd al-Sa'diyyīn ilā mā qabla al-ḥimāya* ([Rabat]: Wizārat al-Awqāf wa-l-Shu'ūn al-Islāmiyya, 1998).

58. Al-Yūbī's analysis is based on al-Wazzānī's reproduction of parts of *Selected Jewels*, but al-Wazzānī's text contains many errors, as noted in the edition below.

59. Mohamed Cherif and Salwa al-Zāhirī, "Fatāwā Ibn Barṭāl," in *Dirāsāt fī tārikh al-Maghrib wa-l-Andalus wa-mabāḥith fī al-turāth al-islāmī: A'māl muḥdāh li-l-Ustādh al-Duktūr Aḥmad Shu'ayb al-Yūsūfī*, ed. M'hamad Benaboud, Mohamed Cherif, and Driss Bouhlila, 1:47–72 (Tetouan: Manshūrāt Kulliyyat al-Ādāb wa-l-'Ulūm al-Insāniyya bi-Tiṭwān, 2018); Mohamed Cherif, "Qaḍāyā ḥarija min tārikh al-Maghrib fī maṭla' al-ʿaṣr al-ḥadīth bayna al-tārikh wa-l-fiqh," *Ostour* 13 (2021): 51–71.

60. Hendrickson, *Leaving Iberia*, 29–75.

61. *Ibid.*, 267–86.

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*.⁶² 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.⁶³ 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 'Inān (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.⁶⁴ 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."⁶⁵ 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 (*nawāzil*).⁶⁶

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

62. Aḥmad Būsharb, *Dukkāla wa-l-isti'mār al-Burtughālī ilā sanat ikhlā' 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*.

63. Hossain Bouzineb, *La Alcazaba del Buregreg: Hornacheros, andaluces y medio siglo de designios españoles frustrados* ([Rabat]: Publicaciones del Ministerio de Cultura, 2006). Bouzineb subsequently published a version of the same book in Arabic: al-Ḥusayn Būzīnab, *al-Mūrīskiyyūn wa-qaṣbat al-Ribāt: Wathā'iḳ takshif jawānib tārīkhiyya majhūla* (Rabat: Dār Abī Raqrāq li-l-Ṭibā'a wa-l-Nashr, [2011]).

64. Abdallah Laroui, *The History of the Maghrib: An Interpretive Essay*, trans. Ralph Manheim (Princeton, NJ: Princeton University Press, 1977), 227–28. Laroui's book was originally published in French as *L'histoire du Maghreb: Un essai de synthèse* (Paris: Librairie François Maspero, 1970).

65. Laroui, *History of the Maghrib*, 228.

66. Ahmed Bouchareb, "Les conséquences socio-culturelles de la conquête ibérique du littoral marocain," in García-Arenal and Viguera, *Relaciones de la Península Ibérica*, 487–537, at 490–91.

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.⁶⁷ 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

67. These summaries are patterned after the summaries that Vincent Lagardère provides for the *fatwās* included by al-Wanṣharīsī in the *Mi'yār*. See Lagardère, *Histoire et société en occident musulman au moyen âge: Analyse du "Mi'yār" d'al-Wanṣarīsī* (Madrid: Consejo Superior de Investigaciones Científicas, 1995).

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), Ifrīqiya, 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 *dār 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-Wansharī'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 Qur'ān, the *sunna* of the prophet Muḥammad, and the scholarly consensus of the jurists. Qur'ān 4:97–99 (in which the angels ask those who claim to have been abused 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 Qur'ān, *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 *ḥadīth*, 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-Bijāʿī (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 (*arḍ 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 Maghribī 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 'Aṭwī⁶⁸ and a PhD dissertation defended in 2019 by 'Abd Allāh al-Amīn,⁶⁹ I have made no attempt to note the many discrepancies between our editions.⁷⁰ As specified below, some of these *fatwās* also appear in an abridged form in al-Wazzānī's two published *fatwā* collections, *al-Mi'yār al-jadīd* and *al-Nawāzil al-ṣuḡhrā*.

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 H); and General Library and Archives of Tetouan MS 178, 262–68 (hereafter T).⁷¹ The Ḥasaniyya and Tetouan manuscripts were both copied by Muḥammad b. Mas'ūd 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 1102/1691.⁷²

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. Ghaniyya 'Aṭwī, "al-Jawāhir al-mukhtāra mimma waqaftu 'alayhi min al-nawāzil bi-Jibāl Ghumāra" (MA thesis, University of Constantine 2, Algeria, 2013). 'Aṭwī 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. 'Abd Allāh al-Amīn, "al-Jawāhir al-mukhtāra mimma waqaftu 'alayhi min al-nawāzil bi-Jibāl Ghumāra" (PhD diss., University of Sidi Mohammed ben Abdellah, Fez, Morocco, 2019). Al-Amīn, who also consulted 'Aṭwī'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, "Mulāhiẓāt," 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; H, 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-Kharshāfi, "Dalīl al-makhtūṭāt al-maghribiyya," 120.

Mālikī jurist Ibn Rabīʿ (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-Nawāzil al-ṣuḡhrā*); and (3) ʿAlī b. ʿAbd al-Salām al-Tasūlī's *fatwā* compilation, *al-Jawāhir al-nafīsa fī-mā 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 Qurʾān as well as *ḥadīths* that are cited or alluded to in the text.

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 "*nawāzil*," while Tunisian National Library MS 5354 is catalogued under the title *al-Turjumān al-muʿrib ʿan fatāwā mutaʾakkhiri ʿulamāʾ 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 ʿAbd 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 ʿAlī b. ʿAbd al-Salām al-Tasūlī, *Ajwibat al-Tasūlī ʿan masāʾil al-Amīr ʿAbd al-Qādir fī al-jihād*, ed. ʿAbd al-Laṭīf Ṣāliḥ (Beirut: Dār al-Gharb al-Islāmī, 1996), 54–58.

الجواهر المختارة

فيما وقفت عليه من النوازل بـجبال غمارة

Selected Jewels:

Legal Cases I Encountered in the Ghumāra Mountains

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

1. First *Fatwā* of Ibn Barṭāl⁷⁵

[2:40]⁷⁶ وسئل⁷⁷ الفقيه أبو الحسن علي بن عبد⁷⁸ الله، وأظنه المعروف بابن برطال⁷⁹ — رحمه الله — عن أناس اصطَلَحُوا مع النصاري على أن يغرموا لهم مائلاً وتركوهم ببلادهم مقيمين. وصاروا معهم على فرق، فمنهم من يتجسس على المسلمين وينقل إليهم أخبارهم، ومنهم من يتسوّق عندهم، ومنهم من صار يقاتل عليهم ويخرج للقتال مع عساكر النصاري، ويمنع المسلمين من الوصول إلى عدوّهم، ومنهم من يؤدّي المغرم فقط ولا يفعل شيئاً ممّا ذكر، ومنهم طائفة أسقط العدو عنهم الخراج كالطلبة والمؤذّنون. ما حكم الله في دماءهم وأموالهم وإمامتهم وشهادتهم؟ وما يخصّ كلّ فريق من هؤلاء الفرق؟ جواباً شافياً.

75. BNRN, 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-ṣuḡhrā* (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 BNRN 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 (عبد) from (عبيد) in BNRN 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. ‘Abd 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-‘Uqda al-Aghsāwī (d. 911/1506); the latter is further said to have studied with al-‘Abdūsī (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-‘Uqda al-Aghsāwī in Muḥammad Ibn ‘Askar (d. 986/1578), *Dawḥat al-nāshir li-maḥāsini man kāna bi-l-Maghrib min mashāyikh al-qarn al-‘āshir*, ed. Muḥammad Ḥajjī, 3rd ed. (Casablanca: Manshūrāt Markaz al-Tūrāth al-Thaqāfi al-Maghribī, 2003), 37; Muḥammad b. Ja‘far al-Kattānī, *Salwat al-anfās wa-muḥādathat al-akyās bi-man uqḥira min al-‘ulamā’ wa-l-ṣulaḥā’ bi-Fās*, ed. ‘Abd 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-ṣuḡhrā*, 1:419). Al-Yūbī repeats this mistake and also writes “Ibn Qarṭāl” instead of “Ibn Barṭāl” (al-Yūbī, *al-Fatāwā al-fiqhiyya*, 212).

فأجاب: القوم الذين عقدوا الصلح مع النصارى [2:41] – دمرهم الله تعالى – على أن يغرموا لهم قوم فسّاق عصاة لله تعالى ومخالفون لسنة رسوله. فأما من التزم داره فلم يتردد⁸⁰ عليهم للتجارة⁸¹ ولا لغيرها، إلا أنه يغرم لهم، فهو عاصي لله بغرامته وقعوده تحت الذلّة. فلا تجوز شهادته ولا تصحّ إمامته، غير أنّ حاله أخفّ من حال من هو يأتي إليهم ويستعمل نفسه في مصالحهم. وحكم هذا القسم أنّه لا يحلّ ماله لأحد ولا يباح دمه. وأما الذين يتجسّسون على المسلمين فالمشهور أنّ دم الجاسوس مباح وأنّه يقتل ويكون قاتله مأجوراً. وأما من اشترى السلاح مع النصارى ويأتي في عسكرهم، فهذا القسم قد مرق⁸² من الدين فحكمه حكم النصارى في دمه وماله. وأما من صار يتسوّق عندهم، فهو فاسق وهو في الإثم أقوى ممّن ألزم نفسه داره. وأما الطلبة والمؤدّنون الذين رضوا بالقعود تحت ذمة النصارى – دمرهم الله – فهم طلبة سوء ومؤدّنو سوء، لا تقبل شهادتهم ولا تجوز إمامتهم، وهم أعظم وزراً من غيرهم لأنهم يقتدى بهم، فتجب عليهم التوبة بعد رحيلهم من تلك البلاد التي غلب عليها الكفرة. وبالله التوفيق (اهـ من بعض التقايد).⁸³

2. *Fatwā* of al-Waryāglī⁸⁴

وسئل الفقيه أبو محمد عبد الله الوريّاجلي،⁸⁵ وأظنه من فقهاء طنجة – رحمه الله – ما تقول أئمة الهدى في إخواننا المسلمين المستوطنين ببلادهم، حيث تناولهم أحكام أهل الكفر، في برّ متّصل بأهل الإسلام، ولم ينتقلوا من بلادهم إلى غيرها من بلاد الإسلام، حيث لا تجري عليهم من الكفّار عوائد ولا أحكام؟ فهل يحلّ للمسلمين – أعزكم الله – سفك دمائهم وسي نساءهم وأخذ⁸⁶ أموالهم؟ وهل تصحّ منهم إقامة الصلاة وإيتاء الزكاة وصوم رمضان أم لا؟

فأجاب: ما ذكرتموه من هذه الطائفة الرديئة الخسيسة، التي طمس الله بصائرهم بعد الإبصار، وأضلّها بسريان الكفر إلى قلوبها بعد الاستبصار، ورضوا بالاستيطان تحت الكفّار الأنجاس الذين يكفرون بالرحمن، ويسوّون نبينا ومولانا محمد – عليه أفضل الصلاة وأزكى السلام – ولعمري، فمثل هذا لا يصدر إلّا من ضعيف الإيمان، ومن سبق له من الله الغواية والحرمان. هذا مع تعظيمهم للكفّار وتعريضهم «لا إله إلّا الله» لآزدراء عبّاد الأصنام وكلّ هذا باختيارهم من غير إكراه. فالمختار في حق هؤلاء لائمتنا، والفتاوى الصادرة فيهم⁸⁷ عن شيوخنا أنّه يجب قتلهم وأخذ مالهم على حكم الفياء لأنّ الدار دار الكفر، ومالهم

80. In all three manuscripts: (يقوم). I have emended this word on the basis of the text in the other *fatwās*.

81. In all three manuscripts: (لتجارة). I have emended this word for grammatical consistency.

82. In all three manuscripts: (فرق). I have emended this word on the basis of the context.

83. I have preserved the abbreviation (اهـ) for (انتهى) 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.

85. Abū Muḥammad ‘Abd Allāh b. ‘Abd al-Wāhid al-Waryāglī (d. 894/1488–89), a Mālikī jurist active in Fez. See Ibn ‘Askar, *Dawḥat al-nāshir*, 34–37 (but note the incorrect death date); Aḥmad Ibn al-Qāḍī al-Miknāsī, *Jadhwat al-iqtibās fi dhikr man ḥalla min al-a‘lām madīnat Fās* (Rabat: Dār al-Manṣūr li-l-Ṭibā‘ wa-l-Wirāqa, 1973–74), 2:439–40; idem, *Durrat al-ḥijāl fi ghurra asmā’ al-rijāl*, ed. Muṣṭafā ‘Abd al-Qādir ‘Aṭā’ (Beirut: Dār al-Kutub al-‘Ilmiyya, 2007), 317; al-Kattānī, *Salwat al-anfās*, 3:386–87; Makhlūf, *Shajarat al-nūr*, 1:384; Aḥmad Bābā al-Tinbuktī, *Nayl al-ibtihāj bi-taṭrīz al-Dībāj*, ed. ‘Alī ‘Umar (Cairo: Maktabat al-Thaqāfa al-Dīniyya, 2004), 1:251–52; Badr al-Dīn al-Qarāfī, *Tawshih al-Dībāj wa-ḥilyat al-Ibtihāj*, ed. Aḥmad al-Shatīwī (Beirut: Dār al-Gharb al-Islāmī, 1983), 111 (spelled al-Wazyāḥī).

86. In all three manuscripts: (أخذ). I have emended this word on the basis of the context.

87. In BNRM and H: (فيه).

إنما هو تحت أيدي الكفار، لا تحت أيديهم، لأنهم ينتزعونه منهم متى⁸⁸ أحبوا، والدار دارهم والإيالة لهم عليه. وكذلك تسي نساءهم وتنزع من أيديهم حتى يصلوا إلى بلاد المسلمين فيحكم بطلاقهم، ويحال بينهم وبين أزواجهم، ويزوجون، ولا يجوز إبقاء نسائهم معهم.⁸⁹ وقد أخطأت أيها السائل خطأ عظيماً في تسميتك لهم بإخواننا المسلمين. بل، هم أعداؤنا وأعداء الدين – خيب الله سعيهم وحبس⁹⁰ سعدهم. بل هم إخوان⁹¹ وأنصار للكافرين – أعز الله المسلمين عنهم ومكن سيوفهم من رقابهم ورقاب الكافرين – الذين انحازوا إلى فتنهم ورجعوا إلى جهتهم. والسلام عليك أيها السائل، ولا⁹² عليهم. ولا بد لنا من جواب فتيا معضوداً⁹³ بنصوص المتقدمين، وفتاوى الأئمة المتأخرين بعد هذا الجواب، إن شاء الله. وفيه⁹⁴ يكون الشرح والإيعاب. خلصنا الله وإياكم من الزيغ والضلال، وأماننا على محبة دين النبي الصادق في المقال. اهـ من التقييد المذكور.

3. *Fatwā* of al-Māwāsī⁹⁵

وسئل الشيخ الفقيه أبو مهدي عيسى الماواسي⁹⁶ – رحمه الله – عن أناس سكنوا بأوطانهم [2:42] على ذمة العدو الكافر – دمره الله وبدد شمله – مع أنهم يتأثى لهم الانتقال من تلك الأوطان ويجدون للرحيل منها سبيلاً. هل تجوز إقامتهم تحت ذمة العدو الكافر أم لا؟ وحالهم معهم على أقسام: قسم يغرم لهم ولا يتردد إليهم، وقسم يتردد إليهم للتجارة لا لغيرها، وقسم يتردد إليهم ويعلمهم بأخبار المسلمين،⁹⁷ وقسم يركب معهم للاصطياد ويقول لهم «أطال الله هذه المدة وهذه

88. In T: (حتى ما); in H: (متى ما).

89. All three manuscripts of *Selected Jewels* omit (لا يجوز), but this phrase appears in both manuscripts of al-Tasūlī's *Precious Jewels*. I have emended al-Zayyātī's text accordingly, for consistency of meaning. See al-Tasūlī, *al-Jawāhir al-nafisa*, Ḥasaniyya Library, MS 12574, 2:233 (numbered by pages); Tunisian National Library, MS 5354, fol. 240b.

90. All three manuscripts of al-Zayyātī read (حبس). I have emended the text for meaning on the basis of al-Tasūlī's *Precious Jewels*. See Ḥasaniyya MS 12575, 2:233; Tunisian National Library MS 5354, fol. 240b.

91. In H: (أعوان); unclear in T.

92. In H: (بل لا); in BNRM: (لا).

93. In BNRM: (ولا بد لنا من جواب فتيا معضود). In T and H: (ولا بد لنا من جواب من جواب معضود), with a blank space between (من جواب) and (الفتيا). I have emended the latter version by removing the definite article from *futyā*.

94. In H: (وفيه كفاية يكون).

95. BNRM, 2:41–42; H, 248; T, 263. Al-Wazzānī records a version of this *fatwā* in his *al-Nawāzil al-ṣuḡhrā*, 1:418.

96. In H: (الماوسي). BNRM, T, and both manuscript copies of *Precious Jewels* read (الماوسي). I have emended the text to match the spelling of this jurist's name as it appears in all seven biographical sources I consulted. His full name is Abū Mahdī ʿĪsā b. Aḥmad al-Māwāsī al-Baṭṭūʿī (d. 896/1491); he was a Mālikī jurist who at one time served as chief *muftī* of Fez. See Kaḥḥāla, *Muʿjam al-muʿallifin*, 2:796; al-Qarāfī, *Tawshih al-Dibāj*, 270; Ibn al-Qāḍī al-Miknāsī, *Jadhwat al-iqtibās*, 2:502–3; idem., *Durrat al-ḥijāl*, 378; al-Tinbuktī, *Nayl al-ibtihāj*, 1:335; idem., *Kifāyat al-muḥtāj li-maʿrifat man laysa fī al-Dibāj*, ed. Muḥammad Muṭīʿ (Rabat: Wizārat al-Awqāf wa-l-Shuʿūn al-Islāmiyya, 2000), 1:320–21; Muḥammad Ḥajjī, *Alf sana min al-wafayāt* (Rabat: Maṭbūʿāt Dār al-Maghrib li-l-Taʿlīf wa-l-Tarjama wa-l-Nashr, 1976), 152 and 272.

97. In H, this portion reads

(قسم يغرم لهم ولا يتردد إليهم، وقسم لا يتردد إليهم للتجارة لا لغيرها، وقسم يتردد إليهم ويعلمهم بأخبار المسلمين).

In T, the same portion reads (قسم يغرم لهم ولا يتردد إليهم للتجارة لا لغيرها، وقسم يتردد إليهم ويعلمهم بأخبار المسلمين).

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

الساعة»⁹⁸ — لا قبل الله دعاءهم. فبينوا⁹⁹ لنا حكم هذه الأقسام بياناً شافياً.
فأجاب: أمّا مقام المسلمين اختياراً تحت إيالة الكفار فحرام.¹⁰⁰ وإن من تردّد إلى منازلهم خسر¹⁰¹ دينه ودنياه وخالف ما أمره مولاه، إذ لا يحلّ للمسلم أن يعقد الصلح مع الكافر على أن يغرم له، باتّفاق في مذهب مالك. فمن يفعل ذلك لا تجوز شهادته ولا إمامته. هذا حكم القسم الأوّل، والإسلام يعلو ولا يعلى عليه.
 وأمّا¹⁰² حكم القسم الثاني، وهو من¹⁰³ يتردّد إلى منازلهم للتجر، [فهو أسوأ حالاً من القسم الأوّل وأقبح منزلاً].
 وأمّا حكم القسم الثالث، وهو الذي يتردّد إلى منازلهم للتجر¹⁰⁴ ويعرفهم بأخبار المسلمين، فهذا أقبح الفرق الثلاثة وأشبه حالاً بالجاسوس الدالّ على عورات المسلمين. وهل¹⁰⁵ يكون خبره¹⁰⁶ على مضرة¹⁰⁷ المسلمين كالخرابة التي توجب لمن قامت به القتل، درءاً لمضرته ومفسدته؟¹⁰⁸ وهو نظر من قال بقتل الجاسوس. أم¹⁰⁹ لا يقتل ويجتهد الإمام في عقوبته وزجره. أو يفرّق بين من اتّخذ ذلك فلتة واحدة، خلاف معروف. وهل تقبل توبته أم لا؟ يشابهه إلى دين¹¹⁰ الزنديق في كتمان فعله. وهو المتردّد لهم الأود إليهم ويعرفهم بالطرق الموصلة إلى أوطان¹¹¹ المسلمين، فهو¹¹² أخبث¹¹³ الفرق¹¹⁴ وأقبح، وهو أقرب للكافرين من المؤمنين،¹¹⁵ لأن الحبّ للكافر والداعي بالعزة له والاستطالة¹¹⁶ على المسلمين من علامات¹¹⁷ الكفر. ونعوذ بالله من الارتداد وتبدّل الاعتقاد.¹¹⁸
 اهـ من التقييد المذكور أيضاً.

perfectly with the text of the answer, the BNRM version offered above makes the most sense.

98. In H and T: (هذه المدة وهذه في الدنيا). In BNRM, a mark above (الساعة) may indicate a mistake, but there is similarly a mark under (الدنيا) in H.

99. In H and T: (بينوا).

100. In H and T: (فحرام محرم).

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

102. In H: (وما).

103. H and T omit (من).

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

105. All three manuscripts read (هل).

106. In BNRM: (وهل يكون به). In T, the end of (خبرته) appears crossed out, such that it may read (خير) or (خبره). In H: (خبرته).

107. In all three manuscripts: (نصرانية). Emended based on al-Tasūlī's text, but see next note.

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

(وهل يكون إخباره النصارى بمضرات المسلمين كالخرابة، التي توجب لمن قام بها القتل؟)

109. In BNRM: (أو).

110. In BNRM: (فشابه دين).

111. I have emended this word to fit the context. In H, the word is (إيعاد). In BNRM and T: (إجبار). In both manuscripts of *Precious Jewels*: (إستتار). In al-Wazzānī: (إستتلاء).

112. In BNRM and H: (فهى).

113. In H: (أبيس), meaning (أبأس). Illegible in T.

114. In H and T: (الفرق).

115. In H and T: (من الإيمان).

116. In T: (الاستطالة).

117. In all three manuscripts: (علامة). I have emended this word on the basis of the context.

118. In H and T: (الاشغاء).

4. Second *Fatwā* of Ibn Barṭāl¹¹⁹

وسئل الفقيه أبو الحسن علي بن عبد الله بن برطال — رحمه الله — عن حكم أناس سكنوا بأوطانهم والنصارى يجاورونهم، وهم على ثلاثة أقسام: قسم أهل فتنة وحرب مع الكفار كأهل جبل حبيب،¹²⁰ وقسم، لما انعقد الصلح مع النصارى، ضربوا لهم أجلاً، ونبتهم أنهم لا يغرمون¹²¹ لهم مالاً، فإن هم طولبوا به، فرّوا إلى بلاد الإسلام. ما حكم سكنائهم في بلادهم مع هذه النية؟ وقسم نبتهم أن يسكنوا بلادهم ويغرموا للنصارى ما بقيت الدنيا. فينبوا¹²² لنا حكم هذه الأقسام.

فأجاب: الجواب عن المسألة الأولى الهائلة، التي هوّل بها أركان¹²³ الإسلام وطمست بها عيون الليالي والأيام، أنّ الثلث الأول هم المسلمون المشفقون بإسلامهم الذين يجب علينا التبرك بغبار أقدامهم، فإنهم في عبادة عظيمة. فيا ليتني كنت معهم فأفوز فوزاً عظيماً.

وأما الثلث الثاني: الذي عقد بينهم أنهم، إن اضطروا على الغرامة، يفرّ بنفسه،¹²⁴ فقد فعل فعلاً مكروهاً¹²⁵ في استيظانه ببلد يمكن الكافر فيه قهره وغلبته، غير أنّ هذا الثلث، إن وقي ما عاهدت¹²⁶ عليه نيته،¹²⁷ فإنّه من الناجين إن شاء الله أنّه¹²⁸ غرّ وسلم.

وأما الثلث الثالث، فإنّه خسر¹²⁹ دينه ودنياه، وخالف ما أمر به مولاه، فهؤلاء يستحقّون العقوبة العظيمة. واختلف في عقوبتهم على خمسة أقوال: المشهور منها ما ذهب إليه ابن القاسم وسحنون، أنه يقتل من غير استتابة — عافانا الله من هذه المصيبة. فبينما¹³⁰ المسلم حرام الدم وإذا به¹³¹ يصير نفسه حلال الدم.

وكذلك لا يحلّ لمسلم أن يبيع ويشترى من النصارى فيتقوون بذلك على المسلمين. وكان يجب على أهل الأوطان الصبر على ما أصابهم حتى يقضى الله أمراً كان مفعولاً. اهـ من التقييد المذكور أيضاً.

119. BNRN, 2:42; H 248; T, 263. Al-Wazzānī combines Ibn Barṭāl's three *fatwās* into one composite opinion in *al-Nawāzil al-ṣuḡhrā*, 1:419.

120. Although all three manuscripts read Ḥabīb, this may be an error for Mount Zabīb in the Ghūmara mountain range.

121. In T: (لا يتركون يغرمون).

122. In H and T: (بينوا).

123. In H and T: (التي هو بها أو كانت); in T there appears to be an attempt to correct (أركان) to (أو كانت).

124. In H and T: (لما عقد بنية أنهم، إن اضطروا على الغرامة، يفرّ بنفسه).

125. In BNRN: (فقد فعل مكروهاً).

126. Emended from (عاهد).

127. In BNRN: (نيتهم).

128. In BNRN: (لأنه).

129. In H and T: (وأما الثلث الثالث فبأس الثلث لأنه خسر).

130. In H and T, this word may be (مبينها) or (بينها), but it is difficult to read; it is more clearly (فبينما) where the passage recurs below.

131. Something is missing from the text here. The meaning should be that although a Muslim's life is normally inviolable, the Muslims in this third group have rendered their lives violable through their intention to remain where they are and to pay the tribute demanded of them.

5. Excerpts from the *fatwā* collection of Abū al-Qāsim al-Burzulī and from a *fatwā* by Ibn Rabī¹³²

وجدت في التقييد المذكور أيضاً ما نصّه:

وقع في كتاب الجهاد من تأليف الشيخ الإمام أبي القاسم — رحمه الله — ما نصّه:

وفيه ما أصابه [2:43] المسلمون من غاشية المسلمين الساكنين تحت أحكام المشركين وبين أظهرهم، وحكم أموالهم، فأجروها على مسألة الحربي الذي يسلم ولم يهاجر، وهو ببلد الحرب بأهله وماله وولده. وفي كتاب الجهاد من المدونة،¹³³ في الحربي¹³⁴ الذي يسلم ولم يهاجر، أنّ ماله وولده فيء للمسلمين. فغلب ابن القاسم¹³⁵ عليه حكم الدار، وكان أصبغ،¹³⁶ من أصحاب مالك، يفتي بجلية ماله، وأنه لا يد لصاحبه عليه، وإنما اليد للكفار. وبمثله قال ابن رشد¹³⁷ لكونه رضي بالإقامة بين المشركين وضرب الجزية عليه، فهو وماله تحت إيالتهم، مع الإجماع على وجوب الهجرة عليه إن وجد سبيلاً إلى ذلك. قال ابن عرفة:¹³⁸ «قلت: والمشهور أنّ مال الحربي للمسلمين فيء إذا لم يخرج.»

قال الفقيه أبو الحسن محمد بن يحيى بن ربيعة¹³⁹ — رحمه الله — وقد سئل عن الإقامة مع الروم في البلد¹⁴⁰ الذي تعلوا عليه أحكامهم وبقي المسلمون معهم تحت الذمة والإذلال بسبب أموالهم واختيارهم،¹⁴¹ يعطون الجزية عليها، وهم صاغرون ويؤدّون الزكاة منها للمشركين.

فأجاب — رضي الله عنه: أنّ فقهاء الأمصار [قالوا] إنه لما كانت هذه الموالاة الشريكية¹⁴² مفقودة في دار الإسلام، ولم تحدث إلا بعد مضي مئين من السنين، وبعد انقراض أئمة الأمصار المجتهدين، لم يتعرّض أحد منهم لأحكامها الفقهية، وإنما تفقهوا¹⁴³

132. BNRN, 2:42–43; H, 248–49; T, 263–64. The Arabic text of the initial portion of this section may be found in al-Burzulī, *Fatāwā al-Burzulī*, 2:22–23. On Abū al-Qāsim al-Burzulī (d. 841/1438), a Mālikī jurist active in what is now Tunisia, see al-Burzulī, *Fatāwā al-Burzulī*, 1:5–46. On Muḥammad b. Yaḥyā b. ‘Abd al-Raḥmān Ibn Rabī‘ (d. 719/1319) and his *fatwā*, see P. S. van Koningsveld and Gerard Wiegers, “The Islamic Statute of the Mudejars in the Light of a New Source,” *Al-Qanṭara* 17, no. 1 (1996): 19–58; Hendrickson, *Leaving Iberia*, 115–16.

133. The *Mudawwana* was composed by ‘Abd al-Salām Saḥnūn b. Sa‘īd (d. 240/854), known as Saḥnūn. In this foundational Mālikī text, Saḥnūn records the answers given to him by ‘Abd 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 *EP*; Jonathan Brockopp, “Ibn al-Qāsim,” in *EP*.

134. In H: (الحرب).

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

136. Aṣḥab b. al-Faraj b. al-Sa‘īd al-Nāfi‘ (d. 225/839) was a prominent Egyptian Mālikī student of Ibn al-Qāsim and other early Mālikī scholars. See Jonathan Brockopp, “Aṣḥab b. al-Faraj,” in *EP*.

137. Abū al-Walīd Muḥammad b. Aḥmad 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. Spector, 295–322 (Leiden: Brill, 2013).

138. Abū ‘Abd Allāh Muḥammad b. Muḥammad Ibn ‘Arafa al-Warḥammī (d. 803/1401), known as Ibn ‘Arafa, was an important Mālikī scholar and *mufī* of the Great Mosque of Tunis. On him, see Mohammad Fadel, “Ibn ‘Arafa al-Warḥammī,” in *EP*.

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

140. In H and T: (بلد).

141. BNRN omits (إختيارهم).

142. In T: (المشركية).

143. In H: (وإنما يتفقوا). In BNRN: (وإنما يتفقوا).

في أحكام نقيضها، وهو من والانا¹⁴⁴ منهم أو من دخل ذليلاً صاعراً في ذمتنا وعهدنا معظماً لدينا وغير متعرض¹⁴⁵. ثم لما نبغت هذه الموالاة النصرانية في المائة الخامسة من تاريخ الهجرة، وقت استيلاء الروم على جزيرة صقلية وبعض كور الأندلس، سئل عنها فقهاء المغرب واستفتوا¹⁴⁶ بالأحكام الفقهية المتعلقة بمرتكبيها،¹⁴⁷ فأجابوا بأن أحكامهم¹⁴⁸ جارية على أحكام من أسلم من الحريين ولم يهاجر، فألحقوا¹⁴⁹ هؤلاء، بأسوأ الطائفتين،¹⁵⁰ في الأحكام الفقهية المتعلقة بأموالهم وأولادهم، ولم يروا فيها فرقاً بين الفريقين، وذلك لأنهما¹⁵¹ في موالاة الأعداء ومساكنتهم ومداخلتهم وترك الهجرة والفرار الواجب من بلادهم¹⁵² وسائر الأسباب الموجبة لهذه الأحكام بمثابة واحدة.

واعلم أن العاصم لدم المسلم وماله وولده هو الإسلام والدار في أحد قولي مالك. وذهب الشافعي¹⁵³ إلى أن العاصم¹⁵⁴ لدمه وماله جميعاً الإسلام،¹⁵⁵ واتفق أبو حنيفة¹⁵⁶ أن العاصم لدمه وولده الدار والإسلام، لقوله تعالى: {والذين آمنوا ولم يهاجروا ما لكم من ولايتهم من شيء حتى يهاجروا}¹⁵⁷ ولقوله تعالى: {فإن كان من قوم عدو لكم وهو مؤمن فتحببوا رقبة مؤمنة}¹⁵⁸ ولم يذكر ديتة. فالمراد بهذا المؤمن الذي لم يهاجر، لأنه مؤمن في قوم أعداء، فهو منهم، لقوله تعالى: {و من يتولهم منكم فإنه منهم}¹⁵⁹، فإنه مؤمن من قوم عدو.

وأما ماله وولده الصغار فذهب مالك، في رواية ابن القاسم عنه في المدونة إلى أن ماله وولده فيء. وبه قال أبو حنيفة. وسبب هذا الخلاف ما لم يحاربوا، فإن حاربوا مع أوليائهم، فليس إلا استباحة دمهم. وإن أعانواهم بالمال على قتالنا فليس إلا استباحة أموالهم وسبي ذراريهم للاستخلاص من يد الكفار وإنشاءهم¹⁶⁰ بين أظهر المسلمين، آمنين من الفتنة. وكذلك نساءهم

144. In H: (ولانا).

145. In van Koningsveld, Wiegers, and Ryad's edition, this sentence continues, ending as follows: (...). وغير متعرض لکلمتنا وصلاتنا).

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

147. All three manuscripts read (بارتكبها). Emended on the basis of the text in Ibn Rabīʿ, which reads (واستفهموا عن الأحكام الفقهية المتعلقة بمرتکبها).

148. All three manuscripts of al-Zayyātī's text read (فأجابوا بأن قالوا أحكامهم); I have emended this sentence on the basis of Ibn Rabīʿ' text, which omits (قالوا).

149. In T: (فألحقوها).

150. All three manuscripts read (أسوا). In Ibn Rabīʿ: (وسوا الطائفتين).

151. All three manuscripts of al-Zayyātī's text read (وذلك لأنهما بمساواتهما); I have emended this sentence on the basis of Ibn Rabīʿ' text, which omits (بمساواتهما).

152. All three manuscripts of al-Zayyātī's text read (وترك الهجرة والفرار الواجب من بلادهم منهم); I have emended this sentence on the basis of Ibn Rabīʿ' text, which omits (وترك الهجرة والفرار الواجب من بلادهم). This longer phrase makes (منهم) redundant.

153. Muḥammad b. Idrīs al-Shāfiʿī (d. 204/820), eponymous founder of the Shāfiʿī school of law.

154. In H: (إلى العاصم).

155. This sentence regarding al-Shāfiʿī's opinion is the only part of these last two paragraphs that matches Ibn Rabīʿ' text.

156. Abū Ḥanīfa al-Nuʿmān b. Thābit al-Fārisī (d. 150/767), eponymous founder of the Ḥanafi school of law.

157. Qurʾān 8:72.

158. Qurʾān 4:92.

159. Qurʾān 5:51.

160. I have emended this sentence on the basis of Ibn Rabīʿ' text. All three manuscripts read (بالاستخلاص من يد الكفار، وأن نساءهم).

للاسترقاق.¹⁶¹ اه صحح.¹⁶²
 اه ما وجدته في التقييد المذكور بلفظه.

6. Third *Fatwā* of Ibn Barṭāl¹⁶³

وسئل الفقيه أبو الحسن علي بن عبد الله بن علي الأغصاوي، وأظنه المعروف بابن برطال — رحمه الله — عن أناس بلادهم قريبة من النصارى وحالهم في السكنى فيها على أقسام: قسم سكنوا على الفتنة مع النصارى ويحترثون في أطراف بلاد الصلح على وجه السرقة، إذ العدو لا يعرف حدود البلاد ولا أين حرثهم. وقسم صالحوا ولكن نيتهم أنهم لا يؤدّون مغرمًا لأنّ النصارى كانوا أخروهم بالغرم إلى شهر أكتوبر وحينئذ يؤدّونه [2:44] لهم فأضمر¹⁶⁴ في أنفسهم أنهم يسكنون في بلادهم إلى ذلك الأجل، فإما أن يغيبهم المسلمون، فيكونون هم الأولون في الجهاد، وإما أن لا يغيبوهم،¹⁶⁵ فيرحلون إليهم. فما حكم الله في أصحاب هذا القسم؟ وقسم صالحوا ونيتهم السكنى على وجه التأييد وتأدية المغرم كذلك. فما حكم الله على هذا الوجه المذكور؟ ومسألة أخرى: رجل من أهل أصيلا — أعادها الله تعالى للإسلام — ترتب عليه دين لرجل، ثم أسره العدو وله هنا مال فهل يقتضي ربّ الدين من هذا المال دينه أم يفدي الأسير أولًا؟ بيّنوا لنا ذلك.

فأجاب: الجواب عن المسألة الهائلة التي هوّل¹⁶⁶ بها أركان الإسلام وطمست بها أعين¹⁶⁷ الليالي والأيتام، أنّ الثلث الساكن على مجاهدة العدو والتأهب لجهادهم وانتظار غاراتهم هم المسلمون المشقّعون بإسلامهم الذين يجب علينا التبرّك بغير أقدامهم فإنّهم في عبادة ما أعظمها عبادة. فإيا ليتني كنت معهم فأفوز فوزًا عظيمًا.

وأما الثلث الثاني الساكن بنية أنّه إن أضغظه العدو¹⁶⁸ على الغرامة يفتر، فقد فعل¹⁶⁹ مكروهاً في استيطانه ببلد يمكن¹⁷⁰ العدو فيها قهره وغلبته واستيصال أهل والأموال. غير أنّ هذا الثلث إن وفي بما عقد عليه بنيته، فإنّه من الناجين إن شاء الله تعالى، إذا قطع الغروم عليهم رأسًا، لأنّه غرّ وسلم.

وأما الثلث الثالث، فيئس الثلث لأنّه خسر دينه ودنياه، وخالف ما أمر به مولاه، أنّه لا يحلّ لمسلم أن يعقد الصلح مع الكفار على أن يغرم لهم، باتفاق في مذهب مالك. فمن فعل ذلك كان عاصيًا لله تعالى ومخالفًا لرسوله — صلى الله عليه وسلم. والواجب عليكم وعلى ساداتنا المستوطنين هنالك أن يعرفوا هذا الثلث بخطئه، وأن ينجروا أهل الحلّ والعقد من ذلك

161. In BNRN: (نساءهم لا يسترقون), but a mark above this word appears to indicate a mistake of some kind.

162. BNRN omits (اه صحح).

163. BNRN, 2:43–45(a); H, 249; T, 264. The second BNRN volume repeats page numbers 45 and 46; this *fatwā* ends on the first instance of page 45, which I refer to as 45(a). Al-Wazzānī combines Ibn Barṭāl's three *fatwās* into one composite opinion in *al-Nawāzil al-ṣuḡhrā*, 1:419. The full page range for this *fatwā* in al-Tasūlī's *Precious Jewels* is Ḥasaniyya Library MS 12574, 2:236–38 and Tunisian National Library MS 5354, fols. 241b–242a.

164. In H: (فاظهروا).

165. In H: (لا يغيبهم).

166. This word has been emended on the basis of Ibn Barṭāl's second *fatwā*. Here, all three manuscripts read (ثلث).

167. In H and T: (عين).

168. T and H omit (العدو).

169. In H: (فعلى).

170. Illegible in H.

الثالث¹⁷¹ جهدهم. فان خالفوا، فاهجروهم، ولا يحلّ لكم أن تولّوا¹⁷² بهم ولا أن تشهدوا لهم ولا تصلّوا على جنائزهم ولا تتعرّضوا لمساؤلهم إلّا أن يرجعوا عن فعلهم المذموم وعن¹⁷³ رذلتهم الخسيسة.

وكنتم عرّفتمونا في سؤالكم قبل هذا أنّ القسم الثالث منهم أقوام ينقلون خبر المسلمين للنصارى ويخبرونهم بعوراتهم¹⁷⁴ ويسعون معهم فيما يضرّ المسلمين فهؤلاء القوم يستحقّون العقوبة العظيمة. واختلف في عقوبتهم على خمسة أقوال. المشهور منها ما ذهب إليه ابن القاسم وسحنون أنّ عقوبة من فعل ذلك القتل من غير استتابة — عفانا الله من هذه المصيبة العظيمة. فبينما المسلم حرام الدم وإذا به¹⁷⁵ يصير نفسه حلال الدم.¹⁷⁶

وكذلك كنتم عرّفتمونا أنّهم يغرمون على النصارى يتبايعون معهم ويحملون لهم ما ينتفعون به. وجوابناكم أنّه لا يحلّ لمسلم أن يحمل للنصارى ما يتقوّون به على المسلمين، ولا يسوغ له¹⁷⁷ أن يبيع لهم ولا أن يشتري منهم بموضع تناله فيه الذلّة منهم، كبلادكم، لأنّ الإسلام يعلو ولا يعلى عليه. وكان من حقّ أهل تلك الأوطان الصير لدينهم حتّى يقع الإيأس من نصرة ترجى لأنّ بلاد المسلمين متّصلة، لا سيّما وعثمان¹⁷⁸ المريني قائم العين مرجوّ الانتصار، شديد الحرص على استخلاص بلاده، مملوء الأحشاء أسفًا، مضمور القرحة ألمًا.¹⁷⁹ فالله المسؤول أن يطلق عقاله وأن يزيل وباله وأن يصلح أمره وأن يسعد عصره

171. In BNRM: (عن ذلك).

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

173. In H and T: (عن).

174. In T: (ويخبرونهم عن عوراتهم). In H: (ويخبرونهم عن عوراتهم).

175. In BNRM: (ذا به).

176. T omits (الدم). 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 H and T: (لهم).

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 Ḥasaniyya Library manuscript of *Precious Jewels* (MS 12574, 2:238) read (عماد المريني) ('Imād al-Marīnī), but no Marīnid ruler was known by that name and Ibn Barṭāl lived in the late fifteenth century, in the (post-Marīnid) Waṭṭāsīd 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 'Imād, 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 Abdul Aziz Al Saoud in Casablanca](#), also reads 'Imād al-Marīnī (MS 584, p. 47; full *fatwā* 46–47). I suggest emending the text to read (عثمان المريني) ('Uthmān al-Marīnī). Although the reference to a Marīnid ruler remains anachronistic, the Marīnid sultan Abū Sa'īd 'Uthmān 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. In their editions of this *fatwā*, 'Atwī has 'Inān al-Marīnī ('Atwī, "al-Jawāhir al-mukhtāra," 132), al-Amīn has 'Imād al-Marīnī ("al-Jawāhir al-mukhtāra," 1:172), and Cherif and al-Zāhirī have 'Uthmān al-Marīnī (Cherif and al-Zāhirī, "Fatāwā Ibn Barṭāl," 70; Cherif, "Qaḍāyā ḥarija," 66). None of these authors note variants or address the anachronism in the text. I have appended to this edition an example image from each manuscript; since readers may wish to see this passage, in particular, I have chosen the page containing this passage to serve as each manuscript's sample image.

179. In addition to the name discussed in the preceding note, I have made additional emendations to this passage on the basis of the text in *Precious Jewels*. For example, the three manuscripts of al-Zayyātī's text re-emphasize the expectation that the region's people await al-Marīnī (مرجوا الانتظار), but the *Precious Jewels* version, which states that al-Marīnī's victory is anticipated (مرجو الانتصار), makes more sense (Ḥasaniyya Library MS 12574, 2:38). This passage appears as follows in BNRM:

كما نسأله أن يوفق بين عباده وأن يتدارك ما هوى¹⁸⁰ من بلاده.
وقد جاوبناكم قبل هذا بفور بلوغ سؤالكم، وبعثناه لكم، فلم يقدر وصوله.
والجواب عن المسألة الأخيرة أنّ ربّ الدين يثبت دينه عند القاضي، فإن عدم القاضي، فعند جماعة عدول البلد.
فإذا أثبتته، يتخلّص من دينه، وقضى له به من مال الأسير، ويتولّى ذلك القاضي أو جماعة عدول عند عدمه. ولا يؤخّر [2:45]
قضاء الدين لاستيفاء الفدية. نعم، إن كان الأسير قد قاطع على نفسه بمال محدود، فإنّ ذلك المال من سائر ديونه. إن حمل
ماله الجميع، قضى الجميع. وإن لم يحمله،¹⁸¹ وقعت الخاصّة على قدر الديون.
أه من التقييد المذكور، قائلاً إنّه¹⁸² نقل من خطّ من نقل من خطّه.

7. *Fatwā* of al-Wansharīsī (the “Berber *Fatwā*”)¹⁸³

وسئل الإمام حافظ زمانه أبو العباس أحمد بن يحيى الونشريسي¹⁸⁴ — رحمه الله ورضي عنه — عن قوم من البرابر أقاموا بأوطانهم تحت طاعة العدو الكافر، وهم يجدون سبيلاً إلى الخروج من تلك الأوطان. هل تجوز إقامتهم هنالك أم لا؟
وهم مع¹⁸⁵ العدو على أقسام: منهم من يقيم بوطنه ولا يذهب إليهم، لا للتجارة ولا لغيرها. ومنهم من يذهب إليهم لقصد التجارة لا لغيرها. ومنهم من يذهب إليهم لقصد التجارة وتعريفهم بأخبار المسلمين. ومنهم من يصطاد¹⁸⁶ معهم وبأوطان المسلمين، ويتحاكم إليهم ويقول لهم «الله يطيل¹⁸⁷ مدّتكم». وما الحكم سيدي فيما استولى عليه العدو الكافر من أموال المسلمين؟ هل يجوز شراءه منهم أم لا؟ فإنّ بعض الطلبة يذهب إليهم لاستخلاص الكتب من أيديهم بالشراء. يبنوا لنا ذلك، ولكم الأجر، والسلام عليكم.¹⁸⁸
فأجاب: حاصل السؤال بما اشتمل عليه من الأنواع يرجع إلى أسئلة: الأوّل المقام بأرض الحرب والدخول تحت إيالة الكفر. والثاني الدخول إليهم للمتاجرة والإخبار بعودة المسلمين. والثالث الاصطياد معهم والتحاكم إليهم والدعاء لهم بالبقاء. وهذان السؤالان كالنوعين تحت السؤال الأوّل، والأوّل¹⁸⁹ كالجنس لهما. فالرابع في حكم ما استخلص من أموال المسلمين.

(وعمد المريني قائم العين، مرجوا الانتظار، شديد الحرص على استخلاص بلاده، حملوا الأحشاء أسفاً مضموراً القريحة أُلما)

Variant in H: (مرجوا لانتظاره).

Variant in T: (الانتظار). This word is smudged, perhaps as a result of an attempt to correct it to (الانتصار). As in BNRN, later in the sentence T seems to read (حملوا الأحشاء), but the ink here is heavy and may also reflect an attempt to correct the word to read (ملوا), corresponding to (ملوء) in modern orthography.

Variant in the Ḥasaniyya Library manuscript of al-Tasūlī's text: the passage ends with (القريحة), omitting (أُلما).

180. In H: (هدى).

181. In H and T: (إن حمل ماله الجميع، وإن لم يحمله).

182. In H: (لأنه).

183. BNRN, 2:45(a)–2:45(b); H, 249–51; T, 264–66. BNRN 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-Mi'yār al-jadīd*, 3:28–31.

184. On Abū al-Abbās Aḥmad b. Yaḥyā al-Wansharīsī, in addition to the sources cited above, see David S. Powers, “Aḥmad al-Wansharīsī (d. 914/1509),” in Arabi, Powers, and Sectorsky, *Islamic Legal Thought*, 375–82.

185. H omits (مع). In T (مع) has been corrected from (من). In BNRN: (مع).

186. In BNRN: (من يذهب يصطاد).

187. In H: (يصيل).

188. In H: (ولكم الأجر والسلام).

189. H and T omit (والأوّل).

فأما الأول، فجوابه — والله سبحانه الموفق للصواب بفضل — أن الدخول تحت طاعة الكفر والمقام بدار الحرب مع التمكن من النقلة عنها والبعد منها حرام، لا يجوز طرفه عين ولا ساعة من نهار. والواجب المحتّم اللازم أن تهجر بقاع الكفر ينتقل عنها إلى دار الإسلام بحيث لا تجري أحكامهم. والدليل على ذلك الكتاب¹⁹⁰ والسنة الإجماع.

أما الكتاب،¹⁹¹ بقوله تعالى: ﴿أَنَّ الَّذِينَ تَوَقَّاهُمُ الْمَلَائِكَةُ ظَالِمِي الْأَرْضِ﴾¹⁹² أنفسهم قالوا: «فيما كنتم؟» قالوا: «كنا مستضعفين في الأرض.» قالوا: «ألم تكن أرض الله واسعة فتهاجروا فيها؟» فأولئك مأواهم جهنم وساءت مصيراً، إلا المستضعفين من الرجال والنساء والولدان، لا يستطيعون حيلة ولا يهتدون سبيلاً. فأولئك عسى الله أن يعفو عنهم، وكان الله عفواً غفوراً¹⁹³ إن الذين لا يهتدون سبيلاً يتوجهون إليه، لو خرجوا هلكوا، فأولئك عسى الله أن يعفو عنهم. يعني في إقامتهم لأهم¹⁹⁴ بين ظهور المشركين. وأما السنة، فبقوله — صلى الله عليه وسلم: «أنا بريء من كل مسلم يقيم مع المشركين.»¹⁹⁵

وأجمع الأئمة على ذلك.

فإذا وجب، بالكتاب¹⁹⁶ والسنة وإجماع الأئمة، على من¹⁹⁷ أسلم بدار الحرب أن يهجرها ويلحق بدار الإسلام، ولا يثوي¹⁹⁸ أو يقيم بين أظهرهم لئلا تجري عليه أحكامهم، فلا ينبغي في حق المسلم الأصلي أخرى وأولى. وقد كره¹⁹⁹ مالك — رضي الله عنه — السكنى ببلد يسب فيه السلف، فكيف ببلد يكون فيه تحت طاعة الشيطان، وسخط الرحمن وحيث يدعى التثليث وتعبد الأوثان؟ لا تسكن على هذه المرام إلا نفس خبيثة العقيدة مريضة الإيمان.

ونص الأئمة على أنه لو لم يجد السبيل إلى التخلص من حبال الكفرة إلا ببذل ما له من المال، أوجبناه عليه وجوباً مضيئاً. فان لم يفعل، لم تكمل حرمة، ولم تقبل شهادته، ولم يكن له حق في الفداء والخمس. ولهذا²⁰⁰ اختلف المذهب في أموال الدجن،²⁰¹ هل يحكم لها²⁰² بحكم الدار، فهي كأموال العدو، أو لم تنزل على ملكهم؟ وعن بعضهم، لا تجوز معاملتهم، ولا

190. In H and T: (الكتب).

191. In H: (الكتب).

192. T repeats (ظالم).

193. Qurʾān 4:97–99.

194. In H: (في أرد لأهم). In BNR, there is a blank space with a line through it between (في) and (ظهورهم).

195. Muḥammad b. ʿĪsā al-Tirmidhī, *Sunan al-Tirmidhī wa-huwa al-jāmiʿ al-kabīr*, ed. Markaz al-Buḥūth wa-Taḥqīqat al-Maʿlūmāt (Cairo: Dār al-Taʾṣīl, 2016), 2:601 (*abwāb al-siyar, bāb mā jāʿ fī karāhiyat al-muqām bayna aẓhur al-mushrikīn, ḥadīth 1709*); Sulaymān al-Azdī al-Sijistānī Abū Dāwūd, *Sunan Abī Dāwūd*, ed. Shuʿayb al-Arnaʿūt and Muḥammad Kāmil Qurra Balalī (Damascus: Dār al-Risāla al-ʿĀlamiyya, 2009), 4:280–83 (*kitāb al-jihād, bāb al-nahy ʿan qatl man iʿtaṣama bi-l-sujūd, ḥadīth 2645*); Aḥmad b. Shuʿayb al-Nasāʾī, *Kitāb al-Sunan al-kubrā*, ed. Ḥasan ʿAbd al-Munʿim Shalabī and Shuʿayb al-Arnaʿūt (Beirut: Muʾassasat al-Risāla, 2001), 6:347–48 (*kitāb al-qasāma, bāb al-qawd bi-ghayr ḥadīda, ḥadīth 6956*).

196. In H and T: (الكتب).

197. T omits (من).

198. In T: (يبدل). In BNR and H: (يبار). I have emended this word on the basis of Ibn Rushd al-Jadd's *al-Muqaddimāt al-mumahhidāt*, al-Wansharī's source for this paragraph. See Ibn Rushd al-Jadd, *al-Muqaddimāt al-mumahhidāt li-bayān mā iqtadathu rusūm al-Mudawwana min al-aḥkām al-sharʿiyyāt wa-l-taḥṣīlāt al-muḥkamāt li-ummahāt masāʾilihā al-mushkilāt*, ed. Saʿīd Aḥmad Aʿrāb (Beirut: Dār al-Gharb al-Islāmī, 1988), 2:153. This work is Ibn Rushd al-Jadd's commentary on Ṣaḥnūn's *Mudawwana*.

199. Emended on the basis of the context; all three manuscripts read (ذكره).

200. In T: (وهذا).

201. I have emended this word on the basis of the context. In H and T: (دين). In BNR, there is a blank space with a line through it between (أموال) and (حل). The same term (*al-dajn*) appears below, so this usage is not anachronistic.

202. T omits (لها).

السلام²⁰³ عليهم، كأهل الأهواء. ونصّ القاضي أبو الوليد الباجي²⁰⁴ — رحمه الله — على أنّ المسلم، إذا أقام بدار الحرب مع القدرة على الخروج، وقتل خطأ، أنّه لا دية²⁰⁵ له. ونصّ أهل المذهب أيضًا على امتناع قبول مخاطبة²⁰⁶ أهل الدجن، كقضاة دجن بلنسية [2:46] وطرطوشة²⁰⁷ وقوصرة²⁰⁸ وميورقة²⁰⁹ وعَلَّلوا بأن شرط قبول²¹⁰ القاضي صحّة ولايته ممّن تصحّ توليته بوجه. وأمّا الداخل إليهم²¹¹ للتجر وطلب الدنيا وجمع²¹² حظامها، وهو النوع الأول من نوعي السؤال الثاني من تخلصنا، وهو مجموع السؤال الثاني من الأصل، وأحد نوعي الثالث منه. فنصّ — رحمه الله — أنّه جرحه فيه، تسقط بها إمامته وشهادته إذ لا يجوز لأحد دخول أرض الشرك، إلّا لمفاداة أسارى المسلمين. والواجب على أئمة المسلمين وجماعتهم — وفقهم²¹³ الله وأعانهم — أن يمنعوا من الدخول إلى أرض الحرب للمتجارة ويضعوا لهم المراسد في الطريق لذلك حتّى لا يجد أحد السبيل إلى ذلك، لا سيّما إن خشي أن يحمل²¹⁴ إليهم ما لا يحلّ بيعه منهم، ممّا هو قوّة على أهل الإسلام، لاستعانتهم²¹⁵ به في حروبهم.²¹⁶ قال في المدوّنة: وشدّد مالك الكراهية في التجارة إلى أرض الحرب. قال: يجري حكم المشركين عليهم، ولا تباع من الحرّيين آلة الحرب من كراع أو سلاح وسروج وغيرها، ممّا يتقوّن به في الحرب، من نحاس وخرثي وغيره. وفي الواضحة عن مطرّف وابن الماجشون: ²¹⁷ إذا كانت الهدنة بيننا وبين المشركين، فلا بأس أن يباع منهم الطعام. ويكره أن يباع لهم الكراع والسلاح والحديد والنحاس والخرثي والجلود، وكلّ ما يستعان به في الحرب. وأمّا في غير الهدنة، فلا يحلّ أن يباع منهم الطعام ولا غيره، من كلّ ما هو قوت لهم في دار حربهم. وفي المقدمات،²¹⁸ لا يجوز أن يباعوا²¹⁹ شيئًا ممّا يستعينون به في حروبهم من كراع أو سلاح أو حديد، ولا شيئًا ممّا يرهبون به على الإسلام في قتالهم، مثل الرايات،²²⁰ وما يلبسون في حروبهم من الثياب، فيباهون بها على الإسلام. وكذلك النحاس، لأنّهم يعملون منه الطبول، فيرهبون به على المسلمين. وكذلك لا يجوز أن يباع منهم العبد النصراني، لأنّه يكون دليلًا

203. In H: (وللا سلام). In T: (وللا لسلام).

204. Abū al-Walīd al-Bājī (d. 474/1081) was an Andalusī judge and jurist. On him, see Makhḷūf, *Shajarat al-nūr*, 1:178.

205. H repeats (لا دية).

206. In BNRM: (المخاطبة).

207. In H: (طرطوشية).

208. T omits (قوصرة).

209. In BNRM: (ميورقة).

210. T omits (قبول).

211. In T: (اليهم بوجه), although (بوجه) appears crossed out.

212. In H: (جميع).

213. Emended; all three manuscripts read (وفرهم).

214. In BNRM and H: (يحمل). In T, this word has been corrected but appears to be (يحمل), a reading supported by the text in Ibn Rushd's *al-Muqaddimāt al-mumahhidāt* (2:154).

215. In T: (لاستعانتهم).

216. In all three manuscripts: (فرضوا بهم). 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 Andalusī jurist ‘Abd al-Mālik b. Ḥabīb al-Sulamī (d. 238/853). The two jurists mentioned here are Muṭarrif b. ‘Abd Allāh b. Muṭarrif (d. 220/835) and ‘Abd al-Mālik b. ‘Abd al-‘Azīz 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: (يبتاعوا).

220. In BNRM: (الرايات).

على المسلمين، وعورة عليهم. وإثماً يجوز أن يباع منهم من العروض ما لا يتقوون بها²²¹ في الحرب ولا يهرب به في القتال، ومن الكسوة ما بقي الحرّ والبرد، لا أكثر، ومن الطعام، ما لا²²² يتقوّت به، مثل الملح والزيت، وما أشبه ذلك.

وأما النوع الثاني من نوعي السؤال الثاني، وهو الذي يدخل²²³ إليهم للدلالة على المسلمين والإخبار بعوراتهم، فالواجب على من ثبت ذلك عليه²²⁴ من ضعفة المسلمين وأخسائهم ببينة مرضية لا مدفع فيها²²⁵ القتل في قول ابن القاسم وسحنون، ولا تقبل له توبة. قال سحنون: ولا دية لورثته، كالحارب. وقيل: يجلد نكلاً ويطال سجنه وينفى لما بعد من دار الحرب.²²⁶ نقله سحنون عن بعض أصحابنا. وقيل: يقتل إلا أن يتوب. قاله²²⁷ ابن وهب.²²⁸ وقيل: إن كانت منه فلتة، وظنّ جهله،²²⁹ وعدم عوده، وليس من أهل الضّرّ على الإسلام، نكل وضرب. وإن كان معتاداً، قتل. قاله ابن الماجشون. وقيل: يقتل إلا أن يعذر بجهله. وقيل: يجتهد فيه الإمام، وهي رواية العتيبي والخمي،²³⁰ بتفصيل²³¹ في المسألة يطول بنا جلبه.²³²

وأما النوعان الأولان من أنواع السؤال الثالث من تخليصنا،²³³ وهي الاصطيداء معهم والتحاكم إليهم، وهو القسم الرابع من تقسيم المسائل، فحكمها الجرحه وعظيم الكراهة. ولا يبعد التحريم، لما في ذلك من إذلال عزة الإسلام وأهله. والإسلام يزيد ولا ينقص، وبعّلوا ولا يعلى عليه.

وأما الثالث من السؤال الثالث، وهو الدعاء للملاعين الكفار²³⁴ — أبعدهم الله — بالبقاء وطول المدة، فالظاهر أنّ ذلك علامة²³⁵ على ردة الداعي وإلحاده في فساد سريره²³⁶ واعتقاده،²³⁷ لما تضمنه من الرضى بالكفر، والرضى بالكفر كفر. وقد الحق الشيخ²³⁸ أبو الحسن الأشعري²³⁹ — رضي الله عنه — إرادة الكفر بالكفر، كبناء الكنائس ليكفر فيها، أو قتل نبي²⁴⁰

221. In *al-Muqaddimāt al-mumahhidāt*, 2:155: (ما يتقوى به).

222. Emended; the manuscripts omit (لا).

223. Emended; the manuscripts read (الداخل).

224. T omits (عليه).

225. In H: (بها).

226. In H: (لدار الحرب).

227. In T: (قال).

228. In BNRM: (ابن زرب). ‘Abd Allāh b. Wahb (d. 197/813) was an Egyptian student of Mālik b. Anas.

229. In H: (فعله).

230. Abū ‘Abd Allāh Muḥammad al-‘Utbi (d. 254 or 255/868–69), a Mālikī jurist from Córdoba, wrote the *Mustakhraja*, also known as the *‘Utbiyya*. Abū al-Ḥasan ‘Alī b. Muḥammad al-Rib‘ī al-Lakhmī (d. 478/1085–86) was a prominent Mālikī jurist in Ifrīqiyyā (modern-day Tunisia). On al-Lakhmī, see Ibrāhīm b. ‘Alī Ibn Farḥūn (d. 799/1397), *al-Dībāj al-mudhahhab fī ma‘rifat a‘yān ‘ulamā’ al-madhhab*, ed. Ma‘mūn b. Muḥyī al-Dīn al-Jannān (Beirut: Dār al-Kutub al-‘Ilmiyya, 1996), 298; Makhlūf, *Shajarat al-nūr*, 1:173.

231. In T: (تفصيل). In H: (تفصيل).

232. In H: (حليه).

233. In H and T: (تخليصها).

234. In H and BNRM: (الكفرة).

235. Emended; the manuscripts read (علم).

236. In H and T: (سرايره).

237. In H: (إشهاد).

238. In BNRM: (شيخ).

239. Abū al-Ḥasan al-Ash‘arī (d. 324/935–36), eponymous founder of the Ash‘arī school of theology.

240. In H and T: (قتل نبي). In BNRM: (بشيء); the word is unclear.

مع اعتقاد صحّة رسالته، ليميت²⁴¹ شريعته²⁴². ومنه عند القراني تأخير من أتى²⁴³ يسلم على يديك، [2:45]²⁴⁴ فتشير عليه بتأخير الإسلام، لأنّ إرادة إبقاء الكفر، يريد إرادة بقاءه، كفر²⁴⁵.

من هذا المعنى مسألة وقعت في أيام شهاب الدين القراني²⁴⁶ — رحمه الله — وهي²⁴⁷ أنّ رجلاً قال لآخر²⁴⁸ «أما ته الله البعيد كافرًا»²⁴⁹ فأفتى الشيخ شرف الدين الكركي²⁵⁰ بكفره، لما تضمّنه من إرادة الكفر. وهي في مسألتكم أوضح وأبين. وأدنى حال هؤلاء الفسقة أن يبالغ في ضربهم ويمعن في تأديبهم²⁵¹ حتّى يتوبوا، كما فعل عمر — رضي الله عنه — بصيغ المتهم في اعتقاده، من ضربه إيّاه، حتّى قال: «يا أمير المؤمنين، إن كنت تريد دوائي، فقد بلغت مني موضع الداء، وإن كنت تريد قتلي، فأجهز عليّ» فخلّى سبيله²⁵².

وأما السؤال الرابع، وهو ابتياع ما في أيديهم من أموال المسلمين، ما حكمه؟ جوابه: قال في المدوّنة، ومثله في العتبية من سماع ابن القاسم، واللفظ للمدوّنة: وإذا دخلت دار الحرب بأمان، فابتعت عبد المسلم من حربي أسره أو أبق²⁵³ إليه، أو وهبه الحربي لك، فكافأته²⁵⁴ عليه، فلسيّد أخذه بعد أن يدفع إليك ما أدبته²⁵⁵ من ثمن أو عرض. وإن لم تثب واهبك، أخذه ربّه بغير شيء. اهـ.

وإلى اختصار حكم المسألة أشار الشيخ أبو عمرو ابن الحاجب²⁵⁶ بقوله: ومن عاوض في دار الحرب على مال مسلمًا

241. In H: (اللميت).

242. Emended; the manuscripts read (شريعة).

243. In H: (أن). In BNRN: (يريد أن).

244. This is the second instance of page 45 in the second BNRN volume; I refer to it as 2:45(b).

245. BNRN omits (يريد إرادة بقاءه).

246. Shihāb al-Dīn Aḥmad b. Idrīs al-Qarāfī (d. 684/1285) was a prominent Egyptian Mālikī scholar.

247. H and T omit (وهي).

248. In BNRN: (بالآخر).

249. BNRN omits (البعيد).

250. In H: (الكرخي). In BNRN and T: (الكرخي). I have emended this name from al-Karkhī to al-Karkī on the basis of the context and of confirmation in another source. Muḥammad b. ‘Umrān, Abū Muḥammad b. Abī ‘Abd Allāh, known as Sharaf al-Dīn al-Karkī (d. 688 or 689/1289–90), was originally a Mālikī jurist who moved from Fez to Egypt, where he studied Shāfi‘ī law and was a contemporary of Shihāb al-Dīn al-Qarāfī. The Mālikī jurist Khalīl Ibn Ishāq al-Jundī (d. 776/1374) relates this same story about al-Karkī in his commentary *al-Tawḍīḥ*. See Khalīl Ibn Ishāq, *al-Tawḍīḥ: Sharḥ Mukhtaṣar Ibn al-Ḥājib fī fiqh al-Imām Mālik*, ed. Muḥammad ‘Uthmān (Beirut: Dār al-Kutub al-‘Ilmiyya, 2010), 5:187. On al-Karkī, see Ibn Farḥūn, *al-Dībāj*, 417 (entry no. 578).

251. In T: (يمعن في). BNRN omits (يمعن في).

252. ‘Umar b. al-Khaṭṭāb (r. 634–44) was the second caliph of Islam. This story, in which a man named ‘Abd Allāh Sbigh al-Timī is sent to him after questioning certain passages in the Qur’ān, may be found in Ibn Rushd’s *fatwā* collection: Ibn Rushd al-Jadd, *Fatāwā Ibn Rushd*, 2:805.

253. In H: (أم وفق).

254. I have emended this word on the basis of the context; all three manuscripts read (فكافية) or (فكافيه).

255. Emended on the basis of the context; all three manuscripts read (وديته).

256. I have emended this name on the basis of al-Tasūlī’s text. All three manuscripts of *Selected Jewels* read (الشيخ خليل أبو عمرو ابن الحاجب), although BNRN has a line above (خليل) indicating a mistake. Jamāl al-Dīn Abū ‘Amr Ibn al-Ḥājib (d. 646/1248–49) was a Kurdish grammarian and Mālikī jurist who spent most of his life in Egypt. He wrote *Jāmi‘ al-ummahāt* (also known as *al-Mukhtaṣar al-far‘ī*), of which Khālīl Ibn Ishāq’s *Mukhtaṣar* is an abridgment. On Ibn al-Ḥājib, see H. Fleisch, “Ibn al-Ḥādījib,” in *ET*; Ibn Farḥūn, *al-Dībāj*, 289–91; Makhlūf, *Shajarat al-nūr*, 1:241.

أو ذمياً، فلما لکه أخذہ بثمانه اتفاقاً²⁵⁷ فإن کان بغير شيء، أخذہ بغير شيء، ولو باعه²⁵⁸ المعاوض مضى، ولما لکه²⁵⁹ الزائد إن کان. وخرّج اللّخمي²⁶⁰ تمکینه علی الغنیمه، وخرّجه غيره²⁶¹ علی الموهوب بیاع. وفيه قولان: المشهور كالمعاوض، وقيل: يأخذہ بالثمن ويرجع علی الموهوب له بجميع الثمن، لا غير. وحيث قلنا يأخذہ ربّه بالثمن، فإنّ المشتري يصدّق فيه ما لم يتبيّن كذبه، فيأخذہ ربّه بقيمته يوم اشترائه حيث اشتراه. وإن جهلت به، فلاقرب محلّ له. وإن ادّعا، صدق المبتاع مع يمينه إن أشبه، وإلا، فربّه إن أشبه،²⁶² وإلا، بقيمته. وإن نكل صدّق عليه الآخر، وإن لم يشبه.

وحكم الدخول لاستخلاص الكتب²⁶³ والمتاع²⁶⁴ في هذا المعنى واحد، فلا معنى لإفراد الكلام. ويتأكّد علی الطالب الداخل لهذا الغرض الخاصّ أن²⁶⁵ يبدأ في استخلاص ما يمكنه²⁶⁶ من الكتب، بالأهمّ²⁶⁷ فالأهمّ. فأهّمّها في الاستنقاذ كتاب²⁶⁸ الله، ولو لم يكن مستنقذه²⁶⁹ علی طهارة.²⁷⁰ ثم حديث رسول الله²⁷¹ — صَلَّى الله عليه وسلّم. ثم الفقه، ثم الأصول،²⁷² ثم العربية واللغة والطبّ وكتب التفسير من الطراز الأوّل، لا سيّما تفسير²⁷³ ابن عطية،²⁷⁴ وكذلك كتب القراءات. أه، من التقييد المذكور. والغالب علی ما قيدت من التقييد المذكور من هذه الأجوبة التصحيح،²⁷⁵ فمن وجد نسخة من ذلك، فليصلح ما فسد هنا. وأجره علی الله.

257. Al-Wansharīsi is quoting from Ibn al-Hājib's *Jāmi' al-ummahāt* in this passage, but he omits a sentence at this point regarding the recovery of property without cost from a thief. See Jamāl al-Dīn Abū 'Amr Ibn al-Hājib, *Jāmi' al-ummahāt*, ed. Abū 'Abd al-Rahmān al-Akhḍar al-Akhḍarī, 2nd ed. (Damascus: al-Yamāma li-l-Ṭibā'a wa-l-Nashr wa-l-Tawzī', 2004), 253.

258. In BNRM: (باعه).

259. In H and T: (ولما لك).

260. Abū al-Ḥasan 'Alī b. Muḥammad al-Rib'ī al-Lakhmī (d. 478/1085–86). On him, see note 230 above.

261. H omits (غيره).

262. T omits (وإلا، فربّه إن أشبه).

263. In T: (ما يمكنه من الكتب).

264. In T: (المبتاع), buyer; in al-Tasūlī and al-Wazzānī, (على الطلبة) is added to the end of this sentence. Together, these two variants change the meaning from an equivalence between the purchase of books and the purchase of other objects (the likely intended meaning, as above) to an equivalence between *ṭullāb* (students or religious functionaries) and other buyers.

265. In H: (وأن).

266. In BNRM: (ما عليه).

267. In H: (بالأعلم).

268. In H and T: (كتب).

269. In H and T: (مستنقذه).

270. In H: (طاهرة). Unclear in T.

271. T omits (الله).

272. In BNRM: (الأصول).

273. In T: (في تفسير).

274. 'Abd al-Ḥaqq b. Ghālib Ibn 'Aṭīyya (d. 541/1147) was an Andalusī Mālikī exegete. The full title of his exegesis of the Qur'ān is *al-Jāmi' al-muḥarrar al-wajīz fī tafsīr al-Kitāb al-'Azīz*, better known as *Tafsīr Ibn 'Aṭīyya*. It has been published in numerous editions.

275. In T: (التضييف). In BNRM: (التضييف).

8. *Fatwā* of Ḥamdūn²⁷⁶

وسئل الفقيه الأجل أبو العباس أحمد بن محمد الأتار الفاسي المدعو²⁷⁷ بحمدون²⁷⁸ — حفظه الله — بما نصّه:
 سيدي — حفظ الله مقامكم وأعانكم على ما فيه مصلحة وأقامكم.²⁷⁹ جوابكم — أدام²⁸⁰ الله رعايتكم — في رجل
 مقيم ببلاد مشتملة على مداشر عديدة، وأهل البلاد المذكورة على قسمين: قسم أهل سنة يتذهبون بمذهب مالك في الفروع،
 وقسم يتذهبون بمذهب آخر خارج عن المذاهب الأربعة المعروفة في هذا الزمان. وأتفق لهذا²⁸¹ الرجل المسؤول عن حاله أن
 كانت سكناه مع أهل القسم الثاني، وهو رجل سني، مالكي المذهب، كأهل القسم الأول، إلا أن سكناه حيث ذكر فقط.
 فما تقول سيادتكم في سكناه مع هؤلاء القوم المذكورين؟ هل هي ممنوعة أو جائزة؟²⁸² والفرص²⁸³ أنهم لا يأمرونه بشيء من
 مذهبهم، ولا يجبرونه بشيء عليه، ولا يدعونه إلى ذلك، بل هم على مذهبهم وهو كذلك، وله بالمداشر المذكور الذي هو ساكن
 به أصول وأملاك، إن رحل منها، فسدت وانتشرت.²⁸⁴ وإن أقام عليها، أقام مع هؤلاء القوم المذكورين. [2:46]²⁸⁵ فهل تجب
 عليه الهجرة وبيع أملاكه وجميع ماله هنالك وينتقل بالسكنى إلى مداشر أهل السنة، أم لا يجب عليه ذلك؟
 ومن بدعة هؤلاء القوم أنهم يرون ترك²⁸⁶ السورة في صلاة الظهر والعصر، وأنها لا تقرأ في شيء من ركعاتها وأن الجمعة
 لا تجب اليوم في بلد من سائر البلدان، زاعمين أنها لا تصلّى إلا مع إمام عادل أو في طاعة إمام عادل، ولا عادل في أئمة
 الوقت، بل كلّهم أهل ظلم وجرم، وأن النبي — صلى الله عليه وسلم — لم يقع له إسرائ إلى السماء، وأن من دخل النار من
 عصاة هذه الأمة، فهو مخلّد فيها، لا يخرج منها أبداً. هذا ما أخبر به الرجل السائل عن حال إقامته بالبلاد المذكورة. فتأمل
 ذلك سيدي وأجبنا بما يشفي الغليل إن شاء الله. ولكم الأجر والسلام.
 فأجاب بما نصّه:

الحمد لله.²⁸⁷ الجواب — والله سبحانه وتعالى ولي التسديد والهداية إلى الصواب — أن الذي تدلّ²⁸⁸ عليه نصوص
 العلماء في النازلة وأشباهها أن الواجب على من حلّ ببلد شاعت بها المناكر والبدع، ولم يقدر²⁸⁹ على تغييرها لوجود مانع
 واختلال شرطه، فليُنظر، فإن وجد بلداً يتحقّق أنه سالم من هذه المناكر وهذه البدع وأمثالها، وأمكنه الانتقال إليه من غير مشقة
 فادحة، تلحقه لا مطلق المشقة، فلينتقل إليه. وأما إن لم يتحقّق السلامة بالموضع الذي يريد أن ينتقل إليه لشيوع²⁹⁰ المناكر

276. BNRN, 2:45(b)–46(b); H, 251–52; T, 266–67. This *fatwā* is included in al-Wazzānī's *al-Mi'yār al-jadīd*, 3:36–38, with only slight differences. I do not translate this *fatwā* in *Leaving Iberia*.

277. In H: (المدعو).

278. Abū al-Abbās Aḥmad b. Muḥammad al-Abbār al-Fāsī (d. 1071/1660–61), known as Ḥamdūn, was a *muftī* and preacher at the mosque of al-Andalus in Fez. On him, see Makhḷūf, *Shajarat al-nūr*, 1:447; Kaḥḥāla, *Mu'jam al-mu'allifin*, 4:1490–91.

279. Emended slightly, all three manuscripts omit the (و) in (وأقامكم).

280. In H and T: (أدام).

281. In H and T: (هذا).

282. In H and T: (أجازة).

283. In H and BNRN: (الفرق).

284. Emended on the basis of al-Tasūlī's *Precious Jewels*; all three manuscripts read (وانتشرت).

285. This is the second instance of page 46 in the second BNRN volume.

286. In H: (تلك).

287. H and T omit (الحمد لله).

288. In H and T: (أنزل).

289. In H: (يعرد).

290. In H: (لشيوع).

والبدع في هذا الزمان بكلّ مكان،²⁹¹ فالأفضل له أن يقيم ببلده. ثم ليكن جلس بيته.

وبهذا المعنى وفق بعض العلماء²⁹² – رضي الله عنهم – بين الحديثين الواردين عنه – صلى الله عليه وسلم – في الفرار والإقامة. فحديث الفرار قوله – صلى الله عليه وسلم: «سيأتي على الناس²⁹³ زمان لا يسلم لذي دين دينه إلى أن يفرّ من شاهر إلى شاهر كطائر يفرّ²⁹⁴ بأفراخه وكتعلب بأشباهه.»²⁹⁵ أو كما قال – صلى الله عليه وسلم. فحملة²⁹⁶ على ما إذا وجد موضعًا سالمًا من البدع، فرّ إليه.²⁹⁷ وحديث الإقامة قوله – صلى الله عليه وسلم – للذي سأله لما ذكر الفتن، وقال: «ما تأمرني به، يا رسول الله، إن أدركني ذلك؟» فقال له – عليه²⁹⁸ أفضل الصلاة وأزكى السلام – «كن حلسًا من احلاس بيتك،»²⁹⁹ يعني أنه يتخذ بيته كالثوب الذي يستر به عورته في الملازمة. فحملة هذا الموفق على ما إذا عمت المناكر ولم يجد مهاجرًا. والذي اختاره ابن الحاج في المدخل ورجّحه، عدم الانتقال في هذا الزمان، وأنّ الإنسان يعوّض منه³⁰⁰ دوام صمته وملازمة بيته، ويترك الخوض فيما هم فيه، فيحصل له بذلك بركة امتثال قوله – صلى الله عليه وسلم – «نعم الصومع»³⁰¹ بيوت أمتي،³⁰² كما يحصل له السلامة من تبديد شمله وحاله، ومن تشويش خاطره وترك الدؤوب على عبادة ربّه. وبصير كالغائب عنهم، ولم يضرّه – بعون الله وبركة نبيّه – صلى الله عليه وسلم – ما هم فيه.

وهذا كلّ إذا كان هؤلاء القوم المذكورون في النازلة يخفون مذهبهم، ولا يظهرونه بحيث يأمن المقيم معهم من فتنته وفتنة عياله، وإذا لم يترام بهم ألسنتهم لما يوجب كفرهم. وإلا، فإن حكم بكفرهم، فلا خلاف في تحريم الإقامة معهم حيث لم يقدر على قتالهم، لتعاضد الآي القرآنية والأحاديث النبوية على منع موالاتهم. ولا يعذر إذ ذاك بضياغ ماله وأصوله، بل³⁰³ حتى يكون عذره واضحاً، بمثابة³⁰⁴ المريض والمقعد. وهذا ما أمكن تسطيره في النازلة، والله سبحانه وتعالى أعلم بالصواب. اهـ من خطّه.

291. In H: (ما كان). Illegible in T.

292. This paragraph summarizes a lengthier discussion found in Ibn al-Hājj's *al-Madkhal*. See Abū 'Abd 'Allāh Muḥammad al-'Abdarī (d. 737/1336–37), known as Ibn al-Hājj, *al-Madkhal ilā tanmiyat al-'amāl bi-taḥsīn al-niyyā wa-l-tanbīh 'alā ba'ḍ al-bida' wa-l-'awā'id allatī untuḥilat wa-bayān shanā'atihā*, ed. Tawfiq Ḥamdān (Beirut: Dār al-Kutub al-'Ilmiyya, 1995), 1:216–18.

293. In H: (للناس).

294. In H: (فر منه). In T and BNR: (فر منه).

295. This ḥadīth appears in 'Alā' al-Dīn 'Alī al-Muttaqī al-Hindī (d. 975/1567), *Kanz al-'ummāl fī sunan al-aqwāl wa-l-aḥwāl*, ed. Bakrī Ḥayyānī and Ṣafwat al-Ṣaqqā', 5th ed. (Beirut: Mu'assasat al-Risāla, 1985), 11:154 (*kitāb al-fitan wa-l-ahwā' wa-l-ikhtilāf min qism al-aqwāl, faṣl fī qatl al-Khawārij . . . , bāb al-fitan min al-ikmāl, ḥadīth 31008*).

296. T omits the foregoing ḥadīth, from (سيأتي) to (وسلم).

297. In H and T: (فما فر منه).

298. H and T omit (عليه).

299. This statement is part of a ḥadīth that appears in Muttaqī, *Kanz al-'ummāl*, 11:213–14 (*kitāb al-fitan min faṣl af'āl, faṣl fī al-waṣiyya fī al-fitan, ḥadīth 31274*).

300. H omits (منه).

301. In H and BNR: (الصوم).

302. See Ibn al-Hājj, *al-Madkhal*, 1:218; I have been unable to locate this statement in any ḥadīth collection.

303. T omits (بل).

304. In H and T: (بمنافاة).

9. Excerpt on the Categories of *Hijra*³⁰⁵

ووجدت في تقييد لبعض الفقهاء ما نصّه:

الفصل التاسع في الهجرة إلى الله تعالى والعزلة عن الخلق. أعلم – وفقك الله وإيانا – أنّ الهجرة على أقسام: هجرة من دار الكفر إلى دار الإسلام، وهجرة من أرض كثرت فيها البدع والعصيان، وهجرة عن الخلق إلى الملك الديان. أمّا الأولى والثانية، فواجب³⁰⁶ حكمهما،³⁰⁷ يتعين³⁰⁸ أمرها.³⁰⁹ قال الله تعالى: {أَنْ الَّذِينَ تَوَقَّاهُمُ الْمَلَائِكَةُ ظَالِمِي أَنْفُسِهِمْ [2:47] قالوا: «فيما كنتم؟» قالوا: «كُنَّا مُسْتَضْعِفِينَ فِي الْأَرْضِ.» قالوا: «أَلَمْ تَكُنْ أَرْضَ اللَّهِ وَاسِعَةً فَتُهَاجِرُوا فِيهَا؟»}.³¹⁰ الثعالبى: ³¹¹ «ظالمى أنفسهم» بترك الهجرة، وقول هؤلاء «كُنَّا مُسْتَضْعِفِينَ فِي الْأَرْضِ» اعتذارًا غير صحيح، إذ كانوا يستطيعون الحيل ويهتدون السبيل. وقوله: {يَجِدُ فِي الْأَرْضِ مُرَاعِمًا} ³¹² أي متسعين ومتحولًا. وقال في قوله تعالى: {فَمَنْ يَتَوَلَّهُمْ مِنْكُمْ، فَإِنَّهُ مِنْهُمْ}.³¹³ نهي الله سبحانه³¹⁴ المؤمنين بهذه الآية عن اتّخاذ اليهود والنصارى أولياء في النصرة والخلطة المؤدية إلى الامتزاج والمعاضدة. وحكم هذه الآية يلم كل من³¹⁵ أكثر مخالطة هذين الصنفين، فله حظّه من هذا العناء الذي تضمّنه قوله تعالى «فإِنَّهُ مِنْهُمْ». وقال رسول الله – صلى الله عليه وسلم – «أنا بريء من كل مسلم أقام بين المشركين.»³¹⁶ اهـ. ولا يعارض هذا الحكم بقوله – صلى الله عليه وسلم – «لا هجرة بعد الفتح، لكن جهاد وثبة.»³¹⁷ وأين الجهاد؟ وأيضًا يمتثل ذلك حيث لا تجري عليهم أحكام الكفار. فأما من جرت عليه أحكام الكفار، ودخل تحت قهرهم، فلا ينبغي أن يختلف في وجوب الهجرة في حقّه، إلّا من عذره القرآن من {المستضعفين من الرجال والنساء والولدان،³¹⁸ لا يستطيعون حيلة ولا يهتدون سبيلًا}.³¹⁹

305. BNRN, 2:46–47; H, 252; T, 267. Al-Wazzāni includes this excerpt in *al-Mi'yār al-jadīd*, 3:38–39, with only slight differences.

306. In H: (فجواب).

307. In H and T: (حكمها).

308. In H: (يتعين). In BNRN: (يتعين).

309. In H: (أحدها).

310. Qurʾān 4:97.

311. ʿAbd al-Rahmān b. Muḥammad 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).

315. In H and T: (بلف وكل من).

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

317. Muḥammad b. Ismāʿīl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, ed. Muṣṭafā al-Bughā (Damascus: Dār Ibn Kathīr, 1993), 3:1025 (*kitāb al-jihād wa-l-siyar*, *bāb faql al-jihād wa-l-siyar*, *ḥadīth* 2631), 3:1040 (*kitāb al-jihād wa-l-siyar*, *bāb wujūb al-naḥr* . . . , *ḥadīth* 2670); Muslim b. al-Ḥajjāj al-Qushayrī al-Nisābūrī, *Ṣaḥīḥ Muslim*, ed. Muḥammad Fuʾād ʿAbd al-Bāqī (Beirut: Dār Iḥyāʾ al-Kutub al-ʿArabiyya, 1991), 3:1488 (*kitāb al-imāra*, *bāb al-mubāyaʿa baʿda fath Makka* . . . , *ḥadīth* 86); al-Tirmidhī, *Sunan*, 2:595 (*abwāb al-siyar*, *bāb mā jāʾ fi al-hijra*, *ḥadīth* 1693).

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

319. Qurʾān 4:98.

وقال ابن عباس: «أنا وأمي من المستضعفين.»³²⁰ قال مالك — رحمه الله — «لا أحلّ لأحد المقام بأرض يسب فيها السلف وتغيّر فيها السنن ويعمل فيها بغير الحق.» وإذا تعيّن الفرار من بلاد الظلم، فبلاد الكفر أحرى. اهـ
وأما الهجرة من بلاد الظلم والذلّ والبدع،³²¹ فواجبة كما تقدّم، وإن كانت الأولى أكّد، ولا سيّما في حقّ أهل العلم. فلا يحلّ لهم أن يذلّوا أنفسهم، والله تعالى قد أعزّهم وشرفهم بالعلم والقرآن. ولتكن إقامته بالله وخروجه إلى الله. قال الله³²² تعالى: {ومن يخرج من بيته مهاجراً إلى الله ورسوله ثم يدركه الموت، فقد وقع أجره على الله}.³²³

10. Fatwā of Bijā'ī³²⁴

وأريد³²⁵ أن أثبت سؤالاً وجواباً لبعض العلماء، لموافقته لمعنى³²⁶ ما تقدّم. كتب³²⁷ الفقيه الزاهد سيّدي أحمد البجاني³²⁸ — رحمه الله ورضي عنه — للفقيه العالم العلامة سيّدي أحمد بن الحاجّ البيدوي³²⁹ — رحمه الله³³⁰ — سؤالاً، هذا نصّه:
الحمد لله سيّدي، رضي الله عنكم وأدام بمّنه عافيتكم ومتّع المسلمين ببقائكم. جوابكم في موضع كثر فيه الظلام³³¹ والأشوار وانتشر فيه الباطل والمكس كلّ الانتشار، وذلّ³³² به المسلمون وعزّ به الكفار، وارتفع فيه أهل الجور والظلم واتّضع فيه

320. Al-Bukhārī, *Ṣaḥīḥ*, 1:455–56 (*kitāb al-janā'iz*, *bāb idhā aslama al-ṣabīy fa-māta . . .*, *ḥadīth* 1291), 4:1675 (*kitāb tafsīr al-Qur'ān*, *bāb "wa-mā lakum lā tuqātilūna . . ."*, *ḥadīths* 4311 and 4312).

321. In BNRN: (من بلاد الذلّ الظلم).

322. BNRN omits (الله).

323. Qur'ān 4:100.

324. BNRN, 2:47–48; H, 252; T, 267. Al-Wazzānī includes a version of this *fatwā* in *al-Mi'yār al-jadīd*, 3:39–41, but mistakenly records the *muftī*'s name as Aḥmad al-Jāyy. The answer portion is reproduced in Ibn 'Askar, *Dawḥat al-nāshir*, 114–15.

325. In H: (وأريد).

326. In T: (معنى).

327. In T: (من كتب). In al-Tasūlī: (كتبه). Al-Bijā'ī appears to be the questioner in al-Zayyātī's introduction, but Ibn 'Askar makes clear that he is actually the *muftī*. See the biography for al-Bijā'ī in Ibn 'Askar, *Dawḥat al-nāshir*, 114–15.

328. In H: (اللجائي); in BNRN, the name is closer to (البيدوي) than to (البجائي). Abū al-Abbās Aḥmad b. Muḥammad al-Ḥājj al-Bijā'ī (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 'Askar states that he died at the beginning of the tenth/sixteenth century. On the basis of this information, Muḥammad Ḥajjī estimates his death date as 901/1495. Al-Bijā'ī is said to have studied with the Fez-based scholar 'Abd Allāh al-'Abdūsī (d. 849/1446), and al-Wansharīsī includes in the *Mi'yār* a response by al-Bijā'ī to a question posed to the scholars of Fez (al-Wansharīsī, *al-Mi'yār*, 7:305). See Ibn 'Askar, *Dawḥat al-nāshir*, 114–15; Ḥajjī, *Mawsū'at a'lām al-Maghrib*, 2:807–8 (a reproduction of Ibn 'Askar's entry). Several biographical entries treat the same jurist but render his name as Abū al-Abbās Aḥmad b. Muḥammad b. 'Isā al-Lajā'ī. See Makhlūf, *Shajarat al-nūr*, 1:345; Ibn al-Qāḍī al-Miknāsī, *Jadwat al-iqtibās*, 1:122; al-Tinbuktī, *Nayl al-ibtihāj*, 1:121.

329. I have not located a biographical notice for this jurist (Aḥmad b. al-Ḥājj al-Baydawī or al-Bayḍāwī), who must have posed the question to al-Bijā'ī and then received his response. His name may also be (البيدري) or a similar variant. In al-Tasūlī, this jurist's given name is Muḥammad instead of Aḥmad. Ibn 'Askar identifies the questioner as an Abū al-Abbās al-Bijā'ī; I have not been able to locate a biographical notice under this name, either.

330. T omits (الله).

331. This world is unclear in BNRN. In H: (الكلام).

332. In H: (ذل).

أهل المعرفة العلم، وتمكّس جلّ المبيعات فيه على المسلمين وأشكل الأمر على المسترشدين.³³³ ولم يظهر من فضائله³³⁴ ناكراً لمنكر، فلا أدري أخوفاً على أنفسهم أو استهزاءً بالأثر. ثم إنَّ إنساناً اضطّر إلى أخذ العلم من علماء الموضوع المذكور وخشي على نفسه ممّا هو قبل مسطور. فهل — أعزكم الله — يسوغ له المكث³³⁵ بذلك الموضوع، مع عدم قدرته على تغيير المنكر إلّا قليلاً؟ ويكون بذلك الأمر ربّه ممتثلاً؟ وهل يسوغ له الشراء من بعض المبيعات الممكنات³³⁶ إن اضطّر إلى ذلك، ويكون آمناً من الوقوع في المهالك؟ أم يجب عليه أن ينتقل من ذلك الموضوع لغيره، لأنّ الراتع حول الحمى يوشك أن يقع فيه؟³³⁸ بينوا لنا³³⁹ الأمر لمن اضطّر إليه واحتاج إليه في خاصّة نفسه. ولكم الأجر.

ونصّ الجواب:

الحمد لله. الواجب على المؤمن المحقّق، الناظر لنفسه نظر مشفق، أن يفرّ بدينه من الفتن، ولا يقيم إلّا في موضع تقام فيه السنن. ولا يأخذ من علم دينه ما يحتاج إليه،³⁴⁰ إلّا ممّن³⁴¹ تظهر³⁴² آثار الخشية والخضوع عليه، ويطلب ذلك في أقطار الأرض ونواحيها³⁴³ بدليل {ألم تكن أرض الله واسعة فتهاجروا فيها؟} ³⁴⁴ هذا مع الإمكان ووجود بغيته³⁴⁵ في غير ذلك [2:48] المكان.

فإن تعذّر عليه ذلك، واشتدّت عليه المسالك، ولم يجد موضعاً صالحاً مرضياً، ولا معلماً ناصحاً مهدياً، فليقم هنالك صابراً صبراً جميلاً، ويكون من {المستضعفين من الرجال والنساء والولدان، لا يستطيعون حيلة ولا يهتدون سبيلاً} ³⁴⁶ وليقل كما قالوا إذ لم يجدوا معيّنًا على الدين ولا ظهيرًا: {ربّنا أخرجنا من هذه القرية الظالم أهلها، وأجعل لنا من لدنك وليّاً، وأجعل لنا من لدنك نصيرًا} ³⁴⁸، ويأخذ من العلم ما يضطرّ إليه من كلّ متصدّر للأخذ عنه، فربّ حامل علم إلى من هو

333. In H: (المترشدين).

334. Emended from (فضائله) in all three manuscripts.

335. In H and BNRM: (الكتب).

336. In T: (المماكسات).

337. In H and T: (إلى أن).

338. The question alludes to a *ḥadīth* 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 faḍl man istabra'a 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. H and BNRM omit (لنا).

340. All three copies read (إلّا ما يحتاج إليه). I have emended the text on the basis of the context and the text in al-Tasūlī's *Precious Jewels* and Ibn 'Askar's *Dawḥat al-nāshir*.

341. In BNRM: (ولا يأخذ إلّا ممّن).

342. In H and T: (تظهره).

343. In H: (نواحيها).

344. Qur'ān 4:97.

345. This word is replaced by a line in BNRM.

346. Qur'ān 4:98.

347. In T: (ألم)، with a mark that may indicate a correction.

348. Qur'ān 4:75.

أعلم منه،³⁴⁹ وقد يتعالج المريض بدواء الطبيب الكافر، وقد يؤيد الله الدين بالرجل الفاجر.³⁵⁰ ويشترى من المبيعات ما يضطر³⁵¹ إليه لبساً وطعاماً ولكن لا³⁵² يغشم المعيشة غشماً، وليعط الورع حقه ويستعمل في ذلك اجتهاده، ورفقه،³⁵³ ويجتنب شراء الجزء المأخوذ من المكس من غاصبه، ويشترى مما بقي على ملك صاحبه، على³⁵⁴ مراعاة قواعد الشريعة المقررة و مسائل الفقه المسطرة، والوقوف على حد الضرورة وعدم استرسال في الشهوات المباحات، فضلاً عن المحظورات.³⁵⁵ فان اقتصر على ضرورياته،³⁵⁶ لم يخف على دينه اختلافاً إذ لو كانت الدنيا جيفة، لكان³⁵⁷ قوت المؤمن منها حلالاً. اهـ محل الحاجة من التقييد المذكور.

11. First *Fatwā* of al-Zawāwī³⁵⁸

وسئل الفقيه العالم أبو الحسن علي بن عثمان الزواوي،³⁵⁹ أحد فقهاء بجاية — رحمه الله تعالى ورضي عنه — عمن سكن في أرض النصارى. هل يجب عليه الهجرة منها³⁶⁰ أم لا؟
فأجاب: قال القاضي أبو الوليد بن رشد — رحمه الله: أجمع المسلمون³⁶¹ أنه لا يحل لمسلم أن يبقى في بلاد الكفر اختياراً حيثما تناله أحكامهم، فيجب على من قدر على الفرار أن يفر، ولا يقيم بها. اهـ من بعض التقييد.

349. Al-Muttaqī al-Hindī, *Kanz al-‘ummāl*, 10:258 (*kitāb al-‘ilm min qism al-af‘āl, bāb fī faql . . . , ḥadīth 29375*).

350. The final part of this sentence (“God might further the religion even through a sinful man”) appears in at least four *ḥadīths*. See, for example, Muslim b. al-Ḥajjāj, *Ṣaḥīḥ*, 1:105–6 (*kitāb al-īmān, bāb ghilaḥ taḥrīm qatī al-insān nafsaḥ . . . , ḥadīth 178*); al-Bukhārī, *Ṣaḥīḥ*, 4:1540 (*kitāb al-maghāzī, bāb ghazwat Khaybar, ḥadīth 3967*).

351. In H: (ما يضطر).

352. BNRM omits (لا).

353. In T: (رفقه).

354. In H: (هذا). Unclear in T.

355. In H and T: (المحظورة). In BNRM: (المحظورات). I have emended the text on the basis of the context.

356. In BNRM: (ضرورياته).

357. In T: (لكانت).

358. BNRM, 2:48; H, 252; T, 267. Al-Wazzānī includes a version of this *fatwā* in *al-Mi‘yār al-jadīd*, 3:41.

359. Abū al-Ḥasan ‘Alī b. ‘Uthmān al-Zawāwī (d. 815/1412–13). All three manuscripts of *Selected Jewels* read “al-Zarwālī” (الزروالي), a name for which I could not locate a biographical notice. I have emended the *nisba* on the basis of al-Tasūlī’s *Precious Jewels*, both manuscript copies of which record the name as al-Zawāwī (الزواوي). See the entries for Abū al-Ḥasan ‘Alī b. ‘Uthmān al-Zawāwī and for his son Maṣṣūr b. ‘Alī al-Zawāwī in the following sources: al-Tinbuktī, *Kifāyat al-muḥtāj*, 1:354 (al-Zawāwī) and 2:251 (son); idem, *Nayl al-ibtihāj*, 1:373 (al-Zawāwī) and 2:311 (son); Muḥammad b. ‘Abd al-Raḥmān al-Sakhāwī, *al-Ḍaw’ al-lāmi‘ li-ahl al-qarn al-tāsi‘*, ed. ‘Abd al-Laṭīf Ḥasan ‘Abd al-Raḥmān (Beirut: Dār al-Kutub al-‘Ilmiyya, 2003), 5:232 (al-Zawāwī) and 10:158 (son). In al-Sakhāwī’s first entry, the father’s name is rendered “‘Alī b. ‘Uthmān al-Manjulātī al-Bukhārī,” but in light of all the other notices this may be understood to refer to al-Zawāwī. Although al-Zawāwī lived in Bijāya, these opinions appear to be concerned with Iberian Muslims; they must predate the Portuguese conquests in the Maghrib. I do not translate these three *fatwās* in *Leaving Iberia*.

360. H omits (منها).

361. In H: (المسلمين).

12. Second *Fatwā* of al-Zawāwī³⁶²

وسئل أيضًا عمن كان ساكنًا في أرض النصارى وأراد الهجرة منها إلى بلاد الإسلام، وأبواه أو واحداهما يمنعه من ذلك. هل يجوز له الخروج بغير إذنهما ورضاهما، أم يفرّق في ذلك بين خوف الضياع عليهما أم لا؟ أو³⁶³ بين كونهما، لهما غيره من الأولاد ذكورًا أو إناثًا أم لا؟

فأجاب: لا يتوقّف خروجه عن إذنهما، إذ لا طاعة لهما في معصية الله تعالى، ولم أر فيما ذكرتم من خوف الضيعة عليهما نصًّا. ولا شكّ أنّه قد تعارض واجبان، والقاعدة في مثل ذلك تقديم أقواهما. وأمّا إذا كان لهما غيره، فالحكم ما تقدّم من وجوب الفرار وعدم الاستئذان. اهـ من التقييد المذكور.

13. Third *Fatwā* of al-Zawāwī³⁶⁴

وسئل أيضًا عن معنى الهجرة وفضلها.

فأجاب: الهجرة المعلومة أنّ يخرج عن وطنه إلى موضع النبيّ - صلى الله عليه وسلم - للأغراض التي ذكرها³⁶⁵ العلماء، وهي واجبة³⁶⁶ على كلّ من أسلم قبل فتح مكة. ³⁶⁷ وأمّا بعد فتح مكة، فقد قال - عله الصلاة والسلام: «لا هجرة بعد الفتح، ولكن³⁶⁸ جهاد ونية». ³⁶⁹ ويبقى وجوب الفرار من الموضع الذي ³⁷⁰ يخاف على دينه عدم السلامة في موضعه، أو كان في موضع ليس فيه من يعلمه دينه. ويتأكد الفرار من بلاد الكفار لما يجري على من كان بها من استيلاء الكفر على الإيمان، وإجراء أحكام الكفر عليه. اهـ من التقييد المذكور.

14. First *Fatwā* of Ibn Zakrī³⁷¹

وسئل الإمام أبو العباس أحمد بن محمد بن زكري³⁷² - رحمه الله - بما نصّه:

سيدي - رضي الله عنكم وأعانكم على ما به أولاكم - ما ترون في هذا الرجل الشريف القائم بأمر الجهاد الآن في

362. BNRN, 2:48; H, 252-53; T, 267. Al-Wazzānī includes this *fatwā* in *al-Mi'yār al-jadīd*, 3:41-42.

363. In BNRN: (و).

364. BNRN, 2:48; H, 253; T, 267-68. Al-Wazzānī includes this *fatwā* in *al-Mi'yār al-jadīd*, 3:42.

365. In H: (ذكر).

366. H repeats (واجبة).

367. In H and T: (بعد الفتح، فتح مكة).

368. In H and T: (وإنما هو).

369. Al-Bukhārī, *Ṣaḥīḥ*, 3:1025 (*kitāb al-jihād wa-l-siyar, bāb faql al-jihād wa-l-siyar, ḥadīth* 2631), 3:1040 (*kitāb al-jihād wa-l-siyar, bāb wujūb al-nafir . . . , ḥadīth* 2670); Muslim b. al-Ḥajjāj, *Ṣaḥīḥ*, 3:1488 (*kitāb al-imāra, bāb al-mubāya'a ba'da fatḥ Makka . . . , ḥadīth* 86); al-Tirmidhī, *Sunan*, 2:595 (*abwāb al-siyar, bāb mā jā' fī al-hijra, ḥadīth* 1693).

370. In H and T: (التي).

371. BNRN, 2:48-49; H, 253; T, 268. Al-Wazzānī includes this *fatwā* in *al-Mi'yār al-jadīd*, 3:42-43.

372. On Abū al-Abbās Aḥmad b. Muḥammad b. Zakrī al-Tilimsānī (d. 899-900/1493-94), see Ibn 'Askar, *Dawḥat al-nāshir*, 108-9; Makhlūf, *Shajarat al-nūr*, 1:386; al-Tinbuktī, *Nayl al-ibtihāj*, 1:136-37; idem, *Kifāyat al-muḥtāj*, 1:125-26; Ibn al-Qāḍī al-Miknāsī, *Durrat al-hijāl*, 48; Ḥajjī, *Mawsū'at a'lām al-Maghrib*, 2:798; M. Hadj-Sadok, "Ibn Zakrī," in *IE*.

المغرب الأقصى من حوز سبتة وأخواتها؟ هل فعله اليوم جائز شرعًا لكون سلطان تلك [الأوطان] صالح³⁷³ المشركين، والموضع الذي هو فيه الشريف داخل في عمالة السلطان المذكور؟ والفرض أن هذا الصلح لم يقع إلا بعد اطلاع العدو على [2:49] عورات المسلمين إطلاعًا كليًا، وأخذوا البلاد³⁷⁴ المذكورة في غاية قوة الجند والسلاح، وبيت³⁷⁵ المال على خير. هل فعل هذا الشريف مباح لأجل هذا المعنى، أم لا؟ والفرض أن الصلح المذكور³⁷⁶ له مدة تنيف على العشرين سنة. هل يسوغ ذلك، أم لا؟

فأجاب: إن كان الرجل القائم بالجهاد آمنًا في حربه ونفسه آمنًا من غائلة من يمنعه من جهاد العدو، جاز له قتال الكفار بحيث يؤمن العدو أن يقاتل³⁷⁷ المسلمين في غير موضع الشريف المذكور. وأما الصلح الواقع، فغير ماضي³⁷⁸ لما فيه من تقوي العدو وضعف المسلمين في تلك المدة، وغاية ما يقع الصلح بين المسلمين وعدوهم السنتان والثلاثة — والله الموفق للصواب بمنه وفضله.

اهد من بعض التقاييد.

15. Second *Fatwā* of Ibn Zakrī³⁷⁹

وسئل أيضًا: ما تقولون في قبائل من المغرب الأقصى، تلي سبتة وطنجة وأصيلا والقصر، امتزجت أمورهم مع النصارى، وصارت بينهم محبة حتى أن المسلمين، إذا أرادوا الغزو، أخبروا هؤلاء القبائل من المغرب النصارى، فلا يجدهم المسلمون إلا متحذرين مهيعين، والفرض أن المسلمين لا يتوصلون إلى الجهاد في هؤلاء النصارى إلا من بلاد هؤلاء القبائل، وربما قاتلوا المسلمين مع النصارى. ما حكم الله في دمائهم وأموالهم ونسائهم وأولادهم؟ وهل ينفون من تلك البلاد أم لا؟ وكيف إن أبوا من النفي إلا بالقتال، فهل يقاتلون أم لا؟

فأجاب: ما وصف به القوم المذكورون يوجب قتالهم وقتلهم كالكفار الذين يتولّونهم. ومن يتولّى الكفار فهو منهم. والله أعلم.

اهد من التقاييد المذكور.

373. Emended. In BRNM: (لكون السلطان صلح). In H and T: (لكون السلطان تلك صالح).

374. In T: (البلد).

375. In H: (وبقيت).

376. In H and T: (المذكورة).

377. In H: (يقاتل).

378. In H: (قاضي).

379. BRNM, 2:49; H, 253; T, 268. Al-Wazzānī includes a version of this *fatwā* in *al-Nawāzil al-ṣuḡhrā*, 1:419; this version omits all of the city names.

[illegible]

فلم يسمعوا له ولم يأتوا
بالحجة عليه

٩٣٨

رستم علی بن علی بن محمد بن علی

ذاك القتل من غير استجابة على ما نزل الله من غير الهيبة ولا عقوبة بين المسلمين
 من الامم واذا به يعني نفسه ملك الامم وكنزك كنس عن محمونا انهم يغرموه على
 انصاره يتبدل عونه معهم ويحلقون بهم طيبت عهده به وجبا وبذلك انه لا يملك لمسلم ان
 يجلد لغيره ولا يتفقون به على المسلمين ولا يسوغ له ان يبيع لهم ولا يشترى منهم
 بوضع ثاله فيه الزلة منع كبله مع لان اذا سلبوا يعلوا ولا يعمل عليه وكل من معك املك
 تلك الامم وكل من لا يملك المحقر ليرجع حتى يقع في ايديهم من نعتهم حتى يملوا بلاد المسلمين
 متصلة سيما وعلمه الرمي فابى العبيد وجوا الاشمار بشرير اخر من على اختلافه ولا يجل
 فلو الا حشا اسما مضمورا في الغرابة وارسه للسؤل ان يعلق عقاله وارسه فيل وباله
 وان يعلق امره وارسه عرقه كما نسله ان يوضع في عيله وان يتدارك ما هو
 من ياله وقد جلد وبذلك انك هذا بعد وبلغ سرانكم اسنيد وبغشاه ابيك لم يغرموه
 له **والتوايت عن القلعة** (اخيرة ان رب الرعي يثب وبنه عند القلعة بلان
 عرو القلعة بغنر جماعة عرو لبلدة ولذا لفتته حلة لانه لم يتجلمد من دينه وفعله
 به من ملك الامم ويتولى ذلك القلعة او جماعة العرو من غنرمه ولا يورخ ففلا
 الرعي لا يستعنا وان لم يجلد وفعت الجماعة على فدر الرعي من من الرعي المذكور
 فاجب له ان يفل من خلفه من خلفه **وتبيل الامم عامية وان فيه**
ابو العباس اخذته في التوتني في ربيعة الله ورفعت عنه عن فوم من
 البع اى انا موايا وكنتم تحت جماعة العرو والقيام وبع جرون سكا الى الخروج من تلك الامم
 وكل من من فورا فامتنع من ذلك اى اومم مع العرو على الاسلام فمع يفتح بر كنه ولا يريه
 ابيهم لا يتجلمد ولا يغي معا ومنهم من يزوب ابيهم لغير التجلمد وتفي بغير باخيار المسلمين
 ومنهم من يجلد معهم ويبيع مع ياد وكل من المسلمين ويخا اى ابيهم ويقول لهم انه و
 يتجلمد منكم وما الحكم بين هذا استولى عليه العرو والقيام من امم المسلمين هل يجوز شره
 ومنهم من اى ابناء بعض المسلمين يبيع ابيهم لاستحالة الكتبه ما ايرهم بل اشرك بنوا
 لفل ذلك وانهم الاجر والاسلام عليكم **فاجاب** حاصل السؤل ببلد اشرك عليه
 من الامم اى جمع الى اسرته (اولك المفل بارض الحرب والرحول تحت ايدى الرعي
 والاشاء الرضول ابيهم لمتلجزة واخبار بعرو المسلمين والاشاء الامم كيدا معهم

والخليفة

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