

THE ISLAMIC STATUTE OF THE MUDEJARS IN THE LIGHT OF A NEW SOURCE

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The discussions of Muslim scholars concerning the statute of Islam under Christian rule in the Iberian Peninsula have been the subject of research conducted from two different perspectives. First of all, their historical value has been studied for the complex *history of Islam within the Iberian Peninsula*, where Muslim communities, under both Muslim and Christian rule, were existing during several centuries and where, for most of the 16th and the early years of the 17th century, Islam was completely subjected to Christian rule ². A second perspective, emphasized in more recent publications, has been the relevance of these discussions *within the general framework of the development of Islamic legal thought about the statute of Muslim minorities*, incidentally including those living in Western Europe today ³.

The purpose of the present article is to study an unknown manuscript which adds some source material which are relevant to both the approaches mentioned in the previous paragraph. We refer to a set of photocopies in our possession of parts of a privately owned Arabic manuscript in a village in the surroundings of the Moroccan City of Tetuan. The pages of the MS at our disposal contain no indication of the place or date of copying, but their script is strikingly similar to the one we know in Arabic manuscripts from 16th century Spain. One might imagine that they were brought to North Africa by some Morisco immi-

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² Mu'nis (1957); Harvey (1964); Sabbagh (1983); Buzineb (1988-1989).

³ Masud (1989) and (1990); Fierro (1991); Meier (1991); Lewis (1992); Abou al-Fadl (1994); Shadid and Van Koningsveld (in the press).

grant during the 16th or early 17th century. However this may be, we are dealing with two separate texts, viz. (1) a *fatwā* of the Andalusian scholar, Ibn Rabīʿ (d. 719/1320) on the statute of Islam under Christian rule, and (2) *fatwās* of the Chief Judges of the four Sunnite *madhhabs* in Cairo around the year 1510 A.D., concerning the statute of Islam under Christian rule in Spain. The first extensive text seems to be the only complete Andalusian *fatwā* on this vital issue known so far, while the second text at once places the same issue within the broader scope of the inter-*madhhab* discussions in East and West concerning the statute of Muslim minorities in general.

The author's name of the *first text* is given as «*al-Shaykh al-Faqīh al-ʿĀlim al-ʿAlam al-Qāḍī al-Aʿdal, Abū ʿl-Ḥasan Muḥammad ibn al-Shaykh al-Faqīh al-ʿAlam al-Qāḍī Abī ʿĀmir ibn Rabīʿ*». Ibn Ḥajar provides a short biographical notes of this scholar. He gives his complete name as follows: Muḥammad ibn Yaḥyā ibn ʿAbd al-Raḥmān ibn Aḥmad ibn Rabīʿ al-Qurṭubī al-Mālikī al-Ashʿarī. According to Ibn Ḥajar, he was born in Córdoba in 626 (1228), settled in Málaga and died on 17 Dhū ʿl-Qaʿda 719/30 December 1319. «He became the *muḥaddith*, *faqīh* and *wazīr* of Málaga»⁴. Buzineb has recently drawn attention to a short quotation from a *fatwā* by «Abū ʿl-Ḥusayn Muḥammad ibn Yaḥyā ibn Rabīʿa» [sic] to be found in the work of the Moroccan scholar al-Zayyātī (d. in Tetuan in 1055/1645), in his work *Al-Jawāhir al-mukhtāra mim-mā waqaftu ʿalayhi bi-Jabal Ghumāra*⁵. This is in fact the only quotation from Ibn Rabīʿ' s *fatwā* known so far. Facing an incorrectly spelled name in al-Zayyātī's work, Buzineb did not identify the author as an Andalusian scholar but rather considered him as one of the Maghribī jurists who were discussing the migration of Spanish Muslims to North Africa. Al-Zayyātī's quotation proves that Ibn Rabīʿ' s *fatwā* was indeed known in the north of Morocco during the first half of the 17th century. We shall see below that al-Wansharīsī also had a copy in front of him, while compiling in Fez two similar *fatwās* during the late 15th century.

The second text of the MS contains the opinion of four leading legal specialists belonging to the four Sunnite *madhhabs* in Egypt. With the help of Ibn Iyās' chronicle, they can be identified as the Chief Jud-

⁴ *Al-Durar al-kāmina*, vol. 4, N.º 793; he is also mentioned by Abū Ḥayyān (d. 745/1344) as one of his teachers (al-Maqqarī, ed. Dozy et al., vol. 1, 835, with *kunya* Abū ʿl-Ḥusāyn).

⁵ Cf. Buzineb, *Respuestas* (1988-9), pp. 54-55 (based on Manuscript 66 of the General Library in Rabat).

ges of the four *madhhabs* in Cairo who were in office *between July 1508 and April 1513*. This identification is only possible, however, if we assume that some scribal errors have changed the correct spelling of two out of the four names.

The names that can be identified with complete certainty are those of Muḥammad ibn ‘Alī al-Qādirī al-Shāfi‘ī and Aḥmad ibn ‘Alī al-Ḥanbalī. The full name of the former was Kamāl al-Dīn Abū ‘l-Faḍl Muḥammad ibn Nūr al-Dīn ‘Alī ibn al-Naṣīrī Muḥammad ibn al-Sayfī Bahādir al-‘Umarī al-Qādirī al-Ṭawīl⁶. Judging from the data provided by Ibn Iyās, his first appointment as Shāfi‘ite Chief Judge took place on the last day of the month of Ṣafar 914 (29 June 1508)⁷. He was discharged from this office after the Feast of Sacrifices and the *ayyām al-tashrīq* of the month of Dhū ‘l-Ḥijja of the year 915 (27 March 1510)⁸, but reinstated on 17 Jumādā I 916 (23 August 1510)⁹. He was discharged from this office on 8 Dhū ‘l-Qa‘da 919 (5 January 1514) but reinstated on 27 Rajab 921 (7 September 1515)¹⁰.

As for the Ḥanbalite imam, his full name was Shihāb al-Dīn Aḥmad ibn ‘Alī ibn Aḥmad ibn al-Shīshīnī al-Ḥanbalī. He is mentioned by Ibn Iyās as the Ḥanbalite Chief Judge of Egypt for the first time in the year 902¹¹, and also in the years 907, 908, 913 and 919 (Shawwāl). He died on 7 Ṣafar 919 (15 April 1513) while occupying the same position¹².

The imam mentioned in the manuscript by the name of ‘Abd al-Barr ibn Iṣḥāq al-Ḥanafī can be identified with the Ḥanafite Chief Judge ‘Abd al-Barr ibn al-Shiḥna, with the assumption of a scribal error in the transmission of the text, changing the name of al-Shiḥna into that of Iṣḥāq. Judging from the chronicle of Ibn Iyās, ‘Abd al-Barr ibn al-Shiḥna occupied the post of Ḥanafite Chief Judge in 906 for the first time¹³. He was confirmed in his position in the beginning of Ṣafar 908 and in 909¹⁴. He died on 28 Rajab 921 (8 September 1515)¹⁵.

Finally, the Mālikite imam mentioned in the manuscript by the

⁶ A biographical note on him is given by al-Ghazzī, *Al-Kawākib*, vol. 2, pp. 45-46.

⁷ Ibn Iyās, *Badā‘ī*, vol. 4, p. 132.

⁸ *Ibidem*, vol. 4, p. 171.

⁹ *Ibidem*, p. 189.

¹⁰ *Ibidem*, vol. 4, pp. 350 and 469.

¹¹ *Ibidem*, vol. 3, p. 363.

¹² *Ibidem*, vol. 4, pp. 14, 30, 11, 344; cf. vol. 5, p. 92.

¹³ *Ibidem*, vol. 3, p. 466; vol. 4, p. 7.

¹⁴ *Ibidem*, vol. 4, pp. 39 and 59.

¹⁵ *Ibidem*, vol. 4, p. 470.

name of Muḥammad ibn al-Muḥibb can be identified with Yaḥyā Muḥyī al-Dīn al-Damīrī, if we assume that «Yaḥyā» was corrupted into «Muḥammad», and «Muḥyī» into «Muḥibb». After the death of his father he was appointed Mālikite Chief Judge of Egypt on 17 Shawwāl 913 (16 February 1508)¹⁶. He occupied the same post in 919¹⁷ and still in Ramaḍān 921¹⁸.

As the *fatwās* in all likelihood were written at a moment when all four previously identified specialists occupied the office of Chief Judge of their *madhhab* in Egypt, it follows that these texts have to be dated between the last day of the month of Ṣafar 914 or 29 June 1508 (the date of the first appointment of the Shāfi'ite Chief Judge) and 7 Ṣafar 919 or 15 April 1513 (the date on which the Ḥanbalite Chief Judge died).

I. THE FATWĀ OF IBN RABĪ' (died 719/1320)

I.1. Structure and Arguments

The *fatwā* of Ibn Rabī' consists of an *introduction*, two «studies» (*naẓar*) and a *conclusion*. In the introduction, the author describes the questions posed to him. In the two studies he discusses (1) the rules concerning residence in the Territory of War (*aḥkām al-iqāma*) and (2) the rules concerning the person residing among the enemies (*aḥkām al-muqīm*). The first study is further divided into two separate «investigations» (*baḥth*), viz. one concerning the «categorical prohibition of residence (in the Territory of War)»¹⁹, and another concerning «the (only legitimate) cause preventing the emigration (from the Territory of War to the Territory of Islam), viz. the complete inability to do so, but not (the interest of) one's property or (the attachment to) one's homeland»²⁰. The second «study» is divided into two «investigations» as well, viz. of «the rules (applying to the resident in the Territory of War) in as far as they pertain to this world in connection with life, offspring and

¹⁶ *Ibidem*, vol. 4, p. 126.

¹⁷ *Ibidem*, vol. 4, 300 supra.

¹⁸ *Ibidem*, vol. 4, p. 477.

¹⁹ «Fī taḥrīmihā qaṭ'an.»

²⁰ «Fī 'l-sabab al-mānī' min al-hijra wa-annahu al-'ajz al-tāmm lā al-māl wa-'l-waṭan.»

property»²¹ and, secondly, of «the rules (applying to the resident in the Territory of War) in as far as they pertain to the Hereafter»²². At the very end of his treatise the author presents his *conclusion* which contains his classification into three distinct categories of those who are living among the enemies on the basis of treaties concluded with them²³. In the following analysis we will present a summary of the main arguments presented by the author in each part of his treatise, in as far as they may be directly relevant to a better understanding of the social, religious and political life of the Mudejars in Christian Spain and for the way their situation was perceived by a leading scholar from al-Andalus.

In the *introduction* the author refers to questions which were asked him by a student concerning residence in the lands conquered by the Christians who, consequently, were now in possession of the fortifications. The Muslims had continued to live with them under their protection and rule because of (their attachment to) their properties. For this they pay the *jizya* in submission²⁴; they also pay the *zakāt* levied from their properties to the Infidels²⁵. The student concerned has asked him to provide the religious arguments prohibiting residence in those lands. He stated that in a certain place in those lands someone²⁶ had permitted them to reside with the Christians²⁷. This person had argued that

²¹ «Fī aḥkāmihi al-dunyāwiyya al-mutaʿallaqa bi-ʿl-nafs wa-ʿl-wuld wa-ʿl-māl.»

²² «Fī aḥkāmihi al-ukhrāwiyya.»

²³ «Fī aṣṅāf haʿulāʾi ʿl-muʿāhidīn li-ʿl-aʿdāʾ fal-taʿlam annahum thalāthatu aṣṅāf.»

²⁴ The author sarcastically alludes to the Quranic verse about the *jizya*: «...ʿan yadin wahum ṣāghirūn». Cf. Kister (1964). The author in fact refers to the taxes the Mudejars had to pay, see Torres Fontes (s.a.), pp. 13-14, who discusses the following taxes: 1. the *pecho real* or *capitación*, 2. the tithe (*diezmo*), the tenth part of the harvest and the *almojarifazgo*, originally a tax of Islamic origin, which was now used for the maintenance of walls, fortifications, etc. In addition, the Mudejar population had to pay their taxes to their *aljamas*. The combined taxes (to be paid both to the Christian and the Muslim authorities) resulted in a heavy burden, which were higher than those paid by the Christians. In addition Mudejars had to contribute more than the Christians to some of the taxes, such as the «royal tithe as part of the almojarifazgo» (*ibidem*, p. 14); see also Boswell (1977), pp. 196ff (Mudejar taxes and aljama finances).

²⁵ The author, perhaps ironically, refers to the fact that many Mudejars were forced to pay the ecclesiastical tithes, the Christian counterpart of the *zakāt*, see Boswell (1977), p. 200. According to a 14th-century Bishop of Tortosa canon law prescribed that Jews and Saracens must pay the tithes and first-fruits of the lands. This was also the case in some places in 13th-century Castile, where they were to be paid to the archbishops, see Torres Fontes (s.a.), p. 13.

²⁶ Apparently, Ibn Rabīʿ consciously leaves his opponent in anonymity. Elsewhere in his treatise he refers to him merely as «the muftī».

²⁷ The author uses alternately the Arabic words *al-Rūm* and *al-Naṣārā* to indicate the Christians living outside the Territory of Islam.

the first *hijra* had taken place when the religion of Islam was endangered²⁸. In these places (under Christian domination), however, this danger had been thwarted. For this view he based himself especially on two prophetic traditions, viz. (1): «Whosoever believes in God and His messenger, performs the *ṣalāt*, pays the *zakāt*, fasts during Ramaḍān and performs the pilgrimage to the House, is entitled to be permitted by God to enter Paradise, whether or not he has emigrated in the way of God or has remained in the country where he was born»²⁹, and (2): «There is no emigration after the conquest (of Mecca)»³⁰. In addition, he had also stressed that many countries would be devoid of the word of God if to emigrate from them were an individual duty imposed on every Muslim inhabitant. One might perhaps argue against him by pointing out that the power of government belonged to the Infidels, that their legal rules were applied, that the Muslims were subjected to humiliation by them and would have to fear them for their life and property. To this he would riposte that the Muslims have gained such a degree of confidence in the existing treaty that they feel safe from those potential dangers.

In the first «investigation» of the first «study» the author expounds that there exists no difference of opinion among the legal scholars of Islam about the prohibition to reside with the Infidels, to pledge them loyalty³¹ and to trust them. The same holds true for the obligation to emi-

²⁸ Arabic: «'inda 'l-fitna fi 'l-dīn.» This is an argument of central importance in the present and other similar discussions indicating that the earliest followers of Islam in Mecca were obliged to emigrate because their practise of Islam was undermined by the city authorities.

²⁹ «Man āmana bi-'llāhi wa-rasūlihi wa-aqāma 'l-ṣalāt wa-a'tā al-zakāt wa-ṣāma Ramaḍān wa-ḥajja al-bayt kāna ḥaqqan 'alā 'llāhi an yudkhalahu 'l-janna - ḥājara fī sabīli 'llāhi aw jalasa fī 'l-arḍ allatī wulida fihā.» This is a *ḥadīth* of key-importance for those scholars who argue that it is permitted to continue to live outside *Dār al-Islām*, as long as one is able to practise the Five Pillars or «to manifest the signs of Islam» («iẓhār sha'ār al-islām»).

³⁰ «La hijrata ba'da 'l-fath.» This is another prophetic saying of crucial importance for those scholars arguing against the validity of emigration, if certain conditions are complied with (cf. the preceding note).

³¹ Arabic: «wa-taḥrimi muwālāthimim.» The author refers with this Quranic expression implicitly to pledges of loyalty which are familiar to us from the entire history of the Mudejars. A few examples may suffice. Fernández y González publishes the pledge of loyalty by the Mudejars of Murcia to Alfonso, after the city had been reconquered by James I, dated 23 June 1266 / Era 1304 (appendix 47). The document drawn up in Spanish and Arabic (as far as we know, only the Spanish version is extant), is signed by the *Alguaziles* «Abubacre Abuadah» and «Abuambre Abengalip» on behalf of don Buabdille Abenbut [Abu 'Abd Allāh ibn Hūd], king of Murcia. See for pledges of loyalty in 13th-

grate from them to the lands of the Muslims. They base this view on the Quran and the Sunna and point out the contradiction existing between the act of residing among the Infidels and many basic principles and characteristic traits of Islam. Everything which contradicts religion is forbidden and everything inviting to commit forbidden acts is forbidden as well.

The religious prohibition of the Quran against residing with the infidels is equal in its absoluteness to the prohibition of eating carrion, blood and pork. It cannot be denied by any Muslim. This view is supported by the Sunna. The author quotes a whole series of Quranic verses and two prophetic sayings in support of his view. He then sets out to prove that no Muslim under Christian rule is really able to perform the Five Pillars of Islam in a legitimate manner. As for *the profession of the two basic articles of the Islamic creed*³², the author stresses that Muslims have been ordered to fight the Infidels in order to establish the superiority of the Word of God (as summarized in the two basic articles of the creed). This can be brought about by their conversion or their subjugation, including their paying the *jizya* in submissiveness. Only then is it permitted to live together with them, after they have been submitted to humiliation and degradation³³. However, in the case of Muslims living under Christian rule, the Word of God is inferior, not superior; it is defied, not honoured. This holds equally true for the second Pillar, the *ṣalāt*. Islam prefers the collective to the individual *ṣalāt* because it implies a gathering for the remembrance and adoration of God and a public manifestation of Islam. If the collective *ṣalāt*, however, is concealed among the Infidels but the Muslims are (nevertheless) heard performing it³⁴, then it becomes an object of derision among them³⁵.

century Valencia Burns 1973: 284ff (dealing with Murcia on p. 287), for 14th-century Aragon Boswell (1977), p. 166ff. In 15th-century Castile, but also elsewhere loyalty to a new King was demonstrated in a ceremonial way by his Muslim and Jewish subjects with dances and other public displays of joy, see Tapia Sánchez (1991), pp. 67-68.

³² Arabic: «al-talaffuḏ bi-'l-shahādatayn», viz. that there is no god but God and that Muhammad is God's Messenger.

³³ Arabic: «al-dhilla wa-'l-ṣaghār», both of these words being key-concepts in the Islamic discussions concerning the position of Jews and Christians in *Dār al-Islām*.

³⁴ Arabic: «Fa-in ukhfiyat bayna aḏhur al-kuffār wa-yusma'u minhum.»

³⁵ The author is referring to concrete historical events. Alfonso X apparently prohibited the Mudejars of the Muslim quarter Arrixaca to chant the *adhān*, a prohibition to be dated after 1266 see Torres Fontes (s.a.), p. 21, see for similar problems in 14th-century Aragon, usually motivated by religious sentiments: Ferrer i Mallol (1987), 87 ff.; Van Koningsveld and Wiegers (1994), p. 176; Boswell (1977), pp. 262-267.

This is an infringement upon its perfection. If the voices (of the worshippers) are lowered because of the Infidels, this implies an impairment of it and a diminishing of its rank. Also the legitimacy of the Friday *ṣalāt* performed by Muslims under the rule of Infidels, can, according to Ibn Rabīʿ, be disputed. For this view, the author bases himself on the opinion of Abū Ḥanīfa, who, contrary to Mālik ibn Anas and al-Shāfiʿī, held that Friday prayers can only be performed with the permission of the legitimate ruler or his representative.

Also the duty to pay the *zakāt* cannot be performed correctly in the absence of a legitimate Muslim ruler, because he is the one entitled to collect it. Whosoever keeps it back from him is liable to be killed. This Pillar is therefore destroyed in this situation of loyalty to a Christian ruler. Similarly, the fourth Pillar, viz. *the obligation to fast during the month of Ramaḍān*, cannot be perfectly observed. It is stipulated that this fast should start and end with the observation of the new moon. In most cases, however, Ramaḍān starts only by following, under the authority of the legitimate ruler or his representative, a testimony about the concrete observation of the new moon. This observation may have been made in one region but not in another. However, if this procedure takes place under the authority of one believing government, then the news about it are easily conveyed from one to the other and everyone will act accordingly. Wherever there is neither a legitimate Muslim ruler nor his representative, both the beginning and the end of the month will become a doubtful element of religious practice³⁶. As for the obligation to perform *the pilgrimage to Mecca*, it lapses because of their inability to do so³⁷. However, the *jihād* is one of the fundamental Islamic practices as well, and a collective duty in the case of need and in a place of necessity like the place where the Muslims referred to reside, as well as the adjacent areas. Thus, they are either omitting the performance of this obligation completely and have given up hope of ever fulfilling it, which, in the absence of an absolute necessity, would make them equal to the one who purposely omits the performance of a collective duty. Or they are

³⁶ This remark reflects the existing doubts among Mudejars, as can be shown by the existence of *fatwās* requested by them on this subject, see for such a *fatwā*, Wiegiers (1994), 83n.

³⁷ The ability (*istiṭāʿa*) to perform the *ḥajj* is a legal term discussed in great detail by the jurists. For reasons to be explained below, it is unlikely that the author is writing at a time in which the Mudejars were categorically prevented from going on *ḥajj*. He rather seems to refer, in general terms, to the great and mostly unsurmountable difficulties faced by the Mudejars who wanted to perform the pilgrimage.

supporting their masters with their lives or their property ³⁸, and hence are becoming *ḥarbīs* with the polytheists.

Equally important is the impossibility, under Christian rule, of complying with the fundamental religious obligation to appoint and pledge loyalty to a legitimate Muslim ruler (*imām*). On his existence depends the application of judicial verdicts and legal rules, the drafting of legal documents concerning cases of homicide, marriages and property. All or most of these documents are either invalid because of the absence of a legitimate Muslim ruler or the use of them is to be qualified as prohibited because they rely on an Infidel who sees to their application or employs someone else for that purpose. Even if the latter is a Muslim, he is still the representative of an Infidel ³⁹.

In addition, living among the Infidels very often brings about a number of reprehensible or forbidden situations, such as: humiliation and contemptability, being mocked, being insulted in one's honour, being physically or financially damaged, being forced to observe reprehensible things, being exposed to impure things and eating forbidden and doubtful things.

Another series of forbidden situation must be feared by those living under Christian rule, viz. that the King will break the treaty and that life, family, offspring and property will be violated. It is transmitted that the Umayyad Caliph 'Umar ibn 'Abd al-'Azīz had forbidden settlement in this peninsula, although it was a *ribāṭ* in that time, the virtue of which was widely known. Notwithstanding the power and dominant position of the Muslims, the reigning Caliph, whose piety was generally acknowledged, forbade settlement there. What should be thought of someone who throws himself, his family and children into their hands at a time when *they* are powerful and superior, trusting that they will keep their treaty concluded in accordance with their religious Law? We do not accept their testimony with regard to them, so how could we do it with regard to ourselves? How can we rely on their assertion that they will keep their treaty? This holds even more true, if we take into account

³⁸ The author seems to say that some Muslims form part of the Christian army and fight against al-Andalus, while others support warfare against Islam financially or materially. We know that both these means of conduct occurred regularly, see Burns (1973), 288-299, Boswell (977), 166-193.

³⁹ This remark reflects the judicial structure of Mudejar Islam, as will be explained below.

what has actually happened already as could have been expected⁴⁰ and how many of the previously mentioned matters can be observed if we study and examine the experience of various regions⁴¹. We also have to fear the violation of life, children and property from the part of their evil people, even if we admit that their King will be faithful to his treaty and that they will be protected from riots. To this the existing practice also testifies, as will be confirmed by everyone who studies reality.

They also have to fear the corruption of their religious life. One may admit that important and intelligent people will not fall victim to this, but who will protect from it the humble and the ignorant when *their* (i.e. the Christians') Sages and *their* Satans are put in charge of them⁴²? In addition to this, there is the danger of sexual relations (and marriage) between a Muslim woman and a man from among the enemies. These relations may eventually involve apostasy⁴³. Then, there is also the danger that those who are residing for a long time with them will follow their way of life, including their language, cloths and despicable habits. This happened to the inhabitants of 'Ayla' and others, who lost the Arabic language completely⁴⁴. When the Arabic language is lost, so are the

⁴⁰ Arabic: «Hadhā ma'a mā waqa'a min hadhā 'l-mutawaqqa'» The author seems to allude to actual examples of the breaking of treaties between a Christian ruler and Muslim subjects, as happened in Murcia, as we will see below.

⁴¹ Arabic: «wa-ma'a mā yushhadu min al-waqā'i' al-mutaqaddima 'inda man baḥatha wa-'stiqrā'a 'l-ikhtibār fī 'l-aqṭār». The author seems to imply that his understanding of the situation of the Mudejars is based on personal observation of various regions with Mudejar communities, on the reports of eye-witnesses or on his personal investigation of documents pertaining to these communities. This conclusion is confirmed by the author's remark (see *infra*) «And also the journey to their lands makes clear that the contrary of this assertion is correct» («kamā anna 'l-safar ilā bilādihim waḍḍaḥa anna 'aksa hadhā 'l-qawl huwa 'l-ṣawāb»). In a more general sense, the author demonstrates a high degree of certainty when he speaks about the actual situation of the Mudejars. To mention one more instance (see *infra*), the author states: «The existing practice testifies to this and it is confirmed by actual fact according to those who investigate.» («Tashhadu lahu 'l-awā'id wa-yuqarriruhu 'l-wuqū' 'inda man baḥatha»).

⁴² The author may refer here to court proceedings by which ecclesiastical authorities became the owners of religious institutions such as mosques etc. See, for 13th-century Castile, Torres Fontes (s.a.).

⁴³ This may be a reference to the famous case of the «Mora Zayda», who became a wife to Alfonso VI, and converted to Christianity. In the parallel passage, al-Wansharīsī explicitly refers to her (*Mi'yār*, vol. 2, p. 141); cf. Lévi-Provençal (1934).

⁴⁴ Cf. Al-Wansharīsī, *al-Mi'yār* (1981), 2, p. 141, where the place name is spelled Ābullah, identified by many as Avila. No place seems to exist spelled Ayla. We do find Ayala, nowadays a small village in the province of Alava, north of Vitoria, not known to have had a Mudejar population, several villages called Ayelo in Valencia (Ayelo de Malferit and Ayelo de Rugat). Furthermore one might think of Ayllón near Segovia, a place

rituals in which the pronouncing of Arabic expressions do indeed occupy a prominent place. Moreover, it has to be feared that their property will be controlled by imposing on them heavy tasks and unjust fines. This may start in the form of a temporary necessity or may be based upon a combination of treason and interpretation⁴⁵, which they are unable to dispute [about] with them. They cannot protest against this out of fear that it will generate hatred and will ultimately lead to the breaking of the treaty. Finally, they also have to fear that their life and children will be controlled by them.

All this indeed happens, as is witnessed by whosoever investigates the matter. It has actually happened several times in the place referred to in the questions and elsewhere. By all this the prohibition to reside with them is clearly established. Whosoever defies this prohibition commits the greatest of sins.

On the basis of the preceding data the author sets out to refute every single argument adduced by the (anonymous) *muftī* who had permitted Muslims to reside among the Infidels. In reaction to the argument that many countries would be devoid of the Islamic message if the Muslims left, the author replies that it is obligatory to keep the Islamic confession removed from the foolish talk of infidels and scorners. However, «a journey to their country shows that the contrary of this rule is the case»⁴⁶. Whoever studies the circumstances and the history of the Infidels who have concluded treaties with the Muslims and who are continuously motivated to break them, knows that these treaties are indeed broken every now and again⁴⁷. It has been reported that the place from which the questions dealt with in the present treatise were sent, used to have an earlier treaty which was broken. How could one then rely upon the second treaty there?⁴⁸ Old and recent treaties

which in any case is known to have had a Mudejar population. Finally, we have Ayuela in Palencia. It seems most likely that Ibn Rabī is referring to the aforesaid small villages in Valencia.

⁴⁵ Viz. a treacherous interpretation of the original rules stipulated in the treaty. See for such cases further below.

⁴⁶ «Wa-kamā anna 'l-safar ilā bilādihim waḍḍaha anna 'aks hadhā 'l-qawl huwa 'l-ṣa-wāb.»

⁴⁷ Arabic: «al-mu'āhidīn». This word usually refers to Christians and Jews in *Dār al-Islām*. In this case, it is more likely that it refers to states outside the Territory of Islam which have concluded some form of treaty with the Muslim world.

⁴⁸ «Bal al-bulda allatī waṣala hadhā 'l-su'āl minhā qad dhukira annahā [...: gap of two words in the MS] 'ahd awwal fa-nuqida fa-kayfa yūthaqu bi-'ahdihim al-thānī fihā?». This very interesting sentence provides another important indication of the place of origin of the questions. We will deal with this below.

have been broken in this Andalus of ours and elsewhere ⁴⁹. They have never been known to have complied with a treaty completely as it had been concluded. Here, the author refers to the treaty regarding Crete which was changed completely with the result that the island became Christian ⁵⁰.

In the second «investigation» of the first «study» the author deals with «the (only legitimate) cause preventing the emigration (from the Territory of War to the Territory of Islam), viz. the complete inability to do so, but not (the interest of) one's property or (the attachment to) one's homeland». Here the author deals mainly with the meaning of the Quranic term *al-mustad'afīn* who are exempted from the obligation to emigrate. He confines this category as strictly as possible to those who possess no possibility at all and who, for that reason, may be regarded as tantamount to the lame, the imprisoned, the ill or the weak. In this case, they can be compared with those who are forced to confess the belief of the infidels in words or to eat carrion. This person will be forgiven if he maintains his intention to emigrate whenever he finds a way to do so. As for those who are prevented from emigrating by their attachment to their worldly property, they have absolutely no legal excuse for staying among the Infidels.

In the first «investigation» of the second «study» the author proceeds to explain the «rules (applying to the resident in the Territory of War) in as far as they pertain to this world in connection with life, offspring and property». First of all, he stresses that the phenomenon of Muslims pledging loyalty to Infidels under whose rule they continue to live is a comparatively recent one. For this reason, the great scholars of jurisprudence have not occupied themselves with the task of explaining the rules pertaining to them on the basis of their *ijtihād*. They have confined themselves to the opposite case, viz. of Christians and Jews living under Muslim rule. According to the author this phenomenon appeared in the fifth century of the history of Islam, when Sicily and some districts of al-Andalus were conquered by the Europeans ⁵¹. In that time, some scholars from the Western part of the Islamic world were

⁴⁹ «Wa-qaḍ unqīdat 'uhūd qadīma wa-ḥadītha fī Andalusīnā wa-ghayrihā.»

⁵⁰ I.e. during and after the Byzantine reconquest in 960, see EI², s.v. *krīṭish*, especially p. 1084, column 2 infra-p. 1085, column 1 supra.

⁵¹ Arabic: «Waq̄t istīlā' al-Rūm 'alā Jazīrat Ṣiqīlliya wa-ba'ḍ kuwar al-Andalus.» In Western texts, the word al-Rūm may be translated as «Europeans» or «Christians» (in an ethnical sense).

questioned about the legal rules concerning the person who pledges loyalty to the Infidels and continues to live under their rule⁵². They answered that those rules are the same as the rules pertaining to the inhabitants of *Dār al-Ḥarb* who have converted to Islam but did not emigrate to *Dār al-Islām*.

In fact, the jurists developed different views of the cause(s) of the inviolability of the life, property and (small) children of a Muslim which are protected in a different manner. The opinion of Mālik ibn Anas was that a Muslim's life is inviolable by virtue of the mere fact of his being a Muslim, while his property and children were (only) inviolable if he was living in *Dār al-Islām*. In other words, Muslim soldiers were not allowed to kill such a person during war, but were allowed to appropriate his property as spoils and take his children captive if he was living in *Dār al-Ḥarb*. Only if he were living in *Dār al-Islām* would his property and children be inviolable as well. Al-Shāfi'ī maintained, however, that the mere fact of his being a Muslim made his life and property inviolable. Abū Ḥanīfa, on the other hand, made a distinction between two kinds of protecting factors, viz. the factor justifying claims of indemnity in the case of offenses against life and property (*al-ʿāṣima al-mughrima*) and the protecting factor leading (merely) to the committing of a sin in the case of an offense (*al-ʿāṣima al-mu'aththima*). According to him, the first factor depended on the Territory one lived in. In other words, only the claims of those living in *Dār al-Islām* could be guaranteed. The second protecting factor was Islam. In other words, wherever a Muslim committed an offense against the life, property and children of another Muslim he had committed a sin, even though the claim of the person whose interests had been damaged could not be guaranteed if he was living in *Dār al-Ḥarb*. Abū Bakr ibn al-ʿArabī illustrated this further by explaining that the expiation (*kaffāra*) had to be paid for an Infidel who had converted to Islam and was then killed (in *Dār al-Ḥarb*), rather than the blood-money (*diya*). If he had emigrated to *Dār al-Islām*, however, then the killer must pay both the expiation and the blood-money. From this it can be concluded that the life of a Muslim living in *Dār al-Ḥarb* must be spared (during war) according to Mālik

⁵² Arabic: «ba'd fuqahā' al-Maghrib». The scholars concerned may have lived in any country between Tunisia and Muslim Spain. Buzineb's translation of this expression, found by him in the quotation adduced by al-Zayyātī, as «los alfaquíes de Marruecos» is incorrect [Buzineb (1988-9), p. 55].

and al-Shāfi'ī, while, according to Abū Ḥanīfa, no blood-money is to be paid for him if he is erroneously killed, but only the expiation.

The jurists also developed different views on the statute of the property and the small children of a Muslim living in *Dār al-Ḥarb*. In the version of Ibn al-Qāsim of his *Mudawwana*, Mālik said that they were to be made spoils for the Muslims. This was also the opinion of Abū Ḥanīfa and the Malikite scholars Asbagh and Ibn Rushd. Ashhab and Saḥnūn, however, thought that his property and children should follow his personal statute. This implies that they should not be touched by virtue of the mere fact of his being a Muslim, even though living in *Dār al-Ḥarb*. This was also the opinion of al-Shāfi'ī and of Abū Bakr ibn al-'Arabī. However, some jurists tended to make a distinction between his property and his children, claiming that his children should follow his status while his property could be taken as spoils. The root of this dispute was a difference of opinion concerning the questions whether or not an inhabitant of *Dār al-Ḥarb* can own anything legally and whether the protecting factor was the mere fact of his being a Muslim or the territory he was residing in.

As for his adult children and his wife, the rules applying to them are to be defined individually. If they have converted together with their father and husband but did not emigrate to *Dār al-Islām* either, the same rules apply to them as to him. If they have remained infidels, the rules applying to the infidels pertain to them.

Some later jurists were asked about the rules applying to the Muslims living in a country (of *Dār al-Ḥarb*) with which a Muslim ruler has concluded a treaty⁵³. Of these some preferred the opinion of Ashhab and Saḥnūn quoted before. Moreover, they pointed out that these Muslims cannot really be treated as the equals of converts living in *Dār al-Ḥarb* who have not emigrated to *Dār al-Islām*. In fact, the first group (the *mu'āhidūn*) have always been Muslims. Contrary to the converts, there has never been a moment in their life during which their children and their property could have been taken lawfully by Muslims (during war). Therefore, there was no way at all to nullify the protection of their

⁵³ «Wa-qad alḥaqa bi-hā man su'ila min al-muta'akhhirīn ha'ulā'i 'l-mu'āhidīn.» From this point the author distinguishes between the rules applying to Muslims residing in *Dār al-Ḥarb* in general on the one hand and those who are residing in countries related to Muslim governments by treaties, on the other.

property and children by the mere fact that were living in *Dār al-Ḥarb*. The author agrees with this point of view ⁵⁴.

As for the question whether their testimony may be accepted, the answer distinguishes between three categories, viz. (1) the category of those know that it is forbidden to reside in *Dār al-Ḥarb* but insist on staying there, although they are able to emigrate. There is consensus that their testimony cannot be accepted because of their unbelief, in view of the fact that they are consciously sinful ⁵⁵. (2) Those who know that it is forbidden to stay there but are unable in every respect to emigrate. There is consensus that their testimony can be accepted if it is evident that they are forced to stay. (3) Those who are ignorant of the fact that it is prohibited to stay there or even justifying staying there on the basis of a wicked interpretation ⁵⁶. Their testimony is rejected by Mālik and al-Bāqillānī because of their sinfulness in an absolute sense ⁵⁷. However, according to al-Shāfiī, who accepts their testimony, sinfulness in itself is no ground to reject a witness, this only being the case if there is a specific reason to suspect the contents of his testimony. According to Ibn Rabī this third group is extremely small. Those among them who pretend to be jurists are to be regarded as sinful in their application of *ijtihād*. There is no excuse for their permitting Muslims to stay in *Dār al-Ḥarb*, because of the abundance of authoritative sources prohibiting this ⁵⁸. Consequently, their testimony is not acceptable either. The same holds true for the common people among them who are considered to be ignorant of the prohibition. The reason is that they frequently visit the lands of the Muslims. This enables them to enquire about the rules regarding this residence and loyalty (to a Christian ruler). In fact, the matter is so frequently discussed that one cannot

⁵⁴ Ibn Rabī does not identify the jurists he is referring to here. However, al-Wansharīsī (*Al-Mi'yār*, vol. 2, p. 129), who takes up this argument, specifies that it was in fact «the famous Judge Abū 'Abd Allāh ibn al-Ḥājj and other late [scholars]». Al-Wansharīsī here quotes Ibn Rabī almost verbatim, with the exception of the name of Ibn al-Ḥājj which is not to be found in his treatise. Ibn al-Ḥājj al-Tujībī (458-549) was *qāḍī al-jamā'a* in Córdoba and the author of *Nawāzil al-aḥkām*, in which the *fatwā* Ibn Rabī and al-Wansharīsī are referring to, may, in all probability, be found.

⁵⁵ «Fa-ha'ulā'i lā ikhtilāfa fī radd shahādatihim min jihat kufrihim fussāqan 'ālimīna.»

⁵⁶ «Wa-ṣinf jāhilūna bi-tajrīm hādhihi 'l-iqāma aw mujawwizūna la-hā bi-ta'wīl fāsid.»

⁵⁷ «Min jihat fusqihim 'alā 'l-iṭlāq.»

⁵⁸ «Wa-man ta'allaqa bi-'l-tafaqquh minhum -wa-hum alladhīn yuqaddaru minhum annahum mukhtī'ūn fī 'l-ijtihād- yakūnūna ghayra ma'dhūrīn fī tajwīzihim al-iqāma li-kithrat mustanadāt taḥrīmihā.»

but assume that most of them indeed posed questions about it when they found themselves (temporarily) in Muslim territory and also that they informed those who stayed behind after having returned.

On the basis of the preceding consideration, the author concludes that the rules applying to the life, property and children of the (old) Muslims living in *Dār al-Ḥarb* are identical with the rules concerning Muslims living under Christian rule in *Dār al-Ḥarb* in general, taking into account the existing differences of opinion which have been explained earlier. Those Muslims who are living in Christian territories with whom Muslims rulers have concluded a treaty, are entitled to the kind of protection of their life, property and children stipulated in the treaty and during the time of its validity⁵⁹. If, however, they fight us, together with their Christian patrons, then their life may be taken. And if they help them financially to fight us, then their property may be confiscated. In certain cases, it may also be deemed lawful to capture their offspring, not in order to enslave them but to rescue them from their hands and to raise them among the Muslims.

After having discussed, in the second «investigation» of the second «study», the rules applying to the resident in the Territory of War in as far as they pertain to the Hereafter, the author presents his classification of the Muslims who are living in *Dār al-Ḥarb* within the framework of existing treaties with them. The first category form a minority; they are absorbed by the enemies and live dispersed among them⁶⁰. The second category also forms a minority and is absorbed by the enemies, as well. However, they do not live dispersed, but in a special quarter, separated from the enemies⁶¹. The third category forms a majority in comparison with the enemies who are in control of the country and its *qasbas*⁶². The heaviest sin is committed by the first category and the lightest by the third. Nevertheless, the latter are tantamount in their loyalty to polytheists, because of their residence among Christian, their

⁵⁹ «Ammā 'l-muhādinīn minhum fī ḥālī kawnihim muhādinīn: fa-yalḥaḥu man wālāhum min al-'āmmīn min ḥifẓ al-nufūs wa-'l-amwāl wa-'l-awlād mithlu mā yalḥaḥu bi-sabab al-muhādana al-ṣulḥiyya muddata baqā'ihā.»

⁶⁰ «Ṣinf hum al-aqallūn bi-'l-iḍāfa ilā 'l-a'dā' fa-hum mustaghraqūn fihim wa-hum mubtathūn fī 'l-suknā bayna aḥurihim.»

⁶¹ «Wa-ṣinf thānī mustaghraqūn ayḍan fī 'l-a'dā' wa-aqallūn bi-'l-iḍāfa ilayhim illā annahum ḡayru mabthūthīn bayna aḥurihim bal hum munhāzūn 'an al-a'dā' bi-jihā makḥṣūša.»

⁶² «Wa-ṣinf thālith hum al-aktharūn bi-'l-iḍāfa ilā 'l-a'dā' wa-'l-a'dā' aqallūn bi-'l-iḍāfa ilayhim. Wa-ha'ulā'i hum arbāb al-bilād wa-mutamallikat al-qīṣāb.»

omission to fulfil the duty to emigrate, their reliance upon the Infidels, their paying the *zakāt* to them and their forsaking the honour of Islam, their lack of obedience to the legitimate Muslim ruler and their omission of the duty to pledge homage to the Muslim Sultan and their acceptance of the authority of the Christian Sultan over them. Therefore, the prohibition to go on living there and the rules derived from it are equally applicable to them, apart from the different modalities discussed earlier. Even though the circumstances of the third category are less serious and sinful, the people belonging to it cannot be freed from the duty to emigrate because of the fact that they are dominated by a Christian Sultan. Also, emigrating is easier for them than for the people of the first category who are more deeply involved with the enemies, so that the forsaking of the duty to emigrate by the people of the third category is more sinful.

I.2. Historical Context

Though many *fatwās* are meant to give juridical and theological statements about specific historical matters, they are often phrased in a way which transcends this specificity in order to be applicable to analogous situations in the future. The consequence is a style in which the historical background, though clearly present, is presented in rather general terms. This makes it rather difficult to reach complete certainty about the historical setting. This is also the case with the *fatwā* of Ibn Rabī. Nevertheless, there are some passages which seem to indicate that the questions were prompted by the case of Murcia⁶³.

One of the most interesting parts of the *fatwā* is the passage in which Ibn Rabī sets out to explain the three categories of Mudejars. The political structure Ibn Rabī is referring to in the third category is that in which a Muslim puppet ruler exercised political power in a certain area, while crucial strongholds were dominated by the Christians, a situation which occurred in the Crowns of Castile, Portugal, and Aragon (including Valencia and the Balearics)⁶⁴. The word *qaṣba* seems to

⁶³ For a general account of the conquest and surrender of Murcia see Gaspar Remiro (1905), pp. 300-304; Torres Fontes (s.a.); idem (1987).

⁶⁴ Harvey (1990), pp. 41-54. We will deal with Murcia below. Other examples of this category were for a shorter or longer period:

1. *Crevillente* (Elche): part of Castile from 1243 until 1296; part of Valencia from

refer not to strongholds in general, but to *qaṣbas* in the interior of the towns and villages. Indeed, from such strongholds the Christians often dominated the towns, while the pre-conquest social and political structure of town and province were largely left intact.

An outstanding example of this category was Murcia and its provinces, conquered in 1243 by the Castilians, and displaying a number of characteristics which fit the *fatwā* of Ibn Rabī. After 1243 the Christians tried to create a favourable climate to induce the Muslim population to stay. Murcia was governed by Mudejar rulers and indirectly controlled by the Christians. In 1264, however, Murcia became one of the centres of the Mudejar revolt. We do not know the direct reasons for this revolt, but it is remarkable that the sources tell us about Muslim dissatisfaction with the way the Christian King met the conditions of the treaty. According to al-Maqqarī he had indeed broken (*nakatha*) it. Thereupon the Muslims sent Ibn Sabīn to Rome, «the seat of the great priest», and «a city which no Muslim had ever reached before»⁶⁵. The result of the embassy is unknown, but the fact that it was not successful seems to be corroborated by the ensuing revolt⁶⁶. This revolt, supported by the Naṣrids, was suppressed in 1265. After the reconquest of the city in 1266 by the Aragonese King James I, the city was almost imme-

1296 until 1318. On Crevillente see Guichard (1973). The lords (Sp. *arraeces*) of this city-state ruled as semi-independent rulers, as is already indicated by the mere word *ra'īs* which, as Guichard explains, signifies: the lord of a village or a castle who ruled virtually independently [Guichard (1973), p. 290]. In 1318 Crevillente ceased to exist as a separate entity.

2. The short reign of al-Azraq in Valencia. Al-Azraq was a Mudejar ruler who revolted in 1276 and was killed in the same year.

3. *Niebla*: The ruler of Niebla, Ibn Maḥfūz, accepted vassalage to Alfonso X in 1262, surrendering the castle. Later he emigrated to Marrakesh.

4. *Montesa* (Kingdom of Valencia), where the Banū 'Isā reigned. In Montesa, the Muslim rulers who had accepted Christian sovereignty remained master of the stronghold which had not been conquered during the conquest of the Kingdom of Valencia. The Christians tried to conquer it for many years. It was only conquered by Peter, successor to James, who died in 1276.

5. *The Balearics* [see Harvey (1990), pp. 114-117].

⁶⁵ *Nafh al-ṭīb*, II, 201, cf. Burns (1973), p. 287, and the sources referred to there. Burns explains that this Papal intervention in litigations between a Christian 'Lord' and Muslim 'vassals' was by no means unique.

⁶⁶ It is remarkable that even after the second conquest we find Muslim scholars teaching in the city. Muḥammad al-Riqūṭī, a Muslim scholar in Murcia in the service of Alfonso X el Sabio who taught Christians, Muslims and Jews in an institution which is described as a *madrassa*, see Ibn al-Khaṭīb, *Al-Iḥāṭa*, vol. 3, pp. 67-8; Van Koningsveld (1992), pp. 81-2. Al-Riqūṭī only emigrated from Murcia after 1272, i.e. six years after the suppression of the revolt.

diately again handed over to the Castilians, who concluded a new treaty with the Mudejar inhabitants. In general terms, this treaty implied that the Muslim vassal ruler was assigned the stronghold called Fortuna, where he led a marginal political existence until the beginning of the 14th century when the last 'ruler' emigrated to Granada. The new treaty could not prevent a massive emigration of the Muslim population to *Dār al-Islām*. At the beginning of the 14th century Ferdinand IV, concerned about the economic situation of Murcia caused by its depopulation, offered favourable conditions in order to stimulate reemigration. The conditions mentioned in his documents give us a good insight into the problems of the preceding situation⁶⁷. Both from the general contents of the *fatwā* and from several specific remarks we gather a picture of a situation showing remarkable parallels with the situation in Murcia after 1266.

1. The passage mentioned above in which the author discusses the lack of certainty and security to be derived from the treaties concluded with the Christians: «What should we think then of someone who throws himself, his family and children into their hands at a time when *they* are powerful and superior, trusting that they will keep their treaty concluded in accordance with their religious Law? We do not accept their testimony with regard to them, how could we then do this with regard to ourselves? Therefore, how can we rely on their assertion that they will keep their treaty? This holds true even more if we take into account what has actually happened already as could have been expected.» The author has witnessed events which he regarded as Christian infringements of such treaties.

2. The questions came from a place which had not only known a first treaty, but had recently even concluded a second treaty, after the first treaty had been broken by the Christian: the author, as we have seen above, poses the rhetorical question: «How could we then rely upon the second treaty there?», i.e. after the first one had been broken. This was indeed the case in Murcia.

3. The problems with respect to the *adhān*, to taxes etc. are all well documented in Murcian sources.

4. The purport of the *fatwā* matches the events in Murcia after

⁶⁷ Torres Fontes (s.a.), pp. 31-37.

1266 well. Instead of the restoration of a stable social structure, we witness a massive emigration of the population to *Dār al-Islām* ⁶⁸.

It therefore seems to be likely that the questions were posed to Ibn Rabīʿ by a person from Murcia, who wished to have an expert opinion about the situation which had come into existence there after 1266. This massive emigration from Murcia is in line with the tenor of Ibn Rabīʿ' s *fatwā* and might be seen (partly) as a result of its influence. However, we should keep in mind that the Castilian infringements upon the treaty played an important part in this process as well.

It seems certain that the problem of the statute of the Mudejars was a common concern of at least two other contemporary scholars living in the immediate environment of Ibn Rabīʿ. The *first* is Ibn al-Fakhkhār al-Judhāmī who was born in Ḥiṣn Arkush between 630 and died in Málaga, 723/1323. He wrote some 30 works on different disciplines. Among these was *Al-Jawāb al-mukhtaṣar al-marūm fī taḥrīm sukna al-muslimīn fī bilād al-Rūm* ⁶⁹. In Granada, he met the *qāḍī al-jamāʿa* Abū ʿAlī-Qāsim ibn Abī ʿĀmir ibn Rabīʿ, the author of our *fatwā*. He shared some students with him, like Muḥammad ibn al-ʿArabī al-Ghassānī ⁷⁰ and Yaḥyā al-Anṣārī, the Judge of Wādī Ash ⁷¹.

The *second* scholar is Ibn Bartāl ⁷². His name was Abū ʿAbd Allāh Muḥammad ibn ʿAlī ibn Muḥammad ibn Bartāl. He shared some students with Ibn Rabīʿ as well ⁷³.

II. THE *FATWĀS* OF THE FOUR CHIEF JUDGES OF EGYPT (ca. 1510)

II.1. The Questions

The questions posed to the four legal specialists in Egypt are related to the position of Muslims living «in subjection in the lands of the

⁶⁸ Torres Fontes (s.a.), p. 20.

⁶⁹ Ibn al-Khaṭīb, *Al-Iḥāṭa*, vol. 3, pp. 91-95; cf. Ibn Farḥūn, *Al-Dībāj al-mudhhab*, p. 304. Arkush is probably Arcos de la Frontera, conquered by Ferdinand III in 1450. Its Muslim inhabitants rose in 659/1261 during the general Mudejar revolt (see Arkūsh in EI² [A. Huici Miranda]).

⁷⁰ *Ibidem*, vol. 3, 97.

⁷¹ *Ibidem*, vol. 4, 375.

⁷² Cf. Buzineb (1988-9), 56-57.

⁷³ *Al-Iḥāṭa*, vol. 4, pp. 387 and 13.

Christians»⁷⁴. Neither the questions nor the answers contain any name of a specific country or place where these Muslims are living. From several details it is evident, however, that the questions refer to the situation of Muslims living under Christian rule in Spain. The questioners may have belonged to the Maghribī community in Cairo or to the pilgrims temporarily staying in the Egyptian capital on their way to or from Mecca. In his history Ibn Iyās says that on 19 Dhū 'l-Ḥijja of the year 922 H a large number of «Maghribīs» tried to pay a visit to the Sultan of Egypt⁷⁵. (As is well known, in oriental sources the name Maghribīs may include people of Andalusian or Christian Spanish origin.) Moreover, some pilgrims from Christian Spain stopping over in Cairo are known by name. During her *hajj*-journey, the Mudejar/Morisca Nuzaya Calderán had stayed in Cairo for some time, long enough to witness «many festivals»⁷⁶. The pilgrim from Puey Monzón, a village in Aragon, whose *riḥla* has been preserved in the collection of Arabic and Aljamiado manuscripts in Almonacid de la Sierra, also describes his stay in Cairo. Among the buildings he describes is the «Gauriya», probably to be identified with the Ghawriya built ca. 909/1504, during the reign of Qānṣawh al-Ghawrī, the penultimate Mamlūk sultan of Egypt, who died in 922/1516. At the very beginning of his travelogue he mentions that he purchased his licence to go on *hajj* in Valencia in the usual way, applying to the bailiff. We may assume, therefore, that he went on *hajj* prior to the period of the banning of Islam and the forced conversions of Muslims to Christianity⁷⁷. This holds also true for the questioner(s) from Aragon whose questions were answered by another Cairo scholar, viz. the Shāfi'ite mufti Aḥmad al-Ramlī (d. 957/1550)⁷⁸.

⁷⁴ In Arabic: «al-Muslimīn al-mudajjanīn bi-bilād al-naṣārā». The Spanish name of the *Mudéjares* is a direct derivation of the Arabic word *mudajjanīn* used here. The use of this word is not known from other areas of the world in which Muslims lived under non-Muslim rule, although we know it was also used in the Ottoman Empire and North Africa from the beginning of the sixteenth century onwards with reference to Muslims emigrated from Christian Spain to these parts of the Muslim world. The use of the expression «muslim mudajjan» is a first indication that the questions were posed by a Muslim from Christian Spain. We will see below that other evidence only confirms this.

⁷⁵ Ibn Iyās, *Badā'i' al-zuhūr*, vol. 5, p. 137.

⁷⁶ Harvey (1988), p. 19.

⁷⁷ Pano y Ruata (1987) p. 37. There are other examples. Gayangos (1839), p. 79n, mentions a MS in the Royal Library in Madrid entitled *Peregrinación del Mancebo de Arévalo*, but this has disappeared without a trace.

⁷⁸ A translation of this *fatwā* is given by Abou al-Fadl (1995), who erroneously attributed it to the son of the author, Muḥammad ibn Aḥmad al-Ramlī (d. 1004/1596). In fact, the latter only collected the *fatwās* of his father (cf. GAL S II, 440).

The questions raised by the anonymous questioner(s) from Christian Spain may be divided into five distinct subject-areas. The *first of these* is related to the duty *to emigrate to the Lands of Islam*. The questioner refers to a situation where Muslims who want to emigrate are forbidden to do so by the Infidels. When they are caught on their way to the Lands of Islam, they are treated as captives and their property is confiscated. Should a Muslim expose himself to such disasters or is he permitted to postpone the emigration until he can leave without endangering his life and property? What about his duty to emigrate if his life is not at stake, but only his property? Should he spend all his wealth on the journey to the Lands of Islam or a specific part of it only? If the answer were that he is only obliged to spend so much of his wealth that his capital will not be ruined, the questioner wants to know specifically which percentage of his money could be spent without ruining the main capital ⁷⁹.

This question allows us to establish its Mudejar origin. Conditions for emigration from Christian Spain varied considerably, both in place and in time. Determining factors were the economic importance of the Mudejar labour force and the willingness of Mudejars to emigrate. In the fourteenth century a balance was achieved in most Spanish kingdoms, with the exception of Valencia. For Muslim natives of that Kingdom, either in their quality as Mudejars or as freed Muslim slaves, it became increasingly difficult to obtain licences to emigrate ⁸⁰. The Valencian laws, promulgated from the beginning of the fifteenth century onwards put heavy penalties on illegal escape: enslavement and confiscation of goods ⁸¹. But whereas the Christian inhabitants of Valencia were generally opposed to the emigration of the Mudejars, the Crown was at times more willing to allow it. The picture therefore varies from place to place ⁸². At the beginning of the sixteenth century the

⁷⁹ «Mā taqūlu al-sāda al-‘ulamā’, a’immat al-dīn wa-fuqahā’ al-muslimīn fī ḥukm Allāh fī ‘l-muslimīn al-mudajjanīn bi-bilād al-naṣārā, idhā arādū ‘l-hijra ilā bilād al-islām, famana’ahum al-kuffār wa-ja’alū ‘alā man ukhidha min al-muslimīn fī ṭarīq al-hijra an yakūna asīran ‘indahum wa-yu’khadha māluhu, fa-hal li-‘l-muslim al-murīd li-‘l-hijra an yulqiya binafsihi fī dhālika am yurakhkhaṣa lahu fī ‘l-takhalluf ‘an al-hijra ilā an ya’mana ‘alā nafsihi wa-mālihi fa-yuhāhir? Wa-hal yu’maru bi-‘l-hijra idhā khāfa ‘alā mālihi dūna nafsihi aw bi-an yunfiqa fī-‘l-hijra jamī’ mālihi aw qadran makhṣūsan minhu? Wa-in qultum bi-annahu mukallaf bimā lā yujhifu min mālihi fa-bayyinū lanā mā qadru mā lā yujhifu?»

⁸⁰ Salvador (1975); Ortells Pérez (1991).

⁸¹ Salvador (1975), 42-44.

⁸² Sometimes the ruler made concessions for financial reasons only. Such was the ca-

situation was as follows. Whereas Mudejars from Valencia were in general not allowed to emigrate, the City of Valencia had become the most important port of emigration for Muslims from the other territories of the Catholic Kings, including, until 1512, the Kingdom of Navarre⁸³. The way in which the question is raised, referring to a situation in which it is prohibited to emigrate and to go on *ḥajj* provide someone stands bail strongly suggests that the question refers to Valencia.

The *second subject-area* of the questions is related to the duty of *performing the ḥajj*. The questioner refers to a situation where Muslims are only permitted (by the Christian authorities) to leave for the *ḥajj* if they have found some other Muslims who are willing to go bail for their return to the Lands of the Christian. Should one, in this situation, perform the pilgrimage and return, or stay behind in the Lands of Islam, thus endangering the personal freedom and the property of one's bail?⁸⁴

This question only confirms the conclusion that the *fatwās* were requested by a Mudejar. During a large part of the period before the forced conversions the *ḥajj* is attested in the sources. In principle people were always allowed to go on *ḥajj* though it seems clear that it always remained something for which only a small elite was able to pay⁸⁵. The historical case most closely resembling the situation referred to in our source is mentioned by Barceló. It is the case of a certain Mudejar from Valencia, Ali Benxarnit, who received a licence from the General Bailiff in 1420 to travel with his wife, sons and other members of his family to

se in about 1360, when the King of Aragon decided to grant the Valencian Mudejars the possibility to emigrate, lasting for a period of nine months. Apparently he heard that «quite a few of the Saracens of the southern Kingdoms wished to pass to other lands» [Boswell (1977), 310]. In a letter of the year 1360, the Aragonese King told the King of France that according to a treaty recently concluded between him and the Kings of Granada he was «constrained to send the said Muslims with their belongings to the homeland (patria) of the said king, free of our suzerainty and without any objections from anyone» [Boswell (1977), 311].

⁸³ It will be remembered that Navarre was incorporated into the Crown of Castile in the said year, though it was only in 1515 that Castilian law, including the pragmatic of 1502, became effective. However, 1512 was the last year in which Mudejars from Navarre embarked in Valencia, Salvador (1975), p. 55.

⁸⁴ «Wa-mā al-ḥukm fiman wajaba 'alayhi farḍ al-ḥajj minhum wa-'staṭa'ahu 'alā an yaḍmanahu ba'd unās min al-muslimīn fī '-rujū' ilā bilād al-naṣārā: hal yaḥujju wa-yarjī'u aw yatakhallafu bi-bilād al-islām 'alā annahu yatrūku man ḍamanuhu fī khaṭr min asr aw akhdh amwāl?»

⁸⁵ For example, in 1357 some Navarrese Mudejars from Tudela, Mahoma Cordoueri [sic] en Abdalla Tunici (read: Tunici?) went on *ḥajj* with wife and children, goods and animals [Boswell, (1977) 292ff, 446; García-Arenal (1984), 49]. These Mudejars belonged to a privileged elite of the Navarrese court.

Bougie and from there to Mecca in order to perform the *hajj*, paying 1,500 *libras* for the licence and the goods. When the term mentioned in the licence (two years) had elapsed, the General Bailiff wished to collect the security money. This had been promised by a Mudejar guarantor, who now found himself in great difficulties⁸⁶.

The *third complex of questions* is related to *the position of religious scholars living among the subject Muslims in Christian territory*. Are they permitted to postpone their duty of emigration, even though they would be able to leave, in order to preserve the religious doctrines of the Muslims living in the Lands of the Christians and to strengthen their faith? If they were to leave, there would be reason to fear that the faith of the Muslims would fall into decay and that ignorance of Islam would prevail among them. Or are religious scholars to be regarded among those who cannot travel feasibly without great difficulty⁸⁷? Is their legal reliability invalidated by the mere fact that they stay, even if they would only stay for a religious interest of a great number of Muslims⁸⁸? As far as we know this problem is not discussed in any other source related to the position of the Mudejars.

The *fourth question* focuses on the situation of *a man who had performed the religious duty to emigrate individually, without taking his children with him, after having lived in the Territory of the Christians*. On second thoughts he was worried about the fate of his children and wanted to return in order to rescue them. Would he be allowed to do so, just like someone travelling to the Christian world in order to redeem a captive? As far as we know this problem is not discussed in any other source relating to the position of the Mudejars either⁸⁹.

Finally, the questioner focuses on *the use of a language other than Arabic within a religious context*. This language is defined as «the non-Arabic language» and is to be identified with one of the varieties of old

⁸⁶ Barceló (1984), pp. 96, 103.

⁸⁷ Arabic text: «aw-hum mimman lā yata'attā (?) lahum al-irtihāl?». Like old people, children, etc.

⁸⁸ «Wa-hal yubāhu li-ahl al-'ilm minhum an yatakhallafū 'an al-hijra ma'a tamakku-nihim minhā li-ḥifz 'aqā'id al-muslimīn al-qāṭinīn bi-bilād al-naṣārā wa-tathbīt dīnihim khawfan min an tafsuda 'aqā'iduhum wa-yastawliya 'l-jahl 'alayhim bi-'rtihālihim 'anhum a-wa-hum mimman lā yata'attā lahum al-irtihāl? Wa-hal yujarraḥūna bi-iqāmatihim wa-hum innamā aqāmū limaṣlaḥa dīniyya taṣluḥu li-jam' kathīr min al-muslimīn?»

⁸⁹ «Wa-mā al-ḥukm al-sharī fī rajul kāna bi-bilād al-naṣārā fa-hājara munfaridan imtithālan li-amr Allāh-'an awlādihi thumma khāfa 'alayhim fa-arāda 'l-rujū' ilā bilād al-naṣārā li-yunqīdha awlādahu; fa-hal lahu dhālika am lā kamā yubāhu li-man qaṣada bi-safarihi li-arḍ al-ḥarb iftikāk asīr?»

Spanish. First, is it permitted to express the (meaning of) the Quran in Spanish words in order to make it understood to those who do not understand Arabic? Second, if this is not permitted, should this practice then be considered «reprehensible» or «prohibited» in the legal sense? Third, is it permissible for the preacher of a community whose members do not understand Arabic, to give the Friday sermon in Arabic followed by an explanation of it in Spanish? Fourth, should one make a distinction between the preacher who explains his Arabic sermon word by word on the one hand and the one who first completes both sermons in Arabic, before providing the Spanish explanation of both of them, all from the pulpit? ⁹⁰.

This is the first question known so far about the use of a language other than Arabic by Muslims from Spain to have been answered in a written form, the only known *fatwā* being an oral one given by the well-known mystic Abū'l-Ghayth al-Qashshāsh at the beginning of the 17th century ⁹¹. The question refers to two problems, both of them well documented in the sources. The first has to do with the written and oral use of Romance in a Quranic context, the second with the use of Romance in the Friday sermon, the *khuṭba*.

With regard to the Quranic context two types of Mudejar sources exist. The *first* is *tafsīr*, i.e., Quranic commentary, either in the form of almost literal paraphrases or more or less elaborate explanations, which have been the subject of several studies. This is not the case with the *second* type, complete and literal *translations* of the Quran, the most famous one being the translation made by the Mudejar *faqīh* from Segovia, Yça «Gidelli» in 1456 ⁹². The said Mudejar *faqīh* made this translation at the request of the theologian John of Segovia, but it seems likely that it circulated among the Mudejars later on as well. When posing the question whether it is permitted to express the (meaning of) the Quran in Spanish words in order to make it understood to those who do not understand Arabic, the questioner is almost certainly thinking of a Muslim public only.

⁹⁰ «Wa-hal yajūzu 'l-ta'bīr 'an al-qur'ān al-'azīz bi-'l-alfāz al-'ajamiyya li-yafhama man lam yafham al-lisān al-'arabī am lā? Wa-in qultum bi-'l-thānī fa-huwa makrūh aw muḥarram? Wa-hal yajūzu li-khaṭīb jamā'a lā yafqahūna 'l-'arabiyya an yakhtuba lahum yawm al-jum'a bi-'l-'arabiyya thumma yufassiru bi-'l-'ajamiyya? Wa-hal yufraqu bayna man yufassiru kalima kalima aw yakhtubu wa-yukmilu 'l-khuṭbatayn thumma yufassiruhumā bi-'l-'ajamiyya -kullu dhālika 'alā 'l-minbar- am lā?»

⁹¹ See Wiegers (1995), p. 312.

⁹² See Cabanelas Rodríguez (1952); Wiegers (1994).

Several Mudejar manuscripts containing Romance sermons show that the second problem was by no means a theoretical one either. Many Romance versions are written interlinearly in the Arabic texts and some are accompanied by a remark that they were «translated for the common people (*‘amma*)»⁹³.

II.2. The Answers

Concerning the *first question*, the Mālikite, Shāfi‘ite and Ḥanafite scholars explicitly agree that the circumstances specified in it justify postponing the performance of the duty of emigration. The answer of the Ḥanbalite scholar is more sophisticated in that it provides a concise treatise of three categories of people in relation to the duty of emigration. It seems that he wanted to make clear that he could not really answer the question without knowing to which group the people concerned should be reckoned. The *first* group is obliged to emigrate. It consists of people who are able to travel, while they cannot openly profess and observe the Islamic faith under Christian rule. The *second* group is not obliged to emigrate. It consists of people who are unable to leave for various reasons, for instance because they are ill or because they are forced to stay. The *third* group is not obliged to emigrate, but recommended to do so. It consists of people who are able to profess and observe the Islamic faith openly under Christian rule. They are advised to leave in order to strengthen the Muslims, to participate in the *jihād* and to end their mingling with Infidels and their direct contact with their reprehensible practices. Concerning the amount of money to be spent for the performance of the duty of emigration, all legal specialists agree that a Muslim is not obliged to ruin himself for it. The Mālikite scholar specifies that one is not obliged to spend more than a third of one’s wealth for this purpose. This is also the percentage of which one has the right to dispose freely as charity, or by testament or vow. The Ḥanbalite scholar takes a different position and stresses that the exact percentage should be defined on the basis of customary practices (which may vary from one place to another).

As we have stated before, in Valencia, where the questioner(s) apparently came from, and outright prohibition to emigrate prevailed.

⁹³ Wiegiers (1994), p. 205.

Mudejars who attempted to do so without permission were punished in the way indicated in the question, i.e. by enslavement and by confiscation of property. According to all four *muftīs* this justified postponement of the duty of emigration. The Ḥanbalite scholar even allows for the possibility that if the persons involved were able to profess and observe the Islamic faith (i.e. if they belonged to the third group), they were not obliged to emigrate, but only advised to do so, i.e. it would cease to be an obligation. Moreover, unlike Ibn Rabī and other Andalusian and Maghribi scholars (such as al-ʿAbdūsī, whose *fatwā* will be discussed below, and who is of the opinion that one is obliged to perform the *hijra* even if this means that one has to spend all one's money) all four agreed that a Muslim is only obliged to spend part of his money in order to perform the *hijra*.

Concerning *second question*, all four specialists agree that the person concerned can perform the *ḥajj* under the circumstances and the conditions specified in the question and return to his country of origin. The Mālikite scholar stresses that he should return in order not to cause harm to the life and property of others. The Ḥanbalite scholar specifies that the person who gets permission from the Infidels to perform the *ḥajj* on the condition of returning is obliged to do so, except if this person is a woman. The Ḥanafite scholar adds that the circumstances specified, including the condition of returning and the impossibility of performing the duty of emigration at the same time, do not justify postponing the performance of the *ḥajj*.

The four answers given to the *third question* agree that religious scholars can postpone the duty of emigration in order to serve their fellow Muslims (both the members of established Muslim communities and Muslim captives who happen to live there). There are some slight differences, however, between the precise legal evaluations given in the various answers. First of all, the Mālikite and the Shāfiʿite scholars agree that religious scholars in this situation do not only have the right to stay but are actually obliged to do so. According to the Mālikite scholar, this obligation exists if the religious scholars concerned know that the Islamic faith will fall into decay if they leave. According to the Shāfiʿite scholar, the mere fact that the local Muslims will profit from their presence is sufficient to oblige them to stay. From al-Shāfiʿī's *Kitāb al-Umm* he quotes the story of Ibn ʿAbbās who, after the Emigration, had stayed behind in Mecca with the approval of the Prophet. His presence was a support for the Muslims who had stayed behind too. He

also refers to the custom of the Prophet to order his armies to give new converts the choice between emigrating and staying. The Ḥanafite scholar thinks along the same lines but takes a more prudent position, by stating that it is «perhaps to be regarded as an individual duty» that they indeed should stay. On the other hand, the Ḥanbalite scholar tends to judge their position on the same level as that of the other Muslims. He states that anyone who can openly practice his faith, observe the religious prescriptions and teach the religious duties, is allowed to stay in the Territory of Unbelief. It seems that he does not want to deal with the religious scholars as a separate case in comparison with the other Muslims. In conclusion, all the answers agree that the legal reliability of a religious scholar is not invalidated, whenever he stays in Christian territory, under the conditions described in the questions and/or the answers.

Concerning the *fourth question*, all four scholars agree that the man concerned should be permitted to return. The Shāfi'ite and Ḥanafite scholars grant this permission in an unconditional sense. According to the Ḥanbalite scholar, it is only permitted for him to return if he does not endanger his personal security by doing so. The Maliki scholar provides a specific motive for his opinion. He stresses, by quoting the Prophet, that a man commits a grave sin by neglecting those whom he provides for (like his children). This will be the case when their religious life, their property or their personal safety have been harmed because of his departure.

The widest difference of views is to be observed in the answers given by the four legal specialists to the complex of problems involved in the *fifth question*, regarding the use of Spanish in a religious context. This is perhaps also due to the fact that the first issue was raised in a rather vague manner. The questioner started to ask whether «it is permitted to *express* the (meaning of) the Quran in Spanish words in order to make it understood to those who do not understand Arabic». The meaning of this question was apparently understood by the four scholars concerned in different manners. The Mālikite and Shāfi'ite scholars state that it is not permissible to *recite* the Quran in a language other than Arabic. The Mālikite scholar specifies that this prohibition applies to a person who can *recite* the Quran in Arabic. He makes an exception for students. The Shāfi'ite scholar argues that recitation of the Quran in a language other than Arabic is prohibited because, in doing so, one loses the specific literary quality of the Quran, known in Islamic thought as

i'jāz al-qur'ān (the «inimitability of the Qur'ān»). The Ḥanbalite scholar uses exactly the same argument, to stress that it is forbidden to *translate* [the [meaning (*ma'nā*) of] the Quran. Finally, the Ḥanafite scholar argues that it is permitted to *make the Quran understood* in a language other than Arabic and that it not even «reprehensible» to do so.

The answers given reflect the different tendencies in pre-modern times within the four *madhhabs*, all of which, except the Ḥanafite *madhhab*, in principle prohibited recitation of the Quran in a language other than Arabic. The background of this difference is that the Ḥanafite *madhhab* had another opinion about the 'definition' of the Quran. According to the Ḥanafite scholars the Quran does not stop being the Quran after translation; its «being the Quran» lies in the meaning, which can be preserved in a faithful, literal translation. According to prevailing opinions in the other *madhhabs* the Quran stops being the Quran in the process of translation. Hence, they did not allow reciting a translation. The Ḥanafite scholar in question, however, qualifies commenting on the Quran in a non-Arabic language as allowed and not reprehensible. Only the Mālikite scholar deals with a situation in which believers are unable to recite the Quran in Arabic. He deems it allowed to do so when one is unable to recite it in Arabic and when such translations are used by students. This last situation seems to apply perfectly to the Romance-speaking Mudejars. It should be noted, however, that as far as we know, most Valencian Mudejars spoke Arabic. This question may indicate that the questioner either put this question on behalf of Romance-speaking Mudejars or belonged to a part of the Mudejar population which spoke Romance.

The Mālikite scholar states that a preacher who is able to give his sermon in Arabic is not allowed to do so in another language, especially if one assumes, that the sermon replaces two *rak'as* during the Friday *ṣalāt*. (The implication of this remark is that the use of a language other than Arabic during the sermon would in such circumstances invalidate the *ṣalāt*.) Explaining the sermon in a language other than Arabic, either word by word or completely, is an infringement of the rules of the Sunna concerning the Friday service ⁹⁴.

⁹⁴ «Wa-lā tajūzu qirā'at al-qur'ān bi-ghayr al-'arabiyya li-'l-qādir 'alayhā illā min muta'allim li-muta'allim lā yumkinuhu ghayru dhālika 'l-qadr al-lāzim. Wa-lā yakhtubu 'l-qādir 'alā 'l-'arabiyya bi-ghayrihā, khuṣūṣan in qulnā: innahā badalun 'an rak'atayn wa-'l-imām al-qādir 'alā 'l-'arabiyya lā yaqra' bi-ghayrihā li-ghayrihi. Wa-ammā tafsīruhā bi-ghayri 'l-'arabiyya jumlatan wāḥida aw shay'an fa-shay'an fa-dhālika mukhrijun lahā 'an sunnat al-jum'a.»

The Ḥanbalite scholar agrees that it is not permitted to give the Friday sermon in a language other than Arabic. In his view it is, however, permitted to explain its meaning (with the exception of the Quranic verses quoted) in another language after having completed it. In formulating this judgement he assumes that this explanation is directed to an audience whose presence is necessary to complete the minimum of worshippers required for the legal performance of a Friday service. The implicit suggestion is that in the case of the presence of a sufficient number of worshippers who know Arabic there is no need to grant this permission.

The Shāfi'ite scholar takes an intermediate position. He argues that the sermon should be given in Arabic, if there is someone among the community able to do so. In this case, it is sufficient for the rest of the audience to know that the preacher is presenting a religious admonition (without their understanding its precise contents). However, if there is no one among them who can do so, then one of them can give the sermon in his own language. At the same time, however, it is their duty to see to it that one of them learns Arabic. When the time needed for the acquisition of a sufficient amount of Arabic has passed and none of them has in fact learnt it, then all of them are sinning. Consequently, they cannot celebrate a Friday service any longer and should perform the *ṣalāt al-jum'ā* as an ordinary *ṣalāt al-zuhr*.

Finally, the Ḥanafite scholar confines himself to saying that it is permissible for a preacher to use a language other than Arabic in the way specified in the question, especially if there is a lack of the knowledge of Arabic (apparently, on the part of the audience) and an inability (on the part of the preacher) to convey his message in it.

All four scholars sustain the principle of the Arabic language as the language of the sermon. Three scholars do so by stating that the sermon should be given in Arabic, while at the same time allowing in various ways for the possibility under specific circumstances to explain it afterwards to an audience which does not master Arabic. Only the Mālikite scholar does not deal with the situation the questioner is referring to: a situation in which the believers only speak the Romance vernacular and do not master Arabic. This is a remarkable answer to a questioner known to have belonged to a Mālikite community, among which (as we have seen above) sermons were indeed given in Spanish as well. None of the scholars does full justice to the details of the question; the problems whether a preacher should paraphrase the sermons in a piece-

meal way or only after completing them, and whether he is allowed to do so from the pulpit (possibly a prevailing practice in Christian Spain) are not discussed.

III. THE ISLAMIC STATUTE OF MUDEJAR ISLAM: AN ATTEMPT TOWARDS A TYPOLOGY OF ISLAMIC LEGAL THOUGHT

Do the stern views of Ibn Rabīr represent the dominant line of thought of the Andalusian and Maghribi jurists about Muslims living under Christian rule in Spain, or did a more pragmatic approach prevail among them, in the vein of some of the answers of the Cairo judges? We can only try to formulate a tentative answer by sketching a typology of the two different approaches of Mudejar Islam in Christian Spain that can be distinguished in the writings of Muslim legal scholars. We will label the first of these two approaches as the «pragmatic line»; the second as the «hard line».

The earliest traceable Andalusian discussion about a Muslim in Christian territory refers to a person who had remained in Barcelona, apparently after its conquest in 185/801, and who had turned against the Muslims out of fear of being killed if caught. Yaḥyā ibn Yaḥyā stated that this Muslim was to be treated as a Muslim highway-robber committing theft in the Territory of Islam because he had not forsaken his Islamic religion. (In other words, his staying behind under Christian rule was not to be judged as an act of apostasy.) If he were caught, his case should be submitted to the ruler who would have to judge him like one of the *ahl al-fasād wa-l-ḥarāba*. His property, however, should not be touched by anyone catching him ⁹⁵.

New ideas were developed in the time of the early Reconquista during the Almoravid period (first half of the 12th century), by the Chief Judge of Córdoba, Ibn al-Ḥājj al-Tujībī (458-549). He rejected the idea that Muslims left behind in Christian territory should be put on the same level as converts in *Dār al-Ḥarb*. Referring to the treaties with the Christian Kings these Muslims were living under, Ibn al-Ḥājj defended the inviolability of their life, property and children ⁹⁶. This pragmatic view was tantamount to a de facto recognition of Islam under Christian

⁹⁵ Apud al-Wansharīsī, *Al-Mi'yār*, vol. 2, pp. 129-130.

⁹⁶ Al-Wansharīsī, *Al-Mi'yār*, vol. 2, p. 129.

rule. Similar ideas were defended by the anonymous Mudejar mufti referred to by Ibn Rabī, and by the Moroccan *muftī* al-‘Abdūsī (d. 849/1445). The latter argued, first of all, that the testimony of Muslims in Christian Spain can be accepted, on the basis of the assumption that they were not staying among the Infidels out of free choice, and because leaving them would endanger their lives and their families. Secondly, he stressed that in the absence of a legitimate Muslim ruler (as was the case in Christian Spain) the community of the Muslims (*al-jamā‘a*) assumed his functions, also as a source of legitimacy. Whether or not a Muslim judge in Christian Spain must be recognized as legitimate depends, therefore, on the willingness of the local Muslims to accept him of their own free will, even if he was appointed by the Christian ruler and not by themselves. The same holds true for the entire Islamic judiciary infrastructure in Christian Spain together with the verdicts and documents emanating from it ⁹⁷.

The *fatwās* from Cairo, analyzed above, breathe a similar pragmatic spirit. This also holds true in particular for the *fatwā* of al-Ramlī Senior (d. 957/1550), translated by Abou al-Fadl, who even stresses that Muslims are obliged to go on living under Christian rule to further the preaching of the Islamic message, as long as they enjoy the freedom to practice their religion. Under such conditions, a land ruled by a Christian king must even be considered as part of *Dār al-Islām!* This is precisely the same view we encounter in some modern writings on the statute of Muslims living in Western Europe, for instance in the work of the Moroccan scholar ‘Abd al-‘Azīz ibn al-Şiddīq. Describing the liberties enjoyed and the numerous religious institutions (mosques, institutes, schools, etcetera) created by Muslims in Europe and America, including the preaching of Islam and the conversion of Europeans and Americans to Islam, he concluded that «Europe and America, by virtue of this, have become an Islamic country fulfilling all the Islamic characteristics by which a resident living there becomes the resident of an Islamic country in accordance with the terminology of the legal scholars of Islam» ⁹⁸. Ibn al-Şiddīq thus revives the old Şāfi‘ite doctrine stating

⁹⁷ Al-Wazzānī, *Al-Mi‘yār al-jadīd*, vol. 3, pp. 20-21, who refers to Al-‘Abdūsī’s *fatwā* on the basis of a summary found in the *Nawāzil* by the Granadan muftī Ibn Tarkāt (middle of the 15th century). The summary was translated into French by Mercier, in: Ibn Hudhayl, *La parure des cavaliers et l’insigne des preux*, vol. 2, pp. 60-61.

⁹⁸ Ibn al-Şiddīq (1995), p. 30; see also p. 61.

that *Dār al-Islām* exists wherever a Muslim is able to practise the major religious rites and observances. This vision was also adopted by Raḥed al-Ghannouchi, the main intellectual leader of the Tunisian Islamist Nahda-movement, who in 1989, on the occasion of a congress of the Union of Islamic Organisations in France (UOIF) declared that France had become *Dār al-Islām*. The leading circles of the UOIF adopted this view, which was to replace the doctrine previously adhered to that France was merely part of *Dār al-ʿAhd*⁹⁹.

Apart from the pragmatically orientated view points, there is what we decided to call «the uncompromising line». It seems that the oldest testimony of the uncompromising line is to be found only in the *fatwā* of Ibn Rabī (ca. 1266 A.D.) which we have already been analyzed in detail. A similar line was defended by Ibn Miqlāsh, living in Oran at the end of the 14th century¹⁰⁰. In the absence of sufficient biographical information about him, we can only suppose that his views must be understood in connection with the Spanish military activities in North Africa at that time. The same holds true for Ibn ʿArafa (716/1316-803/1401), who refers to an island near the coast of Tunisia when rejecting the validity of the documents issued in the name of the judges of the Mudejars: «The condition of accepting the document issued by a judge is the validity of his office in which he should have been appointed by someone who is entitled to do so in one way or another. We should therefore be on our guard against the documents of the judges the Mudejars like the judges of the Muslims of Valencia, Tortosa and *Qawsara*, etcetera»¹⁰¹. *Qawsara* is to be identified as Pantelleria, the small island between Sicily and Tunisia, which was conquered by the Sicilians in 1221, and subsequently came under Aragonese dominion¹⁰². Its Muslim population accepted a Mudejar status. The 14th century witnessed a gradual process of Christianisation of the inhabitants. During the life of the said Ibn ʿArafa, at the end of the 14th century and the beginning of the 15th century, the island went through a period of political and social anarchy. At the beginning of the 15th century, the Tun-

⁹⁹ Kepel (1994), 208, 271ff.

¹⁰⁰ Cf. Buzineb (1988-1989).

¹⁰¹ «Wa-kamā lā tuqbalu shahādaturum ka-dhālika lā yuqbalu khiṭāb ḥukkāmihim. Qāla Ibn ʿArafa raḥimahu ʾllāh: wa-sharṭ qabūl khiṭāb al-qāḍī ṣiḥḥat wilāyatihi mimman taṣiḥḥu tawliyatuhu bi-wajh, iḥtirāzan min mukhāṭabat quḍāt ahl al-dajn ka-quḍāt muslimī Balansiyya wa-Ṭurtūsha wa-Mawsara [sic] ʾindanā wa-naḥwa dhālika»: apud al-Wansharīsī, *al-Miʿyār*, vol. 2, p. 133.

¹⁰² See EI² s.v. *Ḳawsara* (art. M. Talbi).

sian authorities (perhaps under the influence of *muftīs* like Ibn ‘Arafa and al-Burzulī (d. 1438 ¹⁰³) strongly urged the Muslim population to emigrate to Tunis ¹⁰⁴.

Al-Wansharīsī (d. in Fez, in 914/1508) is the last representative of the hard line with respect to the position of Muslims under Christian rule in Spain. However, his views too must be placed within their proper historical context, viz. the preceding conquest of the last remainders of al-Andalus and the official Moroccan policies towards Christian Spain at the end of the 15th century.

Al-Wansharīsī is known to have compiled two separate *fatwās* concerning the position of Muslims in Christian Spain. These *fatwās* have played a very prominent role, both in the discussions of Muslim scholars who lived after him and in orientalist studies concerning this issue. This is not the place for a detailed comparison between the views of al-Wansharīsī and Ibn Rabī, which should be postponed until the publication of the full text of Ibn Rabī’s *fatwā*. It should be stressed, nevertheless, that al-Wansharīsī made extensive use of Ibn Rabī’s treatise in both of his *fatwās*, including lengthy quotations and paraphrases, without referring to him a single time.

In the first *fatwā*, to be discussed below, al-Wansharīsī integrated the most fundamental issues dealt with by Ibn Rabī from a more or less theoretical perspective, especially the question whether or not it was permitted to live as a Muslim under Christian rule. He thereby adopted Ibn Rabī’s line of thought totally, including many of his references to the Quran, Sunna and legal sources. To the latter he added occasional references not to be found in the *fatwā* of Ibn Rabī. In the second *fatwā* al-Wansharīsī answered the question of a man from Marbella who had asked permission to stay in Christian Spain in order to render his services as an interpreter between the Muslims and the Christian authorities. Here, al-Wansharīsī integrated the data provided by Ibn Rabī concerning the impossibility of performing the ‘*ibādāt*’ correctly in Christian Spain.

The first *fatwā* is entitled *Asnā al-matājir fī bayān aḥkām man ghalaba ‘alā waṭanihi al-naṣārā wa-lam yuhājir wa mā yatarattaba ‘alayhi min al-‘uqūbāt wa ‘l-zawājir*, which can be translated as «The best and most beautiful that can be purchased to explain the legal rules with respect to

¹⁰³ Mentioned by ‘Abd al-Wahhāb, cited in Bresc (1971), p. 108.

¹⁰⁴ Bresc (1971), p. 110.

him, whose fatherland has been taken by the Christians and yet did not emigrate, and about the punishments and restrictions resulting from this».

The *fatwā* deals with some Andalusian Muslims who had emigrated to Morocco but regretted having left Spain and wanted to return. They were not satisfied with their life in the Maghrib, where they probably stayed in the neighbourhood of Fez ¹⁰⁵. They had suffered financial losses because they had left behind their Granadan properties, their houses, lands, gardens and vineyards, etc., and now they regretted their *hijra* because they found themselves in a difficult situation; they did not easily find adequate means of making a living and did not find the safety needed in order to travel through the various parts of the country. In fact they say they want to return to Spain, and accept the domination of the Infidels ¹⁰⁶. Was it permissible to say these things or to return from *Dār al-Islām* to *Dār al-Kufr*? What measures should be taken?

This *fatwā* seems to be dated Sunday, 19 Dhū 'l-Qa'da 896, which would correspond to *Friday* 23 September 1491. However, this reading is difficult to accept for a technical and a historical reason ¹⁰⁷. The technical problem is that 23 September 1491 did not fall on a Sunday but on a Friday. Most likely, an error has crept into the reading of the year in which the *fatwā* was finished. However, this year is read by Casiri, in his famous *Bibliotheca*, as 898, which corresponds to Sunday 23 September 1493 ¹⁰⁸.

This brings us to the historical problem. If the *fatwā* was finished in September 1491 al-Andalus was already reduced to the City of Granada and a small territory around it but until that moment there still existed a theoretical possibility to return to al-Andalus *without having to accept the domination of the Christians*. However, al-Wansharīsī makes *no mention at all* of that possibility. It seems therefore likely that it was completed only after the fall of Granada in January 1492. It is indeed from that time that we also have reports about groups of Andalusian emigrants in Fez who wished to return to Granada and accept the

¹⁰⁵ *Al-Mi'yār*, vol. 2, p. 131.

¹⁰⁶ *Al-Mi'yār*, vol. 2, pp. 119-20.

¹⁰⁷ Cf. Lévi-Provençal (1928), III, p. 264; Mu'nis (1957), p. 182. *Al-Mi'yār*, ed. Hajjī a.o., vol. 2, p. 138 reads: «katabahu yawm al-aḥad al-tāsi' 'ashar li-Dhī Qa'da al-ḥarām min 'ām s.n.a. wa-tis'īn wa-thamānīmī'a». The lithographic edition of the *Mi'yār*, however, also reads «sitta» instead of *s.n.a.*, which is therefore probably a printing error.

¹⁰⁸ Vol. 2, p. 170 [no. 1753].

*dajn*¹⁰⁹. Therefore, although the title of the *fatwā* suggests that it will deal with the statute of Muslims under Christian rule in general, it in fact addresses the specific problem of the possibility of returning to Christian Spain, after the *hijra* to North Africa had already been performed and after the destruction of Islam's last stronghold in the Peninsula. This was, of course, a very sensitive political issue, because the complaints of the people concerned implied that they preferred to live under the authority of the Christian King of Spain rather than in *Dār al-Islām*, under the protection of a legitimate Muslim ruler.

The historical impact of these two distinct lines of thought cannot be adequately deduced from religious sources only, in view of their dogmatic, predominantly a-historical character. In order to understand their historical influence, they should be studied within the wider perspective of the *historical* relations between al-Andalus on the one hand and the Christian Kingdoms of Spain on the other, as they are reflected, for example, in the texts of treaties between the two sides. These treaties, as well as the actual relations between Islam and Christianity implied by them, are in fact concrete applications of the more fundamental legal views about the statutes of *Dār al-Islām* and *Dār al-Ḥarb* underlying them, like the ones discussed in the present article. The conclusion of these treaties, which frequently involved, directly or indirectly, the position of Muslims living in Christian Spain as well, are unlikely to have taken place without the prior consultation and agreement of the legal advisors of Muslim rulers. They are therefore to be regarded as historical sources from which the attitudes of the legal elite can be gauged in an indirect way. *Generally speaking, it seems that the Muslim jurists of al-Andalus were prepared to accept, under certain conditions, the existence of Muslim communities under Christian rule.*

In conclusion, we may formulate the following hypothesis for further research: Within the context of peaceful relations which crystallized in international treaties (or in treaties between a Christian ruler and a Muslim community living in his realm), it was the pragmatic line of legal thought that prevailed. However, in times of war or military con-

¹⁰⁹ Al-Maqqarī, *Azhār al-riyād*, vol. 1, p. 68: wa kāna min qadar Allāh ta'ālā annahum lammā waṣalū madīnat Fās aṣāba al-nās bihā shidda 'aẓīma, min al-dju'wā' wa'l-ghalā' wa 'l-ṭā'ūn, ḥattā farra kathīr minhūm bi-sabab dhālika, wa-raja'a ba'd ahl al-Andalus ilā bilādihim fa-akhbarū bi-tilka al-shidda fataqā'asa man arāda al-jawāz wa-'azamū 'alā al-iqāma wa 'l-dajn. Al-Maqqarī probably took this report from the anonymous *Nubdhat al-'aṣr* [Bustani and Quirós (1940), p. 44/tr. p. 56].

frontation, it was the hard line that came to the fore. This is exactly what happened in the case of the *fatwās* of Ibn Rabī (that served the Naṣrid policy towards Murcia, if our interpretation can be accepted) and of his follower, al-Wansharīsī, who wrote after the destruction of the last remnants of al-Andalus in 1492 and who indirectly defended *his* country and *his* ruler, against the King of Christian Spain, as the new source of religious legitimacy to be recognized and obeyed by all Muslims of Andalusian extraction, whether they had yet to fulfil their duty to emigrate or were living in Morocco already.

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ABSTRACT

The present article aims at analyzing and evaluating the data of a new source concerning the legal views of Muslim scholars about the Islamic statute of the Muslim communities living under Christian rule in the Iberian Peninsula from the 12th up till the early 16th centuries. We are dealing here with (1) and unpublished *fatwā* of the Andalusian scholar Ibn Rabī' (d. 719/1320) and (2) unpublished *fatwās* of the Chief Judges of the four Sunnite *madhhabs* in Cairo around the year 1510 A.D. In all probability, the first *fatwā* was closely related to the events following the Mudejar revolt in Murcia in 1265 and the Christian

reconquest of the city in 1266. This *fatwā* stresses that Muslims living under Christian rule are absolutely obliged to perform the duty of emigration (*hijra*) to Islamic territory. A much more pragmatic view was, however, defended by the Chief Judges of the four *madhabs* in Cairo during the early 16th century. The questions to which these *fatwās* provide the answers, seem to have been posed by Muslims from Valencia, stopping over in Cairo, on their way to or from the *hajj*. In conclusion, the authors argue that from the early 12th century onwards two different types of legal views about the statute of Islam under Christian rule in the Iberian Peninsula *coexisted*, viz. (1) a pragmatic view, tantamount to a *de facto* recognition of Islam under Christian rule, and (2) a rejectionist view, stressing the duty to emigrate from Christian Spain to *Dār al-Islām*. The changing impact of these different lines of legal thought deserves to be studied more closely within the context of the complex and changeable political relations between Christendom and Islam during the period concerned.

RESUMEN

El trabajo expone, analiza, y evalúa los datos de una nueva fuente sobre las visiones jurídicas de los '*ulamā*' con respecto al estatuto islámico de las comunidades islámicas bajo dominio cristiano en la Península Ibérica desde el siglo XII hasta el siglo XVI. Se trata de (1) una fetua desconocida e inédita del sabio andalusí Ibn Rabī (m. 719/1320) y (2) fetuas desconocidas de los principales cadíes de los cuatro *madhabs* sunníes en El Cairo hacia 1510 A.D. Muy probablemente, hay que relacionar la primera fetua con los acontecimientos en Murcia tras la sublevación mudéjar de 1265 y la reconquista cristiana de la ciudad en 1266. El muftí subraya que los musulmanes que viven bajo dominio cristiano están imperativamente obligados a emigrar a territorio islámico.

Los principales cadíes de los cuatro *madhabs* sunníes en El Cairo al principio del siglo XVI, sin embargo, defienden un modo de ver mucho más pragmático. Probablemente, las preguntas fueron planteadas por mudéjares de Valencia, que estaban en El Cairo camino de la peregrinación.

Finalmente, los autores plantean que hay que distinguir dos tipos *coexistentes* de visiones con respecto al estatuto del Islam bajo dominio cristiano en la Península Ibérica desde principios del siglo XII; (1) una visión pragmática, equivalente a un reconocimiento *de facto* del Islam bajo dominio cristiano, y (2) una visión «de rechazo», que asume la obligación de emigrar de la España cristiana a *Dār al-Islām*. El impacto variable de estas visiones jurídicas merece un estudio más profundo dentro del ambiente histórico de las complejas y cambiantes relaciones políticas entre Islam y Cristiandad en esa época.