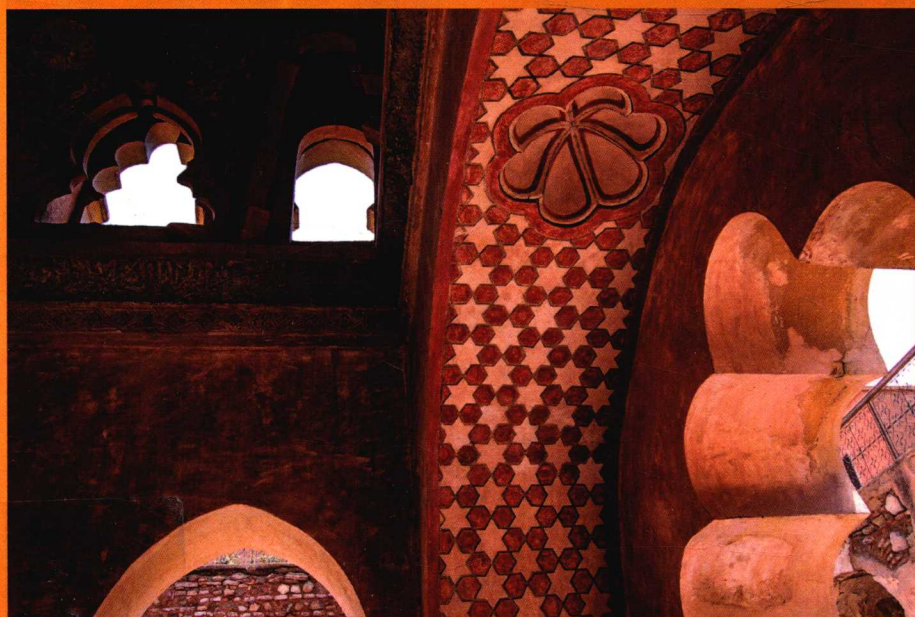


STUDIES IN THE HISTORY AND SOCIETY OF THE MAGHRIB

# Law and the Islamization of Morocco under the Almoravids

The Fatwās of Ibn Rushd al-Jadd  
to the Far Maghrib

Camilo Gómez-Rivas



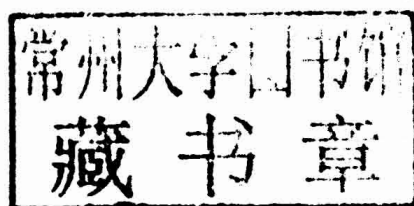
BRILL

# Law and the Islamization of Morocco under the Almoravids

*The Fatwās of Ibn Rushd al-Jadd to the Far Maghrib*

By

Camilo Gómez-Rivas



BRILL

LEIDEN | BOSTON

Cover illustration: Qubbat al-Bārudiyyīn, Marrakesh, commissioned by 'Alī b. Yūsuf and finished in 1117.  
Photo: Camilo Gómez-Rivas.

Library of Congress Cataloging-in-Publication Data

Gomez-Rivas, Camilo, author.

Law and the Islamization of Morocco under the Almoravids : the fatwas of Ibn Rushd al-Jadd to the far Maghrib / by Camilo Gomez-Rivas.

pages cm. -- (Studies in the history and society of the Maghrib ; volume 6)

Based on author's thesis (doctoral - Yale University, 2009) issued under title: The Fatwas of Ibn Rushd al-Jadd to the Far Maghrib.

Includes bibliographical references and index.

ISBN 978-90-04-27780-9 (hardback : alk. paper) -- ISBN 978-90-04-27984-1 (e-book)

1. Law--Morocco--History--To 1500. 2. Islamic law--Morocco--History--To 1500.
3. Almoravides. 4. Fatwas--Morocco--History--To 1500. 5. Ibn Rushd, Muhammad ibn Ahmad, 1058-1126. I. Title.

KSW130.G66 2014

340.5'9220964--dc23

2014030587

This publication has been typeset in the multilingual "Brill" typeface. With over 5,100 characters covering Latin, IPA, Greek, and Cyrillic, this typeface is especially suitable for use in the humanities.  
For more information, please see [brill.com/brill-typeface](http://brill.com/brill-typeface).

ISSN 1877-9808

ISBN 978-90-04-27780-9 (hardback)

ISBN 978-90-04-27984-1 (e-book)

Copyright 2015 by Koninklijke Brill nv, Leiden, The Netherlands.

Koninklijke Brill NV incorporates the imprints Brill, Brill Nijhoff and Hotei Publishing.

All rights reserved. No part of this publication may be reproduced, translated, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior written permission from the publisher.

Authorization to photocopy items for internal or personal use is granted by Koninklijke Brill nv provided that the appropriate fees are paid directly to The Copyright Clearance Center, 222 Rosewood Drive, Suite 910, Danvers, MA 01923, USA. Fees are subject to change.

This book is printed on acid-free paper.

## Acknowledgements

I am deeply thankful to the people who read the manuscript and guided me through the process of writing this book. Paul Freedman, Beatrice Gruendler, David Powers, and María Rosa Menocal—whom I wish I had been able to thank again before her premature passing—guided me through the first stage of this project. Maribel Fierro, Amira K. Bennison, and Delfina Serrano were instrumental in helping me through the revision. I have strived to incorporate and respond to their many generous and careful suggestions and have not always managed. The shortcomings are all my own. Many thanks also to the anonymous reviewers at Brill for their incisive comments. The colleagues, friends, and family members who have helped, inspired, and supported me through this long process are too many to list; I hope for the chance to deliver my unserved thanks to each and every one, in person.

A summer research grant and a semester leave from the American University in Cairo provided the time and support to complete the revision.



# Contents

## Acknowledgements IX

### Introduction 1

- 1 Introduction 1
- 2 Historical and Historiographical Background 9
- 3 The Muftī 21
- 4 Urban Development of the Far Maghrib 26
- 5 Mālikī Law and Custom in the Far Maghrib 33
- 6 The Development of the Network and Its Activity as Seen through al-Wansharīsī's *Mi'yār* and Qāḍī Iyāḍ's *Tartīb al-Madārik* 39
- 7 Book Structure 42

## 1 Fatwās to Marrakesh: Regulation of the City Market and the Symbolic Authority of Mālikī Learning 46

- 1 Introduction 46
- 2 The Founding and Development of Marrakesh 49
- 3 The Motor of Gold: Two Questions Involving Gold Exchange 59
- 4 Mediating Exchange: Two Questions over Commercial Disputes 65
- 5 Transmitting and Developing Juristic Knowledge: Two Questions Resolving Contradictions within the School 70
- 6 The Symbolic Religious Authority of Cordoba: the Case of the Man who Wouldn't Remove his Turban and the Case of the Apostate 76

## 2 Fatwās to the Far Maghrib: Ibn Rushd's Consultations for the Amīr and Cases of Murder and Stolen Cattle 85

- 1 Introduction 85
- 2 Questions from the Almoravid Leadership: On the Permissibility of Ash'arism and the Exceptionalism of the Islamic Maghrib 86
- 3 Two Technical Questions from al-'Idwa: Ritual and Murder 99
- 4 The Islamicization of Property: Partitioning and Gifts from Plunder 104

<b>3 Fatwās to Ceuta: Water Rights, Judicial Review, and Ibn Rushd's Correspondence with al-Qāḍī 'Iyāḍ</b>	<b>113</b>
1 Introduction	113
2 Historical Background	113
3 The Qāḍī	116
4 Islamic Water Law	121
5 The First Ruling	122
6 The Case Re-Opened: Judicial Review and Avoiding Harm	127
7 'Iyāḍ's Case Part II: Riparian Dispute, Avoiding Harm, and Water Rights Adjudication	136
 <b>Epilogue</b>	 <b>149</b>
 <b>Appendix A: Breakdown of the Fatwās in al-Wansharīsī's <i>Mi'yār</i> by Subject and Region</b>	 <b>153</b>
<b>Appendix B: Fatwās Chapter One</b>	<b>155</b>
<b>Appendix C: Fatwās Chapter Two</b>	<b>167</b>
<b>Appendix D: Fatwā Chapter Three, The Case of the Gardeners vs. the Miller</b>	<b>177</b>
 <b>Bibliography</b>	 <b>192</b>
<b>Index</b>	<b>203</b>

# Introduction

## 1 Introduction

In the middle of the fifth/eleventh century, the religio-political movement of the Almoravids (*al-Murābiṭūn*, 434–530/1042–1147) took root in the western Sahara. Within forty years of its formation, the Ṣanhāja tribal confederation that was at its core unified, for the first time, a region extending from the Senegal and Niger River Valleys in West Africa to the Ebro Valley in northeastern Iberia. The resulting state, which in Maghribī historiography is referred to as an empire,<sup>1</sup> was the first of this magnitude headed by Muslims of Berber ethnicity, historically the dominant demographic of the Maghrib.<sup>2</sup> The prevailing view in the twentieth-century historiography in the West – inspired to an extent by classical Arabic historical writing in and about the Islamic West<sup>3</sup> – perceived these developments from the narrative perspective of barbarian invasion ensued by decline. It focused on the movement’s espousal of jihād, its unsophisticated and utterly “surprising” emergence from sparsely populated desert provenance, and the cultural clash it generated in the Iberian Peninsula, where it was perceived to have come up against a more sophisticated civilization. The dominant narrative thus focused on the occupation of a cosmopolitan Hispano-Arab society by a less sophisticated and “intolerant” Berber religious movement, followed by the eventual regional replacement of the diverse civilization

- 1 Defined as “an extensive territory (esp. an aggregate of many separate states) under the sway of an emperor or supreme ruler; also, an aggregate of subject territories ruled over by a sovereign state.” *OED*, 2nd Edition, s.v. Empire.
- 2 Berbers are a population indigenous to North Africa from antiquity. In Morocco, the North African country with the largest Berber population today, the terms *Amazigh/Imazighen* are used as self-identifiers. For a general historical introduction to the Berbers in history, see Michael Brett, and Elizabeth Fentress, *The Berbers, The Peoples of Africa* (Wiley-Blackwell, 1997).
- 3 Islamic West (*al-Gharb al-Islamī*) in the pre-modern period generally refers to the Maghrib and al-Andalus together. The Maghrib consists of a group of countries in North Africa, including Tunisia, Algeria, and Morocco, and more marginally Mauritania and Libya. One of the unifying characteristics of the Maghrib as a region is the presence of Berber or Amazigh language and culture. The Maghrib can be further divided into the regions of Middle or Central Maghrib and Far Maghrib. This last term, which coincides with the Arabic, *al-Maghrib al-Aqṣā*, and is roughly coterminous with modern Morocco and the Western Sahara, is widely used below. Al-Andalus is the Arabic term for the Iberian Peninsula, which I use consistently and occasionally substitute with Islamic Iberia, its translation. I do not use the more popular Muslim Spain, because it omits Portugal.

of al-Andalus by a more homogeneous and conservative Maghrib.<sup>4</sup> This narrative, moreover, was predicated on the grand narrative of *reconquista*, the rise of Europe, and eclipse of Islam – unfortunately and perhaps inevitably current today, even if not among all specialists.

From the mid-1970s several voices have emerged questioning the reductionism of this view, which has tended to omit, among other things, the place of Berbers in history and the fluidity of the relationship between the peninsula and North Africa. These historians have attempted to do justice to the complexity of the region's social development during the period of Islamic rule in Iberia.<sup>5</sup> While the results of these inquiries have been compelling, on the whole, Western scholars have favored the study of Iberia and the interaction and influence that Islam and Islamicate culture had on Europe. As a result, the Maghrib has been cast as a marginal region within Mediterranean and Islamic history. This is true, moreover, not only within Western historiography, but also within the Arab-Islamic historiographical and literary traditions, in which the Mashriq has traditionally claimed centrality.<sup>6</sup> In an effort to counter this trend, *Law and the Islamization of Morocco under the Almoravids* adopts a perspective centered on the Maghrib and seeks to complement the growing understanding of a period that signified a clear historical turning point – the import of which

---

4 An example from one of the standard histories of medieval Spain reads: The Almoravids, who covered their faces with a veil, were fanatical puritans who insisted upon a rigorous observance of Muslim law, condemning the use of wine, the imposition of taxes not sanctioned by the Koran, and the custom of having more than four wives permitted by law. Under the leadership of Yusuf ibn Tashufin (1061–1106), a rude Berber endowed with great military talent, who called himself emir of the Muslims (*amir al-muslimin*) and acknowledged the supremacy of the Abbasid caliphs of Baghdad, the Almoravids conquered Morocco and western Algeria... The contrast between the Almoravids and the petty kings of al-Andalus could not have been greater. The former were barbarian nomads who viewed the latter as effete lovers of luxury who bore their religious obligations lightly. In summoning the Almoravids to their aid the *reyes de taifas* were running the risk of self-destruction, but they had no other choice. Al-Mutamid of Seville summed up the feelings of his colleagues when he remarked that he preferred to herd camels for the Almoravids than to guard the pigsty of Alfonso VI. Joseph F. O'Callaghan, *A History of Medieval Spain* (Ithaca: Cornell University Press, 1975), 208.

5 Widely seen as one of the pioneering studies investigating the Berber presence in al-Andalus is Pierre Guichard, *Al-Andalus: estructura antropológica de una sociedad islámica en Occidente* (Barcelona: Barral Editores, 1976).

6 Marginalization of the history of the Islamic West in Western and Arab-Islamic historiography is not coincidental. Anglo-American historians of the pre-modern period have focused mostly on the Islamic “central” lands of the Near East. For historical reasons, French and Spanish historians have devoted much more attention to the region.



perhaps only modern Maghribī historians have been aware. Characterized by a marked intensification of urbanization and the development of institutions associated with Islamic urban civilization of the Middle Period,<sup>7</sup> the era spanning from the second half of the fifth/eleventh century to the middle of the sixth/twelfth witnessed not only the rise of the first Berber-Islamic empire (i.e., the region's first large indigenous Islamic state) but also the first articulation of a political community that, in many ways, laid the foundations for the modern state of Morocco. Seen from this perspective, the political experience of the Far Maghrib<sup>8</sup> has been characterized by remarkable institutional longevity, singular in the experience of Arab-Islamic world.

The rise of the Almoravids in the Far Maghrib transformed the region from frontier zone to regional center. Before this, during the first three and a half centuries after the Arab conquests, the Far Maghrib had been overshadowed by Qayrāwan to the east, in Ifrīqiya, and Cordoba to the north, in southern Iberia. There had been cities between Qayrawān and Cordoba in the pre-Almoravid period, to be sure. Several Roman cities, such as Tangier, Ceuta, and Oran, survived into the Islamic era, and the city of Fez was foundational in more ways than one – its appearance in the late second/early ninth century under an alliance of Zanāta tribes and the Sayyid Idrissid family-line created one of the region's spiritual axes.<sup>9</sup> Nevertheless, in the first centuries of the Islamic era, the Far Maghrib lagged behind al-Andalus and Ifrīqiya in terms of economic and urban development. Much of the region was described in contemporary sources as frontier-like, its principal economic activities being slave-raiding and the extraction of a few commodities.<sup>10</sup> Adding to its liminality, during the fourth/tenth century, the Far Maghrib was the site of the proxy struggle between the Umayyad Caliphate of Cordoba and the Fāṭimid

7 Following Hodgson's periodization, the Islamic Middle Period is 945–1258. Marshall G. S. Hodgson, *The Venture of Islam: Conscience and History in a World Civilization* (Chicago: University of Chicago Press, 1974). On urban development in the Far Maghrib more generally, see Michael Brett, "The Islamisation of Morocco from the Arabs to the Almoravids," in *Ibn Khaldun and the Medieval Maghrib*, ed. Michael Brett, Variorum Collected Studies (London: Ashgate, 1999), chap. 1.

8 *Al-Maghrib al-Aqṣā*, separated from the Middle Maghrib by the Middle and High Atlas Mountains.

9 On this concept, see Amira K. Bennison, "Liminal States: Morocco and the Iberian Frontier between the Twelfth and Nineteenth Centuries," in *North Africa, Islam and the Mediterranean World: From the Almoravids to the Algerian War*, ed. Julia Clancy-Smith (New York: Frank Cass Publishers, 2001), 11–28.

10 Jamil M. Abun-Nasr, *A History of the Maghrib in the Islamic Period* (Cambridge: Cambridge University Press, 1987), 33.

Imamate, based first in Mahdia and later in Cairo.<sup>11</sup> Efforts by each to extend their power into the region, with the consequent alignment of proxies and allies, were powerfully destabilizing forces.<sup>12</sup>

The religio-political bases of the Almoravid movement originated in the missionary activity of Mālikī scholars from Ifrīqiya. The defense of orthopraxy as defined by Mālikism had become invigorated and central to the identity of this group as a result of the ideological contest waged, and ultimate victory against, Ismāʿīlism in Ifrīqiya.<sup>13</sup> In its earliest stages in the western Sahara, the “corrective” Almoravid movement focused its attention on the basics of Sunnī-Mālikī identification through ritual practice.<sup>14</sup> The targets of the initial thrust of Almoravid armed expansion were local unorthoprax/unorthodox communities, such as the Sufri Khārijīs of Sijilmāsa<sup>15</sup> and the Barghawāta of the Atlantic coastal plain. Behind this ideologically-inspired armed struggle for the orthodoxification<sup>16</sup> of territories gradually coming under Almoravid control, lay powerful economic forces that would draw the movement northward, into the historically more urbanized regions of the northern Maghrib and, especially, al-Andalus, almost all of which would be conquered by the Almoravids within forty years of their formation. As noted above, much attention has been devoted to the dynamics of the Almoravid presence in Iberia, especially as it partook in the epic of southward expansion by the Christian kingdoms of the north of the peninsula. These kingdoms would make their most significant advances in the period between 478/1085 and 646/1248, roughly the first half of which took place under Almoravid rule. The Almoravids thus participated as major players in the Mediterranean wars between Muslims and Christians. And, in undeniably significant ways, they embody the combination of religious fervor and militancy that so characterized this struggle. Focusing on this militancy, however, does not do justice to the story.

Historians’ preoccupation with the inter-religious struggle related to the Christian expansion or *reconquista* has eclipsed, among other things, the

11 The Fāṭimid Dynasty (297–567/909–1171) had its capital at Mahdia from 308/920, moved to Cairo from 358/969.

12 One such alignment was the Maghrāwā and Banū Ifrān (Zanāta) with the Umayyads, and the Ṣanhāja of Ifrīqiya with the Fāṭimids. Jamil M. Abun-Nasr, *A History of the Maghrib in the Islamic Period*, 64.

13 Jamil M. Abun-Nasr, *A History of the Maghrib in the Islamic Period*, 68. On this see also Heinz Halm, *Empire of the Mahdi: The Rise of the Fatimids* (Leiden: Brill, 1996).

14 On social identity construction and ritual, see D. A. Marshall, “Behavior, Belonging, and Belief: A Theory of Ritual Practice,” *Sociological Theory* 20, no. 3 (2002): 360–80.

15 Of the Banū Midrār dynasty c. 208–366/823–824–976–977.

16 Orthopraxification is more correct but unwieldy.

major changes that swept the Far Maghrib as it became the political center of the Almoravid state. Urban centers that would come to define the region – most significantly Marrakesh – appeared in the Almoravid period, as did the principal features of the region's pre-existing cities, including Sijilmāsa, Fez, and Ceuta. Burgeoning long-distance trade brought the Far Maghrib into the Mediterranean as a major political-economic entity; the currency it established would become the gold standard of the western Mediterranean and be traded as far east as China. From these facts alone, it is plain that the economic landscape of the Far Maghrib was profoundly and irreversibly transformed in the Almoravid period. It should come as no surprise, then, that several of the social movements and institutions that would come to define the region are known to have originated in this period. These include the broad spectrum of practices, institutions, and beliefs subsumed under the rubric of “Šūfism,” as well as the learning network and judicial and administrative institutions associated with the Islamic legal school of Mālikism, to this day an essential component of the region's legal traditions.

In spite of the striking significance of such changes, however, the social history of the Far Maghrib in the Almoravid period remains largely unexplored. Aside from a few pioneering exceptions, the study of the multiple facets of this transformation, and its repercussions in and interaction with the wider region, have been subordinated either to a reductionist narrative whose principal characters are Mālikī fundamentalists fighting Christians and persecuting religious minorities (read: holy war and intolerance), or to the more elaborate but still shallow political and military history of great leaders, conquests, and tribal alliances forged and failed. Even if somewhat overstated here, this description of modern historiography touching on the Almoravids is, on the whole, I believe, fair.<sup>17</sup> One of the principal aims of this book, therefore, is to investigate some of the major facets of this neglected social history; I will do so through the examination of the rich source provided by consultative legal texts (fatwās and *nawāzil*<sup>18</sup>) and the development of the social institutions and discursive practices they entail.

17 Especially noticeable when compared to the more sophisticated understanding of other regions of the pre-modern Islamic world, such as Iberia or Mamluk Egypt.

18 Sing. *nāzila*, “case.” This term is most often encountered in plural form, which I use throughout, instead of *nāzilas*. Fatwā, pl. *fatāwā*, is a non-binding legal opinion by a jurisconsult or muftī. Compilations of *fatāwā* and *nawāzil* constitute a genre of legal writing, consisting of collections of authoritative and significant opinions and cases (because difficult, influential, or otherwise notable). The terms are distinct since they refer to different parts of the legal process: 1. an opinion by a muftī (fatwā) and 2. the case as a whole (*nāzila*). This distinction is underscored by the texts of the two jurists who are the subject

The historiographical corpus that provides grounding for this project is that which takes Islamic social institutions – their history and relationship to culture – as its object of study. Once perceived as inscrutable and immutable (even arbitrary), the long history of Islamic institutions, their development and adaptation to an astonishing diversity of environments (producing an equally astonishing diversity of institutional forms and practices) has become better appreciated and more sophisticated over the past few decades, assuming a central place in the study of Islamic societies as a whole.<sup>19</sup> Of particular importance to the present inquiry is the study of the discursive tradition of consultation in Islamic law, a textual practice associated with, but not limited to, the term *fatwā*.<sup>20</sup> The genre of legal writing associated with this term is particularly compelling for social historians because of its responsiveness to and grounding in changing social conditions. Enthusiasm for *Fatwā Studies*, which has developed substantially since the early 1990s, has yielded both increasingly sophisticated models for the interaction between Islamic law and society and a growing corpus of textual sources, editions of which are appearing with growing frequency.<sup>21</sup>

---

of this study: the *fatwās* of Ibn Rushd consist of his judicial opinions, whereas the *nawāzil* of Qāḍī ʿIyāḍ comprise his own opinions as well as the opinions of muftīs he consulted as judge presiding over a case (as can be seen in Chapter Three). A further distinction between the two terms relates to the region and/or dominant legal school or madhhab: the term *nawāzil* is more popular in the Islamic West and in the usage of the Mālikī School (in which, to some extent, the terms are interchangeable), whereas *fatwā* is current elsewhere and in modern usage.

- 19 Examples (from a very large bibliography) of such work include P. J. Bearman, et al., *The Islamic School of Law: Evolution, Devolution, and Progress* (Cambridge, Mass: Islamic Legal Studies Program, Harvard Law School: Distributed by Harvard University Press, 2005); Jonathan Berkey, *The Transmission of Knowledge in Medieval Cairo: A Social History of Islamic Education* (Princeton, N.J.: Princeton University Press, 1992); Leonor E. Fernandes, *The Evolution of a Sufi Institution in Mamluk Egypt: The Khanqah*, *Islamkundliche Untersuchungen* (K. Schwarz, 1988). These focus on the development of legal, educational, and Ṣūfī institutions and their interaction with specific geographical, cultural, and historical contexts. Institutional development is made central to the interpretation of Islamic history in both Jonathan Berkey, *The Formation of Islam: Religion and Society in the Near East, 600–1800* (Cambridge; New York: Cambridge University Press, 2003), and Ira Lapidus, *A History of Islamic Societies*, 2nd ed. (New York: Cambridge University Press, 2002).
- 20 On the definition and conceptualization of discursive traditions in Islam, see O. Anjum, “Islam as a Discursive Tradition: Talal Asad and His Interlocutors,” *Comparative Studies of South Asia, Africa and the Middle East* 2, no. 3 (2007): 656–92.
- 21 Muhammad Khalid Masud, et al., *Islamic Legal Interpretation: Muftis and Their Fatwas* (Cambridge, Mass: Harvard University Press, 1996). Masud et al. present an important

*Law and the Islamization of Morocco under the Almoravids* explores the intersection of these two historiographical currents: i.e., the social history of the Almoravid Far Maghrib and the development of the discursive tradition of legal consultation, through an examination of consultative communications between jurists of al-Andalus and the Far Maghrib, that is, through a technical correspondence between a region in which this textual tradition was established and a region in which it was appearing. Each text analyzed below originated from questions that arose in the Far Maghrib in the first quarter of the sixth/twelfth century. The texts are further unified by the authorship of the responses to the questions, as almost all are by one of the preeminent jurisconsults or muftis of the period, Ibn Rushd al-Jadd of Cordoba. The book is thus an examination and reassessment of the relationship between al-Andalus and the Far Maghrib, viewed from an angle opposite to that which has garnered most scholarly attention. Analysis of the texts from this perspective reveals a process of expansion of Islamic institutions into what had been a borderland or frontier. Through the consultative correspondence analyzed below, the institutional knowledge of the religio-political establishment of al-Andalus can be seen to move into the Far Maghrib, at once mobilized for and adapting to the needs of the transforming region. This book examines the nature of this process; the

---

collection of studies of fatwās, from diverse periods and across the Islamic world, testament to the interest and diversity of work with this genre of legal document – the fatwā – as principal point of inquiry. Much has been produced since then, overcoming the need to defend and justify such studies (the result of the lingering, and superficial, Weberian view that Islamic law was the “procedurally irrational” result of individual considerations based on social context. David S. Powers, *Law, Society, and Culture in the Maghrib, 1300–1500*, Cambridge Studies in Islamic Civilization (Cambridge; New York: Cambridge University Press, 2002), 1. The impressions projected from debates over the reliability of legal documents in the historiography of the Latin West are likely a contributing factor). Studies dealing with the legal tradition of the Islamic West that I have found useful include: Wael Hallaq, “Murder in Cordoba: Ijtihād, Iftā’ and the Evolution of Substantive Law in Medieval Islam,” *Acta Orientalia* 55 (1994): 55–83; Delfina Serrano, “Legal Practice in an Andalusī-Maghribī Source from the Twelfth Century CE: The Madhāhib al-ḥukkām fi nawāzil al-aḥkām,” *Islamic Law and Society* 7, no. 2 (2000): 187–234; David S. Powers, *Law, Society, and Culture in the Maghrib, 1300–1500*; P. Cressier, et al., eds. *L’urbanisme dans l’Occident musulman au Moyen Age: aspects juridiques* (Madrid: Casa de Velázquez Consejo Superior de Investigaciones Científicas, 2000); Kathryn A. Miller, *Guardians of Islam: Religious Authority and Muslim Communities of Late Medieval Spain* (New York: Columbia University Press, 2008). Editions of Ibn Rushd’s fatwās appeared in 1987 and 1992 and of ‘Iyāḍ’s *Nawāzil* in 1990 with a second, corrected edition appearing in 1997. More on my own use of these editions is discussed on the section on the book’s structure at the end of the Introduction.



analysis of the microhistories of each question/case opens a window onto the larger socio-historical landscape.

*Law and the Islamization of Morocco under the Almoravids* argues that, far from serving merely as a religious ideology for mobilization and military expansion (through jihād), the institution of Mālikism in the Far Maghrib developed to meet the specific practical needs of the urban transformation of the fifth/eleventh and sixth/twelfth centuries. These needs, moreover, did not respond to the top-down demands of a military administration (i.e., as a kind of coercion through moral legitimization) but involved, rather, a two-way exchange or interactive process. While the administrative needs of the state were a key component in the development of the, principally, “legal” institution of Mālikism, analysis of the texts below demonstrates how this development consisted, to a significant degree, of incorporating self-regulating practices.<sup>22</sup> Another key dimension to the development of these institutions, as betrayed by the texts, was their role in shaping and cultivating the flow of knowledge through a learning network, the basic social contours of which were defined by the relationship between teachers and students.<sup>23</sup> We thus find that a substantial portion of the consultative correspondence was devoted to learning through debate and clarification of practical and theoretical questions. Furthermore, many of the questions reveal the nature of the changing social practices of a region whose identity was in transformation as it came under a unified polity and was integrated into the larger Islamic world. The success of the social institution of Mālikism, as it was adopted, developed, and transformed in the Far Maghrib, helps to explain important dimensions of the relationship between the Far Maghrib and al-Andalus, from where the Almoravids and their leadership so often took cue and sought guidance.

Neither this relationship nor the larger process it involved were simple. It was complex and fraught with opposition and contestation, both in al-Andalus and the Far Marghib. The social history of the Far Maghrib has long been confused, however, with its dynastic history (i.e., the movement from Almoravids

22 One of the important functions of these practices, and the first encountered below, was to regulate growing commercial exchange.

23 On the formation and context of Islamic learning networks, see George Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981). Jonathan Berkey, *The Transmission of Knowledge in Medieval Cairo: A Social History of Islamic Education*. On the development specifically of Mālikism as the dominant tradition of “teachers and pupils” in al-Andalus, see Maribel Fierro, “Proto-Malikis, Malikis, and Reformed Malikis in al-Andalus,” in *The Islamic School of Law: Evolution, Devolution, and Progress*, ed. Peri Bearman, et al. (Cambridge: Harvard University Press, 2005).

to Almohads to Marinids). This has been the result, most likely, of a desire to account for the tribal alliances and reconfigurations these dynastic changes implied, as well as for the significant religio-political and ideological differences that came with dynastic change. *Law and the Islamization of Morocco under the Almoravids* argues that the institutions born with the urban transformation of the fifth/eleventh and sixth/twelfth centuries transcended these dynastic vicissitudes, even while being affected by them.

## 2 Historical and Historiographical Background<sup>24</sup>

The extent of the spread of Islam into the southern Far Maghrib and western Sahara, the character of Islam practiced there in its earliest form, and the causes for the irruption of the Saharan Ṣanhāja into the Northern Maghrib and al-Andalus have all been subject to debate. Sources for the origins of the Almoravid movement and for the social history of the greater Almoravid Far Maghrib are scant and difficult, to a great extent because the events associated with this social transformation occurred at a turning-point: a historical “beginning,” eliciting descriptions such as “true surprise of history,”<sup>25</sup> on the farthest frontier of the Arab-Islamic world, and in a profoundly diglossic environment.<sup>26</sup> The dominance of a classical Arabo-centric historiography along with long-standing partiality toward Roman archeology in the modern period have compounded the problem. The historical narrative that we possess remains largely based on chronicles and geographical writing, little of which is contemporaneous with the events.

In the elite and individually-driven historiography of Maghribī-Andalusī chronicles and biographies, one of the traditional narratives of the Almoravids begins with Yaḥyā b. Ibrāhīm, a Judāla Ṣanhāja who took control of an existing Ṣanhāja tribal confederation in the western Sahara.<sup>27</sup> Historians have

<sup>24</sup> The three principal chapters below are all prefaced by historical and historiographical information, relevant to material in each. To avoid repetition, in this section, I present only a general background discussion.

<sup>25</sup> María Jesús Viguera Molíns, “Historia Política,” in *El retroceso territorial de al-Andalus: almorávides y almohades, siglos XI al XIII*, ed. María Jesús Viguera Molíns, Historia de España Menéndez Pidal (Madrid: Espasa Calpe, 1997), 41. For a recent, accessible history of the Almoravids, see Ronald A. Messier, *The Almoravids and the Meanings of Jihad* (Oxford: Praeger, 2010).

<sup>26</sup> Diglossia, defined as situations in which two or more languages are separately and systematically employed in certain domains or events.

<sup>27</sup> María Jesús Viguera Molíns, “Historia Política,” 47. Yaḥyā b. Ibrāhīm appears to have wrested leadership from the Lamtūna, a tribal group that had traditionally exercised

speculated that Yaḥyā b. Ibrāhīm undertook the pilgrimage to Mecca in 427/1035–6 in an effort to shore up his relatively new position of authority (or that of his group) through the vehicle of religious ideological cohesion. For this gesture to be socially intelligible, Islamic religio-political discourse must have been developed to some extent in the region by this time; Islamic practice, on the other hand, appears to have been found “wanting” and was mixed with local customary religious practices in a kind of creative interaction.<sup>28</sup> Of special note is what appears to have been the mounting competition in the region comprised today of Mauritania, the Western Sahara, and southern Morocco, between the groups, broadly defined, of the Soninke Kings of Ghana, the Zanāta Maghrāwa, and the Ṣanhāja confederation of which Yaḥyā b. Ibrāhīm had become leader.<sup>29</sup> This competition was over control of a trade route on which these groups can be said, somewhat schematically, to have exercised influence at three key points: 1.) on the southern edge of the Sahara, where the kings of Ghana had captured the urban center of Awdaghusht<sup>30</sup> sometime in the late fourth/tenth or first half of the fifth/eleventh centuries;<sup>31</sup> 2.) on the northern edge, where the Maghrāwa controlled Sijilmāsa from the middle of the fourth/tenth century;<sup>32</sup> and 3.) the region in between, where Yaḥyā b. Ibrāhīm’s confederation was located. The axis on which these three points lay traces a trade route on which the commerce of gold and salt was dominant and growing in this period and defined the space where the Almoravids’ political power would first develop.<sup>33</sup>

---

leadership of the confederation. Jamil M. Abun-Nasr, *A History of the Maghrib in the Islamic Period*, 79.

28 Bosch Vilá writes that Yaḥyā b. Ibrāhīm performed the pilgrimage in imitation of Tarsīna, his Lamtūnī predecessor. Jacinto Bosch Vilá, *Los Almorávides*, introductory study by Emilio Molina López (Granada: Universidad de Granada, 1998), 49. Descriptions of the Barghawāta and the Ṣufrī Khārījī Midrārīds of Sijilmāsa in al-Bakrī and Ibn Hawqal are cited as evidence for such syncretism. For a recent study of the Midrārīds see Paul M. Love, “The Sufis of Sijilmasa: Toward a History of the Midrarids,” *The Journal of North African Studies* 15, no. 2 (2010): 173–88.

29 María Jesús Viguera Molíns, “Historia Política,” 47.

30 North of the Senegal River Valley, 750 km east of modern Nouakchott.

31 The archeological site of Awdaghusht is on the tentative list of UNESCO World Heritage sites. <http://whc.unesco.org/en/tentativelists/1547/>

32 James A. Miller, “Trading through Islam: The Interconnections of Sijilmasa, Ghana and the Almoravid Movement,” in *North Africa, Islam and the Mediterranean World: From the Almoravids to the Algerian War*, ed. Julia Clancy-Smith (London: Frank Cass, 2001), 41.

33 The importance of this trade to West Africa, the Maghrib, and the Mediterranean, as well as its importance to the Almoravids who were seen to have fostered it greatly, has long been appreciated. The classic study is E. W. Bovill, *The Golden Trade of the Moors: West*

The key episode for Almoravid history in Yaḥyā b. Ibrāhīm's pilgrimage did not occur, as might be expected, in the Islamic East, but in Qayrawān, in Ifrīqiya,<sup>34</sup> a city characterized by a vibrant Islamic intellectual milieu. Qayrawān had been on the frontline of the Ismā'īlī "challenge" from which the Sunnī legal school of Mālikism had emerged as a dominant popular social force with missionary inclinations.<sup>35</sup> Sometime between 427/1035 and 430/1039,<sup>36</sup> on his return from Mecca, Yaḥyā b. Ibrāhīm met with Abū 'Imrān al-Fāsī (d. 430/1039), a key figure in the development of the Mālikī tradition in the Islamic West.<sup>37</sup> Yaḥyā asked him for help in bringing more robust knowledge of Islam to his homeland and al-Fāsī recommended a student, Wajjāj b. Zalwī.<sup>38</sup> The latter, in turn, put Yaḥyā b. Ibrāhīm in touch with his own student, 'Abd Allāh b. Yāsīn (d. 451/1059). This last is the man credited with founding the Almoravid movement in the western Sahara. A Ṣanhāja of the Judāla tribe, Ibn Yāsīn was said to have been a learned Mālikī jurist or *faqīh* (although al-Bakrī describes him as largely ignorant of the finer points of religious doctrine and Mālikī jurisprudence).<sup>39</sup> An alternate version of events, put forth by Qāḍī 'Iyāḍ, omits Yaḥyā b. Ibrāhīm and al-Fāsī altogether and credits one Jawhar b. Sakkum with performing the pilgrimage and asking for help from Wajjāj. H.T. Norris considered this the most dependable account (he suggested that Yaḥyā and Jawhar traveled together and had a falling out upon their return).<sup>40</sup>

---

*African Kingdoms in the Fourteenth Century*, 2nd ed. (Princeton: M. Weiner Publishers, 1995). An engaging recent study of trans-Saharan trade is Ralph A. Austen, *Trans-Saharan Africa in World History*, The New Oxford World History (Oxford: Oxford University Press, 2010).

34 Modern day Tunisia.

35 Jamil M. Abun-Nasr, *A History of the Maghrib in the Islamic Period*, 77.

36 María Jesús Viguera Molíns, "Historia Política," 48.

37 M. Fierro credits Abū 'Imrān al-Fāsī for playing a major role in diffusion of Ash'arism in the Islamic West. Maribel Fierro, "La Religión," in *El retroceso territorial de al-Andalus: almorávides y almohades. Siglos XI al XIII*, ed. María Jesús Viguera Molíns, Historia de España Menéndez Pidal (Madrid: Espasa Calpe, 1997), 437.

38 Or Wajāj b. Zallū. Maribel Fierro, "La Religión." Wajjāj b. Zalwī is said to have established a *ribāṭ* in the Sūs. Jamil M. Abun-Nasr, *A History of the Maghrib in the Islamic Period*, 79.

39 N. Levtzion, and J. F. P. Hopkins, eds. *Corpus of Early Arabic Sources for West African History* (Princeton: Markus Wiener Publishers, 2000), 75. My thanks to the anonymous reviewer who pointed this out and reminded me of the importance of H. T. Norris's article, cited in the following note.

40 H. T. Norris, "New Evidence on the Life of 'Abdullāh b. Yāsīn and the Origins of the Almoravid Movement," *Journal of African History* 12, no. 2 (1971): 255–68. By the same author, and more generally on Saharan and Berber history, see H. T. Norris, *Saharan Myth*