Andalusian Fiqh *concerning non-Muslims: The Discrepancy Between Written Formality and Daily Reality (900-1250)*

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I. Introduction

General context

Nations prosper by their merits, as long as these [merits] remain. If their merits perish, they perish.[1]
Aḥmad Shawqī (d. 1932)

Perhaps the most romantic and edifying part of Islamic history when it comes to multi-ethnicity and multi-religiosity is the conquest and Muslim governance of Spain and the 'Far West' (*al-Maghrib al-Aqsā*)[2], i.e., Morocco. As Spain was quantitatively spoken conquered by Berber-Moroccan soldiers rather than by Arabs from Syria,[3] Morocco and Muslim Spain (henceforward Andalusia) remained socio-religiously and politically tight to each other.[4] A striking fact thereby is the great distance from the legislative capital of the Umayyad dynasty in Damascus, while leaving no trace of reign between the two lands. In other words, it seems as if the Umayyad dynasty aimed well-considered to express its powers until the outer parts of the then known world, without showing much interest in the areas in between.[5]

The Muslim conquest of Andalusia was engineered by the Umayyad lieutenant Ṭāriq Ibn Ziyād (d. 720) in the year 711,[6] less than a century after the death of the Prophet Muhammad (d. 632). At an almost irrational short period of time the Muslims were able to subject Christian-Visigoth Spain to their rule, despite the great difference in the number of soldiers and civilians in disadvantage of the Muslims. This might be considered one of the two grand reasons of our concern for the historic patriotism among many Muslims nowadays;

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[1] Ahmad Shawqī, *Al-Shawqiyyāt* [tr.: The poems of Shawqī] (Beirut: Dār al-'awdah, 1986), vol. ii, p. 64.

[2] I use the transcription of *The Encyclopaedia of Islam*, except for the character ق (occlusive voiceless uvular stop), for which I use 'q', and the character 'j' for ج (voiced palato-alveolar). For the plural forms of the transcribed Arabic words I use the Arabic plural when it is a broken plural instead of the '-s'. For example, the word '*ḥadīth*' becomes '*aḥādīth*' -as is grammatically correct-, instead of the more frequently used '*ḥadīths*'. Words in the singular with the *nisbah* (attributive suffix) are ended with '-īn' in the masculine, and '-āt' in the feminine when plural. For example, '*kitābī*' (masculine member of the Book) becomes *kitābiyyīn*, and *kitābiyyah* (feminine member of the Book) becomes *kitābiyyāt* instead of *kitābīs*. For the initiating glottal stop no character is used, since an initial vocal starts automatically with a glottal stop in pronunciation. The *tā marbūṭah* (final bound 't' as marker for feminine gender of nouns and adjectives) is indicated by '*h*' both in contextual and pausal location, as to reflect upon the accurate pronunciation.

[3] Although nowadays the majority of Moroccans are fully Arabized, the Berberphone community still represents at least 35% of Morocco.

[4] Morocco was called in that time like presented above, meaning 'the far going under'. Seen from Syria were the Islamic capital was settled, the farthest known populated world was Morocco. *Maghrib* refers to the place were the sun sets, and *al-aqṣā* means 'the far'.

[5] For a general introduction of the conquests of the Umayyad dynasty, see among others: L. Molina, "Umayyads," in *The Encyclopaedia of Islam* (Leiden: Brill, 1961), vol. x, pp. 840-851.

[6] All dates are presented according the Gregorian calendar.

the reference to the power that Islam possessed in the 'good old days when Muslims behaved well'.[7] The second possible reason for a shared retrospective patriotism among many Muslims is a rather sensitive and complex one. Some Muslims often portray themselves as descendants of a tolerant, liberal, and highly civilized people under whose Muslim rule non-Muslims could profess their religion in perfect freedom and protection, while they claim to receive nowadays hegemonic dominance, aggression, racism, and scapegoating for in return. The Muslims with these and similar convictions see the hand of their Andalusian forefathers been spit by the very mouth that was fed by it. These two thoughts -or rather feelings-converge in the strong notion among many Muslims that the medieval Muslim triumphs were achieved through strict observance of God's Law, in contrast to the contemporary misfortunate situation of the Muslims due to the alleged violation of and deviation from God's Law. "We once were one people, then…when we ruled the world according God's Law. We then started to become a fragmented and ruled people, now…when we started to neglect His Law", as the famous preacher Abdulhamid Keisk (d. 1998) screamingly said in a sermon.[8]

Notwithstanding the socio-religious importance of these normative claims and considerations, they do not serve as a value-free source for empirical verification of the alleged religious tolerance of Andalusia.

Focus, methodology, and layout

Without discussing the possible validity or invalidity of the aforementioned normative claims and considerations, they are nevertheless important to be kept into account; they may possibly serve as a broad point of departure for an empirical investigation of the *modus operandi* of Andalusian Islamic law concerning non-Muslims.

The focus of this thesis is not on Andalusian Islamic law concerning non-Muslims in itself; the number of works studying this question is rather representative.[9] Nor is the focus solitarily on the question whether and to what extent laws concerning non-Muslim were theologically constructed and motivated; literature about this subject is scarce, but still selectable.[10] Instead, the general focus of this thesis is on the question whether Andalusian Islamic

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[7] This thought can be found in numerous books, but -not less importantly- in popular speech on the streets, in the mosques, etc. I have been brought to ears this expression and its equivalents on Arabic television-programs such as *al-Ittijāh al-muʿākis* [tr.: The adversing direction] of the Arabic news-channel *al-Jazeera*. For an Arabic conversation about the difference between the current state of affairs of the Muslim world and that of the era of Andalusia see: "*Al-Miḥwar al-tarīkhī: al-Andalus wa rijāluh* [tr.: Historical discussion: Andalusia and its men]," accessed november 11, 2013 http://www.aljazeera.net/portal/pages/15d97d40-3d0d-4a85-90e5-2aaa70d09b8e

[8] "*Le fin de monde* [tr.: The end of the world]," accessed November 11, 2013 http://www.youtube.com/watch?v=mitjm_X4WeA With French subtitle.

[9] See for example: Luke Yarbrough, "Upholding God's Rule: Early Muslim Juristic Oppositions to the State Employment of non-Muslims," in *Islamic Law and Society*, (19)2012); Marin Gayyusi, *The Legacy of Muslim Spain* (Leiden: Brill, 1992); Janina Safran, *Defining Boundaries in al-Andalus; Muslims, Christians and Jews in Islamic Iberia* (Ithaca: Cornell University Press, 2013).

[10] See for example: David Nierenberg, *Neighboring Faiths Christianity, Islam, and Judaism in the Middle Ages and Today* (Chicago: University of Chicago Press, 2014); Ibn Ibrāhīm Abū al-Khayl, *Al-Andalus fī al-rubʿ akhīr min al-qarn al-thālith al-hijrī: al-dirāsah fī al-tarīkh al-siyāsī* [tr.: Andalusia in the last quarter of the third century *hijrah*: studies on the political history] (Riyad: maktabat al-malik ʿAbd al-ʿAzīz al-ʿĀmmah, 1995); Oussama Arabi, *Islamic Legal Thought: a Compendium of Muslim Jurists* (Leiden: Brill, 2013).

law-literature (*fiqh*) concerning non-Muslims was daily reality, or merely written formality, and -if a reality- to what extent.

The general focus is on the 10th-13th century.[11] However, as an apparent and important number of laws were established either on the basis of earlier rulings or established in earlier times, some pivotal parts of information concerning earlier centuries are integrated. Illustratively, the celebrated Pact of 'Umar is claimed to had been written by the Caliph 'Umar Ibn al-Khaṭṭāb (d. 644) himself only a couple of years before his death, around 640. This pact is considered by many Muslim scholars and historians one of the most important formative sources (610-850) for Islamic law concerning non-Muslims under Muslim governance.[12] It would be inappropriate to neglect the alleged Pact itself and the discussions circumambulating around it, since many laws in 10th-13th century Andalusia were directly or indirectly linked to this pact; indeed, regardless the lack of proof of its existence.[13] Nonetheless, throughout this thesis the main focus is on the Classical era, for the reason that this is considered to be the period in which Andalusia was administratively and politically well-organized, and because of the significant influence of the *fiqh* concerning non-Muslims in that era.

Political power during the Classical period in Andalusia was religious at times, and non-religious at others. Religion was powerful at times, and weak at others. The same holds true for politics.[14] At times religious authority was consulted by political power to religiously justify the ruler's policies or to strengthen his position. At the converse, political power was sometimes or often consulted by religious authorities to gain executive and formal support at others.[15] Irrespective of the power of religion or politics, the link between religious authority and political power maintained firm at large. However, this was not always the case. Islamic law in Andalusia often was either not in accordance with what had been held by some

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[11] In order not to superfluously repeat so often, I refer to the period between 900 and 1200 as the Classical era. This is not a consensual determination, but rather a rough era-reference as regards to the period in which the kernel of the Classical era has taken place, mostly represented by the most influential written works of celebrated Muslim scholars in the Muslim world.

[12] There is no anonymously determined era for the formative period. It is a reference to the era before the Classical period of Islam. In this thesis I classify the period between the prophethood of the Prophet (610-632) and the first written celebrated Islamic sources as the formative period.

[13] As far as I have been able to detect, there is no empirical study in the West on the content of the pact. Academic studies discuss to different degrees the pact, but the text itself has till so far not been investigated on its authenticity. Discussions on the Pact follow in the following two chapters.

[14] Patricia Crone, *God's Caliph* (Cambridge: Cambridge University Press, 1986). 44-49.

[15] Ibn Jarīr Al-Tabari, *Tārīkh al-rusul wa al-muluk* [tr.: The history of the Messengers and the kings]*,* ed. Michael Jan De Goeje (Leiden: Brill, 2010), vol. vii, pp. 237, 291, 302. Examples follow in the coming chapters.

theologians to be God's Law,[16] or the treatment of non-Muslims was not regarded concordant to what was considered God's Law. Nonetheless, the standardization of what had been defined as God's Law was chiefly formed by Muslim scholars. Alternatively, when I refer in this work to Islamic law this includes 1) the *fiqh* of Muslim scholars (principally in the form of legal advices/rulings; henceforth *fatwā*, pl. *fatāwā*), together with 2) its execution, and 3) the policies of the ruler. When I discuss exclusively the written legal rulings by scholars I use the term *fiqh*. Analogically, the subquestion therefore is which place the *fiqh* of the scholars had within Andalusian Islamic law of the ruler and the scholars, generally representing the policies and the *fiqh*, respectively. The second sub-question is on which basis one may examine Andalusia's tolerance (or the lack of it) towards non-Muslims, keeping in mind that we distinguish throughout this thesis between the *fiqh* of the scholars, Islamic law of the scholars and the ruler, and daily practice of all.

The following chapter consists out of a contextualization of Andalusia. Therein I discuss briefly the political, economic, demographic, and socio-religious landscape of Andalusia, concluded by a more detailed description of the significance of the *fiqh* for Christian Europe. To obviate terminological unclearness as much as possible, I present in the third chapter a profound discussion of some essential terms used throughout this thesis in context of legal and denominational typology as founded in the Quran and *sunnah* (the total of Prophetic Traditions) to which the *fiqh* refers. In chapter four I discuss the legal context of Andalusia. In order to probe the adequateness of the relation between written formality and daily reality, I thoroughly discuss the *fiqh* that deals with the way in which non-Muslims should behave and how they should be treated by the Muslims on the one hand, and which rights and obligations apply to them alone on the other. This forms the kernel of the fifth chapter. In the penultimate chapter I analyze the documented reality or practice, which serves as a comparative paradigm vis-à-vis the *fiqh* in specific, and Islamic law in general. The epilogue is reserved for a retrospective commentary and a conclusion.

I try through this thesis to examine bibliographically as adequate as possible the historical romanticism of normative scholars and -conversely- the deconstructive views regarding Andalusian law concerning non-Muslims as proposed by negationist revisionists (henceforth: revisionists). This I hope to achieve by stressing and explaining two pivotal considerations. On the one hand I try to show that Andalusian Islamic law was not exclusively confined to the written rulings of the scholars (*fiqh*), but that Islamic law was rather to fluctuating degrees an overshadowing system including the *fiqh*. On the other hand I try to show that there had been often a discrepancy between the *fiqh* and daily reality.

I hope that my approach contributes to the broader discussion related to religious tolerance -or the lack of it- in general, and to the significance of religious tolerance within the inter-religious configuration of Andalusia on Christian Europe in specific. Furthermore, this thesis tries also to contribute to the notion of contextual consciousness, meaning that

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[16] Islamic Law with capital 'L' or God's Law (*al-sharī'ah al-islāmiyyah*, or *ḥukm Allāh*, respectively) is considered by Muslims to have been revealed by Allah through the Quran and the *sunnah*. Whereas the *fiqh* is considered human and hence fallible and susceptible to errors, the *sharī'ah* is believed to be divine, infallible, and free of errors. Deductively, the *fiqh* is believed to be the interpretation of the God's Law. In value-free empiricism the *sharī'ah* is generally translated as Islamic law without capital 'l'. In normative studies and discourse the *sharī'ah* is generally translated as Islamic Law or God's Law with capital 'L'. In our thesis we speak of Islamic law as defined above. Further elaboration follows in III.I. and III.III.

Andalusian Islamic law concerning non-Muslims ought to be understood in its proper chronological, locative, and socio-religious context. I start therefore in the following chapter with the socio-religious context of Andalusia prior to the discussion of the normative terminology and typology.

II. Historical Context of Andalusia and its Place within Christian Europe

Andalusia's political consolidation

Prior to the Muslim conquest, the Visigothic state was house to no less than 7 million citizens ruled by nearly 200.000 unorganized elites.[17] Andalusia's first priority was to build a civilization on the basis of assimilation of the Spanish and Berber citizens to Islamic and Arabic culture. ʿAbd al-Raḥmān I (d. 788) was supported by Berbers from North Africa and Syrians who remained loyal to the Umayyad family. Many of them settled in Spain between 760 and 780. The centralization of the socio-political administration was brilliantly given form by his grandson ʿAbd al-Raḥmān II (d. 852), and completed by his grandson ʿAbd al-Raḥmān III (d. 961), who enrolled many Berbers, Mosarabs (Andalusian Arabic-speaking non-Muslims), and *muwalladīn* (those who have been raised as Muslims but who were of non-Muslim origin) in high function. What these three namesakes had in common was the socio-political unification of religio-cultural diversity, through centralization of an effective administration under which everyone could ingrain, surpassing religious, cultural, and ethnic differences, resulting in what is being designated as Andalusia's political consolidation.
I argue that this approach contributed to the increase of converts on the one hand, and to the flourishing of Andalusia as a whole on the other.

The conversion of initially the Visigoths and Berbers and later the Mozarabs to Islam and thence their absorption into the organized socio-political configuration of Andalusia was decisive in the flourishing and further Islamization of Andalusia. The phenomenon of conversion had a snowball-effect; the more non-Muslims converted to Islam, the more rapid this conversion continued.[18] By 912 there would have been 2.8 million indigenous Muslims (*muwalladīn*), while in 1100 this number was at least 5.5 million.[19] In the period between 900 and 1200 the Mozarabs remained the majority, followed by the *muwalladīn*, then the Berbers, and only in the last place the Arabs.

The ease with which people were able to travel between Andalusia and the East contributed likewise to the multi-ethnic and multi-religious landscape of Andalusia.

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[17] Thomas Glick, *Islamic and Christian Spain in the Early Middle Ages* (Leiden and Boston: Brill, 2005), 14.

[18] See for a detail description of this phenomenon of logarithmic conversion in Andalusia: Richard Bulliet, Conversion to Islam in the Medieval Period: an Essay in Quantitative History (Cambridge: Harvard University Press, 1979), 116-123. See especially his curve (graphics number 21) on page 118.

[19] Thomas Glick, Islam and Christian Spain, 24.

Andalusians moved mountains to provide an active and effective infrastructure, which formed Andalusia as a cradle of ethnic diversity. As an example, by the eleventh century a direct shipping-route between Andalusia and Alexandria had been established (from and to Seville and Almería), enabling merchants to trade in the Levant in less than 20 days.[20] Andalusia imported from and exported to Morocco and Tunisia, and through Tunisia from and to Egypt.[21] Discrimination of non-Muslim foreign travelers was held to be scandalous, which may have contributed to a positive view among non-Muslim foreigners of the Andalusian Muslims.

Dissension

In the tenth century literary arts flourished, attracting many Eastern scholars. Libraries were enlarged, translations of important Greek works were established, philosophy was integrated in rational theology, and architecture was being brought to incomparable levels of brilliance and greatness, most beautifully represented by the royal city *Madīnat al-zahrā*.

The stabilization of the Umayyad regime in Andalusia was one of the earliest concerns and conditions for a firm settlement of Islam. ʻAbd al-Raḥmān I (d. 788) understood that he had to attract as much Umayyad supporters from Syria as possible. The reign of his son al-Ḥakam I (d. 822) was characterized by political turmoil due to the increasing number of rebellions of Neo-Muslims in Zaragoza and Toledo.[22] Al-Ḥakam's son ʻAbd al-Raḥmān II (d. 852) learned that he was put in such a difficult position, that he could neither rely on the silenced Umayyad supporters of the East anymore, nor that he could or would subject to the ʻAbbāsid dynasty. ʻAbd al-Raḥmān III proclaimed himself the Caliph in 929, but his Caliphate was short-lived. Again the Umayyads had to face new waves of turmoils initiated by the Berbers, causing the civil war of 1009, which eventually led to the fragmentization of the Muslims into the so-called *mulūk al-ṭawā'if* (translated as 'kingdom-parties, but literally meaning 'the kings of the parties').[23] Two decenniums later the Umayyad Caliphate had been officially dispensed. Already in 1050 Andalusia counted no less than 30 of such principalities.[24] At the end of the eleventh century a new era commenced: that of the Berber dynasties, lasting till 1223. In 1236 Ferdinand III reconquered Cordoba, and in 1248 Seville. The *Reconquista* was therewith officially completed. Only Granada remained under Muslim rule till 1492.[25]

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[20] Ibid., 12, 13.

[21] Ira Lapidus, *A History of Islamic Societies* (Cambridge: Cambridge University Press, 2002), 2nd ed., 313.

[22] Ibid., 28, 29.

[23] Note that Muslim scholars never speak of 'kingdoms', but only of 'kings'.

[24] Maribel Fierro, "Al-Andalus and the Maghrib (from the fifth/eleventh Century to the Fall of the Moraveds," in The New Cambridge History of Islam (Cambridge: Cambridge University Press, 2010), vol. ii, p. 23.

[25] Jan Just Witkam, Remke Kruk and Camilla Adang, *Ibn Ḥazm: de Ring van de Duif* (Amsterdam: Bulaaq, 2008), 8, 9.

Legal scholars as linchpin

For all the turmoils and crumbling, scholars remained powerful and functioned as a bridge between the people. Given the universally accepted Islamic law and Arab identity, scholars had been the linchpin of Andalusia. Extensionally, it were the scholars that played a decisive role in the justification and legitimization of the ruler's position, and finally in the subjection to the ruler's power, as discussed in more detail in IV.II.

The Andalusian *fiqh* was forced to pay emphatic attention to the multi-religious environment which it religiously served. Contrary to the relatively clear socio-religious boundaries of Eastern Islam, Andalusia dealt with a landscape in which the unification of its people by an element surpassing religion and race was imperative for an effective administration and reign. This element was the *fiqh*. Naturally, the Andalusian *fiqh* was indeed part and parcel of religion and even one of its principles by framing Islam for the Muslims, but when governing of non-Muslims was concerned the *fiqh* served two additional chief objectives. On the one hand it defined the socio-religious boundaries of the Muslims vis-à-vis non-Muslims. On the other hand it provided the ruler with justification of his policies, legitimization of his position, and obedience towards him by his subjects. No other Muslim area was represented by such detailed and voluminous *fiqh*-literature concerning non-Muslims as Andalusia.

The encompassment and multi-religious inclusiveness of the *fiqh*

In the period between 900 and 1200 Andalusia counted no less than 7.000 scholars of the *fiqh*. Many of them never wrote a *fiqh*-book, and among those who did, the majority of their alleged works are lost.[26] If one is to estimate the number of survived *fiqh*-texts, it would not be less than 900. Among this number, at least 65 consist out of multiple volumes. Most of them are still widely being used all over the Muslim world. Since the Andalusian *fiqh* touched upon almost all imaginable aspects of life captured in an enormous number of works, our knowledge of the history of Andalusia thanks itself to a greater degree to the legal scholars, than to the historians, philosophers, and poets, three other important literary upper-*strata* that shaped the intellectual landscape of Andalusia, but who generally speaking restricted their expertise to the domain of their speciality. Alternatively, although the *fiqh* is also a specialization by extracting God's Law directly or indirectly from the Quran and *sunnah* through legal reasoning (*ijtihād*), it is not restricted to a specific realm of life, since Islam is believed to touch upon all aspects of life. It is this holistic representation of life that is the fundamental source of our knowledge of the history of Andalusia in general, and of the way in which non-Muslims were treated and regarded in specific.

Irrespective of the fact that Andalusia was geographically a peripheral Islamic spot entirely surrounded by Christianity, it was on all levels of central significance. In addition to the international relations and policies of the rulers, the contribution of Andalusian scholars to Western historical consciousness can hardly be overestimated. As noted earlier, Andalusian scholars made a pivotal contribution to the Greek philosophy by translating, analyzing, and

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[26] See for a thorough account of the Andalusian scholars and the number of them including their biographies: Muḥammad Ibn al Faraḍī, *Tārīkh 'ulamā' al-andalus* [tr. The history of Andalusian scholars] (Cairo: Dār al-miṣriyyah li al-ta'līf wa al-nashr, 1966). Herein only Andalusian scholars till the eleventh century are included.

refining many of the most important works of its prominent thinkers. To accomplish this, many Mozarabs were enrolled as translators and literary historians by the rulers. The importance of the *fiqh* therein was that it religiously justified the appointment of non-Muslim scholars, the study and translation of non-Islamic philosophy, and that of Judeo-Christian works. To fruitfully realize this, the legal scholars understood that inter-religious cohabitation was a prerequisite. In a sense one may speak of Andalusia's reviving Islamization of Western forgotten intellectual heritage, as the 'rebirth' of these 'forgotten' sciences was not only initiated by the Andalusian Muslims, but also because it was assimilated into Islamic and Arabic culture. Aristotelian logic and neo-Platonic rationalism were translated, revised, and refined and thence used for rational Islamic theology (speculative theology was less warmly perceived) to which the Andalusian *fiqh* till approximately 1200 felt to a certain extent affiliated.

At the peak of Andalusia's philosophical heyday one is to observe a very striking fact related to the influence of this philosophy on Christian Europe. By the moment that Muḥammad Ibn Rushd (Averroes, d. 1126) had completed the great commentaries on the whole Aristotelian corpus, Christian Europe was still unfamiliar with Greek philosophy. Boethius (d.525) had translated most of the Aristotelian heritage into Latin, but this was almost completely forgotten in Europe till the translations of Ibn Rushd's commentaries.[27] By the moment that philosophy started to revive in Christian Europe from the late thirteenth century onwards, it was almost totally terminated in Andalusia. Whereas the Andalusian legal scholars accepted philosophical logic and rationalism before the performance of Ibn Rushd,[28] they started to regard religion and philosophy as irreconcilable when philosophy started to be used as hermeneutical methodology for Quranic exegesis (resulting in what has been defined as speculative theology by which ambiguous verses are rationalized and metaphorically interpreted). Ibn Rushd proposed the audacious statement that only the philosophers were able to establish a genuine interpretation of the ambiguous verses.[29] The battle between philosophy and religion started at least one century before Ibn Rushd. But since Ibn Rushd revealed a great part of the methods of philosophy and tried to firmly integrate them into religious sciences, philosophy started to face relentless attacks from legal scholars who began to advocate a literal and independent understanding of the revelation. Thus by the moment that Aristotelian logic and neo-Platonic rationalism started to be banned from Andalusia, Christian Europe just started to open its eyes for it. In my opinion it were the legal scholars who played a decisive role in the initial importation of philosophy to, and finally the deportation of it from Andalusia.

The earlier relative appreciation of philosophical rationalism by the legal scholars coincided with their religious legitimization of intellectual cooperation with non-Muslims. It will always remain a question whether the legal scholars would have reprehended intellectual cooperation and social interaction with non-Muslims after their attacks on philosophy, given the fact that the Christians reconquered roughly 90% of Andalusia between 1212 and 1248, leaving no time and space to reconsider the inter-religious boundaries. Nonetheless, even till

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[27] Majīd Fakhrī, *Islamic Philosophy, Theology, and Mysticism* (Oxford: OneWorld Publications, 1997), 87.

[28] *Ibid.*, 92, 93.

[29] *Ibid.*, 95.

1200 when non-Muslims were generally granted the right to engage with the Muslims, this did not mean that non-Muslims were considered legally equal to them.

The Andalusian *fiqh* restricted non-Muslims in many of their religious manifestations. Concomitantly, it was the determination of the socio-religious boundaries between the Muslims and non-Muslims that left little space for legal equality. However, the Andalusian *fiqh* made a heroic attempt to preserve the own religious boundaries -of both the Muslims and non-Muslims- in a way that enabled simultaneously different religions to benefit from each-other's expertise. In this the religion had been the only differentiating element between the *us* and the *them*. The Andalusian *fiqh* concerning non-Muslims forbade some elements of assimilation of non-Muslims with the Muslims exactly on grounds of this identity-preserving principle, which could only be totally obliterated through conversion of non-Muslims to Islam. Conversion to Islam led to total assimilation and legal emancipation with the Muslim community. Nevertheless, two important notes should be added. For one, this all is what the Andalusian *fiqh* concerning non-Muslims described (written formality), and not what always had been consistently realized (daily reality); between this written formality and daily reality there had been at times a clear contradiction (discrepancy), as substantially discussed in this thesis. For another, the Andalusian *fiqh* concerning non-Muslims distinguished between inter-religious cohabitation and social integration on the one hand, and religious assimilation on the other. Where the former is concerned, this was two-sided; both the Muslims and non-Muslims could cooperate and socialize with each-other. Where the latter was concerned, this was one-sided; the Muslims were forbidden to adopt religious non-Islamic customs, whereas non-Muslims were allowed to adopt many of those of the Muslims under certain conditions listed in chapter V. The discrepancy between the *fiqh* on the one hand, and daily reality together with the ruler's policy on the other is most noticeably exactly on the level of mutual religious assimilation, especially when the strict segregational regulations of 'Umar's Pact are concerned compared with what was being factually realized.

To understand both the objectives of the Andalusian *fiqh* concerning non-Muslims, and the motivations that lay at its basis in their proper milieu, it is of fundamental relevance to study the primary sources themselves concerning Islamic law. There are different approaches to study them, discussed beneath.

Three different scientific approaches

The history of Islamic law of Andalusia can be approached generally through three different *modi* of literature. Each of it represents a different angle from which Islamic law is being considered. The normative literature written by Muslim historians and Muslim scholars approaches the history of Andalusian law from an emic view; it reflects upon the insider's thought of its writers as being emotionally -or rather value-bound- involved, i.e. the normative approach. The negationist revisionist[30] (henceforward: revisionist) literature studies the history of Andalusian Islamic law as an antithesis to the aforementioned literature; it aims to deconstruct the romantic representations of the normative literature by classifying it as an

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[30] The revisionist methodology can be divided in two approaches. One approach characterizes itself by a critical but general re-examination of existing knowledge about a historical event The other approach characterizes itself by distortion of historic and historical records, mainly through a selective re-examination of it followed by a deconstructive interpretation.

un-empirical and utopian set of emotionally motivated commitments. The empirical literature aims as adequately as possible to choose a neutral and thence historic position. Consequently, it analyzes the history of Islamic law in Andalusia with a critical rereading of both the Classical normative literature and the revisionist literature as a referential and comparative point of departure, but attaching to the importance of the normative literature as being prevalent. This is called the etic view, i.e. from the outside.[31]

Having said this, a pivotal remark should be made. The Classical normative literature can by no means be neglected for its indispensable value, since no serious study about the history of Islamic law in Andalusia can exist without implementing these sources or relying on it. In this, selectively searching for normative sources which run counter to the general norm of the theses proposed by the normative literature is a dominant feature of the revisionist approach. As a result, an emphatic part of this thesis includes discussions about, reference to, and study of the Classical normative literature. Nonetheless, answering to the academic standards and conditions, this thesis consults a representative number of secondary sources likewise, but does not recoil from a refuting vocabulary of the revisionist approach when deemed necessary.

State of the art

A repercussive shortcoming of Western scientists of the history of Andalusia is that they force the reader to choose among them. Maribel Fierro observes in her valuable article "Spanish Scholarship on Islamic Law", accurately I think, that scientist of Islamic law prepare translations, but have little knowledge of the Islamic law itself. Historians of Islamic law do have proper knowledge of Islamic law, but do not master Arabic.[32] As a consequent, the reader is either to choose one of the two methodologies resulting in a partial understanding of Islamic law, or both methodologies resulting in hair-loss.

In addition to the aforementioned shortcoming one may refer to the so-called "local ethnocentrisim" of Spanish scientists on which many English-writing scientists rely. According to Fierro, Spanish historians focus on the connection of Arabic and Islamic studies with Spanish national history.[33] Due to the fact that Spanish scientists of Andalusia are dominant actors in the field, neglecting them would be irresponsible. However, relying too much on them means inherently overlooking the broader (international and multi-disciplinary) context of which Andalusia was part. Fortunately, the number of works that combine these sources with additional expertise starts to increase. Two beautiful examples shedding light on this approach are that of James Monroe[34] and Martine de Epalza -"Arabic Studies in Spain Today" (1974). Fierro argues that this isolation by Spanish scientists has been the outcome of

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[31] See for more about emic and etic approaches: Michael Morris, "Views form Inside and Outside: Integrating Emic and Etic Insights about Culture and Justice Judgement," in *Academy of Management Review 24(1999)*, pp. 782-84.

[32] Maribel Fierro, "Spanish Scholarship on Islamic Law," in Islamic Law and Society (2:43, 1995), 59, 60.

[33] Ibid., 44.

[34] James Monroe, *Islam and the Arabs in Spanish Scholarship: Sixteenth Century to the Present* (Leiden:Brill, 1970). See for example pp. 27-41 about the shift from regional to local approaches.

the Spanish Civil War,[35] but she lacks explanation of the influence of this war on the "local ethnocentrism" of Spanish scientists.

Serious non-Spanish studies of the Andalusian *fiqh* started to breathe in the late 19th century, initiated by the Zeitschrift der *Morgenländischen Gesellschaft*. Authors in that period are, among others, Ignaz Goldziher, Maḥmūd ʿAlī al-Makki, Aḥmad Turki, Muhammad Ḥajjī, and later Montgomery Watt and Salomon Keizer. Currently we find, among others, John Tolan, Mariebel Fierro, Thomas Glick, Christian Müller and Janina Safran. The point of shared focus among these contemporary scientists of Andalusian Islamic law is the problem of Muslim identity and legal norms. More specifically, the background of Andalusian scholars and the integration of the Andalusian *fiqh* into the social order start to demand more attention.[36] However, where I think one is to yield profit is the study of eschatological motivations behind the *fiqh*, and the influence of the Andalusian *fiqh* on Europe, two elements poorly studied in my view. The influence of Andalusian Islamic law on Europe is to a certain extent studied -though insufficiently I think-, but till now there is still no serious study which adequately and contextually distinguishes between the Andalusian *fiqh*, Andalusian Islamic law of which the *fiqh* is only a part, and daily reality as three different entities. I argue that only by properly understanding these three entities and their correlation one is able to grasp more accurately the socio-religious boundaries between the Muslims and non-Muslims. This brings us to the following chapter.

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[35] Maribel Fierro, "Spanish Scholarship," 45, 36.

[36] Janina Safran focuses on socio-religious boundaries, while Christian Müller sheds light on how the sources of the *fiqh* are being integrated. They are discussed in more detail in the following chapters.

III. Denominational typology and legal terminology in the Quran and Sunnah

Contrary to what might often be the common approach of many scientists, I do not discuss the *fiqh* concerning non-Muslims as juridical literature apart from the *fiqh* as a whole. This choice actually deemed necessary, as none of the *fiqh*-books considers the treatment of non-Muslims to be a distinguished set of rules outside the *fiqh* concerning the Muslims. Rulings concerning non-Muslims are rather fragmentally, but intrinsically interwoven with more general topics from which the former are being deduced. Moreover, the *fiqh* concerning non-Muslims is as a rule proposed in light of the Muslims' religiosity, that is what effects these rulings have on the Muslims. As an example, consumption of meat provided by disbelievers is forbidden,[37] since meat on which another name than Allah -or no name- had been invoked is determined unlawful by the Quran.[38] The *fiqh* focuses thereby on the socio-religious consequences of their encounter with non-Muslims and judges accordingly. Since the dietary-laws are integrated in the Quran, *sunnah*,[39] and the *fiqh*, how to rule as regards to meat provided by non-Muslims is included in sections on the Islamic dietary-laws (*aḥkām al-aṭ'imah wa al-ashribah*), rather than in sections dealing with unbelief or non-Muslim denominations. When the latter is concerned, these also are discussed from the own perspective, i.e. how unbelief and non-Islamic religions ought to be regarded. These are generally speaking incoherently included in different sections, sometimes located where one might not expect them.

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[37] The Quran allows the consumption of meat slaughtered by the People of the Book (*kitābiyyīn*, or *ahl al-kitāb*; I use the term *kitābiyyīn*). Q.5:5. "Today all good foods have been made lawful, and the food of those who have been given the Scripture is lawful for you, and your food is lawful for them." The discussion in this respect is whether those people who have been given the Scripture (a revelation) still exist, or whether this verse has been abrogated by both verses stating that there is no religion accepted by Allah than Islam, and that the people who are given the Scripture altered and falsified the Scriptures revealed to them and thence lost this title. If affirmative, the question would be who these People of the Book exactly are. See for example: Ibn Jarīr al-Ṭabarī, *Jāmi' al-bayān 'an ta'wīl āyāt al-qur'ān* [tr.: The comprehensive explanation on the exegesis of the verses of the Quran] (Qairo: Dār al-ma'ārif, 1954-1966), vol. ix, pp. 572-580; Ibn 'Umar al-Zamakhsharī, *Al-Kashshāf 'an ḥaqā'iq jawāmid al-tanzīl* [tr.: The table of the genuinenesses of the revelation and kernels of the statements about the different faces of hermeneutics], (Beirut: Dār kutub al-'ilmiyyah, 2003), vol. ii, pp. 54-57; Fakhr al-Dīn al-Rāzī, *Mafātīḥ al-ghayb* [tr.: The keys of the hidden], (Cairo: Maṭba'at al-miṣriyyah al-amīriyyah, 1862), vol. vii, pp. 116,117; Ibn Ismā'īl al-Bukhārī, *Al-Jāmi' al-ṣaḥīḥ* [tr.: The collection of the canonical *aḥādīth*], "*Kitāb al-dhabā'iḥ* [tr.: Book on slaughtering]," no. 10; Abū Bakr al-Bayhaqī, *al-Sunan al-kubrā* [tr.: The great Traditions of the Prophet], "*Kitāb al-ḍaḥāyā* [tr.: Book on sacrificial slaughter]," no. 4; Muwaffaq al-Dīn Ibn Qudāmah, *Al-Mughnī* [tr.: The enricher], (Riyad: Dār 'ālam al-kutub, 1997), vol. xiii, pp. 291-314; Muḥammad al-Shāfi'ī, *Kitāb al-umm* [tr.: The book of exemplar], (Cairo: Dār al-miṣriyyah li al-ta'līf wa al-tarjamah, 1987), vol. iv, p. 174.

[38] Q.2:173. "He has forbidden for you dead animals, and blood, and the meat of swine, and that on which another than Allah has been invoked. But whoever is forced without desiring [it] and without without transgressing, upon him there is no sin. Verily, Allah is Forgiving, Merciful."

[39] The sources where the *aḥādīth* can be found that are presented and discussed in this thesis are listed without their editions. I give the exact location by referring to the title, the "*Kitāb*" (general thematic chapter), the "*bāb*" (chapter or subchapter), and the number of the *ḥadīth*. This way of referring enables the reader to find the *ḥadīth* without being dependent on a specific edition.

In sum, any focus on the description of the non-Muslims' religiosity serves *ab initio* as a measure to preserve the own Islamic legislative and theological boundaries throughout the entire *corpora* of the *fiqh*-literature. Consequently, almost all topics in all the *fiqh*-literature are listed thematically as of relevance to the Muslims from the own perspective.

The Quran

The first and most substantive and imperative source of Islam is the Quran. Almost all *fiqh*-literature dealing with rulings concerning non-Muslims refer directly or indirectly to the Quran. Due to the fact that the Quran is more general than the *fiqh*, it touches upon the question of non-Muslim treatment by the Muslims generally speaking fundamentally (basically, but with fundamental authority and authenticity). To begin with, the denomination *dhimmiyyīn* (sing. *dhimmī*) or *ahl al-dhimmah* is not mentioned in the Quran. Only the term *dhimmah* is mentioned once, in Q.9:8. "How [can there be a treaty], while, if they dominate over you, they do not observe regards to you any pact of kinship or *covenant of protection* [*dhimmah*]. They satisfy you with their mouths, but their hearts refuse, and most of them are debauchers." The inter-complementation between the textual context of the verse and the exegesis given by the Companions about the term *dhimmah* constitutes the supposition that it bears the definition of a signed pact in which the protection of non-Muslims is being guaranteed in exchange for certain obligations which non-Muslims ought to observe. The payment of the *jizyah* (tax-poll paid by non-Muslims to the Muslims; henceforward, *jizyah* or non-Muslim tax-poll) is probably the most significant among these conditions. However, the Quran is silent about who exactly is to be considered a *dhimmī*. The Quran speaks of the

following non-Islamic denominations, in order of decreasing number of repetitions: 1) *al-kā-firīn* or *al-kuffār*,[40] 2) *ahl al-kitāb*,[41] 3) *al-muskhrikīn*,[42] and *al-ṣābi'īn*.[43]

The noun *kufr* (disbelief) has two plural forms in Arabic, *kāfirīn* and *kuffār*;[44] the former 150 times, and the latter 19 times.[45] Irrespective of the clear explanation given by scholars about the term *kāfirīn* (disbelievers) in the Quran, they do not show complete agreement about one very important question, namely whether the Quran regards disbelief (*kufr*) a religious denomination. One might possibly expect a negative answer to this question, as disbelief refers linguistically and logically speaking to the absence of belief. However, looking with a critical eye at Q.109 one might conclude differently. "Say, o, disbelievers [1]. I do not worship what you worship [2]. Nor are you worshippers of what I worship [3]. Nor will I be a worshipper of what you worship [4]. Nor will you be worshippers of what I worship [5]. For you is your *religion*, and for me is my religion [6]." In the last-cited verse the Prophet is commanded by God to assign to the disbelievers the freedom to profess their

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[40] Tr.: Unbelievers. They are the people who the monotheistic message of Islam has reached, but who renounce(d) to submit to the religious authority of the Prophet and hence to Islam. They are considered the denouncers of the only sound religion and the neglecters of Allah's blessings, i.e. the blessings of Islam. See: Muḥammad Ibn Manẓūr, *Lisān al-'Arab* [tr.: The language of the Arabs], ed. Muḥammad Ḥasab Allāh and Muḥammad al-Shādhilī (Cairo: Dār al-ma'ārif, 1981-84), vol. xii, pp. 118, 119.

[41] Tr.: People of the Book. They are the people who have been given a Scripture from God. From quantitative point of view the Christians and the Jews are the most significant. However, there are other denominations that held this title during the lifetime of the Prophet and before him. Quran-exegetes lack consensus about the question which denominations bear or bore the title *ahl al-kitāb*. See for a historical background of the definition: G. Vajda, "Ahl al-kitāb," in *Encyclopaedia of Islam*, vol. i, p. 264-265. See for the denominational classification by Muslim scholars: Al-Ṭabarī, *Jāmi' al-bayān* [tr.: The collective clarification], vol. ix, p. 573; al-Zamakhsharī, *Al-Kashshāf* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1968), vol. ii, pp. 54-57; al-Rāzī, *Mafātīḥ al-ghayb*, ed. Ibrāhīm Shams al-Dīn and Aḥmad Shams al-Dīn (Beirut: Dār al-kutub al-'ilmiyyah, 2000), vol. vii, pp. 115, 116; Ismā'īl Ibn Kathīr, *Tafsīr al-qur'ān al-aẓīm* [tr.: The exegesis of the mighty Quran] (Beirut: Dār al-kutub al-'ilmiyyah, 1984), vol. ii, pp. 21, 22. Note in his exegesis that Ibn Kathīr pays poor attention to the denominational classification as reference to Q.2:173. He also discusses the suspension of the title by the Banū Taghlab (also pronounced as Banū Taghlīb) tribe who considered themselves Christians, but who lost this title according to some Companions of the Prophet (among them 'Alī Ibn Abī Ṭālib, paternal cousin and son-in-law of the Prophet and fourth Caliph), because they used to consume alcohol. It is interesting to note that this suspension depended on alcohol, probably meaning that those Christians who consumed alcohol were not regarded *ahl al-kitāb* due to the claimed deviation from the revealed prohibition on consuming alcohol in their Scripture (the Gospel in this respect). If accurate, that would mean that the Companions believed that the Gospel also forbade the consumption of alcohol, but that the Christians omitted this prohibition from the Gospel.

[42] Tr.: Polytheists or idolators. They are the people who worshipped different deities besides or instead of God. Most of these deities were self-made idols that consisted out of a variety of substances, such as clay, wood, and dates. See for a more profound description: Ibn Manẓūr, *Lisān al-'Arab*, vol. vii. p. 100.

[43] Tr.: Sabians. Sometimes also defined as *mājūs*, a denomination mentioned in the Quran likewise. Ibn Manẓūr says that they are a denomination among the People of the Book who falsely claims to follow Noah, originally from a place called Maḥabb. See: Ibn Manẓūr, *Lisān al-'Arab*, vol. vii, p. 267. As there is no clear definition to be found in the exegeses of neither *ṣābi'īn*, nor *mājūs*, these denominations are not discussed profoundly in this thesis. Moreover, in the Andalusian *fiqh* discussions about the *ṣābi'īn* or the *mājūs* are scarce.

[44] That is including the different syntactic *modi*, like *al-kāfirīn* with the prefixed definitive article '*al*-' and *al-kāfirūn* in the nominative tense.

[45] Muḥammad Fu'ād 'Abd al-Bāqī, *Al-mu'jam al-mufahras li alfāẓ al-qur'ān al-karīm* [tr.: Lexical index for the terminology of the holy Quran] (Cairo: Dār al-ḥadīth, 1987), 610-612.

religion.[46] Nonetheless, we read in Q.3:85 premonitorily: "If anyone desires a religion other than Islam, it will not be accepted of him. And in the Hereafter he will be among the losers." The least scholars agree on is that Islam is that the only religion which guarantees entrance to the paradise.[47] How then can the verses which seem to recognize other religions than Islam be brought in coherence with verses that seem to neglect and to forbid adherence to other religions? The answer should be sought for on the level of social interaction, rather than on confessional level. Consequently, Muslim scholars propose that there should be differentiated between dogmatic acceptance of a religion by Allah, and acceptance of a religion other than Islam by the Muslims in social setting. The former is exclusively up to God, and the latter up to the Muslims themselves, in order to enable them to interact, cohabit, and to cooperate with non-Muslims.[48]

The *ahl al-kitāb* are mentioned 30 times in the Quran.[49] Exegetes are in consensus that both the Children of Israel and the Christians are anyway meant by this title. The point of disagreement circulates around the question which of the other denominations also bear the title People of the Book. The majority of scholars include the Sabians (*ṣābi'īn*), referring thereby to Q.2:62 which states that those among them who believe in God, the Hereafter, and who perform good deeds will neither fear, nor grieve.[50] The question which scholars are less unanimous about is which Scripture has been sent down to them, since the primary condition for inclusion within the *ahl al-kitāb* is determined by the revelation of a Scripture. Additionally, in the *ḥadīth* referred to in footnote 38 we find the *majūs*, commonly identified as Magians.[51] It is also ambiguous to scholars whether or not the *majūs* and the

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[46] Al-Ṭabarī, *Jāmi' al-bayān*, vol. xxx, pp. 330, 331; Ibn Kathīr, *Tafsīr al-qur'ān al-'aẓīm*, vol. iv, p. 599. Al-Ṭabarī notes that the designation *kāfirīn* (disbelievers) is defined in this context as the polytheist members of the Qurayshī clan to which the Prophet adhered. The reference to the religion of the unbelievers in verse six is due to their belief in idols. Ibn Kathīr states generally the same, referring thereby also to the chain of transmitters of the formative exegetes included in the exegesis of al-Ṭabarī.

[47] Al-Ṭabarī, *Jāmi' al-bayān*, vol. vi, pp. 570-572; Ibn Kathīr, *Tafsīr al-qur'ān al-'aẓīm*, vol. i, p. 387.

[48] *Ibid.*, vol. xxviii, pp. 65-67. Al-Ṭabarī stresses that Q.60:8 is general and not applicable to only the polytheist Meccans. The verse reads as follows: "Allah does not prohibit you from those who do not fight you in the cause of religion and do not expel you from your homes - from being righteous towards them and acting justly toward them. Indeed, Allah loves those who act justly." Al-Ṭabarī adds that righteousness and justice is an intrinsic and independent virtue which Muslims ought always to preserve as long as they are not being attacked.

[49] 'Abd al-Bāqī, *Al-mu'jam al-mufahras*, 95, 96.

[50] Q.2:62. "Verily, those who believe [in that which has been revealed to you, o, Muḥammad], and the Jews, and the Christians, and the Sabians - whoever believes in Allah and the Last Day and performs good deeds, for their rewards is with their Lord. And no fear shall come upon them, neither shall they grieve."

[51] See for a thorough account on Magians during the lifetime of the Prophet: Michael Cook, "Magian cheese: an archaic problem in Islamic law," in *Bulletin of the School of Oriental and African Studies* (London: London University Press, 1984), vol. 47(3), pp. 450-457.

ṣābi'īn are one and the same religious community.[52] If affirmative, it would mean that they ought to discover one revealed Scripture in addition to the Torah revealed to the Jews and the Gospel revealed to the Christians. If negative, the scholars ought to discover two books in addition to the Torah and the Gospel. This question is of primary importance as regards how to treat non-Muslims, as only the denominations acknowledged by the Quran and *sunnah* as religious denominations fall within the legislative radius of *dhimmah* and hence eligible to exception of particular duties imperative on others on the one hand (such as conscription and the material poll-tax), and the guaranty of religious freedom and protection against possible invaders and threats from both Muslim and non-Muslim co-citizens on the other.[53]

Leaving the discussion between exegetes aside about who exactly the *ahl al-kitāb* are -although very interesting, but way too voluminous-, the matter of our concern in this respect is about who had been regarded the *dhimmiyyīn* by Classical scholars of Andalusia. Although none of the descriptive propositions of scholars -which have been integrated in the *fiqh*- were regarded absolutely binding -neither by themselves, nor by the ruling *strata*-, there is general consensus among Muslim scholars of Andalusia who ought to be included in the *dhimmah*-system (discussed beneath).

"If it [the Quran] had been from other than God, they would had found in it many inconsistencies." This verse (Q.4:82) informs the Prophet about one of the nullifying claims of the polytheists concerning the origin(ator) of the Quran. One Quranic characterization of the polytheists is that they claim that the Quran is either fabricated by the Prophet himself, or that he is inspired by sorcerers and demons.[54] A second shared conviction of the polytheists mentioned in the Quran is the worship of idols besides or instead of God, a feature to which the self-defining title *muskhrikīn* thanks its designation.[55]

Returning to the question which of the non-Muslim denominations fall within the juridical *dhimmī*-system of Andalusia, one might probably be flabbergasted to learn that all non-Muslims are included. But carefully, this does not mean whatsoever that the entire

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[52] Al-Ṭabarī proposes a profound assessment about the questions who the *ṣābi'īn* are. According to one narration which he relates they are those who converted from their original religion to either Christianity or Judaism. A second narration included in his assessment defines them as those who believe in one God, but who do not belong to Christianity, Judaism, or Islam. Another narration speaks of worshippers of angels, while the fourth narration defines the *ṣābi'īn* as those who believe in the Psalms of David. The final narration which reached al-Ṭabarī considers them a religious community among the People of the Book. See: Al-Ṭabarī, *Jāmiʿ al-bayān*, vol. ii, pp. 146, 147. Ibn Kathīr argues that the *ṣābi'īn* are a group of people whose religion waver between all of Christianity, Judaism, and *majāsah* (religion of the *majūs*). It is important to add that Ibn ʿAbbās (the first exegete of the Quran, a Companion, and a paternal cousin of the Prophet, d. 653) regard them undoubtedly People of the Book, because they believe in and recite from the Psalms of David, and hence marriageable and lawful for the Muslims to consume their slaughtered meat. See: Ibn Kathīr, *Tafsīr al-qur'ān al-ʿaẓīm*, vol. i, pp. 107, 108.

[53] As already explained, the term *dhimmah* is consensually defined by exegetes as a pact in which non-Muslims promise to meet certain obligations, in exchange for protection and freedom to profess their religion. But al-Ṭabarī speaks also of "the people of the pact among the polytheists". See: Al-Ṭabarī, *Jāmiʿ al-bayān*, vol. xiv, pp. 146-148. Ibn Kathīr speaks of a pact for non-Muslims in general. See: Ibn Kathīr, *Tafsīr al-qur'ān al-ʿaẓīm*, vol. ii, p. 351.

[54] See al-Ṭabarī's exegesis of Q.23:70: Al-Ṭabarī, *Jāmiʿ al-bayān*, vol. xviii, pp. 41,42. For an account of the claim that the Prophet was a poet who fabricated the Quran, see al-Ṭabarī: vol. xvii, p. 3.

[55] Many verses place the worship of other gods than Allah in specific context of *shirk*. They are too rich to draught and to discuss. Examples are: Q.5:72,73, 76; Q.9:30, 31.

discussion between Muslim scholars about who ought, and who ought not to be regarded a *dhimmī* had been superfluous or obsolete. A head-breaking question, for example, is whether merely religious non-Muslims are considered *dhimmiyyīn*, or also disbelievers (discussed in the following chapter).

As rightly observed by Mark Cohen in his celebrated *Under Crescent and Cross*, there is within the broad *dhimmī*-system hierarchy,[56] as well as marginality.[57] Cohen speaks of hierarchy when the socio-religious barrier between the Muslims and non-Muslims is concerned; a hierarchy which marks the social order of the two societies in which the Jews lived in Andalusia. Additionally, according to the "marginality theory" as defined by some sociologists …"members of a group 1) do not qualify for admission into another group with which, over varying lengths of time, it is more or less closely associated; 2) when these groups differ significantly in the nature of their cultural or racial heritage; and 3) between which there is limited cultural interchange or social interaction."[58] According to sociologists the kernel of the difference between marginality and exclusion is defined by the fact that the former expresses a less alienated relationship between the dominating group and the subordinate.[59] However, it is rather a shortcoming that neither of the two scientists pays attention to the Islamic legal principles from which the thesis of segregational hierarchy originates, namely the Quran and *sunnah*.

As classified at the beginning of this sub-chapter, the Quran speaks then of the *ahl al-kitāb* in general, then of the Christians and the Jews separately. When it comes to the Jews -predominantly referred to in the Quran as the Children of Israel- one is to conclude that they enjoy both a kind of privileged status as well as a condemnatory judgement. The Quran shows two faces of them: one directed towards heaven whence they have been bestowed with blessings from Allah by receiving His Scriptures and prophets. The other face is directed towards the world with all its seducing and pernicious evils which arise from it. As regards the former, they are the People of the Scriptures. As regards the latter, they concealed, altered, and perverted both their content and meaning. Exemplary, Q.2:85 speaks of them as those who selectively follow the Book commensurate with their desires.[60] Two verses speak clearly

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[56] Mark Cohen, *Under Crescent and Cross: the Jews in the Middle Ages* (Princeton: Princeton University Press, 1994), 107.

[57] *Ibid.*, 108, 109.

[58] Quoted in Mark Cohen, *Under Crescent and Cross*, 108. Cohen draws on the theory of H.F. Dickie-Clark. See for the latter's theory: H.F. Dickie-Clark, *The Marginal Situation: a Sociological Study of a Coloured Group* (London, 1996), 32, 33.

[59] Dickie-Clark, *The Marginal Situation*, 21, 22.

[60] "[…] Do you believe in part of the Book and disbelieve part? What will be the recompense for those who act as such but disgrace in this life? And on the Day of Judgement they will be consigned to the most severe penalty. And Allah is not unmindful of what you do."

of alteration of the Book revealed to them (the Torah).[61] Another verse characterizes them as irrational protectors of life on earth in exchange for the life in the Hereafter.[62]

When both the Jews and the Christians are concerned, they are characterized as those who will never accept the Muslims, unless the latter follow their religion.[63] Another verse promises hellfire to them who write the Book with their own hands, meaning altering the revelation and replacing the passages abrogated by them.[64] Q.3:78 defines them as swindlers by their way of claiming that the passages written by them are God's revelation.[65]

Related to the Christians separately, they are not judged with less severeness, but almost entirely in context of dogmas concerning the position of Christ. We read that those who state that Christ is the son of God have fallen in disbelief.[66] The same holds true for those who attach to the Trinity-doctrine.[67] In another verse a cursing judgment is directed towards the Christians, because they claim that Christ had been crucified.[68]

The *sunnah*

Understanding the religious differences between Islam and Judaism merely from a ritual or confessional perspective would be one-sided and not representative. I argue that the rather marginal alienness of the Jews vis-à-vis the Muslims has been the result of the legal similarities rather than the ritual. It is correct to argue that the Muslims and the Jews share a number of fundamental similitudes in their dogmatic tenets, but these bear no relevance in terms of dogmatic cohesion. Muslims are not allowed to pray behind a rabbi or the converse, neither may Muslims take care of a Jewish funeral or the converse, or consult a Jewish preacher for mediation or the converse.

The legal encounters between the Prophet and the Jews had almost exclusively been the result of either asking mediation, or consultation from the Prophet. As an example, when two Jewish spouses made themselves guilty of adultery, the Jews brought them for justice to the Prophet, who stated that the Jewish community ought to rule with what has been sent

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[61] Q.4:46: "Of the Jews there are who displace words from their [right/original] places and say: "We hear and we disobey", and: "Hear what is not heard"…; Q.2:75: "Can you [o, men of faith] ascertain the hope that they believe you? -While a party of them heard the Word of Allah, and altered it after they have reminded it while they know?"

[62] "You will indeed find them, of all people, most protective of life, [even] more than the idolators. Each one of them wished he could be given a life of a thousand years…"

[63] Q.2:120: "Never will the Jews and the Christians be satisfied with you, until you follow their denomination…"

[64] Q.2:79: "Then *wayl* [a hell-river in hellfire] for those who write the Book with their hands and say: "This is from Allah," to traffic with it for a small price. *Wayl* for what their hands write, and *wayl* for what they gain [by that]."

[65] Q.3:78: "And there is of them a party who distort the Book with their tongues; you would regard it part of the Book, but it is no part of the Book…"

[66] Q.5:17: "Those who say that Allah is Christ the son of Mary indeed disbelieve…"

[67] Q.5:73: "Those who say that Allah is a third of three indeed disbelieve…"

[68] "And [their disbelieve] by their saying: "We have killed Christ, the son of Mary, the Messenger of Allah." But they did not kill him, and they did not crucify him, but so it [was made to] appear(ed) to them…"

down to them, i.e. the Torah. When they objected that there is no ruling in the Torah dealing with adultery, his Companion and former rabbi 'Abd Allāh Ibn Salām (d. 630) refuted them.[69] He referred to the particular passage in the Torah which was claimed to rule that the married fornicator must be stoned to death.[70]

One of the earliest survived reports dealing with legal encounters between the Muslims and the Jews is studied by Arent Jan Wensinck (d. 1939). One document contains a promise of the Jewish clan Qaynuqā' to the Prophet and his Companions not to consume swine, to attach to a polite treatment towards the parents, and to not worship except one God.[71]

Michael Schreiner succeeded in tracing a report informing us about Jewish complaints against the Quranic prohibition towards Muslim women on marrying non-Muslim men.[72] Nevertheless, in a later stage when the Prophet gained more power the Jews obeyed generally speaking the judgements of the Prophet without that much complaints or insurrection.

To the legal associations and interchange between the Prophet and the Jews another important interface should be added, namely kinship. Notwithstanding the fact that the Muslims and the Jews differ inharmoniously in certain dogmatic beliefs concerning the Patriarch Abraham,[73] they both consider him the initiator of pure monotheism as revealed by God. The Prophet had claimed offspring from Abraham, the Jews alike.[74] Additionally, the protecting and rescuing role Moses played in occasion of the Jews is not only of pivotal

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[69] His original name was Abū Yūsuf al-Isrā'īlī. It is stated in a *ḥadīth* that his conversion to Islam came after the Prophet's answers to his questions by which Ibn Salām wanted to belie the Prophet's prophethood. "I post you three question, which no one is able to answer except a prophet. What is the first sign of the end of time? What is the first meal that the people of the paradise will consume? And what about a child bearing either the gender of his father, or that of her mother?" The Prophet said: "I have just been provided with answers to these questions by Gabriel." Ibn Salām said: "This Gabriel, for he verily is the enemy of the Jews among the angels." The Prophet said: "Regarding the first sign of the end of time; that is a fire driving them [people in the East] to the West. Regarding the first meal to be consumed by the people of the paradise; that is the extension of the fish' liver. And regarding the child either bearing the gender of his father, or of her mother; when the water of the man precedes the water of the woman, for the child will bear the gender of his father. When the water of the woman precedes the water of the man, for the child will bear the gender of her mother." After hearing these answers, Ibn Salām pronounced immediately the Islamic profession of faith. See for the whole *ḥadīth:* Ibn Ismā'īl al-Bukhārī, *Jāmi' al-ṣaḥīḥ*, "*Kitāb al-anbiyā'* [tr.: Book on the prophets]," no. 1, "*Bāb tafsīr sūrah 2* [tr.: Chapter on the exegesis of *sūrah* 2]," no. 6, "*Kitāb al-riqāq* [tr.: Book on slaves]," no. 44, 41; Muslim Ibn al-Ḥajjāj, *Ṣaḥīḥ Muslim* [tr.: The canonical *ḥadīth* of Muslim], "*Kitāb al-ḥayḍ* [tr.: Book on menstruation]," no. 34, "*Bāb al-munāfiqīn* [tr.: Chapter on hypocrites]," no. 30; Aḥmad Ibn Ḥanbal, *Musnad Ibn Ḥanbal* [tr.: The chained-transmitted Tradition of Aḥmad], nos. 3:108, 189, 281.

[70] Muslim Ibn al-Ḥajjāj, *Jāmi' al-ṣaḥīḥ*, "*Kitāb al-ḥudūd* [tr.: Book on penalties]," no. 27; Ibn 'Isā al-Tirmidhī, *Jāmi' al-Tirmidhī* [tr.: The collection of Canonical *ḥadīth* by al-Tirmidhī], "*Kitāb al-ḥudūd* [tr.: Book on penalties]," no. 10; Abū 'Abd Allāh Ibn Mājah, *Sunan Ibn Mājah* [tr.: The Traditions of the Prophet by Ibn Mājah], "*Kitāb al-ḥudūd* [tr.: Book on penalties]," no. 10; Ibn Ḥanbal, *Musnad Ibn Ḥanbal*, nos. 2:7, 62, 63, 76, 126, 280, 4: 355, 5:91, 92, 94, 95, 96, 97.

[71] Arent Jan Wensinck, *Mohammed en de Joden te Medina* (Leiden: Brill, 1908), 67.

[72] Michael Schreiner, *Zur Geschichte der Polemic zwischen Juden und Muhammedanern* (Berlin: ZDMG, 1888), 81.

[73] For example that not Isaac was the son who Abraham was ordered by God to sacrifice, but Ismael.

[74] Tariq Ramadan, *In the Footsteps of the Prophet: Lessons from the Life of Muḥammad* (New York: Oxford University Press, 2007), 9; 'Abd al-Malik Ibn Hishām, *Sīrat al-nabī* [tr.: The biography of the Prophet] (Cairo: 1936), vol. i, 56-59.

importance to the Jews, but also to the Muslims. The Children of Israel who Moses is held to had rescued are believed by the Muslims to had been monotheists who followed the Torah in the way and form it was revealed, without alteration or corruption (the so-called *ḥunafā*, adherents of the *ḥanīfiyyah*).[75] When the Prophet came to know that the Jews fasted on a particular holy day,[76] he asked them for the reason, upon which the Jews answered that they remember on that day that Moses rescued his community from the pharaoh. He stated that …"we are closer to Moses then you. If I will be living the next year, I will fast on this day."[77]

As elucidated through the discussed examples, also the *sunnah* shows two faces of the Jews. On the one hand they are the closest to the Muslims due to association with some legal, dogmatic, and hereditary closeness to the Muslims. On the other hand they are characterized as a privileged religious community that has never been convinced of the Scriptures' content and which never felt blessed by Allah.

It has never been consensually clear to scholars why the Christians demand less emphatic attention of the Quran and the *sunnah*. Irrespective of the claim of some scholars that the Children of Israel include the "original" Christians (*al-ḥunafā' min al-naṣārā*),[78] it is clear that both the Quran and *sunnah* are more concerned with the Jews among the Children of Israel and among the People of the Book than with the Christians as a separately defined denomination. It is perhaps the sometimes constructive, other times deconstructive picture showed by the Quran and *sunnah* of the Jews that possibly had been a contributive force to the way in which Islamic law in Andalusia regarded and treated them. In either way, they are being regarded a denomination which demands a segregational and specific governance bound by the *fiqh*.

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[75] Al-Ṭabarī, *Jāmiʿ al-bayān*, vol. iv, pp. 6,7. In the *sunnah* we find some *aḥādīth* explaining this *ḥanīfiyyah*, such as that about Zayd Ibn Nufayl (d. 625?) who was searching for the monotheistic truth prior to the Prophet's revelation. See: Al-Bukhārī, *Jāmiʿ al-Ṣaḥīḥ*, "*Bāb manāqib al-anṣār* [tr.: Chapter on the Christian characteristics]," no. 64.

[76] This day is the Yom Kippur, defined in Islam as *ʿashūrā*. The term *ʿashūrā* means 'ten in character', referring to the tenth day of the first month of the Islamic calendar (*muḥarram*). Since there was no Islamic calendar during the lifetime of the Prophet, the Muslims followed in some cases that of the Jews. The current Islamic calendar is claimed to correspond with the original Jewish calendar.

[77] Al-Bukhārī, *Jāmiʿ al-Ṣaḥīḥ*, "*Kitāb al-ṣawm* [tr.: Book on fasting]," no. 69; Muslim, *Ṣaḥīḥ Muslim*, "*Kitāb al-ṣiyām* [tr.: Book on fasting]," nos. 128-130; Sulaymān Abū Dāwud, *Sunan Abī Dāwud* [tr.: The Traditions of the Prophet by Abū Dāwud], "*Kitāb al-ṣawm* [tr.: Book on fasting]," no. 63; Abū Muḥammad al-Dārimī, *Sunan al-Dārimī* [tr.: The Traditions of the Prophet by al-Dārimī], "*Kitāb al-ṣawm* [tr.: Book on fasting]," no. 46; Ibn Ḥanbal, *Musnad Ibn Ḥanbal*, nos. 3:34, 348, 4:415, 5:96, 105, 6:248.

[78] Among them al-Zamakhsharī, al-Rāzī, al-Ṭabarī, and Muqātil Ibn Sulaymān. The Classical scholars who share the same opinion are too numerous to discuss in this thesis.

IV. Non-Muslims under Islamic Law in Andalusia: Discriminate Segregation or Identity-Preserving Boundaries?

Introductory remarks

According to John Tolan in his *Saracens* the fact that Islamic dominance in Christian Spain started to become a reality was initially perceived by the Christians as a military animosity on the one hand, and as a divine recompense for Christian sins on the other.[79] It is only when more and more Christians started to convert to Islam that Christian thinkers began to portray Islam as a religious adversary, in stead of merely a military danger.[80] One might possibly expect that this may have been the result of the initial relative marginalization of Islam's presence in Spain by the Christians due to the initially alleged Muslims' insignificance. Adversely, historians have been in general agreement over the last decades that the more the power of Islam decreased, the more these merciless attacks occurred from Christian hands, especially around the *Reconquista*. With the exception of a handful of documented non-Muslim complaints and protests against the conquest of Spain by the Muslims, there was no real massive Christian opposition against Islam's entrance. It is not clear whether this alleged silence was the result of lack of power, lack of consciousness of the Christian identity, or lack of clear reasons for the Christians to battle against the Muslims. The latter hypothesis is merely posited by Muslim normative apologetics, claimed as an idea of real justice for the Christians guaranteed to them in contrast to the unjust governance of Christian rulers from which the Christians sought to be freed.[81]

In a broader comparative context this claim bears no consistency, since there are many Christian apologetic treatises preserved from the Middle East in which Christianity is being defended against the claimed barbarity of Islam. Abū al-Farj Ibn Yaḥyā (d. 11th century) gives us an inside in how Islam ought to be conceived by the Christians: as a fabricated religion

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[79] John Tolan, *Saracens: Islam in the Medieval European Imagination* (New York: Columbia University Press, 2002), 71, 72.

[80] *Ibid.*, 72. To this statement should be added the fact that the portrayal of Islam as a heretic religion spread by a satanic madman had already taken place long before, even during the lifetime of the Prophet and extensionally throughout the entire formative era. The reason why the formative era does not attract much attention as regards to negative image-shaping of Islam is due to the scarcity of survived written works. One of the few (survived) Christian anti-Islamic polemics in the formative era is that of Paul Alvarus (d. 861). See for more about Alvarus' views of Islam: R.W. Southern, *Western Views of Islam in the Middle Ages* (Cambridge: Harvard University Press, 1962), 21-28.

[81] Many of these suppositions are distributed on the internet. See for examples the following websites: "*Al-Muslimūn bayn 'azz al-ṭā'ah wa dhill al-ma'ṣiyyah* [tr.: Muslims between esteem of obedience and subserviency of disobedience]," accessed October 17, 2015 http://mrx777.blogspot.nl/2013/06/blog-post_10.html#.Vj3fwUtbxyo : "*'adāwat al-naṣārā li al-muslimīn wa mawqifuhum minhum* [tr.: The enmity of Christians against the Muslims and their view of them]," accessed October 17, 2015 http://www.dorar.net/enc/adyan/604 : "*Nash'at dawlat al-islām wa ṣuqūtihā* [tr.: The rise and fall of the Muslim country]," accessed October 17, 2015 http://www.darulu-loom-deoband.com/arabic/magazine/tmp/1326687834fix4sub7file.htm

which dogmas are based on erratic perceptions of pure monotheism as founded in the Gospel.[82]

The anti-Islamic Christian apologetics did not serve as a defense of the Christian theology *per se*, but should rather be understood as a way to protect Christian territory. It served therewith chiefly as a way to agitate a sense of reprehension among the Christians and thence a combative spirit against the Muslims. The influential treatises of Pope Urban II (d. 1099) are a clear example of such an approach. Throughout his pontificate the reconquest of Christian territories remained his primary concern.[83]

For the Muslims emotional apprehension could not prevail over rational (or formal, if you like) perception, let alone over revealed prescripts. Alternatively, the way in which the Muslims considered non-Muslims had of course played to a certain extent a role in how the latter were being treated, but generally speaking not in the way the *fiqh* in Andalusia concerning non-Muslims was constructed by scholars or executed by Islamic law. In other words, daily reality was not consistently engineered by the *fiqh* of the scholars or policies of the ruler. Thus in Andalusia the otherness of non-Muslims or how they regarded the Muslims did not serve as a decisive element of how Islamic law ought to react on them. In that, the *fiqh* was mostly engineered as an attempt to reflect on the Quran and *sunnah*, or at least how Muslim scholars interpreted these sources. However, it is of pivotal importance to borne in mind throughout this thesis the fact that Islamic law -wherever it might have taken place, and irrespective of the era- has never been a coherent and consensual codex exclusively based on the Quran and *sunnah*, nor always a consistently reflective execution of the *fiqh*. Andalusia was no exception on this rule. That is one of the two chief reasons why Islam should be reigned by a ruler; on the one hand deciding what Islamic law is on grounds of consultation of his scholars who explain and vindicate their *ijtihād* (legal reasoning) behind their *fiqh*, and on the other hand deciding rules not (explicitly or clearly) mentioned in the Quran and *sunnah*.

Despite the fact that Muslim scholars are unanimously convinced of *the* Islamic Law or God's Law,[84] more and more scientists claim that there is no such thing as *the* Islamic Law, but only Muslim law(s).[85] Nonetheless, even the most opposing revisionists against the idea of the Islamic Law can not but assent to the existence of four formative sources on which Islam law, the Islamic Law, Islamic laws, or Muslim law is founded: 1) the Quran, 2) the *sunnah*, 3) the *ijmā'* (consensus among Muslim scholars), and 4) the *qiyās* (syllogistic

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[82] There are two treatises survived in manuscripts: *Maqālah fī ḥaqīqat al-diyānah* [tr.: Treatise on the Truth of the [Christian] Religion], MS Aleppo; *Maqālah fī al-radd 'alā al-muslimīn* [tr.: Treatise on the refutation of Muslims], MS Aleppo.

[83] David Nirenberg, "Christendom and Islam," in *Christianity in Western Europe c.1000-c. 1500*, ed. M. Rubin and W. Simons (Cambridge: Cambridge University Press, 2010), 149-156.

[84] Wael Hallaq, *The Origins and Evolution of Islamic Law* (New York: Cambridge University Press, 2005), 96, 97.

[85] Knut Vikor, *Between God and the Sultan: a History of Islamic Law* (London: Hurst and Company, 2005), 1.

reasoning or analogical deduction).[86] All examples of the *fiqh* concerning non-Muslims discussed in this thesis are in one way or another to different degrees based on one or more of these four sources.

The framers of Islamic law: rulers *and* scholars, or scholarly rulers?

The *fiqh* in Andalusia was never confined to a strict and binding compendium or codex serving as what we nowadays would call a constitution, but rather fragmentary compiled in voluminous legal works.[87] As a result, Islamic law is the totality of laws as laid down in the *fiqh* together with the execution of laws and policies of which some may not have been founded in, or even have been conflictive with the *fiqh*. *De facto*, the *fiqh* is restricted to the realm of written formality, but serves in many cases as an imperative basis for Islamic law of which it was to differing degrees part.

      Notwithstanding the fact that the ruler was burdened with the responsibility to determine and to execute God's Law, he seldom appropriated monopoly on it. This is no oxymoron, since both the determination and execution of Islamic law by the ruler were chiefly tasks assigned to him by scholars who were commonly more acquainted with and grounded in the *fiqh*.[88] Indeed, in formal terms the ruler was the exclusive pronouncer of the law, but this verbal determination had generally speaking been an executive formulation of optional rulings proposed by scholars from which the ruler chose. In this, it is chiefly the opinion of the judge (*qāḍī*) who actually was regarded to have the paramount voice. In the words of the Mālikī jurist Ibn Farḥūn (d. 1397): "Know that the office of *qāḍī* is among the most powerful and venerable offices. The *qāḍī* is the orbit of legal rulings, and he is responsible for all aspects of judgement, no matter how large or small, without limits."[89] Consequently, it deemed the ruler necessary for maintaining his power to cooperate as harmoniously as possible with the *quḍāt* (pl. of *qāḍī*). But cautiously, it is more plausible that the *quḍāt* had been the pronouncers of the ruler's decisions, than that they overruled the ruler's decrees in case of disagreements.

      Among the most valuable *fatwā*-compilation which gives us a revealing insight in how Islamic law in Andalusia was being integrated, is that of Ibn Yaḥyā al-Wansharīsī (d. 1508). Being himself a famous scholar, Al-Wansharīsī did not only compile an enormous number of *fatāwā* of celebrated scholars from Andalusia from the early years till his period, but integrated his own *fatāwā* also.

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[86] *Qiyās* is a legal methodology through which scholars use a particular ruling founded in either the Quran or *sunnah* for a particular case which lacks foundation in the Quran or *sunnah* as departure-point for searching for a ruling to this case on which the Quran and *sunnah* are silent through deduction/analogy. See for a profound explanation of *al-qiyās*: Felicitas Opwis, *Integrating Maṣlaḥa into Legal Reasoning (Qiyās)* (Leiden-Boston: Brill, 2010), 69, 70, 74-77. See for a historical discussion of *qiyās* and the practical methodology: Muhammad Kamali, *Principles of Islamic Jurisprudence* (Cambridge: The Islamic Text Society, 2011), 264-301.

[87] Christian Müller, "Non-Muslims as Part of Islamic Law: Judicial Casuistry in a Fifth/Eleventh-Century Law Manual," in *The Legal Status of* dhimmīs *in the Islamic West,* ed. Maribel Fierro and John Tolan (Turnhout: Brepols, 2013), 25, 26.

[88] Christian Müller, "Judging with God's Law on Earth: Judicial Powers of the Qāḍī al-Jamāʿah of Cordoba in the Fifth/Eleventh Century," *Islamic Law and Society 7,2* (2000): 61, 63, 64.

[89] Ibrāhīm Ibn Farḥūn, *Tabṣirat al-ḥukkām fī uṣūl al-aqḍiyyah wa manāhij al-aḥkām* [tr.: The insight of the rulers concerning judgements and methodologies of rulings] (Cairo: 1884), vol. i, p. 93.

Al-Wansharīsī is highly regarded by both Muslim scholars and non-Muslim historians for his punctual and broad referential adaptation of Mālikī (eponym of Mālik Ibn Anas, the founder of the Mālikī School of legal thought, d. 795) legal rulings.[90] It is also al-Wansharīsī who importantly contributed to the convincing presupposition that ʿUmar's Pact indeed existed (in the past tense, because the archetype is lost).[91] In his influential *al-Miʿyār al-muʿrib* al-Wansharīsī includes a letter of a Christian commander to ʿUmar as a response to his his Pact, what became known as *al-shurūṭ al-ʿumariyyah* or *shuṭūṭ ʿUmar* (the conditions of ʿUmar).

In name of Allah, the Beneficent, the Merciful. This is a writing to ʿAbd Allāh ʿUmar the Commander of the faithful from the Christians of the Levant. When you entered us we asked you protection for ourselves, our families, our possessions, and the people of our denomination. We affirmed to the condition of not building in our cities and the surrounding areas a monastery, a church, a synagogue, or a monastic building, and that we will not restore what has been destroyed of it. And that we will not deny access to the Muslims during the day or at night, and that we will open our doors to [the Muslim] enterers or travelers.

…And [we affirmed to the condition that] we will not resemble ourselves with them [Muslims] in the [way they] dress […], that we will not speak like them or take the same names, and we will not seat on saddles, and not make the same swords, and not arm ourselves. And we will not etch our rings with Arabic, and will not sell alcohol.

…And [we affirmed to the condition that] we will fasten our sashed around our waist, and we will not expose our crosses or Books amongst the Muslims or in their markets. And we will poll our church-bell only once quietly.[92]

The Pact of ʿUmar had been an important document for Islamic law in Andalusia, since it contains one of the earliest and authoritative decrees about rights and obligations of non-Muslims falling under Islamic law. However, unfortunately, neither Western scientists of the Andalusian *fiqh*, nor of its history have succeeded in proving the acquaintance of Andalusian scholars with ʿUmar's Pact and the effects of it on the Andalusian *fiqh*. Al-Ṭurṭūshī mentions in his *Sirāj al-mulūk* that …"regards as churches, ʿUmar Ibn al-Khaṭṭāb -may Allah be proud of him- ordered that all churches which had been built after the entrance of Islam ought to be destroyed, and that no crosses my be showed outside the church."[93] Corroboration of the same ruling on grounds of ʿUmar's Pact can be found in Abū ʿAbd Allāh Ibn al-Munāṣif (d.1223), Ibn Khalaf al-Gharnāṭī (d. 1145), and Abū al-Rabīʿ Ibn Sālim (d. 1242).[94] All these four legal scholars base to a certain extent some of their rulings concerning

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[90] The Mālikī School of legal thought is one of the four survived legal Schools in the Sunni Muslim world. It was the dominant School of Andalusia.

[91] Muslim scholars have generally no doubt about the authenticity of ʿUmar's Pact. Visit for discussions, among others, the following websites: "*Qul ḥaqqan adhalla ʿUmar al-naṣārā fī al-ʿahdat al-ʿumariyyah* [tr.: Say: "In-deed did ʿUmar subject Christians in the Pact of ʿUmar]," accessed October 20, 2015 http://www.ebnmaryam.com/vb/t196770.html : "*Naṣṣ al-wathīqah al-ʿumariyyah: radd ʿalā al-mukhkharrifīn* [tr.: The text of the docu-ment of ʿUmar: Refutation of the charlatans]," accessed October 20, 2015 http://www.elforkan.com/7ewar/showthread.php/7561-نص-الوثيقة-العمرية-ردا-على-المخرفين!!

[92] Ibn Yaḥyā al-Wansharīsī, *Al-Miʿyār al-muʿrib wa al-jāmiʿ al-maghrib ʿan fatāwā ʿulamāʾ ifrīqiyyah wa al-andalus wa al-maghrib* [tr.: The demonstrative guideline and compiling coverer of *fatāwā* of African, Andalu-sian, and Maghrībī scholars] (Beirut: Dār al-islāmī, 1981), vol. ii, pp. 237, 238.

[93] Ibn al-Walīd al-Ṭurṭūshī, *Kitāb sirāj al-mulūk* [tr.: The book on the light of the kings] (Cairo: Alexandria, 1872), 164.

[94] Mentioned in al-Wansharīsī. Vol. ii, p. 238.

non-Muslims on 'Umar's Pact, which proves quite convincingly that the Andalusian *fiqh* was acquainted with the Pact.

The aforementioned conditions are believed to be a confirmation of the Christians of 'Umar's Pact (*shurūṭ al-'umariyyah*), in which the Christians impose upon themselves conditions as authentication of 'Umar's Pact. Let us now look to some sections of the alleged Pact itself.

This is what 'Abd Allāh 'Umar, the Commender of the faithful, has given of protection to the people of Iliyā' [Jerusalem]. He has given to them protection for themselves, their belongings, their churches, their crosses..

[…] and that their churches will not be inhabited or destroyed, and that nothing will be reduced reduced of it, or from their crosses, or something of their belongings.

And upon the people of Ilyā' is the obligation of paying the *jizyah* […], and that they deport the Romans and the bandits.

And for those among the people of Ilyā' who wants to emigrate with themselves and their belongings along with the Romans, for they are secured [allowed to do so]. […] And for those who what to stay, and upon him is the same obligation of paying the *jizyah* […].

And in this writing there is the Covenant [*'ahd*] of Allah, the protection [*dhimmah*] of His Messenger, the protection of the Caliphs, and the protection of the believers [Muslims], if [on the condition that] they give what is incumbent upon them of the *jizyah*.[95]

The fact that 'Umar was a contemporary of the Prophet and the second Caliph makes his legal opinions to be considered binding. Although the Pact of 'Umar was written on occasion of the Christians of the East, its influence was not restricted to them alone, but served also as an important legal source in Andalusia.[96] However, from a quantitative point of view the Pact could only be used for a small number of occasions on which it may could have been applicable.

As stated before, some historians argue that the Pact of 'Umar is merely an apocryphal treaty, which would possibly bear the impression that rulings in the *fiqh* which refer to, or which are even based on this Pact would had been sprouted out of vacuum. This is inaccurate. Even if the Pact of 'Umar is a fabrication as claimed by Arthur Tritton,[97] or wrongly accredited to him as argued by Salo Baron and Norman Stillman,[98] the spirit of the content is believed not to conflict clearly with the Quran and *sunnah*. Indeed, most of the rulings in the *shurūt* can not be traced back directly to the Quran or *sunnah* and may even seem to a certain extent deviant from it, but Muslim scholars stress that clear contrasts or contradictions are absent in the Pact itself. That means that Muslim scholars believe that the conditions have been imposed upon themselves by the Christians themselves. Nevertheless, the question whether or not we are dealing with a fabrication, or whether the Pact was harmonious to the revelation is not that much our concern, but rather the influence of its alleged content on Islamic law in Andalusia. The fact that this Pact is recorded in al-Wansharīsī, al-Ṭurṭūshī and some other Andalusian scholars -as showed earlier- as a binding document for Islamic law bears witness of this influence. To state that rulers would have base their opinion on the Pact

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[95] Al-Ṭabarī, *Tārīkh al-Ṭabarī*, vol. ii, pp. 448, 449.

[96] Janina Safran, *Defining Boundaries in al-Andalus*, 10.

[97] Arthur Tritton, *The Caliphs and their non-Muslim Subjects: a Critical Study of the Covenant of 'Umar* (London: F. Cass, 1970), 27.

[98] Milka Levy-Rubin, "Treaty of 'Umar" in *The Princeton Encyclopedia of Islamic Political Thought* (Princeton and Oxford: Princeton University Press, 2013), 562, 63.

of 'Umar if it had really been authentic as Tritton stresses, shows in my opinion that Tritton's knowledge of the scholarly legal discourse concerning non-Muslims is dramatically weak, since the reference of prominent scholars to the Pact as demonstrated above provide enough evidence that legal scholars had at least knowledge of its content and the conviction that it was 'Umar's work. How could this knowledge among legal scholars be hidden from the ruler's view? Furthermore, revisionist views such as mentioned above do not question the authenticity of the relative strict conditions of the *shurūṭ al-'umariyyah* (penultimate cited text) which are believed by Muslim scholars to have been imposed by the Christians upon themselves. It seems as if the *shurūṭ* are believed by them to be authentic given its seemingly harsh regulations, and that the Pact is believed to be fabricated given its tolerant content. The appropriate question in this respect is what could have moved the Christians to impose such restricting regulations upon themselves for which there is no clear impetus founded in the Pact. I argue that the Pact served as a protective covenant in which the objective was not to define obligations, but to guarantee rights and protection. The *shurūṭ*, I think, have been imposed by the Christians upon themselves by which the Pact has been empowered. In any case, 'Umar gave the instruction to sign these *shurūṭ,* which confirms the thesis that 'Umar at least agreed with it and authorized it.

As rightly observed by Safran, the Pact of 'Umar can be understood as a manual for how to attach to the own religious identity by defining sharp boundaries between the Muslims and non-Muslims.[99] In the case of 'Umar's Pact the burden of the responsibility to maintain and to execute God's Law rested on the shoulders of the Caliph, in this case 'Umar.

Contrary to what had been the case in Andalusia, the Caliph did not rely emphatically heteronomous on scholars during the formative era. One reason therefor is that the Caliph himself was regarded the supreme scholar. Patricia Crone argues almost facetiously that a letter survived from Walīd II (d. 744) shows that the "Caliphs were in no way subordinate to prophets, let alone to the Prophet."[100] It is true that the letter itself leaves the reader the impression that the Caliph propagandizes self-claimed infallibility,[101] but to posit thereupon the generalizing claim that the Caliphs did not regard themselves subordinate to the Prophet does not only attest to a biased, irresponsible, and selective revisionist approach, but runs utterly counter to what is determined sound through quadri-doctrinal consensus on normative level on the one hand,[102] and to what is accepted by serious scientists who arm themselves with historic evidence on the other.[103] The fact that the Caliph is considered God's substitute

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[99] *Ibid*., 11. Safran mentions the aforementioned understanding of 'Umar's Pact as only one possible interpreta-tion. It should be said -perhaps superfluously- that this understanding is the dominant among Muslims.

[100] Patricia Crone, *God's Caliph: Religious Authority in the First Centuries of Islam* (New York: Cambridge University Press, 1986), 27. Crone's observation is based rather selectively on the letters of Caliph Walīd II and Yazīd III (d. 744). It is remarkable that Crone states "let alone the Prophet", as if the Muslims regard the Prophet less fallible than the other Prophets mentioned in the Quran.

[101] See for the original text: Al-Ṭabarī, *Tarīkh al-rusul wa al-mulūk*, vol. iii, p. 356.

[102] I use 'quadri-doctrinal' for theses which are established by all four *sunnī* Schools of legal thought.

[103] Literature invalidating Crone's claim is too rich to discuss. But all *sunnī* literature and serious commentaries and studies of Islamic sources from the formative era of Islam conclude differently.

on earth and successor of the Prophet can not mean whatsoever that he was regarded equal to the Prophet,[104] since the Caliph is expected to do nothing but execute what Allah (via the Quran) and the Prophet (via the *sunnah*) have commanded.[105] Disobedience towards the Prophet is considered a sin equally grave to disobedience towards Allah, and the converse.[106] Concomitantly, the fact that some Caliphs had been dethroned by means of often bloody revolts by Muslim opponents, a fact which Crone can not neglect,[107] proves also differently.

Retrospecting on the notion of legal cooperation between the ruler and scholars discussed earlier, the exact way in which this cooperation was being realized is a matter of disputation. Nonetheless, it should be remembered that evidence for an alleged equipollent cooperation can only be purchased by practical documented examples; it is the execution or legal integration of the *fiqh* of scholars which reveal verifiably this cooperation, not the claims in themselves.[108] By way of clarification, the Umayyad 'Abd al-Raḥmān III was initially taken for an idiot by the Abbasid dynasty when he declared himself the Caliph, but since he was supported by Andalusian scholars the matter became less laughable. Crone states, accurately I think, that this support was an alternative for the threats of the Fatimid dynasty,[109] but she renounces to mention the already relatively firm established Mālikī School of legal thought in Andalusia as an enforcement of the Umayyad dynasty with whom Mālikī scholars felt more affiliated. Deductively, though the legal inter-dependence and cooperation between the ruler and scholars are difficult to examine, and although this inter-dependence and cooperation were susceptible to changes in accordance with the ruler's political attitude and agenda together with the political preference of scholars, I argue cautiously that in the period of our concern one might possibly speak more or less of equipollence. That leads us to the discussion of the legal cases.

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[104] The most celebrated book in Islam dealing with the virtues, conditions, rights, and obligations of the Muslim ruler is that of al-Māwardī. See for these elements and the way in which the ruler ought to be regarded: Ibn Ḥabīb Al-Māwardī (d.1058), *Al-Aḥkām al-sulṭāniyyah* [tr.: The rulings of the *ṣulṭān*] (Cairo: Maṭba'at al-sa'ā-dah, 1909), 4-11, 117-121.

[105] Substitute of Allah means in Islam that one should rule with what has been sent down by Allah. Successor of the Prophet means that one should follow the path of the Prophet in the way he constituted it.

[106] Scholars base this notion chiefly on Q. 4:14: "And whoever disobey Allah and His Messenger and transgresses His bounds, He will enter him in an eternal fire, and he will have a humiliating punishment."; Q. 4:80: "Whoever obeys the Messenger is obeying Allah. And whoever turns away -for We have not sent you as a watcher over them." In a *ḥadīth* the Prophet is held to have said: "Whoever obeys me, he has obeyed Allah. And whoever disobeys me, he has disobeyed Allah."

[107] Patricia Crone, *Medieval Islamic Political Thought* (Edinburgh: Edinburgh University Press, 2004), 287.

[108] There are many examples in which scholars claim to be in close understanding with the ruler who opens his ears for their opinions. See for example: Al-Ṭabarī, *Tarīkh al-rusul wa al-mulūk*, vol. v, pp. 3378-87.

[109] Patricia Crone, *Medieval Islamic Political Thought*, 273.

V. Legal rulings concerning non-Muslims

Dhimmī-bound rights

The Andalsuian *fiqh* does not touch merely upon the question what is unlawful for non-Muslims from the prohibitive perspective of Islamic law. Many rights of non-Muslims are placed in contrastive context to the prohibitions applicable to the Muslims. In other word, some rules apply in lawful realm exclusively to non-Muslims, and in unlawful context exclusively to the Muslims. The most important are the following:

- Consuming alcohol is considered a crime for the Muslims only.[110]
- Apostasy, which is a crime for the Muslims only. The reason therefor is that a non-Muslim who converts to another religion does not apostatize, since his initial religion is regarded disbelief like the religion to which he or she converts.
- False accusation of adultery. The punishment for the Muslims is 100 lashes, but if the wife is a *dhimmiyyah*, the husband ought to repent for his false accusation and remains in good understanding with his *kitābī* spouse.[111]
- Inter-denominational marriage between non-Muslims. A non-Muslim is allowed to marry a spouse from another religion than his or her own, the Islam excepted in case of a Muslim woman.
- Consuming pork and consuming meat not slaughtered in accordance with the Islamic prescripts. The selling of pork and meat which has been proven not slaughtered according to the ritual prescripts is however forbidden at public markets.[112]

Inter-religious marriages: marking the barriers between the *us* and the *them*?

We have already stressed the fact that emotional perceptions of the Muslims regarding non-Muslims did not play a leading role in the way Islamic law concerning non-Muslims in Andalusia was constructed. Even the conviction that the non-Muslim is spiritually filthy, inferior, and debauched should I think be understood as an 'indoctrination from above'. That means that the seemingly harsh and strict regulations of the *shurūṭ* could or should be

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[110] The punishment of drinking alcohol in Andalusian *fiqh* is 80 lashes. Christian Müller refers in a footnote to a particular verse as foundation for the punishment of 80 lashes. Both his reference to the verse, as well as his information about 80 lashed in the Quran are false. Firstly, the punishment of consuming alcohol lacks foundation in the Quran. It is in the *sunnah* where one is able to find some *aḥādīth* where the punishment is being founded, varying from beatings with shoes, to 80 lashed. The Mālikī *fiqh* bases its ruling concerning the consumption of alcohol on a *ḥadīth* in the most authentic compilations. Secondly, Müller refers to a verse which does not exist. It is unclear to me whether or not this is a typing-error. Müller refers in other places also to non-existing verses, which feeds the impression that it is not a typing-error, but inaccuracy of references.

[111] Christian Müller, "Non-Muslims as Part of Islamic Law," 28, 30.

[112] I have added the last two rights to the examples given by Christian Müller on grounds of comparative *fiqh*-literature.

understood as an identity-preserving legal treatise rather than a dictatorial edict.[113] Consequently, by defining strictly clear the sharp socio-religious boundaries between the Muslims and non-Muslims the former are held neither to become spiritually 'polluted' on the one hand, nor socially 'inferior' on the other.

Reflecting on the notion of filthiness, the reason why some Andalusian scholars disapproved or even forbade inter-religious marriages is defined by the reprehension of, among others, the consumption of alcohol and pork by the Christian wife in the presence of her Muslim husband and children.[114] This is highly interesting. Although 'Umar forbids marriage with Christian women chiefly because they lost their claim on the title 'People of the Book',[115] Mālik Ibn Anas does not refer to this alleged deviation from the revealed Scripture, but sees the customary otherness as decisive element for disapproving marriage with Christian women.[116]

Reflecting on the the notion of the superior state of Islam which has to be preserved given one potential interpretation of 'Umar's Pact, the reason why he forbade Christian butchers on Islamic markets may speak in favor of this notion.[117] However, neither 'Umar's rulings, nor that of Ibn Anas concerning marriages with Christian women had been adopted as definitively binding. What is striking thereto is that on the one hand 'Umar has always been regarded a quadri-doctrinal authority of the highest shelf, and that on the other hand Ibn Anas is the founder of the Mālikī School of legal thought dominant in Andalusia. Alternatively, irrespective of the fact that both 'Umar and Ibn Anas enjoy an enormous authority, when it comes to marriage with Christian women their rulings and opinion -respectively- were not adopted as the criterion. But caution should be exercised, since nothing of this all means that the right to marry Christian women had been actively and effectively binding, bearing in mind that there were also scholars who disapproved or even forbade such a marriage, but who could not enforce their opinions or rulings because of the lack of an absolutely binding judicial codex on the one hand, and because of the ruler's choice among the rulings proposed by their colleagues who did allow inter-religious marriages on the other.

The notions of spiritual filthiness and superiority demand attention of al-Wansharīsī in his ruling regarding the question whether or not the Prophet was allowed to marry women of

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[113] Janina Safran concludes in her words the following: "In general, it [the *shurūṭ*] established clear and recognizable boundaries between Muslims and non-Muslims." Janina Safran, *Defining Boundaries in al-Andalus*, 11.

[114] 'Abd al-Salām Saḥnūn, *Al-Mudawwanat al-kubrā* [tr.: The great legal corpus] (Cairo, 1908), vol. ii, p. 306.

[115] Ibn Qudāmah al-Maqdisī, *Al-Mughnī* [tr.: The enricher] (Ryad: Dār 'Alam al-kutub li al-ṭibā'ah wa al-nashr wa al-tawzī', 1997), vol. ix, p. 546. 'Umar even forced some Muslims to divorce their Christian wives.

[116] Of course, the prohibition on consuming pork and alcohol in Islam is a legal rule founded in the Quran and *sunnah*, meaning that religious motivations lay at their basis. But Ibn Anas does not refer to the religious deviation of the Christians from the Quran and *sunnah* as reason to disapprove marriages with their women.

[117] Al-Maqdisī, *Al-Mughnī*, vol. ii, p. 3. In his *al-Risālah* [tr.: The message] al-Qayrawānī (d. 996) includes Ibn Anas' reference to 'Umar's reason for prohibiting Christian butchers on Muslim markets in the following words: "Allah has now bestowed us with an increasing number of Muslims." Ibn Abī Zayd al-Qayrawānī, *Risālah al-imām Ibn Abī Zayd al-Qayrawānī* [tr.: The message of *imām* Ibn Abī Zayd al-Qayranwānī], ed. Sāliḥ 'Abd al-Samī' (Cairo, 1920), vol. 9, pp. 316, 317.

the Book (*kitābiyyāt*). It is interesting to see that al-Wansharīsī places this non-occurred issue in relation to the possible significance for the Prophet's community (*ummah*).[118] Al-Wansharīsī states that many divine regulations had been applicable to the Prophet only, and not to the *ummah*, in both prohibiting and permitting realm. Consequently, the highest regarded virtue of following the *sunnah* in its entirety holds true for those regulations from which the Prophet was not excluded. Al-Wansharīsī gives in permitting realm the example of unlimited polygyny, something lawful for the Prophet, but unlawful for the *ummah*.[119] In prohibiting realm he gives the example of marrying *kitābiyyāt*, something unlawful for the Prophet, but lawful for the *ummah*.[120] The reason for the different rulings of the Prophet vis-à-vis the *ummah* in context of inter-religious marriages is that the Prophet's spiritual holiness and purity would had been blemished by the disbelief of the *kitābiyyāt* on the one hand, and that his socio-political exaltedness would had been degraded and profaned on the other.[121]

Insofar as one might be able to perceive the rational grounds for this juridical differentiation, the most pivotal issue therein is twofold. For one, the prohibited element among *kitābiyyāt* is disbelief. As marriage is generally considered in theological discourse a lawful means for a blessed objective (procreation), but one which removes one's attention from God,[122] the best a Muslim man can do is marrying a woman as virtuous as possible who might remember him of his relationship with God. Islam regards virtuous Muslim women higher than virtuous *kitābiyyāt*. As the Prophet is considered the best of creations, only the best of women deserve to be married to him, i.e. the most virtuous women among the Muslims. The same does not hold true for the *ummah*, whose souls are inevitably sinful.[123]

Regardless the lack of *ijmā'* (consensus, the third source of Islamic law as mentioned in sub-chapter IV.I), it can generally be stated that the norm was allowance of marriage between a Muslim man and a Christian or Jewish woman, meaning the two most representative religionists among the *kitābiyyāt*. However, the remaining question here is which of the other religious denominations are eligible to marriage to Muslim man. In his *Kitāb al-kāfī* -which enjoys widely authenticity and authority even nowadays- of Ibn 'Abd al-Barr (d. 1071) it is ruled that a Muslim man is not allowed to marry a polytheist (*mushrikah*),

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[118] The Prophet was married to two non-Arabic and initially non-Muslim women, namely Saffiyyah Bint Ḥuyyayy of Jewish descendance, and Māriyyah al-Qibṭiyyah, who was of Coptic descendance. Since both women converted to Islam prior to their marriage to the Prophet, Muslim scholars share the conviction that the Prophet did never consummate a marriage other than with Muslim women.

[119] The prohibition on marrying more than four women at the same time is founded in Q. 4:4. "And if you fear that you will not deal justly with the orphan girls, then marry those that please you of the [other women], two, or three, or four…"

[120] Al-Wansharīsī, *Al-Mi'yār al-mu'rib*, vol. iii, pp. 103-105.

[121] *Ibid.*, vol. iii, pp. 103, 104.

[122] Ibn Ḥazm al-Andalusī, *Kitāb al-fiṣal fī al-milal wa al-ahwā' wa al-niḥal* [tr.: The book of typologies of denominations, desires, and religious sects] (Cairo: 1903), vol. v, pp. 117-119.

[123] Al-Wansharīsī, *Al-Mi'yār al-mu'rib*, vol. xii, p. 100.

an idolator (*wathaniyyah*), or a Magian (*majūsiyyah*). Marrying a Christian or Jewish woman is however allowed.[124] A Muslim lord is also allowed to arrange a marriage between the Christians reciprocally and the Jews reciprocally if they are his servants, but Christian and Jewish female servants and apostatized woman are not marriageable to the Muslims.[125]

The surplus value of Ibn 'Abd al-Barr in relation to inter-religious marriages is that he sheds light on the question how to rule if one of the two originally non-Muslim spouses converts to Islam. He rules that if the husband converts to Islam and his wife remains either Christian or Jew, then he is allowed to stay married to her, since a Muslim man is allowed to marry Christian and Jewish women. But if the wife is neither Abrahamic, nor does she convert to Islam, the marriage is invalid and hence ought to be dissolved as soon as the husband converts to Islam. When the wife of a non-Muslim man converts to Islam, she ought to abandon him immediately. If her (former) husband also converts to Islam within her waiting period,[126] he may take her back as his valid wife.[127]

Two remarks should not remain untouched. Being a clear Mālikī scholar, Ibn 'Abd al-Barr refers excessively to Ibn Anas' opinions, but not in context of inter-religious marriages. Although Ibn Anas stressfully disapproves a marriage between a Muslim man and a Christian or Jewish woman, the majority of Muslim scholars in Andalusia do not take on his vision. Among these permitting scholars Ibn 'Abd al-Barr undoubtedly demands a dominant place. Secondly, Ibn 'Abd al-Barr differentiates between rules applicable to the Christians and the Jews in relation to marriage on the one hand, and rules applicable to other non-Muslims on the other. It can be concluded without reservation that the overall majority of scholars consider both the Christians and the Jews *kāfirīn*,[128] while the majority among this overall majority allow marriage between a Muslim man and a Christian or Jewish woman. This seeming paradox deserves further elucidation.

We have seen that *kufr* is denominated as a religion by Q.109 -when touching upon the literal interpretation- due to the worship of idols at that time. *Kufr* nowadays bears chiefly the definition of disbelief. Marrying a woman who worships idols or who does not believe in a revealed religion is not allowed for a Muslim man to marry to.[129] It is not clear whether Ibn 'Abd al-Barr approves marriage with Christian and Jewish women on grounds of exception, or on grounds of monotheism and the reception of a revealed Scripture. In case the latter is

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[124] Muḥammad Ibn 'Abd al-Barr, *Kitāb al-kāfī fī fiqh ahl al-madīnah al-mālikī* [tr.: The sufficiency in the Mālikī *fiqh* of the people of Medina] (Ryad: Maktabat al-riyāḍ al-ḥadīth, 1980), vol. ii, p. 543.

[125] *Ibid*., vol. ii, p. 541.

[126] The waiting period for women in Islam is 4 lunar months and ten days. See: Q.2:228.

[127] Ibn 'Abd al-Barr, *Kitāb al-kāfī Ibid*., vol. ii, p. 550.

[128] The reason why the majority of scholars regard them *kāfirīn* is because they altered their Scriptures revealed to them by God and repudiated the Prophet's prophethood, as explained in II.II. It may feed the impression that in Islamic discourse the Classical definition of *kufr* may have been different from the (early-) modern and contemporary definition.

[129] "*Al-Zawāj min ghayr al-muslimīn* [tr.: Marriage with non-Muslims]," accessed October 23, 2015 http://fatwa.islamweb.net/fatwa/index.php?page=showfatwa&Option=FatwaId&Id=2779 ; "*Al-Zawāj min ghayr al-muslimīn* [tr.: Marriage with non-Muslims]," accessed October 23, 2015 http://fatwa.islamweb.net/fatwa/index.php?page=showfatwa&Option=FatwaId&Id=127599 ; "*Al-Ankiḥah al-bāṭilah* [tr.: Invalid marriages]," accessed October 23, 2015 http://islamqa.info/ar/147166

being taken as a measure, this would mean that Ibn ʿAbd al-Barr's ruling seems to be in conflict with the verses that define the believers in the Trinity-doctrine as polytheists in respect of the Christians, and those who disobey Allah and altered the Scripture as *kāfirīn* in respect of the Jews. In case the exceptional ground is being taken as a measure, this would then mean that there must be an element in Christianity and Judaism absent in the other religions which allows such a marriage. Scholars of the Classical period who allow inter-religious marriages have not succeeded in defining this possible exception. The scholars with the opposite view, however, suffice chiefly by concluding that the prohibiting element of inter-religious marriages is *kufr*, due to both alteration of the Scriptures, and polytheism.[130]

Given the fact that Muslim men are allowed to marry Jewish and Christian women, while polytheist, religionless, and -according to many- Magian women are unlawful, one might suggest that the different ruling depends on the religious closeness of the former two to Islam. The prohibiting argument that the Jews and the Christians lost their claim on the title 'People of the Book' -as proposed by, among others, al-Ṭabarī and al-Shāfiʿī, as we have seen in III.II.- seems to lack a firm ground when relating to the *ijmāʿ* that the *kitābiyyīn* are also disbelievers according to the very same source that allows marriage to their women, namely the Quran. This poorly studied, but important problem requires a closer look.

Initially, the claim of some scholars that the verses allowing marriage to *kitābiyyāt* have been abrogated not by the Quran itself, but by the *kitābiyyīn* by having altered the Scriptures revealed to them, does not convince enough scholarly colleagues to construct *ijmāʿ*. Naturally, also these scholars argue that they have altered the Scriptures and deviated from it, but they do not consider this a reason for not marrying *kitābiyyāt*. Q.5:5 which allows such a marriage happens to be one of the last verses revealed to the Prophet according to exegetes.[131] Shortly after that verse the Quran was considered complete(d) and not susceptible to changes whenever or for whatever reason. The possible objection that the *kitābiyyīn* altered their Scriptures and deviated from it after the completion of the Quran bears also no effect, since God is believed to foresee everything.

It is not inappropriate to discuss in this respect a contemporary *fatwā* issued by Yūsuf al-Qaraḍāwī (b. 1926). Al-Qaraḍāwī rules also that marriage with a polytheist or idolator is forbidden, and that marriage with Christian and Jewish women is permitted. But marriage with a disbeliever (*mulḥidah*, atheists) is forbidden, deists comprised.[132] The reason I consider al-Qaraḍāwī's *fatwā* of contributive value for our wider discussion is twofold. For one, as initially an Egyptian authority and later an international authority who has many interactions with Christian and Jews on the highest level, al-Qaraḍāwī is expected not to be socially restricted and restricting.[133] For another, his permitting element of marrying Christian and

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[130] Ibn Idrīs al-Shāfiʿī, *Kitāb al-umm* [tr.: The book of exemplar] (Cairo, 1903), vol. ii, p. 196.

[131] Abū al-Ḥasan al-Wāḥidī al-Naysābūrī, *Asbāb al-nuzūl* [tr.: The circumstances of the revelations] (Beirut: Dār al-kutub al-ʿilmiyyah, 1987), 137.

[132] "*Zawāj al-muslim bi ghayr al-muslimah* [tr.:marriage of a Muslim man to a non-Muslim woman]," accessed October 29, 2015 http://qaradawi.net/new/library2/267-2014-01-26-18-46-21/2465-

[133] Al-Qaraḍāwī is chairman of the International Union of Muslim Scholars. He is also the founder of the faculty of Islamic Studies and Islamic Law at the Qatar University. In Egypt he served as supervisor of the *a'immah* (plural of *imām*) under the Ministry of Endowments. He currently holds the function of head of the European Council for Fatwa and Research. See: Bettina Gräf and Jacob Skovgaard-Petersen, *Global muftī: the Phenomenon of Yūsuf al-Qaraḍāwī* (New York: Columbia University Press, 2009), 7-22, 88-94.

Jewish women is their belief in one God, regardless the way in which they believe or what they have altered or dogmatically innovated. As a result, al-Qaraḍāwī seems to recognize the Christians and the Jews as monotheists, while many Classical scholars regard the Christians polytheists due to the Trinity-doctrine on the one hand, and the Jews *kāfirīn* due to alteration of and disobedience to the Scriptures on the other. Conclusively, the reason given by Muslim scholars of the Classical era for allowance of marriage with Christian and Jewish women is based on exceptional arguments, while al-Qaraḍāwī serves his ruling by monotheistic arguments.

Of course, the last-mentioned problem of marrying atheist women applies not -or only sporadically- to the case of Andalusia. The chief reason therefor is that atheism had not been officially recognized, neither by Andalusian Islamic law, nor by non-Muslim Iberian law. That might possibly be the reason for the difference between the contemporary and Classical interpretation of disbelief on the one hand, and for the lack of consensual Classical rulings concerning marriage with atheist women on the other.[134]

Religious education and proselytization

It may be clear that when even general and seemingly clear questions are answered by opposing views, that specific and ambiguous questions would be susceptible to more uncongenial opinions. For example, Ibn Rushd selects a *fatwā* in his responsa-compilation which answers a query concerning a young child who has been baptized, but whose Muslim male caretaker had the intention to educate him as a Muslim.[135] The answer given is that if the caretaker had ordered the child to be Muslim, he would be considered for the *ṣalāt al-janāzah* (Islamic funeral-prayer).[136]

When it comes to proselytization Andalusian *fiqh* was very clear. A Muslim is of course allowed to try to convert non-Muslims to Islam, but he is neither allowed to coerce them, nor to proselytize their children before adolescence. Even teaching the Quran to non-Muslim children is for that reason forbidden.[137] Since a child is regarded religiously

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[134] Scholars from the late Classical era invented the term '*ilḥād*' (atheism, i.e. not believing in God at all) and its derived forms as to differentiate between the Quranic definition of *kufr* and the more recent definition of atheism. *Kufr* applies to those who do not believe in God, His angels, His Books -the Quran included-, His Messengers -the Prophet included-, and the Hereafter all together in the way the Quran demands. *Ilḥād* applies to those who do not believe in a revealed religion.

[135] It is quite remarkable to see that this *fatwā* of Ibn Anas quoted by Ibn Rushd requires that the caretaker should have been demanding the child to be Muslim, while Ibn Anas rules that people do not have to pronounce the *adhān* (call to prayer consisting out of the profession of faith) in the ears of newborns, because every newborn is born with a Muslim spirit. This last complement is based on a *ḥadīth* which states that "…every newborn is born with a sound nature [*al-fiṭrah*]. They are his parents who [educate him as to] make him a Jew, or a Christian, or a Magian." See: Mālik Ibn Anas, *Al-Muwaṭṭa'* [tr.: The systemizer], "*Kitāb al-janā'iz* [tr.: The book on funerals]," 52.

[136] Muḥammad Ibn Rushd, *Al-Bayān wa al-taḥṣīl wa al-sharḥ wa al-tawjīh wa al-taʿlīl* [tr.: Clarification and achievement: explanation, guidance, and justification], ed. Saʿīd Aʿrāb (Beirut: Dār al-gharb al-islāmī, 1984), vol. ii, p. 222.

[137] Al-Wansharīsī, *Al-Miʿyār al-muʿrib*, vol. xi, p. 96.

defenseless and therefore his possible conversion is conceived as invalid. Furthermore, it is the right of the parents to religiously educate their children as they wish.[138] It is also in this context where we might find a basis for the notion of identity-preserving boundaries as laid down in the *fiqh* of Andalusia. Leaving non-Muslims the freedom to profess and educate their religion is a keynote-figure for preserving the boundaries between the *us* and the *them* (the own identity and the alien identity). Perhaps the attachment to this boundary-principle converges with the fear of syncretism, something more plausible in an inter-religious setting, than in a segregational setting.[139]

Burial and funeral-ritualism

In Islam the funeral-rituals play a significant role, because of the conviction that a deceased person is given over to the prayers of the Muslims while he or she can not add anything anymore in his or her religious scale. Washing the corpse serves thereto as an initiating or preparatory ritual for metempsychosis.

In case a Christian person dies and leaves a Muslim son, he is not allowed to wash him, or to wrap him with a winding-sheet for burial, or to perform for him the *salāt al-janāzah*, except when the son fears corporeal defilement by Christians hands.[140]

Regarding a Muslim who dies in a region of the Christians or the Jews before he learned how to pray, the *ṣalāt al-janāzah* ought to be performed for him, although his corpse had been removed to another non-Muslim territory. Moreover, it is seen that the corpse should preferably not be removed, and that the *ṣalāt al-janāzah* is being performed for him although the Christians and the Jews live there, because a Muslim is alway free and independent.[141]

A related enquiry deals with a Christian woman whose son from her Muslim husband dies in absence of his or her father and is buried by the Christian relatives of the mother. Should the Muslims in such a case remove the corpse that day or the following if they come to know of this Christian burial? The answer is confirmative, except if the Muslims fear for infraction of the corpse.[142]

In even more details, if a building with Muslims and one non-Muslim collapses and the corpses can not, as a consequence, be identified, should the Muslims wash them all and perform the *ṣalāt al-janāzah* for them? The answer given here by Ibn Rushd is confirmative alike, but negative in the opposite case.[143] It may possibly come as a surprise to see in this respect that Ibn Rushd -who is generally held to be the jurist and philosopher who is considered by the West one of the most modern thinkers of his age and the scholar with whom the West feels the most affiliated from among his scholarly contemporaries- is abrogating the

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[138] *Ibid.*, vol. vii, p. 89, 90.

[139] Dogmatic subjugation did of course occur, but in the period of our concern merely as a transgressive act outside the *fiqh*, not in name of it or based on it as far as I have been able to verify.

[140] Al-Wansharīsī, *Al-Miʿyār al-muʿrib*, vol. II, p. 248.

[141] *Ibid.*, vol. ii, p. 258.

[142] *Ibid.*, vol. ii, p. 283.

[143] *Ibid.*, vol. ii, p. 277. The opinion that the *ṣalāt al-janāzah* ought not to be performed if the unidentifiable corpses are all non-Muslims except for one is the result of Ibn Rushd's own reasoning.

view of the direct student of Ibn Anas (Ṣaḥnūn) almost four centuries earlier, who states that also in that case all the corpses should be washed and performed the *ṣalāt al-janāzah* for.

Espionage

Another seemingly radical opinion of Ibn Rushd is related to a very sensitive problem, namely espionage. Ibn Rushd proposes that a Muslim spy who provides non-Muslim enemies with secret information should be executed, since a person who cooperates with non-Muslims as a spy is more dangerous to the Muslims than non-Muslims are.[144] In this respect Ibn Rushd even overrules the ruling of Ibn Anas himself, who states that the *imām* in office should decide his fate.[145]

Similar to the case of hypocrisy, the *fiqh* does not regard a spy disbeliever on dogmatic grounds, but on social grounds. Spies are therefore treated with another ruling outside the inter-religious *fiqh*. Since apostates, hypocrites, and spies are believed to form a major threat from the inside, their religiosity bears no significance, even if they follow all dogmatic and ritual prescripts. All of them ought to be executed on grounds of their danger from the inside according to the Andalusian *fiqh*. The common ground between them is that they leak sensitive information to the enemies.[146] The complicating factor within Islamic law as regards espionage and hypocrisy is that 'Muslim' spies and hypocrites should have undoubtedly been proven to be unbelievers (as for apostasy this proof is rather clear) on the basis of the *fiqh*, which on its turn is expected to be based on the Quran and *sunnah*. It is also in this context where the *fiqh* of Andalusia shows a discrepancy with its foundational principles, namely the Quran and *sunnah*. We can not ignore the discussion around this alleged discrepancy in this respect.

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[144] *Ibid*., vol. ii, pp. 536, 537.

[145] The head-breaking question concerning the penalty of the apostate and the Muslim spy (related to each other due to the great risk of leaking sensitive information to non-Muslims which might be used against them) is being discussed within the context of the circumstances of the revelation of *sūrah* 60. The Companion Ḥāṭib Ibn Abī Baltaʿah (d. 650) came to know that the Prophet was planning to take the Meccan enemies by surprise in order to re-appropriate the belongings of the Muslims which the former stole. Moved by fear for the lives of his Meccan family, Ibn Abī Baltaʿah secretly sent a letter along with a woman heading towards Mecca to inform the Meccans about the Prophet's intention. However, the letter was intercepted before reaching its destination, whereupon Ibn Abī Baltaʿah was brought for justice to the Prophet, who granted him mercy. ʿUmar Ibn al-Khaṭṭāb asked the Prophet for permission to decapitate him, but was brought to silence by the Prophet's appreciation of Ibn Abī Baltaʿah's heroic performance during the battle of Badr in 624. This gave impetus to two opposing opinions among Muslim scholars about the question whether or not a Muslim spy should be executed although he swears repentance. The scholars advocating mercy state that the Prophet's mercy on Ibn Abī Baltaʿah is a binding example, while the opponents state that the case of Ibn Abī Baltaʿah is an unique one, not claimable by other 'repenting' spies. Moreover, they add, a person able of presenting himself as a Muslim and thus being accepted as a member of the Muslim community while he is purposefully the enemy, is also capable of faking his repentance. An exegetical and an academic assessment follow beneath.

[146] Ibn Ḥazm al-Andalusī, *Kitāb al-fiṣal*, vol. iii, pp. 74-77.

During the marsh to Tabūk many Muslims left behind.[147] Three of them were known as pious Muslims, Ka'b Ibn Mālik (d. 671), Murārah Ibn al-Rabī' (d. 664?), and Hilāl Ibn Umayyah (d. 674?). When the Prophet came to know that they did not desert because of fear for their families' life, but because of their weakness and that they persuade other Companions not to battle, the Prophet ordered the Muslims not to interact with them. However, Q.9:118, 119 were revealed granting them forgiveness. The Prophet went back to them and forgave them, whereafter things returned to normal.[148]

The case of the three aforementioned Companions did not give rise to serious protests from other Companions who did participate in the marsh to Tabūk. That does not hold true for the case of the Companion Ḥāṭib Ibn Abī Balta'ah. Ḥāṭib belonged to the *muhājirīn* (the Companions who emigrated from Mecca to Medina with the Prophet). Since most of his relatives did not convert to Islam, they staid in Mecca. He was the only member of the Balta'ah clan who emigrated to Medina. When Ḥāṭib took knowledge of the Prophet's intention to take the Meccan enemies by surprise as recompense for their robbery of their caravans earlier,[149] he started to fear for the lives of his relatives in Mecca. He wrote a letter in which he informed the Meccan enemies of the Prophet's intention and sent it along with a women who was heading towards Mecca. However, the Prophet is believed to have been informed by God of Ḥāṭib's plan and was able to intercept the letter. Ḥāṭib was brought to justice and the Companions already prepared their swords. To everyone's surprise, the Prophet granted him mercy, upon which the Companions started to complain because the fear of repetition which may lead to a secret attack from the Meccan enemies.[150]

In the *fiqh* eventual remorse for espionage and hypocrisy does not lead to abrogation of the death-penalty. Why then were the three 'hypocrite deserters' and the 'spy' granted mercy? The answer to this question is of pivotal importance for our wider discussion regards to the Andalusian *fiqh* concerning non-Muslims. As regards the three 'hypocrite deserters', they were forgiven for the fact that they eventually admitted their cowardliness. As regards to the 'spy', he was forgiven because of the fact that he had taken part in the Battle of Badr in

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[147] Tabūk is a place in the North-East of Saudi Arabia. It was expected that the greatest battle would take place there against the Byzantine army. However, it did not come to an encounter, since the Byzantine army did not appear. Nevertheless, Muslim scholars regard this marsh the initiating force for the decisive battle of Yarmūk a decennium later in 636 (four years after the death of the Prophet). See for a contextual explanation of Tabūk in the Quran: Abū al-Ḥasan al-Naysābūrī, *Asbāb al-nuzūl*, 165-169.

[148] Al-Bukhārī, *Jāmi' al-Ṣaḥīḥ*, "*Kitāb al-jihād* [tr.: Book on the *jihād*]," no. 141; Muslim, *Ṣaḥīḥ Muslim*, "*Bāb faḍā'il al-ṣaḥābah* [tr.: Chapter on the virtues of the Companions]," no. 161; Abū Dāwud, *Sunan Abī Dāwud*, "*Kitāb al-jihād* [tr.: Book on the *jihād*]," no. 98; Al-Tirmidhī, *Sunan al-Tirmidhī*, "*Bāb tafsīr sūrah 60* [tr.: Chapter on the exegesis of *sūrah* 60]," no. 60; Ibn Ḥanbal, *Musnad Ibn Ḥanbal*, no. 1:79.

[149] The intention of the Prophet was not to attack the Meccan enemies, but to re-appropriate their belongings which the Meccan enemies robbed earlier and as an adjustment of their attacks on the Khuzā'ah tribe which had recently become an ally of the Prophet. See for the *hadīth*: Al-Bukhārī, *Jāmi' al-ṣaḥīḥ*, "*Kitāb al-ḥajj* [tr.: Book on the pilgrimage]," no. 43, "*Kitāb al-ṣayd* [tr.: Book on hunting]," nos. 8, 10, "*Bāb 'an al-jizyah* [tr.: Chapter on the *jizyah*]," no. 66, "*Bāb 'an al-'ilm* [tr.: Chapter on knowledge]," no. 39; Muslim, *Ṣaḥīḥ Muslim*, "*Kitāb al-ḥajj* [tr.: Book on the pilgrimage]," nos. 445, 447, 448; Abū 'Abd al-Raḥmān al-Nasā'ī, *Sunan al-Nasā'ī* [tr.: The Traditions of the Prophet by al-Nasā'ī], "*Kitāb al-manāsik* [tr.: Book on rituals]," no. 110; Ibn Ḥanbal, *Musnad Ibn Ḥanbal*, nos. 1:259, 316, 318.

[150] Abū al-Ḥasan al-Naysābūrī, *Asbāb al-nuzūl*, 281-283.

624.[151] In other words, it is by the very Quran and *sunnah* that these four Companions were regarded Muslims even after such grave sins as hypocrisy and espionage.[152] Thus the Quran and *sunnah* do not look to the dangerous act of hypocrisy and espionage solitary and con-textless, but seem to regard the broader context in which a particular hypocrite or spy acts a decisive element for confirmation or negation of the death-penalty. The religiosity of the particular hypocrite or spy has thereby the paramount voice.

As we have seen, Ibn Anas -as founder of the Mālikī School of legal thought prevalent in Andalusia- places the responsibility of the penalty between the hands of the *imām* in office, who should decide his fate. The *imām* may or may not show mercy. Ibn Rushd rules differently by rigidly judging that a spy ought to be executed. No exception is made. Al-Wansharīsī takes also on Ibn Rushd's definitiveness.[153] However, Maribel Fierro observes correctly, I think, that apostasy and hypocrisy did not always lead to trial, but to exclusion from the Muslim community instead.[154] One might state that the alternative of juridical trial, which results in the death-penalty, was social pressure, which results in expulsion.

In sum, the fact that the Andalusian *fiqh* generally rules that spies ought to be unexceptionally executed had to do with economic-pragmatic reasons in the first place, and not -or only in the second place- with the religiosity of spies. To fully justify the death-penalty, the Andalusian *fiqh* generally judges that spies are self-evidently disbelievers. As a consequence, spies are first excommunicated and thence executed. As is the case in other dis-cussions, the examples of Ibn Abī Balta'ah, Ibn Mālik, Ibn al-Rabī', and Ibn Umayyah are generally conceived by the *fiqh* in specific, and by Islamic law in general as exceptions decreed by Allah and the Prophet.

Celebrating non-Muslim feasts

The celebration of non-Muslim religious feasts is forbidden by *ijmā'*. Celebrating Christian New-Year is specifically mentioned in Al-Wansharīsī, in which it is ruled that it is unlawful.[155] Al-Wansharīsī himself has been posted an enquiry whether receiving presents from non-Muslims in occasion of a religious feast is lawful. The answer given is that it is not unlawful, but that he reprehends it.[156]

The Andalusian *fiqh* concerning celebrating non-Muslim feasts may also serve in

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[151] For an academic account related to the consequences of the discussions among scholars concerning the ques-tion whether or not similar cases ought to be considered apostasy and thence eligible to the death-penalty, see: Joas Wagenmakers, "De vijanden van soera 60," *Zemzem: tijdschrift over het Midden-Oosten, Noord-Afrika en Islam* (3)2007, 54-63.

[152] Muslim exegetes agree upon that *sūrah* 60 has been revealed in occasion of Ḥāṭib Ibn Abī Balta'ah. See: Abū al-Ḥasan al-Nayasābūrī, *Asbāb al-nuzūl*, 181.

[153] Al-Wansharīsī, vol. iv, p. 74.

[154] Maribel Fierro, "Religious dissension in al-Andalus: ways of exclusion and inclusion," in *Al-Qantara 22 (2)*, p. 265.

[155] *Ibid.*, vol. xi, p. 150.

[156] *Ibid.*, vol. xi, p. 111.

favor of the notion of identity-preserving boundaries. The *sunnah* is rich of *aḥādīth* that explain why adopting non-Muslim customs are forbidden. The most significant of these is the prevention of similarities between the Muslims and non-Muslims, from which possible religious deviation and innovation may result, two dangers warned for in a great number of *aḥādīth.*

The proper question that might possibly be posted is whether all these discussed matters are hypotheses, or that they have factually occurred. It is likely that not all rulings which have been discussed in the *fiqh* served as answers to practical cases, like probably the ruling of washing and praying for unidentifiable people who died as a result of a building's collapse. Nonetheless, we will see that some pivotal problems concerning non-Muslim legal treatments have been documented and thus may serve quite responsibly as referential comparison with the written formality of the *fiqh* discussed in this chapter.[157]

VI. The Documented Daily Reality

Before discussing the literature dealing with factual cases it should be stressed that the quantity of this literature is many times poorer than the *fiqh*-literature. The *fiqh* does include practical cases, but are often difficult to find because of the low quantity of it on the one hand, and because the reader is in many cases not able to deduce from the text whether it is a discussion of a practical case, or that it merely serves as a suppositional frame on the other. Consequently, a comparative analysis can not be realized on the same footing. The best I could do was seeking for as much historic literature as possible that deals with the same or related thematic discussions. This has been a head-breaking task, but deemed necessary, as it is the only adequate way to answer the main-question of this thesis, namely how the *fiqh* concerning non-Muslims was related to daily reality. The selection of the examples discussed in this chapter are either described by the literature itself as incidents, or reveal enough elements to conclude that it are indeed practical examples. Some themes of these practical cases are included in the *fiqh*-literature analyzed in the previous chapter. In many cases one is to conclude that a particular ruling in the *fiqh* is such specific and individual, that it could only have been a practical case.

Ceremonial inter-religious encounters

The oldest survived work dealing with the Muslim conquest of Spain is Ibn al-Qūṭiyyah's *Tārīkh iftitāḥ al-andalus*. For us Ibn al-Qūṭṭiyyah is specially regarded not only for his chief work, but also for his socio-religious and ethnic situation from which he approaches inter-religious matters.[158]

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[157] Some of the *fatāwā* discussed in chapter III are answers to practical examples. They pass in revue in this chapter as well.

[158] The name Ibn al-Qutiyyah is a matronymic designation, literally meaning 'son of the Gothic woman'. Like his name reveals, Ibn al-Qūṭiyyah descends from a Gothic woman. However, it was not his mother, but his great grandmother who was a Visigoth. Ibn al-Qūṭiyyah initially, or originally, was a grammarian. He came to be known as a historian only after writing the *Iftitāḥ*, the book through which he gained his well-deserved fame. See: J. Bosch-Vila, 'Ibn al-Qutiyya', *Encyclopaedia of Islam* (Leiden: Brill, 2004), vol 5, pp. 847, 848.

Possibly the most obvious example in the *Iftitah* of inter-religious cohesion is presented by Ibn al-Qūṭiyyah as a logical pragmatic result of a highly organized political structure by 'Abd al-Raḥmān I (d. 788), who wished to control on grounds of common satisfaction. Ibn al-Qūṭiyyah proudly addresses that…

Because 'Abd al-Raḥmān had very clearly divided the high functions such as high judges, lieutenants, governors, monetary administrators, *muftīs* [religious scholars who give advice on legal matters] and interpreters of the law, he was able to construct a legal system according to which not only the ruling Muslims and the elites -both the Muslims and non-Muslims- could live in calmness, but also the *kitābiyyīn*.[159]

The quoted anecdote is in fact the oldest survived part in history which states more or less that a kind of religious freedom existed in Andalusia. In that sense we are dealing with a peculiar and highly regarded text. However, the quoted part creates a breeding-ground for uncertainties, as it ambiguous. It is only pages later in his book that Ibn al-Qūṭiyyah actually refers to a certain event which may lend support to our notion of inter-religious cohabitation outside the *fiqh*. Ibn al-Qūṭiyyah illustrates loudly:

It is reported on the authority of Layth Ibn Sa'd that when Mūsā [Ibn Mūsā] entered Andalusia they [the Christians] had idols in their churches [in the previous subparagraph Ibn al-Qūṭiyyah mentions Cordoba]. He became flabbergasted by the amount of gold and silver used for the idols. Then he witnessed the procession with the cross, which was decorated with pearls, silver, and gold, so heavy in weight, that even a group of men could not easily carry it. And Ibn Abī Layl al-Ṭujībī reported to me on the authority of Ḥamīd, on the authority of his father, that he [the father of this Ḥamīd] said: "The image was of such an astonishing kind, that Mūsā [Ibn Mūsā] send a message to the prince of the believers [the then Caliph Al-Mutawakkil (d. 861)] that this was not a conquest, but the Day of Resurrection.[160]

The fact that specific details of the Christian ceremonies are mentioned feeds the assumption that it had been observed by the Muslims who had really taken part in these ceremonies. Many historians -both Muslim and non-Muslim- base their idea of a tolerant Andalusia to a certain extent to Ibn Qūṭiyyah's *Iftitāḥ*.[161] The historian Ibn Mukhtār al-'Abbādī speaks even of 'ethnic Spain' (*Asbanah al-ithniyyah*), among others on the basis of the *Iftitāḥ*.[162]

In another section of Ibn al-Qūṭiyyah he states that…:

…again, the Christians were willing to sacrifice even some of their dearest material goods in return for a good relationship with the Muslims, like they did during their procession in Cordoba.[163]

Perhaps the most important part of the anecdote happens to be the most ambiguous, namely that Mūsā Ibn Mūsā (d. 862) sent a message to the Caliph that "this was not a conquest, but the Day of Resurrection". Ibn al-Qūṭiyyah discusses here the year 856, almost one and a half

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[159] Ibn al-Qūṭiyyah, *Tārīkh iftitāḥ al-andalus* [tr.: The history of the conquest of Andalusia] (Beirut: Mu'assasat li al-ṭibā'ah wa al-nashr, 1994), p. 104.

[160] *Ibid.* pp. 151, 152.

[161] See among others: James Nichols, "The 'History of the Conquest of al-Andalus' by Ibn al-Qutiya the Cordovan: Translation and Study" (PhD diss., Carolina: the University of North Carolina, 1975), vi-ix.

[162] Mukhtār al-'Abbādī, *Mushāhadāt fī bilād al-maghrib wa al-andalus: majmū'ah min rasā'il* [tr.: Witnesses in the land Morocco and Andalusia: a compilation of letters] (Madrid: Majallat al-ma'had al-maṣrī li dirasāt al-islāmiyyah, 1970), 40. *Al-ithniyyah* refers to a policy according to which societies with different religious and cultural backgrounds live in peace together, without loosing the religious and cultural identity of their origin.

[163] Ibn al-Qūṭiyyah, *Tārīkh iftitāḥ al-andalus,* 156.

century after the military campaign of Ṭāriq Ibn Ziyād. Mūsā Ibn Mūsā subjected Cordoba to his autonomous rule after a revolt against the Umayyads in Toledo in 842 and pronounced himself the new Emir or even the new king. The same seems to have happened in Cordoba in the following decennium,[164] but this can hardly be mentioned a conquest in Islamic terms (*fatḥ*), since the Muslims had already conquered Cordoba and other districts. A change of Muslim rulers can not be mentioned a *fatḥ* according to Muslim scholars, because the previous rulers were also Muslims claiming to rule in accordance with God's Law. The neutral or secular term for conquest would have been *ghuzwah*.[165] Whether the use of the term indicates that the conquest before Mūsā Ibn Mūsā's appropriation of Cordoba was not according to Islamic law, or that Ibn al-Qūṭiyyah or Mūsā Ibn Mūsā himself erred in using the term '*fatḥ*' is not clear. It may possibly have been used purposefully as to show discretely tactical –almost viciously- his political preference and hence support.

Regardless the fact that the overall majority of the scholars perceive the celebration of non-Islamic feasts an innovation which violates God's Law, the Muslims in Andalusia did (sometimes or perhaps often) participate in some of the religious occasions of non-Muslims.[166] 'Abd al-Majīd Ibn 'Abdūn (d. 1132) relates for example that Muslim women were in such good understanding with Christian women, that they accompanied them on religious holidays in their walk to the churches, something he strictly forbade.[167] Here we observe again a clear discrepancy between the *fiqh* of the scholars and daily reality.

Whereas the engagement with the Christians at the moment of consuming swine and alcohol is forbidden, the engagement of Muslim women with Christian women on the way to the church was not consensually regarded forbidden. Or at least the prohibition of Ibn 'Abdūn and others had not been obeyed at length. Two reasons may probably lay at the basis. Firstly, consuming swine and alcohol is strictly forbidden by the Quran, while non-Muslims may not be obliged by the Muslims to follow these prescripts. Since the consumption of swine and alcohol are not understood as religious prescripts but as customs about which either the Scriptures are silent, or of which the prohibiting parts have been altered, it provides no religious foundation for engaging with consumers of swine and alcohol as long as they relinquish it in the presence of the Muslims. Moreover, the *sunnah* includes *aḥādīth* which forbid engagement with people consuming alcohol at the moment of interaction with them. Secondly, it is possibly the religiosity of visiting churches that may have been the responsible element for allowance of Muslim women to walk with Christian women to the church. Conclusively, though this example is too restricted for a general statement, it may possibly add to the notion of the religiosity of the *kitābiyyīn* as a decisive measure for socio-religious cohabitation.

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[164] Roger Collins, *Early medieval Spain; Unity in Diversity,* ed. Maurice Keen (London and Basingstoke: The MacMillan Press, 1983), p. 191.

[165] *Lisān al-'Arab*, vol. v, pp. 3338, 3339.

[166] Abū Bakr al-Ṭurṭūshī, *Kitāb al-ḥawādith wa al-bida'* [tr.: Book on religious inventions and innovations] (Beirut: Dār al-gharb al-islāmī, 1990), 141.

[167] 'Abd al-Majīd Ibn 'Abdūn, *Thalāthat rasā'il andalusiyyah fī ādāb al-ḥisbah wa al-muḥtasib* [tr.: Three messages concerning literature about reward and rewarder], ed. Lipi Biropincal (Cairo: Al-Ma'had al-'ilmī al-faransī li al-athār al-sharqiyyah, 1955), 47, 48.

One example included in al-Wansharīsī deserves special attention. He represents a *fatwā* of Ibn Waḍḍāḥ (d. between 901 and 905) to an enquirer who wanted to know the legal ruling concerning the celebration of the 'night of the oldies' (*laylat al-'ajūz*), known by Spanish historians as Noche de la Vieja.[168] What makes this piece of text so valuable is not the *fatwā* which rules that it is unlawful to celebrate the *laylat al-'ajūz*, but the enquiry, in which it is stated that "our people [Muslims] nowadays do",[169] referring to the celebration of this feast by the Muslims.

Appointment of non-Muslim high officials

One of the keystones for the idea of Andalusian tolerance and social emancipation is the major achievements that the Christians and the Jews realized in their intellectual and cultural status. Irrespective of the possible political considerations, Andalusian rulers were not avaricious to enroll non-Muslims to high functions. When it comes to the way in which the Muslim ruler ruled his subjects, Ibn al-Qūṭiyyah can not but speak with pride and praise. This holds mostly true for Hishām (d.796). He states:

He looked after his mass with kindness, justice, and modesty. He visited the sick and attended the funerals. He collected the *zakāt* [legal alms tax], but reduced the *'ushūr*,[170] and he was prudent in his expenditure on dress and horses.[171]

Unfortunately, Ibn al-Qūṭiyyah does not mention the religion of the sick who Hishām visited, nor of which religion the funerals were that he attended. However, it would not go self-evidently too far to assume that Ibn al-Qūṭiyyah refers to both the Muslims and non-Muslims, since 'visiting the sick and attending the funerals' comes after the characterization of Hishām as a ruler who "looked after his mass with kindness, justice, and modesty", which is clearly general.

Hishām's successor al-Ḥakam (d. 822) enjoyed a similar laudatory characterization by Ibn al-Qūṭiyyah. "He conducted himself distinguishably with his people. He was very selective in his appointments and ruled as a believer, waging the *jihād* repeatedly".[172]

The appointment of non-Muslims in high offices had always been contributive to the normative Muslim notion of major tolerance and freedom, and to the academic historical notion of relative tolerance (and major tolerance when compared with other societies in the Middle Ages). In the words of Ibn al-Qūṭiyyah…:

Is it not unusual if the Abbasid Caliphs in the East [Baghdad] came to know that the Umayyads in the West [especially Cordoba and Granada, since the appointment of the Christian high officials took place there]

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[168] Fernando de la Granja, *Fiestas Christianas en al Andalus (Materiales para su Estudio) II: Textos de Tertui* (Proquest, 2005), 22.

[169] Al-Wansharīsī, *al-Miʿyār al-muʿrib*, xi, p. 222.

[170] *Al-ʿushūr* literally means tithes, referring to a tithe of agricultural benefits maintained that ought to be paid as a distinguished *zakāt*. The *zakāt* for non-agricultural property and non-estate is determined at 2,5% for jewelry and savings.

[171] Ibn al-Qūṭiyyah, *Tārīkh iftitāḥ al-andalus*, 42.

[172] *Ibid*., 45.

have appointed to the function of supreme secretary, and highest civil office, the Christian servant, the son of Antonius, son of Juliana, the Christian woman?! I wish I knew what I could do to stop you from this appointment. Choose one who will bring credit to the royal service. One who deserves it through his heritage. I am more worthy, as is Hamid al-Zajjālī, or Ibn Murīn, or Muhammad Ibn Sufyān, or one of the *rijāl al-ajnād*,[173] [......]. They are the descendants of the assignees of the Umayyad Caliphs, from whom the royal service would definitively benefit, rather than them benefiting from it.[174]

Inasmuch as the claimed relative tolerance as proposed by the majority of academics is based on general conclusions resulting from practical examples, the examples in themselves are rarely linked directly to the *fiqh*-literature. To understand this hiatus between written formality (the *fiqh*) and daily facts (practical examples), a discussion of the socio-religious situation of non-Muslims proves itself necessary.

The Jews under Visigoth rule had been repeatedly persecuted and coerced to conversion.[175] Under Muslim rule the Jews were not only free to remain Jews and to exercise their religion, but were generally even able to equally compete with the Muslims for the appointment to high offices. The cases of Hasdai Ibn Shaprut (d. 950) and Samuel Ibn Naghrela (d. 1056) appeal to confirmation of this equality. Ibn Shaprut served ʿAbd al-Raḥmān III as head of the customs department,[176] while Ibn Naghrela was the advisor of the governor.[177]

Two striking facts should be mentioned in respect of socio-religious emancipation. The many examples of appointments of non-Muslims in high offices -on which academics to an emphatic degree base their notion of relative tolerance- play almost no role in the self-consciousness among Andalusian scholars of their alleged tolerance. Literature of Andalusian scholars which refers to the social emancipation of non-Muslims as proof of their tolerance is hard to find. Secondly, and perhaps more importantly, the fact that non-Muslim high officials were preferred in many cases to converts with similar qualities seems to strengthen our thesis of identity-preserving religious boundaries, while creating intellectual opportunities for the *other*. In his *Kitāb al-Muʿjib* Ibn ʿAlī al-Marrakushī (d. 1250) reports the words of the Almohad Caliph Yaʿqūb al-Manṣūr (d.1199).

If I were convinced of their belief [the conversion of Jews and the Christians to Islam], I would allow them to engage with the Muslims in marriage and other issues. But if I would have been convinced of their disbelief [i.e. that they are pretentious], I would certainly kill their men, force their children to slavery, and distribute their possessions as bounty among the Muslims. But I have my serious doubts.[178]

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[173] I think it means something like 'men with abilities'.

[174] Ibn al-Qūṭiyyaḥ, *Tārīkh iftitāḥ al-andalus,* 46.

[175] Mercedes García-Arenal, "The Jews of al-Andalus," in *The History of Jewish-Muslim Relations: From the Origins to the Present Day*, ed. Abdelwahab Meddeb and Benjamin Stora (Princeton: Princeton University Press, 2013), 111.

[176] Raymond Scheindlin, "Hasdai Ibn Shaprut," in *The History of Jewish-Muslim Relations*, 134, 135.

[177] Raymond Scheindlin, "Samuel Ibn Naghrela," in *The History of Jewish-Muslim Relations*, 132, 133.

[178] Ibn ʿAlī al-Marrākushī, *Al-Muʿjib fī talkhīs akhbār al-Maghrib* [tr.: The admirable in outlining the reports of the Maghrib] (Cairo: Dār al-maʾārif, 1963), 223.

Al-Manṣūr did also appoint non-Muslims in high offices. Nonetheless, similar threats as quoted above lack non-converted Muslim high officials as target. Alternatively, it seems as if in some or many cases the Jews and the Christians were preferred to Jewish and Christian converts to Islam, due to the fear of hypocrisy and espionage. Additionally, appointing Jewish and Christian officials who remain clearly Jews and Christians means knowing with whom one is dealing.

The foundation of churches under Islamic law

The churches which were built or renovated under Islamic law have been characterized as Mozarabic church-architecture. However, it is inaccurate to assume that Mozarabs innovated a particular church-architecture.[179] Most of the churches which had been founded under Muslim rule did not show such specific changes that one can speak of typical Mozarabic architecture. Most of the Mozarabic churches had been reconstructions of Visigoth churches, meaning that the foundation of new churches under Muslim rule was extremely uncommon. Furthermore, many churches which were in use under Muslim rule lack accurate date-determinations. Santa María de Melque near Toledo is dated in a range between 650 and 930, for example.[180] Many architect-historians date the church before the Muslim conquest in 711. The reason therefor seems to be that they do not assume that the Muslims would have been tolerant to the extent that they granted the Christians the right to build such a remarkable church. However, in his article Conde de Cedillo argues that the church was clearly built under Muslim rule, since its architecture lacks characteristics of the seventh century in general, and characteristics of Visigoth architecture in specific.[181]

The fact that the building of new churches under Islamic law was uncommon deserves no elucidating discussion. What does concern us, though, is the question whether or not this scarcity had been the result of prohibitions enforced by the Andalusian *fiqh*, or other elements. It can be stated that the foundation of new churches had at least been disapproved, but the claim that it was forbidden by the *fiqh* is eligible to enervation. Historians who agree on this claimed prohibition rely generally speaking on the observations of the influential archivists Francisco Simonet and Manuel Gómez-Moreno.[182] Additionally, the Pact of ʿUmar -in which the enforcement of the prohibition on the building of new churches demands a central place- was selectively being functioned as confirmation of their arguments. Without loosing ourselves in details around the revisionists' selectiveness -sometimes confirming, other times denying the Pact's historicity dependently as to the point they wish to make-, both the Pact of ʿUmar and the policy of Hārūn al-Rashīd (d. 809) as laid down in Abū Yūsuf's *fiqh* of 798 are very clear in its prohibition on the building of new churches. Nevertheless, even such authoritative sources can not be considered entirely free of possible exceptions. Again, daily reality was not always concordant to written formality, as becomes clear in the following two examples.

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[179] Sally Garen, "Santa María de Melque and Church Construction under Muslim Rule," in *Journal of the Society of Architectural Historian* (California: University of California Press, 1992), vol. 51, p. 288.

[180] *Ibid.*, 288.

[181] *Ibid.*, 293.

[182] *Ibid.*, 301.

Following the destruction of the church of St. Vincent after the Muslim conquest in Cordoba, the Christians complained that they do not have a single house of worship anymore for their own. ʿAbd al-Raḥmān I (d. 788) ruled not only that they were allowed to build new churches, but even that he will pay for the land.[183] Ibn Farḥūn (d. 1397) reports in his *Tabṣirat al-ḥukkām* that Emir Muḥammad I (d. 886) ordered to destroy all recently built churches in Spain.[184] This seems to speak in favor of exceptions that churches had been built post-conquest, because the text speaks of "recently built churches". It is not logic to speak of churches older than 150 years as 'recently built'.

Most significantly are the documents which confirm religious places of worship in the form of monasteries. It would be a mistake to postulate that the foundation or reconstruction of churches was absolutely forbidden on religious or hegemonic grounds, since a representative number of survived documents confirm the foundation of monasteries.[185] Of course, a monastery is not a church, but perhaps some ecclesial rituals may have been performed in monasteries when other fitting options lacked.

Irrespective of the fact that one may conclude that the foundation of new churches and synagogues were in most of the sultanic policies forbidden, exceptions reveal the discrepancy between written formality and daily practice. The note that the majority of Mozarabic monasteries had been characterized by French influences[186] -which resulted in a shift from Mozarabic to Romanic liturgy while still for a part under Islamic law- may be interpreted as an example of a non-interfering Muslim attitude towards Christian religious self-organization. If it had been the Islamic law that 'shaped' the religiosity of the Christians, it would had been more expectable that they would have chosen for annihilation.

The destruction of churches by the Almoraved dynasty (*al-murābiṭīn*, 1040-1147) has been a welcome example for some historians in their attempt to weaken the notion of socio-religious tolerance and emancipation. Nevertheless, even such an alleged violence should not be isolated beyond the context in which it took place. According to the contemporary social historian Ibrāhīm al-Qādirī there is no empirical evidence that churches indeed were destroyed repeatedly, and that rather the Almoraveds even contributed in the foundation of new churches.[187] The exception of the destruction of the al-Bireh church in Granada[188] in the year 1099 was justified in terms of recompense for the extremism of its adherents who regarded the crusade attacks of Pope Urban II an authoritative ideology that ought to be

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[183] *Ibid.*, 303.

[184] Ibrāhīm Ibn Farḥūn, *Tabṣirat al-ḥukkām fī uṣūl al-ʿaqīdah wa al-aḥkām* [tr.: The insight of the rulers concerning the principles of judgement and methodologies of rulings] (Cairo:1988), vol. ii, 113-114.

[185] Examples can be found in: Thomas Glick, *Islamic and Christian Spain*, 324, 362, 199.

[186] *Ibid.*, 363.

[187] Ibrāhīm al-Qādirī, *Mabāḥith fī tārīkh al-ijtimāʿī li al-maghrib wa al-andalus fī ʿaṣr al-murābiṭīn* [tr.: Surveys in the social history of Morocco and Andalusia during the age of the Almoraveds] (Beirut: Dār al-ṭalīʿah, 1988), 82.

[188] The church is named after the city-district Al-Bīrah in Ramallah, Palestine.

followed by the Christian mass under Muslim rule.[189] Conclusively, evidence that churches had systematically been destroyed beyond the realm of war, or consistently forbidden to be build, lacks historic foundation. Al-Wansharīsī relates a *fatwā* which states that the destruction of churches is consensually forbidden by Islamic Law.[190] Ibn Rushd rules that selling Muslim-owned land to non-Muslims for the foundation of churches is unlawful,[191] a ruling determined centuries before him by Ibn Anas in his *al-Mudawwanah*. However, while Ibn Rushd does not state that a church that had been built on former Muslim-owned land must be destroyed, Ibn Anas does.

Al-Wansharīsī plays an indispensable role in our understanding of the religious landscape-boundaries of Andalusia related to the question of the foundation of churches. After referring to a great number of Andalusian scholars, al-Wansharīsī concludes that the answer to the question whether or not the foundation of churches was permitted depends on the land. The differentiation thereof is threefold; 1) land as fully property of the Muslims, where founding churches is forbidden, except if the Muslims and the Christians agree thereon in a pact; 2) Muslim land forcefully appropriated by the Christians, which is *a priori* forbidden, but acceptable if re-appropriation of the land would cause violence, and; 3) Land owned by the Muslims but inhabited by non-Muslims by means of a pact. On the latter building churches is allowed and destroying them strictly forbidden.[192] I argue -given these findings- that academic scholars overlook this very important religious land-division, on which the answer to the question around building churches chiefly depends.

Inter-religious marriages

Inter-religious marriages are already discussed. Since the Andalusian *fiqh* is generally consistent in its allowing proclamation, there is no need to search for practical evidence. What might be noteworthy in this context is that in the majority of cases the *fiqh* was more static and conservative than the policy of the rulers.[193] Also of additional value is the fact that there are documents containing Arabic names of Mozarabs who married to women with Romance names. One of such documents reports Mozarabic farmers who emigrated to Léon and who married monolingual Christian women (Romanic and Arabic).[194] That means that despite the dominance of Arabic culture in which these Christian farmers were born and raised, they were (en)able(d) to take advantage of the Andalusian culture without being religiously influenced (as a note, both Christian man and women were not allowed to marry to the Muslims by Iberian Christian law).

The reason for Andalusian law behind the gender-depended allowance of inter-

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[189] Ibrāhīm al-Qādirī, *Mabāḥith*, 75.

[190] Al-Wansharīsī, *Kitāb al-Muʿrib*, vol. ii, p. 219, 228.

[191] Ibn Rushd, *Al-Bayān wa al-taḥṣīl*, vol. 4, 277.

[192] Al-Wansharīsī, *Al-Miʿyār al-muʿrib*, vol. ii, pp. 219-224.

[193] It is important to stress that this difference holds not true for the violence that often took place. It is not unthinkable that violations which were engineered by some rulers had been justified by religious arguments, but these did not contain a binding force as far as I could trace.

[194] Thomas Glick, *Islamic and Christian Spain*, 199.

religious marriages (only Muslim men) is a direct reflection of the Quran and *sunnah.* The principle is that the man is expected to be responsible for the education of his children, and is therefore appropriated superiority.[195]

Many documents which make report of inter-religious marriages include Christian names of women who clearly did not belong to the elite. Consequently, a Muslim man's marriage with a Christian woman had not always to do with social or economic interests. It is in many cases the very choice of a Muslim influential man to marry an unknown and often very poor Christian woman, resulting therethrough in the woman's nobility.[196] Such a finding does not lend support to the possible thesis that only the noble elite among the *kitābiyāt* would had been 'good enough' for marriage to the Muslims.

We can not neglect two very important facts in respect of inter-religious marriages in the Andalusian *fiqh* related to the notion of identity-preservation. Initially, it is the very allowance of the Andalusian *fiqh* that seems to contradict this notion. Marrying a woman of another religion means as a rule inter-religious family cohabitation (the possibility of syncretism is not totally absent). Additionally, the minority of scholars who did reprehend or forbid inter-religious marriages may have been convinced of the significance to preserve these boundaries, but they could not claim the paramount voice due to their deviation from the literal interpretation of the Quran and *sunnah* about the matter on the one hand, and due to the socio-religious configuration of Andalusia on the other. The example of the scholar Ibn al-Ḥassār (11th century) may spill the beans. He warned against the risks of syncretization due to, among others, inter-religious marriages and friendships, but was himself in harmonious understanding with his Christian neighbor for whom he even often purchased his daily groceries.[197] Also the notable example of Ibn Ḥazm's relationship with Samuel Ibn Naghrela shows no characteristics of a strict socially segregational policy.[198] To this we may add an interesting example of the often disobedient attitude of young Muslims towards the scholars. The celebrated Andalusian poet Ibn Bassām (d. 1147) relates an anecdote in his *al-Dhakhīrah fī maḥāsin ahl al-jazīrah* about amorous youngsters who peeped Christian girls on their way to the church. Despite the advice of some scholars to keep them at bay, they neglected them and followed their hearts (or hormones).[199]

One very specific, but important ruling recorded in al-Wansharīsī should not remain

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[195] See for the Quranic prohibition: Q.2:221: "…Do not marry polytheist men, until they believe. Verily, a believing slave is better than a polytheist [free] man, albeit he allures you…" See for an example of the reasons behind the prohibitions: "*Muslimah tuḥibb rajul naṣrānī wa turīd al-sawāj bih* [tr.: A Muslim woman is in love with a Christian man and wants to marry him]," accessed December 3, 2015 https://islamqa.info/ar/100148 This reference is a *fatwā* of a celebrated contemporary scholar. Andalusian scholars do not shed light on this issue in respect of our discussion, as far I could find.

[196] Ibn al-Qūṭiyyah, *Tārīkh iftitāḥ al-andalus*, 6. Ibn al-Qūṭiyyah mentions a number of Christian women who married Muslim men.

[197] Ibn al-Wl-Ṭurṭūshī, *Kitāb sirāj al-mulūk* [tr.: The book on the light of the kings] (Cairo: Alexandria, 1872), 154.

[198] See: Ibn Ḥazm, *Kitāb al-fiṣal*, vol. ii, 10-18, 34-41. Ibn Ḥazm possessed such an insight in Judaism and Christianity, that many thoroughgoing theses in his works must have been purchased from the first hand. We know that he had a good relationship with Ibn Naghrela, but he does not cite him in his theological refutations of Christianity and Judaism.

[199] ʿAlī Ibn Bassām, *al-Dhakhīrah fī maḥāsin ahl al-jazīrah* [tr.: The fund for the pleasantness of the people of the island] (Cairo, 1945), 47, 48.

unmentioned. Given the detailed description and very specific and individual character of the *fatwā*, it can be assumed that this is a practical case. Al-Wansharīsī relates an enquiry from the 11the century concerning a Muslim man who had been enslaved by the Christians and who married a Christian slave with whom he conceived a daughter and left thereafter untraceable. That daughter had been enslaved by the Christians as well for a long period, but in absence of her father. May a Muslim man marry that woman, or is she considered unlawful for a Muslim? The *fatwā* in al-Wansharīsī rules that she is lawful for a Muslim, as she is a Christian who can not be considered daughter of fornication.[200] The important element herein is that a Muslim slave is not allowed to marry a non-Muslim woman. But since the father is enslaved by non-Muslims, he applies for the ruling related to imprisonment, not slavery.[201] Additionally, even when there is no reasonable ground to assume that the daughter had been engendered lawfully, she is not allowed to be labeled as daughter of fornication (*bint al-zinā*). The reason is the fear of false accusation of adultery, which is judged with severe punishment by the Quran.[202] Nevertheless, in reality Islamic law did not recompense the Muslim man who accuses his *kitābī* wife, except for demanding remorse of him for his crime. Here one is again able to observe a discrepancy between written formality and factual reality. Because the Muslims are allowed to marry *kitābiyyāt* according to the majority of scholars, this means that Q.24:4 as referred to in the footnote beneath is general and thus includes Muslim man who are married to *kitābiyyāt*.

Cemeteries and funerals

The Andalusian *fiqh* did in general not intervene with the religious self-organization of the *dhimmiyyīn*. The great number of internal walls which the Jews and -in lesser quantities- the Christians founded for reasons of security provide enough basis to confirm this. Both within and outside the walls the Christians and the Jews were allowed to install cemeteries. Whereas the Jews confined generally speaking their funeral-ceremonies to within the walls, the Christian cemeteries were more widely spread throughout public territory.[203] As opposed to the cemeteries of Christian Spain, the Christian and Jewish cemeteries in Andalusia served not merely as a territory of funerals and commemorations, but also as a means for other occasions such as open pray-ground and worship of dead saints.[204] These additional functions may possibly have been an alternative for the seldom granted permission of the Muslims to build new or to restore old churches and -to a lesser extent- synagogues.[205]

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[200] Al-Wansharīsī, *Kitāb al-miʿyār*, vol. iii, 168, 169.

[201] *Ibid.*, vol. iii, 169.

[202] Q.24:4. "And those who accuse chaste women and then do not provide four witnesses, lash them with eighty lashed and do not ever accept thereafter testimony…"

[203] Thomas Glick, *Islamic and Christian Spain*, 119.

[204] *Ibid.*, 120.

[205] Since Jewish quarters were more common than Christian quarters, I expect that it had been more easy to build synagogues within inner-walls than churches all dispersed in Muslim residencies. Unfortunately, I did not succeed in strengthening this thesis by empirical examples.

The relative non-interference with the Christian and the Jews did not mean disavowal. In all cases the *dhimmiyyīn* maintained subjects and thus under the responsibility of Islamic law. It is not merely in the case of Christian and Jewish transgression or violation where this responsibility may be recognized. As stated in III.II, Islamic law ought to protect the *dhimmiyyīn* not only against possible invaders, but also against violent and violating co-citizens, both Muslims and non-Muslims. For example, Ibn Rushd relates that a group of Christians from Granada complained to ʿAlī Ibn Yūsūf (d. 1142) against the despotic and tyrannic treatment of the governor. Ibn Yūsuf went to size up the situation and dismissed the governor prior to having him imprisoned.[206]

Alcohol

Islam forbids the consumption of alcohol severely, albeit that the recompense of consuming alcohol is not founded in the Quran, but in the *sunnah*. It would logically not cause problems *per se* to grant non-Muslims the right to consume alcohol. But since the *sunnah* forbids social interactions with others at the moment of their consumption of alcohol, it may probably have been one of the heroic quests to disassociate from alcohol-drinking non-Muslims in occasions or events where the Muslims were present. Ibn Rushd was asked by an enquirer whether he is allowed to sit with his Christian wife and her relatives while they drink alcohol. The answer is that a Muslim is not allowed to associate with alcohol-drinking people actively in the same location.[207] The fact that the enquirer had alcohol in his house proves not only that the *fiqh* was not being enforced and that it rather served in this case as juridical explanation, but also that it was possible to purchase alcohol without that much difficulty. Ibn ʿAbd al-Barr launches a *fatwa* which rules that only non-Muslims may buy and sell alcohol, but that it should be consumed outside Muslim territory. He states that…"Regards to alcohol and swine, it is not forbidden for them [the *dhimmiyyīn*] to sell it to whomever [of the *dhimmiyyīn*] they want when returning to their territory."[208] Again, this was the written formality. That the last-mentioned enquirer revealed to the chief-judge (Ibn Rushd) the presence of alcohol in his house is again an example of the discrepancy between written formality and daily reality.

Al-jizyah **(non-Muslim poll-tax)**

Many academic works introduce the *jizyah* as an additional poll-tax which *the* non-Muslims should pay.[209] However, if one is to answer the question who exactly among non-Muslims ought to pay the *jizyah*, he or she may possibly conclude that not *the* non-Muslims, but only a particular group among non-Muslims had been obliged to pay the *jizyah*. Since Ibn ʿAbd al-Barr is regarded one of the foremost authorities in the Andalusian *fiqh* who discusses the con-

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[206] Muḥammad Ibn Rushd, *Al-bayān wa al-taḥṣīl wa al-sharḥ wa al-tawjīh wa al-taʿlīl fī masāʾil al-mustakhra-jah* [tr.: Clarification and achievement: explanation, guidance, and justification] (Beirut: Dār al-gharb al-islāmī, 1987), vol. xiv, pp. 93-95.

[207] Ibn Rushd, *Al-Bayān wa al-taḥṣīl*, vol. viii, p. 66.

[208] Ibn ʿAbd al-Barr, *Kitāb al-kāfī*, vol. i, p. 481.

[209] For example: P. Crone, Mark Cohen, Thomas Cook, Ignaz Goldziher, and many others.

ditions and obligations of the *jizyah*, it is not inappropriate to cite parts of his text about the *jizyah*. The first part sheds light on the question of protection of non-Muslims by the Muslims.

Who leaves his House of War [210] for the House of Islam seeking protection, it will be given to him. The same accounts to him who has been found [by the Muslims in the House of Islam] and asks for protection; it will be given to him.

…And they [the *dhimmiyīn*] will not be burdened beyond what has been agreed on by force of the pact. …And they [the Muslims] will not be allowed to be provided with swine or alcohol by the *dhimmiyyīn*. They [the Muslims] will take the tenth of their [of the *dhimmiyyīn*] total retail, and nothing except this tenth. And they [the *dhimmiyyīn*] are forbidden to sell anything by which they appropriate power over the Muslims, such as weapons.[211]

The following part is a summary of who exactly among non-Muslims ought to pay the *jizyah*.

The *jizyah* may not be appropriated except from a free non-Muslim [who is] adult, masculine, [and] forceful [212]. There is no *jizyah* for [the *jizyah* ought not to be taken from] women, children, mentally ill, monks -the people of the monasteries-[213], old men, and not from the poor. Rich people may not to be ordered to pay on behalf of the poor. And according to Mālik [Ibn Anas], the *jizyah* ought to be taken from every disbelieving *kitābī* [person of the Book], Magian, idolator, and others from among the groups of disbelief [regardless them being], Arabs or non-Arabs, except from the apostates. Their [of the apostates] *jizyah* will not be accepted, for they announce their apostasy. [But] if a disbeliever converts from a religion to another of the disbelievers, his *jizyah* ought to be appropriated from him.

As for the quantity of the *jizyah*, this is four *danānīr* [pl. of *dīnār*] for those who possess gold, and 40 *dirham* for those who possesses paper-money [cash].[214] It is not allowed to exceed this amount, and not to reduce it, except for him who does not possess enough.[215]

The detailed description of the *jizyah* by Ibn ʿAbd al-Barr lends to the assumption that it had been effective. Extensionally, the pivotal note that the *jizyah* was appropriated only from one particular segment of the non-Muslim society justifies the plead to a more nuanced analysis of the *jizyah*-system., as to avoid as much as possible the engrandizement and static generalization of this system by which it may be understood as a tool for totalitarian hegemony.

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[210] *Dār al-ḥarb*. This is the counterpart of *dār al-islām* (tr.: House of Islam). They refer to non-Muslim and Muslim territory respectively. See for a sophisticated discussion, among others,: Jeffreym Bale, "Islamism and Totalitarianism", in *Totalitarian Movements and Political Religions* (Routledge, 2009), vol. 10(2), p. 84; David Cook, *Understanding Jihād* (London: University of California Press, 2005), 32-45.

[211] Ibn ʿAbd al-Barr, *Kitāb al-kāfī*, vol. i, p. 481.

[212] In the text: *qawī ʿala al-iktisāb*, strong enough to provide himself daily expenses.

[213] This complement is an explanation, I think.

[214] One *dīnār* equals 100 *dīnār*. The difference made between a person who possesses only money, and a person who possesses gold, is that gold is considered to be free disposable capital beyond his income.

[215] Ibn ʿAbd al-Barr, *Kitāb al-kāfī*, vol. i. p. 479.

VII. Epilogue

Assessment

We have seen that the Andalusian *fiqh* had never been a statically compiled juridical manifest to be compared with modern law-books or a constitution. For one, the Andalusian *fiqh* was eligible to changes and inconsistencies, since an opinion of a scholar was not always binding on the one hand, and because scholars lacked consensus about many issues on the other. For another, the *fiqh* was regarded the result of the scholar's endeavor to explain God's Law, and was not considered definitively and totally God's Law in itself. It is only God's Law which transcendences human reason. Analogically, the Andalusian *fiqh* was a wide range of laws aiming at touching upon God's Law that wavers between heaven and earth, but which may alight from the intellectual endeavor of the scholars. The final statement of the *fiqh*-works "and God knows the best" bears witness of the scholars' possible vainly attempts to capture God's Law.

The *fiqh* discussed in this thesis tried to delineate the law as a matrix not only for the rulers, but for citizens alike. Naturally, it was a prerequisite to convince the ruler prior to the citizen's conviction. How exactly the Andalsuian *fiqh* of the scholars was being integrated in the Andalusian multi-religious society is a matter of speculation. Additionally, the often elliptical character of a *fiqh*-text conveys the impression that its audience were not the mass, but the upper-class either by intellectual capability, or by socio-political influence or significance. For the mass verbal explanation of the difficultly accessible *fiqh*-works had probably been necessary. The importance of this interactive spread of religious knowledge lays therein that God's Law ought to be indiscriminate and hence incumbent upon all Muslims. Deviation from it was not only regarded a threat to the socio-political order, but not less a deviation from the right path which leads to the paradise.

Retrospect

In the aforementioned paragraph I touched upon the kernel of the shortcoming which historians of Andalusian Islamic law seem to share: the effects of Islam's eschatology on the way in which the *fiqh* was being formulated.[216] In academic setting it is of no value to discuss whether or not it is correct that the *fiqh* served as a means to come closer to God. However, it

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[216] Among others: Patricia Crone in her *God's Caliphs*, Christian Müller in his "Judging with God's Law on Earth", Janina Safran in her *Defining Boundaries in al-Andalus*, and many others. One of the important principles which they do not discuss is the pivotal difference between *al-aḥkām al-muʿallalah* (reason-bearing rulings), and *al-aḥkām al-taʿabbudiyyah* (devotional rulings). The former are accompanied with the reason behind the ruling, such as the prohibition on drinking alcohol because of its damaging effects. The latter are imposed without a traceable reason, such as why the sunset-prayer consists out of three sections, while the noon-prayer consists out of four sections. The Andalusian *fiqh* allows, for example, generally speaking the marriage with *dhimmiyyāt*, because Allah decided as such in the Quran. We have seen that a clear reason behind this allowance lacks in the *fiqh*, which makes the Quranic ruling a *ḥukm taʿabbudī*. The Andalusian *fiqh* forbids engagement with alcohol-drinking people at the moment of consumption, although the Muslims remain persistent. The reason for this prohibition is available, namely the fear for assimilation and spiritual pollution. That makes this ruling a *ḥukm muʿallal*.

is valuable to understand the motivations that lay at the basis of the *fiqh*, namely obeying God's prescript as an inevitable condition for entering the eternal paradise. Since for the Muslims the keys of the paradise shelter between the covers of the Quran and *sunnah* -i.e. what and how to worship-, the *fiqh* should be understood as a guideline of how the Quran and *sunnah* ought to be understood on the one hand, and as a manual of how to deal with aspects not directly or clearly founded in the Quran and *sunnah* on the other. But carefully, even issues that are not being touched upon by the Quran and *sunnah* are generally linked in one way or another to the Quran or *sunnah* -or both-, as we have seen in our examples. I regard it appropriate to clarify the possible consequences of the aforementioned neglect of academic historians. Two examples are hopefully sufficient.

We have seen that the *jizyah* had been incumbent upon healthy adult non-Muslim men only. Since the Quran and *sunnah* lay the responsibility of maintenance on the shoulders of the man, scholars rule unanimously that women, children, old men, and the incapable adult men (the ill and poor) are exempted from paying the *jizyah*. Concomitantly, the fact that only the mentally and materially capable masculine non-Muslim head of the household was obliged to pay the *jizyah* in exchange for protection and freedom to exercise his religion,[217] means that he automatically 'acquires' these two rights for all his family-members as well. It is the Quran and *sunnah* who rule not only that non-Muslims may not be coerced to conversion,[218] but that they also ought to be protected. And it is the Quran and *sunnah* which rule that only the economic kernel of non-Muslims ought to pay the *jizyah*, as underlined above. Justice as a key to the eternal paradise (eschatological motivations) has herein a central place.

The revelational encouragement on social interactions with non-Muslims may serve as a second example of why theological convictions played a decisive role in the way the *fiqh* was being postulated. The obligatory justice towards mankind (non-Muslims included) as laid down in the Quran and the *sunnah* may probably have been indirectly the breeding-ground for the intellectual emancipation and thriver of the Jews and the Christians. By the same token, had it not been the Quran and the *sunnah* who compel justice and righteousness towards all religions (as long as they form no threat) and which advocate effective social understanding, the situation in Andalusia might possibly had been less tolerant (or more relentless, to please those who speak of an intolerant Andalusia). Justice as a key to the eternal paradise (eschatological motivations) has in both examples a central place.

Scientists focus I think generally speaking too context-less on the results of Andalusian Islamic law compared with the sources on which Islamic law was founded on the one hand, and the motivations that laid at the basis of the selected laws which had been integrated and often executed on the other. In fact, the very decision to conquer Spain had been justified and motioned, I stressfully argue, by the strong conviction to increase Islam's radius as to convince as much non-Muslims as possible that it is the only sound religion that guarantees salvation and eventually the paradise, meaning that also in this example eschatological motivations lay at the basis. That translates itself in the phenomenon of *da'wah* (invitation to conversion to Islam, often erratically translated in 'proselytization', which includes persuasion), an obligation according to scholars incumbent upon every

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[217] See the quoted ruling of Ibn 'Abd al-Barr in chapter VI.

[218] The prohibition on religious coercion is founded in Q.2:256.

capable Muslim.[219] As soon as this *da'wah* has bore its fruit through Islamization of a particular territory, the subsequent task is preserving this Islamic territory by defending it against possible non-Muslim invaders.[220] This second task translates itself in the phenomenon of *jihād* (Holy War).[221]

Looking from a broader perspective at *jihād* in Andalusia, the necessity to protect the Muslims against chiefly the Christian transgressors on the one hand, and the need to preserve tranquil social cohabitation between all denominations on the other, were among the foremost argumentations to justify and sanctify *jihād*. It should be borne in mind that Muslim Spain had been periferically isolated from the Muslim world in the East of which it politically spoken did not consider itself to be part.[222] Facing more challenges than their co-religionists in the East, the Andalusians tried to avoid generalization and violence as much as possible. Notwithstanding the wars, the Muslims still interacted with the Christians on social, political, and intellectual level, whereby the Christians took more often the dependent position. The physical treatment of king Ordoño IV in 960 in the hospital of Granada may lend support to this conclusion.[223] A more covering example is the enrollment of Christian students to the 'university' of Granada while wars were fought around the undefined borders between Southern Muslim Spain and Northern Christian Spain.[224] In addition, the commercial relations between both remained firm at large, even during wars.[225]

On the battlefield one is to observe a very interesting element that might possibly strengthen our notion of *jihād* as generally a defensive necessity. It is documented that in some cases the Christians living on Muslim territory under Muslim rule participated in the war against their co-religionists.[226] Two remarks thereon should be made. Initially, there is no firm ground to assume that these Christians had been coerced to take part in these battles, since non-Muslims were exempted from conscription as we have seen. Subsequently, the participation of these Christians may alternatively have been the result of their consciousness as regards their co-religionists' alleged transgression and injustice.

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[219] Q.3:104. "Let there be among you a community inviting what is good, enjoining what is right, and forbidding what is wrong. And they are the successful."

[220] A war between Muslim defenders of their territory and Muslim invaders of that territory is not called *jihād*, but *ma'rakah* (battle). In the Quran and *sunnah* also the terms *ṣirā'* (fighting), *fitnah* (adversary), and *qitāl* (combat, battle) are used for wars between Muslims.

[221] See for the Quranic conditions: Q.2:190. "Fight in the cause of Allah those who fight you, but do not transgress limits. Verily, Allah loves not transgressors." For the Quranic obligation to perform the *jihād*, see among others: Q.2:218; Q.3:142; Q.4:95; Q.5:35.

[222] Muḥammad 'Abd al-Ḥalīm, *Al-'alaqāt bayn al-Andalus al-islāmiyyah wa Isbāniyah al-naṣrāniyyah fī 'aṣr Banī Umayyah* [tr.: The contacts between Islamic Andalusia and Christian Spain in the Umayyad era] (Cairo: Ma'had al-buḥūth wa al-dirāsāt al-Ifrīqiyyah, 1985), 112-114.

[223] *Ibid.*, 407, 408.

[224] *Ibid.*, 114.

[225] Olivia Constable, *Trade and Traders in Muslim Spain:The Commercial Realignment of the Iberian Peninsula, 900-1500* (Cambridge: Cambridge University Press, 1994), 17,18.

[226] 'Abd al-Ḥalīm, *Al-'alaqāt*, 408, 409.

Conclusion

Aiming at initiating a general conclusion, it is necessary to postulate four pivotal remarks as regards the analyzed primary literature. For one, although the objective of the *fiqh* circulates around extracting God's Law from the Quran and *sunnah* and thence explaining it, the Andalusian *fiqh* concerning non-Muslims had not always been totally concordant with the Quran and *sunnah*. Sections of the Andalusian *fiqh* which were based (partially) on the Pact of 'Umar and the *shurūṭ* may serve as an example of this hiatus between the *fiqh* on the one hand, and the Quran and *sunnah* on the other. Also between the *fiqh* and daily reality a discrepancy may be observed, like some of our examples show. In some cases the *fiqh* of the scholars seems to have been more severe and orthodox than the Quran and *sunnah*, but more lenient than the executed policies of the ruler, while at other moments the *fiqh* seems to have been harsher than the revelations, and the rulers' policies. In that respect the *fiqh* roamed between heavenly revelation and earthly policy.

For another, the fact that the Muslim world lacked an absolute religious authority -regardless it being one person or an institutionalized source- outside the Quran and *sunnah*, it meant that scholars and rulers could not claim exclusive right on and enforcement of their laws. The fact that Andalusian Islamic law was to different degrees based on the Mālikī *fiqh* does not invalidate this finding, since within the Mālikī School one may find different rulings about one and the same issue, as we have seen in IV.III.

Penultimately, the Andalusian *fiqh* paid emphatic attention to determining religious boundaries between the Muslims and non-Muslims. But since it did not succeed in consensually defining the social etiquettes vis-à-vis non-Muslims on the basis of the Quran and *sunnah* due to their ambiguity about non-Muslim typology and classification,[227] it had been constructed generally from a preventive and securing point of view, as not to be liable to religious assimilation on the one hand, and to loss of power on the other. I argued that it is in this context that the notion of identity-preserving boundaries should be understood.

Finally, as the Muslims in Andalusia formed the ruling minority in contrast to the situation of Medina where the Prophet with his Companions formed the majority, it could only explain as concordantly as possible the socio-religious etiquettes without demanding always its execution. That means that there was the *fiqh* of the scholars, Islamic law of the ruler and scholars, and daily reality of all. It is for that reason inaccurate to speak of Andalusian Islamic law as an all-compassing law-system in theory and practice.

Having said this all, the remaining point of focus is on the broader context of Andalusian Islamic law concerning non-Muslims. Some speak of relative tolerance, others of general tolerance, and a third group of intolerance. It is important to not loose the wider picture from the sight of which Andalusian Islamic law concerning non-Muslims was part. We are talking about the Middle Ages, when boundaries had not been always definitive and when conquests had been relatively normal and in some cases even heroically conceived by religious authorities. Additionally, it was in a period long before the discussions around

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[227] This ambiguity is discussed in III.II.

humanism like engineered by the Italian renaissance-thinkers such as Pico della Mirandola (d. 1494) and others. Furthermore, it was the era of the crusades costing many Muslim lives.[228] This had undoubtedly been contributive to the attentive, prudent, and sometimes aggressive character of Andalusian Islamic law. The polemic attacks on Islam in general and the Prophet in specific had probably been an additional reason for Andalusian caution and control of non-Muslims. And finally, non-Muslim Europe was generally spoken less civilized and less intellectually figured compared to Andalusia. This possibly added to the sense of superiority towards non-Muslims.

As for the place of this thesis within Andalusian studies, I think it addresses five fundamental problems. Firstly, it shows that daily reality was in many cases different from what the *fiqh* described and prescribed. Secondly, it shows likewise that the *fiqh* was in some cases deviant not only from the Quran and *sunnah*, but also from the ruler's policies. Deductively, it shows that the *fiqh*, Islamic law, and daily reality should be adequately understood as entities, but without ignoring the correlation between them. Penultimately, it shows on the basis of these three findings that the *fiqh* was indeed part and parcel of the Andalusian society, but definitely not its socio-religious and legal frame *in toto*. And finally, it proves hopefully that a thoroughgoing insight in and knowledge of both the primary Classical sources on the one hand, and the Quran and *sunnah* on the other are indispensable conditions for understanding Islamic law and the motivation that lay at its basis.

The contribution of this thesis to modern debates about inter-religious cohesion lays particularly within the complex dichotomy of the preservation of religious identity versus secular assimilation of the Muslims with non-Muslims. How can Muslims in the West synthesize between an effective social integration and preservation of their religious and cultural values? Does a fruitful social integration not gradually lead *ipso facto* to secular assimilation and hence lost of these values? Could possibly some rulings of the Andalusian *fiqh* provide us with a referential base-draft for understanding how to legally deal with some issues related to the problem of religious identity of the Muslims in the West? Conclusively, I hope that this thesis contributes to the awareness of the urgency of studying Andalusian primary sources within the socio-religious context it was written, but without approaching it as socially meaningless for the modern time. As for the answer to the question whether or not the Andalusian *fiqh* and/or Andalusian Islamic law concerning non-Muslims was tolerant, that is up to the reader to decide. Let the reader have a broad horizon.

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[228] In the period discussed in this thesis three crusades had taken place. The first between 1096 and 1099 on the authority of pope Urban II. The second crusade between 1147 and 1149 on the authority of pope Eugene III. And the third crusade between 1189 and 1192 on authority of pope Clement III. The remaining six crusades from 1202 onwards fall beyond our chronological scope.

Bibliography

Secondary literature

Arabi, Oussama,
    Islamic Legal Thought: a Compendium of Muslim Jurists. Leiden: Brill, 2013.
Bale, Jeffreym,
    "Islamism and Totalitarianism." *Totalitarian Movements and Political Religions*.
    10(2) 2010: 73-96.
al-Bukhārī, Ibn Ismāʿīl,
    Al-Jāmi' al-ṣaḥīḥ [tr.: The collection of the canonical *aḥādīth*].
Bulliet, Richard,
    Conversion to Islam in the Medieval Period: an Essay in Quantitative History.
    Cambridge: Harvard University Press, 1979.
Bettina Gräf and Jacob Skovgaard-Petersen,
    Global muttī: the Phenomenon of Yūsf al-Qaraḍāwī. New York: Columbia University
    Press, 2009.
Bosch-Vila, J.,
    "Ibn al-Qutiyya" in *Encyclopaedia of Islam.* Leiden: Brill, 2004.
Collins, Roger,
    Early medieval Spain; Unity in Diversity. Edited by Maurice Keen. London and
    Basingstoke:The MacMillan Press, 1983.
Cohen, Mark,
    Under Crescent and Cross: the Jews in the Middle Ages. Princeton: Princeton
    University Press, 1994.
Constable, Olivia,
    T*rade and Traders in Muslim Spain:The Commercial Realignment of the Iberian
    Peninsula, 900-1500.* Cambridge: Cambridge University Press, 1994.
Cook, David,
    Understanding Jihād. London: University of California Press, 2005.
Cook, Michael,
    Magian cheese: an archaic problem in Islamic law, in *Bulletin of the School of
    Oriental and African Studies.* London: London University Press, 1984.
Crone, Patricia,
    God's Caliph. Cambridge: Cambridge University Press, 1986.
Crone, Patricia,
    Medieval Islamic Political Thought. Edinburgh: Edinburgh University Press, 2004.
Dickie-Clark, H.F.,
    The Marginal Situation: a Sociological Study of a Coloured Group. London, 1996.
Fakhrī, Majīd,
    Islamic Philosophy, Theology, and Mysticism. Oxford: OneWorld Publications, 1997.
Fierro, Maribel,
    "Religious dissension in al-Andalus: ways of exclusion and inclusion." In *Al-Qantara
    22 (2):* pp. 263-287.

Fierro, Maribel,
        "Spanish Scholarship on Islamic Law," in *Islamic Law and Society (2:43, 1995):*
        pp. 43-70.

García-Arenal, Mercedes,
        "The Jews of al-Andalus." In *The History of Jewish-Muslim Relations: From the*
        Origins to the Present Day. Edited by Abdelwahab Meddeb and Benjamin Stora.
        Princeton: Princeton University Press, 2013.

Garen, Sally,
        "Santa María de Melque and Church Construction under Muslim Rule." In *Journal of*
        the Society of Architectural Historian. California: University of California Press,
        1992. Vol. 51, p. 288-305.

Gayyusi, Marin,
        The Legacy of Muslim Spain. Leiden: Brill, 1992.

Glick, Thomas,
        Islamic and Christian Spain in the Early Middle Ages. Leiden and Boston: Brill, 2005.

Gräf, Bettina, and Skovgaard-Petersen, Jacob,
        Global muttī: the Phenomenon of Yūsf al-Qaraḍāwī. New York: Columbia University
        Press, 2009.

Hallaq, Wael,
        The Origins and Evolution of Islamic Law. New York: Cambridge University Press,
        2005.

Hinds M.,
        God's Caliph. Cambridge: Cambridge University Press, 1986.

James, David,
        Early Islamic Spain; the History of Ibn al-Qutiya. Ed. Ian Richard Netton. Routledge,
        London & New York, 2009.

Kamali, Muhammad Hashim,
        Principles of Islamic Jurisprudence. Cambridge: The Islamic text Society, 2011.

Levy-Rubin, Milka,
        "Treaty of 'Umar." *The Princeton Encyclopedia of Islamic Political Thought.*
        Princeton and Oxford: Princeton University Press, 2013.

Mallett, Alex,
        Christian-Muslim Relations: a Bibliographical History. Leiden: Brill, 2010.

Molina, L.
        "Umayyads." *The Encyclopaedia of Islam.* Leiden: Brill, 1961.

Morris, Michael,
        "Views form Inside and Outside: Integrating Emic and Etic Insights about Culture and
        Justice Judgement." In *Academy of Management Review 24(1999)*: 781-796.

Müller, Christian,
        "Judging with God's Law on Earth: Judicial Powers of the Qāḍī al-Jamāʿah of
        Cordoba in the Fifth/Eleventh Century. " *Islamic Law and Society 7,2* (2000):
        159-187.

Müller, Christian,
       "Non-Muslims as Part of Islamic Law: Judicial Casuistry in a Fifth/Eleventh-Century Law Manual." In *The Legal Status of* dhimmīs *in the Islamic West*. Edited by Maribel Fierro and John Tolan, 21-62. Turnhout: Brepols, 2013.

Nichols, James,
       "The 'History of the Conquest of al-Andalus' by Ibn al-Qutiya the Cordovan: Translation and Study." PhD diss., Carolina: the University of North Carolina, 1975.

Nierenberg, David,
       Neighboring Faiths Christianity, Islam, and Judaism in the Middle Ages and Today. Chicago: University of Chicago Press, 2014.

Nirenberg, David,
       "Christendom and Islam", in *Christianity in Western Europe c.1000-c. 1500*, edited by M. Rubin and W. Simons, 149-169. Cambridge: Cambridge University Press, 2010.

Opwis, Felicitas,
       Integrating Maṣlaḥa into Legal Reasoning (Qiyās). Leiden-Boston: Brill, 2010.

Ramadan, Tariq,
       In the Footsteps of the Prophet: Lessons from the Life of Muḥammad. New York: Oxford University Press, 2007.

Safran, Janina,
       Defining Boundaries in al-Andalus; Muslims, Christians and Jews in Islamic Iberia. Ithaca: Cornell University Press, 2013.

Scheindlin, Raymond,
       "Hasdai Ibn Shaprut." In *The History of Jewish-Muslim* Relations. Edited by Abdelwahab Meddeb and Benjamin Stora. Princeton: Princeton University Press, 2013, (134-137).

Scheindlin, Raymond,
       "Samuel Ibn Naghrela." In *The History of Jewish-Muslim Relations*. Edited by Abdelwahab Meddeb and Benjamin Stora. Princeton: Princeton University Press, 2013, (132, 133).

Schreiner, Michael,
       Zur Geschichte der Polemic zwischen Juden und Muhammedanern. Berlin: ZDMG, 1888.

Southern, Richard William,
       Western Views of Islam in the Middle Ages. Cambridge: Harvard University Press, 1962.

Thomas, David,
       Christian-Muslim Relations: a Bibliographical History. Leiden: Brill, 2010.

Tolan, John,
       Saracens: Islam in the Medieval European Imagination. New York: Columbia University Press, 2002.

Vajda, G.,
       "Ahl al-kitāb" in *Encyclopaedia of Islam.* Brill: Leiden, 1960-2009, vol. 1, p. 264-267.

Viguera-Molins, Jesús María,

"Al-Andalus and the Maghrib (from the fifth/eleventh Century to the Fall of the Moraveds." In *The New Cambridge History of Islam* (vol. ii, pp. 19-47). Cambridge: Cambridge University Press, 2010.

Vikor, Knut,
Between God and the Sultan: a History of Islamic Law. London: Hurst and Company, 2005.

Wagenmakers, Joas,
"De vijanden van soera 60." *Zemzem: tijdschrift over het Midden-Oosten,*
Noord-Afrika en islam. Amsterdam: Stichting Soera. (3)2007: 54-63.

Wensinck, Arent Jan,
Mohammed en de Joden te Medina. Leiden: Brill, 1908.

Yarbrough, Luke,
"Upholding God's Rule: Early Muslim Juristic Oppositions to the State Employment of non-Muslims". In *Islamic Law and Society*, 11-89 (19)2012.

Primary literature

al-ʿAbbādī, Mukhtār,
Mushāhadāt fī bilād al-maghrib wa al-andalus: majmūʿah min rasāʾil [tr.: Witnesses in the land Morocco and Andalusia: a compilation of letters]. Madrid: Majallat al-maʿhad al-maṣrī li dirasāt al-islāmiyyah, 1970.

ʿAbd al-Bāqī, Muḥammad Fuʾād,
Al-muʾjam al-mufahras li alfāẓ al-qurʾān al-karīm [Tr.: Lexical index for terminology of the holy Quran]. Cairo: Dār al-ḥadīth [Tr.: House of *ḥadīth*], 1987.

ʿAbd al-Ḥalīm, Muḥammad,
Al-ʿalaqāt bayn al-Andalus al-islāmiyyah wa Isbāniyah al-naṣrāniyyah fī ʿaṣr Banī Umayyah [tr.: The contacts between Islamic Andalusia and Christian Spain in the Umayyad era]. Cairo: Maʿhad al-buḥūth wa al-dirāsāt al-Ifrīqiyyah, 1985.

Abū al-Khayl, Ibn Ibrāhīm,
Al-Andalus fī al-rubʿ akhīr min al-qarn al-thālith al-hijrī: al-dirāsah fī al-tarīkh al-siyāsī [Tr.: Andalusia in the last quarter of the third century *hijrah*: studies on the political history]. Riyad: maktabat al-malik ʿAbd al-ʿAzīz al-ʿĀmmah, 1995.

Abū Dāwud, Sulaymān,
Sunan Abī Dāwud [tr.: The Traditions of the Prophet by Abū Dāwud].

Al-Bayhaqī, Abū Bakr,
Al-Sunan al-kubrā [tr.: The great Traditions of the Prophet].

al-Bukhārī, Ibn Ismāʿīl,
Ṣaḥīḥ al-Bukhārī. Ankara, 1977.

al-Dārimī, Abū Muḥammad,
Sunan al-Dārimī [tr.: The Traditions of the Prophet by al-Dārimī].

Ibn ʿAbd al-Barr, Muḥammad,
Kitāb al-kāfī fī fiqh ahl al-madīnah al-mālikī [tr.: The sufficiency in the Mālikī *fiqh* of the people of Medina]. Ryad: Maktabat al-riyāḍ al-ḥadīth, 1980.

Ibn ʿAbdūn,

Thalāthat rasā'il andalusiyyah fī ādāb al-ḥisbah wa al-muḥtasib [tr.: Three messages concerning literature about reward and rewarder]. Edited by Lipi Biropincal. Cairo: Al-Maʿhad al-ʿilmī al-faransī li al-athār al-sharqiyyah, 1955.

Ibn al Faraḍī, Muḥammad,
   Tārīkh ʿulamā' al-andalus [tr. The history of Andalusian scholars]. Cairo: Dār al-miṣriyyah li al-ta'līf wa al-nashr, 1966.
Ibn Anas, Ibn Anas,
   Al-Muwaṭṭa' [tr.: The systemizer].
Ibn Bassām, ʿAlī,
   Al-Dhakhīrah fī maḥāsin ahl al-jazīrah [tr.: The fund for the pleasantness of the islanders]. Cairo, 1945.
Ibn Farḥūn, Ibrāhīm,
   Tabṣirat al-ḥukkām fī uṣūl al-aqḍiyyah wa manāhij al-aḥkām [tr.: The insight of the rulers concerning the principles of judgement and methodologies of rulings]. Cairo: 1884.
Ibn Ḥanbal, Aḥmad,
   Musnad Ibn Ḥanbal [tr.: The chained-transmitted Tradition of Aḥmad].
Ibn Ḥazm al-Andalusī,
   Kitāb al-fiṣal fī al-milal wa al-ahwā' wa al-niḥal [tr.: The book of typologies of denominations, desires, and religious sects]. Cairo: 1903.
Ibn Hishām, ʿAbd al-Malik,
   Sīrat al-nabī [tr.: The biography of the Prophet]. Cairo: 1936.
Ibn Kathīr, Ismāʾīl,
   Tafsīr al-qur'ān al-ʿaẓīm [Tr.: The exegesis of the mighty Quran]. Beirut: Dār al-kutub al-ʿilmiyyah, 1984.
Ibn Mājah, Abū /ʿAbd Allāh,
   Sunan Ibn Mājah [tr.: The Traditions of the Prophet by Ibn Mājah].
Ibn Manẓūr, Muḥammad,
   Lisān al-ʿArab [tr.: The language of the Arabs]. Edited by Muḥammad Ḥasab Allāh and Muḥammad al-Shādhilī. Cairo: Dār al-maʾārif, 1981-84.
Al-Nasā'ī, Abū ʿAbd al-Raḥmān,
   Sunan al-Nasā'ī [tr.: The Traditions of the Prophet by al-Nasā'ī].
Ibn Qudāmah, al-Maqdisī,
   Al-Mughnī [Tr.: The enricher]. Riyad: Dār ʿālam al-kutub, 1997.
Ibn al-Qūṭiyyah, Muḥammad,
   Tārīkh iftitāḥ al-Andalus [Tr.: The history of the conquest of Andalusia]. Beirut: Mu'assasat li al-ṭibāʿah wa al-nashr, 1994.
Ibn Rushd, Muḥammad Abū Walīd,
   Al-Bayān wa al-taḥṣīl wa al-sharḥ wa al-tawjīh wa al-taʿlīl [tr.: Clarification and achievement: explanation, guidance, and justification]. Edited by Saʿīd A'rāb. Beirut: Dār al-gharb al-islāmī, 1984.
al-Maqdisī, Ibn Qudāmah,
   Al-Mughnī. Ryad: Dār ʿAlam al-kutub li al-ṭibāʿah wa al-nashr wa al-tawzīʿ, 1997.
al-Marrākushī, Ibn ʿAlī,

Al-Mu'jib fī talkhīs akhbār al-Maghrib [tr.: The admirable in outlining the reports of the Maghrib]. Cairo: Dār al-ma'ārif, 1963.

al-Māwardī, Ibn Ḥabīb,
Al-Aḥkām al-sulṭāniyyah tr.: The rulings of the *ṣulṭān*]. Cairo: Maṭbaʿat al-saʿādah, 1909.

al-Qādirī, Ibrāhīm,
Mabāḥith fī tārīkh al-ijtimāʿī li al-maghrib wa al-andalus fī ʿaṣr al-murābiṭīn [Tr.: Surveys in the social history of Morocco and Andalusia during the age of the Almoraveds. Beirut: Dār al-ṭalīʿah [Tr.: House of forefront], 1988.

al-Qayrawānī, Ibn Abī Zayd,
Risālah al-imām Ibn Abī Zayd al-Qayrawānī [tr.: The message of *imām* Ibn Abī Zayd al-Qayranwānī]. Edited by Sāliḥ ʿAbd al-Samīʿ. Cairo, 1920.

al-Rāzī, Fakhr al-Dīn,
Mafātīḥ al-ghayb [tr.: The keys of the hidden]. Edited by Ibrāhīm Shams al-Dīn and Aḥmad Shams al-Dīn. Beirut: Dār al-kutub al-ʿilmiyyah, 2000.

Saḥnūn, ʿAbd al-Salām,
Al-Mudawwanat al-kubrā [tr.: The great legal corpus]. Cairo, 1908.

al-Shāfiʿī, Muḥammad Ibn Idrīs,
Kitāb al-umm [tr.: The book of exemplar]. Cairo: Dār al-miṣriyyah li al-taʾlīf wa al-tarjamah, 1987.

Shawqī, Aḥmad,
Al-Shawqiyyāt [tr.: The poems of Shawqī]. Beirut: Dār al-ʿawdah, 1986.

al-Ṭabarī, Ibn Jarīr,
Jāmiʿ al-bayān ʿan taʾwīl āyāt al-qurʾān [tr.: The comprehensive explanation on the exegesis of the verses of the Quran]. Qairo: Dār al-maʿārif, 1954-1966.

al-Ṭabarī, Ibn Jarīr,
Tarikh al-rusul wa ʾl-muluk. Ed. De Goeje, M.J., Leiden: Brill, 2010.

al-Tirmidhī, Ibn /ʿIsā,
Jāmiʾ al-Tirmidhī [tr.: The collection of Canonical *ḥadīth* by al-Tirmidhī].

al-Ṭurṭūshī, Abū Bakr,
Kitāb al-ḥawādith wa al-bidaʿ [tr.: Book on religious inventions and innovations. Beirut: Dār al-gharb al-islāmī, 1990.

al-Ṭurṭūshī, Ibn al-Walīd,
Kitāb sirāj al-mulūk [tr.: The book on the light of the kings]. Cairo: Alexandria, 1872.

al-Wāḥidī al-Naysabūrī, Abū al-Ḥasan,
Asbāb al-nuzūl [tr.: The circumstances of the revelations] (Beirut: Dār al-kutub al-ʿilmiyyah, 1987.

Ibn Yaḥyā al-Wansharīsī, Ibn Yaḥyā,
Al-Miʾyār al-muʿrib wa al-jāmiʿ al-maghrib ʿan fatāwā ʿulamāʾ ifrīqiyyah wa al-andalus wa al-maghrib [tr.: The demonstrative guideline and compiling coverer of *fatāwā* of African, Andalusian, and Maghrībī scholars] (Beirut: Dār al-islāmī, 1981.

al-Zamakhsharī, Ibn ʿUmar,
Al-Kashshāf ʿan ḥaqāʾiq al-tanzīl wa ʿuyūn al-aqāwīl fī wujūh al-taʾwīl [Tr.: The table of the genuinenesses of the revelation and kernels of the statements about the different faces of hermeneutics]. Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1968.

Electronic References

Ebn-Maryam,
>   "*Qul ḥaqqan adhalla 'Umar al-naṣārā fī al-'ahdat al-'umariyyah* [tr.: Say: "Indeed did 'Umar subject   Christians in the Pact of 'Umar]," accessed October 20, 2015
>   http://www.ebnmaryam.com/vb/t196770.html

ElForkan,
>   "*Nass al-'wathīqah al-'umariyyah: radd 'alā al-mukhkharrifīn* [tr.: The document of 'Umar: Refutation   of the charlatans]," accessed October 20, 2015

IslamQa,
>   "*Al-Ankiḥah al-bāṭilah* [tr.: Invalid marriages]," accessed October 23, 2015 http://is lamqa.info/ar/147166

IslamQa,
>   "*Muslimah tuḥibb rajul naṣrānī wa turīd al-sawāj bih* [tr.: A Muslim woman is in love with a Christian man and wants to marry him]," accessed December 3, 2015 https://islamqa.info/ar/100148

IslamWeb,
>   "*Al-Zawāj min ghayr al-muslimīn* [tr.: Marriage with non-Muslims], accessed October 23, 2015 http://fatwa.islamweb.net/fatwa/index.php?page=showfatwa&Option=Fat waId&Id=2779

Al-Jazeera,
>   "*Al-Miḥwar al-tarīkhī: al-Andalus wa rijāluh* [Tr.: Historical discussion: Andalusia and its men]," accessed november 11, 2013.
>   http://www.aljazeera.net/portal/pages/15d97d40-3d0d-4a85-90e5-2aaa70d09b8e