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*To Jeannie Mettlen, who was Grammie,  
and to Zoë Chan, who goes by many names.*

## Acknowledgments

*Alas, that Spring should vanish with the Rose  
That Youth's sweet-scented Manuscript should close  
The Nightingale that in the Branches sang,  
Ah, whence, and whither flown again, who knows*

As the not altogether sweetly scented manuscript of seven years at the University of Chicago closes, the time comes to thank those who have sung in the branches of the spring of my life.

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## Introduction

### The Granadan vassalage and the obligation to emigrate

I intend to analyze the challenges that the presence of a hegemonic Christian power posed to Islamic law and its practitioners in the kingdom of Granada in the early 15<sup>th</sup> century. In so doing, I hope to explore the nature of Islamic law as a religious, legal, and political system. My primary aims will be to trace the limits of this system's flexibility in the face of political necessity, and to examine the political role of its practitioners, the class of jurists, in Granadan society.

Muslims have been living under non-Muslim rule since the beginning of Islam. These arrangements were initially of relatively short duration and involved relatively small Muslim communities; they were as a result largely overlooked by the jurists. The Christian reconquests of Sicily and significant population centers in northern Spain beginning in the eleventh century brought the reality of Muslims living in Christian territory to the attention of Muslim rulers and legal scholars, however, and spurred attempts to develop a legal consensus on the question of whether and under what circumstances Muslims could legally reside outside the abode of Islam. When a scholar found that Muslim residence in the abode of war was legally prohibited the solution eventually offered by the *sharī'a* was for the Muslims in question, as individuals or en masse, to perform *hijra*, or emigration, to a Muslim polity.<sup>1</sup>

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<sup>1</sup> See, inter alia: Peter Sjoerd van Koningsveld and Gerard Wiegers, "The Islamic statute of the Mudejars in the light of a new source," *Al-Qantara* 17, no. 1 (1996), pp. 19-58; Muhammad

There has never been a universal legal consensus across the four schools of jurisprudence on the obligation to emigrate, however, nor has there ever been a universal legal consensus among those scholars or schools favoring a theoretical obligation to emigrate on the particular circumstances in which that obligation becomes operative and on the legal repercussions for those Muslims who refuse to do so. When we speak of a legal consensus on the obligation to emigrate we are necessarily referring to a prevailing opinion, or *mashhūr*, that emerged in a specific historical context.

It is natural that the first widespread *mashhūr* in favor of the obligation to emigrate should be of considerable interest to modern scholars, especially insofar as it offers us insight into the historical context that gave rise to it. By this I mean the consensus that is widely accepted to have emerged among the Mālikī jurists of the Western Mediterranean between the Christian conquests of the eleventh century and the expulsion of the Muslims from Spain in the sixteenth. The nature of this consensus and of its development, however, remains unclear. We cannot in fact be certain that any such a prevailing opinion ever obtained, even among this geographically and temporally circumscribed universe of jurists, and, if it did emerge, we do not understand why or how.

This dissertation will approach the theory of a Western Mediterranean Mālikī consensus on the obligation to emigrate with a critical eye. I will begin by analyzing a specific debate between two fifteenth-century Granadan jurists in order to reconstruct the state of the supposed

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Khalid Masud, “The Obligation to Migrate: The Doctrine of *Hijra* in Islamic Law,” in *Muslim Travellers: Pilgrimage, Migration, and the Religious Imagination*, ed. Dale F. Eickelman and James Piscatori (London: Routledge, 1990), pp. 29–49.



consensus, or proto-consensus, at that place and time, with the hope that this debate might help us to better apprehend the arguments at play, the historical realities undergirding those arguments, and, perhaps, whether we are justified in conceiving of such a broader consensus at all. More than this, the debate in question provides a wealth of information pertaining to aspects of Granadan and Mudéjar society, politics, and belief quite distinct from the question of the obligation to emigrate. Next, I will seek to apprehend the wider political context of the debate in question through an examination of the peace treaties concluded between Granada and Castile during the 1420s, 1430s, and 1440s.

Under the Naṣrid dynasty, Granada endured for over two hundred years as the only Muslim state on the Iberian peninsula – from its founding in 1238 as a tributary state under Castile until its eventual conquest by the Catholic Monarchs in 1492. While Muslims in the rest of the peninsula grappled with the pressures of direct Christian domination, the Granadans were left in a more ambiguous position. In terms of its social organization and intellectual life, Granada was in most respects a quite typical Islamic society. Yet it was also, for most of its history, a vassal state of its more powerful Christian neighbor, with the sultan of Granada in theory owing his loyalty to the king of Castile – a fact he was at pains to conceal from his subjects. This tension between the Islamic character of the state and the reality of its subservient political position has to date been little explored.

The role of the jurists in negotiating this tension is fundamental. As in most medieval Islamic societies, the jurists of Granada constituted a great share of the intellectual and administrative élite of that kingdom. They elaborated and transmitted the religious law that formed the basis of the legal system, and rulers relied on them to staff the high offices of state,

including positions as judges, diplomats, and cabinet ministers. An additional particularity of the Granadan context is that the more prominent juristic families had by the beginning of the fifteenth century become important powerbrokers, intimately involved in the flurry of political maneuvering, appeals to foreign powers, and coups d'état that characterized the last century of the kingdom's existence.

The Granadan jurists, then, constituted an intellectual community at the intersection of the spheres of religion, law, and politics. Granada's subordination to a Christian hegemon infringed on all three of these domains simultaneously: it was humiliating to religious sensibilities, in clear contravention of Islamic law, and as politically explosive then as it is today. The jurists were therefore present at every point of ideological strain brought about by Granada's state of vassalage. They negotiated this tension through their debates and rulings, which constitute in themselves the reaction of Islamic law to a world no longer dominated by Islam. Yet this was also an Islamic law constituted by political actors vying against each other for power and influence.

My aim is to examine this process as it occurred during the penultimate stage of Granada's existence, when Granada's political position vis à vis Castile was deteriorating. I will pursue my investigation along two axes. The first is the effect that Granada's state of vassalage had on the substance of the law, in particular on the problem of Muslims living under Christian rule, including both the legal status of the Mudéjars, which has been the object of much scholarship, and of Granada itself, which has not. The second is the question of how the precedent-based Mālikī legal system accommodated novel and politically-motivated adaptations to Christian hegemony, and the strategies used by the Granadan jurists to dispose of inconvenient

or unworkable precedents when necessary without rupturing the continuity of the legal system. Connecting these two questions is a third: the role of legal debate as a form of political discourse, and of the jurist as a political actor, such that the sharī‘a, especially touching on the subject of Granada’s relations with Castile, may have served as an arena for political competition for its practitioners.

Granadan political and economic history has been well covered in a series of general studies, the most notable of which are those of Rachel Arié<sup>2</sup> and Leonard Patrick Harvey.<sup>3</sup> The Granadan jurists do not figure in these surveys with much frequency, however, and when they do show up they seem to function either as a unified bloc of political operators whose aim is to depose or enthrone one sultan or another, or else as a class of intransigent naysayers who thwart at every turn the sultans’ prudent efforts to make peace with Castile. Harvey in particular likes to flog this horse, helpfully informing us that “at all stages in the Reconquest the Muslim divines, powerful shapers of public opinion, were more inclined to preach in favor of last-ditch resistance than statesman-like compromise” and that furthermore “the politicians’ aim must have been to achieve the best that was materially possible in the light of the realities of the situation, while the theologians had no acceptable theoretical framework into which permanent retreat and the yielding up of lands to the polytheistic enemy could be fitted.”<sup>4</sup> This mindset, in a less extreme form, informs the modern scholarship on the obligation to emigrate and the treatment of Mudéjar

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<sup>2</sup> Rachel Arié, *L’Espagne musulmane au temps des Nasrides (1232-1492)* (Paris: Éditions de Boccard, 1973).

<sup>3</sup> Leonard Patrick Harvey, *Islamic Spain, 1250 to 1500* (Chicago: University of Chicago Press, 1990).

<sup>4</sup> Idem, 24.

communities by the legal scholars, which takes a handful of hardline rulings by sixteenth-century North African jurists as constituting the response of Islamic law to the Mudéjar question.

The role of the jurists in adapting to Christian hegemony remains, then, an open question. We may obsess over the strictness or lenience of individual jurists, or with their obduracy in the face of the clear needs of their societies. But the historical *sharī'a* was a legal system as complex and vibrant as any that has been devised since, and it was capable of responding to challenges with no small degree of nuance. Perhaps the legal consensus on Mudéjars had become rigid and unyielding by the time of al-Wansharīsī, but it had become so in response to an arrangement that had failed. When Mudéjarism and vassalage were still possibilities, perhaps the jurists were not so univocal in their condemnation.

### **The Granadan vassalage**

I have spoken of Granada above as a vassal of Castile. This is accurate to a point, that point being whether a perennially disloyal vassal with a tendency to lapse into armed conflict with its liege lord is really much of a vassal. The precise extent of Granada's political subservience to Castile fluctuated constantly, and Granada's state of vassalage should be viewed as one component of a small kingdom's ongoing efforts to triangulate its survival amidst much larger neighbors – and as one component of the efforts of individual politicians within that kingdom to triangulate their own survival amidst their rivals. The two kingdoms engaged in a consistent policy of meddling in each other's internal affairs, often by supporting pretenders to

each other's thrones, raiding each other's frontier zones, and harboring each other's rebels and assorted personae non gratae.<sup>5</sup>

The shared political history of Granada and Castile would lend itself well to an HBO dramatization; it lends itself less well to summary. I will here narrate a small portion of that history in order to contextualize the shifts that occurred in Granada's relations with its neighbors, in particular Castile, from the time of the founding of the kingdom until the timeframe of my project.

Muḥammad ibn Yūsuf ibn Naṣr ibn al-Aḥmar was a warlord from the vicinity of Jaén who had established a minor taifa encompassing several cities along the Guadalquivir in the wake of the collapse of Almohad al-Andalus in the early 1230s. He extended his reach to Granada in 1237. Castilian pressure soon drove him from the lowlands of the Guadalquivir basin to the more defensible Sierra Nevada, and Granada and its mountainous hinterland became the seat of his new dynasty and the last redoubt of al-Andalus.

Muḥammad ibn al-Aḥmar had pledged his loyalty to Ferdinand III of Castile, paid him tribute, and surrendered up to him Jaén and the rest of his holdings along the Guadalquivir in return for a lengthy truce. This was the beginning of the Granadan vassalage, which the Naṣrids would lapse into and out of for the rest of the history of their kingdom. The Castilians and Granadans both availed themselves of this truce to indulge in bouts of bloody infighting. In the Granadan case, Muḥammad ibn al-Aḥmar and his son, vizier, and eventual successor Muḥammad II “al-Faqīh” purged the Banū Ashqilūla, a prominent family who held sway in

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<sup>5</sup> See Ana Echevarría, *Knights on the Frontier: the Moorish Guard of the Kings of Castile* (Leiden: Brill, 2009).

Málaga, Granada's second city and most important seaport, and who had been Muḥammad ibn al-Aḥmar's allies during the founding of the polity.

Muḥammad ibn al-Aḥmar had alienated Alfonso X of Castile by supporting a failed Mudéjar uprising in the Guadalquivir valley in the 1260s. Perhaps sensing weakness, or perhaps worried that Muḥammad ibn al-Aḥmar would seek Moroccan military support and thereby weaken their influence in the Granadan army, the Banū Ashqilūla rebelled, initially with the support of Alfonso. While Muḥammad ibn al-Aḥmar attempted to placate Alfonso and remove his support for the Banū Ashqilūla, a contingent of Alfonso's own rebellious noblemen, led by one Nuño González de Lara, decamped to Granada and allied themselves with Muḥammad, using the kingdom as a base of operations. Muḥammad ibn al-Aḥmar died in 1273, to be succeeded by his son.

The various threads that Muḥammad ibn al-Aḥmar had left dangling upon his death came together during the reign of Muḥammad II al-Faḡīh in several Marīnid invasions of southern Iberia, both in support of the Naṣrids and in opposition to them, a spate of double-crosses from all quarters, the pickling of the head of the decapitated Nuño González de Lara, the departure of the Banū Ashqilūla for Morocco, diplomatic overtures to both Aragon (against Castile) and Zayyānid Tlemcen (against Morocco), the arrival on the scene of a contingent of Genoese pirates, the alliance of Alfonso's son and usurper Sancho with Granada against the alliance of his father with Morocco, and the establishment of a permanent contingent of Moroccan holy raiders under the command of a Marīnid *shaykh al-ghuzāt* to man the Granadan-Castilian frontier (and to represent their sultan's interests).

We may identify a few characteristics of Granada's so-called vassalage at this moment in the kingdom's history. The first is the fluidity of Granada's diplomatic position vis à vis Castile, which vacillated opportunistically from loyalty to belligerence to uneasy alliance and back again. Granada gave as good as it got, so to speak, during this period, and Castile's attempts at overt meddling in its smaller neighbor's internal affairs were more likely to be fiascos than they were to bring the Naṣrids to heel. The second is the relatively long duration of peace treaties between the two kingdoms, which regularly lasted for upwards of ten years at a time and which seem to have entailed a relatively fixed set of concessions from the Naṣrids.

The omnidirectional double-dealing that characterized the reigns of the first two Naṣrid sultans continues in the same vein through most of the fourteenth century. So long as Granada had multiple powerful neighbors to play off each other its independence was relatively secure, and any particularly humiliating concessions towards Castile, such as the loss of the fort of Algeciras in 1344, could be reversed in due time. Castile and Morocco would not remain so evenly matched forever, however, and they would not remain equally committed to keeping Granada within their respective spheres of influence.

The Naṣrid dynasty reached its apogee during the reign, from 1354 to 1391 with an intermission between 1359 and 1362, of Muḥammad V. After being briefly deposed, he returned to power with Castilian aid, mastered his internal enemies, defected to the side of the usurper Henry II of Trastámara in the Castilian civil war, and broke with the Marīnids by expelling the commanders of the contingents of *murābiṭs* guarding the Castilian frontier. It was during this period as well that al-Shāṭibī developed his theory of the *maqāṣid al-sharī'a* and the historian and politician Ibn al-Khaṭīb had various adventures.

The reign of Muḥammad V represents a scaling back of Granada's policy of triangulation between Castile and Morocco. This is particularly the case with the latter, which Muḥammad V seemed intent on excluding entirely from the peninsula. On one occasion, he went so far as to depose the Marīnid sultan Muḥammad III for refusing to extradite the wayward Ibn al-Khaṭīb back to Granada to face execution. Muḥammad V's foreign policy was otherwise relatively sedate, though he did take advantage of Castilian strife to retake Algeciras, and the latter half of his reign constituted an unbroken series of truces with Castile. This arrangement began to fray under his successors, as Castile emerged from its lengthy spell of dynastic strife and began to insert itself more forcefully into Granadan affairs. With Morocco weakened by internal divisions and without a direct incentive to intervene on Granada's behalf after the expulsion of its *shuyūkh al-ghuzāt* from the frontier, the old policy of triangulation between the two powers would no longer be enough to secure Granada's independence.

It is this period, from the death of Muḥammad V in 1391 to the middle of the fifteenth century, that will be the focus of my project. At this point, the Naṣrid kingdom descended into a more or less permanent political crisis. Between 1417 and 1452, Granada was ruled twice by Muḥammad VIII, four times by Muḥammad IX, twice by Muḥammad X, briefly by Muḥammad XI and Yūsuf IV, and once by Yūsuf V, and the kingdom was at times effectively divided into two or three principalities, with a different pretender reigning in each of Málaga, Almería, and Granada proper. The Castilians intervened with some regularity in support of their preferred candidates, often via the intermediaries of their agents the Venegas, and the Banū Sarrāj, a prominent political family from Guadix, supported Muḥammad IX on each of his returns to power.



Two primary shifts occurred within the Granadan political and legal system after the reign of Muḥammad V that raised the profile of the legal status of the relationship between Granada and Castile. The first: peace treaties with Castile became shorter in duration and more onerous in stipulation, in part because Castile's less chaotic political situation empowered it to make more aggressive demands, and therefore more difficult for the Naṣrid sultans to defend to their subjects. The second: the relative weakness of the later sultans and the prevalence of pretenders may have granted a certain measure of political independence to the *fuqahā'*, many of whom were active partisans of the different factions.

Granada's state of vassalage had been, up through the reign of Muḥammad V, an irregular nuisance that, while certainly intruding on the kingdom's coffers and its geopolitics, the Naṣrid sultans always seemed capable of wriggling out of with clever triangulation and a bit of luck. But it had become by the early fifteenth century a permanent and ever weightier burden on the kingdom's finances and the dynasty's political legitimacy. Given that Castilian interference was largely responsible for enthroning and dethroning several of Granada's later sultans, and that Castilian demands had begun to penetrate deeper into the political and economic life of the kingdom, we might expect that negotiating the limits of accommodation with Castile had become a live political question. I intend to argue that it was a live legal question as well, and that the jurists played a key role in policing the nature of Granada's vassalage.

## The obligation to emigrate: A Mālikī consensus?

As with vassalage to a Christian power, the legal status of Muslims in non-Muslim polities was not a single question but rather a constantly proliferating set of related questions, each one arising from the complexities of interactions between religious groups and polities. Scholars have tended to classify the resultant opinions along a spectrum from most rigid to most lenient, or not-quite-synonymously from “rigorism” to “pragmatism.”<sup>6</sup>

This is a typology of convenience, and it risks producing polyphyletic groupings of rulings that are superficially similar but that in truth emerge from different circumstances, considerations, and legal rationales. It is at present the most practical typology available to us, however, so long as we are cognizant of its weaknesses: firstly, the fact that a ruling that may seem rigid or lenient to us may not necessarily have seemed so in the time and place in which it was formulated, and secondly the fact that not all rulings were intended by the jurists who issued them to produce a rigid or lenient outcome at all.

The rigid/lenient typology has been expressed in two primary ways. It was initially employed by Khalid Abou el Fadl at the level of the *madhhab* in his extremely useful article “Islamic Law and Muslim Minorities.” Abou el Fadl believes that the Mālikī school was markedly more rigid than the others, a phenomenon that he ascribes to the school’s predominance in those regions where the question of the obligation to emigrate was for historical reasons most pressing (that is to say: Spain, Sicily, and North Africa). We read, therefore, that “each school adopted a cohesive position which it applied, at times, with compulsive rigidity”

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<sup>6</sup> Beginning at least with Harvey, who in *Islamic Spain* refers to al-Wansharīsī as a “rigorist” (p. 60).

and that “the Mālikī school adopted an uncompromising position,”<sup>7</sup> in opposition to the Ḥanafīs, who rejected the theoretical obligation to emigrate entirely, and the Shāfi‘īs, who “treated every case on its merits.”<sup>8</sup>

Abou el Fadl therefore asserts the existence of a rigid Mālikī consensus – but only concerning the theoretical principle itself, not its casuistic application. He does not claim that the Mālikī jurists had developed a true consensus with regard to the imposition of the obligation to emigrate on particular Muslim communities, nor that they were overwhelmingly less willing to take into consideration mitigating circumstances when compared with jurists from the other three Sunni schools, though he does note that the school became “increasingly strict”<sup>9</sup> after the fall of Toledo.

Van Koningsveld and Wiegers adopted and expanded the rigid/lenient typology for use within the Mālikī school itself, classifying individual jurists within the school as falling along a spectrum from pragmatists to hardliners, represented by al-Wahrānī (d. 1511) and al-Wansharīsī (d. 1508) respectively.<sup>10</sup> This analysis has been quite influential. Indeed, it seems as though it may be the scholarly community’s present *mashhūr*, to the extent that scholars like Jocelyn Hendrickson, who disagrees with Van Koningsveld and Wiegers’s classifications of individual

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<sup>7</sup> Khalid Abou el Fadl, “Islamic Law and Muslim Minorities: the Juristic Discourse on Muslim Minorities from the second/eighth to the eleventh/seventeenth centuries,” *Islamic Law and Society* 1, no. 2 (1994), pp. 141-187, p. 153.

<sup>8</sup> *Idem*, 143.

<sup>9</sup> *Idem*, 150.

<sup>10</sup> Van Koningsveld and Wiegers, “The Islamic Statute.”

jurists, and Kathryn Miller, who urges caution when applying the typology,<sup>11</sup> generally accept the validity of the rigorist/pragmatist dichotomy.

The question next becomes: did the hardline faction ultimately prevail? Was their victory thorough enough to actually constitute a consensus of the school? If so, when and why? The notion that the Mālikī school had adopted a more rigorist consensus than the others is generally accepted, as is, necessarily, the notion that the Mālikī school had indeed adopted a consensus. Hendrickson goes so far as to argue that the jurist who is to other scholars the foremost representative of the hardline camp, al-Wansharīsī, was in fact solidly in the mainstream of the school,<sup>12</sup> effectively shifting the entire spectrum of Mālikī juridical thought further towards rigorism.

Having accepted the premise of a hardline Mālikī consensus, scholars have busied themselves attempting to isolate the reasons for it, both on the level of the school compared to the others and on the level of individual jurists compared to each other. These explanations have tended towards the political: the tenor of diplomatic relations between Christian and Muslim kingdoms in the Western Mediterranean figures prominently in both Van Koningsveld and Wiegers's<sup>13</sup> and Hendrickson's analyses, whereas Abou el Fadl is interested in the "social and

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<sup>11</sup> Kathryn Miller, *Guardians of Islam: religious authority and Muslim communities of late medieval Spain* (New York: Columbia University Press, 2008), p. 28.

<sup>12</sup> She asserts that al-Wansharīsī was no more rigorist than the supposed pragmatists al-Māzarī, al-'Abdūsī, and al-Wahrānī. See: Jocelyn Hendrickson, "The Islamic Obligation to Emigrate: al-Wansharīsī's *Asnā al-matājir* Reconsidered," PhD diss., Emory University, 2009, p. 100.

<sup>13</sup> See, for instance, Van Koningsveld and Wiegers's concluding remarks: "In conclusion, we may formulate the following hypothesis for further research: Within the context of peaceful relations which crystallized in international treaties (or in treaties between a Christian ruler and a Muslim community living in his realm), it was the pragmatic line of legal thought that prevailed.

political position of each jurist” vis à vis his society’s power structure as a potential explanation for stricter rulings.<sup>14</sup>

But the validity of the premise of a prevailing Mālikī rigoristic consensus has yet to be conclusively demonstrated. It would indeed appear that the Mālikī school contained a more active rigorist faction than the other schools, but the seeming dominance of this faction may be the result of developments after the fall of Granada, rather than a natural coalescence of different strains of thought within the school.

We have at least some evidence that Mālikī rigorism may have been a regional phenomenon within the school, rather than a true prevailing opinion. The Mālikī *madhhab* has historically dominated the Islamic West, including Sicily and al-Andalus, and as a result was the school of jurisprudence most involved in adjudicating the legality of continued Muslim inhabitation of Christian-governed lands. But it was also, like the other three *madhhabs*, strong in Egypt. If rigorism were a true hallmark of Mālikī thought rather than a phenomenon specific to the Islamic West we would expect it to be just as prevalent in rulings from Egypt as in rulings from North Africa.

This does not appear to have been the case. Van Koningsveld and Wiegers’s analysis of the ruling of the four chief justices of then-Mamlūk Cairo in approximately 1510 demonstrates that, in this case at least, the Egyptian Mālikīs diverged from the rulings of their western contemporaries (or perhaps we might rather say that the western Mālikīs diverged from their

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However, in times of war or military confrontation, it was the hard line that came to the fore.”  
“The Islamic Statute,” p. 54.

<sup>14</sup> Van Koningsveld and Wiegers, “The Islamic Statute,” p. 184.

Egyptian contemporaries). The Mālikī judge agrees with the Shāfi‘ī and Ḥanafī judges that only a limited amount of a Muslim’s income should be spent on emigrating from the abode of war, and he agrees with the Shāfi‘ī that scholars have a legal obligation to remain behind in order to help their communities.<sup>15</sup> Both of these stances are in direct opposition to the rulings of al-Wansharīsī, who would have died only two years prior to the judges’ ruling,<sup>16</sup> and who in his “Marbella fatwa” had rejected in strenuous terms the appeal of a man who had desired to stay behind in Christian Spain in order to assist his community in religious matters and in its interactions with the Christian authorities.<sup>17</sup>

Al-Wansharīsī has loomed large in scholarly treatments of the obligation to emigrate for two primary reasons. The first is his compilation towards the end of his life of the most important fatwa collection of the Islamic west, *The Clear Standard and Extraordinary Collection of the Legal Opinions of the Scholars of Africa, al-Andalus, and the Maghrib (al-Mi‘yār al-mughrib wal-jāmi‘ al-mu‘rib ‘an fatāwā ahl Ifrīqiyya wal-Andalus wal-Maghrib)*. The second is his authorship of several fatwas in that same collection concerning the obligation to emigrate. The two most well-known of these are the aforementioned Marbella fatwa and the fatwa known as *The Most Noble Commerce (Asnā al-matājir)*, concerning a group of Andalusī immigrants to Morocco who had commenced to complaining publicly about the quality of life in that kingdom and expressing a desire to return to live under Christian rule in Spain. In both fatwas he

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<sup>15</sup> Idem, 44.

<sup>16</sup> Al-Wansharīsī died in 1508.

<sup>17</sup> The full text of the Marbella fatwa is included in Hendrickson, “The Islamic Obligation to Emigrate.” This passage is from p. 383.

vigorously (and viciously) upholds what is generally considered a maximalist stance<sup>18</sup> on the obligation to emigrate: that it is incumbent on every Muslim living under non-Muslim rule in every circumstance save utter physical or financial inability.<sup>19</sup> This stance is clearly and completely incompatible with the rulings of the chief judges of Cairo, including the Mālikī judge.

We may entertain a few explanations for this divergence. The first, that the ruling of the Mālikī chief justice was outside of the school’s mainstream, seems dubious: if the Mālikī chief justice of Cairo is outside the mainstream of the Mālikī school then our definition of mainstream is useless. Another is that al-Wansharīsī is representative of a Western Mālikī hardline consensus, as Hendrickson argues, but that this consensus did not extend beyond the Maghrib. Finally, we must consider the possibility that al-Wansharīsī represents no consensus greater than himself, or at most an extremely narrow consensus of late-15<sup>th</sup> and early-16<sup>th</sup> century North African jurists reacting to the conquest of Granada and Iberian encroachment into the Maghrib proper. Irrespective of the explanation that we choose to believe, however, neither al-Wansharīsī nor the Mālikī chief justice are direct representatives of those the jurists (aside from their own) with whom Mudéjars would have had the most interaction: the jurists of Granada in the period before its reconquest in 1492.

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<sup>18</sup> Hendrickson does not deny that it is a maximalist stance, she simply contends that it is no more maximalist than any of his contemporaries’ stances.

<sup>19</sup> Hendrickson, “The Islamic Obligation to Emigrate,” p. 346: “The obligation to emigrate does not lapse except in a situation of complete inability.”

## Chapter One

### The Galeran question: analysis

The same features that render al-Wansharīsī's own fatwas so attractive to scholars, their directness and their uncompromising language, also render them less useful for reconstructing the intra-Mālikī debate regarding the obligation to emigrate. Al-Wansharīsī treats opposing viewpoints on this issue with contempt: "Concerning this prohibition of residence among, and of alliance with, unbelievers," he says, "you do not find any [scholar] with a divergent opinion among those who pray toward Mecca," and "any [scholar] who contradicts this [prohibition] now, or who desires disagreement as to those who reside with or rely upon them, by permitting this residence, by considering it a matter of little consequence, and by making light of its legal status – [any such scholar] has deviated from the religion and parted from the Muslim community who adhere to the noble Book."<sup>20</sup> For al-Wansharīsī there is simply no room for pious *ikhtilāf* concerning the obligation to emigrate, and he verges on excommunicating any jurist who would rule otherwise.<sup>21</sup> He is also, of course, a Moroccan writing after the trauma of the Spanish conquest of Granada: his rulings are as likely to be representative of this fact as they are to be representative of a longstanding consensus.

Al-Wansharīsī's fatwas are either faithful representations of a rigid Western Mālikī consensus or they are aggressive attempts to create such a consensus out of a much more

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<sup>20</sup> Hendrickson, "The Islamic Obligation to Emigrate," p. 350.

<sup>21</sup> One can only imagine what the chief judges of Cairo would have thought of having been excommunicated by the chief mufti of Fez.



fractious legal tradition, perhaps as the result of a particular set of historical circumstances that emerged only at the very end of al-Andalus. In order to assess which possibility is most likely we would ideally like to read dissenting viewpoints from an earlier period. Since al-Wansharīsī views the proponents of a lenient interpretation of the obligation to emigrate as bound for hellfire, however, we might expect to find them in short supply in his *Mi 'yār*. They are. However, the *Mi 'yār* does contain a ruling that undermines al-Wansharīsī's assertions of Mālikī unanimity in subtler ways.

Immediately following al-Wansharīsī's own fatwas concerning the obligation to emigrate is a fatwa entitled *Mas'ala fī shirā' amwāl ahl Ghalayra min al-Rūm*, or "A case concerning the purchasing of the property of the people of Galera from the Christians,"<sup>22</sup> issued by the fifteenth-century Granadan jurist Abū 'Abdallāh Muḥammad al-Saraqusṭī.<sup>23</sup> This fatwa is exceptional in several respects, but the most important for our purposes is its inclusion of an extended followup debate between al-Saraqusṭī and his fellow Granadan Abū Yaḥyā Muḥammad ibn 'Āṣim.<sup>24</sup> Because the two jurists are writing in order to convince each other, rather than in order to influence a third party, we may expect their discussion to represent more faithfully the legal *Zeitgeist* concerning the obligation to emigrate that obtained in Granada in the early to middle fifteenth century.

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<sup>22</sup> Aḥmad b. Yaḥyā al-Wansharīsī, *Al-Mi 'yār al-mu'rib wal-jāmi' al-mughrib 'an fatāwā ahl Ifrīqiyya wal-Andalus wal-Maghrib*, ed. Muḥammad Ḥajjī (Rabat: Wizārat al-Awqāf wal-Shu'ūn al-Islāmiyya lil-Mamlaka al-Maghribiyya, 1981), 2:142-58.

<sup>23</sup> Death in 1459.

<sup>24</sup> Death in 1453.

This fatwa has, in spite of its promise, been underutilized, and no one has touched on the subsequent debate. This may be because it is extremely confusing. The only treatments of any length are to be found in José López Ortiz's 1941 article "Fatwas granadinas de los siglos XIV y XV," where he admits that "la fatwà, tanto en el original como los extractos de Amar,<sup>25</sup> sobre todo en estos últimos, es bastante oscura: el hilo de la argumentación se sigue con bastante dificultad,"<sup>26</sup> and in Alan Verskin's recently-published *Islamic Law and the Crisis of the Reconquista*.<sup>27</sup>

The case is this: the Muslim inhabitants of the town of Galera, some ninety miles northeast of Granada proper, had become the *dhimmi*s of the Christians of Castile. The Christians proceeded to plunder their belongings and attempt to sell the pillaged property to the Muslims of the nearby town of Baza, twenty-five miles southeast of Galera, which causes the inhabitants of that town to write to Granada requesting a ruling on the legality of purchasing the Galerans' property from the Castilians.

López Ortiz dates the fatwa to 1436,<sup>28</sup> having found corroboration of the events therein described in the *crónica* of Juan II, which contains the following description of negotiations between the king's emissaries and the Galerans:

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<sup>25</sup> Here he is referring to a very brief translation/synopsis in French presented in *Archives Marocaines* 12 (1908), pp. 216-18.

<sup>26</sup> José López Ortiz, "Fatwas granadinas de los siglos XIV y XV," *Al-Andalus* 6, no. 1 (1941), pp. 73-127, p. 93.

<sup>27</sup> See in particular Alan Verskin, *Islamic Law and the Crisis of the Reconquista* (Leiden, Brill: 2015), pp. 99-101.

<sup>28</sup> López Ortiz, "Fatwas granadinas," p. 88.

En este tiempo Rodrigo Manrique escribió al Rey que los Moros de Galera é Castilleja habian hablado con él, certificándole que si el Rey les diese seguridad de las guardar las libertades é franquezas que el Rey de Granada les guardaba, que le entregarian las fortalezas, é se harian sus súbditos é naturales. El Rey embió todas las seguridades que por Rodrigo Manrique le fueron embiadas demandar por parte de los Moros, los quales entregaron luego las dichas fortalezas en la forma que lo habian prometido.<sup>29</sup>

Verskin's analysis of the Galera fatwas is a valiant effort, but deficient in several ways. Verskin does not appear to have carefully read either of Ibn 'Āṣim's responses, and his reproduction of al-Saraqusṭī's arguments does not take into account Ibn 'Āṣim's criticisms of them. Ibn 'Āṣim's second response, which on its own comprises approximately half of the total pagecount dedicated to the case in the *Mi'yār*, is not analyzed at all. As a result, Verskin is unable to situate the Galeran case in its political context.

Of the two jurists involved in the Galeran case, al-Saraqusṭī has left the smaller historical trace. More junior than Ibn 'Āṣim, though of roughly the same generation of scholars, he comes across in the biographical dictionaries as a competent and well-respected but largely unremarkable figure who authored neither treatises nor poems and who held none of the distinguished offices of state, save that of imam. His family must have at some point hailed from Zaragoza, per his nisba, but there is no reason to believe that they were recent immigrants to Granada. His teachers included Abū al-Qāsim ibn Sarrāj, Abu 'Abdallāh ibn al-Azraq, and Abū

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<sup>29</sup> Cayetano Rosell et al., *Crónicas de los Reyes de Castilla: Desde Don Alfonso el Sabio, Hasta los Católicos Don Fernando y Doña Isabel* (Madrid: M. Rivadeneyra, 1875), 68:528.

al-Ḥasan al-Qalaṣādī. This latter seems to have been fond of his student, speaking well of him in his *Rihla* and naming him “one of the most faithful stewards of the madhhab of Mālik.”<sup>30</sup>

The one intriguing detail to be found in the biographical dictionaries is that al-Saraqusṭī’s funeral was attended by the sultan and his court. The sultan at the time of his death would have been Abū Naṣr Sa‘d al-Musta‘īn bi-Llāh, who had executed Ibn ‘Āṣim almost a decade earlier whilst mounting a Castilian-backed coup that overthrew Muḥammad IX. What exactly we are to make of this is unclear: that al-Saraqusṭī was well-liked by the sultan who had executed Ibn ‘Āṣim may hint at an underlying political allegiance, or it may not. Finally, One Abū ‘Abdallāh ibn al-Jubayr al-Yaḥṣī wrote a poem lauding al-Saraqusṭī upon his passing. The poem is, unfortunately, quite bad and of little biographical interest.

Ibn ‘Āṣim is a much more prominent figure. The Banū ‘Āṣim were a family of jurists active from the late fourteenth century to the mid-fifteenth century, at least three of whom have left substantive traces.<sup>31</sup> The first is Abū Yaḥyā Muḥammad ibn ‘Āṣim “the Martyr,” who died in 1410. A student of al-Shāṭibī, he was killed fighting Christians on the frontier. The second is his brother Abū Bakr Muḥammad ibn ‘Āṣim, who died in 1426. Also a student of al-Shāṭibī, and composer of the *Gift of the Judges* (*Tuḥfat al-ḥukkām*), an *urjūza* on legal matters. Chief secretary for a time under Muḥammad VII, he was imprisoned by Muḥammad VII’s successor

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<sup>30</sup> Aḥmad Bābā al-Tunbuktī, *Kitāb nayl al-ibtihāj bi-taṭrīz al-Dībāj* (Cairo: ‘Abbās b. ‘Abd al-Salām b. Shaqrūn 1932), p. 539.

<sup>31</sup> See: Seco de Lucena, “Los Banū ‘Āṣim: intelectuales y políticos granadinos del siglo XV.” *Miscelánea de Estudios Árabes y Hebráicos* 2 (1953), pp. 6–14; Milouda Charouiti Hasnaoui, “Una familia de juristas en los siglos XIV y XV: Los Banu ‘Asim de Granada,” *Estudios onomástico biográficos de al-Andalus* 6 (1994), pp. 173-186.

Yūsuf III for a period of six months in 1411 under unclear circumstances. He was later made *qāḍī al-jamā'a* under Muḥammad IX from 1421 until his death.

Finally we come to Abū Bakr's son Abū Yaḥyā Muḥammad ibn 'Āṣim, author of our fatwa, who died in 1453. Author of a commentary on his father's work, the *Sharḥ al-tuḥfa*, and of the *Jannat al-riḍā*, a treatise on the virtues of submitting to the will of God. He was *qāḍī al-jamā'a* during the third and fourth reigns of Muḥammad IX and held many other prestigious posts. Aḥmad Bābā claims that he assumed twelve posts at once: *qāḍī*, vizier, *kātib*, *khaṭīb*, imam, "and others."<sup>32</sup>

The Galeran case, as we shall see, has implications that extend far beyond the obligation to emigrate. It has a great deal to say as well about the nature of agreements between Muslims and Christians, the political circumstances of the kingdom of Granada, and the lot of those Muslims who had in fact emigrated. My translation of the fatwa exchange and the original Arabic may be found in the appendix.

### **Al-Saraqusṭī's fatwa<sup>33</sup>**

The case is brought before al-Saraqusṭī by "the people of Baza," according to al-Wansharīsī. The *mustaftī* may himself have been a jurist, possibly a frontier "judge between kings" (called in Arabic *qāḍī bayna l-mulūk*, in Spanish *alcalde entre moros y cristianos* or *alcalde entre los reyes*), as al-Saraqusṭī implies that he is responding to the questioner's own

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<sup>32</sup> Al-Tunbuktī, *Nayl*, p. 537.

<sup>33</sup> I have included the original fatwa and an English translation in the appendix.

ruling: “I understand from [your question] that your grounds for prohibiting the purchase of their property from the Christians is because [the people of Galera] have a treaty and a guarantee of safe conduct from us like unto that which the Christians possess.” In any event, the Bazan jurist or official had been inclined to believe that the Galerans’ property was illicit due to their being included under the treaty that the sultan of Granada had concluded with the king of Castile, as a result of the Galerans’ position as a Castilian *dhimmi* population. Already we see that, at least for this frontier official, pacts of *dhimma* between Muslim subjects and Christian rulers are recognized at Islamic law.

There are, in fact, two possible avenues to render illicit the property of the Galerans. The Bazan *mustafī* has touched upon one of them: the prohibition by reason of treaty, which applies to all residents of Castile due to the peace treaty signed between that country’s monarch and Granada’s own. Al-Saraqusī begins his fatwa by introducing a second reason to prohibit purchasing the Galerans’ property: “If what you intend by ‘treaty and guarantee of safe conduct’ is what the Law has determined regarding the prohibition of the property of a Muslim to another Muslim except when he has himself agreed to it, then this obliges you to forbid the purchase from the belligerent unbeliever resident in the abode of war (*ḥarbī*) that which he has plundered from a Muslim.”

The distinction between these two prohibitions on the property of the Galerans, the prohibition by reason of Islam on the one hand and the prohibition by reason of treaty on the other, will constitute the central legal question of the case. A jurist seeking to render licit for purchase the Galerans’ property will need to attack either the villagers’ protected status that derives from their being Muslims or the protected status that derives from their inclusion in the

treaty between the two kingdoms. As we shall see, al-Saraqusṭī opts to mobilize the Galerans’ status as protected Muslims in order to attack the validity of the treaty itself.

Al-Saraqusṭī reiterates that he believes the Bazan *mustaftī* has ruled that the Galerans fall under the treaty concluded with the Christians “due to their being under the subjugation of the tyrant,” and next runs through a handful of precedents concerning the property of Muslims that remains in the abode of war and the potential for divergent rulings between Muslims from birth and convert Muslims. It would appear this discussion serves more to demonstrate al-Saraqusṭī’s own mastery of the subject matter than to resolve any outstanding issues of the case, as none of the precedents cited indicate that the Galerans’ property should be licit for purchase. He effectively agrees with the *mustaftī* with respect to the Galerans’ inclusion in the treaty between Granada and Castile: due to this treaty with their Christian master, the Galerans’ property is by default illicit for Muslims to purchase, as it is the property of a protected group that has been seized in battle.

We might expect this to be the end of it. Al-Saraqusṭī, however, has it in mind to overturn the prohibition on the purchase of the Galerans’ property, and begins to discuss whether the Galerans’ property would have been prohibited even in the absence of the treaty: “Would it be forbidden because it belongs to a Muslim? Or licit because it is within an abode of war?” This refers to a longstanding debate among the doctors of the law as to whether legal protections are extended to Muslims simply because they are Muslims or because of their residence in a geographical abode of Islam.<sup>34</sup>

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<sup>34</sup> Abou el Fadl, “Islamic Law and Muslim Minorities,” p. 165.

The Mālikī school had had more difficulty with this question than the other schools. Abou el Fadl says that the Mālikī stance is “equivocal and confusing,” as evidenced by the fact that “jurists from other schools who attempt to describe the Mālikī position reach contradictory results.”<sup>35</sup> His explanation for this phenomenon is that the early Mālikīs had, like the Shāfi‘īs, favored the stance according to which all Muslims are protected, but that later Mālikīs were motivated to adopt the opposing “territorialist” stance, traditionally associated with the Ḥanafīs, due to their disapproval of Muslims who refused to migrate.<sup>36</sup>

It is this doctrinal confusion that al-Saraqṣṭī seeks to address. He cites Abū ‘Abdallāh ibn al-Ḥājj’s<sup>37</sup> treatment of the case of a non-Muslim living in the abode of war who had converted to Islam but remained in his home country rather than emigrating. Some jurists rule that his property is protected by his Islam, others rule that his property is only protected if he moves with it to the abode of Islam. But this case is different, al-Saraqṣṭī says, because the Galerans are not convert Muslims, they are Muslims from birth: their being in the abode of war is not reason enough to declare their property licit as spoils. He uses as precedent here a ruling by Ashhab that the property that a traveling Muslim purchases in the abode of war remains his even if he is unable to bring it back with him when he returns to the abode of Islam. Such consensus as exists, we will note, seems rather firmly in favor of prohibiting the Galerans’ property.

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<sup>35</sup> Idem, p. 167.

<sup>36</sup> Idem, p. 169.

<sup>37</sup> The Cordoban, d. 1134.



Al-Saraqṣṭī at this point seems to believe that the Galerans' property is illicit by reason of their Islam, and that the matter of the treaty has no bearing on matter: "If it is true that the property of the people of Galera was forbidden and no event has occurred that would make it licit, then it has not attained the status of the property of Christians, upon which there is a ban due to a treaty barring us from purchasing it from those who seize it from them." Nevertheless, he begins a discussion of the status of the Galerans, and here his argument takes a surprising turn:

There is no doubt that they were under the *dhimma* of the Christian [king] and his treaty, and then the Christian violated the terms of his treaty and betrayed them. They have the status of those who are allegiant to the Imām of the Muslims when he makes a treaty with the tyrant and agrees with him a truce for a certain period, and [the tyrant] does not honor it in full, and he reneges and makes war and seeks to become master of a group of Muslims and their property. What is seized after the betrayal and violation is equivalent to what is seized after the elapsing of the duration of the treaty without betrayal, and there is no breach in the permissibility of purchasing those items as spoils of war.

Al-Saraqṣṭī, who had seemed to argue that the Galerans' property was protected by both the prohibition by reason of Islam and the prohibition by reason of treaty, has suddenly ruled that it is in fact *licit* for purchase. To do so he has utilized a precedent according to which Christians who conclude treaties with Muslim rulers and then violate those treaties before their date of expiration by looting property from the Muslims render the effect of the treaties on the property in question void as soon as they return with it to their own country. In the Galeran case this would have been instantaneous, since Galera was itself in *dār al-ḥarb*. The reason for this precedent is that returning with the property to the abode of war introduces a degree of uncertainty as to the original ownership of the property. "Our present case," he continues, "is

even clearer in terms of the licitness of purchase than that one, because the seizure of the property in it occurred after the breaching of the truce and commencement of hostilities.”

Let us note how peculiar this use of precedent is. Al-Saraqusṭī had just a few lines up declared that the Galerans were protected by their Islam – they shared the status of those who were obedient to the sultan. He had in fact rejected a simple way of overturning their prohibition by reason of Islam, which would have consisted of analogizing them to convert Muslims who remain in the abode of war. Yet in the end he rules according to a precedent that on its face seems much less applicable to the Galerans’ case. In the precedent that he cites the Christians entered the abode of Islam and then returned to the abode of war with the property, thereby introducing uncertainty of possession. But in the case of the Galerans the Christians and the Muslims were both resident in the abode of war. Furthermore, al-Saraqusṭī upholds the validity of the Galerans’ protection of Islam while simultaneously ruling that their protection of Islam ceases to be operative as soon as the Christians violate their treaty with the sultan. The very fact that al-Saraqusṭī believes the Christians’ actions have invalidated their treaty with the sultan is in itself noteworthy: the Galerans were the subjects of the Christian king, not the sultan, when their property was pillaged – how then could the Christians’ actions towards their own *dhimmīs* have the effect of invalidating their treaty with the sultan of Granada? He cites no precedent and offers no legal rationale for these decisions.

Al-Saraqusṭī’s ruling is therefore quite odd. He goes out of his way to uphold the notion that the Galerans were protected by their Islam when he had precedent available in the Mālikī school that he could have used to overturn this prohibition. He also upholds the applicability of the sultan’s treaty with the Christians as protecting the Galerans due to their being under the

*dhimma* of the Christians. Yet in the end he invalidates both prohibitions simultaneously, without even acknowledging that he is invalidating the Galerans' prohibition by reason of Islam.

Also notable is that al-Saraqusṭī does not once in this ruling mention the obligation to emigrate. He does not use the impermissibility of the Galerans' residence in the abode of war and their sworn loyalty to the infidel king to invalidate either of their prohibitions – in fact, he uses their loyalty to the Christian king as a means to extend the prohibition by reason of treaty to them, before using the Christians' violating of their pact of *dhimma* with the Galerans to invalidate the treaty itself. Al-Saraqusṭī's reasoning in this ruling appears entirely consonant with Abou el Fadl's observation that "although the Mālikīs were compelled to affirm the moral imperative rendering a Muslim inviolable, some managed to affirm the principle and yet simultaneously undermine it."<sup>38</sup>

In this initial ruling, however, it would seem that al-Saraqusṭī's aim is to undermine the Galerans' protection of treaty more so than their protection of Islam: after introducing the protection of Islam he simply proceeds to ignore it for the rest of the fatwa. This leads us to consider the possibility that invalidating the treaty between Castile and Granada is in itself his primary goal.

### **Ibn 'Āṣim's response**

Ibn 'Āṣim seems to have caught wind of al-Saraqusṭī's fatwa and decided to intervene, though it is unclear at this point if his intervention comes on his own initiative or as part of his

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<sup>38</sup> Idem, p. 170.

duties as *qāḍī al-jamā'a*. He begins his response by writing that he found al-Saraqusṭī's ruling perplexing and he outlines seven points of disagreement with the initial fatwa, though several of the points are redundant. His second point contains the core of his disagreement and sheds the most light on what Ibn 'Āṣim himself thought the appropriate ruling in the Galeran case would have been.

Ibn 'Āṣim begins by asserting that the existence of the treaty between the sultan and the Christian king does not diminish in any way the Galerans' prohibition by reason of Islam because it is possible for two prohibitions to be active concurrently, such that removing one of the prohibitions simply causes the other prohibition to take effect. He first introduces a hadith where the prophet had mentioned that a given woman was not licit for him to marry for two simultaneous reasons: "Even were she not my stepdaughter she would not be licit to me due to [her father's having been weaned alongside me]." He next proceeds to expose a logical inconsistency in al-Saraqusṭī's ruling, saying: "if we were to posit that the people of Galera had apostatized, God forbid, then their property would not be licit to us due to the treaty, but the property [would be] licit according to your reasoning due to your invalidation of the treaty and the lifting of the prohibition by reason of Islam by reason of apostasy." Ibn 'Āṣim is here criticizing al-Saraqusṭī for according to the Galerans, who are still Muslim, fewer protections than if they had apostatized, since al-Saraqusṭī has used the fact that the Galerans are still Muslim to argue that the looting of their property constitutes a violation of the treaty.

Let us note that not only does Ibn 'Āṣim not believe that the Galerans' allegiance to the Christian king constitutes apostasy, he does not believe that it has the same effect as apostasy in terms of invalidating the Galerans' protection of Islam. Ibn 'Āṣim's stance is that removing the

prohibition of the treaty but not the prohibition by reason of Islam does not have the effect of rendering the property licit. Al-Saraqusṭī's stance, as we will recall, was that removing the prohibition of the treaty was enough to render the property licit even without removing the prohibition by reason of Islam – this in spite of the fact that before the treaty was signed the Galerans' property was illicit due to their prohibition by reason of Islam.

Ibn 'Āṣim finds this preposterous, because “the requirement of the treaty has no effect.” The “requirement of the treaty” is that the Galerans' property be considered illicit – the Galerans, as Castilian subjects, had come under the protection of the treaty when it was concluded between the sultan and the king. Because of al-Saraqusṭī's refusal to stack the prohibitions of Islam and treaty, however, the prohibition of the treaty effectively overwrites the prohibition by reason of Islam, such that subsequently removing the prohibition of the treaty leaves the Galerans' property licit, whereas it would have remained illicit if no treaty had been signed at all. In other words, the conclusion of the treaty between the sultan and the king had the effect of rendering the Galerans' property less protected than it otherwise would have been.

At this point we are under the impression that Ibn 'Āṣim thinks that the property of the Galerans is doubly prohibited: it is protected because they are Muslims and protected because they are included under the aegis of the sultan's treaty with the Christians. He has, after all, made a detailed argument in favor of the possibility of combining prohibitions. But he is not willing to ignore the prohibition by reason of treaty, even if the Galerans' prohibition by reason of Islam would still hold their property illicit for purchase:

[I]f it is established by a specific proof that the treaty with the tyrant does not govern the Muslim who opposes God by entering under [the tyrant's] *dhimma* then there is no

debate. [But] if this is not present then the clearest course of action is to decide to prohibit the property by means of the treaty, as Ibn Saḥnūn has said: “The conclusion of a truce with the tyrant, before or after besieging him, is required commonly in dealings [between the sultan and the tyrant].

Ibn ‘Āṣim is here making explicit his core disagreement with al-Saraqṣṭī’s initial ruling: not the refusal to stack the prohibitions of Islam and of treaty, but the refusal to respect the implications of the treaty itself. We will see this argument resurface later in their correspondence.

Ibn ‘Āṣim has managed to deem the Galerans’ property illicit without relying on the Galerans’ prohibition by reason of Islam – the only one of the two prohibitions that had not, up to this point in the argument, been called into question. Neither man seems eager to touch the prohibition by reason of Islam, and by extension the question of the Galerans’ obligation to emigrate. So why has Ibn ‘Āṣim just gone through all the trouble of demonstrating that the two prohibitions of treaty and of Islam can coexist concurrently and that the prohibition by reason of treaty supplements rather than replaces the prohibition by reason of Islam? It is likely that his primary interest lies in upholding the validity of the treaty concluded between the sultan and the king, rather than ruling that the Galerans’ property is illicit. We shall have occasion to remark later on that Ibn ‘Āṣim seems overtly concerned with the legal ramifications of concluding treaties with the Castilians.

Ibn ‘Āṣim does not treat the Galerans’ prohibition by reason of Islam as being sufficient to protect their property. He has every opportunity to explicitly rule that the Galerans’ prohibition by reason of Islam has lapsed with their remaining in the abode of war, or with their entering under the *dhimma* of the Christians. That he refuses to do so is curious in itself. Ibn

‘Āṣim’s refusal is more noteworthy when viewed in light of al-Saraqṣṭī’s own refusal to explicitly overrule the Galerans’ prohibition by reason of Islam, in that case amounting to an abrogation by omission.

In any event, what had started as a refutation of al-Saraqṣṭī’s refusal to stack the prohibitions has become a refutation of al-Saraqṣṭī’s elimination of the prohibition by reason of treaty. Now Ibn ‘Āṣim moves on to discuss the status of the Galerans under the treaty between the king and the sultan. He says: “It is clear that the one who contracted these truces included in them for the entirety of the duration everyone who is under Muslim or Christian rule from among the Muslims or the Christians or the Jews in their persons and in their property, and it is incumbent on the Muslims to pursue those who slight them from among the Muslims or Christians or Jews, as it is incumbent on the Christians to pursue those who slight them from among the Christians or Muslims or Jews, like to like.”

Here Ibn ‘Āṣim repairs a flaw in al-Saraqṣṭī’s reasoning that neither man had remarked upon. Al-Saraqṣṭī’s initial fatwa had held that the Christian sack of Galera, a community politically under the domination of the Christian king, had invalidated that king’s treaty with the sultan of Granada. This is not a transparent stance, and al-Saraqṣṭī doesn’t show his math, but the logical end point of his argument would appear to be that the sultan of Granada become a sort of protector for Mudéjar populations in Christian Spain, even if those Mudéjar populations are no longer offered protection at Islamic law. Ibn ‘Āṣim rejects this, and holds that: “As for what [the Christians] take in the time of truce while the truce remains in effect, there is no doubt that it

belongs to its owner when he finds it has been taken without being paid for, and he may reclaim it [by assize of recent dispossession]<sup>39</sup> just as he would reclaim it from a Muslim.”

Ibn ‘Āṣim’s other points are less crucial, though they bear summarizing. His third point is to address the precedent that al-Saraqṣṭī had cited from Ibn al-Ḥājj analogizing the property of Mudéjars to convert Muslims in the abode of war. Ibn ‘Āṣim mentions that two Granadan jurists had indeed addressed this case:<sup>40</sup> Abū al-Qāsim ibn Sirāj, al-Saraqṣṭī’s teacher and Ibn ‘Āṣim’s classmate, who had ruled to permit the division of the property as spoils, and Abū al-Ḥasan ‘Alī ibn Sam‘at, who had ruled to prohibit that division and who had ultimately prevailed (at least according to Ibn ‘Āṣim). Here we see once more the confusion within the Mālikī school concerning the prohibition by reason of Islam versus the prohibition of geography, with Ibn ‘Āṣim coming down on the side of the prohibition by reason of Islam.

The fifth point is somewhat elliptical: “The equivalency between the people of Galera in their having been betrayed and a group from among those who were under the rule of the Imām in their having been betrayed before the expiration of the time of the truce, and it is true that the treaty of the tyrant with them is void.” Here Ibn ‘Āṣim addresses another of al-Saraqṣṭī’s mistakes: his utilization of a precedent having as its *‘illa* (underlying cause, or *ratio legis*) uncertainty of possession, as though the Galerans’ property had been transferred from the abode of Islam to the abode of war when the Christians pillaged it. This would have been the case had the Galerans been “under the rule of the Imām,” but they were in fact under the rule of the Christians, and so no such transfer had occurred.

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<sup>39</sup> *Istihqāq*.

<sup>40</sup> Al-Saraqṣṭī had “not been able to recall any other opinions on the matter.”



Both al-Saraqstī's initial ruling and Ibn 'Āṣim's response seem somewhat evasive when it comes to the prohibition by reason of Islam. Both jurists' rulings treat the Galerans as though they were not protected by the prohibition by reason of Islam, but neither jurist is willing to explicitly say as much. Ibn 'Āṣim does devote considerable effort towards resolving some of al-Saraqstī's logical inconsistencies, but his primary aim seems to have been to reverse al-Saraqstī's invalidation of the treaty between Granada and Castile. The obligation to emigrate is notable for its absence throughout: none of the three jurists involved in the case have made a single mention of the Galerans' legal duty to immigrate to the abode of Islam.

### **Al-Saraqstī's counterresponse**

Al-Saraqstī's counterresponse represents a shift in the parameters of the debate: he is now willing to explicitly invalidate the Galerans' prohibition by reason of Islam by reason of their Mudéjar status. Ibn 'Āṣim's principle challenge to his initial ruling had been to point out that since the Galerans' property was doubly prohibited it would not suffice to remove only one of the prohibitions in order to render it licit: both prohibitions would have to fall. Al-Saraqstī responds by rejecting the very possibility of cumulative prohibitions. This is a rather risky maneuver. In attempting to defend himself against Ibn 'Āṣim's criticisms, however, he is forced to expose, or to develop, elements of his rationale that he had not in his initial ruling. In fact, the differences between al-Saraqstī's initial ruling and his counterresponse are in some ways so striking that one wonders if he has not actually changed his mind.

He begins by objecting to Ibn ‘Āṣim’s “[taking] what [he] can from each of the two prohibitions,” and in so doing he surreptitiously introduces the very first explicit mention up to this point in the two men’s exchange of the possibility that the Galerans’ status as the Christians’ *dhimmi*s entails the invalidation of their prohibition by reason of Islam: “[You maintain that] if the prohibition by reason of Islam is lifted with the triumph of the unbelievers over [the Galerans] you still forbid purchasing from them because of the prohibition by reason of treaty, and if the prohibition of the treaty is lifted by its violation or the expiration of its time the prohibition by reason of Islam remains in force.” Note the highly elusive phrasing: this first direct mention of the notion that the Galerans’ position as Christian *dhimmi*s overrules their prohibition by reason of Islam is couched in a conditional that al-Saraqṣṭī then inserts into the mouth of his opponent. Ibn ‘Āṣim had not in fact maintained that the prohibition by reason of Islam is invalidated by the Christians’ triumph over the Galerans, of course – he had not even implied it.

Al-Saraqṣṭī’s argument against cumulative prohibitions quickly comes to depend on the premise that the Galerans’ prohibition by reason of Islam has been invalidated because it is incompatible with treaty status, even though neither man has actually made an argument, compelling or not, to that effect. The core of al-Saraqṣṭī’s argument is as follows:

I would argue for the impossibility of uniting the two prohibitions for [the property], because the locus (*maḥall*) of the prohibition by reason of Islam is the property of a Muslim and its *ratio legis* (*‘illa*) is Islam, and the locus of the prohibition of the treaty is the property of the *ḥarbī* under treaty and its *ratio legis* is the treaty, and just as unbelief and Islam cannot be united together in one man, so is it impossible for the prohibitions of

Islam and treaty to be united together in one property.<sup>41</sup> What makes this clear is that the prohibition on the property of a Muslim is removed by the victory of the unbeliever *ḥarbī* over him, and the prohibition on the property of one under treaty is not removed by the victory of another over him. The prohibition on the property of the one under treaty expires with the expiration of his covenant, and the prohibition on the property of a Muslim does not expire with the expiration of his Islam, because if he were ruled an apostate and killed his property would pass to his heir. And if he were ruled an apostate his property would be frozen according to the known ruling, and if he returns to Islam it is returned to him, and if he is killed then it is forfeit.

In other words: in order for the sultan's treaty with the Castilians to apply to the Galerans they must be classified as *ḥarbīs*, it is impossible to be both a *ḥarbī* and a Muslim, and therefore when a Muslim becomes a *ḥarbī* he loses his prohibition by reason of Islam. The implications of this are unclear. Al-Saraqustī does not rule that the Galerans are no longer Muslims: we will recall that in his initial ruling he consistently referred to them as Muslims, and in this passage he rejects categorizing the Galerans as apostates. Rather, their legal status as Muslims is invalidated as soon as they are conquered by non-Muslims – at least for the purposes of determining whether their pillaged property is licit or not, but not for the purposes of invalidating the sultan's treaty with the Christians, which is invalid precisely *because* the Galerans are still Muslim. Al-Saraqustī simply asserts this, however, and offers no corroboration. This is odd, since both men

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<sup>41</sup> One could also translate these terms as “proximate cause” for *maḥall*, denoting the immediate circumstances demanding application of a law, and “underlying cause” for *illa*, the *ratio legis*, the reason for the law's existence.

have provided extensive scriptural and jurisprudential evidence for most of their other assertions over the course of their exchange.

Al-Saraqṣṭī next introduces several analogies that are intended to demonstrate his legal point regarding cumulative prohibitions: regarding women who are forbidden for a man to have carnal relations with, meat that is ritually impure, supernumerary noon prayers, and fasting Ramadan in a non-Muslim country. The last is noteworthy in that it echoes earlier concerns regarding the validity of the Ramadan fast in the abode of war,<sup>42</sup> but al-Saraqṣṭī does not seem to be using it to make any such point about the impermissibility of living in the abode of war. He still has not demonstrated that being conquered by Christians renders a Muslim population licit for plundering, nor will he. He moves on to a discussion of mutually exclusive states, and once again asserts that the states of Islam and having been subjugated by a non-Muslim are impossible to combine: they are mutually exclusive in the same way that Quranic and residual inheritance are mutually exclusive. He seems to anticipate criticism of the notion that one cannot be both simultaneously Muslim at the law and under non-Muslim rule by somewhat extraneously reminding Ibn ‘Āṣim that “we have found that inherent and incidental states engender different rulings.” This is in reference to the case of the convert Muslim, whose property had been deemed illicit by reason of his continued prohibition by reason of Islam.

Al-Saraqṣṭī’s counterresponse is the first time that one or the other of the jurists has explicitly declared that the Galerans’ residence in the abode of war and their subjugation by a Christian ruler strips them of their legal protection as Muslims. In the initial ruling and in Ibn

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<sup>42</sup> Ibn Rabī‘ had ruled thusly. See Van Koningsveld and Wiegers, “The Islamic Statute,” p. 26.

‘Āṣim’s response this was left unsaid, and at times seemingly contradicted. It is furthermore impossible to treat this as a serious legal argument, at least not by the standards of the rest of the debate: al-Saraqṣṭī has provided no evidence, neither from scripture nor from precedent, that being conquered by a non-Muslim nullifies a Muslim’s prohibition by reason of Islam. One does not expect he would have been able to find evidence of that sort within the Mālikī madhhab, since that argument would be effectively identical to adopting the stance of a “geographical prohibition” tied to physical residence in the abode of Islam, since the majority of Muslims living in non-Muslim lands at this time were there because they had been conquered by non-Muslims at some point in the past. Al-Saraqṣṭī is in fact issuing a novel ruling, but he does not announce it as such – nor, of course, does he integrate it into the existing jurisprudence on the obligation to emigrate.

Al-Saraqṣṭī’s gambit of relying on divorce law to demonstrate the impossibility of cumulative prohibitions will prove disastrous for the soundness of his argument, as we shall soon see. He couches his overall argument as one against juridical excess (*ghuluww*), citing an opinion of Yaḥyā al-Laythī (d. 848) that “a people who are told that they should refrain from purchasing what the one who seeks a guarantee of safe conduct brings to them from the property that he has looted from the Muslims should take exception to that [prohibition],” but Ibn ‘Āṣim views its primary purpose to be to undermine the treaty between Granada and Castile.

## Ibn ‘Āṣim’s second response

Ibn ‘Āṣim’s second and final response constitutes by a significant margin the lengthiest section of the Galera case – it is as long as the other three sections combined. It has also the least to do with the core question of the legal status of the Galerans’ property. To a large extent, in fact, it consists of a disquisition on the complexities of treatycraft between the Naṣrid sultan and the Castilian king. This provides us with a glimpse of the political debate underlying the Galera case: this case is fundamentally not about the Galerans’ property, or at least it is about the Galerans’ property to a lesser extent than it is about the validity of the treaty signed between Juan II of Castile and Muḥammad IX of Granada, master and benefactor of Ibn ‘Āṣim – and a man with many enemies on the lookout for a pretext to undermine his rule, or to overthrow him altogether.

Ibn ‘Āṣim cuts directly to the chase, beginning his (counter-)counterresponse with a direct attack on al-Saraqustī’s “invalidation of the treaty [stipulating] the prohibition of their properties that the tyrant concluded with the sultan.” He proposes the following hypothetical: “To begin with, let us imagine that the sultan, God render him victorious, has today sought a fatwa from the scholars of the present age, and you are foremost among them, regarding what is permitted to him in terms of concluding tracial agreements with the tyrant on the condition that everyone who becomes Muslim is returned to him first, and it is in your power only to decide [according to the consensus of] the madhhab as it stands.” This passage leads us to entertain certain hypotheses pertaining to Ibn ‘Āṣim’s position vis à vis the power structure, the legal dilemmas facing the sultan and the jurists, the nature of negotiations between Granada and Castile, and the lot of Mudéjars who actually attempted emigration.

It is quite possible that Ibn ‘Āṣim had been personally involved in adjudicating the validity of treaties between Granada and Castile, given his position in Muḥammad IX’s inner circle, and in any event his abiding concern for the status of the prohibition by reason of treaty over the course of the Galeran debate could simply have been motivated by the fact that his political fortunes were tied to those of the sultan in whose government he served. Muḥammad IX had seized the throne from his uncle Yūsuf IV (who had himself seized the throne from Muḥammad IX) in 1432 and was engaged in troubled negotiations with Juan II regarding the terms of Granada’s vassalage, as we shall see in the next chapter. It is suggestive that Ibn ‘Āṣim begins his response by discussing the validity of treaties in which the sultan is required to expatriate Muslims back to Castile, considering this has not figured at all in the debate up to this point. In the absence of the broader political context this appears to be a non sequitur, but we shall see in subsequent chapters that this was in fact one of the key sticking points in the ongoing treaty negotiations.

Ibn ‘Āṣim lays out with some clarity his view of contemporary Naṣrid politics in a khuṭba he delivered before the congregational mosque towards the end of his life, the text of which he includes in his major work *The Garden of Contentment (Jannat al-riḍā)*.<sup>43</sup> In this address he expresses a desire “to rouse the lords of this country from complacency,” lamenting the present state of Granada: “the country is divided, and dissent causes pasturage to go abandoned, and manifold hearts are sundered from each other from among one people, and the tyrant reaches out

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<sup>43</sup> Titled “A Letter to the Granadan People” (*Risāla ilā l-jumhūr al-gharnāṭī*). See Abū Yaḥyā Muḥammad b. Muḥammad ibn ‘Āṣim, *Jannat al-riḍā fī al-taslīm li-mā qaddara Allāhu wa-qaḍā*, ed. Ṣalāḥ Jarrār (Amman: Dār al-Bashīr, 1989), 2:289.

to devour the country and consume it, and he regards it the regard of one who yearns to engulf it.”

Ibn ‘Āṣim presents an explanation of the causes of the kingdom’s present predicament by way of the following historical narrative:

And he who draws conclusions from history and the deeds of the enumerated kings knows that the Christians – God annihilate them – did not exact revenge upon the Muslims, and did not rinse their spirits with disgrace, and did not burn houses throughout the peninsula, and did not seize entire countries and frontiers from it, except after they were so permitted by internal dissent and their efforts to sow division among the Muslims, and their striking with treachery among the kings of the peninsula, and their cunning swindling of them, and their seduction of its defenders in ruinous fitnas.

This is more or less the line we would expect the chief judge in the court of a sitting sultan who had been many times deposed by Castilian-backed pretenders to adopt.

We know less about al-Saraqusṭī’s relationship with the sultan. We know from Aḥmad Bābā’s biographical dictionary of Maghribi jurists<sup>44</sup> that al-Saraqusṭī was on good terms with at least one sultan, though he does not mention which, who attended his funeral. The reigning sultan at the time of al-Saraqusṭī’s death would have been Sa‘d, who took the throne in 1454, some twenty years after the events at Galera, after deposing Muḥammad X, who had been allied with Muḥammad IX, and executing none other than Ibn ‘Āṣim. Ibn ‘Āṣim and al-Saraqusṭī, then, may represent competing factions within the Naṣrid power structure, with the former invested in

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<sup>44</sup> Al-Tunbuktī, *Nayl*, 2:221.



the political survival of Muḥammad IX and the latter allied with forces seeking his ouster.

Whereas Ibn ‘Āṣim’s allegiances are clear, however, al-Saraqustī’s are not, and his apparent allegiance to the wing of the Granadan political establishment represented by Sa‘d may have arisen much later than the Galeran case.

In any event, Ibn ‘Āṣim has introduced here an entirely new topic, one that al-Saraqustī does not appear to have actually pursued in either of his preceding missives, concerning the legal validity of truces that “stipulate that we return to [the unbelievers] everyone who comes to us as a newly-converted Muslim.” Ibn ‘Āṣim initially argues against the proposition, put forward by al-Māzarī, that such truces are only valid if they include men and not women, citing Ibn Shāss and Ibn al-‘Arabī to rule that men and women must have the same legal protection in such cases. Ibn ‘Āṣim then makes the intriguing claim that “if the sultan said to you that he negotiated on this stipulation until it was similarly stipulated that the apostate from Islam be returned to him, then what al-Māzarī mentioned reduces the gravity of this somewhat.”

Whatever is meant by this, Ibn ‘Āṣim asserts that the ideal treaty is one in which “those who are in the hands of the Muslims from among the Christian prisoners and who are in the hands of the Christians from among the Muslim prisoners, and likewise those who are under the *dhimma* of the Muslims from among the Christians or Jews, and those who are under the *dhimma* of the Christians from among the Muslims or Jews, or [he] who flees from the side that he is on to the other. . . is safe from the other in his person and in his property.” Ibn ‘Āṣim now leverages al-Māzarī’s ruling that treaties stipulating the return of Muslim men to the Christians are licit to demonstrate just how eccentric are al-Saraqustī’s attempts to invalidate the present treaty’s protection of the property of Muslim *dhimmi* populations under Christian rule: al-Māzarī, who

was willing to waive the right of Muslim men to flee Christian rule if the sultan had deemed such a concession expedient, would surely not be willing to accept that the sultan lacks the authority to sign a treaty *protecting* the property rights of Muslims in Christendom.

Here Ibn ‘Āṣim introduces the question of *ḍarūra*, or legal necessity. This is related to the doctrine of *maṣlaḥa*, or “public utility,” that had been developed within Granadan Malikism in large part by Ibn ‘Āṣim’s teacher al-Shāṭibī. Ibn ‘Āṣim desires to explore circumstances in which the Muslims have no “choice or recourse available,” and declares that “this is the only way that truces can occur since the domestication (*tadajjun*) of the Muslims, four hundred years since.” Since that time, “whenever [truces] have been sought by the Muslims they have fallen under the *dhimma* of the unbelievers. . .and the tyrant does not permit in general to omit the insertion of [Muslim emigrants] into his trucional agreement, whereas [a Christian ruler] used to allow [Muslim converts] to depart from him out of necessity because it was not possible for the Muslims to be lenient on this point.” Circumstances have changed since “those times when the entire nation was peopled by confederate [Muslims], like in the age of Ibn Rushd. . .who ruled in favor of the expulsion of the confederate Muslims from al-Andalus when they allied with the belligerent unbelievers against the Muslims.”

The sultan of Granada, then, has no choice or recourse in this matter: the tyrant insists that he return refugees to Castile, and return them he must. Who are these Muslim refugees, though? We will examine this question in further detail in our analysis of the peace treaties signed between Muḥammad IX and Juan II, but suffice it to say that these treaties do not contain provision for the return of Muslims to the Castilians. Rather, they contain provision for the return of Christian prisoners of war.

Ibn ‘Āṣim states that a ruling against tracial agreements “except on the condition that the ones under treaty from either or both of the sides are not included in it” would “undermine certain public policy interests (*maṣāliḥ*) that the policy-makers (*ahl al-siyāsāt*) cannot pursue at all.” Foremost among these policy interests, and the reason that the Mudéjars must be included in the treaty signed with the Castilians, is that in the past “the tyrant used to avail himself of his strength against the Muslims and say these are wrongdoers from among your people, there is no treaty to them from you and no treaty to you from them, so demand from them [restitution] for what they have wronged you [in doing], and in those times stability was not available for the Muslims due to the depredations of the Christians and their claiming to be Mudéjars.” Castile’s Mudéjars must be included in the treaty because their exclusion would constitute a loophole that Christian raiders could exploit.

The Castilians did not like their Muslims emigrating and so attempted to secure guarantees from the Granadans that they would repatriate any Muslims who crossed over into the sultan’s domains. The Granadans viewed such guarantees as being illegal, and attempted to have them excluded from treaties, as we shall see. The support for deeming such treaties illegal comes from scriptural injunctions against oppressing Muslims or returning them to enemy territory, however, and not from a belief that these Muslims were fulfilling their religious duties by emigrating. At this point, then, the salient question of the debate concerning the obligation to emigrate was not whether Muslims in the abode of war had an obligation to depart for the abode of Islam, but rather if rulers in the abode of Islam could legally force those Muslims to return to the abode of war.

Next Ibn ‘Āṣim discusses the legality of treaties signed with the Christians, claiming that all such treaties are, in his age, concluded under duress, without the Muslims having any choice or recourse in the matter. The terminology used here, *muhādana* and *‘aqd al-hudna*, is somewhat ambiguous: it could refer either to agreements between the sultan of Granada and the king of Castile or to treaties of *dhimma* such as the agreement apparently concluded between the Galerans and the representatives of Juan II. Ibn ‘Āṣim may in fact be attempting to analogize the Galerans’ treaty with the Christians to the Granadan sultan’s treaty with the Christians by claiming that both treaties were signed under duress. His aim in this respect is ambiguous: if Ibn ‘Āṣim is indeed mounting a defense of the Galerans’ prohibition by reason of Islam he is doing so quite subtly.

Ibn ‘Āṣim continues, saying that the Christians nowadays insist on including clauses pertaining to the repatriation of Muslim emigrants in their treaties, whereas in the past “[a Christian ruler] used to allow [Muslim emigrants or converts] to depart from him, on the grounds that it was not possible for the Muslims to permit [their return] in crucial agreements in those times when the entire nation was peopled by tributaries, like in the age of Ibn Rushd [the Grandfather], God have mercy on him, and it was he who ruled in favor of the departure of tributaries from al-Andalus when the *ḥarbīs* made common cause against the Muslims.” The notion of Mudéjars allying with the Christians against Muslim states is a common one in rulings advocating an absolute obligation to emigrate. Ibn ‘Āṣim, however, argues that Ibn Rushd’s ruling in favor of the obligation to emigrate of Muslims under Christian rule is perhaps no longer practical in light of the changed political situation of the peninsula. The obligation to emigrate,

then, appears to Ibn ‘Āṣim as a somewhat old-fashioned theory whose time has come and gone, rather than a prevailing opinion that needs to be contended with.

Upon concluding this digression Ibn ‘Āṣim returns to the train of the discussion: the possibility of cumulative prohibitions. He rejects al-Saraqṣṭī’s analogy to the impossibility of a single individual combining unbelief and Islam, saying that these are mutually exclusive properties, whereas the prohibition by reason of Islam and the prohibition by reason of treaty do not stem from mutually exclusive properties, simply distinct properties. As such, there are no gaps in the prohibition of the property: “that which was not [secured by its being] the property of a Muslim has been [secured] for him by [the treaty with] the tyrant.” Ibn ‘Āṣim declares that the property of the Galerans is subject to the assize jurisdiction (*istiḥqāq*), just as it would be if it had been the property of Christians or Jews that had been illegally seized by Muslims during a period of treaty.

After dismantling al-Saraqṣṭī’s arguments pertaining to divorce, impure meat, supererogatory prayers, and inheritance law, Ibn ‘Āṣim concludes without making explicit his own beliefs on the matter of the Galerans’ prohibition by reason of Islam: “As to your taking that what I have posited is the apostasy of the people of Galera, the justification for seizing the apostate’s property is in his abandoning it in the midst of the Muslims, and we have not stipulated thusly, and rather have I posited the apostasy of the people of [that] circumstance in their entirety, and that case is not this case.”

## Chapter Two

### The peace treaties between Granada and Castile concluded during the interlocking reigns of Muḥammad IX

We are left with two primary obstacles to understanding the Galera fatwa, both related to the matter of the peace treaty between Granada and Castile. The first: why does al-Saraqusṭī seem so intent on invalidating the Galerans' prohibition by reason of treaty, to the point of adopting a seemingly nonsensical stance at the law? The second: what is the context, political or otherwise, of Ibn 'Āṣim's digression into the question of the sultan's treaty-making authority in his final responsum?

The reader will likely share Ibn 'Āṣim's bafflement at al-Saraqusṭī's initial ruling: at first glance, the Galerans' property seems quite clearly to not be licit for purchase. This is indeed how the Bazan *mustafī* had initially found, grounding his decision in the Galerans' sharing the same prohibition by reason of treaty as their Castilian overlords. In addition to the prohibition by reason of treaty, the Galerans' prohibition by reason of Islam is agreed by both participants in the debate to have remained intact through their entering under the *dhimma* of Castile. The property, in other words, is doubly prohibited. Yet al-Saraqusṭī contorts himself to find that the Castilians' mistreatment of their own *dhimīs* constitutes a violation of their treaty with the Granadans that has the effect of stripping the Galerans of their prohibition by reason of treaty,<sup>45</sup> and that such a

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<sup>45</sup> Or, conceivably, that their mistreatment of their own *dhimīs* constitutes a violation of their treaty with the Galerans themselves, though this is not how Ibn 'Āṣim interprets his fatwa.

violation somehow has the effect of stripping the Galerans of their prohibition by reason of Islam as well.

We may perhaps hypothesize that al-Saraqustī had been motivated to render licit the Galerans' property in service of practical considerations, for instance by a desire to avoid disrupting frontier trade. Even were this true, and it is not at all clear that it is, we must still grapple with the defense of the sultan's treaty-making authority contained at the very beginning of Ibn 'Āṣim's second counterresponse. Ibn 'Āṣim's strategy here is to make explicit the implication of al-Saraqustī's argument: that the sultan's treaty with the Castilians had become invalid upon the Castilians' seizure of the property of the Galerans, or that the treaty had been invalid in the first place.<sup>46</sup>

Ibn 'Āṣim's use of this particular argument hints at the possibility that the debate is, in his view, as much about the treaty concluded between his master, Muḥammad IX, and the Castilians as it is about the Galerans and their property. This framing would help us to understand why Ibn 'Āṣim, at the time chief judge and one of the most powerful men in the kingdom, would take it upon himself to compose lengthy rebuttals to a fatwa having as its ostensible concern a trifling question of cross-border trade – because al-Saraqustī's ruling, whether so intended by its author or not, constituted an attack against one of the central policies of the sultan and his cabinet. If we accept this framing, the case of the Galerans and their

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<sup>46</sup> To briefly recapitulate Ibn 'Āṣim's argument: If the sultan has the power, under certain circumstances, to conclude a treaty with Castile that stipulates, for instance, the extradition of converts to Islam back to Christian territory, then surely the sultan has the power to conclude a treaty with the Christians that would safeguard the property rights of the Christians' own Muslim *dhimmīs*.

property may serve as a proxy for an underlying conflict between representatives of distinct factions within the Granadan establishment – a conflict that is fundamentally political in nature, though waged in this instance beneath a veneer of legal reasoning.<sup>47</sup>

In order to evaluate whether this is an appropriate lens through which to assess the nature and stakes of the Galera fatwas, both politically and at the law, we will here examine the treaties with Castile concluded during this period of Muḥammad IX's interlocking reigns, including one particularly noteworthy and heretofore underexploited treaty concluded during the brief reign of the Castilian-sponsored usurper Yūsuf IV ibn al-Mawl. We will find that the question raised by Ibn 'Āṣim concerning the legality of a treaty that stipulates the extradition to Castile of Muslims, or of recent converts to Islam from Christianity, appears to have been a live political issue during treaty negotiations throughout this period.

We will begin with the most well attested treaty of the early period of Muḥammad's reign, that of 1424, the Spanish version of which has survived intact. This treaty is, as far as I am able to tell, largely representative of those that had been concluded between Castile and Granada since approximately the reign of Muḥammad V (1354-1391), and will therefore serve as the baseline according to which we will judge the deviations of subsequent treaties from the status quo ante.

Next comes the treaty of 1432, signed between Juan II and his puppet sultan Yūsuf IV ibn al-Mawl. This is by some measure the most intriguing of the lot, for two reasons. First: the extreme one-sidedness of its stipulations represents something akin to the maximal Castilian

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<sup>47</sup> These factions are, perhaps, the partisans of Muḥammad IX and the Banū Sarrāj on the one hand and the partisans of the ousted Muḥammad VIII on the other.



negotiating position, and gives us a sense of the demands that Juan's agents were in all likelihood making of the Granadans during the negotiation of subsequent treaties, even when they were not successful in incorporating them into the final product. Second: the Arabic version of the treaty has survived, which permits us to perform *mu'āraḍa* with the Spanish version and thereby to reconstruct the likely Arabic text of various provisions in the other treaties of the period, to isolate discrepancies between the two versions, and to recognize references to specific questions of law present also in the Galera fatwa.

Finally, we will examine the treaties of 1439 and 1443, which are broadly similar and which represent the new political equilibrium after some six years of warfare between the two kingdoms following Muḥammad IX's overthrow of Yūsuf IV. These survive only in Spanish, but in the case of the treaty of 1439 we have an extensive record of the negotiations leading up to its signing, in which the Castilians make several demands that do not appear in the final treaty but that do echo provisions of the 1432 treaty and of the hypothetical treaty discussed by Ibn 'Āṣim in the Galera fatwa. It is likely, as we shall see, that the Galera incident itself occurred during the period of the treaty of 1439, or during the truce leading up to its signing.

### **The treaties of the 1420s**

Muḥammad IX had seized power from his nephew, the child-sultan Muḥammad VIII, in 1419, one year after Juan II had himself attained his majority in Castile. For the next decade, relations between the two kingdoms proceeded relatively uneventfully. A treaty was signed in 1419, shortly after Muḥammad's enthronement, and renewed with seemingly minor amendments

in 1421, 1424, and 1426, before Muḥammad IX was himself ousted by partisans of Muḥammad VIII in 1427 and forced to flee to Tunis. Of these, the treaty of 1424 is the only one attested in full.<sup>48</sup> Here follows a brief discussion of its contents, in order to establish what normalcy in treatycraft would have looked like at the beginning of the reign of Muḥammad IX.

The first characteristic of note is that the treaty of 1424 was to last two years. This was standard for treaties concluded during this period: all treaties signed since 1411 had had durations of either two or three years. The language of the treaty itself is formulaic and repetitive – for instance, some variant of the formula “we, and our Kingdoms, and the people of our domain, and my cities, and our towns, and our castles, and our places, and districts that are in our power, and our servants that are, or will be henceforth” is repeated some thirteen times over its five and a half page length. Subsequent treaties evince a shift away from this proliferation of formulaic accretions, perhaps due to their having been actively negotiated rather than perfunctorily renewed.

This is not a treaty of vassalage, but rather an agreement between two kings of at least theoretically equal standing, concluded out of a desire to pursue “the benefit that comes with peace.” There is provision for mutual military assistance, but it does not apply to conflicts with external powers, rather only to local insurrections and to cases where an enemy of one of the signatories seeks to pass through the territory of the other:

We affirm with you and you affirm with us that whenever one of your enemies should move against you, and wishes to enter your land from outside of your kingdom, and

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<sup>48</sup> See Mariano Arribas Palau, *Las treguas entre Castilla y Granada firmadas por Fernando I de Aragón* (Tetuán: Editora Marroquí, 1956), pp. 95-102. I have included a translation of the full text of the treaty in the appendix.

wishes to come to your land by our land that we are obligated to deny him passage through our land, and to expel him from it by making war upon him, and if we are not able to expel him we are obligated to inform you of this fact, and thus will you the aforementioned honorable King of Granada accomplish this for us, all this as is stated in full, and we affirm with you the said King of Granada, and you affirm with us that if a castle should rise up against us or against you, or a town belonging to our castles, or our towns, or your castles, or your towns then they should not be received from either of the parties, and no castle or town should be received by buying and selling or donation or theft or cheating or other manner whatsoever but rather the castle or town shall be returned to who possessed it from either one of the parties.

The treaty provides for the free and safe travel of ransomers (*alhaqueques*) “from both of the parties safely. . .to ransom captives” and of merchants “and others be they Christians, Jews, or Moors” between the two kingdoms. These latter are at liberty to buy and sell “that which is accustomed in peaces except horses, weapons, and bread.” The provision for unhindered travel for merchants was a new addition, and seems to represent a concession on the part of the Castilians.<sup>49</sup>

Another apparent concession is the lack of a stipulation that the Granadans pay *parias*, or annual tribute, in either gold or captives. These had been reclassified as “presents” theoretically given of the sultan’s own free will starting with the treaty of 1417,<sup>50</sup> but still constituted a de

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<sup>49</sup> Juan Torres Fontes, *Relaciones Castellano-granadinas (1432-1454)* (Cádiz: Hum-165, Patrimonio, Cultura y Ciencias Medievales, 2010), p. 308.

<sup>50</sup> Brief summaries of the other treaties of this period can be found in the *Crónica de Juan II* of Fernán Pérez de Guzmán (d. 1460), published in Cayetano Rosell et al., *Crónicas de los Reyes de Castilla* v. 68 (Madrid: M. Rivadeneyra, 1875). The treaty of 1417 is summarized on page 373: “En este tiempo Yucef, Rey de Granada, embió demandar treguas por mucho tiempo con sus embaxadores, é la Reyna mandó á los del Consejo del Rey é suyo, que viesen lo que les parecia, é hubo entrellos diversas opiniones, é acordóse que la Reyna les diese tregua por dos años, é quel Rey de Granada como en forma de presente diese cient captivos christianos, é que no pareciese que por parias se daban, porque los Moros se hallaban ya poderosos en ver quel Rey de Aragon

facto requirement, and the treaty of 1421 stipulated a payment of thirteen thousand *doblas* over its three-year term (or four thousand three hundred and thirty three *doblas* per year).<sup>51</sup> This is not significantly more than had been demanded in 1410, when the Granadans were to pay ten thousand *doblas*.<sup>52</sup> The 1424 treaty contains no such provision and makes no mention of an attached *carta bermeja*. These “vermillion letters” were side agreements concluded as part of the treaty negotiations but kept separate from the main body of the text, a practice that permitted the inclusion of additional clauses that one or both of the parties, generally the Granadans, would be loathe to see become public knowledge. As we shall see, the more sensitive clauses of the treaties of 1439 and 1443 were contained in *cartas bermejas*, rather than in the text of the treaties proper.

The treatment of political refugees from the respective kingdoms is a question that we will have cause to discuss at greater length in our treatment of the subsequent treaties. This clause in the treaty of 1424 reads as follows:

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era muerto, de quien esperaban, si viviera, recobir grandes daños. E la Reyna Doña Catalina juró las treguas por los dichos dos años, é comenzaron á diez y seis dias de Abril del año susodicho, é se cumplan á diez y seis dias de Abril de mil é quatrocientos é diez y nueve años.”

<sup>51</sup> Idem, 405. No mention is made of captives: “Hecho ha la historia mencion de como estando el Rey en Roa le vinieron embaxadores del Rey de Granada, demandándole treguas por mas tiempo que solia é con ménos parias de las que dar solian, por conocer los movimientos é debates que en estos Reynos estaban, é ni por eso el Rey quiso otorgar mas treguas de las que solia ni con menos parias. É venidos á Tordesillas, despues de muchas altercaciones, el Rey les otorgó las treguas por tres años, é comenzaron á diez y seis dias de Julio del año del Señor de mil quatrocientos é veinte y uno año, é se habian de cumplir á quince del mes de Julio del año de veinte y quatro, con que el Rey de Granada diese al Rey en parias por estos tres años trece mil *doblas* de buen oro.”

<sup>52</sup> Diego Melo Carrasco has helpfully converted the values of the parias, which are denominated in either silver or gold according to the treaty, to gold *doblas* in his article “En torno al vasallaje y las parias en las treguas entre Granada y Castilla,” *Hesperis-Tamuda* 26–27 (1988), pp. 53–66.

And we affirm with you the honorable King of Granada aforementioned, and you affirm with us that when a rich man flees, or a knight, or a servant from either one of the parties to the other that it be made known, and he may plead his case if his error is one of those over which one may plead, and may he be returned safely to the party whence he fled, and if his error is one of those over which one may not plead may he be expelled from the kingdom and from the domain to another place, and if he carries anything may it be returned to its owner, and if a revenue collector (*almoxarife*) should flee the judgment is like unto the aforementioned judgment pertaining to knights, except that the mark of his power be taken from him, and returned to whence he fled, and otherwise when one flees his country we are not obliged nor you to return him but that he who flees with him by compulsion be returned, or any other thing. . .that this be universally the ruling for captives from both parties, Christian and Moor alike.

This provision stipulates that both kingdoms will extradite each other's subjects should they cross the frontier seeking political protection, but that neither kingdom will be compelled to extradite escaped captives to the other. The possibility of a treaty demanding the extradition of Muslims had been alluded to by Ibn 'Āṣim, and this treaty appears to comport with the compromise stance of the Granadan jurists that such treaties could be considered licit if they stipulated the extradition of renegades equally for both parties.

The treaty provides for the customary system of frontier judges to adjudicate disputes between subjects of the two kingdoms. It is possible that one of these frontier judges was the *mustaftī* of the Galera fatwa, and that the frontier courts are the jurisdiction that Ibn 'Āṣim has in mind when he advises that the Galerans should make recourse to *istiḥqāq* if they wish to reclaim their property.

The treaty was signed the fifteenth of July of 1424 and would last until the sixteenth of July of 1426, and the final passage reiterates the intended reciprocity of the provisions: "Every stipulation, and condition stated in this contract will be binding for both of the parties, and the Christians will be held to that which the Moors are held in this and the Moors will be held to that

which the Christians are held equally in this.” In addition, the treaty contains an opt-in provision for Morocco, should that country’s ruler choose to exercise the option within six months of the signing of the treaty.

### **The treaty of 1432**

The treaty of 1424 expired in 1426, shortly before Muḥammad IX’s ouster by Muḥammad VIII in early 1427. If Muḥammad IX had in fact been able to conclude a treaty of 1426, as Torres Fontes<sup>53</sup> surmises, it would have been swiftly abrogated by his nephew’s coup. Muḥammad IX fled, seeking refuge at the Ḥafṣid court in Tunis, still with his eyes on the throne. This set the stage for the conflict that would finally allow Juan II to achieve his aim of renewing the vassalization of Granada – if only for a matter of months.

Muḥammad VIII ruled somewhat ineffectually until 1430, though he appears to have had good relations with the Castilians, and he was able to conclude a new treaty in under a month, the terms of which are unknown.<sup>54</sup> The period of strife that followed Muḥammad VIII’s resumption of power, however, strengthened the hand of Juan, who began to intervene more forcefully in Granada’s internal affairs. Juan dispatched his agent Lope Alonso de Lorca to Tunis to entice Muḥammad IX to return to Granada,<sup>55</sup> which he did in 1429. Muḥammad VIII quit the city, but Muḥammad IX soon recaptured and imprisoned him, before finally executing him in 1431.

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<sup>53</sup> See Torres Fontes, *Relaciones castellano-granadinas 1427-1430*, p. 86.

<sup>54</sup> *Idem*, 56.

<sup>55</sup> *Idem*, 97; *La Frontera murciano-granadina*, p. 183.

Muḥammad IX had promised, during the period when both he and Muḥammad VIII were vying for Castilian support, that he would become Juan's vassal in addition to returning several frontier fortresses and paying the *parias* – or at least this was the impression he had given the Castilian ambassador. Once safely installed on the throne, however, he dawdled and prevaricated.<sup>56</sup> Juan II retaliated by supporting a rebellion by one Yūsuf ibn al-Mawl, a pocket Naṣrid kept at the Castilian court for precisely this purpose. He successfully deposed Muḥammad IX in early 1432 and reigned briefly as Yūsuf IV, during which time he signed an exceedingly generous peace treaty with his master.

It is quite fortunate that an Arabic copy of this treaty has survived.<sup>57</sup> This permits comparison with the Spanish version,<sup>58</sup> and thence to the Spanish versions of the other treaties concluded during the reign of Muḥammad IX. I have included both the Arabic and the Spanish versions of the treaty, as well as my own translation of the Arabic version, in the appendix. As we shall see, the treaty of 1432 is itself a highly unusual document, and the efforts of the

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<sup>56</sup> Juan II expressed his displeasure at Muḥammad IX's misbehavior to the Ḥafṣid sultan by way of Lope Alonso de Lorca: "Deliberado el Rey de hacer la guerra á los Moros, el Rey Don Juan embió al Rey de Tunez á Lope Alonso de Lorca, por el qual le hizo saber que estaba muy quexoso del Rey Izquierdo de Granada, porque despues que cobrara el Reyno con su favor, lo hallara muy desconocido, é que gelo embiaba hacer saber, rogándole que si él le hiciese guerra, no le quisiese dar favor ni ayuda, lo qual mucho le agradeceria. . .E como el Rey de Tunez oyó la embaxada del Rey mandó que todo cesase, é ninguna cosa se embiase al Rey de Granada, é acordó de embiarle sus embaxadores haciéndole saber el mal consejo que habia en no agradar al Rey de Castilla, é que le convenia pagarle largamente sus parias como los Reyes antepasados dél gelas habian pagado, é que no tuviese esperanza de haber dél ninguna ayuda ni socorro contra el Rey de Castilla con quien él tenia grande amor." See the *Crónica de Juan II* in Cayetano Rosell et al., *Crónicas de los Reyes de Castilla* v. 68 (Madrid: M. Rivadeneyra, 1875), p. 488.

<sup>57</sup> For which see Muḥammad 'Abdullāh 'Inān, "Wathīqa andalusiyya qashtāliyya min al-qarn al-tāsi' al-hijrī," *Ṣaḥīfat al-ma'had al-miṣrī lil-dirāsāt al-islāmiyya fī Madrīd* 2, no. 1-2 (1954), pp. 38-45.

<sup>58</sup> For which see Luis Suárez Fernández, *Juan II y la frontera de Granada* (Valladolid: Universidad de Valladolid, 1954), pp. 39-42.

Granadan juridical establishment to make sense of its provisions, or of provisions insisted on by the Castilians during negotiation of subsequent treaties modeled on those that Yūsuf had agreed to, appear to have informed the debate contained within the Galera fatwas.

Before we begin our analysis of the treaty of 1432, let us return briefly to Ibn ‘Āṣim’s hypothetical in the Galera fatwa concerning “a fatwa [sought by the sultan] from the scholars. . . regarding what is permitted to him in terms of concluding trucial agreements with the tyrant.” He next proceeds to discuss a series of individual conditions that the tyrant might insist on including in the treaty. The first of these is “the condition that everyone who becomes Muslim is returned [to the tyrant].” Ibn ‘Arafa and al-Māzarī had held that such clauses could only stipulate the return of male converts, whereas Ibn Shāss and Ibn al-‘Arabī had held that it was impermissible to return any convert Muslim, male or female, “because to do so would mandate the way of the unbeliever for him.”

Ibn ‘Āṣim appears more sympathetic to the latter stance. But he allows that “if the sultan. . . negotiated on this condition until it was similarly stipulated that the apostate from Islam be returned to him. . . [that] would reduce the gravity of this somewhat.” Still, it would be better if the sultan didn’t have to return any Muslims at all, and the ideal situation would be that “the Muslim is not returned to him and he does not return the apostate. . . and a *dhimmī* from either side is safe from the other in his person and in his property.” Returning convert Muslims to the Christians is not permitted, at least not “when it is a choice made of our own volition.”

In certain circumstances, however, the Muslims have no “choice or recourse in the matter,” and necessity (*ḍarūra*) might allow for such a condition to be included in a treaty.

Furthermore, in addition to those circumstances where *ḍarūra* might apply, Ibn ‘Āṣim introduces



another category of situations “wherein there is no choice or recourse available and that is not permissible by reason of necessity.” We are led to understand that it is this category of “absolute necessity” that applies to negotiations between Granada and Castile:

This is the only way that truces can occur since the domestication (*tadajjun*) of the Muslims, four hundred years since. So whenever [truces] have been sought by the Muslims they have fallen under the *dhimma* of the unbelievers since that date, and the tyrant does not permit in general to omit the insertion of [Muslim emigrants] into his trucial agreement.

Ibn ‘Āṣim concludes that in cases where political reality dictates that a treaty is not possible “except on the condition that the [*dhimmi*s] from either or both of the sides are not included in it,” refusal on the part of the jurists to allow the sultan the latitude to conclude the treaty “undermines certain public policy interests (*maṣāliḥ*) that the policymakers (*ahl al-siyāsāt*) cannot pursue.” The policymakers, meaning the sultan, his cabinet, and his negotiators, must have flexibility to concede to the extradition of Muslims to Christian territory in order to secure higher-order objectives. As we will recall, the treaties of the earlier part of Muḥammad’s reign had split the difference, demanding the mutual extradition of rebellious noblemen but not of escaped captives. This was to change.

### **The treaty of 1432**

Let us now turn our attention to the 1432 treaty. Yūsuf ibn al-Mawl, who would reign briefly as Yūsuf IV, here commits himself very transparently to a project of seizing the throne with Castilian aid and governing as a Castilian vassal. The Arabic treaty makes no effort

whatsoever to conceal either of these facts, and all of the conditions, even the most onerous, are laid out explicitly in the text, rather than in a separate *carta bermeja*.

The initial draft of the treaty, in both the Arabic and the Castilian, was composed at Ardales, a town near Málaga, before Yūsuf ibn al-Mawl's conquest of Granada itself (and therefore before he became Yūsuf IV). The signatories were Yūsuf and Diego Gómez de Ribera, Juan's *adelantado mayor*<sup>59</sup> and proxy. This initial signing occurred on September 26<sup>th</sup>, 1431. Once Yūsuf takes Granada the treaty is signed once again, "para mayor firmeza," on January 27<sup>th</sup>, 1432.

It is clear from the outset that Yūsuf ibn al-Mawl's intention is to justify his seeking Castilian support in overthrowing Muḥammad IX by way of the latter's mistreatment and overthrow of Muḥammad VIII, who "was sultan of Granada by absolute and inviolable right" until the "treacherous, disloyal, furtive" Muḥammad al-Aysar betrayed the understanding he had had with "his master" (*mawlāhu*) and overthrew him.<sup>60</sup> Yūsuf uses the same term, *mawlā*, to describe both his own relationship to Juan, who is consistently "our master the sultan Don Juan lord of Castile" (*mawlānā al-sulṭān Dhūn Juwān ṣāhib Qashtāla*), and Muḥammad IX's relationship to Muḥammad VIII, which the Spanish version of the treaty describes in terms of the former's being the vassal (*vasallo*) of the latter.

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<sup>59</sup> This is charmingly transcribed in the treaty as *al-ḡalanṭāḡuh al-kabīr*, indicating a laudable commitment on the part of Yūsuf's scribes to the interdental pronunciation of *ḡā'*. The language of the treaty otherwise evinces a relatively high degree of dialectal interference, with verbs regularly conjugating in the imperfect first person as *naḡ'al/naḡ'alū* rather than *af'al/naḡ'al*.

<sup>60</sup> The Spanish version adds: "e lo que peor es por el mayor se apoderar del dicho reyno aunque contra derecho, mato cruelmente al dicho rey su señor natural." See Luis Suárez, *Juan II y la Frontera de Granada*, p. 39.

We will recall, of course, that Muḥammad IX had returned from Tunis to seize the throne from Muḥammad VIII precisely at the behest of the Castilians, and that Yūsuf IV could hardly have been unaware of this fact given his lengthy residence at the Castilian court. The sense that all this talk of Muḥammad VIII's inviolable rights is a rationalization for domestic Granadan consumption is borne out by the fact that it is only the Arabic version of the treaty dwells on the perfidy of Muḥammad IX's betrayal, whereas the Spanish version emphasizes his failings as a ruler, calling him instead "the perverse, cruel, and tyrannical" in the corresponding location. The overthrow of Muḥammad VIII<sup>61</sup> caused Yūsuf to ally himself with Juan II, "he who is the head of Spain." This epithet is shared between both versions of the treaty. The Spanish version adds that Yūsuf chose to ally with Juan "with certain other Moorish knights of the said kingdom, not having for king the said Muhammad nor consenting in his sin and the great error that he committed."

In the Arabic, we read that Yūsuf came to Juan in "obedience" (*khudū*'), that he might "replace [Muḥammad IX] in the realm as servant and property" (*khaddāman wa-matā'an*) of Juan. These two terms in concert may serve to approximate the concept of "vassalage," though *khaddām* alone translates *vasallo* in the rest of the text, including in one instance where it refers to servants (or "vassals") of Yūsuf himself. *Matā'* carries connotations of "tool," "enjoyment," or "chattel," and is not used elsewhere in the treaty. The Arabic seems to imply that Muḥammad IX had himself been Juan's "servant and property," but no corresponding implication appears in the Spanish version, where Yūsuf hopes that Juan's favor and aid will permit him "by the grace of

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<sup>61</sup> In the treaty's words: "that hideous deed committed by that lying traitor." See the translation included in the appendix.

God to eject from the said kingdom the said tyrannical and disloyal Muhammad and install ourselves as head of the said kingdom.”

The description of the precise nature of Yūsuf’s pledged service to Juan varies between the Arabic and Spanish versions. In the Spanish, we find a straightforward pledge of vassalage: “We say that we will be your vassal henceforth throughout all the days of our life, ruling or not ruling the said kingdom, and we oblige ourselves to serve you loyally to the extent of our loyal power and to do by your command or commands all those things and each one of them that a good and loyal vassal should and is obliged to do.” The Arabic equivalent of this passage is much less specific: “We swear that we will be a servant to our master the Sultan Lord of Castile henceforth until whatever may come, possessing the realm or not possessing it, and our service shall be to him to the fullest of our intention and ability in all matters separately and entirely.”

Here we come to the most intriguing clause of the treaty, in which Yūsuf swears that “if our [kingdom] is arranged for us, and if we enter the house of our noble [kingdom], that we will free all the Christian captives that are in our [kingdom], be they in our lofty capital or in all our Naṣrid country, except the *aṣnāḥ* from among them and the converts who are in our house.” The word I have tentatively translated as “kingdom” above is *mulk*, which strictly means “possession” or “dominion.” There are two possible interpretations of this passage: either Yūsuf is promising only to free Christian captives in the possession of the royal household, or he is promising to free all Christian captives throughout the entire kingdom, irrespective of ownership. The fact that the same word is used in all three instances, and in the first two cases unambiguously means something along the lines of “kingdom” or “realm,” might initially predispose us to believe that the intention here is to free all Christian captives everywhere in the

kingdom irrespective of their possessor. This would be a major concession: the treaties of the 1420s had only provided for the possibility of captives (from both sides) escaping of their own accord without being extradited, and in the negotiations leading up to the treaty of 1439, as we shall see, Muḥammad IX is extremely loathe to free *any* Christian captives at all, much less all of them in the kingdom at once.

Almost all of them, anyway. The provision contains two exceptions, though it is not entirely clear to whom exactly they pertain. The “converts” are *muṣallūn*, literally “those who perform the prayers,” and the fact that they are limited to those in the royal household would seem to imply that they refer to, perhaps inter alia, the Christian (or renegade Christian) honor guard of the Naṣrid sultans, the *elches* or ‘*ulūj*.<sup>62</sup> The *aṣnāḥ*, however, are a puzzle. This is not, as far as I can tell, an actual word, nor is *ṣ-n-ḥ* an Arabic trilateral. The only suitable resolution would seem to be that this is actually something like *al-aṣnā* ‘ (or perhaps even *al-ṣunnā* ‘), “the craftsmen”: the final *ḥā* ‘ of the manuscript has a faint top hook consistent with its being in fact a ‘*ayn*. A similar usage, of *ṣanā* ‘i ‘ rather than *aṣnā* ‘, appears in Ibn Khaldūn, frequently in conjunction with references to the sultan’s ‘*ulūj*.<sup>63</sup> The problem here is that it is quite unlikely that Muḥammad ‘Inān would have overlooked this and even more unlikely that, having overlooked it, he would have thought nothing of leaving the word *aṣnāḥ* unglossed, but I do not see any alternative to this interpretation.

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<sup>62</sup> See Ana Echevarría, *Knights on the Frontier*, pp. 145-147.

<sup>63</sup> See, for instance, Ibn Khaldūn, *Kitāb al-‘ibar wa-diwān al-mubtada’ wal-khabar*, vol. 7 (Beirut: Dar al-Kitab al-Lubnani, 1961), p. 405.

In any event, the general understanding “all Christian captives in the kingdom except for converted members of the royal guard and craftsmen in the royal household” seems plausible enough. The problem is that this isn’t at all what the Spanish version of the treaty says. The corresponding passage there reads as follows:

Otherwise we promise that when we shall hold the said House of Granada and it shall be delivered to us, we will give and deliver to the said lord king or to his deputy all the Christian captives that in this time will be held in the the said city or in other parts of the said kingdom those that belong to the king and the said house and we will send them to his mercy within one month after we shall control the said kingdom. Otherwise we promise for us and for those who shall come after us and inherit the said kingdom to not consent that any Christian natural or subject of the kingdoms of our lord the king shall be turned Moor in the said kingdom of Granada.

The plain reading of this passage would indicate that the sultan of Granada is only bound to send to Castile those slaves that belong to the royal household. We may at this point be inclined to reinterpret the Arabic *mulk* such that it connotes the royal household rather than the entire kingdom, but now we’ve opened up a discrepancy in the opposite direction: the Spanish version of the treaty would see Yūsuf returning all Christian captives belonging to the Naṣrid “casa,” whereas the Arabic version of the treaty exempts converts and craftsmen.

The Spanish version of the treaty also obliges Yūsuf to return recent captives within one month of their capture and, most notably, he and his heirs are bound to never permit any Castilian to convert to Islam. This last clause seems to correspond to a passage in the Arabic version of the treaty that can be found a bit further along and that appears to pertain specifically to *‘ulūj*: “whenever a Christian by birth enters our service we will return him to our master the Lord of Castile as quickly as possible, and there shall be no way for him to remain with us in any

capacity or status, rather shall we return him with our letter to our master the sultan that his beautiful gaze might fall upon him.”

We may attempt to reconstruct the underlying provision scattered between the two versions of the treaty such that Yūsuf is obliged to return Christian captives who have not yet converted to Islam, excepting craftsmen, and is prohibited from “creating” new *‘ulūj* or otherwise allowing the conversion of Castilians to Islam, but is not required to extradite already-existing *‘ulūj*.

Next Yūsuf promises to deliver twenty thousand *doblas* per year as *parias*, nearly five times the amount that had been agreed in the treaty of 1421, and to provide one thousand five hundred armed knights upon request to help fight Juan II’s enemies, “be they Christian or Muslim.” He also promises to attend the Cortes when it is held in the south of Castile, and to send “one of our sons or relatives or intimate [advisors]” if it is held in the north. The Spanish version of the treaty is more exacting on this point, insisting that it be “our oldest son that we might have, and if sons we have not we shall send another person of our line, the most honored and the closest to us and who has the highest position in our said kingdom.”

Juan’s *adelantado* Diego Gómez de Ribera pledges on behalf of his king, “pursuant to the customary practice between kings of the Christians and the Muslims,” to open all of the *puertos* for trade and to guarantee the safety of Muslim merchants. This is one of the few points on which there is no regression, from the Granadans’ perspective, from the status quo ante. The Spanish version of the treaty emphasizes here that Juan’s other vassals will treat Granadans as they would treat their own vassals: “shall mandate to all of his subjects and vassals to live in

good peace with the said kingdom of Granada by land and by sea and to treat them as their own vassals.”

The remaining provisions include a reciprocal guarantee of military support from Juan against Yūsuf’s enemies, Christian or Muslim alike, with the proviso that Juan will reimburse Yūsuf when he personally answers the former’s call to arms by lowering the *parias*. Don Diego promises that Juan will not permit “any from among the Muslims who might travel to [Castile]” to travel any further, and “he shall not harbor them with him, but rather shall he send for the intercession of their master Don Yūsuf Sultan of Granada.” The treaty specifies that “regarding the freed captives we are speaking specifically of Castilians, and there is no provision for [freeing] others besides them.” With that, the two men conclude their agreement, on September 26<sup>th</sup> of 1431, in Ardales.

After this follows a second signing upon Yūsuf’s capture of Granada and accession to the throne. There are some slight discrepancies between the two versions of the treaty here. In the Arabic, the second signing takes up a scant half a page or so, and is simply a restatement of the vows by which Yūsuf IV had initially agreed to the treaty. In the Spanish version, on the other hand, the section between the first and second signings performs a bit of “cleanup work” to reconcile the two versions, “because there had been put in the text of the Arabic that which had been forgotten to put in the Castilian.” This would seem to indicate that the Spanish version of the treaty was drafted first, but that negotiations continued through the drafting of the Arabic version, upon the signing of which the Spanish version was brought up to date.

The reconciliations are two, and correspond to the last two clauses of the Arabic version of the treaty: that when Juan requests that Yūsuf send his one thousand and five hundred knights



it is Yūsuf who will pay their salary for the first three months of their service, but that Juan will pay them after this point. Next: that when Yūsuf personally “goes in service of the Lord King” his costs will be defrayed from the twenty thousand *doblas* in tribute that he owes Juan, but that this does not apply if he is summoned simply to attend the Cortes. Both of these provisions had already been included in the original signing of the Arabic treaty.

After the cleanup work, the second signing of the Spanish version is much longer than that of the Arabic version, and contains numerous assurances on the part of the newly-installed Yūsuf of his gratitude towards Juan and his aid in taking Granada, as well as a repeated promise that Yūsuf and his heirs alike would be bound forever as vassals in the service of Juan and his heirs, that do not figure in the second signing of the Arabic version. We may surmise that Juan (or his negotiator) had begun to feel a bit anxious that his vassal would lose interest in keeping up his end of the bargain once installed in the Alhambra.

### **The treaties of 1439 and 1443**

In the end, Yūsuf was overthrown before he had the chance to betray the terms of his vassalage, and Muḥammad IX returned to the throne. Upon the defeat of Yūsuf, Muḥammad felt no particular obligation to the treaty that the former had signed with the Castilians, and indeed must have realized that adhering to its terms would have been politically suicidal. The Castilians began a scorched earth campaign to bring Muḥammad to heel and impose upon him their hard-fought vassalage. This touched off some six years of off-and-on warfare between the two

kingdoms, the intricacies of which lie beyond the scope of this dissertation. In 1436, during a relative drought of military success for the Granadans, several towns of the frontier surrendered to the Christians, among them Galera. This, then, is the earliest that the events described in the Galera fatwa could have possibly occurred.

It is more probable that they occurred several years later, however. Given that al-Saraqustī treats the Galerans as (at least initially) falling under the auspices of a treaty concluded with the King of Castile, it is clear that there must have been a treaty in force at the time of the seizure of the Galerans' property, and the treaty of 1432 was by 1436 no longer in effect. The debate surrounding the treaty that underlies the Galera fatwa must, therefore, refer to that of 1439.<sup>64</sup>

The negotiations leading up to this treaty are unusually well attested, and Amador de los Ríos long ago compiled them from the Castilian archives. They consist principally of letters to and from the chief Castilian negotiator, the frontier nobleman Íñigo López de Mendoza. His interlocutors include Juan II himself and his Condestable Álvaro de Luna on the Castilian side, and Muḥammad IX, his vizier (or *alguasil mayor*, chief *waṣīl*, in Íñigo's terminology) Ibrāhīm ibn 'Abd al-Barr, and Íñigo's own counterparts, the Granadan negotiators (*alfaunque*, *fakkāk*) Zayd al-Amīn and his son 'Alī.

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<sup>64</sup> Or perhaps to that of 1443, which we will also discuss. Galera was recaptured by Granada around 1445, so the events described in the fatwa could not have occurred any later than that. See López de Coca Castañer, "Institutions on the Castilian-Granadan Frontier, 1369–1482," in *Medieval Frontier Societies*, edited by Robert Bartlett and Angus McKay (Oxford: Clarendon Press, 1989), pp. 127–150, p. 130.

Negotiations began in November 1438 and were not concluded until March 1439, with the term of the treaty beginning on the 15<sup>th</sup> of April of 1439. The primary aims of the Granadans appear to have been to avoid vassalage, to minimize the annual tribute in gold (the *parias*) that they were to render to Castile, to eliminate altogether or at least to minimize the number of Christian captives they were to repatriate, and to secure a liberal trade regime across the frontier by lifting restrictions on the quantities of goods that could be imported from Castile and on the number of border crossings that merchants could pass through.

Muḥammad had written to Don Íñigo, as well as to Juan and his Condestable, expressing his desire to end the bloodshed,<sup>65</sup> though apparently there had been some sort of communications mixup and previous letters had gone unanswered.<sup>66</sup> Don Íñigo transmitted to the Granadans, on behalf of Juan, a letter outlining the Castilian demands.<sup>67</sup> The first: that Muḥammad become the vassal (*vasallo*) of Juan, “according to that which in other more prosperous and well-favored times swore other kings of Granada, his predecessors, to the most serene kings of Castile of glorious memory, predecessors of the said King our Lord.” The enumerated conditions of the desired vassalage are twofold. First, Muḥammad would be bound to respond to summons to the Cortes, in much the same manner as Yūsuf IV: when the Cortes was to be held from Toledo

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<sup>65</sup> Amador de los Ríos, *Memoria histórico-crítica de las treguas celebradas en 1439 entre los reyes de Castilla y Granada* (Madrid: Academia de la Historia, 1879), p. 71. “Buscando bien á los de quien tal cargo tienen é alzar el trabajo que alcanza á los moros é á los xristianos de muertos é captivos é perderse caballeros grandes é otros omes buenos que pierden sus cuerpos é bienes, los quales se pierden en un dia, mas que se non pueden cobrar para siempre: que sy se pierde cavallero grande et esforzado de qual parte fuere, non lo enmendará el mundo con otro tal, é el provecho desto alcanza á las dos partes complidamente.”

<sup>66</sup> Ibid. “Non ovo respuesta; é esto es cosa que nunca fué acostumbrada, por quanto la respuesta es forzada de costumbre, é ademas á los reyes é grandes cavalleros, los que son de grandes sangres é muy poderosos, é sus sesos é consejos más que de otros ningunos.”

<sup>67</sup> Idem, p. 77.

south into Andalusia, Muḥammad would have to come personally, and when the Cortes takes place further than Toledo he would be required to send “in his name and with his power, an heir or honorable knight of his house and of his lineage.”

The second component of the vassalage is that Muḥammad would be obligated to assist Juan during wartime by sending eight hundred knights and two thousand infantrymen, if the fighting would be from Toledo south, and four hundred knights and five thousand infantrymen if the fighting would be from Toledo north. In the latter case it would appear that Juan would pay the soldiers: “for which His Highness shall mandate payment, as His Lordship mandates payment to the other kings, heirs, dukes, counts, barons, residents, and vassals.” These components of the vassalage envisioned by the Castilians are similar to provisions of the vassalage that Yūsuf had agreed to.

In addition to the vassalage, Don Íñigo demands that Muḥammad acknowledge that it was Granada that had initiated the period of warfare that had begun after Yūsuf’s overthrow in 1432 and that Muḥammad commit to paying indemnities for the damages inflicted over the course of the last several years of fighting.<sup>68</sup> He also demands the reconstruction of the fortress at Algeciras and the return of Cambil and Belmes, which had been seized by the Granadans, and the payment of *parias* in the amount of twenty thousand *doblas* annually.

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<sup>68</sup> Idem, p. 78. “Que pues es manifiesto, notorio é claro la guerra ser comenzada é movida por cabsa de los muchos dapños, furtos, é robos, é muertos de omes, é captivieros fechos por los moros, Don Mahomad Rey de Granada satisfaga, pague é enmiende todas las cosas que durante la guerra, quel muy magnifico Rey Señor, el Rey de Castilla, ha fecho en la dicha guerra á los plasos é termino que entre ellos será acordado.”

As an opening bid, this proposal was ambitious, to say the least. It constituted, in most though not all respects, a return to the agreement that had been concluded with Yūsuf, who had been elevated to the throne as a Castilian puppet. Muḥammad, however, had fought the Castilians effectively to a standstill for over half a decade, and had much more to fear from his own internal rivals than from Juan. The Granadans responded to Don Íñigo's proposed terms by calling them "very strong"<sup>69</sup> among many other things.<sup>70</sup>

Muḥammad outlines the sort of "vassalage" that he might consent to: "if it were by means of gifts or presents, which may be given in a manner of love and friendship and good intentions, then that could be arranged, and one could do the things that it is appropriate to do, according to the status and seniority of the Lord King of Castile and the honor of peace." But he rejects the sort of vassalage proposed by Don Íñigo, and he rejects as well the Castilian attempts to cite the vassalage of Muḥammad I ibn al-Aḥmar, the founder of the Naṣrid dynasty, as justification for their demands:

And that service<sup>71</sup> in the said manner is a grave thing, and in doing such a thing would be a great danger; and no one has ever done such a thing unless first he was defeated with his horses and vassals and people: and that which occurred to Ibn al-Aḥmar can be understood by that which is known to have occurred to him, that after the leaders and knights and vassals and subjects of the land knew of the manner of the vassalage that he

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<sup>69</sup> Idem, p. 89.

<sup>70</sup> Idem, p. 84. "Non podrá ninguno faserlas é non podrá sofrirlas é non se deve fablar en cosas que non se pueden faser, nin ay manera para lo complir. E el rey ensalzado, rey de Castilla (Dios lo vendiga), bien se le entiende que non se pueden complir tales cosas, que su çiençia é saber es tan grand, más que de otro ome ninguno: é esta es cosa, que todas las gentes del mundo non podrian complir tal cosa, é sabido es quel Señor Dios Poderoso, non manda á los omes cosas que non pueden complir nin faser."

<sup>71</sup> The use of *serviçio* here leads one to believe that the term *vasallaje* had been translated into the Arabic as *khidma*, as we saw in the treaty of 1432, as does Muḥammad's description of a sort of "vassalage" that isn't really much of a vassalage at all.

had promised, that their hearts could not suffer it a single hour, until it became the beginning of his perdition, and this is seen and known to everyone.<sup>72</sup>

Muḥammad's complaints continue in the same vein at some length,<sup>73</sup> but something odd shows up after the passage in which he rejects paying war indemnities. Muḥammad summarizes his understanding of a demand to return Christian captives: "With regard to the chapter that was written, in which it was sent to say that the King of Granada should give up all the Christians, male and female, that are in the kingdom of Granada." But such a demand does not appear at all in Don Íñigo's proposed terms. There is no mention of any sort of *carta bermeja* at this stage of the proceedings, nor is there reason to believe that any demands that the Granadans would want sealed away in a vermillion letter would also be stricken from the Castilian court's own internal correspondence. The cited demand, however, resembles the troublesome clause from the Arabic version of the treaty of 1432 that would have seen Yūsuf return to Castile all Christians resident in his kingdom.

In any event, Muḥammad IX rejects this demand as impossible:

That this is a strong thing and a thing that cannot be, and no one could do it, because the captive Moors, men and women in excessive number, that are in the kingdom of Castile, and the captives that are in the kingdom of Granada, are in the power of the relatives of those who are in the kingdom of Castile in hopes of exchange, according to use and custom; and how could it be in any way of the world, that a Christian captive might be taken from the hand of he who possesses him to exchange for his brother or his son or his relative? And this cannot be done, nor will there be manner to do it, nor can it be accomplished. And this does not occur in law or in any way of the world, because of the danger that can result from it.

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<sup>72</sup> Amador de los Ríos, *Memoria histórico-crítica de las treguas celebradas en 1439*, p. 85.

<sup>73</sup> The twenty thousand *doblas* per year in *parias* are, of course, also "mucho é salido del uso."

This reference to the impossibility of the proposal at the law is intriguing, given Ibn ‘Āṣim’s roughly contemporaneous discussion of the possibility of a treaty in which Christians would be returned to Castile.

In January of 1439, after some two months of negotiation, we find Don Íñigo still expressing his hope that matters could be brought to a “good and swift conclusion.”<sup>74</sup> This was overly optimistic of him, as the Granadans had no particular incentive not to draw out the negotiations for as long as possible: a cessation of hostilities had been agreed to allow the negotiations to commence, and the Granadans were in effect getting a truce for free so long as they continued to negotiate.

It also didn’t help that Don Íñigo was essentially flying blind. Seemingly at a loss as to what exactly he was supposed to be bargaining for, he had sent a letter to Juan requesting further guidance: “I have found myself in great difficulty for not knowing with regard to these facts the will of Your Highness.”<sup>75</sup> Don Íñigo had at times resorted to simply demanding things that he recalled having overheard discussed at court.<sup>76</sup> The king responded with vague instructions to negotiate “as much as possible in doblas and captives. . .the time shall be for a year; and if you can’t get a year, let it be two.”

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<sup>74</sup> *Idem*, p. 87.

<sup>75</sup> *Idem*, p. 79.

<sup>76</sup> *Ibid.* “He pedido é demandado de parte de vuestra Señoria aquellas cosas que algunas veses me recuerda que oí platicar en el vuestro alto Consejo. Si algunas dellas ó por ventura todas non van en aquella manera que vuestra Altesa quisiera, Vuestra Merced me perdone, ca si mi lengua yerra, sabe Dios que mi voluntad non peca.”

Don Íñigo seeks to reinforce his position by reminding his Granadan counterparts of the good faith with which he has conducted the negotiations,<sup>77</sup> and attempts to frame his demands for war indemnities and the return of captives as simultaneously justified by Juan's strong negotiating position and by longstanding precedent: "That by grace of Our Lord God, the King of Castile can today demand reasonably many things that other kings in other times did not demand; and it is not new that the sons pay and retribute the debts of fathers and ancestors, especially those that are manifest, just, and reasonable."

The Granadans remain unconvinced, and Don Íñigo writes<sup>78</sup> once more to the king to inform him of their terms:

That they would give the doblas that they were accustomed to give in years past to Your Mercy; and they ask for truces of ten years, not proferring any captives. And I swear to you by God, Lord, that when I heard this, that it would not have hurt me more if they had taken out one of my eyes.

The king urges Íñigo to conclude a treaty "if possible for a year, otherwise for two, and if not for two then let it be for three or fewer, if fewer is possible." As for the rest of the provisions of the rapidly-deteriorating vassalage, the king seems content to delegate quite aggressively: "And concerning the number of captives that they must give and the other things that you

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<sup>77</sup> Idem, p. 88. "Otro si, muy onorable é esforzado cavallero: á lo que desides que yo sea buen medianero é trabaje por el buen avenir destos negoçios, Dios save que tanto quanto en mi será é ha seydo he trabajado é entendido trabajar por la buena conclusion dellos; pero todavia, como yo creo, grand parte destos fechos sean en vos, devedes dar logar é abrir camino á mi, para que honestamente yo pueda suplicar al muy magnyfico Señor, mi Señor el rey, por el buen concertamiento de los dichos negoçios, ca las cosas injustas é non fasederas ó cargosas á la su real Corona, su Merced en ninguna guisa non las fará, nin yo, asy como el menor de sus servidores é consejeros, gelas consejára. Muy esforzado caballero: agora non más, sy non que me escribades todas é qualesquier cosas que vos plaserán: que con toda buena voluntad, honestad salva, las faré é porné en obra."

<sup>78</sup> Idem, p. 90.



mention, I entrust everything to you, so that you might do in all of it that which it seems fitting to do, such that the negotiations might have a swift conclusion.”

Following this exchange, Don Íñigo at last steps down from his earlier demands and produces an offer more in touch with reality: a truce for one year, during which “that to the King my Lord be given six hundred captives, which shall be those that His Mercy shall desire, and I in his name shall indicate. That to His Mercy shall be given by the said king of Granada in *parias*, signal of service and reconciliation in the said year, twelve thousand doblas of gold.” The Granadans reject this offer as well, which enrages Don Íñigo. He writes a very charming letter<sup>79</sup> to Juan outlining the Granadan counteroffer:

But, Lord, today I hear them enlarge still more the chapters, which currently state that Your Highness shall choose the six hundred captives, that the selected captives shall be in the number of one hundred, into which, if you wish it, shall enter the said Alfonso Destuñiga and Diego de Zorita and the others that Your Mercy shall mandate. For God, Lord, I fear that these Moors have other efforts or agreements from elsewhere.

Muhammad responds to Don Íñigo, writing that a one year truce was too short a duration, and “and the parties will not be at peace, knowing that the peace is so short, awaiting to return to war, and the evils will not cease, and other evil things may reëmerge.”<sup>80</sup> Juan’s predecessors, including “the king Don Juan and the king Don Enrique,” had seen fit to conclude lengthy truces, and any demands for short truces “are very strong and out of the norm.” Muhammad here

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<sup>79</sup> Idem, 102. “E yo vos certifico, muy magnífico Señor, por Nuestro Señor Dios é por la fé que á Vuestra Alteza devo, que tan malos diez días, desde que soy home, nunca levé como estos: que demás del tiempo que era rason, estos diablos de moros enbaxadores se han detenido en ir é estar é venir, pensando por quál manera ó con qué cábala enbiaria á Granada, sy por ventura ellos non viniessen. Señor, en conclusion tan mal contentos van estos traydores deste poco tiempo que les proferí, que por Dios dubdo que en ninguna guisa ellos vengan en esta trégua, sin que les sea dada por más tiempo de lo que Vuestra Merced manda.”

<sup>80</sup> Idem, 105.

reiterates his intention to promote friendship (*amiganza*) between himself and Juan, and makes no mention of service.

The demand for the return of six hundred Christian captives is also “very large,” in Muḥammad’s estimation. He justifies this stance by referring to the political difficulty it would pose him to fulfill such a demand: “the captives from the Moors that are in Christian territory are many, and there is not a Christian captive in Moorish territory, except that he is there to exchange for another Moor, sons or parents or brothers in Christian territory. And so how can it be that we take a Christian captive from the hand of he who holds him to exchange for his son or father or brother? And that is a very strong thing.” Also too strong a thing is the demand that the *parias* be set at 12,000 doblas for a single year of truce, which the sultan rightly views as quite out of the norm. The sultan proposes, in return, a truce of five years, as truces were in olden times, with exchange of goods across the frontier “with the conditions and things of times past,” and *parias* of 25,000 doblas total (five thousand each year of the truce). No mention is made of the return of captives.

These demands do not sit well with Don Iñigo, who once more waxes indignant.<sup>81</sup> He responds that the demand for Granada’s vassalization is perfectly “just, reasonable, and feasible” given that “leaving aside Ibn al-Aḥmar, many great kings of the kingdom of Granada have done so, and the King my Lord by the grace of God has many great kings in his house; where they

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<sup>81</sup> Idem, 107. “Yo soy mucho maravillado de me ser enviada tan cruda respuesta, é bien puedo desir que la merecí, porque yo con buena entencion condescendí de amenguar é abaxar de lo que primeramente avia pedido, é me era mandado por el muy magnifico rey mi Señor, el rey de Castilla. Dios Nuestro Señor sabe cuánto cargo yo recibí por traher los fechos á buena conclusion.”

would not feel any embarrassment from being his vassal, but they would be grateful to him. . . as kings of Granada came to be written likewise as his vassals and of his Council.” The *parias* were also quite reasonable and “they are not great expenses, those which may excuse and evade much larger and more damaging expenses.” Similarly, the Kings of Glorious Memory had received in the past many captives from previous Granadan sultans, and in any event “the Moors that such Christians have in their power, will be much more able to free their sons, brothers, and parents, working in their plantations, picking their fruits, when their goods and the paths of their kingdom are free and safe, when war does not break out every day, it occurs frequently that men, thinking to free others, lose themselves: where it can be said that in such a case there is evil and worse.”

On this fourth attempt,<sup>82</sup> Don Íñigo proposes a truce of one year, twelve thousand *doblas* annually and six hundred captives in *parias*. The Granadans propose instead a truce of five years, free trade along the frontier, and twenty-five thousand *doblas* over the five years. Don Íñigo rejects this proposal, but allows that he would be willing to extend the length of the truce to two years and raise the caps on certain trade goods, including cattle and olive oil.<sup>83</sup>

Finally, on the fifth attempt, the two sides strike the right balance.<sup>84</sup> The final terms of the truce are as follows:

1. Three trade entrepôts at Alcalá la Real, Huelma, and either Antequera or Zahara.

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<sup>82</sup> Idem, 108.

<sup>83</sup> Idem, 108. “Diredes que en esto en ninguna manera yo non vernia, é que escusado es el fablar en ello. Mas si quisieren aceptar el partido por mi suso ofresçido, que se les alargará otro año, que sean dos años de trégua é se dará logar á que se pueda faser cierto ganado é aseYTE é otras cosas, segund quel Infante don Fernando, que despues fué rey de Aragon, les ovo dado despues que ganó á Antequera.”

<sup>84</sup> Idem, 128.

2. Prohibition on the sale of horses, weapons, bread, silver, “and other things that are prohibited.” Up to seven thousand sheep and goats and one thousand head of cattle may be sold to the Granadans annually.
3. A series of prisoner exchanges to redeem the Castilian nobleman Alfon de Estúñiga, captive at the time in Granada.
4. A mutual promise on the part of either country not to aid rebels from the other side.
5. The return of stolen goods and captives, but not of fleeing captives.
6. *Parias* of twenty four thousand *doblas* and five hundred and fifty captives over the course of the three years of the truce. The captives are to be subjects of Castile, and the King of Castile may select thirty. The specifics of these transactions are to be included in a separate *carta bermeja*: “how and in what manner the said *doblas* and captives shall be given will not be written here, because the said Lord King of Granada has arranged a separate contract concerning this matter.”
7. The two sides promise not to provide refuge to rebellious noblemen from the other side.
8. Escaped captives from either side are not to be extradited.<sup>85</sup>

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<sup>85</sup> Idem, 138. “E otrosi: quando fuyere captivo xristiano ó moro, pleyteando ó non pleyteando, é llegare á su tierra, que non sea tenuto alguno de los dichos reyes á lo tornar; pero que sea tornado el aver, con que fuyó, sy fué fallado en su poder; é sy non fué fallado en su poder, que jure el captivo sobredicho que non llevó cosa alguna, é que juren los del lugar, do saliere é los de la posada en que posare, que non fuyó con cosa alguna; é asy sea quito el cativo sobredicho. É sea universalmente este juisio á los cativos de amas las partes de los xristianos é moros ygualmente.”

9. Disputes across the frontier are to be resolved, wrongdoers apprehended, and stolen goods returned. This section may correspond to the procedure of *istiḥqāq* that Ibn ‘Āṣim recommends the Galerans avail themselves of in the fatwa.<sup>86</sup>
10. There is an opt-in provision for Morocco, as in the treaty of 1424.

In addition, there is attached a *carta bermeja*,<sup>87</sup> which reads:

That I oblige myself to give as a gift to You, the said high king and to your kingdom twenty and four thousand doblas of correct weight, and five hundred and fifty captives, of those who are captive in our kingdom and in our lordship of the Christian captives of the kingdom of Castile, and of Andalusia; thirty captives named according to the will of the high king of Castile or according to the will of the honorable knight, Íñigo Lopes de Mendoça, and that which remains of the count of the captives: those which are five hundred and twenty captives without name, that shall according to our will; and that they shall be healthy in body, young and old men and women, and that we shall give the knight Alfonso de Astúñiga, who is captive in our kingdom, safely to your kingdom. And all this we shall give to You in peace, which is for three years: which is observed with You, the said high king of Castile, and us, king of Granada and our domain; and this said peace is that which the honorable knight, Íñigo Lopes de Mendoça, concluded with us, in your name and your power, and our servant the alcaide Ali al-Amin, with our power and in our name.

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<sup>86</sup> Judges are not mentioned here, but the equivalent clause from the treaty of 1443 does refer to them: “E de lo que afirmamos en estas paces con Vos el dicho rey honrrado de Granada, e lo que afirmades Vos con Nos, que adelantemos Vos e Nos jueces fieles en las partidas de nuestras villas e de nuestros señoríos, que oyan las querellas e ayan poder de lo juzgar, e de las librar e pagar los querellosos de ambas las partes, en cuerpos e en averes, e en otra qualquier cosa de lo que puede acaesçer, que sea seguido el rastro de los malfechores e de lo que fuere tomado, e do llegare el rastro e se pararen, sean demandados los de las partidas do se parare el rastro, e ellos que sean tenidos de lo resçibir, e si non lo quisieren resçibir, e oviere testigos dello, que sean tenidos a pagar lo que se perdiere.” See José Enrique López de Coca Castañer, “Acerca de las relaciones diplomáticas castellano-granadinas en la primera mitad del siglo XV,” *Revista del Centro de Estudios Históricos de Granada y Su Reino* 12, 1998, pp. 11-32, p. 26.

<sup>87</sup> Amador de los Ríos, *Memoria histórico-crítica de las treguas celebradas en 1439*, p. 140.

The treaty signed in 1439 was to last three years, which it seems to have done. Upon its expiration a new treaty was negotiated and ratified in March of 1443, also with a duration of three years. It broadly resembles the 1439 treaty, so our treatment of it will be brief.

There is a new clause explicitly guaranteeing reciprocity in the ransoming of captives:

And that the Christian and Moorish ransomers may enter and leave, and walk all of the said kingdoms, from one part to the other, and ransom and free captives safely and securely, without any obstruction whatsoever; and they can free and transport the said captives paying the accustomed fees, in addition to which cannot be added any additional fees.

The mutual obligation to block the passage of internal rebels through the territory of the respective kingdoms is enunciated more clearly:

And of what we affirm with You, and that which you affirm with Us, that when one of your enemies rises up against You and wishes to enter by your land, from outside of your kingdom, and wishes to come to your land by our land, that we will be obligated to prevent his passage by our land, and to expel him from it by waging war upon him; and if we are not able to expel him we will make you aware of this. And likewise you will accomplish this for Us, you the honored King of Granada aforementioned, in everything that is stated, entirely.

Likewise the promise to extradite rebellious nobles:

And we affirm with you the honorable King of Granada aforementioned, and you affirm with us that when a rich man flees, or a knight, or a servant from either one of the parties to the other that it be made known, and he may plead his case if his error is one of those over which one may plead, and may he be returned safely to the party whence he fled, and if his error is one of those over which one may not plead may he be expelled from the kingdom and from the domain to another place, and if he carries anything may it be returned to its owner, and if a revenue collector (*almoxarife*) should flee the judgment is like unto the aforementioned judgment pertaining to knights, except that the mark of his power be taken from him, and returned to whence he fled.

The treaty once more guarantees the total reciprocity of the provisions:

And that this ruling shall be common to each party from both of the parties, Christians and Moors equal in this. And every stipulation and condition said in this contract shall be binding to both of the parties, and the Christians shall be held to that which the Moors are held in this, and the Moors shall be held to that which the Christians are held equally in this matter.

This treaty also includes a *carta bermeja*, which specifies that the gifts are “by way of friendship,” and “the goodwill that is between our ancestors and yours.” The quantity of the *parias* remains the same on an annual basis as in the treaty of 1439, amounting to thirty-two thousand *doblas* and seven hundred and thirty-three captives in total.

There is one extraordinary passage, however, that appears to be an attempt to split the difference between the initial demand, modeled on the 1432 treaty, for the return of all, or almost all, Christian captives, and the return of a specified number of captives only, as in the 1439 treaty:

And we oblige ourselves likewise to pay with all the aforementioned, of the Christian captives, old and young, men and women, that they be true captives, seven hundred and thirty three; and the king of Castile shall select up to thirty according to his will, if they be foreigners or any others; and those who remain from all of the aforementioned number, that we shall give for each one of them thirty *doblas* of aforementioned gold. And all the Christians that live in the land of the Moors, that wish to depart for the land of the Christians, that this grants them license to do this safely.

There are several intriguing points here. The first is the specification that the Granadans are only to return Christians who are “truly captives”: this may be designed to exempt the Granadans’ own *dhimmīs*, *‘ulūj*, and “craftsmen,” per the 1432 treaty. Second is the explicit mention that Juan II would be able to include “foreigners or anyone else” among the thirty captives he could personally select, whereas foreigners had been excluded from the population of Christians the Granadans were obliged to return in the 1432 treaty. Finally, we have the right

extended to “all Christians” to emigrate from Granada if they so choose. Logically, this cannot include captives, so it must mean all *free* Christians – including, perhaps, the aforementioned *dhimmīs*, *‘ulūj*, and craftsmen.



## Summary and conclusions

We set out initially to investigate the manner in which the Islamic legal system and its practitioners adapted the law to the reality of Christian hegemony, manifest in the vassalage of Granada to Castile and in the presence of Muslims living under Christian rule. We may at this point draw some tentative conclusions from what we have found. The first is simply that the obligation of Muslims to emigrate from Christian territory does not appear to have been a matter of consensus, or even of concern. Far from a Mālikī consensus on the obligation to emigrate, we find that the Granada jurists seek to defend the rights of Castilian Muslims to dwell unmolested in Castile. The “rigorism” of al-Wansharīsī and his contemporaries on this question does not play into the debates of the Granadans in any capacity. The Galera fatwa therefore constitutes another item of evidence to be tallied alongside the ruling of the Mālikī chief judge of Cairo on the side of the ledger arguing against the existence of a longstanding “hardline” consensus against Muslims living under Christian rule within the *madhhab*. Whatever consensus did emerge within the school would appear to have been the product of and local to a specific North African political context.

The question of the Granadan vassalage is altogether more complicated. It is apparent that the period of Muḥammad IX’s reign entailed a comprehensive reform of the treaty arrangements governing the forced extradition of Christians and Muslims across the frontier, not only with regard to the tribute in captives but also with regard to free Christians and renegade converts to Islam. This reform proceeded in two steps. In the 1420s, a treaty arrangement obtained such that the Granadans were not generally required to pay tribute in Christian captives,

captives that escaped across the frontier from either side were generally safe from extradition, and renegades from either side appear to have been tolerated.

The next phase began subsequent to the Castilian intervention in the Granadan civil war on the side of Yūsuf ibn al-Mawl: a treaty was signed in 1432 requiring the Naṣrid sultans to return almost all Christians resident in their territory to Castile, in addition to requiring a significant increase in the amount of the *parias*. This treaty was never enforced, and indeed may have proved fatal to Yūsuf's viability as sultan. Muḥammad IX's subsequent refusal to abide by the terms of the treaty caused Castile to resume open warfare in order to impose upon Muḥammad the vassalage that Yūsuf had agreed to, and this state of affairs continued through most of the 1430s, until negotiations for a new treaty resumed in late 1438. The treaties of 1439 and 1443 represent a synthesis of the treaty of 1432 with the status quo ante, eliminating several of the concessions imposed upon the Granadans in 1432 while at the same time enshrining others.

Galera was captured by the Castilians in 1436, and it is likely that the Galera fatwa and the ensuing legal debate occurred roughly contemporaneously with the negotiations leading up to the treaty of 1439. Indeed, it would appear that the debates around the new treaty began at some point to leak out into the discussion surrounding the Galera case. In his second response on the Galeran question, Ibn 'Āṣim seeks to investigate the licitness of several related treaty provisions concerning the extradition of Muslims and Christians across the frontier. The first provision he mentions is one that would require the Granadans to return to Castile converts to Islam who had crossed the frontier – a provision included to a certain extent in each of the treaties of 1432, 1439, and 1443. He deemed this illegal, but allowed that a reciprocal provision according to

which the Castilians were also obligated to return to Granada converts to Christianity might “reduce the gravity of that somewhat.” Such a treaty could be justified at the law on condition of absolute necessity (*darūra*).

But what if *darūra* were to become general in dealings between Granada and Castile? Ibn ‘Āṣim seems to suggest that this had in fact long been the case, and here emerges the key to understanding the nexus between Islamic law and treaty negotiation that emerged during this period. Ibn ‘Āṣim’s argument is that certain provisions contrary to legal precedent can be justified by making recourse to *maṣlaḥa* in cases of absolute necessity, and that treaty negotiation with the Christians is regularly conducted under the aegis of absolute necessity. In other words, at least in theory, the sultan may conclude treaties with the Christians effectively unhindered by precedent, concerning himself solely with utilitarian public policy. The legal question is simply whether the sultan’s concessions are justified by the political exigencies of the moment.

The Galeran question, then, emerged amidst considerable tumult in the nature of the relationship between Granada and Castile. Not only had towns of the frontier like Galera begun to submit themselves in vassalage and dhimmitude to the Castilians, so too had a pretender to the Granadan throne. In so doing, Yūsuf IV ibn al-Mawl had opened the door to demands and treaty terms theretofore alien to the law, or at the least to recent practice. Al-Saraqusṭī had responded to the Galeran question by invalidating the Galerans’ prohibition by reason of treaty, but Ibn ‘Āṣim could not for political reasons allow any invalidation of Muḥammad IX’s treaty with the Castilians and so intervened.

It was for the jurists to determine which demands could be justified by *darūra* and which not, or to determine how demands could be construed so as to be justified by *darūra*. This was fundamentally a political calculation, as it depended on a given jurist's assessment of a given sultan's ability to resist the imposition of Castilian demands both militarily and diplomatically. Far from Harvey's assessment of the Granadan jurists' constituting the most implacable foes of peacemaking with Castile, we see in Ibn 'Āṣim's responsa a clear inclination towards the preservation of the peace. We see as well, once more against the theory of the Mālikī hardline consensus on the obligation to emigrate, that the Granadan legal establishment had by this stage more or less accommodated itself to the presence of Muslim *dhimmi* populations living under Christian rule in towns like Galera.

If the obligation to emigrate was a non-issue, the more pressing concerns for the jurists were determining the legal protections afforded these *dhimmi* populations, the sultan's rights over and duties to them, and the legal parameters of the relationship, be it of vassalage or simple "gift-giving," with Castile. The adjudication of the outer limits of this "vassalage" entailed that the sharī'a serve as an arena for political competition between its practitioners, who proposed and defended interpretations of the law that had the effect, whether intended or not, of bolstering the policies of the reigning sultan or of undermining them to the benefit of his internal opponents.

This process was so bound up in the realpolitik of treaty negotiations that we may chart the passage into formal legal argumentation of a set of demands initially conceived of by Juan II's negotiators as maximalist and foisted unilaterally upon an abject puppet sultan wholly dependent on Castile. Once Yūsuf ibn al-Mawl had consented to his treaty, the Castilians viewed

the provisions contained within it as fair game and proceeded to insist on them in subsequent dealings with Muḥammad IX, and the simple reality of this insistence forced the jurists to evaluate whether these new provisions might be acceptable at the law, at least under certain circumstances. In the simplest terms, a Christian monarch was able to effectively enact amendments to the Islamic law of truce-making by force of arms.

On the other hand, the willingness of the jurists to legalize certain concessions did not imply that they were without risk. The more delicate provisions were sequestered in vermilion letters, concealed from the Granadan public, for this very reason. For a Granadan sultan to be perceived as a *dhimmī* or as analogous to a *dhimmī* would be fatal, as Yūsuf ibn al-Mawḥ found. More onerous treaties were more difficult to defend to the Granadan people, who bore the brunt of their economic consequences in the form of tribute in money and captives and in reduced opportunities for cross-frontier trade. Simply hiding the provisions of the treaty was not enough: the sultan's subjects would soon enough feel their sting.

Yūsuf ibn al-Mawḥ had made no attempt whatsoever to hide the stipulations of the treaty of 1432: they are contained in the text, rather than in an attached vermilion letter. Nor did he attempt to hide the straightforwardly factional nature of his usurpation: he justified his alliance with the Castilians by his loyalty to Muḥammad VIII and his desire for vengeance against Muḥammad IX. He also dispensed with the fiction that the *parias* were given up out of affection and friendship between the two rulers, acknowledging that he was the *khaddām* of Don Juan and pledging his eternal loyalty and that of his heirs. Indeed, it is notable how little variance there is between the Arabic and the Spanish versions of the treaty, with such discrepancies as exist seeming to be largely artifacts of the ongoing negotiations rather than deliberate attempts to

soften the language of the Arabic version for domestic Granadan consumption, with a handful of exceptions. In any event, Yūsuf's swift ouster signaled that at this stage such concessions, particularly so publicly made, were politically untenable.

The treaty of 1439 is clearly much more favorable to the Granadans than the treaty of 1432 had been. The final text of the treaty, however, disguises the extent to which the Castilian negotiators had attempted to replicate as much as possible the provisions that they had extracted from their puppet Yūsuf ibn al-Mawl. This insistence, well documented by the Castilians, dragged out negotiations for many months, and appears to have weighed heavily on the mind of Ibn 'Āṣim. In the end, Muḥammad IX was able to resist the bulk of the Castilian demands, but the very fact of those demands had penetrated into the Granadan political environment and opened a breach in the sultan's political legitimacy.

Usurpers could use opposition to onerous treaties to rally support for their coups d'état. This was true not only of the army or of the population at large, but of the jurists as well. Ibn 'Āṣim and al-Saraqusṭī found themselves precisely on opposite sides of just such a conflict, and we might return once more to Abou el Fadl's interest in the "social and political position of each jurist" vis à vis his society's power structure as a potential explanation for stricter or more lenient rulings. Al-Saraqusṭī's willingness to question the treaty policy of Muḥammad IX hints at broader sympathies for the kingdom's political opposition, and he appears to have lived the latter portion of his life in the good graces of the new sultan Sa'd and the new political establishment drawn from the ranks of the opponents of Muḥammad IX.

For his part, Ibn 'Āṣim hoped in vain that the Granadans would one day set aside their quarrels and cast off the Christian yoke:

And let us reach out to Him the hand of destitution and unclench the palm of humility and necessity by abstaining from civil war in this country, and by warding the unbelievers from these houses, and by drawing comfort close to this strange land, and by easing the tangled difficulty of this nation so distant from the guardian and supporter, that He may draw hither the fearful hearts and the discordant and far-flung souls, and that we might spill in great gushes the blood of the enemy with swords of steadfastness and courage, and bestow wondrous news, and curious and sweet tidings, to Syria and Iraq.<sup>88</sup>

A few years after writing these lines he was, in the words of Aḥmad Bābā, “sacrificed at the sultan’s side,” a victim of his faroff kingdom’s neverending and infinitely ruinous fitna.

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<sup>88</sup> Ibn ‘Āṣim, *Jannat al-riḍā*, 2:289.

## Appendix

### The Galeran question: Translation

#### A question concerning the purchasing of the property of the people of Galera from the Christians<sup>89</sup>

The investigation into this question occurred between the *faqīh* Abū Yaḥyā ibn ‘Āṣim and the *faqīh* and *khaṭīb* Abū ‘Abdallāh al-Saraqusṭī, God have mercy on and be pleased with them both. The response of Abū ‘Abdallāh al-Saraqusṭī to the people of Baza<sup>90</sup> is as follows:

O my brother and my lord, your missive concerning the Galeran case has reached me, and I understand from it that your grounds for prohibiting the purchase of their property from the Christians is that [the people of Galera] have a treaty and a guarantee of safe conduct from us like unto that which the Christians possess, and for that reason we do not purchase the property of the people of Galera from those who plundered it from them.

In response to this we say: If what you intend by “treaty and guarantee of safe conduct” is what the Law has determined regarding the prohibition of the property of a Muslim to another Muslim except when he has himself agreed to it, then this obliges you to forbid the purchase from the belligerent unbeliever resident in the abode of war (*ḥarbī*) that which he has plundered from a Muslim,<sup>91</sup> and we do not distribute as spoils those items known to have belonged to an

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<sup>89</sup> The translation is my own, from original Arabic in al-Wansharīsī, *Al-Mi‘yār*, 2:142.

<sup>90</sup> Baza is a town of Granada, some 30 miles southwest of Galera. It would appear that a jurist or local official of this town brought this *istiftā’* to al-Saraqusṭī.

<sup>91</sup> This is clearly the intended meaning, but the Arabic is ambiguous: *an lā nashtarī min al-ḥarbī mā ghalaba al-muslim ‘alayhi min mālihi*.



unidentified Muslim because we are in doubt concerning the willingness of its Muslim possessor. Citations in favor of its permissibility can be found, but this is not what I believe that you intend. [But] if what you intend by “treaty and guarantee of safe conduct” is rather the truce that the Commander of the Muslims, God help him, has concluded with the Christians, and that it is inclusive of the people of Galera due to their being under the subjugation of the tyrant, then there is a point of view according to which the Christians were, before the truce, licit to us in their blood and their necks<sup>92</sup> and their property, whereas the blood of the people of Galera was forbidden, but there remains debate with regard to their property: is it forbidden because it belongs to a Muslim? Or licit because it is within an abode of war? I am unable to recall any text on this matter from Mālik or any of his followers (*aṣḥāb*), except that the judge Abū ‘Abdallāh ibn al-Ḥājj<sup>93</sup> mentions it in the collection of his cases (*nawāzil*), classifying it under the question of the *ḥarbī* who embraces Islam and either sets out to join the Muslims or who remains in his home, and the Muslims enter and seize his property: are the items thereby seized licit spoils? The two [opposing] opinions are in the *Mudawwana*.<sup>94</sup> It is true that no spoils may be seized from him; according to the texts of sound hadiths the property of a Muslim is forbidden to a Muslim except when he gives permission.

On this point there is an opinion to the effect that the *ḥarbī*'s blood and neck and property are licit, and if he converts then all agree that he keeps his blood and neck, but there remains

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<sup>92</sup> The word “necks” in the phrase “blood, necks, and property” indicates the licitness of enslaving them.

<sup>93</sup> This is likely the Moroccan-Egyptian Mālikī jurist Abū ‘Abd Allāh Muḥammad ibn Muḥammad al-‘Abdarī al-Fāsī (d. 1336 in Egypt).

<sup>94</sup> The *Mudawwana* of Saḥnūn (d. 855) is one of the primary treatises of Mālikism.

disagreement on his property remaining in the abode of war. As to the monotheist<sup>95</sup> Muslim whose Islam is not preceded by unbelief, then there is no cause to treat his blood or his neck as being licit due to the lack of the presence of a factor that would render them licit, which would be unbelief. That which obtains with regard to his blood and his neck obtains also with regard to his property, because the *ratio legis* of this prohibition is his Islam, **and the blood and property and goods of any Muslim are forbidden to a Muslim.**<sup>96</sup> (2:143)

How then do we distinguish between a Muslim whose prohibited status was [from birth] and a Muslim whose prohibited status was [by conversion and not from birth]?<sup>97</sup> If the prohibition on the property of one who is Muslim from birth stands, then we extend it until it falls by valid evidence, and [the property's]<sup>98</sup> being in the abode of war is not reason enough to invalidate its prohibited status until valid evidence is presented. Have you not seen the ruling of Ashhab<sup>99</sup> regarding the Muslim who purchases something from a captive in the land of the enemy and leaves unable to bring it with him? If raiders enter and seize [the item] it nevertheless belongs to its purchaser and not to those who seize it, this is the correct ruling due to [the Muslim's] having possessed it, and his leaving it behind unwillingly and out of inability to transport it with him does not invalidate his possession of it. Would you not agree that it is the same as the case of the man who has a cow that escapes and becomes feral? He retains ownership of it, and the status of

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<sup>95</sup> *Al-muslim al-muwahhid*. It has been suggested to me that this may refer to soldiers in the Almohad armies, supposedly on account of their having frequently converted from paganism, though this seems like a bit of a stretch.

<sup>96</sup> A hadith found in the *Ṣaḥīḥ al-Bukhārī*, vol. 8, book 73, tradition 69. The hadith distinguishes between immovable property (*'ird*) and movable property (*māl*). The latter is the word used for the property in the Galeran case.

<sup>97</sup> The words used are *aṣṭī* and *ṭāri*, "inherent" and "contingent."

<sup>98</sup> Possibly "[the Muslim's] being in the abode of war."

<sup>99</sup> Early Mālikī jurist, d. 819.

this beast is not the same as the status of the beast that was originally feral. Would you not agree that the correct opinion on the matter of the quarry that escapes from its hunter and that is seized by another is that it belongs to the former rather than the latter, even after twenty years? That is the opinion of Ibn ‘Abd al-Ḥakam,<sup>100</sup> who seeks to preserve the rights of original ownership in various such cases.

If it is true that the property of the people of Galera was forbidden and no event has occurred that would make it licit, then it has not attained the status of the property of Christians, upon which there is a ban due to a treaty barring us from purchasing it from those who seize it from them. But it remains for us to consider [the Galerans’ status], and there is no doubt that they were under the *dhimma* of the Christian [king] and his treaty,<sup>101</sup> and then the Christian violated the terms of his treaty and betrayed them. They have the status of those who are allegiant to the Imām of the Muslims when he makes a treaty with the tyrant and agrees with him a truce for a certain period, and [the tyrant] does not honor it in full, and he reneges and makes war and seeks to become master of a group of Muslims and their property. What is seized after the betrayal and violation is equivalent to what is seized after the elapsing of the duration of the treaty without betrayal, and there is no breach in the permissibility of purchasing those items as spoils of war.<sup>102</sup>

It was asked of Ibn al-Qāsim<sup>103</sup>: Do you hold that if the people of our *dhimma* steal property or a slave from us and they conceal this fact until such time as they make war against

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<sup>100</sup> Early Mālikī jurist, d. 772.

<sup>101</sup> The “treaty of the Christian” appears to refer to the treaty concluded between the Granadan sultan and the king of Castile.

<sup>102</sup> *Fī jihād al-ghanīma*.

<sup>103</sup> Early Mālikī jurist, d. 806.

us, the items still in their possession, and then they make peace such that they return to their status of payment of the *jizya* that had been incumbent upon them, that what they stole before the war and the reconciliation that occurred should be taken from them?

He said no. I am of the opinion that [the item] is granted to [the *dhimmīs*] by the pact and that nothing of what they plunder is taken from them after they reconcile, [so long as] the goods remain in their possession. Consider how he ruled [in this case], when they took [property] while under the status of the *dhimma* and it remained in their possession until they made war: what they take is not taken from them after the conclusion of the hostilities, and if it is not taken from them then it is licit for the Muslim to purchase it from them. Our present case is even clearer in terms of the licitness of purchase than that one, because the seizure of the property in it occurred after the breaching of the truce and commencement of hostilities. **(2:144)** He said also that if a band of enemy soldiers descends under a guarantee of safe conduct and steals some of the Muslims' slaves and goes away with them and then returns with them and descends once more under a guarantee of safe conduct [while they are unawares]<sup>104</sup> and seeks to sell them, then the slaves are not taken from them, and I take this to mean that [the unbelievers] remain in possession of the slaves because they seized them and returned with them to their lands and made war. So with regard to what they take after the breaking of the *dhimma* and the pact then there is no obstacle to its permissibility, God willing. The ruling in favor of the permissibility of purchasing the goods from this case is stronger than the ruling from the previous case. As for what they take after the expiration of the *dhimma* and the treaty, this does not prevent the licitness of the goods, God willing. The intent of this, and God is all-knowing, is that the

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<sup>104</sup> *Wa-lam ya 'rifū*, with the subject presumably "the Muslims."

uncertainty of the ownership of property seized [by the Christians] in a state of war, or before it, and that remains in their possession requires the permissibility of purchasing it, just as their marriages are dissolved by conversion to Islam when they seek to have them deemed licit (*istahallūhā*) if the status of Islam would have prohibited the commencement of such a marriage agreement [in the first place]. Here it ends.

### **Ibn ‘Āṣim’s response**

The *faqīh* Abū Yaḥyā ibn ‘Āṣim, whom we have mentioned, became acquainted with the ruling, and he responded as follows:

My lord, may God secure your protection, I have read attentively your ruling and I must confess to being overcome by a sense of surprise with regard to the entirety of it. Certain points have occurred to me that disincline me to your opinion, and they comprise a group of issues:

The first of these: What you maintain regarding the ruling that you have deemed disfavored, when it is in fact of clear necessity.

And the second: What you express regarding the alternate ruling, which is the view that demands we treat as illicit the property of the people of Galera and others in like circumstance. The fact that the Galerans’ property was illicit before the treaty [made with the Christians] does not imply that the existence of the treaty should diminish this in any way, for it is as with the matter in which two prohibitions are concurrent, each one independently negating the validity of the action, as with the saying of the Prophet: **Even were she not my stepdaughter she would**

**not be licit to me due to [her father's having been weaned alongside me].**<sup>105</sup> Here the people of Galera [are treated] in the same manner as full brothers<sup>106</sup> in common issue inheritance.<sup>107</sup>

One of the proofs that there are two prohibitions on deeming licit their property is that if we were to posit that the people of Galera had apostatized, God forbid, then their property would not be licit to us due to the treaty, but the property [would be] licit according to your reasoning due to your invalidation of the treaty and the lifting of the prohibition by reason of Islam by reason of apostasy.

If we were to posit that the Christians betrayed [the treaty] by breaking the truce, then the property of the people of Galera would not be licit to us **(2:145)** as spoils according to the correct opinion that you have cited, because it is the property of Muslims. If the prohibition on the property is prior to the treaty, thereby necessitating the invalidation of the treaty by its seizure, then the prevailing ruling is that regarding the property of monks (*ruhbān*) that remains behind [in the abode of war], which renders it licit for us to purchase from those who plundered it from them, whereas it was forbidden before the treaty, as were the neck and blood of the monk, and so the requirement of the treaty has no effect. And that is highly irregular, but if it is established by a specific proof that the treaty with the tyrant does not govern the Muslim who opposes God by entering under [the tyrant's] *dhimma* then there is no debate. [But] if this is not present then the clearest course of action is to decide to prohibit the property by means of the treaty, as Ibn Saḥnūn<sup>108</sup> has said: “The conclusion of a truce with the tyrant, before or after besieging him, is

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<sup>105</sup> This hadith is in *Ṣaḥīḥ al-Bukhārī* 62:42.

<sup>106</sup> Or full siblings?

<sup>107</sup> *Al-ashiqqā' fil-mushtaraka*.

<sup>108</sup> Muḥammad ibn Saḥnūn, Mālikī jurist and son of the famous Saḥnūn, d. 870.

required commonly in dealings [between the sultan and the tyrant], except in the case of the specific circumstances that Ibn ‘Arafa<sup>109</sup> has mentioned.” So what then is the point of view concerning a truce agreement such as that of Galera? It is clear that the one who contracted these truces included in them for the entirety of the duration everyone who is under Muslim or Christian rule from among the Muslims or the Christians or the Jews in their persons and in their property, and it is incumbent on the Muslims to pursue those who slight them from among the Muslims or Christians or Jews, as it is incumbent on the Christians to pursue those who slight them from among the Christians or Muslims or Jews, like to like.

And the third: The ruling regarding the property of the Mudéjars and Ibn al-Ḥājj’s classifying it with the property of the *ḥarbī* who converts. This case occurred long ago between our teacher Abū al-Qāsim ibn Sarrāj,<sup>110</sup> God have mercy on him, who ruled to permit the division of their property amongst the raiding parties as spoils, and our teacher Abū al-Ḥasan ‘Alī ibn Sam‘at,<sup>111</sup> God have mercy on him, who ruled to prohibit that, and who prevailed over the shaykh [Ibn Sarrāj], God have mercy on him, and his rulings on the subject are to be found in the collection of his cases.

And the fourth: The investigation into Ibn al-Ḥājj’s classification, and that is very well consistent with the view of our shaykh Abū al-Ḥasan ‘Alī ibn Sam‘at, God have mercy on him.

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<sup>109</sup> Tunisian Mālikī jurist, d. 1401.

<sup>110</sup> See: Abū al-Qāsim ibn Sarrāj al-Andalusī, *Fatāwā Qāḍī al-Jamā‘a Abī al-Qāsim Ibn Sarrāj al-Andalusī*, ed. Muḥammad Abū al-Ajḡān (Abu Dhabi: al-Majma‘ al-Thaqāfī, 2000).

<sup>111</sup> See al-Tunbuktī, *Nayl*, p. 207.

And the fifth: Classifying together the people of Galera in their having been betrayed and a group from among those who were under the rule of the Imām in their having been betrayed before the expiration of the time of the truce, and it is true that the treaty of the tyrant with them is void.

And the sixth: The equivalence of the two circumstances in which the tyrant might seize looted property: on the one hand by violating the truce, and on the other hand after the expiration of its allotted time. Concerning this there is a point of view according to which what the Christians take after the expiration of the period of the truce clearly belongs to them, because uncertainty of possession is what determines the legal validity of the distribution of spoils in [such matters]. **(2:146)** If the owner of the goods does not come forward before [the expiration of the truce] then he cannot reclaim them afterwards except by paying their price, according to what you know from the *madhhab* [of Mālik]. As for what they take in the time of truce while the truce remains in effect, there is no doubt that it belongs to its owner when he finds it has been taken without being paid for, and he may reclaim it [by assize of recent dispossession]<sup>112</sup> just as he would reclaim it from a Muslim. There remains [a point of view] midway between the two aforementioned, such that what they take in the time of truce breaks [the truce], and its classification is with theft by the people of the *dhimma* while they are in a tracial status, followed by their breaking [their *dhimma*] after [the theft] and their subsequent return to their original status of *dhimma*, and it is clear [also] with thieves who descend under a guarantee of safe conduct and who then return to their land and then once more return under the guarantee of safe conduct [from the Muslims]. Except that it is possible to distinguish between these two opinions

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<sup>112</sup> *Istihqāq*.



and the opinion regarding the guarantee of safe conduct, in the preceding two in favor of taking the property such that it is not possible to seize it from [the looters], and because of that [Ibn al-Qāsim] rules that the guarantee of safe conduct is strict, and there is a judgment in favor of him whose property was taken from him, and this requires consideration.

And the seventh: The existence of what the unbelievers kept necessitates [for the Galerans] the existence of uncertainty of possession with regard to it, and that is clearer than that which opposes it. This is what has occurred to me from my own limited knowledge and perception. Favor be to you, and may you excuse such insufficiencies as I have committed in this. Peace be upon you and mercy and blessing.

### **Al-Saraqusṭī's counterresponse**

Then the *khaṭīb* Abū ‘Abdallāh al-Saraqusṭī responded to that with what follows:

Praise be to God. O my lord, may God grant you cause for happiness and prolong your life and bless you. I wished to consult with you regarding an ambiguity that has occurred to me in what you have written, and that is that you have ventured to unite the two prohibitions, of treaty and of Islam, in the property of the people of Galera. You take in your opinion what you can from of each of the two prohibitions: if the prohibition by reason of Islam is invalidated with the triumph of the unbelievers over [the Galerans] you still forbid purchasing from them because of the prohibition by reason of treaty, and if the prohibition of the treaty is invalidated by its violation or the expiration of its time the prohibition by reason of Islam remains in force. I would argue for the impossibility of uniting the two prohibitions for [the property], because the locus

(*maḥall*) of the prohibition by reason of Islam is the property of a Muslim and its *ratio legis* (*'illa*) is Islam, and the locus of the prohibition of the treaty is the property of the *ḥarbī* under treaty and its *ratio legis* is the treaty, and just as unbelief and Islam cannot be united together in one man, so is it impossible for the prohibitions of Islam and treaty to be united together in one property. Evidence to this effect is that the prohibition on the property of a Muslim is removed by the victory of the belligerent unbeliever over him, and the prohibition on the property of one under treaty is not removed by the victory of another over him. Furthermore, the prohibition on the property of the one under treaty<sup>113</sup> expires with the expiration of his treaty, and the prohibition on the property of a Muslim does not expire with the expiration of his Islam, **(2:147)** because if he were ruled to be engaged in clandestine unbelief and killed his property would pass to his heirs, and if he were ruled an apostate<sup>114</sup> his property would be frozen according to the known ruling, and if he returns to Islam it is returned to him, and if he is killed then it is forfeit.

The assize procedure (*istihqāq*) overturns<sup>115</sup> the prohibition on the property of a Muslim, whereas assize does not overturn the prohibition on the property of the one under treaty, among other things. If a single agreement does not combine two things with divergent statuses according to the prevailing opinion [of the madhhab], like contracts of advanced payment (*bay'*) and marriage, then the worthier course of action is that is that a single locus does not unite both of them.

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<sup>113</sup> *Mu'āhad*.

<sup>114</sup> Two distinct words are used here: *zandaqa* in the first sentence and *ridda* in the second.

<sup>115</sup> *Yusqit*.

We may clarify the matter further by noting the three ways that the prohibition on carnal relations might fall: in the case of revocable divorce (*ṭalāq raj'ī*) by reconciliation, in the case of irrevocable divorce (*ṭalaqa bā'ina*) by remarriage without any other condition, and in the case of triple [divorce] by marriage after having married another and consummated. These prohibitions do not combine and there is not a single woman who unites more than one of them.

Thence: The prohibition on [carnal relations with] a woman who is a stranger (*ajnabiyya*) is inherent and is waived by marriage, and the prohibition on the wife is contingent upon the dissolution of the marriage and these two things do not unite in the *ajnabiyya*. So if a man who is a stranger (*ajnabī*) is forbidden to her and then he marries her she is not forbidden to him except if he provides for conditional divorce<sup>116</sup> [in the marriage contract] in accordance with the prevailing opinion [of the *madhhab*]. We do not speak of combining the two prohibitions in one woman if the husband provides for conditional divorce, because the condition of divorce (*mu'allaq*) does not precede the agreement but rather applies to her while she is a wife and not before.

Thence is it that the prohibition on eating ritually impure meat is inherent (*lāzim*) to the meat, for example, whereas the prohibition on selling deceptive merchandise is contingent (*āriḍ*), and so they do not share a common locus, because the locus of this is not the locus of that. And thence is it that a single locus does not encompass two obligations, one inherent and one contingent, as the noon prayer does not encompass supererogatory prayer (*nadh'r*),<sup>117</sup> and if

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<sup>116</sup> *Yu'alliquhu 'alā tazawwujihā.*

<sup>117</sup> Lit. "vowing," in this case the practice of committing oneself to the performance of religious actions not obligatory at the law.

someone performs the noon prayer as a supererogatory prayer his *nadhhr* does not increase [the prayer] in obligation and it does not increase its legal status nor decrease from it. And thence is it that Ramadan is a specific locus of fasting, for if one fasts during it for atonement or if one engages in supererogatory [fasting] under its covenant (*dhimma*) then it is not valid for Ramadan, because that is not its intent, because [Ramadan] does not accept that sort of alteration. All this is to say that a single locus does not accept the combining of two distinct statuses from any aspect or from multiple aspects.

If that is sound then the prohibition of the treaty cannot be combined with the prohibition by reason of Islam concerning the property of the people of Galera. If the prohibition of the treaty has no effect, [such that] it was the property of Muslims who were under the treaty of the unbelievers, who violated [the treaty] and returned to war and plundered them, then it is permitted to purchase from them and to plunder in their abode [of war] without difference of opinion that I can recall. **(2:148)** And [the property's] owner must take it from its purchaser by [agreed] price, and without it if [the purchaser] gives it away and doesn't keep it, and to buy it from them in our abode is detestable according to Ibn al-Qāsim in the *Ta'wīl* of al-Lakhmī,<sup>118</sup> [but] *qiyās* does not support that, and it is licit from the perspective of Ibn al-Mawwāz.<sup>119</sup> If its owner comes forward, there is no right for him to take it from the hand of its purchaser in the abode of Islam, and for him to give [the purchaser] the price that he purchased it for is rejected according to Ibn al-Qāsim who discourages its purchase, and in this he differs from Yaḥyā ibn Yaḥyā<sup>120</sup> because this latter permits its owner to take it for that price. The jurists have permitted

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<sup>118</sup> Likely the Tunisian jurist, d. 1085.

<sup>119</sup> Early Mālikī jurist, d. 894.

<sup>120</sup> Yaḥyā al-Laythī, d. 839.

the purchasing of what the one who seeks a guarantee of safe conduct brings with him from what he has plundered from the Muslim, and let whosoever deems this detestable deem it so, and [the jurists] have not distinguished in this matter the distinction that those who distinguish regarding it distinguish.

Certain leaders of the *madhhab* have mentioned, according to Yaḥyā ibn Yaḥyā, that a people who are told that they should refrain from purchasing what the one who seeks a guarantee of safe conduct brings to them from the property that he has looted from the Muslims should take exception to that [prohibition] and say, “this is an excess.” What precedes does not encompass the issue of the uniting of the prohibition of weaning with regard to the wife and the stepdaughter because her status is concurrent, not divergent,<sup>121</sup> with respect to who is rendered illicit [for marriage] by the two statuses, and regarding the full sister there is no uniting of the prohibitions of filiation of the mother and filiation of the father and the two filiations together because they are concurrent prohibitions, nor is there uniting of Quranic and residual inheritance (*al-farḍ wal-ta‘ṣīb*)<sup>122</sup> in a single person because they are both inherent, and we are investigating differences in status between inherent and contingent [traits].

You say: “One of the indications that there are two prohibitions on deeming licit their property is that if we were to posit that the people of Galera had apostatized then their property would not be licit to us due to the treaty, but the property [would be] licit according to your

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<sup>121</sup> *Muttafaq lā mukhtalaf.*

<sup>122</sup> *Farḍ* refers to inheritance of fixed fractions of the estate by the core relatives, *ta‘ṣīb* refers to distribution of any “leftover” fractions to residual relatives (such as the son of a paternal uncle). Al-Saraqṣṭī’s argument is that the fact that someone cannot be both a Quranic and residual inheritor at the same time is evidence that two statuses cannot coexist in one person.

reasoning due to your invalidation of the treaty and the lifting of the prohibition by reason of Islam.”

The response to this is that the property is only illicit to the extent that it is covered by the prohibition of the treaty, because [this] has been abolished according to what has preceded, because the property of the apostate is frozen, and if he returns to Islam his property is returned to him, and if he dies while still an apostate it is forfeit.

You say: “If the prohibition on the property is prior to the treaty, thereby necessitating the invalidation of the treaty by its seizure, then the prevailing ruling is that regarding the property of monks (*ruhbān*) that remains behind [in the abode of war], rendering it licit for us to purchase from those who plundered it from them, whereas it was forbidden before the treaty, as were the neck and blood of the monk, and so the requirement of the treaty has no effect. And that is highly irregular.”

The response to this: The case [that you posit] differs from our case in the fact of the possessor’s being an unbeliever, (2:149) and I cannot recall a textual reference concerning it, and the clearest is to categorize it with the case of one under treaty, considering that both of them are unbelievers for whom the prohibition of their property applies due to their refraining from warfare. As we do not purchase the property of one under treaty and the *dhimmī* from whom he plundered it, thusly [with this case]. This is the ruling that has occurred to me, and favor be to you in considering it and reviewing it according to what occurs to you, for I would greatly appreciate that and would derive benefit from it, peace be upon you and the mercy of Almighty God and His blessings.

## Ibn ‘Āṣim’s counter-counterresponse

And the lord *faqīh* Abū Yaḥyā ibn ‘Āṣim, God have mercy upon him, wrote:

Praise be to God. May God secure your protection and bestow good luck upon you. I have examined the letter that you have sent to me regarding my findings concerning the investigation into the permissibility of purchasing the properties that the Christians, God annihilate them, plundered from the people of Galera, and the invalidation of the treaty [stipulating] the prohibition of their properties that the tyrant concluded with the sultan, God render him victorious, and concerning what occurred to you in terms of the impossibility of the two prohibitions of Islam and treaty in a single property, and I have considered that a thorough consideration, but that consideration has not been fruitful for me except insofar as it has demonstrated the impossibility of what you have decided upon.

To begin with, let us imagine that the sultan, God render him victorious, has today sought a fatwa from the scholars of the present age, and you are foremost among them, regarding what is permitted to him in terms of concluding truce agreements with the tyrant on the condition that everyone who becomes Muslim is returned to him first, and it is in your power only to decide [according to the consensus of] the madhhab as it stands. The firmest is to apply to it the opinion of Ibn ‘Arafa: al-Māzarī<sup>123</sup> [said]: “If the truce stipulates that we return to [the unbelievers] everyone who comes to us as a newly-converted Muslim it means by that men only, following [the prophet’s] return of Abū Jandal and Abū Baṣīr when they had become Muslims and the unbelievers of Quraysh sought their return, but it does not include the return of women,

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<sup>123</sup> Tunisian jurist, d. 1141.

following Almighty God's saying **return them(f.) not to the unbelievers.**<sup>124</sup> Ibn Shāss<sup>125</sup> [said]:  
The agreed condition of that [agreement] does not render licit [the return of] men and not women, and if it stands then it is not licit to return either of them.”

I say: Ibn al-‘Arabī<sup>126</sup> similarly said: “The Prophet did that specifically in his own capacity.” But if returning the men is permitted according to what al-Māzarī mentions, [this is] in spite of the prohibitions on returning them such as the Prophet’s saying: **the Muslim is the brother of the Muslim, he does not oppress him and he does not cause him to submit,**<sup>127</sup> and he permits, as you can see, the condition of Islam after conversion to Islam, and there is an innumerable multitude of valid sources [to uphold] the prohibition of the Muslim in his person and the prohibition of his return [to the enemy], because to do so would mandate the way of the unbeliever for him, and that is forbidden in the text of the Noble Book. **(2:150)**

If the sultan said to you that he negotiated on this stipulation until it was similarly stipulated that the apostate from Islam be returned to him, then what al-Māzarī mentioned reduces the gravity of this somewhat, and [likewise] if he retreats from this stipulation such that the Muslim is not returned to him and he does not return the apostate, and if [he stipulates a] trucial agreement [such that] those who are in the hands of the Muslims from among the Christian prisoners and who are in the hands of the Christians from among the Muslim prisoners, and likewise those who are under the *dhimma* of the Muslims from among the Christians or Jews, and those who are under the *dhimma* of the Christians from among the Muslims or Jews, or [he] who flees from the

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<sup>124</sup> Quran 60:10.

<sup>125</sup> Egyptian jurist, d. 1188.

<sup>126</sup> The Andalusī jurist, d. 1147.

<sup>127</sup> This hadith can be found in *Ṣaḥīḥ al-Bukhārī* 1:244.



side that he is on to the other, and whether the prisoner is an individual or part of a group [of captives] he remains safe, and whether he remains where he is or he returns before he reaches his place of safety from the side that he is on he is at liberty according to this ruling, and a *dhimmi* from either side is safe from the other in his person and in his property.

[Would] al-Māzarī forbid the likes of this, taking into account what he allows in permitting the return [to the Christians] of men who convert to Islam? Is it impossible, according to him, to prohibit the property of a Muslim, in addition to the prohibition on an agreement stipulating the impermissibility of returning a Muslim who has left [a Christian land] as an emigrant to God and His prophet and elevating the way of unbelief for this Muslim by returning him [to the Christian]? It is not possible for the *prima facie* reasoning that forbids striking (*ḍarb*) due to the prohibition on refusal (*ta'fīf*) and disobedience to the parents to be clearer than that, and I do not deem you one who would agree with these opinions that al-Māzarī expressed. Now, let us examine the classification according to what Ibn Shāss and Ibn al-‘Arabī cite: they both rule that returning the Muslim [to the unbeliever] was specific to the Prophet, for he had been granted foresight by God of the good that would be the result of that [return], and that to anyone other than him it is impermissible. If both of their opinions are correct, then what is not permitted to us at the Law is that which we are not far from [considering] with regard to the treaty of peace when it is a choice made of our own volition. There remains [for us to consider] a situation of impermissibility that exists without our having any choice or recourse in the matter, such as a Muslim who is under the Christians’ *dhimma* seeking out Muslim prisoners who are in the unbelievers’ grasp, and either we have no choice in the matter or it is permissible to us due to its being devoid of legal prohibition, like [the jurists’] ruling to grant the prohibition of the treaty to

Muslims who are under the rule and *dhimma* [of the Christians] in addition to the prohibition by reason of Islam. Both Ibn Shāss and Ibn al-‘Arabī agree a complete agreement, or at least that is what I have gleaned from the generality of their opinions.

So it is known that neither of them prohibit deeming this licit if necessity (*darūra*) calls for it, (2:151) and so [let us consider] one of those situations wherein there is no choice or recourse available and that is not permissible by reason of necessity, and this is the only way that truces can occur since the domestication (*tadajjun*) of the Muslims, four hundred years since. So whenever [truces] have been sought by the Muslims they have fallen under the *dhimma* of the unbelievers since that date, and the tyrant does not permit in general to omit the insertion of [Muslim emigrants] into his trucional agreement, whereas [a Christian ruler] used to allow [Muslim converts] to depart from him out of necessity because it was not possible for the Muslims to be lenient on this point in those times when the entire nation was peopled by confederate [Muslims],<sup>128</sup> like in the age of Ibn Rushd,<sup>129</sup> God have mercy on him. It was he who ruled in favor of the expulsion of the confederate Muslims from al-Andalus when they allied with the belligerent unbelievers against the Muslims. You may find that in its place [in his works].

If it is known that the present facts cannot be but in accordance that a trucional agreement is not feasible between Muslims and Christians except on the condition that the ones under treaty from either or both of the sides are not included in it, and likewise their property either by text or by law in any respect,<sup>130</sup> then that undermines certain public policy interests (*maṣāliḥ*) that the

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<sup>128</sup> *Bil-mu ‘āhadīn*.

<sup>129</sup> The Grandfather, d. 1126.

<sup>130</sup> This could feasibly mean “either by text of the agreement or by its legal enforcement,” but it seems more likely to mean “either by direct scriptural evidence or by consensus of the jurists.”

policy-makers (*ahl al-siyāsāt*) cannot pursue at all, and the harm in that is if it is made incumbent upon the [majority of the] Muslims to expel from their country the ones under treaty from the Christians except a small number not returned to them, such as Genovese with neutral diplomatic status (*kal-ṣulḥiyyīn min Januwa*) and the like.

If the invalidity of the treaty for the Mudéjars has been stipulated, then it is also necessary with regard to truce[s] for them, and thereupon the tyrant used to avail himself of his strength against the Muslims and say these are wrongdoers from among your people, there is no treaty to them from you and no treaty to you from them, so demand from them [restitution] for what they have wronged you [in doing], and in those times stability was not available for the Muslims due to the depredations of the Christians and their claiming to be Mudéjars, and this is hardly a secret. The outcome whenever [such a case] is contemplated [is that] the jurists cannot prohibit tracial agreements from pertaining to [the Muslim emigrants], since the locus for that does not stipulate anything legally impermissible.

If this is decided then let us return now to the train of [our] discussion, and that is that it is impossible according to you that there should exist in a single property the prohibition by reason of Islam and the prohibition by reason of treaty, just as it is impossible to unite in a single man unbelief and Islam. As for unbelief and Islam in a single man at a single time, this is indeed impossible, as it has appeared to you, because the two things are contraries, and contraries cannot be united in a single circumstance, in a single time, in a single aspect. You have acknowledged that the treaty of safe conduct unites with unbelief and is therefore not its contrary, and it is therefore not the contrary of belief, because if it were the contrary of belief then it would be the

contrary of unbelief, because the contrary of a thing is the contrary of that thing's contraries.

**(2:152)**

What might clarify the matter is that concepts are divided into things that are mutually exclusive and things that are not mutually exclusive, and there is no secret that belief and unbelief are contraries, and contraries are mutually exclusive and so cannot be united, just as there is no secret that treaty and belief are distinct and things that are distinct are not mutually exclusive, and there is no impossibility of their being united. Nothing that you have mentioned is subject to assize jurisdiction, and this is clear evidence to me, because it reinforces that this is distinct from that, and if this is true then the impossibility of uniting the two is impossible, and he who declares that they do not unite bears the burden of proof. I proffer to you a piece of evidence in favor of the uniting, and that is: that the properties of Muslims are forbidden cognate to what Almighty God has said: **Consume not your goods between you in vanity,**<sup>131</sup> and the Prophet has said: **The blood and property and goods of any Muslim are forbidden to a Muslim,** in addition to innumerable multitudes of other proofs. And this [case] concerns trade, and there is no doubt that similar dealings on the part of one who does not cheat are licit, and Almighty God says: **Except there be trading, by your agreeing together,**<sup>132</sup> and the Prophet says: **Let the people [alone] and God will grant them provision through one another.**<sup>133</sup> [Those dealings] on the part of one who cheats in contracts of sale, when he [misrepresents his merchandise], are prohibited an additional prohibition above and beyond the status of Islam. Firstly, that is an agreement that [one has sworn to], with no ambiguity, just as a contract (*'ahd*)

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<sup>131</sup> Quran 2:188.

<sup>132</sup> Quran 4:29.

<sup>133</sup> This hadith can be found in the *Ṣaḥīḥ Muslim* 21:6.

is a bond (‘*aqd*) with no ambiguity, and Almighty God says: **“O believers, fulfil your bonds.”**<sup>134</sup> Notably, the contract is among the first principles by prevailing consensus, and the Prophet has said regarding the oath that existed before his prophethood: **If I were invited by it into Islam then I would respond affirmatively.**<sup>135</sup> It is inconceivable that he would respond affirmatively to the unbelievers in that matter, and so [the oath] must have been between him and the Muslims.

Consider the works of *fiqh*. A legal guarantee<sup>136</sup> is created by the word of the guarantor, except when there exists a difference of opinion in what he swears or testifies to, such as when the lack of a legal guarantee compelling the craftsman to fulfill an engagement of workmanship requires fining him even if the original [agreement] lacked this provision. Except that you say that the prohibition of the property of the Muslim is annulled by the seizure of the property by the belligerent unbeliever. This is the same claim that is forbidden to you, and it is the one that an onlooker might say is the seizure of liabilities (*muṣādira ‘an al-maṭlūb*). I rule in favor of [the property’s] security: that which was not [secured by its being] the property of a Muslim has been [secured] for him by [the treaty with] the tyrant. **(2:153)** Thusly [also] for your statement that the prohibition of the property of the Muslim is annulled by assize of recent dispossession,<sup>137</sup> which is confusing to me, and if you had ruled instead that assize of recent dispossession reinforced it then it would be more credible, because the prohibition of the property [obtains] if its possessor is a Muslim or *dhimmi*, and the existence of one claiming recent dispossession upon it other than

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<sup>134</sup> Quran 5:1.

<sup>135</sup> This hadith can be found in the *Musnad* of Ibn Ḥanbal 185:1.

<sup>136</sup> Or a loan or trust, *i’timān*.

<sup>137</sup> *Istiḥqāq* returns seized property to the original possessor until its true ownership can be ascertained.

the one who possesses it [obtains] whether the one whose claim prohibits the property is Zayd the Muslim or Moses the Jew or so-and-so the Christian under treaty, not ‘Amr who is the object of the claim of recent dispossession, whether he be *dhimmī* or Muslim. Whether or not the right of the claimant of recent dispossession annuls or makes licit what the one under treaty brings from what he has pillaged before the treaty of safe conduct and after a period of uncertainty of possession, what he took in the time of the truce is subject to assize just as it would be subject to assize from the Muslim and the *dhimmī*.

As to your saying: “And if a single agreement does not combine two things with divergent prevailing rulings, like contracts of advanced payment and marriage, then the worthier course of action is that is that a single locus does not unite both of them,” this does not touch upon the question. As for the non-prevailing opinion, it does not countenance any contradiction or incompatibility between the two treaties, and there is no doubt that it views both of them as being the same as the prohibitions of the treaty and Islam in a single property. As for the prevailing opinion, it therefore forbids that the legal statuses of those contracts should contradict each other, such as mutual generosity (*mukārama*)<sup>138</sup> in marriage and robbery<sup>139</sup> in contracts of advanced payment, and we need not prolong the discussion of the matter, for it is reiterated in the books [of the law].

As to your saying: “We may clarify the matter further by noting the three ways that the prohibition on carnal relations might fall: in the case of revocable divorce (*ṭalāq raj’ī*) by reconciliation, in the case of irrevocable divorce (*ṭalaqa bā’ina*) by remarriage without any other

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<sup>138</sup> Santillana offers the suggestive “reciproca liberalità.”

<sup>139</sup> *Tashīh*, though the text says “*tashāh*.”

condition, and in the case of triple [divorce] by marriage after having married another and consummated. These prohibitions do not combine and there is not a single woman who unites more than one of them.”

I would summarize [thusly]: There are not three prohibitions here but rather a single reality and that is divorce, and that is the prohibiting factor on carnal relations. As to its being concurrent in a single woman, in the case of the last of the three it requires a ruling (*ḥukm*), and in another case it is akin to divorce at the instance of the wife (*khul‘*) without *khul‘* itself,<sup>140</sup> and that is an irrevocable (*bā’in*) [divorce] according to custom and necessitates a different ruling, and in another case it consists of revocable (*raj‘*) [divorce] and [the woman] is in all particulars like a wife except in carnal relations, and this necessitates another ruling, these are enumerated as three prohibitions and this is hardly an obscure point. How can a thing obstruct itself, or how can a place [already] inhabited tempt inhabitants a second time? This does not exist, and I do not think it obscure to anyone. You speak concerning a single property [as the] locus and concerning the uniting of marriage and advanced payment by contract such that it fulfills the extent of the contract when it is constrained [from doing so] according to the locus. [So] you speak of that which it is impossible to unite, either according to reason, like belief and unbelief, or according to the law, like a contract of advanced payment and marriage, without infringing upon the agreed meaning of these expressions, because they call that from which another thing results a subject of predication (*mawḍū‘*), which is more general than being a locus<sup>141</sup> or a contract, [and more general still] than being an essence or an accident. **(2:154)**

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<sup>140</sup> *Ka-ṭalāq al-khul‘ min ghayr khul‘*.

<sup>141</sup> Or a substrate?

What clarifies that the matter of divorce is a single reality is that if there is a man has four wives and he divorces them all in a single utterance, saying thereby “you four are divorced a legal divorce,” with one [wife] having not been penetrated, and the second having sustained a single divorce, and the third being encompassed by the conditions of a revocable divorce, and the fourth likewise except that she had menstruated for a day before that, and so this single utterance has given rise to divergent results even though it was in itself uniform. The first [woman] has become irrevocably divorced and she cannot be remarried unless by [the consent of her] guardian and the rest of what corresponds here, and the second likewise after another marriage, and [in the case of] the third the husband has the right to revoke the divorce and her status will be the status of wife except as it concerns carnal relations, and in the case of the fourth the husband is compelled to take her back,<sup>142</sup> and that is what becomes apparent to him after that, and I do not know what would be the resolution of this mess according to you. I have no [resolution] save that it is a single reality and a single status that requires for each locus a [different] outcome, and what undermines a locus in terms of agreed conditions or what accrues to it in terms of prohibiting factors [causes] divergence in the statuses that are built upon what occurs in terms of divorce subsequent to that. Thusly if that man who wishes to divorce follows that divorce with a subsequent utterance such as *ilā*<sup>143</sup> and *zihār*<sup>144</sup> [towards] his four wives the criterion for distinguishing between them is the prior divorce, and as for the first division between the women it is free from the consequence of the *ilā*’ and *zihār*, and as for the second division it is that which

<sup>142</sup> *Wal-rābi ‘a yajbur ‘alā raj‘atihā.*

<sup>143</sup> Annulment of the marriage upon the husband’s sworn testimony to have refrained from intercourse for at least four months.

<sup>144</sup> When a husband divorces his wife by declaring that she is to him like his mother’s back.



is affected without a doubt. Accordingly a single woman may unite three prohibiting factors on carnal relations, such that carnal relations are not licit with her until such point as [the man] discharges his contractual obligations towards her.

In that is the clearest evidence for the impossibility of what you have deemed impossible. Firstly, you deem it impossible that a single property should unite the prohibitions of treaty and Islam, and I wish I knew how this one woman could unite the prohibition of divorce and *īlā'* and *zihār*. [As for] your saying that the prohibition on [carnal relations with] an unfamiliar woman (*ajnabiyya*) is inherent and is lifted by marriage and the prohibition on the wife is contingent upon the dissolution of the marriage, and these two things do not unite in the *ajnabiyya*, and that is true. The *ajnabiyya* does not unite the two of them due to the mutual exclusivity between them and the [status of] wife, because if the prohibition specific to spouses applied to her then she would be a wife, but she is an *ajnabiyya* who has never been married to that particular man, and so there is no prohibition upon him of the sort that is prohibited to him with regard to his wife.

As to your saying: “And thence is it that the prohibition of eating ritually impure meat is inherent (*lāzim*) to the meat, (2:155) for example, whereas the prohibition of selling deceptive merchandise is contingent (*‘āriḍ*), and so they do not share a common locus, because the locus of this is not the locus of that” – this is correct. Who is he who says that any status that occurs he will accept, irrespective of its locus? The incompatibility that exists between the forbidden meat and the sales that are forbidden due to faults in the merchandise is quite clear, because the ritually impure meat is not something financed,<sup>145</sup> and faults are forbidden in [articles of]

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<sup>145</sup> *Mutamawwal*.

financed merchandise, and how does one come to imagine that this prohibition specific to financed things comes to apply rather to a thing that is not financed? I cannot regard this but as though you had said that livestock (*dawābb bahīmiyya*) must not be taught to write, and when has anyone thought, nay, fancied! that it would be possible for livestock to learn to write? Subsequently, if we are to stipulate ritually impure meat that has been financed, then it is possible that the prohibition of selling faulty merchandise would be relevant, for instance if one in a state of desperation (*muḍṭarr*), without water, provisions himself with ritually impure meat. In order to say it is permitted we must find a pretext of necessity, [for instance if] another has water and each of the two are stingy with what they have and refuse to give any to their companion except in exchange [for what the other has], then here one might be inclined to stipulate the exchange of all that is necessary for the two of them respectively. Therefore the appropriate [loci] for prohibiting ritually impure meat are the prohibition of pork and the prohibition of vermin and carnivores with canine teeth, and for that reason if ritually impure meat from an otherwise licit animal (*an 'ām*) were found with a ritually slaughtered carnivore or horse, then it is agreed that the ritually slaughtered animal is [akin to] God's saying: **“Say, ‘I do not find in what has been revealed to me that anyone be forbidden to eat anything except carrion or spilt blood, or the flesh of swine —for that is indeed unclean— or an impiety offered to other than Allah.’ But should someone be compelled, without being rebellious or aggressive, indeed your Lord is all-forgiving, all-merciful.”**<sup>146</sup> That is more relevant than the meat that this exclusion stipulates forbidding.

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<sup>146</sup> Quran 6:145.

As to your saying: “Thence is it that a single locus does not encompass two obligations, one inherent and one contingent, as the noon prayer does not encompass supererogatory prayer (*nadhhr*), and if someone performs the noon prayer as a supererogatory prayer his *nadhhr* does not increase [the prayer] in obligation and it does not increase its legal status or decrease from it.” If this case were concordant with the obvious meaning of your words then the question of the prohibition of the property of a Muslim would be relevant only on the condition that the additional prohibition be the prohibition by reason of Islam and not the prohibition by reason of treaty, as we rule regarding the necessity of the noon prayer, found in the words of the Almighty: **Perform the prayer**, that it increases in necessity if he says to himself “I have imposed upon myself the performance of the prayer as an obligation like unto that which God has imposed upon me,” and that is an analogous necessity and that is an analogous prohibition. So it is possible for he who advocates that this be prohibited that the prohibition has as its underlying cause the fact that the locus is [inhabited by a thing, and so it cannot be inhabited a second time]. Or the cause of it is independent, such that it requires an independent cause like it in every aspect, especially in these obligatory causes. It is possible that one might rule for the permissibility of increasing this obligation, but the fruit of this necessity has been hidden in the abode of this world, and it is possible that the reward would multiply in the Other for the one who imposed the action upon himself in addition to its necessity in the command of Almighty God, and the torments might multiply for him if he neglects it. **(2:156)**

I posit a questioner who asks: “I have taken guidance from the word of Almighty God: **Be you watchful over the prayers, and the middle prayer**<sup>147</sup> and it has been mentioned to me

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<sup>147</sup> Quran 2:238.

also that Almighty God has made this obligatory and that the [aforementioned] middle prayer is the ‘*asr*’ prayer, I have taken guidance also from the inducement to prayer and the prohibition on neglecting it in the hadith of the Prophet: **For him who neglects the afternoon prayer it is like he has lost his family and his property**<sup>148</sup> and so have I imposed upon myself the performance of it as an obligation like unto the obligation of God. It is necessary for me to the extent that missing it requires I pay ten dinars in alms, to such a point that I have stretched tightly my money, in truth it has all but vanished.” What is the response to this questioner? For if you rule in favor of the necessity of his supererogatory prayer then you have mandated its observance as an additional ruling, and if that you say that its necessity is not required by law then you have undermined what he had vowed purely of his own accord, and the Prophet has said: **Require of the people what they require of themselves**,<sup>149</sup> and what attests to the validity of the necessity of the one who imposes upon himself in addition to what God imposes is that Almighty God has said: **And some of them have made covenant with God: ‘If He gives us of His bounty, we will make offerings and be of the righteous.’ Nevertheless, when He gave them of His bounty they were niggardly of it, and turned away, swerving aside.**<sup>150</sup> It is known that if he distributes the necessary alms then we cannot name him one who violates his oaths according to what the scholars have said. There was no breach of an oath, neither with regard to what [was] promised to God nor to what He was sworn by, and so the thing that prohibits *zakāh* is specifically his saying that it is the sister of the *jizya*, according to what is substantiated in the hadith. It is likewise clear that alms and *zakāh* are obligatory, and that the covenant that one

<sup>148</sup> *Ṣaḥīḥ al-Bukhārī* 9:527.

<sup>149</sup> I have been unable to find this hadith.

<sup>150</sup> Quran 9:75-76.

makes with God is an additional obligation to the obligation that comes from Almighty God, according to what has been mentioned by those who have mentioned it from among the exegetes. This is a violation according to some, and an original and incidental obligation in accordance with your practice, and its likeness is in the core of the prohibition of God's saying: **Yet they had made covenant with God before that, that they would not turn their backs; and covenants with God shall be questioned of.**<sup>151</sup>

You have proceeded to other than that which suggests itself strongly by ruling that even he who has vowed four supererogatory *rak'as* that he intends to follow the noon prayer [has performed something] superfluous, and likewise with the fast of Ramadan and the expiation of a crime or *zihār* divorce the matter in these cases is closer [to being relevant], because the basis of ritual practice is that they are truths that are laudatory in themselves. The aspiration to perform ritual practices [is the same] if its meaning is known in its entirety as it is when the meaning of its specificities is not known. Because of that [there are those who would] declare the statuses mutually opposing using the condition of the intentionality inherent in them in spite of the similarity between the two cases. **(2:157)**

There is a similar [ruling] in terms of contravening what it is impossible to unite, as when the agreed stipulation [of a contract] expires by the expiration of the thing stipulated upon. There is also [a ruling concerning] the lack of an offense requiring the increase and decrease [of reward] and the necessity of preventing their contravention by force,<sup>152</sup> and the action in [service

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<sup>151</sup> Quran 33:15.

<sup>152</sup> *Wa-luzūm al-khuld* [sic] *min manāfihā bil-quwwa*, likely a typographical error.

of] preventing (*ḥadd*) is what it has been said does not correspond with it according to analogy<sup>153</sup> except according to the analogy of the lack of a criterion of separation (*firāq*). In addition, we have found from that example something approaching mutual opposition, like the classification of the washing of ritual impurities and washing for Friday prayers according to the prevailing opinion, and the classification of certain similar matters. Indeed, the sunna is incompatible with supererogatory duties, and those duties that are not incompatible are those mutually stipulated [in a contract], except antecedent stipulations.<sup>154</sup> Likewise conducting supererogatory *rak'as* and placing additional restrictions on the state of purity required for pilgrimage (*iḥrām*), and performing supererogatory circumambulations of the Ka'ba, as you know.

As to what you say: If that refers to what you have narrated from Yaḥyā ibn Yaḥyā then it is excess, and that is true as you say, but that is not [the property of a] Muslim.

As to your saying: “What precedes does not encompass the issue of the uniting of the prohibition of weaning with regard to the wife and the stepdaughter because her status is concurrent, not divergent, with respect to who is rendered illicit [for marriage] by the two statuses.” So I say: Likewise the status of the property of the Muslim who is under treaty with the tyrant does not differ with respect to what was forbidden [regarding buying his property] so long as there are two prohibitions that apply to him, and if one of them is lifted the thing required by it is lifted simultaneously. Four wives, and there are two prohibitions on marrying any one of them, and one of the two prohibitions may be lifted or they both may be lifted together.

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<sup>153</sup> *Wal-fi 'l fil-ḥadd alladhī qīla innahu lam yajri fihā min al-aqyisa.*

<sup>154</sup> *Illā bimā taqaddama min al-shurūf.*

As to your saying: “Regarding the full sister there is no uniting of the prohibitions of filiation of the mother and filiation of the father and the two filiations together,” [this is] because they are concurrent prohibitions.

Nor is there uniting of Quranic and residual inheritance in a single person because they are both inherent, and we are investigating differences in status between inherent and contingent [traits], and I do not know what to add to that. Regarding the example of the concurrence of the prohibitions of the full sister, the theoreticians say that the uniting of Quranic and residual inheritance is an extreme example upon which there is no ruling to be built, and for that I have examined the appropriate examples for building that ruling.

Perhaps this is surprising to the theoretician who expresses this extremity in his argument, but according to your own theory the contingent and the inherent have two different statuses, and an example (2:158) is if there were two paternal cousins who had a female paternal cousin and they both inherit from her [via residual inheritance] and one of them marries her and then she dies. The inherent is their both inheriting a common share from her via residual inheritance, and with marriage one might inherit a fourth of the property, and the ruling differs regarding the inherent and the contingent. Searching for examples of this would be beside the point, for [there are numerous rulings that seek to determine] how much accrues to the manumitter of his father [and how much of] the remaining part [to] his brothers, built in part upon filiation and in part upon manumission, and these are respectively inherent and contingent.

As to your taking that what I have posited is the apostasy of the people of Galera, the justification for seizing the apostate’s property is in his abandoning it in the midst of the Muslims, and we have not stipulated thusly, and rather have I posited the apostasy of the people

of [that] circumstance in their entirety, and that case is not this case, and Ibn ‘Arafa has spoken upon the matter and he said: “If a group that has forbidden themselves (*mana ‘ū anfusahum*) apostatize and then take [property], then their status is the status of belligerent nonbelievers or apostates etc,” and I believe if the ruling of the ḥarbīs does not hold sway over them then their property is booty, and what you have mentioned in the case of the monk is [accurate]. And God is All-Knowing, and this is what has seemed best to me, and the fullness of peace be upon you and the mercy of Almighty God and His blessings.



## The Galeran question: Arabic

### 155 مسألة في شراء أموال أهل غليرة من الروم

وقع البحث فيها بين الفقيه أبي يحيى بن عاصم والفقيه الخطيب أبي عبد الله السرقسطي رحمهما الله ورضي عنهما.

ونص كلام أبي عبد الله السرقسطي مجاوبًا لأهل بسطة:

يا أخي وسيدي وصلنتي كتبكم في القضية الغليرية وعرفت منها أن مستندكم في فتياكم بحرمة شراء أموالهم من

الروم أن لهم عهدًا وأمانيًا منا مثل ما للروم، فلذلك لا نشترى أموال أهل غليرة ممن غلبهم عليها.

والجواب عن هذا أن نقول: إن أردتم بالعهد والأمان ما قضى به الشرع من حرمة مال المسلم على المسلم إلا إن

طابت به نفسه فيلزمكم عليه أن لا يشتري من الحربي ما غلب المسلم عليه من ماله، ولا نقسم في الغنائم ما عرفنا أنه لمسلم

غير معين، لأننا على شك من طيب نفس مالكة المسلم، ما عقده أمير المسلمين أيده الله للروم على الهدنة وترك الحرب وأنه

شامل لأهل غليرة لكونهم تحت قهر الطاغية فبِهِ نظر من حيث إن الروم كانت قبل الهدنة دماؤهم ورقابهم وأموالهم مباحة

لنا، ودماء أهل غليرة محترمة وبقي النظر في أموالهم هل هي محترمة لأنها لمسلم؟ أو مباحة لأنها في دار حرب؟ ولست

أذكر فيها لمالك ولا لأحد من أصحابه نصًا، غير أن القاضي أبا عبد الله بن الحاج ذكرها في نوازله وأجراها على مسألة

الحربي يسلم ويخرج إلينا أو يبقى بداره فيدخلها المسلمون ويأخذون ماله، هل يكون له أو غنيمة؟ والقولان في المدونة.

وصحيح أنه له لا غنيمة بنصوص الأحاديث الصحيحة أن مال المسلم حرام على المسلم إلا عن طيب نفس منه.

وفي هذا الجراء نظر من حيث إن الحربي مباح الدم والمال والرقبة، فإذا أسلم أحرز دمه وزقبته باتفاق، ويبقى

الخلاص في ماله ما دام بدار الحرب. وأما المسلم الموحد الذي لم يسبق إسلامه كفر فلم يكن قط مباح الدم والرقبة لعدم وجود

المبيح فيه وهو الكفر، وما لزم في دمه ورقبته يلزم في ماله، لأن علة الاحترام هي الإسلام، وكُلُّ الْمُسْلِمِ عَلَى الْمُسْلِمِ حَرَامٌ

دَمُهُ<sup>156</sup> وَعَرَضُهُ وَمَالُهُ، فكيف يسوى بين من كانت حرمة أصلية وبين من كانت حرمة طارئة غير أصلية، وإذا ثبتت

الحرمة لمال المسلم الأصلي استصحابها حتى تسقط بدليل صحيح، وليس كونه بدار الحرب مسقطًا لحرمة حتى يقوم الدليل

<sup>155</sup> Al-Wansharīsi, *Mi 'yār*, 2:142.

<sup>156</sup> Idem, 143.

عليه. ألا ترى أن قول أشهب فيمن اشترى ببلاد العدو من السبي شيئاً فتركه به عجزاً عنه فدخلت خيل فأخرجته أنه له لا لمن أخذه وأخرجه هو الصحيح من حيث إنه قد ملكه، وتركه إياه مكرهاً وعاجزاً لا يسقط ملكه عنه. ألا ترى أن من نذت له بقرة وتوحشت أن ملكه باق عليها ولا توكل بما يوكل به الوحش بقاء مع الأصل. ألا ترى أن القول الصحيح في الصيد يند من صاحبه فيأخذه آخر أنه للأول يأذه من الثاني ولو بعد عشرين سنة، وهو قول ابن عبد الحكم استصحاباً لأصل الملك وبقاء معه، إلى غير ذلك من المسائل.

فإذا صح أن مال أهل غليرة كان محترماً ولم يطرأ عليه ما يبيحه لم ينزل منزلة مال الروم في كونه حصلت له حرمة بالعهد مانعة لنا من شرائه ممن غلبهم عليه، وبقي لنا النظر فيهم ولا شك أنهم كانوا تحت ذمة الرومي وعهده فنقض عهده وغدر بهم، وهم بمنزلة من كانوا تحت طاعة إمام المسلمين وعاهد الطاغية وعقد معه عقدة الهدنة إلى مدة فلم يوف وغدر وحارب واستولى على طائفة من المسلمين وأموالهم، فما أخذه بعد انقضاء زمانه في غير غدر ولا نكث في جواز الشراء منه في جهاد الغنيمة.

قيل لابن القاسم: أرايت أهل ذمتنا لو سرقوا أموالاً لنا أو عبيداً فكتموا ذلك كما تكتم السرقات وأخفوه حتى حاربوا وذلك بأيديهم، ثم صالحوا على أن رجعوا إلى حالهم من غرم الجزية التي كانت عليهم، أيؤخذ منهم ما سرقوا قبل المحاربة وقبل الصلح الذي استحدثوا؟

قال لا. وأرى أن يوفى لهم بالعهد ولا ينزع شيء مما حاربوا عليه ثم صالحوا وهو في أيديهم. فانظر كيف حكم لما أخذوه في حال ذمتهم وبقي عندهم حتى حاربوا بحكم ما أخذوه بعد المحاربة في أنه لا ينزع من أيديهم، وإذا لم ينزع من أيديهم جاز للمسلم شراؤه منهم. ومسألتنا أبين في جواز 157 الشراء من هذه، لأن أخذ المال فيها وقع بعد النقض والحرب. وقال أيضاً في نفر من العدو نزلوا بأمان فلما فرغوا سرقوا بعض عبيد المسلمين وذهبوا بهم ثم عادوا بهم ونزلوا على أمان ولم يعرفوا وأرادوا بيعهم، لا يخرجون من أيديهم، وأرى أن يوفى لهم لأنهم أحرزوهم، يريد حين بلغوا ديارهم وصاروا حرباً. وانظر إلى قلوه في السؤال وأرادوا بيعهم، وقوله في الجواب وأرى أن يوفى لهم، فإنه يقضي بتمكينهم من البيع لهم وجواز شرائهم منهم، وأخذ جواز الشراء من هذه المسألة أقوى من أخذه من التي قبلها. وهذا فيما أخذوه حالة كونهم تحت ذمة

<sup>157</sup> Idem, 144.

ثم حاربوا. أمّا ما أخذوه بعد النقض للذمة والعهد فلا يتوقف في جوازه إن شاء الله. ووجهه والله أعلم أن ما استحلوه بأخذهم له في حال الحرب أو قبلها وبقي بأيديهم حتى حاربوا لهم فيه شبهة ملكٍ اقتضت جواز شرائه، كما أن أنكحتهم يمضيها الإسلام إذا اسلموا واستحلوها، وإن كان الإسلام يمنع ابتداء العقد عليها. انتهى.

### اختلاف نظر المفتين الأندلسيين في حرمة أموال المُدجّنين

وطالع بذلك الفقيه أبا يحيى بن عاصم المذكور فجوابه بما نصه:

سيدي وصل الله حفظكم تأملت مكتوبكم ووقع مني موقع الإعجاب به على الجملة، وظهر لي فيه من النظر ما أ عرضه عليكم، وذلك أنه يتضمن جملة مسائل:

إحداها: ما التزمتم في الاحتمال الذي ظننتم أنه غير مراد وذلك ظاهر اللزوم.

والثانية: ما أبديتم من النظر في الاحتمال الثاني، وذلك النظر يوجب احترام أموال أهل غليرة وأمثالهم أحرؤيا، إذ لم يلتئم كونها محترمة قبل العهد أن ينقصها العهد شيئاً كان لها ثابتاً، كما الشأن فيما يجتمع فيه مانعان، كلٌ واحد مستقل بمنع الحكم من جهته، كقول النبي صلى الله عليه وسلم: **لو لم تكن لي ربيبةٌ لما حَلَّت لي من أجل الرضاعة**. وهنا يقول أهل غليرة نحوًا من قول الأشقاء في المشتركة، ومن الدليل على كونهما مانعين من استباحة ذلك المال أننا لو فرضنا أهل غليرة ارتدوا، والعياذ بالله، لما حلت لنا أموالهم لأجل العهد، وتحل على قياس قولكم لالغانكم معنى العهد وارتفاع حرمة الإسلام بالارتداد. ولو فرضنا أن النصارى غدروا بنقض الهدنة لما حلت لنا أموال<sup>158</sup> أهل غليرة غنيمة على القول الصحيح الذي رجحتموه، لأنه مال مسلم. ولو كان احترام المال قبل العهد موجباً لالغاء العهد فيه لكان القدر المتفق عليه مما يبقى للرهبان من أموالهم سائغاً لنا اشتراؤه ممن غلبهم عليه لما كان محترماً قبل العهد كرقبة الراهب ودمه، فلا يعمل فيه مقتضى العهد. وهذا بعيد جداً، لكن إن ثبت بدليل خاص أنّ العهد مع الطاغية غير عامل فيمن عصى الله من المسلمين بدخوله تحت ذمته فلا كلام، وأن لم يوجد ذلك فالأظهر أن تتأكد حرمة بالعهد، لنقل ابن سحنون عنه: ومهادنة الامام الطاغية بعد محاصرته إياه أو قبل توجب عموماً في عمالتهما، إلا أن يخصص لها حسبما حكاه ابن عرفة. فما الظن إذا نص على الموضع في عهد المهادنة كمثل غليرة، وذلك ظاهر لمن باشر عقدة هذه المهادنات، فإنه ينص فيها على شمول الأزمان لكل من تحت إيالة المسلمين أو

<sup>158</sup> Idem, 145.

النصارى من مسلم أو نصراني أو يهودي في أنفسهم وأموالهم، وأن للمسلمين أن يطلبوا من ينقصهم من مسلم أو نصراني أو يهودي أو أموالهم، كما أن للنصارى أن يطلبوا من ينقصهم من نصراني أو مسلم أو يهودي أو أموالهم مثلاً بمثل سواء بسواء.

والثالثة: حكم أموال المدجنين وإجراء ابن الحاج لها على مال الحربي يسلم، وهذه المسألة وقعت قديماً بين شيخنا

أبي القاسم بن سراج رحمه الله فأفتى باباحة قسم أموالهم لسرية غنمتهما، وبين شيخنا أبي الحسن علي بن سمعت رحمه الله فأفتى بمنع ذلك، واستظهر على الشيخ رحمه الله بكل صحيح من النق أصيل من الرأي، وفتياه بذلك موجودة في جملة نوازله.

والرابعة: البحث في إجراء ابن الحاج، وذلك حسن جداً موافق لنظر شيخنا أبي الحسن علي بن سمعت رحمه الله في

المسألة بعينها.

والخامسة: التسوية بين أهل غليرة في غدرهم وبين طائفة ممن كان تحت طاعة الامام في غدرهم قبل انقضاء زمان

الهدنة، وذلك صحيح إن ثبت أن عقد الطاغية عليهم المهادنة لغو.

والسادسة: التسوية بين ما غدر الطاغية فيه في زمان الهدنة بنقضها من مال، وبين ما صدر منه أخذه بعد انقضاء

زمانها. وفي ذلك نظر، لأن ما أخذه النصارى بعد انقضاء زمان الهدنة لاختفاء أنها تكون لهم فيه شبهة ملك هي<sup>159</sup> التي

اقتضت نفوذ المقاسم فيه أن لم يات ربه قبلها فلا يأخذه بعدها إلا بالثمن على ما في علمكم من المذهب، وما أخذوه في زمان

الهدنة مع بقائها فلا اشكال في كونه لربه متى وجده أخذه دون ثمن كاستحقاقه من مسلم. ويبقى متوسطاً بينهما ما أخذوه في

زمان الهدنة نقضاً لها، واجراؤه على سرقة أهل الذمة في حال كونهم تحتها، ثم نقضهم بعدها وعودتهم لحالتهم الأولى من

الذمة، وعلى سرقة النازلين بأمان ثم عودتهم لأرضهم ثم للنزول بالأمان ظاهر، إلا أنه يمكن أن يفرق بين هاتين القضيتين

وبين تلك القضية بعقد الأمان في هاتين لأخذ المال فلم يمكن انتزاعه منه، ولذلك قال والأمان شديد، وهو هناك معقود لمن أخذ

منه المال فتأملوه.

<sup>159</sup> Idem, 146.

والسابعة: كون ما أحرزه الكفار يوجب لهم شبهة ملكٍ فيه، وذلك أوضح من أن يستظهر عليه، هذا ما ظهر لي بحسب ما أنا عليه من شغل البال وقصور النظر، فلکم الفضل والإغضاء عن الواقع فيه من نقص. ومعاد السلام عليكم والرحمة والبركة.

### استحالة اجتماع حُرْمَتِي إِسْلَامٍ وَعَهْدٍ فِي مَالٍ وَاحِدٍ

فجواب على ذلك الخطيب أبو عبد الله السرقسطي بما نصه:

الحمد لله. يا سيدي وصل الله إليكم أسباب العافية ومد لكم في العمر وبارك لكم فيما خولكم من صحة الإدراك وجودة النظر. أردت مراجعتكم لإشكالي عرض لي فيما قيدتم، وهو أنكم ذهبتم إلى اجتماع حرمتي العهد والإسلام في مال أهل غلبرة، يُوخِذُ فيه بمقتضى كل واحدة منهما ما أمكن، إن بطلب حرمة الإسلام فيه بتغلب الكفار عليه امتنع ابتياعه منهم لحرمة العهد، وإن بطلب حرمة العهد بنقضه أو انقضاء مدته بقيت له حرمة الإسلام. وأنا أقول باستحالة اجتماع الحرمتين له، لأن حرمة الإسلام محلها مال المسلم وعلتها الإسلام، وحرمة العهد محلها مال الحربي المعاهد وعلتها العهد، وكما استحيل اجتماع كفر وإسلام في رجل واحد، يستحيل اجتماع حرمتي إسلامٍ وعهدٍ في مال واحد. مما يبين ذلك أن حرمة مال المسلم يرفعها تغلب الكافر الحربي عليه، وحرمة مال المعاهد لا يرفعها تغلب غيره عليه. وحرمة مال المعاهد تنقضي بانقضاء عهده، وحرمة مال المسلم لا تنقضي بانقضاء<sup>160</sup> إسلامه، لأنه إن حكم بزندقته فقتل كان ماله لورثته، وأن حكم بردته وقف ماله على القول المعروف، فإن راجع الإسلام رجع إليه، وأن قتل كان فيئاً.

وحرمة مال المسلم يسقطها الاستحقاق، وحرمة مال المعاهد لا يسقطها الاستحقاق، إلى غير ذلك. وإذا كان العقد

الواحد لا يجمع شيئين مختلفي الحكم على المشهور كالبيع والنكاح، فأولى أن لا يجمعهما المحل الواحد.

ومما يزيد ببياناً أن تحريم الاستمتاع بالزوجة يقع بالطلاق الرجعي وترفعه الرجعة، وبالطاقة البائنة ويرفعه النكاح

من غير توقف على شرط آخر، وبالثلث ويرفعه النكاح بعد نكاح الغير ودخوله، فهذه تحريمات ثلاث لا تجتمع ولا اثنتان

منها في امرأة واحدة لتضاد أحكامها.

<sup>160</sup> Idem, 147.

ومن ذلك: تحريم الأجنبية أصلياً يرفعه النكاح، وتحريم الزوجة طارئاً على حل النكاح وهما لا يجتمعان في الأجنبية. فلو حرمها الأجنبي ثم نكحها لم تحرم عليه إلا أن يعلقه على تزوجها على المشهور. ولا يقال باجتماع التحريمين فيها أن علقه، لأن المعلق لم يسبق العقد وإنما وقع عليها وهي زوجة لا قبل ذلك.

ومن ذلك أن تحريم الميتة مثلاً لأزم لها، وتحريم بيع الغرر عارض، ولا يقبلها محل واحد، لأن محل هذا غير محل هذا. ومن ذلك أن المحل الواحد لا يقبل وجوبين أصلياً وعارضاً كصلاة الظهر لا تقبل النذر، فلو نذرنا المكلف بها لم يزدنا نذره وجوباً ولا زاد في حكمها ولا نقص منه.

ومن ذلك أن رمضان محل للصيام مخصوص، فلو صامه لكفارة أو نذر في ذمته لم يصح لرمضان لأنه لم ينوه ولا لغيره لأن الزمان لا يقبل ذلك الغير، فهذا كله وما يشبهه مما يكثر إذا تتبع يدل على أن المحل الواحد لا يقبل اجتماع حكمين مختلفين من كل وجه أو من بعض الوجوه.

وإذا سلم ذلك لم يدخل تحريم العهد على تحريم الإسلام في مال أهل غليظة ولم يجامعه، وإذا لم يدخل عليه كان مالاً للمسلمين كانوا تحت عهد الكفار ونقضوه وعادوا حرباً وغلّبهم عليه يجوز أن يشتري منهم وينهب<sup>161</sup> بدراهم من غير خلاف أذكره، ولربه أخذ من مشتريه منهم بالثمن، ودونه إن وهبه ولم يثب عليه، وأن يشتري منهم بدارنا على كراهة من ابن القاسم في تأويل اللخمي لا يحملها القياس، واستحباب من ابن المواز. وأن جاء ربه لم يكن له سبيل إلى أخذه من يد مشتريه بدار الإسلام وأن بذل له الثمن الذي اشتراه في قول ابن القاسم الكاره له شراءه، خلافاً ليحيى بن يحيى فإنه أجاز لرّبه أخذه بالثمن. وقد اطلق الفقهاء جواز بيع ما جاء به المستأمن مما غلب المسلم عليه، وأن كرهه من كرهه من قبيل الجائز، ولم يفرقوا فيه هذه التفرقة التي فرق بها من فرق.

وقد ذكر بعض أئمة المذاهب عن يحيى بن يحيى أن قومًا ذكروا له أنهم تورعوا عن شراء ما قدم به المستأمن من مال المسلمين الذي غلبهم عليه، فعابه وقال هذا غلٌّ ولا يعارض ما تقدم باجتماع تحريم الرضاة وبنوة الزوجة في الربيبة لأن حكمها متفق لا مختلف في حق من حرمت بهما عليه، ولا بالشقيقة اجتمع فيها تحريم أخوة الأم وأخوة الأب وأخوتها معاً

<sup>161</sup> Idem, 148.

لأنها تحريمات متفقة، ولا باجتماع الفرض والتعصيب للشخص الواحد لأنهما أصليان، وبحثنا في طارئ وأصلي مختلفي الحكم.

وقولكم: ومن الدليل على كونهما ما نعين من استباحة ذلك المال لو فرضنا ارتداد أهل غليرة لما حلت لنا أموالهم لأجل العهد، وتحل على قياس قولكم لا لغناكم معنى العهد وارتفاع حرمة الإسلام.

جوابه أنها لا تحل إلا بما لها من حرمة العهد لأنه ساقط بما تقدم، لأن مال المرتد يوقف، فإن عاد إلى الإسلام عاد ماله إليه، وأن مات على ردته كان فينا.

وقولكم: ولو كان احترام المال قبل العهد يوجب الإلغاء للعهد فيه، لكان القدر المتفق عليه مما يبقى للرهبان من أموالهم سائغاً اشتراؤه ممن غلبهم عليه لما كان متحرماً قبل العهد كرقبة الراهب ودمه، فلا يعمل فيه مقتضى العهد. وهذا بعيد جداً.

جوابه: أن هذه المسألة فارقت مسألتنا بكفر المالك فيها، ولست اذكر<sup>162</sup> الآن فيها نصاً، والأظهر جريانها على مسألة المعاهد، بجامع أن كلا منهما كافر عرضت له حرمة في ماله بكفه عن الحرب. فكما لا يشتري مال المعاهد والذمي ممن غلبه عليه، كذا. هذا ما حضر تقييده ولكم الفضل في تأمله والمراجعة بما يظهر لكم، فإني أحب ذلك وألتمس فيه الفائدة، والسلام عليكم ورحمة الله تعالى وبركاته.

**غدر نصارى الأندلس بالمُدَجِّنِينَ من المسلمين**

فكتب الفقيه السيد أبو يحيى بن عاصم رحمه الله:

الحمد لله. وصل الله حفظكم، وأجزل من الخير حظكم. ووقت الله على مكتوبكم الذي راجعتموني به عما ظهر لي من المباحث في اباحة شراء أموال من غدرهم النصارى دمرهم الله من أهل غليرة وكون العهد الذي عقده الطاغية مع السلطان نصره الله على حرمة أموالهم لغو، لما ظهر لكم من استحالة حرمتي اسلام وعهد في مال واحد، وقد تأملت ذلك أتم التأمل فلم يثمر لي ذلك التأمل إلا استحالة ما ظهر لكم من الاستحالة.

<sup>162</sup> Idem, 149.

أما أولاً فإني أفرض السلطان نصره الله اليوم يستفتي علماء الوقت، وأنتم أولهم، ما يجوز له أن يعقد الهدنة مع الطاغية على أن يرد له كل من جاء مسلماً أولاً، فلا يسعكم إلا أن تقزروا المذهب كما هو. وأضبط تقدير له قول ابن عرفة: المازري لو تضمنت المهادنة أن يرد إليهم من جاء مسلماً وقى بذلك في الرجال، لرده صلى الله عليه وسلم أباً جندل وأبا بصير حين جاء مسلمين وطلب كفار قريش ردهما، ولا يوفي في ذلك برد النساء لقوله تعالى **فَلَا تُرْجِعُوهُنَّ إِلَى الْكُفَّارِ**، ابن شاس: ولا يحل شرط ذلك في رجال ولا نساء، فإن وقع لم يحل ردهما.

قلت: ومثله لابن العربي قال: وفعله صلى الله عليه وسلم ذلك خاص به. وإذا ساع على ما ذكره المازري رد الرجال مع ما في ردهم من التدافع مع قوله صلى الله عليه وسلم: **المسلم أخو المسلم لا يظلمه ولا يسلمه**، وقد جوز كما ترى شرط إسلامه بعد إسلامه، إلى ما لا يحصى كثرة من الأدلة الدالة على حرمة المسلم في نفسه، وردّه مضاداً لها، لما فيه من جعل السبيل للكافر عليه، وهو ممنوع بنص الكتاب العزيز. فإن قال لكم السلطان إنه<sup>163</sup> نازعه في هذا الشرط حتى شرط عليه في مقابلته رد من ذهب إليه مرتدًا، فإن الذي ذكره المازري يخفف ثقله بعض الخفة، فإن صرفه عن هذا الشرط إلى أن لا يرد له مسلم ولا يرد هو مرتدًا، وإنما تكون المهادنة على من بأيدي المسلمين من أسرى النصارى ومن بأيدي النصارى من أسرى المسلمين. وكذلك من تحت ذمة المسلمين من نصراني أو يهودي، ومن كان تحت ذمة النصارى من مسلم أو يهودي، أو من فر من الجهة التي هو فيها إلى الأخرى، وسواء كان الأسير مقاطعًا أو غير مقاطع فقد فاز، وأن بقي حيث هو أو ردّ قبل أن يصل إلى مأمّنه بالجهة التي هو فيها التصرف فيه بحكمها. وذمي كل جهة آمن من الأخرى في نفسه وماله.

وهل يمنع المازري هذه الصورة مع ما ارتهن في جوازه من رد من جاء مسلماً من الرجال؟ وهل يستحيل عنده حرمة مال مسلم زادته حرمة عهد استحالة ردّ مسلم خرج مهاجرًا إلى الله وروسله فجعل عليه للكفر أعظم السبيل برّدّه إليه؟ فلا يمكن أن يكون القياس الجلي الذي يحرم به الضرب اقتباسًا من تحريم التأفيف وعقوق الوالدين أوضح من هذا، ولا أظن منكم أحدًا يتوقف في هذه الفتيا إجراء على ما ذكره المازري بوجه، وإنما يبقى الآن النظر في جريانها على ما ذكره ابن شاس وابن العربي، ولا خفاء بجريانها على ذلك، لأنهما جعلًا حكم ردّ من جاء مسلماً من خصائص النبي صلى الله عليه وسلم، لما كان في علم الله من حسن عاقبة ذلك، وأن ذلك لغيره لا يحل، فإذا يصح كلامهما أن ما لا يحل لنا شرعًا هو الذي نجتنبه في

<sup>163</sup> Idem, 150.



عقد المهادنة لما كانت اختياراً منا فيما لنا القدرة عليه فيبقى إذا ما لا اختيار لنا فيه مما لم نقدر عليه وهو لا يحل لنا، ككون أسرى المسلمين تحت أيدي الكفار، وكون طالبه من المسلمين تحت ذمتهم وما لنا فيه اختيار، أو هو مما يحل لنا لخلوه عن مانع شرعي كإعطائهم حرمة العهد فيمن تحت قهرهم وذمتهم من المسلمين زيادة لحرمة الإسلام، يتناول القسمين قول ابن شاس وابن العربي أتم التناول، وإلا فأخرجوهما لي من عموم قولهما.

#### بدأ تدجّن المسلمين في الأندلس أواخر القرن الرابع

إذ من المعلوم أنهما لا يمنعان من الاثارة إن دعت إليها الضرورة،<sup>164</sup> فيدخل قسم ما لا قدرة عليه ولا اختيار فيه وأن لم يحل من جهة الضرورة، ولا يمكن أن تقع مهادنة منذ تدجّن المسلمون، اليوم نحو أربعمئة سنة، إلا هكذا. فإن طلبت من المسلمين صارت تحت ذمة الكفار منذ ذلك التاريخ، ولم يسمح الطاغية بوجه في عدم اندراجهم تحت عقد هدنته، لما كان يلحقه بخروجهم عنه من الضرورة التي لم يمكن المسلمون يسمحون فيها أزمان كل الوطن عامراً بالمعاهدين، كعصر ابن رشد رحمه الله، فإنه هو الذي أفتى بإخلاء المعاهدين من الأندلس لما مالوا الكفرة الحربيين على المسلمين. فانظروا ذلك في محله.

فإذا من المعلوم الذي لا يكون الواقع إلا على وفقه أنه لا يتأتى عقد المهادنة فيما ما بين المسلمين والنصارى على أن يكون المعاهدون من إحدى الجهتين أو كليتهما غير مندرجين فيها، ولا أموالهم إما نصاً وإما شرعاً بوجه، لما ينخرم بذلك من المصالح التي لا يمكن أهل السياسات ارتكابها أصلاً، والضرر في ذلك لو فرض على المسلمين أعظم لخلو وطنهم عن المعاهدين من النصارى إلا قليلاً لا يُوبه لهم كالصُلحيين من جنوة ومن أشباههم.

ولو فرض لغو العهد للمدجنين فيما لهم للزم في الهدنة فيما عليهم، وعند ذلك كان الطاغية يغتتم تسليطه على المسلمين ويقول هؤلاء مفسدون منكم، لا عهد لهم منكم ولا عهد لكم منهم فاطلبوهم بما يفسدون لكم، وحينئذ لم يكن يستقر للمسلم قراراً بفساد النصارى ودعواهم أنهم المدجنون، وفي هذا ما لا يخفى. والقضية إذا تُؤمّلت لا يمكن الفقهاء القول بعدم إعمال الهدنة في حقهم إذ والمحلّ بها خالٍ من اشتراط ما لا يحل شرعاً.

<sup>164</sup> Idem, 151.

## نقض استحالة اجتماع حرمتي إسلام وعهد في مال واحد

فإذا تقرر هذا فلنرجع الآن لسياق كلامهم, وذلك أنه استحال عندكم أن يكون في المال الواحد حرمة إسلام وحرمة عهد كما يستحيل أن يجتمع في الرجل الواحد كفر وإسلام. فأما الكفر والإسلام في الرجل الواحد في وقت واحد فاستحالتها صحيحة كما ظهر لكم لأنهما ضدان, والضدان مستحيل اجتماعهما في موضع واحد في وقت واحد من جهة واحدة. وأنتم قد سلمتم أن الأمان<sup>165</sup> يجتمع مع الكفر فهو إذاً ليس بضدٍ له, فلا يكون ضد الإيمان,<sup>166</sup> لأنه لو كان ضد الإيمان لكان ضدًا للكفر, لأن ضد الشيء ضد لأضداده.

ومما يزيد ذلك ببياناً أن الموجودات تنقسم إلى متقابلات وغير متقابلات, ولا خفاء بأن الكفر والإيمان من الضدين, والضدان من المتقابلات فيستحيل اجتماعهما كما أنه لا خفاء بأن العهد والإيمان من الخلفين والخلافان من غير المتقابلات, ولا استحالة في اجتماعهما. وكل ما ذكرتم بعد قولكم ومما يبين ذلك إلى قولكم لا يسقطها الاستحقاق فهي أدلة لي واضحة, لأنها تثمر أنّ هذا خلاف هذا, وإذا صح ذلك استحالت الاستحالة في اجتماعهما. ومن ادعى أنها لا تجتمع فعليه الدليل حسبما اعتمده النظار. وأما أنا فأتطوع لكم بالدليل على الاجتماع, وذلك: أن أموال المسلمين فيما بينهم ممنوعة مطلقاً لقوله تعالى: لا تَأْكُلُوا أَمْوَالِكُمْ بَيْنَكُمْ بِالْبَاطِلِ, وقوله صلى الله عليه وسلم: كُلُّ الْمُسْلِمِ عَلَى الْمُسْلِمِ حَرَامٌ دَمُهُ وَمَالُهُ وَعِرْضُهُ, إلى ما لا يحصى كثرة من الأدلة, وهي بالتجارة وما شاكلها من المعاملات ممن لا يخدع بمباحة بلا إشكال, لقوله تعالى: إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ وَهِيَ مِمَّنْ يَخْدَعُ فِي الْبَيْعِ إِذَا قَالَ لَا خِلَابَةَ مُحْتَرَمَةً حُرْمَةً زَائِدَةً عَلَى حُكْمِ الْإِسْلَامِ أَوْلاً وَذَلِكَ عَقْدُ الْقَائِلِ بِهِ, بلا إشكال, كما أن العهد عقد بلا إشكال, والله تعالى يقول يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ لا سيما والعهد من الأوليات المشهورات, وقد قال صلى الله عليه وسلم في الحلف الذي كان قد حضره قبل النبوة: لَوْ دُعِيتُ بِهِ فِي الْإِسْلَامِ لَأَجَبْتُ وَمَحَلُّ أَنْ يَجِبَ فِيهِ الْمُشْرِكِينَ فَهُوَ إِذَا مِمَّا بَيْنَهُ وَبَيْنَ الْمُسْلِمِينَ.

وتأملوا أبواب الفقه, فالانتماء فيها يجعل القول قول الأمين إلا أن يظهر خلاف ما عقده أو اعتقده فيه, كما أن عدم الائتمان بالاضطرار إلى استصناع الصناعات اقتضى تضمينهم ولو كان الأصل عدمه, إلا أنّ قولكم حرمة مال المسلم يرفعها تغلب الكافر الحربي عليها, هي نفس الدعوى المنوعة لكم, وهو الذي يقول فيه النظار إنه مصادرة عن المطلوب. وأنا أقول

<sup>165</sup> الإيمان Likely

<sup>166</sup> Idem, 152.

بصحتها ما لم يكن مال المسلم قد عوهد عليه الطاغية. وكذا قولكم حرمة مال المسلم<sup>167</sup> يسقطها الاستحقاق مما لم يتبين لي، ولو قلتم يثبتها الاستحقاق لكان أمثل، لأن حرمة المال إنما هي بمالكه مسلمًا كان أو ذميًا، وكون المستحق له غير من هو بيده إنما ظهر بذلك أن الذي يحترم هذا المال من أجله هو زيد المسلم أو موسى اليهودي أو النصراني المعاهد فلان الذي استحقه، لا عمرو الذي استحق منه، سواء كان ذميًا أو مسلمًا. وإنما أسقط حق المستحق فيما جاء به المعاهد مما كان قد غلب عليه قبل العهد لأمان بعد شبهة الملك الذي فيه، أو بحوزه إياه، إذا ما أخذ في زمان الهدنة يستحق من يده كما يستحق من المسلم والذمي.

وأما قولكم: وإذا كان العقد للواحد لا يجمع سببين مختلفي الحكم على المشهور كالبيع والنكاح فأولى أن لا يجمعهما المحل الواحد، فمما لا يمس المسألة. أما على غير المشهور فإنه لم يَرَّ بين المعقدين تضادًا ولا تنافيًا، فلا شك أنه رأهما كحرمة العهد والإسلام في المال الواحد. وأما على المشهور فإنما يمنع لتضاد أحكام تلك العقود عنده، كمكارمة النكاح وتشاح البيع، ولا تطول بإيضاح وجه ذلك فإنه مكرر في الكتب.

وأما قولكم: ومما يزيد ببيانًا أن تحريم الاستمتاع بالزوجة بقع بالطلاق الرجعي وترفعه الرجعة، وبالطاقة البائنة ويرفعه النكاح من غير توقف على شرط آخر، وبالثلث ويرفعه النكاح بعد نكاح الغير ودخوله، فهذه تحريمات ثلاث لا تجتمع ولا اثنان منها في امرأة واحدة لتضاد أحكامها، فإني أحاشي مقداركم من مثله، لأنه ليس هنا تحريمات ثلاث وإنما هي حقيقة واحدة وهي الطلاق وهو المانع من الاستمتاع. وأما كونه صادف في واحدة آخر الثلاث فأوجب حكمًا، ووقع في أخرى كطلاق الخلع من غير خلع وهو البائن في العرف فأوجب حكمًا آخر، ووقع في أخرى رجعيًا هي في أحوالها كلها كالزوجة إلا في الاستمتاع فأوجب حكمًا آخر، يعدونها ثلاث تحريمات، هذا مما لا يخفى ما فيه عليكم بوجه. وكيف يزاحم الشيء نفسه أو يكون المحل معمورًا به فيطمع في عمرانه به مرة ثانية. هذا ما لا يكون ولا أظنه يخفى على أحد، وتعبيركم عن المال الواحد بالمحل وعن جميع النكاح والبيع بالعقد حتى يتم ذلك اتساع العقد لما يضيق عند المحل، مع أنكم تتكلمون فيما يستحيل اجتماعه إمامًا عقلاً كالكفر والإيمان، وإما شرعًا كالبيع والنكاح، غير جار على<sup>168</sup> ما يصطلح بهذه العبارات عليه، لأنهم يسمون ما يتوارد عليه موضوعًا الذي هو أعم من كونه محلًا أو عقدًا، بل ومن كونه جوهرًا أو عرضًا.

<sup>167</sup> Idem, 153.

<sup>168</sup> Idem, 154.

ومما يبين قضية الطلاق وأنها حقيقة واحدة، لو أن رجلاً له أربع زوجات طلقهن جميعاً في كلمة واحدة قال فيها أنتن

الأربع طوالق طلاقاً شرعياً، فكانت الواحدة غير مدخول بها، والثانية قد بقيت على طلقة، والثالثة مستوفية شروط وقوع الطلاق الرجعي، والرابعة كذلك غير أنها خاصت قبل ذلك بيوم، فقد اختلفت هذه الكلمة الواحدة مع أنها في نفسها غير مختلفة باختلاف متعلقاتها. فالأولى قد بانّت ولا يملك ارتجاعها إلا بولي وسائر ما يجب هنالك، والثانية كذلك بعد زوج آخر، والثالثة يملك رجعتها وحكمها حكم الزوجة إلا في الاستمتاع، والرابعة يجبر على رجعتها، وهو وما يظهر له بعد ذلك، فما أدري ما يكون الانفصال عن هذا الاشكال عنكم؟ وليس عندي إلا أنه حقيقة واحدة وحكم واحد أوجبت في كل محل أثره، وبما انخرم في المحل من شرط أو عرض له من مانع اختلفت الأحكام التي تنبني على ما وقع من الطلاق بعد ذلك. ثم لو أن ذلك الرجل المطلق أردف ذلك الطلاق كلاماً آخر كالأبلاء والظهار من زوجاته الأربع المفصل فيهن الطلاق قبل، فأما الشطر الواحد من النسوة فقد برئ من تبعه الأبياء والظهار، وأما الشطر الثاني فهو الذي يلحقه بلا إشكال. وعند ذلك يجتمع في المرأة الواحدة من النسوة ثلاثة موانع من الاستمتاع لا يجوز له الاستمتاع حتى يخرج عن عهدة موجباتها.

وفي ذلك أدل دليل على استحالة ما استحال لديكم أولاً إذ أنكرتم أن يجمع المال الواحد حرمتي عهد وإسلام، فليت شعري كيف جمعت هذه المرأة الواحدة حرمة طلاق وإبلاء وظهار. أو أصل قولكم إن تحريم الأجنبية أصلي يرفعه النكاح وتحريم الزوجة طارئ على حل النكاح، وهما لا يجتمعان في الأجنبية، فذلك صحيح. وإنما لم تجمعهما الأجنبية للتضاد الذي بينهما وبين الزوجة، لأنها لو وقع فيها مثل التحريم المخصوص بالزوجين لكانت زوجة لكنها أجنبية لم ينعقد فيها قط نكاح لذا الرجل المعين، فلا تحرم عليه بما تحرم عليه زوجته.

وأما قولكم: ومن ذلك أن تحريم الميتة مثلاً لازم لها وتحريم بيع الغرر<sup>169</sup> عارض لا يقبلهما محل واحد، لأن محل هذا غير محل هذا فهو صحيح. ومن الذي قال أي حكم اتفق يقبله أي في محل اتفق، والتنافي الذي بين الميتة المحرمة والبيع التي يمنع فيها الغرر أوضح من أن يبين، لأن الميتة شيء غير متمول، وما يمنع فيه الغرر سلعة متمولة، فكيف يتوهم أن يطرأ هذا التحريم الخاص بالأشياء المتمولة على الشيء الذي ليس بتمول، ولا أرى هذا إلا كمن قال إن الدواب البيهيمية لا يمكن فيها تعليم الكتابة، ومتى ظن أحد بل توهم أن الكتابة مما يمكن البهائم تعلمها؟ ثم إن فرض صيرورة الميتة متمولاً فيمكن

<sup>169</sup> Idem, 155.

أن يدخلها تحريم بيع الغرر كما إذا تزود مضطر لا ماء معه من الميتة على القول بجواز ذلك فلقي في عذر الاضطرار مثله ومعه ماء وشح كل واحد منهما على صاحبه بما عنده إلا أن يكون بالمعاوضة، فهنا قد يتجه أن يشترط في المعاوضة كل ما يجب لهما في أبوابهما من المعرفة بقدر العَرَضَيْنِ ونفي الغرر وما أشبه ذلك. وإنما المناسب لتحريم الميتة تحريم الخنزير وتحريم المدواب وكلّ ذي ناب من السباع، ولذلك لو وجدت ميتة بهيمة الأنعام مع مذكى السباع أو الخيل لاتفق على أن المذكى الذي يتناوله عموم قوله تعالى: **قُلْ لَا أَجِدُ فِيهَا أُوحِيَ إِلَيَّ مُحَرَّمًا عَلَى طَاعِمٍ يَطْعَمُهُ إِلَّا أَنْ يَكُونَ الْخِ أُولَى مِنَ الْمَيْتَةِ** التي نص على تحريمها هذا الاستثناء.

وأما قولكم: ومن ذلك أن المحل الواحد لا يقبل وجوبين أصليًا وعارضًا، كصلاة الظهر لا يقبل النذر، فلو نذرها المكلف بها لم يزد نذرًا وجوبًا ولا زاد في حكمها ولا نقص منه، فإن هذه المسألة إن كانت على المعنى المتبادر من قولكم فإنها لا تناسب مسألة حرمة مال المسلم إلا على فرض كون الحرمة الزائدة له حرمة إسلام لا حرمة عهد، كما نقول إن وجوب الظهر الذي هو بقوله تعالى: **أَقِمِ الصَّلَاةَ** زاده وجوبًا بقوله إنني ألزمت نفسي إقامة الصلاة الواجب عليّ الزامًا مثل الذي ألزمني الله، فهذا وجوب متمائل وتلك حرمة متمائلة، فمن الممكن لمن يقول بمنع هذا أن يعلل المنع بكون المحل معمورًا بشيء فلا يعمره مرة ثانية. أو يكون المسبب فيه مستقلًا ليفتقر لسبب مستقل مثله من كل وجه، لا سيما في هذه الأسباب الوجودية. ومن الممكن أن يقال بجواز زيادة هذا الوجوب، ولكن قد تخفى ثمره هذا الوجوب في دار الدنيا، ويمكن أن يضاعف بها الثواب في الآخرة إذا أتى المكلف بالفعل الذي أوجبه<sup>170</sup> على نفسه زائدًا لوجوبه بأمر الله تعالى ويضاعف له العذاب إذا أضاعه.

وأنا أفرض سائلًا يقول: إنني وقفت على قول الله تعالى: **حَافِظُوا عَلَى الصَّلَوَاتِ وَالصَّلَاةِ الْوَسْطَى** وذكر لي أن أمر الله تعالى محمول على الوجوب وأن الصلاة الوسطى هي صلاة العصر، ووقفت أيضا في معنى الحَضِّ عليها والتخويف من فوتها على قول النبي صلى الله عليه وسلم: **الَّذِي تَفَوُّتُهُ صَلَاةُ الْعَصْرِ فَكَأَنَّمَا وَتَرَ أَهْلَهُ وَمَالَهُ** فألزمت نفسي المحافظة عليها إلزامًا مثل الزام الله يجب عليّ لتفويته عشرة دنائير صدقة حتى أوتر من مالي حقيقة يفوت المحافظة كالذي كان هنالك تشبيهًا في الأصل والمال. فما يكون جواب هذا السائل؟ فإن قلتم بلزوم نذره فقد أوجب المحافظة حكمًا زائدًا، وأن قلتم إن التزامه لا

<sup>170</sup> Idem, 156.

يوجب حكمًا فقد أبطلتم ما نذر صريحًا مترتبًا على فوت ما ألزم نفسه، ولا أظن من يقول بذلك لقوله: **ألزموا الناس ما ألزموا أنفسهم**، ومما يشهد بصحة إيجاب المكلف على نفسه بعد إيجاب الله قوله تعالى **ومنهم من عاهد الله إلى قوله: وبما كانوا يكذبون**. ومعلوم أنه لو أدى الصدقة الواجبة لما استحق اسم البخل حسبما نقلها العلماء، ولم يكن في ذلك إخلاف لما وعد الله ولا لما عاهده عليه، وكان مانع زكاة خاصة بقوله هذه أخت الجزية، حسبما ثبت في الحديث. ولا خفاء بأن الصدقة والزكاة الواجبة، وأن العهد الذي عاهد الله أمرٌ زائد على الوجوب الذي فيها بإيجاب الله تعالى حسبما ذكره من ذكره من المفسرين. وهذا هو النقض عند النظر، وثبت به وجوب أصلي وطارئ على وفق اصطلاحكم، ومثله في طرؤ التحريم قوله تعالى: **ولقد كانوا عاهدوا الله من قبل لا يولّون الأدبار وكان عهد الله مسنولاً**. وأن قصدتم غير ما يتبادر من قولكم حتى يكون قد نذر أربع ركعات أراد أن يأتي بالظهر مغنية عنها وعن نفسها فتكون الصورة كالصورة، وبعدها صوم رمضان عنه وعن كفارة أو ظهار فالأمر في ذلك أقرب، لأن الأصل في العبادات أنها حقائق تمتاز بأنفسها ظاهر فيها قصد التعبد الذي إن عقل معناه على الجملة فإن تفاصيلها لا يعقل معناها. وبسبب ذلك كانت من تضاد أحكامها باشتراط النية فيها على الصورة التي بين المسألتين. 171

في التصور فيها من التنافي ما لا يمكن به اجتماعهما، إذ يفوت الشرط بفوت المشروط. وكانت أيضا من عدم الافتتيات بالزيادة والنقص ولزوم الخل من منافيتها بالقوة والفعل في الحد الذي قيل إنه لم يجر فيها من الأقيسة إلا قياس عدم الفارق. وعلى ذلك فقد وجدنا فيها ما هو أقرب إلى التضاد من ذلك المثل كإجزاء غسل الجنابة والجمعة عنهما إذا نواهما على المشهور، وإجزءاء بعض الصور على غيره، فإن السنة تنافي الفريضة ما لا ينافي الفرض بعضه بعضًا إلا بما تقدم من الشروط. وكذلك إجزاء تكبيرة الركوع عن تكبيرة الاحرام للمأموم، وإجزاء تطوع الطواف عن واجبه عند قائل ذلك كما في علمكم.

وأما قولكم: وإذا سلم ذلك إلى ما حكيتم عن يحيى بن يحيى أنه غلو فذلك صحيح كما قلتم إذا سلم ذلك، ولكن ذلك

غير مسلم.

<sup>171</sup> Idem, 157.

وأما قولكم: ولا يعارض ما تقدم باجتماع تحريم الرضاعة وبنوة الزوجة في الربيبة أن حكمهما متفق لا يختلف في حق من حرمت بهما عليه. فأقول: كذلك حكم مال المسلم الذي هو عهد الطاغية عليه لا يختلف في حق من حرم عليه ما دامت له الحرمتان, فإن ارتفعت احدهما ارتفع موجبها كأخت. أربع زوجات, ففيها مانعان من نكاحها إياها, وقد يرتفع أحدهما وقد يرتفعان معاً.

أما قولكم ولا بالشقيقة اجتمع فيها تحريم أخوة الأم وأخوة الأب وأخوتها معاً, لأنها تحريمات متفقة.

ولا باجتماع الفرض والتعصيب للشخص الواحد لأنهما أصليان, وبحثنا في طارئ وأصلي مختلفي الحكم, فلا أعلم ما يبني على ذلك, ومثل اتفاق تحريمات الشقيقة وأصلية اجتماع الفرض والتعصيب هو الذي يقول عنه النُّظار إنه وصف طردِي لا يبني عليه حكم, ولذلك أسبرت الأوصاف المناسبة لبناء الأحكام عليها. وربما يتعجب من الناظر الذي يعتبر الطردِي في مناظرته, ولكن على إعمال نظركم في طارئ وأصلي مختلفي الحكم, فمثله إذا كان ابناً<sup>172</sup> عمّ لهما بنت عم وهما يرثانها فتزوجها أحدهما ثم ماتت فإن الأصل إرثهما إياها بالتعصيب جزءاً شائعاً وبالزوجة لناكحها ربع المال, اختلف الحكم عن أصلي وطارئ. ولو تتبععت صور هذا لخرجت عن الغرض, فكم يحدث لمعتق أبيه دون سائر إخوته من أحكام يبني بعضها على البُنة وبعضها على العتق وهما أصلي وطارئ.

وأما أخذكم ما فرضته ارتداد أهل غليرة مأخذ المُرتدِّ بترك ماله بين ظهور المسلمين, فإننا لم نفرضه كذلك, وإنما فرضت ارتداد أهل الموضع بجملتهم, والمسألة غير تلك المسألة, وقد تكلم عليها ابن عرفة فقال: ولو ارتد جمع منعوا أنفسهم فأخذوا فالحكم فيهم بحكم الحربيين أو المرتدين الخ ما قال, وأعتقد إذا لم يقدر عليهم رجحان حكم الحربيين فتكون أموالهم غنيمة, وما ذكرتم في مسألة الراهب ظاهر الله أعلم, هذا ما حضر تقييده والله الموفق, ومعاد السلام عليكم ورحمة الله تعالى وبركاته.

<sup>172</sup> Idem, 158.

## Treaty of 1424

### Translation<sup>173</sup>

11 June 1424

In the name of God amen let those who see this letter know how we Don Juan by the grace of God King of Castille of Toledo of Galicia of Seville of Cordova of Murcia of Jaen of the Algarve of Algeciras, and lord of Biscay, and of Molina; how you the great honorable King Don Muhammad King of Granada, and of Malaga, and of Almeria, and of Guadix, and of Ronda, and of Bartan and of Gibraltar, and of that belonging to the aforementioned the frontiers of which are within your power, that you have sent to us to speak of the good, and of the advantage that comes with peace, to which end between us and you the said honorable King of Granada aforementioned are agreed, and concorded firm peaces for us, and for our kingdoms, and territories, and for the people of them, and for Andalusia, and for our towns and places of Zahara, and Antequera with its hinterland, and Xebar, and Conche, and Alnasmara, and Aymonte, and Cañete, and the Tower of al-Hakim, and Ortexicar, and Pruna with all the hinterland of all that; to which end we the said King Don Juan command and know that we give and command a firm peace, and a good true compact for us, and for our kingdoms, and for the people of our territory, and of my cities, and of our towns, and of our castles, and of our places, and the frontiers that are in our power, and for our servants who are or who will be henceforth, and for Andalusia, and for our towns, and places of Zahara, and of Antequera with all of their

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<sup>173</sup> This translation is my own, from the text established in Mariano Arribas Palau, *Las treguas entre Castilla y Granada firmadas por Fernando I de Aragón* (Tetuán: Editora Marroquí, 1956), pp. 95-102.



hinterlands, and Xebar, and Conche, and Asnalmará, and Aymonte, and Cañete, and the Tower of al-Hakim, and Ortexicar, and Pruna with all of their hinterlands and you the said honorable King Don Muhammad King of Granada, and to your kingdoms, and territories, and the peoples of your kingdom, and territory, and of your cities, and towns, and your castles, and of your places, and to your peoples of your kingdoms that are in your power, or will be, according to which you affirm with us for yourself, and for your kingdom, and for the people of your territory, and of your cities, and of your towns, and of your castles, and of your places that now are in your power, or will be, and for your servants that are, or will be, that no harm will befall from our kingdom nor from our cities nor from our towns nor from our castles, and from our places, and hinterlands aforementioned to any thing of your kingdom nor of your cities nor of your towns nor of your castles nor of your places, and hinterlands that are today in your power, or will be, nor to your people. And likewise that no harm shall befall from your kingdom nor from your cities nor from your towns nor from your castles nor from your places that are today in your power or will be to anything of our kingdoms and of our cities, and of our towns, and of our castles, and of our places, and hinterlands aforementioned that are today in our power, or will be from our people, and the judgment of these peaces will be between us, and you guarded, and including by land, and by sea, and in the seaports, and let the ransomers from both sides come and go safely, to ransom captives, and free them by rendition, and of what we affirm, and swear with you the said King of Granada, and of what you affirm, and swear with us that the merchants come and go, and others whosever they might be of the Christians, and of the Jews, and of the Moors of our kingdoms, and our cities, and our towns, and our castles, and our places to your kingdoms, and to your cities, and to your towns, and to your castles, and to your places, and from

your said kingdoms, and cities, and towns, and castles, and places to our kingdoms, and to our cities, and to our towns, and to our castles, and places by sea, and by land safely in their bodies and in their properties and in their doings and in their goings, and in their comings, and in their protected statuses they may travel and no harm shall be done to them in their bodies, and in their property, and they shall be free to sell, and to buy what they will of all the things in town, or in castle, and to take what they buy safely without any gainsaying, and without being charged more than what is customary in peaces except horses, and weapons and bread, and of what we affirm with you and you affirm with us that when one of your enemies rises up against you, and wishes to enter your land from outside of your kingdom, and wishes to come to your land by our land that we are obligated to prevent him passage by our land, and to expel him from it making war upon him, and if we cannot expel him then we are to inform you, and thus shall you achieve for us, you the honorable King of Granada aforementioned, all of this as has been stated, and of what we affirm with you the said King of Granada, and you affirm with us that if a a castle, or a town of our castles, or of our towns, or of your castles, or of your towns should rise up against us or against you then they shall not be received by either of the parties, and that no castle nor town shall be received by buying nor by selling nor by giving nor by theft nor by trickery nor by any other manner before we aid you against it with our power in the same manner until the castle or town returns to its rightful owner from either of the parties, and of what we affirm with you the honorable King of Granada aforementioned, and you affirm with us that when a rich man should flee, or a knight, or a servant of either of the parties to the other that he shall be made aware, and let him plead if his error was a thing over which one may plead, and that he be returned safely to the party whence he fled, and if his error was a thing over which one may not plead that he be

expelled from the kingdom, and from the territory to another place, and if he carries with him anything may it be returned to its owner, and when a revenue collector is in this situation then the judgment of the revenue collector upon his body shall be the judgment aforementioned of the knights, except the possession of his power shall be taken from him, and shall be returned to whom he fled, and otherwise when one flees his land we are not obligated we nor you to return him but what he carries with him in terms of possessions shall be returned, or any other thing that may have fallen into his power that the aforementioned captive swears he is not carrying anything, otherwise the people of the place whence he fled, and those of the posse in which he traveled that he did not flee with anything, and the aforementioned captive shall be taken away, and this shall be the judgment universally to captives from both of the parties from the Christians, and of the Moors equally in this judgment, and of what we affirm in these peaces with you the honorable king King of Granada aforementioned, and you affirm with us that we shall deploy for you our loyal judges in the parts of our towns, and our territories that hear quarrels, and that they shall have the power to adjudge them, and to free them, and to pay the quarrelers from both parties what they may determine with regard to the case, this peace between us and you the honorable king King of Granada aforementioned that whenever a quarrel of either one of the parties should emerge in bodies, or in possessions, or in any other thing that one may quarrel over that the record of the belligerents shall be followed, and of what was taken, and whence the record came, and the plaintiff's party shall be asked to separate from the the defendant's party, and if they do not wish to receive the record, and shall hear testimonies of what they shall be obligated to pay in terms of what was lost, and the place to receive it shall be fixed within ten days of the occurrence of the event, and shall come in demand against the doers

and wait in the location where the record shall halt between them within fifty days, and if what was taken should be lost then it should be returned to its original possessor and if this is not done according to the law to the said place then the said judges of quarrels shall be obligated in that case shall cause that party to seize that which was lost, and if the judge of quarrels is prevented from presiding in the said place then he shall make a supplication to us, and to you, and to him whom we have sent to hear for us, and for you shall we command him to judge, and cause him to make amends, and give a penalty to the aforementioned judge, and what is to be paid for that which is said for the persons who are returned before the place, and thereafter in every way, and that they kill the evildoers, and if people were taken after the death of the evildoers let them be returned, and if this is not possible they shall be compelled to pay for each person of them forty doblas of gold, and for cattle, and other things that cannot be returned let it be paid for each thing its value according to that which the judges shall determine, and this judgment shall be common to each of the two parties Christians, and Moors equal in this, and the duration of this peace shall be for two years first following that shall begin on the fifteenth of the month of July of this year of one thousand, and four hundred, and twenty, and four years, and its end shall be on ten, and six days of the month of July of the year of one thousand and four hundred, and twenty, and six years, and every stipulation, and condition stated in this contract shall be firm to both parties, and the Christians shall be held to that to which the Moors are held in this and the Moors shall be held to that to which the Christians are held in this equally in this fact; and thus do we command, and affirm these peaces with the conditions, and stipulations aforementioned to you the said honorable King of Granada thus do we affirm them with your friend the great honorable king King of Banu Marin by sea, and by land for all our towns that are seaports, and for those that are

not seaports, and his towns that are seaports, and those that are not seaports for the said time, and place with all the conditions, and stipulations aforementioned and that you shall be held to send us the power of the said King of Banu Marin aforementioned within six months from the day that this peace affirms and awards, and he shall maintain, and accomplish all of its conditions, and stipulations aforementioned according to that which we the said King Don Juan of Castile aforementioned with him shall establish, and affirm, and we know the stipulations, and conditions, and promises that are in this letter contained, and we swear by God our lord the true God trinity and unity that we shall abide by, and accomplish to you the said King of Granada these peaces with all of their conditions, and their articles as are in this contract contained until the said time shall elapse; and you the said King of Granada aforementioned thus do swear by the one true God to hold, and maintain, and accomplish the said peaces with all of their stipulations, and conditions aforementioned for the said timeframe, and whosoever shall violate an article of its articles, or a condition of its conditions, great or small, from us or from you God shall be his judge, and so that this might be true, and firm, and valid we order it be written in two letters of one voice and one intention each one of them in Castilian, and in Arabic, and place in each one of the Castilian my name, otherwise shall be placed our habitual seal in order to achieve this, and to be bound to it likewise as you the said honorable King of Granada shall place letters of your hand with your accustomed seal in testimony to accomplish it, and to be held to it and for that it should be sure, and firm, and true it shall be in your power one contract of Castilian, and of Arabic, and the other in our power, given in the town of Ocaña the eleventh of June of the year of the birth of our Lord Jesus Christ of one thousand, and four hundred, and twenty, and

four years. I the King. I Diego Romero caused it to be written by command of our lord the King.  
Enregistered.

## Treaty of 1432

### Translation of the Arabic<sup>174</sup>

In the name of God, the Compassionate, the Merciful.

May God bless our lord and master Muḥammad and his family and may he grant them salvation.

Let all who might read this noble missive know that we, the amir Abū al-Ḥajjāj Yūsuf ibn al-Mawl,<sup>175</sup> Sultan of Granada and Malaga and Almeria and Gibraltar<sup>176</sup> and Guadix and Baza, and possessor<sup>177</sup> of all those places, as soon as we shall have entered the house of our realm in the Alhambra of Granada, may God watch over it, shall conclude and stipulate this contract that we have agreed with the notable of our master the exalted Sultan Don Juan Lord of Castile<sup>178</sup> and Leon, and he is Diego Gómez de Ribera, chief *adelantado*<sup>179</sup> in Andalusia and delegate to the *frontera*<sup>180</sup>, one of those who bear the ensign of the *Consejo*<sup>181</sup>. My word is true in all that I have stipulated in this said contract with the said *adelantado*, without addition to what is within nor subtraction from it, and we swear it by the one true God, and by Muḥammad, may God bless him

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<sup>174</sup> The translation is my own, from the text established in Muḥammad ‘Abdullāh ‘Inān, “Wathīqa andalusiyya qashtāliyya min al-qarn al-tāsi‘ al-hijrī,” *Ṣaḥīfat al-ma‘had al-miṣrī lil-dirāsāt al-islāmiyya fī Madrīd* 2, no 1-2 (1954), pp. 38-45.

<sup>175</sup> Yūsuf IV.

<sup>176</sup> Lit. “the Mount of the Conquest,” *jabal al-fath*.

<sup>177</sup> The intended meaning is unclear: *mālikī* or *mālikay* is written, but *mālik* seems more probable.

<sup>178</sup> *Ṣāḥib Qashtāla*.

<sup>179</sup> *Al-ḡalanṡāḡuh al-kabīr*.

<sup>180</sup> *Al-falantīra*.

<sup>181</sup> *Qanāqāyin*. It is unclear to me whence this word derives etymologically, but it corresponds to *Consejo* in the Spanish version of the treaty, and there is a certain slight resemblance.

and grant him salvation, and by the exalted Quran, and by the faith that the Muslims believe in and do not contradict. A copy of the contract of the truce [follows]:

Praise be to God. Let all who might read this noble missive know that we, the amir Abū al-Ḥajjāj Yūsuf ibn al-Mawl al-Naṣrī. . .do affirm that when the late exalted Sultan Abū ‘Abdallāh Muḥammad,<sup>182</sup> son of the Sultan Abū al-Ḥajjāj ibn Naṣr,<sup>183</sup> may God bless them, was sultan of Granada by absolute and inviolable right, the treacherous, disloyal, furtive Abū Muḥammad al-Aysar<sup>184</sup> did break [his] vows and rise up against him, and he did not fear Almighty God, and he did not maintain the pacts and covenants and agreements that he had promised to his master the said sultan, and to his brother Abū al-Ḥasan ‘Alī, the mercy of God upon both of them and his contentment, and he coerced him and extorted from him his realm and his dominion, without right and without legitimacy, and he expelled him from his realm and his country. That hideous deed committed by that lying traitor Abū Muḥammad al-Aysar was the reason for our seeking vengeance and our betaking ourselves to our master the exalted Sultan Don Juan, Sultan of Castile and Leon, he who is the head of Spain,<sup>185</sup> and so we sought refuge in his allegiance and patronage, and in the greatness of his might, and we came in obedience,<sup>186</sup> along with those who were with us from among our leaders and knights, to where he was with his mighty host before the city of Granada, with a grand army and great strength, that our master the said sultan might be a support for us in the taking of the realm from the hands of Muḥammad al-Aysar, for his treachery and his hideous character, that we might replace him in the realm as

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<sup>182</sup> Muḥammad VIII.

<sup>183</sup> Yūsuf III.

<sup>184</sup> Muḥammad IX.

<sup>185</sup> *Ra's Ishbāniya*.

<sup>186</sup> *Khuḍū*‘.



servant and property<sup>187</sup> of our master the Sultan Lord of Castile, by his aid and allegiance and by what he demonstrated in terms of his renown and charity and patronage to us against our enemy the traitor al-Aysar.

We swear to the noble knight Don Diego Gómez de Ribera, chief *adelantado*, captain of all the notables of Andalusia, may God save him, for he is the proxy of our master the Sultan Lord of Castile and his official, and he has authority over all of the knights of the *frontera* arrayed against all of the Muslims. We swear that we will be a servant<sup>188</sup> to our master the Sultan Lord of Castile henceforth until whatever may come, possessing the realm or not possessing it, and our service<sup>189</sup> shall be to him to the fullest of our intention and ability in all matters separately and entirely. We stipulate and swear that if our kingdom is arranged for us, and if we enter the house of our noble kingdom, that we will free all the Christian captives that are in our kingdom,<sup>190</sup> be they in our lofty presence<sup>191</sup> or in all our Naṣrid kingdom, except the *aṣnāḥ*<sup>192</sup> from among them and the converts<sup>193</sup> who are in our house; and we swear and stipulate the delivery of twenty thousand dinars of gold of true weight every year, delivered to the hands of our master the sultan wherever he might be in his country from among his towns and his

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<sup>187</sup> *Khaddāman wa-matā'an*. *Matā'* has connotations of tool, chattel, enjoyment.

<sup>188</sup> *Khaddām*, once again.

<sup>189</sup> *Khidma*.

<sup>190</sup> Or: in our possession.

<sup>191</sup> That is to say, in the city of Granada proper.

<sup>192</sup> This is perhaps *al-ṣunnā'*, “craftsmen.” The manuscript is unclear, but the letter that ‘Inān has interpreted as a *ḥā'* appears to have an additional hook on top, leading me to believe it is possibly a *'ayn*. Another possibility is *al-ṣiyām*, “those who perform the fast,” but this seems farfetched. Finally, *aṣnāḥ* may be a local word to describe Granada’s own Christian *dhimmi*s, whom we are aware of indirectly due to references to “swineherders” in fatwas from, among others, Ibn Sarrāj and our friend al-Saraqustī.

<sup>193</sup> *Al-muṣallūn*, lit. “those who pray.”

fortresses, and we will verify and ascertain from our servants and commanders<sup>194</sup> that it come to rest in his noble hand. We stipulate and swear to aid our master the sultan with one thousand five hundred armed knights from among the knights in our command, which we will send to him in whichever place in his country he might have need of them so as to make war upon those who would make war against him and array themselves against him and antagonize him, be they Christian or Muslim, and we stipulate and swear that whenever he should have need of us for dialog we shall embark in person and with our armies to the Cortes wherever it might be held, and should the Cortes be held from the *puertos*<sup>195</sup> near Toledo [south] to the borders of the lands of the Muslims then we will attend in person, and should the Cortes be held from the *puertos* of Toledo further into Castile, then we will send one of our sons or relatives or intimate [advisors]. We swear and stipulate that whenever a Christian by birth enters our service we will return him to our master the Lord of Castile as quickly as possible, and there shall be no way for him to remain with us in any capacity or status, rather shall we return him with our letter to our master the sultan that his beautiful gaze should fall upon him.

All of this we stipulate personally, and we are obligated to what everything that we have said obligates, and we swear that we will carry out all that we have said in a perfect fulfillment that shall satisfy our master the Sultan Lord of Castile, and we say by the God beside Whom there is no other god, Knower of the Unseen and the Evident, the Compassionate and the Merciful, and by the truth of Muḥammad ibn ‘Abdallāh, God bless him and grant him salvation, and by the truth of the exalted Quran that He sent down upon Muḥammad, God bless him and

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<sup>194</sup> *Min khuddāminā wa-quwwādinā.*

<sup>195</sup> *Al-abrāt.* This appears to be a broken plural derived from a loanword, likely *burt* or something of that genre, that represents the Spanish *puerto*.

grant him salvation, that we shall not shirk by a single word from this agreement and from what we have said in this contract, and if we shirk then almighty God shall be the witness between us and the castigator to us.

I the *adelantado* Diego Gómez de Ribera, the aforementioned, the delegate of our master the Sultan Don Juan Lord of Castile by his noble order, his captain by his advancement and his letter, I accept from you o Don Yūsuf Sultan of Granada and am satisfied with on behalf of our master the Sultan Don Juan all that you have said and testified to personally. I have been satisfied with it and I have concluded it on behalf of our lord the Sultan Lord of Castile, your pact is a true pact and a true oath in which is no doubt from our master the Sultan Lord of Castile that shall suffice you for all your days, o Don Yūsuf Sultan of Granada, and the days of our master Don Juan, and the days of your sons, and upon the conditions of true peacemaking, and pursuant to the customary practice<sup>196</sup> between kings from the Christians and the Muslims, and true pacts between them, and the opening of all the *puertos* to all the Christian lands, and the safety of all the traders from among the Christians and the Muslims, that they might travel with all manner of items and acquisitions, and all the things that are licit to buy and sell between Christians and Muslims, to all the lands under a guarantee of safe conduct and a prohibition without fear or obstacle in their coming and going, not one of them shall be obliged to do anything that is not the custom between Christians and Muslims, and likewise the assistance of our master the Sultan Lord of Castile to you o Don Yūsuf Sultan of Granada against all who would oppose you or who would seek to make war upon you, or evildoers from your country from among the Christians or Muslims, and all possible aid to you, and likewise o Don Yūsuf

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<sup>196</sup> *'Awā'id*.

whenever you go in service to our master to the aforementioned Cortes, for one year or many years, then the aforementioned duties shall be lightened from you, and likewise any from among the Muslims who might travel to the land of our master the Sultan Lord of Castile, then he shall not grant to them a permit to the east nor the west, and he shall not harbor them with him, but rather shall he send for the intercession of their master Don Yūsuf Sultan of Granada, and regarding the freed captives we are speaking specifically of Castilians,<sup>197</sup> and there is no provision for others besides them, likewise concerning the one thousand five hundred knights their pay shall be from the Sultan Don Yūsuf for three months, and there is to be no addition to that on the part of the Lord of Castile our master Don Juan, [but rather] whenever the Sultan Don Yūsuf goes to the Cortes personally and with whom his gaze selects, be they few or many, we affirm by saying in this treaty that the twenty thousand dinars, mentioned above, [when] the sultan Don Yūsuf shall send them with his army and his power, Don Juan Lord of Castile shall aid him and lighten his burden, and whenever the one thousand five hundred knights go [without the sultan] there is no lightening of his burden.

We affirm our oath by the aforementioned faith; and thus are the oath and the pact sealed. The said *adelantado* shall require that which has been said of him, and what he has said on behalf of our master Don Juan Lord of Castile, and Don Yūsuf Sultan of Granada bears personal witness to what he has said. In two copies, one in Arabic and one in Foreign,<sup>198</sup> in the fortress of Ardales<sup>199</sup> on Sunday the twenty-sixth of the month of September of the year one thousand and four hundred and thirty one, which corresponds to the month of God Muḥarram of the year eight

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<sup>197</sup> *Al-qashtaliyyīn*.

<sup>198</sup> *Al-‘ajamī*.

<sup>199</sup> A town near Malaga.

hundred and thirty five.<sup>200</sup> It is certified that we the amir Abū al-Ḥajjāj Yūsuf ibn al-Mawl Sultan of Granada and Malaga and Almeria and Gibraltar and Guadix and Baza and what is in addition to all that, bear our own witness to the contract registered above and we renew the faith that we registered in it, and God has bound us to it, from the lofty Alhambra our signature upon it and our golden seal affixed with silken thread on Sunday the twenty seventh of the year one thousand four hundred and thirty two corresponding to the twenty second of First Jumādā of the year eight hundred and thirty.

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<sup>200</sup> Here and again at the end of the document there is written something that looks like *'urifa lil-tadkhira* but is almost certainly *tadhkira*, “reckoned by the memorandum.” This would seem to indicate the method by which the date was converted between the two calendrical systems.

بسم الله الرحمن الرحيم

وصلى الله على سيدنا ومولانا محمد، وعلى آل محمد وسلم تسليماً

ليعلم كل من يقف على هذا الكتاب الكريم أننا الأمير أبو الحجاج يوسف ابن المول، سلطان غرناطة ومالقة وألمرية وجبل الفتح ووادي آش وبسطة، ومالكي ذلك كله، لما دخلنا دار ملكنا بجمراء غرناطة حرسها الله، كلما عقدت واشترطت في هذا العقد، الذي عقدته مع كبير مولانا السلطان المعظم ذون جوان صاحب قشتالة وليون وهو دياقه غومس ذا الربيره الظلنطاضه الكبير بالأندلسية والمفوض على الفلنتيرية وواحد من أهل راية قنقارين عليه ويدي مشدودة فيه، وقولي صحيح في كل ما اشترطت في هذا العقد المذكور، مع الظلنطاضه المذكور، من غير زيادة على ما فيه ولا نقص منه، ونحلف على ذلك بالله الواحد الحق، ومحمد صلى الله عليه وسلم، وبالقرآن العظيم، وبالإيمان الذي يعتقدونها المسلمون ولا يخالفونها. نسخة عقد الصلح.

الحمد لله. ليعلم كل من يقف على هذا الكتاب الكريم أننا الأمير أبو الحجاج يوسف ابن المولى النصري. . . نقول انه لما كان السلطان المعظم المرحوم أبو عبد الله محمد ابن السلطان أبي الحجاج بن نصر رحمهم الله سلطاناً لغرناطة بتحقيق وصدق يقين، خالفه الغدار المخالف الخافي الكل، أبي محمد الأيسر، الذي خان العهد، ولم يخاف الله تعالى، ولم يراعي العهود والمواثيق والأمان، الذي أمن لمولاه السلطان المذكور، ولأخيه أبي الحسن علي، رحمة الله عليهما ورضوانه، وقهره وغصبه في ملكه وسلطانه، بغير حق وبغير شرع، وأخرجه عن ملكه وبلاده، فكان ذلك الفعل القبيح، الذي فعله ذلك الغدار الكذاب أبو محمد الأيسر سبباً لتوجهنا وانتصارنا بمولانا السلطان المعظم دون جوان، سلطان قشتالة وليون، الذي هو رأس اشبانية، فاستعنا بحزمته ونصرته، وكبير سلطانه، وجننا له بالخضوع، عن ومن لنا من قوادنا وفرساننا، حيث كان بمحلته مقيماً على مدينة غرناطة، وهو بجيش عظيم وقدرة كبيرة، ليكون مولانا السلطان المذكور عوناً لنا على أخذ الملك من يديه محمد

<sup>201</sup> For which see Muḥammad ‘Abdullāh ‘Inān, “Wathīqa andalusiyya qashtāliyya min al-qarn al-tāsi’ al-hijrī,” *Ṣaḥīfat al-ma’had al-miṣrī lil-dirāsāt al-islāmiyya fī Madrīd* 2, no 1-2 (1954), pp. 38-45.

الأيسر, لغدره وشيمته القبيحة, وان نكونوا نحن عوضًا منه في الملك خدامًا ومتاعًا لمولانا السلطان صاحب قشتالة, بمعاونته وحزمته, وبما أظهر علينا من جاهه واحسانه ونصرته لنا على عدونا الأيسر الغدار. ونحن نشاهدوا على أنفسنا إلى الفارس المكرم دون دياقه غومس الربيره الظلنطاضه الكبير, المفوض على جميع الكبار بالأندلسية سلمه الله, إذ هو نائبًا عن مولانا السلطان صاحب قشتالة وقائمًا مقامه, وهو على جميع الفرسان بالفلنتيرة المعادين لجميع المسلمين. فنحن نشهد على أنفسنا أننا خدامًا لمولانا السلطان صاحب قشتالة من الآن إلى ما يأتي بعد, ملكنا الملك أو لم نملكوه, وخدمنا له بنيتنا وقد استطاعتنا في جميع الأمور بعضها وكلها. ونحن نشترط ونشهد على أنفسنا أننا إذا تمهد لنا ملكنا, ودخلنا دار ملكنا الكريم, أن نحرر جميع الأسارى الذين بملكنا من النصارى في حضرتنا العلية, وجميع بلادنا النصرية, ما عدا الأصناح منهم والمصلون الذين بدارنا: ونشهد على أنفسنا ونشترط أداء عشرين ألف دينار من الذهب العين البلدي الوزن في كل سنة, موصلة ليدي مولانا السلطان حيث ما يكون من بلاده ومواضعه وحصونه, حتى يستقر بيده الكريمة مع من نستثيقوه ونطمئنون فيه من خدامنا وقودانا. ونشترط ونشهد على أنفسنا معاونه مولانا السلطان بألف فارس وخمسمائة فارس مسلحون من فرساننا بمرتبنا ونعمتنا, نوجههم له للموضع الذي يحتاجهم فيه من بلاده الحاربة من يريد محاربتة ومعاندته ومنازعتة, نصارى كانوا أو مسلمون, ونشترط ونشهد على أنفسنا أنه إذا احتاجنا لمخاطبتنا فتوجه إليه بأنفسنا وجيوشنا إلى الكرتش الذي يكون فيه في البلاد والمواقع, فإن كان الكورتش من الأبرات التي تلي طليطلة لناحية بلاد المسلمين فتوجه بأنفسنا, وإن كان الكورتش من أبرات طليطلة بداخل قشتالة, فنوجه أحدًا من أبنائنا أو أحدًا من قرابتنا أو أقربنا ناسًا إلينا. ونشهد ونشترط على أنفسنا مهمى توجه نصرانيًا أصليًا إلى خدمتنا فنردوه إلى مولانا صاحب قشتالة لأقرب وقت, ولا سبيل له أن يقيم معنا بوجه ولا بحال, بل نردوه بكتابنا لمولانا السلطان يقع نظره الجميل فيه. فهذا الشروط كلها نشترطوا بها على أنفسنا, ونلزموا أنفسنا ما يلزم في كل ما قلناه, ونحلف أننا نوفوا بما قلنا على أتم الكمال, الذي يرضاه مولانا السلطان صاحب قشتالة, فنقولوا بالله الذي لا إله إلا هو عالم الغيب والشهادة, الرحمن الرحيم, وبحق محمد ابن عبد الله صلى الله عليه وسلم, وبحق القرآن العظيم, الذي أنزل على محمد صلى الله عليه وسلم, أننا لا نخالف العهد في كلمة واحدة مما قلنا في هذا العقد, وإن خالفنا فالله تعالى شاهد بيننا والمعاقب لنا, وأنا الظلنطاضه دياقه غومس ذا الربيرة, المذكور قبل, نايبًا عن مولانا السلطان دون جوان صاحب قشتالة بأمره الكريم مفوض عليه بتقديمه وكتابه, أنا قابل منك يا دون يوسف سلطان غرناطة وراض به عن مولانا السلطان, دون جوان كلما قلته وشهدت به على نفسك, قد رضيت وأمضيت فيه عن مولانا السلطان صاحب قشتالة, وعهدتك عهدًا

صحيحًا، وقولاً صادقًا لا شك فيه، عن مولانا السلطان صاحب قشتالة الصلح بطول أيامكم يا ذون يوسف سلطان غرناطة، وأيام مولانا دون جوان، وأيام أبنائكم، وعلى شروط الإصلاح الصحيحة، وعلى حسب العوايد بين الملوك من النصارى والمسلمين، والعهود الصحيحة بينهم، وتسريح جميع الابرات بجميع البلاد النصرانية، وتأمين جميع التجار من النصارى والمسلمين، وليتوجهوا بجميع السلع الكسب، وجميع الأشياء المباح بيعها وشراؤها بين النصارى والمسلمين، إلى جميع البلاد تحت الأمن والحرمة من غير خوف عليهم ولا عارض يعترضهم في توجههم وإيابهم، لا يلزم أحد منهم غير الواجب الذي هو عادة بين النصارى والمسلمين، وكذلك معاونة مولانا السلطان صاحب قشتالة لكم يا ذون يوسف سلطان غرناطة على جميع من يعارضكم أو من يريد محاربتكم، أو فساد بلادكم من نصارى أو مسلمين، ونصرته لكم بما يمكنه، وكذلك يا ذون يوسف إذا توجهتم لخدمة مولانا إلى الكرنتش المذكور قبل، من عام أو أعوام، فإن الملازم المذكورة قبل، تخفف عنكم، وكذلك كل من يتوجه من المسلمين لبلاد مولانا السلطان صاحب قشتالة، انه لا يبيع لهم جوازًا لشرق أو لغرب، ولا يخفيهم معه، بل يكتب لهم بالشفعة لمولاهم ذون يوسف سلطان غرناطة، وعلى أن الأسارى المحررين إنما الحديث على القشتاليين خاصة، وأما غيرهم فلا حديث فيهم، وكذلك الفرسان الألف والخمسمائة فارس مرتبهم من السلطان ذون يوسف ثلاثة أشهر، وما زاد على ذلك فمن صاحب قشتالة مولانا دون جوان، وإذا توجه السلطان ذون يوسف إلى الكرنتش إنما يتوجه بنفسه وبمن يقتضى نظره بقليل أو بكثير، وتثبتوا بالقول في هذا العقد أن العشرين ألف دينار، المذكورة أعلاه، فهي توجه السلطان ذون يوسف بجيشه ومقدورته، يعاونه ذون جوان صاحب قشتالة وتخفف عنه، ومهمى وجه الالف وخمسمائة فارس فلا يخفف عنه، وتثبتوا قولنا في ذلك بالإيمان المذكورة قبل: وقد تم القول والعهد، وألزم الظلنطاضه المذكور ما قيل عنه، وما قال عن مولانا ذون جوان صاحب قشتالة، وشهد بما قال ذون يوسف سلطان غرناطة على نفسه بما قال، وفي نسختين بالعربي والعجمي، وفي حصن برضالش بتاريخ يوم الأحد السادس عشر لشهر شتنبر عام ألف وأربعمائة وواحد وثلاثين، يوافق السابع لشهر الله المحرم عام خمسة وثلاثين وثمان مائة، عرف للتدخيرة. ومن الاشهاد أننا الأمير أبو الحجاج يوسف بن المول سلطان غرناطة ومالقة وألمرية وجبل الفتح ووادي آش وبسطة وما إلى ذلك كله، نشهد على أنفسنا في هذا العقد المقيد أعلاه ونجدد الإيمان التي قيدت فيه، وعهدنا الله عليها، من الحمراء العلية بخطنا عليه وطابع المعلق بشراب الحرير في يوم الأحد السابع والعشرين لينير عام ألف وأربعمائة واثنين وثلاثين يوافق اليوم الثاني والعشرين لجمادى الأولى عام خمس وثلاثين وثمان مائة عرف للتدخيرة.



## Spanish version of the treaty of 1432<sup>202</sup>

1432 enero 27 Granada

Reconocimiento de vasallaje, por parte de Yūsuf IV, rey de Granada, hacia Juan II de Castilla

En el nombre de Dios el piadoso apiadador, la perdonança de Dios sobre nuestro señor e nuestro mayor Mohamad. Conoçida cosa sea a todos los que agora son o serán de aquí adelante como yo Amir Almuslemin Abulhagis Yaçaf rey de Granada Aben Arrays Abaudyle Mohamed Abenalmaul, acatando a las muchas merçedes e honrras e ayudas que yo falle en vos mi señor don Juan, rey de Castilla, etc., ove otorgado un contrabto de vasallaje e de otras çiertas cosas en la mi villa de Hardales a don Diego Gomes de Ribera, vuestro adelantado mayor de Andalusia e vuestro capitan mayor de la frontera e del vuestro Consejo, en vuestro nonbre, en que me obligue a servir a vuestra merçed, el qual dicho adelantado don Diego Gomez otorgo a mi otras cosas por parte de la vuestra merçed segund mas largamente en el se contiene, el qual es este que se sigue:

Sean quantos esta carta vieren como Dios don Yuçaf Aben Almaul, rey de Granada, desimos que por quanto reynando en el dicho reyno el rey Abuebdilch Mahomad, justo e valedero rey por derecho subçesion del dicho reyno, el perverso, cruel e tirano Mahomad el Isquierdo, olvidando el temor de Dios e la lealtad que devia el dicho señor rey Abuabdilch Mahomad, seyendo su vasallo, levantose contra el e injustamente ocupo el dicho reyno e lo que peor es por el mayor se apoderar del dicho reyno aunque contra derecho, mato cruelmente al dicho rey su señor natural e a Abuelhaçem Ali, su hermano, e detiene por la dicha tiranía la

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<sup>202</sup> In Luis Suárez, *Juan II y la Frontera de Granada*. Begins p. 39.

nonbrada e casa del dicho reyno con todas las cibdades e villas que le pertenecem, por lo qual nos con otros algunos caballeros moros del dicho reyno, non aviendo por rey al dicho Mahomad nin consintiendo en su pecado e grande error que fiso, acordamos de nos apartar del e nos venir a la merced e anparo del muy alto e muy poderoso nuestro señor el rey don Juan, rey de Castilla e de Leon, asy como aquel que es cabeça de España e a quien todos los reyes e otros grandes de ella se deven recorrer en sus neçesidades esperando ser anparado e defendido en la su señoria e ayudado de la su merçed e poderio para ganar el dicho reyno que a nos pertenesçe por deçeder del linaje e sangre real de los reyes que derechamente poseyeron el dicho reyno, el qual dicho nuestro señor el rey, estando e tenyendo sus huestes poderosamente sobre la çibdad de Granada nos siguiendo el dicho proposito nos venimos para la su merçed al su real. Por ende nos reconoçiendo las muchas honrras e merçedes que en el dicho nuestro señor fallamos, reçiendonos so el dicho su anparo por cosa suya, fasiendonos muchas merçedes e ayudas mas aun en nos prometer e dar el su favor e ayuda, con lo qual nos entendemos mediante la gracia de Dios lançar del dicho reyno al dicho tirano e desleal Mahomad e nos apoderar del dicho reyno e pues que tantos bienes e merçedes e onrras sin meresçimiento alguno nuestro avemos reçevido e fallado en la soberana nobleça e larguesa del dicho nuestro señor el rey, con grand razon e justiçia le somos e devemos ser muy tenidos e muy obligados a lo server muy lealmente en todos los dias de nuestro vida e despues los que de nos vinieren. Por todo lo qual otorgamos a vos el mucho onrrado cavallero don Diego Gomes de Ribera, adelantado mayor de la frontera por el dicho nuestro señor el rey, bien asi como sy la su real magestad fuese presente, e dezimos que nos fazemos vasallo suyo desde agora para en todos los dias de nuestra vida, cobrando o non cobrando el dicho reyno, e nos obligamos a lo server bien e lealmente a todo nuestro leal poder e

faser por su mandamiento o mandamientos todas aquellas cosas e cada una de ellas que bueno e leal vasallo deve e es obligado a faser e conplir. Otrosy prometemos que luego que la dicha Casa de Granada nos cobraremos e nos fuere entregada, daremos e entregaremos al dicho nuestro señor el rey o al su mandado todos los cativos christianos que a este tiempo fueren fallados en la dicha çibdat o en otras partes del dicho reyno aquellos que pertenesçieren al rey e a la dicha casa e los enbiaremos a su merced dentro de un mes despues que fuereamos apoderado en el dicho reyno. Otrosy prometemos por nos e por los que después de nos vinieren e heredaren el dicho reyno de non consentir que ningun christiano natural o subdito de los reynos de nuestro señor el rey sea tornado moro en el dicho reyno de Granada. Otrosy prometemos por nos e por los dichos nuestros hedederos, nos cobrando el dicho reyno e la dicha Casa, dende en adelante de dar e pagar cada un año perpetuamente en serviçio al dicho nuestro señor el rey veyne mill doblas de oro valadies de justo peso, levadas a costa nuestra a doquiera que la su real magestad estoviere en qualquier çibdat o villa de todos los dichos sus regnos, e otrosy prometemos por nos e por los dichos nuestros herederos que después de nos heredasen el dicho reyno de servyr al dicho nuestro señor el rey con mill e quinientos de cavallo pagados a sueldo nuestro e ge los enbiar a do el mandare en qualquier menester quell aya e entendiere que cumpla a su serviçio e la su señoria no los enbiare demandar. E sy tal caso fuere que por la su persona del dicho nuestro señor el rey fuese con las sus huestes contra qualquier o qualesquier adversarios suyos que agora son o fueren adelante, que en tal caso nos por nuestra persona e con toto nuestro poder lo yremos server asy por mar como por tierra a do la su señoria mandare a costa nuestra, enpero aquel año o años que al tal serviçio ovieramos de yr por nuestra persona e con todo nuestro poder, que seamos relevado del cargo de las dichas veynte mill doblas que prometido le avemos a pagar en

cada un año e non seamos obligado dellas en aquel año o años en que el dicho servicio ovieremos a fazer por nuestra persona e con todo nuestro poder. E otrosi prometemos que quandoquier que el dicho nuestro señor el rey ayuntare e toviere sus Cortes en qualquier o qualesquier de las çibdades o villas de los dichos sus regnos que son aquende de los puertos mayores que estan cabe Toledo, syendo nos para ello llamado, yremos a las dichas Cortes por nuestra persona, e quando las dichas Cortes se ayuntaren en qualquier de las otras çibdades o villas de los dichos reynos que son allende de los dichos puertos mayores que estan allende Toledo, que seamos tenido e obligado nos a enbiar a las dichas Cortes en lograr nuestro, nuestro fijo mayor que ovieramos, e sy fijos non ovieremos embiaremos otra persona del nuestro linaje, la mas honrrada e mas allegada a nos e que mayor estado tenga en el dicho nuestro reyno. En lo qual todo como es dicho e delarado otorgamos e prometemos por nos e por todos los que despues de nos heredaren el dicho reyno de Granada, de tener e faser e guardar en todo bien e conplidamente como leales e fieles a verdaderos vasallos, como dicho avemos. E para mayor firmeza e seguridad juramos e prometemos por el santo nombre de nuestro señor Dios uno Todopoderoso a al su santo profeta Mahomad Aboabdile e por el Alcoran que con el nos enbio e por todas aquellas juras que todos los moros devemos guardar e non perjurar, que bien e fiel e lealmente faremos e conpliremos e guardaremos todo lo sobre dicho a todo nuestro leal poder, e asy non la fasiendo e cunpliendo venga sobre nos la maldición de nuestro señor Dios e conprehendanos la su yra e su justiçia en todos nuestros fechos e en aquellos que mas menester ayamos la su ayuda nos sea en contrario. E yo el dicho adelantado que presente so a lo sobredicho por parte del dicho nuestro seyor el rey e por el reçibo todo lo que por vos el dicho don Yuçaf Abenalmaul rey avedes dicho e prometido e otorgado e vos fasiendolo e guardandolo

asy vos aseguro quell dicho señor rey vos reçebira e avra por su vasallo e vos tomara en su guarda e encomienda e vos defendera e anparara de todas e qualesquier gentes asy reyes como otras personas que sean que contra vos se muevan e movieren e vos guardara como a vasallo suyo e vos ayudara e dara su favor para vos escusar de qualquier mal e daño e injuria de aquellos que contra vos se movieren. E otrosy que en tanto que vos el dicho rey don Yuçaf Abenalmaul e vuestros herederos fueredes reyes del dicho reyno e quisieredes e quisieren guardar al dicho rey nuestro señor la lealtad que devedes e deven asy como buenos e leales vasallos todas las cosas por vos en esta carta otorgadas e prometidas, el dicho señor rey mandara tener abiertos los puertos de entre los dichos reynos para que libremente entren e salgan destos dichos reynos al dicho reyno de Granada e del dicho reyno de Granada a estos regnos todos los mercadores e otras personas quales quier e traygan e saquen todas las mercadurias que se acostunbraron e usaron sacar destos reynos quando las otras veses las dichos puertos estovieren abiertos, pagando los derechos acostunbrados, e mandara a todos sus subditos e naturales bevir en buena pas con el dicho reyno de Granada por tierra e por mar e trabtallos como a vasallos suyos e acaesçiendo que alguno se alçare con fortaleza alguna en el dicho reyno contra vos, vos seyendo reçebido por señor del dicho regno e aviendo menester ayuda del dicho señor rey contra aquel o aquellos que asi contra vos se alçaren quell dicho señor rey vos enviara ayuda e la gente que nescesaria vos fuere asy por mar como por tierra de los sus naturales e vasallos fasta vos recobrar la fortaleza o fortalezas que rebelada o rebeladas vos fueren, e sy algunos grandes onbres de vuestro reyno se quisieren pasar a los reynos del dicho señor rey por vos deservir e ser contra vos e por se querer pasar allende que el dicho nuestro señor non lo reçebira nin consintira pasar allende mas que vos escrevira sobre ello e los ganara perdon de vos. Lo qual todo como dicho he aseguro quel dicho

señor rey aprovara, e aviendolo por firme mandara dar su carta dello e lo otorgara e previllejo qual la su señoria entendiere que cumpla en el dicho caso. De lo qual todo nos el sobredicho rey don Yuçaf Abenalamaul por nos e por los dichos nuestros herederos que después de nos heredaren el dicho reyno. E yo el dicho don Diego Gomes adelantado por el dicho señor rey e en nombre suyo otorgamos dos cartas en un tenor la una escripta en letra castellana e la otra en lengua arabiga. Fecha esta carta en Hardales, villa del dicho reyno de Granada domingo dies y seys dias de setiembre año del naçimiento del Nuestro Señor Ihesu Christo de mill e quatroçientos e treynta e uno años. E por quanto se puso en la carta del aravigo que se avia olvidado de poner en la castellana que quandoquier quell dicho nuestro señor el rey de Castilla enbiare pedir los mill e quinientos de cavallo al dicho rey don Yuçaf que ge los enbie pagados de sueldo para tres meses e sy mas tiempo estovieren quel dicho señor rey los mande pagar e que sy el caso viniere quel dicho rey don Yuçaf aya de yr por su persona e con su poder a serviçio del dicho señor rey que vaya a costa suya del mesmo e que viniendo por su persona e a su costa con su poder como dicho es al dicho serviçio del dicho señor rey de Castilla que en el tiempo en que el dicho serviçio estoviere sea relevado de las dichas veynte mill doblas, e quando a las Cortes viniere trayga consigo la gente que le pluguiere pero que por su venida a las Cortes non se escuse de las dichas veyne mill doblas. E por fin del dicho contrabto estava escripta una señal de firma araviga que desia firme es esto. Diego.

E agora yo el dicho rey don Yuçaf Abulhagis Abenalmaul, vasallo de vos el dicho mi señor el rey don Juan de Castilla, acatando las muchas merçedes que de vos el dicho mi señor rey resçebi e como con la vuestra ayuda so puesto e apoderado en la Casa del mi reyno de Granada e he resçebido de la vuestra señoria tantas merçedes que por mucho que a vuestra merçed serviese

yo non lo podria satisfacer estando en mi libre poder syn fuerça e syn premia que persona alguna me faga e apoderado de la mi Alfanbra e çibdad de Granada e en otras çibdades e villas del dicho reyno, otorgo e retifico e he por firme e valedero el dicho contrabto suso encorporado que entre el dicho don Diego Gomes de Ribera, adelantado en nonbre de vos el dicho my señor don Juan, rey de Castilla e yo fue otorgado en todo e por todo segund que en el se contiene y si nesçesario es para mayor firmeza agora de nuevo otorgo e prometo por mi e por todos mis herederos e subçesores que despues heredaren el dicho reyno de Granada, que seremos sienpre a vos el dicho mi señor don Juan rey de Castilla e a vuestros herederos e subçesores que despues heredaren el dicho reyno de Castilla buenos e leales e verdaderos e derechos vasallos e servidores e a los que despues de vos heredaren los dichos regnos faremos e conpliremos todas las otras cosas e cada una dellas en el dicho contrabto suso encorporado contenydas. E por mayor firmesa juro e prometo por el santo profeta Mahomad Aboabdile e por el Alcoran que con el nos enbio e por todas aquellas juras que todos los moros devemos guardar e non perjurar de lo tener e guardar e conplir agora e por sienpre jamas yo e los dichos mis herederos e suçesores que despues de mi heredaren el dicho reyno de Granada en todo segund en el se contiene, e firmolo de mi letra e sellolo con mi sello de . . . pendiente en filos de seda. Fecha en el Alfanbra de Granada a veynte e siete dias del mes de enero año del naçimiento de mill e quatroçientos e treynta e dos años.

## Vermilion letter attached to the treaty of 1443<sup>203</sup>

In the name of God the compassionate the merciful. God's salvation be upon our prophet Muhammad, and upon all the members of his house. Let those who may see or hear this letter know how We, servant of God, the king who is victorious with God, Muhammad, son of the king Abelgoyos Nacer, son of the king Abonandali, son of the king Abihaged, son of the king Abilgualid and Besonacer – may God accord them his blessing and guide them the path of his guidance -, we command for Ourselves and for our kingdom of Granada to You, the great and high king, known as Don Iohan, king of Castille and of Leon, and to your kingdom and domain, by means of friendship that is between Us and You, and the goodwill that is between our ancestors and yours, we commit to You at present the quantity of thirty and two thousand doblas of valid gold, good and of just weight, and that each one of them shall be of fine gold just as any of the doblas of the said king of Castille, of those that are used in the time of the date of this letter. And these shall be paid in four payments in Granada: the first payment with eight thousand doblas of named gold, and this shall be in the month of July of the year of one thousand four hundred and forty and three years of the era of Maceli; and the second payment, eight thousand doblas of named gold, and this shall be in the month of October of the said year; and the third payment, eight thousand doblas of named gold, and this shall be in the month of October of the following year; and the fourth payment, eight thousand doblas of named gold this

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<sup>203</sup> The translation is my own, from the text established in José Enrique López de Coca Castañer, “Acerca de las relaciones diplomáticas castellano-granadinas en la primera mitad del siglo XV,” *Revista del Centro de Estudios Históricos de Granada y Su Reino* 12, 1998, pp. 11-32.



is in the month of October of the following year of one thousand and four hundred and forty and five years of the era of Maceli. And we oblige ourselves as well to pay all of the aforementioned, of Christian captives, old and young, men and women, that may be truly captive, seven hundred and thirty and three; and the king of Castille shall select up to thirty according to his will, be they foreigners or any others; and should we fail to meet the said number, that we shall give for each one of them thirty doblas of the aforementioned gold; and that these shall be given in four payments, and each payment shall consist of one hundred and eighty and three captives with the sum of the required gold aforementioned. And all of the Christians who might live in the land of Moors, who wish to leave for the land of Christians, that this shall be allowed them according to their will safely. And this by reason of the peace of four Latin years following. And if the said conditions and promises in it and condition that he receive the gold and captives that are with the power of the high king of Castile, and this letter shall be given in Granada, we promise upon Ourselves to accomplish this at the required times, for reinforcement of our word, and we place upon it the letter of our hand and our accustomed seal as public witness upon Ourselves to accomplish it. This was written in Granada – may Almighty God protect her -, Wednesday, the ninth day of the month of Naguel the very blessed, of the year of five and forty and eight hundred. It is certified.

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