

1. Islamic law — Early works to 1800. 2. Islam — Relations — Christianity. 3. Christianity — Relations — Islam.

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SOME ASPECTS OF THE LEGAL POSITION OF CHRISTIANS UNDER MĀLIKĪ JURISPRUDENCE IN AL-ANDALUS

BY
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Of the different schools of jurisprudence in Sunni Islam, the Mālikī school was the one to gain prominence in the West Mediterranean: North Africa, al-Andalus (Muslim Spain) and Sicily, and to supplant the Ḥanafi school which had been in vogue earlier. Other schools were of minimal impact or of none at all. The Zahiriyah School, which was advocated by Ibn Ḥazm, was certainly without influence. Contrary to what our perception may be, on account of his renown as an intellectual and writer, Ibn Ḥazm had little impact, if any at all, on shaping religious life in al-Andalus, especially in so far as the legal system was concerned. In his Kitāb al-daḥīrah, Ibn Bassām al-Ṣantarīnī assembles some samples of literary invectives against Ibn Ḥazm describing him as «a sea whose wonders are unceasing but whose water does not satiate a thirst».

It may be that he had the most to say against Christians and Jews; however, his narrow approach, particularly as regards his interpretation of the Christian Scriptures, was of little import, at least during his lifetime. We should not overlook the fact that he was discredited in a public debate in Mallorca by his contemporary Abū al-Walīd al-Bāgī, a staunch Mālikī faqīh (jurisconsult) of the eleventh century in al-Andalus, and that consequently his writings were symbolically deprecated by being burnt in public. Sadly, we do not possess the details of the debate and cannot, as a result, determine the degree, if any, to which Ibn Ḥazm’s treatment of Christian Scriptures was included in the encounter. On the other hand, we

1) We shall pass over the prominence regained by the Ḥanafi school following the arrival of the Ottomans in North Africa west of Morocco.
3) IBN ḤAZM, Kitāb al-fiṣal bayn al-ẓawār wa-l-nihāl, 5 vol. (Cairo, 1964), particularly vol. 1 and 2.
know that al-Bāghī did not hesitate to acknowledge the conditional validity of Biblical Law, and not only when dealing with the legal status of *dimmā*.

The Mālikīs were disciplined and traditional, and may be appropriately described as *ahl taqlīd* (traditionalists) and not *ahl iqtishād* (innovators). They did not spare any effort to assert and maintain Muslim orthodoxy as they understood it: Sunnī in the tradition of Medina as established by Imām Mālik (d. A.D. 795) and as interpreted by Saḥnūn (d. A.D. 854) in his *Mudawwana*.

And in view of the principles upon which the Mālikī legal system was founded, the status of the Christians in the jurisprudential domain of the Mālikis, particularly in al-Andalus, was closely governed by the dictates of the Qur'ān, the traditions of the Prophet, as these were interpreted by the Mālikī jurconsults, as well as the circumstances under which the Christians came under Muslim rule. According to a dictum of Mālik in his *Muwatta*’, the subjugated Christians were either *ahl šulḥ* (‘treaty--Christians’) or *ahl ūnwaḥ* (‘conquered Christians’). The distinction arose from a question put to Mālik regarding Christians who accepted Islam. Would they be entitled to keep their wealth? Mālik’s response was that it depended on whether or not these Christians were brought under Islamic rule by treaty (*ahl šulḥ* or *muʿāhidūn*) or forcibly, by war (*ahl ūnwaḥ*).

Guided by this dictum, Mālikī *fuqahā* were scrupulous in maintaining that ‘treaty Christians’ were protected by the terms of the respective treaty of surrender that brought them under Muslim rule. It is not surprising that the terms and stipulations of the earliest extant treaty between Muslims and Christians in Spain in A.D. 711 (the ‘Treaty of Tudmir’) should be akin in tenor to those contained in earlier treaties: those granted by the Prophet to

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5) *Abū al-Walīd al-Bāghī*, al-Muntaqā: *šarḥ muwatta’ al-imām Mālik*, 7 vol. (Cairo, 1912, reprinted in Beirut, 1983), vol. 7, pp. 95–96; al-Bāghī responds to Abū Ḥanīfa’s exemption of those who wound from being wounded in return by citing the Qur’ānic passage, Sura 5:45, and adding ‘This has been cited in the Bible (ara’wařā); what has been legislated before us is applicable to us if it is also stated in the Qur’ān or an established tradition (huḏ al-ṣulḥ) of the Prophet.

6) *‘Abd al-Salām ibn Sa‘ūd Saḥnūn* (d. 854), al-Mudawwana al-kubrā li-Imām Mālik ibn Anas al-Asbaḥī, 5 vol. (Dār al-Kutub al-‘ilmiyyah, Beirut, 1994). Known also as *al-muṣṭafā‘īs*, this important work is based on responses by Ibn al-Qāsim al-Utaqī, a disciple and transmitter of the teaching of al-Imām Mālik, to Saḥnūn. Referring to the Mudawwana, subsequent writers may use the formula ‘as Ibn al-Qāsim said’.

the Christians of Nağrān, or by ʿUmar, the second caliph, to the Christians of Palestine and Syria. While the details in the text of one treaty may vary from those of another, the general drift and overall content of these treaties was constant. In return for fulfilling specified commitments and obligations, including the payment of the jizyah (tribute tax), the conquered Christians were entitled to the protection of God and the security of Muḥammad, the Prophet, the Messenger of God, which security shall involve their persons, religion, lands and possessions (the «Treaty of Nağrān»). Thus, following the pattern established by the Prophet, ʿUmar covenanted the people of Jerusalem «security for their person, their wealth, their churches, their crosses, their sick and healthy ones, and to the entire community».

Close to a century later, the «Treaty of Tudmir» assured the subjugated Christians of Spain «the guarantee of God and of Muḥammad that ... they shall not be taken into captivity nor would they be separated from their women or children. They shall not be killed; their churches shall not be burnt nor shall their cult objects be desecrated; they shall not be forcibly converted out of their religion».


9) See, for example, the treaty with the Christians of Lydda, applicable to all Palestine except Jerusalem, whose surrender was governed by a separate treaty; Al-Ṭabarî, Annales, ed. M.J. de Goeje (E.J. Brill, Leiden, 1870), Sser. I, vol. 5, pp. 2406-7; The History of al-Ṭabarî: An Annotated Translation, Ehsan Yarshater, General Editor (State University of New York Series in Near Eastern Studies, Albany), vol. 12, translated by Yohanan Friedmann, p. 192.


But by the beginning of the twelfth century a variant text of a pact between Muslims and Christians (of Syria), attributed to the Caliph ʿUmar (known as the «Pact of ʿOmar») and in which the Christians fare more abjectly, began to gain currency. This took the form of a letter written by the Christians of Damascus to ʿUmar in which they purportedly defined their terms of surrender. The text appears in the writings of such Muslim historians as al-Ṭurūṣī in Sirāḡ al-Mulūk (completed in A.D. 1122)12, and Ibn ʿAsākir in his History (begun in A.D. 1134)13. It should be remembered that both al-Ṭurūṣī, the earlier of the two authors who had migrated to the East from al-Andalus, and Ibn ʿAsākir were writing during a period of crises for Islam in their respective native countries. The text of this version of the treaty emerges after such cataclysmic events as the «crusade» against Barbastro in 1064, the fall of Toledo in 1085, and the launching of the First Crusade in 1096. The ongoing stab of these events overrode their apparent antiquity. Thus, the circulation of the «Pact of ʿOmar», as it appears in the writings of al-Ṭurūṣī and Ibn ʿAsākir, alongside the earlier, more conciliatory text, may indicate a growing ambivalence regarding the status of the indigenous Christians in the light of the European assault on the world of Islam. I am inclined, therefore, to regard this text as an expression of a new hardened attitude adopted by some Muslims, in al-Andalus and elsewhere, vis à vis the Christians, as well as a demonstration of the growing division of opinion in Mālikī circles regarding their legal status.

As in the case of the Jews, the Christians were left, as a marginal segment of society, to manage their own affairs with, by and large, little or no interference by the Muslims. The Muslim ruler was generally satisfied to entrust the administration of their affairs to one of their own, an official referred to as al-qāʾimis («Comes»). They were judged by their own magistrates according to the dictates of their own religious laws and customs. In certain circumstances, they appeared before a Muslim judge and their cases were dealt with according to Islamic law. Such circumstances included litigation


involving non-Christians (Muslims or Jews), intermarriage and sexuality involving Muslim women, conversion and apostasy, charges of blasphemy, acts of treason, sale of alcohol to Muslims, or social dealings. Elsewhere\textsuperscript{14}, I have dealt with the social status of the Christians as viewed by some Mālikī fuqahā and cited, among others, the fatwā relevant to this subject by Abū al-Ḥasan al-Qābisi (A.D. 935-1012), one of the leading figures in Mālikī jurisprudence in the tenth century, whose views held sway in subsequent periods. In response to a judicial query he said,

«Do not associate with someone whose religion is different from yours; that is safer for you. There is no harm in doing your neighbour a favour if he asks you and if what he asks for is not sinful. There is no harm either if you are to respond to him with kind words providing that this does not unduly magnify him or place him in a rank of honour higher than his own, nor should it make him pleased with his religion. If he greets you [with the greeting 'Peace be upon you'], your response should be 'And upon you'. You should add nothing else. There is no benefit in your inquiring about his well-being or that of those who belong to him [his family]. Do not exceed or go too far; however, fulfil what is required by neighbourliness»\textsuperscript{15}.

Events of the second half of the eleventh century (leading up to the First Crusade) were a watershed in relations between Christians and Muslims as well as in the social and legal attitudes of the latter toward their Christian subjects. It is noteworthy that it is not until the second half of the eleventh century that we begin to find closer attention being paid in the writings of the Muslims to the legal status of the Christians in al-Andalus. This may be due to various factors, notable among which was the growing desire of many Muslims in al-Andalus for a return to orthodoxy following the division and debauchery that had prevailed in their country in the eleventh century, during the age of the taifa kings\textsuperscript{16}. Another factor may have been the growing emboldenment of the Andalusian Christians themselves, perhaps as a result of the awakening of Christian Europe to the fact of the Muslim-Christian dichotomy in Spain, a land that came to be claimed as belonging to St. Peter. This awakening was certainly prompted or at least stimulated by the devel-

\textsuperscript{14} «Arabic-speaking Christians in al-Andalus in an Age of Turmoil (Fifth/Eleventh century until A.H. 478/A.D. 1085)», in al-Qantara: Revista de Estudios Árabes (Madrid), vol. XV (1994) 401-422.


\textsuperscript{16} I discuss this in «Muslim revival in Spain in the fifth/eleventh century: Causes and ramification», in Der Islam 67 (1990) 78-110.
opment of the pilgrimage to Santiago de Compostela. In other words, the weakening position of the Muslims and the steadily strengthening position of the Christians of Europe necessitated a re-examination of the terms of the relationship between a weakened master and a steadily strengthening subject who was increasingly viewed, not always without justification, as a collaborator with the enemy.

From the simultaneous circulation of two variants of a treaty governing the surrender of the Christians and their consequent status under Muslim rule, it may be suggested that the Mālikī jurisconsults (fuqahā') were divided into two camps, each viewing the status of the Christians in the light of the text of one treaty or another. But regardless of their respective points of view, it became the task of Mālikī jurisconsults to elaborate on the terms ahl sulh and ahl 'anwah, terms employed by Imām Mālik as the basis on which the resolution of legal issues involving Christians should be established.

One of the most influential among the Mālikī fuqahā' to address the issue of the status of Christians was the eleventh-century jurisconsult Abū al-Walid al-Bāghī, mentioned earlier. In his al-Muntaqā, a commentary on the Muwatta' of Mālik, al-Bāghī attempted to define the technical distinction between the two groups of Christians, ahl sulh («treaty Christians») and ahl 'anwah («conquered Christians»). According to him, treaty-Christians included those who fought in defence of their country until they arrived at a peace agreement with the Muslims, paying in return a sum of money, the jizyah, or another form of tax. What they contracted to keep in their possession was protected by the treaty, be it land or other property (māl sulh). However, if a people fought until they were forced to sue for peace, according to which they were given safe passage away from their property, or the permission to live under protection (dimmah) on their property, and unless stipulated otherwise in the terms of surrender, that property was not to be considered as treaty-land. He took great pains to distinguish between making peace after fighting (qitāl) in defence of their lands by the Christians, and forcible defeat ('anwah). The latter may be defined as «those who fight to the end, missing the opportunity of making peace». In either case, al-Bāghi emphasized that the Christians' status was determined primarily by the terms of the treaty that brought them under Muslim rule.

One of the dominant themes in the extant corpus of judicial deliberations by the Mālikī fuqahā' relevant to the Christians was the issue of the

construction of churches and the maintenance of existing ones. It was not uncommon for churches to be used as places of worship by Muslims before being completely converted to or replaced by mosques. The case of the churches in Ḥamā and Damascus, in Syria, and Córdoba, in Spain, are good illustrations. But these should be seen in a different light from the case in which churches were demolished intentionally, without there being a need to make space for the construction of mosques. The latter case would arise if the fiqahā were able to convince the ruler that a specific church had been constructed after the Muslim conquest and, therefore, was in violation of the treaty of surrender by the Christians. One of the earliest recorded cases in al-Andalus in this regard was the destruction of a church in Granada which occurred during the reign of the Almoravid prince Yusuf ibn Tāṣfīn (d. A.D. 1106). Quoting the lost work of Ibn al-Ṣayrābī, Ibn al-Ḥaṭīb reports on the episode as follows:

«They [the Christians] had a famous church, in the direction of the Gate of El-vira, about twice the distance of an arrow shot (gahwatayn) from the city, at the intersection of the road to Qūqar (Cuejar). It was constructed by one of their leaders who had been called by one of its (Granada’s?) rulers to serve in the cavalry of Christians (istarkabahu ba’šu umarā’ihā fi ḡayṣ ḥaṣīn min al-rūm). The church was unique in construction and decoration. Prince Yusuf ibn Tāṣfīn ordered its demolition upon the insistence of the fiqahā and the counsel of their legal opinion. On Monday, before the end of Jumādā II, in the year 492 [23 May 1099] the people of the city (Granada) went out to destroy it. It was quickly flattened and despoiled.»

Regrettably, we do not know the circumstances that led the fiqahā to arrive at their decision. The cavalry referred to may have been in the service of the much disliked Zirids who governed Granada in the eleventh century, during the period of the taifa kings. It is quite plausible that the church was constructed at this time, and thus in violation of the treaty of surrender.

But in spite of the fact that this was a rare occurrence, the issue of the construction of churches was hotly debated by the Mālikī fiqahā. This was particularly true following the exile of the Christians of Granada to Morocco in 1126, after their treacherous collusion with Alfonso I against the Muslims. As a consequence of their exile, the legal questions confronting the

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fuqahāʾ concerned their abandoned property, including churches, and their desire to construct places of worship in their new places of residence.

In the case of churches being used as mosques, we find a ruling by ʿIyāḍ, a disciple of al-Bāġī and a well-known Mālikī faqīh and qāḍī in al-Andalus and the Maghreb during the first half of the twelfth century (he was qāḍī of Granada between A.D. 1136 and 1144). The ruling concerns a church and its property in an unidentified location in al-Andalus, formerly owned by Christians who had been exiled to Morocco. The inquirer points out that the abandoned church was turned into a mosque and that the property attached to it continued to be used, as during the period of its Christian ownership, to cover the expenses of the building and its functions. However, an official of the treasury of the Muslim state (bayt al-māl) wanted to expropriate the property for the benefit of the treasury without any legal authorization from the ruler. The question placed before ʿIyāḍ as whether or not the official, or even the ruler himself, could lawfully confiscate the property attached to the former church.

We are faced with two versions of ʿIyāḍ’s response, both reported by his son. In the first, ʿIyāḍ is reported to have said,

«The property of Christians and Jews (ahl al-dimmah) is not inviolable. However, if the person who has an inalienable right to it is alive and wants to either repossess or sell it, he should not be prevented from doing so. Dimmāt (Christian or Jewish) owners should not be interfered with if the property has always been in their possession. It is very fitting that, after the exile of the Christians, the person responsible for the affairs of the Muslims should turn the church into a mosque. For the Muslims who replace the exiled Christians in residence are in need of a place of prayer, and the leader should construct one for them. It is preferable in this case that he should turn the church into a mosque. For, following the deportation of its owners, the church and its property, abandoned by the Christians, belong to the Muslim treasury (bayt al-māl). We were the original donor alive and were he to return and reclaim his property rights, he would be granted these. But, it [the church and its property] has no real owner, and the Christians had the benefit of using it and its property by virtue of their living there. Once they have been banished from it, it becomes the property of the Muslims as it has no owner. Furthermore, it has not been established that they have the right to be dealt with as treaty-Christians.»


20) Abū al-Faḍl ʿIyāḍ and his son Muḥammad, Kitāb mašāḥib al-ḥukkām fī nawāzīl al-
Iyād’s son reports having come across an alternate fatwā in this regard which, unlike the previous one, was written by his father’s own hand. In it, Iyād emphasizes that the answer to the query depends on the legal status of the Christians in question and says, [inna] amr naṣārā al-andalus muskīl hal hum ṣulṭīyyūn wa-ṣuḥūhum ʿalā mā bi-aydīhim fa-yāgrī amruhum ʿalā mā bi-aydīhim maqrā al-ṣulṭīyyīn am hum ʿunwah wa-arḍīhum ʿunwah fa-yāgrī maqrā ahl al-ʿunwah... «The matter of the Christians of al-Andalus is problematic: are they treaty-Christians [the terms of] whose treaty applies to their property so that they can deal with it in the manner of ‘treaty-people’ (ṣulḥ)? Or are they a people brought in by force, whose land is conquered and who, therefore, should be treated as a ‘conquered-people’ (ʿunwah)?»

But, in view of the absence of a legal claimant to the property title, the legal findings are the same as in the previous text.

There is merit here in mentioning another jurist, not so much on account of his distinction but in view of the fact that he had something to say about the thorny issue of the construction of churches. The jurist in question was Abd Allāh ibn Abī Bakr al-ʿAṣnūnī, a fifteenth-century faqīh of Twāt (Morocco). He sought the legal opinion of the fiqāhāʾ of Fās and Tlimsān regarding a dispute that had erupted among the local fiqāhāʾ about his ruling in favour of the lawfulness of the construction of a synagogue by the Jewish population of Twāt, a desert town in Morocco. He was bitterly opposed by a group of his colleagues led by one named al-Mağīlī. The legal dispute was extended to deal with the lawfulness of the Christians either building or restoring churches. The questioner, the faqīh al-ʿAṣnūnī, had thoroughly conducted his investigation of the matter of the lawfulness of the construction of places of worship by the dīmās (Christians and Jews) and supported his favourable decision by citing two specific circumstances on which earlier jurists had given a similar positive legal opinion. The first circumstance, in which the distinguished faqīh Ibn al-Ḥaqqī gave an opinion, concerns a request by Christians who came to Morocco from al-Andalus for permission to build a church. Ibn al-Ḥaqqī concluded that, as these were treaty-Christians, the terms of their treaty were portable and applied to them wherever they went, and that Muslim faithfulness to the terms of the treaty


22) Details of the following debate are preserved by AL-WANŠARĪSĪ, al-miʾyār, vol. 2, pp. 214ff.
was obligatory (wāqīb). He further concluded that each group (jā'ifah) among the Christians was entitled to construct a church in which to conduct their rites of worship. On these issues, concluded Ibn al-Ḥaḍrā, there was no disagreement among Mālikī scholars; the only restriction was that the Christians should ring no bells. Citing this precedent, the faqih of Twāt reminded the jurists of Fās and Tlīmsān, to whom he addressed his query, that the Christians in question had moved to Morocco involuntarily (in the twelfth century) in view of the ruler’s fear of their treason.

The second precedent cited by al-ʿAṣnūnī pertained to a church built by the Christians in their own district in the city of Tunis, which they equipped with a dome. When questioned about their action, the Christians produced the text of the treaty that brought them under Muslim rule in which it was found that they could not be restrained from building churches. As for the dome, the Christians argued that it was needed for lighting the church an argument that was accepted by the Muslims at the time.

Thus, al-ʿAṣnūnī sought an opinion on his conclusion that whoever was in authority should permit the non-believers (Christians and Jews) to build places of worship of their own. However, he pointed out that his conclusion was opposed by other faqahā who among whom was al-Maḡlī, who counselled the obligatory destruction of such churches. According to the questioner, al-Maḡlī argued that there was no disagreement on the necessity to destroy newly-built churches and that anyone who opposed this conclusion was an imposter (daḡgāl). According to al-ʿAṣnūnī, his opponent argued that the destruction of synagogues and churches was obligatory even at the cost of human life. «Whosoever dies in the course of destroying them shall enter Paradise», argued al-Maḡlī, «and anyone who opposes that position is a resident of the Fire». The questioner informed his addressees that al-Maḡlī went further to claim that any faqih who counsels the preservation of churches (and synagogues) «shall burn in the Fire for he has supported the religion of disbelief and established a house wherein the Prophet is cursed». Al-ʿAṣnūnī then summarized the arguments of his opponents and the judicial references they cited in support of their arguments, which deal primarily with the legal definition of the various territories of the realm of Islam and the application of the prohibition of the construction of churches in them. He concluded his query by complaining about his opponents’ employment of language, foreign to him, that denigrated Christians and Jews.

The response of the muftī and faqih of Tlīmsān, one of the two to whom the question was addressed, was remarkable and warrants presentation, al-
beit in summary fashion. He said that according to Muhammadan Law (al-ṣaḥīḥ al-muḥammatiyyah) and its interpretation by the Mālikīs, the destruction of churches as described in the question before him was unlawful and that agitation against this position (as in the case of al-Maġūl) arises from the lack of juristic scholarship, as a result of which the agitator is misled by generalizations drawn from specific situations. The issue raised by the opponents pertained to the construction of churches by Christians in locations founded by Islam (iḥtiṭāf), whereas the issue at hand was that of the lawfulness or unlawfulness of the destruction of existing churches. He added that while churches could not be built in cities of Muslim foundation (iḥtiṭāf), treaty-Christian who moved from one location to another were permitted to construct churches in their new places of residence, for «the covenant of protection granted by the Muslims is not variable and applies to all Muslim lands»23. However, the Christians would not be permitted either to ring church bells or to recite their Scriptures publicly.

As expected by the Mālikī judicial system, the muftī of Tlimsān had to take cognizance of existing Mālikī dictums regarding the construction of churches and to bring his conclusion into harmony with these. The first was expressed in al-mudawwanah, where Saḥnūn states, lā yaḡūzū li-muslim an yuḵrī dārahū aw yabʿāhā mimman [li-man] yattaḥḏūhū kanṣah aw bayt nār, «it is not permitted for a Muslim to rent or sell his house to someone who would turn it into a church/synagogue or a (Zoroastrian) fire temple»24. The other dictum comes from al-Ŭibbiyyah, the leading Mālikī code in al-Andalus, where it is stated, laysa li-ahl al-dimmah an yuḥḍītī bi-balad al-islām kanṣah («The ḍimmā are not permitted to construct [new] churches in the land/city of Islam»).25 The application of these dictums, according to the muftī of Tlimsān, hinged on the definition of the term balad al-islām. He argued that according to Mālikī jurisprudence there were three types of terrain: the first was arḍ li-l-muslimin, «land that belongs to the Muslims». This included arḍ muḥtaṭah, which applies to cities of Muslim foundation such as at Kūfah, Baṣrah, Fustāṭ, al-Qayrawān. The second was land that belongs to treaty-people (arḍ li-l-ṣulṭānīn). The third was land that was forcibly conquered (arḍ al-ʿanwah) which, according to some, is also the property of Muslims but, according to others, would be similar to the land of the treaty-people if the Christians were to continue living in it. The force of the dic-

tums from *al-mudawwanah* or *al-‘Uthbiyyah* applied to the first terrain, whereby churches could not be built. But neither the concept of *balad al-islām* nor the prohibition contained in the dictums could be applied to the second terrain. On the other hand, the construction of churches in the third terrain depended on whether or not it was considered to be the property of Islam.

The *mustāfi* of Tlimsān appears to have been of considerable repute on the issue of the construction or demolition of churches. According to al-Wanṣarīṣī, his opinion was sought regarding the proposed demolition of a church in Jerusalem, counselled by some of the *fuqahā‘*, but opposed by the *mustāfi*. The circumstances of the proposed demolition are not clear, nor are the names of the *fuqahā‘* involved in the recommendation given. From the response of the *mustāfi*, however, it appears that the church in question pre-dated the Muslim conquest. Here again, he argues that as Jerusalem was taken by means of a peace treaty, the terms of the treaty apply. «According to the *mudawwanah*,» he argues, «treaty-Christians are permitted to construct churches in terrain governed by treaty. How, then, can a church built before Islam be destroyed?»

While the debate to which the *mustāfi* of Tlimsān was responding pertained primarily to the matter of the construction of a synagogue in Twāt, it turned to the issue of churches even though there had not been a church-related issue under discussion. There were many issues involving Christians on which there was little disagreement, if any at all, among the Mālikī *fuqahā‘*. These included social behavioural matters such as greetings, dress, general conduct of Christians and their social relations with Muslims, and even responses on such occasions as sneezing. But none was as frequently debated or mentioned in the legal literature as was the construction of churches. Architecture is a banner of a religious community and the symbol of its vitality. While its inscriptions pertain to Jesus, Son of Mary, the Dome of the Rock in Jerusalem was constructed primarily to counter the emblematic power of the Church of the Resurrection. In similar fashion, a Christian church in the land of Islam symbolized the vitality of a community in spite of its weakness. In such circumstances, it is understandable that the Christians would seize any occasion to enhance their status by repairing or constructing churches. But it is also equally understandable that, armed with the law and the terms of a treaty of surrender, the Muslims would move to re-

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26) AL-WANŠARĪṢĪ, al-*mi‘yar*, vol. 2, p. 228.
strain such attempts. Undoubtedly, no time is more crucial for the suppression of such Christian emblems than moments of predicament experienced by Muslim society. As a consequence of the weakening of Islamic society, in al-Andalus or elsewhere, following the cataclysmic events of the eleventh and twelfth centuries, the issue of the construction or maintenance of Christian churches became increasingly symbolic of the growing struggle between Islam and Christendom. As a result of the weakening and humiliation of Islam, the conflicting views of the fiqhā regarding the legal status of Christians became increasingly stringent without, however, losing sight of the obligation to continue to abide by the dictates of treaties and the law that in the first place gave the cover of protection to the Christians.

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