AN ARCHITECTURAL INVESTIGATION OF MARINID AND WATTSID FES MEDINA (674-961/1276-1554), IN TERMS OF GENDER, LEGEND, AND LAW

by

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The candidate confirms that the work submitted is his own and that appropriate credit has been given where reference has been made to the work of others.
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ABSTRACT

Early and medieval Muslim culture exhibits a preoccupation with boundaries. Called "wall thought" in the dissertation, this preoccupation takes exemplary architectural form in the high-sided, labyrinthine structure of Fes' walled city, or medina. In Islamic law, it takes the form of The Book of Walls, a genre pertaining to the regulation of external and party walls within the medina environment. In the gendered aspects of Islam, it commonly takes the form of women's enclaustration and veiling.

The locus of all these and other aspects of "wall thought", the medieval medina of Fes presents a sociologically interesting environment, but one whose nature has never been investigated. The following dissertation represents an attempt to correct this. Demonstrating the medina to be defined and determined by its walls, the dissertation uses the legal genre The Book of Walls to identify the meaning of a wall in medieval Muslim thought. Applying this meaning to Fes medina, the dissertation arrives at a conclusion concerning the nature of its environment. Lastly, the dissertation compares this deductively reached conclusion with one inductively reached by way of Fes' medieval historiography, including the foundation legend recorded there.

As an interdisciplinary investigation, the dissertation comprises a number of subjects from within the academic field of Middle Eastern Studies, including Maghribi history and historiography, Islamic law, gender and urban studies. Its predominant concern is architectural, attentive to the spaces architecture bounds and people inhabit.
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ARABIC TRANSLITERATION AND SPELLING OF FOREIGN WORDS

The transliteration of Arabic follows the system established by the *International Journal of Middle Eastern Studies*. In the instance of *alif* of the accusative voice, this is shown in superscript, vocalised with *tanwin*.

The following dissertation addresses a question that in principle pertains to any human environment: the nature of place. It is a question that has recently come to prominence in other areas of academia, but which has yet to have much impact in the field of Middle Eastern Studies. This is a missed opportunity;


There are, of course, many important studies of individual localities in the Muslim world, but to the best of my knowledge these neither take as their point of departure theories of place and/or space, nor make as their goal the nature of the place under discussion. Meanwhile, the following titles focus only indirectly upon place, treating instead related issues such as proxemics, for example. Françoise Navez-Bouchanione, Habiter la ville marocaine (Paris/Casablanca: L'Harmattan/Gaëtan Morin Éditeur, 1997); Barbara Daly Metcalf (ed.), Making Muslim Space in North America and Europe (Berkeley: University of California Press, 1996); Joëlle Bahloul, The Architecture of Memory: A Jewish-Muslim Household in Colonial Algeria, 1937-1962, trans. Catherine du Peloux Ménagé (Cambridge: Cambridge University Press, 1996); Suha Özkay (ed.), Faith and the Built Environment: Architecture and Behaviour in Islamic Countries (special issue of Architecture & Comportement/Architecture & Behaviour 11, no. 3-4, 1995); Pierre Guichard and Jean-Pierre Van Staëvel, "La casa andalusf: Ensayo de lectura antropológica," in Julio Navarro Palazón (ed.), Casas y palacios de al-Andalus (Barcelona: Lunwerg Editores S.A., 1995), 53-61; Clinton Bennett, "Islam," in Jean Holm with John Bowker, Sacred Place (London:
for not only does the question render corporeal and three-dimensional concepts important to the field, such as territory and sexual difference;\(^3\) but according to the Andalusian mystic Ibn al-\'Arabi (d. 638 A.H./1240 C.E.), at a certain level it is also a Muslim question: "Places affect subtle hearts.... Just as spiritual dwellings differ in excellence, so, too, do bodily ones (Li-al-amākīna fi al-qulūb al-latīfa ta’thir".... Fa-ka-mā tatafādalu al-manāzil al-rūḥāniyya ka-dhālika tatafādalu al-manāzil al-jusmāniyya).\(^4\)

The question could have been asked of any Muslim environment, but I have chosen Fes, specifically Marinid and Wattasid Fes,\(^5\) for reasons that will be

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\(^5\)The Marinids (Banū Marīn) and their cousins the Wattasids (Banū Wattās) were the fifth and sixth ruling dynasties of Fes and Morocco (al-Maghrib al-Aqsā\(^\prime\)), and the dates given for them here represent the years they controlled and made of Fes their capital (with the exception of a seven-year hiatus from 869/1465, when Fes was under local rule). As individual dynasties, their dates are 668-869/1269-1465 and 876-961/1472-1554, respectively. See Maya Shatzmiller, "Marinids," in Encyclopaedia of Islam, 2nd ed. (Leiden: E.J. Brill, 1954-2002), 571-574; E. Lévi-Provençal, "Wattāsids," in The Encyclopaedia of Islam: A Dictionary of the Geography, Ethnography and Biography of the Muhammadan Peoples (Leiden: E.J. Brill, 1913-1938), 1134-1135; see also Chapter One. Prior to the Marinids and Wattasids, the dynasties of Fes and Morocco were the Almohads (al-Muwāḥḥidūn), from 514-668/1120-1269; the Almoravids (al-Murābīṭūn), from 462-541/1069-1146; the Zenatas (al-Zanāta), from 377-462/987-1069; and the Idrisids (al-Adārisa), from 172-337/789-949. Subsequent to the Marinids and Wattasids, the two other dynasties of Fes and Morocco were the Saadids (Banū Sa\’d), from 961-1069/1554-1659; and the
further elucidated in the following pages and next chapter. They include: Fes' status in Islamic urban studies, making it the logical academic choice; its medina's celebrated labyrinthine structure, suggesting an environment of pronounced character; and its extant medieval historiography, presenting a civic identity open to analysis. Customarily divided into three parts, Fes (Fās, also transcribed as Fez and Fes) currently comprises: 1) Old Fes ("l-Madina" in Moroccan dialect, Fās al-Bāli in Standard Arabic), consisting of the medina founded in 172/789 by the eponym of the Idrisid dynasty and grand patriarch of contemporary Morocco, Alawids (al- ’Alawiyya), from 1069/1659 to the present day. See Roger Le Tourneau, "Fās," in Encyclopaedia of Islam, 2nd ed., 818-21; see also this encyclopaedia's entries on the individual dynasties. With the exception of the Idrisids and Zenatas, the dates given for the dynasties follow Muhammad b. 'Abd al-Hādi al-Manilni, al-Masādir al-'arabiyya li-tärikh al-Maghrib, 2 vols. (Rabat: Publications de la Faculté des Lettres et des Sciences Humaines, Université Mohammed V, 1404-1410/1983-1989), 1: 28, 39, 65, 117, 133, 157.

On literary celebrations of Fes' structure, see, inter alia, Edmondo De Amicis, Morocco: Its People and Places, trans. C. Rollin-Tilton (New York: G. P. Putnam's Sons, The Knickerbocker Press, 1888), 201-203; Paul Bowles, The Spider's House (London: Random House, 1955), passim; Anaïs Nin, The Diary of Anaïs Nin 1934-1939, (New York: The Swallow Press/Harcourt, Brace & World, Inc., 1967), 71-81; and idem, "The Labyrinthine City of Fez," in idem, In Favor of the Sensitive Man and Other Essays (New York: Harcourt Brace Jovanovich, 1966), 119-130. For a critical reading of some of these and other descriptions of the medina, see Mohamed Alaoui Belrhiti, Fez: Lieu d'écriture (Casablanca: Afrique Orient, 1988), 39-50; and Burke, "Fez," 1. Regarding these critical readings, I am aware that in referring to Fes medina in terms of a labyrinth, I, too, risk accusations of a wrong kind of orientalism. It is, after all, nowadays understood that the medina is not the chaotic, randomly organised place that it was once popularly thought to be - an environment indicative of the indigene's equally chaotic mind; but a regulated, readily defensible and environmentally efficient habitat, catering for a sizeable population. But one loses too much in rejecting the adjective 'labyrinthine'; for when the negative and mythical connotations of this word are unpacked, one is left with a term that means winding, interconnecting passages bordered by insurmountable and seemingly impenetrable walls. Such is a reasonable description of Fes. For a contrary opinion (concerning Rabat medina), see Michèle Jolé, Abdelkabir Khatibi, and Mona Martensson, "Urbanisme, idéologie et ségrégation: Exemple de Rabat," in Annales Marocaines de Sociologie (1970): 35-37. For two recent works giving due importance to the labyrinthine form of medinas in general, including Fes, see Dominique Clevenot, Une esthétique du voile: Essai sur l’art arabo-islamique (Paris: Éditions L'Harmattan, 1994), 7-9; and Jean Marc Tingaud and Tahar Ben Jelloun, Medina: Morocco’s Hidden Cities, trans. Jacky Thompson (Paris: Assouline, 1998), passim.


Moulay (Mawläy) Idris I (d. 175 / 791) - Idris b. 'Abd Alläh b. Ḥassan b. al-Ḥassan b. 'Alī b. Abī Ṭālib, a great grandson of the Prophet; 2) New Fes ("Fes Jedid" in dialect, Fās al-Jadīd in Standard Arabic), founded by the Marinids in 674/1276 and consisting of the Sultan's palace, barracks and administrative quarters, as well as the Jewish quarter, or mellah (mallāḥ); and 3) the "Ville Nouvelle" (also known as "Dar Dbibagh" in dialect, Dār al-Dubaybah in Standard Arabic), founded by the French four years after the signing of their Protectorate in 1331/1912.9 Unless stated otherwise, all subsequent references to Marinid and Waṭṭasid Fes are to Old Fes (Fās al-Bālī), the medina, alone.

I have also chosen Fes for reasons of method. Although the city has been studied in a number of books and articles, none has gained a reputation as great as Roger Le Tourneau's Fès avant le protectorat: Etude économique et sociale d'une ville de l'Occident musulman.10 First published in 1949, this encyclopedic

9Mohamed Ameur, Fès... ou l'obsession du foncier. Vol. 25 Fascicule de Recherches (Tours: Centre Études et de Recherche URBAMA, 1993), 99-101. As the Ville Nouvelle has continued to expand exponentially, so it has come to comprise a multitude of new areas, each with its own name. Idem, 18 (Planche 1), and 279-309.

work quickly became a classic, combining thorough historical research with meticulous sociological description and analysis. It put Fes firmly onto the academic map, and subsequent studies of the millenary medina would always be indebted to it. It did more: it not only assured Fes' place within the discipline of Islamic urban studies, but it was pivotal to the formation of the academic concept of "the Islamic city". In principle, this concept represented the essential components of every Muslim city; and like a Platonic form or idea, it was generative of every city found in reality. Albert Hourani, for example, considered that:

[A] "typical" Islamic city would look like... the following. First, there would be a citadel. Secondly, there might be a royal "city" or "quarter" [comprising a] royal residence, administrative offices, places for the bodyguards or personal troops... Thirdly, there would be a central urban complex which would include the great mosques and religious schools, and the central markets with their khangs and qaysariyyas, and with special places assigned for the main groups of craftsmen or traders. The great house of the merchant and religious bourgeoisie would be in this district... Fourthly, there would be a "core" of residential quarters. 13

Nowadays, however, the concept lies displaced by more recent interpretations of Islamic urbanism, including those presented in an article by Janet Abu-Lughod. 14

Abu-Lughod's article "The Islamic City - Historic Myth, Islamic Essence and

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Contemporary Relevance" has been identified as marking a watershed in discussions of the Islamic city. For the first time in Islamic urban studies, the genealogy of the Islamic city concept was revealed, the author concluding that "the idea of the Islamic city was constructed by a series of Western authorities who drew upon a small and eccentric sample of pre-modern Arab cities on the eve of Westernization, but more than that, drew upon one another in an isnad [chain] of authority." As already noted, Fes and Le Tourneau's work on Fes were bench-marks in this construction.

Although there had been some notable attempts at disciplinary self-reflection before, with Abu-Lughod's article the utility of the Islamic city concept looked finished once and for all, so methodologically flawed was it shown to be. Nevertheless, as a number of scholars including Dale Eickelman, Pierre Guichard, André Raymond, Ronald Lewcock, Jean-Claude Garcin, and Sylvie Denoix have subsequently indicated, denying the entirety of the concept is to evade a persistent


fact: there are features shared by cities across the Muslim world which justify retaining something of the concept.\textsuperscript{18} Whilst there exists no one "pure" Islamic city, there are, as Eickelman usefully puts it, a number of "family resemblances," \ldots partial similarities that can be meaningfully compared and contrasted, rather than exact matchings of distinctive features."\textsuperscript{19} He concludes: "The notion of 'Islamic city' can be made to have utility in this manner, as an experience-distant concept useful for interpretive comparison, and not as an Ur-construct 'Islamic' cities are made to fit."\textsuperscript{20}

In drawing this conclusion, Eickelman stands slightly apart from the other mentioned scholars, who are more hesitant to ascribe to the concept the adjective "Islamic". They might agree that cities in the Muslim world "show an identity of organization that is definitely present from Marrakech to Herat," but whether that organisation is due to Islam is harder to know.\textsuperscript{21} Indeed, as Lewcock points out, "there is considerable evidence in archaeology to suggest that [the so-called Islamic city] closely resembles in its main characteristics the early cities of Mesopotamia, Egypt and South Asia . . . ."\textsuperscript{22}


\textsuperscript{19}Eickelman, "Comparative Studies," 314.

\textsuperscript{20}Ibid., 314.

\textsuperscript{21}The embedded citation is from Raymond, "Islamic city, Arab city," 17. Like Eickelman, both Wheatley and Abu-Lughod are also less circumspect in this regard. Wheatley, "Levels of Space Awareness," 359; Abu-Lughod, "The Islamic City," 162.

\textsuperscript{22}Lewcock, "Cities in the Islamic World," 47.
With agreement as to the partial validity of the Islamic city concept, but disagreement as to whether anything about it is Islamic, there is room to pursue the latter point and ask whether Islam can be meaningfully considered generative of a particular, broadly recognisable urban space: that of the so-called Islamic city. One way to answer this is to study walls.

In spite of the hiatus between the pioneering work of Robert Brunschvig and that of Besim Hakim, effectively the field’s second pioneer, there is now increasing interest in an area of medieval Sunni Islamic law (fiqh) that, broadly speaking, has walls as its theme.\(^2^3\) Brunschvig’s merit was to provide Western scholarship an appraisal of Islamic law’s engagement with the medina architectural environment. For this he drew extensively from two key Maliki (Māliki) texts: ‘Isā b. Mūsā b. Aḥmad Ibn al-ʾImām al-Ṭūṭīlī (d. 380/991 or 386/997), Kitāb al-Qadā‘ wa nafy al-ḍarar ‘an al-aʃniya wa al-ṭuruq wa al-judur wa al-mabāni wa al-ṣaḥāt wa al-shajar wa al-jāmi‘ (The Book of Jurisdiction and the Elimination of Harm Regarding Houses, Streets, Walls, Buildings, Squares, Trees, etc.); and Abū ʿAbd Allāh Muḥammad b. Ibrāhīm al-Lakhmī, known as Ibn al-Rāmī al-Ṭūnīsī (d. after 733/1333), Kitāb al-Iltan bi-ahkām al-bunyān (The Book of Disclosing Judgements in Matters of Construction).\(^2^4\)


Forty years later, when Besim Hakim came to the subject, an unpublished Ph.D. thesis referring to the above titles had been written, and two articles, but little else; and although Hakim's book Arabic-Islamic Cities: Building and Planning Principles tends to over simplification and has been criticized for being partisan, it was instrumental to the development of the field. In quick succession, other works followed its publication, culminating in the three-volume Ph.D. thesis of Jean-Pierre Van Staëvel, Les usages de la ville.


26For criticism of Hakim's book, see AlSayyad, Cities and Caliphs, 38.

From these publications and my own research, it is possible to talk of a mainly medieval genre of Sunni Islamic law, that is occupied with the regulation of the medina architectural environment; that has walls as a predominant theme; and that may conveniently be called The Book of Walls after two titles it comprises: al-Shaykh al-Marjî al-Thaqafi's (d. late 5th/11th or early 6th/12th century) Kitāb al-Hiṭān; and 'Isā Ibn Dinār's (d. 212/827) Kitāb al-Jīdār.28 By chance in accord with these titles, the genre appears most pronounced in Hanafi (Hanafi) and especially Maliki law respectively; and all subsequent references to The Book of Walls are restricted to these two law schools (sg. madhhab), most particularly the latter.29

Returning to the Islamic city concept, if something proper to Islam could be found in this legal treatment of walls, referring to the Islamic quality of the


28The two titles translate as The Book of Walls and The Wall Book respectively; the lack of distinction between jīdār and ḥayy (pl. ḥiṭān) is discussed in Chapter One, Part 2:2:1. Regarding publication details for these titles, the latter (K. al-Jīdār) is not extant, known only through citation in other works, e.g. Ibn al-Rāmi and Ibn al-Imām. The former (K. al-Hiṭān) is something of a palimpsest with four different authors/contributors, and two published versions currently exist, each attributed differently. The first is al-Shaykh al-Marjî al-Thaqafi (ma'a sharḥ wa tadhhib wa al-ziyadāt 'alayhi), Kitāb al-Hiṭān: Aḥkām al-turq wa al-suṭūṭ wa al-abnāb wa masil al-miṣyāh wa al-hiṭān fi al-fiqh al-islāmī, ed. Muḥammad Khayr Ramadān Yūsuf (Beirut: Dār al-Fikr al-Mu‘āṣir, 1996), hereafter cited as "Kitāb al-Hiṭān". The second is 'Umar b. 'Abd al-'Azīz Sadr al-Shahid (d. 536/1141), Kitāb al-Hiṭān: Dirāsa fiqhiyya li-ahkānt al-bins‘ wa al-irtifaq, ed. 'Abd Allāh Nadhir Al‘umād (Jeddah: Markaz al-Nashr al-Tilmi, Jāmi‘at al-Malik 'Abd al-'Azīz, 1996). I have been unable to obtain this second version. The The Book of Walls genre and its constituent texts will be treated fully in Chapter Two; Arabic speaking scholars, meanwhile, refer to the rulings and assessments it comprises as fiqh al-bins‘ (construction law) or fiqh al-imrān (building law). Ben Hamouche, Fiqh al-imrān al-islāmīyya, 9.

concept would make better sense. With the fundamental architectural element, the wall, of different Muslim cities found to be governed by Islamic law, the morphology of these cities would be meaningfully termed Islamic; and the Islamic city concept, based upon these and other cities, an increasingly tenable proposition.

With specific regard to Fes and the aim of this dissertation, studying walls and the legal genre that represents them is a means of evaluating the nature of the medieval medina. In the same way that the physical structure of Muslim cities can be assumed to be indicative of the contested Islamic quality of the Islamic city concept, so identifying what a wall is within medieval Muslim thought and culture can be expected to indicate something about Fes, a city renowned for its pressing, forbidding walls. Certainly, such is the hypothesis of this dissertation. If it were shown that medieval Fes was defined and determined by its walls, and if it were known what a wall signified for this period, then an investigation...
would have apprised something fundamental about the city.

Only via the *The Book of Walls* can this investigation succeed: only by way of it can a wall be analysed and interpreted within terms local to Muslim thought and culture.\(^{31}\) It is Islamic law that has made of walls an object of treatment; not an outside observer. As John Gulick says in comparing foreign and native observers of Tripoli: "Since the foreigner or outsider is not socially involved, he does not, in actual fact, see the same over-all image [of the city and its buildings] as clearly, if at all."\(^ {32}\) This is particularly true of Fes, where an outsider can walk past many of its monuments unawares, so resistant to visual disclosure are they.\(^ {33}\) However, because *The Book of Walls* is generic, mostly having come into being as solutions to particular cases that were subsequently generalised for application elsewhere, one task of the investigation must be to confirm that the genre was operative in medieval Fes. The genre represents legal thought concerning walls in general, not walls of Fes in specific; yet it is as close as one can get to these same walls without reliance upon culturally alien observation and description.

\(^{31}\) As will be discussed in Chapter Four, one problem in architectural criticism is how to address the fact that ordinarily architecture (Muslim or otherwise) is not only looked at, but bodily experienced, too. If buildings are an effect of representation, as has been argued by some, in architectural criticism they can be more than just looked at and described; they can be "haunted": their structural logic thought in terms of the discourses governing representation, e.g. Islamic law for medieval Morocco. See Mark Wigley, *The Architecture of Deconstruction: Derrida's Haunt* (Cambridge: MIT Press, 1993), passim, esp. 212-213; also Jane Rendell, Barbara Penner, and Iain Borden, "Editors' General Introduction," in idem (eds.), *Gender Space Architecture*, 10-11. In Islamic architectural criticism, examples of going beyond external observation and description include Gülru Necipoğlu's *Architecture, Ceremonial, and Power: The Topkapi Palace in the Fifteenth and Sixteenth Centuries* (New York and Cambridge: The Architectural History Foundation, Inc., and The MIT Press, 1991); and Bechir Kenzari and Yasser Elsheshtawy, "The Ambiguous Veil: On Transparency, the Mashrabiyya [sic], and Architecture," in *Journal of Architectural Education* 56, no. 4 (2003): 17-25.

\(^{32}\) Gulick, "Images of an Arab City," 277. See also Eickelman's comments concerning inhabitants' perception of a Moroccan town's neighbourhoods ("darbs"), e.g. "The differences of perception are related to what informants know of the social history of the town (which varies with generation and experience) and how they have experienced it (which varies with social position)." Idem, "Is There an Islamic City?," 283.

\(^{33}\) Some of these monuments announce themselves in other ways. The Al-Qarawiyyin mosque, for example, is aurally perceived by the number of beggars lining its external walls, chanting the Qur'an and/or invoking the name of God.
Given the dissertation's hypothesis, the investigation proceeds as follows. Chapter One describes the architectural composition of Marinid and Wattasid Fes, having first clarified why this period of Fassi\(^{34}\) history has been preferred for the investigation. The chapter demonstrates that walls are physically definitive of the city; and an analysis of its early and medieval history shows that they are historically determinant of it, too. Chapter Two provides a cultural and religious survey of Fassi and Muslim walls, concluding with a treatment of the social dynamic that establishes women on the inside of the home, and men on the outside. In this gendered divide, walls play a crucial rôle. Chapter Three completes this survey with an historicised analysis of The Book of Walls, including the gender-based privacy and separation rulings that form a substantial part of it. It is here I shall show that the genre was operative in Fes. Chapter Four is the most technical of the dissertation, in that it seeks the legal basis of The Book of Walls. Because Islamic law is built upon known bases (sg. asl), were the basis of the genre identified, what lies at the heart of walls - what walls are - would also be identified.\(^{35}\) The resultant identification would be a legal one; however, because Islamic law is the core of Muslim thought and culture, to identify a wall legally is also to identify it culturally.\(^{36}\) Chapter Five refines the conclusion of this chapter, defining walls in terms of shame, and corroborating the definition upon evidence from the corpus of rithā' al-mudun, elegies on cities vanquished

\(^{34}\)"Fassi" is the most common spelling of the adjective formed from "Fes", properly transcribed as Fāṣi.


or abandoned.

With a wall so defined, the nature of Fes - a city determined and defined by its walls - is consequently reached. In the final chapter, this deductively reached nature is compared to the city's own, internally construed nature, as conveyed in the local historiography of the period. An analysis of the city's foundation legend reveals its constituent elements to be literary topoi: ritual re-enactments of a mythical foundation paradigm, recorded in the Prophet's biography, regarding the creation of Medina as the archetypal Islamic political state. Shown lying at the heart of this paradigm is the investigation's definition of a wall.
Chapter One

MARINID FES: AN ARCHITECTURAL HISTORY AND DESCRIPTION

In order to make the proposed investigation of Fes medina, a first requirement is to explain why Marinid and Wattasid Fes has been preferred over other periods of the city's history. Doing so will introduce the early and medieval history of Fes, but not draw out an adequate description of the medina under Marinid and Wattasid rule. Forming the chapter's second half, such a description is necessary in order to show how walls are of particular issue to Fes, how they are physically definitive and historically determinant of it.

Because the Wattasids are an extension of the Marinid dynasty, a collateral branch perpetuating Marinid policy and making no proper mark upon the medina's infrastructure, in this chapter their rule is ignored. The Marinids made a lasting impression upon Fes, architecturally and otherwise; to all intents and purposes, the Wattasids added little. In that regard, an architectural history and description of Marinid Fes is also one of Wattasid Fes.

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1. THE PRIORITY OF MARINID FES: A CAPITAL SELF-CONSCIOUS

There are three reasons why Marinid and Wattasid Fes has been chosen over other periods of Fassi history: pre-Marinid Fes is insufficiently known for the proposed investigation; the historiography of the city that begins with the Marinids; and the permanent mark that the Marinids left on their capital in terms of monuments and overall appearance. All three are treated below.

These three reasons serve to create a fourth: the Marinid age is a golden age for Fes, branding for it an identity that persists long after the Marinid themselves have perished. Three examples drawn from the highest reaches of contemporary or near-contemporary Moroccan religious, political, and educational life illustrate this claim: the veneration of Idris II; officially sanctioned sharifianism; and madrasa-based education, all originate or are said to develop under the Marinids.

References to Marinid Fes as a golden age are numerous, including Roger Le Tourneau, Fès avant le protectorat, 61; idem, Fez in the Age of the Marinides, trans. Besse Alberta Clement (Norman: University of Oklahoma Press, 1961), xi, 150; Terrasse, "Fä s (Monuments)," 822-23; Cigar, "Société et vie politique à Fès," 93; and Mezzine (ed.), Fès médiévale, passim.

1:1 Sources for the History and Description of Marinid and pre-Marinid Fes

1:1:1 The Arab geographers and the imprecise identity of pre-Marinid Fes
Not the least affect of monumental architecture is to render a coherent image of otherwise incoherent and conflicting times and spaces. Such is the case of Marinid Fes, which in the absence of an earlier historiographical tradition to oppose it, manages to retroject itself some five or six hundred years to the Idrisid origins of the city, engendering the illusion that the city came into being like Pallas Athena: fully formed, imperial and, as both the foundation and burial site of a descendant of the Prophet, sacrosanct. Of course, this effect is not exclusively architectural, but enmeshed in a political and religious ideology that for centuries has made of Fes the cradle of orthodox Islam, and via the scholars, or ulema ('ulamä) there, the guarantor of legitimate Islamic rule in Morocco.


On the sources for the history of early Fes, see immediately below; on the absence of an earlier historiographical tradition, see 1:1.2. That the Marinids knew Fes medina was architecturally astonishing to behold is indicated by the ruins of a palace, mosque, and possibly a necropolis built by this dynasty just beyond the northern walls of the medina: visiting dignitaries were probably taken there by court officials, for an imposing view was guaranteed. As Le Tourneau says of this view: "De là les souverains pouvaient jouir d'un magnifique panorama: une ville immense à leur pieds, à l'horizon une chaîne de montagnes altières, entre les deux un moutonnement de collines fauves ou verdoyantes selon les saisons, où l'ombre et la lumière jouaient au soleil couchant." Le Tourneau, Fès avant le protectorat, 72 (also, idem, Fes in the Age of the Marinides, 33); see also Leo Africanus (d. ca. 957/1550), The History and Description of Africa and of the Notable Things Therein Contained. Written by al-Hassan ibn Mohammed al-Wezaz al-Fasi, a Moor, baptized as Giovanni Leone, but better known as Leo Africanus, ed. Robert Brown, trans. John Pory, 3 vols. (London: Printed for the Hakluyt Society, 1896), 2: 474. Hereafter cited as "Leo Africanus".

In the academic literature on Fes, it is a commonplace to find the medina referred to
When this illusion is countered with reference to the only significant source for early Fes, namely, the Arab geographers, it becomes clear that Fes first came into being as one of a series of fortified townships built by the scattered, warring Idrisids in their efforts to colonise the Western Maghrib (al-Maghrib al-Aqṣā') through Islam. And although it rapidly grew in size and population, for at least the first two hundred years Fes was a functional but unadorned, largely agrarian, somewhat rude, and frequently violent place. Al-Muqaddisi (d. after in this way, critically or otherwise. See, inter alia, García-Arenal and Manzano Moreno, "Idrissisme et villes idrissides," 10; Mediano, Familias de Fez, 13-19; Mercedes García-Arenal, "Sainteté et pouvoir au Maroc: La résistance de Fès aux Sa’diens," in Annales: économies - sociétés - civilisations no. 4 (juillet-août 1990): 1019, 1036-1037; Norman Cigar, "Conflict and Community in an Urban Milieu: Fez under the 'Alawis (ca. 1666-1830)," The Maghreb Review 3, no. 2 (Nov.-Dec. 1978): 3, 10; Jacques Berque, "Ville et université: Aperçu sur l'histoire de l'Ecole de Fès," Revue historique de droit français et étranger 27 (1949): 73-77. The fullest treatment of the political and religious ideologies that first gave this Fes pre-eminence, is Beck's L'Image d'Idris II; see also Kably, Société, pouvoir et religion au Maroc, esp. 291-302. It is beyond the scope of this present dissertation to discuss the nature of the sharifi orthodox Islam that Fes is said to cradle and irradiate, but Clifford Geertz's Islam Observed: Religious Development in Morocco and Indonesia (New Haven: Yale University Press, 1968) provides a good introduction. See also Henry Munson, Religion and Power in Morocco (New Haven: Yale University Press, 1993). The latter work is also informative on the power the Fassi ulema with respect to the legitimacy or illegitimacy of a sultan; see, for example, pp. 70-71 regarding the deposition of Sultan Moulay 'Abd al-`Aziz (1312-1326 / 1894-1908). For fuller treatment of the same event, see Edmund Burke III, Prelude to Protectorate in Morocco: Precolonial Protest and Resistance, 1860-1912 (Chicago: University of Chicago Press, 1976), 93-117. The most infamous deposition of a sultan by Fassi ulema, leading to regicide, is treated in Mercedes García-Arenal, "The Revolution of Fäs in 869 / 1465 and the Death of Sultan `Abd al-Haqq al-Marini," Bulletin of the School of Oriental and African Studies 41, no. 1 (1978): 43-66.

8Blachère, "Fès chez les géographes arabes," 41-43. Mitigating this impression is Ibn Hawqal's (d. after 367 / 977) description of the paved marketplaces daily sluiced and cooled during the summer months with diverted river water: "Wa min ayâm al-sayf yursalu fi aswagihim min nahrihä al-mä' fa-yaghshiluhä fa-tabarudu al-ḥijära." Abū Qāsim Ibn Hawqal al-Nasibi, Kitāb Šūrat al-ard, ed. M.J. de Goeje (Beirut: Dār Śādir, n.d.; Leiden: E.J. Brill, 1939), 90. Cf. Blachère, "Fès chez les géographes arabes," 42. Also mitigating the impression, but upon uncited evidence, is Le Tourneau who writes of 3rd / 9th century Fes as if it represented a zenith of culture: "Elle était plus et mieux
378/988), for example, describes Fassis as "sluggish and ignorant. Scholars are few; mobs abundant (Waf-him thiqa'l wa ghaba' qalil al-`ulamä' kathir al-ghawghâ`)." Adding to this impression of a city without developed identity, al-Ya`qubi (d. 284/897) notes that only the river running through the medina is called Fes (Fäs), not the place itself.  

This poor identity is explicable not upon Fes' juvenescence alone, but also that until 541/1069 Fes consisted of twin medinas separated by a tributary of the Jawhar river, Wâdí al-Kabîr, improbably called Fes by al-Ya`qubi. A source of some confusion amongst historians, the two sites are nowadays dated to 172/789 and 193/808-809 respectively. The first of these date pertains to Madînat Fäs, founded by Idris I (172-175/789-791); the second, to al-`Aliyya (also, al-`Aliya), qu'un grand centre commercial: un foyer de civilisation... un flot de culture arabe, de raffinement et de luxe au milieu des régions berbères qui l'entouraient." Le Tourneau, Fès avant le protectorat, 48. For the early growth of Fes, see Evariste Lévi-Provençal, La fondation de Fês (Paris: Larose, 1939), 16-17, in conjunction with García-Arenal and Manzano Moreno, "Idrissisme et villes idrissides," 15-19, and Eustache, Corpus des dirhams idrissides, 146-150. (These two more recent works modify slightly the history proposed by Lévi-Provençal.) For further discussion of the foundation of Fes, see immediately below and 2:1; and especially Chapter Six. N.B. Lévi-Provençal's study on the foundation of Fes is more readily attainable under the same title in Annales de l'Institut d'Études Orientales de l'Université d'Alger IV (1938): 23-53, where it was first published; and Evariste Lévi-Provençal, Islam d'Occident. Études d'histoire médiévale (Paris: G.P. Maisonneuve, 1948), 1-41. All subsequent references to this study are to the 1939 publication.


12This is the chronology first established by Lévi-Provençal in his ground-breaking study La foundation de Fès, 16.
founded by his son Idrīs II (192-213/808-828) (fig. 1). Both sites were walled and autonomous, and both rivalrous of the other; hence the internecine violence so remarked upon by the geographers. It is not certain when the name Madīnāt Fās, or Fes came to include both agglomerations, but according to numismatic evidence, not until at least the late fourth/tenth century: no Idrīsid coins have been found with the name Fes; only al-ʿAliyya and al-ʿAliyya Madīnāt Idrīs. This evidence, combined with the fact that in the mid-fifth/eleventh century both cities were expanded and Fes "became as one city (wa šīrat madinat" wāḥidat")", establishes the name of Fes for both sites by the end of Zanāta rule (377-462/987-1069). Such is borne out by the geographers posthumous to al-Yaʿqūbī, all of whom refer to the double medina as Fes.

During the Almoravid period (462-541/1069-1146), and enclosed definitively within one perimeter wall, Fes acquires a reputation for more than just rusticity, but Maliki legal scholarship and the Jewish inhabitants' vigour in trade. Basing

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13The gap between the reign of Idrīs I from that of his son is explained by the latter's regency: 175-192/791-808.

14Levi-Provencal, La foundation de Fes, 11; Eustache, Corpus des dirhams idrisites, 146-150. As mentioned in the note above (p. 20), this latter work is vital for correcting Lévi-Provençal's chronology based upon a misreading and misattribution of a coin. Eustache, Corpus des dirhams idrisites, 26 n. 4; Lévi-Provençal, La foundation de Fes, 9. Meanwhile, contrary to my argument regarding Fes as the name of both agglomerations, Lévi-Provençal inexplicably (that is, upon uncited evidence) states that after 202/817 "l'ancien nom de Madinat Fas ... servira désormais à désigner tout le site, y compris les deux villes qui s'y dressent." Idem, La foundation de Fès, 17.


16Blachère, "Fès chez les géographes arabes," 42 et seq.

17Zahrat al-ās, 42, trans., 75; Rawd al-qīrṭās, 179, trans., 124.

18Blachère, "Fès chez les géographes arabes," 44; Berque, "Ville et université," 66; Vincent J. Cornell, Realm of the Saint: Power and Authority in Moroccan Sufism (Austin: University
Fig. 1: Idrisid Fes
(from García-Arenal & Manzano Moreno, *Légimité et villes idrissides*, 270)
his account on Umayyad records, not visiting Fes in person, al-Bakri (d. 487/1094) is clearly impressed by the size of the city, including its two principal edifices, the Al-Qarawiyyin and Al-Andalus cathedral mosques (sg. *jami*').\(^{19}\) He is no less impressed by the artificial canalisation that supplies water throughout the city, turning the three hundred-plus mills (*arhä*'), irrigating the gardens and fruit trees, and sourcing the twenty-some public baths.\(^{20}\) The importance of this testimony notwithstanding, it is still fair to say that only during the Almohad dynasty (514-668/1120-1269) is Fes described in terms more indicative of a city of culture and refinement.\(^{21}\) For example, whilst still noting the bloody intramural conflicts, the Andalusian geographer al-Idrisi (d. 560/1166) also remarks upon the beauty of Fes, the "nobility of [its] architecture, houses, and palaces (*mabän*", *sāmiyya wa dār wa qaṣūr*):

All around, gushing fountains of flowing water, surmounted by domes. Arcaded, vaulted reservoirs; plasterwork tracery, and other sorts of ornament (*Wa bi-hä fi kull makän minhä 'uyän nābi'a wa miyäh jāriya wa 'alayhä qibāb mabniyya wa dawāmis maḥniyya wa nuqūsh* of Texas Press, 1998), 23-28.


\(^{20}\) Ibid., 115-117; the numbers given are those of al-Bakri. Cf. Blachère, "Fès chez les géographes arabes," 44. For further treatment of construction projects undertaken by the Almoravids in Fes, see Le Tourneau, *Fès avant le protectorat*, 51-54.

\(^{21}\) This is supported by Henri Pérès' study of literary production in Fes during the Almoravids and Almohads, in which he notes the existence of the first Fassi poet (Ibn Ḥabūs); a greater tolerance to creativity; and some official patronage only during the latter dynasty. Idem, "La poésie à Fès sous les Almoravides et les Almohades," *Hespéris* 18 (1934): 13-17, 32-33. These facts notwithstanding, the same article also makes it evident that it is only during the Marinids that Fes can lay proper claim to a literary culture, and even this is subject to qualification. Ibid., 9, 40. For further indications of cultured, Fassi life under the Almohads, see *Zahrat al-ās*, 43-44, trans., 81-82; Le Tourneau, *Fès avant le protectorat*, 54-60; and Berque, "Ville et université," 68-71.
A few decades later, Yaqút (d. 626/1229) distinguishes Fes with the title ħādira, capital or "mighty dwelling"; and the words "a grand and famous city (madīna mashhūra kabira)."

Possibly, then, one could make Almohad Fes the period for the investigation: at this point in time Fes had a more developed structure and identity. However, a problem arises in that Almohad Fes is known only through the geographers' brief accounts and one history, ʿAbd al-Wāḥīd al-Marrākushi’s (b. ca 581/1186) al-Muʿjib fi talkhis akhkhār al-Maghrib, dated to 621/1224. In this account of the Almohad dynasty, al-Marrākushi includes a short, glowing description of Fes, but adds nothing to the geographers to deepen our knowledge of it. Certainly,
not enough to base an investigation upon.

1:1:2 The historians of Marinid Fes

The arrival of the Marinids, and the foundation of their administrative centre Fes Jedid in 674/1276, mark the return of Fes to a dynastic capital after a hiatus of two hundred years, and the beginnings of an official, historical narrative for Fes. The Marinids make Fes their capital; and the historians make it illustrious, destined to be inviolable.

These two events alone indicate the importance of Marinid Fes over earlier periods: something is happening in Fes on a scale not seen there before, and that will mark all subsequent periods of its history. Combined with the information the histories provide, these events also make Marinid Fes a sensible choice for the proposed investigation.

Only two Marinid histories of Fes remain today, out of what is thought to have been a total of at least eight. They are al-Anîs al-mutrib bi-rawd al-qirtas fi akhbâr mulûk al-Maghrib wa tarikh madinat Fâs (hereafter, Rawd al-qirtas), dated to 726/1326 and most probably composed by Abû al-Hasan b. 'Abd Allah Ibn Abi Zar' (n.d.) or Abû 'Abd Allâh Ibn Abi Zar' (n.d.), and Janâ zahrat al-âs fi binâ'

27Shatzmiller, L’historiographie merinide, 136-138.
28Cf. the note supra p. 17. That the historians succeeded is indicated by works such as Titus Burkhardt, Fez: City of Islam, trans. William Stoddart (Cambridge: The Islamic Texts Society, 1992), that reinforce the sacred image of Fes.
29See above, p. 16. As another example, the canonic narrative that establishes the burial site of Idris II to be where currently stand his mosque-cum-mausoleum, Zawiya (zâwiyya) Moulay Idris, reportedly originates with the Marinids. Aḥmad b. 'Abd al-Ḥayy al-Ḥalabî al-Fâsi; al-Durr al-nafs wa al-nîr al-anîs fi manâqib al-Imâm Idris b. Idris, 2nd ed. (Fes: 1314/1897), 304-305; as cited in Beck, L’image d’Idris, 229-230.
30Eight is the figure given by Shatzmiller in her study of Marinid historiography, but in the preface to his edition of Zahrat al-âs, Ibn Mansûr lists additional lost histories of Fes not counted by Shatzmiller. Shatzmiller, L’historiographie merinide, 136-137; Ibn Mansûr, preface to Zahrat al-âs, b (ُ).
31For the most recent debates over the exact paternity of this work see Beck, L’image
Zahrat al-äs (hereafter, Zahrat al-äs), dated to either 766/1365 or 768/1367 and written by Abü al-Hasan ‘Alî al-Jaznä‘i (n.d.). As both titles indicate, these are histories with reference to Fes; but whereas the canonic Rawd al-qirtäs devotes many of its pages to events and people apart from Fes, the shorter Zahrat al-äs is exclusive to Fes alone. Specifically, it is devoted to Fes' construction from its foundation to the mid-eighth/fourteenth century.

Zahrat al-äs provides an almost verbatim and occasionally more plausible copy of the Fes medina history recounted sporadically in Rawd al-qirtäs, supplemented with new information. When combined with the work's architectural focus, these "improvements" on Rawd al-qirtäs make Zahrat al-äs a convenient document for the proposed investigation of Fes, and explain why reference will be made to it as well as the more celebrated Rawd al-qirtäs in the coming pages and chapters. Regarding its author ‘Alî al-Jaznä‘i, nothing is known; but given his detailed knowledge of the mosques and other mortmain (waqf, hubus) elements of Fes, one theory is that he was a functionary in charge of the medina's considerable waqf property. As for the author of Rawd al-qirtäs, because of the work's uncertain paternity, little is known except that he was a native of Fes, most likely from a distinguished family.  

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For summaries of the two works, see Shatzmiller, L'historiographie mérinide, 19-20, 26-27; and Mezzine, "La mémoire effritée," 45-48. On the canonic stature of Rawd al-qirtäs, see Beck, L'image d'Idris, 54, 128-129, 136.

Cf. Bel, preface to El-Djaznäi, 7-10; Shatzmiller, L'historiographie mérinide, 27-29; and Beck, L'image d'Idris, 134-136. Bel's translation indicates both the passages copied and the information added: El-Djaznäi, passim. On the genre of local histories and the custom of copying standard works, see Franz Rosenthal, A History of Muslim Historiography (Leiden: E.J. Brill, 1952), 130-149.

Ibn Mansûr, preface to Zahrat al-äs, d (०). For other theories, see Beck, L'image d'Idris, 132-134; Shatzmiller, L'historiographie mérinide, 30-35; Ibn Mansûr, preface to Zahrat al-äs, d (०); Bel, preface to El-Djaznäi, 5-7.

See the note above regarding the work's paternity (p. 23); also, Mezzine, "La mémoire
Amongst contemporary historians of medieval Morocco there is debate regarding the reasons for the sudden irruption of this historiography of Fes. Maya Shatzmiller has put forward the notion that it was part of a deliberate strategy to alienate the citizens of Fes medina from their Marinid rulers by enhancing the Idrisid, Prophetic lineage of their city, highlighting thereby the Marinids' illegitimacy. Additionally, she sees in the historians' lengthy treatments of the religious institutions of Fes a protest at the Marinids' disregard for the upkeep and maintenance of the medina's mosques.

Whilst it is plausible that the Marinids contributed minimally to mosque maintenance, and true that the histories sanctify the ancestry of the medina, the Dutch historian Herman Beck is not alone in interpreting these facts otherwise. Along with Mercedes García-Arenal, Eduardo Manzano Moreno, and Giovanna Calasso, Beck finds in the Fassi histories evidence of a pro-Marinid ideology, one legitimating the dynasty. Further, Beck is persuaded of an campaign led by the author of Rawd al-qirās to attach the otherwise rebellious Fassi shurafā' to their city, centralising them there, allowing the Marinid authorities better to control them. The means of achieving this attachment, Beck argues, was to obscure the rôle of Idrīs I in the foundation of Fes, and instead ascribe the city entirely to his son Idris II, whose sharīfī descendants still

37 Shatzmiller, L'histoireographie mérinide, 138-147.
38 Ibid., 31-35, 147.
40 See Beck's rebuttal of Shatzmiller's argument in idem, L'image d'Idris, 87-89, 132-134.
42 Beck, L'image d'Idris, 126.
occupied the home he had built, Dār al-Qayṭūn. Upon the success of Rawḍ al-qirtās, subsequent historians of Fes repeated this narrative, thereby ensuring that Fes and Idris II became indissolubly linked in the Fassi imagination, and paving the way for the discovery in 841/1437 of Idris II's incorrupt body in the ruins of Al-Shurafā' mosque opposite Dār al-Qayṭūn.

There is much that recommends Beck's reading of Marinid historiography of Fes, not least the fact that it explains why historians from the Marinids onwards have insisted on seeing in Fes' twin foundations just one actor: Idris II. Only in 1357/1938, with the publication of Lévi-Provençal's aforementioned research, was this myth exposed. It is, however, beyond the scope of the present dissertation to discuss further the historiography of Fes; and instead to use the extant histories to illuminate the city, including its appearance.

1:2 The Stamp of an Epoch

Although the outline of Fes had been fixed by the Almohads at the start of the seventh/thirteenth century with the construction of the present perimeter wall, the Marinids were to supplement it with Fes Jedid and its double perimeter wall. As of 674/1276, Fes no longer consisted of one outline, but two; the second placed menacingly close to the first (fig. 2).

With the foundation of Fes Jedid, Fes became the capital of Morocco, and an

43Ibid., 125.
44Ibid., 127-129, 228-240.
45On this double perimeter wall (and Fes Jedid in general), see Bressolette and Delarozière, "Fes-Jdid," 258-263. Under the Saadids (961-1069/1554-1659), it was further reinforced with bastions (burūj, sg. burj). Ibid., 269.
46See below for further discussion of the placement of Fes Jedid.
Fig. 2: Marinid Fes
(from Le Tourneau, *Fez in the Age of the Marinids*, 4)
intensive campaign of Marinid-funded building began in the medina. In tandem with a lesser programme of neighbourhood mosque (masjid) construction, between 670/1271 and 758/1357 six madrasas (sg. madrasa) were built there.\(^{47}\) The style of construction and decoration used in both programmes has since come to be recognised as Marinid, a style largely followed by succeeding dynasties in Fes.\(^{48}\)

The Madrasa "Bou `Inaniya" is representative of the culmination of this style. Built in 758/1357 under the patronage of Sultan Abī `Inān Fāris (749-759/1348-1358), it was the last and largest of the Marinid madrasas, with a minbar and mosque (jami`) for Friday prayers, a royal enclosure (maqṣūra), a mortuary chapel, and a Qur`an school (kuttāb). It could accommodate one hundred students on its two floors, and in addition it possessed a monumental minaret and a unique, external hydraulic clock.\(^{49}\) What the architectural historian Robert Hillenbrand says of Moroccan madrasas in general, is especially true of Bou `Inaniya:

> The lavishness of the royal patronage in these madrasas leaps to the eye [with] a breathtaking parade of ornament. The cool sheen of tiled floor and dadoes gives way to the lacy filigree of stucco set off by the subtle mellow patina of the ancient woodwork. It is like


stepping inside a casket of jewels.\textsuperscript{50}

It was not just monumental architecture that was stamped with the Marinid style. Domestic architecture was also permanently marked, prompting the other architectural historian to conclude:

Under the Marinids, Fās received not only its shape as two distinct agglomerations, but also its architectural appearance. From then on it was second only to Granada, the most active centre of Hispano-Moorish art. Once Muslim Spain had disappeared, all the processes of masonry, techniques and ornamental forms inherited from the 14th century continued to be used in Fās up to our own times, in a slow decline and with a touching fidelity.\textsuperscript{51}

\section*{1.3 Conclusion}

From the lack of records for Fes under earlier dynasties, to the efflorescence of a civic self-consciousness and permanent architectural stamp during the Marinids, the foregoing section has established why Marinid Fes has been chosen for the proposed investigation. The same section has also introduced the outline of Marinid Fes, to be completed below.

\section*{2. THE PHENOMENON OF MARINID FES}

\textsuperscript{50}Hillenbrand \textit{Islamic Architecture}, 247.

If the reasons for choosing Marinid Fes have now been given, it remains to be shown why walls are a particular issue for Fes, how they are determinant of it. By drawing out the phenomenon of Marinid Fes, this question can be answered. A description of the medina's architectural infrastructure, its equipment for living, will begin the process. From the ensuing portrait, a defining feature of the medina will become clear, which can then be explored in terms of the medina's history. The feature in question is, of course, walls.

Whenever possible, the following description will be based upon the Marinid histories of Fes discussed earlier. Because these histories are selective in their scope, the description will be supplemented by that of Leo Africanus, pertaining to the early-tenth/sixteenth century Fes; and those of Le Tourneau in *Fez in the Age of the Marinides* and *Fès avant le protectorat*. It hardly needs to be added that this task is an inexact science.

### 2.1 An Architectural Description of Marinid Fes: Monumental and Other Spaces

Spanning an area of 210 square hectares, today the city walls no longer contain the medina that spills onto the land beyond. This, however, is an aspect of the present overcrowding of the medina; not something known under the Marinids, when a significant swathe of Fes was left green and unbuilt: a ring of gardens, cemeteries, and open spaces immediately inside the walls. If a recent census has recorded 128,000 people officially residing in the medina, a population level of 608 inhabitants per square hectare, under the Marinids the population would

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Le Tourneau, *Fez in the Age of the Marinides*, 20, 72; cf. *Zahrat al-ās*, 45, and Leo Africanus, 2: 443. Whilst suburbs beyond the walls were few, they included the leprosarium, lime kilns, bleachers, and potteries. *Zahrat al-ās*, 24-25, 44; Leo Africanus, 2: 471-473; Le Tourneau, *Fez in the Age of the Marinides*, 33-34.
almost certainly have been no greater than that at the end of the nineteenth century: about 80,000, a population level of 380 inhabitants per square hectare.\(^{53}\)

During Marinid rule, this population was divided between the two banks or "'adwa-s" ("udwa) of the medina: "'Adwat al-Qarawiyyin" and "'Adwat al-Andalus".\(^{54}\) These two banks represent the development of the original foundations of Fes, al-'Aliyya and Madinat Fas respectively, that were fully united in 462/1069.\(^{55}\) They take their name from two inaugural waves of immigrants: five hundred Arab horsemen (sg. fāris) from Andalusia and Ifriqiya, principally the capital Kairouan (al-Qayrawān), in 189/804-805; and eight thousand families (sg. bayt) from Andalusia in 202/817-818.\(^{56}\) Serving as a reminder of these events, the two great mosques of Fes, the Al-Qarawiyyin and Al-Andalus, are today still the banks' major monuments, followed in Marinid times by the

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\(^{53}\)Le Tourneau, Fès avant le protectorat, 154-155, 159; M. Ameur, A. Baltagi, J. Barbier et al. (Groupe Huit/Urbaplan/SIDES/ADER-Fes/UNESCO), Sauvegarde de la ville de Fès, 2 voIs. (Paris: Programme Des Nations Unies Pour Le Développement; Fes: Ministère de L'Intérieur, 1992), 1: 6, 14, 16. It should be added that estimating population numbers for the medieval period is an inexact and often contentious activity; and so the figures quoted are to be taken as a broad indication only. On this activity, see Gia Djandjgava, "Ways of Estimating Population Numbers in Medieval Islamic Cities as Exemplified in the Case of Fustat Cairo," in Al-Masaq 5 (1992): 65-69; Jean-Claude Garcin, "Note sur la population du Caïro en 1517," in idem (ed.), Grandes villes méditerranéennes, 205-213; and Françoise Micheau, "Les sources pour les mégapoles orientales," in Nicolet et al. (eds.), Mégalopoles méditerranéennes, 685-704.

\(^{54}\)Historically, these two banks have not known the same economic prosperity: 'Adwat al-Qarawiyyin being the richer and better developed from at least Marinid times (to judge by the greater degree of Marinid investment there); and according to tradition, from Zanata times. Rawd al-qirtās, 52, trans., 45. In al-Bakri's 5th/11th century description of Fes, however, he makes no mention of this economic and social disparity between the more luxury-loving inhabitants (ahl rahiya) of 'Adwat al-Qarawiyyin and the tougher (ahl najda wa shidda) farming stock of 'Adwat al-Andalus. Al-Bakri, Al-Maghrib fi dhikr bilād Ifriqiya wa al-Maghrib, 116. Cf. Le Tourneau, Fès avant le protectorat, 149.

\(^{55}\)See above, p. 20. Cf. Lévi-Provençal, La foundation de Fès, 17.

\(^{56}\)Rawd al-qirtās, 35, 56-57, trans., 33, 47-48; Zahrat al-ās (less precise), 17, 26, trans., 38, 57. Cf. Lévi-Provençal, La foundation de Fès, 15, 17, 22. The first wave appears to have been part of Idris II's attempt to lessen the Berber majority about him. Rawd al-qirtās, 35, trans., 33. The second wave comprised refugees expelled by the ruler al-Hakam b. Hishām i (180-206/796-822), following the revolt of a suburb of Cordoba, the so-called Battle of the Suburbs (waq'at al-rabaḍ). Cf. Ferhat, 'Fes,' 220.
aforementioned madrasas (fig. 2).57

Undoubtedly, the monumental space of Marinid Fes comprised these six madrasas and two mosques. But if the definition of monumental means something other than just big buildings, then this space would have comprised more besides.58

The French philosopher and architectural theorist Henri Lefebvre (d. 1412/1991) defines monumental space as that which offers "each member of a society an image . . . of his or her social visage. [A] collective mirror more faithful than any personal one."59 He continues:

Monumental space permits a continual back-and-forth between the private speech of ordinary conversations and the public speech of discourses, lectures, sermons, rallying-cries, and all theatrical forms of utterance.60

57 Nowadays, the Alawid zaawiya of Moulay Idris II, built on the Qarawiyyin bank in 1132/1719, is the second monument of Fes, if not the first. Georges Salmon, "Le culte de Moulay Idris et la Mosquée des Chorfa à Fès," in Archives Marocaines III (1905): 418-419. For an indication of the Al-Qarawiyyin mosque as the real monument of Fes, as Fes' site of memory, see Abdelhadi Tazi, La Mosquée Al Qaraouyine: La Mosquée-Université de Fès. Histoire architecturale et intellectuelle, 2 ed., 3 vols. (Rabat: Dar Nachr el Maarifa, 2000) (in Arabic, with some French).

58 Cf. the discussion of "monument" and "monumentality" in Wu Hung, Monumentality in Early Chinese Art and Architecture (Stanford: Stanford University Press, 1995), 1-15. As will become clear, knowing what the monumental space of Marinid Fes comprised is not just a case of knowing what historically was there; but also knowing the psyche and social consciousness of the inhabitants. As John Gulick's aforementioned study of Tripolitans' image of their city shows, what strikes an outsider as important to a city may not register at all for a native. Gulick, "Images of an Arab City," 272, 275-277; see also Wheatley, "Levels of Space Awareness in the Traditional Islamic City," 354-356.

59 Lefebvre, The Production of Space, 220. He exemplifies his remarks by way of the monumental space of a cathedral: "The use of the cathedral's monumental space necessarily entails its supplying answers to all the questions that assail anyone who crosses the threshold. For visitors are bound to become aware of their own footsteps, and listen to the noises, the singing; they must breathe the incense-laden air, and plunge into a particular world, that of sin and redemption; they will contemplate and decipher the symbols around them; and they will thus, on the basis of their own bodies, experience a total being in a total space." Idem, 220-221. For an example of Lefebvre's use to Middle Eastern Studies, see Richard van Leeuwen, Waqfs and Urban Structures: The Case of Ottoman Damascus. Vol. 11 Studies in Islamic Law and Society, ed. Ruud Peters and Bernard Weiss (Leiden: Brill, 1999).

60 Ibid., 224. Accordingly, a "monumental work, like a musical one, does not have a 'signified' (or 'signifieds'); rather it has a horizon of meaning: a specific or indefinite multiplicity of meanings, a shifting hierarchy in which now one, now another meaning comes momentarily to the fore, by means of - and for the sake of - a particular action."
On this view, for at least the medina's freely circulating, male members, the monumental space of Marinid Fes would also have comprised the most ornate fonduks (sg. funduq); the more lavishly built neighbourhood mosques with their prominent minarets - those built by the Marinids, for example; the larger,

Ibid., 222. On this view, the study of architecture cannot just be about what an architect, builder, or ruler intended by any particular edifice; but also what meanings that edifice comes to have for the people using it. Cf. Amos Rapoport, The Meaning of the Built Environment: A Nonverbal Communication Approach, 2nd ed. (Tucson: The University of Arizona Press, 1990), 21.

61"Ce mot désigne, en général, une sorte d'hôtelerie comprenant une grande cour fermée. Au fond et au rez-de-chaussée, des écuries pour les animaux tandis que des chambres sont aménagées à l'étage pour les voyageurs. A Fes, il a une acception particulière: le fonduk est un important immeuble, à deux, voire trois étages, avec une cour intérieure sur laquelle s'ouvrent des chambres. On l'appelle aussi 'dar es sala' (maison des marchandises) ou 'fonduk toujar' (fonduk des commerçants); il est utilisé comme dépôt de marchandises ou encore pour le commerce en gros." Joseph Luccioni, Les foundations pieuses "habous" au Maroc depuis les origines jusqu'à 1956 (Rabat: Imprimerie Royale, n.d.), 127-128. In Marinid Fes, one of the most ornate of these fonduks was the 8th/14th century "Fonduk of the Tetwanis" (Funduq Tettawniyin), that still stands in close vicinity to the Al-Qarawiyyin mosque. Le Tourneau, Fès avant le protectorat, 72, 134; Marçais, Manuel d'art musulman, 2: 557. No longer standing, but also thought to have been remarkable, giving its name to one of the medina's oldest neighbourhoods, was the "Fonduk of the Jew" (Funduq al-Yahidi). Luccioni, Les foundations pieuses, 128. That these and other fonduks were impressive to behold is proven by Leo Africanus' description of them: "Never, to my remembrance, did I see greater buildings, except it were the Spanish college at Bologna, or the palace of the Cardinali di San Giorgio at Rome." Leo Africanus, 2: 428. That they were popularly frequented, albeit for reasons of 'lewdery and villany', is also certified by the same author. Ibid., 2: 429.

more finely ornamented fountains (sg. *sagāya*), often inscribed with dedicatory verses, the hydraulic clock outside madrasa Bou 'Inaniya, the hospital (*maristān*) "Sidi Frej", and the more elaborate hammams. Also included would


An extant example of such a fountain from Marinid times is the *sagāya* of "Sidi Frej", dated to 840/1436 and located at the heart of the medina, close to the Al-Qarawiyyīn mosque, adjacent to the *zāwiyā* of Moulay Idris. For a detailed description of this fountain, including its dedicatory inscription, see Bel, *Inscriptions arabes de Fès*, 72-85. On the general structure, types of ornamentation, and locations of the fountains of contemporary Fes medina, see William Betsch, "The Fountains of Fez," in *Art and Archaeology Research Papers* 12 (December 1977): 33-44.

The clock is included in the monumental apurtenances of Fes because of Sultan Abū 'Inān’s personal involvement with it and other means of measuring and displaying time: an attempt to dominate the medina, not through buildings, or space; but time. *Zahrat al-ās*, 52-53, trans., 94-96; cf. Lefebvre, *The Production of Space*.


have been the military and defensive architecture of the perimeter walls; their eight gates (sg. bāb), some of which were rudimentary only; the former Almoravid citadel or kasbah (qaṣaba) "Bou Jeloud"; the archways and heavy doors separating one neighbourhood (ḥūma) from another, and sometimes individual houses (sg. dār) from neighbourhoods; and if Leo Africanus' tenth/sixteenth century description the qaṣariyya (centrally located, lockable market of precious metals and fabrics) also holds true for Marinid times, then the walls and doors protecting this central market zone must likewise be considered part of the medina's monumental space.

If the monumental space of Marinid Fes seems limited in terms of civic...
institutions, this is not to say that the medina was sparsely built. The opposite is true, as shown in the following description of late-sixth/twelfth century Fes, an inventory of the architectural infrastructure reportedly compiled by the city's then Customs and Excise supervisor (mushrif): 73

In the days of the Almohad al-Manṣūr [580-595/1185-1199] and his son Muḥammad al-Nāṣir [595-610/1199-1214] there were [in Fes]:

785 mosques (masājīd);
42 chambers for ritual ablution (dūr al-wudū');
80 fountains (siqāyāt);
93 hammams;
472 watermills (arḥā al-mā');
89 236 houses (dūr al-suknā);
17 041 adjoining, smaller houses (mašārī);
469 fonduks;
2 qaṣariyyas, one on either bank;
9 082 shops (ḥawānīt);
2 mints (dūr li-al-sikka), one on either bank;
3 094 embroiderers (aṭrīza);
47 soap factories (dūr `amal al-sābūn);
86 tanneries (dūr al-dabbāgh);
116 painting workshops (dūr li-al-sabbāgh);
12 iron and copper foundries (dūr sabk al-ḥadid wa al-nahās);
11 glass factories (dūr `amal al-zujāj);

72 Cf. Le Tourneau, Fez in the Age of the Marinides, 22.


74 This translation follows Jean-Claude Garcin: "[Le terme mašriya] désigne cette partie isolée de la dūr, en étage, à laquelle on accède par un escalier dont la porte est placée soit dans la rue même, à côté de la porte principale de la dūr, soit dans l'entrée de la maison; la mašriya est munie de fenêtres qui donnent sur la rue; elle sert à abriter des hôtes de passage ou un jeune couple appartenant à la famille, qui se trouve ainsi vivre dans la maison, mais de façon tout à fait indépendante de la cellule familiale qui utilise la cour; la mašriya peut également être louée." Jean-Claude Garcin, "Quelques questions sur l'évolution de l'habitat médiéval dans les pays Musulmans de Méditerranée," in L'habitat traditionnel, 2: 380. Garcin wonders if the term originates from Egypt (Mīr), supporting his conjecture with the observation that the construction style connected with it is reminiscent of Egyptian construction styles. He also wonders whether both the term and style were adopted by Mediterranean cities at a time of rising populations, when space was at a premium, such that the traditional Mediterranean house centred about a court (dūr) was no longer always practical or possible. Ibid., 2: 382.
1170 bakeries \textit{(afrān al-khubz)}; 
400 stone papermaking machines \textit{(ahjār 'amal al-kāghid)}.

All this was inside the city.\textsuperscript{75}

The reporters of this inventory, Ibn Abī Zar` and al-Jaznā`ī, end their account of late-sixth/twelfth century Fes with a description of the industries packing the river banks.\textsuperscript{76} They conclude that during this time "houses inside the city had neither exterior nor interior gardens except at 'Zaytūn Ibn 'Atiya', an indication of just how densely built Fes could be, even during its early years.\textsuperscript{77}

\textbf{2.2 A City Defined and Determined by its Walls}

In the article "La Médina: Un art de bâtir," Moncef M'halla reduces the generic Arab-Muslim medina to its basic element: the wall. Referring to the wall as the medina's "épine dorsale", he calls it "l'élément clé d'une architecture dont la maison est le module de base, unité minimale d'une composition générale qui donne forme à la médina."\textsuperscript{78} Such a reduction holds true for Marinid and

\textsuperscript{75}Zahrat al-ās, 44, trans., 81-82. A similar inventory is given in Rawd al-qirtās, 57-58, trans., 48-49.

\textsuperscript{76}"From where the river enters the city until where it leaves, there were the dyers' pits and their shops \textit{(dür al-sabbāghin wa hawānīthum)}; the tanners' and soap-makers' workshops; the silk worm shops \textit{(haawānit al-khānāqīn)}; the animal slaughterers \textit{(al-qasābīn)}; the doughnut friers \textit{(al-saffāīn)}; the places for cooking gazelle \textit{(li-ṭābkh al-ghazal)}; the sellers of cooked beans \textit{(al-fawwālīn)}; and other industries requiring water." Zahrat al-ās, 44-45, trans., 83; Rawd al-qirtās, 58, trans., 48-49 (with minor variances). The translation of al-khānāqīn follows Bel's translation, p. 83; in Rawd al-qirtās this word is replaced by al-khaqāīn (tailors).

\textsuperscript{77}"Wa lam yakun bi-dākhilihā riyād wa lā bustān ḥāsh" Zaytūn Ibn 'Atiya". Zahrat al-ās, 44, trans., 83; Rawd al-qirtās, 59 (with ghars instead of bustān), trans., 49. On the riyād style of house construction in Fes, see Revault, Golvin, and Amahan, \textit{Palais et demeures de Fès}, 1: 199-201; and Bel, \textit{Inscriptions arabes de Fès}, 127 n. 2.

\textsuperscript{78}Moncef M'halla, "La Médina: une art de bâtir," 44, 66. The entirety of the first citation is: "Résumer l'urbanisme arabo-musulman, voire le réduire au mur, c'est dire l'importance de cet élément architectural qui en constitue l'épine dorsale." Ibid., 44.
Waṭṭasid Fes. As just seen in the foregoing description, the basic architectural unit this medina is the dār: at its simplest, a walled enclosure or cell;79 at its more elaborate, a "house" - an enclosure about an open courtyard.80 The madrasas, fondusks, a number of the neighbourhood mosques, and all the houses follow the second pattern;81 the hammams, shops, factories, maṣārī, and bakeries, none of which involves a courtyard, follow the first. Both are defined by walls.

Given Fes' and more generally the Arab-Muslim medina's reliance on the dār, it is no wonder that the enclosure has been called "the fundamental concept of architecture in the Islamic world."82 And given the enclosure's reliance on walls, no wonder that M'Halla should in turn consider them the Gordian knot of Arab-Muslim urbanism: the entire structure of a medina is defined by external

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81Whilst the Prophet's house in Medina is widely considered to be the nascent Muslim community's first mosque, this does not mean that mosque architecture follows domestic architecture. In Fes, for example, whilst all but the smallest neighbourhood mosques have courtyards, these courtyards are often relegated to one end of the mosque. In other words, although they are enclosed by the walls, the courtyards are not always the focal point of the building, unlike those of the house. Fassi mosques, then, with a number of important exceptions including the Almohad "Bou Jlould", the Marinid "Abū l-Hasan", and the Alawid "Bāb Guissa", fall somewhere between the two patterns of dār mentioned above. In all cases, they are walled structures, enclosing an orientated and liturgically pure space. Hillenbrand, Islamic Architecture, 39, 85-89, 475; Terrasse (M.), "L'Architecture hispano-maghribine," 2: 350, 360; Maslow, 80-85, 92-98, 122-142; Henri Terrasse, "La mosquée Almohade de Bou Jeloud à Fès," in Al-Andalus 29 (1964): 358. That the madrasas and fondusks follow the courtyard pattern, see the notes above for each building type; also, Hillenbrand, Islamic Architecture, 240-243; Terrasse (M.), "L'Architecture hispano-maghribine," 2: 377; Roger Le Tourneau, "Funduq," in The Encyclopaedia of Islam, 2nd ed., 945; and Marçais, Manuel d'art musulman, 2: 522-523.

and party walls. Its buildings are set out by them; its streets, defined by them.

This definitive quality of a wall is explicit to one of the two Arabic terms for it, namely, ḥāʾit (pl. ḥīṭān): "that which surrounds an area (ism li-mā ḥuwwa bi-hi al-makān)." Implicit to the second term, jidār (pl. judrān), is the notion of the party wall, the concept of consensual contiguity so marked in the medina's cellular structure (fig. 3): "Sibawayh [d. 180/796] said [the jidār] is that which they manage to construct the most by constructing the least. And so they say: 'Three walls' (Qāla Sibawayh: wa huwa mimmā istaghnū fi-hi bi-bināʾ akthar al-adad 'an bināʾ aqallahu, fa-qālū thalāthatu jidur)." But if walls are definitive of medinas in general, what makes those of Fes merit particular attention?

Walls are integral to both the specific history and historical self-identity of Fes. Concerning the latter, two medieval proverbs or maxims bespeak an importance accorded by Fassis to their city's web of pressing walls (ḥīṭān).


84Kitāb al-Ḥīṭān, 109. In the genre The Book of Walls, the two terms are used interchangeably, without any obvious alteration in meaning. E.g. Ibn al-Rāmi, 281-283.

85Ibn Manẓūr, Lisān al-ʿarab, 4: 121 ("Jidār"). As M'halla interprets this terse definition, because of the concept of consensual contiguity, when a new house is built only three walls are needed for it; the fourth is supplied by the house adjacent to it; this wall is the party wall. M'halla, "La Médina," 54. Often, only one or two new walls are needed, as illustrated in Akbar, Crisis in the Built Environment, 81 fig. 4.5. On the concept of contiguity in generic medina architecture, see M'halla, "La Médina," 53-59.

86Concerning the historicity of the two proverbs, a respected Moroccan historian of Fes assured me of their ancient pedigree, but regarding an exact date, it was impossible to say. 'Abd al-Qādir al-Zamāma, private communication, 19/05/03. Two other Moroccan historians of Fes concurred with this view: Mohamed Mezzine and Aouini Lhaj Moussa, private communications, 22/05/03. Concerning the difference between a proverb and a maxim, Nigel Barley writes that is one of level, not type. For him, the "maxim is already expressed in general terms that are to be interpreted quite literally. The proverb, on the other hand, is metaphorical and is expressed low on the axis of particularisation." Nigel Barley, "A structural approach to the proverb and maxim with special reference to the Anglo-Saxon Corpus," in Proverbium 20 (1972): 738-739. On this view, the two
Fig. 3: al-Qarawiyīn area of Fes
(from Escher & Wirth, Die Medina von Fes, 6)
1) If Fes were revealed from its walls, the dark-eyed virgins [of Paradise] would appear. But if the secluded virgins left [their] covers, they would be stricken with wilt and debasement (Law takashshafat Fäs`an ḥiṭānihā la zahara minhā al-ḥūr al-ʿiyn. Wa lākin al-ḥūr al-maqṣūrāt idhā kharajat `an al-khiyām aṣābāhā al-dhubūl wa al-ibtidhāl).

2) Knowledge springs from [Fes'] inhabitants' hearts, just as water springs from its walls (Inna al-ʿilm yanbaʿ u min ṣudūr ahlīhā ka-mā yanbaʿu al-mā' min ḥiṭānihā).

Orally transmitted from generation to generation, these proverbs or maxims have documentary value precisely because of their orality: they were once part of local lore because they spoke to notions the Fassi community collectively held about itself and its city. In the words of the linguist A. J. Greimas (d. 1413/1992): "On a l'impression que le locuteur [d'un proverbe ou dicton] abandonne volontairement sa voix et en emprunte une autre pour proférer un segment de la parole qui ne lui appartient pas en propre, qu'il ne fait que sayings of Fes to be cited below, are maxims more than they are proverbs.


88Cited in al-Kattāni, Fäs ʿāsimat al-Adārisa, 40. Alluded to in this maxim is Moulay Idris II's legendary speech at the foundation of Fes (historically speaking, Al-ʿAlīyya): "O God! Make [of Fes] a house of religious knowledge and law (dār ʿilm wa fiqḥ), wherein your Book is recited and your Sunna and your Boundaries (ḥudūd) upheld." Zahrat al-ās, 22, trans., 47; Rawd al-qīṛṭās, 45, trans., 39 (with one minor variation). In both histories, the speech provides a focal point about which to discuss the excellence of ʿilm in Fes, as well as an opportunity to cite a Prophetic hadith praising the religious virtues of the Fassis. Zahrat al-ās, 20, trans., 42; Rawd al-qīṛṭās, 45, trans., 40; see also Chapter Six, Part 1:1.

citer.\textsuperscript{30} This same impersonal orality also renders them undatable; as Greimas once more observes: "La formulation archaïsante des proverbes et dictons intercalés dans la chaîne du discours actuel les renvoie, semble-t-il, à un passé non déterminé, leur confere une sorte d'autorité qui relève de la 'sagesse des anciens'.\textsuperscript{31}

Concerning the specific history of Fes, from the medina's foundation to the signing of the French Protectorate Fes has been conquered and seized at least fourteen times. Sometimes these were short-lived reprisal attacks by the ruling powers against the medina's notorious resistance to their authority;\textsuperscript{92} more often they were full-scale invasions by nascent dynasties aspiring to rule, aware that without Fes conquered, or at least subdued, rule would be meaningless.\textsuperscript{93} In both cases, walls played a key rôle. The following pages recount this rôle for the medieval period.

In the Marinid historiography of Fes, the Idrisid dynasty confers upon Fes an inherent self-importance, one which the subsequent dynasties only succeed in

\textsuperscript{30} Algirdas Julien Greimas, "Les proverbes et les dictons," in idem, 

Du sens: Essais sémantiques (Paris: Éditions du Seuil, 1970), 309. In this regard, the proverb or maxim forms part of what the French sociologist Maurice Halbwachs (d. 1365/1945) called the "collective memory" of a group. See Maurice Halbwachs, On Collective Memory, ed. and trans. Lewis A. Coser (Chicago: The University of Chicago Press, 1992), esp. 45, 173; also, idem, La mémoire collective, ed. Gérard Namer (Paris: Éditions Albin Michel, 1997), 97-142. For an example of how proverbs or maxims can profitably be used in the study of Islamic architecture, see Depaule, A travers le mur, esp. 87-99.

\textsuperscript{31} Greimas, "Les proverbes et les dictons," 313.


\textsuperscript{93} It was not just native dynasties who sought to conquer Fes, but Christian empires, specifically the Portuguese. Marcel Bataillon, "Le rêve de la conquête de Fès et le sentiment impérial portugais au XVI\textsuperscript{ère} siècle," in Mêlanges d'études luso-marocaines dédiés à la mémoire de Duve Lopes et Pierre de Cenival (Lisbon: Instituto Para Alta Cultura, with l'Institut Des Hautes Études Marocaines de Rabat, 1945), 31-39.
reaffirming. Fes may be conquered in name, and have to accept outsiders as rulers; but it will affect an obdurate, frequently belligerent autonomy. It will occupy itself with itself; and to conquer it in more than just name, rulers are compelled to grasp it from the inside. They must build and raze monuments.

Representing the medina as thoroughly worked upon by these rulers, Rauḍ al-qiṭṭās and especially Zahra al-ās relate the walls they erect or destroy, beginning with the Zanata ruler Dūnās al-Maghrawī (440-452/1049-1061):

During this period the emirs and kings continued their constructions in Fes (yaẓidina al-birū bi-fūs), to such a point that the inhabitants went to build in the outskirts of the two medinas. . . . One of the rulers, Dūnās b. Ḥamāma b. al-Muʿizz b. ʿAtiya b. Ziri [al-Maghrawī], ringed both these outskirts with walls. He built there mosques, fonduks, hammams, and so forth, and Fes became as one city.

With Dūnās' death, his two sons ʿAjīsa and al-Futūh continue his work. Less extensive in scope, their constructions were of a military order only:

Al-Futūh fortified (ḥasṣana) the Andalus bank of Fes, and built a citadel for his residency there. . . . ʿAjīsa fortified the Qarawiyyīn


1For example, the refusal of the "people" (al-nās) to accept a particular alteration, ordered (amara) by one of the Marinid princes, to the Al-Qarawiyyīn mosque; the permanent closure of a door of this mosque, that had been restored without the sultan's authority; the fierce conflict between the qādi (qāfī) of the medina, the governor (wālī) of the medina, and the sultan, over the restoration of a fonduk; and the conflict between the sultan and the ulema (fuqaha') over the accuracy of the Al-Qarawiyyīn mosque's qīla. Zahra al-ās, 75, trans. 145; ibid., 74, trans. 144; ibid., 79-80, trans. 157-158; ibid., 81-82, trans. 160-162. Cf. Shatzmiller, L'histoire et l'histoire méridionale, 33 (in conjunction with Beck, L'image d'Idris, 97-98).


bank, building a citadel there for his residency. These fortifications proved of no avail in face of the Almoravids. To this dynasty, the Marinid historiography ascribes many structural, military, and conceptual changes:

During the period of the Almoravids, the dividing ramparts that were built by the Idrisids between the two banks of Fes were demolished, and [also those] between the outskirts of the two banks. The rampart at the top of Wādi al-Kabīr was renovated... as was the rampart at the bottom of it. ... Bridges were built between the two banks for passage from either side. ... Concerning the greatest ruler of the Almoravids Yūsuf Ibn Tāshfin [453-500/1061-1106], he hardly stopped adding to the number of mosques, fountains, baths, and fonduks (khānāt) in Fes, and repairing its walls. From Cordoba he brought across a team of skilled mill makers (jumla min ʂʊnːa' al-arḥā), and of these he built many. ... During his rule the two banks of Fes became [definitely] one (ṣārat al-'adwatān quṭr“n ṭwāhīd”).

The demise of the Almoravids occurred at the hands of the Almohads, and the historiography recounts in similar terms the changes this latter dynasty wrought, namely, buildings constructed and institutions established. Also recounted is an anecdote about the Almohads’ founder ʿAbd al-Mūmin b. ʿAli al-Kūmi al-Zanāṭī (524-558/1130-1163). Whereas all previous rulers of prior dynasties had seen fit to build walls in Fes, ʿAbd al-Mūmin acted otherwise. No less aware that walls were integral to the control of Fes, and having already entered the city by damming the river until it burst the ramparts, he tore the remaining walls down, replacing them with figurative ones:

In the year 542/1148 the ruler ʿAbd al-Mūmin Ibn ʿAli ordered the tearing down of most of the walls of Fes (amara bi-hadān akthar

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100Zahrat al-ās, 43-45, trans., 81-83; cf. Rawd al-qirfās, 57-58, trans., 49. See also above, p. 35.
aszūr Fās), saying: "Truly, we have no need of walls. Instead, our swords and our justice will be our walls (Innanā lā naḥṭāju ilā sūr, innanā aswārūna asyāfūnū wa `adlūna)." The situation remained that way until Yā`qūb al-Manṣūr [580-595/1184-1199] began rebuilding what had been torn down. 101

Had the authors of Rawāḍ al-qirṭās and Zahrat al-ās been interested in describing Fes Jedid as well as the medina, they might have seen in the conurbation a similar wall-related effort to dominate the old city. Placed just outside the medina's walls, this Marinid palace, military and administrative centre was nothing short of a giant citadel, policing what came in to the medina, and what left. 102 In part, the madrasas the Marinids built in the medina were an extension of this attempt to control the old city: a form of intellectual policing. 103 Finally, had the two historians been writing in a later century, they would surely have noted the Saadid constructions menacing the medina. The two bastions (sg. burj) with cannons overlooking the medina are theirs, as are the three bastions and artillery redoubts added to the ramparts of Fes Jedid, nearest to the medina. 104

2:3 Conclusion

In the foregoing section "The Phenomenon of Marinid Fes", walls have been teased out of their customary background position and shown to be critical elements of the city. Their status as the medina's building block revealed them

103 Mediano, Familias de Fez, 35-43; Hillenbrand, Islamic Architecture, 240; Shatzmiller, "Les premiers mérinides et le milieu religieux de Fès," 115-118; Berque, Ville et université, 71.
104 Bressolette and Delarozière, "Fes-Jdid," 269.
as physically definitive of Fes; their place in local lore and conquest, as determinant of the medina's medieval identity and history. The conclusion follows that, just as Fes has been historically apprehended through its walls, so in this dissertation may Fes be apprehended by way of them again.

3. SUMMARY

In this chapter, the reasons for choosing the Marinid and Waṭṭasid period of Fes for the investigation were explained, and the phenomenon of the medina described. Physically definitive and historically determinant of the city, walls were discerned as the means by which the investigation would apprise the nature of the medina.
Chapter Two

GENDERED AND SACRED BOUNDARIES: THE CULTURAL AND RELIGIOUS DIMENSIONS OF WALLS

As a type of boundary, walls are one means by which Islamic law separates the lawful (halāl) from the forbidden (harām). Sufficiently important are walls to the law that a genre is dedicated to them: the aforementioned Book of Walls. As a type of boundary, walls are also a means by which Islam and Muslim culture separate inside from outside, private from public. As will be seen, along the divide stand separated this world from the next, and women from men.

Most societies have recourse to walls for purposes as various as ritual, habitation, protection, and control; but as this and the next chapter will suggest, Muslim societies have an especial reliance upon them. The current chapter treats the more exclusively extralegal, cultural and religious dimensions of walls, providing

1 On the Qur'anic and legal (fiqh) meanings of these terms, see Toshihiko Izutsu, The Structure of the Ethical Terms in the Koran: A Study in Semantics (Tokyo: Keio Institute of Philological Studies, 1959), 245-248; and Joseph E. Lowry, "Lawful and Unlawful," in Jane Dammen McAuliffe (ed.), The Encyclopaedia of the Qur'an (Leiden: Brill, 2001-), 3: 172-176

thereby a contextual introduction to the following chapter's analysis of *The Book of Walls*. To recap the investigation's hypothesis: were it known what a wall was in medieval Muslim thought and culture, then something fundamental about Fes, a city determined by its walls, might also be known. The two chapters represent an attempt to reach this definition.

1. WALLS AS THRESHOLDS

Whatever else a wall is, empirically it is a threshold: a frontier and liminal "space between" (Zwischenraum) - between here and there. If a door is more commonly considered the threshold, in reality it is a gap in a wall. The wall is the threshold; and the door, its point of traversal. Simultaneously conjoined and divided by the wall, here and there are reversed at their point of contact, the wall acting like a mirror. Finally, configured by the tensions of this liminality, a wall is frequently fetishised at its most vulnerable points: ornate, supplementary frames about openings, windows, and doors, even upon the blindest, most

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"silenced" (muṣmat) of medina walls.\(^7\)

Much of this is explicit in a Qur'anic passage on a wall (sūr) and its door (bāb).\(^8\) In the hereafter, this wall divides the "Believers" (muʿminūn) from the "Hypocrites" (munāfiqūn), and divine mercy (al-raḥma) from divine punishment (al-ʿadhāb). The Believers occupy its inside; the Hypocrites, vainly crying out to be allowed across, its outside. Their cries can be heard by those on the inside, but not via the door; it is kept shut, part of the bodily impenetrable threshold between the two groups, which the wall establishes and upholds. Kept shut, the door is a tantalising symbol of this impenetrability; an indication of how close is the conjunction, but great the divide, between the saved and the damned: a wall's breadth, across which mercy and punishment are reversed.\(^9\)

The significance of a wall's threshold qualities notwithstanding, a wall is empirically also a screen, or cover; rarely more so than in Muslim culture, with its traditional enclaustration and veiling of women. Both aspects of walls - threshold and cover - are discussed in detail below. Belying my attempt to treat them, for clarity's sake, as if they were discrete, both aspects are in fact inter-related.

\(^7\) Although "blind" is the English adjective for a blank wall, "muṣmat" is the Arabic: someone or something "silenced". With regard to Fes medina, contrary to what is often supposed about its exterior walls, they are invariably plastered and quite often lightly incised with herring-bone and other simple patterns. For a general repertory of decorative frames about windows and doors in Muslim culture, see Depaule, A travers le mur, 169-279. On the supplementary function of frames, see Jacques Derrida, The Truth in Painting, trans. Geoff Bennington and Ian McLeod (Chicago: The University of Chicago Press, 1987), 37-82. See also Irene A. Bierman's treatment of inscriptions about thresholds, in idem, Writing Signs: The Fatimid Public Text (Berkeley: University of California Press, 1998), 31, 35, 73; and Lefebvre's treatment of window- and door-frames in idem, The Production of Space, 209.

\(^8\) 57: 13-15.

\(^9\) Cf. the discussion of other Qur'anic divides between the saved and the damned of the Hereafter, p. 66 below.
1:1 Liminal Aspects of Walls in Islam and Muslim Culture

1:1:1 Monumental architecture: the qibla wall

Asking what makes a mosque a mosque, the architectural historian Robert Hillenbrand responds: "The answer is forbiddingly simple: a wall correctly orientated towards the qibla, namely the Ka`ba within the Masjid al-Haram, Mecca."\(^{10}\) The immediate purpose of this qibla wall is to orient the believers' prostrations of prayer (salāt);\(^{11}\) but as Dominique Clevenot demonstrates in Une esthétique du voile: Essai sur l'art arabo-islamique, another purpose is attributed to this wall: "la séparation et la promesse."\(^{12}\)

Clevenot's demonstration begins with the sutra. Etymologically a veil, but technically a mark or object placed on the ground by an individual in prayer, the sutra symbolically separates the worshipper from the world (al-dunyā): before it no one may pass; and beyond it the worshipper "cannot" see.\(^{13}\) For Clevenot, the qibla wall represents the communal extension of this sutra, and he argues that in blocking the believers' vision the qibla wall "matérialise la fracture idéale qui sépare les hommes de Dieu."\(^{14}\) From within the mosque, the qibla wall marks the threshold between this world and the next (al-ākhira). The next world may not be seen, but to the faithful it is promised. The qibla wall guarantees its invisibility, whilst simultaneously offering "un accès à l'imagination


\(^{12}\)Clevenot, *Une esthétique du voile*, 55.


\(^{14}\)Ibid., 23-26. For further information on the sutra's relation to the qibla wall, see A.J. Wensinck, "Qibla," in *Encyclopaedia of Islam*, 2nd ed., 83.
d'un au-delà paradisiaque." An authoritative hadith supports this interpretation:

The Prophet led us in prayer, and then mounted the minbar. With his hand he pointed in the direction of the mosque's qibla, and said: "Since leading you in prayer just now, I was shown paradise and hell depicted on the surface of this wall. I never saw, as I saw today, into good and evil. I never saw, as I saw today, into good and evil. (Uriyu al-āna mundhu sallaytu la-kum al-ṣalāt al-jannā wa al-nār mumaththalatayni fi qubul hādhā al-jidār fa-lam ara ka-al-yawm fi al-khayr wa al-sharr fa-lam ara ka-al-yawm fi al-khayr wa al-sharr)."

With the development of Maghribi mosque architecture under the Almoravids and Marinids, funerary spaces were sometimes added behind the qibla wall of Friday mosques. Thought to be the first of them, the Almoravid funerary annexe of the Al-Qarawiyyin, Fes, serves as a good example: within it the dead were placed, and prayers said over the body from within the sanctuary of the mosque itself, before the qibla wall. The institution was followed by the

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17Zahrat al-ās, 78, trans., 153; Abdelhadi Tazi, La Mosquée Al Qaraouiyine: La mosquée-université de Fès, histoire architecturale et intellectuelle, 3 vols. 2 ed. (Rabat: Dar Nachr el Maarifa, 2000), 74-75 (in Arabic); and Terrasse, La mosquée Al-Qaraouiyin à Fès, 21-22, 45-46. For further description and illustration, see also Maslow, Les Mosquées de Fès et du Nord du Maroc, 165-174. Tazi suggests that originally the funeral prayers were not said in the oratory, but in the annexe and street adjoining it. Terrasse, however, wonders what the three doors connecting the annexe to the oratory via the qibla wall were there for, if not to be opened as and when the prayers were said in the oratory. Tazi, La Mosquée Al Qaraouiyine, 74; Terrasse, La mosquée Al-Qaraouiyin à Fès, 22. Terrasse's argument is firmly supported by Zahrat al-ās, which states that the first of the three doors in the qibla wall is where the imam stands for the funeral prayer (wa bi-hi maqām ma'lam bi-al-jarnāʿīz). Zahrat al-ās, 78; not included in translator's recension. The current custom of Fes is to have the prayers in the oratory, and the body in the annexe or space behind the mihrab (mīhrāb), where such a facility exists.
Almoravid Great Mosque (Jami` al-Kabir), Tlemcen - a small space behind the qibla wall’s mihrab;\(^{18}\) the Marinid Great Mosque, Fes Jedid - a large annexe;\(^{19}\) the Marinid madrasa “Bou ʿInaniya” - an annexe;\(^{20}\) and the Marinid mosque in Manṣūra, near Tlemcen, Algeria - another small mihrab space.\(^{21}\)

Although the practical purpose of the institution was to prevent the deceased from polluting the mosque’s interior;\(^{22}\) the symbolic purpose was surely to indicate the departed soul’s passage to the hereafter.\(^{23}\) The Marinid sultans Abū al-Ḥasan ʿAli (732-749/1331-1348) and Abū ʿInān Fāris (749-759/1348-1359) appear to have favoured this symbolism: the latter is buried in the funerary annexe of Fes Jedid’s Great Mosque; and the former lies behind the qibla wall of the mosque of his name in the Chella necropolis, Rabat.\(^{24}\) In Cairo, meanwhile, their contemporary, the Mamluk Sultan Ḥasan (748-752/1347-1351 and 755-762/1354-1361), lies buried behind the qibla wall of his mosque.\(^{25}\) And some two-and-a-half centuries later, Saadian sultans and their families would all be buried behind another qibla wall, that of the Al-Manṣuriyya mosque in Marrakech’s citadel, or kasbah. This necropolis, brought to near artistic perfection by its builders and craftsmen, is the famous Saadian Tombs, sealed off from view until the early-twentieth century.\(^{26}\)

\(^{18}\) Marçais, Manuel d’art musulman, 1: 314, 2: 486.

\(^{19}\) Maslow, Les Mosquées de Fès et du Nord du Maroc, 47-50.

\(^{20}\) Hillenbrand, Islamic Architecture, 246, 524.

\(^{21}\) Marçais, Manuel d’art musulman, 2: 486.

\(^{22}\) Tazi, La Mosquée Al Qaraouiyyine, 74; Terrasse, La mosquée Al-Qaraouiyin à Fès, 21.


\(^{26}\) Marçais, Manuel d’art musulman, 2: 707-710.
Nowadays indissociable from the qibla wall, but in the Prophet's lifetime unknown, the mihrab (mihrāb) is commonly a mosque's most ornate element, located neither before nor behind the qibla wall, but within it. Most frequently in the form of a recessed, arcuated niche, the mihrab is thought by some to signify an absent presence: that of the Prophet as Imam. Ambiguous, because presence and absence at once co-exist, this signification draws upon the mihrab's location within the liminal, equally ambiguous qibla wall.

An alternative signification for the mihrab, as proposed by Clevenot, is that of door: the mihrab "invite à traverser l'écran du mur de qibla. Elle invite à se mettre en mouvement pour aller au-delà de la réalité immédiate." As before,
this interpretation draws upon the qibla wall; for without it, there were no door for traversal. Finally, although there are difficulties inherent to interpreting the mihrab in terms of the illuminated niche (mishkāt) mentioned in the Qur'an's "Verse of Light" (ayāt al-nūr, 24:35), the mihrab's location within the qibla wall substantiates such an interpretation. Only in such an unworldly space - neither of this world, nor the next - could such an extraordinary light shine forth.

1:1:2 Domestic architecture: the dār

As has been suggested by others, to study Islamic architecture only in its monumental aspects is to neglect its numerous vernacular aspects. In the words of Guy Petherbridge:

Monuments and public buildings do not . . . exist in isolation but play a particular symbolic role in a total spatial and hierarchic system of building and decorative forms, serving to reinforce political and social structure and religious belief. Because of their status and massiveness of construction, such buildings tend to survive while associated domestic and utilitarian complexes of a contemporary date are destroyed. To consider monumental architecture without these associated complexes is to create an unbalanced and perhaps erroneous impression of the nature and development of Islamic architecture and its relationship to the society that formed it.

31 The verse reads: "Allah is the Light of the heavens and the earth. The similitude of His light is as a niche wherein is a lamp. The lamp is in a glass. The glass is as it were a shining star. (This lamp is) kindled from a blessed tree, an olive, neither of the East nor of the West, whose oil would almost glow forth (of itself) though no fire touched it. Light upon light, Allah guideth unto His Light whom He will. And Allah speaketh to mankind in allegories, for Allah is Knower of all things." The Meaning of the Holy Qur'an, trans. Mohammed Marmaduke Pickthall (New Delhi: UBS Publishers' Distributors Ltd., 1994), 24:35. On the trend of viewing the mihrab in terms of this Qur'anic verse, see, for example, Walter B. Denny, "Reflections of Paradise in Islamic Art," in Sheila S. Blair and Jonathan M. Bloom (eds.), Images of Paradise in Islamic Art (Hanover, New Hampshire: Hood Museum of Art, Dartmouth College, 1991), 36-38; and Titus Burkhardt, Art of Islam: Language and Meaning, trans J. Peter Hobson (London: World of Islam Festival Publishing Co. Ltd, 1976), 91. On problems inherent to this interpretative trend, see Finbarr B. Flood, "Light in Stone: The Commemoration of the Prophet in Umayyad Architecture," in Johns (ed.), Bayt al-Maqdis, 329-339; Khoury, "The Mihrab Image," 11-12, 28 n. 105; and Alexandre Papadopoulos, "Le problème du mihrāb," in idem (ed.), Le mihrāb dans l'architecture et la religion musulmanes, 46.

Regarding domestic architecture in particular, to neglect its study is not only to disregard the numerically greater part of Islamic architecture;\textsuperscript{33} but also to underestimate the priority accorded to it in the Qur'an, Hadith, and Muslim thought.\textsuperscript{34} In the Qur'an and Hadith, for example, seven words are used to refer to a house or dwelling place, most frequently dār (pl. diyyār) and bayt (pl. bāyyūt), which appear forty-nine and sixty-five times respectively in the Qur'an alone.\textsuperscript{35} God has a house (bayt), variously qualified by the Qur'an as "the house" (al-bayt, e.g. 2:128), "the first house" (awwal al-bayt, 3:96), "the sacred house" (al-bayt al-harām, 5:97), and "the ancient house" (bayt al-‘ātiq, 22:29), amongst other terms.\textsuperscript{36} The Prophet, his wives and his descendants are popularly associated with this house as "the people of the house" (ahl al-bayt), a Qur'anic phrase that has become their sobriquet alone.\textsuperscript{37} The hereafter is a house, qualified by the Qur'an as "the house" (al-dār, e.g. 6:135), "the house of residence" (dār al-muqāma, 35:35), and "the final house" (dār al-akhira, e.g. 2:94), to name but three.\textsuperscript{38} Hell, meanwhile, is referred to in the Qur'an as "the evil house" (sic‘ al-dar, e.g. 13:25), "the house of perdition" (dār al-bawār, 14:28), and the "house of eternity" (dār

\textsuperscript{33}In Fes medina and Fes Jedid, for example, there are currently estimated to be some 8,000 traditional houses - a number far in excess of what are ordinarily considered the medina's monuments, viz. seven madrasas, some fonduks, some mosques. Ameur, Baltagi et al., Sauvegarde de la ville de Fes, 1: 18; cf. Le Tourneau, Fès avant le protectorat, 154. See also the building inventory of Almohad Fes in Chapter One, Part 2: 1; in this inventory, houses far outnumber all other building types (to such an extent as to prompt doubts regarding the inventory's accuracy).

\textsuperscript{34}The following sub-section is indebted to the pioneering study by Juan Eduardo Campo, The Other Sides of Paradise: Explorations into the Religious Meanings of Domestic Space in Islam, op.cit. It develops Campo's study inasmuch as it refines the focus from houses, to walls of houses.


\textsuperscript{36}J. Lecerf, "Bayt," in Encyclopaedia of Islam, 2nd ed., 1139; Campo, The Other Sides of Paradise, 9.


\textsuperscript{38}Cf. Campo, The Other Sides of Paradise, 24.
al-khuld, 41:28). Finally, in Muslim thought the entire world is divided into a number of houses (sg. dār), including the "House of Islam" (dār al-Islām), where Islamic law prevails; and the "House of War" (dār al-ḥarb), where it does not.

Given the importance accorded to domestic space in Islam and Muslim thought, it is hardly fanciful to suggest that the rule of Islam is one of the house; not the castle or palace. The Prophet’s biographer Ibn Ishaq (d. 151/768) says as much when he recounts the events following the foundation of the Prophet’s house-cum-mosque in Medina:

> When the Prophet, peace be upon him, had settled himself (ittma’anna) in Medina; when the Emigrants (al-muhājirūn) had gathered about him; and (when) the matter of the Anṣār (Medinan “Supporters”) had been resolved - the rule of Islam was established (istahkama amr al-Islām). Ritual prayer was instituted (qāmat); almsgiving and fasting, prescribed (furīdat). Legal punishments (ḥudūd) were instituted; and halal and haram, determined (furīda). Islam took up residence (tabawwa’) amongst them.

Within the "House of Islam", the individual households comprising it are themselves subject to rules. Drawn from the Qur’an and Hadith, these behavioural rules reflect a number of concerns, a main one being the negotiation of houses’ thresholds. In the Qur’an, for example, believers are taught the comportment

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39 Cf. ibid., 26.
40 Cf. A. Abel, "Dār al-Islām" and idem, "Dār al-Ḥarb," in Encyclopaedia of Islam, 2nd ed., 126-127. Other "houses" include the "House of Covenant" (dār al-‘ahd), the "House of Reconciliation" (dār al-ṣulḥ), the "House of Pillaged Land" (dār al-masluba), the "House of Heresy" (dār al-bid‘a), and the "House of Unbelief" (dār al-kufr).
41 Cf. "The establishment of Islam is intimately connected with the creation, appropriation, and expansion of Muslim domestic space." Campo, The Other Sides of Paradise, 65; see also ibid., 46.
expected of them when at the door of another:

O you who believe! Enter not houses (buyūt) other than your own without first announcing your presence and invoking peace upon the folk thereof. That is better for you, that you may be heedful. And if you find no one therein, still enter not until permission has been given. And if it be said to you: Go away again, then go away, for it is purer for you. God knows what you do. (It is) no sin for you to enter uninhabited houses wherein is comfort for you. God knows what you proclaim and what you hide.\(^3\)

Later in the sura, believers are also told: "When ye enter houses, salute one another with a greeting from Allah, blessed and sweet." (24:61).

In the Hadith, this concern with "threshold propriety" is amplified, affecting not only visitors, but also proprietors. When a believer leaves his own house, for example, he should follow the Prophet's example and say: "In the name of God, I trust in God. In You I seek refuge neither to stray, nor to be led astray; neither to trip, nor to be tripped; neither to commit wrong, nor to be wronged; neither to play the fool, nor to be fooled."\(^4\) Upon entering his house, the same believer should say: "O God, I ask from you the best entrance and the best exit (khayr al-mawlaj wa khayr al-makhraj). In the name of God we enter; in the name of God we exit; and in God our Lord we trust." He then should greet his family

\(^3\)The Meaning of the Holy Qur'an, 24:27-29; translation modified. See also the rules for entering the Prophet's household (buyūt al-nabi), 33:51. A Qur'anic phrase, popularly uttered in Morocco today in the context of visitation rules, but which refers to matters of pilgrimage, reads: "It is not righteousness that ye go to houses by the backs thereof (as do the idolaters at certain seasons), but the righteous man is he who wardeth off (evil). So go to houses by the gates thereof, and observe your duty to Allah, that ye may be successful." Ibid., 2:189. As with other examples in the Qur'an, this phrase uses domestic space for the expression of piety. Cf. Campo, The Other Sides of Paradise, 22.

For visitors, meanwhile, "threshold propriety" is an even greater cause of anxiety, to judge by the Prophet's undisguised intolerance of threshold impropriety:

1) A man from the Bani 'Amir sought entry to the Prophet (ista'dhana 'alā al-nabi), who was in his house. The man said: "May I enter?"
God's Messenger said to his servant: "Go out to this person and teach him how to seek entry (fa-'allimhu al-isti'dhan). Tell him: Say 'Peace upon you. May I come in?'" The man heard him and said: "Peace upon you. May I come in?" The Prophet gave him permission, and he went in.\(^{46}\)

2) I heard Jābir saying: "In order to repay my father's debt, I went to the Prophet and knocked upon the door. He said: 'Who is it?' I said: 'It is I.' He said: 'I, I,' as if he hated it."\(^{47}\)

As the Qur'an teaches, visitors should precede their entrance by announcing themselves and greeting the occupants. The announcement should consist of name and title; not ambiguous abbreviations. That is correct threshold procedure or isti'dhān, and that is what the Prophet is reported having taught.\(^{48}\) The Prophet is also reported having explained both the immediate and wider reasons for isti'dhān. The immediate reason is the prevention of uninvited, unlicensed eyesight into the house:

A man was peering into (ittla'a) the Prophet's chambers (hujar) through a hole [in the wall]. The Prophet held a comb (midran)
and with it he was massaging his head. He said: "Had I known you were looking, I would have stabbed you in the eye with it. 
Isti'dhän was promulgated for the sake of [illicit] looking (Innamä ju’ila al-isti’dhän min ajl al-basar)."49

The wider reason and context, is that the house is a sacred enclave or haram, scarcely less inviolable than other enclaves held sacred in Muslim thought, including the harams of Mecca and Medina (al-Haramayn), and the zäwiya of Moulay Idris II in Fes:50

The Prophet said: "The house is a haram. Whoever enters your haram [without permission], kill him! (Al-där haram fa-man dakhala ‘alayka haramaka fa-ugtulhu)."51

It is beyond the scope of the present dissertation to discuss all the reasons why the house is a haram, but one reason is that the house is traditionally considered the domain of women, a fact that will be pursued in the following section on the gendered aspects of walls. Although the seclusion of women within the house is not Islamic in origin, and in the Qur'an is apparently applied to the Prophet's wives only, in the Hadith are found the clear beginnings of an ideological

49Al-Bukhäri, Sahih al-Bukhäri, k. al-isti’dhän, bäb 11, raqm 6241. A sound hadith, also collected by Muslim, al-Nisä'i, Ibn Hanbal, and al-Tirmidhi. Wensinck et al., Concordance et indices de la tradition musulmane, 1: 185. Related hadiths include: "Whoever peers (attala’) into a house without permission, [the occupants may] gouge and blind in the eye"; "If the eye (al-basar) goes in, no permission [to go in]"; "Isti’dhän: Because of the gaze (Innamä al-isti’dhän min al-nazar).” Abü Däwud, Sunan Abi Däwud, k. al-adäb, bäb fi al-isti’dhän 136, arqäm 5172, 5173 and 5174.


alignment between all believing women and domestic space. In the case of ritual worship (ṣalāt), for example, women are encouraged to observe this in the house; they may only leave for the mosque with their husband's or father's permission. Presumably, had the social norms witnessed by the Hadith been other than the restriction of women beyond the house, there were no need for them to ask permission to leave. Just as in the Qur'an, then, the Hadith defines the house as "a moral center". But now all believing women are subject to its rules.


53 E. g. "God's Prophet said: 'Do not prohibit mosques to your womenfolk; but their homes (būyūt) are better for them.'" Abū Dāwud, Ṣūnān Abi Dāwud, k. al-ṣalāt, bāb mā jā' fi khurūj al-nisā' ilā al-masjid 52, raqm 567. Cf. Wensinck et al., Concordance et indices de la tradition musulmane, 6: 440. See also Abū Dāwud, Ṣūnān Abi Dāwud, k. al-ṣalāt, bāb tashdīd fi dhāhillika 53, raqm 570.


56 Campo, The Other Sides of Paradise, 22.
With the historical development of Muslim culture, the ideological linkage of women with domestic space takes semantic expression. Ḥaram, for example, becomes an honorific for a man's wife;\(^{57}\) and derivatives of ḥaram, namely, ḥarīm (the English "harem"), ḥurām (sg. ḥurna), and ḥirniyyāt (sg. ḥirniyya), come to connote the wives and/or the women of the family.\(^{58}\) "Bint ad-ḍār" and "mūlat ḍār" are contemporary colloquial Moroccan epithets for a demure young woman and a wife respectively; their literal translations are "girl of the house" and "owner of the house".\(^{59}\) "Sitt al-bayt" is the latter's Middle Eastern equivalent; its literal translation is "lady of the house".

In this development, the house has become the women's realm; the realm outside the house, perforce that of the men. The walls of the house are the realms' threshold; in the words of the sociologist Pierre Bourdieu regarding the Algerian Kabyle house, "a magical boundary... the place where the world is reversed."\(^{60}\)

The walls are "magical", not in a hyperbolic sense owing to their rôle in

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\(^{59}\)Cf. Boughali, La représentation de l'espace chez le marocain illétré:, 136; and Richard S. Harrell (ed.), A Dictionary of Moroccan Arabic: Moroccan-English (Washington: Georgetown University Press, 1966), 91 (entry "mula"). This dictionary entry gives only the plural of mülat ḍār, namely, mawalīn ḍār, possibly because when the dictionary was researched and first published, polygamous marriages were still quite common in Morocco.

\(^{60}\)Pierre Bourdieu, "The Kabyle House or The World Reversed," in idem, Algeria 1960, trans. Richard Nice (Cambridge: Cambridge University Press, 1979), 151. Bourdieu's study focuses upon the main threshold wall of the house, namely, "the wall of darkness, or the wall of sleep, the maiden, or the tomb" where the front door hangs. Ibid., 135; see also Boughali, La représentation de l'espace, 137. Just as in the Hadith, with the historical development of Muslim culture, threshold propriety remains a complex issue. Varying with societies and periods, some of the more elaborate codes and arrangements are set out in Depaule, À travers le mur, 66-69; Marmon, Eunuchs and Sacred Boundaries in Islamic Society, 4-8; Necipoğlu, Architecture, Ceremonial, and Power, xvi, passim; and idem, "Framing the Gaze in Ottoman, Safavid, and Mughal Palaces," in Ars Orientalis 23 (1993): 303-342.
demarcating gendered realms, something that will be discussed further below; but because of the symbolic logic societies ascribe to them and their liminality. Kabyle villagers, for example, consider sitting on a house's main threshold a means of "closing the passage to happiness and prosperity". Women are told never to sit near it holding their children; young children and brides, not to traverse it too often. In southern Morocco, the Aoulad Bou 'Aziz tribe "kill a sheep or a fowl and wet with its blood the ground where the walls will stand. When the entrance is ready, they kill another sheep or fowl over the threshold. . . . When the house is ready a third sacrifice is made, a sheep being killed over the threshold, and its meat is served at the so-called ārs d-dār, 'the wedding of the house', to which the men and women of the village are invited." Further south in Morocco, in the coastal region near Agadir, villagers throw flour, oil, and salt in the trench made for the walls; and where the main entrance is designated, a "perfectly white sheep is slaughtered . . . its bleeding body taken along the trench three times from right to left." Finally, lest it should be thought that these and other threshold rituals pertain to rural areas alone, in Fes a "buck-goat or a ram is slaughtered when the walls of the house are ready and it is just going to be roofed."

In Fes, too, according to Rawd al-qirās and Zahrat al-ās, prophylactic talismen (sg. ṭilasm) in the shape of a rat, a bird with a scorpion's tail in its beak, and

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64Ibid., 1: 317.

65Ibid., 1: 315. See also the discussion of the social practices involving the Syrian "ātabe" (ātaba), a distinctively paved interior threshold located just before main rooms, in Depaule, *À travers le mur*, 69-70, 285.
globs (taffațh), were placed above the first mihrab of the Al-Qarawiyyin mosque.66 When the mosque was extended, they surmounted the mosque's `anaza (external mihrab).67 The same sources also report an enormous living turtle (sulahih) left buried beneath one of the mosque's main doors.68 And although these two reports apply to monumental, not domestic architecture, as an echo of the Prophet's house-cum-mosque in Medina, the Al-Qarawiyyin is symbolically speaking a house.69 Like a house, it has its haram,70 and like a house, crossing its threshold is to undergo a reversal of sorts: from the world of commerce and action, to that of worship and remembrance.71 Its numerous inner thresholds, those created between the arched piers of its gabled sanctuary (see Plate One), are meanwhile considered the "abode of devils" (ma'wâ al-Sha'fîân), blameworthy.

66Rawd al-qirtas, 72, trans., 56; Zahrat al-âs, 54, trans., 97.
69Although the Prophet's house in Medina is widely considered to be the source of the structural genesis of the mosque (e.g. Robert Hillenbrand, "Masjid. H. The Architecture of the Mosque," in Encyclopaedia of Islam, 2nd ed., 678), serious doubts about this orthodoxy have recently been raised. See Johns, "The House of the Prophet," esp. 69-80, 103-112. In view of these doubts, it is wiser to assert that the Prophet's house-cum-mosque represents an ideological source of the mosque, and possibly a structural one, too. For an example of the ideological and structural influences of the rebuilt Prophet's Mosque (88-90/707-709) upon a later mosque, see Nuha N. N. Khoury, "The Meaning of the Great Mosque of Cordoba in the Tenth Century," in Muqarnas: An Annual on Islamic Art and Architecture 13 (1996): 80-83, 88-94.
70Hillenbrand, Islamic Architecture, 35; see also Tazi, La Mosquée Al Qaraouyyine, section "haram al-Qarawiyyin," 1: 98-99.
71Cf. the involved threshold comportment expected of a pilgrim to the zawiya of Moulay Idris II, as excerpted in Salmon, "Le culte de Moulay Idrîs," 423-425; see also John Renard's discussion of sacred space and the preparations required to enter it, in idem, Seven Doors to Islam: Spirituality and the Religious Life of Muslims (Berkeley: University of California Press, 1996), 35-36. Regarding the Al-Qarawiyyin's mihrab threshold marked by the talismen, this, too, should be considered an external threshold between the worlds of action and prayer; not a qibla threshold symbolising the reversal of this world with that of the next (as described in Part 1: 1: 1). The reason is that the talismen face away from the mosque, prohibiting the entrance into the mosque of rats, scorpions, and snakes respectively. Rawd al-qirtas, 72, trans., 56; Zahrat al-âs, 54-55, trans., 97-98.
(makrūh) to stand on in prayer.\textsuperscript{72}

2. WALLS AS COVER

2:1 Gendered Aspects of Walls in Islam and Muslim Culture

Recounted in the Qur'an is a story prescient of Muslim culture's gender-based engagement with walls. Moses and a mysterious stranger, traditionally called Khīḍr, enter a village and come across a collapsing wall (\textit{wa}.\textit{jada' fi-hā jīdār}”\textit{yuridu an} \textit{yanaqadda}).\textsuperscript{73} Despite the villagers' inhospitality, and much to Moses' incredulity, the stranger rebuilds it for free. Later he explains why:

As for the wall, it belonged to two orphan boys in the city; and beneath it, a treasure (\textit{kanz}) that was theirs. Their father had been a righteous man, and thy Lord intended they should come of age and should bring forth their treasure as a mercy from their Lord.\textsuperscript{74}

Whereas in the foregoing section the function of a wall was liminal, here it is protective: covering, barring, secluding. The orphans' treasure is at risk of theft once exposed to the villagers' eyes, and to maintain its invisibility the wall is rebuilt. It is a function upon which Muslim culture's traditional domestic seclusion of women will come to depend.\textsuperscript{75}

\textsuperscript{72}This is still a widely held belief in Morocco, pertaining not just to the Al-Qarawiyyin, but to all mosques. It finds early expression in the rhymed text \textit{al-Murshid al-mu‘ayyan ‘alā al-ḍarūrī min ‘ulūm al-dīn} by the Fes-based scholar Ibn ‘Āshīr (d. 765/1363), as commented on by another Fes-based scholar, Miyāra (d. 1072/1662), in Muḥammad b. Aḥmad b. Muḥammad al-Fāsī al-shāhīr bi-Miyāra, \textit{Mukhtāṣar al-durr al-thamin wa al-mawrid al-mu‘ayyan} (Casablanca: Dār al-Ma‘rifah, 1421/2001), bayt 167 (k. al-ṣalāt), pp. 171-172.

\textsuperscript{73}18:77.

\textsuperscript{74}18:82.

\textsuperscript{75}It might be imagined that this story would serve as a Muslim allegory for Muslim culture's gender-based engagements with walls, as well as a Sharia indication (\textit{dalil}) for
Although the seclusion of women in medieval Muslim culture was absolute neither in theory nor practice, but concomitant upon factors including the means of individual families and the social status of each woman, there is no doubt that it occurred and was meant to occur for a sizeable segment of female society.\textsuperscript{76}


In the binary logic of the wall, "respectable" Muslim women (sg. muhsana) and their unmarried daughters belonged within the house.77

Marinid and Waṭṭasid Fes was no exception to this logic, as indicated by the following report of a qadi (qādi) there, Abū al-Ḥasan al-Ṣaghīr (d. 719/1319):

At the time when Shaykh Sīdi Abī al-Ḥasan al-Ṣaghīr became qadi of Fes, the women of the city (nisāʾ al-balad) used to leave [their houses] a great deal. So he placed agents (aʿwān) on every main thoroughfare (shāriʿ) to prohibit their exit.78 Fearing for the corruption (mafsada) of the agents through their direct contact with the women (li-mubasharatihinna), he put vats of glue (mahābis min maghra) on these thoroughfares for the agents to soil (yaltakhūna) the clothes of those women who ventured out. The women stopped [going out].79


For a typology of generic medina streets, passageways, etc., see Nejmeddine, "La rue dans la ville de l'Occident musulman médiéval," 303-305. The word used in the citation is shāriʿ, main thoroughfare, as distinct from zaqāq or darb, neighbourhood passage or alleyway, for example. In other words, what the qadi wished to prevent was women leaving their neighbourhood, not their houses. On the distinction between house and neighbourhood, see the note above.

Marinid and Wattasid Fes was also no exception to women's use of the *hijāb* (veil) as a mobile extension of the house, permitting them to leave the house and neighbourhood because covered and largely unrecognisable, at least during times when qadis and other authorities had not banned them. An undated Fassi proverb, for example, states that the "beauty of Fes lies in its water, its air, and the mantle of its women (zayn Fäs fi mähā wa hauwähā wa talhifat nisähā);" and in Leo Africanus' description of Fes, he recalls that when Fassi women "goe...
abroad, they put on certain long breeches, wherewith their legs are all couered, hauing also, after the fashion of Syria, a vaile hanging downe from their heads, which couereth their whole bodies. On their faces likewise they weare a maske with two little holes onely for their eies, to peepe out at." Fifty miles from Fes in Meknes, meanwhile, "gentelemens wiues neuer go foorth of the doores but only in the night season, and then also they must be so vailed and muffeled that no man may see them."

In these examples, and across medieval Muslim culture, the hijāb is a continuation of the binary logic of the wall: it is like a wall. This is so, not because a veiled woman bears a resemblance to the minimally adorned, "silenced" (muṣmat) medina wall; a resemblance often noted by nineteenth-century European travellers, and rendered explicit in the words of Ibn Taymiyya (d. 728/1328): "[Women must be] veiled with clothing and houses (al-istitār bi-al-libās wa al-buyūṭ)." The hijāb is like a wall, because in the Qur'an and medieval Muslim culture, the functions of hijāb are those of a wall: screen and threshold.

As a screen in the Qur'an, hijāb functions to seclude Mary from her family (19:17); to hide (tawārā) the sun, turning day into night (38:32); and to veil the acuity of the unbelievers, distinguishing them from the Prophet and the believers (41:5 and 17:45). As a threshold in the Qur'an, it divides the damned from the

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83 Leo Africanus, 2: 446-447.
84 Ibid., 2: 414.
85 "Les murs sont des voiles." Depaule, A travers le mur, 30.
86 Depaule, A travers le mur, 30-31.
87 Ahmad b. `Abd al-Halim Ibn Taymiyya, Hijāb al-mar'a wa libāsuhā fi al-ṣalāt, ed. Muḥammad al-Albānī, 2nd ed. (Damascus: s.n., 1393/1974), 32, cited in Marmon, Eunuchs and Sacred Boundaries, 8. See also the discussion of rithā‘ al-mudun poetry in Chapter Five, Part Two, where it is seen how the destruction of houses is commonly paired with the absence of women's veils.
88 For further discussion of the meaning of the last two verses, about which there is disagreement, see Chelhod, "Ḥijāb," 359.
saved in the Hereafter (7:46); a divide Muslim commentators call a wall (sūr). 89

Lastly in the Qur'an, as both a threshold and screen hijāb is a medium of communication: across it believers make requests (sa'ala) of the Prophet's wives (33:53), and God speaks (kallama) to humans (42:51). 90

In medieval Muslim culture, apart from its function as the institutionalised veiling of women, hijāb functions as the equally institutionalised curtaining of caliphs and rulers from their household and/or subjects. 91 Like God's communications with humans, and believers' requests of the Prophet's wives, here the hijāb is simultaneously threshold and screen: it signifies the ruler's otherness, his extraordinary status, whilst shielding his audience from "the radiance of his countenance." 92 For Muslim mystics, meanwhile, hijāb is a barrier that renders humans insensitive to divine reality. 93 Reminiscent of one of its functions in the Qur'an (41:5), hijāb is described by the mystic al-Ḥallāj (d. 309/922) as "un rideau, interposé entre le chercheur et son objet, entre le novice et son désir, entre le tireur et son but. . . . Ce n'est pas Dieu qui porte un voile, ce sont les créatures qu'Il a voilées." 94

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92 Chelhod, "Hijāb," 360.

93 Ibid., 361.

3. SUMMARY

In the foregoing survey, Islam's and Muslim culture's involvement with walls has been shown to be extensive, with the liminal and screening dimensions of particular note. In a religion where the injunction to heed "God's boundaries" ( hudūd Allāh ) is exhorted of believers, such extensive involvement is unsurprising. Observing limits would seem to be a religious requirement; establishing them about women, along the gender divide, a cultural preoccupation. In the following chapter, this engagement will be shown in its more exclusively legal dimension.

95 In the Qur'an alone, God's boundaries are mentioned fourteen times, mostly in tandem with the injunction to maintain (aqāma, hāfaza) and not trangress (ta'addā, i'tadā) them. Ṭāb al-Bāqi, al-Mu`jam al-mufahris li-al-aljaz al-qur'an al-karim, 248.

Chapter Three

THE LEGAL DIMENSION OF WALLS: AN ANALYSIS OF THE BOOK OF WALLS

In view of Islam's and Muslim culture's involvement with walls, the subject of Chapter Two, it would be surprising if Islamic law (fiqh) had added nothing to the subject. As a system covering all aspects of public and private, religious, civil, and political life, Islamic law cannot but have occupied itself with that fundamental element of medina life: the screen and threshold, the wall. The genre The Book of Walls comprises this legal engagement: a corpus of mainly medieval opinions (aqwāl) and court records (nawāzil) related to the built environment in general, and walls in specific. As stated in the Introduction, the genre provides access to indigenous thought concerning walls; were its legal basis (aşl) identified, the thought's governing directive would also be identified. Commencing this identification process, the current chapter analyses and historicises the genre; and exemplifies it by way of its bearing upon issues of privacy and the seclusion of women. Chapter Four concludes the process.

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1. AN HISTORICISED ANALYSIS OF THE BOOK OF WALLS

1:1 An Overview of The Book of Walls

Comprising discrete books as well as chapters of larger legal works, the genre The Book of Walls embodies Islamic law's engagement with walls. Pertaining to disputes regarding the urban architectural environment, the genre describes this environment from the perspective of Islamic law, with external and party walls a major theme. In view of the synonymy compiled by Ibn al-Manzūr (d. 711/1312) concerning the words "walls" (sg. ħā‘īt) and "building", or "construction" (bunyān), one might even propose that its sole theme was walls.²

Whilst it would be misleading to say The Book of Walls represented self-conscious reflection upon external and party walls sub specie aeternitas, that it is concerned with them sub specie legalis is clear, as the following extract shows. Taking Kitāb al-Ḥiṭān as representative of the genre, listed below is a selection of the case titles it contains:

If two men contest (tanāza‘u) an adjoining wall (ḥā‘īt muttasil);

On the long wall (al-ḥā‘īt at-tawi‘), and two adjoining parties are separated at part of it;

On the wall between two neighbours, and neither one has roofing, and one of them permits the other to place a roof over the wall.

²Ibn Manzūr, Lisān al-‘arab, 14: 94. This synonymy has been already suggested in the Introduction and Chapter One, when discussing the fact that so much of the medina environment is defined by walls: they are the medina's building block. In cases reported in the genre where walls form neither the explicit subject matter, nor the building block of the subject matter, they often form part of the proposed solution. For example, in the matter of overlooking of neighbours’ houses (ijṭilā‘), walls might have to be erected as screens, or windows and doors might have to be walled up (see below, Part Two). In cases of noisy movements from domestic stables (sg. iṣṭabl), additional walls might have to be built to block this noise. E.g. Ibn al-Rāmi, 306-307. In the rare cases where architecture is not treated at all, but gardens, trees, birds, dogs, and so forth, these partake of the genre's capacity to treat all elements related to the built environment. For examples of all the aforementioned cases, see Appendix (1): Selected case titles and cases from The Book of Walls.
Then he appears to him and says: "Remove your roof! (azil saq faka)";

If the wall is between the two houses of two men, and one of them owns the foundations (judhū') and on top of the wall is a dividing screen (sitra);

If the foundations of the wall belong to each of two parties, and one of them produces legal proof (bayyina) that the other's foundations were wrested by force from him;

If the bottom of a wall (sufl al-hā'īt) belongs to one man and the top of it to another;

If there is a door in the wall belonging to one person, which leads to the house of another person, and the first person claims (idda'ā) that the right of passage belongs to him, but the other denies it;

On the collapsed wall (al-hā'īt al-munhadim): if one of two owners wants to rebuild it but the other refuses, can the latter be forced to rebuild it? 3

Finally, although The Book of Walls engages with external and party walls, this is not to say that it represents them, detailing their appearance, size, constitution, and so forth. Rather, the genre records from a legal perspective conflicts occurring in the semi-private and public spaces that the walls bound. It collapses these spaces to a cipher, walls, encoding them for articulation in later texts of the genre and related discourses. 4 In so doing, it establishes a legal aesthetic of

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3Kitāb al-Hiṭān, case titles cited in order of appearance. These titles differ little from others in the genre, for example, those contained in the texts of Ibn Sahl (d. 486/1094), Ibn al-Imām, and Ibn al-Rāmi. See Appendix (1): Selected case titles and cases from The Book of Walls. A similar engagement with the walls of medieval London is found in the Assisa de Edificiis, whose origins probably date to the late sixth/twelfth century. See Helena M. Chew and William Kellaway (eds.), London Assize of Nuisance 1301-1431: A Calendar (London: London Record Society, 1973), ix-xi, passim. My thanks to Dr. Catherine Batt for alerting me to this parallel. On the Muslim genre’s differences from Roman law and the "Coutume de Paris", see Brunschwig, "Urbanisme médiéval," 130, 140, 153 n. 1.

4For example, the hisba discourse on the policing of market areas (sg. süq). See, for instance, the neighbourhood dispute section of al-Sunāmi’s Kitāb Niṣāb al-īhtisāb, as studied and reproduced in Mawil Izzī Dien, The Theory and Practice of Market Law in Medieval Islam: A Study of Kitāb Niṣāb al-īhtisāb of ’Unār b. Muḥammad al-Sunāmi (fl. 7th-8th/13-14th Century) (Warminster: E.J.W. Gibb Memorial Trust, 1997), 82-85; also, Emilio García Gómez, "Unas 'ordenanzas del zoco' del siglo X: Traducción del más
urban architectural space. As will be seen in the following pages, this aesthetic derives from an undatable moment of a particular type of architectural space that precedes the genre, is collapsed and recorded in the genre, and is maintained and perpetuated by the genre.

1:2 The History and Genealogy of The Book of Walls

1:2:1 Putative origins

As with much of Sunni Islamic law, the origins of The Book of Walls can be found in the Qur'an and Hadith, but little more than perfunctorily so, especially with regard to the Qur'an. The Qur'an contains no verses from which legal rulings (ahkām) are derived for The Book of Walls; only two or three verses that refer obliquely to urban architectural matters, and which the genre occasionally cites in the context of rulings derived from elsewhere. For example, regarding the harm (darar) caused by smoke from public ovens and baths, Ibn al-Rāmi cites the verse "Then watch for the day when the sky will bring forth a kind of smoke plainly visible" (44:10). The actual ruling forbidding such smoke is, however, based on opinions established by the eponymous leader (imām, pl. a'imma) of the Maliki law school, Mālik Ibn Anas (d. 179/796), and his disciples.7
If the Qur'an occupies an auxiliary position only in *The Book of Walls*, the genre's substantive material from Islamic law's two primary sources comprises but hadiths. In the Hadith, the Prophet is reported engaging with the urban environment in more than an extralegal capacity. Some of these reports find their way into the genre. Common ones include: "A neighbour should not forbid his neighbour from inserting wooden beams in his wall (Lā yamna‘ jār jārahu an yaghriza khashaba fi jidārihi);" ⁹ "If you disagree about the width of a street, make it seven cubits (Īdāh ikhtalaftum fi al-tariq ju‘ila arḍahu sab‘a adhru’);" and "Whoever wrongfully appropriates an inch of land will, [on the Day of Resurrection], be enclosed in the Seven Earths (Man zalama qīd shībīr min al-ard ṭuwwiqahu min sab‘a arḍīn)." As with the Qur'an, however, these and other hadiths ultimately serve little more than a supplementary role. The width of

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⁸Ibid., k. al-musāqāa, bāb 31, raqm 143. Cited in Ibn al-Rāmi, 430; Ibn al-Imām, 2: 145


¹¹It is the fallacy of some research on medinas that presumes that what is stipulated in the Qur'an and Hadith, as well as in legal works, is what is found in reality. Besim Hakim's work occasionally falls foul of this, e.g. his discussion of street widths in idem, *Arabic-Islamic Cities*, 20-21.
medina thoroughfares, for example, is frequently either more or less than the seven cubits recommended in the Hadith. Furthermore, many are the occasions in *The Book of Walls* where no hadith is cited in relation to rulings; the one that does get much mention is of general import, without specific bearing upon urban architectural matters. As will be seen in Chapter Four, the driving force of wall-related *fiqh* is not the Qur'an and Hadith, but legal opinion and custom.

1:2:2 Substantive origins

It is to the eponymous leaders of the Maliki and Hanafi law schools that the genre's true origins belong. In the leaders' teachings, related and compiled by disciples, is found the first properly substantive wall-related *fiqh*. For the Maliki school, to which the texts of Ibn al-Rāmī and Ibn al-Imām belong, the principle compilation is the multi-volume *al-Mudawwana al-kubrā* (The Great Law Compilation), mostly known as the *Mudawwana*. Compiled by the Kairouanese qadi known as Saḥnūn (d. 240/855), the contents are but an earlier narration from Mālik's most prominent disciple Ibn al-Qāsim (d. 191/806).

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13E. g. in Fes medina there are sections of thoroughfares that are narrower than the stipulated 4.05 m (7 cubits). The conversion of a cubit (dhira') to 0.578m follows William Popper, *Egypt and Syria under the Circassian Sultans, 1382-1468 A.D.: Systematic notes to Ibn Taḫri Birdi's Chronicles of Egypt (continued)*, University of California Publications in Semitic Philology, vol. 16 (Berkeley: California University Press, 1957), 35-36; cited in Fernandes, "Habitat et prescriptions légales," 420 n. 3.


15"In Islam there is no harm or return of harm (La darar wa lā dirar fi al-Islām )." For collection details and analysis, see Chapter Four, Part Two.


For the Hanafi school, to which Kitāb al-Hitān belongs, the principle compilations are by the two disciples considered by some to be the true founders of the Hanafi law school: Ya`qūb Abū Yūsuf (d. 182/798) and especially Muhammad al-Shaybānī (d. 189/804). Compilations by the latter include Kitāb al-Jāmi` al-kabīr (The Major Collection), Kitāb al-Jāmi` al-saghir (The Minor Collection), and Kitāb al-Asl (The Source). In conformity with other Hanafi literature of the period, in Kitāb al-Hitān he is commonly cited under his first name, Muḥammad.

Taking the Mudawwana as an example, although its engagements with the urban architectural environment are rarely wall-specific, and include additional issues such as property bequests (waşayā), they establish the pattern and many of the precedents for The Book of Walls. For instance, in the chapter (kitāb) pertaining to property division and allotment (qisma), Saḥnūn asks Ibn al-Qāsim a hypothetical question about someone prevented by neighbours from building an oven, hammam or mill on his empty lot (ʿarṣa). Ibn al-Qāsim responds: "If what is built will harm (qārar) the neighbours because of smoke or other comparable nuisances, then they can prevent the project, because Mālik taught (qāla) that one is prevented from harming neighbours." Earlier in the same chapter, Ibn al-Qāsim is asked about the division of streets and walls (qismat al-ṭariq wa al-jidār). For a wall that is to be divided between two co-proprietors

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Chaumont, "Al-Shaybānī," 393; and Melchert, The Formation of the Sunni Schools of Law, 60.


(sharikān), he responds: "I did not hear anything from Mālik on this matter, but my opinion (ara) is that so long as no harm comes from it when it is divided, then it may be divided." These and similar teachings find their way into the genre.

Roughly contemporary with Saḥnūn and Ibn al-Qāsim, other disciples and/or associates of Mālik were also giving opinions and judgements concerning the urban architectural environment. Such figures include `Abd Allāh Ibn Wahb (d. 197/813), an associate of Mālik and author of a number of legal works;Ashhab (Ashhab b. `Abd al-`Aziz al-Qaysi, d. 204/819), considered the legal scholar of Egypt, and a friend of Mālik;Ibn al-Mājishūn (d. 212/827), taught by both Mālik and Saḥnūn;`Abd Allāh Ibn `Abd al-Ḥakam (d. 214/829), one of Mālik's companions and author of one of the two earliest discrete works about walls, Kitāb al-Qaḍā’ fī al-bunyān (The Book of Jurisdiction in Building);Muṭarrif (Muṭarrif Ibn `Abd Allāh Ibn Muṭarrif, d. 220/835), a scholar of Medina taught by Mālik;Aṣbagh (Abū `Abd Allāh Aṣbagh Ibn al-Faraj, d. 225/840), a student of Ibn al-Qāsim and Ibn Wahb, and a formative legal scholar of Egypt; and Muḥammad Ibn Saḥnūn (d. 256/870), Saḥnūn's son and author of many works.
Included, too, are `Abd al-Malik Ibn Ḥabīb (d. 238/853), a student of Muṭarrif, Aṣbagh, and Ibn al-Mājishūn and author of an influential imitation of the Mudaωwana, namely, al-Wādīha fi al-sunna wa al-fiqh; and Abū `Abd Allāh Muḥammad b. Aḥmad al-ʿUtbi (d. 255/869), a student of Yahyā in b. Yahyā al-Laythī (d. 238/848) and author of the Mudaωwana's alleged supplement, the Mustakhraja or ʿUtbiyya.

From these scholars, Ibn al-Imām and Ibn al-Rāmī compile much of their texts.

Ibn al-Rāmī acknowledges as much in his introduction:

This is a book that gathers building-related questions concerning walls, the elimination of harm, and gardens and mills, from government administration records; the books of our contemporaries; the court records of qadis; and fatwas of muftis (Hādhā kitāb jumʿat fihi masāʿil al-abniya fi al-jidār wa nafṣ al-dīrār wa al-ghurūs wa al-arḥiya, min ummahat dawāwīn wa kutub al-mutaʾakhkhirin wa nawāzīl al-quḍāt wa masāʿil al-muṣṭiyyīn). Also from the Mudaωwana; the Wādīha; and the ʿUtbiyya; the book of ʿAbd Allāh Ibn ʿAbd al-Hakam; the book of Ibn Sahnūn; the book of Ibn ʿAbdūs; and the Nawādir. [Also] from what notaries

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30 Ibn al-Imām, 2: 5 n. 1; Cottart, ʿMālikiyyya, 278; A. Huici Miranda, ʿIbn Ḥabīb, in Encyclopaedia of Islam, 2nd ed., 775.
32 On the translation of masāʿil al-muṣṭiyyīn as "fatwas of muftis", cf. Hallaq: "One may argue that the term 'masʿila'[pl. masāʿila], which became the appellation for sub-sections in legal and other works, reflects the smallest unit of discussion revolving around a question (suʿāl) and an answer, and these are nothing but the components of the fatwa."
Wael B. Hallaq, From Fatwās to Furū' : Growth and Change in Islamic Substantive Law, in Islamic Law and Society 1, no. 1 (1994): 62. The translation of ummahat dawāwīn (government administration records) is based upon A. A. Duri and G. S. Colin, 'Diwan (i) and (iii), in Encyclopaedia of Islam, 2nd ed., 323-327,331-332. Regarding the translation of nawāzīl (sg. nāzīla) as court records, Bosworth explains: "The plural nawāzīl figures in the title of a fairly considerable number of collections ... put together by jurists practising law in a mahkama (court) ... in order to offer the public, but above all, the qadis, a choice of questions bearing on specific cases and accompanied by the solutions in practice adopted." C.E. Bosworth, 'Nāzila,' in Encyclopaedia of Islam, 2nd ed., 1052. See also, Rocio Daga Portillo, "Los nawāzīl y géneros relacionados en la literatura jurídica: fetuas y masāʿila," in Miscelánea de Estudios Arabes y Hebraicos (Granada) 40-41, no. 1 (1991-92): 82.
34 Kitāb al-Nawādir wa al-ziyādāt 'alā al-Mudaωwana by Ibn Abī Zayd al-Qayrawānī (d.
follow in their legal formularies (intakhabahu al-muwaththiqūn fi wathāʾiqihim), like the notaries Ibn al-Qāsim and Ibn Mughayth; and from [the formulary] al-Mutitiyya. And from what qadis follow of the Ḥaḳām of Ibn Abī Zamanin; the Ḥaḳām of Ibn Hīšām; and the Ḥaḳām of our master, the learned, the ascetic, the devout and God-fearing Abū Iṣḥāq Ibn Šāhānbi - may God grant him success and guide him.

With Ibn al-Rāmi's mention of the qadis' court records; the works qadis follow; the muftis' fatwas; and the notaries' formularies, it is necessary to clarify the relationship between The Book of Walls and other forms of legal expression out of which it is woven.

1:2:3 The "Golden Age"
The period 340-750/950-1350 marks a particular moment for The Book of Walls, that might with due levity be considered a "golden age"; for during this time at least four extant discrete texts on walls were written: the aforementioned Kitāb
al-Ḥitān; the books of Ibn al-Imām and Ibn al-Rāmī; and one by Ibn Rushd "al-Jadd" (d. 520/1127), *Kitāb al-Qaḍā‘ wa al-arāḍīn wa al-dūr* (The Book of Jurisdiction, Terrains, and Houses). It is these discrete works, as well as those written, or reported written, outside of the period, that justify calling *The Book of Walls* a genre; for the evidence available suggests that the more regular form of the genre is one of chapters (sg. *kitāb*, *bāb*), sections (sg. *fasl*), or sometimes just individual cases of longer legal works. In other words, indiscrete texts forming but one topos of Islamic law's exhaustive literature.

By and large, the legal works to which these chapters and sections belong are either compilations of judgements (*nawāzil* or *ahkām*) of the type mentioned by Ibn al-Rāmī: the *Aḥkām*-titled works; or compilations of muftis' fatwas, of the type implied by him. Reference has already been made to the possibility that one of two earliest but non-extant texts of the genre, Ibn `Abd al-Ḥakam's *Kitāb al-Qaḍā‘ fi al-būnīyān*, was not a book (kitāb) but a chapter (also *kitāb*) of a legal compilation, albeit not an *ahkam* or fatwa one. The second of these two texts,

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44Apart from the works already mentioned in this dissertation, other discrete works of the genre include: Muḥammad al-Barūḍī (d. 1247/1831), *Fath al-raḥmān fi mas‘alat al-tanāzu‘ fi al-būnīyān* (The Victory of God in the Matter of Disputes in Walls), Bibliothèque Nationale de Tunis, MS no. 3933; and Abū `Abd Allāh Muḥammad Ibn Ḥassān Bayrām I (d.1318/1900), *Risālat fi al-hā’it al-munḥadim* (Treatise on the Falling Wall), Bibliothèque Nationale de Tunis, MS no. 187. Both are cited in M’halla, "La médina," 40 n. 16. To date, I have been unable to see them. Also, Muḥammad b. Ṭābāḥ Muḥammad Ibn Ḥassān Bayrām (d. 397/989), *Kitāb al-Abniyā* (The Book of Buildings); and Muḥammad b. Ibrāhīm Ibn Ṭābāḥ. Neither is extant. The first is cited in Nejmeddine, "La rue dans la ville de l’Occident musulman médiéval," 282; and the second is cited in Qāḍī Ṣiyāh, *Tarāt ib-al-madārik*, 1: 434. To the best of my knowledge, the first scholar to consider these works a genre was the Tunisian Moncef M’hall in his article "La médina, un art de bâtir." In that article, he refers to "traités d’urbanisme, constituent un genre littéraire particulier formant ainsi un corpus cohérent dont l’objet est l’organisation de l’espace dans sa matérialité architecturale." Ibid., 38.
45On this type of compilation, see J. Schacht, "Aḥkām," in *Encyclopaedia of Islam*, 2nd ed., 257; and Bosworth, "Nāzila," 1052.
46See immediately below for discussion of this type of compilation.
47See the relevant fotonote to this work, Ibn `Abd al-Hakam's *al-Mukhtasar al-kabīr*, on p. 76 above. Brockopp describes this work as "a commentary on the collection of Mālik's dicta found in the *Muwaṭṭa’,* supplemented by additional dicta from Mālik and other authorities." Brockopp, *Early Mālikī Law*, 100.
Ibn Dinār’s Kitāb al-jidār, was perhaps the same. Ibn Sahl’s (d. 486/1094) text "al-Masājid wa al-dūr (Mosques and Houses)" certainly belongs to an āhkām compilation, his Aḥkām al-kubrā,49 as do the wall-related texts of Ibn Abī Zayd al-Qayrawānī (d. 386/996),50 al-Bājī (d. 474/1081),51 and Ibn Farḥūn (d. 799/1396).52

Regarding the fatwa compilations, two categories exist: those limited to a single mufti; and those comprising fatwas from a number of muftis.53 To the first category belongs, for example, the compilation of Ibn Rushd "al-Jadd".54 Scattered in it are fatwas with titles such as "A question concerning he who joins (damma) his wall to the wall of his neighbour";55 "On overlooking (iṭṭilā’) houses from [a]

48Like Ibn ʿAbd al-ʿAbd al-Hakam’s Kitāb al-Qadā’ fi al-bunyān, this work is cited by Qādi ʿIyād. Qādi ʿIyād, Tarīkh al-madārik, 1: 375. It should be emphasised that, in both cases, there is no positive evidence to doubt Qādi ʿIyād’s references to them as discrete works.


55Ibid., 3: 1578.
minaret (al-ṣawmaʿaʿ);\textsuperscript{56} and "On he who installs a door or shop (ḥānūt) opposite the door of his neighbour's house on a through-passage (zuqāq nāfīdūh)."\textsuperscript{57} To the second category of compilation belong, for example, al-Burzulī's (d. 841/1438) Jāmiʿ masāʿ il al-aḥkām;\textsuperscript{58} al-Wansharīsī's (d. 914/1509) al-Mi yār al-mughrib;\textsuperscript{59} and al-Wazzānī's (d. 1342/1924) al-Nawāzīl al-jadīdā al-kubrā and al-Nawāzīl al-ṣughrā.\textsuperscript{60}

In these works are found numerous wall-related fatwas, mostly in the chapters pertaining to division (qisma), partnership (sharīka) and, especially, harm (ḏarar).\textsuperscript{61}

If the more usual form of the genre is chapters or sections of other works, history offers some reasons for the appearance of the discrete texts. In the introduction to his edition of Ibn al-Imām's text, Muḥammad al-Naminaj suggests that the population increase in fourth/tenth-century Andalusia, coupled with the ensuing frictions and strains upon the urban architectural fabric, were the causes of this work.\textsuperscript{62} A similar argument might apply to the other texts, too. This is an acceptable proposition when one looks at the uneven urban growth

\textsuperscript{56}Ibid., 2: 1246.
\textsuperscript{57}Ibid., 1: 169.
\textsuperscript{58}Abū ʿAlī al-Qāsim b. Aḥmad b. Ismāʿīl Muḥammad b. Aḥmad al-Muʿtalla al-Balawi), Jāmiʿ masāʿ il al-aḥkām bimā nazala min al-qadāyā bi-al-muṭṭīyīn wa al-ḥukkan (Bibliothèque Nationale de Tunis, MS no. 4851).
\textsuperscript{59}Al-Wansharisī, op. cit.
\textsuperscript{61}See, for example, the chapter "Masāʿ il min al-ḍarūr wa jarī al-miṣyāḥ wa al-bunyān (Cases of harm, flowing water, and building)" of al-Burzulī's compilation (f° 281-313, cited in Nejmeddine, "La rue dans la ville"); the lengthy chapter "Nawāzīl min al-ḍarūr wa al-bunyān (Cases of harm and building)" of al-Wansharīsī's collection (8: 435-487, 9: 5-73); and the chapter "Nawāzīl al-ḍarūr wa al-istiḥḥāq (Cases of harm and vindication)" of al-Wazzānī's Nawāzīl al-jadīdā (3: 459-520).
throughout the Arab-Muslim world during the first seven centuries of Islam. The greatest growth occurred between the fourth to eighth/tenth to fourteenth centuries, ending with the Black Death of 749/1349: exactly the time frame of the genre's "golden age". The proposition is also acceptable when one considers the extent to which solutions to new problems, arrived at in one locale but not contained or known in the source books (ummahât) of the law schools, might have been found helpful for solving similar problems elsewhere. Compiled in the form of generalised, viz. non-place specific legal cases plus their assessments (ahkâm), these texts would have represented concise summaries of the principal teachings of a law school with regard to the architectural environment, and manuals of potential solutions.

2. ISSUES OF PRIVACY IN THE BOOK OF WALLS

Whether in the shape of discrete texts, or chapters and sections of other works, what matters for the dissertation is not the form taken by the wall-related thought of The Book of Walls, but that wall-related thought is taken at all. In

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62Garcin, "Le Caire et l'évolution urbaine des pays musulmans," 289-304. See also, idem, "Le moment islamique (VIIe-XVIIIe siècles)," in Nicolet et al. (eds.), Méropoles méditerranéennes, 91-103; and Albert Hourani, A History of the Arab Peoples (London: Faber and Faber, 1991), 10 et seq..

63There are, for example, some twenty extant copies of Ibn al-Râmi's text, indicating the utility of this work. Ibn al-Râmi (2), 28-29. There are at least four copies of Ibn al-Imâm's work, and a similar number of Kitâb al-Hîthân. Ibn al-Imâm, 1: 62-65; Ben Slimane, "Entre Ibn al-Imâm," 110 n. 6; Kitâb al-Hîthân, 10-12.

64For the details of a similar process of generalisation (tangîh: tajrid and talkhîs), see Hallaq "From Fatwâs to Furû'," 44-48. Where a place is mentioned, for example Tunis in Ibn al-Râmi, it is either incidental or in relation to the genre's 'amal application mechanism (see Chapter Four).


66For a later period of the genre (from the end of 9th/15th century), Fernandes suggests as a cause of additional texts the desire of rulers to reform the often disorderly urban sites under their command. Idem, "Habitat et prescriptions légales," 426.
combination with the religious and cultural preoccupation with walls seen in Chapter Two, it is not implausible to borrow the French anthropologist Lévi-Strauss' (b. 1326/1908) famous formula regarding totems, and venture that in medieval Muslim culture walls are "good to think". 68

As indicated earlier, in its legal dimension the net effect of this "wall thought" was to establish an aesthetic to which the medieval medina's public and semi-private spaces were expected to conform. 69 In Lefebvre's analysis of urban space, this type of aesthetic belongs to a society's representations of space: the conceptualised spaces of scientists, planners, and so forth, that are "tied to the relations of production and to the 'order' which those relations impose, and hence to knowledge, to signs, to codes." 70 In any given society, such representations form the dominant space. 71 Competing with them are a society's representational spaces: the largely non-verbal, symbolic spaces, directly lived by the society's inhabitants. 72 Overlaping physical space, these representational spaces afford a shelter for the imagination, which seeks to make them its own. 73 An example is the private space of a house. 74

As the French philosopher Gaston Bachelard (d. 1382/1962) showed in his study of the Western imagination The Poetics of Space, the house is the imagination's

68 "[N]atural species are chosen [as totems] not because they are 'good to eat' but because they are 'good to think'." Claude Lévi-Strauss, Totemism, trans. Rodney Needham (Harmondsworth: Penguin Books, 1969), 162.
69 On the semi-private spaces of the medina, see the extended footnote to this subject in Chapter Two, Part 2:1.
72 "Representational spaces: space as directly lived through its associated images and symbols, and hence the space of 'inhabitants' and 'users' .... " Ibid., 39.
73 "[Representational space] is the dominated - and hence passively experienced - space which the imagination seeks to change and appropriate. It overlays physical space, making symbolic use of its objects." Lefebvre, The Production of Space, 39.
74 Cf. ibid., 147, 166.
primary shelter, "one of the greatest powers of integration for the thoughts, memories, and dreams of mankind." Although no equivalent research exists for the affective dimensions of the Muslim house, Paul Wheatley has hinted at their significance; and Fatima Mernissi's semi-autobiographical account of her childhood house in Fes supports him: plentiful descriptions of the cathartic reveries and theatrics of the girls and women cloistered there, inspired from being there.

Representational spaces, however, form no part of The Book of Walls, except as absences: lacunae of domestic privacy (ʼawra), demarcated by the rulings proscribing the overlooking (ittilâ') and exposure (kashf, takashshuf) of neighbourhood houses. These rulings form an important part of the genre, and have been the subject of extensive commentary by modern scholars. As many of them have noted, they are premised upon the need to keep the women

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75Bachelard, The Poetics of Space, 6. See especially pp. 3-73.
77Mernissi, The Harem Within. See, for example, pp. 3-19, 213-228.
79For examples, see Case Titles A, B and C, and Case 2 of Appendix (1): Selected case titles and cases from The Book of Walls.
inside the houses invisible to foreign eyes.\(^{81}\) Whilst not made explicit in the genre, this premise is in conformity with the aforementioned notion of the dār as ḥaram.\(^{82}\)

2.1 Overlooking from Minarets

A common cause of overlooking in medieval medinas were the neighbourhood minarets and muezzins who ascended them. Frequently higher than the houses of the vicinity, these minarets inevitably looked onto open courtyards and interiors, and the muezzins standing atop them were privy to the view. For The Book of Walls, this constituted a clear cause of harm (dārar), as the following case illustrates:

Ibn Rushd ["al-Jadd"] was asked about a minaret (ṣawma‘a) that was added (uḥdithat) to a mosque, and some of the neighbours (jirān) complained about being exposed (al-kashf) from it. [The petitioner asked]: Is there a teaching (maqāl) on this? Our [local] imams allowed (abahā a‘immatunā) a man with a tree in his house to climb it in order to gather the fruit, despite their having swiftly admonished (ma‘a al-indhār) the ascent of [the minaret], and stopped its ascent for the call to prayer. Their counsel has been largely disregarded by the people of piety and those who intend no harm (Wa innamā yatawallāhā fī al-ghālib wa man lā yaqṣidu maḏarra).

[Ibn Rushd] responded: I have scrutinised and devoted myself to [your] question, and [I conclude that] the mosque’s minaret is not the same as the tree in the man’s house. Climbing the tree in order to harvest the fruit is a rare occurrence (nādir); climbing the minaret for the call to prayer occurs repeatedly everyday. In Ashḥāb’s narration, Mālik’s counsel prohibiting the climbing and scaling of [the minaret] confirms what you have been counselled, the import of which is correct (Wa al-riwāya fī samā‘ Ashḥāb ‘an Mālik bi-al-man’.


\(^{82}\) See also, Van Staeval, "Casa, calle y vecindad," 59.
min al-šuʿūd ilayhā wa al-raqū alayhā mansūṣa `alā `ilmika wa al-maʿnā fihā saḥīh). To [this counsel] I add: If [the muezzin is able to] overlook houses in certain directions (naḥāhi) only, then he should be prevented from attaining that offending side [of the minaret] by constructing a barrier (ḥijāz) between it and the other [sides]. We have to do this on many of our minarets here in Cordoba.83

It was not just in Cordoba that overlooking from minarets caused problems. According to Zahrat al-ās, Fes, too, had its difficulties. In 345/956, for example, the minaret of the Al-Qarawiyyīn had to be destroyed and rebuilt because it was too high and overlooked houses (li-kawnihā mutāmānata al-īshrāf).84 In the centuries that followed, rulers themselves took an interest in who made the calls to prayer, ensuring that only muezzins known for their chastity (ʾiffā) and trustworthiness in "prudently averting their gaze from the harems of Muslims, not overlooking their domestic privacy (ṣī ḥaddā baṣarihi ḥawṭāt wa al-īṭīla `alā āwātīhim)" could climb the minarets in daytime.85 Finally, so commonplace was the problem of overlooking in Fes, that the market inspector Khālid Ibn ʿAbd Allāh (n.d.) ordered the lowering of minarets to a level below houses (ḥadama Khālid Ibn ʿAbd Allāh manārat al-masājid ḥattā ḥattāhā `an dūr al-ḥās).86

3. CONCLUSION

In legal terms, The Book of Walls represents medieval Muslim culture's engagement with walls. Comprising cases pertaining to the medina architectural environment, its major theme is external and party walls. As in Chapter Two's treatment of

84Zahrat al-ās, 47; trans., 89.
85Ibid., 53; not included in the translator's recension.
86Ibid., 54; not included in the translator's recension.
the cultural and religious dimensions of walls, women have a bearing upon these walls, in that they present a requirement for the privacy and seclusion that walls provide.

"The Book of Walls" is not restricted in its place of application, mostly having come into being as solutions to particular cases that were then generalised for use elsewhere. As a result, whilst the genre would not be expected to treat specifically of the walls of Fes, its principles would be expected to be in operation there. In the shape of "overlooking", this is what is indicated in "Zahrat al-ās".

4. SUMMARY

In this chapter and the previous, "wall thought" has been exposed as a particular activity of Muslim culture. As the legal embodiment of this activity, "The Book of Walls" provides a legitimate platform upon which the investigation can reach a definition of a wall from within medieval Muslim thought.
Chapter Four

`AMAL AND `URE: THE APPLICATION AND LEGAL BASIS OF THE BOOK OF WALLS

If the study of Muslim architecture is commonly preoccupied with questions of patronage and a building's intended meaning, studying walls within the discourse of Islamic law represents an alternative approach.¹ Lessening the emphasis upon visual perception and "reading" strategies broadly informed by semiotics, it seeks not a building's intended meaning; but allows for a range of meanings, based upon social compliance and participation.²


As is often noted by scholars seeking a building's intended meaning, even where such can be found, it rarely survives beyond a certain period. This is because, alongside it, a building also generates experience-based mnemonic and associational meanings through inhabitation or usage. Whilst these meanings are limited by the inhabitant's or user's enculturation, they almost invariably outlive those of the patron or architect, and almost invariably outnumber them. In the case of medina architecture, some of these meanings are part of the walls' fabric; for, as will be shown in the identification of The Book of Walls' legal basis (ašl), medina walls are founded in 'urf: a society's customs or conventions. To recap the dissertation's premise: in order to evaluate the nature of medieval Fes, the entity which defines the medina for this period must be grasped. Defining it physically and determining it historically, this entity is walls; and to grasp it, the investigation has recourse to the The Book of Walls. As shown in the previous chapter, The Book of Walls is the legal embodiment of Muslim "wall thought"; were its basis identified, the basis of walls would also be identified.

Mugerauer (eds.), Dwelling, Place and Environment, 99-111. Of such perception, Lefebvre writes: "Space is listened for, in fact, as much as seen, and heard before it comes into view." Idem, The Production of Space, 199-200; see also 225; cf. Grabar, "Symbols and Signs," 9, 11.

3As noted, for example, in Flood, The Great Mosque of Damascus, 242-245; Rabat, "The Meaning of the Umayyad Dome of the Rock," 13, 18; and Grabar, "Symbols and Signs," 4, 8, 9


5On enculturation limiting a buildings' experiential meaning, see Rapoport, The Meaning of the Built Environment, 61, 65-70. Were enculturation with respect to architecture the theme of this chapter, Bourdieu's concept of habitus would provide a more refined way of analysing it. See, for example, Bourdieu, The Logic of Practice, 52-65.
Apart from methodological considerations, one other reason recommends identifying *The Book of Walls'* legal basis: classification of the genre's most apparent application mechanism. Forming part of the legal identification, classification should prevent future misapplications of *The Book of Walls*. With the exception of Van Staëvel concerning Ibn al-Rāmi, heretofore no one has classified it this way; as a result, there exists a view that *The Book of Walls* embodies prescriptive laws that are immediately applicable today. As will be shown, because of its time- and place-specific 'amal mechanism, it does not.

1. 'AMAL AND THE APPLICATION MECHANISM OF THE BOOK OF WALLS

In Chapter Three, it was observed that *The Book of Walls* establishes a legal aesthetic by which medina space is reproduced. Just as this space is not monolithic, but nuanced in accordance with local needs and conditions; so

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7This view applies in particular to the works of Hakim, al-Hathloul and Akbar. Although all three scholars recognise the non-prescriptive nature of the genre (al-Hathloul, "Tradition, Continuity and Change," 138; Hakim, *Arabic-Islamic Cities*, 138; Akbar, *Crisis in the Built Environment*, 145), their recognition is undermined by the terminology used to treat the genre, as well as the cumulative effect of their expositions. Regarding the first shortcoming, terminology, it is Hakim who falls foul of it by implying that the wall-related law is a "set of principles". Hakim, *Arabic-Islamic Cities*, 137. If Akbar is free of the first shortcoming, he is not free of the second - exposition; and in this he is representative of the other two scholars, too. It is a subtle issue, one of omission, not commission, and is best seen in Akbar's chapter "Elements of the Traditional Built Environment" (*Crisis in the Built Environment*, 107-128). In this chapter, it could seem that for each element of the built environment discussed, there existed a specific legal ruling. Because Akbar has not first assessed the genre, it is not certain that correct understanding of its workings will be reached by readers. One feels that a warning sign is required, similar to that by Robert Brunschwig: "Dans cet ordre de recherches, une difficulté notable, qui risque de devenir un écueil, tient à ce que les interprètes modernes, surtout s'ils sont juristes de métier, sont volontiers en quête de définitions rigoureuses et d'énumérations limitatives, que les textes étudiés ne sont pas faits pour leur fournir." Brunschwig, "Urbanisme médiéval et droit musulman", 129.

8See also Appendix (2): Conditions for the validity of 'amal.


10See, for example, Akbar, *Crisis in the Built Environment*, esp. 141-200.
neither is the most apparent mechanism by which this space is reproduced. As will be argued for at least the Maliki texts of the genre, by the fifth/eleventh century, if not before, this mechanism forms part of local court practice, or 'amal.11 The importance of this fact for the reproduction of medina space notwithstanding, as will be shown 'amal implicates 'urf as the genre's legal basis.

1:1 The Definition of 'Amal

1:1:1 The textbook definition

The prevalent, or "textbook" definition of 'amal assigns 'amal to late-ninth/fifteenth century Morocco, and describes it as the instance of the isolated (shādhdh) or weak (da'if) opinion prevailing over the widespread (mashhūr) opinion, and the opinion that must always be followed in judgement.12 It comes from Joseph Schacht's and Noel Coulson's standard introductory texts to Islamic law, that are in turn based upon the pioneering Western studies on 'amal by Louis Milliot and Jacques Berque.13 The definition is, therefore, not so


12For further discussion of these terms as they pertain to legal opinion, see Hallaq, Authority, Continuity, and Change, 137-138, 146-152.

Recent research into 'amal has shown this definition to be historically incomplete, with undue importance accorded to the eleventh/seventeenth century, metred 'amal text al-'Amal al-fāṣi and its doctrinaire formula: "The 'amal must prevail over the best attested opinion. It cannot be neglected (Mā bi-hi al-`āmal dūna al-mashhūr / Muqaddam fī al-akhhād ghayr mahjūr)." Whereas the textbook definition is so, even when such opinion was a weak or isolated one. Thus, the author of Al-'Amal al-Fāṣi states: 'In principle the judgement of qādis of our time based on an isolated opinion ought to be rescinded immediately. But the 'amal must prevail over the mashhūr. It cannot be neglected.' Toledano, Judicial Practice, 12. Basing himself on Toledano, Muhammad Masud defines 'amal in a similar manner; and so the definition is propagated. Muhammad Khalid Masud, Islamic Legal Philosophy: A Study of Abū Ishāq al-Shāṭibi's Life and Thought (Islamabad: Islamic Research Institute, 1977), 16, 29 n. 64. The above citation from Toledano is sourced to the studies of Milliot and the 'amal text of `Ālī al-Zaqqāq (d. 912/1507 - see below); not Schacht or Coulson. This fact notwithstanding, Coulson's voice is often heard in Toledano, mostly from "Muslim Custom and Case-Law," an article that preceded A History of Islamic Law, providing well-worked material for the latter text's treatment of 'amal. More often than not, his voice goes unattributed by Toledano. For example, Toledano writes: "It ['amal] became, in fact, an instrument for modifying and adapting the Shari'ah to meet the practical needs of society; and the judges in Morocco were filling the same role as their predecessors in the first two centuries of Islam." Toledano, Judicial Practice, 9. Cf. Coulson: "Thus the 'amal became an instrument for modifying and adapting the Shari'a to meet the practical needs of society, and the judiciary in Morocco were filling the same role as their predecessors in the first two centuries of Islam." Noel James Coulson, "Muslim Custom and Case-Law," in Die Welt des Islam 6 (1959): 23.

14 For example, the definition informs the introductory pages of a later monograph on the subject: "The interesting and perhaps unique feature of Moroccan jurisprudence was to recognize the 'value of 'amal', or the fact that a certain opinion among variants was consistently applied in practice of the courts, as a binding legal principle. This is so, even when such opinion was a weak or isolated one. Thus, the author of Al-'Amal al-Fāṣi states: 'In principle the judgement of qādis of our time based on an isolated opinion ought to be rescinded immediately. But the 'amal must prevail over the mashhūr. It cannot be neglected.' Toledano, Judicial Practice, 12. Basing himself on Toledano, Muhammad Masud defines 'amal in a similar manner; and so the definition is propagated. Muhammad Khalid Masud, Islamic Legal Philosophy: A Study of Abū Ishāq al-Shāṭibi's Life and Thought (Islamabad: Islamic Research Institute, 1977), 16, 29 n. 64. The above citation from Toledano is sourced to the studies of Milliot and the 'amal text of `Ālī al-Zaqqāq (d. 912/1507 - see below); not Schacht or Coulson. This fact notwithstanding, Coulson's voice is often heard in Toledano, mostly from "Muslim Custom and Case-Law," an article that preceded A History of Islamic Law, providing well-worked material for the latter text's treatment of 'amal. More often than not, his voice goes unattributed by Toledano. For example, Toledano writes: "It ['amal] became, in fact, an instrument for modifying and adapting the Shari'ah to meet the practical needs of society; and the judges in Morocco were filling the same role as their predecessors in the first two centuries of Islam." Toledano, Judicial Practice, 9. Cf. Coulson: "Thus the 'amal became an instrument for modifying and adapting the Shari'a to meet the practical needs of society, and the judiciary in Morocco were filling the same role as their predecessors in the first two centuries of Islam." Noel James Coulson, "Muslim Custom and Case-Law," in Die Welt des Islam 6 (1959): 23.

makes of 'amal a "practice over theory" ruse and inflexible doctrine, the history of 'amal does not unfailingly bear this out. It appears to hold true for the early modern period of 'amal, as primary evidence illustrates; but not for the medieval period.

1:1:2 The development of 'amal in medieval Morocco and Andalusia

Although the origins and justification of both medieval and early modern 'amal ultimately lie in the collective "Practice of the People of Medina" ('amal ahl..."


For example, al-Majjaṣī (d. 1100/1688) states: "A judge's divergence from the practice of the courts is a cause of suspicion and censure; rather, a judge must conform to the judicial practice ['amal] in cases in which there exists one, and follow the dominant opinion only in matters in connection with which no judicial practice is established." Abū 'Abd Allah Muḥammad al-Ḥasan al-Maghrawī al-Majjaṣī, al-Ajwībā; cited in Toledano, Judicial Practice, 168. Qādī 'Isā (10th/16th century) states: "Il n'est pas permis de statuer contrairement à [l'aman]"; cited by al-Sijilamāsī in Milliot, Démembréments du habous, 109. Finally, a Moroccan legal maxim defines the meaning of 'aman to be: "Electing a weak opinion, and judging and issuing fatwas by it (Ikhtiyār qawl da'if wa al-ḥukm wa al-ifā' bi-hi);" cited in al-Jayyīdī, al-'Urf wa al-'aman, 342.
al-Madina) that was established by the Prophet's residency there, as local court practice 'amal is something different, with a juridic significance only. To date, the earliest attested appearance of this kind of 'amal belongs to fourth/tenth century Andalusia (al-Andalus), principally Cordoba: in the legal formulary of the Cordoban notary Abū Abd Allāh Muḥammad b. Āham b. ʿUbayd b. Saʿīd al-Umawi, known as Ibn al-ʿAṭṭār (d. 399/1009), reference to local court practice is made some twenty times. Contrary to the textbook definition, therefore, even by this early period 'amal would seem to be a recognised juridic phenomenon; one pertaining neither to "Morocco" (Schacht) nor "north-west Africa" (Coulson), but Andalusia. In Morocco (al-Maghrib al-Aqsā) and Tunisia (Ifrīqiya) of the same period, meanwhile, examined records show no mention of court practice. Not until the 6th/12th century does it show in them: in the work of al-Mazari (d. 536/1141) for Tunisia, and Ibn ʿIyād (d. 575/1179) for Morocco.

Regarding Morocco, although Ibn ʿIyād's mention of 'amal does not mean it had authority there, but just in Andalusia, principally Cordoba, to where the mention is sourced, the fact that during this period Cordoba was a legal ('ilmī) capital of

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20 Van Staël, "Les usages de la ville," 2: 355, for Tunisia (specifically, Kairouan); my own research for Morocco (specifically, Fes).


22 Serrano Ruano, "La práctica legal ('amal) en al-Andalus," 172. The fact that 'amal appears in these records does not mean the earliest date for it is the date of the records' compilation, but sometime earlier.
both Andalusia and Morocco, would suggest that it did. Even if it did not, Ibn 'Iyāḍ also provides evidence of a North African (maghribi) 'amal or 'amal-like practice in operation at this time. Concerning the permissability of a partner in a jointly owned house compelling the others to sell their shares in order for him to build an apartment (maskan), Ibn 'Iyāḍ refers to a Maghribi court practice allowing this based upon an opinion of Ibn al-Qāsim, saying "Wa `alā hāḍhā jārat aḥkām ahl al-Maghrib". As Serrano Ruano remarks of this statement: "Probably this is one of the oldest references to the legal practice in the Far Maghrib."

Were either evidence presented in the preceding paragraph historically the case, institutionalised 'amal in Morocco began much earlier than that proposed by the textbook definition. The latter is premised on another metred 'amal text from Fes, al-Lāmiyya, dating to the late-ninth/fifteenth century and referring to a local court practice increasingly emancipated from the authority of Andalusia.
This premise betrays the textbook definition as restricted in scope to the period of Moroccan history when Muslim Andalusia had ceased to exist as a cultural and political power; in other words, to the post-Marinid period, when it is meaningful to refer to intellectual currents in Morocco as "Moroccan" (Schacht) or "north-west African" (Coulson).  

With time, as 'amal became established in Andalusia, Tunisia, and Morocco, so its remit grew, leading eventually to the desirability of recording some or all of it. Hence, the existence of the 'amal texts al-Lämiyya and al-'Amal al-fäsi, for example, versified to be remembered. But until this moment, evidence suggests there was no absolute compulsion for a judge to adhere to the 'amal; and no notion that 'amal was a judgement solely in accord with the weak or isolated opinion. Rather, 'amal seems to have been a mechanism for realising an authoritative, but not obligatory regional guide to help judges differentiate between competing opinions pertaining to any given case (mas'ala). The opinion...
marked "'amal" indicated which one they were expected to apply in the judgement; frequently the mashhûr, or widespread opinion. In this way, 'amal formed part of taqlid: the mechanism a law school possessed to ensure doctrinal uniformity, especially at the interface of litigant and judiciary.\textsuperscript{32}

1:2 'Amal and The Book of Walls

As a term denoting the acceptance of legal authority, taqlid can be dated with certainty to the second/eighth century;\textsuperscript{33} but as a term meaning a law school's mechanism of doctrinal unification, it dates to the fourth/tenth century.\textsuperscript{34} As the latter meaning took root within all the main Sunni law schools, so it gained currency, such that by the close of the fifth/eleventh century in Maliki Andalusia many jurists were ranked according to its criteria.\textsuperscript{35}

against the generalisation of regional 'amal (whereby different regions fall under one region's authority, as happened, for example, with both Cordoban and Fassi 'amal), see al-Ḥajwî, al-Fikr al-sâmi, 2: 468; trans. Berque, Essai, 126-127. On the historical phenomenon itself, see al-Jâyyîdi, al-'Urf wa al-'amal, 376-377; and Abû 'Isâ "Sidi" al-Mahdî al-Wazzârî al-Fâsî (d. 1342/1924), Tuhfat akyâs al-nâs bi-sharîf 'amaliyyât Fâs, ed. Hâshîm al-'Alâwî al-Qâsimî (Rabat: Wizârât al-Awqâf wa al-Shu'iin al-Islâmiyya li-al-Mamlâka al-Maghribiya, 1422/2001), 14-15.


\textsuperscript{33}Serrano Ruano, "Legal Practice in an Andalusi-Maghribi source," 229-230; Hallaq, Authority, Continuity, and Change, 160-162. See also Jackson, Islamic Law and the State, 79-80.

\textsuperscript{34}Schacht, An Introduction to Islamic Law, 70-71.

Given taqīd's acceptance in Andalusia at this period, it is unsurprising to find dating to the same century a legal (ahkām) text in part devoted to the `amal operative there: Abū al-Walīd al-Bājī's (d. 474/1081) Fusūl al-ahkām wa bayān mā maḏā `alayhi al-`amal `inda al-fuqahā’ wa al-ḥukkām (The Division of Judgements and Clarification of the `Amal according to Scholars and Judges). As noted in Chapter Three, in this work are found a small number cases concerning walls. Among the competing opinions these cases contain, two are marked as the `amal rulings. Here, then, is early evidence that wall-related law is applied through the mechanism of `amal. And just as al-Bājī's text does not mark the start of `amal in Andalusia, neither does it mark the start of wall-related `amal there. In the court records compiled in the fourth/tenth century by Ibn al-ʿAṭṭār, of the twenty or so times `amal is mentioned, one is to an `amal ruling related to walls.

With the continued development of taqīd within the law schools, and thus the growth of `amal, when Ibn al-Rāmī comes to write his wall book in eighth/fourteenth century Tunis he refers to `amal rulings with frequency. But these references are a fortuitous supplement; not a distinguishing mark of the genre, which is a record of legal cases relating to walls; not a record of `amal rulings relating to walls. Ibn al-Rāmī and, to a lesser extent al-Bājī, are exceptions in that they specifically mention the `amal ruling in addition to the cases' competing opinions. For the most part, the other authors in the genre do not; they merely organise these competing opinions according to the notions of casuistry and

36 Al-Bājī, Fusūl al-ahkām, op. cit. Whilst it is not certain that this title is the one chosen by al-Bājī himself, the words of it are his and report his own view of the contents of the book. Ibid., 135.
37 Chapter Three, Part 1:2:3.
38 Al-Bājī, Fusūl al-ahkām, 325, 333.
39 Ibn al-ʿAṭṭār, Kitāb al-Wathāʾiq wa al-sijillāt, 123.
That Ibn al-Rämi is so diligent in recording the ‘amal rulings of his city is one reason why he is so important to the current investigation. He confirms ‘amal as the genre's most apparent mechanism of application. Cited below is an example. In the ranking of divergent opinions and identification of the mashhūr, the example also demonstrates Ibn al-Rämi’s competence in casuistry and taqālīd.

The case of a wall (ḫāʾīf) owned by one man that screens [the house of] another man, and it collapses or the owner wants to raze it. Is the owner compelled to restore it or not?

We advocate (naqūlu) categorising this type of wall in three ways. Either it is a strong (qawīy) wall that is not feared to collapse, and its owner wants to raze it; or, it is a weak wall that is feared to collapse, and its owner wants to raze it; or, it is [a wall] razed by the Will of God. Concerning the first category, namely, the strong wall not feared to collapse: If the owner razes it for his own benefit is he compelled to restore it or not? There are four opinions (aqwāl):

'Īsā Ibn Dinar taught (qāla) in al-‘Utbiyya that if he razes it for his own benefit or [with the intention] to restore it but is then unable to do so or finds he can manage without it, then he is not compelled to restore it. He says to the other man: “Screen yourself on your own land, if you want!” Ibn al-Qasim taught the same in al-Majmūʿa on the authority of Malik, as did Ashhab and Ibn Nāfiʿ.

41 On casuistry as a method of organising cases and competing opinions in Islamic law, see Schacht, An Introduction to Islamic Law, 205-206; and Baber Johansen, "Casuistry: Between Legal Concept and Social Praxis," in Islamic Law and Society 2, no. 2 (1995): 135-156. On the historical development of casuistry in Islamic law, see ibid., 135-140. Regarding the different level of casuistry and taqālīd between Ibn al-Imām and Ibn al-Rāmi, for example, see Van Staėvel, "Les usages de la ville," 2: 332-348, 390-393.

42 That ‘amal retains this prominence is proven for the eleventh/seventeenth century in the Fassi ‘amal compilation al-‘Amal al-fāsi, and for the fourteenth/twentith century, in court records from Fes. For the former, see V. Loubignon, "Le chapitre de la préemption dans l \'Amal al-Fāṣī," in Hesperis 26 (1939): 233 (cf. Berque, Ulémases, fondateurs, insurgés du Maghreb, 204); for the latter, see Lawrence Rosen, The Anthropology of Justice: Law as Culture in Islamic Society, Lewis Henry Morgan Lecture Series (Cambridge: Cambridge University Press, 1989), 48-49.


The second opinion is from the al-Wāḍiḥa: Ibn al-Mājishūn, Saḥnūn, and Ibn Kināna\(^4\) taught that the owner is compelled to restore it whether he likes it or not, even if the wall is weak (\(wa\ in\ kāna\ daʿīf\) \(\rlap{`alā\ mā\ aḥabba\ aw\ kariha}\)), because it constitutes damage (madārr). The owner must do this because the prerogative fell to the neighbour, against him, when the neighbour built his house in the screened protection of that wall (\(ḥīn\ qāmat\ dāraḥu\ bi-sitr\ dhālika\ al-jidār\)).

The third opinion is also from the al-Wāḍiḥa: Ibn Ḥabib taught that the owner is compelled to build it, but that he should not be rushed to do so - the neighbour being told in the meanwhile that he should screen himself, if he can find one. If he cannot [find one], and his intimacy is thereby compromised (\(wa\ kānat\ la-hu\ `awra\)), the owner of the wall is compelled to restore it, whether he likes it or not. . . .

The fourth opinion: Yahyā\(^4\) taught on the authority of Ibn al-Qāsim: If the wall is strong, then he is compelled to restore it; if it is weak, then he is not. The widespread opinion (al-mashhūr) is that he is not compelled; fatwa and `amal ruling follow it (\(wa\ bi-hi\ al-fatwā\ wa\ al-`amal\)).\(^4\)

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1:3 `Amal and `Urf

In addition to its function in taqlid, the mechanism of `amal has long been considered a means of alleviating hardship (darūra) and realising the "common good" (maṣlaḥa).\(^4\) By determining, under the strictest of conditions, the `amal

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\(^{48}\)E.g. al-Sijilmāsi in Milliot, Démembrements du habous, 111; al-Ḥajwi, al-Fikr al-sāmi, 2: 465-466, trans. Bergue, Essai, 120-121; Toledano, Judicial Practice, 12; and al-Jayyidi, al-`Urf wa al-`amal, 342. By and large, for Muslims scholars and jurists it is a legitimate means; for Western academics, as noted earlier, an illegitimate one. On ḍarūra, see V.
ruling of any particular case according to circumstances of place and time, it
provided flexibility and local sensitivity within a legal system frequently
portrayed as static and unreasonable.\footnote{For examples and a critique of such portrayal, see Wael B. Hallaq, Usül al-filth: Beyond
Tradition," in Journal of Islamic Studies 3, no. 2 (1992): 172-202; also Powers, Law, Society,
and Culture, 1-3,23-52. On the strict conditions for defining the 'amal, see Appendix
(2): Conditions for the validity of 'amal. On these conditions, see also al-Hajwî, al-Fikr
al-sämi, 2: 469, trans. Berque, Essai, 128-129; Berque, "Amal (3)," 428; and especially
'Abd al-Salâm al-'Asri, Nazariyya al-akhdh bi-mä jarä bi-hi al-'amal ft al-Maghrib ft iiär
al-madhhab al-mäliki (Rabat: Wizärat al-Awgäf wa al-Shu'ün al-Islämiyya, 1417/1996),
passim. Lastly, I have here spoken of 'amal in the past tense, as it is my understanding
that it is nowadays everywhere inoperative.}

Given this sensitivity to local conditions, it is natural to find that scholars and jurists alike have commonly viewed custom
or convention ('urf) as the mechanism's pivot, and the 'amal ruling's decisive
determinant.\footnote{E.g. Abdelkêbir Alaoui M'daghri, Ma jara bihi-l-amal ou le droit coutumier: Une modèle
typique de notre patrimoine juridique (Rabat: n.a., c 1417/1996), esp. 55-56; Chalmeta,
"Acercas del 'amal," 339; al-jayyidy, al-'Urf wa al-'amal, 371; Toledano, Judicial Practice,
39-42 (but see also 17 n. 28); Berque, "Amal (3)," 428; idem, Essai, 69, in conjunction
with 43 n. 1 and 47 n. 10; al-Wazzäni al-Fäsi, Tuhfat akyiis al-näs, 16; Milliot (with some
reservations), Démembrements du habous, 26; al-Zaqqäq, al-Lämiyya, 33, trans. 35 (see
below); Ibn Farhûn, as represented by al-Sijilmäsi and others in Milliot, Démembrements
du habous, 114. Recently, Serrano Ruano has questioned this orthodoxy with regard to
Andalusian 'amal: "En nuestra opinión, tales afirmaciones puede que sean ciertas en el
caso del 'amal magrebí o en el de los resultados que arrojan los formularios notariales,
pero desde luego no son aplicables a la realidad andalusí ... de los siglos X-XII d.C." 
Idem, "La práctica legal ('amal) en el-Andalus," 185. For his part, with regard to Ibn
al-Rämî, Van Stævel has refuted entirely the scholars' and jurists' majority view, but
upon no supporting evidence: "Dans le K. al-`lân ... le 'amal n’entretient aucun lien
explicite avec la coutume." Idem, "Les usages de la ville," 2: 360.}

In Al-Zaqqäq's (d. 912/1507) words:

Should it be said that some of [the 'amal rulings] I have reported
are [based upon] weak opinions: Yes, indeed! But on 'urf [is 'amal]
dependant! (Fa-in gila inna al-ba’âd mimmä naqaltuhu da’if na’am läkinna
‘alä al-'urf ‘iwal°")\footnote{Al-Zaqqäq, al-Lämiyya, 33 (verse 204); my translation. Cf. Toledano’s translation in
idem, Judicial Practice, 12 n. 11.}
repetition, this opinion becomes the regional 'amal ruling, until - ideally - circumstances of time and place change, causing the ruling to be revoked.\(^{52}\)

As a result of this process, 'amal and its rulings are sometimes considered akin to an Islamic, or juridically sanctioned redaction of a society's customs;\(^{53}\) for 'urf is firstly a cultural, not a legal (fiqhî) category, and often includes practices considered contrary to the Shari'a.\(^{54}\) To the best of my knowledge, except in this, 'amal has no affect on 'urf.\(^{55}\)


\(^{55}\) For further treatment of legal 'urf, see below and Appendix (3); Verbal and practical 'urf.
1:4 Conclusion

As the most apparent application mechanism of The Book of Walls, 'amal indicates the connection between 'urf and the genre.56 This indication will be pursued below. Meanwhile, the connection itself can physically be seen in the architectural vernaculars of different regions.57 For example, only in medieval and early-modern Fes are houses noted for their height, often three or four storeys, and sometimes surmounted by a belvedere, or "menzeh" (manzaha).58 Also in Fes of the same period, the building medium used is stone, brick, and cedar;59 by contrast, in the fortified urban complexes, or "ksur" (quṣūr) of the Tafilalt, southern Morocco, it is pisé, mud brick and palm tree.60 And so forth; architectural conventions influencing the shape the genre's 'amal rulings finally assume.

2. 'URF AND THE LEGAL BASIS OF THE GENRE

The foregoing discussion of 'amal has indicated a relationship of 'urf with The Book of Walls; in the application of the genre within the medina environment,

56From a point of departure other than 'amal, Van Staël has also shown the connection of 'urf with the genre (specifically, Ibn al-Rāmi). Idem, "Les usages de la ville," 2: 382-401, esp. 393. As important as his treatment is, I believe Van Staël mistakes Ibn al-Rāmi's references to 'urf for references to a general category of 'urf, when they mostly refer to the jargon of masons and builders - a type of restricted 'urf known as al-'urf al-lafzi al-khāṣṣ. Muṣṭafā ʿĀḥmad al-Zargā', al-Madkhal al-fiqhi al-ʿāmm, 7th ed., 3 vols. (Beirut: Dār al-Fikr, n.d.), 2: 841-846; cf. Kamali, Principles, 289-291. This mistake would explain Van Staël's ungrounded dismissal of 'urf as the determinant of the 'amal rulings found in Ibn al-Rāmi's text (see above): he has assumed that the only connection the text has with 'urf is where 'urf is mentioned by word or synonym.


59Rawd al-qirtās, 51, trans., 44; al-ʿUmari, Masālik el-absār, 158; Leo Africanus, 2: 420.

‘urf plays its part. However, in terms of the chapter’s stated aim to identify the legal basis (asl) of the genre, and hence the governing principle of "wall thought", a relationship of ‘urf with the genre is not the same as ‘urf underpinning the genre. Consequently, this part of the chapter will demonstrate that The Book of Walls’ principal justification or "proof" (dalil) from the Sharia depends upon ‘urf to exert legal effect. It will be shown that because this dalil’s meaning is obscure, in order to determine its significance or value (hukm Shar‘i) for any given case referring to it, it is subject to clarification (takhîšîs) governed by ‘urf.

2:1 The Hadith Lä darar wa lâ dirär and The Book of Walls

It is commonly observed by scholars of the genre, that of the Sharia proofs referred to therein, the dalil the hadith "No harm or return of harm (Lä darar wa lâ dirär)" is fundamental. Hakim, for example, considers it "one of the most frequently quoted and used in building matters". Kahera and Benmira conclude that, regarding "habitat, the neighborhood, the home and the street, inferences of spatial form [are] implicitly derived from the axiom lâ darar wa-lâ dirär", and ‘Azab asserts:

The principle Lä darar wa lâ dirar occupies a broad chapter in Islamic building fiqh, and upon it are built innumerable rulings. It has influenced the procedure of building in Islamic cities (Wa ihtallat qā‘ida Lä darar wa lâ dirar bâb‘n wasîn fi fiqh al-imârât al-islâmiyya, wa ‘alayhâ qâmât ahkâm lâ ḥâṣra lahâ, wa atharat hâdhihi al-qâ‘ida ‘alâ ḥarakat al-‘umrân fi al-mudun al-islâmiyya).

61See below for collection details.
62Hakim, Arabic-Islamic Cities, 22
63Kahera and Benmira, "Damages in Islamic Law," 162.
64‘Azab, "Takhtût wa ‘imârat," 84. See also, M'halla, "La Médina," 63; Akbar, Crisis in the Built Environment, 93-104; al-Hathloul, "Tradition, Continuity and Change," 75; and Brunschwig, "Urbanisme médiéval et droit musulman," 133-134.
These and other assertions are born out in the texts themselves of The Book of Walls. In Ibn al-Imâm's text, for example, of the thirty times a hadith is cited, Lâ ɗarar wa là ɗirâr appears the most at eight times.65 In Ibn al-Rämi's Kitāb al-I'llān the dalîl has greater ubiquity appearing, for example, five of the ten times a hadith is cited in the first quarter of the book.66 And in Kitāb al-Ḥīṭān, although the hadith is not itself cited, the concept of harm (ɗarar) is referred to at least ten times.67

A "fair" (ḥasan) but "incomplete" (mursal) hadith related by Mâlik among others,68 Lâ ɗarar wa là ɗirâr is said to be one of five hadiths upon which all fiqh is based.69 This importance notwithstanding, because of the hadith's complex linguistic form, its precise meaning is uncertain.70 And because the qualified jurist is required to pay attention to the grammatical and linguistic form of the words

65The next most frequently cited hadith appears twice; meanwhile, as mentioned in Chapter Three, Part 1:2:1, the Qur'an is cited twice. Ibn al-Imâm, 2: 207-209.
67Kitāb al-Ḥīṭān, 80, 83, 118, 121, 123, 127, 143, 152, 153, 185. These references are metonymic of the hadith and its legislative value, as the following example illustrates. In it, ɗarar is invoked, and because of the hadith's value, a judgement is reached. "It was mentioned in the words of Abû Sufyân al-Ḍârî, God have mercy on him: If the house in question is adjacent to other houses and its owner wants to build an oven in it for the continual baking of bread like those ovens used in stores, or [he wants to build in it] a flour mill or a fuller's pounder, he is not permitted to because such hurts (yaḍurru) his neighbours with unavoidable, exorbitant harm (ɗararfîsh)." Ibid., 127.
69As reported by Yaḥyâ Ibn Adam al-Qurayshî (d. 203/819) and Abû Dâwūd (d. 275/887); cited in 'Azâb, "Takhtīṭ wa 'imārat," 84 n. 1. Cf. the so-called "Five Principles" (al-qawā'id al-khams) of Islamic law, as discussed in Wolfhart Heinrichs, "Qawa'id as a Genre of Legal Literature," in Bernard G. Weiss (ed.), Studies in Islamic Legal Theory (Leiden: Brill, 2002), 365-369.
70As noted, for example, in Nejmmeddine, "La rue dans la ville de l'Occident musulman médiéval," 295 n. 106; Kahera and Benmira, "Damages in Islamic Law," 142; and Brunschwig, "Urbanisme médiéval et droit musulman," 133.
constituting any *dalil* in order to deduce its significance or value (*hukm shar'i*), *Lā ḏarar wa lā ḏirār* has been the subject of frequent analysis and interpretation.\(^{71}\)

Such is illustrated by Ibn al-Rāmī's own attempt to define it, in which he refers to a number of other interpretations:

The ulema differ as to the meaning of the hadith, with some saying *Lā ḏarar wa lā ḏirār*: do not harm yourself and do not harm other than yourself. Ibn Ḥabīb said: "Ḍarar" and "ḍirār" are two words with one meaning, that are repeated to emphasise prohibition (al-*man*'). Perhaps Arabic inflection has kept both [meanings] (*Wa qad ya'khudhuhumā taṣrīf al-ỉrāb*). "Ḍarar" is the noun and "ḍirār" is the verb. The hadith's teaching (*qawluhu*) "lā ḏarar" is to say harm does not befall one person from another, even if the person did not intend it. And the teaching "lā ḏirār" is to say one person does not deliberately harm another. Al-Khashani\(^{72}\) taught: "Ḍarar" is what benefits (manfa'a) you, but disadvantages (maṭara) your neighbour. What he means is that "ḍarar" is what someone intends benefit from, but in which is harm to another; and "ḍirār" is the deliberate harming (al-ỉdrār) of another. Our Lord, Great is His Splendour and Holy His Names and Attributes, said: "And there are those who put up a mosque by way of 'ḍirār' and infidelity."\(^{73}\) It is conceivable that the meaning of "ḍarar" is that one of two neighbours harms the other; and the meaning of "ḍirār" is that both of them harm each other. The Prophet, upon whom be peace, forbade both aspects. . . . In his book *Mu'īn al-quḍāa*, Qadi Ibn ʿAbd al-Rāfī taught: The interpretation (*tafsir*) of "ḍirār" is that you harm yourself in order that someone other than yourself is harmed. Ashhab taught: If two harms come together, the smaller of the two is abolished (saqaṭa); not the bigger of them.\(^{74}\)

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\(^{72}\) In Ibn al-Rāmī (2), Al-Khashani is elucidated as Muḥammad b. ʿAbd Allāh al-Salām al-Qurṭubī (d. 286/899). Ibid., 58 and 58 n. 2.

\(^{73}\) Qurʾān, 9:107.

\(^{74}\) Ibn al-Rāmī, 299.
The Hadith Lā ḍar ar wa lā dirār and its Clarification by 'Urf

Whilst 'urf is but one of several means for the clarification of ambiguities and obscurities in the sources of Islamic law, it is a vital one. As the Moroccan jurist al-Tawdi Ibn Süda (d. 1209/1795) said of it: 'Urf "particularises the general, specifies the equivocal, and determines the indeterminate." As well as helping to determine the meaning of judgements, contracts, and so forth established under Islamic law, 'urf is of value in clarifying linguistic ambiguities within the principal sources of this law, the Qur'an and Sunna. In Muhammad Kamali's words: "In determining the scope of [words of generic, non-particularised meaning within the sources, called 'general' ('ämm) in jurisprudence], reference is made not only to the rules of language but also to the usage of the people, and should there be a conflict between the two the priority is given to the latter."

Considered one of the two categories of 'urf, linguistic usage (al-'urf al-lafzi) is the matrix of meaning where words are understood without ratiocination or a requirement for context. Similar to St. Augustine's concept of time, in this


Al-Zarqā', al-Madkhal al-fiqhi al-'āmm, 2: 842-843; for a translation, see Appendix (3): Verbal and practical 'urf.
matrix everyone knows what this or that word is, even if they cannot define it satisfactorily. Such is the case with the meaning of لَا ضَرَرْ وَ لَا ضَرَرُ, specifically its generic word "harm" (ضرر, ضرار).

Referring once more to Ibn al-Rāmi’s attempt to define the hadith, as excerpted above he commences his treatment with the ulema and their definitions. From these definitions he does not proceed to choose one; rather, he leaves the hadith’s meaning floating, and shifts his treatment to the “many aspects” (وَجُوه كَثِيرة) of harm within a legal context. These aspects he divides and sub-divides into old and new, supporting them on the opinions of Ibn Rushd and Ibn ‘Abd al-Rafi’, and extending them on the view of Ibn Hishām. Finally, he ends his treatment by choosing to clarify the "many aspects" of harm in the legal cases to come. He says:

The aspects of harm are many; they will become clear via legal cases concerning them (وَ وَجُوه الضرر كَثِيرة تُثْبَيْنُ تَنَاوُذِ الْحُكْم فِيهَا). 80

As a result of this decision, the meaning Ibn al-Rāmi ascribes to the hadith and its concept of harm comes covertly, imprecisely, and piecemeal within the legal cases referring to it; not in an explicit, cognitive definition. For the legal cases he cites do not explain the hadith and harm; they just use both. As such, they bear witness to the particular understanding of harm current at the time and place of each individual case. Of their audience they presume an understanding of harm, one governed by local usage, and variable; whence the prerequisite of muftis and judges to be knowledgable of the ‘urf of the regions of their jurisdiction: only by knowing what constitutes harm for a particular region, can a valid

79Ibn al-Rāmi, 299-300.
80Ibn al-Rāmi, 300.
81Cf. al-Wazzāni al-Fāsi, تُهَفَ‬ةٌ أَكْبَرِ الْإِلْيَادِيِّ بَعْضِ النَّاسِ, 16.
opinion or judgement be issued.  

Examples corroborate this. In a court case from Medina in 981/1573, a judge is asked about an individual who opened two windows (nāfidhayn, ūqatayn) in his second-floor apartment (hawsh) overlooking another's house. In order to decide the case on the basis of the hadith Lā ḍarar wa la ḍirār, the judge turns to local mastermasons (sg. muʿallim, muhandis al-`amāʿir al-sulṭāniyya bi-al-Madina) and asks if the opened windows are considered a harm in the region. As al-Hathloul summarises this case: "For the judge to decide that intrusion onto the privacy of neighbors inflicted harm and damage, he had to look back to the acknowledged social conventions." In a case reported by Ibn Sahl, two jurists from the Cordoban ahl shūrā (advisory council) give contradictory opinions regarding the legality of an architectural projection (raff), the second jurist dismissing the first's conception of harm. Finally, Ibn al-Rāmī reports a case of a man who opened a window (kuwa) that allowed him to overhear the speech (al-kalām) of his neighbour. The neighbour took him to court complaining of harm, but the advisory council (ashyāḵhunā) disagreed as to whether this constituted harm. The judge decided that it did not; and that became the `amal ruling for Tunis.

2:3 Conclusion

Although Lā ḍarar wa la ḍirār inevitably has status in building matters for being a Prophetic hadith, legislatively speaking it exerts itself via the clarifying rôle of  

82 Al-Jayyidi, al-ʿUrf wa al-ʿamal, 86, 126, 149, 421; Faruqi, "Consideration of ʿUrf, 494.  
83 Record 6 (vol. 1), Page 229, Case 418; appended in al-Hathloul, "Tradition, Continuity and Change," 322.  
84 Al-Hathloul, "Tradition, Continuity and Change," 139.  
85 Ibn Sahl, 92; translated in Case 3 of Appendix (1): Selected case titles and cases from The Book of Walls.  
'urf. Because it is the principal *dalil* of *The Book of Walls*, this is to say that 'urf is the genre's legal basis and governing principle.\(^{87}\)

3. SUMMARY

In this chapter, *The Book of Walls'* most apparent application mechanism has been shown to be *'amal*, and its legal principle identified as *'urf*. Lying at the heart of "wall thought", custom lies at the heart of walls. In the next chapter, this finding will be elaborated and refined.

Chapter Five

SHAME AND THE SIGNIFICANCE OF WALLS

In the image of a house whose weak foundations show in the fissures tracing its walls, the customs of a people show in their medina walls. Based in 'urf, these external and party walls uphold 'urf. They tell of a society that has created for itself a coherent built environment in which all legally capable (mukallaf) members are, to varying degrees, patrons and recognised participants: a "people's" environment, coded through Islamic law. But so broad and all-encompassing a category is 'urf that, in the absence of finer definition, what shows is otherwise impenetrable, too general for further significance. For the walls to become more telling, something that draws 'urf's focus is required: a defining factor, one drawing 'urf's limit.

Meaning literally "the known", 'urf and its cognate synonym ma'rūf are etymologically the opposite of munkar, or "the unknown". Semantically, too, they are opposites. In the Qur'an munkar is what is disavowed and unacceptable to Muslims; 'urf and ma'rūf, what is appropriate and acceptable (and thus in Islamic law, customary). Whatever draws a divide between these terms, draws

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1On the legal category mukallaf, see Qutub Mustafä Sänü, Mu'jam muşālahat usūl al-fiqh (Damascus: Där al-Fikr, 1420/2000), 440.
2Ziadeh, "'Urf and Law in Islam," 60.
3Ibid., 60; Izutsu, The Structure of the Ethical Terms in the Koran, 218-222; Michael Cook,
a definition of 'urf.

1. THE SHAME FACTOR

In The Power of Shame: A Rational Perspective, Agnes Heller argues that in contrast to the other emotions, all of which precede culture, shame is coeval to culture, allowing for entry and conformity to it. In feeling shame, a person shows awareness of societal norms, of what is and is not acceptable. Heller is not alone in arguing this. Whether in the context of ancient Greece, medieval Iceland, or contemporary America, a number of psychologists, scholars, and philosophers agree that shame plays its part in the socialisation of the individual. Instead of reducing it to disgrace or humiliation only, these and other academics


recognise shame as a complex phenomenon, exploring its plural forms. As exemplified by Léon Wurmser, these forms are:

"I am afraid that exposure is imminent and hence terrible humiliation" - shame anxiety. "I have been exposed and humiliated, I want to disappear as this being" - shame affect in the broad sense. . . . "I must always hide and dissemble, in order not to be exposed and disgraced" - shame as preventive attitude.

How true is any of the above for Muslim culture? And in an architectural investigation, what, if any, are the spatial implications?

1:1 Muslim Culture and Shame

1:1:1 Shame in religion (din)

In an authoritative hadith the Prophet is reported saying: "Every religion has its moral character, and the moral character of Islam is shame (Li-kulli din khuluqhu wa khuluq al-Islām al-ḥayā')." Other authoritative hadiths endorse this importance of shame to Islam. For example: "Inside of you are two natural traits loved by God: forbearance and shame (Innafi-ka khaslatayn yuhibbuhumā Allāh: al-ḥilm wa al-ḥayā');" "When God wants to destroy a servant, He strips him of his shame (Inna Allāh 'izz wa jall idhā ārāda ān yuhlika abdā naza'a minhu al-ḥayā');" Among

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6 In addition to the above titles, see especially, Gabriele Taylor, Pride, Shame, and Guilt: Emotions of Self-Assessment (Oxford: Clarendon Press, 1985), 53-84. For a succinct critique of the reduction of shame to disgrace or humiliation only, see Schneider, Shame, 18-28.


8 Mālik Ibn Anas, al-Muwatta', 563. Also collected by Ibn Mājah. Wensinck et al., Concordance et indices de la tradition musulmane, 1: 543.


10 Ibn Mājah, Sunan, k. al-fatan, bāb dhahāb al-amāna, raqm 4054.
the teachings that people learnt from the first prophecy is: If you feel no shame, then do as you please! (Inna minmā adraka al-nās min kalām al-nubuwa al-ūlā: Idhā lam tastaḥī fa-išna' mā shi'ta); 11 "Shame does not occur, except for the better (Al-ḥayā' lā yā'tī ʾillā bi-khayr);" 12 "All shame is good (Al-ḥayā' khayr kullhu);" and "Shame is of faith (Al-ḥayā' min al-imān)." 14 In contrast to its often negative status in contemporary Western culture, here shame is valued: an integral part of religious life. 15

The Qur’an is less forthcoming on the subject, but in one clear reference we are told that the Prophet knows shame; not always his guests:

O ye who believe! Enter not the dwellings of the Prophet for a meal without waiting for the proper time, unless permission be granted you. But if ye are invited, enter, and when your meal is ended, disperse. Linger not for conversation. Lo! that would cause annoyance to the Prophet, and he would be ashamed of you (fa-yastaḥīyy min-kum); but God is not ashamed of the truth (wa Allāhu lā yastaḥīyy min al-ḥaq). 16

Occurring in the context of what Chapter Two called threshold propriety, this

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11 Al-Bukhārī, Sahih al-Bukhārī, k. al-adāb, bāb 78, raqm 6120. Also collected by Ibn Mājah, al-Tirmidhī, and Ibn Ḥanbal. Wensinck et al., Concordance et indices de la tradition musulmane, 1: 540.

12 Al-Bukhārī, Sahih al-Bukhārī, k. al-adāb, bāb 77, raqm 6117. Also collected by Muslim. Wensinck et al., Concordance et indices de la tradition musulmane, 1: 542.

13 Muslim, Sahih Muslim, k. al-imān, bāb 12, raqm 61. Also collected by Ibn Ḥanbal. Wensinck et al., Concordance et indices de la tradition musulmane, 1: 542.


15 On the denigration of shame in modern Western culture, see Schneider, Shame, xiii-6; and idem, "A Mature Sense of Shame," in Nathanson (ed.), The Many Faces of Shame, 196-199.

reference belongs to the spatial dimension of shame, to be discussed below. Of issue now is the word used for shame in this verse: istahyā, to feel hayā', to be ashamed; and etymologically, to seek hayā', to seek shame. The same word as used in the above hadiths, hayā' is cognate with hayya (to live), hayāh (life), and al-Hayy (He Who Lives, God), suggestive of shame as affirmative of life: something sought. 17 Such would mirror the other Qur'anic meaning of istahyā: to save life, to spare it. 18

1:1:2 Shame in society

In Muslim societies there are a number of terms for shame, and even more related to shame. Comprised in the first category is hayā', but also `ayb and hishma/hasham. Anthropologists have recorded some of their usages; these mirror the complexities accorded to shame by the scholars referred to earlier, and include shame as preventive affect, and shame as agent of enculturation. Unni Wikan, for example, observes that among the poor of Cairo:

`[Ayb] is one of the first words people hear and, throughout their lives, it remains the most common. I have no count of the types of actions to which the word is applied: they range from trifling misdeeds or accidents, such as insulting a guest, gossiping, stealing and miserly behaviour, to acts judged horribly immoral, such as homosexuality, female adultery or loss of virginity before marriage. `[Ayb] refers to actions, not people. Thus, a child whose mother scolds him "eb` [`ayb] does not necessarily think he has fallen in grace, only that his behaviour is at fault. `[Ayb] is such a vital word that there is not a toddler who does not understand what it means. 19

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She concludes that so embedded is `ayb in this society's cultural background, that it is used without reflection, enacted rather than thought.\(^{20}\) This, too, is in keeping with the earlier discussion of shame: it is a learnt reflex.

Of hasham, Lila Abu-Lughod observes that for the "Awlad `Ali" tribe of Egypt's Western Desert:

> It lies at the heart of ideas of the individual in society. [It] involves both feelings of shame in the company of the more powerful and the acts of deference that arise from these feelings. In the first instance, hasham is conceptualized as an involuntary experience . . .; in the second, as a voluntary set of behaviours conforming to the "code of modesty." [T]he primary goal of socialization is to teach [children] to understand social contexts and to act appropriately within them - which means knowing when to tahashsham [to exhibit hasham, to be ashamed]. Mothers often scold their children with the imperative, which can be translated as "behave yourself" or "act right" and which implies, "have some shame".\(^{21}\)

Similar usages of hasham are also recorded for Moroccan society by Susan Schaefer Davis, Dale Eickelman, and Soumaya Naamane-Guessous, the latter asserting that it divides conventional from unconventional, perforce secretive behaviour.\(^{22}\)

Regarding terms related to shame, they include sharaf, `ird, wajh, namus (Turkey),


izzat (Pakistan), nif, and hurma, and signify notions of "honour."

A moral value like shame, but pertaining to a person's character, not their actions, honour is considered reciprocal to shame, such that where anthropologists and others have characterised this or that Muslim society as one in which honour is emphasised, shame is usually also implicated, if not always mentioned.


On the reciprocity of shame and honour, see David D. Gilmore, "Introduction: The Shame of Dishonor," in idem (ed.), Honor and Shame, 3-4; also, Heller, The Power of Shame, 4; Taylor, Pride, Shame, and Guilt, 54-57, 80-81; and Miller, Humiliation, 116-119; cf. "The capacity to feel shame has... been cited as a pre-condition of all the virtues, as in the Ethiopian proverb 'Where there is no shame, there is no honour.'" Robert C. Solomon, "Shame," in Ted Honderich (ed.), The Oxford Companion to Philosophy (Oxford: Oxford University Press, 1995), 825. That honour and shame are reciprocal does not mean they are opposites. See Wikan, "Shame and Honour," 636; and Stewart, Honor, 128-129.

"Ird is one of the more common of these honour terms, and serves as an example of this reciprocity. As Bichr Farès explains it, it is "a sort of partition or curtain separating the individual from the rest of mankind": a preventive, like shame.²⁷

1:1:3 Conclusion

If Heller's and others' identification of shame as a primary factor of socialisation were thought to apply to Western societies only, the foregoing theological and anthropological appraisals have shown its adequacy for Muslim societies, too.²⁸ Acting as a preventive and preservative, shame marks what is acceptable in these societies, what is customary; preventable actions not triggering its response in the perpetrator, for example, the lingering of the Prophet's dinner guests, marking the unacceptable. In this way, shame draws a definition of 'urf.

1:2 The Spatial Dimension of Shame

That honour has a temporal dimension, has been noted by academics.²⁹ With


²⁷Farès, "Ird," 77. See also Al-Khayyat, *Honour and Shame*, 21-22.

²⁸The discipline of anthropology shows the adequacy of this identification for contemporary Muslim societies only, thereby posing a problem for an investigation that pertains to the medieval period. The problem is mitigated by the following considerations. Firstly, the status of shame in the Qur’an and Hadith suggests the identification's adequacy for medieval Muslim societies, too. Secondly, the importance of honour and, by implication, shame in pre- and early-Islamic Arab societies, suggests this also. See, for example, Farès, *L'honneur chez les Arabes avant l'Islam*, passim; Mohamed Abdesselem, *Le thème de la mort dans la poésie arabe des origines à la fin du IIIè/IXe siècle* (Tunis: Publications de l'Université de Tunis, 1977), 36-39; Chelhod, "La place de la coutume dans le fiqh primitif," 36; and Denise A. Spellberg, *Politics, Gender, and the Islamic Past: The Legacy of 'A'isha Bint Abi Bakr* (New York: Columbia Press, 1994), 62-63, 73. And lastly, choosing shame as a definitive factor of 'urf is not the same as choosing what a society constitutes as shame, viz. the standards required to trigger its response. These standards are variable and, in the absence of anthropological accounts, difficult to know.

one exception, that shame has a spatial dimension, has not been noted. 30 This latter dimension is important, for it is what makes shame architecturally of interest. Wurmser hints at it when he says that in shame there is "an object pole, in front of whom one feels ashamed, and the subject pole, for what one feels ashamed." 31 Although the object pole, or audience, need not be real but imagined, typically shame unfolds across the two poles, across - in other words - space, be it inner and imaginary or outer and sensible. 32 In this unfolding, some of the resulting effects are spatial. As will be seen, it is predominantly these that justify noting shame as spatial in part: shame occurs in space, but its effects alter the perception of this space.

1:2:1 The spatial effects of shame

"Shame never occurs in a thing," the Prophet is reported saying, "but adorns it (Wa lä kāna al-ḥayā' fi shai' qaṭṭu illā zānahu)." 33 In this authoritative hadith, the Islamic purpose of shame is revealed: to cover things beautifully. 34 What is considered to require adorning in Muslim culture varies with societies, but in the Qur'ān is stated as one's "modesty": literally, one's private parts (furūj, saw'āt). 35 It is a requirement that applies to believing men and women alike:


30 Eickelman, Moroccan Islam, 140.

31 Wurmser, "Shame," 68; italics as marked in the original.


33 Ibn Mājah, Sunan, k. al-zuhd, bāb al-ḥayā', raqm 4185. Also collected by al-Tirmidhī and Ibn Ḥanbal. Wensinck et al., Concordance et indices de la tradition musulmane, 1: 543. The apparent contradiction between this hadith and one cited earlier where shame is located within people ("Inside of you are two natural traits loved by God: reflection and shame"), is resolved by distinguishing the effects of shame from the capacity for shame. On this distinction, the two hadiths translate as: "Inside of you are two natural traits loved by God: reflection and the capacity for shame"; and "The effects of shame never occur in a thing, but adorn it."

34 This function, without the corresponding sense of beauty attached to it, is also embedded in the word "shame", derived from the Indo-European root *(s)kem-, to cover. Schneider, "A Mature Sense of Shame," 199; also Wurmser, The Mask of Shame, 29.

35 See, for example, 7:20-27; and 24:30-31.
Tell the believing men to lower their gaze and preserve their modesty (yahfazū furūjahum). That is purer for them. Truly God is well acquainted with what they do. And tell the believing women to lower their gaze and preserve their modesty (furūjahunna). 36

Clothing (libās) provides the most obvious form of preservation or cover, replicating and thereby guaranteeing the Islamic function of shame, as in the following Qur'anic verse where both real and metaphorical clothing are mentioned:

O Children of Adam! We have bestowed clothing upon you to cover (yuwäri) your modesty (sawʾātikum) and to be of finery (rish). But the clothing of piety, that is best. 37

In replicating the Islamic function of shame, clothing highlights the first of shame’s spatial effects: separation. Men and women’s face veils are an example. Just as these separate or distance the wearer from their immediate surroundings, 38 so the experience of being ashamed is commonly one of separation - of being cut off and effaced ("banished" in severer cases) 39 - accompanied by distancing

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37The Meaning of the Holy Qur’ān, 7:26; translation modified. Cf. "The dictionaries define [clothing] as 'that which conceals or covers the pudenda.'" Y. K. Stillman et al., "Libās," in Encyclopaedia of Islam, 2nd ed., 732; see also The Meaning of the Holy Qur’ān, 7:20-22, 27; and El Guindi, Veil, 73-76, 147-148. The popular Muslim conception of modesty that is expressed in Arabic as sitr al-a’wra (covering your modesty), is a reflection of this Qur’anic verse. On this notion, see for example, Leila Abouzeid, Return to Childhood: The Memoir of a Modern Moroccan Woman, trans. by the author, with Heather Logan Taylor (Austin: Center for Middle Eastern Studies at The University of Texas at Austin, 1998), iii; and Paula Sanders, "Gendering the Ungendered Body: Hermaphrodites in Medieval Islamic Law," in Keddie and Baron (eds.), Women in Middle Eastern History, 82.
39So intense can the experience be, that suicide is sometimes contemplated and/or committed. Lewis, Shame, 2, 75. On shame and separation in less severe cases, see Schneider, Shame, 26, 39, 138-139.
acts acknowledging one's error and/or inferior position. As Abu-Lughod describes the experience for the 'Awlad `Ali:

To *tahashsham* from someone involves neither eating nor drinking in front of him or her, nor smoking . . . cigarettes. One also assumes a rigid posture and does not speak or look the superior in the eyes. These acts imply formality on the one hand and self-effacement on the other, both means of masking one's nature, of not exposing oneself to the other. . . . Inequality is thus expressed as social distance, which is marked by *hasham*'s formality, effacement, and, ultimately, avoidance.\[40\]

In this experience of separation, space appears reversed: the second of shame's spatial effects. Where before there was proximity to another, now there appears distance; what was close, now appears apart; and what was inferior, now appears elevated: dignified and remote. Again, clothing replicates and guarantees this reversal, as in the case of the Tuareg face veil (*tegelmoust* in Air Tuareg dialect). Observed by the anthropologist Robert Murphy, the "Tuareg wear the veil highest and conceal their faces most completely when among those who are closest to them and know quite well who they are."\[41\] This is never more apparent than when a Tuareg is in the presence of their father- or mother-in-law, "for the Tuareg state that reserve and shame are the essence of conduct toward the senior affine and that they partially express this with the veil."\[42\]


\[41\] Murphy, "Social Distance and the Veil," 1264.

\[42\] Ibid., 1268. Cf. Jon Anderson's observations of *hajah* ("extreme politeness") comportment amongst Ghilzai Pakhtun in Afghanistan, of which a veil (*chader, chadri*) is just one part of a series of distancing techniques: "When a man and woman encounter each other outside the *kor* [the boundary defining whom it is socially possible to marry], restraint applies equally to both, or more precisely to their interaction, and in parallel fashions. In such encounters, a man at the very least will avert his gaze and 'not notice' a woman. He may additionally cover his face and turn away, even face a wall, exactly as she does, with frequently comical results that are not lost on Pakhtun. He will certainly cover his mouth and avoid eye contact, exactly as she does, if they cannot avoid speaking. . . . Put another way, the veil is part of a pattern of comportment in which both sexes participate with slightly different but overlapping inflections." Anderson, "Social Structure and the Veil," 402.
The shame experienced need not result from one's own error or social position, but from another's error or faux-pas. Such is the case of the Qur'anic verse cited earlier in which the Prophet is described as ashamed of the guests' lingering in his house. It cannot be proved, but it is surely no accident that the verse's next words introduce the requirement of speaking to the Prophet's wives (al-nisā') behind a screen (hijāb). The wives' Qur'anic status as different to other women requires a spatial counterpart, a marker of their apartness amidst the closeness of the Medina community: a physical screen, one replicating the Islamic function of shame, guaranteeing their status.

2. AN INTERPRETATION OF WALLS

With the significance of 'urf now focussed, this sociological interpretation follows: telling of 'urf, medina walls more clearly tell of shame; upholding and presenting their foundations in 'urf, these external and party walls manifest shame. Connoting, hence, the separation and reversal of space, they confirm the functions shown of them in Chapter Two.

To be understood as more than theoretical metaphor, the product of deductive logic, this interpretation requires inductive corroboration: reference to cultural

43Cf. Lewis, Shame, 3-4; Roberts, Emotions, 227-228. In the case of a faux-pas, the emotional discomfiture experienced by the perpetrator's audience, is often more one of embarrassment - a shallower type of shame. Taylor, Pride, Shame, and Guilt, 68-76; and especially Roberts, Emotions, 230-233.
proof. Such proof comes from or echoes the corpus of Arabic *ritā' al-mudun*, poems on cities vanquished or abandoned, and centres on the perceived disgrace of women when no longer secluded by walls. Part of the ancient, elegiac genre of Arabic poetry, Marthiya, the *ritā' al-mudun* corpus takes the form of lamentation (*ritā'*): a lyrical and often nostalgic expression of loss, including the loss of cities and homelands.⁴⁷

### 2:1 The figure of women in the language of lamentation

As shown in Chapter Two, whereas in the Qur'an it is a believer's modesty and the wives of the Prophet that require covering or screening, with the historical development of Muslim society and the *hijāb* as a cultural institution, this requirement becomes levelled at *muḥsana* Muslim women in particular, whose domain henceforth is the house.⁴⁸ In the *ritā' al-mudun* poetry, this requirement finds expression: in the poets' imagination, upon the ruination of the walls ensuring seclusion, a woman is subject to immodest deterioration. For example, after a period of unspecified calamity (*khutub*) in Kairouan, Ibn Sharaf al-Qayrawānī (d. 460/1068) recounts the fate of a destitute group of women who had never before heard of open space, but who are now destined to make of it their home (*mā sam'at bi-al-falā: qaṭṭu fa-`āyanat al-falā dārahā*). Where the walls


of the women's seclusion had once formed their horizons, now the empty horizon alone suffices (wa kānāt al-āstār ǧaqqahā: fa-ʿādat al-āfāq astārahā); stumbling (ʿāthūr) across the rocks and earth, they are reduced to gathering their buried rags (aṭmār); and where before no eye had ever set itself upon them, now censure blackens their eyelids with the sun (wa lam takun talḥāzuhā muqla: lawm kahḥalat bi-al-shams ashfarāhā).

In conformity with religious and popular notions describing a woman's inherent nakedness (ʿawra) and incapacity for shame, for Ibn Sharaf and other poets it

49 Abū ʿAbd Allāh Muḥammad b. Saʿīd b. ʿĀhmad Ibn Sharaf al-Qayrawānī, compiled in Mustapha, "Recherche sur les poèmes," 2: 186; for biographical details of this poet, see Muḥammad, Rithāʾ al-muḏūn, 118-121. Other examples include: 1) Ibn al-Labbāna's (Abū Bakr Muḥammad Ibn ʿIsā, d. after 484/1091) rithāʾ on the departure of the family of Muḥammad II al-Muʿtamīd (461-484/1069-1091) from Seville, following the Almoravids' victory over the city in Rajāb 484/August 1091: "[The women's] veils were down, not covering the [once] secluded virgins; their faces ripped, [like] shredded clothes (Haṭṭa al-qināʾ fa-lam tastaṛ muskhaddara wa muẓiqat awjah tarmiqiṣ abrād)." Compiled in Muḥammad, Rithāʾ al-muḏūn, 164, 1.3; trans. Henri Pères, La poésie andalouse en arabe classique au Xle siècle: Ses aspects généraux et sa valeur documentaire (Paris: Adrien-Maisonneuve, 1937), 103. 2) Abū Muḥammad ʿAbd Allāh Ibn ʿAssāl's (d. after 456/1064) rithāʾ of Barbastro, Andalusia, pillaged by Normans in 456/1064. In this elegy, the forced exposure of the hidden women to the outside world is symptomatic of the disgrace and humiliation of the entire city, caused by the inhabitants' crimes and sinfulness. Like the women, these sins now stand exposed for all to see. "With their horses [the polytheists, mushrikūn] defiled the haresms of the palaces (Hatakū bi-khaylihim qusūr harīmihā) .... Secluded and veiled in their inner chambers, [the women] were forced outside, unable to conceal themselves (Wa maṣiṣīna fi khidiḥīmah maḥjūba qad abrazūhā mà la-lā ṣīḥrūhā) .... Had it not been for the Muslims' crimes and perpetration of grievous sins, none of which can be concealed, never would the Christian horsemen have defeated them (Law-lā dhunūb al-muslimīna wa annahum rakībū al-kabīr ir mā la-hunna ḥaṣa♯ Mā kānā yansūru li-al-naṣārā fāris abādā)." Compiled in Mustapha, "Recherche sur les poèmes," 2: 215, lines 2, 8, 10-11; also, ʿAbbās, Ἀγγέλου al-Tawḍīf, 178 (lines 1-8 only); and al-Zayyāt, Rithāʾ al-muḏūn, 669-670; trans. Pères, La poésie andalouse, 99 (according to my Arabic copies of the poem, this translation is unreliable in places). Finally, see also Mustapha, "Recherche sur les poèmes," 2: 125-126, lines 10-13.

50 On the religious notion that a woman's entire body is ʿawra, naked like a pudendum, see, for example, al-Bayḍāwī's (d. 791/1389) commentary on the Qur'ānic verse 24:31, in idem, Taṣfīr al-Bayḍāwī, 2: 121 ("fa-inna kullā badān al-ḫurra ʿawra"); cf. Stowasser, "The Status of Women," 28. On the popular cultural notion that a woman is incapable of shame, the following examples are representative: "A girl is an object of shame; she must be clothed; she must be protected" - the words of a contemporary Jordanian man, cited in Antoun, "On the Modesty of Women", 680; also "Girls are the source of disgrace and reviling. They cause the enemy to have access to one's house" - a Lebanese proverb, cited in Petherbridge, "The House and Society," 193. Cf. Antoun's observation: "Only the full observance of the modesty code can, at once, protect the fragile woman, for she is a mirror that a breath will cloud, and contain the lust that dwells within her." Idem, "On the Modesty of Women", 691.
would seem that the walls sheltering a woman do not just replicate shame, but are a woman's shame. Once breached, she is defenceless against degradation. The Andalusian poet, philosopher, and jurist Ibn Ḥazm (d. 456/1064) echoes this sentiment in his shock at re-encountering a former servant girl (jāriya) he had once considered the epitome of beauty, chastity, purity, and modesty (ghāya fī ḥusn wajhihā . . . wa ‘ajāfiḥā wa ẓahāratihā wa khafarīḥā). That was ten years ago, when she was sixteen and part of his family's household in Cordoba; before plague, political upheaval, pillaging and sacking had forced him to flee; his beloved Cordoba and Umayyad dynasty to deteriorate; and her to be thrown from shelter into ruin:

Her charms (māhāsin) had all but changed: gone was her bloom (naḍara); extinguished, that beauty (bahja); dwindled, that essence (mā') that had conjured visions of flashing blades and Indian mirrors. That radiant blossom (muwūr), once drawing stares of wonder, leaving eyes helpless (mutahayyir), was wilted (dhabala). . . . All this was because of her decreased care for herself; and her loss of the shelter that had nurtured her in the days of our dynasty, when protection extended [to all]. It was due also to her being debased when going outside on unavoidable tasks; something she was sheltered and kept from before. For women are as fragrant herbs: when not tended to, they decline; and as a building: when not cared for, falling into ruin (Wa dhālika li-qillat ihtibāl bi-nafsihā wa 'adamuhā al-ṣiyāna allati kānāt ghudhhdhiyat bi-hā ayām dawlatinā wa imtidād zillinā. Wa li-tabadhdhuliḥā fi khurūj fi-mā lā badda la-hā min-hu mimnā kānāt tusānu wa turfa'u 'an-hu qablu. Wa innamā al-nisā' rayāḥin matā lam tata'ahad naqāsat wa bunya matā lam yahtabil bi-hā istahdamat).


52Ibid., 288-290. On the fitna, or the political and social turbulence surrounding his
Just as with the rithā' al-mudun poetry where the figure of a broken woman can serve as a metaphor for a ruined city, so in this passage Ibn Ḥazm is perhaps alluding to Cordoba, even as he describes the tragic decline of a servant girl.

In a proverb about Fes, cited in Chapter One (Part 2:2:2), women are used in a similarly figurative way: sheltered virgins representing the medina's hidden soul. And like the rithā' al-mudun poetry and its echo in Ibn Ḥazm, these women are also subject to a vile destiny once beyond their sheltering walls. In language identical to that of Ibn Ḥazm, they are subject to wilt and debasement (dhubul wa ibtidhāl): "If Fes were revealed from its walls, the dark-eyed virgins [of Paradise] would appear. But if the secluded virgins left [their] covers, they would be stricken with wilt and debasement.

2:2 Conclusion

flight from Cordoba, see Nykl, Hispano-Arabic Poetry, 76-77; Arnaldez, "Ibn Ḥazm," 790-791; Giffen, "Ibn Ḥazm," 420.


55Cf. the short, unattributed poem comparing Granada to a bride on her wedding day, cited in al-Maqqari, Naft al-ṭib, 1: 148; trans. Henri Péres, La poésie andalouse, 146.

56Cf. the proverb from medieval Andalusia (al-Andalus): "A hidden prostitute is better than a well-known free woman." Cited in translation only (without full reference details) in Nadia Lachiri, "Andalusi Proverbs on Women," in Marín and Deguilhem (eds.), Writing the Feminine, 43.
Inductively corroborated by cultural evidence, the deduced proposition that a wall is a sign of shame stands proven. In the language of lamentation, when women are represented outside of the walls that protect them, they are subject to shameless deterioration.

3. SUMMARY

In this chapter, shame has been demonstrated as definitive of 'urf; its spatial effects shown as separation and reversal; and the question raised in the Introduction, namely, "What is a wall in Muslim thought and culture?" answered. Founded in 'urf, medina walls are sociologically a manifestation of shame.
In the previous chapter, medieval Muslim walls were sociologically defined as manifestations of shame: sites of separation and reversal. As stated in the dissertation's Introduction, with this definition something fundamental is apprised regarding the nature of medieval Fes, a city defined and determined by its walls. Marinid and Waṭṭasid Fes is physically and sociologically a city of shame; specifically, of separations and reversals, an identity echoed in another medieval maxim: "Fes is a mirror."¹

An icon of reversal, does a mirror encapsulate the nature of medieval Fes? Whatever were the answer to this question, it would defy verification, because were it incorrect this could not be proved.² Its logic would belong to clever talk: "a world where all things are possible and nothing sure."³ Instead of proceeding along such an interpretive path, this final chapter seeks to compare the deductively

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¹Cited in Mezzine, "La mémoire effritée," 40.

²Edmund Leach (d. 1410/1989) expresses this issue nicely: "Supposing the whole Freudian argument about symbolic associations and layers of conscious, unconscious and pre-conscious were entirely false, would it ever be possible to prove that it is false?" Edmund Leach, Lévi-Strauss, revised ed. (London: Fontana Paperbacks, 1974), 54. See also Bertrand Russell on truth and correspondence, in idem, The Problems of Philosophy (London: Thornton Butterworth, 1912; paperback reprint, Oxford: Oxford University Press, 1967), 69-75.

³Leach, Lévi-Strauss, 83, speaking of Lévi-Strauss on myth.
drawn nature of Fes with one recorded in the city's Marinid historiography. Focussing on the city's foundation legend contained there in the belief that the first walls it relates should be analysed for what they might reveal of the city's own, internally drawn identity, the chapter links this legend to an originary foundation process recorded in the Prophet's biography (sira). The chapter shows that ritually re-enacted in the legend is a mythical paradigm of Islamic state formation, of which, in the form of separation and reversal, a wall forms the heart. Isolating the paradigm emphasises the extent of "wall thought" in Muslim culture; deciphering it and exposing the legend's debt to it, show how Marinid and Wattasid Fes construes its own identity, and what that identity comprises.

1. LEGENDS OF FOUNDATION

The importance of early and medieval Muslim claims that biblical and antique sites lie at the foundations of a number of medinas, has been noted and considered in a number of studies. What has been given less attention are the legends of these and other medinas at the moment of their foundation or Islamic re-foundation. This is an oversight; for although medieval Arab authors show a fascination for the marvellous and unusual, and thus cannot always be relied

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on for objectivity, the contrived, semi-literary symbolic elements shared by a number of these legends indicate more than just an heightened imagination. As will be shown in Part Two, they indicate the ritual re-enactment of a Prophetic foundation paradigm.

With reference to the foundation legends of Kairouan, Baghdad, Samarra, and especially Fes, proving the elements are shared is the task of the present section. The contrived elements from within the Fes legend will first be isolated, and then shown to compare with the other legends. These elements will not be interpreted; that is the task of Part Two. For the sake of clarity, whilst my use of the term "legend" in the main follows ordinary usage, viz. a story "associated with some particular place or culture-hero"; in the specifics, it follows the anthropologist Bronislaw Malinowski (d. 1361/1942):

Legends refer to subjects intensely stimulating to the natives; they are all connected with activities such as economic pursuits, warfare, adventure, success in dancing and in ceremonial exchange. Moreover, since they record singularly great achievements in all such pursuits, they redound to the credit of some individual and his descendants or of a whole community; and hence they are kept alive by the ambition of those whose ancestry they glorify.


1:1 The Legend of Fes

In both Marinid histories of Fes Rawâ al-qirtâs and Zahrat al-ās a nearly identical, protracted account is given of the medina's foundation by Idris II. The historically inaccurate attribution of this foundation to Idris II, and not to his father Idris I, is not of concern here. What is of concern are the obviously contrived, semi-literary symbolic elements of the account, that suggest the legend to be forced in conformity to a prior model. These elements include the elevated and then glorified status of the city's founder; the eremitic monk with his scriptural prophecy; the physical act of foundation, in which a matrix of power is established, governed by Idris; and the story of Sef (Saf), around which the whole account is woven, and in which Islam arises supreme.

Ibn Ghalib mentions in his history that when Imam Idris, may God be pleased with him, decided to build [Fes] and was standing in the site so as to mark it out ('azama 'ala banä'ihä wa wagafa fi mawdi'iha li-yakhtattaha), he passed by an old man - one of the Christian monks, over one hundred and fifty years of age - in retreat in a hermit's cell (sawma' a) nearby. [The monk] stopped Imam Idris and greeted him. Then he said: "Emir! What do you wish to contrive (tasna'a) between these two hills?" [Idris] said: "Between them I wish to mark out, for my dwelling and that of my children after me, a city wherein God on high is worshipped, His Book is recited, and His Boundaries are upheld (Uridu an akhtaṭṭa baynahumā)

9On the historical fact of misattribution, see Chapter One, Part 1:1:1; and Lévi-Provençal, La fondation de Fès, 1-18. On political motivations underlying this misattribution, see Chapter One, Part 1:1:2; and especially Calasso, "Genealogie e miti di fondazione," 21-27; and Beck, L'image d'Idris, esp. 124-129; cf. B. A. Mojetan, "Myth and Legend as Functional Instruments in Politics: The Establishment of the 'Alawi Dynasty in Morocco," in Journal of African History 16, no. 1 (1975): 17-27. As will be seen, this misattribution gains its symbolic political significance by occurring within the re-enactment of a mythical foundation. Idris II "borrows" status from the Prophet.

10Hence, also outside the scope of this chapter is the political dimension of Marinid historiography. On this dimension, see especially Shatzmiller, L'historiographie mérinide, 109-123.

11Ibn Ghalib (n.d.), an earlier historian of Fes who in turn based his history on that of 'Abd al-Malik al-Warrâq (d. 3rd/10th century). Neither history is extant. See Bel, preface to El-Djaznâi, 12; Ibn Mansûr, preface to Zahrat al-ās, b (ب); Shatzmiller, L'historiographie mérinide, 137; and Beck, L'image d'Idris, 64.
The old monk said: "Emir! I have good news for you." "What would that be, Monk?" "Some monk before me in this monastery (dayr), dead now a hundred years, told me he had found in his books of knowledge (kutub 'ilmihī) that on this site there was a city (madīna) called Sef, in ruin for seventeen hundred years; that a man called Idris, belonging to the family of the Prophets, would renew it: revive it from oblivion, make stand its ruins; and that its importance would be great, its destiny momentous. In it the religion of Islam would last until the Last Day (wa annahu yujaddiduha wa yuhiy dāthiraha wa yuqimu darisaha rajul min ill bayt al-nubū'a yusamma Idris, wa yakānu la-hā sha'n 'azīm wa qadr jasim, la yazālu din al-Islām qā 'imā bi-hā ilā yawn al-Qiyāma)." Idris said: "Thanks be to God. I am Idris; I am from the Prophet's family, God bless him and grant him salvation; and I shall build it, God Willing." This event strengthened his resolve to build [Fes], and he commenced digging its foundations (fa-shara'ā fi ḥafir asāsihi).

Whereas the elevated and then glorified status of the founder Idris requires no further comment, so evidently contrived and symbolic it is; and likewise the monk with his scriptural prophecy; with respect to the physical act of foundation, some remarks are necessary. The verb used in the account is ikhtatta: to mark out a site, physically to draw its boundaries. Once excavated, upon these boundaries will stand the walls; not just those of the perimeter fence implied in the account, but also the walls of the buildings inside. In physically drawing

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13Ikhatta'ahā: wa huwa an yu'allima 'alayhā alāma fī bi-al-khaṭṭ li-yu'lima annahu qad ihtāzahā li-yabnihā dar... Wa ikhatta' fulān khattār idhā tahajjara mavođi wa khaṭṭa 'alayhī bi-jidar ('Ikhtattahā: this is to put a mark - the mark of an outline - on the site, so as to make it known that the site is claimed for building a house... It is said a person has done 'ikhatta', when he has taken a site and outlined it with a wall)." Ibn Manzūr, Lisân al-'arab, 7: 288 ("Khaṭṭa"). See also Jamel Akbar, "Khaṭṭa and the Territorial Structure of Early Muslim Towns," in Muqarnas: An Annual of Islamic Art and Architecture 6 (1989): 22-25; Calasso, "I nomi delle prime città," 153-155, 160; and al-Hathloul, "Tradition, Continuity and Change," 30-64.

14Cf. Djait, Al-Kūfa, 117-135; Akbar, "Khaṭṭa," 24-30. As Calasso says, the perimeter walls are a secondary element of ikhatta; of greater significance are the internal walls, "che, si potrebbe dire, circoscrive il luogo della città." Idem, "I nomi delle prime città," 155.
the city's boundaries, an inside and outside is established: outside lies what is excluded; inside, what belongs.\textsuperscript{15} In Pierre Bourdieu's terms, a "field of power" (\textit{champ du pouvoir}, also \textit{champ politique}) is instituted: a society's preeminent matrix, pertaining to the principles of domination and authority, and the struggles arising in relation to them.\textsuperscript{16} This matrix is alluded to in a speech the foundation legend reports of Idrīs II immediately prior to striking the ground in construction of the first walls; in it, he invokes a realm of obeisance, and a community defined by law. As before, both \textit{Rawd al-qirtās} and \textit{Zahrat al-ās} offer almost identical versions.

When Imām Idrīs, may God be pleased with him, decided to build Fes . . . he raised his hands to the sky and said: 'O God! Make [of Fes] a house of religious knowledge and law (\textit{dār ‘ilm wa fiqh}), wherein Your Book is recited and Your Sunna and Your Boundaries upheld. Make its people cleave to the "Sunna and Orthodoxy"\textsuperscript{17} for as long as you make [the city] last (\textit{Allāhumma ij'ālha dār ‘ilm wa fiqh yutlā bi-hā kitābuka, wa tuqāmū bi-hā sunnatuka wa ḥudūduka, wa ij' al ahlahā mutammassīkīn bi-al-sunna wa al-jamā'a mā abqaytahā). Then he said: 'In the name of God the Clement the Merciful; praise be to God; "The earth belongs to God. He gives it as a heritage to such of His servants as he pleases. And the end is best for the God-fearing."\textsuperscript{18} Then he took the pickaxe (\textit{mi'wal}) in his hand, and

\textsuperscript{15}Cf. Calasso's comments on the Islamic foundation of Medina (to be discussed below) in ibid., 154.


\textsuperscript{17}"Al-sunna wa al-jamā'a": see Dozy, \textit{Supplément aux dictionnaires arabes}, 1: 215.

\textsuperscript{18}Qur'an 7:128.
commenced digging the foundations.\textsuperscript{19}

With respect the story of Sef around which the whole foundation legend is woven, whereas drawing the city's boundaries is an act of separation, building upon an ancient site is one of continuity; with one important distinction: the physical and religious trajectories of Sef are reversed in Fes.\textsuperscript{20} Sef is in ruins; Fes is on the rise. Sef is pre-Islamic and pagan; Fes is avowedly Islamic. Regarding this last point, and the histories' presumption of Sef's historicity aside,\textsuperscript{21} in the form of an unearthed marble bust testifying in alien script to heathen practices, Rawād al-qirţās and Zahrat al-ās both assign to Sef this pagan heritage; and in the form of a hadith, both recount the Prophet's apparently foreseeing Fes' Islamic credentials. The marble bust is unearthed and described as follows:

A man from the Jews was digging the foundations of a house that he was building near "'Adila" bridge in [Fes]. Now this location was at that time covered with a vegetation of yews, oak, and others

\textsuperscript{19} Zahrat al-ās, 22-23, trans., 47. Cf. Rawād al-qirţās, 45; trans., 39.

\textsuperscript{20} Ignoring the monk's words about renewing and reviving Sef, Calasso sees in the foundation of Fes a rottura only with the past. Idem, "Genealogie e miti di fondazione," 20. Only for reasons unrelated to the monk's speech, does he subsequently also see continuity in the foundation. Ibid., 20. These reasons concern the mediating figure of the monk, and will be discussed in Part Two below. Calasso's hesitancy whether to refer to Fes as a rupture or continuity with the past mirrors an ambivalence that de Polignac detects in the medieval Arab authors themselves: "Certains indices laissent penser que la vertu d'ancienneté et la vertu de sainteté risquaient de paraître contradictoires et rivales si elles ne pouvaient être conciliées." Idem, "L'imaginaire Arabe et le mythe de la fondation légitime," 60.

\textsuperscript{21} As already mentioned, medieval Arab authors display a marked interest in histories like that of Sef. For an analysis of this phenomenon with regard to North African antiquity, see Ahmed Siraj, L'image de la Tingitane: L'historiographie arabe médiévale et l'antiquité nord-africaine. Vol. 209 Collection de l'École Française de Rome (Palais Farnèse, Rome: École Française de Rome, 1995), 201-272. Modern scholarship, meanwhile, is unequally divided on the question of Sef's historicity. Of scholars who are dismissive of it, Eustache is representative. See idem, Corpus des dirhams idrisites, 147. Of the numerically fewer scholars who entertain the possibility, Lévi-Provençal is representative. See idem, La fondation de Fes, 27-29. Subsequent to this publication of Lévi-Provençal, a Roman lamp was found in Fes, seeming to confirm the French scholar's sense that the suppositions regarding Sef's historicity should not be summarily dismissed: "Qui sait pourtant si le hasard d'une trouvaille ne permettra pas quelque jour de pouvoir poursuivre [les suppositions] sur un terrain plus solide?" Ibid., 29. On the lamp itself, see R. Thouvenot, "Lampe romaine trouvée à Fes," in Publications du Service des Antiquités du Maroc 7 (1945): 184-189. This article is not cited by Eustache.
trees. In the foundations the man found a fragment (qitʿa) of marble in the form of a serving girl (jāriya), and inscribed (manqūsh) upon her bosom (ṣadr) in Sindi script (bi-al-khāṭ al-sindi) the following: "This place is a temple-therm (ḥammām), inhabited ('amara) for a thousand years; then it became ruined. At this place oblations were held, sworn commitments to religious devotion (fa-uqīma bi-mawdī 'ihī bayʿa li-al-ʿibāda)."22

The Prophetic hadith says:

There will be a city in the Maghrib which will be called Fes. Of all the people (ahl) in this part of the world, its people will have the most correct qibla, and be the most numerous in prayer. They will be [followers] of the "Sunna and Orthodoxy", and will cleave to the path of Truth (mithāj al-ḥaqiq). No opponent will harm them, and God will repel from them all that they dislike, until the Last Day.23

In transforming Sef's physical and religious trajectories, reversal not only gives rise to Fes, but is also memorialised in the city's name. Recounting the legendary origins of the city's name, both histories provide the following explanation: the letters "s" and "f" of "Sef" were reversed about the middle vowel, resulting in "Fes".

It is said that when the construction [of Fes] was finished, Imām Idris, may God be pleased with him, was asked: "What will you call it?" He said, "I shall call it by the name of the city that was here before on this site, which the monk told me was that of an eternal town, built by the Ancients (madīna azaliyya min bunyān al-awā'il), and fallen into ruin [seventeen hundred] years before Islam. The name of that town was Sef. I shall reverse this name and call [the city] by [the result]." [The result] was Fes, and [the city] was named after it (Wa läkini aqlibu ismahā al-āwwal wa usammihā

1:2 Other Foundation Legends

In the foregoing analysis of the Fes foundation legend, a number of contrived, semi-literary symbolic elements were isolated. They include the elevated status of the founder, further glorified in the account, the figure of the monk and his scriptural prophecy; the demarcation of a "field of power"; and the reversal of a prior state, or the ascendancy of Islam and Islamic urbanity. In order to prove that these elements are not just an isolated occurrence, peculiar to Fes only, they must be found to compare with other foundation legends. Given the city's early foundation, the legend of Kairouan (Qayrawan) is the first example.

According to Ibn 'Idhāri's (d. after 720/1320) history of North Africa and Andalusia, Kairouan was founded in 51/671 by the one of the Followers (sg. tābi') of the Prophet, the legendary conqueror and martyr (shahid) 'Uqba b. Nāfi' al-Fihri.26 Ordering the start of the construction, 'Uqba is told that the chosen site is covered in wild, impenetrable vegetation, and haunted by lions, snakes, and other predatory beasts (sha'ārā wa ghiyād lā turāmu wa naḥnū nakhāfu min al-sibā' wa al-ḥayyāt wa ghayri dhālika). On learning of this, 'Uqba takes the

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24Zahrat al-ās, 24, trans., 50. Cf. Rawḍ al-qirṭās, 54; trans., 46. In the Rawḍ al-qirṭās version, the agency of letter reversal is not ascribed to Idris II directly. Instead, he gives only the order to perform the reversal: "Reverse the first name, and call it [that] (Iqlibī ismahā al-āwwal wa sammūhā)." Ibid., 54; trans. 46.


eighteen of his men who are Companions (āshāb) of the Prophet, and heads for the site. There he calls out: "O Snakes and Lions! We are Companions of the Prophet, God bless him and grant him salvation. Depart from us! We [mean] to settle [here] (Fa-innanā nāzīlūn)! Whatever we find of your type after this [warning], we shall kill!" At this, all the beasts and their young departed, and the people (al-nās) entered in safety, never to see there another beast for forty years. 'Uqba could now begin his construction, firstly marking out the quarters of government and the congregational mosque (Fa-ikhtatta 'Uqba awwalān dār al-imāra, thumma atā ilā mawdiʿ al-masjid al-aʿẓam fa-ikhtattahu).27

In this legend of Kairouan, the elements shared with Fes are three: the elevated status of its founder, who is then glorified in his miraculous eviction of the predatory beasts; the reversal of a prior state; and the demarcation of a field of power. Regarding the second element, unlike Fes which moves from paganism (al-jāhiliyya) to urbane Islam, here the reversal is from untamed, savage (jāhil) nature to urbane Islam.28 Regarding the third element, in the form of the government quarters (dār al-imāra) and the congregational mosque, the installation of a dominant authority and community is clearly stated. As Paul Wheatley says of these two Muslim institutions: they are "signatures of power in the urban landscape."29

In 145/762, almost one hundred years after the foundation of Kairouan, the


28On the meaning of jāhil and its derivatives, see Izutsu, The Structure of the Ethical Terms in the Koran, 24-31; and idem, God and Man in the Koran, 203-215; also, Jaroslav Stetkevych, Muhammad and the Golden Bough: Reconstructing Arabian Myth (Bloomington: Indiana University Press, 1996), 5-10.

29Paul Wheatley, The Places Where Men Pray Together: Cities in Islamic Lands, Seventh through the Tenth Centuries (Chicago: The University of Chicago Press, 2001), 228. He also considers them the "two most important communal institutions of the Ummah." Ibid., 229. See ibid., 228-238 for a detailed description of both.
Abbasid Caliph al-Manṣūr (136-158/754-75) founded Baghdad (Baghdād), designated officially "The City of Peace" (Madinat al-Salām), and called popularly "The Round City" (Madinat al-Mudawwarah).³⁰ As recounted by the historian al-Ṭabarî (d. 310/923), on the authority of the father of one Muḥammad Ibn Jārir (n.d.), the foundation legend begins with al-Manṣūr in the area of a village called Baghdad. Thinking about building his new city there, he saw a monk and asked: "In your books, do you find a city to be built here?" "Yes," the monk replied, "Miqlāš is to build it." At this, al-Manṣūr exclaims: "In my youth, I was called Miqlāš."³¹ Next in the account, on the authority of Sulaymān Ibn Mūjālid (n.d.), al-Manṣūr orders the city to be marked out, and its foundations dug (wa amara bi-khaṭṭ al-madīna wa ḥafri al-asāsāt).³² Finally, on the authority of an unnamed source or sources, al-Manṣūr appears to repeat these last actions, but in the following way. Wanting to see what the city will look like, the caliph orders it marked out with ashes (amara an yakhṭṭa bi-al-ramād); he then "enters through each gate, and walks along the walls, arcades, and squares, all marked out with ashes (yadkhulu min kulli bāb wa tamma fi fuṣlāniḥa wa tāqātihā wa rihābihā wa hiya makhṭūta bi-al-ramād)." Exiting, he orders cotton seed and oil to be placed on the outline; ignites them; and "in the flames [comes to] understand the city and recognise its design (wa al-nār tashta'ilu fa-fahimaha wa 'arafa rasmaha)." He gives the order to dig.³³

³⁰Ibid., 54.


Beyond the striking image of the field of power - the caliph surveying his city of fire - the elements of the Baghdad legend also belonging to the Fes legend are the figure of the monk, and the scriptural prophecy of the future city. As Charles Wendell has pointed out, prophecies from "monkish 'books'" appear to be a necessary ingredient of Muslim foundation stories.\textsuperscript{34} In addition to the Baghdad story, he cites as an example the foundation legend of the Umayyad administrative city Wāsi.\textsuperscript{35} He could have cited others; for example, that of the Abbasid city al-Rāfiqa;\textsuperscript{36} and legends with variations on the monkish theme.\textsuperscript{37} For the dissertation's purposes, he could have also cited the foundation legend of Samarra (Sāmarrā'); for not only in its "monkish book", but in all its elements does it best compare to Fes.

In al-Ya`qūbi's (d. 284/897) description of the city he calls Surра Man Ra`ā,\textsuperscript{38} the foundation history is reported via Ja`far al-Khushshaki (n.d.), a member of the Caliph al-Mu`taṣim's (218-227/833-842) entourage when scouting locations for the new capital. After visiting and rejecting a number of sites, al-Khushshaki

\begin{itemize}
  \item On variants of the monkish theme, see, for example, al-Ḥimyari’s (d. after 866/1462) account of the foundation of Madīnat al-Zāhira, near Cordoba, in which an old crone (ʻajūz musīna) is made to voice a prophecy regarding it, transmitted in local lore (sama‘a qadīm‘an). Abū ʿAbd Allāh Muhammad b. ʿAbd al-Mun‘im al-Ḥimyari, La péninsule ibérique au moyen-âge d’après le Kitāb ar-Rawḍ al-mī’tār fi khabar al-aqtār d’Ibn ʿAbd al-Mun‘im al-Ḥimyari. Texte arabe . . . avec une introduction, un répertoire analytique, une traduction annotée, un glossaire et une carte par E. Lévi-Provençal (Leiden: E. J. Brill, 1938), 80 (Arabic), 100-101 (French).
  \item According to Alistair Northedge, this was the name used for Samarra at the caliph's court, and represents an unusual wordplay. It means: "He who sees it is delighted". Idem, "Sāmarrā‘," in Encyclopaedia of Islam, 2nd ed., 1039.
\end{itemize}
says the entourage eventually arrived at the future location of Surra Man Ra'ā: a desert, inhospitable and empty but for a Christian monastery (sahrā’ . . . lā ‘imāra bi-hā wa lā anīs fi-hā illā dayr al-našārā). Entering the monastery, Mu‘taṣim asks the monks the name of the place. They reply: “In our ancient books, we find that this site is called Surra Man Ra‘ā; that it was the city of Shem (Sām’), son of Noah; and that after [many] ages it will be rebuilt at the hand of a resplendent king . . . who will settle there, as will his son (wa annahu sayu’maru ba‘da al-duḥūr ‘alā yad malik jalīl . . . wa yanzilhā wa yanzilhā waladu‘hu).” On hearing this prophecy, Mu‘taṣim swears that he will build this city and settle himself and his son there; he summons architects (muhāndīsin) and tells them to choose the best locations for his companions’ palaces (qūsūr). He then proceeds to mark out the areas for his administrative officers, secretaries, and others; the congregational mosque; and the markets around the congregational mosque (thumma khatta al-qātā‘i‘ li-al-quwwad wa al-kuttāb wa al-nās wa khatta al-masjid al-jāmi‘ wa ikhṭattā al-aspūq ḥawla al-masjid al-jāmi‘).\(^{39}\)

All the elements of the Fes legend appear in this account: the glorification of the founder, a “resplendent king”; the figure of the monk; the scriptural prophecy of the future city; the reversal of a prior state - both undomesticated nature and pre-Islamic ruin;\(^{40}\) and the demarcation of a field of power. Their appearance closes the question as to whether the elements of the Fes legend were an isolated occurrence; indicates them to be of a literary order; and renders substantial the question concerning their origins.


\(^{40}\)To be sure, the city of the prophet Shem is not of the same pre-Islamic order as that of Sef, city of paganism. Hence the frequent desire of Muslim authors to ascribe to their cities more than just antique, but Biblical origins: prophets acknowledged by the Qur’an and Prophet. See von Grunebaum, “The Sacred Character of Islamic Cities,” 25-26; and Busse, “Der Islam und die biblischen Kultstätten,” esp. 137-142; cf. de Polignac, “L’imaginaire Arabe et le mythe de la foundation légitime,” 60.
2. MYTH, MEDINA, AND THE PROPHET

In Giovanna Calasso's analysis of the Fes foundation legend, she raises the possibility that it comprises "certain typical 'literary' forms expressive of classical Arab-Islamic culture." From the elements, or topoi identified in foregoing section, this conjecture would appear valid; but another arises in its place. Following R. Stephen Humphreys' recovery of a Qur'anic paradigm informing the narrative structure of early Islamic historiography, this current section considers the possibility of a sira paradigm informing the foundation legends. The argument is that the legends are ritual re-enactments of this paradigm.

2:1 The Sira as Myth

Malinowski defines myth as "a warrant, a charter, and often even a practical guide to the activities with which it is connected." The Cambridge anthropologist Edmund Leach (d. 1410/1989) follows this definition, but amends it in one significant way. Myth refers to a corpus of often contradictory, mostly oral sacred traditions; not single traditions in isolation. For Leach, both the Bible

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41Calasso, "Genealogie e miti di fondazione," 20.
43Malinowski, "Myth in Primitive Psychology," 108. Also, "Myths never explain in any sense of the word; they always state a precedent which constitutes an ideal . . . ." Ibid., 110.
44E.g. Leach, "Anthropological Approaches to the Bible," 8.
45Idem, "Introduction," in M. I. Steblin-Kamenskij, Myth, trans. Mary P. Coote and Frederic Amory (Ann Arbor: Karoma, 1982), 16-18. See also ibid., 5-7, 14-16; and idem,
and Qur'an qualify as myth; and on this view, so, too, does the sira.

Meaning literally "way of going", "way of acting", sira also means "biography"; and with the definite article placed before it, al-sira, "the Prophet's biography". For Muslims, the value of this latter biography could scarcely be greater, "almost a holy writ"; because as stated in the Qur'an, the Prophet is their exemplary model (uswa hasana). Nevertheless, the Prophet's sira is not a biography in the modern sense of the word; but compilations drawn from a corpus of often contradictory oral traditions purporting to portray aspects of his life. As such, it qualifies as myth in Leach's definition. And because for Muslims "the life of

"Anthropological Approaches to the Bible," 9, 25.


49 Ibid., 663.

50 Qur'an 33: 21. On the concept of imitating the Prophet, see Annemarie Schimmel, And Muhammad is His Messenger: The Veneration of the Prophet in Islamic Piety (Chapel Hill: University of North Carolina, 1985), 32.

Muhammad represents the most crucial stage of a sacred history that began with the creation of the world," it qualifies as myth in the broader sense, too. In Mircea Eliade's (d. 1407/1986) definition of the term, for example:

Myth narrates a sacred history; it relates an event that took place in primordial Time, the fabled time of the 'beginnings.' [Myths] describe the various and sometimes dramatic breakthroughs of the sacred . . . into the world. It is this sudden breakthrough of the sacred that really establishes the World and makes it what it is today.

Leach's close definition of myth and Eliade's broader one also agree on a basic purpose of myth: something to be ritually re-enacted in the present. Both scholars adhere to Malinowski's definition of myth as a social charter: in re-enacting the charter, myth comes to life.

2.2 A Mythical Foundation Paradigm According to the Sira of Ibn Ishaq (d. 151/768)

Ibn Ishâq's Sira is one of the very earliest sira compilations. No longer extant in its original form, it best survives in a recension of al-Bakkâ'i (n.d.), as redacted by Ibn Hishâm (d. 218/834). In that format it found favour with early and

52 Rubin, "Introduction," xiii. Cf. "If Muḥammad the Prophet were to be cast in entirely detached and objectivized archetypal-symbolic and mythical terms, he would undeniably fit into the paradigmatic mold of the culture hero, inasmuch as he was a founder, a builder, and a lawgiver - all three on a distinctly 'mythical' scale." Stetkevych, Muhammad and the Golden Bough, 112. For a disputed reconstruction of how one of the most important but extensively lost sira compilations sets the history of the Prophet into the history of Creation (al-mubtada') and beyond, see Gordon Darnell Newby, The Making of the Last Prophet: A Reconstruction of the Earliest Biography of Muhammad (Columbia: University of South Carolina Press, 1989).


54 Leach, "Introduction," 5-6; Eliade, Myth and Reality, 18-20.

55 On Ibn Hishâm, see W. Montgomery Watt, "Ibn Hishâm," in Encyclopaedia of Islam, 2nd ed., 800-801. On Ibn Ishâq, his text's different recensions and still incomplete
medieval Muslim historians;\textsuperscript{56} is considered the most prominent of all the \textit{sira} compilations;\textsuperscript{57} and according to W. Montgomery Watt, represents "the basic work on the subject."\textsuperscript{58} In that format, too, it is the compilation chosen for the following analysis. Hereafter referred to only as the \textit{Sira}, in the footnotes it is attributed to Ibn Hishâm.

In the \textit{Sira} a number of events are reported that bear a close resemblance to the shared elements of the foundation legends. As already stated, my argument is that these elements are ritualised re-enactments of the \textit{Sira}'s mythical events, the latter representing something akin to a "foundation paradigm". This paradigm comprises three parts: Bahîrâ the monk; the Prophet's arrival in Medina; and the so-called Constitution of Medina.

\textbf{2:2:1 Bahîrâ the monk}

According to the \textit{Sira}, when the Prophet was a boy his guardian and uncle Abû Ṭâlib took him to Syria in a merchants' caravan. On their way they stopped near a monk in his hermit's cell (\textit{sawma`a}). His name was Bahîrâ; he was well versed in Christian knowledge; and in his cell he had a book, allegedly passed down from generation to generation. Numerous caravans had passed him over the years, but never had he taken any notice of them; until this year. This year, he invited the travelling merchants to a feast he had prepared for them. All

\textsuperscript{56}Duri, \textit{The Rise of Historical Writing}, 36.

\textsuperscript{57}Raven, "Sira," 661.

\textsuperscript{58}Watt, "Ibn Hishâm," 800.
came, except for the Prophet who, on account of his youth, was left behind to guard the baggage. When Bahirä looked at his guests, he knew that one of them was missing, and requested him to attend. When the Prophet duly arrived, Bahirä saw upon his body traces of a description found in [his book] ('andahu). And when, at the end of the feast, Bahirä asked him questions, in the Prophet's answers lay traces of this description, too. Finally, Bahirä examined the Prophet's back, and there, between the shoulders, he found the Seal of Prophecy (khāṭim al-nubūwa), also exactly as described in [his book] ('andahu). He approached Abū Ṭālib and said: "Take your nephew back to his city (baladihi), and guard him carefully against the Jews; for if they see him, and know about him what I know, by God they will do him evil! A great event (sha'n 'azīm) belongs to this nephew of yours, so get him home quickly.""60

As A. Abel has observed of this story's place within Muslim tradition, in the figure of Bahirä is "the witness, chosen at the heart of the most important scriptural religion, of the authenticity of the Prophetic mission."61 At the time to which the story refers, Islam has yet to be preached, but in Bahirä its foundations are prepared: its prophet's credentials guaranteed by scripture.62 In this way, too, function the bookish monks of the foundation legends: they guarantee the cities' and the founders' Islamic credentials.63

2:2:2 Arrival in Medina

61A. Abel, "Bahirä," in Encyclopaedia of Islam, 2nd ed., 922; my emphasis.
62Cf. "[In Bahirä's prediction,] Islam provided a remedy for the absence of a textual promise concerning the founder, and this point, as is known, formed one of the essential arguments of the Christian polemic." Ibid., 922. See also al-Ṭabarī, The History of al-Ṭabarī, 6: xxix-xxxi.
63Cf. Wendell, "Bağhdād," 111.
Approximately six decades after his encounter with Bahirä, the Prophet left Mecca for Medina, then called Yathrib. In the Muslim calendar, this emigration, or hijra (hijra) marks the start of year one of the Islamic era (622 C.E.). After frustrating, turbulent, and finally insufferable beginnings in Mecca, the new religion of Islam was about to enter a period of consolidation. According to the Sira, on the fourth day after his arrival in Yathrib the Prophet founded (asāsa) the new religion's first mosque (masjid), on the southern fringe of the oasis, in a place called Qubä. The following day he left Qubä and headed

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64On the problems inherent to traditional chronologies of the Prophet's life, and hence the difficulty of knowing when events occurred during it, see Rubin, The Eye of the Beholder, 189-214.

65Yathrib is the original Arabic name for all or part of the oasis, and occurs once in the Qur’an (33:13). Corresponding to the Aramaic medinta ("area of jurisdiction"), the name Medina (al-Madina) is thought in Western scholarship to result from the strong Jewish presence at the oasis. Muslim tradition, however, is largely of the view that it is an abbreviation of the epithet Madinat al-Nabi, "the City of the Prophet". Via the Hadith and Ibn Shabba's (d. 262/876) history of Medina, Muslim tradition also asserts the Prophet's opposition to the name Yathrib, and preference for the name al-Madina (also Täba and Taiyitba, "Good"). See Fr. Buhl, "al-Madina," in The Encyclopaedia of Islam, 83; W. Montgomery Watt and R. B. Winder, "al-Madina," in Encyclopaedia of Islam, 2nd ed., 994; and Marco Schöller, "Medina," in McAuliffe (ed.), The Encyclopaedia of the Qur'an, 2: 369-370; Abû Zayd 'Umar Ibn Shabbah al-Numayrî al-Bâṣrî, Kitāb Ta’rikh al-Madina al-munawwara, ed. Fahim Muḥammad Shaltût, 4 vols. (Jedda: Dar al-Isfahānī, n.a.), I: 165; Muslim, Sahih Muslim, k al-habab 88 (al-Madina tanfi shirārahā), raqm 488 (1382), incl. al-Nawawi's commentary (ibid., 5: 167); and Ibn Ḥanbal, al-Musnad, 6: 409, hadith no. 18544 (musnad al-Kūfīyin/ḥadith al-Barāʾ Ibn Ḥazīb).


towards the centre of the oasis, giving his camel free rein, for she was divinely commanded (ma'mūra). Where she at last halted, exhausted, was outside an agricultural enclosure (mirbad) belonging to two orphans. The Prophet bought it from them, taking it as the site for his new mosque and living quarters (masākin). He then gave the order for both to be built, and along with the Emigrants and "Supporters" (Ansār) laboured with them in the construction, singing: "There's no life but the life of the next world. O God, have mercy on the emigrants and helpers!"

Whilst both mosques in this account are important for the development of Islam, the second is especially so, for in Muslim tradition it is known as the Prophet's Mosque (masjid al-Nabīy, masjid al-Rasūl, and al-masjid al-nabawi al-sharif); is commonly considered the model for all subsequent mosques; and in the details of the Sira's account, its foundation is "a calque upon the foundation of the Temple of Jerusalem (the masjid of Qur'ān XVII:7)." In these ways, it is more than just a second mosque; but an originary foundation, marking the establishment of Islam's temporal and spiritual authority. The Sira confirms


70See, for example, al-Bukhārī, Sahih al-Bukhārī, k. faḍl al-ṣalāt fi masjid Makka wa Madīna, abwāb 1-3, 5-6, arqām 1188-1193, 1195-1197.

71See, for example, Hillenbrand, Islamic Architecture, 40; cf. the criticism of this orthodoxy, also raised in Chapter Two, in Johns, "The 'House of the Prophet'," 69-88, 103-112.

72Johns, "The 'House of the Prophet'," 103; his argument then follows, pp. 103-107. For examples of other calques upon the Bible in the Sira, see Gordon D. Newby, "The Sirah as a Source for Arabian Jewish History: Problems and Perspectives," in Jerusalem Studies in Arabic and Islam 7 (1986): 123, 123 n. 12.

73Cf. "In the Prophet's Mosque, from its very beginning, there was no separation of divine and earthly authority." Johns, "The 'House of the Prophet'," 93. As Johns and others have emphasised, in early and medieval Islam, mosques were never places of worship only; but incorporated military, political, judicial and other social functions.
this interpretation in an already cited passage that comes after the second mosque's foundation, the signing of the so-called Constitution of Medina, and the institution of fraternity (mu'ākhah) between the Emigrants and Anṣār.73

When the Prophet, peace be upon him, had settled himself in Medina; when the Emigrants had gathered about him; and [when] the matter of the Anṣār had been resolved - the rule of Islam was established (istahkama amr al-Islām). Ritual prayer was instituted; alms-giving and fasting, prescribed. Legal punishments were instituted; and halal and haram, determined. Islam took up residence amongst them.74

Although neither mosque-foundation account in the Sira shows the Prophet actually marking out either site, demarcating the boundaries (ikhtität), in helping to build the second mosque he performs a related action. A field of power is under construction; one completed with the signing of the so-called Constitution of Medina.

2:2:3 The "Constitution" of Medina
Consisting of approximately fifty clauses, the Constitution of Medina, as it is misleadingly called in Western scholarship, is a treaty75 or collection of treaties between different groups in Yathrib at the time of the Prophet's arrival there.76
As R. B. Serjeant describes its contents:

Firstly, the defining of specific treaty relations of mutual aid between these groups, the action to be taken against those who break the said treatises and against persons within the allied groups who commit crimes, along with the procedure to be observed in dealing with offenders. Secondly, special sections or documents deal with

Johns, "The 'House of the Prophet'," 73; Hillenbrand, Islamic Architecture, 42, 61-64.
73Ibn Hishām, Sira, 2: 114; trans., 234.
the position of the Jews in relation to the other groups.  

It is, in short, a practical, political affair; worded according to first/seventh century local tribal customs (ma‘rūf); and according to the Sira, written by the Prophet himself.

Preserved in two recensions, the earlier and fuller one belonging to the Sira, the Constitution of Medina is accepted as authentic by both Muslim and Western scholarship. But dating it; deciding upon its composition; defining its key terms; and understanding how and to which groups in Yathrib it refers, all remain debated issues. Not attempting to address these issues, the following analysis refers to what is unambiguously stated in the Sira's recension, and to what may reasonably be inferred from it. In the footnotes, the citations will refer first to Serjeant's bilingual edition of the Sira's recension, then to Watt's more commonly available translation of the same.

According to the wording and location of the recension in the Sira, the Constitution

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78Ibid., 4, 12; Gil, "The Constitution of Medina," 44.
80Ibn Hishām, Sira, 2: 111; trans., 231.
82Humphreys, Islamic History, 92. Cf. Watt, Muhammad at Medina, 225; but note Crone and Cook referring to it as only "plausibly archaic", in Patricia Crone and Michael Cook, Hagarism: The Making of the Islamic World (Cambridge: Cambridge University Press, 1977), 7.
83See Humphreys' summary of the debates, in idem, Islamic History, 93-98.
85Watt, Muhammad at Medina, 221-225.
of Medina is a unitary document (kitāb, sahīfa), composed before the “institution of fraternity” between Emigrants and Ansār, and after the foundation of the Prophet’s house-cum-mosque. In conjunction with information from other sources, this dates it to approximately the fifth or eighth month of year 1/622, and makes it part of the Prophet’s foundational activity in Yathrib. As will be seen, in defining Yathrib a sacred enclave (harām), and establishing the concept of an exclusively Muslim umma, the Constitution of Medina is the equal or greater of the other foundational events that year.

In the Qur'an, use of the term umma to refer solely to the Muslims is limited to three chronologically late occasions (2:128, 2:143, and 3:104); earlier occurrences referring to or implying other groups as well, for example, the Jews and Christians. In the Constitution of Medina, the term umma occurs twice; and although there is incomplete agreement on its exact meaning, Serjeant and Denny both consider it a closed concept: something never shared, but exclusive to a theocratic confederation or religious group - a usage consonant with its late

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87Serjeant, "The Sunnah Jāmiʿah," 16:1, trans. 18:1; 23:3a, trans. 24:3a; Watt, Muhammad at Medina, 221, 223:22.
90On different chronologies proposed for the Constitution in Western scholarship, see especially Serjeant's, in ibid., 8-16; and idem, "The Sunnah Jāmiʿah," 15-39.
92E.g. Qur'ān 3:113; 21:92; and 23:52; cf. Denny, "The Meaning of Ummah in the Qur'ān," 34-36. This is with regard to the occurrences of umma meaning "religious community" only. For the different Qur'anic meanings of umma, including its chronological development to mean specifically the Muslims, see ibid., passim; and idem, "Umma," in Encyclopaedia of Islam, 2nd ed., 860.
93Serjeant, "The Sunnah Jāmiʿah," 16:2a, trans. 18:2a; 26:2a, trans. 27:2a; Watt, Muhammad at Medina, 221:1, 223:25.
Qur'anic occurrences. Both scholars also find in it a territorial quality, especially Serjeant. In the clause that renders Yathrib harâm, Serjeant sees the culmination of a process that began with the naming of the different Muslim groups in Yathrib as an umma, the Constitution's first paragraph and clause. According to Serjeant, this umma was a theocratic confederation of tribes presided over by the Prophet as arbiter. When the latter was sufficiently consolidated in Yathrib, his prophetic credentials and "honourable, arms-bearing" lineage recognised, he designated the oasis harâm: "[an] Arabian solution . . . for centralising the power and control over tribes which will not yield their own sovereignty and independent management of their own affairs." Forming an inviolable core around which an indefinite number of tribes could be gathered, Yathrib became the nucleus of the Prophet's "theocratic state"; a development that,


96Serjeant, "The Sunnah Jämi'ah," 35: 1, trans. 35: 1; Watt, Muhammad at Medina, 224: 39.


100Ibid., 50.

according to Serjeant, took a number of years, but which the Sira's recension presents as completed by the time the document was drafted.\textsuperscript{102}

\textbf{2:3 Conclusion}

If Serjeant's thesis is correct,\textsuperscript{103} as represented by the Sira, with the Constitution of Medina the Prophet completed a foundation process that began with his and the Qubâ' mosques. Inaugural of Islam as a spiritual and temporal power, this process was itself inaugurated by Bahîrâ the monk with his scriptural authentication of the Prophet's divinely commanded authority. From these two inaugurations emerged Islamic Medina and the Muslim religious polity, or \textit{umma}.\textsuperscript{104} In these two inaugurations lie the mythical origins of the elements common to the foundation legends of Part One. In the figure of Bahîra lie the elements of the monk and his scriptural prophecy; in the figure of the Prophet and Bahîra's discovery of his Seal of Prophecy lies the founder's elevated then glorified status; in the foundation process begun at Qubâ' and finished with the separation of Yathrib from the surrounding territory as \textit{harâm}, lies the demarcation of a field of power; and in the hijra that preceded this foundation process lies the reversal of a prior state.\textsuperscript{105}

\textsuperscript{102}Cf. Wansbrough's account of the formation of the exclusively Muslim umma in the \textit{sira} literature, in idem, \textit{The Sectarian Milieu}, 85-86.


\textsuperscript{104}Cf. "The Islamic concept of authority can be fairly described as 'apostolic'. In the midrashic styles of salvation history the functions of [the \textit{sira}] scripture were to generate (historicization) and to embellish (exemplification) a portrait of the early community, and simultaneously to provide bona fides of its covenantal dispensation. Dominant there is the charismatic figure of the apostle of God in an essentially public posture. Informing the narrative is a polemical concern to depict the emergence of a religious polity (\textit{umma}) out of a more or less traditionally articulated theophany (\textit{wahy})." Wansbrough, \textit{The Sectarian Milieu}, 70-71. On Islamic Medina emerging from Yathrib, see the footnote above (p. 146) detailing the Prophet's discouragement of the use Yathrib as the oasis' name.

Although the hijra was not discussed in terms of reversal, but separation, implicit to its Islamic meaning is relinquishment of an iniquitous situation and attachment to a praiseworthy one. In this intentional severance-and-turn movement, lies the reversal. For the Prophet, it formed the bedrock of the events that followed his arrival in Yathrib.

3. SUMMARY AND CONCLUSION

In this chapter, the foundation legend of Fes was analysed, and its elements shown to compare with other foundation legends. These elements included the founder's elevated status; the figure of the monk; the scriptural prophecy of the future city; the reversal of a prior state; and the demarcation of a field of power. In turn, these elements were shown to be re-enactments of a mythical foundation paradigm, comprising the Christian scriptural authentication of the Prophet; his hijra; and his establishment of Islamic Medina.

Lying at the heart of this foundation paradigm is a process of separation and reversal, the dissertation's definition of a wall. This discovery is important, for it emphasises the extent of "wall thought" in Muslim culture. Of more importance to the dissertation, however, is what the paradigm reveals concerning Marinid

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106 This meaning is explicit in the Qur'anic usage of the verb ħājara fi. For example, "Those who left [their homes] for [the sake of] God after being oppressed, We shall house well in the world (Wa alladhina ħājarū fi Allāhi min ba'di mā zuilmū... )." Qur'an 16:41; see also 16:110, and 22:58; and cf. Casewit, "Hijra as History and Metaphor," 109 n. 18, 117. Struggle and effort are required to achieve this severance from the bad and attachment to the good; hence the Qur'anic association of hijra with jihad (jihād, striving or fighting for God). For example, "Those who believed and left [their homes] and strove (ḥājarū wa jihādū) with their wealth and their lives in the way of God (fi sabili Allāhi) . . . ." Qur'an 8:72; see also 8:73, 8:74, and 8:75; cf. Casewit, "Hijra as History and Metaphor," 110.
and Waṭṭasid Fes' own, internally constructed nature. Likening the medina to Medina of the Prophet’s time, in the Marinid historiography Fes is ideologically construed as an inviolable enclave, or ʿḥarām: a space politically, religiously, and communally elevated from the world around it, over which it seeks dominion. In an age frequently suspicious of urban life, Fes and its founder are thereby identified as cast of Prophetic mold; the city’s inhabitants (ʾahl), by implication, as beyond reproach.

In characterising the nature of the medina this way, the Marinid historiography verifies medieval Fes to be a city defined and determined by its walls, that is to say, a city of separations and reversals. For the logic of ʿḥarām is that of the medina’s basic architectural unit, the dār, or walled enclosure: in the absence of walls or limits, there could be no inside, separate and inviolable from outside; and no thresholds to reverse the worlds that inside and outside separately represent.

CONCLUSION

In the Introduction to the dissertation, two objectives were proposed: to investigate the nature of Fes; and to determine the Islamic quality of the academic concept of the Islamic city. Regarding the second objective, it was stated that if something proper to Islam could be ascribed to medina walls, then the adjective's relation to the concept would be substantive. The existence of a legal genre, The Book of Walls, augured well in that direction, but subsequent analysis offered no evidence that the rulings it contained coincided with the inception of Islam. Rather, they had come into being, at the earliest, many decades after the Prophet's death; and there was no good reason to suppose that they reflected more than a type of architecture in existence before the Prophet and his Companions, and inherited by them. It can be shown that this architecture was modified by Islam: the regulations regarding the placement of doors and windows ensuring visual privacy provide an example. And it seems clear that The Book of Walls perpetuated this modified architecture, establishing a legal aesthetic of urban space. But modification and perpetuation by Islam and Islamic law is not the same as origination de novo by Islam.

Of course, the Prophet and his Companions inherited much from the world before and around them, and this fact in no wise diminishes the originality of Islam; nor does it merit referring to the religion as anything less than Islam, its culture as Muslim or Islamic. In this regard, referring to the Islamic quality of
the concept does make sense: the individual components of the concept might have originated elsewhere, but in their translation and historical re-orchestration they formed a particular urban fabric broadly recognisable as Islamic. Medieval Fes is a case in point: the degree to which the city is determined and defined by its walls, when combined with the importance accorded to walls in the Qur'an, Hadith, and Muslim culture, bespeaks its Islamic quality.

For reasons of methodology, considering the Islamic quality of medina walls via the genre The Book of Walls was the precondition of the dissertation's other objective, to investigate the nature of Fes. The medina's labyrinthine structure indicated a fundamental dependence upon walls; if these walls could be analysed and defined from within the culture and social imaginary, then something fundamental might be known about the city. The Book of Walls provided the means of achieving this; for although the rulings it comprised were not specific to Fes, but Arab-Islamic medinas in general, they represented an indigenous discourse regarding walls. They obviated reliance upon foreign description, with its physical, cultural, and social distance from the objects in question. Assuming the discourse could be shown to have operated in Fes, then it could be used to analyse and define the city's walls from within Muslim thought.

Proposing, hence, to make the investigation of Fes via this genre, and choosing the Marinid and Wattasid period of the city's history for reasons including the first availability of local historiography, the dissertation established the following. In Chapter One, that walls were physically definitive and historically determinant of Fes. In Chapter Two, that within the Qur'an, Hadith, and early and medieval Muslim culture, walls played significant social and religious rôles, comprising the extralegal dimensions of what the dissertation would call "wall thought". In Chapter Three, that aspects of some of these and other rôles were reproduced by way of The Book of Walls, the legal embodiment of "wall thought" and organising
aesthetic of public and semi-private medina space. In Chapter Four, that this aesthetic was dictated by custom, or 'urf; and in Chapter Five, that in the context of custom, walls were significant of shame, and hence represented sites of separation and reversal, the spatial effects of shame. With this sociological meaning of a wall, the conclusion followed that the nature of Fes, a city defined and determined by its walls, was physically and sociologically one of shame: separation and reversal.

In the final chapter, supposing that an account of Fes' first walls was worthy of analysis for what it might reveal of the city's own, internally constructed view of itself, the dissertation examined the foundation legend of Fes. It was argued that this legend, recorded in the Marinid historiography, was a ritual re-enactment of a mythical foundation paradigm, recorded in the Prophet's biography, concerning the creation of Medina as the archetypal Islamic political state. It was shown how the legend equated Idris II and his city with the Prophet and his city, and effectively likened its inhabitants to the virtuous first generations of that holy city. It was concluded that, ideological considerations apart, the nature accorded to Fes in the legend was consonant with the architectural observations made of Fes in Chapter One, and the cultural and sociological observations made of walls in Chapters Two and Five. Comparing Fes to Islamic Medina, the legend effectively characterised the city as a ḥarām: a space religiously, politically, and communally distinct from the world surrounding it. Dependent on boundaries to define and then defend, or keep reversed the purportedly inviolable interior, this type of separation-logic found its ideologically neutral equivalent in the enclosure, or dār - the basic unit of Fes, whose building block was the wall. The nature of Marinid and Waṭṭasid Fes was, therefore, not only physically and sociologically one of separation and reversal, but ideologically, too.
In sum, the dissertation has shown that in terms of gender, legend, and law Marinid and Wattasid Fes is a city physically, sociologically, and ideologically defined by its walls. Referring to Fes as a enclosure (dār) encapsulates this complex nature; for the reference supports not only the medieval medina’s ideological identity as an inviolable enclave; and its physical identity as a contiguous cluster of walled enclosures; but also its sociological identity as a city determined by the functions of these enclosures. Included in these functions are the protective caul of shame that the enclosures’ external walls cast upon the neighbourhoods’ private and semi-private spaces; and the separation of cultural valuables that they facilitate - for example, the storage of silks and precious metals within the qaysariyya, and muḥsana women within domestic houses. Included, too, are the reversals of symbolic, legal, and "natural" orders across the enclosures’ thresholds - for example, this world and the next reversed at the mosque’s qibla wall; the domains of public and private fully reversed at domestic house doors; muḥsana women’s decline beyond these doors; and taxes levied on goods coming and going through the perimeter walls.

To refer to the nature of medieval Fes as one of enclosure, is not, however, to consider the medina closed; at least, not entirely so. Spatially, for example, the medina is rather entr’ouvert, ambiguous, simultaneously open and closed: a liminal realm of perforated surfaces in multiple planes; not the perspicuous voids of Euclidean depth. Shuttering and weaving the visual field, framing and re-framing space, layering it into bays and arcades, the piers and arches of the Al-Qarawiyyīn mosque’s interior are an illustration of this phenomenon (Plate 1). Elsewhere in the medina, the same ambiguity is deployed to equally good effect. To a complete outsider, for instance, the medina is closed in its

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entirety except for the major thoroughfares, principally "Tal`a Kabira" that connects "Bab Bou Jeloud" to the Al-Qarawiyyin mosque and qaysariyya. Not belonging to the life of the side-streets, alleys and inhabitants' houses, to this visitor the medina is impenetrable, forbidding and obscure: a stereotypical labyrinth of the Western literary imagination, as described by Bachelard.² Although physically within the city, this visitor is yet without all but the most public of spaces, and this double position is disorienting. To one more acquainted with Fes, however, and perhaps a part of its community, the doors of the houses that otherwise blend into the walls to form a blind whole, are in principle traversable; the side-streets frequently known, and thus appearing to open off the main thoroughfares, as opposed to more menacingly withdrawing. But even for this more familiar visitor or inhabitant, a play between open and closed operates to seemingly deliberate effect; for although having traversed increasing degrees of interiority, from the city gate to the main thoroughfare, to the side-street, to the dead-end alley, to at last entering the house, this person remains within and without. Opening onto the heavens, the courtyard's well of sky returns him to the entr'ouvert.

PLATE ONE: Sanctuary of the Al-Qarawiyyin Mosque
Emphasised throughout this dissertation has been the notion that walls occupy a position in early and medieval Muslim culture more significant than might at first have been imagined. Fes has proved a good location to illustrate this importance; but the methodology used, and many of the conclusions drawn, should not be considered applicable to Fes alone. As suggested in the discussion of the Islamic city concept, medieval Fes is but one striking instance of an Islamic medina. There exist, then, other locations where applying the dissertation's definition of a wall, for example, should again prove beneficial to learning about Islamic urbanism, the sociological horizons it engenders, and the historical nature of the places it comprises. Within Middle Eastern Studies, such results would highlight the value of addressing the question of place.
APPENDIX (1):
Selected Case Titles and Cases from The Book of Walls

Case titles
A) Ibn al-Rāmi, Kitāb al-I‘lān bi-aḥkām al-bunyān:

On the wall (jidār) between two houses of two men;

On the wall owned by one man that provides a screen (sitra) against another man, and either it collapses or the owner wants to raze it completely. Can he be forced to repair or rebuild it?

On the wall that is shared between two men who acknowledge this, and one of them wants to make use of it (wa arāda aḥaduhumā an yuntafi`u bi-hi) without the consent of his neighbour;

On dividing a wall, on drawing lots with regard to a wall, on pre-emption rights with walls (Fi qismati al-jidār wa wasfati al-qur’a fi al-hā’it wa hal la-hu fi al-hā’it shuf’a);

On he who permits his neighbour to sink wooden support beams into his wall (Fi gharz khashabīhi fi jidār);

On the harm of smoke (darar al-dakhān) and the ruling about it (al-ḥukm fi-hi);

On the harm of odour (rā’iḥa) and the ruling about it;

On the harm of cloth makers (kamādin) and mills (al-arḥiya);

On he who builds a stable (istabl) to fasten animals;

On the harm of overlooking (ittifā`) from windows and doors;

On he who builds a window and from it sees the entrance-corridor of his neighbour’s house (ustwān jārihi);
On he who builds a minaret (sawma’a) and thereby exposes to view (yatakashfū) the interiors of the neighbours’ houses;

On he who wants to open a door on a thoroughfare (zuqāq nāfidh);

On leasing (ikriya) the open spaces about houses (al-afniya);

On he who wants to expel water from his house;

On he who wants to build a room (bayt) such that water will be sent from his roof over his neighbour’s property;

On the open canal (qanāt al-zāhira) and the effect upon buildings (al-binā’) in a covered alley (zanaqa rā’iqā);

On the sticking out (ikhraj) of porticos and other architectural projections (al-‘asākir wa al-rufūf) on the street (al-tariq);

On the garden allotment (al-‘arsa) between two men, and one of them requests to build on it;

On two neighbours’ utilisation of the courtyard (al-sāha);

On the man who has a path (tariq) between the properties of a group of people, and he wants to divert it to another locality;

On he who builds on his wife’s land;

On fishing in lakes (buhairāt) and rivers (anhār) and ponds (birak). Can the natives of these places (ahlūhā) prevent the populace (al-‘āma) doing this?

On the right of pre-emption (al-shuf’a) regarding walls: does the owner of upper stage of the house have this right?

On the pigeon of one neighbour that mates (yakhtalitu) with another neighbour’s pigeon. Can one eat the chicks (firākhā)?

B) Ibn al-Imām, Kitāb al-Qaṣṣa’ wa nafy al-ṣarar ‘an al-afniya wa al-turuq

Ibn al-Rāmi; titles in order of appearance.


On the house or the well that belongs to two men, and it collapses, and one of them refuses to rebuild it;

On architectural projections which jut out onto the thoroughfares (aziqqat al-muslimin), and the building of roofs over them;

On the building of house stairs (Fi bunyān salālim al-dūr);

On the lavatories of houses (al-marāhīd al-dūr) and cleaning them;

On the opening of doors and windows in houses, and on the man who heightens his wall (bunyānahu) and deprives his neighbour of air and sun;

On the opening of doors and shops (ḥawānīt) on thoroughfares and non-thoroughfares (aziqqat al-nāfidhā wa ghayr al-nāfidhā);

On the construction of mosques and their minarets, and the prevention of harm of that which is overseen from them;

On new ovens, ironsmiths's shops, tanneries, and baths, and the prevention of harm by them;

On walls and their partition (al-jadrāt wa qismatihā), and the utilisation of them;

The case of the wall (Al-da'wā fi al-jidār);

On the perilous leaning wall (Al-jidār al-mā'īl al-makhūf), and its collapse;

On the man who wants to render and decorate his wall using his neighbour's house to do so (al-rajal yuridu an yuṭarrīa jidāramu 'alā dār jārīhi);

On the man who pulls down his house, leaving the rubble (naqḍ) on a public sidestreet (sikkat al-muslimūn);

On the man who has a path between the properties of a group of people, and wants to divert it to another locality on his land;
On the man who has land between the properties of a group of people, and they close their properties, preventing his access;

On he who illegally removes (ightasa) a plant (ghars) from a man's garden (janan) and plants it in his own garden;

On the erection of pigeon and sparrow coops (ihdath abrajat al-hamam wa al-asafir); the making use of bees and geese; and insurance (daman) of that which livestock and voracious dogs destroy (mafsadat al-mawashi wa al-kulub al-aqur).2

C) Ibn Sahl al-Andalusi, from "al-Masajid wa al-dur (Mosques and Houses)"
of al-Ahkam al-kubra:

[On] opening a door in a neighbourhood mosque (masjid)

[On] connecting buildings (ta`aliq al-bunyan) to the walls of Friday mosques and neighbourhood mosques;

[The case of] a contested wall visited and visually examined by the qadi and legal scholars (Rukub al-qadi ma`a al-fuqaha` ilaa mu`ayana ha`i` fi-hi tanazu);

[On] he who installs a staircase (man ahdath daraj") in his house, using his neighbour's wall by inserting wooden beams into it; and [on he who installs] a kitchen, the smoke of which irritates his neighbour;

[On] he who claims that [such-and-such construction] rests and encroaches upon his wall (Man idda`a an hadhd buniya `alaa ha`i`ithi muta`addiy");

On he who expels the [drainage] water from his wall, over the wall of his neighbour (Fi-man sabba ma` jidarihi `alaa ha`i` jarihi);

Questions regarding architectural projections [in walls] (Mas`il fi al-rufuf);

[On] he who buys a house that has had added to it a door or

2Ibn al-Imam, vol. 2; titles in order of appearance.
similar, and he wants to dispute it [and close it] (fa-arāda makhāṣama muḥdathahu fi-hī);

[On] the construction of an oven near a house;

On an old tree that overlooks a house (muṭilla `alā dār);

On pigeon coops and the harm caused to them by bees.3

D) Al-Marji al-Thaqafi et al., Kitāb al-Ḥiṭān

If two men contest (tanāza`u) an adjoining wall (ḥāʾit muttasīl);

On the long wall (al-ḥāʾit at-ṭawīl) and two adjoining parties separated at part of it;

On the wall between two neighbours, and neither one has roofing, and one of them permits the other to place a roof over the wall. Then he appears to him and says: "Remove your roof! (azil saq faka)";

If the wall is between the two houses of two men, and one of them owns the foundations (judhā`) and on top of the wall is a dividing screen (sitra);

If the foundations of the wall belong to each of two parties, and one of them produces legal proof (bayyīna) that the other's foundations were wrested by force from him;

If one buys a house and under it is a cellar (sirdāb) and a drainage well (biʿr bālūʿa`) coming from another house next to it;

On the wall (ḥāʾit) between two houses owned by two men, neither having access to load-bearing support (laysa li-aliadihimā `alayhi ḥumūla), and one of them wants to support upon it one or two wooden beams (fa-arāda aḥaduhumā an yahniilā `alayhā khashaba au khashabatayn);

If a man buys a wall (ishtarā ḥāʾit) and no mention is made of its land (wa lam yuqal bi-arḍīhi), the sale occurs on the building (al-bināʿ)

3Ibn Sahl; titles in order of appearance.
without the land. Then it is said to the purchaser: "Remove your building! (iqla’ binä’aka)";

If a man buys half a wall (nisf hā’iṭ);

If a man build (aqârra) a wall [next] to another, and does no more than that, the wall belongs to the place (maqârrr) by its land;

If a woman divorces (ikhtal’at) her husband over a wall (‘alt al-ḥā’iṭ) [using the wall as ransom], and no mention is made of its land, the sale occurs on the building (al-binā’) without the land;

If the bottom of a wall (sufl al-ḥā’iṭ) belongs to one man and the top of it to another;

On the house between two men that collapses (inhadamat);

If there is a door in the wall belonging to one person, which leads to the house of another person, and the first person claims (idda’a) that the right of passage belongs to him, but the other denies it;

On the collapsed wall (al-ḥā’iṭ al-munhadim): if one of two owners wants to rebuild it but the other refuses, can the latter be forced to rebuild it? 4

E) Al-Wansharîsî, from "Nawâzil min al-ḏarar wa al-bunyân (Cases of harm and building)" of al-Mi’yâr al-mughrib:

The ruling [regarding] the construction of a screen between two neighbouring terraces (al-sathayn al-mutajâwirayn);

The ruling [regarding] a person owning a wall [that forms a side of] another person's basement (siflî), and this wall collapses;

The ruling [regarding] a palm tree leaning against the wall (al-sūr);

[On] a wall that is opposite the door of a neighbour’s house;

The ruling [concerning] the opening of windows (kuwan) on terraces;

4Kitâb al-Ḥîṭân; titles in order of appearance.
The ruling [concerning] the opening of a shop door (bāb hānūt) opposite a house door;

How far does a person who wants to operate a mill in his house have to be from his neighbour's wall?

A case (mas'ala) regarding a person who wanted to put a door into a "blind" wall (ḥā'iṭ muṣmat);

A case regarding a person wanting to inspect his wall from his neighbour's house;

[On] opening a new house door on a closed alley (zinqa ghayr nāfidha);

A case regarding a street (tariq) between two proprietors (mālikayn), one of them wanting to build across his boundary ('alā ḥaddihi)

A case regarding a fallen wall between two gardens (jannatayn), and one of the two proprietors is unable to rebuild it.⁵

Cases

1) Ibn al-Rāmi, Kitāb al-I'ān bi-ahkām al-bunyān

The case (al-kalām) discussing the second permutation (ṣūra) of the first wall (jidār):

The master builder (al-mu'allim) Muḥammad [Ibn al-Rāmi] said regarding the second permutation of the first wall: this is a wall (ḥā'iṭ) between two men, both of whom claim it (yaddā'ihī) and neither has a legally identifying bond within it (laysa li-ahadīhimā fi-hi 'aqd).

The master builder Muḥammad said (qāla): If two men both claim a wall between them, and neither has an identifying bond within it, the case is decided between them (ḥukima baynahimā) by way of the appurtenances (bi-marāfiq) of the wall. These appurtenances

⁵Al-Wansharisi, al-Mi'yar al-mughrib, 8: 435-458 and 9: 5-73; titles in order of appearance.
are five, with the exception of the bond: the window (al-kūwa) and the door (al-bāb) in it; the support of wooden beams (haml al-khashab); construction on top of the wall; and the façade (al-wajh) of the wall according to doctrine ('ala qawāl); and likewise the wooden beams. If both claim it, there's no doubt (la takhlū) that these appurtenances will be found to belong to one of the two claimants, either in their entirety or part thereof (jumlataḥa aw ba`dahā), or else belong to both of them together (takūnu la-humā jami′). And if they are the property (milk) of one of the two, or some of them are, and the other claimant has nothing, the wall belongs to the one with the appurtenances.

Such is what `Abd Allāh Ibn `Abd al-I ḥakam taught (qāla) via Ibn al-Qāsim; Sahnūn taught it as is proven by his son's book, as did Ibn Sha`bān. Al-Shāfi`ī taught that it belonged to both of them, half-and-half (nusfayn). Abū Ḥanīfa taught that if the found appurtenances were for the supporting of the wooden beams or the door, then the wall was judged (ḥukima) to belong to he who owned (ḥāza) the door or the wooden beam; and if the appurtenances found were for other than this, then no - except in the case of the window.

Of a surety, master mason Muḥammad's opinion differs from what was taught before (ikhtalafa qawālu fi-hā `alā mā taqaddama). Muṭarrif and Ibn al-Mājishūn taught that the wall is not owned by he who possesses the supporting of the wooden beams. If the wall is between two men, and one of the two has the wooden beams, and the other has nothing nor an identifying bond, in the book of Ibn `Abd al-Ḥakam, Ibn al-Qāsim taught that the wall belongs to the owner of the wooden beams. In the book of Ibn Ḥabīb, Muṭarrif and Ibn al-Mājishūn taught that it belonged to them both, half-and-half. The difference (al-farq) between these two opinions is that the wooden beam is recognised ('urifa) as belonging to the owner (li-al-mālik) and that it represents the acquisition of the right of possession (wa annahā ḥiyāza). Thus, Ibn al-Qāsim taught that the wall belongs to him who has the wooden beams; but Muṭarrif and Ibn al-Mājishūn did not see in this as a definitive proof (hujja) because the wooden beams are inserted (taghrizu) via gift (bi-al-hiba), via illegitimate means (bi-al--sariqa), and via recommendation (bi-al-nadb), following the teaching (qawāl) of the Prophet, peace and God's blessing upon him: "No one of you should prevent his neighbour from inserting wooden beams in his wall." In the law school of Muṭarrif and Ibn al-Mājishūn, the words of the Prophet,
upon him be peace, "no one should prevent" are conveyed and understood (ḥaml) as a recommendation (ʿalā al-nadb).  

2) Ibn al-Imām, Kitāb al-Qaḍāʾ wa naḥf al-ḍarar ḍan al-ḥaṣnīya ḍa al-ṣuruq ḍa al-judur ḍa al-mabānī ḍa al-ṣaḥāt ḍa al-ṣhaṣṣar ḍa al-jāmī‘:

The judgement (al-qadāʾ) on the construction of mosques and their minarets (mabānī al-masājid wa sawānīʿihā) and the prevention of harm of that which is overseen or built from them (qaṭʿu mā uṭṭilaʿ minhā wa buniya ʿarāran):

Al-ʿUtbi taught (qāla): the following case was attributed to Saḥnūn. A minaret was built for a mosque (al-masjid yuḥṣuʿu ḍa-hu al-manār), and when the muezzin ascended it he saw (ʿayin) inside the houses neighbouring the mosque, such that the people of these houses wanted to prevent the muezzin from ascending, even though some of the houses are at a distance from the mosque and between the two was a wide fināʿ and sidestreet (sikka). Saḥnūn taught (qāla): the muezzin should be prevented from ascending it (yummāʿu min al-ṣūʿūd wa al-rūqīʿ ʿalāhā) because this is harmful (ḥādhā min al-ḍarār), and God’s Prophet, peace and God’s blessing be upon him, forbade harm (nahīʿ an al-ṣarār).

Ibn Saḥnūn said: [Ibn] Ḥabīb asked Saḥnūn about a person who built (baḥā) a mosque on the upper part (ʿala ḍahr ḍaḥānīt) of some shops, and made for it a terrace (ṣāṭh) such that all who came onto the terrace (fa-kull man šārā ṣaṭh) saw what was in [another] man’s house located at its side. This man came to Saḥnūn with the matter, and Saḥnūn said (qāla): The builder of the mosque is compelled (yuḥṣuʿu) to screen (an yustura) the roof of the mosque and to prevent people from praying in the mosque until his neighbour is shielded (yustaru).

Al-ʿUtbi taught (qāla): Ashhab and Ibn Nāfiʿ said the following. Mālik was asked (suʿila) about a tribe (ʿashīra) that had a mosque they prayed in, and one man wanted to build a mosque close to it. Was such permissable for him? Mālik said (qāla): "There’s no good in harm (lā khayr fī ḍarār), in particular in mosques. But if the mosque is built for good benefit and probity (li-khayr wa ṣalāḥ),

6Ibn al-Rāmi, 281-282.
then no matter (fa-lā ba‘as bi-hī). If it was built for harm (di'rār), then there is no good in it. God - Power and Glory - declared (qāla) in the Qur’an (9:107): "And there are those who put up a mosque seeking harm (wa alladhina ittakhadhū masjid di'rāran)." There's no profit (khayr) in harm in anything, and God's word is unending to the very last of the mosques (fī al-ākhīr min al-masjidin).

3) Ibn Sahl, "al-Masājid wa al-dūr":

Questions regarding architectural projections (rufūf):

I wrote to my teachers (shuykhīnā) in Cordoba in Shā‘bān 456 (July-August 1064) asking them about two neighbouring houses belonging to two men. Between the two houses was a wall (hā‘īt) belonging to one of the two men; and belonging to him also was an architectural projection (raff) upon the wall. [This man’s] dogs (aklub) escaped to his neighbour’s house, and [so] the owner of the projection wanted to build a brick wall (hā‘īt bi-ajurr) or similar at the dogs’ [proper] limits (atrāf), and to heighten [the other wall] with stone or a kennel-room (ghurfā). But his neighbour, the owner of the [first] house, prevented him saying: "The air is mine (al-hawā’ lī) in front of my house [and you may not build in it]. You can have your projection [that comes] towards my house (ilā nähiyati), but nothing more." How, then, can the owner of the projection build in this air (izalātahu), heighten his wall and restore the projection upon it to how it was before? Can he do this?

Ibn "Attāb⁸ wrote [back] to me: "The owner of the projection may not build what he wishes, and should be prevented from doing so. However, he does own the air of his property, and so he may heighten the wall and restore the projection upon it to how it was before."

Ibn al-Qattān⁹ wrote: "The owner of the projection may build what he likes at the dogs’ [proper] limits, and cannot be prevented from

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⁹Abū "Umar Ahmad b. Muḥammad b. Isā b. Hilāl (d. 460/1067), a renown scholar from Cordoba. Ibid., 77 n. 261.
Ibn Malik\(^{11}\) wrote: "The owner of the projection should be prevented from doing what he proposes, unless his opponent (mu'tariq) permits him. [A similar case] occurred (kānat jarat) in Toledo between me and Mūsā Ibn al-Saqṭāt [n.d.], qadi of Guadalajara, and to my mind the response (jawāb)\(^{12}\) of Ibn al-Qattān was the most dubious ('andi ashbah). God alone knows the correct solution (al-sawab)."

In Ibn Sahnūn's book is a question [to] Ibn Ḥabīb regarding a projection with a rail about it (raff mahzūr), but no bamboo [screen] (lā qaṣb 'alayhi), jutting out towards the neighbour [opposite]. The [owner of this projection] wants to place a bamboo [screen] into it, but the neighbour prevents him. Sahnūn taught (qāla): "He cannot prevent him; rather, fencing can be put on it (ju'ilat al-huzūr li-hādhā)." He also taught: "He who has an external projection [facing] towards his neighbour's house, and this neighbour [then] builds his [own] wall opposite the projection, and wants to heighten his building (binā'hu) above the projection - he may not. [He may not] build above the projection, because the owner of the projection owns his open space (qad malaka samā'ahu)."

The master said (Qāla al-shaykh): "To my mind, this [teaching] supports what Ibn al-Qattān proposed."

In a response\(^{13}\) of Ḥabīb, Sahnūn taught (Qāla Sahnūn fi jawāb Ḥabīb): "Whoever wishes to render and decorate their wall from their neighbour's house, is prohibited [from doing so]." [Regarding this teaching, Ḥabīb] said (Qāla): "He cannot be prevented from entering his [neighbour's] house and rendering and decorating his

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\(^{10}\) Cf. Khallāf's quite different interpretation of this passage's last two sentences. Ibn Sahl, 28.

\(^{11}\) Abīd 'Allāh b. Muḥammad Ibn Mālik (d. 460/1067), a specialist in Hadith and legal cases (masā'īl). Ibid., 77 n. 264.

\(^{12}\) Following Mohammed Fadel, I am hesitant to interpret jawāb (response) as "fatwa". Fadel, "Rules, Judicial Discretion, and the Rule of Law," 53. On the components of a fatwa, including the jawāb, see Powers, Law, Society, and Culture, 21.

\(^{13}\) Ḥabīb b. Naṣṣar b. Sahl al-Tamīmī (d. 287/900), author of works on Sahnūn's legal questions (masā'īl). Ibid, 94 n. 442.
wall. Likewise, if the wind tore the cloak off a man's shoulders, blowing it into a man's house, this man would not prohibit the other from entering and taking it, or would take it out to him [himself].

4) Al-Marji al-Thaqafi et al., *Kitāb al-Ḥitān*

The case (bāb) of the bottom of the wall (sufl al-hā'it) belonging to one man, and the top to another (wa li- al-ākhar ‘alayhi ‘ulūw). The case comprises two parts (faslayn).

The first part:

If the bottom of the wall belongs to one man, and the top of it to another, by consensus (bi-al-ījmā') the owner of the bottom may not tear it down (laysa li-sāhib al-sufl an yahdima al-sufl). Neither may he open in it a door or window (wa laysa la-hu an yaftaḥa fi-hi bāb wa lā kuwa), and he cannot introduce into it (la yudkhilu fi-hi) a supporting element (judh') without the consent of the owner of the top. This is according to the teaching (qawl) of Abū Ḥanifa; may God be pleased with him.

Abū Yūsuf and Muḥammad [al-Shaybāni], may God grant them mercy, taught (qāla) otherwise: he may do any of these things if he does not harm the top (la-hu dhālika kuluhu idhā lam yadurra bi-al-'ulūw).

The matter (al-mas'ala) is well-known and accepted (ma'rūfa) in the books (al-kutub). He can sell the bottom; give it as a gift; and give it as charity (la-hu an yabi'a al-sufl wa yahabahu wa yatasaddqa bi-hi).

If the dispute remains unresolved (wa idhā thabata hādhā al-ikhtilāf), if the owner of the top of the wall wants to establish a construction there (idhā arāda an yuḥdith ‘alā ‘uluwwihī binā'), or place a supporting element (yada'a judh'), or design a water closet (yashra'a fi-hi kantif) with it as a window (wa huwa rūshun), then, according to Abū Ḥanifa, this is not allowed (laysa la-hu dhālika); but according to [Abū Yūsuf and Muḥammad al-Shaybāni], this is allowed (la-hu dhālika)

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Ibid., 92-94. The first half of this case is quoted verbatim by Ibn al-Rāmi, 387-388.
Qadi al-Dāmaghāni said: Abū Bakr al-Khuwārazamī used to issue fatwas (yuftī) in these two situations using Abū Yūsuf and al-Shaybānī's declaration (bi-qawlihimā).

The Second Part:

In it are two matters (masa'latän) that come under the teaching (qaul) of Abū Yūsuf and Muḥammad (al-Shaybānī); may God grant them mercy

The first: If the roof (saqf) is upon a shared walled (kāna 'ala ḥaʿīt mushtarik), and the owner of the roof wants to build an oven or store on it (an yabnia fi-hi tannūr aw dūkkān") sometimes Qadi Abū 'Abd Allah al-Saymirl used to issue fatwas allowing this (yuftī bi-jawāz dhālika), and sometimes he issued fatwas disallowing it. And if it were a stove (kūnūn) that was moved and converted (ijungalu wa yuhawwalu), he allowed it because it was like an everyday necessity of life (ka-al-matā').

The second: If the wall is shared (ḥaʿīt mushtarik) and one of the two parties wants to make (an yaʿmala) a hut that is screened by it (khuss yustaru bi-hi), Abū Bakr al-Khuwārazamī used to issue fatwas (yuftī) allowing it because no harm is involved in it (lä ḍarar fi-hi). The other party is obliged to accept it (yuṯbaru al-akhir ʿalayhi).

All of this is a deduction based upon their teaching (wa hadhī kulluhu tafriʿ ala qawlihimā).

Something of this matter crosses into the chapter "On the wall between two men and it is razed and neither has access to load-bearing support in it" (al-bāb ʿfi al-hāʿīt yakunu bayna rajalayn fa-yuhdamu wa laysa li-ahadihim ʿalayhi ḥumūlā").

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15 Kitāb al-İḥtiyān, 119-123.
APPENDIX (2):
Conditions for the Validity of ‘Amal

When the conditions of ‘amal’s validity are reviewed, it is surprising how al-‘Amal al-fāsi’s two-line formulation could ever have been found sufficient to speak for ‘amal’s reality.¹ In an attempt to show the complexity of ‘amal, what follows is a summary of a modern Moroccan scholar’s treatment of the conditions for ‘amal. It comes from Muḥammad b. ‘Abd al-Karim al-Jayyidi’s al-‘Urf wa al-‘amal fi al-madhhab al-mālikī wa mafhūmuhumā lada ‘ulamā‘ al-Maghrib (Mohammedia, Morocco: Maṭba‘a Fuḍāla, 1404/1984). It may usefully be read in conjunction with a longer summary provided by another modern Moroccan jurist, Muḥammad b. al-Ḥasan al-Ḥajwī (d. 1376/1957).²

For convenience’s sake, and following al-Jayyidi’s own division, the complexities of ‘amal may be divided into two categories: those pertaining to the qualifications of jurists who initiate ‘amal rulings (A); and those pertaining to conditions for maintaining these rulings’ effect (B).³ In practice, the two categories are interrelated.

A1. The ‘amal ruling must have originated (ṣadara) from one who is emulated and followed (yuqṭada bi-hi) in judgements (aḥkām).⁴ Only a judge qualified to

¹See Chapter Three, Part One.
²Al-Ḥajwī, al-Fikr al-sāmī, 2: 464-470; trans. Berque, Essai, 119-130. Whilst both summaries make references to medieval ‘amal, their main reference is to ‘amal’s later, more self-conscious period.
³Al-Jayyidi divides the complexities thus: “The procedure (manhaj) of Moroccan scholars for authenticating (ithbāt) ‘amal”; and “The conditions (shurūṭ) of ‘amal”. Idem, al-‘Urf wa al-‘amal, 353, 359.
⁴Ibid., 353.
issue fatwas (qādī mujtahid al-fatwā) has this necessary rank, that of "preponderancy" (rujḥān) or "law school Ijtihād" (al-ijtihād al-madhabī), which alone guarantees the ability to discern the true from the false, such as the public good (maṣlaḥa) from the public ill (mafsada), and which alone justifies an 'amal ruling's departure from the widespread opinion to the isolated opinion. Figures such as Abū al-Walid Muḥammad Ibn Rushd (d. 520/1126), Abū Bakr Ibn 'Arabi (d. 543/1148), and ʿAlī Muḥammad al-Rabʿi al-Lakhmī (d. 487/1085) attained such rank.

A2. The existence of the 'amal ruling must be endorsed as authentic by witnesses competent in matters of Islamic law (an yuthbata bi-shahādat al-udūl al-mutathabbitin fi al-masāʿil al-fiqhiyya). Disagreement arises as to the number of witnesses necessary for the 'amal ruling to be endorsed as authentic: one, two or three; they are drawn from either reliable scholars or judges. With such endorsement, assuming the pre-eminent degree of the 'amal ruling's originator, the nature of an opinion is effectively altered, and what was once weak no longer remains so (Wa al-'amal bi-al-daʿif fi al-fatwā harām illā li-mujtahid zahara la-hu rujḥānuhu wa bi-āhālika la yabqī daʿif `indahu wa lá `inda man qalladahu).

A3. The 'amal ruling itself must be in accordance with the fundaments of the Sharia, even if it is an isolated opinion (an yakūna jāriyya `alā qawāʾid al-sharʿ wa in kāna shādīn).

To ensure the 'amal ruling accords with the fundaments of the Sharia, the second

5Ibid., 357. For a historically based discussion of the terms "preponderancy" and "law school Ijtihād" see Hallaq, Authority, Continuity, and Change, 127-132 and 66-75 (also 2-17), respectively.
6Al-Jayyidi, al-ʿUrf wa al-ʿamal, 359.
7Ibid., 353.
8Ibid., 356.
9Ibid., 353.
category of complexities exist: conditions that must be fulfilled in order for the 'amal ruling to have effect. They prevent 'amal rulings originating from jurists without competence in the giving of judgements (ashkhäs laysa la-hum ahliyat tawjih al-ahkäm). 10

B1. The 'amal ruling must be well established in its circulation (thubüt jarayän al-'amal), until it becomes in effect the dominant and preponderant opinion (hattä yuṣbiha fi qāwat al-mashūr wa al-rājiğ). 11

B2. There must be local knowledge of where the 'amal ruling circulates: is the ruling general or specific to one of the places? (Ma`rifa mahalliyya jarayānihi 'amm° aw khās° bi-nāhiya min al-nawāhi [al-makāniyya]). 12

B3. There must also be knowledge of the time (ma`rifat al-zamān) when the ruling began. 13

Regarding B2 and B3: if the locality or the time in which the 'amal ruling operated is not known, it is hardly feasible to apply it elsewhere. To places and times belong specific characteristics, and if it is established that the 'amal ruling of a people of a certain place was effective in a certain time in a certain legal case, then it is not permissable for us to follow them (Wa ammā bi-al-nisba li-al-thāni wa al-thālith: fa-innahu idhā juhila al-mahall aw al-zamān alladhī jarā fi-hi al-'amal lam tata’tt ta’diyatuhi ilā al-mahall alladhī yurād tu’diyatuhi ilayhi. Idh li-al-amkina khusūṣiyāt kamā li-al-azmina khusūṣiyāt fa-idhā thabata anna ahl balda min al-balād jarā ‘amaluhum fi zamān mā fi qādiya mā fa-lā yajūzu lā-nā al-iqtidā’ 14

10Ibid., 359.
11Ibid., 360.
12Ibid., 360. For information on the difference between a general and a specific 'amal ruling, see ibid., 352.
13Ibid., 360.
B4. Knowledge of the quality of the person who initiated the 'amal ruling (ma’rifat kawn man ajrā dhālika al-'amal) is similarly required. If one does not know who initiated it, the jurist’s competence cannot be established; and following an 'amal ruling in ignorance is not allowed (Wa idḥā lam ya’rif man ajrāhu lam tathbut ahliyatuhu wa lā yajūzu al-taqlīd fi . . . al-jahl). 16

B5. Finally, knowledge is required of the cause for which the jurists abandoned the dominant opinion in favour of the isolated opinion (Ma’rifat al-sabāb alladhi li-ajlihi ‘adalā’ an al-mashhūr ilā muqābilī). If one is ignorant of the cause of the 'amal ruling, its conveyance to the status of permissability is forbidden (Idhā juhila mujib jary al-'amal intana’at ta’diyatuhu li-jawāz). 18

14Ibid., 361.
15Ibid., 360.
16Ibid., 361.
17Ibid., 360.
18Ibid., 361.
APPENDIX (3):
Verbal and Practical ‘Urf


‘Urf is concerned either with the use (yataʿallaqu bi-istiʿmāl) of certain expressions (baʿd al-alfāẓ) with meanings that the people come to know through using them (māʾanin yatʿarafū al-nās ʿalā istiʿmālīhā fi-hā), or with the habituation (iʿtiyād) of a variety of actions (aʿmāl) or social interactions (muʿāmalāt). From here, ‘urf is divided with respect to its subject matter and concerns into two types: verbal ‘urf and practical ‘urf.

A) Verbal ‘Urf (Al-ʿurf al-lafzī)

Regarding verbal ‘urf, there circulates (yushiʿu) amongst the people the use of certain expressions and grammatical constructions (tarākīb) of designated meaning (maʿna muʿayyān) such that, upon its application, that meaning becomes the immediately understood meaning (al-mafḥūm al-mutabādir) in people's minds (adḥān), without context (qarīna) or ratiocinative association (ʿalāqā ʿaqliyya).\(^1\)

Such is the case in the application of the word (lafz) "dirhams" (dirāḥim) with its meaning of 'the common currency' in a country regardless of the currency's type and value, including the paper money of today. All this despite the fact that, originally "dirhams" were silver coins of specified weight and fixed value.

\(^{1}\)Cf. "Verbal ‘urf consists of the general agreement of the people on the usage and meaning of words deployed for purposes other than their literal meaning. As a result of such agreement, the customary meaning tends to become dominant and the original and literal meaning is reduced to the status of an exception [and] consigned to obscurity." Kamali, Principles, 289.
some countries meaning "the room" (al-ghurfa); in others, "the house" (al-där) in its entirety.

This type of 'urf is, in truth, a kind of local language specific to its users (Wa hädhä al-naw' min al-'urf huwa fi al-ḥaqiqā min qabil al-lughat al-khässa li-ašhābīhi).

If comprehension of the intended meaning necessitates context or ratiocinative association, then that is not 'urf; rather it is a species of metaphor (majāz).

An example of context is if someone were to brandish a small cane ('asan) and swore to kill so-and-so with it. From the context it would be understood that his intention of "killing" was to beat painfully. Similarly, if someone said to another: "I'll give you this thing for ten dinar", from the context of exchange it would be understood that the meaning of the intended "giving" (hiba) was "selling", metaphorically speaking.

An example of ratiocinative association is our saying: "The court passed sentence on so-and-so". The intended meaning here is that the judge passed sentence; the court was only the location. This leaning of a term upon another (isnād) is considered permissible and acceptable by virtue of the connection or link that the intellect (‘aql) perceives between the state (ḥāl) and the locality (mahall). The action (al-fi‘l) may be considered with the connection or link as if it had issued from the locality, irrespective of the subject (al-fī‘īl al-ḥāl) of it, just as you say "The ruler entered into an alliance with so-and-so country, or waged war against it" where the intended meaning is the people of the country and its inhabitants.

These technical (fanniyya) styles in the ways of expression (tarā‘iq al-ta‘bir) belong to modes (ṣuwār) of metaphor within the statement (fi al-bayān) because they are premised upon (taqāmu‘ alā asās) the existence of context and connection. They are not part of verbal 'urf which is considered a specific, conventional language (lugha wad‘iyya khasa) whose meanings become customary realities (ḥaqiq ‘urfīyya) inferred from (tustafadū min) the word itself (mujarrad al-lafz).

B) Practical 'Urf (Al-‘urf al-‘amali)
As for practical ‘urf, it is people making a habit (i’tiyäd al-näs) of run-of-the-mill, ordinary actions or civic transactions (al-af āl al-‘ädiyya aw al-mu’ämalät al-madaniyya).²

What is meant by "run-of-the-mill, ordinary actions" are the individual actions of people in their worldly affairs (sh’än hayawîyya), that are not based upon the reciprocal exchange of social benefits and the establishment of rights (tabâdul al-masâlih wa inshâ’ al-ḥuqûq). For example, eating, drinking, clothing, travelling (al-rakb), ploughing and sowing (al-ḥarth wa al-zar‘), and so forth.

What is meant by "civic transactions" is the usufruct (at-tasarrufât) whence proceeds either the establishment of rights between people, or their elimination and abrogation (inshâ’ al-ḥuqûq bayna al-näs aw tasfîyyatuhâ wa isqâṭuhâ), regardless of whether this usufruct was a binding contract (‘aqd) or not. For example, marriage (al-nikâh), selling (al-bay‘) and remission from debt (al-ibrâ‘); also, extortion (al-ghasb) and arrest (al-qabd) and discharge of duty (al-adâ‘).

Examples of ‘urf in the recurrent actions of people include making (ta’til) certain days of the week a holiday from work; in some places, eating a particular (khâss) type of meat, such as mutton, goat and beef; or using a type of costume (malâbis) and equipment (adawät); and so forth.

Examples of [civic] transactions include:

1 - People’s habituation to selling certain heavy goods such as wood, coal and wheat, where it is up to the vendor to transport the items to the home of the purchaser.
2 - Their habituation to paying the yearly land rent (taqsît al-ujûr as-sanawîyya li-al-‘aqârât) in fixed instalments (aqṣât ma’dûda).
3 - Their mutual acquaintance (ta’arufuhum) in the matter of marriage, with the advance payment (ta j’il) of a specified portion of the woman’s dower, such as a half or two-thirds, and the deferral of the remainder until after death or divorce.
4 - Their mutual trading (ta’ämuluhum) of what they own (fi-ma ba’nahum) with certain types of money (nuqûd) below [the traded goods'] equal (dûna suwâhâ).

²Cf. “[Practical] ‘urf consists of commonly recurrent practices which are accepted by the people... The validity of this type of custom is endorsed by the legal maxim which reads: ‘What is accepted by ‘urf is tantamount to a stipulated agreement (al-ma’rûf ‘urf" ka’l-mashrût sharî‘)’.“ Ibid., 290.
5 - Their mutual understanding in certain occupations and crafts (fi ba'd al-mihan wa al-ṣinā'ʿa) that the worker (al-ṣānīʿ) takes a fee (ajr) from the proprietor of the work (rabb al-ʿamal), and with certain other occupations and crafts the proprietor of the work takes a fee from the worker.³

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