AN ARCHITECTURAL INVESTIGATION OF MARINID AND WAṬṬASID 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*.

Foreign words not recognised by *The New Shorter Oxford English Dictionary On Historical Principles*, ed. Lesley Brown, 2 vols. (Oxford: Clarendon Press, 1993) are shown either italicised or between quotation marks.

INTRODUCTION

The following dissertation addresses a question that in principle pertains to any human environment: the nature of place.[1] 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.[2] This is a missed opportunity;

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[1]The academic study of place is sufficiently heterogenous to preclude the presentation of a satisfactory bibliography here; the developing field ranges across the disciplines of geography, anthropology, architecture, literature, and religion. Key works informing this present dissertation include: Kim Knott et al. (eds.), *Religion and Locality* (Leeds: Community Religions Project, forthcoming); Stuart Elden, *Mapping the Present: Heidegger, Foucault and the Project of a Spatial History* (London: Continuum, 2001); Edward S. Casey, *The Fate of Place: A Philosophical History* (Berkeley: University of California Press, 1997); Steven Feld and Keith H. Basso (eds.), *Senses of Place* (Santa Fe: School of American Research Press, 1996); Luce Irigaray, *An Ethics of Sexual Difference*, trans. Carolyn Burke and Gillian C. Gill (Ithaca: Cornell University Press, 1993); idem, *Elemental Passions*, trans. Joanne Collie and Judith Still (New York: Routledge, 1992); Henri Lefebvre, *The Production of Space*, trans. Donald Nicholson-Smith (Oxford: Blackwell, 1991); Pierre Bourdieu, *The Logic of Practice*, trans. Richard Nice (Cambridge: Polity Press, 1990); Gaston Bachelard, *The Poetics of Space*, trans. Maria Jolas (New York: The Orion Press, Inc., 1964; reprint, Boston: Beacon Press, 1994); Michel de Certeau, *The Practice of Everyday Life*, trans. Steven Rendall (Berkeley: University of California Press, 1984); and Martin Heidegger, *Poetry, Language, Thought*, trans. Albert Hofstadter (New York: Harper & Row, Publishers, Inc., 1971)

[2]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-Bouchanine, *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 Özkan (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 andalusí: 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-`Arabī (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-amākina fi al-qulūb al-laṭīfa ta'thīr*[an]. . . . *Fa-ka-mā tatafāḍalu al-manāzil al-rūḥāniyya ka-dhālika tatafāḍalu al-manāzil al-jusmāniyya*).[4]

The question could have been asked of any Muslim environment, but I have chosen Fes, specifically Marinid and Waṭṭasid Fes,[5] for reasons that will be

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Pinter Publishers, 1994), 88-114; Juan Eduardo Campo, *The Other Sides of Paradise: Explorations into the Religious Meanings of Domestic Space in Islam* (Columbia: University of South Carolina Press, c1991); Jean-Charles Depaule, with Jean-Luc Arnaud, *À travers le mur* (Paris: Éditions du Centre Georges-Pompidou CCI, 1985); Michael Gilsenan, *Recognizing Islam: Religion and Society in the Modern Middle East* (London: I.B. Tauris, 1982), 164-214; María Jesus Rubiera, *Arquitectura en la literatura arabe: Datos para una estérica del placer* (Madrid: Editora Nacional, 1981); Dale F. Eickelman, "Formes symboliques et espace social urbain: Le cas du Maroc," in A. Rassam and A. Zghal (eds.), *Système urbain et développement au Maghreb* (Tunis: Ceres Productions, 1980), 199-218; Paul Wheatley, "Levels of Space Awareness in the Traditional Islamic City," *Ekistics* 42, no. 253 (Dec. 1976): 354-366; Christian Zarka, "Maison et société dans le monde arabe," *L'Homme* 15, no. 2 (avr.-juin 1975): 87-102; Mohamed Boughali, *La représentation de l'espace chez le marocain illetré: Mythes et tradition orale* (Paris: Éditions Anthropos, 1974); Colette Petonnet, "Espace, distance et dimension dans une société musulmane: À propos du bidonville marocain de Douar Doum à Rabat," *L'Homme* 12 (June 1972): 47-84; John Gulick, "Images of an Arab City," *Ekistics* 17, no. 101 (April 1964): 270-278.

[3]Cf. Casey, *The Fate of Place*, 321-330; Elizabeth Grosz, "Woman, *Chora*, Dwelling," in Jane Rendell, Barbara Penner, and Iain Borden (eds.), *Gender Space Architecture: An Interdisciplinary Introduction*. The Architext Series, ed. Thomas A. Markus and Anthony D. King (London: Routledge, 2000), 217-221.

[4]Muḥyī al-Dīn Ibn `Arabī, *al-Futūḥāt al-Makkiyya*, ed. `Uthmān Yaḥyā, 10 vols. (Cairo: al-Hay'ah al-Miṣriyya al-`Āmma li-al-Kitāb, 1392-1413/1972-1992), 2: 120.

[5]The Marinids (*Banū Marīn*) and their cousins the Waṭṭasids (*Banū Waṭṭās*) were the fifth and sixth ruling dynasties of Fes and Morocco (*al-Maghrib al-Aqṣā'*), 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, "Marīnids," in *Encyclopaedia of Islam*, 2nd ed. (Leiden: E.J. Brill, 1954-2002), 571-574; E. Lévi-Provençal, "Waṭṭāsids," 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 Waṭṭasids, the dynasties of Fes and Morocco were the Almohads (*al-Muwāḥḥidūn*), from 514-668/1120-1269; the Almoravids (*al-Murābiṭūn*), 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 Waṭṭasids, 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;[6] and its extant medieval[7] historiography, presenting a civic identity open to analysis. Customarily divided into three parts,[8] Fes (*Fās*, also transcribed as Fez and Fès) currently comprises: 1) Old Fes ("l-Madīna" in Moroccan dialect, *Fās al-Bālī* in Standard Arabic), consisting of the medina founded in 172/789 by the eponym of the Idrisid dynasty and grand patriarch of contemporary Morocco,

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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 Muḥammad b. `Abd al-Hādī al-Manūnī, *al-Maṣādir al-`arabiyya li-tārīkh 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.

[6]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), 29-50; 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, idéolgie 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, *Medinas: Morocco's Hidden Cities*, trans. Jacky Thompson (Paris: Assouline, 1998), passim.

[7]By "medieval" I mean the period 339-957/950-1550, referred to by Hodgson as the Earlier Middle and Later Middle Periods. Marshall G.S. Hodgson, *The Venture of Islam: Conscience and History in a World Civilization*, 3 vols. (Chicago: The University of Chicago Press, 1974), 2: 3. All my subsequent references to "medieval" imply this time-span.

[8]Cf. Abdellatif al-Hajjami et al., "Fez: The Ideal and the Reality of the Islamic City," in Jonathan G. Katz (ed.), *Architecture as Symbol and Self-Identity: Proceedings of Seminar Four in the series Architectural Transformations of the Islamic World. Held in Fez, Morocco, October 9-12, 1979* (Philadelphia: The Aga Khan Award for Architecture, 1980), 74-76.

Moulay (*Mawlāy*) Idrīs I (d. 175/791) - Idrīs b. `Abd Allāh b. Ḥassan b. al-Ḥassan b. `Alī b. Abī Ṭālib, a great grandson of the Prophet; 2) New Fes ("Fes Jedīd" 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-Dubaybagh* 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

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[9]Mohamed 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.

[10]Other than Le Tourneau's work, important urban studies of Fes medina (*Fās al-Bālī* and *Fās al-Jadīd*) include Henri Gaillard, *Une ville d'Islam: Fès. Esquisse historique et sociale* (Paris: J. André, Éditeur, 1905); Edouard Michaux-Bellaire, "Description de la ville de Fès," *Archives Marocaines* 11 (1907): 252-330; Louis Martin, "Description de la ville de Fès, quartier du Keddan," *Revue d Monde Musulman* 9 (1909): 433-443, 621-642; Alfred Bel, *Inscriptions arabes de Fès* (Paris: Imprimerie Nationale, 1919); Régis Blachère, "Fès chez les geógraphes arabes du Moyen-Age," *Hespéris* 18 (1934): 41-48; Boris Maslow, *Les Mosquées de Fès et du Nord du Maroc. Avec une introduction de Henri Terrasse et des notes sur six inscriptions de Fès et de Taza par E. Lévi-Provençal* (Paris: Publications de l'Institut des Hautes Études Marocaines, 1937); Norman Cigar, "Société et vie politique à Fes sous les premiers `Alawites (ca 1660/1830)," *Hespéris Tamuda* 18, spec. iss. (1978-79): 93-172; Attilio Gaudio, *Fès, Joyau de la civilisation islamique* (Paris: Les Presses de l'UNESCO, 1982); Henri Bressolette and Jean Delarozière, "Fes-Jedid de sa foundation en 1276 au milieu du XX^{ème} siècle," *Hespéris Tamuda* 20-21 (1982-83): 245-318; Jacques Revault, Lucien Golvin, and Ali Amahan, *Palais et demeures de Fès*, 3 vols. (Paris: Éditions du Centre National de la Recherche Scientifique, 1985-92); William Betsch, *The Hakima: A Tragedy in Fez* (London: Secker and Warburg, 1991); Mohamed Mezzine (ed.), *Fès médiévale: Entre légende et histoire, un carrefour de l'Orient à l'apogée d'un rêve* (Paris: Éditions Autrement, 1992); Anton Escher and Eugen Wirth, *Die Medina von Fes: Geographische Beiträge zu Persistenz und Dynamik, Verfall und Erneuerung einer traditionellen islamischen Stadt in handlungstheoretischer Sicht* (Erlangen: Fränkische Geographische Gesellschaft, 1992); Susan Gilson Miller, Attilio Petruccioli, and Mauro Bertagnin, "Inscribing Minority Space in the Islamic City: The Jewish Quarter of Fez (1438-1912)," *Journal of the Society of Architectural Historians* 60, no. 3 (2001): 310-327; Hamad Berrada, *Fes de Bab en Bab: Promenades dans la Medina* (Casablanca: Publiday-Multidia, 2002).

work quickly became a classic, combining thorough historical research with meticulous sociological description and analysis.[11] 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".[12] 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 *khans* 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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[11]Roger Le Tourneau, *Fès avant le protectorat: Étude économique et sociale d'une ville de l'Occident musulman* (Casablanca: Société Marocaine de Librairie et d'Édition, 1949; reprint, Rabat: Éditions La Porte, 1987). Edmund Burke III provides a valuable discussion of the proto-tradition of French urban ethnography in Morocco from which Le Tourneau's work grew, in idem, "Fez, The Setting Sun of Islam: A Study of the Politics of Colonial Ethnography," *The Maghreb Review* 2, no.4 (July-Aug. 1977): 1-7.

[12]Janet Abu-Lughod, "The Islamic City - Historic Myth, Islamic Essence and Contemporary Relevance," *International Journal of Middle Eastern Studies* 19, no. 2 (1987): 159.

[13]Albert Hourani, "The Islamic City in the Light of Recent Research," in idem and S. H. Stern (eds.), *The Islamic City: A Colloquium* (Oxford: Bruno Cassirer, 1970), 21-22.

[14]Had not that article proved so fatal for the concept, Nezar AlSayyad's later study would have: a book chapter entitled "The Typical Muslim City: A Historiography of a Concept," in idem, *Cities and Caliphs: On the Genesis of Arab and Muslim Urbanism* (New York: Greenwood Press, 1991), 13-41.

Contemporary Relevance" has been identified as marking a watershed in discussions of the Islamic city.[15] 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."[16] 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.[17] 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

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[15]Dale F. Eickelman, "The Comparative Studies of 'Islamic' City," in Tadeshi Yukuwa (ed.), *Urbanism in Islam: Proceedings of the Second International Conference on Urbanism in Islam (ICUIT II), November 27-29, 1990* (Tokyo: Research Project "Urbanism in Islam" and the Middle East Culture Center in Japan, 1994), 313.

[16]Abu-Lughod, "The Islamic City," 155.

[17]Important instances of earlier disciplinary reflection include Kenneth Brown, "The Uses of a Concept: 'The Muslim City,'" in idem et al. (eds.), *Middle Eastern Cities in Comparative Perspective* (London: Ithaca Press, 1986): 73-81; Hichem Djaït, *Al-Kūfa, Naissance de la ville islamique* (Paris: Éditions G.-P. Maisonneuve et Larose, 1986), esp. 139-154; Eugen Wirth, "Villes islamiques, villes arabes, villes orientales? Une problématique face au changement," in Abdelwahab Bouhdiba and Dominique Chevalier (eds.), *La ville arabe dans l'Islam: Histoire et mutations* (Tunis: Imprimerie Al Asria, 1982): 193-225; Robert Ilbert, "La ville islamique: réalité et abstraction," *Les Cahiers de la recherche architecturale: Espaces et formes de l'Orient arabe* 10-11 (1982): 6-13; Tarif Khalidi, "Some Classical Islamic Views of the City," in Wadād al-Qāḍī (ed.), *Studia Arabica et Islamica: Festschrift for Iḥsān `Abbās on his Sixtieth Birthday* (Beirut: American University of Beirut, 1981), 265-276; Dale F. Eickelman, "Is There an Islamic City? The Making of a Quarter in a Moroccan Town," *International Journal of Middle Eastern Studies* 5 (1974): 274-294; and Ira M. Lapidus, *Muslim Cities in the Later Middle Ages* (Cambridge: Harvard University Press, 1967). Concerning the last title, and following an approach similar to that of Tarif Khalidi, Doris Behrens-Abouseif has recently contrasted Lapidus' conception of medieval Muslim cities with medieval Arab conceptions of the same. Idem, "La conception de la ville dans la pensée arabe du Moyen Âge," in Claude Nicolet, Robert Ilbert and Jean-Charles Depaule (eds.), *Mégapoles méditerranéennes: Géographie urbaine rétrospective. Actes du colloque organisé par l'École française de Rome et la Maison méditerranéenne des sciences de l'homme* (Rome, 8-11mai 1996) (Paris/Rome: Maisonneuve et Larose/École française de Rome, 2000), 32-40.

fact: there are features shared by cities across the Muslim world which justify retaining something of the concept.[18] Whilst there exists no one "pure" Islamic city, there are, as Eickelman usefully puts it, a number of "'family resemblances,' . . . partial similarities that can be meaningfully compared and contrasted, rather than exact matchings of distinctive features."[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."[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.[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 . . . ."[22]

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[18]Ronald Lewcock, "Cities in the Islamic World," in Attilio Petruccioli and Khalil K. Pirani (eds.), *Understanding Islamic Architecture* (London: RoutledgeCurzon, 2002), 41-47; Pierre Guichard, "Les villes d'al-Andalus et de l'Occident musulman aux premiers siècles de leur histoire: Une hypothèse récente," in Patrice Cressier and Mercedes García-Arenal (eds.), *Genèse de la ville islamique en al-Andalus et au Maghreb occidental* (Madrid: Casa de Velázquez/Consejo Superior de Investigaciones Científicas, 1998), 36-40; André Raymond, "Islamic City, Arab City: Orientalist Myths and Recent Views," *British Journal of Middle Eastern Studies* 21, no.1 (1994): 17; Eickelman, "Comparative Studies," 313-316; Jean-Claude Garcin, "Le Caire et l'évolution urbaine des pays musulmans à l'époque médiévale," *Annales Islamologiques* 25 (1991): 289 et seq.; Sylvie Denoix, "Unique modèle ou type divers? La structure des villes du monde arabo-musulman à l'époque médiévale," in Nicolet et al. (eds.), *Mégapoles méditerranéennes*, 923, 933. Abu-Lughod herself does not abandon all use of the concept, but elucidates "a modest list of the forces that created the traditional Islamic city. . . . " Abu-Lughod, "The Islamic City," 162.

[19]Eickelman, "Comparative Studies," 314.

[20]Ibid., 314.

[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.

[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.[23] 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 (*Mālikī*) texts: `Īsā b. Mūsā b. Aḥmad Ibn al-Imām al-Ṭuṭīlī (d. 380/991 or 386/997), *Kitāb al-Qaḍā' wa nafy al-ḍarar `an al-afniya wa al-ṭuruq wa al-judur wa al-mabānī 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 `Abd Allāh Muḥammad b. Ibrahīm al-Lakhmī, known as Ibn al-Rāmī al-Tūnisī (d. after 733/1333), *Kitāb al-I`lān bi-aḥkām al-bunyān* (The Book of Disclosing Judgements in Matters of Construction).[24]

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[23]Robert Brunschvig, "Urbanisme médiéval et droit musulman," in *Revue des Études Islamiques* 15 (1947): 127-155; Besim Selim Hakim, *Arabic-Islamic Cities: Building and Planning Principles* (London: Kegan Paul International, 1986). For the most recent scholarship, see below.

[24]For minorly variant titles of these works, different editions, and manuscript locations, see Jean-Pierre Van Staëvel's dissertation cited immediately below. The editions used in my dissertation are: Īsā bin Mūsā bin Aḥmad Ibn al-Imām, "al-Qaḍā' bi-al-mirfaq fi al-mabānī wa nafy al-ḍarar li-`Īsā bin Mūsā bin Aḥmad Ibn al-Imām al-Ṭuṭīlī," ed. Muḥammad al-Namīnaj, 2 vols. (*Diblūm al-dirāsāt al-`ulyā fi al-dirāsāt al-islamiyya* degree thesis, University of Sīdī Muḥammad Ben `Abd Allāh, Fes, 1413/1992), hereafter cited as "Ibn al-Imām"; and Ibn al-Rāmī, "Kitāb al-I`lān bi-aḥkām al-bunyān" ed. `Abd Allāh al-Dāwūdī, in *Majallat al-fiqh al-Mālikī al-turāth al-qaḍā'i bi-al-Maghrib* (Rabat), nos. 2, 3, 4 (1 vol.) (1982): 259-490, hereafter cited as "Ibn al-Rāmī". No translation exists for the latter; but for the former, see Barbier, "Des droits et obligations entre propriétaires d'héritages voisins," in *Revue Algérienne, Tunisienne et Marocaine de Législation et Jurispridence* 16 (1900): 9-15, 17-23, 42-56, 93-104, 113-144; and 17 (1902): 65-84, 89-108.

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;[25] 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.[26] 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*.[27]

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[25]Baber Johansen, "Eigentum, Familie, und Obrigkeit im hanafitischen Strafrecht: Das Verhältnis der privaten Rechte zu den Forderungen der Allgemenheit in hanafitischen Rechtskommerntaren," in *Welt des Islams* 19 (1979): 1-73; idem, "The All-Embracing Town and its Mosques: *Al-Miṣr al-Jāmi`*," in *Revue de l'Occident et de la Mediterranée* 33 (1981-1982): 139-161; and Saleh A. al-Hathloul, "Tradition, Continuity and Change in the Physical Environment: The Arab-Muslim City" (Ph.D. dissertation, Massachusetts Institute of Technology, 1981). Additionally, in a special issue of *Ekistics* (vol. 47, no. 280, Jan./Feb. 1980) dedicated to "Islamic Human Settlements," some articles abridged from *The International Symposium on Islamic Architecture and Urbanism* (Jan. 5-10, 1980, King Faisal University, Damman, Saudi Arabia) had raised the subject, but in a dogmatic, over-determined fashion. See, for example, the articles by Othman B. Llewellyn and Ali Safak in the sub-section "Codes, Land Use Policy, Planning and Implementation Processes". Finally, some court cases involving walls and their maintenance had been mentioned in Galal H. El-Nahal, *The Judicial Administration of Ottoman Egypt in the Seventeenth Century* (Minneapolis: Bibliotheca Islamica, 1979), 52-53.

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

[27]Jean-Pierre Van Staëvel, "Les usages de la ville: Discours normatif, habitat et construction urbaine dans l'Occident musulman médiéval (Xe-XIVe siècles)," 3 vols. (Ph.D. diss., University of Lyon II "Lumière", 2000); an extract of this dissertation has since been published as idem, "Savoir faire et le faire savoir: L'expertise judiciaire en matière de construction, d'après un auteur tunisois du 8e/XIVe siècle," *Annales Islamologiques* 35 (2001): 627-662. The earlier publications include: Patrice Cressier, Maribel Fierro and Jean-Pierre Van Staëvel (eds.), *L'urbanisme dans l'Occident musulman au Moyen Âge: Aspects juridiques* (Madrid: Casa de Velázquez/Consejo Superior de Investigaciones Cientîficas, 2000); Mustapha Ben Hamouche (Mustafã Aḥmad Ibn Ḥamūsh), *Fiqh al-`umrān al-islāmiyya: min khilāl al-arshīf al-`uthmānī al-jazā'iri (956/1549-1246/1830)* (Dubai: Dār al-Buḥūth li-l-Dirāsāt al-Islāmiyya wa Iḥyā' al-Turāth, 1421/2000); idem, "Sight Restrictions in Maghrib Muslim Architecture," *Intellectual Discourse* (Malaysia) 7, no.2 (1999): 133-154; Moncef M'halla, "La médina, un art de bâtir," *Africa* (Tunisia). *Serie: Arts et Traditions Populaires* 12 (1998): 33-98; Akel I. Kahera and Omar Benmira, "Damages in Islamic Law: Maghribī Muftīs and the Built Environment (9th-15th Centuries C.E)," *Islamic Law and Society* 5, no. 2 (1998): 131-164; Akel Ismail Kahera, "Building, Dwelling and Reasoning: A Discourse on Mālikī Legal Practice and the 'Ordering' of Habitat in the Medieval Maghrib" (Ph.D. diss., Princeton University, 1997); Khālid Muḥammad Muṣṭafā `Azab, "Takhṭīṭ wa `imārat al-mudun al-islāmiyya," in *Kitāb al-Umma* (Qaṭar) 58, spec. iss. (1418/1997): 9-141; Jean-Pierre Van Staëvel, "Casa, calle y vecindad en la documentación jurídica," in Julio Navarro Palazón (ed.), *Casas y palacios de al-Andalus*, op.cit., 53-61; Farid Ben Slimane, "Ibn al-Rāmī et l'art de bâtir," in Hassen Annabi, Mounira Chapoutot-Remadi, and Samia Kamarti (eds.), *Itinéraire du Savoir en Tunisie: Les temps forts de l'histoire tunisienne* (Paris: CNRS Editions, 1995), 78-83; Farid Ben Slimane, "Entre Ibn Al Imām le Tudèlien (mort en 996) et Ibn Al Rāmī le Tunisois (mort après 1333)," *Sharq Al-Andalus* 8 (1991): 109-112; Leonor Fernandes,

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-Marjī al-Thaqafī's (d. late 5th/11th or early 6th/12th century) *Kitāb al-Ḥīṭān;* and `Īsā Ibn Dīnār's (d. 212/827) *Kitāb al-Jidār*.[28] By chance in accord with these titles, the genre appears most pronounced in Hanafi (*Ḥanafi*) 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

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"Habitat et prescriptions légales," in *L'habitat traditionnel dans les pays musulmans autour de la Méditerranée. Rencontre d'Aix-en-Provence (6-8 juin 1984).* Vol. 2, *L'histoire et le milieu* (Cairo: L'Institut Français d'Archéologie Orientale, 1990), 419-426; Jamel Akbar, *Crisis in the Built Environment: The Case of the Muslim City* (Singapore: Concept Media Pte. Ltd., 1988). Most recently, a new book has been published that weakly draws upon this still developing field of research: Hisham Mortada, *Traditional Islamic Principles of Built Environment* (London: RoutledgeCurzon, 2003). Also recently published is a much stronger article by Hentati Nejmeddine, "La rue dans la ville de l'Occident musulman médiéval d'après les sources juridiques malikites," in *Arabica* 50, no. 3 (July 2003): 273-305.

[28]The two titles translate as *The Book of Walls* and *The Wall Book* respectively; the lack of distinction between *jidār* and *ḥayṭ* (pl. *ḥīṭān*) is discussed in Chapter One, Part 2:2:1. Regarding publication details for these titles, the latter (*K. al-Jidār*) is not extant, known only through citation in other works, e.g. Ibn al-Rāmī and Ibn al-Imām. The former (*K. al-Ḥīṭān*) 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-Marjī al-Thaqafī (ma`a sharḥ wa tahdhīb wa al-ziyadāt `alayhi), *Kitāb al-Hīṭān: Aḥkām al-ṭuruq wa al-suṭūḥ wa al-abwāb wa masīl al-miyāh wa al-ḥiṭān fi al-fiqh al-islāmī,* ed. Muḥammad Khayr Ramaḍān Yūsuf (Beirut: Dār al-Fikr al-Mu`āṣir, 1414/1994), hereafter cited as "Kitāb al-Hīṭān". The second is `Umar b. `Abd al-`Aziz Ṣadr al-Shahīd (d. 536/1141), *Kitāb al-Ḥīṭān: Dirāsa fiqhiyya li-ahkām al-binā' wa al-irtifāq,* ed. `Abd Allāh Nadhīr Aḥmād (Jeddah: Markaz al-Nashr al-`Ilmī, Jāmi`at al-Mālik `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-binā'* (construction law) or *fiqh al-`imrān* (building law). Ben Hamouche, *Fiqh al-`umrān al-islāmiyya,* 9.

[29]For Shafi`i (*Shāfi`ī*)law's engagement with walls, see Otto Spies, "Islamisches Nachbarrecht nach schafäitischer Lehre," in *Zeitschrift für vergleichende Rechtswissenschaft* 42 (1927): 393-421.

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.[30] 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

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[30]Whilst this basis of this renown will be analysed in Chapter One, the following accounts are representative. Edith Wharton, for example, begins her travel account of Fes with the words: "Many-walled Fes rose up before us out of the plain toward the end of the day." Idem, *In Morocco* (London: Century Publishing Co. Ltd., 1984), 71. Some three centuries before her, the Moroccan scholar and mystic al-Yūsī (d. 1102/1691), had written a letter saying of himself that "in Fez he was slowly dying in the narrow streets flanked by tall buildings which closed in upon him and obscured his line of vision." Cited in Susan M. Peters, "The *Barzakh*: Mohammed Azeddine At-Tazi's Fez," (M.A. thesis, University of Wisconsin-Madison, 1997), 7. The letter was written in 1096/1675 and addressed to the `Alawid Sultan Moulay Ismā`īl (1082-1139/1672-1727); for further details, see Jacques Berque, *Al-Yousi: Problèmes de la culture marocaine au XVIIème siècle* (Paris: Mouton & Co, 1958), 58; it is not included in Fāṭima Khalīl al-Qablī (ed.), *Rasāil Abī `Alī al-Ḥasān b. Mas`ūd al-Yūsi: Jam` wa taḥqīq wa dirasa*, 2 vols. (Casablanca: Dār al-Thaqāfa, 1401/1981). Most recently, the contemporary Moroccan novelist Muḥammad `Izz al-Dīn al-Tāzī has written the following about the walls (sg. *sūr* and *jidār*) of Fes: "The walls, with all of their history, mythology, and murderous insularity, portioning out their shade between the inside and the outside; stretching into people's lives and houses and shops, as if drawing fixed borders for the city outside of which one cannot move. Have you ever seen a house in a wall? From within the thick walls, they dug out houses and lived in them. There they are, living in the heart of the walls. They know that the winds will not uproot them, nor an earthquake demolish them. . . . The walls still remain, enclosing everything inside; opening onto the desert; hearkening to the voices of the dead and the raging of the winds." Idem, *Manzil al-yamām* (Salé: Print-Diffusion, 1995), 43; my translation. My thanks to Susan M. Peters for bringing this story to my attention. Susan Peters translated *Manzil al-yamām* in partial fulfilment of the Degree of Masters of Arts in African Languages and Literature, University of Wisconsin - Madison, 1997.

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.

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[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 Mashrabiy'ya [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 Waṭṭasid 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. *aṣl*), 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

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[34]"Fassi" is the most common spelling of the adjective formed from "Fes", properly transcribed as *Fāsī*.

[35]"Basis: The main constituent. . . . A thing on which anything is constructed and by which its constitution or operation is determined." *The New Shorter Oxford English Dictionary On Historical Principles*, ed. Lesley Brown, 2 vols. (Oxford: Clarendon Press, 1993), 2: 188.

[36]Cf. "Islamic law is the epitome of Islamic thought, the most typical manifestation of the Islamic way of life, the core and kernel of Islam itself." Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Oxford University Press, 1964), 1. On the particular suitability of this assertion for medieval and early-modern Moroccan culture, see Lawrence Rosen, *The Anthropology of Justice: Law as Culture in Islamic Society*, Lewis Henry Morgan Lecture Series (Cambridge: Cambridge University Press, 1989), esp. 1-19; and David S. Powers, *Law, Society, and Culture in the Maghrib, 1300-1500*. Cambridge Studies in Islamic Civilization, ed. David Morgan, Virginia Aksan, Michael Brett et al. (Cambridge: Cambridge University Press, 2002), esp. 229-233.

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 Waṭṭasid 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 Waṭṭasid 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 Waṭṭasids 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.[1] The Marinids made a lasting impression upon Fes, architecturally and otherwise; to all intents and purposes, the Waṭṭasids added little. In that regard, an architectural history and description of Marinid Fes is also one of Waṭṭasid Fes.

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[1]Lévi-Provençal, "Waṭṭāsids," 1134-1135; Le Tourneau, *Fès avant le protectorat*, 73; Henri Terrasse, "Fās (Monuments)," in *Encyclopaedia of Islam*, 2nd ed., 822; and Michel Terrasse, "L'Architecture hispano-maghrébine et la naissance d'un nouvel art marocain à l'âge des Mérinides," 2 vols. (Thèse de doctorat d'état, Université de Paris IV, 1979), 2: 647-649.

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

There are three reasons why Marinid and Waṭṭasid 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.[2] Three examples drawn from the highest reaches of contemporary or near-contemporary Moroccan religious, political, and educational life illustrate this claim: the veneration of Idrīs II; officially sanctioned sharifianism; and *madrasa*-based education, all originate or are said to develop under the Marinids.[3]

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[2]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, "Fās (Monuments)," 822-23; Cigar, "Société et vie politique à Fès," 93; and Mezzine (ed.), *Fès médiévale*, passim.

[3]On the renascent veneration of Idrīs II, see, inter alia, Muḥammad b. Ja`far al-Kattānī, *al-Azhār al-`aṭira al-anfās bi-dhikr ba`ḍ maḥāsin quṭb al-Maghrib wa tāj Madīnat Fās* (Fes: 1307/1889), 159-179; Edouard Michaux-Bellaire, "La légende idrissite et le chérifisme au Maroc," in *Revue du Monde Musulman* 35 (1917-1918): 63 et seq.; Daniel Eustache, *Corpus des dirhams idrīsites et contemporains: Collection de la Banque du Maroc et autres collections mondiales, publiques et privées* (Rabat: Banque du Maroc, 1970-71), 30; and Maya Shatzmiller, *L'historiographie mérinide: Ibn Khaldūn et ses contemporains* (Leiden: E.J. Brill, 1982), 138-147. Persuasively contesting these and other historians' accounts, is Herman L. Beck, *L'image d'Idrīs II, ses descendants de Fās et la politique sharifienne des sultans marīnides (656-869/1258-1465)* (Leiden: E.J. Brill, 1989), 3-10, 233-239. On the origination of officially sanctioned sharifianism, see Mohamed Kably, *Société, pouvoir et religion au Maroc à la fin du "Moyen-Age" (XIV^e - XV^e siècle)* (Paris: Éditions Maisonneuve et Larose, 1986), 293-302; Abdelhad Sebti, "Au Maroc: Sharifisme citadin, charisme et historiographie," *Annales: économies - sociétés - civilisations* no.2 (mars-avril 1986): 436-437; and Beck, *L'image d'Idrīs II*, 130-197, 234. On the origination of *madrasa*-based education, see, inter alia, M.A. Pérétié, "Les medrasas de Fès (d'après les notes de G. Salmon)," in *Archives marocaines* 18 (1912): 257-372; Maya Shatzmiller, "Les premiers mérinides et le milieu religieux de Fès: L'introduction des médersas," *Studia Islamica* 43 (1986): 109-118; and Fernando R. Mediano, *Familias de Fez (ss. XV-XVII)* (Madrid: Consejo Superior de Investigaciones Científicas, 1995), 33-43.

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.[4] 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.[5] 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 (*`ulamā*) there, the guarantor of legitimate Islamic rule in Morocco.[6]

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[4]Lefebvre, *The Production of Space*, 220-226; Wigley, *The Architecture of Deconstruction*, 1-33 and 59-95.

[5]Cf. Ahmed Siraj, "Vie et mort d'une cité islamique: À propos du phénomène urbain dans le Maroc idrisside septentrional," in Cressier and García-Arenal (eds.), *Genèse de la ville islamique*, 285; also Mercedes García-Arenal and Eduardo Manzano Moreno, "Idrīssisme et villes idrīssides," *Studia Islamica* 82, no. 2 (Oct. 1995): 6, 9-10. (This article has since been republished in a slightly expanded form as idem, "Légitimité et villes idrissides," in Cressier and García-Arenal (eds.), *Genèse de la ville islamique*, 257-284.) On the sources for the history of early Fes, see immediately below; on the absence of an earlier histiographical 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 panorame: 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, *Fez 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".

[6]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.[7] 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.[8] Al-Muqaddisī (d. after

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in this way, critically or otherwise. See, inter alia, García-Arenal and Manzano Moreno, "Idrīssisme et villes idrīssides," 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'École 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'Idrīs 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 *sharīfi* 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-`Azīz (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 Fās in 869/1465 and the Death of Sultan `Abd al-Ḥaqq al-Marīnī," *Bulletin of the School of Oriental and African Studies* 41, no. 1 (1978): 43-66.

[7]Michael Brett, "The Islamisation of Morocco: From the Arabs to the Almoravids," *Morocco: Journal of the Society for Moroccan Studies* 2 (1992), reprinted in idem, *Ibn Khaldun and the Medieval Maghrib* (Aldershot: Aldershot Publishing Limited. Variorum Collected Studies Series, 1999) I: 60-61. On the string of fortresses or townships built or developed by the Idrisids, see also Abdallah Laroui, *L'histoire du Maghreb: Un essai de synthèse* (Paris: Maspero, 1970; reprinted Casablanca: Centre Culturel Arabe, 1995), 105-110; García-Arenal and Manzano Moreno, "Idrīssisme et villes idrīssides," 22-31; and Bernard Rosenberger, "Les premières villes islamiques du Maroc: Géographie et fonctions," in Cressier and García-Arenal (eds.), *Genèse de la ville islamique*, esp. 233 and 235-241.

[8]Blachère, "Fès chez les géographes arabes," 41-43. Mitigating this impression is Ibn Ḥawqal's (d. after 367/977) description of the paved marketplaces daily sluiced and cooled during the summer months with diverted river water: "Wa min ayām al-ṣayf yursalu fī aswāqihim min nahrihā al-mā' fa-yaghsiluhā fa-tabarudu al-ḥijāra." Abū Qāsim Ibn Ḥawqal al-Naṣībī, *Kitāb Ṣūrat al-arḍ*, ed. M.J. de Goeje (Beirut: Dār Ṣādir, 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, descries Fassis as "sluggish and ignorant. Scholars are few; mobs abundant (*Wa fi-him thiqal wa ghabā' qalīl al-`ulamā' kathīr al-ghawghā'*)."[9] Adding to this impression of a city without developed identity, al-Ya`qūbī (d. 284/897) notes that only the river running through the medina is called Fes (*Fās*), not the place itself.[10]

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, *Wādī al-Kabīr*, improbably called Fes by al-Ya`qūbī.[11] A source of some confusion amongst historians, the two sites are nowadays dated to 172/789 and 193/808-809 respectively.[12] The first of these date pertains to *Madīnat Fās*, founded by Idrīs I (172-175/789-791); the second, to *al-`Aliyya* (also, *al-`Āliya*),

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qu'un grand centre commercial: un foyer de civilisation. . . un îlot 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 Fès* (Paris: Larose, 1939), 16-17, in conjunction with García-Arenal and Manzano Moreno, "Idrīssisme et villes idrīssides," 15-19, and Eustache, *Corpus des dirhams idrīsites*, 146-150. (These two more recent works modify slightly the history proposed by Lévi-Provencal.) 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.

[9]Muḥammad b. Aḥmad al-Muqaddisī, *Aḥsān al-taqāsīm fi ma`rifat al-aqālīm li-al-Maqdisī al-ma`rūf bi-al-Bashārī*, ed. Muḥammad Makhzūm (Beirut: Dar Iḥyā' al-Turāth al-`Arabī, 1408/1987), 190. Cf. Blachère, "Fès chez les géographes arabes," 43.

[10]Al-Ya`qūbī (Aḥmad b. Abī Ya`qūb b. Wāḍiḥ al-Kātib), *Kitāb al-Buldān. Bibliotheca geographorum arabicorum. Pars septima: Kitâb al-A`lâk an-Nafisa VII, auctore Abū Alî Ahmed ibn Omar Ibn Rosteh; et Kitâb al-Boldân, auctore Ahmed ibn abî Jakûb Wâdhih al-Kâtib al-Jakûbî, edit. secunda*, ed. M. J. de Goeje (Leiden: E. J. Brill, 1892), 358. Cf. Blachère, "Fès chez les géographes arabes," 41.

[11]Today, the Jawhar river is mostly known as "Oued Fes" (*wādī Fās*); and Wādī al-Kabīr as "Bou Khararеb" (*wādī Abū Kharārib*). `Alī al-Jaznā'ī, *Janā zahrat al-ās fi binā' madīnat Fās*, 2nd ed., ed. `Abd al-Wahhāb Ibn Manṣūr (Rabat: Al-Maṭba`a al-Malikiyya, 1411/1991), 34 n. 79 (hereafter cited as *Zahrat al-ās* only). A French translation of *Zahrat al-ās* is available as idem, *Zahrat el-âs (La fleur du myrte): Traitant de la ville de Fès par Abou-l-Hasan `Ali El-Djaznâi*, trans. Alfred Bel (Algiers: Jules Carbonel, 1923). Note: the recension of *Zahrat al-ās* translated by Bel is not exactly the same as that edited by Ibn Manṣūr. For the important differences, see Beck, *L'image d'Idrīs*, 132.

[12]This 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).[13] 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 *Madinat Fās,* or Fes came to include both agglomerations, but according to numismatic evidence, not until at least the late fourth/tenth century: no Idrisid coins have been found with the name Fes; only *al-`Aliyya* and *al-`Aliyya Madinat Idris*.[14] This evidence, combined with the fact that in the mid- fifth/eleventh century both cities were expanded and Fes "became as one city (*wa ṣārat madīnat^{an} wāḥidat^{an}*),"[15] establishes the name of Fes for both sites by the end of Zanata rule (377-462/987-1069). Such is borne out by the geographers posthumous to al-Ya`qūbī, all of whom refer to the double medina as Fes.[16]

During the Almoravid period (462-541/1069-1146), and enclosed definitively within one perimeter wall,[17] Fes acquires a reputation for more than just rusticity, but Maliki legal scholarship and the Jewish inhabitants' vigour in trade.[18] Basing

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

[14]Lévi-Provençal, *La foundation de Fès*, 11; Eustache, *Corpus des dirhams idrīsites*, 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 idrīsites*, 26 n. 4; Lévi-Provençal, *La foundation de Fès*, 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 Madīnat Fās . . . servira désormais à désigner tout le site, y compris les deux villes qui s'y dressent." Idem, *La foundation de Fès*, 17.

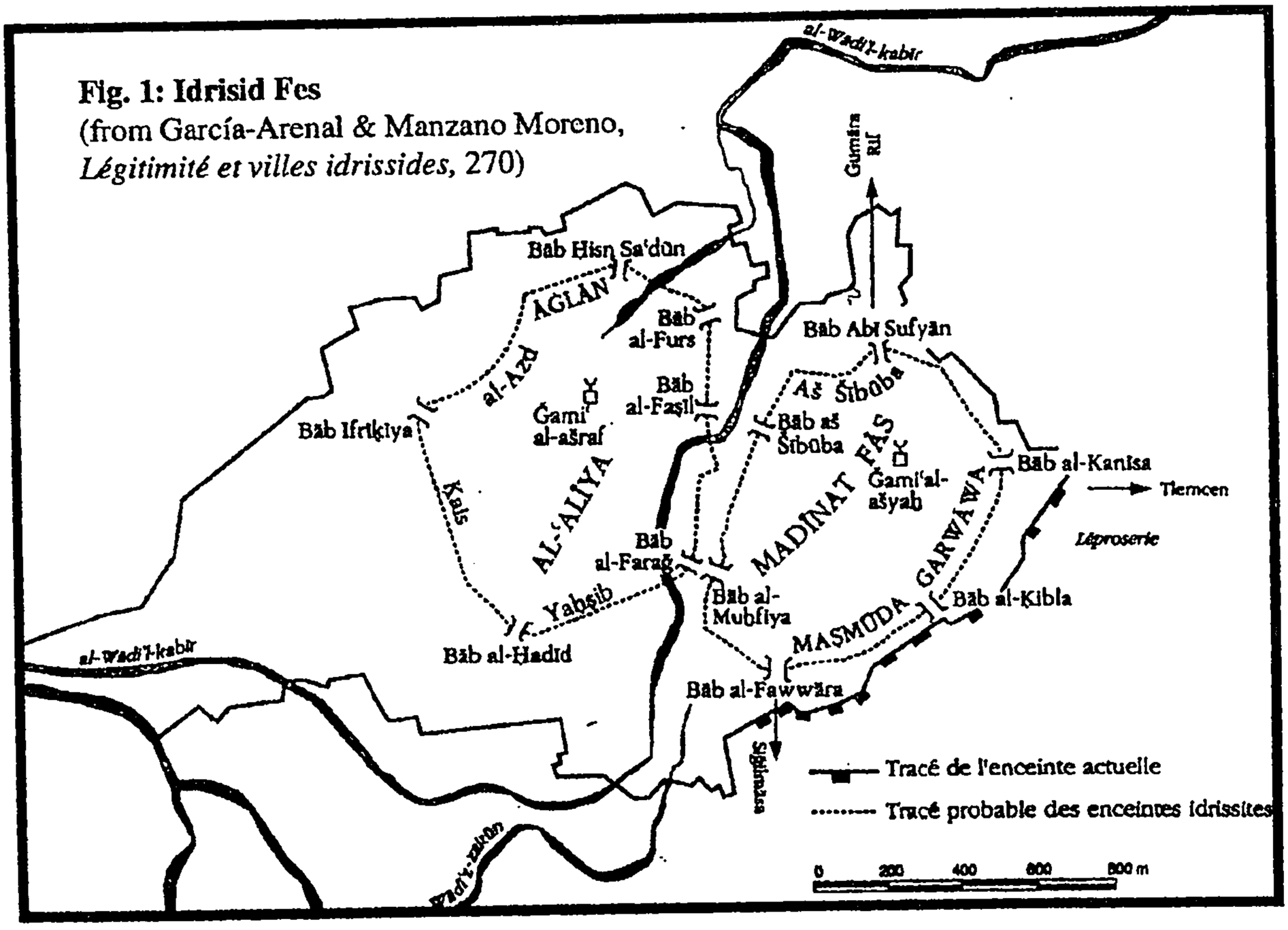
[15]*Zahrat al-ās*, 40, trans., 74; see also, Le Tourneau, *Fès avant le protectorat*, 51. *Rawḍ al-qirṭās*, upon which *Zahrat al-ās* is based (see 1:1:2 below), says only "and [Fes] became the capital of Morocco (*wa ṣārat ḥāḍirat al-Magrhib*)." `Alī Ibn Abī Zar` al-Fāsī, *al-Anīs al-muṭrib bi-rawḍ al-qirṭās fī akhbār mulūk al-Maghrib wa tarīkh Madīnat Fās*, ed. `Abd al-Wahhāb b. Manṣūr, 2nd ed. (Rabat: Al-Maṭba`a al-Malakiyya, 1420/1999), 140 (hereafter cited as *Rawḍ al-qirṭās* only). A French translation is available as Ali ibn-abi Zar', *Rawd Al-Kirtās: Histoire des Souverains du Maghreb et annales de la ville de Fès*, trans. Auguste Beaumier (Paris: Imprimerie Impériale, 1860; reprint, Rabat: Editions La Porte, 1999), 99.

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

[17]*Zahrat al-ās*, 42, trans., 75; *Rawḍ al-qirṭās*, 179, trans., 124.

[18]Blachère, "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,
Légitimité et villes idrissides, 270)



his account on Umayyad records, not visiting Fes in person, al-Bakrī (d. 487/1094) is clearly impressed by the size of the city, including its two principal edifices, the Al-Qarawiyyīn 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 (*arḥā'*), 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-Idrīsī (d. 560/1166) also remarks upon the beauty of Fes, the "nobility of [its] architecture, houses, and palaces (*mabānīn sāmiyya wa dūr wa quṣūr*)":

> All around, gushing fountains of flowing water, surmounted by domes. Arcaded, vaulted reservoirs; plasterwork tracery, and other sorts of ornament (*Wa bi-hā fi kull makān minhā `uyūn nābi`a wa miyāh jāriya wa `alayhā qibāb mabniyya wa dawāmīs maḥniyya wa nuqūsh*

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of Texas Press, 1998), 23-28.

[19]Abī [sic] `Ubayd al-Bakrī, *al-Maghrib fi dhikr bilād Ifrīqiya wa al-Maghrib, wa huwa juz' min Kitāb al-Masālik wa al-mamālik* (Cairo: Dār al-Kitāb al-Islāmī, n.d.), 115-116. On the Almoravids' considerable program of enlargement and ornamentation of the Al-Qarawiyyīn mosque, see Henri Terrasse, *La mosquée Al-Qaraouiyin à Fès. Avec une étude de Gaston Deverdun sur les inscriptions historique de la mosquée.* Vol. III Archéologie Méditerranéenne, (Paris: Librairie C. Klincksieck, 1968), 17-53. For an introduction to the Almoravids' architectural and administrative programmes in general, see Ronald A. Messier, "Re-Thinking the Almoravids, Re-Thinking Ibn Khaldun," in Julia Clancy-Smith (ed.), *North Africa, Islam and the Mediterranean World: From the Almoravids to the Algerian War* (London: Frank Cass Publishers, 2001), 65-71.

[20]Ibid., 115-117; the numbers given are those of al-Bakrī. 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.

wa ḍurūb min al-zīna).[22]

A few decades later, Yāqūt (d. 626/1229) distinguishes Fes with the title *ḥāḍira*, capital or "mighty dwelling"; and the words "a grand and famous city (*madīna mashhūra kabīra*)."[23]

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.[24] However, a problem arises in that Almohad Fes is known only through the geographers' brief accounts and one history, `Abd al-Wāḥīd al-Marrākushī's (b. ca 581/1186) *al-Mu`jib fi talkhīṣ akhbār al-Maghrib*, dated to 621/1224.[25] In this account of the Almohad dynasty, al-Marrākushī includes a short, glowing description of Fes, but adds nothing to the geographers to deepen our knowledge of it.[26] Certainly,

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[22]Abū `Abd Allāh Muḥammad al-Idrīsī, *Description de l'Afrique et de l'Espagne. Texte arabe, publié pour la première fois d'aprés les manuscrits de Paris er d'Oxford avec une traduction, des notes et un glossaire par Reinhart P.A. Dozy et Michaël J. de Goeje* (Amsterdam: Oriental Press, 1969), 76 (Arabic pagination; my translation). Cf. Blachère, "Fès chez les géographes arabes," 45.

[23]Ibn `Abd Allāh al-Ḥamawī Yāqūt, *Mu`jam al-buldān*, ed. Farīd `Abd al-`Azīz al-Jundī, 7 vols. (Beirut: Dār al-Kutub al-`Ilmiyya, 1410/1990), 4:261. Cf. Blachère, "Fès chez les géographes arabes," 45. The translation of *ḥāḍira* follows Ibn Manẓūr's (d. 711/1312) dictionary definition, "al-ḥāyy al-`aẓīm". Muḥammad b. Mukarrim Ibn Manẓūr, *Lisān al-`arab*, 15 vols. (Beirut: Dār Ṣadir/Dār Bayrūt, 1475-76/1955-56), 4:197. On the appellation of Fes as "ḥāḍira" at this time, see also Halima Ferhat, "Fès," in Jean-Claude Garcin (ed.), *Grandes villes méditerranéennes de monde musulman médiéval* (Rome: École française de Rome, 2000), 216.

[24]Cf. Le Tourneau, *Fès avant le protectorat*, 58: "Bref, on peut dire que Fès au début du XIIIe siècle est une ville en plein épanouissement." See also Part 1:2 below for further indications of prosperity in Fes under the Almohads.

[25]`Abd al-Wāḥīd al-Marrākushī, *al-Mu`jib fi talkhīṣ akhbār al-Maghrib li-`Abd al-Wāḥīd al-Marrākushī*, ed. Muḥammad Zaynahum Muḥammad `Azab (Cairo: Dār al-Farjānī li-al-Nashr wa al-Tawzī`a, 1994); a French translation is available as `Abd al-Wāḥīd al-Marrākushī, *Histoire des Almohades d'Abd El-Wâh'id Merrâkechi*, trans. Edmond Fagnan (Algiers: Adolphe Jourdan, 1893). In the anonymous *Kitāb al-Istibṣār fi `ajā'ib al-amṣār*, the extant version of which is dated to 587/1191, but whose original author lived during Almoravid rule, some brief information on Almohad constructions in Fes is given; but as with al-Marrākushī, not enough for the proposed investigation. *Kitāb al-Istibṣār fi `ajāib al-amṣār*, ed. Sa`d Zaghlūl `Abd al-Ḥamīd (Baghdad: Dār al-Shu'ūn al-Thaqāfiyya "Āfāq al-`Arabiyya", n.d.), 180-183; trans., *Kitāb al-Istibṣār: L'Afrique septentrionale au XIIe siècle de notre ère. Description exraite du Kitab el-Istibçar*, trans. Edmond Fagnan (Constantine, 1900), 121-123.

[26]Al-Marrākushī, 289-290; trans. 307-308.

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.[27] The Marinids make Fes their capital; and the historians make it illustrious, destined to be inviolable.[28]

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.[29] 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.[30] They are *al-Anīs al-muṭrib bi-rawḍ al-qirṭās fī akhbār mulūk al-Maghrib wa tarīkh madīnat Fās* (hereafter, *Rawḍ al-qirṭās*), dated to 726/1326 and most probably composed by Abū al-Ḥasan b. `Abd Allāh Ibn Abī Zar` (n.d.) or Abū `Abd Allāh Ibn Abī Zar` (n.d.);[31] and *Janā zahrat al-ās fī binā'*

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[27]Shatzmiller, *L'historiographie mérinide,* 136-138.

[28]Cf. 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.

[29]See above, p. 16. As another example, the canonic narrative that establishes the burial site of Idrīs II to be where currently stand his mosque-cum-mausoleum, Zawiya (*zāwiya*) Moulay Idrīs, reportedly originates with the Marinids. Aḥmad b. `Abd al-Ḥayy al-Ḥalabī al-Fāsī, *al-Durr al-nafīs wa al-nūr al-anīs fī manāqib al-Imām Idrīs b. Idrīs,* 2nd ed. (Fes: 1314/1897), 304-305; as cited in Beck, *L'image d'Idrīs*, 229-230.

[30]Eight is the figure given by Shatzmiller in her study of Marinid historiography, but in the preface to his edition of *Zahrat al-ās*, Ibn Manṣūr lists additional lost histories of Fes not counted by Shatzmiller. Shatzmiller, *L'historiographie mérinide*, 136-137; Ibn Manṣūr, preface to *Zahrat al-ās,* b (ب).

[31]For the most recent debates over the exact paternity of this work see Beck, *L'image*

madīnat Fās (hereafter, *Zahrat al-ās*), dated to either 766/1365 or 768/1367 and written by Abū al-Ḥasan `Alī al-Jaznā'ī (n.d.).[32] As both titles indicate, these are histories with reference to Fes; but whereas the canonic *Rawḍ al-qirṭās* devotes many of its pages to events and people apart from Fes, the shorter *Zahrat al-ās* is exclusive to Fes alone.[33] Specifically, it is devoted to Fes' construction from its foundation to the mid-eighth/fourteenth century.

Zahrat al-ās provides an almost verbatim and occasionally more plausible copy of the Fes medina history recounted sporadically in *Rawḍ al-qirṭās*, supplemented with new information.[34] When combined with the work's architectural focus, these "improvements" on *Rawḍ al-qirṭās* make *Zahrat al-ās* a convenient document for the proposed investigation of Fes, and explain why reference will be made to it as well as the more celebrated *Rawḍ al-qirṭās* in the coming pages and chapters. Regarding its author `Alī al-Jaznā'ī, nothing is known; but given his detailed knowledge of the mosques and other mortmain (*waqf, ḥubus*) elements of Fes, one theory is that he was a functionary in charge of the medina's considerable *waqf* property.[35] As for the author of *Rawḍ al-qirṭās*, because of the work's uncertain paternity, little is known except that he was a native of Fes, most likely from a distinguished family.[36]

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d'Idris, 56-58; and Shatzmiller, *L'historiographie mérinide*, 20-25.

[32]As cited above.

[33]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 *Rawḍ al-qirṭas*, see Beck, *L'image d'Idrīs*, 54, 128-129, 136.

[34]Cf. Bel, preface to El-Djaznâi, 7-10; Shatzmiller, *L'historiographie mérinide*, 27-29; and Beck, *L'image d'Idrīs*, 134-136. Bel's translation indicates both the passages copied and the information added: El-Djaznâi, 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.

[35]Ibn Manṣūr, preface to *Zahrat al-ās*, d (د). For other theories, see Beck, *L'image d'Idrīs*, 132-134; Shatzmiller, *L'historiographie mérinide*, 30-35; Ibn Manṣūr, preface to *Zahrat al-ās*, d (د); Bel, preface to El-Djaznâi, 5-7.

[36]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.[37] 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.[38]

Whilst it is plausible that the Marinids contributed minimally to mosque maintenance,[39] and true that the histories sanctify the ancestry of the medina, the Dutch historian Herman Beck is not alone in interpreting these facts otherwise.[40] 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.[41] Further, Beck is persuaded of an campaign led by the author of *Rawḍ al-qirṭās* to attach the otherwise rebellious Fassi *shurafā'* to their city, centralising them there, allowing the Marinid authorities better to control them.[42] 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 Idrīs II, whose *sharīfi* descendants still

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effritée," 45-47.

[37]Shatzmiller, *L'historiographie mérinide*, 138-147.

[38]Ibid., 31-35, 147.

[39]Cf. Robert Hillenbrand, *Islamic Architecture: Form, Function and Meaning* (Edinburgh: Edinburgh University Press, 1994; paperback reprint, Edinburgh: Edinburgh University Press, 2000), 240.

[40]See Beck's rebuttal of Shatzmiller's argument in idem, *L'image d'Idrīs*, 87-89, 132-134.

[41]Ibid., passim; García-Arenal and Manzano Moreno, "Idrīssisme et villes idrīssides," 12-13; Giovanna Calasso, "Genealogie e miti di fondazione: Note sulle origini di Fās secondo le fonti merinidi," in *La Bisaccia dello Sheikh: Omaggio ad Alessandro Bausani, Islamista nel sessantesimo compleanno*. Venezia, 29 maggio, 1981 (Rome/Venice, 1981), 24.

[42]Beck, *L'image d'Idrīs*, 126.

occupied the home he had built, Dār al-Qayṭūn.[43] Upon the success of *Rawḍ al-qirṭās*, subsequent historians of Fes repeated this narrative, thereby ensuring that Fes and Idrīs II became indissolubly linked in the Fassi imagination, and paving the way for the discovery in 841/1437 of Idrīs II's incorrupt body in the ruins of Al-Shurafā' mosque opposite Dār al-Qayṭūn.[44]

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: Idrīs 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 Jedīd and its double perimeter wall.[45] As of 674/1276, Fes no longer consisted of one outline, but two; the second placed menacingly close to the first (fig. 2).[46]

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

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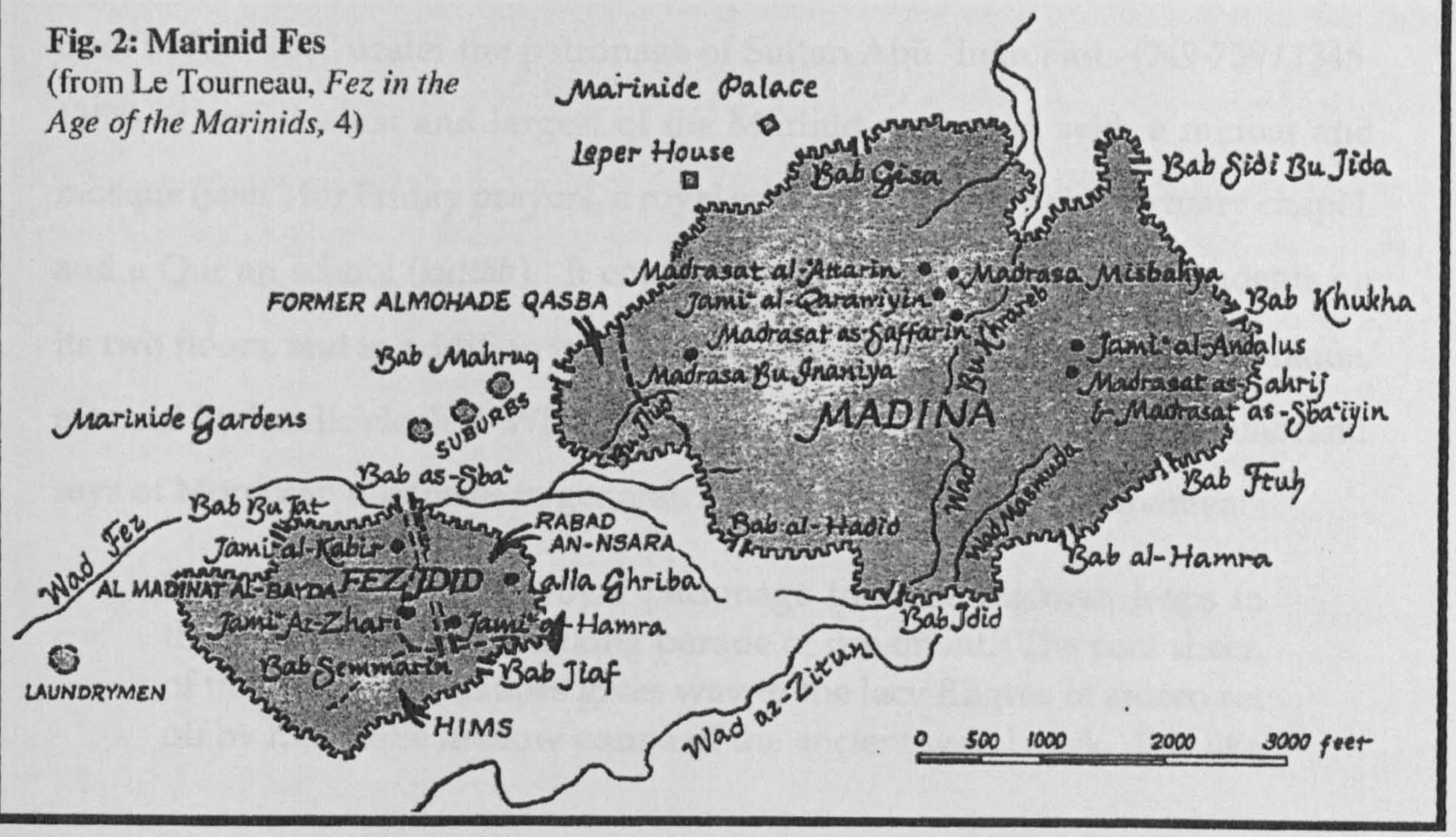
[43]Ibid., 125.

[44]Ibid., 127-129, 228-240.

[45]On this double perimeter wall (and Fes Jedīd 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.

[46]See below for further discussion of the placement of Fes Jedīd.

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 Abū `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 *madrasa*s 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

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[47]Pérétié, "Les medrasas de Fès," 262-284; Lucien Golvin and Catherine Cambazard-Amahan, "La marque mérinide," in Mezzine (ed.), *Fès médiévale*, 78-83.

[48]Terrasse (M.), "L'Architecture hispano-maghrébine et la naissance d'un nouvel art marocain à l'âge des Mérinides," 2: 647-656; and Terrasse, "Fās (Monuments)," 823. For a description of the decorative aspect of the Marinid style, see Golvin and Cambazard-Amahan, "La marque mérinide," 78-91; and Terrasse (M.), "L'Architecture hispano-maghrébine," 2: 341-489. On the architectural and decorative style of the Marinid madrasas alone, see Hillenbrand *Islamic Architecture*, 242-250; Henri Terrasse, *Villes Impériales du Maroc* (Grénoble: B. Arthaud, 1937), 34-37. (Note: Hillenbrand never refers to this style as Marinid, but Moroccan.) The standard reference work on the Marinid style in general is, meanwhile, Georges Marçais, *Manuel d'art musulman: L'architecture Tunisie, Algérie, Maroc, Espagne, Sicile*, 2 vols. (Paris: Éditions Auguste Picard, 1926-27), 2: 472-652.

[49]Hillenbrand, *Islamic Architecture*, 246, 250; Lucien Golvin, "La médersa, nouvel outil du pouvoir," in Mezzine (ed.), *Fès médiévale*, 95-99; Pérétié, "Les medrasas de Fès," 273-283. On the hydraulic clock, see *Zahrat al-ās*, 53, trans., 96-97; and Abdellatif al-Hajjami, "Au fil du temps," in Mezzine (ed.), *Fès médiévale*, 126-130.

> stepping inside a casket of jewels.[50]

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

> Under the Marīnids, 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.[51]

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.

2. THE PHENOMENON OF MARINID FES

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[50]Hillenbrand *Islamic Architecture*, 247.

[51]Terrasse, "Fās (Monuments)," 822-823. Regarding the Marinid influence on domestic architecture, see Revault, Golvin, and Amahan, *Palais et demeures de Fès*, vol. 1, *Époques mérinide et saadienne (XIV^e - XVII^e siècles)*. E.g. "Les rares témoins de l'architecture domestique [Mérinide] à Fès, attestent des principes bien définis que nous retrouvons, conservés en grande partie, dans les maisons plus récentes, jusqu'au début du XX^e siècle, persistance assez extraordinaire d'une tradition qui avait fait, dès le XIV^e siècle, atteint une sorte de perfection." Idem, 79. For a briefer description of Marinid domestic architecture than that given in *Palais et demeures de Fès* , see Terrasse, *Villes Impériales du Maroc*, 37.

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.[52] 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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[52]Le Tourneau, *Fez in the Age of the Marinides*, 20, 72; cf. *Zahrat al-ãs*, 45, and Leo Africanus, 2: 443. Whilst suburbs beyond the walls were few, they included the leprosarium, lime kilns, bleacheries, and potteries. *Zahrat al-ãs*, 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-Qarawiyyīn" and "`Adwat al-Andalus".[54] These two banks represent the development of the original foundations of Fes, *al-`Aliyya* and *Madīnat Fās* 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 Ifrīqiya, 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-Qarawiyyīn 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-Fès/UNESCO), *Sauvegarde de la ville de Fes*, 2 vols. (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-Masāq* 5 (1992): 65-69; Jean-Claude Garcin, "Note sur la population du Caire en 1517," in idem (ed.), *Grandes villes méditerranéennes*, 205-213; and Françoise Micheau, "Les sources pours les mégapoles orientales," in Nicolet et al. (eds.), *Mégapoles méditerranéennes*, 685-704.

[54]Historically, these two banks have not known the same economic prosperity: `Adwat al-Qarawiyyīn 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. *Rawḍ al-qirṭās*, 52, trans., 45. In al-Bakrī'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 rafāhiya*) of `Adwat al-Qarawiyyīn and the tougher (*ahl najda wa shidda*) farming stock of `Adwat al-Andalus. Al-Bakrī, *al-Maghrib fi dhikr bilād Ifrīqiya 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]*Rawḍ al-qirṭās*, 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 Idrīs II's attempt to lessen the Berber majority about him. *Rawḍ al-qirṭās*, 35, trans., 33. The second wave comprised refugees expelled by the ruler al-Ḥakam b. Hishām I (180-206/796-822), following the revolt of a suburb of Cordoba, the so-called Battle of the Suburbs (*wāqi`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]

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[57]Nowadays, the Alawid *zāwiya* of Moulay Idrīs II, built on the Qarawiyyīn bank in 1132/1719, is the second monument of Fes, if not the first. Georges Salmon, "Le culte de Moulay Idrīs et la Mosquée des Chorfa à Fès," in *Archives Marocaines* III (1905): 418-419. For an indication of the Al-Qarawiyyīn mosque as the real monument of Fes, as Fes' site of memory, see Abdelhadi Tazi, *La Mosquée Al Qaraouyyine: 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*);[61] the more lavishly built neighbourhood mosques with their prominent minarets - those built by the Marinids, for example;[62] the larger,

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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'hôtellerie 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 Fès, il a une acceptation particulière: le fondouk 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 'fondouk toujar' (fondouk 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 Teṭṭawniyyīn*), that still stands in close vicinity to the Al-Qarawiyyīn 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-Yahūdi*). 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 pallace of the Cardinall *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.

[62]Golvin and Cambazard-Amahan, "La marque mérinide," 79; Maslow, *Les Mosquées de Fès et du Nord du Maroc*, 74-85. On the monumental significance of the minaret in Islamic architecture, see Hillenbrand, *Islamic Architecture*, 129-171; on the varied rôles of the neighbourhood mosque in everyday Fassi life, see Abdelaziz Touri, "L'oratoire de quartier," in Mezzine (ed.), *Fès médiévale*, 100-108. To judge by both Norman Cigar's description of Alawid Fes and Clifford Geertz's analysis of neighbouring Sefrou, the rôle played by the Sufi *zāwiya*s in the monumental space of Fes medina has, at times, been considerable. Cigar, "Société et vie politique à Fes sous les premiers `Alawites," 116-120; Clifford Geertz, "Suq: The Bazaar Economy in Sefrou," in idem, Hildred Geertz, and Lawrence Rosen, *Meaning and Order in Moroccan Society: Three Essays in Cultural Analysis* (Cambridge: Cambridge University Press, 1979), 154-164. But whilst Sufism was important in Fes from at least the Almohads onwards, to the best of my knowledge the earliest *zāwiya*s of any note date from the 9th/15th century. Such a conclusion is in agreement with the Ph.D. dissertation of Muhammad Miftāḥ, who notes that the term *zāwiya* is not found in Moroccan texts until the Marinid period. Muhammad Miftāḥ, "Al-Tayyār al-ṣūfī wa al-mujtama` fī al-Andalus wa al-Maghrib athnā'a al-qarn 8/14" (Ph.D. dissertation, Université Mohammed V, Rabat, 1981), cited in Cornell, *Realm of the Saint*, 302 n. 87. On the early importance of Sufism in Fes, see Cornell, *Realm of the Saint*, 6-31; Mohamed Faouzi Skali Lami, "Topographie spirituelle et sociale de la ville de Fès," 4 vols. (Thèse de Doctorat ès-Lettres, Université de Paris VII, 1990), 1: 68-101; and Muḥyī al-Dīn Ibn `Arabī (d. 638/1240), *Sufis of Andalusia: The* Rūḥ al-quds *and* al-Durrat al-fākhirah *of Ibn `Arabī*, trans. Ralph W.J. Austin (London: George Allen &

more finely ornamented fountains (sg. *saqāya*), often inscribed with dedicatory verses;[63] the hydraulic clock outside madrasa Bou `Inaniya;[64] the hospital (*maristān*) "Sīdī Frej";[65] and the more elaborate hammams.[66] Also included would

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Unwin Ltd., 1971; reprint, Sherborne: Beshara Publications, 1988), 29-32 (pages recounting the celebrated Sufi's stay with fellow Sufis in Almohad Fes). Regarding the paucity of *zāwiya*s during the Marinids and before, Skali Lami notes the possibility of the Marinid-built neighbourhood mosques having a *zāwiya* rôle. Idem, "Topographie spirituelle et sociale de la ville de Fès," 1: 109. Meanwhile, known for certain of Fes during this same period, is the presence of a number of *rābiṭa*s - Sufi hermitages - located immediately beyond the city gates. Abī `Abd Allāh Muḥammad b. `Abd al-Karīm al-Tamīmī al-Fāsī (d. 603/1207), *al-Mustafād fi manāqib al-`ubbād bi-Madīnat Fās wa mā yalīhā min al-bilād*, 2 vols., ed. Mohamed Cherif (Tétouan: Publications de la Faculté des Lettres et Sciences Humaines, Université Abdelmalek Assa`di, 2002), 1: 86, 152, 168-169. The translation of *rābiṭa* as "Sufi hermitage" follows Cornell, *Realm of the Saint*, 23.

[63]An extant example of such a fountain from Marinid times is the *saqāya* of "Sīdī Frej", dated to 840/1436 and located at the heart of the medina, close to the Al-Qarawiyyīn mosque, adjacent to the *zāwiya* of Moulay Idrīs. 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.

[64]See above, p. 27. 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*.

[65]Located where the above-mentioned fountain stands, this now disused hospital is a walled, two-storey courtyard construction, thought to date to the reign of the Marinid Abū Ya`qūb Yūsuf (685-706/1286-1307). Luccioni, *Les foundations pieuses*, 96-97. By the time Leo Africanus was secretary there in the early 10th/16th century, the hospital had become an asylum, and the adjoining mosque a place of poetry recitation during the annual celebration of the Prophet's birthday (*`id al-mawlūd*). Leo Africanus, 2: 425-426; Azzedine Kharchafi, "Sidi Frej et la fête du mouloud à Fès," in *Découverte et montagne du Maroc* 2 (1996): 15. On other medieval Moroccan hospitals, see Joseph Luccioni, "Les Maristanes du Maroc: Le nouveau maristane de Sidi-Fredj à Fès," in *Bulletin économique et sociale du Maroc* 16, no. 58 (1952): 461-465.

[66]E.g. Hammam "El-Awliya Sīdī Ben Abad" in the "Qaṭṭanīn" neighbourhood, or Hammam "El-Ghūla" in "`Ayn Azlīten", both Marinid constructions. Escher and Wirth, *Die Medina von Fes*, 135; Revault, Golvin, and Amahan, *Palais et demeures de Fès*, 1: 198-199. Cf. Leo Africanus: "In this citie [Fes] are moe than an hundred bath-stoues very artificially and stately built: which though they be not of equally bignes, yet they are all of one fashion [sic]." Idem, 2: 426. On the Marinid fashion of hammam construction and decoration, see Henri Terrasse, "Trois bains Mérinides du Maroc," in *Mélanges offerts à William Marçais par l'Institut d'études islamiques de l'Université de Paris* (Paris : Éditions G.-P. Maisonneuve et C^{ie}, 1950), 311-320. On the hammams of Fes in general, see Edomond Secret, "Les hammams de Fès," in *Bulletin de l'Institut d'Hygiène du Maroc*, nouv. série, II (1942): 61-77, reprinted in idem, *Les sept printemps de Fès* (Paris: Toursi Impression APS, 1990), 57-67. For the monumental rôle of hammams in Maghribi culture, see Abdelwahab Bouhdiba, *Sexuality in Islam*, trans. Alan Sheridan (London: Saqi Books, 1998), 160-174. For a creative account of their significance in Fassi womens' lives, see Fatima Mernissi, *The Harem Within: Tales of a Moroccan Girlhood* (Toronto: Bantam Books, 1995); in Fassi men's lives, see the photographic essay in William Betsch

have been the military and defensive architecture of the perimeter walls;[67] their eight gates (sg. *bāb*), some of which were rudimentary only;[68] the former Almoravid citadel or kasbah (*qaṣaba*) "Bou Jeloud";[69] the archways and heavy doors separating one neighbourhood (*ḥūma*) from another, and sometimes individual houses (sg. *dār*) from neighbourhoods;[70] and if Leo Africanus' tenth/sixteenth century description the *qayṣariyya* (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.[71]

If the monumental space of Marinid Fes seems limited in terms of civic

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and Carole Naggar, *Le Bain. Cité du Sang* (Périgueux: Pierre Fanlac, 1988).

[67]For an indication of the monumental value of medieval medina walls in general, see Sheila S. Blair, "Decoration of City Walls in the Medieval Islamic World: The epigraphic message," in James D. Tracy (ed.), *City Walls: The Urban Enceinte in Global Perspective* (Cambridge: Cambridge University Press, 2000), esp. 524-526.

[68]Le Tourneau, *Fez in the Age of the Marinides*, 19. For the names of the Marinid gates, see fig. 2 and also Le Tourneau, *Fès avant le protectorat*, 42, 55, 56, 114; for the names and locations of the original Idrisid gates (as traditionally reported), see *Zahrat al-ās*, 24-25, trans., 50-52; *Rawd al-qirṭās*, 52-53. For the monumental significance of many of these names, see Evariste Lévi-Provençal, "Notes de toponomastique hispano-maghribine: Les noms des portes, le *Bab al-Shari`a* et la *Shari`a* dans les villes de l'Occident musulman au moyen âge," in idem, *Islam d'Occident*, esp. 49-66; first published in *Annales de l'Institut d'Études Orientales de l'Université d'Alger* II (1936): 210-234. On the ornamentation and structure of Moroccan medina gates in general, see Henri Terrasse, "Le décor des portes anciennes du Maroc," in *Hespéris* III, tr. 2 (1923): 147-174.

[69]Le Tourneau, *Fès avant le protectorat*, 53, 108.

[70]Cf. Jamel Akbar, "Gates as Signs of Autonomy in Muslim Towns," in *Muqarnas: An Annual on Islamic Art and Architecture* 10 (1993): 141-147. In the contemporary medina of Fes, there are still vestiges of the monumental significance of these neighbourhood gates, e.g. the inscribed and/or ornamented archways separating "`Aqbat Saba`" from "Sīdī Muḥammad Belḥāj", and "Sīdī Muḥammad Belḥāj" from "Siāj"; and the heavy wooden gate, now permanently open, dividing "Siāj" and "Oued Rshasha". On the names and composition of the neighbourhoods of pre-modern and early twentieth century Fes, see Le Tourneau, *Fès avant le protectorat*, 118-121, 217-231; for a detailed description of one of the oldest and largest neighbourhoods, see Martin, "Description de la ville de Fès, quartier du Keddan".

[71]Leo Africanus, 2: 437. E.g. "This burse you may well call a citie, which being walled round about hath twelve gates, & before every gate an iron chaine, to keep horses & cartes from coming in."

institutions,[72] 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 (*masājid*);
> 42 chambers for ritual ablution (*dūr al-wuḍū'*);
> 80 fountains (*siqāyāt*);
> 93 hammams;
> 472 watermills (*arḥā al-mā'*);
> 89 236 houses (*dūr al-suknā*);
> 17 041 adjoining, smaller houses (*maṣārī*);[74]
> 469 fonduks;
> 2 *qayṣariyyas*, one on either bank;
> 9 082 shops (*ḥawānīt*);
> 2 mints (*dār li-al-sikka*), one on either bank;
> 3 094 embroiderers (*aṭriza*);
> 47 soap factories (*dūr `amal al-ṣābūn*);
> 86 tanneries (*dūr al-dabbāgh*);
> 116 painting workshops (*dūr li-al-ṣabbāgh*);
> 12 iron and copper foundries (*dūr sabk al-ḥadīd wa al-naḥās*);
> 11 glass factories (*dūr `amal al-zujāj*);

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

[73]*Zahrat al-ās*, 44, trans., 82. The translation of *mushrif* follows Reinhart Pieter Anne Dozy, *Supplément aux dictionnaires arabes* (Leiden: E.J. Brill, 1881; reprint, Beirut: Librairie du Liban, 2 vols., 1981), 1: 750.

[74]This translation follows Jean-Claude Garcin: "[Le terme *maṣrīya*] désigne cette partie isolée de la *dār*, 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 *dār*, soit dans l'entrée de la maison; la *maṣrīya* 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 *maṣrīya* 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 Egypyt (*Miṣr*), 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 (*dār*) was no longer always practical or possible. Ibid., 2: 382.

1170 bakeries (*afrān al-khubz*);
400 stone papermaking machines (*aḥjār `amal al-kāghid*).

All this was inside the city.[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.[76] They conclude that during this time "houses inside the city had neither exterior nor interior gardens except at 'Zaytūn Ibn `Aṭiya'", an indication of just how densely built Fes could be, even during its early years.[77]

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."[78] Such a reduction holds true for Marinid and

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[75]*Zahrat al-ās*, 44, trans., 81-82. A similar inventory is given in *Rawḍ al-qirṭās*, 57-58, trans., 48-49.

[76]"From where the river enters the city until where it leaves, there were the dyers' pits and their shops (*dūr al-ṣabbāghīn wa hawānituhum*); the tanners' and soap-makers' workshops; the silkworm shops (*ḥawānīt al-khannāqīn*);the animal slaughterers (*al-qaṣṣābīn*); the doughnut friers (*al-saffājīn*); the places for cooking gazelle (*li-ṭabkh al-ghazal*);the sellers of cooked beans (*al-fawwālīn*); and other industries requiring water." *Zahrat al-ās*, 44-45, trans., 83; *Rawḍ al-qirṭās*, 58, trans., 48-49 (with minor variances). The translation of *al-khannāqīn* follows Bel's translation, p. 83; in *Rawḍ al-qirṭās* this word is replaced by *al-khayyāṭīn* (tailors).

[77]"Wa lam yakun bi-dākhilihā riyāḍ wa lā bustān ḥāsh[an] Zaytūn Ibn `Aṭiya". *Zahrat al-ās*, 44, trans., 83; *Rawḍ al-qirṭās*, 59 (with *ghars* instead of *bustān*), trans., 49. On the *riyāḍ* style of house construction in Fes, see Revault, Golvin, and Amahan, *Palais et demeures de Fès*, 1: 199-201; and Bel, *Inscriptions arabes de Fès*, 127 n. 2.

[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, fonduks, 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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[79]Shelomo Dov Goitein, *A Mediterranean society: The Jewish Communities of the Arab World as portrayed in the documents of the Cairo Geniza*, 5 vols. (Berkeley: University of California Press, 1967-1983), 4: 56; cited in Sylvie Denoix, "Note sur une des significations du terme '*dār*'," in *Annales Islamologiques* 25 (1991): 285 n. 2. As Marçais indicates, the enclosure may be one of tents or buildings; not necessarily brick walls. William Marçais, "Dār," in *The Encyclopaedia of Islam*, 2nd ed., 113.

[80]Guy T. Petherbridge, "The House and Society," in George Michell (ed.), *Architecture of the Islamic World: Its History and Social Meaning* (London: Thames and Hudson ltd., 1978), 199-201; Marçais, "Dār," 113-115.

[81]Whilst 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 Jloud", the Marinid "Abū l-Ḥasan", 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-maghrébine," 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 fonduks follow the courtyard pattern, see the notes above for the each building type; also, Hillenbrand, *Islamic Architecture*, 240-243; Terrasse (M.), "L'Architecture hispano-maghrébine," 2: 377; Roger Le Tourneau, "Funduq," in *The Encyclopaedia of Islam*, 2nd ed., 945; and Marçais, *Manuel d'art musulman*, 2: 522-523.

[82]Ludovico Micara, "Lofty Chambers: The Interior Space in the Architecture of Islamic Countries," in Petruccioli and Pirani (eds.), *Understanding Islamic Architecture*, 52. For his part, Alexandre Lézine considers the impasse the "élément de base de l'urbanisme musulman traditionnel" - another space defined by walls alone. Alexandre Lézine, *Deux villes d'Ifriqiya: Sousse, Tunis. Études d'archéologie, d'urbanisme, de démographie* (Paris: Libraire Orientaliste Paul Geuthner, 1971), 136; cited in Nejmeddine, 285 n. 52.

and party walls.[83] 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, *ḥā'iṭ* (pl. *ḥiṭān*): "that which surrounds an area (*ism li-mā ḥuwwiṭa bi-hi al-makān*)".[84] 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): "Sībawayh [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 Sībawayh: wa huwa mimmā istaghnū fi-hi bi-binā' akthar al-`adad `an binā' aqallahu, fa-qālū thalāthatu judur*)."[85] 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 (*ḥiṭān*):[86]

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[83]M'halla, "La Médina," 44. Cf. "[Les murs de la médina] guider nos déplacements, renfermer, délimiter et protéger nos activités, nos objets et outils, nous accueiller et nous faire passer d'un lieu à l'autre. Ils séparent et structurent l'espace architectural, et de de fait nous permettent de demeurer. Ils peuvent donc signifier la nature de cette demeure." Ali Djerbi, "Sémiologie de la médina," unpublished paper delivered at The American Institute for Maghrib Studies (AIMS) conference *The Living Madina: The Walled Arab City in Literature, Architecture, and History,* 29th May-4th June, 1996, Tangiers, Morocco, p. 10.

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

[85]Ibn Manẓūr, *Lisān al-`arab,* 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.

[86]Concerning 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

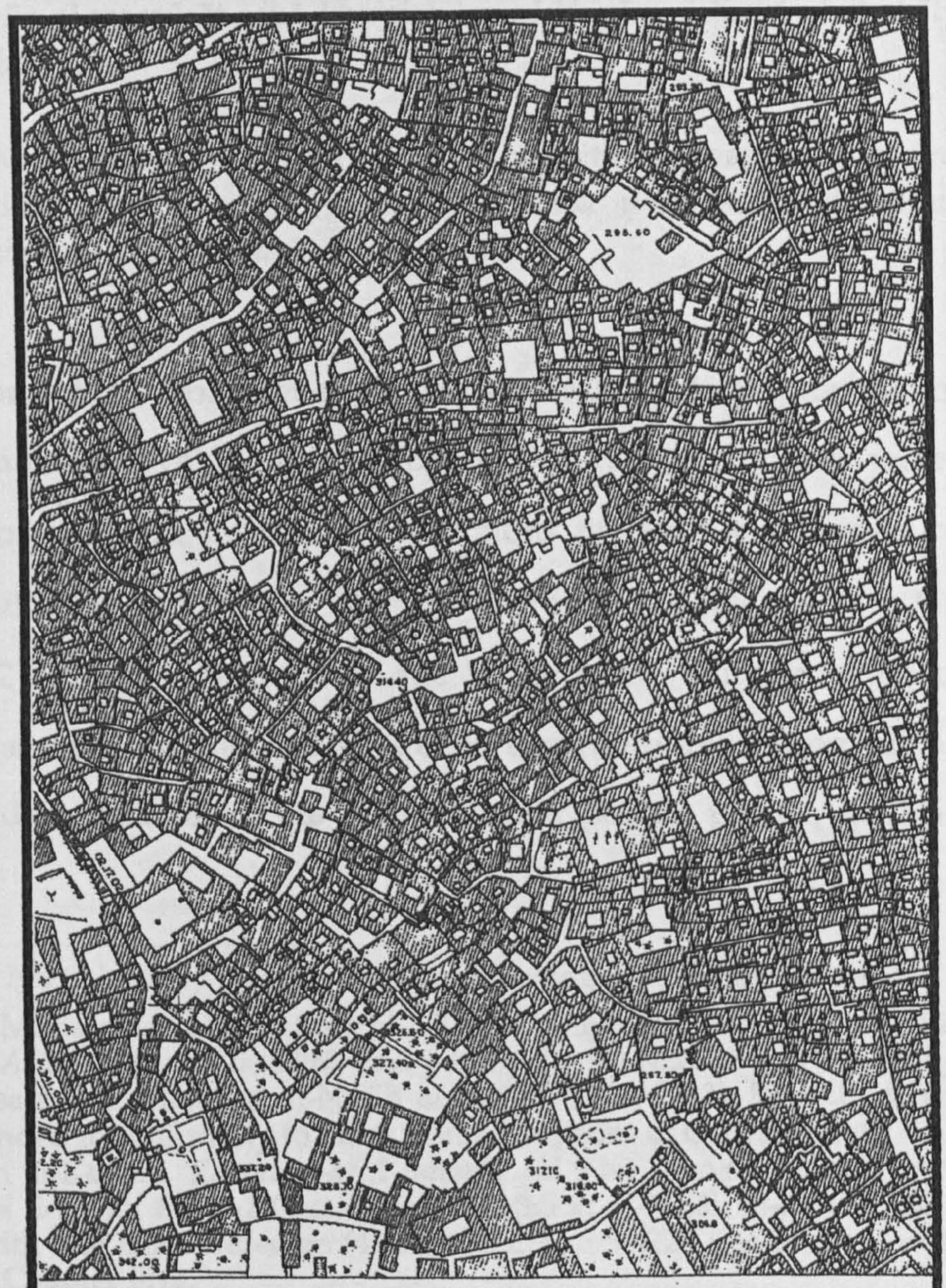

Fig. 3: al-Qarawiyyīn area of Fes
(from Escher & Wirth, *Die Medina von Fes*, 6)

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 Fās`an ḥiṭānihā la ẓahara minhā al-ḥūr al-`iyn. Wa lākin al-ḥūr al-maqṣūrāt idhā kharajat `an al-khiyām aṣābahā al-dhubūl wa al-ibtidhāl*).[87]

2) Knowledge springs from [Fes'] inhabitants' hearts, just as water springs from its walls (*Inna al-`ilm yanba` u min ṣudūr ahlihā ka-mā yanba`u al-mā' min ḥiṭānihā*).[88]

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.[89] 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

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sayings of Fes to be cited below, are maxims more than they are proverbs.

[87]Cited in Muḥammad al-Muntaṣir bi-Allāh b. Muḥammad al-Zamzamī al-Kattānī, *Fās `āṣimat al-Adārisa wa rasā'il ukhrā*, 2nd ed., Series: Al-Mawsū`a al-Kattāniyya li-tārīkh Fās 3 (Casablanca: Maṭba`at al-Najāḥ al-Jadīda, 1423/2002), 39, with a typographical error amended in conformity to other printed versions of the maxim, e.g. `Abd al-Kabīr b. Hāshim al-Kattānī, *Zahrat al-ās fi buyūtāt ahl Fās*, 2 vols., Series: Al-Mawsū`a al-Kattāniyya li-tārīkh Fās 1-2 (Casablanca: Maṭba`at al-Najāḥ al-Jadīda, 1422/2002), vi. Replete with Qur'anic references (44:54, 55:72, and 56:22), this proverb will be treated further in Chapter Five.

[88]Cited in al-Kattānī, *Fās `āṣimat al-Adārisa*, 40. Alluded to in this maxim is Moulay Idrīs II's legendary speech at the foundation of Fes (historically speaking, Al-`Aliyya): "O God! Make [of Fes] a house of religious knowledge and law (*dār `ilm wa fiqh*), wherein your Book is recited and your Sunna and your Boundaries (*ḥudūd*) upheld." *Zahrat al-ās*, 22, trans., 47; *Rawḍ al-qirṭās*, 45, trans., 39 (with one minor variation). In both histories, the speech provides a focal point about which to discuss the excellence of *`ilm* 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; *Rawḍ al-qirṭās*, 45, trans., 40; see also Chapter Six, Part 1:1.

[89]Cf. J.S. Madmulla, *Proverbs and Sayings: Theory and practice, with examples from the Wahehe of the Southern Highlands of Tanzania* (Dar es Salaam: Institute of Kiswahili Research, University of Dar es Salaam, 1995), 11; and Edward Westermarck, *Wit and Wisdom in Morocco: A Study of Native Proverbs* (London: George Routledge and Sons, Ltd., 1930), 1-2.

citer."[90] 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 confère une sorte d'autorité qui relève de la 'sagesse des anciens'."[91]

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;[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.[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

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[90]Algirdas Julien Greimas, "Les proverbes et les dictons," in idem, *Du sens: Essais sémiotiques* (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, *À travers le mur*, esp. 87-99.

[91]Greimas, "Les proverbes et les dictons," 313.

[92]On the notorious recalcitrance of Fassis regarding external authority, see, inter alia, Mohamed El Mansour, "Urban Society in Fez: The *Rumat* during the Modern Period (17th-19th Centuries)," in *The Maghreb Review* 22, no. 1-2 (1997): esp. 81, 91-92; García-Arenal, "Sainteté et pouvoir au Maroc: La résistance de Fès aux Sa`diens," esp. 1019, 1030-1037; Shatzmiller, "Les premiers mérinides et le milieu religieux de Fès," 109-111; García-Arenal, "The Revolution of Fās in 869/1465 and the Death of Sultan `Abd al-Ḥaqq al-Marīnī," passim; Norman Cigar, "Une lettre inédite de Mūlāy Ismā`īl aux gens de Fes," in *Hesperis Tamuda* XV (1974): 106-111; Berque, "Ville et université," 65.

[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^{e} siècle," in *Mélanges d'études luso-marocines dédiés à la mémoire de David Lopes et Pierre de Cenival* (Lisbon: Instituto Para Alta Cultura, with L'Institut Des Hautes Études Marocaines de Rabat, 1945), 31-39.

reaffirming.[94] Fes may be conquered in name, and have to accept outsiders as rulers; but it will affect an obdurate, frequently belligerent autonomy.[95] 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.[96]

Representing the medina as thoroughly worked upon by these rulers, *Rawḍ al-qirṭās* and especially *Zahrat al-ās* relate the walls they erect or destroy, beginning with the Zanata ruler Dūnās al-Maghrāwī (440-452/1049-1061):

> During this period the emirs and kings continued their constructions in Fes (*yazidūna al-binā' bi-fās*), 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-Mu`izz b. `Aṭiya b. Zīrī [al-Maghrāwi], ringed both these outskirts with walls. He built there mosques, fonduks, hammams, and so forth, and Fes became as one city.[97]

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

> Al-Futūḥ fortified (*ḥaṣṣana*) the Andalus bank of Fes, and built a citadel for his residency there. . . . `Ajīsa fortified the Qarawiyyin

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[94]Cf. Shatzmiller, *L'historiographie mérinide*, 136; Beck, *L'image d'Idris*, 124-129; García-Arenal and Manzano Moreno, "Idrissisme et villes idrīssides," 9; and Siraj, "Vie et mort d'une cité islamique," 285.

[95]For 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 qadi (*qāḍī*) 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 (*fuqahā'*) over the accuracy of the Al-Qarawiyyīn mosque's qibla. *Zahrat al-ās*, 75, trans. 145; ibid., 74, trans. 144; ibid., 79-80, trans. 157-158; ibid., 81-82, trans. 160-162. Cf. Shatzmiller, *L'historiographie mérinide*, 33 (in conjunction with Beck, *L'image d'Idris*, 97-98).

[96]Cf. Yasser Tabbaa, *Constructions of Power and Piety in Medieval Aleppo* (University Park: Pennsylvania State University Press, 1997), passim; and Robert S. Nelson, "The Rhetoric of Monuments: The World Trade Center," in idem and Margaret Olin (eds.), *Monuments and Memory, Made and Unmade* (Chicago: University of Chicago Press, 2003), 326.

[97]*Zahrat al-ās*, 40, trans., 73-74; cf. *Rawḍ al-qirṭās*, 140, trans., 98-99.

bank, building a citadel there for his residency.[98]

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 Wādī 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 Tāshfīn [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 ṣunnā` al-arḥā*), and of these he built many. . . . During his rule the two banks of Fes became [definitively] one (*ṣārat al-`adwatān quṭr^en waḥid^en*).[99]

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.[100] Also recounted is an anecdote about the Almohads' founder `Abd al-Mūmin b. `Alī al-Kūmī al-Zanātī (524-558/1130-1163). Whereas all previous rulers of prior dynasties had seen fit to build walls in Fes, `Abd 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 `Abd al-Mūmin Ibn `Alī ordered the tearing down of most of the walls of Fes (*amara bi-hadm akthar*

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[98] *Zahrat al-ās*, 40-41, trans., 74; cf. *Rawḍ al-qirṭās*, 141, trans., 99.

[99] *Zahrat al-ās*, trans., 75-78; cf. *Rawḍ al-qirṭās*, 179, trans., 124

[100] *Zahrat al-ās*, 43-45, trans., 81-83; cf. *Rawḍ al-qirṭās*, 57-58, trans., 49. See also above, p. 35.

> *aswār Fās*), saying: "Truly, we have no need of walls. Instead, our swords and our justice will be our walls (*Innanā lā naḥtāju ilā sūr, innamā aswārunā asyāfunā wa `adlunā*)." The situation remained that way until Ya`qūb al-Manṣūr [580-595/1184-1199] began rebuilding what had been torn down.[101]

Had the authors of *Rawḍ 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 Jedīd, 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

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[101]*Zahrat al-ās*, 42-43, trans., 78-79; cf. *Rawḍ al-qirṭās*, 243, trans., 160-161.

[102]Cf. Yasser Tabbaa, "Circles of Power: Palace, Citadel, and City in Ayyubid Aleppo," in *Ars Orientalis* 23 (1993): 181-200. For a period description of Fes Jedid, see Ibn Faḍl Allāh al-`Umarī (d. 761/1349), *Masālik el abṣār fi* [sic] *mamālik el amṣār. I: L'Afrique, moins l'Égypte*, trans. M. Gaudefroy-Demombynes (Paris: Librairie Orientaliste Paul Geuthner, 1927), 156.

[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 (*ḥalāl*) from the forbidden (*ḥarām*).[1] 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;[2] 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

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[1]On the Qur'anic and legal (*fiqhī*) 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'ān* (Leiden: Brill, 2001-), 3: 172-176

[2]On perimiter walls alone, see the essays in Tracy (ed.), *City Walls*, including, especially, Jonathan M. Bloom, "Walled Cities in Islamic North Africa and Egypt with particular reference to the Fatimids (909-1171)," 219-246. On ritual walls with parallels to Islam and Islamic law, see Mitchell Schwarzer, "The Architecture of the Talmud," in *Journal of the Society of Architectural Historians* 60, no. 4 (2001): 474-487.

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.[3] If a door is more commonly considered the threshold, in reality it is a gap in a wall.[4] The wall is the threshold; and the door, its point of traversal.[5] Simultaneously conjoined and divided by the wall, here and there are reversed at their point of contact, the wall acting like a mirror.[6] 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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[3]Cf. de Certeau, *The Practice of Everyday Life*, 127; Lefebvre, *The Production of Space*, 209-210.

[4]The classic essay on the door as threshold is Georg Simmel (d. 1337/1918), "Bridge and Door," trans. Mark Ritter, in *Theory, Culture and Society* 11 (1994): 5-10; reprinted in Neil Leach (ed.), *Rethinking Architecture: A Reader in Cultural Theory* (London: Routledge, 1997), 66-69. More recently, Richard Lang has offered some valuable insights in his essay "The Dwelling Door: Towards a Phenomenology of Transition," in David Seamon and Robert Mugerauer (eds.), *Dwelling, Place and Environment: Towards a Phenomenology of Person and World* (Dordrecht: Martinus Nijhoff Publishers, 1985), 201-213.

[5]Neil Leach usefully refers to the traversal function of the door as "transgression", and in so doing, he distinguishes the function of the door from that of the wall. Leach (ed.), *Rethinking Architecture*, xx. In a different way, Heidegger also refines the difference between threshold and door in his essay, "Language," in idem, *Poetry, Language, Thought*, trans. Albert Hofstadter (New York: Harper & Row, Publishers, 1971), 204.

[6]Cf. de Certeau, *The Practice of Everyday Life*, 126-129; and Mircea Eliade, *The Sacred and the Profane: The Nature of Religion*, trans. Willard R. Trask (San Diego: Harcourt Brace Jovanovich, 1959), 25, 181. This uncanny ability to enact a reflection is perhaps one reason why walls are rarely objects of reflection, and are instead relegated to the background: hidden by frescos and paintings in Western culture; by murals and ornamentation in Muslim culture.

"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" (*mu'minūn*) from the "Hypocrites" (*munāfiqūn*), and divine mercy (*al-raḥma*) from divine punishment (*al-`adhāb*). 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.

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[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, *À 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 (*ṣalāt*);[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 represenents 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

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[10]Hillenbrand, *Islamic Architecture*, 31. See also Jeremy Johns, "The 'House of the Prophet' and the Concept of the Mosque," in idem (ed.), *Bayt al-Maqdis: Jerusalem and Early Islam* , Oxford Studies in Islamic Art, Volume IX, Part Two (Oxford: Oxford University Press, 1999), 81-83.

[11]Ibid., 46; Alexandre Papadopoulo, "Introduction générale," in idem (ed.), *Le miḥrāb dans l'architecture et la religion musulmanes: Actes du colloque international tenu à Paris en mai 1980, publiés et pourvus d'une étude d'introduction générale* (Leiden: E.J. Brill, 1988), 9-10.

[12]Clevenot, *Une esthétique du voile*, 55.

[13]Cf. A.J. Wensinck, "Sutra," in *Encyclopaedia of Islam*, 2nd ed., 902-903. For an anthropological description of the imaginary sacred space about a Muslim in prayer, see Gilsenan, *Recognizing Islam:*, 179.

[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."[15] 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. (*Uriytu al-āna mundhu ṣallaytu la-kum al-ṣalāt al-janna 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*)."[16]

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-Qarawiyyīn, 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.[17] The institution was followed by the

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[15]Ibid., 55; cf. the paradisiacal vision beheld upon a wall, in Sadeq Hedayat (d. 1371/1951), "The Blind Owl", in idem, *The Blind Owl and Other Hedayat Stories*, ed. Russell P. Christensen (Minneapolis: Sorayya Publishers, Inc., 1984), 41-43. (Thanks to Chloe Mulderig for bringing this story to my attention.) See also Joan Holt, "Architecture and the Wall Facing Mecca," in *VIA: Culture and the Social Vision* 5 (1982): 25-26; and Gülzar Haider, "Faith is the Architect, Reflections on the Mosque," in *Architecture et Comportement/Architecture and Behaviour* (Lausanne) 11, no. 3-4 Special Issue: Faith and the Built Environment. Architecture and Behaviour in Islamic Countries (1995): 70 and 70 n. 6.

[16]Abū `Abd Allāh b. Ismā`īl b. Ibrāhīm b. al-Mughira b. Barduzba al-Bukhārī, *Saḥiḥ al-Bukhārī*, ed. `Abd al-`Azīz b. `Abd Allāh b. Bāz, 5 vols. (Beirut: Dār al-Fikr, 1414/1994), k. al-raqāq, bāb 18, raqm 6468; cf. ibid., k. al-adhān, bāb 91, raqm 749.

[17]*Zahrat al-ās*, 78, trans., 153; Abdelhadi Tazi, *La Mosquée Al Qaraouiyyine: 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 Qaraouiyyine*, 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-janā'iz*). *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 (*miḥrāb*), 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 Jedīd - a large annexe;[19] the Marinid madrasa "Bou `Inaniya" - 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 `Alī (732-749/1331-1348) and Abū `Inān Fāris (749-759/1348-1359) appear to have favoured this symbolism: the latter is buried in the funerary annexe of Fes Jedīd'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, Saadien 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 Saadien Tombs, sealed off from view until the early-twentieth century.[26]

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[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.

[23]Cf. Emma David, "The Qibla Wall as Threshold for the Qarawiyyin Mosque and Medina of Fes," (Architecture Tripos, University of Cambridge, 1999), 3-16. My thanks to Ms. David for providing me with a copy of her thesis.

[24]Bressolette and Delarozière, "Fes-Jdid," 264; Maslow, *Les Mosquées de Fès et du Nord du Maroc*, 47; Marçais, *Manuel d'art musulman*, 2: 498-500.

[25]Shaun Marmon, *Eunuchs and Sacred Boundaries in Islamic Society* (New York: Oxford University Press, 1995), 30.

[26]Marçais, *Manuel d'art musulman*, 2: 707-710.

Nowadays indissociable from the qibla wall, but in the Prophet's lifetime unknown, the mihrab (*miḥrāb*) is commonly a mosque's most ornate element, located neither before nor behind the qibla wall, but within it.[27] 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.[28] Ambiguous, because presence and absence at once co-exist, this signification draws upon the mihrab's location within the liminal, equally ambiguous qibla wall.[29]

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."[30] As before,

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[27]The earliest example of the ubiquitous concave or niche mihrab (*miḥrāb mujawwaf*) dates to 88-90/707-709, and belongs to the rebuilt Prophet's Mosque in Medina. Prior to that, the mihrab "was indicated by a stripe of paint or by a block of stone embedded in the qibla wall." G. Fehérvári, "Miḥrāb," in *Encyclopaedia of Islam*, 2nd ed., 7-8. For a typology of niche mihrabs and their decoration, see Alexandre Papadopoulo, "Typologie de Miḥrāb: Bref essai d'étude esthétique," in idem (ed.), *Le miḥrāb dans l'architecture et la religion musulmanes*, 20-34, incl. plates 1-120. For an historicial and geographical review of mihrabs in general, see Fehérvári, "Miḥrāb," 7-15. That the mihrab is commonly the most ornate aspect of a mosque is proven by the gold and jewel-encrusted mihrab and surmounting dome of the Al-Qarawiyyin during the Almoravid dynasty. So dazzling and beautiful was this work that it distracted believers from finishing their prayers. *Rawḍ al-qirṭās*, 76, trans., 55-56

[28]E.g. Papadopoulo, "Introduction générale," 11-12 (also idem, "Conclusions inspirées par le colloque et débats de la dernière séance," in idem [ed.], *Le miḥrāb dans l'architecture et la religion musulmanes*, 176); Estelle Whelan, "Origins of the *Miḥrāb Mujawwaf*: A Reinterpretation," in *International Journal of Middle Eastern Studies* 18 (1986): 215; and Oleg Grabar, *The Formation of Islamic Art*, revised ed. (New Haven: Yale University Press, 1987), 115. See also Hillenbrand, *Islamic Architecture*, 45-46; and on this signification for medieval Muslim historians, see Nuha N.N. Khoury, in idem, "The Mihrab: From Text to Form," in *International Journal of Middle Eastern Studies* 30 (1998): 18. For a critical analysis of the absent presence signification, see Clevenot, *Une esthétique du voile*, 57-59. On the debate regarding the significance of the mosque mihrab in general, see Daoulatli, "Le miḥrāb: signe ou symbole," in Papadopoulo (ed.), *Le miḥrāb dans l'architecture et la religion musulmanes*, 76-82; and Lucien Golvin, "Le miḥrāb et son éventuelle signification," in Papadopoulo (ed.), *Le miḥrāb dans l'architecture et la religion musulmanes*, 53-55. On exceptions to the concave form of the mihrab, see Abdelaziz Daoulatli, "Le miḥrāb: signe ou symbole," 76-77.

[29]An alternative interpretation finds the mosque mihrab reminiscent of early Arabic tomb-stones and burial sites, i.e. more liminal locations. Fehérvári, "Miḥrāb," 7-8. Cf. "[Flat, non-mosque mihrabs] are coded signs within a wide-ranging medieval discourse on death, resurrection, and commemoration." Nuha N.N. Khoury, "The Mihrab Image: Commemorative Themes in Medieval Islamic Architecture," in *Muqarnas: An Annual on Islamic Art and Architecture* 9 (1992): 22.

[30]Clevenot, *Une esthétique du voile*, 59-60.

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.[31] 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.[32]

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[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'ān*, 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 Papadopoulo, "Le problème du miḥrāb," in idem (ed.), *Le miḥrāb dans l'architecture et la religion musulmanes*, 46.

[32]Petherbridge, "The House and Society," 193.

Regarding domestic architecture in particular, to neglect its study is not only to disregard the numerically greater part of Islamic architecture;[33] but also to underestimate the priority accorded to it in the Qur'an, Hadith, and Muslim thought.[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. *diyār*) and *bayt* (pl. *buyūt*), which appear forty-nine and sixty-five times respectively in the Qur'an alone.[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-ḥarām*, 5:97), and "the ancient house" (*bayt al-`atīq*, 22:29), amongst other terms.[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.[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.[38] Hell, meanwhile, is referred to in the Qur'an as "the evil house" (*sū' al-dār*, e.g. 13:25), "the house of perdition" (*dār al-bawār*, 14:28), and the "house of eternity" (*dār*

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[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).

[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.

[35]Muḥammad Fu'ād `Abd al-Bāqī, *al-Mu`jam al-mufahris li-al-alfāz al-qur'ān al-karīm*, 4th ed. (Beirut: Dār al-Fikr, 1414/1994), 333-334 and 178-179; Campo, *The Other Sides of Paradise*, 8, 29, 194 n. 2.

[36]J. Lecerf, "Bayt," in *Encyclopaedia of Islam*, 2nd ed., 1139; Campo, *The Other Sides of Paradise*, 9.

[37]Ignaz Goldziher, C. Van Arendonk, and A.S. Tritton, "Ahl al-Bayt," in *Encyclopaedia of Islam*, 2nd ed., 257-258. On the association of "al-bayt" with "ahl al-bayt", see, for example, Sayyid Muhammad Raza Shabbar, *The Story of the Holy Ka'ba and its People*, 2nd ed. (London: Muhammadi Trust, 1999).

[38]Cf. Campo, *The Other Sides of Paradise*, 24.

al-khuld, 41:28).[39] 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.[40]

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.[41] The Prophet's biographer Ibn Isḥāq (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 (*iṭma'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 (*istaḥkama amr al-Islām*). Ritual prayer was instituted (*qāmat*); alms-giving and fasting, prescribed (*furiḍat*). Legal punishments (*ḥudūd*) were instituted; and halal and haram, determined (*furiḍa*). *Islam took up residence* (tabawwa') *amongst them*.[42]

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.

[42]Muḥammad Ibn Isḥāq, *Sīrat rasūl Allāh*, as redacted by Muḥammad `Abd al-Mālik Ibn Hishām (d. 218/834), in idem, *al-Sīra al-nabawiyya*, ed. Sa`īd Muḥammad al-Laḥḥām, 2nd ed., 4 vols. (Beirut: Dār al-Fikr, 1418/1998), 2: 116 (my emphasis); trans., *The Life of Muhammad: A Translation of Isḥāq's* Sīrat Rasūl Allāh, trans. A. Guillaume (Oxford: Oxford University Press, 1955), 235; cf. Campo, *The Other Sides of Paradise*, 52-53. In Chapter Six, Part 2:2 below, the historical events mentioned in this passage are either explained or explained more fully. On the designation of the Prophet's house as a "house-cum-mosque", see below, p. 61, and Chapter Six, Part 2:2.

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.[43]

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."[44] 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

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[43]*The Meaning of the Holy Qur'ān*, 24:27-29; translation modified. See also the rules for entering the Prophet's household (*buyūt al-nabī*), 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.

[44]Abū Zakariyā Yaḥyā b. Sharaf al-Nawawī al-Dimashqī (d. 676/1278), *al-Adhkār al-Nawawiyya* (Beirut: Dār al-Fikr, 1414/1994), 22-23, hadith no. 54. A sound (*ṣaḥīḥ*) hadith, collected by Abū Dāwud, al-Tirmidhī, Ibn Mājah, Ibn Ḥanbal, and al-Nisā'ī. A.J. Wensinck et al., *Concordance et indices de la tradition musulmane: Les six livres, le Musnad d'al-Dārimī, le Muwatta' de Mālik, le Musnad de Ahmad ibn Hanbal*, 8 vols. (Leiden: E.J. Brill, 1933-1988), 2: 341. In al-Nawawī's chapter "What he [the believer] says on leaving his house," my source of the hadith, four other "threshold" hadiths are also listed. Al-Nawawī, *al-Adhkār*, 22-23.

(*thumma la-yusallim `alā ahlihi*).[45]

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

> 1) A man from the Banī `Āmir sought entry to the Prophet (*ista'dhana `alā al-nabī*), 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'dhān*). 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 (*iṭṭla`a*) the Prophet's chambers (*ḥujar*) through a hole [in the wall]. The Prophet held a comb (*midran*)

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[45]Al-Nawawī, *al-Adhkār*, 24, hadith no. 58. A fair (*ḥasan*) hadith, collected by Abū Dāwud. Cf. Wensinck et al., *Concordance et indices de la tradition musulmane*, 7: 408. In al-Nawawī's chapter "What he [the believer] says on entering his house," my source of the hadith, five other hadiths are also listed.

[46]Al-Nawawī, *al-Adhkār*, 260, hadith no. 742. A sound hadith, collected by Abū Dāwud and Ibn Ḥanbal. Wensinck et al., *Concordance et indices de la tradition musulmane*, 7: 408.

[47]Al-Bukhārī, *Saḥīḥ al-Bukhārī*, k. al-isti'dhān, bāb 17, raqm 6250. A sound hadith, also collected by Abū Dāwud and Ibn Ḥanbal. Wensinck et al., *Concordance et indices de la tradition musulmane*, 2: 140.

[48]See, for example, Sulaymām b. al-Ath`ath Abī Dāwud, *Sunan Abī Dāwud*, ed. Muḥammad `Abd al-`Azīz al-Khālidī, 3 vols. (Beirut: Dār al-Kutub al-`Ilmiyya, 1416/1996), k. al-adāb, bāb 137 et seq.; also al-Nawawī, *al-Adhkār*, bāb al-isti'dhān, pp. 259-262.

> 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'dhān* was promulgated for the sake of [illicit] looking (*Innamā ju`ila al-isti'dhān min ajl al-baṣar*)."[49]

The wider reason and context, is that the house is a sacred enclave or *ḥaram*, scarcely less inviolable than other enclaves held sacred in Muslim thought, including the *ḥarams* of Mecca and Medina (*al-Ḥaramayn*), and the *zāwiya* of Moulay Idrīs II in Fes:[50]

> The Prophet said: "The house is a *ḥaram*. Whoever enters your *ḥaram* [without permission], kill him! (*Al-dār ḥaram fa-man dakhala `alayka ḥaramaka fa-uqtulhu*)."[51]

It is beyond the scope of the present dissertation to discuss all the reasons why the house is a *ḥaram*, 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

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[49]Al-Bukhārī, *Saḥīḥ al-Bukhārī*, k. al-isti'dhān, bāb 11, raqm 6241. A sound hadith, also collected by Muslim, al-Nisā'ī, Ibn Ḥanbal, and al-Tirmidhī. Wensinck et al., *Concordance et indices de la tradition musulmane*, 1: 185. Related hadiths include: "Whoever peers (*aṭṭala`*) into a house without permission, [the occupants may] gouge and blind in the eye"; "If the eye (*al-baṣar*) goes in, no permission [to go in]"; "*Isti'dhān*: Because of the gaze (*Innamā al-isti'dhān min al-naẓar*)." Abū Dāwud, *Sunan Abī Dāwud*, k. al-adāb, bāb fī al-isti'dhān 136, arqām 5172, 5173 and 5174.

[50]On architectural meanings of *ḥaram*, both in general and in Morocco, see Mohamed El Mansour, "The Sanctuary (Ḥurm) in Precolonial Morocco," in Rahma Bourqia and Susan Gilson Miller (eds.), *In the Shadow of the Sultan: Culture, Power, and Politics in Morocco*. Harvard Middle Eastern Monographs XXXI (Cambridge: Harvard Center for Middle Eastern Studies, 1999), 49-73; Bennett, "Islam," 93-98; Leslie P. Peirce, "Beyond Harem Walls: Ottoman Royal Women and the Exercise of Power," in Dorothy O. Helly and Susan M. Reverby (eds.), *Gendered Domains: Rethinking Public and Private in Women's History. Essays from the Seventh Berkshire Conference on the History of Women* (Ithaca: Cornell University Press, 1992), 43; Edward Westermarck, *Ritual and Belief in Morocco*, 2 vols. (London: Macmillan and Co., Ltd., 1926), 1: 64.

[51]Aḥmad Ibn Ḥanbal (d. 241/855), *al-Musnad li-al-Imām Aḥmad Ibn Ḥanbal*, ed. Ṣidqī Muḥammad Jamīl al-`Aṭṭār, 2nd ed., 10 vols (Beirut: Dār al-Fikr, 1414/1994), 8: 317, hadith no. 22836; (Boulaq edition, 5: 326.)

alignment between *all* believing women and domestic space.[52] In the case of ritual worship (*ṣalāt*), for example, women are encouraged to observe this in the house;[53] they may only leave for the mosque with their husband's or father's permission.[54] 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.[55] Just as in the Qur'an, then, the Hadith defines the house as "a moral center".[56] But now all believing women are subject to its rules.

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[52]Cf. Barbara Freyer Stowasser, "The Status of Women in Early Islam," in Freda Hussain (ed.), *Muslim Women* (London: Croom Helm, 1984), 35. On the seclusion of women before the advent of Islam, see especially Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven: Yale University Press, 1992), 11-37, 55; also Eleanor Abdella Doumato, "Seclusion," in *The Oxford Enclyclopedia of the Modern Islamic World*, ed. John L. Esposito (New York: Oxford University Press, 1995), 19. The Qur'anic verses announcing the seclusion of the Prophet's wives are 33:32-34; cf. Stowasser, "The Status of Women," 23-24; and Leila Ahmed, "Women and the Advent of Islam," in *Signs* 11, no. 4 (1986): 665-691, reprinted in Bryan S. Turner (ed.), *Islam: Critical Concepts in Sociology. Vol. III: Islam, Gender and the Family* (London: Routledge, 2003), 58-60. Although the Qur'anic verses announcing seclusion seem unambiguously directed at the Prophet's wives only, it is far from unknown for Muslim commentators to generalise their applicability to all believing women. This phenomenon is treated in Mostafa Hashem Sherif, "What is *Ḥijāb*?," in *The Muslim World* 77, nos. 3-4 (1987): 158-163; and Barbara Freyer Stowasser, "The *Ḥijāb*: How a Curtain Became an Institution and a Cultural Symbol," in Asma Afsaruddin and A. H. Mathias Zahniser (eds.), *Humanism, Culture, and Language in the Near East: Studies in Honor of Georg Krotkoff* (Winona Lake, Indiana: Eisenbrauns, 1997), 97-98. For a recent example of the phenomenon, see `Abdul Rahman I. Doi, *Woman in Shari'ah (Islamic Law)* (London: Ta-Ha Publishers Ltd., 1989), 25-26.

[53]E.g. "The Prophet said: 'Do not prohibit mosques to your womenfolk; but their homes (*buyūt*) are better for them.'" Abū Dāwud, *Sunan Abī Dāwud*, k. al-ṣalāt, bāb mā jā' fī 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, *Sunan Abī Dāwud*, k. al-ṣalāt, bāb tashdīd fī dhālika 53, raqm 570.

[54]E.g. "God's Prophet said: 'If your womenfolk ask your permission to go the mosques, allow them.'" Abū al-Ḥusayn Muslim Ibn al-Ḥajjāj al-Qushayrī, *Ṣaḥīḥ Muslim bi-sharḥ al-Nawāwī*, ed. `Iṣṣām al-Ṣabābṭī et al., 11 vols. (Cairo: Dār al-Ḥadīth, 1415/1994), k. al-ṣalāt, bāb khurūj al-nisā' ilā al-masājid 30, raqm 135. See also arqām 134 and 136-140. Cf. Wensinck et al., *Concordance et indices de la tradition musulmane*, 6: 439-440. For early occasions of permission being refused or all but withheld, see Muḥammad Ibn Sa`d (d. ca 231/845), *Kitāb al-Ṭabaqāt al-kabīr*, ed. Eduard Sachau, 9 vols (Leiden: E. J. Brill, 1904-), 8: 195; and Nabia Abbott, *Aishah: The Beloved of Mohammed* (Chicago: University of Chicago Press, 1942; reprinted, London: Saqi Books, 1998), 88.

[55]Cf. Stowasser, "The Status of Women," 34-36; and Ahmed, *Women and Gender in Islam*, 60-61.

[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"), *ḥuram* (sg. *ḥurma*), and *ḥirmiyyāt* (sg. *ḥirmiyya*), come to connote the wives and/or the women of the family.[58] "Bint ad-dār" and "mūlat dār" 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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[57]Fadwa El Guindi, *Veil: Modesty, Privacy and Resistance* (Oxford: Berg, 1999), 85; A. De Biberstein Kazimirski, *Dictionnaire Arabe-Français* (Paris: Masionneuve et Cie, Éditeurs, 1860; reprint, Beirut: Librairie du Liban, n.d.), 1: 414 (entry "ḥ-r-m")

[58]A. Kevin Reinhart, "Ḥarām," in *The Oxford Enclyclopedia of the Modern Islamic World*, 101; Ibn Manẓūr, *Lisān al-`arab*, 12: 121-125 (entry "ḥ-r-m"); Reinhart Pieter Anne Dozy, *Supplément aux dictionnaires arabes* (Leiden: E.J. Brill, 1881; reprint, Beirut: Librairie du Liban, 1981), 1: 278 (entry "ḥ-r-m"); Kazimirski, *Dictionnaire Arabe-Français*, 1: 414-415 (entry "ḥ-r-m").

[59]Cf. Boughali, *La représentation de l'espace chez le marocain illetré:*, 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 *mūlat dār*, namely, *mawalin dār*, 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.[61] 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.[62] In southern Morocco, the Awlad Bou `Azīz 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 *`ärs d-dār*, 'the wedding of the house', to which the men and women of the village are invited."[63] 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."[64] 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."[65]

In Fes, too, according to *Rawḍ al-qirṭās* 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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[61]Cf. Eliade, *The Sacred and the Profane*, 25; and Edmund Leach, "Anthropological Approaches to the Bible During the Twentieth Century," in idem and D. Alan Aycock, *Structuralist Interpretations of Biblical Myth* (Cambridge: Cambridge University Press, 1983), 15-16.

[62]Bourdieu, "The Kabyle House," 146, 148. See also ibid., 147 and 149; and idem, "The Sense of Honour," in idem, *Algeria 1960*, 122 n. 25. Cf. some Moroccan equivalents in Boughali, *La représentation de l'espace*, 19-20.

[63]Westermarck, *Ritual and Belief in Morocco*, 1: 316.

[64]Ibid., 1: 317.

[65]Ibid., 1: 315. See also the discussion of the social practices involving the Syrian "`atabe" (*`ataba*), a distinctively paved interior threshold located just before main rooms, in Depaule, *À travers le mur*, 69-70, 285.

globes (*tafāfiḥ*), were placed above the first mihrab of the Al-Qarawiyyīn 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 (*sulaḥfāh*) 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-Qarawiyyīn 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'wā al-Shayāṭīn*), blameworthy

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[66]*Rawḍ al-qirṭās*, 72, trans., 56; *Zahrat al-ās*, 54, trans., 97.

[67]*Rawḍ al-qirṭās*, 72, trans., 56; *Zahrat al-ās*, 54-55, trans., 97-98. On the *`anaza* of the Al-Qarawiyyīn, see *Zahrat al-ās*, 73, trans., 141-142; Terrasse, *La mosquée Al-Qaraouiyin à Fès*, 65; and Tazi, *La Mosquée Al Qaraouyyine*, 1: 73. On the *`anaza* in general, see Marçais, *Manuel d'art musulman*, 1: 313; and G. C. Miles, "`Anaza," in *Encyclopaedia of Islam*, 2nd ed., 482. On the subject of talismen in pre-Islamic and Islamic architecture, see Giovanna Calasso "Les remparts et la loi, les talismans et les saints: La protection de la ville dans les sources musulmanes médiévales," in *Bulletin D'Études Orientales* 44, Special Issue: Sciences occultes et Islam (1992): 83-104; also Beck, *L'image d'Idrīs II*, 252-254.

[68]*Rawḍ al-qirṭās*, 74, trans., 58; *Zahrat al-ās*, 65-66, trans., 121-122.

[69]Although 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.

[70]Hillenbrand, *Islamic Architecture*, 35; see also Tazi, *La Mosquée Al Qaraouyyine*, section "ḥaram al-Qarawiyyīn," 1: 98-99.

[71]Cf. the involved threshold comportment expected of a pilgrim to the *zāwiya* of Moulay Idrīs II, as excerpted in Salmon, "Le cultre de Moulay Idrīs," 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-Qarawiyyīn'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. *Rawḍ al-qirṭās*, 72, trans., 56; *Zahrat al-ās*, 54-55, trans., 97-98.

(*makrūh*) to stand on in prayer.[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 Khiḍr, enter a village and come across a collapsing wall (*wajada fi-hā jidār*^{an} *yurīdu an yanqaḍḍa*).[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 (*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.[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.[75]

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[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 *al-Murshid al-mu`ayyan `alā al-ḍarūrī min `ulūm al-dīn* by the Fes-based scholar Ibn `Āshir (d. 765/1363), as commented on by another Fes-based scholar, Miyāra (d. 1072/1662), in Muḥammad b. Aḥmad b. Muḥammad al-Fāsī al-shahīr bi-Miyāra, *Mukhtaṣar al-durr al-thamīn wa al-mawrid al-mu`ayyan* (Casablanca: Dār al-Ma`rifa, 1421/2001), bayt 167 (k. al-ṣalāt), pp. 171-172.

[73]18:77.

[74] 18:82.

[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 (*dalīl*) 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.[76]

The Book of Walls. However, a review of *The Book of Walls*, and an analysis of a broad sample of five Qur'anic exegeses (sg. *tafsīr*), indicate that it does not. This is surprising in the latter case, but unsurprising in the former. If, as Fatna Sabbah has argued, women belong to the unconscious of Muslim culture, one would not expect the gendered aspects of walls to be theorized by that culture. Fatna A. Sabbah, *Woman in the Muslim Unconscious*, trans. Mary Jo Lakeland (New York: Pergamom Press, 1984), passim. The exegeses used for the analysis comprised Abū Ja`far Muḥammad b. Jarīr al-Ṭabarī (d. 310/923), *Jami` al-bayān `an ta'wīl āy al-Qu'rān al-ma`rūf Tafsīr al-Ṭabarī*, ed. Maḥmūd Shākir, 30 vols. in 15 bindings (Beirut: Dār Iḥyā' al-Turāth al-`Arabī, 1421/2001), 16: 9 et seq.; Muḥyī al-Dīn Muḥammād b. `Alī Ibn `Arabī (sic), *Tafsīr Ibn `Arabī*, 2 vols. (Beirut: Dār al-Ṣadir, n.d.), 1: 407-409; `Imād al-Dīn Abī al-Fidā' Ismā`īl Ibn Kathīr (al-Qurashī al-Dimashqī, d. 774/1373), *Tafsīr al-Qur'ān al-`aẓīm, wa yalīhu Kitāb Faḍā'il al-Qur'ān*, 4 vols. (Beirut: Dār Iḥyā' al-Turāth al-`Arabī, 1417/1997), 3: 88-90; al-Jalālayn (Jalāl al-Dīn al-Maḥallī, d. 864/1459, and Jalāl al-Dīn al-Suyūṭī, d. 911/1505), *Tafsīr al-Jalālayn bi-hāmish al-Qur'ān al-karīm mudhayyal*^{an} *bi-al-lubāb al-nuzūl li-al-Suyūṭī*, 2nd ed. (Beirut: Dār al-Jīl, 1415/1995), 302; and Muḥammad al-Alūsī al-Baghdādī (d. 1271/1854), *Rūḥ al-ma`ānī fī tafsīr al-Qur'ān al-`aẓīm wa al-sab` al-mathānī*, 15 vols. (Beirut: Dār al-Fikr, 1408/1987), 8: 6 et seq.

[76]On the theoretical ideal of early, medieval, and early modern seclusion of Muslim women, see Cristina de la Puente, "Juridical Sources for the Study of Women: Limitations of the Female's Capacity to Act According to Mālikī Law," in Manuela Marín and Randi Deguilhem (eds.), *Writing the Feminine: Women in Arab Sources* (London: I.B. Tauris Publishers, 2002), esp. 98-106; Mounira Chapoutot-Remadi, "Femmes dans la ville Mamlūke," in *Journal of the Economic and Social History of the Orient* 38, no. 2 (1995): 145-162; Huda Lutfi, "Manners and Customs of Fourteenth-Century Cairene Women: Female Anarchy versus Male Shar`i Order in Muslim Prescriptive Treatises," in Nikki R. Keddie and Beth Baron (eds.), *Women in Middle Eastern History: Shifting Boundaries in Sex and Gender* (New Haven: Yale University Press, 1991), passim; and Nora Seni, "Ville ottomane et représentation du corps féminin," in *Les Temps Modernes* 41, no. 456-457 (July - Aug. 1984): 66-71. On the practical impossibility of achieving this ideal, see Lutfi, "Manners and Customs of Fourteenth-Century Cairene Women," passim; Chapoutot-Remadi, "Femmes dans la ville Mamlūke," passim; Victoria Aguilar and Manuela Marín, "Las mujeres en el espacio urbano de Al-Andalus," in Julio Navarro Palazón (ed.), *Casas y palacios de al-Andalus* (Barcelona: Lunwerg Editores S.A., 1995), 39; and Yvonne J. Seng, "Invisible Women: Residents of Early Sixteenth-Century Istanbul," in Gavin R.G. Hambly (ed.), *Women in the Medieval Islamic World: Power, Patronage, and Piety* (New York: St. Martin's Press, 1998), 241-265; María Luisa Ávila, "Women in Andalusi Biograhical Sources," in Marín and Deguilhem (eds.), *Writing the Feminine*, 155-159; see also below. On the related issue of family wealth and social status as factors influencing the degree or absence of seclusion, see D. Fairchild Ruggles, "Vision and Power: An Introduction," in idem (ed.), *Women, Patronage, and Self-Representation in Islamic Societies* (Albany: State University of New York Press, 2000), 8; Seng, "Invisible Women," 243; Aguilar and Marín, "Las mujeres en el espacio urbano de Al-Andalus," 39-40; and Judith E. Tucker, "The Arab Family in History: 'Otherness' and the Study of the Family," in idem (ed.), *Arab Women: Old Boundaries, New Frontiers* (Bloomington: Indiana University Press, 1993), 199-205.

In the binary logic of the wall, "respectable" Muslim women (sg. *muḥṣana*) 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 (*qāḍī*) there, Abū al-Ḥasan al-Ṣaghīr (d. 719/1319):

> At the time when Shaykh Sīdī Abī al-Ḥasan al-Ṣaghīr became qadi of Fes, the women of the city (*nisā' al-balad*) used to leave [their houses] a great deal. So he placed agents (*a`wān*) on every main thoroughfare (*shāri`*) to prohibit their exit.[78] Fearing for the corruption (*mafsad*a) of the agents through their direct contact with the women (*li-mubāsharatihinna*), he put vats of glue (*maḥābis min maghrā*) on these thoroughfares for the agents to soil (*yalṭakhūna*) the clothes of those women who ventured out. The women stopped [going out].[79]

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[77]For a full definition of the Qur'anic and legal term *muḥṣana*, see J. Burton, "Muḥṣan," in *Encyclopaedia of Islam*, 2nd ed., 474-475. On the "inside/outside" binarism of the house wall with respect to medieval seclusion of women, see the preceding section, and also Guichard and Van Staëvel, "La casa andalusí," 47; cf. the discussion of contemporary seclusion of women in Christian Zarka, "Maison et société dans le monde arabe," in *L'Homme* XV, no. 2 (avr.-juin 1975): 92-99. Whilst the wall establishes an inside and an outside, this should not be translated into the related binarism of private and public space. As a number of studies have shown, the latter does not hold true for Muslim urban culture; a third, intermediate space exists, namely, the semi-private, communal space of the neighbourhood, wherein women may circulate relatively freely. See, for example, Suad Joseph, "Women and the Neighborhood Street in Borj Hammoud, Lebanon," in Lois Beck and Nikki Keddie (eds.), *Women in the Muslim World* (Cambridge: Harvard University Press, 1978), 544-551; Nawal al-Messiri Nadim, "The Concept of the Ḥāra: A Historical and Sociological Study of Al-Sukkariyya," in *Annales Islamologiques* 15 (1979): 342; Abu-Lughod, "The Islamic City," 168-169; André Raymond, "Espaces publics et espaces privés dans les villes arabes traditionnelles," in *Maghreb-Machrek* 123 (1989): 194-201; and Dina Rizk Khoury, "Slippers at the Entrance or Behind Closed Doors: Domestic and Public Spaces for Mosuli Women," in Madeline C. Zilfi (ed.), *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era* (Leiden: Brill, 1997), 114-117; cf. Lidia Sciama, "The Problem of Privacy in Mediterranean Anthropology," in Shirley Ardener (ed.), *Women and Space: Ground Rules and Social Maps* (London: Croom Helm, 1981), 89-111.

[78]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 *shāri`*, 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.

[79]Cited in Abī al-`Abbās Aḥmad b. Yaḥyā al-Wansharīsī (d. 914/1509), *al-Mi`yār al-mughrib wa al-jāmi` al-mu`rib `an fatāwā ahl Ifrīqiya wa al-Andalus wa al-Maghrib*, 13 vols. (Rabat: Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya li-al-Mamlaka al-Maghribiyya, 1401-1404/1981-1983), 2: 499; cf. Vincent Lagardère, *Histoire et société en occident musulman au moyen âge: Analyse du* Mi`yār *d'Al-Wansharīsī* (Madrid: Casa de Velázquez en

Marinid and Waṭṭasid Fes was also no exception to women's use of the *ḥijāb* (veil)[80] as a mobile extension of the house, permitting them to leave the house and neighbourhood because covered and largely unrecognisable;[81] 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 Fās fī māhā wa hawāhā wa talḥīfat nisāhā*)";[82] and in Leo Africanus' description of Fes, he recalls that when Fassi women "goe

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collaboration avec le Consejo Superior de Investigaciones Científicas, 1995), 46. For examples of similar policing strategies in Ottoman cities, see Seni, "Ville Ottomane," 66-69. Additional evidence of the seclusion of women in Fes is provided by the proverb or maxim cited in Chapter One: "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."

[80]Unless qualified otherwise, in this dissertation my use of the term *ḥijāb* refers to its literal, etymological meaning, namely, screen, partition, or curtain, and hence also veil; not to its institutional connotations, including women's seclusion, self-effacement and modest comportment. See Gertrude H. Stern, *Marriage in Early Islam* (London: The Royal Asiatic Society, 1939) 108-126; J. Chelhod, "Ḥijāb," in *Encyclopaedia of Islam*, 2nd ed., 359-361; Sherif, "What is *Ḥijāb*?," 151-163; Fadwa El Guindi, "Ḥijāb," in *The Oxford Enclyclopedia of the Modern Islamic World*, 108-110; and Stowasser, "The *Ḥijāb*," 87-104. For additional uses of *ḥijāb*'s literal meaning, and treatment of its institutional connotations, see immediately below (screen); Chapter Five (screen, self-effacement, women's seclusion); and Chapter Six (women's seclusion). On the varieties of veil in Muslim culture, and the inadequacy of the one word "veil" to do them justice, see see El Guindi, "Ḥijāb," 108; and idem, *Veil*, 49-157; see also Stern, *Marriage*,, 110-111.

[81]On the veil as an extension of the house, see Hanna Papanek, "Purdah: Separate Worlds and Symbolic Shelter," in *Comparative Studies in Society and History* 15 (1973): 295; Sheila K. Webster, "*Ḥarīm* and *Ḥijāb*: Seclusive and Exclusive Aspects of Traditional Muslim Dwelling and Dress," in *Women's Studies International Forum* 7, no. 4 (1984): 251-252; and Míkel de Epalza, "La mujer en el espacio urbano musulmán," in María J. Viguera (ed.), *La mujer en Al-Andalus: Reflejos históricos de su actividad y categorías sociales* (Madrid: Ediciones de la Universidad Autónoma de Madrid; Seville: Editoriales Andaluzas Unidas, 1989), 58. On the distinction between house and neighbourhood, see the note on p. 64 above. On other instances in Muslim history of bans on women's exit, see Lutfi, "Manners and Customs of Fourteenth-Century Cairene Women," 101-102. Finally, on the proxemics of veiling and how it is possible for a fully veiled woman to be recognised by her close companions and/or family, see Lila Abu-Lughod, *Veiled Sentiments: Honor and Poetry in a Bedouin Society* (Berkeley: University of California Press, 1986), 159-165, and El Guindi, *Veil*, 97-115.

[82]Cited in al-Ḥussayn b. `Alī b. `Abd Allāh, *Qiṣāṣ wa amthāl min al-Maghrib*, 2 vols. (Casablanca: Maṭba`at al-Najāḥ al-Jadīda, 1996-1999), 2: 386, raqm 1810. Both Dozy and Ibn `Abd Allāh gloss the women's mantle or *talḥīfa* as the "haik" (*ḥayk*), the large white cotton or woollen blanket that covers all but the woman's face. Ibid., 2: 386-387; Dozy, *Supplément aux dictionnaires arabes*, 2: 527. An interesting old photograph of Fassi women wrapped in this garment, standing next to the city walls watching a royal procession, is reprinted in Secret, *Les sept printemps de Fès*, 124. In the photograph, the juxtaposition of the women and the walls suggests an inalienable unit.

abroad, they put on certaine 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."[83] 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."[84]

In these examples, and across medieval Muslim culture, the *ḥijāb* is a continuation of the binary logic of the wall: it is like a wall.[85] 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,[86] 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-buyūt*)."[87] The *ḥijāb* is like a wall, because in the Qur'an and medieval Muslim culture, the functions of *ḥijāb* are those of a wall: screen and threshold.

As a screen in the Qur'an, *ḥijāb* 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).[88] 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, *À travers le mur*, 30.

[86]Depaule, *À travers le mur*, 30-31.

[87]Aḥmad b. `Abd al-Ḥalīm Ibn Taymiyya, *Ḥijāb al-mar'a wa libāsuhā fi al-ṣalāt*, ed. Muḥammad al-Albāni, 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 *ḥijāb* 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, *ḥijāb* 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 *ḥijāb* 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, *ḥijāb* is a barrier that renders humans insensitive to divine reality.[93] Reminiscent of one of its functions in the Qur'an (41:5), *ḥijāb* 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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[89]E.g. Ajmal (Sulaymān b. `Umar al-`Ajilī al-Shāfi`ī) (d. 206/822), *al-Futuḥāt al-Ilāhiyya*, 4 vols. (Beirut: Dār al-Fikr, 1415/1994), 2: 42; al-Ṭabarī, *Jami` al-bayān*, 8: 222; Ibn Kathīr, *Tafsīr al-Qur'ān al-`aẓīm*, 2: 191; and Nāṣir al-Dīn Abī Sa`īd `Abd Allāh b. `Umar b. Muḥammad al-Shirāzī al- Bayḍāwī (d. 791/1389), *Tafsīr al-Bayḍāwī al-musammā Anwār al-tanzīl was asrār al-ta'wil*, 2 vols. (Beirut: Dār al-Kutub al-`Ilmiyya, 1420/1999), 1: 340.

[90]See Toshihiko Izutsu, *God and Man in the Koran: Semantics of the Koranic Weltanshauung* (Tokyo: The Keio Institute of Cultural and Linguistic Studies, 1964), 176.

[91]See, for example, `Abd al-Raḥmān Ibn Khaldūn (d. 809/1406), *Muqaddima* (Cairo: al-Maktaba al-Tijāriyya al-Kubrā, n.d.), 290-292; a translation is available as Ibn Khaldūn, *The Muqaddimah: An Introduction to History*, trans. Franz Rosenthal, 3 vols. (New York: Pantheon Book, 1958), 2: 111-113. See also Necipoğlu, *Architecture, Ceremonial, and Power*, 15-22, 254-257.

[92]Chelhod, "Ḥijāb," 360.

[93]Ibid., 361.

[94]Al-Ḥusayn b. Manṣūr al-Ḥallāj, cited in Louis Massignon, *La passion d'Al-Hosayn-Ibn-Mansour Al-Ḥallāj: Martyr mystique de l'Islam, exécuté à Bagdad le 26 mars 922*, 2 vols. (Paris: Paul Geuthner, 1922), 2: 700.

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 injuction to heed "God's boundaries" (*ḥudūd Allāh*) is exhorted of believers, such extensive involvement is unsurprising.[95] Observing limits would seem to be a religious requirement;[96] 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.

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[95]In the Qur'an alone, God's boundaries are mentioned fourteen times, mostly in tandem with the injunction to maintain (*aqāma, ḥāfaẓa*) and not trangress (*ta`addā, i`tadā*) them. `Abd al-Bāqī, *al-Mu`jam al-mufahris li-al-alfāz al-qur'ān al-karīm*, 248.

[96]This is drawn out well, if mawkishly, in Fatima Mernissi, *The Harem Within: Tales of a Moroccan Childhood* (London: Doubleday Books, 1994; reprinted London: Bantam Books, 1995), 1-11.

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.[1] 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 (*aṣl*) 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]On the reach of *fiqh* in societies under Islamic rule, see, inter alia, Baber Johansen, *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh* (Leiden: Brill, 1999), 1; and I. Goldziher and J. Schacht, "Fiqh," in *Encyclopaedia of Islam*, 2nd ed., 886.

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-Manẓūr (d. 711/1312) concerning the words "walls" (sg. *ḥā'iṭ*) 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-Ḥīṭān* 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'iṭ muttaṣil*);
>
> On the long wall (*al-ḥā'iṭ aṭ-ṭawīl*), 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.

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[2]Ibn Manẓūr, *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 (*iṭṭilā`*), 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-Rāmī, 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 saqfaka*)";

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-ḥā'iṭ*) 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-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? [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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[3]*Kitāb al-Ḥiṭān*, 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-Rāmī. 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.

[4]For example, the *ḥisba* discourse on the policing of market areas (sg. *sūq*). See, for instance, the neighbourbood dispute section of al-Sunāmī's *Kitāb Niṣāb al-iḥtisāb*, as studied and reproduced in Mawil Izzi Dien, *The Theory and Practice of Market Law in Medieval Islam: A Study of* Kitāb Niṣāb al-Iḥtisāb *of `Umar b. Muḥammad al-Sunāmī (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 IX: Traducción del más

urban architectural space.[5] 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 (*aḥkām*) 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 (*ḍarar*) caused by smoke from public ovens and baths, Ibn al-Rāmī cites the verse "Then watch for the day when the sky will bring forth a kind of smoke plainly visible" (44:10).[6] 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]

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antecedente de los tratados andaluces de ḥisba, por un autor andaluz," in *Al-Andalus* 22, no. 2 (1957): 291-292. On the history of the *ḥisba* institution, see Cl. Cahen and M. Talbi, "Ḥisba," in *Encyclopaedia of Islam*, 2nd ed., 485-489; and R. P. Buckley, "The *Muḥtasib*," in *Arabica* 39 (1992): 59-117. That urban environments, Muslim and other, are encodable spaces is something well treated in Rapoport, *The Meaning of the Built Environment*, esp. 57, 81-82.

[5]Cf. Abu-Lughod's comments on the "system of property laws . . . whereby a pattern of space was continually reproduced." Idem, "The Islamic City," 163.

[6]Ibn al-Rāmī, 300.

[7]Ibid., 300-301. In Ibn al-Rāmī's text, eleven Qur'anic verses are cited, only three of which have some, if any, urban architectural relevance; the other eight being of even broader import; for example, the influential but general "Hold to forgiveness, and command what is right (*khudhi al-`afwa wa amur bi-al-`urf*)" (7:199). Ibid., 276. The other verses cited by Ibn al-Rāmī are 50:9, 43:33, 23:18, 21:32, 9:107, 7:85, 7:58, 3:9, and 3:7. Ibn al-Rāmī, *al-I`lān bi-aḥkām al-bunyān: Abū `Abd Allāh Muḥammad b. Ibrāhīm al-Lakhmī Ibn al-Rāmī al-bannā'*, ed. Ferid Ben Slimane (Tunis: Centre de Publication Universitaire, 1999), 253, hereafter cited as "Ibn al-Rāmī (2)". In Ibn al-Imām's text, two

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.[8] 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 (*Idhā ikhtalaftum fi al-ṭarīq ju`ila `arḍahu sab`a adhru`*)";[10] and "Whoever wrongfully appropriates an inch of land will, [on the Day of Resurrection], be enclosed in the Seven Earths (*Man ẓalama qīd shibr min al-arḍ ṭuwwiqahu min sab`a arḍīn*)."[11] As with the Qur'an, however, these and other hadiths ultimately serve little more than a supplementary rôle.[12] The width of

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Qur'anic verses are cited: 9:107, and 21:78. Ibn al-Imām, 2: 207; cf. Appendix (1): Selected case titles and cases from *The Book of Walls*. In Ibn Sahl's text, 7:85 is cited. Abū al-Aṣbagh `Īsā Ibn Sahl al-Andalusī (d. 486/1094), *Wathā'iq fi shu'ūn li-`umrān fi al-Andalus "al-Masājid wa al-dūr" mustakhraja min makhṭūṭ al-Aḥkām al-kubrā' li-al-qāḍi Abī al-Aṣbagh `Īsā Ibn Sahl al-Andalusī,* ed. Muḥammad `Abd al-Wahhāb Khallāf (Cairo: al-Maṭba`a al-`Arabiyya al-Ḥadītha, 1983), 99, 101, hereafter cited as "Ibn Sahl". I have found no Qur'anic verses cited in *Kitāb al-Ḥiṭān*.

[8]E.g. "Do you know the rights of the neighbour? . . . You must not build to exclude the breeze from him, unless you have his permission (*A-tadrūna mā ḥaqq al-jār? . . . Wa lā tasta`mil `alayhi bi-al-binā' fa-taḥajjubu `anhu al-rīḥ illā bi-idhnihi*)." Abū Bakr Muḥammad b. Ja`far b. Muḥammad b. Sahl al-Sāmurrī al-Kharā'ṭī (d. 327/938), *Makārim al-akhlāq wa ma`ālīhā wa maḥmūd ṭarā'iqihā wa marḍīhā* (Beirut: Dār al-Fikr, n.d.), 59. Also, "A neighbour has pre-emption rights over his neighbour's property. If they share common access and the neighbour is absent, then the other should wait for his return (*Al-jār aḥaqq bi-shuf`at jārihi yantaẓiru bi-hā wa in kāna ghā'ib*[an] *idhā kāna ṭarīquhumā wāḥid*)." Majd al-Dīn al-Mubārak b. Muḥammad Ibn Athīr al-Jazarī (d. 606/1209), *Jāmi` al-uṣūl fi aḥādīth al-rasūl,* ed. `Abd al-Qādir al-Arna'ut, 5 vols. (Beirut: Dār al-Fikr, 1405/1995), 1: 582. See also the appendix "Selected Sayings of the Prophet", in Hakim, *Arabic-Islamic Cities,* 146-156.

[9]Muslim, *Ṣaḥīḥ Muslim,* k. al-musāqāa, bāb 29, raqm 136. Cited in Ibn al-Rāmī, 294; Ibn al-Imām, 2: 1 and 2: 8. See Appendix (1): Selected case titles and cases from *The Book of Walls*.

[10]Ibid., k. al-musāqāa, bāb 31, raqm 143. Cited in Ibn al-Rāmī, 430; Ibn al-Imām, 2: 145

[11]Ibid., k. al-musāqāa, bāb 30, raqm 142. Cited (with minor variations) in Ibn al-Rāmī, 398-399; Ibn al-Imām, 2: 125.

[12]It 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.[13] Furthermore, many are the occasions in *The Book of Walls* where no hadith is cited in relation to rulings;[14] the one that does get much mention is of general import, without specific bearing upon urban architectural matters.[15] 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*.[16] 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).[17]

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[13]E.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 Taghrī Birdī'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.

[14]In all of *Kitāb al-Hīṭān*, for example, I have found cited just one hadith: an account of the Prophet's companion Ḥudhayfa Ibn al-Yammān (d. 35/656) judging a quarrel (*khiṣām*) over a wall (*khuṣṣ*). *Kitāb al-Hīṭān*, 44; also cited in Ibn al-Rāmī, 276-277. The hadith is collected in Abū `Abd Allāh Muḥammad b. Yazīd al-Qazwīnī Ibn Mājah (d. 274/888), *Sunan al-ḥāfiẓ Abī `Abd Allāh Muḥammad b. Yazīd al-Qarawīnī Ibn Mājah*, ed. Muḥammad Fu'ād `Abd al-Bāqī, 2 vols. ([Cairo]: Dār Iḥyā' al-Kutub al-`Arabiyya, 1372/1952), k. al-aḥkām, bāb 18, raqm 2365.

[15]"In Islam there is no harm or return of harm (*Lā ḍarar wa lā ḍirār fī al-Islām*)." For collection details and analysis, see Chapter Four, Part Two.

[16]These orally transmitted teachings came to exert as decisive an effect on the development of law school identity and doctrine as the works traditionally attributed to the leaders themselves. Schacht, *An Introduction to Islamic Law*, 57-68; N.J. Coulson, *A History of Islamic Law*, (Edinburgh: Edinburgh University Press, 1964), 51-52; and Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th-10th Centuries C.E.* (Leiden: Brill, 1997), 23, 60. On the predominantly oral nature of early Islamic law, see Norman Calder, *Studies in Early Islamic Jurisprudence* (Oxford: Clarendon Press, 1993), passim, esp. 161-197.

[17]N. Cottart, "Mālikiyya," in *Encyclopaedia of Islam*, 2nd ed., 278-279. On Ibn al-Qāsim,

For the Hanafi school, to which *Kitāb al-Ḥiṭān* 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 Muḥammad al-Shaybānī (d. 189/804).[18] Compilations by the latter include *Kitāb al-Jāmi` al-kabīr* (The Major Collection), *Kitāb al-Jāmi` al-ṣaghīr* (The Minor Collection), and *Kitāb al-Aṣl* (The Source).[19] In conformity with other Hanafi literature of the period, in *Kitāb al-Ḥiṭān* he is commonly cited under his first name, Muḥammad.[20]

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 (*waṣayā*), 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 (*`arṣa*). Ibn al-Qāsim responds: "If what is built will harm (*ḍarar*) 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."[21] Earlier in the same chapter, Ibn al-Qāsim is asked about the division of streets and walls (*qismat al-ṭarīq wa al-jidār*). For a wall that is to be divided between two co-proprietors

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see J. Schacht, "Ibn al-Qāsim," in *Encyclopaedia of Islam*, 2nd ed., 81; on Saḥnūn, whose real name was Abū Sa`īd `Abd al-Salām b. Ḥassān b. Hilāl b. Bakkār b. Rabī`a al-Tanūkhī, see M. Talbi, " Saḥnūn," in *Encyclopaedia of Islam*, 2nd ed., 843-845.

[18]On al-Shaybānī, see E. Chaumont, "Al-Shaybānī," in *Encyclopaedia of Islam*, 2nd ed., 392-394. On Abū Yūsuf, see J. Schacht, "Abū Yūsuf," in *Encyclopaedia of Islam*, 2nd ed., 164-165. On the problematic characterisation of these two disciples as the founders of the Hanafi law school, see Melchert, *The Formation of the Sunni Schools of Law*, xxi-xxiii and 1-67.

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

[20]Cf. Chaumont, "Al-Shaybānī," 392.

[21]Saḥnūn (Abū Sa`īd `Abd al-Salām b. Ḥassān b. Hilāl b. Bakkār b. Rabī`a al-Tanūkhī), *al-Mudawwana al-kubrā li-Imām Mālik Anas al-Aṣbaḥī riwāyat al-Imām Saḥnūn b. Sa`id al-Tanūkhī `an al-Imām `Abd al-Raḥmān Ibn Qāsim*, 6 vols. (Beirut: Dār al-Fikr, 1419/1998), 5: 2569.

(*sharīkān*), he responds: "I did not hear anything from Mālik on this matter, but my opinion (*arā*) is that so long as no harm comes from it when it is divided, then it may be divided."[22] 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;[23] Ashhab (Ashhab b. `Abd al-`Azīz al-Qaysī, d. 204/819), considered the legal scholar of Egypt, and a friend of Mālik;[24] Ibn al-Mājishūn (d. 212/827), taught by both Mālik and Saḥnūn;[25] `Abd Allāh Ibn `Abd al-Ḥakam (d. 214/829), one of Mālik's companions and author of one the two earliest discrete works about walls, *Kitāb al-Qaḍā' fi al-bunyān* (The Book of Jurisdiction in Building);[26] Muṭarrif (Muṭarrif Ibn `Abd Allāh Ibn Muṭarrif, d. 220/835), a scholar of Medina taught by Mālik;[27] 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;[28] and Muḥammad Ibn Saḥnūn (d. 256/870), Saḥnūn's son and author of many works.[29]

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[22]Ibid., 5: 2560.

[23]Ibn al-Imām, 2: 16 n. 1.

[24]Ibid., 2: 11-12 n. 3.

[25]Ibid., 2: 5 n. 3.

[26]Ibid., 2: 5 n. 6; Qāḍī `Iyād (al-Qāḍī Abī al-Fāḍil `Iyād b. Mūsā al-Yaḥṣubī al-Sabtī d. 544/1149), *Tartīb al-madārik wa taqrīb al-masālik li-ma`rifat a`lām madhhab Mālik*, ed. Muḥammad Sālim Hāshim, 2 vols. (Beirut: Dār al-Kutub al-`Ilmiyya, 1418/1998), 1: 305. In a recent monograph on Ibn `Abd al-Ḥakam, Jonathan E. Brockopp has questioned Qāḍī `Iyāḍ's ascription of this work to him; he suggests that it is not a separate book (*kitāb*), but a chapter (*kitāb*) of Ibn `Abd al-Ḥakam's major compendium of law *al-Mukhtaṣār al-kabīr fi al-fiqh*. Idem, *Early Mālikī Law: Ibn `Abd al-Ḥakam and his Major Compendium of Jurisprudence* (Leiden: Brill, 2000), 62. For the purposes of the present dissertation, whether this work is a chapter or a book is immaterial. See below, Part 1:2:3.

[27]Ibn al-Imām, 2: 5 n. 4.

[28]Ibid., 2: 12 n. 1.

[29]G. Lecomte, "Muḥammad b. Saḥnūn," in *Encyclopaedia of Islam*, 2nd ed., 409.

Included, too, are `Abd al-Mālik Ibn Ḥabīb (d. 238/853), a student of Muṭarrif, Aṣbagh, and Ibn al-Mājishūn and author of an influential imitation of the *Mudawwana,* namely, *al-Wāḍiḥa fi al-sunna wa al-fiqh;*[30] and Abū `Abd Allāh Muḥammad b. Aḥmad al-`Utbī (d. 255/869), a student of Yaḥyā in b. Yaḥyā al-Laythī (d. 238/848) and author of the *Mudawwana*'s alleged supplement, the *Mustakhraja* or *`Utbiyya.*[31]

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 jum`at fihi masā'il al-abniya fi al-jidār wa nafi al-ḍirār wa al-ghurūs wa al-arḥiya, min ummahāt dawāwīn wa kutub al-muta'akhkhirīn wa nawāzil al-quḍāt wa masā'il al-muftiyyin*).[32] Also from the *Mudawwana*; the *Wāḍiḥa*; and the *`Utbiyya*; the book of `Abd Allāh Ibn `Abd al-Ḥakam; the book of Ibn Saḥnūn; the book of Ibn `Abdūs;[33] and the *Nawādir*.[34] [Also] from what notaries

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[30]Ibn al-Imām, 2: 5 n. 1; Cottart, "Mālikiyya," 278; A. Huici Miranda, "Ibn Ḥabīb," in *Encyclopaedia of Islam*, 2nd ed., 775.

[31]Ibn al-Imām, 2: 12 n. 4; Ana Fernández Félix, "al-`Utbī," in *Encyclopaedia of Islam*, 2nd ed., 945; Melchert, *The Formation of the Sunni Schools of Law*, 159.

[32]On the translation of *masā'il al-muftiyyin* as "fatwas of muftis", cf. Hallaq: "One may argue that the term '*mas'ala*'[pl. *masā'il*], which became the appellation for sub-sections in legal and other works, reflects the smallest unit of discussion revolving around a question (*su'āl*) and an answer, and these are nothing but the components of the *fatwā*." 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 *ummahāt dawāwīn* (government administration records) is based upon A. A. Duri and G. S. Colin, "Dīwān (i) and (iii)," in *Encyclopaedia of Islam*, 2nd ed., 323-327, 331-332. Regarding the translation of *nawāzil* (sg. *nāzila*) as court records, Bosworth explains: "The plural *nawāzil* figures in the title of a fairly considerable number of collections . . . put together by jurists practising law in a *maḥkama* (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 *nawāzil* y géneros relacionados en la literatura jurídica: fetuas y *masā'il*," in *Miscelánea de Estudios Árabes y Hebraicos* (Granada) 40-41, no. 1 (1991-92): 82.

[33]Muḥammad b. Ibrāhīm Ibn `Abdūs al-Qayrawānī (d. 261/874). Ibn al-Rāmī (2), 33 n. 10.

[34]*Kitāb al-Nawādir wa al-ziyādāt `alā al-Mudawwana* by Ibn Abī Zayd al-Qayrawānī (d.

follow in their legal formularies (*intakhabahu al-muwaththiqūn fi wathā'iqihim*),[35] like the notaries Ibn al-Qāsim[36] and Ibn Mughayth;[37] and from [the formulary] *al-Mutīṭiyya*.[38] And from what qadis follow of the *Aḥkām* of Ibn Abī Zamanīn;[39] the *Aḥkām* of Ibn Hishām;[40] and the *Aḥkām* of our master, the learned, the ascetic, the devout and God-fearing Abū Isḥāq Ibn `Abd al-Rafī`[41] - may God grant him success and guide him.[42]

With Ibn al-Rāmī'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*

386/996), author of the famous précis of Maliki law, *al-Risāla*.

[35]For the advanced legal knowledge required of the notary, see Émile Tyan, "Le Notariat et le régime de la preuve par écrit dans la pratique du droit musulman," in *Annales de la Faculté de Droit de Beyrouth* II (1945): 33-37 and 40-45. The formualaries' format would likely have been similar to the wall-related *wathā'iq* documents presented in Ibn al-`Aṭṭār, *Kitāb al-Wathā'iq wa al-sijillāt li-al-faqīh al-muwaththiq Muḥammad b. Aḥmad al-Umawī al-ma`rūf bi-Ibn al-`Aṭṭār (330-399 AH)* (*Formulario notarial hispano-árabe*), ed. Pedro Chalmeta and Federico Corriente (Madrid: Academia Matritense del Notariado, Instituto Hispano-Árabe de Cultura, 1983), 117-123; and Ben Hamouche, *Fiqh al-`umrān al-islāmiyya*, passim.

[36]`Alī b. Yahyā Ibn Qāsim al-Jazīrī (d. 585/1189). Ibn al-Rāmī (2), 33 n. 13.

[37]Yūnis b. Muḥammad Ibn Mughayth (d. 429/1037). Ibid., 33 n. 14

[38]Authored by`Alī b. `Abd Allāh al-Anṣārī al-Mutīṭī (d. 570/1174). Ibid., 33 n. 15.

[39]Ibn Abī Zamanīn of Andalusia (d. 399/1008), attributed with the authorship of *al-Muntakhab fi al-aḥkām*. Ibid., 33 n. 16. For examples of this text, see María Arcas Campoy, "Algunas consideraciones sobre los tratados de jurisprudencia Māliki de Al-Andalus," in *Miscelánea de Estudios Árabes y Hebraicos* 37 (1988): 14, 21.

[40]Ibn Hishām of Cordoba (d. 606/1209), author of the extant *Mufid li-al-hukkām* (The Judges' Mentor). Ibid., 15.

[41]Ibn `Abd al-Rafī` (d. 733/1332), the chief qadi of Tunis, author of the extant *Mu`īn al-quḍāt wa al-ḥukkām* (The Qadis' and Judges' Aide); also Ibn al-Rāmī's teacher in legal matters, and effectively his employer. Ibn al-Rāmī (2), 33 n. 18.

[42]Ibn al-Rāmī, 274-275.

al-Ḥīṭān; 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-araḍīn wa al-dūr* (The Book of Jurisdiction, Terrains, and Houses).[43] 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;[44] for the evidence available suggests that the more regular form of the genre is one of chapters (sg. *kitāb, bāb*), sections (sg. *faṣl*), 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 *aḥkām*) of the type mentioned by Ibn al-Rāmī: the *Aḥkām*-titled works;[45] or compilations of muftis' fatwas, of the type implied by him.[46] 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-bunyān,* was not a book (*kitāb*) but a chapter (also *kitāb*) of a legal compilation, albeit not an *aḥkam* or fatwa one.[47] The second of these two texts,

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[43]Abū al-Walid Muḥammad Ibn Rushd, *Kitāb al-Qaḍā' wa al-araḍīn wa al-dūr* (Bibliothèque Générale à Rabat, MS no. 424).

[44]Apart from the works already mentioned in this dissertation, other discrete works of the genre include: Muḥammad al-Barūdī (d. 1247/1831), *Fatḥ al-raḥmān fi mas'alat al-tanāzu` fi al-bunyān* (The Victory of God in the Matter of Disputes in Walls), Bibliothèque Nationale de Tunis, MS no. 3933; and Abū `Abd Allāh Muḥammad Ibn Ḥassan Bayrām I (d.1318/1900), *Risālat fi al-ḥā'iṭ al-munhadim* (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. `Abd Allāh al-Zubayrī (d. 397/989), *Kitāb al-Abniya* (The Book of Buildings); and Muḥammad b. Ibrahīm Ibn `Abdūs (b. Bashīr, d. 260/874), *Kitāb al-Dūr* (The Book of Houses). 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 `Iyād, *Tartīb al-madārik,* 1: 434. To the best of my knowledge, the first scholar to consider these works a genre was the Tunisian Moncef M'halla 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.

[45]On this type of compilation, see J. Schacht, "Aḥkām," in *Encyclopaedia of Islam,* 2nd ed., 257; and Bosworth, "Nāzila," 1052.

[46]See immediately below for discussion of this type of compilation.

[47]See the relevant fotonote to this work, Ibn `Abd al-Ḥakam's *al-Mukhtaṣar 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 Dīnār's *Kitāb al-Jidār*, was perhaps the same.[48] Ibn Sahl's (d. 486/1094) text "al-Masājid wa al-dūr (Mosques and Houses)" certainly belongs to an *aḥkam* 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 (*ḍamma*) his wall to the wall of his neighbour";[55] "On overlooking (*iṭṭilā`*) houses from [a]

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[48]Like Ibn `Abd al-Ḥakam's *Kitāb al-Qaḍā' fi al-bunyān*, this work is cited by Qāḍī `Iyād. Qāḍī `Iyād, *Tartīb al-madārik*, 1: 375. It should be emphasised that, in both cases, there is no positive evidence to doubt Qāḍī `Iyād's references to them as discrete works.

[49]To the best of my knowledge, the only edited version of *al-Aḥkām al-kubrā* was originally presented as the editor's doctoral thesis at St. Andrew's University: Abū al-Aṣbagh `Īsā Ibn Sahl b. `Abd Allāh al-Asdī al-Jiyānī, *Diwan al-Aḥkām al-kubrā: al-Nawāzil wa al-a`lām li-Ibn Sahl*, ed. Rashīd al-Na`īmī, 2 vols. (Riyad: R. al-Na`īmī, 1997).

[50]The chapter (*kitāb*) "al-Qaḍā' fī al-bunyān (The Book of Jurisdiction in Building)" of his *Kitāb al-Nawādir wa al-ziyādāt*. Abū Muḥammad `Abd Allāh b. `Abd al-Raḥmān Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa-al-ziyādāt: `Ala´ mā fi al-Mudawwana min ghayrihā min al-ummahāt*, ed. `Abd al-Fattāḥ Muḥammad al-Ḥulw et al., 15 vols. (Beirut: Dār al-Gharb al-Islāmī, c 1999), 11: 93-112. The case titles of this chapter are translated and listed in Nejmeddine, "La rue dans la ville de l'Occident musulman médiéval," 278-280.

[51]Two chapters (sg. *bāb*) of his *Fuṣūl al-aḥkām*: "Al-Qismā bayna al-shurakā wa ijārat al-qāsim wa kātib al-wathīqa wa jāmi` al-da`āwā fī al-judrāt (The division of [goods and chattels] between partners; the hire of [those qualified to make and record divisions]; and all claims regarding walls);" and "Fī bayān aḥkām al-ḍarar wa ḥarīm al-ābār wa aḥkām al-hibāt wa al-aḥbās wa al-ṣadaqāt (On the elucidation of judgements [regarding] harm; the inviolable perimeters of wells; gifts; acts of mortmain; and charitable donations)." Abū al-Walīd Sulaymān b. Khalaf al-Bājī, *Fuṣūl al-aḥkām wa bayān mā maḍā `alayhi al-`amal `and al-fuqahā´ wa al-ḥukkām*, ed. al-Bātūl Ibn `Alī (Rabat: Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya li-al-Mamlaka al-Maghribiyya, 1410/1990), 315-348.

[52]The section "al-Ḥā'iṭ al-mā'il (The Leaning Wall)" of his *Tabṣirat al-Ḥukkām*. Burhān al-Dīn Ibrāhīm b. `Alī b. Abī al-Qāsim b. Muḥammad Ibn Farḥūn, *Tabṣirat al-ḥukkām fi uṣūl al-aqḍiya wa manāhij al-aḥkām*, ed. Ṭaha `Abd al-Ra'ūf Sa`d, 2 vols. in 1 (Cairo: Maktabat al-Kulliyyāt al-Azhariyya, 1406/1986), 2: 339-340.

[53]Wael B. Hallaq, "From *Fatwās* to *Furū`*: Growth and Change in Islamic Substantive Law," in *Islamic Law and Society* 1 (1994): 43.

[54]Abū al-Walid Muḥammad b. Aḥmad b. Aḥmad Ibn Rushd, *Fatāwā Ibn Rushd*, ed. al-Mukhtār b. Ṭāhir al-Talīlī, 3 vols. (Beirut: Dār al-Gharb al-Islāmī, 1407/1987).

[55]Ibid., 3: 1578.

minaret (*al-ṣawma`a*)";[56] and "On he who installs a door or shop (*ḥānūt*) opposite the door of his neighbour's house on a through-passage (*zuqāq nāfidh*)."[57] To the second category of compilation belong, for example, al-Burzulī's (d. 841/1438) *Jāmi` masā'il al-aḥkām;*[58] al-Wansharīsī's (d. 914/1509) *al-Mi`yār al-mughrib;*[59] and al-Wazzānī's (d. 1342/1924) *al-Nawāzil al-jadīda al-kubrā* and *al-Nawāzil al-ṣughrā*.[60] In these works are found numerous wall-related fatwas, mostly in the chapters pertaining to division (*qisma*), partnership (*sharika*) and, especially, harm (*ḍarar*).[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-Namīnaj 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.[62] A similar argument might apply to the other texts, too. This is an acceptable proposition when one looks at the uneven urban growth

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[56]Ibid., 2: 1246.

[57]Ibid., 1: 169.

[58]Al-Burzulī (Abū al-Qāsim b. Aḥmad b. Ismā`īl Muḥammad b. Aḥmad al-Mu`talla al-Balawī), *Jāmi` masā'il al-aḥkām bimā nazala min al-qaḍāyā bi-al-muftiyin wa al-ḥukkām* (Bibliothèque Nationale de Tunis, MS no. 4851).

[59]Al-Wansharīsī, op.cit.

[60]Abū `Īsā Sīdī Muḥammad al-Mahdī b. Muḥammad b. Muḥammad b. al-Khaḍir al-Wazzānī, *al-Nawāzil al-ṣughrā, al-musāmmātu al-Minḥ al-sāmiya fi al-nawāzil al-fiqhiyya*, 4 vols. (Rabat: Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya li-al-Mamlaka al-Maghribiyya, c. 1413/1993); and Abū `Īsā Sīdī al-Mahdī al-Wazzānī, *al-Nawāzil al-jadīdā al-kubrā fimā li-ahl Fās wa ghayrihim min al-badū wa al-qurā, al-musammātu bi-al-Mi`yār al-jadid al-jāmi` al-mughrib `an fatāwā al-muta'akhkhirīn min `ulamā' al-Maghrib*, ed. `Umar Ibn `Abbād, 16 vols. (Rabat: Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya li-al-Mamlaka al-Maghribiyya, c. 1419/1998).

[61]See, for example, the chapter "Masā'il min al-ḍarar wa jary al-miyāh 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 "Nawāzil min al-ḍarar wa al-bunyān (Cases of harm and building)" of al-Wansharīsī's collection (8: 435-487, 9: 5-73); and the chapter "Nawāzil al-ḍarar wa al-istiḥqāq (Cases of harm and vindication)" of al-Wazzānī's *Nawāzil al-jadida* (3: 459-520).

[62]Al-Namīnaj in Ibn al-Imām, 1: 53; cf. a related argument in al-Hathloul, *Tradition, Continuity and Change*, 16, 138. See also al-Namīnaj 's discussion of the political and social conditions of tenth-century Andalusia. Ibn al-Imām, 1: 14-20; cf. Philip K. Hitti, *History of the Arabs* (London: MacMillan and Co., Ltd., 1937), 512-519.

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".[63] 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 (*ummahāt*) of the law schools, might have been found helpful for solving similar problems elsewhere.[64] Compiled in the form of generalised, viz. non-place specific[65] legal cases plus their assessments (*aḥkām*),[66] 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.[67]

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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[63]Garcin, "Le Caire et l'évolution urbaine des pays musulmans," 289-304. See also, idem, "Le moment islamique (VII^{e} - XVIII^{e} siècles)," in Nicolet et al. (eds.), *Mégapoles méditerranéennes*, 91-103; and Albert Hourani, *A History of the Arab Peoples* (London: Faber and Faber, 1991), 10 et seq..

[64]There are, for example, some twenty extant copies of Ibn al-Rāmī's text, indicating the utility of this work. Ibn al-Rāmī (2), 28-29. There are at least four copies of Ibn al-Imām's work, and a similar number of *Kitāb al-Ḥiṭān*. Ibn al-Imām, 1: 62-65; Ben Slimane, "Entre Ibn al-Imām," 110 n. 6; *Kitāb al-Ḥiṭān*, 10-12.

[65]For the details of a similar process of generalisation (*tanqīḥ*: *tajrīd* and *talkhīṣ*), see Hallaq "From *Fatwā*s to *Furū`*," 44-48. Where a place is mentioned, for example Tunis in Ibn al-Rāmī, it is either incidental or in relation to the genre's *`amal* application mechanism (see Chapter Four).

[66]The translation of *aḥkām* in this context follows A. Kevin Reinhart, "Transcendence and Social Practice: *Muftī*s and *Qāḍī*s as Religious Interpreters," in *Annales Islamologiques* 27 (1993): 14.

[67]For 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 anthroplogist 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] Overlaying 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

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[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.

[70]Lefebvre, *The Production of Space*, 33. See also Andy Merrifield, "Henri Lefebvre: A Socialist in Space," in Mike Crang and Nigel Thrift (eds.), *Thinking Space* (London: Routledge, 2000), 173-174.

[71]Lefebvre, *The Production of Space*, 39. Cf. Merrifield, "Henri Lefebvre," 174.

[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."[75] Although no equivalent research exists for the affective dimensions of the Muslim house, Paul Wheatley has hinted at their significance;[76] 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.[77]

Representational spaces, however, form no part of *The Book of Walls*, except as absences: lacunae of domestic privacy (*`awra*),[78] demarcated by the rulings proscribing the overlooking (*iṭṭilā`*) and exposure (*kashf*, *takashshuf*) of neighbourhood houses.[79] These rulings form an important part of the genre, and have been the subject of extensive commentary by modern scholars.[80] As many of them have noted, they are premised upon the need to keep the women

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[75]Bachelard, *The Poetics of Space*, 6. See especially pp. 3-73.

[76]Wheatley, "Levels of Space Awareness," 354. Perhaps the closest that has come to Bachelard's book is 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); also, Carel Bertram, "The Turkish House, an Effort of Memory" (Ph.D. dissertation, University of California Los Angeles, 1998), esp. 1-30. In spite of the promising title, the following colloquium proceedings do not attend to the affective dimensions of the house: A. D. C. Hyland and Ahmed Al-Shahi (eds.), *The Arab House: Proceedings of the Colloquium held in the University of Newcastle upon Tyne, 15/16 March 1984* (Newcastle upon Tyne: CARDO, Centre for Architectural Research and Development Overseas, University of Newcastle upon Tyne, 1986).

[77]Mernissi, *The Harem Within*. See, for example, pp. 3-19, 213-228.

[78]Literally, *`awra* means vulnerability or nakedness, as, for example, in the Qur'an 24:58 and 33:13. In the plural (*`awrāt*), it signifies the pudenda of men and women. Cf. Valerie J. Hoffman-Ladd, "Polemics on the Modesty and Segregation of Women in Contemporary Egypt," in *International Journal of Middle Eastern Studies* 19 (1987): 28.

[79]For examples, see Case Titles A, B and C, and Case 2 of Appendix (1): Selected case titles and cases from *The Book of Walls*.

[80]See in particular, Hakim, *Arabic-Islamic Cities*, 33-39; M'halla, "La médina," 59-66; and Ben Hamouche, "Sight Restrictions," passim. On the continued validity of these rulings in contemporary Saudi Arabia, and the types of ad-hoc architectural improvisations they inspire, see Tawfiq Abu-Gazzeh, "Privacy as the Basis of Architectural Planning in the Islamic Culture of Saudi Arabia: The Social and Psychological Aspects of Boundaries," in *Architecture et Comportement/Architecture and Behaviour* 11, no. 3-4 Special Issue: Faith and the Built Environment. Architecture and Behaviour in Islamic Countries (1995): 93-111.

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 (*ḍarar*), 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 (*jīrān*) complained about being exposed (*al-kashf*) from it. [The petitioner asked]: Is there a teaching (*maqāl*) on this? Our [local] imams allowed (*abāḥa 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 fi al-ghālib ahl al-ṣalāḥ wa man lā yaqṣidu maḍarra*).
>
> [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 Ashhāb'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 fi samā` Ashhāb `an Mālik bi-al-man`*

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[81]Brunschwig, "Urbanisme médiéval," 140; M'halla, "La médina," 90-92; Van Staevel, "Casa, calle y vecindad," 59; and Ben Hamouche, "Sight Restrictions," 134.

[82]See also, Van Staevel, "Casa, calle y vecindad," 59.

> *min al-ṣu`ūd ilayhā wa al-raqy `alayhā manṣuṣa `alā `ilmika wa al-ma`nā fihā ṣaḥīḥ*). To [this counsel] I add: If [the muezzin is able to] overlook houses in certain directions (*nawāḥī*) only, then he should be prevented from attaining that offending side [of the minaret] by constructing a barrier (*hijāz*) 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 mutaṭāminata al-ishrāf*).[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 (*`iffa*) and trustworthiness in "prudently averting their gaze from the harems of Muslims, not overlooking their domestic privacy (*fī ghaḍḍ baṣarihi ḥawṭat*[n] *wa al-iṭṭila` `alā `awrātihim*)" could climb the minarets in daytime.[85] Finally, so commonplace was the problem of overlooking in Fes, that the market inspector Khālid Ibn `Abd Allāh (n.d.) ordered the lowering of minarets to a level below houses (*hadama Khālid Ibn `Abd Allāh manārāt al-masājid ḥattā ḥaṭṭahā `an dūr al-nās*).[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

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[83]Al-Wansharīsī, *al-Mi`yār al-mughrib*, 9: 22.

[84]*Zahrat al-ās*, 47; trans., 89.

[85]Ibid., 53; not included in the translator's recension.

[86]Ibid., 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 *`URF: 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]

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[1]Of the patronage and meaning paradigm in Islamic art history, the following recent studies are representative: Oleg Grabar, "The Meaning of the Dome of the Rock," in Marilyn J. Chiat and Kathryn L. Reyerson (eds.), *The Medieval Mediterranean: Cross-Cultural Contacts* (St. Cloud: North Star Press of North Cloud, 1988), 1-10; Nasser Rabat, "The Meaning of the Umayyad Dome of the Rock," in *Muqarnas: An Annual of Islamic Art and Architecture* 6 (1989): 12-21; Khoury, "The Meaning of the Great Mosque of Cordoba"; and Finbarr Barry Flood, *The Great Mosque of Damascus: Studies on the Makings of an Umayyad Visual Culture,* Vol 33 Islamic History and Civilization (Leiden: Brill, 2001), esp. 1-14, 237-246. Doris Behrens-Abouseif provides a primary sourced account of why the paradigm is both appropriate and inadequate for the study of Muslim architecture. Idem, *Beauty in Arabic Culture*. Princeton Series on the Middle East (Princeton: Markus Wiener Publishers, 1999), 165-180. Oleg Grabar also raises important questions regarding it, in idem, "Symbols and Signs in Islamic Architecture," in Katz (ed.), *Architecture as Symbol*, 1-11; and Grabar, *The Formation of Islamic Art*, 3-6, 195-200.

[2]The classic work on semiotics and architecture is Umberto Eco, "Function and Sign: Semiotics of Architecture," in *VIA* 2 (1973): 130-154. Criticism of the semiological approach includes Rapoport, *The Meaning of the Built Environment*, 36-43; and Lefebvre, *The Production of Space*, 141-143, 223-224, 269 n. 28. On the importance of aural perception for the study of architecture, see R. Murray Schafer, "Acoustic Space," in Seamon and Mugerauer (eds.), *Dwelling, Place and Environment*, 87-98; and Miriam Helen Hill, "Bound to the Environment: Towards a Phenomenology of Sightlessness," in Seamon and

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.[3] This is because, alongside it, a building also generates experience-based mnemonic and associational meanings through inhabitation or usage.[4] Whilst these meanings are limited by the inhabitant's or user's enculturation, they almost invariably outnumber those of the patron or architect, and almost invariably outlive them.[5] 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 (*aṣl*), 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.

[3]As 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

[4]See, especially, Rapoport, *The Meaning of the Built Environment*, 19-21, 55-86; Jonathan Hill (ed.), *Occupying Architecture: Between the Architect and the User* (London: Routledge, 1998), 135-246; and Bryan Lawson, *The Language of Space* (Oxford: Architectural Press, 2001), 86-88; also Iain Borden, Jane Rendell, and Joe Kerr (eds.) *The Unknown City: Contesting Architecture and Social Space* (Cambridge: MIT Press, 2000), passim; and Roland Barthes, "Semiology and the Urban," in M. Gottdiener and A. Lagopoulos (eds.), *The City and the Sign* (New York: Columbia University Press, 1986), 88-98; reprinted in Leach, *Rethinking Architecture*, 166-172. See also Chapter One, Part 2:1.

[5]On 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-Rāmī, heretofore no one has classified it this way;[6] as a result, there exists a view that *The Book of Walls* embodies prescriptive laws that are immediately applicable today.[7] As will be shown, because of its time- and place-specific *`amal* mechanism, it does not.[8]

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.[9] Just as this space is not monolithic, but nuanced in accordance with local needs and conditions;[10] so

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[6]Van Staëvel, "Les usages de la ville," 2: 311-365.

[7]This 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." Brunshwig, "Urbanisme médiéval et droit musulman", 129.

[8]See also Appendix (2): Conditions for the validity of *`amal*.

[9]Chapter Three, Part 1:1.

[10]See, 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 (*ḍa`īf*) 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

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[11]On Hanafi *`amal*, see Louis Milliot and J. Lapanne-Joinville, *Recueil de jurisprudence chérifienne. Tome IV* (Paris: Librarie du Recueil Sirey, 1952), xii; Henry Toledano, *Judicial Practice and Family Law in Morocco: The Chapter on Marriage from Sijilmāsī's* Al-`Amal al-Muṭlaq (Boulder: Social Science Monographs, Boulder, Colorado, 1981), 9 n. 2; Muḥammad b. `Abd al-Karīm al-Jayyidī, *al-`Urf wa al-`amal fi al-madhhab al-mālikī wa mafhūmuhumā ladā `ulamā' al-Maghrib* (Mohammedia, Morocco: Maṭba`a Fuḍāla, 1404/1984), 341; and Wael B. Hallaq, *Authority, Continuity, and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001), 161-162.

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

[13]Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 61-62; Noel James Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), 147. Louis Milliot, *Démembrements du habous: Menfa`â, gzâ, guelsâ, zînâ, istighrâq* (Paris: Editions Ernest Leroux, 1918); idem, *Recueil de jurisprudence chérifienne*, 3 vols. (Paris: Editions Ernest Leroux, 1920-23); idem and J. Lapanne-Joinville, *Recueil de jurisprudence chérifienne. Tome IV*; Jacques Berque, *Essai sur la méthode juridique maghrébine* (Rabat: n.a., 1944); idem, "`Amal (3)," in *Encyclopaedia of Islam*, 2nd ed., 427-428. These French studies are listed as both Schacht's and Coulson's principal sources; in Schacht, *An Introduction to Islamic Law*, 233; and Coulson, *A History of Islamic Law*, 232.

much original, as memorable.[14]

Recent research into *`amal* has shown this deninition to be historically incomplete, with undue importance accorded to the eleventh/seventeenth century, metred *`amal* text *al-`Amal al-fāsī* and its doctrinaire formula: "The *`amal* must prevail over the best attested opinion. It cannot be neglected (*Mā bi-hi al-`amal dūna al-mashhūr / Muqaddam fi al-akhdh ghayr mahjūr*)."[15] Whereas the textbook definition

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[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-Fāsī* states: 'In principle the judgement of *qaḍī*s 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 Isḥāq al-Shāṭibī'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 `Alī 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 Sharī`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.

[15]E.g. "Hemos podido comprobar que casi todos los estudios recientes sobre el *`amal* que hemos consultado están muy influenciados por la vision que L. Milliot ofrece del mismo. . . . L. Milliot . . . parece basar sus definiciones en el *`amal fesí*." Delfina Serrano Ruano, "La práctica legal (*`amal*) en al-Andalus durante los siglos X-XII, a través de los *Madhāhib al-ḥukkām fi nawāzil al-ahkām* de Muḥammad Ibn `Iyāḍ," in *Qurtuba: Estudios Andalusíes* 1 (1996): 184, 184 n. 49. See also, Pedro Chalmeta, "Acerca del *`amal* en al-Andalus: Algunos casos concretos," in *Anuario de Historia del Derecho Español* 57 (1987): 339-364; Alfonso Carmona González, "Las differencias entre la jurisprudencia andalusí y el resto de la escuela de Mālik: El texto atribuido a Abū Isḥāq al-Garnāṭī," in *Al-Qantara: Revista de Estudios Árabes* 19, no. 1 (1998): 67-102, esp. 89 and 100; Serrano Ruano, "La práctica legal (*`amal*) en al-Andalus," 171-192, esp. 184-189; idem, "Legal Practice in an Andalusī-Maghribī source from the twelfth century CE: The *Madhāhib al-ḥukkām fi nawāzil al-aḥkām*," in *Islamic Law and Society* 7, no. 2 (2000): 187-234, esp. 207-208; and Van Staëvel, "Les usages de la ville," 2: 348-365. The formulation from *al-`Amal al-fāsī* that informs the textbook definition is cited in turn by Milliot, Berque, Schacht, and Coulson. Milliot, *Démembrements*, 109 (also, idem and Lapanne-Joinville, *Recueil de jurisprudence chérifienne. Tome IV*, xvii); Berque, *Essai*, 46-47 n. 10, 125; Schacht, *An Introduction to Islamic Law*, 62; and Coulson, *A History of Islamic Law*, 147. As Berque says, upon this formula "est basée la théorie de l'*`Amal*." Berque, *Essai*, 47 n. 10. And

makes of *`amal* a "practice over theory" ruse and inflexible doctrine, the history of *`amal* does not unfailingly bear this out.[16] It appears to hold true for the early modern period of *`amal,* as primary evidence illustrates;[17] 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*

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yet, even in its own day, the formula was contentious, as shown in a commentary by Abū `Abd Allāh Muḥammad b. Abī Qāsim al-Filālī al-Sijilamāsī's (d. 1214/1800); translated in Milliot, *Démembrements du habous,* 109-114. My citation of the formula comes from Muḥammad b. al-Ḥasan al-Ḥajwī al-Tha`ālabī al-Fāsī, *al-Fikr al-sāmī fi tārikh al-fiqh al-islāmī,* ed. Ayman Ṣāliḥ Sha`bān, 2 vols. (Beirut: Dār al-Kutub al-`Ilmiyya, 1416/1995), 2: 467. Finally, on the metre and composition of `Abd al-Raḥman b. `Abd al-Qādir al-Fāsī's (d. 1096/1685) *al-`Amal al-fāsī,* see Milliot and Lapanne-Joinville, *Recueil de jurisprudence chérifienne. Tome IV,* vii; and Jacques Berque, *Ulémas, fondateurs, insurgés du Maghreb: XVII^e siècle* (Paris: Sindbad, 1982), 200-201. On the author alone, see Evariste Lévi-Provençal, *Les historiens des chorfas* (Paris: Larose, 1922; reprinted Casablanca: Afrique Orient, 1991), 264-269.

[16]The theory versus practice dichotomy is a common topos in Western scholarship on Islamic law, e.g. Robert Gleave and Eugenia Kermeli (eds.), *Islamic Law: Theory and Practice* (London: I.B. Tauris, 1997); Abraham L. Udovitch, "Theory and Practice of Islamic Law: Some Evidence from the Geniza," in *Studia Islamic* 32 (1970): 289-303; Noel J. Coulson, "Doctrine and Practice in Islamic Law: One Aspect of the Problem," in *Bulletin of the School of Oriental and African Studies* 18, no. 2 (1956): 211-226. In this dichotomy, practice is frequently denigrated, e.g. Reuben Levy, *The Social Structure of Islam* (Cambridge: Cambridge University Press, 1957), 256; Coulson, "Muslim Custom", 23; and Toledano, *Judicial Practice,* 17. For a critique of the dichotomy, see Aziz al-Azmeh, "Islamic Legal Theory and the Appropriation of Reality," in idem (ed.), *Islamic Law: Social and Historical Contexts* (London: Routledge, 1988), 250-265. See also Mohammed Fadel, "Rules, Judicial Discretion, and the Rule of Law in Naṣrid Granada: An Analysis of *al-Ḥadiqa al-mustaqilla al-naḍra fi al-fatāwā al-ṣādira `an `ulamā' al-ḥaḍra,*" in Gleave and Kermeli (eds.), *Islamic Law,* 49-52; Lawrence Rosen, "Law and Custom in the Popular Legal Culture of North Africa," in *Islamic Law and Society* 2, no. 2 (1995): 201; and Wael B. Hallaq, "From *Fatwās* to *Furū`*: Growth and Change in Islamic Substantive Law," in *Islamic Law and Society* 1, no. 1 (1994): 31.

[17]For example, al-Majjāṣī (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 Allāh Muḥammad al-Ḥasan al-Maghrāwī al-Majjaṣī, *al-Ajwiba;* cited in Toledano, *Judicial Practice,* 168. Qāḍī `Īsā (10th/16th century) states: "Il n'est pas permis de statuer contrairement à [l*`amal*]"; cited by al-Sijilamāsī in Milliot, *Démembrements du habous,* 109. Finally, a Moroccan legal maxim defines the meaning of *`amal* to be: "Electing a weak opinion, and judging and issuing fatwas by it (*Ikhtiyār qawl ḍa`īf wa al-ḥukm wa al-iftā' bi-hi*)"; cited in al-Jayyidī, *al-`Urf wa al-`amal,* 342.

al-Madīna) that was established by the Prophet's residency there, as local court practice *`amal* is something different, with a juridic significance only.[18] 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. Aḥmad b. `Ubayd b. Sa`id al-Umawī, known as Ibn al-`Aṭṭār (d. 399/1009), reference to local court practice is made some twenty times.[19] 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-Aqṣā'*) and Tunisia (*Ifrīqiya*) of the same period, meanwhile, examined records show no mention of court practice.[20] Not until the 6th/12th century does it show in them: in the work of al-Māzarī (d. 536/1141) for Tunisia;[21] and Ibn `Iyād (d. 575/1179) for Morocco.[22]

Regarding Morocco, although Ibn `Iyād'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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[18]On the relationship between the two kinds of *`amal*, see al-Jayyidī, *al-`Urf wa al-`amal*, 341-342; and Van Staëvel, "Les usages de la ville," 2: 352-354. On *`amal ahl al-Madīna* alone, see al-Jayyidī, *al-`Urf wa al-`amal*, 263-335; Aḥmad Muḥammad Nūr Sayf, *`Amal ahl al-Madīna: Bayna muṣṭalaḥāt Mālik wa ārā' al-uṣūliyyīn*, 2nd ed. (Dubai: Dār al-Buḥūth li-al-Dirāsāt al-Islāmiyya wa Iḥyā' al-Turāth, 1421/2000), passim; and Yasin Dutton, *The Origins of Islamic Law: The Qur'an, the* Muwaṭṭa' *and Madinan* `Amal, 2nd ed. (London: RoutledgeCurzon, 2002), 32-52.

[19]Ibn al-`Aṭṭār, *Kitāb al-Wathā'iq wa al-sijillāt*, 35, 62, 65, 123, 126, 128, 165, 180, 190, 231, 242, 286, 287, 343, 354, 522, 523, 633, 643, 644. Cf. al-Jayyidī, *al-`Urf wa al-`amal*, 344-346; and Chalmeta, "Acerca del *`amal*," 351. On Cordoba as the centre of Andalusian *`amal* (and subsequently as a major influence upon Moroccan *`amal*), see Aḥmad b. Muḥammad al-Maqqarī al-Tlimsānī (d. 770/1368), *Nafḥ al-ṭīb min ghuṣn al-Andalus al-raṭīb*, ed. Iḥsān `Abbās, 8 vols. (Beirut: Dār al-Ṣadir, 1408/1988), 1: 556; al-Jayyidī, *al-`Urf wa al-`amal*, 371-375; and Arcas Campoy, "Algunas consideraciones," 20. See also, Alfonso Carmona González, "Acerca del influjo de la jurisprudencia andalusí en el Magrib," in *Revista del Instituto Egipcio de Estudios Islámicos* 26 (1993): 137-147.

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

[21]Van Staëvel, "Les usages de la ville," 2: 355

[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.[23] Even if it did not, Ibn `Iyād also provides evidence of a North African (*maghribī*) *`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 `Iyād refers to a Maghribi court practice allowing this based upon an opinion of Ibn al-Qāsim, saying "*Wa `alā hādhā jārat aḥkām ahl al-Maghrib*".[24] As Serrano Ruano remarks of this statement: "Probably this is one of the oldest references to the legal practice in the Far Maghrib."[25]

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.[26]

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[23]If Andalusian *`amal* had no authority in Morocco, why would the jurists from whom Qāḍī `Iyād sought answers (*ajwiba*), repeatedly refer to it? The Moroccan scholar al-Ḥajwī (d. 1376/1957) was of the opinion that it had. Idem, *al-Fikr al-sāmī*, 2: 465; trans. Berque, *Essai*, 120. The extent of its authority is, however, another matter. On Cordoba as an intellectual, especially legal capital during this period, see Jesús Zanón, "La actividad intellectual: Las ramas del saber. Centros y métodos de conocimiento," in María Jesús Viguera Molíns (ed.), *Historia de España Menéndez Pidal. Vol. VIII-2: El retroceso territorial de al-Andalus. Almorávides y Almohades, siglos XI al XIII* (Madrid: Espasa Calpe, S. A., 1997), 572-573; Dominique Urvoy, "The *`Ulamā'* of Al-Andalus," in Salma Khadra Jayyusi (ed.), *The Legacy of Muslim Spain*, 2nd ed. (Leiden: E.J. Brill, 1994), 858-861, 867; and Dominique Urvoy, *Pensers d'al-Andalus: La vie intellectuelle à Cordoue et Séville au temps des empires berbères fin XI^e siècle-début XIII^e siécle* (Paris: Editions du CNRS, 1990), 25, 41-42, 54. On the Almoravid dynasty's dependency upon the Maliki scholars of Andalusia in general, see Maribel Fierro, "La religión," in Viguera Molíns (ed.), *Historia de España Menéndez Pidal. Vol. VIII-2: El retroceso territorial de al-Andalus*, 438-439, 460.

[24]Abū `Abd Allāh Muḥammad Ibn `Iyād, *Madhhāhib al-ḥukkām fi nawāzil al-aḥkām li-al-Qāḍī `Iyād wa waladihi Muḥammad*, ed. Muḥammad Bencherifa (Beirut: Dār al-Gharb al-Islāmī, 1990), 201; cf. Serrano Ruano, "Legal Practice in an Andalusī-Maghribī source," 208-209. Serrano Ruano and Chalmeta disagree as to whether the phrase "`alā hādhā jārat al-āhkām" is synonymous with *`amal*. Serrano Ruano is uncertain. Ibid., 209; Chalmeta, "Acerca del *`amal*," 351.

[25]Ibid., 209. For his part, al-Jayyidī dates institutionalised *`amal* in Moroco to the eighth/fourteenth century. Idem, *al-`Urf wa al-`amal*, 350-351. Cf. David S. Powers, "*Fatwās* as Sources for Legal and Social History: A Dispute over Endowment Revenues from Fourteenth-Century Fez," in *Al-Qanṭara: Revista de Estudios Árabes* 11, no. 2 (1990): 327-329 n. 108, where he conjectures a similar date.

[26]Abū al-Ḥasan `Alī b. Qāsim b. Muḥammad al-Tujībī, known as al-Zaqqāq (d.

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).[27]

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.[28] Hence, the existence of the *`amal* texts *al-Lāmiyya* and *al-`Amal al-fāsī*, for example, versified to be remembered.[29] 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.[30] 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*).[31] The opinion

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912/1507), *Tuḥfat al-ḥukkām fi masā'il al-da`āwā wa al-aḥkām*, ed. and trans. Merad Ben Ali Ould Abdelkader (*La "Lamia" ou "Zaqqaqia" du jurisconsulte marocain Zaqqaq: Manuel marocain de jurisprudence musulmane*) (Casablanca: Imp. Réunies de la "Vigie Marocaine" et du "Petit Marocain", 1927). This text is generally called the *Lāmiyya* or *al-Lāmiyya*. On the *Lāmiyya*'s expression of emancipation from Cordoba, see ibid., 31-33; trans. 33-35 (verses 190-204). On the gradual emancipation of Moroccan *`amal* from Andalusian *`amal*, see al-Ḥajwī, *al-Fikr al-sāmī*, 2: 464-465, trans. Berque, *Essai*, 120-121; and al-Jayyidī, *al-`Urf wa al-`amal*, 350-351.

[27]Cf. Serrano Ruano's and Carmona González's hesitancy over whether to consider Qāḍī `Iyād (d. 544/1149) and his references to *`amal* as "Andalusian". He was, after all, born in Ceuta, Morocco, and there spent much of his working life. Serrano Ruano, "La práctica legal (*`amal*) en al-Andalus," 173; Carmona González, "Acerca del influjo de la jurisprudencia andalusí," 143. See also ibid., 138.

[28]Serrano Ruano, "Legal Practice in an Andalusī-Maghribī source," 230; Milliot and Lapanne-Joinville, *Recueil de jurisprudence chérifienne. Tome IV*, viii-ix.

[29]Ibid., vii.

[30]Serrano Ruano, "La práctica legal (*`amal*) en al-Andalus," 174-189, esp. 185-188; idem, "Legal Practice in an Andalusī-Maghribī source," 206-208; Carmona González, "Las differencias entre la jurisprudencia andalusí," 89, 100; Van Staëvel, "Les usages de la ville," 2: 357-362. Cf. Appendix (2): Conditions for the validity of *`amal*.

[31]On the distinction between "restricted and regional" (*khāṣṣ*) and "unrestricted and general" (*muṭlaq*) *`amal*, see al-Jayyidī, *al-`Urf wa al-`amal*, 352; also Milliot and Lapanne-Joinville, *Recueil de jurisprudence chérifienne. Tome IV*, viii. This distinction appears to belong to a time much later than the first appearance of just *`amal*: the earliest notion of something approaching it that I have found is in Ibn Farḥūn (d. 799/1396), *Tabṣirat al-ḥukkām*, 1: 69; cf. al-Sijilmāsī in Milliot, *Démembrements du habous*, 113. On the argument

marked "`*amal*" indicated which one they were expected to apply in the judgement; frequently the *mashhūr*, or widespread opinion. In this way, `*amal* formed part of *taqlīd*: the mechanism a law school possessed to ensure doctrinal uniformity, especially at the interface of litigant and judiciary.[32]

1:2 `*Amal* and *The Book of Walls*

As a term denoting the acceptance of legal authority, *taqlīd* can be dated with certainty to the second/eighth century;[33] but as a term meaning a law school's mechanism of doctrinal unification, it dates to the fourth/tenth century.[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.[35]

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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-Ḥajwī, *al-Fikr al-sāmī*, 2: 468; trans. Berque, *Essai*, 126-127. On the historical phenomenon itself, see al-Jayyidī, *al-`Urf wa al-`amal*, 376-377; and Abū `Īsā "Sīdī" al-Mahdī al-Wazzānī al-Fāsī (d. 1342/1924), *Tuḥfat akyās al-nās bi-sharḥ `amaliyyāt Fās*, ed. Hāshim al-`Alawī al-Qāsimī (Rabat: Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya li-al-Mamlaka al-Maghribiyya, 1422/2001), 14-15.

[32]Serrano Ruano, "Legal Practice in an Andalusī-Maghribī source," 229-230; Hallaq, *Authority, Continuity, and Change*, 160-162. For the most recent treatment of *taqlīd*, that also undermines the latter's frequently denigrated status within scholarship, see Mohammed Fadel, "The Social Logic of *Taqlīd* and the Rise of the *Mukhataṣar* [sic]," in *Islamic Law and Society* 3, no. 2 (1996): 193-233; Sherman A. Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfī* (Leiden: E. J. Brill, 1996), 73-112; and Hallaq, *Authority, Continuity, and Change*, ix, 86-165, 236-239. See also Powers, *Law, Society, and Culture*, passim, esp. 230-231. Cf. Appendix (2): Conditions for the validity of `*amal*.

[33]Schacht, *An Introduction to Islamic Law*, 32. See also Jackson, *Islamic Law and the State*, 79-80.

[34]Schacht, *An Introduction to Islamic Law*, 70-71.

[35]Maribel Fierro, "La religión," in María Jesús Viguera Molíns (ed.), *Historia de España Menéndez Pidal. Vol. VIII-1: Los Reinos de Taïfas. Al-Andalus en el siglo XI* (Madrid: Espasa Calpe, S. A., 1994), 411; and Serrano Ruano, "Legal Practice in an Andalusī-Maghribī source," 229. On the historical development of Islamic law in Andalusia until this time, see Maribel Isabel Fierro, "El derecho mālikī en al-Andalus: Siglos II/VIII-V/XI," in *Al-Qanṭara: Revista de Estudios Árabes* 12 (1991): 119-132. On the historical development of *taqlīd* within the Sunni law schools, see Hallaq, *Authority, Continuity, and Change*, 86-120; also, Melchert, *The Formation of the Sunni Schools of Law*, xviii, 16-18.

Given *taqlīd*'s acceptance in Andalusia at this period, it is unsurprising to find dating to the same century a legal (*aḥkām*) text in part devoted to the *`amal* operative there: Abū al-Walīd al-Bājī's (d. 474/1081) *Fuṣūl al-aḥkām wa bayān mā maḍā `alayhi al-`amal `inda al-fuqahā' wa al-ḥukkām* (The Division of Judgements and Clarification of the *`Amal* according to Scholars and Judges).[36] As noted in Chapter Three, in this work are found a small number cases concerning walls.[37] Among the competing opinions these cases contain, two are marked as the *`amal* rulings.[38] 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-`Aṭṭār, of the twenty or so times *`amal* is mentioned, one is to an *`amal* ruling related to walls.[39]

With the continued development of *taqlīd* 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.[40] 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

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[36]Al-Bājī, *Fuṣūl al-aḥkām*, 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, *Fuṣūl al-aḥkām*, 325, 333.

[39]Ibn al-`Aṭṭār, *Kitāb al-Wathā'iq wa al-sijillāt*, 123.

[40]E.g. Ibn al-Rāmī, 278, 289, 291, 292, 303, 308, 309, 311, 313, 316, 321, 322, 328, etc. Cf. Van Staëvel, "Les usages de la ville," 2: 355-365, esp. 355.

taqlid existent at that time.[41]

That Ibn al-Rāmī 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.[42] Cited below is an example. In the ranking of divergent opinions and identification of the *mashhūr*, the example also demonstrates Ibn al-Rāmī's competence in casuistry and *taqlid*.

> **The case of a wall (*ḥā'iṭ*) 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 Dīnār 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-Qāsim taught the same in *al-Majmū`a*[43] on the authority of Mālik, as did Ashhab and Ibn Nāfi`[44].

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[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 *taqlid* between Ibn al-Imām and Ibn al-Rāmī, for example, see Van Staëvel, "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-fāsī*, and for the fourteenth/twentieth century, in court records from Fes. For the former, see V. Loubignac, "Le chapitre de la préemption dans l'*`Amal al-Fâsî*," in *Hespéris* 26 (1939): 233 (cf. Berque, *Ulémas, 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.

[43]*Al-Majmū`a fi al-fiqh `alā madhhab Mālik*, by Abū `Abd Allāh Muḥammad b. Ibrāhīm Ibn `Abdūs (d. 260/874). Van Staëvel, "Les usages de la ville," 3: 670.

[44]Abū Muḥammad `Abd Allāh Ibn Nāfi`, known as al-Ṣā'igh (d. 186/802). Van Staëvel, "Les usages de la ville," 3: 652.

The second opinion is from the *al-Wāḍiḥa*: Ibn al-Mājishūn, Saḥnūn, and Ibn Kināna[45] taught that the owner is compelled to restore it whether he likes it or not, even if the wall is weak (*wa in kāna ḍa`īf*$^{an}$ *`alā mā aḥabba aw kariha*), because it constitutes damage (*maḍarr*). 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 dārahu bi-sitr dhālika al-jidār*).

The third opinion is also from the *al-Wāḍiḥa*: Ibn Ḥabīb 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: Yaḥyā[46] 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*).[47]

1:3 *`Amal* and *`Urf*

In addition to its function in *taqlīd*, the mechanism of *`amal* has long been considered a means of alleviating hardship (*ḍarūra*) and realising the "common good" (*maṣlaḥa*).[48] By determining, under the strictest of conditions, the *`amal*

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[45]Abū `Umrū `Uthmān `Īsā Ibn Kināna (d. 186/802). Ibn al-Imām, 2: 62 n. 4.

[46]Abū Muḥammad Yaḥyā b. Yaḥyā (d. 234/848). Ibn al-Rāmī (2), 47 n. 1.

[47]Ibn al-Rāmī, 288-289. On the distinction between the fatwa of a mufti and the judgement (*ḥukm, qaḍā'*) of a judge (only the latter is binding), see A. Kevin Reinhart, "Transcendence and Social Practice: *Mufti*s and *Qāḍi*s as Religious Interpreters," in *Annales Islamologiques* 27 (1993): 14-18. On the semi-binding fatwa issued by the judge's *majlis al-shūrā* (advisory council), of which the fatwa mentioned by Ibn al-Rāmī might be an example, see Manuela Marín, "*Shūrā* et *al-shūrā* dans al-Andalus," in *Studia Islamica* 62 (1983): 49; and Powers, *Law, Society, and Culture*, 19-21.

[48]E.g. al-Sijilmāsī in Milliot, *Démembrements du habous*, 111; al-Ḥajwī, *al-Fikr al-sāmi*, 2: 465-466, trans. Berque, *Essai*, 120-121; Toledano, *Judicial Practice*, 12; and al-Jayyidī, *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.[49] 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.[50] In Al-Zaqqāq'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 qīla inna al-ba`ḍ mimmā naqaltuhu ḍa`īf na`am lākinna `alā al-`urf `iwal*[an]).[51]

In a qualified jurist's hands, the conventions of a region (most commonly, a city) indicate the opinion best suited to this or that case in litigation there. With

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Linant de Bellefonds, "Ḍarūra," in *Encyclopaedia of Islam*, 2nd ed., 163-164; and Birgit Krawietz, "*Ḍarūra* in Modern Islamic Law: The Case of Organ Transplantation," in Gleave and Kermeli (eds.), *Islamic Law*, 185-186. On *maṣlaḥa*, see Madjid Khadduri, "Maṣlaḥa," in *Encyclopaedia of Islam*, 2nd ed., 738-740; and Mawil Izzi Dien, "*Maṣlaḥa* in Islamic Law: A Source or a Concept? A Framework For Inquiry," in I. R. Netton (ed.), *Studies in Honour of Clifford Edmund Bosworth. Vol. 1: Hunter of the East: Arabic and Semitic Studies*, (Leiden: Brill, 1999), 345-356.

[49]For examples and a critique of such portrayal, see Wael B. Hallaq, *Uṣūl al-fiqh*: 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-Ḥajwī, *al-Fikr al-sāmī*, 2: 469, trans. Berque, *Essai*, 128-129; Berque, "`Amal (3)," 428; and especially `Abd al-Salām al-`Asrī, *Naẓariyya al-akhdh bi-mā jarā bi-hi al-`amal fi al-Maghrib fi iṭār al-madhhab al-mālikī* (Rabat: Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyya, 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.

[50]E.g. Abdelkébir 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, "Acerca del *`amal*," 339; al-Jayyidī, *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 45 n. 1 and 47 n. 10; al-Wazzānī al-Fāsī, *Tuḥfat akyās al-nās*, 16; Milliot (with some reservations), *Démembrements du habous*, 26; al-Zaqqāq, *al-Lāmiyya*, 33, trans. 35 (see below); Ibn Farḥūn, as represented by al-Sijilmāsī and others in Milliot, *Démembrements du habous*, 114. Recently, Serrano Ruano has questioned this orthodoxy with regard to Andalusian *`amal*: "En nuestra opinión, tales affirmaciones 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 al-Andalus," 185. For his part, with regard to Ibn al-Rāmī, Van Staëvel has refuted entirely the scholars' and jurists' majority view, but upon no supporting evidence: "Dans le *K. al-I`lān* . . . le *`amal* n'entretient aucun lien explicite avec la coutume." Idem, "Les usages de la ville," 2: 360.

[51]Al-Zaqqāq, *al-Lāmiyya*, 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 (*fiqhi*) category, and often includes practices considered contrary to the Sharia (*Sharī`a*).[54] To the best of my knowledge, except in this, *`amal* has no affect on *`urf*.[55]

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[52]For examples of this process, see Milliot, *Démembrements du habous*, 6-66, 83-108 (cf. Toledano, *Judicial Practice*, 19-20); F. Guay and M. Ben Daoud, "Le mariage dans la jurisprudence des cadis de Fès," in *Revue Algérienne, Tunisienne et Marocaine de Législation et Jurispridence* 49 (1933): 178-207; and Berque, *Ulémas, fondateurs, insurgés du Maghreb*, 215-217. On the jurist's qualifications, and the requirement for repetition and, ideally, revocation, see al-Jayyidī, *al-`Urf wa al-`amal*, 353-361 (summarised and translated in Appendix 2: Conditions for the validity of *`amal*); and Toledano, *Judicial Practice*, 15-16. On revocation alone, see al-Ḥajwī, *al-Fikr al-sāmī*, 2: 469, trans. Berque, *Essai*, 128; and Berque, *Essai*, 130.

[53]Al-Zaqqāq, *al-Lāmiyya*, xiii-xiv; al-Wazzānī al-Fāsī, *Tuḥfat akyās al-nās*, 13-14; Jacques Berque, "L'ambiguïté dans le *fiqh*," in Jean-Paul Charnay et al., *L'ambivalence dans la culture arabe* (Paris: Éditions Anthropos, 1967), 246; and Berque, *Ulémas, fondateurs, insurgés du Maghreb*, 217.

[54] That *`urf* is firstly a cultural, viz. pre-legal category, is proven by the requirement in Islamic jurisprudence (*uṣūl al-fiqh*) to consider as a source of law (*dalīl*) only those elements of *`urf* not in contradiction with the Sharia. `Abd al-Wahhāb Khallāf, *`Ilm uṣūl al-fiqh*, 12th ed. (Kuwait: Dār al-Qalam, 1398/1978), 89; cf. Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, revised ed. (Cambridge: Islamic Texts Society, 1991), 287; and Baber Johansen, "Coutumes locales et coutumes universelles aux sources des règles juridiques en droit musulman hanéfite," in *Annales Islamologiques* 28 (1993): 29. Perhaps due to a related meaning of *`urf* as pre-Islamic tribal customary law (frequently contrary to the Sharia, but ancient, revered, and authoritative), there is a tendency to consider *`urf* a legal (*fiqhī*) category only. For example, Reuben Levy, "`Urf," in *Encyclopaedia of Islam*, 2nd ed., 1031. On tribal *`urf*, see Georges Henri Bousquet, "Islamic Law and Customary Law in French North Africa: A printed lecture delivered in the University of London" (London: University of London, 1945), 1-9; Joseph Chelhod, "La place de la coutume dans le *fiqh* primitif et sa permanence dans les sociétés arabes à tradition orale," in *Studia Islamica* 64 (1986): 19-37; and R. B. Serjeant, "Sunnah, Qur'ān, `Urf," in Christopher Toll and Jakob Skovgaard-Petersen (eds.), *Law and the Islamic World: Past and Present. Papers presented to the joint seminar at the Universities of Copenhagen and Lund, March 26-27, 1993*. Series: Historisk-filosofiske Meddelelser, vol. 68 (Copenhagen: Det Kongelige Danske Videnskabernes Selskab/The Royal Danish Academy of Sciences and Letters, 1995), 33-48.

[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,

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[56]From a point of departure other than *`amal*, Van Staëvel has also shown the connection of *`urf* with the genre (specifically, Ibn al-Rāmī). Idem, "Les usages de la ville," 2: 382-401, esp. 393. As important as his treatment is, I believe Van Staëvel mistakes Ibn al-Rāmī'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-lafẓī al-khāṣṣ*. Muṣṭafā Aḥmad al-Zarqā', *al-Madkhal al-fiqhī al-`āmm*, 7th ed., 3 vols. (Beirut: Dār al-Fikr, n.d.), 2: 841-846; cf. Kamali, *Principles*, 289-291. This mistake would explain Van Staëvel's ungrounded dismissal of *`urf* as the determinant of the *`amal* rulings found in Ibn al-Rāmī'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.

[57]Cf. Besim S. Hakim, "The 'Urf' and its Role in Diversifying the Architecture of Traditional Islamic Cities," in *Journal of Architectural Planning and Research* 11 no. 2 (1994): 117-119.

[58]*Rawḍ al-qirṭās*, 51, trans., 44; Leo Africanus, 2: 420; Marçais, *Manuel d'art musulman*, 2: 717-722. Cf. Akbar, *Crisis in the Built Environment*, 8.

[59]*Rawḍ al-qirṭās*, 51, trans., 44; al-`Umarī, *Masālik el abṣār*, 158; Leo Africanus, 2: 420.

[60]Guy T. Petherbridge, "Vernacular Architecture in the Maghreb: Some Historical and Geographical Factors," in *Maghreb Review* 3 (1976): 17.

`urf* plays its part. However, in terms of the chapter's stated aim to identify the legal basis (*aṣl*) 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" (*dalīl*) from the Sharia depends upon *`urf* to exert legal effect. It will be shown that because this *dalīl*'s meaning is obscure, in order to determine its significance or value (*ḥukm Shar`ī*) for any given case referring to it, it is subject to clarification (*takhṣīṣ*) governed by *`urf*.

2:1 The Hadith *Lā ḍarar wa lā ḍirār* and *The Book of Walls*

It is commonly observed by scholars of the genre, that of the Sharia proofs referred to therein, the *dalīl* the hadith "No harm or return of harm (*Lā ḍarar wa lā ḍirār*)" is fundamental.[61] Hakim, for example, considers it "one of the most frequently quoted and used in building matters";[62] Kahera and Benmira conclude that, regarding "habitat, the neighborhood, the home and the street, inferences of spatial form [are] implicitly derived from the axiom *lā ḍarar wa-lā ḍirār*";[63] and `Azab asserts:

> The principle *Lā ḍarar wa lā ḍirār* 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 iḥtallat qā`ida Lā ḍarar wa lā ḍirār bāb[an] wāsi`[an] fi fiqh al-`imārāt al-islāmiyya, wa `alayhā qāmāt aḥkām lā ḥaṣra lahā, wa atharat hādhihi al-qā`ida `alā ḥarakat al-`umrān fi al-mudun al-islāmiyya*).[64]

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[61]See below for collection details.

[62]Hakim, *Arabic-Islamic Cities*, 22

[63]Kahera and Benmira, "Damages in Islamic Law," 162.

[64]`Azab, "Takhṭīṭ wa `imārat," 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-Imām's text, for example, of the thirty times a hadith is cited, *Lā ḍarar wa lā ḍirār* appears the most at eight times.[65] In Ibn al-Rāmī's *Kitāb al-I`lān* the *dalīl* 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 (*ḍarar*) is referred to at least ten times.[67]

A "fair" (*ḥasan*) but "incomplete" (*mursal*) hadith related by Mālik among others,[68] *Lā ḍarar wa lā ḍirār* 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

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[65]The 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-Imām, 2: 207-209.

[66]Ibn al-Rāmī, 288, 292, 298, 299, 335. The next most frequently cited hadith appears three times. Ibn al-Rāmī (2), 254. See also Ibn Sahl, 100, 105, 112, 119, 134.

[67]*Kitāb 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, *ḍarar* is invoked, and because of the hadith's value, a judgement is reached. "It was mentioned in the words of Abū Sufyān al-Dārī, 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 (*ḍarar fāḥish*). Ibid., 127.

[68]Mālik Ibn Anas, *al-Muwaṭṭa' li-imām al-a'imma `ālim al-Madina Mālik Ibn Anas* (muṣawwara min nuskha min awā'il al-makhṭūṭāt fī al-Kuwayt), ed. Muḥammad b. Nāsir al-`Ajamī (Kuwait: Markaz al-Buḥūth wa al-Dirāsāt al-Kuwaytiyya, 1418/1997), 245, 498. On the other collections, see al-Bājī, *Fuṣūl al-aḥkām*, 318 n. 5; and Yaḥyā b. Sharaf al-Dīn al-Nawawī (d. 676/1278), *An-Nawawi's Forty Hadith*, trans. Ezzedin Ibrahim and Denys Johnson-Davies (n.a.), 106-107. Regarding the hadith's alleged authenticity, see Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: The Clarendon Press, 1950), 183-184.

[69]As reported by Yaḥyā Ibn Adam al-Qurayshī (d. 203/819) and Abū Dāwūd (d. 275/887); cited in `Azab, "Takhṭīṭ wa `imārat," 84 n. 1. Cf. the so-called "Five Principles" (*al-qawā`id al-khams*) of Islamic law, as discussed in Wolfhart Heinrichs, "*Qawā`id* as a Genre of Legal Literature," in Bernard G. Weiss (ed.), *Studies in Islamic Legal Theory* (Leiden: Brill, 2002), 365-369.

[70]As noted, for example, in Nejmeddine, "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 *dalīl* in order to deduce its significance or value (*hukm shar`ī*), *Lā ḍarar wa lā ḍirār* 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 ḍarar wa lā dirār*: 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-i`rāb*). "Ḍarar" is the noun and "ḍirār" is the verb. The hadith's teaching (*qawluhu*) "lā ḍarar" is to say harm does not befall one person from another, even if the person did not intend it. And the teaching "lā ḍirār" is to say one person does not deliberately harm another. Al-Khashanī[72] taught: "Ḍarar" is what benefits (*manfa`a*) you, but disadvantages (*maḍarra*) 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-iḍrār*) 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 (*nahā*) both aspects. . . . In his book *Mu`īn al-quḍāa*, Qadi Ibn `Abd al-Rafī` taught: The interpretation (*tafsīr*) 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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[71]See, for example, immediately below; also Ibn Sahl, 119; Sulaymān b. `Abd al-Qawiy b. `Abd al-Karīm b. Sa`īd al-Ṭūfī (d. 716/1317), "Risālat al-Ṭūfī," in `Abd al-Wahhāb Khallāf, *Maṣādir al-tashrī` al-islāmī fi-mā lā naṣṣ fi-hi* (Kuwait: Dār al-Qalam, 1970), 106-109; and Aḥmad b. al-Shaykh Muḥammad al-Zarqā' (d. 1357/1938), *Sharḥ al-qawā`id al-fiqhiyya*, ed. Muṣṭafā Aḥmad al-Zarqā', 5th ed. (Damascus: Dār al-Qalam, 1419/1998), 165-177. Regarding the requirement to consider the grammatical and linguistic form of the *dalīl*, see below.

[72]In Ibn al-Rāmī (2), al-Khashanī is elucidated as Muḥammad b. `Abd Allāh al-Salām al-Qurṭubī (d. 286/899). Ibid., 58 and 58 n. 2.

[73]Qur'an, 9:107.

[74]Ibn al-Rāmī, 299.

2:2 The Hadith *Lā ḍarar wa lā ḍirār* 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-Tāwdī Ibn Sūda (d. 1209/1795) said of it: *`Urf* "particularises the general, specifies the equivocal, and determines the indeterminate."[75] 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.[76] In Muhammad Kamali's words: "In determining the scope of [words of generic, non-particularised meaning within the sources, called 'general' (*`āmm*) 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."[77]

Considered one of the two categories of *`urf*, linguistic usage (*al-`urf al-lafẓī*) is the matrix of meaning where words are understood without ratiocination or a requirement for context.[78] Similar to St. Augustine's concept of time, in this

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[75]Abū `Abd Allāh Muḥammad al-Tāwdī Ibn Sūda, *Sharḥ al-Tāwdī li-al-Lāmiyya al-Zaqqāq* (Egypt: 1349/1931), 369; cited in Berque, *Essai*, 44 n. 1. Cf. Khallāf, *Maṣādir al-tashrī` al-islāmī*, 148-149; and idem, *`Ilm uṣūl al-fiqh*, 91.

[76]Kamali, *Principles*, 86; Al-Jayyidī, *al-`Urf wa al-`amal*, 172-175; Mohamed El-Awa, "The Place of Custom (*`Urf*) in Islamic Legal Theory," in *Islamic Quarterly* 17 (1973): 180. On the use of custom in determining the meaning of judgements and contracts, for example, see Ibn Farḥūn, *Tabṣirat al-ḥukkām*, 2: 67-75; Muḥammad Y. Faruqi, "Consideration of *`Urf* in the Judgements of the *Khulafā' al Rāshidūn* and the Early *Fuqahā'*," in *American Journal of Islamic Social Sciences* 9, no. 4 (1992): 493-498; and Johansen, "Coutumes locales et coutumes universelles," 29-30.

[77]Kamali, *Principles*, 105. On the category of the general or *`āmm* in Islamic jurisprudence, see Sayf al-Dīn Abī al-Ḥasan `Alī b. Abī `Alī b. Muḥammad al-Āmidī (d. 631/1233), *al-Iḥkām fi uṣūl al-aḥkām*, ed. Ibrāhīm al-`Ajūz, 2 bindings 4 vols. (Beirut: Dār al-Kutub al-`Ilmiyya, n.d.), 2: 413-434; translated and summarised in Bernard Weiss, *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Dīn al-Āmidī* (Salt Lake City: University of Utah Press, 1992), 389-399. See also Kamali, *Principles*, 104-112; and Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī* uṣūl al-fiqh (Cambridge: Cambridge University Press, 1997), 45-47.

[78]Al-Zarqā', *al-Madkhal al-fiqhī 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 *Lā ḍarar wa lā ḍirār*, specifically its generic word "harm" (*ḍarar*, *ḍirār*).

Referring once more to Ibn al-Rāmī'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" (*wujūh kathīra*) 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-Rafī`, and extending them on the view of Ibn Hishām.[79] 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 (*Wa wujūh al-ḍarar kathīra tatabayyan `inda nawāzil al-ḥukm fi-hā*).[80]

As a result of this decision, the meaning Ibn al-Rāmī 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.[81] 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

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[79]Ibn al-Rāmī, 299-300.

[80]Ibn al-Rāmī, 300.

[81]Cf. al-Wazzānī al-Fāsī, *Tuḥfat akyās al-nās*, 16.

opinion or judgement be issued.[82]

Examples corroborate this. In a court case from Medina in 981/1573, a judge is asked about an individual who opened two windows (*nāfidhayn, ṭāqatayn*) in his second-floor apartment (*ḥawsh*) overlooking another's house. In order to decide the case on the basis of the hadith *Lā ḍarar wa lā ḍirār,* the judge turns to local mastermasons (sg. *mu`allim, muhandis al-`amā'ir al-sulṭāniyya bi-al-Madīna*) and asks if the opened windows are considered a harm in the region.[83] 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."[84] 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.[85] 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 (*ashyākhunā*) disagreed as to whether this constituted harm. The judge decided that it did not; and that became the *`amal* ruling for Tunis.[86]

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

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[82]Al-Jayyidī, *al-`Urf wa al-`amal*, 86, 126, 149, 421; Faruqi, "Consideration of *`Urf*, 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*.

[86]Ibn al-Rāmī, 312-313; cf. Kahera and Benmira, "Damages in Islamic Law," 145.

`urf*. Because it is the principal *dalīl* 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.

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[87]That it is far from unknown for *`urf* to be a source of Islamic law, is discussed in Gideon Lisbon, "On the Development of Custom as a Source of Law in Islamic Law," in *Islamic Law and Society* 4, no. 2 (1997): 131-155; Abraham Udovitch, "Les échanges de marché dans l'Islam médiéval: Théorie du droit et savoir local," in *Studia Islamica* 65 (1987): 5-30; and Farhat J. Ziadeh, "'*Urf* and Law in Islam," in James Kritzech and R. Bayly Winder (eds.), *The World of Islam: Studies in Honour of Philip K. Hitti* (London: Macmillan and Co. Ltd., 1959), 60-67.

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.[1] 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".[2] 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).[3] Whatever draws a divide between these terms, draws

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[1]On the legal category *mukallaf*, see Quṭub Muṣṭafā Sānū, *Mu`jam muṣṭalaḥāt uṣūl al-fiqh* (Damascus: Dār al-Fikr, 1420/2000), 440.

[2]Ziadeh, "*`Urf* and Law in Islam," 60.

[3]Ibid., 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.[4] 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.[5] Instead of reducing it to disgrace or humiliation only, these and other academics

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Commanding Right and Forbidding Wrong in Islamic Thought (Cambridge: Cambridge University Press, 2000), 567-569. See also, A. Kevin Reinhart, "Ethics in the Qur'ān," in McAuliffe (ed.), *The Encyclopaedia of the Qur'ān*, 2: 62-64.

[4]Agnes Heller, *The Power of Shame: A Rational Perspective* (London: Routledge and KeganPaul, 1985), 5-7. Sartre (d. 1401/1980) expresses it thus: "Shame is by nature *recgonition*. I recognise that I *am* as the Other sees me." (I.e. Shame reveals my separation from others, allowing for my joining others, viz. society or culture; because what is not first separated cannot be joined.) Jean-Paul Sartre, *Being and Nothingness: An Essay on Phenomenological Ontology*, trans. Hazel E. Barnes (London: Methuen and Co. Ltd., 1958), 222; italics as marked in the text.

[5]Sartre, *Being and Nothingness*, 221-223, 261-263; Emmanuel Levinas, *Totality and Infinity: An Essay on Exteriority*, trans. Alphonso Lingis (Pittsburgh: Duquesne University Press, 1969), 84; Carl D. Schneider, *Shame, Exposure, and Privacy* (Boston: Beacon Press, 1977), passim; Léon Wurmser, *The Mask of Shame* (Baltimore: The Johns Hopkins University Press, 1981), 29-59; Stanley Brandes, "Reflections on Honor and Shame in the Mediterranean," in David D. Gilmore (ed.), *Honor and Shame and the Unity of the Mediterranean* (Washington: American Anthropological Association, 1987), 127-133; Toni M. Massaro, "Shame, Culture, and American Criminal Law," in *Michigan Law Review* 89 (1991): 1880-1944; Michael Lewis, *Shame: The Exposed Self* (New York: The Free Press, 1992), 1-2; William Ian Miller, *Humiliation and Other Essays on Honor, Social Discomfort, and Violence* (Ithaca: Cornell University Press, 1993), 117-124; Bernard Williams, *Shame and Necessity* (Berkeley: University of California Press, 1993), 75-102; Deborah Stipek, "The Development of Pride and Shame in Toddlers," in Jane Price Tangney and Kurt W. Fischer (eds.), *Self-Conscious Emotions: The Psychology of Shame, Guilt, Embarrassment, and Pride* (New York: The Guilford Press, 1995), 237-252; J. H. Neyrey, *Honor and Shame in the Gospel of Matthew* (Louisville: Westminster John Know Press, 1998), 30-32.

recognise shame as a complex phenomenon, exploring its plural forms.[6] 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.[7]

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 (*dīn*)

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 dīn khuluquhu wa khuluq al-Islām al-ḥayā'*)."[8] 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 (*Inna fi-ka khaṣlatayn yuḥibbuhumā Allāh: al-ḥilm wa al-ḥayā'*)";[9] "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'*)";[10] "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.

[7]Léon Wurmser, "Shame: The Veiled Companion of Narcissism," in Donald L. Nathanson (ed.), *The Many Faces of Shame* (New York: The Guilford Press, 1987), 68.

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

[9]Ibn Mājah, *Sunan*, k. al-zuhd, bāb al-ḥilm, raqm 4188. Also collected by Ibn Ḥanbal. Wensinck et al., *Concordance et indices de la tradition musulmane*, 1: 543. For a full definition of *ḥilm* (forbearance, gravity, restraint), see Toshihiko Izutsu, *God and Man in the Koran: Semantics of the Koranic Weltanshcaung* (Tokyo: The Keio Institute of Cultural and Linguistic Studies, 1964), 203-219.

[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 mimmā adraka al-nās min kalām al-nubuwa al-ūlā: Idhā lam tastaḥi fa-iṣna` mā shi'ta*)";[11] "Shame does not occur, except for the better (*Al-ḥayā' lā ya'tī illā bi-khayr*)";[12] "All shame is good (*Al-ḥayā' khayr kulluhu*)";[13] and "Shame is of faith (*Al-ḥayā' min al-īmān*)."[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-yastaḥiyy min-kum*); but God is not ashamed of the truth (*wa Allāhu lā yastaḥiyy min al-ḥaqq*).[16]

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

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[11]Al-Bukhārī, *Saḥīḥ 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, *Saḥīḥ 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, *Ṣaḥīḥ Muslim*, k. al-iymān, bāb 12, raqm 61. Also collected by Ibn Ḥanbal. Wensinck et al., *Concordance et indices de la tradition musulmane*, 1: 542.

[14]Ibn Mājah, *Sunan*, k. al-zuhd, bāb al-ḥayā', raqm 4184. Also collected by al-Bukhārī, al-Tirmidhī, Mālik, Ibn Ḥanbal, al-Nisā'ī, and Muslim. Wensinck et al., *Concordance et indices de la tradition musulmane*, 1: 542. Cf. "Faith is composed of sixty branches, and shame is one of them (*Al-īmān biḍ` sittūna sh`uba, wa al-ḥayā shu`ba min al-īmān*). Al-Bukhārī, *Saḥīḥ al-Bukhārī*, k. al-īmān, bāb 3, raqm 9.

[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.

[16]*The Meaning of the Holy Qur'ān*, 33:53; translation modified. Pickthall translates *yastaḥiyy* as "to be shy"; both N. J. Dawood and Yūsuf `Alī as "to be ashamed". *The Koran*, trans. N. J. Dawood, 4th ed. (Harmondsworth: Penguin Books Ltd., 1974); *The Meaning of the Holy Qur'ān*, trans. `Abdullah Yūsuf `Alī, revised 7th ed. (Beltsville, Maryland: Amana Publications, 1995).

reference belongs to the spatial dimension of shame, to be discussed below. Of issue now is the word used for shame in this verse: *istaḥyā*, to feel *ḥayā'*, to be ashamed; and etymologically, to seek *ḥayā'*, to seek shame. The same word as used in the above hadiths, *ḥayā'* is cognate with *ḥayya* (to live), *ḥayāh* (life), and *al-Ḥayy* (He Who Lives, God), suggestive of shame as affirmative of life: something sought.[17] Such would mirror the other Qur'anic meaning of *istaḥyā*: 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 *ḥayā'*, but also *`ayb* and *ḥishma/ḥasham*. 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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[17]For full dictionary definitions of *ḥayā'* and its life-based cognates, including *istaḥyā*, see Edward William Lane, *An Arabic-English Lexicon: Derived from the best and the most copious Eastern sources . . . [etc.]*, 4 vols. (London: Williams and Norgate, 1863-1893), 1: 679-682.

[18]E.g. "Lo! Pharaoh exalted himself in the earth and made its people castes. A tribe among them he oppressed, killing their sons and sparing (*yastaḥiyy*) their women." *The Meaning of the Holy Qur'ān*, 28:4.

[19]Unni Wikan, "Shame and Honour: A Contestable Pair," in *Man* (New Series), 19 (1984): 636-637.

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 *ḥasham,* 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, *ḥasham* 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 *taḥashsham* [to exhibit *ḥasham,* 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 *ḥasham* 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, `irḍ, wajh, namus* (Turkey),

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[20]Ibid., 637. Cf. Bourdieu, "The Sense of Honour," 128.

[21]Lila Abu-Lughod, *Veiled Sentiments: Honor and Poetry in a Bedouin Society* (Berkeley: University of California Press, 1986), 107-108.

[22]Soumaya Naamane-Guessous, *Au-delà de toute pudeur: La sexualité féminine au Maroc,* 11th ed. (Casablanca: Editions Eddif, 2001), 6; Dale F. Eickelman, *Moroccan Islam: Tradition and Society in a Pilgrimage Center* (Austin: University of Texas Press, 1976), 138-141; Susan Schaefer Davis, *Patience and Power: Women's Lives in a Moroccan Village* (Rochester: Schenkman Books, Inc., c 1983), 23-25, and 156-159. Other anthropological treatments of shame in Muslim society, include: Abou A. M. Zeid, "Honour and Shame among the Bedouins of Egypt," in John G. Peristiany (ed.), *Honour and Shame: The Values of Mediterranean Society* (London: Weidenfeld and Nicolson, 1965), 245-259; Richard T. Antoun, "On the Modesty of Women in Arab Muslim Villages: A Study in the Accommodation of Traditions," in *American Anthropologist* 70, no. 4 (1968): 671-697; and Carol Delaney, "Seeds of Honor, Fields of Shame," in Gilmore (ed.), *Honor and Shame,* 35-48.

izzat (Pakistan), *nif*, and *ḥurma*, and signify notions of "honour".[23] A moral value like shame, but pertaining to a person's character, not their actions,[24] honour is considered reciprocal to shame,[25] 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.[26]

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[23]I have placed honour in scare-quotes in order to indicate the difficulties of incautiously applying it cross-culturally. See Michael Herzfeld, "Honour and Shame: Problems in the Comparative Analysis of Moral Systems," in *Man* (New Series) 15 (1980): 339-351. Treatments of the Arabic, Urdu, and Turkish words for honour mentioned above, include T. Fahd, "Sharaf," in *Encyclopaedia of Islam*, 2nd ed., 313-314; Bichr Farès, "`Ird," in *Encyclopaedia of Islam*, 2nd ed., 77; Michael E. Meeker, "Meaning and Society in the Near East: Examples from the Black Sea Turks and the Levantine Arabs (I)," in *International Journal of Middle Eastern Studies* 7 (1976): 243-270 (*sharaf, namus*); Papanek, "Purdah," 318-319 (*izzat*); Bourdieu, "The Sense of Honour," 117 et seq. (*nif, ḥurma*); Frank Henderson Stewart, *Honor* (Chicago: University of Chicago, 1994), esp. 81-85, 99-103, 132-133 (*`ird, wajh, sharaf*). See also, Zeid, "Honour and Shame," esp. 256-257; Peter C. Dodd, "Family Honor and the Forces of Change in Arab Society," in *International Journal of Middle Eastern Studies* 4 (1973); Eickelman, *Moroccan Islam*, 136; and Michael A. Marcus, "'Horsemen are the Fence of the Land': Honor and History among the Ghiyata of Eastern Morocco," in Gilmore (ed.), *Honor and Shame*; Leslie Peirce, "'She is trouble and I will divorce her': Orality, Honor, and Representation in the Ottoman Court of `Aintab," in Hambly (ed.), *Women in the Medieval Islamic World*; and Fariba Zarinebaf-Shahr, "Women and the Public Eye in Eighteenth-Century Istanbul," in Hambly (ed.), *Women in the Medieval Islamic World*, esp. 306-319.

[24]Wikan, "Shame and Honour," 636. This and other statements regarding the nature of honour should be read in conjunction with Stewart, *Honor*, esp. 9-29.

[25]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.

[26]See, for example, Antoun's discussion of "`ard" (*`ird*) in Kufr al-Ma, Jordan, in idem, "On the Modesty of Women," 680-684; also Bichr Farès, *L'honneur chez les Arabes avant l'Islam: Étude de sociologie* (Paris: Librairie d'Amérique et d'Orient, Adrien-Maisonneuve, 1932), 75-81; Zeid, "Honour and Shame," 245-257; Papanek, "Purdah," 316-319; Bourdieu, "The Sense of Honour," esp. 124-128; Abu-Lughod, *Veiled Sentiments*, 117; Sana Al-Khayyat, *Honour and Shame: Women in Modern Iraq* (London: Saqi Books, 1990), 21-26; Tahire Kocturk, *A Matter of Honour: Experiences of Turkish Women Immigrants* (London: Zed Books Ltd., 1992), 56-58; and Stewart, *Honor*, 107-110. See also treatments of so-called "honour killings" in which women are murdered or urged to suicide by relatives for behaviour considered dishonourable, shameless. E.g. Geraldine Brooks, *Nine Parts of Desire: The Hidden World of Islamic Women* (London: Hamish Hamilton, 1995; reprint, London: Penguin Books Ltd., 1996), 49-53; Lama Abu-Odeh, "Crimes of Honour and the Construction of Gender in Arab Societies," in Mai Yamani (ed.), *Feminism and Islam: Legal and Literary Perspectives* (Reading: Ithaca Press for Centre of Islamic and Middle Eastern Law, School of Oriental and African Studies, University of London, 1996), 141-194; Shahla Haeri, "Woman's Body, Nation's Honor: Rape in Pakistan," in

`Irḍ 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

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Asma Afsaruddin (ed.), *Hermeneutics and Honor: Negotiating Female "Public" Space in Islamic/ate Societies* (Cambridge: Harvard Center for Middle Eastern Studies, 1999), 55-69; and Norma Khouri, *Forbidden Love: Love and Betrayal in Modern-day Jordan* (London: Doubleday, 2003), esp. 11-35.

[27]Farès, "`Irḍ," 77. See also Al-Khayyat, *Honour and Shame*, 21-22.

[28]The 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 III^e/IX^e 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.

[29]E.g. Julian Pitt-Rivers, "Honor," in *International Journal of the Social Sciences* 6 (1968): 505, cited in Delaney, "Seeds of Honor," 39; and Pierre Bourdieu, *Outline of a Theory of Practice*, trans. Richard Nice. Series: Cambridge Studies in Social Anthropology, ed.

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 lā 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'an 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:

Jack Goody, vol. 16 (Cambridge: Cambridge University Press, 1977), 7.

[30]Eickelman, *Moroccan Islam*, 140.

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

[32]For a full discussion of the nature of the audience, real or imagined, required for shame, see Taylor, *Pride, Shame, and Guilt*, 57-69; cf. Robert C. Roberts, *Emotions: An Essay in Aid of Moral Psychology* (Cambridge: Cambridge University Press, 2003), 228-229.

[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 (*yaḥfazū 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 (*yuwārī*) your modesty (*saw'ātikum*) and to be of finery (*rīsh*). 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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[36]*The Meaning of the Holy Qur'ān*, 24:30-31; translation modified.

[37]*The 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-`awra* (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.

[38]See, for example, Robert F. Murphy, "Social Distance and the Veil," in *American Anthropologist* 66, no. 2 (1964): 1257, 1264-1269; Papanek, "Purdah," 294 et seq.; Ursula M. Sharma, "Women and Their Affines: The Veil as a Symbol of Separation," in *Man* (New Series) 13 (1978): 218-219, 227; and Jon W. Anderson, "Social Structure and the Veil: Comportment and the Composition of Interaction in Afghanistan," in *Anthropos* 77 (1982): 402-406.

[39]So 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 *taḥashsham* 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 *ḥasham*'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]

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[40]Abu-Lughod, *Veiled Sentiments*, 115-116. See also ibid., 156-157.

[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*.[43] 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.[44] 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 (*ḥijāb*).[45] 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.[46]

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

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[43]Cf. 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.

[44]See Part 1:1:1.

[45]*The Meaning of the Holy Qur'ān*, 33:53.

[46]That the *ḥijāb* as a veil is symbolic of shame in post-revelation (*tanzīl*) Muslim culture is confirmed in Abu-Lughod, *Veiled Sentiments*, 138, 159. On the Qur'anic status of the Prophet's wives (*al-nisā'*) and the Hadith's account of their cramped living conditions, see *The Meaning of the Holy Qur'ān*, 33:32 (also 33:59); Abbott, *Aishah*, 25-27; Stowasser, "The Status of Women," 23-24; and idem, "The *Ḥijāb*," 92.

proof. Such proof comes from or echoes the corpus of Arabic *rithā' 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 *rithā' al-mudun* corpus takes the form of lamentation (*rithā'*): 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 *ḥijāb* as a cultural institution, this requirement becomes levelled at *muḥṣana* Muslim women in particular, whose domain henceforth is the house.[48] In the *rithā' 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 (*khuṭub*) 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

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[47]Al-Maqqarī, *Nafḥ al-ṭīb*, 4: 446-553; Iḥsān `Abbās, *Tārikh al-adab al-andalusī. Vol. II: `Aṣr al-Ṭawā'if wa al-Murābiṭīn* (Beirut: Dār al-Thaqāfa, 1962), 177-193; Hassen Mustapha, "Recherche sur les poèmes inspirés par la perte ou la destruction des villes dans la littérature arabe à partir du III^{e}/IX^{e} siècle jusqu'à la prise de Grenade en 897/1492," 2 vols. (Thèse de doctorat de troisième cycle, Université de Sorbonne, 1977), 1: 44-47, 55-57; Charles Pellat, "Marthiya (1)," in *Encyclopaedia of Islam*, 2nd ed., 602-607; `Abd al-Rāhmān Ḥusayn Muḥammad, *Rithā' al-mudun wa mamālik al-zā'ila fi al-shi`r al-`arabī ḥattā suqūṭ Gharnāṭa* (Cairo: n.a., 1983), 105-223; `Abd Allāh Muḥammad al-Zayyāt, *Rithā' al-mudun fi shi`r al-andalusī* (Binghāzī: Jāmi`at Qār Yunis, 1990), 81-95.

[48]Chelhod, "Ḥijāb," 359-360; Sherif, "What is *Ḥijāb*?," 158-163; Doumato, "Seclusion," 19. See also Abraham Marcus, "Privacy in Eighteenth-Century Aleppo: The Limits of Cultural Ideals," in *International Journal of Middle Eastern Studies* 18 (1986): 167-170. It is beyond the scope of the current dissertation to seek the reasons for the widespread imposition of the *ḥijāb* institution upon women; some plausible ones are suggested in Abu-Lughod, *Veiled Sentiments*, 155-167; and Doumato, "Seclusion," 19.

of the women's seclusion had once formed their horizons, now the empty horizon alone suffices (*wa kānat al-astār āfāqahā: fa-`ādat al-āfāq astārahā)*; stumbling (*`athūr*) 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 talḥaẓuhā muqla: lawm kaḥḥalat bi-al-shams ashfārahā*).[49]

In conformity with religious and popular notions descrying a woman's inherent nakedness (*`awra*) and incapacity for shame,[50] for Ibn Sharaf and other poets it

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[49]Abū `Abd Allāh Muḥammad b. Sa`īd b. Aḥmad Ibn Sharaf al-Qayrawānī, compiled in Mustapha, "Recherche sur les poèmes," 2: 186; for biographical details of this poet, see Muḥammad, *Rithā' al-mudun*, 118-121. Other examples include: 1) Ibn al-Labbāna's (Abū Bakr Muḥammad Ibn `Īsā, d. after 484/1091) *rithā'* on the departure of the family of Muḥammad II al-Mu`tamid (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 (*Ḥaṭṭa al-qinā` fa-lam tastar mukhaddara wa muziqat awjah tamzīq abrād*)." Compiled in Muḥammad, *Rithā' al-mudun*, 164, l. 3; trans. Henri Pérès, *La poésie andalouse en arabe classique au XIe siècle: Ses aspects généraux et sa valeur documentaire* (Paris: Adrien-Maisonneuve, 1937), 103. 2) Abū Muḥammad `Abd Allāh Ibn `Assāl's (d. after 456/1064) *rithā'* 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 harems of the palaces (*Hatakū bi-khaylihim quṣūr ḥarīmihā*) . . . . Secluded and veiled in their inner chambers, [the women] were forced outside, unable to conceal themselves (*Wa maṣūna fi khidrihā maḥjūba qad abrazūhā mā la-hā istikhfā'*) . . . . 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-muslimīn wa annahum rakibū al-kabā'ir mā la-hunna khafā' Mā kāna yanṣuru li-al-naṣārā fāris abad*[an])." Compiled in Mustapha, "Recherche sur les poèmes," 2: 215, lines 2, 8, 10-11; also, `Abbās, *`Aṣr al-Ṭawā'if*, 178 (lines 1-8 only); and al-Zayyāt, *Rithā' al-mudun*, 669-670; trans. Pérès, *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 *`awra*, naked like a pudendum, see, for example, al-Bayḍāwī's (d. 791/1389) commentary on the Qur'anic verse 24:31, in idem, *Tafsīr al-Bayḍāwī*, 2: 121 ("fa-inna kulla badan al-ḥurra `awra"); 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 fi husn wajhihā . . . wa `afāfihā wa ṭahāratihā wa khafarihā*).[51] 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 (*nuwwār*), once drawing stares of wonder, leaving eyes helpless (*mutaḥayyir*), 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 allatī kānat ghudhdhiyat bi-hā ayām dawlatinā wa imtidād ẓillinā. Wa li-tabadhdhulihā fi khurūj fi-mā lā budda la-hā min-hu mimmā kānat tuṣānu wa turfa`u `an-hu qablu. Wa innamā al-nisā' rayāḥin matā lam tata`āhad naqaṣat wa bunya matā lam yahtabil bi-hā istahdamat*).[52]

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[51]Abū Muḥammad `Alī b. Aḥmad b. Sa`īd Ibn Ḥazm al-Andalusī, *Le collier du pigeon ou de l'amour et des amants: Ṭawq al-ḥamāma fī'l-ulfa wa'l-ullāf.* Texte arabe et traduction française avec un avant-propos, des notes et un index, par Léon Bercher (Algiers: Editions Carbonel, 1946), 282; see also pp. 282-283 for additional description of her chastity and modest reserve. Nykl refers to her as a servant girl "belonging to a noble lady", but in Bercher's Arabic edition this is not apparent; rather, "she had grown up in our house (*nasha'at fi dārinā*)." Alois Richard Nykl, *Hispano-Arabic Poetry and Its Relations with the Old Provencal Troubadors* (Baltimore: n.a., 1946), 76; Ibn Ḥazm, *Le collier du pigeon*, 282. For a summary of the life and works of Ibn Ḥazm, and a study of the *Ṭawq al-ḥamāma*, see R. Arnaldez, "Ibn Ḥazm," in *Encyclopaedia of Islam*, 2nd ed., 790-799; and Lois A. Giffen, "Ibn Ḥazm and the *Ṭawq al-ḥamāma*," in Jayyusi (ed.), *The Legacy of Muslim Spain*, 420-442.

[52]Ibid., 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,[53] so in this passage Ibn Ḥazm is perhaps alluding to Cordoba, even as he describes the tragic decline of a servant girl.[54] 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.[55] 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."[56]

2:2 Conclusion

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

[53]See, for example, al-Sumaysir's (Abū al-Qāsim Khalaf Faraj, d. after 484/1091) *rithā'* on Madīnat al-Zahrā'; cited in al-Maqqarī, *Nafḥ al-ṭīb*, 1: 527-528; compiled in al-Zayyāt, *Rithā' al-mudun*, 665; and trans. Pérès, *La poésie andalouse*, 126; Nykl, *Hispano-Arabic Poetry*, 193. See also al-Fatḥ Ibn Khāqān's (d. 529/1134) description of the same dilapidated locality: "The ruins of the houses rose up before [the visitors] like bereaved mothers mourning their destruction (*ka-thakālā yanuḥna `alā kharābihā*)." Cited in al-Maqqarī, *Nafḥ al-ṭīb*, 1: 624; and Rubiera, *Arquitectura en la literatura arabe*, 131. Finally, see Muḥammad Ibn Yaḥyā's (n.d.) description of the breached and ruined (*makhrūq*) Ka`ba after the fighting and blaze of 64/683: "[The Ka`ba] was like the bosoms of [mourning] women (*ka-annahā juyūb al-nisā'*)." Cited in Abū al-Walīd Muḥammad b. `Abd Allāh b. Aḥmad al-Azraqī (d. ca 251/865), *Akhbār Makka wa mā jā' fi-hā min al-athār*, ed. Rushdī al-Ṣāliḥ Malḥas, 1 binding 2 vols. (Mecca: Maṭābi` Dār al-Thaqāfa, 1416/1996), 1: 199; my translation follows in part Hitti, *History of the Arabs*, 192.

[54]Cf. D. Fairchild Ruggles, "Arabic Poetry and Architectural Memory in al-Andalus," in *Ars Orientalis* 23 (1993): 174.

[55]Cf. the short, unattributed poem comparing Granada to a bride on her wedding day, cited in al-Maqqarī, *Nafḥ al-ṭīb*, 1: 148; trans. Henri Pérès, *La poésie andalouse*, 146.

[56]Cf. 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.

Chapter Six

SEE, FOUNDATION LEGEND OF FES

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

[2]Edmund Leach (d. 1410/1989) expresses this issue nicely: "Supposing the whole Freudian argument about symbolic associations and layers of conscious, unsconscious 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.

[3]Leach, *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 (*sīra*). 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 Waṭṭasid 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.[4] What has been given less attention are the legends of these and other medinas at the moment of their foundation or Islamic re-foundation.[5] 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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[4]See especially, G. E. von Grunebaum, "The Sacred Character of Islamic Cities," in Abdurrahman Badawi (ed.), *Mélanges Taha Hussein: Offerts par ses amis et ses disciples à l'occasion de son 70ième anniversaire* (Cairo: Dar Al-Maaref, 1962), 25-37; Von Heribert Busse, "Der Islam und die biblischen Kultstätten," in *Der Islam* 42 (1966): 113-147; F. de Polignac, "L'imaginaire Arabe et le mythe de la foundation légitime," in *Revue de l'Occident Musulman et de la Méditerranée* 46 (1987): 55-63; and Franck Mermier, "Les foundations mythiques de Sanaa et d'Aden," in *Revue du Monde Musulman et de la Méditerranée* 67, no. 1 (1993): 131-139.

[5]Giovanna Calasso, "I nomi delle prime città di fondazione islamica nel *Buldān* di Yāqūt: Etimologie e racconti di origine," in Renato Traini (ed.), *Studi in onore di Francesco Gabrieli nel suo ottantesimo compleano*, 2 vols. (Rome: Università di Roma "La Sapienza", 1984), 1: 147.

on for objectivity, the contrived, semi-literary symbolic elements shared by a number of these legends indicate more than just an heightened imagination.[6] 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";[7] 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.[8]

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[6]For a representative example in translation of this fascination for the marvellous, as it pertains to historiography, see Aḥmad b. Muḥammad al-Maqqarī al-Tlimsānī, *The History of the Mohammedan Dynasties in Spain: Extracted from the Nafhu-t-tíb min ghosni-l-Andalusi-r-rattíb wa tárík lisánu-d-dín Ibni-l-Khattíb*, trans. Pascual de Gayangos, 2 vols. (London: The Oriental Translation Fund of Great Britain and Ireland, 1840-43), 1: 77-84; cf. Calasso "Les remparts et la loi," 88-93. On the "marvels", or *`ajā'ib* literature in general, see L. Richter-Bernburg, "*`Ajā'ib* Literature," in Julie Scott Meisami and Paul Starkey (eds.), *Encyclopedia of Arabic Literature* , 2 vols. (London: Routledge, 1998), 1: 65-66; also, Mohamed Arkoun et al. (eds.), *L'étrange et le mérveilleux dans l'Islam médiéval: Actes du colloque tenu au Collège de France à Paris, en mars 1974* (Paris: Editions J.A., 1978), passim.

[7]Northrop Frye, *Words With Power: Being a Second Study of "The Bible and Literature"* (San Diego: Harcourt Brace Jovanovich, 1990), 30.

[8]Bronislaw Malinowski, "Myth in Primitive Psychology," in idem, *Magic, Science and Religion and Other Essays by Bronislaw Malinowski* (London: Souvenir Press, 1974), 106.

1:1 The Legend of Fes

In both Marinid histories of Fes *Rawḍ al-qirṭās* and *Zahrat al-ās* a nearly identical, protracted account is given of the medina's foundation by Idrīs II. The historically inaccurate attribution of this foundation to Idrīs II, and not to his father Idrīs I, is not of concern here.[9] 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 Idrīs; and the story of Sef (*Sāf*), around which the whole account is woven, and in which Islam arises supreme.[10]

> Ibn Ghālib[11] mentions in his history that when Imām Idrīs, may God be pleased with him, decided to build [Fes] and was standing in the site so as to mark it out (*`azama `alā banā'ihā wa waqafa fi mawḍi`ihā li-yakhtaṭṭahā*), he passed by a an old man - one of the Christian monks, over one hundred and fifty years of age- in retreat in a hermit's cell (*ṣawma`a*) nearby. [The monk] stopped Imām Idrīs and greeted him. Then he said: "Emir! What do you wish to contrive (*taṣna`a*) between these two hills?" [Idrīs] 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*

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[9]On 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'Idrīs*, esp. 124-129; cf. B. A. Mojuetan, "Myth and Legend as Functional Instruments in Politics: The Establishment of the `Alawī 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. Idrīs II "borrows" status from the Prophet.

[10]Hence, 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.

[11]Ibn Ghālib (n.d.), an earlier historian of Fes who in turn based his history on that of `Abd al-Malik al-Warrāq (d. 3rd/10th century). Neither history is extant. See Bel, preface to El-Djaznâi, 12; Ibn Manṣūr, preface to *Zahrat al-ās*, b (ب); Shatzmiller, *L'historiographie mérinide*, 137; and Beck, *L'image d'Idrīs*, 64.

madīna li-suknāi wa suknā awlādī min ba`dī yu`badu Allāh ta`ālā bi-hā wa yutlā bi-hā kitābuhu wa yuqāmu bi-hā ḥudūduhu*)." 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 `ilmihi) that on this site there was a city (*madīna*) called Sef, in ruin for seventeen hundred years; that a man called Idrīs, 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 yujaddiduhā wa yuḥīy dāthirahā wa yuqīmu dārisahā rajul min ill bayt al-nubū'a yusammā Idrīs, wa yakūnu la-hā sha'n `aẓīm wa qadr jasīm, lā yazālu dīn al-Islām qā'imā bi-hā ilā yawn al-Qiyāma*)." Idrīs said: "Thanks be to God. I am Idrīs; 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`a fī ḥafr asāsihā*).[12]

Whereas the elevated and then glorified status of the founder Idrīs 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 *ikhtaṭṭa*: to mark out a site, physically to draw its boundaries.[13] 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.[14] In physically drawing

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[12]*Rawḍ al-qirṭās*, 46; trans., 40. Cf. *Zahrat al-ās*, 23, trans., 48.

[13]"*Ikhtaṭṭahā: wa huwa an yu`allima `alayhā alāmat*^{an} *bi-al-khaṭṭ li-yu`lima annahu qad iḥtāzahā li-yabnīhā dar*$^{an}$ . . . . *Wa ikhtaṭṭa fulān khiṭṭat*$^{an}$ *idhā taḥajjara mawḍi` wa khaṭṭa `alayhi bi-jidār* ('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 'ikhtaṭṭa', when he has taken a site and outlined it with a wall)." Ibn Manẓūr, *Lisān 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.

[14]Cf. Djaït, *Al-Kūfa*, 117-135; Akbar, "Khaṭṭa," 24-30. As Calasso says, the perimeter walls are a secondary element of *ikhtaṭṭa*; 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.[15] In Pierre Bourdieu's terms, a "field of power" (*champ du pouvoir*, also *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.[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 *Rawḍ al-qirṭās* and *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 (*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"[17] for as long as you make [the city] last (*Allāhumma ij`alhā dār `ilm wa fiqh yutlā bi-hā kitābuka, wa tuqāmu bi-hā sunnatuka wa ḥudūduka, wa ij`al ahlahā mutamassikīn 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."'[18] Then he took the pickaxe (*mi`wal*) in his hand, and

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[15]Cf. Calasso's comments on the Islamic foundation of Medina (to be discussed below) in ibid., 154.

[16]Bourdieu's treatment of "field" and "field of power" is diffuse, spread across his writings. But see, for example, Pierre Bourdieu, "Champ du pouvoir, champ intellectuel et habitus de classe," in *Scolies* 1, no. 1 (1971): 7-26; idem "The Genesis of the Concepts of *Habitus* and of *Field*," in *Sociocriticism* 1, no. 2 (1985): 16-24; and especially idem and Loïc J. D. Wacquant, *An Invitation to Reflexive Sociology* (Chicago: The University of Chicago Press, 1992), 76-77, 76 n. 16, 99-115; and Loïc J. D. Wacquant, "From Ruling Class to Field of Power: An Interview with Pierre Bourdieu on *La noblesse d'État*," in *Theory, Culture and Society* 10, no. 3 (1993): 20-25. Regarding the secondary literature, see John B. Thompson, "Editor's Introduction," in Pierre Bourdieu, *Language and Symbolic Power*, ed. John B. Thompson, trans. Gino Raymond and Matthew Adamson (Cambridge: Polity Press, 1991), 12-14; and especially, Richard Jenkins, *Pierre Bourdieu* (London: Routledge, 1992), 84-91; and David Swartz, *Culture and Power: The Sociology of Pierre Bourdieu* (Chicago: The University of Chicago Press, 1997), 117-142.

[17]"Al-sunna wa al-jamā`a": see Dozy, *Supplément aux dictionnaires arabes*, 1: 215.

[18]Qur'an 7:128.

commenced digging the foundations.[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.[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,[21] in the form of an unearthed marble bust testifying in alien script to heathen practices, *Rawḍ al-qirṭās* 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 "`Adīla" bridge in [Fes]. Now this location was at that time covered with a vegetation of yews, oak, and others

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[19] *Zahrat al-ās*, 22-23, trans., 47. Cf. *Rawḍ al-qirṭās*, 45; trans., 39.

[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 foundation légitime," 60.

[21]As already mentioned, medieval Arab authors display a marked interest in histories like that of Sef. For an analysis of this phenomemon 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 Fès*, 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 Fès," 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 (*qiṭ`a*) of marble in the form of a serving girl (*jāriya*), and inscribed (*manqūsh*) upon her bosom (*ṣadr*) in Sindi script (*bi-al-khāṭṭ al-sindī*) 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-mawḍi`ihi bay`a li-al-`ibāda*)."[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 (*minhāj al-ḥaqq*). 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 Idrīs, 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 (*madina 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 lākinī aqlibu ismahā al-āwwal wa usammīhā*

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[22]*Zahrat al-ās*, 23, trans., 48-49. Cf. *Rawḍ al-qirṭās*, 46; trans., 40-41.

[23]*Rawḍ al-qirṭās*, 45; trans., 40. Cf. *Zahrat al-ās*, 20, trans., 42. This hadith is discussed in Ignaz Goldziher, *Muslim Studies (Mauhammedanische Studien)*, ed. S. M. Stern, trans. C. R. Barber and S. M. Stern, 2 vols. (London: George Allen & Unwin, Ltd., 1967-1971), 2: 121-125.

bi-hi. Fa-jā' min-hu Fās fa-summiyat bi-hi).[24]

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;[25] 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 (*Qayrawān*) is the first example.

According to Ibn `Idhārī'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 (*shahīd*) `Uqba b. Nāfi` al-Fihrī.[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 ghiyāḍ 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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[24]*Zahrat 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 Idrīs II directly. Instead, he gives only the order to perform the reversal: "Reverse the first name, and call it [that] (*Iqlibū ismahā al-āwwal wa sammūhā*)." Ibid., 54; trans. 46.

[25]Cf. Charles Wendell's comments on this requirement, in idem, "Baghdād: *Imago Mundi*, and Other Foundation-Lore," in *International Journal of Middle Eastern Studies* 2 (1971): 103.

[26]Ibn `Idhārī al-Marrākushī, *al-Bayān al-mughrib fī akhbār al-Andalus wa al-Maghrib*, ed. G. S. Colin and É. Lévi-Provençal, 2 vols. (Leiden: E. J. Brill, 1948), 1: 20. On the *Bayān* and what little that is known about its author, see Shatzmiller, *L'historiographie mérinide*, 124-129; cf. J. Bosch-Vilá, "Ibn `Idhārī," in *Encyclopaedia of Islam*, 2nd ed., 805-806. On `Uqba b. Nāfi` al-Fihrī's legendary status, see Mondher Sakly, "Kairouan," in Garcin (ed.), *Grandes villes méditerranéennes de monde musulman médiéval*, 83.

eighteen of his men who are Companions (*aṣḥāb*) 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 nāzilūn*)! 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-ikhtaṭṭa `Uqba awwal*^{an} *dār al-imāra, thumma atā ilā mawḍi` al-masjid al-a`ẓam fa-ikhtaṭṭahu*).[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

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[27]Ibn `Idhārī, *al-Bayān*, 1: 20. Cf. Sakly, "Kairouan," 83; and Calasso "Les remparts et la loi," 93.

[28]On the meaning of *jahl* 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, *Muḥammad and the Golden Bough: Reconstructing Arabian Myth* (Bloomington: Indiana University Press, 1996), 5-10.

[29]Paul 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" (*Madīnat al-Salām*), and called popularly "The Round City" (*Madīnat al-Mudawwara*).[30] As recounted by the historian al-Ṭabarī (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, "Miqlāṣ is to build it." At this, al-Manṣūr exclaims: "In my youth, I was called Miqlāṣ."[31] Next in the account, on the authority of Sulaymān Ibn Mujālid (n.d.), al-Manṣūr orders the city to be marked out, and its foundations dug (*wa amara bi-khaṭṭ al-madīna wa ḥafr 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 yakhaṭṭa 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 fuṣlānihā wa ṭāqātihā wa riḥābihā wa hiya makhṭūṭa 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-fahimahā wa `arafa rasmahā*)." He gives the order to dig.[33]

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[30]Ibid., 54.

[31]Abū Ja`far Muḥammad b. Jarīr al-Ṭabarī, *Ta'rīkh al-rusul wa al-mulūk*, ed. M. J. de Goeje et al., 16 vols. (incl. 2 indices) in 3 Series (Leiden: E. J. Brill, 1964), Series III: vol. 1: p. 276; trans., Abū Ja`far Muḥammad b. Jarīr al-Ṭabarī, *The History of al-Ṭabarī (Ta'rīkh ak-rusul wa'l-mulūk)*, ed. Ehsan Yar-Shater et al., 39 vols. (Albany: State University of New York Press, 1985-1998), 28: 244. Cf. the minor variations of this legend in the reports from other individuals, in al-Ṭabarī, *Ta'rīkh al-rusul wa al-mulūk*, III: 1: 272, trans. 28: 239; and ibid., III: 1: 277-278, trans. 28: 246. See also Wendell, "Baghdād," 112-113; and Jacob Lassner, *The Shaping of `Abbāsid Rule* (Princeton: Princeton University Press, 1980), 164-165.

[32]Al-Ṭabarī, *Ta'rīkh al-rusul wa al-mulūk*, III: 1: 277; trans., 28: 245.

[33]Al-Ṭabarī, *Ta'rīkh al-rusul wa al-mulūk*, III: 1: 277, trans., 28: 245-246.

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.[34] In addition to the Baghdad story, he cites as an example the foundation legend of the Umayyad administrative city Wāsi.[35] He could have cited others; for example, that of the Abbasid city al-Rāfiqa;[36] and legends with variations on the monkish theme.[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`qūbī's (d. 284/897) description of the city he calls *Surra Man Ra'ā*,[38] the foundation history is reported via Ja`far al-Khushshakī (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-Khushshakī

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[34]Wendell, "Baghdād," 111-112. Cf. "Invece, proprio città di diretta fondazione califfale como Baghdād, Wāsiṭ e Rāfiqa, sembra non possano essere sprovviste, nei racconti di storici e geografi arabi, di questa sorta di legittimazione, che un rappresentante della 'Gente del Libro' viene a fornire al fondatore con la sua 'profezia'." Calasso, "Genealogie e miti di fondazione," 20.

[35]Wendell, "Baghdād," 111-112. Cf. Al-Ṭabarī, *Ta'rīkh al-rusul wa al-mulūk*, II: 2: 1126; trans., 23: 71. On Wāsiṭ itself, see Wheatley, *The Places Where Men Pray Together*, 88-89, 400 n. 21.

[36]Al-Ṭabarī, *Ta'rikh al-rusul wa al-mulūk*, III: 1: 276, trans. 28: 244-245; and III: 1: 372, trans. 29: 67-68. Cf. Wendell, "Baghdād," 112; and Wheatley, *The Places Where Men Pray Together*, 104-105.

[37]On variants of the monkish theme, see, for example, al-Ḥimyarī's (d. after 866/1462) account of the foundation of Madīnat al-Zāhira, near Cordoba, in which an old crone (*`ajūz musinna*) is made to voice a prophecy regarding it, transmitted in local lore (*sama`nā qadim*^{an}). Abū `Abd Allāh Muḥammad b. `Abd al-Mun`im al-Ḥimyarī, *La péninsule ibérique au moyen-âge d'après le Kitāb ar-Rawḍ al-mi`ṭār fi khabar al-aqṭār d'Ibn `Abd 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).

[38]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.

says the entourage eventually arrived at the future location of *Surra Man Ra'ā*: a desert, inhospitable and empty but for a Christian monastery (*ṣaḥrā' . . . lā `imāra bi-hā wa lā anīs fi-hā illā dayr al-naṣārā*). 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-duhūr `alā yad malik jalīl . . . wa yanzilhā wa yanzilhā waladuhu*)." On hearing this prophecy, Mu`taṣim swears that he will build this city and settle himself and his son there; he summons architects (*muhandisūn*) and tells them to choose the best locations for his companions' palaces (*quṣūr*). 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 khaṭṭa al-qaṭā'i` li-al-quwwād wa al-kuttāb wa al-nās wa khaṭṭa al-masjid al-jāmi` wa ikhtaṭṭa al-aswāq 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.

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[39]Ja`far al-Khushshakī, cited in al-Ya`qūbī, *Kitāb al-Buldān*, 255-258. Cf. J. M. Rogers, "Sāmarrā: A Study in Medieval Town Planning," in Hourani and Stern (eds.), *The Islamic City*, 126.

[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."[41] 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,[42] this current section considers the possibility of a *sīra* 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."[43] The Cambridge anthropologist Edmund Leach (d. 1410/1989) follows this definition,[44] but amends it in one significant way. Myth refers to a corpus of often contradictory, mostly oral sacred traditions; not single traditions in isolation.[45] For Leach, both the Bible

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[41]Calasso, "Genealogie e miti di fondazione," 20.

[42]R. Stephen Humphreys, "Qur'anic Myth and Narrative Structure in Early Islamic Historiography," in idem and F. M. Clover (eds.), *Tradition and Innovation in Late Antiquity* (Madison: The University of Wisconsin Press, 1989), 271-290.

[43]Malinowski, "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.

[44]E.g. Leach, "Anthropological Approaches to the Bible," 8.

[45]Idem, "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;[46] and on this view, so, too, does the *sīra*.[47]

Meaning literally "way of going", "way of acting", *sīra* also means "biography"; and with the definite article placed before it, *al-sīra*, "the Prophet's biography".[48] For Muslims, the value of this latter biography could scarcely be greater, "almost a holy writ";[49] because as stated in the Qur'an, the Prophet is their exemplary model (*uswa hasana*).[50] Nevertheless, the Prophet's *sīra* 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.[51] As such, it qualifies as myth in Leach's definition. And because for Muslims "the life of

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

[46]Idem, "Introduction," 6; also, idem, "Anthropological Approaches to the Bible," 9. By way of comparison, Leach also counts as myth the oral traditions of local rival football clubs. Idem, "Introduction," 18.

[47]Upon different criteria, John Wansbrough also refers to the *sīra* literature in terms of myth. Idem, *The Sectarian Milieu: Content and Composition of Islamic Salvation History*. Vol. 34 London Oriental Series (Oxford: Oxford University Press, 1978), 1-49, esp. 23, 31, 33.

[48]W. Raven, "Sīra," in *Encyclopaedia of Islam*, 2nd ed., 660.

[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.

[51]On the orality of the traditions and their compilations, see especially Uri Rubin, "Introduction: The Prophet Muḥammad and the Islamic Sources," in idem (ed.), *The Life of Muḥammad*. Vol. 4 The Formation of the Classical Islamic World, ed. Lawrence I. Conrad (Aldershot: Ashgate/Variorum, 1998), xiii, xxv-xxix; and M. J. Kister, "The *Sīrah* Literature," in A. F. L. Beeston et al. (eds.), *Arabic Literature to the End of the Umayyad Period* (Cambridge: Cambridge University Press, 1983), 352, 366-367. On the often contradictory nature of the traditions, see Raven, "Sīra," 662; Uri Rubin, "The Life of Muḥammad and the Islamic Self-Image: A Comparative Analysis of an Episode in the Campaigns of Badr and al-Ḥudaybiya," in Harald Motzki (ed.), *The Biography of Muḥammad: The Issue of the Sources*. Vol. 32 Islamic History and Civilization: Studies and Texts (Leiden: Brill, 2000), 3-16; Uri Rubin, *The Eye of the Beholder: The Life of Muḥammad as Viewed by the Earliest Sources. A Textual Analysis*. Vol. 5 Studies in Late Antiquity and Early Islam (Princeton: The Darwin Press, Inc., 1995), passim; J. M. B. Jones, "The *Maghāzī* Literature," in Beeston et al. (eds.), *Arabic Literature*, 349-351; and W. Montgomery Watt, "The Materials Used by Ibn Isḥāq," in Bernard Lewis and P. M. Holt (eds.), *Historians of the Middle East*. Historical Writings on the Peoples of Asia (London: Oxford University Press, 1962), 30-33. On the contested value of the traditions for a portrait of the historical Muḥammad, see a summary of the debate in Rubin, "Introduction," xv-xxi; cf. F. E. Peters, "The Quest of the Historical Muhammad," in *International Journal of Middle Eastern Studies* 23 (1991): 291-315.

Muḥammad 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.[52] 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.[53]

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.[54] 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 *Sīra* of Ibn Isḥāq (d. 151/768)

Ibn Isḥāq's *Sīra* is one of the very earliest *sīra* compilations. No longer extant in its original form, it best survives in a recension of al-Bakkā'ī (n.d.), as redacted by Ibn Hishām (d. 218/834).[55] In that format it found favour with early and

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[52]Rubin, "Introduction," xiii. Cf. "If Muḥammad the Prophet were to be cast in entirely detached and obejectivized 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, *Muḥammad and the Golden Bough*, 112. For a disputed reconstruction of how one of the most important but extensively lost *sīra* 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).

[53]Mircea Eliade, *Myth and Reality*, trans. Willard R. Trask. Vol. 21 World Perspectives, ed. Ruth Nanda Anshen (London: George Allen and Unwin, Ltd., 1964), 5-6. See also ibid., 18-20.

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

[55]On Ibn Hishām, see W. Montgomery Watt, "Ibn Hishām," in *Encyclopaedia of Islam*, 2nd ed., 800-801. On Ibn Isḥāq, his text's different recensions and still incomplete

medieval Muslim historians;[56] is considered the most prominent of all the *sīra* compilations;[57] and according to W. Montgomery Watt, represents "the basic work on the subject."[58] In that format, too, it is the compilation chosen for the following analysis. Hereafter referred to only as the *Sīra*, in the footnotes it is attributed to Ibn Hishām.

In the *Sīra* 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 *Sīra*'s mythical events, the latter representing something akin to a "foundation paradigm". This paradigm comprises three parts: Baḥīrā the monk; the Prophet's arrival in Medina; and the so-called Constitution of Medina.

2:2:1 Baḥīrā the monk

According to the *Sīra*, when the Prophet was a boy his guardian and uncle Abū Ṭālib took him to Syria in a merchants' caravan. On their way they stopped near a monk in his hermit's cell (*ṣawma`a*). His name was Baḥīrā; 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

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reconstruction from other sources, see Josef Horovitz, "The Earliest Biographies of the Prophet and Their Authors," in *Islamic Culture* 2 (1928): 169-182; Alfred Guillaume's introduction to Ibn Hishām, *The Life of Muhammad: A Translation of Isḥāq's* Sīrat Rasūl Allāh, trans. A. Guillaume (London: Oxford University Press, 1955), xiii-xli; A. A. Duri, *The Rise of Historical Writing Among the Arabs*, ed. and trans. Lawrence I. Conrad. Modern Classics in Near Eastern Studies, ed. Charles Issawi and Bernard Lewis (Princeton: Princeton University Press, 1983), 33-36; J. M. B. Jones, "Ibn Isḥāq," in *Encyclopaedia of Islam*, 2nd ed., 810-811; Tarif Khalidi, *Arabic Historical Thought in the Classical Period*. Cambridge Studies in Islamic Civilization, ed. David Morgan et al. (Cambridge: Cambridge University Press, 1994), 34-39; and Raven, "Sīra," 661.

[56]Duri, *The Rise of Historical Writing*, 36.

[57]Raven, "Sīra," 661.

[58]Watt, "Ibn Hishām," 800.

came, except for the Prophet who, on account of his youth, was left behind to guard the baggage. When Baḥīrā looked at his guests, he knew that one of them was missing, and requested him to attend. When the Prophet duly arrived, Baḥīrā saw upon his body traces of a description found in [his book] (*`andahu*). And when, at the end of the feast, Baḥīrā asked him questions, in the Prophet's anwers lay traces of this description, too. Finally, Baḥīrā 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 `aẓīm*) 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 Baḥīrā 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 Baḥīrā 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

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[60]Ibn Hishām, *Sīra*, 1: 149-150; trans., 80-81. Cf. al-Ṭabarī, *Ta'rīkh al-rusul wa al-mulūk*, I: 3: 1123-1125; trans., 6: 44-45.

[61]A. Abel, "Baḥīrā," in *Encyclopaedia of Islam*, 2nd ed., 922; my emphasis.

[62]Cf. "[In Baḥīrā'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.

[63]Cf. Wendell, "Baghdād," 111.

Approximately[64] four decades after his encounter with Baḥīrā, the Prophet left Mecca for Medina, then called Yathrib.[65] In the Muslim calendar, this emigration, or hijra (*hijra*) marks the start of year one of the Islamic era (622 C.E.).[66] After frustrating, turbulent, and finally insufferable beginnings in Mecca, the new religion of Islam was about to enter a period of consolidation.[67] According to the *Sīra,* on the fourth day after his arrival in Yathrib the Prophet founded (*asāsa*) the new religion's first mosque (*masjid*), on the southern fringes of the oasis, in a place called Qubā'.[68] The following day he left Qubā' and headed

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[64]On 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

[65]Yathrib 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-Madīna*) 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 *Madīnat al-Nabiy*, "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-Madīna* (also *Ṭāba* and *Ṭayyiba*, "Good"). See Fr. Buhl, "al-Madīna," in *The Encyclopaedia of Islam*, 83; W. Montgomery Watt and R. B. Winder, "al-Madīna," in *Encyclopaedia of Islam*, 2nd ed., 994; and Marco Schöller, "Medina," in McAuliffe (ed.), *The Encyclopaedia of the Qur'ān*, 2: 369-370; Abū Zayd `Umar Ibn Shabbah al-Numayrī al-Baṣrī, *Kitāb Ta'rīkh al-Madīna al-munawwara*, ed. Fahīm Muḥammad Shaltūt, 4 vols. (Jedda: Dār al-Iṣfahānī, n.a.), 1: 165; Muslim, *Ṣaḥīḥ Muslim*, k. al-ḥajj, bāb 88 (al-Madīna tanfī shirārahā), raqm 488 (1382), incl. al-Nawawī's commentary (ibid., 5: 167); and Ibn Ḥanbal, *al-Musnad*, 6: 409, hadith no. 18544 (musnad al-Kūfiyyīn/ḥadīth al-Barā' Ibn `Āzib).

[66]Fred M. Donner, *Narratives of Islamic Origins: The Beginnings of Islamic Historical Writing*. Vol. 14 Studies in Late Antiquity and Early Islam (Princeton: The Darwin Press, Inc., 1998), 234-238; Wheatley, *The Places Where Men Pray Together*, 25. On the Prophet's hijra (the classical meaning of the word *hijra*); others' hijras; and other meanings of *hijra*, see inter alia Patricia Crone, "The First-Century Concept of Hijra," in *Arabica* 41 (1994): 352-357; Daoud S. Casewit, "Hijra as History and Metaphor: A Survey of Qur'anic and Ḥadīth Sources," in *The Muslim World* 88, no. 2 (1998): 105-128; and Muhammad al-Faruque, "Emigration," in McAuliffe (ed.), *The Encyclopaedia of the Qur'ān*, 2: 18-23.

[67]For a reconstruction of events in pre-hijra Mecca, see W. Montgomery Watt, *Muhammad at Mecca* (Oxford: The Clarendon Press, 1953), passim; cf. Ibn Hishām, *Sīra*, 1:191-2:92, trans. 117-218; al-Ṭabarī, *Ta'rīkh al-rusul wa al-mulūk*, I: 3: 1147-1242, trans. 6: 66-150; and Wheatley's criticisms of Watt, in idem, *The Places Where Men Pray Together*, 19-24. For an overview of the Prophet's better documented Medinan period, see W. Montgomery Watt, *Muhammad at Medina* (Oxford: The Clarendon Press, 1956), passim; and idem and Winder, "al-Madīna," 995-996.

[68]Ibn Hishām, *Sīra*, 2: 105; trans., 227. Cf. the slightly different version in al-Ṭabarī, *Ta'rīkh al-rusul wa al-mulūk*, I: 3: 1256-1260, trans. 7: 1-5; and a longer version in Abū `Abbās Aḥmad b. Yaḥyā b. Jābir al-Balādhurī (d. 279/872), *Futūḥ al-buldān*, ed. `Abd Allāh and `Umar Anīs al-Ṭabbā` (Beirut: Dār al-Nashr li-al-Jāmi`iyyīn, 1377/1957), 8-13, trans. *The Origins of the Islamic State: Being a Translation from the Arabic accompanied with*

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" (*Anṣār*) 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!"[69]

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-Nabiy, masjid al-Rasūl,* and *al-masjid al-nabawī al-sharīf*);[70] is commonly considered the model for all subsequent mosques;[71] and in the details of the *Sīra*'s account, its foundation is "a calque upon the foundation of the Temple of Jerusalem (the *masjid* of *Qur'ān* XVII:7)."[72] 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.[73] The *Sīra* confirms

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Annotations Geographic and Historic Notes of the Kitāb Futūḥ al-Buldān of al-Imām *abu-l `Abbās Aḥmad ibn-Jābir al-Balādhuri,* trans. Philip Khūri Hitti (New York: Columbia University Press, 1916; reprinted, Beirut: Khayats, 1966), 15-20. On "Masjid Qubā'" as the first mosque of Islam, see Schöller, "Medina," 369; cf. Michael Lecker, *Muslims, Jews and Pagans: Studies on Early Islamic Medina.* Vol. 13 Islamic History and Civilization (Leiden: E. J. Brill, 1995), 79-80, 93-100.

[69]Ibn Hishām, *Sīra,* 2: 105-108; trans., 228-229. Cf. al-Ṭabarī, *Ta'rīkh al-rusul wa al-mulūk,* I: 3: 1259-1260; trans., 7: 4-5.

[70]See, for example, al-Bukhārī, *Saḥīḥ al-Bukhārī,* k. faḍl al-ṣalāt fī masjid Makka wa Madīna, abwāb 1-3, 5-6, arqām 1188-1193, 1195-1197.

[71]See, 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.

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

[73]Cf. "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'ākhāh*) 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 (*istaḥkama 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 *Sīra* shows the Prophet actually marking out either site, demarcating the boundaries (*ikhtiṭāṭ*), 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 treaty[75] 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

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Johns, "The 'House of the Prophet'," 73; Hillenbrand, *Islamic Architecture*, 42, 61-64.

[73]Ibn Hishām, *Sīra*, 2: 114; trans., 234.

[74]Ibn Hishām, 2: 116, trans. 235; cf. Chapter Two, Part 1:1:2.

[75]Moshe Gil prefers "negotiated agreement". Idem, "The Constitution of Medina: A Reconsideration," in *Israel Oriental Studies* 4 (1974): 45.

[76]Watt, *Muhammad at Medina*, 221-226; Gil, "The Constitution of Medina," 45; R. Stephen Humphreys, *Islamic History: A Framework for Inquiry*, revised ed. (Princeton: Princeton University Press, 1991), 92; and Wheatley, *The Places Where Men Pray Together*, 25.

the position of the Jews in relation to the other groups.[77]

It is, in short, a practical, political affair;[78] worded according to first/seventh century local tribal customs (*ma`rūf*);[79] and according to the *Sīra*, written by the Prophet himself.[80]

Preserved in two recensions, the earlier and fuller one belonging to the *Sīra*,[81] the Constitution of Medina is accepted as authentic by both Muslim and Western scholarship.[82] 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.[83] Not attempting to address these issues, the following analysis refers to what is unambiguously stated in the *Sīra*'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 *Sīra*'s recension;[84] then to Watt's more commonly available translation of the same.[85]

According to the wording and location of the recension in the *Sīra*, the Constitution

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[77]R. B. Serjeant, "The 'Constitution of Medina'," in *Islamic Quarterly* 8, nos. 1-2 (1964): 3.

[78]Ibid., 4, 12; Gil, "The Constitution of Medina," 44.

[79]Wheatley, *The Places Where Men Pray Together*, 25; see also R. B. Serjeant,"The *Sunnah Jāmi`ah*, Pacts with the Yathrib Jews, and the *Taḥrīm* of Yathrib: Analysis and Translation of the Documents Comprised in the so-called 'Constitution of Medina'," in *Bulletin of the School of Oriental and African Studies* 4 (1978): 1-42, reprinted in Rubin (ed.), *The Life of Muḥammed*, 2 (page references follow the pagination of the original publication, included in the reprint).

[80]Ibn Hishām, *Sīra*, 2: 111; trans., 231.

[81]Serjeant,"The *Sunnah Jāmi`ah*," 9; Wheatley, *The Places Where Men Pray Together*, 25. This recension is found in Ibn Hishām, *Sīra*, 2: 111-113; trans., 231-233.

[82]Humphreys, *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.

[83]See Humphreys' summary of the debates, in idem, *Islamic History*, 93-98.

[84]Serjeant,"The *Sunnah Jāmi`ah*," 16-39. Page and clause references to the Arabic will come first.

[85]Watt, *Muhammad at Medina*, 221-225.

of Medina is a unitary document (*kitāb, ṣaḥīfa*),[87] composed before the "institution of fraternity" between Emigrants and *Anṣār*, and after the foundation of the Prophet's house-cum-mosque.[88] In conjunction with information from other sources, this dates it to approximately the fifth or eighth month of year 1/622,[89] and makes it part of the Prophet's foundational activity in Yathrib.[90] As will be seen, in defining Yathrib a sacred enclave (*ḥarām*), 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);[91] earlier occurrences referring to or implying other groups as well, for example, the Jews and Christians.[92] In the Constitution of Medina, the term *umma* occurs twice;[93] 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 confedaration or religious group - a usage consonant with its late

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[87]Serjeant,"The *Sunnah Jāmi`ah,*" 16: 1, trans. 18: 1; 23: 3a, trans. 24: 3a; Watt, *Muhammad at Medina,* 221, 223: 22.

[88]See its placement in Ibn Hishām, *Sira*, 2: 111-113; trans., 231-233.

[89]`Alī b. `Abd Allāh al-Samhūdī (d. 911/1506), *Kitāb Wafā' al-wafā' bi-akhbar Dār al-Muṣṭafā,* 2 vols. (Cairo: n.a., 1908), 1: 190; and Ḥusayn b. Muḥammad al-Diyārbakrī (d. 965/1558), *Ta'rikh al-khamīs fi aḥwāl anfas nafis,* 2 vols. (Cairo: n.a., 1302/1885), 1: 398; both cited in Gil, "The Constitution of Medina," 49. See also Serjeant, "The 'Constitution of Medina'," 7.

[90]On different chronologies proposed for the Constitution in Western scholarship, see especially Serjeant's, in ibid., 8-16; and idem, "The *Sunnah Jāmi`ah,*" 15-39.

[91]Cf. Frederick Mathewson Denny, "The Meaning of *Ummah* in the Qur'ān," in *History of Religions* 15, no. 1 (1975): 68-70; and idem, "Community and Society in the Qur'ān," in McAuliffe (ed.), *The Encyclopaedia of the Qur'ān*, 1: 371-372.

[92]E.g. Qur'an 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.

[93]Serjeant,"The *Sunnah Jāmi`ah,*" 16: 2a, trans. 18: 2a; 26: 2a, trans. 27: 2a; Watt, *Muhammad at Medina,* 221: 1, 223: 25.

Qur'anic occurrences.[94] Both scholars also find in it a territorial quality, especially Serjeant.[95] In the clause that renders Yathrib *ḥarām*,[96] 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.[97] According to Serjeant, this *umma* was a theocratic confedaration of tribes presided over by the Prophet as arbiter.[98] When the latter was sufficiently consolidated in Yathrib, his prophetic credentials and "honourable, arms-bearing" lineage recognised, he designated the oasis *ḥarām*: "[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."[99] Forming an inviolable core around which an indefinite number of tribes could be gathered,[100] *ḥarām* Yathrib became the nucleus of the Prophet's "theocratic state";[101] a development that,

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[94]Serjeant, "The 'Constitution of Medina'," 13; idem,"The *Sunnah Jāmi`ah*," 4; Frederick Mathewson Denny, "*Ummah* in the Constitution of Medina," in *Journal of Near Eastern Studies* 36, no. 1 (1977): 44. Cf. Watt's alternative opinion, in idem, *Muhammad at Medina*, 241.

[95]Serjeant, "The 'Constitution of Medina'," 12-13; Denny, "*Ummah* in the Constitution of Medina," 44-45. Cf. Gil, "The Constitution of Medina," 56-57.

[96]Serjeant,"The *Sunnah Jāmi`ah*," 35: 1, trans. 35: 1; Watt, *Muhammad at Medina*, 224: 39.

[97]R. B. Serjeant, "Haram and Hawtah, the Sacred Enclave in Arabia," in Badawi (ed.), *Mélanges Taha Hussein*, 50. On the precise wording of the Constitution's first paragraph and clause, and the meaning of the terms "Mu'minūn" and "Muslimūn" used there, see Serjeant,"The *Sunnah Jāmi`ah*," 12-14, 16: 1-2a, trans. 18: 1-2a; and idem, "The 'Constitution of Medina'," 11; but cf. Fred Donner's forthcoming article "From Believers to Muslims: Confessional Self-Identity in the early Islamic Community," in Lawrence I. Conrad (ed.), *The Byzantine and Early Islamic Near East. Vol. 4: Patterns of Communal Identity* (Princeton: Princeton University Press, forthcoming), cited in Denny, "Community and Society in the Qur'ān," 378-379.

[98]See Serjeant "The 'Constitution of Medina'," 11-13; and idem,"The *Sunnah Jāmi`ah*," 4. On the clause that renders the Prophet the final arbiter, see Serjeant,"The *Sunnah Jāmi`ah*," 24: 4, trans. 24: 4; Watt, *Muhammad at Medina*, 223: 23; see also Serjeant,"The *Sunnah Jāmi`ah*," 25: 4.

[99]R. B. Serjeant, "Haram and Hawtah, the Sacred Enclave in Arabia," in Badawi (ed.), *Mélanges Taha Hussein*, 47-50 (embedded quotation, p. 48; closing quotation, p. 50). Cf. al-Balādhurī's account of the Prophet designating the oasis inviolable (*taḥrīm*), in idem, *Futūḥ al-buldān*, 14-15; trans., 21-22; and Daoud S. Casewit, "Fāḍā'il al-Madīnah: The Unique Distinctions of the Prophet's City," in *Islamic Quarterly* 35, no. 1 (1991): 7-8. On the credentials and lineage required of a founder of a *ḥarām*, see Serjeant, "Haram and Hawtah," 43-48.

[100]Ibid., 50.

[101]Idem, "The 'Constitution of Medina'," 15.

according to Serjeant, took a number of years, but which the *Sīra*'s recension presents as completed by the time the document was drafted.[102]

2:3 Conclusion

If Serjeant's thesis is correct,[103] as represented by the *Sīra*, with the Constitution of Medina the Prophet completed a foundation process that began with his and the Qubā' mosques. Inaugural of Islam as a spiritual and temporal power, this process was itself inaugurated by Baḥīrā 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 *umma*.[104] In these two inaugurations lie the mythical origins of the elements common to the foundation legends of Part One. In the figure of Baḥīra lie the elements of the monk and his scriptural prophecy; in the figure of the Prophet and Baḥīra's discovery of his Seal of Prophecy lies the founder's elevated then glorified status; in the foundation process begun at Qubā' and finished with the separation of Yathrib from the surrounding territory as *ḥarām*, lies the demarcation of a field of power; and in the hijra that preceded this foundation process lies the reversal of a prior state.[105]

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[102]Cf. Wansbrough's account of the formation of the exclusively Muslim umma in the *sīra* literature, in idem, *The Sectarian Milieu*, 85-86.

[103]For acceptance of this thesis, see Gil, "The Constitution of Medina," 56; and Wheatley, *The Places Where Men Pray Together*, 27-28. For more guarded acceptance, see Denny, "*Ummah* in the Constitution of Medina," 46; and Humphreys, *Islamic History*, 95.

[104]Cf. "The Islamic concept of authority can be fairly described as 'apostolic'. In the midrashic styles of salvation history the functions of [the *sīra*] 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 (*umma*) out of a more or less traditionally articulated theophany (*waḥy*)." Wansbrough, *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.

[105]Cf. Calasso, "I nomi delle prime città," 153-154.

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.[106] 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 *hājara fi*. For example, "Those who left [their homes] for [the sake of] God after being oppressed, We shall house well in the world (*Wa alladhīna hājarū fi Allāhi min ba`di mā ẓulimū. . .*)." 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 (*hājarū wa jāhadū*) with their wealth and their lives in the way of God (*fi sabīli 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 *ḥarām*: a space politically, religously, and communally elevated from the world around it, over which it seeks dominion. In an age frequently suspicious of urban life,[107] Fes and its founder are thereby identified as cast of Prophetic mold; the city's inhabitants (*ahl*), 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 *ḥarām* 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.

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[107]Khalidi, "Some Classical Views of the City," 265-276.

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 Waṭṭasid 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 Idrīs 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 Waṭṭasid 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 *muḥṣana* 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; *muḥṣana* 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.[1] 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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[1]Cf. Gilles Deleuze and Félix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia*, trans. Brian Massumi (Minneapolis: University of Minnesota Press, 1987), 494; James Dickie, "Space and Volume in Naṣrid Architecture," in Jayyusi (ed.), *The Legacy of Muslim Spain*, 623-624; and Kenzari and Elsheshtawy, "The Ambiguous Veil," passim.

entirety except for the major thoroughfares, principally "Ṭal`a Kabira" that connects "Bab Bou Jeloud" to the Al-Qarawiyyīn 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*.

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[2]Gaston Bachelard, *La terre et les reveries du repos* (Paris: Librairie José Conté, 1948; reprinted, Tunis: Cérès Éditions, 1996), 215-266.

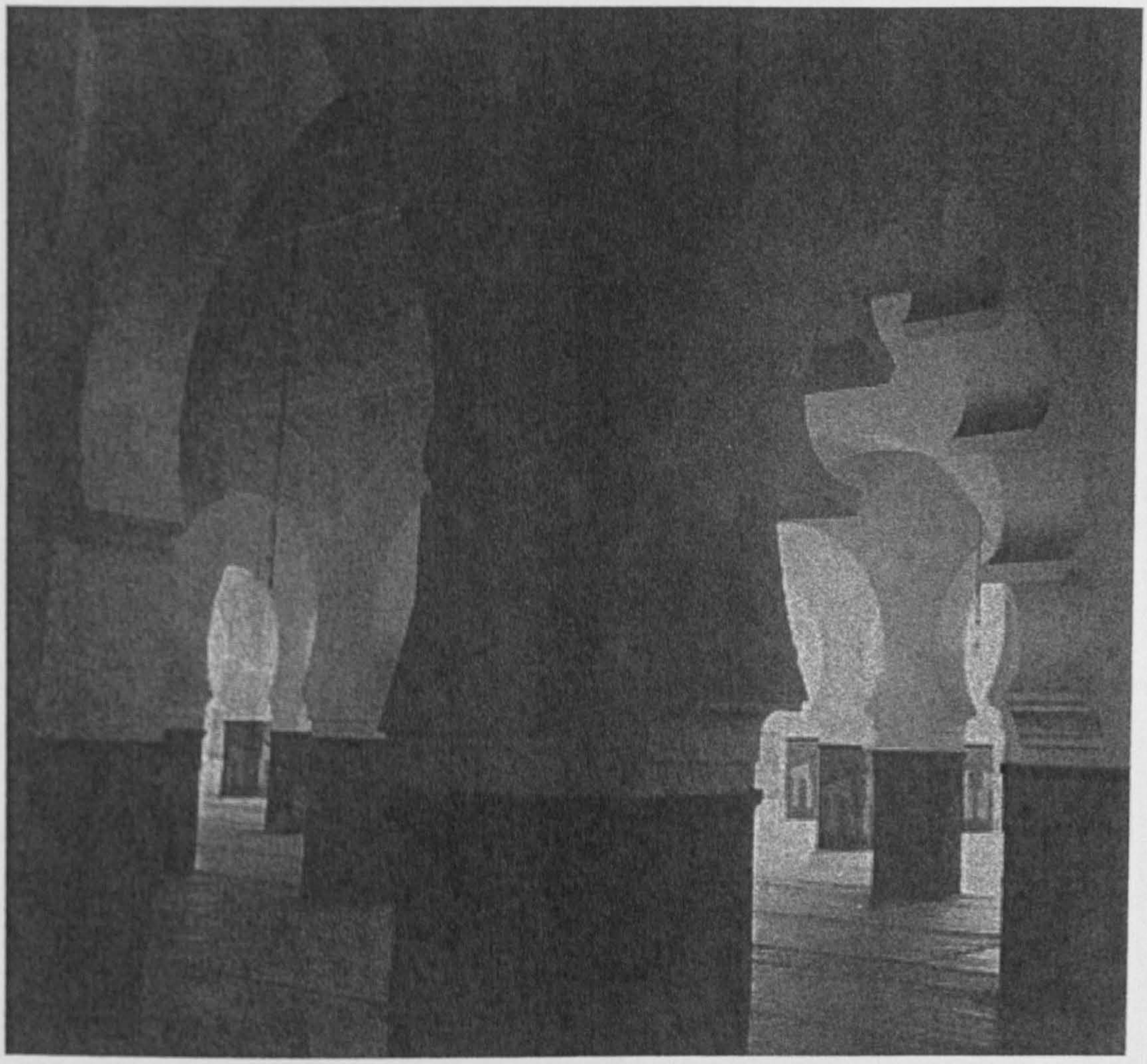

PLATE ONE: Sanctuary of the Al-Qarawiyyīn Mosque

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-Rāmī, *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 yantafi`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 (*Fī qismati al-jidār wa wasfati al-qur`a fi al-ḥā'iṭ wa hal la-hu fi al-ḥā'iṭ shuf`a*);

On he who permits his neighbour to sink wooden support beams into his wall (*Fī gharz khashabihi fi jidār*);

On the harm of smoke (*ḍarar al-dukhān*) and the ruling about it (*al-ḥukm fī-hi*);

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

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

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

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

On he who builds a window and from it sees the entrance-corridor of his neighbour's house (*usṭuwān jārihi*);

On he who builds a minaret (*ṣawma`a*) and thereby exposes to view (*yatakashshafu*) 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-ẓāhira*) and the effect upon buildings (*al-binā'*) in a covered alley (*zanaqa rā'iqa*);

On the sticking out (*ikhrāj*) of porticos and other architectural projections (*al-`asākir wa al-rufūf*) on the street (*al-ṭarīq*);

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

On two neighbours' utilisation of the courtyard (*al-sāḥa*);

On the man who has a path (*ṭarīq*) 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 (*buḥairāt*) and rivers (*anhār*) and ponds (*birak*). Can the natives of these places (*ahluhā*) 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 (*yakhtaliṭu*) with another neighbour's pigeon. Can one eat the chicks (*firākhahā*)?[1]

B) Ibn al-Imām, *Kitāb al-Qaḍā' wa nafy al-ḍarar `an al-afniya wa al-ṭuruq*

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[1]Ibn al-Rāmī; titles in order of appearance.

wa al-judur wa al-mabānī wa al-ṣaḥāt wa al-shajar wa al-jāmi`:

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-muslimīn*), and the building of roofs over them;

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

On the lavatories of houses (*al-marāḥiḍ 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'il 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 yuṭarria jidārahu `alā dār jārihi*);

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 beween the properties of a group of people, and they close their properties, preventing his access;

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

On the erection of pigeon and sparrow coops (*iḥdāth abrajat al-ḥamām wa al-`aṣāfir*); the making use of bees and geese; and insurance (*ḍamān*) of that which livestock and voracious dogs destroy (*mā afsadat al-mawāshī wa al-kulub al-`aqūr*).[2]

C) Ibn Sahl al-Andalusī, from "al-Masājid wa al-dūr (Mosques and Houses)" of *al-Aḥkām al-kubrā*:

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

[On] connecting buildings (*ta`alīq al-bunyān*) 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-qāḍī ma`a al-fuqahā' ilā mu`āyana ḥā'iṭ fi-hi tanāzu`*);

[On] he who installs a staircase (*man aḥdath daraj[an]*) 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`ā an hādhā buniya `alā ḥā'iṭihi muta`addiy[an]*);

On he who expels the [drainage] water from his wall, over the wall of his neighbour (*Fī-man ṣabba mā' jidārihi `alā ḥā'iṭ jārihi*);

Questions regarding architectural projections [in walls] (*Masā'il fi al-rufūf*);

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

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[2]Ibn al-Imām, vol. 2; titles in order of appearance.

similar, and he wants to dispute it [and close it] (*fa-arāda makhāṣama muḥdathahu fi-hi*);

[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-Marjī al-Thaqafī et al., *Kitāb al-Ḥiṭān*:

If two men contest (*tanāza`u*) an adjoining wall (*ḥā'iṭ muttaṣil*);

On the long wall (*al-ḥā'iṭ aṭ-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 saqfaka*)";

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 one buys a house and under it is a cellar (*sirdāb*) and a drainage well (*bi'r bālū`a*) coming from another house next to it;

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

If a man buys a wall (*ishtarā ḥā'iṭ*) and no mention is made of its land (*wa lam yuqal bi-arḍihi*), the sale occurs on the building (*al-binā'*)

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[3]Ibn Sahl; titles in order of appearance.

without the land. Then it is said to the purchaser: "Remove your building! (*iqla` binā'aka*)";

If a man buys half a wall (*niṣf ḥā'iṭ*);

If a man builds (*aqārra*) a wall [next] to another, and does no more than that, the wall belongs to the place (*maqārr*) by its land;

If a woman divorces (*ikhtal`at*) her husband over a wall (*`alā 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`ā*) 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-Wansharīsī, from "Nawāzil min al-ḍarar wa al-bunyān (Cases of harm and building)" of *al-Mi`yār al-mughrib*,:

The ruling [regarding] the construction of a screen between two neighbouring terraces (*al-saṭḥayn al-mutajāwirayn*);

The ruling [regarding] a person owning a wall [that forms a side of] another person's basement (*sifli*), 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;

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[4]*Kitāb al-Ḥiṭān*; titles in order of appearance.

The ruling [concerning] the opening of a shop door (*bāb ḥānūt*) 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 (*ṭarīq*) 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-Rāmī, *Kitāb al-I`lān bi-aḥkām 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-Rāmī] said regarding the second permutation of the first wall: this is a wall (*ḥā'iṭ*) between two men, both of whom claim it (*yadda`īhi*) and neither has a legally identifying bond within it (*laysa li-ahadihimā fī-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 baynahumā*) by way of the appurtenances (*bi-marāfiq*) of the wall. These appurtenances

[5]Al-Wansharīsī, *al-Mi`yār 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 (*ḥaml al-khashab*); construction on top of the wall; and the façade (*al-wajh*) of the wall according to doctrine (*`ala qawl*); 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 (*jumlatahā aw ba`ḍahā*), or else belong to both of them together (*takūnu la-humā jamī`*). 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-Ḥakam taught (*qāla*) via Ibn al-Qāsim; Saḥnūn 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 (*nuṣfayn*). 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 qawluhu 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 (*ḥujja*) 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 (*qawl*) 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 (*`alā al-nadb*)."[6]

2) Ibn al-Imām, *Kitāb al-Qaḍā' wa nafy al-ḍarar `an al-afniya wa al-ṭuruq wa al-judur wa al-mabānī wa al-ṣaḥāt wa al-shajar wa al-jāmi`*:

The judgement (*al-qadā'*) on the construction of mosques and their minarets (*mabāni al-masājid wa ṣawāmi`ihā*) and the prevention of harm of that which is overseen or built from them (*qaṭ`u mā uṭṭila` minhā wa buniya ḍarāran*):

Al-`Utbī taught (*qāla*): the following case was attributed to Saḥnūn. A minaret was built for a mosque (*al-masjid yuja`lu la-hu al-manār*), and when the muezzin ascended it he saw (*`āyin*) 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 *finā'* and sidestreet (*sikka*). Saḥnūn taught (*qāla*): the muezzin should be prevented from ascending it (*yumna`u min al-ṣu`ūd wa al-ruqiy `alaihā*) because this is harmful (*hādhā min al-ḍarar*), and God's Prophet, peace and God's blessing be upon him, forbade harm (*nahā `an al-ḍarar*).

Ibn Saḥnūn said: [Ibn] Ḥabīb asked Saḥnūn about a person who built (*banā*) a mosque on the upper part (*`ala ẓahr ḥawānīt*) of some shops, and made for it a terrace (*saṭḥ*) such that all who came onto the terrace (*fa-kull man ṣāra fi al-saṭḥ*) 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 (*yujabaru*) to screen (*an yastura*) the roof of the mosque and to prevent people from praying in the mosque until his neighbour is shielded (*yustaru*).

Al-`Utbī taught (*qāla*): Ashhab and Ibn Nāfi` said the following. Mālik was asked (*su'ila*) about a tribe (*`ashīra*) 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 fi ḍarar*), in particular in mosques. But if the mosque is built for good benefit and probity (*li-khayr wa ṣalāḥ*),

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[6]Ibn al-Rāmī, 281-282.

then no matter (*fa-lā ba'as bi-hi*). If it was built for harm (*ḍirār*), 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 alladhīna ittakhadhū masjid ḍirāran*)." There's no profit (*khayr*) in harm in anything, and God's word is unending to the very last of the mosques (*fī al-ākhir min al-masjidīn*)."[7]

3) Ibn Sahl, "al-Masājid wa al-dūr":

Questions regarding architectural projections (*rufūf*):

I wrote to my teachers (*shuyūkhinā*) in Cordoba in Sha`bān 456 (July-August 1064) asking them about two neighbouring houses belonging to two men. Between the two houses was a wall (*ḥā'iṭ*) 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 (*ḥā'iṭ bi-ajurr*) or similar at the dogs' [proper] limits (*aṭrāf*), and to heighten [the other wall] with stone or a kennel-room (*ghurfa*). 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 nāḥiyatī*), 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 `Attāb[8] 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-Qaṭṭān[9] 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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[7]Ibn al-Imām, 2: 73-74.

[8]Muḥammad b. `Attāb b. Muḥsin (d. 462/1070), head of the *ahl al-shūrā*, an official body of senior scholars consulted on legal matters. Ibn Sahl, 49 n. 1. On the *ahl al-shūrā*, see Marín, "*Shūrā* et *al-shūrā* dans al-Andalus," 25-51.

[9]Abū `Umar Aḥmad b. Muḥammad b. `Īsā b. Hilāl (d. 460/1067), a renown scholar from Cordoba. Ibid., 77 n. 261.

doing so; nor from [building on] top of his wall. [He can do this] without harm [to his neighour, other than the harm of] air and light [deprivation] and the like, for this is not harm (*Wa lā yumna`u min dhālika wa lā min a`lā ḥā'iṭihi min ghayri ḍarar illā min al-rīḥ wa al-ḍau' wa shibhihi fa-laysa bi-ḍarar*)."[10]

Ibn Mālik[11] wrote: "The owner of the projection should be prevented from doing what he proposes, unless his opponent (*mu`tariḍ*) permits him. [A similar case] occurred (*kānat jarat*) in Toledo between me and Mūsā Ibn al-Saqqāṭ [n.d.], qadi of Guadalajara, and to my mind the response (*jawāb*)[12] of Ibn al-Qaṭṭān was the most dubious (*`andī ashbah*). God alone knows the correct solution (*al-ṣawāb*)."

In Ibn Saḥnūn's book is a question [to] Ibn Ḥabīb regarding a projection with a rail about it (*raff maḥẓūr*), 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. Saḥnūn taught (*qāla*): "He cannot prevent him; rather, fencing can be put on it (*ju`ilat al-huẓūr 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'uhu*)."

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

In a response[13] of Ḥabīb, Saḥnūn 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'il*). 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. Naṣar b. Sahl al-Tamīmī (d. 287/900), author of works on Saḥnūn's legal questions (*masā'il*). 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]."[14]

4) Al-Marjī al-Thaqafī et al., *Kitāb al-Ḥiṭān*:

The case (*bāb*) of the bottom of the wall (*sufl al-ḥā'iṭ*) belonging to one man, and the top to another (*wa li- al-ākhar `alayhi `ulūw*). The case comprises two parts (*faṣlayn*).

The first part:

If the bottom of the wall belongs to one man, and the top of it to another, by consensus (*bi-al-ijmā`*) the owner of the bottom may not tear it down (*laysa li-ṣāḥib 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 Ḥanīfa; may God be pleased with him.

Abū Yūsuf and Muḥammad [al-Shaybānī], 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 yaḍurra 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 yabī`a al-sufl wa yahabahu wa yataṣaddaqa 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 `uluwihi binā'*), or place a supporting element (*yada`a judh`*), or design a water closet (*yashra`a fi-hi kanif*) with it as a window (*wa huwa rūshun*), then, according to Abū Ḥanīfa, this is not allowed (*laysa la-hu dhālika*); but according to [Abū Yūsuf and Muḥammad al-Shaybānī], this is allowed (*la-hu dhālika*)

[14]Ibid., 92-94. The first half of this case is quoted verbatim by Ibn al-Rāmī, 387-388.

Qadi al-Dāmaghāni said: Abū Bakr al-Khuwārazamī used to issue fatwas (*yufti*) in these two situations using Abū Yūsuf and al-Shaybānī's declaration (*bi-qawlihimā*).

The Second Part:

In it are two matters (*masa'latān*) that come under the teaching (*qawl*) 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 ḥā'iṭ mushtarik*), and the owner of the roof wants to build an oven or store on it (*an yabnia fi-hi tannūr^a aw dukkān^a^n*), sometimes Qadi Abū `Abd Allāh al-Ṣaymirī used to issue fatwas allowing this (*yufti bi-jawāz dhālika*), and sometimes he issued fatwas disallowing it. And if it were a stove (*kānūn*) that was moved and converted (*yunqalu wa yuḥawwalu*), he allowed it because it was like an everyday necessity of life (*ka-al-matā`*).

The second: If the wall is shared (*ḥā'iṭ mushtarik*) and one of the two parties wants to make (*an ya`mala*) a hut that is screened by it (*khuṣṣ yustaru bi-hi*), Abū Bakr al-Khuwārazamī used to issue fatwas (*yufti*) allowing it because no harm is involved in it (*lā ḍarar fi-hi*). The other party is obliged to accept it (*yujbaru al-ākhar `alayhi*).

All of this is a deduction based upon their teaching (*wa hādhā kulluhu tafrī` `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 "fi al-ḥā'iṭ yakunu bayna rajalayn fa-yuhdamu wa laysa li-ahadihim `alayhi ḥumūla*").[15]

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[15] *Kitāb al-Ḥiṭān*, 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-fāsī*'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-Karīm al-Jayyidī's *al-`Urf wa al-`amal fi al-madhhab al-mālikī wa mafhūmuhumā ladā `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-Jayyidī'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 (*yuqtada bi-hi*) in judgements (*aḥkām*).[4] Only a judge qualified to

[1]See Chapter Three, Part One.

[2]Al-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.

[3]Al-Jayyidī 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.

[4]Ibid., 353.

issue fatwas (*qāḍī 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.[5] Figures such as Abū al-Walīd Muḥammad Ibn Rushd (d. 520/1126), Abū Bakr Ibn `Arabī (d. 543/1148), and `Alī Muḥammad al-Rab`ī al-Lakhmī (d. 487/1085) attained such rank.[6]

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-mutathabbitīn fi al-masā'il al-fiqhiyya*).[7] 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-ḍa`īf fi al-fatwā ḥarām illā li-mujtahid ẓahara la-hu rujḥānuhu wa bi-dhālika la yabqī ḍa`īf*$^{an}$ *`indahu wa lā `inda man qalladahu*).[8]

A3. The *`amal* ruling itself must be in accordance with the fundaments of the Sharia, even if it is an isolated opinion (*an yakūna jāriy*$^{an}$ *`alā qawā`id al-shar`* *wa in kāna shādh*^{an}).[9]

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

[5]Ibid., 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.

[6]Al-Jayyidī, *al-`Urf wa al-`amal*, 359.

[7]Ibid., 353.

[8]Ibid., 356.

[9]Ibid., 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 (*ashkhāṣ laysa la-hum ahlīyat tawjih al-aḥkām*).[10]

B1. The *`amal* ruling must be well established in its circulation (*thubūt jarayān al-`amal*), until it becomes in effect the dominant and preponderant opinion (*ḥattā yuṣbiḥa fi qūwat al-mashūr wa al-rājiḥ*).[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 maḥalliyya jarayānihi `āmm*^{an} *aw khāṣṣ*^{an} *bi-nāḥiya min al-nawāḥī [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-thānī wa al-thālith: fa-innahu idhā juhila al-maḥall aw al-zamān alladhī jarā fi-hi al-`amal lam tata'tt ta`dīyatuhu ilā al-maḥall alladhī yurādu ta`dīyatuhu ilayhi. Idh li-al-amkina khuṣūṣiyāt kamā li-al-azmina khuṣūṣiyāt fa-idhā thabata anna ahl balda min al-balād jarā `amaluhum fi zamān mā fi qaḍīya mā fa-lā yajūzu la-nā al-iqtidā'*

[10]Ibid., 359.

[11]Ibid., 360.

[12]Ibid., 360. For information on the difference between a general and a specific *`amal* ruling, see ibid., 352.

[13]Ibid., 360.

bi-him).[14]

B4. Knowledge of the quality of the person who initiated the *`amal* ruling (*ma`rifat kawn man ajrā dhālika al-`amal*) is similarly required.[15] 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 idhā lam ya`rif man ajrāhu lam tathbut ahlīyatuhu wa lā yajūzu al-taqlīd fī . . . 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 alladhī li-ajlihi `adalū `an al-mashhūr ilā muqābilihi*).[17] If one is ignorant of the cause of the *`amal* ruling, its conveyance to the status of permissability is forbidden (*Idhā juhila mūjib jary al-`amal imtana`at ta`dīyatuhu li-jawāz*).[18]

[14]Ibid., 361.
[15]Ibid., 360.
[16]Ibid., 361.
[17]Ibid., 360.
[18]Ibid., 361.

APPENDIX (3):
Verbal and Practical *`Urf*

The following account of *`urf* is translated from Muṣṭafā Aḥmad al-Zarqā', *al-Madkhal al-fiqhī al-`āmm*, 7th ed., 3 vols. (Beirut: Dār al-Fikr, n.d.).

> *`Urf* is concerned either with the use (*yata`allaqu bi-isti`māl*) of certain expressions (*ba`ḍ al-alfāẓ*) with meanings that the people come to know through using them (*ma`anin yat`ārafu al-nās `alā isti`mālihā fi-hā*), or with the habituation (*i`tiyād*) of a variety of actions (*a`māl*) or social interactions (*mu`amalāt*). 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-`urf al-lafẓi*)

> Regarding verbal *`urf*, there circulates (*yushī`u*) amongst the people the use of certain expressions and grammatical constructions (*tarākīb*) of designated meaning (*ma`na mu`ayyan*) such that, upon its application, that meaning becomes the immediately understood meaning (*al-mafhūm al-mutabādir*) in people's minds (*adhhān*), without context (*qarina*) or ratiocinative association (*`alāqa `aqliyya*).[1] Such is the case in the application of the word (*lafẓ*) "dirhams" (*dirāhim*) 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.
>
> Such is also the case in the application of the term "al-bayt": in

[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-dār*) in its entirety.

This type of *`urf* is, in truth, a kind of local language specific to its users (*Wa hādhā al-naw` min al-`urf huwa fi al-ḥaqīqa min qabīl al-lughat al-khāṣṣa li-aṣḥābihi*).

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 (*`aṣan*) 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 permissable and acceptable by virtue of the connection or link that the intellect (*`aql*) perceives between the state (*ḥāl*) and the locality (*maḥall*). 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-fā`il 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 (*ṭarā'iq al-ta`bīr*) belong to modes (*ṣuwar*) of metaphor within the statement (*fi al-bayān*) because they are premised upon (*taqūmu `alā asās*) the existence of context and connection. They are not part of verbal *`urf* which is considered a specific, conventional language (*lugha waḍ`iyya khaṣṣa*) whose meanings become customary realities (*haqā'iq `urfiyya*) inferred from (*tustafādu min*) the word itself (*mujarrad al-lafẓ*).

B) Practical *`Urf* (*Al-`urf al-`amalī*)

As for practical *`urf*, it is people making a habit (*i`tiyād al-nās*) of run-of-the-mill, ordinary actions or civic transactions (*al-af`āl al-`ādiyya aw al-mu`āmalāt al-madaniyya*).[2]

What is meant by "run-of-the-mill, ordinary actions" are the individual actions of people in their worldly affairs (*sh'ūn ḥayawiyya*), that are not based upon the reciprocal exchange of social benefits and the establishment of rights (*tabādul al-maṣāliḥ wa inshā' al-ḥuqūq*). 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 (*aṭ-ṭaṣarrufāt*) whence proceeds either the establishment of rights between people, or their elimination and abrogation (*inshā' al-ḥuqūq bayna al-nās aw taṣfiyyatuhā wa isqāṭuhā*), regardless of whether this usufruct was a binding contract (*`aqd*) or not. For example, marriage (*al-nikāḥ*), selling (*al-bay`*) and remission from debt (*al-ibrā'*); also, extortion (*al-ghaṣb*) and arrest (*al-qabḍ*) and discharge of duty (*al-adā'*).

Examples of *`urf* in the recurrent actions of people include making (*ta`ṭil*) certain days of the week a holiday from work; in some places, eating a particular (*khāṣṣ*) type of meat, such as mutton, goat and beef; or using a type of costume (*malābis*) and equipment (*adawāt*); 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 (*taqsīṭ al-ujūr as-sanawiyya li-al-`aqārāt*) in fixed instalments (*aqsāṭ ma`dūda*).
3 - Their mutual acquaintance (*ta`ārufuhum*) in the matter of marriage, with the advance payment (*ta`jil*) 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`āmuluhum*) of what they own (*fī-mā baynahum*) with certain types of money (*nuqūd*) below [the traded goods'] equal (*dūna suwāhā*).

[2]Cf. "[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`rūf `urf*^{an} *ka'l-mashrūṭ shart*^{an})'." Ibid., 290.

5 - Their mutual understanding in certain occupations and crafts (*fi ba`ḍ al-mihan wa al-ṣinā`a*) that the worker (*al-ṣāni`*) takes a fee (*ajr*) from the proprietor of the work (*rabb al-`amal*), and with certain other occupations and crafts the proprietor of the work takes a fee from the worker.[3]

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[3]Al-Zarqā', *al-Madkhal al-fiqhi al-`āmm*, 2: 841-845, paragraphs 486-488.

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