Hespéris-Tamuda LVII (1) (2022): 301-323

Animosity Against Those "Drowned in Debt": An Analysis of Legal Texts in the Marīnid Period

Tomoaki Shindoa
JaCMES, Research Institute for Languages and Cultures of Asia and Africa, The Tokyo University of Foreign Studies

Abstract: This essay discusses social sanctions against a group of people called those "drowned in debt," who were deemed collaborators in illegal state tax collection. To do so, I use fatwās relating to a dispute in Marīnid Fez: the question addressed is about if a teacher can receive money from these people as fees for their children's education. By adopting an opinion of Ibn Rushd al-Jadd, a famous Mālikī jurist of the Almoravid period, a muftī, named al-Qabbāb, argues that such a transaction's permissibility should be determined on the legal status of the property of the party involved and not on the occupation of specific jobs that relate to tax collection. By doing so, the muftī considers the legal sensibility of the city's inhabitants who expect sanctions against state tax collectors while avoiding arbitrary legal reasoning by grounding his argument in the authoritative legal opinions of the Mālikī law school.

Keywords: The Marīnid Dynasty, Fatwā, Islamic Law, the Mālikī Law School, Fez.

Introduction

*Fatwā*s as a Source for Legal and Social History

Using the Mālikī legal literature, especially *fatwā*s issued by a muftī of Fez in the VIIth/XIVth century, I discuss a social sanction on people who are "drowned in debt." The *fatwā*s show that some city dwellers tried to deny education to these people's children on the grounds of their collaboration with the ruling Marīnid dynasty in its tax collection.[1] Based on my analysis of the *fatwā*s, I suggest that Muslim jurists considered the legal sensibilities of their communities and avoided arbitrary legal reasoning by basing their recommendations on the authoritative legal opinions of their law schools.

As is well known, Muslim jurists of the same law school may issue different opinions with respect to the same legal problems. Nevertheless, jurists did not always choose an opinion arbitrarily. Most of them were *muqallid*s, i.e., they were required to follow their school's authoritative doctrines after the so-called "closing of the door of *ijtihād*" in the IVth/Xth century. Many of these *muqallid*s were required to apply the dominant opinions (*mashhūr*) of their school. When they could not determine which

1. The Marīnids controlled a region that corresponds to modern-day Morocco from the middle of the thirteenth century to 1465. In this period, the Mālikī law school developed, thanks to the support of the dynasty. The Marīnid court system involved the sultan, judge, and muftī. See David Powers, *Law, Society and Culture in the Maghrib, 1300-1500* (Cambridge: Cambridge University Press, 2002), 17-21.

Journal Indexed in Emerging Sources Citation Index (Web of Science)
Covered in *Clarivate Analytics* products and services, ISSN: 0018-1005

opinion to apply, they needed sought a recommendation from expert jurists. This system fostered legal stability in the application of Islamic law to practical problems.[2]

The *fatwā* system also enabled certain changes to the rules and principles established in the classical period.[3] A *fatwā* is a non-binding opinion on a specific point of law issued by an expert jurist. It consists of two parts. The first part is the *istiftāʾ* or request for a *fatwā*, in where the questioner poses the question. In many cases, the questioner is a *qāḍī* or a judge, but sometimes litigants requested *fatwā*s to support their claims. The second part is the *jawāb* or answer provided by the expert jurist. *Fatwā*s issued by prominent jurists were often collated in compilations.

Using this legal literature, historians have discussed diverse issues in specific periods and places.[4] Many of them have used *al-Miʿyār*, a huge collection of *fatwā*s assembled by Aḥmad al-Wansharīsī (d. 914/1508). This jurist gathered thousands of *fatwā*s issued by jurists of Ifrīqiyā, Andalus, and Maghrib from the IIIrd/IXth to the Xth/XVIth century.[5]

Recent studies have explored how jurists used *fatwā*s to resolve disputes.[6] David Powers focuses on primary *fatwā*s that include specific historical details and documents that were presented to the courts.[7] Whereas earlier studies focused on the *istiftāʾ*, Powers also analyses the *jawāb*, in which the muftī develops his reasoning. Using this method, Powers rejects the stereotype of Muslim jurists who "decide each

2. Mohammad Hossam Fadel, "The Social Logic of Taqlīd and the Rise of the Mukhtaṣar," *Islamic Law and Society* 3, no. 2 (1996): 193-233, reassesses the role of *taqlīd* and the function of *Mukhtaṣar* in the development of Islamic law. See also Powers, *Law, Society and Culture*, 21.

3. Wael B. Hallaq, "From Fatwās to Furūʿ: Growth and Change in Islamic Substantive Law," *Islamic Law and Society* 1, no. 1 (1994): 29-65.

4. To take only a few recent publications, Camilo Gómez-Rivas, *Law and the Islamization of Morocco under the Almoravids: The Fatwas of Ibn Rushd Al-Jadd to the Far Maghrib* (Leiden: Brill, 2014); Élise Voguet, *Le monde rural du Maghreb Central (XIVe-XVe siècles): Réalités sociales et constructions juridiques d'après les Nawāzil Māzūna* (Paris: Publications de la Sorbonne, 2014); Etty Terem, *Old texts, new practices: Islamic Reform in Modern Morocco* (California, CA: Stanford University Press, 2014); Jocelyn Hendrickson, *Leaving Iberia: Islamic Law and Christian Conquest in North West Africa* (Cambridge, MA: Havard University Press, 2021). *Fatwā* collections provide valuable resources for studying the social and legal history of al-Andalus and the Maghrib, where only a few court records have survived to this day.

5. On al-Wansharīsī, see David S. Powers, "Ahmad al-Wansharisi (d. 914/1509)," in *Islamic Legal Thought: A Compendium of Muslim Jurists*, edited by Arab, Oussama, David S. Powers, Susan A. Spectorsky, (Leiden-Boston: Brill, 2013), 375-99. On the composition of *al-Miʿyār*, see Francisco Vidal Castro, "El Miʿyâr de al-Wanšarîsî (m. 914/1508) I: fuentes, manuscritos, ediciones, traducciones," *Miscelánea de estudios árabes y hebraicos* 42, no. 1 (1993), 317-62; "El Miʿyâr de al-Wanšarîsî (m. 914/1508) II: Contenido," *Miscelánea de estudios árabes y hebraicos* 44, no. 1 (1995), 213-46; Powers, *Law, Society and Culture*, 4-7. Vincent Lagardère, *Histoire et société en Occident Musulman au moyen âge: analyse du Miʿyār d'al-Wanšarīšī*, Online (Madrid: Casa de Velázquez 1995) offers useful summaries and comments regarding specific *fatwā*s.

6. The use of the legal system and knowledge by the urban population, including women, in the Marīnid period has hitherto been explored. See Rosemary Admiral, "Living Islamic Law: Women and Legal Culture in Marinid Morocco," *Islamic Law and Society* 25, no. 3 (2018), 212-34.

7. On the distinction between primary and secondly *fatwā*s, see Hallaq, "From Fatwās to Furūʿ," 31–38.

case according to what they see as its individual merits, without referring to a settled and coherent body of norms or rules and without employing a rational set of judicial procedures."[8] Powers also investigates modes of reasoning used by Muslim jurists in delivering judgments in court or while issuing *fatwā*s. His discussion of the legal sensibility of Muslim jurists is especially relevant to this study. In his analysis of a *fatwā* about a dispute in which two Berber jurists were sued for slander against the Prophet Muḥammad in IXth/XVth century Tlemcen, Powers argues that the muftī took into consideration his reading of the historical moment and his understanding of the impact that any punishment meted out to these jurists would have on the social harmony of the city. By issuing the *fatwā*, the muftī sent a didactic message to the residents of Tlemcen to restore social equilibrium among the litigants and the community, thereby accomplishing his goal of being a "securer of justice."[9]

In this essay, I am concerned with how local sensibilities shape the legal reasoning of jurists. In two *fatwā*s of fourteenth-century Fez I will analyse below, the questioner likely expected a harsh opinion that outlawed any transactions with state tax collectors, who were called those "drowned in debt (*mustaghraq al-dhimma*)." However, the muftī al-Qabbāb (d. ca. 779/1379), one of the leading jurists at Fez in his time, issued a more moderate opinion than expected about the licitness of such transactions. In the following section, I review the literature on those "drowned in debt," pointing out scholarly differences about the phrase's meaning. Next, I will examine the juridical definition of the phrase in the Mālikī law school based on the opinion of Ibn Rushd al-Jadd (450-520/1058-1126), to which al-Qabbāb refers in his *fatwā*s. After a short note about the muftī's career, I will analyse his two *fatwā*s concerning the permissibility of transactions with those "drowned in debt." In conclusion, I will argue that al-Qabbāb framed his opinion to ease tension in the city while bearing in mind animosity against those "drowned in debt."

Those "Drowned in Debt"

Beginning in the Xth century, Mālikī jurists have used the phrase "drowned in debt" to refer to the legal status of property gained through injustice and usurpation.[10] Abū Zakariyyāʾ Yaḥyā al-Shiblī, a jurist of the VIIIth/XIVth century North Africa, composed a book named *Al-Taqsīm wa-l-tabyīn fī ḥukm amwāl al-mustaghraqīn [min al-ẓalama wa-l-ghāṣibīn]* (*The Classification and the explanation about the judgment of the property of those drowned in debt* [*among the oppressors and the usurpers*]).[11]

8. Powers, *Law, Society and Culture*, 23-52.

9. Powers, *Law, Society and Culture*, 167-205.

10. Although it is difficult to identify who first used the phrase at the current stage of investigation, Ibn Abī Zayd al-Qayrawānī (d. 386/996) already uses it. Aḥmad al-Wansharīsī, *Al-Miʿyār al-muʿrib wa-l-jāmiʿ al-Mughrib ʿan fatāwā ʿulamāʾ Ifrīqiya wa-l-Andalus wa-l-Maghrib*, Edited by Muḥammad Ḥajjī et al, 13 vols. (Bayrūt: Dār al-Gharb al-Islāmī, 1981), 9: 564.

11. The words in brackets are added by the editor al-Zurayqī. About al-Shiblī, we have limited information that can be found in his book. The exact dates of his birth nor his death are unknown. Abū Zakariyyāʾ Yaḥyā b. Muḥammad al-Shiblī, *Al-Taqsīm wa-l-tabyīn fī ḥukm amwāl al-mustaghraqīn min al-ẓalama wa-l-ghāṣibīn*, edited by Jumʿa Maḥmūd al-Zurayqī (Al-Ribāṭ: Manshūrāt al-Munaẓẓama al-Islāmiyya li-l-tarbiya wa-l-thaqāfa, 1993), 23-39.

To the best of my knowledge, the first western scholar who mentioned the phrase "drowned in debt" was the Dutch Orientalist Reinhart Dozy. In the first edition of his *Supplément aux dictionnaires arabes*, published in 1881, he cited an example of the phrase he found in *Nafḥ al-Ṭīb* of Aḥmad al-Maqqarī (ca. 986/1577-1041/1632).[12] However, he did not determine its meaning and did not provide any vowel marks to indicate his grammatical understanding of the phrase.

Nearly a century later, social historians began to take an interest in the phrase while examining documents about the legal status of Arab tribal groups that plundered villages in Western Algeria in the IXth/XVth century. In 1970, Jacques Berque used *al-Durar al-Maknūna fī Nawāzil Māzūna*, a compilation of *fatwā*s composed by the jurist Abū Zakariyyāʾ Yaḥyā b. Mūsā b. ʿĪsā al-Maghīlī al-Māzūnī (d. 883/1478), to analyse relationships between Sufi saints and Bedouin. While discussing the management of property spoiled by Bedouin, Berque noted that the jurists called these people "*mustaghriqîn al-dhimma*," which he translated as those "drowned in guilt (*noyés de culpabilité*)."[13] Two decades later, Houari Touati, also using *al-Durar al-Maknūna*, analysed a *fatwā* about a man who misappropriated alms (*zakāt*) during his lifetime but was not called "*mustaghriq adh-dhimma*." Touati translated the phrase as "bankrupt" or "outlaw."[14] Élise Voguet, also using the same compilation, noted that the term Arab (*ʿarab*) is often accompanied by the expression "*mustaghriq al-dhimma*," which she translates as "drowned in debt (*noyé de dettes*)." In her view, this is a legal term that signifies people who make a large sum of money on the backs of other people.[15]

Some Moroccan scholars refer to the phrase in their studies about state corruption. In his work on the embezzlement of Waqf properties by the Marīnid state, Mohamed Kably argues that jurists regarded governors, tax collectors, and servants of the state as "bankrupts and public debtors (*faillis et débiteurs publics*) (*mustaġriqu-ḍ-ḍimma*)."[16] Citing *fatwā*s of Ibn Rushd al-Jadd, Halima Ferhat notes that those who seized community goods by taking advantage of their power were called *mustaghriq al-dhimma*, responsible for fraudulent activities such as

12. Reinhart Dozy mentions the phrase in two entries (*Dhimma* and *Gharaqa*). Reinhart Pieter Anne Dozy, *Supplément aux dictionnaires arabes*, 2 vols. (Leiden: Brill, 1881), 1: 489; 2: 208. Al-Maqqarī's *Nafḥ al-Ṭīb* is a compilation of historical and literary information, poems, letters, and quotations about al-Andalus and the Maghrib. See Évaliste Lévi-Provençal and Charles Pellat, "Al-Maḳḳarī," in *Encyclopaedia of Islam*, Second Edition, edited by P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs, VI (1991), 187-88.

13. Jacques Berque, "Les Hilaliens repentis ou l'Algérie rurale au XVe siècle, d'après un manuscrit jurisprudential," *Annales. Histoire, Sciences Sociales* 25, no. 5 (1970): 1347.

14. Houari Touati, "En relisant les Nawâzil Mazouna marabouts et chorfa au Maghreb Central au XVe siècle," *Studia Islamica* 69 (1989): 78.

15. Élise Voguet, "Islamisation de 'L'intérieur du Maghreb': Les fuqahâʾ et les communautés rurales," *Revue des mondes musulmans et de la Méditerranée* 126 (2009): 145; *Le monde rural du Maghreb Central*, 318-19.

16. Mohamed Kably, *Société, pouvoir et religion au Maroc à la fin du moyen-age* (Paris: Maisonneuve & Larose, 1986), 268-69.

misappropriation, swindling, embezzlement, and corruption.[17] Muṣṭafā Binʿalla states that this phrase refers to kings, princes, governors, state officials, tax collectors, those who commit aggression and injustice, holders of royal orders, and those who embezzle other people's property. Binʿalla argues that Moroccan jurists (*fuqahāʾ al-Maghrib*) reached a consensus on the invalidity of endowments established by these people.[18] However, these historians do not analyse how Muslim jurists legally defined the phrase.

Although many scholars have identified the phrase in juridical texts from the Vth/XIIth to the Xth/XVIth century, they seldom analyse a juridical definition of the phrase with reference to specific examples. The phrase is also problematic from a linguistic perspective. In Arabic, it consists of three parts. The first part is an active participle (*mustaghriq*) or passive participle (*mustaghraq*) of the verb *istaghraqa*, a Form X derivative of the root *gh-r-q*. When used as an intransitive verb, this verb means "to sink, to be immersed," and "to take up wholly" when used as a transitive verb. The second part, *al-*, is a definite article. The third part, *dhimma*, means "financial obligation" or "debt capacity."[19] Many scholars read the first word as an active participle.[20] However, al-Zurayqī, the editor of al-Shiblī's book, reads the word as a passive participle, i.e., *mustaghraq*.[21] Vincent Lagardère also reads the word as a passive participle, without explaining why, and translates the phrase as "outlaw (*hors-la-loi*)."[22]

Both Western and Maghribi scholars refer to the phrase in their discussions about the illegal acquisition of property. They translate the phrase in diverse ways without explaining the conceptual and linguistic details. However, without a clear understanding of the phrase, it is hard to comprehend the dispute about animosity against those "drowned in debt" in VIIIth/XIVth century Fez. In the next section, I expose the legal definition and linguistic perspective of the phrase using Ibn Rushd al-Jadd's texts.[23]

---

17. Halima Ferhat, "Souverains, saints et fuqahā': le pouvoir en question," *Al-Qanṭara* 17, no. 2 (1996): 386. However, it is hard to accept Halima Ferhat's argument. She states that many jurists attracted by Sufism were interested in the question of the origin of fortunes at the end of the VIIth/XIIth century only by citing Ibn Rushd al-Jadd's (d. 520/1126) text, which has nothing to do with Sufism.

18. Muṣṭafā Binʿalla, *Tārīkh al-awqāf al-islāmiyya bi-Maghrib fī ʿaṣr al-Saʿdiyyīn min khilāl ḥawwālāt Tārūdānt wa-Fās* (Al-Ribāṭ: Manshūrāt wizārat al-awqāf wa-l-shuʾūn al-islāmiyya, 2007), 1: 140.

19. *Dhimma* also means 'protection', and *ahl al-dhimma* refers to the non-Muslims living under Muslim rulers who grant them protection.

20. Powers, *Law, Society and Culture*, 26, refers to the phrase in the form of a verbal noun (*istighrāq al-dhimma*) and translates it as 'outstanding debt.'

21. Al-Shiblī, *Al-Taqsīm wa-l-tabyīn*, [1]; 78.

22. See Lagardère, *Histoire et société en Occident Musulman*, 109. Lagardère mentions 33 *fatwā*s including the phrase, of which I could only find 27.

23. For the life and works of Ibn Rushd, see Delfina Serrano Ruano, "Ibn Rušd al-Ŷadd, Abū al-Walīd," *Biblioteca de Al-Andalus* IV (2005), 617-26; Gómez-Rivas, *Law and the Islamization*, 21-26.

Ibn Rushd al-Jadd's Definition of "Drowned in Debt"

As we will see later, al-Qabbāb does not explain what the phrase "drowned in debt (*mustaghraq al-dhimma*)" mean in his *fatwā*s. Therefore, the phrase was familiar to Marīnid jurists. Although al-Qabbāb does not always mention his sources, he relies on Ibn Rushd's definition to discuss the dispute.[24]

On several occasions, Ibn Rushd discusses the rules applied in transactions with those who accumulate wealth using illegal means. In a lengthy *fatwā* about the legal status of the property of oppressors, unjust governors, and the like, he assumes that illegally acquired property is a special kind of "debt."[25]

Ibn Rushd begins his answer by distinguishing two situations. In the first situation, the illicit property (*al-ḥarām*) is assigned to the debt capacity of a person who acquired it (*tarattaba fī dhimmati ākhidhī-hi*) and cannot return the acquired item itself to the owners.[26] In this case, the person assumes liability to compensate for the fungible items with the same and the non-fungible items with money. In the second situation, the illicit property is at the hand of a person who acquired it and can return it to the owners.[27] In this case, the person has no option but to return the item to the owners.[28]

In the first situation, Ibn Rushd classifies people who acquire property illegally into three categories based on the status of the property of the people. If most of a person's property is licit, he falls under the first category. If most (but not all) of a person's property is illicit, he falls under the second category. If all of a person's property is illicit, he falls under the third category. The third case may arise either because he does not own any licit property or because the value of the illicit property he used exceeds the total value of his licit property. Ibn Rushd calls the third category of people "those whose debt capacity is wholly taken up with the illicit [property]

24. Ibn Rushd likely was an authority on those "drowned in debt" for al-Shiblī, who cites Ibn Rushd's opinions many times, as noted by his book's editor. See al-Shiblī, *al-Taqsīm wa-l-tabyīn*, 42-43.

25. Abū al-Walīd ibn Rushd al-Jadd, *Fatāwā Ibn Rushd*, edited by Al-Mukhtār b. al-Ṭāhir al-Talīlī (Bayrūt: Dār al-Gharb al-Islāmī, 1987), 631-48; *Masāʾil Abī al-Walīd Ibn Rushd (al-Jadd): taḥqīq ʿan sitt nusaj khaṭṭiyya maʿa dirāsa ʿan al-muʾallif wa-l-kitāb*, edited by Muḥammad al-Ḥabīb al-Tajkānī, 3 vols (Bayrūt: Dār al-Jīr,1993), 2: 552-73. According to Delfina Serrano Ruano, the quality of al-Talīlī's edition is superior and more complete than al-Tajkānī's edition. See "Ibn Rušd al-Qurtubī al-Mālikī, Abū l-Walīd Muḥammad b. Aḥmad, Fatāwī Ibn Rušd, taqdīm wa-taḥqīq wa-ŷamʿ wa-ta'līq al-Duktūr al-Mujtār al-Ṭāhir Al-Talīlī. Masāʾil Abī l-Walīd Ibn Rušd (Al-Yadd), taḥqīq ʿan sitt nusaj jaṭṭiyya maʿa dirāsat ʿan l-muʾallif wa l-kitāb Muḥammad al-Ḥabīb al-Taŷānī (Book Review)," *al-Qanṭara* 15, no. 2 (1994): 531-34. Note that al-Talīlī's edition comprises 666 *fatwā*s, whereas al-Tajkānī's edition has only 358. However, this difference stems from the choice of the manuscripts the editors used and may not mean that the text of each *fatwā* of al-Talīlī's edition is always more accurate than the corresponding *fatwā* in al-Tajkānī's edition. Thus, I refer to both editions in this essay.

26. Ibn Rushd, *Fatāwā Ibn Rushd*, 632; *Masāʾil Abī al-Walīd Ibn Rushd*, 2: 553.

27. Ibn Rushd, *Fatāwā Ibn Rushd*, 632; *Masāʾil Abī al-Walīd Ibn Rushd*, 2: 553.

28. Ibn Rushd, *Fatāwā Ibn Rushd*, 643-644; *Masāʾil Abī al-Walīd Ibn Rushd*, 2: 567.

(*mustaghraq al-dhimma bi-l-ḥarām*)."[29] So, the "debt" in this context means the obligation to provide compensation for the illegally acquired property. When the value of a person's "debt" exceeds that of his licit property, he cannot liquidate the "debt" and becomes "bankrupt."

According to Ibn Rushd, there are two different opinions on the obligations imposed on those "drowned in debt." According to the first opinion, they must donate all the property they possess as alms (*ṣadaqa*). According to the second opinion, they must use it for some purpose that is profitable for Muslims. This divergence reflects a difference of opinion among scholars concerning whether the rule about the property of unknown ownership is that of the alms or that of the booty (*fayʾ*). In any case, those "drowned in debt" can only retain some clothes to hide their private parts and enough food to avoid starvation. On this point, they differ from ordinary bankrupts who can wear clothes that fit them and use money to support themselves and their families with the consent of their creditors.[30]

If those "drowned in debt" do not fulfill the obligation, what are the legal effects of their transactions using the illegally acquired property? There are four opinions:

1. It is not permissible to trade with a person "drowned in debt," receive a gift, and eat his food. The same rule applies even if he donates a property or serves food from what he is known to have bought, inherited, or taken as a gift. According to Ibn Rushd, this is because once a person "drowned in debt" becomes the owner of a property, the property necessarily belong to his creditors (*ahl tibāʿati-hi*), and its legal status (*ḥukm*) is the same as that of his other possessions. So, it is not permissible for him to damage the property at the expense of his creditors by donating it or using it in other ways, even if the creditors are unknown. This is because his legal status is that of the bankrupt whose debt surpasses his assets, and the Mālikī law school does not permit his donation, unlike the Ḥanafī school (*ahl al-ʿIrāq*).[31] Rather, Ibn Rushd nullifies any transfer of property by the bankrupt, regardless of whether it includes compensation after the judge has declared his bankruptcy or not. Hence, Ibn Rushd considers that any transaction by a person "drowned in debt" is invalid, and a

29. Ibn Rushd, *Fatāwā Ibn Rushd*, 632; *Masāʾil Abī al-Walīd Ibn Rushd*, 2: 553. Scholars argue about the issuance of this *fatwā* in relation to the political background of Andalus in the Almoravid period (in the first half of the XIIth century). They suggest that Ibn Rushd issued it, by request, to the new dynasty's Sultan to legitimize the confiscation of properties donated from the state treasury by rulers of *tāʾifa* kingdoms and some Almoravid governors. While some muftīs issued *fatwā*s prohibiting the confiscation, which must have produced economic turmoil, Ibn Rushd approved it and caused furore among the population, which led to his demotion from the post of judge in Cordoba. See Vincent Lagardère, "La haute judicature à l'époque Almoravide en al-Andalus," *al-Qanṭara* 7, no. 1 (1986): 144-45; Emilio Molina López, "La economía: propiedad, impuestos y sectores productivos," in *El retroceso territorial de al-Andalus: Almorávides y Almohades (Siglos XI Al XIII). Historia de España Menéndez Pidal* (Madrid: Espasa-Calpe, 1997), VIII/2: 229; Serrano Ruano, "Ibn Rušd al-Ŷadd," 618–20.

30. Ibn Rushd, *Fatāwā Ibn Rushd*, 635-36; *Masāʾil Abī al-Walīd Ibn Rushd*, 2: 557-58.

31. Ibn Rushd, *Fatāwā Ibn Rushd*, 636; *Masāʾil Abī al-Walīd Ibn Rushd*, 2: 558.

transition of the ownership of the transaction's object does not occur. If the bankrupt buys food, he cannot serve it to anyone because it remains the seller's property.

2. If he alienates the illegally acquired property, commercial goods that he bought, or what he inherited or received as a gift in a sale or other transaction at the market price without making favoritism,[32] it is permissible to trade with him. However, it is not permissible for him to donate a property or to make favoritism. The purport of this opinion is that if he alienates his property at the market price, the alienation does not cause a loss to his creditors (*ahl tibāʿāti-hi*).[33]

3. He cannot execute a transaction using his property. If he buys goods, the goods become illicit for him. Moreover, the money he paid becomes illicit for the seller. However, if he sells goods he bought using his illicit property, it is permissible for a third party to buy the goods from him or receive a donation. The same rule applies to property that he inherited or received by way of a gift,[34] regardless of whether or not there are claims against him that surpass the value of the property he used for the transaction.

4. It is permissible for a third party to receive a donation from a person "drowned in debt" or sell goods to him, unless the property that the person "drowned in debt" uses is the property itself that he usurped.[35]

To sum up: The first opinion prohibits transactions with a person "drowned in debt," with a few exceptions. The second permits onerous transfers that do not reduce the total value of his property. The third invalidates a transaction using the illegally acquired property; thus, if he exchanges the illicit property for something else, he can legally sell or give the newly acquired item to a third-party. The fourth prohibits only transactions of the usurped property itself.

Finally, I make a brief remark on the linguistic understanding of the phrase. Ibn Rushd refers to a person of the third category as "a person whose debt capacity is taken up wholly with the illicit [property] (*man ustughriqat dhimmatu-hu bi-l-ḥarām*)" with the verb in passive form.[36] In other examples, the jurist always uses the verb transitively that means "to take up wholly" or "surpass" something.

In what follows, I will read the phrase as a passive participle and transcribe it as *mustaghraq al-dhimma*, meaning a person whose debt capacity is entirely taken up

32. *lam yuḥābi-hi*. Favoritism, or *muḥābāt*, in this context means a trade of commercial goods at a price that differs substantially from the market price.

33. Ibn Rushd, *Fatāwā Ibn Rushd*, 636; *Masāʾil Abī al-Walīd Ibn Rushd*, 2: 558. If a person stole some commercial goods and sold them to a third party, the trade was seen as invalid and the original owner could demand restitution from the buyer, who could in turn make a claim for the price of the stolen goods. In this text, claim (*tibāʿa*) means the possible amount of property for which he will have a claim.

34. Ibn Rushd, *Fatāwā Ibn Rushd*, 637; *Masāʾil Abī al-Walīd Ibn Rushd*, 2: 559.

35. Ibn Rushd, *Fatāwā Ibn Rushd*, 639-641; *Masāʾil Abī al-Walīd Ibn Rushd*, 2: 562-564.

36. Ibn Rushd, *Fatāwā Ibn Rushd*, 639; *Masāʾil Abī al-Walīd Ibn Rushd*, 2: 561.

because he does not have enough licit property to compensate for the illicit property he use or does not own any licit property.

In his *al-Muqaddimāt*, his major works, Ibn Rushd presents this opinion more concisely.[37] His opinion seems to have been accepted by Mālikī jurists, who cite the definition of being "drowned in deb" from *al-Muqaddimāt* rather than the *fatwā*. Ibn Shās (d. 616/1219), an Egyptian Mālikī jurist, quotes *al-Muqaddimāt* from beginning to end in his *ʿIqd al-jawāhir al-thamīna*.[38] Al-Qarāfī (d. 684/1285), also an Egyptian Mālikī jurist, copies the text entirely to his large corpus of the Mālikī jurisprudence, *al-Dhakhīra*, from this *ʿIqd al-jawāhir al-thamīna*.[39] Al-Burzulī (d. 841/1438), a Tunisian jurist, incorporated the *fatwā* into his compilation of *fatwā*s with some modifications.[40] In the next section, I will show how al-Qabbāb reworked Ibn Rushd's opinion to control the tension between the Fez inhabitants and those "drwoned in debt" because their occupations were allegedly related to corruption and especially to illegal tax collection.

*Fatwā*s Regarding Transactions with Those "Drowned in Debt"

A Biography of the Muftī and his Time

Abū al-ʿAbbās Aḥmad b. al-Qāsim b. ʿAbd al-Raḥmān al-Qabbāb was a muftī of Fez in the latter part of the fourteenth century.[41] Various information exists about his life because many historians and some of his contemporaries wrote biographies on him in their works. However, no author appears to have recorded the date of his birth.

He was well-known in the field of *ḥadīth*, jurisprudence, and *uṣūl al-dīn*, on which he gave lectures. He penned several texts, such as commentaries to the *Qawāʿid* of al-Qāḍī ʿIyāḍ and *Buyūʿ ibn Jamāʿa*. He worked as a professional witness and muftī in Fez. He also assumed the office of judge in Gibraltar during an

37. Abū al-Walīd al-Jadd Ibn Rushd, *al-Muqaddimāt al-mumahhadāt li-bayān mā iqtaḍat-hu rusūm al-Mudawwana min al-aḥkām al-sharʿiyyāt wa-l-taḥṣīlāt al-mukammalāt li-ummahāt masāʾili-hā al-mushkilāt*, edited by Muḥammad Ḥajjī, 3 vols. (Bayrūt: Dār al-Gharb al-Islāmī, 1988), 3: 422-24.

38. ʿAbd Allāh b. Najm Ibn Shās, *ʿIqd al-jawāhir al-thamīna fī madhhab ʿālim al-Madīna*, edited by Ḥamīd b. Muḥammad Laḥmar, 3 vols. (Bayrūt: Dār al-Gharb al-Islāmī, 2003), 3: 1306-7.

39. Aḥmad b. Idrīs al-Qarāfī, *al-Dhakhīra*, edited by Muḥammad Ḥajjī, 14 vols. (Bayrūt: Dār al-Gharb al-Islāmī, 1994), 13: 317-19. This transmission of the text is an example of what Hallaq argued as the incorporation of juridical discussion made in the form of *fatwā* to *furūʿ* works.

40. Abū al-Qāsim b. Aḥmad al-Burzulī, *Fatāwā al-Burzulī: Jāmiʿ masāʾil al-aḥkām li-mā nazala min al-qaḍāyā bi-l-muftīna wa-l-ḥukkām*, edited by Muḥammad al-Ḥabīb al-Hīla, 7 vols. (Beyrūt: Dār al-Gharb al-Islāmī, 2002), 5: 143-50.

41. Among the historians, Ibn al-Khaṭīb presents a different version of his name: Abū al-ʿAbbās Aḥmad b. Abī al-Qāsim b. ʿAbd al-Raḥmān, known as ibn al-Qabbāb. Ibn al-Qāḍī (1973, 123) adds that he is al-Judhāmī. See Lisān al-Dīn Ibn al-Khaṭīb, *al-Iḥāṭa fī akhbār Gharnāṭa*, edited by Muḥammad ʿAbd Allāh ʿInān, 4 vols. (Al-Qāhira: Maktabat al-Khānijī, 1973), 1: 187; Aḥmad Ibn al-Qāḍī al-Miknāsī, *Jadhwat al-iqtibās fī dhikr man ḥalla min al-aʿlām madīnat Fās*, 2 vols. (Al-Ribāṭ: Dār al-Manṣūr, 1973), 123.

unknown period.[42] He died in Fez around 779/1377-78, although reports vary on the exact date of his death.[43]

In addition to his activities as a jurist, al-Qabbāb also participated in the region's political life. According to Ibn al-Khaṭīb (714-76/1313-74), he spent some time in Salé. Whilst there, he conducted an examination and inquiry into the political situation (*al-aḥwāl al-sulṭāniyya*) in the city. In 762/1360-61, al-Qabbāb visited Granada as a messenger for the Marīnid Sultan Abū Sālim Ibrāhīm (r. 760-62/1359-61).[44] Ibn Qunfudh (740-810/1339-1407), who attended al-Qabbāb's class during his stay in Fez, also reported the close relationship between the jurist and the Marīnid dynasty. When al-Qabbāb received an appointment to the office of the preacher (*khiṭāba*) for the Andalus mosque of Fez (*al-Jāmiʿ al-Aʿẓam bi ʿUdwat al-Andalus bi-Fās*), he accepted the offer, although he did not change his attire to reflect the office, and resigned after several weeks for an unknown reason. Nor did he refuse the visit of another Marīnid Sultan, ʿAbd al-ʿAzīz (r. 767-74/1366-72). Instead, al-Qabbāb sat with him and encouraged him to engage in good behavior and protect whoever relies on God, even if that person were a liar. In turn, the Sultan acted righteously, just as al-Qabbāb had advised. Ibn Qunfudh remarked that al-Qabbāb's influence on the entire population was so strong that if he ordered the people to kill someone, they would have done so before al-Qabbāb finished speaking. Ibn Qunfudh also noted the jurist's attention to the conduct of judges and guardians (*ṣāḥib*) of Waqf and said that if he found one among them to be improper, he would transform the person; all of the people obeyed him voluntarily.[45]

These anecdotes may contain some exaggerations. Nevertheless, they show al-Qabbāb's concern for maintaining social justice in Fez in the second half of the 8th/14th century. In this period, internal strife in Marīnid, following the death of Sultan Abū ʿInān (r. 749-59/1348-58), aggravated the social and economic disorder caused by the Black Death in Maghrib. The Marīnid dynasty's economic policies infuriated the public and strained relations between the state and society. In my opinion, his argument in the *fatwā*s, which will be analysed in the next section, reflects both the tense social context and al-Qabbāb's relationship with the dynasty,

42. For his biographies, see Ibn al-Khaṭīb, *al-Iḥāṭa fī akhbār Gharnāṭa*, 1: 187-88; Ibn al-Qāḍī, *Jadhwat al-iqtibās*, 123-24; Aḥmad Ibn Qunfudh al-Qusanṭīnī, *Uns al-faqīr wa-ʿizz al-ḥaqīr*, edited by Muḥammad al-Fāsī & Adolphe Faure (Al-Ribāṭ: al-Markaz al-Jāmiʿī, 1965), 78-79; *Kitāb al-wafayāt*, edited by ʿĀdil Nuwayhiḍ (Bayrūt: Dār al-Āfāq al-Jadīda, 1983), 372; Ibrāhīm b. Farḥūn b. Nūr al-Dīn, *al-Dībāj al-mudhahhab fī maʿrifat aʿyān ʿulamāʾ al-madhhab*, edited by Muḥammad al-Aḥmadī Abū al-Nūr (Al-Qāhira: Dār al-Turāth, 1972), 1: 187; Aḥmad Bābā al-Tunbuktī, *Nayl al-ibtihāj bi-taṭrīz al-dībāj*, edited by ʿAbd al-Ḥamīd ʿAbd Allāh al-Harāma (Tarābuls: Kulliyyat al-Daʿwa al-Islāmiyya, 1989), 1: 102-4; *Kifāyat al-muḥtāj li-maʿrifat man laysa fī al-dībāj*, edited by Muḥammad Muṭīʿ, 2 vols (Al-Muḥammadiyya: Maṭbaʿat Faḍḍāla, 2000), 1: 97-99.

43. Ibn Qunfudh, *Uns al-faqīr*, 78; *Kitāb al-wafayāt*, 372, states that he died in 779/1377-78. Ibn Farḥūn, *al-Dībāj al-mudhahhab*, 1: 187, suggests he died after 780/1378-79. Ibn al-Qāḍī, *Jadhwat al-iqtibās*, 1: 124, adds another date (5 Dhū al-Ḥijjah 778/23 April 1377).

44. Ibn al-Khaṭīb, *al-Iḥāṭa fī akhbār Gharnāṭa*, 1: 187–88.

45. Ibn Qunfudh, *Uns al-faqīr*, 78-79.

wherein he did not reject the authority but adopted a critical stance and demanded that corrupted people be rejected.

General Remarks about the *Fatwās*

The two *fatwā*s I analyse here are contained within a group of twelve *fatwā*s that al-Wansharīsī includes in *al-Miʿyār* in sequence.[46] As I have already noted, recent research has focused on both the *istiftāʾ* and *jawāb* of *fatwā*s. However, the *istiftāʾ* of the first *fatwā* is very succinct: It tells us neither the identity of the questioner nor its date, and it does not contain any historical details about its issuance. Even the nature of the dispute for which the request of the *fatwā* was made is not apparent. This lack of information makes it difficult to reconstruct the dispute which was heard in the court with certainty.

Nevertheless, a close reading of the *fatwā*s reveals some information about the *fatwā*s and the dispute. The same questioner requested both *fatwā*s; however, the order of their issuance must have been inverse to the order in *al-Miʿyār*. This is because, in the second *fatwā*, al-Qabbāb mentions a sentence from the first *fatwā* and declares that he had already replied to the questioner regarding this point. Concerning the dispute, the texts repeatedly study the permissibility of a transaction with those "drowned in debt" and, in particular, if a teacher can receive a salary for educating the children of these people. The last question of the second *fatwā* even asks if a teacher can expel children from his school based on the inequality of the financial burden among the parents. From such fragmented information, it is possible to conjecture that some parents in the city may have opposed allowing certain children to attend a class. In doing so, they may have alleged that the legal status of the parents of these children should be that of those "drowned in debt," arguing that any transaction with them should be prohibited. It is possible that, after an unknown process outside the court, some of the litigants brought the dispute to the court to resolve it. I will confirm these points in the following analysis of the *fatwā*s.

The First *Fatwā*

Questions in the First Fatwā

The *istiftāʾ* of the first *fatwā* broadly consists of two questions. The first concern the permissibility of a teacher receiving a salary from scriveners (*muwaththiq*), tax collectors on the city gate (*jallās*), brokers (*dallāl*), money changers (*ṣayraf*), cupping doctors (*ḥajjām*), and agents of Makhzan (*makhzanī*) for the education of their children.[47] The second question is about the four legal opinions (*al-arbaʿa*

46. The first is al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 63-66. The second is al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 58-60. Halima Ferhat briefly refers to these *fatwā*s without mentioning the identity of the muftī and states that they are terrible condemnations that call into question the whole state apparatus. Ferhat, "Souverains, saints et fuqahā'," 387.

47. In Arabic, 'makhzan' means a place for preserving something; however, in the Moroccan context, it is a term that means the government, in particular its financial department or treasury.

al-aqwāl) concerning those "drowned in debt" and whether these opinions have the same legal validity.[48]

The first question is a more specific version of the second question because the six groups of people mentioned in the first question are suspected of being among those "drowned in debt," and the four legal opinions mentioned in the second question are, in particular, about the permissibility of a given transaction when one's counterpart is "drowned in debt." Note that the muftī replies to the question without clarifying what the questioner means by "the four legal opinions." Therefore, the inhabitants of Marīnid Fez knew that there was a certain number of widely accepted opinions about the permissibility of transactions with those "drowned in debt"; however, they did not know how being "drowned in debt" was defined, nor did they know the criteria required for each opinion in applying it to specific cases.[49]

The Answer to the First Question

At first, al-Qabbāb reports on the diversity of these people in their conduct and rejects the idea that the same legal outcomes should arise for every individual who engages in these jobs. He then studies the duties within their jobs, one after another, and states the conditions that make them "drowned in debt." Here, we follow his expositions.

According to the muftī, some of the scriveners, whose occupation is to create instruments (*wathīqa*), deviate from the rule in all the illegal tax collection of Makhzan (*al-jibāyāt al-makhzaniyya al-muḥarrama*). If all of a scrivener's property consists of what he received for his testimony, he had already served a long term in office, and he undertook the process of creating an instrument for those "drowned in debt" (such as governors, unjust people, and the like), there is no doubt in the reprovable nature of his office. Some of the scriveners have, the muftī continues, property that derives from other sources than the scrivener's office, such as inheritance, and their term in office is not long enough to make them "drowned in debt." He finally points out that some of them exhibit exemplary behavior. They never impose a payment of a fee beyond the prescription of the office, and they receive all that is given for their instruments. They undertake the distribution of the estate and the creation of commercial documents adequately, without committing any fraud. In this latter case, their legal status is superior among the scriveners: They are like the other craftsmen (*ahl al-ṣanāʾiʿ*).[50]

Concerning the brokers, the argument continues, if their legal status is unknown, they deserve the same treatment as those in the other jobs. It is necessary, however, to be aware that some of them may become "drowned in debt" by receiving money

48. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 63.

49. Admiral, "Living Islamic Law," demonstrates the role of a jurist outside the court in Medieval Fez. The inhabitants of the city, including women, could consult the jurists of the city on legal issues to learn the prevailing legal provisions concerning their cases and defend their rights.

50. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 63.

from those who were already "drowned in debt." On the other hand, the fact that they often receive a salary for a business that entails unlawful acts does not affect their legal status regarding whether they are "drowned in debt" in general because they can receive a fee that is suitable for their work.[51] The muftī seems to have considered that the brokers can receive their fee licitly regardless of the nature of their business.

Concerning the tax collectors at the city gate, the muftī admits that he is not entirely clear regarding the exact nature of their jobs (*ḥaqīqat amri-him*). Relying on hearsay, he recapitulates their business as follows: When a merchant stands in front of the tax collector, the latter enquires about everything the former has brought. The tax collector then looks among the merchandise for those items upon which the Makhzan imposes a tax, tolls those that apply, turns them into cash, and transfers the money to the governor. These people seem to be regarded as reprehensive because, according to the muftī's comment, some of them take the merchandise they taxed from the merchants on commission (*murattab*) with permission from the governor. This system enables them to acquire wealth in collaboration with the brokers in a reprehensive and illegal way. If they have engaged in the business while deceiving the Makhzan for an extended period so that they become completely "drowned in debt," they are the most reprehensible. Nevertheless, they can receive adequate remuneration for their work that can be profitable to the merchants. Finally, the muftī reiterates his unfamiliarity with the precise nature of the job.[52]

Curiously, the muftī then discusses the legal status of cupping doctors. Except for those known to be "drowned in debt," it is licit to receive money from them, just as it is from the craftsmen. However, if they receive remuneration for their treatment from unjust people, this act makes them, too, "drowned in debt" unless they have enough licit property to offset all the illicit money they receive.[53]

For the moneychangers, the muftī's vigilance becomes evident as he states that their transactions are fraud and usury (*ribā*) in general. They practice usury so frequently that the *ʿulamāʾ* had long been keeping a close watch on them. Although some moneychangers are known for being God-fearing and never engage in a transaction before confirming its legality, the muftī evaluates that they are a minority.[54]

For the *Makhzanī* (literally, he who relates to the Makhzan)," the muftī begins by checking whether it refers to unrighteous tax collectors (*jubāt al-amwāl*) among governors, guards (*ḥuffāẓ*), and soldiers who wrongfully take people's property. The muftī decrees that there is no ambiguity in the repulsiveness of their property and their legal status is the same as those "drowned in debt."[55]

51. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 63.
52. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 63-64.
53. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 64.
54. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 64.
55. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 64.

The muftī continues his censure for those who are involved in tax collection, such as superintendents of the market (*umanāʾ al-aswāq*) who survey and collect tax for the storehouses or those who determine the allocation of tax among people and demand payment. He affirms that all of these people are "drowned in debt," regardless of whether they are disinterested or not. Rather, in his view, the most unjust people are those who act unjustly for somebody else's sake, and whether they do so under coercion is not an excuse for the infringement of the rights of humanity. Such coercion can be an excuse only in the relationship between God and His slave and cannot be an excuse concerning the rights of people.[56]

From his exposition, we can estimate that an important criterion is whether a person is involved in tax collection. For this reason, al-Qabbāb puts forward a harsh evaluation of agents of the Makhzan who illegally take people's property. What is more, he affirms that the legal status of all these people is "drowned in debt," even if they engage in such activities without earning money for themselves. However, that is because such a large fraction of the property of these people is likely to be illicit, so as to make them "drowned in debt." Meanwhile, the questioner supposes that whether someone is "drowned in debt" or not depends fundamentally on the nature of their job.

The Answer to the Second Question

After the exposition of the legal status of the six groups, al-Qabbāb answers the second question, which is about the four legal opinions concerning those "drowned in debt," before assessing the permissibility of receiving money from them. Although the wording is different, his exposition for the four opinions about the permissibility of transactions with them corresponds to Ibn Rushd's discussion in his *al-Fatāwā* and *al-Muqaddimāt*:

1. It is prohibited for a person "drowned in debt" to make any such transaction: He cannot do it at the market price (*qīma*) nor another price, regardless of whether it is known that he acquired a given item licitly or it is unknown.[57]

2. It is permitted for a person "drowned in debt" to conduct a transaction in the marketplace, as it does not cause a reduction in the value of his property, regardless of whether it is known that he acquired a given item licitly or it is unknown.[58]

3. It is permitted for a person "drowned in debt" to engage in a transaction, as long as the transaction concerns items known to have been acquired in licit ways, such as inheritance or donation. However, it is prohibited to engage in such a transaction concerning what he has had (which must by nature be illicit property, as he is "drowned in debt"). Based on this rule, it is permitted for a third party to receive as a donation his item that he gained through donation, inheritance, or legal

56. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 64.
57. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 64.
58. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 64.

purchase, even if he paid for it using his illicit property. Al-Qabbāb then adds that, in this rule, Ibn ʿAbdūs, a jurist of Tunisia in the ninth century,[59] requires that the seller should know the defect of the money he paid.[60]

4. It is permitted for a third party to receive a donation from a person who is "drowned in debt" and eat his food.[61]

Al-Qabbāb argues that these opinions are applicable only if the legal status of the property used in a transaction is unknown. If the property is proven to have been illegally acquired (*ʿayn al-maghṣūb*), it is not licit for anyone to use the property without the agreement of the right-holder from whom the property was unlawfully taken.[62]

Al-Qabbāb then proceeds to state which of these four opinions allow a teacher to receive a salary. If the first or second opinion is adopted, the teacher cannot receive a salary. The third opinion enables the teacher to receive a salary if it is paid from a licit property. The fourth opinion permits the payment of a salary if it is not an illegally acquired property itself.[63]

Al-Qabbāb then discusses the permissibility of transactions with people whose property contains illegally acquired items but who are not among those "drowned in debt."[64] He seems to add these lines because they are subject to transaction restrictions, although the questioner does not ask about them. In this part of the *fatwā*, he refers to Ibn Rushd by name and his opinion. Therefore, we can suppose that al-Qabbāb understood the definition of being "drowned in debt" according to Ibn Rushd's opinion.

In this case, which standard should be invoked to choose which opinion to apply? Here al-Qabbāb introduces legal sensibility into his reasoning. By slightly modifying a prophetic tradition, he affirms that "the righteousness (*birr*) is what makes the mind confident and the heart calm" and argues that it is necessary to choose an opinion that accords with this standard.[65] Based on this argument, he

59. This is Abū ʿAbd Allāh Muḥammad b. Ibrāhīm ibn ʿAbdūs (d. 873). He was a disciple of the famous Tunisian jurist of the Mālikī law school, Saḥnūn (d. 854). See Hussain Monés, "Ibn ʿAbdūs," in *Encyclopaedia of Islam*, Second Edition, edited by Bearman, P., Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs, III (1979): 681.

60. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 65.

61. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 65.

62. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 65. Ibn Rushd makes a slightly different assertion in his *fatwā*, as he states that if the original right-holder of the illegally acquired property is known, all the transactions using that property are invalid. See Ibn Rushd, *Fatāwā Ibn Rushd*, 641; *Masāʾil Abī al-Walīd Ibn Rushd*, 2: 564.

63. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 65.

64. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 65.

65. Al-Qabbāb introduces this phrase in his discussion about whether an affirmative statement is sufficient to know the validity of the property's acquisition. Although we cannot find a *ḥadīth* that has exactly the same wording, Aḥmad b. Ḥanbal relates one according to which 'the righteousness is what makes the heart and mind confident (*al-birr mā iṭmaʾanna ilay-hi al-qalb wa-ṭmaʾanna ilay-hi al-nafs*).' See Aḥmad Ibn Ḥanbal, *Musnad al-Imām Aḥmad b. Ḥanbal*, edited by Shuʿayb al-Arnāʾūṭ et al, 50 vols. (Bayrūt: Muʾassasat al-Risāla, 1999), 528.

rejects the fourth opinion, as "the heart cannot become calm with this opinion." He also turns down the first opinion because "it is excessively rigorous." He then declares that "the need in our time or, I say, the necessity (*ḍarūra*) demands the adoption of the second opinion." For the third opinion, he states that although "it is remote from the piousness and not so strict," some famous scholars of other schools, such as Abū Ḥanīfa, al-Muḥāsibī, al-Ghazālī, and Ibn ʿAbd al-Salām, have accepted this opinion. That fact should mean that this opinion also held some legal validity.[66]

The Proposition of the *Muftī*

Al-Qabbāb's statement here is rhetorical because, while acknowledging the necessity of adopting the second opinion, he attempts to introduce another that enables a teacher to receive a salary. Let us recall that if the second opinion is adopted, the teacher cannot receive the salary. On the authority of Mālik b. Anas, the founder of the Mālikī law school, who relates the opinion of the people of Medina, the muftī exposes "the most righteous and the most appropriate opinion to be adopted in this hard time (*aʿdal al-aqwāl ʿindī wa-awlā-hā bi-l-akhdh fī hādhā al-waqt alladhī ḍāqa fī-hi al-amr*)." That is, if a person bought something with his illicit property without compelling anyone to sell the item, it is permissible for a third person to buy the material he bought using the illicit property. This opinion requires two additional conditions, as related by Ibn ʿAbdūs. First, the seller knows the defect of the money he paid to gain the property. Second, if the first person who bought something with the illicit property gives it to a third person, it is not permissible for the third party to receive it as a donation. This opinion is, he argues, stricter than the third opinion above because it enables the first person's transaction (buying something with the illicit property) but prohibits a subsequent donation. By following this opinion, a teacher can receive a salary from those "drowned in debt." To underscore the suitability of this opinion, al-Qabbāb refers to the *ʿulamāʾ* who do not consider the defect of being "drowned in debt" when a person legally acquired something that had been taken illicitly. He then briefly reiterates the opinion of the people of Medina. Al-Qabbāb then asks: "why don't we use this interpretation in a period when corruption prevails (*fī hādhā al-zamān maʿa istīlāʾ al-fasād*)?" He also asserts that "if the mind is oppressed, it opposes, and evades." So, al-Qabbāb argues, his opinion is appropriate because it lies in between "rigor and laxity (*tawassuṭi-hi bayn al-tashdīd wa-l-tarakhkhuṣ*)" and because it is the opinion that Mālik reported from the people of Medina.[67]

In this manner, in response to the question, al-Qabbāb first exposes the four opinions about the permissibility of transacting with those "drowned in debt" according to the authoritative text of Ibn Rushd. He then acknowledges the legal sensibilities of the public, which demand the adoption of the second opinion: It is a relatively strict one that prohibits a teacher from receiving such a salary. Thus,

66. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 65–66.
67. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 66.

he recognises the irritation the Fez inhabitants experienced when they saw those "drowned in debt" using what had been illegally acquired from them. However, he further advances his opinion as a more appropriate one for his time. The essence of his answer is as follows: Even in the time of Mālik b. Anas, a moderate opinion had prevailed among the people of Medina to whom Muslims should imitate as their model. Then, today, when corruption prevails, it is difficult for the people to observe a more rigorous opinion being followed, which is liable to increase social tensions.

The Second *Fatwā*

Questions in the Second *Fatwā*

Al-Qabbāb's first *fatwā* seems to have perplexed the questioner, possibly because this issue touches on a more substantial section of society than the questioner had expected. Al-Qabbāb explained that those who collect taxes for the state, such as superintendents of the market, are at risk of being considered to be "drowned in debt." As we have already seen, he stated that the "superintendents of the market who survey and collect taxes for the storehouses" and "those who determine the allocation of tax among people and demand the payment" are all "drowned in debt," regardless of whether they perform these jobs for their own sake or not.

The questioner begins his second *fatwā* by asking about this point and poses other questions in succession. In these questions, he again requires examination of particular jobs. This suggests that the questioner still stands by his idea that being "drowned in debt" depends on being engaged in specific jobs rather than on a general rule about the legal status of one's property. The list of questions is as follows. According to which opinion can a teacher receive a salary for [the education of the superintendents'] children? If a superintendent is known to have taken bribes from the people of the market, do the same legal effects arise as for when the bribe-taking is undiscovered? What about the children of Fez people (*al-Fāsiyyīn*)? Many of them will inevitably sit on the gates to collect tax from those who pass there, and some of them may walk around the city and collect a tax levied on the houses. What about a merchant who associates with the people of the Makhzan?[68] When someone says that the merchant is an agent of the people of the Makhzan, does the teacher need to investigate this [before receiving a salary]? What about those who have a good reputation (*mastūr*) but for whom people talk about something that requires caution? Does the teacher need to take a survey of this? If not, when these people eventually are uncovered as being among those "drowned in debt," does the teacher need to relinquish the salary he received? What about a man who incurred punishment for serving in the office of the Makhzan as a treasurer or a receiver? The Sultan confiscated all his possessions or a large part of them, then he gained his new fortune by commerce or something and obtained a job concerned with religious law (*al-umūr al-sharʿiyya*). What about a tailor who was put in chains in the market and

68. I read *al-makhzaniyyīn* for al-m-kh-z-y-y-n.

then repented? He continues his business as a tailor. He is poor and has nothing to relinquish. What about the professors who receive their remuneration from the Waqf property of the *madrasa*s? What about the servants of the *madrasa*s? Is there anyone [of those mentioned above] on whom no disagreement occurs?[69]

These questions indicate people's concern for being "drowned in debt." Everyone could become a victim of illegal taxation by those "drowned in debt" due to the degeneration of the reigning dynasty. Moreover, for the same reason, everyone faces the risk of unwittingly becoming involved in a transaction using illegally acquired money. This sense of anxiety may have been especially acute in the capital city of Fez, where many officials of the dynasty lived. Without their consumption, the city's economy was not sustainable. However, such people's property is likely to include illicit items, and whether a person becomes "drowned in debt" depends on the general rule about the legal status of property used in his transactions; everyone is at risk.

Answers to the Questions

To these multiple questions, al-Qabbāb consistently maintains that whether these people are regarded as those "drowned in debt" depends on the legal status of their property. Thus, his answer focuses on the conditions under which these people become responsible for their work and clarifies the scope of their responsibility. In terms of the question about the superintendents, he states that "the answer has already come to you" and incidentally reveals that the same person requested the first and second *fatwā*s. Then he adds that if one engaged in the collection of an illegal tax [the amount of which] takes up all of his [legal] property (*tawallā jibāyat ẓulm tastaghriq māla-hu*), he is "drowned in debt" regardless of bribe-taking or whether he took the tax for himself.[70] By doing so, he rejects the idea that all those who engage in illegal tax collection become "drowned in debt," as can be understood from his answer in the first *fatwā*. For those who sit on the gates, he asks if they have the power to order and ban anyone bringing something to the market. Concerning those who walk around the city to collect a tax levied on the houses, if they do not cause anyone to pay more or suffer a loss, this work does not harm them.[71] Regarding those who incur suspicion about the legal status of their property, al-Qabbāb also defines a criterion of whether a teacher needs to engage in due diligence. For a merchant associating with the people of the Makhzan and is said to be their agent, if he commits wrongdoing or is involved in prohibited activities so overtly that they annul his inviolability,[72] the teacher can investigate the merchant. It is not permitted, however, to do so based on doubt (*al-shakk*). For those rumored to be involved in something that requires caution, a teacher should judge whether he needs to survey according to the degree

69. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 58.
70. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 58.
71. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 58-59.
72. I read asqaṭa ḥurmata nafsi-hi for asqaṭa ḥirma(?)-hu nafsa-hu.

of the informant's conviction.[73] Al-Qabbāb seems to be aware of the potential for escalating mutual suspicion among the inhabitants of Fez by allowing a survey to be conducted without trustworthy motivation. For those who engaged in the Makhzan's job and already incurred a punishment, under certain conditions, al-Qabbāb enables such transactions that use what was acquired legally after the confiscation of his property because of having been "drowned in debt." The same judgment applies to the tailor who had been put in chains in the market, perhaps to serve as an example for those who committed fraud and became "drowned in debt." For the professors and the servants of the *madrasa*s, al-Qabbāb declares that receiving a salary paid by them is legal if they are faithful in the performance of their stipulated duties, and the Waqf property in question does not pertain to any specified person.[74]

Restriction on Providing Education to the Children of those "Drowned in Debt"

All the previous questions in the second *fatwā* concern the permissibility of transactions with people engaged in particular jobs. However, at the end of the *istiftāʾ*, the questioner raises questions of a different kind: If one follows the fourth opinion and takes a salary and then donates it, does he receive a reward [in the hereafter] for what he donates or returns to the owners for having given it as an alms or returns it to its true owner (*hal yuʾjaru ʿalā al-taṣadduq bi-hi aw tarki-hi wa-raddi-hi ʿalā arbābi-hi*)? Does he expel them [the children of those "drowned in debt"] from his school (*msīd*) because when they remain in the school, it inflicts a loss to those from whom the teacher receives a salary to buy necessary materials?[75] The meaning of the questions appears to be ambiguous to al-Qabbāb, who shows three interpretations for the conditional clause and comments on each of them. However, he briefly answers the last question by saying that "He can expel whom he wants and allow whom he wants."[76]

The question is relevant to our discussion. I conjecture that the prevailing opinions among the inhabitants of Fez deemed that a teacher should not receive a salary from people "drowned in debt." However, what does that mean? Does it mean that such people's children can go to school for free? That does not appear to be plausible. Instead, this must have been an attempt to exclude these children from being educated.[77] It is likely that the questioner wanted to exclude the children from the school and so used the inequalities of the financial burden among the

73. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 59.

74. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 59-60. The last sentence means that if the Waqf property were taken illicitly by a person before its endowment, the transfer of its ownership would not happen, and it remains the person's property.

75. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 58.

76. Al-Wansharīsī, *al-Miʿyār al-muʿrib*, 12: 60.

77. Ibn ʿArḍūn, a jurist of sixteenth century Northern Morocco, cites the entire first *fatwā* among other juridical opinions that prohibit or restrict giving education to the tax collector's children. See Abū al-ʿAbbās Aḥmad Ibn ʿArḍūn, *Muqniʿ al-muḥtāj fī ādāb al-azwāj*, edited by ʿAbd al-Salām al-Ziyātī, 2 vols. (Al-Qāhira: Dār ibn Ḥazm, 2010), 2: 1075-81.

parents to justify their exclusion. The last question demonstrates the displeasure Fez inhabitants experienced when they saw the children of those "drowned in debt" in the school alongside their own. This feeling must have stemmed from the nature of the income of these people because, as we have seen previously, they were regarded as collaborators in the illegal tax collection of the Makhzan. To this animosity, al-Qabbāb had nothing else to say but that whether such children can receive the same education as others is to be determined at the teacher's discretion. Thus, he permitted a restriction on educating the children of those "drowned in debt" without expressly endorsing it.

Conclusion

In this essay, using juridical documents, I discussed the reasoning of al-Qabbāb concerning those "drowned in debt" who had amassed a fortune in illegal ways. In the context of Andalus and Maghrib, social historians have regularly referred to the phrase "*mustaghraq al-dhimma*"; however, they seldom clarified its definition in detail. Using texts from Ibn Rushd, an authoritative jurist of Andalus in the Almoravid period, I exposed the conditions in which people came to fall under this legal status and the legal consequences of such a status. Al-Qabbāb's *fatwā*s show us that inhabitants of Marīnid Fez, bearing malice toward the collaborators of the dynasty's illegal taxation, tried to use an opinion restricting transactions with those "drowned in debt" to enforce sanctions against them. Instead of this strict stance, al-Qabbāb proposed a more moderate opinion based on the authoritative juridical discourse of Mālik b. Anas and the people of Medina.

We can appraise al-Qabbāb's ruling as showing an explicit criterion for being "drowned in debt" while expecting its application in a moderate way that avoids both "rigor and laxity," as he declared. On the one hand, he severely reproached those who engaged in illegal tax collection. On the other hand, he asserted the necessity of assessing their legal status according to the nature of their property and opposed a uniform imposition of sanctions on people in particular occupations related to tax collection. He further advised against a survey of another person's property without proof and excluded from sanctions those who had already received punishment for their being "drowned in debt." Further, he allowed remuneration for those engaging in work that concerns state tax collection while demanding its proper operation.

The questioner of the *fatwā*s appears to have had a harsher attitude toward those involved in tax collection, although we do not have information about the context of the *fatwā*s issuance, and the discussion regarding this point remains hypothetical. Al-Qabbāb recognised that the people of his time expected strict rule against those "drowned in debt" as a way to satisfy their discontentment. Yet, he did not follow this sentiment and instead gave a warning against applying too strict of a rule.

It is difficult to gauge whether al-Qabbāb's attempt was successful. While advocating a moderate opinion, he did not negate the possibility of the expulsion

of the children of those "drowned in debt." He may have been obliged to submit to the pressure of an urban society in which the prevailing view was strongly against those who worked on behalf of the Marīnid dynasty, which collapsed in the 869/1465 uprising of Fez because of the harsh tax policy of the dynasty that the Sultan and his minister had instituted. These *fatwā*s are records of antagonism between the state and society concerning this policy.

Bibliography

Al-Burzulī, Abū al-Qāsim b. Aḥmad. *Fatāwā al-Burzulī*: *Jāmiʿ masāʾil al-aḥkām li-mā nazala min al-qaḍāyā bi-l-muftīna wa-l-ḥukkām*. Edited by Muḥammad al-Ḥabīb al-Hīla. 7 vols. Beyrūt: Dār al-Gharb al-Islāmī, 2002.

Ibn Ḥanbal, Aḥmad. *Musnad al-Imām Aḥmad b. Ḥanbal*. Edited by Shuʿayb al-Arnāʾūṭ et al. 50 vols. Bayrūt: Muʾassasat al-Risāla, 1999.

Ibn ʿArḍūn, Abū al-ʿAbbās Aḥmad. *Muqniʿ al-muḥtāj fī ādāb al-azwāj*. Edited by al-Ziyātī, ʿAbd al-Salām. 2 vols. Al-Qāhira: Dār ibn Ḥazm, 2010.

Ibn Farḥūn, Ibrāhīm b. Nūr al-Dīn. *Al-Dībāj al-mudhahhab fī maʿrifat aʿyān ʿulamāʾ al-madhhab*. Edited by Muḥammad al-Aḥmadī Abū al-Nūr. Al-Qāhira: Dār al-Turāth, 1972.

Ibn al-Khaṭīb, Lisān al-Dīn. *Al-Iḥāṭa fī akhbār Gharnāṭa*. Edited by Muḥammad ʿAbd Allāh ʿInān. 4 vols. Al-Qāhira: Maktabat al-Khānijī, 1973. 2nd Ed.

Ibn al-Qāḍī, Aḥmad al-Miknāsī. *Jadhwat al-iqtibās fī dhikr man ḥalla min al-aʿlām madīnat Fās*. 2 vols. Al-Ribāṭ: Dār al-Manṣūr, 1973.

Ibn Qunfudh, Aḥmad al-Qusanṭīnī. *Kitāb al-wafayāt*. Edited by ʿĀdil Nuwayhiḍ. Bayrūt: Dār al-Āfāq al-Jadīda, 1983.

_____. *Uns al-faqīr wa-ʿizz al-ḥaqīr*. Edited by Muḥammad al-Fāsī & Adolphe Faure. Al-Ribāṭ: al-Markaz al-Jāmiʿī, 1965.

Ibn Rushd, Abū al-Walīd al-Jadd. *Masāʾil Abī al-Walīd Ibn Rushd (al-Jadd): taḥqīq ʿan sitt nusaj khaṭṭiyya maʿa dirāsa ʿan al-muʾallif wa-l-kitāb*. Edited by Muḥammad al-Ḥabīb al-Tajkānī. 3 vols. Bayrūt: Dār al-Jīr, 1993.

_____. *Al-Muqaddimāt al-mumahhadāt li-bayān mā iqtaḍat-hu rusūm al-Mudawwana min al-aḥkām al-sharʿiyyāt wa-l-taḥṣīlāt al-mukammalāt li-ummahāt masāʾili-hā al-mushkilāt*. Edited by Muḥammad Ḥajjī. 3 vols. Bayrūt: Dār al-Gharb al-Islāmī, 1988.

_____. *Fatāwā Ibn Rushd*. Edited by Al-Mukhtār b. al-Ṭāhir al-Talīlī. Bayrūt: Dār al-Gharb al-Islāmī, 1987.

Ibn Shās, ʿAbd Allāh b. Najm. *ʿIqd al-jawāhir al-thamīna fī madhhab ʿālim al-Madīna*. Edited by Ḥamīd b. Muḥammad Laḥmar. 3 vols. Bayrūt: Dār al-Gharb al-Islāmī, 2003.

Al-Shiblī, Abū Zakariyyāʾ Yaḥyā b. Muḥammad. *Al-Taqsīm wa-l-tabyīn fī ḥukm amwāl al-mustaghraqīn min al-ẓalama wa-l-ghāṣibīn*. Edited by Jumʿa Maḥmūd al-Zurayqī. Al-Ribāṭ: Manshūrāt al-Munaẓẓama al-Islāmiyya li-l-tarbiya wa-l-thaqāfa, 1993.

Al-Qarāfī, Aḥmad b. Idrīs. *Al-Dhakhīra*. Edited by Muḥammad Ḥajjī. 14 vols. Bayrūt: Dār al-Gharb al-Islāmī, 1994.

Al-Tunbuktī, Aḥmad Bābā. *Kifāyat al-muḥtāj li-maʿrifat man laysa fī al-dībāj*. Edited by Muḥammad Muṭīʿ. 2 vols. Al-Muḥammadiyya: Maṭbaʿat Faḍḍāla, 2000.

_____. *Nayl al-ibtihāj bi-taṭrīz al-dībāj*. Edited by ʿAbd al-Ḥamīd ʿAbd Allāh al-Harāma. Tarābuls: Kulliyyat al-Daʿwa al-Islāmiyya, 1989.

Al-Wansharīsī, Aḥmad. *Al-Miʿyar al-muʿrib wa-l-jāmiʿ al-Mughrib ʿan fatāwā ʿulamāʾ Ifrīqiya wa-l-Andalus wa-l-Maghrib*. Edited by Muḥammad Ḥajjī et al. 13 vols. Bayrūt: Dār al-Gharb al-Islāmī, 1981.

Admiral, Rosemary. "Living Islamic Law: Women and Legal Culture in Marinid Morocco." *Islamic Law and Society* 25, no. 3 (2018), 212-34. https://doi.org/10.1163/15685195-00253P02.

Berque, Jacques. "Les Hilaliens repentis ou l'Algérie rurale au XVe siècle, d'après un manuscrit jurisprudential." *Annales. Histoire, Sciences Sociales* 25, no. 5 (1970), 1325-53. https://doi.org/10.3406/ahess.1970.422276.

Binʿalla, Muṣṭafā. *Tārīkh al-awqāf al-islāmiyya bi-Maghrib fī ʿaṣr al-Saʿdiyyīn min khilāl ḥawwālāt Tārūdānt wa-Fās*. Al-Ribāṭ: Manshūrāt wizārat al-awqāf wa-l-shuʾūn al-islāmiyya, 2007.

Dozy, Reinhart Pieter Anne. *Supplément aux dictionnaires arabes*. 2 vols. Leiden: Brill, 1881.

Fadel, Mohammad Hossam. "The Social Logic of *Taqlīd* and the Rise of the *Mukhtaṣar*." *Islamic Law and Society* 3, no. 2 (1996): 193-233. https://doi.org/10.1163/1568519962599122.

Ferhat, Halima. "Souverains, saints et fuqahā': le pouvoir en question." *Al-Qanṭara* 17, no. 2 (1996): 375-90. https://doi.org/10.3989/alqantara.1996.v17.i2.554.

Gómez-Rivas, Camilo. *Law and the Islamization of Morocco under the Almoravids: The Fatwas of Ibn Rushd Al-Jadd to the Far Maghrib*. Leiden: Brill, 2014.

Hallaq, Wael B. "From *Fatwā*s to *Furūʿ*: Growth and Change in Islamic Substantive Law." *Islamic Law and Society* 1, no. 1 (1994), 29-65. https://doi.org/10.1163/156851994X00147.

Hendrickson, Jocelyn. *Leaving Iberia: Islamic Law and Christian Conquest in North West Africa*. Cambridge, MA: Havard University Press, 2021.

Kably, Mohamed. *Société, pouvoir et religion au Maroc à la fin du moyen-age*. Paris: Maisonneuve & Larose, 1986.

Lagardère, Vincent. *Histoire et société en Occident Musulman au moyen âge: analyse du Miʿyār d'al-Wanšarīšī*. Online. Madrid: Casa de Velázquez, 1995. http://books.openedition.org/cvz/2378.

_____. "La haute judicature à l'époque Almoravide en al-Andalus." *Al-Qanṭara* 7, no. 1 (1986): 135-228.

Lévi-Provençal, Évaliste and Charles Pellat. "Al-Maḳḳarī." In *Encyclopaedia of Islam, Second Edition*, edited by P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs. VI: 187-88, (1991).

Molina López, Emilio. "La economía: propiedad, impuestos y sectores productivos." In *El retroceso territorial de al-Andalus: Almorávides y Almohades (Siglos XI Al XIII). Historia de España Menéndez Pidal*. VIII/2. Espasa-Calpe, 1997, 209-300. Madrid.

Monés, Hussain. "Ibn ʿAbdūs." In *Encyclopaedia of Islam, Second Edition*, edited by Bearman, P., Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs. III: 681, (1979).

Powers, David S. "Ahmad al-Wansharisi (d. 914/1509)." In *Islamic Legal Thought: A Compendium of Muslim Jurists*, edited by Arab, Oussama, David S. Powers, Susan A. Spectorsky. Leiden-Boston: Brill, 2013, 375-99. https://doi.org/10.1163/9789004255883_019.

_____. *Law, Society and Culture in the Maghrib, 1300-1500*. Cambridge: Cambridge University Press, 2002.

Serrano Ruano, Delfina. "Ibn Rušd al-Ŷadd, Abū al-Walīd." In *Biblioteca de Al-Andalus*. IV: 617–26, (2005).

_____. "Ibn Rušd al-Qurtubī al-Mālikī, Abū l-Walīd Muḥammad b. Aḥmad, Fatāwī Ibn Rušd, taqdīm wa-taḥqīq wa-ŷamʿ wa-ta'līq al-Duktūr al-Mujtār al-Ṭāhir Al-Talīlī. Masāʾil Abī l-Walīd Ibn Rušd (Al-Yadd), taḥqīq ʿan sitt nusaj jaṭṭiyya maʿa dirāsat ʿan l-muʾallif wa l-kitāb Muḥammad al-Ḥabīb al-Taŷānī (Book Review)." *Al-Qanṭara* 15, no. 2 (1994): 531-34.

Terem, Etty. *Old texts, new practices: Islamic Reform in Modern Morocco*. California, CA: Stanford University Press, 2014.

Touati, Houari. "En relisant les Nawâzil Mazouna marabouts et chorfa au Maghreb Central au XVe siècle." *Studia Islamica* 69 (1989), 75-94. https://doi.org/10.2307/1596068.

Vidal Castro, Francisco. "El Miʿyâr de al-Wanšarîsî (m. 914/1508) II: Contenido." *Miscelánea de estudios árabes y hebraicos* 44, no. 1 (1995), 213-46.

_____. "El Miʿyâr de al-Wanšarîsî (m. 914/1508) I: fuentes, manuscritos, ediciones, traducciones." *Miscelánea de estudios árabes y hebraicos* 42, no. 1 (1993), 317-62.

Voguet, Élise. *Le monde rural du Maghreb Central (XIVe-XVe siècles): Réalités sociales et constructions juridiques d'après les Nawāzil Māzūna*. Paris: Publications de la Sorbonne, 2014.

_____. "Islamisation de 'L'intérieur du Maghreb': Les fuqahâʾ et les communautés rurales." *Revue des mondes musulmans et de la Méditerranée* 126 (2009). https://doi.org/10.4000/remmm.6403.

العنوان: النكاية ضد مستغرقي الذمة: تحليل بأدب فقهي في العصر المريني

ملخص: يناقش هذا البحث العقوبات الاجتماعية التي فرضت على مجموعة من الأشخاص الذين يطلق عليهم "مستغرقو الذمة" بسبب تعاونهم مع الدولة في تحصيل ضرائب غير شرعية، وذلك بناء على تحليل فتاوى متعلقة بنزاع في العصر المريني حول مشروعية ما إذا كان من الجائز لمعلم أن يتقاضى الأجر من هؤلاء الأشخاص مقابلاً لتعليم أطفالهم. وبالاستناد على فتوى ابن رشد الجد من عصر المرابطين، ادعى القباب، المفتي في هذه النازلة، أن مشروعية مثل هذه المعاملة يجب أن تقرر على أساس الوضع القانوني لمال الطرف المعني، لا على أساس اشتغاله في وظائف معينة متعلقة بتحصيل الضرائب. وبإصداره هذه الفتوى، كان المفتي يأخذ في الحسبان الحساسية القانونية لسكان فاس الذين كانوا يتوقعون عقوبات أشد ضد مستغرقي الذمة من جهة، وتجنب استدلالاً قانونياً تعسفياً من خلال تأسيس حكمه في الأقوال الموثوقة لمذهب مالك من جهة أخرى.

الكلمات الرئيسية: بنو مرين، فتاوى، الشريعة، المذهب المالكي، فاس.

Titre: L'animosité contre les "noyés de dettes": une analyse des textes juridiques à l'époque marīnide

Résumé: Cet article traite des sanctions sociales appliquées à un groupe de personnes, surnommés les "noyés de dettes," considérés comme des collaborateurs de la collecte illégale des impôts d'État. Pour ce faire, j'utilise des *fatwās* relatives à un litige dans la Fès marīnide qui traitent de la question du droit pour un enseignant de bénéficier ou non de l'argent de ces personnes pour financer l'éducation de leurs enfants. Al-Qabbāb, un muftī de l'époque marīnide, affirme que la licéité d'une telle transaction devrait être déterminée par le statut légal des biens de la partie impliquée et non par l'occupation d'emplois spécifiques liés à la collecte des impôts, en adoptant une opinion d'Ibn Rushd al-Jadd, un célèbre juriste malikite de l'époque almoravide. Ce faisant, le muftī tient compte de la sensibilité juridique des habitants de la ville qui s'attendent à des sanctions à l'encontre des collecteurs d'impôts et évite un raisonnement juridique arbitraire, en fondant son argument sur les opinons de l'école qui font autorité.

Mots-clés: Mérinides, fatwa, jurisprudence islamique, Malikisme, Fès.