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Michael Brett

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ISLAM AND TRADE IN THE *BILĀD AL-SŪDĀN*, TENTH-ELEVENTH CENTURY A.D.

BY MICHAEL BRETT

The origins of Islam to the south of the Sahara are poorly documented. West of the Nile, the Arab conquests of the seventh and eighth centuries did not extend across the desert, and the *Bilād al-Sūdān* or Land of the Blacks rose only slowly above the horizon of the Arab world which those conquests created. That it rose at all, however, was the consequence of the trade which the Arab conquests stimulated, which reached out across the Sahara to bring the *Bilād al-Sūdān* for the first time within the sphere of the civilization of the Mediterranean and the Middle East. Reconstructed by the Arab conquests, that civilization was now the civilization of Islam, and the inclusion of sub-Saharan Africa within its sphere was not only associated with, but in large measure activated by, the spread of the religion of Islam to the south of the desert. How and why this spread occurred is controversial. The arguments are summed up by H. J. Fisher in Volume 3 of the *Cambridge History of Africa*, where he suggests that the Muslim merchant from North Africa, however important his trade may have been in establishing the necessary contact with the Islamic world, was less important than the Muslim cleric in bringing about the conversion of the peoples of the *Bilād al-Sūdān*.¹ I want to return to the North African merchant, to show the importance of Islam in his business, and to suggest how the role of Islam in trans-Saharan trade in the period before the widespread conversion of native rulers and their subjects may have influenced the subsequent history of Islam in West Africa.

The written sources for the history of West Africa in the Middle Ages are for the most part, of course, the writings of Arab geographers and historians, now brought together in translation by Hopkins and Levtzion.² With few exceptions, these authors never crossed the Sahara, and their evidence, however good, is a matter of report. In the *Mi'yār al-mu'rib* of the sixteenth-century Moroccan jurist al-Wansharīshī, however, are preserved two narratives of about the year A.D. 1000 which, while still dependent upon hearsay, provide more direct evidence for the period when the *Bilād al-Sūdān* was still largely pagan.³ They are two *fatwā*-s of the Qayrawānī jurist al-Qābisī (A.H. 324-403/A.D. 935-1012), that is, legal opinions offered in two doubtful cases, the first of which concerned an unfulfilled contract made in Ifrīqiya for trade in the *Bilād al-Sūdān*, the second a dispute over the inheritance of a merchant who had died in the *Bilād al-Sūdān*. The details of each case, and the comments of the jurist, are a valuable addition to our knowledge, and justify firmer conclusions than those possible from the information supplied by the geographers alone.

Al-Qābisī was a member of the Malikite school of Muslim jurists at

¹ Roland Oliver (ed.), *Cambridge History of Africa*, III (Cambridge, 1977), 284-5, 313.

² J. F. P. Hopkins, trans., N. Levtzion and J. F. P. Hopkins, ed., *Corpus of early Arabic sources for West African history* (Cambridge, 1981).

³ Al-Wansharīshī, *Al-Mi'yār al-mu'rib wa 'l-jāmi' al-mughrib 'an fatāwī ahl Ifrīqiya wa 'l-Andalus wa 'l-Maghrib*, 12 vols., lithographed (Fes, 1314-15 A.H.).

Qayrawān, the capital of Ifrīqiya, the region comprising eastern Algeria, Tunisia and Tripolitania, which had once been a province of the Arab empire, but which was in the tenth century an independent state, ruled first by the Fatimids and then by their viceroys the Zirids.⁴ The Fatimids were Shi'ites; nevertheless they made little attempt outside the field of public worship to substitute their own version of the Law of Islam for that of the Sunnite Malikites, which had been established in the country in the ninth century, and continued to be applied by the *qāḍī*-s or judges in their courts. The *qāḍī*, sitting in judgement in accordance with the Law of God, bore a heavy responsibility for his God-like decisions. By the end of the tenth century, therefore, he was accustomed to refer the more difficult cases to a jurist for his learned opinion on what the Law might be in the matter, so much so that under the Zirids and their successors the Hafsids it eventually became the practice of the state to appoint such a jurist alongside the *qāḍī* to act in this way.⁵ In the days of al-Qābisī the system was less formal. Jurists of the required eminence formed a small and distinguished elite, all the more influential because of their pious reluctance to become involved in any way in the sinful business of government. Al-Qābisī, a native of Gabes (Qābis) in southern Tunisia, who was for many years the leader of the group, was typical in this respect. He was, it is said, forced to give consultations by the populace, which broke into his house to insist that a jurist of his eminence had a duty to do so.⁶

It is nevertheless clear from the form of the *fatwā*-s or consultations given by al-Qābisī that the practice was already a normal part of the administration of justice. The two which deal with the *Bilād al-Sūdān*, for example, were clearly provoked by litigation. This has called in the first place for a *résumé* of each dispute, giving rise to a specific question, followed by the jurist's answer. The *résumé* is likely to have been the work of a clerk or a disciple of the master employed to edit the submissions of the parties to identify the point at issue, so that the jurist could go straight to the heart of the matter.⁷ The answers are correspondingly succinct; the jurist first reviews the question presented to him, then gives his opinion, quoted without reference to any of the authorities he may have cited. The effect of this procedure is twofold. On the one hand it transforms the facts of the case into the elements of a hypothetical question – 'if this were so, then what might the Law be?' On the other, it produces a pearl of legal wisdom, on which a judgement might be based. The answer thus provided was of permanent worth, far beyond its immediate value in the case. It was a contribution to human understanding of the divine Law, and as such both these specimens have been preserved in the legal literature, eventually to appear in the celebrated work of al-Wansharīshī, an immense collection of *fatwā*-s classified to illustrate the doctrines of the Malikite school.

The arrangement of the material for juristic purposes, which is of the

⁴ Cf. J. D. Fage (ed.), *Cambridge History of Africa*, II (Cambridge, 1978), chs. 8, 10; H. R. Idris, *La Berbérie orientale sous les Zirides, X^e-XII^e siècles* (Paris, 1962).

⁵ Idris, *Berbérie orientale*, 568-72; R. Brunschvig, *La Berbérie orientale sous les Hafssides, des origines à la fin du XV^e siècle*, 2 vols. (Paris, 1940, 1947), II, 138-41.

⁶ H. R. Idris, 'Deux juristes kairouanais de l'époque zirīde: Ibn Abī Zayd et al-Qābisī', *Annales de l'Institut des Etudes Orientales* (Algiers), XII (1954), 122-98, p. 181.

⁷ Cf. J. Berque, *L'Intérieur du Maghreb, XV^e-XIX^e siècle* (Paris, 1978), 31, n. 3.

essence of the *fatwā*, tends to obscure the event from the historian's point of view, but compensates with the insight it provides into the mentality at work in the case. Of these two *fatwā*-s, the first concerns a man who accepted a *qirāḍ*, that is, money or goods to buy or sell on behalf of the owner, the profit to be divided between them in some previously agreed proportion upon completion of the business, and is as follows:⁸

Al-Qābisī was asked about a person who had given a *qirāḍ* to a man to take to the district of Tādmakka, which is the *Bilād al-Shūd, al-Sūdān* as it should be. The agreement between them was drawn up in writing and properly witnessed. So the man went to Tādmakka, but on from there to Ghāna and Awdaghost, where he married and had children, and stayed eleven years from the day of his departure from the town where he had accepted the valuables entrusted to him. Now (in this town) this agent had debts, so that the *qāḍī* sold his belongings to divide among his creditors. Thereupon the person who owned the *qirāḍ* came forward and asked if he should be recognised as a creditor. Saḥnūn⁹ had said in the case of one who had taken valuables as a *qirāḍ* to negotiate at Tunis, but who had gone instead to Egypt, that the owner should be treated as a creditor on account of this *qirāḍ*. Was this case different? How would it be, for example, if the agent had gone to Andalus and Sijilmāsa from Tādmakka, and then to Ghāna or Awdaghost where he had married?

Al-Qābisī answered that the man's instructions were to go to Tādmakka. If what has been said of him be true, this agent has been excessively slow in this long period during which it is possible for people to go and to come back. But as to how it would be if this agent had extended his journey to Sijilmāsa when his instructions were only to go to Tādmakka, and had gone on to Andalus, that were most wonderful!

I say that the giving of a *qirāḍ* which stipulates a journey to the *Bilād al-Sūdān* is not permissible. It is not, in my opinion, like the giving of a *qirāḍ* for a journey to the cities of Islam. In my opinion the *Bilād al-Sūdān* is not trustworthy for the *qirāḍ* and not satisfactory.¹⁰

However, in this case the fault is not in the fact that the agent entered into the obligation, since he did so on the instructions of the owner, but rather in the aforesaid excessive delay in returning. The claim upon him of the owner of the valuables is valid, and he is responsible for the capital of the owner which is down to him; therefore let his creditors include the owner, all on account of the patent delay. And God knows best.

In this first text, the location of the affair is a North African city; in the second, the main action takes place in the *Bilād al-Sūdān* itself:¹¹

Al-Qābisī was asked about a man who died in the *Bilād al-Sūdān* without a will or provision for his estate. Thereupon a man had taken the key of his storeroom and kept it for several days. It became clear, however, that this man was not entitled to the trust. In the town (or country) was a Muslim whom the king of the town

⁸ *Mi'yār*, IX, 78-9.

⁹ The greatest jurist of the Maliki school in Ifrīqiya, fl. c. A.D. 850; cf. *Cambridge History of Africa*, II, 539-40.

¹⁰ In the work of al-Qābisī's contemporary Ibn Abī Zayd this opinion becomes: 'trade with the land of enmity (*adw*) and the *Bilād al-Sūdān* is wrong and hateful. The Prophet said: "the journey is a part of the punishment": Ibn Abī Zayd al-Qayrawānī, *La Risāla*, ed. and trans. L. Bercher (Algiers, 1945), 318-19; cf. *Cambridge History of Africa*, II, 650; III, 284-5.

¹¹ *Mi'yār*, I, 98-9.

(or country) had appointed superintendent (*nāẓir*) of the Muslims, and whom they had accepted. Therefore the Muslim community brought the matter of this dead man before him. The *nāẓir* ordered the man who had taken the key to give it up, and chose another person to sell what the dead man had left. The person chosen did so conscientiously, and brought the proceeds to the *nāẓir*. But the heir of the deceased said: The seller transgressed; I do not approve of anything the *nāẓir* did.

Al-Qābisī answered: since the place where the affair happened was a residence of Muslims who lived and dwelt there, there was no alternative for them but to have someone to supervise their affairs and judge between them, with authority from the ruler of the place to enable him to compel the recalcitrant and carry out his duties. For it is not possible to escape from kings in their power (*sultān*), and especially not from the power of unbelief (*kufr*) and enmity ('*adāwa*).¹² Therefore, if the *nāẓir* of the Muslims judges them by the laws of the Muslims, his judgement goes, hitting the mark of justice, and binding upon those who have been pleased to enter his jurisdiction (*sultān*) and come under his supervision (*naẓar*), either permanently or in passing.

As for the one whom the *nāẓir* appointed to take care of the property of the dead man, and sell what he had left: had there been a warrant (*kitāb*) from the Muslim authorities in the lands of Islam, then this executor would have been as the executor in a Muslim country by permission of the *qādī* of the Muslims, nothing withstanding. Now it is certain that he took charge with the permission of this *nāẓir*, a procedure to which people do not object, but which seemed good when they essayed the journey to that land. Had the *nāẓir* acted unjustly (*bi 'l-'adā'*) towards those concerned, then the estate of the dead man would indeed have perished. And if anyone had seized it and put his hand upon it, that would have been transgression ('*adā'*)¹³ of which he would inevitably have been culpable on account of his greed. But it is not as this heir says, when he has no proof, that the action in this matter of this *nāẓir* of the Muslims is unacceptable. And reconciliation is by God.

In both these texts, the hypothetical element is clear. The first is careful to establish that the agreement was properly made, and that it was not carried out. On this assumption, it asks if the owner of the capital has a claim on the estate of the agent, and specifically if an opinion of the great ninth-century jurist Ṣaḥnūn is relevant. Al-Qābisī denies the analogy, but justifies the claim on other grounds. The second proceeds still more carefully to insist upon the rectitude of the *nāẓir* as a person properly appointed, who fulfils all the requirements of the Law in the circumstances, and who has acted in the matter with complete propriety; so too has the *bā'ī*, the man appointed by the *nāẓir* to sell the property, who has done his duty conscientiously. Given that this is so, al-Qābisī is able to dismiss the plea of the dead man's heir without discussion. The contrast between the two opinions is instructive.

The world of these two *fatwā*-s is that of Ibn Ḥawqal and al-Bakrī. Tādmakka, Awdaghaṣṭ and Ghana, and the general picture of Muslims from North Africa trading and living in the *Bilād al-Sūdān* under the rule of pagan kings, are all familiar from the *Ṣūrat al-Arḍ* and the *Masālik wa 'l-Mamālik*, in the passages now translated by Hopkins and Levtzion.¹⁴ It is a pity that

¹² '*Adāwa*, 'enmity', i.e. opposition to the Law, with reference here to lands unconquered and ungoverned by Muslims and their Law; cf. '*adw*, n. 10 above.

¹³ '*Adā'*, 'transgression': a third form, after '*adāwa* and '*adw*, with the same meaning of opposition to the Law, but used here of Muslims, not infidels, who have broken the Law and therefore sinned.

¹⁴ Hopkins and Levtzion, *Corpus*, 43-52, 62-87.

the pagan town or country of the second *fatwā* is not named. For al-Qābisī, the salient feature of this world is the division between the lands of Islam to the north of the Sahara, and those of paganism to the south. It is the division established by the Arab conquest of Egypt and North Africa between countries where Muslims rule, and the Law of Islam prevails on the authority of the *qāḍī*, the judge appointed by the Muslim monarch, and those where this state of affairs, divinely ordained for the good life, does not exist. Instead there is *'adāwa*, enmity or opposition, a state in which the Law is not accepted and is therefore broken by peoples living under a different regime. For Muslims to venture into this region is perilous; they risk being unable to live according to the Law, thus falling into the same state of contravention, which in their case is sin. Nevertheless they do so in order to trade, and it is the duty of the jurist to provide them as far as possible with the protection of the Law as they travel outside the lands where it can be properly enforced.

In the first *fatwā*, therefore, al-Qābisī begins by refusing to recognize that a *qirāḍ* concluded for the *Bilād al-Sūdān* is valid, because it cannot be enforced. The question is thus disallowed on the grounds proposed in the submission to the jurist. But by shifting the element of blame from the contract and its non-fulfilment to the delay in coming back, al-Qābisī is able to conclude that the taking of the capital by the agent stands as a straightforward debt to the owner. The result is a *hila* or juristic device which overcomes the basic objection to a *qirāḍ* for the *Bilād al-Sūdān* in this particular case. The case itself is simple, and seems to have afforded al-Qābisī some amusement. Since he was not asked to uphold the actual details of the *qirāḍ*, that the proceeds should be divided in such and such a way between the owner and the agent, it is not clear what he would have done had the agent in fact returned to quarrel with the owner. But the position he adopted in this *fatwā*, that the general invalidity of a *qirāḍ* for the *Bilād al-Sūdān* did not invalidate the basic responsibility of a merchant to repay what he had in fact borrowed, was evidently thought sufficiently important to be recorded. It is perhaps in the light of this *fatwā* that we should understand the prohibition upon trade with the *Bilād al-Sūdān* contained in the *Risāla* of al-Qābisī's contemporary Ibn Abī Zayd,¹⁵ and conclude that the effect of jurisprudence in this period was to exclude trade across the Sahara from the elaborate provisions made by the Law for commerce within the Dār al-Islām, but to offer those engaged in this trade some elementary guarantees in respect of debts.

In the second *fatwā*, the situation is reversed. It is the questioner who challenges the operation of the Law in the *Bilād al-Sūdān* in the absence of a proper authority to enforce it, and the jurist who insists that the Law can and does apply. Once again, however, a certain amount of argument is required to overcome the same basic objection that from the legal point of view, the *Bilād al-Sūdān* is not secure. The argument proceeds from the need of the Muslim community for government in order to live the good life, and the corollary, generally accepted in the Malikite school, that any government is better than no government.¹⁶ On the one hand, therefore, al-Qābisī insists

¹⁵ See above, n. 10.

¹⁶ For this general attitude, cf., e.g. D. de Santillana, 'Law and Society', in Sir Thomas Arnold and A. Guillaume, *The Legacy of Islam*, 1st ed. (Oxford, 1931), 284-310, 301-3; E. I. J. Rosenthal, *Political Thought in Medieval Islam* (Cambridge, 1958), 53-5.

that a Muslim community beyond the jurisdiction of a *qāḍī* has the obligation to choose for itself a *nāẓir* or 'watchman' to watch over its affairs according to the Law, and to accept his authority in place of that of the *qāḍī*. On the other, he notes the power of kings, from which there is no escape in theory or in practice. The irresistible force which it employs is a necessary defence against the ultimate horror of anarchy. In the ideal state, the power of the Muslim ruler will enforce the judgements of the *qāḍī*, and ensure the rule of Law; in a pagan kingdom, power is wielded on a different principle. But it is necessary for Muslims who live in such a kingdom to accept and call upon its power to compel obedience to the *nāẓir* in charge of their affairs. On this basis, al-Qābisī is able to justify what has been done with an argument from expediency, that the system under which the *nāẓir* acted was the best in the circumstances, so that both it and its operation in this particular case have the force of Law. Once again, the fact that this opinion has been recorded and preserved would indicate that we have here a statement of principle of practical value to the trans-Saharan trade as well as theoretical importance for the doctrine of the Maliki school.

Both *fatwā*-s thus proceed in different ways from the evident will of the jurist that the Law of Islam should apply as far as possible in the unsatisfactory circumstances of the *Bilād al-Sūdān*. Equally, both may be taken to represent a strong and probably dominant tendency within the Maliki jurisprudence of the period. For this will to be successful, a certain amount of casuistry was required. More than that, it was necessary for the courts of Ifrīqiya to take cognizance of cases which involved the *Bilād al-Sūdān*, and still more for the jurists attached to those courts to sanction the creation of Muslim authorities to administer the Law in lands where Muslims did not rule. For this sanction to be given, it was necessary to compromise with paganism, and accept the power of pagan kings as indispensable to the good life. Predicated on the basic fact that the *Bilād al-Sūdān* was in a fundamental state of disobedience to God's Law, such a system could never be perfect; it might mitigate, but could never overcome the radical defect of *'adāwa*. Nevertheless it was much better than nothing. In an ambiguous situation, in which the Muslim merchant was clearly liable to ignore the Law, it imposed a certain restraint. More positively, it enabled the merchant to live and trade in a country where otherwise he would have been at the mercy of the inhabitants and his fellow traders. He became a member of a local Muslim community established by agreement with the local king, while at the same time he had some elementary recourse to the Law in his business.

How well the system worked in practice is difficult to say. The estate of the North African merchant who died in the Sahara or the Sudan was still at risk in the nineteenth century, when the *nāẓir* himself was liable to seize it.¹⁷ Al-Qābisī was evidently aware of the dangers when he insisted that those who travelled to the *Bilād al-Sūdān* did so voluntarily, knowing the risks before they set out. But from the growth of trans-Saharan trade, and the development of Islam to the south of the desert, the system may be supposed to have served its purpose. Its application of universal rules allowed the Muslim merchant to enter the particular society of West Africa with its multiplicity of customs and laws. For this it provided him with a recognized

¹⁷ Cf. G. Nachtigal, *Sahara and Sudan*, trans. Allan G. B. and Humphrey J. Fisher (London, 1974 onwards), II, 237-8.

identity apart from the peoples with whom he traded. Thereby it gave rise to resident Muslim communities, which *ipso facto* formed part of this Sudanese society of many different groups. By its isolation of the Muslim, this merchant's Islam may have produced few converts; but it was not without results. The formation of distinct communities, and their insertion into the complicated pattern of West African society, all on the basis of the Islamic Law and its provisions for the conduct of daily life, were features which survived the transition to Islam as a religion of the Sudanese themselves. This was not least because the association with commerce remained, and trans-Saharan trade continued to maintain the connection with North Africa and the Middle East, even as new factors, political and religious, came into operation to broaden the Muslim community into a cross-section of the West African population.

For al-Qābisī, the *Bilād al-Sūdān* is not so much a geographical as a legal category, specified in each *fatwā* as a crucial condition of the case. It includes for example Tādmakka, and it would be pointless to argue whether this Saharan location was then ethnically or physically part of what we call the Sudan. A salient feature of the *Bilād al-Sūdān*, as al-Qābisī represents it, is not simply paganism and enmity, but the power of pagan kings which rests upon this Lawlessness, and with which the good Muslim must come to terms. Neither *fatwā* prescribes specifically for a situation in which there was no such royal power, as must have been the case among the many tribal or 'stateless' societies of the Sahara and the Sudan. The implication of the second *fatwā*, indeed, may be that if no pagan king existed, it was necessary to invent one. It is therefore particularly instructive to see what did happen in such a stateless society, and how the Muslim argument might run counter to the opinions of al-Qābisī. I refer to the Almoravids.

The history of the Almoravids is as well known as the sources allow, which means that a great deal is still obscure. The tendency of all recent writers, however – Norris, Farias, Levtzion and Fisher, for example – has been to retreat from an account founded essentially upon the *Rawḍ al-Qirtās* of the fourteenth-century Moroccan Ibn Abī Zar', to one based upon earlier writers, and especially the contemporary al-Bakrī.¹⁸ It is al-Bakrī whom I shall use to bring out the comparison and contrast with the *fatwā*-s of al-Qābisī in the actions of Ibn Yāsīn, the founder of the Almoravid movement in the middle of the eleventh century A.D. some fifty years after al-Qābisī's time. The comparison is appropriate, for the two men were connected through Abū 'Imrān al-Fāsī, a pupil of al-Qābisī and his successor as a leading jurist at Qayrawān, who according to al-Bakrī gave the recommendation that led to the dispatch of Ibn Yāsīn from southern Morocco into the western Sahara. Qayrawān was certainly the source of Ibn Yāsīn's doctrinal inspiration. Among the Berbers of the desert, the Guddāla and the Lamtūna, he endeavoured like the jurists of al-Qābisī's school to uphold and apply the Law of Islam, using it to create a new Muslim community living in accordance with Malikite doctrine.

It is not clear how far the Guddāla and the Lamtūna were already Muslim. They were both 'stateless' in the sense that they lacked permanent rulers, and Lawless to the extent that they lived by tribal custom. For Ibn Yāsīn

¹⁸ For references see *Cambridge History of Africa*, II, ch. 11; also H. T. Norris, *The Berbers in Arabic Literature* (London and New York, 1982), 105–56.

this was tantamount to paganism, and it was his aim and ultimate achievement to form at least some of them into Muslims who obeyed the Law under his direction. At Aratnannā his first followers built to his command a town in which no house might be higher than another. There he was obeyed as a judge in control of the affairs of the inhabitants until his judgements were contested, and he was driven out. He returned, however, to massacre those who had rejected him as enemies of the Law, together with criminals and moral offenders. His authority re-established, and the community reconstituted under his direction, he employed it as an army to subjugate the tribes of the desert in the name of the Law, to sack Awdaghast, to conquer Sijilmāsa, and to begin the invasion of Morocco which culminated under his successors in the foundation of a great new empire.

Such a history, and such an outcome, is not envisaged in the *fatwā*-s of al-Qābisī, but in both cases the premises are the same. It is necessary for Muslims who live beyond the pale of Lawful power and authority to be under some kind of supervision. Once his community had been recruited by his summons to lead the good life, Ibn Yāsīn appears fundamentally in the character of the *nāẓir* or watchman specified by al-Qābisī in such a case. His primary function was to see that the Law was obeyed. The main difference between him and the *nāẓir* of the second *fatwā* is that in the Sahara his power to enforce his judgements came not from a pagan monarch, but solely from his authority as a man of God to 'command the right and forbid the wrong'.¹⁹ This he did with a ferocious zeal that apparently outran his knowledge of the Law it was meant to serve. Al-Bakrī devotes a separate heading to his strange judgements, while reporting his willingness to be corrected by a man of Qayrawān who claimed to know better.²⁰ It is this ignorance which seems to have led to his expulsion from Aratnannā.²¹

The expulsion of Ibn Yāsīn from Aratnannā points to a more specific difference between himself and the *nāẓir* described by al-Qābisī. The *fatwā* is careful to insist upon the rectitude of this *nāẓir* in every respect – his acceptability to the community; his appointment by the king; the need for a person in his position; and the correctness of his action. On two of these counts, Ibn Yāsīn fails. His judgements were often unsound, and as a result he was unacceptable to a large part of the Muslim community. But the criteria set out in the *fatwā* are of at least two kinds. There is a contradiction between them which is disguised in the *fatwā* by the insistence that all of them have been satisfied, but is brought out in the Aratnannā affair. Whereas the question put to al-Qābisī urges the fact that the Muslim community has accepted the *nāẓir* as a point in favour of his action, the answer of the jurist stresses the obligation of the community to accept his authority. In the question, therefore, acceptance by the community has a constituent effect, empowering the *nāẓir* to act. In the reply, acceptance of the *nāẓir* follows

¹⁹ The duty of the *ḥisba*, incumbent upon all Muslims and especially upon their rulers, to secure the rule of the Law of God.

²⁰ Al-Bakrī, *Description de l'Afrique septentrionale*, ed. and French trans. M. G. de Slane (Paris, 1965), 169–70, trans. 319–20; cf. Hopkins and Levzion, *Corpus*, 74–5. The ignorance of Ibn Yāsīn has been vigorously denied: cf. Norris, *Berbers*, 122–7; but if he was misrepresented to his contemporaries in the Maghrib, the misrepresentation had the value of truth, and al-Bakrī's report retains its value for a discussion of juristic opinion.

²¹ Ignorance or excessive severity, which might be the same thing: Al-Bakrī, *Description*, 165–6, trans. 313; Hopkins and Levzion, *Corpus*, 71–2; cf. Norris, *Berbers*, 112–13.

from the need for such a person to administer the Law. It may well be, therefore, that al-Qābisī would have justified the 'nazirate' of Ibn Yāsīn despite its imperfections, in accordance with his general attitude to the *Bilād al-Sūdān*, that compromise was necessary. The words of the second *fatwā* might well have applied in the case of the visiting merchant so nearly flogged by Ibn Yāsīn,²² that the jurisdiction of the Almoravid leader 'seemed good when (he) essayed the journey to that land'.

When the expulsion of Ibn Yāsīn from Aratnannā was put to Ibn Yāsīn's master Waggāg ibn Zalwī in Morocco, however, the constitutional conflict between the approval of the people and the necessity of obedience to authority was much more drastically resolved. Ibn Yāsīn returned to the Sahara armed with a pronouncement that those who opposed him were apostates who had left the community and forfeited their lives.²³ This extreme opinion, more reminiscent of the Kharijites than the Malikites, was promptly put into effect by Ibn Yāsīn, who interpreted it to mean not only his opponents, but all those convicted of sin – what al-Qābisī calls '*adā*', enmity to the Law on the part of Muslims who have broken its commandments. The great difference between Waggāg's pronouncement and al-Qābisī's *fatwā* is immediately apparent. Whereas al-Qābisī was ruling for a community subject to the overlordship of a pagan king, Waggāg was prescribing for a revolution in the government of an independent people. With no power apart from his authority as the representative of the Law, Ibn Yāsīn was elevating his 'nazirate' into an amirate, his jurisdiction into a state. For this, conquest was necessary; the community became an army, and its neighbours the object of attack and subjugation. Their offence, which justified their conquest, was on the one hand '*adā*', on the other what al-Qābisī calls '*adāwa*', enmity to the Law on the part of those who have never accepted Islam. With paganism there could be no compromise, and so Ibn Yāsīn came directly into conflict with the opinion of al-Qābisī. In 1054–5 his followers, the Almoravids, sacked the southern city of Awdaghost because, says al-Bakrī, its Muslim inhabitants were ruled by the (pagan) lord of Ghana. That acceptance of pagan power which al-Qābisī had considered necessary for life in accordance with the Law, was now regarded as a sin which excluded the people of Awdaghost from the community of the faithful, and entitled them to be treated as infidels.²⁴

The weight of the Almoravids was felt in the Maghrib rather than the *Bilād al-Sūdān*. The embryonic state founded by Ibn Yāsīn developed after his death in 1059 along conventional lines, first in the Sahara and then in Morocco and Spain. His successors as rulers of the community, Abū Bakr and Yūsuf ibn Tāshfīn, went on to establish a Muslim monarchy in which the Malikite jurists were more than ever recognized as authorities upon the Law. The war upon paganism to the south of the desert failed to develop. Humphrey Fisher has recently demonstrated in this Journal that the Almoravid conquest of Ghana in 1076 is a legend, perhaps attributable to the Almoravid sympathies of Marinid historians of Morocco in the fourteenth century.²⁵ The conflict of opinion about the acceptability of pagan power was

²² Al-Bakrī, *Description*, 170, trans. 320; Hopkins and Levtzion, *Corpus*, 75.

²³ See n. 21.

²⁴ Al-Bakrī, *Description*, 168, trans. 317; Hopkins and Levtzion, *Corpus*, 73–4.

²⁵ Humphrey J. Fisher, 'Early Arabic Sources and the Almoravid Conquest of Ghana', *Journal of African History*, xxiii (1982), 549–60.

resolved in practice by the Islamisation of the major monarchies of the western and central Sudan from the eleventh century onwards. Nevertheless it has survived as a recurrent theme of West African history down to the present day, fed by the arguments which accumulated in the juridical literature and culminated in the explosion of writing attendant upon the *jihād*-s of the nineteenth century. The difference from the days of al-Qābisī and Ibn Yāsīn is that the controversy subsequently became internal to West Africa, part of the history of the complicated relationship between its immensely varied peoples.

SUMMARY

Two *fatwā*-s or legal opinions of the jurist al-Qābisī at Qayrawān about the year A.D. 1000 show the way in which the Law of Islam was used to protect the Muslim against the hazards of trans-Saharan trade with the *Bilād al-Sūdān*. Trade was to be conducted as far as possible in accordance with the Law, and approval was given to the establishment of Muslim communities in the *Bilād al-Sūdān* under the authority of a *nāẓir* or 'watchman', with the consent of the pagan king of the country. The formation of Muslim communities on this legal basis, and their incorporation into the pattern of West African society, were important for the subsequent character of Islam in West Africa. Meanwhile, among the 'stateless' Berber peoples of the Western Sahara, the doctrines of the Malikite school were subject to a different interpretation by Ibn Yāsīn, which came into open conflict with the views of al-Qābisī when the Almoravids sacked the Muslim city of Awdaghost for submitting to the pagan king of Ghana. This conflict of attitudes to paganism remained a feature of West African Islam down to the twentieth century.