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Gender and Authority in
Almoravid andalusia:
Subjects/Objects of Regulation
in Ibn 'Abdun's Risala fi
Al-Qada' Wa Al-Hisba

SEAN CONNOR RIORDAN

2002

The American University in Cairo

School of Humanities and Social Sciences

**GENDER AND AUTHORITY IN ALMORAVID ANDALUSIA:
SUBJECTS/OBJECTS OF REGULATION IN
IBN 'ABDŪN'S RISĀLA FI AL-QADĀ' WA AL-HISBA**

A Thesis Submitted to

The Department of Arabic Studies

in partial fulfillment of the requirements for

the degree of Master of Arts

by

Sean Connor Riordan

May 2002

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2002/37

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THE AMERICAN UNIVERSITY IN CAIRO

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SEAN CONNOR RIORDAN

TO

DEPARTMENT OF ARABIC STUDIES

MAY 2002

IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR

THE DEGREE OF MASTER OF ARTS

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ABSTRACT

The American University in Cairo

Gender and Authority in Almoravid Andalusia:
Subjects/Objects of Regulation in
Ibn 'Abdun's *Risala fi al-qada' wa al-hisba*

Recent strands of western historical writing understand gender in medieval Islamic societies through any of number of local cultural, religious and political discourses. This type of writing shifts the focus of historical research away from questions regarding whether Islam debases or improves the status of women—questions that tend to immobilize the subject in a polemic of competing essentialisms—and instead finds gender as having been produced in historically dynamic local processes. My thesis attempts to contribute to this literature by exploring how gender functioned as a regulatory issue in the context of the Almoravid political-religious movement in al-Andalus through a close reading of the *Risalat fi al-qada' wa al-hisba*, a *hisba* manual authored by Ibn 'Abdun in Seville around the year 1100 AD.

I first situate *hisba* generally in the discourse of *siyasa shar'iyya*. This administrative basis for understanding is expanded in a section linking the pragmatic logic of subject-formation in *hisba* literature with that of *fiqh*. Several discursive moments related to this logic are provided.

I also situate Ibn 'Abdun's manual in the historical context of its creation. In the relevant period Maliki jurists were increasingly able to effect a number of actions and reforms in line with their vision of the *shari'a* under sympathetic Almoravid rule. At the same time, inter-confessional tensions had also peaked.

My method of reading Ibn 'Abdun's passages on gender relations are informed by the questions that Judith Butler and Michel Foucault ask about discourse, subject construction and sex. Using these questions I see the numerous prescriptive interdictions regarding the regulation of gender relations as productive of gendered subjects, objects and subjects/objects. They are productive in that they continually form and re-form the subject of "women" (*al-nisa'*) in relation to different types of men of and for the regulatory authority of the *muhtasib*. I show how Ibn 'Abdun's *Risala*—written at a critical time in the development of Sunnism in al-Andalus—was a discourse in which gendered subjects/objects were constantly being articulated through of prescriptive interdictions.

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Introduction

Recent strands of historiography understand gender¹ in Medieval Islamic societies as having been constructed by any of number of (possibly interconnected) cultural, religious and political discourses. This type of historical writing shifts emphasis away from questions about whether Islam debases or improves the status of women—questions that tend to immobilize the subjects of Islam and women in competing essentializations—and instead locates gender issues in historically dynamic local discourses and institutions. My thesis attempts to contribute to this literature by exploring a discursive manifestation of gender issues during the period of the Almoravid (*al-Murabitin*) political-religious movement's dominance in al-Andalus. This will primarily involve a close reading of relevant statements from the Sevillian Ibn 'Abdun al-Tujibi's *Risala fi al-qada' wa al-hisba* (Treatise on the Functions of the Judiciary and the *Hisba*). *Hisba* is the duty of Muslims to "command right and forbid wrong." Like all similar *hisba* manuals, the *Risala* (ca. 1100 AD) thus instructs civil officers and administrators how to prevent transgressive behavior in urban space. Through its unprecedentedly elaborate prescriptions regarding gender relations, it beautifully illustrates a historically particular discursive relationship between gender and authority, a relationship that is also part of a larger authoritarian discourse with universal aims.

Since this project is a critical engagement with a text that sought to instruct a state officials regarding their daily duties, it is, first of all, important to briefly outline the Muslim tradition of writing about administrative institutions as well as the operational logic of this tradition that seeks an ordered administration in line with divine guidelines.

This operational logic, which establishes normative subjects and objects of administrative authority, is manifest in the operational logic of *hisba* literature like the *Risala*. Having dealt with these issues in chapter one, chapter two discusses gender as a category of analysis. After discussing different historical approaches towards gender and women in Islam, I outline a method of reading gender through certain stipulations in *hisba* manuals like Ibn ‘Abdun’s. This method seeks instances in which gender relations enter the discourse of *hisba* through the presentation of subjects and objects of administrative authority. Chapter three is a historical excursus that provides the political and religious background upon which the development of discursive practices such as *hisba* and, specifically, Ibn ‘Abdun’s *hisba* manual must be understood. As the critical reading of Ibn ‘Abdun’s manual in chapter four shows, these discursive practices reflect events and concerns from the periods of their authorship. For the relevant Almoravid period which is the focus of chapter three, the manifold injunctions that Ibn ‘Abdun uses to promote public justice reflect contemporary concerns by Muslim scholars and the Almoravid rulers to promote an explicitly Sunni order. Thus, chapter three feeds directly into the general point of chapter four, namely, that Ibn ‘Abdun’s vision of *hisba* largely combats the related elements of disorder and sin through promotion of proper gender relations.

¹ There is no equivalent term or terms in Arabic that accurately reflect(s) the normal English usage—though *al-jins* (sex) is close—and certainly no term or terms that reflect its scholarly usage, which is perhaps one of the basic problems of scholarly writing about “gender” in Islam (see chapter two).

Chapter One. Introducing Hisba and Situating its Discourse

There is nothing mysterious or natural about authority. It is formed, irradiated, disseminated; it is instrumental, it is persuasive; it has status, it establishes canons of taste and value; it is virtually indistinguishable from certain ideas it dignifies as true, and from traditions, perceptions, and judgments it forms, transmits, reproduces. Above all, authority can, indeed must, be analyzed.

Edward Said, *Orientalism*²

Who commands, who obeys, and upon what language does this phenomenal continuity of 'order' rest?

Hamid Dabashi, *Truth and Narrative*³

Authority in context: a relevant example to get us started

This chapter is concerned to outline the field of Muslim thought and practice in which the texts of *hisba* operate discursively. While the bulk of this chapter will discuss texts, it is important to remember that texts were also affected by practical (in the field of practice, rather than its related field of discourse) considerations. For example, the discursive field in which Ibn 'Abdun's *Risala* and its prescriptions regarding the regulation of gender relations operated was affected by the Almoravid movement. The following anecdote captures a vital moment in this movement's promotion of a relationship between political authority and religious order. While this anecdote explicitly discusses neither *hisba* nor Ibn 'Abdun's *Risala*, it captures a congruent issue in terms of authority. It acts as an effective segue between political practice and discourse for the subsequent discussion of *hisba* and related Muslim authored discourses.

² Said, *Orientalism* (New York, 1979), pp. 19-20.

³ Dabashi, *Truth and Narrative: The Untimely Thoughts of 'Ayn al-Qudat al-Hamadani* (Surrey, 1999), p. 26.

Several years after the Almoravid crossing of Gibraltar and the subsequent dominance of Muslim armies in the Iberian Peninsula we find the following scene. After being deposed, Murcia's duplicitous and rebellious governor Ibn Rashīq appealed to the Almoravid *Amir al-Muslimin* (Commander of the Muslims) Yusuf b. Tashfin, begging the most powerful man west of Cairo to intercede on his behalf. Ibn Rashīq had aided the Christians at the failed Muslim siege of Aledo in 1088 and was subsequently named by a group of jurists in a *fatwa* (a non-binding legal pronouncement) that recommended he be relieved of his position. Receiving Ibn Rashīq and hearing his pleas to be reinstated Ibn Tashfin replied, "Had you a claim upon me, I would have acceded to your request but these are judgements delivered in accordance with the *Sunna* and I have no power to interfere with their provisions." The Almoravid commander then fulfilled the remaining stipulations of the *fatwa* by arresting the recalcitrant governor and handing him over to his *ta'ifa* (faction, pl. *tawa'if*) king al-Mu'tamid in Seville.⁴

While Ibn Rashīq's demise is politically insignificant in relation to the contemporary military and ecclesiastical struggle for the Muslim held lands of the Iberian Peninsula—a region known as al-Andalus in Arabic—as an anecdote it serves to introduce an important development in political and religious authority that was particular, in al-Andalus and North Africa, to the Almoravid period. Indeed, as Muslim and non-Muslim historiography alike understands it, the eleventh century Almoravid ascendance in North Africa and al-Andalus was a distinct period in which the interests of Muslim jurists (*fuqaha'*) were actively pursued by the ruling dynasty to an exceptional degree. Concurrently, the jurists frequently served the needs of the Almoravid *amirs*, thus

⁴ Tibi, Amin T., trans. *The Tabyan: Memoirs of 'Abd Allah b. Buluggin, Last Zirid Amir of Granada* (Leiden, 1986), p. 122.

allowing them to establish what is commonly viewed—at least regarding the movement's early period—as a Muslim state that enacted the just guidelines of the *shari'a* (the corpus of Allah's ordinances in the *Qur'an* and *sunna*) through strict observation of Maliki *fiqh* (pragmatic understanding of the *shari'a*). Not surprisingly, the interests of the bearers of swords and the keepers of pens were often mutual in late eleventh and early twelfth century al-Andalus. While it would be specious to construct the interests of the jurists or the Berber conquerors as homogeneous—*fiqh* typically left a large margin for internal disagreement, even among jurists of the same *madhhab* (legal rite), and the Almoravids were not without elemental variance within their own movement—it would also be historically inaccurate not to portray the remarkable coherence of a Sunni vision of political and religious authority that emerged contemporary to the dominance of these two groups. Both of these groups attempted to regulate—through different but often historically indistinguishable strategies—the everyday affairs of Muslims and *dhimmi*s (protected non-Muslims) in al-Andalus. It is with this type of practical exposition in mind that I can turn to the pan-Islamic discourses that enabled and normalized such regulation. Beyond a specific manual like Ibn 'Abdun's Almoravid era *Risala*, *hisba* literature in general is situated within these discourses of administrative institutions.

State administration and the *shari'a*: the *muhtasib* as a delegate of authority

The *shari'a* is the foundation from which all of Allah's permissions and prohibitions can be known by humans. The divinity of these permissions and prohibitions demand adherence. However, the common person was never expected to adhere to the *shari'a* without a social and political structure that promoted such adherence. Thus, Muslim jurists described an ideal state administrative hierarchy in the texts of *siyasa*

shar'iyya (just policy making and implementation consistent with the requirements of the *shari'a*) based on the necessary implementation of the *shari'a* in the practical realm of everyday life. In this hierarchy, institutions and individual officers were expected to fulfill certain responsibilities and were capacitated to exercise certain types of regulatory power based on their situation in the state administrative structure.

In Sunni books on proper state administration, no institution was more important than the imamate, an office personified by the *imam*. (An even more empowered imamate was also the center of Shi'i writings on the subject of *siyasa shar'iyya*.) In Sunni *siyasa shar'iyya* the *imam*, or caliph, was idealized as the ruler of the Community and the chief executor of the *shari'a* on earth. This idealization was consistent with the historical representation of the imam in court poetry as well as with the symbolically staged representations of the imamate's authority.⁵ Given the wide range of practical duties that constituted the *imam*'s responsibility for, in the words of Abu al-Hasan al-Mawardi (d. 1058), "upholding the faith and managing the affairs of the world," the *imam* was also presented as a delegator of authority and responsibility.⁶ Following al-Mawardi's *Ahkam al-Sultaniyya* (The Ordinances of Government), considered a standard work of *siyasa shar'iyya*,⁷ the *imam* dutifully delegates power to the *wizara* (vezirate, ministry), provincial governors, army commanders (for fighting idolators, apostates, and insurgents), *qadis* (judges), prayer leaders, leaders of the pilgrimage, tax collectors, and *muhtasibs* (the officer charged with *hisba*, "commanding right and forbidding wrong").

⁵ See Crone and Hinds, *God's Caliph* (Cambridge, 1986), Mottahedeh, *Loyalty and Leadership in an Early Islamic Society* (Princeton, 1980), Safran, "Ceremony and Submission" *Journal of Near Eastern Studies* 58 (Chicago, 1999), pp. 191-201.

⁶ al-Mawardi, *The Ordinances of Government*, trans. Wafaa H. Wahba (Reading, 1996), pp. 3 and 16.

⁷ Even though al-Mawardi was of the Shi'i *madhhab* (legal rite), his work is considered standard by Sunnis of all *madhhabs*.

All such delegated offices are important if the *imam* is to be able to “uphold the faith” while “managing” worldly affairs.

The judiciary (*qada'*) is explicitly connected to the *shari'a*'s proper application on a daily level. As a basis of authority the judge was required to have a firm command of both the “roots” (*usul*) and “branches” (*furū'*) of *fiqh* (literally “understanding”), the science of “understanding” the *shari'a*.⁸ His power to bring an end to disputes was both informal and formal. In the case of a formal resolution to a conflict between persons the judge would issue a “binding decision” in line with the *shari'a*.⁹ The judge was also expected to execute punishment for the *hudud* (penalties for infringing on Allah's rights as established in the *shari'a*) if presented “deposition or indisputable evidence.”¹⁰ Just as the *imam*, overburdened with practical responsibilities, delegated authority directly to the judge, the overburdened judge delegated authority directly to the *muhtasib*.¹¹

Within this same framework of *siyasa shar'iyya* the *muhtasib* is responsible for supervising urban space and censoring public morality. With the judge guarding the *shari'a* back at court the *muhtasib* was left to police the streets, markets, mosques and bathhouses in order to root out transgression. Though other policing agents existed in Muslim dominated lands, their authority was rarely articulated by Muslim writers. In contrast there exists a rich discourse about the *muhtasib* and his duties. This discourse is reflexive of, and often contained within, the larger discourse of *siyasa shar'iyya*. Like *siyasa shar'iyya* it is a discourse constructed through the logic and methodology of *fiqh*.

⁸ Ibid., p. 73.

⁹ Ibid., p. 79.

¹⁰ Ibid., p. 80.

¹¹ Ibid., p. 261.

Fiqh and hisba: Limits, usul, and 'urf

Fiqh refers to the science, practice, and body of texts concerned with explicating the *shari'a* for practical application. In none of these senses is *fiqh* itself divine or totalitarian. Its *ahkam* (sing. *hukm*)¹² were expected to be continuously revised by fallible human scholars.¹³ Likewise, *ahkam* had to be translated into judicial and regulatory decisions and practices to account for unique and changing cases. In these translations the judge or the regulatory officer like the *muhtasib* was expected to use his discretion in reaching a decision on the case before him, taking into account existing guidelines from accepted *ahkam* and the precise circumstances of the case. This capacity, however, is not a *carte blanche*. A judge or *muhtasib* deciding not to punish an act that clearly violated a *hukm*, especially in cases of a violation of a *hadd*, would then be transgressing clear and popular *ahkam* of *siyasa shar'iyya*. Nevertheless, the program of *fiqh* allowed the judge and *muhtasib*—as an authoritative, acting subject—to dictate and define the practical limits of his own authority.

Beyond such limitations upon *fiqh*'s totalitarian authority is the basic methodological issue that *fiqh* can only derive *ahkam* from the finite sources of the *shari'a*, the contents of which are often general in terms of legal/moral matters. One of the reasons for *fiqh*'s expansion as a corpus and a mode of legal contestation in the ninth and tenth centuries may be due to the need to adequately elaborate upon a limited body of holy texts.¹⁴ In order to deal with the finitude and ambiguity (on certain issues) of the *Qur'an* and *sunna*, Muslim scholars developed a pragmatic methodology through which

¹² A *hukm shar'i* is a judgement about the legal (and hence also moral) status of any action according to its relationship to the *shari'a*, as understood by the system of *fiqh* that developed in order to explicate just such judgements.

¹³ See Hallaq, "Was the Gate of *Ijtihad* Closed?" *International Journal of Middle Eastern Studies*

to derive *ahkam*. A cursory understanding of this methodology is a precondition to understanding how *fiqh* influenced the development of subjects/objects in *hisba* literature.

Entitled *usul al-fiqh*, this methodology was pragmatic to the extent that it derived *ahkam* through a concurrent understanding of the “formal structure of language” in the *shari‘a* as well as the intentions of Allah and the Prophet Muhammad within that language.¹⁵ The Maliki scholar Ibn Rushd (d. 1196), known as the philosopher Averroes in Western scholarship, concisely summarizes this pragmatic methodology in a preface to his *Bidayat al-Mujtahid wa Nihayat al-Muqtasid* (“The Distinguished Jurist’s Primer”). He states first of all, that the *ahkam* are received from the Prophet—as the bearer of Allah’s message in the *Qur‘an* as well as the source of *hadiths* (sayings) that constitute the *sunna*—through two main “channels.” These channels are words and acts.¹⁶ For the first channel four categories of “words” found in the *shari‘a* are subsequently outlined. Each category of word implies a certain *hukm* depending on the jurist’s understanding of whether the word is general (*‘amm*) or particular (*khass*) and whether that categorically defined word is then to be applied generally or particularly.¹⁷ Thus Ibn Rushd establishes one level through which a positive methodology of *fiqh* operates. As far as this pragmatism functions effectively the jurist deriving *ahkam* has no room to engage in abstract ethical reasoning as a basis for decisions. Even if the word at stake is deemed “general” (as words from the *Qur‘an* and *sunna* often were) the methodology for

¹⁶ (Cambridge, 1984).

¹⁴ Hallaq, *A History of Islamic Legal Theories* (Cambridge, 1997), pp. 8-13.

¹⁵ Ali, *Medieval Islamic Pragmatics* (Surrey, 2000), p. 3.

¹⁶ Ibn Rushd mentions a third “channel,” approval (*iqrar*), but he includes only a brief phrase in its description, tacked on to the end of his discussion of acts.

¹⁷ Ibn Rushd., p. 1.

establishing the linguistic “generality” is itself particularistic, in that it seeks *ahkam* only in relation to the particular context through which the word must be understood.

Ibn Rushd’s discussion of “acts” as the second “channel” through which *fiqh* derives *ahkam* begins with the statement that some jurists believe that reports of the Prophet’s acts—as the primary source of juristic evidence in this “channel”—“do not yield *ahkam*, as they do not have linguistic patterns.” Clearly for some jurists then, the very ambiguity of thinking about an act engaged in by the Prophet did not constitute the basis for a pragmatic and positive science like *fiqh*. For others, who accepted “non-linguistic” sources as a means to derive the *ahkam*, debates concerned whether the *ahkam* received through Prophetic acts implied obligation (*wujub*) or recommendation (*nadb*) in performance, permissibility (*mubah*) in either performance or non performance, or disapproval (*karaha*) or prohibition (*tahrim*). On this issue Ibn Rushd emphasises that Prophetic acts do not render things-in-themselves either obligatory, recommended, permissible, disapproved, or prohibited. It is only in relationship to the legally capacitated subject (*mukallaf*), the one responsible for commission or non-commission of an act, that the derivation of *ahkam* from a Prophetic act becomes salient in the methodology of *fiqh*.¹⁸

The *hukm* regards the acting subject. This point is especially relevant for understanding *hisba* literature in which all interdictions regarding public morality are directed at acting subjects, transgressive bodies identified through their transgression.

The pragmatic methodology expressed by Ibn Rushd is an example of the kind of universal framework that *fiqh* provides in order to evaluate the actions of individuals according to the requirements of the *shari‘a*. But just because the framework is universal

does not mean that it is adequate for establishing the universality of the *shari'a* institutionally. In order for the *shari'a*'s universality to be expressed in the administrative institutions of Muslim states *fiqh* had to accommodate local custom. Thus *'urf* (local custom compatible with the *shari'a*) supplemented *fiqh* in the formation of institutional discourses—such as *siyasa shar'iyya*—that would govern the lives of Muslims. This supplementarity is especially pertinent for *hisba* literature. *Hisba* literature is based on the logic of *fiqh*, but especially in the case of manuals, which instruct the *muhtasib* on his day to day activities, it relies *'urf* to supplement the universal *ahkam*. This supplementarity can bring certain *ahkam* into focus by adding detail that would be impossible to extract from the *shari'a* itself.

An example from Ibn 'Abdun's *Risala fi al-qada' wa al-hisba* demonstrates this supplementarity. Ibn 'Abdun quotes the *Qur'an* in order to demonstrate the necessity of official regulation of weights and measures. He cites the verse, "Woe to those that deal in fraud" (83:1), with the contemporary understanding that the next verses directly condemn tampering with weights and measures for personal gain (83:2-4). He proceeds to cite two related verses, reinforcing the fact that the *muhtasib*'s duty for regulating weights and measures is imperative because of its clear expression in the *shari'a*.¹⁸ However, nowhere in the *Qur'an* is a method for the regulation of weights and measures articulated. Nor is a numerical standard for proper weights and measures set. Given the *Risala*'s aim to instruct the *muhtasib* on his daily duties in detail, Ibn 'Abdun uses the *'urf* of Seville to supplement the general principles found in the *Qur'an*. The result is a section specifying

¹⁸ Ibid., p. liii

¹⁹ Ibn 'Abdun, *Risalat fi'l-qada' wa'l-hisba*, in Levi-Provencal, *Trois Traites* (Paris, 1955), p. 7.

the proper weights and measures as used in the Sevillian market.²⁰ The use of *'urf* as a supplement to the requirements of the *shari'a* was, like the *fiqh* that it became a part of, a principle of normalization through which relations between Muslims could be regulated in order to effect justice in line with the *shari'a* and local custom. This relationship between *'urf*, *fiqh* and *shari'a* will be important in examining the discursivity of gender in Ibn 'Abdun's *Risala*. In nearly every prescriptive interdiction regarding gender in this *hisba* manual *'urf* plays a role in defining the propriety of the acting subject/object of regulation.

The discourse and practice of *hisba*

As discussed in the previous section, *fiqh* explicated the *shari'a* so that it could be applied practically. Thus the strategy of texts derived from *fiqh* is to effect a *shar'i*²¹ order in the *umma* (Community of Believers). Certain *hisba* texts, however, are significant and particularly interesting discursively in that, unlike, for example, the *fiqh* of marriage and divorce, they were not intended to be read and applied only by the *imam* and the *qadi* (judge). Though many *muhtasibs* did serve as *qadis* (as well as in other administrative posts) and despite the fact that *hisba* manuals were penned by *muhtasibs* versed in *fiqh* and other religious sciences, formal training in *fiqh* was never a prerequisite for the post.²² Thus, over time, as *hisba* manuals became more and more detailed in outlining the regulatory responsibilities of the *muhtasib*, they nevertheless

²⁰ Ibid., pp. 39-44.

²¹ I use this term instead of the commonly used adjective "Islamic," the Arabic equivalent of which, *islami*, was not commonly used in the Medieval period in reference to matters of the *shari'a*. The gross use of the term "Islamic" to describe people, groups, ideas and institutions is largely modern, and apparently emerged in both Muslim and non-Muslim writing in conjunction with the indigenous and Orientalist projects of defining "Islam" in order to, respectively, reform it and study it as a "religion" (al-Azmeh, pp. 21 and 24 and Salvatore, pp. 46-47, 68). The term "Islamic" is not generally useful, and more accurate terms and phrases can often be found (as in the case of *shar'i*, which here connotes the extent to which the normative order effected by *fiqh* based discourses was in line with the *shari'a*).

remained—in most cases—practical guidebooks relatively unencumbered by complicated legal reasoning. In these manuals the *muhtasib* is instructed as the authoritatively capacitated subject of primary action in the regulation of transgressive subjects/objects. *Hisba* manuals are thus formative of an authoritative discourse—and by discourse I mean a set of dialogic texts, or ideas represented in texts, composed by specialists—that is instructive, with the ultimate aim of normative and practical regulation.

The responsibilities of the *muhtasib* expressed in *hisba* manuals are many. Generally *muhtasibs* are expected to defer important judgements that required independent reasoning to the judge or the *imam*.²³ Through the same logic they are expected to fulfill the requirements of surveillance and prohibition as instructed in the *hisba* manuals without recourse to personally inspired innovations. Surveillance and prohibition are to be carried out with reference to many aspects of public life in Muslim controlled cities. Among the injunctions most often expressed in *hisba* manuals are those concerning the public market, where the *muhtasib* is exhorted to ensure proper commercial practices—for instance by ensuring that vendors are not extorting their customers with unfair prices—and censor moral offenses.²⁴ However, the *muhtasib*'s jurisdiction also usually includes mosques, bathhouses, thoroughfares and other urban areas that were not privately owned. Among the non-commercial issues that the manuals enjoin the *muhtasib* to administer to in markets and other public spaces are the activities

²² Buckley, "The Muhtasib," *Arabica* 29 (Leiden, 1992), p. 73.

²³ Ibn al-Ukhuwwa, *Ma'alim al-qurba fi ahkam al-hisba*, ed. Ruben Levy (Cambridge, 1938), pp. 190-192 and Ibn 'Abdun, p. 20.

²⁴ The type of market inspection exemplified by the *muhtasib* is first discernable in the fifth century BC Hellenic milieu, where the growth of a market economy centered around the *agora* (municipal market) led by the 420s to the emergence of an officer known as the *agoranomos* (market inspector) (*The Cambridge Ancient History*, p. 302). The Roman *aedile* had similar functions, though with increased administrative, judicial and moral responsibilities (Foster, p. 130). Though it is popularly stated that *muhtasib* was adopted

of *dhimmis*, rituals such as prayer and fasting, the physical condition of roads and buildings, and relations between men and women.

Analyzing this last issue in the *hisba* manual of Ibn ‘Abdun—in the context of the Almoravid period in which it was written and in dialogue with other relevant *hisba* texts—is the central concern of this project. However, establishing the historical and methodological ground from which to undertake such analysis is a major concern. Though most *hisba* manuals contain injunctions instructing the *muhtasib* how to regulate public relations between men and women, the contents of these injunctions and the very manner in which they were elaborated varied historically. These variations are subtle, reflecting the subtle variations in the history of the idea of *hisba* in Muslim thought. Chapter four will explore the richness of these variations in terms of a discourse of gender in the *hisba* manuals of North Africa and al-Andalus. However, the general history of *hisba* and its definition provides the frame through which to understand a discourse that, even in its specific regional manifestations, reflected a universal program of regulation.

Neither institutionalized market inspection nor its accompanying or formative discourses were unique to Islam. By the time the Prophet announced his mission in the early seventh century, offices of market inspection and public censorship had been functioning as civic or state institutions for at least a millennium.²⁵ Though the fifth century BC Hellenistic *agoranomos* nicely models the subsequent institutional typology of Eastern Mediterranean offices of market inspection and public censorship, the specific

by the early caliphal state from this eastern Mediterranean heritage, alternative and plausible theories are offered by Crone (pp. 107-108) and Buckley (p. 63).

functions of these offices varied according to local needs. *Hisba* is the Arabic term that connotes these typological functions and discourses as well as the important Qur'anic theme of "commanding right and forbidding wrong." However, *hisba* was not always synonymous with "commanding right and forbidding wrong." Neither *hisba* nor any other words from its *h-s-b* root appear in the *Qur'an* in connection with this idea. *Hisab* and *hasaba*, which come from the same *h-s-b* root and have literal meanings, like *hisba*, of "being held to account" or "reckoning" do appear in the *Qur'an*, but, again, not in relation to "commanding right and forbidding wrong."²⁶

Regardless of any early ambiguity in the definition of *hisba*, writers eventually came to understand *hisba* (and its nearly identical term *ihtisab*) to be based on the Qur'anic exhortation to "command right (*al-ma'ruf*) and forbid wrong (*al-munkar*)" (e.g. Q3:104). As Ibn al-Ukhuwwa (d. 1329), the Cairene author of a *hisba* manual, has it, the *muhtasib* undertakes *hisba* by, "commanding what is correct (*al-ma'ruf*) if its abandonment (*tarkuhu*) is apparent and putting an end to what is wrong (*al-munkar*) if its enactment (*fi'luhu*) is apparent, as well as settling [disputes] between (*islah bayn*) people."²⁷ The Indian jurist 'Umar b. Muhammad al-Sunami (d. fourteenth century) states, "Legally (*fi al-shar'*) *ihtisab* is the enjoinder of good when it becomes commonly abandoned and remonstrating against evil when it becomes commonly practiced."²⁸ The importance of "commanding right and forbidding wrong" is underscored by the frequency in which it occurs in the *Qur'an* as a phrase (some seven

²⁵ Foster, "Agoranomos and Muhtasib," *JESHO* 13 (Leiden, 1970), p. 129; *The Cambridge Ancient History*, vol. 5, ed. Lewis, et. al. (Cambridge 1992), 302. and *The Oxford Classical Dictionary*, eds. Hamond and Scullard, (Longon, 1970), p. 29.

²⁶ Cahen and Talbi, "Hisba," *Encyclopedia of Islam*, vol. 3., 2nd edition, (Leiden, 1986), p. 485.

²⁷ Ibn al-Ukhuwwa, p. 7.

²⁸ Dien, *The Theory and Practice of Market Law in Medieval Islam* (London, 1997), p. 43.

times in various forms).²⁹ Abu Hamid al-Ghazali (d. 1111) goes so far as to call this duty, in identifying it with *ihtisab*, “the kingpin (*al-qutb al-a‘zam*) of the living religion (*al-din*).”³⁰ In any of these definitions it is important to remember that *hisba* literature was part of a field of Muslim authored discourses that were constantly redefining and refining their intertextual referentiality and sources, or roots, of authority in relation to political, religious, and social change.

This relationship between discourse and change in *hisba* is explicit in the following example regarding punishment of transgression. One popular *hadith* has the Prophet Muhammad stating that, “Whoever sees a wrong and is able to put it right with his hand, let him do so; if he can’t then with his tongue; if he can’t then with his heart, which is the bare minimum of faith.”³¹ This *hadith* was enunciated in the tribal Hijaz, where political hierarchy was relatively absent and individuals were expected to take “wrongs” into their own hands. This can be contrasted with the logic of *hisba* literature. *Hisba* literature developed to account for regulation and punishment in a hierarchical, sedentary, urban context in which vigilantism was only a valid recourse if the *imam* had allowed law and order to collapse. For example, Ibn al-Ukhuwwa discusses the steps to be taken in disciplining transgression but inverts the Prophet’s sequence. As a basis for any action the *muhtasib* must first be able to “admonish (*wa‘aza*) himself” before proceeding to admonish verbally (correlating to the Prophet’s “his tongue”) and, finally failing all else, resorting to corporal measures (“his hand”) of deterrence and

²⁹ In addition to 3:104 the phrase appears in 3:110, 3:114, 7:157, 9:71, 9:112, 22:41 and 31:17. From Cook, *Commanding Right and Forbidding Wrong in Islamic Thought* (Cambridge, 2000), p. 12.

³⁰ al-Ghazali, *Ihya’ ‘ulum al-din*, vol. 2. (Beirut, 1992), p. 442.

³¹ Ibid., p. 33.

punishment.³² Ibn al-Ukhuwwa's thirteenth century Malagan predecessor al-Saqati states that it is the obligation of the *muhtasib* to first use verbal chastisement before employing incarceration or, ultimately, the infliction of physical pain to punish transgression.³³ In his book on "commanding right and forbidding wrong" (part of *Ihya' 'ulum al-din*), a book that is not characteristic of *hisba* manuals like Ibn 'Abdun's, al-Ghazali elaborately describes the course of action a *muhtasib*—who for the author can be anyone from the Community, not just a state appointee—is to take against a "wrong": learning of the offense (*ta'arruf*); informing the offender of his or her offense (*ta'rif*); preaching and counsel (*al-wa'z wa'l-nush*); using rough language with the offender (*al-sabb wa'l-ta'nif bi'l-qawl al-ghaliz al-khashin*); physical action (*al-taghyir bi'l-yad*) against objects (like wine containers); threats and physical intimidation of the offender (*al-tahdid wa'l-takhwif*); striking the offender (*mubasharat al-darb*) with hands, feet, other body parts and, in certain circumstances, weapons; and, finally, employing the assistance of armed helpers (*a'wan*).³⁴ Contrasted with the Prophet's discussion of disciplinary procedure, these examples serve to illustrate that *hisba* literature was consistent with the principles of positive obligation for "commanding right and forbidding wrong" common in this and other *hadiths* that qualify the discourse of *sunna*, which along with the Qur'an constitutes the *shari'a*. At the same time these examples show that *hisba* literature developed strategies appropriate to urban conditions where law and order were written into the state administrative structure. In specific instances, as will be explored in chapter four, these strategies will be applied to analyzing how gender relations are constructed in Ibn 'Abdun's *Risala*.

³² Ibn al-Ukhuwwa, pp. 191-92.

³³ al-Saqati, pp. 375-76.

Types of *hisba* literature

Earlier in this chapter I discussed the aims and methodology of *fiqh*. As a type of *fiqh*, *hisba* literature is constituted by the same aims and methodologies. The discourse of *hisba* thus is an important practical link between the *shari'a* and the urban realm of administrative authority and public morality. Indeed, to answer a concern by Brinkley Messick that scholarship has not attended to "the obeyed dimensions of the *shari'a*," an examination of *hisba* literature—and especially *hisba* manuals—coupled with an understanding of its service and definition within the field of *fiqh*, exposes the practical operation of an authoritative discourse that asks to be obeyed based on positive and particular "dimensions of the *shari'a*."³⁵ The following takes up these issues in delimiting the different types of *hisba* literature that make up the discourse of *hisba*.

Though the *muhtasib* in its mature form appeared as a state appointed civic functionary in the early 'Abbasid period,³⁶ extant *hisba* manuals date from the second half of the ninth century at the earliest and may not have appeared earlier. This half-century is in fact a critical period in which all Muslim thought began to take on more discrete textual forms; the appearance of *hisba* manuals based on the methodology of *fiqh* in which legal subjects are identified is thus consistent with other discursive developments. Subsequently, Muslim writers developed distinct but concordant and reflexive ways of discussing *hisba* and *ihtisab* through two major types of *hisba* literature.³⁷ Appearing first were manuals concerned primarily with instructing the *muhtasib* how to carry out his daily responsibilities. The earliest of these were the *Ahkam*

³⁴ al-Ghazali, pp. 474-80 and Cook, pp. 438-41.

³⁵ Messick, *The Calligraphic State* (Berkeley, 1993), p. 60.

³⁶ Buckley, p. 67.

³⁷ Cahen and Talbi, p. 485.

al-suq of the Cordovan trained Yahya b. 'Umar (d. 901) and the Zaydi *Kitab al-ihṭisab* of the Tabaristani al-Hasan b. 'Ali al-'Utrush (d. 917).³⁸ The typical contents of manuals were briefly discussed above. With this brief introduction executed, and due to the fact that chapter four involves a close reading of several such manuals, expedience requires that the present discussion move beyond manuals and onto the second type of *hisba* literature.

Texts of the second major type of *hisba* literature—which I will henceforth call “*hisba* commentaries”—were often contained in larger works of *siyasa shar'iyya* and religious science, which discussed *hisba* explicitly in relation to the *shari'a*. These commentaries use this relation to define the obligations and capacities of the *muhtasib* on a general scale. This contrasts with *hisba* manuals, which focus on the *muhtasib*'s particular daily obligations and capacities. A further difference between *hisba* manuals and *hisba* commentaries along these lines concerns space. The former often make explicit reference to issues located in a particular space or area—such as Ibn 'Abdun's identification of a problematic windows at a house in Seville that the *muhtasib* must lock to make sure that voyeurists do not spy on women in the cemetery³⁹—while the latter tend to make only aspatial statements about the *muhtasib*'s duties. Significantly, aspects of *hisba* commentary are often included in *hisba* manuals. This is the case for Ibn 'Abdun's *Risala*, in which detailed sections instructing the *muhtasib* on his daily duties are prefaced by a summarized reiteration of al-Mawardi's discussion of administrative functionaries. Also characteristic of *hisba* commentaries and yet present in the *Risala* is a

³⁸ Chalmeta Genderón, “La Hisba en Ifriqiya et al-Andalus” *Cahiers de Tunisie* 18 (Tunis, 1970), pp. 92, 94.

³⁹ Ibn 'Abdun, *Risala fi al-qada' wa'l-hisba*, ed. Lévi-Provençal, *Trois traites hispaniques du hisba*, (Paris, 1955), p. 27.

general exhortation regarding the righteousness of “commanding right and forbidding wrong.”⁴⁰ In the super-literate and reflexive discourse of eleventh and twelfth century Muslim religious science such appropriations were common.

One of al-Mawardi’s important discussions about *hisba*—which he states is “an injunction” to “command right and forbid wrong”—outlines the differences between someone who volunteers to undertake *hisba* (*al-mutatawwi’*) and a civic officer appointed by the state with the duty (*al-muhtasib*).⁴¹ Nine differences are listed. First, for the state appointed *muhtasib* the duty is “imposed”—that is, it is obligatory upon the appointee once he has accepted his post—while for all others, including those who might volunteer for the duty, it is a collective duty (*fard kifaya*), which they are absolved from performing should it be undertaken by others in the Community. Second, the appointed *muhtasib* may not “neglect” his duties of *ihtisab* in favor of other activities; a volunteer is permitted a margin of “neglect.” Third, others may bring cases of “reprehensible conduct” to the notice of the appointee while such action is not permitted with the volunteer *mutatawwi’*. Fourth, the appointee must respond to complaints, an action permissible to but not mandatory upon the volunteer. Fifth, the appointee must “investigate manifest immoral actions in order to have them reprehended, and to look for the good that has been abandoned in order to have it reestablished;” the volunteer is under no such obligations of surveillance, prohibition, and correction. Sixth, the appointee may employ assistants while the volunteer may not. Seventh, the appointee may execute *ta’zir* (discretionary) punishments “for evident violation without reaching

⁴⁰ Chelmeta Genderón, p. 96.

⁴¹ Cook, pp. 447-48.

the level of [*hadd* (pl. *hudud*)] punishment[s];”⁴² the volunteer may not punish offenses at all. Eighth, the appointee is paid from the state treasury but a volunteer is not to be paid by the state “for objecting to a moral infraction.” Ninth, the appointee may “exercise his independent judgment” in matters that are *urfi* and do not involve formal legal reasoning (*fiqh*) needed for matters concerning the *shari‘a*; a volunteer lacks the right to use independent judgment as such.⁴³

The fifth point is especially important for understanding the logic of *hisba* and subject formation in Ibn ‘Abdun’s manual, which by its genre was directed at the appointed *muhtasib*, not the *mutatawwi‘*. It also ties into the preceding discussion about *fiqh* and operation of identifying legally capacitated subjects. Al-Mawardi identifies the *muhtasib*’s obligation to “investigate manifest immoral actions” and “to look for the good that has been abandoned.” Significantly, as al-Mawardi has it, it is actions that are the focus of the *muhtasib*’s authority of surveillance and prohibition. Indeed, actors, subjects engaged in “immoral actions” or who are “abandoning” good are already identified by their actions. The point extrapolated from Ibn Rushd’s theory that all legal or illegal activity is already performed by a legally capacitated subject might be extended into al-Mawardi’s statement about “actions.” As will be apparent in chapter four, the inscription of certain objects for the *muhtasib*’s regulatory authority in *hisba* manuals is actually an inscription of objects that are always already subjects acting in transgression. Importantly, this dual subject/object relationship between those committing proscribed actions and the *muhtasib* is also in relation to the *muhtasib*’s own subjectivity as an individual who acts. The subject status of the *muhtasib* is underscored in a fascinating

⁴² *Hadd* punishments were supposed to be referred to the judge.

⁴³ al-Mawardi, p. 260.

passage from a section on the requisite characteristics of the *muhtasib* in al-Ghazali's book on "commanding right and forbidding wrong."

Unlike al-Mawardi, who distinguishes the appointed *muhtasib* from the volunteer *mutatawwi'* and proceeds to write exclusively on the former, al-Ghazali's explication of *ihtisab* seems to apply both to those Muslims who volunteer for the duty and those charged by the state with it. Al-Ghazali thus considers anyone "commanding right and forbidding wrong" to be carrying out *ihtisab*, with the meaning of censoring public morals and almost no connotation of the state-appointed position specifically. Among the requisite characteristics of the *muhtasib* he outlines is 'adala (probity). Most of the lengthy discussion on probity is occupied by the project of demonstrating that sinners may undertake *ihtisab*.

Al-Ghazali first sets up as a "straw man" the popular argument that sinners should not be *muhtasibs*. He cites two Qur'anic verses, "Do ye command right conduct on the people, and forget (to practice it) yourselves?" (2:44) and "Grievously odious is it to Allah that you say what you do not do" (61:3), as well as a *hadith* in which the Prophet describes encountering, during his nocturnal journey to heaven, a group whose lips had been clipped by scissors of fire (*maqarid min al-nar*). They explained their state to the Prophet (through clipped lips!), "we commanded good (*al-khayr*) and did not perform it [ourselves] while we forbade evil (*al-sharr*) and performed it [ourselves]." ⁴⁴ The popularity of this particular *hadith* in arguing that probity be prerequisite in *ihtisab* is perhaps attributable to what Cook refers to as Sunnism's "limited" interest in forbidding wrong due to its "overtones of an uncongenial political activism." ⁴⁵

⁴⁴ al-Ghazali, p. 452.

⁴⁵ Cook, p. 50.

Thus outlined, the argument that would bar unprobate men and women—who al-Ghazali thinks should be able act as *muhtasibs*⁴⁶—is discredited at length. Al-Ghazali asks rhetorically whether the *muhtasib* must “be guiltless (*ma‘sum*) of all sin,” to which he answers that such a stipulation “is in violation (*kharq*) of *ijma*.” After all, he argues, the *Qur‘an* demonstrates that Adam acted in disobedience (*ma‘siya*) and yet was Allah’s vice-regent. Al-Ghazali then relates a comment from Ibn Jabir that was admired by Malik that states that if sinlessness was requisite for the one charged with “commanding right and forbidding wrong” then there would be no one to undertake the duty. In fact, al-Ghazali thinks that a *muhtasib* may continue his or her responsibilities if his or her probity is tainted by venial sins (*al-sagha‘ir*) but sets the wearing of silk as the limit at which all probity is lost and *ihtisab* should not be undertaken.⁴⁷

In an important analogical discussion al-Ghazali plays this theme out to its logical conclusion by presenting a hypothetical scenario of rape through which the positive and particular operation of *fiqh* is used to validate the relationship between sin (and sinners) and the act of “commanding good and forbidding wrong.” As the hypothetical rape is perpetrated the victim reveals her face to the rapist. The rapist then undertakes *ihtisab* and reprimands her. “You are forced to engage in fornication (*inti mukraha fi al-zina*) and yet with free choice have uncovered [your] face outside the appropriate limits of consanguinity (*li-ghayr mahram*),” the rapist states. “I am not a consanguine relation of yours so cover your face!” Al-Ghazali then asks if this *ihtisab*—while clearly repugnant (*shani*)—is also valid. Can a sinner, even in the process of a gross violation of the

⁴⁶ al-Ghazali, p. 451.

⁴⁷ Ibid., p. 452.

shari'a, carry out *ihtisab* and enjoin others, even those victimized by his or her sin, to do good?

In solving this weighty problem al-Ghazali first questions whether the rapist's statement, "Do not uncover your face," is—following three of the categories of permissibility used in *fiqh*—obligatory (*wajib*), acceptable (*mubah*), or forbidden (*haram*) in the specific action of the rape. Supporting the obligatory nature of the rapist's *ihtisab* is the fact that unveiling is a sin and forbidding sin (*al-nahy 'an al-ma'siya*) is one's duty. The support that this *ihtisab* is an acceptable—but not obligatory or forbidden—action is that the *hisba* can be undertaken even by a sinner. There is no support that it is forbidden, because if sinners were not allowed to do their duties as good Muslims it would only encourage the perpetuation (*irtikab*) of other prohibited acts.⁴⁸ One of course wonders why al-Ghazali did not present the woman exercising *ihtisab* and admonishing her rapist while concurrently sinfully uncovering her face, given that this would be a (perhaps only slightly) less ridiculous contrivance. Of course, one should keep in mind the strand in some *fiqh* that encouraged men—but not women—to actively correct the behavior of women.⁴⁹ In effect, al-Ghazali affirms the subject position of a male *muhtasib*—acting, even in the course of grave personal sin, to uphold the *shari'a*—opposite an equally active female subject. This female subject is the object of both sexual violence and moral exhortation. Her actions are faulty on two grounds. First, she uncovers her face. Second, she refrains from exercising the duty of *ihtisab* by not reprimanding her rapist.

⁴⁸ Ibid., p. 453.

⁴⁹ Lutfi, "Fourteenth-Century Cairene Women," in eds. Keddie and Baron, *Women in Middle Eastern History* (New Haven, 1991), p. 115.

Though al-Ghazali's statements are not specific to the state appointed *muhtasib* who was represented and instructed in the *hisba* manuals of his contemporary Ibn 'Abdun, they are the most elaborate evaluation of the duties of *ihtisab* and are applicable as a defining vision for the whole of *hisba* literature produced subsequently.

Supplementing this vision, al-Mawardi's normative evaluation of the *muhtasib* demonstrates the extent to which the duties of *hisba* had become part of the way Muslim writers imagined political and religious authority by the time of Ibn 'Abdun. Both al-Mawardi and al-Ghazali's vision of the *muhtasib* as a subject who exercises disciplinary authority over transgressive subjects/objects will be replayed in my analysis of Ibn 'Abdun.

The fact that the deployment of the authority of the *muhtasib* in relation to subjects has a history that can be traced through normative texts is important. It is specifically this history in reference to gendered subjects that I attend to through a close reading of Ibn 'Abdun's prescriptions regarding the regulation of gender relations in chapter four. The contents of chapter four require preceding chapters on methodology and the historical background through which some of the contents of Ibn 'Abdun's *Risala* can be understood. Thus, in chapter two I lay out the problems of gender in the historiography of Islam and establish the operative basis for my reading of Ibn 'Abdun's manual. Chapter three outlines key developments in the history of political and religious Islam in North Africa and al-Andalus.

Chapter Two: Gender in Medieval Islam: historiography and the "subject" of hisba
Historiographic precedents and problems in writing medieval Muslim women

In this chapter I introduce certain problems, and then propose solutions, regarding the historiography of women and gender in Medieval Islam. A problematic aspect of historical writing about medieval Muslim women and gender is apparent in the only English language piece that focuses historically on medieval Muslim women in al-Andalus. In this piece María J. Viguera suggests that strict legally-sanctioned family structure in al-Andalus prohibited women's "freedom."⁵⁰ Such a comment remains unsubstantiated by citation of primary or even secondary sources even though it is a central point of reference for her other arguments. A similar line of thinking is exposed in H.T. Norris's *Encyclopedia of Islam* article on the Almoravids, where he sees Berber women as "exceedingly free."⁵¹ All arguments about the philosophical and sociological problems with the term "freedom" aside, a major issue must be raised against such evaluations. As Nikki R. Keddie points out in her characterization of historical writing on Middle Eastern women, such evaluations make facile claims that Islamic institutions themselves—for Viguera it is dominance of the Maliki *madhhab* that demeans women, for Norris it was the marginality of such an orthodox *madhhab* in the rural Berber Maghrib before the Almoravids that allowed women to be "free"—have positive or negative effects on women's lives.⁵²

⁵⁰ Viguera, "*Asluhu li'l-ma'ali*: On the Social Status of Andalusí Women," in ed. Jayyusi, p. 713.

⁵¹ Norris, "al-Murabitun," *Encyclopedia of Islam*, p. 587.

⁵² Keddie, "Introduction: Deciphering Middle Eastern Women's History," in eds. Keddie and Baron, pp. 1-2.

This type of historical writing thus understands both the institutions themselves, and their relation to female subjects/objects, in essential terms. Feminist literature on Islam and women, even that which is produced within the spatial boundaries of "the Muslim world," and the polemics that such literature elicits is particularly divisive to critical history about gender. When historians concern themselves with evaluating Muslim women's history through terms such as "freedom" and "patriarchy"⁵³ several critical aspects of gender relations in Islam may be left out. Among these critical aspects are contextual analysis of the mutually referential rights and responsibilities that men and women can expect to possess in any social system, as well as how dynamic institutions, described ideally through *fiqh*, and often possessing their own temporal histories, have related to these rights and responsibilities in Muslim dominated societies. As Eleanor A. Doumato suggests, the question should be how the expansion of Islam "reshaped" women's lives, "and how Islam was shaped by local attitudes and practices."⁵⁴ However, even histories, like Viguera's, that essentialize Islamic institutions in presenting an equally essentialized object of "women" are not singularly essentializing in their historical outlook on this subject.

In addition to essentializing the institutionality of women's lack of freedom, Viguera's article attempts to localize the subject of "women" by demonstrating the ability of upper-class Andalusian females to transcend "barriers" and express "surprising freedom" through poetry. She finds "a considerable degree of personal initiative on their part...in the expression and fulfillment of their feelings of love" and focuses her evidentiary discussion on the figure of the Umayyad princess Wallada and other specific

⁵³ See Kandiyoti, "Islam and Patriarchy," in eds. Keddie and Baron (New Haven, 1991).

⁵⁴ Doumato, "Hearing Other Voices" *IJMES* 23 (Cambridge, 1991), p. 179.

circles of Muslim women writers.⁵⁵ Such localized and thematic essays mark a recent development in the historiography of women in Medieval Muslim societies. Its growing corpus establishes the importance and even subversiveness of elite Muslim women as participants, rather than as silenced or oppressed objects, in the Islamic past, thus modifying, in Gavin R. Hambly's words, "the stereotypical assumption that in traditional Islamic society women were somehow 'invisible.'"⁵⁶ Leslie Pierce's monograph *The Imperial Harem* (1993) is exceptional in this respect. It demonstrates the important and frequently changing political role of Ottoman royal women, especially the *haseki* (the sultan's favorite concubine) and the *valide sultan* (queen mother), in the sixteenth and seventeenth centuries. While demonstrating the viability of elite medieval Muslim women as historical subjects these projects nevertheless have not—indeed, given the extant primary sources they can't⁵⁷—present a detailed narrative about lives of common women. There are, of course, methods to recover a certain amount about how common women were perceived by medieval Muslim men through their writings.

This is the project that Hoda Lutfi (1991) tackles in discussing a set of writings by Ibn al-Hajj (d. 1336 or 1337), a Maliki jurist originally from Fes whose vitriolic comments on gender relations and women in Mamluk Cairo are examples of certain misogynistic attitudes in *fiqh* literature. Lutfi repeatedly demonstrates Ibn al-Hajj's persistent admonitions of warning about women, women's bodies, and social situations in which unmarried and unrelated women and men had contact. These admonitions were not unique to the time; similar, though less elaborate statements, are found in Ibn al-

⁵⁵ Viguera, p. 709.

⁵⁶ Hambly, Gavin R., "Becoming Visible: Medieval Islamic Women in Historiography and History," in ed. Hambly, p. 19.

Ukhuwwa's contemporary *hisba* manual.⁵⁸ However, Lutfi's methods of analysis are unique and valuable in their own right to the extent that they present an elite operation in which old ideas about gender relations were being written and prescribed as truth according to the *shari'a*.

In developing an operation through which to read gender in Ibn 'Abdun's manual, it would be wise to look at a strand of Ibn al-Hajj's *fiqh* that Lutfi highlights. His repeated and critical statements that the misguided and unchecked activities and presences of women in public are a major cause of social disorder in Cairo is indicative of an authoritative discourse that creates objects that are always already subjects of and for its own judgment.⁵⁹ To elaborate, these instances "women" are objects to be identified by the jurist as the authoritative acting subject. However, "women" only come to be identified as objects through an active subjectivity that must precede or be concurrent with their objectivity. Prescriptively and equally authoritatively, Ibn al-Hajj declares that if men and women only listened to the '*ulama*' regarding such gender problems—problems that he inscribes into the text and thereby "creates" discursively—then order would be restored.⁶⁰ Through this snippet alone, Lutfi demonstrates the viability of gender and common women as a subjects of historical analysis through a presentation of the way that women and men became mutually referential subjects/objects of judgment, a judgment that is always presented by '*ulama*' as truth in accordance to the *shari'a*.

⁵⁷ A work such as Pierce's "'She is Trouble...And I Will Divorce Her,'" in Hambly, ed., goes a long way towards making the promise of Ottoman court records for the history of common women, first explored in the 1970s by scholars like Ronald C. Jennings, a reality.

⁵⁸ See for example, Ibn al-Ukhuwwa, pp. 31 and 43.

⁵⁹ The arguments about the implications of Lutfi's exposition of Ibn al-Hajj as regards subject and object making are mine.

⁶⁰ Lutfi, p. 100.

Discourse centered analyses of gender

Operationally, the reading of gender in Ibn 'Abdun's *Risala* will seek out within this manual the similarly authoritative judgments and prescriptions that serve to make gendered subjects/objects of men and women. The methodological inspiration for this project can be traced to another strand of recent historical writing—in which I include Lutfi's essay—which invokes male authored discourse as the means to historicize medieval Muslim women. Methodological inspiration also stems from theories of sexual construction in the work of Michel Foucault and Judith Butler. I will first discuss some of the significant works of this strand of historical writing before turning to the theories of sexual construction that inform the operation of identifying gendered subjects/objects in the reading of *hisba* manuals.

Developing with the elite-centered historiography that localizes Muslim women discussed above is what I term a discourse oriented method of understanding gender in medieval Islam. Given the difficulty of finding sources that allow common Muslim women to be written as historically viable subjects *for themselves*,⁶¹ and, perhaps more importantly, to revise the basis from which the subjectivity of women has typically been approached in historiography, this method attempts to understand male-authored discourse about women and gender with sensitivity towards the historical setting and intellectual tradition in which the discourse was produced. Lutfi's analysis of Ibn al-Hajj's discourse on women is characteristic. However, D.A. Spellberg's *politics, gender, and the Islamic past: the legacy of 'A'isha bint Abi Bakr* (1994) is the most exemplary

⁶¹ Here I have the Hegelian conception of "Thing-for-itself" in mind when using the term "for themselves" to describe subjects that have represented themselves historically.

work along these lines. It constructs the Prophet's favorite wife 'A'isha as a historically real individual whose most important historical impact came some two to three centuries after her death. During this period her centrality as a positive and negative model for Muslim women was being elaborated in the doctrinal debates between Shi'i's and Sunnis in which—among many other critical subjects—her image as a transmitter of *hadith* and as a public figure was contested.

In another essay on 'A'isha, Spellberg (1991) looked at the way male-authored discourse connected *fitna* (strife) to her political presence during the First Civil War (*al-Fitna al-Kubra*) while Remke Kruk (1998) identifies the connection between active women and *fitna* in certain epic poems. Spellberg's (1996) more recent article traces the emergence of Eve in Islamic literature. Despite her innocence (she is actually not even named) in the *Qur'an*, Eve became marked in certain *hadith* and other Muslim writing as insidious and culpable for humanity's fall, leading to the discursive construction of the female body as tainted. Using a similar operation of analysis, Paula Sanders's (1991) describes the discourse on hermaphrodites in *fiqh*. The sexual ambiguity of hermaphrodites was categorically problematic for the *fuqaha'* who sought to define Islamic space in gendered terms where male and female constituted separate though related public spheres. Following the discourse sensitive precedents of this line of historiography I will examine Ibn 'Abdun's *Risala*—in comparison with the other Andalusian and North African *hisba* manuals, and in the historical context of the Almoravid movement and the *Reconquista*—as an authoritative and normative discourse (in that it seeks to preserve the *shari'a*) that creates gendered subjects/objects through prescriptive interdictions intended to be read and practiced by the *muhtasib*.

Gender and the construction of subjects/objects of *ihtisab*

As a category—or even subject—of analysis, gender can be understood generally as the sometimes dynamic, sometimes static determination of the normative characteristics of men and women, in terms that dictate their “maleness” or “femaleness.” This determination, which is often, even in scholarly literature, a de-historicized overdetermination and hence essentialization, largely occurs on the level of discourse. Gender is thus only salient in and through discourse and discourse sensitive analysis. To use such a discursive model is not to suggest that gender and gendering—the process, accidental or strategic, whereby human bodies and their various signifiers are ascribed with (often essentialized) gender/sex characteristics—operate only in and through texts. As Judith Butler states, a discursive reiteration of sexual norms—especially to the extent that their effects are materialized in some way—often may “not take place in speech or writing but might be ‘signaled’ in a much more inchoate way.”⁶² It would be a simple leap of historical imagination to assume the presence of the *muhtasib* in public as one of these “inchoate” signals through which urban space and the people living and working in it would be gendered—that is, ascribed with gender norms. However, because of the inability to know exactly how *ihtisab* might have been practiced, I am unwilling to make such a leap to materiality based on the contents of *hisba* manuals. Thus for the duration of this project, gender and gendering are assumed to be active in the creation of subjects/objects only in and through texts and their readers.

Just as the operation of *fiqh* has no power without an acting and legally commissioned subject, gender in *hisba* manuals does not have salience without an object

or an acting subject to which it is ascribed. The process of ascription need not be passive; subjects, which are sometimes—as in the case of subjects marked for interdiction in *hisba* manuals—objects as well, may in fact partially or completely gender themselves. This is a key point for the reading of the subjects/objects of a gendered discourse of prohibition in *hisba* manuals. While I would again caution against a vulgar materialization of this ideas in this discussion, the operation of prohibition in a *hisba* manual takes as its objects only subjects that are already in the act of violating the concurrently self-constructing normative interdictions against certain acts. By acting in transgression these objects are already subjects in action and are already marked as transgressive. The transgressive subject does not precede itself as the object marked for interdiction but is part of the same moment in which authority constitutes its power vis-à-vis that which it seeks to control, namely the dual subjectivity/objectivity of the normative body in public space. Butler is instructive in terms of the “women” and several types of problematic men that are marked for regulation in Ibn ‘Abdun’s manual. As Butler states, “The ‘subject-position’ of women, for instance, is never fixed by the signifier ‘women’; that term does not describe a preexisting constituency, but is, rather, part of the very production and formulation of that constituency, one that is perpetually renegotiated and rearticulated in relation to other signifiers within the political field.”⁶² It is this last point, the presence of multiple signifiers—in *hisba* manuals the textual presence of multiple gendered subjects/objects in the same statements of prescriptive interdiction—that requires further critical thought.

⁶² Butler, *Bodies That Matter* (New York, 1993), p. 11.

⁶³ *Ibid.*, p. 195.

The above paragraph deconstructed the notion of the passive subject/object of discursive gendering in *hisba* manuals. However, it risks dangerously essentializing all subjects/objects of prescriptive interdiction (see chapter four) as equally transgressive or equally problematic in terms of gender relations. As will be shown in chapter four, subjects/objects of regulation were not all the same. Not only in the manual of Ibn ‘Abdun, but also notably in the tenth century manual of the Moroccan Ibn ‘Abd al-Ra’uf, the process of prescriptive interdiction which directed the *muhtasib* to action did not mark all transgressive bodies as equally subjective or objective. Though there can be no quantification of such unequal subjectivities/objectivities, the main point of reading gender is to demonstrate how the other marked bodies in each relevant statement—themselves subjects, objects, or subjects/objects—come into play with the subjectivity/objectivity of the interdiction’s targeted body of transgression.

Though the subject/object issue is one starting point for the operation of this type of reading, another starting point must be the very discursive productivity of the interdictions contained in a manual. The assumption of discursive productivity excludes a reading of discursive interdiction as essentially repressive. (As much was suggested above in relation to subjects whose very transgressive activity coincides with their objectivity—the subject/object is always tied to the productive constitution of its subjectivity/objectivity). Foucault is succinct on this point when, in writing about modern sexuality, he states that, “we must begin with...positive mechanisms,” rather than assuming repression or freedom, “insofar as they produce knowledge, multiply discourse, induce pleasure, and generate power; we must investigate the conditions of their emergence and operation, and try to discover how the related facts of interdiction or

concealment are distributed with respect to them.”⁶⁴ Specifically then my operation is to read, especially but not exclusively in Ibn ‘Abdun’s manual, the “the conditions” of the “emergence and operation” of “the related facts of interdiction or concealment” that discursively produced specifically situated references to women and men as subjects/objects. I will thus be reading Ibn ‘Abdun’s *hisba* manual through the strategies that Butler and Foucault have developed to account for the discursive formation of sex/gender within its prescriptive interdictions. Before this reading, a chapter on the relevant political and religious developments that influenced the world in which Ibn ‘Abdun lived is important.

⁶⁴ Foucault, *The History of Sexuality*, p. 72.

Chapter Three: The Almoravid Age: Mobilization of Doctrinal Sunnism, Jihad and the Reshaping of Islam in North Africa and al-Andalus

A sectarian milieu

Adequately locating Ibn ‘Abdun’s *hisba* manual historically requires an exposition of some relevant political and religious dimensions of the Almoravid movement’s age, the age in which it was created. Though I will discuss the Almoravid movement as it existed in al-Andalus in the period of the *Risala*’s writing, the religious and political location of this *hisba* manual—and other relevant manuals—should also be sought in the institutional, political and religious developments of the period that preceded and influenced the period of Almoravid dominance. Among these developments were the emergence of Sunnism and Maliki *fiqh* that formed the discursive bases for *hisba* manuals and the complex interaction between different communities and groups in North Africa and al-Andalus from the tenth-century on. Just as the contents of chapter one form a basis for understanding the *Risala* in terms of Muslim administration in general, this chapter is the basis for understanding the *Risala* in terms of regional religious and political developments.

Before doctrinal or political Sunnism had fully developed there were variously aligned Khariji and Shi‘i groups (as well as other parties that are not so prominent or “easily” classified) struggling with the great Umayyad and ‘Abbasid dynasties for political control of Muslim conquered territory. As it happened, the Kharijis managed to establish viable states in Oman and North Africa, and far from being “marginal,” these states would at different times play host some of the most commercially successful

slaving enterprises ever.⁶⁵ However, even as certain Khariji dynasties were able to maintain territorial sovereignty, Shi'ism continued to be a largely unrealizable political project. This sectarian balance changed drastically in the tenth century. Before 920 Isma'ili states secured hegemony over Bahrayn and Ifriqiya (Tunisia and eastern Algeria). In 945 Daylami Shi'is of the Buyid dynasty took effective political control of 'Abbasid 'Iraq and most of Iran. Concurrently, Sunnism had developed an increasingly canonized doctrine in reaction to Khariji, Mu'tazili, Shi'i and various other movements' doctrinal claims over the course of the ninth and tenth centuries.

Among the episodes inaugurating this process, and one which would be eventful in the development of Islam in North Africa in al-Andalus, involved a messianic Isma'ili Shi'i army successfully overrunning Ifriqiya in 909 behind escatological expectations and the military strength of the Kutama Berbers.⁶⁶ In 910 the Fatimid Imamate-Caliphate was officially declared in Ifriqiya.⁶⁷ Isma'ili revolutions were also moving forward in Bahrayn under the Qarmati banner and in Yemen under contested leadership. It was a time of momentum for the elite leaders who supported the Imamate of Muhammad b. Isma'il b. Ja'far al-Sadiq and who adhered to the movement's esoteric cosmology.⁶⁸ Though the next few generations of dynastic leadership would temper some of the radical doctrine that had brought the Fatimids to power,⁶⁹ the Isma'ili project remained, for the duration of its stay in Ifriqiya and beyond, a threat to Sunni juristic authority in Qayrawan and Sunni political authority in al-Andalus.

⁶⁵ Savage, *A Gateway to Hell, A Gateway to Paradise* (Princeton, 1997), p. 3.

⁶⁶ Brett, *The Rise of the Fatimids* (Leiden, 2001), pp. 85-89.

⁶⁷ *Ibid.*, pp. 105-106.

⁶⁸ Halm, "The cosmology of the pre-Fatimid Isma'iliyya," in ed. Farhad Daftary, *Medieval Isma'ili History and Thought* (Cambridge, 1996), p. 81.

⁶⁹ Brett, "The Realm of the Imam: the Fatimids in the Tenth Century," *BSOAS* 59 (Oxford, 1996), p. 436.

In the ninth century Qayrawan, capital of the Aghlabid dynasty's somewhat autonomous principality in North Africa, had become prominent as a center of learning in the religious sciences in general and Maliki *fiqh* in particular. The Maliki *madhhab* was named after the Medinan Malik b. al-Anas and based initially on the idea of Medinan 'amal (practice).⁷⁰ Malik's *al-Muwatta'*, often recognized as the first Islamic book of *fiqh*, had developed an organized form by the late 760s and was intended to guide jurists on a path that been smoothed out by Madinan 'amal.⁷¹ Malikism quickly spread to Egypt, where many followers and critics of his jurisprudence communed. Thus, when North African and Andalusian *fuqaha'* went on pilgrimage or traveled East on the scholarly *rihla* (journey) they were bound to pass through two centers of Maliki learning (Egypt and Medina). Thus the early development of juristic identity in Ifriqiya and al-Andalus was based on Malik's book of *fiqh*.⁷²

Important in the process of Malikism's popularization in Ifriqiya was the period of Sahnun's (d. 849) judgeship,⁷³ when Ibn al-Qasim's (d. 806) Maliki doctrines were favored.⁷⁴ The Egyptian Ibn al-Qasim influenced a generation of students Maliki *fuqaha'*, including the important Cordovan Yahya b. Yahya al-Laythi (d. 848) to practice *ra'y Malik*.⁷⁵ Malik had defined *ra'y* as "sound opinion," as opposed to the type of speculative opinion that its later detractors would consider it to mean. Thus contemporary *fuqaha'* like Sahnun and Yahya b. Yahya, both of whom practiced *ra'y Malik*, believed

⁷⁰ Dutton, *The Origins of Islamic Law: The Qur'an, the Muwatta' and Medinan 'amal* (Surrey, 1999), p. 168.

⁷¹ Ibid., p. 22.

⁷² Fierro, "The introduction of *hadith* in al-Andalus," *Der Islam* 66 (Berlin, 1989), p. 73.

⁷³ Idris, "Reflections on Malikism Under the Umayyads of Spain," trans. John Smedley, in eds. Maribel Fierro and Julio Samsó, *The Formation of al-Andalus*, vol. 2, (Aldershot, 1998), p. 87.

⁷⁴ Ibn Khaldun, *The Muqaddima: An Introduction to History*, vol. 3, trans. Franz Rosenthal (London, 1967), p. 16.

themselves to be properly applying the contents of the *Muwatta'* and other received Maliki methods to new situations as they arose in Ifriqiya and al-Andalus, respectively.⁷⁶ This basis of Malikism would be contested and modified over the ninth and tenth centuries, perhaps most importantly from the influence of *'ilm al-hadith* (the systematic study and application of Prophetic tradition inaugurated for *fiqh* by al-Shafi'i) on religious science in general.⁷⁷

With the Fatimid victory, the Sunni *fuqaha'* of Qayrawan and the other Ifriqiyān cities were forced to align themselves vis-à-vis the new Isma'ili Shi'i state in which the Imam, rather than the *fuqaha'* and their collective *ijma'* (consensus), had the power to interpret the *shari'a* as the ultimate religious authority on earth.⁷⁸ Thus the most important religious debates in tenth-century Ifriqiya worked on the sectarian Sunni-Shi'i level.⁷⁹ While the Malikis debated Fatimid ideologues through the authoritative logic of Sunni *fiqh* in Ifriqiya, another Sunni authority in the western Mediterranean would open a front on which to contest a Shi'i state that was seen as heretical.

The Andalusian Umayyad Amir 'Abd al-Rahman III (r. 912-961) declared himself *amir al-mu'minin* (commander of the faithful) and caliph in 929. After his victorious campaign of *jihad* against the Banu Hafsun, who were labeled in the familiar terminology as infidels, polytheists and hypocrites, 'Abd al-Rahman claimed that Allah had chosen him to lead the Muslim Community in political and spiritual matters.⁸⁰ The Cordovan dynasty's claim to caliphal legitimacy was often framed in terms of a sectarian

⁷⁵ Makki, "Ensayo sobre las aportaciones orientales en la España Musulmana," *Revista de Estudios Islámicos en Madrid* 10 (Madrid, 1961), p. 197.

⁷⁶ Melchert, p. 163.

⁷⁷ Fierro, pp. 70-78.

⁷⁸ Brett, "The Realm of the Imam," p. 436.

⁷⁹ Hamdani, "The Dialectic of Power" *Studia Islamica* 90 (Paris, 2000), p. 11 and 13-15.

⁸⁰ Safran, *The Second Umayyad Caliphate* (Cambridge, MA, 2000), p. 23-24.

struggle in which a caliph was needed to extend rightly-guided Sunni authority in North Africa, where the deviant Fatimids had already given effect to the Isma'ili threat of splitting the Community into factions.⁸¹ Thus 'Abd al-Rahman became the only Sunni *imam* with the authority to follow the prescriptions of *siyasa shar'iyya* and ensure the administration of the *shari'a* in North Africa and al-Andalus.

Though the Umayyad Caliphate represented its authority in elaborate ritual spectacles like no previous Muslim administration,⁸² its legitimacy was not achieved without the support of the *fuqaha'*. While 'Abd al-Rahman was hardly a puppet of the jurists like his predecessor 'Abd Allah (r. 888-912), who had assassinated his own son according to a *fatwa* issued by the Malikite *faqih* Ibn Lubaba (d. 926),⁸³ he did rely on a council of *fuqaha'*—known as *fuqaha' al-shura* or *ashab al-ra'y*—for advice.⁸⁴ 'Abd al-Rahman's best-known collaboration with the Andalusian Maliki jurists involved the heretic Ibn Masarra (d. 931). Ibn Masarra propagated Mu'tazili philosophical doctrines by claiming that the *Qur'an* was created and denying that the Prophet Muhammad would act as intercessor on behalf of sinners. Many Maliki jurists in al-Andalus were determined to stop Ibn Masarra's heresy from spreading. In this endeavor, they found a willing ally in 'Abd al-Rahman, who was determined to fulfill his obligations as the *imam* by stamping out Ibn Masarra's *firqa* (sect). Eventually he ordered the burning of all of Ibn Masarra's works.⁸⁵

⁸¹ Ibid., p. 25 and Safran, "Ceremony and Submission: The Symbolic Representation and Recognition of Legitimacy in Tenth-Century Al-Andalus," *Journal of Near Eastern Studies* 58, (Chicago 1999), p. 193.

⁸² Safran, *The Second Umayyad Caliphate*, chapter two, "The Symbolic Articulation of Legitimacy;" Safran, "Ceremony and Submission," pp. 191-92 and Évariste Lévi-Provençal, *L'Espagne Musulmane au X^eme siècle: institutions et vie sociale* (Paris, 1996 [1932]), p. 48.

⁸³ Idris, p. 94.

⁸⁴ Lévi-Provençal, p. 83.

⁸⁵ Idris, p. 95.

His son and successor, the scholarly polymath al-Hakam II (r. 961-977) was also a collaborator with a block of rigorous Cordovan Malikis who saw their influence in the shaping of Islamic thought and practice in Umayyad lands increase over the course of the tenth century. In one instance, al-Hakam ordered the uprooting of a number of vineyards under direction from certain *fuqaha*'.⁸⁶ In addition to rigorously leading campaigns of *jihad* against Christian kingdoms, a move that pleased most Maliki jurists saw al-Hakam punish "Abu Khayr," an accused Shi'i.⁸⁷ He furthermore marked the Idrisid leader Hasan b. Qanun of Fes as a symbol—like the Banu Hafsun had been for his father—of rebellion bundled up with depravity, heresy and tyranny. With the enlisted strength of Berber armies recruited for the purpose,⁸⁸ al-Hakam defeated Hasan b. Qanun in the early 970s, which again allowed the Umayyad Caliphate to publicize its divine righteousness while simultaneously extending its political influence over most of the Maghrib. This reopening of the Maghrib promised another chance for the Umayyads to fulfill one of the caliphate's mandates, namely the elimination of Shi'ism from North Africa and the establishment and execution of Sunni version of the *shari'a* there.⁸⁹

The Fatimid decision to leave Ifriqiya for Egypt—where Cairo was subsequently founded—in the late tenth century had not, in any case, guaranteed the success of the Umayyads or Sunnism in Ifriqiya and the Maghrib. Fatimid power was actually on the rise even as the Umayyad caliphate attempted, with mixed success, to defend a developing version of orthodox Sunnism.⁹⁰ Fatimid Imams organized enough defeats of rival caliph 'Abd al-Rahman's expeditions that Umayyad holdings in North Africa had,

⁸⁶ Idris, p. 95.

⁸⁷ Safran, *The Second Umayyad Caliphate*, p. 37.

⁸⁸ Shatzmiller, *The Berbers and the Islamic State: The Marinid Experience in pre-Protectorate Morocco* (Princeton: 2000), p. 33.

by the time the Fatimids conquered Egypt in 969, been reduced to the port territories of Tangiers and Ceuta. Al-Hakam's defeat of the ambiguously aligned Idrisids was thus a vital reassertion of Umayyad and Sunni authority in North Africa. However, the Fatimids had left their nominally Shi'i Zirid clients—traditional enemies of the Berber tribes that had been backing the Umayyads—to rule Ifriqiya upon their move to Egypt in 972. The Sunni-Shi'i political contest in North Africa would thus not be decided in the tenth century.

After al-Hakam's death, even as the 'Abbasid Caliphate was under Buyid captivity in the East, all effective control of the Umayyad caliphate was usurped by the *hajib* (chamberlain) Ibn Abi 'Amir, who gave himself the honorific al-Mansur (r. 981-1002). His short-lived dynasty would be known as the 'Amirid. Al-Mansur was an exceptional military commander. His rule was marked by dozens of successful raids against the coalescing Christian principalities of the Peninsula, and the strengthening of Umayyad rule in North Africa.⁹¹ It can be argued that his *jihad* against the Christians staved off the immediate decimation of Peninsular Muslim lands, which suffered frequently at the hands of infidel raiders during the five years between al-Hakam's death and al-Mansur's ascendance.⁹² Concerned to control not only the army, which he continued reconstructing with Berber mercenaries,⁹³ the pietist *hajib* also appeased some of the more strict Maliki scholars by purging al-Hakam's library of all philosophical and materialist (*al-dahriyya*) works and was said to have loathed all those who treated the

⁸⁹ Safran, *The Second Umayyad Caliphate*, pp. 38-9.

⁹⁰ Brett, *The Rise of the Fatimids*, pp. 166-175.

⁹¹ Safran, p. 100.

⁹² al-Maqqari, *The History of the Mohammedan Dynasties in Spain*, vol. 2., partial trans. Pascual de Gayangos of *Nafhu al-tib min ghusni al-Andalusi al-ratib wa tarikh lisan al-din* (London, 1843), pp. 188-

89.

⁹³ Safran, *The Second Umayyad Caliphate*, pp. 106-7 and Tibi, p. 44.

shari'a frivolously.⁹⁴ Though some historians praised al-Mansur for his emphasis on *jihad* he was concurrently criticized for introducing so many new Berber elements in al-Andalus.⁹⁵ Al-Mansur's introduction of these Berbers into urban Peninsular life is often cited as the reason for the chaos of the *fitna al-barbaryya*, the Berber *fitna* that ensued in the atomization of political power in al-Andalus after the death of al-Mansur's son in 1008.

Control over the Berber militias that had been absorbed into the caliphate's normal military structure over the past several decades was lost as they tore through country and city, even reducing Cordova's grand palaces to ashes.⁹⁶ The ensuing struggle for authority led to the caliphate's complete disintegration in 1031. This was followed by the rise of *mamalik al-ta'ifa* (party kingdoms), contending Muslim principalities that controlled al-Andalus and the Maghrib until the Almoravid period. The *muluk al-tawa'if* (party kings) were more likely to align with a Christian principality in order to attack a rival Muslim king than to organize sustainable common *jihad* against the infidel. In addition, the party kings aggravated their subjects and Peninsular jurists alike by frequently levying non-canonical taxes (*al-magharim*) in order to pay tribute to Christian principalities.⁹⁷ Because of such practices many *fuqaha'* felt that Islam was threatened from corrupt Muslim rulers as well as the increasingly aggressive Christian kingdoms.

The Reconquista and its effects

⁹⁴ Safran, *The Second Umayyad Caliphate*, p. 105.

⁹⁵ Ibid., p. 107.

⁹⁶ Shatzmiller, p. 33.

⁹⁷ Safran, p. 128.

Despite the political chaos in Muslim controlled territory from 1008 to 1032 the Christian kingdoms were in no position to expand, being occupied by infighting.⁹⁸ Not until the middle of the century, when Fernando I (r. 1035-1065) ruled a united León-Castilla and dominated the northern regions of the Peninsula, would sustained aggression against the Muslims be a viable option for any of the Christian principalities.⁹⁹ Alphonso VI (r. 1065-1109) was again able to reconstitute León-Castilla in 1072 and shortly thereafter secured tribute (Spanish *parias*, Arabic *jizya*) from the Muslim *ta'ifas* of Zaragoza, Toledo and Granada. In 1074 Alphonso donated a Leonese monastery to the French monastery of Cluny, the first Peninsular holding for a group which became increasingly involved in Peninsular ecclesiastical organization. With the growing regional power of León-Castilla the Church thus was also more systematically integrated into the political and social networks of Christian and Muslim held territories.¹⁰⁰ As will be discussed shortly, the response of the Muslim jurists in both al-Andalus and Ifriqiya to these processes—coupled with latent concerns about Islam that had developed over the course of the eleventh century—was, in the words of one Western writer, “unequivocal.”¹⁰¹

The situation of Muslim-Christian relations in the *ta'ifas* had also contributed to perceptions that Islam was under threat. To begin with, the percentage of Christians in Muslim controlled lands may actually have been rising towards the end of the eleventh century as Cluniacs became increasingly involved in missionary activity in the frontier territories where the Muslim governments were already paying tribute to Fernando and

⁹⁸ Reilly, p. 25.

⁹⁹ Ibid., p. 27.

¹⁰⁰ Ibid., pp. 66-7.

then Alphonso.¹⁰² Al-Muqtadir, the Muslim king of Zaragoza, was said to have hospitably entertained a monk who was trying to convert him to Christianity.¹⁰³ The Cordovan Muslim king Ibn Dhi al-Nun and the ruler of Denia Ibn Hud both paid large sums to Alphonso for protection and occasional military support.¹⁰⁴ In certain areas Muslim populations were increasingly celebrating non-Muslim feasts.¹⁰⁵ All of these phenomena raised the ire of the *fuqaha*.¹⁰⁶

Muslim-Jewish relations in some of the *tawa'if* were not much less complicated. Jews (and to a lesser extent Christians) had continued to act—as in pre-Islamic Iberia—as key bureaucratic functionaries throughout Umayyad rule, especially in the secretariat.¹⁰⁷ This occupation does not seem to have been controversial, but during the *ta'ifa* age several Jewish administrators had earned places of distinction in Muslim governments, angering opposing rulers and scholars alike. Perhaps the most infamous of these was the Sevillian *ta'ifa*'s vizier Ibn 'Ammar, who concluded a treaty with Alphonso in the early 1070s that offered the Christian king 50,000 dinars on the condition that Seville would be allowed to control the Zirid held *ta'ifa* of Granada after its fall.¹⁰⁸ From an infidel, Ibn 'Ammar had thus bought the rights for his Muslim king to hold domain over another Muslim territory. Granada itself had back-to-back Jewish viziers, Samuel b. al-Naghrilla (1037-1056) and his son Yusuf (1056-1065); the latter wrote a treatise identifying

¹⁰¹ Hanna E. Kassis, "Muslim Revival in Spain in the fifth/eleventh Century," *Der Islam* 67 (Berlin, 1990), p. 86.

¹⁰² Kassis, p. 90.

¹⁰³ *Ibid.*, p. 92.

¹⁰⁴ Tibi, pp. 93-4.

¹⁰⁵ Kassis, p. 85.

¹⁰⁶ *Ibid.*, p. 86.

¹⁰⁷ Lévi-Provençal, p. 83.

¹⁰⁸ Tibi, p. 87.

contradictions in the *Qur'an* and was assassinated by a Muslim.¹⁰⁹ While the Jewish threat to Islam in al-Andalus was not manifested militarily or overtly ecclesiastical—in contrast to the Christian threat, which was both military and ecclesiastical—the very powerful positions attained by certain Jews over in the *ta'ifa* period presented a challenge to the *shari'a*'s stipulation that Muslims should not be ruled by non-Muslims.

The *fuqaha'* of al-Andalus were active interpreters and critics of these developments. Sectarianism was still a perceived threat in the writings of *fuqaha'*, as seen in the case of the jurist Abu 'Umar b. Lubb al-Talamuki who was branded a Khariji by fellow *fuqaha'* after attacking Maliki doctrine.¹¹⁰ Often times the jurists' critiques called into question the legitimacy of Muslim rulers who were not promoting an acceptable version of *shari'i* practices and beliefs. In line with *siyasa shar'iyya* the literalist Ibn Hazm (d. 1064) who had rejected Malikism continued to agitate for the caliphate's legitimate restoration in order to balance the rising tide of Muslim factionalism and the threat of Christianity.¹¹¹ Some of the material in Ibn Hazm's *Kitab al-Fisal* accentuates the virtues of Islam while refuting Christian doctrine, a popular exercise for Andalusian *fuqaha'* in the critical eleventh and twelfth centuries.¹¹² For their part, Malikis often sought to emphasize the existing *sunna* and apply it to the problems of *ta'ifa* rule. Ibn Hazm's friend Ibn 'Abd al-Barr al-Qurtubi (d. 1071) attempted to strengthen the Sunni qualities of Maliki doctrine by preaching a harmonization of *ra'y Malik* and the

¹⁰⁹ Ibid, p. 218 and Reilly, p. 218.

¹¹⁰ Urvoy, p. 860.

¹¹¹ Urvoy, p. 862.

¹¹² Kassis, p. 92.

formulation of *usul al-fiqh* in which *hadith* formed the basis for knowledge about the Prophet's *sunna*.¹¹³

The influential Abu al-Walid al-Baji (d. 1081) further promoted the synthesis between *ra'y Malik* and Shafi'i's *usul al-fiqh*,¹¹⁴ as Malikism became more compatible with other legal doctrines in the late-eleventh century pan-Islamic reinvigoration of Sunnism that occurred under Seljuk power in the East and Almoravid power in the West. In defending Islam he took up *'ilm al-kalam* (theological science) as a polemic against Christian doctrine.¹¹⁵ He was also one of the most influential advocates pushing for Muslim unity under the direction of the Almoravid movement that had, by the 1070s, become the dominant dynasty in North Africa after its conquest of the Maghrib.¹¹⁶ Al-Baji's Andalusian disciple al-Turtusi saw the effects of Muslim communal fragmentation in the face of Christian crusaders in both al-Andalus and Syria and subsequently challenged the complacency of Muslim rulers.¹¹⁷ The jurists' discouragement over the state of Islamic politics that had transpired over the course of *ta'ifa* rule was perhaps most dramatically demonstrated by the jurist Abu 'Ali al-Sadafi (d. 1120). A constant proponent of *jihad*, he died fighting with the Almoravids against infidels on the northeastern frontier.¹¹⁸

Clearly, the definition and uses of Sunnism were being constantly refined by these eleventh century jurists. However, the political effect of their agitation would not be felt until 1086, when several of the most powerful *tawa'if* kings requested a group of

¹¹³ Fierro, "Spiritual and Political Activism: the *Ghuraba'* in al-Andalus during the sixth/twelfth century," *Arabica* 37 (Lieden 2000), p. 238.

¹¹⁴ *Ibid.*, p. 239.

¹¹⁵ Urvoy, p. p. 863.

¹¹⁶ Kassis, p. 91.

¹¹⁷ Fierro, p. 241.

¹¹⁸ *Ibid.*, p. 242.

respected jurists to issue a *fatwa* inviting the Almoravid commander Yusuf b. Tashfin and his armies to cross the Straits of Gibraltar and take up *jihad* against the infidel Christians. What had caused the kings to suddenly align themselves with the jurists after generations of mostly ignoring their guidance was nothing less than what was perceived to be the impending demise of Muslim rule on the Peninsula. The events that triggered this perception were all related to Alphonso's capture of the strategically important former Visigoth capital of Toledo in 1085.

Toledo had been considered an almost impenetrable fortress city. However, in an intrigue between competitors for its throne in 1079-80, the victor al-Qadir was forced to make major concessions to his ally Alphonso. The main concession involved the establishment of two Leonese garrisons deep inside al-Qadir's Toledan territory, to be maintained by taxes on al-Qadir's mostly Muslim subjects.¹¹⁹ In the autumn of 1084 the siege of Toledo began.¹²⁰ In May 1085 Alphonso entered the city triumphantly.¹²¹ In an event perhaps no less important in demonstrating for Muslims the precariousness of their position in the Peninsula, shortly after the fall of Toledo Alphonso wed Zayda, the widowed daughter of the Sevillian king al-Mu'tamid. She converted to Christianity shortly thereafter, an apostasy that, in the words of a western writer, "scandalized Islam for some time to come, demonstrated the possibility of the realization of the second hope of Christianity, the conquest of Muslims 'for Christ.'"¹²² Such an event must have been pivotal in the minds of jurists like Ibn 'Abdun, whose regulatory prescriptions frequently concern the boundaries between religion and sex (see chapter four).

¹¹⁹ Reilly, pp. 80-81.

¹²⁰ Ibid., p. 84.

¹²¹ Ibid.

¹²² Kassis, pp. 98-99.

The trauma of these events for the *ta'ifas* and their Muslim subjects was expressed by the contemporary Zirid king of Granada 'Abd Allah b. al-Buluggin:

The fall of Toledo sent a great tremor through al-Andalus and filled the inhabitants with fear and despair of continuing to live there. A large number of disputes arose between al-Mu'tamid and Alphonso who had asked al-Mu'tamid to cede him a number of fortresses. Al-Mu'tamid would rather die than surrender them. He was, nevertheless, overcome with fear of Alphonso and sought to defeat him with the help of Almoravid contingents (*tawa'if*) battering the one against the other according to the fate decreed by God.¹²³

The Sevillian king al-Mu'tamid was the Muslim ruler most responsible for communicating with the Almoravid *amir al-muslimin* Yusuf b. Tashfin,¹²⁴ and supported the jurists' *fatwa* inviting his Almoravid armies to land at Algeciras. As a show of goodwill al-Mu'tamid even ceded Algeciras to the Sanhaja Berber commander. At this point, before the veiled Almoravid warriors had begun their Andalusian jihad against the Alphonso and his Christian allies, the *tawa'if* kings were already agitating for Yusuf's mediation in their internal disputes.¹²⁵ The *amir al-muslimin* wanted no part in these disputes and after the dramatic victory over the Christians at Zallaca in 1086 he, in the words of 'Abd Allah b. al-Buluggin, "ordered us to agree among ourselves, to cooperate with one another and to close our ranks. He remarked that the Christians had been able to exploit us simply because we were divided and because we sought Christian help against one another."¹²⁶ The lesson was not well learned.

Al-Mu'tamid and 'Abd Allah b. al-Buluggin continued to intrigue against one another. As a result, Yusuf dissolved the *ta'ifa* of Granada and placed 'Abd Allah b. al-

¹²³ Tibi, p. 113.

¹²⁴ Yusuf was a supporter of the 'Abbasid Caliphate and refused to claim the caliphal title of *Amir al-Mu'minin* (Commander of the Faithful) and opted instead for the still powerful title of *Amir al-Muslimin*. See below for more information on the rise of the Almoravid movement.

¹²⁵ Tibi, p. 113-14.

¹²⁶ Ibid., p. 117.

Buluggin and his family under palace arrest.¹²⁷ The Granadan territory was absorbed into an Almoravid empire that now stretched from Ghana, across the Western Sahara and the Maghrib, and deep into al-Andalus. Seville, the last remaining *ta'ifa* power, was next. When al-Mu'tamid repeatedly failed to comply with his wishes, Yusuf conferred with the *fuqaha'*, who advised that he be attacked. Cordova and Seville both fell in 1091.¹²⁸ Thus in six years the Almoravids had managed to control the whole of Muslim land in the Iberian Peninsula, with the exception of the small and still independent *ta'ifa* of Badajoz, which fell in 1094.¹²⁹ Their program in al-Andalus involved the empowerment of the Maliki jurists, who were to legislate and help enact a revival of doctrinal Sunnism among Muslim communities.

Even the Almoravid engagement in warfare with the Christians accorded with what had become orthodox Sunni *fiqh*. Before the Battle of Zallaca Yusuf was said to have offered Alphonso the three options dictated by the *fiqh* of *jihad*: conversion to Islam, payment of the *jizya* (tribute) in return for protection, or preparation for battle.¹³⁰ These types of reports are consistent with the process in which Muslim life in al-Andalus was reinscribed with the juristic principles of the *shari'a* deemed most vital to the spiritual and political well being of the Community. No doubt the earlier challenges from the Shi'is in North Africa, the disintegration of the Umayyad Caliphate in *fitna*, the corruption of the *tawa'if* kings, and the Christian threat all contributed to a collective consciousness among Andalusian jurists that a commitment to the implementation of the *shari'a* was of the utmost importance. The Almoravid movement was nothing less than

¹²⁷ Ibid., p. 155.

¹²⁸ Ibid., p. 168.

¹²⁹ Reilly, 92.

¹³⁰ Kassis, p. 102.

the martial application of this consciousness as it existed in the *ribat* culture of North Africa.

The rise of the Almoravid movement

During the eighth and ninth centuries the *ribat* had developed as an outpost from which Muslim defenders attempted to repulse the infidel Byzantine and Norsemen navies on the coast from Tripoli to the Maghribi Atlantic. The call from the *ribat* was to *jihad*. However, over time the characteristics of most *ribats* came to include the spread of religious knowledge, a function which would later supercede the previous functions of *jihad*.¹³¹ The Maliki *ribat* thus became a refuge in which both *da'wa* (call to Islam) and *zuhd* (renunciation of the material world) were practiced in harmony.¹³² In particular, *ribats*, populated by scholar-ascetics who could also play the role of missionaries, formed an important connection between the jurists of cities like Qayrawan and Cordova and the legally defined but politically unstable frontier between the *dar al-islam* (abode of Islam) and the *dar al-harb* (abode of war) where Muslim political control was absent. The *dar al-harb* was of great concern for Qayrawani Maliki jurists in the tenth and eleventh centuries given the fact that numerous Muslim traders operated in Saharan lands where Islam had not yet been embraced. A major issue was the spiritual danger posed to believing merchants in the lands of unbelief, where the *shari'a* had no legislators or executors and could thus neither protect the merchants nor check their behavior.¹³³ These kinds of concerns were in some ways answered by the presence of *ribats* the southern Maghrib in the eleventh century.

¹³¹ Brett, "The Islamisation of Morocco from the Arabs to the Almoravids," p. 66.

¹³² Levtzion, Nehima, "Abd Allah b. Yasin and Almoravids," in ed. John Ralph Willis, *Studies in West African Islamic History*, vol. 1 (London, 1979), p. 85.

The missionary dissemination of Maliki Sunnism through *ribats* led to the emergence of the Almoravid movement. An important phase in this emergence began in the late 1030's, when a southern Sanhaja chief named Yahya b. Ibrahim passed through Qayrawan after completing the *hajj*.¹³⁴ There he met the prominent Maliki jurist Abu 'Imran al-Fasi, who had been driven from Fes by its Fatimid aligned Shi'i Zirid governor and who was central in the post-Fatimid Maliki revival at Qayrawan.¹³⁵ Abu 'Imran found Yahya to be strong in faith and eager for religious knowledge, but almost totally lacking in orthodox knowledge about Muslim belief and practice. The chronicler al-Bakri reports that the jurist asked his guest what was preventing him and his people from studying the *shari'a* properly and from executing the *hisba* (in the general sense of "commanding right and forbidding wrong"). Yahya lamented that, "only those teachers come to us who possess neither piety nor knowledge of the *Sunna*."¹³⁶ The chief was asked to travel to the *ribat* of one of Abu 'Imran's pupils in the southern Maghrib, who would provide Yahya with a missionary scholar who teach proper Sunnism to the southern Sanhaja in the desert. One of the *ribat*'s scholars, the Cordovan trained Maliki jurist 'Abd Allah b. Yasin, who was born and raised on the fringes of the Sahara, was assigned the difficult missionary task of returning with Yahya to his people.¹³⁷

When Ibn Yasin arrived with Yahya in the lands of his Sanhaja Judalla tribe in the southern Maghrib he was appalled by the condition of Muslim practices there. The Berbers were apparently Muslim only to the extent that they made and appeared to

¹³³ Brett, "Islam and Trade in the *Bilad al-Sudan*, Tenth-Eleventh Century AD," *Journal of African History* 24 (Cambridge 1983), p. 436.

¹³⁴ Levtzion, p. 79.

¹³⁵ Kassis, p. 100.

¹³⁶ Levtzion, p. 84.

¹³⁷ Sa'dun 'Abbas Nasr Assad, *Dawlat al-murabitin fi'l-Maghrib wa'l-Andalus: 'ahd Yusuf bin Tashfin amir al-Murabitin*, (Beirut, 1975), p. 21.

believe the *shahada*, the basic affirmation of Muslim faith that states, "There is no god but Allah and Muhammad is His Apostle." They apparently did not pray regularly. Furthermore, men were found to be married to more than four women and *zina* (illicit sex) was quite common.¹³⁸ About the only thing positive that could be said about the largely customary practices of the Judalla was that they included nearly perpetual engagement in *jihad* with neighboring pagan tribes.¹³⁹ This was of little comfort to the pietist Ibn Yasin, who equated the nominally Muslim Berber society with paganism.¹⁴⁰ He set about at once to "command right and forbid wrong."¹⁴¹ He enforced the *hudud* (Allah's corporal penalties), established regular prayer, smashed musical instruments,¹⁴² and tried to teach proper Qur'anic recitation.¹⁴³ His methods of discipline were often excessive, violent, and alienating—far beyond what the Maliki establishment in Qayrawan probably would have recommended.¹⁴⁴ When Yahya b. Ibrahim died the Judalla rebelled against Ibn Yasin's strict apostolism. He was forced to retreat to his *ribat* and begin his mission anew. As the contemporary historian al-Bakri reports, he decreed that any individual who disobeyed him in the future, "would be regarded as separating himself from the Community, and that his blood could be lawfully shed."¹⁴⁵

Michael Brett has perceptively identified this as a moment in which Ibn Yasin's mission was radicalized along lines more akin to traditional Kharijism than Sunnism.¹⁴⁶ In Ibn Yasin's theocracy not only would the *shari'a* be extended to the superficially

¹³⁸ Ibid., p. 22.

¹³⁹ Levzion, p. 85.

¹⁴⁰ Brett, "Islam and Trade in the *Bilad al-Sudan*," p. 438.

¹⁴¹ Assad, p. 22.

¹⁴² Levzion, pp. 85-86.

¹⁴³ Ibn Khaldun, *Histoire des Berbères et des dynasties musulmanes de l'Afrique septentrionale*, vol. 2, trans. Baron de Slane (Paris, 1927), p. 67.

¹⁴⁴ Brett, p. 438.

¹⁴⁵ Levzion, p. 92.

Islamized peoples of the Sahara, but any individual who refused to accept the political authority of its protector in Ibn Yasin would be treated as an unbeliever and battled to submission or death. Ibn Yasin began his renewed mission with *hijra*, a symbolically charged withdrawal from a society identified as pagan and modeled after the early Muslim Community's immigration from Mecca to Medina. It was the Fatimid *da'i* Abu 'Abd Allah's *hijra* with the Kutama that had inaugurated the Fatimid revolution in the early tenth century. In the early 1040s it would be Ibn Yasin's *hijra* and establishment of a *ribat* in a remote region of the Sahara near the Senegal River that initiated the Almoravid movement.¹⁴⁷

Prospective adherents were rigorously cleansed of their misdeeds through the retroactive application of *ta'zir* and non-fatal *hudud* penalties for past sins. Ibn Yasin's interpretation of the *shari'a* was the central aspect of this utopian *ribat* project. *Al-murabitin* (those encamped in pagan lands in a *ribat* for the purpose of *jihād*, hence Almoravids) gradually increased in number until 1042-43. They then "came out" of the *ribat*,¹⁴⁸ ready to spread Ibn Yasin's strict Malikism through *jihād*, *hisba*,¹⁴⁹ and an administration that promised to execute the *hudud* and exact only legal taxes. It was a total vision of militant and reformist Sunnism that promised to defend Allah's rights on earth through execution of the *shari'a*.¹⁵⁰ The Judalla and Lamtuna were the first tribes to submit to Almoravid dominance. Other southern Sanhaja tribes whose members, like the Almoravids, wore the *litham* (veil covering their faces below their eyes) would follow. They gave allegiance to the *Qur'an* and the *sunna* and were subsequently absorbed into

¹⁴⁶ Brett, p. 439.

¹⁴⁷ Levtzion, p. 92 and Assad, p. 26.

¹⁴⁸ Levtzion, p. 92.

¹⁴⁹ Cook, p. 389.

the movement, forming, along with the original *murabitin*, the core of an army that would subsequently sweep from the Sahara into the Maghrib and al-Andalus.¹⁵¹

Fuqaha' from all over the Maghrib began requesting that the Almoravids rid them of unjust rulers.¹⁵² In these cases the jurists were putting the authoritative ideals of *siyasa shar'iyya* into play with a political and religious movement that sought to uphold just such ideals. Perhaps the crowning achievement of the Almoravid cleansing of Maghribi Islam was the elimination of the Burghawata heresy, which had dominated Islamic belief on the central Maghrib's coast for nearly three centuries. Ibn Yasin was killed in the eventually successful defeat of the Burghawata, who preached the veracity of a Berber *Qur'an*. Almoravid political leadership passed into the hands of Yusuf b. Tashfin.¹⁵³ From his own recently founded capital of Marakesh Yusuf would succeed to conquer the rest of the Maghrib between 1170 and 1181.

Earlier I discussed the Almoravid movement's initial impact in al-Andalus. Here I have reviewed the Almoravid movement's development in Northern Africa. However, important questions remain regarding the Almoravid movement's response to its late eleventh century position of power on the Peninsula. Did the jurists continue to be influential consultants to the Almoravid state into the early twelfth century? How, also, did the Christian communities and the kingdoms respond? The answers to these questions help further enframe Ibn 'Abdun's *Risala* in the intellectual climate in which it was produced.

¹⁵⁰ Assad, p. 28.

¹⁵¹ Ibid., p. 31.

¹⁵² Levtzion, p. 95.

¹⁵³ Brett, "The Islamisation of Morocco from the Arabs to the Almoravids," p. 67.

Alphonso remained in power at the time of Yusuf b. Tashfin's death in 1106. Though the Almoravids had progressively consolidated their hold al-Andalus, León-Castilla was able to maintain a precarious position in Toledo. There would be no dramatic Islamic reconquest to counter the Christian *Reconquista*.¹⁵⁴ Furthermore, inter-confessional battles would increasingly be fought with both the pen and the sword.

The early twelfth century marked the period in which Mozarab theologians (Andalusian Christians living under Islamic rule and writing in Arabic) began seriously engaging Muslim scholars on issues of doctrine. Strategically, these arguments were framed in terms of the Islamic *kalam* that al-Baji had prominently employed to support Islam the century before.¹⁵⁵ While Mozarab thinkers were challenging their rival Muslim jurists on theological grounds, Mozarab populations agitated strategically against their position of subservience in a Muslim dominated society. In 1125-26, for example, Mozarab revolts coincided with expeditions launched by Alphonso I (*el Batallador*) of Aragon (not to be confused with Alphonso VI of León-Castilla).¹⁵⁶ Perceived as a clear and present danger to Muslim political and communal integrity, the great *qadi* of Seville Ibn Rushd (d. 1126) (grandfather of the Ibn Rushd discussed in chapter one) issued a *fatwa* resulting in the deportations of large numbers of Mozarabs to North Africa.¹⁵⁷

Jurists like Ibn Rushd also played an important part in the maintenance of Almoravid power and acted as guarantors of a vision of orthodox Malikism that was supported by the Almoravid state. At one point, he issued a *fatwa* encouraging the

¹⁵⁴ Reilly, p. 95.

¹⁵⁵ Thomas E. Burman, "Christian *Kalam* in Twelfth-Century Mozarabic Apologetic in Spain," in ed. Larry J. Simon, *Iberia and the Mediterranean World of the Middle Ages* (Leiden, 1995), p. 38.

¹⁵⁶ Vincent Lagardère, "Communautés Mozarabes et pouvoir Almoravide en 519 H/1125 en Andalus,"

Studia Islamica 67 (Paris, 1988), pp. 99-100.

¹⁵⁷ El Hour, "The Andalusian Qadi in the Almoravid Period: Political and Judicial Authority," *Studia Islamica* 90 (Paris, 2000), p. 74.

Almoravids to continue wearing the *litham* (facial veil) as it was an important part of their symbolic power as defenders of Islam.¹⁵⁸ Several *fuqaha*' headed by Ibn Hamdin (d. 1114)¹⁵⁹ also ordered that the Almoravids burn all extant copies of al-Ghazali's famous work *Ihya' 'ulum al-din*. Al-Ghazali had criticized the Maliki jurists who returned the criticism by attacking *Ihya' 'ulum al-din* for encouraging mystical practices in contravention of established doctrine.¹⁶⁰ The Berber dynasty—sensitive to charges of unorthodox practices and writings in their domain—torched all available copies of the work. The career and thought of the famous Maliki jurist Abu Bakr b. al-'Arabi (d. 1148)—who was critical of al-Ghazali's work but was not completely opposed its synthesis between mysticism and orthodox Sunnism—lends depth to our understanding of the “renovation of Western Malikism”¹⁶¹ that started in the eleventh century and continued into the twelfth. He held many state appointments, including *qadi* and special envoy to the 'Abbasid Caliphate in Baghdad (to which the Almoravids maintained a strict allegiance, in keeping with the Sunni *fiqh* of *siyasa shar'iyya* and the rule of the *imam*).¹⁶² At the same time he went against the grain and promoted the mutual value of certain aspects of Sufi thought and Ash'ari theology.¹⁶³ Even though the Almoravid movement and its jurists overwhelmingly favored a fairly strict adherence to established Maliki *fiqh* through *taqlid*, the case of Abu Bakr b. al-'Arabi demonstrates a complexity to the way Sunnism was redeployed by the jurists and the state during the Almoravid movement's dominance in al-Andalus. It is in light of this complexity that the work of a

¹⁵⁸ Benhsain and Devisse, “Les Almoravides et L'Afrique Occidentale XIème-XIIe Siècle,” *Arabica* 37 (Lieden 2000), p. 7.

¹⁵⁹ Urvoy, p. 868.

¹⁶⁰ El Hour, p. 74.

¹⁶¹ Fierro, “Spiritual Alienation and Political Activism,” p. 243.

¹⁶² El Hour, pp. 72-73.

¹⁶³ Fierro, p. 243.

jurist such as Ibn 'Abdun can be read. His creation of an elaborate *hisba* manual that addressed many social issues of the day through the authority of *fiqh* is concordant with the conservative, reformist work of other contemporary *fuqaha*'.

By the middle of the twelfth century the Almoravid state was eclipsed and then eliminated in North Africa and Iberia by the Berber Almohads (*al-Muwahhidun*). The Almohad period was no less critical for the future and development of Islam in al-Andalus than the Almoravid period had been. In fact, the Almohads pursued an even more aggressive state campaign of religious control over their subject *dhimmis* (protected Christians and Jews), sometimes trying to force them to convert to Islam.¹⁶⁴

Comparatively, the Almoravids and their common partners the Maliki *fuqaha*' seem moderate in their treatment of Christians and Jews, even though these communities were probably highly scrutinized by public authorities like the *muhtasib*.¹⁶⁵

Thus emerging from a sectarian milieu in North Africa, the Almoravid movement was able to mobilize doctrinal Sunnism and engage in an amazingly successful *jihad*. This process strengthened and redefined the relationship between the *fuqaha*' and the Berber rulers in the Maghrib and al-Andalus. These relationships of authority form a historical context for the following discussion of *hisba* literature and gender.

¹⁶⁴ Ibid., p. 231.

Chapter 4. Gendered Subjects/Objects: The Discourse of Ibn 'Abdun's *Risala*

A Frame of Reference in the *shari'a* and *'urf*

As the last chapter suggests, it was in the eleventh- and twelfth century context of Sunni revival and Muslim retrenchment against the Christian threat that Ibn 'Abdun wrote his *Risala* for the *ihtisab* of Seville, a city which had come under Almoravid rule during Ibn 'Abdun's own lifetime in 1091. With many important references to this context, the current chapter aims to show that Ibn 'Abdun al-Tujibi's manifold statements regarding the relations between men and women in public urban space can be read as an elaborate, complex and authoritative discourse that produced gendered subjects/objects among the *muhtasib*'s targets of surveillance and prohibition. These statements scattered throughout the *Risala fi al-qada' wa al-hisba* are far more numerous and nuanced than those found in *hisba* manuals written by his Andalusian and North African predecessors and even some of his successors. Ibn 'Abdun's manual represents a unique moment in the process in which *hisba* manuals came to create subjects and objects of regulation like

¹⁶⁵ Ibn 'Abdun, *Risala fi al-qada' wa al-hisba*, ed. Lévi-Provençal, *Trois traites hispaniques du hisba*, (Paris, 1955), pp. 48-49.

“women” and certain types of men through increasingly elaborate regulatory prescriptions. However, in discussing Ibn ‘Abdun’s manual in this chapter I will not start with gender, but rather with some of the more significant discursive factors that define its general normativity. These discursive factors are generally *shari‘a* and *‘urf*. The goal of examining these factors is to enframe the forthcoming discussion of gender within the congruent discursive mechanisms of its enunciation. Furthermore, analyzing these factors allows for a concurrent excursus on non-gendered subjects/objects of *hisba*’s regulatory authority, thus presenting a fuller background on the relationships between text, authority, regulation and subjectivity/objectivity.

When introducing *hisba* literature in chapter one I discussed its tendency to work from a methodology of *fiqh* that understands subjects/objects only in terms of the positive actions of those subjects/objects in particular circumstances. This methodology allows the *shari‘a* to exercise authority through the discursive moments of subjective/objective inscription and interdiction in *hisba* manuals, texts that are themselves authoritative on the basis of their mandate to enact the *shari‘a*. At the same time, a *fiqh* based discourse like *hisba* also reflects local practices and knowledges. Among these local practices and knowledges is *‘urf* (those customary practices which are considered compatible with the *shari‘a*). Understanding Ibn ‘Abdun’s normative vision of *hisba* in the *Risala* thus requires an analysis of the dual presence of *shari‘a* identified texts and aspects of *‘urf* that are deemed necessary to supplement this presence of the *shari‘a* as a meta-referential authority.

The *shari‘a*’s presence in a whole range of *fiqh* based discourses begs an explanation of how this presence ties into the empowerment of the discourse and

institutions in question. Not only in *hisba* literature, but also in works of *siyasa shar'iyya* (which, like al-Mawardi's, sometimes contained expositions of *ihtisab*), government administration is seen through the frame of the *shari'a*. In fact, the intersections between the *shari'a* and the government's administrative responsibility are perhaps the best starting point for a discussion of the relative normativity of the *Risala*.

As mentioned earlier, Ibn 'Abdun's understanding of *hisba* is preceded by a general discussion of administrative institutions and their functionaries' responsibilities. Among these institutions are the *bayt al-mal* (public treasury), the prison, and tax collection. Some of the functionaries discussed are the *wazir al-sultan* (chief minister), the *hakim* (judicial officer in villages), the *sahib al-madina* (town governor distinct from the chief of police, the *sahib al-shurta*), the *sahib al-mawarith* (official overseeing inheritance), and, of course, the *muhtasib*.¹⁶⁶ However, the bulk of Ibn 'Abdun's opening sections concern the judiciary, its duties, and its relation to these other offices. Partly in recognition of an institutional genealogy originating with the Prophet as the first Muslim "judge," and mostly due to the need for a practically functioning body of courts to dispense Allah's justice on earth in the name of the *imam*, the judiciary was charged with giving specialized judgments on the *shari'a*.¹⁶⁷ As discussed in chapter one, the judge's authority comes directly from the *imam* as the highest human administrator in the hierarchy of *siyasa shar'iyya*. The judge is seen as the leading government appointed *'alim* (scholar) and thus was to offer *nasiha* (sincere counsel) to other officers and the *imam* regarding the *shari'a* and public administration.¹⁶⁸ Nevertheless, the judge definitely had a limited capacity to fulfill a large mandate on behalf of the *imam*. The

¹⁶⁶ Lévi-Provençal, *L'Espagne Musulmane au Xème siècle*, pp. 83, 86 and 88.

¹⁶⁷ Tyan, *Histoire de l'organisation judiciaire en pays d'Islam*, vol. 1 (Paris, 1938), p. 16.

limited ability of one judge, on the authority of the *imam*, to personally oversee all aspects of civil administration that Ibn 'Abdun commissions to the judiciary in these opening sections—especially in a city as large as Seville—would have required the frequent delegation of authority. Even in cases in which the *muhtasib* or some other officer is not specifically mentioned in connection with a duty incumbent upon the judge, the discourse of *siyasa shar'iyya* leaves an option for the judge to delegate responsibility for that duty to a lesser functionary, so long as no independent reasoning regarding the *shari'a* is involved.¹⁶⁹ For example, a section regarding the propriety of weights and measures indicates the judge's supervisory jurisdiction (*nazar al-qadi*)¹⁷⁰ for such matters but it is likely that the *muhtasib* would have tended to this duty on a daily basis.¹⁷¹ But where does the mandate of regulation for both the judge and the *muhtasib* come from in Ibn 'Abdun's *Risala*?

In chapter one I discussed the discourse of *siyasa shar'iyya*. In this discourse the *imam* is the unitary delegator of authority in a civil administration always based on the *shari'a*. The extent to which this basis in the *shari'a* is expressed explicitly depends on the particular text in question. Ibn 'Abdun sometimes makes explicit reference to the *shari'a* in relation to certain administrative offices. This is the case in his discussion of the judiciary. However, as a manual primarily dedicated to explaining the daily duties of the *muhtasib*, the *Risala* also explicitly connects the administration of *hisba* with the *shari'a*.

¹⁶⁸ From comments made by Elizabeth Sartain on April 8, 2002.

¹⁶⁹ al-Mawardi, p. 80.

¹⁷⁰ Ibn 'Abdun, p. 7.

¹⁷¹ Later (p. 39) Ibn 'Abdun explicitly states that ensuring the propriety of weights and measures is the *muhtasib*'s responsibility. The two Maliki manuals written before the *Risala* both expressly delegate this duty to the *muhtasib* as well (Ibn 'Umar, p. 295 and Ibn 'Abd al-Ra'uf, p. 106-9).

Ibn 'Abdun powerfully expresses the *muhtasib*'s religious significance by correlating the practice of *ihtisab* with humanity's (*al-insan*) necessary realization of a society in line with the *shari'a*. Demonstrating the indispensability of an officially appointed *muhtasib* acting as the judge's mouthpiece (*lisan*), Ibn 'Abdun passionately attacks the faults of the common people (*'ammat al-nas*) who are labeled as ignorant (*al-juhhal*), crooked (*mu'awwajun*), wicked (*ashrar*) and heedless (*bi-ihmal*), among other terms of disrepute. He proceeds to state that the scholar (*al-'alim*), the leader (*al-ra'is*) (perhaps referring to the Almoravid governors) and others from among "all of people" are the righteous ones who can be counted on to rectify such depravity. The *muhtasib* is to be found in this group. He provides the means (*al-bab*) for the effective performance (*iqama*) of the living religion (*al-din*), the obligations based on the *shari'a* (*al-fara'id*), and the approved practices of the Prophet that constitute part of the *shari'a* (*al-sunan*). Thus is the *muhtasib*'s job to observe the affairs of these people and to check their excesses in the name of the *shari'at al-islam*.¹⁷² Herein a theme running throughout the *Risala* that is central to an understanding of the discursive place of gender in *hisba* is present. That theme is Ibn 'Abdun's presentation of the sinful masses who can only be prevented from sin by the *shar'i* authority of the *muhtasib*. Many other aspects of the *muhtasib*'s relationship to the *shari'a* are also explicit in the *Risala*.

The section regarding weights and measures is the first of many instances in which Ibn 'Abdun quotes Qur'anic verses in order to demonstrate the necessity of official regulation. He cites the verse, "Woe to those that deal in fraud" (83:1), with the contemporary understanding that the next verses explicitly condemn tampering with

¹⁷² Ibn 'Abdun, pp. 20-21.

weights and measures for personal gain (83:2-4). He proceeds to cite two related verses, reinforcing the imperative status of this particular regulatory responsibility.¹⁷³ The manual's next section enumerates the *qadi*'s ideal qualities.

Therein, a statement emphasizing the judge's requisite forbearance, forgiveness, and protection of Muslims and the living religion (*al-din*) is punctuated with the verse, "Whoever recommends and helps a good cause becomes a partner therein," which, as a Muslim readership familiar with the *Qur'an* would have recognized, is completed with the corollary that those who aid evil "share in its burden" (4:85).¹⁷⁴ This same verse is cited again as Ibn 'Abdun instructs the judge and his helpers (*a'wan*)—again the *muhtasib* is implicitly understood to be a primary delegate of the judge's authority in this case—regarding the regulation of cemeteries.¹⁷⁵ So far, then, Ibn 'Abdun's inclusion of Qur'anic verses reinforces the understanding that the administration of public space—to be overseen by the judge and carried out by the *muhtasib*—was imperative to ensure that specific aspects of the *shari'a* were effectively guarded (as in the case of weights and measures) as well as a responsibility that offered its own divine rewards. These citations are akin to those found in other Andalusian and North African *hisba* manuals.¹⁷⁶

However, certain statements that Ibn 'Abdun makes in explicit reference to the texts of the *shari'a* are unique. For example, the final instance of Qur'anic citation in the *Risala* merits its own discussion due to the historical specificity of the subjects it identifies for regulation.

¹⁷³ Ibid., p. 7.

¹⁷⁴ Ibid., p. 8.

¹⁷⁵ Ibid., p. 27.

¹⁷⁶ Yahya b. 'Umar, for example, cites the *Qur'an* when discussing the setting of prices (p. 273) and musical instruments and banquets (p. 286); regarding weights and measures he, like Ibn 'Abdun, cites 83:1 (p. 295). Ahmed b. 'Abd Allah b. 'Abd al-Ra'uf cites more than ten verses in his manual, though most are

Inter-confessional tensions and fears were, as discussed in chapter three, rife during the *ta'ifa* and Almoravid periods. Given this context, Ibn 'Abdun's representation of Jews and Christians as insidious subjects requiring supervision from the *muhtasib* is consistent with anti-Jewish and anti-Christian expressions by other Muslim writers from the period.¹⁷⁷ In one section, an enjoinder against allowing Jews and Christians (as well as certain other types of men) to dress as influential people (*kibar al-nas*), jurists (*faqih*), or pious men (*rijal al-khayr*) proceeds immediately to invoke a Qur'anic verse condemning the Jews and Hypocrites (*munaḥiqun*) who conspired against the Prophet and the Believers in Medina. As the verse states, "Satan has gotten the better of them: So he has made them lose the remembrance of Allah. They are the party of Satan (*hizb al-shaytan*). Truly, it is the party of Satan that perishes!" (58:19).¹⁷⁸ In these statements Ibn 'Abdun offers regulatory instruction pertinent only to those Jews and Christians whose dress infringes on the precedent of the *sunna*, believed to have been established by the Umayyad caliph 'Umar b. 'Abd al-'Aziz (r. 717-720) but attributed in Muslim sources to the second caliph 'Umar b. al-Khattab (r. 634-644), that *dhimmis* be clearly distinguishable from Muslims in public space.¹⁷⁹ However, by ending the instructive phrase with several terms of opprobrium directed at cross-dressing *dhimmis*, and then punctuating the point with a Qur'anic verse aligning these *dhimmis*, like the Jews and Hypocrites, with Satan, Ibn 'Abdun places the pious authority of the *muhtasib* in opposition to the divinely ordained flaws of the *dhimmis*. At the same time, this

from *surat al-Baqara* and *al-Nisa'* and thus generally exhibit the moral virtue of all of the *muhtasib*'s duties rather than expressing the specific duties themselves in Qur'anic terms.

¹⁷⁷ Urvoy, p. 863 and Tibi, pp. 60-2 and 84-6.

¹⁷⁸ Ibn 'Abdun, p. 51.

¹⁷⁹ Tritton, *Caliphs and Their non-Muslim Subjects* (London, 1970), p. 115.

section—like those discussed above that also cite the *Qur'an*—establishes a basis in the *shari'a* for the authoritative project of *ihtisab*.

Though the *shari'a* is an important source of authority in the *Risala*, other more local or popular influences also instruct its normative vision. While *'urf* is not explicitly included as a source of authority in a section on the *muhtasib*'s mandate, Ibn 'Abdun indicates that it should be considered by the *hakim*'s assistants (*a'wan*) in certain commercial transactions.¹⁸⁰ Among the *muhtasib*'s enumerated requisite characteristics is, however, that "he is familiar with matters" (*'arafa bi-al-'umur*). Here the term "matters" implies a familiarity with local social conditions and practices. Local knowledge is thus a fairly explicit prerequisite for discharging *hisba* in an official capacity, as well as for carrying out other functions—such as those assigned to the *hakim*'s assistants—in Ibn 'Abdun's normative vision of civil administration.

Certain specific local persons of recognized authority also influence the normativity of *hisba* administration. This statement applies also to *hisba* manuals that preceded Ibn 'Abdun's *Risala*. For instance, the Cordovan trained Abu Zakariyya' Yahya b. 'Umar (d. 902) frequently cites the prominent ninth century Cordovan chief judge and Maliki jurist Ibn Habib as an authority in his proto-*hisba* manual entitled *Ahkam al-suq*. The Moroccan writer Ahmed b. 'Abd Allah b. 'Abd al-Ra'uf (fl. tenth century?) also cites Ibn Habib and other local scholars in his *Risala fi adab al-hisba wa al-muhtasib*. However, Ibn 'Abdun—while drawing on local figures for inspiration—does not cite famous scholars in describing the duties of the *muhtasib*. Instead he lauds two antecedent *muhtasibs*, Ibn Farra' and Ibn Shihab, for their exemplary surveillance of cemeteries.¹⁸¹

¹⁸⁰ Ibn 'Abdun, p. 12.

¹⁸¹ Ibid., pp. 26-7.

Ibn 'Abdun's failure to align himself with a jurist, local or otherwise, as done by Yahya b. 'Umar and Ibn 'Abd al-Ra'uf—who also frequently cite Malik b. al-Anas—perhaps indicates his attempt to create a version of *hisba* independent of earlier scholars' views. He relies on the methodology of *fiqh*, but avoids imitating the *hisba* manuals written by his Maliki predecessors. He employs and expounds the *shari'a* and (without contradiction) explicitly recognizes '*urf*' a few times while implicitly recognizing its importance throughout the manual by creating an incredibly detailed list of the *muhtasib*'s regulatory responsibilities, presumably based on '*urf*'. His text thus includes detailed regulations that reflect the importance of '*urf*' (while at the same time explicitly promoting the *shari'a*) to larger degree than the texts of his predecessors do. These detailed regulations that are informed by local knowledges are part of the way that a text like the *Risala* can seek universal authority over the subjectivity of the bodies of a populace that was deemed, by Ibn 'Abdun and other jurists during the Almoravid period, in dire need of governance under the *shari'a*.¹⁸²

A section dedicated to the Almoravids further illustrates Ibn 'Abdun's responsiveness to local conditions. The historicity of his assertion that that Jews and Christians must look different than Muslims was discussed above. This necessary differentiation of appearance was not exclusive to the maligned *dhimmis*. It was extended—through a different construction of difference—to the Almoravids and their Berber race. However, the assumption of difference that permeates local knowledge about Berbers is distinguishable from the universal and divine precedent from the *Qur'an* that is presented as a marker of difference in *dhimmis* above. If the construction of

¹⁸² Ibid., p. 21.

difference in the case of *dhimmis* is based on their essential depravity in the Community and before Allah, then the construction of difference regarding Berbers is based on their essential tendencies to become enraged (*ghadabu*) and to kill (*qatalu*) or injure (*jarahu*). No doubt recalling tales of the decimation of Cordova and other cities at the hands of Berber contingents as the Umayyad caliphate disintegrated into the *fitna al-barbariyya* in the early eleventh century, Ibn 'Abdun alerts the *muhtasib* not just to their violent nature, but also establishes a set of rules that help the discerning authorities distinguish between acceptable Berbers and problematic Berbers.¹⁸³

Acceptable Berbers are none other than the Almoravid core of the Sanhaja and (its subtribe) the Lamtuna, both of which wore a facial veil known as a *litham*. All other Berbers are prohibited from wearing a similar veil, since any one of them "is not qualified" (*la yata'ahhal*) to do so. One here recalls Ibn Rushd's *fatwa* encouraging the Almoravids to continue veiling as a representation of power (chapter three).¹⁸⁴ But what about the slaves of the Almoravids (*'abid al-murabitin*)? Known to have worn a veil similar to the *litham* they too became acceptable bearers of its power as a symbol (*'alama*). Ibn 'Abdun also reports that the Almoravids' entourage (*al-hasham*) and followers (*atba'*) can acceptably wear veils, though these are not, again, to be the exact same type as those worn by their Almoravid leaders. The ability of these non-Almoravid groups to veil legally is premised on an apparent difference between their own facial covering and the Almoravid *litham*.¹⁸⁵

Manifest in this construction of difference is the same positivist attention to details regarding appearance—a specific positivism characteristic of *fiqh*—coupled with

¹⁸³ Safran, *The Second Umayyad Caliphate*, p. 107.

¹⁸⁴ Benhsain and Devisse, p. 7.

an *'urfi* knowledge that characterizes an entire race as savage. This local knowledge can be historicized, located in the ethnic tension of the eleventh century, and can be seen to precede the prescriptive interdictions regarding Berbers. In the regulatory logic of *hisba* the result is subjects/objects that are preceded by both universal normativity and historically contingency. In the ideal practice of *ihtisab* prescribed by Ibn 'Abdun, the complex subjectivity/objectivity of "Berbers" is further pluralized in the direction of multiple subjectivities/objectivities, all of which require observation by the *muhtasib* on two levels. First, at a specific level of appearance the very corporeality of the subject becomes a concern: What is this subject wearing? What tribe did he come from? What is his status within the Almoravid movement? Second, at a general level the very presence of Berbers in an Andalusian city is problematic—they are different from non-Berber Muslim Andalusians. These points and the way they tie into the discourse of *hisba* is elaborated in the next section. As congruent mechanisms of textual authority they also provide a discursive basis for the reading of gendered subjects/objects in the two sections that follow the next section.

Difference, discourse and codification

If indeed spatial codes have existed, each characterizing a particular spatial/social practice, and if these codifications have been produced along with the space corresponding to them, then the job of theory is to elucidate their rise, their role, and their demise.

Henri Lefebvre, *The Production of Space*¹⁸⁶

This constant drawing of lines of prescriptive difference, asking the *muhtasib* to differentiate us from them and right practice from wrong practice, perpetually referring the subjects/objects of this differentiation against an equally prescribed and concurrently

¹⁸⁵ Ibn 'Abdun, p. 28.

¹⁸⁶ Lefebvre, *The Production of Space*, trans. Nicholson-Smith. (Oxford, 1991), p. 17.

self-constructing normative order, is manifest throughout the manual. In the typology of *hisba*, such creation of manifold relations of discursive difference is a universal byproduct of the normative aims of manuals. Indeed, as Edward Said argues, discourse consists of a "universal practice of designating in one's mind a familiar space which is 'ours' and an unfamiliar space beyond 'ours' which is 'theirs.'"¹⁸⁷ Awareness of difference and the relation of that difference to *shar'i* order is one of the primary ways in which subjects/objects are created by these manuals. This difference-making in terms of the *shari'a* (and *'urf*) was seen in the presentation of *dhimmis* and Berbers as subjects/objects of regulation. Significantly, however, we find none of Ibn 'Abdun's inter-confessional vitriol, nor his concern with the public presence of Berbers, in the earlier Andalusian and North African manuals of Yahya b. 'Umar and Ibn 'Abd al-Ra'uf. This earlier absence of such subjects/objects of difference in works prescribing the *muhtasib* how to do his job is perhaps predictable given the history of the region. It was not before the eleventh century that the Mozarab communities in al-Andalus were seen by Muslims as possible collaborators with powerful Christian military states, the treachery of Jewish royal attachés became a political possibility, and latent racial tension between Berbers and Andalusians came to a head publicly and violently (chapter three).

One might then expect to find these subjects in the *Kitab fi adab al-hisba* of al-Saqati (fl. early thirteenth century?).¹⁸⁸ This work was likely produced in the period of late Almohad dominance that witnessed a radically increasing military and spiritual threat

¹⁸⁷ Said, p. 54.

¹⁸⁸ The dating of this manual is problematic since the author does not appear in biographical literature. Colin and Lévi-Provençal (al-Saqati, 1931), who first edited the manual, stated that it dated from the late eleventh or early twelfth centuries (about the same time as Ibn 'Abdun's *Risala*), a statement that the latter reiterated (Lévi-Provençal, 1947). Imamuddin (1963) thought that al-Saqati lived in the fourteenth century. The best answer comes from Chalmeta Gendrón (al-Saqati, 1968), who uses substantial inter-textual

from Christianity as well as continued problematic social and political relations between Berber and non-Berber in al-Andalus. However, neither *dhimmis* nor Berbers appear as subjects/objects of prescriptive interdiction in al-Saqati's *Kitab fi adab al-hisba*. There is no evident way to account for the fact that neither *dhimmis* nor Berbers are of concern for al-Saqati. The manuals of Ibn 'Abdun and al-Saqati construct subjects/objects of difference differently. They contain variant discourses of difference.

The above should demonstrate that Ibn 'Abdun's manual—with all its demarcations of difference and attendant operations of subject/object making—is a unique textual formation within a field of *hisba* literature that was constantly refining and elaborating the mechanisms of its purported operation and normativity. To say that it is unique and historically contingent puts its discourse squarely within the framework of *fiqh*. *Fiqh* is an operation through which the *shari'a* is constantly related to a specific time and place, the context in which it operates and for which it operates. However, the historicity of Ibn 'Abdun's prescriptions in the *Risala* are also staged in an increasingly formalized and predictable *hisba* discourse. It should be understood that the historicity of *hisba*, as a complex discourse concerned with "commanding right and forbidding wrong," was related to the inter-textual referentiality that any single manual had with other pre-existing manuals. Thus the discourse of *hisba* is at the same time historically local—in terms of different manuals constructing subjects/objects of difference in various ways—and part of a genealogy of *fiqh*-based texts which all had universalizing aims. This duality is characteristic of the very historicity of the *shari'a* as a meta-trope that was

evidence to demonstrate that al-Saqati lived in the twelfth and thirteenth centuries and probably wrote his *Kitab* in the early thirteenth century.

constantly presented and re-presented in various and changing oral and textual forms—with equally dynamic contents—by Muslim scholars.

If it is understood that Ibn ‘Abdun’s *Risala* was produced in an increasingly formalized textual discourse, then the relationship of this formalizing textuality to authoritative codification requires another consideration in light of subject/object formation. The *Risala*’s textuality—the fact that its discourse is functional today, for the historian, through the written word—is not particularly significant in itself. Indeed, it may very well have been transmitted orally in conjunction with its written transcription. What needs to be considered seriously, however, is the codifying power of this textuality and its effect on analysis of subject/object formation. The big question therein would revolve around what is meant by codification and how that meaning of codification—as applied to the discourse of the *Risala* and *hisba* in general—is related to the authority to make subjects/objects through a discourse of difference.

It would be inadequate and probably faulty to suggest that textuality is somehow more tangible, absolute or effectively authoritative than orality in medieval Muslim societies. In these societies the line between orality and textuality was unstable (indeed, “books” often began in lectures and dialogues and would only later be written, by either the author himself or one of his disciples). Furthermore, as Roy Mottahedeh has shown for tenth and eleventh century Buyid society, orality had its own codes that functioned in reference to a complex structure of authority and its subjects, subjects whose oaths of loyalty often demanded a certain amount of mutual recognition from political leaders and subjects alike.¹⁸⁹ Likewise, the increasingly formalized code of prescriptive interdiction in *hisba* manuals, today accessible only through the extant texts of these manuals, would

have functioned similarly to what Mottahedeh discusses as an oral and performative practice of authority.

Thus the texts of *hisba* manuals, operating through their own developing codes that are tied into the formalization of *hisba* as a discourse and the locally-responsive methodology of *fiqh*, have a history that must be examined on the basis of the authority it claims over, or demands from, its subjects/objects. As Hamid Dabashi states, texts should not be seen only as "the coded puzzle of some *original* meaning," but, "as a resumed dialogue with a hegemonic past which has successfully institutionalized itself as 'history.'"¹⁹⁰ The authority I am attempting to describe through a discussion of gendered subjects/objects is revealed not, following Dabashi, in some "original meaning," but in the process of reading *hisba* manuals as codified texts produced by men in authority for the purpose of regulation. Reading gender in these manuals is nothing less than initiating a "dialogue" with this power for the purposes of its exposure in the process through which the public relations of men and women were circumscribed.

"And he should prohibit the women...": Gender and the language of prescriptive interdiction in *hisba* discourse

The central issue... is not to determine whether one says yes or no to sex, whether one formulates prohibitions or permissions, whether one asserts its importance or denies its effects, or whether one refines the words one uses to designate it; but to account for the fact that it is spoken about, to discover who does the speaking, the positions and viewpoints from which they speak, the institutions which prompt people to speak about it and which store and distribute the things that are said. What is at issue, briefly, is the over-all 'discursive fact,' the way in which sex is 'put into discourse.'"

Michel Foucault, *The History of Human Sexuality, Volume One*¹⁹¹

¹⁸⁹ Mottahedeh, *Loyalty and Leadership in an Early Islamic Society* (Princeton, 1980).

¹⁹⁰ Dabashi, p. 45.

¹⁹¹ Foucault, *The History of Sexuality, Volume One*, trans. Hurley (New York: 1978), p. 11.

This provocative excerpt from one of Foucault's most acclaimed and frequently cited works is both productive and problematic in organizing questions about the linguistic level at which *hisba* discourse establishes men and women as subjects/objects. Certainly, for example, the "discursive fact" of the term "women," that is, the ways that this term is "put into discourse," is a "central issue" of my analysis of the subject/object formation of women in Ibn 'Abdun's manual. To this end, the above excerpt productively encourages a consideration of the power of authoritative discourses like *hisba* to constitute gender beyond received notions about prohibition and permission. Very often, however, such an epistemological movement "beyond" requires a dual or prior movement "though." Thus, in Ibn 'Abdun's *Risala* the "discursive fact" of gender, the way gender is "put into discourse" is directly through "prohibitions and permissions."

Recognizing these "prohibitions and permissions" as the "central issue" through which gender issues enter the discourse must be subtle. Reaffirming the centrality of prohibition in Ibn 'Abdun's *Risala* in some way undermines Foucault's historical project. However, if this discursive centrality is rightfully presented as both subtle and complex, then the very category of gender does not become a repressive or liberatory category. Preventing gender from becoming categorically repressive or liberatory confirms the utility of the issues Foucault raises in the history of modern discourse for discursive analyses of the pre-modern.

For Ibn 'Abdun's *Risala* gender can be inscribed as a category through which discursive power operates, which is not to say that gender is categorically repressive or liberatory. As such a category, gender is constituted through an authoritative operation of power in the enunciation of subjects/objects. Thus, an adequate way of accounting for

the discursive fact of gender in *hisba* manuals is through the language of prescriptive interdiction. The term "prescriptive" refers to the fact that this language primarily prescribes the *muhtasib* to carry out an action. The term "interdiction" is more appropriate than "prohibition" or "regulation," terms that do not express the full relationship between the *muhtasib* and subjects/objects of his prohibitive or regulatory authority. "Inter-" implies a relationship between multiple subjects, objects and/or subjects/objects. "-Diction" implies an operation of speech. Thus "interdiction" implies the communication of authority between the *muhtasib* and subject/objects marked as transgressive by the manual. Furthermore, going back to chapter one, it should be borne in mind that the *muhtasib*'s disciplinary power begins with an oral rebuke; that is, within a speaking relationship to the transgressive subject/object that aims to prevent further transgression. Thus prescriptive interdictions establish the *muhtasib* as an authoritative subject, who acts in accordance with the prescription to exercise powers of surveillance and prohibition over the subjects/objects of the prescribed interdiction.

The language of prescriptive interdiction, with its coincident surveillance and prohibition, is the discursive mechanism through which the discourse of *hisba* creates the gendered subjects/objects that it seeks to regulate. Thus it is through this language that women and certain types of men are "put into discourse." Yahya b. 'Umar's pioneering manual establishes this linguistic pattern by instructing the *sahib al-suq* (the precursor to the *muhtasib* in North Africa and al-Andalus) to "prohibit the women" from wearing "sandals that squeak" because there is a chance that the sound from these could cause men to lift their heads and stare at the women as they pass. Notably, there is not an attendant phrase instructing the *sahib al-suq* to prohibit the men from looking up upon

hearing the sound of these squeaking sandals nor to prohibit men from staring at women. However, it is recommended that he stamp out the problem at its source by prohibiting the cobbler from producing squeaking sandals. Here women and cobblers become subjects/objects through the language of prescriptive interdiction, which also goes on to recommend punishment should the prohibition go unheeded and the activity continue.¹⁹²

A similar language is used by Ibn 'Abd al-Ra'uf. In a section on surveillance (*nazar*) of the prayers the *muhtasib* is told, "A young woman (*al-mar'a al-shabba*)¹⁹³ who is begging between rows of men in the mosque (*al-jami'*) is prohibited [from doing so], and the same goes for its courtyards (*rihabih*)," though an old female beggar—as well as someone equally unattractive as (*ashbaha*) an old woman—would be allowed to pass. Here women are presented as subjects/objects to be prohibited from violating the gendered space of the congregational mosque. Leaving nothing to ambiguity, however, the author also writes that the *muhtasib*, "Should prohibit the men who are begging from passing between rows of women in the mosque." This identification of men as subjects/objects that should be prohibited from violating gendered space is reiterated in the statement that, "Social mixing (*ikhtilat*) of women with men is prohibited at prayers, as well as on feast days (*a'yad*) and at gatherings (*mahafil*), for they should be separated according to what the Prophet—Allah's prayers and peace upon him—said: 'Individual men and women are to be separated (*ba'adu*)!'"¹⁹⁴ Here the *shari'a*, constituted in part by such *hadith*, is used to support a statement of prescriptive interdiction that understands men and women to be mutually problematic.

¹⁹² Ibn 'Umar, p. 290.

¹⁹³ For the sake of syntactic ease I have translated the "the woman" as indefinite and will do so with "the men," "the women," etc., for the same reason.

¹⁹⁴ Ibn 'Abd al-Ra'uf, p. 74.

In the surveillance of funeral processions (*al-jana'iz*) and the normative gendering of space therein, however, women are understood by Ibn 'Abd al-Ra'uf to be the sole subjects/objects of the *muhtasib*'s prohibitory power. This concern is consistent with those expressed by Yahya b. 'Umar,¹⁹⁵ al-Saqati,¹⁹⁶ and Ibn al-Ukhuwwa,¹⁹⁷ all of whom condemn women who weep in funeral processions, the former on a tradition from 'Umar b. al-Khattab and the latter on a tradition from the Prophet stating that female mourners will burn in Hell. In formulating a course of prohibition, Ibn 'Abd al-Ra'uf primarily quotes the jurist Ibn Habib on this matter. Ibn Habib explicitly disapproves of "the weeping" (*al-buka'*) of women over the dead. He places the duty of prohibiting such an abomination in the hands of the *imam*. The *imam* "prohibits" (*yamna'*) and "forbids" (*yanha*) "women" and professional "weeping women" (*nawa'ih*) from getting together in funeral processions, even if they are not weeping, with the implicit understanding that the *imam* would delegate his responsibility for preventing these activities to the judge and his accessory the *muhtasib*.¹⁹⁸

The gendering authority of the language of prescriptive interdiction is again apparent in one of the final sections of the manual, "Surveillance of the Roads," where Ibn 'Abd al-Ra'uf discusses various (and not necessarily connected) issues that do not coherently belong in any of his other sections. The *muhtasib*, he states, "Should prohibit women from standing (*al-wuquf*) in doors of the houses, for that involves [the risk of] uncovering (*al-kashfa*) and non-concealment (*'adam al-istitar*)."¹⁹⁹ "Women" here are subjects/objects marked for surveillance not because the prohibited activity of "standing

¹⁹⁵ Ibn 'Umar, pp. 288-9.

¹⁹⁶ al-Saqati, *Kitab fi adab al-hisba*, trans. Chalmeta Genderón, *Al-Andalus* 33 (Madrid, 1968), pp. 412-413.

¹⁹⁷ Ibn al-Ukhuwwa, p. 51.

in doors of the houses” violates any of the *shari‘a*’s precepts (though it is possible to image a vernacular *‘urfi* stigma being attached to this kind of “standing”), but because such an activity seems to be the gateway to other activities that would indeed violate the *shari‘a*, including, but not limited to, *zina*. The prescriptive interdiction that follows is also instructive in elaborating the danger of women’s standing in doorways. In this statement, Jews selling wine are prohibited from sitting in doorways, since this draws attention to their product, a beverage forbidden to Muslims.²⁰⁰ If linked to this issue, the Ibn ‘Abd al-Ra’uf’s discomfort regarding women standing in doorways is also linked to the fact that this activity draws attention to their very social presence.

Doing the work of *fiqh*, such operations of prescriptive interdiction seek to prevent certain actions that are viewed by *fiqh* as prohibited (see chapter one) in terms of gender relations. A woman’s act of standing in a doorway would elicit a *hukm* of *mubah* (acceptable) since there is no specific principle or ruling from the *shari‘a* to govern such action. A *hukm* of *mubah* allows for a *fiqh*-based discourse like *hisba* to then rule on the action as it deems acceptable. This is exactly what Ibn ‘Abd al-Ra’uf does, seemingly as a preemptive measure. Thus the formation of new subjects/objects of surveillance and prohibition is coincident with the extension of the scope of a normative and legally sanctioned discourse. In the language of prescriptive interdiction “women” who stop in doorways are marked as transgressive subjects not because they have violated the specific rulings, but rather because their ability as subjects to act in violation of these specific rulings requires a positive and particular extension of *hisba* as a governing principle that “commands right and forbids wrong” in order to prevent violations of the *shari‘a* and

¹⁹⁸ Ibn ‘Abd al-Ra’uf, p. 77.

¹⁹⁹ Ibid., p. 113.

shari'a compatible *'urf*. This discursive moment concurrently involves an extension of the disciplinary requirements of the *shari'a*, investing both the *shari'a* itself, and the officer entrusted with its public effect, the *muhtasib*, with increased authority to create gendered subjects/objects like "women" who stop in doorways.

The implications of this particular gendered iteration of prescriptive interdiction also plays on Muslim ideas of public and private, which are clearly defined by *fiqh*. The doorway is the threshold between public space, overseen by the *muhtasib*, and private space, in which state officers (including the judge) were technically forbidden to interfere. (Individuals encountering violations of the *shari'a* in their privately owned homes and businesses, as well as in public space, were, however, allowed to personally initiate suits or complaints in the judge's court against violations occurring therein.) The doorway is thus perhaps a space that a regulatory discourse like *hisba* has no choice but to deem problematic. The demarcation of space is a popular exercise in *hisba* manuals. As seen above, Ibn 'Abd al-Ra'uf forbids women and men from violating the gendered order of sacred prayer space (unless they are old and thus sexually unattractive). To take another example from a *hisba* manual, al-Utrush's encourages the *muhtasib* to expel (*yunfa*) hermaphrodites (*al-mukhannathin*)—whose ambiguous biological sex caused them to be incompatible with gendered public spaces²⁰¹—from the city.²⁰² Thus Ibn 'Abd al-Ra'uf's prescriptive interdiction against women who occupy the ambiguous space between public and private domains of legality is part of the *muhtasib*'s general job of

²⁰⁰ Ibid., p. 114.

²⁰¹ Sanders, pp. 76-77 and 80-81. Jurists were especially at a loss regarding where hermaphrodites pray since rows of men need always precede and be separated from rows of women in the mosque. Allow a hermaphrodite to pray in a male row and everyone's prayer could be nullified. The same threat exists in allowing the hermaphrodite to pray with the women. Some jurists theorized that the only safe bet was to establish a special space for hermaphrodites between the rows of men and women.

²⁰² Serjeant, p. 22.

ensuring that clear lines be established between different kinds of space. Inscribing the subject/object for prescriptive interdiction can only take place—and indeed, in *hisba* manuals, only does take place—in public urban space.

The issues of women's bodies and space expressed in Ibn 'Abd al-Ra'uf's prohibition of women who stand in doorways are also expressed by Ibn 'Abdun in an injunction. He writes, "[The *muhtasib*] must forbid (*yanha*) boarding house women (*nisa' dur al-kharaj*) from going out with uncovered heads (*kashf ru'usihinna*) upon leaving the boarding house (*al-funduq*), for the embellishment (*al-tahalli*) of the women is in their beauty and adornment (*bi-zinatihinna*)... and he must forbid female dancers (*raqisat*) from uncovering their heads."²⁰³ Far from being the generalized subject/object of "women" with whom Ibn 'Abd al-Ra'uf was concerned to identify in relation to the specific activity of standing in doorways, Ibn 'Abdun here identifies two specific kinds of women engaged in equally specific activities. The subjects/objects here are certain women of ill-repute: the suspicious female clients and patrons of boarding houses—establishments known to contain all variety of lowlife (transient merchants, eroticist poets, freaks, etc.)²⁰⁴—and dancers, a type of woman identified with these boarding houses. Importantly, the language of prescriptive interdiction neither requests that the *muhtasib* dissuade women from entering these boarding houses nor from dancing. Rather, the act of revealing their beauty in public space draws the need for the *muhtasib*'s disciplinary attention. These women become subjects/objects of prohibition based on the non-concealment of their "beauty and adornment," which is a clear

²⁰³ Ibn 'Abdun, pp. 50-51.

²⁰⁴ These marginal types of people are often targeted in other *hisba* manuals. For example, 'Umar b. 'Uthman b. al-'Abbas Al-Jarsifi's thirteenth century *hisba* manual includes an injunction against "freaks," including "monkey-trainers, pigeon-fanciers, hermaphrodites and clowns" (Wickens 1956: 182).

“embellishment.” Though Ibn ‘Abdun does not make specific reference to scripture, the premise of marking these subjects lies partially in a popularly cited Qur’anic verse that states, “And say to the believing women that they should lower their gaze and guard their modesty; that they should not display their beauty and adornments (*zinatahunna*) except what (must ordinarily) appear thereof” (24:31). When Ibn ‘Abd al-Ra’uf presents *zinatuhunna* in his prescriptive interdiction he is using *‘urf* to supplement the *shar‘i* principle expressed in this verse. Thus the subjectivity/objectivity of the named women is tied to activities that threaten principles from this verse and are carried out in the public realm where the *muhtasib* has the power of surveillance over all public life, not just that concerned with gender.

Ibn ‘Abdun’s version of *hisba* sets out to rectify public life in a society full of different kinds of transgression. This transgression is not always presented in gendered terms. The non-gendered transgression of *dhimmis* and Berbers was discussed above. In order to put gender prescriptive interdictions like the one from the preceding paragraphs it is imperative to keep in mind that, beyond *dhimmis* and Berbers, Ibn ‘Abdun sees the presence of other Muslim men in public space as a major threat. Quasi-administrators such as tax-farmers and police officers are transgressive presumably for the way that they exploit their positions.²⁰⁵ Young men are not only suspect as thieves,²⁰⁶ but as will be seen in coming sections are also very problematic in terms of their social relations with women. Thus, Ibn ‘Abdun’s entire field of prescriptive interdictions includes male subjects/objects that may or may not be presented in gendered terms.

²⁰⁵ Ibn ‘Abdun, p. 51.

²⁰⁶ Ibid., p. 54.

Certain types of men are often subjects to be prohibited from interacting with women in certain ways. Thus for Ibn 'Abdun even state officers like the *hakim*'s assistants (*a'wan*) "should not talk with a woman unless he is one known (*'urifa*) to be righteous (*khayr*) and virtuous (*'afif*) and he is a venerable old man (*shaykh*)."²⁰⁷ Even a civil functionary at the lower end of the administrative hierarchy like the *hakim*'s assistant is presented as a subject of scrutiny, if not full blown surveillance. The fact that inter-personal relations between men and women are presented as an issue in such stipulations is of significance. Ibn 'Abdun's attempt to stipulate the conditions of oral interaction between a state officer and a woman—because such men are prone to "immoral acts" (*fussaq*)—serves as another instance of the *Risala*'s attempt to codify what had previously been left unwritten into the normative field of *hisba* literature. As the text stipulates, such interaction with woman is deemed acceptable only by an officer who is well known for his virtuousness and is also well beyond the years of being a sexual threat or enticement. These stipulations are similar to those forwarded by Ibn 'Abd al-Ra'uf when he says that elderly male and female beggars are permitted to pass between rows of members of the opposite sex at the congregational mosque while their younger counterparts are not.²⁰⁸ Such criteria finds further manifestation in Ibn 'Abdun's section on the prison (*al-sijn*), in which the only suitable jailors of women are identified as elderly, married, and virtuous (*'afif*) males.²⁰⁹ Identifying subjects/objects based on their potential to engage in *zina* (unlawful sexual relations) makes those men and women who have passed through the dangerous years of sexual desire, and in the opinion of Ibn 'Abdun, are known to be morally upright, exempt from prohibition. Though present in

²⁰⁷ Ibid., p. 12.

²⁰⁸ Ibn 'Abd al-Ra'uf, p. 74.

the discourse as subjects/objects, they are identified as unproblematic and escape interdiction.

In a section on the cemeteries (*al-maqabir*), Ibn 'Abdun's gendered language of prohibition is less particularistic regarding age and more attuned to other categories of subjects/objects. In this space, "[the *muhtasib*] must not leave (*la yatrūk*) even one of the vendors (*al-ba'a*) in the cemetery, for they can see (*yakshufun*) the mourning women [there]." This is but one of several instances in which Ibn 'Abdun brings vendors into the proximity of the *muhtasib*'s power. Here the goal would seem to be the prevention of a disturbing or indecent encounter between a vendor or vendors and any of the (quietly—as most jurists would hope!) mourning women. He goes on to write that, "On feast days he also must not leave the young men (*al-shubban*) sitting on the path in the cemetery to obstruct [or accost] (*i'tirad*) the women—the *muhtasib* must strive earnestly (*yajadd*) for that and the *qadi* must support him (*ya'adudahu*)." Again the prohibition is spatial, preventing idle young men from impeding the free movement of the women, or harassing them as they attempt to move about the cemetery.

The more pervasive threat that the young men present is seen in the next sentence, directed at the *sultan* (synonym of *imam* or the temporal sovereign with functions of upholding the *shari'a* like the *imam*) who, "must prevent [young men] from sitting in the spaces around the tombs (*al-qubur*) in order to lead the women into temptation (*li-murawada*). This must be undertaken (*yuta'ahhad*) twice each day and should be carried out by the *muhtasib*."²¹⁰ As subjects/objects of the *muhtasib*'s prohibitory power, young men in the cemetery do not merely threaten the security and peace of the women,

²⁰⁹ Ibn 'Abdun, p. 19.

²¹⁰ Ibid., p. 27.

but also endanger those women sexually. This sexual enticement to which the women at the cemetery are subject is already cast in relation to another problematic aspect of the public behavior of young men. As Ibn 'Abdun states on the previous page, young men often come to the cemetery drunk.²¹¹ These inebriated young men could hardly be expected to regulate their actions around the mourning women in order to prevent the unleashing of female sexuality and an ultimate sexual rendezvous.

The term *murawada* is used to describe the temptation to fornication that the young men in this passage present. One finds the same root *r-w-d* to describe feminine temptation in the *Qur'an*'s description of the Egyptian nobleman's wife's failed attempt to tempt Joseph to illicit sex (12:23). Clearly the issue of temptation is serious. It is so serious that Ibn 'Abdun explicitly charges the *sultan* to ensure that the *muhtasib* guards against such temptation-breeding situations during twice-daily rounds of surveillance and prohibition in the cemetery. As seen in several instances above, the language of prescriptive interdiction does not express its power to prohibit through casting the women who embody the temptation as subjects/objects. Rather it is the young men who are presented as the subjects/objects of this prohibition. They must be prevented from occupying the problematic spaces around the tombs in which they—cast in the role of the Egyptian nobleman's wife—might entice women to illicit sexual relations. Here the mourning women are presented as objects of the prescriptive interdiction who certainly do not possess Joseph's divinely inspired ability to resist temptation. In this chain of interdiction, the *muhtasib*, the official entrusted by the *sultan* to prevent wrong from

²¹¹ Ibid., p. 26.

taking place, acts as the direct conscience of these young men where Allah directly acted as Joseph's prophetic conscience.

A similar injunction follows these sections on overseeing cemeteries, in which Ibn 'Abdun states, "[The *muhtasib*] must prohibit fortune-tellers (*al-hussab*) and the storytellers from being alone (*yanfaridu*) with women in their booths in conversation (*fi akhbiyatihim li-al-kalam*). This is a sexual temptation (*murawada*), or [at best] a strategem (*hila*) to rob [the women], and women do not go to them unless they are harlots (*al-fajirat*)." He goes on to state that likewise the *muhtasib* should "prohibit" any women from going to the homes of the fortune-tellers and he should always "keep an eye on (*yartaqib*) their [that is, the fortune-tellers'] condition, for they are licentious (*fussaq*)."²¹² Prohibition centers on male subjects/objects—the fortune-tellers and storytellers—who accept women into their concealed booths to "converse." The *hussab* also engage in suspicious action by inviting women into their houses. Ibn 'Abdun is certain about these women—whether enticing or being enticed by the men to commit *zina* or being subject to a scheme of petty thievery they are whores in behavior if not profession. They are thus identified in their own right as subjects/objects to be prohibited from entering the *hussab*'s home. Though women are considered a problem in their relations with the *hussab* and storytellers in this prescriptive interdiction, as in the previous discussion on cemeteries, a certain kind of male is again identified as a subject/object of the prescriptive interdiction. In the prohibition on women entering the houses of *hussab* the prescriptive interdiction then focuses both on women as subjects/objects of prescriptive interdiction. Not caused by either sex exclusively, the dual presence of women and men in a private space like a booth or a home is seen as a direct cause of temptation.

The clarity with which Ibn 'Abdun's language of prohibition presents women and men as subjects whose mutual proximity leads to temptation must be related to his presentation of men as predatory voyeurs, always in search of a glimpse at clothed and unclothed female bodies. In a particularly specific reflection of the urban topography of Seville, the *muhtasib* is enjoined to lock or block up the windows of the houses and other rooms and doors that face the direction of the cemetery that allow men to look out at the women mourners.²¹³ In another section Ibn 'Abdun, after a sanitary demand that the *muhtasib* prohibit women from polluting the town's water supply by washing their filthy things in the place where the drinking water is brought up out of the river,²¹⁴ states that they must do their washing in an area concealed from "the people" (*al-nas*). The *muhtasib* must then forbid these people from scaling the area's wall in the hopes of peering in at the women. Here the prohibition falls upon "the people"—ordinary men—as subjects. Women however are then reiterated as subjects/objects when Ibn 'Abdun writes that "[the *muhtasib*] must prevent the women from sitting on the bank of the river [to do washing?] unless it is truly in a place in which no men are sitting."²¹⁵ What is one to take from this last injunction? Is the presence of women here prohibited because voyeuristic men will be flirting with them, thus leading themselves and the women into temptation; because their bodies and wiles are dangerous enticements to all proximate men and themselves; or due to a combination of these issues?

Ibn 'Abdun's injunctions on related subjects do not necessarily give us an overt answer to this question. They repeatedly present a complex discourse that is formative of

²¹² Ibid., pp. 27-8.

²¹³ Ibid., p. 27.

variously situated subjects/objects. In one instance, the *muhtasib* should “prohibit the women from washing” in gardens, which he depicts as the “nests (*awkar*) of *zina*.”²¹⁶ In another injunction women are prohibited from sitting on the riverbanks in summer if men should appear.²¹⁷ In the realm of relations between the sexes in the market Ibn ‘Abdun recommends limiting the opportunities of women to “mingle” with the shopkeepers, merchants and providers of medical services. Subsequently, men and women are prohibited from walking together on feast days along the river.²¹⁸ In all of these cases the language of prescriptive interdiction encourages the *muhtasib* to support the integrity of gendered space by presenting males and females as subjects to be prevented from intermingling in certain circumstances.

The perpetual problem space of the river is reiterated in reference to female subjects towards the end of the manual, where the *muhtasib* must, “ban (*qat*’) women from the streets of the river banks, and as a duty, from improper behavior along the river—for [in these circumstances] they like to show off their charms (*mutabarrijat*).”²¹⁹ Presumably it is the men who intentionally or inadvertently might encounter these women and fall victim to their charms that are the objects of protection here. The presence of these women in certain spaces frequented by men marks them as problematic—and thus they are subjects/objects of prohibition—in a roughly similar manner as in earlier injunctions warning the *muhtasib* to guard against the temptation (*murawada*) that men pose to women. In the same section Ibn ‘Abdun warns the

²¹⁴ By referring to “filthy things” Ibn ‘Abdun may mean menstrual cloths specifically, which would have caused the water to become ritually impure and thus unfit for drinking and for the practice of ritual purity required to validate each prayer.

²¹⁵ Ibn ‘Abdun, p. 32.

²¹⁶ Ibid., p. 45.

²¹⁷ Ibid., p. 46.

²¹⁸ Ibid., p. 47.

muhtasib to give good guidance to the Sevillian ferrymen (*nutiya*). A ferryman “must not permit a woman [to cross the river into the town] if it is apparent that she has characteristics of harlotry (*fujur*). And he should alert the officer in charge of river security (*amin*) about her.”²²⁰ This prescriptive interdiction is one more way of extending the normative authority of the *muhtasib* into spaces. Here the ferrymen are the subjects/objects of the prescriptive interdiction while any woman who appears to be a prostitute becomes the related object.

Indicative of the complexities of all subject relations in *fiqh*, the way that male and female subjects are constituted for the regulatory power of the *muhtasib* in *hisba* manuals works through manifold specificities. Among these specificities are the action that the performing subject in question is engaged in, the object (often a person or group of the opposite sex) affected by that action, the space in which the action takes place, and the category of person (i.e. harlot, old man, old woman, ferryman). These specifics of subject formation are the basis of the power of *hisba* manuals to form a gendered regulatory order. They are also at the base of the language of prescriptive interdiction, a concept that reflected the *muhtasib*'s responsibilities of communicating the normative vision of the *hisba* text in his relations with its normative subjects/objects. Among these subjects/objects are *dhimmis* (protected non-Muslims), an important group that was discussed in chapter three and earlier in this chapter but have not been considered in relation to the gendered language of surveillance and prohibition. The manner in which *dhimmis*—and especially Christians—are presented as subjects/objects in Ibn ‘Abdun’s regulatory vision will thus be considered in the next section.

²¹⁹ Ibid., p. 57.

²²⁰ Ibid., pp. 56-7.

“For indeed the priests are sinners, fornicators, and sodomists...”: *Dhimmis* and women as subjects in Ibn ‘Abdun’s *Risala*

As described in the latter sections of chapter three, the second half of the eleventh and early twelfth centuries was a period of inter-confessional tension on the Iberian Peninsula perhaps unprecedented since the second-half of the ninth century when conversion to Islam was increasing among Christians, some of whom also began prompting their own martyrdom through public denunciations of Muhammad and Islam.²²¹ This tension is readily apparent in Ibn ‘Abdun’s *Risala*. Particular Muslim-Christian issues are sometimes even expressed in injunctions governing gender relations. Falling within the logic of the above discussion on the gendered language of prescriptive interdiction, these injunctions also reflect local Muslim fears about female sexuality and the licentiousness of priests. Ibn ‘Abdun’s prescriptive interdictions that cast priests as the subjects/objects of the *muhtasib*’s surveillance and regulation in terms of the threat of *zina* speak to contemporary inter-confessional fears through the frame of *shari‘a* and the *fuqaha*’s perception of the *ahkam* of the *shari‘a* in terms of gender relations as well as the place of *dhimmis* in a Muslim-dominated society.

Even in matters that have nothing to do with gender relations Ibn ‘Abdun is generally concerned with *dhimmis*—seemingly as subjects who must be dealt with in line with the *shari‘a*. He states that the *muhtasib* “must ensure that the striking (*darb*) of the church bells (*al-nawaqis*) is stopped (*yuqta‘*) in a land (*bilad*) of Islam, for [this occurs only] in a land of unbelief (*kufra*).”²²² Such an interdiction reflects similar stipulations in the covenant with the *dhimmis* attributed to ‘Umar b. al-Khattab.²²³ Though it is thus

²²¹ See Wolf, “Muhammad as Antichrist in Ninth Century Còrdoba,” in eds. Meyerson and English.

²²² Ibn ‘Abdun, p. 55.

²²³ Tritton, pp. 5, 9 and 11.

sunna and a source of the *shari'a*, there is probably more to this particular injunction than its legality in the context of Ibn 'Abdun's al-Andalus. In Ibn 'Abdun's age the silence of church bells had come to signify the ability of Muslims to dominate Peninsular Christians. This ties into the Umayyad *hajib* Ibn Abi 'Amir al-Mansur's sacking of Santiago de Compostella in 997, after which the city's cathedral bells were transported to Cordova on the backs of Christian captives and installed as lamps in the Great Mosque there.²²⁴ When Cordova was conquered by Fernando III (r. 1217-1252) of Castile in 1236 the bells were returned to Santiago de Compostella, symbolically marking Christian dominance of the Muslims for the thousands of pilgrims who would annually flock to the city to pay homage to St. James.²²⁵ Whatever value Ibn 'Abdun attached to the history of the bells of Santiago de Compostella, his primary reason for pronouncing the imperative prevention of the striking of church bells was probably symbolic in a different way. Following the *sunna* of the Caliph 'Umar, Ibn 'Abdun's proscription is due to the fact that the striking of church bells represented a dangerous signal, calling attention to the church as a space of alternative worship, alternative spirituality, and alternative doctrine.

Earlier I discussed Ibn 'Abd al-Ra'uf's prescriptive interdiction regarding women standing in doorways that references Jews as the sellers of wine on doorsteps.²²⁶ Ibn 'Abdun also presents a minority religious group's sale of alcoholic beverages in reference to gender issues. In the *Risala* Christians are also presented as the sellers of alcoholic beverages (*al-khamr*), which the *Qur'an* forbids Muslims from drinking.²²⁷ In particular

²²⁴ Safran, pp. 100, 104-5.

²²⁵ Fletcher, *Moorish Spain* (Berkeley, 1992), p. 128.

²²⁶ Ibn 'Abd al-Ra'uf, p. 113.

²²⁷ Ibn 'Abdun, p. 57.

this reference associates the Christians' wine with the debauchery of the young men.²²⁸ One recalls Ibn 'Abdun's investment of this debauchery with the power to overwhelm women. Thus, following Ibn 'Abdun, the Christian vendors' drink is partly to blame for such debauchery. To end such a problem the *muhtasib* empowers the ferrymen to smash the vessels intended to be filled with wine by the Christians.²²⁹ Without its connotations of concern over gender relations, this same issue is written into the discourse of *hisba* according to *sunna* at a later date. As Ibn al-Ukhuwwa states, Christians were indeed prohibited from selling alcohol to Muslims in the caliph 'Umar's treaty with the *dhimmis*.²³⁰

Ibn 'Abdun includes other prescriptive interdictions regarding *dhimmis* that are intended to protect Muslims from violating the *shari'a*. In a matter of ritual purity, Jews are forbidden from slaughtering (*yadhbah*) meat to be consumed by a Muslim.²³¹ Rooted in the caliph 'Umar b. al-Khattab's ruling that prohibited Muslims from eating meat slaughtered by *dhimmis*²³² and in a Qur'anic injunction, Ibn 'Abdun's enunciation of prohibition here protects Muslims against the consumption of meat that would thus violate several prescriptions of the *shari'a*.

Ibn 'Abdun furnishes an even more condemning prescriptive interdiction directed towards *dhimmis* in reference to the necessary *tahara* (ritual purity) of Muslims and their relative "upper-caste" status in regard to Christians and Jews. He states, "A Muslim must not touch (*yahukk*) the Jew or the Christian," he writes. "Neither may he throw away his refuse nor clean his lavatory—for the Jew and the Christian were from the first in these

²²⁸ Ibid., p. 26.

²²⁹ Ibid., p. 57.

²³⁰ Ibn al-Ukhuwwa, p. 40.

²³¹ Ibn 'Abdun, p. 49.

occupations.” Thus reestablishing the subservience of *dhimmis*, cast as the only beings who might engage in these “lowly occupations” (*san ‘al-ardhalin*), Ibn ‘Abdun continues, “A Muslim must not care for (*yakhdam*) the animals of Jews or Christians—nor associate himself with such work—nor should he be a groom for [a Jew or Christian’s] mount.” In sum, if a Muslim does any of these things it is “held against him” (*unkira*) by other Muslims.²³³

The inherent impurity and menial position assigned to *dhimmis* in these normative statements should, as part of the *Risala*’s discourse on *dhimmis*, be brought into reference with Ibn ‘Abdun’s comparison between the improperly dressed Jews and Christians of his contemporary al-Andalus and the treacherous Jews and Hypocrites that plagued the early Community in Medina, as discussed above. One will recall that he equates the Andalusian *dhimmis* who try to dress like respectable Muslim men and jurists with the enemies of the Community. In the words of Ibn ‘Abdun these *dhimmis* “are not to be protected” (*la yusallam*) and in the words of Allah are the “party of Satan” (*hizb al-shaytan*) (58:19).²³⁴ As in the prescriptive interdiction discussed in the paragraph above, the articulation of difference between *dhimmis* and Muslims is clear. In both cases the *dhimmi* as subject/object of prohibition is also a universal subject/object of defamation through the invocation of essential and negative characteristics. This inter-confessional difference-making, like the creation of gendered difference, is central to the operational viability of a *hisba* manual like the *Risala* which must concurrently interpret and execute the principles of the *shari‘a* while establishing the application of these principles through

²³² Tritton, p. 92.

²³³ Ibn ‘Abdun, p. 48.

²³⁴ Ibid., p. 51.

channels amenable to *'urf*. The moments of Ibn 'Abdun's text in which these two types of difference making—inter-confessional and gendered—come together demonstrate the extent to which the language of prescriptive interdiction could create elaborately problematic subjects of and for the regulatory authority of the *muhtasib*.

In the sections regarding *dhimmis* discussed above Ibn 'Abdun presents general terms such as “(the) Jews” and “(the) Christians” in order to effect categorical defamation through a warning about their essential characteristics or to specifically discuss the problematic acts that they engage in. However, in articulating gender issues these broad terms are abandoned and Ibn 'Abdun specifically articulates only “the priests” (*al-qissisun*) and their relations to Muslim and Christian women. Evangelists of the Christian presence in the Iberian Peninsula, which included a still substantial presence in Muslim-controlled cities in al-Andalus, these figures are absent from those sections on *dhimmis* discussed above. Indeed, the category “the priests” is present only in injunctions that also present a gendered language of prescriptive interdiction. The very presence of “the priests”—thus the very presence of a threatening and formalized Christianity in Muslim-controlled al-Andalus—is presented by Ibn 'Abdun only in terms of gender issues.

As always, this language of prescriptive interdiction is grounded in an identified urban space or institution. In the case of constituting Muslim women as subjects/objects in reference to the sexual threat of priests, these spaces and institutions are churches. “[The *muhtasib*] must prohibit the Muslim women from entering the abominable churches (*al-kana'is al-mashnu'a*),” Ibn 'Abdun writes. “For indeed the priests are sinners (*fasaqa*), fornicators (*zunna'*) and sodomists (*lawata*).” Marked as embodying the worst of human characteristics in terms of gender relations, the priests are nevertheless

themselves not identified as subjects/objects of surveillance and prohibition in this prescriptive interdiction. It is Muslim women who are cast as the subjects/objects to be prevented from engaging in a specific activity, in this case entering the “abominable” space of the church which is identified with the priests’ abominable sexual practices.

However, this prohibitory subjectivity/objectivity is not limited to Muslim women. Ibn ‘Abdun continues, “[The *muhtasib*] must ensure that the Frankish women (*al-ifranjiyyat*) are prevented (*tumna*) from entering into the church—with the exception of a day of grace (*fadl*) or a feast day (*‘id*)—for indeed they eat, drink, and fornicate with the priests.” Extending the mandate of *hisba* to protect Christian women from their own priests, “the Frankish women” are subject/object to the *muhtasib*’s authority while the priests are again associated with abhorrent practices (gluttony, drunkenness and fornication) that the Frankish women are known also to engage in. The characteristic of fornication further preoccupies Ibn ‘Abdun, as he proceeds to state that each priest has at least two mistresses. As he explains, such activities are the *‘urf* of the priests, a group that “prohibits what is permissible and permits what is forbidden” (*harramu al-halal wa istahallu al-haram*).²³⁵

At the end of this section priests are presented as subjects/objects of the *muhtasib*’s authority. Ibn ‘Abdun writes, “The priests must be ordered to (*yu’mar*) marry as they do in eastern lands. If they want to do this they can.” The idea that priests should marry rather than engage in *zina*, which Ibn ‘Abdun saw as a normal activity for priests, is important enough to be reiterated in the next section. He states, “[The *muhtasib*] must not leave a woman in a priest’s house. This goes for old women and others, if he has

²³⁵ Ibid., pp. 48-9.

refused to marry."²³⁶ Though in this second injunction women are again subjectified/objectified, Ibn 'Abdun appears to have broken with the discrimination regarding age that typifies other cases of prohibitive subjectification. As both Ibn 'Abd al-Ra'uf and Ibn 'Abdun indicate, relations social relations between either older Muslim men or older Muslim women and Muslims of the opposite sex were not prohibited. This is because these older Muslims were no longer either sexually enticing nor liable to sexual temptation. However, according to Ibn 'Abdun, a priest could not even be trusted with an old Christian woman. This would again seem to reflect Ibn 'Abdun's appraisal of priestly character, which was compounded by the repressed state of clerical celibacy. The solution for debauchery was marriage. With a legally sanctioned sexual relationship priests would be less likely to prey on other women.

This type of anti-clericalism was not peculiar to a Muslim writer like Ibn 'Abdun. For example, licentiousness of priests was a common theme in medieval fabliaux, popular thematic stories, which would have probably been circulating at the time of Ibn 'Abdun, but which gained a prominent place in thirteenth century French culture.²³⁷ In *Du Prestre ki abevete* (The Priest who Peeked) a voyeuristic priest tricks a peasant into allowing him to be alone with the peasant's wife and then convinces the peasant that he is eating supper with her when in fact he is "fucking" her right before the peasant's eyes.²³⁸ In *Du Bouchier d'Abbeville* a haughty priest keeps a paramour of great beauty.²³⁹ Besides a shared anti-clericalism presented in an idiom of sexual depravity, however, such fabliaux bear no substantive commonalities with the relevant passages from Ibn 'Abdun's

²³⁶ Ibid., p. 49.

²³⁷ Eichmann, Raymond, intr., *Cuckolds, Clerics, and Countrymen*, trans. DuVal (Fayetteville, 1982), pp. 6-

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²³⁸ Ibid., p. 46.

Risala. The anti-clericalism of the fabliaux are presented as parody in a form of entertainment and takes place inside the Christian community. In contrast, the anti-clericalism of the *Risala* seeks to organize discipline against a strategically targeted subject/object of danger to the Muslim community in al-Andalus. This dedication to understand gender relations not as a playful dimension of social life punctuated by licentious priests but rather as a serious matter to be dealt with by a state appointed official in a codified operation of surveillance and prohibition importantly sets *hisba* literature like the *Risala* apart from popular literatures in contemporary France (and al-Andalus for that matter). The elaborate construction of difference through which the *Risala* constituted gendered subjects/objects, as well as other subjects/objects of regulation like priests, marks it as a particularly good example of the way discursive power is constituted in the field of *hisba* literature. It also provides a glimpse into a locally specific relationship between gender and authority in Almoravid Seville. In the following conclusion I first extrapolate the issue of gender and administrative authority into Christian dominance in the Iberian Peninsula. I then tie together the arguments made throughout this project and propose prospective questions regarding the historical study of gender in Islam.

²³⁹ Ibid., p. 20.

Conclusion: Extending the Project

Gender and public administration under Christian rule

The Berber Almoravid and Almohad dynasties were briefly able to halt the advance of the Christian kingdoms into Muslim Iberia. Over the course of the thirteenth century Christian kingdoms nearly completely reconquered the Peninsula, leaving the territorially insignificant Granadan Nasirid dynasty as the last Muslim-controlled principality administering a Muslim population. In this process numerous Muslim communities came under the administration of Christian kingdoms. In this section I will outline briefly some of the interesting administrative developments that concerned these now subservient Muslim communities before concluding my project with a final section on Ibn 'Abdun's *Risala* and the study of gender in Islam. The central point of the forthcoming discussion of the Christian administration of Muslim communities is that gender continued to be an important aspect of the regulation of communal boundaries and public order.

As early as the mid-ninth century, Spanish Christian polemics against the spiritual threat of Islam identified Muhammad as a "type" and instrument of Antichrist whose vices were cast in sexual terms.²⁴⁰ The logic of sexual difference expressed in these polemics would be deployed in authoritative Christian administrative institutions from the thirteenth century on. Reflecting some of the pre-existing forms and functions of Muslim institutions like *hisba*, Christian institutions also represented a new sense in which, in the words of one historian, "violence about sex" was central to "the coexistence of majority and minorities in medieval Spain...and suggest that coexistence was in part

predicated on such violence."²⁴¹ At the same time these institutions also represented a new sense in which illicit gender relations could be used for the financial benefit of the king and his government.

The *Reconquistadores* codified municipal charters known as *fueros* in order to administer cities and towns that had been under *Mudéjar* (Muslim) rule.²⁴² Muslim administrative offices were adopted into the administration of these now Christian ruled spaces. As had been the case in Sicily after its reconquest from the Muslims in the late eleventh century,²⁴³ the Muslim principle of *dhimma* was applied by Christian states to their subservient Muslim populations. In Christian dominated areas Muslim populations thus enjoyed a degree of protection similar to that which Christians and Jews had enjoyed under Muslim rule.²⁴⁴ *Qadis* continued to adjudicate between Muslims, but with only limited authority to exercise corporal punishment.²⁴⁵ As will be shown, this limitation on corporal punishment by Muslim judges meant that the Christian crowns concurrently monopolized statutory violence regarding sexual offenses and developed new means of extracting profit from such offenses. Thus, with a Christian initiated *de jure* limitation on the *shari'a*'s full and unconditional authority in public administration some Muslim jurists like Ibn Rushd (the Averroes mentioned in chapter one, grandson of the Ibn Rushd

²⁴⁰ Wolf, pp. 9-11, 15.

²⁴¹ Nirenberg "Religious and Sexual Boundaries in the Medieval Crown of Aragon," in eds. Meyerson and English, *Christians, Muslims and Jews in Medieval and Early Modern Spain* (South Bend, 2000), p. 142.

²⁴² Powers, "Frontier Municipal Baths and Social Interaction in Thirteenth-Century Spain," *American Historical Review* 84 (Washington, 1979), p. 657.

²⁴³ Brett, "Muslim Justice Under Infidel Rule," *Les Cahiers de Tunisie* 43 (Tunis, 1991), p. 328.

²⁴⁴ O'Callaghan, "The Mudéjars of Castile and Portugal in the Twelfth and Thirteenth Centuries," in ed. Powell, *Muslims Under Latin Rule* (Princeton, 1990), p. 22.

²⁴⁵ Meyerson, Mark D, "Prostitution of Muslim Women in the Kingdom of Valencia," in eds. Chiat and Reyerson, *The Medieval Mediterranean* (St. Cloud, 1988), pp. 88-9.

mentioned in chapter three) requested that Muslims withdraw to Muslim controlled territory.²⁴⁶

Sometimes, the *Reconquistadores* found it useful to adopt Muslim offices in order to govern the entirety of social space, not just the Muslims populations themselves. This was the case of the *muhtasib*, whose duties were taken up by the *almudazaf* or *almotucén* (transliterations of the Arabic).²⁴⁷ The *almudazaf/almotucén* was charged with overseeing weights, measures, public sanitation, water supplies, public health and sexual conduct for Muslims, Jews, and Christians.²⁴⁸ One commentator on the appropriation of the *muhtasib* by the *Reconquistadores* writes that, "the Christians took an Islamic office in decline, found it culturally congruent, and by adopting the institution for Christian town and diffusing it in civil law codes, breathed new life into the original Muslim office."²⁴⁹ The Christian version of the *muhtasib*, while active in the administration of sexual norms in *Reconquista* Iberia, was only one officer engaged in a larger system of institutional administration of gender relations.

One law from thirteenth century Valencia, for example, stipulated that a Muslim man and Christian woman were both to be burned alive if caught fornicating together. A similar law from the city of Tortosa in Catalonia states: "If Jew or Muslim males are found lying with a Christian woman, the Jew or Muslim should be drawn and quartered and the Christian woman should be burned, in such a manner that they should die. And this accusation can be brought by any inhabitant of the town, without the penalty of *talio*

²⁴⁶ O'Callaghan, p. 18.

²⁴⁷ Powers, p. 656.

²⁴⁸ Ibid., pp. 655-56.

²⁴⁹ Glick, "Review: *Islam Under the Crusaders*," *Speculum* 52 (Washington, 1977), p. 129.

or any other [penalty].²⁵⁰ Sometimes the statutory violence of the state could become a mythical and symbolic representation of the righteousness of Christianity over Islam. For example, Alfonso X of Castille is reported to have told of a Christian woman who committed adultery with a Muslim slave. In the process of being burned alive she was saved from the flames by the Virgin Mary, even as her lover was completely consumed by the flames and killed.²⁵¹ These violent manifestations of Christian administration of sexual boundaries must be understood in reference to another way that Christian kingdoms controlled the gender relations of their minority subjects.

In Valencia, if a Christian man was caught fornicating with a Muslim woman he would receive no punishment while she would likely become a state owned prostitute in one of the crown's many brothels.²⁵² On one level these laws represent the inter-confessional tensions of the early *Convivencia*, a term referring to the cohabitation of large Christian, Jews and Muslim communities under Christian rule. They are on this level an extension, through a now Christian dominated administration, of the way inter-communal tensions were played out in the prescriptive interdictions in Ibn 'Abdun's *Risala* regarding lecherous priests. As a historian of the Aragonese crown has it, in these cases (as in Ibn 'Abdun), "the female body becomes the site of fears of penetration and corruption."²⁵³ On another level, the laws relegating sexually transgressive Muslim women, especially those on state prostitution, demonstrates an entirely new way of using normative power to produce bodies gendered in certain terms. The opportunity to derive a

²⁵⁰ Nirenberg, p. 142.

²⁵¹ O'Callaghan, p. 32.

²⁵² Meyerson, p. 88.

²⁵³ Nirenberg, p. 145.

large profit from the licensing and taxing of prostitution provided the state good reason to regulate sexual morality in this way.

As seen in Ibn 'Abdun's work on *hisba* and in works of *siyasa shar'iyya* in general, the goal of surveillance and prohibition in Muslim administration is to prevent transgression against the *shari'a* within the Community. In the context of Christian dominated Valencia, surveillance and prohibition of gendered bodies, while not excluding the ideal of public justice, also deliberately attempted to make use of transgressive gendered bodies. It aimed make these bodies economically and symbolically (representing the Christian dominance over Muslims) productive. As Meyerson writes, at one point, "the bailiff general was going so far as to order his subordinates to seek out and apprehend Muslim. . . women who had committed adultery," in order to supplement the number of prostitutes working for the crown. Under the watchful eye of royal and seigniorial officials, Muslim judges would commonly commute sentences of flogging or stoning (which were not in their power to perform anyway) and recommend a sentence of sexual slavery to the state. Besides those working in the state-owned brothels, all prostitutes faced licensing fees and taxes on their labor, regulations that were especially strict for Muslim women prostitutes.²⁵⁴

Thus the conqueror kingdom of Valencia derived utility from the illicit actions of its minority women. While the history of these governmental practices are well documented in Valencia they also existed in other kingdoms. The thirteenth-century Castilian statute *Siete Partidas* stipulated that if an unmarried Christian woman engaged in sexual relations with a Muslim or Jew that she would be fined half her property. On her second offense the remainder of her property would be confiscated by the crown and

she would face execution.²⁵⁵ These examples offer evidence of an axial difference between Islamic and Christian Iberia. The Valencian kingdom was able to make the administration of gender a productive category not just on a discursive level, but also in terms of capital. Though gender is clearly a productive category for administrative power in Ibn 'Abdun's *hisba* manual, neither this text, nor any other precedent or subsequent *hisba* manuals, seek to supplement the exchequer through the identification of transgression.

Ibn 'Abdun's *Risala* and gender in Islam

This project has generally been concerned with the way that a type of discursive authority has constituted its power. Specifically this project has sought to expose the complex way this authority produces gendered subjects/objects in the deployment of its power in a specific text on *hisba*. Since *hisba* has a discursive history embedded in the related and mutually (though partially) constitutive fields of *siyasa shar'iyya* and *fiqh* I began with a discussion about the basic structure of Muslim institutional administrative authority and a very brief outline of the way *fiqh* constructs acting subjects of its authority. *Hisba* was then introduced as a specific type of administrative duty defined and normalized in the different kinds of *fiqh* based *hisba* literature. With this institutional and discursive structure for understanding *hisba* literature in place I turned to the problem of gender in historiography of Islam. I outlined an operation for reading the construction of gender relations in *hisba* manuals through the presentation of subjects, objects and subjects/objects of regulation therein. I then provide the political and religious background through which the development of discursive practices such as *hisba* and,

²⁵⁴ Meyerson, pp. 88-9.

²⁵⁵ O'Callaghan, pp. 31-2.

specifically, Ibn 'Abdun's *hisba* manual must be understood. For the relevant Almoravid period, the lengths that Ibn 'Abdun goes to promote order and justice (according to the *shari'a*) reflect the contemporary concern by jurists and the Almoravid rulers to promote an explicitly Sunni religious and political state.

These preceding arguments established the basis for reading Ibn 'Abdun's *Risala*. After analyzing the relationship between *shari'a*, *'urf*, and the production of subjects of regulation in Andalusian and North African *hisba* manuals I focused on understanding gendered subjects/objects in Ibn 'Abdun's *Risala*. Several main points emerged from this reading of prescriptive interdictions in Ibn 'Abdun's manual. First, demarcating gendered subjects/objects is only one of several types of important demarcations manifest in *hisba* manuals. As discussed, these include religious (confessional) and ethnic demarcations of difference. Second, prescriptive interdictions regarding gender are not necessarily centered on women's actions or bodies. More often than not in the *Risala* it is the actions and bodies of men that tempt women to transgression and are thus the target of prescriptive interdiction. Third, and related to the last point, gendering subjects/objects in *hisba* is related to other issues of concern; gender cannot be categorically extricated from its context as if it existed independently. In important ways, the issue of female sexuality in the *Risala* only makes sense in the context of a society that Ibn 'Abdun understood to be pervaded by the transgressive activities of drunk young men, tax collectors, lecherous fortune-tellers, silly women and debauched priests. How does this complex picture regarding the normative role of gender in Ibn 'Abdun's *hisba* manual affect a conception about gender in Islam?

To begin with, it implies that concerns about gender and sex were present at many levels of institutional and authoritative medieval Muslim discourse. This is hardly a revolutionary thought. As Franz Rosenthal states, "Islam always took care to admit that sexuality existed as a problematic element in the relationship of individuals and society and never hesitated to leave room for the discussion of approval and disapproval."²⁵⁶ However, even if "Islam took care to admit" that gender "existed as a problematic element in the relationship of individuals and society," it seems that in light of our discussion of Ibn 'Abdun's manual that this "discussion" also frequently took place at the level of institutional normativity. Sex and gender issues were not merely private. At various times and in various ways they were very much governmental issues that were put into discursive play with other aspects of administration that concerned the effecting of a *shar'ī* order in the Community. Thus, concern with gender cannot be extricated from concern over Muslim institutions and the normative power they exercised, both discursively and in the relation of that discursive power to practice.

More than anything, however, I hope that scholarship can move towards new analyses of gender and Islam by utilizing the contents of a point Butler makes. She states that, "Construction not only takes place *in* time, but is itself a temporal process which operates through the reiteration of norms; sex is both produced and destabilized in the course of this reiteration."²⁵⁷ This point, which really contains two relevant points, deserves a moment of explication. To begin with, Butler is working from a premise whereby authoritative discourses—like *hisba*—seek to establish "sex" (or proper gender

²⁵⁶ Rosenthal, "Sources for the Role of Sex in Medieval Muslim Society," in ed. Al-Sayyid-Marsot, *Society and the Sexes in Medieval Islam*, (Malibu, 1979).

²⁵⁷ Butler, p. 10.

relations) in a relationship of power that allows the authoritative discourse to create universal gendered subjects of and for their authority. Pursuant to deconstructing this relationship of power, Butler's first point in the above statement is relevant to Ibn 'Abdun's manual. As demonstrated in my reading of the *Risala*, it is through the "reiteration of norms" that gendered subjects/objects are produced therein. By continually reiterating various prescriptive interdictions regarding gender relations Ibn 'Abdun thus outlines norms that can be traced discursively. Second, this discursive production constitutes a gendering that is "destabilized in the course of this reiteration." Even as a normative subject/object is created through a prescriptive interdiction, that iteration of a delimited normativity also creates a subject/object of delimited subjectivity/objectivity. In such texts that present normative subjectivity/objectivity of gendered bodies, those normative bodies are always therein being constructed or reconstructed by the discourse. Thus the discursive reiteration of norms limits the universality of its own subjects/objects and thus "destabilizes" the general normativity of gendered women or men who must be prohibited from certain actions by the *muhtasib*. In other words, the very presentation of subjects/objects is quite often the precondition for the destabilization of the normativity of those subjects/objects.

Any historical reading of a normative subject or object must take such limits into account or risk presenting the false picture of an overdetermined or totalitarian subject or object of power. My reading of Ibn 'Abdun's prescriptive interdictions regarding gender relations has sought to avoid this by leaving room for the normative subjects/objects to break down and by presenting a range of other related subjects/objects of concern to the

muhtasib. I leave this problem space open so that researchers can continue to ask nuanced and productive questions about the relationship between authority and gender in Islam.

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