ʿAbd al-Qādir al-Jazāʾirī, Migration, and the Rule of Law: 'a reply to certain persons of distinction'

ʿAbd al-Qādir's Political Theology

This article will deal with a text authored by ʿAbd al-Qādir al-Jazāʾirī during the later years of his rule in what is now Western Algeria.[1] Ostensibly a justification for some of his major policies through recourse to Mālikite (and to a lesser extent Shāfiʿī) juridical traditions, this text is a suggestive of understanding ʿAbd al-Qādir's religious politics. As well as presenting legal precedents, it illustrates several of ʿAbd al-Qādir's views on the primacy of divine law, its relationship with Sufism, and its place in the history of Islamo-Christian contact and conflict in the Western Mediterranean. It is hoped that this article will contribute to the general understanding of ʿAbd al-Qādir by elucidating his moral and ideological perspectives from a textual basis. This article will also inform the question, implicit in many historical discussions, of whether ʿAbd al-Qādir's rule in Algeria an instance of rule of law or rule by law.

The Arabic text is reproduced as a chapter of Muḥammad Bāsha bin ʿAbd al-Qādir al-Jazāʾirī's Tuḥfat al-zāʾir fī tārīkh al-Jazāʾir

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wa al-amīr ʿAbd al-Qādir,[2] with only a brief poetic post-script and very little in the way of comment or contextualisation. It is given the inelegant but descriptive title 'That which the Amīr [ʿAbd al-Qādir] wrote in answer to a question put to him by certain persons of distinction'.[3] Its authenticity is unquestioned, and the work in which it is presented represents a pre-eminent source in the Arabic language on ʿAbd al-Qādir's life. The text appears to have been composed in dhū al-ḥijja 1258/1842-3.[4] While never explicitly mentioned, the dramatic circumstances of that time are a clear pre-occupation in ʿAbd al-Qādir's treatise on migration. The text at hand, in spite of its overwhelmingly 'religious' content, is at the same time a definitely 'political' document, intended to bring about specific ends and respond to specific historical developments. Its combination of juridical precedent with political intent demonstrates the degree to which the 'religious and the political' are identified in ʿAbd al-Qādir's thought.

The following discussion will therefore analyse ʿAbd al-Qādir's treatise on migration (hijra) both in terms of its 'religious' and its 'political' aspects. It is important to note that this distinction, while useful to our analysis, is by no means intended to reflect a duality of concerns in the mind of ʿAbd al-Qādir himself. The modern conception of a religiously neutral 'politics' on which that distinction rests is not an empirical given, but rather the result of centuries of theorisation which were foreign to ʿAbd al-Qādir.[5] His 'politics' are

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2. This text is referred to as Tuḥfa throughout this article. EI2 refers to the is Encyclopaedia of Islam 2nd Edition, throughout., and Ḥukm al-hijra to the book of the same name by Muḥammad bin ʿAbd al-Karīm.

3. Mā kataba al-amīr jawāban ʿan suʾāl qaddamahu ilayhi baʿḍ al-aʿyān min al-khawwāṣ: Tuḥfa, pp. 411.

4. Tuḥfa, p. 422.

5. This is not to question the universal validity of such a secular conception, but only to recognise that its articulation has been the hard-won product of significant personal efforts and historical experiences [see for instance Taylor, 2007 and Asad, 1993, passim.]. Early developments in this direction (such as Locke's Letter Concerning Toleration) did insist on theological foundations (such as Protestant Christianity, opposition to Rome, and a rejection of atheism) [e.g.

expressed in religious language not least because there was simply no alternative open to him. In other words, this article will discuss the text at hand both in terms of the ('religious') views it explicitly espouses, and in terms of the ('political') consequences it implicitly encourages, without presuming that 'religion' and 'politics' represented discrete spheres of life for our subject.

ʿAbd al-Qādir's discussion of religious, moral, and legal questions in the treatise at hand is clearly designed to influence the views on policy of his readership. This is not to presume that ʿAbd al-Qādir was adducing rationalisations, that he was either reasoning ex post facto or manipulating the beliefs of others for the sake of one transient strategic end or hidden agenda. It will be demonstrated in what follows that the weight of the traditions of judgement, argumentation, and adjudication drawn on by ʿAbd al-Qādir is sufficient to justify seeing him as speaking (and ultimately acting) from genuine conviction. Whether or not ultimately to espouse this interpretation must be left to the individual reader's judgement.

To recognise the substantiveness of the factors underlying such conviction, moreover, is also to suggest some re-appraisal of ʿAbd al-Qādir's career. It demands that our attempts at understanding ʿAbd al-Qādir be more sensitive to his particular intellectual heritage than has often been the case. While fundamentally religious motivation was often attributed to ʿAbd al-Qādir by early writers, it was often of so caricatured a form as to generate a considerable backlash from later scholars.[6] Mālikite legal reasoning has consequently played a smaller role in past studies of ʿAbd al-Qādir than

Mendus, 1989, passim.]. Today's efforts by liberal political philosophers (such as John Rawls) to delineate a 'purely political', morally and theologically disinterested, politics remain works in progress. Nowhere in his writings does ʿAbd al-Qādir evince familiarity with the modern secular tradition (which largely postdates him), which many of his views in any case rule out.

6. The major study of ʿAbd al-Qādir's 'state building' by Raphael Danziger is the best example of this disillusionment. It has furthermore influenced later writers hoping to elucidate ʿAbd al-Qādir's motivations in terms more meaningful than the non-cognitive enthusiasms imputed by early sources.

analyses proceeding from modern Western conceptions of martial and charismatic power, and from colonial conceptual models of 'accommodationists and rejectionists'. It is not the intention here to repudiate such approaches, so much as to build upon them through more localised analyses.[7] The present article hopes to go some way toward exploring this issue, though the hitherto-neglected medium of ʿAbd al-Qādir's writing on migration (hijra).

Though the significance of the question of migration to ʿAbd al-Qādir's time has been recognised in the Western literature,[8] the document we intend to analyse here has thus far received only the brief mention. A paragraph in Martin's Muslim Brotherhoods in 19th Century Africa mentions its existence, names it the 'Risālat al-ʿAyān' (Treatise or Epistle of the Notable Figures), and notes its major theme: a novel contribution to the question of hijra or migration in Islamic law.[9] Martin is quite correct to point out that this is an issue left largely unaddressed in the first Islamic centuries, a fact which ʿAbd al-Qādir himself acknowledged toward the beginning of the risāla. What Martin omits to mention, and what is of particular relevance to ʿAbd al-Qādir's case, is that the question of migration did later receive considerable attention in the Mālikī juridical tradi-

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7. That 'power' is a diverse and contested concept is not ignored here. Most discussions of ʿAbd al-Qādir's rule have understood 'power' in relatively coercive terms as 'power over', however, and this represents one among many interpretations [e.g. Haugaard et al, 2002]. Amira Bennison's recent studies of ʿAbd al-Qādir's relationship with the Sultanate of ʿAbd al-Raḥmān provide a treatment of ʿAbd al-Qādir's 'power' as socially constituted and embedded. It is to exploring this connection of issues that the present article most hopes to contribute.

8. E.g. Piscatori in Michot, 2006, p. XII.

9. Martin, 1976, pp. 66-67: '[h]is treatise makes a valuable contribution to a part of Islamic theory untouched by the classical writers on this subject. This is not because most of the classical Muslim thinkers composed their books at a time when the Muslim-controlled area was expanding, or remaining static, rather than contracting in size. Hence they had very little to say about Muslim populations stranded under Christian or other governments... the main theme in the Risala is the separation of Muslims from alien invaders and the breaking off of all contact with them.'

tion to which ʿAbd al-Qādir adhered. This is a fact, moreover, which is directly linked to the particular historical and political experience of the Muslim Western Mediterranean in which Mālikism has been most concentrated.

> 'Know this: that this tragedy, that is the conquest of Muslims by unbelievers and their entry under the protective compact [of the unbelievers] occurred not in the first, nor second, nor third, nor fourth century [after the Prophet's hijra] – but has occurred since the fifth. For this reason, there is not to be found a [Prophetic] utterance, nor unambiguous decisive text [naṣṣ] from anyone in the Community (may God be pleased with them!) as it had not yet occurred. It came to pass that the question was [later] asked, and analogical reasoning was employed by our most authoritative theoreticians and adjudicators [ahl al-naẓar wa al-ijtihād] with respect to him who accepts Islām but does not migrate. [qāḍī al-jamāʿa][10] Ibn Rushd has said that this analogical reasoning was sound [though] the community differed in their opinions of him who accepts Islam and does not migrate…'[11]

In the Arabic literature, however, the treatise at hand has been more extensively studied by Muḥammad bin ʿAbd al-Karīm in the course of his survey of Ḥukm al-hijra min khilāl thalāth rasāʾil jazāʾiriyya ('the law on migration through three Algerian treatises'). This text will be referred to again below, and furthermore makes a number of connections which have been absent or underrepresented in writing on ʿAbd al-Qādir in European languages. That analysis is based on a microfilm copy held in Rabat,[12] which differs only

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10. That is to say, holder of the highest post in the Iberian judiciary; Latham, J.D., EI2 entry on 'Ibn Rushd, Abu 'l- Walīd Muḥammad b. Aḥmad'.

11. Tuḥfa, pp. 418-419.

12. Ḥukm al-hijra…, p. 41.

slightly from the text presented in the Tuḥfat al-zāʾir. There, the text is given the title Ḥusām al-dīn li-qatʿi shabah al-murtaddīn.[13] The major themes and characteristics of this text as presented in the Tuḥfat al-zāʾir will be discussed in what follows.

Migration and Authority – Inna ʿarḍī wāsiʿatun[14]

Though the text of the risāla contains no subheadings, its central themes and their development are quite clearly traced. The entire text is organised around the question of the status and obligations of Muslims conquered by non-Muslims. It begins with an unequivocal insistence on the individual duty to migrate, or make hijra, from non-Muslim to Muslim territory. This duty is then discussed with respect to extenuating circumstances, and finally (and most critically) with respect to the status of those who renege on it to differing degrees. That it is generally obligatory to migrate from non-Muslim to Muslim territory is therefore a fundamental tenet of the text, and though some standard objections to this view are mentioned they are quickly rejected.[15]

> 'God – the Most High – does not excuse dwelling under the protective compact of the unbeliever [taḥta dhimmat al-kāfir], except for him who is unable to escape and who cannot take to any road, such as a blind man who can find no-one to guide him or the invalid with none to bear

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13. Op. cit., pp. 43- 66 ('the sword-edge to cut off the likes of the apostates').

14. Tuḥfa, pp. 411, 414, quoting Qurʾān 29:56: 'Verily My Earth is vast and spacious'.

15. Tuḥfa, p. 416 mentions 'some ignorant leaders... who refer to the Prophet's (SAAWS) saying that there is no migration [from Mecca to Medina] after the conquest [of Mecca], a ḥadīth which is in the Ṣaḥīḥ of al-Bukhārī and elsewhere. But is there not no excuse for them to be found in it...' Tuḥfa, p. 417 similarly dismisses a reading of Qurʾān 12:55 ('over all the storehouses of this Earth, I am the most knowing custodian') as 'a proof of the permissibility of investiture of the unbeliever. This is no excuse for them in this matter…'

him away. [Nonetheless] their intention [nīya] is very much that of the migrant, and were they to abandon that intention, they should not behave as true believers – there are many [Qurʾānic] textual bases for this assertion.'[16]

It is worth remarking at the outset that ʿAbd al-Qādir's conception of 'territory' in this risāla is a distinctly pre-modern one based on religious affiliation rather than ethnicity, land, and formal borders.[17] During the preceding centuries '[m]ost Mālikī jurists were inclined toward territoriality, but only at the theological level. Islam can exist only in territory formally ruled by Muslims.'[18] When the Arabic term closest to the more modern conception of national territory (waṭan)[19] is first used in this text, it is in fact in a pejorative context[20] - though reading this as a rejection of nationalism would also be anachronistic. Muslim 'territory' is for ʿAbd al-Qādir that area

16. Tuḥfa, p. 415.

17. While formal borders between what is now Algeria and Morocco, for instance, were established on French insistence during the 1844 Treaty of Tangier after the Battle of Isly [Abun-Nasr, 1971, p. 246], the border had previously been 'anomalous' [Bennison, 2002, p. 128]. That same treaty also saw the formalising of Moroccan political separation from ʿAbd al-Qādir [Blunt, 1947, p. 189], again following pressure from France. Britain also brought diplomatic influence to bear so as to force the Sultanate's hand against ʿAbd al-Qādir so as to deprive France of a pretext for expansionist reprisals against Morocco [Danziger, 1977, p. 236].

18. Abou el Fadl, 1994, p. 183.

19. This term waṭan is today the standard translation for 'Nation', hence also waṭaniyya for 'Nationalism'. At the time of ʿAbd al-Qādir's writing, however, the term more typically denoted a more limited 'district or canton, or in most cases, to an area inhabited by a given tribe and co-extensive with it: often it would simply designate the tribe itself.' [Shinar, 1965, p. 154]

20. In his opening passages, ʿAbd al-Qādir castigates those whose cleaving to their waṭan prevents their divinely ordained migration through their belief that it sustains their physical existence (hūwa rāziquhu) [Tuḥfa, p. 411]. The suggestion is that it is not their land, but God (al-razzāq) on which they should rely – their failure to do so is tantamount to idolatry. Such people are those who 'lie to God in their conscience for the sake of [worldly] reward' [ibid.]. He later re-iterates that 'neither the leaving of one's waṭan nor the loss of one's wealth are excuses for renouncing the hijra.' [Tuḥfa, p. 414]

of the world in which Muslims are in the ascendant and in which Islamic law is practiced without interference.

ʿAbd al-Qādir writes before the modern understandings of secularism or laicism, and he makes no mention of them. He does not envisage a non-religious politics which governs all religious communities disinterestedly. This is worth recalling again, not least because these political and intellectual conceptions would later become significant in undermining the sorts of arguments ʿAbd al-Qādir brings in this risāla.[21] It is also significant in that ʿAbd al-Qādir has recently been depicted as motivated by opposition to French 'secularism'.[22] It is rather the case that ʿAbd al-Qādir takes for granted that one religio-legal dispensation or another will be dominant in any given community. His argument for the obligation of migration is thereby inextricably bound up with his views that a Muslim community must be governed by Islamic law, and that this would be impossible under non-Muslim rule. This perspective is common (though not universal) in pre-modern Mālikī writing, and is largely informed by quite specific historical experiences, though it also has some Qurʾānic basis (touched on below). These historical experiences arose from the conquest of Muslim lands in the Iberian peninsula by Christian kingdoms, and the fate of those

> 'Muslims who entered under the protective compact [dhimma] of the Christians, whom the people of Algeria called hypocrites. Al-Māzirī asked the Judge of Sicily for his judgements. He replied that censure for this [entering under the protective compact of the Christians] is

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21. E.g. Waardenburg, 2003, p. 265: '[t]he old rule that Muslims should not live under non-Muslim governments lost its sense when the right of religious freedom allowed them to practice their religion in Western countries.' It is also worth noting in this connection that the fatwa obtained from Qayrawān by the pro-French and anti-ʿAbd al-Qādir Tijāniyya permitting Muslims to remain under French rule did so only on the explicit proviso that their religious obligations not be interfered with by the French [Piscatori in Michot, 2006, p. xiii].
22. E.g. Heck (ed.), 2007, pp. 12-13.

twofold: firstly, with respect to the Judge, and thereby of justice… residence in the domain of strife [dār al-ḥarb] under the leadership of unbelievers is not permitted. Secondly: with respect to jurisdiction, since the [Muslim] Judge is beholden to the unbelievers, and anyone in such a state shall not have his judgements considered legitimate according to Sharīʿa.'[23]

Khaled Abu el-Fadl's study of the question of migration or hijra from non-Muslim lands identifies Mālikism as the madhhab (jurisprudential school) which engaged most substantially with the matter. In his survey of this question in Islamic law, he furthermore links that body of juridical discussion to the experience of West Mediterranean Muslims, and particularly those of Iberia (al-andalus).[24] The process of the 'reconquest' of Iberia (la Reconquista) by Christian monarchs, famously culminating in the surrender of Muslim Granada in 1492, often involved the expulsion or forced conversion of non-Christians. The result was both an exodus of Jews and Muslims from Iberia to North Africa and elsewhere, and the development of a body of juridical rulings on the issue of conquest by non-Muslims with little interest in embracing Islam. Though hardly unanimous,[25] this body of rulings and opinions understandably tended to scepticism towards the possibility of Muslim life under non-Muslim rule

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23. Tuḥfa, p. 416.
24. Abu el Fadl, 1994, p. 163: 'historical circumstances forced most Mālikī jurists to adopt an absolute and uncompromising position. As Muslim territory came under siege and vast Muslim populations were threatened, most Mālikī jurists responded by demanding that all Muslims make a clear and decisive choice in favor of Muslim lands. Theological doctrines combined with political polemics because, for most Mālikīs, choosing to reside in a non-Muslim land was a religious and ethical decision as much as a political one. Muslim lands, Islam and a moral life, became inseparable. Making the political decision to favor non-Muslim territory is the ultimate unethical act.'
25. Miller, 2000, p. 258 : 'Rigorism was not the only option, however, and some Mālikī jurists were willing to entertain the possibility that Mudejars had sufficient reason, even obligation, to reside in dār al-ḥarb (abode of war).'

and the concomitant need for a separation between spheres dominated by Muslims and by non-Muslims. It is also notable that the founding Imām Mālik is himself widely reported as having already tended strongly towards this position[26] – a fact to which ʿAbd al-Qādir refers repeatedly in this text.[27] The historical Mālikī position has in these respects been distinguished from the other three major madhāhib still extant, which have tended not to take so strong a pro-hijra position.[28]

ʿAbd al-Qādir draws on this 'pro-migration' strand of Mālikī thought in the risāla at hand. He does this both through his choice of sources – many of which are Iberian, and most of which are Mālikī[29] – and the arguments he brings. ʿAbd al-Qādir's major source in this treatise is the Fāsī jurist al-Wansharīsī's Miʿyār al-muʿrib wa al-jāmiʿ al-mughrib ʿan fatāwā ʿulamāʿ Ifrīqiya wa al-Andalus wa al-Maghrib.[30] This major collection of Mālikī legal judgements dating from the 9th to 15th centuries contains many arguments paralleling those of ʿAbd al-Qādir in this treatise. Though the rulings assembled by al-Wansharīsī are not unanimous, the collection as a whole has been described as 'a resounding condemnation of Muslims who accepted Mudejar [Christian subject minor-

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26. Abu el Fadl, 1994, p. 146: 'Saḥnūn (d. 2401/854) reports that Mālik (d. 179/796) strongly disapproved of Muslims travelling to the lands of non-believers for purposes of trade because they might become subject to the laws of unbelievers. The operative legal cause in Mālik's view is that Muslims will be forced to submit to non-Muslim law, an issue that later became a crux of legal discussions.' This view is also taken by Qāḍī Abū Bakr Ibn al-ʿArabī and Qāḍī Ibn Rushd [op. cit., pp. 146, 150-1], both of whom are drawn on by ʿAbd al-Qādir in this treatise.

27. Tuḥfa, p. 414, 416.

28. Abu el Fadl, 1994, passim.; Miller, 2000, p. 257.

29. Those referred to by ʿAbd al-Qādir who are neither Mālikī, nor outside of madhhab distinctions through being universally accepted (e.g. al-Bukhārī, Abū Dāwūd) or independent legal reasoners (e.g. Ibn al-ʿArabī), are all Shāfiʿīs noted for ḥadīth scholarship and uṣūl al-fiqh (and hence most influential on Mālikism [e.g. Cornell, 1998]).

30. E.g. Tuḥfa, p. 414 and throughout.

ity] status in al-Andalus [Iberia]'.[31] Muḥammad bin ʿAbd al-Karīm observes that 'the amīr [ʿAbd al-Qādir]'s treatise and Wansharīsī are united in subject and justification'.[32] 'ʿAbd al-Qādir relied on [al-Wansharīsī's writing], as its author exceeded him in knowledge and preceded him in history. And why should he not? Ibn Ghāzī has described al-Wansharīsī as a mountain of knowledge astride the earth.'[33] That Abou el Fadl's recent survey of the question of hijra takes al-Wansharīsī as a preeminent Mālikī source is further testament to his significance as a jurist.

ʿAbd al-Qādir explicitly relates these already centuries old arguments, such as those of al-Wansharīsī, to the historical circumstances of their appearance. ʿAbd al-Qādir refers frequently to the Reconquista (though quite naturally not using that term!). He speaks explicitly of the breaching of Christian commitments to Muslims and the conversion of Muslims to Christianity.[34] ʿAbd al-Qādir implicitly threatens his readership with the same labels they had come to apply to those Muslims who had remained under Christian rule in Iberia. He calls them 'pseudo-Christian' [mutanaṣṣira][35] and ahl al-dajn,[36] 'people kept like livestock' – a pejorative[37] usage which gave

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31. Abu el Fadl, 1994, p. 154.

32. Ḥukm al-hijra, p. 7.

33. *Op. cit.,* p. 8.

34. E.g. Tuḥfa, p. 418 refers to the treaties made by the Muslims of conquered Cordoba, which 'were annulled, bond by bond! The end of the matter was this: the unbeliever came to the Muslim saying "your grandfather, or great-grandfather, was an unbeliever, so return to the unbelief that was your grandfather's, and abandon the religion of Islam!" And so on in other cases. The Nazarenes do not honour their agreements unless the word of Islam is most exalted and its power most prominent... if they get the upper hand over you, they do not respect the bonds of kinship or covenant [Qurʾān 9:8, originally relating to the pagan Arabs, al-mushrikīn].'

35. Tuḥfa, p. 419 (from naṣāra or Nazarenes, a standard Arabic term for Christians in general – not only for those early Christians who emphasised adherence to Jewish law, as might sometimes be the case in English).

36. Tuḥfa, p. 416.

37. The verb dajana, to tame or domesticate, is conventionally used only of animals; the application of this verb to human beings suggests both their subju-

rise to the more neutral European term Mudejar (as above). More crucially, he consistently identifies them as munāfiqūn – 'hypocrites and waverers'.[38] The text as a whole presents itself as condemning the deadly category of nifāq[39] and concomitantly urging ṣidq.[40] The significance of the Iberian experience to ʿAbd al-Qādir's motivation has typically been understated or absent in Western studies of ʿAbd al-Qādir, however. The centuries earlier fall of al-andalus clearly looms larger for him than might be intuitive to readers with a modern historical consciousness and who have typically been more focused on modern colonialism and its impacts. It has been pointed out both how convincing the view that Christian domination would lead to abandonment of Islam must have been at the time, in light of the experience of Spanish Muslims, and how poorly founded such fears would turn out to be in the subsequent Algerian experience.[41]

That ʿAbd al-Qādir adduces historical evidence in support of what he says need not imply that he sees himself as presenting a fundamentally historical argument, however. The experience of al-andalus is presented as one among several historical cases,[42] in which a

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gation and their degradation.

38. Brockett, A., EI2 entry on al-munāfiḳūn.

39. With its strong Qur'ānic resonances and later juridical elaboration, nifāq/munāfiq evokes a much more substantial criticism than the English translation 'hypocrisy' suggests. The condemnation of al-munāfiqūn by the Qur'ān, in fact, is so strong and so frequent [e.g. Qur'ān 57:13-14, 61: 2-3, 63:1-5, 66:9] that 'the hypocrites' have sometimes been considered a variety of unbeliever [Izutsu, 2002, p. 179].

40. Usually translated honesty or sincerity, this term for 'doing/saying the right thing for the right reasons' has also been described as the 'mystical state most directly related to the affirmation of Sufism as a normative framework for social action' [Pinto in Heck (ed.), 2007, p. 128].

41. Ḥukm al-hijra, pp. 7-8.

42. The reasoning in the treatise we are dealing with is generally casuistic. Sceptical attitudes toward casuistry among modern Westerners are understandable and, at least since Pascal's Provincial Letters, quite common. Reasoning from cases is not entirely without modern proponents [e.g. Jonsen and Toulmin, 1989], however, and there is no reason not to suppose that ʿAbd al-Qādir considered it rigorous, reasonable, and persuasive.

fundamentally transhistorical norm is in question.[43] Qurʾānic utter-ances and Qurʾānic narratives are constantly returned to. As they do, ʿAbd al-Qādir moves between historical cases thematically rather than chronologically; history as a whole is seen as illustrative of sunnat allah,[44] the Divine Custom which governs it. To this end, ʿAbd al-Qādir 'simultaneously' evokes the experience not only of the Reconquista, but of Muḥammad and the Rāshidūn caliphs who immediately succeeded him.[45] He reminds his readers of the days of the prophets Moses/Mūsā and Samuel (though, like the Qurʾān, he does not name Samuel).[46] Finally and most obliquely he alludes to his present day – though here his approach is never explicit. In each case, the community of believers is beset by powerful adversaries, and fight or flight is ordained by God. In each case, the community is divided between those who obey and those who disobey the will of God – the latter invariably suffering the most damning conse-quences.

Though ʿAbd al-Qādir argues from juridical precedent, present-ing himself as a humbly reticent[47] transmitter of rulings already es-tablished among 'the Mālikīs and a great many of the Shāfiʿīs',[48] the

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43. In Taylor's terms, ʿAbd al-Qādir does not present '"secular" time.. [in which] when something is past, it's past [and] time placings are consistently transitive' [Taylor, 2007, p. 55].

44. Tuḥfa, p. 412: '[t]hese trials proceed from the divine custom [sunnat allah], by which He deals with His servants, as well as His wisdom which holds sway over His Earth and [all its] lands, such that it differentiates between the sincere and the false.' The term sunnat allah derives from Qurʾān 48:23: 'Such has been the divine custom in the past, no change will you find in the custom of God.'

45. E.g. Tuḥfa, pp. 411, 422.

46. Sūrat al-Baqara [2:246] refers to him as 'a Prophet [of the Children of Israel after the time of Mūsā]', lines also quoted by ʿAbd al-Qādir [Tuḥfa, p. 412]. The episode in question centres around the failure of many of the Israelites to go to war after fighting had been prescribed for them by God. Those Israelites who did obey the will of God are described as 'those who held fast to the bonds of Islām' [Tuḥfa, p. 412].

47. 'Yet if I had not witnessed the severity of your burning thirst, I would have mentioned nothing to you.' Tuḥfa, p. 411.

48. E.g. Tuḥfa, pp. 411, 421. See also his letter (on topics related to those dis-

ultimate authority invoked is neither theirs nor, still less, his own. Rather, it is that of God Himself; the historical narratives above are given in explicitly Qur'ānic terms. In a sense this is necessarily the case in a theological argument of this kind, but it is also expressed in a powerful rhetoric. Though ʿAbd al-Qādir, as quoted above, recognises the absence of an unanswerable Qur'ānic proof-text [naṣṣ][49] in support of his central legal argument, the Qur'ānic revelation is everywhere in evidence in this text.

As befits a man who is said to have memorised the Ṣaḥīḥ ḥadīth collection of al-Bukhārī,[50] ʿAbd al-Qādir quotes the Qur'ān and ḥadīth liberally. Quotations and close paraphrases of Qur'ānic verses and sayings of the Prophet are closely interwoven with one another and with ʿAbd al-Qādir's own writings. This occurs to such an extent that some pages of the risāla contain considerably more quotation than they do words composed by ʿAbd al-Qādir himself; some are composed almost entirely of quotations.[51] These allusions are only occasionally attributed and never named chapter-and-verse, however; the text assumes its audience's ability to recognize Qur'ān and ḥadīth when they hear them. When he does point out that he is quoting scripture, it is to emphasise his central argument:

> 'God the Most High said: Oh ye who believe, do not
> take my enemies or yours as confederates nor behave
> cordially toward them.[52] This to the point that He says:

cussed in the treatise at hand) to the jurists of Fez, reproduced at Tuḥfa, p. 384-5.

49. Naṣṣ traditionally indicates the strongest form of textual evidence, it should be remembered, and not all textual evidence per se: it is typically the most certain of a (usually tripartite) continuum.

50. Abun-Nasr, 2007, p. 203; Al-Bayṭār, 1963, p. 887.

51. E.g. Tuḥfa, p. 412. In addition to two aḥādīth – one from the Ṣaḥīḥ of Bukhārī and one from the Sunan Abī Dāwūd (though only al-Bukhārī is named), that page of text contains unattributed excerpts from Qur'ān 7:155, 48:23, 29:3, 2:214, 3:142, 2:246, 4:77, 5:24, 16:106, 12:55, and close paraphrases of Qur'ān 63:1-5, 12:18, and 12:83.

52. Qur'an 60:1

whosoever of you has done this, by whatever means, has gone astray.[53] Truly God has forbidden you from [amity with] him who opposes your religion, who casts you out of your homes, or who conquers you, and they who submit to the authority of the conqueror are themselves doers of injustice.[54] He said: preach to the hypocrites that [there await them] grievous punishments…[55] All glory be to God. God the Most High has specified his intention toward the hypocrites in the following verse: those who take unbelievers as confederates in lieu of believers, are hypocrites.[56] [This also in other] verses and sound, clear and unambiguous hadīths which bear no re-interpretation [lā taḥtamil taʾwīlan]. '[57]

Towards the end of his treatise, ʿAbd al-Qādir develops his legal view of those who fail to migrate in spite of migration being a possibility open them: '[i]f however he is capable of flight, yet remains under the rule [of the unbelievers], it shall not be said of him that he is a Muslim'.[58] The political ramifications of these views will be clear, not least because ʿAbd al-Qādir had an obvious strategic interest in strengthening his own constituency as against that of the French colony. It must also be remembered that the freedom of all Muslims to leave French territory was an explicit term of every treaty ʿAbd al-Qādir signed with France.[59]

ʿAbd al-Qādir first distinguishes between those who aid and pledge allegiance to their non-Muslim overlords and those who do

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53. *Ibid.*
54. Qurʾan 60:9
55. Qurʾan 4:138
56. Most likely a reference to Qurʾan 3:28; 4:139; 4:144; 9:23; 60:1
57. Tuḥfa, p. 415.
58. Tuḥfa, p. 417.
59. The texts of ʿAbd al-Qādir's treaties with France are available as appendices to Raphael Danziger's study [1977, pp. 241-260].

not. The case of the former is open to question, ʿAbd al-Qādir suggests (referring to Ibn Rushd, as above), whereas the latter is not:

> 'If however he supports them materially and they take from him taxes or his pledge of allegiance to them which give comfort to them even the littlest bit - then, says the Qāḍī Ibn al-Ḥāj al-Tujīnī al-Andalūsī, legal principles dictate that material aid makes licit that material, and spiritual aid makes licit the souls [for reprisals]. Imām al-Maghīlī, in his Maṣābīḥ al-Falāh… [says that] they are to be fought against, even if they read the Qurʾān.'[60]

Ibn Qāsim, Imām Abū ʿAbbād, and the Imām Mālik are then quoted to the same effect, and major Mālikī jurists including Qāḍī Abū Bakr Ibn al-ʿArabī and Ibn ʿArafa invoked with respect to secondary debates on this principle. 'As for their children, one must not fight against them, and they are not spoils of war, though the killing of those among them who have reached the age of seniority is licit, given their allegiance to the enemy in time of war, and their support for them in spirit.'[61]

It is adult males who have made the conscious decision to support non-Muslims against Muslims who are given the shortest shrift. These unfortunates are

> 'to be killed along with them [yuqtal bi-qatlihim], [as] what is incumbent upon [the enemies of the Muslims] is incumbent upon [their supporters], even if these are not themselves present at the act [of combat]. This is directly analogous to the keeping back of ʿUthmān and Ṭalḥa and Saʿīd bin Zayd – may God be pleased with them! – from [the Battle of] Badr, [whereafter] the

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60. Tuḥfa, p. 419.

61. *Ibid.*

Prophet (SAAWS) gave them their share of the spoils
[for their support]… These comrades of the Nazarenes,
who enter under their protective compact, bring victory
to the unbelievers over those Muslims from whom they
defected... And this is apostasy [ridda].'[62]

While the possibility of magnanimous clemency on the part of
the Imām, following Shaykh Sālim's interpretation of the actions of
Abū Bakr ('and there is no gainsaying benevolence!' [ibid.]) is sug-
gested, Ibn Wahb's view that the apostate is to be treated 'as though
he were a genuine unbeliever' [ibid.] seems ʿAbd al-Qādir's view
also. He concludes that those who kill 'apostate' women and chil-
dren in the course of battle 'should not be oppressed or [considered]
sinners'.[63] The copy of the text held on microfilm in Rabat, however,
specifies that this exemption applies only to those who kill women
and children 'unintentionally, while they have combatants among
their number and it is night, such as is the case in raids before dawn
while people are gathered together in their homes'.[64]

ʿAbd al-Qādir's attack on Muslims who support non-Muslim
rulers, then, is redolent of threat and its political message to his con-
temporaries contemplating French rule is clear. Taken as a whole,
ʿAbd al-Qādir's treatise on migration is tantamount to a declaration
of war against those Muslims who willingly subject themselves to
rule by France. It consistently presents itself not as innovative or
original, but as representing long-established schools in Mālikī legal
thinking. While the consensus ʿAbd al-Qādir presents is arguably
exaggerated, it is by no means obviously fictive.

ʿAbd al-Qādir's discussions of the obligation to migrate from
non-Muslim rule and the licitness of reprisals against those who fail
to migrate are clearly the most salient aspects of the treatise at hand.
It is also the element of the text which most obviously touches on

62. Tuḥfa, p. 421.
63. Tuḥfa, p. 422.
64. Ḥukm al-hijra, p. 65.

political live wires of the time. The treatise evinces additional characteristics which are worthy of note, however. This is the case both with respect to the political context of its composition and to our understanding of ʿAbd al-Qādir's thought in general.

On Error and Omission; hal yuṣliḥ al-ʿaṭṭār mā afsada al-dahr?[65]

In the text at hand, ʿAbd al-Qādir informs us on broader issues than the single question of migration through his contextualisation of that matter. He frames the ostensibly 'legal' question of migration within a broader 'moral' framework.[66] Conquest by non-Muslims is throughout the text presented in terms of moral 'trials' (fitan)[67] sent by God to test His followers and distinguish among them between the sincere and the hypocritical, between the moral and the immoral, between the observant and the lawless. The text therefore begins not with a discussion of the practical question of migration as a legal matter, but with a typology of moral failings: the risāla is presented as progressing from the general to the specific. During this opening discussion, ʿAbd al-Qādir indirectly informs readers about his

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65. 'Will that fated to corrupt the age heal the physician?' Tuḥfa, p. 411.

66. The intention here is by no means to suggest that ʿAbd al-Qādir himself conceived of 'divine law' and 'morality' as two separate spheres.

67. 'The primary meaning [of fitna/fitan] is "putting to the proof, discriminatory test", as gold, Ḏjurdjānī says in his Taʿrīfāt (ed. Flügel, Leipzig 1845, 171), is tested by fire. Hence the idea of a temptation permitted or sent by God to test the believer's faith, which, for the man wedded to his desires, would have the appearance of an invitation to abandon the faith. "Your goods and children are fitna" (Ḳurʾān, VIII, 28; LXIV, 15). The term fitna occurs many times in the Ḳurʾān with the sense of temptation or trial of faith ("tentation d'abjurer", according to R. Blachère's translation); and most frequently as a test which is in itself a punishment inflicted by God upon the sinful, the unrighteous... on the other hand fitna will be essentially a state of rebellion against the divine Law in which the weak always run the risk of being trapped. The idea which is to become dominant is that of "revolt", "disturbances", "civil war", but a civil war that breeds schism and in which the believers' purity of faith is in grave danger.' [Gardet, L., EI2 entry on fitna].

views on the rule of law, 'inter-religious' issues, and the relationship between what one might describe as the 'normative and the mystical' in Islam. In so doing, he also sheds light on some of his more quixotic acts as ruler in North Africa, which conscientiously secular analyses of ʿAbd al-Qādir's Algerian career have found particularly difficult to explain.

ʿAbd al-Qādir begins by dividing those who fail to uphold the commandments given to them by God into two groups, before again subdividing these into two more sub-groups. Each of these categories is characterised by a different moral, spiritual, or intellectual failing. One can infer from these their inverse corollaries: ʿAbd al-Qādir's typology of 'error' tells us a great deal about his positive conceptions of 'correctness'.

The first such dichotomy is that between the wrong-doer who strays from the straight path ordained by God through his own weakness and timorousness, and the wrong-doer who is indifferent to it altogether:

> 'So know this: the one who trusts in the unbelievers, who subjects himself to the protective compact of the people of perdition [al-dākhil taḥta dhimmat ahl al-būwār] is one of two [types of] men. The first is one who lies to God in his conscience for the sake of reward – we take refuge in God from the unbelief and foolishness of such a one... And then there is that man who struggles greedily in the world [mutakālib ʿala al-dunyā] and is deafened and blinded by his love for [the things of the world]. He desires to possess it, no matter by what means – be they those of Islām or of unbelief.'[68]

The first knows what is expected of him, yet fails to act properly. The latter, on the other hand, ignores or perverts his own un-

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68. Tuḥfa, p. 411.

derstanding of what is expected of him. The inverse corollaries of these failings are the virtues of obedience to and mindfulness of the Divine Law. Such obedience and mindfulness must not be trumped by any 'worldly' concern, ʿAbd al-Qādir asserts.

This rejection of 'worldliness' should not be understood as purely 'other-worldly', however. The lines above in fact presume that Islām includes engagement with the world: '[H]e desires to possess [the things of this world], no matter by what means – be they those of Islām or of unbelief'. What is in question is a hierarchy of obligations rather than a binary opposition between this life and the next, as ʿAbd al-Qādir makes explicit by repeating a commonplace from maqāṣid al-sharīʿa literature[69]:

> '[T]here are five necessities which must be preserved: religious obligation [al-dīn], the self [al-nafs], reason [al-ʿaql],[70] kinship and wealth. Every one of these must be preserved, and all accepted that does not conflict with them. Wealth is the last of these in ranking, and religion [al-dīn] the first, with priority over all others.'[71]

In all of this ʿAbd al-Qādir is taking quite conventional positions. The second dichotomy he makes between forms of wrong-doer is no less conventional, yet rather more informative, however. (The se-

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69. 'Literally, "the aims or purposes of the law". The term is used in works of legal theory (uṣūl al-fiqh) and refers to the idea that God's law, the Sharīʿa, is a system which encompasses aims or purposes. If the system is correctly implemented, these aims will be achieved. From such a perspective, the Sharīʿa is not merely a collection of inscrutable rulings. One who claims that the Sharīʿa has maqāṣid is, therefore, making a statement concerning the rational nature of the Sharīʿa: that God intends to bring about a certain state of affairs by instituting particular laws.' Gleave, R.M, EI2 entry on maḳāṣid al-sharīʿa.

70. Dīn, nafs, and ʿaql all have significantly varying meanings in different contexts, as do their rough English equivalents as translated here. It is for this reason the 'dīn' is in this instance translated both as 'religion' and as 'religious obligation'.

71. Tuḥfa, p. 414.

cond of these will be discussed here before the first as they appear in ʿAbd al-Qādir's text.) This form of error is that which derives from a simply negligent relationship with the Divine Law:

> 'The other man was one who had read a few chapters of jurisprudence [fiqh] and knew [ʿalima] some of the rules for prayer, marriage and trade, reckoning [ẓanna] that he had reached an end qualifying him to be called an ʿālim [religious scholar], and came to claim things about the religion of God of which he had not knowledge [ʿilm]. He defames God with falsehood, and who is more unjust than he who defames God with falsehood? Or his [Qurʾānic] verses with falsehood? Those who commit injustice will not know success!'[72]

The inverse corollary is clear: one must read more than 'a few chapters' of fiqh to master legal theory, and more than 'some' of the legal texts to master the law. A proper, comprehensive, and traditional education, ʿAbd al-Qādir asserts, is a precondition for making up one's own mind about one's religious obligations. He specifies this education still further in subsequent lines, by stating both its objects and its preconditions:

> '[the negligent would-be ʿālim] seeks guidance from [Qurʾānic' verses], and traditions of the Prophet [aḥādīth], and discursive theology [kalām]… [though] he does not excel at [the traditional linguistic and exegetical sciences of] correct reading and verbal morphology which are the premises [of such exercises]. How then might he delve into their [true] meanings?'[73]

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72. Tuḥfa, p. 413.
73. Tuḥfa, p. 413.

In closing his discussion of this form of religious negligence, he first paraphrases and then quotes a rhyme about those who are especially ignorant in that they do not recognise their own ignorance:

> 'The donkey is in a better state than such a man, since a donkey's ignorance is simple [jahl al-ḥimār basīṭ], whereas this man's ignorance is complex [murakkab]. "The donkey of wise Thomas said – if this age were just, I should ride / as my ignorance is simple – and my master's is complex".'[74]

As well as including an amusing play on words – 'complex' (murakkab) ignorance is attributed the 'rider' (rākib) of the donkey – this couplet also contains an anti-Christian resonance. Probably originating with the prolific Ḥanbalī scholar Abū al-Faraj ibn al-Jawzī,[75] its attributing of 'complex ignorance' to a Christian[76] reinforces the stratum of religious polemic in ʿAbd al-Qādir's treatise.[77] Christians are depicted throughout the text as 'proud and self-important. Which is to say they are transgressors - that is they do not stop at any condition or contract [and be bound by it].'[78] This view is not simple bigotry, it must be remembered. In addition to the traditional theological view of the corruption of the (ultimately Islamic) Revelation

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74. Tuḥfa, pp. 411-412.

75. Specifically his 'Information on Fools and Dupes' (Akhbār al-ḥumqā wa al-mughaffalīn), which contains many such couplets to illustrate its critiques. ʿAbd al-Qādir does not name this rhyme's author, and it is possible that he encountered it elsewhere.

76. Thomas, Tūmā, is a conspicuously Christian name (hence for instance Bāb Tūmā, the Christian district of Damascus whose inhabitants ʿAbd al-Qādir and others were famously to defend during the riots of 1860).

77. These lines are particularly redolent of the perennial Muslim scepticism of the Christian Mystery of the Trinity – typically seen by polemicists as an overcomplicated and retrograde form of the 'pure monotheism' (tawḥīd) at the heart of Islam.

78. Tuḥfa, p. 418.

by Christians (taḥrīf),[79] and the Reconquista experience discussed above, ʿAbd al-Qādir writes in the context of French expansionism and treaty violations. The relative propensities of Christians and Muslims to observe their obligations and keep their words is furthermore also the major theme of ʿAbd al-Qādir's later text al-Miqrāḍ al-ḥādd li-qaṭ lisān muntaqis dīn al-islām bil-bāṭil wa al-ilhād.

This anti-Christian aspect of this treatise should not be seen as categorical. ʿAbd al-Qādir does not argue for the destruction of Christianity nor for the killing of Christians per se. The manner in which he argues against Christian rule consistently assumes the possibility of co-habitation, which was in any case characteristic of ʿAbd al-Qādir's 'state' which employed numerous Christians and Jews. ʿAbd al-Qādir's constant references to the 'dhimma' of the non-Muslims is presented as a rhetorical inversion of what he assumes to be the natural order wherein Muslims offer dhimmī status to non-Muslim monotheists. Once Islam is in the ascendant, Christianity in itself does not present a problem to ʿAbd al-Qādir: '[T]he Nazarenes do not honour their agreements unless the word of Islam is most exalted and its power most prominent'.[80] This understanding of ʿAbd al-Qādir's perspective addresses the perplexity expressed by Danziger[81] as to the apparent contradiction between ʿAbd al-Qādir's famously cordial comportment toward Christians under his power[82] and his 'studied insolence'[83] towards leaders such as General Bugeaud who sought to assert power over him. This is in fact as conservative an attitude as any of those expressed in the discussion above. Such conservatism extends also to ʿAbd al-Qādir's attitude towards Sufism.

In this treatise, ʿAbd al-Qādir draws on figures such as Malikī faqīh al-Qayrawānī (from whose work he would teach while cap-

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79. E.g. Tarakci and Sayar, 2005.
80. Tuḥfa, p. 418, emphasis added.
81. Danziger, 1977, pp. 182-3.
82. Abun-nasr, 1971, p. 244; Churchill, 1867, p. 208; Danizger, 1977, p. 182.
83. Blunt, 1947, p. 100.

tive in France)[84] who were hostile to Sufism.The text includes no condemnation of Sufism – in fact, it makes almost no reference to its author's 'marabout' status. One can infer from the content and intention of the text, however, something of the author's 'Ghazālīan',[85] conception of the orthodoxy of Sufism as in accord with Shariah law. It is to this that the final subcategory of error fruitfully may be related. ʿAbd al-Qādir condemns the

> 'one who knew the truth [ʿarafa al-ḥaqq] and resisted it… since he knew, [yet] his knowledge was of no use to him, and he renounced truth along with his knowledge of it [jaḥada al-ḥaqq maʿ maʿrifatuhu bih]. This is one of the many sources of unbelief. Such was the unbelief of some who were present at the time of the Prophet (SAAWS) and who witnessed his inimitable acts [i.e. the 'inimitable' Qur'ān]. God the Most High said of them: 'They do not call you [Muḥammad] a liar, yet these evil-doers foreswear the [Qur'ānic] verses of God.[86] This is the greatest of goings-astray and virulent obstinacy of him whom God has led astray...'[87]

This critique forms a pair with the previously discussed condemnation of 'ignorance'. Both passages in ʿAbd al-Qādir's treatise are characterised by the use of a different verb for 'knowing', ʿilm and maʿrifa, which may carry a particular resonance when used as a pair.[88] One might broadly describe these two critiques as

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84. Tuḥfa, pp. 421, 529.

85. E.g. Jackson (trans.), 2003, p. 115.

86. Qur'ān 6:33

87. Tuḥfa, p. 413.

88. Schimmel [1975, p. 130] differentiates these in the context of Islamic thought as being based on 'discursive reason' (ʿilm) and 'divine mystery' (maʿrifa). As distinct from conscious ʿilm, the more 'mystical' 'Maʿrifa assumes not only the abolition of the consciousness of self at the level of the soul, the empirical self, but an absence of self at the level of the heart and the spirit… But it is

focusing more on the quantitative and on the qualitative, respectively; the first critique uses only the roots ḥayn-lam-mīm, while the second employs both sets. In the former case it is the content of knowledge which the erring party neglects, while in the latter case it is also the epistemological status of knowledge which is undervalued. This connotation, whether reads it from the text or not, is in any event wholly congruent with the overall thrust of the treatise; the treatise is by no means a work in a special Sufi genre, but rather an appeal to the pre-eminence of the Shariah as the source of obligation for all Muslims, Sufi or otherwise. Moreover, ʿAbd al-Qādir attributes the maqāṣid commonplace quoted above (with respect to the priority of religious obligation over all other concerns) specifically to Sufis.[89] In each case, sincere, educated, and mindful adherence to the Qurʾānic revelation is presented as the antithesis of all kinds of intellectual and spiritual error.

While these assertions may be argued to have been strategically appealing,[90] they have also been widely held because of their intrinsic appeal. ʿAbd al-Qādir was circumstantially inclined towards law-abiding mysticism before he assumed political power. One must recall ʿAbd al-Qādir's inheritance as son of a Shaykh and his primary Sufī affiliation[91] to a ṭarīqa, like its founder and ʿAbd al-Qādir's namesake ʿAbd al-Qādir al-Jīlānī (to whose grave in Baghdād the

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definitely a misuse to translate maʿrifa automatically as "gnosis". Were it not so, it would be necessary to render the plural al-maʿārif by "the gnoses" (listed above), which would obviously be unacceptable' [Arnaldez and Corbin, EI2 entry on maʿrifa]. Other broad distinctions between ʿilm and maʿrifa might focus on mediated versus unmediated knowledge, or the contrast between compound and singular intelligibles.

89. Tuḥfa, p. 414.

90. That is, as a 'lowest common denominator' uniting factor among imperfectly cohesive tribes and ṭarīqas in the region. Against this view, one must remember the damaging political effects of ʿAbd al-Qādir's botched campaign against the Tijāniyya (see below).

91. ʿAbd al-Qādir, like his father and members of most other ṭuruq, was also connected to other 'Sufi orders' (such as the Raḥmāniyya in Algeria and Shādhiliyya in the Hejaz) during his lifetime.

young ʿAbd al-Qādir had made a pilgrimage) often associated with legism. Such inclinations have furthermore been common through-out the history of organised Sufism outside[92] and within[93] the North African context from which ʿAbd al-Qādir writes. His later writings re-assert this 'lawful' orientation repeatedly,[94] moreover, while his condemnation of Syrian Sufis inclined towards an antinomian rejec-tion (or 'transcending') of Islamic law has also been noted.[95] In any event, appeals to legal rectitude have historically been common in intra-Sufi polemic, for reasons not obviously extraneous to the pole-micists' practices of Sufism.

While not insignificant in themselves, these implicit and explicit assertions of the orthodoxy of Sufism as subject to Islamic law by ʿAbd al-Qādir is not a defence against those who would argue against such a view. At the time of this treatise's writing, before the spread of modernist and salafī critiques, Sufism of one sort or another was an accepted aspect of North African religious culture. Moreover, Vin-cent Cornell's broad survey of hagiographic literature from the region has demonstrated the 'sine qua non' role of socially understood or-thopraxy in North African 'living sainthood'.[96] Rather, ʿAbd al-Qādir mentions this form of error within a specific normative context: his assertion of the primacy of the Shariah, including the legal obligation

92. E.g. Schimmel, 1975, pp. 20-1; Goldziher, 1981, p. 147. See also Karamus-tafa's [2006, passim.] discussion of the attitudes of ṭarīqa Sufis to antinomian 'dervishes'.

93. E.g. Ibn ʿAjība's quoting al-Mālik [Ibn ʿAjība, 1972, p. 5-6] to the effect that Sufism and jurisprudence are mutually reliant, or Kugle's discussion of Aḥmad Zārrūq's dictum 'be a jurist first and then a Sufi' and its wide support by Muslim governments [Kugle, 2006, pp. 61, 130] (Zārrūq himself uses the latter to gloss Al-Shāfiʿī).

94. E.g. Al-Jazāʾirī, 1967, pp. 147-148. In this context, ʿAbd al-Qādir also ar-gues in favour of the decision (by a Mālikī judge) to sentence al-Ḥallāj to death for declaring himself divine ('anā al-ḥaqq') 'outside of the mystical transports [al-aḥwāl] and with his wits about him [ʿaqluhu maʿuhu]' [Al-Jazāʾirī, 1967, p. 1044].

95. Weismann, 2001, pp. 231-232.

96. Cornell, 1998, p. 94.

of able-bodied Muslims to leave territory conquered by non-Muslims. As such, it carries a definite political implication – an attack on those Muslims (including Sufis) who called for submission to French rule.

Individual and tribal defectors to French territory were a cause of concern to ʿAbd al-Qādir throughout his career in Algeria, are addressed in every treaty he signed with France, and are clearly a target of this treatise.[97] The circumstances of this treatise's writing, however, bring also ṭarīqa defectors to the fore. Chief among these, from ʿAbd al-Qādir's perspective, was Muḥammad al-Ṣaghīr al-Tijānī, head of the ʿAyn Māḍī Tijāniyya. This figure supported French colonial policy[98] through his urging that Muslims should submit to French rule, and has been maligned by Algerian anti-colonialists in the 20th century for the same reasons. It was against him that ʿAbd al-Qādir in 1838 led one of his most strategically ill-advised campaigns – a lengthy, costly, and embarrassing siege. While other reasons, such as tribal rivalries[99] and poor military planning,[100] have been suggested for this campaign, it seems likely that ʿAbd al-Qādir's understanding of Mālkite law was a necessary (if not necessarily sufficient) motive. It is in relation to that campaign and its aftermath (an open Tijānī treaty with France, and increased calls for Muslim submission) that ʿAbd al-Qādir appears to be writing in this case.

If this inference is correct, then this strand of ʿAbd al-Qādir's argument in this treatise is particularly striking in relation to the centrality accorded 'Maraboutism'[101] in many studies. ʿAbd al-Qādir is

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97. These are reproduced in Danziger, 1977, pp. 241-260.

98. Abun-nasr, 2007, p. 218; Michot, 2006, pp. Xii-xiii.

99. Abun-Nasr [1971, p. 243] relates the origins of this conflict also to a quarrel between the Tijāniyya and ʿAbd al-Qādir's Hāshim tribe dating back to 1827.

100. This is the explanation favoured by Raphael Danziger, following the opinion of French officer Eugène Daumas [Danziger, 1977, p. 163].

101. This European extrapolation from the Arabic murābiṭ has been the subject of discussion in recent years. For critical treatments of this category and its usefulness to the study of North Afican culture, especially in the seminal work of Clifford Geertz (following Weber [Geertz, 1971, p. 45]), see for instance

in fact arguing against 'maraboutism' (at least as understood in We-berian terms as a variety of 'charismatic authority') by insisting that marabouts (Sufis) are not independent authorities in themselves but rather are subject to the same laws as every other Muslim. In this, his position also seems consistent with that repeatedly taken in his later Damascene writings in the genre of Ibn al-ʿArabī.[102]

The fact that the lawless ʿārif is often considered more danger-ous than the incompetent ʿālim (erring 'qualitatively' and not just 'quantitatively') supports both this view and the need to attack the pro-French Tijāniyya which ʿAbd al-Qādir apparently felt.[103] This attitude might even be distinguished from his less warlike coldness toward the vestiges of Ottoman government in the east, as these presented a less profound threat to the faith as understood by ʿAbd al-Qādir. Such 'theological' readings are not mutually exclusive with more materialist analyses to which his actions have been sub-jected, however. Such a dilemma is itself reliant on more secular presuppositions than ʿAbd al-Qādir's background suggests or his writing evinces[104].

Conclusion

The text analysed here demonstrates that theology, morality, pol-itics, law, and mysticism were inextricably bound up in the thinking of ʿAbd al-Qādir. The result seems to have been an intensification of certainty in and commitment to the ethico-legal tradition in which

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Munson, 1993, passim; Kugle, 2006, pp. 52-3; and Cornell, 1998, pp. xxx, 32.
102. E.g. Jazā'irī, 1967, Vol 1, pp. 147-148 and vol. 2, p. 810.
103. This view is also taken by al-Ghazālī in the pages of the Fayṣal al-tafriqa referred to above, as well as by numerous other Sufis (e.g. as discussed by Karamustafa [2006] in relation to ṭarīqa/'dervish' conflict).
104. E.g. Taylor's discussion of the self-sufficient 'immanent frame' [Taylor, 2007, passim.], and the characteristically modern separation between the 'im-manent and transcendent, the natural and the supernatural' [op.cit. pp. 13-14]. ʿAbd al-Qādir's later writing in the genre of Ibn al-ʿArabī makes the attribution to him of such attitudes still more problematic.

he was raised. The text at hand also allows us to describe the content of that tradition as understood by ʿAbd al-Qādir, moreover. It argues from a predominantly Mālikī legal perspective that migration from territory governed by non-Muslims to lands governed by Muslims is obligatory. It argues that material support for non-Muslims engaged in warfare against Muslims is illicit and warrants punitive reprisals. It argues that legal judgements require a significant degree of education, and access to the authoritative sources of Qurʾān and sunna. It sees the reaching of such judgements primarily as a matter of exegesis and casuistry. It assumes the existence of God and the finality of the Qurʾānic revelation. It asserts that all Muslims (including Sufis) are subject to the norms of Islamic law. It repeatedly states that it is God's custom to sends trials and temptations in order to test the righteousness of humanity and divide the righteous from the hypocritical. Finally, it presumes that every community will be governed by one or another (and ideally Islamic) religious tendency, to which minorities will be beholden by protective compacts [dhimmam].

In all of this, this treatise is a fundamentally conservative text. The views it espouses are all widely to be found in North African intellectual and religious history for many centuries prior to its writing. The novelty attributed it by some does not appear to be justified, and is certainly disavowed by the author himself, who consistently presents himself as a transmitter of earlier rulings. Nor does it seem clear that its conception of the rule of law is of a 'modern' as opposed to 'mediaeval' kind.[105] Its most unconventional, but again not unprecedented, feature, is the degree to which it conflates hypocrisy [nifāq] with apostasy and unbelief, a tendency argued by Amira Bennison to have been common in North African argumentation at the time.[106]

ʿAbd al-Qādir is typically assimilated into a 'modern' historical moment by the (variously teleological) narratives of globalised colo-

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105. E.g King, 1997, p.73.
106. Bennison, 2002, *passim*.

nialism, declining Muslim influence, and anti-colonial nationalism. It is not self-evident that ʿAbd al-Qādir saw history in those terms, however, and the text at hand offers no suggestion that he did. As has been suggested above, it was to be characteristically modern developments which were later to weaken the strand of Mālikī thought which ʿAbd al-Qādir propounded in this treatise. There seems little justification for thinking that ʿAbd al-Qādir was prescient of these developments, and therefore little reason not to read him as sincere in his interpretation of his duties as an observant Muslim – especially since he adhered to his interpretation in respect of incidents where these weakened his strategic standing. ʿAbd al-Qādir's treatise on migration inclines one to the conclusion that his motives owed less to 'modernity' than his modern significance might suggest, and more to conviction than his strategic successes might imply. However sceptical one may be about the deployment of religious argumentation in the political sphere, or the propounding of one strand of juridic thinking over another, it seems clear that ʿAbd al-Qādir was at least to some extent following in a tradition developed centuries before the French invasion of North Africa. One might ask, as does Muḥammad bin ʿAbd al-Karīm, above: 'Why should he not?'

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