

# *The Islamic Roots of Spanish Protocols of Possession: The Requerimiento as Dialogue of Legal-Political Cultures with a Missing Interlocutor*

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**T**HE LONG PERIOD BETWEEN the twelfth and fifteenth centuries formed the crucible for the vernacular cultures that would constitute the Spanish Empire. After a long and turbulent century and a half of conquest (1085–1248), the foundations of Castilian and Catalan cultures were laid. These included discursive and institutional practices, from the literary and historiographical to the legal and strictly political. It is certainly true that powerful religious and political forces appeared on the Peninsula with the Berber-Arab conquest of the eighth century, but the cultural, religious, and political makeup of those new forces (in the eighth and ninth centuries) was largely undefined. The textual traditions of Sunni Islam had not been systematized; the legal schools (including what would become the *madhhab*, or legal school, of the Arab West, Mālikism) had not formed in any palpable way. And the relationship with other imperial actors and non-Muslim identities was fluid. Arab and Berber Islamic identities themselves, in the first centuries after the conquest, were a work in progress, or, more precisely from our vantage, they did not contain key characteristics of what would come to be considered normative or classical. It was only from the late ninth to the eleventh centuries that a powerful western Islamic political tradition (that of the Umayyads of Córdoba), with an associated tradition of higher learning (that of Mālikism), crystallized.<sup>1</sup> Despite its collapse as a unified political system, it would leave

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Many thanks to Andrew Devereux and Anthony Pagden for inviting me to this fascinating discussion with a group of scholars with whom I wouldn't normally get the chance to speak. A second iteration of this paper was presented at a panel of the 2015 Middle East Studies Association annual conference, "Interpretation and Practice of Mālikī Law in the Islamic West," organized by Nina Safran.

<sup>1</sup> See, e.g., Alfonso Carmona, "Doctrina sobre la *ḡizya* en el Occidente islámico pre-moderno," in *The Legal Status of *Dimmī*-s in the Islamic West (Second/Eighth–Ninth/Fifteenth Centuries)*, ed. Maribel Fierro and John



an indelible trace as one of the region's principal traditions of political legitimacy, visible in the appropriations of later Andalusi and Maghribi dynasties and states, visible even in the Hispano-Mauresque architecture of the French colonial and Maghribi postcolonial states,<sup>2</sup> and certainly of profound influence in the Romance cultures of Iberia. The vernacular political traditions of the Iberian Christian kingdoms developed in competition and dialogue with this post-Umayyad tradition of the Islamic West as it was adopted and transformed by Almoravids, Almohads, Nasrids, and Marinids.<sup>3</sup> Spanish imperial patterns of enacting imperial possession, such as the *Requerimiento*,<sup>4</sup> likely were not modeled after patterns of imperial expansion, set at the time of Arabo-Berber conquests, nor were they the result of the influence of an unchanging, doctrinally determined pattern in Islam (i.e., an "Islamic" pattern of negotiating conquest or of subjugating non-Muslims, or *dhimmi*s), but rather, they arose out of an altogether-messier, long-evolving, and multiparty dialogue. While a formulation such as Patricia Seed's comparative study of early modern European forms of enacting possession of territories<sup>5</sup> compellingly explains differences

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Tolan, *Religion and Law in Medieval Christian and Muslim Societies* (Turnhout, Belgium: Brepols, 2013); and Maribel Fierro, "Proto-Malikis, Malikis, and Reformed Malikis in Al-Andalus," in *The Islamic School of Law: Evolution, Devolution, and Progress*, ed. Peri Bearman, Rudolph Peters, and Frank E. Vogel (Cambridge, MA: Islamic Legal Studies Program, Harvard Law School, 2005).

<sup>2</sup> The Hassan II Mosque of Casablanca is a prominent example.

<sup>3</sup> As well as Hafsidis, Waṭṭasids, and Sa'dis.

<sup>4</sup> Formulated by the Spanish legal scholar Juan López de Palacios Rubios in 1512, the *Requerimiento* survives in multiple versions. A condensed translation of the version found in *Brevísima relación de la destrucción de las Indias* by Bartolomé de Las Casas reads:

On behalf of Fernando V, King of Spain, Defender of the Catholic Church, subduer of barbarians, and on behalf of Queen Juana, his beloved daughter, I, Pedrarias Dávila, their servant, messenger, and captain, bring you word of God Our Lord, one and eternal. He is creator of earth, of heaven, and of the man and woman from whom all of us are descended and from whom all future humans will descend. A large number of humans have been born during the more than five thousand years since the earth was created. Since no one area could sustain so many people, humans were forced to scatter widely and divide themselves into many kingdoms and provinces. Our Lord selected one of these people, Saint Peter, to lead the humans on earth. All people, regardless of where they were or what their nationality or religion was, were placed under his jurisdiction. The Lord instructed Peter to govern from Rome, which was the best place from which to administer the earth. He also exercised power in other parts of the world so he could judge and govern Christians, Moors, Jews, gentiles, and those of other faiths.... One of the pontiffs, who succeeded Peter, granted these islands and the mainland to our King and Queen and to their successors. You can inspect the documents that recorded this grant. As a result of this property transfer, their Highnesses exercise sovereignty over these islands and over the mainland.... You may take the necessary time to discuss this information and to recognize the Church as owner and administrator of the entire world.... If you behave properly and perform your obligations to their Highnesses, I, in their name, will receive you with all love and kindness and will protect your wives, children, and land, and will not impose servitude upon you. Rather than having Christianity forced on you, you are free to do what you wish.... However, if you do not do this, or if you maliciously delay your response, you are hereby notified that, with God's support, I will launch an all-out attack to force you to submit and obey the Church and their Highnesses. Furthermore, I will enslave you and your women and children, and dispose of them as our majesty may command. Also I will seize your goods and inflict harm on you. You will be treated as disobedient vassals. You will be to blame for the resulting injury and death. The blame will not lie with me, their Highnesses, or the soldiers who accompany me. You have been warned. I request that the scribe who is present with me record this warning. May all who are present serve as witnesses.

The full translation can be found in the companion website of Philip Russell, *The History of Mexico: From Pre-conquest to Present* (New York: Routledge, 2010): <http://cw.routledge.com/textbooks/russell/pdf/ch02-requerimiento.pdf>.

<sup>5</sup> Patricia Seed, *Ceremonies of Possession in Europe's Conquest of the New World, 1492–1640* (Cambridge: Cambridge University Press, 1995), a classic and thought-provoking study of the *Requerimiento*. In this essay I

between emerging imperial cultures—including the insightful idea that Spanish imperial forms were distinct because of its Islamicate experience—the idea that Spain’s ceremonies of possession were based on Islamic forms of conquest presents an incomplete picture, because Spain’s interaction with Islamic and Islamicate institutions was much richer than that constituted by the unidirectionally conceived interaction between conqueror and conquered.

I would argue that the earliest Spanish imperial forms and patterns (whether borrowed, hybrid, or *sui generis*) had their origin in the context of increased contact during the long twelfth century of the territorial decline of Al-Andalus, 1085–1248. This contact included large-scale violent confrontation *and* vigorous political negotiation and commercial and fiscal exchange. The practice of taking *parias* is one such form of exchange. It involved the extraction of large sums from Iberian Muslim kingdoms by the emerging Christian ones (although military and political alliances were often complex and cut across religious divides). This practice or political relationship emerged in the eleventh century and generated a significant flow of wealth, linking West Africa, the Maghrib, the Iberian Peninsula, and France. This high point of the so-called *reconquista* accompanied the formation and maturation of the vernacular kingdoms (as well as of the Maghribī principalities)—of their textual traditions, legal cultures, and legitimating practices. This crystallization, borrowing, and synthesis of forms occurred through the intensification of contact, a contact, I believe, that shaped and strengthened the ethnic and religio-legal identities of individuals and communities, perhaps especially at the universalist level (i.e., Hispano-Christian vs. Berber-Arabo-Muslim over Wahrānī vs. Malagan; note that I believe these identities to be fictive and socially constructed).<sup>6</sup> Crusading kingdoms extorting astronomical amounts of protection money from Arab city-states, the emergence of Aragonese control of western Mediterranean commerce, the rise of a captivity and ransom industry based on religious (increasingly ascriptive) identity, alongside the textual and material growth of the Iberian vernacular cultures: this cocktail yields the contradictions of starker religious identities making starker borrowings of culture. It yields the *Siete partidas* and the Alcazar of Seville; Mercedarians and Almohads; Don Juan Manuel and Ramon Llull. These groups and individuals with starker identities, moreover, knew each other better, while embracing a rhetorical strategy of difference and othering (take, for instance, the development of strategies of religious polemic in the thirteenth and fourteenth centuries). More knowledge or intimacy (to use María Rosa Menocal’s term) leads to starker difference, more borrowing.

The point I want to argue here, in the context of the Islamic legal background to Spanish imperial protocols of possession, such as the *Requerimiento*, is twofold: the shape of the *Requerimiento* and of similar institutional practices is both borrowed and synthesized, not from an eighth-century culture that valued religion in a way that was strange and different from that of northern Europe, but rather from a shared Mediterranean space that was characterized by a culture of intelligibility when confronted with difference. This was an intelligibility that operated on a diversity of levels: legal, commercial, scientific, literary. It is a space and a shared

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agree with the idea that Spanish imperial forms were inherited from Iberia’s distinct past but, on the basis of my own research and on the literature that has developed significantly since Seed’s work appeared, disagree with the mechanics and conception of what exactly that influence is and how it developed.

<sup>6</sup> On universalist, as opposed to local or corporate, dimensions or levels of discourse and on majority-minority relations in the medieval Mediterranean, see Brian A. Catlos, “Ethno-religious Minorities,” in *A Companion to Mediterranean History*, ed. Peregrine Horden and Sharon Kinoshita, Wiley Blackwell Companions to World History (Chichester, West Sussex: Wiley, 2014).

culture in which religious identity and the uncomfortable coexistence of the three Abrahamic faiths (and attendant legitimating and legal-learning traditions) are permanently inscribed. A particular, dominant dynamic of interaction exploded in this space in the centuries of crusade and *reconquista* (which neatly coincide with the centuries considered here, twelfth to fifteenth) and would survive into the early modern competition between religiously identified empires (Ottomans and Habsburgs). I argue that this period of intense competition and exchange (call it *reconquista* if you want) was more important to the institutional makeup of the Spanish Empire than some founding moment of Arabism or Islamism in Iberia's past or some inherited, deeply and unconsciously held theological notion or proclivity. The culture and space of the Mediterranean are more important to understanding early modern Spain's difference or distinction than are the principles of Islamic theology or Islamic traditions of Qur'anic interpretation.<sup>7</sup>

The second fold of my argument and of my own focus of attention<sup>8</sup> concerns the nature and dynamics of that shared culture, which I am calling Mediterranean as a kind of shorthand, but by which I mean that shared culture of intelligibility that allows for creative borrowings and successful transactions and interactions between cultures (such as the legal traditions, which so often describe themselves as isolated, evolving purely through the dynamics of their own inner logic).<sup>9</sup> In what remains of this essay, I want to turn to discussing (sometimes obliquely) a few aspects of this shared culture and process that I think are important to the history I am trying to write. One concerns the way in which a system is able to incorporate foreign objects (objects not originating in the system, legalizing them, legitimating them). A second reinforces the idea of intelligibility and reciprocity in a context of sharp conflict and competition. I do this by considering the interaction of Mediterranean legal cultures and the rise of the captivity industry. The third deals with late medieval diplomacy as evidence for patterns of practices of losing and gaining possession, through speech acts and textual exchanges with interlocutors. This understanding of the origins of the *Requerimiento*, of a practice or performance transplanted to a different context, with a hopelessly uncomprehending, supposed or ostensible interlocutor, leads to the final point that the real interlocutor for the text of the *Requerimiento*—whether we imagine it as performative or historiographical—is the performer himself (not its fictive audience).

## THE DESERT FRONTIER

I am positing here a model in which Christian and Muslim legal cultures interact and influence each other. However, I will begin with a brief case that is removed from the Iberian or Mediterranean space of Muslim-Christian interaction and that involves a different kind of frontier, where Islamic legal discourse met non-Islamic practices (one could think of them as non-state practices).<sup>10</sup> I will return to Iberian and Mediterranean Christian-Muslim frontiers below, but thinking about these other parallel frontiers will aid us in thinking about how these frontiers may work in the first place. The case in question illustrates how Islamic law adapted to new environments and what concerns administrators and jurists had about dealing with

<sup>7</sup> I disagree with Seed's focus on the prophetic tradition.

<sup>8</sup> As part of a research project on the history of the reception of religious refugees.

<sup>9</sup> On the concept of mutually intelligible culture, see *ibid.*

<sup>10</sup> James C. Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven, CT: Yale University Press, 1998), introduction to pt. 3.

non-Islamic practices and property obtained through means not recognized as lawful and the strategies adopted to resolve such concerns.<sup>11</sup>

The case, or the question prompting the case, arose sometime toward the end of the first quarter of the twelfth century. Ibn Rushd al-Jadd of Córdoba (Averroës's grandfather and one of the principal figures of Mālikism and its twelfth-century systematization and reform) received a formal written request (an *istiftā'*) for his authoritative legal opinion as a jurisconsult, or *muftī*. The person or persons requesting the opinion (responsum or *fatwā*: an authoritative, nonbinding legal opinion by a *muftī*) was someone presumably in a position of power in the Maghrib. Al-Andalus (of which Córdoba had once been capital) and the western, or Far, Maghrib had been politically unified for the first time in centuries a few decades before by the regime that patronized Ibn Rushd al-Jadd. My own interest in the case and its importance here is that it highlights the interaction between Islamic, or Mālikī, law and local non-Islamic practices or custom. I think it also shows, through its careful wording or narration, a certain awareness of that interaction and its possible implications.

The text of the *fatwā* refers to the petitioner as one of the “desert” Almoravids, here identified as one of the Mulaththamūn, or veiled or muffled ones (formal written opinions were most often solicited by a judge, or *qāḍī*, adjudicating a case).<sup>12</sup> From the perspective of Córdoba, this would have been one of the distinctive characteristics of the new military-administrative elite, an ethnically distinct caste. This “desert Almoravid” wrote to Ibn Rushd from across the Mediterranean with a question concerning “the usurpation taking place among them.” He wanted to know what should be done concerning a group of tribes who wintered in the desert and whose custom was to raid each other's cattle. This was a long-standing custom in the community—practiced by “fathers and grandfathers.” This property “usurped from each other” had been inherited and passed on from generation to generation. The petitioner posed a series of questions related to the

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<sup>11</sup> I analyzed this *fatwā* in my book on legal consultation between Morocco and Córdoba under the Almoravids and revisit it here because of what it says about jurisdictional frontiers. See Camilo Gómez-Rivas, *Law and the Islamization of Morocco under the Almoravids: The Fatwās of Ibn Rushd al-Jadd to the Far Maghrib*, Studies in the History and Society of the Maghrib, vol. 6 (Leiden: Brill, 2014), 107–11. This *fatwā* has also been analyzed in Russell Hopley, “Nomadic Populations and the Challenge to Political Legitimacy: Three Cases from the Medieval Islamic West,” in *The Articulation of Power in Medieval Iberia and the Maghrib*, ed. Amira K. Bennison, Proceedings of the British Academy, vol. 195 (Oxford: Oxford University Press, 2014), 233–49. On the basis of a statement in the text that the question comes from one of “the veiled-ones of the desert” (i.e., the Almoravids) and concerned “a group of tribes who winter in the desert,” I interpreted the actions described in the case as taking place in the Maghrib. Hopley's reading places the action in a different context (in Al-Andalus itself). The conflict, however, is likewise construed as one setting a group ruled by orthodox Mālikī tradition against a group whose practices do not conform to this tradition, the crux of the matter residing in the fiscal exchange (property passing through the hands of the *amīr*):

Ibn Rushd is confronted once again with the delicate task of reconciling a decidedly unorthodox custom of the Almoravids, the origins of which lay in their nomadic heritage, with the dictates of the *sharī'a*. The task that lay before the Andalusī *qāḍī* in this instance amounted to providing a legal gloss for a questionable custom of a people whose nomadic heritage was still strong, and rendering that custom palatable to a sophisticated sedentary populace that had come under the rule of those nomads. The Almoravid practice of offering poached livestock to the *amīr al-muslimin*, himself an Almoravid, and receiving in return money drawn from the *bayt māl al-muslimin* must have appeared to an Andalusī audience suspiciously like an illicit use of public funds, and it no doubt called into question the fitness of the Almoravids to rule over the community of Muslims. (Hopley, “Nomadic Populations and the Challenge to Political Legitimacy,” 239)

<sup>12</sup> Ibn Rushd, *Fatāwā Ibn Rushd: Li-Abī al-Walīd Muḥammad b. Aḥmad b. Aḥmad b. Rushd al-Qurṭubī al-Mālikī*, ed. al-Mukhtār b. al-Ṭāhir al-Taḥlīlī, 3 vols. (Beirut: Dār al-Gharb al-Islāmī, 1987), 1018–19.

problem of the Muslim who trades in property when the procurement or origin of that property is unlawful according to the *shari‘a*.<sup>13</sup> He asked whether a “pious” person could purchase cattle from these tribes, whether the tribes could offer their cattle to the commander of the Almoravids (Amīr al-Muslimīn) and whether said “pious” person, in turn, might receive the gift of this cattle from the Amīr al-Muslimīn. May the *amīr* of the Almoravids reward members of these tribes in reciprocation for the gift? May he use public money from the treasury (or *bayt al-māl al-muslimīn*)? He also asked whether it is permissible for a man belonging to one of those tribes who is appointed commander by the *amīr* of the Almoravids to receive such gifts of cattle and make or receive them from the Almoravid *amīr*. The *istiftā’* ends with the question of whether the fact that the raiding activity was limited to this community of tribes had any bearing on the ruling (*hukm*).

What interests me most about this case is how it highlights the interaction between the official legal regime of the Almoravids and a practice (call it customary) of a group with which the legal regime is coming into contact.<sup>14</sup> The question is also about property that is owned in an unrecognized or illegitimate fashion entering into the recognized legal property regime patronized by the Almoravids. The question is framed by the *mustaftī* under the rubric of usurpation (*ghaṣb*) rather than theft (*sariqa*).<sup>15</sup> Certain conditions must be met for something to be termed theft (the testimony of two witnesses, a confession, and identification of what was stolen and from whom). All these are absent in the case in question. Generally speaking, when someone is proven to have usurped, that is, unlawfully taken possession or caused the destruction of someone else’s property, whether intentionally or by mistake, the person is liable for replacing or compensating the owner for the property.<sup>16</sup> Camels and other livestock were considered usurpable. In Mālikī literature there is disagreement among jurists over the exact nature of the liability or what was to be restituted in cases of usurpation. The principal variables included the determination of intentionality or accidentality—whether caused by man or God—the nature of the property, and its valuation, including whatever benefits the usurper may have drawn from the property since usurpation.

In the present case, these considerations were not relevant, since no specific party claimed to have lost the property. What concerned the *mustaftī* was not whether or how to effect restitution, but whether the property could be lawfully traded or gifted. This concern is addressed in legal manuals under the topic of *hibāt*, or gifts. And while the legal dimension of gift giving revolves mostly around issues of *ribā* restrictions and inheritance (such as under what circumstances property can be given away as gifts and the limitations placed on the portion of an individual’s wealth that can be gifted), proven and lawful ownership was certainly deemed an essential

<sup>13</sup> The *mustaftī* is placing the question into an existing legal framework, translating into an institutionally comprehensible narrative strategy.

<sup>14</sup> Politically these tribes may have been part of the Almoravid federation from the very beginning, but the Almoravid period, especially after unification with Al-Andalus, saw the accelerated development and adoption of Mālikī law and institutions in the area. I am thus making a distinction between political and legal regimes.

<sup>15</sup> Presumably because the owners of the usurped property are not identifiable and because of the different liability attached to each offense. While *sariqa* is subject to the *hadd* liability of amputation, “substantial doubt with respect to ownership,” however, “has the effect of waiving this *hadd*.” Ibn Rushd al-Hafid, *Bidāyat al-Mujtahid (the Distinguished Jurist’s Primer)*, trans. Imran Ahsan Khan Nyazee, 2 vols. (Reading, UK: Garnet, 1994), 2:543.

<sup>16</sup> In Mālikī law, usurpation, defined as the act of acquiring or causing the destruction or loss of property belonging lawfully to someone else, is chiefly subject to the liability of restitution of the usurped property. Usurpation is considered a tort.

condition for the act to be lawful. Thus, for a gift transaction to occur, the property in question must be rightfully owned by the gift giver.

Ibn Rushd answered this question in a fair amount of detail, acknowledging the significance of the issue and its bearing on the power and behavior of military-political leaders. The gist of his opinion was that the property need not be considered usurped but rather “found” or *trove*<sup>17</sup> (*luqta*), meaning that the status of the property should be conceived in a wholly different manner from that initially posited. The camels in the possession of this group of tribes should be considered *trove* instead of usurped, because they were inherited (“from fathers and grandfathers”) and because of the great length of time elapsed since they came into their possession. Restitution of the property, “or of any portion of it,” to a rightful owner is impossible. If such is the case, Ibn Rushd continued, “let it be judged to be in the [rightful] possession of those who possess it . . . by inheritance from their fathers and grandfathers,” and let the property be deemed, therefore, to have been “found.” In support of this opinion Ibn Rushd adduced the tradition in which the Prophet reportedly said to someone who had found something: “Do as you like with it.”<sup>18</sup>

It is commendable for a person who finds such property to donate it to charity. But it is not obligatory. He said it is permissible for anyone to purchase such livestock from the present owners and likewise permissible for the Amīr al-Muslimīn to receive and bestow such property as a gift and for the recipient to receive and own it. “He incurs no crime or sin through this.” It is also lawful for the *amīr* of the Almoravids to reward the person or tribe who gave him this gift from the *bayt al-māl*.

What is a more sensitive issue, however, is for the holder of an office [*wālī*] who has been appointed by the Amīr al-Muslimīn to receive such a gift.

For him it is not permissible to accept it from them, due to what has been said [in the Prophetic *ḥadīth*, which is] that “the gifts of commanders are malicious [*ghalūl*],” unless he reimburses it [*yukāfi’u ‘alayhā*]. If he reimburses with a value equal to it, [by means of] a reward, and he gives some of it [as a gift] to the Amīr al-Muslimīn—may God perpetuate his success and sanction—and [the *amīr* in turn] gives this to someone, this giving is sound and permissible for him. [This remains so] whether the usurpers of this cattle usurped it from someone who has not usurped from them or from one who has [usurped] from their fathers before them. Since the tribe has plundered the tribe, each individual does not know that he took specific property [or] to whom particular property has gone.<sup>19</sup>

Receipt by the *wālī* of such property without redistribution is thus deemed corrupting. The original source of the property—once the property itself is declared “found” with certainty (meeting certain conditions)—is not relevant. Overall, Ibn Rushd placed great emphasis on the redistributive role and protocol of political authorities with regard to receiving gifts. Naturally, if the conditions above are not met, and the current owners in fact usurped the camels, or they know the owner and can return the property to a specific person or to his or her heirs, they are obliged to return the property. And any person receiving usurped property knowingly will be liable for that usurpation.

<sup>17</sup> As Hopley (“Nomadic Populations and the Challenge to Political Legitimacy”) aptly translates.

<sup>18</sup> Ibn Rushd, *Fatāwā Ibn Rushd*, 1018–19.

<sup>19</sup> *Ibid.*, 1019–20.

To summarize, the case discusses the means by which an object, owned and acquired by means not recognized by the system, can be incorporated, traded, and owned in a way that is acceptable or recognizable to the officially sanctioned discursive system of the regime. An object that existed on or beyond the frontier of the legal regime is translated into that regime, its ownership and circulation made lawful through a set of careful considerations. Certainly, not every single piece of property entering into the legal regime received such careful consideration. Moreover, the political expediency of legalizing property possibly destined for the ruler must be considered. The *fatwā* may have been produced as the result of a somewhat cynical ratiocination by the *muftī* in order to legalize an activity of the regime that was his patron. Nevertheless, the awareness displayed by the actors and the act of translation itself, bringing the object into the legal regime of ownership, are striking, since they acknowledge and engage the object, its origin, and the customary practices associated with its trade and procurement. In the many centuries of steady development and expansion of Islamic legal jurisdictions, similar questions, answers, and strategies of translation must have been enacted countless times.

### THE SEA FRONTIER

The Mediterranean and its ports constituted a space characterized by legal pluralism and interaction between legal regimes. The case above shows how the practices of a group (on the frontier of the community) whose activities or property are considered to be illegitimate can be legitimated or legalized, pointing to a longer process of the interaction of Islamic discursive traditions with non-Islamic ones and how they adapt creatively. Such interactions, it must be noted, did not occur only on the outer frontiers of regimes, especially as depicted by modern maps and boundaries. They also took place domestically or internally, especially at points where state and non-state spaces met, where activities administered according to the official legal regime interacted with groups and activities that were not. In the twelfth-century Far Maghrib, where the Mālikī establishment was relatively new and expanding, there were many such points of contact.

Perhaps because it is a space characterized by interaction between legal and commercial cultures in the *longue durée*, the Mediterranean coast presented especially rich nodes of commercial, legal, and diplomatic interaction and was recognized as such by the practitioners of Mālikī law itself. Some of the most interesting research in this field concerns Mediterranean maritime customary law, with overlapping jurisdictions and flexible points of connection. At these points significant mediation occurs. A recent article by Delfina Serrano illustrates the process of interaction between Mālikī and maritime law and the complex evolution of the former through this contact. Serrano argues that Mālikī maritime law developed significantly in the Almoravid and Almohad periods because of the increase in maritime trade in places like Ceuta, the most important port in the Far Maghrib in the twelfth and thirteenth centuries. Her analysis centers on the commercial partnership of the *qirād* or *commenda*, “a form of partnership contract in which one party provides the capital and the second party does the work”<sup>20</sup> as discussed in Muḥammad b. ‘Iyāḍ’s *Kitāb al-shirka* (Chapter on partnerships), a work composed in two stages, by father and son, spanning the transition between the Almoravid and Almohad periods. The father, who served as *qāḍī* in Ceuta, presided over cases (*nawāzil*) and requested written opinions. These were compiled by his son, Muḥammad, whose compilation and commentary in the

<sup>20</sup> Delfina Serrano Ruano, “Custom, Almohad Legal Ideology and the Development of Mālikī Maritime Law,” *Encounters: An International Journal for the Study of Culture and Society* 6 (Fall 2015): 37.

*Kitāb al-shirka* constitute one of the most important works on maritime law after the tenth-century *Kitāb akriyat al-sufun* (Book on the leasing of ships) by Khalaf b. Abī Firās (d. 969), which is the foundational and probably most important work on the subject before the modern era. Both of these works explicitly acknowledge custom (*ʿurf*) as a major source of maritime law—one of the relatively few areas in which custom enjoys an unproblematic prominence. “Already by the eleventh century CE,” Serrano writes, “Mālikī treatises on applied law (*furūʿ al-fiqh*) mention custom (*ʿurf*) as the ruling principle of certain legal practices connected with marriage, land cultivation, and commercial transactions, the validity of custom being equated there with that of a stipulation in a contract (*al-ʿurfka-l-shart*).”<sup>21</sup> Ceuta’s rise to prominence as the principal North African Almoravid port, paired with Almoravid patronage of Mālikī law, spurred the articulation of important commercial law.<sup>22</sup> In Halima Ferhat’s words: “L’activité commerciale, la nécessité d’établir des contrats conformes à la législation, ont provoquée, très tôt, le développement d’un droit commercial. *Madhahib al-ḥukkām*,” the work containing the *Kitāb al-shirka*, “est truffé de cas qui traitent du processus en cours. Les cadis appliquent souvent le *ʿurf* en matière commerciale. L’un des chapitres les plus originaux du corpus de ‘Iyyad est consacré aux contrats de nolisation et associations commerciales.”<sup>23</sup> Serrano’s analysis unpacks Ferhat’s insight. Ceuta’s position as a nexus of exchange developed in the Almohad period, as Serrano writes, when its “strategic and economic position improved even further. Ceuta managed to monopolize the bulk of commercial transactions with the Christians—a circumstance encouraged by the limitation upon the number of ports open to this trade imposed by the Almohad authorities—and, as a result, the Pisan merchants present in the city were soon followed by the Genoese. The city’s economic growth reached its peak in the thirteenth century CE.”<sup>24</sup>

Serrano’s analysis involves a particular aspect of the partnership concerning the liability of the shipowner when the cargo or ship was lost or damaged. Is the value of the ship calculated as part of the average investment? And does the shipowner form part of the “community of risk” of the partnership? Muḥammad b. ‘Iyād’s text reads as a minitreatise on maritime commercial law, mostly focused on determining liability and compensation, adducing different questions and opinions put forth by Mālikī jurists on the topic.

There are three opinions regarding whether or not the ship must be included in the assessment of the general average contribution for jettisoned cargo: the first one is that it must not be included in this category; the second opinion is that it must and the third opinion is that it must be included in this category only if it touched the bottom while being anchored in a harbour. There is a fourth opinion by Abū Muḥammad Ibn Manṣūr, according to which the ship must be included in the accounts to assess compensation for jettisoned cargo if its owner had thrown himself into the storm.<sup>25</sup>

<sup>21</sup> Ibid., 32.

<sup>22</sup> Serrano builds on her analysis of Muḥammad b. ‘Iyād’s *Kitāb al-shirka* as well as on the seminal work on Ceuta by Halima Ferhat. See Halima Ferhat, *Sabta des origines au XIVème siècle* (Rabat: Ministère des Affaires Culturelles, 1993).

<sup>23</sup> Quoted in Serrano Ruano, “Custom, Almohad Legal Ideology and the Development of Mālikī Maritime Law,” 53n8. Ferhat, *Sabta des origines au XIVème siècle*, 288.

<sup>24</sup> Serrano Ruano, “Custom, Almohad Legal Ideology and the Development of Mālikī Maritime Law,” 36.

<sup>25</sup> Ibid., 26.

Another significant aspect of Muḥammad b. ‘Iyād’s intervention is that he sides in favor of some of the jurists he quotes—almost all of whose opinions are derived from customary Mediterranean maritime law—but he dresses this up in Islamic legal clothing. Positions are preferred because they are espoused by prominent Mālikī jurists of the past. Muḥammad’s strategy is determined by the religio-political and intellectual context he was working in and resulted in the relatively contradictory stance he espoused: embracing customary practice on the basis of its concordance with Islamic legal principles. For our discussion here this is also interesting, as it illustrates another, difficult process to trace, in which customary or non-Islamic social, legal, and judicial practices morph into Islamic ones and lose their origins and genealogies.

The import of the *Kitāb al-shirka* for my own investigation is how it shows Mālikī law developing through contact with commercial spaces and agents outside the legal regime. It suggests also that further research in these exchanges can substantiate and clarify the process of negotiation, influence, and interaction between Islamic and Christian legal spheres and the plural jurisdictions mediating between them. Indeed, it appears clear that European commercial law, including the elaboration of partnerships such as those described by Muḥammad b. ‘Iyād, began to develop significantly in the twelfth century. Mallorca, to give a prominent example, after its fall to Jaume I in 1229–31, became an important emporium and nexus of exchange between the Christian and Muslim kingdoms of the western Mediterranean. Pope Gregory IX allowed the island to trade a variety of items and products with Islamic states.<sup>26</sup> An early documentary record of such transactions, the record book of the notary Pere Romeu, dated to 1240, some ten years after the conquest, includes seventeen *comanda* contracts, a significant portion of which appear to have involved trade with the Maghrib.<sup>27</sup> Documentation from the fifteenth century shows a similar level of sustained engagement. “Of the 339 maritime journeys between 1448 and 1480 that we are able to document, 151 went to Barbaria, which accounts for 46.89% of the total, although the documentation is uneven and incomplete. The loads headed to Barbaria accounted for one third of the total *comanda* contracts still conserved. The others were partnership agreements for maritime commerce.”<sup>28</sup> The *comanda*, likewise, became the system most used by the merchants of Barcelona in their commerce with the Maghrib. The development of this and related forms of partnerships in the Latin western Mediterranean can be traced in documentation in Catalan and Italian from places like Barcelona and Pisa from the mid-twelfth century through the thirteenth.<sup>29</sup>

The argument that modern forms of commercial partnership developed in late medieval Mediterranean Europe as a result, to some extent, of maritime commercial activity has a long and distinguished history in Western historiography. Max Weber’s dissertation and first book, *The History of Commercial Partnerships in the Middle Ages*—an investigation that proved influential in his later work, including *The Protestant Ethic and the Spirit of Capitalism*—argues precisely this, that modern German forms of commercial partnerships had their roots in late medieval

<sup>26</sup> Maria Teresa Ferrer i Mallol, “Catalan Commerce in the Late Middle Ages,” *Catalan Historical Review* 5 (2012): 37. Horses, mules, weapons, iron, and wood were excepted from this trade.

<sup>27</sup> Ten of the seventeen *comanda* “indicate their destination: four were heading towards ports in the Maghrib, namely Ceuta, Algiers, Bône (Annaba) and Tunis, and one alone to Islamic Spain. The other destinations were in Catalonia, Valencia and the Islands” (ibid.).

<sup>28</sup> Ibid., 38.

<sup>29</sup> Carme Battle i Gallart and Elisa Varela Rodríguez, “Las relaciones comerciales de Barcelona con el norte de África (siglo XIII),” *Anales de la Universidad de Alicante, Historia Medieval* 7 (1988–89): 23–52.

Italian forms and that these did not originate as strategies for sidestepping usury laws. He traces the origins of some forms to Italian maritime trade cities and of others to more inland crafts operations. Weber finds the beginnings of modern commercial partnerships in the medieval *commenda*, “essentially a partnership in which an investor (the *commendator*) commissioned a traveling partner (the *tractator*) to sell merchandise for a share in the profit.” This partnership existed in two basic forms, unilateral and bilateral. In the first, the traveling partner did not contribute capital, and the profit was divided “so that the sedentary investor would typically receive three-fourths of it.” In the case of loss, the investor absorbed it in full. With the bilateral *commenda*, “the investor usually received half of the profit and absorbed two-thirds of the loss,” writes Lutz Kaebler, who has translated and studied Weber’s earliest works.<sup>30</sup> “Hence, in terms of the assumption of risk, in the unilateral *commenda* the traveling associate was a mere participant in the venture, and his involvement, in a technical sense, could thus be called a mere ‘participation.’ Weber argued that this type of partnership, based on such participation, relates neither to the general nor the limited partnership but to the modern agency, in which a commission agent buys and sells goods in his name on the account of another person, the principal.”<sup>31</sup> A comparative analysis of commercial partnerships in the tenth- to fifteenth-century western Mediterranean would reveal nodes of complex interaction between legal cultures that otherwise considered themselves separate. And without going into much greater detail into an intricate topic, I believe this brief presentation points to the existence of a mediating space or a community of practice mediating between these legal cultures.<sup>32</sup>

To reiterate, I argue that these forms of interaction, however briefly sketched, were more influential in the dialogue between Christian, Muslim, and Jewish cultures than those construed as having occurred at the foundational moment (during the Islamic conquests) or originating from the static, doctrinally defined position of one community on the other. Recent studies in Islamic law and society, such as those quoted above, show (1) that Islamic legal practice evolved pronouncedly between the period of conquest and the late European Middle Ages; any analysis that conceives of a fully formed Islam or a fully formed Islamic law arriving with conquest, exerting influence from the beginning and (crucially I think) not developing in relation to its interaction with the communities around it, rings simplistic; and (2) that other legal, administrative, and

<sup>30</sup> Lutz Kaebler, “Max Weber’s Dissertation,” *History of the Human Sciences* 16, no. 2 (2003): 43–44.

<sup>31</sup> Kaebler continues:

In the case of the *societas maris*, or bilateral *commenda*, two parties contributed capital, but not as equals, and while the contribution of different amounts of capital by the parties necessitated some form of accounting for these contributions, Weber initially finds only beginnings of a separate fund, notably in the case of Genoa, that was legally treated as such in a partnership’s relations to third parties (the creditors) (pp. 74–8). The same is also true for partnerships called *societas terra* or *compagnia di terra*, which were employed in overland trade. In the case of Piacenza, Weber finds partners whose personal liability was unlimited and other partners who were liable only to the extent of their contribution (see pp. 80–2). For Pisa, an important place of maritime trade, Weber is able to show that the city’s commercial stipulations reflected the existence of a separate fund as well as of partnership business undertaken in the name of a firm. There was no solidary liability among the partners, however. The investor’s liability was limited to his contribution, whereas the liability of the main managing and enterprising partner was unlimited. Weber therefore traces the origins of the modern limited partnership to the *societas maris* in Pisa (chap. 4, especially p. 136). (Kaebler, “Max Weber’s Dissertation,” 43–44)

<sup>32</sup> While this has long been recognized, further investigation seems promising. See Stephen D. Goitein, “Commercial and Family Partnerships in the Countries of Medieval Islam,” *Islamic Studies* 3 (1964): 315–37; and Abraham L. Udovitch, *Partnership and Profit in Medieval Islam* (Princeton, NJ: Princeton University Press, 1970).

social (for lack of a better word) jurisdictions and spheres of action were equally significant for eventual outcomes. The “jurists’ law” of *sharī‘a* and its manuals coexisted with justice enacted by governors, sultans, and other sovereigns, with the on-the-ground policing and administration of *muhtaşibs* and market inspectors, and with non-Islamic jurisdictions, including those of *dhimmīs* as well as of the communities and spheres of activity lying outside explicitly *sharī‘a*-governed spaces—for example, tribal, maritime, and military law. The Muslim Mediterranean lands were characterized by an environment of legal pluralism, by no means identical to that of the Latin West but where parallel process occurred.

This comparative history of commercial partnerships likewise taps into the rich historiography of comparative capitalism or European ascendancy. The inability of Islamic institutions to evolve more complex or flexible partnerships and cooperative capital-accumulating forms is a well-known and oft-rehearsed argument.<sup>33</sup> Weber’s own work, of course, explored this question: the complex relationship between religion and economy. Both questions remain worthy, and they should be revisited with the more robust understanding of the social and institutional history of Islamic societies that has developed in recent years. They remain, however, outside the scope of this article. And, perhaps more significantly, they have proven somewhat distracting in the past. Master narratives and guiding questions about the why and wherefrom of European institutions have resulted in a deeply Eurocentric historiography. One of my points here rests on attempting to establish, at least partially, a Maghribī frame of reference, one in which “influence” is construed, not as emanating from a classical, religiously defined trait, unidirectionally traveling from “East to West,” but as bidirectional and multidirectional influence, mirroring responses, relationships of reciprocity. This is because in the post-twelfth-century Mediterranean interaction between Muslim and Christian actors, informal as well as official (economic, diplomatic, military, and commercial), only grew in intensity. A perspective in which only the institutions of the northern Mediterranean are those exhibiting development and evolution is unconvincing and tired.

Joshua White in his work on law in the early modern eastern Mediterranean—to give just one example of a recent study attuned both to the multilateral complexity of the engagement of imperial and corporate political and legal regimes and to its complex development beyond our period and into the sixteenth and seventeenth centuries<sup>34</sup>—has shown how Ottoman legal authorities in the sixteenth and seventeenth centuries were continually approached by non-Ottoman, non-Muslim actors to achieve commercial and political gains. In his article “Fetva

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<sup>33</sup> According to Timur Kuran, *The Long Divergence: How Islamic Law Held Back the Middle East*, Kindle ed. (Princeton, NJ: Princeton University Press, 2011), location 1218–27:

Studies of premodern Middle Eastern cities provide evidence of traders, Muslim and non-Muslim, who built huge households and financed major public services. Taken as a whole, they confirm also that neither the scale nor the organization of commerce changed appreciably over time. In seventeenth- and eighteenth-century Istanbul, Aleppo, Tunis, and Cairo the pooling of commercial resources generally took place through partnerships structurally identical to ones common almost a millennium earlier. Moreover, commercial businesses involving resource pooling across families rarely survived their founders; ordinarily heirs to commercial fortunes did not retain, let alone develop, businesses established by deceased relatives. Scholars describe contracts found in records of the seventeenth, eighteenth, and even early nineteenth century with reference to legal treatises of a millennium earlier. Within Middle Eastern studies very few works exist on organizational dynamics of the private sector, which is a vast subfield of European economic history. This is not for lack of talent. Rather, it reflects the organizational stagnation of Middle Eastern commerce, precisely what this book has set out to explain.

<sup>34</sup> And, of course, concerning the very different but akin environment of the eastern Mediterranean.

Diplomacy: The Ottoman *Şeyhülislam* as Trans-imperial Intermediary,” White shows how the Ottoman Empire (and the institutions it inherited) provided a legal framework not only for the multireligious interaction of actors within its imperial space (which is well documented) but also for the interaction of actors outside its jurisdiction (foreign jurisdictions not necessarily recognized in any way as legitimate by Ottoman *Ḥanafī* law).

From at least the late sixteenth century onward, the *şeyhülislam* was an important node on the Istanbul diplomatic circuit. Alongside other highranking Ottoman dignitaries and political figures like the grand vezir, the *kaymakam* (the grand vezir’s deputy and stand-in when he was away on campaign), and the *kapudan paşa* (the imperial admiral), the *şeyhülislam* entertained frequent visits from European ambassadors. Unlike these others, however, the *şeyhülislam* had no formal political-administrative or military function. But in his capacity as the sultan’s jurisconsult, it fell to the *şeyhülislam* to interpret, explain, and, when necessary, legitimize the Ottoman Empire’s commercial agreements and peace treaties with foreign powers, called *ahdname*. Securing the *şeyhülislam*’s assent, often alongside that of other influential religious figures, proved necessary to establish commercial relations with the Ottoman Empire and obtain a favorable *ahdname*.<sup>35</sup>

White goes on to show how English and Dutch negotiators worked to obtain *ahdname*. In both the English and Dutch negotiations to obtain an *ahdname* in 1578 and 1612, respectively, the acquiescence and subsequent support of the *şeyhülislam* were essential to the missions’ success despite vociferous opposition from the other established European trading communities. It could be argued that this is a sort of precapitulation kind of response. But what I think is important is the nuanced process of negotiation and exchange across legal regimes or jurisdictions and the changing nature of these through the agency of the flow of people and things through and across them. It also shows that the actors involved in these exchanges were aware of how the foreign institutions of mediation worked, and especially of how they could be leveraged for influence to bring about desired results in an interaction.

## CAPTIVITY, RANSOM, AND DIPLOMACY

The rise in the numbers of captives taken for ransom in the clashes associated with the expansion of the Iberian Christian kingdoms involved a special kind of interreligious violence and points to the development of mirroring and reciprocating institutions and social responses. The increase in the taking and ransoming of captives (or, alternatively, selling them as slaves) was part of the process of emerging sharper religious (and racialized religious) identities. In a previous article (arguing that a history of the reception of the refugees of the *reconquista* should begin with an investigation of this captivity industry), I looked at a series of cases containing questions about

<sup>35</sup> Joshua M. White, “Fetva Diplomacy: The Ottoman *Şeyhülislam* as Trans-imperial Intermediary,” *Journal of Early Modern History* 19 (2015): 200–201. White also writes:

The *şeyhülislam*’s unique, quasi-outsider position—of the Ottoman administration but not quite part of it—and his religious gravitas were precisely what made him such a valuable diplomatic ally and effective intermediary across confessional and political lines. The power and influence of individual *şeyhülislams* varied over the course of the early modern period, but in all manner of affairs concerning war, peace, and trade, Venetian, French, English, and Dutch ambassadors sought the mufti’s counsel and aid. However, Christian diplomats and their Ottoman Muslim interlocutors sought more than his approval or occasional intercession; they also sought his written legal opinions, his fetvas (Arabic: *fatwa*), the most powerful tool wielded by the Ottoman Empire’s chief mufti.

captives, their ransom, and the management of ransom money.<sup>36</sup> The high level and frequency of diplomacy over captivity and ransom meant that by the thirteenth century it had become one of the (maybe five) most important issues discussed in diplomatic communications between Christian and Muslim sovereigns. Examples of the textual evidence include the case of a group of captured Christians who claimed to have safe-passage documentation (the questioner asks whether this was legitimate), a petition to build a new house of worship (a church) by a group displaced to the Maghrib, the case of a woman wanting to use money from a fund created to ransom her for something else (i.e., to buy food and clothing), several letters from Muslim sovereigns to the Crown of Aragon asking for the return of captives, and the case of the large-scale capture and ransom of the inhabitants of Minorca in 1287 by Alfonso II of Aragon (when thousands were ransomed and sold), a case in which ransoming causally leads to the resettlement of a group as religious refugees.

A few major points emerge out of these cases and analyses. The rise of a capture and ransom industry shows how societies on both sides of the Muslim-Christian frontier focused their imaginative and affective energies on the frontier and responded in mirroring and commensurable ways to the development of that industry, not identically but in synchronicity. Ransoming and its success (if it can be called that) point to this mirroring and to a set of social responses and expectations that developed. These include the formation of Christian redemptive orders, the establishment of funds and endowments to rescue Muslims (a process still poorly understood), diplomacy at the highest level, and the expectations of all the actors: of profiting by the taking of captives, of being ransomed after settling on the frontier, and, when returning home was impossible, of being resettled by family, coreligionists, or sovereigns.<sup>37</sup>

As has been noted, a relatively extensive diplomatic correspondence was produced by the interactions and negotiations of Christian and Muslim kingdoms of the twelfth- to fifteenth-century Mediterranean. The Arabic letters preserved in the archive of the Crown of Aragon constitute one of the better-known collections. Most of them are from North African sovereigns and emissaries to the Crown. In them we read hints of threats of potential violence, such as when Ismāʿīl I threatens Jaume Andreu with military action if the latter does not deliver a group of captives. But on the whole, what we find is a series of assurances of safe passage for merchants and pilgrims and entreaties for the return of captives and promises of fealty. The collection also includes peace treaties, such as that between Pedro IV of Aragon and the Hafsid sultan of Tunis, Abū Ishāq Ibrāhīm. Dated January 15, 1360, it is a tributary treaty, outlining a series of obligations from the vassal sultan to the Aragonese king, including an obligation of two thousand gold dinars a year and assurances of access to khans and safe passage (evidence of Aragonese preeminence in western Mediterranean commercial networks). It is, however, still couched in a language of Islamic legitimacy:

This is a blessed peace treaty that, in the name of our lord and sovereign, the Caliph, the Imam, who calls on the help of God, and aided by the grace of God, Prince of the Believers, Abū Ishāq

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<sup>36</sup> Camilo Gómez-Rivas, “The Ransom Industry and the Expectation of Refuge on the Western Mediterranean Muslim-Christian Frontier, 1085–1350,” in Bennisson, *Articulation of Power in Medieval Iberia and the Maghrib*, 217–32.

<sup>37</sup> I want to investigate the history of these social responses further because I believe it can yield insight into change and the agents of change in the institutional development of the late medieval and early modern western Mediterranean. In the meantime, see *ibid.*

Ibrāhīm, son of our lord and sovereign, the Caliph, the Imam, who places his trust in God, who calls on God's help, Prince of the Believers, Sanctified, praise God, Abū Yahyā Abū Bakr, son of our lords the princes who follow the straight path, [may God fortify them with His help and aid them with His goodness, praise, and glory and] perpetuate his power and extend his dominion over the surface of the earth...<sup>38</sup>

And on for several lines before letting the reader know that “by the present document peace is established with the respected and illustrious Don Pedro, of glorious renown . . . , for a period of ten years.”<sup>39</sup> The treaty saves face and preserves significant qualities of Islamic diplomatic tradition, including what might be interpreted as a kind of posturing (one can almost suspect things being lost in translation or the readings and misreadings of the parties).

A rarer set of documents from the thirteenth-century frontier between Granada and Aragon illustrates even more clearly the dialogue and interpretive and performative discrepancies occurring in such treaties. The bilingual surrender treaties of al-Azraq and Játiva to Jaume the Conqueror contain interlinear Catalan and Arabic in one case and Latin and Arabic in the other. The Catalan begins: “Let it be known to all present and future: that I Abu ‘Abd Allah ibn Hudhayl, wazir and lord of Alcala, make myself your vassal, lord Don Alfonso, the elder son of the king of Aragon, and give you eight castles—one called Pop and the other Tárbená, and Margarida, Cheroles, Castell, Alcala, Gallinera, and Perpunchent.”<sup>40</sup> The ensuing lines detail the property and obligations owed. Significantly, there are discrepancies between the interlinear texts, each apparently endeavoring to present the situation in the most positive light or to adhere to certain concepts and traditions of sovereignty and legitimacy within the limits of the acceptable when negotiating these. Robert I. Burns, who, with Paul Chevedden, edited and studied the text, sees it as a negotiating strategy, trying to hold out for the best deal, given the circumstances. And, in the most literal of senses, the bilingual interlinear text (like the Hebrew-, Arabic-, Castilian-, and Latin-engraved tomb that Alfonso X had built for his father) presents a vivid illustration of the process whereby Catalans and Castilians engaged with Arab-Islamic forms, and vice versa, of diplomacy and political negotiation, through continuous and intensive interaction, in a framework of both diglossia and intelligibility. Some things were lost in translation. Some things were adopted and transformed. Some were dropped. A lot was understood.

## CONCLUSION

I think it is important and productive to think of the *Requerimiento* as a text that shares a genealogy with texts such as these bilingual peace treaties, and that the glaring difference is the disappearance or absence of the interlocutor (even one remotely possible) for the text. As in the case of the text of our first case (about trading camzels of dubious origin), I would argue that the real, intended audience are the composers of the texts themselves: a reminder of who is in charge, of

<sup>38</sup> M. A. Alarcón y Santón, *Los documentos árabes diplomáticos del Archivo de la corona de Aragón* (Madrid: Imp. de E. Maestre, 1940), 315.

<sup>39</sup> *Ibid.*

<sup>40</sup> Robert Ignatius Burns and Paul E. Chevedden, eds., *Negotiating Cultures: Bilingual Surrender Treaties in Muslim-Crusader Spain under James the Conqueror*, *The Medieval Mediterranean: Peoples, Economies and Cultures, 400–1453*, vol. 22 (Leiden: Brill, 1999), 37. See also Robert Ignatius Burns and Paul E. Chevedden, “Al-Azraq’s Surrender Treaty with Jaume I and Prince Alfonso in 1245: Arabic Text and Valencian Context,” *Der Islam* 66 (1989): 1–37.

how power is supposed to be enacted, transmitted, and legitimated, of how ownership is made lawful. The original owners of the plundered camels are not being addressed or they are not a serious or main consideration of the discussion. The point is to promote the self-assurance and confidence of those doing the adapting and conquering. But the extreme diglossia of the new context, of an utterance patterned after a dialogue that took place a world away, and without even the possibility of the interlocutors' comprehension, points to the dynamics of how such a practice would change, quickly and irrevocably. This is especially the case if, as I have argued, the practice has not been inherited from the events of a deep past or is not a suddenly reactivated cultural inheritance but, rather, arises from a parallel and continuing context of imperial expansion and campaigns. These were, perhaps, most significant in the Maghrib, on the Mediterranean and Atlantic coasts of which nascent Spanish and Portuguese Empires established and maintained a series of fortified settlements from the early fifteenth century onward. In other words, the Spanish imperial protocols of possession evident in the text of the *Requerimiento* were not inherited or adopted from Arab-Islamic influence but from the context of negotiation with Christian and Muslim neighbors. They were learned from a context of competition and negotiation in Iberia, the western Mediterranean, and the Maghrib that preexisted *and* coexisted with the New World conquests. Perhaps these protocols represent how a group, accustomed to the limitations and rigid requirements of a particular context, acts, imagines, and narrates the process of expansion (to, at least from our perspective, rather rapacious effect) when their horizons have been expanded. About this process, however, and the mind-boggling possibilities opened by New World horizons, the other articles in this special issue are more incisive. A