Appendix A

Al-Wansharīsī: On the Leader of the Muslims of Christian Marbella

[Question]

Praise God, and blessings and peace on the Messenger of God. My master, please give your response to a case, may God be pleased with you and may He, through your life, bring joy to the Muslims.

The case concerns a Marbellan man, well-known for his virtue and piety, who rather than migrating together with his fellow townspeople, stayed behind in order to search for his brother who went missing while fighting the enemy in the land of war. He had until now searched for news of him but, not discovering any and despairing of him, was on the point of migrating when another obstacle arose. This [obstacle] was that he had become a spokesman and helper for the Muslim subject peoples (dhimmīyūn) amongst whom he lived and also for their neighbors who lived in similar circumstances in Western al-Andalus. He represented them before the Christian rulers regarding whatever hardships fate dealt them, argued on their behalf, and frequently rescued them from great difficulties. Most of them are unable to perform these [services] themselves. If he were to migrate, few would be found to match him in this art. On account of his loss [of a brother], he had joined them, but the loss of him [the man himself] would cause them great harm. On the grounds that his residing there is of social benefit (maslaha) to those poor subject peoples, is it possible to grant him a dispensation to live under the rule of the unbelievers, even though he has the ability to migrate whenever he wills it? Or can one give no dispensation to him since [these subject peoples] also have no dispensation for residing there while subject to the laws of unbelief? This is especially the case given that they have been given permission [by the Christians] to migrate, and most of them have the ability to do so when they wish. [Further], if he were to be given a dispensation [to live there], would he also be given a dispensation to pray in his garments [in whatever degree of purity] he is able [to keep them]? This [would be required] because his clothing

1 al-Wansharīsī, al-Miʿyār al-muʿrib, 2: 137–41. The translation of this fatwā was previously published in Alan Verskin, Oppressed in the Land: Fatwās on Muslims Living under Non-Muslim Rule from the Middle Ages to the Present (Princeton: Markus Wiener Publishers, 2012) and has been reproduced with permission. For earlier attempts to translate both this and the next fatwā by al-Wansharīsī into English, see Aboobaker Asmal, “Muslims under non-Muslim Rule: the Fiqhi (Legal) Views of Ibn Nujaym and al-Wansharisi” (Ph.D. dissertation: University of Manchester, 1998) and Jocelyn Hendrickson, “The Islamic Obligation to Emigrate: Al-Wansharīsī’s Asnā al-Matājir Reconsidered” (Ph.D. Dissertation: Emory University, 2009).
would mostly not be free of impurities on account of his aforementioned frequent mixing with Christians, moving about among them, and sleeping and residing in their homes while in the service of the Muslim subject peoples.²

Explain for us God’s ruling regarding this. If God wills it, may you be praised and rewarded and may abundant peace and the mercy and blessings of God, may He be exalted, support your exalted station.

[Answer]

He [al-Wansharīsī] answered him thus:

Praise is to God alone. Here is the answer [to your question], and it is God who bestows success through His grace. It is our one and victorious God who has set the poll-tax (jizya)³ and abasement upon the necks of the accursed unbelievers as chains and fetters with which to roam about the land, cities, and towns, displaying the might of Islam and the nobility of the chosen prophet. Therefore, if one of the Muslims [138], may God guard and protect them, tries to invert these chains and fetters [by setting them] upon his own neck, he has acted against God and His messenger and has exposed himself to the anger of the Almighty and the Omnipotent. Indeed, it would be fitting for God to hurl him together with them into Hellfire: “God has decreed: I shall conquer, I and My messengers. God is Strong and Almighty” (Qurʾān 58: 21). It is obligatory for every believer with faith in God and the Last Day to endeavor to preserve this basic principle of faith by distancing himself and fleeing from the dwellings of the enemies of the Merciful One’s ally [i.e., the Prophet].

To make excuses for the aforementioned virtuous man because of his intention of acting as an interpreter between the tyrant and his sinful Mudéjar⁴ subjects does not free him from the obligation of migration. No one should be under the delusion that there is [any genuine] opposition to the obligation [of migration] in the prescriptions for evading it noted in the question—except someone who displays feigned or genuine ignorance of this inversion of Islam (fiṭra), or who has no knowledge of the sources from which the law is derived. Dwelling among the unbelievers, other than those who are protected

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² For views on how ritual impurity was transmitted from non-Muslims to Muslims, see below, page 9 n. 33.
³ The jizya or poll-tax is the tax levied upon “people of the book.” On its origin and function, see Claude Cahen, “Djizya,” in The Encyclopedia of Islam, 2nd ed., 2: 559–62.
⁴ Arabic: Ahl al-dajn. A Mudéjar is defined as “a Muslim who, after the surrender of a territory to a Christian ruler, remained there without changing religion, and entered into a relationship of vassalage under a Christian king.” L.P. Harvey, Islamic Spain, 1250 to 1500, 3.