

The Mālikī School of Law in Andalusia and Its Impact on the Development of European Legal Systems

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Abstract

Objectives: This article explores the history of the Mālikī school of law in Andalusia and its influence on European laws. The study opens with the period of the Muslim conquest of Andalusia, aiming to highlight the various schools that existed before the emergence and spread of the Mālikī school and its impact on European laws.

Methodology: This article uses a descriptive analysis, drawing on early and contemporary Islamic sources. Its goal is to trace the spread of the Mālikī school of law in Andalusia and analyse its influence on European laws.

Findings: This article demonstrates how the Mālikī school of law influenced modern European laws that modified this jurisprudence and integrated it into their legal systems, such as the French Civil Code. Such was the result of a substantial interaction between Muslims and non-Muslims following the Islamic conquest of Andalusia. Consequently, the article concludes that introducing the Mālikī school of law into Andalusia substantially impacted European laws and systems.

Originality: This article discusses the entry of Muslims into Andalusia during the European Dark Ages. It elucidates how the conquest of Andalusia affected the Andalusians and that Islamic civilisation and the Mālikī school of law influenced most of Europe's nations as well.

Keywords: Mālikī Law; Contemporary Legislation; Conquest of Andalusia; European Laws; Islamic Law

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المذهب المالكي في الأندلس وأثره في تطور الأنظمة القانونية الأوروبية

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ملخص البحث

أهداف البحث: يتناول هذا المقال تاريخ المذهب المالكي في الأندلس وتأثيره في القوانين الأوروبية. وستكون انطلاقة البحث من الوقت الذي فتح فيه المسلمون الأندلس، من أجل إظهار المدارس المختلفة التي كانت موجودة قبل ظهور وانتشار المذهب المالكي وتأثيره في القوانين الأوروبية.

منهج الدراسة: يستند هذا المقال إلى تحليل وصفي يعتمد على الأبحاث الإسلامية القديمة والمعاصرة، بهدف تتبع انتشار المذهب المالكي في الأندلس وتحليل تأثيره في القوانين الأوروبية.

النتائج: يُظهر هذا المقال كيف أثر المذهب المالكي في القوانين الأوروبية الحديثة التي طوّرت هذا الفقه وأدجمته في قوانينها، كما هو الأمر مع القانون المدني الفرنسي؛ وذلك نتيجة للتواصل الكبير الذي حدث بين المسلمين وغير المسلمين بعد الفتح الإسلامي للأندلس. وبناءً عليه، يخلص المقال إلى أن دخول المذهب المالكي إلى الأندلس كان له أثر كبير في القوانين والنظم الأوروبية.

أصالة البحث: يناقش هذا المقال دخول المسلمين إلى الأندلس في وقت كانت أوروبا تعيش في عصر مظلم بسبب انتشار الجهل. ويوضح كيف أثر حدث فتح الأندلس ليس فقط في الأندلسيين ولكن أيضاً في معظم الدول الأوروبية التي تأثرت بالحضارة الإسلامية عامة والمذهب المالكي خاصة.

الكلمات المفتاحية: الفقه المالكي، التشريع المعاصر، فتح الأندلس، القوانين الأوروبية، الشريعة الإسلامية

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Introduction

The Mālikī Madhhab holds significant importance among Islamic schools as it encompasses both the spiritual and civil aspects. It includes comprehensive civil legislation for all legal principles regulating the relationships among people, their relationship with the ruling authority, public security, and the maintenance of freedom and public rights. These laws cover a wide range of subjects, both internally within the community and externally with regard to interactions beyond its borders.

The influence of Mālikī jurisprudence on contemporary legislation is clearly noticeable due to its extensive origins and branches. This is because it draws from various sources, including analogy (Qiyās), Public interest (al-Maṣlaḥah al-mursalāh), custom (‘Urf), juristic discretion (Istiḥsān), presumption of continuity (Istiḥāb), blocking the means (Sadd al-dharā’i’), and other sources of discretion that make the Mālikī Madhhab in a state of continuous growth, and permanent development. Such characteristics allow this Madhhab to confront the developments of contemporary society within the framework of appropriateness of the spirit of the legislative text as well as the purposes of *Sharī‘ah*.¹

This is what has made the Mālikī Madhhab universal. It has affected many Arab and western laws, especially after the conquest of Andalusia (currently Spain) and the translation of the first Mālikī jurisprudence books. These books paved the way for the spread of Malik Ibn Anas’ doctrine in Europe, which was at the height of its ignorance. Andalusia at that time became a beacon of knowledge, attracting foreigners who came to learn not only the different sciences, but also the Arabic language. Moreover, the conquest of Sicily by Asad ibn al-Furāt paved another way for the spread of the Mālikī doctrine in the rest of Europe, chiefly in Italy and France.

On the other hand, it should be noted that the translation work accompanying Napoleon’s campaign in Egypt had a special focus on the summary of Khalīl (Mukhtaṣar Khalīl), which was translated into French by Dr. “Nicolas Peron” in compliance with the order of the French government.² It seems that this manual was the true nucleus of the French Civil Code issued in 1804, where there is a great similarity between this law and the explanations of Khalīl’s summary, especially *Sharḥ al-Dardīr*.

1 Indeed, it is this diversity of sources that has caused difference in opinions among scholars in some provisions, making the Maliki doctrine more capable of providing alternative solutions to emerging issues. For more details: see: Yaser Ajeel AL-Nashmi, “Reasons for the disagreements in the Maliki school of thought using *‘Aqd al-Jawāhir al-Thamīna for Ibn Shas*”, Journal of College of Sharia & Islamic Studies, Vol. 39, Issue 1 (2021). <https://doi.org/10.29117/jcsis.2021.0288>.

2 Louis Sedillot, a French orientalist, further elaborated on this notion by stating that the French government had ordered the translation of the books of Maliki jurisprudence in general. See: Abdussalām Fīghū, “*Athar fiqh al-Imām Mālik fī al-qānūn al-madanī al-Faransī*,” Majallat al-Ḥuqūq, Casablanca, Dār al-Āfāq al-Maghribīyah, Issue 14, (2013), pp. 20-21; Muṣṭafā al-Sibā‘ī, *min Rawā’i’ ḥaḍāratunā* (Al-Riyād: Dār al-Warrāq for Publishing and Distribution, 1st ed., 1999), p. 90.

Based on the foregoing, it is clear that the Mālikī jurisprudence has a clear impact on contemporary legislation. In fact, we could mainly notice its effects in countries that adopt the Mālikī school like the Maghreb countries. For instance, in Moroccan legislation, there are laws that derive their provisions from the Mālikī jurisprudence, chiefly the laws related to family, real rights and Awqaf as well as the Moroccan civil law, which is clearly affected by the French civil law.

From this perspective, we can see the significance of the current topic, which will focus on the spread of the Mālikī school of thought in Andalusia and its impact on contemporary legislation. The study will examine the practical aspects of the Mālikī jurisprudence in modern laws, which are heavily influenced by French civil law.

The research problem of this study stems from the independence of Islamic jurisprudence from other legal systems, particularly Roman law. It is a flexible and not a rigid system, valid for every time and place due to its characteristic of development and renewal. This study aims to demonstrate that the Mālikī jurisprudence is one of the most dynamic, developed, and widespread doctrines. Its widespread influence increased after the adoption of the Mālikī school of thought in Andalusia. Indeed, due to its strategic location in Europe, foreigners flocked to Andalusia so as to learn different sciences, including the Mālikī school, which influenced and inspired them. As a result, they translated some of its most important books and transferred them to their countries of origin. In fact, there are even Western laws that derive their provisions from the Mālikī jurisprudence. This influence is evident in several areas, especially contracts, transactions, eligibility and other provisions that passed to the Europeans and settled among them as customs, which later turned to become laws.

As a matter of fact, the answer to this problem leads the author to divide this article into two major points: First, addressing the conquest of Andalusia and the adoption of the Mālikī school of thought. After that, focusing on the Mālikī Madhhab in Andalusia and European laws: effects and practical applications.

1. The conquest of Andalusia and the adoption of the Mālikī school of thought

Before addressing the adoption of the Mālikī Madhhab in Andalusia, it is necessary to discuss the conquest of Andalusia as a significant historic event that had a huge impact on European civilization. Thus, an overview of the Muslim conquest of Andalusia is provided, and then the explanation of how the Andalusians adopted the Mālikī school of thought.

1.1 The Muslim conquest of Andalusia

Undoubtedly, the Islamic conquest of Andalusia¹ is considered one of the greatest historical events that Europe has witnessed since the Middle Ages, owing to its lasting impact that spanned nearly 800 years. During this period, Muslims established a great civilization in Andalusia, which was considered the “lighthouse of Europe.”² Interestingly, the conquest of Andalusia occurred in a relatively short period,³ estimated at three and a half years, from 711 to the end of 714, during which Muslims conquered all of Andalusia under the leadership of Ṭāriq Ibn Ziyād and Mūsá Ibn Nuşayr.⁴

The Muslims’ rapid conquest of Andalusia could be attributed to several reasons. The most important being the deteriorating conditions of Andalusia due to the brutality and barbarism of the Visigoths.⁵ These Germanic tribes turned the indigenous people into slaves once they entered Andalusia. Additionally, the struggle for power between Roderic⁶ and the sons of Wittiza, led to resentment among the Andalusians, and they became willing to be ruled over by any authority other than the Visigoths. As a result, they looked towards the Muslims in North Africa with the hope of being rescued from the Goths’ oppressive and cruel rule.⁷

Consequently, when Muslims first arrived in the Iberian Peninsula in 92/711, they found a Visigoth monarchy in a state of decline, ruled by an elite of clergymen and noblemen who were widely regarded as

1 The Islamic conquest of Andalusia (Latin: *Capta Islamica della Hispania*) also called in some foreign sources the Umayyad conquest of Hispania (Spain) or the Muslim conquest of the Iberian Peninsula, was a military campaign that began in 711 AD. The Iberian Peninsula, known to the Muslims as “Al-Andalus”, was ruled by an army mostly of Berbers from Maghrib led by Ṭāriq Ibn Ziyād and his superior Wālī Mūsá Ibn Nuşayr. Ṭāriq Ibn Ziyād landed in an area that is now called Gibraltar, then headed north, where he defeated the Gothic king Ludhik (Roderic) in a crushing defeat at Wādī Lak. The conquest resulted in the fall of the Visigothic Kingdom and the establishment of the Umayyad Wilāyah of Al-Andalus. It marks the westernmost expansion of both the Umayyad Caliphate and Muslim rule into Europe. Muslim’s campaign continued until they seized large areas of contemporary Spain, Portugal and southern France. See: Aḥmad Muḥammad Abū Shanār, *Athar al-Masjid fī al-Ḥaḍārah al-Insānīyah* (Oman: Dār al-Mu‘tazz for Publishing and Distribution, 1st ed., 2019), p. 151.

2 Ibid.

3 Ibid.

4 Except for an area at the end of the northwest of Andalusia called the Covadonga, which is also known as “Cradle of Spain” because it was the nucleus of the Christian kingdoms that arose later on, and it had the upper hand in the fall of Andalusia centuries later. See: Rāghīb al-Sirjānī, *Qiṣṣat al-Andalus mina al-Fath ilā al-suqūt* (Cairo: Iqra’ Institution for Publishing, Distribution and Translation, 1st ed., 2011), pp. 74, 82.

5 Visigothic rule lasted for about 300 years in the Iberian Peninsula (5th to 8th century). For more details see: Hugh N. Kennedy, *Muslim Spain and Portugal: a political history of Al-Andalus* (London: New York: Longman, 1996), p.1 et seq.

6 Ludharīq (Roderic) was the last Goth to rule in Andalusia, but not the last Gothic king. His lineage was not true in the Goths, but he acquired the kingship through usurpation when the king Witiza died after 15 years of reigning over Andalusia. See: Abū ‘Abd Allāh Muḥammad ibn ‘Abd Allāh ibn ‘Abd al-Mun‘im alḥimyrā, *Ṣifat Jazīrat al-Andalus* (Beirut: Dār al-Jīl, 2nd ed., 1988), p. 6.

7 Tawfīq Sulṭān al-Ūzbakī, “*al-Ḥaḍārah al-Islāmīyah fī al-Andalus wa-atharuhā fī Ūrūbbā*,” *The Journal of Culture for Studies and Research*, Baghdad, vol. 5, issue 20 (2010), p.12; Abū Shanār, *Athar al-Masjid*, p. 159 et seq.

having subjected the Andalusian populace through much hardship.¹ However, despite creating an unjust society, the Visigoths were also starting to shape a unique ‘Spanish’ identity, something that had never happened before.² One of the ways in which this ‘national’ identity was created was through the codification of the law, which involved getting rid of legal codes specific to different ethnic groups and blending together Hispano-Roman and Gothic law. Leovigild set down 324 laws, and each successive king added to what he found, resulting in a “synthetic and ordered compilation of all the existing laws.”³ Nevertheless, when the Muslims conquered Al-Andalus, this well-defined legal system vanished, and there is no evidence to suggest that Muslims were in any way influenced by the Visigoth code.⁴ The Muslim conquest of the Iberian Peninsula, however, did not result in the replacement of one system with another.⁵ Rather, it resulted in one system being replaced by a vacuum that was slowly filled by a new system, as the primary concern of the first Muslims in Al-Andalus was not to establish an Islamic system of law.⁶

In fact, the Andalusian people readily accepted the Muslims as new conquerors due to the Goths’ brutality. This was especially true during that period when the Islamic civilization was characterized by the progress and prosperity in all religious, educational and political fields, along with the tolerance of the Islamic Sharī‘ah in coexistence with other religions. In contrast, prior to the Islamic conquest of Andalusia, the Iberian Peninsula and Europe as a whole experienced a dark age, marked by injustice, bloodshed, ignorance, and a rejection of ethical and moral standards of civilization.⁷

The tolerance of the Islamic religion in Andalusia was evident in the recognition of the rights of Christians and Jews to practice their religious rituals in return for the payment of “*Jizyah*.”⁸ The Goths who converted to Islam blended with the Muslims, resulting in a diverse population of different ethnicities in Andalusian. While a process of Arabization affected a bulk of Berbers and some Goths, the Arab-Islamic culture and

1 See: Vazquez Paluch & Daniel Andrzej, *The establishment of the Maliki School in Muslim Spain*, Phd Diss., SOAS, University of London, 2008, p. 52; Bonnassie Pierre, *la epoca de los Visigoths in Las Espanas Medievales* (Barcelona: Editorial Critica, 2001), pp. 39-47.

2 Ibid.

3 Ibid.

4 Paluch & Andrzej, Op. cit., p. 52.

5 Ibid.

6 Ibid.

7 This was extended even to the outward appearance of individuals and their social life in that era, according to what was mentioned by the Muslim travelers who roamed those countries at the time. The residents were distinguished by their lack of interest in cleanliness, so they did not bathe once or twice in the whole year, thinking that the accumulation of dirt is healthy for the body. Communication was limited to sign at times, as they had no clear spoken language nor a written one. This extended to their faith, as they believed in some of the beliefs of the Indians and the Majūs/Zoroastrians, such as burning the deceased with the body of his wife while she was alive, or burning his slave-girl with him, or the people he loved. See: Al-Sirjānī, *Qiṣṣat al-Andalus*, pp. 16-17; Abū ‘Ubayd al-Bakrī, *Juḡhrāfiyah al-Andalus wa-Ūrūbbā: min Kitāb al-masālik wa-al-mamālik* (Beirut: Dār al-Irshād for Printing, Publishing and Distribution, 1968), pp. 186187-.

8 *Jizyah* is a tax paid by non-Muslim populations to their Muslim rulers in return for protection of life and property and the right to practice their religion.

population also absorbed local elements. As a matter of fact, this fusion between Arabs, Berber and Goths gave rise to a new ethnocultural entity not only in all over Andalusia but also in the Maghrib.¹ The Christian Goths also began to learn the Arabic language so as to better understand the Islamic culture.²

In general, the conquest of Andalusia remains one of the greatest good deeds of the Umayyads. The conquest took place in 92 A.H., which is approximately the middle of the reign of Umayyad Caliph Al-Walīd Ibn ‘Abd al-Malik, who ruled from 86 to 96AH (705-715AD). The significance of Muslims’ presence in Europe was undeniably important, as Muslims played a vital role in shaping what Europe is today.³ By promoting multi-racial integration or Convivencia among Muslims, Christian, and Jews, the three monotheistic religions coexisted peacefully under Muslim rule.⁴ This mutual coexistence was created through social cooperation, religious tolerance and cultural exchange.⁵ This is indeed an important milestone that shows Islamic presence was not only about conquest but also about reshaping society through knowledge advancement and sharing.⁶

The era of rulers⁷ began after the completion of the conquest of Andalusia and the summoning of Ṭāriq Ibn Ziyād and Mūsá Ibn nuṣayr⁸ to Damascus by the Umayyad Caliph. The Caliph used to appoint the governor of Andalusia in Damascus. The early years of this era were characterized by the spread of Islam, the abolition of class society and the fight against ignorance that were prevalent in Andalusia. There was also an expansion of ideological liberty. The Muslims took Cordoba as the capital city, and formed a strong civil state, both militarily and urbanely.⁹

Moreover, the inhabitants of Andalusia were imitating Muslims in everything; they even learned the Arabic language spoken by Muslims. In fact, the Spaniards, Christians and Jews were proud of learning and teaching Arabic in their schools.¹⁰

The era of rulers also coincided with the death of the Umayyad Caliph Sulaymān ibn ‘Abd al-Malik

1 Abū Shanār, *Athar al-Masjid*, pp. 151-152.

2 Ibid.

3 Muhammad Aiman Awaluddin, “A suggestion that Europe is the Muslim Domain: A study from historical and contemporary perspectives,” *Indonesian journal of Islamic literature and Muslim societies*, Vol. 9, No 1 (2019), p. 92. DOI: 10.18326/ijims.v9i1.83-109

4 Ibid.

5 Ibid.

6 Ibid.

7 The era of rulers lasted 42 years from 95 to 138 Hijri. The number of rulers who ruled Andalusia were about 20 or 22 Wali, with Abdelaziz bin Musa bin Nasser serving as the first ruler. See: Al-Sirjānī, *qiṣṣat al-Andalus*, pp. 95-96.

8 To know more about: Ṭāriq Ibn Ziyād and Mūsá Ibn nuṣayr see: Lorenzo-Jimenez Jesus, “*The origins of Mūsà ibn Nuṣayr and Ṭāriq ibn Ziyād and their relationship with the Sasanian empire*,” *Al-Qanṭara Journal*, vol. 43, no. 2 (2022), pp. 2-13. DOI: <https://doi.org/10.3989/alqantara.2022.016>

9 For more information about the era of rulers see: Al-Sirjānī, *Qiṣṣat al-Andalus*, p. 95.

10 Ibid., p. 89.

(99AH), and his successor, ‘Umar ibn ‘Abd al-‘Azīz, appointed Al-Samḥ Ibn ‘Abd al-Malik Al khūlāny as the governor of Andalusia in Ramadan, 100AH. Andalusia was isolated from Ifrīqīyah¹ and made directly subordinate to the caliphate due to its importance and the multitude of its affairs.² Al-Samḥ Al khūlāny made significant efforts to conquer the southwestern region of France, and he succeeded until he his death in a city there. After that, the rest of the rulers of Andalusia completed the mission and occupied most of the French lands, especially under the leadership of ‘Abd al-Raḥmān al-Ghāfiqī, who conducted the largest campaign inside France, resulting in the complete control of southern France.³

After a period of stability in Andalusia, a time of political turmoil occurred due to the downfall of the Umayyad Caliphate in Damascus in 750AD (132AH)⁴ and the rise of the Abbasid state, which aimed to eliminate anyone affiliated with the Umayyads. The remaining Umayyad survivors sought refuge in Andalusia, including ‘Abd al-Raḥmān ibn Mu‘āwīyah,⁵ also known as the Saqr of Quraysh, and ‘Abd al-Raḥmān Al-dākhil, who was the first Umayyad ruler to enter Cordoba in 753 AD.⁶ His tenure marked the beginning of the Umayyad Emirate, as it separated from the Islamic Caliphate, whether in the era of the Abbasid Caliphate or in the subsequent eras until the fall of Andalusia. During his nearly forty-year rule (755 -788 AD), Andalusia experienced one of its most prosperous periods in terms of military, civil, and scientific advancements, as he had a strong interest in promoting knowledge.⁷

1.2 The entry and spread of the Mālikī school of thought in Andalusia

After the situation stabilized in Andalusia, ‘Abd al-Raḥmān al-dākhil was interested in spreading science and encouraging its learning across all fields. The learning of the Arabic language was spread among non-Muslims who abandoned the Latin language and went to Arab schools to acquire knowledge from different fields of study.⁸ As a result, the Arabic language became a source of acquiring knowledge, and Cordoba became a model of urbanization at a global level. Besides, tolerance prevailed among Muslims, Christians and Jews, as some Jews and Christians studied under Muslim scholars.⁹ The Mozarabs became new messengers of Islamic civilization as a result of their combination of the Arabic and Latin languages,

1 Also known as al-Maghrib al-Adná (the near Maghrib).

2 Abū ‘Abd Allāh Muḥammad ibn Muḥammad Ibn ‘udhārī al-Marrākushī, *al-Bayān almughrib fī Akhbār al-Andalus wa-al-Maghrib* (Beirut: Dār al-Thaqāfah, 3rd ed., 1983), vol. 2, p. 26.

3 Al-Sirjānī, *Qiṣṣat al-Andalus*, p. 91 et seq.

4 The Umayyad Caliphate began in 41AH and ended in 132AH (661-750AD).

5 See for more details on the Wilāyah of ‘Abd al-Raḥmān al-dākhil: Al-Sirjānī, *Qiṣṣat al-Andalus*, p. 137 et seq.

6 Ibid., p. 150 et seq.

7 Ibid., p. 158 et seq.

8 Ḥassān ‘Alī Ḥallāq, *Dirāsāt fī Tārīkh al-Ḥaḍārah al-Islāmīyah* (Beirut: Dār al-Nahḍah al-‘Arabīyah for Printing and Publishing, 2nd ed., 1999), p. 274 et seq.

9 Ibid.

and they transferred Arab and Islamic sciences to the Spaniards and Europeans.¹

During the period of ‘Abd al-Raḥmān al-dākhl, Andalusia adopted the Awzā‘ī’s school of thought. However, with the accession of his son »Hishām ibn ‘Abd al-Raḥmān al-dākhl,« to the rule (172-180AH/788-796AD), the Mālikī sect was adopted as an official doctrine for the country.² The Mālikī school of thought was spread due to the efforts of Imam Malik’s students who travelled to Ḥijāz to learn about Malik in al-Madīnah. Ziyād ibn ‘Abd al-Raḥmān al-Lakhmī, known as Shabtūn (died in 193AH), was the first to introduce the Maliki doctrine to the Andalusians. He was followed by his student Yaḥyá ibn Yaḥyá al laythi, who played a vital role in spreading the Mālikī doctrine because of his legal position as a member of Al-Shūrā (the advisory board that the emir and judges had to consult).³

One reason for the growth of Imam Malik’s doctrine in Andalusia was his influence on Andalusian students. This influence was especially noteworthy after Imam Malik praised Hishām ibn ‘Abd al-Raḥmān al-dākhl, who then made people embrace the Mālikī doctrine and leave al-Awzā‘ī’s school of thought.⁴ Other reasons were due to the hostility of the Umayyads towards the Abbasids, who had already embraced the Hanafī doctrine, as well as the similarity between the people of Andalusia and Medina in terms of simplicity and personality, in addition to other social and geographical reasons.⁵

Therefore, the different schools of thought that existed in Al-Andalus had a significant impact on the way knowledge was studied, essays were written, and how people thought about various topics.⁶ The entry of Mālikī school to al-Andalus was influenced by political, emotional, socio-cultural and intellectual factors.⁷ The political factors that contributed to the dominance of Maliki sect in Al-Andalus was the opposition of the Umayyads to their rivals, the Abbasid dynasty, which made Ḥanafī Madhab their official school.⁸ The emotional factor was caused by Imam Mālik’s tendency to the Umayyad and his dislike for Abbasid who persecuted the descendants of the Prophet and wiped out the remnants of the Umayyad family.⁹ The socio-cultural factors, as suggested by Ibn Khaldūn, were the equation of rural community (*badāwah*) and

1 Ibid

2 Aḥmad ibn Muḥammad al-Maqqarī al-Tilmisānī, *Nafḥ alṭṭīb min ghuṣni al-Andalus al-raṭīb*, (Beirut: Dār Ṣādir, 1st ed.,1997), vol. 1, p. 45.

3 During that era, a group of people who were Shabtūn’s peers, such Farghūs ibn al-‘Abbās, ‘Īsá Ibn Dīnār, Sa‘īd ibn Abī Hind and others who went to Hajj during the days of Hishām Ibn ‘Abd al-Raḥmān. See: al-Maqqarī, *Nafḥ alṭṭīb*, pp. 45-46.

4 Ibid., vol. 3, p. 230.

5 ‘Abd alraḥmān ibn muḥamaad Ibn khaldūn, *al-Muqaddimah* (Damascus: Dār ya‘urub Publishers for Research and. Distribution, 1st ed., 2003) vol.2, pp. 190-192.

6 See in this meaning: Muhammad Akmaluddin, “The origin of fiqh schools in Al-andalus: from qairawan to medina,” *International E-journal of Advances in Social Sciences*, Vol. 3, Issue 9 (2017), p. 884.

7 Ibid.

8 Ibid.

9 Ibid.

the level of technology and knowledge between Ḥijāz and al-Andalus.¹ The intellectual factor was the similarity of textual thought between Ḥijāz and Al-Andalus.²

The Mālikī school established itself as the sole authority and tradition in Al-Andalus. Schools that did not align with the Maliki doctrine were banned and censored. It should be noted, though, that this power, which was initially productive and unrepressive, became repressive, tendentious, and authoritarian over time, to the point where scholars began to focus on reproducing and imitating the opinions of the Mālikī school.³ In fact, these factors and circumstances resulted in the Mālikī doctrine remaining firmly rooted in Andalusia from its entry in the second century AH until the downfall of Andalusia. Thus, the Andalusians adhered to it during both times of strength and weakness.

Indeed, among the last books⁴ written on the Mālikī school of thought were the two books written in Spanish in the fifteenth century by the jurist ‘Īsā Ibn Jābir, the judge of Segovia. These books explain the origins of the Maliki doctrine and its rules for those Muslims who were residing in the Christian Kingdom of Castile and had forgotten the Arabic language and were no longer able to use it.⁵ It is noticeable that the Andalusians’ fanaticism to a single sect (the Mālikī sect) was a policy that affected the Christian kingdoms that were established near Spain. They even became more adherent and fanatical to the papacy of the catholic church than the Pope himself.⁶

The Islamic culture had spread widely in Al-Andalus, especially with regard to the Mālikī jurisprudence, which reached European countries. This was due to several reasons, including the continuous influx of foreigners to Andalusia seeking knowledge, and the spread of translation works that affected all Islamic heritage, especially the Mālikī jurisprudence.⁷ Furthermore, the Spanish Mozarabs played a significant role in this process, as they were proficient in both Arabic and Latin languages, enabling them to translate the most important Islamic and scientific works.⁸ This led to the emergence of many notable translators, such as the Italian “Gerard of Cremona,” who came to Toledo and focused on studying the Arabic language

1 Ibid.

2 Ibid.

3 Ibid., p. 885.

4 These two books are titled as (Leyes de Moros), meaning (the law of the Muslims), as reported by the great historian Maḥmūd ‘Alī Makkī.

5 See the introduction to the investigation of the book: Muḥammad ‘Abd al-Wahhāb Khallāf, *Thalāth wathā’iq fī muḥārabat al-ah-wā’ wa-al-bida’ fī al-Andalus* [Mustakhrajah min makhṭūṭ al-aḥkām al-Kubrā lil-Qāḍī Abi al-Aṣḥab ‘Īsā ibn Sahl al-Andalusī], presented by Maḥmūd ‘Alī Makkī (Egypt: Arab International Center for Media, 1st ed., 1981), p. 6.

6 Aḥmad Mukhtār al-‘Abbādī, *Dirāsāt fī Tārīkh al-Maghrib wa-al-Andalus* (Alexandria: University Youth Foundation, n.d), pp. 122-125.

7 For more details about the impact of Andalusia on European civilizations see: Khalīl Ibrāhīm alsāmīrā’ī, ‘Abd al-Wāḥid Dhan-nūn Ṭāhā, Nāṭiq Ṣāliḥ maṣlūb, *Tārīkh al-‘Arab wa-ḥaḍāratihim fī al-Andalus*, (Beirut: Dār al-Kitāb al-jadīd, 2000), 1st ed, p. 476 et seq; Ḥassān Ḥallāq, *Dirāsāt*, p. 274 et seq.

8 Alsāmīrā’ī and others, *Tārīkh al-‘Arab*, p. 479.

and translating from Arabic to Latin, with the help of the Arabs. It was attributed to him, the translation of seventy-one books in various sciences.¹ Moreover, Andalusia's strategic location contributed to the transfer of Islamic cultural heritage to European countries, which in turn helped spread the rulings of Mālikī jurisprudence in Europe.

2. The Mālikī Madhhab in Andalusia and the European laws: Effects and practical applications

In this point, I will address the impact of the Mālikī Madhhab on European laws through Andalusia. After that, I will analyze some practical applications of the Mālikī Madhhab on European laws.

2.1 The impact of the Mālikī Madhhab on European laws through Andalusia

The Mālikī doctrine was conveyed to Europe via Andalusia, which served as a vital pathway for its dissemination. In other words, Andalusia was regarded as an essential route for the transmission of the Mālikī school of thought to Europe.² Later on, European laws were influenced by Mālikī jurisprudence as well as other various Fields of sciences. This was due to the contact between Western students and Islamic schools in Andalusia, where they translated and transferred a set of Islamic jurisprudence and legislative provisions into their mother languages. At that time, Europe did not have a well-established legal system. However, during Napoleon's era in Egypt, the most famous books of Mālikī jurisprudence were translated into French; especially *Mukhtaṣar Khalīl* (*The summary of Sheikh Khalil bin Ishaq Al-Maliki*), which became the nucleus of French civil law. This fact can be supported by the testimony of the French orientalist Eugène Amélie Sédillot (1808-1875) who indicated that the French government had ordered the translation of Mālikī jurisprudence books.³ In this regard he said: "It is the Mālikī school of thought that particularly catches our attention, due to our links with African Arabs, and the French government asked Dr. Nicolas Peron to translate into French the book of *Al Mukhtasar* by *Khalīl ibn Iṣḥāq ibn Ya'qūb*, who died in 1422 AD."⁴

Based on the above, it can be deduced that during the peak of Andalusian civilization, Europeans were greatly influenced by it. Such influence had not only affected the scientific domain, but also extended to European laws, which derived many rulings from the Islamic jurisprudence in general and the Mālikī jurisprudence in particular as a result of the geographical location of Andalusia in Europe and its proximity to the Europeans. Therefore, it can be argued that the Mālikī jurisprudence is the first Islamic jurisprudence

1 Samīr Orabi, *'ulūm al-ṭibb wa-al-jirāḥah wāl'adwyah 'inda 'ulamā' al-'Arab wa-al-Muslimī*, (Cairo: Dār al-Kitāb al-ḥadīth, 1st ed., 1999), p. 39.

2 This is in addition to Sicily, where the Mālikī Madhhab spread after it was conquered by Asad Ibn al-Furāt, as well as the French campaign of Napoleon in Egypt, where the most famous books of Mālikī jurisprudence were translated into French; especially *Mukhtaṣar Khalīl*.

3 See: Fīghū, *Athar fiqh al-Imām Mālik fī al-qānūn al-madanī al-Faransī*, pp. 20-21; Al-Sibā'ī, *min Rawā'ī' ḥaḍāratunā*, p. 90.

4 Ibid.

to accompany Europeans who were living in the darkness of ignorance. Also, it is evident that the Europeans were influenced by a variety of Arabic sciences including poetry, philosophy, mathematics, astronomy,¹ chemistry.²

As a result, there is no doubt that European laws were impacted by Andalusian civilization. To illustrate, many of the jurisprudential rulings that were based on Imam Malik's jurisprudence were transmitted to Europeans through customs and traditions that later became laws.³ The intersection of philosophy and Islamic thought with European thought had also an impact on the philosophy of law, particularly with the translation of the works of Ibn Rushd and the transfer of his books from Arabic into Latin.⁴ The University of Paris was the foremost center that embraced, nurtured and studied Ibn Rushd's ideas.⁵ In this context, one of the famous scholars who was influenced by Ibn Rushd's ideas was St. Thomas Aquinas.⁶

Despite the fall of Andalusia, European students who learned from Muslim scholars became ambassadors of Islamic civilization in their countries of origin. In fact, one of the reasons that helped spread the of Mālikī doctrine among foreign students was the influence of the policy of tolerance followed by Muslims in Andalusia towards non-Muslim minorities, such as Christians and Jews, who were passionately studying Arabic, jurisprudence, philosophy and various sciences.⁷ They even abandoned reading their religious books and despised them.⁸

Pope Sylvester II (Sylvestre II), a Frenchman who studied at the Arab Islamic schools in Cordoba as well as the University of Al-Qarawīyīn in Fez, was one of the important individuals who contributed to the transmission of Arabic sciences, particularly the Mālikī jurisprudence, from Andalusia to Europe⁹ He contributed to the transfer of many sciences from various branches of study, such as arithmetic, astronomy and engineering, along with the legal systems prevalent in Andalusia.¹⁰ This was also one of the main preludes to the emergence of modern Western European legislation.¹¹

1 See for more details on the influence of the Muslims on Western countries in the fields of mathematics and astronomy: Ḥallāq, *Dirāsāt*, p. 22 et seq.

2 Ibid., p. 88 et seq.

3 The evidence for this is that even after the fall of Andalusia, some of the people of Toledo were still slaughtering sheep on the day of Eid al-Adha, and they were saying that it is a custom that they inherited from their fathers and grandfathers. see in this: Ḥallāq, *Dirāsāt*, p. 96.

4 Ibid., p. 97.

5 Ibid.

6 Ibid.

7 Ibid., p. 21.

8 Ibid.

9 'Abd Allāh Mashūkhī, *Mawqif al-Islām wa-al-Kanīṣah mna al-'ilm* (Jordan: Maktabat al-Manār, 1st ed., 1982), p. 56; Gustave Le Bon, *the Civilization of the Arabs*, translated by: Adel Zuaier (Cairo: Arab Press Agency Publishers, 2018), p. 840.

10 Fawzī Sālim Šālīh ūlīṭy, "Ṭaṭawwur al-fiqh al-Islāmī wa-ta'thīruhu 'Alī al-qawānīn al-Gharbīyah al-mu'āširah," *Journal of Shari'ah and Legal Sciences*, Al-Marqab University, Issue 2 (2018), p. 15.

11 Ibid.

Besides, European kings and heads of state were sending official missions of students to Andalusia in order to benefit from its civilizational progress, and to emulate the Islamic model that was present in Andalusia. Some countries even recruited Andalusian scholars to establish schools, spread science and transfer the Andalusian urban model to their own countries.¹ In the ninth century and beyond, the governments of Holland, Saxony and England signed contracts with around ninety Arab professors and experts from Andalusia in various sciences and industries in order to bring them to their respective countries and benefit from their knowledge and expertise.²

Undoubtedly, this matter indirectly led to the beginning of a change in the European mentality. This change was observed later through the renaissance period when various fields of knowledge, including law, experienced notable advancements. Indeed, the provisions of Mālikī jurisprudence had a significant influence on these advancements in the field of law. These provisions were transferred to Europe through two main channels: firstly, through students who traveled to Andalusia to learn from Mālikī jurists and returned to their home countries to disseminate knowledge; and secondly, through the interactions of European foreigners with Muslim professors and experts who were brought from Andalusia to European institutions. Another effective factor was the translation of Mālikī *fiqh* books from Arabic to Latin, which facilitated the transfer of jurisprudential rulings to Europe. The impact of these translated books was noticeable in different areas of European laws, including transactions, obligations and contracts.

2.2 Practical applications of the Mālikī Madhhab on European laws

One of the practical impacts of the Mālikī school on European laws was its effect on corporate, economic, and commercial laws. In this respect, professor Awktāf Bīl confirmed that the concept of companies in Mālikī jurisprudence is based on trust agreements, and this same concept was applied in French law in the past.³ This fact indicates that French law was influenced by the rulings of Mālikī jurisprudence, due to the historical entry of Muslims into France through Andalusia. Similarly, the Mālikī jurisprudence had an impact on the Spanish civil law, leading to the elimination of the requirement for marriage contracts to be made exclusively within the church. ‘This suggests that the Mālikī Madhhab played a role in changing the marriage practices in Spain and helped in shaping Spanish civil law.

With regard to transactions, a professor at the University of Madrid (1151) found a sales contract written in Arabic which served as a model for the contracts used by Spaniards in Andalusia.⁴ This discovery provides an example of how the influence of Mālikī jurisprudence can be seen in Spanish transactions. It further

1 Ibid., pp. 478-479.

2 Ibid.

3 Awktāf Bīl, *al-Sharikah wa-al-qismah fī al-madhhab al-Mālikī* (Casablanca: al-Maṭba‘ah al-Muttaḥidah, 1948), 2nded, p.24; ‘Abd al-‘Azīz Bin-‘Abd Allāh, *Ma‘lamat al-fiqh al-Mālikī* (Beirut: Dār al-Gharb al-Islāmī, 1st ed., 1983), p. 42.

4 ‘Abd al-‘Azīz Bin-‘Abd Allāh, *Ma‘lamat al-fiqh*, p. 42.

5 Ibid., p. 43.

demonstrates the impact that the Mālikī school had on the development of Spanish law in different fields.

The spread of Mālikī jurisprudence in Morocco and Andalusia had a profound impact not only on ecclesiastical law but also on the Talmūd and the Jewish jurisprudence since the tenth century in the city of Fez.¹ This era marked the spread of the Mālikī school of jurisprudence in Morocco after a period during which Hanafi, Shafi'i and Awzā'i jurisprudences had prevailed².

One prominent example of this influence is Abū Sa'īd Ibn Yūsuf al-Fayyūmī (also known as Rabbi Sa'adiah, 942 AD), who is considered the founder of Jewish philosophy in the Middle Ages.³ Al-Fayyūmī compiled an Arabic translation of the Old Testament and completed the Jewish inheritance law with the help of Islamic law.⁴

There is also a Moroccan Jewish scholar, Ishāq Ibn Ya'qūb alkūhn (nicknamed al-Fāsī),⁵ who has a commentary on the Talmūd in twenty volumes.⁶ This commentary is considered till now one of the most important books of Talmūdic legislation. *Al-Fāsī* also has three hundred and twenty *fatwas*, all written in Arabic.⁷ These *Fatwas* were based on the Mālikī jurisprudence that was prevalent in Andalusia and Morocco at that time.⁸

With regard to other fields related to jurisprudence and law, the entry of Mālikī fiqh into Andalusia had a significant impact on changing European traditions⁹ and adapting them to Islamic culture. The contact and friction between Europeans and Mālikī scholars in Andalusia and Sicily, which occurred after the Muslims conquered those areas, played a crucial role in this change. This can be noticed in the potential influence of Islam on Western public and international law. Therefore, many cultural, philosophical and moral Islamic issues have been incorporated into the European legal codes. This occurred as a result of the influence of the Mālikī jurisprudence in particular and the Islamic jurisprudence in general on the European legislative thought, whether in terms of diplomacy, military or civil.¹⁰ As a matter of fact, the impact of Islamic law was not limited to a specific area of European law but rather had a broader influence on the legislative thought and practice in Europe.

Based on the above, the Crusades were not the reason that introduced science to Europe as it is commonly believed. Instead, science was introduced to Europe by Spain, Sicily and Italy, which all adopted the Mālikī

1 Ibid., p. 44.

2 Ibid.

3 Ibid.

4 Ibid.

5 He was born in 404AH/1013AD in Qal'at ibn Aḥmad near Fez and died in Lusina in Andalusia in 497AH/1103AD.

6 Bin-'Abd Allāh, *Ma'lamat al-fiqh*, p. 44.

7 Ibid.

8 Ibid.

9 Ibid., pp. 44-45.

10 Ibid., p. 45.

doctrine. “Gustave Le Bon” emphasized that during the Middle Ages, the books of the ancient Greek world were not known until they were translated into Arabic.¹ Thanks to these translations, Europeans became familiar with the contents of Greek books. ²This can be proved by the fact that an office of translators was established in Toledo to translate Arabic books, of different fields, into Latin under the auspices of Bishop Raymond.³ In other words, the translation movement in Andalusia helped in bridging the gap between the Eastern and Western worlds, and it had a major impact on European intellectual and cultural development.

Therefore, the renaissance that Europe witnessed in the field of democracy and rights, and the development that occurred in its legislative systems, were influenced by the Islamic civilization, especially after the conquest of Andalusia and Sicily and the spread of the Mālikī sect among Muslims and non-Muslims. In this regard, “M. Liberi said: If the Arabs had not appeared on the stage of history, the renaissance of Europe in literature would have been delayed by several centuries.”⁴ This highlights the profound impact of Arab culture, knowledge, and literary traditions, which influenced not only the legal systems but also the literature of Europe during that period.

The English historian “H. G. Wells” also stated that Islam played a major role in shaping Europe’s administrative and financial laws. According to him: “Europe owes Islam the greater part of its administrative and financial laws.”⁵ Prince Charles-the Crown Prince of Britain-said in a lecture he delivered at the Oxford Center for Studies: “...Spain during the era of Muslims, made important contributions in many fields of human research in sciences, astronomy, law and mathematics...Cordoba was the most civilized city in Europe, and many of the advantages that modern Europe is proud of originated from Spain during the Islamic rule. Diplomacy, freedom of trade and open borders... all came from that great city.”⁶

In fact, the nucleus of the international trade law began to emerge from the 12th century AD through the spread of the principle of freedom of the seas, which resulted from contacts between Muslims and Europeans via Andalusia and Sicily.⁷ These contacts further developed with the establishment of anchorages of Venice, Genoa, and Pisa, where European merchants would spend several months in the East during the early autumn and half of spring each year.⁸ It was during these interactions that European merchants were first exposed to the Islamic morals and customs ⁹that had been influenced by the dissemination of Mālikī

1 Gustave Le Bon, *the Civilization of the Arabs*, p. 848.

2 Ibid.

3 Ibid.

4 Ibid., pp. 848-849.

5 Rāghib al-Sirjānī, *Mādhā qaddama al-Muslimūn lil- ‘ālam* (Egypt: Iqra’ Establishment for Publishing, Distribution and Translation, 2nd ed., 2009), vol. 2, p. 706.

6 Ibid.

7 Ibid., p. 45.

8 Ibid.

9 Ibid.

jurisprudence in those cities. In 1340 AD, a consulate for the sea was established in Andalusia, leading to the development of administrative, maritime, and war laws.¹

Among those influenced by the Mālikī jurisprudence was Alfonso IX, also known as the Wise, King of Castile and Emperor of the West (1272 AD). He was influenced by Islamic civilization in the second half of the 13th century and quoted numerous rulings from various Arab sources;² It was under his reign that the University of Salamanca revitalized, playing a significant role in shaping what would later become modern international law.³ Alphonso authored the first legal code in Europe known as “Las Siete Partidas,” which was published in three volumes in Madrid in 1829, with Latin commentaries by Gregorie Lopez. The code was mainly derived from the legal traditions observed in Muslim Andalusia, dating back to 1280 AD.⁴ This Latin book was indeed a direct reflection of the Mālikī school of thought that prevailed in Andalusia until its downfall.⁵ In this respect, it is evident to specialists who analyze the content and origin of these texts that this Latin book had a significant impact on the development of European international law in the modern era.⁶

Here, it should be noted that Morocco, which embraced the Mālikī doctrine, witnessed notable innovations highlighted by Professor Caille in his book on treaties, agreements and decrees during the reign of the ‘Alawī Sultan Sīdī Muḥammad ibn ‘Abd Allāh. The book emphasizes the creation and ingenuity of numerous principles that were included in the codes of international public law in Europe.⁷ In other words, Professor Caille suggests that Morocco also played a significant role in shaping and influencing the development of international legal norms and regulations in Europe.

As a final point, the French civil law, which served as the foundation for Western legal systems, provides a notable example of the impact and influence of the Mālikī Madhhab on foreign legislation. A significant illustration of this influence can be seen in the interpretation of contracts. Here, there is a jurisprudential rule that states that “The criterion in (the construction of) contracts is intentions and meanings and not words and form.”⁸ This means that when interpreting a contract, the focus should be on understanding the underlying intentions and the intended meaning of the parties involved, rather than relying solely on the literal words and formalities of the contract.

This jurisprudential rule was articulated by al-Wansharīsī in his book of al-Nawāzil) al-Mi’yār al-Mu’rib

1 Ibid., p. 46.

2 Ibid., pp. 46-47.

3 Ibid.

4 Ibid., p. 47.

5 Ibid.

6 Ibid.

7 Ibid., pp. 48-49.

8 See the explanation of this rule at: Aḥmad Muḥammad al-Zarqā, *sharḥ al-qawā‘id al-fiqhīyah* (Damascus: Dār al-Qalam, 2nd ed., 1989), p. 55.

(where he stated: “If the issue revolves between observing the form and observing the intent, then observing the intent is preferred.”) This suggests that if the matter pertains to a conflict between adhering to the form and adhering to the intent, then giving preference to the intent is favored. In fact, by prioritizing intentions and meanings, the aim is to achieve a fair and equitable interpretation of the contract that aligns with the parties’ actual intentions and expectations.

Similarly, Article 1188 of the French Civil Code conveys a similar idea, stating that: “The contract is interpreted according to the common intention of the parties rather than stopping at the literal meaning of its terms. When this intention cannot be detected, the contract is interpreted according to the meaning given to it by a reasonable person placed in the same situation.”² This article recognizes that in cases where the common intention of the parties is unclear or cannot be determined, the contract should be interpreted based on how a reasonable person, placed in the same situation, would understand and interpret its terms. The purpose of this approach is to promote fairness and reasonableness in the interpretation process, considering the broader context and circumstances surrounding the contract.

The Moroccan law has also been influenced by the Mālikī jurisprudence and French law, and expressed the same jurisprudential rule in Chapter 462 of the Law of Obligations and Contracts, which states: “... it is necessary to search for the intention of the contracting parties, without stopping at the literal meaning of the words, nor at the structure of sentences.”

Coercion in the Law of Contract is another example of the impact of Mālikī fiqh on foreign legislation. Coercion is defined as the act of compelling someone to work without their consent, which is not permitted by law.³ That’s why, coercion (or duress) is one of the causes that nullifies the consent and then invalidate a contract either in Islamic law or modern legal systems. In Maliki Madhab, although duress negates consent, it does not negate the power of choice. In other words, the Maliki jurists assert that contracts or sales induced by duress are non-binding (Ghayr Lāzim), but the victim of duress still has the choice between avoiding the contract of sale or executing it.⁴ This means that Maliki jurists recognize that although the contract may be considered void, the victim can still decide whether to uphold or reject it.

1 Ahmad ibn Yahya al-Wansharisi, *al-Mi'yār al-Mu'rib wa al-Jāmi' al-Mughrib 'an Fatāwā Ahl Afrīqiya wa al-Andalus wa al-Maghrib* (Rabat: the ministry of Awkaf and Islamic affairs, 1st ed., 1981), vol. 4, p. 95.

2 Article 1188, code civil français (Modifié par Ordonnance n°: 2016-131 du 10 février 2016): «Le contrat s’interprète d’après la commune intention des parties plutôt qu’en s’arrêtant au sens littéral de ses termes. Lorsque cette intention ne peut être décelée, le contrat s’interprète selon le sens que lui donnerait une personne raisonnable placée dans la même situation.»

3 Morocco’s Obligations and Contracts Act defined coercion in article 46 and stated that: “coercion is a compulsion carried out without the law permitting another person to work without his consent.”

4 According to what is in Mukhtaṣar Khalīl’s explanation, contracts or sales induced by duress are non-binding (Ghayr Lāzima). Thus, it cannot be enforced against the victim, but the victim cannot enforce his rights against innocent third parties who act in the course of business without knowledge of the illegality. The victim’s remedy is to pursue the oppressor and obtain just compensation. See: Muḥammad al-kharshy, *Sharh Mukhtaṣar Khalīl* (Egypt: al-Maṭba‘ah al-Kubrā al-Amīriyah, 2nd ed., 1317), vol. 5, p. 9; Muḥammad al-Dasūqī, *Ḥāshiyat al-Dasūqī ‘alā Mukhtaṣar Khalīl* (Egypt: Dār al-Fikr, n.d), Vol. 3, p. 6.

If we rank the Islamic schools of thought in terms of how far they were willing to go to negate the effect of duress, the Shāfi‘ī, Ḥanbalī and Zāhirī were willing to go to the furthest; to them the contract is void. They are followed by the Hanafi school; to them the contract is voidable. The Māliki school seems to be the most permissive in this regard; to them the contract is not binding,¹ giving the victim the freedom to choose whether to abide or reject the contract.

The Maliki jurisprudence and the French Civil Code both agree that coercion is grounds for nullifying a contract, regardless of whether the coercion was carried out by one of the contractors or by a third party, and regardless of whether one of the contractors was involved in the coercion or was aware of it. We can clearly understand this from Article 1142 (French Civil Code), which states that duress is a ground of nullity regardless of whether it has been applied by the other party or by a third party.² In addition, “There is also duress where one contracting party exploits the other’s state of dependence and obtains an undertaking to which the latter would not have agreed in the absence of such a constraint, and gains from it a manifestly excessive advantage.”³

In brief, it is worth mentioning that prior to Napoleon’s reign, France did not have its own distinct law that stemmed from religion or other national sources. The scholars who drafted the civil law associated with Napoleon’s name had benefited greatly from the provisions they had encountered, and from what they translated from the books of Mālikī jurisprudence in particular.⁴ This signifies that Islamic law had entered into the European positive laws because it was taken by them as the best and valid legislation during that time.⁵

Conclusion

The laws or legal rules are not mere chance occurrences in our contemporary legislation. Instead, they are intricately tied to specific economic, social, political, religious and intellectual conditions that have evolved in response to the time and place in which they exist. Therefore, understanding the origins of any law requires an understanding of the factors that have contributed to its creation and evolution.

It is true that the ancient societies had various forms of legal organizations and customs that governed relations and interactions among their members within their communities and with other nations. However,

1 Khaled Abou El Fadl, “*law of duress in Islamic law and common law: a comparative study*,” *Journal of Islamic Studies*, Islamabad, vol. 30, issue 3 (1991), p. 320.1

2 Article 1142 from French Civil Law stated that: « La violence est une cause de nullité qu’elle ait été exercée par une partie ou par un tiers ».

3 Article 1143 aslo stated that « Il y a également violence lorsqu’une partie, abusant de l’état de dépendance dans lequel se trouve son cocontractant, obtient de lui un engagement qu’il n’aurait pas souscrit en l’absence d’une telle contrainte et en tire un avantage manifestement excessif. »

4 Fawzī, *Taṭawwur al-fiqh al-Islāmī*, p. 24.

5 Ibid.

most of these legal organizations and customs were not formally codified. Examples of such uncoded laws include the Indian law of Manu (2000 BC), the law of Borkkhoris (740 BC), Hammurabi's Code (1728 BC), and the Roman Law of 450 BC. Alongside these legal frameworks, the Islamic law or *Sharī'ah* law had a significant impact on many modern legal systems, particularly the Mālikī jurisprudence, which was the dominant doctrine in Andalusia and Morocco.

In this context, we have seen in this article that due to the vibrant intellectual environment and the close connections between Andalusia and other European regions, the influence of Maliki jurisprudence extended beyond the borders of Andalusia. European scholars and jurists became acquainted with the principles and concepts of Maliki jurisprudence, incorporating them into their own legal systems. This means that Andalusia acted as a bridge between cultures, facilitating the dissemination and influence of Maliki jurisprudence on European laws and contributing to the development and evolution of legal systems in Europe.

We also have observed in this article how foreign students from Europe were influenced by the *fiqh* of the Maliki school of thought and the scholars of the Madhhab, becoming ambassadors of its teachings in their respective countries. Furthermore, many Christians adopted Arab names and imitated their Muslim neighbors, embracing certain religious practices such as circumcision (*Al-Khitān*) as well as food and drink. These influences persisted even after the Muslims were expelled from Andalusia.

We have found out that the rules and provisions of the Mālikī Madhhab were transferred to Europe through various means, including the translation of its books and the journeys of students and scholars engaged in the study of customs and sciences.

We have provided examples of European laws that have been impacted by Maliki jurisprudence. Additionally, we have examined the similarities between French civil law and the provisions of Maliki jurisprudence. We specifically focused on French civil law due to its substantial influence on other European countries' legal systems.

Finally, the importance of the Islamic law and its impacts on other legal systems was proved through the decisions made by the Hague Conference in 1937, which approved the resolutions reached during the Washington Conference in 1935. These conferences declared that the Islamic *Sharī'ah* is an independent source of law, distinct from the legal traditions of ancient Greece and Rome.

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