1 MODERN ISLAM AND THE RELIGIOUS REFORM TRADITION

IN 1910, at the height of a period of major crisis and change in Morocco, as fears about a full-scale French military occupation threatened the country with social disorder and anarchy, al-Mahdī al-Wazzānī (1849–1923), a prominent Moroccan Islamic scholar, published a massive eleven-volume compilation of Mālikī fatwās and named it *al-Miʿyār al-jadīd* (the *New Standard Measure*; henceforth, the *New Miʿyār*).[1] In all likelihood, al-Wazzānī began his project around 1902.[2] Enormous effort was involved in the compilation of the book. During a period of approximately eight years, al-Wazzānī toiled on countless manuscripts of Mālikī law and jurisprudence. He came across thousands of fatwās that had been issued in Morocco over the course of centuries of Mālikī legal activity, selecting individual fatwās to be included in his monumental work.

As a work of compilation, the *New Miʿyār* constitutes an assemblage of legal opinions issued by al-Wazzānī himself and by other prominent Mālikī muftīs, both contemporaries and predecessors. The scope of the work attests to a deliberate policy on the part of al-Wazzānī to produce a digest or encyclopedia of Mālikī law. It is immediately apparent that he carefully selected fatwās that tackle an ample spectrum of topics, and he gathered, copied, and arranged the material according to thematic criteria. Many of these legal opinions treat questions concerned with concrete social exigencies and everyday life of ordinary people that emerged within the context of the world in which al-Wazzānī lived: What are the ethical and legal duties of Muslims residing under European rule? Is emigration from non-Muslim territory an absolute

duty? Is it lawful for Muslim merchants to travel to Europe? Is it appropriate to impose a market tax not stipulated by the Qur'ān? Is it legal to consume European-manufactured sugar?

Al-Wazzānī's compilation of fatwās was deeply rooted in a traditional, eclectic genre of classical Islamic texts.[3] Throughout Muslim societies, fatwās issued by distinguished jurists were regularly collected, either by the jurists themselves or by their students or associates, to be taught, transmitted, and interpreted.[4] In text-centered societies, assembling the greatest teachings of the previous generations not only reflects a deeply ingrained respect for precedent and established authority but assigns such authority and prestige to the compiler and the work.[5] Such fatwā collections can become paradigmatic examples of legal schools and juristic thought.

Al-Wazzānī's naming the finished work the *New Miʿyār* automatically implied continuity with a leading work of the Mālikī school, the *Miʿyār* of Aḥmad al-Wansharīsī (d. 1508), the most famous collection of Mālikī fatwās.[6] In the centuries after its compilation, this encyclopedic oeuvre was one of the most widely used legal texts by Moroccan 'ulamā'. Its juristic authority was considered impeccable, and it was regarded as an authoritative model within the Mālikī school. Al-Wazzānī's compilation resembles al-Wansharīsī's in its massiveness, chronological span, format, and apparatus. It is only natural to assume that al-Wazzānī's selection of the *New Miʿyār* as the title of his work was intended to echo the reputation of al-Wansharīsī's *Miʿyār*. Indeed, the modern editor of the *New Miʿyār*, 'Umar Bin'abbād, has referred to the collection as "one more brick, in terms of its content and size, and its scholarly significance and value that is added to the edifice [ṣarḥ] of great Moroccan authors in this field, such as *Kitāb al-Miʿyār* of Aḥmad al-Wansharīsī."[7]

The *New Miʿyār* is one of the central and most extensive texts of the Mālikī legal tradition written and published in pre-Protectorate Morocco (1860–1912) and is recognized as an important repository of the Moroccan juristic lore.[8] Despite its scope and vast spectrum of topics, no comprehensive study of the collection has been undertaken to date.[9] Who was al-Mahdī al-Wazzānī? What causes and motives led him to compile the *New Miʿyār*? Why was a *New Miʿyār* needed? What were his objectives for the work? And how did they shape the nature of the material he collected in it? This book is about a single text, the *New Miʿyār* of al-Mahdī al-Wazzānī, its nature and meaning. It aims at providing detailed analysis of a specific project of Islamic reform initiated by a modernist religious scholar.

ISLAMIC MODERNISM RECONSIDERED

A long-standing view, if not consensus, has dominated the scholarship on modern Islamic reformist thought in the late nineteenth and early twentieth centuries. This view, in broad outline, maintains that reformist thinkers promulgated a sharp critique of the classical Islamic scholarship and rejected the principle of legal schools.[10] More specifically, the concepts of renewal (*tajdīd*), revival (*iḥyā'*), and reform (*iṣlāḥ*) are understood to involve the recovering of a correct form of Islam exemplified by the Prophet and the "pious ancestors" (*al-salaf al-ṣāliḥ*). This focus of reformist Islam on the early community of Muslims posited a return to the basic authoritative sources, the Qur'ān and the *sunna* (the normative example of the Prophet). Central to Islamic reformism, as suggested by this narrative, are the notions of revival of the Prophetic *sunna* recorded in authenticated ḥadīth (traditions traced to Muḥammad), promotion of *ijtihād* (reasoning independent of precedent), and rejection of *taqlīd* (blind imitation of earlier authorities).

In its preoccupation with the Qur'ān and the corpus of the ḥadīth as the guide to the true essence of Islam, and the vehement opposition to *taqlīd*, modern reformism, as emphasized fairly consistently by scholars, denoted radical critique of the legacy and teachings of classical scholarship, the classical schools of law (*madhāhib*, sing. *madhhab*), and the religious establishment.[11] In one of the seminal texts on Islamic reform, Ali Merad articulates an outlook shared by many commentators on this orientation that characterized Islamic modernism:

> By preaching tirelessly for a return to first principles, the reformists were led to voice severe criticism of the orthodox Schools and their teachers. In their eyes, the Schools generally identified themselves with trends hostile to reason and science; they hindered the research carried out by *idjtihad* and consequently helped to stop the cultural progress of the community; they in fact gave priority to the study of *fikh* over knowledge based on the Kuran and on the Prophet's *Sunna*; they placed the authority of the "doctors" higher than the authority of the only legitimate and worthwhile *madhhab*: that of the Salaf.[12]

Accordingly, reformist 'ulamā' have been often construed as the opposite of conservative 'ulamā'. In their attitude toward Islamic tradition, conservative 'ulamā' were depicted as defenders of the classical interpretations of the orthodox schools who rejected any form of change and were content with blind adherence to juristic opinions developed hundreds of years ago. Moreover, Muslim reformers, it has been often argued, were concerned with the socio-

political consequences of modernization and the overwhelming Western challenge, so they espoused a dynamic and flexible understanding of Islam and provided the underpinnings for the renewal and revival of Islamic tradition. Conversely, conservative ʿulamāʾ have been tagged as protectors of the status quo who were detached from the changed conditions of the time and hostile to modern ideas and practices.[13]

Recent scholarly efforts to investigate and characterize the multifaceted movement of modern Islamic reform in the late nineteenth century and the beginning of the twentieth century have aptly criticized some of the implicit assumptions underpinning the historiography of modern Islamic reform. Critics have observed that for decades, Western scholars often told the story of Islamic modernist reformism as reflecting the subjective viewpoint of a few modernist intellectuals of the early twentieth century associated with the modernist network in Cairo, with whom they had most contact and on whose writings they principally relied.[14] Ultimately, the conceptual preoccupations invoked in the works of major reformists such as Jamāl al-Dīn al-Afghānī (d. 1897), Muḥammad ʿAbduh (d. 1905), and Rashīd Riḍā (d. 1935) became a fundamental typology on which the study of modern Islamic reformism is based.[15] I agree with this dissatisfaction.[16] The type of reformism that emerged in Egypt undoubtedly deserves close attention.[17] My general concern here, however, is with conceiving the broad movement of modernist reform, which developed within the intellectual/epistemological, geographical, and political diversity of Islam, in terms of the ideas and principles that are intimately linked to a single network of Muslim reformers.[18]

More specifically, my principal concern is with automatically associating Islamic modernism with a sharp critique of the medieval scholarship and rejection of the principle of legal schools. The problem with this conception of modern reformism is the implication that thinkers who abided by consensual precedent, invoked the authority of the conventional legal schools, and were important members of the religious leadership in their communities did not (indeed, could not) offer any change as a basis for Islamic revival and reform. This study offers a new way of conceptualizing Islamic reformers and their projects. Redefining such an established view uncovers yet another chapter in the narrative of the origins of modern Islam.

Over the past few decades, a growing body of literature on tradition and religious authority in Islam has aimed at offering new approaches to thinking about Islamic tradition and historical change.[19] The emergent view pos-

its Islamic tradition as a sphere of fundamentally variable and shifting truths and principles rather than a set of stagnant beliefs and understandings. Scholars have argued that definitions of what constitutes Islamic tradition emerge within competing discourses and arguments, further eroding the simpler association of Islamic tradition with a fixed, essentialized body of knowledge. Interrogations of the concept have been particularly fruitful in redirecting the attention of scholars from prominent formulations of tradition as "traditional" that simply mimics the past to complex conceptions of pursuing continuity and coherence with the past. This approach is connected to the idea that appeal to tradition does not always entail opposition to change but can effectively enable it, that innovation may be articulate entirely within the terms of an age-old tradition. It is this body of knowledge on which I draw. My own view is profoundly inspired by the works of Talal Asad, an anthropologist of religion, and Daniel Brown, a scholar of Islam.

Asad understands Islam as "a discursive tradition" consisting of ongoing discourses in a variety of historical circumstances that seek to orient practitioners regarding the authorized practices. For him,

> These discourses relate conceptually to *a past* (when the practice was instituted, and from which the knowledge of its point and proper performance has been transmitted) and *a future* (how the point of that practice can best be secured in the short or long term, or why it should be modified or abandoned), through *a present* (how it is linked to other practices, institutions, and social conditions).[20]

Moreover, Asad argues that Islamic tradition is constituted and reconstituted not only by ongoing interactions between the present and the past. For him, interpretative debates, confrontations, and conflicts are intrinsic to the constitution and development of Islamic tradition, as of others. In Asad's view, central to the concept of tradition is orthodoxy, which conveys the correct authoritative doctrine. As he suggests, orthodoxy "is not a mere body of opinion but a distinctive relationship—a relationship of power. Wherever Muslims have the power to regulate, uphold, require, or adjust *correct* practices, and to condemn, exclude, undermine, or replace *incorrect* ones, there is the domain of orthodoxy."[21]

Particularly instructive to my thinking is the conception of power and change. The construction and reconstruction of Islamic orthodoxy, or the definition of what constitutes a Muslim, emerges in conditions of conflict and contestation of interpretations; "incorrect" concepts, beliefs, and practices are

dismantled and replaced with "correct" ones. Furthermore, Asad suggests in a related article that because orthodoxy "aspires to be authoritative," what is involved in the process of determining orthodoxy "is not a simple ad hoc acceptance of new arrangements but the attempt to redescribe norms and concepts with the aid of tradition-guided reasoning." In fact, for Asad, those who speak for Islamic orthodoxy "cannot speak in total freedom: there are conceptual and institutional conditions that must be attended to if discourses are to be persuasive."[22] From this point of view, then, a reconfigured orthodoxy necessarily engages Islamic forms of reasoning and is firmly rooted in the Islamic discursive tradition.

Closely related to this position is Daniel Brown's approach to the relationships between Islamic tradition and modernity. He points out,

> A tradition emerges from the prism of modernity as a multi-colored spectrum of responses. Some responses will show the effects of modernity much more dramatically than others, but none will be entirely untouched. At the same time, each color of the spectrum, each different response, is clearly rooted in the tradition. All responses to modernity from a religious tradition, and even those that seem to have left the tradition altogether behind, maintain a certain continuity with the tradition, just as each band of the spectrum is present in the light entering a prism.[23]

Brown invokes the transforming relationships of modernity and tradition. His point is that in the modern competition over the definition and content of tradition, there are no nonmodern formulations of tradition. He urges us to imagine tradition as "refracted by the prism of modernity." For him, modern Muslims are engaged in an ongoing process of *rethinking* the traditions in which they participate. All responses to modernity from a religious tradition are at the same time fundamentally shaped by the modern as well as anchored within tradition. This is to say that "the most radical opponents of tradition are not departing from the tradition" and "the most conservative defenders of tradition cannot help but reshape the very tradition that they seek to preserve unchanged."[24]

The point that Brown's insight illustrates for me is that the opposition between modern reform and Islamic intellectual tradition that underlies so many discussions of modern Islam assumes a simplistic understanding of the relations between tradition and modernity. Fidelity to the large body of Islamic classical knowledge, and adherence to earlier rulings and precedents authorized

by the *madhhab*, does not simply signify "traditional" as opposed to "modern" Islamic thought. Put differently, while some reformist thinkers aimed at defending the Islamic legal tradition through the implementation of norms they considered as "truly" Islamic, these thinkers were also modern and reformulated Islam through the prism of historical time and in light of the new social circumstances and structural changes produced within modernity.

Asad and Brown invite me to imagine tradition as consisting of alternative, even rival, interpretations that by a culturally specific continuous argument and disagreement over the content of that tradition constitute and reconstitute orthodox doctrine. The latter is firmly grounded in Islamic texts, beliefs, and practices. Moreover, modernity has a constitutive effect on tradition; it informs/imposes a distinctive pattern of rethinking tradition. This pattern is a fundamentally *modern* one.

I argue that precisely such a competition between interpretations characterized the period in which al-Mahdī al-Wazzānī operated, and such a reconstitution of tradition was his *New Mi'yār*. Larger political and socioeconomic transformations that characterized the Moroccan nineteenth century stimulated a widespread reexamination of Islamic law and scrutiny of social and legal norms. Many among the religious scholars and jurists of the period were particularly dissatisfied with the state of the Mālikī legal tradition and called for a reevaluation of its definitive doctrinal authority. In composing his *New Mi'yār*, al-Wazzānī reacted against this negative assessment of Mālikī jurisprudence and sought to defend and reinforce its preeminent authority.

In approaching the *New Mi'yār* from this vantage point, my goal is to provide a way of conceptualizing the relations between Islamic tradition and modern religious reform that is different from that proposed by existing scholarship. I want to demonstrate that Islamic ideas of revival and reform were not the privileged intellectual monopoly of reformist thinkers who articulated a critical position toward the classical legal tradition. In fact, al-Wazzānī's reform project aimed at the revival and renewal of the authority of Mālikī scholarship by introducing a new Mālikī orthodoxy.

THE MAKING OF THE *NEW MI'YĀR*

Al-Mahdī al-Wazzānī was a distinguished Moroccan religious scholar (*faqīh*, pl. *fuqahā'*) of the late nineteenth century. He was born in 1849 in the city of Wazzān in northern Morocco to a sharīfan family of the celebrated 'Imrānī

line, which claimed lineage to the Prophet Muḥammad through his descendant
and founder of Fez, Mawlāy Idrīs. As a youth, al-Wazzānī left Wazzān for Fez,
where he studied Islamic law at the Qarawiyyīn University. After completing
his studies, al-Wazzānī wrote legal treatises, taught at the Qarawiyyīn, and is-
sued fatwās, engaging in the various roles of the trained legal scholar.

By the time al-Wazzānī completed the writing of the *New Mi'yār* in 1910,
the Moroccan state and society had undergone a period of approximately sixty
years of far-reaching changes that constituted an accelerated passage to moder-
nity.[25] Beginning in the second half of the nineteenth century, the Moroccan
state and society experienced new circumstances arising from two interrelated
historical developments: the growing disparity in power between Morocco and
Europe, which prompted ever-increasing foreign interference in Moroccan
affairs, and the modernizing projects initiated and led by the Moroccan state
(henceforth, the Makhzan).[26]

The French occupation of Ottoman Algiers in July 1830 had fateful reper-
cussions for Morocco. Shortly thereafter, Europe affirmed its economic and
military superiority at Morocco's expense. Throughout the remainder of the
nineteenth century England, France, and to a lesser extent Spain and Germany
aggressively competed for influence in the internal affairs of the Moroccan
state. Between the mid-nineteenth century and the beginning of colonial rule
in 1912, Moroccan sovereignty was repeatedly challenged by European powers.
The sultan's armies suffered crushing military defeats at the hands of modern
European armies in 1844 (the battle of Isly against France) and again in 1859
(the Tetuan war against Spain), forcing the Makhzan to sign a truce and hu-
miliating peace treaties. The financial cost of the wars and the large war in-
demnity forced the Makhzan to accept foreign loans, which bankrupted the
Moroccan state. The unfavorable commercial treaties concluded with European
states (beginning with England in 1856) opened Morocco to an increasingly ag-
gressive European economic expansion that the Makhzan was unprepared to
meet.[27] As foreign governments increasingly undermined the sovereign rights
of the Moroccan sultan, the system of granting consular protection to native
Moroccans became widespread and much abused. By the last decades of the
nineteenth century, the protection offered by the foreign powers symbolized
the transformation of the foundations underlying the relations between the Is-
lamic ruler and his subjects.[28] Moroccan writings of the time manifest the anger
and frustration of particular sectors of the population with the inability of the
state to stop European encroachment.[29]

Confronted by Europe's political, military, and economic superiority and a deepening economic crisis, the Makhzan initiated reforms in the government, the financial system, and the army. The second half of the nineteenth century marked a period of extensive Makhzan-led reform that was meant to place more political, fiscal, and religious authority in the hands of the state. While foreign advisers played a prominent role in shaping various reforms, there were also members of the Moroccan bureaucracy and merchant elite, familiar with administrative, socioeconomic, and technological developments in Europe, who were active in these reforms and their implementation.[30] In the course of the reform process, local praxis and social ideals were considerably modified and replaced with new and innovative institutions and practices. This intensive process of centralization and reform of the Moroccan state prompted considerable local resistance and generated internal unrest in Moroccan society.[31] The reform effort of the second half of the nineteenth century, however, proved mostly ineffective in preventing greater European intervention in Moroccan affairs. The convening of the international Madrid conference in 1880, at which the European powers addressed their competing ambitions regarding Morocco, further exposed the unequal relationship of power between Europe and Morocco that culminated in military occupation and the establishment of the French and Spanish Protectorates in 1912.

By the latter part of the nineteenth century, concerns regarding European hegemony, the corresponding weakness of Islam, and dissatisfaction with the state of politics and religion emerged as central issues for many religious thinkers. The new historical conditions encouraged a special preoccupation with Islamic law. Doctrinal questions and theological considerations took on particular significance and became the focus of intense debates and heated conversations.[32] This preoccupation with Islamic law in turn triggered a larger reexamination of the Mālikī legal tradition and a call for religious reform. In the face of crisis and change, Moroccan 'ulamā' searched the tradition in which they were grounded for the explanations for the apparent weakness of Islam. Leading Moroccan jurists offered a radical critique of Mālikī jurisprudence (*fiqh*) and vigorously insisted that the renewal of religion (*tajdīd*) was necessary for the revival of the Moroccan Muslim community.[33]

In the course of these years, al-Mahdī al-Wazzānī, in addition to being a writer of treatises, a muftī, and a professor of law, compiled two collections of Mālikī fatwās. The writing of the *New Mi'yār* was preceded by the *Exalted Gift*, a short and less-known compilation.[34] Al-Wazzānī devoted considerable

energy to these two projects, and as I am going to suggest, for him, making fatwā compilations was not only the mere assembling of a collection. Rather, collecting the material was a creative act of making new constructions that effectively represent and communicate the unique modern Moroccan existence.

Like most classical collections of fatwās, al-Wazzānī's *New Mi'yar* is structured according to the standard categories of Islamic law, or sharī'a jurisprudence. The collection encompasses a wide array of subject matter that covers almost every conceivable area of life. The fatwās range from treatments of marriage contracts, dowries, divorce, alimony, and child custody to considerations of questions concerning inheritance and pious endowments; ritual duties, such as prayer, fasting, and alms giving; crimes against religion; rules of evidence and court procedure; and many other issues. It is worth noting that the legal deliberations touch upon the entire spectrum of private and communal life and reveal the enormous variety of matters that al-Wazzānī considered central to his oeuvre. In addition, it must be stressed that the *New Mi'yar* represents an Islamic conception of law. It is arranged according to the conventional branches of *fiqh* and in line with the traditional comprehensiveness of sharī'a jurisprudence. As a work of *fiqh*, it embraces acts of worship (*'ibādāt*) and interpersonal relations (*mu'āmalāt*). In other words, the *New Mi'yar* does not represent a new understanding of the nature and role of the law; rather, it is a legal text within the conventional *fiqh* tradition.

As mentioned, in creating the *New Mi'yar*, al-Wazzānī collected fatwās from a wide range of sources—from his own work, from those of his contemporaries, and from canonical texts central to the Mālikī tradition. As a literary work, the *New Mi'yar* reflects al-Wazzānī's self-conception as both a compiler of Mālikī knowledge and wisdom and a muftī. In the first role, al-Wazzānī studied manuscripts comprising the school's doctrine—law manuals, commentaries, treatises, and fatwā compilations. He then selected and copied individual fatwās that he considered as authoritative statements within the Mālikī school. Finally, he assembled and arranged the material in separate, thematically unified chapters (*bāb*, pl. *abwāb*). In editing the material and preparing chapters, al-Wazzānī took a dynamic and creative role of juxtaposing different authorities, consciously creating original links and eliciting new arguments.[35] In the second role, that of a muftī, he treated legal disputes between individuals, requests for fatwās from judges, and questions arising from actual judicial practice.[36] In addition to gathering his own material, al-Wazzānī chose to present dozens, if not hundreds, of fatwās issued by his predecessors, which he

disputed in order to introduce new legal opinions firmly grounded in Mālikī mainstream scholarship, thereby emphasizing the act of recovering and restoring the correct practice from within Mālikī intellectual tradition using familiar forms of reasoning. In this way, al-Wazzānī created "new yet old" constructions that featured a creative dialogue between his own cultural world and the Mālikī heritage.[37]

In both roles, however, al-Wazzānī relied primarily on the traditional commentaries and classical and medieval literature of the Mālikī *madhhab*. His sources include some of the most authoritative works of legal doctrine and celebrated compilations of fatwās of the Mālikī school, such as the *Muwaṭṭa'* of Mālik b. Anas (d. 795), *Mudawwana* of Saḥnūn (d. 854), *Risāla* of al-Qayrawānī (d. 996), *Fatāwā* of Ibn Rushd (d. 1126), *Mukhtaṣar* of Khalīl (d. 1374), *Ajwiba* of Ibn Lubb (d. 1380), *Nawāzil* of Ibn Hilāl (d. 1504), *Kitāb al-Mi'yār* of al-Wansharīsī (d. 1508), and *Mawāhib al-Jalīl* of al-Ḥaṭṭāb (d. 1547). At the same time, he compiled much material from early modern and modern works of distinguished Mālikī legists such as *al-'Amāl al-Fāsī* of 'Abd al-Raḥmān al-Fāsī (d. 1685), *Nawāzil* of al-Majjasī (d. 1688), *Sharḥ al-Zurqānī* of al-Zurqānī (d. 1710), *Kitāb al-Nawāzil* of al-'Alamī (d. 1715), and *al-'Amal al-Muṭlaq* of Sijilmāsī (d. 1800). In addition, he incorporated manuscripts and commentaries of prolific jurists of the first half of the nineteenth century and his contemporaries such as 'Ali al-Tasūlī (d. 1842), Muḥammad bin al-Madanī Gannūn (d. 1885), and Muḥammad bin Ja'far al-Kattānī (d. 1927). Whether the library he used while conducting his research was the Qarawiyyīn's, his own private library, or those of his colleagues, the canonical works of *les grands docteurs* of the Mālikī *madhhab* that are central to the tradition predominate.[38]

These sources span many centuries and capture and communicate the accumulated juristic patrimony of the Mālikī school. This is a significant determinant of the ideological orientation and cultural function of the *New Mi'yār*, giving a particular color to the work. The *New Mi'yār* is intimately linked to a specific intellectual community and textual culture, thereby bound to be shaped by the methods of reasoning, modes of argumentation, and foundational principles that conform to this legal tradition. This strong connection to the Mālikī discursive tradition pushes to the fore the obvious uniqueness of the *New Mi'yār*. On the one hand, fundamental domains of the text, including attitudes, beliefs, judgments, sensitivities, vocabulary, and so on, operate within the Mālikī tradition; and on the other, it is inevitably rooted within the cultural world of its author, his motivations, and temperament. My point is that

al-Wazzānī's *New Mi'yār* is a document of a certain milieu at a certain moment, a product of its time, bearing traces of a particular intellectual tradition.

READING FATWĀS

It should be clear by now that this book investigates the *New Mi'yār* as a cohesive and original work, consciously and deliberately created by a single author. From this perspective, *Old Texts, New Practices* differs from other studies that are based on fatwā compilations. Most such works have tended to neglect the compilation's own literary form and function and treated almost exclusively selected fatwās as a subject of critical discussion and source material for historical construction. Fatwā compilations have been principally studied as a mine of texts waiting to be investigated.[39] In this book I move away from this preoccupation.

As the following chapters demonstrate, I am interested in the *New Mi'yār* as a single text. It seems to me that this conceptual framework is a more instructive and fruitful one since it encourages me to consider fatwā texts within the compositional context of the entire work. Consequently, what is important to me is not only to read fatwās but also to explore the author of the compilation and his consciousness, the historical context from which the compilation emerged, the creative act of producing it, its content, and its meaning in the mind of its author. To put the same point in another way, central to this book's concerns is the view of the *New Mi'yār* as a radically ideological text original to the period. Al-Wazzānī was not a passive clerk copying the sayings of his predecessors in a schematic method, and the *New Mi'yār* is not a scrapbook or a random compilation of fatwās. Rather, it possesses a particular character and espouses a particular point of view.

In an effort to penetrate the nature and meaning of the *New Mi'yār*, I have sought ways to conceptualize the relationship between al-Wazzānī and the individual fatwās that make up his compilation. In this study, I have approached the law from a particular historical perspective, itself the result of my encounters with the works of cultural anthropologists.[40] As is undoubtedly clear by now, law, as understood here, interacts with a particular historical reality. It fits a particular place, time, and society. It takes place within a certain culture and projects its internal logic. The role and importance of the law are inseparable from its connections to a wide range of cultural practices and its dialectic interaction with a specific society.

Specifically, I have drawn on Brinkley Messick's investigation of the muftīship as an indigenous institution of worldly interpretation.[41] For Messick, muftīs are worldly interpreters who apply Islamic law to practical life problems; their fatwās constitute an application of a "distinctive notion of text" to the factual world, representing a mode of thought that serves to "bring Islamic-legal knowledge into the world and the world into knowledge." As he suggests, "Muftis are intermediate figures" who "have functioned at the interpretative interface of theory and practice in Islamic law for many centuries."[42] In other words, Messick views the muftīship as an institution representing an interpretative activity that crafts meaning for a society in its own terms by relating an indigenous notion of text to a particular set of circumstances.

Muftīship, Messick emphasizes,

> was not only an institution through which rarified scholarly disputes and the received wisdom of the jurists were brought down to earth in communicable form as "guidance" for the common people. It was also the channel through which mundane, earth-hugging realities, including new factual developments, were formally noticed by and reflected upon by qualified scholarly minds, leading to analogical extensions of the body of legal knowledge. In a dialectical manner, locally generated questions were related to locally interpreted jurisprudence.[43]

As muftīs offered their opinions on what the Islamic view entailed, they were also engaged in a continual process of developing legal doctrine on new topics in response to concerns and events in their communities, creating new texts and regulating new cases. For Messick, the muftī's fatwā provides an example of an interpretative genre that is clearly identified as "native" interpretation by the people themselves. In his view, fatwās are "neither oriented towards, nor dependent upon, communicating with outsiders." As such, they represent indigenous thought, comprising an interpretation of reality, for indigenous consumption.[44]

Inspired by Messick's conceptualization of the muftīship, I argue that al-Wazzānī's discourse invokes a pattern of sophisticated interaction between Mālikī legal doctrine, sources of legal authority, and the rhetoric of legal argumentation, on the one hand, and sociocultural assumptions, customary practices, and sensibilities particular to his society, on the other. In other words, Messick invites me to argue that al-Wazzānī formulated in his *New Mi'yār* an interpretation of the world anchored in Mālikī tradition for a particular Muslim society. The point I wish to emphasize is that even though

the *New Mi'yār* transmits Mālikī memory and tradition and features a mul-
tiplicity of voices, it bears the personal, subjective creativity of an individual
author's voice, rooted in his own cultural world, and thereby builds upon his
interpretation of his society.

This book presents a twofold argument. First, in composing the *New
Mi'yār*, al-Wazzānī reacted to—or against—Islamic ideas of revival and reform
that encouraged a radical critique of Mālikī legal tradition and a call for a
reevaluation of its definitive doctrinal authority and special status in the Mo-
roccan intellectual scene. Al-Wazzānī's *New Mi'yār* intended to restore and
reinforce the preeminent authority of the Mālikī legal tradition by compos-
ing a new Mālikī orthodoxy. Second, in the *New Mi'yār*, al-Wazzānī, in fact,
formulated his interpretation of the world anchored in the Mālikī discursive
tradition for a particular Muslim society. In elaborating his interpretation,
al-Wazzānī both challenged and accommodated the changes in his age. His
goal was to infuse Mālikī thought with meaning relevant to his changed world.
Thus, a critical concern in his *New Mi'yār* was to establish a discourse that
consciously preserved long-standing Mālikī doctrine and knowledge as the
substance of a contemporary ethical Muslim life. In the process, al-Wazzānī
actively transformed the contents and forms of Mālikī scholarship. For al-
Wazzānī, redefining Mālikī tradition and thought as an effective regulator of
contemporary social relations and Islamic morality was necessary to ensure its
preservation and continuity in the context of the changes that marked Moroc-
can modernity. In other words, the story of al-Wazzānī and his *New Mi'yār*
alters the focus of our attention away from (the usual and misleading) narra-
tive that defines Islamic modernism as a rupture with tradition and toward the
distinctive shape of discourses, consciousnesses, and intellectual projects that
emerged in a modern Muslim world.

THE STRUCTURE OF THE STUDY

My trajectory in the succeeding chapters is as follows: Chapter 2 looks at al-
Mahdī al-Wazzānī's biography. In particular, this chapter focuses on the ques-
tion of what experiences, institutions, and professional roles shaped al-Wazzānī's
identity and his vision of the world. I argue first that al-Wazzānī was an adher-
ent of the Mālikī school of sharī'a jurisprudence and a highly trained Mālikī
faqīh. I also suggest that he was deeply involved in the exigencies of everyday
life. My portrait is of a man who was a distinguished scholar and at the same

time rooted, in a variety of ways, in the world he inhabited. He was a respected member of the community of Moroccan scholars, deeply involved in the legal and social affairs of the local population, and a loyal counselor in the service of the Moroccan sultan. In addition to his professional, authoritative knowledge of Islamic law, his position within society granted him intimate acquaintance with social and cultural life, political changes and conflicts, and doctrinal conversations and debates. Al-Wazzānī was a broadly respected and venerated *faqīh* among his fellow *fuqahāʾ* and in the popular sectors of society, and this affected his self-definition and expanded his sense of his intellectual abilities.

In Chapter 3, I examine the concrete historical circumstances within which the *New Miʿyār* was created. I argue that the new historical conditions of the late nineteenth and early twentieth centuries encouraged a special pre-occupation with Islamic law and informed conversations and debates about Mālikī jurisprudence, its content, and nature. Concerns about the declining state of Islam emerged as a critical issue for religious thinkers. They firmly believed that religious reform and the renewal of religion would benefit social and political life. Al-Wazzānī viewed the dissatisfaction with the state of the Mālikī legal legacy as a direct challenge to the special position and authority of Mālikī *fiqh* and ultimately to his position as keeper of knowledge and interpreter of law. Thus, I maintain that in his *New Miʿyār*, al-Wazzānī searched for a solid basis for defending and restoring Mālikī legal tradition by composing a new Mālikī orthodoxy.

While these two chapters are concerned with al-Wazzānī and the concrete historical content of the changes that marked Moroccan modernity within which the *New Miʿyār* emerged and acquired its form and meaning, the next three chapters examine the very nature and meaning of the compilation. The chapters are organized thematically and focus on an analysis of five fatwā texts, which deal with sociolegal issues that experienced dramatic structural and conceptual transformations in al-Wazzānī's time. Together, the three chapters offer a way to penetrate al-Wazzānī's juristic interpretation and argumentation as well as his compositional mechanics and methods.

Chapter 4 focuses on the expansion of contact with foreigners as the growing disparity in power between Morocco and Europe became particularly acute during the second half of the nineteenth century. Specifically, I analyze two texts composed by al-Wazzānī. The first is a fatwā originally issued by al-Wazzānī himself on Muslims becoming protégés of foreign powers represented in Morocco. Al-Wazzānī's juristic argumentation is an unequivocal condemnation

of Muslim protégés and a rejection of the discourse that authorized the prac-
tice. The second text is an extensive editorial comment, combining materials
from separate sources, gathered and arranged by al-Wazzānī. In it, he disputes
a famous fatwā issued by Aḥmad al-Wansharīsī on the legal duty of Muslims
who voluntarily reside under non-Muslim rule to migrate from the realm of
unbelief. Here, al-Wazzānī contested older ways of interpreting the world and
accommodated the changes created by the new historical conditions. In both
texts, I demonstrate how al-Wazzānī explicitly delegitimized and marginalized
certain interpretations and authorized others in order to both challenge and ac-
commodate the historical change dictated by Moroccan modernity.

Chapter 5 investigates the sociolegal domain of kinship and domestic life as
new historical conditions emerged and altered circumstances and conscious-
nesses in the Moroccan countryside and cities. I examine two fatwās issued
by al-Wazzānī. The first one tells the story of a dispute over family property
(ḥubs). The second fatwā focuses on a family conflict between a woman and
her brother-in-law, who refuses to pay her maintenance (nafaqa). In both
cases, al-Wazzānī contests interpretations that sought to enhance gender asym-
metry and male dominance. Instead, he suggests a restructuring of the patri-
archal social order to reflect changes in family arrangements and household
composition. I argue that al-Wazzānī denounced and rejected older answers
that became irrelevant and legitimized others that accommodated the new his-
torical conditions.

Chapter 6 looks at the increased Moroccan trade with Europe and the diffu-
sion of new tastes for European-manufactured items. I explore one text assem-
bled by al-Wazzānī that deliberately combines material from several sources
written in the course of the nineteenth century. Al-Wazzānī compiled this text
in response to rumors circulated in the last quarter of the nineteenth century
that imported sugar from Europe was processed with pig's blood. The text un-
equivocally authorizes the consumption of imported sugar and reinforces the
drinking of three other popular stimulant beverages. I show how al-Wazzānī's
composition authorized an interpretation that accommodated new customs
and changing tastes.

Finally, in Chapter 7 I reflect on the complexities of change in Islamic law.
I focus on the Islamic commitment to argument and debate in a shared style
of discourse and its role in shaping the direction and nature of that change. I
argue that al-Wazzānī's commitment to compile in his New Miʿyār the most
authoritative opinions within the Mālikī school of law as a medium for the

transmission and preservation of tradition did not preclude innovation and creativity. In fact, precisely by pretending merely to present original, earlier texts, the *New Mi'yār* regularly offered new interpretations of the law and allowed for considerable flexibility in the adaptation of the law to new historical conditions and changing social needs. This complex dialogue between new consciousnesses and age-old voices of tradition is instructive for thinking about modern Islam.