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Excavating Arabic sources for the history of slavery in Western Africa

GHISLAINE LYDON AND BRUCE S. HALL

The history of slavery and the experiences of enslavement in the interior of West Africa are poorly understood in comparison with those in other regions of the Atlantic world. This is in large part due to the limited availability of internal source material. Within Muslim societies in West Africa, however, there are extant written sources in Arabic that address slavery and that date back to the end of the fifteenth century. Slave labor and the trade in slaves within and across the Sahara desert, and along trade routes that crossed West Africa more broadly, were important for the economies and societies of Muslims throughout the subregion. Slave dealers sometimes recorded their transactions in writing, drafting contracts and expediting commercial correspondence. Moreover, transactions involving slavery consistently appear in Muslim jurisprudential writings produced by West African scholars. Thankfully, a considerable number of literate Muslim families have preserved these written sources in private collections. Historians with the access and skills to decipher these documents can glean a great deal of information about the practice of slavery in Muslim slave-owning societies in Western Africa, including insights into the lives and predicaments of enslaved people themselves.

In this chapter we examine a variety of commercial and legal sources that document transactions in slaves, or the lives of enslaved people, in precolonial West Africa. While some of this primary source material has been published, most of it remains in manuscript form and is held in Malian and Mauritanian private family libraries, or at several public archives such as the Institut des Hautes Etudes et de Recherches Islamiques Ahmed Baba (IHERI-AB) in Timbuktu, Mali. We begin by setting the stage with a broad review of the place of slave ownership in Muslim thought. We survey the studies on slavery that scholars have produced using these and other Arabic language sources, and then we turn to an overview of the history of slavery, and the transregional and trans-Saharan slave trades in Western Africa. This is followed by an examination of the formal rules concerning enslavement, slavery and property rights as detailed in the manuals of the Mālikī school of law practiced by Muslims in the region. When reviewing the various types of sources on slavery derived primarily from

This article was partially inspired by material contained in Lydon, "Slavery, Exchange and Islamic Law: A Glimpse from the Archives of Mali and Mauritania," *African Economic History* 33 (2005), 117-148.

archives and private collections of northern Mali and Mauritania, we address the challenges that each set of documents poses to historians seeking to decrypt meanings and determine facts.

SLAVERY AMONG AFRICAN MUSLIMS

Slavery may have increased with the spread of Islam in sub-Saharan Africa, which had gained a significant number of followers by the beginning of the eleventh century. Some scholars even point to the Muslim conquest as the beginnings of slavery in Western Africa.¹ However, slavery or forms of servility were practiced in the region prior to the arrival of Islam, just as was the case in pre-Islamic Arabia. How did Muslims justify the act of enslavement? As a matter of principle, Islamic law held that the only lawful means to generate slaves was through the capture of non-Muslims who refused to convert during a lawful Jihad. Enslavement was in fact one of five options available to a Muslim captor engaged in a legitimate Jihad; the other four were putting the prisoner to death, releasing him or her without penalty, asking a ransom and demanding the payment of a head tax (*jizya*).² A theological argument was used to justify the act of enslaving unbelievers as part of a proselytizing mission to expand the frontiers of Islam. Several scholars have argued, however, that the sources of Islamic law do not justify enslavement, and emphasize that manumission, or the freeing of the enslaved, was recommended.³ To be sure, since the time of the Prophet's original seventh-century Jihad, the sources of Islamic law often have been reinterpreted to justify acts of enslavement.⁴ It is important to stress that if we are to understand the history of slavery in historical Muslim societies, we must focus on the actual practice of Islamic jurisprudence of slavery in particular historical contexts, rather than confine ourselves to a theoretical perspective based on the ways in which slavery is treated in the Qur'an and the ḥadīth, and in the subsequent codifications of the substantive law about slavery in the legal manuals of the different legal schools.⁵ Our approach here will be, as much as possible, to put the legal principles around slavery found in the widely known manuals and didactic texts into dialogue with particular examples of cases and disputes produced in West Africa. In this way, we hope to point to some of the potential work

¹ Mukhtār ibn Ḥamidun, *Ḥayāt Mūrītāniyā: al-Ḥayā al-thaqāfiyah* (Tunis, 1990), 52.

² John Hunwick and Eve Troutt Powell, *The African Diaspora in the Mediterranean Lands of Islam* (Princeton, 2002), 23.

³ Moulavi Cherāgh Ali claims that "it is a false accusation against the Koran that it allows enslavement of captives of war." (*A Critical Exposition of the Popular "Jihād"* [Karachi, 1977], 193 and especially Appendix B, 193–223). While not going quite so far, Ulrike Mitter explains how manumission was institutionalized in early Islam ("Unconditional manumission of slaves in early Islamic law: a ḥadīth analysis," *Der Islam* 78, 1 [2001], 55–72). See also William Gervase Clarence-Smith, *Islam and the Abolition of Slavery* (London, 2006).

⁴ See Chouki El Hamel's recent discussion of these issues in *Black Morocco: A History of Slavery, Race and Islam* (New York, 2012). It is important to note that while this justification for enslavement in Islam is taken for granted by Muslim jurists and modern scholars alike, there exists no treatise or work on the subject. The Qur'an underscores that those who reject the religion of Islam are doomed to the worst of fates; only one verse vaguely insinuates that unbelievers should be enslaved (Qur'an 33:50). The ḥadīth, or Prophetic sayings, contain discussions of a number of cases concerning slaves that the Prophet Muḥammad addressed during his lifetime.

⁵ Ehud Toledano, "Enslavement and Abolition in Muslim Societies," *Journal of African History* 48 (2007), 481–485.

historians can do to further explore the rich material on slavery in Arabic to advance our understanding of the history of slavery on the continent.

It is important to acknowledge that there were critics of the practice of slavery within the Muslim world. The racism produced by the slave trade among Muslims was decried early on by the likes of the ninth-century writer known as al-Jāhīz, a black Muslim from Baghdad and one of the most prolific scholars of his time. In no uncertain terms he condemned racist stereotypes about 'blacks,' arguing that they were in many ways superior to whites, and he documented the African ancestry of Prophet Muḥammad.⁶ Whereas a fifteenth-century Egyptian jurist from the Ḥanafī school of law could write a treatise advising traders on how best to select purchased slaves through careful inspection,⁷ his contemporary, the well-known late-medieval Egyptian scholar 'Abd al-Raḥmān al-Suyūṭī (d. 1505), felt compelled to write two books that aimed to refute negative ideas associated with 'blacks.' Based largely on the work of an earlier scholar named Ibn al-Jawzī (d. c.1200), al-Suyūṭī praised the 'blacks' for their physical strength, bravery, generosity, good manners, harmlessness, cheerfulness, sweetness of breath, easiness of expression and fluency.⁸ As the frontiers of Muslim lands expanded in the nineteenth century, contemporary African scholars such as the Moroccan Aḥmad bin Khālid Al-Nāṣirī also questioned the legitimacy of enslaving Africans indiscriminately on legal and racial grounds.⁹ The fact that, on the one hand, trans-Saharan slave dealers were sometimes concerned with ensuring that their trade was carried out lawfully and, on the other hand, that there are numerous reports of incidences of wrongful enslavements of African Muslims suggests that there was often confusion, conflict and debate among Muslims surrounding transactions in slaves.¹⁰ Still, for centuries, traders and consumers of slaves in the Muslim world based their actions on a number of ill-defined assumptions couched in religious terms. Moreover, many turned a blind eye to the question of the manumission

⁶ For an English translation of al-Jāhīz's work see Abū 'Uthman 'Amr ibn Baḥr al-Jāhīz, *The Book of Glory of the Blacks over the Whites - Kitāb Fakhr as-Sudan 'alā al-Baydan*, trans. Vincent Cornell (New York, 1981).

⁷ The scholar was Maḥmūd b. Aḥmad al-'Ayntābī (d. 1492), *Risāla Nādīra fī Sharī wa-Taqlīb al-'Abid: Al-Qawl al-Sadīd fī Ikhtiyār al-Imā' wa-'l-'Abid* (Beirut, 1997) ["An unusual treatise on the buying and examination of slaves: the correct statement on the selection of slave-girls and male slaves"].

⁸ Akbar Muhammad, "The Image of Africans in Arabic Literature: Some Unpublished Manuscripts," in John Ralph Willis (ed.), *Slaves and Slavery in Muslim Africa, Volume 1: Islam and the Ideology of Enslavement* (London, 1985), 55. Al-Suyūṭī's two books are called "Raising the status of the Ethiopians" (*Raf' sha'n al-ḥubshān*) and an abridged version of this work titled "The flowers of the throne concerning information about the Ethiopians" (*Azhār al-'urūsh fī akhbār al-ḥubūsh*). Modern publications of these works are as follows: *Raf' sha'n al-ḥubshān*, ed. Ṣafwān Dāwūdī and Ḥassan 'Ubayjī (Jedda, 1991); *Azhār al-'urūsh fī akhbār al-ḥubūsh*, ed. 'Abd Allāh 'Isā al-Ghazālī (Kuwait, 1995). On these different works by al-Suyūṭī, see Saud H. al-Khatlan, "A Critical Edition of Kitāb Raf' Shān al-Ḥubshān by Jalāl al-dīn al-Suyūṭī" (PhD dissertation, University of St. Andrews, 1983). Ibn al-Jawzī's book is called "The illumination of the darkness on the merits of the Blacks and the Ethiopians" (*Tanwīr al-ghabash fī faḍl al-sūdān wa-'l-ḥabash*). It is published as Abū al-Faraj 'Abd al-Raḥmān b. al-Jawzī, *Tanwīr al-ghabash fī faḍl al-sūdān wa-'l-ḥabash*, ed. Marzūq 'Alī Ibrāhīm (Riyad, 1998). See Imran Hamza Alawiye, "Ibn al-Jawzī's Apologia on Behalf of the Black People and Their Status in Islam: A Critical Edition and Translation of Kitāb Tanwīr al-Ghabash fī Faḍl al-Sūdān wa-'l-Ḥabash" (PhD dissertation, University of London, 1985).

⁹ John Hunwick, "Islamic Law and Polemics over Race and Slavery in North and West Africa (16th-19th Century)," in Shaun E. Marmon (ed.), *Slavery in the Islamic Middle East* (Princeton, 1999).

¹⁰ The fact that Muslims were wrongfully enslaved throughout the centuries is well reported in the literature, including the record of Muslim African victims of the trans-Atlantic slave trade. Even Mālikī scholars made allowances for the ownership of Muslim slaves, as discussed later.

of the converted slave, choosing instead to hold Muslims in captivity and passing down slave ownership of their descendants for generations by way of inheritance.

Remarkably few historians of West Africa have explored Muslim records on slavery. John Ralph Willis published a landmark volume in which several contributors cite original Muslim sources.¹¹ John Hunwick published a number of annotated translations and critical studies of important Arabic writings on slavery.¹² In addition to the two authors of this chapter,¹³ Hunwick and Eve Troutt Powell have published a book that collects a number of primary sources on slavery in northwestern Africa.¹⁴ E. Ann McDougall's research on slavery is informed by trade records from Morocco and Mauritania.¹⁵ Even fewer historians of East Africa have mined Arabic source material. The archives of Zanzibar have been used by several scholars for information on slavery.¹⁶

Due in large part to linguistic training, it is not surprising that scholars of North Africa, more than from any other region of Africa, have mined Arabic-language archives. Based on court records, Terence Walz produced a landmark study of the slave trade to Egypt, and Ahmad Sikainga has researched slavery in Sudanese as well as in Moroccan history.¹⁷ For Morocco, Mohamed Ennaji wrote a pioneering book informed in part by royal archives, and David Powers relied on the legal compendium of Aḥmad al-Wanṣharīsi.¹⁸ Daniel Schroeter and, more recently, R. David Goodman have used court records to document contestations over rights over slaves.¹⁹ Chouki El Hamel and Rita Aouad examine slavery and race in southern Morocco.²⁰ For Tunisia, Ahmed Rahal

¹¹ In J. R. Willis (ed.), *Slaves and Slavery in Muslim Africa* (London, 1985).

¹² John Hunwick, *Shari'a in Songhay: the replies of al-Maghili to the questions of Askia al-Hajj Muhammad* (Oxford: Oxford University Press, 1985); Ahmad Bāba al-Tinbukti, *Mīrāj al-su'ūd. Ahmad Bābā's Replies on Slavery*, eds. and trans. John Hunwick and Fatima HARRAK (Rabat: University Muḥammad V Souissi, 2000).

¹³ Lydon, "Slavery, Exchange and Islamic Law: A Glimpse from the Archives of Mali and Mauritania," *African Economic History* 33 (2005), 117-148; Lydon, "Islamic Legal Culture and Slave Ownership Contests in Nineteenth-Century Sahara," *International Journal of African Historical Studies* 40, 3 (2007), 391-439; Bruce S. Hall, *A History of Race in Muslim West Africa, 1600-1960* (New York, 2011).

¹⁴ Hunwick and Troutt Powell, *The African Diaspora*.

¹⁵ See, for examples, McDougall, "Discourses and Distortions: Critical Reflections on Studying the Saharan Slave Trade," *Revue Française d'Histoire d'Outre Mer* 336-337, 4 (2002), 55-87.

¹⁶ Fahad A. Bishara, "Paper Routes: Inscripting Islamic Law Across the Nineteenth-Century Western Indian Ocean," *Law and History Review* 32, 4 (2014), 797-820; Elke Stockreiter, "Child Marriage and Domestic Violence: Islamic and Colonial Discourses on Gender Relations and Female Status in Zanzibar, 1900-1950s," in Emily Burrill, Richard Roberts, and Elizabeth Thornberry (eds.), *Domestic Violence and the Law in Colonial and Postcolonial Africa* (Athens: Ohio University Press, 2010), 138-158 and Stockreiter, *Islamic Law, Gender, and Social Change in Post-Abolition Zanzibar* (Cambridge, 2015); Thomas F. McDow, "Arabs and Africans: Commerce and Kinship from Oman to the East African interior, c. 1820-1900," Dissertation (Yale University, 2008).

¹⁷ Walz, *Trade between Egypt and Bilād As-Sūdān, 1700-182* (Cairo, 1978); Ahmad A. Sikainga, *Slaves into Workers: Emancipation and Labor in Colonial Sudan* (Texas, 1996); "Shari'a Courts and the Manumission of Female Slaves in the Sudan, 1898-1939," *International Journal of African Historical Studies* 28, 1 (1995), 1-14. "Slavery and Muslim Jurisprudence in Morocco," *Slavery and Abolition* 19, 2 (1998), 57-72.

¹⁸ Ennaji, *Serving the Master, Powers, Law, Society and Culture in the Maghrib, 1300-1500* (Cambridge, 2002).

¹⁹ Daniel Schroeter, "Slave Markets and Slavery in Moroccan Urban Society," in E. Savage (ed.), *The Human Commodity*, 185-213; R. David Goodman, "Demystifying 'Islamic Slavery': Using Legal Practices for Reconstructing the End of Slavery in Morocco," *History in Africa*, 39 (2012), 145-174.

²⁰ Rita Aouad, "'Esclavage' et situation des 'noirs' au Maroc dans la première moitié du XXe siècle," in L. Marfaing and S. Wippel (eds.), *Les relations transsahariennes à l'époque contemporaine: un espace en constante mutation* (Paris, 2004), 337-359; El Hamel, *Black Morocco*.

and Ismael Montana document the religious practices of the enslaved based on legal sources.²¹ Raed Bader completed a dissertation in France on slavery in colonial Algeria.²² Also using court records, Libyan historian Āmāl Muḥammad al-Ṭālib published work on nineteenth-century families in Tripoli, in which she pays close attention to domestic slavery.²³ Our focus here, in contrast, is largely on West Africa and its connections to the trans-Saharan trade.

THE SLAVE TRADES IN BRIEF

In the eighteenth and nineteenth centuries, there were significant shifts in the demand and supply of slaves in West Africa and beyond. Locally, the enslaved were put to work in all areas of the economy, as domestic workers, concubines and wet-nurses, town and field laborers, but also as commercial agents. Throughout West Africa, slaves also labored in all areas of production, from craft manufacturing to farming. In large states such as the Sokoto Caliphate (and also in North African states like Morocco), male slaves served as guards and soldiers to the sultan, as well as to wealthy chiefs in the countryside, while female slaves acted as domestics and concubines.²⁴ In the desert-side economies of the Saharan regions, they were further put to work as salt miners, caravan workers, well diggers and shepherds. Access to cheaper slaves gave a boost to labor-intensive date palm cultivation and especially to the small cereal-producing fields of Saharan oases.²⁵ This increase in cereal production in the Sahara may have been provoked by Saharans' desire to secure basic subsistence needs in the face of the increasing insecurity surrounding West African markets. Rock salt bars were the primary currency Saharans used to acquire slaves. Ann McDougall has shown that a higher demand for slave labor in salt pans arose from the increased demand for salt bars in and across the Sahara, and that this gave added impetus to the slave trade.²⁶

From the early nineteenth century onward, the volume of the trans-Saharan slave trade from West Africa to the north and beyond Africa to the markets of the Middle East grew significantly as a result of the closing of the trans-Atlantic slave trade and the increased demand in the Middle East after other slave provenance areas for the Mediterranean basin, such as the areas bordering the Black Sea, were closed.²⁷ Slave

²¹ Ahmed Rahal, *La Communauté noire de Tunis: Thérapie initiatique et rite de possession* (Paris, 2000); Ismael Montana, *The Abolition of Slavery in Ottoman Tunisia* (Gainsville, 2013).

²² R. Bades, "Une Algérie noire? Traite et esclaves noirs en Algérie coloniale" (unpublished PhD thesis, Université Aix-Marseille III, 2005).

²³ Āmāl Muḥammad al-Ṭālib, *Al-Ḥayat al-Uṣriya fi wilāya Ṭrāblus al-gharbi fi al-'ahad al-'uthmāni al-thāni (1911–1835)* (Tripoli, 2006), especially Chapter 3. She completed in 2015, at the University of Manchester, a dissertation titled "A Social and Economic History of Slavery in Libya." Of relevance is F. Renault, "La traite des esclaves noirs en Libye au XVIII^e siècle," *Journal of African History* 23, 1 (1982), 163–181.

²⁴ Ennaji, *Serving the Master*; Sean Stilwell, *Paradoxes of Power: The Kano 'mamluks' and Male Royal Slavery in the Sokoto Caliphate, 1804–1903* (Portsmouth, 2004).

²⁵ E. Ann McDougall, "Salt, Saharans and the Trans-Saharan Slave Trade: Nineteenth Century Developments," in Elizabeth Savage (ed.), *The Human Commodity: Perspectives on the Trans-Saharan Slave Trade* (London, 1992), 72–73. See also Pierre Bonte, "L'Émirat de l'Adrar. Histoire et anthropologie d'une société tribale du Sahara occidental" (PhD dissertation, École de Hautes Études en Sciences Sociales, Paris, 1998).

²⁶ McDougall, "Salt," 75.

²⁷ Catherine Newbury, "North African and Western Sudan Trade in the Nineteenth Century: A Re-Evaluation," *Journal of African History* 7 (1966), 233–224; Steven Baier, *An Economic History of Central Niger* (Oxford, 1980); Baier, "Commercial Sectors in the Economy of the Nineteenth-Century

markets in the Western Sudanic interior remained active well into the twentieth century. But the drop in Atlantic-side demand over the nineteenth century caused prices of slaves to decline as well. Martin A. Klein found that the overall prices of slaves would have dropped in the first three decades before rising again for the remainder of the century.²⁸ This may well have been the period when, in the popular memory of people in the southern Sahara, a slave's worth in salt was the size of a foot cut out in a slab of salt.²⁹ Indeed in Saharan-Sahelian borderland markets, enslaved Africans were exchanged for slabs of Saharan salt, which were much in demand in West Africa, because it was a salt-deficient region.

Political instability in West Africa during the nineteenth century also led directly to increased demand for slaves and extensive enslavement. Extensive slave-raiding took place in the area dominated by the Sokoto Caliphate in modern Northern Nigeria and southern Niger.³⁰ Other Muslim state builders such as Aḥmad Lobbo, al-Ḥājj 'Umar Tāl and Samori Turé depended on slave raiding to acquire imported goods such as the firearms that they needed to resist European encroachment and establish their respective fiefdoms.³¹ One example gives us an idea of how this worked: in 1859–1860, a caravan

Central Sudan: The Trans-Saharan Trade and the Desert-Side Salt Trade," *African Economic History* 13 (1984), 85–116; Ralph Austen and Dennis Cordell, "Trade, Transportation, and Expanding Economic Networks: Saharan Caravan Commerce in the Era of European Expansion," in Alusine Jalloh and Toyin Falola (eds.), *Black Business and Economic Power* (Rochester, 2002), 88–113; Austen, "Marginalization, Stagnation and Growth: The Trans-Saharan Caravan Trade in the Era of European Expansion, 1500–1900," in James D. Tracey (ed.), *The Rise of Merchant Empires: Long Distance Trade in the Early Modern World, 1359–1750* (Cambridge, 1990), 311–350; Austen, "The Trans-Saharan Slave Trade: A Tentative Census," in Henry Gemery and Jan Hogendorn (eds.), *The Uncommon Market: Essays in the Economic History of the Atlantic Slave Trade* (New York, 1979), 23–76; McDougall, "Salt"; Martin A. Klein, *Slavery and Colonial Rule in French West Africa* (Cambridge, 1998); Ennaji, *Serving the Master*; Marion Johnson, "Calico Caravans: The Tripoli-Kano Trade After 1880," *Journal of African History* 17 (1976), 95–117; Capitaine Dupas, "Le Commerce Caravanier entre les Confins Algéro-Marocains et l'AOF (Mauritanie et Soudan) à Travers le Sahara Occidental," *Centre des Hautes Études d'Administration Musulmane*, no. 1357 (April 1, 1938); Paul Lovejoy, "Slavery, the Bilād al-Sūdān and the Frontiers of the African Diaspora," in Paul Lovejoy (ed.), *Slavery on the Frontiers of Islam* (Princeton, 2003), 1–30; J.-L. Miège, *Le Maroc et L'Europe (1830–1894)*, vol. III (Paris, 1962).

²⁸ Klein, *Slavery*, 42. He admits, however, that whether there was a general drop in slave prices is debatable for the nineteenth century. Quantitative questions such as the size of the intra-African slave trade and relative slave prices over the course of the nineteenth century will become easier to resolve once more local trade records are mined. For a discussion of prices of female slaves in the 1850s see Paul Lovejoy and David Richardson, "Competing Markets for Male and Female Slaves: In the Interior of West Africa, 1780–1850," *International Journal of African Historical Studies* 28 (Spring 1995), 261–294.

²⁹ Lydon interviews with retired caravaners: Fuḷḷi wuld al-Ṭayr Atar, Mauritania (March 17, 1998); Bāba Ghazzār, in Tishīt, Mauritania (April 16, 1997); and Aḥmad Jiddu, in Shingīṭi, Mauritania (August 1, 1997). This oral tradition, still very vivid in the memory of Mauritanian elders, is also reproduced in the late nineteenth-century ethnography of Aḥmad b. al-Amin al-Shinqīṭi, *Al-Wasiṭ fi Tarājim Udabā' Shinqīṭ* (Cairo, 1911), 521. McDougall cites a French source dating from the 1840s that claims that in the region of Niore, an average slave was worth one salt bar ("Salt," 63). So conceivably, there may have been a time when enslaved Africans were sold for even less.

³⁰ Lovejoy, *Transformation of Slavery*, Chapter 9.

³¹ D. Robinson, *The Holy War of Umar Tal. The Western Sudan in the Mid-Nineteenth Century* (Oxford, 1985); Y. Person, *Samori. Une Révolution Dyula*, Tomes I, II, III, IV (Dakar, 1968–1975). P. Marty, "Les Chroniques de Oualata et de Néma," *Revue des Etudes Islamiques*, Cahier III (1927), 367. An early twentieth-century correspondence between the French colonial administration and the trading community of St. Louis, expressing concern for their commercial activities, makes clear that the exchange of slaves for firearms was ongoing. "Rapport du délégué du Gouverneur Général en Pays Maures (Xavier Coppolani) à Monsieur le Gouverneur Général de l'A.O.F. sur la mission d'organisation du Tagant,

from Tishit (central Mauritania) sold 2000 slabs of Saharan salt, half of them for slaves, to the Tokolor leader al-Ḥājj ʿUmar. That year, according to the Chronicle of Walāta (eastern Mauritania), the price of salt dropped to approximately thirty-five kilograms of millet. In turn much of this salt would have been used as currency to purchase all kinds of military supplies, including firearms and horses.

At the same time, Saharan nomads, mounted on camels and horses, were notorious for their raids on villages for slaves. Many slaves were raided from the Senegal River Valley, as well as the regions of the Middle Niger Valley and areas further south and east.³² The second half of the nineteenth century witnessed an escalation of slave raiding through the region of the southwestern Sahara and what is today northern Senegal and western Mali. All groups, including Muslims, were targeted for capture or enslavement by nomads engaged in chronic warfare, or by entrepreneurial raiders. Indeed, even the family of al-Ḥājj ʿUmar was raided for slaves by unscrupulous nomads following the death of the Tokolor leader in 1864.³³ Muslim leaders, such as al-Ḥājj ʿUmar, justified their actions on the basis of jihad and Islamic rules regulating enslavement.

MĀLIKĪ RULES ON SLAVERY

It is difficult to know the percentage of people in West Africa that were Muslim before the twentieth century, but certainly Muslims constituted a majority of the population of the Sahelian zone along the southern edge of the Sahara Desert by the end of the nineteenth century. West African Muslims followed the Mālikī doctrine of Islamic law, a school named after the early Arabian scholar named Mālik b. Anas (d. 796). Mālik's major work, called the *Muwattaʿa*ʾ (or "The Well-Trodden Path"), is a foundational reference of substantive law that gathers together prophetic sayings and legal precepts compiled in eighth-century Medina.³⁴ In its 61 chapters, there are over 200 references to slaves, including details of rules concerning the manumission, inheritance and commercial activities of slaves.³⁵ The other foundational work of Mālikī law is Ṣaḥnūn's (d. 854)

Saint-Louis 1er juillet 1904," *Mauritanie*, Vol. IV (1902-1904), Centre D'Archives d'Outre-mer (CAOM). See also Klein, *Slavery*, Chapter 2; Robinson, *Holy War*. L. C. Faidherbe, the French governor of Senegal, went so far as to categorize Samori as a "marchand d'esclaves pour maures du Sahara" *Le Sénégal* (Paris, 1889), 318.

³² Richard Roberts, *Warriors, Merchants and Slaves: The State and the Economy in the Middle Niger Valley, 1700-1914* (Stanford, 1987); James Searing, *West African Slavery and Atlantic Commerce: The Senegal River Valley, 1700-1860* (Cambridge, 1993); Lovejoy, "Slavery, the Bilād al-Sūdān and the Frontiers of the African Diaspora."

³³ This is revealed in a letter addressed to a trans-Saharan trader by his son, Aḥmadu, demanding assistance to rescue his family members. Family archives of Shaykh b. Ibrāhīm al-Khalīl (Tishit, Mauritania), IK1.

³⁴ W. B. Hallaq, "On Dating the Muwattaʿa," *UCLA Journal of Islamic and Near Eastern Law* 1, 1 (2001), 23-45. For a general history of Islamic legal thought see Hallaq, *A History of Islamic Legal Theories* (Cambridge, 1997). Another useful guide is Mohamed Hashim Kamali's *Principles of Islamic Jurisprudence* (Cambridge, 2003).

³⁵ For a recent French translation, see Imām Mālik, *Al-Muwattaʿa: Synthèse pratique de l'enseignement islamique*, trans. and ed. Muhammad Diakho (Beirut, 2004). For a review of the early history of the Maliki doctrine see Jonathan Brockopp, *Early Maliki Law. Ibn ʿAbd al-Hakam and his Major Compendium of Jurisprudence* (Leiden, 2000); especially relevant is his discussion of Islamic law and slavery in the eighth century, 115-205. For a history of Maliki doctrine in North and West Africa see M. H. Mansour, "The Spread and the Domination of the Mālikī School of Law in North and West Africa: Eighth-Fourteenth Century" (PhD Dissertation University of Illinois, 1981).

Mudawwana ("The Book of Law"), a work compiled in Qayrawān (Tunisia) and meant to complement the *Muwattaʿ*. While this text was well known, its extreme length meant that few in West Africa could afford to have copies, and most knew it through derivative forms and commentaries.³⁶

By far the most important legal manuals in West Africa, and in the Mālikī school more broadly, were two shorter works that provided synopsis of substantive law. One is called *al-Risāla* ("The treatise") by Ibn Abī Zayd (d. 996), a scholar from Qayrawān (Tunisia).³⁷ The other is titled *Mukhtaṣar fī ʿl-ḥiqh ʿalā madhhab al-Imām Mālik* ("Compendium of jurisprudence of Imām Mālik's legal doctrine") by the Egyptian Khalīl ibn Ishāq al-Jundī (d. 1374).³⁸ The *Mukhtaṣar*, as it came to be known, is an abridgement of Ibn al-Ḥāḥib's (d.1249) *Mukhtaṣar al-farʿī*. It became a popular text that brought together in a compact format much of the substantive law of the Mālikī school. Khalīl's *Mukhtaṣar* is a more technical work that is meant to be memorized and is almost impossible to understand without the aid of commentaries, whereas Ibn Abī Zayd's *Risāla* is written in a much more comprehensible narrative style. West African Muslim jurists based their decisions on such works, and wrote commentaries on these texts.³⁹ They also referred to these sources while engaging in daily jurisprudence, answering the legal questions tailored to the particular circumstances of the day by writing legal opinions and shorter replies, as examined in the next section.

With notable exceptions Mālikī law treated transactions in slaves similarly to transactions in animals, as was the case across Islamic legal traditions. The two primary rules of trade in Islam, which were plainly linked, were the interdiction on usury and the requirement that transactions take place simultaneously.⁴⁰ Selling a good with a delay was considered usurious simply because that delay was worth something to the seller. However, the sale with anticipated payment, a practice known as *salam*, was considered lawful only for slaves, animals and foodstuffs, as well as real estate and land, as long as terms and prices were agreed upon and payment occurred prior to delivery.⁴¹ Selling slaves in bulk was also forbidden since, like animals, they could be priced individually. But as in the case of animals, they also could be sold in portions or shares, loaned out temporarily or rented.⁴² In all of these cases, if a slave became pregnant during the loan period, the progeny belonged to the owner, not the borrower.⁴³

³⁶ On the rarity of the *Mudawwana* in West African manuscript collections, see Bruce S. Hall and Charles C. Stewart, "The historic 'Core Curriculum,' and the Book Market in Islamic West Africa" in Graziano Krätli and Ghislaine Lydon ed., *The Trans-Saharan Book Trade: Arabic Literacy, Manuscript Culture, and Intellectual History in Islamic Africa* (Leiden, 2010), 132.

³⁷ Ibn Abī Zayd, *La Risāla ou Epitre sur les éléments du dogme et de la loi de l'islam selon le rite mālīkite (texte et traduction)*, ed. Léon Bercher (Alger, 1968). Note that sometimes West African jurists refer to this work as "the author of the *Risāla*" or simply "Abū Muḥammad."

³⁸ We rely on the following Arabic text: *Al-Mukhtaṣar ʿalā madhhab al-Imām Mālik ibn Anas li-Khalīl ibn Ishāq ibn Yaʿqūb al-Mālikī* (Paris, 1855).

³⁹ Hall and Stewart, 129–137. See also M. M. Ould Bah, *La Littérature Juridique et l'évolution du Malikisme en Mauritanie* (Tunis, 1981).

⁴⁰ Ibn Abī Zayd, 200; Khalīl, 126–127. For a detailed explanation see Kamali, *Principles*, 402–404.

⁴¹ Ibn Abī Zayd, 210; Khalīl, 125.

⁴² Ibn Abī Zayd, 212; Khalīl, 124 (who claims that wholesale transactions are tolerated only where it is the local custom). On shareholding rules: Ibn Abī Zayd, 202; Khalīl, 124; on renting and loans: Ibn Abī Zayd, 214, 236; Khalīl, 136–137.

⁴³ Ibn Abī Zayd, 238; Khalīl, 127.

Given the fact that, unlike animals, the enslaved were “endowed with reason,” special rules further governed their status and predicament. Unlike domestic animals that constituted perpetual property, slaves could be manumitted or they could be allowed to purchase their freedom.⁴⁴ The Qur’ān recommends manumission, “if any of your slaves ask for a deed in writing (*al-kitāba*) give them such a deed if you know any good in them.”⁴⁵ The rules of manumission (*‘itq*) are well described in Mālikī manuals, starting with Mālik’s *Muwaṭṭa’*, which contains two chapters (39 and 40) on the subject. The slave in the process of purchasing his or her freedom was known as a *mukātib*, and the manumission certificate as the *kitāba*. Until the agreed-upon manumission price had been fully paid, the *mukātib* remained a slave. If s/he died in the process of manumission, and left property that was superior in value to the amount remaining for attaining freedom, then the children of the enslaved could inherit whatever was left after this payment as long as they were mentioned in the *kitāba* contract. Another form of manumission is known as the *mudabbar*, whereby a master agrees to free an enslaved person after the master’s death (more on this later).

Laws of sales were all governed with protection for buyers against purchasing defective merchandise, whether goods, animals or slaves. According to the rules of exchange, the seller had an obligation to honestly divulge all of a slave’s “defects” (*‘uyūb*) to the best of his/her knowledge and to the purchaser’s satisfaction (as in the case examined later).⁴⁶ As Sikainga noted in his study of slavery in Morocco, sellers of slaves were required to disclose all “defects at the time of sale and to describe them in the [sales] contract.”⁴⁷ But while these rules existed to guarantee the rights of buyers and sellers, both could decide to ignore them. In the Mālikī doctrine, defects fell within three broad categories: inherent (such as a visible physical flaw); intermittent (such as illnesses); and external (such as a tendency to run away or a penchant for rebelling).⁴⁸ Related to the disclosure of defects was the question of a delayed sale allowing the buyer to ensure the healthy status of a purchased person.

The purchase of slaves was subject to certain purchase guarantees.⁴⁹ After a sale, the purchaser had three days to check the slave for signs of illness or physical disability. When this guarantee was respected, the buyer would pay for the slave at the end of the three-day period, at which point the actual sale could take place. The second was the guarantee of one year during which time the seller was held accountable if the slave showed signs of less obvious “defects” such as insanity, elephantiasis or leprosy.⁵⁰ If discovered within the allotted time, the buyer could decide to return the slave for a full refund. If, however, the seller could prove that the slave had incurred the sickness or other defect while living with the buyer, then the sale was final. Because they could reproduce and be sexually

⁴⁴ Ibn Abī Zayd, 224, 226, 228; Khalil devotes a chapter on the question of manumission, and the rights of a manumitted slave, 219–221.

⁴⁵ Qur’an (24:33).

⁴⁶ Khalil, 133. There are countless stipulations about this clause, and specifications about how a seller’s knowledge of a slave’s inadequacies and failure to reveal it are considered in the eyes of law.

⁴⁷ Sikainga, “Slavery and Muslim Jurisprudence in Morocco,” *Slavery and Abolition* 19, 2 (1998), 66.

⁴⁸ Octave Pesle, *La Vente dans la Doctrine Malikite* (Rabat, 1940), 163.

⁴⁹ Ibn Abī Zayd, 204–206; Khalil, 130–131 and 135.

⁵⁰ Ibn Abī Zayd, 210; Khalil, 135 (he further specifies that insanity must be hereditary, not passing); Pesle, *La Vente*, 38–39; 137; 153–155.

exploited, sales of women and girls were subject to additional clauses.⁵¹ As in the case of animals, the sale of a fetus was considered illegal since it was considered unlawful to sell “the fish that are in streams and ponds, the fetus in the belly of his mother, what is in the belly of animals, the future litter of the female camel, or a male camel’s potential to produce offspring.”⁵² A period of observance was allowed in order to determine whether a female slave was pregnant or not at the time of sale, and to deal with the possibility of parentage.⁵³ If a woman was pregnant and bore a child, this child was the property of the seller, but the buyer could not separate mother and child until the stipulated growing-up time, which according to Ibn Abī Zayd was after the second teething period (approximately the sixth year).⁵⁴ The actual purchase was final once the reproductive state of the slave had been determined.⁵⁵

The rules were strict on the unlawfulness of certain transactions considered risky and uncertain. These included the sale of runaway slaves, for it was prohibited to sell “a slave in flight, [like] a bird in the air, [or] a fish in the water.”⁵⁶ When a slave with possessions was sold, his/her possessions remained the property of the seller unless otherwise specified in the bill of sale.⁵⁷ In addition, Mālikī scholars wrote long lists of conditions that could either adversely affect a slave’s price (such as circumcision, broken teeth, varicose veins, transgender behavior or a tendency to wet the bed), or increase his/her value, including a slave’s capacity to read and count.⁵⁸

Slaves could also be loaned or pawned as a security for a loan. The Mālikī manuals are quite detailed on such transactions, especially the work of Khalīl.⁵⁹ Pawned objects were simply guarantees for future loan repayments, but in the case of pawned slaves the labor performed by the slave during the loan period benefited the creditor, representing, in effect, interest on the principal loan.⁶⁰ This can be compared to the pawning of domestic animals (cows, camels), as well as trees and arable land that could be exploited

⁵¹ It is noteworthy that nowhere in these manuals is there mention of the sexual violation and exploitation of the slave boy.

⁵² Ibn Abī Zayd, 208; Khalīl, 127. ⁵³ Ibn Abī Zayd, 204–206.

⁵⁴ Ibn Abī Zayd, 206, 212; Khalīl, 128. (He does not specify the age, stating simply the small child who no longer needs his mother. He also stipulates that Muslims should not separate mother and child at the time of purchase).

⁵⁵ It is important to mention that in both the female slave clause and the “three days guarantee,” the seller was responsible for the sustenance of the slave during the observation period.

⁵⁶ Ibn Abī Zayd, 208; Khalīl, 127. It is interesting to note the ambiguity of this saying that insinuates that to run away is a slave’s natural prerogative. For the observance of this legal prescription in Northern Nigeria, see, for instance, the discussion in Lovejoy and Hogendorn, *Slow Death to Slavery* (Cambridge, 1994), 115). According to Khalīl, a seller was not obligated to disclose if a slave had previously tried to run away (134).

⁵⁷ Ibn Abī Zayd, 212–213; Khalīl, 135.

⁵⁸ Khalīl, 132, 145. Khalīl goes so far as to specify that a slave cannot be dressed up for sale on the market to increase his or her price; also ink was smeared on the slave’s clothes to give the impression that he or she can write. He also states that there is no consensus among Mālikī scholars about whether the clothes on a slave’s back were automatically included in the deal (138).

⁵⁹ Khalīl, 143–6. In Arabic pawnship is *al-rahn*, but the word most commonly used for pawning in Mauritania is *al-waḍā‘a*, meaning the act of making a deposit.

⁶⁰ Anne O’Hear notes that in early twentieth-century Ilorin, Nigeria, pawning was practiced in accordance with Islamic precepts, but the evidence points to a great deal of variation in pawning arrangements. The Emir of Bida argued in 1905 that a man could not place any family member in pawnship, only himself. We did not locate this clause in Khalīl’s work. Moreover, O’Hear’s evidence points to the fact that this rule was not abided by, as many a wife and child were pawned by husbands and fathers (“Pawning in the Emirate of Ilorin,” in Paul Lovejoy ed., *Slavery on the Frontiers of Islam* [Princeton, 2003], 142).

for a profit. At the same time, the upkeep and maintenance of pawns was the responsibility of the creditor. Most everything could be pawned with notable exceptions, such as a runaway slave or anything with uncertain ownership.⁶¹ Pawning slave-girls and young women was discouraged, and to be lawful, a creditor's planned cohabitation with a female pawn had to be specified in the contract.⁶² If a child was born to a female pawn during the loan period, the child remained the property of the debtor, unless a prior arrangement had been convened.⁶³ The subsequent loaning of the pawn by the creditor was prohibited, and he or she lost the financial privilege if he or she loaned the pawn back to the original owner for a profit. But if a debtor failed to pay back the loan, the slave, or a portion of his or her ownership, could be sold to cover the original debt.⁶⁴ Finally, if the pawn committed a misdemeanor, a crime, or if he or she came to perish, the creditor was held responsible.

Another important set of rules concerns the status of slaves as commercial representatives and couriers, which includes literate slaves, who were quite common in Africa as elsewhere.⁶⁵ Many nineteenth-century West African traders were literate in Arabic and they recorded their trading activities. These commercial records, which are not as commonly preserved as other types of documents, represent some of the most informative sources on the operation of the slave trade that are available for historians to mine. The slave whose master has conferred upon him the right to trade is a distinct category of slave status in Mālikī jurisprudence. In Ibn Juzay's (d.1340) rules (*qawā'id*) manual, for example, a distinction is made between those who have been authorized to participate in commerce and those who have not: "the authorized slave is allowed freedom of action in all matters coming under the heading of commerce, such as making a deal, and in this respect he is like a plenipotentiary agent."⁶⁶ Mālikī law further stipulated that "the slave who is authorized to trade cannot be sold to cover debts he incurred."⁶⁷ Here, as in all cases, masters remained liable for all acts committed by enslaved trade agents or caravan workers. Indeed, slave owners were held accountable for all damages caused by their slaves, and if the amount covering the cost of the damage exceeded the value or original price of the slave, the slave simply changed hands.⁶⁸

Overall, the compendia of Ibn Abī Zayd and Khalīl tend to hold similar views on rules regulating exchanges in slaves, with the notable exception of interfaith trade. For Khalīl, it was unlawful for Muslims to sell to non-Muslims copies of the holy book,

⁶¹ Khalīl, 144; Ibn Abī Zayd does not include this clause.

⁶² There was some disagreement concerning the pawning of young girls. Ibn Abī Zayd declares that it is prohibited (236) as does Khalīl, unless the creditor has obtained prior permission (145).

⁶³ Ibn Abī Zayd, 138; Khalīl, 123.

⁶⁴ Khalīl, 145. If a partial buyer could not be located, the slave was sold "whole," the loan subtracted from the total sales price and the rest of the sum was returned to the debtor.

⁶⁵ Walz cites evidence of this in Egypt in "Black Slavery in Egypt During the Nineteenth Century as Reflected in the Mahkama Archives of Cairo," in John Ralph Willis, ed. *Slaves and Slavery in Muslim Africa, vol. II. The Servile Estate* (London, 1985), 148-149; Bruce S. Hall, "How Slaves Used Islam: The Letters of Enslaved Muslim Commercial Agents in the Nineteenth-Century Niger Bend and Central Sahara," *Journal of African History* 52, 3 (2011), 279-97.

⁶⁶ Muḥammad b. Aḥmad b. Juzay al-Kalbī al-Gharnāṭī, *Qawānīn al-aḥkām al-shar'iyya wa-masā'il al-furū' al-fiqhiyya* (Beirut: Dār al-'ilm li-'l-malāyīn, 1974), 317-18. English translation in Hunwick and Powell, *The African Diaspora*, 26-27.

⁶⁷ Ibn Abī Zayd, 270-271; Khalīl, 159.

⁶⁸ Commandant Le Humeur, "Les Captifs au Sahara Méridional," *Centre des Hautes Etudes Administratives Musulmanes*, no. 1205 (19 décembre 1947).

Muslim slaves or even young slaves.⁶⁹ Interestingly, he admitted that such slaves could be temporarily pawned but not sold to non-Muslims. Still, this Mālikī book, *Mukhtasar*, provides somewhat contradictory recommendations about the use of Muslim pawns. On the one hand, it argues that if a pawn converted to Islam during the debt period, the debtor was obligated to renegotiate his guarantee (i.e. provide another non-Muslim pawn). At the same time, it states that a newly converted pawn could still be sold in the absence of the debtor and debt reimbursement. Here is an obvious example of the blurring of the boundaries between enslavement and Islam in the law manuals.

Whether the rules around slavery established by Mālikī jurisprudence were clear or somewhat ambiguous as in the case discussed above, the law is best understood as having provided a framework within which Muslims could evaluate and contest the actual practice of slavery in their societies. The legal structure that organized aspects of slavery was important, but not always because it was followed closely in different historical contexts. For researchers, the legal framework must be understood because it was such a crucial reference that many Muslims would have shared, but the more interesting questions arise in those sites in the historical record where aspects of the law were debated, contested and questioned. Our discussion of the set of rules regulating slavery in Mālikī jurisprudence is not meant to provide an ideal-typical model of 'Islamic slavery' in Africa. Instead it is designed as a reference and road map for historians investigating the lived experience of Muslim Africans, enslaved and free alike.

LOCAL INTERPRETATION: *FURŪ'*

As Wael Hallaq has shown so comprehensively in his work, Islamic law was not a moribund and formalistic recitation of original principles, limited to abstract ethical questions divorced from real life. It was instead a growing body of substantive law that changed over time as new contexts required. The development of Islamic law was driven by legal scholars arriving at answers to new questions. As these answers accumulated, they were collected – usually in abstracted and summarized formats – into collections of substantive or positive law. When new questions arose, the legal opinions that were written to address them acted, over time, to reformulate the substantive law. According to Hallaq,

...works of substantive law (*furū'*) constitute the highest authority as compilations of the law. Although they contain a hierarchy of doctrinal authority, they represent on the whole the standard legal doctrine of the schools ... [T]he *furū'* works contain the "canonized" version of the law, and as such they became the standard reference for the legal profession.⁷⁰

The substantive law developed because jurisconsults issued legal opinions (pl. *fatāwā*; sing. *fatwā*), or shorter legal replies (pl. *nawāzil*, sing. *nāzila*), which were gathered together, summarized and abstracted, and added to the compendia of the *furū'*. We have already discussed the oldest and best-known texts of substantive law in the Maliki school, Ibn Abī Zayd's *Risāla* and Khalīl's *Mukhtaṣar*, which are among the most widely

⁶⁹ Khalīl, 122–3.

⁷⁰ Wael Hallaq, "From Fatwas to *Furū'*: Growth and Change in Islamic Substantive Law," *Islamic Law and Society* 1, 1 (1994): 39.

cited Islamic texts anywhere in West Africa.⁷¹ In the subsequent commentaries and versifications of these texts, one finds an ongoing process of updating the substantive law to some extent. But it is really in the *fatāwā/nawāzil* literature that the dynamism and change in legal interpretations should be located.

Until very recently, there has not been significant research carried out on this question in West Africa, which has not usually been thought of as a site where Islamic legal scholarship was especially dynamic. For example, the Mauritanian scholar Mohamed El Mokhtar Ould Bah argued in his work on the history of Mālikī writing in Mauritania that West African scholars produced little original work in the field of law, and that they followed closely the lead of outside authorities.⁷² This is true in one sense, because West African intellectuals did not produce large compendia of substantive law. But from the seventeenth century forward, West African legal scholars were extremely prolific in writing legal opinions and collecting them in large volumes. These *fatāwā/nawāzil* collections were influential and widely consulted. It was here that West African scholars took up issues of importance in their day, including problems that arose because of the prominence of slavery in West African societies. The recent publication of some of these collections, and the extraordinary work of the Mauritanian scholar Yahyā wuld al-Barā' in compiling and publishing legal opinions culled from manuscripts, will make it possible for scholars to revise our understanding significantly.⁷³ How West African legal scholars engaged questions about slavery, and how the conclusions that they drew helped to shape and change substantive law as it was applied to slavery, is an opening frontier for new research. Here, we suggest one way in which legal opinions changed as a consequence of the growing importance of slavery in West Africa.

Our example is the issue of the wrongful enslavement of Muslims. This problem is as old as Islam; it appears in some of the earliest legal sources of the Mālikī school.⁷⁴ The issue was further developed in medieval Muslim Iberia and North Africa in legal opinions issued in response to various questions of wrongful enslavement that arose out of centuries of conflicts between Muslims and Christians. The corpus of substantive law (*furū'*) on this issue was developed out of these contexts, which subsequently provided a legal framework for future jurisconsults, including West Africans. The earliest mention of the issue of the wrongful enslavement of Muslims in a text written in West Africa is in Muḥammad 'Abd al-Karīm al-Maghīlī's replies to Askia Muḥammad, ruler of the Songhay Empire, written in 1498. In it, al-Maghīlī wrote, "As for him whom you find in their hands enslaved but who claims that he is free, then his word is to be taken, even though he used to admit to slave status before them, then later claimed that [he did this because] he was afraid of them."⁷⁵ The important issue for legal scholars was whether one should believe an enslaved person's claims to be a free Muslim, and under what

⁷¹ Hall and Stewart, "Core Curriculum," 131–134.

⁷² Mohamed El Mokhtar Ould Bah, *La littérature juridique et l'évolution du Malikisme en Mauritanie* (Tunis, 1981), 177.

⁷³ Yahyā wuld al-Barā', *al-Majmū'a al-kubra: al-shāmīla li-fatāwā wa-nawāzil wa-aḥkām ahl gharb wa-janūb gharb al-ṣaḥrā'* 12 volumes (Nouakchott, 2009); Ḥamā Allāh al-Tishīti, *Nawāzil Ḥamā Allāh al-Tishīti* (Damascus: Imārat Abū Ḥabīb – Dā'irat al-Qadā', 2010).

⁷⁴ F. H. El Masri ed. and trans., Usman dan Fodio, *Bayān wujūb al-hijra 'alā 'l-'ibād* (Khartoum, 1978), 119.

⁷⁵ In John Hunwick, *Sharī'a in Songhay: The Replies of al-Maghīlī to the Questions of Askia al-Ḥājj Muḥammad* (Oxford: Oxford University Press, 1985), 75.

circumstances.⁷⁶ Al-Maghilī took a very generous position with respect to enslaved person's claims, arguing that they were to be believed, even in the case where the enslaved had previously admitted to having carried slave status.

Perhaps the best-known legal discussion of wrongful enslavement in the Muslim intellectual tradition in West Africa was produced a little more than a century later in 1615 in Timbuktu when Aḥmad Bāba wrote his treatise called "The ladder of ascent towards grasping the law concerning transported blacks" ("Mir'āj al-ṣu'ūd ilā nayl ḥukm majlūb al-sūd"). As the title suggests, this text was written in response to a series of questions about the lawfulness of buying sub-Saharan slaves – or 'blacks' as they are called – brought to Saharan and North African markets for sale. A man from the Saharan oasis of Touat, in present-day Algeria, had written to Aḥmad Bāba, seeking his expert opinion on whether it was legitimate to buy slaves who claimed to be Muslims. The precise question was, "What have you to say concerning slaves imported from lands whose people have been established to be Muslims, such as Bornu, 'Afnū, Kano, Gao and Katsina, and others among whose adherence to Islam is widely acknowledged? Is it permissible to own them or not?"⁷⁷ In Aḥmad Bāba's response, he wrote that

Be it known-may God Most High grant us and you success-that the people of these lands are, as you have said, Muslims, except for 'Afnū whose location I do not know, nor have I heard of it. However, close to each of these is a land in which there are unbelievers (*kafara*) whom the Muslim people of these lands make raids on. Some of them, as is well known, are under their protection and pay *kharij*, according to what has come to our ears. Sometimes the sultans of these lands are in a state of discord the one with the other, and the sultan of one land attacks the other and takes whatever captives he can, they being Muslims. These captives, free Muslims, are then sold-to God we belong and to Him shall we return! This is commonplace among them in their lands. The people of Katsina attack Kano, and others do likewise, though they speak one tongue and their languages are united and their way of life similar. The only thing that distinguishes them is that some are born Muslims and others are born unbelievers. This is what confuses the situation concerning those who are brought to them, so that they do not know the true situation of the one imported.⁷⁸

As is well known, in the rest of this text, Aḥmad Bāba laid out a series of arguments that sought to defend the legitimacy of the free Muslim status of many among the 'blacks' who found themselves sometimes wrongfully enslaved in terms of Muslim law.

The problem that lay behind Aḥmad Bāba's text was the potential enslavement of 'blacks' who were, in juridical status, free Muslims. It is clear that this was an issue not just in North Africa because it appears in many West African collections of legal opinions. For example, in the collection of legal opinions authored by the well-known scholar from the Tagānit region of Mauritania Sīdī 'Abd Allāh b. al-Ḥājj Ibrāhīm al-'Alawī (d. 1818), he discussed the appropriate way to address claims made by a slave that he or she was a

⁷⁶ This was an issue in many different slave systems, including in the Atlantic World. See, for example, Rebecca Scott and Jean Hébard, *Freedom Papers: An Atlantic Odyssey in the Age of Emancipation* (Cambridge, MA, 2012), 70.

⁷⁷ *Mīrāj al-ṣu'ūd: Aḥmad Bābā's Replies on Slavery*, ed. and trans. John Hunwick and Fatima Harrak (Rabat: Université Mohammed V-Souissi, 2000), 22.

⁷⁸ *Mīrāj al-ṣu'ūd*, 22-3.

wrongly captured free Muslim and, thereby, should be set free: "It is incumbent on she who claims to be free to provide the evidence unless the claim of freedom is made during the time of purchase, and her place of origin [is a place of] Islam, in which case her claims to be free are to be believed."⁷⁹ What is important to note about Sīdī 'Abd Allāh's legal opinion is that while he accepted the principle found in the substantive law that an enslaved person from a Muslim area should be set free, he placed the burden of evidence on the enslaved person to prove that she was wrongly enslaved, rather than on the slave owner. This is a more restrictive ruling than those of al-Maghīlī or Aḥmad Bāba on this question. It seems quite plausible to suggest that we can find part of the reason for this stricter interpretation in the increasing importance of slavery in the socioeconomic and political context of the early nineteenth-century West Africa.

To support his argument, Sīdī 'Abd Allāh cited an earlier ruling of substantive law attributed to the North Africa Mālikī scholar Ibn Farḥūn (d.1397):

Those who claim the freedom of origin, whether as a child or an adult, are to be accepted based on their origin among free people. If on the contrary they first appear already as property [i.e. slaves] because they were captured due to their condition as unbelievers, or if their origin as a non-captive cannot be demonstrated, then [their being held as] property is permitted. She would claim freedom based on origin. For this reason, she can only demonstrate that she is a person of free origins by bringing evidence because otherwise, it is known that she will lie about it.⁸⁰

By privileging Ibn Farḥūn's stricter interpretation of what value to give to the claims of an enslaved person to be a free Muslim, Sīdī 'Abd Allāh acts to restrict the existing substantive legal conventions on this issue. Although he accepts that when a newly enslaved person is sold shortly after her capture and she claims to be from free Muslim people she should be believed unless someone else can bring evidence to the contrary, he also notes that "she would claim freedom based on origin," which presumes that she is a liar. Slaves who claim to be free Muslims after they have already been held in the state of slavery for some time, should bear the burden of proof to demonstrate the truth of their claim.

We should understand this legal issue as the subject of ongoing debate. The Kunta scholar Shaykh Bāy al-Kuntī (d.1929), from present-day northern Mali, offered a more benevolent opinion of the terms required for believing an enslaved person's claims to be a Muslim. He cited a piece of didactic verse to make his point: "Most slaves hide their religion / Those from the land of the blacks who state it are free."⁸¹ When Usman dan Fodio took up this issue in his "Evidence for the duty of emigration" ("Bayān wujūb al-hijra") written in 1806 to justify the Jihad he had launched against Hausa rulers in 1804, he cited al-Maghīlī and Aḥmad Bāba on this question. However, Usman dan Fodio challenged a different part of their opinion, arguing that Aḥmad Bāba's list of those 'blacks' who should be considered free Muslims should be rejected. Aḥmad Bāba had been especially wrong, he wrote, about including the Hausa among the free Muslims.

⁷⁹ Sīdī 'Abd Allāh b. al-Ḥājj Ibrāhīm al-'Alawī, "Nawāzil al-'Alawī," (Institut des Hautes Etudes et de Recherche Islamique Ahmad Baba, Timbuktu, Mali [IHERIAB], ms. 490), #335, f. 193.

⁸⁰ Ibid. ⁸¹ Shaykh Bāy al-Kuntī, "Nawāzil Shaykh Bāy" (IHERIAB ms.121), #500, f. 556.

Another class is those lands where Islam predominated and unbelief is rare such as Borno, Kano, Katsina, Songhay and Mali according to the examples given by Aḥmad Bāba in the aforementioned book. These, too, are lands of unbelief without any doubt, since the spread of Islam there is [only] among the masses but as for their sultans, they are unbelievers ... even though they profess Islam. [That is] because they are polytheists, turning [people] from the path of God and raising the banner of the kingdom of this world above the banner of Islam – and that is all unbelief according to the consensus of the scholars.⁸²

Such views can be understood instrumentally as a justification for the Jihad that Usman dan Fodio had proclaimed against his Hausa enemies.⁸³ Whereas Aḥmad Bāba had argued that different groups like the Hausa held Muslim status and could not therefore be legitimately enslaved, Usman dan Fodio insisted that although there were true Muslims among the ‘blacks,’ “the status of a land is that of its ruler,” and therefore all people under the authority of these non-Muslim rulers were obliged to emigrate or be subject to legitimate attack in Jihad. And we know that large-scale enslavement was one of the outcomes of the conflicts in Hausaland at the beginning of the nineteenth century.⁸⁴

The shifts in the interpretation of existing substantive law around the issue of wrongful enslavement of Muslims point to an important methodological strategy: the dynamism and change over time of a particular issue often plays out as a seeming reiteration of older authorities on a question. We have suggested that narrower, more restrictive interpretations of the question of wrongful enslavement developed as slavery and the slave trade became more important in West Africa historically. It is only by bringing together various authorities over a number of centuries that one can begin to see change in interpretive strategies. Looking at one scholar in isolation would almost certainly produce a different conclusion.

SLAVERY IN THE FATĀWĀ/NAWĀZIL LITERATURE

There were undoubtedly many other shifts in West African legal interpretation around other aspects of slavery that have not been the subject of academic research. Legal sources are certainly among the richest materials that touch on slavery for historians to work with. More and more of them are now available in published forms. For example, in the aforementioned collection of legal opinions compiled by Yaḥyā wuld al-Barāʾ, he includes 93 opinions in his section on slavery and manumission, and another 35 opinions in his section on clientship.⁸⁵ In what follows, we will discuss the range of issues that found their way into collections of legal opinions produced in Western Africa in order to suggest avenues for future research.

Jurisconsults deliberated on all kinds of economic and social matters, including the status, ownership and manumission of slaves. Typically, a question was sent to them by

⁸² Usman dan Fodio, *Bayān wujūb al-hijra ‘alā ʾl-‘ibād*, ed. and trans. F.H. El Masri (Khartoum: Khartoum University Press, 1978), 50.

⁸³ Jennifer Lofkrantz, “Protecting Freeborn Muslims: The Sokoto Caliphate’s Attempts to Prevent Illegal Enslavement and its Acceptance of the Strategy of Ransoming,” *Slavery and Abolition* 32, 1 (2011): 109–127.

⁸⁴ Lovejoy, *Transformations in Slavery*, 155–156.

⁸⁵ Wuld al-Barāʾ, *al-Majmūʿa al-kubra*. Volume 12: 6177–6282.

the public, by other legal scholars or by a Muslim judge (*qadi*), seeking advice on a particular case or on the legality of a specific transaction. Muslims often sought counsel and had recourse to local Muslim scholars who interpreted the law.

Each Saharan oasis town tended to have an officially appointed *qadi* who ruled in consultation with other *qadis* and with *muftis*. The legal system was kept in check by the regional community of jurists who scrutinized each other's rulings, especially on highly contested matters involving notable personalities. The *qadi's* authority rested on his scholarly credentials, and frequently the office was passed down from father to son, together with the inherited reference libraries. In most Muslim societies, *qadis* assumed non-negligible roles as financial intermediaries in civil and commercial transactions. Because they were legal guardians in matters concerning property rights, including the property of orphans and inheritance estates, they handled significant sums of money. They also functioned as intermediaries entrusted with financial transfers between physically distant parties, such as trade partners or husbands and wives.⁸⁶

The collections of legal scholars were copied and preserved in various personal collections over time, becoming sources of reference for local jurisprudence. These sources offer unique insights into the concerns of the day, not just of the elite but also of commoners concerned with behaving lawfully in the eyes of Islam. They contain both the questions asked and the answers composed by the legal scholar. Legal opinions tend to be full deliberations, containing more or less detail and references to legal manuals. For the most part, however, these collections tend to be redacted, containing only cursory information on the circumstances of any given situation faced or the names of the petitioners. As such, they can represent somewhat cryptic documents to the historical interpreter.

The only legal discussion we found dealing directly with the conduct of the slave trade is from the aforementioned *Sidī 'Abd Allāh b. al-Ḥājj Ibrāhīm al-'Alawī* (d. 1818). Concerning the legality of cross-cultural exchange with non-Muslims, he was asked the following: "Is it lawful to sell slaves to another trader knowing that in turn this trader is going to sell the slaves to the Christians/Europeans (*al-Naṣārā*)?"⁸⁷ In his elaborate reply, *Sidī 'Abd Allāh* argued that it was not lawful for a Muslim to sell a slave to another Muslim if the first was aware that the second was a slave dealer who traded with non-Muslims. In other words, one could purchase from, but not sell slaves to, non-Muslims. Citing *Khalīl* and other *Mālikī* sources, his central argument was that it was the responsibility of Muslims to initiate slaves to the religion of Islam. Indeed, his opinion that Muslim dealers should only sell slaves to other Muslims was very much in line with *Khalīl's* position discussed above. It also followed official practice in Morocco, a place *Sidī 'Abd Allāh* knew well as a one-time guest of the Sultan, where the sale of slaves to Christians was prohibited based on Islamic legal opinion as expressed in a royally issued *fatwa*.⁸⁸

The issue of selling slaves to non-Muslims became especially salient in Western Africa in the Atlantic slave trade era. But the objection offered to such sales draws on

⁸⁶ Ghislaine Lydon, "A Paper Economy of Faith Without Faith in Paper: A Reflection on Islamic Institutional History," *Journal of Economic Behavior and Organization* 71 (2009), 653–654.

⁸⁷ *Sidī 'Abd Allāh b. al-Ḥājj Ibrāhīm*, "Nawāzil."

⁸⁸ Sir West Ridgeway to Earl of Rosebury cited in Ennaji, Mohamed et Khalid Ben Srhir "La Grande-Bretagne et L'esclavage au Maroc au XIXe siècle," *Hesperis-Tamuda* 29, 2 (1991), 266.

another theme that has deeper resonance. One of the principal justifications for slavery as an institution in Islamic legal terms was the didactic role that slavery was meant to play in bringing the enslaved into Islam. Slavery was often justified as a punishment for unbelief and a rejection of Islam on the part of those enslaved, and slaves were often represented as the antithesis of Muslims, people who lacked personal honor and behaved in licentious ways.⁸⁹ In colonial and postcolonial West Africa after slavery had been abolished, the descendants of slaves have often shown a strong aspiration for Islamic education.⁹⁰ Indeed, Allen Fischer and Humphrey Fischer argued in their widely cited overview of slavery and Islam in West Africa that masters often neglected their duty under Islamic law to educate their slaves in religious matters.⁹¹

In the *fatāwā/nawāzil* collections, the issue of the nature and extent of master's responsibility for religious instruction of their slaves appears regularly. An example of an opinion on this matter can be found in the *nawāzil* collection of the eighteenth-century jurist from Tishīt al-Sharīf Muḥammadnā Ḥamā Allāh b. Aḥmad b. al-Imām Aḥmad al-Ḥasanī (d.1755), known as al-Sharīf Ḥamā Allāh.⁹² In response to a question about whether it is necessary to force Islam on 'Bambara' slaves, al-Sharīf Ḥamā Allāh wrote that

I have gathered together in these papers that which contains the evidence for what we must do in bringing the slaves and the slave girls to Islam, and the requirements according to the religious law of the rulings for he who struggles to apply himself to what he is required to do. He should not accept the tribulations that often come about due to the neglect of the slaves as if they were beasts of burden who are not to be bothered with and cannot be brought to that which is hoped for from awakening (*tanbīh*) . . . Some claim that [instructing the slaves in religion] is not required by their rights and that this is not part of our [practice of] slavery, in which clearly, some slaves do not have Islam forced upon them.

Al-Shaykh Ḥamā Allāh refutes this and argues, "If we understand the right to knowledge which the Bambara (*Banbār*) slaves possess, then it is necessary to force them to follow their religious requirements, if God Almighty wills it, just as we will demonstrate."⁹³

The prominent Kunta scholar and Sufi shaykh Sīdī al-Mukhtār al-Kuntī (d.1811) asserted that force was a legitimate and necessary means of making slaves practice Islam.

⁸⁹ Claude Meillassoux, *The Anthropology of Slavery: The Womb of Iron and Gold*, trans. A. Dasnois (Chicago, 1991), 121–123; Martin A. Klein, "The Concept of Honour and the Persistence of Servility in the Western Sudan," *Cahiers d'Études Africaines*, 45: 179/180 (2005), 840–842; Ahamd Sikainga, *Slaves into Workers: Emancipation and Labor in Colonial Sudan* (Austin, 1996), 117–118.

⁹⁰ Klein, "Concept," 832; Sean Hanretta, *Islam and Social Change in French West Africa: History of an Emancipatory Community* (New York, 2009), 221; Urs Peter Ruf, *Ending Slavery: Hierarchy, Dependency and Gender in Central Mauritania* (Bielefeld, 1998), 262–263; Meskerem Brhane, "Narratives of the Past, Politics of the Present: Identity, Subordination, and the Haratines of Mauritania" (unpublished PhD thesis, University of Chicago, 1997), 195–196, 200–202; Roger Botte, "Pouvoir du Livre, pouvoir des hommes: la religion comme critère de distinction," *Journal des Africanistes*, 60, 2 (1990), 48–49; Ousmane Kamara, "Les divisions statutaires des descendants d'esclaves au Fuuta Tooto mauritanien," *Journal des Africanistes*, 70, 1–2 (2000), 284–285.

⁹¹ Allen Fisher and Humphrey Fisher, *Slavery and Muslim Society in Africa: The Institution in Saharan and Sudanic Africa and the Trans-Saharan Trade* (Garden City, 1971), 45–50. A similar argument is made by Klein, *Slavery*, 12; Brian Peterson, *Islamization from Below: The Making of Muslim Communities in Rural French Sudan, 1880–1960* (New Haven, 2011), 36–37.

⁹² Ḥamā Allāh al-Tishīti, *Nawāzil*, 254. ⁹³ *Ibid.*, 176–177.

It is not sufficient just to propagate [Islam], but instead it is necessary that [the slaveholder] force them [to become Muslims] whether they are non-believers or idolaters (wathaniyīn). They should be forced by beatings and threats, without going so far as killing them. If [the slave] is led to Islam, and he is corrected in the recitation of the Muslim credo, then it is also necessary to force them to learn their religion including issues of purity, prayer, and fasting. He should not speak to them about work during the period of learning the [essential] texts.⁹⁴

A similar statement was made a century later by Shaykh Bāy al-Kuntī, who argued that the slave must “know what God permits and what He forbids,” because in this way he will be able “to claim the rights that God has put in place for him.”⁹⁵ In the Kunta tradition, there was a didactic poem that set out the requirements of educating slaves:

And preserve the right of the slave; for indeed
 He is affirmed in matters of religion; so be patient and steadfast
 And teach them the matter of the creeds; for indeed
 It is incumbent upon you; so lead them to the well
 And do not disregard them as if they were livestock; for indeed
 They are human beings . . .⁹⁶

Shaykh Bāy even lays out the pedagogic approach best followed with slaves.

[The master] sets forth the principles (*qawā'id*) of articles of faith (*'aqā'id*) in a simplified form. He does not mention from this a piece of property which his mind carries, and he provides him with the satisfying proofs until what was said to him is firmly embedded in him. It is not done according to the way of the *kalām* theologians (*mutakallimīn*), and he is not asked in the beginning about what are the principles of faith, but instead he must acknowledge his Lord according to the singularity of [God's] existence, and his Prophet according to the mission of prophethood.⁹⁷

A Qur'ānic verse that held the head of household responsible for the religious practice of all his dependents was often employed by those scholars who insisted on the duty of educating slaves: “O ye who believe! Save yourselves and your families from a fire whose fuel is men and stones.”⁹⁸

Issues concerning slavery are found in the earliest collection of short legal replies (*nawāzil*) by Muḥammad b. al-Mukhtār Bil-A'mash (d.1695-6), who is considered the Mauritanian region's first *faqīh*, or expert in jurisprudence (*fiqh*), and whose work became the model for all subsequent Mauritanian jurisprudence. One question that is discussed in his collection is that of the waiting period of three days (for obvious defects) or one year (for special illnesses) offered to guarantee slave sales. Bil-A'mash was asked about the purchase of slaves with 'defects':

⁹⁴ Sīdī al-Mukhtār al-Kuntī, “al-Ajwiba al-muhimma” (IHERIAB ms. 1476), 38. This discussion draws on Hall, “How Slaves Used Islam,” 283-284.

⁹⁵ Shaykh Bāy al-Kuntī, “Nawāzil Shaykh Bāy” (IHERIAB ms. 118), #173, 218. Bruce S. Hall, *A History of Race in Muslim West Africa, 1600-1960* (New York, 2011), 225.

⁹⁶ Habīb Allāh b. Sīdī al-Mukhtār al-Kuntī, “al-Qaṣ'ida al-rā'iya,” cited by Shaykh Bāy al-Kuntī, “Nawāzil Shaykh Bāy” (IHERIAB ms.125), #940, 22-26.

⁹⁷ Shaykh Bāy, #940. ⁹⁸ Qur'ān, 66:6. Cited by Shaykh Bāy, #851, #940.

A man sold a portion of a horse for a young woman slave who was ill . . . And the buyer [of the horse] told the seller about [the conditions of] the sale in the presence of witnesses. He then disclosed that the slave woman was ill and they both agreed about this fact. And so the seller held the young female slave and she remained with him for four days and then she died. So should the sustenance [for those four days] be at the seller's expense or not? Or is the sustenance before the death of the young slave girl, when her illness increased, and the expense after her death, equally his responsibility? And are the description of the defect, the explanation that she was sick by her seller, together with the examination of her visible condition [by the purchaser] adequate [enough for the sale to be considered lawful]?⁹⁹

The question posed by the slave buyer and horse co-owner was twofold. First, he sought counsel to determine if his purchase agreement on an avowedly sick slave could be legally revoked on the basis that the illness caused the slave's death. Second, in either case, he wanted to determine who was responsible for covering the maintenance costs of the slave during the four days, as well as the resultant burial costs.

In his elaborate four-page response, where he cited numerous legal texts including Khalīl, Mālik's *Muwaṭṭa'* and Ṣaḥnūn's *Mudawwana*, Bil-A'mash argued the following:

Whoever purchased a sick slave, is informed about his illness, and consents to the deal [i.e. was fully responsible, and if] the slave came to die . . . the misfortune is for the purchaser if he knew about it, just as [is the case in sales of] the cow and the sheep . . . [And if] the seller knows [of the illness] and did not disclose it to the purchaser then he can return it, according to Khalīl.

In other words, the man who purchased the slave had to bear all the costs, including the loss of the ailing slave, since he had agreed to the purchase. Evidently, the question of the three-day guarantee therefore was naught since the "defect" in question had been acknowledged at the time of purchase.¹⁰⁰

In addition to deliberating on the application of the return policy in this case, Bil-A'mash was also asked to discuss whether the slave dealer was responsible to reimburse at least part of the purchase price. After considering whether the slave was the only purchased item and whether the sales price was a bargain or not in relationship to the value of the slave, Bil-A'mash explained that Mālikī jurists had varying opinions on the subject. He reviewed different scenarios discussed by Mālikī scholars, such as the case of a seller not fully disclosing or underrepresenting the extent of the illness of a slave or animal, or the damages done by a contagious illness. In the end, the legal scholar ruled thus: "in this case the sickness of the slave girl (*ama*) was known; the seller mentioned it and the purchaser accepted it. If they both knew about it, then it is the purchaser's loss."¹⁰¹ His judgment was based entirely on Khalīl's *Mukhtaṣar*, the basic Mālikī text, "because," he reasoned, "we people are all "followers of Khalīl" (*Khalīliyyūn*)."¹⁰²

⁹⁹ Bil-A'mash, *Nawāzil*, 52-56 (manuscript).

¹⁰⁰ In a related case, a man contested the return of a female slave that he had sold prior to traveling, and was being asked to reimburse the purchase for a slave who, according to his testimony, showed no signs of illness. Family archives of Faḍīl al-Sharīf (Tīshīt, Mauritania), FS 7.

¹⁰¹ Bil-A'mash, *Nawāzil*, 55. ¹⁰² *Ibid.*

As discussed earlier, Mālikī law was very detailed on the modalities of pawning, including that of enslaved people. Indeed, pawnship was common practice in Mali and Mauritania and often was the subject of contracts dealing with property transactions such as land, real estate and palm trees. Bil-A'mash discussed two such cases involving slave pawns. In the first, he ruled, citing Khalil, that a pair of male slaves pawned for an unpaid salt loan could not be sold by the creditor in bulk.¹⁰³ In another case, the same jurist was asked whether the fact that a creditor took a given pawn on a caravan expedition effectively cancelled the original debt.¹⁰⁴ Citing Khalil and others, he argued that if the creditor had not obtained the debtor's authorization to travel with his pawned slave, then the latter had a right to cancel the pawnship agreement.

In the mid-nineteenth century a *muftī* was asked to opine on the joint ownership of an enslaved mother with twins. He was asked the question by a man from Tishīt who had received as a gift from his mother the rights to half a young female slave (*ama*) who later gave birth to female twins.¹⁰⁵ As co-owner, the man asked whether he now had rights over one of the slave's twins or half of both twins. The *muftī* replied that the son's property rights could only be determined by examining the intent of his mother's gift, and so "if she said that 'if my slave (*amatī*) gave birth to a female child then half of it will be yours only,'" therefore the son was co-owner of both twin girls.¹⁰⁶ In other words, it was up to the son to find testimonial proof of the donor's intent. This short fatwa is a prime example of the cryptic nature of this genre of legal document, for it contains few details about the others involved in what appears to be a contestation over slave ownership.¹⁰⁷

Because of the importance of slavery among the Muslim societies of Western Africa, the mention of slaves and disputes over sales, labor and behavior of slaves is ubiquitous in Arabic jurisprudential sources. Rather than recite the many combinations of circumstances that produced a mention of slavery, it is more useful to focus on those topics that generated the thickest literary material and that were invoked most often. In the *nawāzil* collections, the topic that elicits by far the largest number of opinions is the predicament of female slaves. The issues range from rules of sexual access to determination of paternity to marriage and manumission. It is a very rich area for potential research, although these sources have gone almost completely unexamined by historians. Here, we will point to some of the larger themes that emerge in the collections of legal opinions themselves.

The issue of sexual access to female slaves produced a lot of questions for juriconsults. A number of questions to Shaykh Bāy al-Kuntī invoke the following circumstances: "A man who had sex with his slave girl, then was cleared [of fathering a child with her by her menstruation], and then she brought him a child after the clearing [by menstruation] and said to him that it was his child."¹⁰⁸ To this basic scenario, different details were added according to circumstances. So in one case, the questioner wanted to know if the slave girl could be punished as an adulterer by the 'ḥadd' punishment of flogging?¹⁰⁹ In another case, the child at the center of the paternity dispute returned with his or her mother to live with the purported father as a domestic servant. According to Shaykh Bāy, this proved that the man was the father:

¹⁰³ Bil-A'mash, *Nawāzil*, 50-51. ¹⁰⁴ Bil-A'mash, *Nawāzil*, 56.

¹⁰⁵ Family archives of Sharifna b. Shaykhna (Tishīt, Mauritania), SS13. ¹⁰⁶ *Ibid.*

¹⁰⁷ For further discussion on this particular case see Lydon, "Muslim Contests." ¹⁰⁸ Shaykh Bāy, #339.

¹⁰⁹ Shaykh Bay #338

She brings the child and if four years were to pass, and if you were, by the acknowledgement [of your parentage], to cohabit with her as a house servant (*farrāsh*), the Prophet, may God bless him and grant him peace, said: "The child that belongs to the house servant and the forbidden adulterer, is the proof of guilt." I see that you have not repudiated what the ruling of God enjoins you to do.¹¹⁰

In another case of this kind, Shaykh Bāy chastised a questioner by invoking the Prophet's saying: "Woe to women who make people enter [a house] which does not belong to them or to God in any way; God will not invite her to enter His paradise. Woe to the man who disavows his child, expecting that God, in His power and majesty, will hide [the child] and his disgrace from the heads of neighboring families and others on the Day of Judgment."¹¹¹

Another variation is the question about the status of a child born to a female slave married to another slave, but whose master continued to have sexual relations with her. In this case, Shaykh Bay explained that the questioner had been wrong.

Be warned that having sex with a female slave who has a husband is a grave sin requiring repentance. It is impossible for her husband to accept, even if he is a slave, or like a slave, or even a non-slave. Know that the rights of both the slave and the free are equal, and for both, violating their inviolability is not permissible. God has assigned to the master only those things from the slave that are known in [the rules for] the proper conduct in sales, or gifts, or in disciplining [the slave] commensurate with his offense. [The master] does not own [the slave] himself as he owns beasts. Therefore, it is not permissible for him to kill him, nor to cut off his limbs, nor to hit him, nor to insult him wrongfully, nor to coerce his wife [into having sex with him]. He who presses [his slave] in any [of these ways] does so unlawfully and must [therefore] repent.¹¹²

We learn from this and other similar cases that sexual exploitation of female slaves was common, and that some Islamic scholars like Shaykh Bāy found this to be sinful and morally wrong.

Another questioner asked whether a female slave who has gained the status of 'umm walad' ('mothers of a child') because she bore her master a child, which he recognized, should be sexually available to the master's sons. According to Shaykh Bāy, she should not be.¹¹³ Another question is about

he who had sex with a slave girl who was partly owned by him and his brother, and the pregnancy that resulted [from the sex act]. Is the child in slavery or not? . . . The child is indeed free unless it is a false [claim of paternity] in which case she does not become an umm walad from it . . . Otherwise, the child is free and there is no ḥadd punishment on the fornicator despite the fact that what was done was unlawful. It has a negative impact on his reputation when he commits a sin similar to lying with a prostitute.¹¹⁴

In another case, a questioner asks,

Your question was: "Can the slave girl who has been taken as a concubine go out, for example, to [fetch water at] the well and to gather firewood, or is she prohibited from this

¹¹⁰ Shaykh Bāy, #339. ¹¹¹ Ibid., #340, f. 384–387.

¹¹² Shaykh Bay, "Nawāzil" (IHERIAB ms. 119, #340, f. 384–87). Cited in Hall, *A History of Race*, 231.

¹¹³ Shaykh Bāy #341. ¹¹⁴ Shaykh Bāy#342.

in the religious law? Does she have any rights over her master above and beyond the rights of a slave girl, or not?" The response, and may God make it successful in what is right, is that if the concubine is a slave girl, then she owes her master her [normal] service, etc., just like the work of his other slave girls. So yes, she owes him her daily work in his care, and her neglect [of these daily tasks] is forbidden, and her leaving these tasks aside to enter the entrance hall [leads] to suspicions that it may be a place for prostitution.¹¹⁵

Many more similar cases could be marshaled; by now it should be clear how commonly debated were these complex issues in the sources.

Another issue that largely focused on female slaves and former slaves was that of marriage. Slaves require the permission of their masters to marry. If slaves were to marry without their master's permission, Shaykh Bāy argued that the marriage would be nullified and therefore considered to be adultery.¹¹⁶ But masters were generally encouraged to allow their slaves to marry each other. Shaykh Bāy wrote that he himself had encouraged this in a meeting of elders of the Kel Es-Suq, a Tamashek-speaking group in south-central Sahara. "It suddenly struck some of the lesser scholars (*ṭalaba*) that there was a rank of nobility required for marrying, and they preferred to leave [slaves] alone to move around like the beasts." Shaykh Bāy responded that it was important for slaves to be able to marry because of male slaves' sexual needs; because if they were not met, it can lead to dejection. According to Shaykh Bāy, "All of the scholars saw the validity of the marrying of slave girls."¹¹⁷ One questioner asked whether a slave who was married to a slave girl was responsible for providing the material means of life for his slave wife? Shaykh Bay responded that all husbands – whether slave or free – are equal in being responsible for supporting their wives.¹¹⁸

There are many questions about the marriage of a female slave to a free person. In principle, a female slave should be manumitted in order to marry a free man. The following example highlights some of the complex dimensions to this kind of issue:

Response about the ruling of the marriage of an *umm al-walad* to a stranger. What the text says: Know that the marriage of an *umm walad* is reprehensible unless she is manumitted, in which case it is desirable for him. If she does not need to be manumitted, then marry her and be good to her. If you do not marry her without manumission, then continue the relationship with her after this or leave her without marriage for otherwise you will put her in danger of fornication.

Response about what is the difference between the slave girl (*ama*) and the *umm al-walad*. According to the text: Know that the *umm al-walad* is like the slave girl in the sense that for her master, she is not forbidden to him if he refuses to give her what he does not intend by way of her manumission. It is not necessary to divorce her since there is no divorce unless there is a marriage. She was not married but instead approached as property which she remains for him . . . It is permissible for him to have sex with her even though he is not happy to manumit her, or if he intends to divorce her, or if he refuses to manumit her. Therefore, the monthly menstruation clears them even if he dismisses her and he reaches that final point. As for forcing her into marriage, the scholars differ on this.¹¹⁹

¹¹⁵ Shaykh Bāy #372 ¹¹⁶ Shaykh Bāy, "Nawāzil" (IHERLAB ms.119, #347, f. 389-90).

¹¹⁷ Shaykh Bāy, #687. ¹¹⁸ Shaykh Bāy, #373 ¹¹⁹ Shaykh Bāy #336-7.

A variation on the theme of marriage is the question of the slave who has been designated as a pious endowment, what is called *waqf* or *ḥubus* in Arabic. In most of the Muslim world, it was fixed property like agricultural land that was turned into pious endowments, whose rent and yield would support institutions like mosques, schools, charities and so on, in perpetuity. The mechanism was also used to get around the division of property by inheritance rules. Sean O'Fahey has written that the *waqf* is uncommon in sub-Saharan Africa, although he found some examples in Darfur.¹²⁰ The issue appears regularly enough in the *nawāzil* collections for us to suggest that it was not uncommon in West Africa. Here is an example of a question about the marriage of an enslaved woman designated as religious bequest:

As for marrying the slave girl [who are designated as a] *ḥubus*, who have been made into *waqf*. According to the answer pertaining to some of the ancient Kel Es-Suq, it must be guaranteed by the donor of the *ḥubus*, and he is in charge of their marriages. If her dowry comes from the totality of her yield [i.e. what she produces for the *ḥubus*] which is the property of the donor of the *ḥubus*, then the matter according to us and others is what he said. As for the dowry when it is from her property and not from her yield, then it is not his property to dispose of. As for her marrying, the one responsible for it is the person in charge of the *ḥubus*.¹²¹

Another variation of a similar theme concerns whether the enslaved women designated as *waqf/ḥubus* should be understood to own her dowry.

Response about their sayings concerning the dowry of the slave girl of the *waqf*: Does it belong to the beneficiary of the *waqf* as property, or the *waqf* [itself], or to the downer of the *waqf*? According to the text: The dowry belongs to the slave girl according to the *fatwā* of the *Mālikīs* who take that from the Qur'ānic verse that there is no difference between the beneficiary of the *waqf*, etc. The property of the endowed slave remains with him and it does not belong to the master extracting it.¹²²

Other issues connected to *waqf* involve disputes over inheritance of enslaved people designated as *waqf*.

In offering some examples of the ways that slavery was discussed in jurisprudential sources in West Africa, we have highlighted the centrality of the issue of female domestic slavery to slaveholders. Although the historical details that led to the production of these texts are often difficult to uncover due to the nature of the sources, they do nonetheless provide a remarkable window into slaveholding societies in West Africa unavailable by other means. At least ideologically, slavery in Muslim West Africa was a system premised on the responsibility of slaveholders to undertake the moral education of their slave, whether through religious instruction or through marriage. The extent to which this responsibility was merely a self-justifying rhetoric of Muslim scholars in the region, or something with more tangible effects on slaveholder behavior, is an open question. Muslim West African legal literature offers one avenue to further explore such issues.

¹²⁰ R.S. O'Fahey, "Endowment, Privilege, and Estate in the Central and Eastern Sudan," *Islamic Law and Society* 4 (1997), 334-351.

¹²¹ Shaykh Bāy, #687. ¹²² Shaykh Bāy, #690.

DOCUMENTATION

There are at least three kinds of documents found in private and archival collections in Mali and Mauritania that can be used to reconstruct aspects of the history of slavery in the region: (a) contracts and other commercial records, (b) correspondence and (c) wills and manumission certificates. Before examining these sources, it is worth mentioning the slave terminology in Arabic commonly used in Muslim West Africa. The generic word for slave, tellingly derived from the Arabic root verb meaning 'to be or to become thin,' was *raqīq* (pl. *riqāq*, or *ariqqāʿ*).¹²³ It was used explicitly in relationship to 'the slave trade' (*tijārat al-raqīq*). Male slaves most often were referred to as '*abd*' (pl. '*abīd*'). Women slaves either were called *khādīm* (pl. *khuddām*), a word also used broadly for male or female 'domestic servant,' or *jāriya* (pl. *jāriyāt* or *jawārī*) meaning concubine. Another term that is used in the Arabic sources in West Africa to indicate a concubine is *surriya* (pl. *sarārī*). Concubines who bore their masters a child were known as 'mother of a child' (*umm walad*), and, unlike any other category of slaves, they were supposed to be automatically freed at the master's death.¹²⁴ The term *ghulām* (pl. *ghilmām*) was sometimes applied to young slave boys between the ages of ten and fourteen, while the equivalent for girls of similar age was *ama* (pl. *imāʿ*). Some traders used *sadās*, a word that might stem from the Arabic "sixth," for young boys and the equivalent *sadāsiya* for young girls. This last term was common among traders from Libya and the markets of Hausaland and Bornu servicing the eastern branches of trans-Saharan trade.¹²⁵ Moreover, male slaves or freed slaves working as commercial agents and couriers for merchants of Ghadames and Ghat commonly were ascribed the epithet of *ghulām* or sometimes *sayd*. The choice of vocabulary depends to some extent on the type of document. So, for example, a legal opinion is more likely to employ formal terms for slaves such as *raqīq*, '*abd*' and *ama*, whereas correspondence and commercial documents tend to use less formal words such as *khādīm*, *ghulām*, *sadās* and so on.

Contracts and other records

Written contracts drawn up among trading associates, or between an immobile merchant and an itinerant agent, were important mechanisms for coordinating long-distance trade. Partnership agreements, but also simple donations, were recorded between contracting parties. In so doing, Muslims simply followed the Qur'ān injunction to commit to writing contractual agreements so as to produce a record of a transaction and avoid future disagreements about deals. They were also a means to attest to a particular transaction, such as a long-term loan or a pawnship. One such case involving a slave pawn was an attestation to amend a pawnship contract dating

¹²³ A *raqīq* is a saleable slave, whereas '*abd*' denotes a bonded person, servant or serf. The word *raqīq* is also an adjective, meaning thin, slim or delicate, alluding perhaps to the poor condition of slaves. All translations are based on *The Hans Wehr Dictionary of Modern Written Arabic*, J. M. Cowan, ed. (Ithaca, 1994).

¹²⁴ Ibn Abī Zayd, 224. In his legal code, Khalīl devotes a separate chapter to the question of concubine mothers (221). Moreover, slave owners could manumit slaves ('*ataqa*') postmortem, in which case they would take on the status of *mudabbar* (Ibn Abī Zayd, 222). Slaves who purchased their freedom by way of a contract agreement were "registered" (*mukātib*).

¹²⁵ Fisher and Fisher, *Slavery*, 162-163.

from the second half of the nineteenth century.¹²⁶ It concerned a loan negotiated between a creditor named Muḥammad ibn Aḥmad and his debtor Aḥmad ‘Aly. The first had made a loan to the second, who pledged a young female slave as a guarantee. A third man named Ḥayba, who in all probability was of servile status, asked for the pawn to be released to marry or otherwise claim her. The text translates as follows:

This is to inform whoever may come across this that Muḥammad b. Aḥmad testified to me, the writer, that the slave girl (*ama*) which Aḥmad ‘Aly is claiming from him, he will not give her to Ḥayba. She will remain in his debt until he obtains it [i.e. the loan from Aḥmad ‘Aly]. And, God willing, Aḥmad ‘Aly will not forbid him from granting her to Ḥayba even though she will not [be authorized to] cohabit with him. And this was written by Muḥammad al-Amīn b. Sīdī Muḥammad b. al-Ḥajj ‘Umar.¹²⁷

The document states that Muḥammad bin Aḥmad, the creditor, would not liberate the pawned slave girl until the loan had been fully repaid. Nevertheless, he consented that Ḥayba, the man who desired her, could have intercourse with the slave girl although they were not allowed to live together. As is stated in Khalīl, the slave was not to cohabit with another slave, even if the couple were pawned together. Therefore, the decision that the pawn was to remain in the creditor’s household complied with Mālikī rules. That the woman in question was not named, and apparently had no say in the matter, reflects the dire conditions of slaves in Muslim Africa, where generally women were far worse off than their male counterparts.¹²⁸

A case from the late nineteenth century concerned the donation of the use of half of a female slave. Muḥammad al-Amīn agreed to “return half of his slave girl (*ama*) [named] Afayṭum to his mother so that she may use her during her lifetime.”¹²⁹ This was the son of Shaykh Ibrāhīm al-Khalīl, a prosperous Saharan long-distance trader settled in Tishīt. As the document makes clear, the slave girl originally had been donated to Muḥammad al-Amīn by his mother.¹³⁰ The official recording of these types of donations ensured clarity in property right transfers. Donations could not be revoked by family members, and the documentation would be factored into inheritance procedures.¹³¹ But such

¹²⁶ Family archives of Shaykh b. Ibrāhīm al-Khalīl (Tishīt, Mauritania), IK7. The document is dated through genealogical inference.

¹²⁷ Family archives of Shaykh b. Ibrāhīm al-Khalīl (Tishīt, Mauritania), IK7.

¹²⁸ For a discussion of women and slavery in Africa, see *Women and Slavery in Africa*, Clare Robertson and Martin A. Klein, eds. (Madison, 1983) and Humphey J. Fisher, *Slavery in Muslim Black Africa* (London, 2001), Hall, *A History of Race*, chapter 7.

¹²⁹ Family archives of Shaykh b. Ibrāhīm al-Khalīl (Tishīt, Mauritania), IK6 verso.

¹³⁰ The mother was a Māsna woman named Fāṭima Seri mint Niāba who was also a trader in her own right. Lydon interviews in Niore (Mali) with Shaykh b. Nāni (05/16/98) and Muḥammad b. Sharīf Aḥmad “Sufi” b. Sid Aḥmad b. Shaykh b. Ibrāhīm al-Khalīl (05/16/98). The life history of the Shaykh b. Ibrāhīm al-Khalīl family figured prominently in Lydon’s dissertation (“On Trans-Saharan Trails: Trading Networks and Cross-Cultural Exchange in Western Africa, 1840s-1930s” (Ph.D. dissertation, Michigan State University, 2000). Paul Pascon identified him as one of the most important West African trade correspondents of the Moroccan commercial house of Igh: Pascon, “Le commerce de la maison d’Ighigh d’après le registre comptable de Husayn b. Hachem Tazerwalt, 1850-1875,” in *La Maison d’Ighigh et l’histoire sociale du Tazerwalt*, Pascon, A. Arrif, D. Schroeter, M. Tozy and H. Van Der Wusten, ed. (Rabat, 1984), 70, 72, 74 and 83.

¹³¹ Octave Pesle, *La Donation dans le Droit Musulman – Rite Malékite* (Rabat, 1933), 190-193.

contractual precautions did not always guard against the eventuality of family feuds erupting over slave ownership.¹³²

The evidence of the joint ownership of enslaved individuals illustrates quite vividly the extent to which slaves, like livestock, were crassly valued and partitioned in the process of exchange. It is difficult to imagine how the management of a co-owned slave, and a slave made to serve multiple masters, would be negotiated. Undoubtedly, such stressful circumstances would have resulted in additional hardship and alienation for slaves who were forced to perform for several owners who expected equal rights over their labor as well as their bodies. That these and other types of deliberations were taking place at a time when slaves were supposedly at their cheapest is an indication that the human commodity remained a coveted luxury item in this time period.

Other commercial records by slave dealers include waybills or lists of merchandise and participants on a caravan venture that include the identity of the sellers of individual slaves.¹³³ The following list of slave purchases belonged to a Ghadāmiṣī trader stationed in nineteenth-century Timbuktu, who would have coordinated import-export operations along the eastern and northeastern routes.

First, I purchased from Mūsa one *sadās* for eleven white *bayṣa* (unit of cotton cloth that, like salt bars and mithqāls, functioned as currency) . . . Then a *sadās* for six black (*bayṣa*) and one and a quarter blue *bayṣa* and a *sadās* from Milād with eight white (*bayṣa*) and a *sadāsiya* for three *bayṣa* (one dark blue, one black and another one blue). Then a *sadās* for eight and half a *bayṣa* (four white and four dark blue), then another for eight and a half (five dark blue and three and a half white), then another for eight dark blue *bayṣa*. Then an older male slave ('*abd kabīr*) for six *bayṣa* (five white and one dark blue) from Abūba and a she-camel from him as well as two teenaged boys (*ghulām*) for sixteen *baiṣa* (half are white) from Ḥama . . . And a single young female woman (*ama*) from Tūlit for eighteen, paid for with the salt and the *shigga* (thick cotton cloth) which he was owed.¹³⁴

The total number of slaves purchased was therefore eleven, with children counting for more than half: six boys (*sadās*), one young girl (*sadāsiya*), two teenaged boys (*ghulām*), one older male slave, and one slave woman. Like most such lists this one was not dated, but judging from other documents written by the same trader, it may have been produced in the mid-nineteenth century. In this particular case, the slave dealer might have been on commission and therefore he would have had to keep a record of the price of each purchased slave. If he was trading for his own account, he may have been required to register total expenditures. But in light of the legal deliberations regarding the sale of slaves and guarantees discussed above, committing purchases to writing provided legal guarantees. For such documents could be referred to in the eventuality that a "defect" was subsequently discovered in individual slaves.

The following excerpt from such a list, which includes the order of a slave, illustrates the commercial arrangements prevailing between caravaners. Judging from the mint

¹³² In one such case, two sisters fought for the ownership of a slave girl in 1884-1885. Public Library of Shaykh Sidi Muḥammad wuld Ḥabbut (Shingīṭi), "Marāfa'a qaḍā'ia bayna Fāṭima mint al-Sālik wa-Kūria mint al-Sālik tatanāz'ān ama."

¹³³ In his description of contracts, Khalīl specifies that prices, conditions and names are required and that it was not sufficient to include simply "two male slaves for such an amount," 123.

¹³⁴ IHERI-AB, no. 7582 "Wathīqa tadhkir mu'malāt fī bay' al-raqāq."

condition of the paper, this document is, in all likelihood, a copy of the original that traveled with the caravan. It describes an interregional salt caravan primarily destined to exchange salt for millet organized by traders from Shingīṭi. Based on genealogical inference, the caravan dates to the first half of the nineteenth century.

Reminder note regarding what the writer can at least expect to receive for his salt. Except three salt bars (*‘adīla*) which are for the debtor (in this case the lead caravaner) and all of the half bars (*fās*) are his as well.¹³⁵ The rest of the salt was rented to us at the rate of two salt bars per camel.¹³⁶ . . . and on the camels of Muḥammad Sālam sixty-one salt bars . . . and for Muḥammad al-Ḥanṣhī’s family fifty-three salt bars, and Muḥammad Mālik’s family thirty-three salt bars and he gives to you (the caravan leader) on behalf of ‘Abd al-Raḥmān b. al-Ghāṣī one *mithqāl*¹³⁷ for the purchase of a good-looking unmarried slave girl (*ama jayda wa ‘uzba*) or an ugly but very young one. And six and a half salt bars for the writer, and the salt must be sold for gold at the rate of one *mithqāl* per one and a half salt bars . . . If millet can be found at the price of four *mudd*,¹³⁸ then buy the equivalent of five camel loads and five bars (i.e. a total of thirty-five bars) and if millet is less than that then buy three camel loads for whatever price you find.¹³⁹

As this example conveys, the caravan shareholders commissioned their trade deals in explicit terms, including the purchase of slaves such as the order for a young slave girl, either a nice-looking unmarried and presumably virgin one, or one who was very young. When not specified, it was understood that the salt loads were to be exchanged for millet at the current market price.

The value of contracts as an historical source lies in the fact that unlike the abstracted cases discussed in *fatāwā/nawāzil* collections, these writings provide precise information including names, prices, itineraries, and (sometimes) dates. The problem is that they have not usually been collected systematically by state archives in the region, so that even when they are available, it is very difficult to reconstruct the wider social context from which they were drawn. Work with these kinds of materials is much more likely to be fruitful when they are found in their original contexts, usually as part of a collection of family-held papers, often stored in metal trunks, and frequently interspersed with other personal papers including letters. Muslim West Africa is rich in these kinds of materials, but most of it remains in private hands as part of family heirlooms.

¹³⁵ Half a bar of salt per camel load of salt was the typical payment for caravan leader in the late nineteenth and early twentieth century.

¹³⁶ Salt bars were typically “rented” to caravaners at the rate of 1/3 or 33.33% profit. Lydon interview with ‘Abdarraḥmān wuld Muḥammad al-Ḥanṣhī in Shingīṭi, Mauritania (09/29/97). Perhaps the process of calling this type of transaction “rent” as opposed to “loan” was a mechanism to mask a technically usurious transaction. These types of arrangements were common between traders and camel owners. A camel loading at the Ijil salt mine north of Shingīṭi typically carried six bars of salt.

¹³⁷ A *mithqāl* was a measure equal to approximately 4.25 grams of gold. Based on our readings of nineteenth-century sources, it was used more as a means of valuation than an actual measure of gold. See Marion Johnson, “The Nineteenth-Century Gold ‘Mithqal’ in West and North Africa,” *Journal of African History* 9 (1968).

¹³⁸ A *mudd* was a measure of cereal and other dry goods such as henna and dates. Each region had a different measurement for the *mudd*. The Shingīṭi *mudd* approximated 2.5 kg. The largest was the *mudd* of Tishit, which measured about 4.5 kg.

¹³⁹ Family archives of ‘Abdarraḥmān wuld Muḥammad wuld Aḥmad wuld Muḥammad al-Ḥanṣhī (Shingīṭi, Mauritania) MH 14.

Commercial correspondence

Merchants and their trade agents made use of correspondence to coordinate their trading activities, place orders and send commercial agents on expeditions equipped with a shopping list detailing goods and terms of trade. Letters by prominent merchants could serve as passports to be presented to potential interceptors or caravan raiders, as their reputation could “protect” the caravan from being ransacked.

Slaves trained in matters of commerce were employed as trade representatives. In a document detailing the shares of a caravan loaded with millet returning from southern markets to the town of Tishit, a male slave (‘*abd*’) belonging to the daughters of a certain “Imām,” was listed as their representative.¹⁴⁰ Free women usually did not embark on long-distance commercial caravan expeditions. So in order to participate in long-distance trade, they hired agents or simply exploited the services of enslaved men. Similarly, migrant traders without access to their extended family networks tended to employ slaves as caravan leaders or workers. Traders from Shingīṭi, for example, relied on the services of a freed slave named Mūsa as their main trade correspondent in late nineteenth-century Nioro (Mali). Two such men named Şambu and Anjay (or Njay), both enslaved, worked as commercial agents for a merchant from Ghadames named ‘Īsā b. Ḥmīda, and their commercial correspondence is preserved in Timbuktu.¹⁴¹

‘Īsā b. Ḥmīda headed a family-based commercial network that connected the Sahara desert with the Sudanic region of the Niger Valley in present-day Mali. He established a household in the town of Timbuktu (Mali) in the 1850s, from where he organized trade that linked the Saharan sellers of products such as salt, tobacco and textiles with the Western African commerce in gold, foodstuffs, textiles, kola nuts, ostrich feathers and slaves. The letters that he exchanged with his slave agents are remarkable mostly for the fact that they represent texts written between a master and his slaves. They are mostly about matters of accounting and market conditions, but they provide evidence of literate slaves playing a crucial role as agents in the commercial networks of precolonial West Africa.

One of the most striking things about this correspondence is the degree of rhetorical respect sometimes accorded to the slaves by their interlocutors. For example, in one of his letters to Anjay, his master ‘Īsā b. Ḥmīda begins as follows: “From ‘Īsā b. Ḥmīda with full and generous greetings to his slave (ghulām) Anjay.” In correspondence from his master’s sons, written in the 1880s and 1890s, we find repeated usage of the following salutary formula at the beginning of the letters:

This is from Aḥmad al-Bakkāy b. ‘Īsā b. Ḥmīda to his brother and beloved, and only then his slave (ghulām) Anjay. Greetings to you and may you have God’s mercy and blessings. How are you? How is your family? We hope that you are just as we are and that you are satisfied with that.

Such greetings suggest something about the social relationships that bound these slaves to their master’s family.

¹⁴⁰ Family archives of Fāḍil al-Sharīf (Tishit) FS4.

¹⁴¹ On these letters, see Bruce S. Hall and Yacine Daddi Addoun, “The Arabic Letters of the Ghadames Slaves in the Niger Bend, 1860–1900,” in *African Slavery/African Voices*, ed. Alice Bellagamba, Sandra E. Greene, Carolyn Brown and Martin A. Klein (New York: Cambridge University Press, 2013), pp. 485–500; also Hall, “How Slaves Used Islam.”

Many, although not all, of the letters authored by slaves were actually written by scribes. One letter written by another slave belonging to ʿĪsā b. Ḥmīda named Ibrāhīm credits the actual writing of the letter to a scribe named Muḥammad Yintāwū, whose name is sometimes written Ṣiṭāwū in other letters, and who is frequently greeted in this correspondence. Judging from the handwriting, the same few scribes did much of the actual letter writing for some of these slaves. But it is also clear that Anjay wrote his own letters, at least some of the time. When Anjay died in Timbuktu in the first decade of the twentieth century, the executors of his possessions listed thirteen Arabic books that were found in his house in the areas of Islamic law, Arabic grammar and devotional literature. That a slave would possess these texts is surprising and suggests a level of education well beyond what we would expect slaves to possess.¹⁴²

The literacy and education of certain slaves made them valuable to their masters. It seems likely that the slaves were educated as children so that they could work as commercial agents when they became older. There is also evidence that younger slaves were sent along with older ones in a kind of apprenticeship to learn the tricks of the trade. Masters encouraged their slaves to marry and have children because it bound slaves more closely into the affairs of their masters' family, and because it led to the biological reproduction of their workforce. Ṣanbu and Anjay both married and established families in Timbuktu (Ṣanbu's wife was named Kani; Anjay's wife was named Bintu).

A couple of examples of the kinds of issues that arise in these letters will help to illustrate some of the potential research that these letters open up. The letters provide evidence of how important slaves were as knowledgeable and skilled agents. There are many examples of letters written between an enslaved agent and his master communicating prices and market conditions or detailing a shipment being sent to the master. The following is an excerpt from one letter written by the slave Anjay to his master ʿĪsā:

Now then, I write to tell you that, God willing, you will find thirty cotton bands (*tāri*) brought to you by Saddi Maflūṭ. They will be folded in a mat and marked by two circles, one inside the other, plus the foot of a bird just like the mark from twine made from palm frond fiber (*korongoy*). He is also bringing with him one rod (*ʿūdu*) of kola nuts, which contains 1500 nuts. As for the cotton bands, they are in the middle of the two veils (*disa*), and their price is 11,000 cowries. The cotton bands cost 100,000 *salāmiyya* [of salt] and 2000 cowries. As for the price of the 1500 cotton bands, it was 93,000 cowries. Inside of the cotton bands you will also find 8 garments (*libās*) – they are for your beloved al-Madani.¹⁴³

The letters written by slaves sometimes contained commercial intelligence that the agent had acquired in his travels and dealings. An example comes from a letter written by the slave Ṣanbu to the same master ʿĪsā:

You asked about the prices of commodities in Sansanding: One block of salt sells for two *mithqāls* of gold, or 10,000 cowries. Labor is 2,700 cowries. Grain is 400 cowries for a sack (*qashāsha*). There are no slaves (*khadīm*) that can be bought profitably here. Cotton strips (*tāri*) are cheap, but honey is expensive. Shea butter is expensive, baobab flower is not available, and tamarind is expensive. Grain is expensive throughout the country but

¹⁴² Hall, "How slaves used Islam," 285-6.

¹⁴³ IHERIAB, ms. 8308, Hall and Daddi Addoun, "Arabic Letters," 492-494.

there are no people who are more dishonest than the people of Sansanding. They gouge prices all the time because they do not believe in God or shaykhs.¹⁴⁴

Other letters communicate political information that would have been useful in organizing trade missions in different places.

The letters reveal that Anjay and Şanbu were simultaneously engaged as commercial agents for their master, and acting on their own accord in different commercial transactions on behalf of others. The female counterpart to the ghuḷām slave in these letters is the surriya. In one letter, a woman named Yājīda, who identified herself (or was identified by a scribe), as the surriya of Īsā, the same master of Anjay and Şanbu, wrote a letter about a commercial venture that she was invested in together with Anjay.

Please accept full and generous greetings from Yājīda, concubine (surriya) of Īsā, to her beloved and distinguished brother Anjay Īsā. After invoking God, I write to inform you that you will receive from Tafa two units, one of hulled rice and the second of tobacco, and two strips of cotton equal to 20 lengths, and 5 lub turbans marked with an "X." When they reach you, may God's blessings be upon you, send them to me quickly in less than three day and no more than five days. I have also sent one blanket made from wool at the house of Faṭim Gh-Th-M. Take possession of it and buy it for me in exchange for tobacco. We send our greetings to you, to everyone with you, to those who are related to you and to all of the people, even those we don't know.¹⁴⁵

So, aside from the interesting fact that this is a letter written on behalf of a female slave, the issue that it is concerned with is the a side deal that the agency slave Anjay is to carry out on behalf of Yajida. These kinds of commissions are very common in these letters.

There are sometimes glimpses in the commercial letters of the nature of relations between slaves and masters. This opens possibilities for researchers to better understand this form of slavery in West Africa. As the greetings in some of the letters addressed to slaves mentioned above indicate, a language of affinity is often part of the way in which masters and slaves communicated with each other. It seems clear that whatever else it was, this language of affinity was also instrumental, offered as a kind of promise to slaves about what their place was and would be in the larger family. Eventual manumission did not mean independence or freedom from the family of the master; instead it meant fuller integration as a junior client. But this language could also be turned on its head by the slaves themselves. In one letter written by Anjay to his master Īsā in the 1860s from the market town of Youvarou, on the Niger River just north of Lake Debo, 200 km southwest of Timbuktu, we can see evidence of a dispute between the two.

I also received your first letter and the second one which arrived on the same day that I wrote you my letter. I read both of them and I understood their content. You said in the two letters that you had ordered me to return to you and not to remain here. I have not deviated from this for even one day. I do not disobey your commands and your orders because I do not wish to disobey them even for a single moment. Everything that you reproached me for is because of a delay caused by circumstances, not my personal choice. There is no quick business in the town of Youvarou. Salt is not sold quickly and gold is not

¹⁴⁴ IHERIAB, ms. 5451, Hall and Daddi Addoun, "Arabic Letters," 489–491. For the value of 'mithqāl', see fn 137.

¹⁴⁵ IHERIAB, ms. 10444, Hall and Daddi Addoun, "Arabic Letters".

found easily. But you are absent and I am present here. It is those who are here on the ground who can see and know what those who are not here cannot see and cannot possibly know. This is the difference between you and me. I have no personal business in remaining here other than your service and business . . . As for the fact that he said that I had sold on credit: I did this only for one half load (*'adila*) of tobacco, which I sold for 100,000 cowries on credit. This was a mistake on my part, but it was decreed by God Almighty and I did not do it by my own will. God willing, I will come to you without further delay. Do not listen to everything that people say to you until you see me, God willing. To you, I am like the mouse that is in the house of the people: He does not abandon these people of the house. You and I are like that. So rest your heart in peace about me. From me you will see only things that please you, God willing. I swore an oath to God Almighty to never betray you. Even if people tell you that I am stealing your money, I will walk to you on my two feet, God willing. I will walk to you myself and you will do with me what you want. I prefer this to betraying you.¹⁴⁶

By invoking divine will repeatedly and suggesting that his relationship with his master was religiously sanctioned, Anjay made claims on his master as a client. Although he was a slave, Anjay represented himself as a junior client of 'Īsā's household and commercial network. Sources such as this open up new interpretive space for histories of slavery in Africa.

Other documents

Enslaved women and girls were frequently included in marriage negotiations among the Muslim elite and featured in bridewealth payments.¹⁴⁷ From our cursory examination of marriage contracts, and other sources describing civil matters, it would appear that a gender division of property rights prevailed, which included slave ownership. One example was the case of a woman who was given a young slave girl (*ama*) by her father at the time of her marriage. Shortly after he died, leaving no records of this particular transaction, the executor of the will claimed the slave. The woman's husband then purchased the slave back for her. But the ownership of the slave was contested once again between the two families after the wife died. It was resolved in a fatwa in favor of the husband's family.¹⁴⁸ We came across other instances where women had to purchase back their slaves after the death of their husbands and the estate was divided. One widow involved in a complicated inheritance case that unfolded in Tishit in the early 1850s purchased back her male slave for the price of thirty-four salt bars.¹⁴⁹ In order to protect their rights of ownership after their death, men and women could draw up trust funds or endowments (*waqf* or *hubus*) in

¹⁴⁶ Hall and Daddi Addoun, "Arabic letters." This letter is discussed in Hall, "How Slaves Used Islam," 293–294.

¹⁴⁷ Khāil recognized the lawful of such transactions (131 and 135).

¹⁴⁸ Family archives of Aḥmad b. Zayn (Tishit, Mauritania), AZ 2 (Fatwā written by Muḥammad al-Mukhtār b. Aḥmad).

¹⁴⁹ Family archives of Arwāli deposited in the Shaykh b. Ḥammuny Library (Shingīti). Islamic law on inheritance is very precise. Generally, women inherited half the amount of men. But the specific portions depend on whether there were children involved, in which case, a wife inherited 1/8 of her husband's estate, and a husband 1/4 of his wife's wealth. For another example, see Hunwick's explanation of the inheritance of a widow in nineteenth-century Timbuktu; "Islamic Financial Institutions," 81.

accordance with Islamic law. We saw several cases of this sort in the discussion of *fatāwā/nawāzil*. John Hunwick has examined such a contract in Timbuktu, whereby “Nādda, daughter of Batāka, endowed a slave woman called Tadāy to her daughters to be enjoyed in perpetuity by her offspring.”¹⁵⁰

In the same way that a portion of a horse was traded in the above case, a slave also could be divided and sold in portions. Slave shareholders could exchange their shares as they pleased as long as all owners agreed to the transaction.¹⁵¹ The evidence of transactions in shares of slaves is plentiful enough to suggest that the co-ownership of individuals was common practice among Muslim communities of West Africa. Slaves, like most property, could be co-owned in halves or quarters in the same way that livestock was so partitioned.¹⁵² Their ownership was transferred through inheritance procedures as in the following case from early nineteenth-century Tīshīt:

Time of appraisal of the inheritance of the late Abūbakkar b. Ayūb al-Fulānī and it is half of a she-camel in his possession with its young weaned male camel worth seventeen-and-a-half *mithqāl*, a female slave (*khādim*) with her young slave son (*Ibnihā ghulām*) both worth thirty and a quarter *mithqāl*.¹⁵³

How the relatives of the deceased Abubakkar b. Ayūb al-Fulānī were to divide the property is not discussed, but their shares were probably assessed based on the stated value of the estate.

Another extant form of Arabic writing related to slavery is the manumission document. These documents usually followed a more or less standard formula. John Hunwick has translated the unconditional manumission formulary from an anonymously written manual found in Nigeria called the *Kitāb al-tarsil* (the book of letter-writing):

On unconditional manumission: So-and-so, son of so-and-so, has granted his slave complete freedom for the sake of God the Generous and in hope of His mighty reward. He has made him one with the free Muslims, partaking of both their privileges and their responsibilities. May God free from the fire of Hell a limb of his corresponding to the limb he set free [of his slave], even his genitals for the genitals [of the slave], just as [the Prophet], may God bless him and grant him peace, released (?) al-Mukhtāra. The slave's colour is so-and-so and he has such-and-such marks. Or “in the reign of sultan so-and-so and the month of God such-and-such.” Whoever lays claim to him should not be given ear. Nothing should be heard [in court] except what relates to clientship, for clientship goes to him who sets free. “Whoever changes this after he has heard it, surely the sin of

¹⁵⁰ Hunwick, “Islamic Financial Institutions,” 97 (Document no. 1 “*Waqf* of a slave woman,” IHERIAB, 3851/9).

¹⁵¹ If one of the owners agreed to free the slave, he could buy out the other shareholders. The shareholding of slaves and potential disputes is also mentioned in the Qur’ān (39:29). Incidentally, Ibn Abī Zayd discusses the legal procedures for the manumissions of co-owned slaves. Ibn Abī Zayd, 226–227.

¹⁵² On the shareholding of domestic animals, see Paul Dubié, “La Vie Matérielle des Maures,” *Mélanges Ethnographiques. Mémoires de l’Institut Français d’Afrique Noire*. No. 23 (Dakar, 1953), 220, where he argues that “the different types of animals formed a real monetary system which used to allow for the valuation and payment of bridewealth, exchanges of animals and merchandise, the dividing of inheritances, the payment of debts and usurious loans.”

¹⁵³ Family archives of Shaykh b. Ibrāhīm al-Khalīl (Tīshīt, Mauritania), IK16 (dating 1220h/1805).

such action is borne only by those who change it," and so on. Written by so-and-so on such-and-such a date. Peace.¹⁵⁴

Hunwick also translated the formulae from this text for the postmortem emancipation of a slave (*tadbir*) and for the contract for the purchase of freedom.

In Bruce S. Hall's book on the intellectual history of race in Muslim West Africa, he translated a colonial-era manumission document from Timbuktu that included a reference to an antiracist argument about not oppressing the so-called 'blacks.' The document invokes the manumitted slave's status as a free Muslim, with no stain of slavery remaining. The slave's color - his blackness - cannot be a legitimate argument to enforce his social inferiority.

[The emancipated slave] responds that the true vestiges and [remaining] reality [of his enslavement] is in the freedom of Muslims as their right and duty. Nothing of the traces of slavery remains upon him and the only bondage is the road of ardent desire for He who loves him [thus] releasing him. Whosoever disputes his change [of status] after hearing of it follows the example of those who oppress because of his color - God is all hearing and all knowing.¹⁵⁵

There are large numbers of manumission documents held in the IHERI-AB in Timbuktu, and it is a form of documentation that is quite extensive. A research methodology would have to be devised to really make use of this material, bringing together a significant sample size to reveal patterns and demographic information.

CONCLUDING

This chapter has provided an overview of Arabic sources in which mention of slavery is made. These sources are both prolific and wide-ranging as we have demonstrated, but also challenging to work with. There are many difficulties of access to Arabic-language materials in West Africa, largely because unlike for much of the colonial materials, archival institutional infrastructure is quite undeveloped. Large amounts of Arabic documentation are held in private hands, which means that most often it not catalogued or indexed. But aside from the very challenging problems of access, the Arabic materials present methodological problems that are similar to other sources on slavery in Africa. The overwhelming majority of written materials on slavery were written by slaveholders or by those discussing legal and ideological supports of the practice of slavery.

What we have argued in this chapter, however, is that Arabic materials offer rich veins of information to mine in reconstructing the historical practice of slavery in Western Africa, and the particularities of local interpretations of Islamic law in light of the changing importance of slavery and the slave trades over time. We believe that Arabic sources make possible a detailed social history of slavery in parts of precolonial West Africa, especially as it touched on enslaved women and girls. The extant

¹⁵⁴ John Hunwick, "Falkeiana III: The Kitāb al-tarsīl, an Anonymous Manual of Epistolary and Notary Style," *Sudanic Africa* 5 (1994), 181-182.

¹⁵⁵ Hall, *A History of Race*, 240.

sources also hold many surprises, such as the fact that literate enslaved commercial agents wrote and received letters, and that female slaves sent letters to manage their business affairs in distant markets. Although few historians have devoted themselves to using Arabic documentation to recover new histories of slavery in Africa, we hope that we have made clear that such efforts, while difficult, can be very fruitful.

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