SLAVERY, EXCHANGE AND ISLAMIC LAW:
A GLIMPSE FROM THE ARCHIVES OF MALI AND MAURITANIA*

Ghislaine Lydon
University of California, Los Angeles

Many pages have been written about slavery and the slave trades in and out of Africa. Much less attention has been paid to the local laws that governed such dealings in the past. While several detailed studies document the pervasiveness of slave pawns in the credit and loan markets, our knowledge of both the legal and the financial institutions that once regulated such transactions in Africa is still limited. This is particularly true of scholarship on Muslims who were more likely to leave written records of their commercial activities. Indeed, because of the availability of such sources, and given that slavery is such a popular subject of historical investigation, one would expect that the rules governing commercial exchange in slaves between Muslims in precolonial West Africa, and the place of Islamic law as a referent, would be better understood.

Based on a reading of Islamic legal theory, and relying on a handful of commercial and legal sources, this article is a modest contribution to our understanding of exchanges in slaves among Muslims in nineteenth-century Mali and Mauritania. After setting the context for these documents with a brief discussion of the trans-Saharan slave trade in the nineteenth century and Muslim justifications of it, I examine the provisions regulating sales and purchases of slaves according to the Mālikī doctrine of Islamic law prevailing in the region. I review how such transactions were defined in key references, including the two most commonly used legal manuals in West Africa: the compendia of Abū Muḥammad ‘Abdullah ibn Abī Zayd al-Qayrawānī and Khalīl ibn Ishāq al-Jundī. Then I turn to the local evidence documenting transactions in the human commodity in order to ascertain to what extent Islamic law provided a framework for commercial exchange and the regulation of slave property rights. From this limited sample of sources I make the following three preliminary observations. First, Islamic legal

principles on transactions in slaves were well known among learned Muslims who tended to be traders as well as conspicuous consumers of slaves. Second, local jurists provided legal intermediation to Muslims who actively sought counsel or arbitration in matters concerning slave transactions. Finally, Islamic law, as defined in classic legal manuals and represented in the official record of slave transactions, while offering guidelines, was not always followed, applied or enforced among these ostensibly litigious societies.

I. The Setting: Trade, Slavery and Islamic Practice

Most historians concur that the volume of trans-Saharan trade, including the trafficking of enslaved Africans from West Africa to the Maghrib, over to northeast Africa and beyond to the markets of the Middle East, grew significantly in the nineteenth century. In the early part of the century, European imperial powers, starting with Denmark and followed by Britain and then France, eventually put an end to the Atlantic slave trade. While on the coast slave markets experienced a ‘slow death’, in the Western Sudanic interior they remained active well into the twentieth century. For the region that concerns us these markets included the northern desert-edge market of Guelmîm, the Mauritanian desert-oasis of Tîshît, ports of trade along the Senegal River, the Malian center of Timbuktu, and the Libyan market of Ghadâmîs. Prices of enslaved Africans may have shifted as a consequence of the drop in the Atlantic-side demand, perhaps reaching one of their lowest levels in West Africa sometime in the nineteenth century. Martin 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. This may well have been the period when, based on real or imagined facts, a slave’s worth in salt was the size of a foot cut out in a slab of salt. At the same time, European mercantilism along the coast of West Africa now imported ever larger quantities of goods, from industrial cotton cloth and paper to sugar and tea, which transformed consumption patterns and African demand in the hinterland.
The tumultuous nineteenth century was also marked by the emergence of Muslim state-builders such as Ahmad Lobbo, al-Hajj ‘Umar Tal and Samori Turé. To acquire, by way of long-distance traders, imported goods such as firearms needed to resist European encroachment and establish their respective fiefdoms, these revolutionary leaders engaged in extensive raids generating large numbers of enslaved Africans as currency. At the same, Saharan nomads mounted on camels and horses were notorious for their raids on villages for slaves. Many slaves would have come from around the Senegal River Valley, as well as the Bamana regions of the Middle Niger Valley, but some also originated from further south and east in the lands of the Hausa and Bornu. In turn, the proliferation of imported firearms, the consolidation of Islamic polities, and organized resistance to European occupation contributed to increasing violence and enslavement.

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-Hajj ‘Umar was raided for slaves by unscrupulous nomads following the death of the Sufi leader, as revealed in a letter addressed to a trans-Saharan trader by his son, Ahmadu, demanding assistance to rescue his family members. Meanwhile, the demand for slave labor continued to rise steadily throughout western and northern Africa, and across to the Middle East and the Ottoman Empire.

### Demand for Enslaved Workers

In the Maghrib, male slaves served as guards and soldiers to the Sultan, as well as to wealthy chiefs in the countryside, while female slaves performed as domestics and concubines. Throughout North and West Africa, slaves also labored in production, from the manufacture of crafts to farming. In the desert economy of Saharan regions, they were further put to work as caravan workers, shepherds of the numerous herds of goats and camels, and guards at strategic...
wells. Access to cheaper slaves gave a boost to the labor-intensive date palm cultivation, and especially the small cereal-producing fields of Saharan oases. Concurrently, 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. Salt bars were the primary currency Saharans used to acquire slaves. Ann McDougall convincingly argues that a higher demand for slave labor in salt-pans, to meet the increased demand for salt bars in and across the Sahara, gave added impetus to the slave trade.

Muslims, Literacy and Caravan Trade

As Saharan archives reveal, the nineteenth century was also the most prolific period for written documentation in Arabic, including material pertaining to trans-Saharan trading activity. Indeed, as is clear from their numerous legal and commercial records, a majority of large-scale caravan organizers were Muslim and literate. Many relied on Islamic law as a framework for regulating their often complex business operations and contractual agreements. To finance caravans, they depended extensively on multiple forms of credit transactions across long distances and currency zones.

Observance of the basic tenets of Islamic law tended to be self-regulating as most Muslims generally abided by its basic principles. But when legal contestation or disputes arose, the role of scholars of Islamic jurisprudence was paramount. These legal specialists influenced the conduct of trade through contract enforcement and mediation, by establishing standards of measures and valuation, and by setting guidelines for local and cross-cultural exchange. Classic and local interpretations of Islamic practice provided an institutional framework upheld by Muslim authorities who shaped the law and whose rulings were enforced through reputation mechanisms. Saharan merchants were reliant upon paper (imported in much larger quantities in the nineteenth century) to document their economic transactions for purposes of accounting, accountability and to uphold their property rights. Until the last decade of the nineteenth century, a semblance of economic order was maintained across a large area of Muslim West Africa based on what I have called elsewhere a ‘paper economy of faith.’
Islamic Law and Slavery

Although this article focuses on transactions in slaves, a word must be said about local justifications for slavery. 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. Conventional wisdom maintained that the only lawful means to generate slaves in Islam was through the capture during a *jihad* of non-Muslims who refused to convert. Indeed, a theological argument was used to justify the act of enslaving unbelievers as part of a proselytizing mission to expand the frontiers of belief or *Dār al-Islām*. Several scholars argue, however, that the sources of Islamic law do not justify enslavement, while manumission was recommended. 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.

Muslim scholars throughout the ages debated slavery from various angles. For example, a fifteenth-century Egyptian jurist from the Ḥanafī school of law wrote a treatise advising traders on how best to select purchased slaves through careful inspection. In West Africa, the best known legal opinions or *fatwas* on the lawful enslavement of Africans were written by the celebrated Muslim scholar Aḥmad Bābā ibn Muḥammad Aqīt who lived in sixteenth-and early seventeenth-century Timbuktu. But even this author writes with the assumption that non-Muslims could be lawfully enslaved. His reply to a Maghribi of Tuwāt, who was seeking to identify the non-Muslims subject to lawful enslavement, was entitled “The Ladder of Ascent Towards Grasping the Law Concerning Transported Blacks.” In his answer, which reads like an ethnographic account, the scholar mapped the limits of the known Muslim world beyond which he considered it permissible to enslave Africans. His legal opinions seem to have held wide currency among Muslim scholars from Morocco to Hausaland. With the expansion of the frontiers of Islam in the nineteenth century, many contemporary scholars such as the Moroccan Aḥmad ibn Khālid Al-Nāṣirī would question, on legal and racial grounds, the legitimacy of enslaving Africans indiscriminately. That trans-Saharan slave dealers were concerned with lawfully carrying out their
trade on the one hand, and that Aḥmad Bābā did not fail to report the incidence of wrongful enslavements of African Muslims on the other (as he himself had been in the aftermath of the Moroccan invasion of Songhay), points to the marked confusion among Muslims surrounding transactions in slaves.24

II. The Law: Mālikī Rules on Transactions in Slaves

The pervasiveness of Islam in West Africa makes it difficult to understand the trans-Saharan slave trade outside of a religious framework. It is well-known that the Qurʾān contains numerous directives concerning the treatment and manumission of slaves. The same is true of the other fundamental sources of Islamic jurisprudence (ʿusūl al-fiqh), including the Prophetic sayings (ḥadīth). The word slave, as it relates to the condition of bondage as opposed relationships to God, appears in seventeen of the Qurʾān’s one-hundred and fourteen chapters. Not surprisingly, transactions in slaves are described in great detail in the Islamic law manuals of the Mālikī doctrine, most commonly followed in West and North Africa. Three broad themes will be examined here: the circumstances of the slave trade; the specific clauses concerning female slaves; and the rules governing slave pawns. But before turning to these legal principles, it is appropriate to make note of the slave terminology in Arabic commonly used in Muslim West Africa.

Language of Enslavement

The generic word for slave, tellingly derived from the Arabic root verb meaning ‘to be or to become thin,’ was ṭaqqā (plur. ṭaqā).25 It was used explicitly in relationship to ‘the slave trade’ (ṭijāra al-raqāʾ). Male slaves most often were referred to as ṣab (plur. ʿabā). Women slaves were either ḥalīm (plur. ḥuddām), a word also used broadly for male or female ‘domestic servant,’ or ḟāriya (plur. ḟariyā or jawārī) meaning concubine. Concubines who bore their masters a son were known as ‘mother of the son’ (umm al-walad), and, unlike any other category of slaves, they were supposed to be automatically freed at the master’s death.26 The term ghulām (plur. ghulmām) was applied to young slave
boys between the ages of ten and fourteen, while the equivalent for girls of similar age was ama (plur. imā'). Some traders used sadās, a word which I suspect stems 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. Moreover, male slaves or freed slaves working as commercial agents and couriers for merchants of Ghadāmis and Ghāṭ, commonly were ascribed the epithet of ghulām or sometimes sayd.

Sources of Mālikī Law

By the end of the nineteenth century, a majority of West Africans in the region of present-day Mali and Mauritania were Muslim and they followed the doctrine of Islamic law founded by Imām Mālik Ibn Anas. There the main Mālikī references were the works of two medieval scholars from Africa. The first, entitled “The Treatise” (al-Risāla), was written by Abū Muḥammad ‘Abdallāh ibn Abī Zayd al-Qayrawānī who lived in tenth century Tunisia. The second was “The Compendium of Jurisprudence of Imām Mālik’s Legal Doctrine” (Mukhtaṣar fī al-fiqh ‘alā maqāb al-Imām Mālik) by Khalīl ibn Ishāq al-Jundī, a fourteenth century Egyptian scholar. The Mukhtaṣar was the most popular legal code, perhaps because it was written later, but mainly because it was concise and designed to be memorized and passed down orally. Moreover, Khalīl’s version is more technical on commercial transactions, while Ibn Abī Zayd’s abridgement is written in narrative style. West African Muslim jurists based their decisions on such works, and wrote commentaries on other commentaries. They also referred to them while engaging in daily jurisprudence that was tailored to the particular circumstances of the day by writing legal opinions and shorter replies, as examined in the next section.

Overall, the compendia of Ibn Abī Zayd and Khalīl, both based on the fundamental texts of Mālikī fiqh (jurisprudence), held similar positions on slave transactions. Imām Mālik’s principle contribution,
the *Muwatt* (or “The Well-Trodden Path”), a collection of Prophetic sayings and legal questions compiled in eighth-century Medina, was the first source of reference. Of its sixty-one chapters, containing over two-hundred references to slaves, the most relevant discussion of slavery is the one on business transactions (*kitāb al-mu‘āmlāt*). The second Mālikī reference manual is the *Mudawwana* (“The Book of Law”) by Saḥnūn ibn Sa‘īd who, like Ibn Abī Zayd, was from the city of Qayrawān in Tunisia. While this text was well-known, its sixteen volumes were not readily available in the libraries of nineteenth-century West Africa. More so than Imām Mālik’s text, the *Mudawwana* was extremely detailed on the rules of commercial exchange and the question of sales.

Exchanges in Slaves and Animals

With notable exceptions examined below, Mālikī law treated transactions involving slaves similarly to those of animals. The two primary rules of trade in Islam, which were plainly linked, were the interdict on usury and the requirement that transactions take place simultaneously. 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, foodstuffs as well as real estate and land as long as terms and prices were agreed upon and payment occurred prior to delivery. Selling slaves in bulk was also forbidden since like animals they could be priced individually. Moreover, they also could be sold in portions or shares. As with animals, slaves were loaned out temporarily or rented. In these cases, if the slave became pregnant during the loan period, the progeny belonged to the owner, not the borrower. It also was 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.” Finally, unlike domestic animals that constituted perpetual property, slaves could be manumitted or they could be allowed to purchase their freedom.
However, special rules governed exchanges in slaves for, as Octave Pesle explains, “the slave being endowed with reason, they may contain defects which are not found in other things and in animals.” The seller had an obligation to honestly divulge all of the slave’s “defects” (‘uyūb) to the best of his/her knowledge and to the purchaser’s satisfaction (as in the case examined below). As Ahmad Sikainga notes 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.” 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). 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.

**Slave-Sale Guarantees**

Generally two types of guarantee clauses were applied to the sale of slaves. The first, known as the guarantee of three days, stipulated that after a sales agreement, slaves were held in observance for three days to check 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 insanity, elephantiasis or leprosy. If such a “defect” was discovered within the allotted time, the buyer could decide either to keep the slave and receive no compensation, or return the slave for a full refund. The sale was forfeited if the seller could prove that the slave had incurred the sickness or other defect while living with the buyer.

Sales of enslaved women and girls were subject to additional rules because of their reproductive function and because they could be exploited sexually. As mentioned earlier, the sale of a fetus was illegal. This was also true of the child of a manumitted female slave. A special sales clause existed to determine the state of a slave’s womb. There was an allotted period of “surveillance” to establish whether a female slave was pregnant or not at the time of sale, and to deal with
the possibility of parentage. The female slave purchased on stipulation of a legal period was placed in the custody of a third party, which had to be a woman, who reported when and if the slave menstruated. The third-party supervision was obligatory whether the seller recognized having had sexual relations with the slave or not. For, if the slave bore a child, the buyer was not allowed to separate mother and child until the stipulated growing-up time, which according to Ibn Abī Zayd was after the second teething period (in approximately the sixth year). The actual purchase took place when the reproductive state of the slave had so been determined.

The rules were strict about 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.” When a slave with possessions was sold, her/his possessions remained the property of the seller unless otherwise specified in the bill of sale. 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.

As for credit transactions (which had to be free of obvious and exploitative interest), everything could be loaned except for slave girls (ama) and silver dust.

Pawnship

The modalities of pawning, or the pledging of property as a security for a loan, were carefully discussed by Mālikī scholars and were more explicitly detailed in the work of Khalīl. 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. This can be compared to the pawning of domestic animals (cows, camels), as well as trees and arable land that could be exploited for a profit. At the same time, the upkeep and maintenance of pawns was the responsibility of the creditor.

In principle, most everything could be pawned with notable exceptions. It was illegal, for instance, to pawn items with uncertain
ownership, such as a runaway slave. Moreover, the pawning of 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. 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. The subsequent loaning of the pawn by the creditor was prohibited, and s/he lost the financial privilege if s/he loaned the pawn back to the original owner for a profit. But if a debtor failed to pay back the loan, the slave or part of the slave could be sold to cover the original debt. Finally, if the pawn committed a misdemeanor, a crime, or if s/he came to perish, the creditor was held responsible.

**Enslaved Trade Agents**

Use of slaves as commercial representatives and couriers was quite common in Africa as elsewhere. In this particular case, Mālikī law stipulated that “the slave who is authorized to trade cannot be sold to cover debts he incurred.” 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.

As noted earlier, the compendia of Ibn Abī Zayd and Khalīl hold similar views on exchanges in slaves, but there is one notable exception which has to do with interfaith commerce. Indeed, for Khalīl it was unlawful for Muslims to sell to non-Muslims copies of the holy book, Muslim slaves, or even young slaves. Interestingly, he admitted that such slaves could be temporarily pawned but not sold to non-Muslims. Yet he provided seemingly contradictory recommendations about the use of Muslim pawns. On the one hand, he argued 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 he stated that a newly converted pawn could still be sold in the absence of the debtor and debt reimbursement. Given that the boundaries between enslavement and Islam were not always clear in the legal arena from the beginning of Islam, such confusion is hardly surprising. For all of these dealings
Mālikī scholars repeated the Qur’anic injunction that transactions be committed to writing. As noted earlier, many nineteenth-century West African traders were literate. Because they used paper to record their trading activities, and otherwise relied on their literacy to enhance their commercial efficiency, rich sources about the slave trade are available for historians to mine.

III. The Evidence: Multiple Transactions in Slaves

Aside from the opinions of Ahmad Bābā of Timbuktu about lawful enslavement in West Africa, we still know very little about actual transactions in the human commodity. While the legal manuals discussed above were well-known in Mauritania and Mali, and featured in legal deliberations as well as library collections, it is necessary to weigh precept against practice to ascertain to what extent Muslims abided by Mālikī rules. Judging from the predominance of legal documentation contained within these libraries, it is certain that Muslims in these regions often sought counsel and had recourse to the law as it was interpreted by local Muslim judges and scholars. As Ḥamdan wuld Tah, one of Mauritania’s finest contemporary jurists explains, “since the seventeenth century when we begin having legal records in Mauritania until today, the most debated and discussed issue in the fatwas is what is known as the problem of sales.” Indeed, economic behavior was the second most common issue examined by Saharan jurists after theological or purely sacred matters.70

Documents detailing slave transactions abound in Mauritanian and Malian libraries. But given the preoccupation of traders and scholars with commercial exchange, it is surprising that I found so few legal debates about the slave trade. While Saharan scholars deliberated at length about transactions in salt bars and gum arabic, I have yet to locate a similar discourse on the legality of buying and selling slaves. Two leading scholars who produced the earliest sources for Mauritania are the seventeenth-century Muḥammad ibn al-Mukhtār Bil-A’mish, considered the region’s first faqīh, or expert in Islamic jurisprudence, and Shaykh Sīdī ‘Abdallah Ibn al-Ḥājj Ibrāhīm, the well-known scholar of the eighteenth and early nineteenth century.72 I relied on their legal collections since they deliberated on
cases involving transactions in slaves. I also mined fatvas, attestations, contracts and other commercial records from several private archives. As for the Malian sources, they were collected from family records held in Timbuktu at the Centre de Documentation et de Recherches Ahmad Baba (CEDRAB). The following discussion is therefore based on a varied yet admittedly limited sample of legal and commercial documents.

In his collection of short legal replies (nawārīl), which became the model for all subsequent Mauritanian jurisprudence, the seventeenth-century jurist Bil-A'mish provided counsel on a number of slave-related concerns. Yet the only legal discussion I found dealing directly with the conduct of the slave trade was written by one of his followers, Shaykh Sīdī ‘Abdallah Ibn al-Ḥājj Ibrāhīm (d. 1816). 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-Naṣūrā)?" 

In his elaborate reply, Sīdī ‘Abdallah 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 Sīdī ‘Abdallah knew well as a 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.

Enslaved Caravan Workers

In the nineteenth century, caravans were often led by hired hands. Typically, caravanning families would place orders and send commercial agents on expeditions equipped with a shopping list detailing goods and terms of trade. Such documents could serve as passports to be presented to potential interceptors or caravan raiders.
The reputation of certain important traders listed therein would often “protect” the caravan from being ransacked by unscrupulous “road-stoppers.” The following excerpt from such a list, which includes the order of a slave, illustrates the commercial arrangements which prevailed between caravaners. Judging from the mint condition of the paper, this document is, in all likelihood, a copy of the original which traveled with the caravan. It describes an interregional salt caravan primarily destined to exchange salt for millet organized by traders from Shingṭi. 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 (gharīm; in this case the lead caravaner) and all of the half bars (fāṣ) are his as well. The rest of the salt was rented to us at the rate of two salt bars per camel. ...and on the camels of Muḥammad Sālam sixty-one salt bars...and for Muḥammad al-Ḥanshi’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 ‘Abdarrāḥmān b. al-Ghāṣī one mithqāl for the purchase of a good-looking unmarried slave girl (ama jašla 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, then buy the equivalent of five camel loads and five bars (i.e. a total of 35 bars) and if millet is less than that then buy three camel loads for whatever price you find.

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.

As aforementioned, slaves trained in matters of commerce were employed as trade representatives. Indeed, this may well have been the social status of the agent in charge of the caravan described above. In a document detailing the shares of a caravan loaded with millet returning from southern markets to the town of Tīshīt, a male slave
(‘abd) belonging to the daughters of a certain “Imām,” was listed as their representative. 81 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 Shingi, 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, Samba and Sarāq, worked as commercial agents for a merchant from Ghāmis named Sīdi ‘Isa ibn Aḥmayda, and their commercial correspondence is preserved in Timbuktu. 82

The following list of slave purchases belonged to another Ghāmisī trader also stationed in Timbuktu, who would have coordinated import-export operations along the eastern and northeastern routes.

First, I purchased from Mūsa one sadās for eleven white baiṣa (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 baiṣa. 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 a 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. 83

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 it was
probably produced in the mid-nineteenth century judging from other documents written by the same trader.

Aside from a desire to follow the Islamic legal recommendation that sales be put in writing, there are a number of professional reasons why slave dealers would hold tallies, including naming the identity of the sellers of individual slaves. 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 in the previous section, 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.

Ailing Slaves with “Defects”

At this stage of our research, it is difficult to say whether or not the Maliki principles concerning the three days (for obvious defects) or one year (for special illnesses) guarantees for slave sales were actually adhered to in the nineteenth century. But the following example, found in the nawaiil of seventeenth-century jurist Bil-A’mish, sheds some light on the legal procedures concerning the purchase of slaves with “defects.” He was asked to deliberate on the following contested sale:

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 are 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]?
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, Imām Mālik’s Muwaṭṭa’ and Saḥnūn’s Mudawwana, Bil-A’mish argued the following:

Whoever purchased a sick slave, is informed about his illness, and consents to the deal [was fully responsible and if] the slave came to die...the misfortune is for the purchaser if he knew about it, just like [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 sale. Evidently, the question of the three day guarantee therefore was naught since the “defect” in question had been acknowledged at the time of purchase.86

In addition to deliberating on the application of the return policy in this case, Bil-A’mish 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’mish 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 under-representing 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 that “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.”87 His judgment was based entirely on Khalīl’s Mukhtasar, the basic Mālikī text, “because,” he reasoned, “we people are all “followers of Khalīl” (Khalīliyūn).”88
Joint-Ownership of Slaves

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. 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. Their ownership was transferred through inheritance procedures as in the following case from early nineteenth-century Tishīṭ:

Time of appraisal of the inheritance of the late Abubakkar b. Ayūb al-Fulānī and it is half a she-camel in his possession with its young weaned male camel (faṣḥ) worth seventeen-and-a-half mithqal, a female slave (khālim) with her young slave son (Ibniha ghulāman) both worth thirty and a quarter mithqal.

How the relatives of the deceased Abubakkar ibn 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.

In the mid-nineteenth century a muftī or legal scholar of Tishīṭ, named Muhammad al-Mukhtar ibn Alīmad ibn Anbāke, was asked to judge a related matter pertaining to the joint-ownership of an enslaved mother. Like most of the documents discussed here, I came across this short legal opinion after wading through family records. It concerned a man from Tishīṭ 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. 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. So, he reasoned, “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. He concluded that it was up to the son to find testimonial proof of the donor’s intent. As was made clear in the document, such ownership
might not have been the subject of contestation had the enslaved mother given birth to male twins.  

Another similar 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.”  

This was the son of Shaykh Ibrāhīm al-Khalīl, a prosperous Saharan long-distance trader settled in Tīshīt. As the document makes clear, the slave girl originally had been donated to Muḥammad al-Amīn by his mother.  

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.  

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

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 would be negotiated, or how she may have been exploited by multiple masters. Undoubtedly, such stressful circumstances would have resulted in additional hardship and alienation for slaves 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.

**Pawned Slaves**

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 according to both oral and written sources, and was often the subject of contracts dealing with property transactions such as land, real estate and palm trees.  

Bil-A‘mish, the seventeenth-century Mauritanian jurist, discussed two such cases involving slave pawns. In the first, he ruled,
citing Khalīl, that a pair of male slaves pawned for an unpaid salt loan could not be sold by the creditor in bulk. 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. Citing Khalīl 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.

Another case involving a slave pawn was an attestation to amend a pawnship contract dating from the second half of the nineteenth century. 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. Sīdi Muḥammad b. al-Ḥajj ‘Umar.

The document stated that Muḥammad ibn Aḥmad, the creditor, would not liberate the pawned slave girl until the loan had been fully repaid. Nevertheless, he consented to Ḥayba, the man who desired her, the right to have intercourse with the slave girl although they were not allowed to live together. As is stated in Khalīl, the slave was not to cohabitate 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.
Other Transactions

Finally, other types of legal sources, dealing with civil matters more than commerce per se, inform about transactions in slaves, and will be briefly mentioned here. Enslaved women and girls were frequently included in marriage negotiations among the Muslim elite and featured in bridewealth payments.\textsuperscript{106} From my cursory examination of marriage contracts, and other sources describing civil matters, it would appear that a gender division of property rights prevailed including with regards to 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 which ruled in favor of the husband's family.\textsuperscript{107} I 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 Tīshīṭ in the early 1850s purchased back her male slave for the price of thirty-four salt bars.\textsuperscript{108} In order to protect their rights of ownership after their death, men and women could draw up trust funds or endowments (\textit{waqf} or \textit{jabbus}) in accordance with Islamic law. John Hunwick 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.”\textsuperscript{109}

IV: Concluding Remarks

Based on this admittedly limited sample of sources, it is difficult to ascertain to what extent all transactions in slaves were \textit{ipso facto} “lawful.” To be sure, many of these contracts and legal deliberations were written in proper form, testified by the appropriate number of witnesses, framed by Mālikī codes, dated with the Islamic calendar and written “in fear of God.” Overall, the legal prescriptions of the experts such as Bil-A'mish and Sīdī ʻAbdallah followed closely the Mālikī doctrine. Their reliance on legal sources is hardly surprising
given that they were men of law and owners of sizeable reference libraries. Clearly, a thorough assessment of Islamic practice and precept concerning the question of exchanges in slaves awaits a more thorough investigation of the evidence. But what these sources do reveal is the reliance in nineteenth-century West Africa on a legal framework within which exchanges, accountability, and some degree of enforcement could take place.

Yet it is important to keep in mind that these legal sources merely represent “official” records of the past, and as such they must be handled with the historian’s customary circumspection. On the use of legal sources, Endre Stiansen and Jane Guyer warned that “the ideal frameworks are better described than are the actual workings of transactions.” This is not the case for the *nawāṣil* which document actual cases presented to, and deliberated by, local jurists. Yet even these deliberations represent prescriptions rather than descriptions of normative behavior. Moreover, it is difficult to judge how wide or how narrow was the gulf between precept and practice among Muslims who exchanged slaves outside of the purview of legal experts and in an undocumented manner. Finally, it must be recognized that, with the exception of the rare documents produced by literate enslaved caravan workers, these legal documents and trade records contain an inherent class bias as they were usually generated by a literate slave-owning elite. As such, they represent the ‘master’s narrative,’ depicting slaves as mere objects or animals, such as they were considered under Islamic law. While they reveal much about conditions of slavery and exchange, they are almost mute about the identities and realities of the victims of enslavement.

This study is an attempt to reveal how Islamic law, as it was practiced in pre-colonial Mali and Mauritania, provided a framework for commercial exchange and slavery transactions. As the title suggests, this is but a glimpse into a new area of investigation for the history of slavery in Africa. Because exchanges in slaves represented costly transactions, they were subject to a great deal of legal contestation producing a significant body of commercial and legal archives. Definite conclusions await a more thorough investigation of the available written record. Only then will it be possible to ascertain when, and under what conditions, Islamic commercial law was upheld, how customary law blended into this framework, and how
this established legal system was changed by colonial occupation at the turn of the century.

Notes

* The first draft of this paper was presented at a conference entitled “Liberté, identité, intégration et servitude dans le monde musulman” held in Ifrane at the University al-Akhawayn, Morocco (June 2000). I thank the organizers, Mohamed Ennaji and Paul Lovejoy, as well as the conference participants, especially R. Sean O’Fahey, for their remarks. I am most grateful to Wendy Belcher, Liz MacGonagle, Abdullah al-Shami, Yahya Ould El-Bara and Ken Sokoloff for their insightful comments and suggestions on this article. I thank the editor of this journal for her careful reading and editing. All translations and errors are mine.


The most notable exception is the tremendous scholarship of John Hunwick, including “Islamic Financial Institutions: Theoretical Structures and Aspects of their Application in Sub-Saharan Africa,” in Stiansen and Guyer, eds., Credit, 72-99. For Islamic legal debates regarding enslavement of blacks, see his “Islamic Law and Polemics over Race and Slavery in North and West Africa (16th-19th Century),” in S. Marmon, ed. Slavery in the Islamic Middle East (Princeton, 1999), 43-68. Moreover, Hunwick and Eve Trout Powell’s The African Diaspora in the Mediterranean Lands of Islam (Princeton, 2002) contains a rich collection of sources with a most useful introduction and chapter on slavery and Islamic law. Other exceptions are the classic work of A. Fisher and H. Fisher, Slavery and Muslim Society in Africa: The Institution in Saharan and Sudanic Africa and the Trans-Saharan Trade (London, 1970), 5-7 and chapter two; and A. A. Sikainga, Slaves into Workers: Emancipation and Labour in Colonial Sudan (Austin, 1996) and “Slavery and Muslim Society in Morocco,” in S. Miers and M. Klein, eds., Slavery and Colonial Rule in Africa (London, 1999), especially 62-63. This is not to imply that the Islamic framework in precolonial African economic history has been ignored, but simply to suggest that it requires further study. A discussion of how Islamic law regulated enslavement and the slave trade is noticeably lacking in a recent volume on slavery and Islam in African history: P. Lovejoy, ed. Slavery on the Frontiers of Islam (Princeton, 2004).

I rely on the following Arabic texts: Ibn Abī Zayd, La Risâla ou Épitre sur les éléments du dogme et de la loi de l’Islam selon le rite mâlikite (texte et traduction), Léon Bercher, ed. (Alger, 1968), hereafter Ibn Abī Zayd; and Al-Mukhtasār’ala maqāl al-Imām Mālik ibn...
Anas li-Khalī ibn Ishāq ibn Ya'fū b al-mālikī (Paris, 1855), hereafter Khalī. The latter publication is preceded by a note about Khalī ibn Ishāq by the well-known scholar Ahmad Bābā of Timbuktu. Also see the translation by G. H. Bousquet, Abrégé de la loi musulmane selon le rite de l’Imām Mālek (Algiers, 1958).


5 Klein, Slavery, 42. He admits, however, that whether there was a general drop in slave prices is debatable and debated in 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 females slaves to 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.

6 Interviews with retired caravanners: Fuūī wuld Atlā’yr in Atar (3/07/98); Bāba Ghazzāl in Tīshīḥ (04/16/97); and Ahmad Jiddu, in Shīnqīṭī (10/01/97). This oral tradition, still very vivid in the memory of Mauritanian elders, is also reproduced in the late nineteenth century ethnography of Ahmad b. al-ʾAmīn al-Shīnqīṭī, Al-Wasūfī, Tarājīm Udābī Shīnqīṭī (Cairo, 1911), 521. McDougall cites a French source dating from the 1840s that claims that in the region of Nioro, 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.
SLAVERY, EXCHANGE, AND ISLAMIC LAW


8 In 1276/1859-60, a caravan from Tīshīt sold 2000 salt bars, half of them in slaves, to al-Ḥājj ʿUmar. That year, according to the Chronicle of Wal ta, the price of salt dropped to ten millet mudds of Ṭaḡānt (approx. 35 kgs). It is likely that such salt would have been used in turn as currency to purchase all kinds of military supplies, including firearms and horses. P. Marty, “Les Chroniques de Oualata et de Némā,” 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, 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.


10 Family archives of Shaykh b. Ibrāhīm al-Khālīf (Tīshīt), IKI (N.B. the codification of sources used throughout are from Lydon’s archival photographic collection). The letter, written sometime in the late 1860s or early 1870s, clearly indicated that Shaykh b. Ibrāhīm al-Khālīf had been a good friend of al-Ḥājj ʿUmar. This letter is discussed in detail in Lydon, “Muslim Contests over Property Rights in Slaves in Nineteenth Century Mauritanian,” International Journal of African Historical Studies, forthcoming.


12 Ennaji, Soldiers.


It is important to note that while this justification for enslavement in Islam is taken for granted by Muslims jurists and modern scholars alike, there exists no treatise or work on the subject. While 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).

Moulavi Cherágh 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 “Jihád” (Pakistan, 1977), 193 and especially Appendix B, 193-223. While not going quite so far, Ulrike Mitter explains how manumission was institutionalized in early Islam. See his “Unconditional manumission of slaves in early Islamic law: aḥādīth analysis,” in W. B. Hallaq, ed. The Formation of Islamic Law, (Burlington, VT, 2004). William Gervase Clarence-Smith Islam and the Abolition of Slavery, forthcoming, addresses this very question.


Mi’raj, 52 (English translation), 85 (Arabic text).

Mi’raj, 7 (English translation), 55 (Arabic text); and Hunwick, “Aḥmād Bābā on Slavery,” 135.

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. See contributions in Lovejoy (ed.), Slavery. Even Mālikī scholars made allowances for the ownership of Muslim slaves, as discussed below.

A raqī is a saleable slave, whereas ‘abd denotes a bonded person, servant or serf. Incidentally, the word raqī 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).

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 (’atāqa) post mortem, in which case they would take on the status of “manumitted” or mudābbar (Ibn Abī Zayd, 222). Slaves who purchased their freedom by way of a contract agreement were “registered” (mukārīb), but they nonetheless retained the social status of slave.
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Fisher and Fisher explain that the sedasi was a standardized slave category in the market of Bornu. Such a slave was aged between 12 and 15 or was a boy measuring 54 inches or “six spans from the ankle to the tip of the ears,” (Slavery, 162). I am more inclined to think that this term designated slaves of even younger ages than twelve and that instead the term ghulām (and not sedasi) was applied to ten to twelve year-olds and to young teenage boys. The example of a trade record discussed below, which includes both these terms, is an indication of this. In fact, the word sālas, which in all likelihood stems from the word for sixth (sālis), most probably refers to the year of the legal age at which a child could be separated from his slave mother and sold into slavery in accordance to Mālik law.

For a biography of Imām Mālik see the Encyclopedia of Islam, VI: 265b and 278a.

Aside from the two compendia discussed here, other legal references were commonly used in North and Western Africa. These include the works of the prolific Egyptian Ab Fāḍl al-Ṣuyūṭī, and especially of the Tunisian Saḥn ibn Saʿīd (referred to below) and its commentaries.

Ibn Abī Zayd, La Risāla ou Épitre sur les éléments du dogme et de la loi de l’Islām selon le rite mālikite (texte et traduction), Léon Bercher, ed. (Alger, 1968), hereafter Ibn Abī Zayd. Note that sometimes West African jurists refer to this work as “the author of the Risāla” or simply “Ab Muḥammad.”

I rely on the following Arabic text: Al-Mukhtāsār’ala mašhār al-Imām Mālik ibn Anas li-Khālīl ibn Ishāq ibn Ya’fū b al-mālikī (Paris, 1855). This is one of the best transcriptions and it is preceded by a note about the author by the hand of the celebrated Aḥmad Bābū of Timbuktu, hereafter Khalīl. Also see the translation by G. H. Bousquet, Abrégé de la loi musulmane selon le rite de l’Imām Mālik (Algiers, 1956). Note that in West African texts, Khālil is sometimes referred to as “Sīdī Khālil.”

Interview in Nouakchott (06/02/97) with Ḥamdan wuld Tah, a retired Minister of Islamic Orientation. Despite his age, he is a progressive thinker and remains actively engaged in social change.


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 Maliki School of Law in North and West Africa: Eight-Fourteenth Century” (Ph.D. Dissertation University of Illinois, 1983).

57 Al-Ṣādiq ʿAbd al-Raḥmān al-Ghariyānī, Mudawwana: al-Fiqh Al-Mālikī wa Adillatuh, (Beirut, 2002), volume 1, 173-65, hereafter Mudawwana. There are numerous categories of sales recognized in Islamic law, from forward purchases (bayʿ al-salam) to the sale of currency (al-ṣurf). For a French examination of sales in the Mālikī doctrine, based on North African legal sources, see O. Pesle, La Vente dans la Doctrine Malékite (Rabat, 1949). Unfortunately, this colonial ethnographer who published several useful works on Mālikī fiqh does not adequately cite, or provide a list, of his sources.

58 Ibn Abī Zayd, 200; Khalīl, 126-127. For a detailed explanation see Kamali, Principles, 402-404.

59 Ibn Abī Zayd, 210; Khalīl, 125.

60 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.


62 Ibn Abī Zayd, 238; Khalīl, 127.

63 Ibn Abī Zayd, 208; Khalīl, 127.

64 Ibn Abī Zayd, 224, 226, 228; Khalīl devotes a chapter on the question of manumission, and the rights of a manumitted slave, 219-221.

65 Emphasis mine. Pesle, La Vente, 161.

66 Khalīl, 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.


68 Pesle, La Vente, 163.

69 Ibn Abī Zayd, 204-206; Khalīl, 130-1 and 135.

70 Ibn Abī Zayd, 210; Khalīl, 135 (he further specifies that insanity must be hereditary, not passing); Pesle, La Vente, 38-9; 137; 153-5.

71 It is noteworthy that nowhere in these manuals is their mention of the sexual violation and exploitation of the slave boy. Pederasty, and homosexuality generally, is not officially recognized by Muslims.

72 Khalīl, 123.

73 Ibn Abī Zayd, 204-206.

74 Ibn Abī Zayd, 206, 212; Khalīl, 128 (he does not specify 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).
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.

It is interesting to note the ambiguity of this saying which 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 Khalil, a seller was not obligated to disclose if a slave had previously tried to run away (134).

Khalil, 132, 145. Khalil goes so far as to specify that a slave cannot dressed-up for sale on the market to increase his/her price, including smearing ink on their clothes to give the impression that they can write. He also states that there is no consensus among Maliki scholars about whether the clothes on a slave’s back were automatically included in the deal (138).

Ibn Abī Zayd, 206-7. I have not discovered why the loans of silver dust were prohibited. Khalil's code does not contain this clause. Saharan records show that silver, mainly in the shape of European coins, was commonly loaned.

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

A. 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. I did not locate this clause in Khalil’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 (“Pawnning in the Emirate of Ilorin,” *Slavery*, 142).

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

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

Ibn Abī Zayd, 138; Khalīl, 123.

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.


Abī Zayd, 270-271; Khalīl, 159.

Khalīl, 122-3.

Hamdan wuld Tāḥ, Interview in Nouakchott (06/02/97).


For brief biographies of Muḥammad ibn al-Mukhtar Bil-‘A’mish and Sīdī ‘Abdallah ibn al-Ḥājj Ibrāhīm see Ahmad b. Al-Amīn, Al-Wasīṭī, 37-40.

Sīdī ‘Abdallah b. al-Ḥājj Ibrāhīm, Nawzīl (my photocopy of a handwritten copy of the manuscript).


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.

Salt bars were typically “rented” to caravanners at the rate of 1/3 or 33.33% profit. Interview with ‘Abdarrahmān wuld Muḥammad al-Ḥanshī in Shinqīṭ (09/29/97). I suspect that 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 Ijl salt mine north of Shinqīṭ typically carried six bars of salt.

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

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 Shinqīṭ mudd approximated 2.5kg. The largest was the mudd of Tīshīt which measured about 4.5kg.

Family archives of ‘Abdarrahmān wuld Muḥammad wuld Aḥmad wuld Muḥammad al-Ḥanshī (Shinqīṭ) MH 14.

Family archives of Fāḍal al-Sharīf (Tīshīt) FS4.

CEDRAB nos. 7532 and 8294. These are among the rare sources written or dictated by slaves, or freed slaves.

CEDRAB, no. 7582 “Wathīqat taḍkīr mu‘āmalat fi bi’ al-raqīq.”

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.
In a related case, a man contested the return of a female slave that he 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 Fādil al-Sharīf, FS 7.

87 Bil-A’mish, Nawā’il, 55.

88 Bil-A’mish, Nawā’il, 55.

89 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’an (39:29). Incidentally, Ibn Abī Zayd discusses the legal procedures for the manumissions of co-owned slaves. Ibn Abī Zayd, 226-227.

90 On the portioning of domestic animals see P. 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.”

91 Family archives of Shaykh b. Ibrahīm al-Khalīl (Tīshīt), IK16 (dating 1220H/1805).

92 Family archives of Shaykh b. Ibrahīm al-Khalīl (Tīshīt), IK6 verso.

93 For further discussion on this particular case see Lydon, “Muslim Contests.”

94 For example, Shaykh Aḥmad al-Saghīr, the eminent jurist of Tīshīt wrote a long fatwa on the subject of pawning palm trees.


96 The mother was a Māṣna woman named Fātimma Seri mint Niabi who was also a trader in her own right. Interviews in Nioro (Mali) with Shaykh b. Nāni (05/16/98) and Muḥammad b. Sharīf Ahmad “Sufi” b. Sid Aḥmad b. Shaykh b. Ibrahīm al-Khalīl (05/16/98). The life history of the Shaykh b. Ibrahīm al-Khalīl family figured prominently in my dissertation. P. Pascon identified him as one of the most important West African trade correspondents of the Moroccan commercial house of Illigh. Pascon, “Le commerce de la maison d’Illigh d’apres le registre comptable de Husayn b. Hachem Tazerwalt, 1850-1875,” in La Maison d’Illigh et l’histoire sociale du Tazerwalt, Pascon, A. Arrif, D. Schroeter, M. Tozy and H. Van Der Wusten, eds. (Rabat, 1984), 70, 72, 74 and 83.

97 Pesle, La Donation dans le Droit Musulman - Rite Malékite (Rabat, 1933), 190-193.

98 In one such case, two sisters fought for the ownership of a slave-girl in 1884-1885. Public Library of Shaykh Sīdi Muḥammad wuld Ḥabbut (Shingītī) “Marāfa’a qaḍḥa’a bayna Fātimma mint al-Sālik wa Kūṛa mint al-Sālik tatanāz‘ān ama.”

99 For example, Shaykh Aḥmad al-Saghīr, the eminent jurist of Tīshīt wrote a long fatwa on the subject of pawning palm trees.

I make this inference based on the nature of his name, the fact that it was not cited in full, and the nature of the attestation.

Family archives of Shaykh b. Ibrāhīm al-Khalīl (Ṭīshīṭ), IK7.


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

Family archives of Aḥmād b. Zayn (Ṭīshīṭ), AZ 2 (Fatwa written by Muhammad al-Mukhtar b. Ahmad).

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 ¼ 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.
