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# Islamic law and slavery in premodern West Africa

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## abstract

This article examines a series of legal works on the subject of slavery and enslavement in premodern West Africa written by Aḥmad Bābā, Timbuktu's most famous Islamic scholar (963/1556-1036/1627). In these juridical opinions (*fatāwā*, fatwas, and *ajwiba*, legal *responsa*), Aḥmad Bābā answers several questions concerning the lawfulness of enslaving different ethnical groups of the *bilād al-sūdān*,<sup>1</sup> and the legal procedure that should be followed with the slaves that claim their freedom for having been captured while being free. The author's stance towards it clearly stresses that in the religion of Islam, slavery is not related to race, but to infidelity, thus rejecting contemporary views that held that Africans were slaves by nature. Nevertheless, the author's and enquirer's links to Trans-Saharan trade in slaves may have conditioned the motivation and efficacy of these legal texts.<sup>2</sup>

## keywords

Slavery, Islamic law, History of West Africa

*Yā ayyuhā al-nās! Innā khalaqnā-kum min dhakar wa-unthā wa-ja' alnā-kum shu' ūb<sup>an</sup>  
wa-qabā' il li-ta' arifū. Inna akramu-kum 'inda Allāh atqā-kum<sup>3</sup>*

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<sup>1</sup> Literally, «the land of the blacks». Medieval Arabic sources refer with this term to the Saharan Sahel and the area located to its South, from the Atlantic to the Indian Ocean, see *Encyclopaedia of Islam*<sup>2</sup>, «Sudan» s.v. [Jean-Louis Triaud and A. S. Kaye]. The toponym *Takrūr*, although used in a similar way by the sources, refers more specifically to the westernmost part of this *bilād al-sūdān*, see 'Umar al-Naqar, "Takrūr, the history of a name", *Journal of African Studies* 9 (1969), 365.

<sup>2</sup> A preliminary version of this article was presented at the *Islam and Africa Chicago Area Seminar*, hosted by the Program of African Studies and the Institute for the Study of Islamic Thought in Africa of Northwestern University. I would like to thank the comments and suggestions received in this occasion, especially from R. Shereikis, M. S. Umar, C. Stewart and R. Seessemann. I would also like to express my gratitude to professor John O. Hunwick, whose work has made mine possible.

<sup>3</sup> «Oh, people! We created you from male and female and made you into peoples and tribes so that you know each other. The most noble in the eyes of God is the most pious», Qur'ān 49:13.

«The most noble in the eyes of God is the most pious». One of the cornerstones of the religion of Islam is the equality of the believers. Whereas this verse was originally meant to reduce the frictions originated by the key role played by genealogy in pre-Islamic Arab societies, it soon became a resourceful argument for those who claimed that equality should be extended to non-Arabs, a way to delegitimize and to deny any religious grounds to the *de facto* Arab social superiority in the first centuries of the Islamic Empire. The relative success of these claims in the central lands of Islam, such as Persia or Palestine, can be discussed, but certainly, in the case of black Africans racial prejudice seems to have been the norm rather than the exception. Racism and discrimination owing to the black skin colour were frequent everywhere in the Arabic and Islamic world, with some exceptions of which some works, conceived to fight beliefs in the supposed inferiority of Africans and their servile nature, are witness.<sup>4</sup> Aḥmad Bābā's work *Mi'rāj al-ṣu'ūd ilā nāyl ḥukm majlab al-sūd* («The ladder of ascent towards the law concerning imported blacks») can be considered as one of these works, especially because the author refuses all possible legitimacy to the widespread beliefs that all blacks were slaves by nature, but it can still be argued, as this article will do, that in the context of the Trans-Saharan trade in slaves, Aḥmad Bābā's different replies on slavery and enslavement did not set strong or effective hindrances to the sale of illegally captured Africans.

#### **Aḥmad Bābā al-Tinbuktī (963/1556-1036/1627)**

For islamologists, arabists and historians, Aḥmad Bābā is one of the best known Islamic scholars of premodern West Africa, *bilād al-sūdān* in Arabic. Born in Timbuktu in the second half of the 10<sup>th</sup>/16<sup>th</sup> century, he is one of the symbols of Islam in Africa, the African *'ālim* par excellence.<sup>5</sup> One of the reasons for his widespread renown was that he was one of the few African scholars that could have the opportunity of making his work known outside West Africa, although this was at the cost of his deportation to Morocco, caused by his opposition to the occupation of his native land, the Songhay Empire, by the troops of the Sa'did sultan Aḥmad al-Manṣūr.<sup>6</sup> During the time of his forced exile at Marrakech, Aḥmad Bābā had a ceaseless activity within the intellectual spheres of the capital, teaching at the Chorfa mosque, and informally delivering fatwas, for he refused to accept any formal appointment from the authority that had reduced him to captivity.<sup>7</sup> Thus, he acquired the reputation of an eminent jurist and the respect and admiration of his colleagues, a great esteem that lasted through time and space, in

<sup>4</sup> Racism in premodern Islamic societies didn't only affect persons with black skin, but also white Europeans, that constituted a great part of the captives and slaves in many parts of the Arab and Islamic world. For instance, 'Abd al-Rahmān III of Cordova, whose mother was a Basque concubine, considered himself too blond for an Arab caliph, and died his hair. About these matters, see Bernard Lewis, *Race and color in Islam* (New York: Harper and Row, 1971).

<sup>5</sup> John O. Hunwick, «A new source for the biography of Aḥmad Bābā al-Tinbuktī (1556-1627)», *Bulletin of the School of Oriental and African Studies* 27, 3 (1964), 568. Also Maḥmūd Zouber, *Aḥmad Bābā de Tombouctou: sa vie et son oeuvre* (Paris: Maisonneuve et Larose, 1977).

<sup>6</sup> About the conquest of Songhay and neighboring territories undertaken by the Sa'did sultan Aḥmad al-Manṣūr (that received the appellative *al-dhahabī*, «The Golden», because of the gold that he expected to obtain from it), see John O. Hunwick, «Aḥmad Bābā and the Moroccan invasion of the Sudan (1591)», *Journal of the Historical Society of Nigeria* 2, 3 (1962), 319; also Mercedes García-Arenal, *Aḥmad al-Mansur. The Beginnings of Modern Morocco* (London: Oneworld, 2009), 91; Henri de Castries, «La conquête du Soudan par Moulāye Ahmed el-Mansūr», *Hespéris* 3 (1923), 438-488; Georges Paniel, «Les préliminaires de la conquête du Soudan par Moulāye Ahmed el-Mansūr, d'après trois documents inédits», *Hespéris* 40 (1953), 185-197; Évariste Lévi-Provençal, «Document inédit sur l'expédition sa'adide au Soudan», *Arabica* 2 (1955), 89-96.

<sup>7</sup> Maḥmūd Zouber, *Aḥmad Bābā de Tombouctou: sa vie et son oeuvre*, 30.

the Maghreb and in his native West Africa. This can be observed in the influence of his works in authors such as the Moroccan Aḥmad b. Khālid al-Nāṣirī,<sup>8</sup> or the 19<sup>th</sup> century West African jihad leaders, Shehu Ahmadu and Usman Dan Fodio.<sup>9</sup>

The subjects treated in Aḥmad Bābā's works are very varied, going from grammar and Arabic language to Sufism and even political thought, but the area that attracted his attention in a more visible manner was Islamic law and jurisprudence (*fiqh*), and more precisely, that of the Māliki school. Mālikism, historically one of the least followed legal schools in Islam in number of adherents, but predominant even today in the Westernmost lands of Islam, like North and Sub-Saharan Africa, was the institutional school in al-Andalus and in many regimes of the medieval Maghreb. The Māliki school in itself was the subject in two of the best known works written by Aḥmad Bābā, his biographical dictionaries of members of this *madhhab*.<sup>10</sup> These works tell a lot more than the intellectual and spiritual merits of these scholars. They are also the author's credentials, claiming his place and that of his scholarly lineage among the figures that he includes in them, thus linking West Africa to the traditions of learning of Mālikism for the first time, and providing his homeland with an intellectual genealogy that was previously unknown outside the *bilād al-sūdān*.

This is mentioned here because of the remarkable role played by Aḥmad Bābā's clan in these works, where the author is portrayed as the heir and representative of the intellectual merits of the *bilād al-sūdān*, the work of an elite that he describes as being almost exclusively of a Berber-Masūfa origin, and members of his own family, the Aqīts, in its almost entirety.<sup>11</sup> This somewhat biased portrait has an echo in the *Mi' rāj*. Even though this work and the dictionaries can be considered as intended for very different audiences, coincidentally or not, they all could be seen as favouring the author's interests in social or economic terms. The dictionaries may have had the intention of providing him with the powerful legitimacy of Islamic knowledge. As we will see later on, the *Mi' rāj* may have intended to remove the possible impediments to the Trans-Saharan trade in slaves that a more rigorous interpretation of Māliki jurisprudence

<sup>8</sup> Al-Nāṣirī (d. 1314/1897) included a firm condemnation of the conception that Africans are slaves by nature, that referred to Aḥmad Bābā's *Mi' rāj* in his work *Kitāb al-istiṣā'a*, see John O. Hunwick, «Islamic law and polemics over slavery in North and West Africa, 16th-19th century», in *Slavery in the Islamic Middle East*, ed. Shaun E. Marmon (New York and Oxford: Oxford University Press, 1995), 60.

<sup>9</sup> Aḥmad Bābā's lists of enslaveable (non-Muslim) and unenslaveable (Muslim) West African peoples were used by the Usman Dan Fodio (1167/1775-1232/1817) in his work *Bayān wujūb al-hijra* and in the 19<sup>th</sup> century partial forgery of the work *Ta' rīkh al-fattāsh* (one of the *Timbuktu Chronicles*) produced at the court of Shehu Ahmadu (d. 1259/1844), in order to justify the re-enslavement of ethnic groups of the Middle Niger traditionally considered as servile castes, such as the Sorko and the Arbi. See Nehemia Levtzion, «A seventeenth century chronicle by Ibn al-Mukhtar: a critical study of the *Tarikh al-Fattash*», *Bulletin of the School of Oriental and African Studies* 34, 3 (1971), 590; also John O. Hunwick, «Some notes on the term *zanj* and its derivatives in a West African chronicle», *Research Bulletin, Centre for Arabic Documentation* 4 (1968), 42.

<sup>10</sup> Aḥmad Bābā al-Tinbukṭī, *Nayl al-ibṭihāj bi-ta'rīz al-Dībāj*, ed. Muḥammad 'Amar (Cairo: Maktabat al-Thaqāfa al-Dīniyya, 2004, 2 vols.); Aḥmad Bābā al-Tinbukṭī, *Kifāyat al-muḥtāj li-ma' rifat man laysa fi l-Dībāj*, intr. and ed. Muḥammad Muṭī', (Rabat: Wizārat al-Awqāf wa-l-Shu' ūn al-Islāmiyya, 2000, 2 vols).

<sup>11</sup> Only one out of fifteen of Aḥmad Bābā's biographies of *sūdānī* scholars, included in his biographical works, is dedicated to an *ālim* of Manding stock. This certainly obviates autoctonous (as opposed to Saharan-Berber) traditions of learning that are clearly depicted in the sources for the history of West Africa. See Marta García Novo, «Ulemas mālikíes del bilād al-sūdān en la obra biográfica de Aḥmad Bābā al-Tinbukṭī (963/1556-1036/1627)», forthcoming in Mohamed Meouak (dir.), *Biografías magrebíes: identidades y grupos religiosos, sociales y políticos en el Magreb medieval. Estudios Onomástico Biográficos de al-Andalus XVIII* (Madrid and Cádiz: Consejo Superior de Investigaciones Científicas-Universidad de Cádiz, 2012), 205-273.

could have set up, thus benefiting the economic interests of his social group, the Berber (Masūfa) elite that controlled it at the time.

### **Aḥmad Bābā's legal opinions on slavery**

Aḥmad Bābā's fatwas are among the best-known legal texts on slavery in West Africa in the premodern period. The most widely known of them is the *Mi'rāj*, a work that acquired great fame through its first editions and translations into European languages,<sup>12</sup> and that seems to have also had a wide diffusion in North Africa.<sup>13</sup> Three different texts will be analyzed: the consultation or *istiftā'*, where Aḥmad Bābā is asked for an opinion on the matter of what black captives can be legally sold into slavery; the fatwa proper, which is the response that specifically receives the title *Mi'rāj al-ṣu'ūd*, and finally, a third work consisting on brief questions and answers on the subject between Aḥmad Bābā and one of his disciples, Yūsuf al-Īsī.<sup>14</sup> John O. Hunwick and Fatima Harrak were the first to make al-Jirārī's consultation and the *Replies* to al-Īsī available to the general public with their edition and English translation of the works.<sup>15</sup> This edition made use of several manuscripts of the three works mentioned above, but it should be noted that the *Replies* to al-Īsī were only found in a compilation of jurisprudence regarding the *bilād al-sūdān* that made its way into the Royal Library of Rabat from the library of the Nāṣiriyya *zāwiya* of Tamgrout,<sup>16</sup> a Sufi convent that lies in the Southermost part of present-day Morocco, the Dra'a valley, and a major enclave of Trans-Saharan trade. This was indeed the road that took Aḥmad Bābā in his way to Timbuktu, back from exile. Also, and most significantly, Aḥmad Bābā's enquirer, al-Īsī, belonged to (or had a close relationship to) the Nāṣiriyya brotherhood.<sup>17</sup> This compilation also included another fatwa issued in West Africa about slaves claiming their freedom for having been captured while being Muslims, whose author was Makhlūf al-Balbālī, a scholar from Walāta, in present-day Mauritania, who had taught in Marrakech and Fes. The consultation addressed to Aḥmad Bābā refers explicitly to al-Balbālī's fatwa. Hunwick and Harrak included this opinion as an appendix of their edition and translation, together with another appendix that consisted in a post-script to the *Replies (Ajwiba)*, that could only be found in the manuscripts from Tamgrout.

<sup>12</sup> Ernest Zeys, «Esclavage et guerre Sainte: consultation juridique adressé aux gens de Touat par un érudit nègre, câdi de Timbouctou au dix-septième siècle», in *Réunion d'Etudes Algériennes (Bulletin de la Réunion d'Etudes Algériennes)* (Paris: Marchal & Billard, 1900). Also Bernard Barbour, B. and Jacobs, M., «The *Mi'rāj*: a legal treatise on slavery by Aḥmad Bābā», in *Slaves and Slavery in Muslim Africa*, edited by John R. Willis (London: Frank Cass, 1985), 125-159.

<sup>13</sup> Most manuscript copies of the *Mi'rāj* were found in North African libraries, about nine copies against only two in sub-Saharan Africa, but there could be more in private libraries of this region.

<sup>14</sup> John O. Hunwick, «Aḥmad Bābā on slavery», *Sudanic Africa* 11 (2000), 132-3.

<sup>15</sup> Aḥmad Bābā al-Tinbukti, *Mi'rāj al-ṣu'ūd: aḥwibat Aḥmad Bābā ḥawla l-istirqāq*. (The Ladder of ascent: Aḥmad Bābā's replies on slavery), ed. and trans. John O. Hunwick and Harrak, F. (Rabat, Publications of the Institute of African Studies, 2000).

<sup>16</sup> The Nāṣiriyya brotherhood was the largest economic organization in 11<sup>th</sup>/17<sup>th</sup> century Morocco, and controlled Trans-Saharan commercial routes, especially from the West African coast (present-day Senegal and Mauritania), and from inner territories in West Africa. See David Gutelius, «The path is easy and the benefits large: the Nāṣiriyya, social networks and economic change in Morocco, 1640-1830», *Journal of African Studies* 43 (2002), 27-49.

<sup>17</sup> Yūsuf al-Īsī was, according to John O. Hunwick, the copyist of a manuscript that he acquired in Marrakech, and that included several fragments related to the Nāṣiriyya, and most significantly, a prayer from this brotherhood. See Mss. Hunwick 535-545, Africana Library, Northwestern University. Also John O. Hunwick, «Aḥmad Bābā on slavery», 132.

The enquirer (*mustafti*) of the first part of the consultation that motivates the issue of the *Mi'raj*, the *istiftā'*, is Sa'īd b. Ibrāhīm al-Jirārī, who declares to be an inhabitant of the region of Touat, in the south of present-day Algeria<sup>18</sup>. This is the only information that al-Jirārī provides about himself, but his well-elaborated questions, and his familiarity with the fundamental sources of Māliki law and the traditions of the prophet Muḥammad (*ḥadīth*) can lead to think that he had a good education. He could have also been a scholar, or a scholar-to-be. Al-Jirārī always directs his attention towards the sources of the law and the jurisprudence, and of prophetic tradition, and makes a meticulous and easy soft use of the Arabic language, always showing reverence to the recipient of his questions. This is at the Antipodes of the questions of al-Īsī, the second enquirer, and the copyist of Aḥmad Bābā's *Replies*, the *Ajwiba*. Yūsuf al-Īsī, a student of Aḥmad Bābā in Marrakech, makes use of a more colloquial, less elaborate style, and does not evidence a high degree of scholarship, but rather a rudimentary one. His questions do not refer to any legal works, other than al-Balbālī's fatwa, and this is quoted only in an indirect or even a superficial manner, as we will see later on.

The contents of the *Mi'raj* can be divided into three general thematic areas, the first of them being the part dedicated to the legal arguments of the work. This is not, however, the largest section of it, which is, instead, the part dedicated to the authors rebuttal of the topics about the supposed servile nature of black Africans (*al-sūdān*). Relying on historical, scientific or philosophical works, like those of Ibn Khaldūn or Avicenna, or on prophetic traditions, Aḥmad Bābā sharply denies any possible relation between the black skin color of Africans and slavery, because the only cause for slavery in Islam is infidelity. Having said that, he dedicates most of the *Mi'raj* to elaborate a classification of the peoples of the *bilād al-sūdān* according to their adherence to Islam or to unbelief, that is, those than cannot be enslaved according to Islamic law, and those that it is lawful to capture and sell into slavery.

This article focuses on the first thematic area, the legal foundations of the consultation or *istiftā'*, the *Mi'raj* and the *Replies* or *Ajwiba*. The questions that can be found in the consultation to Aḥmad Bābā, try to find a solution to the problem of the enslavement and sale of free Muslims, a reality that the enquirer, al-Jirārī, only lets see in what is implicit in his interrogations. It can be argued that a more straight denounce of this illegality could rarely be expected in the context of a major enclave of the trade in slaves, and also, it should be considered that this straight denounce may not be the enquirer's intention, as will be later discussed. The questions of al-Jirārī deal with the peoples of the *bilād al-sūdān* that, like Bornu, Kano, Gao or Katsina, are known to have embraced Islam, and how the slaves coming from those lands should be considered: if it is legal to own them, and what is the legal procedure to follow in the case that a slave should raise the doubts of possible buyers by claiming that he was illegally captured. Al-Jirārī's questions also focus on the process of expansion of Islam in West Africa and how it was carried out, in order to discern if the West African peoples can be considered as «slave reservoirs», if they were enslaved by Muslims after a violent conquest. The questions also include a number of references to the slaves that belonged to the prophet Muḥammad and his companions and how they proceeded

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<sup>18</sup> The region of Touat (Tuwāt) was one of the major enclaves of Trans-Saharan trade until the 19th century, see John Wright, *The Trans-Saharan Slave Trade* (London, New York: Routledge, 2007), 16, 65.

when buying slaves. The highest emphasis is made in trying to determine if the slave's testimony (*qawl*) can be accepted as a proof (*bayyina*) of his origin. Al-Jirārī finishes his consultation by urging Aḥmad Bābā to reply, saying that error in these matters is extremely harmful. It may be deduced that, together with the enquirer's possible religious concern, among the possible motivations for his *istiftā'* or fatwa petition to Aḥmad Bābā in particular, the geographical setting of the latter may be determining. As al-Jirārī explicitly declares, he seeks the advice of the *sūdānī* scholar on the enslaveable, non-Muslim peoples of West Africa because he is "close to them" (*aq'ad bi-him*) and also is "more knowledgeable about their situation than us" (*a'raf min-nā bi-ḥāli-him*).<sup>19</sup>

### **The legal context: previous rulings on the subject**

The consultation's legal arguments are consistent in that they include a number of legal concepts that can be traced to some of the most relevant works of Māliki jurisprudence, two of them from North Africa, *al-Mi'yār al-mu'rib*, by al-Wansharīsī,<sup>20</sup> and Ibn Hilāl's<sup>21</sup> *Replies (Ajwiba)*, and the other from Egypt, al-Qarāfī's *Dhakhīra*.<sup>22</sup> I will specifically focus on al-Wansharīsī, because his work *al-Mi'yār al-mu'rib*, is from whence seem to develop the arguments in al-Jirārī's consultation, in the *Mi'rāj*, and in al-Balbālī's fatwa. Al-Wansharīsī's famous fatwa compilation was renowned all over North and Sub-Saharan Africa ever since the 15<sup>th</sup> century, and constitutes one of the fundamental sources of jurisprudence of all the premodern period, that can be considered the most relevant of them. Two of the legal opinions comprised in al-Wansharīsī's *Mi'yār*, are quoted by al-Jirārī in his consultation.<sup>23</sup> In this fatwa, al-Wansharīsī does not clearly express a prohibition on the trade of slaves of dubious origin, and uses the recourse to the trader's good conscience or «precaution» (*iḥtiyāt*) in order to avoid chastisement in the future life, leaving it up to his personal judgement. There are no instruments being set for the enforcement of the Qur'ānic prohibition against the enslavement of Muslims, but more strict measures in this direction are not likely to appear, for they would exceed the *muftī*'s attributions, as will be discussed later on. Al-Wansharīsī's argument ties together two different kinds of doubt with very different effects, doubt about the prohibition (*shakk fī l-māni'*) and doubt about the condition (*shakk fī l-shart*). The first one of them, which is considered by al-Wansharīsī as the kind of legal doubt that corresponds to the ignorance of the slave's origin, does not have any effects on previous legal actions.<sup>24</sup> On the other hand, the doubt about the condition (*shakk fī l-*

<sup>19</sup> Aḥmad Bābā al-Tinbukfī, *Mi'rāy al-ṣu'ūd: a'ywibat Aḥmad Bābā ḥawla l-istirqāq*, 44 (Arabic text), 14 (English translation).

<sup>20</sup> Aḥmad al-Wansharīsī (d. 914/1508), jurist from Tlemcen, in present-day Algeria, who acted as jurisconsult in Fes during the 10<sup>th</sup>/16<sup>th</sup> century, See Francisco Vidal Castro, «Aḥmad al-Wansharīsī (m. 914/1508). Principales aspectos de su vida», *Al-Qanṭara* 12, 2 (1991), 315-354.

<sup>21</sup> Abū Ishāq Ibrāhīm b. Hilāl al-Sijilmāsī (d. 903/1497-8), *muftī* in Sijilmāsa. See Aḥmad Bābā, *Nayl al-ibtihāj bi-taṭrīz al-dībāj*, ed. 'Abd al-Ḥamīd 'Abd Allāh al-Harrāma (Tripoli, Lybia: Kulliyat al-Da'wa al-Islāmiyya, 1989), 607.

<sup>22</sup> Shihāb al-Dīn Aḥmad b. Idrīs al-Qarāfī al-Ṣanhājī (d. 684/1285), Egyptian jurist (Māliki). See Khayr al-Dīn al-Ziriklī, *al-A'lām: qāmūs tarājīm li-ashhar al-rijāl wa-l-nisā' min al-'arab wa l-musta'ribīn wa-l-mustašriqīn* (Cairo: 1954-1959), I, 90.

<sup>23</sup> Al-Wansharīsī, *al-Mi'yār al-mu'rib wa-l-jāmi' al-mugrib 'an fatāwī ahl Ifrīqiyyā wa-l-Andalus wa-l-Magrib*, ed. M. Hajji (Rabat-Beirut: Dār al-Garb al-Islāmī, 1981), IX, 238-240. Translated in Émile Amar, "La pierre de touche des fétuas d'Aḥmad al-Wansharīsī", *Archives Marocaines* 13 (1909), 426-428. Translated partially in Vincent Lagardère, *Histoire et société en Occident musulman au Moyen Age: Analyse du Mi'yār d'al-Wansharīsī* (Madrid: Casa de Velázquez, 1995), 405.

<sup>24</sup> This is, for instance, the kind of doubt applied in cases of divorce or manumission. These legal actions may not be revoked in classical Islamic law, following a tradition (*ḥadīth*) of the prophet Muḥammad that established their ultimate seriousness.

*shart*), which according to al-Wansharīsī corresponds to the sale of slaves whose adherence to Islam is known or suspected, invalidates the legal action that can only take place if the condition is met. Al-Wansharīsī's opinion seems to contradict itself, but a slight nuance may be observed: the first kind of doubt seems to refer to the slaves that have converted to Islam after they had been reduced to slavery, and the second, to the Muslims from previously infidel lands, that have been illegally enslaved. It also seems that al-Wansharīsī considers conversion in captivity to be the general circumstance for slaves, but that if it is suspected that free Muslims, and he does not mention protected non-Muslims, are being sold, then as precaution (*iḥtiyāt*) their possession should be preventively prohibited. This mention of precaution needs to be understood as an expression of exceptionality.

Aḥmad Bābā, in his reply to al-Jirārī, will not shed more light on this matter, not going further from a more detailed explanation on the different kinds of doubt that could be involved, and repeating once again, the basic regulation of slavery in Islam, like al-Wansharīsī: the slave must be a non-believer, non subject to the protection of a pact (*ṣulḥ*) or of the *dhimma* status, he must be part of the booty and assigned «in broad light» to one of the combatants in the legitimate jihad, and if he converts to Islam after having been captured, this does not set him free. The prohibition of the slave's possession is also mentioned in another fatwa of al-Wansharīsī's *Mi'yār*. This is a reproduction of other opinions, issued five hundred years before his lifetime in 4<sup>th</sup>/10<sup>th</sup> century Cordova. Al-Wansharīsī takes them from the *Dīwān al-aḥkām al-kubrā*, a compilation of Andalusī fatwas, gathered by Ibn Sahl, one of al-Andalus most illustrious jurists, in the early 5<sup>th</sup>/11<sup>th</sup> century. The text reproduces the legal opinions of some of Cordova's finest jurists on the subject of slaves that claimed their freedom for having been captured while being Muslims.<sup>25</sup> The rulings gathered by Ibn Sahl in this fatwa should be understood as the response of the '*ulamā*' to a very particular situation, and it should also be considered that it is also somehow unusual that Māliki jurists take a firm stance against a legally dubious commercial practice. In this case, the sale of these slaves had taken place in the context of the rebellion of Ibn Ḥafṣūn against the caliphate of Cordova,<sup>26</sup> a confrontation marked by the rebels' conversion to Christianity. Following the defeat of the rebel forces, many soldiers were sold as slaves, as if they could be considered as legitimate booty. However, this could not be a legal sale in any case, for the soldiers were not infidels, but apostates.<sup>27</sup> This obstacle was obviated by Cordovan jurists in the opinions mentioned by Ibn Sahl, that did not mention their apostasy, and just set forth that in the lands of Ibn Ḥafṣūn "the sale of free people was abundant" (*kathura bī al-aḥrār*). Their ruling considered that slaves bought in these

<sup>25</sup> Ibn Sahl, *Dīwān al-Aḥkām al-kubrā*, ed. Yaḥyā Murād (Cairo: Dār al-Ḥadīth, 2007), 169; Al-Wansharīsī, *Mi'yār*, IX, 219-220.

<sup>26</sup> About Ibn Ḥafṣūn's rebellion, that lasted between 265/879-316/929, and the problems aroused by his conversion to Christianity, see Maribel Fierro, «Cuatro preguntas sobre Ibn Ḥafṣūn», *Al-Qanṭara* 16 (1995), 2: 221-257. About the slaves sold during this period, see Virgilio Martínez Enamorado, «Donde rigen las normas de Satán: Ibn Anṭuluḥ, Ibn Ḥafṣūn y el asunto de la propiedad de una esclava», *Espacio, tiempo y forma. Serie III: historia medieval* 23 (2010): 97-112.

<sup>27</sup> If any of the two things. Their religious situation is still discussed, due, on the one hand, to the uncertainty about the spread and degree of adoption of Islam in peripheral regions of al-Andalus before the caliphate, and on the other, because the sources are unclear about if Ibn Ḥafṣūn's soldiers did effectively convert to Christianity, if they did so willingly or under coercion, or if they were just thought to have converted because their leader had done so. This is yet unclear. However, if their apostasy had been fully proven, the correspondent punishment in classical Islamic law would not be slavery, but death, if they did not repent.

lands had to be set free until their owner could prove that they had been rightfully bought, and they charged the owner with the burden of proof (*al-bayyina*), in order to demonstrate the legality of their acquisition.

The case of African slaves being sold at the markets of North Africa was quite the opposite. Their enslavement did not correspond to an exceptional situation, such as the apostasy of a rebel against a legitimate or legally established Muslim ruler. It was a constant social and economic practice, that had systematically furnished the royal courts and the houses of the well and not so well-to-do in the premodern *bilād al-sūdān*, and in the Middle East and North Africa, and that was at the time beginning to supply the slaves that European merchants were to introduce in the Atlantic system. Even if the introduction of Islam and the establishment of Islamic law as predominant legal system in premodern West Africa would necessarily imply concern for and condemnation of the capture and sale of persons that were considered free according to it (Muslims and protected non-Muslims), the practice of enslavement made it difficult for these regulations to be effectively enacted, for indiscriminate captures were a constant feature in the region at the time, stimulated by an ever-growing demand for slaves, especially at the turn of the 11<sup>th</sup>/17<sup>th</sup> century.

In the case of the slaves that claimed their freedom for having been wrongly captured, mentioned in al-Jirārī's consultation, in Aḥmad Bābā's *Mi'rāj*, and in the *Replies* to al-Īsī, a strict position is not to be expected. It is quite unrealistic to even imagine the economic consequences if the '*ulamā*' in the *bilād al-sūdān* and North Africa would try to verify the legality of the acquisition of each slave arriving to any given point of the Trans-Saharan trade routes. Even more to expect that the '*ulamā*'s concern would turn into the admission of the slave's testimony, and the possibility that she or he could be set free without any further proof. But there is, however, a relationship between this fatwa and the trade of African slaves. The insistence of al-Jirārī in order to find out if the testimony of the slave can be accepted as a proof (*bayyina*) shows that he was probably aware of the argument present in the mentioned fatwa, and certainly, he knew it via its adaptation to the trade in slaves in the *bilād al-sūdān*. This is Makhlūf al-Balbālī's fatwa, that reproduces the rulings of the jurists of Cordova, and incorporates for the first time the reference to the West African peoples that it is unlawful to possess.<sup>28</sup> This fatwa could be at the bottom of some of al-Jirārī's questions in his consultation to Aḥmad Bābā, mainly those about West African peoples. This fact bears a significant relevance, in that, as will be argued later on, the relationship between al-Īsī's questions and al-Jirārī's consultation with al-Balbālī's fatwa must be analyzed when trying to answer the question of why Aḥmad Bābā is asked to deliver a legal opinion on the subject of the slaves that claim their freedom for having been illegally captured in the *bilād al-sūdān*. It should also be noted that al-Īsī's questions mention al-Balbālī's fatwa, but they never refer to the possibility of admitting the slave's testimony as a proof (*bayyina*) of his origin. That is, they could deliberately omit it.

As can be read in al-Balbālī's fatwa, the situation that motivates the adoption of the exceptional measures proposed in the Andalusī jurisprudence gathered by Ibn Sahl and

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<sup>28</sup> Aḥmad Bābā al-Tinbukī, *Mi'rāj al-su'ūd: aḡwibat Aḥmad Bābā ḥawla l-istirqāq*, 95 (Arabic text), 11-2 (English translation).

transmitted by al-Wansharī is the capture and sale of large groups of free people in the *bilād al-sūdān*, something that al-Balbālī declares to be a great catastrophe (*muṣība ‘azīma*) generalized in this region at the time. According to the historiography of the region, al-Balbālī would refer to the «mass» captures that took place during a precise period in the history of West Africa, the rule of Sonni ‘Alī over the Songhay Empire. If this were so and should large groups of free people had been captured by this (supposedly) impious and remorseless emperor,<sup>29</sup> then such an exceptional ruling, shared by an earlier opinion of Aḥmad Bābā’s great uncle,<sup>30</sup> al-Balbālī quotes, would be justified. But there are reasons to suspect that Maḥmūd b. ‘Umar Aqīt’s and al-Balbālī’s rulings on this matter may have been issued in order to highlight Sonni ‘Alī’s alleged crimes, a sort of «revisionism» on this historical character that can also be observed in other West African sources, as will be discussed later on. However, even in this case we cannot speak of a formal prohibition. It is clearly stated that it is illegal to possess people or goods from the Muslims of West Africa, and an instrument to ascertain the slave’s origin is provided, coming from the jurists in al-Andalus, who accepted the slave’s testimony as a proof of his origin. But no obligation to obtain this proof is set up, and the possibility of “ignoring” the slave’s origin is still there.

Al-Balbālī’s fatwa is, to our present knowledge, the first legal opinion issued in West Africa to include the feature of the ethnic group lists, as a measure in order to prevent the sale of Muslims and protected non-Muslims. This is an adaptation of previous Islamic jurisprudence on the subject to the characteristics of enslavement in the *bilād al-sūdān*, a localised legal practice that shows the degree of flexibility that can be reached in Islamic law. However, as a measure against illegal captures, its efficacy may be questioned. It should be noted that, as a fatwa, al-Balbālī’s is just a non-binding legal opinion, although it clearly condemns these captures, that are described as being against the law. There is no instrument to persecute the crime, for this could only be expected from a qadī’s firm judgement (*ḥukm*), that is binding for the parts concerned in a given judicial procedure, and cannot be taken as a universal ruling to be generally applied. Let us examine now what are Aḥmad Bābā’s answers to this problematic in the *Mi’rāj*, and in the *Replies* or *Ajwiba*, and how these arguments found in the previous jurisprudence can be adapted to the context of the trade in African slaves through the Sahara desert.

### **Islamic law, religion and ethnicity in Aḥmad Bābā’s legal opinions on slavery**

Religion and ethnicity come together in Aḥmad Bābā’s legal opinions as determining factors for the possibility of enslaving captives. As it has been mentioned, in the work *Mi’rāj al-ṣū‘ūd* Aḥmad Bābā responds to the dilemmas proposed to him by al-Jirārī in his consultation or *istiftā’*, turning, like his predecessors, to the existing jurisprudence,

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<sup>29</sup> The so-called *Timbuktu Chronicles* describe Sonni ‘Alī as an impious, pagan tyrant, capable of the worse crimes, especially against the “sacrality” of the Timbuktu *ulamā’*. This portrait responds to the bias established by the antagonism between Timbuktu scholars and the ruler of the Songhay Empire, the grounds of which could be at an economic and commercial conflict of interests. Also, it has been argued that Sonni ‘Alī may have been murdered by his successor, Askya Muḥammad I, who for this reason may have intended to «justify» his crime over-dimensioning the latter’s impiety. See Michael Gomez, «Timbuktu and imperial Songhay, a reconsideration of autonomy», *Journal of African History* 31 (1990), 1, 15. Also Charlotte Blum and Humphrey Fisher, «Love for three oranges, or, the Askya’s dilemma. The Askya, al-Maghīlī and Timbuktu, 1500 AD», *Journal of African History* 34 (1993), 1, 70-71.

<sup>30</sup> Maḥmūd b. ‘Umar b. Muḥammad Aqīt (d. 955/1458), qadī of Timbuktu between 904/1499-915/1510 and 926/1520-955/1548, see Aḥmad Bābā al-Tinbukṭī, *Kifāyat al-muḥtāj*, vol. 2, 245-246.

and also to historical, philosophical and religious sources. Great emphasis is made in denying any possible relationship between skin colour and slavery, and in establishing that in what regards the basic regulation of enslavement according to Islam, religion, and not skin colour, is the determining factor. This is clearly illustrated in the following statement: *You know that the cause (sabab) of slavery is unbelief (al-kufr) and that black infidels (kifār al-sūdān) are equal in this to other infidels, be they Christians, Jews, Persians or Berbers.*<sup>31</sup> This should be understood as a categorical denial of the prejudice, that can be read between the lines in al-Jirārī's enquiry, that Africans were slaves by nature and that black skin colour was a sign of this.<sup>32</sup> As Aḥmad Bābā explains, it is not skin colour, but religion, what determines the possibility of enslaving captives in Islamic law, and we can conclude that this is what motivates that a significant part of the *Mi' rāj* should consist in the description of the adoption of Islam by West African rulers and peoples and the historical circumstances in which this took place. A large part of Aḥmad Bābā's reply to al-Jirārī develops this idea, with the aid of historical works such as Ibn Khaldūn's *Great History (Kitāb al-ʿibar)*, but also with a feature that could already be observed in Makhlūf al-Balbālī's fatwa: the account of West African Muslim peoples. In the *Mi' rāj*, this is done, on the one hand, by answering al-Jirārī's direct questions about the peoples from the *bilād al-sūdān* that are generally thought to be Muslim, and also, on the other hand, by relating the peoples that do not belong to Islam. It should be noted that this last clarification did not exist in Makhlūf al-Balbālī's fatwa, maybe because it was a much shorter work.

In what refers to the legal arguments, the questions addressed to Aḥmad Bābā by al-Jirārī can be broadly divided into two groups: questions about the legal procedure to follow with slaves of unknown origin, and questions about the peoples of the *bilād al-sūdān*. Aḥmad Bābā starts dealing with al-Jirārī's legal questions by exposing the basic regulation of enslavement in Islamic law, saying that only infidels can be enslaved, regardless of their skin colour, and that therefore, the peoples mentioned by al-Jirārī (Gao, Bornu or Songhay) cannot be enslaved. He then moves on to quote the previous jurisprudence on the subject of slaves that claim their freedom for having been captured while being Muslims, and he starts with the opinions quoted in Ibn Sahl's *Aḥkām*.<sup>33</sup> However, Aḥmad Bābā's version of Ibn Sahl's *Aḥkām*, the names of the jurists that support each view, in what regards to accepting the slave's testimony as a proof of his origin, are mixed up, as a result of this fatwa having been summarized with others included in the same chapter of the work. It is yet unknown if this re-elaboration of Ibn Sahl's passage was done by Aḥmad Bābā or by a previous author, who remains unmentioned in the text. It juxtaposes opinions for and against accepting the slave's testimony as a proof of his origin, and in the process, some of the views are ascribed to the wrong scholar, which creates the confusion that can be observed in how the

<sup>31</sup> Aḥmad Bābā al-Tinbukṭī, *Mi' rāj al-ṣu'ūd: aḡwibat Aḥmad Bābā ḥawla l-istirqāq*, 57 (Arabic text), 27 (English translation).

<sup>32</sup> Traditionally in the Maghreb, black skin colour was associated with a servile origin or condition. The term *ḥarātānī* (pl. *ḥarātīn*), was used for persons of darker skin colour, thought to be descendants of black slaves. As far late as the 19<sup>th</sup> century, they were threatened to be reduced into slavery, see John O. Hunwick, «Islamic law and polemics over slavery in North and West Africa, 16th-19th century», 43-68. This prejudice still persists in some cases, in the shape of class/caste discrimination. For example, about the social discrimination of black people in present-day Tunisia, see Inès Mrad Dali, «De l'esclavage à la servitude. Le cas des noirs de Tunisie», in *Cahiers d'Etudes Africaines* 3-4 (2005), 179-180.

<sup>33</sup> Aḥmad Bābā al-Tinbukṭī, *ibidem*, 57-8 (Arabic text), 27-9 (English translation).

arguments are presented in the work *Mi'raj al-ṣu'ūd*. Following the reference to the Andalusí judgements, Aḥmad Bābā quotes the jurisprudence originated in his native *bilād al-sūdān*. The first work quoted is the fatwa of Maḥmūd b. 'Umar b. Muḥammad Aqīt, Aḥmad Bābā's great uncle, who ruled that those slaves that claimed to be free Muslims should be set free, until their masters could provide a proof of their legal acquisition. From his great uncle, qadi of Timbuktu, Aḥmad Bābā goes on to cite al-Balbālī, who agreed with the latter on accepting the slave's testimony as a proof of his origin, as we have seen before. This legal opinion literally transmits the opinions gathered by Ibn Sahl, without the erroneous attributions that have been mentioned above. This may mean that this re-elaboration, in which the views gathered by Ibn Sahl correspond to the wrong scholars, was probably composed at Aḥmad Bābā's time, or shortly before. The matter is left unsettled by just presenting the different views on the subject, as can be expected, due to the non-binding character of fatwas.

Aḥmad Bābā's survey of the previous jurisprudence on slaves that claim their freedom is completed with the answer to a question of al-Jirārī about religious scruple (*wara'*).<sup>34</sup> As al-Jirārī explains, both the Maghrebi scholar Ibn Hilāl or al-Hilālī, as well as the Egyptian scholar al-Qarāfi, consider that refraining from the acquisition of a slave of dubious origin is a matter of religious scruple. Aḥmad Bābā's answer to this question does not add any clarifications, in that he just adds that this opinion may be the same case as Ibn Lubābā's refusal to accept the slave's testimony, and «only God knows it». The text here is obscure and confuse, probably due to the errors in the re-elaboration of Ibn Sahl's *Nawāzil*. After this Aḥmad Bābā finally addresses one of al-Jirārī's most interesting questions: that of the kind of legal doubt that the doubt about the origin of the slave can constitute. When asked to determine if it would be a doubt about the prohibition (*shakk fī l-māni'*) or a doubt about the condition (*shakk fī l-shart*), Aḥmad Bābā briefly answers that it is a doubt about the cause (*shakk fī l-sabab*), for infidelity is the cause of slavery, without any further explanation about its effects and consequences. However, this is a key issue in determining the lawfulness of the capture and sale of captives of dubious origin. If it would be treated as a doubt about the impediment, as al-Jirārī says, the doubt about the origin of the slave would invalidate the sale. If it would be treated as a doubt about the condition, the sale would always be valid. But such a matter should be individually (not generally) judged, and determining it overpasses what a non-binding opinion may establish.

In what refers to the *Ajwiba*, the questions and answers between Aḥmad Bābā and Yūsuf al-Īsī, its formal and thematic characteristics are far from the subtleness that leads the way through the legal arguments that can be found in the work *Mi'raj al-ṣu'ūd*. As mentioned above, al-Īsī's questions are much more direct and simple than those of al-Jirārī, and legal considerations are almost absent from them, to focus on the subject of the West African ethnic groups that belong to Islam. This takes place mostly in the first question, where Aḥmad Bābā is asked to provide updated information about the peoples of the *bilād al-sūdān* that were ascribed to Islam in Makhluḥ al-Balbālī's fatwa, and also to name the peoples that do not belong to Islam, that were omitted by al-

<sup>34</sup> The believer's religious scruple should not be under-estimated in what comes to preventing possibly illegal actions according to Islamic law, and this is evident in the proliferation of legal works about this matter, called *kutub al-wara'*, «books of religious scruple», composed to help believers to avoid those practices that, whereas being legally allowed, could imply an utter transgression of the law, that could lead to chastisement after death.

Balbālī, «for Islam may have entered some of these lands after his [al-Balbālī's] death, or may have disappeared and their people returned to unbelief», says al-Īsī.<sup>35</sup>

The enquirer also mentions the names of other ethnic groups, besides from the ethnonyms, patronyms and place names present in al-Balbālī's fatwa, that are reportedly known as Muslims or non-Muslims in the Maghreb, asking Aḥmad Bābā to confirm this information. The Timbuktu scholar provides his knowledge about these peoples in his reply, with a considerable depth that is nevertheless not to be found in the *Mi' rāj*. This depth is largely overlapped by the detail with which the different ethnic groups of the *bilād al-sūdān* are described in what was considered to be a post-script to the second reply of the *Ajwiba* according to the 2000 Rabat edition of the work.<sup>36</sup> Its length and exhaustiveness in the relation of the peoples that belong or not to Islam in the region, together to the rest of the «ethnographic» information that can be found in the *Ajwiba* and the *Mi' rāj*, were the grounds for Aḥmad Bābā's opinions on slavery to be considered as a «map of the spread of Islam in West Africa in the 17<sup>th</sup> century».<sup>37</sup> It should be taken into consideration, however, that the *Mi' rāj*, the *Ajwiba* and specifically the «post-script» to the second reply, where most of this information is found, have only a limited «reliability» in that they certainly are not a relation of historical and ethnographical facts, but texts, the context of which must be analyzed in search for the author's motivations and intentions.

The description of the peoples of the *bilād al-sūdān* that takes place in the *Mi' rāj* and the *Ajwiba* bears some similarities, besides from the mentioned extension differences, that must be analyzed. In both works, when the author responds to the questions that deal with the slaves that come from Muslim lands in West Africa, the same argument appears. When asked how is it possible that persons that declare to come from Muslim lands are taken as slaves to the markets in North Africa, the same answer is found in the *Mi' rāj* and the *Ajwiba*: the peoples of Bornu, Gao, Songhay, etc., are Muslim, so they cannot be enslaved; however, close to them there are unbelievers, whom they capture, so the slaves that come from the lands of Islam are certainly those unbelievers. The explanation itself is not peregrine or illogical, in that this was one of the capture patterns that have been documented in premodern West Africa. But it should be noted that such an argument may also be used to conceal the claims of free people coming from the mentioned lands, captured in lower-profile raids, which seem to have occurred often after the fall of the Songhay Empire, as will be exposed later on.

This argument appears again in the second of al-Īsī's questions, in what constitutes one of the two references to juridical problems present in the *Ajwiba*, the rest being considerations about West African peoples. This is once again the possibility of accepting the slave's testimony (*qawl*). Al-Īsī's question raises up the issue of the possibility that the slaves may fake their claims for freedom aided by their acculturation in Muslim lands of the *bilād al-sūdān*, which is directly linked to the argument

<sup>35</sup> Aḥmad Bābā al-Tinbukṭī, *Mi' rāj al-ṣu'ūd: aḡwibat Aḥmad Bābā ḥawla l-istirqāq*, 79-80 (Arabic text), 41 (English translation).

<sup>36</sup> The «post-script» is considered apocryphal by the editors, on the basis of the differences in style with the rest of the *Ajwiba*, and that this part is only to be found in one of the mss. from Tamgrout.

<sup>37</sup> Fatima Harrak, «Taḡdīm», in Aḥmad Bābā al-Tinbukṭī, *Mi' rāj al-ṣu'ūd: aḡwibat Aḥmad Bābā ḥawla l-istirqāq*, 23.

discussed above. Whereas it is probable that fake claims may have occurred, what al-Īsī exposes in the fragment is somewhat spurious, and it is not unreasonable to think that he could have had the intention to cast a veil of suspicion upon the slaves. This should be considered together with the possible motivations that can be deduced due to the mentioned links of al-Īsī with Trans-Saharan trade, as will be exposed later. Certainly, that the slaves may lie about their origin does not prove that the slaves lie, but this possibility may reassure slave owners that worry about the legality of their possession. Aḥmad Bābā's reply does not, however, settle the matter. He does not engage directly with al-Īsī's *argumentum ad ignorantiam*: all he says is that the claims for freedom of the slaves that declare that they were captured while being Muslims can only be agreed upon if the slave provides a clear proof of his origin open. This is already a noticeable difference, compared to the *Mi'rāj*. In his reply to al-Īsī, Aḥmad Bābā makes no mention of the Andalusī rulings quoted in al-Balbālī's fatwa, nor does he quote al-Balbālī's position itself. He does not support al-Īsī's claim that the slaves may pretend to be free in their origin to avoid possession, but he charges the slaves with the burden of proof, in order to obtain freedom. It can be easily deduced that there was no possible way for the slaves to prove their origin once they found themselves in the markets of North Africa, a desert away from their homeland. And this is precisely where al-Jirārī and al-Īsī received the answers to their questions. Aḥmad Bābā does, however, leave the possibility of not buying slaves of dubious origin, in order not to commit the sin of owning a Muslim, especially when suspicions are backed by rumours or knowledge of illegal captures. It should be noted that this was the case at the time, as mentioned above.

One of the final issues treated in the *Ajwiba* draws the reader's attention due to its implied weakness in Islamic legal thought. Al-Īsī asks Aḥmad Bābā if it is necessary or not to enquire about from which of the West African peoples does the mother of a *muwallad* (mulatto) slave come from, in case he would wish to buy a half-Arab or half-Berber one.<sup>38</sup> The question is striking, in that it obviates a fundamental principle of Islamic law, the «slave mothers» (*ummahāt al-awlād*). This principle establishes that if a female slave, Muslim or non-Muslim, gives birth to a child of her master, the child is born free, for he cannot be a slave of her/his father, and the mother will be free at the master's death. In practice, she is already partially free, because she is protected from sale and other possible damages. Al-Īsī's enquiry seems to depart from assuming that the slave's skin colour necessarily implies a Sub-Saharan mother, and concludes that the mother's status is transferred to her child, obviating that if she bore a child whose father was her master, that child would be a free Muslim (or a free non-believer). The slave mothers are a fundamental figure of the regulation of slavery in Islam, and they appear in the earliest works of Māliki jurisprudence, with which Aḥmad Bābā was very well-acquainted. Ignorance of this principle is striking, even in al-Īsī's question. But Aḥmad Bābā's reply is even stranger, for he does not object to his student's peregrine question by explaining the case, but just answers with a short «Buy them whenever you are sure (of their origin), and refrain from it when you have doubts». It is necessary now to reflect on this remarkable gap and on the *Ajwiba's* generally poor style, but this will be done in connection with the context in which the *Replies* were composed, and in which the author's ties with Trans-Saharan trade play a significant role.

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<sup>38</sup> Aḥmad Bābā al-Tinbuktī, *ibidem*, 91 (Arabic text), 53 (English translation).

### **The socio-economic context: Islamic law and African slaves**

As mentioned above, Aḥmad Bābā's direct family held for over a century before his birth the office of judge (qadi) in Timbuktu, the highest stance of religious and political power in the city and its surrounding area,<sup>39</sup> though probably not in the whole Songhay Empire, as the sources ceaselessly try to convey. That the Timbuktu scholarly elite, of which the Aqīts were the most distinguished members, had a share in the wealth of the merchant aristocracy of the city is evident, for only wealthy families could provide some of their members with such refined educations, and finance their lifelong dedication to learning, that could imply generous expenses like manuscripts and even pilgrimage to Mecca, in order to study with the reputed masters of the Holy lands of Islam, and of Egypt, in the way there. This means that the Aqīts were directly linked to Trans-Saharan trade, for this was the city's main economic asset, and also the main dedication of the Ṣanhāja Berber tribes to which they belonged. We can also presume that Trans-Saharan trade was the economic activity that permitted al-Jirārī to obtain the juridical formation that can be appreciated in his consultation to Aḥmad Bābā. As for al-Īsī, the circumstances are yet obscure, but his relationship to the Nāṣiriyya brotherhood could also be linked to the latter's economic activities.

This does not necessarily mean that the motivation for al-Īsī's questions, al-Jirārī's consultation and Aḥmad Bābā's replies to them was not a genuine religious concern. That they may have been worried by the possibility of selling or owning slaves that could have been illegally captured, and thus in practice violating Islamic law and earning the corresponding chastisement in the afterlife, can be a reasonable motivation for the composition of the texts. Such a concern, it should be noted, is one of the possible grounds behind the works, in that there may have been a more or less generalized worry in North African populations about the claims for freedom of captives coming from lands that were known to have adopted Islam, as al-Jirārī declares. Nevertheless, religious concern may have also acted in the opposite way. It is also possible that growing worry among North Africans could have been what Aḥmad Bābā's enquirers would have tried to stop, not to «solve», and this would make sense if the possible effects of Makhlūf al-Balbālī's fatwa are taken into consideration. What is suggested here is that the possibility of setting slaves free on the sole basis of their testimony (*qawl*) that they had been captured while being free Muslims or protected non-Muslims could have been a problem for slave traders. If this were so, it could be possible to suggest that al-Īsī's and al-Jirārī's enquiries may have sought an alternative legal opinion, backed by a direct knowledge of West African peoples, that would be against accepting the slave's testimony, or more restrictive in accepting it, and that would in general reassure possibly worried owners or owners-to-be.

This is what Aḥmad Bābā does in the *Replies* to al-Īsī and in the *Mī' rāj* (although in this last work in a more subtle way) by means of not accepting the slave's testimony or by means of presenting this possibility in confrontation with previous legal opinions against it. This would be done also by shedding doubts over the slaves' claims, by means of establishing that the (African) slaves that seemed to be Muslim in every

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<sup>39</sup> Elias Saad, *Social History of Timbuktu*, (Cambridge: Cambridge University Press, 1983), 94.

aspect, from language to religious habits, would actually be infidels that would have been raised as Muslims in the lands of Islam. As mentioned above, Aḥmad Bābā's explanation is plausible and these fake claims may have actually existed, but it is still quite shocking when confronted to what is known about enslavement in West Africa at the time, with a growing number of indiscriminate raids, upheld by the political instability and lack of security that fell over the Middle Niger with its invasion by the troops of Aḥmad al-Manṣūr (after 999/1591). After reading the previous rulings on the subject, it could be expected that Aḥmad Bābā's opinion too would consider that the slaves could be set free if they mentioned to come from regions where the sale of free people was abundant (*kathura bī' al-aḥrār*). Such a view could have caused great economic damage to the social groups involved in Trans-Saharan trade, but the probability of it being mostly respected is very scarce.

Certainly, if Aḥmad Bābā's opinions would have been as decided as al-Balbālī's, they could have to some extent undermined the religious *prestige* of slave merchants, a non-negligible damage, for instance, for merchants ascribed to the Nāṣiriyya brotherhood, for which religious legitimacy was a determining asset. This is yet another reason to consider that al-Īsī's and al-Jirārī's motivation when seeking Aḥmad Bābā's advice could have been to obtain a legal opinion that would oppose al-Balbālī's fatwa, but this is still a very obscure matter, in which many questions remain unsolved. How and why did al-Balbālī's fatwa reach the Maghreb, if it was composed in the *bilād al-sūdān* after Sonni 'Alī's fall? Was the fatwa composed during al-Balbālī's stay in the Maghreb? And if so, why? In what context was it composed? These are very relevant questions, because the contexts in which the legal opinions analyzed in this article were composed show that in most (if not all) of them, except in Aḥmad Bābā's, the muftis' intention could have been other than regulating the sale of slaves. Andalusi rulings could apparently try to obviate the existence of non-Muslim opposition to the rule of Cordovan Umayyads, as could evidence their silence about the possible apostasy of the slaves captured in Ibn Ḥafṣūn's territory. Maḥmūd b. 'Umar Aqīt's and Makhlūf al-Balbālī's rulings may respond to the intention of emphasising Sonni 'Alī's paganism, by attributing to him the capture and sale of large groups of Muslims, a great catastrophe (*muṣība 'azīma*) in al-Balbālī's words.

This could explain why Andalusi and *sūdānī* rulings exceptionally accepted that slaves could be set free, an extraordinary situation that would highlight, on the one hand, that Islamic faith was effectively protected by Cordovan authority, and on the other hand, that Sonni 'Alī was a pagan ruler that violated the law, and that was «luckily» replaced by a pious Muslim ruler like Askya Muḥammad I. It should be observed how both texts would thus reinforce the Islamic legitimacy of the rulers under whose rule the *fatāwā* were composed. On the contrary, Aḥmad Bābā's opinions were most likely related to the ordinary circumstances of the trade in slaves. Even if al-Īsī's, al-Jirārī's and Aḥmad Bābā's declared intention of avoiding the capture and sale of free people was genuinely true, it is probable that the circumstances would not have allowed the extraordinary subversion of the principles of the *sharī'a* that constitutes turning the slaves momentarily from an object of rights (possession) to rights-holders, even though they could be certain that some of them were actually free people deprived of their rights by kidnapping. It could be argued that instead of accepting the slave's testimony as a

proof of his origin in order to avoid the capture and sale of free people, Aḥmad Bābā's «solution» to the problem are his lists of Muslim and non-Muslim peoples of the *bilād al-sūdān*. But the efficacy of this measure can be reasonably questioned.

Al-Balbālī's, and more elaborately Aḥmad Bābā's opinions, by way of establishing the West African peoples that belong or not belong to Islam, integrate ethnicity into the general regulation of slavery and enslavement in Islamic law. This could be seen as an effective measure to avoid the capture and sale of free people, given that Muslims and protected non-Muslims could be then identified through Aḥmad Bābā's relation of ethnic groups in the *Ajwiba* and the *Mi'rāj*. But this is directly linked to the possibility of accepting the slave's testimony (*qawl*) about his origin: if the slaves were unable to declare that they had been captured while being free people in the lands of Islam or in the lands under the protection (*amān*) of Muslim rulers, then it was up to the sellers and buyers to find out. Al-Jirārī explicitly asks Aḥmad Bābā if finding out the origin of the slave before buying it is obligatory, a question that is solved by Aḥmad Bābā by saying that religious scruple (*wara'*) lies in not buying slaves of dubious origin. His position avoids formal condemnation of the possibility of buying slaves of dubious origin, although this depends on the importance given to religious scruple, that could certainly be quite strong. The problem is left to the buyer's good conscience, as is the possibility of accepting the slave's testimony, suggested but not emphasised in the *Mi'rāj*. On the other hand, the refusal to accept the slave's testimony in the *Ajwiba*, and also letting the burden of proof of the slave's freedom lie over the slaves themselves, are measures that clearly protect slave owners' interests. There was no possible way for the slaves to prove their claims once they had been taken away from their homes, even less if they had been taken across the Sahara desert.

The author's or the author's social group's (the Ṣanhāja Berber elite) substantial economic interests in the trade in slaves, who were part of the goods in exchange in Transaharan trade, must also be considered when trying to determine the possible motivations behind the *Ajwiba* and the *Mi'rāj*. As the sources tell, Aḥmad Bābā belonged to the wealthiest, most influential family in Timbuktu, at least until the invasion of the *bilād al-sūdān* by the troops of Ahmad al-Mansur. I have mentioned before that it is highly doubtful that the wealth of the Aqīts had been obtained by means other than trade. Even though Aḥmad Bābā may have been really concerned by the enslavement of Muslims and protected peoples, the existence of indiscriminate captures and the ongoing sales attested in the sources imply a necessary profit from the sale of free and slave people alike for Muslim merchants. In this sense, it is also necessary to consider Aḥmad Bābā's relations to the Sufi brotherhoods in North Africa, of which at least his relation to the Nāṣiriyya of Tamgrout is sufficiently attested. The role of these religious, but also social and economic organizations in trade across the Sahara has been thoroughly established, what allows us to suggest that their profit would have been reduced, had a more strict regulation of the sale of captives and slaves been enforced. That most copies of the work *Mi'rāj al-ṣu'ūd* have appeared in North Africa, some of them in the *zawāyā* of Tamgrout and Tamentit, could indicate that the less strict position of the work, as compared to the firmer position present in al-Balbālī's fatwa, could have benefited the brotherhoods' economic interests.

The elaborated style and the depth of the arguments present in the *Mi' rāj* cannot be found in Aḥmad Bābā's *Replies* to al-Īsī, and the reader may have the impression as though both works were written by different authors, one of them an eloquent, erudite jurist, the other most likely not. In what refers to the content, the author's position about the possibility of accepting the slave's testimony as a proof of his origin, as mentioned above, is also different. Such dissimilarities between the «post-script» to the second reply to al-Īsī and parts of the *Mi' rāj* caused that the editors and translators of the Rabat edition of the works cautiously showed their doubts towards the attribution of this sort of *addenda* to Aḥmad Bābā. However, while questioning the authorship of the «post-script», as well as the authorship of the whole *Replies*, is certainly possible, other hypotheses are also possible. The differences in the «post-script» of the second reply to al-Īsī can be attributed to errors committed by the copyist or copyist, for this fragment is basically made of ethnonyms (or patronyms) and has very little real «text» that could effectively differ from the rest of the *Ajwiba*. It should also be noted that the style in this last work is also very different from that of the *Mi' rāj*, what could mean that not only the «post-script» could be considered apocryphal, but also the *Replies* altogether. Then, that the «post-script» was only found in one of the manuscripts of the *Replies* from the library of the Nāṣiriyya *zāwiya* of Tamgrout does not necessarily imply that Aḥmad Bābā was not its author, although as the editors consider, it may have been added to the text of the *Replies* in a later copy of the work. Further codicological research is still needed on this matter.

The incidence of orality in the differences that have just been brought up may be determining. As al-Īsī declares, he asked Aḥmad Bābā's advice and copied his questions on the same folio on which Aḥmad Bābā wrote his replies to them «with his own handwriting» (*bi-qalami-hi*).<sup>40</sup> While this is plausible for the first of Aḥmad Bābā's replies, it can be observed that the second and third reply are more and more synthetic, more and more colloquial, to the point where no mention is made of the figure of the «slave mothers», as we have seen. In the last reply, al-Īsī declares that Aḥmad Bābā answered to him orally, and that he copied question and answer together.<sup>41</sup> On the one hand, if the *Replies* were issued in Tamgrout, one of the reasons why Aḥmad Bābā's style was less elaborate in this work than in the *Mi' rāj* could be that he didn't have much time for writing it. According to what he allegedly wrote in his legal opinion on tobacco smoking, that was written in Tamgrout during Aḥmad Bābā's return to the *bilād al-sūdān*, that would be the reason why he didn't go deeper into the question. On the other hand, it is also possible that al-Īsī's transcription of his opinion was not completely literal, and this could also be due to a number of reasons: he may have transcribed Aḥmad Bābā's *Replies* some time after the latter's departure, and thus may have not remembered them completely, or at least not in Aḥmad Bābā's own words. He may also have invented them partly, especially the second and third replies, that seem to differ more with the first one in style, and that include gaps such as not mentioning the legal figure of the «slave-mothers». And this probable invention, that could have been unintended, could also have aimed even at «correcting» Aḥmad Bābā's opinion in order to make it more favourable to the trade in slaves. There are very few possibilities

<sup>40</sup> Aḥmad Bābā al-Tinbukti, *Mi' rāy al-ṣu'ūd: aḡwibat Aḥmad Bābā ḥawla l-istirqāq*, 88 (Arabic text), not translated.

<sup>41</sup> Aḥmad Bābā al-Tinbukti, *ibidem*, 91 (Arabic text), 53 (English translation).

of demonstrating this hypothesis or maybe none at all, but this does not mean that it is not a reasonable query.

All in all, it is still possible that Aḥmad Bābā was the author of the *Replies*, despite the style and content differences between this work and the *Mi'raj*. This is justified by the fact that, in essence, what the *Ajwiba* and the *Mi'raj* imply in what refers to the claims of African slaves in Maghrebi markets is mostly the same. Both works mainly establish that buying slaves of dubious, probably illegal origin cannot be accepted from the point of view of the buyer's religious scruple. Both works basically leave it up to the buyer's good conscience. Moreover, another argument can be found in the *Ajwiba* as well as in the *Mi'raj* in an identical manner: the slaves that *don't look like slaves* because they have been raised in the lands of Islam. As mentioned above, the possibility that the slaves' claims may be fake, a possible explanation for the existence of slaves that declare to come from the lands of Islam, is also a means of generally discarding the slaves' demands, and of reassuring possibly worried owners. Whereas the repetition of this argument does not necessarily imply that both works were written by the same author, it is a significant coincidence. However, if Aḥmad Bābā was the author of the *Ajwiba*, that were written at least ten years before the *Mi'raj*, and probably with less time or attention, it is striking that the question of the West African Muslim and non-Muslim peoples is so developed in the earliest work, much more than in the *Mi'raj*. This could to some extent point at a considerably thorough knowledge in the Maghreb of the peoples of the *bilād al-sūdān*.

A word must be added about the composition chronology of the above mentioned works. The *Replies* may have been written during Aḥmad Bābā's captivity in Marrakech, as is generally considered, but it is also possible that they may have been written at the Nāṣiriyya headquarter *zāwiya* of Tamgrout, where it is known that Aḥmad Bābā made a stop in his way back to Timbuktu, at the end of his forced exile in North Africa.<sup>42</sup> The duration of Aḥmad Bābā's stay in Tamgrout is not known, but as witnesses another of his *fatāwā* or legal opinions,<sup>43</sup> he did have the time to deliver his judgements in this period. This opens the way to consider the possibility that the *Replies* may have been written in Tamgrout, a hypothesis that is backed by the fact that at least two of the three existing copies of this work were found at the Nāṣiriyya *zāwiya*'s library in this location. The presence of al-Īsī, Aḥmad Bābā's interlocutor in the *Replies*, in Tamgrout may be justified by his relationship to the Nāṣiriyya brotherhood. This situates the composition date of the *Replies* between the years 1001/1593-1015/1607, that is, at least ten years before the composition of the work *Mi'raj al-ṣu'ūd*. Also, one of Aḥmad Bābā's answers to the questions formulated to him by Yūsuf al-Īsī leaves a hint on the possible chronology of the opinions on slavery issued by the Timbuktu scholar. Talking about one of the non-Muslim peoples of the *bilād al-sūdān*, he says: *that is what I thought about them before when we were asked (about them) and we were in Timbuktu (wa-naḥnu bi-balad Tinbuktu).*<sup>44</sup> This could mean that Aḥmad Bābā had already delivered

<sup>42</sup> Maḥmūd Zouber, *Aḥmad Bābā de Tombouctou: sa vie et son oeuvre*, 33.

<sup>43</sup> *Al-Lam' fi l-ishāra ilā ḥukm ṭibgh*, Aḥmad Bābā's fatwa on the legality of tobacco smoking according to Islam, see Maḥmūd Zouber, *Aḥmad Bābā de Tombouctou: sa vie et son oeuvre*, 184.

<sup>44</sup> Aḥmad Bābā al-Tinbukū, *Mi'raj al-ṣu'ūd: aḥwibat Aḥmad Bābā ḥawla l-istirqāq*, 87 (Arabic text), 48 (English translation).

legal opinions on the possibility of enslaving the different West African peoples before he was deported to Marrakech, more than fifteen years before he wrote the *Mi' rāj*.

It is possible that the *Ajwiba* and the *Mi' rāj* may have intended to provide slave merchants with a convenient legal support against possible accusations about the illegal captures that furnished them with a growing number of slaves. It is also possible that the appeals to the buyer's good conscience that can be found in both works were the only possible way to avoid the sale of free West Africans in the Maghreb. Their effectiveness should not be underestimated. And even if this were so, it should be considered that the *Mi' rāj* and the *Ajwiba* are only non-binding legal opinions. Determining freedom or slavery in response to the claims of African slaves was probably a matter to be judged, and further research should be carried out in North African judgements of the period. Aḥmad Bābā's legal opinions on slavery remain enigmatic for us in many of their aspects. The contexts in which they were written are still very obscure, but further light can be shed over them in returning to examine the different manuscripts that have been preserved of both works. In this, Aḥmad Bābā's opinions are a very valuable treasure for Historians and researchers in general, as opposed to a great part of the literary production of the *bilād al-sūdān*, that waits for editions that make it available to the general public. For the time being we must keep digging on the very few written sources for West African history, in which every new question opens deeper signification dimensions.

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