Slavery and Muslim Jurisprudence in Morocco

Ahmad Alawad Sikainga

Teaches African history, Ohio State University
Published online: 13 Jun 2008.

To cite this article: Ahmad Alawad Sikainga (1998) Slavery and Muslim Jurisprudence in Morocco, Slavery & Abolition: A Journal of Slave and Post-Slave Studies, 19:2, 57-72
To link to this article: http://dx.doi.org/10.1080/01440399808575239

PLEASE SCROLL DOWN FOR ARTICLE

Taylor & Francis makes every effort to ensure the accuracy of all the information (the “Content”) contained in the publications on our platform. However, Taylor & Francis, our agents, and our licensors make no representations or warranties whatsoever as to the accuracy, completeness, or suitability for any purpose of the Content. Any opinions and views expressed in this publication are the opinions and views of the authors, and are not the views of or endorsed by Taylor & Francis. The accuracy of the Content should not be relied upon and should be independently verified with primary sources of information. Taylor and Francis shall not be liable for any losses, actions, claims, proceedings, demands, costs, expenses, damages, and other liabilities whatsoever or howsoever caused arising directly or indirectly in connection with, in relation to or arising out of the use of the Content.

This article may be used for research, teaching, and private study purposes. Any substantial or systematic reproduction, redistribution, reselling, loan, sub-licensing, systematic supply, or distribution in any form to anyone is expressly forbidden. Terms & Conditions of access and use can be found at http://www.tandfonline.com/page/terms-and-conditions
Slavery and Muslim Jurisprudence in Morocco

AHMAD ALAWAD SIKAINGA

The aim of this article is to examine the link between the Muslim legal system and slavery in Morocco and to shed light on the conditions of Moroccan slaves as reflected in the records of the Muslim courts. Its primary interest is in the vein of social rather than legal history. Beyond the intricacies of Muslim jurisprudence as it pertains to slavery, the article focuses on the way in which Islamic law was used by the slaveholders to justify and maintain their control over the slaves, how the slaves themselves used the tenets of Islam to resist domination and assert their equality, and the response of both groups to colonial anti-slavery policies in the twentieth century. The article will also address the question of what abolition meant in the Moroccan context and to what extent it affected the status of slaves and their descendants.

This study is based on Muslim court records as well as the writings of the Moroccan 'ulama (Muslim scholars and theologians) who wrote legal decrees and opinions known as fatawi (sing. fatwa) and nawazil (sing. naziha). Muslim court records consisted of rulings in disputes over such matters as the purchase of slaves, marriage, inheritance, concubinage, manumission, and so forth. The fatawi and nawazil were written by learned scholars and jurists in response to questions from judges, administrators, and commoners. Before analysing some of these writings and court cases, it is appropriate to provide a brief account of the nature of Moroccan slavery and the role of slaves in Moroccan society.

The Evolution of Slavery in Morocco

Slavery was an ancient institution in Morocco. Located at the northern terminus of the trans-Saharan trade routes, for many centuries Morocco received a continuous influx of slaves from West Africa, the Sahara, and the Mediterranean regions. However, the majority of slaves in Morocco came from the Western Sudan through the trans-Saharan trade. A large number of captives were taken from the Western Sudan during the Sa'adiyyin invasion of the kingdom of Songhay at the end of the sixteenth century. The import of West African slaves into Morocco continued until the late nineteenth
century when the French occupied the region. Slaves were brought to Tafilalt in southern Morocco via Tuwat, from which they were distributed to the rest of the country. Although the French succeeded in curtailing the slave trade from West Africa, clandestine slave trafficking continued throughout the first two decades of the twentieth century. Slave markets existed in major Moroccan cities such as Fez, Rabat, and Marrakesh. In Rabat, for instance, at the beginning of this century the slaves were sold and auctioned in hotels. In Fez, in the late nineteenth century, the slave sale was conducted daily at a textile market called al-Barka. The mechanics and the complex process of the slave sale will be examined later. What will be stressed here is the role and the status of slaves in Moroccan society.

As elsewhere in Africa and the Middle East, Moroccan slaves performed various tasks particularly in the domestic and the agrarian sectors. However, one of the most notable aspects of Moroccan slavery that drew a great deal of scholarly attention was the conscription of slaves into the army. In the late seventeenth century, Moulay Isma'il, the 'Alawite sultan, created an army of black slaves to avoid having to rely on tribal forces whose loyalty was suspect. The creation of a slave army was part of the sultan's effort to consolidate his power, to expand the kingdom, to suppress internal dissent, and to repulse the European and Ottoman threat.

Although the use of slave soldiers had several precedents in Islamic history, Moulay Isma'il's experiment generated a great deal of opposition from some of the leading Muslim scholars in Fez because it involved the forcible recruitment of the Haratin who were Muslims. The Haratin are people of ambiguous social and racial status. Their origin is a subject of debate. According to some accounts the Haratin were manumitted slaves. Yet it is generally believed that they were perhaps the aboriginal inhabitants of North Africa and the Sahara region who were displaced by Berber and Arab immigrants. The Haratin were dark-skinned, landless farmers and craftsmen. Although they were legally free, the Haratin resembled the slaves in that they were kinless and were regarded as socially inferior by the Arab and Berber among whom they lived. The Haratin did not form a single ethnic group; rather they were scattered among the Berber and Arab groups with whom they maintained dependent relationships. Some 'ulama from Fez opposed the recruitment of the Haratin into Moulay Isma'il's army because, in their view, they were Muslims who could not be legally enslaved. Although the sultan succeeded in coercing some of the 'ulama to endorse his endeavour, the protest continued and led to the imprisonment and execution of a jurist who refused to bend to the Sultan's will.

The army that Moulay Isma'il had created was called the 'Abid al-Bukhari. While earlier studies have suggested that the 'Abid al-Bukhari were captives and refugees from the Western Sudan, the recent studies of
Allen Meyers have stressed that nearly all of these slave and Haratin soldiers were Moroccan-born. Many of the slave soldiers were either confiscated from their masters or given as tribute to Moulay Isma'il. By 1727, the slave army numbered 50,000 soldiers who were stationed in parrisons in various parts of the country and became responsible for maintaining internal security as well as the conquest and administration of tribal territories. The 'Abid al-Bukhari helped Moulay Isma'il resolve his immediate political crises and strengthen his power.

In addition to military functions, the slaves and the Haratin played an important role in agricultural production, particularly in the oases of southern Morocco. These tasks included tending crops, drawing water, pasturing cattle, and so forth. In Tuwat, for instance, in the late nineteenth century, the Haratin formed approximately 40 per cent of the population and the slaves about 9 per cent. As mentioned earlier, the Haratin were landless and hence they became a source of cheap labour for the Berber and Arab landlords with whom they forged patron-client relations hips. The Haratin made share-cropping arrangements with their patrons, according to which they received a small share of the crop. For instance, the Haratin would receive only one-tenth of the date harvest. The social and economic distinction between the Haratin and the rest of the population was recognized in the customary law in southern Morocco.

In administrative and urban centres such as Fez, Marrakesh, Rabat, and Meknes the great majority of the slaves were used for domestic purposes in the households of government officials, military commanders, merchants, religious leaders, and commoners. According to Mohammed Ennaji, slave ownership in Morocco was associated with prestige and high status. Although slaves from both sexes were involved in domestic work, the overwhelming majority were females. In addition to being concubines, female slaves were responsible for household chores and child rearing and provided entertainment for the urban elite.

The conditions and status of slaves in Moroccan society have been a subject of debate. While some scholars have held the view that Moroccan slaves were treated well and were integrated into the owners’ households, Mohammed Ennaji has argued that the condition of slaves in Morocco was a complex web of paternalism and oppression. He drew attention to the hard work and miserable conditions of farm slaves. The slaves were considered the absolute property of the master who could sell them at will. Upon the master’s death, the slaves were listed with livestock and other forms of property and were distributed among the heirs of the deceased owner. As elsewhere in the Middle East, Moroccan slaves were given peculiar names to distinguish them from the free-born persons. It was reported that the newly-purchased slave would be asked about his name.
his name resembled the names of free-born persons, it would be changed to one of the typical slave names. Slaves were severely punished for disobedience. Such punishments often involved whipping, expulsion from the owner's home, or sale. The slaves responded to their harsh treatment by fleeing, seeking sanctuary in the shrines of holy men, or demanding that their owners sell them. Some slave owners manumitted their slaves as an act of religious piety. Female slaves who bore children to their owner were automatically freed. As elsewhere in Africa and the Middle East, liberated slaves had no alternatives for survival and often continued to be attached to and work for their former owners.

West African slaves brought many cultural influences to Moroccan society. They retained a great deal of their cultural heritage and introduced new traits that continue to have significant impact on Moroccan popular culture and religious practices. Although this subject is beyond the scope of this study, suffice it to say that West African cultural traits in Morocco are evident in such customs as ecstatic dancing, spirit possession, and blood sacrifices.

Slavery in the Muslim Legal System

The status of slaves in Muslim societies has generated a great deal of scholarly debate during the past three decades. A major part of this debate revolves around the questions of whether or not slavery in Muslim societies was benevolent and on the existence or the absence of colour prejudices among Muslims. This approach was criticized by Frederick Cooper who pointed out that the main problem of both apologists and critics of Muslim slavery was their conception of religion as a determinant of social structure and their attempt to find a universal essence of Islamic slavery. The status of slaves in Muslim societies cannot be determined merely by looking at the Quranic injunctions and the legal texts. Rather, it is important to stress the way which Muslim law was used by different groups in the society and the dialectical relationship between social relations and their conception in religious terms. Although the message of Islam is essentially singular, 'it assumes different forms and manifestations for different groups and societies and at different times and circumstances.' There were differences between theologians who were more concerned with the essence of the Islamic faith, jurists who were concerned with the formulation and the application of the Shari'a, and philosophers who sought to reconcile reason with religious revelation.

The Shari'a laws were formulated by jurists in the early centuries of Islam. Eventually four schools of jurisprudence, or madhahib (sing. madhab) emerged: Maliki, Hanafi, Shafi'i, and Hanbali. Jurists eventually
declared that the work of interpreting the Quran and the *summa* as positive law was complete. The *'ulama* were supposed to be the guardians of the sacred law who ensured its proper application by the rulers. However, in reality, many *'ulama* in Muslim societies became closely linked with the ruling elite and the dominant groups. Although the role of the *'ulama* may be compared with that of Gramsci’s intellectuals, who play a major role in shaping the cultural norms that ratify the structure of the society, yet the *'ulama* were not a monolithic group. As will be shown later, some *'ulama* broke rank with the rulers and defied them when they felt that the latter did not follow the *Shari'a*.

The Quranic concepts regarding slavery consisted mainly of broad and general propositions of an ethical nature rather than specific legal formulations. In theory, Islam obliges the slave owner to bring his slaves into the Muslim community and to teach them Islam. The owner is the guardian, responsible for the slave’s action. The Quran admonishes the owner to treat the slaves well, and to look after their needs. If the owner fails to meet these obligations, the *qadi* (Muslim judge) can compel him/her to fulfil them or else either sell or emancipate the slave. The owner is forbidden to overwork the slave, and if he does so to the point of cruelty, he is liable to incur a penalty that is, however, discretionary and not prescribed by law.40

As in other matters, the *Shari’a* rules on slavery varied from one school to another. In general, the *Shari’a* ruled that the only legal criterion for enslaving a person was that he or she was an unbeliever, with whose people the Muslims had a no non-aggression pact and whose territory had been forcibly overrun in accordance with the rules governing *jihad* (Muslim holy war).41 In theory, a free-born Muslim could not be enslaved. Slaves had both legal rights and limitations. Technically, the master owned both the slave and what the slave possessed; but if a contract of manumission had been entered into, the slave was allowed to earn money to purchase his freedom and similarly to pay a marriage dowry. The slave could marry, but only with the consent of his master. While the Hanafi and the Shafi’i schools of jurisprudence allowed a male slave to marry two wives, the Maliki permitted him four, thereby making no distinction between slave or free-born male. Theoretically, a male slave could marry a freeborn woman, but this was discouraged in practice, a reflection of racial consciousness and social status among Arabs. If a male slave married a slave woman, the children belonged to the woman’s owner. A slave woman could marry a free man, including her master, but she should be freed before the marriage was contracted.41 A slave’s testimony was not admitted in courts. A penalty for an offence by slave was half that of a free person. The owner was responsible for paying fines incurred by a slave. In civil matters, a slave had
Islam encouraged 'itq (manumission) and provided several procedures to facilitate it. The first method is mukataba, or a contract of manumission between the owner and the slave, whereby the latter would pay the former a fixed sum of money. The second is tadbir, by which the owner would declare that a slave would be freed after the owner’s death. A third method is a verbal proclamation by the owner that a slave is free. Fourth, a slave could be freed as a kafara or penance for accidental homicide, breaking an oath, or other offences.4

Perhaps no area was treated in more detail than the status of female slaves who were regarded as concubines by the Shari’a. A slave concubine who bore children to her master would be elevated to the status of um walad (mother of his child), and their offspring were considered co-equal to the masters’ free-born children. Such a woman could not be sold and was to be freed upon her master’s death. If a man claimed a female slave as a concubine before a Shari’a court, she could establish a claim at his death, which would entitle her to a share in his estate. If a concubine was manumitted, she could not have a legal status as a wife; she would be living with her master as his mistress and her children would be regarded as bastards. If a slave woman decided to desert her master, she would lose the custody of her children. If the slave woman had children from a man who did not belong to her owner’s family, the children would be considered as the property of the owner. The same applied if she had children from another slave.43 But there is no reason to assume that such strictures were any more effective among Muslims than others. The status of slaves in many parts of Africa and the Middle East and their day-to-day existence was determined by social reality and by other considerations such as their economic roles and the cultural norms of the society.

Slavery and Muslim Jurisprudence in Morocco

For several centuries, the judicial system in Morocco was based on the Shari’a and followed the Maliki school of jurisprudence. However, customary law prevailed among many Berber groups and other segments of the population. Successive Moroccan rulers assumed the Muslim title, the khalifa, and tried to legitimize their authority by seeking the support of the ‘ulama, particularly those of the Qarawiyyin Mosque in Fez. In addition to advising the rulers, Moroccan ‘ulama have written extensively on various aspects of the Shari’a and tried to ensure its application in all aspects of life. They also advised judges and administrators on various legal problems. Their writings were contained in voluminous fatawi and nawazil.44 Slavery
was one of the subjects that has figured prominently in the *fatwa* and *nawazil* books.

One of the earliest recorded theological and legal debates on the subject of slavery occurred in the late seventeenth century, when a group of people from Tuwat in southern Morocco sought the advice of Ahmad Baba, the Western Sudanic scholar in Fez, on the question of which West African groups could be enslaved. In response, Ahmad Baba wrote a lengthy treatise in which he delineated the regions and the ethnic groups whose people were the legitimate target of enslavement. According to this treatise, captives from Bornu, Kano, Katsina or Songhay should not be taken as slaves since the inhabitants of these regions were long-standing Muslims. However, Ahmad Baba identified several non-Muslim groups in the same region, such as the Mossi, Gurma, Busa, Borgu, etc. These groups were in fact a major source of slaves for the kingdom of Songhay.

It is clear that the people of Tuwat were trying to legitimize the acquisition of slaves and to practice slavery within an Islamic ideological and legal framework. In essence, the *fatwa* of Ahmad Baba's treatise had laid the ground rules for enslavement and made black and non-Muslim West African communities a legitimate target for enslavement. Indeed, the association of blackness and unbelief with servitude was deeply rooted among North Africans.

Perhaps the most notable scholarly debate on the subject of slavery in Morocco, took place in the late seventeenth century in response to the efforts of Moulay Isma'il to recruit the Haratin into his slave army. As mentioned previously, the 'Alawite sultan tried to persuade the 'ulama of Fez, particularly those of the Qarawiyyin mosque, to endorse his policies. He asked them to scrutinize and approve the conscription of the slaves whose names were placed in a register. The slaves whose owners were known were purchased at a fixed price, while those whose owners were unknown were recruited 'free of charge'. One of the leading 'ulama who supported the sultan was Muhammad 'Alilish who became the chief recruiting officer. However, the majority of the 'ulama of Fez opposed the conscription and declared it illegal, particularly when it became indiscriminate and involved free-born persons such as the Haratin. Their disapproval was articulated in letter by Sidi Muhammad ibn 'Abdel Qadir al-Fasi who argued that 'the basic condition of man is freedom', and that if the slave-status of a person cannot be proven, then such a person is 'the master of his soul.' Moulay Isma'il was enraged and tried to discredit the 'ulama of Fez. He humiliated Burdula, the Qadi of Fez, dismissing and reinstating him several times. But it was Sidi Al-Hajj 'Abdel Salam Jasus who offered the most daring challenge to Moulay Isma'il: it was reported that Jasus had held a debate with 'Alilish in which he criticized the *fatwa*
that sanctioned the forced conscription of the Haratin, arguing that they were free Muslims. Jasus was immediately seized and imprisoned in Meknes for three months in 1708. He was then released on condition that he pay a fine and stop agitating against the recruitment of the Haratin as slaves. He was not prepared to do either. Upon the orders of the governor of Fez, Jasus was reimprisoned and tortured, his books and property were confiscated, and he was finally executed on 4 July 1709.\(^\text{50}\) Jasus's controversy illuminates several important points: First, it underscores the fragility of the power of the religious establishment and the fact that the slave army was much more important for the sultan than the allegiance of the 'ulama. At the same time, from the perspective of the slaves, the episode can be regarded as a struggle among the ruling establishment. The 'ulama's opposition was not against the idea of a slave army, rather it was against the manner in which it was conducted; they tried to ensure that it adhered to the Shari'a rules.

**Conflicting Legal Systems**

The French occupation of Algiers in 1830 increased the pace of European intervention in Morocco. In addition to France, Britain and Spain had strong economic and strategic interests in the country. The weakness of the Moroccan government in the late nineteenth century provided an opportunity for these European powers to expand their holdings on Moroccan soil. For instance, in the 1950s Spain occupied Tetuan and Melilla. However, it was France that had the strongest interest in Morocco. After a series of military interventions in the late nineteenth and early twentieth centuries, France finally proclaimed Morocco as a French protectorate in 1912.

The disintegration of the Moroccan government and the beginning of European intervention in the nineteenth century led to the erosion of the Muslim judicial system, as new European courts were established in different parts of Morocco. These included a new government independent judicial apparatus that was administered by tribal leaders and provincial governors who began to strengthen their authority at the expense of Shari'a judges.\(^\text{51}\) Moreover, with the establishment of the European protectorates in different parts of the country, European law was applied not only to European nationals but also to Moroccan citizens who were living in the protectorates.

Following the establishment of the French protectorate in 1912, the judicial system was reorganized and several court systems were established. In addition to French, British, and American Courts, there were al-Mahakim al-Makhazania (Government Courts), al-Mahakim al-Shar'iyya (Shari'a
SLAVERY AND MUSLIM JURISPRUDENCE IN MOROCCO

Courts), al-Mahakim al-‘Urfiyya (Courts of Customary Law), al-Mahakim al-Isra’iliyya (Jewish Courts), and al-Mahakim al-Ist‘nafiyya (Courts of Appeal).52

The Shari’a courts dealt with personal matters such as marriage, divorce, inheritance, slavery, and so forth. As mentioned earlier, these courts followed the Maliki fiqh (jurisprudence) which was laid down and explained by the ‘ulama in different works. These books were divided into three categories. The first consisted of kutub al-Isoul (original works) such as Mukhtasar al-Shaykh Khalil and Tuhfat ibn ‘Asim. The second category consisted of the fatawi and nawazil such as Mi‘yar al-Wanshrisi and al-Mi‘yar al-Jadid of al-Wazzani. The third category included interpretative works such as al-‘Amal al-Fasi by ‘Abdel Rahman ‘Abdel Qadir. These texts became the legal references upon which Moroccan ‘ulama and judges relied.

Like other European colonial powers in Africa, the French adopted a gradual approach in the abolition of slavery. A series of laws was enacted over a period of time. The French law of February 1848 prohibited slavery in all territories under French control. In June 1880 the supreme court in Algeria issued a decree to the effect that the relationship between the slave and his owner would not be recognized by law. A similar law was introduced in Tunisia after the establishment of French rule there.53 However, in Morocco anti-slavery legislation was introduced in piecemeal fashion. Moroccan judges assumed that since Morocco was a French protectorate and slavery was prohibited in French possessions, then slavery was illegal in their country.

In July 1916 the Supreme Council of Justice in Rabat issued a decree to the effect that the son of a concubine would no longer be regarded as the son of her owner unless the owner acknowledged his relationship with the slave woman and recognized the paternity of the child.54 However, it was only in 1925 that a law explicitly prohibiting slavery in Morocco was introduced and all clauses recognizing servitude were removed from the personal matters code.55

As elsewhere in Africa, the official abolition neither led to the sudden death of slavery nor brought a substantial change in the relationship between freed slaves and their former owners. In Muslim countries, the problem was compounded by the fact that servitude was sanctioned by the Shari’a. This provided them with both an ideological and a legal framework to maintain their control over their slaves and resist colonial anti-slavery laws. It is not surprising, therefore, that disputes involving slaves and slaveowners continued to arise and the Shari’a courts became a major arena of the struggle between the two groups. The following examples involve disputes emanating from the selling of slaves and the ‘defects’ of the slaves,

Downloaded by [University of Alberta] at 00:57 29 November 2013
inheritance, and child custody. Although these are limited examples that do not give a complete picture, they do provide important insights into the conditions of the Moroccan slaves and the problems they endured during slavery and after emancipation.

Purchase of Slaves

As mentioned previously, the Shari'a ruled that the only legal criterion for enslaving a person was that he or she was an unbeliever, with whose people the Muslim community had no non-aggression pact and whose territory had been forcibly overrun in accordance with the rules governing the jihad. However, once the slave was acquired and became a property, then s/he could be sold. The Shari'a contains elaborate rules governing the buying and selling of the slaves. Slaves were classified with livestock; their sale was regulated by the same rules applying to camels, sheep, and goats.

The Shari'a placed great emphasis on the physical and mental conditions of the slaves and stressed that the slave should be free of any 'defects' at the time of his sale. According to Tuhafit Ibn 'Asim, a major reference for Moroccan judges, the slave defects were defined and divided into three groups: The first are the permanent defects such as stroke, blindness, loss of body parts, leprosy, vitiligo, and any permanent facial or body defects. The second group includes mental illnesses, urinating in bed, and any other recurring defects. The third group include behavioural defects such as stealing, lying, adultery, etc. Buyers were usually given several days to discover any defects in a newly purchased slave, after which the sale was considered complete. The slave defects and the sale procedure were discussed in great details in many legal texts. The seller was required to disclose these defects at the time of sale and to describe them in the contract. If the buyer discovered a defect that was not disclosed, he had legal a claim on the seller. The emphasis on the health of the slaves underscores the importance of their productive and reproductive functions. The slaves were usually assigned to heavier household duties, including cooking, washing, cleaning, lifting and so forth.

In nineteenth-century Morocco, slaves were bought either privately through dealers or from the slave markets. As mentioned earlier, these markets existed in all major cities such as Fez, Marrakesh, Rabat, and Meknes. In Fez, slaves were sold in open markets and the sale was done through written contracts. These contracts included full description of the slaves and any known defects. In Rabat, slave markets were held in hotels. Newly purchased slaves were kept in the buyer’s house for a three-day testing period, after which they would be returned if the buyer discovered any defects. If an owner decided to sell one of his female slaves, he would
take her to the house of an old woman called the *amina*, who would look after the slave woman until she was sold. After the slave was sold, the seller would reimburse the *amina* for all her expenses.\(^{38}\)

The prices of slaves varied depending on their gender and physical conditions. In general, female slaves commanded higher prices. For instance, in Fez markets in the late nineteenth century, a 16-year-old female slave was sold for 500 francs.\(^{39}\) However, after the prohibition of the slave trade in the late nineteenth century, slaves were sold privately and their prices increased, particularly female slaves.\(^{40}\)

The selling and buying of the slaves was a source of numerous legal disputes. These disputes illuminate important matters such as the health condition and the exploitation of individual slaves. There were many disputes involving pregnant female slaves, who were often sexually exploited by their owners. For instance, in 1898, Ahmad ibn al-Mamoun al-Balgithi al-Fasi, who was a retired judge, wrote a *nazila* in response to a dispute involving a pregnant female slave from Rabat: the buyer decided to return her after a brief period, arguing that he was defrauded by the seller because the slave woman had a miscarriage. A group of *ulama* from Fez replied that he had a legal claim against the seller. But when al-Fasi was asked by a judge, he replied that the buyer had no claim since the seller was not aware of the pregnancy. He further argued that the miscarriage of the foetus ended the pregnancy and the defects no longer existed. However, he pointed out that the buyer would have had a legal claim against the seller if the miscarriage had caused any permanent physical damage to the slave woman.\(^{41}\) This case illustrates the degradation of female slaves as a result of the sexual exploitation of their owners and other members of the owners' households. The slave woman in this case was considered a 'used property' by the buyer who was not willing to take her. In another case dated in 1914, a prominent merchant in Azrou brought a legal claim to Muhammad ibn Rashid al-'Iraqi, a judge at Azrou, against a man who after marrying one of the merchant's manumitted female slaves, divorced her and decided to sell her. However, the judge ruled in favour of the merchant and upheld the free status of the woman.\(^{42}\)

These cases raise important questions that have much wider implications. First, they demonstrate the fact that according to the *Shari'ah*, the slaves were just a commodity that could be bought, sold, used and exchanged. Second, the 'legal defects' of the slaves cannot be defined without reference to time and place. The Muslim world encompasses a vast geographical area, with different climatic conditions and diseases. Apparently, early Muslim jurists did not take these variations into account. Third, perhaps most of the so-called slave defects were associated with the harsh conditions of enslavement; the long journey involved in the
transportation of the slaves and their encounter with different climatic conditions as well as the physical and sexual abuse of the slaves by their owners.

Concubinage and Child Bearing

As mentioned previously, the slave concubine who bore a child to her master would be elevated to the status of um-walad and would be freed upon her master's death; and her children would be regarded as co-equals to their free-born brothers. In a case dated November 1967, a freed slave woman took her stepson to court, alleging that he was the father of her two children and demanded that she be paid child support. Her stepson denied the allegation and brought witnesses who testified that the slave woman was the concubine of his father and that after his father's death she came under the custody of his mother. The court accepted the woman's claim and ordered him to pay child support. The stepson then appealed against the ruling and the case was brought to the Supreme Council of Justice which overturned the verdict. In its deliberation, the Supreme Council of Justice provided three reasons for its decision. First, the junior court ruling was contrary to the law of the land which prohibited slavery. The council referred to the 1925 law which had removed all clauses recognizing slavery from the penal code. The council also cited the Moroccan constitution which stipulated that all Moroccan citizens are equal before the law enjoying the same rights and liberty. Second, the council criticized the verdict on technical grounds arguing that all the parties involved in the case were not present during the court proceedings. The council was referring to the concubine's sons who neither made a claim nor appeared in court. Finally, the council stated that the junior court should not have awarded the woman an unspecified amount of child support. The council then referred the case to the provincial court in Casablanca. It is not clear how the case was finally decided by the provincial court.

Inheritance

According to the Shari'a, the estate of a deceased freed male slave who had no children would be divided between his widow and his former owner, with the former receiving one-fourth and the latter receiving three-fourths. If the former owner was dead, his share would be inherited by his nearest relatives. The estate of a deceased freed female slave with no offspring would be divided equally between her husband and her former master. If the former master was deceased and had no surviving heirs, his share of the estate would be claimed by the bayt al-Mal (Muslim public treasury).
In 1931 in Fez, a case was brought by the bayt al-Mal to Judge Muhammad ibn Ahmad Al-'Alawi of Fez, against two prominent religious figures, Ahmad ibn Hamad ibn 'Ali and his cousin Muhammad ibn Moulay Al-'Arabi. The latter was the nephew of a prominent Fasi woman named Umm Kalthoum Ghatsa who was owner of a slave woman called 'Anbar. As an act of piety in her old age, Ghatsa wrote a will in which she declared that after her death 'Anbar should be freed and should be married to a free-born man. After Ghatsa's death, 'Anbar was married to a free-born man but he died without children. 'Anbar herself died at Fez in May 1931, leaving behind a significant estate. The inheritance of her estate became the subject of dispute between the public treasury and the aforementioned Fasi men. The representative of the bayt al-Mal argued that since the deceased woman was manumitted and had no children, her estate belonged to the bayt al-Mal. The two men, on the other hand, claimed that since 'Anbar was owned by their aunt and had no heirs, they were legally entitled to her estate. They invoked a well-established Muslim tradition known as *wala*', which was a perpetual bond between the manumitted slave and his former owner. The judge ruled in favour of the two men, and even though the bayt al-Mal appealed the rulings, the Supreme Council of Justice upheld the judge's ruling. This particular ruling and the concept of *wala* deserves further attention. According to Muslim jurists, manumission does not nullify the eternal bond between the slave owner and his mawla (freed slave). In pre-Islamic Arabia, the word mawla (plural mawali) referred to a category of people who lacked kinship ties within Arabian society. They included vagabonds, slaves, freed slaves, and non-Arabians. Mawla is also a concept based on the premise that once the slave was freed, he needed an affiliation with society. Through the *wala*', the freed slaves were formally established as full members of society. Although this practice was common in pre-Islamic Arabia, it was also strongly encouraged by Islam and was sanctioned by Muslim jurists. The *wala* was one of the ways in which Arabian Muslim society tried to avoid the social consequences of manumission. Without *wala*, it was assumed, the freed slave would be let loose and would pose a danger to the society. If the mawla died without heirs, his estate would be inherited by his former owner. In short, the *wala* meant that, despite manumission, the slave owner would still maintain control over his ex-slaves who would continue to be dependent upon him.

**Conclusion**

From the preceding narrative it is evident that there was a strong link between slavery and Muslim jurisprudence in Morocco. Moroccan 'ulama and jurists made conscious efforts to ensure that the practice of slavery
conformed to the Shari'a rules and the Islamic concepts. As a group that was closely linked with the ruling elites and the slave-holders, the 'ulama and the jurists tried to explain and legitimize the existing social order and to provide an ideological framework for the slave-holders to maintain their domination of the slaves. But, as we have seen, the 'ulama's conception of the social order often conflicted with that of the ruling establishment and the slave-holders. The latter needed slaves for building their political and economic power as well as prestige, and were prepared to use 'illegal' methods to obtain slaves. However, Islamic norms could be a double-edged sword that would also be used by the slave in their struggle against the owners. As the above cases show, the slaves themselves used the tenets of Islam to assert their moral equality and independence.

The establishment of French colonial rule created a complex and paradoxical situation. It eroded the power of the ruling elites, the slave-holders, and the 'ulama. At the same time, it imposed a European model of abolition that did not necessarily conform with Muslim concepts of slavery and freedom. This situation posed a major challenge to the 'ulama and the jurists. Despite the efforts of the slave-holders to use Islamic law to maintain their control over the slaves, the 'ulama tried to provide interpretations that would conform to the new reality and to establish an ideological framework that would ratify the new social order.

ACKNOWLEDGEMENT

I am indebted to the J. William Fulbright Program and the Moroccan-American Commission for Educational and Cultural Exchange for awarding me a Fulbright fellowship in 1996-97 academic year, which enabled me to conduct research for this essay.

NOTES

2. The fatawi and nawazil are replies and opinions written by the 'ulama in response to legal questions posed by judges, administrators, and sometimes common people.
4. Although there are numerous references to slavery in Morocco, the most recent single book on the subject is Mohammed Ennaji's, Soldats, Domestiques et Concubines. L'esclavage au Maroc au XXe Siècle (Casablanca, 1994).
6. Roger Letourneau, Fes qabl al-Himaya, vol.1, translated by Mohamed Lakhdar and


13. The army was called so because soldiers were asked to swear the oath of allegiance on Imam al-Bukhari's book which is regarded as the most authentic text which contains the Prophet Muhammad's sayings.


16. Ibid.

17. 'Afif, p.160

18. Ibid., p.175.

19. Ibid.

20. I.nnaji, p.198.


25. For instance, in their study of the economic life in Rabat, Nura al-Taba' and Bahiyya al-Azraq reported that al-Yamani b. Said al-Nasiri used his female slaves to pay off the debts of his wife. Moreover, the slaves were commonly included in the estate of deceased persons for distribution among their heirs, see al-Tabba' and al-Azraq, pp.95–6.

26. Examples of slave names were Sa'ida (happy) for females and Mubarak (blessed) and Rabih (winner) for male slaves, see al-Tabba and al-Azraq, p.96; Brunot, p.86.

27. Ibid.

28. Brunot, p.95

29. In Fez, for example, slaves took refuge in the shrines of famous holymen such as Sidi Abdel Qadir al-Fasi and Ahmad al-Tijani, founder of the Tijaniyya brotherhood, see Letourneau, p.298.

30. I.nnaji, pp.77–90.

31. Ibid., p.96.


34. Examples of studies that emphasized the benevolent nature of slavery in Muslim societies include Muhammad Abdel-Wahab Fayid, *al-Rig fil-Islam* (Cairo, n.d.); Muhammad Shwkat
al-Tunisi, Muhammad Muharir al-Abeid (Cairo, 1975); and Hammouda Ghoraba, 'Islam and Slavery', The Islamic Quarterly, II, 3 (October 1955), pp.152–9.
36. Ibid.
38. Ibid., p.2.
41. Walid Arafa, pp.12–18.
42. Fayid, al-Riq fi-Islam, pp.82–90.
43. Ibid.
44. The most distinguished group of Moroccan scholars were those based at al-Qarawyyin mosque in Fez.
47. Batran, pp.2–4.
48. Ibid.
49. Ibid.
50. Ibid.
53. Ibid.
54. Ibid.
57. Ibid., pp.68–9.
58. Bruzez, p.86.
59. Loti, p.183.
60. al-Tabba' and Al-Azraq, p.95.
64. Ibid.
68. Ibid., p.136.