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UNIVERSITY OF CAPE TOWN

The Department of Historical Studies

Muftīs and the women of Timbuktu:

History through Timbuktu's Fatwās, 1907 – 1960

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Abstract

History is the great humaniser¹

This dissertation is about the social history of Timbuktu during the colonial era (1894 – 1960). Scholars have written about Timbuktu and its intellectual tradition since the beginning of twentieth century more so the last forty years. They have used the city's written sources made up of thousands of manuscript materials found all over in Timbuktu and its surrounding world's desert and village archives. However, these scholars have worked only on the city's famous seventeenth and eighteenth-century chronicles (*tarikhs*), a few theological treatises and political correspondences of the nineteenth century. From annotated translations to analyses and monograms, their works were limited to the above sources. This dissertation, firstly, takes *fatwās* from Timbuktu's archives as its historical source, a source the aforementioned scholars paid very little attention to or consciously ignored. Although *fatwās* are legal documents, this dissertation shows that *fatwās* are a historical source. Secondly, it looks at the history of ordinary men and women in their everyday lives. Hitherto, the earlier looked at events shaped around Timbuktu and the Songhay Empire's political and religious elite only. Can Timbuktu's *fatwās* tell stories about themselves and about the ordinary men and women who appear in them? This dissertation is inclined to the affirmative. Timbuktu's *fatwās* can do that. Timbuktu's colonial-era *fatwās* show, for example, that wives contracted subsequent marriages while still legally married, refused to travel with or to husbands, and abandoned the marital home. They show that husbands travelled leaving their wives behind remaining away for long periods of time; others married secretly without letting

¹ Barzun, J and Graff, H.F. 1992. *The Modern Researcher*, fifth edition. New York: Harcourt Brace Jovanovich College Publishers, pg. 9

their existing families know. We scratch beneath the surface of the questions people asked the scholars, their utterances and actions as the *fatwās* describe them as well as the answers of *muftis*. In this way we reconstruct Timbuktu's colonial-era history from below.

Acknowledgments

Writing this thesis was very difficult. However, many people made it a lot easier for me. This work could not have been achieved without the support of my family, many friends, colleagues and institutions. For their assistance, care and support I express my heartfelt gratitude. All that I can give them in return is gratitude and the hope that this thesis will provide some knowledge about Timbuktu, and be a source of benefit to them. I thank my Creator; in the Qur'ān, on the tongue of one of His prophets, He inspires us to say, "My Lord, inspire me to thank you for your bounty that you bestowed on me." I thank my dear parents who always supported me with all they could, especially my mother who passed away in July 2010; a factory worker for thirty years, she vowed that her children will have education and did everything to ensure its realization. To my beloved wife, I cannot express my gratitude sufficiently; her sacrifices, selflessness and unwavering support, encouragement and nagging for me to carry on and finish; Gadija, I owe all this to you and our beloved son and daughter; to you all the honour belongs, to me all the hardships caused. To my Supervisor and mentor Shamil Jeppie who firstly introduced me to Timbuktu and historiography, made me love history, and trained me to become a historian and made everything available to me as a new researcher. All credit in this effort to reconstruct Timbuktu's social practice using its fatwās as sources is due to him.

During five visits to Timbuktu - in 2004, 2006, 2007, 2008 and 2009 - I was given unfettered access to the manuscripts at the Institute Haute Etude et Recherche Islamique Ahmad Baba (IHERI-AB formerly the Aḥmad Bāba Centre) and the Mammā Haidara Memorial Library. Special thanks go to Abdelkader Mamma Haidara,

curator of the Mammā Haïdara Memorial Library, who was the first person to open up his family collection of manuscripts to us at the Tombouctou Manuscripts Project at the University of Cape Town. He continues to lend his support and grant us access to his private collection. I am especially grateful to Dr Mahmoud Zouber (the first director of the Aḥmad Bāba Centre) who, though no longer the director, did everything for me he possibly could while I was in Bamako, from advice, encouragement and letters of recommendation. To Dr Muhammad Galo Dicko, the current director of the Aḥmad Bāba Centre and his deputy (until his untimely passing away in December 2010) Dr Sīdī Muḥammad ould Yuba I say thank you very much (May God rest the soul of Sīdī Muḥammad ould Yuba). I could not have done without the guidance of Ustadh Hamou. He clarified all problematic areas in the manuscripts and provided me with information I would otherwise never have known and treats me like a son; his care for me knows no bounds. Thanks are due to my colleague Dr. Mohamed Diagayete, who gave and still gives me so much of his time, suggestions and encouragement. To Ustadh Djibril Doukre, the librarian at, in reality the caretaker of, the Aḥmad Bāba Centre (whom I call the caring father) and Boya Haïdara the keeper of the manuscripts at the Aḥmad Bāba Centre, I say thank you.

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I acknowledge with gratitude all the men and women of Timbuktu who agreed to interviews and to answer any questions I asked; thank you to all those who provided friendship during all my stays in Timbuktu.

I also want to say a special thanks to the Institute for African Studies at the Muḥammad V University in Rabat, Morocco, especially to Professor Fatima Harrak and Lahsan Sadiqi. A special word of thanks I spare for my dear Comrade Paulo de Moraes de Farias who gave me much assistance during my short stay in Birmingham and while I was in South Africa. My thanks also go to Aslam Farouk-Alli, Baz Lecocq, Rebecca Shereikis, Seidou Traoré, Banzoumana Traoré, Hamidou, Nouri al-Anṣārī, Nigel Penn from the Department of Historical Studies at UCT, Brenda Beneke, Anne Wegerhoff and many, many others who are too numerous to mention. Finally, anything good in this thesis, if at all, belongs to others; naturally all shortcomings and mistakes are entirely mine. Thank you to all.

A NOTE ON ORTHOGRAPHY, AND TRANSLITERATION

I have generally used the English spelling of well-known places such as Segou, but I have also employed the French spelling for the name French Soudan. All Arabic words are italicized except for proper names and "Qur'ān given that is commonly used. I employ the JMES style of transliteration.

ABBREVIATIONS

- ANM: Archive National du Mali
- ART: Archive de Region du Tombouctou
- IHERI-AB: Institute Haute Etude et Recherche Islamique Ahmad Baba
- CADN-AOF: Centre des Archives Diplomatiques de Nantes, Afrique Occidentales Française, Dakar, Senegal

Glossary

Amenokal: political leader or "chief" of Tuareg confederacy.

Arma: from Arabic *al-rumāt* – Moroccan musketeers, applied corporately to the ruling caste of Timbuktu after 1591, and originally composed of members of the Sa'dian expedition. It was later applied to the Songhay-speaking descendants of those Moroccan soldiers as elite groups in certain Niger Valley towns such as Timbuktu.

Azalaï: Salt caravans

Azawād: Desert region north of Niger Bend.

Barakah: Blessings (usually indicating a pious person understood to be close to God).

Bellah: Servile and "Black" members of Tuareg society.

Barābīsh: Arabophone group based north of Niger Bend.

Fatwā: a religious-legal verdict

French Soudan: French colonial territory that gained its independence as the Republic of Mali in 1960

Fiqh: Islamic substantive law

Fuqahā (singular *faqīh*): Jurists

Goumier: Camel-mounted military policeman in the Sahara established by French colonial rule.

Ḥadīth: A prophetic tradition (what Prophet Muḥammad said, did, and tacitly approved of).

Ḥassānī: Arab "warrior" lineage.

Ḥarām: forbidden/proscribed

ʿIddah: the mandatory waiting period a Muslim woman observes after divorce or death of her husband

Iftā: the act of making a *fatwā*

Istiftā: petition/seeking a religious-legal verdict

Kāhiya: Moroccan military rank of the third order, of Turkish origin

Khuṭ: A divorce initiated and requested by the wife

Kunta: Arabophone group in Niger Bend and Mauritania.

Madhhab: Islamic legal school of thought (e.g. Ḥanafī, Shāfi'ī, Mālikī, Ja'farī, Zaydī, etc.)

Mālikī: The Islamic legal school followed in Timbuktu and the rest of West Africa by most Muslims

Mufti: jurisconsult

Mustaftī: petitioner for a *fatwā*

Pasha: Moroccan military rank of the first order, of Turkish-Persian origin

Qaḍā: judicial process/judiciary

Qāḍī: judge

Takrūr: Imprecise term for Sahelian West Africa.

Talāq: divorce

Tarīkh: chronicle

Tenguereguif: Berberophone (Tuareg) group in the western Niger Bend

‘*Ulamā*’: traditional scholars of the Islamic sciences (singular ‘*ālim*)

Uṣūl al-fiqh: Methodology in source jurisprudence or legal hermeneutics.

Contents Page

COVER PAGE.....	i
ABSTRACT.....	ii
ACKNOWLEDGEMENTS.....	iv
NOTE ON TRANSLITERATION.....	viii
ABBREVIATIONS.....	ix
GLOSSARY.....	x
CONTENTS PAGE.....	xii
LIST OF MAPS.....	xiii
LIST OF APPENDIXES.....	xiv
INTRODUCTION.....	1
PART A: HISTORICAL CONTEXT AND PERSPECTIVES	
CHAPTER ONE: LAW IN COLONIAL TIMBUKTU: MUFTĪS AND NATIVE COURTS.....	26
CHAPTER TWO: ANOTHER HISTORY OF TIMBUKTU FROM FATWĀS.....	77
PART B: STORIES	
CHAPTER THREE: SEX, LIES, AND FATWĀS AROUND TIMBUKTU.....	122
CHAPTER FOUR: WHEN HOLYMEN DENY PATERNITY.....	175
CHAPTER FIVE: THE INTRIGUES OF A MUFTI OF TWO CITIES.....	211
CONCLUSION.....	255
SOURCES CONSULTED.....	261

List of Maps

1. Map of Timbuktu on the Niger Bend

Introduction

In a sense, of course, the whole business of writing about Africa is an invention.¹

Africa has long, deep and complex histories. This study is an attempt to make a contribution to Timbuktu's history from below as an authentic African city during the colonial era (1894-1960). It uses the city's rich local written sources, primarily those from the colonial era, but also a few written sources that date to the pre-colonial era. The sheer numbers of Timbuktu's manuscripts make such a task possible, desirable and appropriate.

The city of Timbuktu lies close to the Niger Bend, the point where the River Niger reaches its furthest point north, bends east then takes a sharp turn south away from the great Sahara desert. It was founded at the beginning of the twelfth century CE.² Timbuktu's history is embedded in and with the Niger Bend and the Sahara, without which it will be hard to imagine it coming into existence. That Timbuktu is the symbol of Africa's written heritages long before the arrival of European colonialism is a platitude today. The sheer quantity of its manuscripts bears witness to that indisputable fact. The East African *Kilwa* and *Pate Chronicles*, the West African *Hausa Chronicles*, and the late sixteenth-century short chronicle of Idris

¹ Isichei, E. 1997. *A history of African societies to 1870*. Cambridge: Cambridge University Press, pg. 4

² Hunwick, J.O. 1999. *Timbuktu & the Songhay Empire: Al-Sa'di's Tarikh al-Sudan down to 1613 & other contemporary documents*. Leiden: Brill.

Aloma are other examples of Africa's pre-colonial written intellectual legacy.³ Timbuktu's written heritage represents, however, the most compelling case of and for Africa's written heritage. Moreover, its written legacy far outweighs its oral and other non-written sources. It is, in fact, Timbuktu's intellectual legacy that ensured for it a special place in history, without which it might have remained an insignificant settlement or, at best, a commercial emporium. The city reduced to its pivotal dimension was a centre of knowledge, the abode of jurists, astronomers, and sages, and the sanctuary of the Sankore mosque-cum-*madrrasah*.

The city lived its "golden age" during the sixteenth century, especially during the reign of the Songhay ruler *al-hājj* Askiya Muḥammad (r. 1493 – 1528) and later his son Askiya Dāwūd (r. 1549-1582). In 1591, it came under Moroccan colonial rule when the Sa'dian army defeated the Songhay army on 13 March 1591. Songhay, however, offered protracted resistance until 1612-13.⁴ By 1630, the Moroccan Sultan's authority had become nominal. His mercenaries who conquered Songhay in his name became embroiled in power struggles; corruption, extortion and disorder became pervasive. According to Kaba, on another level the Moroccan soldiers underwent a Songhayization through marriage and other forms of socialization. This process, according to him, marked the formation of the Arma as

³ Jeppie, S. What is *tarikh* in Timbuktu? *Beyond tarikh* (unpublished paper delivered at Basle University, 2008). I have the author's permission to quote from the paper.

⁴ Kaba, L. 1981. 'Archers, musketeers, and mosquitoes: the Moroccan invasion of the Sudan and the Songhay resistance 1591-1612', *Journal of African history*, 22, pg. 473

a community in Timbuktu and along the river.⁵ The Arma military elite ruled Timbuktu for the next two centuries. This rule was characterised by political instability, chaos and hardship. Between 1833 and 1862, the city was under the loose control of the Masina Islamic state. Following his defeat of Masina in 1862, *al-hājj* ‘Umar sent his envoy to administer the city. That exercise ended in failure though. In 1894 Timbuktu was colonized by France, formally becoming the French Soudan.⁶ In 1960 it became part of the independent Republic of Mali.

Going to Timbuktu: from Islamic law to social history

I am a graduate of the Faculty of Islamic law, al-Azhar University. Established in 971 CE, it is the Muslim world's oldest university and regarded as the highest centre of learning in the Sunni world. Fiqh and uṣūl al-fiqh (Islamic substantive law and source methodology in jurisprudence), the two sciences of Islamic law, are the main subjects studied in this faculty. Literally, the word fiqh means to understand, to precede others in understanding, or when understanding comes naturally to a person.⁷ Technically, fiqh is the study of the practical rulings specifically for human action. Uṣūl al-fiqh is the aggregate knowledge of the proofs of fiqh: the Qur'an, the Prophetic traditions, the consensus of Muslims and analogical deduction, the manner by which such proofs are

⁵ Ibid, 473

⁶ From 1920 to 1958, Soudan Français (French Soudan) was the colonial name (one of many) for the territory comprising what became the Republic of Mali in 1960.

⁷ Abū Zahrāh, M. undated. *Uṣūl al-fiqh*. Cairo: Dār al-Fikr al-‘Arabī, pg. 4

adduced, and the status of the adducer.⁸ It leads either to certain knowledge of a ruling or to at least a reasonable assumption.⁹

After five years of study at al-Azhar, hours of reading, and memorization (not to mention the frustrations), and as many exams over five years, I graduated as a traditionally trained shaykh, with an Honours degree. On my return to South Africa I enrolled for a Masters degree at the University of Cape Town's Department of Religious Studies. Studies at this secular institution introduced and exposed me to a critical study of the Islamic intellectual tradition, including Islamic law, unlike anything I experienced at al-Azhar.

The UCT-Tombouctou¹⁰ Manuscripts Project

In January 2004, I went to Timbuktu, as a researcher on the UCT-Tombouctou Manuscripts Project, the first of many visits to come. Until then, Timbuktu was just a name of some far, far away place. I was exposed to Timbuktu's wonderful world of manuscripts scattered in unorganized archives – but an archive, as is said, is always in the making. At, more-or-less, the same time, I was also introduced to historiography, more precisely, the new historiographical approaches of the post-1950s period. I began reading on the Annales School in all its generations, history from below, micro-history,

⁸ Al-Ghazālī, Abū Ḥāmid. 1995. *Al-mustasfā min 'ilm al-uṣūl*, first edition. Beirut: Dār Ṣādir, pg. 9

⁹ Al-'Alwānī, T.J. 1990. *Uṣūl al-fiqh al-islāmī*, transl. Y.T. de Lorenzo and al-Shaikh-Ali, A.S. Riyadh: International Islamic Publishing House; Zuḥaylī, W. 1996. *Uṣūl al-fiqh al-islāmī*, 2 vols. Damascus: Dār al-Fikr, pp. 19 – 23

¹⁰ We use the French spelling for Tombouctou because of the *uct* in it for UCT (the University of Cape Town). I, however, use the English spelling Timbuktu throughout this thesis.

Subaltern Studies, le histoire mentalité, historical novels, and much more. What a reading experience for a legally-trained “shaykh”: difficult, but exciting and rewarding.

Thus began a relationship with the city’s manuscripts as a researcher on the UCT-Tombouctou Manuscripts Project that would last many years – it continues to this moment in 2010 as I am writing. My work with specific manuscripts from Timbuktu’s libraries showed me their relevance in any attempt to write the city’s “history from below” or “from the bottom up.” In short, becoming a researcher on the UCT-Tombouctou Manuscripts Project changed my academic focus and introduced to a novel world of doing history, which I will shortly say more about. These approaches or new ways of doing history were, among other things, concerned with preserving and telling the histories of ordinary people using unconventional sources, such as police and court records, memoirs of some unknown person, etc.

It was decided, given my qualifications in Islamic law that I would work on the fatwā manuscripts from Timbuktu – other members of the research team work on manuscripts in accordance to their expertise and interest. A fatwā is a non-binding legal opinion of a mufīī (jurisconsult) issued in response to a question or petition. Fatwās involve real persons with real problems or questions in particular circumstances that stem from the real world. In many fatwās the names, professions and places of residence are mentioned. They tell us more about individuals and societies in that they serve, or can serve, as a

conduit of society's narratives, which indicates the link between law and society. Thus to reject *fatwās*' worldliness is to make nonsense of their form and contents.¹¹

My education at Al-Azhar included something about fatwās. However, it was limited to the definition and legal stature of fatwās and pre-requisites for a person to issue fatwās, i.e. to become a muftī. We did not work with fatwās as case studies. That would have required an additional two years of study at Egypt's Dār al-Iftā'. As Sherman Jackson says, "to become a muftī "requires [extra] years of study [of fatwās], incalculable hours of memorization, tortuous bouts of disputation, and months of apprenticeship".¹²

Notwithstanding the fact, that I did not qualify as a muftī or work with fatwās - prior to Timbuktu fatwās – I was able, after some initial difficulty to read and understand Timbuktu's fatwās. I recalled the little I was taught at al-Azhar about fatwās. My "falling in love with Timbuktu fatwās" enhanced my reading and understanding of the intricacies of fatwās, not to mention the curious stories some of them contain. I detected in fatwās a propensity as a source for the history of the social practice of Timbuktu's ordinary men and women. Able to read Timbuktu's fatwās and armed with the new historiographical approaches I was ready to take on Timbuktu's "history from below".

¹¹ Hallaq, W. 1994. 'From fatwās to furū: growth and change in Islamic substantive law', in *Islamic Law and Society*, 1, (1), 29-65

¹² Jackson, S. 1992. 'The second education of the *muftī*: notes on Shihāb al-Dīn al-Qarāfi's tips to the jurisconsult', *Muslim World*, LXXXII, pg. 1

Africa's historiographies and historians

Africa, of course, has a pre-colonial historical tradition and one of its main written forms are the chronicles in the Arabic script and language. There is in East Africa the *Kilwa Chronicle* and the *Pate Chronicles*; in West Africa the late 16th century short chronicle of Idris Aloma and the *Hausa chronicles*. Africa features in the works of ibn Baṭūṭa, ibn Khaldūn, and al-Bakrī. The Arabic written chronicles are the major sources of West African history starting from the early sixteenth centuries and for all the pre-nineteenth-century history of East Africa.¹³

The seventeenth-century *Tarīkh al-Sūdān* and *Tarīkh al-fattāsh* represent Timbuktu's great tradition of historical narrative.¹⁴ It bears very much the hall marks of classical Islamic historical writing with its own history, styles, periodization, philosophical tendencies and epistemic breaks. Both *tarīkhs* focused on the Songhay state from the mid-15th century through to around 1655 and are organized around the dominant political regimes in the region and its important personalities, such as *al-ḥājj* Askīya Muḥammad. The scholars and the saints also receive plenty of coverage.¹⁵ What remains,

¹³ Hunwick, J.O. 1970. Arabic sources for African history, in Fage, J.D (ed.), in *Africa discovers her past*, Ibadan: Oxford University Press, pg. 48; also see Hopkins & Levtzion's *Corpus of early Arabic sources for West African history* (Cambridge: Cambridge University Press, 1981)

¹⁴ Other *tarīkhs* are the sixteenth-century *Durar al-ḥisān*, the seventeenth-century so-called *Notice historique*, the eighteenth-century *Tadhkirah al-nisyān & Dhikr al-wafayāt*, and the twentieth-century *Kitāb al-turjumān & Naql al-kawā'in*.

¹⁵ Jeppie, S. What is *tarikh* in Timbuktu? *Beyond tarikh* (unpublished paper delivered at Basle University, 2008).

unfortunately, virtually untapped are nineteenth and twentieth-century “little” *tarīkhs*, some of which are no longer than two manuscript folios.¹⁶

Limiting themselves to the two chronicles, the historical writings of modern scholars on Timbuktu, naturally, focused on kings, empires, wars of Songhay and the scholars of the region; in short, the history of elites. The works of John Hunwick bespeak this historiographical approach: *Secular power and religious authority in Songhay* (1964), *A new source for the biography of Aḥmad Bābā al-Tinbuktī* (1964), *Shari'ah in Songhay* (1989), *Timbuktu and the Songhay Empire* (1999) and *Arabic Literature of Africa* (2003).

Hunwick's article, *Timbuktu: a bibliography*¹⁷ lists the works of Kaba,¹⁸ Blum and Fisher,¹⁹ Gomez,²⁰ Stieber,²¹ Paulo de Moraes Farias and many others on Timbuktu. The titles of these works show they were concerned only with Songhay kings (especially *al-*

¹⁶ See, Sidi Amarould Ely. 1995. Handlist of manuscripts in the Centre de Documentation et de recherches historiques Ahmed Baba, Timbuktu, volume 1. London: Al-Furqān Foundation, pp. 317-324

¹⁷ Hunwick, J. 2001. 'Timbuktu: A Bibliography', *Sudanic Africa: A Journal of Historical Sources*, 12, pp. 115-129

¹⁸ Kaba, L. 1984. 'The Pen, the Sword, and the Crown: Islam and Revolution in Songhay Reconsidered, 1464-1493', *The Journal of African History* 25, 3

¹⁹ Blum, C, Fisher, H. 1993. 'Love for Three Oranges, or, the Askiya's Dilemma: The Askiya, al-Maghīlī and Timbuktu, c. 1500 A.D', *The Journal of African History*, 34 (1), pp. 65-91

²⁰ Gomez, M. 1990. "Timbuktu under Imperial Songhay: A Reconsideration of Autonomy", *The Journal of Africa History* 3

²¹ Stieber, M. T. 1981. 'The background and possible historical significance of a letter and manuscript of 1798 concerning Timbuktu', *History in Africa*, 8

hājī Askiya Muḥammad), armies, the Arma, wars and scholars.²² They covered only the period from 1468 to about 1630. Michel Abitbol's translation of an eighteenth century chronicle of events up to 1801 includes the wars and armies of the nineteenth century. In short, they used neither *fatwās* as a source (except for Hunwick and Fatima Harrak who based their work on a *fatwā* of Aḥmad Bāba al-Sūdānī) nor was history from below their goal.

Elias Saad's *Social History of Timbuktu*, the one contemporary work dedicated to the social history of Timbuktu is at once about Timbuktu's elite scholars as notables and members of rich mercantile families. Saad, however, limited himself to Timbuktu's seventeenth-century and eighteenth century *tarīkhs* especially the two seventeenth-century *tarīkhs* in addition to nineteenth century political correspondences. He outright dismissed Timbuktu's *fatwā* and other Arabic materials as sources for Timbuktu's history as an authentic Black African city.²³

But Saad is wrong on two counts. The *tarīkhs* are part of the very so-called "Arabic sources and Islamic traditions" produced by the same intellectual-religious tradition.

Secondly, *fatwās* - and many other manuscripts such as intra '*ulamā*' letters, commercial

²² Farias, P.F. de Moraes. 2003. *Arabic medieval inscriptions from the Republic of Mali: epigraphy, chronicles and Songhay-Taureg history & intellectual innovation and reinvention of the Sahel*, in Shamil Jeppie and Souleymane Diagne (Eds), *The meanings of Timbuktu*. Cape Town: HSRC Press (2008).

²³ Saad, E.N. 1983. *Social history of Timbuktu: the role of Muslim scholars and notables, 1400-1900*. Cambridge: Cambridge University Press, pg.1

records or what Ghislaine Lydon calls a “paper economy of faith²⁴”, etc. i.e. the rest of Timbuktu’s written sources - are suitable sources for Timbuktu’s history as an “authentic” African city. As Louis Brenner, in his review of Saad’s work suggests, the reader would have been better served if the content of Timbuktu’s social tradition had been presented with its vagaries and complexities left more open to question.²⁵ That cannot be done by depending on the city’s formal *tarikhs* only. Saad’s work only marginally informs us about the mercantile dimension of Timbuktu’s patriciate as Carl Petry points out in his review.²⁶ Had Saad used the hundreds of commercial letters among Timbuktu’s Arabic sources, we would know that dimension.

Although the works of Bruce Hall²⁷, Horace Miner²⁸, Yacouba Dupuis²⁹ and Ismaël Haïdara,³⁰ treat all classes of Timbuktu’s peoples, they are not history from below nor did they use *fatwās* as a source. Their sources were oral, colonial records, ethnography and late pre-colonial commercial letters.

²⁴ Lydon, G. 2009. *On Trans-Saharan trails: Islam law, trade networks, and cross-cultural exchange in nineteenth-century Western Africa*. Cambridge: Cambridge University Press, pg. 3

²⁵ Brenner, L. 1984. Review article of Elias Saad’s social history of Timbuktu: the role of Muslim scholars and notables, 1400-1900’, *The International Journal of African Historical Studies*, 17 (3), 568

²⁶ Petry, C.F. 1985. Review article of Elias Saad’s social history of Timbuktu: the role of Muslim scholars and notables, 1400-1900’, *Canadian Journal of African Studies*, 19 (3), pg. 678

²⁷ Hall, B. Mapping the river in black and white: trajectories of race in the Niger Bend, Northern Mali. PhD Dissertation, University of Illinois at Urbana-Champaign

²⁸ Miner, H. 1965. *The Primitive City of Timbuctoo*. New York: Anchor Books

²⁹ Dupuis, Y.F. 1921. *Industries et Principales Professions des Habitants de la Région de Tombouctou*. Paris: E. Larose. This was an ethnographic study.

³⁰ Haïdara, I.D. 1999. *Les Juifs à Tombouctou: Recueil des sources écrites relatives au commerce juif à Tombouctou au XIXème siècle*. Bamako: Donniya.

The above cannot, of course, be properly understood outside the context in which African studies emerged in the 1960s. In its task to debunk Eurocentric racist stereotypes about Africa, the nationalist/Africanist narrative tended to define the African past in terms of great States. This was partly to show that Africans were capable of creating and maintaining them. The professional study of African history took shape about the same time most African countries became independent.³¹ Hence the modern state was seen as everything, even social transformation was deemed to be the outcome of the state's initiative.³² In short, the mission of African studies was to let the 'ideology of development' replace the European 'mission to civilize'.³³ As Paulo de Moraes Farias says, "the sheer irrationality of white racism generated, in return, writings that can be 'sometimes quaint, sometimes fantastic.'"³⁴

Likewise, starting from the 1960s, the modern historiography of Islam in Africa focused on kings, caliphates, *jihāds*, scholars and literary activity. Thus the scholars of the Ibadan school concentrated their efforts on the *jihād* of 'Uthmān b. Fūdī, his writings, and the Sokoto Caliphate.³⁵ Nehemia Levtzion's critical study of the *Tarīkh al-fattāsh* focused on

³¹ Isichei, E. 1973. *The Ibo people and the Europeans*. London: Faber and Faber, pg. 17

³² Mamdani, M. 1992. 'The intelligentsia, the state and social movements in Africa', in Mamadou Diouf and Mahmoud Mamdani (eds.), *Academic freedom in Africa*. Dakar: CODESRIA, pg. 253

³³ Swai, B & Temu, A. 1981. *Historians and Africanist history: a critique*. London: Zed Press, pg. 9

³⁴ Farais, P.F. de Moraes. 2003. Review article, Afrocentrism: between crosscultural grand narrative and cultural relativism, *Journal of African history*, 44, pg. 327

³⁵ Willis, J.R. 1971. 'The historiography of Islam in Africa: the last decade (1960-1970)', *African studies review*, 14 (3), pg. 405

how the Masina Caliphate manipulated the *tarīkh* for its religious-political aims.³⁶ In general, the diverse and layered history of West Africa was reduced (or elevated, so it was thought) to that of its great empires (Ghana, Mali and Songhay) and Muslim chiefs.³⁷ Even social history in Africa remains confined to a description of the lives of chiefs and their headmen, nationalist fighters and trade union leaders. The criterion for writing history of ordinary people remains elusive.³⁸ Even as far as African biography is concerned, Neville Alexander raised the question of it always reflecting the extremes of hagiography or demonization.³⁹

Writings about long-distance trade, Africans as *homo economicus*, successful entrepreneurs were meant to rebut European notions of African backwardness and victimhood.⁴⁰ In its emphasis on long-distance trade between great pre-colonial African states, this perspective neglected local production, and as Elizabeth Isichei says, “At the heart of all African history is the productive base – agriculture, pastoralism, crafts, mineral extraction, fishing, hunting, and gathering.”⁴¹ Production involves the ordinary

³⁶ Levtzion, N. 1973. ‘A seventeenth-century chronicle by ibn al-Mukhtār: a critical study of the *Tarikh al-fattāsh*’, *Bulletin of the School of Oriental and African Studies*, 36, 571-593, pg. 573

³⁷ *Muslims and chiefs in West Africa* (Oxford: Clarendon Press, 1968) & *Ancient Ghana and Mali* (London: Methuen & Co Ltd, 1973)

³⁸ Swai & Temu, *Historians and Africanist history*, pp. 5-6

³⁹ Quoted in, Cheryl-Ann Michael. 2004. Introduction: African biography: hagiography or demonization, *Social Dynamics*, 30 (1), pg. 1

⁴⁰ Hopkins, A.G. 1973. *An economic history of West Africa*. London: Gray, R & Birmingham (eds.), 1970. *Pre-colonial African trade*. London:

⁴¹ Isichei, *A history of African societies*, 4

people who produce the goods for long-distance trade, their experiences and contributions.

The Marxist perspective of African historiography paid attention to both production and distribution. However, it focused on structures rather than individuals and their experiences. Secondly, it paid scant attention to peasants in the making of Africa's history. In general, all approaches of African studies paid relatively little attention to the organization of work in structuring the rhythm of peasants' daily lives.⁴²

Not only were Africans robbed by colonial rule of initiative, Capitalism continued to stifle Africa's economy as Walter Rodney wrote.⁴³ Rodney was, of course, correct.

Rodney wrote *How Europe underdeveloped Africa*, "to reach our own people without having it mediated by the bourgeois institutions of learning."⁴⁴ However, in that he and many other proponents of Dependency Theory ignored African initiatives, adaptations and choice.⁴⁵ John Tosh's *Clan leaders and colonial chiefs in Lango* ameliorated modern historians' neglect of African stateless societies in Africa. However, Tosh's was political

⁴² Isaacman, A. 1993. Peasants and rural social protest in Africa, in Cooper, F, Isaacman, A.F, *et al* (eds.), 'Confronting historical paradigms: peasants, labor, and the capitalist world system in Africa and Latin America. Madison: The University of Wisconsin Press

⁴³ Rodney, W. 1974. *How Europe underdeveloped Africa*. Washington: Howard University Press, pp. 13-25

⁴⁴ Rodney, W. 1990. *Walter Rodney speaks: the making of an African intellectual*. Trenton, New Jersey: Africa World Press, Inc, pg. 26

⁴⁵ Cooper, F. 1993. Africa and the world economy, in Cooper, F, Isaacman, A.F, *et al* (eds.), 'Confronting historical paradigms: peasants, labor, and the capitalist world system in Africa and Latin America. Madison: The University of Wisconsin Press, 84-85

history; a preoccupation with the politics of chiefship during the colonial period, based on colonial documents and the oral traditions of the Langi of their chiefs.⁴⁶

Moreover, modern African – and other non-European – historians had to contend with a historiography that served European colonial interests. Michel de Certeau saw in historiography (that is, “history” and “writing”) a paradox - almost an oxymoron, of a relation between the real and discourse, the relation that discourse keeps with the real that is forever its object.⁴⁷ Colonial rule used historiography to *re-present* Indian history writing.⁴⁸ In Africa it was worse; Africa was not only denied history, but even religion. Africa’s religion said Hegel is what Europe calls magic.⁴⁹ History happened to Africa, not in Africa, as Hugh-Trevor Roper asserted. With all this it is quite understandable that those who wrote about Africa’s history in the early days of independence paid no attention to the life experiences and testimonies of ordinary men and women.

Thus for Hunwick and the others Timbuktu’s history was high political and intellectual history. *I realized that my attempt was completely novel; it appeared to be virgin territory. Though I was the first for Timbuktu, I was comforted by the fact that I was not*

⁴⁶ Tosh, J. 1978. *Clan leaders and colonial chiefs in Lango: the political history of an East African stateless society c. 1800-1939*. Oxford: Clarendon Press, pg. 4

⁴⁷ De Certeau, M. 1988. *The writing of history*, trans. Tom Conley. New York: Columbia University Press, xxvii

⁴⁸ Guha, R. 2002. *History at the limit of world-history*. New York: Columbia University Press, pp. 2 - 16

⁴⁹ Hart, W.D. 2002. *Slavoj Žižek and the imperial/colonial model of religion*. Duke University Press, pg. 553

the first to use fatwās as a historical source for Africa’s social history. David Powers⁵⁰ and Narimān ‘Abd al-Karīm⁵¹ have shown, *long before “my discovery”*, that *fatwās* are a historical source. They worked on the *Kitāb al-Mi’yār*, a multiple volume work of *fatwās* compiled by the fifteenth century North African scholar Aḥmad al-Wansharīsī (d. 1515).⁵²

Secondly, I had at my disposal literature of Africa’s history from below. Since the early 1980s, many historians, both African and non-African, began to focus on the history of ordinary men and women in Africa, using oral sources and/or documents from colonial and government archives.

Thus, Charles van Onselen wrote numerous works on ordinary people of the Witwatersrand, most notably about the black sharecropper Kas Maine. Through van Onselen’s writing, the world could know, despite officialdom owning the land, that Kas, who “if one went by the official record alone, never was”, owned the seed, ploughshare, span of oxen, and just about everything else.⁵³ And so there is the story of the aggrieved

⁵⁰ Powers, D. 1990. ‘A court case from fourteenth-century North Africa’, *Journal of the American oriental society*, 110 (2), 229-254

⁵¹ ‘Abd al-Karīm, N. 2008. *Al-khul’ bayna fiqh wa tarikh*. Cairo: Al-Ru’yah

⁵² The *fatwās* in the *Kitāb al-Mi’yār al-mu’rib wa al-jām’ al-mughrib ‘an fatāwā ahl Ifriqiyyah wa al Andalus, wa al Maghrib* represent nearly half a millennium of Māliki legal activity, including the *fatwās* of its compiler Aḥmad bin Yahya al-Wansharīsī.

⁵³ Van Onselen, C. 1996. *The seed is mine: the life of Kas Maine, a South African sharecropper, 1894-1985*. Cape Town: David Phillips; see, pp. 3-11

migrant labourer, Nongoloza Mathebulu.⁵⁴ In *Women of Phokeng*, Belinda Bozzoli studied the forms of consciousness a group of black South African women express in their own interpretations of their histories.⁵⁵ Susan Newton-King's *Sodomy, race and respectability in Stellenbosch*⁵⁶, Ladeg White's *Magomero*⁵⁷, and T.C. McCaskie *Asante identities* are other examples.⁵⁸ Chimamanda Adichie's *Half of a yellow sun*, a historical novel of the Biafra war of secession is a wonderful epic of love, infidelity, family, and how uneducated Nigerians had to negotiate with modernity.⁵⁹ In *In an antique land*, Amitav Gosh depended on documents from the Cairo Geniza⁶⁰ to narrate the tale of an Indian slave who represented his Jewish master's business interests in Egypt during the tenth century CE.⁶¹

⁵⁴ Van Onselen, C. 1984. *The small matter of a horse: the life of 'Nongoloza Mathebulu, 1867-1948*. Johannesburg: Ravan Press

⁵⁵ Bozzoli, B. 1991. *Women of Phokeng: consciousness, life strategy, and migrancy in South Africa, 1900-1983*. Johannesburg: Ravan Press, pp 1 -15

⁵⁶ Newton-King, S. 2007. Sodomy, race and respectability in Stellenbosch and Drakenstein, 1689-1762: the story of a family, loosely-defined, in Nigel Worden (Ed), in *'Contingent lives: social identity and material culture in the VOC world*. Pretoria: Royal Netherlands Embassy, pp. 305 - 342

⁵⁷ White, L. 1987. *Magomero: portrait of an African village*. New York: Cambridge University Press

⁵⁸ McCaskie, T.W. 2000. *Asante identities: history and modernity in an African village, 1850-1950*. London: Edinburgh University Press for the International African Institute

⁵⁹ Adichie, C.N. 2007. *Half of a yellow sun*. London: Harper Perennial

⁶⁰ For a review of the Cairo Geniza, see Friedman, M.A. 1986. 'A Mediterranean society: daily life. The Jewish communities of the Arab world as portrayed in the documents of the Cairo Geniza', *Journal of the American Oriental Society*, 106(4), 815-819

⁶¹ Gosh, A. 1994. *In an antique land: history in the guise of a traveller's tale*. New York: Vintage Books

History from below (in other terms, micro history, Subaltern Studies⁶², popular history, *mentalité*, social history) was, of course, part of a world trend in historiography at the time. In the words of Carlo Ginzburg, writing in 1980, historians are more and more turning toward micro history, away from the history of the “great deeds of kings”, which their predecessors in the past were only interested in.⁶³ Already in 1967, Werner Conze spoke of social history’s increasing popularity.⁶⁴ The historiographical frontier”, said Richard Cobb, “is not to be found in statistical tables, economic models ... but in the lost mental world of obscure person like [the crafty peasant] Marie Besnard.⁶⁵ Emmanuel Ladurie’s *Montaillou* is a brilliant narration of the everyday lives and *mentalité* of Cathar heretics and Catholic believer in early fourteenth-century Avignon.⁶⁶ *Histoire de mentalité* allows us to see how ordinary people contribute to the history of their society, whether they are aware of that or not.⁶⁷ “Historians”, wrote Stern, “could no longer assume that a community of scholars defined the pertinent more or less as the history of

⁶² See, for example, Dipesh Chakrabarty’s *Habitations of modernity: essays in the wake of Subaltern Studies*. (The University of Chicago Press, 2002)

⁶³ Ginzburg, C. 1980. *The cheese and the worms: the cosmos of a sixteenth century miller*, trans. J. Tedeschi, J and A. Baltimore: The Johns Hopkins University Press, ix

⁶⁴ Conze, W. 1967. ‘Social history’, trans. Charles Wright, *Journal of social history*, 1 (1), pg. 7

⁶⁵ Quoted in, Darnton, R. 1990. *The kiss of Lamourette: reflections in cultural history*. Ontario: Penguin Books, pg. 195, 253-254; also see, Darnton, R. 1984. *The great cat massacre and other episodes in French cultural history*. London: Penguin Books, pg. 5

⁶⁶ Ladurie, E. Le Roy. 1978. *Montaillou: Cathars and Catholics in a French village 1294-1324*, trans. Barbara Bray. New York: Penguin Books.

⁶⁷ Vovelle, M. 1990. *Ideologies & mentalities*. Trans. Eamon O’ Flaherty. Cambridge: Polity Press. pp 6-12

the powerful and the influential . . . if one redirected the focus of inquiry to commoners rather than elites, everyday lives rather than high politics . . . and the like”.⁶⁸

This kind of historiography has its moments of flow and ebb. Thus after the collapse of communist regimes in Eastern Europe and the impact of the conservative policies of the Reagan and Thatcher eras historians were redirecting their attention to ruling elites and the independent influence of ideas.⁶⁹ Despite the advances made the histories of women and family are still in their infancy, as Shula Marks points out.⁷⁰

My work is archival and philological; I did no ethnographical fieldwork, participant observation, or life-history interviews.⁷¹ In other words, my attempt to contribute to Timbuktu's history from below is based entirely on written documents. It is documents, in the words of Langlois and Seignobos that hold the traces of past events.⁷² Langlois and Seignobos wrote, of course, at the end of the nineteenth century as part of a classical historical tradition that did not consider oral traditions and testimonies worthy as a historical source anywhere. My reference to Langlois and Seignobos should not be

⁶⁸ Stern, S.J. 1993. Africa, Latin America, and the splintering of historical knowledge: from fragmentation to reverberation, in Cooper, F, Isaacman, A.F, *et al* (Eds), in *Confronting historical paradigms: peasants, labor, and the capitalist world system in Africa and Latin America*. Madison: The University of Wisconsin Press, pg. 7

⁶⁹ Beik, W. 'The dilemma of popular history', *Past and Present*, 141 (1993), pg. 207

⁷⁰ Marks, S. 1986. The historiography of South Africa, in Jewsiewicki, B and Newbury, D (eds.), *African historiographies: what history for which Africa*. New Delhi: Sage Publications, pg. 175

⁷¹ Ethnographic fieldwork and oral testimonies would, undoubtedly, have enriched this study.

⁷² Langlois, CH. & Seignobos, CH. 1898. *Introduction to the Study of History*, trans. G.G. Berry. London: Duckworth & Co.

interpreted as an infatuation with the old understanding of what history is and what its sources are.

Rather, it is a statement that Africa's history (high political, intellectual and from below) can be written using written sources produced by Africans since far back in time and long before the arrival of Europeans and their literacy. For example, it was with the help of several pre-colonial West African manuscripts that modern scholars could study the chronology of events of the nineteenth-century Islamic state of Hamdullahi.⁷³ Tens of these manuscripts are found in Timbuktu's manuscript archives. The type of sources that I use sets me apart from van Onselen, Bozzoli, and the others who write on the histories of Africa's ordinary men and women. They use oral testimonies and/or colonial documents, I use Africa's local Islamic written heritage that survived solidly into the colonial and post-colonial eras.

Thus, in this study I am thoroughly at home with texts, legal and other: fatwās, intra-'ulamā' correspondence, biographical dictionaries, and twentieth century tarīkhs, in addition to colonial records. However, my being at home with texts is not the "at home with texts of Orientalists" Ernest Gellner speaks of; to be sure I was not at home in villages as anthropologists doing participant observation are.⁷⁴ I, however, did some

⁷³ Brown, W.A. 1968. 'A chronology for the Caliphate of Hamdullahi (Masina)', *Cahiers d'Études Africaines*, pg. 428

⁷⁴ Gellner, E. 1981. *Muslim society*: Cambridge studies in social anthropology. Cambridge: Cambridge University Press, pg. 99

'village' work in the form of interviews for points of clarification regarding the fatwās that I use in this study and their authors.

I interviewed two people: a traditional scholar and the son of a *muftī* (who features in one of the chapters of this study), not to do *life-histories*⁷⁵, but for philological issues to do with *fatwās* and matters related to *muftīs*. Thus, with the scholar, I read the *fatwās*, I use in this thesis, to ask about the meaning of certain words, idioms, nomenclature (Chapter Three) and phrases and related information such as historical context. I interviewed the son of the *muftī* to discuss an extract from a local twentieth-century *tarīkh* that talks about his father's alleged slave origins. He showed me a few letters to and by his father and a *fatwā*.

However, I got more than I bargained for. Let me explain. During our discussions, both my interviewees supplied me with information I had no intention of asking about. While reading a fatwā on a paternity dispute (Chapter Four), the scholar informed me that the child is still alive and lives in the capital city, Bamako. On of his own accord, he told me

⁷⁵ During the early stages of my research, I interviewed six lay people. I do not use any of their testimonies in this study. I mention it, however, because of the discrepancy between the oral, i.e. the interviews and the written, i.e. *fatwās* that struck me. The written is frank and open while the oral is closed and cautious. Whereas Timbuktu's written sources speak clearly of bigamy, sex, paternity disputes, and intra-'*ulamā*' squabbles, etc. its oral testimonies shy away from and even deny them. When I showed the interviewees a *fatwā* about a woman with two husbands, they responded with denial, surprise, flat embarrassment, and indifference. My persistent reference to a manuscript containing explicit advice on sexual intimacy was downplayed with the explanation that everything written is not necessarily indicative of its actual occurrence. The responses of informants are, of course, interpretations mediated by history and culture see, Rabinow, P.1977. *Reflections on fieldwork in Morocco*. Berkeley: University of California Press, pg. 119

of an incident where one *muftī* allegedly refused to pray behind another *muftī* on the basis of colour. *I still cannot explain how it came to him telling me about the two muftīs as we were not even speaking about them. Nevertheless, this allowed me much later, to pursue material and questions that I would materialize in Chapter Five. (I would later find a written secondary source of the alleged incident later).*

While I was talking to the son of the muftī about the extract in the local twentieth-century chronicle, he, almost out of nowhere, told me about his father's marriage and controversial divorce. It turns out that the author of the chronicle, also a muftī, had a hand in his father's divorce and estrangement from his wife. Although there is a link between the two incidents (as we will see in Chapter Five), if he did not tell me about the marriage, I would not have asked, let alone known. Almost one year later, the scholar provided me with a written source (a fatwā) of the marriage and controversial divorce. This fatwā is my main source from which I weaved the story in Chapter Five.

They were not, it seems, exactly unaware of what they were doing. They wanted me to know, but not to know too much. This became clear when they refused that I record on audio the above things or digitize some of the letters and the photo of another controversial *muftī*. For the rest, they allowed me to record them and scan copies of letters. I realized that these were sensitive matters as they involved the personalities and behaviour of *muftīs* that compromised the latter's' stature as holymen I was vehemently

refused to digitize a letter that places another *mufī* in bad light.⁷⁶ What matters is that *I was able to innovatively use this 'unsolicited' information. Their 'volunteering' with information made this study richer.*

Approach and Analysis

Timbuktu's ordinary men and women had eventful lives. *As I stated above, this study aims is to tell their stories. In the words of E.H. Carr, I attempt to save their 'facts' from the limbo of unhistorical facts.⁷⁷ Or to rescue their actions from the condescension of posterity as E.P. Thompson sought to do for the poor stockinger, the Luddite cropper, and the 'obsolete' hand-loom weaver.⁷⁸ In this vain I give a voice to the stories as they appear in the written texts; without doubt historical imagination also plays a role. Let me from the outset emphasize that my aim is not to demonstrate the power of ordinary peoples.⁷⁹ I simply aim to show that fatwās are adequate and fertile sources for the social history of Timbuktu.*

⁷⁶ I deliberately use the passive and the third person in the plural.

⁷⁷ Carr, E.H. 1961. *What is history?* Harmondsworth: Penguin Books, pp. 3 – 12;

⁷⁸ Thompson, E.P. 1968. *The making of the English working class*, Hamondsworth: Penguin, pg. 13

⁷⁹ Ordinary persons exercise power all the time as Michel de Certeau shows. De Certeau examined commonplace activities over which institutional organization apparently have control, but suggested that control was in fact ignored or bypassed. People walk their own way through the grid of city streets zigzagging and prefer streets with certain names. They read in ways that escape social hierarchy, in all kinds of places from libraries to toilets, with their own rhythms and interpretations. They think, daydream and make gestures or sounds, Davis, N.Z. 2008. 'The Quest of Michel de Certeau', *The New York Review* (May 15, 2008), pp. 57-58. The medieval Muslim jurist al-Qarāfi (d. 1286) warns that the lay person is a potential predicament for the learned powerful *mufī* causing him consternation. When asking a question, the layperson is not necessarily seeking an answer to a legal situation, but to appease his/her conscience or to justify something s/he wants to embark upon. The *mufī*, al-Qarāfi advised, must detect the layperson's intention when they ask questions. Jackson, S. 1992. 'The Second Education of the *Mufī*: Notes on Shihāb al-Dīn al-Qarāfi's Tips to the Jurisconsult', *Muslim World*, LXXXII, 3-4, pp. 201; 208-209

Because the laity, or humble folk, as Shahid Amin calls them, are more adept at producing goods and services – even ideas, but rarely documents, their speech and deeds have to be wrenched from police dockets, chain letters,⁸⁰ criminal records,⁸¹ and *fatwās*. I wrench the history of Timbuktu’s ordinary folk from *fatwās and other written documents to supplement the fatwās*.⁸² *I let the texts speak and I listen in order to convey, as faithful as possible.*

As an explanatory model, I look at the works of Natalie Zemon Davis in general: *Fiction in the archives*, *Women on the margins* and *The return of Martin Guerre*, among others. The latter (*The return of Martin Guerre*) is, however, my main “guide” as it were. My reasons and motives for this will become clear in the body of this dissertation, specifically Chapter Three. I also look at Michelle de Certeau’s *The possession at Loudun*. Zemon-Davis and de Certeau weaved their stories from legal documents and letters. I attempt the same with *fatwās* as legal documents supplemented by letters between scholars and from lay people to scholars.

As far as approach is concerned, for both authors, more so Zemon-Davis, imagination and invention were fundamental to them. However, in that they were guided by the sources. As Zemon-Davis says, “What I offer you here is in part my invention, but held

⁸⁰ See, Soares, B.F. 2003. ‘A warning about imminent calamity in colonial French West Africa: the chain letter as historical source’, in *Sudanic Africa* 14, 103-116

⁸¹ See, Viljoen, R. 2001. ‘Aboriginal Khoikhoi servants and their masters in colonial Swellendam, South Africa, 1745-1795’, in *Agricultural History* 75, 1, pg. 28

⁸² Amin, *Alternative histories*, 27 - 28

tightly in check by the voices of the past.”⁸³ De Certeau imagined that the brutal public exorcism in 1632 of the ‘possessed’ nuns of the Ursuline convent at Loudun allowed them to safely declare to the world what they secretly were, without fear of stigmatization or punishment.⁸⁴ This experience and acting of the nuns are what de Certeau, elsewhere, calls the practice of everyday life of ordinary people; the ordinary person that murmurs the voice of all society and comes in all ages before texts.⁸⁵

As far as sources are concerned, Zemon-Davis used the *Arrest Memorable* of Jean de Coras, one of the judges of the trial of the false Martin Guerre as her major source. She also used the short *Historia* of one Guillaume Le Sueur. – to come to know the world of peasant sentiment and aspiration. In as far as Coras’s book has features of a legal text, *fatwās* as legal texts resemble it. De Certeau used the letters of a mystic and the autobiography of the prioress (who was also possessed) of the Ursuline convent at Loudun to weave his story. In one of the chapters I use an investigation or fact-finding mission conducted by a scholar.

I too offer my “invention” held tightly in check by the voices as the *fatwās* preserved them. From the question posed to the muftī in the *fatwā* and the muftī’s answer, I weave stories by asking questions and venturing answers, whether as possibilities or

⁸³ Davis, N.Z. 1983. *The return of Martin Guerre*. Massachusetts: Harvard University Press, pg. 3

⁸⁴ Davis, N.Z. 2008. ‘The quest of Michel de Certeau’, *The New York Review* (May 15, 2008), pp. 57-58

⁸⁵ See, De Certeau, M. 1984. *The practice of everyday life*, trans. F. S. Rendall. Berkley: University of California Press, v

probabilities. I however realized that *fatwās* cannot do for me what the Arrest Memorable did for Natalie Zemon-Davis. That for one simple reason: as a source *fatwās* come nowhere near the Arrest Memorable as far as detail is concerned. Chapter Two addresses this problematique in *fatwās*.

Wives are the main actors of the stories told in this thesis, although husbands and male lovers too feature. Each story is woven around a wife. They were, in fact, the *raison d'être*, or at least a part of it, for the issuing of the *fatwās*. They said, demanded, uttered or did something that caught, or were brought to, the attention of *muftīs* whence from they proceeded to issue their *fatwās*. For this reason, wives are present in all the chapters of this thesis. *Muftīs* play a seminal role, both as religious luminaries and everyday individuals in this study. Their *fatwās* and correspondences show that they were not simply legal commentators and religious luminaries. They were fully involved in the hustle and bustle of everyday life with its trivialities, banalities, and even superstitions; not merely as spectators and guides but as actors too. They explained, justified, manipulated, exonerated, and made excuses, all as part of what they saw as their religious duty to guide the ordinary Muslim men and women. Natalie Zemon-Davis marveled at how the authors of royal letters of pardon and remission shaped the events of a crime into a story.⁸⁶ We read *fatwās* on domestic dispute to see whether *muftīs*, unwittingly or unwittingly, shaped the events of a marriage or divorce into stories.

⁸⁶ Davis, N.Z. 1987. *Fiction in the archives: pardon tales and their tellers in sixteenth-century France*. Stanford: Stanford University Press, pg. 2

Chapter Outline

Chapter One is about historical context. It looks at the impact of the *jihāds* and colonial wars, the Islamic states and colonial states of the nineteenth century on Timbuktu and the Niger Bend. We focus on how Timbuktu's Muslim population responded to the colonial native courts established in 1905 with respect to their intimate domestic disputes. We also wonder whether colonial rule in general and its legal institutions such as the native courts had introduced new social behaviours such as women marrying two men.

Chapter Two introduces *fatwās* as legal documents and an activity of Islamic law. However, it shows that *fatwās* are more than just about law. They are equally about society and can serve as a historical source for social practice. The chapter exhibits six *fatwās* from Timbuktu's archives to show that *fatwās* can tell stories. They tell stories about themselves and about other things.

Chapters Three, Four and Five are the story-telling part of the thesis, i.e. the stories I make them tell. The three *fatwās* of chapter three tell a story of sex, love and lies in Timbuktu in 1946 that involves a wife (the main actor) and her two husbands. Wives entering into subsequent marriages although they were not divorced from their current husbands seem to have been a phenomenon during the 1940s in Timbuktu, at least in terms of the *fatwā* sources. Did World War Two and a decline in Timbuktu's local economy force husbands to seek work elsewhere and stay away for long periods, which in turn impacted on wives to marry available men? Or did these women have a different understanding of marriage as opposed to the conventional Islamic notion of marriage?

Chapter Four treats the question of paternity disputes in Timbuktu during the colonial era. In terms of the number of *fatwās* most paternity disputes in the region transpired during the 1940s. The chapter tells the story of a scholar in Timbuktu who does not acknowledge paternity of a son whose mother he secretly married. The pieces were picked up some years after his demise by this boy. He, however, had to contend against the scholar's established son. Their wrangle takes them to two *muftīs*, of whom one issued a *fatwā* and the other conducted an inquiry that he recorded in a letter.

Chapter Five is about the '*ulamā*' and *muftīs* of Timbuktu not as intellectual luminaries and holymen as Timbuktu's formal chronicles and bibliographical dictionaries present them, but in their everyday parochial behavior. It shows the sarcasm and mocking attitudes they displayed against one another often using their *fatwās* as avenues for such attacks. More specifically it looks at the life of the controversial twentieth-century *muftī* Muḥammad Maḥmoud ould Cheikh and his troubled relationship with another *muftī*, which has been reduced to race. We argue for a more nuanced reading of the two men's complex relationship. Although it challenges the allegation that ould Cheikh was racist against the other *muftī* and spends some time on his racialized political discourse, the chapter is not, however, about race or racism.

Chapter One

Law in colonial Timbuktu: between muftīs and native courts

I knew neither *la Marie* nor the tribunal. I never saw anyone from my village use the tribunal.¹

Introduction

Since the building of Djingere-Ber, the grand mosque in 1325, Timbuktu gradually became one of the centres of knowledge in West Africa alongside the older Jenne and Biru (Walata). By 1501, it eclipsed both Jenne and Walata to become the centre of Islamic knowledge and the symbol of Islam's intellectual tradition in West Africa. Thus, Islamic law had been taught and practiced in the city for almost six centuries. Throughout these six centuries, when the city's men and women wanted authoritative legal opinions and binding judgements, they referred their disputes for mediation and/or litigation to their *muftīs* and *qāḍīs* who resolved their disputes on the basis of Islamic law.² The French were well aware of the legal and educational role of Islamic law and Muslim scholars throughout West Africa, more so in Timbuktu.

Between 1905 and 1907, colonial native courts, established in accordance with the 1903 legislation that created a new legal system for France's West African territories, were up and running in Timbuktu, as elsewhere in French West Africa. Colonial court

¹ Testimony of a woman in the Malian city of Kayes cited in Shereikis, R. 2003. 'Customized courts: French colonial legal institutions in Kayes, French Soudan, c. 1880 – c. 1913'. PhD dissertation, North Western University, Evanston, Illinois.

² See Chapter Two for definitions of *iftā'*, *muftī*, *qāḍī*, etc.

records show that the native courts heard intimate domestic disputes from the outset in addition to criminal, commercial and other civil disputes.

In this chapter we are interested in how Timbuktu's Muslim population – which appears to have been almost wholly Muslim - responded to the newly established colonial native courts. With Timbuktu's population, we mean those inhabitants (sedentary and non-sedentary/visitors) who had already lived for generations in the city or had migrated there prior to the establishment of French colonial rule in Timbuktu. In other words, their presence in Timbuktu was not as a result of French colonial rule as would be the case of those Africans from other parts of the French Soudan and West Africa who settled in Timbuktu after the establishment of colonial rule and as a direct result thereof. Many of them came to Timbuktu to flee from former masters after the French abolished slavery; others came as soldiers in the French army. They too appear to have been mostly Muslim or most likely converted to Islam once in Timbuktu or due to other factors.³

Our focus, however, is the domestic sphere. Criminal matters, commercial and non-domestic civil disputes were, in any case, to be heard exclusively by the native courts - although colonial-era *fatwās* show that *mufītīs* did deal with civil and commercial

³ For example, an unintended consequence of colonial rule in French West Africa was the Islamization of large parts of it, see Lunay, R & Soares, B.F. 1999. 'The formation of an 'Islamic sphere' in French colonial West Africa', *Economy and society*, 28 (4), pg. 497. Also, the French colonial administration employed Islamic law and Muslim judges as a stepping stone in its *mission civilisatrice*. Islamic law and Muslim judges played a significant role in native courts even in areas where Muslims were the minority or non-existent; see, O'Brien, D.C. 1967. 'Towards an Islamic policy in French West Africa, 1854-1914', *Journal of African history*, viii (2), pp. 304-305. Colonial administrators requested copies of Muslim legal compendia; Roberts, R. 2005. *Litigants and households: African disputes and colonial courts in the French Soudan 1895 – 1912*. Portsmouth: Heinemann, 88.

disputes. How did the Muslim population receive the native courts? Did they continue to refer their domestic – and for that matter, non-domestic civil and commercial - disputes to their traditional Muslim scholars, as they used to, for almost six centuries? Or did they see in the native courts an alternative avenue for justice? Colonial records show that, elsewhere in French West Africa, people, especially wives, saw in the courts the opportunity to traverse new landscapes of power. In other words, what did the native courts mean for Timbuktu's Islamic legal tradition especially, as far as domestic disputes were concerned? Did they render Timbuktu's existing Islamic legal institutions redundant or not?

Beyond how Timbuktu's Muslim population responded to the native courts this chapter is also concerned with the actual intimate domestic disputes the colonial native courts heard. This concern is informed by the similarity of the domestic disputes the native courts heard and the intimate domestic quarrels we read of in colonial-era *fatwās*. Because the domestic disputes heard by the native courts are older than the domestic disputes the *fatwās* addressed, it leads us to wonder whether this is indicative of new social behaviour and practices in Timbuktu as a result of the French occupation. The domestic disputes heard by the native courts, which we look at in this chapter, transpired between 1907 and 1959. In terms of the available colonial records found in Mali's colonial archives, the period 1907 to 1912 yields the overwhelming number of domestic disputes heard by the native courts. The *fatwās* we look at in Chapters Two, Three, Four and Five are of domestic quarrels that transpired mostly in the 1940s, but also earlier during the colonial era.

That the type of social behaviours, we see in both colonial court records and colonial-era *fatwās* are peculiar to the colonial period is at this stage still an assumption. In other words, the possibility that these social behaviours and practices did not exist in Timbuktu prior to colonialism is not based on conclusive evidence, archival or oral. I have, however, yet to come across pre-colonial *fatwās* from Timbuktu and the broader region that dealt with the types of social behaviours Timbuktu's 1940s *fatwās* dealt with, certainly in terms of numbers. I think therefore a case can be made for there being very few such *fatwās* compared to that of the colonial era. However, my claim and observation remain tentative. If colonial rule did not create these social behaviours in Timbuktu it arguably brought them to the fore and contributed to their proliferation.

We begin, however, with a description of Timbuktu during the eighteenth and nineteenth centuries in the lead-up to the French conquest of 1894 and the establishment of the native courts in 1905. In the hundred years that preceded the French conquest, Timbuktu underwent many changes. The eighteenth-century was, for Timbuktu and its surrounding world, an epoch of chaos and disorder. The nineteenth century in contrast, notwithstanding the many *jihāds* and European colonial conquests it witnessed, was one of greater stability and order.

Eighteenth-century Timbuktu

By the eighteenth-century Timbuktu had slipped into disorder due to the absence of an effective government. The city was, to say the least, a difficult place to be in throughout the eighteenth-century; at times a state of semi-anarchy reigned. *An*

account of the deaths and [tragic] events that transpired in Timbuktu and Jenne between 1748 and 1800", the title of an eighteenth-century Timbuktu *tarīkh* bespeaks a dark, almost anarchic reality.⁴ True to its title, the chronicle is a pessimistic repository, an ominous sepulchre of death and horrific events. Death, more unnatural than natural, the mainstay of the chronicle pervades it from beginning to end.

One is immediately struck by the grotesquely violent deaths of political and military elites, more often than not, as a result of treachery and assassinations. The very first sentence of the chronicle lists the cruel death of *al-Kāhīyah*⁵ Anbār by starving on 16 January 1747.⁶ Except for the natural deaths of the '*ulamā*' (religious scholars) and some notables including women, one may be excused for thinking that death was only violent and its mention in the chronicle only a matter of statistics. Except for the pilgrimages to the *ḥājj* the *tarīkh* mentions and the reverence with which it treats the '*ulamā*': their piety, status and years of service as *imāms* and *qāḍīs*, the chronicle is one of almost total doom and gloom. Even the deaths of the scholars it mourns are far from being conventional obituaries.

Other than death and dying, security, stability and prosperity all but eluded the city and the broader region. Internecine warfare, disease, famine, and plunder capture Timbuktu's eighteenth-century milieu. For example, in 1703/4, 1711 to 1716, 1738

⁴ Maulāy al-Qāsim b. Maulāy Sulaymān, *Dhikr al-wafayāt wa al-ḥawādīth allati jarat fī Timbuktu wa Jenne min 1748 - 1800*, IHERI-AB; ms 3315, fl. 1 -56. Michel Abitbol has translated the ms into French; see below.

⁵ A *kāhīyah* was an officer of the third rank in the Arma military and political hierarchy. Originally an Ottoman-Turkish word: a colonel of the thirty-second regiment of the Janissaries or a colonel of the local cavalry bodies. 1968. *New Redhouse Turkish-English dictionary*. Istanbul: Redhouse: Yaginevi, pg. 646

⁶ Ms 3315, fl.1

and 1741-1744 the city experienced food shortages and famine. Pestilence and epidemic plagues broke out in 1703/4, 1764-66 and 1791. From 1716 to 1719 a regime of terror ruled over the city. Following the assassination of their leader Habatīt by the Arma in 1770, the Kel-Tadmekket laid siege to Timbuktu causing the population tremendous suffering.⁷ Nature too contributed to this deplorable state when on 2 November 1755 Timbuktu felt the effect of the massive earthquake that struck Portugal.

Since the break-up of the Songhay Empire, no durable political authority had been able to establish itself in Timbuktu.⁸ This milieu of political instability saw the arbitrary and frequent removal of *pashas*⁹ from the *pashalik* almost as soon as they ascended power, sometimes after only three months. The number of *pashas* appointed and the period each *pasha* spent in office during the latter half of the eighteenth century make for staggering statistics. Michel Abitbol describes the situation,

From 1748 to 1801 twelve *pashas* were appointed in accordance to the regulations and procedures devised in the course of the previous century. However, their epoch did not confer any guarantee for stability. The election and removal of the *pasha* were carried out in an atmosphere of uncertainty and internecine fighting between different clans of the Arma who neutralized each other ... In periods when no accord was reached, Timbuktu remained without a government for months, in fact ... for over nineteen years without a *pasha* ... until in 1794 the two main [Arma] clans agreed on the choice of a *pasha* that restored the functions of the *pashalik*.¹⁰

⁷ Maulây al-Qâsim b. Maulây Sulaymân, *Dhikr al-wafayât wa 'l hawâdith allati jarat fi Timbukt wa Jenne min 1748 - 1800*, IHERI-AB, ms 3315.

⁸ Ly-Tall, M. 1989. 'Massina and the Torodbe Tukuloor Empire until 1878', in J.F. Ade Ajayi (ed.), *General history of Africa VI: Africa in the nineteenth century until the 1880s*. Berkley: University of California Press, pg. 603

⁹ Pasha, also Ottoman Turkish, was the highest rank in the Arma military and political hierarchy.

¹⁰ Abitbol, M. 1982. *Tombouctou au milieu du XVIIIème siècle d'après la chronique de Maulây al-Qâsim b. Maulây Sulaymân*. Paris: Maisonneuve et Larose, vii-viii; pg. 70

Between March 1775 and May 1794, no *pasha* was appointed, i.e. the city had no ruler. Thus of the forty six years, from 1748 to 1794, only twenty seven years witnessed official rule. With the exception of Bā Ḥaddu bin Bubakr al-Dar‘ī who was *pasha* for eight years (February 1767 to March 1775), no *pasha* lasted long. Their reigns lasted eleven, ten, five, and even two months. This reality can fairly be attributed to the Moroccan invasion of 1591. Writing almost half a century after the invasion, the chronicler ‘Abd al-Raḥmān al-Sa‘dī records,

Security gave place to danger, wealth to poverty; distress, calamities and violence replaced where once there was tranquillity. In every place and in every direction there was plunder; war spared neither life, property nor persons. Disorder was pervasive and ubiquitous to the highest degree.¹¹

The scholarly establishment

One gathers from Timbuktu’s seventeenth-century *tarīkhs* that the city was autonomous with self-government throughout the sixteenth century, free from the intervention of the Songhay rulers. The scholarly establishment saw to the running of the city. More specifically, through the office of the *qāḍī*, the ‘*ulamā*’ had “the power to loose and to bind”; the *qāḍī* was the ruler.¹² But the judgeship (*al-qadā’*) as an institution was a representative of the state authority in Gao. It evolved into a very influential post which drew its strength largely from its dual character as a

¹¹ Al-Sa‘dī ‘Abd al-Raḥmān, *Tarīkh al-Sūdān*, IHERI-AB, ms 681

¹² Maḥmūd Ka‘t bin al-Mutawakkil Ka‘t, *Tarīkh al-fattāsh*, 179 and 314. This view has not gone unchallenged. In his re-examination of the the seventeenth century *tarīkhs*, Michael Gomez argues that not only was Timbuktu not autonomous, but that Gao, the seat of the Songhay Empire exercised sufficient control over it. See, Gomez, M. 1990. ‘Timbuktu under Imperial Songhay: a reconsideration of autonomy’, *The Journal of African history*, 31 (1), pg. 5.

representative of the state authority on the one hand and as a spokesperson for the civil community of Timbuktu on the other.¹³

However, under the rule of the Moroccan conquerors, the “temporal” power of the scholars became all but non-existent.¹⁴ The former did not accord the ‘*ulamā*’ the respect and reverence they were shown by the Songhay rulers. Jūdar Pasha forced them to provide slaves for the construction of the *qaṣba*. Pasha Maḥmūd Zargūn held them responsible for an armed revolt and general forms of resistance by the people of Timbuktu against the Moroccan occupiers. On their side, the ‘*ulamā*’ were part of the resistance against the occupying Moroccans; they did not stop the people when the latter rose up in Timbuktu against the Moroccan rule. The Pasha accused them of tacit involvement.¹⁵ On 19 October 1593, he arrested many jurists, their associates and servants including the illustrious *qāḍī* ‘Umar who died in prison, before sending them into exile to Morocco.¹⁶

The Nineteenth Century: Wars and States

Notwithstanding the political instability, internecine warfare, and periodic outright chaos, of the seventeenth and eighteenth centuries, Timbuktu maintained its strategic importance. At the turn of the nineteenth century, it was still the point of departure

¹³ Abdallah, F.I. 1986-87. The role of the ‘*ulamā*’ in the resistance against the Moroccan invasion of the Sudan, *A current bibliography on African affairs*, 19 (1), 47 & Kaba, Archers, musketeers, and mosquitoes, 469-470

¹⁴ Levtzion, N. 1975. ‘North-West Africa: from the Maghrib to the fringes of the forest’, in J.D. Fage and Roland Oliver (Eds), in *The Cambridge history of Africa*, 4 vol. Cambridge: Cambridge University Press, pp. 158-159

¹⁵ See Abdallah’s paper, The role of the ‘*ulamā*’ in the resistance ... (n. 17 above).

¹⁶ *Tarīkh al-Sūdān*, IHERI-AB, ms 681

and arrival in the Middle-Niger for the Sahara-caravans carrying salt, gold, books, slaves, and other merchandise and, of course, the centre of Islamic learning in West Africa. This much, the *jihād* armies of Masina and Tokolor and the French colonial conquerors knew. It was therefore natural that the city would be high on their list of priorities, given its religious, strategic and economic significance. In short, the ravages of the seventeenth and eighteenth centuries did not cause the city to lose its appeal to both regional Muslim armies and European explorers and conquerors.

The nineteenth century, as Ade Ajayi says, was a period of rapid and sometimes contradictory changes for the whole of Africa.¹⁷ In West Africa, the changes were the result of both local developments such as the Fulbe-led *jihāds* and foreign factors such as European commercial, missionary, and military activities. But the major factor was undoubtedly war with the aim to conquer, subjugate, and establish political order and administration. Islamic ideology through continuous *jihād* and the so-called French *mission civilisatrice* are what distinguish the wars of nineteenth-century from that of the seventeenth and eighteenth centuries. The conflicts of the eighteenth century were violence for the sake of violence. The *jihāds* and colonial wars were fought by professional ideologically-inspired armies with the clear objective to establish Islamic states and colonial orders.¹⁸

¹⁷ Ajayi, *General history of Africa*, 773

¹⁸ Ly-Tall, *Massina and the Torodbe, 600-620*; also see, Robinson's, *The holy war of Umar Tall* (Oxford: Clarendon Press, 1985) and Kanya-Forstner's, *The conquest of the Western Sudan: a study in French military imperialism* (London: Cambridge University Press, 1969) for an in depth description of the wars and armies of Masina, *al-hājj* 'Umar Tall, and the French conquests and their meaning for Timbuktu.

Moreover, the nineteenth-century heralded a modicum of stability not experienced since the Moroccan invasion of 1591. To be sure, the city was not instantly nor completely rid of all its pressing problems, the Tuareg continued their raids harassing the city's sedentary population. The disease measles (*mard al-ḥaṣbā'*) caused the death of many children in 1880. In 1893/1894, the whole of Takrūr witnessed an unprecedented hike in prices, to the extent that one egg cost seven fold its usual price.¹⁹ Nevertheless, by the end of the first decade of the twentieth century, the city witnessed political stability and normal commercial practice with French rule effectively in charge.²⁰

The wars and states that concern us are the *jihāds* of Aḥmad Lobbo, *al-hājj* 'Umar Tall, the anti-*jihād jihād* of Aḥmad al-Bakkāy, and the French conquest. The states are the Masina Islamic Caliphate or *Dīna* based at Hamdallahi in the Middle Niger (1818-1862), Tokolor Islamic state (1852-1890) and the French colonial order (1894-1960). These states impacted both directly and indirectly on Timbuktu. In the case of the Masina and Tokolor Islamic states we look at the reception they were accorded by Timbuktu's notables and the nature of their political and religious authority over the city. In the case of the French colonial state, we look at the French subjugation of opposition and the establishment of its authority in the region.

It is the French colonial state that we will focus on though. Of the three, the French conquest was the final one. But more importantly, it was the only one whose rule was

¹⁹ Aḥmad bin Abī al-'Arāf al-Taknī, *Naql al-kawā'in*, IHERI-AB, ms 330

²⁰ Hall, B. Mapping the river in black and white: trajectories of race in the Niger Bend, Northern Mali. PhD Dissertation, University of Illinois at Urbana-Champaign, pp. 146-160

long enough and direct to impact on Timbuktu's legal and social life. Masina's rule of Timbuktu was short-lived (1833 to 1854) and its rule was a loose hegemony.

Although the 'Umarian State took all steps to procure the allegiance and obeisance of Timbuktu's notables, the latter refused to submit to 'Umarian authority. In general Timbuktu was hostile to the *jihāds* of the nineteenth century.²¹

The Middle-Niger Jihāds and States

The two Middle-Niger *jihāds* of 1816 and 1852 respectively are the last two in a series of Fulbe-led *jihāds* in West Africa that began at the end of the seventeenth century in Futa Jallon.²² The early success of both resulted in the establishment of the Masina and Tokolor Islamic states. Murray Last aptly describes West Africa's nineteenth-century *jihāds* and the States they created:

Too often the Muslim states of nineteenth-century West-Africa are described secularly as empires, while the warfare by which they were established is labelled *jihād*. But *jihād* should rather be considered not merely as warfare *against*, but as a struggle *for*, as a constructive reform movement and not simply as the destruction of pagan peoples. For the struggle was to continue throughout the century, whereas the period of intensive warfare was short: ... in Masina less than a year. Only in the later period, in the very different struggles of al-ḥājj 'Umar ... was warfare chronic and, by comparison with ... Masina, destructive ... *Jihād* in the post-war period was concerned rather with maintaining politically and socially the demands for which the war was fought.²³

²¹ Levtzion, N. 1987. Background to the Islamic revolutions in West Africa, in Nehemia Levtzion and John O. Voll (Eds), *Eighteenth-century renewal and reform in Islam*. New York: Syracuse University Press, pg, 34

²² Isichei, E. 1983. *West African history: A.D. 1000 to the present day*. Oxford: Oxford University Press, 36-41

²³ Last, M. 1974. 'Reform in West Africa: the *jihād* movements of the nineteenth century' in Ajayi, J.F. and Crowder, M (eds.) *History of West Africa*, 2 volumes, London: Longman Group Limited, pp. 1-3

Masina

The Masina *jihād* was conceived and led by Shaykh Aḥmad Lobbo (1775-1845), a Fulbe religious leader and teacher. Like earlier Fulbe Muslim leaders he rejected the un-Islamic practices of both pagans and nominal Muslims. In 1816 he began his preaching and calling for *jihād*. The first battles were against the non-Muslim kings of Segu and the nominally Muslim Ardo'en. In 1818 Lobbo's army scored its first success over his enemies followed by his establishment of the Masina Caliphate with its capital at Hamdallahi.

The scholars of Timbuktu welcomed Shaykh Aḥmad's victory over Jenne and Masina but were not as eager to have him extend his control to Timbuktu. The austerity and puritanical Islamisation drive of the Masina Islamic state and its leaders alienated them, more so where it stood to harm Timbuktu's commercial and political interests.²⁴ As Murray Last says, Aḥmad Lobbo and his disciples seem to have been distinguished more for their piety and zeal than for their scholarship.²⁵ For example, Masina banned the use of tobacco, while Timbuktu's jurists legalized it as it played a vital role in the commerce of the city. Interestingly, and paradoxically, of the many manuscripts on tobacco by Timbuktu's '*ulamā*', I have seen, all condemn the usage of tobacco. I have not come across any treatise or *fatwā* that defends, less so extol the

²⁴ Robinson, D. 1985. *The holy war of Umar Tall*. Oxford: Clarendon Press, pg. 81.

²⁵ Last, Reform in West Africa, 15

use or selling of tobacco. Timbuktu's scholars also rejected Masina's insistence that men and women be fully segregated.²⁶

Masina employed religious knowledge and scholars in its quest for its religious legitimacy. Shaykh Aḥmad Lobbo's name and description were inserted into the seminal *Tarīkh al-fattāsh* to fit the twelfth *amīr* (leader) of the Muslims a Prophetic tradition speaks of.²⁷ All other original copies of the *Tarīkh al-fattāsh* were reportedly destroyed. Nūḥ bin Ṭāhir, Hamdallahi's chief scholar and Aḥmad Lobbo's closest confidant, wrote his *Risālah Nūḥ ilā al-salāḥīn* to convince Muslim political leaders and 'ulamā' of North-West Africa that Aḥmad Lobbo was that twelfth *amīr*.²⁸

Shaykh Aḥmad Lobbo left the city alone as long as Sīdī Muḥammad al-Kuntī, son of the celebrated ṣūfī scholar Sīdī Al-Mukhtār al-Kuntī al-Kabīr, was alive. This was most probably on the advice of the abovementioned Nūḥ b. Ṭāhir, a disciple and student of Sīdī al-Mukhtār al-Kuntī al-Kabīr. However, very soon after the death of Sīdī Muḥammad al-Kuntī in 1826, Shaykh Aḥmad Lobbo requested Timbuktu's political and religious elite to formally recognize his sovereignty over Timbuktu. Not prepared for a military engagement against the Masina army, the Arma ruler, *al-Qā'id* 'Uthmān b. Bubakr recognized the authority of the Masina Caliphate.

²⁶ Saad, E.N. 1983. *Social history of Timbuktu: the role of Muslim scholars and notables, 1400-1900*. Cambridge: Cambridge University Press, pp. 216-217.

²⁷ Al-Bukhārī, Muḥammad bin Ismā'īl. 1988. *Ṣaḥīḥ al-Bukhārī*, trans. M.M. Khan, 2nd revised edition, 9 vols.

²⁸ Nūḥ b. Ṭāhir, *Risālah Nūḥ ilā al-salāḥīn*, Mamma Haidara Memorial Library, ms 3348

However, in September/October 1833 *al-Qā'id* 'Uthmān, supported by the Kel Tadmekket Tuareg, revoked the allegiance and at the head of a small Arma army marched against Masina. The Masina army decimated the Arma force.²⁹ Masina now extended its full control over Timbuktu. The city however, was spared direct rule through the intercession of Sīdī al-Mukhtār al-Kuntī al-Ṣaghīr (d. 1845), elder son and spiritual successor of the aforementioned Sīdī Muḥammad al-Kuntī, whose religious/spiritual authority Masina recognized and respected. He succeeded in securing autonomy for the city under Masina's loose control.³⁰

However thin Masina's dominance, Timbuktu and its surrounding world benefitted greatly from the stable regime the Masina Caliphate enforced throughout the Middle-Niger and Niger-Bend beyond Jenne in the west and Timbuktu in the east. As Bruce Hall says, "the extension of the authority of the jihadist state of Hamdallahi as far as Timbuktu and the ascendancy of their allies, the Kunta, as mediators between local Tuareg groups and Hamdallahi resulted in a period of some prosperity for the western parts of the Niger Bend".³¹ Regarding the positive impact of Masina's control of the region and Timbuktu for commerce Elias Saad notes:

The commerce of Timbuktu became a major beneficiary. At a later time it was even claimed that the city attracted so many merchants and settlers that it was restored to its previous size under Songhay. This does not seem true, but a measure of growth is certainly evidenced by Barth's observations concerning the extensiveness of storage buildings at Kabara. In the late eighteenth century that port-town had been under constant threat of depredation by

²⁹ Abitbol, *Tombouctou au milieu du XVIIIème siècle*, 69

³⁰ *Ibid*, 80 & 109

³¹ Hall, B. *Mapping the river*, 127

Tuareg, and even the Sankore quarter at Timbuktu had to be walled in one case, after being evacuated in a conflict with the Taureg.³²

Thus, commerce and security reached a status it had not enjoyed for a long time in Timbuktu. Another noticeable impact was that the '*ulamā*' again played a greater role in the running of the city's affairs, a function they had effectively been denied since the Moroccan invasion of 1591. Through almost two and a half centuries of Arma rule the '*ulamā*' had no or very little say in the administration of the city. Masina's loose control over Timbuktu allowed the '*ulamā*' that. In terms of commerce and the role of the '*ulamā*', the nineteenth century was a better era for Timbuktu.

When Aḥmad Lobbo died in March 1845 he was succeeded by his son Aḥmad (hereafter Aḥmad II), but not without a succession battle at Hamdallahi. The Tuareg from the areas surrounding Timbuktu exploited the succession crisis to get rid of *al-qāḍī* San Chirfi, Masina's appointed *qāḍī* in the city. However, after consolidating his rule, Aḥmad II sent an army at the beginning of 1846 that defeated the Taureg. This time Aḥmad al-Bakkāy, the younger brother of al-Mukhtār al-Ṣaghīr negotiated terms with Masina. Al-Bakkāy succeeded to have the Masina military garrison in Timbuktu disbanded. Peace was restored and relative calm returned to the city.

Aḥmad II's oldest son Aḥmad (hereafter Ahmad III) succeeded him on his death in 1853. Lacking the knowledge and political acumen of his father and grandfather, Aḥmad III met a lukewarm reception from Timbuktu's scholars. In 1854, Aḥmad al-

³² Saad, *Social history*, 217

Bakkāy rebuked him in a letter for his intransigent attitude towards the German traveller Heinrich Barth; Al-Bakkāy said to him,

You depose the great ... You exile the learned and surround yourself with the base. You glorify the children of sin and demean those of good character. How do you want me to submit to your rule, when those who are already under it despise it?³³

The jihād and state of al-ḥājj ‘Umar Tall

‘Umar Tall provided the same rationale, as Shaykh Aḥmad Lobbo in 1816, to launch his jihād against non-Muslims and nominal Muslims, which would ironically include the Islamic Masina Caliphate itself in 1862. After defeating Masina on 17 May 1862, ‘Umar sent a contingent to Timbuktu in June 1862 to restore its obligation to pay a share of its taxes and customs to Hamdallahi.³⁴ Timbuktu’s notables initially accepted his authority, in the understanding that it would, as Masina’s, be only a nominal authority. ‘Umar, however, wanted to establish direct rule over Timbuktu. He demanded that Timbuktu’s notables pay their formal allegiance to him at his court.³⁵ The latter promptly refused. Robinson attributes ‘Umar’s failure to create a unified state to the fact that he saw his mission as the destruction of paganism not the construction of Islamic societies.³⁶ By all standards, Timbuktu was not pagan. Acting on behalf of Timbuktu’s notables, *Qāḍī* San Chirfi drafted a *bay‘ah* in favour of Aḥmad al-Bakkāy to lead Timbuktu in a *jihād* against the ‘Umarians.³⁷

³³ Robinson, *The holy war of ‘Umar Tall*, 290

³⁴ *Ibid*, 301

³⁵ Saad, *Social history*, 218

³⁶ Robinson, D. 1990. ‘The chronicle of the succession: an important document for the ‘Umarian state’, *The journal of African history*, 31 (2), pg. 250

Aḥmad al-Bakkāy was the most suitable person to lead the people of Timbuktu in a *jihād* against ‘Umar Tall. Ever since the two men met first met in Sokoto, as guests of Muḥammad Bello in the early 1830s, their relationship was marked by animosity and mutual dislike. In an 1862 letter, al-Bakkāy reminded ‘Umar that Muḥammad Bello personally received him while he left ‘Umar to the care of griots and artisans. On this, al-Bakkāy argued, he is rightfully deserving of ‘Umar’s allegiance and not the other way around as ‘Umar now demands.³⁸

But the hostility between the two men was more than just personal. It concerned the relationship between the *Tijānīyyah* and *Qādirīyyah ṣūfī* orders in the southern Sahara. The Qadirī-Tijānī ideological ‘cold war’ as William Brown calls it.³⁹ As *Tijānīs*, the ‘Umarians increasingly threatened the spiritual leadership of the Kunta-led *Qādirīyyah ṣūfī* Brotherhood in the southern Sahara, especially after the *Tijānī* order gained adherents in the southern Sahara. Furthermore, *Tijānī* influence began to threaten Kunta political and commercial domination after almost a century of unchallenged Kunta control.⁴⁰

³⁷ Saad, *Social history*, 124.

³⁸ Robinson, *The holy war of ‘Umar Tall*, 103-105

³⁹ Brown, W.A. 1968. ‘A chronology for the Caliphate of Hamdullahi (Masina)’, *Cahiers d’Études Africaines*, pg. 430

⁴⁰ Saad, *Social history*, 218

And two, al-Bakkāy's relationship with the Bambara⁴¹ leader, 'Alī Munzo. In *Tabākiyāt al-Bakkāy* (literally, what will make al-Bakkāy to cry), al-Mukhtār bin Wadī'atullah, a scholar in the service of the 'Umar state accuses Aḥmad al-Bakkāy of,

Entering into an alliance with the enemies of God, the disbelievers and polytheists [lead by 'Alī Munzo] ... your written word to 'Alī Munzo that you will pray for a long life for him and the survival of the [Bambara] State, even though it remains one of polytheism and an enemy of God [is there for all to see].⁴²

Nevertheless, Timbuktu's inhabitants ousted 'Umar's agents from of the city in 1863 and killed 'Umar's military commander. In a coalition with the Masinanke, the kinsmen of the fallen Aḥmad III, al-Bakkāy led a combined Kunta and Tuareg force against Hamdallaye in June 1863. They laid siege to 'Umar. Although the latter escaped, he was killed on Friday, 12 February 1864.

Al-Bakkāy himself was killed within a year, in 1865. Ironically, he died in a *jihād* against *jihād*. Ironic, because when asked once in the 1830's as to why he does not wage *jihād*, al-Bakkāy replied that *jihād* leads to kingship and kingship to oppression and that their city is better off without *jihād*. This militant involvement eroded for the Kunta their special status and privilege as scholars and saints of over a century in Timbuktu and longer in the Sahara.⁴³ In the thirty years between the death of al-

⁴¹ The Bambara are a Mande people living in primarily in Mali, but also Guinea, Burkina Faso and Senegal. In Mali, they form the largest group of the population. Most of them became Muslim after *al-ḥājj* 'Umar Tall's conquest of Segou.

⁴² Al-Mukhtār bin Wadī'atullah, *Tabākiyāt al-Bakkāy*, IHERI-AB, ms , fl. 31

⁴³ Robinson, D. 2000. 'Revolutions in the Western Sudan', in N. Levtzion and R. Pouwels (eds.), *The history of Islam in Africa*. Cape Town: David Philip, pp. 142-143

Bakkāy and the arrival of the French, the Tenguereguif and Kel Antessar Tuareg largely displaced the Kunta as political players in the Western part of the Niger Bend.⁴⁴ In short, the decline of Kunta influence left the Tuareg as the only power in the Western Niger Bend. Timbuktu began to descend into lawlessness, a political vacuum and lack of security.

All these developments impacted negatively on Timbuktu and its surrounding world, as we alluded to above. The stability and commercial prosperity of the past forty years it enjoyed since the days of Masina's rule dissipated fast and the situation was somewhat reminiscent to the days of the seventeenth and eighteenth centuries. A letter by one Mīlād records the terrible ordeal he and his brother Aḥmad experienced when they arrived in Timbuktu in 1885 to sell their ivory. They were subjected to the hardships of a lawless Timbuktu under the Tuareg, whom they describe as plunderers who wrongly devour the wealth of Muslims with the help of their accomplices.⁴⁵ The path to Timbuktu was now open to the French.

The French – and Final - Conquest

Europeans have been fascinated and obsessed with Timbuktu since the mid fifteenth century, more so after the publication of Leo Africanus' *History and Description of Africa* which described the wealth and marvels of the "fabled" city.⁴⁶ According to

⁴⁴ Hall, Mapping the river, 143

⁴⁵ Unknown author, *Wathīqah fī riwāyah tarīkh Timbukt sanah 1302/1884*, IHERI-AB, ms 3429, fl. 1-2

⁴⁶ Hair, P.E.H. 1987. Review article of Elias Saad's social history of Timbuktu: the role of Muslim scholars and notables, 1400-1900', *The English Historical Review*, 102 (402), pg. 216

Hacquard, the first European who came to Timbuktu was a Frenchman Paul Imbert. However, he did not visit the city out of his own volition, but was brought to the city as a captive by Arabs in 1630 following the capture of his ship on the Atlantic. He was, then, sent to Morocco where he died without having recorded anything about his stay in Timbuktu.⁴⁷

In the nineteenth century four European travellers, Rene Caillié, Gordon Laing, Heinrich Barth, and Oskar Lenz reached Timbuktu.⁴⁸ Laing first reached the city, however, on his way out of the city he was killed in the Azawād desert. His memoirs were lost.⁴⁹ Caillié was then the first European to enter Timbuktu in 1828 where he lived for two weeks. He returned to Europe with his memoirs - the first European to do so.

Beyond the fascination with the fabled city though, the French expansion up the Senegal Valley in the 1850's and 1860's was aimed at extending their commercial network as far as Timbuktu. The idea was to establish Timbuktu as a sort of lynchpin between French possessions in North and West Africa.⁵⁰ Very soon after they

⁴⁷ Hacquard, A. 1900. *Monographie de Tombouctou*. Paris: Société des Etudes Coloniales & Maritimes, pp. 65-66

⁴⁸ Hacquard, *Monographie*, 66

⁴⁹ Al-Bāshā Yūsuf b. 'Alī Bāshā b. Muḥammad Bāshā al-Qarmanālī, *Risālah ḥawl al-Inkilizī*, IHERI-AB, ms 4078.

⁵⁰ Kanya-Forstner, A.S. 1969. *The conquest of the Western Sudan: a study in French military imperialism*. London: Cambridge University Press, pp. 26-27

established a base on the Niger River at Bamako in 1883 the French sent two missions to Timbuktu in 1885 and 1887. Both missions failed.⁵¹

On 27 December 1893, Etienne Bonnier, the military commander in the territory dispatched a column under Joseph Joffre overland from Segu to Timbuktu while he led a second column himself that approached on river barges. Bonnier entered Timbuktu as a conqueror on 10 January 1894.⁵² Five days later, Bonnier was killed in an attack by the Tenguereguif and Kel Antessar Taureg outside Timbuktu. When Joffre reached the outskirts of Timbuktu on February 1894 he first avenged Bonnier's death - in most brutal fashion, of course - then entered Timbuktu on 12 February 12, 1894.⁵³

The French resorted to all means to suppress opposition, especially of the pastoralist groups, to their rule, for only then could they secure Timbuktu. In the initial years it was essentially violence and brutality that did it for the French. In March of 1894, near Diré, French forces led by Joffre attacked a large group of Tenguereguif. They massacred one hundred and twenty of them including a number of prominent leaders, and taking almost 1300 goats, cattle and camels as booty. Because the Tuareg employed guerilla tactics to ambush and disrupt French supply lines, the French indiscriminately attacked any Tuareg group that they encountered, destroyed crops, took slaves, and burned villages and pastoral camps thought to be dependent on

⁵¹ Hall, B. Mapping the river, 127-130

⁵² Ibid, 132

⁵³ Joffre, R. 1915. 'My march to Timbuctoo', *Journal of the Royal African Society* 14 (56), 450-451. Review of Joffre's march to Timbuktu, *The Geographical Journal*, (1915), 46,4, pp. 306-307

Tuareg. The display of the severed heads of two Tuareg in the market of Tassakant in 1895 was to assure the local sedentary population that the French, not the Tuareg, were now the dominant force.⁵⁴

The building of more posts and military missions in 1895/1896 played a seminal role in bringing about the formal submission of the most important Tuareg groups active in the areas west of Timbuktu. Thus, in 1896, the newly appointed leader of the Tenguereguif, Chebboun Ag Fondogomo came in person to Timbuktu and formally acknowledged French dominance over the region. The impact of the change in seasons on pasturage and the lakes forced the leaders of Tuareg groups to the east and south of Timbuktu to follow suit and submit to French rule. Notwithstanding these submissions many pastoralist groups remained hostile to the French. Unable to attack the French directly, they raided the sedentary peoples along the river and those pastoralist groups who had submitted to the French.⁵⁵

The French realised the limits of military measures. Their next and arguably most successful tactic was co-optation. Exploiting what they perceived to be the historical enmity between Arab and Tuareg, the French sought to win over the Arabs as the Tuareg groups seemed to pose the greatest threat to their presence in the Niger Bend. In 1899 all the Kunta Arabs, with the exception of Zayn al-‘Ābidīn al-Kuntī, formally submitted to the French. Al-‘Ābidīn al-Kuntī rejected any cooperation with the

⁵⁴ Hall, *Mapping the river*, 133-134

⁵⁵ *Ibid*, 134-137

French. He had already declared a *jihād* against the French in 1894 that continued with his *jihād* well into the 1920s.⁵⁶

The Barābīsh Arabs were won over in 1900 when their newly appointed leader Maḥmūd ould Daḥmān promised to co-operate with the French and ensure the safety of the azalaī salt trade. However, their deposed leader Sīdī Muḥammad ould M’hammad challenged ould Daḥmān’s authority, disrupted the azalaī and led raids and plunder in the Azawād that often resulted in violent murders.⁵⁷ The Tuareg Iwllimmeden submitted formally in 1903, but continued their raids against the Kunta and those Tuareg who submitted to French rule, until they were finally crushed in June 1916.⁵⁸

Response of the ‘ulamā’

The ‘ulamā’ – together with the rest of Timbuktu’s notables and the general population of the region - were divided in their response to French rule. The majority accommodated, and some even welcomed, it while a minority among them rejected it completely.⁵⁹ As pointed out already, Zayn al ‘Ābidīn al-Kuntī declared *jihād* against the French and continued his raids against them, right into the 1920s while his saintly cousin and top ranking scholar, Shaykh Bāy, encouraged both Arabs and Tuareg to

⁵⁶ Ibid, 144-145

⁵⁷ Abū al-Khayr bin al-Ḥill, *Tarīkh Arawān wa Taoudeni*, IHERI-AB, ms 3462, fl. 1-8 & Muḥammad Maḥmūd ould Cheikh, *Kitāb al-Turjumān*, IHERI-AB, ms 762, fl. 65-70.

⁵⁸ Hall, Mapping the river, 148-151

⁵⁹ The disagreement between the scholars of Timbuktu vis-à-vis the French and their rule gave rise to *fatwās* and treatises in favour and opposing *jihād* colonial rule in Timbuktu, for example, mss 5286 and 5678 in the IHERI-AB collection and mss 602 and 3747 in the Mamma Haïdara Library.

avoid conflict with the French.⁶⁰ Both were descendants of the great Sīdī al-Mukhtār al-Kuntī. A treatise by an accommodationist scholar approves a truce and commercial transactions with the Christians, i.e. the French, especially since they overpowered the Muslims.⁶¹

Those who welcomed French rule cited the peace, stability, and order the French brought to the region as articulated by this *mufīī* from a notable family:

Before the coming of the French ... the region was for many centuries in a state of complete ignorance: harshness, mutual hate between tribes, military raids, infighting, and enslavement of free people. There were no legitimate government, rule of law, or any restraining external factor to deter the oppressor from committing excesses in addition to the proliferation of disease, shortage of skilled doctors, lack of transport between regions, scarce economic resources/materials, and the non-existence of security for life and religion, among both sedentary communities and the nomads. Until God brought France; she put a stop to plundering, infighting and the enslavement of free people. She repaired the roads, constructed bridges, built and fixed schools and paid attention to the cultural and material growth of the country. Read, the ancient history of the [Arab] West, Ifriqiyah (Tunisia) and the Soudan i.e. Black Africa to ascertain the condition we were in before the French arrived. Everything was viler, worse and more harmful to life, religion and wealth compared to today in terms of strength and security under France.⁶²

This is clearly an exaggeration of the so-called “benefits” of French colonial rule.

Nevertheless, many scholars and lay people agreed that French rule did bring security

⁶⁰ Hunwick, J. 2003. *Arabic literature of Africa: the writings of Western Sudanic Africa*, vol. 4. Leiden: Brill, pg. 68

⁶¹ Muḥammad bin Ḥayy bin Mūsā, *Maktūb li Maḥmūd bin Muḥammad al-Ṭāhir al-Sayyid ‘Ālī fi muḥādanah al-Naṣārā ‘inda mā takūn lahum al-ghalabah wa al-mu‘āmalah ma’a hum*, IHERI-AB, ms 3143 (2093)

⁶² Interview Radio Tunisia did with Muḥammad Maḥmūd ould Cheikh in 1955, Le Qadi de Tombouctou 1954-1959, Sahara OCS 1957-1959, CADN AOF Dakar 320

to the region. The majority of scholars that accommodated the French did so out of pragmatism. The French were simply too strong to oppose. The accommodationist scholar and first colonial-appointed *cadi* of Timbuktu advised the anti-French *jihād* scholar, *al-shaykh* al-Madanī Madīd, “reach an agreement with France and abandon war against her, for she has taken possession of all the lands.”⁶³

The rejectionists not only declared *jihād* against the French, they condemned the accommodationists – and the generality of Muslims – for cooperating with the colonial order. The Kunta scholar, Muḥammad bin Ibrāhīm bin ‘Ābidīn, refused to confer the French judicial order with any legitimacy and branded the *Ghumyāt*⁶⁴ and any Muslim who worked with the French as translators and writers as corrupt and declared them disbelievers.⁶⁵ Another virulent anti-French scholar declared permissible the blood of those Muslims who saw no problem in living alongside the French disbelievers and the confiscation of their property.⁶⁶

The jamā‘ah: Timbuktu’s traditional administration

⁶³ Aḥmad Bāba b. Abū al ‘Abbās, *Risālah ilā al-shaykh al-Madanī Madīd yansāḥhu bi al-ittifāq ma’a Faransa wa tark al-ḥarb ma’ahā li annahā malakat jamī’ al-bilād*, IHERI-AB, ms 5678

⁶⁴ An armed unit established by the French colonial authority in the Niger Bend to patrol the desert and assist the district patrol guards to track down runaways and guard prisoners. I thank Mahmoud Mohamed Dedeb ditt Hamou (hereafter Hamou) for this information - e-mail, April 2010.

⁶⁵ Aḥmad bin Abī al-‘Arāf, *Maktūb li Aḥmad bin Abī al-‘Arāf fi al-radd ‘alā Muḥammad bin Ibrāhīm bin ‘Ābidīn ‘indamā kaffara man yata’āmal ma’a al-Naṣārah*, IHERI-AB, ms 4810, fl. 7. Muḥammad ibn Ibrāhīm’s grandfather ‘Ābidīn was possibly the same al-‘Ābidīn al-Kuntī who, with his sons, was the most prominent dissident against the French and led many raids against the Niger Bend well into the 1920’s.

⁶⁶ Abū al-Khayr bin ‘Abd-Allah bin al-Marzūq al-Ḥill, *Risālah fi al-radd ‘alā man aḥalla amwāl al-Muslimīn al-muqīmīn ma’a al-musta‘mar*, IHERI-AB, ms 5286, fl. 1-11.

When the French arrived in Timbuktu in 1894, they found in place a functioning administration called the *jamā'ah*. The *jamā'ah* was constituted of high-ranking scholars and wealthy notables from each of Timbuktu's old three quarters: *Djingere-Ber* site of the Friday congregational mosque, *Bajinde* location of the Sīdī Yaḥya mosque, and *Sankore* home of the famous Sankore mosque and *madrasah*. Another important quarter was *Abaraju*, built by and for the Arma. As a concept, the *jamā'ah* first emerges in one of Aḥmad Bābā al-Sūdānī's (d. 1627) treatises in the seventeenth century.⁶⁷ In this treatise, Aḥmad Bābā discusses the organization of a Muslim settlement (civil society) in the absence of a Muslim political authority,

If the *jamā'ah* of Muslims agree among themselves in a place which has no sultān or is not reached by the authority of a sultān, upon establishment of the stipulations of the law in the proper manner, then their authority becomes like that of the *Qāḍī* or that of the *Sulṭān*.⁶⁸

Interestingly, Aḥmad Bābā was writing after the destruction of the Songhay Empire at the hands of the Moroccan army. Thus, his idea of an authority-wielding *jamā'ah* could be seen as an implicit delegitimizing of the Moroccan-Arma occupation and administration of Timbuktu - and the former Songhay Empire. Timbuktu's *jamā'ah* carried out that function in an increasing capacity, following the collapse of Arma rule in 1833 right up to the French conquest in 1894. The *jamā'ah*'s power should though not be exaggerated. Saad notes that its actual jurisdiction was limited to judicial affairs, but semi-administrative in all other areas. This is corroborated by the

⁶⁷ Saad, *Social history*, 122.

⁶⁸ Saad, *Social history*, 119

fact that they had no control over the Tuareg hegemony in Timbuktu following the death of Aḥmad al-Bakkāy in 1865 and the decline of the Kunta after his death.

Nevertheless, they took up and executed important decisions.⁶⁹ In 1862 they invited the Kunta scholar Aḥmad al-Bakkāy to lead Timbuktu in its *jihād* against *al-hājj* ‘Umar Tall. In 1885, they corresponded with the French authorities for a reduction in taxation and import costs from those areas under French control. Following the first French attempt to conquer Timbuktu, they requested the Moroccan ruler, Mawlāy Ḥasan, to renew the old Moroccan protectorate of 1591. And again on the eve of the French conquest in 1894 they sent another call in the name of all Timbuktu’s people to Mawlāy Ḥasan to take control of the city.⁷⁰ They refused to meet with the French military mission that arrived in Timbuktu in 1887. As notables, Timbuktu’s ‘*ulamā*’ were members of the *jamā‘ah*. Their primary function though remained the issuing of *fatwās*, sitting in judgment, writing, and teaching the various Islamic traditional sciences such as theology, Islamic substantive law, Islamic legal theory, exegesis, Prophetic traditions, biography of the Prophet, Arabic grammar, rhetoric, and others.

The 1903 Decree

In 1900, Jean-Baptiste Chaudié Governor-general of French West Africa set up a commission to review existing legal institutions in France’s West African colonial territories and probe the creation of a new single system of law. However, the

⁶⁹ Ibid, 223

⁷⁰ Kanya-Forstner, *The conquest of the Western Sudan*, 218-219; Al-Ṣādiqī, *Min al-jadd al-Sulṭān Ḥasan*, 48

commission only met in May and June of 1903 over three sessions chaired by then Governor-general Ernest Roume. It debated 96 articles of proposed legislation, modified the articles where necessary and approved it for submission to the Minister of Colonies. The ninety-six articles were presented formally to the President of the Republic on 10 November 1903 then sent to the French National Assembly where it was formally adopted as law.⁷¹

Although the 1903 legislation sought a single “system” of law it created two discrete legal tracks, one for citizens comprising of French nationals and assimilated Africans, and another for African natives or subjects. Assimilated Africans mostly resided in the communes of St. Louis, Dakar, Rufisque, and Gorée.⁷² French metropolitan law applied to French nationals and assimilated Africans while customary law applied to African natives or subjects. It is the legal track for natives that concern us. This legal track consisted of three layers of courts: the *tribunal de village* (village tribunal), the *tribunal de province* (provincial tribunal), and the *tribunal de cercle* (regional tribunal). The village and provincial tribunals heard disputes involving family and property and defined categories of misdemeanours. The *tribunal de cercle* acted as the appeals court and heard criminal cases.⁷³ Roberts describes the structure and workings of the three layers of courts,

At the lowest level [*tribunal de village*] the court was instructed to seek reconciliation between the parties; at the provincial and *cercle*

⁷¹ Roberts, R. 2005. *Litigants and households: African disputes and colonial courts in the French Soudan 1895 – 1912*. Portsmouth: Heinemann, 67-96

⁷² Shereikis, Customized courts, 2.

⁷³ For a detailed outline of the architecture, structure, functions, and statistics of the native courts see Roberts, *Litigants and households*, 4, 72 – 82; passim 125 - 147.

(district) level, legal judgments would reward those who prevailed in the court and punish ... The village chief presided over the *tribunal de village*. If the litigants were not pleased with village tribunal's efforts at reconciliation, they were instructed to bring their cases before the *tribunal de province* ... The *chef de province*, the historic or invented indigenous ruler of the region, presided over the affairs of the tribunal de province assisted by two assessors nominated by the French district officer. The *tribunal de province* was to apply "custom" and the assessors were selected from those reputed to be the most knowledgeable of community custom. Judgments rendered were to be recorded either in Arabic or in French and the litigants were to be instructed to proceed to the *tribunal de cercle*, if they wished to pursue their appeal.⁷⁴

The native courts, as indicated above, were up and running in Timbuktu by 1905.

Because Timbuktu's population were subjects and because Islamic law was not metropolitan law, but regarded as customary law, the native courts regime applied to it. Richard Roberts argues that by conflating Islam with custom the 1903 legislation made a fundamental erroneous assumption about the bounded nature of custom.⁷⁵

Use of the Native Courts for Domestic Disputes

As indicated above, this chapter is interested in how Timbuktu's Muslim population responded to the native courts as far as domestic disputes were concerned. Before we look at the native courts and Timbuktu's inhabitants' reception of them, a word must be said about Timbuktu and its inhabitants at the end of the nineteenth century and turn of the twentieth century.

Timbuktu Society at the turn of the twentieth century

⁷⁴ Ibid, 74

⁷⁵ Ibid, 71-82

This brief socio-economic overview of Timbuktu over a fifty year period, from 1900 to the end of the 1940s is based on the accounts of a White Father, an ex-head of the Catholic mission at Timbuktu, a Muslim bibliophile and an anthropologist. The priest Pierre Hacquard published his work in January 1900, Yacouba Dupuis his *Industries et principales professions habitants de la région de Tombouctou* in June 1919, the bibliophile Bul ‘Arāf began his biographical dictionary in 1939, and Horace Miner’s fieldwork was carried out over seven months in 1940.

According to the 1898 census, Timbuktu had a fixed population of 5 000 and a temporary population at 4 000.⁷⁶ Elias Saad disputes this figure, citing Heinrich Barth’s estimation of between 13 000 and 23 000 people when he arrived in the city in 1854. There was however, a downward trend in the population at the end of the nineteenth century as Saad himself points out.⁷⁷ The city’s population was just over six thousand in the early 1940s when Horace Miner did his fieldwork.⁷⁸

One of the likely causes for the decrease in population is the small number of births, itself possibly the result of the prevalence of syphilis.⁷⁹ The average size of households in the 1940s was four persons as Miner observed.⁸⁰

⁷⁶ Hacquard, A. 1900. *Monographie de Tombouctou*. Paris: Société des Etudes Coloniales & Maritimes, pg. 24.

⁷⁷ Saad, *Social history*, 91

⁷⁸ Miner, H. 1965. *The primitive city of Timbuctoo*. New York: Anchor Books, xvii-xviii

⁷⁹ The French army doctor treated 54 males, 71 females and 16 children for syphilis in May 1940. Also, wealthy men in polygamous marriages had only one child, and abortion was not unknown. Miner, *The primitive city*, 15

⁸⁰ Miner, *The primitive city*, 15

The temporary population consisted mostly of merchants from further north: Morocco, towns such as Ghadāmis and Tindouf, and the oasis settlement, Touat. From the south the Fulbe, Mossi and Bambara traders sold products from their lands to the merchants from the north. Hacquard noted that, and as we pointed out in Chapter One, at the end of the nineteenth century, Timbuktu still offered the most conducive atmosphere for such activities as trade not found anywhere else. By 1899 French wholesalers from Saint-Louis were established in Timbuktu bringing vital European products to the city. Timbuktu's indigenous people had also by then began taking the road to Kayes and Saint Louis to replenish their stock.⁸¹

At the beginning of the twentieth century, Timbuktu's economy was still one of craft and commerce. The principle industries were bakeries, butchers, dairy products, and food.⁸² The craft industry grew with the establishment of colonial rule as the French taught tailoring and slipper-making in one of their schools. The major crafts were tailoring, masonry, commerce, smith craft (iron, gold, and gun smiths), weaving, and animal skin tanning. Butchery, barbering and masonry are passed down in family lines. Almost as an absolute rule, a child could only exercise the father's trade. It appears that the only choice for children not able to exercise the trade of their inherited "class" or "caste" was to study and become a

⁸¹ Hacquard, *Monographie*, 24-48

⁸² Except for tourism, there has been little or no change as far as production and economic growth is concerned seventy years later at the turn of the twenty first century. Economic activity remains confined to these crafts.

religious scholar. Certain professions, such tailoring were exclusively for men.⁸³

In the 1940s, especially during the war period, many settled elsewhere in the French Soudan, Algeria, etc. as these crafts were over saturated.

Religious scholars were tailors, teachers and charm-makers. Low social status groups such as the Bella⁸⁴ engaged in sandal-making, basket weaving, donkey breeding, etc. Arabs⁸⁵ were camel breeders and smiths although their slaves did the actual work. When it came to commerce Arabs were wholesalers, caravaneers, retailers, landlords and shippers. The offspring of the Arma notables shared with Arabs in these activities. Only a limited number of religious scholars are wholesalers. The commercial and transport activity of the Gabibi⁸⁶ and Bellah⁸⁷ consist of market retailing, wholesaling, money lending and donkey-drivers.⁸⁸

Writing at the end of the 1930s, the bibliophile Bul 'Arāf lamented that Timbuktu's people pay no attention to agriculture. Despite the fertile land and abundant waters of the Niger to harvest palm trees, wheat, barley, tobacco, maize, potatoes, lettuce, and all kinds of grains, Timbuktu's people completely lack

⁸³ Dupuis, Y. 1921. *Industries et principales professions des habitants de la région de Tombouctou*. Paris: Emile Larose, ii, 29; Hacquard, *Monographie*, 40

⁸⁴ The Bellah traditionally, but not

⁸⁵ Arab – and Berber - is a cultural-linguistic, not racial, label referring to people who speak as a primary language either a dialect of Arabic or one of the Berber languages. This is what I mean with it throughout this work, see, Hall, B. Mapping the river, 24

⁸⁶ The Gabibis are Songhay of servile status; they often became clients or serfs of the Arma after the Moroccan conquest of 1591.

⁸⁷ "Bellah" is a term used by Songhay speakers to conflate different statuses of Tamasheq-speaking servile people under a single term. Although vulnerable to Tuareg slave raids, these "Bellah" were not all slaves to the Tuareg as French colonial administrators who came to the region wrongly assumed. See, Hall, Mapping the river, 172

⁸⁸ Miner, *The primitive city*, 61

resolution in this regard. Other than industry and commerce, witchcraft, geomancy, occult practices, charm writing, etc. are everyday activities.⁸⁹ Miner identified an organic link between the craft economy and such activities as witchcraft: the latter were resorted to as a way to maintain a certain craft within a particular family.⁹⁰

Polygamy was practiced by the affluent; a man's wealth status was appraised by the number of wives he had. However, as Hacquard noticed, the harem did not exist in Timbuktu; every wife in a polygamous union had her own house where she lived with her children. Hacquard also observed that divorce was very common at the end of the nineteenth century. As soon as a wife ceases to please her husband she is abandoned in her house with her children.⁹¹

Muftīs and domestic disputes

From the large number of colonial-era *fatwās* on domestic, we can safely say that Timbuktu's Muslim population continued to refer their intimate domestic disputes to their local *muftīs*. In fact, they continued to refer civil and commercial disputes such as debts, ownership, business shares, sales, etc. to the city's *muftīs*, as not a few *fatwās* show. For example, a 1914 *fatwā* was on a dispute between a wife and her deceased husband's creditors on who had prior right to retrieve from the deceased's

⁸⁹ Aḥmad Bul 'Arāf al-Taknī, *Izālat al-rayb wa al-shakk wa al-tafrūt fi dhikr almu'alaḥīn min ahl al-Takrūr wa al-sahrā'a wa ahl Shinqīt*, ed. by Al-Hādī al-Mabrūk Al-Dālī (n.d., n.p.; Introduction gives place as Tripoli and year 2000). It is based on three mss: Ms in Dedeb collection, 176pp.; Ms copy 2, in Ahmad Baba collection, Ms 3, in archives in Libya, pg. 52

⁹⁰ Miner, *The primitive city*, 57

⁹¹ Hacquard, *Monographie*, 46

estate the debts he owed both.⁹² In another *fatwā*, a *muftī* deals with a dispute involving a house and cows between a deceased man's wife and his children from another marriage.⁹³

They were in no hurry to embrace the native courts, for their intimate domestic disputes, at least not in early years following the establishment of the native courts. This, even though the native courts were obliged to apply Islamic law when hearing domestic disputes, if both or one of the litigants were Muslim. Section 49 of the 1903 legislation, the only section that addressed Muslim law stated, "In regions where Muslims personal status prevails, one of the two notables will be the qadi if one exists".⁹⁴ The difference, of course, was that while the verdicts of the native courts were official and binding, *fatwās* were not.⁹⁵

Rebecca Shereikis' interviews with people of the city of Kayes in the Western French Soudan show that they had more or less the same response to the customized native courts as Timbuktu's long-standing Muslim population. They often resorted to the colonial courts only as a last resort, "For family quarrels we usually arranged things among ourselves, in the family. We rarely went to the village chief" said a

⁹² 'Alī b. 'Umar, *Fatwā fī imra'ah tuwuffiyā zawjuhā wa wujida rasm bi annahā sharīkatuhu fī kullī mā yamlik*, IHERI-AB, ms 3091

⁹³ Shaykh wuld 'Alī, *Fatwā fī sh'an rajul bā'a li zawjatihi dāran*, IHERI-AB, ms 3447

⁹⁴ "Rapport au Président de la République, suivi de décret portant réorganisation du service de la justice dans de les colonies relevant du gouvernement général de l'Afrique occidentale" *Journal officiel de la République française* (24 November 1903)

⁹⁵ The non-binding status of a *fatwā* is not a result of colonial rule. A *fatwā* was always, and remains the unbinding opinion of its *muftī* in contrast to the binding judicial ruling of the *qāḍī* appointed by the State, since the earliest days in first and second centuries of the Muslim state.

centenarian. When there were problems, people would contact the village chief. If they could not find a solution they would then go to the cantonal chief. They did not go to the colonial administration” one man stated. Another woman said “I knew neither ‘*la Marie*’ nor the tribunal; “I never saw anyone from my village use the tribunal”. Thus, whereas the archival record shows that people in Kayes had, in fact, used the courts, and in significant numbers, Shereikis’ interviews show that many others, perhaps the majority, either rejected or ignored them.⁹⁶

The number of *fatwās* on marriage, divorce, inheritance, paternity and monetary disputes issued in the 1905-1960 period, listed in the Aḥmad Bābā Collection (IHERI-AB)⁹⁷ and SAVAMA Consortium⁹⁸ catalogues, runs into the hundreds and more. It is a huge body of material when compared to the number of native court hearings and rulings on intimate domestic disputes, at least in light of the available colonial records on domestic dispute litigation. Timbuktu’s *muftīs* were always on the scene ready at hand to respond to disputes with their *fatwās* as they were accustomed to doing before the arrival of the French.

Up to four *muftīs* could issue a *fatwā* on the same domestic dispute, as in a 1946 dispute involving a wife with two husbands, when three *muftīs* issued *fatwās* on the dispute. Bul ‘Arāf (d. 1955), Abū al-Khayr (d. 1976), ould Cheikh (d. 1973), ibn

⁹⁶ Shereikis, *Customized courts*, 4-20.

⁹⁷ The six-volume Aḥmad Bābā’s catalogue contains the meta-data of only nine thousand manuscripts. There are reportedly up to thirty one thousand mss in the Aḥmad Bābā Collection (IHERI-AB)

⁹⁸ The SAVAMA-DCI consortium (Association Tombouctienne de Sauvegarde et de Valorisation des Manuscrits et pour la Défense de la Culture Islamique) in Timbuktu comprises four private manuscript libraries: the Mammā Haīdara Memorial Library (4 volume published catalogue), the Imam Ben Suyūfī Library, the Wanghari Library, and the Muṣṭafā Konate Library.

‘Ābidīn (d. 1964), *Qāḍī* Aḥmad Bābā (d. 1931), Muḥammad Dah (d. 1955), and al-Ṭāhir Intaṭo were seven of Timbuktu’s highest-ranking colonial-era *muftīs*.⁹⁹ They were, however, not exhaustive of all the *muftīs* in the city and the Niger-Bend of the colonial-era.¹⁰⁰ They all have tens of *fatwās* on personal matters to their names as the catalogues show.

We take a closer look at one of the seven: *al-Qāḍī* Aḥmad Bābā bin Abī al-‘Abbās bin ‘Umar bin Zayyān al-Ḥasanī. A high-ranking traditional scholar, the bibliographical dictionary, *al-Sa‘ādah al-abadīyyah* describes him as a jurist and an expert in the science of Prophetic traditions.¹⁰¹ The French first appointed him as a *qāḍī* in 1896 according to Paul Marty, the early ethnographer and French colonial intelligence officer. According to another source, he was appointed as the *qāḍī* for the populace of the Sāri Kayna neighbourhood, the Barābīsh Arabs and all Arabs who settled in Timbuktu in 1895.¹⁰² His appointment by the French, however, was a mere confirmation as he was already the *de facto* *qāḍī* of Timbuktu before the French arrived.¹⁰³ Marty describes him as a man of integrity, intelligent, open minded, wise, well liked, listened to by the indigenous population and, of course, friendly to the

⁹⁹ Not their full names; I have given the full names of some of them above and in the coming chapters.

¹⁰⁰ I mention these seven in particular, because their *fatwās* on domestic disputes are the sources for the stories told in this thesis.

¹⁰¹ Aḥmad Bāber, *Al-sa‘ādah al-abadīyyah fī ‘ulamā’ Timbukt al-bahīyyah*, IHERI-AB, ms 16, fl. 65.

¹⁰² Ms 10972, IHERI-AB (dated 1 March 1895)

¹⁰³ Saad, *The social history of Timbuktu*, 222.

French course.¹⁰⁴ He was no less enthusiastic in his support for the French as a letter he wrote in 1916 shows.¹⁰⁵

Once the native courts were up and running in Timbuktu by 1907, he was appointed as an assessor on the *tribunal de cercle* in his capacity as a *qāḍī*.¹⁰⁶ He remained in his post as an assessor on the *tribunal de cercle* and a *qāḍī* until his death in 1931. Thus, in addition to being a *mufīī* he was also the first chief assessor of Timbuktu's *tribunal de cercle*. Although an assessor of Timbuktu's *tribunal de cercle*, he continued to issue *fatwās*, albeit in his personal capacity. He issued *fatwās* in both the pre-colonial and colonial eras, before and after the establishment of the native courts and his appointment as an assessor. His *fatwās* range from land disputes, to paternity issues, inheritance, money, marriage, etc.¹⁰⁷

Of particular interest to us is one of *Qāḍī Aḥmad Bāba*'s domestic dispute *fatwās* that we will juxtapose to a domestic dispute he heard as an assessor of Timbuktu's *tribunal de cercle*. Our aim is to show discrepancies in his application of Islamic law in the two different capacities he served. We will suggest a motive for Aḥmad Bāba's inconsistency. His *fatwā* entitled *Naṣran li al-ḥaqq wa nuṣṣan li al-muslimīn* was issued on 11 July 1904. It was in response to and an endorsement of another *fatwā*

¹⁰⁴ Marty, P. 1920. *Études sur Islam et les tribus du Soudan*, vol. 2. Paris: Éditions Ernest Leroux, pp. 12-13 & Rapport sur le fonctionnement de la justice indigène, ANM 2 M 97, Tombouctou 1905 – 1921

¹⁰⁵ Marty, P. 1920. *Études sur Islam et les tribus du Soudan*, 313

¹⁰⁶ Justice Indigène nominations des assesseurs auprès des tribunaux cercle de Tombouctou (1905-1908), ANM 2 M 262

¹⁰⁷ Manuscript numbers 4777, 5552, 5961, 5968, 5978, 5996, 4745, 4733, 4734, 4963 & 4739, all in the Aḥmad Baba Collection (IHERI-AB) are some of his *fatwās*.

dated 18 June 1904 by *Qāḍī* Sīdī ‘Ālin, the traditional *qāḍī*¹⁰⁸ and *muftī* of the town of Arawān.¹⁰⁹ The *fatwā* annulled the marriage of milk siblings. *Muftīs* in Timbuktu and the region practiced what we may call *fatwā* peer-reviewing. They sent their *fatwās* to one another for evaluation, but more importantly for endorsement.

A *fatwa* ... has been put before us concerning the annulment of a marriage between a man and a woman who were positively regarded as siblings through milk kinship. They enjoyed this status for a long time, such that [knowledge of their kinship] was circulated by everyone in the village; their wet-nurse was present and confirmed it ... The two [milk siblings] remained for a period upholding the claim that they were siblings, but then bypassed the prohibitive relationship status denying their [previous] affirmation of [being siblings through] milk kinship. They were then married. The *Qāḍī* ... issued a *fatwā* annulling the marriage ... [H]e marshalled explicit textual proof as well as authentic traditions. I closely examined the references mentioned in his *fatwā* and followed them up in their original sources, I found that he had excelled in his *fatwā* ... I deem it correct to transmit some of the writings of the leading scholars here for the benefit of those who will come across this work. It is stated in *al-Bahjah* ... Dear Brothers, know that when I heard that all of you agreed to this illegitimate marriage, which is immoral by the standards of the Quran, Sunnah and consensus [of the scholars] ... it became obligatory on me to advise you...¹¹⁰

Qāḍī Aḥmad Bāba first summarised the earlier *fatwā*, declared it sound, and then presented his own juristic elaboration of the matter. He embellished it with Qur’ānic verses, prophetic traditions, anecdotes and poetry and ended it with an exhortation to the people complicit in this unlawful marriage to take heed and do the right thing. His

¹⁰⁸ A traditional *qāḍī* was not a colonial appointed or confirmed *qāḍī*.

¹⁰⁹ ‘Ālin b. ‘Amar, *Fatwā fī sha’n rajul wa imra’ah makathā zamanan mutaṣādiqayn wa qārrayn bi anna humā ikhwān min al-raḍā’ah*, IHERI-AB, ms 579

¹¹⁰ Aḥmad Bābā bin Abū al ‘Abbās bin ‘Umar bin Zayyān al-Ḥasanī, *Naṣran li al-ḥaqq wa nuṣṣan li al-muslimīn*, Mamma Haïdara Memorial Library, ms 384, fl. 2-6.

endorsing *fatwā* is indeed a thoroughly scholarly response by all standards of the Islamic law tradition.

The same rigid adherence to Islamic law, exhortation to piety, and admonishment are, however, absent from another domestic dispute he handled in his capacity as an assessor of Timbuktu's *tribunal de cercle*. In June 1905, a husband and wife appeared before him. The wife demanded a divorce claiming that she cannot bear travelling with her husband. The husband agreed to her request on condition that she returns to him monies he paid her. The couple were then divorced. A few days later, however the now ex-husband returned, accompanied by another man he claimed corrupted his ex-wife against him and instigated her to seek the divorce. Furthermore, he charged the man with marrying off his ex-wife to a "White Christian" man only four days after their divorce before the expiry of her 'iddah.¹¹¹ The man confirmed the latter part of the claim. *Qāḍī Aḥmad Bāba*'s response is instructive,

I said to him [the other man]: "Sikir, you are one of Timbuktu's inhabitants, you have lived here for some time now, and you know the [rules of] the *Sharī'ah* and the customs of the Arabs. You know that if a woman has been divorced, no one can marry her until the completion of her 'iddah. You violated our *Sharī'ah* as the scholars explicitly state ... I punished him with a fine of twenty *riyals*..."¹¹²

¹¹¹ *Iddah* or waiting period is the mandatory waiting period a Muslim woman has to observe after divorce or the death of her husband before she can marry another man. In the case of divorce, a menstruating woman's 'iddah is three periods of non-menstruation intervened by two menstruation cycles, from the moment the divorce is uttered. Her 'iddah expires with the beginning of her third menstruation cycle after the divorce is uttered. The 'iddah for a widow is four months and ten days.

¹¹² Aḥmad vs Kūṭī, 1 June 1905, Justice indigène, correspondance Cercle de Tombouctou 1895-1920, ANM 2 M 37.

While the 1904 *fatwā* is replete with Qur'ānic verses, Prophetic traditions, exhortations, and the views of Māliki jurists, the 1905 litigation is not. Other than saying, "as the '*ulamā*' state explicitly", he makes no explicit reference to any works of Islamic substantive law or any of the great jurists in his ruling. The case is recorded on a single page that includes claims, counter claims, some legal argument, and the verdict. The 1904 *fatwā*, on the contrary, is a detailed discursive treatise that spans eight manuscript folios of medium size.

The most glaring discrepancy between the cases is in their verdicts though. In his 1904 *fatwā* he exhorted the offending parties to accept his admonishment citing the Qur'ānic verse: "Indeed therein is a reminder for the one who has a repentant heart, or who listens attentively as he bears witness,"¹¹³ not so in the 1905 court case. The 1905 verdict merely rebuked Sikir for marrying off the divorced woman before the expiry of her '*iddah*. It did, however, not censure him for marrying her off to a Christian man. Nor did it annul the marriage. This is rather astonishing when compared to his annulment of the proscribed marriage in the 1904 *fatwā*. The marriage of a Muslim woman to a non-Muslim man and the marriage of milk siblings are equally unlawful in Islamic law.

While a loophole can be imagined for permitting the marriage of milk-siblings, no such loophole is possible for the marriage of a non-Muslim man to a Muslim woman. Muslim jurists differ on the amount of milk that the suckling baby must drink from the milk mother for the prohibitive relationship to be established between them. In the

¹¹³ Qur'ān 50, verse 16

Māliki School (followed in Timbuktu) a drop of milk establishes it, while in the Shāfi‘ī school five full separate breast-feedings establish it. Some other schools stipulate fifteen feedings. Other factors, the jurists differ on, are whether the milk mother had her child within wedlock or from an illicit sexual relationship; whether the woman fed the baby herself or the baby sucked on her breasts while she was asleep, and so forth. There is no difference regarding the prohibition of marriage between a Muslim woman and a non-Muslim man.

The *qāḍī*'s failure to annul the marriage between the Muslim woman and the Christian man might have something to do with the fact that marriage between Muslim women to Christian men had become a phenomenon in Timbuktu and the region. The fact that he rebuked Sikir for marrying her off during her *'iddah* seems to reflect a phenomenon which worried the colonial administration: an increase in the number of divorced women undergoing their *'iddah* marrying other men. Such marriages gave rise to undesirable consequences such as denial or wrong claim of paternity, maintenance disputes, family instability, etc.¹¹⁴

I suggest however, the inconsistency of *Qāḍī* Aḥmad Bāba's application of Islamic law between being a "private" *muftī* on the one hand and being a "public" *qāḍī* of the native court on the other hand was a deliberate position to keep Islamic law and colonial law apart. This was the position of all of Timbuktu's other *muftīs* and scholars. Their aim was to keep Islamic law out of the jurisdiction of the native courts thereby preventing French district officers from interfering with Islamic law. The

¹¹⁴ Roberts, *Litigants and households*, 126

latter, despite Lieutenant-governor Trentinian warning, as early as 1896, not to get mixed up in the many disputes without significance, did become involved.¹¹⁵ They interfered in the decisions of local assessors in applying customary law in other areas and regions of the French. They did not hesitate to reverse the decisions of native judges, especially in the nature of Soudanese marriages and the treatment of women.

In other words, Timbuktu's *muftīs* did not desire the application of Islamic law by the native courts. This they did to secure the independence of Islamic law and by extension the power and continued relevance of *muftīs*. This possibly explains *Qāḍī* Aḥmad Bāba's conscious "marginalization" of Islamic law in the 1905 litigation. I have also quoted the *fatwā* at length for another purpose: the significance of its content to the aim of this thesis, which is to tell stories about social practice in Timbuktu using *fatwās* as a historical source. That role of *fatwās* will however become apparent only in the chapters that follow. Thus, I use this very *fatwā* in Chapter Three as a source to elaborate on a story I reconstruct.

Two other factors indicate, albeit indirectly, that the city's Muslim population did not eagerly refer their domestic disputes to the native courts. The first is the number of criminal cases the native courts dealt with compared to the number of domestic disputes. Criminal matters were heard by the *tribunal de cercle* exclusively. The French Commandant of a district presided over all criminal cases. Civil-commercial and family law matters at the Provincial level fell solely under the jurisdiction of the local judges. But that too, only until 1924, for, after the decree of 22 May, 1924 there

¹¹⁵ Ibid, 1, 67-70; passim

was an attempt by the colonial administration of the French Soudan to preside over all cases (criminal, civil, family) of the 1st degree court. It was an attempt to curb the free will of local judges and assessors after twenty years.¹¹⁶

The number of criminal cases the native courts heard outweighs the number of intimate domestic disputes by far. In 1909 alone, Timbuktu's native courts heard and ruled on one hundred and seventy four criminal cases (thefts, robberies, injurious violence, murder, domestic offenses, etc.). Compare that to twenty four civil cases, twelve commercial cases, and seventeen domestic disputes in the same period.¹¹⁷ The native courts administered twenty-one marriages, annulled two marriages, issued ten divorces, and ruled in favour of one claim for the restitution of the dowry.

This trend remains constant throughout colonial rule. In 1938 the native courts ruled on two guardianship cases and one divorce. Compare that to forty-five criminal cases (theft, blows, wounds, breach of trust, false accusations, fraud, etc.). In the same year, the native courts heard another thirty-two other criminal cases.¹¹⁸ Between 1941 and 1947 four hundred and nine (409) criminal cases (an average of sixty eight per year) were heard compared to one hundred and twenty six civil and commercial cases (an average of twenty one per year).¹¹⁹ There were also one hundred and eight

¹¹⁶ Rodet, M. 2009. *Les migrantes ignorées du Haut-Senegal (1900-1946)*. Paris: Karthala, 135.

¹¹⁷ Justice indigène correspondances diverses 1944 – 1947, ANM 2 M 97

¹¹⁸ Chambre d'accusation – Tombouctou – 1936-1946, ART M10

¹¹⁹ Justice indigène – correspondances diverses 1944-1947, ART M2; Justice rapport sur le fonctionnement de la justice et diverses affaires à juger 1925-1951 ART M4; Justice tribunal de 1^{er} degré de Tombouctou affaires à juger 1933-1942 ART M7.

incarcerations. Between 1936 and 1946, the native courts issued ninety one birth, twenty marriage, and forty three death certificates.¹²⁰

It cannot be said that there were less family squabbles than criminal offenses. On the contrary, it is reasonable to assume that there were more intimate domestic disputes. Richard Roberts shows, from the aggregate data of court use for Bamako and Segu, that marriage life was one of the most troubled domains of African social life.¹²¹

Ghislaine Lydon study of the Muslim tribunal records in Ndar, Senegal from the 1880s to the 1920s shows that marital disputes and divorce settlements were the most common cases.¹²² Thus, if the native courts heard many more criminal cases than domestic disputes it is because Timbuktu's Muslim population did not refer their frequent domestic disputes to the native courts.

The names and professions of litigants who referred their domestic disputes to used Timbuktu's native courts are an indication that they were not originally from Timbuktu's Muslim population. These litigants had settled in the city or the port town of Kabara as a result of colonial rule. Names such as, Diarra, Diemba, Camara, Konte, Fofana, Samake, Coulibaly, Keita, Diallo, Sidibé, etc. that abound in the

¹²⁰ Chambre d'accusation – Tombouctou – 1936-1946, ART M10

¹²¹ Roberts, *Litigants and households*, 125-126

¹²² Lydon, G. 2010. Obtaining freedom at the Muslims' tribunal: colonial kadijustiz and women's divorce litigation in Ndar Senegal, in Shamil Jeppie, *et al* (Eds.), *Muslim family law in Sub-Saharan Africa: colonial legacies and post-colonial challenges*. Amsterdam: Amsterdam University Press, pg. 136

intimate domestic disputes heard by the native courts are Bambara and Fulfulde.¹²³ In other words, they were not the Songhay, Tamasheq, Arabic names of Timbuktu's long-established Muslim population, which indicates that their presence in Timbuktu is recent and due to the colonial presence. A wife with a European name and surname requests Timbuktu's native court for a divorce from her Muslim husband in Gao.¹²⁴

Tirailleurs, that is local infantrymen serving with the French army, almost always denotes the "outsider status" of the litigant. They were litigants in at least ten domestic disputes heard by Timbuktu's native courts between 1907 and 1910.¹²⁵ There were also freed slaves from different parts of the French Soudan and French West Africa fleeing from recalcitrant masters. A slave exodus began in Banamba, north of Bamako in March 1905 and had by 1907 spread to other areas of the Middle-Niger and beyond. The Fathers of the Catholic mission established a village for "runaway" freed slaves called *village de liberté* nearby or in Timbuktu following the abolition of slavery under colonial rule. It is thus plausible that former slaves settled nearby Timbuktu.¹²⁶ These do not include slaves from the Niger Bend of the pre-colonial period or the slaves bought and sold in the Sahara during the colonial

¹²³ I have not been able to establish the linguistic group of names such as Tarasse, Koute, Dondoni that appear frequently in the court record court records, of which. They are, however, not Songhay, Arabic or Tamasheq names.

¹²⁴ Marie Kritzenberger v Foulane, 23 March 1934, Tribunal civil du 1er degré de Tombouctou – affaires à juger – 1933-1942, ART M 7.

¹²⁵ Etats des jugements et extraits des registres d'écrou, Timbuktu, 1908 ANM 2 M 149. Many of the *tirailleurs* in Timbuktu were Bambara and former slaves; I thank Marie Rodet for this information: e-mail communication, August 2009.

¹²⁶ For more on *village de liberté* established during colonial rule in the French Soudan, see, Bouche, D. 1968. *Les villages de liberté*. Paris: Mouton & Co, pg. 114, 132, passim.

period.¹²⁷ At times, litigation was launched from outside Timbuktu against a spouse resident in the city or in prison in Timbuktu.¹²⁸ Most of the litigants were Muslim though some were Christian as we will see.

This is not to say that individuals of Timbuktu's Muslim population did not refer their domestic disputes to the native courts at all, even during the early years of the native courts' existence. In later years there was an increase in Timbuktu's Muslim population using the native courts for their domestic disputes to the native courts as can be seen from Tamasheq and Arab names and surnames in the court records of the 1940s and 1950s.

The native courts and domestic disputes

The available records in Mali's colonial archives show that Timbuktu's native courts heard their first intimate domestic disputes from 1907. However, the 1906 court register of the French Soudan currently in the Senegalese National Archives (ANS), probably sent there for close evaluation, might contain the summaries of intimate domestic disputes of 1906 and even 1905 that were heard by the native courts of the French Soudan.¹²⁹ Thus it may be that people in Timbuktu began using the native courts already in 1906 or 1905 for their domestic disputes. The abovementioned

¹²⁷ For slavery in Timbuktu during the colonial era, see Michael Klein's *Slavery and colonial rule in French West Africa* (Cambridge: Cambridge University Press, 1998), pp. 56, 254 and passim & Robert Maugham's *The slaves of Timbuktu* (London: Longman, 1961).

¹²⁸ For example the case of the wife Khady resident in Dakar Senegal against her husband Soaibou imprisoned in Timbuktu: *Soaibou v Khady*, 14 August 1945, Tribunal de Tombouctou – affaires à juger – 1933-1959, ART M 18.

¹²⁹ Roberts, *Litigants and households*, 2-4.

intimate domestic case of Aḥmad and his wife Kūtī can serve as evidence for the usage of the native courts as early as 1905. However, since most Soudanese waited to see what transpired in the courts, as Richard Roberts points out, it is equally possible that people in Timbuktu started using the courts from 1907 only; hence the court records of intimate domestic disputes dating from 1907 only.

The records of intimate domestic disputes heard by the native courts in Timbuktu currently in the colonial archives in Timbuktu and Bamako are those for the periods 1907-1912, 1934, 1941-1945, and 1958-1959. The 1907 to 1912 period, during which Timbuktu's native courts heard some seventy-seven domestic disputes, seems to have been by far the busiest.¹³⁰

The fact that there are no records for periods other than the abovementioned ones does, of course, not mean that domestic dispute cases were not brought to the native courts. We can safely assume that domestic disputes were brought almost all the time to the native courts. The “lack of documentation” of domestic disputes for these periods is not evidence that the native courts did not hear domestic disputes. Rather, this “lack of documentation” has to do with the general organization of colonial archives in post-colonial Mali and the accessibility of colonial court records to researchers. From personal experience of research in Mali's colonial archives, I have learned that colonial records on certain personalities and events in Timbuktu are either “made” missing or not made available to researchers. This is especially true for

¹³⁰ Justice indigène: Etats des jugements et extraits des registres d'écrou cercle du Tombouctou, 1903 – 1920, ANM 2 M 149. The seventy seven litigations are in all likelihood not all the domestic disputes presented before the native courts in the period 1907 to 1912.

intimate domestic disputes that involve extra-marital affairs, bigamous marriages, adultery, etc.

1907 – 1910

Requests for divorce were the lion's share of the domestic dispute litigation during this period constituting 39,5% of all disputes in Timbuktu - the highest among eight district tribunals including the much larger region of Segou.¹³¹ There were fifty-three divorce cases, from both wives and husbands; in four cases, both spouses filed for divorce.¹³² Of the fifty-three cases, Timbuktu's native courts ruled on forty six, accorded divorce in thirty seven cases and refused it in nine. Numerous reasons were forwarded for divorce.

Abandonment of the marital home was a major reason for a spouse (husband or wife) requesting the native court to end a marriage. Husbands abandoned the marital home, usually leaving Timbuktu, for periods of 4-10 months and up to 5 years in one instance. The 1907-1912 court records contain seven divorce requests for husbands having abandoned the marital home or whose whereabouts were unknown. Husbands gave various explanations to the court for not returning home. One cited that his illness detained him in Arawān. Wives too abandoned the marital home. They however, did not leave the city, but went to a relative's house. Many *fatwās* also show

¹³¹ Roberts, R. 2010. 'Custom and Muslim family law in the native courts of the French Soudan, 1905-1912', in Shamil Jeppie, *et al* (eds.), *Muslim family law in sub-Saharan Africa: colonial legacies and post-colonial challenges*. Amsterdam: Amsterdam University Press, pg. 93.

¹³² Roberts puts the number of divorce cases during this period at thirty six. His figures include, possibly, only the cases for which the divorce was accorded while my figures include all cases that requested divorce, accorded or refused.

that wives went to their parents' homes. A court record speaks of a wife who had a habit of abandoning the marital home. Thirteen domestic dispute cases between 1907 to 1912 involved abandonment of the marital home: six by wives and seven by husbands.¹³³

Wives cited spousal abuse ranging from battering, to brutality, insults, and sexual abuse; a wife showed the bruises on her body; the courts heard seven cases of abuse. A more recurrent reason wives gave the court was their husbands' failure to maintain them and see to their well-being, especially when husbands were travelling. There were thirteen such cases. There is a single case of a wife claiming the absence of sex in the marriage as a motive for her divorce request.¹³⁴ Husbands, who filed for divorce, cited sexual misconduct (ten cases), general misconduct and bad behaviour, wives having several lovers, wives refusing to travel with or to their husbands and fickleness. As one husband put it to the court, "I am tired of my wife's notorious sexual promiscuity". Another too cited his wife's "loose living", which he claimed was a well-known fact.¹³⁵

Husbands were the only plaintiffs when it came to litigation for the annulment of illegal marriages. At least four wives contracted subsequent marriages while still

¹³³ Justice indigène: Etats des jugements et extraits des registres d'écrou cercle du Tombouctou, 1903 – 1920, ANM 2 M 149

¹³⁴ The courts heard at least twenty-one such reasons from wives requesting for divorce between 1907 and 1912. Justice indigène: Etats des jugements et extraits des registres d'écrou cercle du Tombouctou, 1903 – 1920, ANM 2 M 149

¹³⁵ Justice indigène: états des jugements et extraits des registres d'écrou cercle du Tombouctou, 1903 – 1920, ANM 2 M 149

married, in two instances to *tirailleurs*. Three such litigations were heard between August and December 1909. In one case the husband claimed that his wife “married” the other man during his absence. In the other, the wife married a soldier while on a visit to her family in the town of Segu.¹³⁶ Others, in opposing a divorce application from a wife and refuting her claim that he is not maintaining her, informed the courts that the wife is planning to marry someone else, in some cases a former husband. In one case a husband requested the court to force a woman to live with him though they were not married.

There were at least eight cases of litigation for custody in this period, including one by the biological father for a child born out of wedlock. The courts granted custody to mothers – and maternal grandmothers - in all the cases, except for one. In one case where custody was awarded to the husband after the court accorded the wife her request for divorce on 7 December 1909. The ex-wife on 17 December 1909 applied to the court to annul the 7 December divorce ruling, so as not to be separated from her child.

Beyond 1912

It can safely be assumed that people continued to bring their domestic disputes to the native courts after 1912. There is one case for 1934. A wife who seems to be of European origin married to a local man in accordance to Islamic law requested the native court for a divorce from her uncooperative absent. Marie Kritzenberger

¹³⁶ Justice indigène: états des jugements et extraits des registres d'écrou cercle du Tombouctou, 1903 – 1920, ANM 2 M 149

claimed that her husband Foulane does not maintain her. She also claimed that he owed her thirty thousand Francs, and that he was away in Gao refusing to return to Timbuktu.¹³⁷ In a 1945 case, Khady, resident in Senegal applied to the French authorities in Timbuktu for a divorce from her husband Soaibou, a *marabout*¹³⁸ and political prisoner of the French, in Timbuktu. The husband agreed to divorce her. Interestingly, he based his decision on the *Risālah ibn Abī Zayd al-Qayrawānī*.¹³⁹ Thus, the matter did not go to the native court for jurisdiction.¹⁴⁰

1958-1959

Between August 1958 and May 1959, the native courts heard at least five intimate domestic disputes. These could not have been the only domestic cases Timbuktu's natives courts heard during these last years of colonial rule. They are, however, the only ones there seems to be records for.

Three of the five cases involved requests for divorce, two by wives. Two of the husbands complained that their wives (one seven months pregnant) abandoned the marital home, one several times. Another husband told the court that his wife refused to accompany him. One husband requested the court to force wife to return to the

¹³⁷ Marie v Foulane, 23 March 1934, Tribunal civil du Ier degré de Tombouctou – affaires à juger – 1933-1942, ART M 7. She was either fully European or from her father's side only.

¹³⁸ The – French – term used specifically in Francophone West Africa for a holy man and leader of a *ṣūfī* order.

¹³⁹ A major Islamic substantive law work of the Māliki School written in the tenth-century CE.

¹⁴⁰ Soaibou v Khady, 14 August 1945, Tribunal de Tombouctou – affaires à juger – 1933-1959, ART M 18

marital home.¹⁴¹ The court granted two divorce requests and refused one. It also annulled two marriages, one, where the wife was twelve years old.¹⁴²

The court ordered the wife to reimburse the bridewealth (of between 3 000 to 5 000 francs) and in another refused the husband's request for the return of the bridewealth. It granted custody to the mother.¹⁴³ In another, it enjoined the husband to provide the wife with one hundred francs and pay her the bridewealth of 3 000 francs.¹⁴⁴

The dispute of a Catholic husband, a local and a corporal or sergeant in the French army and his Muslim Bellah woman shows the marriage of Muslim women to non-Muslim men during the colonial era. Interestingly, the Catholic husband had two wives.¹⁴⁵ The one dispute is the result of an intriguing interplay of family pressure and interference, lies, and the conflicting testimonies of two *marabouts* (one of them the former colonial appointed *qāḍī* of Timbuktu's sedentary population, from 1942 to 1948).¹⁴⁶ The marriage was also a bigamous one, "I can swear that I was not divorced

¹⁴¹ Mohamed Ali v M'Barka, 2 Décembre 1958, Tribunaux de Tombouctou, justice de paix diverses, affaires et correspondances cercle de Tombouctou 1946-1959, ART M30

¹⁴² Sabo v Rahamatou, 7 April 1959, Tribunaux de Tombouctou, Justice de paix diverses, affaires et correspondances cercle de Tombouctou 1946-1959, ART M30. The "*Décret Mandel*" of 13 June 1939 prohibited the marriage of girls under the age of 14 in French West Africa, see, Justice de paix diverses affaires et correspondances Cercle de Tombouctou 1946-1959 ART M 30.

¹⁴³ Kangaye v Niamoye, 2 December 1958, Tribunaux de Tombouctou, Justice de paix diverses, affaires et correspondances cercle de Tombouctou 1946-1959, ART M30

¹⁴⁴ Ouartakoffad v Sene, 12 May 1959, Tribunaux de Tombouctou, justice de paix diverses, affaires et correspondances cercle de Tombouctou 1946-1959, ART M30

¹⁴⁵ Kalifa v Mariam, 27 January 1959, Tribunaux de Tombouctou, Justice de paix diverses, affaires et correspondances cercle de Tombouctou 1946-1959, ART M30

¹⁴⁶ Politique Musulmane fiches de renseignements sur les personnages religieux Tombouctou, 1911-1950, ART 4 E 30 and Justice indigène correspondances diverses, 1944-1947, ART M4

from my shepherd husband when I married my current husband (a former brigadier)", the wife told the court.¹⁴⁷

The similarities between these domestic disputes and the ones the court heard between 1907 and 1912 are clear. The relevance of these cases to this study is that the *fatwās* we use as a historical source show similar disputes as we will see in the coming chapters.

Conclusion

Except for a few, Timbuktu's long-established Muslim population did not use the colonial native courts for their intimate domestic disputes. They continued to refer their domestic disputes to their *mufītīs* cum *qāḏīs* as they had done for six centuries. This is clear from the large numbers of colonial-era *fatwās* on domestic disputes. Nevertheless, the native courts did hear domestic dispute cases of people who had come to the city as a result of colonial rule, as their names and professions show. Litigation centred on abandonment of the marital home, bigamy, wives frequently requesting divorce, wives with multiple lovers, and wives refusing to travel with or to their husbands. The same social behaviours and practices we find in colonial-era *fatwās* on domestic disputes, specifically of the 1940s. Whether the social practices were a result of French colonial rule and its legal system, we can only wonder at this stage. Timbuktu's people, as Horace Miner points out, attribute, for example, bastardy to a change in conditions that accompanied the arrival of French colonial

¹⁴⁷ Mohamed Ali v M'Barka, 2 December 1958, Tribunaux de Tombouctou, Justice de paix diverses, affaires et correspondances cercle de Tombouctou 1946-1959, ART M30

rule. The French, however, insist that promiscuity in the city of the kind pre-dates their arrival.¹⁴⁸ Such a conclusion awaits a study of *fatwās* from the region over a long term, as far back as the sixteenth century, as Lucien Febvre suggested the value of documents lies in studying them over the long term.¹⁴⁹ And the study of the geography of the region, for geography as Braudel said, “Help us to rediscover the slow unfolding of structural realities, to see things in the perspective of the long term (*la longue durée*).¹⁵⁰ In addition, the oral testimonies of individuals alive during colonial rule or of their children are an indispensable source. However, given that colonial rule ushered in a variety of profound social transformations in the French Soudan, as Ben Soares shows, there is no reason to assume that Timbuktu remained immune. Whatever future research will yield, the native court cases and the *fatwās* exhibited here and in the following chapters do allow for imagining and reconstructing social practice in colonial Timbuktu. The coming chapters narrate their stories or micro-histories.

¹⁴⁸ Miner, H. 1965. *The primitive city of Timbuctoo*. New York: Anchor Books, pg. 189

¹⁴⁹ Burke, P. 1990. *The French historical revolution: the Annales School, 1929-89*. Stanford: Stanford University Press, pg. 74

¹⁵⁰ Braudel, F. 1972. *The Mediterranean and the Mediterranean world in the age of Philip II*, trans. Siân Reynolds, vol. 2. London: Collins, pg.23

Chapter Two

From fatwās: an alternative history of Timbuktu

When they ask you [O Muḥammad] for a pronouncement (*yastaftūnaka*) ... Say: “God pronounces to you (*yufīkum*) ...¹

Isn't law reality itself? The answer – here as everywhere, at all times – is no. Of course not.²

Introduction

“Is it permissible O great and learned sir to ride upon a camel that has drunk wine” the great medieval Muslim polymath and polemicist Aḥmad ibn Taymīyyah (d. 1328) was once asked by an illiterate Bedouin.³ With his humorous question, the Bedouin - clearly worried about the religious implications of mounting an intoxicated camel - is the petitioner or *mustafī*. His question was an *istiftā'* or a request/petition for a *fatwā* from ibn Taymīyyah, who was the *muftī*. We can safely assume that ibn Taymīyyah's answer, i.e. his *fatwā*, was that it was permissible: a camel, as any animal, is not the locus of divine injunctions and is therefore permissible to mount even in a state of drunkenness. He, in all likelihood, added that provided it is safe, as falling off a drunken camel running at high speed can result in death or grave injury. We can only imagine that the camel either stumbled upon the wine accidentally or was given it by an unscrupulous person.

¹ Qur'ān 4, verse 176

² Comaroff, J.L. 1994. Foreword, in S.F. Hirsch and M. Lazarus-Black (eds.) *Contested states: law, hegemony and resistance*. London: Routledge, xi

³ Quoted from, Moosagie, M.A. Trends in the justificatory force of the fatawa of the Deobandi mufti. Unpublished PhD dissertation, University of Cape Town, Cape Town, pg. 1

Ibn Taymīyyah was called upon in another *istiftā'*, also to do with drunkenness - only this time the drunken party was not a camel. He was with his students and some '*ulamā'* in Damascus at the beginning of the fourteenth century CE when they came across some drunken Mongol soldiers. The drunken soldiers were Ilkhan Mongols who had recently become Muslim.⁴ Some of those present requested that ibn Taymīyyah go to Qazaan Khan, the leader of the Muslim Mongols Ilkhans – whom he had just met with - to have the soldiers punished in accordance with Islamic law. They might be soldiers, but they are Muslims and had to be admonished and punished for having consumed wine or whatever intoxicant it was.⁵

Much to their surprise and astonishment, ibn Taymīyyah did not censure the drunken Muslim Mongol soldiers, less so call for them to be punished. Instead, his reply was that the drunken soldiers be left alone. As they had only recently become Muslim, these Mongol soldiers were still “wild” and when sober they often raped and murdered the local Damascene population. Thus, they were better off drunk and harmless than sober and destructive,⁶ which were greater evils than drinking alcohol. If the security and safety of Damascene population were contingent upon their intoxication then a blind eye should be turned to their sin of wine consumption.⁷ The manner in which ibn Taymīyyah handled this incident was his *fatwā*. In this *fatwā* he took into account the

⁴ The Mongols were decisively defeated in September, 1260 (three years prior to ibn Taymīyyah's birth) at 'Ayn Jalūt in Palestine but remained a formidable military and civilizational threat to the Muslim world.

⁵ The prescribed punishment for a Muslim who consumes wine or any substance that intoxicates is eighty lashes. Zuhaylī, W. 1989. *Al-fiqh al-islāmī wa adillahtuh*, vol. 6. Damascus: Dār al-Fikr

⁶ <http://sunn1.wordpress.com/2009/11/15/yasir-qadhi-mawlid-a-sloppy-affair>, accessed on 9/06/2010. Also, see ibn al-Qayyim al-Jawzīyyah, S. 1988. '*Ilām al-muwaqqi'in*. 4 vols. Damascus:

⁷ The *fatwā* also depicts ibn Taymīyyah's independent reasoning and rather innovative thinking - for a man often perceived and portrayed as one of the bastions of the conservative and literal trend of Islamic scholarship.

socio-political situation in Damascus at the time. At no time did ibn Taymīyyah say it was permissible for the Mongol Muslim soldiers to consume wine. Had he come across other Muslims who were drunk he would have had meted out to them the prescribed punishment for consuming alcohol.

The two *fatwās* show that alcohol, although forbidden in Islam, was not only available in Muslim communities but also traded in and consumed, and not only by a camel and recently converted Muslim Mongol soldiers.⁸ The extent of this is no more evident than with ‘Imād al-Dīn Zanki (d. 1146), the great Muslim *jihād* leader famous for his *jihāds* against the Crusades. Zanki was the most successful *jihād* leader against the Crusaders, after Saladin (d. 1193) – in fact, Saladin owes his *jihād* to Zanki. But Zanki was also a consumer of wine and it was wine that contributed indirectly to his death in September 1146. On that fateful September night - one hundred and fifty years before the incidents with ibn Taymīyyah – Zanki went off to sleep after having imbibed a great quantity of alcohol. Sometime during the night, he was awoken from his sleep, by his eunuch drinking wine from his goblet. This infuriated Zanki so much, he swore to severely punish the “offender” the following day. Afraid of his master’s wrath, the eunuch waited for Zanki to fall asleep then riddled his body with dagger strokes.⁹

Fatwās, as legal texts, are about law, and law do two things. One, it enjoys a very close relationship with history, since the last 2 500 years as Carlo Ginzburg points out.¹⁰ Two

⁸ In another *istiftā’*, ibn Taymīyyah is asked about the permissibility of Jews selling wine.

⁹ Maalouf, A. 1984. *The crusades through Arab eyes*, transl. Jon Rothschild. London: Al-Saqi Books, pg. 138

¹⁰ Ginzburg, C. 1991. ‘Checking the evidence: the judge and the historian’, *Critical Inquiry* 18 (1), 79

and more particularly, law commands and shapes social relations and social action as Richard Roberts and Kristin Mann hold.¹¹ “Law”, as Hay and Wright argue, “can be seen as a reflection of norms, customs, and rules through which society regulates itself; on the other hand, law may be viewed as directing social behaviour.”¹² To see how problems raised in law and culture find their responses not within their own confines alone but within the ambit of both, we must move back and forth across the analytic line that separates both, as Lawrence Rosen said.¹³ *Fatwās* show us both these functions of law clearly.

Wael Hallaq shows convincingly that *fatwās* originate socially. All *fatwās* begin with a question and many jurists begin their response with “I have read your question and carefully considered it” and involve real persons with real problems that stem from the real world. In many *fatwās* the names, professions and places of residence are mentioned. The dictum that no *fatwā* should be issued with regard to a problem that has not yet occurred in the real world is indicative of *fatwās*’ social character.¹⁴ *Fatwās* thus reflect the thoughts, feelings, experience, and ordeals of people. Any rejection of the worldliness of the *fatwā* genre, as Hallaq says, would make nonsense of their form and contents.¹⁵ From her study of seventeenth-century *fatwās* from the Levant, Judith

¹¹ Mann, K & Roberts, R. 1991. ‘Introduction’, in K. Mann and R. Roberts (eds.), *Law in colonial Africa: social history of Africa*. Portsmouth: Heinemann, pp. 1-5

¹² Hay, M.J & Wright, M. ‘Introduction’, in M.J. Hay and M. Wright (eds.), *African women & the law: historical perspectives*. Boston: Boston University, x

¹³ Quoted in, Moosagie, Trends, 5

¹⁴ Hallaq, W. 1994. ‘From *fatwās* to *furū*: growth and change in Islamic substantive law’, in *Islamic Law and Society*, 1, (1), 31-38

¹⁵ Hallaq, From *fatwās* to *furū*, 31-38

Tucker shows the connection between women and administrative, economic, and social developments in that society.¹⁶

David Powers and Narimān ‘Abd al-Karīm’s meticulous study of *fatwās* from al-Wansharīsī’s *Kitāb al-Mi‘yār* convincingly establish *fatwās* as a historical source of social practice. David Powers’ “A court case from fourteenth-century North Africa” demonstrates that work on *fatwās* provides a diachronic snapshot of both social history and legal practice.¹⁷ ‘Abd al-Karīm’s study of divorce in the Arab West, Andalusia and Egypt drawn shows that *nawāzil* or *fatwās*¹⁸ introduce us to the lives of people in its most minute details. The particular *fatwās*, she concludes, articulates/expresses the history of ordinary men and women and all those not written about in the annals and other works.¹⁹

In short, because *fatwās* are about ordinary people they have tremendous potential to articulate and express the history of the absent and the negated, those not written about in the annals of the classical Muslim historiographical legacy.²⁰ As a Muslim jurist, Ibn Taymīyyah responded to the drunken camel and the drunken Mongol soldiers incidents in legal fashion. However, the two incidents show that *fatwās* are a historical source and that they can tell stories about themselves and other things.

¹⁶ Tucker, J.E. 1998. *In the house of law: gender and Islamic law in Ottoman Syria and Palestine*. Berkley: University of California Press, pg. 10

¹⁷ Powers, D. 1990. ‘A court case from fourteenth-century North Africa’, *Journal of the American Oriental Society*, 110 (20), 231

¹⁸ *Nawāzil* (s. *nāzilah*) is another word for *fatwā* and is the preferred word used in the Arab West including Timbuktu; *wāqi‘āt* is another word, used mostly in eastern Islamic world.

¹⁹ ‘Abd al-Karīm, N. 2008. *Al-khul‘ bayna al-fiqh wa al-tarīkh*. Cairo: Ru’yah, pp. 19 - 22

²⁰ *Ibid*, 22

This chapter looks at *fatwās* from Timbuktu and its surrounding world as a historical source of Timbuktu's ordinary men and women in their everyday lives. We look at six *fatwās* from two of Timbuktu's manuscript libraries, the public Aḥmad Bābā library (IHERI-AB) and the private Mamma Haïdara Memorial Library. But the six *fatwās* also tell stories. In this chapter, however, they are merely introduced as story-tellers. Detailed stories, from *fatwās*, are told in the coming three chapters. Before we proceed to the six *fatwās*, we look at *iftā'* and questioning in general in the Qur'ān and during the life of Prophet Muḥammad, what a *fatwā* is, and the problematic of *fatwās* as a historical source. We also give a brief account of *iftā'* in Timbuktu and a social-economic description of Timbuktu at the end of the nineteenth century up to the 1940s.

Iftā' in the Qur'ān and Sunnah

Questioning is accorded a place in Islam and its foundational texts. The early Muslims asked questions and confronted the Prophet with their needs and enquiries, expecting an answer from him or from God. This was natural as they were confronted in their daily lives, religious and mundane, with many events and experiences. The Qur'ān shows that God took note of the experiences, questions and concerns of the first generation of Muslims and responded with guidance. In fact, in numerous places, the Qur'ān instructs Muslims to consult those with knowledge if they do not know (*fas'alū ahl al-dhikr in kuntum lā ta'lamūn*).²¹ The words *iftā'*, *istiftā'*, *su'āl*, etc. in the Qur'ān and their variations denote the asking of questions and giving of answers.

²¹ Qur'ān 16, verse: 43 and passim

Thus, the word *iftā'* and its variations appear in several places in the Qur'ān. For example, after reading King Solomon's letter, Bilqīs the queen of Sheba said to her courtiers, "*yā ayuhā al-mala' aftūnī fī amrī*" (give me a verdict on this matter).²² Similarly in *Sūrah* 12, the Pharaoh asks Joseph to interpret his enigmatic dream (*aftinā fī*) that others failed to interpret.²³ In the chapter of the Qur'ān entitled "Women" both *yastaftūn* and *yuftī* appear in the verse, "When they ask you [O Muḥammad] for a pronouncement (*wa yastaftūnaka*). Say: "God pronounces to you (*yuftīkum*) concerning ..."²⁴ Another formula is *yas'alūna [ka]*, meaning they ask you Muḥammad. *Yas'alūna [ka]* occurs fifteen times in the Qur'ān and its variations one hundred and twenty six times, *yastaftūnaka* and its variations six times, *yuftīkum* two times and *aftinā/aftūnī* three times.²⁵ The *yas'alūnaka* formula in the Qur'ān shows that the Prophet was asked about new crescents, gambling and alcohol, orphans, menstruation, what to spend in God's path, etc.

A *ḥadīth* (prophetic tradition) tells us of Umm Sulaym, a woman who came to Muḥammad and asked him whether women must take the ritual bath after wet dreams.²⁶ She prefaced her question with the words "God is not shy".²⁷ Another *ḥadīth* tells us about a woman who complained to the Prophet that her husband's penis was too small.

²² Qur'ān 27, verse: 32 and passim

²³ Qur'ān 12, verse: 32

²⁴ Qur'ān 4: verse 185

²⁵ Qur'ān 2, verse: 189 and passim. See, 'Abd al-Bāqī, M.F. 1988. *Al-mu'jam al-mufahras li alfāz al-Qur'ān al-karīm bi ḥāshiyah al-muḥaf al-sharīf*. Cairo: Dār al-Ḥadīth

²⁶ Wet dreams, sexual intercourse, menstruation, masturbation make the ritual bath called *ghusl* obligatory.

²⁷ Ibn Ḥajr, Aḥmad bin 'Alī al-'Asqalānī. *Fath al-bārī sharḥ ṣaḥīḥ al-bukhārī*, vol. 1. Dār al-Fikr, pg. 388 (n.d., n.p.; Introduction gives year of its editing as 1959)

She wanted to know whether she could return to her first husband from whom she was divorced.²⁸ At times the Prophet responded immediately and directly to questions; other times he awaited revelation.²⁹

Naturally, people did not stop asking questions after the cessation of revelation with the demise of the Prophet. They were and are confronted continuously with novel situations while revelatory texts and legal precedents are limited. The difference was that with the demise of Prophet Muḥammad, questions would no longer be answered directly through revelation from God or by the Prophet. The responsibility or the mantle of answering the believers' questions now fell to the scholars, i.e. those who had knowledge of the Qur'ān, the Prophetic teachings, and specific sciences, such as Arabic language, exegesis, legal precedent, etc. More specifically, the responsibility fell on the shoulders of *mufṭīs*. "The *mufṭī*," wrote the great Muslim jurist al-Shāṭibī (d. 1388), "stands before the Muslim community in the same place as the Prophet stood."³⁰

What is a Fatwā?

In its basic form, a *fatwā* consists of an *istiftā'* or *su'āl* (petition or question) by a *mustaftī* addressed to a *mufṭī* (jurisconsult) and the *mufṭī's jawāb* (answer).³¹ The issuing of a *fatwā*, i.e. the *mufṭī's* answer is called *iftā'*. Although most *mustaftīs* are lay persons

²⁸ See, Ibn al-Kathīr, Abū al-Fidā' Ismā'īl. 1990. *Tafsīr al-Qur'ān al-'aẓīm*, second edition. 4 vols. Beirut: Dār al-Jīl, pg. 263

²⁹ The Prophet's direct answers, in addition to what he said and did generally, constitute his *Sunnah* or exemplary conduct. What he received through revelation is the Qur'ān.

³⁰ Quoted from Masud, *et al*, *Muftis, fatwas, and Islamic*, 8

³¹ Akin to *fatwās* both as legal documents and sources of social history is the rabbinical responsa literature, i.e. the answers of authoritative Jewish scholars on questions of a legal character. S.D. Goiten has evidently shown that rabbinical responsa from the Cairo *Geniza* are a historical source. See, Goiten, *A Mediterranean society*, 4 volumes (Berkeley: University of California Press, 1967)

as well as rulers, we find learned *qāḍīs* consulting *muftīs*, such as the fourteenth-century Moroccan *qāḍī* ‘Isā b. Muḥammad al-Tirjālī who sent his *istiftā’* to the distinguished *muftī* Ibrāhīm b. ‘Abd-Allah al-Yaznāsini.³²

A *fatwā* is nonbonding irrespective of the *muftī*’s qualifications and piety. The *mustaftī* always has the option to consult another *muftī* if s/he is not satisfied with the first *muftī*’s answer. Although most *fatwās* are “born” as a result of a question from a *mustaftī*, a *muftī* may issue a *fatwā* without receiving a prior *istiftā’* from anyone. Thus, it is not strange to find *muftīs* issuing their *fatwās* solely on the transpiring of an event without anyone having requested them for a *fatwā*, as is evident from many Timbuktu *fatwās* and as we will see in the following chapter. While, for all intents and purposes, *muftīs* were and are men, women can be, and were, *muftīs*.³³ The issuing of *fatwās* has been a pervasive feature of Muslim societies since the first/seventh century and has continued ever since. Thus, to talk about *fatwās* is very much to talk about the lived experience of Islam.

A *fatwā* can be on any subject from commerce, to domestic disputes, dietary laws, sexual matters and even became an instrument for political criticism.³⁴ In the case of Timbuktu, *muftīs* employed *fatwās*, among other things, to critique and even attack one another, as we will see in chapter five. Most *istiftā’āt* (petitions) were conveyed in

³² Powers, D. 2002. *Law, society, and culture in the Maghrib, 1300-1500*. Cambridge: Cambridge University Press, pp. 19-28

³³ For example, the Prophet’s wife ‘Ā’isha was a *muftī* of her time

³⁴ Masud, M.K., *et al.* 1996. ‘Muftis, fatwas, and Islamic legal interpretation’, in Masud, M.K., *et al* (eds), *Islamic legal interpretation: muftis and their fatwas*. Massachusetts: Harvard University Press, pg. 9

writing to the *muftī*, although a few were conveyed orally. Unlettered people referred their questions to a lettered person to have it put in writing and then send to a *muftī*. The *muftī* applies his knowledge of the primary sources of Islamic law³⁵ to the particular question or incident. However, the *muftī* worth his salt has to take into account such factors as local custom, public welfare, the political situation, economic demands, and even the tricks and lingo of the laity and so forth. In other words, he does not simply refer to ready-made answers whether from the Qur'ān, the *Sunnah*, the manuals of substantive law, or previous *fatwās*. In fact, for many novel incidents or questions the primary sources and legal precedents do not provide ready-made answers. *Iftā'*, as Moosagie says, "has throughout history enjoyed the privilege of being regarded as the single most accepted legal means through which, Islamic law was mediated."³⁶

Problematique of fatwās as a historical source

A, if not the, big problem with *fatwās*, as a historical source, is the paucity of information it contains. The information with regards to the people involved in the question the *muftī* addresses in his *fatwā*. What and how much the *muftī* decides to include in the final version of the *fatwā* determines the degree of this problematique. Karen Miller and others have shown that *fatwās* tend to have a short *istiftā'* (question) and a lengthy *jawāb* (the *muftī*'s answer). Moreover, the *jawāb* like the *istiftā'* is not always transparent as a historical source.³⁷ *Muftīs* more often than not omit details such as names, place, dates, and age, social and economic status of the petitioner and a

³⁵ The Qur'ān, prophetic traditions, the consensus of the scholars, and independent reasoning

³⁶ Moosagie, 'Trends in the justificatory force of the fatawa of the Deobandi mufti', 1

³⁷ Miller, K. 2000. 'Muslim minorities and the obligation to emigrate to Islamic territory: two *fatwās* from fifteenth-century Granada', *Islamic Law and Society* 7,2, pg. 264

comprehensive description of what transpired. They suffice with giving only a general description of the incident in their *fatwās*. That they privilege their answer at the expense of the question is not out of vanity. In their mind, a repetition of the details of the *istiftā'* in the *fatwā* is superfluous.

What matters to them is that they understand the question and its context and more importantly guide the *mustaftī* to the correct answer. The details that *mufīīs* omit are, of course, vital to the social historian. Below, we will provide an example from a *fatwā* in this regard. It must be noted though that these details are not always stated in the *istiftā'* itself.

Wael Hallaq's discussion of primary *fatwās* and secondary *fatwās* gives us an idea of how *fatwās* are stripped of information; information so vital to the social history. A primary *fatwā* is one that mentions the names of the litigants, the location of the dispute, and the date of specific events. It may also include a transcription of one or more legal documents relating to the case. These details were eliminated when the primary *fatwā* was transformed into a secondary *fatwā*.

In the secondary *fatwā*, concrete historical details such as the names of people and places, words and phrases not of direct legal relevance and documents attached to or embedded in a primary *fatwā* are stripped from the *fatwā*. The length of the *fatwā* is reduced through summary (*talkhīṣ*). As a result of stripping away of information and the summarization of the *fatwā*, a narrative dealing with a specific and historically

contextualized situation was transformed into an abstract case that refers to one or more nameless individuals living in an unspecified place at an undetermined time.³⁸

The following example shows the transformation of a primary *fatwā* into a secondary one. The primary *fatwā* was issued originally by ibn Rushd, the twelfth century Cordovan jurist and philosopher (d. 1198 CE),

[Ibn Rushd] ... was asked about two men who fought each other. The name of the first is Abū al-Walīd and of the second ‘Abd al-Malik. Abū al-Walīd inflicted upon ‘Abd al-Malik a wound with a knife belonging to him, so ‘Abd al-Malik, in the company of a relative named ‘Umar followed Abū al-Walīd, who had injured him. On the way, ‘Abd al-Malik and ‘Umar, met the brother of Abū al-Walīd whose name is Muḥammad. ‘Umar held Muḥammad, the brother of Abū al-Walīd, and said to ‘Abd al-Malik, “Strike to kill.” Thus, he wounded Muḥammad. Each of the two parties inflicted injuries upon the other: ... The injuries which the parties inflicted upon each other were confirmed by witnesses ... Muḥammad died as a result of the injury. Abū al-Walīd sought to avenge his brother’s death at the hands of ‘Abd al-Malik and ‘Umar, but he could procure no witness to take an oath against them ... Should ‘Abd al-Malik be executed on the basis of these [testimonial] oaths before healing from the injuries inflicted upon him by Abū al-Walīd? Or should the execution be delayed until he recovers?³⁹

The secondary *fatwā* appears in a later work of Islamic substantive law work (*furū’*) entitled *Mawāhib al-jalīl*

In his *Nawāzil*, ibn Rushd also said: A man inflicted a wound upon another and the brother of the former was also wounded by the latter, together with a relative of his ... The second man who was injured died. His brother wanted to avenge his death. Can the injured man, and his relative, be executed on the basis of testimonial oaths before the wounds inflicted upon him have healed, or should he be imprisoned until he recovers? He answered: The injured man...⁴⁰

³⁸ Hallaq, *From fatwās to furū’*, 43-48; Powers, *Law, society, and culture in the Maghrib, 1300-1500*, 17

³⁹ Hallaq, *From fatwās to furū’*, 45 - 46

⁴⁰ *Ibid*, 46 - 47

The primary *fatwā* contains 248 words, while the secondary version comprises of 110 words. Omitted from the secondary *fatwā* are the names of the disputants, including that of the murdered victim and also several details regarded as legally irrelevant. The *fatwā* was transformed from a highly contextualized situation into an abstract case.

The primary *fatwā* is clearly the better candidate as a source for the social history of twelfth-century Cordoba. We learn from it that knives were used as weapons to kill and that revenge was not necessarily visited on perpetrators of crimes (Abū al-Walīd), but on relatives (Muḥammad). Also, retribution was not according to the just measure of punishment fits the crime, hence ‘Umar’s call to ‘Abd al-Malik to strike to kill although Abū al-Walīd only wounded ‘Abd al-Malik. The incident also reflects the Arab custom that blood is thicker than water: my brother/cousin and I against the stranger, irrespective of the merits of the case. And finally this case allows us to assume that people in Cordoba bypassed the law enforcement agencies to take the law into their own hands.

There are exceptions of course, for example an *istiftā’* of the fourteenth-century Marīnid *qāḍī*, ‘Isā bin Muḥammad al-Tirjālī to the distinguished *muftī* Ibrāhīm b. ‘Abd-Allah al-Yaznāsīnī. Al-Tirjālī’s *istiftā’* was long, detailed, and carefully formulated. He summarized the facts of the case, presented a summary transcription of the testimonial evidence and preserved the names of the litigants. He thereby made it possible for the historian to situate the case in its historical context.⁴¹ Neither the *mustaftī* (the judge in this case) nor the *muftī* omitted any of this information. This perhaps, because the

⁴¹ Powers, *Law, society, and culture in the Maghrib*, 26-27.

mustaftī was a learned judge and not a common man and that the *istiftā'* was issued in connection with *qāḍī* court litigation.

We cannot summarily categorize Timbuktu and its surrounding world's *fatwās* as either primary or secondary *fatwās*. That because the discussion of primary/secondary *fatwās* centres on the incorporation of *fatwās* into the manuals of Islamic substantive law.

Timbuktu's *fatwās* have not been incorporated into any text of Islamic substantive law. However, we must remember that Hallaq's discussion of primary and secondary *fatwās* is not only to show that *fatwās* were incorporated on a regular basis into manuals of substantive law, but that they originate socially.⁴² Thus if we are permitted to apply the primary/secondary *fatwā* category to Timbuktu's *fatwās*, with much over-simplification, then we can categorize them under secondary *fatwās*. In other words, we take it for granted that most of Timbuktu's *fatwās* have from the outset been stripped of highly contextualized social information.

A prophetic tradition about the legal consequences of a divorce issued in jest stripped of details such as names and context shows how the social context of the *ḥadīth* is lost. The *ḥadīth* (resembling the secondary *fatwā*) states, "The messenger of God [Muḥammad] said, "Three things uttered in seriousness or in jest are legally binding: marriage, divorce and taking back one's wife after divorce".

⁴² Hallaq's aim was also to show that *fatwās* were instrumental in bringing about legal change, thereby challenging the notion that Islamic law had become rigid after the first three centuries of Islam and lost touch with the lived reality.

In these words, the social context of the *ḥadīth* cannot be understood. However, another *ḥadīth* (resembling the primary *fatwā*) states, “In the time of the Prophet, a man would say to another man, “I have married you off to my daughter”, only to add, “I was playing.” Likewise another *ḥadīth* on the same matter states that a man from the Yemeni Ash‘arī tribe divorced his wife, and then took her back saying, “I did so in jest”. The Prophet, angry at this Ash‘arī man, then issued his *ḥadīth*. Thus the first *ḥadīth* states only the ruling and provides no context at all, while the second *ḥadīth* provides a context.⁴³

Iftā’ in Timbuktu

Iftā’ in Timbuktu exists ever since scholars settled in the town, more so after it became a centre of scholarship in the region at the beginning of the sixteenth century CE. As we pointed out in chapter one, the inhabitants of Timbuktu directed their questions to their scholars for six centuries. Askiya *al-ḥājj* Muḥammad (r. 1493-1529) is known to have consulted the scholarly establishment of Timbuktu and Gao, as the famous *Ajwibah al-Maghīlī ‘alā as’ilah Askiya al-ḥājj Muḥammad*, a *fatwā* on religious-political matters, shows.⁴⁴ The well known jurist, Muḥammad al-Kābirī (lived *circa* 1450) issued a *fatwā* on the possession of property.⁴⁵

⁴³ See, Ibn al-Kathīr, *Tafsīr al-Qur’ān al-‘azīm*, 266

⁴⁴ Muḥammad bin ‘Abd al-Karīm al-Maghīlī, *Ajwiba al-Maghīlī li ‘alā as’ilah Askiya al-ḥājj Muḥammad*, IHERI-AB, ms 5180, fl.1 & ‘Abd al-Raḥman al-Sa’dī, *Tarīkh al-Sūdān*, IHERI-AB, ms 681

⁴⁵ Muḥammad al-Kābirī, IHERI-AB, ms 19

Two notable *fatwā* givers, among many, during the sixteenth century are Muḥammad Baghayogo (d. 1594) and his student, the celebrated Aḥmad Bābā al-Sūdānī (d. 1627).⁴⁶ One of the latter's most seminal *fatwās* is his *Mi'rāj al-ṣu'ūd* on the enslavement of free black Muslims.⁴⁷ *Fatwā*-giving activity in Timbuktu continued ever since. This institution seems to have come to an end in Timbuktu, only at the end the twentieth century with the death of its last few great traditional scholars.

Six Timbuktu fatwās

The six *fatwās* addressed a divorce, a dowry squabble, a Muslim- Christian marriage, question over conjugal relations, the marriage of a virgin girl without the knowledge of her guardian, and battering. Although five of the *fatwās* are not dated, we know that, from the *mufīīs* who issued them, they were issued during the colonial era. Muḥammad bin al-Ṭāhir Dah (d. 1964), Muḥammad Maḥmūd b. al-Cheikh (d. 1973), etc. lived the larger part of their lives during the colonial era. The one dated *fatwā* was issued in the pre-colonial period, in 1804. The six *fatwās* lack such basic information as names of people and places, dates, etc. - the kind of details that the *fatwās* used in the three chapters that follow have.

Fatwā One: Selling salt for food on credit

The *mufīī* is asked whether the current practice in the villages and desert of the Azawād of selling agricultural produce in exchange for salt that will be paid at a later stage is permissible. Salt is the main commodity of

⁴⁶ Aḥmad Bābā al-Sūdānī. 1989. 1st edition. *Nayl al-ibtihāj bi taṭrīz al-dībāj*, 2 volumes. Tripoli: Kulīyah al-Da'wah al-Islamīyyah, pg. 603. The catalogues of the Aḥmad Bābā Collection list a few of Muḥammad Baghayogo's *fatwās*; see *Handlist of manuscripts*, volume 1, 81 and passim; also, Hunwick, *Arabic literature*, vol. 4, 12, 31 and passim

⁴⁷ See, Aḥmad Bābā al-Sūdānī. 2000. *Mi'rāj al-ṣu'ūd: Aḥmad Bābā's replies on slavery*, John Hunwick and Fatima Harrak (annotators and translators). Rabat: Publications of the Institute of African Studies

trade in this region ... The agricultural produce is handed over, while the salt is delivered at a later date. This practice, taking the food on credit and paying the salt later, ensures the welfare of all and secures the mutual interests of both the salt merchants and the farmers. What a benefit! The cessation of the practice will cause great harm and loss for both parties; what harm! For the farmers [coming far from the river] might come to the desert villages and far outlying areas [to sell their agricultural produce] but not find the salt as the [the salt caravans] have not brought it as yet. Remaining [in the desert] awaiting the arrival of the salt will lead to the suffering of their animals and the destruction of their agricultural produce.⁴⁸

This *fatwā* was issued sometime between the end of the nineteenth century and beginning of the twentieth century. The former is more probable as the *mufī*, ‘Umar bin ‘Alī b. al-Shaykh b. Aḥmad died around 1921. Secondly, other *fatwās* he issued are dated around 1918. The *istiftā*’ was on the permissibility of selling agricultural produce and other foods in return for salt on credit.⁴⁹ Islamic law permits the exchange of different commodities such as salt and agricultural produce or gold and wheat in unequal measures provided both commodities are exchanged in the same business transaction. The prophetic tradition states that gold can be sold in exchange for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt in equal measures and immediate exchange of both commodities in the same sale transaction.⁵⁰

However, in the Azawād, wherein Timbuktu and the other important commercial and strategic towns Arawān, Gao, Taoudeni, etc. are located, the salt was not handed over at the same time that the food was received; it was handed over only at a later stage. Thus,

⁴⁸ ‘Umar bin ‘Alī bin al-Shaykh bin Aḥmad, *Wasīlah al- najah fī ‘ adm ribawīyyah al-milḥ*, Mamma Haīdara Memorial Library, ms 98, fl. 7 - 8

⁴⁹ ‘Umar bin ‘Alī bin al-Shaykh bin Aḥmad, *Wasīlah al- najah*, Mamma Haīdara Memorial Library, ms 98, fl. 1

⁵⁰ Muslim b. Ḥusayn al-Nayshabūrī. 1988. *Ṣaḥīḥ muslim bi sharḥ al-Nawawī*, vol. 5. Cairo: Dār al-Ghad al-‘Arabī, p.298

we have a local commercial practice that apparently contradicts Islamic law. The *muftī* declared it permissible. The practice was a long-standing one, as the *muftī* himself indicates when he notes that Sīdī al-Mukhtār al-Kuntī (d. 1811) was also asked the very same question.

As a historical source, the *fatwā* tells us of a commercial practice in Timbuktu and its surrounding world at the turn of the twentieth century that involved the exchange of agricultural produce for salt. In the early twentieth century, the former White Father of the Catholic mission in Timbuktu, Yacouba Dupuis noted that the exchange of salt from Taoudeni in exchange for grains and fabrics is one of the most lucrative commercial ventures.⁵¹ As late as the 1940s, such exchanges were still necessary in the bush and desert even though bush people knew the value of currencies such as cowries and Francs. In fact, Francs were used in Timbuktu even before the French conquest of 1894. Travellers carried salt, kola nuts, etc to exchange for food. The caravans carried produce such as sugar, shea butter, grain, tobacco, etc. to the major salt mine Taoudeni.⁵² Because the farmers and salt traders were not from the big towns, such as Timbuktu or even Arawān, money such as silver or cowries were of often of little significance or not an indispensable means of purchase.

But the *fatwā* also tells the importance of this practice to the lives of many ordinary salt traders and farmers in the region, as the practice involved small rural villages and desert communities. Taking into account their socio-economic environment, the *muftī*

⁵¹ Dupuis, *Industries et principales professions*, ii

⁵² Miner, *The primitive city*, 49 & 73-74

emphasizes the necessity and benefits of the transaction, despite the clear injunction of Islamic law that both goods should be exchanged simultaneously. The practice, he states, procures tremendous benefits for the salt traders and the food producers and safeguards their mutual interests. Conversely, the cessation and/or prevention of the practice will cause excessive harm such as economic loss and hunger to both salt traders and farmers and their animals.

The *fatwā*, if issued at the end of the nineteenth century, could have been informed by the negative impact Taureg and Arab pastoralist opposition to the French had on trade in the Niger Bend. In their opposition to the French, pastoralist groups raided pastoralists and sedentary communities that co-operated with the French. These raids, which were only suppressed finally in the 1930s, severely affected the salt trade known as the azalaï.

The colonial administration levied a 50 percent tax on all cereals leaving Timbuktu in 1897, which led to a complete halt in the trade of salt as a result.⁵³ Local organizers of the annual azalaï avoided Timbuktu all together and diverted their trade to areas outside of French control. This disruption of the salt trade caused economic losses for the Barābīsh Arabs and many smaller desert settlements involved in this commerce.

Coupled to this, Timbuktu witnessed a poor crop harvest in 1899.⁵⁴ The negative impact of all these developments on the small sedentary agricultural riverine communities and the salt merchants cannot go lost.

⁵³ See, Hall, Mapping the river, 141-142

⁵⁴ See, Hall, Mapping the river, 141-142

Fatwā Two: You want three, take four

He and his wife were arguing when she [suddenly] said to him “divorce me”; “what is the reason for this?” he asked. “There is no reason, but I want you to give me three [divorces all at once]”, she replied. “If you want three [divorces in one go] then I have given you four” he said.⁵⁵

This twentieth century *fatwā* depicts an argument between a husband and his wife that abruptly develops into the wife demanding the husband to issue her with three divorces in the same sitting. The husband responded by giving her four divorces rather than three. For the majority of the Muslim legal schools including the Māliki followed in Timbuktu, three divorces uttered simultaneously make the divorce irrevocable. This means that the divorced couple cannot remarry until the ex-wife marries another man who consummates the marriage then divorces her.

The husband’s almost knee-jerk response, “If it is three that you need three then I give you four”, is typical male chauvinism. He refused to be outdone by a woman. But with all big talk comes regret. As soon as reality dawned, much sooner than later, common sense prevailed. However, much to the “brave” husband’s regret, it was too late. He and his ex-wife were now irrevocably separated. It was not quite all over for the husband though; there was still the *muftī* whom he could run to with his predicament. He did, and the *muftī* came to his rescue.

The eminent *muftī* declared the husband’s utterance void of any legal consequence on the basis of language. He was well acquainted with the language Timbuktu’s laity used in their everyday lives. Simply put, according to the *muftī*, the husband did not know

⁵⁵ Muḥammad bin Ibrāhīm b. ‘Ābidīn, *Fatwā fi al-ṭalāq ‘arba’an*, IHERI-AB, ms 10496, fl. 1

what he was saying and therefore his utterance had no legal ramifications. Sherman Jackson shows that the language of the laity is a problem that constantly confronts *mufīīs*. The daily language of the laity is not the language of scripture, rhetoric, hermeneutics, propaedeutics, etc. which the *mufīī* had been trained in, but replete with solecisms, inaccuracies and idiosyncratic usages. It could not be assumed that a lay person always meant what s/he said.

A *mufīī* worth his salt therefore had to learn the dominant usage of words among the laity and interpret their questions and utterances in this light. Jackson cites the thirteenth century jurist, Shihāb al-Dīn al-Qarāfī for whom the statement of a man to his wife, “you are divorced” does not effect divorce according to the original meaning of these words. The statement’s original meaning is that he informed her that he divorced her. The words, “acquire the ability to bring divorce into actual existence by the fact that custom has converted them from mere assertion into an origination (directive).⁵⁶ As Wittgenstein said, do not ask for the meaning of a word, but for the use; bringing a word back from its metaphysical to its everyday use.⁵⁷

Secondly, the *mufīī* seems to have known the husband quite well. He took into account the husband’s fickleness and his love for his wife, “he loves her too much and would never do such a thing” in declaring his utterance legally redundant. All this despite the Prophetic tradition, which states, “three things uttered in earnest or in jest are legally

⁵⁶ Jackson, S. 1992. ‘The second education of the *mufīī*: notes on Shihāb al-Dīn al-Qarāfī’s tips to the jurisconsult’, *Muslim World*, LXXXII, pp. 205-6

⁵⁷ . 1999. in Richard Popkin (Ed), *The Pimlico history of Western philosophy*. London: Pimlico, pg. 631 & Wittgenstein, L. 1978. *Philosophical investigations*, trans. G.E.M. Anscombe. Oxford: Blackwell, pg. 116

binding: a marriage offer (if the other party accepts), a divorce utterance and the manumission of a slave".⁵⁸ Such sensitivities on the part of the *muftī* shows that he understood what the laity in Timbuktu gets up to.

Whether the wife really wanted an irrevocable divorce we do not know. However, her demand does show that Timbuktu's women were acquainted with the laws of divorce in Islamic law, at least to the extent of using it to their benefit. The wife's request for divorce can also be read against a background of the frequency of divorce in the region, at least during the colonial era. Thus, as Miner found in the 1940s, among the Arabs of Timbuktu and its surrounding world, both sexes see frequent divorce and remarriage as a means of acquiring prestige. A man's friends might tease him for being married to the same woman too long, one of them with the vested interest to marry the woman himself. A wife might also insist on a divorce.⁵⁹ At the end of the nineteenth century, Hacquard, too, noticed the common occurrence of divorce among all people in Timbuktu in general.⁶⁰

Fatwā Three: The dowry, the lion, and the dead "husband"

A man asked for the hand of a girl from her father. The father accepted the proposal and stipulated the dowry, which the future groom paid in full. News then spread among the people that this particular man married that particular woman. The girl's father and the future groom prepared the marriage home with furniture for the consummation of the marriage and prepared for the wedding celebration. A lion however, attacked the future husband, who died as a result.⁶¹

⁵⁸ Ibn Ḥajar al-ʿAsqalānī, ʿAlī b Aḥmad. Undated. *Bulūgh al-marām min adillah al-aḥkām*. Cairo: Muṣṭafā al-Bābī al-Ḥalabī, pg. 135

⁵⁹ Miner, *The primitive city*, 211

⁶⁰ Hacquard, *Monographie*, 46

This twentieth century *fatwā* addressed a dispute over dowry. The couple got engaged; however, before they could marry the future groom was attacked and killed by a lion. He had, however, paid the dowry in full, prepared the marital home and organized the wedding feast. In another similar twentieth-century incident, the future groom too died - although not at the hands of a lion - before the solemnization of the marriage contract. He, however, did not pay the dowry before the solemnization of the marriage contract.⁶² In both cases, the girls' families demanded the dowries; in the second incident (ms 5945), the girl's family demanded her inheritance share from her deceased "husband's" estate, in addition to the dowry. It was, of course, easier for the girl's family in the first case as they already had the dowry in their possession whereas in the second case they did not. While the *fatwā* of ms 4867 does not mention the response of the deceased man's family, the *fatwā* of ms 5945 states that they refused the girl a dowry and inheritance. They argued that the marriage was not officially contracted, it was only a proposal, they argued. In Islamic law, the dowry becomes obligatory only upon the solemnization of the marriage contract that is, after a couple exchange their marriage vows.

Both *mufīīs* took into account the prevailing 'urf or custom to solve the dispute. 'Urf is regarded as a valid source of Islamic law. In other words, the prevailing custom was important in deciding whether the acts and utterances of the two cases were indicative of a legally binding marriage. However, for 'urf to be effective a source, it has to be, one,

⁶¹ Muḥammad al-Ṭāhir Intaṭo, *Fatwā fī man khaṭab imra'ah wa daḡa' al-ṣadāq wa fashā dhālik fa iftarasa hu asad*, IHERI-AB, ms 4867, fl. 1

⁶² Aḥmad Abī '1 'Arāf. *Fatwā fī al-farq bayna al-khiṭbah wa al-zawāj*, IHERI-AB, ms 5944, fl 1. There is a possibility that the two incidents are actually one and the same incident addressed by two *fatwās*, each having details that the other does not. What makes this assumption plausible is that the *mufīī* of the second *fatwā* (ms 5945) was the copyist of, or commissioned the copying, of the first *fatwā* (ms 4867).

in conformity with the Qur'ān and the Prophetic traditions. And two, its practice must be continuous or in dominant in most events.⁶³

“The ‘*urf* of our region is that a group of people gather to testify a marriage taking place ... some of them do the call to prayer over and above announcing the marriage; others, such as the Arabs beat drums, and others bring fruit and indulge in merry-making”.⁶⁴ “The ‘*urf* of all the regions of the Arab West, from Morocco to Senegal, all of the Western Soudan, to Khartoum and the Sūdān of Egypt is ...”⁶⁵

On the basis of the prevailing ‘*urf* at the time, both *muftīs* ruled that the two cases were not marriages, but only proposals. The two girls were thus not entitled to dowries or inheritance. Whatever the two *muftīs* concluded, the two cases show that laity regarded their own notion of what constituted ‘*urf* to be binding. The girls’ families regarded a mere engagement as an established ‘*urf* that implied a legally binding marriage.

The dowries must have been of substantial monetary value, so both families were not simply going to forfeit substantial amounts of money. The two *muftīs* were not, of course, supposed to take into consideration the custom of families. That both *muftīs* had to refute two other *muftīs* who regarded both cases as marriages and that the girls were entitled to the dowry and inheritance is telling. Strangely, both *muftīs* refer to the two deceased men as *zawj* (husband,) not merely as *khāṭib* (fiancée).

⁶³ ‘Abd Rabihi, M. 1980. *Buḥūth fī al-adillah al-mukhtalaf fī hā ‘inda al-uṣūliyyīn*. Cairo: Al-Īmān li al-Ṭibā’ah, pg. 185

⁶⁴ Ms 4867, fl. 2-5

⁶⁵ Ms 5945, fl. 5-6

That people, *muftīs* and laymen, had their own understanding of what constituted ‘*urf*’, different to that of normative Islamic law and the general ‘*urf*’, we gauge from a letter of Abū al-Khayr b. ‘Abd-Allah (d. 1976), one of Timbuktu’s foremost twentieth-century *muftīs*. In the letter, sent to the Mauritanian scholar Muḥammad b. Salīm al-Walātī, he says,

I write to you dear Sir for my salvation ... [firstly] circumstances have forced me into *iftā’* as I am one of only a few among ignoramuses qualified to issue *fatwās* ... [Secondly], scholars have different opinions [regarding the place of ‘*urf*’]. Is it permissible ... to issue *fatwās* in accordance to the ... prevailing ‘*urf*’ of our time knowing that we are ignorant of its reality, conditions, and who instituted it? Can the intentions and aims of our people play a role in [the acceptance of] a custom to inform the application of Islamic law? Should a custom be discarded when it contradicts a Qur’ānic text, prophetic tradition, or the preponderant opinion of the Mālikī School? Indeed, should the institution of *iftā’* be discarded all together in our time? Given the scarcity, and even absence, of real scholars who should sit for *iftā’*?⁶⁶

Abū al-Khayr’s concerns are heavy indeed. Although he points only to local custom and ignorant *muftīs*, we can safely assume that colonial rule, and more specifically the colonial native courts were part of his concerns.

Although, the two *fatwās* do not mention the two couples’ social status or the amount of the dowry, we can, through reconstruction, take it for granted that the “couples” hailed from notable, and probably mercantile, families making the dowry a substantial amount. Squabbles over dowries – and inheritance - inevitably involve wealthy families because the dowries – and estates – of wealthy families are inevitably abundant. That the future groom paid the dowry in advance (ms 4867) indicates that he was a wealthy man, or at

⁶⁶ Diagayete, M. 2008. Al-Shaykh Abū al-Khayr: illustrious scholar and pious friend of God’, in S. Jeppie and S.B. Diagne (eds.), *The Meanings of Timbuktu*. Cape Town: HSRC Press, pg. 252

least had the wealth to do so; a man with no wealth cannot readily pay a dowry before the actual marriage. That he was killed by a lion indicates that he was most probably on travel - lions are not found in the city or villages and travel in Timbuktu is often associated with trade - or knowledge; he was probably a merchant.

The dowries of four notable girls married between 1897 and 1939 were 20 000 cowries, and a slave girl, aged five or six, in two cases.⁶⁷ The word ‘*ayān*’ in the title of the ms indicates that the grooms and brides were notables. One of the grooms (the 1897 marriage) has the title *al-qā'id* indicating his possible lineage from an elite Arma military family; another was a son of a scholar. The 20 000 cowries were in all likelihood 20 000 piles of cowries, as 20 000 single cowries equalled only 20 Francs (1000 cowries equalled one Frank in 1901 in Timbuktu), an insignificant amount for notable families. One pile of cowries consisted of anything between 60 to 100 cowries - piles were called “hundreds” even if they had less than one hundred cowries in the pile. The exchange rate between cowries and gold changed drastically over two centuries.⁶⁸ Thus 20 000 piles of cowries equal two million cowries, which equalled 2 000 Francs.⁶⁹

⁶⁷ Author unknown, *Thalāth wathā'iq fi 'aqd al-nikāh li ba'd 'ayān Timbukt*, IHERI-AB, ms 4183.

⁶⁸ In 1735 the exchange rate between cowries and gold was 2000 cowries for a *mithqāl* (4.5 grams) of gold – during periods of famine the gold exchange fell, thus during the 1617 famine the gold exchange fell to 500 cowries for a *mithqāl* of gold. By 1738, it was 3000 cowries for the same amount of gold, 4000 cowries during the first half of the nineteenth century, 8 000 cowries by 1880. At the end of the century it fell to 6 200 cowries, probably caused by the disruption of the *azalā* in 1899. A *mithqāl* of gold was worth twelve Francs in the oasis town of Arawān just north of Timbuktu, while the cowry-franc rate in was 1 000 to 1 from 1830 to 1900, by 1928 had fallen to 160 to 1. Miner, *The primitive city*, 50-51

⁶⁹ In a 1860 letter, a slave writing from Sansanding in the Middle Niger informs his master in Timbuktu that he sold four blocks of salt for 300 piles of cowries or 6 000 cowries. If each pile had 80 cowries, as was the common denomination in Bamana-speaking areas of the Niger Valley, it means he received the same 6000 cowries for each block ($300 \div 4 = 75 \times 80 = 6,000$). Şanbu 'Isā, *Risālah min Şanbu ilā 'Isā bin Aḥmayd* IHERI-AB, ms 5451, fl. 1. I thank Bruce Hall for this information (e-mail correspondence, 14 September 2010).

In chapter one, we saw domestic dispute cases heard by the native courts in 1959 involving dowries of 3 000 to 5 000 Francs.

That it is 20 000 piles of cowries instead of 20 000 cowries only is made more plausible by the fact that only a fraction, 3 000/3 500, of the cowries was paid on the wedding day and the remainder six months after the wedding. This in contrast to the dowry of a girl named Zowkayr, married to Mamadou Keita a guard of Timbuktu's cercle on 3 April 1913, of a meagre ten *riyāls*, five *riyāls* paid immediately and the rest paid three months later. The name and profession of the husband indicate that he was not of Timbuktu's *originaire* population, less so its elite.⁷⁰

Fatwā Four: She married a Christian without her parents' permission

What is your verdict on the status of a Muslim woman who, without the permission of her parents, married a Christian? She remained married to him giving birth to his children? Can she still be called a Muslim ... Are all that is binding on the Muslims binding on her too, since she does everything we do: the testimony of faith, prayer, fasting, alms, and many other injunctions. She has not denounced or denied any of those things...⁷¹

This July 1932 *fatwā* by *Qāḍī* Muḥammad Maḥmūd Ould Cheikh is about a Muslim woman married to a Christian man. The marriage itself was contracted many years earlier, “she remained married to him and gave birth to his children”, the petitioner stated in his *istiftā'*.⁷² Ostensibly, the petitioner wanted to know the religious status of the woman. This is not an isolated incident as another *fatwā* too addressed the

⁷⁰ Ms 10787, IHERI-AB

⁷¹ Muḥammad Maḥmūd ould Cheikh, *Nāzilah tat 'alaq bi ḥukm imra'ah Muslimah tazawwajat Naṣrānīyan min ghayr irādah abwayhā*, IHERI-AB, ms 516, fl. 1

⁷² Muḥammad Maḥmūd ould Cheikh, *Nāzilah imra'ah Muslimah*, IHERI-AB, ms 516, fl. 1

phenomenon as can be seen from its title, “*Treatise on the ... the rebellious wife and the marriage of a Muslim woman to a non-Muslim man*”.⁷³

Colonial records speak of the marriage of Muslim women to non-Muslim men, presumably all Christian. For example, a Bella Muslim woman is married to a local Catholic and Fatimata to a Christian from Europe.⁷⁴ Such marriages were an established practice by the second decade of the twentieth century. Records of such marriages are found only in colonial documents and *fatwās* from the colonial era. This indicates that the marriage of Muslim women to non-Muslim men in and around Timbuktu is not only a colonial-era phenomenon, but also a result of colonialism.

There are, to the best of my knowledge, no *fatwās* or other documents from Timbuktu’s manuscripts, dating to the pre-colonial era, on such marriages. It is most unlikely that Muslim women in the region married non-Muslim men prior to colonial rule. There were no Christians, tribes or individuals, in the Niger Bend prior to the arrival of the French there. The converts came from outside of Timbuktu, from bush areas where tribes were either not Muslim or nominally Muslim that still practiced pre-Islamic fetishism or syncretism. Catholic missionaries converted the first ten or twenty bush natives who came to Timbuktu; they lived at the mission until its closure around 1905. One man who worked a boatman for the Catholic mission converted to Christianity, only to be rejected by his non-Muslim tribe.⁷⁵

⁷³ Muḥammad al-Ṭāhir b. Aḥmad al-Anṣārī, *Aḥkām tazwīj al-mar'ah al-Muslimah bi ghayr Muslim*, Mamma Haïdara Memorial Library, ms 84

⁷⁴ Justice Indigene: *Etats des jugements et extraits des registres d'écrou cercle du Tombouctou, 1903 – 1920*, ANM 2 M 149.

Non-Muslim husbands and lovers were both Frenchmen and local Africans. The marriage or love affairs of Muslim women to European non-Muslim men is clearly shown by the category of children known as *enfants métis* i.e. mixed children or of mixed parentage: European and African. The names of their mothers: Barka, Nounou, Mariam, Salka, etc., as stated in the colonial record, are Arabic, Tuareg or Songhay. The names and surnames of the children such as Marianne, Jacqueline, Thérèse, Constance, Robert, Paul Colombani, Monique, Claude, etc betray their fathers' European and Christian identities.⁷⁶

The legal position on the marriage that both the *mustafī* and the *mufti* clearly and eloquently outlined is not our concern here, but the story, we imagine, the *fatwā* tells us. To start with, the questioner's care to mention that the marriage was without the approval of the woman's parents is interesting. Muslim parents' approval of their daughter's marriage to a non-Muslim man is of no consequence in Islamic law. What it does possibly show though is that such marriages in Timbuktu and the region were accepted when parents, and perhaps the broader family, approved of them, irrespective of the injunctions of Islamic law. So too parents' approval was vital when it came to social status, group and culture. Thus when an Arab girl, daughter of Kunta⁷⁷ *sharīfs*⁷⁸ married the brother of the wealthiest Gabibi against her parents' wishes, they boycotted the marriage ceremony.⁷⁹

⁷⁵ Miner, *The primitive city*, 78-79

⁷⁶ Assistance publique enfants métis Cercle de Tombouctou, 1942-1957, ART 2 H

⁷⁷ One of the two largest Arab tribes in the Azawād

Out of eleven questions the petitioner posed to the *mufī*, two indicate that the petitioner's concern was not solely about the woman but involved his self-interest too. The first is, whether it was permitted for a Muslim man, infatuated with the woman, to marry her if he fears an illicit sexual relationship with her? The second question was with regard to a man who had an adulterous affair with a woman then married her formally without her observing the necessary waiting period to determine whether she was pregnant.

The first question suggests that the petitioner is in love with this Muslim woman - nothing in the *fatwā* suggests that she was divorced from her Christian husband. The second question implicitly suggests an illicit sexual relationship between the petitioner and the woman - although in the latter woman is indefinite, meaning it could be any woman. However, the language of the petition was carefully formulated so as not betray the identity of the actual petitioner. Thus "woman" and "man" are written as indefinite articles so as not to invite suspicion that the petitioner or the writer⁸⁰ was the man and she the woman and that they already had an affair of an intimate nature.

Since the woman's marriage to the Christian man was religiously invalid and would be declared as such the petitioner was simply going through the formalities. He knew full well the status of the marriage. The *mufī*'s answer to the first question was what the

⁷⁸ The title *sharīf* is given to people who trace their lineage to the Prophet of Islam.

⁷⁹ Miner, *The primitive city*, 192-193

⁸⁰ The person who presented the *istiftā'* to the *mufī* was Sīdī Yaḥya b. Muḥammad al-Wanghari. It is unlikely though that he, a man known for his piety and a practitioner of the esoteric sciences, was the actual petitioner; he must have written the *istiftā'* on behalf of someone else, who could have been unlettered or who wished not to be known.

petitioner hoped for and received: it was permissible for a Muslim man to marry the woman provided she had repented from her sin of having married a Christian man. Therefore, this time he referred to her in the definite article as the woman. However, since he also knew what the *mufī*'s response to an adulterous relationship would be, he referred to "man" and "woman" as indefinite articles.

There are at least two more cases that involve a Muslim wife and a Christian husband in Timbuktu. The first one, already encountered in chapter one was that of Kūtī a Muslim woman married to a European Christian man in 1905. Kūtī's embittered former husband, a Muslim referred the case to Timbuktu's colonial-appointed *qāḍī*.

[Four days after the divorce] Aḥmad came to me accompanied by another man. He claimed that the man instigated his (Aḥmad's) wife against him and that he had now married her off to a White Christian man before her *'iddah* expired. The man replied that he was looking for a wife for a particular man when he heard that Aḥmad had divorced his wife. He immediately sent for her. [When] She came to meet him he spoke to her on behalf of the [White Christian] man. [After] the two agreed on the dowry, he married her off to the [White Christian] man.⁸¹

The second and arguably most famous Christian male-Muslim female marriage, certainly by virtue of the unique personality of the man, is that of the Catholic missionary Yakouba Auguste Dupuis and the Muslim woman Salama Bouba from the port town of Kabara. The marriage was conducted according to Islamic rites in 1904, but registered only on 8 August 1922 by the Commandant Cercle de Tombouctou as stated

⁸¹ Aḥmad vs Kūtī, 1 June 1905, Justice indigène, correspondance Cercle de Tombouctou 1895-1920, ANM 2 M 37. The colonial record states the man's name.

on the civil licence.⁸² Dupuis and Salama remained married until Dupuis' death in 1945 and produced several children.⁸³

Dupuis remained a Christian, despite resigning as superior of the Catholic mission some time in June 1904, a fact the '*ulamā*' and community of Timbuktu knew well. There was a claim that Dupuis had converted to Islam. However, as Owen White points out, the source of this claim was a less scholarly French account that described Dupuis as a "un type". It was a baseless claim that Dupuis, says White, would not have appreciated the at all.⁸⁴ An oral source, patently apologetic, informed me that the '*ulamā*' "approved" of the marriage because Salama was of servile status.⁸⁵

Whatever Salama's social status, the fact remains she was married to a White Father and the former head of the Catholic mission in Timbuktu. Before her marriage to Dupuis, Salama was married to a young White Commandant stationed in Gao.⁸⁶ He abandoned her when he returned to France. Her marriage to Dupuis was thus neither an accident nor something novel for her. Also there were Muslim Tuareg women of not servile status who had Christian husbands, mostly French men, as we will see later.

⁸² Seabrook, W. 1934. *The white monk of Timbuctoo*. London: Harrap, pg. 126

⁸³ White, O. 2004. 'The decivilizing mission: Auguste Dupuis-Yakouba and French Timbuktu', *French Historical Studies*, 27 (3), 554

⁸⁴ Ibid, 557

⁸⁵ Interview with Mahmoud Mohamed Dedeb ditt Hamou, 21 June 2009, Timbuktu.

⁸⁶ Seabrook, *The white monk*, 127

The marriage of Muslim women to non-Muslim men seems to have been tolerated, in Timbuktu and the broader region during the colonial era. Timbuktu's 'ulamā' for their part seem to have been unable to or unwilling to oppose such marriages, at least to the point of putting a stop to the practice or annulling existing ones.

Fatwā Five: You are forbidden to me, just as my dad is

I have been asked, and Allah grants assistance, concerning a woman who, [following an] argument and dispute with her husband, said to him: "You are forbidden to me as my father is. Does her utterance have any [legal] impact/consequence on their marriage? And is there anything binding on either the husband or the wife herself?"⁸⁷

This colonial-era *fatwā* issued sometime between 1907 and 1955 concerns a wife's utterance to her husband regarding conjugal relations.⁸⁸ This particular wife literally declared her husband unlawful for her sexually, after they had had an argument; put simply she denied him sex. She did so by indirectly comparing him to her father. The implication of her statement was that just as sexual relations between a father and his daughter(s) are forbidden, so they are with a husband if he is like her father. The *mufī* was requested to pronounce on the legal consequences of the wife's statement. He did. He found it legally inconsequential. Beyond declaring her statement meaningless, it is clear that the *mufī* also sought to bring to order an imprudent wife who dared to venture into a domain, reserved exclusively for men. Says the *mufī* about the wife's action,

Her words should be thrown into the river or somewhere [far away] in the land for a wife cannot declare herself lawful or unlawful for her husband

⁸⁷ Aḥmad bin Abī al-'Arāf, *Fatwā fī sha'n imra'ah qālat li zawjihā anta 'alayya ḥarām ka abī*, IHERI-AB, ms 4743, fl. 1

⁸⁸ The manuscript, as most of the *fatwās* discussed in this chapter, is not dated. However, Aḥmad bin Abī al-'Arāf the *mufī* who issued the *fatwā* arrived in Timbuktu only in 1907 and died there in 1955, hence I date it over that broad period. What is clear though is that it was a colonial-era *fatwā*.

... a wife's word has no impact in divorcing or declaring herself forbidden [to her husband] except in two cases.⁸⁹

By linking the matter to divorce - the wife said nothing about divorce – the *muftī* betrays a typical male fear. If wives are allowed to declare themselves forbidden to their husbands at random - even though the wife's declaration came after an argument - they will resort to divorce at random.

It is important to appreciate this incident and the *muftī*'s response in their colonial context. Colonial rule presented increased opportunities for women;⁹⁰ more so after the establishment of the native courts. This is true for Timbuktu and its surrounding world as well, albeit less than other parts of the French Soudan. During this time, a relatively decentralized state and the existence of several different legal modes offered African women a “brief period of expanded personal options and temporarily greater freedom, particularly in marriage and residence.”⁹¹ Husbands, colonial officials and *muftīs* if this *fatwā* is anything to go by became increasingly worried about what they perceived as the ill discipline and rebelliousness of wives.

The wife was, however, less concerned with what Islamic law had to say about things such as wifely obligations toward husbands, her right to divorce, etc. She was even less concerned with the *muftī*'s age old male-wisdom regarding what women can or do get up to in their treatment of their husbands. She wanted her husband out of her bed, whatever her reason. What makes this case intriguing is the wife's course of action in

⁸⁹ Ms 4743, IHERI-AB, fl. 1

⁹⁰ Shereikis, R. 'Customized courts: French colonial legal institutions in Kayes, French Soudan, c. 1880 – c. 1913'. PhD dissertation, North western University, Evanston, Illinois, pg. 176

⁹¹ Hay and Wright, *African women and the law*, xiv.

her resolve to refuse her husband sex. By likening him to her father, she appropriated, wittingly or unwittingly, a practice akin to the pre-Islamic Arab misogynist practice called *zihār* or ‘incestuous comparison’.

Zihār was a form of divorce husbands practiced in Arab society at the time of Prophet Muhammad. A husband would say to his wife: “you are to me like the back of my mother.” Having compared her to his mother’s back, or any other part of her body, meant that she was just like his mother. Since it is forbidden for a man to marry or sleep with his mother so his wife who had now acquired the status of his mother by virtue of the comparison, was now forbidden to him to have sex with and remain married to.⁹²

Beyond the religious, legal and social ramifications of *zihār* though lay a chauvinistic male desire to control women by repudiating them in such a manner.

Qur’ānic revelation condemned *zihār*. A woman called Khawlā’ bint al-Tha‘ālabah came to the Prophet to complain against her husband who had practiced *zihār* on her. She engaged the Prophet in a passionate argument. He, having had no immediate answer, advised her to be patient. The wording of the Qur’ān seems to convey that she was not satisfied with this response of the Prophet. But the Prophet awaited a response from God in the form of revelation. God did respond, “Indeed God heard the word of she who argues with you [Muḥammad] about her husband’s [deed].⁹³ It is clear that the first Muslims did not simply accept the Prophet’s response or his silence, they argued with him.

⁹² Encyclopaedia of Islam CD-ROM Edition v.1.0, 1999

⁹³ Qur’ān 58, verse 1

God informed the Prophet and all Muslims that he has heard the plea of this wife who argued with the Prophet about her husband who repudiated her through *zihār*. God refutes the view that men's wives are their mothers; their mothers are only those who gave birth to them. The implication is clear: husbands should not resort to *zihār* which in the sight of God is an odious act. By practicing *zihār* they attain sin. They either divorce their wives properly or if they wanted to sleep with their wives again must pay a penalty: either manumit a slave, fast sixty days consecutively, or feed sixty people.

While we cannot speculate what the wife's motive was, she clearly exercised power in this instance. Not only by embarking on the type of action she did, but also in her appropriation and employment of male tools. She did as the famous Scheherazade, narrator or rather "author" of *A Thousand and One Nights* (Arabian Nights) did a few centuries earlier: appropriate men's tools to overcome and tame them.⁹⁴

The husband, as in the case of *fatwā* number two above, sought relief in a *mufī* or someone else might have brought the matter to the *mufī*'s attention. Any which way, the *mufī* duly responded both as a man and as a scholar. He possessed the act of writing while the wife as a woman had only her tongue. But a woman's sword is in her mouth,

⁹⁴ The legendary *Arabian Nights* have an interesting history and story. The narrator – and hero- of the stories, Scheherazade appropriated men's stories to save her life, and ultimately the lives of all women. She narrated the stories to her husband King Shehriyar who had all his wives killed immediately after consummating the marriages (he married only virgins) as he believed all women i.e. wives are by nature given to sexual infidelity. Scheherazade thereby not only compiled stories but also confronted males while starring death in the face from one angle and defending her dignity from another. Finally after a period of just under three years (a thousand and one nights) of continuous narration and giving birth (even with his sword on a woman's neck, a man will get his sexual needs from a woman) to three boys (note no girl) Shehriyar was cured and tamed. See, Al-Ghadhdhāmī, A.M. 1996. *Al-mar'ah wa al lughah*. Casablanca: Al-Markaz al-Thaqāfī al-'Arabī, 57 – 79

as al-Suwaydī said.⁹⁵ We do not, unfortunately, know whether Islamic law and the *mufīī*'s legal acumen were sufficient to convince the wife to rethink her action. The *fatwā*, or any other source, did not record her response or reaction to the *mufīī*'s interference. It will however, not be farfetched to assume, given her daring action, that she had something to say, if not to the *mufīī* himself then to her husband and others.

But wives too resorted to other means to ban their husbands from their beds. If they could not ban their husbands themselves, they resorted to *qāḍīs* or *mufīīs* to find a sympathetic ear. This is shown in another colonial-era *fatwā* - by the very *mufīī* Bul 'Arāf who issued the current *fatwā*.⁹⁶ His *fatwā* is about a wife who stated in front of another *qāḍī*⁹⁷ that her husband had issued her three divorces in the same sitting. In other words, the divorce was irrevocable.⁹⁸ She failed to produce any evidence except her claim that she heard him with her own ears. In other words she had not a single witness or any other form of evidence. The *qāḍī*'s did not grant the divorce, but ruled that the wife could refuse the husband conjugal relations and that she was not under obligation to beautify herself for him.

⁹⁵ Quoted in al-Ghadhdhāmī, *Al-mar'ah wa al-lughah*, 37

⁹⁶ Aḥmad bin Abī al-'Arāf al-Taknī, *Fatwā fī ṭalāq al-thalāth*, IHERI-AB, ms 4908, fl. 1-2

⁹⁷ The *fatwā* does not state whether it was a traditional *qāḍī* or one appointed by the colonial government of Timbuktu

⁹⁸ This form of divorce: three divorces issued in the same sitting are also regarded as constituting a major irrevocable divorce by the majority of the Islamic legal schools as when a man had divorced his wife a third time after having divorced her on two previous times separate occasions. After the third divorce – or three in one sitting according to the majority schools – the couple cannot remarry until the ex-wife marries another man, consummates the marriage, and this latter divorces her. This in contrast to a revocable divorce namely after the first and second divorces when the couple can remarry. In fact, the man can take back his ex-wife without her consent, a new marriage contract, or a new dowry provided he does so during the 'iddah. But once the 'iddah has expired he needs her consent to re-marry her in addition to a new marriage contract and a new dowry.

Bul ‘Arāf scoffed at the other *qāḍī* for contradicting himself and causing confusing, “If this is not a contradiction, then I will never know, after this, what a contradiction is”.⁹⁹ He therefore issued his *fatwā*, to expose the error of the *qāḍī*. How could the *qāḍī* reject the wife’s claim that her husband divorce her irrevocably yet afford her the right to refuse him sex and beautify her for him? With this confused ruling, the *qāḍī* endeavoured to create mischief between husband and wife, Bul ‘Arāf claims.¹⁰⁰ The *qāḍī* might just as well have granted her the divorce. The correct thing for the *qāḍī* was to reject the wife’s claim of a divorce, as she failed to produce evidence and to order the two to depart, without giving the wife the option to refuse her husband sex.

Whether contradictory or not, the wife though seems to have achieved her aim with the *qāḍī*’s ruling. For that is what she actually wanted. Immediately after the *qāḍī* issued his ruling, she confessed that her claim that her husband divorced her was a fabrication. Her aim with taking her case to the *qāḍī* was thus not to obtain a divorce, but to deny her husband sex, a wish the *qāḍī* granted. In another *fatwā*, dated 2 November 1932, one Khatār bin ‘Abd al-Qādir complained of his wife, Nāna bint Sīdī bin ‘Ammār who refused him sexual relations. He also charged that she keeps company with the riffraff, presumably all men.¹⁰¹

⁹⁹ Ms 4908, IHERI-AB, fl. 1

¹⁰⁰ Ms 4908, fl. 1-2

¹⁰¹ Muḥammad Maḥmūd ould Cheikh, *Fatwā fī māni ‘ah al-firāsh*, IHERI-AB, ms 3187, fl. 1; the *muftī* of the *fatwā* had no sympathy for the wife; he defended her husband beating her since she disobeyed him. In the *fatwā* he makes reference to a sympathetic *muftī* (whom he condescendingly calls a student) who ruled that the wife could refuse her husband sex, and in fact that she was forbidden to him because he hit her.

Fatwā Six: Give me my daughter's dowry

The *muftī* of this *fatwā* has been asked about a virgin girl whose father and legal guardian was absent from home on business in a location less than ten days distance by camel. Her mother responsible for her custody then married her off [in the absence of the girl's father, without his previous permission]. The mother appointed the girl's uterine brother as her proxy to administer the nuptial contract. The uterine brother married her off. She remained with her husband for some months when he, on her request, divorced her in return for the dowry he gave her. After a while, the father returned and demanded the dowry with which she divorced herself claiming that she was his ward at the time of the divorce.¹⁰²

This May 1804 *fatwā* shows a social practice in Timbuktu and its surrounding world, with its various legal ramifications, that was still in practice well into the twentieth century, as we will see from another *fatwā* issued anywhere between 1930 and 1960.¹⁰³ The incident was not an isolated event.

Nevertheless, what concerns us is that this virgin girl's mother married her off without the permission of her father as the girl's religiously sanctified legal guardian. The mother did not even inform the father after the marriage contract as he only came to find out a few months after upon his return home as the *fatwā* mentions. The father's whereabouts were not unknown; he was at a distance of less than ten days away from home.¹⁰⁴ In other words, it was possible for the mother to have contacted him for his approval or at least have informed him later of the marriage. According to Islamic law, a

¹⁰² Al-Bukhārī b. Muḥammad al-Amīn, *Fatwā fī al-bint al-bikr allatī zūwwijāt dūn idhn abihā*, IHERI-AB, ms 3076, fl. 1

¹⁰³ The *muftī* of the second and similar *fatwā* mentions that he responded before to a like matter; he was born in 1910 and died in 1973, Muḥammad Maḥmūd b. al-Cheikh, *Fatwā fī al-nikāḥ*, IHERI-AB, ms 10485, fl.1-2. Further research will in all likelihood find similar *fatwās* among Timbuktu's hundreds of *fatwās* on personal law matters.

¹⁰⁴ If the family was in Timbuktu, the father was closer to home than for example, the gruelling azalaï trip to Taoudeni which is situated fifteen days from Timbuktu by camel.

virgin girl cannot marry without the permission of her legal guardian; a marriage contract without his prior approval is either null and void or suspended pending his subsequent approval.¹⁰⁵

After a few months the wife requested a divorce from her husband. Islamic law makes provision for a wife to request a divorce from her husband, but not to issue a divorce. This legal device is called *khul'*. Because, the wife initiates the divorce with her request, Islamic law permits the husband to demand financial compensation in return, usually the dowry he gave her for their marriage. Some Muslim legal schools allow husbands to demand additional financial compensation over and above the dowry. *Khul'* is a divorce (*talāq*) initiated by the wife; she requests her husband to divorce her in return for something monetary. *Talāq* is when the husband issues a divorce.

The wife in our *fatwā* returned to the husband the bridewealth. However, when her father returned from his business endeavours after a few months he demanded the bridewealth. He claimed that as his daughter was still his ward, he was entitled to the bridewealth. Interestingly, he did not object to the marriage although invalid according to Islamic law, but did demand a say in the divorce given its financial ramifications.

The social practice involves the marrying off of daughters without the knowledge and/or prior approval of their religiously sanctioned legal guardians. Thus, while Islamic law assigned particular persons to administer the marriage of virgin girls, the practice in

¹⁰⁵ In Islamic law, a father is always his daughter's first guardian. According to the Māliki and Shāfi'ī schools a father and the paternal grandfather alone have the right to marry off his virgin daughter without her request or permission.

Timbuktu did not always uphold that religious injunction. In this case it was the girl's mother who despite lacking the religious-legal authority married off her daughter.

Moreover, she appointed her son, the girl's uterine brother to administer the marriage contract. If she erred in marrying off her daughter without the girl's father's consent, she erred a second time by assigning a person not sanctioned by Islamic law to administer the invalid marriage. In Islamic law, only a girl's full blood or consanguine brother can marry her off and that in the absence of her father or paternal grandfather.

I suggest that this marriage and subsequent divorce became the locus of *ifā'* because of its financial ramifications. For the father it was important that the marriage be declared invalid then annulled so that the girl's dowry, which she gave to her husband as a ransom to divorce her, is returned to him. The amount involved must have been considerable. Financial considerations both hastened and impeded marriage and divorce.

Conclusion

Fatwās are not merely legal tools that *mufītīs* employ to explain and apply God's law to particular situations. That is their primary function. They are also a historical source and tell stories. This chapter delineated this characteristic of *fatwās* with the six *fatwās* it exhibited as has been done elsewhere with *fatwās* over the past two decades. Timbuktu's are a historical source for alternative histories. John Hunwick's "*Arabic literature of Africa*" (vol.4), Mahmoud Mouhamed Déidéou's unpublished *Kashf al-ḥā'il* and the catalogues of the Aḥmad Bāba Centre and Mamma Haïdara show that there are hundreds of *fatwās* in Timbuktu's desert libraries. The study of Timbuktu's *fatwās* has just about begun with this attempt. It awaits historians, especially social historians to

work on them. Additionally, Timbuktu's *fatwās* also tell stories: banal, funny and trivial stories of Timbuktu's ordinary men and women, but also of its *muftīs* and *qāḏīs* and other elites and notables (as we will see in chapter five). But as we pointed out above, *fatwās* in this chapter were only introduced as storytellers, to merely whet the appetite as it were. In the three coming chapters, the city's *fatwās* are made to tell detailed stories of Timbuktu's ordinary men and women, specifically wives.

Chapter Three

Sex, Lies, and Fatwās around Timbuktu: A Wife and her Two Husbands

Trustworthy women are few; they proximate to evil. The pious ones are transgressors and the bad ones whores. As for pure and innocent, such among them are non-existent. They have three traits ... they cry for justice while they wrong others, they withhold good while they violently desire and demand it, and they are liars under oath. Seek God's protection from their evil ones and beware of their good ones.¹

Among the Arabs of Timbuktu, divorce becomes a mechanism for gaining prestige by demonstrating the opulence of the man and beauty of the woman.²

Introduction

This chapter focuses on stories that reflect the behaviour of legally married wives in Timbuktu contracting subsequent marriages during the absence of their existing husbands. In chapter one, we saw four husbands charging their wives in front of the colonial native court between 1907 and 1912 for entering into subsequent marriages. This behaviour seems to have been particularly high during the 1940s, as more than one *fatwā* shows. The *fatwās* do not point out the reasons for wives contracting second marriages during this period; however, World War Two and a downturn in Timbuktu's local economy are two probable factors. By 1940, some of the salt from Taoudeni no longer passed through Timbuktu, as it went directly to towns such as

¹ Muḥammad b. Al-Mukhtār al-Kuntī, *Risālah fī ḥuqūq al-nisā'*, IHERI-AB, ms 3989, fl. 2-4

² Miner, H. 1965. *The primitive city of Timbuctoo'*. New York: Anchor Books, pg. 211

Gao after the route became secured under the French.³ During the early twentieth century salt was the principal commercial activity of Timbuktu. As a result, men, many of them husbands, either went to the war front or were forced to seek work elsewhere because of hard times in Timbuktu. Wives were, of course, left at home, often waiting long periods on their husbands to return.

However, men in Timbuktu, especially traders and the rich, travelled anyway, even in the pre-colonial period. We will see that wives in Timbuktu made conditions that their husbands return within a specific time period, failing of which they will divorce themselves. Indeed, this was the case with the main story this chapter tells. Although some of the wives who married another man did so under the impression that their first marriage no longer existed this was not always the case. We will suggest that the wives (certainly the wife of the main story) we look at in this chapter were clearly aware that they were still legally wedded to their husbands when they married other men. We will see that they could count on the fact that the ‘*ulamā*’ regarded all women as naturally ignorant of Islamic law and would therefore exonerate them from legal accountability.

Women: the “founders” of Timbuktu

A slave woman called Buktu was Timbuktu’s first ‘citizen’ according to the popular version regarding the founding of the city at the beginning of the twelfth century CE (1106 CE). According to this version, the city owes not only its existence, but also its

³ Miner, *The primitive city*, 74

name to this lone slave woman. The compound noun Timbuktu is composed of her name, *Buktu* and *tin* which apparently means a lump as she apparently had a protruding navel. Thus, from her name and physiognomy the city received its name. It is also said that the word *tin* refers to the well where she sat guarding the merchandise of her masters, the Maghsharan Tuareg.

There is another, less known, Tuareg version regarding the meaning and etymology of the word Timbuktu as I came to find out in an interview.⁴ According to this version, the word *tin* means caretaker or possessor while the word *buktu* is not a proper noun but a common noun that means merchandise. Thus *Buktu/buktu* was not the slave woman's name (her name remains unknown). This version also does not entertain the claim of her having had a protruding navel nor does it make any reference to the well where she reportedly sat. Rather Timbuktu is a compound noun (*tinbuktu*) that means the caretaker of goods. The caretaker (*tin*) is the slave woman and the merchandise (*buktu*) that of the Maghsharan Tuareg, the slave woman's masters. Whichever of the two versions is the correct one (perhaps neither is correct) both are agreed that a woman was present and pivotal in the founding of Timbuktu. Three centuries later during the early fifteenth century, a woman of the Laghlāl tribe built, from her personal wealth, the Sankore mosque. This mosque, also known as the "University of Timbuktu" became the locus of intellectual activity in Timbuktu with numerous circles of teaching and hundreds of students.⁵

⁴ Interview with Nurī al-Anṣārī, December 2006, Timbuktu

⁵ Hunwick, J.O. 1999. *Timbuktu & the Songhay Empire: Al-Sa' dī's Tarīkh al- Sūdān down to 1613 & other contemporary documents*. Leiden: Brill, pg. 88

Ever since that slave woman and the woman from the Laghlāl tribe⁶, the women of Timbuktu and the Niger Bend have been visible, speaking and doing things. However, despite the role of women in the establishment of Timbuktu and its knowledge tradition, women have been shockingly absent in social and historical studies of the city. This chapter attempts to redress that neglect by telling stories of wives using Timbuktu's colonial-era *fatwās* as a source. The *fatwās* accorded them a voice, mostly in the third person, but in the first person too. Before we delve into the stories, an overall description of Timbuktu's women, their social and economic status, what they said and did is in order to sketch a broader historical and social context for our stories.

They hail from rich mercantile and poor families, are of notable and servile status, are educated and illiterate, and are free and slave. They live in the city, deep in the desert, along the river, in oasis towns and villages surrounding Timbuktu. The estates of women and bequests show that they owned houses, large quantities of jewellery, slaves, spices, furniture, animals and other merchandise. One woman's estate comprises of four measures of rice, a black outer garment, a pearl necklace, two earrings, two Tuwātī red rings, two ear chains, a gold coin weighing two and half grams, two grams of gold, dark grains of pearls, two silver coins, and more.⁷

⁶ The Laghlāl are from the southern region of Mauritania called Shinqīt, but a small community resides in Timbuktu.

⁷ Aḥmad Bāba Abū al-‘Abbās bin ‘Umar, IHERI-AB, ms 5029; (the manuscript is incorrectly numbered as it does not correspond to the same number in the catalogue, vol. 4

Sale documents show that they were involved in real estate, they bought and sold homes. One woman sells her house to another in 1924; Fāṭim sells or buys a house for sixty thousand francs (the ms states *riyāls*) in 1929. Considerable amounts of wealth indeed.⁸ They manumitted their slaves or gave them and other property such as homes, jewellery, salt, and so forth as gifts to family members. For example, in circa 1871 Fāṭim gave her daughter Nāna Alfā Īj her house and a slave girl named Barīyyah as gifts.⁹ ‘Ā’isha manumits the children of her female slave; another woman bequeaths slaves to her sister; Nāna Fāṭim manumits her male slave Bilāl Barnāf in 1850, while Jamīlah gives her slaves to her brother.¹⁰

A *fatwā* dated July 1914 states that half a deceased husband’s estate belongs to his wife. The husband left a written statement wherein he made known that she was his partner in everything he owned including a business property and other wealth.¹¹ In 1840, a woman appointed her brother as her legal agent to administer her rights and properties.¹² That some of Ghislaine Lydon’s contemporary Saharan men and women interviewees (single and groups) regard women’s engagement in trade as “very shameful” is instructive. Similarly is one informant’s categorical denial that in the

⁸ Mss 10264 & 10256, IHERI-AB

⁹ IHERI-AB, ms (I have a copy of the ms, but not its number).

¹⁰ Mss 10180, 10238, 10257, 10855, IHERI-AB

¹¹ ‘Alī b. ‘Umar, *Fatwā li ‘Alī b. ‘Umar fī imra’ah tuwufiyya zawjuhā wa wujida rasman*, IHERI-AB, ms 3091, fl. 1-2

¹² Al-Marwān b. ‘Abdal b. Aḥmad, *Fatwā fī imra’ah tud’ā Fāṭima wakkalat akhā hā fī ṭalab ḥuqūq hā*, IHERI-AB, ms 1184, fl. 1.

1920s and 1930s that women did not work or brand with iron.¹³ The former clearly reveals clearly that women were traders while the latter shows the tensions between the archival record and oral sources, something, I pointed out in the Introduction chapter. Valerie Hoffman noted the tendency on informants' part to emphasize an idealized modesty norm at the expense of experiences of actual behaviour.¹⁴

Although the women who owned property were as a rule from notable families, as we mentioned before, there was one notable twentieth century exception: Salama Bouba. Salama was the wife of the former Catholic missionary, Yacouba Augustus Dupuis. Although she was a woman of "servile" status, she was financially stable and owned more than one house in the port village of Kabara and in Timbuktu.¹⁵

Though few and far between, there are literate women. Nāna Mūsā bint Muḥammad, most likely of notable extract, copied manuscripts and was possibly educated in the traditional sciences of Islamic higher learning.¹⁶ She was the copyist of a complaint

¹³ Lydon, G. 2009. *On trans-Saharan trails: Islamic law, trade networks, and cross-cultural exchange in nineteenth-century Western Africa*. Cambridge: Cambridge University Press, pg. 233

¹⁴ *Ibid.*, 233

¹⁵ Seabrook, *The white monk of Timbuctoo*, 124 and 131.

¹⁶ Brent Singleton points out that though basic literary skills were abundant, only a select few drawn from a small number of wealthy families were able to attain the status of 'ulamā' (scholars); Singleton, B.D. 2004. 'Books and libraries in medieval Timbuktu', *Libraries & Culture*, 39 (1), pg. 3

letter against the local *qāḍī* in 1865 and the copyist of a letter addressed to the prayer leader Wanghari bin Ibrāhīm.¹⁷

Women were not limited to owning, selling, buying and bequeathing property.

Northern Malian women have a reputation of being very assertive and independent-minded.¹⁸ They make demands of their men and exercise control over them. A mother writes to her son to not disgrace her and his family by abandoning a girl he had proposed marriage to. She reminded, or threatened, him that the anger of God comes as a result of a mother's anger. She made it clear that he must marry the girl as he promised, even if he does not love her. If he so wishes he can divorce her later.¹⁹ A mother married off her virgin daughter without the consent of the girl's father.²⁰ Not a few women marry on condition that their husbands cede to them the right of divorce and/or that husbands remain monogamists. Three women refused marriage proposals unless their suitors divorced their existing wives.²¹ Ghislaine Lydon notes that these requests of women were very common in this larger region.

¹⁷ Nāna Mūsā bint Muḥammad, *Risālah ilā Muḥammad bin Aḥmad tashkū fihā al-Qāḍī*, IHERI-AB, ms 3226; also, Nāna Mūsā bint Bābā, *Risālah ilā al-Imām Wanghari bin Ibrāhīm*, IHERI-AB, ms 3329

¹⁸ I thank Bruce Hall for this information, e-mail correspondence, February 2010.

¹⁹ 'Ā'isha bint Muḥammad, *Risālah 'Ā'isha bint Muḥammad bint Sīdī 'Alī ilā ibn hā Bāba Aḥmad*, IHERI-AB, ms 15665, fl 1-2

²⁰ Al-Bukhārī bin Muḥammad al-Amīn bin Aḥmad al-Bashīr, *Fatwā fī sha'n zawāj al-bikr*, IHERI-AB, ms 3076, fl 1-2

²¹ Mahmoud Mohamed Dedeḥ diṭt Hamou (hereafter Hamou). "*Kashf al-ḥā'il fī al-ta'rīf bi kutub al-fatāwā wa al-nawāzil*, 86 (This is a contemporary unpublished work; all 355 pages are handwritten)

A wife requests her husband to divorce her in return for the bridewealth he gave her. She nagged him to the point that he, in a moment of fit and annoyance, told her to do as she pleases. She left the house within the hour, in her understanding that she was a divorced woman.²² A *fatwā* dated 25 January 1923 speaks of a wife who accepts her husband's offer to divorce her, she gave him twenty *dirhams* and exonerated him from the maintenance due to her during her *'iddah* and his financial duties due to their son. She did so without her family's knowledge and managed to conceal it from them for a full two years as they would be responsible for her and the child's maintenance. The point is she wanted the divorce at any cost.²³

A wife and her mother teamed up against the husband even though he accepted her conditions that he does not remove her from her hometown, does not marry another woman or take a concubine.²⁴ She moved in with her mother where he often found her in the company of strange men. Another wife divorced herself without requesting her husband for a divorce; she simply returned to him the dowry he gave her.²⁵

Women lie about their marital status and related matters. A married woman convinces a man who had no idea that she was already married to marry her. Another lied in front of a *qāḍī* that her husband divorced her thrice. She produced no evidence,

²² 'Ālin bin 'Umar, *Fatwā li 'Ālin bin 'Umar bin Aḥmad bin Muḥammad bin Muḥammad Ber fī al-khul'*, IHERI-AB, ms 3832, fl. 1

²³ Muḥammad al-Ṭāhir Dah, *Nāzilah fī al-zawāj wa al-ṭalāq*, IHERI-AB, ms 1643, fl. 1-2

²⁴ Al-Bashīr b. 'Ilī b. Muḥammad Dāda al-Mukhtārī, *Fatwā fī al-ṭalāq*, IHERI-AB, ms 4259

²⁵ Muḥammad b. al-Muṣṭafā b. Aḥmad Baghayogo, *Fatwā fī imra'ah khāla 'at nafsa hā*, IHERI-AB, ms 2931, fl. 1

except her insistence that she heard him with her own ears. There are a few such cases.

There seems to be extra-marital affairs. Wives keep company with other men despite their husbands' unhappiness and objections. A *fatwā* speaks of a woman sitting on a bed with strange men, possibly not an isolated incident.²⁶ A man sees another man leaving his house and finds dried semen on his wife's clothes. A husband vows to divorce his wife if she sits with another man he does not want her keep company with. She continued to keep the company of this other man.²⁷

A woman falls pregnant one year after her husband's absence; she had menstruated many times since his absence.²⁸ A few married women, especially during the 1940s contracted second marriages while still legally married to their existing husbands. Others marry during their *'iddah*. In a letter a *mufīī* discusses with another *mufīī* the case of a husband returning home finding his wife with another man whom the wife presented as her husband.

A wife stipulates that if her husband remains away more than three months on his travel she will be divorced.²⁹ A *mufīī* is asked about the correctness of a woman's marriage immediately after the birth of her child conceived out of wedlock.³⁰

²⁶ Hamou, *Kashf al-hā'il*, 47

²⁷ Ibid, 188, 232 and passim

²⁸ Ibid, 24. That she menstruated indicates that she could not have been pregnant at the time of her husband's departure, meaning the child was in all likelihood not his.

²⁹ Ibid, 111

A November 1944 *fatwā* tells us of a wife who extracted an oath from her husband that he would not so much as speak to another woman she suspected he had affection for. He complied and avoided his wife's potential – or illusionary - competitor all together. When circumstances forced him to speak to this other woman: her young son had burnt, so hearing her screaming he hurried to her tent to lend a hand he hastened back to his wife to inform her of what had transpired.³¹ He only consoled her in the face of the calamity and exhorted her to be patient. The hold his wife exercised over him is clear.

We have already mentioned Salama, the wife of “servile” status. Notwithstanding her servile status, Salama was from day one not only Dupuis' queen, but his boss who knew what was best for him. When he wanted to buy his own house, Salama would have nothing of the sort. But even if she did live in his house, he could not, as William Seabrook contends, stop her from bossing it.³² In fact, Salama coerced Dupuis into moving back to the city when she moved into one of her houses in the centre of Timbuktu. Dupuis wanted to remain in the port town of Kabara on the Niger. She convinced him to give up the idea of becoming a Niger fisherman, after he left the Catholic mission in July 1904, and to talk to the white French Colonel for a job in the administration.³³ He carried out her advice – or instructions.

³⁰ Maḥmūd Baghayogo, *Nāzilah fī sha'n imra'ah tazawwajat ba'd waq'hā min ḥaml fāsīd*, IHERI-AB, ms 1209, fl. 1.

³¹ Aḥmad bin Abī al-'Arāf, *Fatwā fī al-ṭalāq*, IHERI-AB, ms 4908, fl. 1

³² Seabrook, W. 1934. *The white monk of Timbuctoo*. London: Harrap, pg. 124 - 126

³³ *Ibid*, 124 - 131

A slave woman plans to kill her master, but he comes to find out before she is able to execute her plot.³⁴ The *fatwā*'s title, "*ḥukm al-mudabbarah ...*" (the ruling on the *mudabbarah*...) indicates that this slave woman would have attained her freedom upon her master's death. She thus had reason to kill him: to expedite her freedom; it is possible that he ill treated her.

The first epigraph is the "advice" of a father to his son regarding the behaviour of women. This kind of "advice" is not unique to Timbuktu, but part of the general Muslim male-centred discourse on the nature of women. However, that it comes from a great scholar such as Sīdī Muḥammad al-Kuntī (d. 1826) suggests that women's behaviour in Northern Mali was not exactly exemplary, certainly not in line with how husbands and men wanted it to be.

But women suffer abuse and neglect. Nāna 'Ā'isha's husband, *alfā* Nūḥ (a scholar) left her without maintenance, clothing and other needs for three years. His whereabouts were unknown.³⁵ A *muftī* is asked about a man who abused his wife physically. There are other *fatwās* on wife battering.³⁶ Ṭayyibah raised a case against her husband 'Abd al-Raḥmān for physical abuse, swearing at her and her parents and starving her over eleven years.³⁷ Nāna charged her husband with injuring her in the

³⁴ Hamou, *Kashf al-ḥā'il*, 23

³⁵ 'Uthmān bin Muḥammad bin 'Uthmān al-Kābirī, *Fatwā fī al-nikāḥ*, IHERI-AB, ms 3762, fl. 1-2, dated 5 May 1866

³⁶ Hamou, *Kashf al-ḥā'il*, 112-116

³⁷ Aḥmayt bin al-Ḥājj al-Shaykh, *Fatāwī fī zawāj al-ḍarar*, IHERI-AB, ms 5373, fl. 1

neck. He, in turn claimed that she refused him sex and keeps company with the riff-raff.³⁸ He also claimed that she left the house angry after he rebuked her for refusing him sex and mixing with the wrong crowd.³⁹ A young girl, apparently a slave, is raped.⁴⁰

A word of caution about the incidents referred to above and the stories that follow below is necessary, specifically because a discussion about Muslim women is always interesting and contentious. I do not read Timbuktu's marriage and divorce *fatwās* with a hermeneutic of suspicion. My concern is not whether wives in Timbuktu resisted patriarchy, male domination, or misogyny or suffered under it. I have no such noble aim. To conclude, in light of the above examples, that Timbuktu's women were completely in charge of their own affairs is to exaggerate. There are many *fatwās* and colonial records that show wives in Timbuktu at the mercy of husbands and other men. However what is clear is that they were protagonists and exercised agency; they expressed themselves and made things happen.⁴¹ They made choices.

³⁸ An indication that this husband and his wife were probably from notable families of high social standing

³⁹ Muḥammad Maḥmūd ould Cheikh, *Fatwā fī sh'an māni'ah al-firāsh*, IHERI-AB, ms 3187, fl. 1, dated 2 November 1932

⁴⁰ Aḥmad Bābā bin Abī al-'Abbās bin 'Umar, *Hukm ṣādir fī rajl ghaṣab shābbah*, IHERI-AB, ms 5394, fl. 1-2

⁴¹ Some feminists have long asserted that the personal is political; that power dynamics play out in the home and the bedroom, the factory line and the lunchroom, the legislature and the courtroom. Power, they argue, is exercised not possessed, is productive, not primarily repressive and should be analyzed from the bottom up, not the top down; see, Hirsch, S and Lazarus-Black, M 1994. 'Introduction', in S. Hirsch and M. Lazarus-Black (Eds), *Contested states: law, hegemony and resistance*. New York: Routledge, 3. Women create opportunities and advantages for themselves from being on the margins; see, Davis, N.Z. 1995. *Women on the margins: three seventeenth century lives*. Massachusetts: Harvard University Press, pg. 15. Domination, as Pratha Chatterjee points out, always exists within a relationship. However, the dominant never consume and destroy

In short, this chapter simply offers a glimpse into the experiences of married women in Timbuktu as the *fatwās* recorded them, which we “embellish” with our imagination as we re-tell their stories here.

Dhāt al-Jamāl and her two husbands: ‘Abd al-Qādir & ‘Abd al-Mun‘im

The main story the chapter tells is about a wife who married her two husbands in a space of six months in 1945. The story is woven from three separate *fatwās* that addressed the incident. Of the three *fatwās*, I use one as the chief source for reasons we will outline shortly, notwithstanding that the two other *fatwās* were issued before it.⁴² It is entitled *Al-kashf wa al-nabhah fī ilhāq al-walad bi al-shubhah* (hereafter ms 5064).⁴³ Its *mufīī* is the renowned scholar, bibliophile, trader in books, prolific author, copyist of manuscripts, and historian Ahmad bin Abī al-‘Arāf (hereafter Bul Arāf).⁴⁴ I use it as my chief source because it, alone among the three *fatwās*, contains the names of the people involved and gives both dates of the wife’s marriage to her two husbands. Also of the three *fatwās* it contains features of a narrative, i.e. it lends itself more than the two other *fatwās* to the reconstruction of a story.

the dominated, for then there would be no relation of power and hence no domination; quoted in, Amin, S. 2002. *Alternative histories: a view from India*. Calcutta: SEPHIS, 14.

⁴² This I deduce from its author himself, when he says that he issued his *fatwā* only after scholars discussed and disputed over the two other *fatwās*. He refers in particular to one of the two *fatwās* that differs in its ruling (with regards to the paternity of the child) with that of other scholars. Only then, says its author did he decide to issue his *fatwā* as a duty to God. He wanted to show that the ruling of this dissenting *mufīī* was wrong according to all the Māliki works of Islamic substantive law.

⁴³ I thought it best not to attempt a translation of the titles of the *fatwās*, admittedly because of the difficulty to do so.

⁴⁴ His historical works are, *Maktūb fī ahammiyyah al-tarīkh* (*A treatise on the importance of history*) and *Naql al-kawā’in*, a chronicle of events in Timbuktu from the year 1509 to around the year.

I put it into conversation with its two older “sibling” *fatwās* for a richer, more interesting and embellished narrative to emerge. The two other *fatwās* are “*Tanbīh al-ghāfil fī farsh al-‘arāsh fī aḥkām luḥūq al-walad bi al-firāsh*” by Muḥammad Maḥmūd b. al-Shaykh (hereafter ms 5054) and “*Fatwatān fī al-ṭalāq*” by Muḥammad al-Ṭāhir Dah (hereafter ms 4903).⁴⁵ The three *fatwās* supplement each other; the discrepancies between them add to the richness of our story. In addition to our three *fatwās*, we look at other *fatwās* that tell other stories. These *fatwās* and their stories complement and embellish our main story.

The Fatwā

‘Abd al-Qādir married Dhāt al-Jamāl in a religiously binding contract, according to how their description. After the consummation of the marriage, he remained with her for some time then informed her of his intention to travel. She objected to his plans to travel, leaving her behind, and said to him, “I need you at all times and under all circumstances”. The husband replied that he will not remain away for a long time. Dhāt al-Jamāl claims that he said to her, “should I remain away longer than fifteen days you have the option to divorce yourself. She claims, she waited longer than fifteen days then went ahead and divorced herself based on what he said to her. There were no witnesses to their conversation; she sufficed with her husband’s word. The truth is, this woman is ignorant of the legal rulings and the laws of the *Shari‘ah*, as are all of her gender and the common people of our day. With the expiry of her *‘iddah*, she performed the ceremonial bath according to the custom of her people. When it became known throughout the village that her *‘iddah* had ended, ‘Abd al-Mun‘im asked for her hand in marriage. She accepted. He married her in a religiously valid marriage. Thus, this woman was first married to ‘Abd al-Qādir on 12 March 1945. She married ‘Abd al-Mun‘im on 3 September 1945. ‘Abd al-Mun‘im consummated his marriage with Dhāt al-Jamāl and remained with her a number of months. After an absence of about one year the first husband, ‘Abd al-Qādir turned up only to find her with her second husband ‘Abd al-Mun‘im. ‘Abd al-Qādir demanded his wife from ‘Abd al-Mun‘im, but the latter refused. How can I leave her for you he said to ‘Abd al-Qādir, I refuse to leave her, she is my wife and,

⁴⁵ All three *fatwās* are from the Aḥmad Bāba Collection (IHERI-AB): mss 4903, 5054, and 5064

moreover, she is pregnant with my child”?’ Abd al-Qādir, however, insisted, “She is my wife”, he told ‘Abd al-Mun‘im.⁴⁶

The Story

On 12 March 1945 (27 *Rabī‘ al-awwal* 1364)⁴⁷ ‘Abd al-Qādir and Dhāt al-Jamāl married on their understanding of what constitutes a religiously legitimate marriage contract. Their honeymoon seems to have been rather short for no sooner had the newly weds settled down and become accustomed to married life when ‘Abd al-Qādir informed Dhāt al-Jamāl of his intention to travel to Tindouf in Algeria.⁴⁸ The *fatwa* does not state the exact period Dhāt al-Jamāl and ‘Abd al-Qādir spent together before ‘Abd al-Qādir travelled - “as long as God willed” is all we are told. However, if we calculate the three months Dhāt al-Jamāl claims she waited before she divorced herself, followed by her *‘iddah* which normally lasts between two and three months then count back from the date of her marriage to ‘Abd al-Mun‘im six months after her marriage to ‘Abd al-Qādir, it could not have exceeded one month. This conclusion is strengthened by Dhāt al-Jamāl’s plea, “... I need you at all times...” It takes much more than a month for a wife to grow tired of her husband.

Travelling, even for recently married men, was not something unusual by Timbuktu standards. People travelled all the time, for commerce, for knowledge and simply to

⁴⁶ Aḥmad bin Abī al-‘Arāf al-Taknī, *Al-kashf wa al-nabhah fi ilhāq al-walad bi al-shubhah*, IHERI-AB, ms 5064, fl. 2-3

⁴⁷ 3rd month of the Islamic year

⁴⁸ Tindouf lies twenty days by camel northwest of Timbuktu. It was established in 1852 and rapidly emerged as a major caravan hub and soon became the meeting point of the northern caravan crossroads. See, Lydon, *On trans-Saharan trails*, 155

visit their families, which could include other wives and children living outside Timbuktu. Tindouf, a mineral-rich area would be an attraction for people seeking jobs and wealth especially in the 1940s when times were hard in Timbuktu, as we mentioned before. Furthermore, there were interlinking networks of commerce, clan, and family affiliation extending from Colomb-Béchar, through Tindouf to Timbuktu and Agadez.⁴⁹

However, the newly wedded bride (who, in fact, was married before) would have nothing of it and protested rather strongly. “Are you leaving me here all alone even though I need you under all circumstances” she asked him. He, all out to pacify her, told her that he will not be away for a long time and that in case of him delaying longer than fifteen days she was free to divorce herself. She waited for what she claimed was longer than fifteen days (more than three months according to ms 5054), then proceeded to divorce herself. She conducted the divorce as an act between herself and her Lord, as is stated in both mss 5054 and 5064.⁵⁰ As soon as her ‘*iddah*’ expired the news spread that Dhāt al-Jamāl was “*ahumay*”⁵¹, i.e. she took a ceremonial bath indicating that she was now a free woman. In accordance with the

⁴⁹ Baz Lecocq, Unpublished paper (in draft) presented at the 3rd international ABORNE conference, University of Witwatersrand, 9-13 September, fl. 7. I obtained the author’s written permission to quote from the draft (e-mail dated, 12 October 2009)

⁵⁰ Ms 5054, fl. 4

⁵¹ A Songhay word meaning the ceremonial bath that a divorced woman takes after the expiry of her ‘*iddah*’. Another meaning of the word is usurped or taking by force. Interview with Hamou, April 2008, Cape Town

local custom a divorced woman takes this ceremonial bath after the expiry of her ‘iddah.⁵²

It was then that Abd al-Mun‘im came forward and proposed to her. She gladly accepted and they tied the knot on 3 September 1945 (25 *Ramaḍān* 1364)⁵³, two days short of six Islamic lunar months from the date of her first marriage to ‘Abd al-Qādir. This second and apparently very happy marriage was just over six months old when ‘Abd al-Qādir, the first husband, returned, rather suddenly, around March 1946, one year since his departure.

Three Fatwās in Conversation

Each of the three *fatwās* has unique bits of information not found in its two counterparts. In the Bul ‘Arāf *fatwā* (ms 5064) it is the husband ‘Abd al-Qadir who makes the fifteen day condition, to appease Dhāt al-Jamāl. In other words, Dhāt al-Jamāl was the passive recipient of the appeasement; she did not say anything and apparently accepted the condition. But ms 4903 has Dhāt al-Jamāl uttering the fifteen day proviso, not as an appeasement, rather as an ultimatum, “If you are away for more than fifteen days I divorce myself”. ‘Abd al-Qādir agreed verbally, “he said yes”.⁵⁴ In this account she is the first person and active voice. Thus between the two *fatwās* we have an interesting interplay between the husband’s patronizing

⁵² Ms 5064, fl. 3

⁵³ 9th month of the Islamic year

⁵⁴ Ms 4903, fl. 1

appeasement and the wife asserting her right. The two *fatwās* give two conflicting pictures of Dhāt al-Jamāl: a submissive appeased wife (for that moment though) and an assertive ultimatum-issuing wife.

In mss 5054 and 4903, Dhāt al-Jamāl and ‘Abd al-Mun‘im are known only as “the man/husband” and the “woman/wife”, not by their proper names. Ms 5054 alone reveals that ‘Abd al-Mun‘im, the second husband, and Dhāt al-Jamāl were married prior to Dhāt al-Jamāl’s marriage to ‘Abd al-Qādir. They were married for years and she gave birth to his children (the *fatwā* does not say how many). ‘Abd al-Mun‘im then divorced her. During her *‘iddah*, Dhāt al-Jamāl discovered that she was pregnant. Their last child was thus born after their divorce. Dhāt al-Jamāl stayed single for two years following her divorce from ‘Abd al-Mun‘im before she married ‘Abd al-Qādir.⁵⁵

Thus ‘Abd al-Mun‘im, although Dhāt al-Jamāl’s second husband in the *fatwās* of mss 4903, 5064 and 5054 and our story, was Dhāt al-Jamāl’s original and first husband, and again her third husband. Another interesting detail found only in ms 5054 is that Dhāt al-Jamāl explicitly denied to ‘Abd al-Mun‘im that she had remarried after their divorce when he asked her about her marital status. “She completely denied it to him and informed him that she did not remarry”. As far as he was concerned she remained single since their divorce two years earlier in early 1943. He then proposed to her and she accepted. This she did while receiving maintenance from ‘Abd al-Qādir:

⁵⁵ Ms 5054, fl. 3

[T]he reality is that the travelling husband continued to send her clothes and silver. And all this she accepted from him before her marriage to the second one and continued to accept it from him after her marriage to the second one. All this is affirmed and established by impeccable and untainted witnesses. None of this was known to the second husband or to any one of her family until the travelling husband returned.⁵⁶

Other than ‘Abd al-Qādir sending her clothes and silver (money) from Tindouf there seems to have been no communication, written or via messengers between the couple, at least not from ‘Abd al-Qādir. This is apparent from Dhāt al-Jamāl’s claim that she had sent him a telegraph in Tindouf requesting him to return home, but he did not respond (ms 5054). At this point, after waiting for more than three months (unspecified period in ms 5064), she divorced herself without referring her case to a *muftī* - or the colonial native courts. It was, in the words of the *muftīs* of mss 5054 and 5064, an act between her and her Lord.

‘Abd al-Qādir’s return is treated with slight differences in mss 5054 and 5064 - ms 4039 pays no attention to his return at all. Only in ms 5064, do the two husbands engage in conversation; Dhāt al-Jamāl does not speak at all in any of the mss. When upon his return, ‘Abd al-Qādir found his wife with ‘Abd al-Mun‘im, a verbal altercation ensued, in both first and third persons. The former demanded his wife from ‘Abd al-Mun‘im who, however, refused, “I shall not let her to you, how can I do so, she is my wife and is moreover pregnant with my child?” But ‘Abd al-Qādir

⁵⁶ Ms. 5054, fl. 3

insisted, “The woman is my wife, the talked-on wife is mine”. The altercation soon led them to Timbuktu’s *mufītīs*.

The second husband (‘Abd al-Mun‘im), Dhāt al-Jamāl, and her family all feature in the ensuing conversation in the third person in ms 5054. ‘Abd al-Mun‘im and the family, seemingly shocked and surprised, confronted her to clarify the situation and explain how she married him while she was still ‘Abd al-Qādir’s wife. Ms 5054 relates their internal conversation, “They claim that she claims that her husband told her the day he travelled that should he not return within fifteen days the matter is in her hands.”

The discrepancies, few as they might be, between the three *fatwās* are telling and significant. Put together they allow for a richer reconstruction of Dhāt al-Jamāl’s story embedded in the three *fatwās*. The three *fatwās* are, however, agreed on two issues. One, that there were no witnesses to what was said in the alleged conversation between Dhāt al-Jamāl and ‘Abd al-Qādir. And two, as a corollary of one, the fifteen day proviso is made by all three *mufītīs* to be purely Dhāt al-Jamāl’s claim, “they claim that she claims (ms 5054); as she claims (ms 4093); she says (read, claims) that he said to her husband (ms 5064)”.

‘Abd al-Qādir did not corroborate her claims, although he did not explicitly deny that he uttered the fifteen day proviso. That he demanded his wife from ‘Abd al-Mun‘im (ms 5064) was an implicit repudiation of her claims. “When the husband returned

from his journey he affirmed that she was his wife and rejected the alleged proviso she cited; the women was unable to substantiate her claim” (ms 5054).

Thus all three our *mufītīs* hold, implicitly and explicitly, that ‘Abd al-Qādir neither issued nor accepted the fifteen day proviso. It was all the making of Dhāt al-Jamāl. They differ only in so far as they appraise her action and claims of the fifteen day proviso. Bul ‘Arāf (ms 5064) excuses her since she, like the rest of her gender and the common people, was ignorant of Islamic law. In his view, she in all likelihood misunderstood her husband, imagining that he told her to divorce herself after the said period.⁵⁷ Muḥammad al-Ṭāhir, the author of the ms 4903 *fatwā* seems neutral. There is nothing in his *fatwā* that conveys his diagnosis/appraisal of her intention. As for Muḥammad Maḥmūd b. al-Shaykh, the *mufītī* of ms 5054, he incriminates her implicitly. But who is Dhāt al-Jamāl?

Dhāt al-Jamāl between the Lines

Who was Dhāt al-Jamāl? What do our sources tell us about her? Her story is not an easy one to reconstruct. Despite the helpful bits of information the three *fatwās* contain, they lack details such as the age, social status, profession, etc. of Dhāt al-Jamāl and her two men. As happens with all *fatwās*, our three *mufītīs* omitted such

⁵⁷ This androcentric attitude on the “inferior” nature of a woman’s knowledge and memory can be traced back to the early Muslims. For example, when a woman informed the second *Caliph* of Islam, Umar b. al-Khaṭṭāb that the Prophet Muhammad told her as an irrevocably divorced woman she is not entitled to maintenance from her former husband during her waiting period, ‘Umar rejected her report. “We will not discard the Book of God or the way of our Prophet for the word of a woman who might have preserved or have forgotten; Muslim bin al-Qushayrī al-Nayshabūrī. 1988. *Ṣaḥīḥ Muslim bi sharḥ al-Nawawī*, vol. 5. Cairo: Dār al-Ghad al-‘Arabī, pg. 55.

details. A comparison of our *fatwās* to, for example, the sources Natalie Zemon-Davis used in her reconstruction of the Martin Guerre story immediately demonstrates this problem with our three *fatwās*. Davis describes her main source as one that combines features of a legal text and a literary tale leading us into the hidden world of peasant sentiment and aspiration. We cannot say that about our three *fatwās*.

Age

Although the three *fatwās* do not give us Dhāt al-Jamāl's age, we can, however, attempt to calculate her age at the time the incident transpired around March 1946. Focus on Dhāt al-Jamāl's age is important as it allows us to reasonably assume that 'Abd al-Mun'im married her a second time in 1945, two years after their divorce, because she was still relatively young. In other words, 'Abd al-Mun'im would not have married her if she, in addition to other factors as we will see, was not relatively young.

Women in Timbuktu and the region, according to the sources, written and oral, married young.⁵⁸ Thus we can put Dhāt al-Jamāl's age at the time of her first marriage to 'Abd al-Mun'im between fifteen and twenty. If we assume her first marriage to 'Abd al-Mun'im around 1935, it puts her birth somewhere between 1915 and 1920.⁵⁹ The possibility of 1935 is reasonable as, according to ms 5054, Dhāt al-

⁵⁸ A 1958 domestic dispute involves a husband and his twelve year old wife from the Tuareg Kel el Horma tribe whose girls reportedly marry at a young age. Tribunaux de Tombouctou, Justice de paix diverses affaires et correspondances Cercle de Tombouctou 1946-1959 ART M 30; Justice indigène: états des jugements et extraits des registres d'écrou cercle du Tombouctou, 1903 – 1920, ANM 2 M 149. In 2006 I spoke to a man whose wife was fifteen at the time of their marriage.

Jamāl remained married to ‘Abd al-Mun‘im for a few years during which she gave birth.⁶⁰ The period between 1935 and 1943 counts for a few years and was sufficient for Dhāt al-Jamāl to have given birth. Thus when ‘Abd al-Mun‘im married her for the second time in 1945, she was at most thirty years old.

Nomenclature

Her name, Dhāt al-Jamāl (ms 5064), is another interesting factor that allow us, with a modicum of our imagination, to reconstruct this remarkable woman’s story. The name Dhāt al-Jamāl literally means possessor of beauty, from which one can assume that she was a beautiful woman.⁶¹ The name is not common in the region.⁶² It is not clear whether it was her birth name or her nickname.⁶³ If it was her nickname then she most certainly was a beautiful woman. It is equally possible that her birth name was authenticated by her looks. A name, whether given at birth or later, is a living word that conveys a unique message. It reflects the desire of the person who gives the name for the named to embody the meaning of the name.⁶⁴

⁵⁹ Ms 5054, fl. 3

⁶⁰ Ibid, fl.3; Dhāt al-Jamāl was in fact pregnant at the time of their divorce.

⁶¹ S.D. Goiten shows (in the context of the Cairo Jewish community of the High Middle-Ages: 10th -13th centuries CE) that it was a natural expectation that girls should be beautiful and since names have magical power numerous names describe the newborn as a paragon of beauty. There is no reason to think that it was not the same in Timbuktu. See, Goiten, *A Mediterranean society*, 318

⁶² Interview with Hamou, 22 October 2008, Timbuktu

⁶³ It is possible that Bul ‘Arāf used it merely as a pseudonym in order to conceal her identity.

⁶⁴ As S.D. Goiten shows, Jewish parents, especially mothers, of Egypt of the High Middle Ages (10th to 12th centuries CE) gave their daughters names such as *Sitt al-kull* (mistress who rules over everyone), *Sitt al-nās* (mistress over mankind), and *Sitt a‘dāhā* (mistress of her enemies) to show that a woman was not synonymous with frailty. *Sitt al-kull* makes life so miserable for her husband

Dhāt al-Jamāl's beauty, real or assumed, is fundamental to my telling her story. I imagine her as a beautiful woman all the same. In andocentric religious discourse, a beautiful woman is looked upon with caution and suspicion.⁶⁵ Did Dhāt al-Jamāl exploit her beauty to manipulate the situation and juggle with two husbands? Was her beauty for her a tool that granted her power? I want to imagine the affirmative. This is plausibly explained by both husbands' continued love for her notwithstanding her less than honest behaviour. 'Abd al-Qādir retained her as his wife, despite her, as we will show, lying about him. 'Abd al-Mun'im took her back as a wife more than two years after their divorce, despite her having lied (ms 5054) to him as well. He, as I will show later, could not have been ignorant of her marriage to 'Abd al-Qādir. He willingly allowed himself to be duped, because he wanted to be with her, at all cost.

Simpleton or Manipulator

The manner in which Dhāt al-Jamāl dealt with her situation is interesting indeed. Did she misunderstand her husband about the fifteen day proviso? Or did she invent the fifteen day proviso when she conceived of, and executed, her arbitrary decision to repudiate 'Abd al-Qādir? Was not her objection to 'Abd al-Qādir's travel and her saying, "I need you at all times" intended, in reality, as a premonition and justification of what she intended to embark upon? In other words, was she a victim

that he preferred to divest himself of all his possessions rather than keep her. Goiten, *A Mediterranean society*, 265-266, 316 – 317 and passim

⁶⁵ Was it not the beautiful Delilah who overpowered the all powerful Samson to reveal the secret of his strength? Was not the beautiful Helen the cause of the war between the Greeks and the Trojans? Muslim jurists advised against marriage to an excessively beautiful woman, see for example, Zuhaylī, W. 1989. *Al-fiqh al-islāmī wa adillahtuh*, third edition vol. 7. Damascus: Dār al-Fikr, pg. 9

of her own misunderstanding or did she exploit her husband's absence to act in the way she did? We are inclined to see Dhāt al-Jamāl as a skilful manipulator.

Dhāt al-Jamāl prepared her husband and society – and unwittingly, a reader in the future - well for what was to come. It is almost too good to be true that a woman in a city such as Timbuktu in 1945 could extract either passively (ms 5064 and 5054) or actively (ms 4903) a fifteen day proviso from her husband to be back from his travels. She could not do so, unless she had preconceived plans. Tindouf, where ‘Abd al-Qādir travelled to, is situated twenty days journey by camel north west of Timbuktu. Thus, it takes forty days for a trip from Timbuktu to Tindouf and back. He was unlikely to have travelled by automobile. Returning one year later was not a terribly long period taking into account the duration of the trip from and to Timbuktu, difficulties along the road, and ‘Abd al-Qādir probably working or trading in Tindouf.

From ms 5054, the second conclusion is more plausible. Her denial to ‘Abd al-Mun‘im that she had remarried after their divorce; her faithful acceptance of the clothes and silver that ‘Abd al-Qādir sent from Tindouf, before and after her marriage to ‘Abd al-Qādir attested to by scrupulous witnesses; her sending him a telegram in Tindouf, and concealing the two latter points from both ‘Abd al-Mun‘im and her family, are not accidental.⁶⁶ They are indicative of a woman who carefully charted her course of action. Such is not the behaviour of an ignorant wife.

⁶⁶ Ms 5054, fl. 3

The resemblance between Dhāt al-Jamāl and Bertrande de Rols of the sixteenth century Martin Guerre story is striking.⁶⁷ Both women had two husbands, both their legal husbands had left home, and both women had children from their second “husbands” - Dhāt al-Jamāl was pregnant at the time of ‘Abd al-Qādir’s return to Timbuktu. As striking, however, are the differences. The physiognomic resemblance between Bertrande de Rols’ husband Martin Guerre and Arnaud du Tilh, the man who presented himself as Martin Guerre, fooled not only Bertrande, but also Martin Guerre’s family. The same did not apply for ‘Abd al-Qādir and ‘Abd al-Mun‘im. Martin Guerre had been missing for eight years and all contact with him was lost. ‘Abd al-Qādir was away hardly three months and still in communication with Dhāt al-Jamāl.

It is on the basis of the differences that the argument for Dhāt al-Jamāl as an accomplice in this case has, *a fortiori*, greater merit than Natalie Zemon Davis’s argument for Bertrande de Rols as an accomplice. What the three *fatwās*, specifically ms 5054, point to should be inescapable to any reader. The two *muftīs*’ (mss 4903 & 5064) exoneration of Dhāt al-Jamāl is supported only by their andocentric belief that all women are ignorant of Islamic law. In short, if Bertrande could be excused for being duped, the same cannot be said for Dhāt al-Jamāl.

⁶⁷ Davis, N.Z. 1983. *The return of Martin Guerre*. Massachusetts: Harvard University Press; Finlay, R. 1988. ‘The refashioning of Martin Guerre’, *The American historical review*, 93, 3, pp. 557 – 571; & Davis, N.Z. 1988. ‘On the Lame’, *The American historical review*, 93, 3, pp. 572 – 603

*Defective intelligence*⁶⁸

There is another prism from which to view Dhāt al-Jamāl's action and attempt to determine her innocence or culpability: women's knowledge of Islamic law. Simply put, if she had knowledge of Islamic law, specifically on divorce, then she was culpable. However, if she was ignorant of Islamic law, as all women are according to *muftī* Bul 'Arāf (ms 5064), then she was innocent.

Interestingly, Bul 'Arāf accorded Dhāt al-Jamāl a voice, switching between her and 'Abd al-Qādir, ("she says to him ... her husband answered her ... his wife Dhāt al-Jamāl says that he said to her ... the wife said that she remained for a period longer than fifteen days").⁶⁹ His aim though is not to accord her a voice, but to show her ignorance of Islamic law by condescendingly and patronizingly reporting her claims or explanation of events. In other words, Dhāt al-Jamāl's literal understanding and acceptance of her husband's words, as sufficient to divorce herself, were for the *muftī* an indication of her ignorance of Islamic law. This fact, he emphasises, is affirmed by the absence of witnesses both when the alleged conversation took place and when Dhāt al-Jamāl executed the divorce. Witnesses, all males of course, would, whatever

⁶⁸ My usage of this sub-title is deliberate and meant to be provocative. It comes, of course, from a tradition ascribed to Prophet Muḥammad regarding the religiosity and intelligence of women compared to that of men; it says, "Women are defective in intellect and religion". It was said to him (the Prophet), "O Messenger of God, how are they defective in religion"? He said, "They remain in their homes, not praying neither fasting [during menstruation] for half their lives" and "how are they defective in intellect"? He said, "Is not the testimony of one man equal to that of two of them?" See, Zuḥaylī, W. 1996. *Uṣūl al-fiqh al-islāmī*, second edition, vol. 1. Damascus: Dār al-Fikr, pg. 361. Muslim b. Al-Qushayrī al-Nayshabūrī. 1988. *Ṣaḥīḥ muslim bi sharḥ al-Nawawī*, vol. 2. Cairo: Dār al-Ghad al-'Arabī, pp. 65-66.

⁶⁹ Ms 5064, fl. 3

‘Abd al-Qādir said (or did not say), have explained to Dhāt al-Jamāl what he really meant.

Bul‘Arāf’s reference to the common people “*ahl waqt hā*” and the female gender “*jinsihā*” reinforces this notion, only this time it includes some men too. In general, the ‘*ulamā*’ find it necessary to dismiss the laity’s violations of religious laws as the result of their ignorance. This is Bul ‘Arāf’s attitude in this and at least two other cases.⁷⁰ Bul ‘Arāf’s description of Dhāt al-Jamāl, all women, and the laity as a whole, as ignorant of Islamic law, quite possibly an indication of Dhāt al-Jamāl’s case not being an isolated or novel event in Timbuktu. In other words, incidents of the kind did occur before in Timbuktu. The lay people of Timbuktu, I imagine Bul ‘Arāf saying, are always busy with such abominable deeds and behaviour before, during my time and will be after my time.

Bul ‘Arāf’s intention was however not to condemn Dhāt al-Jamāl, women and the laity or to call into question their religious commitment and devotion. Rather, it was a hermeneutical tool to show them as innocent in their violations of Islamic law and absolving them of religious accountability on earth. The voice he gave Dhāt al-Jamāl amounts to an implicit proclamation of her innocence. She was not to be held responsible and accountable for embarking upon an illegal divorce and thus finding herself married to two husbands simultaneously. Her ignorance was due both to the

⁷⁰ See, Aḥmad bin Abī al-‘Arāf, *Fatwā fi al-ṭalāq*, IHERI-AB, ms 4907, ms 5203, ms 4908, etc.

devil that led her astray to do this proscribed and repugnant act as well as the tool of mercy that absolved her from any accountability.

We may ask though, whether Dhāt al-Jamāl was really ignorant of Islamic law as Bul ‘Arāf would have us believe, and therefore innocent? I suspect that Dhāt al-Jamāl used her alleged ignorance of Islamic law to divorce her husband and to escape religious and legal accountability.⁷¹ On the contrary, her “superficial understanding” and doing things in the absence of witnesses were not, contrary to Bul ‘Arāf’s diagnosis, indicative of someone ignorant of Islamic law, but exactly of someone who had knowledge of Islamic law, if only some. Her claim of the absence of witnesses suited her well for then she could put anything into ‘Abd al-Qādir’s mouth. Their presence would have thwarted her plans.

‘Abd al-Qādir’s vehement denial of the fifteen day proviso upon his return one year later strengthens this argument. Wives do not simply divorce themselves then observe their ‘*iddah* and not involve anyone, not in the least their families. Dhāt al-Jamāl’s invention of the fifteen day proviso, either at the time she divorced herself or when ‘Abd al-Qādir returned, shows her knowledge of Islamic law. When she linked her divorce to the fifteen day proviso, Dhāt al-Jamāl appropriated a tool in Islamic law known as *ta‘līq al-ṭalāq*.⁷² None of the three *fatwās*, however, made provisions for

⁷¹ In, *The possession at Loudun*, Michel de Certeau raises the possibility that a group of nuns, brutally exorcised at Loudun in 1632, actually played along in their alleged possession in order to live out their “wild” inner life of sexual desire and hidden malice. Davis, N.Z. 2008. ‘The Quest for Michel de Certeau’, *The New York Review* (May 15, 2008), pp. 57-58

Dhāt al-Jamāl to tell her story in the first person. They suffice with the third person narrative: “they claim that she claims; she claims, etc.”

Who needs ‘Ulamā’?

Why did Dhāt al-Jamāl not go to the ‘*ulamā*’ to terminate her marriage to ‘Abd al-Qādir, but terminated it herself. She shunned all legal authority: Islamic and colonial. Her action goes against the conventional way of how such things are done in a Muslim society. Ordinary Muslims - in Timbuktu and elsewhere – refer their religious questions and existential concerns to the ‘*ulamā*’ for only they can dispense with guidance. But ordinary people also know when it is not in their best or vested interest to consult the ‘*ulamā*’ at all or a particular *muftī* or *qāḍī*. To the extent that a lay person anticipates the ‘*ulamā*’ will not lend him/her a favourable ear and rule in their favour, to that extent s/he will not consult them or the particular *muftī*.

There is a reasonable basis to assume that this was the situation in Dhāt al-Jamāl’s case. She must have anticipated an unfavourable response from Timbuktu’s ‘*ulamā*’. It is difficult seeing the ‘*ulamā*’ of her day agreeing to divorce her from her husband, as his whereabouts were known (ms 5054) and because his absence was less than six months. Divorce is, according to classical Islamic law, the right of the husband alone. The legal dictum “*al-ṭalāq bi yad man akhadha bi al-sāq*” (lit. divorce is in the hand of him who takes hold of the leg) is indicative of that

⁷² *Ta’līq al-ṭalāq* is when a husband makes divorce contingent upon something happening in the future. For example the husband says to his wife, “if you speak to a particular person, you are divorced” or “when you travel to your hometown tomorrow”; al-Zuḥaylī, *Al-fiqh al-islāmī*, vol.7, 444.

exclusive right of the husband.⁷³ Taking the leg, a part of the wife's body, is a metaphor for the husband's exclusive right to sex and his power to end the marriage.

The assumption that she consciously avoided the '*ulamā*' is strengthened by the fact that she did not refer her case to the native courts, although she had access to it. By 1946, Timbuktu's Muslim population were increasingly using the native courts. If indeed Dhāt al-Jamāl's failure to refer her case to the scholars was informed by such a fear then she was probably not off the mark. '*Ulamā*', as we will see later, can be lethal when it comes to the misdemeanours of the common people. But she not only divorced herself with no one present, "an act between herself and God", she observed her '*iddah*' all by herself, not telling anyone. Why would she not want anyone to know? After all, 'Abd al-Qādir had, as she would later claim given her the option of divorce should he not return within fifteen days.

Playing two Love Smitten Husbands

Dhāt al-Jamāl was confident - and right - that both "husbands loved her. Their love for her was her trump card that allowed her to emerge unscathed and totally innocent from her adventure as a two-timer. The two men, rather "husbands", one all but cuckolded, the other about to lose her, put up a spirited defence for her. No sooner had they encountered one another (ms 5064) when a verbal altercation ensued; a

⁷³ Al-Amin, M.H. 1999. Maqāṣid al-sharī'ah, in *Qadāyā islamīyah mu'āṣarah* magazine, pg. 58

struggle for her love. Although physically present Dhāt al-Jamāl was all but absent from the discussion. She was the Beauty in all of this and each one of them the Beast, hence each husband reserved his energy to defeat the other fighting tooth and nail to live happily ever after with her. It began as a tale of two beastly men's love for, in both their views, one pure and innocent woman.

Starting the offence, and in anger, the *de facto* cuckold 'Abd al-Qādir screamed at 'Abd al-Mun'im: "Give me back my wife now; I want my marriage restored to how it was before I travelled". 'Abd al-Qādir loved Dhāt al-Jamāl too much to give her the cold shoulder, so unlike the treatment Martin Guerre meted out to his wife Bertrande de Rols.⁷⁴ What, other than love, explains his sudden return to Timbuktu? There is nothing to suggest that he would not have lengthened his by then year stay in Tindouf. Only a traumatic event such as being divorced from the woman he loved so much and her marriage to another man would have forced him to return in such a hurry. Someone must have informed him of what transpired. Could it have been one of our impeccable witnesses?⁷⁵

He must have recalled the happy, admittedly short, times they enjoyed together before he travelled while arguing his case. Of course, he made no reference to a fifteen day proviso throughout all this. If he did turn to Dhāt al-Jamāl it was to remind her how much he loved her. Did he not faithfully send her silver and clothes every month from

⁷⁴ Davis, *The Return of Martin Guerre*, 86

⁷⁵ See, Davis's thoughts on what prompted the original Martin Guerre to return to Artigat just at the moment that his impostor double's trial was nearing its end, Davis, *The return of Martin Guerre*, 82 - 84

Tindouf? In that he was telling ‘Abd al-Mun‘im that he was a responsible husband who took care of his wife even while away.

‘Abd al-Mun‘im, just as in love with Dhāt al-Jamāl was equally vociferous. “How can I and why should I let her go to you? She is my wife and moreover she is carrying my child” he responded defiantly. He in all likelihood reminded ‘Abd al-Qādir that he abandoned her for one whole year, after promising that he will be back in fifteen days. That was not the characteristic of a responsible, caring husband.

As for ‘Abd al-Qādir sending her silver and clothes, he (‘Abd al-Mun‘im) could do the same and more, and probably boasted that he did. Dhāt al-Jamāl needed love and she found that love in him, he passionately stated. He must have reminded ‘Abd al-Qādir that he gave Dhāt al-Jamāl the option of divorce should he not return within a certain period (mss 4903 & 5064). He put it to ‘Abd al-Qādir that Dhāt al-Jamāl was legally divorced and therefore single at the time he married her (ms 5054). “Our marriage” he insisted, “is correct and valid in the eyes of Allah, her family and all the people. You have nothing but yourself to blame. So leave me and my wife, to be”.

The discussion was long and soon involved Dhāt al-Jamāl’s family and other people. Naturally, some people, on the basis of the respective arguments and evidence (or absence of evidence), personal friendship, family or tribal loyalty supported ‘Abd al-Qādir while others sided with ‘Abd al-Mun‘im. Finally, they all: ‘Abd al-Qādir, ‘Abd al-Mun‘im and Dhāt al-Jamāl’s family turned to her for clarity. She was prepared:

“my husband made me a condition the day he travelled that if he is not back within fifteen days then the matter is in my hands” she said. Unlike Bertrande de Rols, who trembled and wept, embraced her husband and begged for his pardon for her fault⁷⁶, Dhāt al-Jamāl stood firm, and she showed no weakness nor invited sympathy. She did nothing wrong. She told them repeatedly that she waited much longer than the fifteen days, in fact a little over three months for him to return. Only then did she proceed to divorce herself.

‘Abd al-Qādir, of course, denied the fifteen day proviso. How could he make or accept such a ridiculous and unrealistic condition when he knew well, as a seasoned traveller, that the trip alone from Timbuktu to Tindouf takes twenty days. In other words, his travel from Timbuktu to Tindouf alone would take longer than fifteen days. On her side, although unable to substantiate her claim, Dhāt al-Jamāl was adamant that he did issue the proviso (ms 5054).

Muftīs to the rescue - anyway

It soon became clear that the matter would not be resolved without higher intervention. Finally the case reached the ears of the ‘*ulamā*’ - as was bound to happen in a city of scholars such as Timbuktu - and the ears of the colonial authorities (ms 5064). The ‘*ulamā*’ were uninvited intermediaries for Dhāt al-Jamāl and ‘Abd al-Mun‘im, but heartily welcomed by ‘Abd al-Qādir. The guardians of Islamic law and

⁷⁶Davis, *The return of Martin Guerre*, 82

its moral code acquainted themselves with the case and expressed their verdicts. It is only after their “interference” that ‘Abd al-Mun‘im backed down; he had no choice.

The motives of a bigamist

We have established that Dhāt al-Jamāl was not ignorant of Islamic law and therefore not a victim. In short, she was guilty of manipulation and bigamy. However, her manipulation was not that of a self-centred woman, of an unrepentant bigamist, or someone given to promiscuity. She did not simply count on her beauty and charm in and for themselves to ‘bag’ two husbands – or any other husband she wanted. Her beauty was a tool. Rather her manipulation was informed by the need of a wife for her husband at all times; not an unfair motive indeed.

Dhāt al-Jamāl needed a life companion for herself, for friendship, love and sex, emotional support, in addition, of course, to financial support. In short, what any spouse “naturally” wants from his/her partner. Her words, “I *need*⁷⁷ you at all times and under all circumstances”, say it all.⁷⁸ In her case, need was certainly not financial only; besides, ‘Abd al-Qādir did send her money from Tindouf regularly (ms 5054). Her voice is an implicit complaint conveyed in what seems to be an affectionate tone of love? It is not terribly unlike Brutus’s wife Portia who complains of being shut out of her husband’s inner life making her feel like a whore.⁷⁹ Dhāt al-Jamāl refused to be

⁷⁷ Emphasis mine

⁷⁸ Ms 5064, fl. 1

⁷⁹ Greenblatt, S. 2004. *Will in the world: how Shakespeare became Shakespeare*. London: Jonathan Cape, pg. 128

her husband's harlot, although he faithfully sent her maintenance, as a religious obligation. Our story thus starts out very affectionately and then progresses into disillusionment, unilateral divorce and finally into another marriage. She loved 'Abd al-Qādir, but only if he was present in her midst all the time.

She spoke up and argued her case. Whether the fifteen day proviso came from her or from the husband it would not have been stated had she not protested and challenged his decision to travel. Her words, "I need you at all times" challenged two religiously sanctioned social norms of Muslim societies regarding the position of wives in a marriage. First, she challenged his 'right' as a husband to travel anytime, i.e. husbands go and come as they like and are not in need of their wives' approval, as long as they see to their wives' financial needs.⁸⁰ Secondly, she challenged – a even greater taboo – the notion that sex is the right of the husband only and that wives merely serve their husbands' sexual needs. Dhāt al-Jamāl refused to be a passive partner in their sexual relationship.

Bul 'Arāf's description, of her verbal objection to 'Abd al-Qādir's travelling and leaving her, though she needs him, as an intended expression (*bi lisān al-hāl*) and as the silent language (*wa lisān al-maqāl*) is instructive and interesting. It conveys a sense of it being a common verbal response of wives in Timbuktu to their travelling husbands. This ought not to be strange given that husbands travelled frequently and at

⁸⁰ The classical Islamic law ruling is that a wife has no right to push for the termination of her marriage in the case of a missing husband however long the period as long as he provided for her financially or that he has to be missing for four years before a *qāḍī* can annul or repudiate the marriage. See, Al-Zuhaylī, *Al-fiqh al-islāmī*, vol. 7, 532-534 and 643-644. Through her action, Dhāt al-Jamāl defied this ruling.

times for long periods. In other words we imagine that Dhāt al-Jamāl's words (complaint or ultimatum) were not novel to Timbuktu and that wives before her had already said them. It might well be that no wife before Dhāt al-Jamāl (and under her exact circumstances) divorced herself, but that they did speak to their husbands is highly probable.

Another plausible motive of Dhāt al-Jamāl was that she needed a father for her children. As we know, she was barely married for three months when 'Abd al-Qādir travelled and before that a single parent for two years. There is thus good reason to believe her claim that she waited for three months on 'Abd al-Qādir before she proceeded to terminate their marriage and very hastily marry 'Abd al-Mun'im thereafter. She could not see herself without husband a second time. In hindsight, she was right, as 'Abd al-Qādir remained away for one full year and she had no knowledge or hope of him returning at any known time. Her marriage to 'Abd al-Qādir, then, was one of necessity. She was two years without a husband, her children were in need of a father, and she had various needs.

Since she and 'Abd al-Qādir spent less than a full month together before he travelled, she in all probability thought of the possibility of her being pregnant. If it turned out that she did conceive then she did not want her unborn child to be "fatherless". The eagerness with which she accepted 'Abd al-Mun'im's proposal seems the logical thing for a woman in need of a father for her children. 'Abd al-Mun'im was, after all, the biological father of her other, still relatively young, children (ms 5054). The

family was complete again and she fell pregnant within a month or two of her marriage to ‘Abd al-Mun‘im. The child was not yet born at the time of ‘Abd al-Qādir’s return six months after her marriage to ‘Abd al-Mun‘im. And when her marriage to ‘Abd al-Mun‘im was annulled and her and ‘Abd al-Qādir’s marriage restored, Dhāt al-Jamāl was assured of her children always having a father, ‘Abd al-Mun‘im or ‘Abd al-Qādir.

To the end, Dhāt al-Jamāl firmly held that she was a divorced woman claiming that ‘Abd al-Qādir had delegated to her the right to divorce if he failed to return from his travels within fifteen days. However, neither the *muftī* nor ‘Abd al-Qādir, on his return, lent any credibility to her claim. ‘Abd al-Qādir all but denied the alleged conversation around the fifteen day proviso. He could as there were no witnesses. And even if all three *muftīs* implicitly accepted that the husband could have uttered those words they dismissed her claim explicitly and implicitly as that of a woman, like the rest of her gender, ignorant of the laws of Islam.

The Unknown Female

Although we decisively dismissed it above and will do so below there is a possibility that ‘Abd al-Mun‘im did not know of Dhāt al-Jamāl and ‘Abd al-Qādir’s marriage. He therefore believed Dhāt al-Jamāl when she told him she had not married after their divorce. “He asked whether she was married or not? She completely denied and informed him that she had not remarried at all since their divorce” (ms 5054). But

how is it possible that a man in a small town such as Timbuktu ends up marrying a legally wedded woman?

A plausible answer can be found in what is almost an axiom with regards to women in some parts of the Muslim world with its diverse religious communities regarding intermingling of the sexes. According to this notion, men are supposed to know only the women of their household and extended family.⁸¹ The tradition, ascribed to Prophet Muḥammad, that a woman's prayer in her house is better than prayer in congregation gives the notion its religious basis and garb. The understanding of this tradition is that women should not be seen, let alone be known. Put differently, and with much oversimplification, women were unknown to men outside their household and extended family. An implication of the "unknown" woman was that a man outside a woman's household or immediate extended family would not know her marital status. It is then possible for such a man to marry a married woman if she does not inform him of, or lies about, her marital status.

Muqaddisī, the thirteenth century Muslim traveller from Jerusalem wrote that in Cairo every wife has two husbands.⁸² That Muqaddisī was exaggerating is clear. However, the fundamental question is how it was possible at all for a married woman in a Muslim society, whether strict or relaxed, to contract a second marriage. It does not seem to be in the "nature" of men to knowingly and happily share their woman (wife)

⁸¹ Goiten shows this social-religious rule was operative in Mediterranean Jewish communities of the High Middle Ages. Goiten, *A Mediterranean society*, 313

⁸² Goiten, *A Mediterranean society*, 322

with another man in matrimony.⁸³ A husband might acquiesce to his wife having an illicit sexual affair with another man, but would not contend with this other man as her husband. In his compilation on marriage and sex in the Muslim world, al-Rāghib al-Iṣfahānī, the famous *ṣūfī*, linguist, and philosopher, gives clear examples of husbands who knew and approved of their wife's affairs with other men, sometimes in their presence.⁸⁴

A *fatwā* by the twentieth century Timbuktu *mufīī*, Muḥammad al-Ṭāhir Dah dealt with such an occurrence. A man met a married woman on a riverboat on the Niger somewhere near to Timbuktu, whom he, of course, could not know. Naturally, he also did not know that she was married. The woman requested him to marry her. He at first refused, but soon accepted. The marriage was rather short lived for even before they disembarked from the riverboat he divorced her. After they disembarked and he visited some of the villages he came to hear that she was married. He began a protracted search for her, but could not find her. She went into hiding, the *fatwā* tells us. When finally she was found, she refused to speak, “she did not confess to anything nor did she deny.”⁸⁵ For this woman being “unknown” and ignorant allowed her to benefit in more than one way: she gained a husband, was given a dowry, and escaped legal retribution.

⁸³ During my stay in Egypt (1989-1998), I more than once read of married women who contracted subsequent marriages. In one case of a university lecturer was married to seven husbands. Apparently none of them knew that she was married.

⁸⁴ Al-Iṣfahānī, Rāghib. 2007. *Al-nikāḥ wa al-jins fī al-turāth al-‘arabī*. Al-Manṣūriyyah-Lebanon: Kitābunā, pp. 112-113

⁸⁵ Muḥammad al-Ṭāhir al-Anṣārī Dah, *Maktūb fī sha’n imra’ah tazawwajat bi rajul fī safīnah ma’annahā kānat fī ‘iṣmah rajul ākhar*, IHERI-AB, ms 1233, fl. 1

Collective Collusion

Two 1904 *fatwās* tell us of the marriage of a woman to her milk brother in one of Timbuktu's surrounding villages. According to Islamic law, children of different parents suckled by the same wet-nurse become siblings by virtue of milk kinship. They are prohibited from marrying one another in the same way as blood siblings are.⁸⁶ From the description of the incident in the two 1904 *fatwās*, we can make an argument for possible collusion between Dhāt al-Jamāl, her family and 'Abd al-Mun'im in this affair.⁸⁷ The two *fatwā*-sources state explicitly that collusion was at work in this marriage of milk siblings. Before we come to the case, we look at elements in Dhāt al-Jamāl's case that implicitly point to collusion. Ms 5054 states,

When the second [husband] and the people (her family) asked her about her divorce from her first husband they claim that she claimed that her [first] husband stipulated to her the day he travelled that if he does not return within fifteen days, the matter is in her hands ... She waited more than three months and send him a telegraph in Tindouf, but he did not reply ... She then divorced herself and observed her 'iddah in solitude. When her 'iddah expired, she made it known to the other man that she is free to marry.

If we accept collusion in Dhāt al-Jamāl's case, as I will attempt to show, then she was not the sole guilty party of her bigamist marriage. 'Abd al-Mun'im and her family all had their hands in the pie. The apparent meaning of this extract is that Dhāt al-Jamāl's family had no knowledge of the fifteen day proviso, her subsequent self-administered divorce and 'iddah. However, despite ms 5054's apparent wording, her family's alleged unawareness of the fifteen day proviso, her self-administered divorce and her

⁸⁶ Qur'an 4: verse 23; Malik b. Anas. 1985. *Kitāb al-muwatta'*. Beirut: Dār al-Āfāq al-Jadīdah, pg. 505

⁸⁷ We confine ourselves to only one of the *fatwās*, in this case the original *fatwā*

lone observation of her *'iddah* cannot be sustained. That they knew of Dhāt al-Jamāl's marriage to 'Abd al-Qādir on 12 March 1945 cannot be doubted for a moment.

She lived for two years in her father's house after her divorce from 'Abd al-Mun'im. Nothing in the three *fatwās* suggests that her marriage to 'Abd al-Qādir was secretive. How then, did they allow her marriage to 'Abd al-Mun'im on 3 September 1945 (ms 5064) without suspecting something amiss? Here too, they could not have been oblivious of the marriage. A divorced Muslim woman must undergo her *'iddah* as soon as the divorce is pronounced. Among other things, she cannot leave her ex-husband's house (except for necessity) until the expiry of the *'iddah*. Thus if Dhāt al-Jamāl was observing her *'iddah* she would not have left her home. Her family would certainly have noticed her remaining in the house and have enquired. Besides ms 5064 states explicitly that with the expiry of her *'iddah*, the news spread throughout the town that Dhāt al-Jamāl had taken the customary bath divorce women take at the end of their *'iddah*.

Dhāt al-Jamāl's family did not know anything simply because there was nothing to know. There was no fifteen day proviso made at the time that 'Abd al-Qādir travelled. Families often come to their daughters' aid in their ordeals with their husbands. They are after all, at the receiving end of an unhappy and continuously complaining daughter/sister. They need release from the heartbreak and hell, and it is in their

interest to facilitate divorce especially where the husband is away or uncooperative.⁸⁸ In light of this, Dhāt al-Jamāl's decision not to consult any judicial authority, either the native courts or traditional Muslim scholars, seems intelligent. Her family was sufficient for her.

Likewise 'Abd al-Mun'im could not have been ignorant of Dhāt al-Jamāl's marriage to 'Abd al-Qādir. He would have been informed by her family or by the impeccable witnesses who testified that 'Abd al-Qādir punctually send her silver and clothes from Tindouf (ms 5054). Dhāt al-Jamāl and her family not only colluded with 'Abd al-Mun'im in making this proscribed marriage, together they invented the fifteen day proviso.

According to the 1904 *fatwās*, everyone in the village knew that the man Muḥammad bin Khamm and the woman Nāna Zahr were milk siblings. Their common wet nurse who identified them as milk brother and sister was present. Nāna Zahr was married to another man. Because it was permissible for Muḥammad to visit Nāna his milk sister at her home in the absence of her husband, he visited her frequently. However, the entire village, except Nāna's husband, knew that Mūhammad's visits to Nāna were not merely those of a brother to his milk sister. The couple were lovers. In fact, they did not conceal their love for each other, except from the woman's husband.

Whenever anyone in the village informed the husband of his wife's affair with her

⁸⁸ For such incidents elsewhere involving families dealing with grass widows, see Goiten, *A Mediterranean society*, Vol.3, 261-265

“brother” he would respond that the latter was her brother. Finally, the husband got a whiff of the love affair between his wife and her milk brother. He divorced her.

For a period after her divorce, Muḥammad bin Khamm and Nāna Zahr continued to act as milk siblings. However, not long thereafter they denied their milk-sibling status and announced their intention to tie the knot. Now, everyone in the village including their milk mother denied their previously affirmed relationship as milk siblings to facilitate their marriage plans. They were then married by the village *muftī*.

However, the eminent *muftī* and *qāḍī* of Arawān, Sīdī ‘Ālin b. Sīdī A’mar soon came to know of the incident. He issued a ruling on 18 June 1904 that annulled the marriage. He made it clear to everyone: the marriage was invalid and abominable. Furthermore, he incriminated the “husband” (milk brother), his “wife” (milk sister), their wet nurse, the *muftī* who married them off, the political leaders of the community, and, in fact, the entire village. They were accessories, active and passive, in the making of this sugar coated disgraceful and vile act. He charged them with greed and infatuation with this ephemeral world.⁸⁹ The only one who seems to have escaped his wrath is Nāna Zahr’s original husband. No one, however, paid attention to him, “they persist in their arrogance as if their ears were filled with wax”.⁹⁰

What concerns us of the incident is the clear collective collusion the *fatwās* show.

Why a whole village, including its religious and political leadership, conspired to not

⁸⁹ ‘Ālin bin A’mar, *Fatwā fī sh’an rajl wa imrah makathā zamān mutaṣādiqayn wa qā’ilayn bi annahumā ikhwān min al-raḍā’ah*, IHERI-AB, ms 579, fl. 1-2

⁹⁰ *Ibid*, fl. 1-2

only conceal the truth, but also violate fundamental religious injunctions is however, not entirely puzzling. To put it differently, there does seem to be an explanation for their behaviour: love. As a community they refused to kill a romantic affair. They simply could not let the Muḥammad Khamm and Nāna Zahr's deep love for one another go to waste.

The two were lovers already when Nāna Zahr was still married, "all the people of the village, except her husband, knew of his love for her."⁹¹ However, the entire village concealed it, which makes their collusion more abominable. If they did everything to conceal the milk siblings' love affair, notwithstanding its adulterous-incestuous nature, they were certainly going to do everything possible to facilitate their religiously-proscribed marriage. All this they did in the service of the couple's love, even if it meant lying and violating unambiguous religious-social injunctions.

However, in the end the *muftī* had the last laugh. What poison did to Romeo and Juliet's love, Sīdī 'Ālin's *fatwā* did to Muḥammad and Nana Zahr's love - and the three *fatwās* of mss 4903, 5054 & 5064 did to Dhāt al-Jamāl and 'Abd al-Mun'im's love.⁹² The *mufti*'s annulment of the marriage was, as Farouk-Alli says, a shift from

⁹¹ Ibid, fl.1

⁹² Farouk-Alli sees a parallel between the real-life protagonists of this story and Romeo and Juliet of the classical *Romeo and Juliet* tragedy. Both love affairs end tragically. However, the fate of a melodramatic literary death is by no means as daunting as a real *fatwā* of the chief *Qāḍī* that annuls one's marriage. See, Farouk-Ali, A. & Mathee, M.S. 2008. 'The Tombouctou manuscript project: social history approaches', in Shamil Jeppie and Souleymane Diagne (eds.), *The meanings of Timbuktu*. Cape Town: HSRC Press, pg. 187

the exclusive resolution of legal problems to the admonition of an entire community by invoking the broader ethical spirit of the Islamic religious tradition.⁹³

From the above discussion, it is not farfetched to suggest that love too was a factor, if not the major one, in the collective collusion of Dhāt al-Jamāl, ‘Abd al-Mun‘im and Dhāt al-Jamāl’s family. Although Dhāt al-Jamāl and ‘Abd al-Mun‘im were divorced for over two years (before she married ‘Abd al-Qādir), their love for one another never faded. What else explains Dhāt al-Jamāl’s ready acceptance of ‘Abd al-Mun‘im’s marriage proposal in spite of her claim statement that she needs ‘Abd al-Qādir? All that two years after ‘Abd al-Mun‘im divorced her. She patiently waited over two years on the man whom she still loved, and when he came along she accepted without the least hesitance.

Dhāt al-Jamāl’s family was aware of her and ‘Abd al-Mun‘im’s deep-seated love for one another. Hence they were not mere silent spectators when Dhāt al-Jamāl divorced herself and then married ‘Abd al-Mun‘im. They were actors too and co-owners of the planning and execution of the process in its entirety. As in the case of the milk siblings they could not see themselves putting a spanner in the path of love. So they played along. Thus, as there was collusion in the love affair of Muḥammad bin Khamm and Nāna Zahr so there was in the love affair of Dhāt al-Jamāl and ‘Abd al-Mun‘im. The difference though is that in Dhāt al-Jamāl’s case the collusion was not obvious and the *mufīīs* did not implicate anyone.

⁹³ Farouk-Ali, & Mathee, The Tombouctou manuscript project, 188

Similar Cases

Dhāt al-Jamāl's illegal marriage as a married woman to 'Abd al-Mun'im was not an isolated case. The 1940s witnessed other similar cases of married women contracting second marriages in Timbuktu and its surrounding world. Some women wittingly violated the teachings of their religion and local social norms. Others however, did not arbitrarily abandon their husbands without regard for proper divorce procedure or summarily contract a second marriage. They did so under the impression that their husbands had divorced them, delegated to them the right of divorce, or that their marriage no longer existed.⁹⁴ There are two similar cases to that of Dhāt al-Jamāl that transpired in Timbuktu in 1945/46 and 1947.

The first is that of a woman called Tilmud. She, resident in Goa, married 'Abd-Allah b. 'Abd al-Barr, resident in Timbuktu, by proxy on 18 May 1947. He joined her in Goa on 29 October 1947, i.e. just over five months after the solemnization of their marriage. They consummated their marriage on 30 October 1947. Tilmud fell pregnant while they were still in Goa. They remained in Goa for about five months. Sometime in early March 1948, they boarded a riverboat to Timbuktu, very much still in the honeymoon phase and totally in love as the *fatwā* tells us. Tilmud gave birth on 14 April 1948.⁹⁵

⁹⁴ In the Cape Muslim community for example, a perception that a wife is automatically divorced, if she does not hear from her husband for in more than three months has until very recently been accepted and practiced. I personally heard from one such wife.

⁹⁵ Aḥmad bin Abī al-'Arāf, *Fatwā fī*, IHERI-AB, ms 5203, fl. 1

The ecstatic father spent lavishly on his wife and son sending her abundant meat in accordance with the custom in Timbuktu for women who had just given birth. All was well and good until some rumour mongers “whispered to ‘Abd-Allah that the child is not his”. They brought it to him that he consummated his marriage to Tilmud on 30 October 1947, but the baby was born on 14 April 1948, i.e. ten days short of a full six months (according to the Islamic lunar calendar)? In Islamic law the minimum period of gestation is six lunar months.⁹⁶ The rumour mongers were supported by a *muftī*, who in a *fatwā*⁹⁷ to ‘Abd-Allah, confirmed their conclusion.

Giving birth at six months of pregnancy or just short of six months is highly unlikely and the infant’s chance of survival is minimal.⁹⁸ If the scandal mongers were correct, two possible scenarios can be imagined. One, Tilmud was married to another man, at the time she married ‘Abd-Allah. ‘Abd-Allah was thus her second, “illegally wedded”, husband. The *fatwā*, however, does not state that she was married (as with Dhāt al-Jamāl), nor does it speak of a first husband who claims her as his wife (as we will see in the next case). This possibility is thus a remote one.

The second, more plausible, possibility is that Tilmud had an extra-marital affair, which could only have begun after her marriage to ‘Abd-Allah on 18 May 1947. The extra-marital affair was either a straightforward adulterous relationship or the already

⁹⁶ The Islamic lunar month is twenty nine or thirty days. Since, I am using the Gregorian calendar we must make allowance for discrepancy of some days, not more than seven days though.

⁹⁷ We do not have this *fatwā* and know of it only because the other *fatwā* mentions it.

⁹⁸ The child lived, and is still alive today; interview with Hamou 7 December 2006, Timbuktu.

married Tilmud “married” another man. If the former, it is possible that her lover knew or did not know that she was married. If however, the latter, he could not have known as Tilmud told him that she was not married, just as Dhāt al-Jamāl did with ‘Abd al-Mun‘im.⁹⁹ In other words, he was her second “illegally wedded husband” alongside ‘Abd-Allah her legitimate husband.

If we accept that Tilmud’s lover/“husband” is the father of her child, it means the earliest she conceived was sometime in July of 1947. That is if she had a normal full nine month pregnancy. It is also possible that she conceived anytime after that date, but before mid October 1947. Whatever the case, when Tilmud realised she was pregnant she called for ‘Abd-Allah to come to Gao immediately. He arrived at the end of October 1947 just as Tilmud was about to complete her first trimester, but still with sufficient time to consummate their marriage so as to be the father of Tilmud’s already conceived child. Tilmud’s pregnancy had not yet begun to show.¹⁰⁰

Why would Tilmud have entered into a second “marriage” although she was married to ‘Abd-Allah? For, more or less, the same reason the married Dhāt al-Jamāl married ‘Abd al-Mun‘im. ‘Abd-Allah was in Timbuktu, satisfied that he was married and saw to his wife’s financial needs. He had no need to be in Gao; he might even have had a wife in Timbuktu. On her part, waiting became more difficult for Tilmud. She was

⁹⁹ Unlike in Dhāt Jamāl’s case where we dismissed the possibility that ‘Abd al-Mun‘im did not know about her marital status, in this case an argument can be made for Tilmud’s lover’s ignorance, simply because Tilmud got married by proxy. As we said before, while a man is fine with an extra-marital affair, he will not accept to be a co-husband.

¹⁰⁰ One of the implications of extra/pre-marital sex is the paternity of the children the affair might produce. This implication is discussed in the following chapter.

not satisfied with a marriage on paper only. She needed her man to be with her, sharing love, companionship, sex, and the things of a normal married life. She could not wait indefinitely, whatever the cause of his delay. The other man was available and he did not know that she was married. However, as soon as Tilmud fell pregnant, she ended the “marriage” or adulterous affair with her lover. A showing pregnancy would, naturally, expose her other “marriage,” or extra-marital affair.

The second incident is that of Khalīl Bāba ‘Uthmān and his wife (the *fatwās* do not give her name). They were married on 2 September 1945.¹⁰¹ Khalīl Bāba had spent just about six months with his new bride when on 28 January 1946, ‘Ammār bin al-‘Abd came up to him and claimed that the woman was, in fact, his wife. He claimed that he did not divorce her. As with Dhāt al-Jamāl and Tilmud, the wife was pregnant. She gave birth ten months after her marriage to Khalīl Bāba ‘Uthmān.

Three *mufītīs*: Muḥammad b. Ibrāhīm b. ‘Ābidīn (hereafter ms 422) on 3 September 1946,¹⁰² Muḥammad al-Ṭāhir Dah al-Anṣārī (hereafter ms 5103) on 14 September 1946,¹⁰³ and ‘Abd al-Raḥmān Yūsuf (hereafter ms 4754) on 15 June 1948¹⁰⁴

¹⁰¹ Is it a telling co-incidence that Dhāt al-Jamāl and ‘Abd al-Mun‘im married on 3 September 1945?

¹⁰² Muḥammad b. Ibrāhīm b. ‘Ābidīn al-Kuntī, *Fatwā fi sha’n Khalīl bin Bāba bin ‘Uthmān alladhī tazawwaja bi imra’ah wa makatha ma’ ahā wa qāla innahā fi dhimmatihā wa mā ṭallaqahā ba’d*, IHERI-AB, ms 422.

¹⁰³ Muḥammad al-Ṭāhir Dah al-Anṣārī, *Risālah fi nāzilāh bayna ‘Ammār b. al-‘Abd wa Khalīl Bābā*, IHERI-AB, ms 5103

¹⁰⁴ ‘Abd al-Raḥmān bin Yūsuf al-Ifriqī, *Fatwā fi al-nikāḥ*, IHERI-AB, ms 4754. That this *fatwā* came two years later is an indication that one of the petitioners was not happy with one or both of the two other *fatwās*.

responded to the incident with *fatwās*. Of the three, the *fatwā* of ms 422 has more information as far as dating is concerned. It gives the date of Khalīl Bāba's marriage: 2 September 1945, his actual *istiftā'*¹⁰⁵, its date: 31 August 1946, and the date of the *muftī's* response: 2 September 1946. The *fatwās* of mss 4754 and 5103 give only the dates the *muftīs* issued their *fatwās*.

The *fatwā* (ms 422) sketches four hypothetical scenarios under which a married woman contracts a second marriage.¹⁰⁶ We look at three only. One, the first husband was present at the time his wife married the second husband with his knowledge and silence until the day he claimed her from the second husband. Two, the first husband is absent throughout the period and has not been informed that his wife had contracted a second marriage. Three, the second husband knows that she is married or still observing her '*iddah* but marries her anyway or he does not know that she is married or observing her '*iddah*. With all the scenarios, the woman might well know that she is still married or still under '*iddah* and thus a guilty of bigamy. Or she may be under an assumption that her husband had divorced her when he did not or be under the impression that her '*iddah* had ended when in fact it did not.¹⁰⁷

Although the *fatwā* speaks hypothetically, the *muftī* thought the three scenarios applicable to either the wife or the first husband 'Ammār bin al-'Abd. His tone is one

¹⁰⁵ The *muftī's* inclusion of Khalīl's *istiftā'* in his own words is an exception to the rule.

¹⁰⁶ Ms 422, fl. 3-6

¹⁰⁷ During her '*iddah* a divorced woman is still regarded as a wife. Her ex-husband can revoke the divorce and return her to their marriage. Therefore, during the '*iddah*, she may not as much receive a proposal from another man.

of blaming. In other words, ‘Ammār bin al-‘Abd knew that Khalīl Bāba married his wife while he was around, but he did nothing to address it. It is in the nature of a man, the *muftī* says, to be more possessive of his wife than his children or himself. Or upon hearing of the marriage, after his absence he too did not act. ‘Ammār bin al-‘Abd was a coward and a man without honour, and he therefore has no right over the wife.

Scenario three does, theoretically, implicate Khalīl (that is if we suppose he knew that the woman was married or undergoing her *‘iddah*). However, not in the *muftī*’s mind. The *Sharī‘ah*, he says, accepts Khalīl Bāba’s claim that he married the woman with the knowledge that she was not in a marriage bond, without the need for witnesses or an oath. He goes to lengths to show that Khalīl was, “the honest, knowledgeable, God-fearing businessman who has never been contaminated by the slightest doubt of wrong doing”.¹⁰⁸ Khalīl is thus blameless in this saga.

The wife remains. She stands implicated in all the scenarios either as a culprit or as a perpetual victim. However, since the *muftī* has vouched for and established Khalīl’s innocence, she is guilty, even though the *muftī* does not spell it out. She lied to Khalīl and through deception made him believe that she was an unmarried woman, just as Dhāt al-Jamāl and Tilmud did. She may, of course, be found totally innocent by virtue of the age-old notion that women are ignorant of the laws of divorce. As with Dhāt al-Jamāl, we see her as one who knew exactly what she was doing. Whatever the truth may be this case and that of Dhāt al-Jamāl and Tilmud show that wives

¹⁰⁸ Ms 422, fl. 11

marrying second husbands in Northern Mali were an increasing social practice during the 1940s.

Ms 4754 too suggests three possible hypothetical scenarios. While Khalīl Bāba, again, is innocent in all three scenarios, ‘Ammār bin al-‘Abd is guilty. Not because he knew of her marriage to Khalīl, but because after he divorced her, he failed to inform her that he took her back as his wife before the expiry of her ‘*iddah*. Interestingly in two of the three, the wife can be seen as completely innocent and only in one can she be seen as blameworthy.

Conclusion

Timbuktu and the broader region’s women were certainly an active lot since the city’s founding at the beginning of the twelfth century until the 1940s. However, it is not from the grand *tarīkhs* of the seventeenth, eighteenth and twentieth centuries, little *tarīkhs*, bibliographical dictionaries, *ṣūfī* and political treatises, etc. that we learn of them and their everyday lives. Perhaps, the authors of these works can be excused for excluding women from their works, as women in Timbuktu were not *qāḍīs*, *muftīs*, saints, holymen, scholars, authors, army generals or rulers. The deeds and utterances of wives in Timbuktu, their possessions and experiences are found, quite frequently at that, in *fatwās*. It was, of course, not the intention of the *fatwā*-givers to preserve the words and deeds of wives – and husbands – for purposes of history. Their aim was to guide the believers, male and female in their mundane affairs and to live in conformity with the tenets of their faith and rulings of Islamic substantive law.

Nevertheless, through their *fatwās*, the social historian can reconstruct and imagine social practice in the city and the region. In addition to the *fatwās* there are estate inventories, letters, colonial court recordings, and oral sources. These sources ‘accorded’ Timbuktu’s women a voice in various tones, psychological dispositions, and social contexts. This chapter has, using *fatwās* as sources, presented the wives of Timbuktu during the colonial era. It highlighted their deeds and words, their ambitions, intelligence, connivance and appropriation of male tools for their goals. They contracted second marriages even though they were married, not because they had no knowledge of Islamic law as the *mufītīs* would have us believe, but a result of their intelligence and manipulation. But more importantly, the stories of these “two-timer” wives shed light on social behaviour and practice during the colonial era, specifically in the 1940s. Polyandry, if we can call it that, was not simply the social deviance of a few women who indulged in it for the sake of it. It may very well reflect the crucial developments of the first half of the twentieth-century, such as the establishment of colonial native courts, the declining local economy that forced husbands to look for jobs elsewhere and women’s understanding of marriage. Wives needed husbands, not only as absentee providers, but also to be present as fathers, companions and lovers. Dhāt al-Jamāl’s story reflects all these needs and wants. Indeed her story merits no less attention than that of the sixteenth-century Bertrande de Rols. And while, in terms of the sources, Bertrande’s case seems to have been unique, an assumption of the existence of more than one Dhāt al-Jamāl in Timbuktu is not farfetched. The story was irresistible.

Chapter Four

The holyman who denied paternity

Motherhood is a matter of fact, but fatherhood is a matter of opinion. All genealogies should be to the stamoeder (matriarch).¹

Any man who denies his child while looking at him and knows that it is his child, God will conceal Himself from that man. Even if you deny your child, he will never be negated from you, whether you are dead or alive. For this child has a right to be attached to you. And when he grows big and disputes with you on the matter, he will be attached to you whether you like it or detest it. Perhaps he will be the most virtuous of your children. That is, if you have intelligence to realize it, but if not then all I can say is there is no power and there is no might except God.²

We saw from the previous chapters that women as wives in Timbuktu and the broader region of the colonial era did things that had *mufītīs* and the native courts take note. Whether they married two men simultaneously, denied their husbands sex, married during their *'iddah*, bossed their husbands around, or refused to travel with their husbands, etc. they made themselves heard. But things also happened to them, and, often, to their children. In this chapter, we look at paternity disputes as far as it was one of the things that happened to women. Paternity disputes have a long history in Timbuktu. However, from the sources it seems that many paternity disputes transpired in the 1940s.

¹ Shell, R. 1994. *Children of bondage: a social history of the slave society at the Cape of Good Hope, 1652-1838*. Johannesburg: Witwatersrand University Press, pg. 294

² Aḥmad bin Abī al-'Arāf al-Taknī, *al-Kashf wa al-nabhah fī ilhāq al-walad bi al-shubhah*, IHERI-AB, ms 5064, fl. 22-23

The previous chapter's story was about the woman Dhāt al-Jamāl, and other women, married to two men at the same time. However, its *fatwā*-sources: mss 5064, 4903 and 5054 actually addressed the paternity dispute that resulted from Dhāt al-Jamāl's marriage to two men at the same time. Dhāt al-Jamāl was pregnant and would give birth to a child whose paternity came under the spotlight. Since her two "husbands" were both potential fathers there was a need to know to whom the child belonged, with all its consequences, glory and responsibilities. The three *muftīs* were clear that they were dealing with a paternity matter. They applied Islamic law to the case in its full scope in order to establish the paternity of the child. They differed as to who the father was. Two of them, the *muftīs* of mss 5064 and 4903 ruled that 'Abd al-Mun'im (the second husband) was the father while the *muftī* of ms 5054 insisted that the honour/burden belonged to 'Abd al-Qādir (the first husband).

That the *muftīs* geared their attention to the paternity dimension of the incident can be gauged from the titles of the *fatwās*. The titles of mss 5054 and 5064 contain the words "attaching the child to the bed" and "alerting the heedless one on the religious rulings of attaching the child to the marital bed". The opening sentence of ms 4903 reads "her pregnancy became clear, so to whom does the child belong" (ms 4903)? That the matter at hand was a paternity dispute is even clearer when one notes that ms 5054, for example, spans sixty-four folios of detailed discursive legal discussion on the paternity of the child.

The three *fatwās* were thus not issued, as might be expected, in response to Dhāt al-Jamāl's unlawful marriage to 'Abd al-Mun'im. Although they annulled that marriage, they said nothing that showed Dhāt Jamāl in a bad light, less so point out the religious-legal implications of her action. The *muftī* of ms 5064 exonerated her as we saw in Chapter Three. Instead, he addressed himself, in a passionate plea and stern warning, to 'Abd al-Mun'im to accept paternity of Dhāt al Jamāl's child. The *muftī* reminded 'Abd al-Mun'im of the serious ramifications in this life and the Hereafter if he fails to acknowledge paternity of the child. Citing a prophetic tradition, he warned Dhāt al-Jamāl against attaching her child to the wrong man.³

Similarly, the *fatwās* of mss 422, 4754 and 5103 addressed the paternity dispute of a child born ten months from the day of his mother's marriage to her current husband. The latter requested the *muftī* of ms 422 for a *fatwā* to determine the child's paternity. This after a man approached him claiming that the child's mother was his wife and that he had not divorced her. The lawful husband and the three *muftīs* were essentially concerned with the paternity of the child not so much the woman's possible infidel behaviour.

This was confirmed by the husband's decision to abandon his wife until she gave birth. Thus, in essence, he accepted the other man's claim that she was his wife. That he wrote to the *muftī* only about the child and not the status of his marriage

³ Ms 5064, fl. 23

is a further indication that what concerned him was not his wife, but the paternity of the child.⁴

The paternity dispute the *fatwā* of ms 5203 addressed is even more interesting. Although the wife, Tilmud, had only one husband (no other man claimed her as his wife) she gave birth to a child who could not, without doubt, be said to be the son of her lawfully wedded husband. As we imagined in Chapter Three, Tilmud's pregnancy was possibly the result of an extra-marital affair or a second marriage. But again what concerned the two *muftīs*, the rumour-mongers and the husband 'Abd-Allah bin 'Abd al-Barr was not Tilmud's possible infidel behaviour but the paternity of the child. As soon as she gave birth, the rumour-mongers harped on the birth of the child ten days short of the minimum gestation period of six lunar months of the Islamic calendar.

According to Islamic law, the minimum period of gestation is six full months. Thus, if a woman gives birth, in exactly six months - and more - from the time of the consummation of her marriage with her current husband the child will be deemed his. If, however, she gives birth within less than six months, her current husband will not be deemed to be the child's father. The child will then either be attached to her previous husband if she was married before or be illegitimate if she was not married. In light of their calculations, 'Abd-Allah bin 'Abd al-Barr was not the father of the child.

⁴ Muḥammad b. Ibrāhīm b. 'Ābidīn al-Kuntī, *Fatwā fī sha'n Khalīl bin Bāba bin 'Uthmān alladhī tazawwaja bi imra'ah wa makatha ma'ahā wa qāla innahā fī dhimmatihā wa mā ṭallaqahā ba'd*, IHERI-AB, ms 422, fl. 1.

For Tilmud, however, it was paramount that her lawfully wedded husband be her child's father. Even if she thought or knew that her lover was the child's biological father, it was not an option for her to confess infidelity and declare him the father. Living in a particular milieu, Tilmud understood the tremendous social and religious consequences of giving birth to a child out of wedlock, both for her and her child.

While she might be able to deal with the stigma and religious consequences of being an adulteress, what concerned her were the consequences for the child. The child would be regarded as a bastard. Such children have no father and their lineage goes to the mother only. They do not inherit from their biological "fathers", do not carry his surname, and he is not liable for their maintenance. Some Islamic legal schools even permit the biological father of a girl born out of wedlock to marry her; paternity, they reason, must be the result of a sexual act within a religiously valid marriage.

A twentieth-century Timbuktu *fatwā* shows the seriousness of the matter. The *fatwā* clarifies that children born out of wedlock can enter paradise; it refutes the view that they will go to hell merely for being born out of wedlock. The *fatwā* shows to what extent children born out of wedlock were frowned upon in the world of Timbuktu right into the twentieth century (and still are). It also shows the possible proliferation of the phenomenon.⁵

⁵ Muḥammad Maḥmūd b al Cheikh, *Fatwā fī anna awlād al-zinā yumkin an yakūnū min ahl al-jannah*, IHERI-AB, ms 3797.

Tilmud was not unique in that regard. It has happened elsewhere, in other parts of the world and at other times. These very concerns were at play, for instance, in the hasty marriage of the William Shakespeare and Anne Hathaway on 28 November 1582. Documentary evidence puts the baptism of William and Anne's daughter on 28 May 1583 i.e. exactly six months from the date of their official marriage. This means that by end of summer, August 1582, Anne was already pregnant and in her first trimester when the hasty marriage was solemnized. Stephen Greenblatt suggests that the three month pregnant Anne was the prime mover behind their hastened marriage. Although better than Victorian England of the 1880's, shame and social disgrace in Elizabethan England of the 1580's were very real. Bastardy was severely frowned upon in that society and in any case Anne's child would need to be fed and clothed. Anne had to act and act she did – and so did Tilmud.⁶

Once again, the *mufīī* - interestingly, the same *mufīī* of ms 5064 – paid no attention to Tilmud at all. He entertained no possibility that she might have been unfaithful to her husband. Even if he thought she was, he would have pardoned her. If anything, he was on her side. His sole focus was the paternity of the child. Therefore he left no stone unturned in proving that her lawfully wedded husband was indeed the child's father and in refuting the rumour-mongers and their *mufīī* who claimed otherwise.

In a 1933 *fatwā*, the *mufīī* Muḥammad al-Ṭāhir Dah discusses the case of a woman who gave birth six or seven days short of a complete six months from the

⁶ Greenblatt, S. 2004. *Will in the world: how Shakespeare became Shakespeare*. London: Jonathan Cape, pp. 120 - 123

day of her wedding and consummation of the marriage. Her case is thus akin to Tilmud's case except that Tilmud gave birth ten days short of six months. The same *muftī* issued a similar *fatwā* earlier in the case of Hase Yaber whose wife Ub Khayn delivered her child a few days short of sixth months.⁷ Ten or seven days mean the same thing. The child was born before a full six months, raising questions around the paternity of the child.

In short, the abovementioned *fatwās* did not deal with the behaviour of the wives. They were clearly only interested in the paternity of the children in the cases. In addition to the above *fatwās*, mss 5065, 4344, 3944, 3463, 439, 5552, 10115 are various *fatwās* that addressed different paternity disputes that transpired in Timbuktu and its surrounding world during the colonial-era. That number of *fatwās* indicates the frequency of paternity disputes during that era. It is not infrequent that one finds *fatwās* with such titles or opening lines as “attaching the child to the bed”, “claiming lineage affiliation to another man”, “a woman who delivers a child within six months from the day she married”, etc.

The phrase “attaching the child to the bed” is derived from a prophetic tradition. The tradition states, “The child belongs to the bed, and to the adulterer the stone” (*al-walad li 'l firāsh wa li 'l 'āhir al-ḥajr*).⁸ Similarly, the phrases “claiming lineage affiliation to another man” and “a woman who delivers a child within six

⁷ Muḥammad al-Ṭāhir bin Aḥmad Dah al-Anṣārī, *Fatwā fi al-zawāj*, IHERI-AB, ms 439, fl. 1

⁸ The *ḥadīth* is narrated by five of the six canonical collections of Prophetic traditions: *Ṣaḥīḥ al-Bukhārī*, *Ṣaḥīḥ Muslim*, *Sunan Abī Dāwūd*, *Sunan al-Nasā'ī*, *Sunan ibn Mājah* and the *Musnad Aḥmad*. According to most jurists the word bed (*firāsh*) refers to the woman's lawfully wedded husband, while adulterer (*'āhir*) refers to the male adulterer. See, al-Zuḥaylī, *al-fiqh al-islāmī*, vol. 7, 675.

months from the day she married” are derived from Qur’ānic verses and prophetic traditions.

The ten abovementioned *fatwās* are from the Aḥmad Bāba Library (IHERI-AB). This number is in all likelihood not exhaustive of the total number of *fatwās* in the Aḥmad Bāba Library or other private manuscript collections on paternity disputes. In addition to *fatwās*, there are records from the colonial native courts on paternity disputes.⁹

Although the abovementioned paternity disputes transpired during the colonial-era, paternity dispute in Timbuktu is not a colonial-era phenomenon, or even a result of colonial rule. A cluster of *fatwās* copied in 1630 deals with paternity disputes in Timbuktu during that time.¹⁰ Sīdī Muḥammad bin al-Mukhtār al-Kuntī (d. 1826) wrote a treatise (it was possibly a *fatwā*) on attaching the child to his/her father, i.e. he was dealing with a paternity dispute.¹¹ Among forty three questions on various issues, another *mufṭī*, ‘Umar b. ‘Alī b. al-Shaykh (d. 1921) dealt with, at least one is a paternity dispute.¹²

⁹ Justice Indigène: Etats des jugements et extraits des registres d’écrou cercle du Tombouctou, 1903 – 1920, ANM 2 M 149

¹⁰ Muḥammad bin al-Ṣāliḥ bin Muḥammad Wankurbi, *Fatāwā fī al-zawāj wa ilḥāq al-walad bi al-firāsh*, IHERI-AB, ms 3783

¹¹ Muḥammad b. Al-Mukhtār b. Aḥmad al-Kuntī, *Risālah fī sha’n ilḥāq al-walad bi abī hi*, IHERI-AB, ms 2086

¹² See, ‘Umar b. ‘Alī b. Al-Shaykh b. Aḥmad al-Kuntī, *Thalātha wa arba’in nāzilah wa ajwibatuhā*, IHERI-AB, ms 2120, fl. 4-5.

This chapter then, is about paternity disputes in Timbuktu and its surrounding world during the colonial era. More particularly, it looks at one colonial-era paternity dispute in the form of a story that take us from Timbuktu to the Algerian town of Touat and back - a tale of two cities indeed. The dispute came to the fore in 1944. The sources of the paternity dispute are a *fatwā* and a letter. Before we come to the two sources, we look at episodes of the story that precede the writing of both the *fatwā* and the letter.

A young boy leaves his hometown Timbuktu for the oasis Touat where he remains for a period of time. The *fatwā* does not qualify young; we therefore assume him to have been in his early teens. Other than his father being originally from Touat, it is not clear from the sources why he had, at his young age, to travel to Touat. The *fatwā* only states that his childhood was one of turbulence and hardship. According to the letter, he visited his paternal cousins in Touat. His mother was in Timbuktu, her place of domicile while his father, a religious scholar and man of *barakah* had already died when he was even younger. We can, however, imagine that he went to Touat to establish a link with his father's family.

As we alluded to above, being born out of wedlock in traditional religious communities has serious religious and social implications for a child, perhaps more than for the mother of the child. Whereas other children have fathers that child does not; s/he can become the ridicule and inquire of other children as to the absence of his/her father. In this story, the father, as is clear from the sources, had

never publically acknowledged the boy as his son or informed his family in Touat of the existence of a son born to him in Timbuktu, or for that matter, of a wife he married there. Because his father, as we stated before, had died while he was small it was impossible to take up the matter with him and settle it.

I suspect this fits best the *fatwā*'s description of his turbulent life, although it may include economic hardship as well. Under these circumstances: being an orphan and victim of a father who all but denied him, it was natural that he went to Touat. Touat was not only his father's place or origin, but he also had there a wife and at least one son the sources tell us of. The young boy must have thought it was better for him to be with his half brother. He was confident that he would finalize the matter of his unsettled paternity.

However, he does not seem to have made any progress in Touat in establishing the truth of his lineage from his father. The two sources say nothing about his stay in Touat. Just over twenty-four years of age, he returned to Timbuktu in order to be with his mother as well as his half-brother, according to the *fatwā*. The half-brother had by then, it seems, settled in Timbuktu; he visited Timbuktu yearly.

But, the disputed son also returned to Timbuktu to deal with the matter of his disputed lineage on a different level. If his stay in Touat and his own efforts yielded no tangible results, it was time, for him, to consult Timbuktu's '*ulamā*' in

this longstanding unsolved matter.¹³ His half-brother's refusal to acknowledge him as his sibling or his ambivalence on the matter when he met him in Timbuktu added to the urgency to solve this paternity matter. Many of Timbuktu's notables and scholars had after all informed him that the scholar from Touat married his mother, or at least had some relationship with her.

He petitioned a prominent *muftī*, requesting him to address the matter in a *fatwā* that either establishes or negates his lineage to the deceased. On his part, the other son wrote to another prominent *muftī* of Timbuktu to conduct an inquiry on his behalf wherefrom the truth about the matter could be established.

Both the *fatwā* and the letter were issued in 1944. It is however, not clear which of the two was issued first. While the letter mentions the day, month and year in which it was issued, 12 December 1944, the *fatwā* mentions only the Islamic year: 1363, which corresponds to the end of 1943 and the beginning of 1944.¹⁴ Given, however, that *fatwās* are the major primary source of this study, we will assume that the *fatwā* was issued first. The letter - as colonial records, correspondence, etc - although primary is a second instance, supplementary source.

It is not a frequent that one finds a Timbuktu *fatwā* so thoroughly enriched by another source, as in this case. In fact, this case is an exception. The order of things with Timbuktu's *fatwās* is that they come "unaccompanied", not

¹³ That the inquiry began twenty four years after the demise of disputed father is indicative of the proliferation of, but also the reluctance to address, paternity disputes in the region.

¹⁴ The 1st *Muharram* (the first month of the Muslim calendar) of the Islamic year 1363 corresponded to 28 December 1943. But since the *fatwā* does not give the Islamic month and day we will assume that it was issued in 1944, in all likelihood closer to the date the letter was issued on.

supplemented by non-*fatwā* sources. The letter contains details, which the *fatwā* is void of, as is the case with most of Timbuktu's *fatwās* that suffice with a minimum of details.¹⁵ Interestingly, both the letter and the *fatwā* are collected in one file, ms 4344. While we cannot say how and why the letter and the *fatwā* ended up in the same file, we can venture to say that it is not farfetched that Bul 'Arāf, the author of the letter had something to do with it. He was both a copyist of manuscripts and paid others to copy manuscripts and was an archivist as well. As Shamil Jeppie points out,

He wrote prose and poetry, copied and commissioned copies, compiled and abridged texts, and stored and arranged them. He also wrote letters, brief and terse, but others can confuse the archivist: are they to be classified under *risālah* in the sense of ordinary letter or as essay because of their length? He was not a casual reader neither a collector by accident.¹⁶

In short, the documentation of this incident is unique and an exception to the rule.¹⁷ The letter is a source one is not wont to find often among Timbuktu's manuscript materials; I literally stumbled upon it. There are a few discrepancies between the two sources. However, because they are discrepancies that are not

¹⁵ David Powers gives an example from the *Kitāb al-mi'yār* of a fourteenth-century paternity dispute from Mārinid Morocco with similar rich documentation. The documentation consists of the presiding *qāḍī*'s letter which he sent as an *istiftā'* to a distinguished *mufīī* in the city of Fās. The *istiftā'* (the *qāḍī*'s letter) is long, detailed and carefully formulated. It is signed by the *qāḍī* and preserves the names of the litigants, which makes it possible to locate the case in its historical context. Powers, D. 1994. 'Kadijustiz or qāḍī-justice: a paternity dispute from fourteenth-century Morocco', *Islamic law and society*, 1 (3), 332-366.

¹⁶ Shamil Jeppie. History for Timbuktu: Aḥmad Bul 'arāf, archives, and the place of the past. (Unpublished paper delivered at the *Ifriqiyyah* colloquium, Columbia University, New York, October 2010). I have the author's permission to cite from the paper.

¹⁷ In the words of Shahid Amin, this is one of those rare documents that seem to provide a peep into the feelings of ordinary people. See, Amin, S. 2002. *Alternative histories: a view from India*. Calcutta: SEPHIS – CSSSC, pg. 28.

complimentary - unlike the discrepancies of the three *fatwās* of the previous chapter – I do not let them feature in the reconstruction of the story.

The fatwā

The *fatwā* is by the well known Kuntī scholar, Muḥammad bin Ibrāhīm bin ‘Ābidīn al-Kuntī (d. 1964).

Mawlūd al-Tuwātī petitioned me for a *fatwā* The matter concerns his birth in this town of Timbuktu. A childhood of turbulence and hardship forced him to travel to the town of Touat, the birth place of his father *al-ḥājj* Muḥammad bin al-Junayd. He remained in Touat for as long as God willed then returned to Timbuktu to be close to his mother Khadīj and establish his relationship with his half brother. However, his brother, al-Mukhtār, surprised him when he refused to acknowledge that they are brothers. As proof for this refusal, al-Mukhtār cited that when he came two years after the death of his father *al-ḥājj* Muḥammad from Touat to Timbuktu, which was twenty four years ago, the then *qāḍī*, Aḥmad Bāba bin Abī al-‘Abbās did not inform him of a brother that he had or of a wife of his deceased father. The *qāḍī* only handed over to him [his deceased father’s] books after its evaluation. What then is the ruling [in this paternity dispute]? I answered that from the angle of *al-qāfah* there is no doubt that you and al-Mukhtār are offspring of the same seed. However, in the school of thought of al-Imām Mālik attaching a child to its father through *al-qiṣāfah* is applicable in the case of slave-women only, not to free women [such as your mother]. Therefore, your lineage is to be ascertained in one of two ways only. The first, if two righteous men testify that they witnessed your father’s marriage to your mother and that your fore-mentioned father acknowledged you as his son during his lifetime. The second, if your mother’s female and male contemporaries in this town heard her, during your father’s lifetime and in his presence, while she was pregnant with you or just after she gave birth to you, attach you to him. Should such a person testify in your favour it will establish your lineage to *al-ḥājj* Muḥammad bin al-Junayd and both you and your mother have a share in his estate. The Māliki jurists are all agreed that God entrusted women as regards pregnancy and menstruation. God says, “It is not permissible for them to conceal what God has created in their wombs if they do believe in Him and the Last Day”. A Prophetic tradition states that people are to be believed in their lineage claims as long as they do not claim lineage from the Prophet. However, if your father denied you during the time of his association with your mother or thereafter then, given that

he is from among the people of knowledge and probity, it was incumbent on him to resort either to *al-li'ān* or be stoned for adultery ...¹⁸

Before we analyze the *fatwā* in more detail we look at two technical terms in the text of the *fatwā* given their importance to our reconstruction of the story from the *fatwā*. The two terms are: *qāfah/qiyāfah* and *li'ān*.

The literal meaning of the word *al-qiyāfah* is to track or to follow the trace. It is a practice the Arabs used, in the absence of conventional and stronger forms of evidence such as admission or witnesses, to establish the lineage of a child in the case of uncertainty. The person trained in *qiyāfah*, called *qā'if* (plural *al-qāfah*), looks at the physical features of the man and the child thought to be his son/daughter. If there is any resemblance(s) from any angle, despite other physiognomic differences, the child is considered the man's child and will be attached to him.

A famous example from the time of the Prophet Muḥammad is when a *qā'if* proclaimed Zayd bin Ḥāritha's¹⁹ paternity of Usāmah²⁰ with a mere look at their feet - the two were asleep on the same bed with their heads completely covered, but their feet were open. "These feet are from one another" he exclaimed. The hypocrites in the Prophet's city had before that created doubt regarding Zayd's paternity of Usāmah. Usāmah was tall, dark of complexion and had a hooked

¹⁸ Muḥammad bin Ibrāhīm bin 'Ābidīn (part of manuscript 4344: *Risālah fī nasab Mawlūd al-Tuwāī bin Muḥammad al-Junayd al-Mawlūd bi Timbukṭ* by Bul 'Arāf.

¹⁹ Zayd bin Ḥāritha was Prophet Muḥammad's adopted son and the third person to become Muslim.

²⁰ Usāmah was a Companion of Prophet Muḥammad

nose, while Zayd was short, between light and dark of complexion with a pug nose.²¹

Li'ān or the mutual invocation of curses of a married couple is invoked when a husband accuses his wife with adultery, but cannot produce the four witnesses required by Islamic law to prove his claim. The husband has to testify four times that he is truthful in what he accuses his wife of. The wife either confirms his claim or testify four times that he is a liar in what he accuses her of. Both spouses are then absolved of any legal consequences in this life, the wife of adultery and the husband of the slander of accusation. Their marriage is however, irrevocably destroyed.

If a husband denies the paternity of the child his wife is pregnant with or had given birth to, he has effectively resorted to *li'ān*; he has indirectly accused her of adultery. If however, he only accuses his wife of adultery but does not negate the child if she is pregnant he will be considered the father of the child.²² In other words, whenever a husband denies the paternity of a child he automatically accuses his wife of adultery and hence *li'ān* comes into play. However, if he accuses her of adultery and resorts to *li'ān*, he does not, of necessity, deny of paternity the child she is pregnant with or gave birth to.

²¹ See, 'Uthmān, M.R. undated. *Al-nizām al-qaḍā'ī fi al-fiqh al-Islāmī*. Cairo: Dār al-Bayān, pp. 431-432; al-Zuhaylī, W. 1989. *Al-fiqh al-islāmī wa adillahtuh*, 8 vols. Damascus: Dār al-Fikr, pg. 680, 387

²² Qur'ān 24: verses 3-4.

From the outset, the *muftī*'s sympathies were clearly with Mawlūd. He confidently and throughout the *fatwā* refers to *al-ḥājj* Muḥammad b. al-Junayd as Mawlūd's father and to al-Mukhtār as Mawlūd's brother even though both refused to acknowledge Mawlūd explicitly as a son and a brother. Secondly, he highlights Mawlūd's childhood of hardship and turbulence. In relating the childhood experience of his *mustafī*, the *fatwā* made a rare move by bringing in the personal. *Muftīs* do not usually do that in their *fatwās*. Their only aim, to the point of obsession, is to provide the religiously sanctioned answer and guide the believers. This he did even before going into a protracted discursive legal discussion. When he says that al-Mukhtār's word to Mawlūd that they are not brother came as a surprise, rather a shock, to Mawlūd, he creates the impression that it was a *fait accompli* that Mawlūd was *al-ḥājj* Muḥammad's son. In other words, al-Mukhtār had just recently adopted the position not to acknowledge Mawlūd as his brother. The *muftī* was thus not limited to his role as a legal doctor; he clearly acted as a social worker taking sides.

In his attempt to establish *al-ḥājj* Muḥammad's paternity of Mawlūd, the *muftī*'s approach was one of select and eliminate of forms of evidence in a way that served his aim. That he began with *qiyāfah* even though it was legally inadmissible, in this case according to Māliki legal doctrine specifically, is instructive. This he did, knowing that he had to eliminate *qiyāfah* almost as immediately as he invoked it, because Mawlūd's mother was not a slave, a fact he was well aware of beforehand. Why then did he make reference to *qiyāfah* when

other forms of evidence were available, and, which he in any case cited immediately thereafter?

Although *qiyāfah* was legally inadmissible in Mawlūd's case, it was socially effective and in line with popular thinking. This the *muftī* knew. He gave vent to what ordinary people take into account when they decide that a child is indeed the son/daughter of his/her father: physical features and not religious-legal criterion. We will recall what *qiyāfah* is about, and depends on the slightest physiognomic resemblances. He must have known Mawlūd, al-Mukhtār and *al-ḥājj* Muḥammad hence he could confidently cite *qiyāfah*. His words to Mawlūd are clear, "from the angle of *qiyāfah*, *there is no doubt*²³ that you and al-Mukhtār are from the same loins." His indirect reference to Mawlūd's mother not being a slave betrays again his sympathies for Mawlūd, this fatherless boy with his turbulent childhood. As if he was saying, "here we have this free child of notable standing being treated like a slave".

Once the legally inadmissible *qiyāfah*, as a social measure, served its popular purpose, the *muftī* moved on to the legally acceptable measures in the Māliki legal school by which paternity can be established. "As for you", he informs Mawlūd, "your lineage cannot be established except through two factors." The first that two righteous men testify to Mawlūd that they witnessed *al-ḥājj* Muḥammad's marriage of his mother and that *al-ḥājj* Muḥammad attached Mawlūd to him as his son in his life time. The second that he inquires from his mother's male and

²³ Emphasis mine

female contemporaries, whether they heard her attaching him to his father during the latter's lifetime and his presence in Timbuktu when she was pregnant with him.

The *muftī* was confident that the two factors were sufficient to prove that Mawlūd was *al-ḥājj* Muḥammad's son, as indeed we will see from the letter further down. However, he took no chances. Just in case the two factors failed to produce the desired result, he alerted to a third factor. This factor involved two matters that were binding on *al-ḥājj* Muḥammad. If *al-ḥājj* Muḥammad denied that Mawlūd was his child, once the claim was made, he had to resort to *li'ān* or demand that Mawlūd's mother be stoned for adultery (lapidation). Bringing *li'ān* and lapidation into the picture, the *muftī* makes clear his view that *al-ḥājj* Muḥammad did marry Mawlūd's mother, however much *al-ḥājj* Muḥammad might have denied later. The *muftī* put the onus of the burden of proof on *al-ḥājj* Muḥammad.²⁴

Because *al-ḥājj* Muḥammad did not do any of the two, the conclusion is that Mawlūd is his son. In other words, he did not, as Islamic law prescribes, formally negate that Mawlūd is his son. And now, twenty four years after *al-ḥājj* Muḥammad's death, *li'ān* was not an option, i.e. *al-ḥājj* Muḥammad's paternity of Mawlūd could not be negated. What made *al-ḥājj* Muḥammad's failure to resort to *li'ān* even more serious is the fact that he was a scholar and a man of

²⁴ The *muftī*'s reference to the third factor, though juristically correct, again betrays his forgone conclusion that Mawlūd is *al-ḥājj* Muḥammad's son.

piety; a point, the *muftī* underscored. To gauge whether the first two factors established the matter conclusively we have to turn to the letter. The *fatwā* does not give us the outcome of the dispute; it left the legwork to Mawlūd merely providing him with the tools.

The letter

Part of what is classified as ms 4344 is the letter, which is, in reality, two separate letters.²⁵ The first letter, dated 29 November 1944, is that of al-Mukhtār, the established son of *al-ḥājj* Muḥammad Junayd al-Tuwātī, which he addressed to the well known *muftī*, bibliophile and historian Bul ‘Arāf. It appears, however, that al-Mukhtār did not write to Bul ‘Arāf in his capacity as a *muftī*, but as a respected elder of standing in Timbuktu who knew his father well. He addressed Bul ‘Arāf as “our dear beloved”, beseeching him to attend to his request with the greatest urgency.²⁶ Thus, he did not ask Bul ‘Arāf for a *fatwā*, but to conduct an investigation.

That Bul ‘Arāf, as a scholar, took care to include the complete text of al-Mukhtār’s letter to him is telling, for he gives the lay-person a voice in the first person. He only pointed out its defective Arabic. Perhaps he did that to safeguard himself: should al-Mukhtār dispute his findings and recommendations, Bul ‘Arāf

²⁵ Aḥmad bin Abī ‘l ‘Arāf, *Risālah fī nasab Mawlūd al-Tuwātī bin Muḥammad al-Junayd al-Mawlūd bi Timbuktu*, IHERI-AB, ms 4344, fl. 2

²⁶ In addition to his vocation as a historian, trader in books, copyist of manuscripts, letter writer, and *muftī*, Bul ‘Arāf was an unofficial guardian of the community. For example, in 1948, he was appointed to administer the inheritance of an intellectually challenged man, *Affaire Ahmed Boularaf Marocain demeurant à Tombouctou – 1949* - ART M35. His hundreds of letters and *fatwās* are a source for social history.

could easily dismiss him as someone who cannot even write clear, legible Arabic. We know from at least one other Timbuktu *fatwā* the potential insolence of the laity if a scholar rules or finds against them. Bul ‘Arāf left nothing to chance. Anticipating or pre-empting such a possibility on the part of al-Mukhtār, he spelt out clearly to him to either make do with his findings and accept them as correct or find a *qāḍī* whom he or Mawlūd is pleased with.

The second part of the letter is Bul ‘Arāf’s inquiry, its process and findings, which comes in two instalments, the first is dated Monday night, 11 December 1944 and the second 12 December 1944.²⁷ This addendum to the 11 December letter he sent al-Mukhtār was because of further investigations he conducted and additional information he gathered in the process. In the 12 December addendum he says to al-Mukhtār, “Know that after I wrote to you, I stumbled upon what I will now mention to you, God-willing.” It seems quite remarkable that Bul ‘Arāf was able to obtain, write and send the new information to al-Mukhtār in a time of less than twenty-four hours. But apparently he did.

Al-Mukhtār’s letter

Al-Mukhtār begins his version of events with his coming to Timbuktu in 1921, a year after *al-hājj* Muḥammad’s death, to round up the latter’s estate and to settle any outstanding debts. *Qāḍī* Aḥmad Bāba, the executor of his father’s estate

²⁷ Bul ‘Arāf gave, in fact, the time of day. It was the time of the evening prayers, around 7.30pm at that time of the year. This he did with the following letter to al-Mukhtār, which he completed during the siesta period of 12 December 1944.

handed over to him his father's books after he had them evaluated.²⁸ That *al-hājj* Muḥammad's estate consisted of only books and no other material possessions or wealth shows that he was a scholar, but not a man of wealth – a fact the letter confirms, as we shall see.²⁹ More importantly, however, the *qāḍī* did not mention anything about a wife and son of *al-hājj* Muḥammad al-Tuwāṭī in Timbuktu. In the ten years thereafter, until *Qāḍī* Aḥmad Bāba's death in 1931, al-Mukhtār visited Timbuktu once yearly, but heard nothing in that regard from the *qāḍī*.

Qāḍī Aḥmad Bāba's silence was the deciding factor for al-Mukhtār. He protested to Mawlūd, that if he was really *al-hājj* Muḥammad's son, "*Qāḍī* Aḥmad Bāba and the Muslim congregation, "would have informed us of you". For they all, Arabs and Blacks, of notable and of servile status, knew *al-hājj* Muḥammad very well and would not have remained silent had they known of a wife and son he had in Timbuktu. Mawlūd claimed that he had witnesses (as the *mufīṭī* advised him) among them a jurist and as it will turn out, the friend of *al-hājj* Muḥammad.

Al-Mukhtār had some grounds to assume that *Qāḍī* Aḥmad Bāba would have known if his father had a wife and son in Timbuktu. *Al-hājj* Muḥammad was not an ordinary person, but of the "*ahl al-'ilm wa al-ṣalāḥ* (people of knowledge and piety), as the *fatwā* described him. But could the old *qāḍī* have known everything that transpired in Timbuktu? Al-Mukhtār's letter to Bul 'Arāf over twenty years later, in 1944, indicate doubt on his part as to whether he could depend on *Qāḍī*

²⁸ In his capacity as Timbuktu's colonial-appointed *qāḍī* and assessor on the colonial native courts, *Qāḍī* Aḥmad Bāba was most probably the executor of all estates.

²⁹ Thus, Mawlūd would have had no material motive to establish himself as *al-hājj* Muḥammad's son. His motive was personal (psychological) and social-religious.

Aḥmad Bāba's silence as conclusive evidence that Mawlūd was not *al-hājj* Muḥammad's son.

The inquiry

The inquiry is rich in detail and intrigue. It gives the names of people, their social status, piety, age, testimonies, denials, affirmations, etc. Bul 'Arāf was thorough and meticulous in his collating of information and coming to know the facts. In short, he left no stone unturned. Whereas, the *fatwā* attempted to establish Mawlūd's sonship of *al-hājj* Muḥammad through legal argument and social convention Bul 'Arāf's letter presented hardcore facts.

Bul 'Arāf was clear that not being a *qāḍī* his findings were not be legally binding. Presenting himself as al-Mukhtār's beloved, he accepted the tremendous task to be fair to all the multiple competing rights involved. He will give due attention to the rights of the woman and her child, the rights of al-Mukhtār and his other siblings, and the rights of the deceased *al-hājj* Muḥammad, "On this, I will walk the path of truth, by the will of God, in accordance to my energy, effort, understanding and conviction". Ready to search and comprehend what transpired, Bul 'Arāf began his work.³⁰ He knocked on the door of Khadīj, Mawlūd's mother and *al-hājj* Muḥammad's disputed wife.

I entered her house and sat down, ready to uncover and comprehend. I spoke and said to her, "what I want from you is to inform me of the mixing that transpired between you and *al-hājj* Muḥammad ibn Junayd al-Tuwāṭī." She said, "Yes, indeed *al-hājj* Muḥammad visited me in my

³⁰ Bul 'Arāf used the Arabic word *li al-tafaṭṭun*, which mean he did not merely seek to understand (for which the word is *fahm*), but did so with sagacity.

house³¹ and said to me, I wish to marry you. I replied, yes I am satisfied with you. We agreed on that. He left and returned with two witnesses: Sīdī wuld al-Bukhārī and the other a man from Tuwāt. My father and brother al-Mukhtār were present and they all solemnized the [marriage] contract with its conditions and circumstances.

Bul ‘Arāf sits down and is relaxed. He allows her voice to be heard; it is important for him that he hears her version of events from her own mouth.³²

Khadīj speaks in the first person in considerable detail, stating how events unfolded, citing witnesses of high standing as we will see, including her father and brother. He reports back to al-Mukhtār, “This is what she informed me”.

Everything she said could be verified. Bul ‘Arāf himself attested to Sīdī wuld al-Bukhārī’s (one of two witnesses she mentioned) righteousness and probity, and therefore the acceptance of his testimony. He does not, however, suffice with that, but asked her for other witnesses, as Sīdī wuld al-Bukhārī had by then passed away. He inquired about the other witness whom she was not acquainted with, but whom her father and brother knew.

He then gets to the crux of the matter, was *al-hājj* Muḥammad intimate with her?

Her reply leaves no doubt, “at times he came to my house and other times I went

³¹ That she had her own house is an indication that she was from a notable and, probably, wealthy extended family.

³² How different this letter, in terms of information and style, is from *fatwās*, for example, Bul ‘Arāf’s *fatwā* of the previous chapter. We will recall that Dhāt al-Jamāl does not speak, at least not in the first person as Bul ‘Arāf allowed her voice to be heard only in the third person. In this letter Bul ‘Arāf is at ease. He is not giving a *fatwā* with the purpose of guiding Khadīj to the straight path. He came to listen, and listening he did in order to gather information then report back to al-Mukhtār. Can we imagine then, from this letter, that at least some of Timbuktu’s *mufṭīs* did this kind of investigation before issuing their *fatwās*? However, when they issued their *fatwās* they omitted or suppressed all the rich details, for then the aim was not gathering information and letting all voices be heard from their own first-person perspective, but guidance and religious correctness. There is no reason to suggest that this particular letter is the only one of its kind among the thousands of manuscripts in Timbuktu’s desert libraries.

to his, during the night and day”. Khadīj fell pregnant, and as soon as she gave birth she sent for *al-ḥājj* Muḥammad. He sent her whatever money he had, to meet, “some of the expenses of birth,” without visiting her or welcoming the child, as any father naturally does. All Khadīj wanted was for *al-ḥājj* Muḥammad to acknowledge his son, more so, “Because he was a scholar, a *ḥājj*, i.e. one who had performed pilgrimage to Mecca. The *barakah* of someone like him is hoped for”. That is why she had married him. Thus, Khadīj’s sending for *al-ḥājj* Muḥammad was not for maintenance – she, after all, told Bul ‘Arāf that she was aware that he did not have “big wealth”.³³

It is this lukewarm, rather negative response of *al-ḥājj* Muḥammad that, I imagine, prompted Khadīj to call her son Mawlūd. The word *mawlūd* in Arabic, a passive participle, refers to the one born, i.e. any baby is a *mawlūd*. The name was not unique; many men in Timbuktu, and elsewhere, had the name. Khadīj’s giving her son that name was not accidental or just a matter of conventional nomenclature. The name she gave him signifies *al-ḥājj* Muḥammad’s refusal or reluctance to acknowledge his son and bless him. This neutral (rather “obscure”) name she gave him was to indicate his biological identity (his birth), not his social identity. To put it differently, the name Mawlūd indicated her son’s incomplete

³³ The question of maintenance is important in light of so many defaulting fathers during this same period as colonial records show. For example, the mothers and grandmothers of not a few *enfants métis*, i.e. children of mixed parentage had to appeal to the Governor for financial assistance for these children. That they took their requests to the Governor stems from the fact that the fathers of these children were French as can be noted from the names and surnames of the children (Marianne, Jacqueline, Thérèse, Constance, Robert, Paul Colombani, Monique, Claude. Their mothers were local as their names indicate. From the colonial records, it seems that Timbuktu, compared to other administrative regions, had of the highest number of *enfants métis* and requests for state grants. Assistance publique enfants métis Cercle de Tombouctou, 1942-1957, ART 2 H 4

identity as long as his father refused to fully acknowledge him. He was simply “born” in Timbuktu.

Accompanied by the notable, and son of a scholar, al-Muṣṭafā bin Bāba Shirfī, Bul ‘Arāf consulted the notables al-Mukhtār chose except those who were deceased or not present in Timbuktu at the time. The first he visited was the pious scholar, Mawlāy ‘Abd al-Salām who was severely ill at the time.³⁴ Bul ‘Arāf enquired from him whether he knew of any son of *al-ḥājj* Muḥammad had in Timbuktu, specifically one by the name of Mawlūd whose mother is Khadīj”. Mawlāy ‘Abd al-Salām referred to the testimony of the pious Bubakr Muḥammad Sālim, the closest friend of *al-ḥājj* Muḥammad who was always in his company. Bubakr Muḥammad Sālim related that he was with *al-ḥājj* Muḥammad the day Khadīj’s messenger came to *al-ḥājj* Muḥammad and informed him that she had given birth. *Al-ḥājj* Muḥammad responded, “Yes, this child has forty fathers and I am one of them.”

What did *al-ḥājj* Muḥammad’s statement that he is one of forty fathers mean? Was he suggesting that Khadīj had had multiple men in her life, him being one (the number forty should not be taken literally, but a metaphor for more than one)? Or could it be that his usage of forty was merely symbolic, as the number is very symbolic in the northern Sahara’s oral traditions and Islamic religious

³⁴ Bul ‘Arāf describes Mawlāy ‘Abd al-Salām as a “knower of history and narrations”. It is not clear whether he means with “knower of history”, the general of Islam or the annals of Timbuktu and the region.

literature?³⁵ The records of the Native Court domestic dispute cases (1907-1912 cases) show that husbands complained of wives having multiple lovers (see Chapter One). Or was he denying paternity of the child Khadīj had just given birth to?³⁶ Assuming that Khadīj did have multiple lovers how was the paternity of her child to be established?

Although there is nothing in Bul ‘Arāf’s investigation-letter about the response/reaction of Timbuktu’s ‘*ulamā*’ to *al-ḥājj* Muḥammad’s enigmatic “forty fathers” statement, we cannot take it for granted that they did not respond.³⁷ It is highly unlikely that there would have been silence on their part. Firstly, the statement was too grave to have gone unnoticed by Timbuktu’s scholars. It all, but accused Khadīj of adultery. *Al-ḥājj* Muḥammad was liable for the punishment of slandering a chaste woman. And secondly, Timbuktu’s *mufītīs* were always eager to take on paternity disputes to establish who the father was, as numerous *fatwās* (mss 4903, 5054, 5064, 5103, 422, etc.) show. It was one of their favourite legal exercises.

³⁵ I learned the symbolic status of the number forty in the northern Sahara from Ghislaine Lydon in her report as an examiner of my PhD thesis. I am grateful

³⁶ Neither the letter nor the *fatwā*, unlike Bul ‘Arāf’s *fatwā* regarding Tilmud (ms 5203), give a date for the marriage or the date Khadīj gave birth that allow one to imagine the possibility of Khadīj having had another man in her life.

³⁷ That there is nothing in Bul ‘Arāf’s letter on the reaction of Timbuktu’s ‘*ulamā*’ to *al-ḥājj* Muḥammad’s statement may be explained by the possibility that Mawlūd was born before 1907, i.e. before Bul ‘Arāf arrived in Timbuktu in 1907. In other words, Bul ‘Arāf was ignorant of the incident, as it transpired before his departure from Mauritania to settle in Timbuktu. It is difficult to see how Bul ‘Arāf could not have known about the incident had it transpired after 1907. His many *fatwās* and letters show, as soon as he arrived in Timbuktu, Bul ‘Arāf acquainted himself with what transpired daily in Timbuktu.

Islamic law provides numerous tools to establish the paternity of children in the case of confusion. The most important tool in this instance that had to be applied is the juristic principle “attaching the child to the bed”. This principle is derived from the prophetic tradition, “*al-walad li al-firāsh wa li al-‘āhir al-ḥajr*” (the child belongs to the marital bed and for the adulterer the stone). Thus, according to this principle, *al-ḥajj* Muḥammad, as Khadīj’s husband (as the testimonies below will show, explicitly and implicitly), was the father of her child, even if Khadīj is alleged to have had other partners.

Al-ḥājj Muḥammad did not deny marriage to Khadīj. He disputed sole responsibility or share in the paternity of the child she had given birth to. Why would Khadīj have sent for him unless she was confident of her being his wife, irrespective of her alleged marital infidelity or not? It is hard to imagine a Muslim woman of notable status in Timbuktu sending for any man and making him the father of her child. More so a man that is a notable, a *ḥājj* and a scholar.

The rich Islamic legal tradition provides both hermeneutical devices and precedents to establish – or deny – paternity. Probably, the earliest Islamic precedent of a paternity dispute is the one that transpired in Yemen during the life of the Prophet.³⁸ From the abovementioned *fatwās* in the Introduction, although

³⁸ The paternity dispute in Yemen involved three men who had sexual relations with the same women in the same time before she had her menstruation. The case was presented to ‘Alī bin Abī Ṭālib the Prophet’s envoy to Yemen. All three men claimed paternity of the child. ‘Alī b. Abī Ṭālib at first requested two at a time to acknowledge the third as the father (he did this thrice), but each time was met with refusal. Finally he drew lots informing them that the one whose lot is selected will be declared the father. Ibn Qayyim al-Jawzīyyah, *Shams al-Dīn ‘Abd-Allah b. Muḥammad*. Undated. *‘Ilām al-muwaqqi‘īn ‘an Rabb al-‘ālamīn*, vol. 2. Beirut: Dār al-Jīl, pp. 62-63

chronologically later than this dispute, Timbuktu's '*ulamā*' had local precedents and numerous legal tools at their disposal to establish the paternity of Khadīj's child.

We can, of course, not expect *al-ḥājj* Muḥammad, although a scholar, to have applied the Islamic legal tradition to the situation; he disregarded it from the outset. Had he intended to invoke that legal principle, he would not have pronounced the "forty fathers" statement. Known and revered as a man of piety, in this instance, he seems to have been acting in bad faith. He never acknowledged the child and was allowed to continue without hindrance. That Mawlūd had to seek the guidance of a *mufīī* and al-Mukhtār having to launch an investigation, more than twenty-four years after *al-ḥājj* Muḥammad's demise are indicative of *al-ḥājj* Muḥammad's course of action.

To this point Bul 'Arāf remained the objective and detached investigator. However, the extent he went to describe both Mawlay 'Abd al-Salām and Bubakr Muḥammad Sālīm shows that he was not entirely dispassionate. He describes the former as a "knower of history and narrations" and states that he personally knows the latter from his business interactions with him and found him to be a rare example of piety. Beyond describing them as pious, there was no need for the additional accolades. It was sufficient to state that they were reliable witnesses. His growing subjective involvement – and even inclination - is apparent with his comment on *al-ḥājj* Muḥammad's "forty-fathers" enigmatic statement. I regard

Bul ‘Arāf’s comment as subjective involvement, because as an investigator he was not expected to comment. Bul ‘Arāf says,

I pondered over *al-hājj* Muḥammad’s statement, “his fathers are forty and I am one of them”, that that is an admission that he was sexually intimate with her which he covered up with accusing Khadīj of adultery. Unless it was said in jest, as often happens between friends. The *sharī‘ah* nullifies anything that is not an admission. Therefore, with this statement, *al-hājj* Muḥammad acknowledged paternity of his mentioned son. Indeed, God does not shy from the truth.”

This comment shows two things: Bul ‘Arāf’s knowledge of Islamic law and his *mufṭī* skills at work. This is shown by his usage of terms such as admission, accusation of adultery, etc. all terms of Islamic law. And two, he is clear - much clearer than the *mufṭī* in the *fatwā* above – that *al-hājj* Muḥammad is Mawlūd’s father. It is paternity that Bul ‘Arāf is interested in, not Khadīj’s alleged immoral behaviour. Interestingly, Bul ‘Arāf does not say anything explicitly about a marriage between *al-hājj* Muḥammad and Khadīj. However, that they were sexually intimate he seems not to have doubted. Thus, whether Khadīj was guilty of multiple affairs or not was not the issue for Bul ‘Arāf.³⁹

Now that Bul ‘Arāf had all but established the legal position on *al-hājj* Muḥammad’s paternity of Mawlūd, he continues his fact finding mission. He “interviews”, as it were, notable women of Timbuktu. We will recall that, in his

³⁹ On the assumption that *al-hājj* Muḥammad did, with the statement imply that Khadīj was an adulterer, there are two implications for *al-hājj* Muḥammad depending whether he was married to Khadīj or not. If he was not married to her, he was guilty of slandering, as he did not produce four witnesses and was therefore deserving of eighty lashes and two other penalties prescribed in the Qur’ān. Moreover, since he admitted that he was one of forty fathers, it makes him guilty of adultery. If on the other hand he was married to her, then he had to resort to *li‘ān*, but he did not, which made him liable for the penalty of slander (eighty lashes, etc.). More importantly, if he was married to Khadīj his paternity of Mawlūd is established.

fatwā, the *mufī* told Mawlūd that the testimony of righteous men and affirmations of Khadīj’s male and female contemporaries are indispensable factors in establishing Mawlūd’s sonship of *al-hājj* Muḥammad. Bul ‘Arāf had just listened to the testimonies of righteous men, all of them scholars and traders. It was now time for him to speak to some trustworthy women and men of notable origins.

The first woman Bul ‘Arāf “interviewed” was ‘Ā’isha, the wife of the *Imām* (congregational prayer leader) of the Sīdī Yahyā mosque, one of Timbuktu’s three major mosques. Her father *alfā*⁴⁰ ‘Umar was a religious figure of note. Bul ‘Arāf describes ‘Ā’isha, whom he calls our mother, as one of Timbuktu’s most righteous and just women. Her pious biography, seniority, and the blurb on her notable pedigree are meant to confer her testimony with authority and weight.

While she could not testify with certainty that Khadīj and *al-hājj* Muḥammad had been married, she could, and did, testify that *al-hājj* Muḥammad was intimately involved with Khadīj. Khadīj and *al-hājj* Muḥammad, she told Bul ‘Arāf, were continuously⁴¹ in one another’s company until Khadīj’s pregnancy became apparent.

⁴⁰ The word *alfā* is a distortion of the Arabic word *faqīh* for jurist. In Timbuktu it is usually used for a person has basic knowledge of Islam but not well versed in such religious and linguistic sciences as Islamic law, theology, grammar, etc. For example, it is often given to prayer leaders of mosque congregations as this function does not necessarily require higher learning.

⁴¹ The Arabic word *tawātur* (I translated above as continuously) - and its derivative *mutawātir* - Bul ‘Arāf puts on ‘Ā’isha’s tongue is interesting; she, almost certainly did not use the word. The word literally means recurrent meaning absolute certainty. Thus, a prophetic tradition classified as *tawātur* denotes that there is absolute certainty with regard to its authenticity; the Qur‘ān is *tawātur*; that South Africa is in Africa is based on *tawātur*. That Bul ‘Arāf used it, betrays his growing bias and involvement in deciding the outcome.

From another man Bul ‘Arāf heard that Khadīj was *al-ḥājj* Muḥammad’s servant, although he was not sure whether Khadīj’s service was that of a spouse (a euphemism for mistress?) or of a paid servant. Whatever, the nature of Khadīj’s servant status, the point is that she and *al-ḥājj* Muḥammad shared the same private space for a sustained period of time. It is for this reason that Bul ‘Arāf felt the need to bring his knowledge of Islamic law to bear upon the situation by explaining the nature of Khadīj’s service in terms of the Islamic law notion of *shubhah*.

The term *shubhah* is a verbal noun that signifies, generally, a “likeness” or “resemblance”. As a technical, legal term, *shubhah* signifies uncertainty or doubt resulting from a resemblance between an unlawful action and a lawful one. Because of the resemblance between the two actions, the jurists exempt the wrongdoer from the normal punishment, while continuing to view the action in question as unlawful. With regard to fornication, Muslim jurists identified a dozen or so instances of sexual intercourse to which the notion of *shubhah* applies. Examples of *shubhah* in this regard are, a man who has intercourse with a woman whom he mistakenly believes to be his wife or a marriage to a woman whose ‘*iddah* is thought have expired while it did not.⁴²

Shubhah, in this instance, did two things. It saved the reputation of *al-ḥājj* Muḥammad. Had *al-ḥājj* Muḥammad not been married to Khadīj but was sexually

⁴² For this brief description of *shubhah*, see Powers, D. 2002. *Law, society and culture in the Maghrib, 1300-1500*. Cambridge: Cambridge University Press pg. 29; Zuḥaylī, W. 1989. *Al-fiqh al-islāmī wa adillahtuh*, vol. 6. Damascus: Dār al-Fikr, pp. 30-32

intimate with her, he would not have been liable for the prescribed punishment for adultery. Secondly, and more importantly, it all but openly proclaimed that *al-hājj* Muḥammad was Mawlūd's father, even if by mistake.

At this stage Bul 'Arāf turned to al-Muṣṭafā bin Bāba Shirfī, his companion hitherto in his inquiry and in the interviews with various people. Did he have any knowledge of the matter, Bul 'Arāf asked him? His reply was the same as the two previous "interviewees": he was party to no marriage ceremony, but does testify on the basis of what he heard from others for a long time now that Mawlūd is the child of *al-hājj* Muḥammad. Such was also the testimonies of al-Bashīr wuld al-Nafrāwī and Muḥammad Aḥmad wuld Maymūn. The scholar al-Tijānī, a close friend of *al-hājj* Muḥammad, did not testify to the marriage of *al-hājj* to Khadīj. However, he had detailed information about the incident, which he mentioned only to al-Mukhtār. In other words, he refused to share it with Bul 'Arāf, who was, however, not put off by this refusal,

I suspect that he knows the testimony of Mawlāy 'Abd al-Salām and he possibly knows more than that, because there is concealed [news] he did not clarify to me. In any case most people who know *al-hājj* Muḥammad bin al-Junayd see the physical features (*al-qiyaḥ*) of *al-hājj* Muḥammad in Mawlūd the son of Khadīj. And this is my conviction and *Salam* (greetings) to you.

Although all the "interviewees" to this point did not witness any formal marriage between *al-hājj* Muḥammad and Khadīj, they all confirmed an intimate mixing of the two. The issue, once again for them, was not whether *al-hājj* Muḥammad and Khadīj's relationship was a religiously sanctioned one (although they all suspected that *al-hājj* Muḥammad had married Khadīj) but that they indeed had a

relationship that produced a child. The only reason they talked to Bul ‘Arāf, it would seem, was to establish that Mawlūd, the son of Khadīj, was indeed the son of *al-ḥājj* Muḥammad, however much the latter refused to acknowledge him. Bul ‘Arāf’s inquiry relieved them, it seems, from a matter that had been weighing heavy for many years on their chests.

It is at this point where Bul ‘Arāf ended the letter dated 11 December. But he was clearly unhappy with concluding the inquiry there. This he brought promptly to al-Mukhtār’s attention, as we mentioned above. His mood is indicated by, what we can almost call, his protest to al-Mukhtār about the impatience of the latter’s messenger. The messenger’s impatience prevented him from conducting a thorough inquiry that would have yielded more findings than what he mentions in this letter. He immediately continued his inquiry after sending the first letter to al-Mukhtār. Interestingly, in this 12 December addendum, Bul ‘Arāf donned his *mufīī* cap more apparently, if for a while only, to show his knowledge of Islamic law and venture his legal opinion of the dispute. He was not satisfied with merely being an investigator. The *mufīī* element in him had to say its say.

The contents of the 12 December 1944 letter are Bul ‘Arāf’s findings from speaking to four more people. The four people were a scholar, two elderly men (the manner in which Bul ‘Arāf addresses one of them suggests that he was a notable), and an elderly woman.⁴³ What differentiates their testimonies from those

⁴³ Bul ‘Arāf is meticulous in his emphasis on knowledge (scholars) and age (elderly), throughout the letter. To put it differently, knowledge and seniority in age indicate the impeccability of the witnesses, which, in turn, indicates the validity and bindingness of their testimonies as evidence of *al-ḥājj* Muḥammad al-Tuwātī’s paternity of Mawlūd.

of the people Bul ‘Arāf previously spoke to, is their certainty regarding *al-ḥājj* Muḥammad’s marriage to Khadīj, the mother of Mawlūd.

The first of the four Bul ‘Arāf spoke to, was Shaykh Man Bābā, who from the title *shaykh* seems to have been a scholar. He was of the most trustworthy and just people by consensus of Timbuktu’s people. He knew *al-ḥājj* Muḥammad personally as the latter was his father’s bosom friend and practically lived in their house. He had no doubt that *al-ḥājj* Muḥammad married Khadīj, the mother of Mawlūd.

The first old man Bul ‘Arāf then spoke to had lived right next door to Khadīj; their homes were joined. He heard that a man from the quarters of the Tuwātī community had married Khadīj and that one day he saw a man whom he thought to be *al-ḥājj* Muḥammad in Khadīj’s room. When he asked about this man’s reliability Bul ‘Arāf was told that people did not know him to be a liar.

The elderly woman Yāmodi’s (her father was a scholar) testimony, in particular, provided important details on Khadīj and *al-ḥājj* Muḥammad’s relationship from its outset. She narrated that *al-ḥājj* Muḥammad saw Khadīj in the house of his neighbour Mayrām, fell in love with her and requested her to marry him in secret. Khadīj initially refused *al-ḥājj* Muḥammad’s marriage proposal. Whether Khadīj refused *al-ḥājj* Muḥammad’s proposal in itself or because he wanted a secret marriage, we can only guess. However, at least two few colonial-era *fatwās*

discuss the occurrence of secret marriages (*nikāḥ al-sirr*)⁴⁴ in Timbuktu and the region.⁴⁵

Yāmodi informed Bul ‘Arāf that she, in fact, exhorted a reluctant Khadīj to accept *al-ḥājj* Muḥammad’s proposal. Being married, she convinced Khadīj, was better than bachelorhood. After their marriage, Yāmodi regularly saw *al-ḥājj* Muḥammad coming to Khadīj’s house and other times she saw Khadīj going to *al-ḥājj* Muḥammad. Visits of such a nature and frequency can only be that of married people. The last word is that of the notable Mawlāy ‘Ilī who happened to be originally from Touat, *al-ḥājj* Muḥammad’s hometown. He testified that Mawlūd was *al-ḥājj* Muḥammad’s son on the basis of recurrent popular talk. He told Bul ‘Arāf that it was so widespread, he did not think any one would dispute it.

On that last testimony Bul ‘Arāf concluded his investigation. All the testimonies and opinions that came out of the investigation make the case for Mawlūd being the son of *al-ḥājj* Muḥammad. What is clear is that Bul ‘Arāf, though fair in how he conducted the inquiry, was not a neutral spectator. His choice of witnesses, i.e. those whose testimonies he included⁴⁶, his description of them: age, knowledge

⁴⁴ Isā bin Muḥammad bin al-Mawlūd, *Fatwā fī sha’n nikāḥ al-sirr*, IHERI-AB, ms 3462 & Abū al-Khayr bin ‘Abd-Allah b. Marzūq b. Al-Ḥill, *Fatwā fī sha’n nikāḥ al-sirr*, IHERI-AB, ms 3959

⁴⁵ Most Muslim jurists have declared secret marriage forbidden and annul such a marriage. Although a secret marriage meets the requirements of a valid Islamic marriage, such as the presence of the bride’s guardian and two witnesses it is not publically announced, which raises a question mark. In general, people marry secretly for various reasons, one being to avoid the ire of an existing wife and her children.

⁴⁶ We can assume that he spoke to more people than the number of testimonies the inquiry shows.

status, their friendship with *al-ḥājj* Muḥammad and Khadīj, and the location of their homes next to *al-ḥājj* Muḥammad and Khadīj's homes are all very telling. On the one hand, it shows the thoroughness of his investigation, but also his wish to see, or even influence, the outcome of the inquiry in a certain direction.

However, Bul 'Arāf left it to al-Mukhtār to decide. It was for him to accept his findings and embrace Mawlūd as his brother or, if he was not happy, to consult a *qāḍī*. *Al-ḥājj* Muḥammad was long deceased, however, the matter remained. It is therefore befitting that we bring to bear upon the situation the second epigraph, which are the words of none other than Bul 'Arāf with which he concluded his *fatwā* that dealt with the case of Dhāt al-Jamāl (ms 5064, Chapter Three). His words, meant for 'Abd al-Mun'im, were, "whether you deny your child deliberately or out of ignorance he will never be negated from you, even if you are deceased". The same words were applicable to *al-ḥājj* Muḥammad al-Tuwāṭī, albeit posthumously.

Conclusion

Mawlūd al-Tuwāṭī's search for his father was not an isolated incident in twentieth-century Timbuktu. Another twentieth-century *fatwā* by the scholar Muḥammad al-Ṭāhir Dah (d. 1964), tells a story similar to that of Mawlūd. A man (the *fatwā* gives neither names nor dates) claimed to be the son of another man after the latter's demise; everyone he met informed him that he is the deceased man's son. His mother confirmed that she was married to the deceased, consolidated by word of mouth and widespread hearsay evidence. Some spoke of

a marriage while others held that they merely saw her alone with him in his house or on his roof. (We heard the same testimonies in Khadīj's case).⁴⁷ There are many similar *fatwās* among Timbuktu's manuscripts. From another angle though, this chapter's focus on *al-ḥājj* Muḥammad as a religious scholar who refused to acknowledge his child is an isolated case, in so far as it shows the "worldliness" and ordinariness of Timbuktu's religious scholars. They could be as weak-willed, short-sighted, and deceptive as the ordinary people who they lectured and wrote *fatwās* for. The formal literature presents Timbuktu and the region's '*ulamā*' as illustrious personalities and intellectuals only. '*Ulamā*' simply do not abandon their children, especially if he is a man whose *barakah* is hoped for, and keeps the company of notables renowned for their righteousness and piety, whether scholars or traders. But in this case the scholar did that and continued to do so until his demise, for this reason the disputed son had to seek guidance and assistance from other '*ulamā*'. He never retracted his words that the child has forty fathers of whom he is one. While it contained some of the themes addressed in the previous chapter it, in a narrow way, introduces the chapter that follows. The following chapter treats the everyday parochialism of Timbuktu's '*ulamā*' as a whole.

⁴⁷ Muḥammad al-Ṭāhir b. Aḥmad al-Anṣārī Dah, *Fatwā fī man idda 'ā intisābuhu ilā rajl ba' d an māṭ*, IHERI-AB, ms 3944

Chapter Five

When holymen squabble: a muffī of two cities

In Muslim literature, the ‘*ulamā*’ appear as a hotchpotch of diverse social statuses and functions. They are semi-literate village imams and erudite *qāḍīs*, rabble-rousers and privy counsellors to kings, spiritual directors and cynical politicians. Some are scions of wealthy and influential families others are impoverished immigrants from remote villages. Some are landowners, some are salaried professors or bureaucrats, and some are merchants or humble artisans. The great majority are men, but there are a number of notable women in their ranks as well. In short, they seem to cut across almost every possible classification of groups within Islamic society, playing a multiplicity of political, social, and cultural roles. For two reasons, then – their omnipresence, and the calibre of our data – the ‘*ulamā*’ demand special attention by the social historian.¹

Ulemology is a noble science – at least we have to think so, because it is almost all the Islamic history, we will ever have . . .²

Introduction

That Timbuktu and ‘*ulamā*’ are virtually synonymous is no exaggeration. They played a seminal role in the making of the city and shaping its character, at least since the construction of *Djingere Ber* (the grand mosque) in 1325. Although the city was founded at the beginning of the twelfth century CE (1106-07) it only became famous after scholars settled in it.³ The sources, both written and oral, show that they were active, albeit in fluctuating degrees, throughout the various empires and states that conquered and ruled the city. Even during the reign of Sonni ‘Alī, founder of the Songhay Empire, who reportedly maltreated, persecuted and killed them, the ‘*ulamā*’ continued to play a

¹ Humphreys, R.S. 1991. *Islamic history: a framework for inquiry*. New Jersey: Princeton University Press, 187

² Mottahedeh, R. 1975. Review article of R.W. Bulliet’s, The patricians of Nishapur: a study in medieval Islamic social history, *Journal of the American oriental society*, 95, 3, pg. 495

³ Hunwick, *Timbuktu & the Songhay Empire*, 29 (footnote number 2)

central role in the running of the city.⁴ Acknowledging their importance and worth, Sunni ‘Alī is reported to have said: “Were it not for the scholars, life would neither be pleasant nor agreeable”.⁵ In short, from even before Mansa Mūsā visited Timbuktu in the early fourteenth century to French rule at the end of the nineteenth century and beyond, the city’s ‘*ulamā*’ were palpably present and active.

Timbuktu produced a prolific corpus of literature on its ‘*ulamā*’, their lives, stature, and literary production over a period of four-and-a-half centuries that supply the historian with abundant information. This corpus of literature includes *tarīkhs*, bibliographical dictionaries, hagiographies, eulogies, obituaries, poems of praise, and other genres of panegyric literature. The ‘*ulamā*’, they present to us are saints, loci of the manifestations of divine grace, *baraka*, clairvoyance, wealthy notables, and authors of intricate juristic, legal and theological treatises. To put it differently, the image we have of Timbuktu’s ‘*ulamā*’ from these sources - supplemented by oral accounts - is one of piety, devotion, and learning – as in most classical Islamic literature on the ‘*ulamā*’. For example, in the two chapters on Timbuktu’s scholars and holymen in the seventeenth-century *Tarīkh al-Sūdān*, Timbuktu’s foremost *tarīkh*, we find the following account of Timbuktu’s ‘*ulamā*’:

This is an account of some of the scholars and holymen who dwelt in Timbuktu generation after generation and some of their virtues and noteworthy accomplishments. In this regard, it is sufficient to repeat what the trustworthy shaykhs have said on the authority of the righteous and virtuous Friend of God, locus of manifestations of divine grace and wondrous acts, the jurist *Qadi* Muhammad al-Kabari. He said, “I was the contemporary of righteous folk of Sankore, who were equalled in their righteousness only by the Companions of the Messenger of God.”⁶

⁴ ‘Abd al-Raḥmān al-Sa’dī, *Tarīkh al-Sūdān*, IHERI-AB, ms 681, fl. 90

⁵ Hunwick, J.O. 1999. *Timbuktu & the Songhay Empire: Al-Sa’dī’s Tarīkh al-Sūdān down to 1613 & other Contemporary Documents*. Leiden: Brill, pg. 54

The great sixteenth/seventeenth century Timbuktu scholar Aḥmad Bāba al-Sūdānī (1556 - 1627), describes his teacher Muḥammad b. Maḥmūd Baghayogo as “our *shaykh* and blessing, the jurist, expert, ascetic and of the choice servants of God.”⁷ Contemporary literature on Timbuktu’s ‘*ulamā*’ re-presents this “classical” image. Elias Saad’s, *The social history of Timbuktu* is at once about the scholars of Timbuktu who throughout the centuries were administrators, judges, and *imams* of mosques.⁸ They were notables drawn from rich mercantile families, and the ranks of the ruling Songhay (1492 - 1591) and Arma⁹ (1591 - 1833) families.¹⁰ The region’s classes of low social status did not, it seems from Saad’s account, contribute significantly or at all to the ranks of the city’s scholars.

An-other ‘ulamā’

This chapter is, however, not concerned with Timbuktu’s ‘*ulamā*’ as luminaries, saints, loci of the manifestations of divine grace. Instead, it focuses on *another* side of Timbuktu’s colonial-era ‘*ulamā*’, quite different from the one we mentioned above that we find in Timbuktu’s *tarīkhs* and biographical dictionaries. We look at their squabbles, personal and political ambitions, boastful display of knowledge, and their contemptuous,

⁶ ‘Abd al-Raḥmān al-Sa’dī, *Tarīkh al-Sūdān*, IHERI-AB, ms 681, fl. 2

⁷ Aḥmad Bāba b. Aḥmad al-Sūdānī. 1989. First edition. *Nayl al-ibtihāj bi tatrīz al-dībāj*. Tripoli: Kulīyyah al-Da’wah al-Islāmīyah, 600.

⁸ Two other contemporary works on Timbuktu’s ‘*ulamā*’ are, Mahmoud Zoubeir’s *La vie Ahmed Baba*, on the life of Aḥmad Bāba al-Sūdānī and John Hunwick’s *Arabic literature of Africa*, on the lives and works of the ‘*ulamā*’ of Timbuktu and the Middle-Niger.

⁹ The Arma (also called Ruma) were the Moroccan soldiers who administered all Songhay’s territories after its conquest, notably Timbuktu, Jenne and Arawān.

¹⁰ Saad, *Social history*, 14 – 158

scornful and sarcastic treatment of one another. The following extract, most likely part of a longer letter, captures something of their other side,

Our dear Sīdī al-Mukhtār [al-Kuntī] do not be excessive . . . be just and be fair. Your fame, wealth and [spiritual] stature in the souls of creation (people) do not make you immune from error . . . your endeavour to preclude me from God's bounties is naught but self-aggrandizement.¹¹

In it, the scholar al-Mukhtār bin Būna accuses the great nineteenth-century spiritual luminary, Sīdī al-Mukhtār bin Aḥmad al-Kuntī (1729 – 1811) of excess, unfairness, and being intoxicated with fame and self-aggrandizement.¹² Sīdī al-Mukhtār was arguably the greatest scholar and saint of the region during the eighteenth century. He successfully brokered a truce between the warring Arma and the Touareg in 1771 that brought stability and relief to the city and the citizens. Bin Būna was a scholar of weight in his own right.¹³

Sīdī al-Mukhtār al-Kuntī had apparently threatened bin Būna that he would invoke God to afflict bin Būna with amnesia so that he would completely forget all his learning! The potency of Sīdī al-Mukhtār al-Kuntī's supplications was reportedly one of the many signs that he was a saint. To be afflicted with erasure of all of one's knowledge is no light matter. Nevertheless, threats and accusations of this kind give us that rare glance into the squabbles and attitudes of Timbuktu's '*ulamā*' and luminaries.

¹¹ Paraphrased extract from the quote of Mukhtār al-Būna, interview with Mahamane Mahamoudou dit Hamou, 6 December 2006, Timbuktu.

¹² Abitbol, *Tombouctou au milieu du XVIIIe siècle*, 81.

¹³ He authored, for example, *Al-iḥmirār*, a work on Arabic grammar in which he made additions to the famous *Alfiyyah ibn Mālīk* of Muḥammad ibn Mālīk (d. 1274) a didactic poem on Arabic syntax and morphology consisting of one thousand and two verses.

In a long treatise dated 9 March 1929, Muḥammad Yaḥya bin Salīm speaks of the ‘*ulamā*’ and the *awliyā*’ (the saints) of his day in the region. They do not acknowledge one another, because of their bickering and disagreements with one another. He is quick to point out though that such behaviour stems from scholars’ commitment to and defence of the religion of God. It harms neither the one who insults nor the one who is insulted. It seems safe to say that Muḥammad Yaḥya bin Salīm was engaging in some form of damage control and sanitization. He himself was often on the receiving end of the dislike and condemnation of some scholars in the region, as many manuscripts show.¹⁴ In a *fatwā*, a *mufīī* pours scorn and shame on another *mufīī* whom he says does not have knowledge of all the laws of divorce.¹⁵

This view of Timbuktu’s ‘*ulamā*’ has thus to be wrenched from *fatwās*, the letters of ‘*ulamā*’, rumours, and even colonial records, etc. Their *fatwās*, wherein they explicated matters of a religious-legal nature and guided the ordinary folk in their mundane affairs, also provided them a platform to vent their ire against colleagues. A caveat is in order at this point. While the *fatwās* and letters reveal the banal and trivial behaviour and attitudes of Timbuktu’s ‘*ulamā*’, they do not negate the image of ‘*ulamā*’ as saints and luminaries the *tarīkhs*, biographical dictionaries, panegyrics, etc. present.

As a rule, a typical *fatwā* – or any treatise by a scholar - begins with pietistic formula such as an admission of ignorance, insufficient knowledge, sinfulness, unworthiness, need for God’s grace, etc. *Mufīīs* refer to themselves in the diminutive form, e.g.

¹⁴ Muḥammad Yaḥya bin Salīm, *Maktūb*, IHERI-AB, ms 5227, fl. 1 - 2

¹⁵ Aḥmad bin Abī al-‘Arāf, *Fatwā fī rajul ḥallafathu zawjatuhu an lā yukallim fulānah fakallamahā nāsīyan*, IHERI-AB, ms 4907, fl 8.

kuwaytib (lit. little author) or *'uwaylim* (lit. little insignificant scholar), etc. However, beyond signifying piety and humility, the standard formulas which Timbuktu's *mufītīs* began their *fatwās* with, allowed them to launch *ad hominem* attacks on other scholars without betraying their intention to offend. This is not to make a claim of insincerity on the part of the scholar, but to argue that a pietistic religious vocabulary had a dual function, at least, for some scholars: piety and concealing personal attacks. This they did without compromising the academic standard of their *fatwās*. For example, in between the lines of a 1946 paternity dispute *fatwā* the scholar Bul 'Arāf refers to Timbuktu's jurists' mutual revulsion and avoidance of one another (lit. 'They turn their backs to, and flee from, one another'). Their hearts, he says, are full of malice and their attitude is one of violence. He singles out one *mufītī* (whom he does not mention by name) in particular as the epitome of this situation and the object of his ire. Of this *mufītī* he says: "I do not have a big turban or a decorated stick (staff), I do not stagger when I walk, and I do not saturate my stomach with trivialities".¹⁶

By disassociating himself from this religious paraphernalia and aloof attitude, he implies that they are the properties and characteristics of this other *mufītī*. In another *fatwā* dated 15 November 1944, the same Bul 'Arāf faults another *mufītī* who had erred in declaring a particular marriage forbidden. He, more than once, condescendingly refers to this *mufītī* as a student.

This *mufītī* has no knowledge of legal theory, Islamic substantive law or the opinions of the jurists. He and his ilk should not issue *fatwās* because in his *fatwā*, he made a man's wife forbidden for him without a sound basis. If he were in a land under Islamic rule, he would be meted a severe beating because he acted without authority and knowledge. Shame on this

¹⁶ Aḥmad bin Abī al-'Arāf al-Taknī, *Al-kashf wa al-nabhah fī ilhāq al-walad bi al- shubhah*, IHERI-AB, ms 5064, fl 24-25

muftī for his ignorance of the eight dimensions [of laws pertaining to the status of the marriage in this incident] of which, even one is sufficient, to make the wife permissible for her husband...¹⁷

In letters, scholars were even more forthright and vitriolic in their attack on one another, albeit always within the ambit of scholarly discussion. The attacks centred ostensibly around questions of a religious-legal nature. A letter, the bibliophile and *muftī* Bul ‘Arāf sent to Muḥammad bin Ibrāhīm bin ‘Ābidīn al-Kuntī (hereafter ibn Ibrāhīm) another of the region’s high-ranking *muftīs*, shows the degree of intra-‘*ulamā*’ attacks. Bul ‘Arāf began his letter with what appears to be a panegyric. He addressed ibn Ibrāhīm as, “the splendid light of our time, the hardworking scholar, the God-fearing, and the ascetic”, etc. However, it turns out to be nothing but sarcasm, mockery, condescension, and even contempt when he immediately qualified his apparent panegyric with, “according to his (ibn Ibrāhīm’s) claim.” In other words, Bul ‘Arāf was simply repeating ibn Ibrāhīm’s words or throwing them back at him, with maximum sarcasm. The sarcasm turns into outright contempt when Bul ‘Arāf calls Muḥammad bin Ibrāhīm - whom he just a moment ago addressed as “the God-fearing lamp” - a liar, fickle-minded, a conjecturer and someone with evil intentions.

The letter is long and permeated with scathing attacks and sarcastic remarks. To add insult to injury, Bul ‘Arāf directed a few questions on Islamic substantive law to ibn Ibrāhīm, but says beforehand he is confident the ‘the splendid lamp of knowledge’ will not be able to answer.¹⁸ Elsewhere Bul ‘Arāf contemptuously describes ibn Ibrāhīm as a capricious person susceptible to every falsehood, perfidy and lies he hears, and trivial in

¹⁷ Aḥmad bin Abī al-‘Arāf al-Taknī, *Fatwā fi al-nikāh*, IHERI-AB, ms 4907, fl. 2 - 7

¹⁸ Aḥmad bin Abī al-‘Arāf al-Taknī, *Rasā’il fi al-munāzarāt*, IHERI-AB, ms 5219, fl. 1

intelligence. Because, says Bul ‘Arāf, “I am well acquainted with your tendency to act in accordance with bad thoughts and conjecture given that your self-doubt overwhelms you.”¹⁹

A series of letters went back and forth between the two scholars. According to another letter by Bul ‘Arāf, Ibn Ibrāhīm called him an ignoramus, more stupid than a donkey, an obtuse commoner that has no knowledge of Islamic law, prophetic traditions, exegesis, Arabic grammar, and logic, etc.²⁰ In his letter, Ibn Ibrāhīm, negates the charges, “never, indeed not, and far be it”. “Rather”, he says, “we pointed it out so that firstly, you may gain insight into this matter (which you are ignorant of) and finally that you may seek forgiveness from God that He may forgive you, or remain in opposition to the approved and well known view of the scholars.”²¹ For Bul ‘Arāf, Ibn Ibrāhīm’s advice was nothing but boastful arrogance sugar coated in exhortations to piety and claims of scholarly insight.

Ibn Ibrāhīm exploited, it seems, the fact that Bul ‘Arāf never became a full-time scholar for he continued to pursue a life of trade, which had brought him to Timbuktu and where he had settled. Nevertheless, Bul ‘Arāf acted and was accepted in practice by Timbuktu’s population as a *mufīī*. Born in 1864 in Guelmim in southwestern Morocco, he lived for a period in Shinqīt (Mauritania), where he, of course, was able to meet many of the notable of the region scholars based there. Here he developed the habit of sitting with scholars

¹⁹ Aḥmad bin Abī al-‘Arāf, *Risālah fī al-radd ‘alā Muḥammad bin Ibrāhīm*, IHERI-AB, ms 4810, fl 2-3

²⁰ Aḥmad bin Abī al-‘Arāf, *Risālah min Abī al-‘Arāf ilā Muḥammad bin Ibrāhīm*, IHERI-AB, ms 5121, fl. 1-2

²¹ Muḥammad bin Ibrāhīm bin ‘Ābidīn, *Risālah min Muḥammad bin Ibrāhīm ilā Aḥmad bin Abī al-‘Arāf al-Taknī*, IHERI-AB, ms 5281, fl 1-2

and in scholarly circles learning informally, it would appear, various aspects of Mālikī fiqh and other disciplines.²²

What appears though to have aroused Bul Arāf's ire was ibn Ibrāhīm's remark that touched on something closest to Bul 'Arāf's heart. It concerned books. Bul 'Arāf was the authority and expert on books in the region. A bibliophile, copyist and buyer of manuscripts, and a trader in printed books, Bul 'Arāf had contact with book dealers in Egypt, Beirut, the Arab West, and other parts of the Muslim world. In his letter, ibn Ibrāhīm disputed Bul 'Arāf's claim that his copy of *al-Juz' al-Nafrāwī*²³ is better than all other copies, that the book markets are expensive and that the prices of commodities have increased, etc. In this, he struck a raw nerve with someone whose knowledge of books was second nature.

Moreover, he charged Bul 'Arāf with sheer ignorance. In the same letter, ibn Ibrāhīm criticized Bul 'Arāf's view that leasing and lending can be enacted in the same legal transaction as wrong. He insinuated that Bul 'Arāf does not know Islamic law, yet acts, as if he does. The broader colonial context was possibly a factor in the two scholars' hostile relationship. As we mentioned in Chapter One, ibn Ibrāhīm seems to have been virulently against the colonial presence and its control of Muslim judicial activities, as least as, no one other, than Bul 'Arāf pointed out in his letter.²⁴

²² Shamil Jeppie. *History for Timbuktu: Aḥmad Bul 'arāf, archives, and the place of the past*, pp. 5-6

²³ The reference here is to a two-volume book called *al-Fawākih al-diwānī 'alā risālah ibn Abī Zayd al-Qayrawānī* by Aḥmad bin Ghunaym bin Sālim al-Nafrāwī. In short, the book is called *Al-Nafrāwī*. I thank Mahamane Mouhamed dit Hamou (hereafter Hamou) for this information.

²⁴ Aḥmad bin Abī al- 'Arāf, *Maktūb li Aḥmad bin Abī al-'Arāf fī al-radd alā Muḥammad bin Ibrāhīm bin 'Ābidīn 'indamā kaffara man yata'āmal ma'a al-Naṣārah*, IHERI-AB, ms 4810.

Le cadi de Tombouctou

More specifically, the chapter focuses on one colonial-era *mufī* in particular:

Muḥammad Maḥmoud ould Cheikh (hereafter, ould Cheikh) often called *le cadi de Tombouctou*.²⁵ Who was Muḥammad Maḥmoud ould Cheikh? He was one of the region's foremost scholars of the twentieth century scholars, born around 1910 in Timbuktu and died there in 1973. He hailed from a family of scholars, saints and wielders of political power in the desert town of Arawān. In an interview with Radio Tunisia on 20 September 1955, ould Cheikh mentioned that his Arab ancestors settled in West Africa between the eighth and ninth centuries CE. They, he stressed, have since their arrival there provided the region with *mufīīs* and *qāḍīs*. As learned men, his ancestors married the daughters of the Touareg chiefs whose offspring in turn became scholars and rulers.²⁶ Thus, in his lineage religious-intellectual and temporal-political authority were combined.

Ould Cheikh was a highly rated intellectual recognized as such by fellow 'ulamā', colonial officials and Muslim community in general. He obtained a thorough education in all the traditional Islamic sciences such as Islamic law, legal theory, Qur'ānic exegesis, and theology. His numerous *fatwās* and adjudications as a colonial-court *qāḍī*

²⁵ Ould Cheikh was referred to as the "Cadi of Timbuktu" in many French administrative documents (as late as 1958). He was however, not the *qāḍī* of Timbuktu, as a single office for the post of colonial *qāḍī* for Timbuktu did not exist. The colonial administration appointed a *qāḍī* for each of the different communities groups and members of desert bound tribes resident in the city. Thus, Mohamed Lamine was the *qāḍī* of the sedentary population of Timbuktu, ould Cheikh *qāḍī* of the Ahel Araouan, Mohamed Ag Mohamed Ali *qāḍī* of the Kel al-Antassar, etc. See, Le Qadi de Tombouctou 1954-1959, Sahara OCRS 1957-1959: Centre des Archives Diplomatiques de Nantes (hereafter, CADN) AOF Dakar 320 (I thank Baz Lecocq for this file on ould Cheikh); *Chambre de accusation Tombouctou 1936 – 1946: Rapport sur le fonctionnement de la Justice indigène en 1938*, ART M 10, *Justice indigène correspondances diverses*, 1944-1947, ART M4; and Hall, Mapping the River, 261.

²⁶ Le Qadi de Tombouctou 1954-1959, Sahara OCRS 1957-1959: CADN AOF Dakar 320.

bear testimony to his status as a top-rated *mufī* and traditional scholar. In addition to that, he spoke, read, and wrote French and had an extensive knowledge of French politics, history, and culture, gained through his many travels.²⁷ His library contained works on French penal and criminal law, the *Petit Larousse Illustré*, and so forth.²⁸ It is no exaggeration to say that from this perspective, Ould Cheikh was unequalled among his fellow ‘*ulamā*’ who at best spoke a limited amount of French. He was one of only two high-ranking traditional scholars appointed as *qāḍī*s by the colonial administration.

In 1932, at the young age of twenty-two, Ould Cheikh was appointed *qāḍī* of the Ahl Arawān in Timbuktu.²⁹ According to another colonial record, his first appointment was in 1931. In 1936, he was appointed a second time following his temporary resignation in 1935 brought on by a conflict between him and the local religious elite. He resigned again and finally, according to Lecocq, in 1939³⁰ (probably for the same reason as in 1935), but was appointed a third time in 1941. This third appointment lasted until 1949 where after his mandate was not renewed.³¹

Ould Cheikh, the *mufī* and descendant of the Prophet and saints, was however, also a man of ambition and intrigue. In an interview with Jacques Hardy, he introduced himself

²⁷ For example, (and by no means exhaustive) immediately after doing the *hajj* in 1955, he visited Palestine, Lebanon, Jordan, Iraq, France, Tunisia, and numerous towns in Algeria. Le Qadi de Tombouctou 1954-1959; Sahara OCRS 1957-1959: CADN AOF Dakar 320

²⁸ Baz Lecocq, Unpublished paper (in draft) presented at the 3rd international ABORNE conference, University of Witwatersrand, 9-13 September, fl. 7. I have the author’s written permission to quote from the draft (e-mail dated, 12 October 2009)

²⁹ Ibid, fl. 7

³⁰ Ibid, fl. 7

³¹ Le Qadi de Tombouctou 1954-1959, Sahara OCRS 1957-1959: CADN AOF Dakar 320, fl. 349

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²⁹ Ibid, fl. 7

³⁰ Ibid, fl. 7

³¹ Le Qadi de Tombouctou 1954-1959, Sahara OCRS 1957-1959: CADN AOF Dakar 320, fl. 349

as the spiritual leader of all the Muslims in the region. The truth is that, at most, he was a recognized leader among few spiritual leaders in the region.³² We already saw his penchant for the title of “Cadi of Timbuktu”, even though he was not. Bul ‘Arāf’s abovementioned talk of scholars with big turbans, decorated staffs and staggering walks most likely refers to him as he was often dressed in a turban and a staff in his hand.³³ He differed in his *fatwā* with the two other *muftīs* and other jurists regarding the paternity of the child in the Dhāt al-Jamāl affair (Chapter Three). In short, his behaviour often stood in contradiction to the normative image of Timbuktu’s ‘*ulamā*’ we referred to in the abovementioned *tarīkhs* and biographical dictionaries. His politics of separation certainly did, as we will see.

There were those in the colonial administration who supported him and exaggerated his importance and authority for their vested interests, of course. However, there were equally colonial officials whose dislike and disdain for him were no secret as colonial records show. In the *Notice de renseignements* of December 1956, he is described as a man who loves intrigue, petty squabbles and bickering.”³⁴

A colonial record has him embroiled in an episode that involved an ostrich and a colonial official. On, 8 September 1952, an inhabitant of Timbuktu charged ould Cheikh with the theft, killing, and eating of his ostrich. The deputy Administrator of the district of Timbuktu, Monsieur Tissier informed ould Cheikh of the charge and summonsed him to

³² Le Qadi de Tombouctou 1954-1959; Sahara OCRS 1957-1959: CADN AOF Dakar 320

³³ See, footnote number 15 above

³⁴ *Justice de paix-diverses affaires et correspondances Cercle de Tombouctou 1946 – 1959*, ART M30; Le Qadi de Tombouctou 1954-1959, Sahara OCRS 1957-1959: CADN, AOF Dakar 320

appear to appear in front of a tribunal. According to the colonial record, the summons so offended ould Cheikh he acted as if nothing had happened and even went into hiding of sorts. Apparently a mere summons to appear as a witness in a court case was already offensive to the Niger Bend's notables. When it became clear to ould Cheikh that the ostrich matter would be heard in court, he, in what can only be described as a bizarre act, laid a charge of assault against Tissier in front of the tribunal claiming the latter slapped him.³⁵

The incident with the ostrich seems incredible, even for a person of ould Cheikh's penchant for intrigue. His stature as a notable and a scholar would have made it highly improbable for him to steal an ostrich and kill it for food for it suggests that he suffered from hunger and extreme lack of means. We will see later in this chapter, that "evidence" used against ould Cheikh was often tenuous and informed by political biases against ould Cheikh made possible by his argumentative personality. Whatever the truth of the story, the ostrich incident - and the other abovementioned stories - is a helpful example of that other "everyday" face of the '*ulamā*'.

Squabbles with the another muftī

It was, however, ould Cheikh's troubled relationship with Abū al-Khayr b. 'Abd-Allah b. Marzūq b. Al-Ḥill al-Arawānī (d. 1976) one of the region's highest-ranking twentieth-century *muftīs*, that concerns us. For many of Timbuktu's literati today, ould Cheikh was the cause of the troubled relationship between him and, Abū al-Khayr. They reduced the long-running conflict between the two scholars to the following single

³⁵ *Justice de paix diverses: affaires et correspondances cercle de Tombouctou* 1946 – 1959, 14 October 1952, M30

incident, “Ould Cheikh refused to pray behind al-Shaykh Abū al-Khayr because he was Black.”³⁶

Thus according to Timbuktu’s literati, race underlies the long-running conflict that Ould Cheikh had with Abū al-Khayr. In one word, Ould Cheikh was racist against Abū al-Khayr. The people of the region, especially of Timbuktu and Arawān, most poignantly remember Ould Cheikh for this issue today.³⁷ Whether the incident even happened as people tell it today, or whatever Ould Cheikh’s motives may have been do not matter - I, on my part, will reject the probity of the story all together.

What does matter is, as Hall says, that it indicates the way in which many people hold on to an ideal of a social order in which one’s place is determined by personal virtue above all else. As a scholar of Islam, Ould Cheikh’s personal behaviour was expected to reflect the highest standard of virtue. With this alleged act and others, real and alleged, he compromised that expectation. We will attempt to show that the long-standing feud between Ould Cheikh and Abū al-Khayr has nothing to do with Ould Cheikh’s alleged refusal to pray behind Abū al-Khayr simply because he was black. We will argue that there was, in fact, no such incident. Rather, the two men’s squabble has its origins in a woman. Thus, in our view, “race” or racism played no role in the long-standing feud.

I now reconstruct what I imagine was the *raison d’être* for the two men’s long-standing conflict. In other words, since I reject the prayer incident as spurious, I must suggest

³⁶ Hall, *Mapping the River*, 260, Hall’s source of the incident is oral. I first heard about the incident from Hamou, a student of Abū al-Khayr; he was in all likelihood Hall’s informant as well.

³⁷ Hall, *Mapping the river*, 260

other motives at play in the making of their strained relationship. Before we delve into that discussion though, we briefly touch on the two men's enigmatic relationship.

Enigmatic Relationship

There is no doubt that Abū al-Khayr and Muḥammad Maḥmūd ould Cheikh's relationship was a troubled one. This must, however, not obscure the fact that the two men enjoyed a normal and healthy relationship as the sources clearly show. For this reason, I find it more helpful to speak of an enigmatic or even a love-hate relationship between ould Cheikh and Abū al-Khayr. An enigmatic relationship suggests a complex relationship that admitted of both negative and positive points. It will also help us to better understand my explanation of ould Cheikh's troubled relationship with Abū al-Khayr. In short, the claim that a single incident, involving race can – alone - explain the two men's troubled relationship is grossly over-simplistic.

Letters and other indicators are proof of the enigmatic nature of ould Cheikh and Abū al-Khayr's relationship. In a letter wherein he endorsed a *fatwā* of ould Cheikh on a paternity dispute, Abū al-Khayr heaps praise on ould Cheikh's legal acumen.³⁸ He declared ould Cheikh's arguments sound and in conformity with the principles of Islamic legal theory and Islamic substantive law. No fair and just person can doubt the correctness of ould Cheikh's verdict; only an ignoramus will dispute it. That Abū al-Khayr evaluated ould Cheikh's *fatwā* means that ould Cheikh sent his *fatwā* to Abū al-Khayr for peer review and endorsement. This practice was, as we showed in chapter one,

³⁸ Abū al-Khayr bin Marzūq bin al-Ḥill al-Arawānī, IHERI-AB, ms 10115; interestingly in the paternity dispute a "Black" and "White" Arab man claimed to be the father of the child. Ould Cheikh ruled in favour of the "White" man.

a tradition among Timbuktu and the region's *muftīs* whereby *muftīs* sent their *fatwās* to their peers or *muftīs* more capable than them.

Abū al-Khayr had a very close relationship with Ould Cheikh's family; Ould Cheikh's uncle, for example, was a spiritual follower of Abū al-Khayr.³⁹ When Abū al-Khayr died in 1975, two years after Ould Cheikh, he was buried in the mosque of Sīdī Aḥmad bin Ṣāliḥ bin al-Wāfī al-Arawānī (d. 1772), Ould Cheikh's great grandfather.⁴⁰

That Abū al-Khayr was a man of clemency is no doubt, but not to the point that he would unflinchingly endorse the verdict of a man who refused to pray behind him simply because he was "black".

In his letter to Abū al-Khayr, Ould Cheikh addressed him as the honoured, noble, illustrious jurist and *shaykh* Abū al-Khayr 'Abd-Allah.⁴¹ He calls upon Abū al-Khayr to ponder over a book and some pages and concluded the letter with, "from your beloved".⁴² The contents of the letter indicate that its writer not only regards his addressee as a scholar, but also holds him in high esteem and respect. There is also the

³⁹ Interview with Hamou, 19 June 2009, Timbuktu

⁴⁰ Diagayeté, M. 2008. Al-Shaykh Abu al-Khayr: illustrious scholar and pious friend of God, in S. Jeppie and S.B. Diagne (eds), *The meanings of Timbuktu*. Cape Town: HSRC Press, pg. 249

⁴¹ This letter of Ould Cheikh predates, in all probability, Ould Cheikh's writing of his *tarīkh*. Thus we can assume, firstly, that his relationship with Abū al-Khayr underwent a change and secondly, that the change was the result of certain factors or developments. We discuss this later.

⁴² Muḥammad Maḥmūd Ould Cheikh's letter to Abū al-Khayr. I have in my possession a copy of the letter, which I obtained from the son of Abū al-Khayr.

fact that Abū al-Khayr was ould Cheikh's teacher.⁴³ The two letters and other factors make an argument for a love-hate relationship between the two men very plausible.

A *fatwā*, by Abū al-Khayr, is our source of a troubled relationship between ould Cheikh and Abū 'l Khayr. The *fatwā* addressed a particular incident in Abū al-Khayr's marriage. It involves ould Cheikh, as far as Abū al-Khayr's wife – a source of the consternation in the marriage – was also ould Cheikh's paternal first cousin. According to the *fatwā*, ould Cheikh had a hand in Abū al-Khayr's troubled marriage.

Although our source is Abū al-Khayr's *fatwā*, we assume that ould Cheikh had a *fatwā* on the matter as well. In fact, ould Cheikh's *fatwā* would have been the earlier of the two. That ould Cheikh issued a *fatwā* on the matter is highly probable for two reasons. One, Timbuktu's *mufītīs* expressed their legal opinions, answers to incidents, and queries in writing, i.e. through a *fatwā*. This they did even when endorsing a *fatwā* by another *mufītī*, as we saw in chapter one. Secondly, according to Abū al-Khayr's son, it was not in his father's personality and habit, as a scholar, to react and respond to mere hearsay. He responded in writing only to things that appeared in writing too.⁴⁴ In other words, Abū al-Khayr's *fatwā* was a response to ould Cheikh's written verdict.

Finding ould Cheikh's *fatwā* has however, proven to be a very elusive exercise. I have yet to come across ould Cheikh's *fatwā* on this particular matter. However, the reason for this is not too difficult: the *fatwā* involves the marriage of one of Timbuktu's twentieth

⁴³ Interview with Hamou, 24 October 2008, Timbuktu

⁴⁴ Interview with Shafa Abū al-Khayr (Abū al-Khayr's son), 26 June 2009, Timbuktu; the interviewee refused to be recorded on audio because of the sensitiveness of the matter the *fatwā* dealt with.

century saints and luminaries. In addition to that, its giver was a very controversial man, as we saw and will see again later. Many written things about *ould Cheikh* are missing from the colonial archives and the Aḥmad Bābā collection. For example, my search in Timbuktu's colonial archive (*Archive Regional Tombouctou* or ART) for file 4 E 34 specifically on *ould Cheikh* ended in disappointment; although listed in the catalogue of the archive, the file is missing.⁴⁵ I therefore supplement Abū al-Khayr's *fatwā* with other sources and "imaginative" reconstruction to emerge with my explanation.

The fatwā

Whoever among Muslims, especially *muftīs*, *qāḍīs*, and the illustrious 'ulamā' come across this *fatwā*, must know that so and so boldly oppressed me sparing no effort in that regard. He declared my wife forbidden for me. This without knowing proofs I depended on when I returned my wife to our marriage after she had divorced herself. He then publicized his verdict to the people of the region. However, it was not permissible for him, or anyone else, to do so without due and proper litigation presenting irrefutable evidence against me and I failed to rebut their arguments or to produce counter evidence with which to avert their verdict. My marriage is and remains religiously valid according to the known and preponderant view of our school of thought. My wife is still mine; no one can take from someone what he possesses except with explicit evidence. My marriage is therefore valid until clear and compelling evidence to the contrary is produced ... My case is as follows: I married Dayja, the daughter of Sulṭān on her condition that if I marry another woman she has the right to decide [to either remain married to me or divorce herself]. I accepted her condition. After some time, I did marry another woman. She executed her condition and divorced herself ...⁴⁶

The *fatwā* is concise with all the technical properties and juristic arguments of a standard *fatwā*. However, more important than showing juristic prowess, Abū al-Khayr's *fatwā* is

⁴⁵ *Fiches de renseignement sur le cadī d'Araouane Mohamed Mahmoud ould Cheikh – 1936-1952*, ART 4 E 34

⁴⁶ *Makātib al-shaykh Abī al-Khayr*, fl. 12 (unpublished), compiled by Hamou, Abū al-Khayr's student. Appendix number six

a passionate complaint. He calls upon any Muslim, specifically scholars who come across his *fatwā* to know that Ould Cheikh treated him unjustly. Ould Cheikh dispossessed him of his wife, declared her *ḥarām* (forbidden) for him, and committed other trespasses against him. His action was deliberate and premeditated, as he spared no effort in that regard. He even publicized it among the people of the region, in a manner nothing short of a scandal. Ould Cheikh's name does not appear in the *fatwā* I use as my source. However, Hamou informed me that, out of respect for Ould Cheikh, he omitted Ould Cheikh's name and replaced it with "so and so" when he compiled Abū al-Khayr's many *fatwās* into a single volume.⁴⁷ Abū al-Khayr had dictated to him Ould Cheikh's name.

The Story

Abū al-Khayr married Dayja on her condition that if he marries another woman, she has the right to decide her position in the marriage: between remaining married to him and divorce.⁴⁸ All this happened in the town of Arawān. Abū al-Khayr came to Timbuktu some time later, he married another woman. When Dayja came to know, she chose the second option; she divorced herself.

As soon as he returned to Arawān, Abū al-Khayr revoked the divorce and informed Dayja of his intention to retain her as his wife, but she refused - as is the nature of

⁴⁷ Interview with Hamou, 21 June 2009, Timbuktu

⁴⁸ Both Abū al-Khayr's son and student do not know the exact date of the incident. However, according to the son, it transpired before Abū al-Khayr's marriage to his mother and the birth of his eldest brother in the late 1930s. It must therefore have transpired in the early 1930s. It could not have been earlier than 1930 as Ould Cheikh turned twenty only in 1930.

women, Abū al-Khayr tells us.⁴⁹ She agreed to return to their matrimonial bond, on condition that Abū al-Khayr includes her initial stipulation (i.e. no second marriage) in their new marriage contract as well. Abū al-Khayr reluctantly acquiesced to her demand. Dayja, however, seems not to have been convinced; might Abū al-Khayr not violate the condition again then simply revoke the divorce as he did the first time? It was probably at this stage that Dayja consulted her cousin, the up-and-coming young *mufīī*, Ould Cheikh. Without listening to Abū al-Khayr's version of events and his legal reasoning as to why he revoked the divorce Dayja enacted, Ould Cheikh declared Dayja *ḥarām* (unlawful) for Abū al-Khayr. But he also challenged and faulted Abū al-Khayr as a jurist.

In as far as Ould Cheikh's troubled relationship with Abū al-Khayr is our concern in this chapter, Abū al-Khayr's *fatwā* is vital and indispensable. It is an established and credible written source of their conflict, unlike the mere rumour about the alleged prayer incident. While there is a written source about Ould Cheikh's one sided conflict with Abū al-Khayr which was, as we will attempt to show below, politically motivated, this is the only source from Abū al-Khayr that articulates not so much a conflict between him and Ould Cheikh, but a personal grievance. More importantly, it allows us to suggest two motives, which, in our view, best explain Ould Cheikh's conflict with Abū al-Khayr: his family and/or his quest for the status of most knowledgeable scholar of the region.

Ould Cheikh's conflict with Abū al-Khayr either predated Abū al-Khayr's violation of his wife's monogamy clause or was a result of it. If the former, it strongly indicates that

⁴⁹ In Islamic law, a man may after divorcing his wife, revoke the divorce during the '*iddah*' without her consent and return her to their marriage a new marriage contract and a dowry. He can do so though only after the first and second divorces. After the third divorce, the ex-wife has to marry another man first then divorce him before she and her first husband can remarry.

the marriage itself was the cause of ould Cheikh's conflict with Abū al-Khayr. In other words, ould Cheikh did not approve of Abū al-Khayr's marriage to his paternal cousin. Abū al-Khayr's violation of the monogamy clause was only a pretext that allowed ould Cheikh to express his rejection of the marriage. If, on the other hand, their troubled relationship is a result of the violation of the monogamy clause, then ould Cheikh's ire was aroused by the treatment of his paternal cousin at the hands of her husband Abū al-Khayr. He, thus, accepted the marriage itself. Whichever one, what is clear is that family status and honour were central in both possibilities.

Why would ould Cheikh not approve of Abū al-Khayr's marriage to his cousin Dayja? Does his disapproval of the marriage not allow for a suspicion of racial prejudice? Abū al-Khayr was a high-ranking scholar, but he was also a Fulani, and "black" according to the prayer incident, while Dayja was Arab and 'white'. While we cannot outright dismiss such a conclusion, we are inclined to interpret ould Cheikh's opposition to the marriage as a desire to preserve his family lineage: the Adda lineage. To put it differently, ould Cheikh would equally have disapproved the marriage of his paternal cousin to a "white" Arab or a Touareg not from his Adda lineage. We will say more about the status and roles of the Adda clan later on.

Ould Cheikh's position was not novel or unique in the region even for scholars as an incident involving scholars in sixteenth-century Timbuktu shows. The Arab jurist, al-Muṣallī (d. 1586-7) intended to ask for the hand of his teacher, the illustrious Maḥmūd b. 'Umar Aqīt's daughter. However, even before al-Muṣallī could speak to Maḥmūd, the latter said to him, "Birds of a feather flock together". Al-Muṣallī immediately understood

and abandoned the idea.⁵⁰ Al-Muṣallī was not only an Arab i.e. “white”, he was a scholar and pious – al-Muṣallī was in fact his nickname which he got as a result of his constant engagement in prayer. Maḥmūd was no less renowned for his piety. His nephew, the great Aḥmad Bābā al-Sūdānī (d. 1627) describes him as the unrivalled scholar, the imam of Takrūr⁵¹, and the locus of many manifestations of divine grace and *barakah*. Revered and respected by all in Timbuktu, Maḥmūd was renowned for his discharge of justice as a *qāḍī*.⁵² Al-Muṣallī received Maḥmūd’s refusal as that of a man of special divine status.

Muḥammad Aqīt the progenitor of the Aqīt family (to whom the great Aḥmad Bābā al-Sūdānī belonged) moved away from the Masina region because of his fear that his offspring will marry among the Fulani.⁵³ Even though the Fulani were Muslim, Muḥammad Aqīt was a Ṣanhāja Taureg. That Ould Cheikh’s rejection of the marriage reflected his desire to keep the birds of the Ādda flock together, is therefore not farfetched. Abū al-Khayr might have been an illustrious scholar and a holy man, as we will see below, however, his ‘feathers’ were not of the Ādda flock.

The possibility that Ould Cheikh’s conflict with Abū al-Khayr is a result of Abū al-Khayr’s violation of his wife’s monogamy clause is, however, more plausible. Ould Cheikh was not opposed to Abū al-Khayr and his cousin’s marriage, but was perturbed by what he regarded as Abū al-Khayr’s humiliation of her. He therefore duly came to the

⁵⁰ Hunwick, *Timbuktu and the Songhay Empire*, 43 - 44

⁵¹ Takrūr refers to a vast region in West Africa that stretches from Senegal in the West to Timbuktu in the east and beyond.

⁵² Aḥmad Bābā al-Sūdānī, *Kifāyat al-muhtāj li-ma’rifah man laysa fī al-dībāj* (also known as *Al-dhayl*),

⁵³ Aḥmad Bābā b. Aḥmad al-Sūdānī. 1989. 1st edition. *Nayl al-ibtihāj bi taṭrīz al-dībāj*. Tripoli: Kulīyyah al-Da’wah al-Islāmīyah, pg.

defence of his “wronged” cousin. However, here too it was, primarily, the honour of the Adda clan, as a family, that informed Ould Cheikh’s position. Dayja was not simply from any family, she hailed from the illustrious Adda clan that provided the region with scholars, *qāḍīs*, saints and temporal rulers for four hundred years. By humiliating Dayja, Abū al-Khayr humiliated the Adda clan. Ould Cheikh saw himself as the protector of the Adda lineage. By declaring Dayja permanently prohibited for Abū al-Khayr, he wanted to ensure that she never returns to a marriage that would compromise his family’s honour. An oral source ascribes Ould Cheikh and Abū al-Khayr’s troubled relationship to a squabble between Abū al-Khayr and Ould Cheikh’s father, Al-Shaykh.⁵⁴

What the above shows, is that race was inconsequential to Ould Cheikh’s conflict with Abū al-Khayr. Abū al-Khayr could have been Arab and “white” it mattered not to Ould Cheikh. When Abū al-Khayr married another woman while married to Ould Cheikh’s cousin he humiliated not only her, but Ould Cheikh’s family. Throughout his *tarīkh*, the *Kitāb al-turjumān*⁵⁵ it is abundantly clear what the Adda name and lineage as habingers of identity, status and distinction mean for Ould Cheikh.

Family, as the cause of Ould Cheikh’s conflict with Abū al-Khayr, can be shown from another angle, drawn from a discussion in the *Kitāb al-turjumān*. After giving a detailed account of the founding of the town of Arawān, Ould Cheikh describes a dispute between ‘Urwah the *amīr* (ruler) of Arawān and its *qāḍī* Sīdī ‘Ālin at the beginning of the

⁵⁴ Interview, Hamou, 19 June 2009, Timbuktu

⁵⁵ The full name of the *tarīkh* is *Kitāb al-turjumān fī tarīkh al-ṣaḥrā’ wa al-Sūdān wa balad Tinbukt wa Shinqūt wa Arawān*, IHERI-AB, ms 762

twentieth century.⁵⁶ According to Ould Cheikh, Sīdī ‘Ālin refused to rubber stamp ‘Urwah’s rules and decrees because they were wrong. When Sīdī ‘Ālin travelled to Timbuktu, ‘Urwah gathered his advisors and appointed another more “compliant” scholar, Sīdī Aḥmad bin Sīdī Bu Bakr as the *qāḍī* of Arawān.⁵⁷

Ould Cheikh was related to both men. They all descended from one ancestor, Shaykh Aḥmad Ag Adda the founder of Arawān after he settled there in the second half of the sixteenth century. However, Ould Cheikh was more closely related to *Qāḍī* Sīdī ‘Ālin as his paternal grandfather Abū Bakr and Sīdī ‘Ālin’s father ‘Umar were brothers. ‘Urwah was his distant cousin who descended from the lineage of Sīdī al-Wāfī *al-mutaghanbir*, Aḥmad Ag Adda’s first son, while Ould Cheikh and Sīdī ‘Ālin descended from Sīdī Muḥammad Aghin another son of Aḥmad Ag Adda.⁵⁸

The dispute possibly affected Ould Cheikh and Abū al-Khayr’s relationship in so far as Abū al-Khayr was aligned to ‘Urwah. His family had a strong attachment to ‘Urwah’s father and grandfather. We will see later that Abū al-Khayr cites ‘Urwah’s father and grandfather to rebut claims that he was of servile (slave) origins.⁵⁹ ‘Urwah was Abū al-Khayr’s main authoritative source when he compiled his short *tarīkh*, *Tarīkh Arawān wa Taoudeni*. Sīdī Aḥmad bin Sīdī Bu Bakr whom ‘Urwah replaced Sīdī ‘Ālin with as the

⁵⁶ Shaykh Aḥmad Ag Adda and his descendants were the *qāḍīs* and rulers of Arawān since his arrival in the town until the beginning of the twentieth century.

⁵⁷ Ould Cheikh, *Kitāb al-Turjumān*, ms 762, fl. 23-25

⁵⁸ *Ibid.*, fl. 19

⁵⁹ Abū al-Khayr’s alignment with ‘Urwah also, arguably, explains his designating Sīdī Muḥammad bin *al-amīr* Sīdī Amḥammad as the rebel and troublemaker since he narrated his *tarīkh*, *Tarīkh Arawān wa Taoudeni* on the authority of ‘Urwah. Sīdī Muḥammad bin *al-amīr* Sīdī Amḥammad, by then the deposed leader of the Barābīsh opposed ‘Urwah when the latter intended to dispossess Sīdī ‘Ālin as *qāḍī* of Arawān.

qāḍī of Arawān was also Abū al-Khayr's teacher. Although ould Cheikh was, either, not born or very young (Sīdī 'Ālin died in 1921 when ould Cheikh was only eleven years old) at the time of the dispute, we can assume that he would have sided with Sīdī 'Ālin his closer kinsman. He and Abū al-Khayr's "involvement" in the dispute was one of default.

Most learned scholar status

Al-a'lam, i.e. the most knowledgeable in the Islamic intellectual heritage, especially Islamic law and exegesis in the region, was an obsession for ould Cheikh. Seen from this perspective, ould Cheikh's conflict with Abū al-Khayr has nothing to do with the former's zeal for his family, but reflects his personal obsession to be the region's top scholar. If so, it means Abū al-Khayr's second marriage and violation of the monogamy condition was an avenue for ould Cheikh, not in defence of family, but to prove himself as a better jurist than Abū al-Khayr. When he declared Abū al-Khayr's wife *ḥarām* for him, ould Cheikh aimed to show that Abū al-Khayr had erred in revoking the divorce and taking her back as a wife. In other words, Abū al-Khayr lacked a proper understanding of Islamic law, while he had a better grasp of it.

To be sure, ould Cheikh was an able scholar of Islamic law. This he clearly showed in as a member of a colonial native court panel that dealt with an intimate domestic dispute in 1936. The panel consisted of Timbuktu's *qāḍī* Muḥammad Lamin, the well-known jurist Muḥammad Ṭāhir bin Sharfī, two other jurists and ould Cheikh. In addition to giving the correct verdict, ould Cheikh also showed, with detailed arguments, the incorrectness of two earlier rulings on the dispute, that were overturned subsequently. The official court

statement reads, “The opinion of *Qāḍī* Muḥammad Maḥmūd ... is in accordance with Islamic law and adopted by all the members of the court sitting.”⁶⁰

However, Timbuktu’s literati regarded Abū al-Khayr as among the most knowledgeable scholar of his day, superior not only to ould Cheikh but also to most scholars in the period, starting from the mid 1930s until his death in 1976. At the young age of twenty-two, his teacher, the illustrious Sīdī Aḥmad b. Sīdī Bu Bakr b. al-Ṣayd permitted him to issue *fatwās*.⁶¹ This was before ould Cheikh was even born. The bibliographical dictionary *al-Sa’ādah al-abadīyyah* (completed 1962) describes him as the unrivalled scholar of Takrūr, its chief jurist, teacher and *mufī* unmatched by any covetous competitor (reference to ould Cheikh?). In addition to his impeccable character and good nature, he reached the pinnacle in Qur’ānic exegesis and the science of Prophetic traditions.⁶² A *fatwā* refers to him as the remainder of the pious predecessors of jurists and the authority for the jurists and people of his day, an epithet given only to scholars of the highest calibre, in knowledge as well as piety.⁶³

Thus for the young and up coming ould Cheikh, Abū al-Khayr was a rival he had to surpass. He carried this rivalry with Abū al-Khayr for the position of top scholar into his *Kitāb al-turjumān*. Abū al-Khayr, he says, was one of a few students who remained in Arawān after all the scholars had either died or left the town due to harsh conditions. He

⁶⁰ *Jugement du 2 E 39*, Cercle du Tombouctou, ART M13 8 July 1936

⁶¹ Interview with Shafa Abū al-Khayr, 26 October 2008, Timbuktu

⁶² Mawlay Aḥmad Bāber, *al-Sa’ādah al-abadīyyah fī ta’rīf bi ‘ulamā’ Tinbukt al-bahīyyah*, IHERI-AB, ms 16, fl 88

⁶³ Ibn ‘Ālin al-Jaknī al-Tinbukfī, *Fatwā fī al-khilāfāt al-zawjīyyah*, IHERI-AB, ms 5964

thus clearly distinguishes student from scholar. With clear condescension, he exceeds that God has imbued the student Abū al-Khayr with a love and acumen for judicial affairs.⁶⁴

In fact, in his quest to establish himself as the region's top scholar, Ould Cheikh went beyond Abū al-Khayr. Elsewhere in the *Kitāb al-turjumān*, he speaks of the extinction of 'ulamā' in the region, especially in Timbuktu. He emphasises that by the mid 1940s, Timbuktu was bereft of scholars with the death of its two last great scholars, al-Imām al-Suyūfī and al-Muṣṭafā Konate, by 1945. The other jurists, which includes Abū al-Khayr, of course, do not know their wrist joint (*kū'*) from their ankle joint (*bū'*) as the Arab proverb, denotes extreme ignorance, says. Anyone who does not know *kū'* from *bū'*, differentiated only by the initial consonant, is surely an ignoramus. Timbuktu used to have numerous 'ulamā', used to be among the greatest centres of knowledge, and used to be an abode of writing.⁶⁵ Therefore, he recites the phrase, "to God we belong and unto Him is our return", signifying the death of knowledge and scholars in Timbuktu.⁶⁶ Ould Cheikh's account stands in stark contrast to that of other sources that speak of many great scholars alive at the same time. The point is, Ould Cheikh was the only real scholar alive at the end of the 1940s.

Interrogating the racism charge

We return now to the charge of racism made against Ould Cheikh. We have already mentioned that we reject the prayer incident with its race element, as the cause of Ould

⁶⁴ Muḥammad Maḥmūd Ould Cheikh, *Kitāb al-turjumān*, ms 762, fl. 25

⁶⁵ Ms 762, fl. 107 - 108

⁶⁶ Muslims recite this phrase on hearing of the death of a person.

Cheikh and Abū al-Khayr's conflict. We will show that racial realities of the new post-colonial Mali played a seminal role in Timbuktu's literati reducing ould Cheikh's troubled relationship with Abū al-Khayr to race. This they did in order to distance themselves from ould Cheikh's racialized political project for the future of the Niger Bend towards the end of colonial rule. Of this response of theirs and ould Cheikh's project, we say more below. By touching on ould Cheikh's racialized political discourse and Timbuktu's literati's delineation of the two men's conflict in terms of race, our focus is not on race/racism in the Niger Bend. Rather, it is to show that their and ould Cheikh's actions stand in contradiction to the ideal image of Timbuktu's '*ulamā*'.

The probability of the prayer incident having occurred is questionable. It does not inspire confidence as a reliable oral historical source. Certainly, the way in which the incident has been told does not do much to convince one of its occurrence. It was Hamou, Abū al-Khayr's student and compiler of his *fatwās*, who first told me of the alleged incident. He was not a witness to it. He could also not tell me the when, where, why, how, etc. of the incident nor that he heard it from Abū al-Khayr.

To date, it remains hearsay and has not been corroborated by another written or recurrent oral source. A mere verbal dissemination of an incident of such magnitude goes against the order of things in Timbuktu as hundreds of manuscripts, especially *fatwās*, show. In this city of manuscripts, the written word, not oral accounts, is the normative medium of dissemination, response, rebuttal, counter rebuttals and rebuke of incidents.

Timbuktu's literati would not have sufficed with verbally passing around this most vile act from a young or middle-aged⁶⁷ arrogant scholar against Abū al-Khayr, or any other scholar for that matter. Abū al-Khayr was not just any "black" man – and that too, if he himself and others regarded him as "black" at all. He was the most illustrious scholar in Arawān and Timbuktu of his day. The matter would have been put down to pen.

Tradition tells us that there would have been a torrent of *fatwās*, and back and forth letters, all discussing the matter, as we saw with the examples above at the beginning of this chapter.

It is also highly unlikely, or at least questionable that ould Cheikh would have chosen congregational prayers, the highest form of worship in Islam to express his alleged racism towards Abū al-Khayr. The improbability of ould Cheikh refusing to pray behind Abū al-Khayr, because he was "black", does not however negate the fact that the act was possible in the Niger Bend and that it could have occurred. The idea of not praying behind someone for racial reasons has a long history in the region. That al-Sharīf Ḥamā Allah (d.1755), a *muftī*, was asked whether it is permitted to emulate a "Black" *Imām* in prayer when he significantly mispronounces the letters of the Qur'ān is instructive.⁶⁸

It is however difficult to suggest that ould Cheikh couched his refusal to emulate Abū al-Khayr in prayer because he mispronounced the letters of the Qur'ān. We will, in that case, have to assume that Abū al-Khayr mispronounced the words of the Qur'ān. It was,

⁶⁷ The mere fact that we do not know ould Cheikh's age at the time the incident allegedly happened shows the problematic nature of the story. There are simply no date, time, place about the story.

⁶⁸ Al-Sharīf Abī 'Abd-Allah Muḥammadnā Ḥamā b. Aḥmad b. Al-Imām Aḥmad al-Ḥasanī, "Nawāzil Al-Sharīf Muḥammadnā Ḥamā Allah", IHERI-AB, ms 146, fl. 18. I thank Bruce Hall for this source.

however, certainly not the case with Abū ‘l Khayr, as the sources show. He memorised the Qur’ān in his early childhood under the tutelage of Shaykh al-Ṭālib al-Ḥabīb (d.1972), the unparalleled scholar of the science of the correct rendition of the Qur’ān in the region.⁶⁹

We question its probability in the same way we question the probability of the incident with the ostrich. Both incidents seem unthinkable for ould Cheikh. Ould Cheikh was far too intelligent and ambitious to expose himself in so fickle a manner. Had he refused to pray behind Abū al-Khayr (or any “black” person) he would have done so during pre-colonial or early colonial era when it was still possible to do so without implications. In an independent Mali under Black rule, especially during the Modibo Keita era, such an act was tantamount to political and social suicide. Born 1910, he became an accomplished scholar only by the 1940s, i.e. toward the end of colonial rule.

Timbuktu’s literati deliberately ignored the nature of ould Cheikh and Abū al-Khayr’s enigmatic relationship, which they were very much aware of. This leaves us to suggest that the prayer episode is an invention of some of Timbuktu’s notables including, perhaps, some literati. It is nothing more than a rumour that we can now read as follows, “rumour has it that ould Cheikh refused to pray behind Abū ‘l Khayr, because he was black”.

⁶⁹ Diagayete, M. 2008. Al-Shaykh Abū al-Khayr: illustrious scholar and pious friend of God, in Shamil Jeppie and Souleymane Diagne (eds.), *The meanings of Timbuktu* , pp. 249-250.

Why the Rumour

Rumours, or fugitive sources, as Natalie Zemon-Davis calls them, have a basis in something. In the words of James Scott, “rumour is not only an opportunity for anonymous protected communication, but also serves as a vehicle for anxieties and aspirations that may not be openly expressed.”⁷⁰ Writing in the context of *pavement radio*, Ellis and Ter Haar show that throughout the twentieth century rumours gained currency in many parts of Africa.⁷¹

Who created the rumour about the prayer incident, why was there a need to invent it, and when did they concoct it? The “white” notables of Northern Mali, most likely, invented the rumour. A rumour about a notable (ould Cheikh) requires the tongues of notables. Why though, did they need to invent a rumour of such gravity? Moreover, why about ould Cheikh, specifically, when before the French Soudan gained its independence from France, many of them supported ould Cheikh’s campaign for the Niger Bend not to be incorporated into one country with the “black” south? In a 1958 petition, ould Cheikh expressed to the French the aspirations and interests of the “whites” of the Niger Bend as loyal subjects of France, which they insisted were not the same as the interests and aspirations of the “black” majority. The petition secured the signatures of over three hundred and sixty ‘white’ notables.⁷²

⁷⁰ Quoted in Hahn, S. 1997. 'Extravagant expectations of freedom: rumour, political struggle and the Christmas insurrection scare of 1865 in the American South', *Past & Present*, pg. 124

⁷¹ Ellis, S & Ter Haar, G. 2004. *Worlds of power: religious thought and political practice in Africa*. Johannesburg: Wits University Press, pg. 28

⁷² I have ould Cheikh’s original letter and petition with the names of all the signatories as a document of the colonial archives, “L’Organisation commune des régions sahariennes (OCRS),” 225; see appendix number. The full text of the letter and petition is published in Claudot-Hawad, *Le politique dans l’histoire touarègue*, 133-53

With independence from France in 1960 times and politics had changed. Finding themselves subjects of a post-colonial independent Mali under “black” rule, the “white” notables needed to prove to the country’s ruling “black” elite that they were loyal citizens of the new Malian State. It was prudent now to distance themselves from the controversial and deeply polarizing *ould Cheikh*. They invented the rumour wherein colour, and therefore race, was pivotal. The rumour pitted the “white” *ould Cheikh* against Timbuktu’s most illustrious scholar at the time who just now conveniently happened to be “black”. *Ould Cheikh* discriminated against *Abū al-Khayr* purely because he was “black”: he refused to pray behind him. As for *Abū al-Khayr*, he was only a conduit that *ould Cheikh*’s local enemies used via this rumour.

Colonial documents show that racism charges begin to appear in the formal politics of the French Soudan after WWII, especially in the context of local elections as well as in *Bellah* testimonies against masters from the same period.⁷³ However, this particular rumour, as far as it shows racism, was thinkable only in post-colonial Mali under “black” rule. For, only then could it serve the motive of some of the “white” notables of Northern Mali. Its instrumental usage was futile during the colonial era.

The extent to which *ould Cheikh* was shunned can be gauged, for example, by his omission from *Mawlay Aḥmad Bāber*’s (d. 1997) biographical dictionary, the *Al-sa‘ādah al-abadīyyah*. Many ascribe *ould Cheikh*’s omission from the bibliographical dictionary to *Mawlay Aḥmad Bāber*, *Abū al-Khayr*’s spiritual and pedagogical protégé, exacting revenge for *ould Cheikh*’s treatment of his teacher. While it was natural and reasonable

⁷³ I thank Bruce Hall for pointing this out to me (e-mail correspondence, 13 February 2010).

that Mawlay Baber would be angry at Ould Cheikh, it is not sufficient to explain why he omitted Ould Cheikh all together from the *al-Sa'ādah al-abadīyyah*. Compare this, for example, to Ould Cheikh's inclusion in another biographical dictionary began at the end of the 1930s and completed by the end of the 1940s, the *Izālah al-rayb* of Bul 'Arāf.⁷⁴ Bul 'Arāf died in 1955, a full five years before the French Soudan became Mali.

That Mawlay Aḥmad Bāber completed his bibliographical dictionary on 8 November 1962, i.e. two years into independence of Mali, is instructive. With Ould Cheikh having campaigned for a “white” Northern Mali independent from the “black” South, it was not politically correct to include him in the biographical dictionary. Mawlay Bāber's praise of the new Malian state is instructive. He equates it to the ancient Mali Empire of the thirteenth century founded by Sunjata, which reached its pinnacle under Kankan Mūsā in the early fourteenth century. He described the newly independent Mali as a state of benevolence, steadfast rule and enlightened rulers who bring happiness to its people.⁷⁵

Ould Cheikh was held with suspicion in independent Mali, by both government and people. The government of Modibo Keita imprisoned him soon after independence in 1960. He was released only after the fall of Keita's government in 1968.⁷⁶ During the

⁷⁴ Aḥmad bin Abī al-'Arāf al-Taknī, *Izālah al-rayb wa al-shakk wa al-tafrīt fī dhikr al-mu' allifīn min ahl al-Takrūr wa al-Ṣahrā' wa ahl al-Shinqīt*, ed. by Al-Hādī al-Mabrūk al-Dālī (u.d., n.p; according to Hunwick, possibly Benghazi, c.2000), pg. 173

⁷⁵ Mawlay Aḥmad Bāber, *Al-sa'ādah al-abadīyyah fī ta'rīf 'ulamā' Tīnbukt al-bahīyyah*, IHERI-AB ms. 16, fl. 11

⁷⁶ I thank Bruce Hall for this information (e-mail correspondence).

civil violence that swept Timbuktu during the civil war in the early 1990's, a mob burned down Ould Cheikh's family home and library in Timbuktu.⁷⁷

Slavery Charge

The population of Arawān continues to diminish as people abandon it because of severe conditions and difficulties. Except for the Azalaï, no outsiders visit the town. Those of the remaining folk in need of a *fatwā* consult the students who remain in Arawān. Foremost among these students is Abū al-Khayr b. ‘Abd-Allah *al-ḥaraṭānī*, the freed slave of Ahl al-Ḥabīb. His mother was a freed slave of Sīdī Muḥammad b. al-Ḥabīb and his father a slave of the Barābīsh. This, Abū al-Khayr was a student of our cousin Qāḍī Sīdī Aḥmad b. Sīdī Bu Bakr b. al-Ṣayd.⁷⁸

In this extract from the *Kitāb al-turjumān*, Ould Cheikh makes the claim that Abū al-Khayr is originally of servile status, hence he calls him *al-ḥaraṭānī* meaning the freed slave. Is it not possible to deduce from it the possibility of Ould Cheikh refusing to pray behind Abū al-Khayr because he was “black”? As Bruce Hall says, in Sahelian discourse, blackness is inferior, it means unbelief, the unbelief legitimizes enslavement, and enslavement demonstrates prior unbelief.⁷⁹ In other words, can we draw a link between the slavery charge and racism and assert that Ould Cheikh showed his racism against Abū al-Khayr through other means? Eric Williams famously wrote in 1944, “slavery was not born of racism; rather, racism was the consequence of slavery.”⁸⁰

For Bruce Hall (writing on race in the Niger Bend) shows a direct connection between the stain of slavery and the inability to achieve full noble status. Thus, it is possible that Ould Cheikh's reference to Abū al-Khayr as *al-ḥaraṭānī* (the freed slave) was meant to

⁷⁷ Hall, Mapping the river, 260

⁷⁸ Ms 762, fl. 25; emphasis mine

⁷⁹ Hall, Mapping the river, 14

⁸⁰ Quoted in Hall, Mapping the river, 12

deny Abū al-Khayr noble status and therefore constituted racist behaviour. He did not need to make any direct reference to colour. We, however, rule out this possibility and explain the extract in the *Kitāb al-turjumān* in terms of family, only this time linked to geography.

Arawān, a family legacy, a family property

My reading of ould Cheikh's description of Abū al-Khayr in the *Kitāb al-turjumān* concludes that ould Cheikh was essentially concerned with Arawān, not with Abū al-Khayr. How and why, when it is clear that he targeted Abū al-Khayr? Arawān occupies a very important place in ould Cheikh's family legacy. Even though he was born in Timbuktu, ould Cheikh continued to look upon Arawān as his family's everlasting legacy.

The importance of Arawān to ould Cheikh can be gauged by contrasting his description of Arawān in his *Kitāb al-turjumān* to its mention in al-Sa'dī's *Tarīkh al-Sūdān*. Ould Cheikh speaks in glowing details of the founding of Arawān. He mentions in detail the encounter between Jawdar Pasha and his ancestor the saint Shaykh Aḥmad Ag Adda: how Jawdar kissed the feet of the latter and sought his *baraka*, etc. In the *Tarīkh al-Sūdān*, Arawān is mentioned only in passing: when Jawdar Pasha passed to the east of the town on his way to Gao. In fact, the *Tarīkh al-Sūdān* says that Jawdar's army did not touch the town of Arawān. It makes no mention of an encounter between Aḥmad ag Adda and Jawdar Pasha.⁸¹

⁸¹ Hunwick, *Timbuktu & the Songhay Empire*, pg. 29 & 189

The arrival of ould Cheikh's saintly ancestor Aḥmad ag Adda, a man of *barakah*, clairvoyance and a jurist in Arawān in the mid sixteenth century made it a religious-knowledge sanctuary and a vibrant commercial centre. However, by the turn of the twentieth century, most of Aḥmad Ag Adda's descendants had left Arawān. Hence, ould Cheikh's reference to the town's dwindling population, severe economic conditions and the absence of visitors. Those of the Adda clan who remained in Arawān, for example the *amīr* 'Urwah, were not descendants from the branch to which ould Cheikh belonged.

If Timbuktu was the collective legacy of different scholars and traders from all over West Africa, Arawān, was the product of one man, Shaykh Aḥmad Ag Adda and his descendants, as ould Cheikh seems to say. For ould Cheikh, the death and departure of his family from Arawān signalled its end. They were, after all, its spiritual, political, and economic founders some four centuries ago and its sustainers. The continued existence of Arawān was inextricably tied to their continued presence there. Their absence marks the town's social, religious and intellectual death. The saintly aroma that hovered above Arawān and kept it alive for the past four centuries dissipated. In short, Arawān died.⁸² All that remained now are Taureg marauding, the absence of the rule of law, economic hardship and, of course, a few students pretending to be scholars, among them Abū al-Khayr.

However, not all scholars left Arawān as ould Cheikh claimed. Abū al-Khayr was one of a few high-ranking who remained in Arawān - even though he spent six months of the year in Timbuktu - long after ould Cheikh's family had abandoned the desert town. As

⁸² Compare that, again, to the *Tarīkh al-Sūdān* where Jenne and Timbuktu never perish, even after the Moroccan destruction of Songhay. They remain cities of knowledge and religious significance

the top scholar of the region, Abū al-Khayr's continued presence in Arawān belied Ould Cheikh's claim that knowledge dwindled and ignorance proliferated and that only a few students remain in the town. Arawān was supposed to have gone to the ruins when the scholars of the notable Adda clan left the town.

Abū al-Khayr became the symbol of a resilient Arawān that, to be sure, was dying but, at a pace too slow to Ould Cheikh's liking.⁸³ The attack was on Arawān, now a dying settlement that used to be a city of scholars and an abode of saints. Abū al-Khayr's continued presence in Arawān represented the town's will to continued existence. It kept the flame of knowledge burning in the town thereby keeping the town alive. Hence, Ould Cheikh used his *tarīkh* to sound the death knell of Arawān through this, vitriolic attack on Abū al-Khayr. Ould Cheikh was not racist toward Abū al-Khayr per se. The latter's alleged slave origins and student status were metaphors for Arawān's social death. If its chief scholar is a former slave and student, what does it say about the town?

Abū al-Khayr responded to both claims in general. Whether, he directed his responses at Ould Cheikh specifically we cannot say. However, they certainly answer and rebut Ould Cheikh's slavery claim and Arawān's alleged ruin. He rebuts the claim that his parents were former slaves and he, therefore, a freed slave in a letter.⁸⁴ He cites as proof, the testimony of the *ahl al-Ḥabīb*, who he qualifies as trustworthy and the genealogists of this land. The notion that his family were slaves or freed slaves comes from the fact that the first generation of his ancestors who settled in Arawān worked with their hands and

⁸³ Arawān did indeed begin to take to a slow death. Today, there are no more than thirty-one people in the town, none of them scholars. The town has no electricity, government schools or other amenities.

⁸⁴ Abū al-Khayr bin 'Abd-Allah bin Marzūq al-Ḥill, *Maktūb fī dhikr tarīkh ahl al-Ḥill wa waqā'i' him ma'a al-Sūdān*, IHERI-AB, ms 6248, fl. 2-3

had no servants. They earned their living through manufacture, tailoring, and teaching children the recitation of the Qur'ān. They intermingled with slaves and freed slaves.

Social practices such as working with one's hands, etc. in Northern Mali were associated with people of servile status. Because of this, many Arabs thought that Abū al-Khayr's family (the *ahl al-Hill*) were slaves or freed slaves.⁸⁵ Sīdī al-Ḥabīb, the *amīr* of Arawān of his day, Abū al-Khayr tells us clarified the matter in the presence of numerous witnesses. However, despite the clarification of Sīdī al-Ḥabīb the rumour persisted. Ould Cheikh's claim in the *Kitāb al-turjumān* that Abū al-Khayr is a freed slave is based on this rumour. What is interesting is that the rumour predates Ould Cheikh's birth in 1910.

In his "little" *tarīkh*⁸⁶, the *Tarīkh Arawān wa Taoudeni*, Abū al-Khayr offers a different view to Ould Cheikh's claim of economic hardship, desertion and retrogression in Arawān. He speaks of ongoing inhabitedness and bustling activity, the proliferation of home building, traders from Ghadāmis, Tuwāt etc. bringing a large variety of cloth, clothing and abundant fruit to Arawān. They sell, buy and make huge profits. Some of them desire to settle in Arawān because of the honesty and good interaction of its population and some of them did settle in the town.⁸⁷ The picture Abū al-Khayr drew of Arawān stands in stark contrast to Ould Cheikh's picture of an Arawān in complete ruins.

⁸⁵ In Northern Mali, many Arabs and Tuareg regard handwork and agriculture as work of slaves. For example, some Tuareg settled in a place called Tin Aicha by the Malian government in the 1970s did farming only until such a time they could reconstitute animal stocks. They hoped the Bellah - who until the end of the colonial period remained in servile relationships with their Tuareg masters would farm it for them. Hall, *Mapping the River*, 4-5

⁸⁶ The notion of "little" *tarīkhs* in Timbuktu I got from Shamil Jeppie; in his paper what is *tarīkh* in Timbuktu, Jeppie raises the idea of Timbuktu's "little" *tarīkhs* as sources of the region's history; hitherto only Timbuktu's famous seventeenth and eighteenth-century *tarīkhs* have been recognized as sources of the region's history.

The explanation given by Timbuktu's literati that Ould Cheikh refused to pray behind Abū al-Khayr and Ould Cheikh's claim that Abū al-Khayr was a freed slave were both rumours. Ould Cheikh was involved with both rumours. Of the rumour that he refused to pray behind Abū al-Khayr he was a victim while he exploited the rumour of Abū al-Khayr's servile origins. By including it in the *Kitāb al-turjumān*, he raised it from mere gossip to literary status. This rumour predates the former one. That because both rumours were thinkable during a particular milieu only. The former was thinkable in the post-colonial era only, as we already said and showed how. The latter rumour during the pre-colonial era only and possibly during the early colonial era.

*Kitāb al-turjumān: Ould Cheikh's political project*⁸⁸

Ould Cheikh's behaviour transcended his relationship with individual scholars, such as Abū al-Khayr. He articulated a racialized political discourse for the Niger Bend to either remain under French rule or become a "white" ruled state. In other words, that the Niger Bend not be incorporated into a future independent state, run by the majority "black" population. In this campaign, he represented the aspirations of many of the "whites" of the region.⁸⁹ The milieu was conducive for Ould Cheikh. As Bruce Hall shows, "black" nationalism, had started already just after World War 2 in the French Soudan.⁹⁰ Race had emerged into the open in the Niger Bend in the 1950s. The Songhay-speaking people of

⁸⁷ Abū al-Khayr bin 'Abd-Allah, *Tarīkh Arawān wa Taoudeni*, IHERI-AB, ms 691, fl. 2 - 5

⁸⁸ The idea that the *Kitāb al-turjumān* had a political aim, I got from Bruce Hall. See, Hall, Mapping the River, 251 - 260

⁸⁹ The Black political elite on the other hand believed in a state that united "blacks" and "whites". They were well aware of the fear of 'Whites' to be incorporated in a state run by the 'Black' majority.

⁹⁰ "Black" nationalism was primarily directed against French rule not "white" Arabs and Tuareg.

the Niger Bend developed ideas of a racialized geography in response to the use of race against them by the nomadic-French alliance.⁹¹ Ould Cheikh exploited this conducive milieu for selfish group interests.

Ould Cheikh's association, and involvement in, with this racialized political campaign, and that as its leader, go against the grain of the ideal scholar of Islam, which we read of in Timbuktu's *tarīkhs* and bibliographical dictionaries. He was alone among the eminent traditional scholars of Islam in the region that openly did so - although many secretly supported him. Of the 360 signatories of a petition he spearheaded in favour of Northern Mali remaining under French rule, I recognized not one of Timbuktu's high-ranking 'ulamā' such as Abū al-Khayr, Muḥammad Ibrāhīm bin 'Ābidīn, etc among them. More importantly though, what concerns us is the particular tool (one among a few) Ould Cheikh employed in the service of that political aim.

That tool was historiography. He wrote a history of the Niger Bend with the aim to prove that Northern Mali was exclusive "white" territory. He partly invented a *histoire nouveau* of the region, especially of Timbuktu, as we will see below. In this regard, he differed not only with his contemporary colleagues among Timbuktu's historians, but also with Timbuktu's seventeenth-century chronicles.

Ould Cheikh's historiography stemmed from his open enthusiastic support for French rule of the region and its continuation and ultimately "white" control. For this reason, he supported the *Organisation commune des régions sahariennes* (OCRS), which espoused

⁹¹ Hall, Mapping the river, 247-254

the loyalty of the Saharan population to France. The OCRS was an attempt, dating from 1951 and intensified in 1954 following the discovery of hydrocarbons in the Algerian Sahara and the start of the Algerian liberation struggle in 1954, to keep the Sahara French, by nationalising it.⁹² In 1957, he started a campaign to promote the OCRS among the Saharan chiefs and notables. On 30 October 1957, he sent a letter of petition signed by Timbuktu's "white" notables and merchants. The petition stated,

If there exists, a right to self-determination for a people, we would like to believe that we are allowed to make our aspirations known. We declare without restrictions that we already are, and want to remain, French Muslims and an integral part of the French Republic. We manifest our formal opposition to being integrated in an autonomous or federalist Black Africa or North Africa ... We demand the incorporation of our country in the French Soudan of which we are part, historically, emotionally and ethnically ... France has not found us under Soudanese, [i.e. "black"] domination.⁹³

Two factors indicate that Ould Cheikh wrote the *Kitāb al-turjumān* in the service of his political agenda: the period during which he wrote and his arrangement and synthesizing of the materials from which he compiled the *tarīkh*. In our view, he could only begin writing the *Kitāb al-turjumān* only in the mid 1950s⁹⁴, when it became clear that the French were departing from the French Soudan.⁹⁵ Prior to this period, there was no need for the *Kitāb al-turjumān* as there was no talk of the French withdrawing from the

⁹² For a detailed discussion of the OCRS and Ould Cheikh's position therein see, Baz Lecocq, ABORNE conference, fl. 1 – 12

⁹³ Baz Lecocq, ABORNE conference, fl. 8

⁹⁴ I base my claim partly on the fact that Bul 'Arāf made no reference to the *Kitāb al-turjumān* in the *Izālah al-rayb*, completed during the 1940's, when he listed Ould Cheikh's writings. See, Aḥmad bin Abī al-'Arāf al-Taknī, *Izālah al-rayb*, pg. 173

⁹⁵ The idea that the region's *tarīkhs* were thinkable in certain eras only is Paulo de Moraes Farias'. He shows that Timbuktu's seventeenth-century *tarīkhs* were thinkable only after the 1591. Moroccan invasion, because they were essentially political projects that reconciled between the three classes, the Arma military elite, the Askiya lineages, and the urban patrician classes which included the '*ulamā*'. Farias de Moraes, *Intellectual Innovation and reinvention of the Sahel*, 95-97

region. The *Kitāb al-turjumān* was a historical argument, albeit a doctored one, for the “natural” right of “whites” over the Niger Bend in light of the eminent departure of the French.

He rearranged and synthesized materials from well-known and older works of local history and French sources in a way that allowed him to produce a history that supported and served his larger political objectives. As Bruce Hall shows,

In describing the way in which Timbuktu came to be populated ... Ould Cheikh writes that the inhabitants were Arab and Touareg. He then discusses how many people came from different places in North Africa (Egypt, Morocco, Touat) ... There is no mention of early “Black” immigrants to Timbuktu from Ouagadougou mentioned in the older written histories ... nor is there any mention of the “Black” inhabitants in the town’s history. This omission serves Ould Cheikh’s purposes, in that it renders Timbuktu “White”.⁹⁶

Compared to the long discussion Timbuktu’s seventeenth-century *tarīkhs* devoted to *al-ḥājj* Askiya Muḥammad, the great Muslim ruler of the Songhay Empire and the praises they heaped on him, Ould Cheikh suffices with a fleeting reference.⁹⁷ The only “accolade” he confers him with is the title *amīr al-mu’minīn* (commander of the faithful). This stands in stark contrast to his evident praise for Sulṭān Aḥmad al-Dhahabī, the conqueror and destroyer of the “black” Muslim Songhay Empire.

Because the petition expressed the fears of the “whites” in overtly racial language, the speculation that Ould Cheikh was racist against the “blacks” of the Niger Bend and therefore against Abū al-Khayr, does seem to have some basis. What is instructive – but

⁹⁶ Hall, *Mapping the river*, 258 - 260

⁹⁷ See, the *Tarīkh al-Sūdān* and *Tarīkh al-Fattāsh*, etc. in their treatment of the person, personality and piety of *al-ḥājj* Askiya Muḥammad. See, *Kitāb al-turjumān*, IHERI-AB, ms 762, fl

ignored by Ould Cheikh's opponents - in this letter is his opposition to being integrated into "white" North Africa. The Muslim "whites" of the Niger Bend were part of Christian France, not of a Muslim "white" geography and history further north. Ould Cheikh's political and discourse and historiography were racist. However, designating him as a racist against Abū al-Khayr is a not easily palatable.

Thus, Ould Cheikh's condescending description of Abū al-Khayr as a student and a freed slave in the *Kitāb al-turjumān* must be read in light of the political aim of historiography. That historiography argued that the Niger Bend belonged to the Saharan "white" population by virtue of its history; that the "white" population are the original inhabitants and perennial masters of the Niger Bend.

Conclusion

Timbuktu's *fatwās* and other written sources show that its 'ulamā' acted, in speech and deed, contrary to the pious and illustrious image Timbuktu's *tarīkhs*, biographical dictionaries and other panegyric literature sketch of them. One such scholar, in particular, was the first-rated scholar of Islamic law and exegete, Muḥammad Maḥmūd Ould Cheikh. Ould Cheikh's unbounded loyalty to his clan, his quest for being the undisputed religious-intellectual authority and his racialized politics of separation put him at loggerheads with the ideal image of the Muslim scholar. Today he is remembered as a deeply controversial and polarizing figure, in particular for his alleged refusal to pray behind the saintly scholar Abū al-Khayr, because the latter was "black". We, however, regarded the alleged incident as spurious all together or rather we showed the claim to be unsubstantiated. Instead we showed that the two men had an enigmatic relationship, both

sweet and sour; however racism was not a feature of that relationship. Thus, in our view, there can be no talk of *ould Cheikh* having been a racist against *Abū al-Khayr*. Certainly, *ould Cheikh*'s political discourse was a racialized one. In the 1950s, he became the chief agitator for the narrow ethnic aspirations of the "whites" of the Niger Bend which demanded that the region remain under continued French rule or become a homeland for "whites". This when "black" Soudanese envisaged an independent country inclusive of all the peoples of the French Soudan. In light of that racially informed quest *ould Cheikh* can justifiably be considered a villain. But *ould Cheikh* was, or became, a victim, too. Not so much at the hands of the "blacks" who would have been the victims of his politics of separation had it succeeded, but the very ones whose aspirations he once fought for. This chapter's concern was however, not with *ould Cheikh*'s alleged racism and genuinely racial politics or with racism in general. Rather it showed how *ould Cheikh*'s many intriguing behaviours are indicative of a behavioural pattern found among all Timbuktu's '*ulamā*' that contradicts the ideal image of pious and illustrious intellectuals. Using *fatwās*, the correspondences of '*ulamā*' and colonial documents and even a *tarīkh*, I showed this to be true for both *ould Cheikh* and other scholars. *Ould Cheikh* was not the only villain among Timbuktu's twentieth century '*ulamā*'.

Conclusion

This thesis showed that it is possible to write Timbuktu's history from the bottom up during the colonial – and pre-colonial - era using its *fatwā* manuscripts as a historical source supplemented by letters and other documents. It shed light on the everyday lives and experiences of ordinary women and men and other less notable individuals in Timbuktu. When I began working on *fatwās* I asked whether *fatwās* can tell stories about itself and other things, about the people who were the cause that a *fatwā(s)* was issued at all. I inclined toward the affirmative that *fatwās* do tell stories about themselves and other things.

Modern scholars had begun working on Timbuktu's manuscripts already before the Aḥmad Bāba Centre¹ opened its doors for the collection, conservation, preservation and scholarly exploitation of Timbuktu's rich manuscript materials in 1973. To be more precise, they worked on Timbuktu's chronicles, specifically its two famous seventeenth-century *Tarīkh al-Sūdān and al-fattāsh* as well as a few. Octave Houdas translated and published the *Tarīkh al-Sūdān* in 1898-1900 and edited and translated the *Tarīkh al-fattāsh* in 1913.² After Houdas, the two names of the post-colonial era that stand out here are that of John Hunwick and Elias Saad. Both men focussed on the two famous chronicles as well. However, in addition to that, Hunwick worked on

¹ Its first official name was *Centre de documentation et de la recherche Ahmed Baba* (CEDRAB); this was changed later to *Institut des hautes études et de recherches Islamiques Ahmed Baba* (IHERI-AB).

² Levtzion, *A seventeenth-century chronicle*, 571

the replies of the scholar ‘Abd al-Karīm al-Maghīlī³ to the theological questions of *al-hājj* Askiya Muḥammad and a seventeenth-century *fatwā* of Aḥmad Bāba al-Sūdānī. Hunwick also published a volume on the scholars (short biographies) of the region and their literary productions over five centuries. Saad worked on two eighteenth-century *tarīkhs* and nineteenth-century political correspondences. Michel Abitbol translated and edited the second of the two most important eighteenth-century *tarīkhs*. After or co-inciding with them, many scholars worked on one or the other aspect of the Songhay Empire, its Askias, the Moroccan invasion and Songhay resistance, the scholarly establishments of Timbuktu and Gao, and related matters. What is clear from all this is that their focus was on Timbuktu’s high political and intellectual history. Even Thomas Hale’s *Scribe, griot and novelist* constructed from oral tradition the life and military achievements of *al-hājj* Askiya Muḥammad.⁴

The number of Timbuktu’s manuscripts modern scholars worked represent not even a fraction of Timbuktu’s manuscript materials, purported to be between one and three hundred thousand manuscripts. Of this number, the Aḥmad Bāba Collection holds thirty thousand manuscripts currently. Having showed that *fatwās* are a historical source, this thesis suggests that intra-‘*ulamā*’ correspondance, letters between scholars and ordinary people, manumission notes, estate inventories, and documents of sale deeds are all potential sources for Timbuktu’s history from below.

³ Hunwick, J. 1985. *Sharī‘ah in Songhay: the replies of al-Maghili to the questions of Askiya al-Hajj Muhammad*. London: Oxford University Press. Also see, Last, M. 1987. Review article, ‘Sharī‘ah in Songhay: the replies of al-Maghili to the questions of Askiya al-Hajj Muhammad; Islam, Christianity and African identity’, *Canadian journal of African studies*, 21 (1), 118-120.

⁴ Hale, T.A. 1990. *Scribe, griot, novelist: native interpreters of the Songhay Empire*. Gainesville: University of Florida Press

In other words, other than chronicles and *fatwās*, all these are a source for the celebrated city's social history, but also its political and intellectual history. Thus this thesis filled a particular gap in Timbuktu's historiography. While it acknowledges the importance of the city's history as described in its foremost chronicles and appreciates the analyses of modern scholarship it introduced an additional but clearly absent and long lacking niche in the existing historiography and other areas of scholarship. I am confident that I successfully highlighted and told women's stories as well as that of learned men in this thesis in their everyday life. My hope is that this will stir the interests of contemporary and future historians and other scholars to contribute to Timbuktu studies in ways not done before. But if it only whets their appetite, my contribution would have been worth it and no more even, if it whets the literature of Timbuktu's histo

To be sure, this study does not suggest that work on Timbuktu's foremost and famous *tarīkhs* have been exhausted. If anything, the *tarīkhs* can and must be re-read and re-cited from many other angles. Thus, a much needed approach is a comparative reading between the different *tarīkhs* of the same and different epochs. For example, a comparative reading of the *Tarīkh al-Sūdān* and *Tarīkh al-fattāsh* may lead historians to ask and suggest why the latter was open to manipulation while the former not. Likewise, a conversation between the twentieth-century *Kitāb al-turjumān* and the *Tarīkh al-Sūdān* will show interesting findings. Bruce Hall has already, although in passing only, pointed out the discrepancies in the *Kitāb al-turjumān* when compared for example to the *Tarīkh al-Sūdān*. The discrepancies between the two *tarīkhs* have tremendous implications, for example, for race in the Niger Bend.

This contribution is an attempt at what can only be part of a larger imperative to broaden Timbuktu studies. For one, the region's written heritage, as a source of knowledge and a historical source far outweighs the oral source, unlike many other regions in Africa where the written comes nowhere near oral traditions and archeology. Here and there, between its numerous manuscripts, lurk surprises that provide the social historian with a tremendous amount of information on social practice in Timbuktu. One such unexpected source is a *tarājim* or biographical dictionary of 477 contemporary and past scholars of significance of the region. It contains a number of snippets of social behaviours in Timbuktu during the first half of the twentieth century. It gives space to a social history or folk ethnography of Timbuktu, by detailing what kinds of productive activities its people are involved in. The author chides Timbuktu's people for giving so little attention to agriculture. Instead, he laments that they are a people, in his words, of industry (*ṣinā'a*) but he really means crafts such as tailoring, gold- and silver-working, and a general concern with commerce. He writes of their diet: rice, grains, spices, maize, camel milk and dried and fresh fish and refers to their sexual habits - a few of his *fatwās* and letters involved descriptions of marital conflicts as we saw in Chapter Two, Three and Four. The ostentatious behavior of some of the wealthy is demonstrated. One such person, whom the author calls an insolent fellow, spent the equivalent of six hundred Francs in one night and prepared no less than thirty types of food including an alcoholic beverage. But he also speaks of Timbuktu's people's love for the scholars and the descendants of Prophet Muḥammad. He mentions by name one person who gives prolific charity, is a philanthropist and had undertaken the pilgrimage to Mecca thrice. In short, he offers a large amount of concrete social details and particularly delighted in capturing the variety of everyday practices of the people of Timbuktu. He poignantly ends this detailed discussion in these words, "let us suffice with what we have written thus far, for

if we are to leave our pen to flow, we could easily write a volume or two, but this is not the occasion for that”.

Because the *fatwās* we looked at are from Timbuktu’s colonial era, we wondered whether the social practices we see in them are a result of colonial rule. The settling of people from other parts of the French Soudan and West Africa to Timbuktu, both as permanent and temporary settlers, gave rise to some social practices not present in Timbuktu prior to colonial rule such as the marriage of Muslim women to Christian men. Or it increased the occurrence of phenomena that were found in Timbuktu prior to the arrival of colonial rule such as paternity disputes. The native courts colonial rule established, provided a platform for many of the new settlers not accustomed to Timbuktu’s traditional Islamic legal system to present their personal disputes to.

The intimate domestic disputes the *muftīs* dealt with in their *fatwās* are very similar to the ones we read of in the native court records. Native court records in most cases provide information and detail that *fatwās* have been stripped of by the *muftīs* informed by what they saw as their religious duty to guide the believers. An archival study that needs to be undertaken is of the same domestic disputes that were addressed in both *fatwās* as well as the native courts. The approach, arguments, details, and conclusions of the two legal systems of a same case will reveal differences which will be of significant value for social historian.

Except for the works of two White Fathers of the Catholic mission, of a French colonial intelligence officer during the early years of colonial rule and anthropological work during the 1940s, no other significant ethnographic work has been carried out. To the best of my

knowledge, no history from below using oral testimonies as a source has been attempted. If my mention and appraisal of modern scholars' work on Timbuktu's manuscripts here, as in the Introduction of this thesis, seem like a review of literature of sorts, it is to show that modern studies of Timbuktu thus far, although significant in itself, is miniscule and not encompassing of Timbuktu's intellectual heritage.

Finally, this thesis hopefully contributed to the study of history from below in Timbuktu. It makes no water-tight claims. After all, this thesis used a maximum of thirty *fatwās* out of hundreds of colonial-era *fatwās*; and *fatwās* are characterized by a stripping of information. As we stated clearly more than once, further research involving oral history, ethnography and archival research must be ongoing. Its real hope lies in the questions and interests it raised through the stories it imagined and reconstructed, kept in check by the voices of common folk in the sources. In as far as it attempted to give a voice to ordinary people in their everyday life, it, of course, imposed order and created narratives out of written material. My hope is that I also listened to the silences in Timbuktu's written sources. For, in the words of Elizabeth Isichei, "oral and written sources sometimes speak most eloquently in their silences".⁵ The only thing we are sure of is that Timbuktu is not famous merely for being famous, but is really famous by virtue of its written intellectual heritage.

⁵ Isichei, E. 1997. *A history of African societies to 1870*. Cambridge: Cambridge University Press, pg. 17

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I – Archival and Oral Sources:

(Specific documents, reference numbers and series are in the notes)

Archives:

ANM: Archives nationales du Mali, Bamako, Mali

ART: Archives, Région de Tombouctou, Timbuktu, Mali

CADN-AOF: Centre des Archives Diplomatiques de Nantes, Afrique Occidentales Française, Dakar, Senegal

IHERI-AB: Institute Haute Etude et Recherche Islamique Ahmad Baba, Timbuktu, Mali

BCMh Bibliothèque Commémorative Mammā Haïdara (Mammā Haïdara Memorial Library), Timbuktu, Mali

Interviews:

(Specific interviews, locations and dates are in the footnotes)

II – Published archival source

Six volume handlist of manuscripts in the Institute Haute Etude et Recherche Islamique; each volume compiled and edited by different people between 1994 and 1998 (published by the al-Furqān Foundation, London)

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Appendixes (After page 279)

1. *Fatwā* (ms 354, Mamma Haïdara): Chapter One
2. *Colonial record* (Archive National du Mali): Chapter One
3. *Fatwā* (ms 4347, IHERI-AB): Chapter Two
4. *Fatwā* (ms 5064, IHERI-AB): Chapter Three
5. *Fatwā* (ms 5203, IHERI-AB): Chapter Four
6. *Fatwā* (private collection of Hamou): Chapter Five
7. *Fatwā* (ms 5219, IHERI-AB): Chapter Five

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى سَيِّدِنَا مُحَمَّدٍ وَآلِهِ وَصَحْبِهِ وَسَلَّمَ
الْحَمْدُ لِلَّهِ الَّذِي جَعَلَ لَهُ دِينَهُ حِمَاةً وَأَنْهَارًا وَأُولَى سَمْعِ الْقَفْرِ بَعْدَ الْجَمْدِ
بِ كَيْفِ فِرْعَوْنَ مَضَارِ شِصَانِ وَالْحَيَاءِ دِينَهُ نَوْرًا وَجِبْرَهُ هَانَا وَبَشْعَانِ
الْإِسْلَامِ عَمْدَةً وَأَرْكَانًا وَالْقَدَلَةَ وَالنُّطْلَاحَ عَلَى النَّشْرِ وَاللَّانِيَاءِ
أَعْمَاءُ وَعَرُوبَانَا وَأَرْجَحَ الْكُرْأِيَانَا وَأَيْفَانَا وَأَخْرَجَهُمْ حَسْبًا
وَأَوْكَلَانَا وَعَلَى آلِهِ وَصَحْبِهِ الَّذِينَ كَانُوا لِلدِّينِ اللَّهُ أَرْكَانًا
وَبِنُ هَانَا وَبَعْدُ رَجَعِ الْبِنَاءُ فِتْوَى أَيْتِي بِهِ الْعَفْهِ الْعَفْهِ
السَّيِّدِ أَعْلَى بِرِ السَّيِّدِ عَمْرٍ فَاضِ أَرْوَانِ فِي وَسْخِ نَكَاحِ رَجُلٍ
وَأَمْرًا كَانَا مَفْرُوقًا وَمَتَصَادِفِيًّا نَهْمَا الْخَوَارِجِ وَالْإِضَاعِ
وَمَكْتَابِ عَلَى ذَلِكَ مَدَّةً كَمَا هُوَ يَلْتَمَسُ حَتَّى يَنْتَهَى إِلَيْهَا مِنْهَا
لِكُلِّ أَحَدٍ مَرَاتِلُ الْفَرْيَةِ وَمَرْضَعَتُهُمَا حَاطَرَةٌ تَقْدِيرُهَا
عَلَى ذَلِكَ فِي تِلْكَ الْمَدَّةِ كُلِّهَا وَالْحَالُ أَنَّ الْمَرْأَةَ تَحْتَ زَوْجٍ
وَالرَّجُلُ يَخُذُ عَلَيْهَا وَيُخْرِجُ عَلَى أَنَّهُ إِخْوَةٌ فِي ذَلِكَ
كَلِمَةُ أَنْفَالِ الْفَرْيَةِ فَالْمَبْنِيَّةُ يَعْلَمُونَ عَشْرَةَ لَهَا عَيْنٌ زَوْجُهَا
وَمَا لَا يَكْتُمُ أَرْبَابُ بَيْنَهُمَا الْعَشْرُ وَالْأَعْلَى النَّوْجُ وَعَلَى
ذَلِكَ كَلِمَةُ لَا يَكْتُمُ أَحَدٌ فِي أَمْرِهَا إِلَّا فَالَهُ أَنَّهُ إِخْوَةٌ
مِنَ الْإِضَاعِ ثُمَّ أَنَّ النَّوْجَ نَوْتَقْمُ شَيْءٌ مَرَّةً كَمَا وَكَلِمَةُ
الْمَرْأَةِ فِي مَكْتَابِهَا عَلَى حَالِهَا مَرَادُ عِلْمِ الْإِخْوَةِ
ثُمَّ أَنَّهُمْ أَنْتَفَلُوا مِنَ الْمَجْرَمِيَّةِ وَأَنْتَفَلُوا فِي أَرْبَابِ الْإِضَاعِ

Etat des jugements rendus en matière civile et commerciale par le Tribunal de province de Tombouctou pendant le 2^e trimestre 1909.

Date	Plaintes et Demandes des parties	Exposé sommaire du litige	Décisions intervenues	Filsations des parties au sujet de l'appel
7 avril 1909	Lala Soumar contre Ali Soumi } de Tombouctou	Lala Soumar femme de Ali Soumi, demande le divorce - Motif: son mari la délaisse et va dans de relations sexuelles avec elle - elle a quitté le domicile conjugal - Ali Soumi prétend que sa femme a des amants en ville - Les témoins entendus certifient que de nombreuses disputes avaient lieu dans le mariage ayant pour objet de griefs réciproques.	Le divorce est prononcé - Lala Soumar est en état et garde le pignon qui lui a été assigné.	Pas d'appel
7 avril 09	Fatimata Sarassi contre Moussa Keita } de Tombouctou	Fatimata Sarassi demande le divorce - Motif: son mari la bat et l'insulte - Les témoins entendus attestent que le grief articulé par Fatimata ne peut pas fonder.	Fatimata Sarassi est déboutée de sa demande.	Pas d'appel
17 avril	Badou Diara Coumba contre Alfa Yoro } de Tombouctou	Badou ayant confié son cheval à Alfa Yoro, ce dernier s'en est tenu et l'a égaré - Alfa Yoro offre de lui même d'indemniser Badou.	Alfa Yoro paiera 15 f. d'indemnité à Badou.	Pas d'appel
11 mai	Diamba Soko contre Mahan Keita } de Tombouctou	Diamba Soko demande le divorce - Motif: Marié depuis 16 ans, il n'a pas mesuré l'indigne le montant de sa dot - Mahan Keita reconnaît les faits et offre de payer la dot de suite.	Diamba Soko est déboutée de sa demande.	Pas d'appel
11 mai	Mohaman Diarra contre Badou Ahoussinga } de Tombouctou	Mohaman demande sa part d'héritage de son père que Badou détient et s'élève à environ 250 ⁰⁰ francs - Badou prétend que son fils ayant épousé une fille de son père, il lui en serait tenu compte au partage des biens successoraux.	L'évaluation de la fortune laissa par le père de Mohaman sera faite par le Tribunal de Tombouctou et en vertu de ce, le partage fait devant les notables entre Mohaman et les deux sœurs, la part de Mohaman étant de 250 ⁰⁰ .	Pas d'appel
29 mai	Dia Coulibaly contre Gaba Soumali } de Tombouctou	Dia Coulibaly demande le divorce - Motif: son mari veut la renvoyer et part en voyage est resté 7 mois sans lui envoyer d'argent - Gaba Soumali dit n'avoir jamais voulu renvoyer sa femme, durant son voyage il lui a envoyé du argent - aucun témoin n'est présent.	Dia Coulibaly est déboutée de sa demande.	Pas d'appel.

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ وَالصَّلٰةُ وَالسَّلَامُ
عَلٰی نَبِیِّنَا الْاَمِیْنِ مُحَمَّدٍ وَآلِهِ وَارْحَمَهُمُ الْاَكْرَمِیْنَ
وَمِنْ تَبَعِهِمْ يَا حَسْبُكَ الْیَوْمَ الرَّبِّیْسُ

و بعد فقد سئلت واللہ المستعان عن امرأة
تشتك كثيرا مع زوجها وتخاصمت معه وقالت له

انت علي حرام كما به هل يوشرك كلامها هذا فنكحها
لزوجها وهذا علي الزوج تشاء هو ذلك وهذا

علي المرأة نفسها تشاء هو ذلك **واجبت**
واللہ المستعان انه ليبيت علي الزوج تشاء وكذا

ليبيت علي المرأة تشاء وكلامها هذا يراد بالمرء
ازوج البئر فالمرأة ليبيت لها فخر بغيرها ولا

تحليلها علي زوجها وانما الطلاق والخروج
جعلهما الله بيد الزوج لا بيد الزوجة

لقوله تعالى الرجال جلال عوامون على النساء بما
فضل الله بعضهم على بعض وبما انفقوا من

اموالهم فالمرأة لا يوشرك كلامها في تكليف
نفسها او فخر بمهارة في صورتين ~~في~~

احرامهما ان تنكح بالردة عامة والثالثة
ان تجعل الزوج خلافها بيدها مع ان هذا لا

يخلو منه خلاف **فبايع** والكلام انما يلزم

الجمال ويلبسها المفال باحاديها زوجهها عبد القادر
 بانها لا يمكت والسبع كثيرا وقالت امراته ذات الجمال
 انه قال لها ان مكنت خمسة ^{عشر} يوما في السبع عليك الخير
 وتكليفه نيسر وغيره وقالت الزوجة انها مكنت
 مدة تزيد على ذلك واخذت الفلاني فكلت نيسر
 واخذت يفوله وم يكن على فوله شهود وكذا
 فوله واذا اخذت بذالك بنيسر النيسر كذا
 منها ان ذلك الحرف حيث تلحق لها زوجهها بتكليف
 نيسرها بعد خمسة عشر ^{تقوا} والجمال انها جاهلة لاحكام
 الشرع وقوا بينيه جميع جنسها واهل وفتها
 واعتسلت بعد العدة على عادة اهل بلدها وشاع
 ذلك في القرية ان بلانته اقمته اى اعتسلت بعد
 العدة با تاهما عبد المنع بقره ~~وجها~~ تزوجا حيل
 على مقتضى ما يعر فوج وتزوج هذه المرأة الاولى
 بعد الفاضل وقع في السابع والعشرون من شهر الله
 ربيع الاول من عام الف وثلثمائة واربع وستين
 وتزوج عبد المنع اها وقع في الخامس والعشرين

بسم الله الرحمن الرحيم والحمد لله رب العالمين والصلوة والسلام على نبينا الامير
 محمد وآله واصحابه الاكرمين ومما تتبعهم باحسانه اليوم الذي هذا وان
 نزلت نازلة في هذه الايام في تنبكت وهي ان رجلا اسمه عبد الله بن عبد البر
 تزوج بامرأة اسمها تلمذت في يومها هذا وهو السابع والعشرون من شهر
 الله جمادى الثانية من سنة ١٣٤٧م ووقع العقد بولي الصبي بتبكت
 وهي بكاو والرجل حاضر بتبكت ووصله اكله ووجلت منه واستمر
 معها الى جمادى الاولى فدخل هو وهي بجنة عين متوافقين متواديين
 في سبعة وثمانين التنبكت فولدت منه ذكرا وعمل عادة اه لتبكت
 من شراء اللحم النفساء واستمر ينقصها ويدخل عليها ويخرج وياكل
 ويشرب ووسوس له بعض الوشاة ان الولد ليس منه بدعوى انه ما
 حضره الا في شهر الحجة الملاح فافتت بان الولد ليس ولد
 بدعوى انه لم يدخل بها على قول الزوج دون قول المرأة الا في الخامس
 عشر من شهر الحجة والمرأة وضعت خمد ولدها في الرابع من جمادى الثانية
 ويكون لهذا الولد بحسب الايام ستة اشهر الا عشرة ايام في مدة حمل
 ويكون ايضا له سبعة اشهر بحسب الاهلة كما هو عند كثير من
 العلماء واما التفسير وله ايضا في العام ما يعزم العقد كما هو
 عند جميع العلماء في شروح خليل والرسالة وشروح ابي عاصم
 وكتبت بعض ذلك برفصا واضحا في بعض بقول ان اتت به
 لدون ستة اشهر او لستة اشهر من يوم العقد سواء دخل ام لا
 وقد كررت ذلك مرارا واوضحته ولم يقل كتاب اتت به لستة
 اشهر من يوم الدخول الا اذا كانت المرأة تحاذيه المرار
 شرعيان في فوجيت كتبت ذلك واوضحته او صلته لبعض
 الاخوان من اهل العلم من اتفقوا بدينه بكتب عليه خلاف ما كنت
 الخ منه ومراد ان يكتب عليه ان ما نفلته عن الشرع

منذ علم

Handwritten text in a cursive script, likely a historical document or manuscript. The text is densely packed and covers most of the page.

تتمت

Handwritten text at the bottom of the page, possibly a signature or a concluding note.

6

الحمد لله وحده وعلى الصلاة والسلام على سيدنا محمد وآله وصحبه وسلم تسليما

بعد السلام الى محمد بن ابراهيم نيشر السرازمي ومصباح الايام
العلم العظمى الخاطبة المنقحة ربه الزاهد على قوله هو جبهه اليد
انما ايت كتابك ووجدت خطابك وقد زعمت انه قلت انما محمد
بن النبي هو النها والنع كبريتا وبينك في رزوت على
هذا في خبره كتابك المذکور فارجع الى كتابك لا تجد فيه اسم
محمد بن يار ولا خبره وانا لست من اهل النجف مثل
تعمل بكل ما سمعت والكذاب هو الذي يحدث بكل ما سمع
كما قالت الحكماء او هو حديث والله اعلم بل قلت النها
ولي الحسين احدا ولست على يقين ان ذلك هو اصله
لذا احذ لان احدهم مثل العجل بالحدس والظنون السنية
وتو ان ذلك لا يلا هذا الكلام على تقدير كونه جبهه بالاننا
كنا احباء والكلام بيننا فيه الحسنة والشر ما نسب
ما اجعل لولا اجعل كلامه على خيل ما نعلم ما كان
عقله وكونه من جنس نساء من الناس معهما اما محمد بن
بكار وان لا اظنه انه هو الذي اوهى اليد الكلام لانه ما نرى
والعاقل لا يفعل ما ليس فيه بايدة وان فيه انفة اذ
النس لا تفيل له ذلك لانه فيه غير اطم من الحرقة وهي
انما خواله اولاد يوهندوا ولا يوهند احرا عرب اعلم
ما اولاد دبير ولا يوهندون سباسب الامور مثل
لذات غير غيروا على الناس وفتلور ويجهلون كل
كيسرة وهي دون الفتل ولا كن مثل رقيقات
الامور يشترطون عنها لانه كان احبا الناركية
وقد سمعت في حثه عن فتنايه في بلاد كثير الى هذه
البلاد واخر اسر لانه اعرب في معرفة الامور
والادوية رجه الله ان تنبها في الدين والادوية