**Islamic Jurisprudence and Social Dependency in a Premodern Saharan Oasis Society[[1]](#footnote-1)**

Ismail Warscheid

*CNRS-IRHT*, Paris, France

ismailwarscheid@irht.cnrs.fr

**Abstract**

This paper investigates the role of Islamic jurisprudence in creating and sustaining forms of social dependency in the oases of Tuwāt (present-day southern Algeria). Drawing upon a series of *fatwā*s collections compiled between 1750 and 1850, I examine how Saharan legal scholars reinforced the structural hegemony of local elites and ensured their control over servile and semi-servile groups, particularly the Haratin population. The materials reveal that jurisprudential techniques and arguments were instrumental in fostering practices of subordination, most notably through the defense of exploitative sharecropping arrangements. The tendency of local jurists to uphold individual property rights *de facto* worked in favor of descent groups claiming genealogical and cultural superiority. It significantly contributed to the maintenance of unequal relationships between individuals and social groups in a society profoundly shaped by the trans-Saharan slave trade.

**Key Words**

Islamic Law, Saharan West, Algeria, *fatwā*, Tuwāt, Haratin, *khammāsa*, Saharan manuscripts, precolonial North Africa, Trans-Saharan slavery

From the fifteenth century onwards[[2]](#footnote-2), the oases of Tuwāt in modern-day Algeria emerged as a hub of Muslim scholarship fostering intellectual connections between the Maghrib and the burgeoning *ʿulamāʾ* communities in the Sahel and Sahara. As Tuwātī scholars gained prominence as jurists, teachers, and religious leaders, they contributed to the development of significant literary traditions, especially during the eighteenth and early nineteenth centuries. Their writings offer insights into how the spread of scholarly knowledge influenced social hierarchies and power structures in the oases. This paper contends that the cultivation of *fiqh*, or Islamic jurisprudence, was crucial in establishing and maintaining a discursive and institutional framework for specific forms of social dependency related to trans-Saharan slavery, an institution that was central to the economic and agricultural activity of Tuwāt. Islamic jurisprudence provided a normative grammar that bound the people of the oases together, albeit in a profoundly unequal manner, perpetuating the hegemony of certain social groups in Tuwāt based on notions of genealogical prestige and inherited social status.

Historical research on Muslim scholarly culture in the Sahara has primarily concentrated on the rich textual legacy of the Arabic-speaking populations in Mauritania and northern Mali.[[3]](#footnote-3) Researchers have examined how religious prestige and scholarly knowledge were deployed to exert power and control material resources.[[4]](#footnote-4) Concurrently, they have highlighted the emergence of a culture of juridical reasoning that supported the dissemination of Islamic normative and literacy practices.[[5]](#footnote-5) Through this work, it is now well established that Muslim scholarship and Islamic law played a crucial role in generating the forms of social and political organization that structured life in the great desert before 1900. Within the region’s political landscape, social order largely depended on establishing or challenging power relations. This involved struggles over who could wield influence and by which means, and the constant production of dependencies in terms of resources or services.[[6]](#footnote-6) Cultural paradigms, shaped by the diffusion of Arabo-Islamic civilization across the Sahara since the tenth century, significantly impacted these dynamics. Social hierarchies and classifications mirrored the spread of Islamic genealogy (*ʿilm al-nasab*) and were part of a comprehensive typology that designated specific collective identities.[[7]](#footnote-7) Because such claims entailed the submission of others, they led to pervasive dependency relations in varying degrees and forms in the Saharan West up to the present day. The designation of low status imbedded one within a complex system of servile or semi-servile relations, a system that at its core was rooted in the painful history of the enslavement of West Africans for centuries.[[8]](#footnote-8)

The materials from Tuwāt enable us to broaden the scope of historical studies on pre-1900 Saharan Islam. Most notably, they provide a distinctive vantage point for investigating the specificities of social order in the oases of the northern Sahara and the substantial role Islamic legal institutions played in shaping them. Although located further north, Tuwāt shares several key socio-cultural aspects with the southern fringes of the Sahara, including a social order grounded in various corporate identities determined by cultural and genealogical factors. Moreover, the shadow of trans-Saharan slavery looms large over the production of relationships of inequality between individuals and social groups. This paper explores the role of Islamic jurisprudence within such a system of hierarchical classifications and examines its impact on political and economic life in the oases. Our focus is on the jurisprudential techniques and arguments employed by local scholars to sustain practices of subordination, most importantly through the vigorous defense of exploitative sharecropping arrangements. While this paper may occasionally seem to adopt a domination approach to social relations, its aim lies elsewhere. We strive to comprehend how the production of social dependency was articulated through a sophisticated legal discourse that skillfully navigated between mechanisms of inclusion and exclusion.

**Muslim Scholarship in Tuwāt**

Located at the convergence of several major trans-Saharan trade routes, the oases of Tuwāt[[9]](#footnote-9) have served as a hub for exchanges between North and West Africa since at least the fourteenth century.[[10]](#footnote-10) The development of Muslim scholarship in Tuwāt also mirrors this history of Trans-Saharan mobility and commerce. According to local and external sources, the earliest scholars were immigrants from the northern Maghrib who arrived in the region during the fifteenth and sixteenth centuries.[[11]](#footnote-11) Some of these scholars permanently settled in the various oasis villages, called *qṣūr* (sg. *qaṣr*) or “castles” in dialectal Arabic because of their fortified structures. Others ventured further south to the Sahel, where several, most notably the Tlemcenian scholar ʿAbd al-Karīm al-Maghīlī (d. 909/1504), rose to prominence within West Africa’s emerging Muslim communities.[[12]](#footnote-12) From the seventeenth century onwards, northern emigrants are less frequently mentioned in records, as a handful of local families began to dominate intellectual and religious life in the oases.[[13]](#footnote-13) Nevertheless, these families were deeply involved in trans-Saharan cultural and economic networks, including the pilgrimage traffic to the east. Alongside nurturing scholarly connections across the desert, they also engaged in caravan trade ventures between the Maghrib, Egypt, and the Sahel. Interactions with neighboring regions and distant places were indeed crucial for sustaining the complex web of property and power relations within Tuwāt, allowing for investment in the resources vital for oasis agriculture: land, water, and labor.[[14]](#footnote-14)

Intellectual life in the oases appears to have been particularly dynamic between the late seventeenth and the early nineteenth centuries, as most local authors whose works now exist as manuscripts in the region’s numerous private libraries (*khizāna*, pl. *khazāʾin*) lived during this period.[[15]](#footnote-15) Their works encompass the full range of scholarly writing in the Islamic West, including chronicles, biographical dictionaries, hagiographies, travelogues, treatises, commentaries, *fatwā*s collections, and poetry.[[16]](#footnote-16) It is not surprising that the growing body of publications by Algerian researchers on these texts characterizes the period as the “golden era” of Tuwātī culture.[[17]](#footnote-17) What is undoubtedly remarkable is the extent to which jurisprudential reasoning became a vehicle for scholarly expression. As in other parts of the Sahara and the Maghrib, significant effort was dedicated to compiling case collections (*nawāzil*), which assembled *fatwā*s, rulings, or correspondences of local jurists.[[18]](#footnote-18)

Between 1700 and 1850, three principal compilations came into existence, along with several smaller collections and single *fatwā*s on specific topics.[[19]](#footnote-19) The texts examined in this paper stem from these compilations.[[20]](#footnote-20) We rely on the *Nawāzil* attributed to ʿAbd al-Raḥmān al-Jantūrī (d. 1160/1747),[[21]](#footnote-21) those of Muḥammad al-ʿĀlim al-Zajlāwī (fl. 1700-1750),[[22]](#footnote-22) the *Ghāyat al-amānī fī ajwibat Abī Zayd al-Tinilānī*[[23]](#footnote-23)dedicated to the jurisprudence of ʿAbd al-Raḥmān b. ʿUmar Tinilānī (d. 1189/1775), and the extensive *Ghunyat al-muqtaṣid al-sāʾil fī mā waqaʿa fī Tuwāt min al-qaḍāyā wa-l-masāʾil*, compiled by Muḥammad al-Ḥājj b. ʿAbd al-Raḥmān al-Balbālī (d. 1244/1828) and his son and successor ʿAbd al-ʿAzīz (d. 1261/1845).[[24]](#footnote-24) Furthermore, in the second part of our paper, we draw on a long single *fatwā* on sharecropping contracts written by Muḥammad b. Ubba al-Muzammirī (d. 1160/1747).[[25]](#footnote-25)

The materials in these compilations are closely related to the development of institutional structures for Islamic adjudication within the oases. The growth of Muslim scholarship since the fifteenth century fostered the development of a dense regional network of “legal service providers”, as Ghislaine Lydon aptly calls them, with Muslim scholars assuming the roles of *qāḍī*s and *muftī*s in the various oasis villages.[[26]](#footnote-26) During the eighteenth and nineteenth centuries, some *qāḍī*s even received formal investiture letters as *qāḍī al-jamā*ʿ*a*[[27]](#footnote-27)from the Moroccan Alawite sultans, who exerted a loose sovereignty over the region. However, such institutional roles must be viewed as participating in a larger system of alliances and competition among Tuwāt’s scholarly families. Local scholars were indeed intricately connected to each other through marital ties, master-disciple relationships, and shared economic interests as landowners and caravan trade entrepreneurs.[[28]](#footnote-28)

In the mid-eighteenth century, the *qāḍī al-jamāʿa* ʿAbd al-Ḥaqq al-Bakrī (d. 1210/1796) established a formal deliberative council called *shūrā*, in which the leading jurists of the oases discussed legal cases and questions. While the council’s formation harkens back to institutional models from the days of *al-Andalus*,[[29]](#footnote-29) it reveals the alliance between two influential local families, the al-Bakrī-s and the al-Tinilānī-s. The leader of the latter, ʿAbd al-Raḥmān b. ʿUmar al-Tinilānī (d. 1189/1775), appears to have been the principal *muftī* in the oases. Many of the *shūrā* council’s deliberations later found their way into the *Ghunya* collection, which reflects the rise of another local family, the al-Balbālī-s. In the early nineteenth century, the *Ghunya*’s initial compiler, Muḥammad al-Ḥājj b. ʿAbd al-Raḥmān al-Balbālī, became *qāḍī al-jamā*ʿ*a* and began assembling various materials related to legal practice in the oases, thereby laying the groundwork for what would become the *Ghunya*. In short, involvement in legal scholarship was integral to the power structures investigated in this paper.

In contrast to the recent proliferation of Arabic publications on Tuwāt’s contribution to Algeria’s national cultural heritage (*turāth*), research in European languages has largely overlooked the history of Muslim scholarship in the oases. Authored by geographers and anthropologists, most studies approach the region’s past from the perspective of its contemporary social and economic structures. A considerable body of literature exists, for example, on the development of palm plantations, small-scale crop farming, and Tuwāt’s irrigation system, which relies on subterranean canals known as *foggāra* in the local dialect.[[30]](#footnote-30) These studies only indirectly engage with the abundant manuscript materials found in nearly all oasis villages, and their analytical approach appears to be profoundly influenced by the legacy of colonial ethnography.

In a series of papers published in the 1970s, Gilbert Grandguillaume offers a cursory exploration of the *Ghunya* compilation, which he primarily interprets through the lens of a dichotomous struggle between customary law and Islamic law in the oases, a classic theme of French colonial studies on rural societies in North Africa.[[31]](#footnote-31) On the other hand, the only comprehensive historical study available on the region, Rachid Bellil’s *Les oasis du Gourara*, relies almost exclusively on oral narratives collected from local *zanātīya*-speaking communities and the works of colonial administrators and military officers, such as A.G.P. Martin.[[32]](#footnote-32) Despite the study’s merits in documenting Gourara’s rich *zanātīya* traditions, the lack of interest in the region’s intellectual history results in a portrayal that presents local Islamic culture, once again, as the exclusive domain of charismatic and illiterate ‘saints’.[[33]](#footnote-33)

In her recent work on Tuwāt’s role in twentieth-century trans-Saharan mobility networks, anthropologist Judith Scheele develops a more sophisticated approach to the local traditions of Muslim scholarship. By combining fieldwork observations with the analysis of French administrative reports and Arabic documents, including some pre-1900 *fatwā*s, Scheele identifies the resort to Islamic law and literacy as a critical element in how oasis communities organized their interactions with the broader Saharan world. Islamic cultural and normative models furnished the necessary tools for shaping commercial interactions with external actors, upon which the local economy heavily depended. More fundamentally, they provided an “idiom of civilization, […], thereby inscribing local society with all its conscious and unconscious shortcomings into a larger and unquestionable scheme of order and legitimacy […]”.[[34]](#footnote-34) Adherence to Islamic intellectual and legal culture was not without tension. However, such “tensions do not arise between different legal ‘systems’ and their representatives, rather within the same institutions, and mainly result from practical contradictions between individual property rights and collective responsibilities, between attempts at municipal containment and necessary reliance on outside funds and prestige, without ever questioning the validity of the overarching Islamic framework as such.”[[35]](#footnote-35)

Scheele’s observations on Islamic legal culture in the twentieth century lead us to the main argument presented in this paper. Through the various texts preserved in the *nawāzil* collections, it becomes apparent that Muslim scholarship and Islamic law provided a sort of working language for the institutions and agents that shaped and framed social interactions within the oasis communities during the eighteenth and early nineteenth centuries. The influence of this working language, its power to secure the hegemony of local elites and endorse communal hierarchies, stemmed from its ability to offer concrete normative and institutional models for social ordering. In pre-1900 Tuwāt, it was what Niklas Luhmann called *das* *Recht der Gesellschaft*.[[36]](#footnote-36) However, to fully comprehend the operative modes of the “Islamic framework” highlighted by Scheele, we need a more precise understanding of the dynamics generated by Muslim scholars’ intellectual and institutional work. These dynamics do not represent the unidirectional transposition of external scriptural norms to local contexts. Instead, they express the unfolding of scholarly knowledge in its various forms within society, among different groups and actors, under varying circumstances, and inseparable from practices of subordination and unequal power relations.

**A Premodern Oasis Society and Its Leaders**

Geographical and anthropological studies have consistently emphasized the impact of status and hierarchy on social and economic relations within the Tuwāt region. Living in a *qṣar* community was tantamount to being affiliated with a descent group[[37]](#footnote-37) invested with a specific genealogical and cultural status. More precisely, those with the power to enforce such classifications sought to differentiate themselves from those who lacked it. Let us first consider the descent groups whose members dominated social and political life in Tuwāt until at least the French colonial conquest in 1900.[[38]](#footnote-38)

In local vernacular Arabic, the term *mrābṭīn* refers to those who identified themselves as a religious notability, with their prominent figures and ancestors specializing in disseminating Islamic knowledge and culture. On the other hand, the *shurafāʾ* are families who claim to be descendants of the Prophet Muhammad, forming the second type of descent group within Tuwāt’s population, among whom power was concentrated. One may wonder why we distinguish between the two, as most historical and anthropological studies on the Maghrib consider them largely overlapping versions of the charismatic “saint” acting as a mediator between social groups.[[39]](#footnote-39) A comprehensive analysis of the question falls beyond the scope of this paper.[[40]](#footnote-40) However, a few observations warrant mention. In the historical records from the eighteenth and nineteenth centuries, *shurafāʾ* and *mrābṭīn* families, in Tuwāt at least, appear to have pursued distinct ways of construing their social prestige. Among the *mrābṭīn*, we observe an ostensible claim of religious and scholarly excellence.[[41]](#footnote-41) For instance, all the scholars in the mentioned eighteenth-century *shūrā* council have a *mrābṭīn* background.[[42]](#footnote-42) Similarly, the institution of the *zāwiya* as the principal framework for Islamic knowledge transmission is primarily associated with *mrābṭīn* descent groups.[[43]](#footnote-43) In short, Muslim scholarship and religious zeal seem to have been foremost a *mrābṭīn* affair, distinct from the genealogical privilege of being a *sharīf*.

What, then, was the *shurafāʾ*’s place in Tuwāt’s society? Reading through the sources, especially the *nawāzil* collections, reveals several surprises. Although there are accounts of *shurafāʾ* mediating between descent groups in a Gellnerian manner,[[44]](#footnote-44) the overall impression is quite different. Most *shurafāʾ* families do not appear as religious intermediaries, but rather as notables vying for control of local politics. Admittedly, *shurafāʾ* and *mrābṭīn* families shared similarities regarding their socioeconomic resources, as both derived their income from caravan trading and land ownership. However, local texts strongly suggest that most *shurafāʾ* families, or their leaders, conducted their affairs without staging scholarship as a way of life. In fact, they often resorted to force and violence to assert their interests, as illustrated by the following example: In a lawsuit presided over by the *qāḍī al-jamāʿa* ʿAbd al-Ḥaqq al-Bakrī in Tamentit, one party was unable to present its witnesses in court due to their fears of being assaulted (*saṭwa*) by an unnamed *shurafāʾ* group.[[45]](#footnote-45) The evidence from the *nawāzil* further reveals that, for the *shurafāʾ*, competing for influence in the oases involved raiding rivals, plundering their caravans, and destroying their *qṣūr* and palm plantations. Thus, being a *sharīf* meant engaging in Saharan power “politics” (*siyāsa*), a term used, not only in Tuwāt, to account for active involvement in conflicts between descent groups. This is not to suggest that *mrābṭīn* did not participate in such *siyāsa* struggles; however, their involvement was primarily linked to their prestige as guardians of Islamic knowledge and culture.[[46]](#footnote-46) In contrast, members of *shurafāʾ* families were rather among those who sought the services provided by the local scholarly community, particularly in the realm of justice.[[47]](#footnote-47)

These observations bring us to another crucial aspect of power dynamics in Tuwāt before 1900. Existing scholarship emphasizes the region’s historical autonomy, which, according to most authors, amounted to a situation of “statelessness” prior to the French colonial conquest in 1900. Although research acknowledges the Saadian conquest of the oases in 1581, followed by the Alawites in the 1650s[[48]](#footnote-48), the Moroccan sultans’ presence in the oases has been deemed marginal, confined to periodic tax expeditions, and largely disintegrating in the nineteenth century. Regarding the period under scrutiny here, Alawite sultans indeed do appear content with maintaining clientelist relationships with those who wielded power and influence within the otherwise autonomous *qṣūr* communities. The primary goal seems to have been ensuring a basic form of allegiance. On the other hand, these clientelist relationships with the Alawite state apparatus (*makhzan*) played a pivotal role in Tuwāt’s internal affairs. Not only did the *makhzan* routinely send gifts and grant fiscal exemptions, but its support could serve as a powerful source of legitimation for local notables, who, at least in theory, recognized the Alawite dynasty as the region’s legitimate Islamic rulers (*imām*).[[49]](#footnote-49) Some *shurafāʾ* families had even closer ties. Unlike most *shurafāʾ* descent groups in western Algeria and Morocco, they did not claim to be descendants of Idris I. Instead, they traced their genealogy back to al-Ḥasan al-Dākhil, the ancestor of the *shurafāʾ* community in Tafilalt, which gave rise to the Alawite dynasty in the seventeenth century.[[50]](#footnote-50) Unsurprisingly, the Alawite sultans heavily relied on their distant cousins to keep the oases within their sphere of influence.

To sum up, we observe two principal ways through which pre-1900 *Tuwātī* elites articulated their claims to power. Some put forward their alleged genealogical connection to the Prophet of Islam, while others emphasized scholarly learning as a shared heritage and source of social prestige. At the same time, *mrābṭīn* and *shurafāʾ* families cooperatively managed local affairs within the various oasis villages. Their leading figures oversaw the administration of collective resources, supervised the work of local *qāḍīs*, and coordinated relations with “external” powers, namely Saharan pastoral groups and the various expedition corps dispatched by the *makhzan* to collect taxes. The community council institution (*al-jamāʿa*), present in most oasis villages, facilitated this collaboration. It served as a communal space for discussion and negotiation, which the region’s jurisconsults recognized as a formal substitute for the Alawite sultans’ somewhat remote authority.[[51]](#footnote-51) However, the councils’ composition, consisting exclusively of *mrābṭīn* and *shurafāʾ* notables, mirrored the systematic subordination of a significant portion of the oasis population, to which we now turn our attention.

**The Shadow of Trans-Saharan Slavery**

In the oasis societies of the Sahara, the rise of certain descent groups to leadership positions within their communities and their claims to specific social status were mirrored by the existence of individuals who were relegated to permanent subordinate positions for similar reasons. In their case, an inherent lack of ‘nobility’ was believed to justify the domination exerted over them. As one might expect, such subordination mechanisms were intrinsically tied to the issue of trans-Saharan slavery and its enduring consequences. Social anthropologists and historians have dealt in depth with this fundamental aspect of Saharan history, exploring the ways slavery and the definition of one’s ethnic origins affected – and still affect – most social relations.[[52]](#footnote-52) For a long time, the role of Muslim scholarly culture was largely absent from these discussions, but the growing interest in Saharan textual traditions has prompted a significant shift in focus. Researchers now emphasize how Islamic legal culture supplied both a practical and theoretical framework that played a crucial role in shaping the lived experiences of enslaved individuals, formerly enslaved people, and their descendants.[[53]](#footnote-53) Most recently, Rainer Oßwald’s exhaustive study *Sklavenhandel und Sklavenleben zwischen Senegal und Atlas*, based on a thorough examination of *fatwā*s and archival documents, demonstrates that local modalities and consequences of being enslaved closely echoed local readings of Islamic legal texts.[[54]](#footnote-54)

The materials from Tuwāt confirm Oßwald’s findings. For centuries, Tuwāt served as a central hub for the trans-Saharan slave trade, and its population continues to reflect the history of enslavement and deportation of West Africans.[[55]](#footnote-55) The *nawāzil* collections contain numerous cases that shed light on the operational realities of slave trading networks and the living conditions of enslaved people. Legal complaints and inquiries submitted to local jurists in the context of slave trade ventures often address conflicts arising from the failed delivery of enslaved individuals by agents (*wakīl*) or trustees (*amīn*) entrusted with their transportation, or from the leasing of enslaved people to others.[[56]](#footnote-56) During travel, the enslaved person might have gone missing (*mafqūd*), been injured, or, in the case of leasing, the agent may have used them for purposes other than those agreed upon with the owner. For example, we learn about a merchant who had tasked someone with delivering an enslaved person to a creditor in an unspecified distant location to settle an outstanding debt. Years later, upon returning from his pilgrimage to Mecca, he encounters his creditor in Egypt, who promptly claims that the enslaved person never arrived. The merchant eventually concedes and pays his debtor the value of the missing person. However, upon returning to Tuwāt, he sues his former agent for the failed delivery before a local judge.[[57]](#footnote-57) It is worth noting in this context that many of the slave merchants mentioned in the *nawāzil* are explicitly identified as members of *shurafāʾ* families, as the honorific title of *mawlāy* (or *mūlāy* in vernacular Arabic) preceding their names indicates a sharifian background.

 The insights offered by the *nawāzil* become even more valuable when examining the living conditions of servile and semi-servile populations within the oases. The practice of slavery led to the formation of the status category of “slaves” (*ʿabīd*), which included not only enslaved individuals but also those who had been manumitted and their descendants. Most enslaved persons were assigned to perform domestic duties within *mrābṭīn* and *shurafāʾ* households. Regarding enslaved women, the *nawāzil* from Tuwāt and other regions in the Saharan West make it clear that domestic slavery often involved sexual exploitation as concubines.[[58]](#footnote-58) To illustrate this point, we may cite one example among many, which exhibits a clear race-related bias against enslaved individuals that extended beyond the legal question of being free or not.[[59]](#footnote-59) In an inquiry submitted to the jurisconsult and *qāḍī* ʿUmar b. ʿAbd al-Qādir al-Tinilānī (d. 1152/1739), we learn about a man who, on the eve of his wedding, was required by his bride to swear an oath that he would neither take a second wife nor engage in sexual intercourse with “black women” (*kaḥlāt*).[[60]](#footnote-60)

 Agricultural labor was primarily assigned to a distinct category of people with low status and likely sub-Saharan origins who, at least legally speaking, were free: the *ḥarāthīn.*[[61]](#footnote-61) Members of *ḥarāthīn* descent groups predominantly worked for *mrābṭīn* and *shurafāʾ* families who owned the majority of the oases’ agricultural resources and properties.[[62]](#footnote-62) As the second part of this paper will argue, the systematic use of sharecropping contracts served as the primary tool for institutionalizing and perpetuating a structural dependency that bound the *ḥarāthīn* to their employers.

 Readers familiar with servile and semi-servile groups in the southern Sahara may find our presentation of the *ʿabīd* and *ḥarāthīn* surprising. Indeed, while in Mauritania the term *ḥarāthīn* refers to the descendants of former slaves,[[63]](#footnote-63) its discursive use in the northwestern Sahara seems to separate the concept from the institution of slavery. This distinction led colonial ethnographers and others to engage in speculative discussions about the supposed origins of these northern *ḥarāthīn*. Although a comprehensive history of *ḥarāthīn* communities has yet to be written,[[64]](#footnote-64) several anthropological studies have investigated the situation of *ʿabīd* and *ḥarāthīn* in contemporary southern Morocco. These studies describe realities that we can also discern in the eighteenth and early nineteenth century *nawāzil* from Tuwāt.[[65]](#footnote-65) Of particular interest to us is the observation that the reputation of not being a slave descendant paradoxically reinforces the *ḥarāthīn*’s status as social outcasts, something we have also noticed during our research visits to Tuwāt between 2009 and 2018. It appears that *ḥarāthīn* face discrimination and exclusion precisely because they are seen as people without identifiable origins. They neither have been the loyal servants of ‘noble’ families nor “free people” (*aḥrār*) who brought civilization and religion to the oases - the standard narrative of origins among *mrābṭīn* or *shurafāʾ* descent groups. In stark contrast, the close relationships resulting from the domestic work assigned to enslaved people render the *ʿabīd* unfree yet trustworthy members of *mrābṭīn* or *shurafāʾ* households.[[66]](#footnote-66)

 Examining the evidence provided by the *nawāzil* from Tuwāt, we not only encounter historical echoes of these discourses, but more significantly, we gain insight into how they related to specific practices of subordination. We shall begin with an inquiry (*istiftāʾ*) from the early seventeenth century submitted to the *qāḍī al-jamāʿa* ʿAbd al-Karīm b. Aḥmad al-Bakrī (d. 1042/1633), which was later included in the *Ghunya* collection.[[67]](#footnote-67) The inquiry addresses the manumission (*ʿitq*) of an enslaved person by a member of one of Tuwāt’s oldest *mrābṭīn* groups, the al-ʿAṣnūnī-s[[68]](#footnote-68). The *istiftāʾ* reads as follows:

“He was asked about the legal problem (*masʾala*) [that arose when] Muḥammad al-ʿAṣnūnī manumitted his servant (*waṣīf*) Abū-l-Khayr. [From that point on], he held no longer any rights over him except those connected to the institution of patronage (*walāʾ*). Both parties agreed that courteous relations (*iḥsān*) would prevail between them and that the former master and his children would provide (*yakfilu* or *yukafillu*) for the servant’s children within the masters’ household (*bi-diyār al-sādāt*). Abū-l-Khayr was to send them three of his children in the customary way (*ʿalā wajh al-maʿrūf*). However, after this, the servant’s wife protested (*qāmat*)[[69]](#footnote-69) and took away her daughter, who was among the three [children]. This led to the former master also protesting, demanding the return of the girl for whom he was supposed to provide. What is the appropriate ruling (*ḥukm*) to be applied in this case?”[[70]](#footnote-70)

The *istiftā*ʾencapsulates the profound ambiguity characterizing servile and semi-servile relations in the pre-1900 Saharan West. It illustrates how formerly enslaved people remained tied to *mrābṭīn* or *shurafāʾ* families over generations as part of an unequal alliance. The narrative, evoking “courteous relations” and “providing”, employs euphemistic terms to describe a *de facto* situation of dependency that did not end with Abū-l-Khayr’s manumission. On the contrary, he and his descendants were expected to comply with a custom that required them to provide domestic servants for the former master’s family. The *muftī*’s assessment of the case presents the matter even more unequivocally while offering legal caution to the practice. ʿAbd al-Karīm b. Aḥmad al-Bakrī adduces evidence in form of two quotes from the founding figures of the Mālikī school. He takes the first from Saḥnūn’s *Mudawwana* and the second from a statement by Mālik himself, reported by his student ʿAbd Allāh b. Nāfiʿ (d. 206/822), although the source remains unspecified. The two quotes attest to the right of a man to give his daughter (*ibna*) as a gift (*hiba*) to another person, provided that the transaction implies no sexual relations and only aims at ensuring the child’s upbringing (*ḥaḍāna*). In such a case, according to Saḥnūn, “her mother has no right to object” (*lā qawl li-ummihā*).

The *nawāzil* collections enable us to discern similar patterns of subordination concerning the *ḥarāthīn* population, with the difference that interaction primarily occurred outside the household. A *fatwā* issued by the eighteenth-century scholar from the oasis of Zaglou, Muḥammad al-ʿĀlim al-Zajlāwī, may illustrate this point. al-Zajlāwī discusses the case of a *ḥarthānī* man who, unable to repay his debts, is compelled to perform agricultural work for his creditors. Again, the *muftī* sanctions local practice:

“Indeed, labor is obligatory for him because it is the only way they [the *ḥarāthīn*] may participate in commercial transactions in our country. Nobody would do business with them if they did not have their labor to sell. They would become a burden for the Muslim community.”[[71]](#footnote-71)

The mobilization of *ḥarthānī* labor in the agricultural sector relied on the widespread use of sharecropping agreements, most notably the local version of the North African *khammāsa* contract.[[72]](#footnote-72) As the contract’s name indicates, the sharecropper (*khammās*) was formally supposed to receive one-fifth of the crops from the property owner in exchange for his work. In practice, however, the *khammāsa* was a generic term that referred to a much more complex institution, perpetuating dependency relations between landowning and sharecropping groups across generations. Its details could vary from region to region, combining *fiqh* elements and customary norms.[[73]](#footnote-73) In Tuwāt, the *khammāsa* was not only the principal tool for employing the *ḥarāthīn*, but also a means of maintaining tight and constant pressure over them.

 **“Because of their Vicious Way of Living”**

In the *Ghunya* collection, we learn about the “custom and usage (*al-ʿurf wa-l-ʿāda*) prevailing in this country” which obliges sharecroppers indebted to their landowners to remain under the *khammāsa* contract until their debts are repaid.[[74]](#footnote-74) The practice is not surprising: anthropological and sociological research conducted in various North African contexts has emphasized the critical role of credit in transforming the *khammāsa* and other tenancy agreements into powerful tools for establishing and sustaining social dependencies.[[75]](#footnote-75) In fact, it was highly improbable for sharecroppers to liberate themselves from such contracted debts. As a result, clientelist relationships developed and endured across generations. For Tuwāt, Scheele’s observes that “debts […] pervaded all aspects of oasis life, and bound even the smallest farmer or *khammas* [sic] into monetary relations that circumscribed him firmly within regional patterns of interdependency and exchange.”[[76]](#footnote-76) From this perspective, the mentioned case in the *Ghunya* warrants further comments. It addresses the “legal problem of interaction between the owner of a palm-garden and the sharecropper” (*mas*ʾ*alat mu*ʿ*āmalat rabb al-janān wa-khammās*), thus categorizing it as “an issue that has arisen out of a history of debate and may still be debated, if there are willing adversaries,” as Bernard Weiss defines the term *mas*ʾ*ala*.[[77]](#footnote-77) In other words, Tuwāt’s scholarly community held differing opinions on the subject.

Unfortunately, the *istiftā*ʾ offers limited information on how the debate emerged. A specific local conflict may well have been the reason, as the *istiftā*ʾ begins by mentioning “a man who has become another man’s *khammās* and close companion (*wa-khālaṭa bi-mukhālaṭa*)”[[78]](#footnote-78), but this could also serve as a suitable, fictitious entry for discussing legal theory in the casuistic style of Mālikī *fatwā*s collections. Furthermore, the questioner’s identity remains unknown. Be this as it may, the compiler records the responses of two jurists who were both prominent figures in the local scholarly milieu. First, he quotes *qāḍī al-jamā*ʿ*a* ʿAbd al-Ḥaqq al-Bakrī. For the *qāḍī*, the matter is clear: “Considering that custom and usage operate as you have recounted, they must be endorsed and relied upon (*yuḥkam bihi wa-yuʾawwal* ʿ*alayhi*). Moreover, indebted individuals only take the exceeding amount [of their share] after the palm garden’s owner debt has become due, as is customary.”[[79]](#footnote-79)

The second jurist, ʿAbd al-Raḥmān b. ʿUmar al-Tinilānī, disputes this view.[[80]](#footnote-80) He denies any compelling normative force to the custom, as it contradicts the “apparent meaning of the noble Quran” (*li-ẓāhir al-qur*ʾ*ān al-karīm*), citing Sura 2 verse 280, which calls for a lenient attitude towards indebted individuals. al-Tinilānī further explains that the “custom results in maintaining the debtor in a state of perpetual indebtedness, and there is no authoritative statement to support this.” Additionally, the *muftī* contends that the disagreement only pertains to the categorization of the sharecropper’s lease (*istījārihi*) and the companionship (*mulāzama*)[[81]](#footnote-81) tying him to the landowner. The authoritative position within the Mālikī school (*al-mashhūr*) rejects the former as a valid legal institution, and agreement (*ittifāq*) exists to adopt the same position in the case of the *mulāzama*. In any case, the *qāḍī*’s initial answer “does not align with the question” (*bi-ghayr muṭābaq al-suʾāl*).[[82]](#footnote-82)

al-Tinilānī’s critique of the local custom recalls the controversies among Māliki jurists concerning the status of the *khammāsa* contract.[[83]](#footnote-83) The *khammāsa* violated several fundamental principles of Islamic contract law, most notably the obligatory definition of costs and benefits for each party when concluding the transaction, as the exact amount of the one-fifth the sharecropper was to receive from the crop could only be estimated. The various customary regulations to which the notion of “companionship” alludes were a further source of concern for the jurists. On the other hand, the *qāḍī*’s endorsement of the practice reflects the pragmatic approach adopted by many Mālikī jurists, who accepted the *khammāsa* as a societal necessity despite its legal shortcomings.

As is often the case when drawing upon evidence from *fatwā*s collections, the subsequent development of the debate remains unknown. Nevertheless, the two opposing perspectives exemplify the inherent tension within the Law as an institution that seeks to reinforce forms of social order while simultaneously providing an avenue for questioning them. Yet most local jurists seem resolute in their support for enforcing subordination mechanisms such as the *khammāsa*. Some even display an open bias against *khammāsa* sharecroppers, who, it is important to note again, predominantly belonged to the *ḥarthānī* population.

A lengthy fatwa of the eighteenth-century jurist Muḥammad b. Ubba al-Muzammirī (d. 1160/1747)[[84]](#footnote-84) allows us to have a closer look. The text, entitled *Taḥliyat al-qarṭās bi-l-kalām ʿalā masʾala taḍmīn al-khammās*[[85]](#footnote-85)*,* responds to an inquiry from another prominent local jurist, ʿUmar b. Muḥammad al-Raqqādī al-Kuntī. The latter belonged to a branch of the Saharan Kunta confederation that settled in southern Tuwāt during the seventeenth century and produced several influential scholars, whose activities contributed to the establishment of the *qṣar*, Zawiyet Kounta.[[86]](#footnote-86) al-Muzammirī’s argument is straightforward: a sharecropper is fully liable for any loss in the date crops if the yield turns out to be less than the expected amount based on the estimation of a communal expert (*mā naqaṣa ʿan takhrīṣ al-*ʿ*ārif*).[[87]](#footnote-87) The inquiry specifies that, in such cases, the sharecropper tends to deny any responsibility, attributing the discrepancy to natural causes or a calculation error, while the communal expert accuses the sharecropper of neglecting the palm trees or even stealing the missing portion. Whose testimony prevails?

In his response, al-Muzammirī employs a wide array of legal arguments and engages with numerous jurisprudential debates within the Mālikī tradition to establish the precedence of the communal expert’s assessment over the sharecropper’s defense. Most significantly, he asserts that the sharecropper is not in the defending position (*al-muddaʿa ʿalayhi*) but instead acts as the plaintiff (*al-muddaʿa*), which implies the burden of proof (*al-bayyina*) falls on the sharecropper, and not on the landowner. Another line of reasoning aims to demonstrate that the communal expert’s estimation can be considered evidence, even if the individual lacks the status of an honorable witness (*shāhid ʿadl*). As the only person present with the requisite technical knowledge, the expert’s honorability (*ʿadāla*) is not a precondition for accepting his testimony.[[88]](#footnote-88)

A full analysis of the *muftī*’s argumentation is unfortunately beyond the scope of our discussion. Therefore, we will only focus on how the alleged defective morality of *khammāsa* sharecroppers becomes a legal argument. The *istiftāʾ* mentions that, due to their “vicious way of living” (*min sīratihim al-khabītha*), sharecroppers intentionally set aside parts of the date crops and later claim that the communal expert made a mistake, all to “conceal their insolent doing” (*sitran ʿalā qabīḥ fiʿlihi*). The passage could be viewed as an apt illustration of James Scott’s classic study of indirect resistance among subordinate groups, especially considering the economic vulnerability *khammāsa* sharecroppers faced.[[89]](#footnote-89) The *istiftāʾ* explicitly states that sharecroppers have their “children and animals” consume the diverted dates. Other cases in the *nawāzil* records attest to the extreme poverty of the *ḥarthānī* population, a situation also highlighted by ethnographic research during the colonial period.[[90]](#footnote-90) However, al-Muzammirī disregards any potential motives related to the sharecroppers’ suffering and hunger. Instead, the *istiftāʾ*’s presentation of events leads his thoughts in almost the opposite direction. He argues that a general suspicion of theft (*sarqa*) weighs on the *khammās* and justifies considering him as the plaintiff who must prove that he has not stolen the dates “because if the suspect’s (*muttaham*) general reputation for such acts strengthens the suspicion (*tuhma*), the burden of proof is on him.”[[91]](#footnote-91)

In another section of his response, al-Muzammirī turns the argument of necessity (*al-ḍarūra*) against the *khammās*. He contends that local people – i.e. the *mrābṭīn* and *shurafāʾ* population – have no choice but to rely on the *khammās*’ labor, despite being aware of their “bad manners” and their propensity to “to unjustly and aggressively seize the property of fellow Muslims.” al-Muzammirī also interprets the dubious legality of the *khammāsa* contract in this light, stating, “In our land today, leasing agreements (*ijāra*) with the *khammās* are flawed (*fāsida*). Scholars have only granted an exception (*rukhṣa*) for palm-garden owners because of necessity (*ḍarūra*).”[[92]](#footnote-92) The *muftī* further argues that the sole reason such contracts persist is the *khammās*’ ability to convince people of their claims (*daʿwatahum*). Standard legal conditions of leasing contracts could be applied without causing any harm (*ḍarar*) to the *khammās*. Under these circumstances, he asks, how can any trustworthiness (*amāna*) of the *khammās* be derived from such agreements? While the owner is compelled to conclude them, his partner has the freedom to choose (*fa-l-mālik muḍtarr wa-l-khammās mukhtār*). al-Muzammirī concludes his argument with a moralistic perspective, suggesting that holding the *khammās* accountable for losses would impart a valuable lesson, “which would dispel from his heart for a long time what it has become accustomed to and prevent it from following its passions.”[[93]](#footnote-93)

**The Ambiguities of LegalAgency**

al-Muzammirī’s rebuttal of the *khammās*’ defense raises the question of the extent to which members of *ḥarthānī* families could engage as active participants in the legal sphere. In discussing the issue, our goal is not simply to provide additional evidence for the study of subaltern agency within Islamic legal institutions.[[94]](#footnote-94) Rather, we aim to shed light on the complex interplay between legal exclusion and inclusion, an interplay that in Tuwāt as elsewhere appears to primarily serve the interests of the powerful.

We have encountered ʿAbd al-Raḥmān b. ʿUmar al-Tinilānī as a critic of the *khammāsa* system. In another *fatwā*, he more specifically addresses the *ḥarāthīn*’s legal rights, as guaranteed by their membership in the Muslim community.[[95]](#footnote-95) The inquiry pertains to the frequent raids conducted by Saharan pastoral groups during the eighteenth and nineteenth centuries.[[96]](#footnote-96) One such attack in an unspecified area had caused considerable disarray by mixing up the crops of several individuals. As a result, the testimony of some *ḥarthānī* agricultural workers was needed to determine each person’s property rights. But can their testimony be accepted? al-Tinilānī affirms that it can, provided that the *ḥarthānī* individuals in question are recognized within their community as honorable men (*ʿudūl*) and thus entitled to bear witness.

The *muftī*’s response reveals the interdependency of abstract Islamic concepts and local notions of social status. From a *fiqh* perspective, being *ḥarthānī* has no legal value and, as such, does not determine whether an individual can act as a witness. The sole criterion is the person’s honorability (*ʿadāla*), even though assessing it may involve discussing potential exceptions to the general rule applicable in a specific case. Conversely, the understanding of what constitutes an “honorable” person is heavily influenced by the local community’s shared values and customs.[[97]](#footnote-97) al-Tinilānī’s *fatwā* introduces an additional element to this discussion. If acknowledging honorability were solely a matter of local values, it is unlikely that any *ḥarthānī* in premodern Tuwāt could realistically expect to be admitted as a witness, given the general bias they faced. However, it appears that in this case, al-Tinilānī provided legal justification precisely for accepting the *ḥarāthīn*’s testimony, rather than dismissing it due to local assumptions about their marginality. In other words, when examining the implementation or enforcement of communal values and customs, we must carefully consider the underlying circumstances and the specific convergence of events. Even more importantly, the case highlights the resilience of unequal power relations, as it demonstrates the capacity of elites to establish and adapt the rules of their hegemony. At times, it may have been beneficial to rely on *ḥarāthīn* as witnesses, while in other instances, such as in al-Muzammirī’s *fatwā*, denying any legitimacy to their voices was the favored option.

Admittedly, the argument may appear overly deterministic in the light of studies that highlight the ability of subaltern or marginalized individuals to turn legal devices and institutions into their interest.[[98]](#footnote-98) Scholarship has also rightly stressed that any form of subordination implies, at least to some extent, mutual dependence. al-Muzammirī acknowledges this fundamental aspect of power relations when he deplores the landowners’ need for the *ḥarāthīn* as agricultural workers. Interestingly, however, the *muftī* does so to dismiss the sharecroppers’ claims and reaffirm the authority of those in power. The emphasis on existing social hierarchies is partly an effect of the *nawāzil* genre. We are not dealing with court records or other archival materials on law in action, but with a scholarly discourse reflecting on the application of the law and its conformity to religious ideals and legal doctrines.[[99]](#footnote-99) Exploring how legal practice unfolded locally was part of a much broader narrative on Muslim jurists’ ongoing efforts to establish God’s Law (*iqāmat al-sharʿ*) within their communities, despite varying conditions of time and place. On the other hand, by articulating the relevant beliefs for the justification of power rules,[[100]](#footnote-100) the normative discourse of Muslim scholars significantly contributed to creating and restraining the spaces of agency that subaltern studies have investigated using archival evidence.[[101]](#footnote-101)

To illustrate this last point, we turn again to ʿAbd al-Raḥmān b. ʿUmar al-Tinilānī’s handling of a case in the *Ghunya* compilation. The question revolves around a free woman (*mrāʾ ḥurra*) who became engaged to a client (*mawlā*). The father had likely passed away, as we learn that her brothers refused to act as her marriage guardians (*walī*) because of the disgrace (*maʾarra*) they believed would result from such a union.[[102]](#footnote-102) In contrast, one of her paternal uncles agreed to take on the role and concluded the marriage on her behalf. The question submitted to al-Tinilānī was whether the brothers had the right to request the annulment of such a marriage (*faskh al-nikāḥ*). At first glance, the matter seems clear: “It is the authoritative position within our school (*mashhūr al-madhhab*) that the client is equal to the free-born woman (*al-mawlā kaffʾ li-l-ḥurra*), as stated in the *Mudawwana*, the *Mukhtaṣar*, and other works*.*” Yet, in Islamic jurisprudential reasoning, general principles may be qualified according to circumstances. In this case, al-Tinilānī identifies such a qualification (*tafṣīl*) in a statement by the Ifrīqiyan jurist Abū-l-Ḥasan al-Lakhmī (d. 478/1086) that “corresponds to the contemporary situation in which a free woman’s guardian would face severe disgrace if she married a client. Such a situation could even lead to discord and bloodshed.”[[103]](#footnote-103)

Abū-l-Ḥasan al-Lakhmī maintains that this type of matrimonial union is only conceivable for a poor woman because “the inviolability of noble descent falls with indigence” (*ḥurmat al-nasab maʿa al-faqr sāqiṭa*). Otherwise, both the woman and her parental guardians may reject the marriage. A second opinion, attributed to the later Ifriqiyan jurist, Aḥmad al-Qalshānī (d. 863/1458), makes a similar point. al-Tinilānī specifies that Aḥmad Bābā al-Tinbuktī (d. 1036/1627) transmitted the passage on the grounds of juristic preference (*istiḥsanahu*) without citing his source. The quote distinguishes three basic requirements regarding equity between spouses (*kafāʾa*): what God may claim (i.e. the groom being a Muslim), what the future wife may claim (the absence of any physical or mental disability), and finally, what the woman and her marriage guardians may claim, which is the prevention of disgrace resulting from the groom’s “moral depravity” (*fisq*) or less prestigious genealogy (*naqṣihi nasaban*).

Together, the two quotes establish, in al-Tinilānī’s view, the brothers’ right to request the annulment of the marriage. For him, “in this country”, the potential disgrace for the women’s guardians is evident (*ẓāhir*). He adds another reason that recalls the discussions on the *khammāsa* contract. If the groom is known as a vicious person who engages in cursing and earns his living in a prohibited way due to the unlawful gain (*ribā*) his activities entail - which, strictly speaking, is the case with the *khammāsa* contract - then there is no disagreement (*khilāf*) whatsoever on the fact that the marriage must be declared void. The compiler of the *Ghunya* mentions that a certain Muḥammad b. ʿAbd al-Karīm, whom we unfortunately could not identify, had appended a note below al-Tinilānī’s original *fatwā*. As expected, the second jurist supports al-Tinilānī’s position by providing additional bibliographical references and includes a personal comment on why, in Tuwāt, marriages between nobles and clients are unacceptable: “It is essential to prevent such disgrace in this country. Opening its door would have significant consequences since no client desires more from free people than to marry a *sharīfa*. On the other hand, considering the mentioned quotes […] on disgrace would effectively close the doors to dissension and conflict (*sadd li-abwāb al-fitan wa-l-nizā*ʿ).”[[104]](#footnote-104)

al-Tinilānī’s *fatwā* articulates the sweeping condemnation faced by semi-servile groups in Tuwāt and elsewhere in the northern Sahara as marginalized and disdained outsiders. Although the legal discussion is sophisticated and reflects the nuances of jurisprudential reasoning, its conclusions entail a clear affirmation of how things should be ordered. To be sure, reading between the lines, we perceive how the complexity of actual practices contrasts with the rigidity of discourses on social status and hierarchy. Assuming the case is not fictitious, it tells us about the marriage plans of a woman of probable *shurafāʾ* origin, as the second jurist’s comment suggests, and a client. Not only did the woman agree (*raḍiyat bihi*) to the marriage, but she was also able to mobilize one paternal uncle’s support against her brothers’ refusal. Other cases in the local *nawāzil* compilations, and the materials from Mauritania recently studied by Rainer Oßwald, attest to similar couple relationships in which closeness and affection seem to have transcended genealogical divisions.[[105]](#footnote-105) One could thus argue that the strict normative upholding of hierarchies was also a reaction to the porousness of social boundaries.

Notwithstanding these observations, the determination and intellectual energy that al-Tinilānī and the second jurist have invested in crafting a legally sound argument to prevent or end such transgressions reminds us of the strict limits in overcoming social marginality. Tuwāt’s institutional setting, in which Muslim jurists strove to apply Islamic law as *muftī*s and *qāḍī*s, provided a space where any person invested with legal rights by the *fiqh* could voice their concerns and claims. But the normative evaluation of these concerns and claims closely followed the patterns of social ordering. Islamic law therefore provided local power relations with an efficient tool for “generating the evidence needed for their own legitimation.”[[106]](#footnote-106)

**Conclusion**

In the *nawāzil* of Tuwāt, the subalterns do not speak. Yet, at times,[[107]](#footnote-107) some of their words and actions became crucial objects of normative reasoning over how social relations should be ordered. The elites do not speak either, at least not directly. Although their words and actions are much more visible in the ‘cases’ (*nawāzil*, sg. *nāzila*) that local scholars have recorded for future generations of Muslim jurists, the mentioned principle of normative conceptualization also applies to them. In a way, both are subject to a process of representation.[[108]](#footnote-108) As we have stressed, this representation is technical in that it operates within the discipline of *fiqh*, carefully observing the epistemologies and conventions that made up Islamic legal science in the post-1300 Muslim world.[[109]](#footnote-109) However, a fundamental difference exists: while we can access the *mrābṭīn* scholars’ normative reading of social relations in Tuwāt, we do not know of any influential *ḥarthānī* or *ʿabīd* scholar who engaged in issuing *fatwā*s.[[110]](#footnote-110)

From this perspective, our paper is in line with the sociological analysis of Muslim scholarship in the rural areas of the precolonial Maghrib as developed by Francophone authors in the second half of the twentieth century, such as Jacques Berque, Magali Morsy, Halima Ferhat, Abdel Wedoud Ould Cheikh, Abdellah Hammoudi, or Houari Touati. Scholars and saints formed an elite whose academic and religious activity cannot be separated from their interests as locally engaged economic and political actors. Mastering the *ʿilm* was a precious asset for pursuing and achieving these interests. Conversely, the spaces of agency for subalterns, which especially Islamic legal institutions offered, could do little more than occasionally make the “hidden transcripts” less hidden.[[111]](#footnote-111) In the final analysis, such spaces were under the firm control of local elites who, incidentally, also created them in the first place.

In the light of the preceding discussion, what would be our paper’s contribution besides providing further empirical evidence from the northern Sahara? We hope to have succeeded in demonstrating how the recourse to Islamic law as a framework for conceptualizing power relations manifested itself socially and discursively. Given the significant progress made in research on Saharan Islam and its textual legacy, we believe it is essential to delve deeper into understanding how things functioned on the ground, socially, discursively, and intellectually. The jurisprudential construction of the *ḥarāthīn*’s and other subaltern groups’ marginality both articulates an embeddedness in local assumptions on social status, and the capacity of Tuwātī jurists to engage in compelling legal argumentation. In other words, to account for the social effects of Muslim scholarly knowledge, we must fully grasp the intellectual operations such knowledge generated, not just its societal underpinnings. Reconstructing these operations is not merely a pedantic exercise for old-fashioned philologists; rather, it calls for retrieving the dual nature of Saharan scholarly texts as locally situated expressions of an ongoing engagement with Muslim thought in which academic curiosity and the desire for power sustain each other.

1. I express my gratitude to Matthew Steele for his feedback throughout the various stages of writing this paper. I would also like to extend my appreciation to Nora Barakat and Adam Mestyan for providing the opportunity to present a draft at the 2022 ASLH Annual Meeting in Chicago. Lastly, I am indebted to the anonymous reviewers for their meticulous and constructive evaluation of my manuscript. [↑](#footnote-ref-1)
2. A note on transliteration and dates: I adhere to Brill’s *E.I. 3* transliteration system for classical Arabic in this article. In some cases, I transliterate Arabic terms, such as zwāyā or ṭulba, according to their vernacular form when this seems more suitable for capturing their local meaning. I employ the common-era calendar; only death dates are given in both hijrī and common-era formats. [↑](#footnote-ref-2)
3. Ulrich Rebstock, *Maurische Literaturgeschichte* (Würzburg: Ergon Verlag, 2009), 3 vols, Charles Stewart, *The Writings of Mauritania and the Western Sahara*, compiled with Sidi Ahmed Wuld Ahmed Salim (Leiden: Brill, 2016), 2 vols. [↑](#footnote-ref-3)
4. See most importantly, Rahal Boubrik, *Entre Dieu et la tribu: homme et pouvoir politique en Mauritanie* (Rabat: Publications de la Faculté des lettres et sciences humaines, Université Mohammed V, 2011), Rainer Oßwald, *Die Handelsstädte der Westsahara: die Entwicklung der arabisch-maurischen Kultur von Šinqīṭ, Wādān, Tīšīt und Walāta* (Berlin: D. Reimer, 1986), Yahya Ould-Al-Bara, *Fiqh, société et pouvoir: étude des soucis et préoccupations socio-politiques des théologiens-légistes maures (fuqahā) à partir de leurs consultations juridiques (futāwā), du XVIIe au XXe siècle* (Ph.D. dissertation: Social Anthropology: École des Hautes Études en Sciences Sociales, Paris, 2000), Abdel Wedoud Ould Cheikh, *Nomadisme, Islam et pouvoir dans la société maure précoloniale (XIe siècle – XIXe siècle): essai sur quelques aspects du tribalisme* (Ph.d. dissertation: Sociology: Université Paris Descartes, 1985), Charles Stewart, *Islam and Social Order in Mauritania: A Case Study from the 19th Century* (Oxford: Clarendon Press, 1973). [↑](#footnote-ref-4)
5. Bruce Hall, *A History of Race in Muslim West Africa, 1600-1900* (Cambridge, New York: Cambridge University Press, 2011), Ghislaine Lydon, *On Trans-Saharan Trails: Islamic Law, Trade Networks, and Cross-Cultural Exchange in Nineteenth-Century Western Africa* (Cambridge: Cambridge University Press, 2009), Rainer Oßwald, *Schichtengesellschaft und islamisches Recht: die Zawāyā und Krieger der Westsahara im Spiegel von Rechtsgutachten des 16.-19. Jahrhunderts* (Wiesbaden: Harrassowitz, 1993), Ould-Al-Bara, *Fiqh, société et pouvoir*, Ismail Warscheid, *Droit musulman et société au Sahara prémoderne : la justice islamique dans les oasis du Grand Touat (Algérie) aux XVIIe-XIXe siècles* (Leiden: Brill, 2017). [↑](#footnote-ref-5)
6. For a thoughtful analysis of such power dynamics, see the various works by the French anthropologist Pierre Bonte, most notably his *L’émirat de l’Adrar mauritanien: harîm, competition et protection dans une société tribale saharienne* (Paris: Karthala, 2008). [↑](#footnote-ref-6)
7. Religious groups emerged, claiming social prestige through piety and knowledge, while investing in oasis agriculture and the caravan trade. Such groups were referred to as *zwāyā*, *ṭulba*, or *mrābṭīn* in vernacular Arabic, with the specific term used varying from region to region. Others asserted their descent from the Banū Hilāl and, as fierce desert raiders, sought to uphold their ancestors’ Bedouin ideals. Cf. Ould Cheikh, *Nomadisme, Islam et pouvoir*, Stewart, *Islam and Social Order*. [↑](#footnote-ref-7)
8. Hall, *A History of Race*, Rainer Oßwald, *Sklavenhandel und Sklavenleben zwischen Senegal und Atlas* (Würzburg: Ergon, 2016), Marielle Villasante-de Beauvais (ed.), *Groupes serviles au Sahara: approche comparative à partir du cas des arabophones de Mauritanie* (Paris: Éd. du CNRS, 2000), E. Ann McDougall, “Visions of the Sahara: Negotiating the History and Historiography of Premodern Saharan Slavery”, *Comparative Studies of South Asia, Africa, and the Middle East* 38:2 (2018), 211-29. [↑](#footnote-ref-8)
9. More precisely, the region comprises three main oasis groups: Tuwāt itself, Tidikelt, and Gourara, part of whose inhabitants speak a variant of *Tamazight* called *zanātīya*. [↑](#footnote-ref-9)
10. Judith Scheele, *Smugglers and Saints of the Sahara: Regional Connectivity in the Twentieth Century* (Cambridge: Cambridge University Press, 2012). [↑](#footnote-ref-10)
11. Élise Voguet, “Tlemcen-Touat-Tombouctou: un réseau transsaharien de diffusion du mālikisme (fin VIIIe/XIVe-XIe/XVIIe siècle)”, *Revue des Mondes Musulmans et de la Méditerranée* 141 (2017), 259-79, Warscheid, *Droit musulman et société*, 28-39. [↑](#footnote-ref-11)
12. John Hunwick, *Sharī´a in Songhay: The Replies of al-Maghīlī to the Questions of Askia al-Ḥājj Muḥammad* (Oxford: Oxford University Press, 1985). [↑](#footnote-ref-12)
13. Warscheid, *Droit musulman et société*, 40-48. [↑](#footnote-ref-13)
14. Judith Scheele, “Traders, Saints, and Irrigation: Reflections on Saharan Connectivity”, *Journal of African History* 51:3 (2010), 281-300. [↑](#footnote-ref-14)
15. On manuscripts collections in contemporary Tuwāt, see Judith Scheele, “Coming to Terms with Tradition: Manuscript Conservation in Contemporary Algeria”, in *The Trans-Saharan Book Trade: Manuscript Culture, Arabic Literacy and Intellectual History in Muslim Africa*, ed. Graziano Krätli and Ghislaine Lydon (Leiden: Brill, 2011), 291-318,Élise Voguet, “Travailler sur les manuscrits du Touat: expérience de recherche dans les bibliothèques privées (khizânât) du Sahara algérien”, *Revue de l’HISCA* 8 (2019), 55-65. [↑](#footnote-ref-15)
16. On Islamic scholarly writing in the Saharan West, see Bruce Hall, Charles Stewart, “The Historic “Core Curriculum” and the Book Market in Islamic West Africa”, in Krätli, Lydon, *The Trans-Saharan Book Trade*, 109-174,Rebstock, *Maurische Literaturgeschichte*, Stewart, *The Writings of Mauritania and the Western Sahara*. [↑](#footnote-ref-16)
17. Ismail Warscheid, “Comment écrire un passé qui ne soit ni colonial ni classique ? Le cas du Tuwāt algérien”, in *Après l’Orientalisme: l’Orient crée par l’Orient*, ed. François Pouillon and Jean-Claude Vatin (Paris: Karthala, 2011), 411-424. [↑](#footnote-ref-17)
18. Ismail Warscheid, “*Nawāzil de l’Ouest saharien (XVIIe – XXe siècles): une tradition jurisprudentielle africaine*”, in *Encyclopédie des historiographies: Afriques, Amériques, Asies*, ed. Nathalie Kouamé, Éric P. Meyer and Anne Viguier (Paris: Presse de l’Inalco, 2020), 1272-1281. [↑](#footnote-ref-18)
19. For details, see Warscheid, *Droit musulman et société.* [↑](#footnote-ref-19)
20. I worked exclusively with manuscript copies collected during several research visits to Tuwāt between 2009 and 2018. While I am unaware of any critical editions of these texts, it is likely that meanwhile some editions have been published. A selection of nawāzil from Tuwāt was digitized between 2014 and 2017 as part of the French ANR-funded project Le Touat à la croisée des routes sahariennes (XIIIe-XVIIIe siècles) led by Élise Voguet (CNRS-IRHT). For more information on the project, see <https://touat.fr>. [↑](#footnote-ref-20)
21. ʿAbd al-Raḥmān al-Jantūrī, *Nawāzil*, mss., collection *khizāna* Badriane, Wilaya of Adrar, Algeria. [↑](#footnote-ref-21)
22. Muḥammad al-Zajlāwī, *Nawāzil*, mss., collection *khizāna* Lemtarfa, Wilaya of Adrar, Algeria. [↑](#footnote-ref-22)
23. Muḥammad *ʿ*Abd al-Karīm al-Balbālī, *Ghāyat al-amānī fī ajwibat Abī Zayd al-Tinilānī*, mss., collection *khizāna* Kousam, Wilaya of Adrar, Algeria. [↑](#footnote-ref-23)
24. Muḥammad al-Ḥājj b. ʿAbd al-Raḥmān al-Balbālī, ʿAbd al-ʿAzīz al-Balbālī, *Ghunyat al-muqtaṣid al-sāʾil fī mā waqaʿa fī Tuwāt min al-qaḍāyā wa-l-masāʾil*, mss*.*, collection *khizāna* Lemtarfa, Wilaya of Adrar, Algeria. [↑](#footnote-ref-24)
25. Muḥammad b. Ubba al-Muzammirī, *Taḥlīyat al-qarṭās bi-l-kalām ʿalā masʾala taḍmīn al-khammās*, mss*.*, collection Sīdī Mawlāy *ʿ*Alī, Awlād Ibrāhīm, Tīmī, Wilaya of Adrar, Algeria. [↑](#footnote-ref-25)
26. Lydon, *On Trans-Saharan Trails*. [↑](#footnote-ref-26)
27. On the institution of *qāḍī al-jamā*ʿ*a*, see Christian Müller, “Judging with God’s Law on Earth: Judicial Powers of the *qāḍī al-jamā*ʿ*a* of Cordoba in the Fifth/Eleventh Century”, *Islamic Law and Society* 7:2 (2000), 159-186. [↑](#footnote-ref-27)
28. Judith Scheele, “Councils without customs, qadis without states: property and community in the Algerian Touat”, *Islamic Law and Society* 17:3 (2010), 350-74, Warscheid, *Droit musulman et société.* [↑](#footnote-ref-28)
29. Manuela Marin, “Šūra et al-Šūra dans al-Andalus”, *Studia Islamica* 61-62 (1985), 25-51. [↑](#footnote-ref-29)
30. Jean Bisson, *Le Gourara: étude de géographie humaine* (Algiers: Institut des Recherches Sahariennes, 1957), Nadir Marouf, *Lecture de l’espace oasien* (Paris: Sindbad, 1980), idem, *L’eau, la terre, les hommes: passé et présent des oasis occidentales: Algérie* (Paris: l’Harmattan, 2010), Abderrahmane Moussaoui, *Les oasis au fil de l’eau: de la foggara au pivot* (Igé: l’Etrave, 2019), Judith Scheele, “L’énigme de la foggara: commerce, crédit et agriculture dans le Touat algérien”, *Annales: histoire, sciences sociales* 67:2 (2012), 471-93. [↑](#footnote-ref-30)
31. Gilbert Grandguillaume, “Régime économique et structure du pouvoir: le système des foggaras du Touat”, *Revue de l’Occident musulman et de la Méditerranée* 13-14 (1973), 437-457, idem, “Universalisme musulman et pratique locale au Touat”, in *Actes du XXIXe Congrès international des orientalistes: études arabes et islamiques I - histoire et civilisation*, ed. Claude Cahen (Paris: L’Asiathèque, 1975), 89-93, idem, “Le droit de l’eau dans les foggara du Touat au XVIIIe siècle”, *Revue des études islamiques* 43:2 (1977), 287-332, idem, “De la coutume à la loi: droit de l’eau et statut des communautés locales dans le Touat précolonial,” *Peuples méditerranéens* 2 (1978), 119-133. On the relationship between Islamic law and customary normativity, see also *Rechtspluralismus in der Islamischen Welt: Gewohnheitsrecht zwischen Staat und Gesellschaft*, ed. Michael Kemper and Maurus Reinkowski (Berlin, New York: Walter de Gruyter, 2005). [↑](#footnote-ref-31)
32. Rachid Bellil, *Les oasis du Gourara, Sahara algérien* (Paris, Louvain: Éd. Peeters, 1999-2000), 3 vols. See also Warscheid, “Comment écrire un passé”. [↑](#footnote-ref-32)
33. Much the same can be said of Abderrahmane Moussaoui’s, *Espace et sacré au Sahara: ksour et oasis du Sud-Ouest algérien* (Paris: CNRS, 2002). For a critique of the “marabout” model, see Fanny Colonna, *Les versets de l’invincibilité: permanence et changement religieux dans l’Algérie contemporaine* (Paris: Presses de la Fondation nationale des sciences politiques, 1995), 19-24, 35-56,Rüdiger Seesemann, *The Divine Flood: Ibrahim Niasse and the Roots of a Twentieth-Century Sufi Revival* (New York: Oxford University Press, 2011), 11-22. [↑](#footnote-ref-33)
34. Scheele, “Councils without Customs”, 352. [↑](#footnote-ref-34)
35. *Ibidem*. [↑](#footnote-ref-35)
36. Niklas Luhmann, *Das Recht der Gesellschaft* (Frankfurt am Main: Suhrkamp, 1995). [↑](#footnote-ref-36)
37. We use the term descent group rather than “tribe” to refer to the notion of *awlād* *fulān*, which we understand as a group united by kinship ties and the shared memory of specific patronymic ancestors. The literature on the topic is extensive. Useful readings for northern Saharan oasis contexts include Geneviève Bedoucha, *L’eau, l’amie du puissant: une communauté oasienne du Sud tunisien* (Paris: Archives contemporaines, 1987), Ahmed Joumani, *L’oasis d’Asrir: éléments d’histoire sociale de l’Oued Noun* (Casablanca: Éditions la croisée des chemins, 2008), Mondher Kilani, *La construction de la mémoire: le lignage et la sainteté dans l’oasis d’El-Ksar* (Genève: Labor et Fidès, 1992), Mustapha Naïmi, *La dynamique des alliances ouest-sahariennes: de l’espace géographique à l’espace social* (Paris: Éd. de la Maison des sciences de l’homme, 2004). [↑](#footnote-ref-37)
38. The historical genesis of these hierarchies remains under-researched but seems to have emerged progressively between the fifteenth and sixteenth centuries. Cf. Bellil, *Les oasis du Gourara*. The French military officer A.G.P. Martin has offered an introductory account of the region's history, relying on local chronicles he had gathered after the colonial conquest in 1900. Alfred Georges Paul Martin, *Les oasis sahariennes (Gourara – Touat – Tidikelt)* (Alger: Edition de l’Imprimerie algérienne, 1908). For a discussion of A.G.P. Martin’s work, see Warscheid, “Comment écrire un passé”. [↑](#footnote-ref-38)
39. See, *e.g*., Raymond Jamous, *Honneur et baraka : les structures sociales traditionnelles dans le Rif* (Paris: Éditions de la Maison des sciences de l’Homme, 1981). [↑](#footnote-ref-39)
40. For a detailed discussion, see Ismail Warscheid “Le pouvoir du chérif: perspectives sahariennes”, *Oriente Moderno* in press. [↑](#footnote-ref-40)
41. We base our appreciation on the analysis of several local biographical dictionaries, *riḥla* and *fahrasa* works such as Muḥammad b. *ʿ*Abd al-Karīm al-Bakrī’s *Durrat al-aqlām fī* *akhbār al-Maghrib baʿd al-islām*, Muḥammad b. *ʿ*Abd al-Qādir al-Tinilānī’s, *al-Durrat al-fākhira fī dhikr mā bi-Tuwāt min al-ʿulamāʾ wa-l-ashrāf al-idrīssiyīn wa-l-ʿalāwiyīn*, or *ʿ*Umar b. *ʿ*Abd al-Raḥmān al-Tinilānī’s *Fahrasa*. For details, refer to Warscheid, *Droit musulman et société.* [↑](#footnote-ref-41)
42. It is true that, today, the al-Bakrī family claims descent from *ʿ*Alī b. Abī Ṭālib. However, our examination of pre-1900 historical sources, including those written by family members, revealed no such claims. Notably, the nineteenth-century local chronicle *Qawl al-basī*ṭ *fī akhbār* Tamanṭīṭ, suggests that the al-Bakrī family initially traced their ancestry to the Moroccan Banū Marīn dynasty. Refer to Louis Watin, “Origines des population d’après les traditions conserves dans le pays”, *Bulletin de la société de géographie d’Alger et de l’Afrique du Nord* 10:2 (1905), 230. Be this as it may, the case nicely illustrates the changes within Saharan genealogical narratives over time. [↑](#footnote-ref-42)
43. The only exception we know is the *zāwiya* founded by the early eighteenth-century Sufi saint and *sharīf* ʿAbd Allāh al-Raggānī in southern Tuwāt. However, it is striking that neither the founder nor his successors showed particular interest in scholarly activities. Even their credentials as Sufi leaders appear relatively modest. Teaching Sufism seems to have been little more than transmitting a set of litanies (*wird*; *awrād*) ʿAbd Allāh al-Raggānī had received from his master, Muḥammad b. Abī Ziyān (d. 1145/1732), who had set up a *zāwiya* in the Wadi Saoura region further north. Cf. Warscheid, “Le pouvoir du chérif”. [↑](#footnote-ref-43)
44. *e.g*., al-Jantūrī, *Nawāzil,* 97. [↑](#footnote-ref-44)
45. al*-*Balbālī, al-Balbālī, *Ghunyat al-muqtaṣid*, 658. [↑](#footnote-ref-45)
46. The Sahelian Kunta scholars are an obvious illustration. On their political role, see mainly Aziz A. Batran, *The Qadiryya Brotherhood in West Africa and the Western Sahara: The Live and Times of Shaykh al-Mukhtar al-Kunti (1729-1811)* (Rabat: Institut des études africaines, 2001), Abdel Wedoud Ould Cheikh, “La généalogie et les capitaux flottants: al-Shaykh Sîd al-Mukhtâr (c. 1750-1811) et les Kunta”, in *al-Ansâb la quête des origines: anthropologie historique de la société tribale arabe*, ed. Pierre Bonte, Édouard Conte, Constant Hames and Abdel Wedoud Ould Cheikh (Paris: Éd. de la Maison des sciences de l’homme, 1991), 137-62, Boubacar Sissiko, 2019, *Le cheikh al-Muḫtār aṣ-Ṣaghīr al-Kuntī (1790-1847): médiation entre l’État peul du Macina et les Touaregs de Tombouctou de 1826 à 1847*, Lyon, Ph.D. dissertation, Université Lumière de Lyon 2, 2019. Another prominent example of a *zawāyā* ‘politician’ is the Mauritanian Sidīya al-Kabīr (d. 1284/1869) studied by Charles Stewart in his pioneering *Islam and Social Order in Mauritania*. [↑](#footnote-ref-46)
47. Still today, cultural life in Tuwāt is reminiscent of this distinction. For example, most *qṣūr* communities organize annual celebrations called *ziyāra* in memory of their ancestors. On these occasions, descent groups claiming a *mrābṭīn* background organize a *ḥaḍra* ritual in the style of the *dhikr* sessions practiced by North African Sufis. In contrast, those claiming *shurafāʾ* ancestry stage so-called “rifle dances” (*bārūd*), the symbol par excellence in the Maghrib and the Sahara of a ‘mundane power’ seeking lifestyle. We draw here on fieldwork observations between 2009 and 2018. The *nawāzil* collections also mention the *bārūd* ritual. Interestingly, local jurists argue that participation in *bārūd*-s affects a person’s capacity to act as an honorable witness. See, *e.g*., al-Zajlāwī, *Nawāzil*, 126. [↑](#footnote-ref-47)
48. On the Saadian and Alawite conquest, see Louis Mougin, “Les premiers sultans sa’dides et le Sahara”, *Revue de l’Occident musulman et de la Méditerranée* 19 (1975), 169-187 and Larbi Mezzine, *Le Tafilalt: contribution à l’histoire du Maroc aux XVIIe et XVIIIe siècle* (Rabat: Publications de la Faculté des lettres et des sciences humaines, 1987), 315-320. [↑](#footnote-ref-48)
49. Cf. Ismail Warscheid, “Les *Jours du Makhzen*: levée d’impôt et relations communautaires dans les oasis du Touat (Sud algérien), 1700-1850”, *Revue d’histoire du XIXe siècle* 59 (2019), 31-48. [↑](#footnote-ref-49)
50. Mezzine, *Le Tafilalt.* [↑](#footnote-ref-50)
51. Warscheid, *Droit musulman et société*,158-163. [↑](#footnote-ref-51)
52. Most significant for the Saharan West context is E. Ann Mcdougall’s pioneering work, *e.g.* E. Ann Mcdougall, “Salt, Saharans, and the trans-Saharan slave trade: nineteenth century developments”, in *The Human Commodity: Perspectives on the Trans-Saharan Slave Trade*, ed. Elizabeth Savage (London, Portland: F. Cass, 1992), 61-88, idem, “A Sense of Self: The Life of Fatma Barka”, *Canadian Journal of African Studies* 32:2 (1998), 285-315, idem, “Slavery, Sorcery, and Colonial ‘Reality’ in Mauritania, ca 1910-1960”, in *Agency and Action in Colonial Africa: Essays for John E. Flint*, ed. Chris Youé and Tim Stapelton (Basingstoke: Palgrave, 2001), 69-82, idem, “Discourse and Distortion: Critical Reflexions on Studying the Saharan Slave Trade”, *Outre-mers: revue d’histoire* 336/337 (2002), 195-227. [↑](#footnote-ref-52)
53. Hall, *A History of Race*. [↑](#footnote-ref-53)
54. Oßwald, *Sklavenhandel und Slavenleben.* [↑](#footnote-ref-54)
55. Wright, John, *The Trans-Saharan Slave Trade* (London: Routledge, 2007). [↑](#footnote-ref-55)
56. See also Oßwald, *Sklavenhandel und Sklavenleben*, 130-33, 188-91,Bruce Hall and Ghislaine Lydon, “Excavating Arabic Sources For the History of Slavery in Western Africa”, in African Slavery/African Voices, Volume 2, Methodology, ed. Alice Bellagamba, Sandra Greene, Carolyn Brown and Martin Klein (New York: Cambridge University Press, 2016), 15-49, Ghislaine Lydon, “Islamic Legal Culture and Slave-Ownership Contests in Nineteenth-Century Sahara”, *The International Journal of African Historical Studies* 40:3/1 (2007), 391–439, idem, “Slavery, Exchange and Islamic Law: A Glimpse from the Archives of Mali and Mauritania”, *African Economic History* 33:1 (2005), 117–48. [↑](#footnote-ref-56)
57. al-Jantūrī, *Nawazil*, 163-164. [↑](#footnote-ref-57)
58. Oßwald, *Sklavenhandel und Sklavenleben*, 259-81. [↑](#footnote-ref-58)
59. Hall, *A History of Race*, Oßwald, *Sklavenhandel und Sklavenleben*, 93-107. [↑](#footnote-ref-59)
60. al-Zajlāwī, *Nawāzil*, 24. [↑](#footnote-ref-60)
61. Our transliteration follows the way the term appears in the local manuscripts, namely حراثين instead of the more common حراطين. For the sake of consistency, we will use this transliteration also when referring to other Saharan regions. [↑](#footnote-ref-61)
62. We should note in this context that, historically, water, land, and (palm) trees are separate commodities in North African oasis societies. [↑](#footnote-ref-62)
63. See*, e.g*., Urs Peter Ruf, “Du neuf dans le vieux: la situation des harâtîn et ‘abîd en Mauritanie rurale”, *Journal des africanistes* 70:1 (2000), 239-54. [↑](#footnote-ref-63)
64. Chouki el-Hamel provides some historical perspectives. See Chouki El Hamel, “Race, Slavery in Maghribi Mediterranean Thought: The Question of the Haratin in Morocco”, *Journal of North African Studies* 7:3 (2002), 29-52. An important preliminary work on southern Algeria to be mentioned is Benjamin Brower’s insightful chapter entitled “The Servile Populations of the Algerian Sahara, 1850-1900”, in, *Slavery, Islam and Diaspora*, ed. Behnaz A. Mirzai, Ismael Musah Montanam and Paul E. Lovejoy (Trenton (N.J.): Africa World Press, 2009), 169-92. [↑](#footnote-ref-64)
65. Cf., most importantly, the recent special issue edited by E. Ann Mcdougall, “Devenir visibles dans le sillage de l’esclavage: la question haratin en Mauritanie et au Maroc”, *Cahiers l’Ouest saharien* 10-11 (2020) but also Cynthia Becker, “‘We Are Real Slaves, Real Ismkhan’: Memories of the Trans-Saharan Slave Trade in the Tafilalet of South-Eastern Morocco”, *The Journal of North African Studies* 7:4 (2002), 97-121, Remco Ensel, *Saint and Servants in Southern Morocco* (Leiden: Brill, 1999), Salima Naji, *Fils de saints contre fils d’esclaves: les pèlerinages de la Zawya d’Imi n’Tatelt (Anti-Atlas et Maroc présaharien)* (Angers, Rabat: Les cinq parties du monde, DTG société nouvelle, 2011).  [↑](#footnote-ref-65)
66. See also Claire-Cécile Mitatre, *Au nord du Sud: espace, valeurs et passion au Sahara atlantique* (Paris: Ed. de l’EHESS, 2021).To be compared with Naji, *Fils de saints*, Ensel, *Saint and Servants.* [↑](#footnote-ref-66)
67. al*-*Balbālī, al-Balbālī, *Ghunyat al-muqtaṣid*, 118. [↑](#footnote-ref-67)
68. By the mid-fifteenth century, the family’s ancestors ʿAbd Allāh al-ʿAsnūnī and his brother Muḥammad had emigrated from Tlemcen and established themselves as scholars in Tuwāt. ʿAbd Allāh became famous for his opposition to ʿAbd al-Karīm al-Maghīlī’s agitation against the local Jewish community. Several of his descendants, most notably Sālim al-ʿAsnūnī (d. 960/1560), also distinguished themselves as scholars until the seventeenth century, when the al-ʿAṣnūnī-s seem to have progressively lost their academic credentials. At that time, another *mrābṭīn* family in Tamentit, the al-Bakrī-s, began to rise to prominence. The inquiry under review was sent to the founding figure of the family’s scholarly traditions, ʿAbd al-Karīm b. Aḥmad al-Bakrī. Cf. Warscheid, *Droit musulman et société*,31-40.On the conflict between ʿAbd Allāh al-ʿAsnūnī and ʿAbd al-Karīm al-Maghīlī, see John Hunwick, *Jews of a Saharan Oasis: Elimination of the Tamentit Community* (Princeton: M. Wiener, 2006), David S Powers, “Aḥmad al-Wansharīsī (d. 914/1509)”, in *Islamic Legal Thought: A Compendium of Muslim Jurists*, ed. Oussama Arabi, David S. Powers and Susan A. Spectorsky (Leiden: Brill, 2013), 382-399. [↑](#footnote-ref-68)
69. The sense of *qāma* here is not entirely clear. It may have the general meaning of ‘protesting’, but it could also refer to the fact that the woman filed a case before a local *qāḍī*. [↑](#footnote-ref-69)
70. al*-*Balbālī, al-Balbālī, *Ghunyat al-muqtaṣid*, 118. [↑](#footnote-ref-70)
71. al-Balbālī, *Ghāyat al-amānī*, 19. [↑](#footnote-ref-71)
72. On the *khammāsa* in twentieth-century Tuwāt, see Bisson, *Le Gourara*, R. Capot-Rey, W. Damade, “Irrigation et structure agraire à Tamentit”, *Travaux de l’Institut des recherches sahariennes* 21 (1962), 99-119, Yves Guillermou, “Survie et ordre social au Sahara: Les oasis du Touat-Gourara-Tidikelt en Algérie”, *Cahiers des sciences humaines* 29:1 (1993), 121-38. [↑](#footnote-ref-72)
73. For a study on *mālikī* sharecropping and leasing contracts in the fourteenth-fifteenth century Maghrib, see Élise Voguet, *Le monde rural du Maghreb central: réalités sociales et constructions juridiques d'après les Nawāzil Māzūna* (Paris: Publications de la Sorbonne, 2014), 337-345. [↑](#footnote-ref-73)
74. al*-*Balbālī, al-Balbālī, *Ghunyat al-muqtaṣid*, 259. [↑](#footnote-ref-74)
75. See most notably the work of Paul Pascon, André Noushi, Jacques Berque and Abdellah Hammoudi. [↑](#footnote-ref-75)
76. Scheele, “Traders, Saints, and Irrigation”, 295. [↑](#footnote-ref-76)
77. Bernard G. Weiss, *The Search for God’s Law: Islamic Jurisprudence in the Writings of Sayf al-Dīn al-Āmidī* (Salt Lake City: University of Utah Press, 2010), 46-47. [↑](#footnote-ref-77)
78. al*-*Balbālī, al-Balbālī, *Ghunyat al-muqtaṣid*, 259. [↑](#footnote-ref-78)
79. *Ibidem*. [↑](#footnote-ref-79)
80. As mentioned earlier, al-Tinilānī appears in the *nawāzil* collections as a regional chief mufti, mainly advising ʿAbd al-Ḥaqq al-Bakrī. [↑](#footnote-ref-80)
81. Such “companionship” entailed various reciprocal services that tightly bound the sharecropper to the landowner. Jacques Berque studied a similar relationship in his early work on herding contracts in the Moroccan Gharb. See Jacques Berque, *Contribution à l’étude des contrats nord-africains (les pactes pastoraux Beni Meskine)* (Algiers: Typo-Litho et Carbonel, 1936) reprinted in Jacques Berque, *Opera minora* (Paris: Éditions Bouchène, 2001), 16-67. [↑](#footnote-ref-81)
82. al*-*Balbālī, al-Balbālī, *Ghunyat al-muqtaṣid*, 259. We should note that the *qāḍī*-’s intervention is explicitly characterized as a ‘reply’ (*jawāb*) and not as a ruling (*ḥukm*). On Mālikī *qāḍī*s also acting as *muftī*s, see Aharon Layish, *Sharīʿa and Custom in Libyan Tribal Society: An Annotated Translation of Decisions from the Sharīʿa Courts of Adjābiyya and Kufra* (Leiden: Brill, 2005), X. [↑](#footnote-ref-82)
83. Robert Brunschvig, “Contribution à l’histoire du contrat de khamessat en Afrique du Nord”, *Revue algérienne de législation*, February (1938), 1-5, Christian Müller, “Sitte, Brauch, und Gewohnheitsrecht im mālikitischen *fiqh*”, in *Rechtspluralismus in der Islamischen Welt*, 17-38. [↑](#footnote-ref-83)
84. Muḥammad al-Muzammirī is best known for his poems and writings in the domain of *lugha*. He is also one of the few authors from Tuwāt whose works appear in manuscript collections in the southern Sahara, Sahel region. For details, refer to John O. Hunwick, *Arabic Literature of Africa Volume 4: The Writings of Western Sudanic Africa* (Leiden: Brill, 2002), Rebstock, *Maurische Literaturgeschichte*, Stewart, *The Writings of Mauritania and the Western Sahara*. On al-Muzammirī’s life and work, see Aḥmad Abā-l-Ṣāfī Jaʿfrī, *Rijāl fī l-dhākira: waqafāt tārīkhīya fī aʿmāq al-dhākirat al-tuwātīya, Muḥammad b. Ubba al-Muzammirī ḥayātuhu wa-athāruhu* (Oran: Dār al-Gharb li-l-Nashr wa-l-Tawzīʿ, 2007). [↑](#footnote-ref-84)
85. al-Muzammirī, *Taḥliyat al-qarṭās.* [↑](#footnote-ref-85)
86. On the Kunta in Tuwāt, see Batran, *The Qadiryya Brotherhood*, 40-46. [↑](#footnote-ref-86)
87. al-Muzammirī, *Taḥlīyat al-qarṭās*, 1. [↑](#footnote-ref-87)
88. *Ibidem*, 3-5. [↑](#footnote-ref-88)
89. James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven: Yale University Press, 1990). [↑](#footnote-ref-89)
90. The earliest account is Alfred Georges Paul Martin, *Les oasis sahariennes (Gourara – Touat – Tidikelt)* (Alger: Édition de l’imprimerie algérienne, 1908). [↑](#footnote-ref-90)
91. al-Muzammirī, *Taḥlīyat al-qarṭās*, 1. [↑](#footnote-ref-91)
92. *Ibidem*, 2 [↑](#footnote-ref-92)
93. *Ibid*., 5. [↑](#footnote-ref-93)
94. See, *e.g*, Bruce Hall, “How slaves used Islam: The letters of enslaved Muslim commercial agents in the nineteenth-century Niger Bend and Central Sahara”, Journal of African History 52:3 (2011), 279-97, Ghislaine Lydon, “Obtaining Freedom at the Muslims’ Tribunal: Colonial Kadijustiz and Women’s Divorce Litigation in Ndar (Senegal)”, in *Muslim Family Law in Sub-Saharan Africa: Colonial Legacies and Post-Colonial Challenges*, ed. Shamil Jeppie, Ebrahim Moosa and Richard Roberts (Amsterdam: Amsterdam University Press, 2010), 135-164, Maya Shatzmiller, *Her Day in Court: Women’s Property Rights in Fifteenth-Century Granada* (Harvard: Harvard University Press, 2007), Elke Stockreiter, *Islamic Law, Gender, and Social Change in Post-Abolition Zanzibar* (New York: Cambridge University Press, 2015). [↑](#footnote-ref-94)
95. al-Jantūrī, *Nawāzil*, 115. [↑](#footnote-ref-95)
96. The various local chronicles studied by A.G.P. Martin contain frequent descriptions of such raids. Cf. Martin, *Quatre siècles d’histoire marocaine*. [↑](#footnote-ref-96)
97. Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003). [↑](#footnote-ref-97)
98. Bruce, Hall, “How Slaves Used Islam”, Oßwald, *Sklavenhandel und Sklavenleben*,250-254, Richard Roberts, *Litigants and Households: African Disputes and Colonial Courts in the French Soudan 1895-1912* (Porthmouth, NH: Heinemann, 2005). [↑](#footnote-ref-98)
99. David S., Powers, *Law, Society and Culture in the Maghrib: 1300-1500* (London: New York, Cambridge University Press, 2002), Oßwald, *Schichtengesellschaft und islamisches Recht*, Delfina Serrano Ruano, “Qadis and muftis: Judicial Authority and the Social Practice of Islamic Law”, in *Routledge Handbook of Islamic Law*, ed. Khaled Abou El Fadl, Ahmad Atif Ahmad and Said Fares Hassan (London: Routledge, 2019), 156-170, Amalia Zomeño, “The Stories in the Fatwas and the Fatwas in History”, in *Narratives of Truth in Islamic Law*, ed. Baudouin Dupret, Barbara Drieskens and Annelies Moors (London, New York: I. B. Tauris, 2008), 25-49. [↑](#footnote-ref-99)
100. David Beetham, *The Legitimation of Power* (Basingstoke: Palgrave Macmillan, 2013), 69. [↑](#footnote-ref-100)
101. While our paper does not claim to contribute to the extensive literature of subaltern studies, our understanding of the notion of subalternity is informed by our readings of John Beverley, *Subalternity and Representation: Arguments in Cultural Theory* (Durham, London: Duke University Press, 1999),and the classic Spivak, Gayatri Chakravorty, “Can the Subaltern Speak?”, in *Marxism and the Interpretation of Culture*, ed. Cary Nelson and Lawrence Grossberg (London: Macmillan, 1988), 271-313. [↑](#footnote-ref-101)
102. al*-*Balbālī, al-Balbālī, *Ghunyat al-muqtaṣid*, 69. [↑](#footnote-ref-102)
103. *Ibidem*. [↑](#footnote-ref-103)
104. *Ibidem*, 70. [↑](#footnote-ref-104)
105. Oßwald, *Sklavenhandel und Sklavenleben*, 278-281, 349-357. [↑](#footnote-ref-105)
106. Beetham, *The Legitimation of Power*, 60. [↑](#footnote-ref-106)
107. Remarkably, the number of cases involving *ḥarthānī* and *ʿabīd* actors is small compared to the vast bulk of materials discussing property rights or family affairs in which only *shurafāʾ* and *mrābṭīn* seem to appear. [↑](#footnote-ref-107)
108. Spivak, “Can the Subaltern Speak?”. [↑](#footnote-ref-108)
109. We are alluding here to Christian Müller’s concept of the *sharīʿatic* turn. Cf. Christian Müller, *Recht und die historische Entwicklung der Scharia im Islam* (Berlin, Boston: De Gruyter, 2022). [↑](#footnote-ref-109)
110. This vision may need some qualification as Khaled Esseissah’s recent article on the nineteenth-century Mauritanian Sufi Bilāl wuld Mahmūd suggests. Cf. Khaled Esseissah, “Enslaved Muslim Sufi Saints in the Nineteenth-Century Sahara: The Life of Bilal Ould Mahmoud”, *The Journal of African History* 62:3 (2021), 342-57. [↑](#footnote-ref-110)
111. Scott, *Domination*. [↑](#footnote-ref-111)