

# Before 1044: ‘Abd al-Ḥaqq al-Ṣiqillī on the Purchase of Christian and Muslim Females in Sicily

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**Abstract:** In a legal treatise, known as “Refinement of the Student and the Benefit of the Willing” (*Tahdīb al-ṭālib wa-fā’idat al-rāḡib*), the Mālikī Sicilian jurist ‘Abd al-Ḥaqq al-Ṣiqillī recorded a legal discussion between his teacher Abū Bakr and himself that dealt with the purchase of enslaved Christian and Muslim girls. The article uses this discussion, not only to shed light on the role played by slavery in Sicily in the first half of the fifth/eleventh century, but also to illustrate the transmediterranean dimensions of legal exchange between and beyond Sicily and Ifrīqiya. Although the Sicilian legal infrastructure was generally indebted to the Qayrawānī jurisprudence, the Sicilian jurists had to develop their own solutions to certain legal issues, as in the case of legal questions arising from the purchase of Christian and Muslim slave girls.

## Source

‘Abd al-Ḥaqq al-Ṣiqillī, *Tahdīb al-ṭālib wa-fā’idat al-rāḡib*, Cairo: Maktabat al-Azhar al-ṣarīf, Ms. 3157, vol. 2, fol. 176a, trans. Hossameldin Ali.

قال عبد الحق: قلت للشيخ أبي بكر بن عبد الرحمن؛ عندنا بصقلية ثمن النصرانية أكثر من المسلمة بتفاوت كثير، فهل إذا اشتراها على أنها نصرانية فوجدها مسلمة يكون له الرد؟ فقال: إن هذا لشديد أن يكون الإسلام عيباً، ولكن إذا كان الأمر على ما ذكرت فله أن يردها.

‘Abd al-Ḥaqq said: I told the *ṣayḥ* Abū Bakr b. ‘Abd al-Raḥmān that, for us in Sicily, the price of a Christian female is considerably higher than that for a Muslim female. If someone bought her as a Christian, but found her to be a Muslim, can he return her [to the seller]? He [the *ṣayḥ*] said: It is hard [to think] that Islam might be a deficiency, but if this is as you mentioned, then he [the buyer] can return her [to the seller].

## Authorship & Work

[§1] ‘Abd al-Ḥaqq b. Muḥammad b. Hārūn al-Sahmī al-Quraṣī al-Ṣiqillī was a fifth/eleventh-century Sicilian Mālikī jurist from Palermo. His name suggests that he was a descendant of the Banū Sahn, a clan of the Arabian Qurayṣ tribe, but may also imply a claim to nobility.<sup>1</sup> There is no record of his date of birth. Since his earliest legal treatise, known as “Key Points and Variances Concerning the Issues of the *Mudawwana* and the *Muḥṭaliṭa*” (*al-Nukat wa-l-furūq*

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<sup>1</sup> Nef, Les élites savantes, pp. 461–462. Nef, La nisba tribale, 45–58.

*li-masā'il al-Mudawwana wa-l-Muḥṭaliṭa*), was written in 418/1027–1028, one can only estimate that he was born in the late fourth/tenth or early fifth/eleventh century.<sup>2</sup>

[§2] 'Abd al-Ḥaqq belonged to the second generation of the Sicilian Mālikī school (*madhab*) of the fifth/eleventh century. He received his early legal training in Sicily.<sup>3</sup> One of his Sicilian teachers was Abū Bakr b. Abū l-'Abbās (fl. late 4<sup>th</sup>/10<sup>th</sup>–early 5<sup>th</sup>/11<sup>th</sup> cent.), a direct student of the famous Ibn Abī Zayd al-Qayrawānī (d. 386/996) from Ifrīqiya.<sup>4</sup> To pursue a professional legal training, 'Abd al-Ḥaqq set out on a “journey to seek knowledge” (*riḥla fī ṭalab al-'ilm*). In al-Qayrawān, he was instructed in the *Mudawwana* of Saḥnūn b. Sa'īd (d. 240/854) by Abū Bakr Aḥmad b. 'Abd al-Raḥmān al-Ḥawlānī (d. 432 or 435/1041 or 1043–1044), the *ṣayḥ* mentioned in the source extract.<sup>5</sup> Abū Bakr used to instruct his students on the *Mudawwana* of Saḥnūn three days a week in al-Qayrawān.<sup>6</sup>

[§3] After returning to Sicily, 'Abd al-Ḥaqq founded his own study circle (*ḥalqa*) to teach Mālikī jurisprudence. It is even reported that some Andalusian scholars sought knowledge from him in Sicily.<sup>7</sup> 'Abd al-Ḥaqq went to Mecca twice to fulfil the fifth pillar of Islam, i.e. the pilgrimage (*ḥaḡḡ*).<sup>8</sup> In addition to its religious significance, the *ḥaḡḡ* was an opportunity for scholars and jurists to meet and discuss jurisprudential and religious matters. On his first visit, 'Abd al-Ḥaqq met the Mālikī judge from Baghdad, 'Abd al-Waḥhāb b. Naṣr (d. 422/1031), whose legal opinions can be found frequently in 'Abd al-Ḥaqq's legal writings. In 450/1058, 'Abd al-Ḥaqq went to Mecca for the second time, where he met the famous Šāfi'ī jurist Abū l-Ma'ālī l-Ḡuwaynī (d. 478/1085) with whom he exchanged theological opinions about the attributes of God.<sup>9</sup> According to Iḥsān 'Abbās, the theological questions raised by 'Abd al-Ḥaqq may have been a major concern in the Sicilian community at the time.<sup>10</sup> On his way back, and probably due to the ongoing Norman invasion of Sicily (1061–1092), 'Abd al-Ḥaqq settled in Egypt, where he died in Alexandria in 466/1073–1074.<sup>11</sup>

[§4] The excerpt is part of his largest and last legal treatise, known as “Refinement of the Student and the Benefit of the Willing” (*Tahḏīb al-ṭālib wa-fā'idat al-rāḡib*), which he completed before leaving for Mecca in 450/1058.<sup>12</sup> The surviving manuscripts of the *Tahḏīb* are housed in two places: one in al-Qarawiyyin library (*ḥizāna*) in Fez, Morocco, the other in the library of al-Azhar (*maktabat al-Azhar al-šarīf*) in Cairo, Egypt, henceforth the al-Azhar manuscript.<sup>13</sup> No edition of the *Tahḏīb* has been published to date. However, there have been some successful academic efforts to edit the *Tahḏīb* conducted at Umm al-Qurā University in Mecca, Saudi Arabia, which are accessible online, although no printed editions have yet

<sup>2</sup> Al-Qāḏī 'Iyāḏ, *Tartīb al-madārik*, ed. A'rāb, vol. 8, pp. 71–74. 'Abbās, *Mu'ḡam al-'ulamā'*, pp. 49–50. 'Abbās, *al-'Arab fī Ṣiqilliya*, p. 108.

<sup>3</sup> Al-Qāḏī 'Iyāḏ, *Tartīb al-madārik*, ed. A'rāb, vol. 8, p. 71.

<sup>4</sup> Al-Qāḏī 'Iyāḏ, *Tartīb al-madārik*, ed. A'rāb, vol. 7, p. 270. 'Abbās, *Mu'ḡam al-'ulamā'*, p. 49.

<sup>5</sup> Ibn Farḥūn, *al-Dībāḡ*, ed. al-Aḥmadī, vol. 2, p. 56.

<sup>6</sup> Al-Qāḏī 'Iyāḏ, *Tartīb al-madārik*, ed. A'rāb, vol. 7, pp. 239–242.

<sup>7</sup> Ibn Baṣkuwāl, *al-Šila*, ed. al-Ibyārī, vol. 1, pp. 276, 320; Ibn al-Abbār, *al-Takmila*, ed. al-Harrās, vol. 1, p. 316; 'Abbās, *al-'Arab fī Ṣiqilliya*, p. 100.

<sup>8</sup> Ibn Farḥūn, *al-Dībāḡ*, ed. al-Aḥmadī, vol. 2, p. 56; al-Qāḏī 'Iyāḏ, *Tartīb al-madārik*, ed. A'rāb, vol. 8, 1983, p. 72.

<sup>9</sup> Al-Ziriklī, *al-A'lām*, vol. 3, p. 282. Al-Ḡuwaynī, *Aḡwiba*, ed. al-Ḡahānī and Fūda; al-Zahrānī, *al-Ḥayāt al-'ilmīyya*, pp. 320, 324.

<sup>10</sup> 'Abbās, *al-'Arab fī Ṣiqilliya*, p. 100.

<sup>11</sup> Ibn Farḥūn, *al-Dībāḡ*, ed. al-Aḥmadī, vol. 2, p. 56, al-Qāḏī 'Iyāḏ, *Tartīb al-madārik*, ed. A'rāb, vol. 8, p. 74. 'Abbās, *Mu'ḡam al-'ulamā'*, p. 50.

<sup>12</sup> Ibn Yūnus al-Šiqillī (d. 451/1059) frequently quoted legal passages from the *Tahḏīb* in his legal treatise “Collection of the Issues of the *Mudawwana*” (*al-Ġāmi' li-masā'il al-Mudawwana*), suggesting that a complete treatise of the *Tahḏīb* already existed at that time.

<sup>13</sup> MS *riwāq al-Maḡāriba* no. 3157 in the library of al-Azhar; Ḥāḡḡī Ḥalīfa, *Kaṣf al-zunūn*, vol. 1, p. 515; Sezgin, *Geschichte des Arabischen Schrifttums*, vol. 1, p. 471; Muranyi, *Materialien*, p. 4.

appeared.<sup>14</sup> The excerpt is taken from the al-Azhar manuscript, which is classified as rare (*nādir*) and is stored in the Moroccan Hall (*riwāq al-Mağāriba*) in al-Azhar library. The manuscript is written in Mağribī script and neither the name of the copyist (*nāsiḥ*), nor the date of writing are mentioned. It consists of two volumes, the first of which contains 148 folios mostly dealing with chapters on worship, while the second volume contains 185 folios mainly on the laws of transactions. The folios are numbered on the top-left corner of the *recto* (*wağh*) with Hindu-Arabic numbers in black ink. The numeration was obviously inserted later. The manuscript ends with a chapter on the compilation of defects (*ğāmi‘ al-‘uyūb*) of transactions from which the excerpt is quoted. At the end of the manuscript, the anonymous copyist wrote:

“Here ends the compilation of *al-šayḥ al-Imām* Abū Muḥammad ‘Abd al-Ḥaqq, then he died, may God have mercy on him (...).” (*wa-ilā hā hunā intahā tašnīf al-šayḥ al-imām Abī Muḥammad ‘Abd al-Ḥaqq tumma māta raḥimahu llāh*).<sup>15</sup>

[§5] In addition to the “Refinement” (*Tahdīb*), ‘Abd al-Ḥaqq compiled other legal treatises. As already mentioned above, his earliest work was written in 418/1027–1028 under the title “Key Points and Variances Concerning the Issues of the *Mudawwana* and the *Muḥtaliṭa*” (*al-Nukat wa-l-furūq li-masā’il al-Mudawwana wa-l-Muḥtaliṭa*). Here, he compiled the legal issues discussed in two important legal works by Saḥnūn b. Sa‘īd (d. 240/854), i.e. the *Mudawwana* and the *Muḥtaliṭa*. The aim of this work was to introduce both elementary (*mubtadi‘īn*) and intermediate (*mutawasiṭīn*) students to the essential features of Mālikī law. It distinguishes clearly between the legal rulings of the Sicilian, Qayrawānī, and Andalusī Mālikī jurists. Pursuing and completing a discussion on probate law (*kitāb al-wašāyā*) that he had begun in his “Key Points” (*Nukat*), ‘Abd al-Ḥaqq wrote another treatise called “The Completion” (*al-Ikmāl*).<sup>16</sup> Some of his works have not reached us and are only known from biographical sources.<sup>17</sup>

## Content & Context

[§6] The excerpt quoted here is documented in a work completed before 450/1058. However, since it reproduces a dialogue between ‘Abd al-Ḥaqq and his teacher Abū Bakr Aḥmad b. ‘Abd al-Raḥmān al-Ḥawlānī (d. 432 or 435/1041 or 1043–1044), we can assume that it was initially recorded before Abū Bakr’s death, in the period when ‘Abd al-Ḥaqq was taking classes with him in al-Qayrawān, i.e. before the 1040s. The discussions between Abū Bakr and ‘Abd al-Ḥaqq appear on various occasions in the *Tahdīb*.<sup>18</sup> The excerpt is part of a sub-chapter on legal rulings relating to defects of sold goods. This, in turn, is part of a main chapter dealing with defects (*ğāmi‘ al-‘uyūb*) of goods in contracts of sale. In classical Islamic law, the buyer is usually entitled to return defective goods to the seller by claiming the right of option due to defect (*ḥiyār al-‘ayb*). The parties of a sale contract enjoy the right to complete or annul a transaction if a defect in the price or goods is detected after the contract is concluded.<sup>19</sup>

[§7] In the text of the “Refinement” (*al-Tahdīb*), the discussion between ‘Abd al-Ḥaqq and Abū Bakr is preceded by a quotation of two earlier Mālikī authorities, which had also dealt with legal problems arising from the purchase of a Christian slave girl, whose religion was not known at the time of contract: the *‘Utbiyya* of the Andalusian Muḥammad al-‘Utbī (d. 255/869) and

<sup>14</sup> ‘Abd al-Ḥaqq al-Šiqillī, *Tahdīb*, ed. Sultān et al.

<sup>15</sup> ‘Abd al-Ḥaqq al-Šiqillī, *Tahdīb*, Ms. 3157, al-Azhar, vol. 2, fol. 185a.

<sup>16</sup> ‘Abd al-Ḥaqq al-Šiqillī, *al-Ikmāl*, ed. Būzyān, pp. 478–497.

<sup>17</sup> Ibn Farḥūn, *al-Dībāğ*, ed. al-Aḥmadī, vol. 1, pp. 349–351; *ibid.*, vol. 2, p. 56. Al-Qādī ‘Iyāḍ, *Tartīb al-madārik*, ed. A‘rāb, vol. 8, p. 73.

<sup>18</sup> See, e.g. ‘Abd al-Ḥaqq al-Šiqillī, *Tahdīb*, Ms 3157, al-Azhar, vol. 2, fol. 88a, 141a, 161a, 176a.

<sup>19</sup> ‘Abd al-Ḥaqq al-Šiqillī, *Tahdīb*, Ms. 3157, al-Azhar, vol. 2, fol. 169a.

the *Mawwāziyya* of the Egyptian Mālikī jurist Muḥammad b. al-Mawwāz (d. 269/882).<sup>20</sup> Together with the *Mudawwana* of Saḥnūn (d. 240/854) and the *Wāḍiḥa* of Ibn Ḥabīb (d. 238/853), the *ʿUtbiyya* and the *Mawwāziyya* form what Mālikī sources refer to as “the foundations” (*al-ummahāt*). They represent the four most authoritative sources of the Mālikī school of law.<sup>21</sup> In the passage quoted from the *ʿUtbiyya*, Ibn al-Qāsim al-ʿUtaqī (d. 191/806) is cited as having ruled that a buyer can annul the sale if he had a special motive to buy a Christian slave girl such as allowing his Christian male slave to get married to her. In the passage quoted from the *Mawwāziyya*, Aṣbaḡ b. al-Faraḡ (d. 225/839) is cited as having authorized annulling the sale contract if the buyer had added a clause stipulating that he did not wish to buy a Muslim slave girl.<sup>22</sup>

[§8] The quoted excerpt from ʿAbd al-Ḥaqq’s “Refinement” (*Tahdīb*) presents a legal model for both the purchase of slave girls (*imāʾ*) and the legal rights and obligations of a seller and buyer in respect to defects. Legally speaking, the text raises two issues: first, was religion to be considered either a deficiency or an added value that impacted upon the price of slave girls? Second, could buyers use their legal right of “option due to defect” (*ḥiyār al-ʿayb*) if they were unaware of or misled by the slave’s religion at the time of the sale contract?

[§9] The same text was quoted almost identically in the book “Collection of the Issues of the *Mudawwana*” (*al-Ġāmiʿ li-masāʾil al-Mudawwana*) by Ibn Yūnus al-Ṣiqillī (d. 451/1059). Together with ʿAbd al-Ḥaqq, he is referred to in later Mālikī sources as one of “the two Sicilians” (*al-Ṣiqilliyyān*). Ibn Yūnus, however, quoted the text without explicitly attributing it to ʿAbd al-Ḥaqq.<sup>23</sup>

## Contextualization, Analysis & Interpretation

[§10] This section will address three topics; First, it will sketch a short history of the Sicilian legal infrastructure between the mid-third/ninth to the mid-fifth/eleventh century, illustrating the latter’s decreasing dependence on al-Qayrawān. Second, it will explain the Mālikī jurisprudential perspective concerning the exchange of recently bought slaves. Third, it will insert and interpret corresponding legal discussions against the backdrop of slave trade in and around Sicily in the late fourth/tenth and the early fifth/eleventh centuries.

[§11] Archaeological studies have shown that the landscape of Muslim Sicily was densely populated and that the number of new settlements, not known from the Byzantine period, increased significantly.<sup>24</sup> The lack of evidence for pork consumption may indicate that the urban areas in Palermo and Mazara were inhabited more by Muslims than by Christians.<sup>25</sup> Towards the end of the fourth/tenth century, the mixed religious society of Sicily featured a demographic majority of Muslims. However, there were also many Christians who were culturally Arabised, but had not converted to Islam.<sup>26</sup> The Muslim community in Sicily resorted to jurists (*fuqahāʾ*) to hear their opinions (*fatāwā*, sg. *fatwā*) on what is permissible (*ḥalāl*) and forbidden (*ḥarām*) in all concerns of daily life.<sup>27</sup> The question on slave girls that ʿAbd al-Ḥaqq

<sup>20</sup> On Muḥammad al-ʿUtībī (d. 255/869) and the surviving fragments of the *ʿUtbiyya* see: Muranyi, *Materialien*, p. 50. Fernández Félix, *Cuestiones*, pp. 81–91. On the surviving fragments of *Mawwāziyya*, see: Muranyi, *Materialien*, p. 48.

<sup>21</sup> ʿAlī, *Iṣṭilāḥ al-maḏhab*, pp. 143–144.

<sup>22</sup> ʿAbd al-Ḥaqq al-Ṣiqillī, *Tahdīb*, Ms. 3157, al-Azhar, vol. 2, fol. 176a.

<sup>23</sup> Ibn Yūnus al-Ṣiqillī, *al-Ġāmiʿ*, ed. al-Zīr, vol. 14, p. 92.

<sup>24</sup> Wilson, *Changes*, p. 331.

<sup>25</sup> Carver et al., *Sicily in Transition*, pp. 14–15.

<sup>26</sup> Metcalfe, *Before the Normans*, pp. 107–108.

<sup>27</sup> Ibn Ḥawqal, *Ṣurat al-ard*, ed. Kramers, vol. 1, p. 127.

raised with his Qayrawānī *ṣayḥ* was probably a matter of concern in the Sicilian Muslim community in which ‘Abd al-Ḥaqq served.

[§12] In spite of al-Muqaddasī’s (d. 380/990) claim that most Sicilian Muslims followed the legal school (*madhhab*) of Abū Ḥanīfa (d. 150/767),<sup>28</sup> recent research has increasingly highlighted the fundamental role played by Mālikī legal experts in Sicily. Mālikī jurisprudence was the most productive and dominant in most periods of Muslim Sicily.<sup>29</sup> Mālikī laws were fundamental in the process of Islamicising knowledge and practices in the newly conquered lands and remained strong throughout the entire Islamic history of Sicily.<sup>30</sup>

[§13] The discussion between the Sicilian ‘Abd al-Ḥaqq and the Qayrawānī Abū Bakr shows that the legal infrastructure in Sicily was generally indebted to the jurists of al-Qayrawān. Besides ‘Abd al-Ḥaqq, many Sicilian jurists owed their legal training to al-Qayrawān. The earliest Sicilian Mālikī jurist was ‘Abd Allāh b. Ḥamdūn al-Kalbī al-Ṣiqillī (“the Sicilian,” d. 270/883–884), who received his legal education by aural transmission (*samā’*) directly from the Ifrīqiyan Saḥnūn b. Sa’īd.<sup>31</sup> Some evidence suggests that Ibn Ḥamdūn’s legal writings were part of the legal education in Sicily at least until the fifth/eleventh century.<sup>32</sup> The Ifrīqiyan jurists were the main transmitters of law to Muslim Sicily. Perhaps the most important among them was Sulaymān b. Sālīm al-Qaṭṭān (d. 289/901–902), the official judge of Sicily at the end of the Aḡlabid era (827–909), whose legal works were among the sources used by ‘Abd al-Ḥaqq in the “Refinement” (*Tahdīb*).<sup>33</sup>

[§14] Traces of an independent Sicilian legal system can be found towards the end of the fourth/tenth century. This period not only witnessed an independent judicial system that did not have recourse to Ifrīqiya, but also the rise of the first generation of Sicilian Mālikīs.<sup>34</sup> This first generation included such scholars as Ibn al-Ḥaṣā’irī and Abū Bakr b. al-‘Abbās (fl. late 4<sup>th</sup>/10<sup>th</sup>–early 5<sup>th</sup>/11<sup>th</sup> cent.), who were instructed in Mālikī law by the Ifrīqiyan jurist Ibn Abī Zayd al-Qayrawānī (d. 386/996).<sup>35</sup> They taught the second generation, which included ‘Abd al-Ḥaqq al-Ṣiqillī (d. 466/1073–1074) and Ibn Yūnus al-Ṣiqillī (d. 451/1059).<sup>36</sup> These fifth/eleventh-century Sicilian Mālikī sources give expression to local normative traditions and customs and thus have a much stronger regional focus than before. They can thus be regarded as documenting the formation of an increasingly independent legal system in Sicily.

[§15] At the time of the master–disciple relationship between Abū Bakr and ‘Abd al-Ḥaqq, approximately between the late fourth/tenth and mid-fifth/eleventh centuries, Sicily was under the rule of the Kalbid amīr Abū l-Futūḥ Yūsuf (r. 379/990–388/998) and his sons. This period was initially characterised by stability and peace, but ended with the dissolution of the Kalbid dynasty in 445/1053.<sup>37</sup> From the perspective of legal history, it was a time when the *Mudawwana* of Saḥnūn was revived in Sicily by the Mālikī jurist Abū Sa’īd al-Barādi’ī (d. after 430/1039). Al-Barādi’ī’s book, “A Refinement of the Summary of the *Mudawwana*” (*al-Tahdīb*

<sup>28</sup> Al-Muqaddasī, *Aḥsan al-taqāsīm*, ed. de Goeje, p. 238.

<sup>29</sup> ‘Abbās, *al-‘Arab fī Ṣiqilliya*, p. 96.

<sup>30</sup> Nef, *Les élites savantes*, pp. 460–465.

<sup>31</sup> Al-Qāḍī ‘Iyād, *Tartīb al-madārik*, ed. al-Ṣaḥrāwī, vol. 4, p. 419. On the method of “*samā’*” or “aural transmission” see: Schoeler, *The Oral*, p. 41.

<sup>32</sup> ‘Abd al-Ḥaqq, *Tahdīb*, Ms. 3157, al-Azhar, vol. 2, fol. 89a.

<sup>33</sup> See, e.g., ‘Abd al-Ḥaqq, *Tahdīb*, Ms. 3157, al-Azhar, vol. 1, fol. 22a, fol. 38a. For the biography of Sulaymān b. Sālīm al-Qaṭṭān see: Al-Qāḍī ‘Iyād, *Tartīb al-madārik*, ed. al-Ṣaḥrāwī, vol. 4, pp. 356–357.

<sup>34</sup> Mandalà, *Political Martyrdom*, pp. 147–175; Ibn Ḥawqal, *Ṣurat al-arḍ*, ed. Kramers, vol. 1, pp. 124–125.

<sup>35</sup> Al-Qāḍī ‘Iyād, *Tartīb al-madārik*, ed. A’rāb, vol. 7, pp. 269–270.

<sup>36</sup> Al-Qāḍī ‘Iyād, *Tartīb al-madārik*, vol. 7, p. 270, vol. 8, p. 114; ‘Abbās, *Mu’ğam al-‘ulamā’*, pp. 49, 234; ‘Abbās, *al-‘Arab fī Ṣiqilliya*, p. 98.

<sup>37</sup> Al-Nuwayrī, *Nihāyat al-arab*, ed. Tarḥīnī, vol. 24, p. 207; Metcalfe, *Muslims of Medieval Italy*, p. 84. ‘Abbās, *al-‘Arab fī Ṣiqilliya*, pp. 46–48.

*fi ihtisār al-Mudawwana*) was an abridgement of Saḥnūn’s *Mudawwana*. It was the most important Mālikī source in Sicily in the late fourth/tenth and early fifth/eleventh centuries.<sup>38</sup> It entered Sicily, most likely, under the Kalbid amīr Abū l-Futūḥ Yūsuf whose court welcomed many scholars.<sup>39</sup> According to Miklos Muranyi, al-Barāḍī’s “Refinement” (*Tahqīb*) was drafted in al-Qayrawān in 372/983 before his departure for Sicily and then divided into chapters in Sicily in 420/1029.<sup>40</sup> ‘Abd al-Ḥaqq studied and criticised al-Barāḍī’s “Refinement” (*Tahqīb*) and may have borrowed the initial title word of his treatise, i.e. *tahqīb*, from al-Barāḍī’s book.<sup>41</sup>

[§16] In Mālikī law, a sale contract has three main elements; a) the wording (*ṣīgha*) of the contract, b) the parties of the contract, c) and the object of the contract. If the object of sale is a slave girl, as in this excerpt, it should be clearly known to and identified by the parties at the time of the contract. In the notary book “Documents and Registers” (*al-Watā’iq wa-l-siḡillāt*) by Ibn al-‘Aṭṭār al-Qurṭubī (d. 399/1009), an exemplary sale contract for a slave girl gives a full physical description of her as the object of the sale, including her ethnic origin. However, the slave girl’s religious affiliation is not part of the description.<sup>42</sup>

[§17] ‘Abd al-Ḥaqq approached his *ṣayḥ* Abū Bakr with a question on the legal ruling of purchasing slave girls in Sicily that can be defined as *iḡtihādī* because it dealt with a hitherto unheard legal problem.<sup>43</sup> The excerpt points to a peculiarity of the slave trade in Sicily, which is the wide price gap between more expensive Christian and cheaper Muslim slave girls, of which a Qayrawānī jurist such as Abū Bakr b. ‘Abd al-Raḥmān was not aware. It starts with a question by ‘Abd al-Ḥaqq and ends with an answer by Abū Bakr. The issue at stake is whether the buyer, who was misled by the slave girl’s religion at the time the contract was concluded, should have the right to return her to the seller. With some reluctance, Abū Bakr regarded the slave’s affiliation to Islam as a “deficiency” (*‘ayb*) and, consequently, allowed the buyer to annul the sale and return the slave girl to her master for a refund of the price. In this way, Abū Bakr applied an Islamic jurisprudential maxim according to which avoiding damages takes precedence over gaining benefits. In this case, the damage was caused by the purchase of an expensive “Christian” slave girl who, in fact, turned out to be a low-priced Muslim.

[§18] The sharp disparity of prices between Christian and Muslim slave girls should first be seen in the context of the application of Islamic laws in Sicily. Islamic law promoted the liberation or manumission of Muslim slaves, for instance as an act of atonement prescribed in the Qur’ān (Q 4:92, *al-Nisā*):

“It is not for a believer to kill a believer except (that it be) by mistake; and whoever kills a believer by mistake, (it is ordained that) he must set free a believing slave and a compensation (*diyya*, i.e. blood-money) be given to the deceased’s family unless they remit it.”<sup>44</sup>

[§19] Under Muslim rule, Christians and Jews were not allowed to own Muslim slaves. Only a free Muslim could own an enslaved Muslim. For instance, a captive Christian slave girl who converted to Islam remained a slave until her Muslim owner set her free. Thus, conversion did

<sup>38</sup> Ibn Farḥūn, *al-Dībāḡ*, ed. al-Aḥmadī, vol. 1, pp. 350–351.

<sup>39</sup> ‘Abbās, *al-‘Arab fi Ṣiḡilliya*, p. 46.

<sup>40</sup> Muranyi, *Beiträge*, pp. 302–303.

<sup>41</sup> Al-Qāḍī ‘Iyāḍ, *Tartīb al-madārik*, ed. A‘rāb, vol. 8, p. 73. Ibn Farḥūn, *al-Dībāḡ*, ed. al-Aḥmadī, vol. 2, p. 56.

<sup>42</sup> Ibn al-‘Aṭṭār, *al-Watā’iq*, ed. Chalmeta and Corriente, pp. 33–34.

<sup>43</sup> *Iḡtihād* is one of the principles of Islamic law (*uṣūl al-fiqh*) and is a legal reasoning that jurists use whenever they are confronted with a new legal question that no one has faced before and for which there is no specific text (*naṣṣ*) from the Qur’ān or Sunna to decide the matter. In this case a jurist has to exert his effort (*yaḡtahid*) to give his legal ruling on the issue.

<sup>44</sup> Al-Hilālī and Ḥān (trans.), *Translation*, p. 123.

not entail the automatic manumission of a former Christian slave. As William Clarence-Smith has pointed out, Muslim jurists “only accepted automatic liberation through conversion when slaves ran away from infidel owners to join the Islamic host.”<sup>45</sup> Soon, the same rules were adopted by the Normans, for we know from the Jewish traveller Benjamin of Tudela (fl. 1159–1173) that Jews, and *a fortiori* Muslims, were not allowed to own Christian slaves.<sup>46</sup> Whereas the Geniza documents contain no reference to slave trade in Muslim Sicily, Norman Sicily produced a few documents, now prohibiting Jews and “pagans” to trade in Christian slaves.<sup>47</sup>

[§20] The source excerpt does not shed light on why the price of Christian slave girls was so much higher than that of Muslims. The question raised by ‘Abd al-Ḥaqq suggests that religion was the main factor behind the price difference. The abovementioned notary form by Ibn al-‘Atṭār, in turn, suggests that the slave girl’s physical attributes and place of origin played a much more important role. It implies that the practice of grouping slaves according to ethnicity affected the dynamics of supply and demand for slave trade in the Mediterranean and, consequently, influenced the price of slave girls.<sup>48</sup>

[§21] Islamic legal sources also suggest that a slave girl’s ethnicity had a higher impact on the price than her religious affiliation. Initially, they only prove that slave girls of different, e.g. Berber, Ṣaqlabī, and Ḥurāsānī origin were traded across the wider Mediterranean since the second/eighth century.<sup>49</sup> ‘Abd al-Ḥaqq’s contemporary, the Sicilian jurist Ibn Yūnus (d. 451/1059), cites the early authority of Ibn al-Qāsim al-‘Utaqī (d. 191/806). According to the latter, someone who bought a “Slavic” (*Ṣaqlabī*) slave girl, but found that she was a Berber or Ḥurāsānī slave girl, had no right to return her to the seller since, in his opinion, no financial damage had occurred.<sup>50</sup> However, from the second/eighth century onwards, jurists seem to have judged the value of a slave girl increasingly on the basis of her ethnicity or place of origin. Muslim jurists such as Saḥnūn believed, for example, that particular ethnic backgrounds were valued higher than others, thus generating a higher demand and a corresponding higher price.<sup>51</sup> Consequently, the origin and ethnicity of slave girls was commented on repeatedly in the following centuries. Abū Ishāq al-Iṣṭaḥrī (d. 346/957) reported that Sicily possessed the best slaves (*raqīq*) in the entire Muslim Mediterranean.<sup>52</sup> In the late second/eighth century, the legal discussions between Saḥnūn and Ibn al-Qāsim reveal that Ḥurāsānī slave girls were regarded as more valuable than Ṣaqlabī slave girls, whereas Berber slave girls were regarded as equal to Ḥurāsānī slave girls.<sup>53</sup> As late as the fifth/eleventh century, ethnicity and place of origin played an important role in the categorization of slave girls for the purpose of trade.<sup>54</sup> While it becomes clear that slave trade in the wider Mediterranean was subject to economic, political and ideological factors,<sup>55</sup> it seems curious that the source excerpt cited here takes religion, not ethnicity as the main criterion that affected the price of a slave girl.

[§22] The higher price of the Christian slave girls may possibly be explained on the basis of the economic theory of supply and demand. In Sicily of the early fifth/eleventh century, Christian slave girls were possibly in higher demand and more difficult to acquire than Muslim slave

<sup>45</sup> Clarence-Smith, *Islam*, p. 40.

<sup>46</sup> Benjamin of Tudela, *The World*, trans. Benjamin, p. 282.

<sup>47</sup> König, 903–906: Raffelstetten Customs Regulation; Simonsohn, *Jews in Sicily*, vol. 1, pp. 431, 434.

<sup>48</sup> Barker, *Trade*, pp. 100–105.

<sup>49</sup> Saḥnūn, *al-Mudawwana*, s. ed., vol. 4, p. 309. Ibn Yūnus, *al-Ġāmi‘*, vol. 14, p. 87. Talbi, *L’Émirat aghlabide*, pp. 43–44.

<sup>50</sup> Ibn Yūnus, *al-Ġāmi‘*, ed. al-Zīr, vol. 14, p. 87.

<sup>51</sup> Saḥnūn, *al-Mudawwana*, s. ed., vol. 4, p. 309.

<sup>52</sup> Al-Iṣṭaḥrī, *Kitāb al-Masālik wa-l-mamālik*, ed. de Goeje, p. 70; Chiarelli, *History of Muslim Sicily*, p. 267.

<sup>53</sup> Saḥnūn, *al-Mudawwana*, s. ed., vol. 4, p. 309.

<sup>54</sup> Gordon, *Slavery*, p. 354.

<sup>55</sup> Fynn-Paul, *Greater Mediterranean Slave Trade*, pp. 27–29.

girls. The Muslim conquest of Sicily in 212/827 had probably led to the enslavement of Christian women from Sicily.<sup>56</sup> The present excerpt, however, is not about the enslavement of a defeated population by raiding or conquest, but about a sale transaction that rather seems to be situated in a period of stability and peace. The last possible period, in which Christian slaves could still be acquired by right of conquest in Sicily itself was in the 960s, when Taormina (*Ṭabarmīn*) and Rometta (*Rumṭa*), the last Byzantine fortresses in the northeast, fell into Muslim hands.<sup>57</sup> Thus, if Sicilian Muslims wanted to acquire Christian slaves that were not protected by *ḍimma*, i.e. the protection granted by the Muslim authorities in return for the payment of a poll-tax (*ḡizya*), they had to acquire these slaves outside Sicily, either through military campaigns, through trade, or through a combination of both.

[§23] Military campaigns led by Sicilian Muslims against Christian territories, in this case the Italian mainland, took place in 982, 1023, 1029, and 1031 respectively.<sup>58</sup> They may have produced a new slave supply, but could probably not satisfy a greater demand for Christian slave girls, if such a demand existed. Raiding activities by Muslims from other parts of the Mediterranean that could have procured a fresh slave supply had either come to an end by the late fourth/tenth century or did not necessarily cater to the economic demands of the Sicilians. The raiding basis at Garigliano had been destroyed in 915. The Fāṭimid raid against Genoa in 935 or 936 seems to have been an isolated affair. The Muslim “colony” of Fraxinetum and associated raiding activities in the Rhône Valley and the Alps came to an end when this base was also destroyed in the 970s. We know of “Saracen” raids against Pisa in 1005, but do not know whether they were linked to Sicily. In 1016, Muḡāhid of Denia then failed in his attempt to get a hold on Sardinia because of Pisan and Genoese resistance. We have no indication that Christian captives were brought to Sicily.<sup>59</sup> Zīrid attacks on the Calabrian coast that prompted the joint Pisan and Genoese campaign against al-Mahdiyya in 1087 probably took place long after ‘Abd al-Ḥaqq and Abū Bakr discussed the juridical issue in question before the 1040s.<sup>60</sup> Generally, we must also ask ourselves, whether extra-Sicilian Muslim actors such as Muḡāhid of Denia or the Zīrids of al-Mahdiyya would necessarily have sold female Christian captives in Sicily rather than taking them to the Iberian Peninsula or North Africa directly.

[§24] The Pisan and Genoese strike against Muḡāhid of Denia in 1016 and the Pisan attack on North African ‘Annāba in 1034 illustrate that Muslim fleets had to reckon with retaliation from the early fifth/eleventh century onwards. This makes it more difficult to insert early fifth/eleventh-century Sicily into a flourishing network of slave trade that involved Christian partners. Slaves had been a commodity of exchange between Italy and North Africa since the mid-second/eighth and at least up to the tenth century, when cities such as Venice at least claimed to end their export of slaves to North Africa.<sup>61</sup> Consequently, we can probably agree with Wilhelm Heyd (1823–1906) who pointed out that “for the sake of profit, some Christian merchants did not shy away from selling their own co-religionists as slaves to the Arabs in Spain, Africa or Syria.”<sup>62</sup> We should also not take Muslim prohibitions too seriously: ‘Abd al-Ḥaqq, for example, prohibited Sicilian Muslim merchants from travelling to “the land of the infidelity” (*arḍ al-širk*) for the purpose of trade, indicating that those who did not comply would not be accepted as witnesses in Islamic courts, thus only imposing a minor punishment that did

<sup>56</sup> Metcalfe, *Muslims of Medieval Italy*, p. 10.

<sup>57</sup> Metcalfe, *Muslims of Medieval Italy*, pp. 55–56.

<sup>58</sup> Hayn and Böhme, 982: Thietmar; Metcalfe, *Muslims of Medieval Italy*, pp. 79–80.

<sup>59</sup> Bruce, *Politics*, pp. 134–137.

<sup>60</sup> Epstein, *Genoa*, pp. 9–53; Mitterauer and Morrissey, *Pisa*, pp. 94–145; Jehel, *L'Italie et le Maghreb*, pp. 13–36; Metcalfe, *Muslims of Medieval Italy*, pp. 4–69; Kreutz, *Before the Normans*, pp. 18–101.

<sup>61</sup> Chiarelli, *History of Muslim Sicily*, p. 262; McCormick, *Origins*, pp. 753, 770; König, 903–906: Raffelstetten Customs Regulation, p. 6; Talbi, *Law and Economy*, p. 224. Schaube, *Handelsgeschichte*, p. 23. *Decretum Venetorum de Abrogando Saracenorum Commercio*, ed. Tafel and Thomas, vol. 1, no. XIII, pp. 18–19.

<sup>62</sup> Heyd, *Histoire du commerce*, vol. 1, p. 95.



to involve any financial loss or physical sanctions.<sup>63</sup> But in spite of indications that Pisan merchants visited Sicily in the early fifth/eleventh century,<sup>64</sup> and that trade between Calabria and Sicily took place,<sup>65</sup> it seems difficult to imagine that Christian merchants active in the Tyrrhenian Sea provided Muslim Sicily with a regular supply of female Christian slaves, especially in a period, in which Pisa and Genoa began to be increasingly active also in military terms. As Shelomo Dov Goitein stated, the early fifth/eleventh century witnessed a complete translocation of the Mediterranean trade routes” that had existed so far,<sup>66</sup> not least because Ifrīqiya had been severely affected by an epidemic plague.<sup>67</sup> Although much more research would be necessary to fully understand the shifting economic flows in the Western Mediterranean of the early fifth/eleventh century and the role of slavery therein, all this could suggest that Sicilian Muslims interested in acquiring female Christian slaves had increasing problems of supply, the consequence thereof being that they had to pay a higher price for them.

[§25] In conclusion, the excerpt on slave trade taken from ‘Abd al-Ḥaqq’s *Mālikī* treatise provides both legal and economic information on slave girls in Sicily in the first half of the fifth/eleventh century. It shows that transmediterranean communication between jurists from Ifrīqiya and Sicily supported the creation of an increasingly independent legal infrastructure in Sicily from the mid-third/ninth century onwards that eventually had to take position on legal matters that were specifically Sicilian. Among these specifically Sicilian legal matters is the issue whether the buyer of a Muslim female slave has to be compensated if he bought her in the belief that she was in fact Christian. Why prices for Christian female slaves should have been higher than for Muslims can possibly be explained by a high demand and a lack of supply, which resulted from changing economic flows in the Tyrrhenian Sea of the early eleventh century. Before this period, it seems, the acquisition of female Christian slaves of either Sicilian or foreign origin had been easier than at the time when the Sicilian jurist ‘Abd al-Ḥaqq raised this legal issue with his Qayrawānī teacher Abū Bakr.

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<sup>63</sup> ‘Abd al-Ḥaqq, *Tahdīb*, Ms. 3157, al-Azhar, vol. 2, fol. 162a.

<sup>64</sup> Heyd, *Histoire du commerce*, vol. 1, p. 122. Chiarelli, *History of Muslim Sicily*, p. 259.

<sup>65</sup> Chiarelli, *History of Muslim Sicily*, p. 262.

<sup>66</sup> Goitein, *Mediterranean Society*, vol. 1, p. 32.

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