**A Legal Note from Southwestern Mauritania**

**An Introduction to *The Criteria for Inheritance******(Asbāb al-Irth)* by Sīdī Muḥammad b. al-Shaykh Sīdiyyā[[1]](#footnote-2)**

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*The Criteria for Inheritance* is a note written by Sīdī Muḥammad b. al-Shaykh Sīdiyyā (d. 1869) to explain some specific points regarding *ʿilm al-farāʾiḍ*, the science of dividing inheritance shares according to Islamic jurisprudence. The author was a renowned scholar and poet,[[2]](#footnote-3) influential in a region of West Africa that corresponds to present day Mauritania. He was a member of the local clerical elite, the *zawāyā*, a group itself divided into lineages competing for influence over local religious and legal affairs. He is today mostly remembered for his poetry, as he spent most of his life as a student and secretary of his father, Shaykh Sīdiyyā al-Kabīr (“the Elder”) (d. 1868)[[3]](#footnote-4)—a highly influential scholar and jurist who served as a mediator in local conflicts. The instrument of this mediation was often Islamic jurisprudence. Both individuals and polities recognized themselves as Muslims and were thus bound by Islamic law and more specifically by its interpretation under the school (*madhhab*) of Mālik b. Anas (d. 795), called the Mālikī school. As such, having people trained in the principles and minutia of Islamic law was of vital importance.

However, Shaykh Sīdiyyā al-Kabīr’s influence went beyond the legal sphere. He developed a profitable commercial network across the Sahara and was also recognized as a spiritual heir of the religious leader Muḥammad b. al-Mukhtār al-Kuntī (d. 1811), a status that afforded him considerable religious authority.[[4]](#footnote-5) After his death, the family influence was transferred to Shaykh Sīdiyyā Bāba (d. 1924), as his own son (and author of this text) Sīdī Muḥammad b. al-Shaykh Sīdiyyā died only a few months after him. Sīdiyyā Bāba became a close interlocutor to the French colonial administration and one of the first Muslim leaders to formally recognize French authority.[[5]](#footnote-6)

The manuscripts available for this text reflect this history of family influence as the *Maktaba* website displays two versions of the text. The first[[6]](#footnote-7) was written sometime in the mid-nineteenth century in the hand of its author, Sīdī Muḥammad b. al-Shaykh Sīdiyyā; the second[[7]](#footnote-8) is a copy made sometime in the twentieth century by Yaʿqūb b. Muḥammad b. Shaykh Sīdiyyā Bāba (d. 2002), grandson of the author and son of Shaykh Sīdiyyā Bāba. Yaʿqūb was a religious figure carrying the family blessing (*baraka*) and authored some works on the life of the Prophet Muḥammad and jurisprudence.[[8]](#footnote-9) We have provided a single translation for both manuscripts since the content is the same except for one line. Displaying both manuscripts not only highlights the common practice of copying texts, but also demonstrates how one text connected several generations of the famous Sīdiyyā scholarly lineage from the region now known as Mauritania.

The manuscripts discuss some specific points of Mālikī jurisprudence regarding *ʿilm al-farāʾiḍ*, the science of dividing inheritance. The main object of *ʿilm al-farāʾiḍ* is to navigate a tension between the so-called Qurʾanic heirs, who inherit from the departed according to fractions explicitly laid out in the Qurʾan on the one hand, and other relatives who are in some cases entitled to inherit whatever is left after these mandatory shares have been distributed on the other hand.[[9]](#footnote-10) Sīdī Muḥammad’s *Criteria for Inheritance* focuses on this second category of putative heirs to determine the conditions under which they are entitled to (or prevented from) accessing the inheritance of a relative.

One of the note’s sources is the poem (*manzūmā*) of Abū Isḥāq Ibrahīm b. Musā al-Tilimsānī al-Sabtī (d. 1291) titled *al-Urjūzā fī al-Farāʾiḍ (Short Poem on the Science of Inheritance)*, specifically the section on the reasons for inheritance and the reasons to prevent someone from accessing a deceased relative’s inheritance. Interestingly, however, there is a brief mention of another source, namely the *Raḥbiyya*, a *manzūmā* authored by a twelfth century Shāfiʿī (hence non-Mālikī) legal scholar by the name of Muḥammad al-Raḥbī al-Shāfiʿī (d. 1181). The citation of al-Raḥbī is significant as it indicates not only some degree of familiarity on the part of the nineteenth century scholars of the Saharan West with other schools of law, but also openness to them. The last section of the text explores eight important points on rules of inheritance, before ending with “warnings” (*tanbīh*) to highlight a few aspects of the jurisprudence.

Although this manuscript is fairly brief (the original is two folios and the copy is four), it nevertheless manages to address the minutiae of rare and seemingly difficult hypothetical cases of Islamic inheritance law. While it is hard to know exactly what the document was used for and why it was penned in the first place, the mention at some points of “students” suggests it might have been used as a teaching memo. At the same time, given the prominent role played by various Sīdiyyā family members in their broader community—as muftis (jurists) and influential Muslim scholars—it is likely that the document was used to craft legal opinions and to adjudicate cases. The author discusses cases about which the first two primary sources of Islamic law (namely the Qurʾan and sunna) are silent. Such cases are thus adjudicated by jurists relying on secondary sources of law, namely the opinions and interpretations of other Islamic jurisconsults and scholars engaged in authoritative legal interpretation (*ijtihād*)and analogical reasoning(*qiyās*) in conformity with the practice and principles of the shariʿa (Islamic law). As such, this short treatise might have been helpful to other scholars asked to adjudicate real-life cases brought before them and therefore might have been the source of many legal opinions (*fatāwā,* sing. *fatwā*).

With its sometimes obscure, laconic wording, the text is quite typical of the style of legal writing in use and circulation among members of the local clerical elite, the *zawāyā*. Combined with the complexity of the legal topic (the science of inheritance is one of the most difficult disciplines in the Islamic legal field), this makes its translation into a Western language particularly challenging, if only because there are so few equivalents in those languages for Islamic legal concepts and categories.

Finally, although this type of literature may not make for easy reading, it offers some nuggets of information related to important themes such as slavery, manumission, kinship, violence, access to inherited wealth and—last but not least*—*gender, including gender diversity and the status and rights of those whose gender identity is considered undetermined or “fluid.”

1. Sīdī Muḥammad b. al-Shaykh Sīdiyyā b. al-Mukhtār b. al-Hayba al-Intishishāʾ al-Abyayrī (henceforth shortened to Sīdī Muḥammad b. al-Shaykh Sīdiyyā), *The Criteria for Inheritance (Asbāb al-Irth)*, MS 101/7/1468 and MS 82/1/27, Charles C. Stewart Papers, University of Illinois Archives (henceforth “Stewart Papers”). [↑](#footnote-ref-2)
2. For a list of his known works, see Charles C. Stewart with Sidi Ahmed Wuld Ahmed Salim, *Arabic Literature of Africa,* vol. 5, pt. 1, *The Writings of Mauritania and the Western Sahara* (Leiden: Brill, 2016), 159-66. [↑](#footnote-ref-3)
3. For a brief biography of Shaykh Sīdiyyā al-Kabīr, see Charles C. Stewart, “Sidiyya al-Kabir al-Ntishaiʾi,” *African American Studies Center* (Oxford University Press, 2011). https://doi.org/10.1093/acref/9780195301731.013.48329.

   [↑](#footnote-ref-4)
4. Charles C. Stewart, *Islam and Social Order in Mauritania: A Case Study from the Nineteenth Century* (Oxford: Oxford University Press, 1973). [↑](#footnote-ref-5)
5. David Robinson, *Paths of Accommodation: Muslim Societies and French Colonial Authorities in Senegal and Mauritania, 1880-1920* (Athens, OH: Ohio University Press, 2000), 178-88. [↑](#footnote-ref-6)
6. MS 101/7/1468, Stewart Papers. [↑](#footnote-ref-7)
7. MS 82/1/27, Stewart Papers. [↑](#footnote-ref-8)
8. Abdel Wedoud Ould Cheikh, “Harun Wuld al-Shaikh Sidiyya (1919-1977),” in *Le temps des marabouts: itinéraires et stratégies islamiques en Afrique occidentale française v. 1880-1960*, eds. David Robinson and Jean-Louis Triaud (Paris: Éditions Karthala, 2012), 201–19 ; Stewart with Ahmed Salim, *Arabic Literature of Africa,* vol. 5, 167-9. [↑](#footnote-ref-9)
9. David S. Powers, “The Islamic Inheritance System: A Socio-Historical Approach,” *Arab Law Quarterly* 8, no. 1 (1993): 13–29. [↑](#footnote-ref-10)