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## **The Bey, the mufti and the scattered pearls : Shari'a and political leadership in Tunisia's Age of Reform -1800-1864**

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### **Citation**

Haven, E. C. van der. (2006, October 26). *The Bey, the mufti and the scattered pearls : Shari'a and political leadership in Tunisia's Age of Reform -1800-1864*. Retrieved from <https://hdl.handle.net/1887/4968>

Version: Corrected Publisher's Version

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**Note:** To cite this publication please use the final published version (if applicable).

## Appendix B

### Documents Relating to the Abolition of Slavery (1846)<sup>1</sup>

#### *Preamble to The Letter of Aḥmad Bey to the High Religious Council (Majlis al-Sharʿī)*

In the month Muḥarram of the year 1262 was promulgated in the entire kingdom a decree of the Bey ordering the liberation of black slaves. His decision was prompted by the conviction that the majority of people in this kingdom – may God Most High bring it prosperity – does not rightfully own their brothers from among Adam’s children in accordance with the law, not in the least. Well, this Bey clearly possessed a natural inclination towards civilization that holds freedom as its true core and foundation.

He held the view that it would convince those striving for social reforms (*al-Tanzīmāt al-Khayriyya*),<sup>2</sup> [also] holding freedom as their foundation. He did not order the implementation of all measures at once, but trod gradually towards his goal. So, in the month Rajab of the year 1257 he prohibited the sale of slaves on the market, as if they were animals. He cancelled the taxes<sup>3</sup>, imposed on that [trade] amounting to a yearly sum of slightly more than 30.000 riyal, the collector of which was called ‘the governor of [Sūq] *al-Birka*’. He had the benches built at the time for them to sit on, destroyed as well as the governor’s office that was called the cage (*qafas*). He was, however, silent about the sale of slaves outside the market.

Subsequently he prohibited the export of slaves for trading purposes out of the province (*imāla*). A communication to that effect was forwarded to the harbors of the kingdom.

Subsequently, in the last days of the year 1258, he promulgated a decree, [stipulating] that every person born in the kingdom of Tunisia is free and should not be bought or sold. In that year possession of slaves became forbidden.

I was given the order to write a letter to that effect to the members of the High Religious Council, the text of the letter after its address being as follows.

#### *The Letter of Aḥmad Bey to the High Religious Council (Majlis al-Sharʿī)*

To us there is not a shadow of a doubt that in this day and age most people in this Regency do not rightfully own their black slaves in the prescribed manner. They consider them of little or no value, notwithstanding the ongoing and unresolved discussion between the religious scholars, while in their land the dawn of faith is casting its light since many centuries. Where is the master owning his brother in a lawful way, as laid down by the Lord of the Messengers at the end of his life in this world and at the beginning of his life in the Hereafter? Is not one of the principle rules of His law to aspire to freedom (*tashawwuf ilā al-ḥurriyya*) and to liberation of the slave from his master because of harm [unjustly impaired upon the slave by his master] (*bi-l-adrār*)?

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<sup>1</sup> *Ithāf* IV, 86-90. The abolition documents have been translated from the *Ithāf*’s 1985 critical edition of A. Abdesselem.

<sup>2</sup> See Chapter Two, page 52 and Chapter Three, page 99 ff.

<sup>3</sup> In 1985 edition: *al-maks*; in 2001 edition: *al-māl* collected for the state on the basis of an eighth [of the sum], 86.

This being the situation and out of sympathy with the fate of these poor people in their world and that of their owners in the Hereafter, we decided to forbid the people to continue this permissible practice, although a discussion on diverging points of view still continues, in view of the situation we described above and out of fear that they might diverge into a conduct that is absolutely forbidden and on which there is consensus, namely, that they might harm their brothers whom God has placed under their authority.

Moreover, political interests prompted our actions. We want to prevent them seeking refuge in the territory of rulers not belonging to their religious community.

We therefore assigned government officials at the *zawiya* of Sīdī Muḥriz, at the *zawiya* of the Bakrī family and at the *zawiya* of Sīdī Maṣṣūr. For anyone appearing before them and seeking protection, they will write out a document stating our verdict that they should be liberated from their masters. The document then has to be presented to us to be certified.

So, if a slave is seeking protection against his master from one of you – may God protect you! – or, if communication reaches you about any event concerning ownership of a slave, you will send this slave to us. Let the owner be aware not to cross his path; your sacred territory will receive whoever seeks refuge therein to ransom his own neck from a right of ownership that in all probability would not hold in a legal sense. We would not grant it to whoever would claim it in our times. Avoiding what is permitted out of fear of being drawn into what is forbidden by law, is an obligatory line of conduct [of the *sharīʿa*] even more so if the public interest so requests. It is therefore obligatory to make the people abide by it.

God guides the people along the surest of ways. He announces to the believers a reward most profuse for their good works. Peace be with you!

Written on the 28<sup>th</sup> of the holy month Muḥarram, the first of the months in the year 1262.

Furthermore he decreed that together with the slaves' liberation will be recorded that their loyalty should be to their former masters; their *walāʿ*<sup>4</sup> will not be conferred to the Treasury.

*Fatwa of the Ḥanafī Shaykh al-Islām Abū ʿAbdallāh Muḥammad Bayram*

The Head of the Fatwa Office of the Ḥanafīyya, Abū ʿAbdallāh Muḥammad Bayram, gave him the following response:

To the Aḥmadī Marshallic Station of Power (*maqām al-sultāniyya*),<sup>5</sup> the Praiseworthy, whose pillars are exalted, whose stature is lofty, whose lands are protected from the enemies' attacks through his good governance. Rightness of action is to him a second nature. In all he commands public interests prevail.

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<sup>4</sup> See Chapter Two, 45.

<sup>5</sup> *Maqām*, a rank, a dignity, often with the connotation of being sacrosanct attached to it. In this context employed to indicate the important and lofty character of the Bey's station. *Sultāniyya* (of *sulta*, power) provides yet another example of the – delegated – power and authority attributed to him in his political domain, his *siyāsa*.

This noble missive has reached [your] poor and humble servant. I lost no time to follow the example [mentioned in the missive] and commenced to pass it on to those mentioned in it. We have understood and confirmed the public interest you referred to. The liberation of your servant's slaves already eventuated, in the awareness that such is the mode of conduct laid down as right and correct. In particular, as the legal grounds for the ownership of these black slaves may be questioned. Those among them who were free by origin, have become mixed up with others. Consequently, there is room for doubt with regard to each specific individual among them. To everyone familiar with the treatise of *shaykh* Sīdī Aḥmad Bābā on the issue, this should be a well-known fact.

In short, to withdraw from the contractual relations with them is preferable for man from a religious point of view. This is particularly true in view of the political interest [at stake here]. Anyone with just a grain of common sense would surely understand.

For the welfare bestowed on His servants through your good offices, God Most High will reward you most generously, in a manner He finds appropriate to the ruler who holds the Muslims' interests at heart.

My most sincere regards to Your Esteemed Highness. Written by him who prays for you, the poor Muḥammad Bayram. May God's Grace be upon him. Written in the month Muḥarram of the year 1262.

*Fatwa of Abū Ishāq Ibrāhīm al-Riyāḥī, the Malikite Bāsh Muftī*

The *Shaykh* of *Shaykhs*, rock of piety<sup>6</sup>, head of the Mālikī Chamber of the High Religious Council (*kabīr ahl al-shūrā*), our *shaykh* Abū Ishāq Ibrāhīm al-Riyāḥī, gave him the following response.

O, God, render Your help to the Islam and the Muslims to keep and to save the Prince of the Believers, who is strengthened by a mighty triumph and a clear victory, who derives his justly formulated views from the light of the Knowing and the All-knowing, our lord and master, Bāshā Aḥmad, the Marshall (*mushūr*). May the Divine Guidance leading him along the surest path rest upon his hand continuously, because of the natural disposition engrained in him!

After your respected letter and esteemed missive has reached me, I have reflected on the message it announced. I rejoice in its contents: it reflects your right judgment with respect to the liberation of these slaves viewed from different aspects. It will be met with approval by everyone endowed with commonsense and knowledgeable of the facts in these matters.

There is nothing to add to your exposition. Through your good offices the community of Islam continues to enhance its splendor and through your good governance the Dynasty gains in prosperity. Amen. To conclude, a prayer from him who honors your lofty rank, Abū Ishāq Ibrāhīm 'Abd al-Qādir al-Riyāḥī, may God send him forgiveness. Amen. In Muḥarram of the year 1262.

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<sup>6</sup> This expression is not employed in the 2001 *Ithāf* edition,. In the 1985 edition, page 127.

*The Malta Pamphlet*

To the entire community of Muḥammad, God's Peace be with him, and with all prophets and messengers. Peace be with you and God's mercy. The sublime Qur'ān with its inimitable and wondrous nature will be amongst you forever and continues to speak of your outstanding qualities. One example most eloquent thereof are His words:

Thus We appointed you a midmost nation  
That you might be witnesses to the people,  
And that the Messenger might be a witness  
to you; (*Sūra* 2, 143(137)).

And His words:

You are the best nation ever brought forth  
to men, bidding to honor, and forbidding  
dishonor, and believing in God. (*Sūra* 3, 110(106))

And His words:

Today I have perfected your religion  
For you, and I have completed My blessing  
Upon you, and I have approved Islam for  
your religion. (*Sūra* 5, 3(4)(5)).

It is appropriate for [this community] that finds itself in this advanced position of excellence, witness the Truthful in His inimitable word, to partly refrain from matters permitted out of fear to revert to matters not permitted. Is it not true that every king has a sanctum that shall not be entered (*ḥimā*)<sup>7</sup> ? The *ḥimā* of God are His prohibitions. Whoever lingers around a *ḥimā* will soon be inclined to set foot in it.

It is permitted in your tolerant community of true believers (*fi millatikum al-ḥanīfiyya*)<sup>8</sup> to possess prisoners of war, in accordance with the principle of its permissibility - announced by the words - in the Qur'ān:

It is not for any Prophet to have prisoners  
until he make wide slaughter in the land.  
You desire the chance goods of the present world,  
and God desires the world to come; and God is  
All-mighty, All-wise.  
Had it not been for a prior prescription from  
God, there had afflicted you, for what you took,

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<sup>7</sup> *Ḥimā*, a pre-Islamic institution. To protect themselves against the consequences of enduring draught, heads of tribes claimed for themselves the right to graze their cattle on specific favorably situated grounds, a *ḥimā*. A place thus marked out was placed under the protection of the tribe's god: plants and animals in the *ḥimā* were protected and the right of asylum applied in it. The institution only retained a secular meaning in Islam, with one exception: only God and His prophet have a *ḥimā*. J. Chelhod, '*Ḥimā*'. In EI<sub>2</sub> III, 393.

<sup>8</sup> *Millat al-ḥanīfiyya*, of *ḥanīf*, i.e. a true Muslim. In the Qur'ān the word is used especially of Ibrāhīm, as the true worshipper of God. The term presumably belongs to the years immediately following the emigration to Medina, especially after the break with the Jews. The use of the terms 'Muslim' and 'Islam' is said not to be before the end of the second century AH. In EI<sub>2</sub> III, 165.

a mighty chastisement.  
Eat of what you have taken as booty, such as  
is lawful and good; and fear you God; surely  
God is All-forgiving, All-compassionate. (*Sūra* 8, 67(68), 68(69), 69(70).

Well, this manner of expressing holds a form of veneration of Muḥammad and a love for him that cannot remain concealed to anyone knowledgeable in the meanings of the Revelation and the secrets of rhetoric, as described by [Qāḍī] ‘Iyāḍ in his *Kitāb al-Shifā’*.<sup>9</sup>

You also know that your Intercessor, your Mediator and your Leader to Eternal Bless is the Prophet, who

has come to you from among  
yourselves; grievous to him is your suffering;  
anxious is he over you, gentle to the believers,  
compassionate. (*Sūra* 9, 128).

His last admonition to you was at the time of his passage to the High Council (*al-malā’ al-‘alā*).<sup>10</sup> ‘God is the God you invoke when you pray. God is the God of all you hold in your possession.’<sup>11</sup>

He also said:

Brothers to you are your servants (*khawalukum*) whom God has placed under your authority. Whoever has a brother placed under his authority and care, he will feed him with whatever he feeds himself and clothe him with whatever he clothes himself. He will not burden him with a task beyond his capability.

It belongs to the foundations of your religion that the Lawgiver did already anticipate and move into the direction of freedom and liberation. [On this principle] detailed regulations have been established in the books of jurisprudence (*fiqh*). One [sufficient] example thereof is the permission to employ *zakāt* money for a slave’s manumission, [the donation of] *zakāt* being one of the five pillars of Islām.

Whoever is devoted to the law and its principles, its clear meanings and intentions, in particular the Muḥammadan law which is based on love and compassion, abstains from this permitted matter, namely the possession of his brother in Adam. In principle, his brother in Adam is qualified to hold the office even of prophet or caliph here on earth and other human stations of prominence. This hold true even if the [slave owner] could fulfill all the conditions disculpating him in a particular time and place and be superior [in his arguments ] to the person denying him that right.

Personal observation yields the strongest proof. Whoever is born with the natural religion (*al-fitra*) of mankind, nurtured with the mother’s milk of love for man and grown in the cradle of

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<sup>9</sup> See Chapter Two, 71.

<sup>10</sup> *Sūra* 37, 8: ‘...they [i.e. the demons] listen not to the High Council.’ *Sūra* 38, 69: ‘...I had no knowledge of the High Council when they disputed.’

<sup>11</sup> viz: your slaves.

compassion, his heart will soften upon the sight of these wretched creatures to whom God's exalted words from His Book apply:

God has struck a similitude: a servant  
possessed by his master, having no power  
over anything, (*Sūra* 16, 75(77))

[His heart will speak] when he sees how they are handled in a humiliating serfdom and in an undignified bondage, in addition to the legal problems of today, as most of them, yes, even all of them come from their land Sudan: they pronounce both the *shahada's* sentences, they know, in essence, its meaning. This points to the fact that it is forbidden to possess them, as expounded in the works of jurisprudence.

There is no objection to abstain from this matter - which is in fact permitted – as it leads to things forbidden. Permissibility is the lifting of restriction. However, this lifting does not imply an order to practice it. On the contrary, if the abstention from what is permitted is pure in its intention, then this abstention will be rewarded profusely, in accordance with the benevolence of the Compassionate and the Merciful, Who commands [us] to be compassionate and blesses [our] compassion with His mercy.

This is the adequate decision in view of your circumstances, oh, people of the faith, whose religion is dominant over all other religions. May the Compassionate have compassion with those who are compassionate!

Oh, souls of purity, oh, hearts pure and sincere, oh, manners inclined towards compassion.... Your law anticipates the liberation of slaves. In the ownership of human beings man is put to the greatest of tribulations; the slave's condition is [now] brought to light. God reigns in opposition to what has been recorded as lawful. As He has made you owners over them, so He will make them owners over you.

He is Omnipotent over His servants, and He is  
the All-wise, the All-aware. (*Sūra* 6, 18).

Peace and God's mercy be with all adherents of Islam, on behalf of God's servant to whom God's word applies:

Say: 'O my people who have been prodigal  
against yourselves, do not despair of  
God's mercy; surely God forgives sins  
altogether; surely He is the All-forgiving,  
the All-compassionate. (*Sūra* 39, 53(54)).

From the words quoted before : "In the ownership of human beings man is put to the greatest of tribulations; the slave's condition is [now] brought to light" it is evident that these words also encompass the legal possession by virtue of taking into captivity during war fare or by virtue of purchase or by virtue of capture by means of overpowering or violence by absolute rulers knowing no temperance. All this is truly more abhorrent than the case [of slavery] mentioned earlier, which still might have an aspect of legality. The latter cases, however, are in no way based on law or on reason.