

# Islamic Law and Linguistics Solecisms: A Case of ‘Insulting the Prophet’ in Late 10th/16th-Century West Africa

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Received: 8 May 2025 • Accepted: 10 October 2025

Published Online: 11 February 2026

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## ABSTRACT

A passage in the West African chronicle *Tārikh al-fattāsh* recounts a tenth-/sixteenth-century case of a mosque attendant in Timbuktu having been executed for an absurdly faulty reading of a single word in a celebrated Arabic panegyric on the Prophet, al-Fāzāzī's *Ishrīniyyāt*. In addition to presenting and analysing this instructive case of unintentional *sabb al-rasūl* ('insulting the Prophet'), the essay discusses some of the juridical aspects of the incorrect use of Arabic, especially linguistic considerations affecting the sanctions against blasphemous and insulting utterances.

## KEYWORDS

al-Fāzāzī, insulting the Prophet, Islamic law, *Ishrīniyyāt*, *sabb al-rasūl*, *sharī'a*, Songhay Empire, Timbuktu

## INTRODUCTION

The core of this essay is based on a paper read at a colloquium held in 2021 to commemorate the 100th anniversary of the death of the renowned orientalist Ignaz Goldziher, who had encyclopaedic expertise on Arabo-Islamic culture and a broad range of interests that encompassed linguistics. The list of his vast *oeuvre* includes a detailed exposition of the history of linguistics among mediaeval Arabs, which he read at the Hungarian Academy of Sciences on 16th April 1877 and which appeared the following year in the Hungarian scholarly journal *Nyelvtudományi*

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*Közlemények* under the title 'A nyelvtudomány történetéről az araboknál: Irodalomtörténeti kísérlet' (On the History of Linguistics among the Arabs: An Essay in Literary History). Goldziher's (1878: 363–367; 1994: 50–53) essay mentions interesting examples of the impact of the methods of Islamic jurisprudence upon Arabic linguistics, but virtually nothing on the impact of linguistics and lexicography upon Islamic law. This latter will be the main concern of the present article, which uses a somewhat unusual yet instructive case to highlight the significance of linguistic solecisms in traditional Islamic law.

Linguistic precision has obvious legal significance and consequences, as do linguistic errors. If they did not, there would be no need for attorneys to draft contracts and other legally binding documents in a language virtually impenetrable for their uninitiated customers, or for several years of study for lawyers to become qualified to handle the *termini technici* of legalese. In civil law an equivocally worded legal document can give rise to prolonged disputes among the interested parties and may necessitate recourse to a tribunal. While in criminal law one perhaps would not expect a mere linguistic error to lead to prosecution nowadays, this need not necessarily be so in premodern contexts, as this essay will argue.

The issue of linguistic competence will inevitably have extra significance in contexts of diglossia, where the everyday vernacular is different from the language used for high culture, including legal matters, a situation that occurred in many (indeed all) parts of the mediaeval Muslim world. The problem was exacerbated in regions in which Arabic was a foreign tongue altogether and knowledge of it – of any variant of it – was restricted to a tiny intellectual élite.

The West African chronicle known as *Tārīkh al-fattāsh* reports an extraordinary case from the late 10th/16th century that puts the issue of linguistic competence and its legal repercussions in harsh relief, and offers particularly interesting lessons on the treatment of linguistic errors by Muslim jurists. Although the focus of the present study is this one report rather than the chronicle as a whole, let alone the highly complex problem of its authorship, it will be necessary to summarise the latter issue in a few words. Attributed to Alfa Maḥmūd Ka'ti, a Timbuktu-based chronicler of the late mediaeval period, the chronicle as we know it today has been conclusively shown to have been authored by Nūḥ b. al-Ṭāhir (d. 1274/1857–8), a prominent Fulani scholar of the jihadist state of Māsina founded by Aḥmad Lobbo. However, in addition to passages of his own composition, Nūḥ b. al-Ṭāhir also incorporated practically the entirety of an older chronicle of the late 11th/17th century penned by one Ibn al-Mukhtār, an otherwise little-known grandson of Maḥmūd Ka'ti. On the other hand, Maḥmūd Ka'ti himself had no role in the writing of the chronicle.<sup>1</sup> The report with which my study is concerned seems to have no obvious relevance to Nūḥ b. al-Ṭāhir's ideological agenda of providing religious legitimacy for Aḥmad Lobbo's rule<sup>2</sup>, but it does align well with one of the main objectives of Ibn al-Mukhtār's older chronicle: the demonstration of the religious authority of the Timbuktu scholarly patriciate (Nobili 2020: 96). We might therefore surmise that the report originates in the late 11th/17th-century text of Ibn al-Mukhtār. The plot is as follows. In the latter part of the 10th/16th century a muezzin of the great mosque of Timbuktu was executed for an absurdly faulty reading of a single word in a strophic version of a well-known Arabic panegyric on the Prophet, al-Fāzāzī's *Ishrīniyyāt*. The story is

<sup>1</sup> I thank two anonymous readers of the first draft of this study for stressing the importance of lending adequate attention to the problematic issue of authorship, on which see Levtzion 1971: 575–579; Ly 1972; Nobili and Mathée 2015, esp. 40–50, 65–71; and above all Nobili 2020, which is set to remain the definitive word on the history of this complex text.

<sup>2</sup> Nobili calls his work 'a political project disguised as a historical work'; see Nobili 2020: 204.

presented by the chronicler (probably Ibn al-Mukhtār in this passage) with obvious approval (*Fattāsh* 123–124), as evidence of the sense of justice (*‘adl*) and of the morally well-justified inclemency of the chief qadi of Timbuktu, al-‘Āqib b. Muḥammad b. Maḥmūd b. ‘Umar Aqīt (913–991/1507–1583; serving as qadi in 1565–83).<sup>3</sup> A muezzin of the grand mosque called ‘Abdallāh b. Kungay attended a Friday session for the recital of panegyrics on the Prophet, a regular public event held at the house of the ‘grammarian’ (*naḥwī*) Abū Ḥafṣ ‘Umar Korey b. al-Ḥājj Aḥmad b. Maḥmūd b. ‘Umar Aqīt. The usual text recited by the professional praise-singer (*maddāh*) at these events was the *Ishrīniyyāt* of al-Fāzāzī<sup>4</sup> (d. 627/1230) and a strophic poem (*takhmīs*) based on it by Abū Bakr Ibn Muḥib.<sup>5</sup> Having reached the line in the *takhmīs* version that reads *Huwa al-wablu ya’lū an yuqāsa bi-tallihim* (‘He is a copious rain, above any possible comparison with their [viz. all other people’s] drizzle’)<sup>6</sup>, the muezzin erroneously recited the first two words as *huwa al-waylu*, ‘he is a woe.’ (The words *wabl* وابل, ‘downpour’, and *wayl* وويل, ‘woe’, differ in one single dot in the Arabic script, a type of spelling mistake all too common in manuscript copies.) Those present called the reciter’s attention to the egregious lexicographical error, but he, no doubt motivated by scholarly hubris, insisted on his reading being correct. This obstinacy proved a fatal misjudgement on his part. The outraged audience brought the case to the qadi al-‘Āqib – an uncle of the event’s host – who immediately ordered that the muezzin be arrested. Learning of this dangerous turn of events, the culprit fled Timbuktu and took refuge in a remote village of the Gundam region in the Niger Bend southwest of Timbuktu.<sup>7</sup> Later on, supposing that the storm had passed over his head, he crept back to Timbuktu still cautiously incognito. However, the hapless man ended up being exposed within a year, whereupon he was executed on the qadi’s order.

What can we learn from this story, which is as bizarre as it is tragicomic to a contemporary Western sensibility? The report is in fact pregnant with a host of implications that may help shed light on the significance of linguistic accuracy in a premodern Muslim intellectual setting. The main culture-specific issues involved in this legal case include the following: misreadings and misspellings of manuscript texts resulting from the similarity of certain sets of letters in the Arabic script (*taṣḥīf*); the juridical significance of various kinds of linguistic errors; the legal regulation of insults to the Prophet’s memory (*sabb al-rasūl*); the juridical distinction between unin-

<sup>3</sup> During the 10th/16th century, members of the Aqīt family, part of the religious élite residing in the Sankore quarter, were especially prominent among the judges’ ranks and monopolised the post of chief qadi; see Gomez 1990: 6–7, 12; Hunwick 1964a: 568; and cf. Massing 2004: 897.

<sup>4</sup> Houdas and Delafosse’s edition gives the erroneous reading al-Fazāzī. His full name was Abū Zayd ‘Abd al-Raḥmān b. Yakhlaftan b. Aḥmad al-Fāzāzī. He wrote two works referred to as the *Ishrīniyyāt*, one of these being the poetic eulogy on the Prophet discussed here, while another is a work on religious ethics and asceticism (*al-naṣā’ih al-dīniyya wa-l-ḥikam al-zuhdiyya*); see Darnīqa 1996: 222–223.

<sup>5</sup> On these works see Brockelmann 1937–1942: Suppl. 1: 482–483. Like most other authors, Brockelmann uses the form Ibn Muḥib, but I choose to follow Syed (2016: 213, note 9), whose usage conforms to the usual West African scholarly tradition. On the specificities of *takhmīs* and on the West African predilection for this sophisticated intertextual exercise, see Ogunnaike 2020: 89.

<sup>6</sup> Houdas and Delafosse’s edition misreads *bi-tallihim* as *bi-tallihī*, which makes no sense. For the correct reading see al-Fāzāzī, *Dīwān* 104.

<sup>7</sup> Unfortunately no details are provided concerning the choice of refuge. However, it bears mention in this context that the right to provide sanctuary was an important privilege given by rulers to Muslim scholarly communities in many parts of West Africa. See Hunwick 1996: 179, 184, 190–191; Sanneh 1979: 59–62; Ware 2014: 97–99; and also cf. al-Bartilī, *Fath* 192.

tentional and deliberate statements; and the norms of reciting versified eulogies on the Prophet in late mediaeval West Africa. In what follows I will briefly discuss each of these issues inasmuch as they are relevant to the case at hand.

## 1. LINGUISTIC ERRORS AND ISLAMIC LAW

The solecism committed by the protagonist is an instance of the phenomenon known as *taṣḥīf* in the premodern Arabic scholarly milieu. This is the technical term that describes an omnipresent problem in a manuscript culture, especially one using the Arabic script: given that certain groups of letters (e.g. b, t, th, y, and in many cases n) are distinguished only by small dots easily misplaced and/or overlooked, a person relying only on a written text will risk misreading words and possibly transmitting them too in the erroneous form (al-‘Askarī, *Sharḥ* 13). The issue of *taṣḥīf* was typically discussed with reference to belles-lettres (*adab*) rather than to Islamic law, and was presented as a source of fun rather than of legal consequences, as in the well-known works of Abū Aḥmad al-‘Askarī (d. d. 382/993). The latter recounts (and maybe on occasion invents) many instances of *taṣḥīf* in Quran recital so elementary that it strikes the reader as quite funny (e.g. *Akḥbār* 70–73). Even though an uncompromisingly harsh scholar such as the qadi of Timbuktu might have found some of these examples offensive and subject to serious punishment, al-‘Askarī’s purpose is clearly entertainment and edification. The following anecdote on a case of silly *taṣḥīf*, offensive to the Prophet as some may regard it, is nevertheless recounted by al-‘Askarī with obvious relish, an indication of considerably less draconian attitudes in his time than in Timbuktu several centuries later:

I have been told by my cousin Ibn Abī Zar‘a, who cited Ḥanbal b. Iṣḥāq, who cited Aḥmad b. Ḥanbal, who cited ‘Abdallāh b. al-Ḥārith, who cited Yūnus, who cited Shihāb: ‘I have been told by ‘Abdallāh b. Tha‘āba that the Prophet – peace be upon him – wiped his face clear of ugliness (*min al-qubḥ*).’ Aḥmad [b. Ḥanbal] said: ‘He committed an error of *taṣḥīf*. [The correct reading] is *during the conquest [of Mecca] (zaman al-fath)*.’<sup>8</sup> (al-‘Askarī, *Sharḥ* 18)

That said, *taṣḥīf* was also regarded as a serious issue in hadith scholarship, in which precision in quoting one’s authorities was a paramount concern. One report explicitly states that an otherwise trustworthy transmitter must be disregarded if he commits a glaring *taṣḥīf* that distorts the meaning of the text (*yusaḥḥif taṣḥīfan fāḥishan yaqlib al-ma’nā*) (al-‘Askarī, *Akḥbār* 39). While hadith scholarship stressed exactitude to an unusual degree, the phenomenon inevitably affected all intellectual disciplines in various ways wherever manuscripts served as the main vehicles of transmitting knowledge. Mediaeval Timbuktu was no exception in this regard.

Although a minority of the population has in more recent times used a West Saharan (*Ḥassāniyya*) dialect of Arabic at home, the *lingua franca* of Timbuktu has probably always been the local variant of Songhay, called *koyra cini* (lit. ‘city talk’) (Miner 1953: 19–20). However, Classical Arabic was widely used in writing in a major centre of Islamic learning such as Timbuktu, and many of the local scholars had a remarkably high command of the language. Indeed proficiency

<sup>8</sup> The two expressions are easily confused in an Arabic manuscript: *الفتح من القبح* vs. *الفتح من القبح*.

in written Arabic has been a major criterion of qualifying for the reputation of being *alfa* (religious scholar) among both the Songhay and the Arabic speakers (Miner 1953: 83–84).<sup>9</sup> It is worth noting that the qadi al-Āqib b. Muḥammad Aqīt, protagonist of the report analysed here, had received a thorough linguistic training in Cairo from the famous grammarian Nāṣir al-Dīn Muḥammad al-Laḡānī (d. 958/1551) (Saad 1983: 66). Linguistic competence was an important constituent of scholarly prestige in general and of the prestige of this qadi in particular.

One proof of the required linguistic competence was the ability to detect, point out and censure errors in the use of Arabic. The more so since linguistic solecisms had legal relevance in several fields of Islamic jurisprudence.<sup>10</sup> It would go far beyond the scope of this essay to offer a comprehensive overview of this subject, but a few examples will perhaps suffice to substantiate this claim. Thus some Maliki jurists insisted that the validity of prayer depended on correct Arabic usage. According to the Maliki scholar al-Qābisī (d. 403/1012), an imam who recited prayers with erroneous grammatical endings (*lahḥān*) necessitated that someone in the congregation more knowledgeable in Arabic grammar constantly correct his reading to make the communal prayer valid (al-Wansharīsī, *Miḡyār* 1:157–8). Other scholars were more lenient, such as an unnamed North African jurist cited in al-Wansharīsī's (d. 914/1508) *fatwa* collection who opined that the use of non-Arabic (to wit Berber) supplications during prayer by someone not fluent in Arabic is not problematic, since 'God knows all languages best (*Allāh a'lam bi-kull lughā*)' (al-Wansharīsī, *Miḡyār* 1:186). This kind of argumentation was obviously much disputed, since we find the Malikite scholar Ibn al-Ḥājj al-'Abdarī (d. 737/1336) insisting (*Madkhal* 4:86–87) that it was prohibited to intersperse the Arabic original of Quran manuscripts or Quran recitals with non-Arabic translations of the text, since God sent it to mankind in clear Arabic (*bi-lisān 'arabī mubīn*). It was, as he notes, a recent innovation that some people would regard it even meritorious to recite and write the Quran's text in a non-Arabic language (*wa-la-qad sarā hādḥā li-ba'ḍ al-nās fī hādḥā l-zamān ḥattā annahum la-ya'uddūna qirā'at al-Qur'ān bi-l-'ajamiyya wa-naskḥ al-khitma bihā faḍīlatan*), by alternating the Arabic text and its translation in small sections two to three *āyas* long. Ibn al-Ḥājj quite unequivocally disapproves of this practice.

The issue of linguistic accuracy inevitably affected the legitimacy of legal acts requiring performative formulae to be completed, such as marriage, divorce, oaths and contracts. For instance, the famous Egyptian jurisconsult as-Suyūṭī (d. 911/1505) issued a detailed *fatwa* discussing the validity or otherwise of a divorce effected through the (phonetically incorrect) formula *anti tāliq*<sup>11</sup> under the title *Fath al-maghāliq min anti tāliq* [Opening the Locks: On the Formula *Anti Tāliq*]. In this, he forms the opinion that such phonetic errors do not invalidate a divorce if the speaker in fact intends to divorce (v.i. on the role of intention), especially if the speaker is not educated and the erroneous pronunciation is widespread and therefore easily understood. The issue was, however, rather controversial and jurists were apparently far from unanimous on the legally binding nature of such erroneous usages (al-Suyūṭī, *Ḥāwī* 1:204–207). However, for all the interesting debates concerning the validity of various linguistically inaccurate formulae, the majority of Muslim jurisprudents seem to have endorsed the overall principle that 'linguistic errors do not obstruct [legal] validity (*al-laḥn lā yamna' al-in'iqād*)' (Ibn al-Tamīn 1429/2008: 91–93).

<sup>9</sup> On the use of Arabic in premodern West Africa see Hunwick 1964b.

<sup>10</sup> For a systematic overview, see Ibn al-Tamīn 1429/2008: 59–93.

<sup>11</sup> The correct form is *anti tāliq*.

## 2. INSULTS TO THE PROPHET AS A JURIDICAL ISSUE

It is undoubtedly important to know if one's declaratory formula has succeeded in making a divorce or a sale valid, but it is arguably the statements justifying charges of blasphemy, heresy or apostasy that could lead to the weightiest consequences. Within this category of offensive statements, the crime of 'insulting the Prophet' (*sabb al-rasūl*) was and remains potentially the most dangerous transgression to commit, with even more menacing implications than blasphemous statements about God. It is neither feasible nor necessary here to offer an overview of the issue of *sabb al-rasūl*, to which the Maliki qadi 'Iyād al-Yahṣubī (d. 544/1146) dedicated a whole book-length study, later expanded even further by the Hanbali jurist Ibn Taymiyya (d. 728/1328). Significantly in the present essay's context, al-Qāḍī 'Iyād's work was widely known and consulted all over West Africa (Hall and Stewart 2011: 124; Kane 2016: 86; Ogunnaike 2020: 78; Ware 2014: 89). In Timbuktu, the Sankore Mosque had a permanent position for a scholar charged with the exposition of the contents of the *Kitāb al-Shifā'* to a wide audience (Saad 1983: 61, 76–77), an indication of the importance of this text for the scholarly community of the city. Given the status of this book as essential reading for jurists, it is little wonder that one finds its recommendations adhered to in the case discussed here. Suffice to note that there was almost total consensus among jurisprudents – certainly within the Maliki school – that linguistic acts betraying even the slightest disrespect to the Prophet's honour called forth the death penalty. The concept of 'insults to the Prophet' tended to be interpreted in a very sweeping manner, so even relatively mild statements and (to our modern sensibilities) obviously facetious utterances would be classified within this rubric (al-Qāḍī 'Iyād, *Shifā'* 343–350; al-Naysābūrī, *Ishrāf* 2:244–245; al-Wansharīsī, *Mi'yār* 2:327, 355–356). Two examples will suffice to show the sensitivity of the issue.

According to some jurists' opinion, if someone uses the diminutive form (*shu'ayr*) in saying *sha'r al-nabī* ('the Prophet's hair'), he thereby becomes an unbeliever (al-Haytamī, *Ilām* 375); and al-Wansharīsī's collection of legal opinions contains a *fatwa* recommending the execution of a man having used the expression 'poor Muḥammad' in reference to the Prophet's exertions (al-Wansharīsī, *Mi'yār* 2:364–365). Indeed, according to the *Kitāb al-shifā'* denying any of the Prophet's known characteristics (*ṣifāt*) is evidence of unbelief. Even though it has to be combined with a belittling tone (*lā budd min ḍamīmat mā yush'iru bi-nuqṣ fi dhālika*) to justify the death penalty, it can be argued that the Prophet was the most perfect human being, and therefore any alteration of his known qualities must be *ipso facto* denigrating (al-Haytamī, *Ilām* 378–379). To make matters worse, Malikite jurisprudence denied even the possibility of repenting (*istitāba*) to anyone who had insulted the Prophet (Fierro Bello 1987: 185), although even apostates would usually be given this possibility to save themselves from execution. On this point, consensus among jurists was not total, but the majority certainly leaned that way (Ibn Taymiyya, *Ṣārim* 306 sqq). Nor were such hard punishments purely theoretical: while certainly not common, they would demonstrably be applied in some cases. Thus in the year 784/1382–3 a man in the heat of a debate said to another in Tunis: 'I am your enemy, and enemy of your prophet', whereupon a council of Malikite muftis gathered to discuss the proper punishment. Some of them classified it as apostasy, others argued that it was an instance of insulting the Prophet, which would exclude the option of repenting (al-Haytamī, *Ilām* 380).

Juridical discussions of the issue of offensive statements uttered in languages other than Arabic offer some instructive lessons on Muslim legal thinking concerning unintended errors. Thus the Egyptian Hanafi scholar Badr al-Rashīd (d. 768/1366–7) lists a few Persian and Turkish phrases – in addition to a far larger number of Arabic ones – that in his view are indicative of unbelief.

For instance, a man who says to another ‘oh my God’ (*Khudā-yi man*) in Persian is in his opinion an apostate, especially if he knows what these words mean in Persian, but according to most authorities even if he does not, whether he said it deliberately or not (*yakfuru muṭlaqan ‘alima bi-l-ma’nā aw lam ya’lam, qaṣadahu aw lam yaqṣudhu*) (Badr al-Rashīd, *Tahdhīb* 50). This rigid and formalistic approach, if transferred to the issue of linguistic solecisms, would mean that it is the utterance that matters, rather than the speaker’s intention in making it. According to this logic, a linguistic solecism may easily condemn the man who made it. If by error he uttered a blasphemy or a word of disrespect towards the Prophet, as in the Timbuktu case reviewed here, no appeals to different intentions would suffice to save him.

An important distinction for assessing statements for legal purposes was one made between unequivocal and figurative utterances (*ṣariḥ* and *kināya* respectively). The usual principle was that the former type of utterance, having an obvious meaning, did not necessitate any inquiry into the intention of the speaker. By contrast, figurative utterances could in most cases lead to legal consequences only after the speaker was properly interrogated and his intention discovered (*al-ṣariḥ lā yaḥtāju ilā niyya wa-l-kināya lā talzamu illā bi-niyya*; al-Suyūṭī, *Ashbāh* 489).<sup>12</sup> Intent is thus a major preoccupation of Muslim jurists in many legal fields.<sup>13</sup> Al-Suyūṭī, for instance, discusses the importance of speaker intent in linguistics and prosody in his juridical work *al-Ashbāh wa-l-naẓā’ir*, and shows that jurists usually take it into consideration for the legal assessment of an utterance (al-Suyūṭī, *Ashbāh* 115–7).<sup>14</sup> Not so, however, in dealing with affronts to the Prophet’s honour. The seminal work of the Qāḍī ‘Iyāḍ (d. 544/1146) explicitly states the irrelevance of any distinction between *ṣariḥ* and *kināya* in such cases. Having made the broadest possible definition of the idea of ‘insulting the Prophet’ that encompasses even the slightest hint of disrespect, he adds: ‘we will not make an exception of any subcategory of this topic for this purpose, and we will not hesitate, be it [a case of] explicit [insult] or just a hint (*taṣrīḥan kāna aw talwīḥan*)’ (al-Qāḍī ‘Iyāḍ, *Shifā’* 345). In cases of disrespect to the Prophet, even the issue of the speaker’s intent (e.g. jesting or irony) was not an acceptable excuse, and neither was a claim of ‘ignorance’ (*jahl*) considered a mitigating circumstance, although it was sometimes regarded as an important consideration in a variety of other contexts. The usual approach was to accept pleas of ignorance when it could not be reasonably expected of a person (e.g. a newly converted Muslim) to be aware of the intricacies of Islamic law (al-Suyūṭī, *Ashbāh* 355–360). This scenario is clearly not applicable to cases of insulting the Prophet, as any decent Muslim would be aware that such behaviour was not acceptable. However, it bears emphasis that the legal issue of *jahl* seems to have been less than clear-cut. Thus

[...] an ignorant man (*jāhil*), if he utters a word of unbelief not knowing that it constitutes unbelief, some [scholars] say it is not unbelief, and he must be excused on account of his ignorance. Others say, however, that he does become [by his utterance] an unbeliever (al-Qārī al-Harawī, *Sharḥ* 229).

<sup>12</sup> Cf. al-Qarāfī, *Umniyya* 153; Powers 2006: 98.

<sup>13</sup> Al-Suyūṭī offers a comprehensive list of these fields in *Ashbāh* 43–6; and for a discussion of the issue at a more theoretical level see al-Qarāfī, *Umniyya* 141–179. On the legal significance of intent (usually *niyya*, but in certain contexts *qaṣd* or *‘amd*), see Powers 2006, esp. 3–4; and on the consideration of intent in legal assessments of blasphemous literary texts in particular, see Szombathy 2016: 473–484.

<sup>14</sup> He specifies, among other observations, that a sentence that happens to comply with a poetic meter unintentionally is not poetry (*ammā mā yaqa’u mawzūnan ittifaqan lā ‘an qaṣd al-mutakallim fa-innahu lā yusammā shīran*), and adds that one finds examples of such happenstance even in the Quran’s text.

### 3. EULOGIES ON THE PROPHET IN WEST AFRICAN MUSLIM TRADITION

Given this extraordinarily sensitive character of the issue of how to talk (and not to talk) about the Prophet, it is little wonder that the linguistic proprieties of the public recital of panegyrics on the Prophet<sup>15</sup> were obviously a serious preoccupation in the wider West African savannah region in the relevant period. Evidence of this keen interest, and of the doubts surrounding the linguistic aspects of the issue, is found in a *fatwa* of al-Suyūṭī (d. 911/1505) which he issued in response to a collection of questions sent to him by a West African (*takrūrī*) Muslim petitioner called Shams al-Dīn Muḥammad b. Muḥammad b. ‘Alī al-Lamtūnī. Among the questions is the dilemma whether it was acceptable to recite eulogies on the Prophet in the local vernaculars. Al-Suyūṭī saw no problem with this practice, but the very fact that the issue was raised surely signals its controversial character (al-Suyūṭī, *Ḥāwī* 1:278, 280).<sup>16</sup>

Juridical uncertainties notwithstanding, public recitals of panegyrics on the Prophet were a long-standing tradition in the Niger Bend region around Timbuktu, as it was elsewhere in West Africa. In Timbuktu members of the lower echelons of the learned élite<sup>17</sup> undertook this task in the late mediaeval period, especially during major religious holidays and Ramadhan, and such reciters formed learned guilds whose leaders, each known by the title *shaykh al-maddāḥīn*, were based in each of the major mosques of the city such as the Dyingereber and the Sankore.<sup>18</sup> The chief religious functionaries would often give presents or food to the *maddāḥūn* in appreciation of their pious art (Saad 1983: 86, 118).<sup>19</sup> For instance, such a charitable habit is recorded about the chief imam of the Grand Mosque, Sidī Abū l-Qāsim al-Tuwātī (d. 935/1528–29)<sup>20</sup>, who initiated in Timbuktu the custom of the reading of a single-letter section (*ḥarf*)<sup>21</sup> from the *Ishrīniyyāt* (plus a full Quran recital) after the Friday prayer ([Anonymous], *Tadhkira*: 14, 21; al-Sa’dī, *Tārīkh* 58-9; and see also Raji 1982: 129–130).<sup>22</sup> Apart from this innovation, such *madḥ* sessions were usually held after the night prayers (*‘ishā*), especially in the month of Rabī’ al-Awwal, in which the festival of the Prophet’s birthday (*Mawlid*) is celebrated (al-Sa’dī, *Tārīkh* 198, cf. Marty

<sup>15</sup> On the development of this genre in the premodern Arabic literary tradition see Muḥammad 1417/1996.

<sup>16</sup> For other examples of al-Suyūṭī’s role as jurisconsult often sought and asked by West African colleagues see al-Suyūṭī, *Tahadduth* 158–159. A comprehensive analysis of this *fatwā* is given in Hunwick 1970.

<sup>17</sup> For some important *caveats* about the definition of this concept in the context of late mediaeval West Africa see Cissoko 1969; Hunwick 1996: 176, 180–181; Levtzion 1985: 96–100; Kane 2016: 62–74. The two distinct types of West African Muslim scholars notably differed in their grasp of the Arabic language; see Nobili 2020: 251. While Quranic schools were numerous in Timbuktu (see Marty 1920: 81) and they would give instruction to several thousand students, the higher echelons of the religious élite were naturally far more restricted, numbering about 200 to 300 at any given time. For a comprehensive study of the subject see Saad 1983.

<sup>18</sup> On these mosques and their sociocultural roles, see Marty 1920: 60–63.

<sup>19</sup> It might not be altogether coincidental that in Mecca in the early 13th/late 19th century the term *maddāḥīn* degenerated to mean ordinary beggars; see Hurgronje 2007 [1931]: 4.

<sup>20</sup> On this scholar see Saad 1983: 115.

<sup>21</sup> On the meaning of this phrase in reference to the division of the text of the *Ishrīniyyāt* see Hunwick 2003: 83 [note 6].

<sup>22</sup> This makes it implausible that the *faqīh* al-Mukhtār (d. 1036/1626), grandson of the qadi al-‘Āqib b. Muḥammad Zenkan, was indeed the man to bring the first copy of the *Ishrīniyyāt* to Timbuktu, as Houdas’ translation of a passage in the *Tārīkh al-sūdān* states. The Arabic original reads *huwa alladhī atā bi-nuskhat al-Ishrīniyyāt li-Timbuktu yakhdimuhu bi-l-madḥ wa-afāl al-birr bi-mawlidihī*, ‘he is the one who brought the copy of the *Ishrīniyyāt* to Timbuktu and served him [i.e. the Prophet] by panegyrics and charitable acts on [the Prophet’s] birthday’, but this is unlikely to refer to the first ever copy there (Arabic text p. 243, French translation p. 373). On book culture in mediaeval Timbuktu and the importation of books into the city see Singleton 2004: 3–7.

1920: 80). As Syed (2016: 223) notes, this continues to be an important custom in many parts of West Africa, such as the Jakhanke settlements of the Senegambia.<sup>23</sup> The ritual significance of the public reading of the *Ishrīniyyāt* and of Ibn Muhib's *takhmīs* version is also attested in the context of the late 12th/18th-century Futa Toro revolution in what is now eastern Senegal (Ware 2014: 124, cf. Ogunnaïke 2020: 97).

As Kane (2016: 85–86) and Ogunnaïke (2020: 1, 74–75) point out, devotional poetry in praise of the Prophet was a major genre within the Islamic learned tradition of West Africa and continues to be so. The text of the *Ishrīniyyāt* and its *takhmīs* versions were extremely popular and ubiquitous all over West and Central Africa and its author regarded there, in Carl Brockelmann's words, as something of an 'apostle of Islam.'<sup>24</sup> Indeed al-Fāzāzī's poem must have been admired already in its author's lifetime, since it is reported to have been studied in 624/1227 by others in the Meccan mosque (Muḥammad 1417/1996: 120). In their painstaking survey of what they term the 'core curriculum' of premodern West African learning, Hall and Stewart (2011: 125–126, 162) list both the *Ishrīniyyāt* and Ibn Muhib's *takhmīs* version. The chief condition for inclusion of a work within the core curriculum is the ubiquity of its manuscripts over West Africa (Hall and Stewart 2011: 113), and both works meet this criterion. Restricting the analysis to the manuscript libraries of Timbuktu in particular, the abundant presence of copies of the two works attests to their prominence and popularity again (Stewart 2021: 299). This means that the error made by the Timbuktu muezzin was, on the one hand, made in the recital of a well-known and very familiar text, and on the other hand, it was probably easily spotted by the learned members of the audience.<sup>25</sup> In other words, it was a glaring and elementary mistake. Worse still, the social setting was a highly public one, and therefore so was the reading error and the stubborn refusal to acknowledge it. The offence was probably further exacerbated by the common West African conception that the linguistic polish of panegyrics on the Prophet must match the human perfection of their subject (Ogunnaïke 2020: 118–119).

<sup>23</sup> This despite the controversies among Malikiite scholars regarding the recital of religious texts (including the Quran) to the accompaniment of music during the Mawlid festival. For such arguments, see for instance Ibn al-Ḥājj, *Madkhal* 2:2–5.

<sup>24</sup> 'Weil seine *Ishrīniyyāt* im Sūdān eine sehr geliebte Lektüre sind, gilt er der Legende als Apostel des dortigen Islams', even though the available data contradicts the assertion of Marquardt that he did proselytise for a time in Kānem (near Lake Chad). See Brockelmann 1937–1942: Suppl. 1:482. An indication of the popularity of al-Fāzāzī's and Ibn Muhib's works is the fact that a cousin of the chief qādi called Aḥmad b. Aḥmad b. 'Umar b. Muḥammad Aqīt (d. 991/1583; father of the famous scholar Aḥmad Bābā al-Tinbukti) composed a commentary (*sharḥ*) on the *takhmīs* version; see as-Sa'dī, *Tārīkh* 42–43; Hunwick 1964a: 569; and for the biography of Aḥmad b. Aḥmad Aqīt see al-Bartilī, *Fath* 29–30. Some other important scholars of West Africa have also produced commentaries, as well as *takhmīs* and *ta'shīr* versions (such as al-Ḥājj 'Umar Tal's *Safīnat al-sā'āda*), of their own on the *Ishrīniyyāt*; see for instance Bobboyi and Hunwick 1991: 125–126; Hall and Stewart 2011: 126; Hunwick 1999: 169; Syed 2016: 213214, 220–223; Ogunnaïke 2020: 97–98. References to the *Ishrīniyyāt* even appear in Islamic religious poetry in local languages such as Nupe (see Ndagi 2011: 24–25); indeed a full Nupe translation of the *takhmīs* has recently been made by Abdurrahman Aboki and is now available online; see Aboki 2019.

<sup>25</sup> On the most widely available Arabic lexicographical works in premodern West Africa, see Hall and Stewart 2011: 120–121.

## CONCLUSIONS

At this point some conclusions can probably be drawn from the case under scrutiny. What to make of this (to a modern Western reader) strange case? And what does it tell us about the relationship of language and law, and to be more precise: about linguistic errors and legally prosecutable crimes?

Although it has been forcefully questioned that Timbuktu's qadis (in Songhay, *alkali*) in the 10th/16th century were *de facto* rulers of the city, acting virtually independently of the central power of the Songhay Empire and its local governor (*Timbuktu-koy*), as claimed in some late mediaeval chronicles and much of the relevant modern scholarship, it is obvious that they had extremely broad powers within the city. Probably the political system of the city was characterised by a sort of dual governance, with the qadi having jurisdiction over municipal affairs, and especially over all affairs having to do with the application of Islamic law (Gomez 1990: 9–12).<sup>26</sup> However, it is worth quoting here Levtzion's observation (1985:99) that 'very few scholars [...] shouldered their responsibility as custodians of the *sharī'a*', insisting unswervingly on the enforcement of strict conformity to the religious law. That said, the qadi involved in this particular case was notable – and widely noted – for his unusual harshness in dealing with perceived affronts to religious and moral sensibilities (*kāna [...] ṣaliban fī l-ḥaqq lā ta'khudhuhu fī 'llāh law-mat lā'im qawī l-qalb jiddan miqdāman fī l-umūr al-'izām allatī yutawaqqafu fihā*).<sup>27</sup> However, even if we ignore this personal peculiarity, the perpetrator was, as we have shown, treading on extremely slippery terrain, since the Prophet's honour was involved in the case. To sum up the observations that I made above in this regard, cases of disrespect to the Prophet's memory would usually preclude any consideration of intent and would not allow for pleas of ignorance. To make matters even worse, the case under scrutiny here involved an unequivocal utterance, and a very public one at that, further exacerbated by the perpetrator's stupid refusal to acknowledge it for the simple linguistic solecism it was.<sup>28</sup> Scholarly hubris thus transformed a trivial linguistic error (an instance of the ubiquitous *tashīf*) into a full-blown insult to the Prophet's honour, leaving little room for lenience for a qadi renowned for his piety and religious zeal. In a sense, perpetrator and judge worked in tandem to turn a banal linguistic error into one of the most serious crimes under Islamic law.

As noted above, the *Kitāb al-Shifā'* of the Andalusian Qadi 'Iyāḍ, which is extremely harsh on the subject of any perceived insults to the Prophet, was widely known and consulted by the clerical class of West Africa, including Timbuktu. This case shows that its recommendations were not only read but on occasion applied as well, thus they must at least to some extent reflect actual practice rather than just theory. However, in addition to religious and juridical considerations, politics and power jostling among the local religious élite could also be a factor influencing the outcome of the case.<sup>29</sup> It might be a pertinent fact in this context that the perpetrator was a

<sup>26</sup> And with certain types of magical practices as well; see for instance Miner 1953: 111.

<sup>27</sup> For his biography, see Aḥmad Bābā, *Kifāya* 1:377-8; Aḥmad Bābā, *Nayl* 353–354; al-Sa'dī, *Tārīkh* 40-1. (The texts are virtually identical.)

<sup>28</sup> A mistake all the more unreasonable given the repeated occurrence of the crucial nouns *wabl* (downpour) and *wayl* (woe) in other verses of the same poem, including verses preceding the one that occasioned the scandal. In more than one verse the words *wabl* and *ṭall* even occur in juxtaposition. See al-Fāzāzī, *Dīwān* 58, 95, 133.

<sup>29</sup> It has been shown that in some cases the charge of 'insulting the Prophet' could all too easily be used as an effective weapon against personal adversaries; see for instance Fierro 1994: 206–207; Fierro 2008: 306.

muezzin (in Songhay, *almudyin*), the incumbent of a profession that tended to be occupied by modestly educated Songhay-speaking commoners or freed slaves (*Gabibi*)<sup>30</sup> rather than scholars in the proper sense. A muezzin would often act as a sort of auxiliary to a proper religious scholar, usually in functions requiring less of a thorough grounding in Arabic. For instance, in the early twentieth century and perhaps in earlier periods as well, an imam well-versed in Arabic would deliver his Friday sermon in Classical Arabic, the substance of which would then be explained in Songhay to the masses of ordinary townfolk by the mosque's muezzin positioned next to him (Marty 1920: 68). Muezzins were appointed by the Qadi, and their appointments were probably caught up in a milieu of remarkably high level of rivalry that characterised the town's *alfa* (scholarly) class (Saad 1983: 112; Miner 1953: 84–85).<sup>31</sup>

The case is a veritable morality tale about the consequences of deficient learning coupled with scholarly hubris. The tone of the passage that reports this incident strongly suggests that it was indeed meant to serve as such. Heaping praise upon the pious qadi for his defence of the the Prophet's honour and his knowledge of Arabic, and ignominy upon the wretched muezzin for his lack of deference to the Prophet and his ignorance of the Arabic lexicon and Arabic verse, the account highlights the qualities and conduct expected of a respectable scholar in 10th/16th-century Timbuktu.

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<sup>30</sup> On the *Gabibi* class of Timbuktu society, see Marty 1920: 22. As Marty notes here regarding the *Gabibi* of his time, '[b]eaucoup d'entre eux vivent en clients dans le sillage de familles alfa ou arma, et à certaines époques, pour les labours saisonniers, se mettent à leur disposition.' That said, the social category *Gabibi* seems to have appeared only as a consequence of the Moroccan conquest of the Songhay Empire and the rise of the new Songhay-speaking aristocracy called *Arma*, and therefore the label is probably irrelevant for the period under scrutiny here. On the history of the term *Gabibi* (and the synonymous *Arbi*), see Hall 2011: 72–74, 253–259. I am indebted to an anonymous reader of this article for pointing out the importance of Hall's monograph in this respect.

<sup>31</sup> These are merely speculative suggestions, since these recent observations might not be true of earlier historical periods.

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