

OTTOMAN SLAVE VAKIFS: LEGAL DOCTRINE AND PRACTICE

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ملخص:

تهدف هذه الورقة إلى دراسة مصطلح الوقف (على وجه التحديد الكول)، وذلك من خلال توضيح العلاقة بين مدلول وقف الكول في الفقه الحنفي وممارسته في الإمبراطورية العثمانية، كالوقف الذي خصصه عثمان آغا بحرم الدولة.

وفقاً للعقيدة الإسلامية، يجب أن يتوفر في صاحب الوقف ثلاثة شروط وهي: أن يكون شخصاً عاقلاً، وبلوغاً وحرراً. واستناداً لهذا الشرط الأخير فإنه لا يحق قانوني للعبد التملك كونه هو بذاته مملوكاً، بلعتبوا أن أي شخص له عبد فهو ملكه. فالمفهوم القانوني للفقه لا يتوافق مع الواقع القانوني وممارسته في الدولة العثمانية التي تسمح لرجال ونساء من عبيد السلطان بامتلاك أوقاف.

وقد استخدم مصطلح كول للإشارة للرقيق المتواجدين بمنزل السلطان. وقد تلقى بعضهم تعليمه بالقصر مما مكنهم من الحصول على مناصب مهمة في الجيش والإدارة، وبالتالي على امتيازات لم تكن متاحة للعبيد وفقاً للعقيدة الإسلامية.

فلم تر الدولة العثمانية في كول عقبة قانونية لتأسيس الوقف، نذكر هنا على سبيل المثال لا الحصر، الأوقاف التي أنشأها الخصيان العثمانيون من القصر الملكي في عهد السلطان محمد الثالث (حكم 1596/1003 هـ - 1603/1011 م)، ابن السلطان مراد الثاني. ومن الأمثلة للاهتمام كذلك، مؤسسة الوقف في القاهرة التي أنشأها

عثمان آغا الخصي من الحرم الملكي لقصر توبكابي في عام 1007هـ/1598م، المتمثلة في مسجد مع مقبرة، والتي تم الانتهاء من بنائها في عام 1019هـ/1610م. فكان مكلفا بإيجاد الوقف، ومدعوما بعقد وقف من قبل السلطان عام 1010هـ/1601م، ولا بد من الإشارة إلى أنه في أعقاب وفاة عثمان آغا، قامت السلطانة صفية بمصادرة جميع ممتلكاته ونقل ملكيتها إليها، بما في ها الوقفية. وبررت قرارها هذا، كونها مالكة لعثمان آغا ولم تقم بعقده، ولم يكن يملك أي ترخيص يسمح له بإنشاء الوقف، وبالتالي، تظهر بوضوح حالة الشد والمد بين المفاهيم النصرية والتاريخية حول مؤسرة الوقف كما هو موضح أعلاه.

Abstract

This paper aims to examine the definition of the term slave (more specifically kul) as vakıf founder and the relationship between the term kul in legal doctrine as established in the Hanafî juridical texts and the legal practice of the Ottoman Empire as exemplified by the foundation of a vakıf by the Chief Eunuch of the imperial harem, Osman Ağa.

According to Islamic legal doctrine, the conditions (shurūṭ) for the founder of a vakıf were three: that the individual be of sound mind (‘āqil), adult (bāligh) and free (ḥurr). The latter condition was based on the legal restriction forbidding slaves from possessing property according to the legal norm that he who is owned cannot own. Consequently, all that a slave possessed was also considered the property of their master. Nevertheless, the juridical language of fiqh did not always conform to juridical reality as demonstrated in the Ottoman legal practice permitting the foundation of vakıfs by men and women who had the status of slaves of the sultan (kul) as documented in numerous instances in which

kapıkulları (slaves of the Porte) and eunuchs (hadım ağaları) established vakıfs.

The term kul was used to refer to a member of the slave class who was of the sultan's household. While some were employed for domestic service in the imperial household, others who received their training and education in the palace could obtain positions of influence in the military and bureaucracy. By means of their status as kuller, they obtained privileges that were denied to ordinary slaves according to Islamic doctrine by accumulating property, founding vakıfs and even owning slaves. It was through the obtainment of imperial permission that the stipulation of freedom for a vakıf founder could be waived and is a demonstration of how sultanic authority took precedence over the authority established in legal texts.

An example of how the status of kul was not defined as a legal impediment to the foundation of vakıfs was the case of Ottoman vakıfs established by eunuchs of the imperial palace during the reign of Sultan Mehmed III (r. 1003/1596-1011/1603), son of Sultan Murad II and Safiye Sultan. A particularly interesting example of the latter was the foundation of a vakıf in Cairo by Osman Ağa who was the Chief Eunuch of the imperial harem at Topkapı Palace (Dârüssaâde Ağası) in 1007/1598 in the form of a mosque with a graveyard which was completed in 1019/1610. Regardless of Osman Ağa's status as a slave of the sultan's household (kul), the fact that he was commissioned to found the vakıf is supported by the vakıf deed dated 1010/1601 which stated that upon orders of the sultan, he was given full disposition of the estates and court protocol likewise attested that he had founded the vakıf by imperial permission. It should however, be noted that following Osman Ağa's death, his vakıf was invalidated by Safiye Sultan who transferred all

his properties, including that of the vakıf, to her possession. She justified her decision on the ground that she, as Osman Ağa's owner, had not manumitted him nor had he received permission to found the vakıf. Thus, the tension between the textual and historical definitions of kul as vakıf founder is clearly exemplified

I. Introduction:

Extensive studies are yet to be made on the theme of slavery in the Ottoman Empire and likewise on the phenomenon of slaves that constructed and endowed *vakıf* property. This paper aims to examine the definition of the term slave as *vakıf* founder and the relationship between the term slave in legal doctrine, as established in the Hanafi juridical texts, and the legal practice of the Ottoman Empire as exemplified by the foundation of a *vakıf* by the Chief Eunuch of the Imperial Harem at Topkapı Palace (*Dârüssaâde -Abode of Felicity-Ağası*), Osman Ağa.

II. Slave as defined in Islamic legal doctrine:

In the classical texts of Islamic legal doctrine, terms, such as *'abd* (pl. *'abīd*, *'ibād*) generally referring to a male slave, *ama* (pl. *ima'*) to female slaves and *raqīq* for the singular of both genders and the collective, all denote bondage. Other expressions such as *ghulām* for male slave, *jāriyya* for female slave and *khādim* for eunuch as well as the Turkish equivalent

kul and *köle* should be mentioned.¹ The permissibility of slavery as well as its status is confirmed in the two primary sources of the Sharī'a, the Qur'an and *ḥadīth*. The former describes the slave as '*abd mamlūk*', and an example of the latter is the following Prophetic tradition: "Your slaves are your brethren upon whom Allah has given your authority."² Linguistically, '*abd*' denotes a person who is owned (*mamlūk*) by another person as opposed to a free man, and according to Sibawayhi, the word was originally an adjective that later became commonly used as a noun.³ In legal terminology, a slave is defined as a person who has a legal impediment preventing the authority (*wilāya*) to make decisions and testify, among others things.

People are enslaved in two types of cases. The first relates to those individuals who are non-Muslims that are not

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¹ It was encouraged not to refer to the slave as '*abd*' rather using other terms which were not so demeaning as encouraged by the following prophetic tradition: "...and one should not say my slave ('*abdī*') or my girl-slave (*amatī*), but should say my lad (*fatātī*) or my lass (*fatātī*), and my boy (*ghulāmī*) in *Ṣaḥīḥ al-Bukhārī* vol. III, 46/728. The euphemistic meaning of *khādim* (i.e. eunuch) should not be confused with the real meaning of free domestic servant.

² Qur'an 16:75

³ Ibn Manzur, Abū al-Faḍl, *Lisān al-'Arab*, vol. IX, Beirut: Dār Iḥyā' al-Turāth al-'Arabī, 1997, p. 10.

protected subjects (*dhimmī* or *musta'min*) or allied to the lands of Islam (*dār al-Islām*) and have been enslaved after been taken prisoners of war and for whom no ransom (*fidiye al-najat*) was paid or prisoner exchange was carried out.⁴ The second are those Muslims and non-Muslims who are born into slavery, with the exception of a child begotten by a female slave with her owner. In the latter case the child follows the status of the mother and so, regardless of whether the father was a slave or freeman, becomes the property of the mother's master as he is the fruits (*namā'*) of the main possession.⁵ Slaves can be legally obtained in three cases, the above mentioned two, as well as full legal ownership (*mulk saḥīḥ*) through purchase or if received as a gift (*hiba*), charity (*sadaqa*), or through inheritance, etc.⁶ It is forbidden for a Muslim to place his co-religionist in bondage regardless of the circumstances such as a creditor selling his Muslim debtor

⁴ Based on the Qur'an 47:4 and prophetic practice as narrated by 'Aisha about the enslavement of the women and children of the Bani Quraiza following their surrender, in *Ṣaḥīḥ al-Bukhārī* vol. V 59/448. Likewise, according to prophetic practice the women and children of the Beni Mustaliq were divided among the soldiers as slaves following the Muslim's victory against them, Ibn Hishām, Abū Muḥammad Jamāl al-Dīn, *al-Sīrah al-Nabawiyya*, vol. II, Cairo: Mustafa al-Bāb al-Ḥalabī, 1955, p. 294.

⁵ Agreed upon by consensus, the usufruct of the corpus belongs to the owner, in this category can also be placed the young of animals or the fruits of trees produced after their purchase.

⁶ This is regardless of the religion of the person the slave was obtained from, as based on Prophetic practice.

into slavery, as permitted in Roman law, likewise a *dhimmi*.⁷ Nevertheless, if a slave were to later adopt the Islamic faith, this would not lead to his manumission.

As regards his/her legal nature, the slave in essence holds the dual characteristic of a person of inferior status (i.e. possessing a legal personality), insofar as certain legal regulations apply,⁸ and a property (*māl mutakawwim*), insofar as he is owned. This dichotomy will be analysed below.

1) Slave as property in Hanafi legal doctrine:

While slaves are equal to freemen in terms of spirituality, they are not in term of legal rights. According to Hanafi legal

⁷ Other prohibitions of ownership include a non-Muslim owning a Muslim slave, a Muslim slave owning a slave because a slave does not have the legal right of ownership, and a Muslim owning his own relatives based on the following prophetic tradition: "Whoever acquires a *maḥram* relative as a slave, he is free" in *Sunan Abī Dawūd* 28/3949.

⁸ For example, intentional homicide committed by a freeman against a slave does not carry the full penalty of retaliation (*qiṣāṣ*), with the exceptions of the Hanafi school (based on *shar' min qablinā*- revealed laws preceding the Sharī'a of Islam). According to the Hanafis a freeman who kills his own slave or the slave of his son is not subject to the full penalty. This is due to the uncertainty (*shubha*) of ownership. The financial compensation (*diya*) for the slave who is a victim is calculated according to their market value (*qīma*), unlike that of a freeman which is set. In the case of unfounded accusation of adultery (*qadhf*), which is a *ḥadd* crime, the guilty slave is subject to have of the sentence of that of a freeman, i.e. forty lashes, but if the slave is a victim of slander then no penalty is imposed upon the guilty party. The *suriyya* (the concubine that is specified for the sexual gratification of her master) who commits adultery does not receive the *ḥadd* penalty of lapidation, rather she receives fifty lashes as does the male slave, because unlike a free man or woman they does not attain the status of *muḥsin*.

doctrine, slaves do not possess a full legal personality because they are subject to the laws of ownership as objects. As a type of property they are therefore at the disposition of their master and can be dealt with as the rest of his property. Thus, according to private law, the slave is an object that can be bought, sold, hired, gifted, pawned and subject to other legal transactions, such as being part of the *mahr* paid to the bride.⁹ Moreover, in penal law any punishment, such as *qiṣāṣ* and *ḥudūd*, cannot be effectuated without the knowledge and presence of the master because the slave, in his/her entirety, is the property of the owner.¹⁰ Yet, the slave's being the subject of ownership is also dependent on their categorisation in relation to the extent to which he/she is owned, as follows: *al-qinn* who is a slave over whom the master has full and complete rights of ownership (*khālīṣ li sayyidihi*), slaves whose manumission is attached to a certain condition such as the *mub'ad*, the *mukātab*, the *mudabbar*, and the *ummwalad*.

⁹ Even as a property certain considerations are applied due to his/her human status, for example, it is disliked when selling slaves to separate those who are relatives. If the slave at the time of sale has money, then it belongs to the owner who is selling him and not to the buyer, based on the following prophetic tradition: "Whosoever sells a slave and he has possessions, they belong to he who sold him except if it is requested/conditioned by the buyer." Bukhari 5/49.

¹⁰ This is the opinion of Abu Hanifa and Muhammad. Abu Yusuf stated the contrary on the evidence that the slave is like a stranger (i.e. not property) to his master in the case of *ḥudūd* and *qiṣāṣ*. Al-Kāsānī, 'Alā' al-Dīn Abū Bakr, *Kitāb Badā'i' al-Sanā'i fī Tartīb al-Sharā'i*, Beirut: Dār al-Kutub al-'Ilmiyya, 1997, p. 159.

¹¹ The latter three are subject to full possession (*mulk kāmīl*) but their servitude is incomplete (*nāqīṣ*) due to contractual enfranchisement.¹²

Here, two points should be differentiated. The first, is legal capacity (*ahliyyat al-tasarruf*), which is based on discernment. The question arises as to whether being a slave prevents eligibility of discernment for whoever is alive, reaches puberty and is sane? According the opinion of the Hanafī legal theorists, slavery is an impediment to full *ahliyya* and diminishes it since the slave resembles a freeman insofar as certain aspects of penal and family law apply.¹³ The second, is legal disposition (*walāyat al-tasarruf*) which is fulfilled by soundness of mind (*‘aql*) and legal personality (*dhimma*). Slavery is not an impediment to either the former or the latter since the slave has a legal personality insofar as

¹¹ *Mukātab* is the slave who buys his own freedom by contractual agreement with his owner (contractual enfranchisement); *mudabbār* is the slave who is promised his freedom (*tadbīr*) by the owner upon his (the owner’s death), if however, the owner cannot recall the *tadbīr* then the slave is inalienable. *Mub’ad* is a slave who is the common property of several people of whom one had set him/her free but was unable to pay the co-owners the value of their part, and the slave is therefore partially free, although according to the Hanafīte opinion he is free and the other owners receive their share from the income of his work. *Umm walad* (literally mother of [his] child) is the concubine who bear her master’s child and as a result of which gains partial rights insofar as she cannot be subject to sale or pawning and is automatically free upon her owner’s death. In the classical texts of jurisprudence a separate section is also dedicated to the runaway slave (*ābiq*) to which specific regulation apply.

¹² Wizārat al-Awqāf, “Al-Riqq”, *Al-Mawsū’a al-Fiqhiyya*, vol. XXIII, pp. 11-93, Kwait: Wizārat al-Awqāf wa al-Shu’ūn al-Islamiyya, 1983, p. 18

¹³ Ibid, p. 39.

he has legal rights and duties in the areas of worship and penal law, yet it is diminished due to the fact that it is combined with his essence (*raqaba*, literally “neck”). Moreover, legal disposition is restricted in areas that risk infringing on the rights of the owner, who owns both the corpus (*‘ayn*) and the use (*manfa‘a*) of the slave. Slavery prevents *wilāyat* (public and private offices of authority), thus the slave is forbidden from making enactments, and as a result cannot alienate or act as the executor of a will (*waṣī*), nor is his testimony recognized in a court of law.¹⁴ Nor does he possess patrimony of his own, with the exception of the slave with real but restricted legal competency *ma’dhūn/ma’dhūn lah* (literally, authorised) which will be detailed below.

2) Slave as legal persona in Hanafi legal doctrine:

The principle (*aṣl*) is that slaves, as humans, are legally responsible (*mukellif*) regardless of their sex once they are of sound mind (*‘āqil*) and pubescent (*bāligh*) and as such must face the consequences of their actions in both this life and the next. This principle covers the area of worship, the performance of which resembles that of the freeman with some minor differences.¹⁵ Likewise, in the area of family law

¹⁴ Lack of *wilāyat* also forbids the slave from obtaining custody (*ḥaḍana*) and also the latter takes place by means of usufruct (*menāfi‘a*) which the slave does also not possess. The slave likewise, does not possess *kafāla*, and so engaging in joint ventures such as *mufawāḍa*, is forbidden.

¹⁵ According to the Hanafis these differences include: the slave leading the prayers, which is somewhat disliked (*makruh tanzīhan*); Friday prayer, pilgrimage (*ḥajj*) and jihad which are not obligatory (*wājib*); the limits of the private parts (*‘awra*) of the female slave in and outside of prayer which is the navel to the knees, the back and stomach; charitable tax (*zakat*) and charity of breaking the fast (*sadaqat al-fitr*); vowed and voluntary fasting and religious retreat (*i’tikāf*) which cannot be carried out without the permission of the owner.

the slave has the right to make a marital contract and has the same unlimited power as a freeman to annul that contract by means of divorce.¹⁶

With regards to juridical competence in social and financial transactions (*muamalāt*), in principle the slave is incompetent to act (*hadjr*) but it is not absolute. “Slave-status is incompatible with “patrimonial ownership” (*malikiyyāt al-mal*), whence it follows, for example, that the slave cannot take a concubine, but is compatible with “non-patrimonial ownership” (*malikiyyāt ghayr al-mal*), whence it follows for example that a slave may marry. His status does not debar the slave from administering property and laying claim to the “possession” (*yadd*) of it, but is incompatible with the full exercise of the higher legal faculties of the human being: his *dhimma* (legal personality) and his *hill* (freedom of action in

¹⁶ According to consensus, the slave can only make a marital contract (*nikāḥ*) after obtaining the permission of his owner, i.e., his *nikāḥ* is conditional upon the permission of his master because it can harm the latter financially due to the dower and maintenance. Yet this is not considered an obstacle since the marriage of slaves is encouraged in the Qur’an 2:221, 4:25, 24:32. The act of divorce is not subject to permission, but the number of times the divorce can be pronounced is considered according to the woman’s status, twice for a slave and thrice for a freewoman.

sexual matters) are reduced, and all *wilayat* (public and private offices of authority) are forbidden to him.”¹⁷

3) Slave as owner:

Ownership (*tamlīk*) means exclusive control over a property and the right to undertake transactions with it. Full ownership can only be exercised by someone with the status of freedom, and is defined as an owner having complete control over his property and being able to dispense it at his will. *Mulk* is that which has become owned whether it be of the corpus (*‘ayn*) or the use (*menfa*). Slaves, as a type of property in themselves, cannot acquire or own property, all that they possess or comes into their possession as a result of what they earn or gain through marriage or birth is the property of their owner who has the right of disposition over it. For example, the dowry of a female slave belongs to her master and likewise any property that the slave were to inherit.¹⁸ So by consensus a slave does not own, and if his owner were to grant him ownership (*mallakahu*) then the Hanafis are of the opinion that he who is owned cannot own and real ownership of one property by two individuals cannot be effectuated.¹⁹

¹⁷ Brunschvig, R, “‘Abd”, *The Encyclopaedia of Islam New Edition*, Vol I, London: Leiden Brill, 1960, p. 27 taken from 'Alī ibn Muhammad *al-Pazdawī*, *Usul*, ed. Istanbul, 1307, pp. 1401-1426.

¹⁸ According to the majority opinion, although Mālik, pointing to chapter al-Nisā’ verse 24 of the Qur’an, stated that it belongs to the female slave.

¹⁹ This corresponds to the opinion of Imam Shafā’ī and Imam Aḥmad, whereas the Imam Mālik ruled the contrary.

The principle is that the slave is under the guardianship (*mahjur 'alayh*) of his master, and is therefore declared legally incompetent (*hajara 'ala*) and thus alienates his right to dispose. On this basis the slave is not permitted to engage in financial transactions such as buying, renting, leasing, trading without the permission of his master, and were he to do so, then the transaction would be invalid (*bātil*) or suspended (*mawqūf*).²⁰ There is however, a special category of slave that possesses limited legal capacity referred to as *ma'thun* or *ma'thun lahu* (literally permitted) who has been permitted by his master to engage in financial transactions, he can make contracts and accept liabilities, i.e., he is responsible for the payment of any debts incurred, be it with capital or his own person.²¹ In this case, his legal incompetence is lifted and obtains legal capacity (*ahliyet*) in this area alone. The pillars of permission are divided into explicit (*sarīh*) and inferred (*dalāla*), the former of which can be divided into general and specific.²² In the former, it encompasses all trade and thus it is

²⁰ An invalid contract is one that is not legal in its fundamental element (*aşlihi*) or characteristic (*waşfihi*). Al-Mawşulī, Abū al-Faḍl Majid al-Dīn, *Al-Ikhtiyār li Ta'tīl al-Mukhtār*, Istanbul: Al-Maktaba al-Islāmiyya, 1951, p. 187.

²¹ The *ma'thun* slave is legally defined as he who is released from the (owner's) guardianship (*fakk hajr*) and forfeit of (his) right (*isqāt haqq*), al-Hidaya. The permission must be verbal for a tacit implication is not accepted as permission.

²² The general and specific are likewise categorised into implemented (*munjiz*), attached to a condition (*muta'liq bi sharṭ*) and related to time (*muḍāf ila waqt*), Al-Kāsānī, 'Alā' al-Dīn Abū Bakr, *Kitāb Badā'i' al-Sanā'i fī Tartīb al-Sharā'i*, vol. X, Beirut: Dār al-Kutub al-'Ilmiyya, 1997, p. 136.

possible for the slave to engage in activities that are defined as trade, i.e. buying, selling or entrusting someone with the latter two, pledging, demanding as security, leasing, renting, and the settlement of debts. The latter, specifying one type of trade, would convert to a general permission due to the owner having waived his claim to guardianship over the slave by granting him permission to engage in financial transactions.²³ The conditions for the granting of permission to engage in trade are as follows: to comprehend trade (*ya'qul al-tijāra*), puberty not being a factor for its validity, and knowledge about the permission either privately (to the slave) or publicly (in the market).

The slave is likewise the owner of his debts, a necessity of trade, which he pays from his earnings (*kasb*), be it from trade or other gains such as presents. Yet, contrary to the freeman, any debts incurred are linked to the slave's person (*raqaba*) rather than legal personality (*dhimma*) and as a result he can be sold in order to pay the debtors if he does not possess sufficient income to pay them.²⁴ The gains (*kasb*) of the *ma'thūn* who is free from debts likewise belongs to the

²³ Al-Hidaya, p. 286; Al-Ikhtiyar, p. 340. To the contrary of Zafer's opinion for whom it remains specific because it is tawkil, see Al-Kāsānī, *Kitāb Badā'i' al-Sanā'i fī Tartīb al-Sharā'i*, vol X, p. 137.

²⁴ Al-Marghinānī, Burhān al-Dīn Abī al-Hasan, *Al-Hidāya Sharḥ Bidāyat al-Muhtadī*, vol. II, Beirut: Dār al-Arqam Ibn Abī al-Arqam, n.d., p. 287; Al-Mawṣūfī, Abū al-Faḍl Majīd al-Dīn, *Al-Ikhtiyār li Ta'īl al-Mukhtār*, Istanbul: Al-Maktaba al-Islāmiyya, 1951, p. 341.

owner, because it is not real gains (*kasb ḥaqīqī*).²⁵ Yet the slave still has the right to claim possession (*yadd*), be it from trade or not, since preference is given to his possession in the right of disposal (*turajjih yadduhu bil tasarruf*) and his possession (*yadd*) is like that of a freeman.²⁶ Since it is not a necessary permission, the owner is free to place the slave under his guardianship (*hadjr*) and thus render him legally incompetent once again (*qābil al-ruju'*) on the condition that it be known by the market traders (*ahl al-souq*).²⁷ It is important to highlight here that his being permitted to engage in trade does not exempt him from being owned.

According to Islamic legal doctrine the conditions (*shurūṭ*) for the founder of a *vakıf* are three: that the individual be of sound mind (*'āqil*), pubescent (*bāligh*) and free (*hurr*). The latter condition, as seen above, is based on the legal restriction forbidding slaves from possessing property. Nevertheless, the juridical language of *fikh* was not always conformed to by juridical reality, as best demonstrated in the Ottoman legal practice permitting the foundation of *vakıfs* by men and women of slave status as documented in numerous instances in which *kapıkulları* (slaves of the Porte) and

²⁵ Al-Kāsānī, *Kitāb Badā'i' al-Sanā'i fī Tartīb al-Sharā'i*, vol X, p. 153

²⁶ Ibid., p. 156

²⁷ Guardianship is also reinstated under certain circumstances linked to either the owner, such as the death of the owner or his becoming insane or an apostate, or to the slave, such as acquiring the status of a run-away slave (*ābiq*) or *umm walad*.

eunuchs (*hadım ağaları*) established *vakıfs*. Before giving an example of Ottoman legal practice with regards to slaves as *vakıf* founders it is important to briefly look at the Turkish equivalent

of the term slave, *kul* and *köle*, so as to dispel any misconceptions that might arise.

III. The definition of slave in the Ottoman Empire:

1) The distinction between *kul* and *köle*:

The term *kul* was used to refer to a member of the slave class that belonged to the sultan's household. Those who received their training and education in the palace to be employed by the state in the military and bureaucracy as loyal servants of the sultan, made up the *kul* system. The relationship resembled an implicit contract between the slaves and the sultan and "...everyone that belonged to it [the ruling institution] was held to be a slave of the Sultan, though only a small minority were really eligible to be any such thing....By entering the Sultan's service they still became his property."²⁸ However, they differed from the slaves that were employed in the harem and domestic service in the imperial household. In Ottoman times *kul* (pl. *kullar*) became the standard designation for the Janissaries (*yeniçeri*). It is important to emphasise here that all those who fell under the title of *kul* did not in fact possess servile status according to Islamic legal

²⁸ Gibb, H. A. R. and Bowen, Harold, *Islamic Society and the West*, vol. I, pt. 1, London: Oxford University Press, 1950, p. 45.

doctrine. Best exemplifying this are the *devşirme*²⁹ who were referred to as “padişah kulu” a title from which the misunderstanding most probably arose.³⁰ As İnalcık confirms: “In general the Ottomans did not regard the *devşirme* as enslavement, but rather as one of the extraordinary services imposed by the state in an emergency.”³¹ These young Christian boys who were collected as a kind of tribute to serve in the army, were protected non-Muslim subjects of the Empire (*dhimmīs*) who due to the contract of protection (*‘aqd al-dhimma*) could not be enslaved.³² They should not be

²⁹The *devşirme* were collected through a levy on the Empire’s young Orthodox Christian male subjects mainly from the Balkans. It was a condition that they were between the ages of ten and eighteen approximately, not an only child, healthy, attractive, intelligent, unmarried and uncircumcised. Akgündüz, Ahmed, *Osmanlı Kanunnâmeleri ve Hukukî Tahlilleri*, c. 9/I, İstanbul: Osmanlı Araştırmaları Vakfı, 1996, pp. 138-139. For a good overview of the *devşirme* system see: Yılmaz, Gulay, “Becoming a Devşirme: The Training of Conscripted Children in the Ottoman Empire,” in Campbell, G., Miers, S., Miller, J., *Children in Slavery Through the Ages*, Ohio: Ohio University Press, 2009, pp. 119-134.

³⁰Akif Aydın, M., Hamidullah, Muhammed, “Köle”, *DİA*, vol. XXVI, İstanbul: Türkiye Diyanet Vakfı, 1997, p. 244. It is argued by some scholars that the devshirme system contradicts Islamic law, as referenced by Paul Wittek, see: Palmer, “Origins of the Janissaries,” 464, whereas others argue that it does not infringe on the devshirme system since they had not been granted genuine dhimmi status, see: Wittek, Paul, “Devshirme and Sharia,” *Bulletin of the School of Oriental and African Studies*, vol17, no. 2, (1955), pp. 276-77.

³¹ İnalcık, Halil, “Servile Labour in the Ottoman Empire,” in A. Ascher, B. K. Kiraly, and T. Halasi-Kun (eds.), *The Mutual Effects of the Islamic and Judeo-Christian Worlds: The East European Pattern*, Brooklyn: Brooklyn College Press, 1979, pp. 25-43, p. 26.

³² For a *fetva* related to Ebussuud see Düzdağ, Ertuğrul, M., *Şeyhülislam Ebussuud Efendi’nin fetvalarına göre Kanuni devrinde Osmanlı hayatı/Fetavayı Edussuud Efendi*, İstanbul: Şule Yayınları, 1998, p. 101.

confused with *pençik oğlanı* who were war captives.³³ Whether all those defined as *kul* were indeed of servile status is a theme for another paper, since it is subject to a large amount of scholarly debate.³⁴

The word *köle* was also used to refer to a slave. While *köle* and *kul* linguistically are synonymous, in political nomenclature *kul* was preferred, for the term *köle* was somewhat debasing. However, this was not a rule implying a legal distinction between them as the status of *köle* and *kul* was defined by Hanafî jurisprudence. Moreover, while the

³³ The important differences between the two is noted by Yilmaz as follows: “The enslavement of war captives (*pençik oğlanı*) and recruitment of the children of Christian subjects (*devşirme*) differed not only in legality and methods of conscription but also in the way they were trained. War captives were not given the education offered to *devşirmes* or subjected to conversion to Islam and the adoption of Ottoman culture. Hence, most of the time they preserved their Christian identity.” Yilmaz, “Becoming a Devşirme,” p. 121.

³⁴ As referenced by Ehud Toledano, participants in this debate are Halil İnalcık, Daniel Pipes (1981) and Orlando Patterson (1982). İnalcık notes the distinction between the slaves of the sultan and domestic slaves. Pipes focuses on the notion of control as a mark of military servile status. Patterson argues that the designation applies to all categories of slaves regardless of their status and power. Metin Kunt (1983) refers to *kuls* as “the sultan’s servants”. Whereas Toledano puts forward the notion of “a continuum of various degrees of servility rather than a dichotomy between slave and free. At one end of the continuum stand domestic and agricultural slaves, those most “slavish” of Ottoman slaves. Officeholders stand at the other end, with very little to tie them to the phenomenon of slavery. Not very far from these office holders we find our kul-type slaves, or state functionaries of slave origins.” Yet he argues that legally bonded subjects of the sultan were enslaved regardless of their degree. Toledano, Ehud, “Ottoman Concepts of Slavery in the Period of Reform, 1830s-1880s” pp. 37-63, in Klein, Martin, ed. *Breaking the Chains: Slavery, Bondage and Emancipation in Modern Africa and Asia*, Madison: University of Wisconsin Press, 1993, p. 42; for more details of these different positions see: Ibid, pp. 40-42.

slave of the sultan was always referred to as *kul*, the slaves of private individuals, even those of the imperial family such as the Sultan's mother, would be referred to as *köle*. For example, *Sultan'ın kulu* (the Sultan's slave), *Valide Sultan'ın kölesi* (the slave of the Sultan's Mother).

Another category of slave, of a different status from the *janisseries* and the *devşirme*, were eunuchs who were castrated and bought as slaves from a young age as opposed to those who were recruited. Eunuchs (*ṭawāsh*) were usually referred to by the neutral term servant (*khādim*/Turkish *hadim*) or teacher (*ustādh*) as a form of respect, as opposed to being called by a name denoting their feature like castrate (*khaṣī*).³⁵ The word *ağawas* also the title used to denote the eunuchs of the Ottoman Imperial palace, regardless of position (i.e. whether they served in the harem -*dariüssaade/harem ağası*-or threshold- *kapı ağası*) and rank. Eunuchs, regardless of whether they were used in the Imperial Harem or not, were from the category of elite slaves; having undergone castration in order to serve in their master's private residence, they were of a high-value making them affordable to all but society's elite. They were, moreover, very much members of the household, a bond strengthened by their

³⁵Brunschvig, “‘Abd”, p. 33. For a detailed discussion on the synonymy of the terms *khādim* and *khāṣī* see Ayalon, David, *Eunuchs, Caliphs and Sultans: A Study of Power Relationships*, Jerusalem: The Magnes Press, 1999, pp. 207-284

bonds of servitude and dependence as alien members of the society.

2) Slave as owner- Ottoman legal practice:

Eunuchs rose to a great status in the Ottoman administration and the palace. By the late 16th century the black eunuchs (*karā ağa*) dominated the position of *Dârüssaâde Ağası* (chief eunuch of the imperial harem) notably Osman Ağa (d. 1011/1603), the white eunuchs (*aķ ağa*) that of the position of *Babüssaâde Ağası* (eunuch of the Gate of Felicity-the threshold in front of the sultan's audience chamber).³⁶ The white eunuchs also obtained positions of viziership, such as the Albanian Hadim Hasan Pasha (1005-6/1597-8) during Mehmet III's reign.³⁷ Occasionally, the number of *ağas* working in the palace would increase to such an extent that efforts were made to manumit them.³⁸ However, there is no indication in the historical records that Osman

³⁶ It is worth mentioning here that the black eunuchs usually underwent radical circumcision by which all of their genital organs were completely severed (*al-majbūb*), whereas the white eunuchs usually had only their testicles cut off thus they were only deprived of their ability to reproduce and not that of engaging in coitus (*al-maslūb*).

³⁷ Orhonlu, Cengiz, "Khāṣī (in Turkey)", *Encyclopaedia of Islam*, vol. IV, p. 1093

³⁸ İpşirli, Mehmet, "Harem-Osmanlı Devleti'nde Harem", vol. XXVI, *DİA*, İstanbul: Türkiye Diyanet Vakfı, 1997, p. 136. The numbers of eunuchs serving in Topkapı Palace reached their peak of 1000 to 1200 during the reign of Murad III (r. 1574-95), 600 to 800 being harem eunuchs, Hathaway, Jane, *Beshir Agha: Chief Eunuch of the Ottoman Imperial Harem*, Oxford: Oneworld Publications, 2005, p. 13.

Ağa, whose *vakıf* will be discussed below, was among those manumitted.³⁹

By means of their status as servants of the sultan they obtained privileges that were denied to ordinary slaves according to Islamic doctrine by accumulating property enabling them to build monuments, found *vakıfs* and even own slaves.⁴⁰ Eunuch are a good example of this, those employed in the imperial household exploited their position of closeness to the sultan's women and princes who were to become the sultan's successor in order to influence affairs. In

³⁹ For biographical information I have referred to books such as Ahmed Resmi Efendi, *Hamiletü'l-Küberâ*, ed. Ahmet Nezihi Turan, Istanbul, 2000, pp. 46-47 and Süreyya, Mehmed, *Sicill-i 'Osmani*, ed. Nuri Akbayar, İstanbul: Tarih Vakfı Yurt Yayınları, 1996.

⁴⁰ The founders of *vakıfs* such as Sulayman Paşa al-Khadim (d. 955/1548) and Hafız Ahmad Paşa, Behrens-Abouseif, Doris, *Egypt's Adjustment to Ottoman Rule: Institutes, Waqf and Architecture in Cairo (16th & 17th Centuries)*, Leiden: E. J. Brill, 1994, pp. 184-191, 205-207; the founders of libraries such as the head eunuch of the palace under Sultan Ahmed III (1703-30) and Mahoud I (1730-54) Beşir Ağa is said to have owned the largest book collection. Tanindi, Zeren, "Bibliophile Aghas (Eunuchs) at Topkapi Saray" *Muqarnas*, Vol. 21, Essays in Honor of J. M. Rogers (2004), pp. 333-343, pp. 339-340. The founders of constructions such as the chief white eunuch Hüseyin Aga under Beyezid II, who undertook the construction of a *bedestan* in 1483 and a *medrese* in 1489 in the city of Amasya. Kafescioğlu, Çiğdem, "The visual arts" ed. Suraiya Faroqhi and Kate Fleet, *The Cambridge History of Turkey*, vol. 2.: *The Ottoman Empire as a World Power*, 1453-1603, Cambridge: Cambridge University Press, 2013, p. 472. A list of buildings constructed by *darüsaadeağas* can also be found in the appendix of Behrens-Abouseif, pp. 278-280. It is related that the Chief Eunuchs also received a "pension of fifty or sixty aspars a day....besides divers gifts and gratuities, which they receive from women strangers." Bon, Ottaviano, *The Sultan's Seraglio: An Intimate Portrait of Life at the Ottoman Court*, London: Saqi Books, 1996, p. 87. For *kulların kulları* see Kunt, Metin, "Kulların Kulları," *Boğaziçi Üniversitesi Dergisi Hümaniter Bilimler*, vol. III, 1975, p. 27-41.

the sixteenth century the *Dârüssaâde Ağası* position was second only to that of the grand vizier and *şeyhülislam*.⁴¹ By the end of the same century the duties of the chief white and black eunuch had extended to the control of the *vakıfs* of the Holy Cities and most of the mosques, the latter gaining exclusive right to the position of overall supervisor as of 1592.⁴² It was through the obtainment of imperial permission that the stipulation of freedom for a *vakıf* founder could be waived and is a demonstration of how sultanic authority took precedence over the authority established in legal texts.

3) Case study: Osman Ağa's *vakıf*:

An example of how servile status was not defined as a legal impediment to the foundation of *vakıfs* was the case of Ottoman *vakıfs* established by the Chief eunuchs of the imperial palace, Topkapı Sarayı, during the reign of Sultan Mehmed III (r. 1003-1011/1596-1603), son of Sultan Murad II (r. 824-848/1421-1444, 850-855/1446-1451) and Safiye Sultan (d. 1028/1619). A particularly interesting example of the latter was the foundation of a *vakıf* in Cairo in 1007/1598 by Osman Ağa who was the Chief Eunuch of the imperial harem (*Dârüssaâde Ağası*) during 1004-1011/1596-1603, in the form of a mosque with a graveyard which was completed

⁴¹ Shaw, Stanford J., *History of the Ottoman Empire and Modern Turkey, Vol. 1: Empire of the Gazis: The Rise and Decline of the Ottoman Empire, 1280-1808*, Cambridge: Cambridge University Press, 1976, p. 115.

⁴² Pellat, C., "Khāṣṣ", *Encyclopaedia of Islam*, vol. IV, Leiden: E.J. Brill, 1978, p. 1092.

in 1019/1610. The *vakıf* was of the charitable (*khari*) category and as such the revenues were dedicated to the benefit of the mosque and its maintenance with any surplus to be given to the poor, and not for the personal use of the founder.⁴³ In addition to being the *vakıf*'s founder, Osman Ağa was also its supervisor, a position that was to be transferred to the next chief eunuch of the imperial harem upon his death. The mosque was endowed with Osman Ağa's own properties, consisting of the village of Zāwiyat Tamīm in Manūf province and his *manzil* on Būlāq Road.⁴⁴ Regardless of Osman Ağa's servile status, the fact that he was commissioned to found the *vakıf* is supported by the *vakıf* deed dated 1010/1601 which stated that upon orders of the sultan he was given full disposition of the estates and the court protocol likewise attested that he had founded the *vakıf* by imperial permission.⁴⁵

⁴³ Behrens-Abouseif, *Egypt's Adjustment to Ottoman Rule*, p. 209.

⁴⁴ For more details of the village and *manzil* see: Williams, John, "The Monuments of Ottoman Cairo", *Colloque International sur l'histoire du Cairo*, [March 27-April 5, 1969], Grafenheinichen, 1972, pp. 453-63, Apendix B, p. 462.

⁴⁵ Osman Ağa had previously been granted the oversight of the imperial *vakıfs* (*evkaf-ı selatin*) by the sultan's order, thus it is not unusual that he was appointed to oversee the foundation of the mosque in Cairo. Original Ottoman text latinized: "Evahir-i şehri-I ramazanda selatin-i izam evkafının mütevelileri ref" buyurulup, dergah-ı al kapucılarından ve Darüssa'ade Ağası nazır Osman Ağa'nun ma'lum ve mu'temedleri olan kimselere sipariş buyuruldu. Selaniki Mustafa Efendi, *Tarih-i Selaniki (1003-1008/1595-1600)*, ed. Mehmet İpşirli, İstanbul: Edebiyat Fakültesi Basımevi, 1989, p. 741.

It should however, be noted that following Osman Ağa's death, his *vakıf* was invalidated by Safiye Sultan who transferred all his properties, including that of the *vakıf*, to her possession. She argued her case in the Sharī'a court through her representative, 'Abd al-Razzaq, based on two points. The first was that she, as Osman Ağa's owner, had not manumitted him. Since, according to legal doctrine, a person cannot make an endowment with a property that he does not own, it was rendered invalid by the following *fetva* issued by the *şeyhülislam*: “‘If ‘Amr, slave of Hind, owning property, should build a mosque and endow it and then die before his manumission, should Hind not receive the waqf of her slave ‘Amr and take possession of all its endowments?’ The response was: ‘The *Waqf* of ‘Amr was incorrect, and his owner should take control of all that pertained to it, like the rest of his possessions.’”⁴⁶ The second point in her claim, was that Osman Ağa had not received permission to build the mosque nor endow it with his properties, in which case any transactions he engaged in would be invalid due to his legal incompetence.

How can it be proved that he was indeed the slave of the Safiye Sultan as opposed to that of the Sultan Mehmed III? This is not an easy question to answer since black slaves were bought from the annual slave caravans from sub-Saharan

⁴⁶ Williams, “The Monuments of Ottoman Cairo”, Appendix B, p. 462.

Africa and those who were castrated were then often bought by the governor of Egypt who sent them to the imperial palace. As a result, their purchase was rarely recorded. Regardless, a harem eunuch would have been presented to the sultan who could have gifted him to his mother, the Valide Sultan. Paul Rycault mentions in his account of the palace, the existence of a “valide agası: eunuch of the Queen Mother” who is distinct and mentioned second to the *harem ağası* (or as he describes “Kuzlir Aga”). He also mentions that the two imams of the Royal Mosque (“*Mesgidigi Barchi*”) also belonged to the Queen Mother.⁴⁷ He does not however, indicate that the *harem ağası* is the property of the Sultan’s mother. Likewise, one is not able to determine the ownership of Osman Ağa by Safiye Sultan from the contemporary historical sources that are available. By stating her ownership, Safiye Sultan was to determine his servile or free status since only the legal owner of the slave can manumit him, be he property of a sole owner or shared property. While the abolishment of slavery is not called for in classical legal doctrine, the manumission of slaves is encouraged according to the Qur’an, Prophetic practice and tradition.⁴⁸ Nevertheless,

⁴⁷ Rycault, Paul, *The Present State of the Ottoman Empire*, (Reprint) Farnborough: Gregg International Publishers, 1972, p. 37.

⁴⁸ Qur’an II, 177; XC, 13, hadith “He who sets free a Muslim slave, shall be freed from the fires of Hell”/ “The man who frees a Muslim slave, God will free from hell, limb by limb”. Manumission can take place on the basis of six considerations, it can be voluntary, expiatory punishment for certain misdemeanors such as intentionally breaking the obligatory fast and intentional homicide (Qur’an 4:92, 5:89, 58:3), through contractual agreement (*kitāba*), obligatory such as a Muslim

Safiye Sultan had not been inclined to such an act in the case of Osman Ağa.

Another related point of interest is that a slave who is manumitted (*mu'taq*, '*atiq*') automatically transfers to the 'patronage' (*wala'*) of their emancipator (*mu'tiq*), and as a result if the emancipated slave were to die without priority heirs or agnates, the patron/patroness would inherit his property and estates.⁴⁹ Osman Ağa, being a black eunuch who would have been purchased as a child would most probably have lost all ties with his family and region of origin and likewise have been childless. These assumptions lead to the conclusion that there were no relatives to inherit him, which is also supported by the scarce documentary evidence about his life. In this case, Safiye Sultan would have automatically inherited his estates as his former owner. Then why did she argue that he had not been manumitted? Her actions cannot be attributed to her wish to secure her possession on his property against any claims on it by his relatives. Should any of his relatives have subsequently appeared to demand their share, the *vakıf* was dedicated in perpetuity as a charitable

that was captured among non-Muslim captives, linked to the death of the owner (*tadbîr*), *umm al-walad* and emancipation by the state. For more details see: Akif Aydın, M., Hamidullah, Muhammed, "Köle", *DİA*, vol. XXVI, Istanbul: Türkiye Diyanet Vakfı, 1997, pp. 242-243.

⁴⁹ Brunshvig, R, "'Abd", *The Encyclopaedia of Islam New Edition*, Vol I, London: Leiden Brill, 1960, pp. 24-40, p.31.

vakıf which would not be subject to inheritance by relatives. As Behrens-Abouseif suggests, it could be the result of her desire to discredit him following his role in the uprising against the imperial harem, since her limitless power in the affairs of the harem was supported by these very eunuchs.⁵⁰

The second question that arises is related to the court case itself. Why did the court support her claim? She was able to persuade the *kadī* about the veracity of her claim by fulfilling the legal requirements of producing two reliable witnesses. Moreover, on a legal basis, the plaintiff's claim could not be rejected for, although it was contested by the deceased Osman Aga's representative and administrator (*mutawalli*) of the said *vakıf*, Dawud Ağa, he was not able to present the required evidence. Even when the plaintiff produced two witnesses she was also requested by the court to corroborate her case by giving an oath, and by which the invalidity of Osman Aga's *vakıf* was concluded.⁵¹ Regardless of the legal practicalities, from a socio-political perspective, the court could also have been inclined to the "infallible"

⁵⁰ His increased influence in political affairs and decision-making from within the imperial harem, together with the misrule of the *devşirme* led to a revolt in the capital by the Anatolian *sipahi* cavalymen supported by *softas* and a former *seyhülislam* Sunullah Efendi on 6th of January, 1603. The execution of Osman Ağa in February of 1603 was followed by a series of reforms. However, this was short lived as the janissaries took back control of the capital executing the *sipahis* and rebel leaders. See: Emecen, Feridun, "Mehmed III", *DİA*, İstanbul: Türkiye Diyanet Vakfı, 1997, pp. 407-413.

⁵¹ Williams, John, "The Monuments of Ottoman Cairo", Apendix B, p. 462.

person of the Sultan's mother as opposed to a disgraced eunuch.

4) Conclusion:

Slave as possession, slave as person, slave as loyal servant of the sultan, slave as owner, slave as *vakıf* founder: in the Ottoman era the slave could hold a multifaceted identity. In this study, which is still in its infancy, the tension between the textual and historical definitions of slave as *vakıf* founder was clearly exemplified. While it is not permissible for an ordinary slave to found a *vakıf*, a slave who possesses limited legal capacity (*ma'dhūn*) can endow such a foundation with the properties of his master alone, as an authorized agent of his master. Osman Ağa's foundation of the above mentioned *vakıf*, regardless of Safiye Sultan's subsequent contestations, was made legally possible due to imperial permission. Yet, the question that still remains to be answered was how he was legally able to endow the *vakıf* with his own properties. Slaves as *vakıf* endowers should not however, be taken as the norm, rather, such examples should be analysed individually and understood within the wider historical context in order to demonstrate how particular circumstances affected legal practice.

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