

Slavery, Liberation and Islamic Law in the Middle East and beyond

October 5, 2018

**Location: Pond Inlet
Brock University
St Catharines, Ontario, Canada**

Symposium Abstracts

“The authorized slave in the *naw zil/fat w* literature of West Africa”

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In Islamic jurisprudence, the formal term *ma dh n* is used for the distinct category of slave who has been authorized to carry out actions independently of his master’s presence or supervision. In the local West African jurisprudential literature, a *ma dh n* can sometimes refer simply to slaves who are authorized to sell milk produced by animals they are looking after, or part of the yield from their agricultural labor. But there is also a distinct category of *ma dh n* that Maliki substantive law recognizes as authorized to trade on behalf of his master. This paper explores the category of *ma dh n* as it appears in the *naw zil/fat w* literature produced in the Southern Sahara and broader West African region from the 17th to the 19th centuries. The importance of this legal category reflects one of the important ways that slavery had become central to the commercial institutions that enabled long-distance trade in the Sahara and West Africa before the advent of European colonial rule. It also provided one path out of slavery in certain circumstances for enslaved people who could make use of this status to advance their own ends.

***Qur’an* 8:41 and 33:50 and their relationship to the problems of slavery and slave-trading in Islamic Jurisprudence.**

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Scholars of Islamic jurisprudence and legal history have, until recently, avoided serious treatment of the topics of slavery and slave-trading in their studies of Islamic law. This is understandable, as slavery and slave-trading are now universally abolished in all the world's jurisdictions, including all the recognized nation-states in the Muslim world, and such behaviors are also condemned and made illegal under a variety of international law principles and instruments. Muslim jurists and Islamic law scholars have therefore viewed any discussion of slavery as anachronistic and of little relevance to contemporary legal issues affecting Muslims in the world today. Recent behaviors of several Islamist insurgencies, to wit: ISIS in Syria, Iraq and Afghanistan, Boko Haram in West Africa, and Abu Sayyaf in the Philippines, have called these assumptions into question, as these insurgencies have asserted that they have the right under Islamic law to enslave war captives in their conduct of military activities against their perceived enemies. A central feature of this assertion is reliance on several verses in the *Qur' n*, specifically 8:41 and 33:50, as well as *ahadith* associated with the revelation of those verses. This paper will undertake a careful analysis of those verses, the circumstances of their revelation, and *ahadith* associated with them, in an effort to determine whether: (1) the claims of the insurgents have any merit and (2) if there is merit to their claims, what, as a matter of Islamic jurisprudence, is or should be the implication of such claims in terms of: (A) the future of the Islamic law of war, both internally and in relation to the emerging regimes of international humanitarian law and (B) the relationship between Islamic law and a worldwide juristic consensus holding that slavery and slave-trading are universally unlawful forms of human behavior.

Islam and Slavery

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In Shi'i circles, there have been important voices calling for a radical rethinking of the religious tradition. Such formulations have come from religious intellectuals like 'Abdolkarim Soroush, but importantly, others emanate from within the religious seminaries itself. Scholars like Ayatullah Sanei, Ayatullah Jannati, Ayatullah Mohagheg Damad, Hujjatul-Islam Muhsin Sa'idzadeh and Mohsen Kadivar have called for a reevaluation of traditional juridical pronouncements on many issues. As a matter of fact, in my discussions with some jurists, I detected a distinct silent revolution within in the seminaries in Qum.

One of the key issues that is subject to reformation is that of slavery. Although the institution has been banned by most Muslim countries, it has been endorsed by many jurists. My paper will argue that in contrast to the Qur'an which sought to gradually abolish slavery, Muslim jurists sought to perpetuate the pre-Islamic institution through various forms of justification and amelioration of the conditions of slaves. The paper will also demonstrate that the juridical decisions in the past were interwoven to the political, cultural, or historical circumstances in the eighth century. While the Qur'an is a fixed text, the interpretive applications of its revelations can vary with the changing realities of history.

The paper will go on to argue that Islamic law imposed many inhumane practices and restrictions on slaves.

For example, Islamic law stipulates that

- Slaves can have only limited authority
- Slaves cannot be witnesses in court
- Killing a slave does not carry the death penalty in most schools of Islamic law
- Slaves are punishable under Islamic law if they commit a crime - although for some major crimes they only receive half the punishment of free people

While imposing such restrictions Islamic law violated the spirit and moral elan of the Qur'an.

How Can we Compare Different Forms of Slavery? Some Preliminary Remarks.

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Two fundamental methodological questions in every trans-disciplinary research are: how can we compare empirical findings across time and space and how can we show and describe connections and disconnections and entanglements and disentanglements in human history? Academic debates on forms of human bondage and coercion have traditionally focused on slavery. Research is conducted largely from the perspective of the "extended West". Post-Enlightenment and liberal-abolitionist ideas as well as normative and legal approaches developed in the Roman world deeply impacted the conceptualization of slavery. Slavery should rather be understood as an extreme form of asymmetrical dependency which includes all forms of bondage across time and space, such as debt bondage, convict labor, tributary labor, servitude, serfdom, and domestic work as well as forms of wage labor and various types of patronage. Moreover, the global field of slavery research requires an expansion towards the Eastern hemisphere, Africa and pre-Columbian America. By studying the empirical manifestations of social bondage and individual coercion in their own right, as well as juxtaposing them within the same analytical

framework, we should strive to arrive at a new taxonomy of asymmetrical dependency. Three analytical steps will help to reach that goal: (a) From a sociological standpoint, for asymmetrical dependencies it is not a significant difference if they connect individuals or collectivities. Structures are similar in both cases. Having said this, a differentiation between collective and individual asymmetrical dependencies appears necessary for heuristic reasons. (b) Collective and individual dependencies must be studied and compared in respect to specific moments and sites of coercion. (c) In order to place empirical findings and historical manifestations of social bondage and individual coercion on a continuum of dependency, the degree of coercion must be measured by alternative indicators such as autonomy versus heteronomy and precariousness versus control.

Slavery, Liberation and Loyalty in Muscovy and Eurasia

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When slaves in petitions to the tsar spoke of liberty, or the tsar about military liberation of slaves, it was not a limited concept before its generalization by philosophers of the European Enlightenment, but rather a notion focused on the achievable. Symbols, rituals and language harked back to the Bible, which is one of the reasons why Muscovites saw themselves as the New Israel. Yet it would be equally misleading to attribute ransoming only to Orthodox self-preservation – the budding state and empire influenced these notions. Muscovites focused on the local, even intimate, so the state had to offer something to get into the cycle. Millions of captives taken in raids in Eastern Europe – from the Caucasus to Hungary – and mostly sold to affluent Mediterranean, Middle Eastern and Central Asian markets made this effort worthwhile, if risky. Though most remained in their new places, there were still vast numbers who returned to Muscovy. They were, anyway, on the move so it was no longer a matter of mobilizing but redirecting them. This mainly involved fortifying open steppe frontiers, but also military aggression and some seriously symbolic effort to convey the message of the tsar's and Orthodox believers' obligations within the ramifications of the system. This effort stressed the strengths of empire and cast out its net – service as well as symbolic – to connect to allies and integrate non-Orthodox outliers appearing frequently in this period of economic, political and social downturn in Central Asia. Moreover, they could offer hands-on help with ransoming due to language skills and local knowledge. Owing to the practical value of the obligations of liberating slaves it was those who took it at face value who put the system to its most revealing tests.

Slavery and Islamic Law in Central Asia

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Though only a handful of studies exist on slavery in Central Asia, two of these studies are largely concerned with its legal aspects. One--a Soviet-era, Uzbek-language work by Turgun Faiziev-- includes an extensive discussion of manumission documents, bills of sale, legal manuals, and other written evidence from the judicial system of Bukhara. Another Soviet-era study--this one in Russian, by F.K. Semeniuk--discusses slavery in Kazakh "customary law," drawing especially on ethnographic data provided by eyewitnesses. Despite the close proximity of Bukhara to the Kazakh steppe, the slave systems of these two regions appear, in these studies, to be worlds apart. In Faiziev's Bukhara, we learn of a system overseen by madrasa-trained Hanafi jurists who drew on a shared corpus of legal manuals and scrupulously documented legal decisions. In Semeniuk's Kazakh steppe, we learn of an allegedly more "arbitrary" system based on unwritten customs loosely interpreted by tribal elders. This division between nomadic and sedentary slave systems parallels a broader division that generations of scholars have made between sedentary and nomadic legal systems in Central Asia--a division between the sedentary "world of shar' a" and the nomadic "world of adat" (steppe customary law). As this paper will show, however, this division is based on two errors: first, a misrepresentation of Kazakh legal traditions and their basis; and, second, a mistaken belief that Hanafi legal norms invariably reflected social realities in sedentary regions. By comparing Central Asian Hanafi legal norms to eyewitness and autobiographical evidence about slaves' lives, I will challenge the assumption that Kazakh nomadic adat was entirely distinct from shar' a; question the extent to which Hanafi law impacted slaves in Bukhara; and demonstrate that both nomadic and sedentary slaveowners relied on a mixture of Hanafi legal norms and locally-accepted customs that sometimes contradicted those norms.

Are There Limits to Enslavement in the Dar al-Harb?: Islamic Legal Discussions on the Purchase of Non-Muslims Slaves in Non-Muslim Realms

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In the nineteenth and twentieth centuries, Muslim scholars responding to the moral challenge of slavery and abolition frequently argued that common means of enslavement being carried out by Muslims were violations of the Shariah. A common example was the purchase of children from their parents outside of the Abode of Islam, which scholars from East India Company law officers to Rashid Rida insisted was illegal. This paper investigates the pre-modern Islamic legal tradition on this question, suggesting that diverging positions reflected theoretical versus practical concerns.

"The Fused Moral Horizon of Abolitionism and Islam: Muslims, Global Slavery and the Challenge of Historical Hermeneutics".

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This presentation considers slavery and abolition in Muslim societies globally as a historical and theological problem. I explore a number of historical situations that produced consensus, contradiction and conflict among Muslims as they encounter abolitionist ideas, especially in the Atlantic world. I argue that the changes in popular consensus among Muslims globally about the desirability, permissibility of owning slaves, a Gadamerian 'fused moral horizon' of abolitionism and Islam most likely first emerged from interreligious African cooperation in New World slave rebellions. By parochializing the boundaries between the civilizational and regional histories of Islam, Europe, Africa and the Americas, and studying slavery as a global phenomenon, the possibility emerges of using a critical historical hermeneutic on the historical experiences of enslaved Muslims, along with a Quranic emphasis on total human equality, to address post-emancipation questions of status, hierarchy and citizenship in Muslim states. Many older law systems have undergone similar transformations. The historical experience of enslaved people and vulnerability of their condition provides an experiential basis for this horizon. I conclude by discussing ideas of universal justice, human rights, equality and freedom in 'Muslim theologies of liberation'.

**The *leiwah* ritual complex in the Persian Gulf
Slavery, possession and social interactions in *the longue durée***

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The recent researches in eastern Arabia reveals that *leiwah* music and dance practice, best known locally to be an entertainment dance, is ultimately an offshoot of a therapeutic ritual complex practiced by a cultural group of descendants of East African slaves named *Zunûj*. Organized in three rites of possession (*tanzilah*, *fatha*, *ramsat-al-leiwah*), this complex, called simply *leiwah*, played a central role in the structuring of this cultural group between the end of the 19th century and the first half of the 20th century.

Indeed, there is no doubt for the *leiwah* practitioners that their ritual complex and its practice are native from the current Swahili coast, despite the fact that they had no more links with Africa for more than a century. According to them, the *leiwah* has been brought from East Africa by their ancestors who were slaves of the Arabs. Their presence in Eastern Arabia dates from the late 19th century as a result of the Indian Ocean Slave trade; and it was only in the second half of the 20th century that the abolition of their slave condition was officially proclaimed and their cultural contribution to the Gulf region became gradually visible.

My communication will expose how the *leiwah* presents specificities both from the point of view of its structure and its organization. Then, through a presentation of its ritual realization, it will show how *Zunûj*'s beliefs in certain immaterial entities and their former statutory condition have contributed in the establishment of their cultural group in eastern Arabia since the 19th century.

Tradition of *mamabies* (songs for a newly mother and her baby) in Afro-Balochi communities along the coast in Iran.

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The aim of the present paper is to analyse the content of *mamabies* songs typically after giving birth as an endangered genre of songs among Afro-Baloch communities. In Balochistan, Afro-Baloch live along the coast and as far north as Iran Shahr and Sarawan. They have lost their ancestral languages in favour of Balochi. Their African origin can be guessed by their physical appearance but no feature of an African language has been identified in their dialect yet (cf. Korn and Nourzaei in press). In contrast to Baloch communities, Afro-Baloch communities are rich in oral traditions and more specifically in traditional practices regarding pregnancy and giving birth, for instance *mamabies*. Unlike lullabies, *mamabies* are only attested in the Afro-

Baloch community along the coast in Iran and there has been no research on the phenomenon. The *mamabies* are recited throughout different stages of pregnancy by a group consisting of a proficient female singer and seven ordinary women. The women recite songs with the same melody without playing a musical instrument. This tradition has been spread to other communities in this region for instance Baloch and Jadgal. The singers receive gifts when performing for non-Afro-Baloch women. The main content of these songs is: praise to God, the Prophets, his followers, the newly mother and her baby. The gender of the baby has an important role in duration of these songs. The data for the present talk has been collected from five famous singers in the Bahukalat, Chabahar and Nobandiyani regions in southeastern Iran in March 2014 and November 2017. The paper concludes that, this tradition along with healing ceremonies (*gwat*) was brought by the African slaves to Balochistan. Although communities of African origin have lost their original language, they have kept these traditions to reconstruct their identity and use them as a source of income in these regions.

What did make the Ottoman enslavement of Iranian Shia possible?

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Whenever the question of slavery is raised in the field of Islamic studies, it is often the case that the study of Muslim enslavement of non-Muslims is brought to the fore. While these studies have been enormously significant and enriching to the field, another aspect of enslavement in the Muslim societies seems to be understudied, that is the Muslim enslavement of other Muslim minorities. The Ottoman enslavement of Shia Iranian is a good example of this. Now given the huge diversity of political, legal, historical, social and economic contexts under which the Sunni Ottoman and Shia Iranian lived for centuries, the answer to the question of what did make the Ottoman enslavement of the Shia Iranian possible seems rather difficult to conceptualise. This paper will address this question, through a discourse analysis of a number of Ottoman texts which provided the imagination that the Ottoman practice of enslaving Shia Iranians acted upon. The conceptual tools of the discourse analysis of the Ottoman texts used in this paper aims to show the significant potential that the exciting interdisciplinary methodologies have for deepening our understanding of the Muslim practice of enslavement of other Muslim minorities in the Ottoman empire. This in turn speaks to wider issues of the importance of proffering interdisciplinary methodologies to the field Islamic studies.

Slavery in Islam from Ni'matullahi Gunabadi Sufi Point of View

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Muslim's exoteric laws (*Sharia*) and jurisprudence (*fiqh*) have always been criticized by refuters of Islam, as many Islamic laws can be compared it with Human Rights. Seminary Scholars of Islam ('*Ulama*) have responded to these criticisms and using their own justifications for the Islamic laws and their religious verdicts. The whole apologetic genre of religious writings in Islam has become an important part of *Kalam* (Islamic Scholastic Theology). *Kalam* is an Islamic seminary science born out of the need to defend Islamic faith and Islamic views against doubters, refuters and critics. Slavery is one of the most important religious issues in Islam for which jurisprudential schools have established their own views and explanations. Mystics of Islam refer to certain verses of Quran with a strong emphasis that gender, color of skin, and language do not create a distinction among believers and it is piety that creates eminence among the followers of Islam. Therefore, many scholars with this view believe that slavery loses its point in Islam, but at the same time, other jurists believe that slavery has its own rules and limitation in Islam. From 18th century onward, Ni'matullahi and Dhahabi Sufi orders have been the two most influential Sufi schools in Shi'ite-Iran and they have also developed their own theological and philosophical views. Also, many Ni'matullahi Gunabadi Sufi masters had talked about their own jurisprudential views on certain religious matters and slavery is one of them. Mulla Ali Baydokhti (d. 1918), Haj Sultanhossein Tabandeh (d. 1992) and Haj Dr. Nourali Tabandeh (present master) are the sole masters of Ni'matullahi-Gunabadi Sufis who have written about slavery based on their own mystical understanding of jurisprudence, representing the Gunabadi views on slavery. This paper presents the overview of these three masters about slavery and how they defended their own theological and jurisprudential views.