Comparative Studies in Society and History 2017;59(3):690–714.
0010-4175/17 © Society for the Comparative Study of Society and History 2017
doi:10.1017/S0010417517000226

Transplanted Slavery, Contested Freedom, and Vernacularization of Rights in the Reform Era Ottoman Empire

CEYDA KARAMURSEL

Department of History, School of Oriental and African Studies, University of London

In 1861, a Nogai prince named Canpolat, who was expelled from the Caucasus during the ongoing Russo-Caucasian war and settled near Köstence (Constanța, in today's Romania), wrote to Ottoman officials to complain about the "rebellious behavior" of his five slaves who he brought with him.[1] Canpolat was one of many Caucasian noblemen who during the war were uprooted from their native lands in the Caucasus and settled in the Ottoman domains. Like many slaveholding Caucasian noblemen, he brought with him not only his slaves but also his conceptions of slavery, freedom, and law, to the degree that he was perplexed when the Ottoman officials responded to his appeal by asking him to pay the *pençik* tax he owed for his slaves.[2] He objected that taxes on

Acknowledgments: Earlier versions of this paper were presented at the Making of Law in the Ottoman Space, 1800–1914 Workshop at Collège de France, the Duke–UNC Islamic Studies Graduate Student Workshop at the University of North Carolina at Chapel Hill, "Workshop in the Global 19th Century" at the University of Pennsylvania, and finally at the Ottoman Studies Lecture Series at the Hagop Kevorkian Center for Near Eastern Studies at New York University. I am grateful to the participants of these workshops and talks for their valuable feedback. I also gratefully thank the anonymous *CSSH* reviewers for their suggestions and criticism, and David Akin for his meticulous editing. The research for this article has been supported by the Social Science Research Council and the Charlotte W. Newcombe Foundation.

[1] Başbakanlık Ottoman Archives (hereafter BOA), A.MKT.UM 507/61, 1278.R.14 (19 Oct. 1861).

[2] The *pençik* tax (from Persian *pandj yak*, and equivalent to Arabic *khums*) originally designated one-fifth share of booty, particularly war captives, be set aside for the sovereign. For an overview of its development within Islamic jurisprudence, see A. Zysow and R. Gleave, "Khums," in P. Bearman et al., eds., *Encyclopaedia of Islam*, 2d ed. (Brill Online, 2016). In the financial and administrative parlance of the late Ottoman state, it amounted to an *ad valorem* import tax on

المنارة للاستشارات

slaves were unknown in his native lands in Kuban and that his ownership of the slaves was not a matter of *sharī'a* law that could be litigated in the *sharī'a* courts. In Canpolat's transplanted perception of law, this process was regulated primarily by customary law, commonly known as *ʿādat* in the Caucasus, whereas for the Ottoman state slavery was regulated by the *sharī'a* law, and accordingly, a person's status as slave or free was determined at the corresponding courts.

Legal ambiguities that resulted from the mass deportation of the Caucasians into the Ottoman territory were not limited to issues of slavery alone. One of earliest and biggest displacements in the global nineteenth century, the Caucasian expulsion necessarily presented a plethora of social, political, and cultural challenges, many of them legal in nature.[3] David Cuthell has written of the social frictions between the incoming refugees and the native tribes in eastern Anatolia, and that small-scale brigandage was commonplace from early in the settlement process.[4] In Tuna province, where refugees arrived in great numbers, conflicts with the Christian population were also common.[5] Fred Burnaby, a British Army intelligence officer posted in eastern Anatolia shortly before the 1877–1878 Russo-Turkish War, wrote that the region's native inhabitants still often complained that the Caucasian refugees had "hazy ideas as to the difference between *meum* and *tuum*," and that they were often collectively implicated in cases of brigandage and robbery near

---

slaves. Hakan Erdem, *Slavery in the Ottoman Empire and Its Demise, 1800–1909* (London: Palgrave Macmillan, 1996), xiii.

[3] Despite its scale and significance, the Caucasian expulsion remains largely unstudied, particularly in terms of its effects on social and legal categories in the Ottoman Empire and Turkish Republic. There are, however, several comprehensive studies of the state's policy on and the mechanisms of the settlement process. See Mark Pinson, "Demographic Warfare: An Aspect of Ottoman and Russian Policy, 1854–1866," (PhD diss., Harvard University, 1970); David Cameron Cuthell, "The Circassian Sürgün," *Ab Imperio* 2 (2003): 139–68; Cuthell's dissertation "The Muhacirin Komisyonu: An Agent in the Transformation of Ottoman Anatolia, 1860–1866" (PhD diss., Columbia University, 2005); Berat Yıldız, "Emigrations from the Russian Empire to the Ottoman Empire: An Analysis in the Light of the New Archival Materials," (MA thesis, Bilkent University, 2006); and Oktay Özel, "Migration and Power Politics: The Settlement of Georgian Immigrants in Turkey (1878–1908)," *Middle Eastern Studies* 46, 4 (July 2010): 477–96. Other studies look at the Caucasian expulsion as part of a bigger wave of displacement in the late Ottoman Empire: Kemal H. Karpat, "Ottoman Population Records and the Census of 1881/82–1893," *International Journal of Middle East Studies* 9, 3 (May, 1978): 237–74; Alexandre Toumarkine, "Entre empire ottoman et état-nation turc: les immigrés musulmans du caucase et des balkans du milieu du XIXe siècle à nos jours," (PhD diss., Université de Paris IV-Sorbonne, 2000); Dawn Chatty, *Displacement and Dispossession in the Modern Middle East* (Cambridge: Cambridge University Press, 2010).

[4] Cuthell, "Circassian Sürgün," 155. The Başbakanlık Ottoman Archives also contains numerous files on conflicts between Caucasian settlers and the native tribes in eastern Anatolia, such as the powerful Afşar tribe.

[5] Cuthell, "Circassian Sürgün," 160; Milen Petrov, "Everyday Forms of Compliance: Subaltern Commentaries on Ottoman Reform, 1864–1868," *Comparative Studies in Society and History*, 46, 4 (2004): 730–59, 749.

المنارة للاستشارات

their settlements.[6] In 1880 Edwin Pears, a British barrister living in Constantinople, reported that he had to pay a "Circassian chief" to protect him from being attacked and held for ransom on his way to Nicaea, "as brigands were known to be out in the neighbourhood."[7] As late as the 1890s, Greater Syria was described as a country "infested with Bedouins and Circassian thieves who went unpunished except when the exasperated villagers in sheer desperation resisted."[8]

One of the most vivid descriptions of the tension between the Caucasian refugees' "hazy ideas" and the Ottoman state law came from Krikor Zohrab, who observed that even murder, especially as retaliation, was not always understood to be a criminal act by the refugees. Zohrab was a young, talented criminal defense lawyer by the 1880s and already famous for work he had undertaken for Armenian peasants and other unprivileged groups. He took on the defense of Krandük, a recent refugee from Dagestan who was charged with first-degree murder. Krandük's testimony "gave everything away," Zohrab wrote ruefully, and his client's "naivety beyond belief" left no room for the lawyer even to plead not guilty.[9] The act in question was an incident of retribution that involved Krandük, his childhood friend Nüş, and a woman named Ceyran who is implied to have been "appropriated" by Nüş in ways not described in the story. The feud between the murderer and his victim had been carried over to the Ottoman lands, as were their "savage" ways. "Many accepted the Ottoman state's protection as if it were the divine order," Zohrab noted, but many others kept with their "nomadic and bellicose habits."[10]

Starting roughly in the mid-nineteenth century, such criminal offences as murder, theft, raiding, pillaging, and banditry, as well as conflicting Caucasian and Ottoman views on them, were addressed and dealt with in accordance with the (trans-)forming criminal law, "which could be anything but taken lightly," as Zohrab described it, and through the legal institutions that adjudicated criminal cases. This transformation, which began with the introduction of the criminal code of 1840 and continued through late 1860s, generated a hybrid system

[6] Fred Burnaby, *On Horseback through Asia Minor* (London: Sampson Low, Marston, Searle, & Rivington, 1877), 277. Burnaby visited Sivas Prison, and saw that the majority of the 102 prisoners there were Circassians and Kurds imprisoned for horse or cattle theft (p. 285).

[7] Edwin Pears, *Forty Years in Constantinople: The Recollections of Sir Edwin Pears, 1873–1915, with 16 Illustrations* (London: Herbert Jenkins, 1916), 66–67.

[8] *The English Illustrated Magazine*, *1891–1892* (London: MacMillan and Co., 1892), 903. Also see Georgi Chochiev and Bekir Koç, "Migrants from the North Caucasus in Eastern Anatolia: Some Notes on Their Settlement and Adaptation (Second Half of the 19th Century–Beginning of the 20th Century), *Journal of Asian History* 40, 1 (2006): 80–103, 94–95, 97; Ryan Gingeras, *Sorrowful Shores: Violence, Ethnicity, and the End of the Ottoman Empire, 1912–1923* (Oxford: Oxford University Press, 2009), 29."

[9] Krikor Zohrab, "Ceyran," in *Öyküler* (Istanbul: Aras Yayıncılık, 2001), 140. The story, which was presumably autobiographical, was originally published in Armenian in *Hayrenik* in 1892.

[10] Ibid., 144.

المنارة للاستشارات

in which "crimes against the individual or his/her property were the first to be reformed."[11] By the 1870s, particularly after the promulgation of the first formal constitution in 1876 and the emergence of the office of public prosecutor "as facilitator of the law" shortly thereafter, the legal procedures for these cases left no room for negotiation and called for definitive decrees of punishment.[12]

This was not the case with slavery. Being simultaneously persons and property, slaves had an intrinsically paradoxical status in this "era of freedom."[13] They posed a challenge both to the liberal principle of "equality before the law, without [consideration of] rank, distinction, religion, or community," and to the ways in which the categories of the new property regime were being translated into legal categories.[14] The Ottoman state and the Caucasian slaveholders did not necessarily agree on what conditions sanctioned enslavement, the terms or durations of the slave status, or the procedures for manumission, yet in practice their different perspectives rarely contradicted one another. In fact, as this article will show, they often worked in support of each other by delineating a system of slavery that could be defined as neither a Caucasian life-term serfdom or a chattel type of slavery, nor exactly an Islamic one. The result was a combination of the two, the bind of which became virtually impossible to break out of, either for the enslaved or for the reformers who sought general abolition in the second half of the nineteenth and early decades of the twentieth centuries.[15]

However, what was unproblematic for the Ottoman state and Caucasian slaveholders' perceptions of law was complicated by another legal development

[11] Omri Paz, "Documenting Justice: New Recording Practices and the Establishment of an Activist Criminal Court System in the Ottoman Provinces (1840–late 1860s)," *Islamic Law and Society* 21, 1–2 (2014): 81–123, 85.

[12] Avi Rubin, *Ottoman Nizamiye Courts: Law and Modernity* (New York: Palgrave Macmillan, 2011), 136; Kent F. Schull, *Prisons in the Late Ottoman Empire: Microcosms of Modernity* (Edinburgh: Edinburgh University Press, 2014), 22–25.

[13] There is a large literature on this particular paradox and how it shaped social and legal categories and, in an indirect way, citizenship in the nineteenth-century Atlantic world. See especially Thomas C. Holt, *The Problem of Freedom: Race, Labor, and Politics in Jamaica and Britain, 1832–1938* (Baltimore: Johns Hopkins University Press, 1992); Frederick Cooper, Thomas C. Holt, and Rebecca J. Scott, *Beyond Slavery: Explorations of Race, Labor, and Citizenship in Postemancipation Societies* (Chapel Hill: University of North Carolina Press, 2000); Rebecca J. Scott, *Degrees of Freedom: Louisiana and Cuba after Slavery* (Cambridge: Harvard University Press, 2005); Richard Follett, Eric Foner, and Walter Johnson, *Slavery's Ghost: The Problem of Freedom in the Age of Emancipation* (Baltimore: Johns Hopkins University Press, 2011).

[14] Yücel Terzibaşoğlu provides an excellent analysis of this particular issue from the viewpoint of land ownership and agrarian regimes, in "The Ottoman Agrarian Question and the Making of Property and Crime in the Nineteenth Century," in Elias Kolovos, ed., *Ottoman Rural Societies and Economies* (Rethymno: Crete University Press, 2015), 324–25.

[15] Different aspects of this particular point have been raised by the historians of Ottoman and Middle Eastern slavery. See especially Erdem, *Slavery in the Ottoman Empire*, 147–51; Ehud R. Toledano, *Slavery and Abolition in the Ottoman Middle East* (Seattle: University of Washington Press, 1998), 96–99.

المنارة للاستشارات

that began taking shape in the early nineteenth century: the global spread of anti-slavery politics, laws, and regulations, the first full articulations of which took place in 1857 in the Ottoman Empire. This added a further layer of complexity to the post-Caucasian-expulsion Ottoman Empire and to how slavery, freedom, and what came to be labeled "citizenship rights" were understood and handled there. These global developments gave incoming enslaved refugees incentive to question their status as slaves and claim freedom, which they deemed to be their right, whatever that may have meant in specific contexts. In subsequent decades they challenged the very legitimacy of the *sharī'a* courts as judicial institutions and increasingly placed less faith in religious institutions and more in overtly secular ones such as the Ministry of Justice and the Parliament.[16]

This article explores the jurisdictional conflicts that emerged at the juncture of the transplanted legalities that followed the Caucasian expulsion in the 1850s and 1860s, the proclamation of the proto-constitution known as the Ottoman Reform Edict of 1856, and the internationally enforced ban on trading in African slaves in 1857. Starting with the Caucasian expulsion, it traces how legal practices were carried over with Caucasian refugees to the Ottoman domains and how the judicial management of slavery-related conflicts determined not only the limits of slavery, but also how such liberal "fictions" as freedom or equality before the law were vernacularized by local agents in the Ottoman Empire. I navigate within a set of what were labeled as freedom suits (*hürriyet davaları*), to examine how enslaved refugees built their claims in relation to different legal terrains, problems, and concepts. My argument is that while Caucasian-Ottoman slavery was economically marginal, it nonetheless posed serious challenges to the new political order the Ottomans aspired to establish, and the abolition that never came continued to bend categories of ethnicity, race, and gender, contributing to the "violent turn" of events in the subsequent decades.

THE CAUCASIAN EXPULSION AND TRANSPLANTED LEGALITIES

Krikor Zohrab was not the first to give an account of the chaotic air surrounding the Caucasian refugees, although he may have been the only one to depict it in a courtroom. Journals and newspapers worldwide not only covered the hardships among refugees, such as the diseases and destitution they encountered during their passage and settlement, but also provided much information about subjects ranging from the many languages they spoke to the strangeness of their customs. Especially the British public, its interests shaped by strong anti-Russian sentiments, read a great deal about "the brave and hardy" people of

[16] Ceyda Karamursel, "The Uncertainties of Freedom: The Second Constitutional Era and the End of Slavery in the Late Ottoman Empire," *Journal of Women's History* 28, 3 (2016): 138–61, 145.

المنارة للاستشارات

the Caucasus, "finished by exile, fever, famine ague, and, far worse than all, cruelty."[17]

Besides the settlement and integration problems, difficulties arose in relation to the Ottoman government's policies intended to settle the refugees in strategic places such as border regions. The government wanted to populate its margins with the incoming Caucasians not only because of outside threats (for instance, in Tuna province in relation to Russia), but also to manage the empire's native populations.[18] The highly fractured nature of the refugees, and the hostilities and feuds that they brought with them, made it impossible for the Caucasians to form a unified community.[19] As the British consul in Soukoum-Kalé (Sukhum or Sukhumi in today's Abkhazia/Georgia), Dickson, reported to Earl Russell in February 1864, "…the absence of all political cohesion between the northern tribes, or such remnants thereof as there were, and those inhabiting other parts of the Caucasus, and, indeed, the almost utter impossibility of bringing about such a consummation" was the main misfortune that fell on the people of the Caucasus. "Each and all cannot be made to forget their blood feuds," Dickson observed, "still less to unite in a common cause….."[20] However, as a formidable addition to the empire's "Mahomedan population," they proved useful in destabilizing existing structures of power and networks of influence, particularly among the early groups of refugees who were reportedly armed.[21] This situation generated

[17] "The Circassian Exodus," *Quiver* (June 1864): 214; "National Extinction of the Circassian People," *London Journal*, 23 July 1864: 61. For the connection of this coverage to the Crimean War, see Candan Badem, *The Ottoman Crimean War (1853–1856)* (Leiden: Brill, 2010).

[18] Janet Klein, *The Margins of Empire: Kurdish Militias in the Ottoman Tribal Zone* (Stanford: Stanford University Press, 2011), 165–66; Cuthell, "Muhacirin Komisyonu," 175–76; Gingeras, *Sorrowful Shores*, 26. For deployment of the incoming refugees as a "demographic weapon," see Pinson, "Demographic Warfare"; Eugene Rogan, *Frontiers of the State in the Late Ottoman Empire: Transjordan, 1850–1921* (Cambridge: Cambridge University Press, 2002), 72.

[19] See BOA, A.MKT.MHM 168/33, 1276.Ra.23 (20 Oct. 1859), for an official correspondence that points out to the governors of Silistra and Varna that a Bzhedug tribe consisting of forty-four households and 365 individuals was not to be mixed with the Tatars when settled in Dobruca (Dobrich). For orders to combine and separate groups by their declared tribal affiliations, also see A.MKT.UM 400/96, 1276.Ş.24 (17 Mar. 1860); and A.MKT.UM 405/51, 1276.L.24 (15 May 1960). Also see David Cuthell, "The Muhacirin Komisyonu," 172. Cuthell specifies the Russo-Caucasian war under Shamyl's leadership as the last (and possibly only) "meaningful organized resistance" among the Caucasians; "Circassian Sürgün," 145. However, there was also anxiety about Caucasian immigrants becoming a unified group; see, for instance, BOA, A.MKT 17/14 1260.N.25 (8 Oct. 1844), for a note written by the Grand Vizier to the governor of Filibe (Plovdiv) cautioning him to keep a close eye on a Circassian prince named Safer and not let him travel outside of Edirne or communicate with other Circassians.

[20] Note no. 2, Consul Dickson to Earl Russell, in *Papers Respecting the Settlement of the Circassian Emigrants in Turkey: Presented to the House of Commons by Command of Her Majesty, in Pursuance of Their Address Dated June 6, 1864* (London: Harrison & Sons, 1864).

[21] Cuthell, "Circassian Sürgün," 150. Also see B. Philpot, letter to the editor, *Times of India*, 17 June 1864: 7. See also a note sent to the governor of Vidin in 1861 cautioning him against armed Crimean, Nogai, and Circassian settlers: BOA, A.MKT.MHM 238/12, 1278.Ca.28 (1 Dec. 1861).

المنارة للاستشارات

considerable tension between the refugees and local populations and triggered frequent clashes across the Ottoman lands.

In some instances these hostilities and clashes were circumstantial, forced upon the refugees suffering the difficult conditions of refugee life or upon poor peasants trying to make ends meet.[22] In many other cases, though, documents about the hostilities refer specifically to Caucasian customary or ancient laws (*kanun-i kadim*). Analogous in many respects to Chinggisid *yasa* or Timurid *töre*, the Caucasian legal codes consisted of an "evolving body of individual decrees, regulations, and practices that had been instituted or sanctioned by [the sovereign] … a kind of unwritten 'constitution.'"[23] While these legal practices varied significantly from one tribal organization to another, particularly in regards to the ways and degrees in which they were affected by the *sharī'a* law, they were strictly observed in settling criminal offences and civil matters, including cases involving the act of enslavement, slavery, and slave trading in the Caucasus. We should not see customary law as representing law-like social behavior that remained outside of or opposed to state law, nor, as Mitra Sharafi cautions scholars of legal pluralism, should it be presumed to have been less coercive than state law.[24]

Prior to coming to the Ottoman Empire, slaveholding Caucasians like Canpolat either inherited their slaves or obtained them through what Georges Charachidze described as a "complex and diversified cycle of exchanges

[22] Reşat Kasaba, *A Moveable Empire: Ottoman Nomads, Migrants, and Refugees* (Seattle: University of Washington Press, 2009), 117–18.

[23] Guy Burak, *The Second Formation of Islamic Law: The Hanafi School in the Early Modern Ottoman Empire* (New York: Cambridge University Press, 2015), 215.

[24] Lauren Benton and Richard J. Ross, "Introduction," in Lauren Benton and Richard J. Ross, eds., *Legal Pluralism and Empires, 1500–1850* (New York: New York University Press, 2013), 4–5; Mitra Sharafi, "Justice in Many Rooms since Galanter: De-Romanticizing Legal Pluralism through the Cultural Defense," *Law and Contemporary Problems* 71 (2008): 139–46, 139. There is a large body of literature on pluralistic legal orders in the Ottoman Empire, which have been classically understood, as exemplified in a recent article by Karen Barkey, as the coexistence of and interaction between different religious legal bodies: "Aspects of Legal Pluralism in the Ottoman Empire," in Lauren Benton and Richard J. Ross, eds., *Legal Pluralism and Empires, 1500–1850* (New York: New York University Press, 2013). Ottoman and Middle Eastern legal historians have been working to include indigenous forms of governance and legal practices in their studies of the Ottoman Middle East. For two excellent examples, see Nora Barakat, "Marginal Actors? The Role of Bedouin in the Ottoman Administration of Animals as Property in the District of Salt, 1870–1912," *Journal of the Economic and Social History of the Orient* 58, 1–2 (2015): 105–34; and Yuval Ben-Bassat, "Bedouin Petitions from Late Ottoman Palestine: Evaluating the Effects of Sedentarization," *Journal of the Economic and Social History of the Orient* 58, 1–2 (2015): 135–62. For a comprehensive discussion of the need to complicate state legal systems within legal pluralism debates, see Ido Shahar, "State, Society and the Relations between Them: Implications for the Study of Legal Pluralism," *Theoretical Inquiries in Law* 9 (2008): 417–41. Specifically for the Caucasus, see Rebecca Gould, "*Ijtihād* against *Madhhab*: Legal Hybridity and the Meanings of Modernity in Early Modern Daghestan," *Comparative Studies in Society and History* 57, 1 (2015): 35–66.

المنارة للاستشارات

that combined agricultural production, commerce, and pillage."[25] Raiding, kidnapping, prolonged blood feuds, and payments of blood money were all parts of this cycle and prevalent in even the most distinctively Muslim parts of the Caucasus, despite the fact that they were often fundamentally at odds with Islamic jurisprudence. In contrast to *sharīʾa*, for instance, *ʿādat* did not differentiate between personal and collective responsibility for a crime, nor did it separate accidental offences from deliberate ones. *Sharīʾa*, on the other hand, recognized the legitimacy of blood feuds but prohibited taking revenge on collective basis.[26] Despite these discrepancies, however, even Dagestanis, who had a long history and tradition of *muridism* and claimed Muslim leadership against Russia during the war, and who had "from time almost immemorial, been engaged in a deadly struggle for mutual destruction," commonly raided their neighbors and converted their "*kanly*s and needy debtors into slaves."[27] The long Russo-Caucasian war sharpened existing enmities between different tribal groups, who formed new alliances in the region and disbanded old ones. Slaves were the primary commodity used to finance that war, especially during its final decades; the slave trade was controlled and organized primarily by the Caucasian nobility and run by Turkish or Tatar intermediaries.[28]

Besides the hostilities and clashes between the refugees and native populations and among Caucasian tribal groups that carried their ongoing feuds to the Ottoman lands, a major government concern regarding refugees was with disputes and conflicts within the tribal organizations themselves. The refugees arrived organized into tribes and clans, though they did not necessarily see themselves as homogenous units. The Caucasian social order was peculiar in that, as Paul Manning describes it, they "contained 'feudal' distinctions of hereditary caste but situated within a generally egalitarian 'acephalous' segmentary political structure," which, depending on one's perspective, could be interpreted as either highly hierarchical (and thus ripe for indirect rule via

[25] Georges Charachidze, "Types de Vendetta au Causase," in Raymond Verdier, ed., *La Vengeance: Etudes d'ethnologie, d'histoire et de philosophie* (Paris: Editions Cujas, 1980), 89. For a more recent and comprehensive discussion on slave-producing cultural practices such as bride-kidnapping or *amanat*, see Bruce Grant, *The Captive and the Gift: Cultural Histories of Sovereignty in Russia and the Caucasus* (Ithaca: Cornell University Press, 2009).

[26] Anna Zelkina, *In Quest for God and Freedom: Sufi Responses to the Russian Advance in the North Caucasus* (New York: New York University Press, 2000), 40–41.

[27] For a contemporary account, see Ivan Golovin, *The Caucasus* (London: Trübner & Co., 1854), 165. Elena Inozemtseva, "On the History of Slave-Trade in Dagestan," in *Iran & the Caucasus* 10, 2 (2006): 181–89, 186. *Kanly*, which literally means "bloody" or "bloodstained" in Turkish, is a term used to describe those who killed a person and thus owed either his life or a corresponding blood money to the victim's relatives; Liubov Kurtynova-D'Herlugnan, *The Tsar's Abolitionists: The Slave Trade in the Caucasus and Its Suppression* (Leiden: Brill, 2010), 14.

[28] Inozemtseva, "On the History of Slave-Trade," 185; İbrahim Köremezli, "The Place of the Ottoman Empire in the Russo-Circassian War (1830–1864)" (MA thesis, Bilkent University, 2004), 41–42.

المنارة للاستشارات

co-optation of the nobility) or as "a miniature Liberal revolution."[29] The Adyghe, for instance, had four castes composed of the princes, nobles, freemen, and serfs/slaves.[30] One slave petition from 1872 (of unidentified tribal affiliation) noted that even the slave class was stratified into two types of slaves: the *abd-ı memluk* were responsible for giving half of their crop to the prince every year and could also be sold, while the *abd-ı hür* were obliged to make the annual payment but could not be sold.[31]

While a retrospective and nation- or ethnicity-focused view of these groups may yield an image of them as cohesive and integral—in the face of the Russian Empire's encroachment they ran away from or the Ottoman Empire, which tried hard to absorb them—but from early on there were clear indications that this was not the case. In most instances, minor disputes or offences that occurred within the group were kept within the group, partly because the refugees spoke no Turkish and so had to work against a language barrier.[32] Aside from those conflicts, many of the disputes that ended up with government authorities, or in their legal institutions such as local *sharī'a* courts, had to do with the practice of slavery and the slave status of incoming refugees.

As one slave petition submitted to the Grand Vizier's office in 1859 made clear, the cause for slaves' discontents was almost always that the slaveholding elites (who, in this example, belonged to the Kabarda/Kabarta tribe) were resorting to their "old customs" of selling the children of their slaves, particularly their daughters.[33] This complaint recurred in slave petitions even during the early phases of the expulsion, when most of the incoming slaveholding nobility were relatively wealthy and had no need to sell their slaves immediately.[34] For instance, in another case, from 1861, two enslaved men named Mehmed and Mustafa filed a petition, again with the office the Grand Vizier, to complain that their owners were, in accordance with the old customs, "in the mind of selling" the plaintiffs' daughters. The slave owners had declared that they were allowed to do this by the orders of the Sultan, even though the young girls were engaged and soon to be married.[35] Mehmed and Mustafa stated that if such an order indeed existed, they were ready to comply with the Ottoman sovereign's wishes, for they, too, were the Sultan's subjects, and moreover, "all praise

[29] Paul Manning, "Just Like England: On the Liberal Institutions of the Circassians," *Comparative Studies in Society and History* 51, 3 (2009): 590–618, 591.

[30] Köremezli, "Place of the Ottoman Empire," 7.

[31] BOA, ŞD 2872/30, 1289.Ra.7 (15 May 1872).

[32] See, for instance, BOA, MVL 620/84, 1278.B.20 (21 Jan. 1862), for a case of a man murdering his brother, both of them recent immigrant-refugees from the Caucasus, whose interrogation was conducted by the help of an interpreter. Also see Ömer Karakaş, "19. Yüzyılda Anadolu'da Çerkes Göçmenlerinin İskânları Sırasında Karşılaştıkları Sorunlar: Uzunyayla Örneği," *Karadeniz Araştırmaları* 36 (Kış 2013), 88–89.

[33] BOA, A.MKT.MHM 176/37, 1276.B.09 (1 Feb. 1860).

[34] Cuthell, "Circassian Sürgün," 146.

[35] BOA, A.MKT.DV 181/59, 1277.B.19 (31 Jan. 1861).

المنارة للاستشارات

be to God," Muslims. If there was no such order, however, they asked to be released from what they deemed the illegitimate bonds of their so-called owners.[36] As time passed and the legal suits and procedures became more widespread and the legal language of slavery and freedom more established, parties debated the contested notion of dominium (*kanun-i malikiye*). Slave owners rooted this notion, again, in the "ancient law," whereas slaves asked for new definitions of both slavery and ownership in general.[37]

In addition to such disputes over definitions and limitations of slave ownership, there were cases of apparent "blunders" by enslaved refugees. In cases of runaway slaves, for one, the customary law was speedily transported into Ottoman *sharī'a* and public law; slaveholders appealed to legal and governmental institutions and demanded that they impose coercive measures against their slaves' "rebellious" behavior.[38] Such was the case with Ömer, a slave owner from the Şibu (possibly Şabsu or Shapsug) tribe, when two male and three female slaves of his ran away to the island of Rhodes in 1860. He petitioned the office of the Grand Vizier for their recovery. The Grand Vizierate found the case to be a matter of *sharī'a* law and ordered that it be heard at the corresponding court and dealt with in accordance with that court's decision.[39] Many of the major conflicts reported between slaves and slave owners directly resulted from an ambiguous notion of rights of ownership over people that referred to both customary and *sharī'a* law. This rendered the implementation of those laws the very source of the problem.

The sale of individual family members and the breaking up of families produced violent resistance against slave owners and caused slaves to appeal

[36] Ibid.

[37] BOA, ŞD 2872/30, 1289.Ra.7 (15 May 1872). Private ownership and property rights particularly of land, as opposed to usufruct rights, were a nineteenth-century development that culminated in the Ottoman Land Reform of 1858. Alan Mikhail, "Unleashing the Beast: Animals, Energy, and the Economy of Labor in Ottoman Egypt," *American Historical Review* 118, 2 (2013): 317–48, 341. For a comprehensive treatment of property ownership in Egypt, see Kenneth M. Cuno, *The Pasha's Peasants: Land, Society, and Economy in Lower Egypt, 1740–1858* (Cambridge: Cambridge University Press, 1992). On the Ottoman Land Code of 1858 specifically, see Huri Islamoglu, "Property as a Contested Domain: A Reevaluation of the Ottoman Land Code of 1858," in Roger Owen and Martin P. Bunton, eds., *New Perspectives on Property and Land in the Middle East* (Cambridge: Harvard University Press, 2011). The enslaved refugees' efforts to push for a new definition of ownership must be understood within this larger framework of changing notions of property ownership.

[38] Ehud R. Toledano insightfully explored how running away or absconding were strategized and employed by enslaved men and women: *As if Silent and Absent: Bonds of Enslavement in the Islamic Middle East* (New Haven: Yale University Press, 2007), 60–107. Here I am building on Toledano's observations, but I am more concerned with how slave flights were translated into legal categories vis-à-vis citizenship rights. As Toledano also argues, most Caucasian enslaved refugees were considered serfs in their native lands and became slaves only after they entered the Ottoman Empire, because that was the only legal category available for them (ibid., 95). However, this was not an automatic process but took shape as the enslaved and slaveholding refugees and the Ottoman state interacted in different capacities in the aftermath of the Caucasian expulsion.

[39] BOA, A.MKT.MHM 176/75, 1276.B.11 (3 Feb. 1860).

المنارة للاستشارات

more strongly to the government. In one instance, a slaveholder named Kaspolat tried to cash in on his "transplanted" privileges by attempting to sell five of his slaves—Makval (or Markoval, age thirty-six), his wife (thirty-five), and their children (four to fourteen)—but met fierce resistance from the family. Their appeal stated that they would rather "bring themselves to ruin and perish" than see their family broken up and be separated from their extended family and other relatives.[40] Their appeal found support from the district governor of Yanbolu (Yambol), who stated that selling people over thirty years of age and those who had children would violate the notion of the family, and suggested that the sale be halted.[41] Through a decision by the Supreme Council of Judicial Ordinances (Meclis- i Vâlâ- yı Ahkâm-ı Adliye), two legal systems and privileges came face to face to determine (or at least, emphasize) age limits as well as their legal implications for the practice of slavery.[42]

In many of the cases of conflict and complaint, slave owners continued to cling to the notion of an "*adat-ı kadime*" that originated from their native lands, referred to as "*vatan-ı asliye*," or simply as Kuban, as the Nogai prince Canpolat called it in his letter that opened this article. The enslaved, on the other hand, followed legal developments more closely, achieved some degree of knowledge and a sense of what their rights were, and sometimes acted in an organized manner to obtain or at least claim those rights. Starting early on in the emigration process, enslaved refugees were highly vocal in demanding a change to their status, at times acting "rebelliously" and potentially mutinously. In the aftermath of their expulsion from Russia, where, as they put it, they "left all that they owned, except for their poverty," the impoverished refugees were less likely to enter into bloody conflicts within their communities. Nevertheless, violent encounters did occur and both the possibility and fear of it remained real.[43] Ehud Toledano gave the following account of a violent clash between slave owners and their slaves:

[40] BOA, MVL 991/62, 1281.M.13 (18 June 1864). Toledano has argued that the established Caucasian customs strongly favored maintaining the unity of slave families and it was the "hardships of emigration [which] eroded the old and established customs"; *The Ottoman Slave Trade and Its Suppression, 1840–1890* (Princeton: Princeton University Press, 1982), 160; and *As if Silent*, 98. While the difficulties encountered during the expulsion and settlement process shifted the ethical boundaries between the slave owners and traders, petitions the enslaved wrote indicate that it was already the slaveholding elite's prerogative to sell their slaves at will. For a comprehensive discussion on this particular point, see Kurtynova-D'Herlugnan, *Tsar's Abolitionists*, 1–36.

[41] The sale of the family was reportedly annulled, as is clarified in an official notice sent by the Supreme Council to the Grand Vizier; BOA, MVL 996/26, 1281.S.21 (26 Jul. 1864).

[42] For a brief note on the extension of the age limit to all Caucasian tribes, see BOA, MVL 991/39, 1280.Z.29 (5 Jun. 1864). Written by the Supreme Council, to the governor of Varna, it states that the legality of the sale of tribe members was conditional on following the age limitations it had previously determined.

[43] BOA, A.DVN 156/50, 1277.Ra.03 (19 Sep. 1860). Armed clashes between the slave owning classes and slaves did occur, especially in the aftermath of the 1908 revolution, when Caucasian slaves claimed full citizenship in the new constitutional order, and the government gave both the

للاستشارات المنارة

On 9 September 1866 the governor of the *Vilâyet* of Edirne reported to the Grand Vezir that violent clashes had erupted in the village of Mandira between Circassian slave holders and their slaves. The issue was the slaves' status. A few policemen were sent to stop the fighting, but they were barred from entering the village. When the authorities learned about this, they immediately dispatched more policemen under the command of a *binbaşı* (equivalent rank of a major). This time the police managed to control the situation and put an end to the skirmish, but the dispute which had caused it still remained unresolved. The slaves demanded to be freed, and the slave holders refused to manumit them. The governor reported that he had sent to the village one of his staff officers to mediate between the factions. He was concerned, however, that with 400 households of immigrants—all armed—fighting could be resumed at any time. Therefore, the *Vâli* suggested that the villagers be disarmed, and he asked the Grand Vezir to authorize this move.[44]

The Ottoman government was not there solely to appease such tensions, however, or to act as a judge to find a resolution for the parties in dispute. It intended also to codify the behavior of slaveholding and enslaved refugees so as to place them within the "grid of law" that it was building.

We see this in the case of Listan, Yunus, and Zekeriya, three of Makhar Ahmed's slaves who one night took up rifles and shot at his house. When interrogated, they said that they did not intend to kill him but only frighten him so that he would stop torturing his slaves and otherwise treating them cruelly.[45] As in the matter of runaway slaves, such offences sped up the process of legally assimilating enslaved refugees, and the result was often the highlighting if not the imposition of a uniformly defined slave status. In this case, for instance, the three slaves were brought before the local court and eventually the higher court of the Supreme Council, which determined their action to be a criminal offence punishable in accordance with the article 179 of the Ottoman Criminal Law, which stipulated imprisonment for from one week to six months. But these three slaves, whose enslaved status was established with the very first question in their interrogation, had committed the offence against their master (*efendi*). This was found to be an aggravating factor and they were sentenced to imprisonment for a full year. In this way, by codifying the enslaved refugees' act against their owners as such, the government and its law-administering institutions helped define these relationships as something above the ordinary and as essentially unequal.

While, judging by the age composition of slaves, many of those who were recorded in the settlement registers were inherited and could be claimed

slaves and slave owners a confusing message by drafting enslaved men into the army. *Gûâze* 1, 9 (19 Mayıs 1327, 1 June 1911): 5.

[44] Toledano, *Ottoman Slave Trade*, 162–63.

[45] BOA, MVL 698/20, 1281.L.13, (11 Mar. 1865).

المنارة للاستشارات

ancestrally,[46] the ancient law, "*adat-ı kadime*," was not evoked solely or necessarily to refer to ancestral rights to own slaves, whose enslavement took place during the tribes' long-gone days in the Caucasus Mountains. In fact, "*adat-ı kadime*" did not refer only to the ownership of slaves, but also to the means of enslavement, in accordance with those customs. In many instances, these were crude expressions of power, when Caucasian nobility claimed the rights to the labor or sexual services (*istihdam* and *istifraş*, respectively) of destitute members of their groups. In one such case a Caucasian man from the Hatuqwai tribe named Dingozi and seven of his friends petitioned the office of the Grand Vizier in 1859 complaining that a man named Hapuzi (or, Hapuji) had employed them forcefully and without payment. The petitioners asked the Grand Vizier to look into the matter or at least give them the permission to pursue it in accordance with the *sharī'a* formulations.[47] Another, brief notice from 1865 reported on the enslavement of Receb and Bata Agurli by a man named Koç Çoseb.[48] As was reported many years later, in addition to those who came to the Ottoman Empire as slaves, many others were enslaved en route to the Ottoman lands due to the journey's harsh conditions that took the lives of two hundred to three hundred people each day.[49] Especially in the aftermath of the constitutional revolution in 1908, during which slaves' claims to freedom soared, many stories of "unjust enslavement" during the Caucasian expulsion came to the fore to invalidate slaveholders' claims to ancestral slave ownership.[50]

Ehud Toledano has argued that weak penalties for kidnapping and enslavement allowed the traffic to go on unhindered throughout the remainder of the nineteenth century and into the early twentieth. This argument presumes that the newly adopted Ottoman criminal code, and the justice it promised, were universally applicable.[51] Yet the penal code was not there simply and universally to be accepted by everyone, especially by the incoming Caucasian refugees, whose justice system worked differently than either the *sharī'a* law that sought above all to maintain the status quo, or the penal code that

[46] For examples of these settlement registers, see BOA, A.DVN 147/43, 1276.R.4 (31 Oct. 1859); A.DVN 147/27 1276.R.4 (31 Oct. 1859); DH.MHC 1/60, 1277 (1860–1861); Taksim Atatürk Kütüphanesi, Belediye Yazmaları, BEL_Yz_B.000059, 1294 (1877–1878). Entries in the register are broken down by family size, and each begins with a brief visual description of the family head (particularly his height and the shape and color of his beard), and his name and age, followed by information on the other family members, starting with the wives and ending with the slaves the family owned.

[47] BOA, A.DVN 146/11, 1276.S.14 (12 Sep. 1859).

[48] BOA, A.MKT.MHM 332/32, 1281.Z.21 (17 May 1865). Also see MVL 529/110, 1283.Z.29 (4 May 1867), in which twenty-six individuals were enslaved, reportedly in return for the simple promise of protection.

[49] Toledano, *Ottoman Slave Trade*, 150–51.

[50] See, for example, DH.MKT 2891/97, 1327.B.17 (4 Aug. 1909). See also Karamursel, "Uncertainties of Freedom," 146.

[51] Toledano, *Ottoman Slave Trade*, 168; *Slavery and Abolition*, 33.

المنارة للاستشارات

aspired to apply universal justice at all costs. The latter was there to be negotiated by those who were also negotiating their inclusion and participation in the Ottoman Empire. The slaveholding and enslaved refugees did so in different ways and in accordance with their respective understandings of the law, sovereignty, subjecthood, and citizenship.

From the Ottoman government's perspective, laws had to be negotiated differently with the refugees who were slaveholders than with those who were enslaved. The Ottoman Empire, like all vast land empires, was accustomed to ruling its diverse populations by coopting their elites. Thus, as Jane Burbank has argued for the Russian Empire, imperial law concerned itself primarily with the "rights and obligations of the local elites."[52] As Grattan Geary, editor of the *Times of India*, put it in 1878, there was great benefit to the government in recognizing "the authority of the Circassian chiefs over their followers," for, according to Geary, they could "keep their people in some sort of order if the government would empower them to do so":

> As it is, the law is too feeble a restraint, and the patriarchal rule of the chiefs being set aside the wild Circassian does whatever he pleases. His great physical strength and his perfect mastery over his weapons, of which he always carries a varied assortment, make him the most formidable of all the robbers in these parts. My experience was confined to those what had been taken into the Government service, and I found them to be very far the best in escort duty that I had on the whole journey. They were obliging, hearty, good-humored fellows never afraid of exertion or exposure and never inventing ingenious fictions as an excuse for coming to a premature halt. There is fine material in these Circassian settlers who have so unenviable reputation. Possibly in the reorganization of Asiatic Turkey, which cannot now be long delayed, they will be turned to good account.[53]

On one hand, the government had much at stake in empowering the slaveholding Caucasian elites so as to be able to implement and enforce the law, which otherwise would be "too feeble" to be useful.[54] On the other, endorsing the "*kanun-i kadim*" in its perpetuation of slavery undermined the very law the state wanted to implement. Scholars of Ottoman history have pointed out this

[52] Jane Burbank, "An Imperial Rights Regime: Law and Citizenship in the Russian Empire," *Kritika: Explorations in Russian and Eurasian History* 7, 3 (2006): 397–431, 401.

[53] Grattan Geary, Letters to the Editor, *Times of India*, 25 July 1878: 4.

[54] We know that the Ottoman government already favored Circassian elites in some contexts. See, for instance, a petition by Şahin Giray Bey of the Zodoh tribe, in which he asked to be granted a military rank equivalent to that he had held with the Russian state before he came to the Ottoman Empire. The Ministry of War approved his request. BOA, A.MKT.MHM 177/29, 1276.B.21 (13 Feb. 1860). Similarly, Kasbolat Bey, the chieftain of the Altıkesek tribe, petitioned to the office of the Grand Vizier for an "appropriate" salary, and asked that if that was impossible then he be given an administrative position at a government institution. This request, too, was deemed appropriate by the *Muhacirin Komisyonu.* BOA, MVL 434/79, 1280.Ş.03 (13 Jan. 1864). For an elaborate discussion of the Ottoman policies of coopting Caucasian and Crimean elites, see Cuthell, "The Muhacirin Komisyonu," 130–39. Cuthell argues that both the *Muhacirin Komisyonu* and the government it represented "recognized and promoted continuity in the social structure common to both Crimean and Ottoman societies," 133.

المنارة للاستشارات

dilemma: the government was caught between its old habits of rule and the new political and legal order it aspired to build.[55] Most recently, Janet Klein's study of the Hamidian era efforts to include the Kurdish region within "the Ottoman fold," and the government's extensive use and abuse of the local power networks (as much as the regional conflicts), exemplifies this dilemma. That said, Klein's and others' studies rarely look beyond interactions between the government and local power holders. Accordingly, in these studies law appears to have been negotiated only between these entities, whereas in fact other, less privileged groups also took part whenever they could. This was especially and transparently so regarding issues surrounding slavery. I turn now to examine how slaves took part in these negotiations at a time when the slavery's legitimacy was highly contested. This was a period when the world was increasingly connected in terms of people's understandings of subjecthood and citizenship, as well as the notions of justice and equality that they were, at least hypothetically, contingent upon.

FREEDOM SUITS

"The universe of right and wrong is territorialized by a grid of laws," Michael Taussig wrote, "and each law is numbered." Yet those numbers never quite fit reality, "neither the reality of the human condition nor the reality of the subtle distinctions necessary to law."[56] The Caucasian enslaved refugees' flights from or assaults on their owners and other criminal acts brought them into the Ottoman "legal fold," where distinctions between their status as *abd-ı hür* and *abd-ı memluk* had collapsed and both their relationship with their owners and their social status were being defined anew. Enslaved refugees' formal pleas for freedom, which began shortly after their arrival in the Ottoman domains, came precisely at this juncture. They embodied an effort, however naive it may seem now, to use the same grid of laws to both thwart the owners' control over them and claim full membership to Ottoman society. In doing so, they not only detached themselves from Caucasian customary law and questioned the legitimacy of the *sharīʻa* law, but also put into competition the old mode of Ottoman rule, largely defined by corporate privileges, and the new one characterized by a fiction of equality before the law. In this way, these disputes between enslaved and slave-holding Caucasians, each using the same language of justice yet ascribing different meanings to that language, involved more than issues of ownership.

Foreign or transplanted law that enforced these descriptions of ownership was not the whole of it; as Suraiya Faroqhi observed, "The process of [slaves']

[55] For a discussion of this particular point, see Ussama Makdisi, *The Culture of Sectarianism: Community, History, and Violence in Nineteenth-Century Ottoman Lebanon* (Berkeley: University of California Press, 2000), Introduction.

[56] Michael Taussig, *Law in a Lawless Land: Diary of a Limpieza in Colombia* (Chicago: University of Chicago Press, 2005), 16.

المنارة للاستشارات

induction to Ottoman society was not simply a matter between slave owners and slaves," and "state intervention went beyond simple tax collection and prevention of abuses."[57] "Acting in the name of religious law," Faroqhi argues, "The state also attempted to enforce general urban [or provincial] order, including the hierarchy between men and women, Muslims and non-Muslims."[58] But this went deeper than "acting in the name of religious law" or simply enforcing hierarchies in relation to what Madeline Zilfi called "the twin pillars of elite 'othering.'" That is, it involved "othering" not just women and non-Muslims,[59] but all subordinate groups.

The state mapped its subjects and citizens primarily according to the level of their subordination and upheld the mechanisms that generated that subordination. The enslaved Caucasian refugees' claims to freedom, which at that point meant no more than their full ownership of their lands, ploughs, oxen, and daughters, were attempts to dismantle these mechanisms. These claims were supported, at least in theory, by a government that promised to safeguard all of its subjects' and citizens' rights to life and property. From the beginning of the Caucasian influx at the end of the 1850s, enslaved refugees filed petitions or legal suits regarding what they believed to be their rights. These claims put the contradictions between the transplanted/old and the existing/new legal systems in writing, and tell us much about what slaves made of their new "homelands," in which they were just as invested as their owners were.

The first mention of organized action by enslaved refugees' is from 1863. An official report written by the Silistra council to the office of the Grand Vizier said that an ongoing dispute among Caucasian refugees on the matter of slavery had been partially resolved when the slaves and their owners agreed to travel to Istanbul to mutually appeal to a judge or court hearing (*terafu'*) with the Supreme Council, but then the slaves had changed their mind for no apparent reason.[60] After that the owner of the slaves, Kobzik Zavir, together with thirty other notables and elders, applied to the provincial court to file a formal complaint concerning the "inappropriate" behavior of his slaves. Following this appeal, and in compliance with the suggestion by local officials that "one or two of the slaves with trustable judgment" should also be heard, a slave named Abrek was summoned to the provincial court of Silistre. Abrek responded (on behalf of other slaves in his village) that they could not and would not travel to Istanbul for the trial since they were not slaves but free

[57] Suraiya Faroqhi, "Quis Custodiet Custodes? Controlling Slave Identities and Slave Traders in Seventeenth- and Eighteenth-Century Istanbul," in *Stories of Ottoman Men and Women: Establishing Status, Establishing Control* (Istanbul: Eren Yayıncılık, 2002), 252.

[58] Ibid. This point constitutes the core argument of Madeline Zilfi's *Women and Slavery in the Late Ottoman Empire: The Design of Difference* (Cambridge: Cambridge University Press, 2010).

[59] Zilfi, *Women and Slavery*, 87.

[60] BOA, MVL 964/64, 1280.M.18 (5 Jul. 1863).

المنارة للاستشارات

like other freeborn people. Abrek maintained that the plaintiffs had no right to claim ownership over them and even less to force them to go to trial, possibly to set the terms of bondage such as their use of their agricultural land and equipment and their sale, and the reselling of their family members.

With rhetorical mastery, Abrek told the council that he and his enslaved colleagues had migrated from their native lands in the Caucasus to the Ottoman domains with the hope and desire of ridding themselves of Russian aggression and becoming farmers worthy of service to the Ottoman sovereign. "Now, since we are all slaves and subjects of our Sultan," he contended, "neither he, nor God would consent to our capture and enslavement." Unless they were rounded and tied up and sent to Istanbul forcefully—which was not permissible, the council report clarified—they would forbid any one of them to be taken there. They were not to be captured forcefully, yet plain talk did not suffice either, the provincial council complained to the Supreme Council of Judicial Ordinances, where the case file eventually ended up. Abrek, as one man of trustable judgment, appeared alone in the provincial court, yet not as a plaintiff but rather representing a joint effort against the *adat-ı kadime*, the slaveholding elite who claimed their ownership, as well as against the Ottoman government that was seeking to (re)define and enforce their status as slaves for the sake of public order and security.

Such claims continued in the ensuing years and became more organized and collective in nature, producing petitions and lengthier arguments. In the meantime, both slave owners and the state developed their own, interrelated strategies and solutions. The Council of Ministers (Meclis-i Vükela) was convinced that manumitting slaves without their owners' consent would bring violent opposition and more clashes, and they suggested that self-purchase (*mükâtebe*) would be the best solution.[61] This would not only avert ongoing or future tensions, but also resolve the matter without deviating from the *sharīʾa* law that governed all civil matters in the empire. *Mükâtebe*, an established *sharīʾa* procedure, allowed slaves and their owners to mutually determine manumission terms and set payment amounts (often the equivalent of the slave's sale price). Upon full compensation of the owner, the slave would be granted a manumission certificate and be deemed free.[62] One problem with *mükâtebe* was that exceedingly impoverished enslaved refugees, who were mere sharecroppers on their owners' land,[63] were unable to pay the price of a slave, let alone for an entire enslaved family. Moreover, legally

[61] Toledano, *Ottoman Slave Trade*, 164–65.
[62] Ibid.
[63] The initial land distribution among Circassian immigrant-refugees was reportedly not based on exceptions or princely prerogatives, and was carried out in accordance with household divisions. But since the slave families were attached to their owners' households, and the land titles were registered with the owners' names, the slaves could not legally claim ownership of the land. See BOA, ŞD 2396/18, 1289.Ra.8 (16 May 1872), 8.

المنارة للاستشارات

speaking, the procedure was voluntary in that it could not be imposed upon owners, and as Ehud Toledano points out, this was a setback for the slaves:[64]

> A *mükâtebe* could not be imposed on a slave owner who had not flagrantly mistreated his slave; it also gave greater leverage to the *Şerî* courts, before which such procedures were normally being conducted. Apparently, the government was unable to overcome the strong opposition of the Circassian slave holders, or simply preferred to avoid a direct, and undoubtedly bitter, confrontation with them. The readiness with which the *Şerî* courts were issuing orders supporting the position of slave owners against the claim of their slaves put the government in a different situation. […] the courts impeded the authorities' actions which were meant to benefit the slaves. This may be indicative of a general mood in religious circles, one which upheld the legality of slavery because it was sanctioned by Islam. The government, it should be stressed, was consistently careful in emphasizing that slavery, as distinct from of the slave trade, was not to be interfered with. The Persian Gulf *ferman* of 1847, the prohibition of the Circassian and Georgian slave trade in 1854, and the *ferman* of 1857 against the traffic in blacks come to mind in this context. It was only the institution of agricultural slavery among the Circassians that Porte was trying to dismantle, and that too—in the face of strong opposition—it did gradually, with great caution, somewhat diffidently.[65]

That the Ottoman government appeared sympathetic to the cause and claims of the slaves, at least more so than did the *sharīʼa* courts, was not because it was inherently good-natured or benign. Indeed, under most circumstances the government, too, favored owners over slaves, but compared to the *sharīʼa* courts, which were exceedingly and purposefully local, it did so more subtly and according to a different set of obligations and priorities, particularly at the international level.[66] The first of the latter had to do with the government's obligation to comply with or at least respond to intensifying international efforts, particularly by the British, to bring about the wholesale abolition of slavery throughout the Ottoman domains. Starting with the 1847 Persian Gulf *ferman*, the government issued imperial decrees that also functioned as pacts and treaties between itself and other governments including those of Great Britain, Austria, Prussia, Russia, and France. These granted the other governments the right of search and seizure, when deemed necessary.[67] The short-lived ban on trade in

[64] Toledano, *Ottoman Slave Trade*, 165–66.

[65] Ibid., 166.

[66] That the courts favored slaveholders over slaves has been noted by Toledano in *As if Silent and Absent*, 95–96. Burak has argued that the "locality" of such legal practices or posts were indicative of local power relations; *Second Formation*, 54. Boğaç Ergene further demonstrated that several legal and administrative ranks of these courts were made up of local notables, many of whom carried "military and religious titles"; *Local Court, Provincial Society and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Çankırı and Kastamonu (1652–1744)* (Leiden: Brill, 2003), 29.

[67] For an excellent analysis of how Ottoman slavery was put into use to enforce imperial hierarchies in the nineteenth-century Mediterranean, see Alison Frank, "The Children of the Desert and the Laws of the Sea: Austria, Great Britain, the Ottoman Empire, and the Mediterranean Slave Trade in the Nineteenth Century," *American Historical Review* 117, 2 (2012): 414–15; The British pressures to abolish Ottoman slavery, which Eve Troutt Powell called "invasive

المنارة للاستشارات

Caucasian slaves necessitated by the Crimean War in 1854, and the more encompassing and carefully enforced prohibition of trade in African slaves in 1857, brought close monitoring of the Ottoman land and sea routes by British consular offices, commercial agents, and naval forces in the Mediterranean. Caucasian slavery differed from the African trade in that the Ottoman government largely managed to dodge British demands for its abolition, but this did not leave it entirely immune to foreign control, and in the decades that followed foreign countries continued to push for measures against it.[68]

More importantly, perhaps, in the aftermath of the 1839 and 1856 proto-constitutions, a period that Thomas C. Holt described as "a particular moment in the [global] history of classical liberalism," the government had domestic obligations, or at least aspirations, to provide to all of its citizens a degree of equality before the law.[69] Liberalism was developed as "a strand of British and French political thought" that appeared committed to such values as "equal human dignity, freedom, the rule of law, and accountable, representative government," and it at first held promise, as Jennifer Pitts has argued, "of a critical approach to European expansion." Yet by 1830s it had become an ideology in the service of imperial projects.[70] It has been "plausibly implicated," as Andrew Sartori has written, "in the conceptualization, institutionalization, and legitimization of hierarchical practices of subordination on the basis of race, gender, and other categories of difference … in the constitution of new regimes of colonial governmentality; in the annihilationist violence against the nomadic aboriginal populations of the settler colonies; and in a vast assault on indigenous epistemological and ethical norms."[71] By the time the Ottoman government embraced the global spread of liberal principles of freedom and equality before the law, those principles had already become the formulae "for exercising power."[72]

abolitionism," has been extensively discussed by historians of Ottoman and Middle Eastern slavery. See Powell's *A Different Shade of Colonialism: Egypt, Great Britain, and the Mastery of the Sudan* (Berkeley: University of California Press, 2003), 136–41; Erdem, *Slavery in the Ottoman Empire*, 67–93; Toledano, *Slavery and Abolition*, 112–34.

[68] Erdem, *Slavery in the Ottoman Empire*, 113–14; Toledano, *Slavery and Abolition*, 113.

[69] Thomas C. Holt, "The Essence of the Contract: The Articulation of Race, Gender, and Political Economy in British Emancipation Policy, 1838–1866," in Frederick Cooper, Thomas C. Holt, and Rebecca J. Scott, *Beyond Slavery: Explorations of Race, Labor, and Citizenship in Postemancipation Societies* (Chapel Hill: University of North Carolina Press, 2000), 37–38.

[70] Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton: Princeton University Press, 2005), 2–3. Also see Pitts' article "Liberalism and Empire in a Nineteenth-Century Algerian Mirror," *Modern Intellectual History* 6, 2 (2009): 287–313.

[71] Andrew Sartori, *Liberalism in Empire: An Alternative History* (Berkeley: University of California Press, 2014), 4.

[72] Patrick Joyce, *The Rule of Freedom: Liberalism and the Modern City* (London: Verso, 2003), 1–2. A large literature examines the ways in which liberalism encountered the world. In addition to the studies by Holt, Pitt, and Sartori cited above, see, Thomas R. Metcalf, *Ideologies of the Raj* (Cambridge: Cambridge University Press, 1995); Uday S. Mehta, *Liberalism and Empire: A Study in*

المنارة للاستشارات

Whether or not the petitions and claims by the Caucasian enslaved refugees were touched by these international developments and domestic aspirations is difficult to say. In most cases, they made no reference to the general ban of 1857, as one would expect, nor did they allude to then-recent abolition of serfdom in Russia or the Emancipation Proclamation in the United States. There is one related document, however, written by the office of the Grand Vizier to the Refugee Commission (Muhacirin Komisyonu), which makes note of the governments' ambivalent position vis-à-vis Caucasian versus African slavery and the discontent it might cause among Caucasian slaves. The officer observed that while both the new importation of African slaves and the sale or purchase of existing ones had been banned throughout the empire and by an international law, the Caucasian slaves were made exceptions to this and their previous statuses, as determined by the *adat-ı kadime*, were being upheld. The importation of slaves from refugee settlements and their sale—"openly, here and there" the officer underscored—continued with little hindrance.[73]

This ambivalence and discrepancy would become one of the central arguments for the reformers, most notably the Ministry of Justice and Caucasian intellectual organizations, who several decades later demanded slavery's wholesale abolition. A semi-official proclamation announced by the Ministry of Justice in late 1908 clearly stated that the sale and purchase of Caucasian slaves was prohibited, just as the trade in African slaves long had been.[74] On a related matter, the slaveholders who claimed that their ownership of their slaves had a *sharī'a* basis (supported by numerous *ayat* and *hadith*, as they highlighted) found the abolition of trade in African slaves deployed against them as a claim-making strategy by both slaves themselves and the reformers demanding general abolition. As one reformer pointed out in 1909, even if the ownership of Caucasian slaves was a *sharī'a* principle or right, had the African slaves not already been exempted from the jurisdiction of *sharī'a* law?[75]

Nineteenth-Century British Liberal Thought (Chicago: University of Chicago Press, 1999); and C. A. Bayly, *Recovering Liberties: Indian Thought in the Age of Liberalism and Empire* (Cambridge: Cambridge University Press, 2012). Although such Tanzimat-era intellectuals as Şinasi and Namık Kemal—two prominent figures in the Young Ottoman movement that culminated in the promulgation of the Constitution proper in 1876—are known to be have been immersed in liberal thought, I know of no systematic study of liberalism as a mode of rule in the Ottoman Empire. The existing literature, moreover, continues to divide the global nineteenth century into binary liberal and illiberal polities—that of the Muslim East and the Christian West—and criticizes "missionaries of liberalism" who tried to "convert Muslims and Islam to Western liberalism and its value system as the only just and sane system to which the entire planet must be converted"; Joseph A. Massad, *Islam in Liberalism* (Chicago: University of Chicago Press, 2015), 3. These neat divisions obscure the "internal inconsistencies" of liberalism and disregard other, more complex challenges to it.

[73] BOA, A.MKT.MVL 140/4, B.23.1278 (24 Jan. 1862).

[74] See *İkdam*, 17 Teşrinisani 1324, for an example of the announcement note.

[75] BOA, ŞD 2786/29, 1327.N.14, 29 (29 Sep. 1909), 66; Karamursel, "Uncertainties of Freedom," 146.

المنارة للاستشارات

Similarly, the minister of justice argued against slavery by pointing out that "slavery pertaining to the white race was already abolished by the Russian government in territories under their control" when the Caucasians emigrated to the Ottoman lands, which, he asserted, meant that Caucasian notables' claims to slave ownership were baseless.[76]

Neither Azizian-era nor Hamidian-era Ottomans openly celebrated "freedom, equality, and justice," as their counterparts would during the post-1908 constitutional revolution, but the idea that slavery was fundamentally incompatible with both the 1839 and 1856 constitutions was forming as early as the 1860s, and Caucasian slaves were instrumental in bringing that debate to the foreground. However, save for "a few individuals who expressed disapproval of enslavement," they were alone in doing so.[77] As Ehud Toledano has rightly noted, the 1857 abolition of trade in African slaves "was not obtained as a result of successful persuasion […] but a sustained pressure through diplomatic channels."[78] Toledano maintained that, because the anti-slavery debate never reached a critical mass, and the government never had to deal with public demands, the political significance of the slaves' claims to freedom and equality before the law was never sufficiently highlighted. Though they made use of the same universal language of "freedom" voiced by abolitionists and reformers around the globe, their actions could never become a moral quest against the "greater evil" of slavery, but instead remained merely local demands. Toward the end of the nineteenth century, they found themselves increasingly obliged to make corporate claims for a "Circassian nation,"[79] but before that their actions were directed at a set of immediate problems such as their owners breaking up their families, selling their daughters, or appropriating their land and animals.

Such was the case described by Mehmed in his brief petition to the Council of State (Şura-yı Devlet) in July 1872.[80] He and other slaves from the town of Silivri had brought legal action against their owners five years before the petition, soon after their settlement in the area. After local legal bodies quickly suppressed their first attempt, they had succeeded in bringing their case to a court in Istanbul and had therefore been residing there together. While Mehmed and his colleagues were following a strictly legal path to claim their freedom, the slave owners refused to wait for the result of the legal

[76] BOA, ŞD 2786/29, 1327.N.14, 29 (29 Sep. 1909), 66.
[77] Ehud R. Toledano, "Abolition and Anti-Slavery in the Ottoman Empire: A Case to Answer?" in William Mulligan and Maurice Bric, eds., *A Global History of Anti-Slavery Politics in the Nineteenth Century* (London: Palgrave Macmillan, 2013), 120.
[78] Ibid., 118.
[79] Karamursel, "Uncertainties of Freedom," 150–51.
[80] BOA, ŞD 2872/30, 1289.Ra.7 (15 May 1872). The Council of State branched off from the Supreme Council of Judicial Ordinances in 1868, and was a consultative assembly to which were brought complex legal matters that could not be resolved or referred to through law.

المنارة للاستشارات

procedure. They fell back on violence and tyrannized the slaves who remained in Silivri in order to seize half of their recent grain harvest.

These specific instances of violence and abuse by slave owners demanded a specific set of responses. At the core of the enslaved refugees' claim to freedom was their assertion that they were different from the rest of the slave population, particularly those employed in domestic settings in the Ottoman center. Another, lengthier petition filed by Haydar, Osman, and Zoş to the Council of State in 1872 provides a more detailed presentation of this point. Acting as representatives (*vekil*) on behalf of all those "who [were] called slaves among the Circassian refugees that settled in Rumelia and Anatolia," the three had been pursuing legal actions of a similar nature for several years. "It must be our poor command of [Turkish]," they wrote in a sarcastic tone, "and the errors we made in expressing our intention thereof that hindered and delayed our receiving the answers and just solutions we have been demanding over the last several years."[81] Their petition, supplemented by a sixteen-item fact list, was not a discursive "double plea of humanity and international right,"[82] but rather a response to actual problems, concepts, and definitions.

The first of these concepts had to do with the question of what it meant to be a citizen in relation to a sovereign power. In their native land of the "Circassian Mountain" (Çerkestan [*sic*] Dağı), they said, they were not under the protection of any monarch, and thus the stability and the order they needed ("simple and vulnerable peasants as they were," they added) came from what they called "a few able swordsmen" and those who had the "will to war."[83] Their present status as slaves, they said, had originated within a specific context, when their ancestors sought protection from local power holders, and over time their status shifted from peasants to slaves. But even putting aside specific histories, the root of their problem was mostly a matter of terminology: they said the word slave (*köle*) should apply only to those employed in domestic settings and sold at will (which in fact was incompatible with the *adat-ı kadime*, they asserted), and they themselves should instead be called peasants (*reaya*).

The petition clarified that this faulty usage of "slave" had been devised by the slaveholding Caucasian elites, who were accustomed to act as the sovereign power in their native lands, a claim the Ottoman state now challenged.[84] The petitioners argued that only by holding on to their slaves (and defining them as such) could the Caucasian elites retain and assert their purported princely qualities and guarantee their continued gains from payments they extorted

[81] BOA, ŞD 2396/18, 1289.Ra. 8 (16 May 1872), 21.

[82] This expression was used by the *National Magazine* in the context of two Caucasian *bey*s, Hadji Hayden Hassan and Kustan Ogli Islam, when they petitioned Foreign Secretary Earl Russel during a visit to England in 1863. Here I borrow it to highlight the rhetorical character of such broad claims. "Our Dominions in India," *National Magazine* (Jan. 1863): 13, 75, 97–99.

[83] BOA, ŞD 2396/18, 1289.Ra.8 (16 May 1872), 19/1.

[84] Ibid., 19/2.

المنارة للاستشارات

from their slaves, or from selling them.[85] They said that their current situation, being at the service of both the Ottoman state and the Caucasian princes, which meant paying two separate taxes, was beyond their means, and they argued that it also undermined Ottoman state authority. They noted, too, that the current arrangement was detrimental to the state in another way: their legal status as slaves exempted them from the military draft. While all other immigrants could be drafted seven years after their arrival in the country, they themselves were held back by their owners.

In a long official report, the Council of State agreed with Haydar, Osman, and Zoş's central claim. Like all other classes and groups of subjects, the report said, they too became stakeholders in both *sharī'a* and civil laws upon their arrival to the Ottoman domains, which should have invalidated their status as slaves.[86] But their enslaved status was due to an old and widespread custom (*itiyad*) among the Caucasians, the existence of which was acknowledged by the slaves themselves,[87] and the council concluded that this could not retrospectively or automatically be undone by simply migrating to another land. Mostly ignoring the enslaved refugees' elaborate arguments on the meanings of citizenship, the government in general and the Council of State in particular concerned themselves with finding a practical solution to the problem. Once again, they proposed the promotion of *mükâtebe* as the safe, just, and in effect only option toward a wholesale abolition of slavery in the Ottoman domains.

Fearing that the conflicts and fights between the two parties would grow more violent, spread throughout society, and result in general turmoil, the council advised against any coercive measures against either slaves or slave owners, and highlighted the importance of imposing limitations on both sides. Accordingly, slave owners were banned from breaking up families and the age limitations debated earlier were reiterated. In short, the government opted to regulate and ameliorate the conditions of slavery, but eschewed intervention to achieve a wholesale abolition. This even though it was aware of slavery's undermining effects, which were discussed "one by one, item by item" by the refugees in their claims to freedom.

Even the issue of whether to draft slaves into the military was partially left to the slave owners' consent and will. The council stated that those already in the process of *mükâtebe* could enter into army service as a way of paying the self-purchase fee, but only with their owner's permission.[88] In this way the government undermined its power as the "holder of the sovereign decision" by tying it to the consent of another authority.[89] All in all, the government

[85] Ibid., 21.
[86] Ibid., 9.
[87] Both Ehud Toledano (*Slavery and Abolition*, 96–97) and Hakan Erdem (*Slavery in the Ottoman Empire*, 118) mention a similar, 1867 decision by the Council of Ministers.
[88] Erdem, *Slavery in the Ottoman Empire*, 16.
[89] Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005), 20.

المنارة للاستشارات

failed to impose any effective solution and instead continued with half measures that in most cases benefited only the slave owners.[90] Its justice betrayed the slaves who had the most faith in it. We know also that even these half-measure limitations and regulations were hardly enforced in the following decades, as the Caucasian settlements continued to supply the urban and provincial elite households with women and young girls as slaves.[91]

Even the principal purpose of the government's appeasement strategies failed, since clashes between the slaves and slave owners continued in the ensuing years. A year after the council's official communication, in 1873, a note from the office of the Grand Vizier reported on the difficulties slaves encountered in paying the self-purchase amounts that were previously decided on. The office suggested that the fee could be paid in kind, with whatever was left from the previous year along with half of the current year's crop.[92] The fee could also be paid in cash earned from auctioning the crop if slaves preferred to do so. In a response that sounded almost automated, the government reiterated that *mükâtebe* would guarantee the *sharīʿa* rights of both parties and help end the ongoing strife and that, for that reason, it should be put into practice, with the results immediately reported to the office of the Grand Vizier.

Just as the Grand Vizierate issued this decision, news came of an incident of unrest at Canik, where armed slaves and slave owners had reportedly assembled in the town square. The report explained that there, too, a group of slave representatives had been to Istanbul in pursuit of legal action to undo or get rid of their slave status. There, the slaves and the slave owners had come to an agreement on the implementation of *mükâtebe* for the manumission of the slaves, but the owners had reneged and could not be persuaded to implement it, even after being given detailed explanations on the solution's benefits. The parties were eventually calmed through the local government's intervention, but given that the matter was left at a stalemate, the report warned, it might resume at any moment. While there were slave owners who refused to enter into *mükâtebe* arrangements with their slaves, there were also some slaves who rejected the idea of paying for their manumission. Hakan Erdem recounted the following 1874 case from Çorlu:

[90] Erdem, *Slavery in the Ottoman Empire*, 120.

[91] It is important to note that even though women were central to the claims to freedom in many slave petitions, women's experience of slavery and freedom remained different from that of male slaves. Women and children, whose flow, especially toward Istanbul, continued for at least another four decades, developed other sorts of relationships both with their owners and with slavery as a practice. For a gender-focused discussion of emancipation, see Ceyda Karamursel, "'In the Age of Freedom, In the Name of Justice': Slaves, Slaveholders, and the State in the Late Ottoman Empire and Early Turkish Republic, 1857–1933," (PhD diss., University of Pennsylvania, 2015), ch. 3, "Slaver-Mistresses, Matchmakers, and Destitute Women"; and Karamursel, "Uncertainties of Freedom." For a note on the vulnerabilities of Caucasian women who managed to obtain their freedom in the aftermath of the Caucasian expulsion, see BOA, ŞD 2395/3, 1288.B.15 (30 Sep. 1871).

[92] BOA, A.MKT.MHM 461/26, 1290.C.16 (11 Aug. 1873).

المنارة للاستشارات

According to [the British vice-consul in Edirne], the slaves asserted their freedom first, then the masters took up arms to compel them to return to their state of slavery unless they chose to purchase their liberty. It must immediately be observed that the masters were in fact willing for a *mükâtebe* but the slaves wanted to be free without paying for their manumission. [...] The local government assembled troops complete with field guns and "informed the Circassian Beys of the Porte's instructions, threatened to abandon them to military." The Beys had little option but to consent to the terms of the government. This was a radically different situation from that envisaged by the aforementioned decisions of the Council. The slaves were to be freed "without money payments, the owners to receive as compensation the whole of the lands they hitherto held in common with the slaves." The slaves, on the other hand, were to be dispersed "among Turkish villages" and to have other land parcels. [The vice-consul] added that there were some ninety Circassian chiefs connected with the late disturbances in the Edirne prisons.[93]

From the many slaves who petitioned with similar claims in the aftermath of the 1908 revolution, we know that the *mükâtebe* the government insisted upon failed as a general abolitionary solution. It was, as we have seen, a voluntary agreement entered at the slave owners' discretion, and it failed even as a means to secure public order, which is what most concerned the government. Consequently, the Caucasian expulsion created an elongated period of crisis and an overabundance of laws, which had to redefine slavery's limits almost by individual case. This gave Ottoman emancipation a highly arbitrary character, an arbitrariness that continued to bend categorical limits until the empire's dissolution. Along the way, the law generated as much silence as it did discussion regarding who was and was not legally entitled to freedom and equality.

Abstract: This article focuses on the jurisdictional conflicts that emerged at the juncture of the transplanted legalities that followed the Caucasian expulsion in the 1850s and 1860s, the proclamation of the proto-constitution known as the Ottoman Reform Edict of 1856, and the internationally enforced ban on trading in African slaves in 1857. Starting with the Caucasian expulsion, it traces how legal practices were carried over with Caucasian refugees to the Ottoman domains and how the judicial management of slavery-related conflicts determined not only the limits of slavery, but also how such liberal "fictions" as freedom or equality before the law were vernacularized by local agents in the Ottoman Empire. Navigating within a set of what were labeled as freedom suits (*hürriyet davaları*), I examine how enslaved refugees built their claims in relation to different legal terrains, problems, and concepts. I argue that while Caucasian-Ottoman slavery was economically marginal, it nonetheless posed serious challenges to the new political order the Ottomans aspired to establish, and the abolition that never came continued to bend categories of ethnicity, race, and gender in the decades after expulsion.

Key words: slavery, emancipation, liberalism, legal hybridity, citizenship, Ottoman Empire

93 Erdem, *Slavery in the Ottoman Empire*, 119.

المنارة للاستشارات

Reproduced with permission of copyright owner. Further reproduction prohibited without permission.