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THE ISSUE OF ABORTION IN 19TH CENTURY OTTOMAN EMPIRE

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The issue of abortion in the Ottoman Empire is a very little studied subject. One reason is that gender studies as a subdiscipline of history itself is a recent phenomenon. It is also true that promising sources such as the Islamic court records have not been sufficiently explored to Find sound historical information on this issue. The modest aim of this presentation is to discuss government policies against abortion during the Ottoman reform period.

The Ottoman State throughout its history had a Sunni Islamic identity and emerged as a power with the official claim to expand Islam. Taking this religious characteristic of the Ottoman Empire into consideration, one should first look at Islamic doctrinal attitudes concerning abortion. The Quran does not provide us a direct hint on this subject. There is only one verse, prohibiting people to commit infanticide, as it was accustomed among the pre-Islamic Arabs.¹ The verse stresses that since God feeds human beings, people should not kill their children because of poverty.

If we look at the main established legal schools of Islam, one may realize certain doctrinal differences among the Hanafis, the Shafi'is, the Malikis, the Hanbalis, the Zaydis and the Imamite Shi'ites. Among these schools the Hanafis and the Zaydis display the most liberal attitude. The Hanafi opinion supports abortion provided it is performed within 120 days of conception. During this period the fetus is not believed to be a complete human soul. Early abortion is held to be *makrouh*, (disliked but not forbidden) when it lacks valid reasons or justifications. Reported valid reasons included a woman's inability to breast-feed her baby and the family's inability to afford a wet nurse. Some Shafi'i scholars share these Hanafi views. The Zaydi Shi'ite school allows abortion unconditionally with or without valid reason, provided it precedes 'ensoulment', calling it *ja'iz* or permitted- The Zahiri and Maliki jurists forbid it under all circumstances, calling it *haram*, but some Hanbali jurists allow it before 40 days. Juristic consensus exists only on the point that abortion after a period of four *months* from the date of conception amounts to taking a life. Yet this limit may also be *set aside* if,

¹ The Surah İsrâ, 31th verse.

according to medical opinion, there is a definite risk of death to the mother. The mother's life takes precedence over the child's life on the juristic principle: 'the root is more valuable than the branch.'²

The Ottoman Islamic establishment, like most other Muslim Turkic states, considered the Hanafî school as its legal basis. Looking from the Hanafî te legal angle, then, the issue of abortion was regulated within the core lands of the Ottoman Empire, at least theoretically, in a relatively liberal way. On the other hand, we have to consider that Ottoman Islamic culture was deeply embedded in Sufi practices. The great Sufi scholar and legalist Imam Ghazali, for example, imprinted his religious and doctrinal influence deeply in Ottoman scholarly life. If we look at his approach to the issue of family planning, Imam Ghazali supported contraceptive methods such as *COITUS interruptus* on the one hand, but considered abortion as a crime on the other³. This example shows us that Ottoman cultural life was determined by different and perhaps conflicting religious and legal approaches.

The collections of fatwas, i.e. opinions on legal issues concerning daily and practical problems delivered by the Şeyhülislam and other muftis, do not help the researcher who deals with the subject of abortion. Though one encounters in the fatwa-collections opinions on numerous types of sexual issues such as fornication, incest, homosexuality etc., the issue of abortion is not considered. One is tempted to ask whether the apparent absence of this problem in the fatwa-collections does indeed imply the application of the liberal attitude of the Hanafî legal school towards abortion within the Empire. This impression becomes stronger, if looking at the famous Ottoman jurist Molla Hüsrev's legal work *Dürrü'l-Hükkam*. In this work compiled during the reign of Mehmed the Conqueror, one finds statements that a women intentionally miscarries her child without the consent of her husband has to pay compensation (*gurre*) to her husband. If the child dies after its birth, then she has to pay blood-money, the *diyet*-compensation⁴.

These statements imply that an abortion with the consent of husband was not considered as a crime. But until comprehensive researches are done in the Islamic court records, it is difficult to reach any definite conclusions. Suffice it to say that

B.F. Musallam. *Sex and society in Islam. Birth control before the nineteenth century* (Cambridge; London; New York: Cambridge University Press), 10-11, 57-59; Abdel Rahim Omran. *Family Planning in the Legacy of Islam* (London and New York: Routledge, reprint 1994), 8, 9; Mustafa Öztürk. "Osmanlı Döneminde Iskat-i Ceninin Yeri ve Hükmü." *Fırat Üniversitesi Dergisi (Sosyal Bilimler)* 1987 I {1}, 199. See also *Türkiye Diyanet Vakfı İslam Ansiklopedisi*, entries of Orhan Ceker, "Çocuk Düşürme," (vol. 8), Muhsin Kocak, "Gurre," (vol. 14), and Mustafa Uzunpostalci, "Cenin," (vol. 7).

³ Musallam, 18; Omran, 9, 137.

⁴ Molla Husrev. *Dürrü'l-Hükkam*. Vol. 2 (Istanbul, 1317), 104-106; Ahmet Akgiinduz. *Osmanlı Kanunnameleri ve Hukuki Tahlilleri*. Vol. 1 (Istanbul: FEYVakfı, 1990), 122.

contemporary foreign observers in the late eighteenth and early nineteenth century Ottoman Empire used to observe the seemingly free and unlimited execution of abortions, and a lack of moral restraint among the Muslim population concerning this issue⁵.

After having discussed briefly the possible legal and religious conditions of abortion in the Ottoman pre-reform period, I will now deal with government policies against abortion in the reform period. A comprehensive decree which signified the emergence of a definite state policy to prevent abortion within the Ottoman lands was issued on 20 October 1838 (1 Şaban 1254)⁶. On the other hand, there are indications that even before 1838 steps were taken to prevent abortion. In May-June 1789 (N 1204) a decree was issued to prevent physicians and pharmacists to sell drugs which enables abortion. Though this decree was initially meant to be enforced in Istanbul, an additional order was issued to enforce this decree also in the provinces⁷. Another decree, issued four years earlier, was concerning the punishment of a non-Muslim pharmacist who was selling prohibited plants. Though the type and quality of these plants are not stressed in the document, one could assume that they possibly enabled abortion⁸. In 1827, shortly after the abolition of the Janissary corps, an order was issued concerning two Jewish midwives, one of them known under the nickname "bloody midwife" (*kanlı ebe*), who were accused of providing abortifacients to pregnant women and therefore were forcibly sent to Salonica. This document included that additional orders were given to the heads of non-Muslim communities to open investigation concerning those members of their communities who were involved in activities of abortion⁹. These documents show us that even before 1838 there were government steps to prevent abortion. This policy became more systematic with the decree of 1838, and continued until the end of the Ottoman Empire.

The abortion decree of 1838 was based on three documents, issued subsequently by the Council of Public Works, by the Council of the Sublime Porte and by Sublime Council for Judicial Ordinances. The first one was a report, prepared by the Council of Public Works (*Meclis-i Umur-i Nafia*). In summary, this report begins by stressing that the increase of the power and glory of a state

⁵ Fanny Davis. *The Ottoman Lady. A Social History from 1718 to 1918* (New York; Westport, Conn.; London: Greenwood Press, 1986), 40; Bulent Özdemir; *Ottoman Reforms and Social Life: Reflections From Salonica, 1830-1850* (Ph.D. Dissertation. C8OMGS, School of Historical Studies, The University of Birmingham, March 2000), 74-75; Francois Charles Hugues Laurent Pouquville. *Voyage en Moree, A Constantinople, en Albanie, et dans plusieurs autres parties de l'Empire ottoman pendant les années 1798, 1799, 1800 et 1801* (Paris: Gabon, 1805), Vol. 1, 265.

⁶ *Muharremat-i Nadire*. Vol.18, 750-755; Öztürk, 200.

⁷ BOA Cevdet Sıhhiye 1026 - N 1204 İlam.

⁸ BOA Cevdet Sıhhiye 380 - 5 Ra 1200.

⁹ BOA Cevdet Sıhhiye 437 -12 Ş 1242 Buyruldu.

depends on the number of its population. Therefore it is a basic duty for the state to take measures to encourage the population increase on the one hand and to prevent anything which would lead to population decrease. The document then states that the conservation of human reproduction and economic life is clearly a divine requirement established by both rational evidences and religious proofs. In spite of this requirement, the imperial subjects and the population of Istanbul in particular are habitually committing the shameful act of abortion which is against the will of God. The report claims that since it is God who forms the foetus, its abortion means the killing of a soul. Therefore the application of abortion is a grave sin, and those who perform it will certainly be punished by God in the next world. Those women who due to hasty abortions and due to using deadly drugs face the death indeed deserve this calamity. The document then underlines that the sultan devotes his whole time to realize the religious commands as well as prohibitions, while he tries to develop the welfare and comfort of all social groups, all of which are trusted by God to the sovereign to keep them safe. Therefore it is clear that the sultan will devote his energy to prevent everything which are against religious laws, and thus measures will be taken to prevent abortion which has become a habit among the population. According to the report, the two main motives for abortion are first, hedonism (*tenperverlik*) and comfort and second, the material difficulty to raise a child. On the basis of these two motives, the administration should apply coercion to hedonists and material support to the modest ones to eliminate this habit. To realize the elimination of abortion, all midwives, physicians and druggists were to be warned by the Chief Physician of the Sultan not to provide the population aborifacient drugs. While midwives, physicians and druggist from non-Muslim communities should give oath to their religious leaders not to sell aborifacients, Muslim midwives should give the same oath in the presence of the Islamic judge of Istanbul. Since the majority of those women who undergo abortion claim the high amount of children as a reason for this act, the report proposed that if a poor family has more than five children, the local imam should report this situation to the Islamic judge, who would take the necessary steps to secure state support for the family in question. According to this report of the Council of Public Works, the prevention of the habit of abortion would provide the population increase within the imperial domains on the one hand, and prohibit the execution of this shameful act which is against the will of God¹⁰.

This report was discussed in the Council of the Sublime Porte (*Dar-i Şura-yi Bab-ı Ali*), and a memo was compiled, where the warning was made that physicians, druggists and midwives were not the main sources for aborifacients, but many women already knew how to prepare drugs leading to abortion. The attention was

¹⁰ Muharretat-ı Nadire, 750-752.

drawn especially to Jewish midwives in Istanbul, who were active in this business and should be prohibited in their activities. It was also underlined that abortion cases were expected to be known by the neighbors, and therefore those who in spite of their information would not inform the dignitaries about abortions should be severely punished. Lastly, this memo stated the necessity to extend this policy to all of the Ottoman provinces¹¹.

The considerations and the measures proposed by the first report and the memo were accepted by the Sublime Council for Judicial Ordinances. The addition was made that those pregnant women, who were willing to abort their foetus, should also be punished, together with their husbands. It was decided to expand this policy throughout the Empire¹². These propositions and measures were then formed into a decree, approved by Mahmud II.

These three documents of 1838 clearly display the following points: first of all, the Ottoman administration was worried about the widespread application of abortion, and was concerned about its negative effect on population growth and its adverse effects on the state power. Second, a religious discourse was used in order to discredit abortion. Since no formal religious ban existed on abortion, these documents preferred to use the term "violation of the will of God", and claimed that the foetus was a living being from the beginning of pregnancy onwards. Two main motives for abortion were stated, which are, hedonistic aims, and, economic conditions. Among these, economic conditions seemed to be the more widespread reason for abortions. The documents stressed the need to prevent physicians, druggists and midwives distributing abortifacials among the population. The Chief Physician of the Palace, the religious heads of the communities, the Islamic judge of Istanbul and the quarter imams were to warn physicians, druggists and midwives not to provide illicit medicine. Those couples who were willing to abort the baby, and those neighbors unwilling to inform this event to authorities were to be punished. On the other hand, modest families with more than five infants were decided to be materially supported.

Though these documents stress demographic as well as religious reasons for the ban of abortion, the orders sent to the provinces underline mainly the demographic reason, i.e. the prevention of population decrease. This indicates that the main concern of the government was mainly of a non-religious nature.

The final decree was decided to be sent to the Anatolian and Balkan provinces of the Empire. We know at least that these decrees reached Ankara, Konya, Salonica and Babadağı¹³.

¹¹ Muharrerat-i Nadire, 753-754.

¹² Muharrerat-i Nadire, 754-755.

¹³ Özdemir, 74-75; Öztürk, 200, 203-205; BOA Cevdet Sıhhiye 566-13 Z 1254 İlam.

The decree of 1838 concerning the prevention of abortion seems to have formed a consisted state policy, which continued until the collapse of the Ottoman Empire. This assumption can be further supported by other regulations, which were issued in 1858 and 1884. On the other hand, the Sublime Porte took additional preventive measures against abortion, which were pursued at two levels: first, it was tried to take midwives under administrative control. And second, the profession of the pharmacist and the selling of drugs were increasingly taken under government supervision.

The role of the midwives in Ottoman society was of such magnitude that the government realized relatively early the importance of training her. Some knowledge of midwifery was included in the surgery lessons for medical students when the medical school opened in 1826/7; in 1842 the midwives themselves began to receive instruction. In that year a memorandum was given to the authorities by the Chief Physician of the Palace announcing the opening of courses in *ebelik*. At the same time, the patriarch, the chief rabbi, and the judges of Istanbul were charged with overseeing the profession of midwifery within their jurisdiction. Midwives came to the medical school for lessons twice a week. It was unthinkable at that time for women to be instructed in such matters by men, so two European women were brought in to teach the local midwives.

By 1845 ten Muslim and 26 Christian midwives had been trained. There was still reluctance to take the course, especially on the part of those midwives who already had a reputation in their profession. The government tried to discourage the people from seeking the services of the latter by issuing a decree which stated that untrained midwives were unregistered and hence should not be held in esteem, but it is doubtful that the decree had much an effect in that period. Later in the century the training of midwives became more widespread. According to a memorandum of 1871, most of the mahalles in the district of Ahırkapı Otluk Ambarı, had orders to set up midwifery schools. In 1885 a plan to build a hospital of midwifery was drawn up, but the project came to nothing¹⁴.

It is difficult to assess the actual outcome of the policy to take midwives under government control. It seems plausible to assume that the majority of the population still preferred traditional, uneducated midwives. This was the same in countries like Great Britain or the Netherlands in the late 19th century, where government-educated midwives were not popular in contrast to traditional midwives. The attempt to control the pharmacists and the selling of abortifacients goes back to the late 18th century, when sporadic attempts were made to prohibit pharmacists to sell abortive drugs. A more systematic step was taken on 29 July 1844

¹⁴ Davis, 39, 40; Osman Nuri Ergin. *Türk Maarif Tarihi*. Second Edition (Istanbul: Eser Kültür, 1977).

(13 Receb 1260) where the government decided that both Muslim and non-Muslim pharmacists and their apprentices were to be registered at the Office of the Chief Physician of the Palace, and these to be put under regular inspection by the Office of the Superintendent of Guild and Markets (*Ihtisab Nezareti*)¹⁵. After Ottoman towns began to be administered by municipalities, the inspection of the pharmacists was left to the municipalities. We know a special regulation concerning the profession of pharmacists, dated 3 February 1861 (22 Receb 1277) where the selling of drugs was put under the strict control of the Ministry of Health (*Umur-i Tibbiye Nezareti*). Accordingly, pharmacists were forbidden to sell any drugs without the prescription of officially certified physicians¹¹. A more comprehensive regulation concerning the selling of drugs was issued in 1888, and a list containing 68 officially forbidden drug names was sent to the pharmacists throughout the empire.¹⁷

In spite of these measures, the research of Alan Duben and Cem Behar on the households in Istanbul clearly shows us that abortion was still applied by a considerable number of women, though illegally.¹⁸ Another problem emerged with the activities of foreign physicians within Ottoman borders. Though the state tried to put physicians and pharmacists of Ottoman citizenship under control, foreign physicians were protected by the embassies of their respective countries. Thus, when a German female doctor established a clinic in Pera, Istanbul, in 1900, and began to practice abortion, this became a diplomatic problem between the Sublime Porte and the German Embassy. Only following a period of negotiations, it became possible to extradite her, in 1905.¹⁹

As for concluding remarks: Though the Hanafî legal school of Sunni Islam did not prohibit abortion for the first four months of pregnancy, the Ottoman state from the late 18th century onwards took steps to prevent abortion. From 1838 onwards this attitude against abortion turned into a comprehensive policy. The main reason for this policy was based on demographic considerations. It was feared that widespread practices of abortion among the population would lead to population decrease. It seems that the government's concern about the excessive application of abortions was not unfounded. Foreign observers from the late 18th and early 19th centuries state the decrease of Muslim population and the widespread application of abortion. As an explanation for the widespread abortion

¹⁵ BOA Cevdet Sıhhiye 454-13 B 1260 - 4 - Takrir.

¹⁶ Osman Nuri Ergin. *Mecelle-i Umur-i Belediye*. Second Edition (Istanbul: İstanbul Büyükşehir Belediyesi Kültür İşleri Daire Başkanlığı Yayınları, 1995), Vol. 6, 3056-3057. ¹⁷ Elgin, *Mecelle*, 3065-3073.

¹⁸ Alan Duben & Cem Behar. *Istanbul Households. Marriage, Family and Fertility 1880-1940* (Cambridge, New York: Cambridge University Press, 1991), 181-184.

Yavuz Selim Karakışla. "Arşivden Bir Belge. Kürtaj Mutehassısı Alman Doktor Madam Mari Zibold." *Toplumsal Tarih* No. 82 (Ekim 2000), 39-44.

it has been argued that the institutions of polygamy and concubinage, and the easiness for the man to abandon his wives prevented the development of family solidarity, which made abortion and other measures of birth control more meaningful.²⁰ But this argument could be possibly true only for a limited segment of Muslim society, since polygamy and concubinage could be afforded only by people with a considerable wealth. The popular character of abortion, on the other hand, renders the economic explanation made by the documents of 1838, more plausible.

The late 18th and the nineteenth centuries were characterized by constant Ottoman defeats in the hands of Russians and Austrians, while internal revolts led to a constant bleeding of Ottoman human resources. Ottoman military and subsequently administrative reform steps had the basic aim to strengthen the military and administrative apparatus in order to resist great powers. The documents of 1838 concerning abortion with their demographic emphasis should be considered within this general historical context. On the other hand, it seems to be an interesting historical coincidence that anti-abortion movements in Western Europe and in the United States, which had a Christian Evangelical basis, emerged during the first half of the 19th century, and became dominant during the latter half of this century.

²⁰Traian Stoimiovich. *A Study in Balkan Civilization* (New York: Alfred A. Knopf, 1967), 135-136.