



Eunuchs in pre-modern Islamic Law

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Changing what has been created by God is strictly forbidden in Islamic Law.¹ Indeed, verse 30, 30 of the Qurʾān states:

“So direct your face toward the religion, inclining to truth. [Adhere to] the *fiṭrah* of Allah upon which He has created [all] people. No change should there be in the creation of Allah. That is the correct religion, but most of the people do not know.”

Consequently, castration is absolutely forbidden in Islamic Law. Though, many eunuchs populated Islamic Courts in pre-modern times. How could this happen? The first point to be mentioned is that eunuchs were probably castrated outside the Islamic world, where Islamic Law did not apply. Moreover, even the Prophet Muhammad himself is said to have accepted a eunuch as a gift.² Therefore, Muslim jurists simply took them for granted. There are in Arabic different terms to identify a castrated man, which are a consequence of the modalities of castration: the term *khaṣīyy* is used to describe a man whose testicles have been cut; the term *majbūb* a man whose penis has been cut, and the term *mamsūh* a man without both. Clearly, the operation had a fundamental impact not only on the gender, but also somehow on the “sex” of the eunuch. How were, therefore, eunuchs gendered in Islamic Law? If we want to understand that, then it’s necessary to start with a basic assumption: Islamic law does not aim at being an egalitarian system of law, but assumed several differences between people. The “perfect” and the “complete” subject of law, the “civis optimo iure” we could say, was man, adult, Muslim and free. Most eunuchs were slaves and not Muslims. This already excluded them from the category of the “perfect subject of law”. Though, many of them were later freed and converted to Islam: therefore, they only missed the “gender” aspect to become “civis optimo iure”. Certainly they were born biologically as men, but then lost their penis, which was considered a fundamental aspect of their virility. So, were they still considered men after castration or not? Quite surprisingly, Muslim jurists did not specifically address this point, as it happened for example with the hermaphrodite, where the legal discussion focused on the techniques to assign him/her to one specific gender. Still, it is possible to infer something about the jurists’ understanding of the eunuch’s gender looking at those fields of law where the division between male and female is particularly important, as marriage, divorce and the attribution of paternity/maternity. For example, even though the marriage of a eunuch was probably not really common in social practices, Islamic Law aimed (and still aims) at being a systematic and complete system of law, and therefore the question of its validity was scrutinized by Muslim jurists. According to the famous jurist al-Shafīʿī (d. 204/820) for example, if the eunuch, either completely castrated or not, marries, and if the wife knows that he is a eunuch and accepts that, then the marriage is completely valid. If he is able to penetrate her, then he is considered exactly as a non-castrated man.³ However, if a woman complains that her husband is not able to penetrate her, then the judge should grant the eunuch one year of time (*ajal*) to satisfy her. If

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² Muḥammad b. Saʿd, *Kitāb al-Ṭabaqāt al-Kabīr*, Maktabat al-Khānḡī 2001, 10: 201.

³ Muḥammad b. Idrīs al-Shāfiʿī, *Kitāb al-umm*, ed. Rifʿat Fawzy ʿAbd al-Muṭṭalib, Dār al-Wafāʾ li-l-tibāʾ wa-l-nashr wa-l-tawzīʿ 2001, 5: 557.



during that year he is not able to “penetrate” her at least once the marriage is nullified. But if a man can marry he can divorce as well. In Islamic law there are different kinds of divorces, being the most important the *ṭalāq* and the *khulʿ*. The *ṭalāq* is a form of unilateral repudiation, in which the man says to the woman that he is going to divorce her. Women cannot initiate a *ṭalāq*, but they only have the possibility of the *khulʿ*, in which they ask to the husband or they may petition a judge to obtain divorce through compensation. The eunuch, like a non-castrated man, has the right to *ṭalāq*. The possibility of a *khulʿ* is not even mentioned. Even more important was the attribution of the *nasab*, paternity: if a castrated man still had the two testicles, then the paternity could be attributed to him. If he still had the penis but not the two testicles, according to the great majority of jurists the paternity could not be attributed. According to others he should be referred to doctors. If he does not have any of them, then the majority of jurists believe that the paternity cannot be attributed.⁴ It is interesting enough that, according to some jurists, eunuchs could theoretically not look at women exactly like non-castrated men. This was justified referring to what ‘Ā’isha, the wife of the Prophet Muḥammad, said. She said that castration is a “mutilation”, and therefore does not make licit what was forbidden before it.⁵ Even though this was not always the case in social practices (eunuchs were the *ḥarem* guardians per excellence), it confirms that eunuchs remained men in Islamic Law: maybe mutilated men, but still men. Probably, to make sense of the eunuch gender, as with the *mukhannath*, we should jump out of the constraints that a binary system imposes on us, which does not necessarily mean that we should add a “third” gender to this binary. Medical sources probably give us a key to solve the puzzle: Dor Ze’evi, in his book on sexuality in the Ottoman Empire, argued that in the pre-modern Islamic medical discourse there was not properly a gender binary, but man and woman were understood

“as part of a continuum of perfection, leading from the basest creatures to the celestial. Man in this scheme of things was the crowning achievement of terrestrial creatures, whereas woman was regarded as a less-developed version of man, physically and mentally.”⁶

This understanding, which clearly resonates Laqueur’s one-sex theory, allows us to make sense also of the eunuch and the *mukhannath* gender. If we assume that Dor Ze’evi is right, and if we assume that man and woman were the two poles of a “continuum of perfection”, then also eunuchs and *mukhannathun* were part of this continuum, and were probably closer to the masculine than to the feminine pole.

⁴ See for example, al-Ghazālī, *al-Wasīʿ fī-l-madhhab*, ed. Aḥmad Maḥmūd Ibrāhīm, Dār al-Salām 1997, 6: 109.

⁵ See for example Burhān al-Dīn al-Marghīnānī, *al-Hidāya, Sharḥ Bidāyat al-Mubtadī*, Dār al-Salām 2000, 4: 1494.

⁶ Dor Ze’evi, *Producing Desire. Changing Sexual Discourse in the Ottoman Middle East, 1500-1900*, Berkeley/Los Angeles 2006, 22. This is in line with Thomas Laqueur’s theory, according to which in pre-modern societies only one-sex was conceptualized, being the woman considered as an imperfect version of the man. See Thomas Laqueur, *Making Sex: Body and Gender from the Greeks to Freud*, Cambridge, MA 1990.