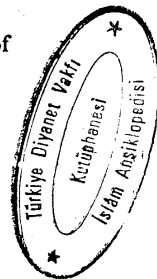


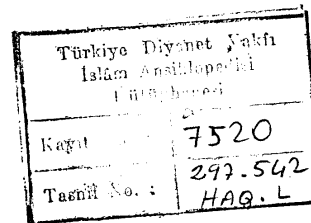
LANDLORD AND PEASANT IN EARLY ISLAM

A Study of the Legal Doctrine of
Muzāra'a or Sharecropping



07 AUGUSTOS 1992

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-Khabāle

CHAPTER VIII

DEVELOPMENT OF THE SUBSTANTIVE LAW OF MUZĀRA'A

The General role of the Fuqahā'

The Islamic laws of land-tenure, both in form and substance, grew as the *Umma* evolved in its social manifestations. The statement of Ibn Taymiyya (d. 728/1328 that the Prophetic ban on the primitive tenures makes *qiyās* (systematic deductive reasoning of analogy) an obligation on the part of the jurists,¹ and the observations of Abū Ḥanīfa and Ibn Ḥazm that the customary primitive tenures cannot be legitimately rationalized and modified on the basis of *qiyās* are, on the face of it, contradictory juristic positions. Yet, they are essentially juristic methods of interpretation and explanation which more or less reflect a gradual development of the doctrine of *muzāra'a*. The *Fuqahā'* developed different interpretative methods, criteria and approaches in order to understand the real significance of the *nahy* or ban on the primitive tenures and subsequently carefully formulated their theories of *muzāra'a*. We shall presently see that starting from the idealistic theory of Abū Ḥanīfa, who clings fast to the general law or the *Grundnorm* of the *Sharī'a*, to the socio-economic approach of Ibn Taymiyya there is a clear evolution of the doctrine which finds its culmination in the analytical-cum-analogical approach of Qāḍī Abū Yūsuf. This evolution of the legal theory, it must be emphasized, was intimately related to the over-all socio-legal development of the *Umma*.

With the expansion and growth of the *Umma* the juristic interpretation became necessary to define and delimit the legal and economic relationships. This is the basic purpose, the *raison d'être* of the reasoning process followed by the jurists.

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During the period under study, these jurists elaborated and developed a remarkable system of land laws. They did not create this law *in abstracto*; it was a spontaneous growth. Nevertheless, their influence on its legal growth was substantial. The reasonable element in the primitive and pre-Islamic systems of tenure could not become Islamic law without the sanction of the *Sharī'a* and without the interference and interpretation of the *Fuqahā'*, as Ibn Taymiyya has rightly observed.

This implies that the fundamental function of the *faqh* (jurist) is literally to know, understand, interpret and apply the law (*'Ilm al-Sharī'a*). His duty is to study and comprehend the nature and significance of the system of customary tenure and its implied legal relationships in order to discover the reason (*'illa*) for banning them. He then defines which socially necessary elements of these tenancies are legally useful for the community. Arriving at this basic understanding of the data, he makes efforts to frame uniform generalizations which he supposes to be in accord with the general tendencies of the period and which at the same time do not contravene the basic principles of the *Sharī'a*. The data and the process of reasoning are not two mutually divorced things—they represent the tool and the material which cooperate to create the substance of the law of *muzāra'a*. In this process of reasoning which we have termed Islamization of the *Fuqahā'*, it appears, function in their respective social milieux, which have left profound marks on their individual theories. Their whole attempt, as we have already observed, in rationalizing the customary practices, is eventually to resolve the inherent tension between custom and the general and broad principles of the *Sharī'a*. The two interacted on each other. The result was the creative product, the substantive law of tenure.

We will now analyze and discuss in detail the nature and main characteristics of the *Fuqahā'*'s doctrine of *muzāra'a*. The basic methodological questions which the *Fuqahā'* asked in the process of their reasoning were: Can general and uniform rules

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the reform movement which was followed under Selim III.

Bibliography: *Sidjill-i 'Othmāni*, iv, 459 f.; A. de Juchereau de Saint-Denis, *Révolutions de Constantinople en 1807 et 1808*, Paris 1819, ii, 113-71; 'Āşim, *Ta'rikkh*, Istanbul n.d., ii, *passim*; Ahmed Djewdet, *Ta'rikkh*, Istanbul 1309, viii, 157-297; Muştafâ Nûri, *Netâ'idj al-wukû'ât*, Istanbul, 1294-1327, iv, 48-55; I. H. Uzunçarşılı, *Meşhur Rumeli ayanlarından . . . Alemdar Mustafa Paşa*, Istanbul 1942, index; idem, *Kabakçı Mustafa isyanına dair yazılmış bir tarihçe*, in *Belleten*, vi (1942), 253-67; idem, *Kabakçı vak'asına dair bir mektup*, in *Belleten*, xxix (1965), 599-604; Zinkeisen, vii, 463-71, 552-57; N. Iorga, *Geschichte des Osmanischen Reiches*, Gotha 1910, v index; A. F. Miller, *Mustafa Pasha Bayraktar*, Moscow-Leningrad 1947; S. I. Shaw, *Between old and new; the Ottoman Empire under Selim III 1789-1807*, Cambridge Mass. 1971; H. D. Andreasyan, (tr.), *Georg Oğulukyan'ın ruznamesi 1806-1810 isyanları: III. Selim, IV. Mustafa, II. Mahmud ve Alemdar Mustafa Paşa*, Istanbul 1972. See also Ahmed Refik, *Kabakçılı Muştafâ*, Istanbul 1331.

(E. KURAN)

X **KABĀLA** (A.) "guarantee", a juridical term used mainly in connection with fiscal practice, in a manner which is still very difficult to define precisely.

The particular field with which this discussion is concerned is a double one—that of the levying of the land-tax, *kharādī* [q.v.], and that of special taxes, *mukūs*. As was already the case before the Arab conquest both in the Byzantine Empire and under the Sasanids, local communities were held jointly responsible by the Treasury for the payment at the required time of the full amount of land-tax demanded. Nevertheless, it frequently occurred that many individuals had difficulty in finding the necessary ready money immediately. In these conditions, as a result of an agreement between the inhabitants and the administration, application was made to a notable, often but not necessarily a man of the locality, to advance the sum required, for which he had to ensure that he would be reimbursed later. The matter having generally been agreed in advance, this notable in effect acted as a guarantor for the debt of the locality in question. This procedure constitutes the contract of *ḡabāla*, the offer being called *taḡbil* and the person named *mutaḡabbil*. In this form, Abū Yūsuf does not disapprove of *ḡabāla*. But in practice it appears that matters often happened otherwise, that is to say that not only the principle of the guarantee but also of the amount were known in advance; here, jurists and traditionists, such as Abū Yūsuf and Abū 'Ubayd, disapproved—traditionists, more particularly when, as the harvest could not be estimated in advance, the tax to be levied on it was likewise not calculable if it consisted of a percentage; and jurists, because the total sum envisaged, being necessarily less or greater than the eventual proceeds of the tax, was bound to be injurious either to the taxpayers or to the Treasury. But it is precisely on account of the anticipated profit that the military leaders began to seek out *ḡabālāt*. At the start, they had been allotted emphyteutic concessions (*kaḡā'i*; pl. of *kaḡi'a* [see *IKTĀ'*]) on the State lands (*ṣawāfi*). But as these were practically hereditary, it was not possible to find new ones, and they therefore turned their attention to the private *kharādī* lands, so that they might succeed either in retaining the *kharādī* for themselves while only paying the tenth (see *Arabica*, i (1954), 358), or, a less serious offence, contract an advantageous *ḡabāla*.

However, the *ḡabāla* disappeared quite rapidly in face of the development of the new type of *iktā'*, although definitions of it are still to be found occasionally in the later lexicographers, such as al-Zamaḡhshārī. Clearly it possessed some of the characteristics of tax-farming, and the texts sometimes confuse *ḡabāla* and *ḡamān*; nevertheless, *ḡabāla* usually denotes merely the operation at the basic level of the whole local community, whilst *ḡamān* also applies, throughout the whole course of Muslim history, to the far wider concession of the right to organize and levy taxes, for some years, from a vast district, in return for the payment—more or less in advance—of a sum which is guaranteed, but markedly smaller than the scheduled revenue. Sometimes the texts also compare the *ḡabāla* with the *muḡāfa'a* which, in the case of a small estate, in effect probably differs only in the matter of duration, but which also applies to vast semi-autonomous districts or provinces in whose entire internal administration the State definitively renounces all interest, in return for the settlement of a guarantee.

What has just been said appears to be applicable in some measure to Muslim Asia in general. In the Maghrib and in Spain, where the *ḡabāla* is to be found in regard to *mukūs*, it is not certain if the term occurs in connection with *kharādī*; occasionally it denotes the fixed dues owed by the administrator of a *wakf*. But it is above all with reference to Egypt, always distinctive in agricultural and fiscal matters, that some particularly delicate questions arise.

In Egypt, indeed, it seems that no *kaḡā'i* were distributed, although State lands and private lands possessing some degree of autonomy existed there before the conquest and were retained afterwards. But no doubt both because the Arab population of Egypt was originally limited to the garrison towns, and because control of the Nile and the resultant agricultural organization created, throughout all the irrigated territories, a unified administration which deprived each of them of part of its own effective autonomy, the very term *kaḡi'a* in this sense seems unknown (although in the plural *kaḡā'i*; it denotes the Ṭūlūnid quarter of Fustāṭ created on the model of Samarrā). *ḡabālāt*, however, do exist, often in the hands of persons whom the papyri call *māzūl*, *μειζότερος*. Then in the 2nd/8th century, Arab tribal groups settled in Egypt and, as it was not possible to give them *kaḡā'i*, they were granted lands for which they assumed the *ḡabāla*, under conditions which guaranteed an income for the State but which also left them with a substantial profit for themselves. It appears that this was brought about by distribution by auction, held in Fustāṭ for four years, with a revision of the basic tax survey every thirty years. Despite reforms in the methods employed (particularly under al-Afḡal and al-Ma'mūn al-Baṭā'ihī, in the second century of Fāṭimid rule,) it seems that the system was maintained in certain respects until the Ayyūbid conquest introduced into Egypt a new system more or less inspired by the eastern *iktā'*. In short, the old system differed from similar systems in the Near East only in its systematic and durable character, and by its adaptation to the specific agricultural organization of Egypt.

However, this does not solve all of the problems. Papyri, and later the fiscal treatises from the Fāṭimid and subsequent periods, reveal that there was a distinction between lands lying outside the *ḡabālāt*, which were subjected to permanent surveys (*misāḡa*), deciding each year the areas to be flooded and the different types of cultivation to be employed on them,

Kebale

قَبالة:

١ - تعريف: القَبالة - بفتح القاف - هي التزام شخص معين بأداء عمل معين جملة واحدة بعوض معين.

٢ - أنواعها وحكمها: القَبالة على نوعين:

أ - قَبالة بمعنى الإجارة: وذلك كما إذا قَبَّل الرجل أرضاً مع شجرها لآخر مدة معلومة، كخمس سنوات، بعوض معلوم، وإن هذا النوع هو من نوع الإجارة، كاستئجار الظئر لإرضاع طفل مخصوص مدة معينة بعوض معلوم، وليس من نوع بيع المعدوم - أعني: بيع الثمر قبل ظهوره - .
وإذا كانت إجارة فهي جائزة.

ب - قَبالة بمعنى الوكالة: وذلك كتقبيب شخص لآخر ما له من ديون على الغير يحصلها على أن يدفع لصاحب الحق مبلغاً معلوماً؛ وتقبيب الدولة ما لها ضرائب على بلد معين لشخص يحصلها مقابل دفعه لها مبلغاً معلوماً، فإن زاد ما حصله المتقَّبِّل على ما دفعه للمقَّبِّل فهو له، وإن نقص ضمن للمقَّبِّل ذلك النقص.

وهذا النوع من القَبالة لا يجوز، لأننا إن قلنا إنه بيع للدين بأقل منه أو أكثر، فلا يجوز لأنه ربا، وإن قلنا إن المتقَّبِّل وكيلٌ عن المقَّبِّل في تحصيل الدين، كان ذلك غير جائز أيضاً، لأن الوكيل أمين يستوفي ما وجب على المدينين من الدين، ثم يؤدي للموكل ما حصَّله منه، ولا يُلزم بضمان ما لم يستطع تحصيله منهم.

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SONRA GELEN DOKÜMAN

19 MAYIS 2002

آنگاه، که بینی ولایت بر مردم، گوئی قباله آن کس باشد که بر مردم برتری یافته است (از حیث ثروت یا قدرت یا طرفداران) (وسائل، کتاب جهاد و امر به معروف، باب ۴۱، حدیث ۶).

واژه قباله در ادبیات ایران پس از اسلام، به همین معنا به کار رفته است. واژه قباله در امثال فارسی هم آمده است، مانند: قباله کهنه جایی بودن، یعنی به امور ملکی جایی بصیرت کامل داشتن؛ یا: پشت قباله کسی انداختن، یعنی در کابین و مهر کسی قرار دادن. اصطلاح «قباله بیج» به معنای یک طاقه یا نیم طاقه شال کشمیری یا ترمه یا جامه گرانبهای دیگر است که قباله عروس را در آن بینچند و شب عروسی به خانه او فرستند. گاهی قباله را «قباله نامچه» هم می گویند.

برای واژه قباله چند معنای دیگر هم ذکر کرده اند؛ از جمله اینکه: قباله مأخوذ از واژه «کفالا» است و آن مجموعه ای از روایات است که به «مانی» نسبت داده شده است. (تاریخ ادبیات پیش از اسلام، ۳۴۳)؛ نیز گفته شده که: قباله یا قبالا رساله ای است به زبان عبری در تفسیر تورات که سزای بوده و سپس مکتوب شده است؛ گر چه ادعا شده که قبالا به نحو شفاهی از حضرت ابراهیم (ع) رسیده، ولی در قرن هفتم میلادی تهیه شده و تا قرن هفدهم میلادی رواج داشته است و در آن هریک از کلمات تورات و حروف آن، به صورت اعداد و معانی، رمزی دارند که فقط اصحاب قباله بر آنها واقفند. قباله سرانجام به صورت بازی با حروف درآمده و منشأ قسمت اعظم سحر و جادو در قرون وسطی شده است. (دائرة المعارف، مصاحب، ذیل «قباله»).

پس از انقلاب مشروطیت و با برپا شدن اداره ثبت، کلمه قباله در زبان محاورات اداری و معمولی، کاربرد خود را بیشتر کرده است. در زبان مکتوب، به جای قباله، از سند مالکیت، عقدنامه، طلاق نامه و قرار داد استفاده می شود و اصولاً ترکیب لفظی «سند رسمی» جانشین قباله شده است. با وجود این، در زبان محاوره، واژه قباله وسعت معنایی پیدا کرده و به صورت اسم عام برای مطلق خرید و فروش به کار می رود: «فلانی زمین را قباله کرد» یعنی: فلانی زمین را خرید.

قباله نویسی در ایران باستان؛ در سال ۱۹۳۴ م هزاران لوح گلی در حفاریهای تخت جمشید یافت شد، که در میان آنها کتیبه هایی حاکی از اجاره املاک شاهی، به دست آمده و همچنین بعضی از مکاتبات حاوی نمونه هایی از عقدنامه ازدواج است (از زبان داریوش، ۳۱). آنچه از مطالب تاریخی و کتیبه ها استفاده می شود حاکی از آن است که در زمان هخامنشی ها نوشتن اسناد و

قبا ← مسجد قبا؛ نیز ← مدینه؛ و نیز ← هجرت

قبادعلی بیگای، حاجی خانقی بیگای نایب آقائی (ز- ۱۰۵۹ ق)، نامبرده از گماشتگان میرز شاه عباس صفوی (۱۰۵۲ - ۱۰۷۸ ق) بوده که در خدمات ساختمانی و تعمیراتی اماکن مهمه مهارت بسیار داشت و از این رو مصدر و مرجع اینگونه امور واقع می گردید. از آن جمله است: تعمیر ایوان عباسی آستانه حضرت امام رضا علیه السلام در شهر مشهد، که در کتیبه های مربوطه از این نکات ملاحظه می شود: ابتدا سوره جمعه نوشته شده و بعد بانی تعمیرات و نویسنده آن مخمدرضا الامامی (۱۰۵۹ ق) سپس نوشته حاجی قباد علی بیگای، به همان تاریخ.

منبع: مطلع الشمس، ۱۲۰۲.

ابوالقاسم رفیعی مهرآبادی

قباله، در لغت اسم مصدر است به معنی نتیجه پذیرفتن، کارسازی، عملی کردن. در اصطلاح، مکتوبی است که در آن، چیزی را که انسان بدان ملتزم می گردد (از قبیل عمل یا دین و جز آن) می نویسد.

قباله کلمه ای عربی از ریشه قبل است. در قباله عقیدیه، نام فروشنده و خریدار، خصوصیات شیء خرید و فروش شده، مبلغ پرداخت شده، شرایط معامله و جز آن را می نویسند؛ مانند قباله ملک و قباله زناشویی. قباله نویس شخصی است که قباله و عقدنامه را می نویسد (فرهنگ ناظم الاطباء، ذیل «قباله»). قباله بیشتر در معنای قباله ازدواج به کار می رود و منظور از آن، عقدنامه است. همچنین در مورد اسناد مالکیت، کلمه قباله فراوان به کار می رود و منظور از آن سند مالکیت است، و اصولاً آنچه اداره ثبت، طبق مواد قانون پس از اتمام تشریفات ثبتی، به دست مالک یا ذینفع می دهد، قباله نام دارد. علاوه بر این، قراردادی که به موجب آن، عضو یک منطقه مالیات دهنده، عهده دار پرداخت مبلغ مقطوعی مالیات می شده که خودش شخصاً از مؤدیان وصول می کرده، در اصطلاح، قباله نامیده شده است (فرهنگ معین ذیل «قباله»). در روایات اهل بیت (ع) کلمه قباله، در معانی مختلفی به کار رفته؛ از جمله: الف) تَقْبَلُ کردن کار بر روی زمین (وسائل، کتاب مزارعه و مساقات، باب ۱۱ و ۱۸)؛ ب) صلح (همانجا، باب ۱۹)؛ ج) خریدن (همان کتاب قضاء، باب ۲۶، حدیث ۳)؛ د) در حدیثی مفصل از امام صادق (ع) پیرامون وضع آخر الزمان: ... وَ رَأَيْتُ الْوَلَايَةَ قَبَالَهً لِمَنْ زَادَ ... و