How to Approach Emic Semantics of Dependency in Islamic Legal Texts: Reflections on the Ḥanafī Legal Commentary \textit{al-Hidāya fī sharḥ bidāya al-mubtadī} and its British-Colonial Translation

1 Introduction

Historical semantics as a method of study has yet to be applied to Islamicate concepts of strong asymmetrical dependency.\(^1\) A major reason for this is simply a lack of technology: a constitutive part of historical-semantic studies is the evaluation of large source corpora by means of digital quantitative methods, to identify and count, for example, certain conceptual terms or \textit{Schlüsselbegriffe} in a body of source material.\(^2\) But we still lack the technical means to search digitally manuscript material or even


\(^2\) The present essay does not seek to expand the discussion of the concepts and theory of historical semantics, but translates certain concepts from neighboring disciplines in a heuristic manner, to test their applicability on the text corpus in question. As there is to date no substantial literature on historical semantics in the field of Islamicate History, I rely on recent publications from German and Asian studies. For a discussion of the concept \textit{Begriff} see Dietrich Busse, “Begriffsstrukturen und die Beschreibung von Begriffswissen: Analysemodelle und -verfahren einer wissensanalytisch ausgerichteten Semantik (am Beispiel von Begriffen aus der Domäne Recht),” \textit{Archiv Für Begriffs geschichte} 56 (2014): 153–95. In a similar way, Christian Schwermann uses the term \textit{Schlüsselwort}, cf. Christian Schwermann, ‘Dummheit’ in altchinesischen Texten: Eine Begriffsgeschichte, Veröffentlichungen des Ostasien-Instituts der Ruhr-Universität Bochum 62 (Wiesbaden: Harrassowitz, 2011): 32. His analysis of the word field “stupidity” is, in addition to Schultz-Balluff’s study (see n. 1),
editions written in the Arabic alphabet, which makes it virtually impossible to base research on large source corpora in Arabic, Persian or Urdu.\(^3\)

The first part of this essay therefore discusses the experimental workaround mode I tried to apply in order to generate a set of data that would give me initial insights into the historical semantics of strong asymmetrical dependency in Indian Ḥanafi legal texts. A crucial part of this workaround mode is the use of English translations of the texts in question, because these are digitally searchable. My aim was not to use the English version as a basis for my analysis, but merely to help me identify relevant passages in the original text. However, this approach proved to be problematic for reasons which I will discuss below. The most challenging part was the textual history of the English translation itself, which is a product of British colonial appropriation and the transformation of what colonial officials found in their new realm. Due to this particular genesis, the English translation is of limited use as a reference text for research into the emic semantics inherent in the original text. However, the special setting of this case offers the opportunity to investigate changes in the semantics of the translation process. The *Hidāya* actually has a long history of translation, in which the original Arabic text was translated into Persian and then into English.

The main part of this article consists of a qualitative analysis of key words in the original Arabic source text. It will focus on the *Kitāb al-ʿitāq*, the Book on Manumission from the Ḥanafi legal commentary *al-Hidāya fi sharḥ bidāya al-mubtadī*, which served as a reference text for Islamic jurisprudence for British Colonial officials; a function it had already previously fulfilled during Islamicate rule in northern India. My analysis suggests that forms of strong asymmetrical dependency are not limited to slavery: not only in the *Hidāya*, but in Islamic law in general. The practice of releasing and partially or gradually manumitting enslaved persons over a longer period of time results in gradations of strong asymmetrical dependency, for which Islamic law has special terms. I will trace these terms in a part of the text and will localize them on a continuum of dependency, following the concept developed by David Eltis and Stanley L. Engerman.\(^4\) In a final step, I will compare the results of this analysis with the method employed by the English translator. For future interest in the development of historical semantic fields, it would be most helpful to study another example of the manifold and fruitful use of digital searches of text corpora in the research of historical-semantic questions.

\(^3\) Initial promising results have recently been announced by “The Digital Orientalist,” see e.g. https://digitalorientalist.com/2020/03/04/some-thoughts-about-arabic-script-ocr/ [accessed 17.05.2022], and the JEDLI toolbox developed at Hamburg University that allows indexing an context searches in digitized texts, see https://www.islamic-empire.uni-hamburg.de/publications-tools/digital-tools/jedli.html [accessed 17.05.2022]. However, until the launch of a software that allows OCR'ing manuscripts and editions, digitally assisted research will be restricted to a small corpus of recent editions.

the full translation process of the *Hidâya* from the Arabic original into Persian translations that were used by both the Mughal and the British authorities in India, with the subsequent British-colonial rendering. As the Persian versions are available only in manuscript, and thus require much preliminary work in Indian archives, this aspect cannot be considered until further studies have been carried out.

2 The *al-Hidâya fî sharḥ bidâya al-mubtadî*

This article concentrates on a normative text from the Ḥanafī legal school. The selected source implies that the study will initially only allow conclusions to be drawn about the historical semantics of normative perceptions of strong asymmetrical dependencies in this particular madhhab (legal school). This complements Veruschka Wagner’s essay in this volume, which focuses on historical-semantic studies of praxeological texts, namely archive material from Ottoman court registers.⁵ The *al-Hidâya fî sharḥ bidâya al-mubtadî* (commonly known as *Hidâya*, “The Guidance”) is a twelfth-century legal commentary by the Ḥanafī scholar Burhân al-Dîn Ābû ‘l-Ḥasan al-Marghinâni (1135–1197), a native from the region of Farghana (modern Uzbekistan).⁶ The multi-volume Arabic text is a concise commentary (*mukhtaṣar*)⁷ on al-Marghinâni’s own compendium *al-Bidayâ al-mubtadî* (hence the title *Guidance through al-Bidayâ al-mubtadî*), which was in turn based on two renowned legal treatises, the *Mukhtaṣar* by al-Qudûrî and al-Shaybâni’s *al-Jâmi‘ al-ṣâghir*. It belongs to the corpus of Ḥanafī normative literature and is considered one of the most influential compendia in Ḥanafī law to this day. There are numerous super- and supra-commentaries and additions by contemporary and later scholars.⁸ This rich hypertextual tradition linked to our basic text would invite further investigation into how historical-semantic notions of strong asymmetrical dependencies developed over centuries of discussion among Islamic jurists, and – an aspect that makes this source genre especially interesting – in different geographical contexts of the Islamic and Islamicate world. While the *Hidâya* was written by an author from Transoxania, i.e. the eastern parts of the Islamic world, it spread

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⁵ The Mughal Empire and the Ottoman Empire both count among the predominantly Ḥanafī Islamic realms.

⁶ He is regarded as the most important member of a well-established family of Ḥanafī legal scholars, cf. Willi Heffening, “al-Marghinâni,” in *Encyclopaedia of Islam, Second Edition*, ed. Pery Bearman et al., http://dx.doi.org/10.1163/1573-3912_islam_COM_0685 [accessed 17.05.2022].


quickly over all regions inhabited by Ḥanafi Muslims, among those the Islamicate realms on the Indian subcontinent. It would be an intriguing task to compare the historical-semantic notions of strong asymmetrical dependency in the two hypotexts mentioned above with those in the Hidāya itself and several super-commentaries from beyond the region.

The Hidāya covers, in a total of eight volumes, all aspects of Islamic law. This includes both provisions concerning the relationship between God and human beings (ʿibāda), such as prerequisites for the proper conduct of worship and other religious duties of Muslims, and juridical regulations for the social life in Muslim societies (muʿāmalāt), including marital or criminal law, among others. For example, volume one of the 1791 English translation contains Book 1 on zakāt (i.e. the obligation of giving alms, which as a religious duty for Muslims comes directly after the obligation of five prayers a day), Book 2 on marriage, Book 3 on fosterage, Book 4 on divorce, Book 5 on the manumission of slaves, and Book 6 on vows. The Hidāya has no separate chapter or book dedicated to slave law exclusively, a fact that seems astonishing only at first glance. As slavery and other forms of strong asymmetrical dependency formed an integral part of Islamicate societies, special legal provisions

9 Other regions with a majority on Ḥanafi Sunni Muslims are the Levant, Egypt and Turkey, parts of the Balkans and Central Asia. Ḥanafi minorities lived and still live in most other regions of the Islamic umma.

10 The edition I used for this article is Shaykh Burhān al-Dīn Abu ʾl-Hasan al-Marghinānī, al-Hidāya fi shārḥ bidāya al-mubtadī, ed. ʿAbd al-Ḥayy Luknawī (Karachi: Maktaba al-Bushra, 2011). All quotations from the Arabic texts in this article are based on this edition. All translations, except otherwise stated, are mine. I will refer to the Arabic text as Hidāya, with the volume number given in Latin numerals.


concerning the legal position and treatment of dependent people form part of all sections of the commentary. It might thus be misleading to use a term like Islamic slave law, because this would imply the notion of a separate body of provisions relating to slaves or other dependents. Moreover, as the analysis of emic conceptual terms in this article will show, the Hidāya knows far more variations of strong asymmetrical dependency than slavery alone. It is worth pointing out in passing that slavery and forms of strong asymmetrical dependency directly derived from it are always discussed in this legal commentary, as they are in other Islamic legal writings, in close conjunction with legal statuses of, for example, a minor child, a married woman or a not wholly sane person.14

The structure and argumentation in all books and chapters correspond to the genre characteristics of Islamic legal commentaries: they are based on the citation of Qurʾānic verses and/or material from the sunna (the tradition) of the Prophet Muhammad. In a second step, the author refers to relevant Ḥanafi teachings, including discussions or controversies, occasionally also differences to other Islamic schools of law, without bringing forward a definite answer to the questions raised.15 The commentary is obviously intended for a specialist readership, as it neither explains nor defines the legal vocabulary used. So to approach the semantic fields of our interest, we need to scrutinize the argumentation related to the defined keywords. This approach via qualitative analysis includes the search for definitions by opposing terms and by indirect definitions, e.g. in the context of exemplifying passages.16

As an important Ḥanafi legal text, the Hidāya was held in high regard in the Mughal Empire as well; some volumes of the text, formerly in the library of Mughal emperor Farrūkh Siyār (r. 1713–1719), have been preserved in the British Library,17 and numerous copies are in Indian manuscript libraries.18 Given the discursive character of Islamic jurisprudence, we may imagine that al-Marghinānī’s twelfth-

14 Similarly Oßwald, Das islamische Sklavenrecht: 113 and especially esp. 123.
15 Such a form of open argumentation that allows different conclusions is also typical for the genre and stands witness to the degree of tolerance towards ambiguous positions in Islamicate culture. Cf. Thomas Bauer, Die Kultur der Ambiguität: Eine andere Geschichte des Islams (Frankfurt am Main: Verlag der Weltreligionen, 2011).
16 The detection of emic definitions and related keywords, moreover, is a prerequisite for future qualitative analysis.
17 For example, MS London, British Library, RSPA 85, a manuscript of the first volume of the Hidāya bearing seals from the courts of the Mughal emperors Muḥammad Muʿazzam Bahādur Shāh (r. 1708–1712) and Farrukh Siyar (r.1713–1719), and a further one of the British governor Henry Vansittart, dated 1164/1750, and RSPA 86, the second part of the text, which bears a possession mark of Sir William Jones (1746–1794), who presented the copy to the Royal Society in 1792.
century compendium still served as a standard reference work during late Mughal rule in India, together with commentaries and supra-commentaries by later generations. It was an established practice of the Mughals to translate works from Arabic as well as Sanskrit or Hindi into Persian, the lingua franca of the empire.\(^{19}\) The British could draw on the experience of specialists trained in Mughal service when they in their turn had the *Hidāya* translated into Persian. Finally, in 1791, Charles Hamilton published an English translation of the commentary in London. This text has an extensive preface, which, incidentally, would offer interesting material for the study of colonial governance and scholarship, and the positionality of scholars in this context. The preface also contains a short outline of sources, functions and institutions of the “Mussulman Law,”\(^{20}\) written to introduce British colonial officials to the basics of Indian society and the evolution of Islamic law. Prepared on behalf of the British governor in Bengal, the translation formed part of British efforts to structure the law of their colonial subjects according to British standards\(^{21}\) and thus stands witness to “a Western style for dominating, restructuring, and having authority over the Orient.”\(^{22}\)

Clearly observing the topic with an “imperial gaze,” it “defines the identity of the subject, objectifies it within the identifying system of power relations and confirms its subalternity and powerlessness,”\(^{23}\) and therefore cannot serve as a reliable basis for any research on the Arabic or Persian source texts, but must be recognized as a highly problematic adaption.\(^{24}\) This is precisely the reason why this text is suitable for exemplifying translation problems from a historical-semantic point of view.

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\(^{19}\) On translation as a cultural technique in the Mughal empire, see e.g. Carl W. Ernst, “Muslim Studies of Hinduism? A Reconsideration of Arabic and Persian Translations from Indian Languages,” *Iranian Studies* 36, no. 2 (2003): 173–95; for the impact of translations from Indic languages see Audrey Truschke, *Culture of Encounters: Sanskrit at the Mughal Court* (New York: Columbia University Press, 2016). The ANR/GRF funded project PersoIndica has prepared an extensive list of translated manuscripts, see http://www.perso-indica.net/ [accessed 17.05.2022].


\(^{24}\) Even more problematic are digests prepared from a number of Islamic sources, like e.g. digests of Islamic juridical texts. See for example Baillie, *A Digest of Moohummudan Law*. 

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No. 2352/ HLÖ No. 4079, *Hudayah Farsi* is a manuscript of the Persian translation of the *Hidāya* prepared on behalf of the British governor of Bengal, Warren Hastings (1732–1818), by the Indian Muslim scholars Ghulām Yāhā Khan Bihārī (d. after 1776), Māuli Tājuddīn Bangālī (d. unknown), Mīr Muḥammad Ḥusain Irānī (d. unknown) and Shārīʿatullāh Sanbhālī (d. unknown), later revised by Muḥammad Rashīd b. Ziyāuddīn Bardawānī (d. unknown).
3 Workaround Mode and Problems

But before we start the actual semantic analysis, I will briefly turn to the workaround mode for texts that cannot be searched digitally. A simple search for “slave” in the first volume of the English translation brought a total of 514 results on 676 pages. The hits are evenly distributed over all chapters. This confirms one of the central findings of Rainer Oßwald’s study on Mālikī law25 where he showed that Islamic legal provisions on slavery are much more than just a distinct legal corpus dedicated to slavery-specific issues such as enslavement, sale, etc. Oßwald’s impressive collection of evidence suggests that slavery was a factor firmly embedded in the social order of Mālikī societies in North Africa. This implies that practically all aspects of legal regulation of human life include distinct provisions for free, enslaved and partly dependent people. Legal provisions for enslaved persons thus do not form a separate body of slave law, but instead are integrated in all areas covered by Islamic law. Due to this situation, searching for a single translated keyword can only reveal a fraction of the relevant text passages,26 so further searches for possible keywords were necessary. I then manually traced the relevant passages and the emic Arabic terms, in the Arabic text. A multitude of Arabic emic terms are represented in the English translation as “slave(ry),” “manumitted/manumission” and “free(dom)/freed.” Figure 1 shows that the translation has often been transverse to emic semantic fields. The emic terms ‘abd,27 ama, mamlūk28 and riqq, which originate from different semantic fields and can therefore refer to different legal statuses, are synonymously translated as “slave,” “slavery” and “bondage.” In a similar way, words belonging to the different emic semantic fields of ḥ-r-r (related to “freedom”)29 and ‘ayn-t-q (related to “manumission”) were translated crosswise into the English words “manumitted” and “free(dom),” respectively (see Fig. 1).

In relation to the historical semantics of the English terms chosen by the translator, this transversal translation practice may have produced feasible renditions of the emic concepts in individual cases. In the overall picture, however, it has resulted in terminological obscurities that can only be clarified by semantic analysis of the original source text. That the crosswise translation into a single semantic

25 Oßwald, *Das islamische Sklavenrecht*.
26 The same would hold true for quantitative searches based on a limited set of keywords in Arabic or Persian texts.
28 See below.
29 Translations of Arabic terms in brackets serve exclusively to make the terms comprehensible to readers who do not read Arabic. They do not represent the result of a semantic analysis, but are merely approximations. I denote the semantic fields associated to Arabic verbal roots as related to an English translation of the emic concept the root is connected to.
field in English is problematic can also be seen from Kurt Franz’s analysis, who found, for example, that the different terms in the Qur’anic terminology of manumission were not interchangeable. In what follows, I will concentrate on the first step of this clarification, namely the examination of the Arabic source terms. This is where the possibilities of digitally supported search in the translated text end. Until such times as suitable applications for Arabic are available, it is therefore advisable to resort to a qualitative analysis for clarifying emic semantic fields. Due to the sheer volume of text, such analyses can only be carried out as individual case studies.

4 Emic Semantic Fields

The analysis in this article concentrates on the fifth book of the *Hidāya*, following the British count, the *Kitāb al-ʿitāq* (Book on Manumission), which discusses the manumission of dependent people. As this chapter deals with the conceptual terms for different states or grades of dependency separately, it is the ideal starting point for an investigation into the emic definitions of these concepts. By studying the different ways of manumission and the legal states a former dependent could reach, it is possible to delineate the different states and their position on a continuum of dependency.

Figure 2 illustrates the Arabic roots, each defining its own semantic field, and several selected keywords that derive from the respective root. The following

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The Arabic edition has no chapter numbering; the *Kitāb al-ʿitāq* is part of the third volume of the Karachi edition, cf. *Hidāya* III, 346–414.

For better readability, instead of referring to the semantic fields by their root structure, I will choose one of the derived terms, e.g. for the semantic fields *ḥ*-r-r (related to “freedom”) and *m*-l-k (related to “possession”), I will use the keywords *ḥurriyya* (“freedom”) and *milk/mamlūk* (“possession/a person possessed by another”) respectively. To distinguish the naming of a semantic field from the reference to a specific source term, I will refer to Arabic terms as used in the *Hidāya* with
discussion will focus on three semantic fields: ḥurriyya (related to “freedom”) and milk (related to “possession”) appear in the chapter on manumission as two important, but clearly distinct, pillars of the definitions of dependence and manumission respectively. A third semantic field is ‘ītāq (related to “manumission”), which features in the title of the fifth book of the Hidāya, the Kitāb al-‘ītāq, the Book on Manumission. Finally, I will also look at the emic semantic fields of three central Arabic terms denoting enslaved people, ‘abd (translates both as “servant” and “slave,” from the root ‘ayn-b-d, related to ‘ubudiyya “service”), ama (from the old Semitic root a-m-m, translates as “female slave”) and riqq (the most common term used to denote enslaved people in the Hidāya, from the root r-q-q, related to “being enslaved”). The text part under consideration here did not contain translations of terms belonging to the Arabic root kh-d-m, which is related to the semantic field of “service,” e.g. khādīm, which may denote both free and enslaved servants.

![Semantic fields and related conceptual terms. Graphic by A. Kollatz.](image)

Before commencing with my semantic analysis of terms used in the Arabic original of the Hidāya, we need to take a brief look at the two semantic fields of ‘ubudiyya/riqq (“slavery”) and ḥurriyya (“freedom”). There is no exclusive semantic field or conceptual term in Arabic that would equal “slavery.” Instead, several terms from at least two semantic fields are usually translated as “slavery” or “slave.” Kurt Franz has discussed the individual conceptual terms to be found in the Qurʾān and the ḥadīth, the tradition of prophet Muḥammad’s sayings and deeds, which form the main normative basis for Islamic legislation.33 Among the most common terms

an approximate English translation and the Arabic source term in brackets, e.g. manumission (iʿtiqād).

33 For the terminology of slavery and related concepts in Qurʾān and ḥadīth, see Franz, “Slavery in Islam”: 59–69, 73–81. For the ambiguity and emic discussions of the conceptual term ḥurriyya, see also Oßwald, Das islamische Sklavenrecht: 23.
translated as “slavery” are ‘ubūdiyya and riqq, while terms derived from the semantic field ḥurriyya exclusively refer to the state of freedom. The Kitāb al-iʿtāq does not contain a discussion of the binary opposition of “slavery” and “freedom,” which however underlies legal concepts of strong asymmetrical dependency in Islamic law. Islamic jurisprudence as well as research on the topic usually refer to two quotations that express the Islamic principle of understanding human beings as free, owing to their status as God’s creatures:

The general doctrine reads al-nās aḥrār fi l-aṣl, ‘people are freemen in principle (or: by origin),’ or al-aṣl huwa al-ḥurriyya, ‘the basic principle (or: the original state) is freedom.’ Slavery is thus an exceptional state, sharply distinguished from the original.34

However, given the discursive character of Islamic law, there is no constitutional definition of either ḥurriyya or the different terms for strong asymmetrical dependencies that would apply across all schools of law. Law books and commentaries usually derive their individual definitions from Qurʿanic quotations, or abstain from sharp definitions, relying on the recipients’ knowledge. The Hidāya discusses definitions of terminology only in such passages where a more precise description is necessary for clarifying the context: for example when it is a matter of presenting different views in different schools of law. The divergence between semantic fields, mentioned above, becomes obvious when al-Marghinānī compares the definition of manumission from a Shāfīʿī and a Ḥanafī perspective. In this case, manumission (iʿtiqād) is defined by contrasting it with characteristics of its opposing legal status, namely riqq (slavery). The first definition explains the Shāfīʿī opinion, according to which it is impossible to manumit a slave partially. Manumission, or the legal status of being manumitted (ʿitq) is contrasted with slavery (riqq), which is defined as a legal status as well, namely as the absence of legal capacity:

Manumission (iʿtāq) is the establishment of the status of being manumitted (ʿitq), which means the capacity of taking decisions (quwwa ḥukumīyya). It is established by the removal (izāla) of its opposite (didduḥā), which is slavery (riqq), and which means the absence of the capacity of taking decisions (daʿf hukumī). Both criteria cannot be separated from each other, like (the criterion of being married) in the case of divorce.35

As long as both manumission and slavery are defined as legal statuses, both are regarded as inseparable entities. The second definition, however, explaining the Ḥanafī point of view, establishes a differentiation between the personal right of possession (milḵ), to which the slave owner is entitled, and the legal status of slavery (riqq). According to the Ḥanafī definition, manumission does not affect the legal status of the slave in question, but only removes the owner’s right of possession,

34 Franz, “Slavery in Islam”: 81–82. The quotation is followed by an extensive discussion of the question whether this principle is to be acknowledged as generally valid.
35 Hidāya III, 363. All translations from the Arabic, unless otherwise stated, are mine.
because the owner can make decisions only for such items as they possess. In a case of shared ownership, a slave cannot become fully manumitted if only one owner gives up their right of possession, because the owner is not entitled to decide on possessions owned by others:

Manumission (iʿtāq) is the establishment of the status of being manumitted (iṭiq). It is established by the removal (izāla) of possession (milk). Possession is (a person’s) right, while slavery (riqq) is a legal status. This means that (the owner) can remove (a part) of his right, without touching upon any other.

This definition suggests that slave owners cannot affect the legal status of an enslaved person, but it does not explain which person or institution is entitled to do so. So the commentary does not present an absolute definition of either term, nor does the text mark one of the definitions as preferable. However, in the case of partially manumitted slaves, the Hidāya recommends that the remaining owners should either release them as well, or at least grant them the right to ransom themselves, for example in the context of a kitāba contract (see below).

It is also important to note that the Hidāya regards the conceptual terms it discusses as having different qualities. For example, al-Marghinānī defines a phrase a slave-owner can use to manumit an enslaved person as “clear and well understood both in the legal terminology and in common use” (ṣaritha fihi and musta’ammla fihi shar’an wa ‘urfan). If a slave owner uses such a phrase in front of a slave, they will be manumitted fully and immediately, even if the owner did not intend to set them free. Such phrases operate with the two semantic fields ḥurriyya (“freedom”) and iʿtāq (“manumission”), which may contain either a verbal construction or constructions with different active or passive participles of the verbs in question. The text lists examples for synonym formulations: “You are free,’ or ‘a manumitted person,’ or ‘manumitted,’ or ‘a freed person,’ or ‘I have set you free,’ or ‘I have manumitted you’” (Anta ḥurr, au mu’attaq, au ‘ātiq, au muḥarrar, au qad ḥarrartuka, au

36 In the general remarks on manumission (iʿtāq) at the beginning of the kitāb al-ʿitāq, al-Marghinānī notes that a slave can only be legally released if the person releasing them has full legal capacity and the slave is in their possession, cf. Hidāya III, 346–47. For the definition of enslaved persons as milk in Mālikī law, see Oßwald, Das islamische Sklavenrecht: 59–61.

37 Hidāya III, 363–64.

38 Hidāya III, 347.

39 As a Semitic language, Arabic is based on a system of so-called verbal roots, which are formed of a combination of three, sometimes four, basal consonants that each define a semantic field, from which further verbs and nouns can be derived by the use of fixed morphological patterns. For a discussion of the semantic field ḥurriyya, see below. For an introduction into traditional Arabic grammar and morphology, see Jonathan Owens, “Traditional Arabic Grammar,” in Morphology. An International Handbook on Inflection and Word-Formation, vol. 1, ed. Geert Booij, Chrisitian Lehmann and Joachim Mugdan (Berlin and New York: De Gruyter, 2000): 67–75.
As al-Marghinānī describes these phrases as equally effective in leading to full and immediate manumission, we may conclude that the verbal roots ḥurriyya and ʿitāq relate to the same concept of freedom, the first describing the legal status of being free and enjoying full legal capacity, the second the legal process of becoming free. Other terms are regarded to have a certain ambiguity, for example phrases that use verbs or nouns from the semantic field milk. This semantic field relates to ownership, chiefly from the slave-owners’ perspective in the context of manumission. According to al-Marghinānī, phrases such as “I no longer have any ownership rights over you” (lā milkun ʾiʿalaika) are considered ambiguous and therefore only effect a manumission if that is the owner’s intention. Ambiguity may also result from the use of different languages, as al-Marghinānī explains. Both the Arabic and Persian form of address “oh free one” (arab. yā ḥurr/yā ḥurra, pers. yā āzād) to an enslaved person by their owner are regarded as clear and thus sufficient to manumit a slave immediately, even if this was not the intention of the slave-owner. So the Arabic and Persian terms seem to be regarded as synonymous. However, al-Marghinānī mentions an exceptional case: if āzād happens to be the slave’s personal name, the address yā āzād from an Arabic-speaking owner would not effect an immediate manumission against the owner’s intentions. To clarify the intention of setting such a slave free, it would however suffice to use the Arabic formulation yā ḥurr, which cannot be mistaken for the slave’s personal name.

5 Semantics of Manumissions and the Continuum of Dependency

The Kitāb al-ʿitāq discusses a great variety of possible ways of manumitting a slave, all of which are commonly found in Islamic legal treatises. There are several ways of manumitting a slave or granting them the possibility to ransom themselves. Several of these legal procedures result in (temporal) statuses of partial enslavement, or partial manumission. As mentioned above, partial manumission can occur when one of several joint owners of an enslaved person decides to release their share of

40 Hidāya III, 347. Arabic is a consonant script, so it is frequently not clear from the written text whether the female or male – or both – grammatical forms are referred to. In the transliterations given here, I only display the male forms for ease of reading.
41 Hidāya III, 348.
42 Hidāya III, 348–49.
43 Hidāya III, 348. For the semantics of the Persian āzād in Ottoman Ḥanafī documents, see the article by Veruschka Wagner in this volume.
44 For a general overview, see Franz, “Slavery in Islam.” For a case study on Mālikī law see Oßwald, Das islamische Sklavenrecht.
the slave. Other procedures involve contractually guaranteed manumission at a specified time in the future; or they may grant the enslaved person certain rights, for example the right to accumulate possessions and dispose freely of them. These forms of partial enslavement still feature characteristics of strong asymmetrical dependency: while some cases include a contractual agreement between owner and slave, others leave the slave without any written guarantee and can easily be retracted by the owner or their heirs. The aim of the following discussion is to locate the different forms of partial manumission on a continuum of dependency in order to gain better insights into the architecture of concepts of strong asymmetrical dependency in Ḥanafi law, and the emic classification of legal statuses between the two extremes of 'ubudiyya, riqq (“slavery”) and ḥurriyya (“freedom”). They represent the extreme ends of the continuum of dependency sketched here. My criteria are as follows: 1) The binding character of the contract or agreement between owner and enslaved; 2) the differentiation of legal capacity: partially enslaved people with the prospect of manumission may gain limited legal capacity either on their own account, or as deputies of their owners. Depending on the form of partial manumission, some partially enslaved persons thus enjoy more, or different, capacities than others; 3) the semantic relations established between the different statuses in their definition by al-Marghīnānī. This is a tentative first approach to classifying the semantics of dependency on the basis of a relatively small text basis. It should not be understood in any shape or form as an attempt at an overall concept for Ḥanafi law on the subcontinent, nor of Islamic law at large.

A pressing question that arises from reading the Kitābal-ʿitq concerns the status of a formerly enslaved person. Where on the continuum between their former status and that of a freeborn Muslim do they fall? To put it plainly: is the status of a muʿattaq (“manumitted one”) equal to the status of ḥurr (“free”), i.e. are they equal in status to a freeborn Muslim? My earlier comparison of different phrases for manumitting a slave suggested that the semantic fields ḥurriyya and ʿitq were considered synonymous, but the way the two terms muʿattaq and ḥurr are used in the present text sample indicate different connotations. In the Kitābal-ʿitq, al-Marghīnānī uses only the term muʿattaq (or other derivates from the root) to describe the status of manumitted slaves, which suggests a differentiation between this semantic field and the field of ḥurriyya. So muʿattaq should be placed slightly below ḥurr on the continuum of dependency. This assumption is supported by the fact that after the dissolution of their legal bond to their former master, manumitted slaves enter into a new form of social dependence towards them. This social status of walāʾ (al-ʿitq), “the enduring...
attachment of the manumitted to the liberator,”47 keeps a manumitted slave in a lifelong social connection to their former master or the latter’s heirs, which includes certain obligations such as asking for permission to marry.48 Even full manumission thus keeps the formerly enslaved in a form of dependence and thus cannot be understood as equal to the status of a freeborn person (ḥurr). On the continuum of dependency, I therefore placed the status of full manumission in the same range as walāʾ/mawlā close to ḥurr, but slightly further down.

Mu’attaq (“manumitted”) works as an umbrella term for all fully manumitted former slaves. This legal status can be achieved directly and without preconditions,49 for example when the sole owner manumits by using an unambiguous formula, as discussed above. Manumission can also come about under certain preconditions, such as a vow by the owner (al-khilf bi-l-ʿitāq);50 or by self-ransom either with a contract (kitāba) or without (ʿitāq ‘alā juʿl).51 Lastly, manumission may be contractually deferred to a specified date, or enacted after the master’s death (tadbīr).52

In the case of both contractual and non-contractual self-ransom, the fulfilment of the conditions depends on the actions of the slaves: they have to pay a certain amount of money or provide a service to achieve manumission, in some cases within a set period of time. Once the contract has been concluded, the (at this point still enslaved) holders obtain certain rights that are denied to fully enslaved people. If they do not manage to meet the conditions, they fall back into full enslavement. However, if the conditions for a manumission set at a later date are independent of the actions of the slave, such as when the master fixes a specific date of release, the legal status of a slave with the prospect of conditional manumission changes from the moment these conditions have been fixed and they cannot fall back into full enslavement. In both cases, the slave thus enters one of a number of legal statuses between slavery and full manumission. Each of these legal statuses is named according

50 See the relevant chapter, Ḥidāya III, 389–91.
51 Ḥidāya III, 392–99; Ḥidāya IV, 338–400.
52 Ḥidāya III, 400–402.
to the manner of conditional manumission decided by the owner or agreed with the slave. Another form of conditional manumission concerns a female slave who bears her owner’s child. Once the owner recognizes the child (who is then born free), the woman enters the legal status of *umm walad* (“mother of the child”) 53 and is automatically manumitted upon his death.

In his analysis of Mālikī law, Rainer Oßwald proposed to unite all forms of partial manumission (or enslavement) under the umbrella term “Hybridsklave” (hybrid slave); he defines the shared feature of all these forms as a “Beimengung” (an admixture) of freedom to the enslaved status. 54 But the different forms of partial manumission result in very different sets of hybrid legal statuses and differently restricted forms of legal capacity. In the following analysis of four terms used to denote variations of hybrid enslavement, I propose to evaluate these differentiations as criteria for placing the different hybrid forms on the continuum of dependency (Figs. 3 and 4).

![Fig. 3: Outline of the continuum of dependency. Graphic by A. Kollatz.](image)

### 5.1 Contractual Conditional Manumission: *kitāba / mukātab*

While Islamic law does not provide for contract-based enslavement, e.g. of debtors, it does allow contractually agreed self-ransom. From a legal point of view this is a contract (*kitāba*) which regulates the manumission of an enslaved person upon the payment of a certain sum. For this reason the *Hidāya* does not discuss the *kitāba* in the Book on Manumission. Instead, there is a separate *Kitāb al-mukātab* (“Book on the holder of a *kitāba* contract”) with six chapters which discuss, for example, how a *kitāba* contract needs to be worded to be considered valid, the rights and obligations of

53 *Hidāya* III, 403–14.l.
54 Oßwald, *Das islamische Sklavenrecht:* 207–8.
a mukātab, and special cases like the kitāba for a slave in shared ownership, or the question which legal status the child born by a mukātaba to her owner will have. The Hidāya interprets holders of such a kitāba as slaves who for a number of reasons are no longer completely dependent on their owners. As soon as the contract is drawn up, a mukātab has the right to acquire property (which is a prerequisite for the self-ransom) and to dispose freely of their possessions. This is very different from a fully enslaved person, who is not allowed to own property (lā milk li-l-mamlūk, “the owned one has no possession”). Interestingly, the right of accumulating possessions includes the right to buy slaves, a legally complicated constellation on which the Hidāya has a separate chapter. However, the mukātab still remains in a state of full enslavement with respect to the work they owe their owner. The Book on Manumission does, however, briefly discuss kitāba in the context of the manumission of a slave owned by more than one owner. Once more, we clearly see the high degree of ambiguity that results from the variable definitions of manumission. A mukātab who agreed a kitāba with their single owner will eventually fall back into the status of full enslavement if they cannot pay the ransom within the time agreed and so fails to fulfill their part of the contract. But a mukātab who contracts a kitāba with just one of their several owners will never fall back into full enslavement. In this case, the process of self-ransom is interpreted as only affecting the property rights (milk) of the owner with whom the contract was agreed. The mukātab cannot lose the property rights that have come to them even upon incomplete payment, and so cannot revert into full enslavement.

5.2 Non-Contractual Manumission Upon Payment: ‘īṭaq ‘alā ju’l and ma’dhūn

In contrast to the mukātab, who may revert to a fully enslaved status if they fail to fulfill their contractual obligations, and who in any case remains a slave in terms of their tasks, the Hidāya states that a slave to whom the owner promises release for a certain price (ju’l) is subject to immediate manumission. The first paragraph of the “chapter on manumission for a certain price” (bāb al-‘īṭq ‘alā ju’l) compares this

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55 Hidāya VI, 338–400.
56 Hidāya III, 346.
57 Hidāya VI, 360–66.
59 Hidāya III, 365.
process to a contract of sale, by which the buyer receives the merchandise immediately but has to pay off their debts subsequently.

If someone releases his slave (abd) for money and the slave accepts, he is (immediately) free (ḥurr). For example, if someone says ‘For a thousand dirhams you are free’, the slave is released at the moment this is spoken (bi-qaulihi), because this is an exchange of property for a different kind of property (muʿāwaḍa al-māl bi-ghair al-māl) [. . .] As in a contract of sale, he is free (ḥurr) at the moment he agrees to the contract. The price he has to pay is a debt upon his person. This differs from kitāba, because the latter comes into force only upon full payment and concerns the termination (qiyām) of enslavement (riqq). 60

Again, the defining criterion is the nature of the item involved: while ‘itāq ʿalā juʾl refers solely to property rights (milk), kitāba is about a contract that changes the legal status of the slave. Ultimately, therefore, ‘itāq ʿalā juʾl comprises two logical steps: first, the enslaved buys the title to themselves. From the legal point of view, this is a sales contract by which the property right is transferred to the buyer with immediate effect, even before full payment of the contracted price has been made. As such, it does not affect the legal status of the enslaved. But since no human being can own themselves, they are automatically declared free (ḥurr) in a second step. This form of sales contract, by which an enslaved person is immediately and fully freed but may still have to pay off a debt, is probably the most direct and safest way to leave the slave status. This also explains why there is no specific term for slaves released in this way: the process turns them directly into muʿattaqṣ. However, even if they are no longer threatened by re-enslavement, a debtor continues to be in a strong asymmetrical relationship of dependency to their former owner. They also lose their entitlement to the care (however limited) which slave owners were required to provide to both slaves and mukātabs.

The owner can also make full payment of the price a condition, in which case the slave is manumitted only upon such payment. In the meantime, the Hidāya tells us, they count as maʾdhūn, because they are neither completely released nor in possession of a written guarantee for their right to be freed by a kitāba contract. 61 By demanding a compensation for manumission from the maʾdhūn, the owner implicitly grants them the right to accumulate property, similar to the case of the mukātab. However, according to the Hidāya there is no legal consensus on the question of whether the owner’s promise is to be regarded as legally binding. In the case of a contractual kitāba the owner must completely manumit his mukātab after full payment, but a maʾdhūn remains dependent on their owner’s willingness to keep to the verbal agreement – or on

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60 The text goes on to explain that this form of contract resembles marriage and divorce contracts, because in all three cases, property is used to “buy” something that is not property. Cf. Hidāya III, 393. 61 Hidāya III, 393.
a judge’s willingness to interpret it as a binding contract. As ma’dhūns can still be sold and remain under their owner’s authority until full payment, I placed this status of dependency next to full enslavement at the lowest point of the continuum of dependency.

5.3 Unilateral Manumission Practices: Vows, tadbīr/mudabbar and istilād/umm walad

Finally, it is also possible for the owner to make the manumission of a slave subject to conditions that cannot be influenced by the slave. Nur Sobers Khan proposed a classification of manumission practices according to the criterion of whether manumission was effected solely by the owner (unilateral manumission), or with the consent or cooperation of the enslaved person, which we might describe as bilateral manumission, though she does not use this term. None of the types of manumission discussed in this last section can be influenced by the enslaved person, and we might therefore describe them as unilateral, thereby distinguishing them from the practices discussed earlier. However, even these manumission types result in a gradual upward shift of the enslaved person’s legal status on the continuum of dependency, even though they do not necessarily lead to full manumission.

The Ḥidāya mentions vows by the owner and discusses several examples of legally binding or invalid wordings. Since such vows do not result in special legal statuses between full enslavement and freedom I will not discuss them here. A special case is the owner’s commitment to grant the slave manumission upon their death, the guarantee being called tadbīr. Slaves whose status is tied to such a promise or oath enter the status of mudabbar. The Ḥidāya defines the promise of tadbīr as a “clear” (ṣarīḥ) statement of manumission planned for the future (ithbāt al-‘itq ‘an dabr); therefore, a mudabbar may not be sold or otherwise transferred to another

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62 Ḥidāya III, 393–95.
63 Ḥidāya III, 395.
64 Nur Sobers-Khan, Slaves Without Shackles. Forced Labour and Manumission in the Galata Court Registers, 1560–1572 (Berlin: Klaus Schwarz Verlag, 2014): 70, where she defines the Ottoman practice of ‘itq as “unilateral.” It must be noted that the Ottoman practice of ‘itq as described by Sobers-Khan differs from the rather general designation of the word in the Ḥidāya, where it serves as an umbrella term for the various manumission practices discussed in it.
owner. In this aspect, the status of *mudabbar* resembles that of the *mukātab* in Ḥanafi doctrine.⁶⁷ *Tadbīr* is defined first as a gift, but later, the *Hidāya* prefers to define *tadbīr* as an inheritance (*waṣīya*). If one were to understand *tadbīr* as a gift, the *mudabbar* would receive full freedom upon the death of the owner. Yet if *tadbīr* is defined as an inheritance, the *Hidāya* again interprets enslaved persons including *mudabbars* as property. So the *mudabbar* paradoxically is both part of the estate and an heir at the same time. Since all property must be divided among the heirs, the *mudabbar* only receives the title to one third of himself, while the other two thirds go to the other heirs or to the treasury. He will have to ransom the remaining two thirds from the owner’s heirs, if they agree, and otherwise remains partly dependent.⁶⁸ So a *mudabbar* does not directly advance to the status of a manumitted person (*muʿattaq*), but rather into that of a partially released person; their status seems to lie somewhere between the contractually secured *mukātab* and the *maʿdhūn*. Since the promise of manumission is linked to the death of the owner, a *mudabbar* may not be sold⁶⁹—this would violate the conditions. They do, however, remain completely dependent on their owner in all other ways, and do not obtain any further rights, such as the right to acquire property, because the right of ownership remains untouched.⁷⁰

Finally, the *Hidāya* also discusses a form of conditional manumission that results in a temporal intermediary status of dependency achievable for female slaves. If a female slave bears the child of her owner, and the owner recognizes this child as his own, the female slave (*ama*) will gain the status of *umm walad* (“mother of the child”) upon the birth of the child.⁷¹ There has been some debate on whether a woman can also achieve this status in the case of a miscarriage, but that is not of interest for the purpose of this article. The status of *umm walad* safeguards the living conditions of the woman to a degree that might even appear favorable compared to the status of a married woman. An *umm walad* cannot be sold (like the *mukātab* and the *mudabbar*), nor can she be coerced into concubinage or given to other men for that purpose.⁷² Her owner has to offer her a decent standard of living, as he would to a wife from a lower class family; but he cannot end the relationship by divorce as he can a marriage. As such, he is obliged to look after the *umm walad* until his death, unless he marries her off to another man. Apart from sexual services, an *umm walad* however is required to render the same sorts of services as an enslaved person and so retains the status on an enslaved person in this respect.
Fig. 4: Hybrid statuses on the continuum of dependency (tentative order). Graphic by A. Kollatz.
She is only manumitted fully upon the death of her owner. Unlike the mudabbar, she does not form part of the deceased owner’s estate.\textsuperscript{73}

\section*{6 Conclusion}

The \textit{Hidāya} describes a number of ways of achieving partial or full manumission. Similar manumission practices are also described in other Islamic madhhab\textsuperscript{s}, and have been analyzed e.g. by Rainer Oßwald for the Mālikī school of law; and by Nur Sobers-Khan for Ḥanafī manumission documents from the Ottoman Empire.\textsuperscript{74} While Rainer Oßwald suggested that the manumission practices in question should be described as \textit{hybrid enslavement} (“Hybridsklaven”), Nur Sobers Khan proposed to distinguish unilateral – and thus, implicitly, also bilateral – forms of manumission. As a result of my historical-semantic analysis in this article, I would suggest the duration of the process as a third criterion of definition. While some rare forms of manumission discussed in the \textit{Hidāya} lead to immediate and full manumission in the legal sense (e.g. the manumission without condition, the ‘\textit{ītāq ‘alā ‘ju‘}’), most other practices might be described as \textit{gradual}. These forms cause a slow upwards movement on the continuum of dependency, which may lead only to partial manumission – and, as such, to temporal or on-going hybrid legal statuses that constitute a stronger or lesser form of asymmetrical dependency. The different manumission practices discussed in this article are regarded as distinct legal procedures (contract, oral promise, contract of sale, etc.) by the \textit{Hidāya} and therefore result in very different \textit{combinations}, e.g. of legal capacity in certain areas with absolute dependency in others. Some forms of manumission that proceed via intermediate legal statuses protect the formerly fully enslaved person from a relapse into full enslavement, while others may preserve the intermediate status or even lead to a relapse into full enslavement, as in the case of \textit{mukātab}. In some cases, even complete manumission intended by the owner, as in the case of \textit{tadbīr}, may result in a partially enslaved status which can only be resolved through new agreements, e.g. \textit{kitāba}. From the normative perspective of the \textit{Hidāya}, partial manumissions are limited either temporally or by certain conditions, or by a combination of the two. The application of these normative standards results in a great variability in practice. We should therefore assume the existence of a large number of gradations of different legal and social dependencies between the absolute opposites of \textit{full enslavement} and \textit{freedom} or \textit{manumission}, some of which in their practical implementation may have diverged considerably from the norms.

If we turn away from a clear dichotomy of \textit{enslaved} and \textit{free} (which, however, is also present in the historical semantics of Islamic legal texts) it becomes evident

\textsuperscript{73} \textit{Hidāya} III, 406–7.

\textsuperscript{74} Sobers-Khan, \textit{Slaves Without Shackles}.
that the normative legal texts not only discuss a number of different forms of strong asymmetrical dependency, but also distinguish them in semantic terms. The high degree of ambiguity and discursivity of the *Hidāya* bears witness to how difficult to grasp these legal statuses must have been for legal theorists. Clearly, this is not an a priori defined normative system, but rather an attempt at legal containment of practices that evolved, and continued to evolve, over time. The fact that the *Hidāya* puts a strong emphasis on discussing legally valid, clear or ambiguous wordings also shows that the negotiation and definition of legal status in the context of strong asymmetrical dependency must always have been a complex undertaking, and difficult to implement for both legal theorists and practitioners. Marc Bloch’s dictum about historians and their struggle with emic semantics probably applies just as much to the historical Ḥanafi legal theorists in Transoxania and India as it does to us who, from the perspective of slavery and dependency studies, are today trying to clarify historical semantics: “To the great despair of historians, men fail to change their vocabulary every time they change their customs.”

Obviously, this effect is amplified when the texts and their underlying semantic connections are translated into another language, as a comparison of the semantic attributions between the Arabic original and the English translation by Charles Hamilton has shown. In the discussion of the various hybrid forms, I purposely refrained from quoting the Arabic original text together with Hamilton’s translation. The latter is in fact not so much a translation as a paraphrase of the original which intervenes in the text, in sometimes heavily interpretative ways. His translation across emic semantic fields deserves particular mention. This technique enables the translator to bring the text statements closer to the etic historical semantics of strong asymmetrical dependency in his target language, i.e. English. This leads to the impression that many of the legal statuses that arise from the various forms of manumission are not directly related to slavery. The actual variety of strong asymmetrical dependency relationships described in the legal commentary is obscured by this technique, though they were not only a constitutive element of Muslim society in India, but also in all other parts of the Islamicate world. The two extremes of *slavery* and *freedom*, as they are established by the translation, seem to be a clear dichotomy, behind which the gradations of forms of strong asymmetrical dependency determined by legal theory fade away. For the historical recipients of the colonial translation, this impression must have been reinforced when, after the formal abolition of slavery, the *Book on Manumission* was omitted from the second edition of the translation. However, we may assume that the hybrid and ambiguous forms of strong asymmetrical dependency, and especially the social dependency of *muʿattaqs* on their former owners, remained formative principles of social interaction and hierarchy even after the formal abolition of slavery.

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It would be beyond the scope of this essay to further investigate the relationship between the original as hypotext and the translation as hypertext. But a comparison of the key terms identified in the translation and the corresponding places in the original text alone has shown that the semantic concepts of the two texts do not match perfectly. The translation process began with the Arabic text analyzed here, and led through the Persian translation, which is only available in manuscript, to the British-colonial paraphrase. In order to understand at which point in the process these shifts entered the text, it would be necessary to examine the different text levels in detail and to compare the emic semantics in each case. My analysis of the emic terminology in the Arabic text could be a first step on this path. The results of such a comparison would then also have to be matched with practical legal documents, e.g. from the Mughal period or the early colonial period. This analysis would be a necessary step to understand the legal and social implementation of normative semantics in each time and society. If we want to further investigate emic historical semantics of strong asymmetrical dependency in Arabic or Persian texts, the only path open to us at present is that of dense qualitative studies, since translations in OCR’able languages cannot be carried out at all without a reconfiguration of the historical semantics inherent in the text.

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