This article studies what conversion to Islam meant in legal terms for women and how it affected their marriage, conjugal rights, children, and property rights in two circumstances: one, when conversion was of their own volition, and the other, when it was not their own decision, but that of their husbands or fathers. A cluster of five conversion documents—three for Christian, Jewish, and pagan males, and two for Christian and pagan females—from a notarial manual composed in tenth century Cordoba is used here to place the results of the investigation within the analytical framework of the study of Muslim women's legal status, and beyond, into the emotional and psychosocial environment of women's conversion and its significance as a life event.

Voluntary conversion in a religious age is an intriguing question for all historians, not only historians of religion. In fact conversion is a valuable topic for any well-rounded historical investigation as it incorporates legal, social, and economic aspects in addition to religion. Over the years, however, conversion was a subject that was essentially treated as a male issue in the literature. Not only was woman's voice on the subject absent, but the sources devised a historiographical debate from which the feminine perspective was omitted all together. The answers from converts about why they converted came from men, and exclusively from those who were literate and educated. The tone of the male converts' writings was apologetic, argumentative, and couched in theological and philosophical polemics, which sent the scholarly investigation in the direction of intellectual rather than social and legal history and, in turn, further suppressed and discouraged any investigation of the female role in conversion. The how, why, and when women converted to Islam, and what changes conversion brought to their lives, have so far remained unanswered. The predicament of women's conversion has also helped to obscure other questions related to conversion.

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question of demography, for instance, closely hinges on knowledge of how many, when, and how women converted. The increase in the size of the Muslim community during the first three centuries of its existence came about mainly through conversion rather than and less through internal growth. But could we declare categorically that women followed their husbands in conversion? Could we declare that for every converted man, there was a converted woman, or a woman and children who joined the Muslim community? Any attempt to discuss the size of the convert community in definitive terms, as some historians have done, without taking women into account, is hazardous at best, if not entirely misleading. The politics of al-Hadjdjâdj, in the newly conquered eighth century Iraq was a hotly debated issue related to conversion in early Islamic history. The question of whether early conversion was encouraged or discouraged by giving and denying property rights to new converts, including women, would benefit greatly from a study of women’s property rights. In the later centuries, from about the tenth century on, established and stable Jewish and Christian communities lived in the midst of a Muslim majority and conversion became a unique act of defiance both of community and of religion. Did women choose conversion as an act of defiance? Did women’s conversion or lack of it indicate a better or worse adjustment and integration on their part? The social environment of women’s existence, and the family and communal associations that served as mechanisms for integrating them into religious communities, need to be investigated. The understanding of conversion in such terms is crucial to the detection of the dynamics behind the process, and to the emotional upheaval that women suffered. Last, but not least, of these neglected issues is the legal framework of conversion. Conversion entailed a switch from one legal system to another and brought changes to family and conjugal legal arrangements and to men’s and women’s family and property rights. In terms of feminine anthropological theory, the laws regulating property and conjugal rights in Islamic society are the means by which women were given the opportunity to take the lead or even to be equal, and also to measure whether women were subordinated by men. The laws relating to conversion are just another aspect of the broader question of the status of women.

The lack of interest shown by historians in women’s conversion does not mean that we are dealing here with an undocumented or irrelevant historical topic. There are enough references to Jewish women and conversion in the Geniza documents alone to indicate an anomaly in the conversion rate of women in comparison to men. Goitein’s evidence suggests that Jewish women resisted conversion to Islam, choosing to remain in the Jewish community, but also that conversion affected family and property rights and that women were negatively affected by the conversion of their male relatives. The wife of a renegade is mentioned in a list of Jewish community alms receivers, a subtle indication that the woman remained Jewish but at the same time was reduced to living on charity from the Jewish community as a result. A poor widow, who died in Cairo, had her renegade sons come back to claim her inheritance. Another Egyptian Jew who converted to Islam refused to grant a divorce to his wife who remained Jewish. After ten years of his absence, she was forced to ask for a divorce from him so she could remarry. Her request was rejected first by the Muslim court and then by a Jewish court. Another Jew, a trader with India, converted to Islam in Aden, following the breakup of his marriage. His wife, who did not convert, was given shelter by the Jewish merchants’ representative until her father could come and collect her. The name of a Muslim dubbed the “son of a Jewess” reveals an early conversion and...
a mother who remained Jewish. We can only guess at the fate of the wives of Jewish converts—nothing is said about them. This is the case with the poet Isaac Ibn Ezra, the well-known Jewish convert from al-Andalus, who appears in the Geniza letters and who was married to the daughter of the poet Judah Halevi. He converted to Islam somewhere about 1140, but there is no information about whether she converted to Islam with her husband and whether she followed her father’s and husband’s peregrinations over the Middle East and Europe. Abū ‘l-Barakāt, Ibn Ezra’s teacher, also converted to Islam at about the same time, but we know that his daughters remained Jewish. In Egypt, several Karaite families converted to Islam, and some of their men became physicians to the kings. In 1030, A Karaite man, whose marriage contract is found in the Geniza, gave his Jewish wife 100 dinars as a wedding gift and promised 200 dinars more in deferred dowry. In 1047, after the assassination of his father, he converted to Islam and became vizier of the Fatimid empire, but the fate of his wife, who began her married life with so much opulence, is unknown. Maimonides, himself perhaps a survivor of a forced conversion in the twelfth century, mentioned a man who gave his wife a provisional bill of divorce when he was leaving on a trip, in case he embraced Islam while he was gone. In fourteenth century Tlemcen, a Jewish physician attending the Marīnīd sultan Abū ‘l-Hasan was invited to embrace Islam, but refused. We do not know whether he consulted his wife or what would have happened to her if he had converted. Another case occurred in 1481 in the still Muslim city of Malaga when a woman married a Jewish man, who had converted from Christianity to Judaism. When he died, the widow tried in vain to obtain a release from the prescribed levirate in order to be able to marry again, claiming that her husband’s brothers were Christians and living in Castile. But when she appealed to the Jewish court, Sa’adya ibn Dannān, a noted rabbi and historian, insisted that the levirate must stand, despite the impossible situation.

By the same token, there is evidence that in comparison to men, Christian women in Islamic lands also resisted conversion and suffered legal and financial distress as a result. In his chronicle, Michael, the twelfth century Antioch Syriac patriarch, had to address this question of Christian conversion to Islam in contemporary Antioch, when the Christian marriage of a young woman, whose father converted to Islam, was challenged by the Muslim community. On this occasion, Michael also commented about conversion in the past and quoted the ninth century chronicle of Denys of Tell Mahré, which confirms Michael’s observation that Christian women resisted conversion to Islam to a far greater degree than men. In the fourteenth century, Egyptian Copt women, also, did not follow their husbands in converting to Islam. During the Mamlūk period, thirteenth-sixteenth centuries, strong pressure was frequently applied to highly placed Copts to convert, but their mothers, wives, and daughters remained Christian.

The incidents described above have a collective historical message. Directly or indirectly, they all reveal an unexplained historical situation where women did not convert as readily as men. This enigma, as well as related questions, will be better understood through the study of Andalusian notarial conversion documents for women, which were recently published. These documents will enable us to proceed with the study of the legal framework of women’s conversion to Islam and will provide an opportunity to analyze and study the issues involved. In this article, I propose to study what conversion to Islam meant in legal terms for women and how it affected their marriage, conjugal rights, children, and property rights in two circumstances:
one, when conversion was of their own volition, and the other, when it was not their own decision, but that of their husbands or fathers. The legal parameters were also the means by which women's status, equality, or inequality were conveyed or denied. My goal is to place the results of my investigation within the analytical framework of the study of Muslim women's status. Once I have established the legal and historical parameters, I would like to move beyond them, into the emotional and psychosocial environment of women's conversion, and to understand its significance as a life event. The question of the legal framework of women's conversion to Islam and her legal status also leads to the broader question of how women's conversion fitted in with the development of the Maliki school of family law in al-Andalus, and how it was incorporated into the general framework of the status of women and the family in Islamic law and society.

The conversion certificates for women appear in the collection of Maliki school notarial documents from tenth century Cordoba, compiled by Ibn al-'Atta, d. 399/1009.16 There is a cluster of five conversion documents: three for Christian, Jewish, and pagan males, and two for Christian and pagan females.17 Some or all of these documents were reproduced in a shortened and slightly altered form by contemporary and later Andalusi notaries, such as Ibn Mughith, d. 459/1067;18 al-Buntti, d. 462/1070; and al-Jaziiri, d. 585/1189-90, in their own formulary manuals. Al-Buntti included all five documents, but Ibn Mughith quoted only two, for Christian or Jewish males, and al-Jaziiri included only one model, for a Christian male.19 The five certificates in Ibn al-‘Aṭṭār's formulary are by far the most complete and detailed of these in the other notarial manuals and will serve as the basis for the legal discussion. There, as in the other manuals, the certificates appear together with more than 500 notarial models that cover every possible act and transaction, whether in family matters, commercial deals, or land cultivation.20 Ibn al-‘Aṭṭār does not indicate in any way that conversion, of either men or women, and its notarial authentication is anything but routine. On the contrary, he assures us that the form used for conversion of a Christian woman may be used without any changes for that of a Jewish woman's.21

The conversion documents consist of two parts: the first is the official record of the act of conversion, which was given over to the individual for his or her records and personal use, and the second, a discussion of legal issues for the notary's use (see Appendix A). The first part of the certificate is a standard formula, common to all conversion certificates, and combines a statement of creed, 'aqida, and the acts to be performed.22 The first sentence states that the person converting is of sound mind. The second is that he or she embraces Islam from conviction, without coercion, and rejects the former religion in the same way. The third is that he or she has recited the shahada, and that 'Isa in the case of a Christian and Musa and 'Uzayr in the case of a Jew are God's messengers. The fourth states that he or she has fulfilled the act of ablution, purification, and prayer, and undertakes to fulfill the different duties imposed on a Muslim. The fifth is the recognition that Islam abrogates, nasikh, all other religions. In a second paragraph, the notary states that the conversion took place before the official so and so, who might be the chief judge, any other judge, chief of police, chief of the town's administration, chief of the market's administration, or chief of the public complaints, radd. The official in question testifies where and when the conversion took place. The convert testifies that he or she understands and accepts everything stated in the document and dates it. Further instructions given to the notary indicate
the phrase used to describe the role of the witnesses, the year that the document was prepared, and that two copies were made, adding that although even one authenticated document is sufficient, several copies are preferable.

In the second part of all five documents, the notary has added legal appendices of different lengths consisting of tafsir, commentary, and fiqh, law, addressing the legal matters arising from the particular conversion. This was done, as it was for every one of the hundreds of certificates, with the intention of explaining the different legal implications and consequences that might result from conversion. By including these documents in their notaries’ manual, Andalusian Muslim jurists confirmed two important historical facts. The first was that women’s conversion to Islam took place as individual acts and were recorded separately in independent legal documents. The second was that regardless of whether it was the wife or the husband who converted, a woman could experience wide-ranging changes to her legal status and to her conjugal and property rights in consequence.

The conversion documents are, nonetheless, models and not actual documents, and the question of exactly what they represent will always remain a valid one, unless we actually chance upon “real” conversion certificates. Recent studies on this issue more or less liberate us from the need to go into details here. Professor Hallaq has extensively examined the reasons that the model notarial documents are exactly what they are said to be, instruments of actual legal transactions, not theoretical suggestions, and how the shurut model documents incorporated both the legal theory and the practice. The “rehabilitation” of the model documents from theory into evidence are particularly significant in this case. The Andalusi notarial models for conversion, of either men or women, bear out the contemporary jurists’ observation that conversion was an ordinary matter. As far as the jurists were concerned, conversion emerges essentially as a legal transaction, stripped of the intellectual debate and soul searching for which male converts were known. The men entrusted with its supervision were of medium rank in the legal hierarchy, qadi, sahib al-ahkam, or hakim. The notary’s task consisted of defining the new status of the marriage at the time of conversion, informing the new convert and his or her spouse about their new status and producing a watertight legal document to that effect. He was instructed to verify the spelling of the name of the official who accepted the conversion, aslama ala yadi, carefully because this person incurred further responsibilities toward the converted. In sum, conversion was a legal issue and, like any routine business transaction, was settled, so far as the Andalusian administration was concerned, by a visit to a law clerk. The fact that women could and did take this step, and that the same mechanism was open and used by them, is a historical testimony to a certain legal independence.

Two additional historical questions need to be answered before we can look at the conversion model documents. One is why model conversion certificates appear at this precise moment in time and in this form. The other pertains to the origin and the content of the legal body of the doctrine behind the model documents for conversion, where it was found and how it was formed. Some observations on the law of conversion and conversion in al-Andalus will answer these questions. They are particularly important for understanding how the issue of conversion and, specifically, women’s conversion, was integrated into the Islamic family law.

For obvious historical reasons, conversion to Islam was one of the earliest legal issues that occupied the jurists. It has been a common and frequent event since the
establishment of the first Islamic community in Mecca and Medina. The question of the convert’s legal status was quite urgent during the formative years of Islamic law. One could logically and legitimately have anticipated an independent heading devoted to it in the early legal works, most likely in the chapters dealing with creed. Instead, we find that the references to conversion are scattered in different sections, but above all in the section on marriage. We can trace, briefly and chronologically, the references to women’s conversion in the principal Malikī works.

The first reference to women’s conversion is found in the eighth century in the marriage section of the Muwatta’. It consists of a set of five hadiths addressing the status of a marriage of a pagan husband, mushrik, in the aftermath of his wife’s conversion and vice versa.24 These hadiths speak about pagan Arabs, all of whom were contemporaries and relatives of the Prophet, whose wives had converted before them, and who had been personally invited by the Prophet to join the Muslim community. The initial legal rulings on the issue were articulated on the basis of these hadiths, the most important one relating the difference between a married man and a married woman in conversion. When a pagan woman converts, the marriage is not invalidated immediately, but the pagan husband, if he wants to retain his marriage, is given a delay of two to four months, while his wife is in the ‘idda, the waiting period, and he “is invited” to convert.25 On the other hand, if the husband converts before his pagan wife, and she is offered the opportunity to convert and refuses, they must separate immediately.26 In the ninth century, when Saḥnūn, d. 854, edited and expanded the Malikī laws on marriage and divorce in the Mudawwana, the subject of conversion and marriage in North Africa was already treated more inclusively.27 Under the heading “Marriage with non-Muslims,” previous rulings from the Muwatta’ and the episodes and hadiths dealing with pagans are reported literally. To these were added a set of rules addressing the conversion of individuals from the people of the Book, referred to as dhimmis.28 This development can be explained by a change that occurred in the identity of converts.

More than a century later, Ibn abī Zayd’s Risāla was considerably more laconic, it was after all a mukhtasar, synopsis. Ibn abī Zayd al-Qayrawānī, d. 996 in Ifriqiyya, though a contemporary of the author of kitāb al-wathā’iq, speaks only briefly about the issue of marriage and conversion.29 If two pagans converted together, their marriage remained valid, but if they converted separately, their marriage was dissolved without a divorce. If a man converted during his wife’s waiting period, the marriage remained valid, if he was married to a kitābiyya. Nonetheless, there are some nuances—for example, a pagan wife who converted soon after her husband’s conversion could remain married, but if she delayed her conversion, she could not. The brevity of this section can be attributed to the fact that Ibn abī Zayd intended his work to be a useful and concise manual for quick perusal, but also to the slackening in the dynamics of conversion, by the tenth century, Ifriqiyya was probably largely Islamized.30

In al-Andalus, on the other hand, the inclusion of the documents in the notarial manual coincided with what has been identified as the peak of voluntary conversion to Islam in the Iberian Peninsula.31 In tenth century al-Andalus, the homogenous society, an image that some scholars have adopted enthusiastically, was probably more of a myth than a reality.32 However, cultural and economic prosperity were sufficient to convince the outsiders, people of the book as well as pagans, that voluntary conversion to Islam was a worthwhile option to consider.33 The period was one that culminated in a robust economy, a new social order, a unique and sophisticated
Andalusian culture, and a legal system that functioned smoothly. The reasons for conversion could stem from a desire to achieve a political appointment, to escape from tax liabilities or family complications, or from communal alienation. We are better informed about conversion from Christianity at the time. Acculturation among the Mozarabs was strong, but Hebrew poetry and Jewish philosophy were marked by Arab influences and show the inroads made among Jewish intellectuals. The sophisticated economy hastened and favored the use of documents and notarial records of transactions, so much so that the possession of a conversion certificate was necessary for administrative reasons. The fact that a conversion had to take place before a magistrate indicates that there had to be good reasons for it.

The subsequent disappearance of conversion documents from the twelfth century notarial manuals might indicate a decline in voluntary conversion but not a decline in religious zeal in the Muslim West, or in forced conversions. Muslims and non-Muslims alike living in al-Andalus and North Africa were more sensitive to the question of conversion than were others. To judge by the polemical writings against Islam that appear in the twelfth century, the Mozarab community did not fade away as a religious community. Indeed, as a recent article has argued, Muslim converts to Christianity became visible in tandem with the progress of the reconquista in the eleventh century. The Almoravid and Almohad invasions of Spain and North Africa resulted in forced conversions in both places. The tension around the issue of conversion continued unabated in the thirteenth and fourteenth centuries. The discovery of a “newly” reconstructed history of the conversion of the Berbers revealed that even as late as the fourteenth century, such long-standing converts as these became preoccupied by their conversion.

In the fourteenth century law books, the treatment of conversion and marriage reflects both the existing body of legal principles and the changing historical environment, as well as its incorporation into an elaborate section on family law. The historical scene had changed considerably in the period separating the early Mālikī legal thinking on conversion, when Islam was expanding, and the fourteenth century, when it was in territorial regression. During this period, conversion to Islam did not come to a halt but assumed different characteristics. Converts came mostly from within the established communities of Jews and Christians. The act no longer represented an entrance into an unknown world, as it did for the early converts, but was the conversion of individuals whose families had lived for generations among Muslims. It would be an isolated act, rather than the mass conversion of the earlier centuries. It could no longer be anonymous and would, necessarily, involve severing contacts with one’s previous community.

In the fourteenth century, an improved and superior organization of the material relating to conversion and marriage is seen in the writings of the Andalusian Ibn Juzayy and the Egyptian Khāfīl Ibn Ishāq, representatives of the two branches of Western and Egyptian Mālikīsm, respectively. Ibn Juzayy is the only one of the jurists to devote a full section to the issue of marriage and conversion in his comprehensive, detailed, comparative, and well-rounded doctrine of marriage. Khāfīl Ibn Ishāq provides the rulings in two sections of the chapter dealing with marriage: marriage of slaves and non-believers, and marriages of the converted and the sick.

I will address these issues by studying the conversion certificates in the Mālikī school, the relevant fiqh, legal treatises, written before and after the documents and fatwās related to it. The following study of the legal issues involved in women’s
conversion is based on all five documents, not just on those written for women, because Ibn al-°Attār discusses those in the conversion certificates for males as well. The relevant legal issues appear in the sections following the certificate model for men as well. 43

MARRIAGE: PRESERVATION AND ANNULMENT FOLLOWING CONVERSION

In accordance with the foregoing, the most important concern following conversion to Islam, for women and jurists alike, was not how well they were versed in their new religion, but the status of their marriage. Certainly, questions regarding women’s knowledge of their religion after their conversion were asked and answered by jurists, and these will be discussed later when we review the fatwās relating to them, but nonetheless, the issue was of secondary importance. The most important step was whether a marriage remained valid or should be annulled following conversion.

In the notarial document, the notary is instructed to establish the status of the marriage, after conversion has taken place, and consider the factors that could validate or invalidate it. These factors were previous religious adherence (pagan, majūs, literally Zoroastrian, or kitābī); simultaneous or delayed conversion of the spouse; civil status (free or unfree); a forbidden degree of relationship between the spouses (blood relationship, mother-milk and marriage affinities); and consummation of the marriage. If the existing marriage was not affected by any of these, the marriage remained valid and the jurist did not insist on a post factum fulfillment of the usual legal requirements for an Islamic marriage, for example, walī and sadaq. Using the five certificates under review, I constructed a chart, presented as Appendix B, showing the outcome of conversion for an existing marriage both for cases where the husband has initiated the conversion and for cases where the wife was the initiator.

The first conclusion to be drawn from the chart is that the mere conversion of one spouse would not result in the immediate dissolution of the marriage. Neither spouse defined the marriage on his or her own, and the factors that might have invalidated it may have originated with either of them. A second conclusion is that although the conversion of both spouses by itself might have produced two good Muslims, it did not create a valid Islamic marriage. A third conclusion is that the conversion to Islam of either spouse had the potential to provoke immediate changes in his or her status as married. Ibn al-°Attār described the Andalusi tenth century practice, but a comparison of early and later fiqh will provide a wider, and fuller, view of the issues.

Previous Religious Adherence and Simultaneous or Delayed Conversion of a Spouse

The first factor in the validation or annulment of a marriage is the presence of Islam. When a kitābīyya, or pagan married woman, converted to Islam without her kitābī, or pagan husband, she set in motion a process that could end either in validation or annulment, depending on whether the husband chose to convert. The validation process unfolded in stages, each one decided according to the marriage law. In the first phase, after the wife converted, a situation was created where a Muslim woman was married to a non-Muslim man, and a separation or divorce should immediately ensue.
In this case, it did not matter whether the husband was a *kitābi* or a pagan, because the law was that a Muslim woman could not be married to a non-Muslim man. However, if her husband converted at the same time, annulment would not occur. In that case, regardless of whether he is a *kitābi* or pagan, his immediate conversion would produce two Muslims married to one another. This marriage might be invalidated later on other grounds, but for the time being, it was valid: “In case he converted with her she is his wife, their marriage is not demolished,” says Ibn al-Attār.

A second option to save the marriage could be exercised during the wife’s waiting period. In conformity with the Islamic law of divorce, the new Muslim wife, whose husband did not convert with her, had to wait for three months before being free to remarry, because the marriage had been consummated and the possibility of a pregnancy must be anticipated: “When a married woman converts (without her husband), her marriage is invalidated and she is told to enter the waiting period. . . . If he converts during her ‘idda and before she has three menses from the time of her conversion, if she is from those who menstruate, and three months if she is someone who does not menstruate, he will remain with her in a state of marriage.” That meant that if the marriage had been consummated, the waiting period resulted from an annulment, which was necessary because a Muslim woman was now married to a non-Muslim husband, and if the husband converted within this period, the annulment could be reversed. If he converted after the waiting period, however, “if her ‘idda passed before his conversion, he has no recourse to her and if he converted after that, he is available for marriage to others.” This is clear because the end of the waiting period signaled in law that the divorce was definitive and that both the woman and the man were available to marry other people.

The fate of a marriage of two pagans was examined according to the same principles. Upon the conversion of either the husband or the wife to Islam, it would immediately be dissolved, because no Muslim, man or woman, can legally be married to a pagan. In the *fiqh* portion of the conversion certificate provided for a pagan man and a pagan woman, the jurist explained that if either one embraced Islam and the other refused to accept it, this action severed the bond of marriage between them. But the equality between the spouses ended here. A pagan husband could still save his marriage by a delayed conversion while his converted wife was in the waiting period. A delayed conversion of the pagan wife, however, did not count. She would no longer be considered his wife, and a separation between them automatically ensued. By the same token, if a husband did not cohabit with his wife, even his delayed conversion would not preserve the marriage that was annulled with her conversion to Islam, and no period of waiting was required from her. If he did not convert but did cohabit with her, then he had to divorce her and entrust her with her rights to her person. If he did not convert, and her waiting period lapsed, then a separation took place.

Looking for the insertion of the conversion issue in the frame of the marriage doctrine and family law, as it was written by the fourteenth century’s jurists, we need to turn to Ibn Juzayy for the overall view:

The marriage pillars, *arkan*, are five: the husband, the wife, the legal guardian, the dowry, and the wording formula, *ṣigha*. In the first pillar, that which regards the couple, there are seven characteristics, *awsaf*, which must be present, the first being Islam. We can envisage 4 prospects here: (1) a marriage of a Muslim man with a
Muslim woman, (2) a marriage of a nonbeliever, kāfir, with a female nonbeliever—these two are legitimate, (3) a marriage of a nonbeliever with a Muslim woman is not permitted and all jurists agree that it should be terminated by divorce, (4) a marriage of a Muslim man with a nonbeliever is allowed if the woman is from the people of the book, kitābiyya, marriage with any other nonbeliever female is not allowed. Mālik (Ibn Anās, founder of the Mālikī school in eighth century Medina) also condemned marriage with a woman from the people of the dār al-ḥarb (people with whom the Muslims are engaged in war) because the child will remain in the abode of war.49

This is the most schematic introduction to the doctrine of Islamic marriage one can find in the literature. By combining the early elements from the Muwattā', Ibn Juzzay has created a fuller legal framework for questions of marriage with non-Muslims, where conversion can find a natural place and will be discussed in future sections, which we will reproduce here. Khāfī, on the other hand, is rather concise. He addressed the issue of marriage with non-Muslims and conversion in few short sentences, but also provided new interesting interpretations: “A Jew or a Christian if they convert keep their marriage with their free co-religionaire, but a marriage of two pagans is annulled . . . if the pagan woman converts (even) a month later, the marriage remains valid. . . . If a wife converts to Islam, and her husband converts during her waiting period, even if he divorced her before, the marriage is valid (since a divorce in a non-Muslim court does not hold in a Muslim court).”50 These two new interpretations, one lengthening the period during which a pagan woman could save her marriage by conversion, and the other, the disqualification of a non-Muslim divorce, could be related to contemporary conditions witnessed by Khāfī Ibn Ishaq, but there is no definitive explanation for it.

Free and Unfree Spouses

The almost impossible situation of marriage between a slave and a free individual became even more complicated if either one of them converted.

In the fiqh section, which was appended to the conversion certificate of a Jewish male for no apparent reason, Ibn al-Ḥattār discussed the situation regarding a convert married to a slave.51 The converted slave who is married to a Jewish or Christian woman gets to keep his marriage. However, the marriage is annulled if that wife was a mamlūka, of unfree status, because, in his words, “a Muslim could not marry a Jewish or Christian slave,” “ili man al-muslim yatazawwaj al-nasraniyya wa l-yaḥūdyya, wala tanqati‘ aqdat al-nikāh baynahumā bi-islām al-zawj, illā an takin al-zawja mamlūka fa-yufsakh al-nikāh baynahumā.”52 Ibn al-Ḥattār was following in the footsteps of other jurists, like Saḥnūn, who addressed the issue as follows:

The marriage of two slaves, Christian or Jewish, to one another is permitted. If the slave converts and his wife is a Christian or Jewish slave, she is forbidden to him unless she converts instantly, makānān, the same as a pagan woman whose husband converted to Islam. If she converts instantly, she remains in the marriage, since it is not appropriate, lā yanbaghi, for a Muslim slave to marry a Jewish female slave, the same as for a free Muslim. It is inappropriate for him to marry a Jewish or Christian female slave."53
The concern that dominated the reasoning in this matter was for property rights and not for religion. A Muslim male, whether free or a slave, cannot marry a slave woman, no matter of what religion she is, because the law does not allow marriage with a slave at any event. The reason is that the property rights of the wife in a marriage stand in contradiction with the property rights of a slave owner. Our notary invoked a Qur'anic verse, quoted by previous and later authors as well: "On this day all things that are clean have been made lawful for you; and made lawful for you is the food of the people of the Book, as your food is made lawful for them. And lawful are the chaste Muslim women, and the women of the people of the Book who are chaste, (for marriage) and not fornication or liaison, if you give them their dowries. Useless shall be rendered the acts of those who turn their back on their faith, and they will be among the losers in the life to come." This phrase did not explain specifically why it was unlawful to marry a Jewish and Christian slave woman, whereas a Muslim free man could marry a kitābiyya free woman.

How did the issue of slavery enter the marriage doctrine in its later formulation in the fourteenth century? As with the previous issue, Ibn Juzayy’s efforts to place the various details in a wider, more comprehensive discussion of marriage and slavery was outstanding on its own merit, compared to the succinct treatment of the case by Khaššl. For Ibn Juzayy, the question of the civil status as the second condition for a valid marriage deserved a full scale treatment:

The second condition to be considered in marriage is slavery, and there are four characteristics here: (1) marriage of a free man with a free woman; (2) marriage of a slave male to a female slave, both are valid; (3) marriage of a slave to a free woman is permitted if she wants it, and if he misled her (with regard to his status), she has the right to choose; (4) and a marriage of a free man to a slave woman, this is permitted on three conditions: the first is that she should be a Muslim (nikāh hurr li-ama yajūz bi-thartha shurūt, al-awwal an takūn muslima); the second, that the full size, ful (of the marriage conditions) will be absent, which is the dowry of a free woman, some say the maintenance, nafaqa; the third is fornication, anat. Do not make these two, fornication and lack of full size fulfillment, as conditions for the marriage of a slave and a slave woman.

The condition of slavery in marriage has four parts, the first is that none of the spouses will own the other in mutual agreement and one will not marry his son’s slave woman or his master’s wumm walad (mother of a master’s child), the marriage becomes invalid and requires divorce. The second, if one of the spouses bought the other, or part of him or her, the marriage is invalid because the buyer owns the bought or a part in her; the third, the male slave cannot marry without his master’s permission, and if his master allows him, then the marriage is valid; the fourth, if a free man marries a free woman in addition to being married to a slave woman, or marries a slave woman in addition to a free woman, the free woman can choose to remain or to have a legal divorce, because it is her right to demand that he would not link between her and a slave woman.

Khaššl deals only briefly with the issue of a conversion and marriage of the slave but raises the link between property status and conversion, namely, that conversion should entail the manumission of the slave wife, "In the case of the conversion of a husband, his marriage to a Jewish or Christian slave would be valid only if she is manumitted."
The Forbidden Degree

A further cause for the annulment of a marriage following the conversion of either spouse was a degree of relationship between the spouses that would have forbidden their marriage to one another under the Muslim marriage law in the first place. Ibn al-‘Atār demonstrated that he understood such circumstances:

If he was married to a sister or an aunt, whether on the mother’s or the father’s side, or the mother or the daughter, in his Christianity or Judaism or paganism, and whether or not his previous community considers this kind of marriage union lawful, the marriage is annulled with his conversion, as this marriage is considered unlawful in Islam. 57

Here, annulment had to be enforced, but the law did address some of the unfairness to the wife, Ibn al-‘Atār explained, by granting her the rights of a Muslim woman facing a divorce. The former husband had to bear the cost of maintaining her during the waiting period, until she became available for marriage with someone else. If she were pregnant, he would provide for her until she gave birth.58 In the full display of the doctrine of marriage by the fourteenth century jurists, the forbidden degree as an impediment for marriage, occupied a considerable place. Ibn Juzayy’s discussion of the topic covered all possibilities and thus provided a broader framework, devoting a long chapter of five whole pages, to this clause in the marriage, providing a list of no less of 48 female relations, who were forbidden—some forever, the others temporarily—to marry a Muslim man:

Twenty-five cases are termed “eternal,” mu‘bidat; the first seven are those of one’s descent, nasab: mother, daughter, aunt on the father’s side, sister, aunt on the mother’s side, daughter of the brother, daughter of the sister, and others, who are of a similar affinity created by milk tie, riddat. Four categories are created through marriage, the mother of the wife, her daughter, the wife of the father and the wife of the son, those who shared milk tie with them, the wives of the Prophet, the cursed woman and the wife married during a waiting period. All together twenty-five. The other twenty-three cases are the apostate, the non-kitábiyya, the married woman, the one in waiting period, the one divorced from him in ibrá‘ divorce (a mutual renunciation of obligations), a slave woman held jointly, a pagan slave woman, a Muslim slave woman who experienced the full marriage rights, tül, the slave woman of the son, one’s own slave woman, his mistress’ slave, the mother of his master, one that is forbidden during the hajj, the sick woman, the sister of the wife, her aunt on the father’s side, and her aunt on the mother’s side, the union between such is not allowed, as the one with a woman married on Friday afternoon (the day of rest), the one who was demanded in marriage after she has been promised to someone else, and the orphan who is not legally major.59

Khaifīl, who deals separately with the forbidden degree in the section on the impediments for a valid marriage, introduced the connection with conversion in the part dealing with marriage with slaves and non-Muslims: “if the two converted together their marriage is valid, unless they are related in the forbidden degree.”60 The fact that neither Ibn Juzayy nor Khaifīl addressed the case of the convert in the section on the
forbidden degree can be interpreted as a sign that the actual possibility of such event was considered remote by both of them.

**Nonconsummation**

The fluidity of the situation was further complicated by a fourth factor that could invalidate a marriage following conversion. This one, like the other three, was based on the marriage law.

We have seen that when a woman converted to Islam, her marriage became invalid, whether she was a kitabiyya or a pagan, unless her husband converted with her or during the next three months while she observed the legal waiting period. This prerogative of the husband lapsed in an unconsummated marriage. If the marriage was not consummated before the wife’s conversion, a delayed conversion within the three months period would not save it. Because there was no need for a waiting period and no conception was anticipated, “he could marry her with her consent, in a new marriage ceremony, with a wali and ṣadāq.”

The fourteenth century jurists did not make an outright attempt to link nonconsummation and conversion in the formulation of the marriage doctrine. However, there is a short mention of the issue by Ibn Juzayy, when he treated conversion in the first section, the one dealing with Islam, as a condition for a valid marriage:

If the couple convert together, their marriage is valid, if the preliminary requirement as wali and ṣadāq are lacking (proceed all the same), no attention should be paid to it, if the husband converted earlier, the marriage with a kitabiyya remains valid and so is a marriage with any other, if she converts after him, if it happened before cohabitation (consummation of the marriage), they should be divorced, if the wife converted after cohabitation and the husband converted during her waiting period, the marriage remains valid.

**Children**

Unlike the concern he showed for legal status in the case of women, Ibn al-‘Attar’s first and only concern when addressing the fate of children was their faith. For our specific concern, that of the status of women, the question is how the law handled the rights mothers had over their children in case of conversion. The children of a spouse who converted to Islam were affected by their parents’ conversion, and their relationships with their mothers were affected in different ways depending on individual circumstances of the marriage. In these special circumstances are slave children, children born to a marriage within the forbidden degree, and children in the custody of a divorced mother. These bore the consequences of their parents’ conversion to a large or lesser degree. The initial dictum was that a child followed his father in religion and his mother in civil status, either freedom or slavery, fi ’l-ḥurriyya wa ’l-riqa. That did not mean that all children of a converted father automatically became Muslims. Only a child younger than seven years, whether male or female, would become Muslim, dakhala fi Islam abīhi. A child older than seven years retained his birth religion. The age of seven was selected here under the assumption that this was an age at which a child was capable of making a reasoned decision about religion, the legal
term used is *yu'qal dînihi*. A child who converted to Islam under such circumstances, the jurist explained, could well become an apostate later on, when he reached the age of majority. He should then be accountable and liable to the capital punishment, which was the penalty for renunciation. Others said that because he was not born a Muslim, or as the jurist defined it, “in Islam,” he should not be accountable. For instance, where the child was young, not quite seven, or about seven, and the newly converted father did not convert him (the jurist used the male person) and neglected him, and he reached majority without converting to Islam, or he was invited to join time after time and refused, he should not be liable for the capital punishment.

In conclusion, the law, while encouraging the conversion of young children, did not deny their right to make a choice with regard to their religion, even at the tender age of seven. As a matter of fact, the law here respected the fact that the need to choose a religion should not be imposed on children whose parents converted.

The law was equally compassionate toward children born of a marriage with a woman of the forbidden degree. After the dissolution of the marriage, a child became a Muslim if still minor. This child is attached to the father (namely, fully legitimate) and unlike children born from an adulterous relationship, could inherit from him. This was because, as the jurist explained, adultery, *zinâ*, in Christianity was not (as bad) as adultery in Islam. If a pregnant wife was of the forbidden degree, however, the law was not so kind. She was forced to separate from her husband at the time of his conversion but being entitled to the rights of a divorced Muslim wife, received food and shelter until she gave birth. After birth her child was taken away from her and attached, *yulhaq*, to the father. It appears that a wife of the forbidden degree did not qualify to have custody or guardianship, *hadâna*, of her young child, a right given by Maliki law even to a divorced Jewish or Christian mother. According to the Maliki school, females remained in the custody of their mother until marriage; male children, until they reached majority. The conversion of the master/father determined the conversion of the slave/biological child, but again only up to a certain age limit. A slave, *'abid*, was assigned the legal status of a child upon conversion: the young ones became Muslims, the older ones remained in their original religions.

In conclusion, the mother clearly did not have the same rights over the child as did the father, because she had no say in the religion of the child younger than seven years. Nonetheless, her rights as a mother included the guardianship over the young child, and these were preserved in most cases whether or not she converted, if she separated from the father of the child. This provision gave a mother actual custody over her young child, which could be used, if she so desired, to exercise some influence over his religious beliefs.

MATRIMONIAL RIGHTS

The first part of the legal discussion consisted in validating the status of the marriage by applying a set of criteria to it. The second part centered on the conjugal rights and obligations and how they were affected by the validation or dissolution of the marriage.

Marriage Agent (*wâli al-nikâh*)

Conversion to Islam entitled both a converted, unmarried woman and a converted, married woman whose marriage had been annulled to contract an Islamic marriage.
Ibn al-Ḥāṭem stated that the patron of conversion, namely, the person who accepted her conversion, whether the qāḍī or another official, automatically became her legal guardian and her marriage agent, wali al-nikāh. He was under an obligation to see that she was married, or remarried, in her new faith and in her new community. The same applied in the conversion of an unmarried kitābiyya woman or a pagan unmarried woman, who, unlike a Muslim virgin woman getting married for the first time, had to give her consent to the marriage: “If she was without a husband, the person who converted her becomes her wali in marriage and he will marry her with her consent, birida-hā.”12 This provision was doubly important for the converted woman. Legally, there was no valid marriage without a wali, and this provision is a fundamental requirement. Second, to initiate the process of matrimony, a Muslim woman needed a marriage agent, wali, because, as Ibn Juzayy put it, “a woman cannot contract a marriage for herself or for another woman, no matter to what social class she belongs.”73 In the case of a converted woman, there was another practical side to the provision in addition to the legal requirements. Under normal circumstances, the marriage agent would be a close male relative, such as the father. The converted woman was not only a newcomer to the community, and would find it difficult to find someone to act as an agent, but she was also deprived of the company of her former family’s close relatives in her former community. It is easy to see that it would be hard for her to find a matrimonial agent for herself.74 The appointment of an agent at the very moment of conversion prevented a situation where the new Muslim woman might remain unmarried and a burden on the community. Also, because the Islamic legal system does not anticipate any real possibility of a single woman living on her own, in the absence of a community of women, matrimonial arrangement, after majority, was in fact imperative.75

Dowry (Sadaq)

The dowry, sadaq, was a cornerstone to the Malikī doctrine of marriage, and under normal circumstances its absence would invalidate a marriage.76 Conversion, however, did not constitute normal circumstances, because it altered the timing of the application of the rules for a valid marriage. A marriage concluded under Christian or Jewish law might or might not have involved the payment of a dowry, and the Muslim jurist was concerned with it because it constituted a fundamental right of the woman. When the marriage went through the process of validation, this linkage between consummation and dowry could well bring matters to a halt. Under normal circumstances, the future Muslim wife was entitled to refuse consummation of the marriage if she did not receive the dowry. When conversion occurred after a dowry had been paid but consummation had not taken place, the marriage would not disintegrate completely. In such a case, according to Ibn al-Ḥāṭem, the question of the nature of the dowry became a contentious issue:

If he (the converted Jew) did not consummate the marriage and did not live with her before conversion, he remains in a state of marriage with her, if he gave her a dowry [of lawful nature, if he gave her] wine or pigs, he should be forced to give her a dowry of similar value, in dirhams or other lawful item. It was said that he should give her something less than what is estimated to be legal for deflowering, a quarter of a dinar, and he should get rid of the unlawful items. If she has taken possession of the unlawful
items, she should spoil it, spill the wine, and kill the pigs. It was said that she should get rid of it and not kill it and he would remain in a state of marriage with her, but if he refuses (to get rid of the unlawful items of the dowry), they should be separated. If he gave her a dowry of unlawful items and she accepted it and consummated the marriage and he converted after the consummation, he would remain in the status of marriage with her, and he does not have to pay anything in addition to the dowry. This is so if it happened in the time frame in which it was allowed for him in his previous faith, which he thought constituted a legal marriage. However, if she did not take from him the dowry before he converted, he has to pay her a dowry like the one he has obligated himself to give her. If he consummated the marriage, all the wine he had in his possession at the time should be spilled and all the pigs should be sent away, or, as others say, should be killed.77

According to this ruling, a kitābiyya wife, most probably a Christian, would have to relinquish her dowry if it consisted of unlawful items, such as wine and pigs, even though she did not convert herself and could very well have envisioned herself enjoying them because she was remaining a Christian. The jurist could well anticipate a situation where, to preserve a marriage, a husband would succumb to a wife making her dowry a blackmailing tool, by including unacceptable items. Not only Ibn al-ʿAttar but also Ibn Mughīth, who did not devote much space to the other issues, discussed ways to handle the unlawful dowry. According to him, the wife of a convert would not stipulate that she would remain with her husband on condition that he provided her with a sadaq consisting in part of wine. This would be unlawful, but he should provide her with a dowry of equivalent value.78

This issue must have been of particular relevance during periods of frequent conversions, because the issue of dowry and conversion was treated in two places in the Mudawwana. The first was in the section dealing with the dowry of Jewish, Christian, and pagan women who converted to Islam while their husbands declined to follow them. This particular ruling in the Mudawwana is attributed to Malik:

(The case of) a Jewish, Christian, or a pagan woman, who converted to Islam and whose husband declined conversion and he has given his wife a dowry, some of it early, some deferred, and consummated the marriage. She is entitled to receive both early and delayed dowry. If he did not consummate the marriage, and did not give her a dowry, she has no right to the dowry. If she has taken it from him, she has to give it back. This is so because the reason for the dissolution of the marriage has come from her, it is an annulment (faskh) and not a divorce (talaq).79

The second ruling in the Mudawwana appears in the chapter dealing with marriage of pagans and people of the book and conversion of one of the spouses.

Ibn al-Qāsim was asked about a Christian who married a Christian woman with a dowry consisting of wine or pigs, or without a dowry, or made a condition that there should not be a dowry, because they considered this lawful in their religion, and converted to Islam. He answered that he, Ibn al-Qāsim, did not hear anything from Malik regarding this, but he is leaning to decide that if he consummated the marriage, she should be getting a dowry of a similar value, if she did not take any, before cohabitation. If he consummated the marriage and she took the dowry before cohabitation, it is her dowry and she cannot be deprived of it, but cannot claim anything in addition and remain in the status of marriage. If he did not consummuate
the marriage before conversion, and whether she took possession of the dowry or not, Ibn al-Qāsim’s opinion is that he has the power of choice if he wanted to give her a dowry of similar value, if he refuses, they have to be separated and she has no claim over him.80

The question of the lawfulness of a dowry in such cases continued to be discussed in the Mālikī marriage doctrine. In fourteenth century Granada, Ibn Juzayy included it in his outline of the dowry issue in marriage. In the chapter on the ṣadaq, he stipulated three conditions for a valid ṣadaq, the first being that it should consist of lawful items that can be owned and sold and not of wine, pigs, and the like, which a Muslim should not own.81 Khāfī, while stipulating his reservation, admitted the unorthodox nature of the dowry’s contents but insisted that the main concern is the actual existence of a dowry.82

The question of why the content of the ṣadaq of a non-Muslim woman became an important part of the jurists’ discourse on conversion and marriage is a valid one. The jurists’ insistence on repayment of the dowry could be seen as a desire to execute the exact letter of the law. It could also indicate an awareness of the needs of the woman herself, because the dowry constituted one of her fundamental property rights in marriage as well as her security after the marriage had ended through divorce or death. The continued presence of this issue in Ibn Juzayy’s and Khāfī’s discussion of the dowry could also suggest frequent conversions. The suggestion that the main reason for the attention given to this issue was the likelihood of frequent marriages with non-Muslim women is a lesser option.

Maintenance

The ultimate and extreme consequence of conversion was the termination of an existing marriage. This termination took place through invalidation of the marriage, which produced dissolution through annulment rather than divorce. In legal terms, the jurist described the “severance” of the marriage bond, tālāq tāqat al-nikāh, by saying that the marriage was abolished, yufsakh, as opposed to using the term divorce, ṭalaq.83 The difference between the two consisted mainly in its secondary effects and in the rights, conditions, or compensation to the woman. The main difference was that annulment was definitive, while after divorce a couple could still remarriage.84 In fact annulment persisted as long as the condition leading to it continued to exist. Despite the different legal term, in an annulment, the same immediate action ensued as in the case of a legal divorce. The wife would enter a period of waiting, the ‘idda, for a period of three months, during which she was entitled to the same shelter and maintenance as in a regular divorce.85 Ibn al-‘Attār gave instructions in two cases, one when a Christian wife converted without her husband,86 and the other when a man was married to a woman of the forbidden degree.87 In the first case,

her marriage is annulled, and if the marriage has been consummated, she is told to enter the waiting period, and the husband has to provide for her shelter and food. If she is pregnant, he has to provide for her until she gives birth. If she is not pregnant, he does not have to pay for her Ṽafqa. The husband has to pay for the rent of a different shelter, for the duration of the waiting period, if she is in a rented premise. If she remains in his home, she should stay there until the end of the waiting period.88
In the second case, an annulment resulting from marriage with a woman of the forbidden degree, no matter if the woman was a *kitābiyya*, slave, or pagan, she would benefit during the *ʿidda* period from lodging, clothes, and food until she gave birth. The question remained, however, whether the forbidden degree wife could benefit from the right of the *ḥadana*, guardianship of the young child, discussed earlier, which belongs here as a maintenance right, because the guardian is entitled for a payment for this service. The jurist indicated that the child would be attached to the father, would carry his name, and would benefit from all the rights of a legitimate child. A child born to an adulterous relationship, *zināʾ*, was deprived of these legal rights.

**PROPERTY RIGHTS**

The conversion model documents do not mention women’s property rights, yet under Islamic law, because there was no community of property between spouses, a converted woman could look forward to a great degree of independence in holding and dealing with her property. Her property rights would include the right to receive and hold early and late dowry, to be gifted, to hold and to handle her property without interference by either the father or the husband, and to gift, endow, inherit, and bequeath. As I have shown elsewhere, women’s property rights did not remain a dead letter in the law books but were implemented by the courts. Nonetheless, the jurist’s neglect to address such issues might have suggested their limited probability as contentious issues.

Compared to a Muslim-born wife, a converted woman might have been in a better position to begin with, because she was free of the limitation by interdiction, *fi ḥajr*, which in Maliki law was imposed on married women for several years. However, as a result of conversion, several channels of acquiring property would be eliminated, or semi-eliminated for her. The first legal channel through which women could own property was inheritance. Women inherited from their blood relatives, as well as from their husbands, even though their shares were considerably smaller. In conversion, however, inheritance from the previous family members was not permitted, whereas inheritance from husband and children became possible. This equilibrium in acquiring property through inheritance was reinforced by the legal instruments created to circumvent the law of inheritance, and from which women could benefit. To place certain properties in the hands of designated individuals, family members enjoyed the right to gift and to be gifted, *hiba*, freely. Evidence has shown that in Muslim Spain, property was transferred in this way to young girls by their parents, at an early age. Although it is doubtful whether converted women could benefit from that particular provision, as youngsters, they certainly could have made use of it later.

A second legal instrument that helped women to concentrate property in their hands was the right to require that in addition to that property, the dowry and trousseau given as wedding presents would remain in their possession. The father could encroach upon this right under normal circumstances but as we have seen, the converted virgin, or remarried wife, could not in any event anticipate any considerable dowry. Women had a third legal means of exercising control over their properties by the possibility of selling it to whomever they chose, without interference, so long as they adhered to the legal procedure of procuring a sale document, *bayyina*. Again, a converted woman who converted on her own was unlikely to have her own property, but if she did, and then remarried under Islamic law, she could keep it separate.
from her husband’s property. A fourth instrument for acquiring and maintaining property was their right to earn and keep their wages. By the same token, women reserved the income from their rented property for themselves. Under normal conditions, the evidence tell us, this provision could even lead wives to claim rent from their husbands when the couple lived in a house that belonged to the wife. The separation of property also entitled wives to allow husbands to cultivate land belonging to them, which, again, increased the household income. Here, again, a converted woman had little chance of bringing independent property to her new marriage and community and therefore would be unlikely to make good use of this provision.

**WOMEN’S CREED AND THE LAW**

When writing out the conversion certificate, the notary was not required to verify nor to testify to the level of the convert’s knowledge of the Islamic creed. We might find this lack of concern at the early stage of conversion somewhat surprising and consider it a sign of a frivolous attitude toward the faith. Nevertheless, because of the link between faith and the validity of marriage that the law provided, the legal consequences to the marriage became subject to scrutiny by husbands and jurists alike. Three fatwas, enquiries submitted to jurists, deal with this question in a way that leads us to suspect that the law could be used by both husband and wife in the entangled conjugal relationship.

The Miṣyār, a collection of juridical enquiries written by Maliki jurists in the Muslim West during the ninth-sixteenth centuries, is an important source of documents for the study of legal practice and implementation of the law in Maghribi and Andalusian societies. More than any other legal source, it provides historical information and a basis for studying the place of the law in women’s life, family, and marriage.

The three fatwas all dating from the fifteenth century Maghrib, seem to have been initiated and drafted as a response to one single question, namely, whether or not weakness and irregularities in a wife’s faith can be a valid reason for the dissolution of the marriage. The first fatwa, issued by Abū Abdallah Muḥammad b. Marzuq, states explicitly that it was written as a second opinion to a previous fatwa issued by a nameless jurist. In the earlier fatwa, the jurist responded to the question of whether every married man should interrogate his wife about the state of her creed, and if she was found to be ignorant, to have his marriage to her annulled, because she was an idolater. The reader appears to have disagreed with or confused by the view expressed in the answer he received, because in the new query, addressed to Ibn Marzuq, he requested confirmation of whether indeed an interrogation of the wife was necessary, and whether the above mentioned ruling was the one that should be followed. He also wanted to know what the rule was if the husband found out that his wife was ignorant about the faith and that all she knew was the shahâda, which was what most people were acquainted with. Ibn Marzuq responded that if such an interrogation was indeed required either before or after the wedding, no woman who professed only the shahâda would be married before her creed could be scrutinized. If, on the other hand, bad belief would crop up among some married women, without their being asked about it, then it should be examined according to the law. Something of that nature might become very bad if it was not disciplined, he advised. A second fatwa was written by
Abdallah al-ʿAbdūsī, in an answer to a query about a man who found an intolerable weakness, faṣād, in his wife’s creed and wanted to know whether he should leave her, thus dissolving the marriage, ḥal yajibu ʿalayhi mufaraqatihā? Al-ʿAbdūsī answered that there are three degrees of weakness in the creed. The first one is what is regarded as kufr by general consensus, jamāʿa. The second is one that is a bad innovation, bidʿa, causing one to stray from the right path, but it is not kufr, unbelief. The third degree is one about which there is debate as to whether it is really kufr. A woman who was a nonbeliever by general consensus was considered pagan, majūsiyya, and was not to be permitted to be married. If she was married to someone who ignored her status, their marriage was to be annulled. This had to be established with a document confirming it, written by her and her husband. If her husband did not confirm it, her word could not be accepted because she might have been deliberately attempting to achieve the annulment of her marriage in this way. The annulment was to be carried out honorably, cautiously, and it was to be free of doubts. Anything that was not considered kufr by consensus did not automatically lead to an annulment, and the husband was to instruct and teach his wife and correct her creed, if none of her own relatives were qualified to do this. In a case of a wife about whose creed there was a disagreement, the judge was to investigate the couple, and if they agreed that there was no kufr, she was to be allowed to remain in the marriage. If both declared that there was kufr, they were to separate. This applied especially if the husband urged it, because the proof of the guiltlessness lay in his hands. If the husband claimed that there was no kufr and the wife declared the contrary, the judge had to put an end to the disagreement between them. If he ruled that there was kufr, they were to be separated; if not, the wife was to be forced to stay in the marriage and his judgment put an end to the conflict.

A third fatwā, by al-ʿAbdūsī, on the question of whether a man should examine his wife’s creed, was related to the case of a converted wife.

We trust the sincerity of the converted women when they manifest their creed and their Islam. Only God knows their secrets. Unless a man is convinced that there is a weakness in his wife’s belief, he should not interrogate her about this. He is encouraged to teach her what she ignores in that respect. Some of the jurists, whose model of behavior is followed, say that during the writing of the marriage contract, the witnesses should examine the creed of the woman because weak creed is common among them. They should do that and so guide a large number of people to the true creed. I myself, God willing, intend to write a concise book, using a simple language for the simple people, employing logic and traditional evidence which their brain could grasp.

From our discussion of the conversion models, we know the legal framework of the views expressed in the three fatwās. We have seen why a marriage to a pagan woman should be annulled, and how an inquisition style treatment, submitting women to an interrogation about their creed, could easily lead to abuse of the marriage laws. Here the significance of the legal link between faith, or the knowledge of the creed and the marriage, becomes apparent. The jurists’ responses, however, indicate a debate on two levels. On the first level there is the real concern that both men and women could use the legal rule about validity of the creed to escape from an unwanted marriage. Because of the connection made in and demonstrated by the law of conversion, instances of
abuse should be anticipated. On another level, which does not seem to have troubled the jurists too much, was the concern of pious men, that because of their wives’ ignorance of the creed, they would find themselves in a state of nonvalid union, being married to a pagan woman. In this respect, the three fatwās communicate an additional dimension of the Muslim family dynamics. The legal principles used to formulate the law of conversion were used later and in other circumstances to manipulate and regulate marital relationships. The jurists’ responses evoked the most probable historical occurrences but also conveyed the prevalent opinion among the jurists in the Muslim West that, although the lack of religious instruction and knowledge of religious principles and practices among women might be common, it should not be used to invalidate marriages. Al-‘AbdūsT expressed the fact that this was a true concern for men and was planning to write a book to correct it. Such books were not a rarity. ‘Abd al-Malik b. Ḥabīb wrote one in Spain in 852, and in the East, Ibn al-Jawzī addressed this concern some two hundred years later in his book Ahkām al-nisā’, written to instruct women and counter their want of knowledge.

THE SOCIAL ENVIRONMENT OF CONVERSION

In the introductory section of this article, we examined evidence showing that Jewish and Christian women resisted conversion to Islam and refused to follow their husbands in conversion. On the other hand, the existence of a model conversion certificate for women from Muslim Spain demonstrates that women did in fact convert to Islam in high enough numbers to generate a model notarial document from the jurists. Despite the conflicting evidence, we have two valid historical parameters of conversion here.

The Muslim jurists acknowledged the affinity of cause and effect between conversion and marriage by dealing with conversion in the chapter on marriage. Contemporary historians have used this connection to suggest that many women used it for their benefit. Pedro Chalmeta opined that young women in al-Andalus converted for sentimental reasons, such as love for a man of another faith, whereas by the same token, he interpreted the conversion of married women as a means of achieving a quick and cheap divorce. Chalmeta did not have sufficient evidence to buttress his views, but later historical instances of conversion lend support to this interpretation. The conversion of Greek women to Islam during the early Ottoman period was described in the court documents of Kandiye, seventeenth-eighteenth centuries. The author of the study, Molly Green, admits that more men converted to Islam than women but that married women converted in order to have their marriages dissolved and to gain control over their children. She bolsters this conclusion by providing examples of the immediate dissolution and marriage to another Muslim man often immediately afterwards, while reminding us that Christian women did not have to convert to Islam in order to marry a Muslim. Whether or not society made romantic liaison across religions possible, this is a valid historical dimension to women’s conversions. Other evidence of Jewish and Christian women not following their husbands in conversion can be explained by Michael the Syrian’s observations that women were generally more loyal to the faith than men. The women’s voice on that issue is also absent.

Women’s reluctance to convert can, however, be explained from a different angle, one that would weigh social and gender parameters against property and conjugal...
rights. Muslim women’s property rights were more important than those given to Jewish women. Jewish law limited women and wivvus in the domain of property rights. A married Jewish woman brought property to her husband in the form of the dowry, nedunya. Although she lost control over her property, which was taken over by her husband, he undertook to compensate her should he divorce her. The property brought as dowry was given to the husband to provide income and could be of two kinds, one that becomes his property entirely and the other that remained in the wife’s possession but was given to the husband to exploit and run, but not to be held responsible, for any loses. Jewish women knew about the alternatives and fought the application of these laws. The Geniza documents of business transactions confirm that husbands were required to authorize their wives if the latter made property-related transactions, but Jewish marriage contracts from the Geniza, eleventh-thirteenth centuries, also show that whereas some wives demanded that their wages remain in their possession, others agreed to surrender their right for maintenance in return for the right to retain their wages. It is not surprising that the Geniza documents show that Jews registered their marriages with Muslim notaries, marriages that Goitein for some reason calls “secular marriage, non-religious.” Goitein recognized that the struggle over property decisions, which surfaced in the Geniza documents, showed that Jewish women’s resistance was inspired by their acquaintance with Islamic law. He was careful, however, not to generalize about the status of Jewish women from the Geniza documents, but asserted that marriage and divorce was regulated by the Jewish law, halacha. Given the evidence of the Geniza documentation about Jewish women’s attempts to achieve Islamic property rights, it is justifiable to ask why more Jewish women did not convert, and why they often refused to do so when offered the opportunity to convert together with their husbands.

It is not implausible to suggest that there was a heavy price to be paid in cases of conversion, which often erased the benefit of acquiring them. In order to understand, we must look not to the legal sphere but to the social one, where the seclusion of women and social and gender segregation were dominant. Jewish women were limited not only in their control over property and income but also in their freedom of movement. According to Mordechai Friedman, Jewish women of the Geniza period could not leave their house without their husband’s permission and were limited as to the number of times they could visit members of their families. Goitein, too, acknowledged this situation, admitting that seclusion of women was the norm, but said that social and gender segregation did not interfere with Jewish women’s economic activity and practice and did not affect their appearance in court, where Jewish women also took part in business transactions. Social segregation and seclusion were not reserved only to Jewish women, however, but were also common to Muslim women. Books of moral etiquette, written for women by male jurists or intellectuals, recommended strict segregation, citing a number of traditions forbidding women to go out while at the same time extolling the merits of staying at home. The limitation on women’s movement in the public sphere has been questioned by authors studying the Mamluk period, but while the debate continues as to whether the etiquette books represent reality, it is not hard to imagine how males dominated the spiritual universe of women and how they controlled women’s behavior through this literature. They created, manipulated, and diffused norms of behavior and expectations of women. Gender segregation existed and shaped females’ conduct in public and at home and curtailed women’s involvement in social and economic life.
For a converted woman, conversion to Islam did not ameliorate her freedom of movement and expectations; on the contrary, it made it worse. A convert was likely to move to another city, away from his previous community. For his wife, living in a gender-segregated environment, secluded at home, and restricted to social contact with only her close family, the separation from them could reasonably be viewed as catastrophic. Jewish families did not allow social or verbal contact with an apostate, considering him or her as dead. Because of this religious, communal, and professional segregation, the elimination of the close family could be devastating. Depriving the woman of her family meant sealing the circle of segregation to which she was already submitted permanently and hermetically, because family relations with the father’s side could not be overestimated. Both Jewish and Muslim women requested clauses in their marriage contracts to prevent their husbands from moving them away from their hometowns. For the already segregated women, the conversion of her husband meant withdrawal from her familiar space, home, and family ties. It also meant acculturation to a different environment at an advanced age and under unknown conditions; dislocation and isolation; and loss of cultural identity, familiar communication skills, and social environment. 119

CONCLUSION

Several conclusions can be drawn from the evidence examined here. Islamic legislation on conversion originated as an offshoot of the marriage law and emerged as a set of rules for regulating the marriage of Muslims to non-Muslims, a fact that ensured that the laws on conversion were located quite early in the law books in the chapter on marriage. In the following years and centuries, some aspects were dealt with in greater detail, because conversion no longer entailed marriage to a nonbeliever, but to Jews or Christians, as well as an altogether new situation, given that an existing marriage presented a set of different rights.

The documents show that it would be wrong to assimilate conversion of women as a legal act bound up to that of men. Men’s conversion was a historical act and so was women’s. It would also be wrong to assume that women had no say in whether or not to convert. The family did not convert as a unit or in one single act. Conversion was an individual undertaking, and the law regarded it as such. The status of the marriage was the most important legal issue to be affected by conversion of one or the other spouse. A husband and wife were equally in a position to confirm or invalidate the marriage by conversion, and both had a role in the validation of the marriage. Once the status of the marriage had been established, the rights of the converted woman, or the kitabiyya woman married to a new Muslim, were established as well. The wife’s rights were not determined solely by the marriage but were guaranteed by it. The evidence suggests very strongly that conversion was more than just a legal issue. It was a legal option offered to women, but one that they could hardly afford. As individuals, women could understandably see their husbands’ conversion as a calamity. Their social and legal status would be affected, and above all, it forced them to make a choice between losing their husband, and father of their children, and any children younger than seven years, and losing the rest of the members of their paternal and maternal family. Women could acquire individual property rights upon conversion to Islam, but whether they could use them can only be assumed, not ascertained. In social terms, the losses were sufficient to wipe out whatever gains they might make.
With regard to our perception of the Islamic marriage and family, the certificates show how elusive, ephemeral, and insecure the marriage bond could be under these circumstances, and how little the woman could rely upon its safeguards. The primary unit to which the woman belonged was the couple’s unit not society at large, but the definition of this unit, its status, the protection it offered her, must have left most women unimpressed, because when they needed to make a choice, they opted for the unwavering protection offered by their blood family rather than of their marriage family. The evidence suggests that however important marriage was in her life, it did not prevail over her blood family of parents, brothers, and sisters.

Furthermore, conversion under those circumstances could be a traumatic experience for a woman because whether or not she herself converted, she was doomed to be affected by it and forced to make a choice. The impact of conversion on the children and on their legal status was equally traumatic. For some children, the father’s conversion triggered either a change in faith or religious conflict with him, the mother, or siblings. Conflict with unconverted mothers, physical separation when the marriage was annulled, and the stigma of being born from a marriage with a spouse of the forbidden degree could be devastating for the family as a unit. The unfairness of this situation, the imposition of such a major decision by one spouse on the other without consultation, did not escape the jurists. Whether Muslim jurists were fully aware of the problems of wives caught in the dilemma of conversion or not, they sometimes used the law to offer some solace. On the basis of the notarial certificates, it could be argued that the jurists saw beyond the mere change of one’s religious belief. In cases where the wife chose annulment, or was forced into it by the conditions set for an Islamic marriage, which were beyond her control, the Law gave her similar rights to those of a Muslim woman who was being divorced, regarding maintenance and the right of custody over her small child. Khafif himself deplored the prospect of a husband neglecting to encourage his wife to convert, when the wife was a pagan. Despite his reservations, however, he was inclined to choose the one account that did not favor the wife, where she was not entitled to maintenance until she decided to convert, unless she was pregnant, but where the intention was nonetheless present.

Unilateral conversion was also unfair in terms of the psychological and emotional environment of women’s conversion, as opposed to the intellectual and theological environment of men’s conversion. The conversion of one spouse immediately placed the other in a position where he or she was obligated to react, because their legal status was changed. A decision had to be taken as to whether or not to preserve the marriage and whether or not to convert. Conversion of one spouse changed the status quo of the other spouse, and there was no going back. In fact, for the women affected by it, it made no difference whether conversion was voluntary or forced. For them, the emotional and social dimensions of conversion could only be unhappy.

APPENDIX A

A Conversion Certificate for a Married Christian (or Jewish) Woman

(Kitab al-wathiq li-Ibn al-Qattara, 415-16)

The Muslim woman [so and so], the daughter of [so and so], or cAbd Allah’s daughter, if her father’s name is unknown, has testified before the witnesses of this deed that she, in a healthy
state of mind and firmness of intellect, being a lawful master of her person, is willingly rejecting the Christian faith to which she belongs and entering the Islamic faith of her free will. She testifies that there is no God except Allah who has no associate, and that Muḥammad is his servant and messenger, the last of his messengers and Prophets, and the best of his creatures. He was sent down to show the right path and the true faith, to make it triumph over other religions, even though the polytheists attacked him. She testifies that ʿĪsā b. Maryam, God bless all his Prophets, is the servant of God and creature of his creatures and messenger of his messengers, and his word was sent to Maryam, as well as his spirit as God said.

She should wash and pray and stand to perform Islam’s laws and pillars of belief, ritual ablution before prayer, complete and pure intention, prayer, alms giving, and the fast of the month of Ramadān, in every year and the pilgrimage to the house when she is able to perform it. She fulfills all these obligations because she chose to do so and she desires to do so and she thanks God for inspiring her, and she thanks him for bestowing it upon her, because she desired Islam, obeying without being forced or coerced to do anything or being afraid of anything.

Her conversion took place before [so and so] and she agrees that all is in accordance with what is in the deed, then you, the notary, say, “witnessed”

Law (fiqh)

If she was not married, the person who accepted her conversion becomes her marriage agent, wali, and arranges a marriage for her with her consent. If she is married, her marriage with this husband becomes invalid, and she is told to observe the waiting period, ʿidda. If he consummated the marriage, he has to defray the cost of her lodging and maintenance; if she is pregnant, he has to support her until she gives birth. If she is not pregnant he does not have to pay maintenance, but he has to pay the rent during the ʿidda period, especially if she is in a rented premise. If she lives in his house, she should be allowed to remain there until her waiting period comes to an end.

If he (the husband) converts during her waiting period and before three menses passed since she converted, if she menstruates, or 3 months, if she does not menstruate, he maintains his rights over her and remains in a state of marriage with her. If her waiting period came to an end before he converted, he has no recourse to her. If he converted afterwards, he is an available suitor. If she converted before he consummated the marriage, the marriage bond is severed and he has no recourse to her if he converted after her. If he converted closer to her conversion he would marry her with her consent in a new marriage with a wali and a dower. If he converted with her, she is his wife as she was before, and her marriage remains valid.

In the case of conversion of a Jewish woman, the same deed should be used as in the case of a Christian woman, if God wills.

APPENDIX B

1. Conversion of a kitābi husband

<table>
<thead>
<tr>
<th>Married to</th>
<th>Valid</th>
<th>Invalid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kitābi converted wife</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Kitābi nonconverted wife</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Kitābi converted slave wife</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Kitābi nonconverted slave wife</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Kitābi converted wife of the forbidden-degree</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Kitābi nonconverted wife of the forbidden-degree</td>
<td></td>
<td>x</td>
</tr>
</tbody>
</table>
Pagan converted wife  x  x
Pagan nonconverted wife  x

2. Conversion of a Kitābī wife

<table>
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<tr>
<th>Married to</th>
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<th>Invalid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kitābī converted husband</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Kitābī nonconverted husband</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Pagan converted husband</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Pagan nonconverted husband</td>
<td></td>
<td>x</td>
</tr>
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</table>

3. Conversion of a pagan husband

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<th>Married to</th>
<th>valid</th>
<th>Invalid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kitābī converted wife</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Kitābī nonconverted wife</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Pagan converted wife</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Pagan nonconverted wife</td>
<td></td>
<td>x</td>
</tr>
</tbody>
</table>

4. Conversion of a pagan wife

<table>
<thead>
<tr>
<th>Married to</th>
<th>valid</th>
<th>Invalid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kitābī converted husband</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Kitābī nonconverted husband</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Pagan converted husband</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Pagan nonconverted husband</td>
<td></td>
<td>x</td>
</tr>
</tbody>
</table>

ACKNOWLEDGMENTS

This article was written during my stay at the Shelby Cullom Davis Center for Historical Studies, History Department, Princeton University, as a 1995-96 Fellow.

NOTES

1. As can be demonstrated by the total lack of interest in the subject among the 27 participants in the conference on conversion and converts to Islam held in Toronto in 1986. M. Gervers and R. J. Bikhazi, eds., Conversion and Continuity. Indigenous Christian Communities in Islamic Lands Eighth to Eighteenth Centuries, Papers in Medieval Studies, 9 (Toronto: Pontifical Institute of Medieval Studies, 1990). In recent years, women's conversion, not to another faith but to a spiritual religious existence within their own faith, received attention by scholars, albeit mostly as a literary medium for women's experience, Virginia L. Brereton, From Sin to Salvation, Stories of Women's Conversions, 1800 to the Present (Bloomington & Indianapolis, 1991).


7. On the chronology, composition, and organization of the Jewish communities reflected in the documentation that became known as the “Geniza,” see the introduction to vol. 1 of S. D. Goitein’s, A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza (Los-Angeles and Berkeley, 1967).


10. Ibid., 135.


17. The documents, as well as the changes in the legal status of marriage affected by conversion, were dealt with by Chalmeta, but the Spanish historian was more absorbed by the symbols of the Islamic creed in them than in the women’s aspect. See Pedro Chalmeta, “Le passage à l’Islam dans al-Andalus au Xe siècle,” in Actas del XII Congreso de la U.E.A.I., Malaga, 1984 (Madrid, 1986), 161-83. The documents were also used to explore the assumed conversion of Maimonides to Islam, see Monserrat Abumalham, “La conversión según formulario notarial andalusí: Valoración de la legalidad de la conversión de Maimónides,” Miscelánea de Estudios Arabes y Hebraicos 32, no. 2 (1985): 71-84.


20. On the notarial formulations, see the introduction by Wilhelm Hoenerbach, Spanisch-islamische Urkunden aus der Zeit der Nasriden und Moriscos (Los Angeles, 1965), and the introduction by Chalmeta to Wathaʾiq.

21. The documents were partially and unevenly translated into French and commented on by Chalmeta, “Le passage.”

22. See W. Montegomery Watt, “Aḵīda,” in EI². For fatwās dealing with women’s creed, see infra.

25. Ibid.
26. Ibid.
28. Ibid.
30. Bulliet, Conversion to Islam, 97.
31. Ibid., 117.
33. Whether pagans, who had no legal status in Visigothic Spain, survived in that position into the Islamic period is a historical question to which there are no clear answers. The conversion document for a māžūs, a term reserved for a Zoroastrian, does not make much sense in the historical background of tenth century al-Andalus, as there is no evidence to the existence of Zoroastrians there. I believe that the usage of the term is an outcome of its origin in the eighth and ninth century Mālikī works, quoted above. In fact, the conversion document for a pagan male and a pagan female actually refers to the existence of other religious affiliations, besides Jews and Christians in al-Andalus who convert to Islam.
34. Conversion to Islam in al-Andalus has been studied by Bulliet, Conversion to Islam, and by others, see Morony, “The Age.” I have suggested the correlation between conversion and economic prosperity in al-Andalus in a previous publication, based on a document that described the synchronization of ethnic origin, religion, and occupation of Andalusians. Maya Shatzmiller, “Professions and Ethnic Origin of Urban Labourers in Muslim Spain: Evidence from a Moroccan Source,” Awraq 5 (1983): 149-64.
36. Chalmeta provides support for the idea that conversion peaked in the ninth century from the case of a dignitary who was obliged to display a conversion certificate, “Le passage,” 174. He also challenges Lévi Provençal’s dates for mass conversion in the eighth century, ibid., 176-7. On al-Andalus mercantile activity, see the recent study by Olivia R. Constable, Trade and Traders in Muslim Spain (Cambridge, 1994).
38. On the Jewish chronicles of the forced conversions under the Almohads in North Africa and Spain, see Maya Shatzmiller, “al-Muwahhidun” in EI2. In the East, the period known for religious persecution against Christians and Jews, which culminated in forced conversion, occurred in the tenth century during the reign of the Fāṭimid caliph al-Ḥākim.
39. I have studied attempts by Berbers to claim earlier conversion to Islam than the one accepted by the traditional historiography, as well as different circumstances than those depicted in previous publications. I was able to reconstruct the new elements advanced by Berber


41. Several translations and partial translation of his manual of Mâliki law have been made; the one that is frequently used and easily available is in four volumes, Khaﬁl Ibn Ishāq, Abrégé de la loi musulmane selon le rite de l’imâm Mâlek, trans. G.-H. Bousquet (Alger & Paris, 1958).

42. Ibid., vol. 2, pp. 34-40.

43. See Chalmeta, “Le passage.”


45. Chalmeta and Coriente, Wathâʾiq, 416.

46. Ibid.

47. Ibid., 413-4.

48. Ibid., 414 and 417, respectively.


51. Chalmeta and Coriente, Wathâʾiq, 410. There is practically no information on Jewish slaves in Muslim Spain or North Africa. On the other hand, a very interesting fattâwâ contained in the collection of Ibn Sahl, eleventh century Granadan jurist, deals with a case of a young slave who is owned by a Jew who seemingly converted him to the Jewish religion. The young man approached the judge, claiming that he was born a Muslim to Muslim parents. Thami al-Azemouri, “Les nawâzîl d’Ibn Sahl, section relative à l’ihtisâb,” Hespéris-Tamouda 14 (1973): 74-5. Jews were entitled to own non-Muslim slaves and, according to the Halacha, were expected to convert them to Judaism. On slaves and slave girls owned by Jews in North Africa, see H. J. Hirschberg, Toldot ha-yehudim be-Afriqa ha-tsfonit, vol. 1 (Jerusalem, 1965), 134-5.

52. Both amma and mamlûka are used in the text.


54. Qorʾân, 5:5 (sûra the Feast, verse 5).

55. Ibn Juzayy, Qawānîn, 149. Linant de Bellefonds, Traité, vol. 2, pp. 150-1, makes the important observation that the law does not permit a marriage with one’s slave, Muslim or non-Muslim, as the two sets of rights, matrimony and property, contradict one another in this case.


57. Chalmeta and Coriente, Wathâʾiq, 412. On the fate of children born to this union before conversion, see infra.

58. Ibid. On the fate of this child, see infra.

59. Ibn Juzayy, Qawānîn, 155.


62. Ibid.

63. Ibn Juzayy, Qawānîn, 149.

64. Chalmeta and Coriente, Wathâʾiq, 411.

65. Ibid.

66. Ibid.

67. A fattâwâ dealing with the fate of a child who converted to Islam on his own and was later convinced by his father to return to his previous faith is included in Ibn Sahl’s collection of

68. The attitude here is fundamentally different from the attitude prevailing at the time in Spain. The Fourth Council in 633 under the presidency of Isidore of Seville repeated the principle that religion was a matter of persuasion and personal conviction and that forcible conversion was improper, and yet children of apostates were to be taken from their parents and reared as Christians. Joseph F. O’Callahan, *A History of Medieval Spain* (Ithaca: Cornell University Press, 1975), 71 ff. As O’Callahan notes, the church of Visigothic Spain by means of the Collectio Hispana, a collection of canons attributed to St.-Isidore, deeply influenced the development of canon law in the West.


73. Ibn Juzayy, *Qawānīn*, 150.

74. The best synthesis of the requirement provision in the Andalusian Mālikī school can be found in Ibn Juzayy’s *Qawānīn*, 150-2. On the conditions required for fulfilling the role of marriage agent, see Khaṭīf Ibn Ishāq, *Abrégé*, vol. 2, p. 17 ff.; Linant de Bellefonds, *Traité*, vol. 2, p. 48 ff. discusses the wāli requirement comparing the different schools. The reason given for the requirement of a wāli in the law books is the intellectual and moral weakness of the woman.

75. See Ibn Mughīth on this issue, *Muqni*, 345-6. Marriage with recent converts or sons of such was a legal issue of some relevance in the Ḥanafi school. A legal debate was raging about the fate of converts and their deficiency as potential marriage partners, which affected only males. Initially, dissimilarity of religion between a husband and a wife could be a cause for the annulment of the marriage. In legal terms, this condition could lead to the annulment of marriage in the case of recent conversion and marriage with Arabs. As such the condition is unique to non-Arabs. Those who recently converted to Islam could not marry a wife whose parents had been Muslims for many generations, unless approved by her wāli. The question was how many generations should conversion be removed for such a man to be fit to marry a long islamized woman? According to Abū Yūsuf, founder of the school, it was sufficient for the father of the man to be a Muslim himself, but in general, the grandfather should be a Muslim. Linant de Bellefonds, *Traité*, vol. 2, p. 175.


80. Ibid., 297.


84. On this issue, see Linant de Bellefonds, *Traité*, vol. 2, pp. 307-11.


86. Ibid., 416.

87. Ibid., 412.

88. Ibid. It is not clear, however, how feasible it would be for a Muslim judge to reinforce these provisions on a non-Muslim man.
89. Ibid. On the right of guard of the young child given to the non-Muslim wife, see Linant de Bellefonds, *Traité*, vol. 3, pp. 164-5.


91. A woman is placed under interdiction, *fi ḥār*, in minority, but although a male child acquires the right to handle his property upon reaching puberty, a woman living under the Ṣalāḥiyya rite did not gain control over her property until she was married, the marriage had been consummated, and that certain time had lapsed. This time could stretch from one year to seven. In addition, four witnesses were required to testify that the woman was indeed mature in her mental capacity, *rashīda*. A father could free his unmarried daughter from interdiction, but this step was not recommended. Compare with other schools of Islamic law, Linant de Bellefonds, *Traité*, vol. 3, pp. 215-6.


95. Ibid.


97. On the contribution of the Miṣār to the issues that are of interest here, see Francisco Vidal Castro, “Economía y sociedad en al-Andalus y el Maghreb a través del Miṣār de al-Wanshariṣī. Breve introducción a su contenido,” *Actas del II colloquium de ciencias históricas* (Madrid, 1992), 339-56.

102. Ibid., 88.

103. An analogous view of women’s religious awareness, not unlike the medieval one, can be gleaned from contemporary Morocco; see Marjo Buitelar, “Between Oral Tradition and Literacy. Women’s Use of the Holy Scriptures in Morocco,” *The Arabist, Budapest Studies in Arabic* vol. 9-10 (Budapest, 1994), 225-39.


107. Ibid., 146-56.
108. Ibid., 147, 155.

109. S. D. Goitein, “The Position of Women According to the Cairo Geniza Documents,” (in Hebrew) in *4th World Congress of Jewish Studies, Jerusalem, 1965*, vol. 2 (Jerusalem, 1968), 178. For a comparison of Jewish and Muslim laws of marriage and divorce, see Judith Romney...

110. For details, see article “Dowry” in the *Jewish Encyclopedia*.


112. Ibid., 179.

113. Ibid., 177-9.


119. Women in general, but especially minority women, who are secluded tend to be unfamiliar with the language required for business transactions or for cultural exchange.


121. Ibid.