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Women under the Law in Islamic Spain, 700s–1492

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From the Umayyad conquest of Iberia in the 700s through the completion of the *Reconquista* in 1492, Islamic culture and political thought permeated the peninsula. Under the Muslim kingdoms, Islamic law was the dominant legal system, and though it formally held exclusive jurisdiction over Muslims, the implementation of Islamic law on a majority Christian populace impacted every member of society. Under Islamic law, the most privileged members of society were devout Muslim males. Other groups in society—such as Jews, Christians, slaves, and women—had fewer rights and privileges under the eyes of the law to varying degrees. The rights of women in particular were contingent on their place within society on several levels including religious, economic and marital status. However, it should be noted that the law in practice was more favorable towards women than it was on the books and women of different religious and social groups experienced different treatments under the law system. In reality, Muslim women in Al-Andalus were able to assert themselves in multiple areas, including marriage and family law, inheritance and property rights, as well as education, religious spaces and employment. Islamic law in Al-Andalus, therefore, was essentially no better or worse for women than contemporary law codes, and it simply operated differently in

its granting and withholding of rights and privileges. The purpose of this paper will be to highlight the key differences and similarities in such law codes, and analyze their impact on women from both dominant and oppressed classes.

In order to investigate Islam's legal impact on women in Spain we must establish the background of this legal system. Though Islamic law is a vast subject area, it can be summarized for our purposes as the legal system derived from the Muslim holy texts, the *Quran* and *Hadiths*, interpreted by Islamic scholars and judges and used as the primary law code in areas under Muslim rule. Islamic law, for the purposes of this research, pertains only to variations of such law codes implemented from the death of Muhammad up until the medieval era. Developments in Islamic law and jurisdiction from the modern era to contemporary times lay outside the parameters of this article. The strain of Islamic law implemented in Medieval Iberia was consolidated under the Maliki school of thought, which relies primarily on the *Quran-Hadiths* source structure, but also considers the "common good or welfare" in its teachings.¹ Medieval Islamic law, however, was also influenced more generally by Persian and Roman law codes, and was similar to its contemporary legal systems in that only men were given complete rights.² These factors led to the implementation of a unique form of Islamic law in medieval Spain, where Muslim women were treated as second-class citizens, and yet still allowed a number of legal privileges and protections. Among these were protections against violence and theft, the right to own and inherit property, to buy and sell goods, and to seek employment and

¹ Muhammad Khalid Masud, "A History of Islamic Law in Spain: An Overview," *Islamic Studies* 30, no. ½ (1991): 8–10.

² Jessica A Coope, "An Etiquette for Women: Women's Experience of Islam in Muslim Spain," *Essays in Medieval Studies* 29 (2014): 76.

take part in commercial enterprise.³ In spite of these legal protections, women were still seen as inferior to men, and many laws were repressive. Under traditional Islamic law, for example, men are permitted to beat their wives, women are limited in their rights to inheritance, and, in the case of divorce, the desires of men overrule those of women.⁴ Additionally, those legal protections that were provided by the law for women did not always achieve their goals.⁵ The law was restrictive towards women in their everyday lives, as well. A twelfth century list of regulations from Seville prohibited women from being alone with men, and generally restricted commercial dealings between the sexes, allowing only for “good and trustworthy men” to buy and sell with women, and only under careful public scrutiny.⁶ Additionally, the same code regulated the dress and appearance of women, so that they would not appear to be prostitutes.⁷ A degree of modesty would be expected from men, as well, but notably not to the same degree applied to women, and such expectations were less likely to be spelled out as specifically, and harshly, as they were for women. The laws on the books in Muslim Spain, therefore, were not particularly kind to women, despite the fact that certain legal privileges and rights were (in theory) guaranteed.

Those rights that were guaranteed, however, provide a valuable insight into the legal status of women in this era. Under the law, women were seen as adults with legal capacity, albeit one that was minimized in comparison to their male counterparts.⁸ The

³ Ibid.

⁴ Emilie Amt, *Women's Lives in Medieval Europe: A Sourcebook* (New York, NY: Routledge, 1993), 298–300.

⁵ Maya Shatzmiller, "Women and Property Rights in Al-Andalus and the Maghrib: Social Patterns and Legal Discourse," *Islamic Law and Society* 2, no. 3 (1995): 235.

⁶ Olivia Remie Constable. *Medieval Iberia: Readings from Christian, Muslim, and Jewish Sources*, 2nd ed. (Philadelphia: University of Pennsylvania Press, 2012), 229–230.

⁷ Ibid, 230–231.

⁸ Coope, “Etiquette,” 78.

implementation of law in practice, however, did not always follow legal canon strictly, allowing for a number of additional opportunities and privileges for Muslim women.

Marriage, for example, is one area where women, both Muslim and non-Muslim, were able to assert themselves under Islamic law. Polygyny is permitted according to traditional Islamic law, but in Al-Andalus the practice was not common.⁹ One possible reason for this is that, under the Maliki School, women were able to prevent their husbands from attaining second wives or long-term concubines.¹⁰ Thus, through the law, Muslim women could protect the status of both themselves and their household, allowing them a degree of control of their home life, an area where men were generally allotted the greatest authority. Additionally, there is evidence that interfaith marriage between Muslims and Christians occurred and was tolerated in Al-Andalus, despite the fact that such couplings are generally discouraged (albeit not forbidden) in the *Quran*.¹¹ Although usually between Muslim men and Christian women, such marriages were still governed under Islamic law.¹² These marriages allowed for greater inter-cultural and religious exchange, and also brought women of minority status into the majority. By marrying into a Muslim household, a Christian woman could gain new rights and privileges she would otherwise be denied.

Women also had property rights and could seek inheritance through the law. Maliki inheritance law is complex, but provides inheritance for women, and expands the groups of women permitted inheritance from those specified in the *Quran*.¹³ In one case,

⁹ Ibid, 79.

¹⁰ Ibid.

¹¹ Janina M. Safran, *Defining Boundaries in Al-Andalus: Muslims, Christians, and Jews in Islamic Iberia*. (Ithaca, NY: Cornell University Press, 2013), 103–104.

¹² Ibid, 105.

¹³ Jessica A Coope, "Marriage, Kinship, and Islamic Law in Al-Andalus: Reflections on Pierre Guichard's Al-Andalus," *Al-Masāq: Journal of the Medieval Mediterranean* 20, no. 2 (2010): 171.

the Andalusian jurist Ibn Al-Makwī found it lawful for a man to leave his entire inheritance to his two daughters, when it was questioned in court.¹⁴ In another, Ibn Lubāba of Córdoba prevented a father from regaining control of his daughter's wealth after she had married.¹⁵ Property law, as well, created opportunities for women. Muslim women were allowed to own land, and had control over who had permission to cultivate it—including their husbands.¹⁶ Additionally, through their rights to property, women were able to work and obtain wages through agriculture, manufacture and service.¹⁷ Therefore, Iberian Muslim women had a number of economic opportunities in their everyday lives protected by Islamic law and, as in marriage and domestic affairs, they were sometimes able to wield these privileges over men, although they did so in a limited capacity.

Even though Islamic law was generally restrictive towards women, it can be seen that through both cultural and practical allowances, women were given various opportunities through the legal system. Both similarities to and differences from this type of practice can be seen in contemporary legal systems, such as the Roman and Gothic laws that governed the Christian kingdoms of Spain, both before and after the Muslim conquests in Iberia. Christians were governed by a mix of Roman and Gothic laws, both with heavy influence from the Roman Catholic Church. Spain was governed for many years by the Roman Empire, and after its fall the Germanic Visigoths seized political control, bringing their own laws and customs. During this time, however, Roman laws

¹⁴ Shatzmiller, "Property Rights," 227.

¹⁵ Ibid, 232.

¹⁶ Maya Shatzmiller, "Women and Wage Labour in the Medieval Islamic West: Legal Issues in an Economic Context," *Journal of the Economic and Social History of the Orient* 40, no. 2 (1997): 201.

¹⁷ Ibid, 202.

and courts still exercised jurisdiction over those of Roman heritage, creating a “legally pluralistic” society.¹⁸ These law codes had varying impacts on women. Under Roman law, for example, slaves did not have the legal right to marry, and marriage between Romans and “foreigners” or other non-citizens was not recognized.¹⁹ This contrasts with Islamic law, which permitted marriage to slaves and to other legal minorities, such as Christians. Under Roman law, however, divorce was permissible, and women could initiate divorce proceedings.²⁰ Islamic law, by contrast, discouraged divorce and only allowed it under a complex process, which was to be initiated by the husband.²¹ Roman laws regarding inheritance were often restrictive towards women, but were not always followed exactly when put into practice.²² Inheritance, then, was comparable to Islamic practices as it was permitted, if restricted, but allowed for greater opportunities in practice than on paper.

Germanic laws had a great many differences from Roman laws, and the legal rights of women were no exception. Under the Visigothic Code, divorce was allowed only in the case of adultery, as opposed to the many reasons allowed in Roman law.²³ When divorce did occur under Gothic law it was, just as in Islamic law, only done at the initiation of the husband.²⁴ Laws regarding divorce, therefore, restricted women both under Gothic and Islamic law. In general, sexual relationships outside marriage were heavily discouraged under Germanic law, just as they are in Islam.²⁵ Likewise, the

¹⁸ James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe*, (Chicago, IL: University of Chicago Press, 1987), 174.

¹⁹ Jane F. Gardner, *Women in Roman Law & Society* (Beckenham, Kent: Croom Helm, 1986), 31.

²⁰ *Ibid.*, 81, 86.

²¹ *Amt.*, 299–300.

²² Gardner, 177.

²³ S. P. Scott, *The Visigothic Code (forum Judicum)* (Boston, MA: Boston Book Company, 1910), 114.

²⁴ Scott, 114; *Amt.*, 299–300.

²⁵ Brundage, 126–127.

Visigothic Code gave women inheritance rights, just as Islamic law guarantees.²⁶ In other areas, however, we see contrast between the two legal systems. Under the Visigothic Code, relationships between Christian women and Muslim men were punished with death for the man, and confiscation of half the woman's property.²⁷ This diverges from Islamic legal opinion, which, as stated before, allowed for marriages between Muslims and Christians.

Both law codes that governed Christian kingdoms during the Islamic age in Spain, therefore, provided varying degrees of restriction and opportunity for women. The opportunities afforded to women depended more on their status in society as part of dominant or minority social groups. Christian women were afforded more rights in Christian society, just as Muslim women were afforded more rights in Muslim societies. Christian rule was especially restrictive towards Muslim women, as they faced limitations both from Christian and Muslim law.²⁸ And although Christian women were afforded certain rights under Muslim rule, such as the right to worship, they had very few under the law comparative to Muslim women. That being said, Muslim women were assured certain rights through the law, and were treated as legal adults. Through the Islamic legal practices in Al-Andalus, Muslim women were able to assert themselves in the areas of marriage, inheritance, property rights, and employment. Additionally, Christian women were able to gain greater status under the eyes of the law through interfaith marriage to Muslim men. Of course, women in Islamic Spain were by no means treated equal to men, and many laws were restrictive and oppressive for women. But, through a number of

²⁶ Scott, 123.

²⁷ Amt, 70.

²⁸ Isabel A. O'Connor, "Muslim Mudejar Women in Thirteenth-Century Spain: Dispelling the Stereotypes," *Journal Of Muslim Minority Affairs* 27, no. 1 (April 2007): 56.

mechanisms Muslim women (and to a lesser extent, non-Muslim women) were able to obtain greater privileges in public life through the law. These privileges were based more on the woman's place in society than anything else; those women in the dominant spaces of society were generally afforded more privileges, while those of minority status were afforded less. Therefore, it cannot be said that any particular law code was better or worse for the women it governed. Roman law favored privileges for women who were free citizens. Germanic law was most favorable to Christian women who were known to be virtuous and chaste.²⁹ Islamic law guaranteed certain rights and allowed other rights and privileges for Muslim women, particularly those under the guardianship of a male. Status in society, accordingly, was the primary determining factor of which rights women would or would not be allowed to have.

Each law system present in medieval Spain was patriarchal and generally gave men a higher status under the law. Depending on their status in society, however, certain women were superior to certain men. Free Roman women, for example, had more rights than male slaves. Likewise, Muslim women in Al-Andalus had greater rights and privileges than Christian men. The status of women under the law in medieval Spain was generally not optimal; perhaps with the rare exception of some royalty, no women were treated with anything resembling full rights and legal autonomy. However, when occupying a space in the dominant sector of society, women were afforded more rights and privileges than others. Islamic law in Al-Andalus was, therefore, not necessarily better or worse for the women it governed than its contemporaries; rather, it operated in a

²⁹ Brundage, 127.

similar manner to other legal traditions by guaranteeing rights to women in some ways and denying them in others.

About the author

Daniel Dawson is a senior majoring in History and Political Science at Virginia Commonwealth University. He plans to go on to graduate school to pursue a PhD degree in History with a focus on religious, social and political movements within Latin America and the Caribbean.