

Marriage and Slavery in Early Islam

Kecia Ali

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Kecia Ali has already acquired a reputation as one of the most important English-language scholars of Islam and gender of her generation. Her latest book

will do nothing to detract from that reputation, and may well solidify her as the leading scholar of her generation of Islam and gender in the United States.

While the title suggests that its contents exhibit a parallel concern with slavery and marriage, the work is really devoted to showing how the formally separate legal institutions of marriage and slave holding shaped and were shaped by each institution – with their respective doctrines at times converging, and while at other times, the doctrines diverged. The book consists of an introduction, five substantial chapters, and a conclusion. The chapters cover the formation of a marriage and its similarities to and distinctions from concubinage, the only other legal relationship that made sexual relations licit. The second chapter treats the interdependency of claims within marriage, while pointing out the gendered nature of the claims particular to the husband and the wife. The third chapter focuses on the wife's legal claims to her husband's companionship, particularly in the context of a polygynous marriage. The fourth chapter deals with the various modes of dissolving a marriage in Islamic law and compares them with a master's power to manumit his slave. The fifth chapter compares and contrasts marriage and slavery as particular modes of ownership (*milk*).

The first chapter raises the intriguing claim that juristic conceptions of concubinage, known in early works of Islamic law as *milk al-yamīn* (the property of the right-hand), were decisive in shaping early jurists' understanding of marriage to a free woman (*nikāḥ*) – the latter giving rise to a particular form of property that the jurists described as *milk al-nikāḥ* (the ownership of the marriage). While Ali points out that the legal tool by which conceptions of ownership derived from the institution of slavery were imported into jurists' conception of marriage were analogical, that does not mean that concubinage and marriage were the same thing; indeed, jurists made great efforts to distinguish, from a legal perspective, lawful concubinage from lawful marriage to a free woman. Nevertheless, Ali argues that the two institutions shared fundamental characteristics: they were the exclusive means by which heterosexual sexual intimacy could become licit, and that both, in order to be valid (and thus serve their function of legitimating sexual intimacy), required that female sexual capacity be in the exclusive domain of one male. This requirement of male control of female sexual capacity in turn provides the conceptual link between the actual ownership of a slave and the metaphorical ownership of a free woman that results from marriage. It also provides the grounds on which the jurists began to compare the dower given by a prospective husband to his bride to the purchase price paid by a master for a slave.

Ali shows that after the formation of a marriage, the primary rights accruing to the parties are determined almost entirely by gender: the hus-

band is entitled to sexual access to his wife, and the wife is entitled to support from her husband. While all the jurists agreed that legal consequences attached when a wife breached her duty to make herself available sexually to her husband, the consequences of a husband's failure to maintain his wife was the subject of greater controversy among the jurists.

The third chapter investigates the wife's claims against her husband's person for intimacy and companionship. Ali concludes that the primary claim the wife had for her husband's time was that he spend as much time with her as he did with other wives – and while all the jurists agreed to this as a matter of principle, they often disagreed in the details regarding what a fair division of time among a man's wives meant. Perhaps the most important point of Ali's analysis, however, is that a woman's right to companionship could practically be disregarded because of the husband's prerogative of unilateral divorce. And while a woman could always renounce an agreement in which she waived her right in favor of another wife, she would face the same dilemma that led her to waive that right in the first place: her husband could always divorce her if she stood on her rights to an equal share of her husband's time.

The fourth chapter, on divorce, skillfully describes differences between the unilateral privilege of divorce (*talāq*), which was the prerogative of the husband, and the divorce by mutual consent accompanied by a consideration (*khul'*), was, as a practical matter, the most widely available form of marriage dissolution to women. Perhaps the most interesting point Ali highlights in this chapter is the fact that the jurists were unanimous in permitting a male slave to exercise the right of *talāq* despite his servile status. Here is one of the best examples Ali brings in her overall argument that early Islamic law was a product of conflicting ideals of personhood, gender, and status, and that at times, status trumped gender. Thus, Ali finds it significant that jurists agreed that only the male slave, and not his master, had the authority to divorce his wife. In many ways, then, despite his status as a slave, a male slave was fully male in a way that other slave-holding systems predating Islam could have never contemplated.

The fifth chapter concludes by returning to the theme of marriage and exclusive male control by examining interstitial doctrines regarding marriages between a free man and a slave woman whom he then purchases; whether a male slave can take a concubine; and the prohibition against free females taking their male slaves as concubines. For Ali, despite the differences in these cases, they all reinforce the central requirement of exclusive male dominion over the female, whether free or enslaved, as a prerequisite for licit sex.

More than her conclusions or the details of her interpretive analysis (which can very well be debated), Ali's *critical* approach to her materials, in

contrast to other authors' *dogmatic* treatment of Islamic law, should rightly earn this work canonical status in the burgeoning field of Islam and feminism. While I disagree with many of Ali's particular conclusions (or find them incomplete), I believe that this work's analytical clarity, its conceptual sophistication, and penetrating analysis of dense legal texts will make it the standard against which future works in Islam and gender are measured.

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