

## Introduction

Shihāb al-Dīn Aḥmad Ibn Ṭawq, a notary in late fifteenth-century Damascus, liked to keep a detailed record of his transactions and other memorable events. This is what he wrote in his diary on Ṣafar 19, 890 (March 7, 1485):

Monday the 19th. In the last few days the weather was very windy. The gusts broke in half an almond tree in the garden, one of the big ones. The tree fell on a heavy pear tree and trimmed its upper half. Many trees were lost. Let us seek refuge in Allāh from the wickedness of our souls and our evil deeds.

I divorced my wife at her request, by mutual consent, after being accused of repudiating her and for doing things and not doing others. The witnesses were Ibn Nūr al-Dīn al-Khaṭṭābī and his colleague Ibn al-Dayrī. She became unlawful to me.

In the afternoon we witnessed the remarriage of Yūsuf ibn Khālīd and his divorcee, the manumitted slave-girl of Amat Sulṭān, in the Mosque of Manjak. The marriage gift was 10 Ashrafī gold coins, which remain a due debt upon the groom. The witnesses were the writer of these lines and Ibn Nūr al-Dīn al-Khaṭṭābī. Shaykh Muhannā presided, and Ibn al-Dayrī accepted the marriage on behalf of the groom.<sup>1</sup>

Divorce was pervasive in late medieval Damascus. As a notary, Ibn Ṭawq made his living out of witnessing the divorce deeds and the subsequent marriages of other Damascene couples, many of which he then recorded in his diary. Squeezed between the storm that swept through his backyard and his afternoon business in the mosque, Ibn Ṭawq's own divorce has an almost casual air to it. The reasons for the divorce remain obscure. The relations between the long-time spouses appear to have been good. The only mention of a row came three years earlier, when the two quarreled over the bracelets worn by their daughter Fāṭīma, and Ibn Ṭawq threatened to divorce his wife if she let Fāṭīma wear them again.<sup>2</sup> More recently, there was some domestic tension on account of the slave maid, whom Ibn Ṭawq felt showed him disrespect. He even records beating the slave-girl with a stick, something for which he felt deeply ashamed.<sup>3</sup> There was also the matter of Ibn Ṭawq's

<sup>1</sup> Shihāb al-Dīn Aḥmad Ibn Ṭawq, *Al-Ta'liq. Yawmiyyāt Shihāb al-Dīn Aḥmad Ibn Ṭawq (834/1430–915/1509): Mudhakkirāt Kutibat bi-Dimashq fi Awākhir al-'Ahd al-Mamlūkī, 885/1480–908/1502*, ed. Ja'far al-Muhājir, vol. I (885/1480–890/1485) (Damascus: Institut Français de Damas, 2000), 449.

<sup>2</sup> *Ibid.*, 153.    <sup>3</sup> *Ibid.*, 431.

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outstanding debt to a textile merchant called Zayn al-Dīn. At the beginning of the month Ibn Ṭawq swore to repudiate his wife three times if he were to ask Zayn al-Dīn for another loan as long as the existing debt was not paid.<sup>4</sup> While the diary has no mention of a remarriage, two-and-a-half months later Ibn Ṭawq's wife gave birth to their third child, a daughter called 'Ā'isha.<sup>5</sup> Only then do we learn that she was in her seventh month when the consensual divorce took place.

The dramatic increase in the rates of divorce over the past several decades has changed the fabric of Western societies: it is associated with breaking away from traditional meanings of family and marriage, of gender relations, and of religion. Most of all, divorce is associated, for good and for bad, with modernity. The rise of divorce is attributed to diverse facets of modern life: decline in belief, breakdown in family values, unadulterated individualism and pursuit of self-interest, rising expectations about marriage, rising life expectancy, increasing economic independence of women and the empowering effect of feminism. The link between modernity and soaring divorce rates has led many to question the future viability of marriage as a social institution.<sup>6</sup>

This has been a Eurocentric debate if there ever was one. The outpouring of scholarly and popular works dealing with the rise of divorce in the West all but disregards the historical examples of past societies in which divorce rates have been consistently high. Two major examples are pre-modern Japan and Islamic Southeast Asia. In nineteenth-century Japan at least one in eight marriages ended in divorce.<sup>7</sup> In West Java and the Malay Peninsula divorce rates were even higher, reaching 70 percent in some villages, as late as the middle of the twentieth century.<sup>8</sup> In these societies divorce was part and parcel of tradition; it was frequent and normative, and did not involve any stigma that would hinder the remarriage of divorced persons. In direct opposition to developments in the West, modernity brought with it greater stability in marriage and a sharp decline in divorce rates.<sup>9</sup>

The pre-modern Middle East was another traditional society that had consistently high rates of divorce over long periods of time. Despite some current misgivings over the imminent disintegration of the Muslim family as a result of frequent divorces, the fact is that divorce rates were higher in Ottoman or medieval Muslim societies than they are today.<sup>10</sup> A decade of research on the history of Ottoman families, mostly drawing on the abundant court registers, has shown that divorce was a

<sup>4</sup> *Ibid.*, 442.    <sup>5</sup> *Ibid.*, 472.

<sup>6</sup> On divorce in Western societies, see R. Phillips, *Untying the Knot. A Short History of Divorce* (Cambridge: Cambridge University Press, 1991); L. Stone, *Road to Divorce: England 1530–1987* (Oxford: Clarendon Press, 1990).

<sup>7</sup> Laurel L. Cornell, "Peasant Women and Divorce in Pre-industrial Japan," *Signs* 15 (1990), 710–32.

<sup>8</sup> Gavin W. Jones, "Modernization and Divorce: Contrasting Trends in Islamic Southeast Asia and the West," *Population and Development Review* 23 (1997), 95–114.

<sup>9</sup> William J. Goode, *World Changes in Divorce Patterns* (New Haven: Yale University Press, 1993), 214–49.

<sup>10</sup> On the current debate on divorce in the Middle East, see M. Zilfi, "'We Don't Get Along': Women and *Hul* Divorce in the Eighteenth Century," in M. Zilfi (ed.), *Women in the Ottoman Empire: Middle Eastern Women in the Early Modern Era* (Leiden: E. J. Brill, 1997), 264–5. On the current rates of divorce in Middle Eastern countries, see Goode, *World Changes*, 270.

common feature of family life. In eighteenth-century Aleppo divorce was a “fairly common occurrence,” with at least 300 divorces registered annually, and many more going on unregistered.<sup>11</sup> The court of Ottoman Nablus recorded as many marriages as divorces, which shows “relatively high rates of divorce.”<sup>12</sup> A similar picture of high divorce rates and a normative attitude to divorce emerges from studies of Ottoman court records in Istanbul, Cairo, Cyprus, Sofia and ‘Ayntab.<sup>13</sup>

Divorce in medieval Middle East societies appears to have been just as common. Due to the general absence of pre-Ottoman court records, the evidence tends to be qualitative rather than quantitative, but several studies based on legal opinions (*fatwās*) from medieval North Africa and al-Andalus give the impression of a pattern of frequent and normative divorce.<sup>14</sup> The prevalence of divorce among the non-Muslim minorities in medieval Islam is an indirect testimony to the frequency of divorce among the Muslim majority. In the thirteenth century the Coptic Church of Egypt, which originally regarded marriage as a holy and unbreakable sacrament, was forced to legalize limited forms of divorce. This legal change allowed the ecclesiastical law to follow the practice of the Coptic community, undoubtedly influenced by its Muslim neighbors.<sup>15</sup> Similarly, the papers of the Cairo Geniza, relating to the Jewish community of medieval Cairo, show that

<sup>11</sup> A. Marcus, *The Middle East on the Eve of Modernity: Aleppo in the Eighteenth Century* (New York: Columbia University Press, 1989), 206.

<sup>12</sup> J. Tucker, “Ties that Bind: Women and Family in Eighteenth and Nineteenth-Century Nablus,” in N. Keddie and B. Baron (eds.), *Women in Middle Eastern History: Shifting Boundaries in Sex and Gender* (New Haven: Yale University Press, 1992), 241. See also J. Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley: University of California Press, 1998).

<sup>13</sup> R. Jennings, “Divorce in the Ottoman Sharia Court of Cyprus, 1580–1640,” *SI* 77–78 (1993), 155–68; A. A. Abdal-Rehim, “The Family and Gender Laws in Egypt during the Ottoman Period,” in A. El-Azhary Sonbol (ed.), *Women, Family and Divorce Laws in Islamic History* (Syracuse: Syracuse University Press, 1996), 96–111; S. Ivanova, “The Divorce between Zubaïda Hatun and Essaïd Osman Aga: Women in the Eighteenth-Century Shari‘a Court of Rumelia,” in El-Azhary Sonbol (ed.), *Women, Family and Divorce Laws*, 112–25; Zilfi, “‘We Don’t Get Along’”; L. Peirce, “‘She is Trouble and I Will Divorce Her’: Orality, Honor and Divorce in the Ottoman Court of ‘Aintab,’” in G. Hambly (ed.), *Women in the Medieval Islamic World: Power, Patronage, Piety* (London: Curzon Press, 1999), 269–300. The following studies play down the incidence of divorce in Ottoman society, but without, I believe, due critical approach to their sources: M. Meriwether, *The Kin Who Count. Family and Society in Ottoman Aleppo, 1770–1840* (Austin: University of Texas Press, 1999), 130; F. Zarinebaf-Shahr, “Women, Law and Imperial Justice in Ottoman Istanbul in the late Seventeenth Century,” in El-Azhary Sonbol (ed.), *Women, Family and Divorce Laws*, 87.

<sup>14</sup> D. Powers, “Women and Divorce in the Islamic West: Three Cases,” *Hawwa* 1 (2003), 29–45; D. Powers, “Women and Courts in the Maghrib, 1300–1500,” in M. Khalid Masud, Rudolf Peters and David S. Powers (eds.), *Dispensing Justice in Muslim Courts: Qadis, Procedures and Judgments* (forthcoming); H. R. Idris, “Le mariage en Occident musulman d’après un choix de fatwās médiévales extraites du Mi‘yār d’al-Wanšārīsi,” *SI* 32 (1970), 157–67; H. R. Idris, “Le mariage en Occident musulman. Analyse de fatwās médiévales extraites du Mi‘yār d’al-Wanšārīsi,” *Revue de l’Occident Musulman et de la Méditerranée* 12 (1972), 45–62; 17 (1974), 71–105; 25 (1978), 119–38; A. Zomeño, *Dote y matrimonio en al-Andalus y el norte de África. Estudio de la jurisprudencia islámica medieval* (Madrid: Consejo Superior de Investigaciones Científicas, 2000).

<sup>15</sup> Mohamed Afifi, “Reflections on the Personal Laws of Egyptian Copts,” in el-Azhary Sonbol (ed.), *Women, Family and Divorce Laws*, 202–15; Jacques Masson, “Histoire des causes du divorce dans le tradition canonique copte (des origines au XIIIe siècle),” *Studia Orientalia Christiana. Collectanea* 14 (1970–1), 163–250; 15 (1972–3), 181–294.

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divorce was “abundantly practiced,” with divorce “much more common in these times and places than [it was amongst] the Jewish families of Europe and America until the last generation.” In fact, the earliest fragment of paper found in the Geniza is a divorce deed.<sup>16</sup>

Yet, despite the acknowledged prevalence of divorce in pre-modern Muslim societies, historians have still to problematize divorce as a social institution. In most accounts, divorces simply happen, like an act of God. In his study of Ottoman Aleppo, Marcus highlights the way divorce and high mortality rates broke up households and dispersed parents and children; but he overlooks the dissimilarity between man-made divorce and the natural causes of high mortality.<sup>17</sup> Other historians, also drawing on Ottoman court records, outlined the common legal causes for divorces, noting that consensual separation (*khul'*) appears to have been as common as unilateral repudiation by the husband (*talāq*).<sup>18</sup> But few have asked why divorces were so common, or attempted to identify what social forces made couples separate from each other so frequently, or suggested what it all tells us about pre-modern Muslim societies in general – and in particular about the nature of marriage, family and patriarchy.

However, in a patriarchal society, divorce appears to be a paradox. Though inscribed in Islamic law as a patriarchal privilege, divorce undermines the patriarchal social order by destabilizing households, increasing the number of female-headed households and debasing the ideal of marriage. If the family was indeed the central building block of pre-modern Muslim society, and an institution that was to be protected from the penetrating eyes of the public gaze, then we would expect the incidence of divorce to be as low as possible. Indeed, if the ideal family of medieval Muslim societies was the patriarchal household, frequent divorce would surely have resulted in the creation of familial institutions that were less than ideal, as many more women would have had to make a living on their own. Moreover, if medieval Muslim societies looked upon the unattached young female as a threat to morality, and if marriage was so highly prized for both men and women, we would expect to find divorce being used only as a last resort. This was clearly not the case for much of the history of the Islamic Middle East.

This book sets out to explain the economic, legal and social causes of Muslim divorce in the Middle Eastern cities of Cairo, Damascus and Jerusalem in the Mamluk period (1250–1517). The starting point is the emergence of the Mamluk state in Egypt, Syria and Palestine, and the consolidation of a distinct military elite largely composed of ex-slaves (*mamlūks*), divided by any number of military households, and headed by a sultan residing in the capital, Cairo. The end point is the demise of this state at the hands of the Ottomans, an event that also marked the end of the medieval political and social order. These two-and-a-half centuries

<sup>16</sup> S. D. Goitein, *A Mediterranean Society. The Jewish Communities of the Arab World as Portrayed in the Documents of the Geniza*, 6 vols. (Berkeley: University of California Press, 1967–93), vol. III, 260–72.

<sup>17</sup> Marcus, *On the Eve of Modernity*, 198.

<sup>18</sup> See in particular Zilfi, “‘We Don’t Get Along’”; Peirce, “‘She is Trouble and I Will Divorce Her.’”

of Mamluk rule are unified by enduring political and legal institutions, many of which can be attributed to the first Mamluk sultans. But this was also a period of radical changes. From the viewpoint of family history, the period should be divided along the fault-line of the first outbreak of the Black Death in 749/1348. The plague, which was to recur at periodic intervals of ten to fifteen years, inflicted a staggering death toll of up to a third of the urban population. The demographic disaster, alongside its traumatic economic repercussions, indirectly triggered a transformation in gender relationships within families.

The population of Mamluk Cairo, Damascus and Jerusalem was cross-cut by sharp distinctions of wealth and rank, language and religion. The ruling horse-riding military elite, whose members mostly spoke to each other in Turkish or Circassian, was assisted by an indigenous Arabic-speaking scholarly elite, who filled the ranks of the state bureaucracy and judiciary. This state apparatus straddled some of the largest metropolises in the medieval world, most notably the capital, Cairo, which may have had up to a quarter of a million inhabitants. The population of these cities was a hotchpotch of different ethnic groups, including sizable Christian and Jewish minorities, who were autonomous in applying their own family law. While the main focus of this book is the application of Islamic family law among the Muslim Sunni majority, it will become evident that, despite the differences in legal frameworks, Muslims, Jews and Christians shared broadly similar family structures, as well as fairly similar notions of the ideal family. The Jewish family of the Geniza and the Muslim family of the Mamluk period were not very far apart.

The incidence of divorce in Mamluk society was remarkably high. The diary of the notary Shihāb al-Dīn Ibn Ṭawq gives ample testimony to the pervasiveness of divorce in late fifteenth-century Damascus, and the work of the contemporary Egyptian scholar Muḥammad b. ‘Abd al-Raḥmān al-Sakhāwī (d. 902/1497) does the same for Cairo. In his mammoth centennial biographical dictionary, containing 12,000 entries for notable men and women, al-Sakhāwī recorded information on the marital history of about 500 women.<sup>19</sup> This sample, the largest we have for any period of medieval Islam (and the subject of a more detailed analysis later in this book), shows a pattern of repeated divorces and remarriages by Mamluk women. At least a third of all the women mentioned by al-Sakhāwī married more than once, with many marrying three times or more. The reason for the high rates of remarriage was mainly the frequency of divorce; according to al-Sakhāwī’s records, three out of ten marriages in fifteenth-century Cairo ended in divorce.<sup>20</sup>

<sup>19</sup> Muḥammad b. ‘Abd al-Raḥmān al-Sakhāwī, *al-Daw’al-Lāmi’li-Ahl al-Qarn al-Tāsi’*, ed. Ḥusām al-Qudṣī, 12 vols. (Cairo: Maṭba‘at al-Quds, 1934–6).

<sup>20</sup> B. Musallam, “The Ordering of Muslim Societies,” in F. Robinson (ed.), *The Cambridge Illustrated History of the Islamic World* (Cambridge: Cambridge University Press, 1996), 186–97; Y. Rapoport, “Divorce and the Elite Household in Late Medieval Cairo,” *Continuity and Change* 16/2 (August 2001), 201–18. See also H. Lutfi, “Al-Sakhāwī’s *Kitāb al-Nisā’* as a Source for the Social and Economic History of Muslim Women during the Fifteenth Century AD,” *Muslim World* 71 (1981), 104–24; R. Roded, *Women in the Islamic Biographical Dictionaries: From Ibn Sa‘d to Who’s Who* (Boulder: Lynne Rienner, 1994).

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The frequency of divorce in Mamluk society forces a re-thinking of gender relations in medieval Muslim societies, and in particular their economic and legal dimensions. From an economic perspective, we need to reconsider women's economic independence within and outside marriage. Since divorce was so common, and sometimes perhaps arbitrary, women could not have been as dependent on their husbands as Muslim jurists would have us believe. Frequent divorce suggests that marriage was not a promise of financial security, and that alternative sources of revenue must have been available to divorced (as well as widowed) women.

From a legal perspective, the notion of divorce as a patriarchal privilege needs to be put in a social context. Was the frequency of divorce a simple result of the easy repudiation allowed by Islamic law? Should the history of divorce, as one scholar put it, be part of the "histories of distress," alongside domestic violence?<sup>21</sup> In part, the questions appear to be: Did men or women initiate the majority of divorces, and what were the most common reasons underlying divorce? But the frequency of divorce and its value as a symbol of patriarchy require us to broach a larger question, which is, like divorce itself, at the intersection of law and society: How did Islamic family law translate into the reality of medieval marriage?

The economic causes and implications of frequent divorces, and in particular women's financial independence, are the subject of the first three chapters of this book. The first chapter focuses on the dowries brought by Mamluk brides. The dowry, almost always in the form of a trousseau, was a major factor determining the degree of women's economic independence, especially among the Mamluk elites. Far from being token gifts, dowries functioned as a form of pre-mortem inheritance reserved exclusively for daughters. Once the dowry was donated by the bride's parents, it remained under the woman's exclusive ownership and control throughout marriage, and then again through widowhood and divorce.

The second chapter focuses on the majority of working women, for whom dowries were of lesser value. That remunerative work was undertaken by women, both within and outside marriage, is crucial for an understanding of the balance of power that existed between husbands and wives, as well as for a comprehension of the phenomenon of frequent divorce. Wages, mostly from work in the manufacture of textiles, allowed many women to remain single for long periods of time, so forming a sizable and often unacknowledged minority in medieval Muslim societies.

The third chapter examines the economics of marriage itself. A striking characteristic of Mamluk marriages is the way in which husbands and wives attached a cash value to various aspects of their relationships. The intrusion of cash contracts typical of the marketplace challenged the ideal of the autonomous and hierarchical patriarchal household, and the monetization of marriage was a major factor determining the rates and patterns of divorce in Mamluk society.

<sup>21</sup> Dalenda Largueche, "Confined, Battered and Repudiated Women in Tunis since the Eighteenth Century," in El-Azhary Sonbol (ed.), *Women, Family and Divorce Laws*, 259.

The basic inequality of Islamic law, whereby a husband can divorce his wife at will, has been one of the major sources of a husband's power over his wife. The absolute right of husbands to dissolve the marriage contract at will, like the absolute right of a master to manumit his slave, was the ultimate symbol of patriarchal authority. Yet divorce was rarely a one-sided affair. The fourth chapter shows how some women manipulated patriarchal ideals in order to initiate divorce, or used their financial leverage power to force their husbands to grant them a divorce.

The paradoxical role of divorce in simultaneously upholding and undermining patriarchy is at the core of the fifth chapter, which considers the use of oaths on pain of divorce. Repudiation was the ultimate symbol of patriarchy, and therefore the basis for the most solemn and binding type of oath in the Mamluk period – and also the cause of many unwanted divorces. The main focus of the chapter is the attempt of the religious reformer Taqī al-Dīn Ibn Taymiyya (d. 728/1328) to change the Sunni law regarding divorce oaths, an attempt which landed him and his followers in jail.

A study of Mamluk divorce provides, almost by necessity, a gendered perspective on Mamluk history. An analysis of the relations of power within households can contribute to Mamluk political and economic history in ways that go beyond a simplistic equation of a political patriarchal order and a domestic one. The extraordinary power accorded to oaths on pain of divorce reveals how marital authority was both evoked and pawned in order to bolster social commitments that went far beyond the domestic sphere. Our understanding of the medieval Near Eastern textile industry becomes richer and more complex after considering the contribution of female spinners, embroiderers and seamstresses. When viewed through the lenses of gender, the grant of fiefs (*iqṭā'*) to the sons of the military appears to stem from the same domestic logic as the inheritance of office in religious institutions. The increasing intervention of the judicial system in conjugal life, coupled with the increasing monetization of marriage, tell us a great deal about the role of the law and, by implication, about the power of the state.

But anyone who seeks in this book a grand narrative about patriarchy and Islam should be advised to look elsewhere. I have tried, as Lila Abu Lughod advised, “to specify, to particularize and to ground in practice, place, class and time the experiences of women and the dynamics of gender.”<sup>22</sup> Coming dangerously close to being anecdotal, this book attempts to individualize these experiences. I have sought to rescue from the historical texts and documents a sense of the humanity of the people whose lives – the very intimate and personal aspects of their lives – I am recounting in this book. I purposefully elaborated and extended the sections dealing with individuals like the seamstress Dayfa or the slave-girl Zumurrud and her consecutive marriages. These are not merely case studies illustrating a point; I hope they acquired a life of their own.

<sup>22</sup> L. Abu Lughod, “Feminist Longings and Postcolonial Conditions,” in L. Abu Lughod (ed.), *Remaking Women. Feminism and Modernity in the Middle East* (Princeton: Princeton University Press, 1998), 22.

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### Sources

More is probably known about women in Mamluk society than in any other medieval Muslim milieu.<sup>23</sup> Mamluk society left us a wealth of legal and literary sources pertaining to the private or domestic life of its members, and these sources compensate for the almost complete absence of court archives. As is true for other periods of medieval Islam, very few Mamluk documents survived in their original form. The Ḥaram collection, consisting of about a thousand documents mostly emanating from the court of a late fourteenth-century *qāḍī*, is the only Mamluk court archive in our possession. It has been catalogued by Donald Little, and was the subject of a monograph by Huda Lutfi, who paid unusual attention to questions of gender.<sup>24</sup> Hundreds of endowment deeds, mainly originating in late fifteenth-century Cairo, have also survived. Their contribution to our understanding of gender relations in Mamluk society has been highlighted by Carl Petry.<sup>25</sup> More directly relevant to the study of divorce are about a dozen Muslim marriage contracts from the Mamluk period unearthed during archaeological excavations in Egypt. The Geniza adds a few documents relating to Jewish marriage and divorce, although most of the Geniza material dates from the Fatimid period.

While the documentary evidence is thin, there is a wealth of other types of legal sources from the Mamluk period. These include legal manuals that reproduce models of common documents for the use of notaries; compilations of *responsa* by contemporary *mufṭīs*, mostly dealing with real-life cases; and descriptions of judicial proceedings in chronicles, some of which were composed by court officials. Legal matters are also discussed by the authors of prescriptive treatises, primarily because judicial practice tended to deviate from proper moral behavior. The *Madkhal* of the Cairene Mālikī jurist Ibn al-Ḥājj (d. 737/1336–7) is the most well-known example of this kind of Mamluk moralistic literature.<sup>26</sup> In all these types of legal sources divorce occupies a prominent place. Since criminal law was mainly handled by the lay courts headed by military officials, family law and commercial law were the primary responsibilities of *qāḍīs* and *mufṭīs*.

While using Mamluk legal sources, one has to keep in mind the pluralism of the Mamluk legal system, a pluralism that allowed individuals to approach the law in a strategic manner. The Mamluk judicial system allowed litigants to choose

<sup>23</sup> Ahmad 'Abd al-Rāziq, *La femme au temps des Mamlouks en Egypte* (Cairo: Institut français d'archéologie orientale, 1973), is a useful introduction, even though largely anecdotal and with a heavy emphasis on the military elite. For a review, see N. Keddie, "Problems in the Study of Middle Eastern Women," *IJMES* 10 (1979), 225–40.

<sup>24</sup> D. Little, *A Catalogue of the Islamic Documents from al-Ḥaram aš-Šarīf in Jerusalem* (Beirut and Wiesbaden: F. Steiner, 1984); H. Lutfi, *Al-Quds al-Mamlūkiyya: A History of Mamlūk Jerusalem Based on the Ḥaram Documents* (Berlin: K. Schwarz, 1985); H. Lutfi, "A Study of Six Fourteenth-Century *Iqrārs* from al-Quds Relating to Muslim Women," *JESHO* 26 (1983), 246–94.

<sup>25</sup> C. Petry, "Class Solidarity Versus Gender Gain: Women as Custodians of Property in Later Medieval Egypt," in Keddie and Baron (eds.), *Women in Middle Eastern History*, 122–42.

<sup>26</sup> H. Lutfi, "Manners and Customs of Fourteenth-Century Cairene Women: Female Anarchy Versus Male Shar'ī Order in Muslim Prescriptive Treatises," in Keddie and Baron (eds.), *Women in Middle Eastern History*, 99–121.



the school doctrine they found most suitable to the case in hand. Chief *qāḍīs* representing all four Sunni schools of law presided in Cairo and Damascus, and during the fourteenth and fifteenth centuries the model was extended to include most other Mamluk urban centers.<sup>27</sup> The differences between the doctrines of the four schools allowed litigants a considerable room for maneuver. For example, a bride who wished to insert stipulations into her marriage contract could appeal to a Ḥanbalī judge, since only the Ḥanbalīs affirmed the validity of such stipulations. The school affiliation of the litigants appears to have been irrelevant.<sup>28</sup>

Another feature of the pluralism of the legal system were the *fatwās*, or legal *responsa*, issued by *muftīs*. Instead of appearing before a *qāḍī*, litigants could put their case to a *muftī*, whose ruling would be authoritative but not enforceable. The authority of *muftīs* did not derive from any official appointment, although most were either employed in the judiciary or given positions in educational institutions. Rather, the *muftī* and the *qāḍī* filled complementary functions. First, a favorable answer from a *muftī* was sought prior to court litigation before the *qāḍī*. Second, while the *qāḍī* had to follow the established orthodoxy, a *muftī* (even if it was the same man) was able to challenge the school doctrine. By virtue of the respect they commanded, distinguished *muftīs* were able to perform the functions of the “author-jurist,” with responsibility for articulating, legitimizing and ultimately effecting legal change.<sup>29</sup> The most influential author-jurists of the Mamluk period were the above-mentioned Ibn Taymiyya, a Ḥanbalī jurist with no official position, and his contemporary, the chief Shāfi‘ī *qāḍī* Taqī al-Dīn al-Subkī (d. 756/1355).

But the study of Mamluk marriage and divorce is made possible, first and foremost, by the autobiographical bent of much of Mamluk historiography. In the Mamluk period we find an unusual production of overtly autobiographical works, i.e., works devoted explicitly to the self-representation of the author.<sup>30</sup> Autobiographical material was often also inserted within the annalistic form of historical works. Many Mamluk chronicles and biographical dictionaries can be read like memoirs in which medieval historians talk about their families – children and female relatives included. They also furnish us with intimate information on friends or acquaintances, who had hoped to be immortalized through the text.<sup>31</sup>

<sup>27</sup> J. Escovitz, “The Establishment of Four Chief Judgeships in the Mamluk Empire,” *JAOS* 102 (1982), 529–31; J. Nielsen, “Sultan al-Zāhir Baybars and the Appointment of Four Chief Qāḍīs, 663/1265,” *SI* 60 (1984), 167–76; S. Jackson, “The Primacy of Domestic Politics: Ibn Bint al-‘azz and the Establishment of the Four Chief Judgeships in Mamluk Egypt,” *JAOS* 115 (1995), 52–65; Y. Rapoport, “Legal Diversity in the Age of *Taqīd*: The Four Chief Qadis under the Mamluks,” *ILS* 10/2 (2003), 210–28.

<sup>28</sup> The possibility of choosing the most suitable doctrine from among the four legal schools is well attested in Ottoman court records. See, with regard to family law, Abdal-Rehim, “The Family and Gender Laws in Egypt”; Tucker, *In the House of the Law*, 83 ff.

<sup>29</sup> W. Hallaq, *Authority, Continuity and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001), 166–235.

<sup>30</sup> Dwight F. Reynolds, *Interpreting the Self. Autobiography in the Arabic Literary Tradition* (Berkeley: University of California Press, 2001), 52–71.

<sup>31</sup> Reynolds, *Interpreting the Self*, 44–45; Nuha N. Khoury, “The Autobiography of Ibn al-‘Adīm as Told to Yaḳūt al-Rūmī,” *Edebiyât: Special Issue – Arabic Autobiography* 7/2 (1997), 289–311.

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While earlier historical writing had also dealt with these topics, it was usually in the framework of a political history where marriage was first and foremost an alliance between two households or dynasties. In the Mamluk period, on the other hand, we can look beyond the ruler's palace. When contemporary authors write about their own lives, they shed light on the families of the predominantly civilian upper and middle classes to which they belonged.

Generally speaking, we can expect more intimate details about family life from a late fifteenth-century author than from a historian writing in the thirteenth century. It is possible to speak of two stages in Mamluk historiography. The first can be identified with a group of thirteenth- and fourteenth-century Syrian historians. Authors like Abū Shāma (d. 665/1268), al-Yūnīnī (d. 726/1326), al-Jazarī (d. 739/1338) and al-Ṣafadī (d. 764/1363) introduced a more literary style of historical writing by incorporating a large number of anecdotes, poetry, and a certain degree of colloquialism. They also tended to include more autobiographical elements than their predecessors or their Egyptian contemporaries. A group of fifteenth-century historians, many of them students or associates of the Egyptian *qādī*, historian and traditionist Ibn Ḥajar al-ʿAsqalānī (d. 852/1449), introduced a second phase in Mamluk historiography. Al-Sakhāwī, the most prolific historian of the late fifteenth century, devoted much space to his personal affairs, and was unusually gossipy when writing biographies of women. Historians like al-Biqāʿī (d. 885/1480), Ibn Iyās (d. 930/1524) or Ibn Ṭūlūn (d. 953/1546) composed chronicles that are also semi-memoirs, and the work of Ibn Ṭawq is, for all practices and purposes, a diary.<sup>32</sup>

Women are well represented in Mamluk historiography, but they do not represent themselves. Mamluk women did not leave us chronicles and biographical dictionaries, nor, for that matter, almost any other form of literary production. Why this is so is not self-evident. We know that families of the educated classes took pride in teaching their daughters to read and write. In the Geniza we find private letters written by Jewish women.<sup>33</sup> Nuḍār (d. 730/1330), the daughter of the Muslim philologist Ibn Ḥayyān, copied her father's works in several volumes, and so did Fāṭima (d. 731/1331), daughter of the historian al-Birzālī.<sup>34</sup> Several literate elite

<sup>32</sup> Li Guo, "Mamluk Historiographic Studies: The State of the Art," *MSR* 1 (1997), 15–43; D. Little, "Historiography of the Ayyūbid and the Mamlūk Epochs," in C. Petry (ed.), *The Cambridge History of Egypt*, vol. I: *Islamic Egypt, 640–1517* (Cambridge: Cambridge University Press, 1998), 421–32.

<sup>33</sup> J. Kramer, "Women's Letters from the Cairo Genizah: A Preliminary Study" (in Hebrew), in Yael Atzmon (ed.), *Eshnav le-Ḥayehen shel Nashūm be-Ḥevrōt Yehūdīyōt* (Jerusalem: Merkaz Zalman Shazar, 1995), 161–81.

<sup>34</sup> Both died in the prime of their youth, and we owe their biographies to their mourning fathers. On Nuḍār see al-Jazarī, *Ta'rikh Ḥawādith al-Zamān wa-Anbā'ihī wa-Wafayāt al-Akābir wa'l-A'yān min Abnā'ihī. Al-Ma'rūf bi-Ta'rikh Ibn al-Jazarī*, ed. 'Umar 'Abd al-Salām Tadmūrī, 3 vols. (Sayda: al-Maktabah al-'Aṣriyya, 1998), vol. II, 240; Th. Emil Homerin, "'I've stayed by the Grave'. A Nasīb for Nuḍār," in Mustansir Mir (ed.), *Literary Heritage of Classical Islam. Arabic and Islamic Studies in Honor of James A. Bellamy* (Princeton: Princeton University Press, 1993), 107–18; Reynolds, *Interpreting the Self*, 77. On Fāṭima bt. 'Alam al-Dīn al-Birzālī, see al-Jazarī, *Ta'rikh*, vol. II, 477; Khalīl b. Aybak al-Ṣafadī, *A'yān al-'Aṣr wa-A'wān al-Naṣr*, ed. 'Alī Abū Zayd, Nabīl Abū 'Amasha, Muḥammad al-Maw'id and Maḥmūd Sālim Muḥammad, 6 vols. (Damascus: Dār al-Fikr, 1998), vol. IV, 30. See also the biography of Fāṭima bt. Kamāl al-Dīn al-Maghribī (d. 728/1328), who was known for her superb handwriting (al-Jazarī, *Ta'rikh*, vol. II, 297).