

# FREE FATHERS, SLAVE MOTHERS AND THEIR CHILDREN: A CONTRIBUTION TO THE STUDY OF FAMILY STRUCTURES IN AL-ANDALUS

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## ABSTRACT

This article seeks to make a brief study concerning a very concrete matter: the family of a free man, whose concubine had his child or became pregnant by him. We will attempt to answer the following questions: 1) what is the legal source of the family structure that is established; 2) what is a slave-mother (*umm walad*) and how is she juridically defined through her rights and obligations; and 3) what is the legal situation of children born within a relation of concubinage? Despite all the deficiencies that can be attributed to Arabic Medieval legal sources, such as the certain fact that they are composed within an urban medium and do not reflect what exists beyond it, they still happen to be the works that offer the most fertile information for social history and the only ones that make it possible to study how “islamisation” and “arabisation” of the institutions influenced the evolution of family structures family in Islamic societies. The legal sources offer plentiful and detailed information about the presence of slaves within family structures<sup>1</sup>.

## KEY WORDS

Slavery, Concubines, Slave Mothers, *Umm Walad*, Muslim Family, Islamic Law, al-Andalus, *Malikis*.

## CAPITALIA VERBA

Servitus, Concubinae, Matres serviles, *Umm Walad*, Mahumedana familia, Arabicae leges, Hispania Arabica, *Malikis*.

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1. This article is the result of the Ministry of Science and Innovation R+D project, “Sexual taboos and family structures: *sharia* and sexual ethics in the pre-modern Islamic world (3th/9th-7th/13th centuries)” (FF12010-16314).

## 1. Introduction

In 1973 Pierre Guichard published his novel work *Al-Andalus. Anthropological Structure of an Islamic Society in the West*,<sup>2</sup> which constituted a pioneering study of Andalusi social and family structures. The first part of the work was devoted to the organisation of kinship and the situation of women in al-Andalus. Guichard studied families, clans, lineages and tribes, fundamentally through historical Arabic sources: chronicles, geographical works and, to a lesser degree, biographical dictionaries, which substantially conditioned the results of his research. These texts allowed him to carry out a review of existing indigenist and continuist theories regarding Andalusi society, as well as of settlements that were established as a result of the conquest, both from an ethnic and social point of view.<sup>3</sup> His work opened up new avenues of investigation, some of which would be undertaken by Guichard himself, others where there still remains much to be done.

Guichard's work represented a watershed in the historiography of al-Andalus. After its publication, there was a marked increase in works dedicated to the social history of the Islamic West. Over the last forty years, some of the questions dealt with by Guichard have been developed and studied further, in combination with other Arabic sources that have been preserved. The historiography is, nevertheless, uneven where results are concerned. While investigation around women in al-Andalus, for instance, has already been given broad attention,<sup>4</sup> it is necessary to deepen studies of family structures and there is a growing need for discussion of some of Guichard's hypotheses in this area, just as there is a continuing urgency to tackle methodological problems.<sup>5</sup> Similarly, I feel once again we have to seek to identify the Arabic sources in which mainly family relations are discussed, locate where these issues have been most explored and where we can find the greatest development of the concept of family. For the meantime, consultation of Andalusi works belonging to other genres different from those employed by Guichard is gradually enabling the subject to be examined in more depth.

Andalusi and North African biographical dictionaries provide plentiful information on families of Ulemas, their genealogies and the unions established between them. They are, therefore, an extraordinary source for the study of the transmission of knowledge, the social networks created for such a purpose and the

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2. The work was published in French in 1976 under the title *Tribus arabes et berberes en Al-Andalus* (translated into Spanish by: Ancochea, Nico; Guichard, Pierre. *Al-Andalus Estructura antropológica de una sociedad islámica en Occidente*. Barcelona: Barral Editores, 1973).

3. Guichard explains the methodology followed in this work in his article: Guichard, Pierre. "Structures sociales 'occidentales' et 'orientales' dans l'Espagne musulmane au Moyen Âge", *Actes du Colloque organisé par l'E.R.A. (Paris, 1976)*. Paris: Librairie Orientaliste Paul Geuther, 1977: 187-193.

4. Standing out among all the works devoted to women in al-Andalus is the joint study by: Marín, Manuela. *Mujeres en al-Andalus*. Madrid: Consejo Superior de Investigaciones Científicas, 2000.

5. The problem about studying the Andalusi family extends to study of the family in the pre-modern Islamic world in general, a question that few works have addressed, and a gap that would partially be filled by the appearance of the work by: Benkheira, Hocine; Giladi, Avner; Mayeur-Jaouen, Catherine; Sublet, Jacqueline. *La famille en Islam après les sources arabes*. Paris: Les Indes Savantes, 2013.



intellectual and political authority of the members of these families.<sup>6</sup> Despite their indisputable value, they do not make it possible to carry out any other kind of investigation. On the one hand, biographical works are not representative of the whole of society, but only of the intellectual and religious urban elites that their authors and readers belonged to; on the other, they offer practically no information about the simple family structure, that is, about what happened within the domestic sphere or the social prejudices that guided marriages, sexual conduct or the different ways in which subjects of such relevance in different historical places and periods as maternity, paternity and filiation might be approached; or the maintenance and custody of members of the family. The information we can draw from biographical dictionaries in this regard are scarce and scattered, for the purpose of the authors who composed these works was not that of providing a social portrait, but rather an intellectual and religious picture of the world they lived in.<sup>7</sup>

Meanwhile, the chronicles concern themselves with the history of the ruling family and the governing elites and they are fundamentally, though not exclusively, of a political nature. Just a few scattered anecdotes allow us to glean an impression of private life in the fortress or in the households of the economically privileged groups. This information is valuable for illustrating or complementing that obtained from other sources, but does not in itself enable the capture of an extensive social portrait.<sup>8</sup>

Lastly and with increasing frequency, legal sources are employed for the study of pre-modern societies.<sup>9</sup> Jurisprudence, by definition, aims to find a solution to problems that arise between individuals and it does so using different sources, among them the analysis of legal opinions or sentences regarding particular areas. It tries, that is, to resolve, theoretically at least, a conflict that exists in real life, and the tension that is brought about between theory and practice is precisely what gives us the most realistic clues as to how social relations were established in the private and public space contemporary to the source studied. In some cases, it has been alleged of Islamic jurisprudence that, because it is mainly of a doctrinaire nature, it did not reflect the society it was aimed at, as if these were works written in pursuit of pure theological or philosophical speculation. This argument is easily rebutted

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6. See the series *Estudios Onomástico-biográficos de al-Andalus*, *Estudios Onomástico-biográficos de al-Andalus*, 18 vols. Madrid-Granada: Consejo Superior de Investigaciones Científicas, 1988-2011.

7. María Luisa Ávila, after examining the characteristics and limitations of biographical dictionaries for carrying out a study on the family, draws some conclusions about women and the composition and size of the families of Ulemas: Ávila, María Luisa. "La estructura de la familia en al-Andalus", *Casas y palacios de al-Andalus*, Julio Navarro, ed. Barcelona-Madrid: Lunwerg Editores, 1995: 33-37 (translated into English in: Marín, Manuela; Samsó, Julio; Fierro, María Isabel. *The formation of al-Andalus*. Aldershot: Ashgate, 1998. Also see: Ávila, María Luisa. *La sociedad hispanomusulmana al final del Califato (aproximación a un estudio demográfico)*. Madrid: Consejo Superior de Investigaciones Científicas, 1985.

8. Joaquín Vallvé carried out a social study of ruling families using chronicles in: Vallvé, Joaquín. "Sobre demografía y sociedad en al-Andalus". *Al-Andalus*, 42 (1977): 323-340.

9. Although there are already many works in which the utility of legal sources for social history is discussed, see, for example: Powers, David. "Fatwas as sources for legal and social history. A dispute over endowment revenues from Fourteenth-Century Fez". *Al-Qantara*, 11 (1990): 295-342.



by the actual legal texts preserved, because the wealth, reach and exhaustiveness they provide for dealing with specific matters attest to the social importance they had for their authors. The abundance and broad diffusion of this legal literature, meanwhile, show the influence and impact they must have found among their readers.

Despite all the deficiencies that can be attributed to legal sources, such as the certain fact that they are composed within an urban medium and do not reflect what exists beyond it, they still happen to be the works that offer the most fertile information for social history and the only ones that make it possible to study how “islamisation” and “arabisation” of the institutions influenced the evolution of family structures family in Islamic societies. It is my view that the reason why historians have tended to ignore them has more to do with the complexity of their contents and with a problem stemming from this difficulty, to wit, the absence of translations of these books into European languages.

In the case that concerns me on this occasion, the presence of slaves within family structures, the legal sources offer plentiful and detailed information, which we would practically know nothing about were we only to read other Arabic literary genres. To give an example, slavery occupies a quarter of one of the basic works (*ummahat*) of the school of Maliki law, the *Mudawwana* of Sahnun, a text widely disseminated in al-Andalus.<sup>10</sup>

To the problems presented by the Arabic sources from different genres indicated so far, modern historiography adds one more obstacle, an anachronistic view of the past, from the perspective of possible family structures in the modern period or existing in present times. The Islamic family in the pre-modern period is conceived from a broad point of view —blood relatives, foster relations, domestic slaves and concubines, as well as relatives where there is a degree of prohibited relationship, meaning those with whom religious sources do not allow a marriage contract to be struck— and all these actors have a relevant role in family and social relations.<sup>11</sup> Despite this, some academic works have not taken on board the Islamic conception of the family, as described by the Muslim legal texts themselves. So, for example, Angela Degand in her work *Geschlechterrollen und familiale Strukturen im Islam*<sup>12</sup>, which studied legal sources composed between the 13<sup>th</sup> and 15<sup>th</sup> centuries, minimises the presence of slaves in the home and, consequently, does not take vital questions into account such as the repercussion of concubinage on the marriage contract, the maternity of a slave-concubine or the legal situation of a female slave’s children.<sup>13</sup> It is possibly the “modern”

10. Sahnun. *Al-Mudawwana al-kubrà*, 4 vols. Cairo: Matba'at al-Sa'ada, 1323/1905: 1905-1927.

11. Reuven Levy outlines the role of slaves in Islamic society in his work: Levy, Reuven. *The Social Structure of Islam being the second edition of The Sociology of Islam*, 1957. Cambridge (UK): Cambridge University Press, 1962: 73-89.

12. Degand, Angela. *Geschlechterrollen und familiale Strukturen im Islam: Untersuchungen anhand der islamisch-juristischen Literatur des 7./13. bis 9./15. Jahrhunderts*. Frankfurt am Main-New York: Peter Lang, 1988.

13. In her works, Kecia Alia proposes, from a feminist perspective, that there be a review of the Islamic marriage contract from its origins, taking into account the influence that concubinage had in



conception she herself has of the family that makes her rule out abundant information regarding slaves, because she considers it to be alien to the family nucleus.<sup>14</sup>

Other works, as has already been mentioned, have recourse to the modern anthropology of the Arabic-Islamic world for support for their hypotheses regarding what a pre-modern Arab society ought to have been like, in this case, that of al-Andalus. This approach to the issue from a contemporary perspective might be one of the reasons why slavery and concubinage are often only treated laterally and not as a constituent part of the basic family group. If the conclusions of these works are compared with existing written jurisprudence in the Islamic West, where slaves occupy an essential quantitative and qualitative space, one perceives a distorted idea of the family structures of that period.

The methodological problems described, general to most family studies, prove especially striking if, in addition, we bear in mind that sources from all the genres of the pre-modern era only make mention of the domestic slave, as practically no references are in our possession with regard to slaves in rural environments or occupied in trades proper to slaves. The servants described tend to cohabit with free individuals with whom they interrelate not only in a work sense, but also through the family.<sup>15</sup> In the Islamic world, it may be affirmed that neither can the slave be studied outside of the family, nor the family be studied without taking its slaves into account, because the Arabic sources preserved do not conceive separately of both questions until the abolition of slavery at the beginning of the 20<sup>th</sup> century.

Naturally, this article does not seek to make a global analysis of the Islamic family in the pre-modern West, but merely a brief study concerning a very concrete matter: the family of a free man, whose concubine had his child or became pregnant by him. We will attempt to answer the following questions: 1) what is the legal source of the family structure that is established; 2) what is a slave-mother (*umm walad*) and how is she juridically defined through her rights and obligations; and 3) what is the legal situation of children born within a relation of concubinage?

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jurisprudential development concerning the family and the fact that this influence ceased after the abolition of slavery: Alia, Kecia. *Marriage and Slavery in Early Islam*. Cambridge (Mass.)-London: Harvard University Press, 2010.

14. Naturally, there are exceptions. Rüdiger Löhlker, in his study on the forced marriage of daughters, makes a methodologically model analysis of the matter in the pre-modern, and in the modern period, taking slaves into account in the former case: Löhlker, Rüdiger. *Islamisches Familienrecht. Methodologische Studien zum Recht Mâlikitischer Schule in Vergangenheit und Gegenwart*. Göttingen: Duehrkohp & Radicke, 2002: I.

15. de la Puente, Cristina. "Mano de obra esclava en al-Andalus". *Espacio, tiempo y forma*, 23 (2010): 135-147.



## 2. The family conceived in The Quran

Family jurisprudence takes the Quran itself as its first source, especially verses 22 to 26 of chapter IV (women), where the social taboos that have to prevail in an Islamic society are expressed and where, in consequence, the legality or illegality of possible sexual and conjugal relations are established. The verses are very clear and do not give room for many interpretations with regard to the constitution of the family and where the Muslim ethic concerning the family stands:

Do not marry women that your fathers married —with the exception of what is past— this is indeed a shameful thing to do, loathsome and leading to evil<sup>(22)</sup>. You are forbidden to take as wives your mothers, daughters, sisters, paternal and maternal aunts, the daughters of brothers and daughters of sisters, your milk mothers and milk sisters, your wives' mothers, the stepdaughters in your care —those born of women with whom you have consummated marriage, if you have not consummated the marriage, then you will not be blamed— wives of your begotten sons, two sisters simultaneously —with the exception of what is past: God is most forgiving and merciful<sup>(23)</sup> women already married, other than your slaves. God has ordained all this for you. Other women are lawful to you, so long as you seek them in marriage, with gifts from your property, looking for wedlock rather than fornication. If you wish to enjoy women through marriage, give them their bride-gift —this is obligatory— though if you have to choose mutually, after fulfilling this obligation, to do otherwise [with the bride-gift], you will not be blamed: God is all knowing, all wise<sup>(24)</sup>. If any of you does not have the means to marry a believing free woman, then marry a believing slave —God knows best [the depth] of your faith: you are all part of the same family— so marry them with their people's consent and their proper bride-gifts. [Make them] married women, not adulteresses or lovers. If they commit adultery when they are married, their punishment will be the half that of free women. This is for those of you who fear that you will sin; it is better for you to practise self-restraint. God is most forgiving and merciful<sup>(25)</sup>, He wishes to make His laws clear to you and guide you to the righteous ways of those who went before you. He wishes to turn towards you in mercy —He is all knowing, all wise—<sup>(26)</sup>.<sup>16</sup>

These verses determine what possible kinships there are and, as a consequence, the sexual relationships that are forbidden among relatives. Some of these taboos are different from those for Christians: those relating to milk relatives, for instance, which have the same impediments as do blood relatives where marriage and concubinage are concerned.<sup>17</sup> Similarly, they establish different possible kinships for men and for women and impose as a compulsory condition that a dowry be given to the woman if the marriage is to be consummated and ratified.<sup>18</sup> Finally, they allow a free man or free woman who cannot marry a free counterpart to do so with a

16. *Qur'an*, trad. Muhammad Abdel Haleem. Oxford: Oxford University Press, 2005.

17. Regarding milk kinship, see: Giladi, Avner. *Infants, Parents and Wet Nurses: Islamic Views on Breastfeeding and Their Social Implications*. Leiden-Boston-Köln: Brill, 1999.

18. For dowry, see: Zomeño, Amalia. *Dote y matrimonio en al-Andalus y el Norte de África. Estudio sobre la jurisprudencia islámica medieval*. Madrid: Consejo Superior de Investigaciones Científicas, 2000.



female or male slave who is not their property.<sup>19</sup> In the case of the free man he will also have to provide the female slave with the corresponding dowry.

But in addition to these Quranic verses on conjugal kinship, which is a question that will be dealt with in this article, other verses govern the relation of concubinage, that is to say, of a free man with his female sexual slaves. This intimate association between a man and a woman who are not married is not conceived in Islam between free persons, but only between a free man and a slave woman who is his property alone and exhibits no impediment to being his sexual slave.<sup>20</sup>

In Arabic the female slave receives various names: *ama*, *mamluka* or *jariya*, and none of them offers clues as to whether she is a slave exclusively dedicated to domestic tasks or is, in addition, a concubine<sup>21</sup>. The latter term *jariya* is moreover a euphemism that also means young girl, which means that it is not even clear in all cases whether the woman who is thus described is of slave or free status. Nevertheless, in the Quran a concubine is identified by a specific term, *milk al-yamin*, which literally means “what the right hand possesses” (*ma malakat aymanukum*) and alludes to her slave status, over which the owner has all rights, including that of sexual slavery.<sup>22</sup> This expression, which is sometimes a synonym for captive, leaves no room for doubt as to its meaning.<sup>23</sup> Another term, *surriyya*, also means concubine, and is not systematically employed, but rather in conjunction with the other words mentioned.

The concubine or concubines, permitted to an unlimited number, form part of the Islamic family unit and will be subject to legal regulation identical to that applying to any other female slave. The law governs their rights and obligations, as well as those of their owner. Similarly, their presence in the household and their relation with the owner has an influence on the husband's relation with his legitimate spouse or spouses, not only from a sentimental but also a legal viewpoint.<sup>24</sup> It must be held in

19. For the legal principles governing the marriage of free persons with slaves, see the lengthy work by: Hocine Benkheira, Mohammed. “Un libre peut-il épouser une esclave? Esquisse d’histoire d’un débat, des origines à al-Shafi’i (m. 204/820)”. *Der Islam*, 84 (2008): 246-355.

20. de la Puente, Cristina. “Límites legales del concubinato: normas y tabúes en la esclavitud sexual según la *Bidaya* de Ibn Rusd”. *Al-Qantara*, 28 (2007): 409-433, especially, 414-430, where reference is made to the impediments against a relation of concubinage according to Ibn Rusd (Averroes).

21. It is worth mentioning that concubinage does not merit a chapter apart in the legal treatises, being dealt with instead in other chapters, particularly in that on marriage.

22. For concubinage see: Ali, Kecia. *Marriage and Slavery...*; for concubinage according to the Maliki doctrine see: de la Puente, Cristina. “Límites legales del concubinato...”; de la Puente, Cristina. “Slaves in al-Andalus through Maliki *Watha’iq* Works (4th/6th Centuries H./10th-12th Centuries CE): Marriage and Slavery as Factors of Social Categorisation”. *Annales Islamologiques*, 42 (2008): 187-212; the subject is still being discussed today, see: de la Puente, Cristina. “What does *milk al-yamin* mean at the beginning of the 21st Century? Selected Online Fatwas on Concubinage in Islam”, *Liebe, Sexualität, Ehe und Partnerschaft-Paradigmen im Wandel. Beiträge zur orientalistischen Gender-Forschung*, Roswitha Badry, Maria Rohrer, Karin Steiner, eds. Freiburg: Fördergemeinschaft wissenschaftlicher Publikationen von Frauen, 2008: 127-152.

23. Quran, IV, 3, 24, 25 and 26; XVI, 71; XXIII, 6; XXIV, 31 and 58; XXX, 28; XXXIII, 50, 52 and 55; and LXX, 30.

24. Although polygamy is permitted in Islam up to a maximum number of four legitimate spouses, monogamous marriage seems to have been most frequent in al-Andalus, see: Marín, Manuela. *Mujeres*





mind that a man and his concubine or concubines already in themselves make up a family unit, as there is no need for the male to take a legitimate wife, nor would that substantially alter the family structure. And the legitimate spouse, should there be one, does not exercise authority over the concubines because they are not her slaves, but her husband's. She can only order and dispose of her own slaves and a female slave of hers can never be her husband's concubine because she does not belong to him. If the male maintains sexual relations with a female slave belonging to his wife, he is deemed to have committed sin and the crime of fornication (*zina*) and may be punished for it.<sup>25</sup>

Like any other female slave, the concubine may change her legal category in line with other criteria: if her owner promises her she will be manumitted after his death, she will become *mudabbara*; as well as if she enters a contract with her owner for manumission by instalments (*mukataba*); or should she become pregnant by the owner and he acknowledge paternity, so that she becomes *umm walad*. All these assumptions will have legal and also social repercussions, because the female slave's membership of the family will be different and her rights and obligations will vary according to her new legal category.<sup>26</sup> In this article only the last case mentioned is going to be studied, that of "the mother of a child" (*umm walad*).

### 3. Maliki jurisprudence on the concubine-mother (*umm walad*)

The concubine who becomes pregnant receives a new name, *umm walad* or *umm al-walad* and, as has been observed, once the owner recognises such paternity her legal status varies, with the corresponding family and social consequences for her and for the rest of her family.<sup>27</sup> In the Maliki doctrine, the only one that was legally applied in al-Andalus, the slave did not have to actually give birth to that child. If she had a miscarriage or the child died after birth, her status was irreversible, even should there be no new pregnancy. Meanwhile, the owner cannot make her one of

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en *al-Andalus...*: 447.

25. Saḥnūn. *Al-Mudawwana...*: I, 52 (chapter 4: *al-nikah al-thani*); see: de la Puente, Cristina. "Violencia y misericordia con los esclavos. Regulación de derechos y deberes según la doctrina malikí", *Crueldad y compasión en la literatura árabe e islámica*, Delfina Serrano, ed. Madrid: Consejo Superior de Investigaciones Científicas, 2011: 179-202, especially, 187-188.

26. de la Puente, Cristina. "Entre la libertad y la esclavitud: consecuencias legales de la manumisión según el derecho malikí". *Al-Qantara*, 21 (2000): 339-360. With regard to how liberation and, consequently, the change in status came about, see: Aguirre, Francisco J. "De esclavos a libertos: fórmulas de manumisión en al-Andalus en el siglo XI según el *Muqni* de Ibn Mugit". *Miscelánea de Estudios Árabes y Hebreos (sección árabe)*, 50 (2001): 21-51.

27. Blanc, François-Paul; Lourde, Albert. "Les conditions juridiques de l'accès au statut de concubine-mère en droit malékite". *Revue de l'Occident Musumane et de la Méditerranée*, 36 (1983): 163-175; de la Puente, Cristina. "Entre la libertad y la esclavitud...": 339-360, especially, 344-348.





his four legitimate spouses because the owner of a female slave can never marry her unless he frees her first, thus giving her the option of deciding.<sup>28</sup>

Acknowledgement of paternity not only depended on the arbitrary will of the owner, but also on the possibility of investigations being made to check whether he had possessed the female slave in accordance with the dictates of Islamic morals: on the one hand, that his ownership of her was full and gave him the right to maintain sexual relations;<sup>29</sup> and, on the other, that he had fulfilled his obligation to prevent her from having sexual relations with anybody during the time that the concubinage lasted. The “decency” of female slaves, and also of concubines, is not only the latter’s responsibility, but also his as an owner and as the *pater familias*. A man may not temporarily loan or transfer a female slave because that would be an incitement to prostitution.

Apart from the new designation, the concubine-mother acquires a series of inalienable rights. In first place, it is forbidden to sell her and she cannot be separated by force from her home, or from her children; nor may she be compelled to work outside of her home for a wage.<sup>30</sup> If a slave is sold when she is pregnant, the vendor may demand paternity of the child and the sale is voidable.<sup>31</sup> Theoretically, the sale would have had to come about because the owner did not know that the slave was expecting a child of his, as were this not the case *he* would have committed a crime.<sup>32</sup>

In the basic source of Maliki doctrine, the *Mudawwana* of Sahnun lets us know that Mālik b. Anas, founder of the Maliki legal school, had considered it to be actually morally detestable (*makrūh*) if the owner married his *umm walad* to another man. Sahnun makes clear, nevertheless, that if this liaison comes about it is legal and declares that he does not know of any case where such a union was annulled.<sup>33</sup> On one hand, this precept bears in mind that between the owner and his concubine there is a legitimate legal situation that is ethically in line with Islam. However, if

28. de la Puente, Cristina. “Esclavitud y matrimonio en *al-Mudawwana al-kubrā* de Sahnun”. *Al-Qantara*, 16 (1995): 309-333, especially, 323. This is a sacred legal obligation, no exceptions to which are known of, even among the top echelons of society. Thus it is known that `Abd al-Rahman II manumitted his female slave Al-Shifa’ in order to be able to marry her, see: Vallvé, Joaquín. “Sobre demografía y sociedad...”: 129.

29. The female slave can only be a concubine when she belongs to him without conditions. If it was stipulated in the sales contract that he cannot sell her or that he must sell her at the price he bought her at, or any other condition was imposed upon her, she will no longer be fully his (*milk<sup>um</sup> tamm<sup>um</sup>*) and will not be able to be his sexual slave, see: Malik b. Anas. *Kitab al-Muwatta’*, ed. Faruq Sa’d. Beirut: Dar at Kitab al’Arabi, 1401/1981: Kitab al-buyu’, 516 (doc n° 5).

30. Ibn Rushd. *Bidayat al-mujtahid wa-nihayat al-muqtasid*, 2 vols. Beirut: Dar al-ma’rifa, 1409/1988: 394.

31. Sahnun. *Al-Mudawwana...*: I, 52-53 (chapter 4).

32. Regarding the offence a man commits if he lets his female slave have sexual relations with another man, see: de la Puente, Cristina. “Violencia y compasión con los esclavos...”: 187.

33. Sahnun. *Al-Mudawwana...*: I, 36 (chapter 4). See: Goldziher, Ignaz. *Muhammedanische Studien*. Halle: Niemeyer, 1890: I, 121; Juynboll, Theodor W. *Handbuch des islamischen Gesetzes nach der Lehre der Schafi’itischen Schule nebst einer allgemeinen Einleitung*. Leiden: Brill, 1910: 182-183 and 192, concerning the evolution that takes place in Islamic society, where inheritance of the maternal status takes second place, giving way to the preponderance of the paternal status.



she has been given in matrimony to another man by her owner,<sup>34</sup> and this marriage is annulled and she returns home, the owner would have failed to comply with the norm whereby the concubine only has sexual relations with him within a relation of concubinage. I am of the opinion that there may also be other reasons not to declare void the marriage of the *umm walad* with a man other than her owner; on the one hand, there is the consideration that she has improved socially as a legitimate spouse; the other is that this marriage also constitutes a religiously good situation.

The legal assumption becomes enormously complicated if the marriage of the *umm walad* has not been agreed to, and is fraudulent. If a slave marries concealing her condition as a concubine mother and has children in that marriage, the value of the children corresponds to the previous owner until his death. When he dies, the concubine who has not lost her legal status as *umm walad* despite the fraud is freed and, with her, her children obtain the freedom that was temporarily lost. At that point the children's father, in addition, recovers authority over them. No heir of the previous owner has the right to claim them because they are no longer slaves and he would be compelled to grant them their freedom.<sup>35</sup>

Another fundamental right of the concubine-mother is her liberation after her owner's death, compulsorily and under any circumstance. Even though the value of the slave were necessary to face a debt left by the owner or to deal with a part of the inheritance, the *umm walad* cannot be deprived of the acquired right to be free because it is a sacred right. This means that it is also strictly forbidden to bequeath her by will.<sup>36</sup> The only reason why a concubine-mother might lose her legal status is if she has committed adultery. The sin of *zina* would return her to her previous status of common slave and she would lose the right to manumission *post mortem*.<sup>37</sup> Children born to the owner would not lose their freedom because the principle that no-one is the slave of their father must be met.

The *umm walad's* right to manumission predominates even after a declaration has been made that the owner (*mahjur*) is mentally incapable. While such a state would render null any other liberation or promise of liberation for any other kind of slave made by him, his concubine-mother would not lose her right.<sup>38</sup> The concubine-mother acquires her status due to pregnancy, which does not necessarily have to be voluntary or desired, whilst the other manumissions: direct, *post mortem*, deferred, etc. are a product of the male or female owner's will, the latter having to be mentally capable in order to be able to free their slaves. Otherwise they might unconsciously cause detriment to their relatives or heirs.

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34. The owner must always give his consent to the marriage of his slaves, otherwise the marriage would be null and void.

35. Saḥnūn. *Al-Mudawwana...*: I, 58-59 (chapter 4).

36. *Muwatta' al-imam Malik (riwayat al-Shaybani)*, ed. `Abd al-Wahhab `Abd al-Latif. Beirut: Dar al-qalam, 1984: 232 (n. 675); Saḥnūn. *Al-Mudawwana...*: I, 52-53 (chapter 4).

37. Ibn Rushd. *Bidayat al-mujtahid...*: II, 394.

38. Ibn Rushd. *Bidayat al-mujtahid...*: II, 366.



Likewise, if the *umm walad* commits a crime, she cannot be handed over to offset the damages for the crime she has committed. Unlike what would happen regarding the crime carried out by any other slave, where the owner could choose between paying damages or compensating for the crime with the slave's value, in the case of the concubine-mother the owner is compelled to pay, because once again what predominates is the principle that she cannot be separated from the household or become enslaved by another person.<sup>39</sup>

On her liberation the *umm walad* will receive a part of the owner's legacy, which will provide her with the means to subsist. Meanwhile, she is not responsible for maintaining her children, as this obligation falls to the owner whilst alive, while after his death they will receive the corresponding inheritance.

#### 4. Concubine-mothers in al-Andalus

Although the jurisprudence previously referred to provides a utopian legal framework for family relations to unfold, and within that ideal scenario concubines and their possible maternity hold fundamental importance, it is necessary to bear in mind psychological and social factors that must have conditioned what legal practice was and, consequently, what the most frequent reality was among Muslim families. Once again it must be reiterated that for such a task we only have access to Arabic sources referring to urban environments.

In first place, mention must be made of the clause contained in the Andalusí marriage contracts that have been preserved, according to which a free wife prevented the husband from taking a second wife, a concubine or keeping an *umm walad* without her consent.<sup>40</sup> The clause could also be rescinded after the wedding via another notary document, the model for which has also been conserved.<sup>41</sup> Manuela Marín is inclined to think that wives could decide to rescind the clause, relaxing the conditions they had imposed on their marriage contract, rather than suffering a divorce. She also considers that this case must have been frequent enough to make it necessary to include a model among the notary forms.<sup>42</sup>

39. de la Puente, Cristina. "Violencia y misericordia con los esclavos", *Crueldad y compasión en la literatura árabe e islámica*, Delfina Serrano, ed. Madrid: Consejo Superior de Investigaciones Científicas, 2011: 195.

40. Carmona, Alfonso. "Aportación al estudio del contrato matrimonial en el Occidente islámico medieval", *Miscellanea Arabica et Islamica*, Frank de Jong, ed. Leuven: Peeters en Departement Orientalistiek, 1993: 53-66, especially, 63-64; Marín, Manuela. *Mujeres en al-Andalus...*: 448; Ibn al-'Attar. *Formulario notarial Hispano-Árabe por el alfaquí y notario cordobés Ibn al-'Attar (s. X)*, eds. Pedro Chalmeta, Federico Corriente. Madrid: Academia matritense del notariado-Instituto Hispano-Árabe de Cultura, 1983: 7; Ibn Mugith. *Al-Muqni' fi 'ilm al-shurut (Formulario notarial)*, ed. Francisco Javier Aguirre. Madrid: Consejo Superior de Investigaciones Científicas, 1994: 21; Al-Jaziri. *al-Maqsad al-mahmud fi talkhis al-'uqud*, ed. Asunción Ferreras. Madrid: Consejo Superior de Investigaciones Científicas, 1998.

41. Ibn Mugith. *Al-Muqni' fi 'ilm...*: 72.

42. Marín, Manuela. *Mujeres en al-Andalus...*: 448.



Meanwhile, in the preserved notary forms not one model is included for making a concubine *umm walad*. There is no initial need, therefore, for the judiciary to intervene by means of a document, as the mere pregnancy and the explicit or tacit acknowledgement of paternity are enough for her to secure this new legal category. A legal model does exist, nonetheless, to deny such paternity in the event that the owner is doubtful about the matter. In that case, he is obliged to argue that he is not the father and must back this up with evidence, proving through witnesses that the slave was not his concubine.<sup>43</sup>

In the models conserved of denial of paternity, allusion is made to the fact that the slave was going through the period of sexual abstinence (*istibra'*) that must obligatorily be observed after a sale in order to determine the identity of the father in the event of the slave being pregnant. This period of abstinence is half the length that corresponds to a free woman who becomes widowed or is divorced (*'idda*):

he denies paternity of So-and-so, son of his slave Such-and-such, as he is not his son, assuming that this slave has observed legal *istibra'*, after which he has not had relations with her again, whilst her pregnancy came after this *istibra'*; which he makes public due to it not being licit to be silent on this point, since, if he did so, someone who is not his heir would inherit from him.<sup>44</sup>

There is no other legitimate reason for drawing up a document of these characteristics, because if the owner argued that his slave had sexual relations with other men whilst being his concubine, he would implicitly make an accusation of *zina*.<sup>45</sup> We must equally draw attention to the fact that in the justification for the denial of paternity the owner's concern is expressed regarding the child's inheritance, in reference to the rights the minor acquires if he recognises his paternity, but he does not seem to be bothered about the rights that the slave procures if she is considered *umm walad*. In reality, such rights do not greatly affect him, as the concubine-mother will be free after his death and, therefore, the new status does not have to cause the owner serious economic detriment whilst alive.

The man is responsible for his actions and, in the end, the slave's pregnancy is his responsibility, as is the ensuing legal change in status. This circumstance is strikingly illustrated, not only in the case of the concubine-mother, but when a man maintains sexual relations with a slave who has previously been pregnant, either because they made her prisoner in that state and she fell to him when the war booty was divided up, or because he bought her, she was given to him, or he inherited her when she was pregnant. Jurists consider that this man cannot have sexual relations with her until she has given birth and they debate as to who the paternity of the child lies with. Most of them are of the opinion that paternity does not fall to the new owner and that, therefore, the boy or girl who is born

43. de la Puente, Cristina. "Slaves in Al-Andalus...": 203-204.

44. Ibn Mugith. *Al-Muqni' fi 'ilm...*: 124; Al-Jaziri. *al-Maqsad al-mahmud...*: 100.

45. See article by Delfina Serrano in this volume.



will not have to be freed. Averroes, however, cites a prophetic tradition that argues for the liberation of the child: "How is he to enslave him if he nourished his hearing and sight?" That is to say, Averroes adopts the medical stance that deems the owner's sperm to have influenced the development of the foetus, which would also make him the father of the child and, in consequence, the slave *umm walad* and the child free.<sup>46</sup>

It may be affirmed that there is a tendency on the part of the jurists to admit the claims of slaves who say they are concubine-mothers and to respect their status, even in cases that might raise some doubt, as is shown in a legal opinion (*fatwa*) from Cordova in which the existence of pregnancy is up for discussion, since maternity has not even occurred:

A slave says she has miscarried after becoming pregnant by her owner, who wishes to sell her. He declares that he might not have fertilised her because he did not ejaculate in her. Two midwives testify that this slave had miscarried in her owner's house, and a third expert says that she had seen the foetus and had helped the abortion.

Reply: She will be considered a concubine-mother (*umm walad*).<sup>47</sup>

Concubines formed part of the family and their maternity must have brought them definitive integration within it, as intended by law and morals, but also because of the logic and sentiments of human relations. Since their children were as free and equal in rights as were the legitimate spouses' children, the mothers must have been considered on an equal level in the harem. One would expect, furthermore, that their children would endeavour, as they grew up, to defend their mother's rights. The honour of the male depended both on the good conduct of their concubine-mothers and of their wives, and the relation they had with him would be pivotal in the place they occupied within the domestic hierarchy.

Islamic law, which frequently attempts to regulate all human relations, even of the most intimate nature, considers that the concubine or concubine-mother do not have the same rights as legitimate spouses when it comes to sharing out the male's nights.<sup>48</sup> As is known, the Quran determines that a man must be fair with his wives, and this has traditionally been interpreted, among other considerations, in the sense that he must devote the same time to them all in terms of sexual relations, an obligation that he does not have with his slaves, even though they have given him a child. This control of privacy makes clear what behaviour was considered religiously

46. Al-Qayrawani, 'Abd Allah Ibn Abi Zayd. *Risala*, ed. León Bercher. Algiers: Editions Jules Carbonel, 1949: 196-197; Ibn Rushd. *Bidayat al-mujtahid...*: II, 47; de la Puente, Cristina. "Límites legales del concubinato...": 429-430.

47. Al-Wansharisi, Ahmad ibn Yahya. *Kitab al-Mi'yar al-mu'rib wa-l-yam` al-mugrib` an fatawa ahl Ifriqiya wa-l-Andalus wa-l-Magrib*, 13 vols., ed. Muhammad Hajji. Rabat: Wizarat al-Awqaf wa-l-Shu'un al-Islamiyya li-l-Mamlaka al-Maghribiyya, 1401/1981: IX, 213-214; Lagardère, Vincent. *Histoire et société en Occident musulman au Moyen Âge. Analyse du Mi'yar d'Al-wansaris*; Madrid: Casa de Velázquez, 1995: 424.

48. Al-Qayrawani. *Risala...*: 178-179.



and morally good, but is scarcely indicative of what really went on within day to day cohabitation in each household.

Meanwhile, within the public arena, the placing of the *umm walad* on the same social level as the free wife might make her capacity for movement resemble more the room for manoeuvre of a free woman than of a common slave. Female slaves have been taken into account, in particular, in studies relating to the public and private spaces that women had access to, where a comparison is established between the ability of free women and slaves to move freely outside the home. These works arrive at the conclusion that a woman's capacity of movement became more restricted the greater the social status she held.<sup>49</sup> Being the mother of the owner's children, because of her proximity to him, her loyalty to the home and the fact that she was a potentially free woman, the *umm walad* had to demonstrate her decency, and her behaviour ought to be in harmony with Muslim virtue.<sup>50</sup>

In the case of noble families where concubinage was more frequent, distinction was often not made between spouses and concubines or, simply, the *pater familias* chose not to take a legitimate wife, given that concubines could provide him with descendants, whereby the mother's status lost all social importance. Joaquín Vallvé considers that *umm al-walad* —he writes it in upper case— is a title that is given to the mothers of some caliphs, such as Muzna, for instance, the mother of `Abd al-Rahman III, and Subh, the mother of Hisham II<sup>51</sup>; in my opinion we are not dealing with a title here, and instead this is rather a question of the two caliphs being the sons of concubine-mothers, which did not influence their access to the throne whatsoever. The same thing occurred with other emirs and caliphs, whose maternal ancestry was irrelevant for their contemporaries and for later chroniclers.

The same authors who pay no heed as to whether mothers are free or slaves, always make sure they distinguish concubine-mothers from other slaves. Ibn Dihya, for instance, says that when the king of the Taifa of Seville, al-Mu`tamid, went off to exile in North Africa, leaving eight hundred women behind, he specified that among them there were concubine-mothers (*ummahat al-awlad*), concubines (*jawari mut`a*), and domestic slaves (*ima' tasarruf*)<sup>52</sup>, making it clear that they corresponded to different hierarchies.

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49. Aguilar, Victoria; Marín, Manuela. "Las mujeres en el espacio urbano de al-Andalus", *Casas y palacios de al-Andalus...*: 39-44; de la Puente, Cristina. "Juridical Sources for the Study of Women: Limitations of the Female's Capacity to Act According to Maliki Law", *Writing the Feminine*, Manuela Marín, Randi Deguilhem, eds. London: I. B. Tauris, 2001: 95-110.

50. Concerning the honour of the slave-mother when a man is slandered through an insult to his mother, see: de la Puente, Cristina. "Violencia y misericordia con los esclavos...": 185. Regarding the honour and decency of individuals, which has criminal consequences, see: Motzki, Harald. "Wal-muhsanatu mina n-nisa'i illa ma malakat aymanu-kum (Koran 4:24)". *Der Islam*, 63 (1986): 192-218, and the article by Delfina Serrano in this volume.

51. Vallvé, Joaquín. "Sobre demografía y sociedad...": 327.

52. Vallvé, Joaquín. "Sobre demografía y sociedad...": 335; Ibn Dihya, `Umar ibn. *al-Mutrib min ashar ahl al-Maghrib*, ed. Ibrahim Abyari. Cairo: Dar al-`Ilm li-l-Jami', 1954: 14-15.





These characteristics that make concubine-mothers different, and the protection the law affords them, which this article has highlighted, are especially in evidence in jurisprudence dedicated to frontier conflicts, where the slave's status is fundamental for clarifying his rights or obligations.<sup>53</sup> In the catalogues of legal opinions (*fatawa*) there are some relevant passages. In the *Mi`yar* of al-Wansharisi, for example, the Cordovan jurist Abu Salih (d. 914)<sup>54</sup> is posed the question of a Christian woman taken captive as war booty, whom a Muslim had purchased and made his *umm walad*. According to this expert, the slave has a right to be manumitted after the owner's death and, as is customary, his clientele and inheritance (*wala'*) will fall to the patrilineal heirs of her previous male or female owner. That is the reason why she could not let herself return to Christian territory, since her heirs would lose such benefits.<sup>55</sup> In this case we observe that the concubine-mother has not only become attached for ever to the family milieu of her owner, but also to Islamic territory (*dar al-islam*), where an ethical and legal framework that will provide her with the status of concubine-mother is guaranteed.

Likewise, the previous example shows how the status of the concubine-mother has to be protected by the community, and not only by her owner. So, should an *umm walad* have already been shared out as part of the spoils of war and her owner identifies her as his, Maliki law considers that she must not be enslaved again, but rather that the *imam*, that is, the person who wields religious authority for the community at the time, ought to pay for her rescue. If he does not do this, the owner has to pay the ransom for her and not abandon her, since she is the mother of his child. On one hand, there is a moral motive for this legal decision: that another Muslim may not possess her and have sexual relations with her, because it would not be morally lawful (*halal*). On the other, it is stated expressly that the legal status of the *umm walad* in such a situation is like that of a free woman (*hiya bi-manzilat al-hurra*) because her owner would have to pay compensation (*fidya*) for her if she injured someone, as he would do for his legitimate spouse, as was previously mentioned.<sup>56</sup>

The same phenomenon of trying to put the concubine-mother on a par with the legitimate wife is observed in moments of distress, where the concubine has to call

53. See the work by: Barton, Simon. "Marriage across frontiers: sexual mixing, power and identity in medieval Iberia". *Journal of Medieval Iberian Studies*, 3/1 (2011): 1-25.

54. Concerning Ayyub b. Sulayman, see: Marín, Manuela. "Nómina de sabios de al-Andalus (93-350/711-961)", *Estudios Onomástico-Biográficos de al-Andalus*, Manuela Marín, ed. Madrid: Consejo Superior de Investigaciones Científicas, 1988: I (n. 298).

55. Vidal, Francisco. "Poder religioso y cautivos creyentes en la Edad Media: la experiencia islámica", *Fe, Cautiverio y Liberación. Actas del I Congreso Trinitario de Granada (Granada, 6, 7 y 8 de 1995)*, Isidro Hernández, ed. Cordova: Secretariado Trinitario, 1996: 73-96, especially, 91, *fatwa* taken from: Al-Wansharisi. *Kitab al-Mi`yar...*: IX, 235. Regarding this work, see: Vidal, Francisco. "El *Mi`yar* de al-Wansarisi (m. 914/1508). I: Fuentes, manuscritos, ediciones, traducciones". *Miscelánea de Estudios Árabes y Hebreos (sección árabe)*, 42/3 (1993-1994): 317-361; Vidal, Francisco. "II: Contenido". *Miscelánea de Estudios Árabes y Hebreos (sección árabe)*, 44 (1995): 213-246.

56. Malik b. Anas. *Muwatta'...*: (K. *al-jihad*) 364 (n. 22); Saḥnūn. *Al-Mudawwana...*: I (chapter 3); Malik b. Anas. *Muwatta'...*: (K. *al-jihad*) 15; Ibn Rushd. *Bidayat al-mujtahid...*: I, 400; see: Vidal, Francisco. "Poder religioso...": 87.





for help from the community because she has been circumstantially deprived of her upkeep.<sup>57</sup> The *qadi`Iyad* relates that `Abd Allah al-Qurashi,<sup>58</sup> a judge from the times of Al-Mansur (Almanzor) (d. 1002), was of the opinion that slave-mothers, whose owner had absented himself without leaving the necessary means of subsistence, ought to be freed, arguing that this case was identical to that of the slave whose owner could not maintain him.<sup>59</sup> The opinion was not accepted, however, by all the jurists, and stirred up great controversy and the opposition of other prestigious muftis including Ibn Saqqaq and Ibn al-Qattan.<sup>60</sup> Two Tunisian *fatwa*-s in the *Mi`yar* illustrate the same supposition of the temporarily abandoned slave who finds herself without necessary sustenance (*nafaqa*) and appeals to the judge to decree her manumission, comparing herself to the legitimate spouse who would have the right to ask for divorce. In the first case, al-Suyuri<sup>61</sup> considers that a concubine-mother is legally different to the legitimate spouse in the periods that have to be met so that she can take decisions regarding her own legal personality, but gives priority to the *umm walad*'s right of maintenance against the absent owner's right to continue in possession of his concubine.<sup>62</sup> A very similar case is expressed in a legal opinion given by Ibn al-Barra',<sup>63</sup> who had been asked for a ruling on a slave abandoned years before, the mother of a daughter whom she was unable to keep any longer. This jurist also finds in favour of her manumission because he considers that freedom would furnish her the possibility of seeking remunerated work or of marrying.<sup>64</sup> As has been shown earlier, these two possibilities would be closed off to her whilst she continued being *umm walad*, which would force her and the girl to fall into poverty. Despite all the different legal arguments employed, all the jurists mentioned coincide in ensuring the welfare of the mother, who is already potentially a free person.

In some hypothetical scenarios the concubine-mother is also equated with the legitimate spouse. In one *fatwa*, for example, the case is posed in which a man has sold a dwelling "to his spouse or to his *umm walad*" and, some time later, after the death of the husband/owner, there is a claim put in for the dwelling by a relative. The interest here relies, in my opinion, in that in the legal response

57. These cases were set out in: de la Puente, Cristina. "Entre la esclavitud y la libertad...": 346-347.

58. Abu Bakr `Ubayd Allah (d. 1052-3), judge of Cordova who was mufti in Seville, see: Ávila, María Luisa. *La sociedad hispanomusulmana al final del Califato...*: (n. 1016).

59. `Iyad b. Musa. *Tartib al-madarik wa-taqrib al-masalik li-ma`rifat a`lam madhhab Malik*, ed. Ahmad Bakir Mahmud. Rabat: Dar Maktabat al-Hayat, 1403/1983: VIII, 45; see: Ávila, María Luisa. "La proclamación (*bay'a*) de Hisam II. Año 976 d.C.". *Al-Qantara*, 1 (1980): 79-114, especially, 111-112; the case is studied in: Müller, Christian. *Gerichtspraxis im Stadtstaat Córdoba. Zum Recht der Gesellschaft in einer malikitisch-islamischen Rechtstradition des 5./11. Jahrhunderts*. Leiden-Boston-Köln: Brill, 1999: 232.

60. Regarding Ibn al-Saqqaq (d. 1035), see: Ávila, María Luisa. *La sociedad hispanomusulmana al final del Califato...*: (n. 96); and for Ibn al-Qattan, see: `Iyad b. Musa. *Tartib al-madarik wa-taqrib...*: VIII, 135-136.

61. On this expert in law (*mufti*) from Qayrawan (d. 460/1067), see: Lagardère, Vincent. *Histoire et société en Occident ...*: 26.

62. Al-Wansharisi. *Kitab al-Mi`yar...*: III, 267.

63. Mufti from Tunis (d. 1394-5), see: Lagardère, Vincent. *Histoire et société en Occident...*: 468.

64. Al-Wansharisi. *Kitab al-Mi`yar...*: III, 285-286.



it is a matter of indifference to the expert in law what the juridical status of the woman purchaser is, as he does not take this into account as an argument when determining who the dwelling should correspond to.<sup>65</sup>

## 5. Brief conclusion

All the examples collected in these pages, both those to do with Maliki legal doctrine and those provided by other genres, illustrate a general tendency of jurisprudence, in its different genres, to preserve the rights of the concubine-mother and to ensure her social welfare, both while her owner is alive and after his death<sup>66</sup>. Everything is regulated through law (*fiqh*): private relations, the relation of the slave with the other members of her family, the relation between them due to the presence of the slave, her criminal liability, her possible legally private and public acts, as well as what the future of her children will be.

Concubinage and the paternity and maternity they give rise to are not anecdotal circumstances in the pre-modern Islamic world, but constitute one of the pillars of the Muslim family, which cannot be conceived without taking their existence into account. It is not just the Quran itself and the *sunna* that make it so, for indeed all the Arabic sources from different genres provide rich and plentiful testimony of different family relations, in which concubinage is a fundamental pillar. All I can ask is how studies of family structures have been carried out without bearing domestic slavery in mind; how the conjugal relation has been described dispensing with the presence of concubines or of the possibility of their existence; how a hypothetical tribal society has been conceived of without first studying the simple family, as understood and governed by Islamic jurisprudence over the course of many centuries; or how the regulation of behaviours and family relations in the progressive islamisation of Islamic societies has not been taken into consideration. I consider the slave to be a woman with a remarkable social presence, as exemplified in Arabic sources, and that she cannot be mentioned as a secondary character in a work in which the free woman is the only leading actor. Arabic sources not only do not disregard them, but they are actually a crucial piece in their descriptions and, of even greater relevance, in their argumentations.<sup>67</sup>

Although the historian confronts numerous methodological problems, the most serious of which is perhaps not being able to trace a chronological evolution of these

65. Al-Wansharisi. *Kitab al-Mi'yar...*: VI, 79-81; Lagardère, Vincent. *Histoire et société en Occident...*: 172-173.

66. Among the pious foundations of Almanzor one is mentioned to the benefit of one of his concubine-mothers, her children and descendants, see: Al-Wansharisi. *Kitab al-Mi'yar...*: VII, 416; Lagardère, Vincent. *Histoire et société en Occident...*: 154.

67. See the work by: Spector, Susan A. *Women in Classical Islamic Law. A Survey of the Sources*. Leiden-Boston: Brill, 2010, where the author voluntarily leaves slave women and concubines out of her study (page 2 of the introduction).



family structures, much work lies on the road ahead in terms of interpreting Arabic sources in order to unravel what the ethical and legal framework of jurisprudence was where family law was concerned. To puzzle out, in other words, how religious law (*shari`a*) imagines a good and exemplary Muslim family.

