WOMEN IN ISLAM

The prophet Muhammad devoted considerable attention to women in the Koran, the holy book of Islam held to be inspired by Allah. The strong Islamic tendency to offer rules for various human affairs is demonstrated in detailed family laws, which in turn reveal both key principles applied to women and practical features of women’s lives in Islamic societies. The second selection is from the Hadith, which consists of collections of traditions attributed to Muhammad and other early leaders; the Hadith set forth further rules and guidelines for Muslims. It began to be written down in the seventh century and was later codified by Muslim scholars. A short third selection, from Islamic law in the eleventh century, deals with public issues. The passage cites the Koran—does it suggest a tension with the Koranic principles of family law? Other Muslim legal authorities are also cited, for Islamic law built up elaborate precedent, becoming more and more complex during the postclassical period.

Document A

THE KORAN

O people, observe your Lord; the One who created you from one being and created from it its mate, then spread from the two many men and women.

You shall not covet the qualities bestowed on each other by God; the men enjoy certain qualities, and women enjoy certain qualities.

The men are made responsible for the women, since God endowed them with certain qualities, and made them the bread earners. The righteous women will cheerfully accept this arrangement, and observe God’s commandments, even when alone in their privacy. If you experience opposition from the women, you shall first talk to them, then [you may use such negative incentives as] deserting them in bed, then you may beat them. If they obey you, you are not permitted to transgress against them.

The Muslim men, the Muslim women, the believing men, the believing women, the obedient men, the obedient women, the truthful men, the truthful women, the steadfast men, the steadfast women, the reverent men, the reverent women, the charitable men, the charitable women, the fasting men, the fasting women, the chaste men, the chaste women, and the men who commemorate God frequently, and the commemorating women; God has prepared for them forgiveness and a great recompense.

Inheritance

The men get a share of what the parents and the relatives leave behind. The women too shall get a share of what the parents and relatives leave behind. Whether it is a small or a large inheritance, [the women must get] a definite share.

God decrees a will for the benefit of your children; the male gets twice the share of the female. If the inheritors are only women, more than two, they get two-thirds of what is bequeathed. If only one daughter is left, she gets one-half.

O you who believe, it is not lawful for you to inherit what the women leave behind, against their will. You shall not force them to give up anything you had given them, unless they commit a proven adultery. You shall treat them nicely. If you dislike them, you may dislike something wherein God has placed a lot of good.

Divorce

Those who intend to estrange their wives shall wait four months [for cooling off]; if they reconcile, then God is Forgiven, Most Merciful. If they go through with the divorce, then God is Healer, Knower. The divorced women shall wait three menstruations [before marrying another man]. It is not lawful for them to conceal what God has created in there wombs, if they believe in God and the Last Day. [In case of pregnancy] the husband’s wishes shall supersede the wife’s wishes if he wants to remarry her. The women have rights, as well as obligations, equitably. Thus, the men’s wishes prevail [in case of pregnancy]. God is Almighty, Most Wise.

Divorce may be retracted twice. . . . If he divorces her for the third time, it is not lawful for him to remarry her, unless she marries another man, and he divorces her. The first husband can then remarry her, so long as they observe God’s laws. . . .

You commit no error if you divorce the women before touching them, or before setting the dowry for them. In that case, you shall compensate them—the rich as he can afford and the poor as he can afford—an equitable compensation. This is a duty upon the righteous. If you divorce them before touching them, but after you had set the dowry for them, the compensation shall be half the dowry, unless they voluntarily forfeit their right, or the responsible party chooses to forfeit the whole dowry. To forfeit is closer to righteousness. Do not abandon amicable relations among you. . . .

The divorcees also shall be provided for, equitably. This is a duty upon the righteous. . . .

If you wish to marry another wife, in place of your present wife; and you had given the latter a great deal, you shall not take back anything you had given her. Would you take it fraudulently, maliciously, and sinfully? How could you take it back, after you have been intimate with each other, and after they have taken from you a solemn pledge? . . .

If a couple fears separation, you shall appoint an arbitrator from his family and an arbitrator from her family; if they decide to reconcile, God will help them get together. . . .

RULES FOR MUSLIM GOVERNMENT, ELEVENTH CENTURY

Exclusion of Women

Nobody may be appointed to the office of qadi [judge] who does not comply fully with the conditions required to make his appointment valid and his decisions effective. . . . The first condition is that he must be a man. This condition consists of two qualities, puberty and masculinity. As for the child below puberty, he cannot be held accountable, nor can his utterances have effect against himself; how much less so against others. As for women, they are unsuited to positions of authority, although judicial verdicts may be based on what they say. Abu Hanifa said that a woman can act as qadi in matters on which it would be lawful for her to testify, but she may not act as qadi in matters on which it would not be lawful for her to testify. Ibn Jarir al-Tabari, giving a divergent view, allows a woman to act as qadi in all cases, but no account should be taken of an opinion which is refuted by both the consensus of the community and the word of God. “Men have authority over women because of what God has conferred on the one in preference to the other” [Koran 4:38], meaning by this, intelligence and discernment. He does not, therefore, permit women to hold authority over men.

Primary Document Analysis
Women In The Byzantine Empire

The Byzantine Empire

Byzantine family law, not surprisingly, reflected Roman principles, particularly early in the empire. The most important early Byzantine emperor, Justinian (483–565), had codified Roman law. A marriage contract of the eighth century reflects careful concern for legal equity. The Byzantine Empire also produced some extraordinary individual women. Justinian’s wife, the empress Theodora, probably made key policy decisions. During the eleventh and twelfth centuries the Komnenus family dominated the imperial line, producing a period of stable, enlightened rule. The princess Anna was a noteworthy historian, and in the second selection below she describes the role of her grandmother, an empress, in affairs of state. Finally, another law code, from about 900 in the reign of Leo VI, suggests another facet of gender relations in the empire. Does it represent a change from the principles expressed in the earlier marriage contract?

Document E

A Marriage Contract, 726

The marriage of Christians, man and woman, who have reached years of discretion, that is for a man at fifteen and for a woman at thirteen years of age, both being desirous and having obtained the consent of their parents, shall be contracted either by deed or by parol.

A written marriage contract shall be based upon a written agreement providing the wife’s marriage portion; and it shall be made before three credible witnesses according to the new decrees auspiciously prescribed by us. The man on his part agreeing by it continually to protect and preserve undiminished the wife’s marriage portion, and also such additions as he may naturally make thereto in augmentation thereof; and it shall be recorded in the agreement made on that behalf by him, that in case there are no children, one-fourth part thereof shall be secured in settlement.

If the wife happens to predecease the husband and there are no children of the marriage, the husband shall receive only one-fourth part of the wife’s portion for himself, and the remainder thereof shall be given to the beneficiaries named in the wife’s will or, if she be intestate, to the next of kin. If the husband predeceases the wife, and there are no children of the marriage, then all the wife’s portion shall revert to her, and so much of all her husband’s estate as shall be equal to a fourth part of his portion shall also inure to her as her own, and the remainder of his estate shall revert either to his beneficiaries or, if he be intestate, to his next of kin.

If the husband predecease the wife and there are children of the marriage, the wife being their mother, she shall control her marriage portion and all her husband’s property as becomes the head of the family and household.

A History of Anna Comnena (Twelfth Century, Granddaughter of Emperor Alexius I)

One might be amazed that my father accorded his mother such high honor in these matters and that he deferred to her in all respects, as if he were turning over the reins of the empire to her and running alongside her while she drove the imperial chariot, contenting himself simply with the title of emperor. Indeed, he had already passed beyond the period of boyhood, an age especially when lust for power grows in men of such nature [as Alexius]. He took upon himself the wars against the barbarians and whatever battles and combats pertained to them, while he entrusted to his mother the complete management of [civil] affairs: the selection of civil magistrates, the collection of incoming revenues and the expenses of the government. A person who has reached this point in my text may blame my father for entrusting management of the empire to the gynaikeia (women's section of the palace). But if he had known this woman's spirit, how great she was in virtue and intellect and how extremely vigorous, he would cease his reproach and his criticism would be changed into admiration. For my grandmother was so dextrous in handling affairs of state and so highly skilled in controlling and running the government, that she was not only able to manage the Roman empire but could have handled every empire under the sun. She had a vast amount of experience and understood the internal workings of many things: she knew how each affair began and to what result it might lead, which actions were destructive and which rather were beneficial. She was exceedingly acute in discerning whatever course of action was necessary and in carrying it out safely. She was not only acute in her thought, but was no less proficient in her manner of speech. Indeed, she was a persuasive orator, neither verbose nor stretching her phrases out at great length; nor did she quickly lose the sense of her argument. What she began felicitously she would finish even more so...

But, as I was saying, my father, after he had assumed power, managed by himself the strains and labors of war, while making his mother a spectator to these actions, but in other affairs he set her up as ruler, and as if he were her servant he used to say and do whatever she ordered. The emperor loved her deeply and was dependent upon her advice (so much affection had he for his mother), and he made his right hand the executor of her orders, his ears paid heed to her words, and everything which she accepted or rejected the emperor likewise accepted or rejected. In a word, the situation was thus: Alexius possessed the external formalities of imperial power, but she held the power itself. She used to promulgate laws, to manage and administer everything while he confirmed her arrangements, both written and unwritten, either through his signature or by oral commands, so that he seemed the instrument of her imperial authority and not himself the emperor. Everything which she decided or ordered he found satisfactory. Not only was he very obedient to her as is fitting for a son to his mother, but even more he submitted his spirit to her as to a master in the science (episteme) of ruling. For he felt that she had attained perfection in everything and far surpassed all men of that time in prudence and in comprehension of affairs.
LEGAL STATUS

I do not know why the ancient authorities, without having thoroughly considered the subject, conferred upon women the right of acting as witnesses. It was, indeed, well known, and they themselves could not fail to be aware that it was dishonorable for them to appear frequently before the eyes of men, and that those who were modest and virtuous should avoid doing so. For this reason, as I have previously stated, I do not understand why they permitted them to be called as witnesses, a privilege which resulted in their frequently being associated with great crowds of men, and holding conversation with them of a character very unbecoming to the sex. . . .

And, indeed, the power to act as witnesses in the numerous assemblies of men with which they mingle, as well as taking part in public affairs, gives them the habit of speaking more freely than they ought, and, depriving them of the morality and reserve of their sex, encourages them in the exercise of boldness and wickedness which, to some extent, is even insulting to men. For is it not an insult, and a very serious one, for women to be authorized to do something which is especially within the province of the male sex?

Wherefore, with a view to reforming not only the errors of custom, but also of law, We hereby deprive them of the power of acting as witnesses, and by this constitution forbid them to be called to witness contracts under any circumstances. But, so far as matters in which they are exclusively interested are concerned, and when men cannot act as witnesses, as, for instance, in confinements, and other things where only women are allowed to be present, they can give testimony as to what is exclusively their own, and which should be concealed from the eyes of men.
The following two documents outline both secular and religious laws concerning women and their rights in marriage. The city of Magdeburg, in northern Germany, was a prosperous center by the thirteenth century, and many merchant families would have had considerable disposable wealth. The codification of canon law on marriage was part of the general systematization of church law—and the rise of lawyers—as European society became more elaborate with economic advance, the growth of cities, and cultural change. An obvious question: were the provisions of the two types of law, city and church, essentially compatible, even as they focused on different sets of details?
A GERMAN CITY’S LAWS, 1261

1. When Magdeburg was founded the inhabitants were given such a charter as they wished. They determined that they would choose aldermen every year, who, on their election, should swear that they would guard the law, honor, and interests of the city to the best of their ability and with the advice of the wisest people of the city. . . .

14. If a man dies leaving a wife, she shall have no share in his property except what he has given her in court, or has appointed for her dower. She must have six witnesses, male or female, to prove her dower. If the man made no provision for her, her children must support her as long as she does not remarry. If her husband had sheep, the widow shall take them.

15. If a man and woman have children, some of whom are married and have received their marriage portion, and the man dies, the children who are still at home shall receive the inheritance. Those who have received their marriage portion shall have no part of [the inheritance]. Children who have received an inheritance shall not sell it without the consent of the heirs. . . .

18. No one, whether man or woman, shall, on his sick-bed, give away more than three shillings’ worth of his property without the consent of his heirs, and the woman must have the consent of her husband. . . .

55. When a man dies his wife shall give [to his heirs] his sword, his horse and saddle, and his best coat of mail. She shall also give a bed, a pillow, a sheet, a tablecloth, two dishes and a towel. Some say that she should give other things also, but that is not necessary. If she does not have these things, she shall not give them, but she shall give proof for each article that she does not have it.

56. If two or more children inherit these things, the oldest shall take the sword and they shall share the other things equally.

57. If the children are minors, the oldest male relative on the father’s side, if he is of the same rank by birth, shall receive all these things and preserve them for the children. When they become of age, he shall give them to them, and in addition, all their property, unless he can prove that he has used it to their profit, or that it has been stolen or destroyed by some accident without any fault of his. He shall also be the guardian of the widow until she remarries, if he is of the same rank as she is.

58. After giving the above articles the widow shall take her dower and all that belongs to her; that is, all the sheep, geese, chests, yarn, beds, pillows, cushions, table linen, bed linen, towels, cups, candlesticks, linen, women’s clothing, finger rings, bracelets, headdress, psalters, and all prayer-books, chairs, drawers, bureaus, carpets, curtains, etc., and there are many other trinkets which belong to her, such as brushes, scissors, and mirrors, but I do not mention them. But uncut cloth, and unworked gold and silver do not belong to her.
CHURCH (CANON) LAW ON MARRIAGE, TWELFTH CENTURY

1. [According to John Chrysostom, a leading early theologian:] “Coitus does not make a marriage; consent does; and therefore the separation of the body does not dissolve it, but the separation of the will. Therefore he who forsakes his wife, and does not take another, is still a married man. For even if he is now separated in his body, yet he is still joined in his will. When therefore he takes another woman, then he forsakes fully. Therefore he who forsakes is not the adulterer, but he who takes another woman.”

2. ... When therefore there is consent, which alone makes a marriage, between those persons, it is clear that they have been married.

20. A woman who has been sent to a monastery without the consent of her husband is not prohibited from returning to live with him....

21. He who has become a monk without his wife's consent must return to her....

22. A man may not make a monastic vow without his wife's consent....

If any married man wishes to join a monastery, he is not to be accepted, unless he has first been released by his wife, and she makes a vow of chastity. For if she, through incontinence, marries another man while he is still living, without a doubt she will be an adulteress....

24. A husband is not permitted to be celibate without his wife's consent....

26. A wife is not permitted to take a vow of celibacy, unless her husband chooses the same way of life....

29. If a woman proves that her husband has never known her carnally, there may be a separation....

31. If a man plights his troth to any woman, he is not permitted to marry another....

Betrothals may not be contracted before the age of seven. For only the consent is contracted, which cannot happen unless it is understood by each party what is being done between them. Therefore it is shown that betrothals cannot be contracted between children, whose weakness of age does not admit consent. This same is attested by Pope Nicholas: before the time of consent a marriage cannot be contracted. He says, “Where there is no consent from either party, there is no marriage. Therefore those who give girls to boys while they are still in the cradle, and vice versa, achieve nothing, even if the father and mother are willing and do this, unless both of the children consent after they have reached the age of understanding.”
1. A girl whose own agreement has never been shown is not required by the oath of her father to marry. . . .

3. Those who are to be of one body ought also to be of one spirit, and therefore no woman who is unwilling ought ever to be joined to anyone. . . .

Many authorities and arguments show that an immoral woman should not be taken to wife. For she who is found guilty of adultery is not supposed to be kept in marital fellowship except after the completion of penance. John Chrysostom said this:

1. He who does not wish to forsake his adulterous wife is a protector of vice. "Just as the man who forsakes a chaste woman is cruel and unjust, so he who keeps an immoral woman is foolish and unfair. For he who conceals the crime of his wife is a protector of vice."

2. A man may forsake his wife because of her fornication, but he may not marry another. . . .

14. It is no sin to marry an immoral woman. . . .

1. Childbirth is the sole purpose of marriage for women. . . .

3. Immoderate conjugal union is not an evil of marriage, but a venial sin, because of the good of marriage. . . .

7. Those who obtain drugs of sterility are fornicators, not spouses. . . .

19. A man is not permitted to forsake his wife except because of fornication. . . .

21. Let a man who forsakes his wife for a cause short of fornication be deprived of communion. . . .

23. Adultery in either sex is punished in the same way. . . .

1. A fornicator cannot forsake his wife for fornication. . . .

4. Men are to be punished more severely for adultery than women.