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Women's Property Rights in Islamic Law: Their Origins in the economy, Significance and Impact

(First draft – the usual caveats apply)

Introduction

This paper studies women's rights over property, income and reproductive behaviour in the Islamic law and the possibility that they were linked to the economic change in the early Islamic Middle East. It examines two clusters of rights, the first, the rights to engage in wage labour, keep earned wages, income and property ownership free from intervention; the second, the legal entitlements to make decisions affecting procreation and rhythm of birth in the marriage, such as the timing of consummation of the marriage, the use of birth control, and the length of breast feeding. Using empirical evidence, some of it quantitative, these two legal clusters are shown to correspond to two economic indicators, high per capita and household income and low fertility rate. The empirical evidence provided in favour of a link is in line with what economic historians have recognized as the participation of women in the labour market, the EMP (European Marriage Pattern) and the preventive check. On the institutional formation level, we favour Douglass North premise on the link between the transition to exclusive property rights and voluntary lowering of the fertility rate. The findings highlight institutional formation in medieval Islam as rational and attentive to social and economic change and the construction of women's property rights as confirming social and economic norms and gains made by individuals, families and communities in a new economic order.

The argument is presented in the following manner:

(1) The first section is devoted to the law. It details women's rights over property in Islamic law, henceforth 'women's property rights', and establishes a 'grid' of interlocking provisions including the ones, which deal with the 'acquisition' of these rights and their activation. (Table 1.) This section is based mainly on the Maliki School

of law, on jurisprudence, *fiqh* and *furūc*, and the variety of records of implementation, such as contract formularies, *shurūt*, or *kutūb wathā'iq*, legal consultations, fatwas, and the archived court records of transactions and dispute resolution. I focus on provisions related to women's wage employment and the rights over the body and describe several cases, which shed light on the practice.

(2) The second section is devoted to the economy. The early Islamic Middle East experienced economic change, which generated efflorescence, or economic growth, dominated by a high wage environment. (Figure 1) Women played a special role here. The evidence shows that the female labour force was a participant and an integral part of the process. The majority of the female labour force was employed in the textile sector in various capacities, and their wages and other income from commercial activities, contributed to higher per capita income and higher Household's income, with the impact visible and measurable in the areas of consumption and human capital. Evidence on consumption of textiles and books (Tables 2, 3) and division of labour (Appendix 1) is used to enunciate three economic indicators, higher incomes, new tastes and human capital formation.

(3) The third section deals with the demography. The literature links the aftermath of a demographic catastrophic event to economic change and explains it by the persistence of low birth rate, women's access to labour markets, and the emergence of a specific marriage pattern, EMP (European Marriage Pattern), and the preventive check. The pattern combines the effect of the plague on the economy with women's employment outside the home, which resulted in some form of non-voluntary birth control, in reality celibacy and delays of marriage, which reduced the number of births. Bringing the two premises into the Islamic environment, the link is made here between the population declines in the Middle East, a result of the Justinian plague 541-750, the provisions in the Islamic law on controlling reproduction, women's property rights over the body, and the possibility that they sanctioned practices already in place.

(4) The conclusion ties the points made together and recaps the process of institutional formation in medieval Islamic societies. It proposes a new approach linking the formulation of women's property rights to the new economic realities of the early

Islamic world and suggests that conceptualizing the process in this manner emphasizes institutional formation in the Islamic environment as a dynamic endogenous process.

(1) A Grid of ‘Property Rights’¹

In this paper I define women’s ‘property rights’ as a series of interlinked provisions dealing with entitlements, acquisition, appropriation and control over a variety of assets, including the physical functions of the feminine body. All rights exist in a ‘dormant’ manner within the female person and need to be activated when majority is attained. Once activated they will make a world of difference in a woman’s life: They entitle her to inherit, gift and be gifted, endow, work for wages and accumulate capital; they safeguard her property and make it possible for her to trade property for divorce and other male rights. They guarantee that property brought into the marriage, or generated during the marriage, remains hers, including loans she made to her husband or investments she undertook with him. She is entitled to make decisions over timing of marriage and consummation, breastfeeding and maintenance.

In order to demonstrate how women’s property rights are interlinked and how they operate, a brief survey of the provisions and their timing is provided.

Table 1. Women’s Property Rights (about here)

The dowry, *sadāq*, given to a bride is in fact not the first property transferred to her, nor is it the first instant when property, whether cash or goods or both, has been invested in a young woman. She could, and did receive gifts when she was still a child, a minor under guardianship and interdicted in her capacity to act. Gifting when under interdiction meant that girls could not manage the property but their ownership of it remains intact, as every gift required a court registered document. The property transferred through the dowry, *sadāq*, a gift of money and property from the groom to the bride through the intermediary of the father, was split into two, immediate and delayed part, the *kāli*, to be paid upon divorce or widowhood. The first installment was converted into household items, the trousseau, and has the power to validate the marriage: in order

¹ The various provisions are discussed in Maya Shatzmiller, *Her Day in Court. Women’s property rights in fifteenth century Granada*, (Cambridge, Harvard University Press, 2007)

for consummation to proceed, the wife must be in possession of the dowry, and delay consummation until it is placed in her possession. The delayed portion could be acquired at any point after the date indicated in the marriage contract, but could also be voluntarily forgiven by the wife in return for the husband's right to marry a second wife or to provide support after divorce. This second portion of the *sadāq*, was considered a debt on the husband and collectable by the heirs of the wife, if not collected beforehand by her. The gift *inter vivos*, *hiba*, constituted of any property transmitted at any age normally from family members. Gifting a young girl still under interdiction, meant to take property out of the main stream of inheritance keeping the property under control of the donor. Taking possession of shares of inheritance by wives, daughters, sisters and mothers proceeded after an estate division, normally accompanied by a court document. A court document was equally required for release from guardianship, though it should occur as a matter of fact when a girl reached majority, or when she was married. Release from the minority status was to be done by the father, and in his absence by the mother. Once released from interdiction, *fi hajr*, a woman has free hand and real power over property she owns.

Wages

Court records are numerous when it comes to commercial activities undertaken by women, but unavailable for hire and wages, probably because normally wage labour did not require a written contract. Fortunately, there is sufficient evidence from other categories of legal sources to gain insight into the law governing women's wage labour.²

The *Qur'an* may have provided the principle: "*men have a share in what they earn and women have a share in what they earn*". (*Q 4:32*) that resulted in the Islamic law of hire, *ijāra*, being 'gender blind', namely does not provide separate rules for men and women. However, when limitations on women wage labour surface in the sources, it could be traced to claims on her wages by the husband. The Maliki jurists clarify in their writings that the duties of the wife do not include income generating activities such as spinning, weaving and the like, but only the duties of the household, cleaning, washing and such.³ This in anticipation that husbands claim their wives earn wages. Attempts to

² See for details, *Her Day in Court*, pp. 176-195.

³ *Her Day in Court*, p. 100.

prevent women from working in the public space on grounds of morality should also be seen as attempts to gain access to their wages.⁴

The wet nurse's wages presented a specific problem. Wet nursing was the only task for which the law required a written signed contract between the father of the baby and the wet nurse, a contract, which the husband was required to sign as well. A written contract was required because the task was stretched over a given period and involved a specific job. Similar to a well digging, for which there was a contract formulae provided, wet nursing had to be accomplished in two years, the normal period assumed to be needed to provide the baby with a healthy size. Getting the signature of the wet-nurse's husband was necessary so that he does not engage in sexual relationship with his wife as long as she is breast-feeding, and that he cannot lay claim to her wages. But in this case we have a threesome participants. His signature was required because he has to abstain from sexual relations with his wife for two years. Since the husband acquired the right for sexual relationship with his wife by the payment of dowry, it meant that he was waiving his rights to 'property ownership'. The jurists knew enough about human biology to understand that a new pregnancy will result in the end of milk flow, which will spoil the contract. Furthermore, refraining from sexual activity was a tricky matter to impose, however, when fulfilled it meant that it delayed birth by 3 years. Husbands tried sometimes to extract a share in wet nurse's wages, after she began wet nursing another baby, but the jurists stood firm against such claims, saying that his claim has no merit since he had the opportunity to voice his opposition before she began her employment.

Consummation of the marriage

The link between women's right to property and the right to the body as property is not immediately apparent, but a series of legal and medical sources allow some insight into it. By 'the rights over the body', is meant the right to make decisions over activities leading to conception, which result in limiting the number of births. These rights are exercised through a variety of provisions, which could affect the biological functions of the female body, controlling pregnancies, their rhythm and timing.⁵ We referred to the

⁴ *Her Day in Court*, pp. 153-155.

⁵ For a complete list of legal provisions see *Her Day in Court*, 93-117; also, Maya Shatzmiller, "The Female Body in Islamic Law and Medicine: Obstetrics, Gynecology,

first act of intercourse between bride and groom, which was subject to property acquisition, which could delay consummation for a while. The notaries included a document for the father to sign, attesting against his daughter's claims, that all property bought with the *sadaq* money was delivered to her home. With the exception of the Hanafi school, all schools give the bride is the right to refuse consummation, and some even gave her the right to request annulment of the marriage if the *sadāq* was not delivered to her house, either because there was none or because the father took control of it.

The absence of virginity

The status of the bride as a virgin is a legal term and figures prominently in the marriage contract. A woman accused by the husband of not being a virgin ran the risk of having her marriage annulled or forfeiting the payment if the agreed *sadāq*. If the claim of the husband is substantiated he is given the choice whether to divorce or force the wife to accept a reduced *sadāq*. We assume such occurrence was common enough since the notaries made a notarial form available to fathers who wanted to prevent it and register their daughter's virginity, or lack thereof, ahead of consummation, by recounting an occurrence during which she may have suffered loss of virginity.

Age at marriage

Jurists of all schools agreed that no intercourse should occur between groom and bride if she is not 'ready' for sexual intercourse. Thus the age of marriage was not always 12 as presumed in the literature, even if a marriage contract was signed and *sadāq* paid. Intercourse with an underage bride was unlawful and if occurred ended up in divorce.⁶

Contraception

The practice of contraception in Islamic societies was dominated by a combination of male and female entitlements over the practice. The usage of a different array of medical ingredients for women was accepted by the jurists and the doctors. *Coitus interruptus* was practiced by males but was subject to the wife's consent. In the Maliki school a monetary compensation was given to the wife for agreeing to the practice, which could be reduced

and Pediatrics," *Attending to Early Modern Women. Conflict and Concord*. (University of Delaware Press, 2013), pp. 121-143.

⁶ The age of 12 as age of marriage for girls was common to most pre-modern societies.

if she changes her mind. The Shi'ci School fixed compensation at 10 dinars for a single practice! The practice of birth control with a slave woman was permitted without her consent. The property issue here was that she would be emancipated if she gives birth to the master's child. The master will suffer a property loss both of the mother and her son, as well as further dilution of his wealth or property. Therefore, he was allowed to have as many concubines as he wanted, with whom he could practice birth control, but only four wives. A child born to an enslaved couple will result in increased amount of property, as the child will remain a slave.

Breastfeeding in the marriage

Breastfeeding, which we reviewed earlier as an issue of wages has a property value in itself and by itself. In the Qur'an breastfeeding is a remunerative activity and mother milk, a commodity (Q 2:233.) The Qur'an specifies that mothers should suckle for 2 years but also that fathers, who pay for the service cannot be obligated to pay for the entire duration. As a result, wives who nurse their babies cannot be forced to 'suffer' or endure, the entire period, as well. Mother milk became a commodity. After divorce, the father is obligated to pay his wife for breastfeeding the baby but the mother is not obligated to breastfeed if there is no pay or if the pay is insufficient. Mother milk within the marriage could be bought and sold; it was a property of the wife. One case reported in a fatwa dealt with a divorced mother who demanded higher wages for breastfeeding. When higher wages were not forthcoming, she sent the baby back to his father in whose care he died. The jurists exonerated her for causing the baby's death.⁷

Maintenance and childcare

Upon divorce women with children were entitled to maintenance from the father and the notaries included contract models in their formularies to register the payment, detailing money and food items. The fatwas also demonstrated that there was no escape from paying for childcare even after the mother died and another female offered her help free of charge. In this case the jurists specify that these are considered wages and the right to wages is always protected.⁸

⁷ *Her Day in Court*, pp. 100-101.

⁸ The jurists insist on the payment even in the case of voluntary renunciation by the grandmother. *Her Day in Court*, pp. 103-107.

Men and women regularly went to court over property rights; Examples from 15th century Granada archives include a case where a widow was forced to return shares of inheritance to her brother-in-law, of a son suing his stepfather over his share in his mother's *sadāq*, and of a husband seeking the court permission to work his wife's fields.⁹ Compliance varied. When people went to court to litigate issues of property rights decisions in most cases followed the letter of the law, but in some instances there was a departure. In one such case from eleventh century Cordova, a wife went to court demanding rent from her husband, who lived in her house, the one given to her by her father. The fatwas related to the matter, and several are reproduced, reveal that there were many instances of similar complaints and that jurists frequently decided in favor of the wife. The reason being that the husband is legally responsible for providing food and shelter to the wife and not the other way around. However, in the case before him, the mufti advised to deny the claim for the 'well being' of the couple's relationship.¹⁰ There are numerous instances of the court registering the use of the wife's property for buying his rights, in addition to abandoning them for a lofty goal such as the couple's relationship.

The impact of defined and protected women's property rights on the economy may be summarized as follows: Women became a stable and reliable conduit for generational transmission of property and offered property devolution system, which was reliable, flexible and effective. Women's property rights created an additional class of economic actors, property holders who could legally engage in economic transactions with no extra transaction costs. Wages in their hands, and their property defended, females were better equipped to act as investors and accumulate wealth.¹¹ The rights over the body recognize the female body as a repository of property and rights. They gave the "commodities" which the female body produces, pregnancies, babies and mother milk, a legal status similar to labour, and the capacity to derive income from them in the form of wages.¹²

⁹ *Her Day in court*

¹⁰ In *khul'* divorce or to buy the husband's right to marry a second wife, or to make her travel with him. *Her Day in Court*, pp. 53.

¹¹ See for example: A woman in Tunis eleventh century is selling her jewelry in order to buy grain in Sicily ship it to Mahdia and sell it there.

¹² *Her Day in Court*, pp. 95-107.

They also gave women power over different aspects related to procreation, which lowered the fertility rate.

(2) The Economy: Female Wage Labour and Consumption

We now turn to the economic conditions in the medieval Middle East and examine the impact of women's wages on income levels.

In a recent study, Şevket Pamuk and myself, trace the development of a new economic order in the Islamic Middle East in the aftermath of the Justinian plague.¹³ This study establishes long-term trends in the purchasing power of the wages of unskilled workers and develops estimates for GDP per capita for medieval Egypt and Iraq. Wages were heavily influenced by two long-lasting demographic shocks, the Justinian Plague and the Black Death and the slow population recovery that followed. As a result, they remained above the subsistence minimum for most of the medieval era. We also argue that the environment of high wages that emerged after the Justinian Plague contributed to the Golden Age of Islam by creating demand for higher income goods.

The new wage conditions favoured a 'Consumer Revolution' in the Middle East.¹⁴ Conditions in the newly conquered Middle East, favored the development of the manufacturing sector and raised its productivity level. A previous Malthusian stagnation period, which kept agricultural productivity at low levels, was relieved in the aftermath of the plague, raising productivity in agriculture. High urbanization rates, probably the highest in the world by 800 AD, according to a recent paper, occurred.¹⁵ High levels of capital-intensive situations developed, as in Egypt during the 9th and 10th century, which

¹³ Şevket Pamuk and Maya Shatzmiller, "Plagues, Wages, and Economic Change in the Islamic Middle East, 700-1500," *Journal of Economic History*, Vol. 74, No 1 (March 2014), pp. 196-229.

¹⁴ See on the role of women, Sheilagh Ogilvie, "Consumption, Social capital, and the 'Industrious Revolution' in early modern Germany," *JEH* 70/2(2010) 287-325.

¹⁵ Maarten Bosker, Eltjo Buringh, and Jan Luiten van Zanden, "From Baghdad to London: Unraveling urban Development in Europe, the Middle East, and North Africa, 800-1800," *The Review of Economics and Statistics*, October 2013, 95(4): 1418-1437. Note of caution: The paper is marred by factual errors when it comes to drawing conclusions between the Islamic institutions and interpretation of Islamic decline.

were behind the rise of the flax cultivation and linen production.¹⁶ Servile labour disappeared in the Middle East with the arrival of the Muslims, in both the rural and the urban sectors, opening the labour markets to women. Demand for wage labour grew and in response wages rose allowing the demand for new tastes in clothing and food to be fulfilled.

Figure 1. Wages of unskilled workers in Egypt and Iraq (about here)

When it comes to women's wages a caveat immediately applies: the income generated by women through wages and other means, cannot at the present moment be measured, due to the fact that no wage data for women has been collected, and may or may not exist. It is equally impossible to estimate labour input as a factor in the growth in output per capita. However, an Islamic 'Industrious Revolution' was in the making in the aftermath of the plague. There is evidence on labour saving devices, introduction of new crops and extension of seasonal cultivation to include summer. The increase in labour productivity is also manifested through the increase in trade, whereas a larger section of the population was involved in production for the market. There is a good deal of qualitative evidence to substantiate what is suggested here, namely that women's wages were substantial enough to make a difference in their per capita income and their wealth, as well as in the household income and worth and generally in relatively high per capita levels. In turn, women's property rights were meant to protect those gains made by women and households, and the social norms, which created them.

If we single out the textile sector for analysis we can show quantitatively high division of labour and high-end textile items consumption.

Appendix 1. Division of Labour: Occupations in the Textile Sector (about here)

¹⁶ On capital formation see Gladys M. Frantz-Murphy, "A new interpretation of the economic history of medieval Egypt. The role of the textile industry 254-567/868-1171," *JESHO*, Vol. XXXIV/3, pp. 274-297.

The high level of specialization and division of labour is documented in Appendix 1. The list shows 166 different occupations in the textile branch, a number well above a comparable list of 90 occupations in clothing/fabrics/shoes making in preindustrial England.¹⁷ Based on sources from Egypt, Iraq and North Africa, our list excluded makers of leather clothing items, included in the list from England, since our classification was based on the raw material used for fabrication. Obviously adding leather-clothing makers would have increased the list further.

The highly sophisticated labour environment was the main market for female skills and where the feminine labour force was concentrated.¹⁸ My own calculations show that the textile sector occupied regularly between 18%-22% of the labour force.¹⁹ Given their monopoly over spinning of every fiber, the female's share of the labour force in the textile industry may have reached between a third and a half.²⁰

Given population decline on one hand and low birth rate on the other, the expansion of the textile sector can hardly be understood without female participation. It is described in the sources, the medieval Arabic sources and the Judeo-Arabic texts of the Geniza, and concluded in this manner: "Textiles, were, of course, the main field of female remunerative occupations"²¹; "In every household, one or several women devoted part of their time to spinning; thus the demand for spindles must have been large enough to encourage people to concentrate on making them."²²; "Each married woman was expected to engage in some work in addition to her household chores"²³. Most importantly, females held a monopoly over the spinning of the entire gamut of fibers used for making cloth, ranging from horsehair and wool to silk, cotton and linen. Women also provided a considerable share of the labour force employed in embroidery, silk dyeing and sewing of sumptuous garments. The spectrum of female occupations should also be

¹⁷ See Gregory Clark, Joseph Cummins and Brock Smith, "Malthus, Wages, and Preindustrial Growth," *The Journal of Economic History*, Vol. 72, No 2, June 2012, pp. 364-392, Appendix on p. 388-389.

¹⁸ This section is based on evidence gathered and studied in Maya Shatzmiller, *Labour in the Medieval Islamic World*, (brill, Leiden, 1994), in particular, pp. 240-249.

¹⁹ Shatzmiller, *Labour*, 215.

²⁰ Shatzmiller, *Labour*, pp. 347-368, for details and thematic discussion.

²¹ Goitein, *Mediterranean Society*, Vol. I, p. 128.

²² Goitein, *Mediterranean society*, p. 100.

²³ Goitein, *Mediterranean society*, p. 127.

extended to include tasks in the rural areas and in the service sector, activities such as growing silk worms, brokers of textile items, and tax farmers of the entire output system of thread manufacturing.

The organization of female wage labour was unencumbered by social institutions: there were no guilds, and workshops for women were small and frequently located in private homes. The tax collector, he or herself, was responsible for the organization of thread production as an output system, ordering a given amount of threads and spun fibers, paying the wages, paying suppliers, marketing the finished items. They were responsible for the payment of taxes to the government.

The economy responded to the demand of higher income goods. Women's massive participation in the labour force contributed to the effect of the sector on the entire economy; first through the effect of the wages on purchasing power, second, by increasing specialization and division of labour, which improved productivity and promoted growth. The textile industry was also geared for trade. Commercialization is widely attested to in the sources, the Arab geographers but especially the letters of the Geniza traders.²⁴ Capital formation, generated by tax collectors was reinvested in the textile industry, and raised wages. Increased commercialization of textiles, exporting finished and unfinished items and raw material, fed by profits from trade. Last but not least, growing incomes affected demand for literacy, book production, and technical skills, which improved the quality of human capital, contributing in turn to better quality production.²⁵

Consumption of literacy and expensive textiles, two high-end items portion of the new tastes, emerged in the high wage environment. Data on prices of several hundreds female garments and about a hundred prices of books collected in a new database, make

²⁴ See among others, S. D. Goitein, *Letters of Medieval Jewish Traders*, (Princeton University Press, 1973)

²⁵ Maya Shatzmiller, "Human Capital Formation in Medieval Islam". In *Workers of the World – International Journal on strikes and social conflict*. ISSN: 2182-893. Special issue: *Global Labour History*" Volume I, number 3, May 2013, pp. 49-71. <http://www.workersoftheworldjournal.net/images/WW%203%20final.pdf> (<http://www.workeroftheworldjournal.net/>); Maya Shatzmiller, "Artisans. Up to 1500." *Encyclopaedia of Islam*, 3rd edition (2012) pp. 29-36.

it possible to draw a comparison between the average prices of the two items. Most of the price data on clothing and books was collected from the Geniza documents.

Table 2. Average prices of female clothing items, Egypt 11th-13th century (about here)

Table 2 combines averages from two sources, Ashtor's, who used letters of Geniza traders,²⁶ and Stillman's who used bridal trousseau lists.²⁷ In the Ashtor data, the price of the item designated as "thawb", a staple clothing item, regularly averaged between ½ and 1 dinar, while the price of the "jukaniyya", another common item of clothing, averaged between ½ dinar and 3 dinar. When these numbers are compared to the average price in the trousseaus list, the average price of the same items doubled and tripled. The reason for the climb in price, was the quality of the product, pricy cloth, brocade and silk, variety of colors, elaborate decorations on the borders, embroidery, gilding, etc. The high average prices indicate few things: high level of luxury items consumption, wide range of high income clients for the high-end items, families with relative high levels of per capita and house hold incomes. The pricey items, included in the dowry, ended up as property in women's possession, and if women possess property-property rights are in order to protect it.

The availability of several hundreds price instances in the sources is an indication of wide spread consumption on one hand and pervasiveness of female labour force in manufacturing. Be it as workers or consumers, textile high-end production and consumption by women covered a wide continuum of female existence.

When we compare the relative high value of women's clothing to the average price of another high-end item in the list of the new tastes, books - an interesting picture emerges.²⁸

²⁶ Eliyahu Ashtor, *Histoire des prix et des salaires dans l'orient médiéval*. (Paris 1969)

²⁷ Yedida Stillman, *Female Attire of Medieval Egypt: According to the Trousseau Lists and cognate material from the Cairo Geniza*, Ph.D. dissertation University of Pennsylvania 1972.

²⁸ On the role of the Islamic technical manual in human capital formation see Shatzmiller, "Human Capital Formation" and Shatzmiller, "Artisans" *EF*³

Table 3. Average prices of volume/book, Egypt 9th to 13th century (about here)

Calculations of book averages are complicated. Books are referred to in the sources as made of volumes, usually one, but sometimes more. Since book prices varied significantly, depending on the number of volumes contained, it was decided that volumes would represent more accurate price trends. Any book with no volume information was assumed to be one volume. When the sources mention volumes we assumed they were referring to a standard size and that referring to a “volume” will be closer to the standard measure than referring to a “book”. We therefore used the term ‘volume/book’ to designate a single item. Any time a “set of” or “several” were used to signify quantity, a set value of five was assigned. In the early period, 9th, 10th, 11th centuries, prices are almost always quoted in dinars, in the 12th century, 60% of the prices are quoted in dinars and 40% in dirhams. In the 13th century prices are almost exclusively quoted in dirhams. Average exchange rates were calculated for each century. These exchange rates were used to convert volumes priced in currencies other than dinars into dinars. Dividing the final price in dinars by the number of volumes it contained, gave the price of a volume (in dinars). These were averaged by centuries and presented in the numbers in the above table

It becomes apparent from the data produced in Tables 2 and 3 that the average price of books declined over the centuries while the price of luxury textiles remained constant and high. This observation is interesting since the two items are closely linked: paper, which replaced papyri and parchment as writing material in the 10th century, is made of flax rags.²⁹ As the early average price indicates, previous writing materials, papyri and parchment, were costly and possessing large quantities of them very expensive, making “books” a luxury far too expensive for most consumers.³⁰ One would expect the low price of the volume/book to be related to the low price of paper, and both

²⁹ See my forthcoming article, “The knowledge Economy: the introduction of paper and the economy in the Islamic Middle East,” where I explore the impact of the introduction of paper.

³⁰ It should be noted though, that, the book as we know it, namely the codex, did not exist before the introduction of paper to the Islamic lands.

traced to the expansion of flax cultivation and linen production, which lowered prices. One would also assume that book prices and clothing prices would move together. However, the price of paper declined thanks to several factors: mass production of flax and linen, cheap raw material and the availability of cheap energy, the watermills installed on rivers. Cost of labour was also lowered by the availability of new fabrication technics. The price of high-end luxury clothing items, however, did not decline since no cheap energy could replace the dexterity of the human hand in embroidery and dyeing, and the price of the fine raw materials, such as the satin *dabiqi* and silk brocades, did not come down, nor have taxes declined.

Economic historians pointed out that expanding market consumption played a key role in the European economic growth before industrialization. So far we used price data for only two items, textiles and books and one may ask how reliable is the use of a limited number of commodities prices for the study of consumption trends in the period in question without the information about the size of the consuming population or the number of retailers?³¹ Indeed most consumption studies employ a wider range of items to reach conclusions, though using one or two principal items as indicators, is not at odds with precedent.³² At the same time the similarities between the Islamic and the European context, in terms of the type of employment, women's participation, reaction of husbands, consumption of luxuries, are nonetheless significant enough to suggest common social and economic patterns of women's labour. The evidence presented in Tables 2 and 3 shows very similar patterns of consumption by Islamic societies: the middle class purchasing the expansive textile pieces for their daughters, while the masses buying the less expansive ones.³³ But the evidence of the legal sources shows the difference property rights can make: unlike European women in the sixteenth and

³¹ Ogilvie used both variables for her study of women and consumption.

³² See Anne E. C. McCants, "Poor consumers as global consumers: the diffusion of tea and coffee drinking in the eighteenth century", *Economic History Review*, 61, SI (2008), pp. 172-200.

³³ The difference between the average prices of luxury and non-luxury items is presented in Table 2.

seventeenth centuries, Muslim women were not prevented by social constraints from playing a role in consumption.³⁴

Recent literature claims that the link between women's wage labour, participation in the labour force, consumption and economic expansion, was not universal, and in places where curtailment of women's participation and consumption occurred within the European continent, the 'industrious revolution' took longer to appear.³⁵ In the Islamic environment the opposite occurred. Women allocated time to wage earning by shifting their hands from household unpaid chores to paid labour, especially spinning, and earning disposable income. Unlike European women in the above case, who did not participate in consumption and in commercialization, Muslim women did and it provided them and women's labour with a great deal of power and influence. I believe that the evidence offered here is robust enough to illustrate the scope of consumption as an accurate picture of the economic reach across households of different incomes, and explain the link which I propose existed between women's property rights, wages and consumption.

(3) The Demography: Property Rights and Fertility Rate

By the same token that women's property rights in the law were linked to women's wages through their origins in the economy, so were women's rights over the body linked to the economy through their effect on fertility rates.

Population size has strong relationship to economic performance and human wellbeing; a relationship that was first diagnosed and expressed by Malthus in the eighteenth century, but still remains a constant in modern economic historiography. All discussions of historical economic growth and economic growth theory still open by reference to the Malthusian equilibrium and how best to deal with it.³⁶ The Malthusian equilibrium, namely the balance between population and limited resources, still requires to be addressed by action affecting the beginning or the end of life cycle, namely, either

³⁴ Ogilvie, "Consumption,"

³⁵ Ogilvie, "Consumption"

³⁶ Oded Galor and David N. Weil, "Population, Technology, and Growth: From Malthusian Stagnation to the Demographic Transition and Beyond," *American Economic Review* Vol. 90 No. 4, pp. 806-828.

through increased mortality or through decreased births. The first considered an exogenous factor, the second, voluntary or involuntary changes in nuptiality, an endogenous one. The shift between the exogenous to the endogenous corresponds to a shift from ‘quantity’ to ‘quality’ in offspring; it requires rationalization of the process of reproduction. The preventive check associated by Malthus with moral restraint, vice and birth control was attributed to social classes who already enjoy wealth and did not want to dissipate it through too many heirs and limited the number of births. Voluntary limitation of the number of offspring for higher standards of living and better quality children is hard to measure in historical societies. Instead economic historians of Europe combined the causality of both the exogenous factor with the endogenous in explaining lower birth rate in the following manner: An exogenous event, the Black Death, lowered European population to about half or even two thirds of its former size, changing the ratio of land to labour, increasing productivity in agriculture, raising wages, per capita income and standards living, and opened the labour markets to women. The endogenous factor, the lowering of fertility rate, which followed, was instrumental but was not voluntary. It was due to circumstances.

The European Marriage Pattern, EMP, has several social and economic formats but most recently it explained the lowering of the fertility rate in the following manner:³⁷ A change from intensive grain cultivation, due to decline in manpower and available land to raise dairy animals, improved women’s employment prospective. Women working in pastoralism, animal husbandry, and as servants remained unmarried, or delayed marriages, thereby reducing childbirth by up to one third between the 14th and the 18th century. Women delayed marriages and delayed births mostly due to physical absence from the home, pasturing animals and earning wages. Tax returns from 1377-8 show a growing number of unmarried women paying taxes. In the absence of evidence of the practice of effective and voluntary birth control, the EMP explanation shifted the focus to what women did in the economy.³⁸ Obviously, if women’s employment was the cause of

³⁷ Nico Voigtländer and Hans-Joachim Voth, “How the West “invented” Fertility Restriction,” *American Economic Review*, 2013, 103(6): 2227-2264 with a comprehensive list of publications on this question.

³⁸ Tine de Moor and Jan Luiten van Zanden, “Girl Power: The European Marriage Pattern And Labour Markets In The North Sea Region In Late Medieval And Early

celibacy and late marriages, then its absence will provoke the reverse. Indeed, the decline in demand for women's labour in the 18th and 19th centuries is seen as contributing to lower wages for women and population increase: "It helps explain the 'baby boom' of the second half of the 18th century, and the stagnation in human capital formation".³⁹ The link between agrarian change and marriage patterns is supported by evidence from a variety of European cases.⁴⁰

This picture was similar to what transpired in the Islamic environment in the aftermath of the Justinian plague, except that in our case the legal provisions with regard to reproduction, sanctioned norms and practices already in place, which facilitated limitation of births and lowered the birth rate for some time.

Our knowledge of the demographic conditions in the medieval Middle East is limited. We know though, that a low birth rate appears to have been emblematic. To begin with the usual conditions apply: Child mortality was high,⁴¹ and female death rate was also high, due to hard work and childbirth. Studies, admittedly of the 14th century situation, provide evidence on small families. Probate estates dating from the last decade of the fourteenth century from Mamluk Jerusalem, show that 58% of males and females had no children and high rate of unmarried single women, divorced and widowed was recorded. "Small families seem to have been more common than larger ones. It is more common for families who had children to have 1 or 2 rather than 3 or 4 so the average household is 2,7 which is lower than the 3,5 average that Russell estimated for a medieval family."⁴² For fourteenth century North Africa, David Powers agreed: "No family had more than three children and the average number of children per family was

Period," *Economic History Review*, 63,1 (2010), pp. 1-33. Morgan Kelly and Cormac ó Grada, "The Preventive Check In Medieval And Preindustrial England," *The Journal Of Economic History*, vol. 72, No. 4 (December 2012), pp. 1015-1035.

³⁹ Jan Luiten van Zanden, "The Malthusian Intermezzo: Women's wages and human capital formation between the Late Middle Ages and the Demographic Transition of the 19th century," *The History of the Family*, 16(2011), pp. 331-342.

⁴⁰ Martin Dribe and Bart van de Putte, "Marriage seasonality and the industrious revolution: southern Sweden, 1690-1895," *Economic History Review*, 65,3 (2012), pp. 1123-1146.

⁴¹ On child mortality see Avner Gil'adi, *Children of Islam. Concepts of Childhood on Medieval Muslim Society*, (New York, St. Martin's Press, 1992), pp.69-116

⁴² Huda Lutfi, *Al-Quds al-Mamlūkiyya. A history of Mamlūk Jerusalem based on the Haram documents*, (Berlin, Klaus Schwartz Verlag, 1985), p. 256

1,6.”⁴³ Michael Dols, who believed strongly in the severe effect of the Justinian plague on population recovery accepted nonetheless an average size of medieval household of 3,5.⁴⁴ A very long-term population decline in Egypt and Syria under the Mamluks, fourteenth-fifteenth centuries, also suggest the absence of population recovery – not only in the next 100 years after the plague- but during the entire pre-modern period, until the nineteenth century. In view of the evidence available, two children per family appear to be a reasonable number to use in this context.

However, the reasons of the small families of the studies mentioned, may be explained by the ‘positive checks’ Malthusian theory, wars and plagues, and not by the ‘preventive check, voluntary limitation on birth. The probate inventories discovered in post Black Death Mamlūk Jerusalem, 1390-1393, show a large number of single women, widowed and unmarried, with property, including textiles and spindles, but no employment in pastoralism and no pasture animals to explain it.⁴⁵ It is not unsound to suggest that the relatively high numbers of unmarried women in the aftermath of the Black Death was due to a husband’s pre-mature death or the lack of available males to contract new marriages, as well as to the plague recurrences. The high percentage of women making court appearances in Islamic Granada court in the late fifteenth century was due to the Spanish Reconquista wars raging for hundred years around the city, which killed men in large numbers.⁴⁶ The legal provisions, which I referred to as the rights over the body, offer a different explanation of the small families and a plausible interpretation of the low fertility rate in the Middle East its link to wage labour, one that favors an endogenous explanation.

The slow population recovery in the Middle East in the aftermath of the Black Death was traced in the first and only study of Islamic voluntary limitation of birth, by Basim

⁴³ David Powers, “A court case from fourteenth-century North Africa,” *Journal of the American Oriental Society* 110(1990), p. 241:

⁴⁴ Michael Dols, “The general mortality of the Black Death in the Mamluk Empire” in A. L. Udovitch Ed. *The Islamic Middle East, 700-1900: Studies in Economic and Social history*, Princeton, Darwin Press, 1981) 397-428, p. 402.

⁴⁵ Lutfi, *Al-Quds*,

⁴⁶ Shatzmiller, *Her Day in Court*, pp. 1-6.

Musallam, to the practice of male birth control, ‘*coitus interruptus*’.⁴⁷ Musallam argued that the voluntary practice should be attributed to the desire to confront the ‘bad times, by which “civilized people reacted to the political upheavals, insecurities in the cities and the countryside, experienced by Muslims.”’⁴⁸ The ‘historical authenticity’ of the practice is not in doubt. A comprehensive coverage of the literary sources, legal, medical, literary, moral and other, attest to it, the only challenge posed to the theory is that the practice, according to the legal sources, seems to date from well before the fourteenth century. Contraception appears in the early hadith, with further elaboration in the juridical and sources as early as in the ninth century.⁴⁹ The medical writers saw the breeding as dependent on both male and female in equal measures and provided treatment for both in cases of sterility or bareness.⁵⁰ Most significantly, the *materia medica* related to contraception was not limited to men but included an array of different methods for contraception for women. Given the comprehensiveness of the coverage of the practices several hundred years before the Black Death, point in the direction of current practice. Small families, as it appears were not innovation, they were the norm.

Douglass North did not mention the Islamic case when he developed his theory about the link between property rights and fertility rate, but the account of the Arab settlement of the Middle East fits it.⁵¹ North suggested that exclusive property rights would appear when a given group who lives in a common property regime seeks to exclude other groups, or limit their access to a share in the returns of labour. While living in a common property regime the group will not engage in limiting birth behavior because it has an incentive to increase its numbers, so as to increase its power to benefit from the limited resources.⁵² Only with exclusive property rights a group has an incentive to limit births and lower its fertility rate in order to increase, or keep stable the rate of return on its

⁴⁷ Basim Musallam, *Sex and Society in Islam: birth control before the nineteenth century*, (Cambridge University Press, 1983)

⁴⁸ Musallam, pp. 106-107

⁴⁹ Musallam, pp. 115-121

⁵⁰ *Her Day in Court*, pp. 107-112, Maya Shatzmiller, “The Female Body in Islamic Law and Medicine: Obstetrics, Gynecology, and Pediatrics,” *Attending to Early Modern Women. Conflict and Concord*, (University of Delaware Press, 2013), pp. 121-143.

⁵¹ Douglass C. North, *Structure and Change in Economic History*, (Norton, 1981), pp. 72- 89.

⁵² North, *Structures*, p. 80 et sq.

members' labour. Members of the tribe ignore constraints and tend to abuse free access to the property, which will eventually cause the gradual elimination of common property. The shift from hunting to agriculture, where it was possible to delineate property and exclude others from deriving benefits, was such event. But the switch to exclusive property rights will occur only when tribal society is no longer in movement and can effectively control property. Exclusive property rights are impossible in common held and limited resources, but in exclusive property rights situation, the group will strive to curtail birth rate through "taboos, infanticide, and various other means to achieve equilibrium between return on fixed resources and population size,"⁵³.

The property regime of the Arabs before Islam was one where property, goats, camels, tents, were held in common by the tribe. Indeed the demographers McEvedy and Jones estimated a population of 5.25 millions in 600AD Arabia, the highest population level experienced there in the medieval period, and which corresponds to the time of the Prophet.⁵⁴ It was a much higher population level than that of either Egypt, at 4,5 million,⁵⁵ or Iraq at 1 million at 600 AD.⁵⁶ Exclusive property rights did not develop until the tribal system faded away and the Arabs settled in the newly urbanized Middle East. Once settled in either villages or cities, but especially in the later, a legal system of exclusive property rights was developed. The timing of the codification of Islamic law is undeniable: new rules on property devolution, wages, and the rights over the body were constructed in ninth and tenth centuries Iraq, center of the new economy. The rights over the body confirmed practices already in place now being sanctioned, practices that aimed at preserving the new gains made by women and families, relative high per capita and household income. It must therefore be concluded that the transition to lower fertility rate occurred either before, or was concurrent, with the construction of Islamic law. As to whether the array of herbs and potions suggested by the medical literature to prevent conception was successful in lowering fertility rate, the answer is that they were as ineffective as the "taboos, infanticide, and various other means", suggested by North in

⁵³ North, *Structures*, p. 85.

⁵⁴ Colin McEvedy and Richard Jones, *Atlas of World Population History*, (Penguin Books, 1978), pp. 144-148.

⁵⁵ McEvedy and Jones, p. 227

⁵⁶ McEvedy and Jones, p. 151

lowering the birth rate. Except that in the Islamic case, they come in combination with women's rights over the body which delay and space births, and those of men who voluntarily want to limit the number of offspring, and had a better chance to make an impact.

The link between women's wages and women's property rights is also detected among the Jews of Egypt. The legal texts of the Geniza from the 11th-13th centuries, show that the Jewish marriage contract, the *Ketuba*, began including for the first time a clause, which guaranteed the right of the bride to control her earnings and not share them with her husband.⁵⁷

(4) Conclusion

The two clusters of women's property rights suggest that the construction of a body of property rights in the law was linked to a change in property regime and property relations. It coincided with the rise of individual and exclusive property rights, and the need to accommodate norms established and economic gains made by individuals, families and communities. Demographers, anthropologists, developmental biologists and economic historians all agree that females played a role in lowering fertility rate but they disagree as to how it worked. By exposing the link between low fertility rates, women's rights over the body and the formation of property rights in Islamic law, the Islamic case points to its origins in economic change. By linking the formulation of property rights and women's property rights in Islamic law to the new economic realities, I offer an alternative analysis of the construction of Islamic law itself, one embedded in a dynamic and engaged historical process of institutional formation.

Criticism of Islamic law has been offered as an explanation of Islamic societies backwardness and with good reason. It is hard to argue against it in the face of the appalling conditions of Islamic societies today and especially those of women. Yet, women's property rights establish family relations on a comprehensive basis, a sound economic policy better suited to the new realities. This is not to say that all attempts at defining property rights in the Islamic law were successful. The law of the Maliki *waqf*

⁵⁷ Goitein, *Mediterranean Society*, Vol. I, p. 127

for example, offers weak property rights to institutions, which left endowed property unprotected against abuse by ‘free riders’.⁵⁸ Women’s property rights laws militated against gender segregation and enhanced female status in the family. The fact that it is trampled on today is the work of society, not of the Islamic law.

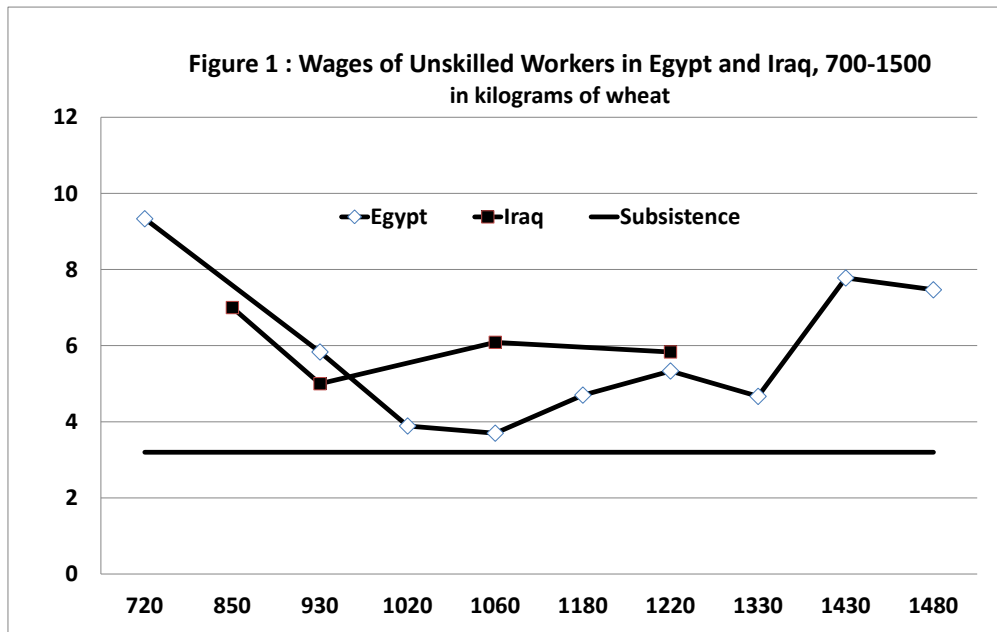
Tables and Appendices

Table 1. Women’s Property Rights

<i>Item</i>	Activation	Limitation	Activation
<i>Sadāq (Dowry)</i> <i>Kali (Delayed portion)</i>	Marriage Divorce/widowed	No Forgiveness option	Required release from guardianship
Inheritance	Any time		Required release from guardianship
Receiving gift and Gifting	Any time		Required release from guardianship
Maintenance	Marriage	Forgiveness option	marriage, divorce
Agreeing to Intercourse	Marriage		Taking possession of the <i>sadaq</i>
Agreeing to Birth Control	Marriage	Compensation required	No
Payment for Breastfeeding	Marriage	Husband’s agreement	No
Engaging in wage earning	Any time	Occasionally Husband’s agreement	No
Conducting Sales and loans	Any time		Required release from guardianship

⁵⁸ See Maya Shatzmiller, “Islamic Institutions and Property Rights: The Case of the ‘Public Good’ Waqf” *Journal of the Economic and Social History of the Orient*, 44/1(2001): 44-74.

Figure 1. Wages of Unskilled Workers in Egypt and Iraq



Appendix 1. Division of Labour: Occupations in Sectors. Textile making occupation recorded in the Arabic sources, 8th-15th centuries

[Source: Maya Shatzmiller, *Labour in the Medieval Islamic World*, (Brill, Leiden, 1994). Each occupation corresponds to a single Arabic term. Highlighted are terms which the Arabic form designated a female worker]

button maker, **female lacemaker**, maker of turbans, seller of turbans, rope maker, rope seller, hemp worker, maker of silk head veil and sturdy turbans, felt maker, skirt maker, button/tassel maker, sheer maker, maker of tight-sleeved coats, maker of hats, seller of hats, maker of shrouds, seller of shrouds, maker of bed coverings, seller of bed coverings, purple dye maker, purple dye seller, maker of women's veils/covers for animal's eyes, seller of women's veils/covers for animal's eyes, maker of "batt" garments (pieces of rough, square and usually green cloth), seller of "batt" garments (pieces of rough, square and usually green cloth), maker of tall headgear, seller of tall headgear, maker of large carpet, seller of large carpet, beater of cloths, maker of caps, seller of caps, maker of silk brocade, seller of silk brocade, maker of cereal bags, seller of cereal bags, maker of sock and stockings, seller of sock and stockings, cloak maker, seller of woolen broadcloth, maker of garment/veil, dyer using lapis-lazuli, weaver, weaver of headgear, weaver of lining materials, carpet weaver, weaver of aprons and silk fabric for headgear and belts, silk weaver, flax weaver, weaver of sacks and tents from canvas, weaver of cloths with fur, weaver of cotton, weaver of delicate cotton, quilt weaver, towel weaver, wool weaver, weaver of fabric from the village of 'Akraba near Damascus, weaver of loin cloths, braider, maker of rope soles for light footwear, carder, silk merchant, maker of silk cloth, seller of silk cloth, silk dyer, silk weaver, dress liner, silken shawl maker, headgear maker, headgear seller, maker of cloth caps, seller of cloth caps, children's blanket maker, maker of pads carried on the back by porters (or used to expand dough), maker of soft garments, seller of soft garments, fuller, bleacher, laundryman, laundryman who bleaches the laundry, cutter, maker of cutting instruments, flax manufacturer, flax seller, flax spinner, flax comber, cotton spinner, cotton seller, cotton manufacturer, cotton carder, kerchief maker, *kazz* silk maker, *kazz* silk weaver, *kazz* silk seller, low grade flax weaver, low grade flax seller, dyer, tailor, seamster, **female dressmaker**, coat maker, coat seller, maker of white linen cloth made in Egypt, seller of white linen cloth made in Egypt, dyer who uses crimson, crimson dye maker, felt maker, felt seller, maker of felt hair (or wool mingled and compacted together), maker of quilts and quilted garments, maker of women's scarves, maker of women's head-veil (made of silk or linen), seller of women's head-veil (made of silk or linen), fan maker, flax comber, maker of belts, maker of women's veils, seller of women's veils, clothes presser, peeler of silk, dyer who uses vermilion, maker of vermilion, embroiderer, dyer who uses oxidized copper, wool carder, cotton carder, mattress maker, carder, maker of cushions/beds, unraveler (of raw silk), maker of coats of mail, garment mender, embroiderer of garment, maker of garment, seller of garment, **female embroiderer**, garment and leather dyer, textile dyer, dyer of silk and yarn, silk cloth maker, silk cloth seller, dyer who uses sumac, silk producer, manufacturer of blue cloth (for uniforms), manufacturer of

ribbon/cord/string, maker of veil, maker of underclothing, seller of underclothing, maker of wool and woolen garments, maker of halters made of hair, seller of halters made of hair, maker of *mamluk hats*, tassel maker, maker of Baghdadi cloth, maker of curtains/veils/screens, maker of carpets/mats, seller of carpets/mats, **female embroiderer**, **female bonnet maker**, maker of wool article (worn by Persians or foreigners), seller of wool article (worn by Persians or foreigners), maker of turban/cloth made in Tustar, seller of turban/cloth made in Tustar, dyer who uses saffron, downer, embroiderer in gold and silver

Table 2. Average Prices Of Female Clothing Items, Egypt 11th-13th Century

Item (Ashtor)	Price	Item (Stillman)	Price
Simple thaub (cloth)	1-2 dinars		
Elegant thaub (cloth)	3-4 dinars	Thawb	6.2 dinars
Simple ghilāla (cloth)	1 1/2 dinars		
Elegant ghilāla (cloth)	4 dinars		
Simple jukāniya (cloth)	1/2 dinar		
Elegant jukāniya (cloth)	1-3 dinars	Jukaniyya	3.3 dinars
Simple mindil (scarf)	1/3-1/2 dinar		
Elegant mindil (scarf)	1-2 dinars	Mindil	3.0 dinars
Simple wasat (waist wrap)	1-1 1/2 dinars		
Elegant wasat (waist wrap)	2 1/2-3 dinars		
Simple mal'a (outer wrap)	1 dinar		
Elegant mal'a (outer wrap)	3-4 dinars		
Simple milhafa (coat)	1 dinar		
Elegant milhafa (coat)	2-3 dinars		
Simple ridā (cloak)	1 dinar		
Elegant ridā (cloak)	3 dinars		
Makhtūma (dress)	5 dinars at least		
Khil'a (robe of honour)	10-15 dinars		
Turban	2-3 dinars		
Elegant mi'jar (headcover)	2-3 dinars		
Simple skullcap	1 dinar	Mukallaf	2.7 dinars
Elegant skullcap	2 dinars	Niqab	1.2 dinars
Headcover	1 dinar	Radda	2.1 dinars

Sources: Eliyahu Ashtor, *Histoire des prix et des salaires dans l'orient médiéval*. (Paris 1969), p. 173. Yedida Stillman, *Female Attire of Medieval Egypt: According to the Trousseau Lists and cognate material from the Cairo Geniza*, Unpublished Ph.D. dissertation University of Pennsylvania, 1972.

Table 3. Average price of volume/book, Egypt 9th to 13th century

Time Period	Price of Volume (Dinars)
9th Century	4.2
10 th Century	N/A
11th Century	2.7
12th Century	0.86
13th Century	0.51