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Age and Gendered Legal Personhood

In recent years, the renowned religious scholar Habib ʿAli al-Jifri has been an outspoken opponent of child marriages and a pointed critic of religious justifications for the practice. Since al-Jifri lives in Yemen, where child marriage has been the subject of significant controversy, his position is of great consequence. Over the years there have been several attempts to establish a minimum age to marry in Yemen. In 2009, parliament passed a bill raising it to seventeen, but the Islamic Sharia Codification Committee ultimately rejected the law as un-Islamic.[1] When censured for marrying off their children, parents often provide religious and cultural justifications.[2] Opposing these practices are organizations promoting women's rights and human rights, organizations that have a different conception of marriage and childhood. "These early marriages rob the girl of the right to a normal childhood and education," argues Wafa Ahmad Ali of the Yemeni Women's Union.[3] "The girls are forced to have children before their bodies are fully grown instead of going to school and playing with other children."[4] The epistemological disconnect between these competing parties is evident in their comments. Whereas one side invokes the idea of childhood to oppose these marriages, the other appeals to the precedent of the sunnah and legal tradition. Since the Prophet Muhammad married his youngest wife when she was six and consummated the marriage when she was nine, to make moral or ethical claims against child marriage would run against this precedent and as Muhammad as an exemplar. These groups also argue that Islamic law has not laid down any minimum age for marriage.

It is within this landscape of competing norms that al-Jifri has been speaking out. In 2014, he posted a strong condemnation of child marriage on his English-language Facebook page, arguing that there is no religious sanction for

the practice.[5] Labeling child marriage a crime, he chided those who support such a practice in the interest of upholding Islamic law as the arbiter of moral norms. Islamic law, he contends, is guided by legal maxims that prohibit practices that cause harm. Thus, he concludes, it is impermissible to marry a female child, who cannot endure the various demands of marriage.[6]

There are important discontinuities between al-Jifri's treatment of child marriage and similar discussions of the matter in premodern Islamic law. His interpretation is couched in modern conceptions of marriage, childhood, and harm. Moreover, much of the contemporary debate regarding child marriage, including al-Jifri's position, does not make a distinction between contracting a marriage and consummating it. Al-Jifri's statement collapses the distinction, arguing that minor marriages themselves are prohibited. Additionally, al-Jifri's assertions assume a modern conception of childhood that is based on age rather than biological developments such as puberty. Human rights organizations in Yemen consider an individual under the age of eighteen to be a child and thus deem any marriage with an individual under that age to be a violation of the child's rights. Their opponents argue that Islamic law establishes puberty as the distinguishing marker between children and adults. Thus, any girl who has entered puberty is no longer a child, and marriage to her is permissible under Islamic law. By deeming child marriages to be prohibited under Islamic law, al-Jifri redefines Islamic legal conceptions of childhood to conform to modern norms. Finally, what is perhaps most intriguing about al-Jifri's claims is his appeal to concerns for not just bodily harm but also mental and emotional anguish: "It is forbidden to marry off a young girl whose body and soul cannot tolerate the demands of marriage."[7]

As we will see in this chapter, al-Jifri largely seems to sidestep much of the basic conceptual parameters that constituted the premodern legal conversation on minor marriage, despite his claims to be speaking from the framework of legal precedent.[8] Instead, he largely focuses on broader legal maxims about the prevention of harm. While this concern with avoiding harm to minor children was certainly present in premodern legal discussions, the parameters of what constitutes such harm were understood quite differently. Many of these issues related to the rights of children stem from changing notions of childhood. While many premodern societies did not find marriage to children to be inherently immoral, this practice has become an increasingly controversial issue in the contemporary period. In these debates over the age of consent and child marriage, we see shifting constructions of childhood.

Childhood as a distinct stage of life separate from adulthood is a social construction that shifts based on temporal and geographical specificities. Historians of childhood have shown that the nineteenth and twentieth centuries saw both the extension of the period of childhood (largely the result of mandatory education) and the notion that childhood is a period of dependence.[9] The modern discomfort

with recognizing childhood sexuality, and concerns with the autonomy and agency of children, have made these long-standing historical practices of child marriage increasingly unacceptable. This controversy over the legal age of consent and the minimum age of marriage centers on two main issues: the first, how to understand and define childhood; the second, whether sexual intercourse between an adult and a child can be consensual. To put it another way, these debates are largely concerned with whether children are discerning individuals capable of offering informed and meaningful consent.

This chapter explores the construction of childhood in Islamic legal discourse and particularly the law's construction of the child as a legal subject. Continuing my discussion of the intersections of different parts of an individual's identity with their legal personhood, here I show that age and life cycle also play a significant role in shaping an individual as a subject of the law. The first section of this chapter looks at how childhood was conceptualized in classical Hanafi legal discourse. The second section then explores the juristic debates around minor marriage in order to demonstrate how age functioned in constraining the subject's legal agency. I focus in particular on the case of minor marriage, as it reveals critical moments in legal texts where jurists reflected on the power dynamic that they were authorizing. Hanafis greatly valued the consent of both parties in contracting a marriage. Children, however, had no right to consent and could be married off by their fathers, paternal grandfathers, and legal guardians.[10] Focusing on this different valuing of consent indicates that Hanafi jurists saw consent as an important aspect of the autonomy and agency of a legal subject. In subjecting children to the will of adult guardians, they were well aware of the vulnerability they were imposing on the minor child. The disagreement among early jurists about the validity of minor marriage demonstrates that in the conflict between the legal agency of the child and the power of the family patriarch, it was the authority of the latter that was solidified in legal discourse.

WHAT IS CHILDHOOD IN ISLAMIC LAW?

Historians of childhood have long argued about whether childhood as a concept existed in the pre-modern world. In *Centuries of Childhood*, published in 1960, Philippe Aries made the compelling argument that childhood is a historically contingent concept.[11] Since then, his claim that the concept of childhood did not exist in the medieval world but instead developed in modernity has been widely challenged by historians of childhood.[12] Their disagreement with Aries provided the catalyst for a rich body of scholarship that gave varied accounts of the social construction of childhood. Most historians of childhood now agree that premodern societies did in fact understand childhood as a distinct part of the human life cycle. In addition to the literary and social analysis in favor of this conclusion, historians have argued that the legal definitions of the minor reflect society's recognition

of childhood as constituting a special status.[13] Through these different accounts of childhood in the premodern world, it is apparent that the idea of childhood varied significantly from one place and time period to another.

As a historical tradition, Islam and Muslim societies have also had varied understandings of childhood. There have been few studies of childhood in Muslim thought and praxis overall, and even fewer of premodern Muslim thought and communities. Anver Giladi's work on early Muslim ideas give us a sense of the rich discussion across different genres (law, medicine, ethics, and literature) about childhood and practices of nursing and child-rearing.[14] He describes the ways in which premodern Muslim scholars concerned themselves with the welfare of children and counseled fathers on their care. Similarly, Afsaneh Najmabadi has argued that premodern texts on parenting assumed that it was the father and not the mother who was in charge of disciplining and educating children.[15] This is in distinct contrast with modern Muslim discourses on motherhood, which emphasize her role as the educator of children (future citizens of the nation) and the caretaker and manager of the household. Kathryn Kueny's work looks at the male scholarly and medical discourse that decentered the reproductive and child-rearing work of mothers by prioritizing the father's biological contribution to children's physiology and character.[16] Women's bodies were seen as receptive and passive, carrying the burden of bearing life, while fathers were seen as bringing forth children. Zahra Ayubi's latest work on the gendered aspects of child-rearing explores how it was understood in Islamic ethical discourse.[17] Child-rearing, she argues, was largely concerned with socializing children into particular gender roles. Boys were raised to become heads of the elite household, whereas girls were raised to take on a supportive role in the ethical transformation of those elite male heads of house.

The Qur'an describes children as both a blessing and a test from God. Numerous Qur'anic verses as well as hadith address the duties that are shared between parents and children. Parents are obligated to provide and care for their children, as well as to teach them about Islam and to focus on their moral development. The Qur'an defines the debt owed by the child to the parents by describing the pain in which the mother bore, delivered, and nursed the child. A fundamental aspect of righteousness in the Qur'an is to give parents their due respect and deference, even despite the senility that comes with age: "do good unto [thy] parents. Should one of them, or both, attain to old age in thy care, never say 'Ugh' to them or scold them, but [always] speak unto them with reverent speech."[18] One oft-cited hadith describes the multilayered hierarchical relationships of care: a ruler is a shepherd over his subjects, a man over his family, the wife over her husband's household and their children, and the servant over his master's property.[19] Another summarizes the mutual duties and obligations between parent and child: "One who does not show mercy to our young and does not respect the rights of our elders is not from us."[20]

While love and affection link parents and children, these emotional connections function within a hierarchical relationship. Children can claim certain rights

over their parents, but parents are owed respect, deference, and obedience. The legal traditions of the Near East all emphasized the importance of parental obedience, particularly to the father. Sassanian law, for example, held that a child who disobeyed his father three times could be put to death.[21] Similarly, Jewish law and Roman law both held that a child who challenged the father's authority could be punished. While Islamic law restricted this paternal power to a considerable extent, it did grant the father significant authority and power over his children.[22] This paternal power was upheld by narratives about parental love, particularly that of the father. Al-Kasani argues that a father is profuse in his compassion (*al-shafaqa*) toward his children and looks out for their interest above that of his own.[23] If a father's or paternal grandfather's marital decision might seem to go against the interest of the child, it is probably because they elevated other interests of the child. Al-Kasani gives the example of the Prophet's trusted companion and later the first caliph, Abu Bakr al-Siddiq, who married his daughter 'Aisha to the Prophet while she was still a child and for a dower (*mahr*) of less than what a woman of her status and background would normally receive.[24] Al-Kasani argues that Abu Bakr's decision was based on considerations that were beyond the financial (such as the character of the Prophet and the possibility of a happy marriage with him). Thus, his decision centered 'Aisha's interests despite the reduced dower amount. The expansive power of guardians (particularly the father and paternal grandfather) over the minor makes clear not only the hierarchical nature of the adult-child relationship but also the impaired legal agency of children.

Childhood in Islamic law was understood as the period before puberty.[25] At puberty, children would enter into legal majority and acquire the rights that would be assigned based on their intersecting social identities. Childhood, however, was not understood to be a static period but rather a constantly evolving process toward adulthood. Premodern Muslim jurists saw childhood as a stage marked by the deficiency in one's not yet fully developed rational capacities.[26] The rational capacities of children, however, were constantly in flux. Jurists distinguished between the discerning (*mumayyiz*) and nondiscerning (*ghayr mumayyiz*) child. Discernment, for the legal jurists, was the rational capacity that allowed a child to comprehend the difference between benefit and harm. Stages of childhood were not distinguished based on age, but instead on what children could demonstrate regarding the development of their rational abilities.

Juristic discourse on the age of discretion (*sinn al-rushd*) is helpful for thinking about the priority given to rationality in the acquisition of legal agency. A great deal of juristic discussion focused on the restrictions that could be placed on an individual if that person reached legal majority but did not exhibit the requisite mental maturity necessary for acquiring legal agency.[27] These conversations also seem to indicate the possibility that a child might be able to demonstrate *rushd* before arriving at legal majority. For instance, one of the key means by which *rushd* could be established was through commercial transactions. Al-Kasani

argued that a guardian could prevent a child from having access to his wealth until he demonstrated mental discretion. While other Sunni jurists disagreed on this matter, the Hanafis allowed a discerning child, with the consent of the guardian, to engage in commercial transactions so as to gain the experience necessary for acquiring mental maturity.[28] Acquiring full legal personhood was thus closely tied to an individual's ability to use their wealth sensibly and productively as a wealth-owning individual.

The last stage of childhood before an individual became an adult was prepubescence (*murahaqa*). At this point, the child entered into a liminal stage.[29] As children are not yet adults, they do not acquire all the rights and obligations of adulthood. However, certain aspects of the law become obligatory on them, and certain actions take on legal significance. Prepubescent children are thus required to perform prayer and cover their bodies in the ways required by Islamic law. However, prepubescent children could not, for example, conduct any commercial transactions without the consent of their guardians. The prepubescent male child also could not marry of his own accord or pronounce a divorce. There were, however, some significant differences between the legal schools on the legal status of prepubescent children. As will be discussed later in this chapter, Hanafi jurists differed from other Sunni legal schools on whether the penetrative act of a prepubescent male child carried legal weight.

In addition to lacking the ability to act independently, legal minors were also not held liable for things they were unable to understand. Thus, children were not required to perform certain obligatory ritual acts and were not prosecuted for criminal acts until they entered puberty. In legal discourse, intellectual abilities (*al-'aql*) and power of discernment were key to an individual's ability to acquire legal agency. While all individuals by virtue of their humanity had the capacity for this acquisition (*ahliyyat al-wujub*), the capacity to execute (*ahliyyat al-ada'*) belonged to individuals not only based on legal majority but also on their rational capacity.[30]

CHILDREN AS IMPAIRED LEGAL SUBJECTS

While Islamic law conceived of marriage as a contractual relationship between two parties, it did allow for one or both parties to be legal minors. Legal minors' marriages had to be arranged by the minors' guardian(s), however.[31] Muslim jurists differed on who could serve as a guardian in this capacity. At its most restrictive, the guardians who could marry off a minor were the father and paternal grandfather; this was the position held by the Malikis, the Shafi'is, and Hanbalis. At its most expansive, the guardians could be any agnate relative of the minor, as the Hanafis argued.[32] It is important to note, however, that the power granted to guardians in contracting the marriage of minors was not a matter of representing the minor's desire in a situation where the minor could not act. The jurists were very explicit that the guardian carried the power to compel the minor into marriage.

Marriage of and to children was a common practice in the premodern world, and particularly in the Near Eastern world, the cultural milieu that most immediately influenced the development of early Islamic law. Like Islamic law, Jewish law (halakhah) also values the consent of both parties in a marital contract. Thus, when children reached legal majority—thirteen for a male and twelve for a female—they could contract their own marriage.[33] Whereas some scholars of the Talmudic period (roughly 50–500 CE) were opposed to a father marrying off his minor daughter without her consent, this position was eventually not accepted as halakhic.[34] By the post-Talmudic period, fathers were permitted to marry off their minor daughters without their consent. Scholars understand this shift as primarily related to the concern over the licit fulfillment of sexual desire as well as the uncertainties of diasporic life for the Jewish community that made parents hesitant to delay the marriage of daughters. In practice, Jewish communities in the Near East and North Africa often married their daughters off at the age of twelve and their sons at an even older age.[35] However, halakhah did not allow a father to compel his male child into marriage. Such a marriage was considered to be illicit, akin to "prostitution" and thus prohibited.[36]

In the Roman context as well, child marriage was common, particularly in elite families. Roman law set a minimum age for marriage at twelve for girls and fourteen for boys, but violations of this law were not punished.[37] While some historians have argued that prepubescent marriage was quite common in Roman society, others have claimed that most Roman women were probably married in their late teens.[38] In the Byzantine context, marriage also required the consent of all parties, so girls could not marry before the age of thirteen—that is, the point at which they could give consent.[39] In the Sasanian context, the father was considered to be both the guardian and the owner of his children. Legal majority was set at the age of fifteen for both boys and girls; girls, however, were expected to be married while still minors. Middle Persian civil law allowed for a girl to be married at the age of nine, but consummation could not take place until she turned twelve. Some Sasanian jurists, however, argued that the marriage could be consummated at nine if the girl was physically mature.[40]

Islamic law thus developed in a world where the marriage of minor children (and girls in particular) was a common practice. As such, Islamic law reflects its location in this broader milieu in its permissiveness not only of minor marriage but also of the extensive rights of the father over his children. There were some significant shifts in this power granted to the father in Islamic law, however, as this paternal authority did not extend much beyond legal majority. Despite these differences, Islamic law authorized the father and paternal grandfather to compel a minor child (male or female) into marriage. In doing so, it established age as an impairment to legal agency.

While there are many case studies in legal discourse that would demonstrate the impaired legal agency of children, I focus on compulsion in marriage for two

purposes: Firstly, because being compelled into marriage had implications that extended into the life of the child after puberty. This was in fact a subject of significant conversation between jurists, as they debated whether guardians other than the father or paternal grandfather had the right of compulsion and whether a child held the right to rescind a marriage contract at the onset of puberty. I see this discussion as a recognition on the part of jurists that granting a guardian the right to contract a minor's marriage meant they were potentially encroaching on the rights and autonomy of a (future) adult. Secondly, compulsion into minor marriage is an important case study because the implications of the compulsion are also gendered. Focusing on the compulsion to marry thus allows us to observe how the intersections of a gendered hierarchy within the adult-child hierarchical relationship produced different forms of legal impairments for male children and female children.

MINOR MARRIAGE AND THE GUARDIAN'S RIGHT OF COMPULSION

In her *Morality Tales*, a microhistory of the Ottoman court of Aintab in the sixteenth century, Leslie Peirce narrates the story of a minor girl who approached the court (with her mother), accusing her father-in-law of rape.[41] The girl had been married off by her father to another minor and had relocated to her husband's domicile. Because her husband was still a minor, the marriage had not been consummated. The girl's rape accusation, however, could not be proved, as she could not fulfill the prohibitive testimonial requirements of four male witnesses for proving coercive and illicit sexual intercourse. Peirce reports that while the case was dismissed, the judge ordered that the couple be moved into the husband's uncle's home, in a different city. Later, the girl returned to court to petition for a divorce, as she did not wish to remain with her husband.

Social and legal histories of the Ottoman period demonstrate that marriage of minors was quite common even as late as the seventeenth and eighteenth centuries.[42] In her book *In the House of Law*, Judith Tucker mentions a legal opinion issued by Khayr al-Din al-Ramli, a seventeenth-century Hanafi jurisconsult. He was presented with a question regarding a man who wished to consummate his marriage to a girl who was a legal minor. While the law permitted the marriage contract to be conducted at any age, consummation was usually delayed until the girl was able to bear penetration. In this case, the girl's father claimed that his daughter was not yet physically able to endure intercourse. Al-Ramli responded by stating that if the girl was "plump and buxom and ready for men" and the stipulated dower had been received, then consummation was the husband's right.[43] Minor brides' social position was a precarious one, and they often turned to courts to adjudicate situations in which their rights were violated. In the context of fourteenth-century Granada, young girls often came to court accusing their fathers

of usurping their dowers and demanding that the judge intervene to help them reclaim their rights.[44]

Legal texts report several instances of child marriage in the Prophetic period as well as in the community of the early Muslims. The most prominent example, of course, is that of the Prophet himself. In justifying the right of guardians to marry off minor children, jurists often authorized the practice by citing the Prophet's marriage to Aisha.[45] Several other stories of the marriage practices of the early generation of Muslims are also evoked.[46] Al-Kasani mentions that the companion ʿAbdullah b. ʿUmar married off his minor daughter to ʿUrwa b. al-Zubayr, and ʿAli b. al-Talib married off his minor daughter, Umm Kulthum, to ʿUmar b. al-Khattab.[47] In his *Musannaf*, ʿAbd al-Razzaq al-San'ani recounts that when ʿUmar b. al-Khattab expressed his interest in marrying Umm Kulthum, ʿAli b. al-Talib responded hesitantly, stating, "she is young."[48] It seems that ʿAli's protest was read as an attempt to prevent the marriage, and when ʿUmar asked for people to intervene on his behalf, ʿAli sent his daughter to ʿUmar, saying that if he was still interested in marrying her after seeing her, then ʿAli would consent to the marriage.[49] The report explains that when Umm Kulthum came before ʿUmar, he attempted to lift her dress to see her legs, at which she responded, "Stop! If you were not the Amir al-Mu'minin [leader of the believers], I would have slit your throat!"[50]

Given the prevalence of minor marriage in the Prophetic period, this practice was permitted by early jurists with little disagreement. Much of the early legal discussion centered instead on the question of who had the authority to compel a minor into marriage. In *al-Hujja ʿala Ahl al-Madina*, al-Shaybani discusses minor marriage within the larger chapter on marriage, focusing largely on the line of succession in guardianship and a minor's right to rescission.[51] Unlike other Sunni legal schools that only allowed the father to compel his minor child into marriage, the Hanafis granted the paternal grandfather and other legal guardians of orphaned minors this power as well.[52] Whereas the father and paternal grandfather could marry off the minor to whomever they considered suitable, setting any amount for the dower (*mahr*), non-immediate guardians were under greater scrutiny from the law. Thus, while a father could marry his daughter to an unsuitable match or agree to a dower amount that was not appropriate for a woman of her social status, other guardians were required by law to consider the fitness of the suitor and the appropriateness of the dower amount. However, with both immediate and non-immediate guardians, minors were subject to their decisions until they reached legal majority. Recounting the position of Abu Hanifa, al-Shaybani asserted that in a marriage contracted by the father or paternal grandfather, as opposed to marriages contracted by any other guardian, the child had no right of rescission (*khiyar al-bulugh*) when they reached legal majority.[53]

The expanded right of compulsion was granted to the father and paternal grandfather owing to the assumption that they had the best interests of the child in mind. Hanafi jurists often talked about the compassion and concern (*kamal*

al-shafaqa) that a father or paternal grandfather holds for the child, a sentiment that would ensure they would not make decisions based simply on their own interest but on the child's.[54] The reality, of course, is far more complicated than these legal assumptions. While there are certainly court cases and legal opinions (*fatawa*) that demonstrate a father's concern for the safety or well-being of his minor daughter whom he has contracted in marriage, other cases show that fathers often usurped the dower of the minor bride.[55]

Since the Hanafis recognized a woman's legal capacity to contract her own marriage as well as that of other women, they allowed a mother to compel her minor child into marriage. In the section on the ability of a female enslaver to contract marriages for her enslaved men and women, al-Shaybani recounts an anecdote to support a woman's legal capacity to contract marriage.[56] One al-Musayyib ibn Najaba had a newborn daughter and visited his cousin Qari'a/Fari'a b. Habban to share the joyful news with her:[57]

> Fari'a, did you hear that a baby girl was born to me?
> She said: May she be blessed for you!
> He said: I offer to marry her to your son!
> She said: I accept!
> Then, after he had stayed for an hour or so, he said: I was not serious, I was just joking.
> She said: You made an offer of marriage, and I accepted.
> He said: 'Abd Allah b. Mas'ud will decide between us on this matter.
> Then 'Abd Allah entered, and they related the matter to him.
> He ['Abd Allah] said: Musayyib, did you mention marriage?
> He [al-Musayyib] said yes.
> He ['Abd Allah] then said that in marriage both seriousness and jest are the same, just as they are in divorce. He permitted Fari'a's statement: "I have accepted."[58]

As this story indicates, a mother had the legal capacity, at least in the early generation of Muslims, to not only contract marriage but to compel her child (in this case, her son) into marriage. The mother's right of compulsion, however, was not like that of the father or paternal grandfather. Her decision was subject to the same restrictions as that of other guardians, and her child could exercise the right of rescission on reaching puberty. As Carolyn Baugh notes, however, later Hanafi jurists did not discuss a mother's legal capacity to contract marriage for their minor sons. Baugh argues that this indicates such a practice was no longer common. Mothers continued to contract marriages of their minor daughters, however, as is evident in court cases from the Ottoman period.[59]

There was little challenge to the marital authority of the father over his minor children in early legal discourse. Two of the only such voices were those of Ibn Shubrama (d. 144/761), the eighth-century jurist and judge in Kufa, and the Mu'tazali jurist and judge, Abu Bakr al-Asamm (d. 220/843).[60] In *Mukhtasar Ikhtilaf al-'Ulama'*, al-Tahawi (d. 321/933) mentions briefly that Ibn Shubrumah

is reported to have held that it was not permissible for a father to contract marriages of minor children.[61] A little over a century later, al-Sarakhsi mentions that both Ibn Shubrumah and Abu Bakr al-Asamm held that minor marriages were impermissible. He recounts their argument as threefold: (1) the Qur'an counsels the guardians of orphaned children to give the children control of their financial property once they reach a marriageable age.[62] If marriage were permissible before the children attained legal majority at puberty, then it would be meaningless for the verse to describe children's maturity through marriageability. (2) They argued that children are in need of guardianship only with respect to certain significant matters. In all other matters that do not carry such import; therefore, the guardian cannot make decisions on their behalf. Marriage, they argued, is an institution that allows for an individual to licitly fulfill sexual desire and the desire for progeny. Since a child is not in need of the former and cannot yet reproduce, contracting a marriage cannot be considered an issue of necessity that must be performed by the guardian while the child is in legal minority. (3) Lastly, they argued that marriage is a contract in which age plays a role in creating obligations between the couple after they reach legal majority. Given that the implications of the marriage contract would continue once the minor attained legal majority, it was not the guardian's prerogative to make a decision with such long-lasting effects.[63] Al-Sarakhsi's reasoning for Ibn Shubrumah's position had a long life. In *al-Badai' al-Sanai'*, al-Kasani provides an account that reiterates al-Sarakhsi's argument about the limits of guardianship. This time it was not Abu Bakr al-Asamm but instead 'Uthman al-Batti (d. 143/760–61) and Ibn Shubrumah who held this position.[64] According to al-Kasani, they reasoned that since granting the guardian the right to contract marriage would have effects that extended beyond minority, this would essentially be akin to granting the guardian the right to contract the marriage of a person of legal majority, which is not permissible.[65] The legal opinions of these three jurists, however, were overcome by the majority of jurists, who granted the right of compulsion over the marriage of minors to the father and paternal grandfather. These minority opinions became so unusual that future generations of jurists could hardly "make sense" of this position. Ridiculing Abu Bakr al-Asamm, al-Sarakhsi asserts: "Abu Bakr al-Asamm must have been deaf, for he seems to have not heard the hadith about the Prophet's marriage to 'Aisha when she was six and the consummation when she reached nine years of age, not to mention other narrations about the early marriage practices of the companions of the Prophet."[66]

Ibn Shubrumah's position, as reported by al-Sarakhsi and al-Kasani, expressed a concern that the guardian's decision would extend into the child's adulthood. He recognized that granting this authority to adult guardians in general, but fathers and paternal grandfathers in particular, had significant implications for a child. The right of the guardian to compel a minor into marriage meant that children had little autonomy and relatively no agency in the establishment of kinship connections that had significant impacts on their life. The right of compulsion also

rendered children legally and socially voiceless individuals by depriving the children of the right to consent. Since marriage was conceived as a contract between two parties and established by bilateral agreement, juristic discussions often centered on the necessity (or lack thereof) of consent and the ability of the parties to enter into the contract. For the jurists, the right to consent and the ability to enter into a marriage contract were structured across a spectrum from full to no legal capacity and depended on several factors, the most important of which were gender, enslavement, and age. Free Muslim men were granted full legal agency to contract their own marriages; moreover, their consent was necessary for the validity of the marriage contract—they could not be compelled into marriage. Free women, children, and enslaved people, however, had varying levels of legal agency, and their consent and ability to contract their own marriage contracts depended on a series of factors. In Hanafi law, free women had the right to contract their own marriages with some restrictions based on ideas of suitability. Enslaved people, on the other hand, were given no legal capacity to enter into a marriage contract without the permission of their enslavers.[67] Similarly, children had no legal capacity to contract a marriage and could be compelled into one. Age was thus an important factor for a free individual's ability to exert agency and autonomy as a legal subject.

CONSUMMATION AND THE GENDERED IMPLICATIONS OF MINOR MARRIAGE

Hanafi jurists recognized the harm that was caused to children who had been compelled to marry, thus giving them no choice to annul the marriage after the advent of puberty, provided it had been contracted by a guardian other than the father and paternal grandfather.[68] Al-Marghinani explains that the right of rescission is granted to the child in recognition of the possible harm in being compelled into marriage—that is, the possibility of incompatibility.[69] The jurists' recognition of harm caused to an individual because of that individual's position in the social hierarchy was also coupled with their understanding that harm could also come from preventing the possibility of minor marriage. In a passage responding to the objections of Ibn Shubrama and Abu Bakr al-Asamm, al-Sarakhsi argues that finding a good match in marriage based on suitability is essential to the purpose of marriage.[70] Finding a compatible spouse is hard; and, if contracting the marriage for a girl were prohibited, the family might lose a good match.[71] Presumably, for al-Sarakhsi, this would cause harm not just to the family but also to the minor. Given the Hanafi assertion that marriage is a form of harm and humiliation for women, it would cause greater harm to a woman to be under the dominion of a man with whom she lacks compatibility; that is, she would find him unworthy of dominating over her.[72] Hanafi jurists seemed acutely aware of the different forms of harm that women and young girls could face with regard to marriage. It seemed, however,

that in their conception of marriage, some or the other form of harm was inevitable for women. In such a hierarchical understanding of the world, jurists were unable to conceive of a marriage that was not premised on some form of harm to women, female children, and enslaved people.

Many aspects of minor marriage were gendered in ways that violated the autonomy of girls rather than boys. As the free boy reached legal majority, he acquired the rights of a free man, which entailed not only the financial responsibilities for the marriage but also the unilateral right of divorce (*talaq*), even if he could not exercise the right to rescission. A free woman could petition her husband to release her from the marriage contracted when she was a minor, but required his consent for the divorce to go through. The woman's request for divorce (*khul'*) also carried a financial penalty insofar as she had to return any dower given to her at marriage. In cases where the father or legal guardian usurped the dower (a possible financial incentive for contracting minor girls into marriage), this would have made leaving the marriage particularly difficult.

Gendered implications of minor marriage also appeared in the legal discussions on the consummation of the marriage. Islamic law allowed the possibility of consummation prior to puberty, given certain legal—and deeply gendered—considerations that reflect the gendered hierarchy explored in chapter 1. The sexual autonomy that is so fundamental to masculinity in Islamic law meant that juristic discussions focused exclusively on the consummation of marriage with a girl, with little attention paid to consummation of a marriage in which the husband was a minor.

In determining whether marriage with a minor girl could be consummated, the main legal considerations centered around her desirability. Hanafi jurists often employed the phrase, "one does have sex with those like her," to describe the desirable girl.[73] This phrase indicates that this legal determination was made based on cultural norms regarding the desirability of the female body. Yet there is little explicit discussion about what marks the distinction between desirability and the lack thereof.[74] In this section, I treat two legal discussions of illicit sexual intercourse and "valid modes of privacy" to piece together the construction of a girl's desirability. We will see that her desirability to men (based on cultural norms) was coupled with her physical ability to serve as a locus of penetration.

We can begin to get a sense of what constitutes "desirability" by focusing on juristic discussions of "valid privacy," which, despite the sense of the words in English, actually centers on the circumstances necessary for consummation.[75] Obligations concerning financial maintenance and the wife's long-term sexual availability were both triggered by consummation and thus were of concern to the law. However, as sexual intercourse between the couple was seen as a private matter, legal discourse also took a newly married couple's time together in a private space as evidence of consummation of the marriage. There were, however, certain circumstances—including physical and legal impediments to intercourse—when

privacy between the couple could not be taken as evidence of consummation.[76] Among the legal impediments were menstruation and lochia and a situation in which one person among the couple was fasting or preparing for pilgrimage. Physical impediments included conditions where the bride had a vaginal occlusion (*al-ratq* or *al-qarn*) or the groom was castrated (*al-majbub*), both of which would prevent vaginal penetration. Finally, one of the other physical impediments to consummation was if the bride was a minor. In his discussion of "valid privacy," al-Kasani stated that if the spouse was a minor who was not culturally understood to be the object of sexual intercourse, that is, "one does [not] have sex with those like her," then the possibility of penetration is hindered.[77] The phrase used here is ambiguous and seems to imply largely cultural norms about what is considered desirable in women. However, in making its lack an impediment to consummation, desirability is also tied to the possibility of penetration without physical harm to the girl.

The distinction between desirable and undesirable girls was crucial to determining whether marriage with a minor bride could be consummated by the adult groom. This juristic consideration was not limited to marriage alone but applied to other legal rulings that were brought into effect through sexual intercourse. For example, if an adult man were to have sex with an "undesirable" female child, he would not be prohibited from marrying the mother of the girl. Islamic law prohibits a man from marrying the mother of a woman with whom he has had sexual intercourse. In the case of sexual intercourse with an "undesirable" female child, however, such a prohibition did not go into effect.[78] Similarly, a man who performs an illicit penetrative act on a girl who is considered undesirable does not incur the *hadd* punishment. One could well argue that the man's sexual arousal and his act of penetration are an indication of his desire for the female child, and therefore that he should receive punishment. However, it is not just his sexual desire but rather legal discourse that determines "desirability" by reifying certain cultural norms. The man's action does not *legally* constitute sexual intercourse, and his experience of desire for the female child does not render her *legally* desirable. In fact, al-Sarakhsi condemns the man who has intercourse with a girl who is not yet "desirable" according to the law. Such individuals, he argues, act contrary to nature: "and the nature of sensible people does not incline towards sexual intercourse with a female child who is not desirable and is not able to endure penetration."[79]

Jurists recognized that allowing an adult man to penetrate a female child entailed the possibility of physical harm. Legal discourse thus addressed the possibility of perineal tearing (*ifda'*), tying it to a minor girl's "readiness" for sexual intercourse.[80] Al-Sarakhsi argued that if the man caused severe (third- or fourth-degree) perineal tearing, then he was required to pay an indemnity in addition to a dower.[81] In explaining the need for the dower, al-Sarakhsi clarified that sex is the insertion of one genital into another, an act that transpires even if the female child is not yet "desirable." While the man was not liable for the *hadd* punishment

(i.e., flogging for fornication and stoning for adultery), owing to the deficiency in the legal definition of the sex act (the locus of penetration was not desirable as affirmed by the perineal tearing), he was still subject to discretionary punishments (*al-ta'zir*) because he acted in a manner that was not permitted to him legally.[82]

As sexual intercourse is legally defined as vaginal penetration, the only two considerations regarding consummation with a minor bride were her "desirability" and her ability to endure penetration.[83] The sexual desire of the female child herself becomes mostly inconsequential for the law. Hanafi jurists concerned themselves with ensuring that the female child was not physically harmed during sexual intercourse. However, in focusing on this alone, they centered male desire and rendered the child's own sexual desire invisible.

By contrast, the consummation of marriage with a boy receives little juristic attention. Al-Kasani's discussion of "valid privacy" uses the phrase, "one like him does not perform sex," to describe the minor groom.[84] With such a minor, if the couple were to be alone together, consummation would still not be legally established. What is interesting in the phrase used to describe the boy, however, is that *he* is the acting subject in sexual intercourse. While the undesirable girl is described as the one who would not conventionally have sex performed on her, the boy is described as one who would not normally perform the sex act.

Unlike the girl, the boy's coming into prepuberty (the liminal stage between childhood and adulthood) is marked by his physiological ability to achieve an erection. He enters into legal majority when he experiences a nocturnal emission.[85] Unlike the Shafi'is, the Hanafi legal school considers the penetrative act of a prepubescent minor boy to have legal effect. In a discussion of *zawaj al-tahlil*, a form of marriage that allows an irrevocably divorced couple to remarry, the question arises about whether sexual intercourse with a prepubescent groom would suffice to make remarriage permissible.[86] The Shafi'i position regarding this issue centers on the legal status of the minor. On the surface, the boy's penetrative act is not different from other sexual acts whereby legal rulings would go into effect: there is a valid marriage contract within which the act of penetration takes place. However, for the Shafi'is, the boy's legal minority renders this act lacking. The Hanafis respond to the Shafi' argument by shifting focus away from the legal status of the boy and turning instead to female sexual desire as the determining factor of the legal validity of such a marriage. In a discussion of this issue, al-Sarakhsi turns to a hadith according to which the Prophet stipulated that remarriage to the previous husband was contingent on the woman "tasting the honey" of the second husband, who must, in turn, also "taste of her honey."[87] The vagueness of the hadith lends itself to multiple interpretations. The word "honey" was read by some jurists as a metonymy for ejaculation, thus disqualifying sexual intercourse with a prepubescent boy. Al-Sarakhsi defended the Hanafi position by arguing that "honey" refers instead to the sexual pleasure that the woman attains through intercourse. While the prepubescent boy is not be an adult male, the woman is

able to derive enjoyment from his penetrative act.[88] The concern here is not the boy's "desirability"—he remains the subject, the penetrator, who acts on the adult woman and in so doing fulfills her sexual desire. Similarly to al-Kasani, al-Sarakhsi described the prepubescent boy, using the phrase, "a boy, the like of which engages in sexual intercourse."[89] This phrase is descriptive not of the pubescent boy's desirability but instead of his own desire and ability to engage in sexual intercourse. Regardless of the acknowledgement of the female subject as desiring, such language indicates a continued conception of the penetrability of the female body and the impenetrability of the male body.[90] The consummation of this marriage with a minor groom is thus predicated on his ability to penetrate and the awakening of his sexual desire. His desirability was, at best, peripheral to the legal discussions.

It is always hard to ascertain where legal texts engage with social practices on the ground as opposed to hypothetical situations set up to work out particular legal issues. Regardless of whether the scenario reflected reality or not, if we continue with the legal scenario here, we can assume this: given the boy's legal minority, the marriage was likely contracted by his guardians and without his consent. As I mentioned in chapter 2, Hanafi jurists were only willing to consider the possibility of a man being coerced into sex if he was compelled by a public authority. Given these assumptions about men's sexual desire, it is quite possible that al-Sarakhsi and al-Kasani assumed that the boy would willfully engage in sexual intercourse. We should not, however, simply accept the juristic assertion that the boy not only willfully participated in this consummation but was the one acting on the adult woman. It is quite possible that, like the enslaved man, Hanafi jurists assumed the prepubescent boy's nascent desire meant he would not refuse the opportunity to engage in licit sexual intercourse, even if the marriage was not consensual.[91] The sexual autonomy of the prepubescent male child, therefore, was, like that of the female child, also compromised by male guardians.[92]

AGE, SEXUAL STATUS, AND THE LEGAL AGENCY OF WOMEN

Within the social hierarchies that determined the legal rights that an individual could claim, legal minority meant not only that children had no ability to consent but that their consent was rendered legally insignificant. This allowed the law to grant adult guardians, particularly the household patriarchs (father and paternal grandfather), the power to impose their will on the children of the household. However, this kind of impaired legal agency had different implications for male and female children. The power of compulsion granted to guardians might have tied male children to kinship relationships (and their concomitant financial obligations) to which they did not consent; for female children, the power of compulsion entailed the possible violation of their sexual autonomy. This gendered discrepancy also manifested itself in the social practice of minor marriage. As

Carolyn Baugh has noted, early jurists discussed the minor marriage of both male and female children; in subsequent generations of jurists, however, the conversation about minor grooms was diminished significantly.[93] By the Ottoman period, the marriage of minor boys, though still practiced, was far less prevalent than the marriage of minor girls.[94]

The gendered implications of legal agency continued even into adulthood. An examination of the juristic discussions of suitability (*kafa'*) in marriage demonstrates that for free female subjects, it was not only age but also sexual status that impacted their legal agency. Whereas the male child would, on attaining legal majority, acquire the capacity to marry without any familial intervention or interference,[95] for the female child, *kafa'a* ensured that she remained subject to the approval of the marriage by her male kin.

The Hanafi legal school required that a free woman, whether a virgin or not, must consent to the marriage. She could, however, also contract her own marriage.[96] Abu Hanifa purportedly held that a free woman could contract her own marriage, regardless of whether she was a virgin or nonvirgin (*thayyib*). He believed that guardianship over a girl was only legitimate because of her inability to make sound decisions regarding herself. Once she reached legal majority, she was no longer in need of guardianship. Puberty thus marked not only legal majority but also a threshold that carried an individual from immaturity to maturity, granting her the right above her guardians to make decisions regarding her life.[97] The Maliki, Shafi'i, and Hanbali legal schools, however, required that a female—whether adult, child, or enslaved—be married off by a guardian. They also allowed for the father and paternal grandfather to compel a woman of legal majority into marriage if she was a virgin. Only a free adult *thayyib* could not be compelled into marriage.

In contrast to the other Sunni legal schools, the Hanafis granted age greater importance than sexual status in the expansion of a free woman's legal rights. This is most evident in the difference between the legal schools with regard to the *thayyib*—that is, a prepubescent—girl who was divorced after a consummated marriage. As a nonvirgin, she gained the right of consent and could not be compelled into marriage. However, because she had yet to reach legal majority, her legal agency was still constrained by age. This confluence of age and sexual status posed a conundrum for the Sunni jurists. If they prioritized age over sexual status, then her guardians could compel the child into marriage again. If they prioritized sexual status, then her *thayyib* status would protect her from the imposition of her guardians' will over her own. The Shafi'is prioritized sexual status and argued that she could no longer be compelled into marriage by her guardians. By contrast, the Hanafis held that a nonvirgin child was still subject to the decisions of her guardians because of her age.[98]

The free woman's legal agency to contract her own marriage was not unrestricted, however. While she did not need permission, her guardians could challenge the marriage contract if they deemed her spouse unsuitable.[99] Early Hanafi

jurists disagreed on the parameters within which guardians could challenge a free woman's agency over her marital decisions. Abu Hanifa held that a marriage contracted by a woman without her guardian was valid regardless of the spouse's suitability; indeed, it only came under scrutiny *if* her guardians challenged the woman's decision. In contrast, his student al-Hasan b. Ziyad al-Lu'lu'i believed that the marriage of a woman without a guardian was valid only if the groom was suitable. Abu Yusuf vacillated between different opinions—from stating that a marriage without a guardian was not valid, to declaring that the marriage was valid if the groom was suitable, to determining that the marriage was valid regardless of suitability. Al-Shaybani, however, held that a marriage without a guardian should be held in suspension until the guardians were consulted. If they validated the marriage, it would be accepted; however, if they challenged the woman's decision, the marriage was determined to be invalid unless she married a suitable spouse.[100] The Hanafi opinion eventually solidified around recognizing the free woman's legal agency to contract her own marriage. However, this right was constrained according to familial interests, since the woman's marital decision could not be separated from kinship structures and the family's stake in her marriage.[101]

Despite the free woman's ability to contract her own marriage, the presence of the guardian who contracted the marriage on her behalf was still assumed by Hanafi legal texts to be the norm in marriage.[102] Proper femininity for a young virgin woman was connected with shyness and timidity; given this, the guardian's contracting of the marriage was seen as her right rather than as a curtailment of her legal agency. Both al-Sarakhsi and al-Kasani argued that having to contract her own marriage would force her to attend a gathering of men and openly express her desire for the marriage, making her engage in a kind of public statement that she might feel shy about expressing. The matter was also one of social censure, as she might be seen as impudent and brazen for such an act.[103]

This juristic conception of virgin femininity also carried over to the way in which the free virgin woman could consent to a marriage. Following a hadith, Hanafi jurists held that a free virgin woman's consent could be intimated through her silence.[104] Virginity was not a matter of concern for male subjects, whose expression of consent had to be openly verbalized and affirmed. Masculinity was characterized by boldness and its proponents did not shy away from expressing sexual desire for women.[105] What was praised and appreciated in the young virgin woman (her shyness and timidity) was blameworthy in a young man.[106]

Silence was not only the way that consent could be established for virgin women. Hanafi jurists had extended discussions of whether other responses would constitute consent. Among the different signs considered were laughter, crying, and other reactions that could not be clearly interpreted as a form of refusal. From these extended discussions, it becomes clear that only an articulate and explicit refusal on the part of the virgin woman could be thought of as the absence of consent to marriage. Thus, while legal majority granted a free woman autonomy

and the right to consent, her sexual status as a virgin compromised the expression of that consent. What jurists refused to accept as consent from free men or free nonvirgin women was readily accepted as consent from a free virgin woman and justified through arguments about virginal femininity.[107] The intersection of age, life cycle, and gender was key in the legal right of consent granted to adult-free-women.

In *Women in the Mosque*, Marion Katz argues that the life cycle was central to early Islamic legal distinctions made about women's mosque attendance. Prepubescent female children were not yet fully subject to laws regarding mobility and veiling. Younger women's mobility restrictions were largely based on their sexual maturity, reproductive capacity, and eligibility for marriage. Elderly women—namely, those considered to be postmenopausal—were seen as neither desirable for marriage nor capable of reproduction; they therefore had increased public mobility.[108] Similarly, as a free woman's sexual status shifted from virgin to *thayyib*, she acquired greater rights to speak and express her will in public. The legal marker for this shift is the consummation of marriage. For all Sunni legal schools, the free *thayyib* woman's femininity no longer needed to be constrained by silence, shyness, and timidity. In marriage, a woman must express her consent verbally and unambiguously, an act that makes clear her will and desire. For the jurists, the difference between the virgin and nonvirgin represented a movement from the natal to the marital household. This shift in status also allowed women to emerge from the constraints of their natal kinship network. Al-Sarakhsi argued that marriage exposed a woman to men and gave her greater experience with them, allowing her to gauge them well and become familiar with their wiles and deceit. It is for this reason that a free nonvirgin woman could exist independently of male protection or guardianship, even if she was no longer married.

The different femininities inhabited by the virgin and *thayyib* were also interlinked with age in a complex configuration. As I mentioned previously, for the Hanafi jurists, the minor female nonvirgin did not acquire the legal agency of an adult *thayyib* because of her youth.[109] Interestingly, the never-married free woman of advanced age could also acquire the legal status of the nonvirgin. Al-Sarakhsi stated, for example, that if a free virgin woman were to grow older and gain the life experience to hold well-reasoned positions,[110] then she could also acquire the legal status of *thayyib*. The main reason for placing the virgin under male protection, he claimed, was out of fear of social discord, something that would no longer remain a concern if a woman were to acquire a seasoned sense of discernment.

Although shifting constructions of femininity certainly allowed free women to negotiate and expand their position as legal subjects, these women never acquired the full legal agency and autonomy granted to free male subjects. We see this perhaps most clearly in the legal discussions of the custody of children in case of divorce. Hanafi law gave a mother priority in custodial care over boys until the age of seven and girls until the age of twelve, since both boys and girls were considered

to be in need of their mothers' greater compassion and unique ability for their physical care. The father, on the other hand, had legal rights over the children even when they were in their mother's custody—owing not only to his compassion for them but to the soundness of his opinions.[111]

In justifying why the father was best suited for this role, al-Sarakhsi argued that only the father had the necessary vigilance and sense of jealousy (*ghirah*) for the protection of the children, especially the daughter, who would become an enticement for men perhaps even before she reached legal majority.[112] Since women were ostensibly more easily deceived and not as intelligent as men, it was in the girl's best interest to return to her father's care for marriage.[113] The mother remained deficient in relation to the patriarch of the household despite the fact that she carried multiple social advantages of freedom, adulthood, and nonvirginity. Indeed, as was indicated in a previous chapter, the mother could acquire power and dominion as an enslaver. Moreover, as a property owner, she had the legal right to manage and dispose of her wealth as she saw fit. The particular disadvantages that accrued to her, however, were in her status as a wife, mother, and daughter. Where she stood as a free woman, her legal rights largely mirrored those of free men.

CONCLUSION

Ishita Pande, in writing about the figure of the child wife in Indian historiography, argues for the importance of the feminist critique of patriarchy to thinking about the intersections of age and gender hierarchies.[114] Such an approach is critical to developing a richer account of the history of gender and sexuality. By thinking about the categories of gender and childhood together, we can see how legal personhood was varied and multifarious in Islamic law.

In this chapter, I have focused on minor marriage as an illuminating case study to think about childhood through the impaired legal agency of individuals based on age and gender. Legal minority entailed that children had little autonomy as legal subjects and that they lacked the legal capacity to act in social and commercial transactions. Legal discourse did not see children as subjects who had the rational capacity to offer consent. This understanding of childhood meant that children not only lacked the right to consent but could also be compelled into marriage by their guardians. This right of compulsion granted to guardians (particularly the father and paternal grandfather) was fairly unanimous, with few dissenting voices. Early jurists who objected to this were largely concerned with the imposition of one individual's will over another; an imposition that would extend into the latter individual's life as an adult. These voices, however, did not win out as legal discourse solidified, and as guardians of children were granted the right to compel those children into marriage.

The legal inability to consent represents a different mode of vulnerability from being compelled. Jurists could have maintained that children could not

marry of their own accord because they do not have the right to consent. This is different, however, from allowing guardians to enter those children into marriage relationships (and, in the case of minor girls, even possibly permitting consummation of the marriage). In describing a nineteenth-century case in the British colonial courts in India, the historian Gauri Viswanathan tells us this about a thirteen-year-old child, Huchi, who came to court seeking to end an arranged marriage: She denied that the marriage had been consummated with her eighteen-year-old husband. In the conclusion of the case, the colonial judge held that, owing to Huchi's age, she was incapable of making decisions regarding marriage.[115] By linking age with autonomy, Viswanathan argues, the judge framed the child as an object in need of patriarchal protection who "*ought not to be heard*."[116] We see a similar construction of the child in Islamic legal discourse. While Hanafi jurists recognized the importance of an individual's agency in their marriage decisions, by granting guardians the power to compel minors into marriage, they not only failed to grant children autonomy but also used the construction of childhood as a period of rational deficiency to justify subjecting them to the will of their father and grandfather.

While the concept of legal minority functioned to impair the legal agency of both male and female children, the implications of being compelled into marriage were far greater for girls than for boys. For the boy, being compelled into such a marriage carried a financial burden to which he did not consent. However, as he came of age, he would acquire the rights and authority of a husband, including the ability to divorce his wife. The girl, however, was compelled into a marriage that compromised her sexual autonomy, that rendered her subject to the authority and dominion of the husband, and that left her with limited options for exiting an undesirable marriage. A person's consent to entering into a marriage relationship was important to the jurists. However, the right to consent was determined on the basis of one's standing in the social hierarchy. Children, like enslaved people, had no right to consent; free nonvirgin women had a greater right of refusal than did free virgin women. Yet, in this social hierarchy, it was the free adult male who held the fullest possibilities of self-determination and autonomy. As Kecia Ali puts it, "Any free male in his majority and of sound mind had free rein over his marital affairs."[117] The ability to exercise agency and autonomy over oneself, as well as over others, was thus dependent on the intersections of gender, age, and life cycle in Islamic legal discourse.