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ARTICLES

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Conversion to Islam in the classical Islamic period (ca. 600–1258) was the outcome of both voluntary choice and sporadic phases of compulsion. Accordingly, historians have developed a variety of ways to explain why non-Muslims chose to join the Islamic fold, along with suggestions as to when these movements took place and their scope.[1] While these longstanding debates, reinforced periodically by new findings, are not likely to be settled in the near future, focused readings into particular phenomena may shed further light on the process of conversion to Islam and the social realities entailed by it. The present discussion seeks to do just that by considering cases of enduring matrimonial arrangements in the context of the Jewish conversion to Islam of one of the partners.

The process of conversion to Islam was augmented by efforts to detach

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1. See Michael Brett, "The Spread of Islam in Egypt and North Africa," in *Northern Africa: Islam and Modernization*, ed. Brett (London, 1973), 112; Richard W. Bulliet, *Conversion to Islam in the Medieval Period: An Essay in Quantitative History* (Cambridge, Mass., 1979); Michael Morony, "The Age of Conversions," in *Conversion and Continuity: Indigenous Christian Communities in Islamic Lands: Eight to Eighteenth Centuries*, ed. M. Gervers and R. J. Bikhazi (Toronto, 1990), 135–50; Jean M. Fiey, "Conversions à l'Islam de Juifs et de Chrétiens sous les Abbassides d'après les sources arabes et syriaques," in *Rapports entre Juifs, Chrétiens et Musulmans: Eine Sammlung von Forschungsbeiträgen*, ed. J. Irmscher (Amsterdam, 1995), 14–22; Robert Hoyland, *Seeing Islam as Others Saw It: A Survey and Evaluation of Christian, Jewish, and Zoroastrian Writings on Early Islam* (Princeton, N.J., 1997), 336–42; David J. Wasserstein, "Conversion and the *Ahl al-Dhimma*," in *The New Cambridge History of Islam*, vol. 4, *Islamic Cultures and Societies to the End of the Eighteenth Century*, ed. R. Irwin (Cambridge, 2010), 184–208.

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new converts from their former coreligionist family members. Conversion entailed not only a new religious identity but also the severance of pre-conversion familial ties, investing the spiritual act with dramatic social implications.[2] Accordingly, at the beginning of the eighth century, the caliph ʿUmar b. ʿAbd al-ʿAzīz (reigned 717–20) would issue a decree granting equal standing with other Muslims to any Christian, Jew, or Zoroastrian who embraced Islam and "mingled among the Muslims in their place of dwelling and separated from the dwelling in which he lived."[3] Supporting the scholarly claim that religious conversion entails social divorce, scenes of kinship detachment can be seen in the Cairo Geniza in the few references to Jews who converted to Islam. Thus S. D. Goitein asserted that "a person changing his religion would prefer to move to another town or country, and several such instances can be traced in the Geniza."[4] Goitein, however, conceded that in some cases apostates did not fully sever ties with their former communities and families.[5] Frustratingly, Goitein found little evidence for Jewish conversion to Islam, leading him to conclude that "cases of conversion were not very common in that period."[6]

However, there is a considerable Geniza documentation on conversion that awaits thorough investigation. Beyond the Geniza, a substantial body of evidence from highly diverse literary sources from the classical Islamic period challenges Goitein's conclusions about the social trajectory of coverts, as do the relatively numerous gaonic responsa dealing with the

2. See Hoyland, *Seeing Islam*, 338; Sarah Bowen Savant, *The New Muslims of Post-Conquest Iran: Tradition, Memory, and Conversion* (Cambridge, 2013), 31, 66–67, 69.

3. Abū Muḥammad al-Maṣrī, *Sīrat ʿUmar b. ʿAbd al-ʿAzīz*, ed. A. ʿAbīd (Beirut, 1984), 84.

4. Shelomo D. Goitein, *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza*, 6 vols. (Berkeley, Calif., 1967–93), 2:301, 3:81; see also Claude Cahen, "Histoire économico-sociale et islamologie: Le problème prejudicial de l'adaptation entre les autochtones et l'Islam," in *Actes: Colloque sur la sociologie musulmane* (Brussels, 1961), 203; Gerald J. Blidstein, "Who Is Not a Jew? The Medieval Discussion," *Israel Law Review* 11 (1976): 376; Menahem Ben-Sasson, "Le-zehutam ha-Yehudit shel anusim—ʿiyun be-hishtamdut be-tekufat ha-al-muwaḥidun," *Peʿamim* 42 (1990): 21; Maya Shatzmiller, "Marriage, Family, and the Faith: Women's Conversion to Islam," *Journal of Family History* 21.3 (1996): 257. Cf. Eliyahu Ashtor, "Prolegomena to the Medieval History of Oriental Jewry," *JQR* 50.2 (1959): 65, who suggests that the conversion of one family member would eventually lead to that of the entire family.

5. Goitein, *A Mediterranean Society*, 2:301.

6. Ibid., 2:302.

aftereffects of apostasy. Gaonic writings should be read alongside early Islamic sources and those from the Geniza. Together these sources provide ample evidence that many among the converts to Islam chose to maintain some ties with, if not to remain within the fabric of, their original families. The present discussion is premised on the recognition of non-Islamic sources in general, and gaonic responsa in particular, as important evidence for understanding Islamization in the classical period.

In what follows I wish to consider one particular type of family relationship between Jewish apostates and their former coreligionists present in Babylonian gaonic responsa—that between married couples.[7] I will conduct my analysis on two levels: a legal level, reflected predominantly in gaonic opinions, and a social level, chiefly inferred from questions presented to the geonim. At times, the two levels intertwine, casting light not only on the legal rationale of the geonim but also on their social considerations. Specifically, I will look at gaonic responsa that treat the legal dilemmas involved in the religious conversion of individual Jews in the context of their social and legal commitments vis-à-vis their Jewish spouses.[8] My analysis is premised on the interplay between law and society. Social realities constituted an important consideration in the shaping of legal positions, while legal arguments, in turn, were bound to affect the lived social reality. I will not treat these responsa in isolation but will present them in conjunction with additional forms of literary testimonies, both Jewish and non-Jewish, so as to establish the responsa in a broader

7. On the geonim and gaonic responsa, see, recently, Gideon Libson, "Halakhah and Reality in the Gaonic Period: Taqqanah, Minhag, Tradition and Consensus—Some Observations," in *The Jews of Medieval Islam: Community, Society, and Identity*, ed. D. Frank (Leiden, 1995), 67–99; Robert Brody, *The Geonim of Babylonia and the Shaping of Medieval Jewish Culture* (New Haven, Conn., 1998); Moshe Gil, *Jews in Islamic Countries in the Middle Ages* (Leiden, 2004), nos. 101–35.

8. For gaonic treatments of Jewish apostasy, see Blidstein, "Who Is Not a Jew?" 369–90; Blidstein, "Maʿamadan ha-ʾishi shel nashim shevuyot u-meshumadot ba-halakha shel yeme ha-benayim" (Hebrew), *Shenaton ha-mishpat ha-ʿivri* 3/4 (1976–77): 36–116; Oded Irshai, "Mumar ke-yoresh bi-teshuvot hageʾonim: Yesodoteya shel pesika ve-makbilotyeya ba-mishpat ha-nokhri," *Shenaton ha-mishpat ha-ʿivri* 11/12 (1984–86): 435–61. I concur with the underlying premise of these studies that in their legal deliberations and opinions the Babylonian geonim attempted to bridge between their halakhic frame of reference and the social circumstances of their time. Indeed, as both Blidstein and Irshai demonstrate, Jewish apostasy constituted a major concern for the geonim, who consequently sought to establish clearer perceptions of what constituted religious renunciation, on both theoretical and practical levels. However, the question of religiously mixed families suggests a hitherto overlooked social pattern that overrode these boundaries.

historical context. Given the fragmentary nature of the source material, not all forms of historical evidence neatly overlap, either chronologically or geographically. Thus, for example, gaonic responsa continue only until the early eleventh century, at which point Geniza documents begin to appear in considerable numbers.

THE JEWISH FAMILY AS A LOCUS OF SOCIAL LIFE

Conceptually speaking, my discussion is based on the premise that the family is a social institution. As a social unit, the family is embedded within broader social, cultural, and economic structures, which shape and construct it but are also shaped by it. Still, the concept of family also implies certain basic and unvarying features.[9] Social scientists tend to speak of two main forms or layers of family, namely, the nuclear family, consisting of parents and children, and the extended family, consisting of grandparents, aunts and uncles, brothers and sisters-in-law, and cousins. An acknowledgment of the cultural and social contingencies of family structures highlights the diversity of these structures and of the family bonds they yield. Yet this observation should be complemented by an equally significant view of the family as a community of shared values and norms: a community in which relations are characterized by emotional reciprocity and moral expectation.[10]

The family may be regarded, then, as a microcommunal setting in which broader group affiliations and values are negotiated. Here, within the enclosure of domestic life, Jewish continuity was to be ensured through procreation and through paternal supervision of the circumcision and proper Jewish education of the sons.[11] Thus, for later generations of Jews, lineage and familial affiliation played a crucial part in matters of communal life.[12] Indeed, family and community arguably functioned

9. John Scott and Gordon Marshall, "Family, Sociology of," in *A Dictionary of Sociology* (Oxford, 2009); see also Miriam Peskowitz, "'Family/ies' in Antiquity: Evidence from Tannaitic Literature and Roman Galilean Architecture," in *The Jewish Family in Antiquity*, ed. S. J. D. Cohen (Atlanta, 1993), 16–18; Peter Burke, *History and Social Theory* (2nd ed.; Ithaca, N.Y., 2005), 54–55; Jonathan Boyarin, *Jewish Families* (New Brunswick, N.J., 2013), 20–22.

10. Cf. Michael L. Satlow, *Jewish Marriage in Antiquity* (Princeton, N.J., 2001), 39, where Satlow speaks of the Jewish household as a "social order . . . in accordance with the divine plan."

11. O. Larry Yarbrough, "Parents and Children in the Jewish Family of Antiquity," in *The Jewish Family in Antiquity*, 42–43; Menahem Ben-Sasson, *The Emergence of the Local Jewish Community in the Muslim World: Qayrawan, 800–1057* (Hebrew; Jerusalem, 1996), 127, 139; Satlow, *Jewish Marriage*, 159.

12. Note the legacy of talmudic Babylonia, according to which the significance of genealogical lineage is underscored in the context of the family household as a

inseparably: the former ensured membership in the latter, which in turn provided the means for sustaining the former through its schooling, supervision of ritual practices, and legal apparatus.[13] It is no surprise, therefore, to discover that for the people of the Geniza, the idea of fatherhood extended far beyond an instrumental capacity to include the function of upholding an unbreakable bond with forefathers and agnates.[14] The Jewish individuals whose lives, concerns, activities, and joys that Goitein was able to extract so illustratively from the documents of the Geniza, owed their loyalties first and foremost to the family unit. These were paternal social entities, of which endogamous marriages, joint commercial enterprises, and mutual liabilities were only some of the more common features that come to light through correspondences, which always begin with the warmest expressions of affection. These extended families, comprising "three generations and inclusive of agnates and cognates,"[15] were able to compensate for circumstances of geographical distance through extensive networks of communication throughout the ports of the Mediterranean, the Red Sea, and the Indian Ocean, as well as in urban centers in Europe, Mesopotamia, and the Indian subcontinent. As we learn to appreciate the Jewish family and the Jewish community as two inseparable realms of religious life, it would seem only reasonable to assume that those who chose to renounce their membership in the Jewish fold would similarly sever their ties to their Jewish families. Yet family loyalties, as Jonathan Boyarin has noted, did not simply or merely help to reinforce religious and communal ties but could also cross "competing and alternative bounds of identity,"[16] resulting, as I will show, in the phenomenon of hybridism in the context of marriage.

FAMILY AND APOSTASY IN GAONIC RESPONSA

Before turning to an analysis of family ties between Jewish and apostate spouses, it should be noted that the geonim dealt with many cases of apostates and their relatives that go beyond the scope of this study. A

conduit of Jewish values; see Aharon Oppenheimer, *Babylonian Judaica in the Talmudic Period* (Wiesbaden, 1983), 16–17; Richard Kalmin, "Genealogy and Polemics in Rabbinic Literature of Late Antiquity," *Hebrew Union College Annual* 67 (1996): 90; Jeffrey L. Rubenstein, *The Culture of the Babylonian Talmud* (Baltimore, Md., 2003), 83–87; Arnold Franklin, *His Noble House: Jewish Descendants of King David in the Medieval Islamic East* (Philadelphia, 2013).

13. See Ben-Sasson, *Emergence of the Local Jewish Community*, 110–43.

14. Goitein, *Mediterranean Society*, 3:1

15. Ibid., 3:33.

16. Boyarin, *Jewish Families*, 22.

notable example of the legal problems that stemmed from Jewish apostasy arose with regard to the levirate (*yibum*) duty of apostates. The immediate concern in such instances was whether apostate brothers of childless deceased husbands were required either to wed their brother's widow through levirate marriage or else to issue her a release (*ḥalitsa*), freeing her to remarry. Thus, for example, a responsum in Hebrew attributed to Rav Paltui, Gaon of Pumbedita (fl. 841–58), mentions an apostate brother-in-law who "is in the land of the Barbarians" (presumably North Africa): "the place is far and there are no caravans."[17] The petitioner seeks to know whether under these circumstances the widow may be released without *ḥalitsa*, perhaps assuming that the levir being an apostate might further bolster her case. But the gaon shows no willingness to compromise:

> This betrothed woman, who has fallen before an apostate levir, is chained and remains [so] forever. There is no solution for her and she cannot marry until the apostate performs a *ḥalitsa* . . . Since he was conceived and born in sanctity [namely, as a Jew,] she requires a levirate marriage . . . not being released until he performs a *ḥalitsa* for her.

The social picture is clear: the apostate had removed himself from his former coreligionist family, but his legal role as levir was not thereby undone. This was, of course, a difficult verdict for Jewish widows of childless husbands, but it could also have provided a motive for sustaining family ties with apostates or indeed for discouraging conversion, given the problematic consequences of such an act.

Other gaonic responsa dealing with apostates discuss the inheritance of their property after death and apostate rights over property left by their deceased Jewish parents. Thus, for example, a question referred to either Rav Sherira (fl. 968–1006) or his son Rav Hayya (Hai, fl. 1006–1038), both of Pumpedita, concerns the fate of the dowry of an apostate woman who gave her husband "fields, houses, and vineyards."[18] Following her apostasy both her husband and her heirs evidently claimed these assets, the former arguing that since the woman had apostatized, she was considered dead, and therefore he was to inherit her. Indeed, halakhically, the husband is the sole heir of the property left behind by his

17. Benjamin M. Lewin, ed. *Otsar ha-ge'onim* (Jerusalem, 1941), Yevamot, 34, no. 77.

18. Lewin, *Otsar*, Ketubot, 356, no. 789.

deceased wife.[19] Yet the gaon disagreed, arguing that the apostate woman was not considered dead but rather akin to an adulterer (*ke-zona*):[20]

> Therefore, her heirs take her used personal possessions (*bela'ot*) if there are witnesses who testify that she gave him (i.e., the husband) these objects through her dowry and they have worn out, and these used articles are left over from them (of those she entered with into marriage). The fields, houses, and vineyards she had given him at the time of their marriage shall all be taken by her heirs. If at the time of her apostasy she seized something from her husband's property, if he has witnesses about this, the husband claims first from the lands and then the heirs take what has remained.

It is noteworthy that the gaon rejects the husband's opinion that she is like a dead wife and instead considers apostasy the cause for divorce, thereby upholding the woman's rights to her dowry.[21] At the same time, however, he notes that whatever the woman seized from her husband's property after her apostasy will be withheld from her dowry.[22]

Questions of inheritance from apostates to Jews and vice versa are common in gaonic responsa dealing with apostate-Jewish family relations. Whereas some of the geonim opposed the right of husbands to inherit their apostate wives, allowing the fathers to seize their daughters' property, others deemed the property abandoned. It seems that two main considerations underlie gaonic opinions on this matter: the first is an attempt to discourage apostasy, and the second is the retention of property in Jewish hands. Whereas the former could have been achieved by placing the female apostate's Jewish husband in a disadvantaged position

19. bKet 84a; bBB 109b, 111b–113a. On the different approaches of medieval Jewish rabbis to this question, see Simḥa Assaf, "Ha-takanot ve-ha-minhagim ha-shonim bi-yerushat ha-baʿal et ishto," *Mada'e ha-Yahadut* 3 (1926): 79–94. See also Shmuel Shilo and Menachem Elon, "Succession," *Encyclopaedia Judaica* (2nd ed.; Detroit, 2007), 19:285.

20. bKet 101b.

21. Blidstein, "nashim shevuyot," 57, n. 72.

22. Cf. Lewin, *Otsar*, Kidushin, 35, no. 89, an attribution of the position designating the apostate wife's property to the ownership of her heirs (and not to her husband) to non-Babylonian Rabbanite authorities, either Palestinian, North African, or even Iberian: "[As to] the people of the West [who] say [regarding] the wife of an Israelite who apostatized, her father inherits her marriage contract—they are wrong and erring and what they say is false and deceiving." Cf. Blidstein, "nashim shevuyot," 56; Blidstein attributed the responsum to Rav ʿAmram Gaon. See also Blidstein, "Who Is Not a Jew?" 384.

(disinheriting him), the latter was addressed by permitting Jews to inherit apostates. While these legal maneuvers appear alternately to link and detach apostates and their Jewish family members, they also suggest the insistence of certain geonim on the legal affinity between fathers/apostates and their Jewish children. The topic of inheritance passing from Jews to apostates has been rather thoroughly examined in modern scholarship, most notably by Oded Irshai, who has argued that ninth-century gaonic responsa betray a radical shift in opinion toward the disinheriting of apostate sons.[23] Irshai notes the lacuna in classical rabbinic literature regarding the right of apostates to inherit their father's possessions.[24] Consequently, we find a gaonic perception of bKid, 17b–18a, where a non-Jew's succession of his father is discussed, as indication that since patrilineal ties were severed following conversion to Judaism, the same would be the case following apostasy—conversion from Judaism. This latter point, coupled with God's words to Abram in Gen 17.8 ("And I will give to you, and to your offspring after you, the land where you are now an alien"), served as the basis for the gaonic disinheriting of apostates.[25] From a social-historical perspective, the intensity of these discussions is striking, suggesting that apostate children often sought to claim their father's legacy. Indeed, while we can only speculate about the nature of these relations, once again the legal mechanism at play in disinheriting apostates reminds us of dual gaonic considerations—the discouragement of apostasy and the retention of property in Jewish hands.

AN APOSTATE SPOUSE

Gaonic responsa dealing with levirate apostates and the inheritances of either Jewish descendants of apostate fathers or of apostate sons of Jewish fathers cannot confirm a social reality of sustained family relations between Jews and apostates. There is nothing in these responsa to indicate that the apostates to whom they refer remained in close vicinity to their Jewish families, even though their presence was often deemed halakhically necessary. Yet those responsa dealing with legal problems that arose consequent to a Jewish spouse's apostasy point to the endur-

23. Irshai, "Mumar ke-yoresh," 459–60; see also Blidstein, "Who Is Not a Jew?" 382–84.

24. bKid 18a.

25. Cf. Maimonides' remark in Joshua Blau, ed., *Teshuvot ha-Rambam* (Jerusalem, 1958–961), 2:658: "[the geonim of both east and west] instructed and so it is our practice always that whoever apostatized, if he has an inheritance, it should be given to his legitimate (*kesherim*) sons."

ance of not only legal bonds but also social ties between apostates and their Jewish families.

Marriages between Jews and former Jews should be seen in comparison to Islamic legal concerns surrounding Muslim–non-Muslim marriages, especially concerning gender, a feature that appears from earliest Islamic times.[26] Both qur'ānic references (Q 2.221, 5.5, 60.10) and early Islamic traditions dealing with such unions were to underpin later jurisprudential opinions that conditioned mixed unions on the male being Muslim.[27] At the same time, both narratives and regulations highlight the social sensitivities and dramas surrounding these unions, whereby non-Muslim women were switching from a social allegiance with their original household to the one entailed by their wedlock with a Muslim husband. While the historicity of reports about mixed marriages in the first and second Islamic centuries may seem uncertain, their treatment in Islamic legal discourses indicates real social anxieties. In fact, traces of early unequivocal objections to marriage between male Muslims and women of the scriptural religions (*ahl al-kitāb*, i.e., people of the book) reflect a perception of these unions as threatening the still-young community.[28] It is in this context that we should perhaps see the qur'ānic call to Muslims to sever ties with non-Muslim relatives: "Thou shalt not find any people who believe in God and the Last Day who are loving to anyone who opposes . . . not though they were their fathers, or their sons, or their brothers, or their clan" (Q 58.22).[29]

Similar to the rabbinic notions discussed above, Islamic traditions and legal principles betray a conception of the family as an embodiment of communal sentiments, in which female roles were assigned central importance. Once established that the sole tolerated form of religiously mixed unions is between Muslim men and scriptural women, Muslim lawyers set out to delimit the religious freedoms of non-Muslim female spouses within the household, a step that can be viewed as further indication of

26. See, for example, the well-known case of Nā'ila bt. al-Furāfiṣa, a Christian woman from Khurasān who was married to the third caliph ʿUthmān b. ʿAffān (r. 644–56), in Abū Bakr Muḥammad b. Ḥibbān a-Tamīmī al-Busṭī, *Kitāb al-thiqāt* (Hyderabad, 1973), 2, 248.

27. All four schools of Sunni law condoned mixed marriages only between a Muslim male and a non-Muslim female, and not vice versa. For a recent discussion, see Yohanan Friedmann, *Tolerance and Coercion in Islam: Interfaith Relations in the Muslim Tradition* (Cambridge, 2003), chap. 5.

28. Ibid., 192.

29. *The Koran Interpreted: A Translation by A. J. Arberry* (London, 1955).

the complexity of mixed matrimonial arrangements.[30] Here, concealed from the control of religious gatekeepers, the presence of the non-Muslim mother within the private domain of the household could have had a negative impact, particularly over the religious integrity of its young members.[31] Although the size of this impact is beyond measure, we should not rule out the potential apostasy of Muslim children, once grown up.[32] Drastic as they seem, the fear of such terrible consequences was likely to motivate an effort to detach converts from their former coreligionist family members.[33]

As already noted, indications of marriages between Muslims and non-Muslims can be detected as early as the days of the Prophet. A well-known case in point involves one of Muhammad's wives—Umm Ḥabība b. Abī Ṣufyān. Prior to her marriage with the Prophet she was married to ʿUbaydallāh b. Jaḥsh, who, like her, embraced Islam, yet following their immigration to Abyssinia he converted to Christianity. Nonetheless, Umm Ḥabība is reported to have remarried only after the death of her apostate husband.[34] Matrimony between a convert to Islam and a non-Muslim is also suggested in a tradition found in Ibn Māja's (d. 887) collection. The short account tells of a married a couple, one of whom was a Muslim and the other an infidel, who litigated before the Prophet.[35]

30. For a similar assessment, see Janina M. Safran, "Identity and Differentiation in Ninth-Century al-Andalus," *Speculum* 76.3 (2001): 575–76. See also Friedmann, *Tolerance and Coercion*, 188–90.

31. Safran, "Identity and Differentiation," 583–84; yet note that the reference in the *Mudawwana* is to children born to Muslim men who married non-Muslim women in the abode of war (*dār al-ḥarb*); see Saḥnūn b. Saʿīd, *al-Mudawwana al-kubrā* (Beirut, 1994), 2:218.; cf. in an Andalusi context, Ragnhild J. Zorgati, *Pluralism in the Middle Ages: Hybrid Identities, Conversion, and Mixed Marriages in Medieval Iberia* (New York, 2012), 94, 167.

32. The legendary ninth-century story of Bakchos the Younger, an eighth-century Palestinian youth, whose father was a Christian convert to Islam and whose mother was Christian, indicates that it was thanks to Bakchos's mother, who remained a devout Christian, that her son grew up to be a monk. See Phōtios Ar Demetrakopoulos, "Agios Bakchos o Neos," *Epistēmonikē epetēris tēs Philosophikēs Scholēs tou Panepistēmiou Athēnōn* 26 (1977–78): 334–50.

33. See Hoyland, *Seeing Islam*, 338; Sarah Bowen Savant, *The New Muslims of Post-Conquest Iran: Tradition, Memory and Conversion* (Cambridge, 2013), 31, 66–67, 69.

34. Ibn Saʿd, Muḥammad, *Al-Ṭabaqāt al-kubrā: Al-ṭabaqa al-rābiʿa min al-ṣaḥāba min man aslama ʿinda fatḥ Makka wa-ma baʿda dhalika*, ed. ʿA. b. ʿA. al-Sallūmī (al-Ṭāʾif, 1995), 1:67.

35. Abū ʿAbdallāh Muḥammad b. Yazīd b. Māja, *Sunan Ibn Māja*, ed. M. F. ʿAbd al-Bāqī (Cairo, 1972), 2:788, no. 2352.

According to a later extended version of the account, it was the woman who had not embraced Islam.[36] The trend is attested throughout the classical Islamic period and even beyond it. Among the better-known examples is that of the Syrian Christian tribe of the Banū Tanūkh. While most medieval Muslim historians report that the tribe had converted to Islam shortly after the conquest,[37] one mentions the Tanūkhid clan of the Ṣāliḥ b. Ḥulwān b. ʿImrān al-Ḥāfī b. Quḍāʾa as having remained Christian until its forced conversion under Abbasid caliph al-Mahdī (*775*–85).[38] According to the account found in the history of the West Syrian patriarch and historian Michael the Syrian (d. 1199), the conversion took place in *779*, when al-Mahdī was on his way to Aleppo. The caliph ordered that all Tanūkhids be converted, whereupon roughly 5,000 men converted, while their women managed to escape.[39] By the Mamluk period, and most likely much earlier, disapproval over the proximity of a recent convert to Islam to his former coreligionists, particularly his non-Muslim family, was a common theme in negative assessments of converts.[40] Thus, for example, among the numerous cases recorded by Tamer el-Leithy we read of "ʿAbdullāh (= Ghubriyāl) b. Ṣanīʿa al-Qibṭī (d. 1334) [who] caught Ibn Ḥajar's eye (i.e., Ibn Ḥajar al-ʿAsqalānī [d. 1448], author of biographic dictionary *al-Durar al-kāmina*) for his 'slyness and good relations with Christians,' but most of all for the rumor that his daughters had not converted."[41]

As may be expected, the geonim were not the only Near Eastern legal authorities of their time preoccupied with legal questions stemming from the endurance of marriages between a convert and his or her former coreligionist.[42] In general terms, Islamic law stipulates the breakup of mar-

36. Abū Nuʿaym al-Isbahānī, *Maʿrifat al-ṣaḥāba*, ed. ʿĀ. b. Y. al-ʿAzzāzī (Riyadh, 1998), 3:1350, no. 3406. My thanks to Michael Lecker for both references.

37. E.g., Aḥmad b. Yaḥyā al-Balādhurī, *Futūḥ al-buldān* (Beirut, 1988), 147.

38. Ismāʿīl b. ʿAlī, *Al-Yawāqīt wa-l-ḍarab fī taʾrīkh Ḥalab*, ed. M. Kamāl and F. al-Bakkūr (Aleppo, 1989), 4.

39. Michael the Syrian, *Chronique de Michel le Syrien: Patriarche jacobite d'Antioche (1166–1199)*, ed. and trans. J. B. Chabot (Paris, 1899–1910), 3:1; the same report is also given in Bar Hebraeus, *The Chronography of Gregory Abū'l Faraj, the Son of Aaron the Hebrew Physician, Commonly Known as Bar Hebraeus*, trans. E. A. Wallis Budge (London, 1932), 1:117.

40. Tamer el-Leithy, "Coptic Culture and Conversion in Medieval Cairo, 1293–1524 A.D." (Ph.D. diss., Princeton University, 2005), 1:193–94.

41. Ibid.

42. For a summary of related positions in the different Sunni legal schools, see Friedmann, *Tolerance and Coercion*, 163–65; for the treatment of similar questions in the context of Islamic Iberia, see Zorgati, *Pluralism*, chap. 4; in Zoroastrian and Eastern Christian sources, see Uriel Simonsohn, "Conversion to Islam:

riages between non-Muslim couples in which the wife embraces Islam. A helpful illustration of the multifaceted nature of this question from an Islamic point of view can be found in a collection of opinions by Aḥmad b. Ḥanbal (d. 855), assembled in the *Kitāb al-jāmiʿ al-kabīr* of the Baghdadi scholar Abū Bakr al-Khallāl (d. 923).[43] The utility of this collection for the present discussion stems from the fact that, like gaonic responsa, Ibn Ḥanbal's opinions appear to address concrete concerns and situations, as opposed to other forms of Islamic legal literature that tend to be more abstract in nature.[44] Ibn Ḥanbal's positions include references to the fate of children with one parent who converted to Islam,[45] and cases of marriages in which the husband converts but his wife chooses not to,[46] or the wife converts before the husband.[47] Unlike Islamic sources, however, gaonic responsa tend to address cases that involve Jewish and apostate spouses in an indirect fashion. Fortunately an exception is found in a query put to Rav Hayya Gaon, in which he is asked about the validity of a matrimonial bond between a Jewish apostate who "joined the religion of the Gentiles, whereas his wife . . . was still adhering to the Israelite religion," and whether a Jewish apostate could marry "a woman from

A Case Study for the Use of Legal Sources," *History Compass* 11.8 (2013): 647–62, and Simonsohn, "Are Geonic Responsa a Reliable Source for the Study of Jewish Conversion to Islam? A Comparative Analysis of Legal Sources," in *Jews, Christians and Muslims in Medieval and Early Modern Times: A Festschrift in Honor of Mark R. Cohen*, ed. A. E. Franklin et al. (Leiden, 2014), 122–38.

43. On Abū Bakr al-Khallāl, see Henri Laoust, "Al-Khallāl, Aḥmad b. Muḥammad b. Hārūn, Better Known as Abū Bakr al-Khallāl," *Encyclopedia of Islam* (2nd ed.; Leiden, 2011); see also Ibn Abī Yaʿlā, *Ṭabaqāt al-Ḥanābila*, ed. M. Ḥ. al-Fiqī (Cairo, 1952), 2:12–15; Ziāuddin Aḥmad, "Abū Bakr al-Khallāl—The Compiler of the Teachings of Imām Aḥmad b. Ḥanbal," *Islamic Studies* 9 (1970): 245–54; Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th–10th Centuries C.E.* (Leiden, 1997), 137, 141, 143; Michael Cook, *Commanding Right and Forbidding Wrong in Islamic Thought* (Cambridge, 2000), 78–90; Nimrod Hurvitz, *The Formation of Hanbalism: Piety into Power* (London, 2002), 4–5. On the *Kitāb al-jāmiʿ*, see Carl Brockelmann, *Geschichte der arabischen Litteratur* (Weimar, 1937–42), sup. 1:311; Fuat Sezgin, *Geschichte des arabischen Schrifttums* (Leiden, 1967), 1:511–12.

44. The point I wish to make is not about the affinity of Islamic and Jewish legal traditions but about the common social reality that underlies them.

45. Abū Bakr al-Khallāl, *Aḥkām ahl al-milal min al-jāmiʿ li-masāʾil al-imām Aḥmad b. Ḥanbal*, ed. S. Kisrawī Ḥasan (Beirut, 1994), 33–37, nos. 75–83; 40, nos. 91–92.

46. Ibid., 176–78, nos. 504–9.

47. Ibid., 186–95, nos. 526–49.

the daughters of Israel who adhere to the Torah of Israel."[48] The Geniza fragment containing the responsum provides only the very beginning of the gaon's answer. Yet from a social-historical perspective, the question should be read alongside several other Geniza letters that appear to corroborate the likelihood of such matrimonial circumstances. Thus an undated question to a Muslim jurist mentions the case of a Jewish woman whose husband converted to Islam and after a year of cohabitation with his wife, set off to India (where he would proceed to spend ten years), following which the woman asked for a divorce.[49] It is noteworthy that the request for divorce came up not after the conversion but after the apostate had distanced himself from his wife, suggesting that the woman's primary concern was over her livelihood.[50] Indeed, in his study of charity lists from the Geniza, Mark Cohen remarks on a rare instance in which an apostate's wife (*imraʾat al-poshe'a*) was listed among alms recipients, indicating that "her husband's conversion to Islam would have left her abandoned, hence needy."[51]

While the above-mentioned question to Rav Hayya Gaon stands out in the directness of its reference to the fate of marriages between Jews and apostates, the complex implications of such bonds rear their heads in three particular categories of legal dilemmas: the fate of children of Jewish-apostate couples, the release from levirate binds (*ḥalitsa*) of widows of childless apostate men, and the dowries left behind by deceased apostate women. To the best of my knowledge, the earliest gaonic reference to the question of marriage between a Jew and an apostate is found in the ninth-century gaonic legal compilation *Halakhot gedolot*, a work that is understood to have incorporated Palestinian sources, some of which are "clearly later than the Talmud."[52] Following a ruling he attributes to

48. Mordechai A. Friedman, "Mi-shut Rav Hai Gaʾon—ketaʿim ḥadashim min ha-geniza" (Hebrew), *Teʿuda* 3 (1983): 79; the answer part of the responsum is missing.

49. TS Ar. 40.96; discussed in Goitein, *Mediterranean Society*, 3:301. I wish to thank Oded Zinger for bringing this document to my attention.

50. Note that the woman asked for a divorce for the first time when her husband was about to set off, that is, a year after the man had converted.

51. TS box K 15.2V, left-hand page, line 7; Mark R. Cohen, *Poverty and Charity in the Jewish Community of Medieval Egypt* (Princeton, N.J., 2005), 152; see also Goitein, *Mediterranean Society*, 2:302, 451, 592, n. 12; Moshe Gil, ed. and trans., *Documents of the Jewish Pious Foundations from the Cairo Genizah* (Leiden, 1976), 36; Shatzmiller, "Marriage, Family, and the Faith," 236.

52. Brody, *The Geonim of Babylonia*, 169; accordingly, Brody questions the Babylonian provenance of the *Halakhot gedolot*.

Rav Yehudai Gaon (fl. 757–61), and the head of Pumbedita, Rav Shemu'el Gaon (fl. 748–55),[53] according to which a writ of divorce is required for dissolving a marriage between a Samaritan man and a Jewish woman, the author of *Halakhot gedolot* brings forth the halakhic principle that whereas a betrothal (*kidushin*) between the son of an apostate man and a non-Jewish woman is invalid, a betrothal between an apostate man and a Jewish woman is valid. The underlying reasoning here is that the son of an apostate man and a non-Jewish woman is considered a non-Jew, not because of his apostate father but because of his non-Jewish mother.[54] It is this principle—namely, that the betrothal between a Jewish apostate and a Jew is valid—that appears to underpin later gaonic responsa.[55] In addition to the question of an apostate's betrothal, to which I return below, the matter brought to the discretion of the two eighth-century geonim also brings to the fore the question of newborns of apostate-Jewish couples. A rather explicit gaonic treatment of this problem can be found in a responsum attributed to the head of the Sura academy Rav Saʿadya Gaon (fl. 928–42):[56]

> A man's wife, whose husband went overseas, whereupon an apostate Israelite came and married her according to the custom of the gentiles. She gave birth to a boy and later her husband came and gave her a divorce. That apostate violates the Sabbath in public.[57] Now is that boy a legitimate Jew (*kasher*), for his father is considered a gentile, [according to the principle that] a gentile and a slave who have sex with an Israelite girl, [their] son is *kasher*, or, rather, since if [that apostate] repented, he is a complete Israelite and the boy is [halakhically considered] a bastard (*mamzer*)?

The problem at stake was whether the child born to an apostate father and a Jewish mother, the latter still legally bound to her former Jewish husband, was to be considered a legitimate Jew. Assuming that the father, having apostatized, was now generally considered a gentile, the

53. Apparently prior to Rav Yehudai's appointment in Sura, perhaps when Rav Yehudai was still in Pumbedita.

54. Ezriel Hildesheimer, ed., *Sefer halakhot gedolot* (Jerusalem, 1971–87), Kiddushin 40, 2:215–16; note Blidstein, "Who Is Not a Jew?" 375, n. 22: "*H.G.* apparently rejects here the position based on Samuel's view of the Ten Tribes—that apostates are forthwith gentiles."

55. Cf. bBekh 30b; bYev 47b.

56. Lewin, *Otsar*, Yevamot, 196, no. 474.

57. tHor 1:5.

petitioner wished to know whether the father might be considered a Jew as far as his betrothal was concerned, or whether the fact that he violates the Sabbath in public renders him a complete non-Jew, even for the purposes of his betrothal. The question in itself reflects a position that sought to cut off the apostate from the Jewish fold altogether, a position that was apparently endorsed by earlier gaonic authorities.[58] Accordingly, it was put to the gaon whether the newborn in question should be considered a legitimate Jew, given the principle that the child of a gentile and a married Jewish woman is not considered a bastard—a Jew of tainted lineage. In reply, Saʿadya ruled with resolution that the newborn was to be considered a bastard on the grounds that it was conceived with a Jew while the woman was married to another. In other words, since the apostate father was born as a Jew ("his conception and birth was in sanctity"), in matters pertaining to religious duties such as betrothal, divorce, untying a widow (*ḥalitṣa*), refusal (*meʾunin*, i.e., a minor girl's refusal to consummate a fixed marriage), and tainted lineage (*mamzerut*), the apostate is considered a Jew in every respect. Hence, the child was born to a Jewish couple who was not considered halakhically married, while the woman was still bound to her Jewish husband. Indeed, from a halakhic perspective, this is a simple case of adultery. Yet from a social-historic point of view, we are witnessing a matrimonial arrangement between an apostate man and a Jewish woman that carried dire consequences for the couple's child in terms of its future relations with the Jewish fold. A strikingly similar affair appears to be mentioned in what has remained of a rabbinic court record from 1220. The fragment contains reference to a certain woman who had given birth to a bastard girl:[59] "[A] daughter of Ṭūwayr gave birth to the daughter of Bū Yaʿlmū and she (the newborn) is a bastard (*mamzeret*)." The reason she is bastardized is given in a line perpendicular to the one quoted above: "her mother apostatized while married to Ephraim al-Daf[?]nīrī who had not written her a deed of divorce; she had married Bū ʿAlī b. Yaʿlmū in a gentile court." Whereas the earlier case, brought before Saʿadya Gaon, involved an apostate man, this case refers explicitly to an apostate woman. However, it seems highly likely that the woman's second marriage, before an Islamic tribunal, was to a Jewish apostate, as the question of the child's tainted lineage would

58. See the compiler's note below the responsum: "In earlier responsa, however . . . he who violates the Sabbath in public is considered an idol worshiper (ʿ*akum*) and his betrothal is invalid.

59. ENA 2560.6; my thanks to Oded Zinger for bringing this document to my attention and to Amir Ashur for providing me with its transcription.

not have come up in the first place had she married a non-Jew. Since there is little evidence to support the probability of Jewish marriages registered in non-Jewish courts, it seems safe to assert that the apostate woman had married a Jewish apostate.[60] The question remains, however, why it was important to assess the lineage of the child of the apostate woman. If indeed both parents had chosen to renounce their Judaism, they would presumably have little motivation to argue for the child's halakhic legitimacy. At this point, the only plausible explanation would be to posit an interest on the part of the Jewish community, who regarded the child as its legitimate member. Both in Saʿadya Gaon's responsum and in the Geniza record we are dealing with instances that concern children born to apostate Jews and declared bastards because their mothers were still held liable to their previous matrimonial commitments with Jewish men. In both cases, marriages between apostates and Jews (or apostate Jews) were registered before a non-Jewish court, most likely an Islamic one. Finally, both cases reveal a hidden assumption on the part of the petitioners that a matrimonial union between a Jew and an apostate is considered on par with such a union between a Jew and a non-Jew and therefore that the children would not be declared bastards.

Another case involving a halakhic question about the newborn child of an apostate man and his Jewish wife appears in a responsum attributed to Rav Sherira Gaon.[61] The responsum mentions a Jewish man who apostatized "while married to an Israelite woman and [later] had a child born by her on a Sabbath." Since the circumcision of the newborn was to take place eight days later, on the following Sabbath, the petitioner wished to know whether the infant could be circumcised on that day. The question at hand was clearly not about the permissibility of performing the circumcision—a ceremony that entails bloodletting (*hakazat ḏam*)—on a Sabbath, as circumcision precedes the law of the Sabbath.[62] In the absence of an explicit reference to the cause of concern underlying the question, it may be inferred that the concern was a possible contention

60. Cf. on the registration of non-Muslim marriages in *qāḍī* courts, in Adolf Grohmann, ed., *Arabic Papyri in the Egyptian Library* (Cairo, 1934), 1: docs. 39, 40; Nadia Abbott, "Arabic Marriage Contracts among Copts," *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 95 (1941): 59–81; see also on the intervention of Muslim authorities in a Jewish matrimonial agreement, in Mordechai A. Friedman, "Hitʿarvut ha-shilton be-Kayrawan be-girushe arusa (ketaʿ ḥadash mikovets gadol shel shut ha-geʾonim ve-heʿarot le-ketaʿim aḥerim)," *Michael* 5 (1978): 215–42.

61. Lewin, *Otsar*, Shabat, 130, no. 398.

62. Lev 12.3; mShab 18.3.

over the infant's religious identity, namely, that the newborn was to be treated as a gentile and hence its circumcision was to take place on a regular weekday. The gaon replied that the child was to be circumcised on the Sabbath, arguing that he is an offspring of Abraham and

> the generations of apostates do not become entrenched [in this specific case], but it is just one [person] who apostatized and perhaps he will rethink [it] and leave his son in the Jewish religion. Furthermore, for [the child's] mother is an Israelite and perhaps he [the child] will follow her; and we do not presume that he will go astray, therefore we do not have the power to forbid his circumcision on a Sabbath.

On the face of it, the case suggests a family household that remained intact despite the father's conversion. Yet, from a legal perspective, the question at hand seems to suggest an uncertainty regarding the child's Jewish identity, perhaps one that demands verification and hence justifies postponing circumcision. This uncertainty can be inferred from the gaon's insistence that the father's apostasy applies only to himself ("the generations of apostates do not become entrenched"). Yet rather intriguingly, the ensuing statement appears to offer an alternative to the position that bases a child's Jewish identity on the Jewish identity of his mother:[63] here, the child's future status as a Jew is conditioned by his choice to follow his mother and not his apostate father.[64]

The examples presented thus far attest to the complexity of questions pertaining to the fate and halakhic status of newborns in the context of matrimonies between apostates and Jews. Running through the gaonic positions issued in these cases is an insistence that their renunciation of Judaism did not render apostates non-Jews in matters of marriage and parenthood. Thus, whereas the questions speak of a social reality of religiously mixed families, the legal opinions given in response to this reality speak of the endurance of legal ties between apostates and Jews. One

63. bKid 68b.

64. The uncertainty regarding the child's Jewish identity may derive from a reading into mKid 3.12: "If the betrothal is valid and no transgression befell, the standing of the offspring follows that of the male [parent] . . . If the betrothal was valid but transgression befell, the standing of the offspring follows that of the blemished party"; cf. the position of Avraham Maimonides (d. 1237) in Avraham Freiman, ed., and S. D. Goitein, ed. and trans., *Teshuvot Rabenu Avraham b. ha-Rambam* (Hebrew; Jerusalem, 1937), 54–55, no. 53; the case brought before Avraham Maimonides dealt with the circumcision on a Sabbath of a newborn whose parents were both apostates. Maimonides ruled that the newborn should be circumcised by a gentile.

may wonder, however, whether gaonic legal opinions were meant to accommodate this religious hybridity or, rather, to discourage it by refusing to release apostates of their legal commitments toward their Jewish family members.

Even greater perplexity appears to have been stirred by cases involving apostate husbands who died childless, leaving behind Jewish widows who, in principle, were required to fulfill their deceased husband's duty of procreation through levirate marriage (*yibum*) or else to be released to remarry (*ḥalitsa*). Thus we read in a question referred to an anonymous gaon: "That which you asked [regarding] a person who apostatized and has an Israelite woman who did not apostatize and he does not have children from her, and he has a Jewish brother. That apostate died, having no children from the Israelite woman."[65] From a social perspective, the question reveals the fact that the couple remained married after the husband's apostasy, or else separated but remained bound together halakhically. Thus, the problem presented to gaonic discretion was whether the marriage between the apostate man and Jewish woman remained valid or, rather, weakened, if not dissolved consequent to the husband's apostasy. Accordingly, if the couple was halakhically bound together, the widow would have remained chained (*ʿaguna*) so long as the brother would not release her. The responsum, which the compiler of *Or zaruʿa* (Isaac b. Moses of Vienna; d. 1250) found in *Sefer ha-miktsoʿot* by Rabenu Ḥanan'el (d. 1055), negates the assumption that apostasy renders the marriage of an apostate invalid, either proscribing the release of the widow or prescribing her levirate marriage to the apostate's brother-in-law. Thus, whereas the social reality remains vague, the apostate is declared legally bound to his Jewish wife, a legal principle that could have been used to encourage apostates to divorce their Jewish wives rather than leave the matrimony intact.[66] This rationale should be contrasted with a gaonic position issued some 250 years earlier, when Rav Yehudai Gaon ruled that if a woman was compelled to remain with her apostate husband she was not bound to the levir, for "that one is not his brother and she also does not require a release (*ḥalitsa*)."[67] The context

65. Lewin, *Otsar*, Yevamot, 34, no. 76.

66. Cf. Goitein, *A Mediterranean Society*, 2:301: a query to Abraham son of Maimonides (d. 1237) mentioning a Jewish traveler who gave his wife "a provisional bill of divorce to be effective in case he adopted Islam while abroad."

67. Lewin, *Otsar*, Yevamot, 36, no. 83. Note Blidstein, "Who Is Not a Jew?" 379: the geonim based their opinion in favor of the untying from levirate marriage of an apostate's wife or sister in-law on a halakhic midrash: "If the biblical verse describes the men as 'brothers' it will be argued that an apostate is no brother; if the biblical rationale for marriage to a brother-in-law is that the 'dead brother's

of these questions may be deduced from a case mentioned in *Sefer ha-maʿaśim*—the sixth- and seventh-century Palestinian collection of legal opinions—where we learn about a man who had betrothed a woman and later apostatized.[68] Consequently, a delegation of Jews pleaded before the apostate to give his wife a divorce so that she may be released from the obligation of marrying his brother, supposedly in the event of the husband's death.[69] It may be this Palestinian precedent that echoed in the background of Rav Yehudai's position and of the one found in *Sefer ha-miktsoʿot* by Rabenu Ḥanan'el. Yet whereas the former appears to have undermined the validity of an apostate's betrothal, the latter was premised on it. Moreover, whereas Rav Yehudai's position reflects a measure of leniency toward the apostate's Jewish widow, it also removed the burden of legal responsibility from the shoulders of the apostate and placed it on his Jewish wife.

In partial agreement with these latter cases, as well as with the above principle cited by Rabenu Ḥanan'el, a responsum attributed to Rav Sherira Gaon stipulates that only a release is required:[70]

> [Regarding] what you asked in the case of an apostate man who died childless, leaving behind a wife requiring a levir, whereupon she went to her levir so that he may release her, yet he was in a different city. She went to him so he may release her but could not find him and [therefore] returned to her place until God availed to her his other brother and he was asked by the elders that he give her a *ḥalitsa* . . . The principle of the law in this case is that the wife of an apostate does not perform levirate marriage, but only gets a *ḥalitsa*, since God said [that the levir] establishes a name for his brother in Israel, and yet this one is not his brother and is not from Israel.

While the gaon insisted that the apostasy of the husband does not invalidate the bonds of matrimony, thus reiterating the idea found in the eleventh-century *Sefer ha-miktsoʿot*, he nonetheless rules that the release

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name may not be blotted out in Israel' it is argued that the apostate's name is already blotted out and deserves to remain so . . . clearly, no talmudic precedent could be marshaled by the ge'onim for their ruling."

68. On the dating of *Sefer ha-maʿaśim* and its provenance, see Hillel I. Newman, *The Maʿaśim of the People of the Land of Israel: Halakhah and History in Byzantine Palestine* (Hebrew; Jerusalem, 2011), chaps. 1–3.

69. Ibid., 154–56, no. 25.

70. Cf. Lewin, *Otsar*, Yevamot, 83, no. 6; the question is likely to have been addressed to a Spanish gaon.

of the widow is the only course of action;[71] like Rav Yehudai, he is of the opinion that the act of apostasy nullifies brotherhood and thus that levirate marriage can no longer be affected. According to Rav Sherira Gaon, the act of apostasy is strong enough to break kinship ties but not strong enough to render matrimonial vows invalid. The Jewish woman remains tied to her apostate husband as long as she is not untied by the levir. Again, the social context can only be inferred from the legal reasoning: there is no way to ascertain whether the Jewish woman and her apostate husband continued to live together after his apostasy, yet the insistence on the validity of their matrimonial bond signals the dire consequences the Jewish widow would face should her apostate husband not divorce her in his lifetime—a warning that apostate-Jewish couples would likely have heeded.[72]

The question of Jewish-apostate matrimonial bonds arises also in cases involving property left behind by a deceased spouse. A responsum attributed to gaon of Sura, Rav Natronai bar Hilai (fl. 853–61), speaks of "a man's wife who apostatized and died."[73] The question section notes explicitly that the woman was bound to her husband at the time of her apostasy and at the time of her death, upon which it was asked whether the husband may claim "her marriage contract and everything he gave her?" The gaon ruled against the husband's right over his wife's property, indicating that "since she has apostatized she made herself a forbidden object and [the husband] is prohibited from having sexual relations with her . . . [moreover,] since she has apostatized she is no longer 'his nearest kin' and he may not inherit her." Thus, according to the gaon, once the woman apostatized, she had de facto annulled her matrimonial bonds and could therefore no longer inherit her from husband or bequeath him an inheritance.[74] In contrast to previous examples, the present line of reasoning is that the act of apostasy does affect the halakhic state of Jewish matrimonial bonds; the couple might still have been married but the apostate woman had become a "forbidden object" to her husband. Once more, the warning is issued: apostasy places the Jewish spouse in an underpriv-

71. Ibid., 35, no. 80.

72. Cf. Michael S. Berger, "Two Models of Medieval Jewish Marriage: A Preliminary Study," in *Marriage, Sex, and Family in Judaism*, ed. M. J. Broyde and M. Ausubel (Lanham, Md., 2005), 126: "Whatever the concerns—apostasy, promiscuity, or the validity of coerced divorce—letting her (the Jewish woman of an apostate) remain a Jewish 'married woman' even as she lived apart from her husband with no serious prospect of reconciliation made little sense."

73. Lewin, *Otsar*, Ketubot, 356, no. 790.

74. Blidstein, "nashim shevuyot," 56.

ileged position, denying him procreation, sexual intercourse, and the inheritance of his wife. Yet from a social perspective, as in the former examples, we find a clear indication of a couple that remained together despite the choice of one of the partners to convert out of Judaism.

In contrast, however, a responsum attributed to gaon of Sura, Rav Tsemaḥ Gaon (fl. 886–79),[75] articulates the principle according to which the husband inherits his deceased apostate wife.[76] Part of the argumentation in support of this position deserves our attention. The gaon concedes that the husband's right of inheritance is not related to her burial: "And although the rabbis enacted [the principle] that her marriage contract is in exchange for her burial, that is, he who buries a woman inherits her marriage contract, that one (the apostate woman) forfeited the right to a Jewish burial." According to the gaon, since the apostate woman has excluded herself from the Jewish fold and is consequently denied a Jewish burial, her husband cannot assume the role of burying her and thus, on the face of it, cannot demand her dowry. The gaon acknowledges that there are certain matters for the sake of which the husband may defile himself and others for which he may not (bYev 22b). Thus in the case of a *kohen* who married

> a divorced women or one for whom a *ḥalitsa* had been performed . . . although the *kohen* transgressed and married an improper woman he does not bury her and does not defile himself, all the more so, in the case of an apostate woman, who was taken as wife in a fitting manner and she herself had gone out of the community and forfeited the right to be buried among Israel. We do not mourn for her, as has been taught "We do not occupy ourselves with those who separated themselves from the community in any respect. Their brothers and relatives clothe themselves in white and eat and drink and rejoice because an enemy of the all-present perished; as it is stated, *Do not I hate them* (Ps 139.21), etc."[77]

The gaon's reasoning allows us to assume that while the apostate woman was alive, she and her husband lived together. This arguably receives further support in the first part of the ruling in favor of the husband's right of inheritance: "But as far as her inheritance is concerned, a husband inherits her and no one can take anything away from him." This is

75. For identification of the gaon, see ibid., 57.

76. Lewin, *Otsar*, Kidushin, 36, no. 90.

77. Minor Tractates, *Semaḥot*, chap. 2, rule 10; English translation from A. Cohen, ed., *The Minor Tractates* (London, 1965), 1:333.

not because of the husband's legal precedence but because the same principle that governs the property of non-Jews is applied to the property of the apostate woman: "'The property of a heathen is on the same footing as desert land; whoever first occupies it acquires ownership' (bBB 54b). And immediately, when the apostate dies, her husband takes possession of her property and no one can take away anything from him."[78] Indeed, Tsemaḥ Gaon would concur with Natronai Gaon—according to both geonim, by separating herself from the Jewish fold the apostate woman forfeited her legal standing as a Jewish spouse. Yet while this was seen as sufficient cause to disinherit her husband in Natronai's view, it was not to interfere with the husband's inheritance according to Tsemaḥ. Both cases suggest the endurance of matrimony following apostasy, while at the same time displaying a legal inclination to breakup matrimonial commitments. Yet it is only Natronai's position that offers a legal mechanism through which similar matrimonial arrangements could be discouraged.

CONCLUSION

The individuals whose life stories run through this essay are all anonymous. We know nearly nothing about their professional, economic, or intellectual background; where they lived, who their friends and enemies were; the extent of their ties to communal affairs and institutions; or how they perceived their Jewishness. Moreover, the legal deliberations in which they figure are typically bereft of any information about the broader circumstances of their lives. Indeed, shortcomings of this sort are bound to discourage historians of social and religious phenomena. Yet it has been the premise of my discussion that legal sources can and should be treated as either reflections of real-life situations or reactions to them. Sociologically speaking, what appears to cut across the collection of gaonic responsa considered here is a challenge to the Jewish family following religious conversion. Many of these responsa suggest a variety of instances in which couples remained married despite the conversion of one of the spouses, male or female, and in few of them apostate fathers retained their parental duties toward their offspring.

Indeed, the endurance of family ties in the context of conversion out of Judaism can be detected on two intertwined levels—formal and informal. The formal level consists of the positions articulated by the geonim. These not only reflect a broad spectrum of opinions on the question of

78. See also Lewin, *Otṿar*, Kidushin, 35, no. 89; according to gaon of Sura, Rav ʿAmram Gaon (fl. 853–71), "Since she has left the laws of Israel and entered the laws of non-Jews . . . whoever lays his hands on the property first acquires it."

when apostasy implied a radical break with the Jewish fold and when it did not. Rather, and perhaps more importantly, they reflect gaonic social considerations as the geonim wrestled with burning matters such as apostasy on the one hand, and safeguarding Jewish well-being on the other.

What appear on the face of it to be internal contradictions in gaonic opinions have been partially resolved through a distinction between matters pertaining to the personal status of the apostate and those pertaining to his spiritual commitments.[79] Indeed, the most fundamental principle underlying the medieval treatment of returning apostates is the idea that a Jew can never truly be excluded from Judaism.[80] At the same time, gaonic considerations may also have included curbing apostasy, preventing the transfer of Jewish property to non-Jewish possession, enabling the untying of deserted or widowed Jewish women, facilitating the future integration of descendants of apostates in the Jewish fold, and perhaps also coming into terms with non-Jewish perceptions of apostasy. It is in this context, for example, that we should understand the motivation behind gaonic responsa that unbound chained women whose husbands apostatized, as these could have served to induce matrimonial breakups following the husband's apostasy. And it is in this context of legal deliberations that we should approach what has been termed throughout this discussion as the social perspective. Accordingly, gaonic responsa not only suggest instances in which the ties of wedlock remained intact or at least continued to a certain extent; they also provide us with an illustrative sketch of the matrix of family ties between Jews and apostate.

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79. Blidstein, "Who Is Not a Jew?" 382. The point is best exemplified in Saʿadya Gaon's explanation as to why the son of an apostate and a married Jewish woman is considered a bastard in Lewin, *Otsar*, Yevamot, 196, no. 474:

> The rules pertaining to an apostate are of two respects and should be assessed in two ways: the first respect has to do with such religious duties as blessing, calling up and nullifying a place (*reshut*), and its assessment is by checking whether [the apostate] keeps the Sabbath or violates it . . . The second respect has to do with such religious duties . . . [of which] [i]ts assessment is by checking if [the apostate's] conception and birth was in sanctity, his betrothal is [a proper] betrothal, his divorce is [a proper] divorce, and his untying of a widow is [a proper] untying . . . In matters pertaining to religious duties, act according to the question of observing the Sabbath; in matters of dissolute relations, act according to the question of conception and birth.

80. The principle, attested in bSan 44a, was famously developed by Rashi; Solomon ben Isaac, *Responsa Rashi*, ed. I. Elfenbein, (New York, 1943), 196–97, no. 175; see Jacob Katz, "'Though He Sinned, He Remains and Israelite'" (Hebrew), *Tarbiz* 27 (1958): 203–17; Blidstein, "Who Is Not a Jew?" 374.