CHAPTER TWELVE

EQUALITY OF BIRTH OF HUSBAND AND WIFE
(KAFĀ'AH), AN EARLY ARAB PRINCIPLE

N. J. Coulson, *A history of Islamic law* (Edinburgh University Press, 1964), p. 49 states: "Class consciousness in Kufa, stemming from the variegated nature of its society, where Arab and non-Arab Muslims were in intimate contact, and from the tradition of social stratification in the Sasanian Persian empire, produced the doctrine of marriage equality (kafā'ah). This doctrine, which required the husband to be the equal of his wife (or her family) in various specified respects, including lineage, financial standing and profession, had no parallel in early Medinan law and is not mentioned at all in Mālik's *Muwaṭṭa*. Class distinctions were not so keenly felt in the closely knit family of Medina." This statement by Coulson (see *ibid.*, p. 228) reflects the theory put forth by Farhat J. Ziadeh in his article "Equality (kafā'ah) in the Muslim law of marriage", published in the *American Journal of Comparative Law*, VI (1957), p. 503-517.

To clarify Ziadeh's theory as fully as possible, we quote some significant statements by him in extenso. After declaring (l.c., p. 505) "that Mālik had nothing to say about kafā'ah in al-Muwaṭṭa... [and] is even reported to have expressly authorized the marriage of non-Arab men to Arab women...", he continues (p. 506 at the bottom) as follows: "It would seem, therefore, that Mālik's denial of the social distinction upon which kafā'ah is built is due to the fact that his milieu of Medina and Ḥijāz had not developed such distinctions, while that of Abū Ḥanīfah in Kūfah and Iraq, which was more cosmopolitan and socially complex, had. The admixture of ethnic groups, the long tradition of urbanization, the existence side by side of Arab and "client" (mawlā, pl. mawālī—new converts to Islam), the resulting social differentiation—all these factors were highly conducive to the development of kafā'ah in Iraq. This country, further, was heir to the class distinctions of the Sasanid empire, and these distinctions seem to have persisted despite the theoretical leveling process of Islam. The inescapable conclusion, therefore, is that kafā'ah developed in Kufah in a milieu..."
which recognized social distinctions, and that the doctrine spread
to other localities and was adopted by other schools at a later date.
This conclusion—as far as it goes—supports Goldziher and Schacht
in their assertion that Muhammadan jurisprudence originated in
Iraq. . . .” Ziadeh closes his examination of “The origin of kafā‘ah”
by the statement (l.c., p. 508): “We have seen that there is very
little in the Arab background, but much in the Persian background
to constitute an origin for the doctrine of kafā‘ah.”

To every one familiar to some degree with early Arab life, in
which noble descent and heroic achievement play such an extra­
ordinary rôle, it must, from the outset, seem rather strange to
derive a principle like kafā‘ah “(marriage) equality” from a foreign
civilization.

Of course, Ziadeh pays attention not only to the possible existence
of kafā‘ah in ancient Arab society, but raises also the question
whether such a principle—if one were inclined to assume that its
origin is Arab, not foreign—would be compatible with the spirit
of Islam (p. 508, under the heading: “Islamic religion and kafā‘ah”):
“. . . But what is the position of Islam as a religion and as a system
of ethics vis-à-vis this doctrine [namely: the doctrine of kafā‘ah]?
. . . there can be no doubt there is a preponderance of evidence to
show that it is contrary to the spirit of Islam. . . .”

With respect to the attitude of Islam to the social equality or
non-equality of tribes and clans—social distinctions on which
kafā‘ah in the sense of “marriage equality” as a genuine Arab
principle would necessarily be based—we quote the following state­
ment by Wellhausen in his study “Die Ehe bei den Arabern” (Nach­
richten der Göttinger Gesellschaft der Wissenschaften, 1893, p. 439)
“Granted, there is no strict scale of the tribes and clans; it varies
and changes; the public opinion on this point—at a given moment
in time—is, however, rather solidly established. Islam is in this
respect, as in many others, heir of paganism. In principle, it does
not tolerate differences of blood, in fact, however, it does re­
cognize them”.

Among the instances which Ziadeh considers as testifying to the
non-existence of the principle of kafā‘ah “marriage-equality” in
eyearly Islamic practice, is the following (p. 508): “When Bilāl, the

1 Wellhausen’s point of view, clearly expressed in this quotation, is
essentially the same as the one set forth subsequently by Goldziher in his
Muhammedanische Studien, I, p. 130ff.