“A Bequest May Not Exceed One-Third”:
An Isnād-cum-Matn Analysis and Beyond

Pavel Pavlovitch and David S. Powers*

[T]he open-ended concept of hiǧra is one of the rare Islamic notions of which we can unequivocally say that they take us back to the beginnings.

PATRICIA CRONE, “The First-Century Concept of Hiǧra.”

Introduction

The Qurʾān contains two sets of verses that treat the subject of inheritance, one dealing with bequests, the other with inheritance shares.

The first set of verses (“the bequest verses”) indicates that a person contemplating death enjoyed considerable freedom to determine how his property would be distributed after his death. The Qurʾān commands believers to leave a bequest (waṣiyya) for parents and close relatives (Q 2.180), and advises a man contemplating death that he may leave a bequest of up to one year’s maintenance for a widow, with the understanding that she will remain in his home during that period (Q 2.240). The Qurʾān also instructs believers to draw up a bequest in the presence of two trustworthy witnesses (Q 5.106–107), and it warns them not to alter a bequest after it has been duly attested (Q 2.181). In the event of a disagreement, the opposing parties are encouraged to reconcile their differences (Q 2.182).

The second set of verses (“the inheritance verses”) affirms the inheritance rights of both men and women (Q 4.8) and specifies the exact fractional shares to be awarded to a surviving daughter(s), parent(s), sibling(s), and/or spouse (Q 4.11–12 and 176).

One might argue that the bequest verses and the inheritance verses represent alternative regimes, i.e., one set of rules in the event that a person leaves a last will and testament and the other in the event that s/he does not. There is

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little or no evidence in the Islamic sources, however, to suggest that these two sets of verses were ever viewed in this manner. Instead, these two sets of verses were combined into a single regime that seeks to strike a balance between testamentary freedom in the form of bequests, on the one hand, and compulsory rules for the division of wealth in the form of fractional shares of inheritance, on the other.

Islamic tradition teaches that the relationship between the bequest verses and the inheritance verses was defined by the Prophet Muḥammad himself. First, the Prophet is said to have issued an instruction according to which “a bequest may not exceed one-third of the estate.” This instruction was understood as meaning that a person contemplating death may dispose of no more than one-third of his/her wealth in the form of a bequest. By setting the upper limit of a bequest at one-third, the Prophet insured that a minimum of two-thirds of any estate would be divided up in accordance with the fractional shares specified in the inheritance verses. Second, the Prophet is reported to have said, “No bequest to an heir.” This instruction was understood as meaning that no heir, that is to say, no person who receives a fractional share of the estate according to the inheritance verses, may receive a bequest in addition to that share. Indeed, Muslim jurists teach that the prophetic dictum “no bequest to an heir” serves as an indicator that two of the bequest verses – Q 2.180 and 2.240 – were abrogated. In this manner, the bequest verses and the inheritance verses were fused together to create a single, comprehensive inheritance regime that came to be known as the ʿilm al-farāʾiḍ or “science of the shares.”

We are concerned here with the first of the two sunnaic pillars upon which the science of the shares rests: “a bequest may not exceed one-third of the estate.” Over the past 80 years, at least seven scholars have attempted to either confirm or disprove the validity of the attribution of this dictum to the Prophet. These seven scholars may be placed into three groups: (1) N. J. Coulson and D. S. Powers have both argued – albeit for different reasons – that it was the Prophet himself who set the limit on bequests at one-third; (2) I. Zaman highlighted the role played by al-Zuhārī as an early transmitter of traditions about the one-third restriction – albeit for different reasons – that it was the Prophet himself who set the limit on bequests at one-third; (2) I. Zaman highlighted the role played by al-Zuhārī as an early transmitter of traditions about the one-third restriction – albeit without ruling out the possibility of authenticity;