THE ISLAMIC INHERITANCE SYSTEM

The ‘ilm al-farāʾiḍ or “science of the shares” appears, at first glance, to be an unpromising, indeed, a forbidding, subject for the investigation of Islamic law and society. Justly renowned for its mathematical complexity, the science of the shares in some cases requires the use of algebraic equations in order to reach the proper solution to the division of an estate. Until recently, Western scholars have tended to focus their attention on the mathematical complexities of the science of the shares and to hold it accountable for certain reputed shortcomings of Muslim societies across time and space. Recent scholarship, however, has argued that Islamic inheritance law is itself only a part of a much larger Islamic inheritance system that makes it possible for Muslim proprietors to accomplish many objectives and desires that appear to be thwarted by the ‘ilm al-farāʾiḍ. With careful attention to this larger system, the current generation of scholars examines the manner in which it functions in the context of the Muslim family (with attention to issues relating to power, gender, and modes of production), Islamization, and the State.

The ‘ilm al-farāʾiḍ emerged, fully formed, by the end of the first century A.H., produced by Muslim scholars who applied their hermeneutical skills to several Qurʾānic verses and prophetic hadith. There was nothing inevitable, however, about the shape taken by the ‘ilm al-farāʾiḍ. Indeed, Islamic sources indicate that the early community’s understanding of the Qurʾānic inheritance verses (Q. 4:11, 12, and 176) and the bequest verses (Q. 2:180-82 and 240) was the subject of controversy during the lifetime of Muḥammad and in the years immediately following his death. In my Studies in Qurʾān and Ḥadīth (Berkeley, 1986), I drew attention to a series of prophetic and companion hadiths that point to confusion regarding the reading (qirāʾa) of Q. 4:12b and the meaning of the mysterious word, kalāla, which appears once in 4:12b and again in 4:176. Drawing on historical, linguistic, and lexicographic arguments, I proposed an alternative reading of three words in 4:12b and a new interpretation of the meaning of kalāla. Based upon this understanding of the verse, I worked backwards from the traditional Sunni understanding of the ‘ilm al-farāʾiḍ to what I regard as an earlier stage in the development of this law, what I call “the proto-Islamic law of inheritance,” in which there was a complete separation.

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between testate succession and intestacy. I argued that the proto-Islamic law of inheritance was a complete system that was designed to replace, rather than supplement, the tribal customary law of pre-Islamic Arabia, and that the transition from proto-Islamic to Islamic law was set in motion by a confluence of historical factors, including sectarian strife relating to the issue of succession to Muḥammad. By exposing the ʿilm al-farāʾid as an historical construction, I sought to demonstrate why it was necessary for Muslim jurists in the second century A.H. to develop the larger Islamic inheritance system.

In his “The Qur’anic Law of Inheritance”, Richard Kimber takes as his starting point the equivocality of the Qur’ānic inheritance verses. Distancing himself from my proposed explanation of the original meaning of Q. 4:12b, Kimber advances his own interpretation of the syntax and meaning of that verse which serves as the basis for the reconstruction of what he calls “the Qur’ānic inheritance system”. He too regards Qur’ānic inheritance law as a complete system, but he sees it as a reform of Jewish inheritance law rather than of Arabian customary law. He also argues that Shīʿī inheritance law is closer to the original Qur’ānic system than Sunnī inheritance law is. For Kimber, the bequest verses and inheritance verses, as originally understood, were not manifestations of two separate processes (testate succession and intestacy), but a means and end to the same process, the disposal of an estate by last will and testament in accordance with the will of God. In the bequest verses, the testator is reminded in general terms of God’s requirements; in the inheritance verses, these requirements are laid down in detail. The shift in emphasis from personal obligation to divine prescription proved so successful that it became practically unnecessary for Muslims to leave a last will and testament. Linguistically sophisticated, subtle, and ingenious, Kimber’s analysis leaves us with four different understandings of the system within which the Qur’ānic inheritance and bequest verses were originally imbedded: that of the Sunnis, the Shiʿīs, Powers, and Kimber. Which understanding makes better sense of the evidence? Which is closer to the understanding of the Muslim community at the time of Muḥammad? It is to be hoped that scholars will turn their attention to these questions.

Readers of this journal will be familiar with the work of Hiroyuki Yanagihashi, whose articles have appeared in volumes 1:1 and 3:1. In his “The Doctrinal Development of ‘Marād al-Mawt’ in the Formative Period of Islamic Law”, Yanagihashi contributes to our understanding of the historical development of Islamic law, showing how different