Muslim jurisprudence portrays Islamic law as a manifestation of the revealed word of God: the shari'a is a divinely ordained system that controls but is not controlled by Muslim society; law does not evolve as a historical phenomenon closely linked with the evolution of society, and legal history, in the Western sense, does not exist. This view has been challenged in the twentieth century by Western scholars who have sought to demonstrate that the classical theory of Islamic law was the product of a complex historical process spanning a period of three centuries and, further, that the early growth of Islamic law was closely linked to contemporary social, political and economic developments.¹ In the field of inheritance, no scholar has done more to promote a socio-historical understanding of the law than Noel J. Coulson. Although Coulson never articulated a unified, comprehensive explanation of the historical evolution of Islamic inheritance law from pre-Islamic to modern times, one does find the elements of such an explanation scattered throughout his numerous writings.² Coulson's explanation of the historical evolution of Islamic inheritance law may be summarised as follows:

The Qur'anic legislation and the Islamic law of inheritance (in Arabic, the 'ilm al-fara'id or "science of the shares") are best viewed against the background of the tribal customary law of pre-Islamic Arabia, that is, the customary inheritance practices of the nomadic Arabs living in the Hijaz prior to the rise of Islam. This tribal society was patrilineal in its structure and patriarchal in its ethos; individual tribes were formed of adult males who traced their descent from a common ancestor through exclusively male links. The tribe was bound by the body of unwritten rules that had evolved as a manifestation of its spirit and character. These rules served to consolidate the tribe's military strength and to preserve its patrimony by limiting inheritance rights to the

¹ The pioneer in this regard was Joseph Schacht. See his The Origins of Muhammadan Jurisprudence, Oxford, 1950.
male agnate relatives (‘asaba) of the deceased, arranged in a hierarchical order, with sons and their descendants being first in order of priority.\(^3\)

During the century prior to the rise of Islam, the social structure of the Hijaz was undergoing a radical transformation, especially in Mecca and Medina, where the nuclear family was replacing the tribe as the basic unit of society. In response to these changes, the Qur’an introduced novel inheritance rules that emphasized the tie existing between a husband and his wife and between parents and children; these rules also had the particular goal of raising the legal status of women within the nuclear family. Thus, the Qur’anic inheritance legislation came to reform the tribal customary law of pre-Islamic Arabia.\(^4\) In Coulson’s words, the Qur’an “modified the existing customary law by adding thereto as supernumerary heirs a number of relatives who would normally have had no rights of succession under the customary law”.\(^5\) These reforms served to strengthen the status of members of the nuclear family.

The Qur’anic reforms were shortlived. Following Muhammad’s death, Muslim jurists fused together the pre-Islamic tribal customary law and the Qur’anic inheritance. The latter imposes compulsory rules for the division of a minimum of two-thirds of every estate; bequests may not normally exceed one-third of the estate and may not be made in favour of any person who stands to inherit a share. Since the bulk of the estate was often preserved for the closest surviving male agnate, Coulson concluded that the tribal component within the Islamic law of inheritance had prevailed over the Qur’anic, nuclear family component. In his view, the Islamic law of inheritance gives superior rights to the male agnate relatives and therefore “caters for a tribal system of society”.\(^6\) Thus, by the end of the first century A.H., the agnatic, extended family had reasserted its dominance over the nuclear family. It was the extended family that would characterise the social structure of Muslim society for the next thousand years.\(^7\)

According to the classical view, once the Islamic law of inheritance had been created, there could be no question of any further reforms or modifications. The law of inheritance reigned supreme for over a millennium, from the ninth to the nineteenth century A.D.; the devolution of property in pre-modern Muslim societies was largely determined by

---

\(^3\) Coulson, *History*, pp. 9-10, 15-16; *Conflicts*, p. 10; *Succession*, p. 29.

\(^4\) Coulson, *History*, pp. 16, 23; *Succession*, p. 29.

\(^5\) Coulson, *Succession*, p. 33.

\(^6\) Coulson, *History*, p. 220; *Conflicts*, p. 97.

\(^7\) Coulson, *History*, p. 220; *Conflicts*, pp. 37, 97; *Succession*, pp. 135-136. Coulson acknowledged that in many areas of the Muslim world (e.g. Kabylie Algeria, Sumatra, Western Nigeria, India, and Java), Muslims do not adhere to the Islamic law of inheritance. He viewed this phenomenon as the triumph of local customary law over the shari’a and explained the anomaly by drawing a distinction between Arab and non-Arab Muslim societies. Islamic inheritance law, he explained, was “largely in accord with the innate temper of Arab society”. For non-Arab Muslims, however, the reception of Islamic inheritance law “posed serious problems, for its basic concepts were alien to the traditional structure of their societies.” See Coulson, *History*, pp. 135-137.