INHERITANCE II. ISLAMIC PERIOD
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In the pre-Islamic period, the Arab family was socially and politically composed of males (*ʿaṣaba*), namely those who were able to fight and defend the common property. At the *pater familias*'s death, the familial estate was transmitted only to males, *pro indiviso*, according to the principle of proximity: firstly to those on direct line (descendants and ascendants), then to those on the collateral line (full or consanguine brothers and their sons, paternal uncles and their sons, etc.). This structure reflected the strong unity of the familial group conceived as an association able to defend and offend (*le'l-tawāzor wa'l-tanāṣor*), thus, implying the social alienation of women, children, and all those persons unable to contribute to the common defence effectively (Santillana, II, pp. 495-96; Tyabji, p. 820).

An Arab family was composed of, in addition to relatives, clients, that is, slaves set free through a manumission, and confederates, that is, persons who had become members of a family through an alliance. They were considered on the same footing as the agnates, meaning that they shared rights to booty, patronage, *dia* (wergild or "blood money"), and succession. Successively Islam abrogated alliances, although keeping in force those stipulated in the previous

period. A remnant of this institution is in Qurʾan 8:72-75, where an agreement was established among *Anṣār* and *Mohājerun*, creating a brotherhood with a reciprocal right to inherit with the exclusion of the relatives (*ḏawu'l-arḥām*). Because of a strong resistance of the old family structure, however, this verse was abrogated by 4:33 (according to some scholars) or by 33:6 (according to others). Moreover, the Islamic Revelation introduced in the division of the estate a higher sense of justice, admitting to the inheritance also the closest women, that is, daughter, wife, sister, and mother, generally giving them a half share of a male. Then verse 4:7 stated that to males as well as to females a fixed share (*farż*) shall be allotted; for this, they are named heirs by quota (*ahl al-farż* or *ahl al-farāʾeż*). Since inheritance is mainly regulated by the Qurʾan, it is considered an essential part of Islamic studies. In fact, according to a Hadith, science (*al-ʿelm*) is composed of three parts: the Qurʾan, the Sunna, and inheritance.

The basic principle governing the inheritance law of Islam is that it is considered as founded on the will of God, who directly imparted such rules. From this premise the other principles derive. One of these is that the acceptance of the share by the heir is not required. Moreover, both renunciation and transmission of this right to a third person are not admitted. Further, the heir cannot lose his right because of the will of his deceased relative (disinheritance is unknown in Islam) or because of the passing of time. Lastly, there is no confusion of the personal property of an heir with the property of his deceased relative. For this, the heir does not respond *ultra vires hereditatis*, that is, he is responsible for the debts left by his relative only within the limit of the goods he received as his share.

The succession is considered open at the moment of the relative's death. The estate allotted to the heirs is comprised of the goods left by a deceased person, less, firstly, determined goods that third persons can claim, sec-ondly, equitable funerary expenses, then debts, lastly bequests amounting to a maximum of one-third of what remains after the previous operations. The remainder constitutes the amount or the assets due to the heirs, on which shares are calculated. If nothing remains, nothing is due to them. Moreover, in the case when the estate is not sufficient to cover debts or any other expense incumbent on the deceased relative, the heirs are not obliged to pay them using their own property (Cilardo, 1994, pp. 31-37, 41-45; Santillana, II, pp. 496-99).

The system by quota introduced by the Qurʾan constituted a sort of transition

from the ancient pre-Islamic to the new order aiming to conciliate the rights of the weakest members of the society with those deriving from the principle of agnation. According to the new rules, the only heirs who can never be excluded from the inheritance are parents, sons, daughters, and spouses. Moreover, among the heirs, only the spouses can inherit in the presence of parents and children. Nevertheless, the Qurʾanic rules do not treat systematically this matter. The formation of a system was due to the jurists, mainly on the basis of their interpretation of the Qurʾan and the practice or Sunna of the Prophet. Subsequently, deep divergences arose among different schools and within a single school. At last, two different inheritance systems emerged: on the one hand the Sunnite (Hanafite, Malikite, Shafiʿite, and Hanbalite), Zaidi, Zahiri, and Ibadi systems, on the other the Imami and Ismaʿili systems (see, e.g., Baillie, Coulson, Durant, Fyzee, Minhas, Tyabji).

SUNNITE, ZAIDI, ZAHERI, AND IBADI INHERITANCE LAW

Titles *(asbāb)* giving right to inherit are relationship (*nasab*, *raḥem*, *qarāba),* marriage (*nekāḥ*), and patronage (*walāʾ*). If a person has more than one title, he is entitled to inherit, based on all of them. Persons entitled to succeed are firstly the heirs by quota, determined by the Qurʾan, the Sunna, and the *ejmāʿ* (consensus), namely spouses, parents, grandfathers, grandmothers, daughters, son's daughters, full, consanguine, and uterine brethren. Secondly, there are three categories of agnates: agnates in a proper sense (*ʿaṣaba be-nafsehi*), that is, males related to a deceased person only through males; and patrons are included in this category. Next follow agnates because of another heir (*ʿaṣaba be-ḡayrehi*), that is, females who are considered agnates because of the presence of a male of their degree (daughters and sons; full or consanguine sisters and full or consanguine brothers). Lastly to be considered are agnates in the presence of another heir (*ʿaṣaba maʿa ḡayrehi*), that is, full or consanguine sisters who are considered agnates because of the presence of direct daughters or son's daughters. For Hanafites, Hanbalites, Zaidis, and Ibadis, those relatives (*ḏawu'l-arḥām*) who are neither heirs by quota nor agnates form a third category of heirs. On the contrary, for Malikites, Shafiʿites, and Zahiris the last category of relatives does not inherit, but the estate shall be given to the Public Treasury (*Bayt al-māl*) in the absence of the first two categories (Cilardo, 1994, pp. 37-41).

Difference of religion, slavery, and homicide are impediments to inheritance. The heir excluded from the inheritance because of such an impediment is considered a dead person. Thus, he neither is an heir nor causes the exclusion

of other heirs from inheritance. According to a Hadith, a Muslim does not inherit from a non-Muslim, and a non-Muslim does not inherit from a Muslim. While most jurists believe that such an impediment is diriment, Ebn Ḥanbal states that this rule admits an exception when a Muslim sets free a non-Muslim, or vice versa, because the title giving right to the inheritance in this case is the patronage (*walāʾ*), not the relationship. As for the relation among non-Muslims of different denominations, according to the Malikites, Šāfeʿi and his school (although later his school changed this doctrine), Hanbalites, Zahiris, and Ibadis, they are not considered belonging to a unique denomination; thus they do not inherit from each other. On the contrary, according to Hanafites and Shafiʿites, Islam is a denomination (*mella*), and disbelief in Islam is another denomination; thus, non-Muslims have the right to inherit from each other. A non-Muslim converted to Islam before the death of his relative is admitted to inherit. Only the Hanbalite school (but not Ebn Ḥanbal himself) considers relevant the moment of the division of the estate in order to admit a converted person to the succession (Cilardo, 1994, pp. 81-115, 136-38; Santillana, II, pp. 503-4).

A willful murder is unanimously considered a diriment impediment. On the contrary, as for manslaughter, Hanafites, Shafiʿites, Hanbalites, and Ibadites believe that it is compared to a premeditated homicide, while Malikites and Zahiris make a distinction between the two. In fact, in this case they state that the murderer inherits the estate, but not the *dia* (wergild). All the schools believe that the dia is part of the estate, and as such it shall be divided according to usual hereditary rules, including both the uterine brothers/sisters and the spouses, too, contrary to the old agnatic rule allotting the dia to agnates only (Cilardo, 1994, pp. 115-22; Santillana, II, p. 503).

A slave does not possess, but he himself is possessed. However, if he is set free after the death of his relative, but before the division of the estate, he is considered a free person (Zahiris and Ibadis). Instead, most jurists (Malikis, Shafiʿis, Hanbalis) believe that freedom is required prior to the death of his relative (Cilardo, 1994, pp. 122-36).

According to the Qurʾan, the shares are six. The share of two-thirds is attributed to two or more daughters or, in their absence, to two or more son’s daughters (4:11); and to two or more full or consanguine sisters (4:176). One half is allotted to one daughter or, in her absence, to a son’s daughter (4:11); to the husband when a wife does not leave direct descendants; and to a full or consanguine sister (4:176). One-third is given to a paternal grandfather as his

minimum share when he is with the full or consanguine brothers (only for Malikites, Shafiʿites, and Hanbalites); to the mother when her deceased husband does not leave descendants and when there are two or more brothers and/or sisters (4:12); and to two or more uterine brothers and/or sisters (4:11). One-fourth is allotted to the husband when his deceased wife leaves descendants, and to the wife when her husband does not leave descendants (4:12). The share of one-sixth is attributed to the father when the deceased person leaves descendants or son's descendants; to the mother when the deceased person leaves descendants of son's descendants or two or more brothers and/or sisters; to one uterine brother or sister (4:11); to one or more son's daughters when there is a direct daughter; to one or more consanguine sisters when there is a full sister; to a grandfather in the presence of a son; and to one or more grandmothers. Lastly, one-eighth is attributed to one or more wives when her/their deceased husband leaves descendants (4:12). If the wives are two or more, they shall divide their share on equal footing (Cilardo, 1994, pp. 45-46; Santillana, II, pp. 506-11).

Partial exclusion (*ḥajb al-noqṣān*) occurs when an heir passes from a greater to a minor share, while the total exclusion (*ḥajb al-ḥermān*) takes place when an heir is completely excluded because of the presence of another heir (e.g., father totally excludes grandfathers; mother totally excludes grandmothers). The heirs totally excluded cause the partial exclusion of other heirs (e.g., brothers and sisters completely excluded by the father, but partially excluding the mother from the one-third to the one-sixth share) (Cilardo, 1994, pp. 75-80).

Sometimes shares allotted to the heirs do not cover the entire estate. In the case that there are neither agnates nor patrons, Ebn Ḥanbal and some Ibadi jurists believe that what remains shall be attributed to the heirs in proportion to their share (*radd*), except spouses, grandmother in the presence of any heir by quota, uterine brothers and/or sisters in the presence of the mother, son's daughters in the presence of direct daughters, consanguine sisters in the presence of full sisters. On the contrary, Abu Ḥanifa and his school, Abu'l-Qāsem Ḵeraqi and the subsequent Hanbalite jurists, the Zaidis and some Ibadi jurists, believe that the remainder shall be due to the heirs by quota, except spouses, on the basis of the interpretation of verse 8:75, which gives pre-eminence to the relationship (*raḥem*) over different titles. But in the absence of both, any other heir by quota, as well as relatives who are not heir by quota, spouses have a right to what remains as radd. Lastly, for Mālek and his school, Šāfeʿi (the most recent Shafiʿites admitted the radd), and the Zahiri school,

what remains shall be due to the *Bayt al-māl* (Cilardo, 1994, pp. 47-62).

Conversely, it occurs that in some cases the estate is not sufficient to cover all the shares. For the Zahiris, only the shares of sons, daughters, full and consanguine brothers and sisters are reduced. On the contrary, all the remaining law schools admit that the shares of all the heirs must be proportionally reduced (*ʿawl*) (Cilardo, 1994, pp. 62-75; Santillana, II, pp. 512-14).

The combination of the Qurʾanic system by quota and the pre-Islamic agnatic principle was differently accepted by the law schools, thus giving rise to divergences in particular cases.

(a) Parents. A father inherits either as heir by quota, or as agnate, or by both titles, while the mother inherits only as heir by quota; moreover, she is partially excluded, passing from a one-third to a one-sixth share in the presence of descendants or two or more brothers and/or sisters (interpreting the Qurʾanic plural *eḵwa* also as dual). However, these rules were adapted in two cases where the jurists give an advantage to the father to the detriment of the mother. The two cases are named *ʿomariyatāni* or *ḡarrawāni*, referring to parents and husband, parents and wife. Following the Qurʾanic rules, rigidly applied only by the Zahiri school, the mother ought to take a greater share than the father: one half to the husband, one-third to the mother, one-sixth to the father; three-twelfths to the wife, four-twelfths to the mother, and five-twelfths to the father. However, the remaining schools, paying respect to a Qurʾanic rule that has been derived from a different context, and attributing to a male the double share of a female, allot to the mother only one-third of what remains after the attribution of the shares to the husband or wife: three-sixths to the husband, one-sixth to the mother, two-sixths to the father; three-twelfths to the wife, three-twelfths to the mother, and six-twelfths to the father (Cilardo, 1994, pp. 195-214).

(b) *Mošarraka*, *moštaraka*, or *ḥemāriya*. This case concerns a husband, mother or grandmother, two or more uterine brothers and one or more full brothers. According to the usual rules, followed by Hanafites, Hanbalites, and Zaidis, the husband has a right to one half (3/6), the mother to one-sixth, and the uterine brothers to one-third (2/6). Nothing remains for the full brothers who inherit as agnates in this case. However, Malikites, Shafiʿites, and Ibadites, aiming to correct such great injustice, admit the full brothers to share the one-third of the uterine brothers on an equal footing, and giving an equal portion to males

as well as to females, only based on the consideration of their common maternal relation (Cilardo, 1994, pp. 219-23).

(c) Grandfather. The most controversial case in the Islamic law of inheritance concerns the case of the grandfather on the paternal line and full or consanguine brothers. While brothers are Qurʾanic heirs, the grandfather is not cited in the Qurʾan, even if he is surely a pre-eminent figure among the agnates; thus, his exclusion from the inheritance is unthinkable. To which of these two (agnatic or Qurʾanic) principles one has to give precedence? For Hanafites, Zahiris, and Ibadis, the agnatic position of the grandfather is prevalent. In fact, accepting a Prophetic saying (a grandfather is like a father when the father is not present) they state that a grandfather causes the total exclusion of brothers and/or sisters of any kind. On the contrary, Malikites, Shafiʿites, Hanbalites, and Zaidis balance the two principles: a grandfather excludes uterine brethren, but he inherits with full and/or consanguine brothers, granting a grandfather a minimum share if the brothers are many. Nevertheless, the amount of such share is determined by the different circumstances. The minimum share is one-third (Malikites, Shafiʿites, and Hanbalites) or one-sixth (Zaidis) if the heirs are only a grandfather and brothers or/and sisters. If heirs by quota are also present, they first take their shares; then the remainder shall be divided among the grandfather, brothers, and sisters, but the grandfather can choose the most favorable share for him: one-third of what remains or one-sixth of the whole estate, or sharing what remains with the brothers on an equal footing (Cilardo, 1994, pp. 265-323; idem, 1990b, Santillana, II, pp. 517-19).

(d) *Akadariya* (husband, grandfather, mother, one full or consanguine sister). The schools (Hanafites, Zahiris, Ibadis) that exclude brothers/sisters, because of the presence of the grandfather solve the case as usual: one half (3/6) to the husband, one-third (2/6) to the mother, and one-sixth to the grandfather. The solution would be the same also for Malikites, Shafiʿites, and Hanbalites, because they consider the grandfather as heir by quota in this case. But they aim to balance the pre-eminent agnatic position of the grandfather and the Qurʾanic position of the sister as heir by quota in the following manner: each heir takes his share: one half (3/6) to the husband, one-third (2/6) to the mother, one-sixth to the grandfather, one half (3/6) to the sister, for a total of nine-sixths. Then the shares are proportionally reduced: three-ninths to the husband, two-ninths to the mother, one-ninth to the grandfather, and three-ninths to the sister. Then, in order to avoid that a female could take a greater

share than a male, the shares of grandfather and sister are summed (1/9 + 3/9 = 4/9) and divided between them, giving a male a double share of a female. Thus, the final distribution of the estate is:

the husband inherits 9/27,

the mother inherits 6/27,

the grandfather inherits 8/27,

the sister inherits 4/27.

If there are two or more sisters, they are excluded from the inheritance (Cilardo, 1994, pp. 274-76).

(e) *Moʿādda* (grandfather, full brothers and/or sisters, and consanguine brothers and/or sisters). The schools (Hanafites, Zahiris, Ibadis) that exclude brothers and sisters, because of the presence of a grandfather, attribute the whole estate to the grandfather. On the contrary, Malikites, Shafiʿites, and Hanbalites balance once again the pre-Islamic agnatic rule and the Qurʾanic innovation but give an advantage to the full brethren by adopting the following rules: the number of consanguine brothers and/or sisters and full brothers and/or sisters is summed up in order to fix the minimum share of the grandfather, even if consanguine brothers/sisters are totally excluded in any case. This solution suffers an exception when there are one full sister, a grandfather, and consanguine brethren. In this case, consanguine brothers/sisters are not excluded in principle, but their number counts in order to fix the minimum share of the grandfather. After this operation, if a part of the estate remains, it shall be divided among the consanguine brothers and/or sisters, giving to a male a double share of a female. For instance, a grandfather takes one-third (2/6), a sister one-half (3/6), and the consanguine brethren share the remaining one-sixth (Cilardo, 1994, pp. 276-78).

The 20th century. Many Muslim countries have promulgated laws on intestate succession, among others the Egyptian Law of Intestate Succession (no. 77 of August 6, 1943) and the Law of Testamentary Dispositions (no. 71 of 24 June 1946); the Syrian Law of Personal Status (decree no. 59 of 17 September 1953, partly modified by the law no. 34 of 31 December 1975); the Tunisian Law of Personal Status (no. 56-66 of 13 August 1956); the Moroccan Code of Personal Status (1957-58, replaced by the new law, no. 03-70 of 3 February 2004); the Iraqi Law of Personal Status (1959); the Pakistan Muslim Family Laws

Ordinance (1961); the law no. 72-61 of 12 June 1972, in Senegal; the Algerian law (no. 84-11 of 9 June 1984); and the Kuwaiti law (no. 51, enacted on 7 July 1984), which seems quite a copy of the Syrian Code, with some variations, however.

Both traditional and modern features are to be found in the modern legislations on inheritance. The classical elaboration is not rejected, although some rules are no longer followed (e.g., the manumission of slaves). Moreover, by means of the methods called *talfiq*, *tarjiḥ*, and *taḵayyor*, in some cases the most favorable Islamic rules for the heirs are chosen among the Hanafite, Malikite, Sha-fiʿite, Hanbalite, Ibadi, and Zaidi doctrines; or innovations are introduced either based on a new, extended interpretation of the Islamic rules themselves (e.g., the case of the obligatory bequests), or derived from Western law systems (e.g., the right of representation).

In their titles one sometimes faces a terminology unknown to Islamic law, for instance the title "Family Law" (*Qānun al-osra*) of the Algerian law and "Code de la Famille" of the law of Senegal, while the most generally used expression is law of "Personal Status" (*al-aḥwāl al-šaḵsiya*), which, too, is not of Islamic origin, but it is resumed from Western language. Also for some specific cases an innovative terminology is used in the Syrian law and in the Kuwaiti Code, such as *al-jadd al-ʿaṣbi* or *al-jadd al-ʿāseb*, which are as correct as the words *al-jadd al-ṣaḥiḥ* (true grandfather), used in the Islamic sources; *al-jadd al-raḥemi* instead of *al-jadd al-fāsed* or *al-jadd ḡayr al-ṣaḥiḥ* (not true grandfather); *al-jadda al-ṯābeta* instead of *al-jadda al-ṣaḥiḥa* (true grandmother); *al-jaddāt ḡayr al-ṯābetāt* or *al-jadda ḡayr al-ṯābeta*, instead of *al-jadda al-fāseda* or *al-jadda ḡayr al-ṣahiáḥa* (not true grandmother). Lastly, there is *al-jāneb*, instead of *al-ḥayyez*.

These laws are effective only for Muslims. But, the "Code de la Famille" of Senegal (art. 571) states special provisions for non-Muslims who, during their lifetime, have expressly or by their behavior manifested their will to have their estate be divided following the rules of the Islamic law. However, a true innovation is introduced in the Egyptian law (no. 25 of 23 March 1944) and the Algerian law (art. 221), which make no further distinction between Muslim and non-Muslim citizens, since the law on succession is a national law. Furthermore, the Algerian law states that the provisions of this law are effective not only for all Algerian citizens, without any other distinction, but also for residents in Algeria (art. 221).

The most relevant reforms of the Islamic system of inheritance introduced into the modern legislation aim to prevent some situations of injustice: (1) The first issue concerns the right for a testator to enjoy a complete freedom to make legacies as he likes, whether to heirs or non-heirs, within the bequeathable third, and the bequests made in favor of an heir are no longer subject to the other heirs' consent. This innovation has been introduced in Egypt (1946, art. 37), Iraq, and in the Senegalese Code (art. 659).

(2) The second innovative topic regards the right given to the spouse relict to receive the residual estate of the deceased by radd, in the absence of any agnate, quota-sharer, or other relative. This concession in favor of the widow/widower is made in Egypt (1943, art. 30), Syria (art. 288), Algeria (art. 167), Kuwait (art. 318), and Senegal (art. 596.3).

(3) The third relevant subject regards the obligatory bequest and the right of representation, as a means to prevent the damage suffered by grandchildren by the demise of their parents before that of their grandparent. The device of the obligatory bequests in their favor consists on the duty of a grandparent to make a bequest in favor of any orphaned grandchildren. If he fails to make it, or had made them some smaller bequest or a gratuitous disposition in their favor *inter vivos*, and they would not be entitled to any share in his or her estate on intestacy, the court must act as though he had, or otherwise must make this up to the sum which their deceased parent would have received or the bequeathable third, whichever is less. The orphaned grandchildren have a right to what their predeceased father would have received had he lived, provided always that this does not exceed the bequeathable third. If, instead, the grandparent had made bequests in favor of others, then the obligatory bequests in favor of the grandchildren should take priority; and this entitlement should be divided between such grandchildren according to the principle of a double share to males.

The device of the obligatory bequests has been adopted in Syria (art. 257) and in Kuwait (art. 291.3); in both these countries this kind of bequest was confined to grandchildren through a predeceased son or son's son. By contrast, the Egyptian law (1946, art. 76) and the Tunisian law (art. 191) include in their scope the children of a predeceased daughter or of a predeceased son's daughter. Morocco adopted the first solution in the law of 1958 (art. 266), while passing to the second one in the law of 2004 (art. 369).

The question of the orphaned grandchildren excluded from inheritance on

intestacy by direct descendants has been radically solved in Algeria. In fact, the main innovation in the Algerian Family Law (arts. 169-72) is the introduction of the right of representation. The latter is a Western juridical doctrine completely unknown to the Islamic law of inheritance, since it fundamentally contradicts the Islamic agnatic rule, according to which the closest heir excludes the most distant. However, not all the implications of the principle of representation are accepted. The reason for this is the following: On the one hand, the amount due to the grandchildren must be the same as what their predeceased father would have received had he lived; on the other, according to the Islamic shariʿa (*šarīʿa*), the law makes this rule conditional by the imposition of the following: (a) that such amount must not be more than the bequeathable third (art. 170); (b) that grandchildren cannot represent their predeceased parents if they are already quota-sharers, or a bequest was made in their favor, or the deceased person, during his life-time, gave them, without return, an amount equivalent to what grandchildren can claim by this bequest; (c) however, if the bequest in their favor was less than the share to which they are entitled, they can claim the difference between the two (art. 171); (d) lastly, the well-known Qurʾanic provision to give a male a double share is in force (art. 172) (Anderson; Cilardo, 1999).

Rudimentary elements of the Imami inheritance system are to be found in the *Qorb al-esnād* of Abu'l-ʿAbbās Qomi (d. ca. 912) including three *Mosnad*s of the Imams Jaʿfar al-Ṣādeq (d. 765), Musā al-Kāẓem (d. 799), and ʿAli al-Reżā (d. 818; q.v.). The three works reflect an early phase in the Imami doctrine, although they mainly attribute their doctrine to Imam ʿAli. The system developed fully only in a later period with Abu Jaʿfar Kolayni (d. 939), Ebn Bābawayh (d. 991; q.v.), and, above all, Shaikh Moḥammad Ṭusi (d. 1067); each representing a different stage in the development of the Imami doctrine with some variations introduced later by Najm-al-Din Abu'l-Qāsem Ḥelli (d. 1277; q.v.). The Imami law system was formed from the 9th century onwards as a reaction to the Sunni interpretation of the Qurʾan and the Sunna of the Prophet. On the other hand, the Isma'ili system was elaborated by Qāżi Abu Ḥanifa Noʿmān (d. 974) in a relatively short period, but long enough to observe its development. The formation of Ismaʿili law was somewhat derivative, almost a re-examination, of Sunnite and Imami legal systems.

The heirs by kin are divided into three classes. This all-encompassing system avoids the fragmentary character of the Sunnite inheritance law. The firm ground of such a division rests exclusively on Qurʾanic verses, listed in the

following order from the historical point of their revelation: Verse 4:11 prescribes that the whole estate be given to descendants (*awlād*), fixing, however, the share due to one or more daughters and specifying that a male has right to a double portion as a female. Then parents and spouses are admitted to succession with descendants (4:11-12). Verse 4:12 fixes the share of uterine brethren; v. 4:176 deals with the full or consanguine brethren; and 8:75, concerning the *ulu'l-arḥām*, gives them precedence over confederates and patrons. Lastly, v. 4:7 abolishes the agnatic right, since also women have a right to "little or much." The non-abrogation of 8:75 leads, as a consequence, to the fact that there is no distinction among heirs by kin, as the remaining law schools maintain (heirs by quota, agnates, and *dawu'l-arḥām*), but relatives must be considered as a whole: cognates and agnates are placed on an equal footing; the only element to be considered is their blood relation both on the paternal and maternal side, and their proximity to a deceased relative (Cilardo, 2000, pp. 127-28).

The first class is composed of two groups (parents; children, however low). Descendants inherit according to their degree; the nearest bars the more remote. The real question involved here is the meaning of *awlād*. While Sunnites interpret the term in different ways in different Qurʾanic verses, Shiʿites give it always the same meaning, which is closer to the Arabic language and the letter of the Qurʾan, namely, male and female direct descendants; consistently, *awlād al-awlād* also include male and female descendants, however low, contrary to the interpretation of the remaining law schools. In the category of brothers/sisters partially excluding the mother, contrary to the Sunnites, only two or more full or consanguine brothers, or at least a male and two females full or consanguine brethren, cause the partial exclusion of the mother from a one-third to a one-sixth share, even if brothers and sisters are excluded from inheritance; while uterine brothers, whatever their number is, do not bar the mother anyway. Moreover, the Imami and Ismaʿili strict application of the Qurʾanic rules leads them to reject the Sunnite solution of both cases named *ʿomariyatāni* or *ḡarrawāni*, notwithstanding the pre-eminence of the mother over the father: one half to the husband, one-third to the mother, and one-sixth to the father; one-fourth (3/12) to the wife, one-third (4/12) to the mother, and five-twelfths to the father (Cilardo, 1993b, pp. 69-91; 2000, pp. 128-30).

In the absence of the heirs of the first class, the nearest in kin follow, both male and female, divided in two groups (grandfathers and grandmothers,

however high; brothers/sisters and their children, however low). Since the principle of agnation is not acknowledged, both paternal and maternal grandfathers and grandmothers have right to inherit on identical grounds. A grandfather is treated as a brother since the distance of both to the deceased is the same, the first through the son and the other through the father. A brother's descendant takes the same place of his ascendant, so that a grandfather and a brother's son are put on an equal footing, contrary to the principles of proximity and agnation maintained by the remaining law schools. Only the Ismaʿilis contravene the strict rule of classes, both admitting a grandmother to the inheritance when her son is still alive, and arbitrarily attributing to a grandfather the whole estate with the exclusion of uterine brothers/sisters' descendants (Cilardo, 1993b, pp. 93-136; 2000, pp. 130-31).

In the absence of heirs of the first two classes, the remaining relatives as a whole, males as well as females, form the third class, based on the Qurʾan (4:33 and 8:75), following the principle of proximity, but with some exceptions. The heirs of the third class are paternal and maternal uncles and aunts and their descendants; then, paternal and maternal uncles and aunts of an ancestor of a deceased relative and their descendants (Cilardo, 1993b, pp. 137-58; 2000, pp. 131-32).

Imamis and Ismaʿilis, refusing the principle of agnation (*taʿṣib*), also reject that mix of the Qurʾanic system by quota and the pre-Islamic Arab family structure. As a consequence, what remains after the attribution of the shares to the heirs shall not be given to agnates, but it shall return to the heirs themselves (Cilardo, 1993b, pp. 15-19). However, both Imami and Ismaʿili schools maintain a peculiar idea of radd. As a matter of fact, for them husband and wife are excluded from radd, because the remainder shall return only to the heirs by kin, even if, for Imamis, the exclusion of the spouses from radd is not so peremptory; in fact, in the absence of any other heir, the husband is entitled to receive the remainder, as it is in the Hanafite school. For the wife, Imami sources have three different doctrines: (a) the remainder is due to the wife if no other relative is present, as it is in the Hanafite school; (b) the Imam has right to the remainder, as it is in the Malikite school; (c) the remainder is due to the Imam if he is present; if, instead, he is in the state of concealment, the remainder shall be allotted to the wife; this solution resembles the Malikite doctrine with an Imami nuance (Cilardo, 1993b, pp. 20-25).

The two Shiʿite schools also refuse the doctrine of the ʿawl. Proportional reduction of shares cannot be performed. In fact, Imamis and Ismaʿilis

imperatively state that Qurʾanic “shares shall not be proportionally reduced” (Ebn Bābawayh, *Ketāb* IV, p. 187, nos. 654-55; Ebn Moṭahhar Ḥelli, *Šarāʾeʿ* IV, p. 59; tr. Querry, *Recueil* II, p. 379, no. 378; Kolayni, *Oṣul* VII, pp. 79-81; Ṭusi, *Ketāb al-kelāf* II, pp. 281-84; idem, *Tahḏib* IX, pp. 247-48, nos. 958-62; Qazi Abu Ḥanifa Noʿmān, *Daʿāʾem* II, p. 381). Only the juridically weakest heirs—children and full and/or consanguine brothers and/or sisters—must suffer a reduction (*naqṣ*) of their share, because those heirs who have the privilege to receive more in certain circumstances when they are residuary heirs are the same' who must support decreasing shares (Cilardo, 1993b, pp. 25-31).

The cases of impediments given below are treated by these two schools following different Sunni doctrines and sometimes expressing peculiar doctrines, such as the most ancient rule, followed by some Imamis and attributed in the Sunnite sources to Ebn Masʿud, a Companion of the Prophet, that the presence of an impeded murderer causes the total or partial exclusion of other relatives from the inheritance. This doctrine is based on a strict interpretation of the Qurʾanic verses which mention the heirs without any other specification. However, according to a less rigid doctrine, some other Imamis, following all the other law schools, maintain that a murderer does not cause the exclusion of any heir.

(1) Difference of religion. Following the Malikite and Hanbalite doctrine, Imamis and Ismaʿilis believe that relatives belonging to the same non-Muslim denomination have the right to inherit from each other, whereas heirs belonging to different denominations have no reciprocal right of inheritance. However, later Najm-al-Din Ḥelli, in adherence to the Hanafite and Shafiʿite schools, maintains that all non-Muslims, considered as a whole, have a reciprocal right to inherit from each other in the same manner as Muslims belonging to different law schools do. On the other hand, non-Muslims neither inherit from their Muslim relatives nor exclude those relatives, in whole or in part, from inheritance. Contrary to the Sunnites, Imamis and Ismaʿilis maintain that Muslims have the right to inherit from their non-Muslim relative, completely excluding their non-Muslim co-heirs.

A non-Muslim converted to Islam before the division of the estate is admitted to inherit, in conformity to the Hanbalite doctrine. Instead, for the particular case of the Zoroastrians (Mazdeans) converted to Islam, the Imami school maintains three doctrines. The first is that Zoroastrians inherit only on presence of a relationship and titles licit for the shariʿa, as it is stated in an isolated Sunni doctrine. The second doctrine, followed by Hanafites and

Hanbalites, is that the relationship deriving from the birth can be licit or illicit, but the title (marriage) must be licit, that is, admitted by the shariʿa; this doctrine, however, did not gain acceptance in the Imami school. The third, quite rudimentary doctrine, maintained by Shaikh Ṭusi, prevalent in the Imami school and present in some Ismaʿili works, but unknown to the Sunnites, admits as valid both licit and illicit relationship and title.

Apostasy is compared to a civil death, as is generally maintained by Muslims. But Ḥelli further distinguishes between the apostasy of a person who was a Muslim by birth and that of a Muslim born in another religion, imputing a more severe consequence to the first. Based on this distinction, Ḥelli modified the Imami rule regarding Muslims who have right to inherit from their non-Muslim relatives excluding their non Muslim co-heirs, by introducing his peculiar doctrine in the sense that, if a non-Muslim leaves no Muslim heirs, but only non-Muslim relatives, the latter have right to inherit from him in the case when the deceased was a non-Muslim by birth (*aṣli*). On the contrary, if the deceased is an apostate (*mortadd*), but he was a Muslim by birth, the Imam has the right to inherit from him with the exclusion of his non-Muslim heirs. However, according to a rarely followed (*šāḏḏa*) account, his non-Muslim heirs inherit from him in this case too (Cilardo, 1993b, pp. 33-50).

(2) Homicide. Shiʿite doctrine evidences an evolution. In fact, it passed from the most rigid and ancient doctrine, followed by Abu Ḥanifa, Šāfeʿi, Ebn Ḥanbal, and their schools among the Sunnites, and accepted by Ismaʿilis and the most ancient Imami scholars, such as Kolayni and Ebn Bābawayh, who attribute this doctrine to Fażl b. Šāḏòān Nišāpuri, according to which there is no distinction between a premeditated murder and a murder by fault: both are diriment impediments, that is, void the inheritance of the estate and the dia. However, a more recent doctrine, followed by Shaikh Ṭusi and Ḥelli, makes a distinction between the two kinds of homicide: only a voluntary homicide causes the complete exclusion from inheritance, while the homicide by fault (manslaughter) only causes the exclusion to inherit the dia. As for the attribution of the dia, Imamis and Ismaʿilis do not consider it like any other part of the estate, as the dia is for the remaining law schools; rather, it is inherited by all the heirs, except uterine brethren. However, according to an abandoned Shiʿite opinion, found also in Sunnite Hadiths, not only uterine brothers/sisters, but also spouses have no right to inherit the dia (Cilardo, 1993b, pp. 51-58).

(3) Slavery. According to the generally followed principle, also for Imamis and

Ismaʿilis, a slave does not inherit from his free relative, and vice versa. However, following an isolated, abandoned Sunnite doctrine, they maintain that, when a deceased person leaves only a slave relative, he shall be freed making recourse to the goods which are part of the estate; the rest, if there is any, shall be given to the freed slave as a succession. Shaikh Ṭuṣi adds that, if the amount of the estate is not enough in order to free a slave, the succession is allotted to the Imam; and Ḥelli, who considers this rule the most correct, further relates an anonymous opinion that the slave is free according to the percentage of the estate, and he has the opportunity to pay what remains in order to became entirely free.

The oldest Imami and Ismaʿili doctrine, following a rigid form of reasoning, maintains a reciprocal right of a patron and a manumitted slave, as a consequence of the comparison of the patronage to the natural relationship; that is, a patron inherits from his client if the latter leaves no heir and vice versa. However, this doctrine was abandoned in the Sunnite, Imami, as well as Ismaʿili schools. In fact, their most recent doctrine confirms only the right of the patron (Cilardo, 1993b, pp. 59-67).

Other Imami features. Only the Imami school offers a further range of peculiarities in the inheritance law. One concerns certain privileges of the eldest son, or, if something happens to him, of the eldest among the surviving male children, subject to the conditions, according to Ḥelli, that this son is neither a prodigal person nor deficient in understanding, that the deceased relative should have left some other property, and that the firstborn male is liable for the payment of debts or fulfilment of prayers and fasts which the deceased may have left unperformed. The doctrine that the eldest son of the deceased is entitled to take some goods as his privilege from the property is fully developed already in Kolayni, although there is no unanimity in the Imami school about its extension. Among the contemplated goods to be so, some Hadiths list the sword, the armature, the signet ring, and the Qurʾan; some others mention only the sword and the arms; another work omits the arms, but adds the *de cuius* books, camel saddle, female riding camel, and garments. There are neither Qurʾanic references nor Prophetic traditions on the matter. Nothing exists in the early *Qorb al-esnād* of Qomi about this subject. Thus, this doctrine cannot be traced back to an early period, and in fact its formulation might be not earlier than the 9th century. For the Ismaʿili jurist Qāżi Abu Ḥanifa Noʿmān, the only explanation of this rule is that it is a peculiarity of the *waṣi*s: nothing in their possession can be considered as

inheritance; it shall be transmitted from the predecessor to the successor, that is, the seal of the Imamate, the Qurʾan, the books of the sciences, and the arms, according to what the Prophet did with his *waṣi* ʿAli b. Abi Ṭāleb and ordered him to do with his son Ḥasan, and so on in each generation. These special privileges recall the primogeniture and the legitimistic tendency prevalent amongst the Shiʿites (Cilardo, 1993b, pp. 73-74; 2000, pp. 132-34).

Another Imami peculiarity regards the disadvantaged position of wives concerning some goods included in their husband's estate. With many variations, generally three kinds of goods are listed: those which wives are entitled to inherit (money, household effects, clothes, household furnishings), those which they can never receive (soil, land, villages, houses, arms, livestock), and those which wives have the right to inherit after their valuation (bricks, building, wood, canes, doors, trunks, trees, and palms). This is because a widow might re-marry so that she could damage the remaining co-heirs of her deceased husband. The rule wants to avoid the fact that her new husband or one of his children, born from other women and thus belonging to other groups, share the property of a group alien to them. The special tie between husband and wife, the *ʿeṣma*, might be interrupted; another *ʿeṣma* might take its place, causing as a consequence a transfer of property from a familiar group to another. However, Ebn Bābawayh introduces a new element, rejected by Ṭusi, since he distinguishes the case when the wife has had a child by the deceased (she inherits out of all that he has left), from the case when there was no *walad* (one applies the above rules). On his part, Ṭusi introduces a mitigation in the limitation of the wife's right, since he makes a distinction between ancient and modern buildings, and states that wives cannot inherit anything either from houses or landed estate, unless they are more recently built. Neither does any Qurʾanic basis or Prophetic Hadith exist on this argument. The most convincing refutation of the Imami doctrine is due to Qāżi Noʿmān, who refuses it on these grounds: once established that it is in contrast to the Qurʾan, the Sunna, the *ejmāʿ* of the Imams and of the Community (*omma*), from the Islamic point of view the only justification is that goods which wives cannot claim as inheritance have been immobilized as pious endowment (*waqf*) exclusively in favor of men. The reason justifying this rule rests on the will to keep familiar property undivided; therefore, for economic, social, and patrimonial reasons, precedence is given to a blood tie over a relation based on *sobub* (marriage and patronage) in the transfer of property *causa mortis* (Cilardo, 1993b, pp. 163-64; 2000, pp. 134-36).

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