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God, Who Created You from a Single Soul:

A Jewish Annotation of the Qur'an

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## Table of Contents

Table of Contents .....	2
Acknowledgment .....	3
Introduction .....	4
Part 1, Chapter 1: Comparing Shari’a and Halacha .....	7
Part 1, Chapter 2: The Problematic of Inheritance.....	14
Part 1, Chapter 3: Islamic Inheritance Traditions .....	17
Part 1, Chapter 4: Jewish Inheritance Traditions.....	26
Part 2: Annotated Selection from Sura 4 <i>An-Nisa’</i> (The Women) .....	38
Conclusion.....	49
Works Cited.....	50

## Acknowledgment

I have written many notes of gratitude in life, but as I write my first Acknowledgements section of a (small) publication, I suddenly find sympathy for all the writers before me who had to make peace with the inadequacy of a few words on a page.

I remember reading Reuven Firestone's biography on the Hebrew Union College website before I transferred to the school and imagining what it would be like to work with someone whose values and interests so closely matched mine but were built upon a monumental scope of scholarship. I have been and always will be grateful, humbled, and thrilled that he has become my teacher (m. Avot 1:6), my mentor, and my advisor. In the long development of this thesis, I am particularly grateful to him.

In everything along the way, I am also indebted to the people who accompany me through life: my partner, my parents and brothers, my extended family, my chevrotot, and my friends. I have been blessed with so much love in my life. As the Psalmist said, my cup overflows.

## Introduction

The standard rabbinic theses of Hebrew Union College students focus on Jewish topics, and at first blush this thesis might look quite outside the norm. The heart of this text study, after all, is the Qur'an, a text that is holy to Muslims and claims to supersede the Jewish canon. The Qur'an's self-aware relation to Tanakh implicitly demonstrates why this Jewish study of the Qur'an is important to adherents of both religions: Jews and Muslims are closely connected – more connected and with more in common, I would argue, than either is with Christianity, and more than modern geopolitical divisions might imply.

My personal investment in Jewish-Muslim understanding long precedes my rabbinical studies. As a high school student, I was fascinated by the Arabic on Israeli highway signs and the seemingly impenetrable society living parallel to Jewish Israeli communities. I pursued this interest as a student at Wellesley College, where I dove into Arabic, linguistics, and Middle Eastern Studies. This led me to live for a time in Amman, Jordan, with a mixed Palestinian-Jordanian family, experiencing the rhythms of Muslim life while quietly maintaining my Jewish practice. Years later, when I was considering rabbinical school, a leftist secular Israeli filmmaker, who had screened her anti-occupation films at American synagogues, cautioned me against becoming a rabbi if I wanted to have any hope of talking about Israel, Islam, and relations between Israeli Jews and Palestinians, or even Jews and Muslims more broadly. This thesis does invalidate her warning about the challenges of such discourse, and it does not aim to. This is not a politically oriented study. But I do believe that many apolitical acts can have political impact, and if this thesis is one such action, I would hope that it diminishes the distance and

amplifies the kinship between Jews and Muslims. Simply put, Jews and Muslims have too much in common and too much at stake *not* to invest in familiarizing themselves with their compatriots' religion and traditions.

This thesis is divided into two parts: Part 1 consists of preliminary chapters that provide foundational knowledge and background information on the material of Part 2, which is a novel annotation of 4:1-12 of the Qur'an, the first twelve verses of Surat an-Nissa (the chapter of "The Women"). In Part 1, the first chapter will cover the nature of the Qur'an as literature and scripture, and how shari'a develops and functions in comparison with halacha. Because the beginning of An-Nissa deals significantly with inheritance law, the second chapter will examine why inheritance is an important area of religious law and different approaches to establishing communal practice. Chapters 3 and 4 will examine Islamic and Jewish inheritance law, respectively. Part 1 will hopefully serve as reference material for the annotation of Part 2.

Part 2 contains annotation that is the product of my research, my reflections, and my Qur'an study sessions with Rabbi Dr. Reuven Firestone. The translation is original, drawn from my study with Dr. Firestone, as well as the English Qur'an translations by Mohammad Marmaduke Pickthall, Seyyed Hossein Nasr, and A. J. Droge, and the Hebrew Qur'an translation by Uri Rubin. As with all translation, I have tried to balance literal precision with faithfulness to the semantic intent and nuance of the original.

In my efforts, I have tried to honor the voices of a variety of scholars and confessional writers because this piece aims to create and amplify a sense of discourse. Research papers appear to be a soliloquy, but ideally they engage in dialogue with those who preceded them and lay the

groundwork for future discussion. My ideal and my dream would be that this work encourages its readers to invest energy and care into the holy work of loving our religious neighbor.

## Part 1, Chapter 1: Comparing Shari'a and Halacha

Summarizing the nature and function of either halacha (Jewish law) or shari'a (Islamic law) in their respective religious traditions would be a monumental undertaking unto itself – all the more so in a comparative analysis. This chapter will not be comprehensive. Rather, it aims to be foundational, so that readers of the following Jewish annotation of an excerpt from Sura (Chapter) 4 of the Qur'an can understand the genre and function of the text more accurately.

The beginning of Sura 4, entitled *An-Nissa'* "The Women," contains primarily legal material. However, this should not be extrapolated to the rest of the Qur'an – there is much more than legal material in Islamic scripture, and remembering the textual context of Quranic legal material is also important for reading it correctly. In an effort to properly contextualize a segment of the Qur'an for Jewish readers, this chapter will provide an overview of the Qur'an and its genres; compare the definition(s), textual foundations, and development process of shari'a and halacha; and areas of confluence and convergence in legal theory and principles of Islam and Judaism.

Let us start at the very beginning: the title of Islamic scripture. "Al-Qur'an" literally means "The Recitation" – Hebrew speakers will recognize the shared root of קרא Q-R-' which similarly means to read, call, or recite. Jews sometimes refer to scripture as *Miqra'*, which means "something that is read or recited."<sup>1</sup> (Note, also, that the standard terminology in both English and Arabic is *the* Qur'an, unlike Torah, which can interchangeably be called "Torah" or "The

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<sup>1</sup> Firestone, Reuven. *An Introduction to Islam for Jews*, 100.



Torah.”) The Qur’an’s oral nature, even as a written text, is implicit in its title. Furthermore, there is a high cultural and religious importance of Qur’an recitation, and the text uses rhyme, rhythm, and repetition so that it often lends itself well to an oral medium.<sup>2</sup>

The Qur’an is more than oral poetry – it contains a wide variety of literary genres. It is fundamentally a prophetic text: according to orthodox Islam, the Qur’an is believed to have been revealed “word for word in the Arabic language by the only God through [the angel Gabriel to] his prophet, Muhammad.”<sup>3</sup> Muhammad’s prophecy contains both legal and narrative material. Each sura (chapter) is not considered one continuous prophecy, but rather a collection of prophecies given around the same time of Muhammad’s life and loosely along a theme. This is why sometimes the text will switch topics abruptly, even within the same chapter. It is also important to know (though it is not relevant for reading a short excerpt, such as included in this thesis) that Quranic suras are ordered from longest to shortest. The chronological order of when Muhammad issued each prophecy was an early area of study in Islamic thought, and is called *asbab an-nuzul* (lit. “reasons/the logic of the bestowed prophecy”). According to Islamic sources, the Qur’an was not recorded during Muhammad’s lifetime, but rather twenty years after his death by his faithful listeners.<sup>4</sup> This may explain some of the apparent lack of internal structure and order, which can be disorienting for new readers.<sup>5</sup>

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<sup>2</sup> Mattson, Ingrid. “How to Read the Quran” in *The Study Quran*, 1592.

<sup>3</sup> Neusner, Jacob and Tamara Sonn, *Comparing Religions Through Law: Judaism and Islam*, 40.

<sup>4</sup> Firestone, 105.

<sup>5</sup> Critical Qur’an scholarship is currently uncovering interesting and intricate structural integrity of the Qur’an. This material should be integrated into future studies and discussions to frame how to read the Qur’an, but it exceeds the scope of this beginner’s guide.

Orthodox Islam<sup>6</sup> does not believe that Muhammad's prophecies created Islam *ex nihilo*. Rather, the Qur'an is considered a continuation and correction of the Torah and Gospels; it is an inherently supersessionist text. Both Islamic and Christian supersessionism value their preceding Abrahamic religion(s) as foundational steps towards true divine revelation (i.e., their own scripture), and as such the Qur'an frequently refers to material shared with the Torah and Gospels but sometimes with slight changes. The exact relationship between the Qur'an and the monotheistic scriptures that preceded it, however, has never been fully resolved. Though the contradictions, challenges, and ambiguity have served as fodder for polemics and prejudice, there have always also been scholars and religionists who took the similarities and differences as opportunities for dialogue.<sup>7</sup> Ultimately, these are separate texts serving separate religious communities, and resolution is not necessary.

Both texts, as the primary scripture for their respective traditions, serve as their tradition's ultimate source of law. Judaism and Islam both have an authoritative oral tradition to accompany written scripture, and though they have similar authority, their origins are quite different. Both the Mishnah and the Hadith and Sunna provide legal (and some narrative) material that is not an exegetical gloss on scripture. (Sunna refers to Muhammad's sayings and actions, and is an abstract noun; Hadith refers to the written record of Muhammad's sayings and actions.<sup>8</sup>) However, the Mishnah is known and acknowledged to have been written hundreds of years after the canonization of the Tanakh, whereas the Sunna and Hadith relates

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<sup>6</sup> I use this term to refer to dominant traditional beliefs in Islam – essentially, in the academic usage of the term “orthodox,” not the way it is used in Jewish confessional contexts to refer to a sect or denomination.

<sup>7</sup> Firestone, 113.

<sup>8</sup> Al-Tayyib, Ahmad Muhammad. “The Quran as Source of Islamic Law,” *The Study Quran*, ed. Seyyed Hossein Nasr, p. 1715.

the words and deeds of Muhammad that were not recorded in his Quranic prophecy.<sup>9</sup> Often the Hadith serve as the guide for how to implement the laws and instructions stated in the Qur'an, which are often stated quite broadly.<sup>10</sup>

Islamic law considers four fundamental principles in its jurisprudence: not being overly difficult for adherents to follow in their lives; a norm of permissibility and minimizing formal obligations; maximizing flexibility and breadth in interpreting Quranic passages; and gradualism in implementing laws. To put it another way, the Qur'an's truth is permanent and everlasting, but the range of interpretation is broad and eternally changing.<sup>11</sup> To counterbalance the wide range of possible interpretations, Islamic law developed a system through which authoritative rulings could be reached that was premised upon consensus (*ijma'*) among scholars or within the local community and strong legal reasoning and intellectual interrogation (*ijtihad*).<sup>12</sup> *Ijtihad* allows for individual opinions to hold some weight, but an argument is considered significantly stronger if it can connect to another principle or precedent through analogy.

These might sound familiar to students of halacha. Indeed, Neusner and Sonn believe that "point by point, a sage of the Torah would have found himself quite at home in the principles that govern in Islamic jurisprudence. When it comes to consensus, the sages held that the prevailing custom rules, and the authority of a place defines the norm. When it comes to

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<sup>9</sup> A note on language: "Hadith" is both a singular and collective noun. To refer to multiple individual units of hadith, the plural is *ahadith*. This is somewhat similar to how "the Mishnah" refers to both the edited and canonized body, "a mishnah" refers to a singular unit with the Mishnah, and "mishnayot" refers to multiple units within the Mishnah.

<sup>10</sup> Neusner and Sonn, 19.

<sup>11</sup> Al-Tayyib, 1717.

<sup>12</sup> Neusner and Sonn, 62-77.

reasoning (ijtihad), the stress on appeal to analogy would find instant recognition among the Talmudic sages.”<sup>13</sup> If one leans into metaphor, it makes sense that “*halacha*” and “*shari’a*” both translate approximately to “the way.”

Of course, significant differences do exist between the Islamic and Jewish legal systems. First, the Oral Torah is considered as timeless as scripture and can be built upon and adapted to answer modern questions. Not so in Islam – the context and specific incident to which a shari’a ruling responds can apply only to that situation, and future jurisprudence must go back to scripture or Sunna for legal authority.<sup>14</sup>

There are also certain topics that are highly important in one religious community and minimally important or even nonexistent in the other. For example, halacha speaks extensively about Temple sacrifice and purity law, even though the Temple no longer existed when halacha was codified. Shari’a, in contrast, addresses animal sacrifice in the context of *hajj* (pilgrimage) rituals that continue to be observed today, but its scope is miniscule relative to the halachic discourse. The opposite balance applies to slavery laws: Islamic law systematically treats a legal category of slavery on the conflicting principles of human dignity and gradualism (for overturning the slave economy that preceded Islam in Arabia); Jewish law mentions slavery but not as its own topic of discourse or legal category.<sup>15</sup> Sacred time also functions differently: the weekly holy day exists in both religions but is much more significant in Judaism; pilgrimage festivals exist in both religions but are significantly more important in Islam. Islam has a system

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<sup>13</sup> Ibid., 101.

<sup>14</sup> Neusner and Sonn, 59.

<sup>15</sup> Ibid., 158-168.

of levels of its legal rulings: five categories: something is obligatory, recommended, permitted, abhorred, or prohibited.<sup>16</sup> In Judaism, something is either permissible/exempt (*mutar*) or obligatory (*chayav*).

Finally, there are two categories that are entirely unique and separate between Judaism and Islam. Indeed, they are so fundamental to each religion's self-concept that they are liable to create chasms of misunderstanding. In Judaism, this concept is the holiness of the land of Israel, which Neusner and Sonn call "the enlandised character of classical Judaism" based upon an understanding of the Jewish people as a holy people defined by the giving of Torah at Sinai and the divine covenant established therein. (This is distinct from Zionism, which is a political movement that defines the Jewish people as united by a shared history and aims to maintain the existence of a political Jewish state in the land of Israel.)<sup>17</sup> The holiness of the land of Israel permeates questions of how to organize Jewish society, what will happen when the messiah comes, how the communal covenant with God works, how to relate to land and the natural world, the holiday cycle and adjustment of the lunar calendar, and even how to define Jewish peoplehood. Islam has holy cities and spaces but does not have anything on par with the land of Israel in Jewish thought and practice.

One unique Islamic category is also frequently misunderstood in the non-Muslim world: *jihad*. *Jihad* is "the ongoing struggle to fulfill the will of God" and both motivates and defines Muslims' service to God – living out Islamic practices without intentionality, commitment, and effort

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<sup>16</sup>Al-Tayyib, 1718.

<sup>17</sup> Neusner and Sonn, 194.

renders the action moot and pointless. *Ijtihad*, the reflexive form of the same root, means to interrogate text to discover the will of God (see above, in relation to Islamic jurisprudence). *Jihad* can include military action, with which it is sometimes exclusively associated, but it can also include the spiritual struggle to defy one's inner demons. Anything that helps God's will be served throughout the earth can be a part of *jihad*. "It is clear, then, that jihad is a function of Islam's perception of itself as a potentially universal community," Neusner and Sonn write. "In stark contrast to Judaism's self-perception as a limited community of people chosen by God to live in accordance with the Torah, the classical presentation of jihad clearly demonstrates the Muslim community is considered to be utterly inclusive, its goal being to encompass all humanity." In this way, Islam has more in common with the evangelism of Christianity than the closedness of Jewish communal boundaries.

Confronting such differences can be discomfiting to readers who seek only the good and compatible in comparative religious studies. However, such efforts are Pollyannaish and will not produce any lasting fruits because fundamentally, Islam and Judaism are different religions and differences are, by definition, not mutually compatible. We can engage in the most productive interfaith dialogue by acknowledging our differences, respecting that we will not change the other, and considering that perhaps others struggle as much with parts of their tradition as we struggle with parts of ours. Sometimes it is in our shared sense of struggle that we also find our sense of interconnectedness.

## Part 1, Chapter 2: The Problematic of Inheritance

The fourth sura of the Qur'an contains some of the most oft-quoted verses on how a man (in this case, the subject is always a man) should divide his assets upon his death. Jewish law contains its own set of guidelines on personal inheritance. One can assume that, as in every legal system, laws exist for a reason. Why, then, do inheritance guidelines exist in both of these fields of religious law?

All societies need a set of rules and expectations to which all members commit and are held accountable. Without this invisible structure, collaboration would be impossible and survival would be unlikely; stability is a critical ingredient for societal longevity. Today, Western civilization and the societies it has affected assign the authority and responsibility for a legal structure and its enforcement to a civic, non-religious government. As citizens of such a system, readers might assume that this authority and structure is standard and nigh universal, but in fact it was created by ancient imperial polities.

Before and outside such empires, the authority for law was derived from God and the legal structure was provided by religion. The foundations of Jewish and Islamic tradition formed in such a legal vacuum; Christianity, in contrast, arose under the Roman Empire. Because a secular legal system governed society, Christianity was able to eschew the religious legal systems that was essential to Judaism and later would be to Islam, instead centering the religious community around the theology of faith and salvation. Though the Roman and Christian standard of non-

legalistic religion seems to be the norm today, in fact it is the minority among Abrahamic traditions.

By necessity, Islam and Judaism developed laws and regulations to govern innumerable aspects of daily life, and even arcane aspects of tradition that no longer pertained to the religious community. By virtue of being products of religion, these laws and their systems of governance carried theological import.

Theocratic law for fundamental obligations and, conversely, sins, serves an obvious purpose: when it is critical that people do not murder one another, a law against murder should come from God. From a more confessional perspective, one might say that God's top priorities are the most fundamental ways to treat one another and Godself – just think of the Ten Commandments.

The fourth chapter of the Qur'an spends a significant amount of time explicating inheritance law, and though Jewish tradition does not have a simple scriptural parallel, Tanakh does contain narrative material on challenges in the realm of inheritance, and rabbinic literature fills in the legal gaps extensively. Why is it important to have a religious body of law around inheritance? Laws exist to keep society stable. Laws, therefore, address situations that threaten stability, and what is more destabilizing than issues of death and money?

Death is one of the most disruptive, and most predictable, parts of communal life. Grief affects people in deep and myriad ways. A good legal system, then, must govern moments of grief and the practical considerations that go with death.



Furthermore, when a person or family is financially unstable, their basic needs might impel actions that would destabilize other aspects of society – they might break laws to meet their basic needs. When one generation has financial stability, therefore, they must pass it on to the next generation in a way that feels mutually acceptable to all parties. A clear means of transferring property intergenerationally preempts conflict and keeps families intact.

Inheritance traditions are particularly interesting as a feminist case study in social law. In most Jewish and Islamic societies, women and minors depended upon adult men for their sustenance. Inheritance law publicly governs the division of that sustenance. By studying inheritance traditions, we can see how the men who governed Jewish and Islamic societies viewed women and minors' personal value and potential, both in the context of their own society and relative to the tribal and regional legal systems that preceded these two respective traditions.

In sum, the problematic of inheritance serves as a productive case study for comparing Jewish halacha and Islamic shari'a. Through this lens, I will touch on issues of theology, sociology, the content of scripture, classical scriptural interpretation, and feminist thought. The resulting discourse will demonstrate a model of comparative religious studies that could prove fruitful for future interreligious scriptural annotation.

## Part 1, Chapter 3: Islamic Inheritance Traditions

*This chapter is dedicated to the victims of the February 2023 earthquake in Turkey and Syria.*

*Many families now live the nightmare of losing multiple relatives all at once. Religious laws on the death of a loved one often provide structure so that all the bereaved must do is grieve. May the laws and traditions summarized here make it so for them.*

*"Learn the laws of inheritance and teach them to the people, for they are one half of all useful knowledge."<sup>18</sup> -Muhammad*

The laws of inheritance, and their ensuing interpretive and application systems, are sufficiently complex that even Muhammad endowed them with particular importance amidst all of sharia'. Yet they started from two sets of verses that at first seem rather simple and innocuous, known as "the inheritance verses" and "the bequest verses."<sup>19</sup> These became the subject of subsequent Islamic jurisprudence and the primary source around which developed academic study of their context in pre-Islamic Arabia.

The bequest verses begin with 2:180-182, which command followers to issue a last will and testament when nearing their death and cautions that anyone who modifies or disputes such a document will be held liable by God:

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<sup>18</sup> Al-Bayhaqi, Sunan al-Kubra, Vol. vi, 208-9.

<sup>19</sup> Powers, David. *Encyclopedia of the Quran*, 518-519.

180 It is prescribed for you, when death approaches one of you, if he leaves behind any goods, (to make) bequests for parents and family rightfully. (It is) an obligation on the ones who guard (themselves). 181 And whoever changes it after hearing (it) – the sin (rests) only on those who change it. Surely God is hearing, knowing. 182 But whoever suspects any injustice or sin from the one making the bequest, and resolves (the matter) between them – no sin (rests) on him. Surely God is forgiving, compassionate.<sup>20</sup>

The next of the bequest verses, Q 2:240, allows dying men to designate one year's maintenance allowance to their soon-to-be widow(s):

240 Those of you who (are about to be) taken, and (are going to) leave behind wives, (let them make) a bequest for their wives: provision for the year without evicting (them from their homes). But if they do leave, (there is) no blame on you for what they may rightfully do with themselves. God is mighty, wise.<sup>21</sup>

Finally, the last of the bequest verses, Q 5:106-107 set for the requirement and standards of two witnesses for the validity of a last will and testament:

106 You who believe! When death approaches one of you, the testimony among you at the time (of making) bequests will be (that of) two just men of you, or two others of (a people) other than you, if you strike forth on the earth and the smiting of death smites you. Detain them both after the prayer, and let them both swear by God, if you have your doubts (about them): "We will not sell it for a price, even if he happens to be a

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<sup>20</sup> Qur'an 2:180-182, trans. A.J. Droge, *The Qur'an: A New Annotated Translation*, 19.

<sup>21</sup> Ibid., 25.

family member, and we will not conceal the testimony of God. Surely then we would indeed be among the sinners.” 107 If it is discovered that they both (were guilty of) sin, let two others take their place, from those who have a rightful claim against the two former (false witnesses), and let them both swear by God: “Certainly our testimony is truer than the testimony of the other two, and we have not transgressed. Surely then we would indeed be among the evildoers.”<sup>22</sup>

The bequest verses set forth laws through which one can make bequests of one’s choosing, as long as they follow specific guidelines. By traditional accounting, the inheritance verses were prophesied a few years after the bequest verses, though both were in the early Medinan period when Muhammad was establishing the legal foundations for his new Medinan society of converts and Meccan emigrants. Muhammad’s followers had left Mecca and their families in order to follow him, cutting themselves off from their non-Muslim relatives; thus, they needed new economic and family systems to reconfigure the transmission of wealth in nascent Islamic society.<sup>23</sup> The origin of the inheritance verses was likely soon after the Battle of Uhud in 3 AH/625 CE,<sup>24</sup> in which the Meccan tribe of the Quraysh attacked the new Muslims who had emigrated to Medina. According to a traditional hadith, the widow of a fallen soldier petitioned Muhammad to address a situation in which her late husband’s two paternal cousins deprived

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<sup>22</sup> Ibid., 73-74.

<sup>23</sup> Because of the need to reconfigure family identity, religious brotherhood became a central concept in Islam and continues to be important today. Despite the gendered nature of the term “brotherhood,” the sense of nearly familial connectedness can be found in Muslim communities around the world, and adherents will commonly call each other “brother” and “sister” regardless of blood relation.

<sup>24</sup> After Hijra is a common (perhaps even the predominant) dating system in the Islamic world. In the field of Islamic Studies, many year citations will appear # AH/# CE, or even just #/#. For example, the year of the emigration to Medina is noted 1/622, which is to say it is the first year After Hijra and 622 of the Common Era. (Encountering such a date notation system makes one examine the Eurocentrism of the phrase “the Common Era” – common to Europeans and those living in societies that were once defined by Christian governance.)

her and her daughters of their inheritance.<sup>25</sup> In response, Muhammad petitioned God for instruction and received the prophecy of Q 4:7-12 (see Part 2 for a full translation and annotation), which designates the inheritance rights of men and women at varying degrees of relation to the deceased. Q 4:176 was added later, along the same theme:

176 They ask you for a pronouncement. Say: "God makes a pronouncement to you about the person who leaves no direct heirs. If a man perishes without children, but has a sister, then to her a half of what he leaves, and he is her heir if she has no children. If there are two (sisters), then to them two-thirds of what he leaves. If there are brothers and sisters, then to the male a share equal to two females. God makes (this) clear to you, so that you do not go astray. God has knowledge of everything.

Together these form what is referred to as "the inheritance verses:" the collection of verses that describe exactly how an estate should be divided, considering several possibilities of family structures and circumstances. As a category, such instructions create what is called "intestate succession," a bequeathal system that prescribes division of property and thus obviates the need for (or option of) making bequests through a last will and testament. Since the inheritance verses describe intestate succession and the bequest verses describe testate succession, Islamic jurisprudence wrestles with how to resolve these two potentially contradictory divine instructions. Speaking broadly, Shi'a Islam privileges the bequest verses and their philosophy, whereas Sunni Islam privileges the inheritance verses.

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<sup>25</sup> Al-Wahidi. *Asbab al-Nuzul*, 137-138, cited in Encyclopedia of the Quran, 519.

Sunni inheritance tradition carefully studies the mathematics and logic problem regarding how to distribute property. The verses do not go through each family member in a linear, logical fashion; one verse might mention what a brother may inherit, and then several verses later the brother's inheritance is mentioned again but in a different scenario (e.g., if the son of the deceased has also died). The division of estates becomes a math equation. For example, if the deceased had X number of sons and Y number of daughters, and the wife has predeceased him, then what fraction of the estate goes to the son and each of the daughters?

A widow with children receives one eighth of the estate for her sustenance, and a childless widow receives one fourth.<sup>26</sup> If a deceased man has both male and female descendants, the males receive double what the females receive.<sup>27</sup> The simplest example would be if the deceased left one wife, one son, and one daughter: after the wife received her  $\frac{1}{8}$  share, the son would receive  $\frac{7}{12}$  and the daughter would receive  $\frac{7}{24}$ . The math gets more complicated, of course, with different proportions of sons to daughters, calculations to account for the deceased's parents and siblings (whose allotments change depending on the offspring of the deceased), and extended family. Indeed, Islamic inheritance law is so mathematically complex and jurisprudentially important that when Muhammad ibn Musa al-Khwarizmi, the ninth century Muslim mathematician, wrote his cardinal publication which became the namesake

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<sup>26</sup> Qur'an 4:12

<sup>27</sup> Qur'an 4:11

and foundational text of the field of algebra,<sup>28</sup> he devoted its longest chapter to an explication of Sunni inheritance calculation.<sup>29</sup>

The calculations referred to thus far are primarily relevant to the Sunni interpretation of inheritance law. In Sunni inheritance tradition, there are two principal classes of heirs: *ahl al-fara'id* (literally: “people of the shares”), to whom the Qur’an specifies a fractional share of the estate; and *‘asaba*, a hierarchy of agnates (people related through male relatives). *Ahl al-fara'id* are primary family members (spouse and children) and therefore the primary inheritors of an estate, whereas *‘asaba* inherit if no closer relatives exist. In the hierarchy of *‘asaba*, one recipient excludes all members of a lower class of agnates; for example, if the deceased has a brother, he will inherit before (and to the exclusion of) all other *‘asaba* such as grandfathers, uncles, nephews, etc.

Distant kindred, or *dhawu l’arham*, pose a tricky problem in Sunni jurisprudence. This category includes sons of daughters, nieces through brothers, nephews through sisters, female cousins through uncles, uncles through a grandmother, cousins through a maternal uncle, aunts on either side, and maternal uncles.<sup>30</sup> The challenge for all of these - with the exception of maternal aunts - is that either they are male but connected to the deceased through a female, or vice versa. In other words, there is no established hierarchy between the gender of the

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<sup>28</sup> The book in reference is *Al-Kitāb al-mukhtaṣar fī ḥisāb al-jabr wa’l-muqābala*, trans. “The Compendious Book on Calculation by Completion and Balancing.” *Al-jabr*, or “calculation,” is the root of the word algebra. Al-Khwarizmi lived from c. 780 CE until c. 820 CE, dying several centuries before his work was translated into Latin in the 1300s. With its translation, the European world began to adopt Hindu-Arabic numerals and algebraic mathematics. For more information, see *Britannica*, “al-Khwarizmi,” <https://www.britannica.com/biography/al-Khwarizmi>.

<sup>29</sup> Gandz, Solomon (1938). “The Algebra of Inheritance: A Rehabilitation of Al-Khwarizmi”. *Osiris*. University of Chicago Press. 5: 319–91.

<sup>30</sup> Ibn Rushd, *The Distinguished Jurist’s Primer*, 412.

individual and the gender of the person through whom they are related to the deceased. The dominant opinion is that they do not inherit, but enough jurists allow them to inherit that they are considered legitimately disputed. Those jurists who do allow them to inherit "do so through the doctrine of substitution *tanzil*, that is, to put them in the position of the person through whom they are related to the deceased."<sup>31</sup> It quickly becomes apparent why inheritance law became an area of intensive study in Sunni legal tradition.

The complex hierarchy in Sunni Islam was developed over the first and second centuries AH<sup>32</sup> specifically in contrast to the legal system developed in the nascent Shi'a tradition. Before the schism over who was Muhammad's rightful heir – the foundational difference between Sunni and Shi'a Islam – the small Muslim community relied upon only the inheritance verses, the bequest verses, and an assortment of hadith (stories about Muhammad and his followers).<sup>33</sup>

David Powers posits that the first stage of development of *'ilm al-fara'id* – the complex legalistic corpus on inheritance – was a "proto-Islamic" law "that was designed to replace, rather than supplement, the tribal customary law of pre-Islamic

Arabia, and 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 Muhammad."<sup>34</sup>

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<sup>31</sup> Ibid., 413.

<sup>32</sup> AH means After Hijra. This would be the seventh and eighth centuries CE. I choose to follow David Powers' standard of referring to time periods in Islamic terms because the pace of development in the Islamic context is more pertinent to this discussion than the pace and timing of development relative to events that would have been dated in terms of the Common Era.

<sup>33</sup> Powers, David. *The Islamic Inheritance System: Introduction*, 285.

<sup>34</sup> Ibid., 286.



Powers' authority on this topic is indisputable, but his theory is challenged by that of Richard Kimber, whose work on the topic Powers calls "linguistically sophisticated, subtle, and ingenious."<sup>35</sup> In the Qur'anic inheritance and bequest verses, Kimber does not see the tension between testate and intestate succession that underlies Powers' theory; rather, both sets of verses contribute to "the disposal of an estate by last will and testament in accordance with the will of God." In short, the bequest verses provide a general outline of God's requirements, which is complemented by more specific instruction in the inheritance verses.<sup>36</sup>

Kimber also claims "that the system reformed...was not tribal law but Jewish law."<sup>37</sup> He cites the Mishnah, specifically Bava Batra 8:2, which outlines the chain of inheritance should a man die and leave both a son and daughters – exactly the analogous situation to the inheritance verses. The result is also similar, though not identical: a son and his descendants precede a daughter, a daughter precedes the brothers of the deceased, brothers precede uncles, etc.<sup>38</sup>

Kimber particularly bolsters his claim by the existence of the Shi'a inheritance system. Shi'a interpretation rejects the gendered hierarchy of Sunni inheritance tradition, opting instead for a system based on each individual's closeness (*qaraba*) to the deceased. Sunni analyses often disregard the existence of the Shi'a system, Kimber writes.<sup>39</sup> Yet if one imagines that the new Islamic society sought to create a system in which women could inherit as rightfully as men – a claim often put forward by both Shi'a and Sunni scholars alike – it might be more likely that

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<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Kimber, Richard, "The Qur'anic Law of Inheritance," 313.

<sup>38</sup> Mishnah Bava Batra 8:2

<sup>39</sup> Kimber, 292.

they introduced subtle changes to the pre-Islamic tribal system, which would have been familiar in Arabian society, rather than replaced the pre-Islamic system entirely, which would be less likely to be accepted as standard practice.<sup>40</sup>

Tidy legal systems do not fit the messy reality of real life. Ultimately, the discordance between the law as presented and its appropriateness to the particular context (of any era or culture) compels adherents to find creative ways to fit the law to their lives rather than the other way around. In other words, adaptation and manipulation of the law are part and parcel of religious legal tradition, and Islam is no exception. Therefore, this chapter is titled “Islamic Inheritance Traditions,” in the plural. Any singular, essentialist summation of Islamic inheritance traditions would be overly simplistic and disingenuous. This broad topic merits further study; may this chapter be a beginning.

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<sup>40</sup> Mohammed, Khaleel. *Sex, Sexuality and the Family*, 298.

## Part 1, Chapter 4: Jewish Inheritance Traditions

Jewish inheritance “law” would more aptly be called Jewish inheritance traditions; as in many areas of *halacha* (Jewish law), legal and non-legal texts have been influenced and impacted by rabbinic decrees and judgments, family practices, and communal practice. Thus, law became a system of practice. This chapter will review the idea and systems of inheritance in Jewish tradition through biblical and rabbinical textual foundations that have shaped the range of Jewish inheritance practices.

### *Biblical Inheritance Precedents*

Oldest sons were given a double portion of their fathers’ possessions upon his passing; the text implies that this is the definition of a birthright (Deuteronomy 21:17). However, this only applied to sons of wives; sons of concubines received no inheritance unless they were adopted as sons (though they could be given gifts, according to Abraham’s will in Genesis 25:5-6), and illegitimate sons were entirely excluded (Judges 11:1-2, Yiftach haGiladi).

A widow did not inherit any part of her late husband’s property, though if she had underage sons she could retain it under guardianship until they became adults. We see this in the book of Ruth, where Boaz proclaims his acquisition through Naomi of the property formerly belonging to Elimelech, Chilion, and Mahlon.<sup>41</sup> If a man had no male descendants, his property would go

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<sup>41</sup> Ruth 4:9

to his brothers or nearest male relatives, and instead of inheriting and living independently, his widow would either return to her father's house<sup>42</sup> or the deceased's brother would take her as a wife under the rituals of levirate marriage.<sup>43</sup>

Daughters were not granted an inheritance if the father had a son to whom he could bequeath his belongings. This is never stated explicitly in Tanakh but is evident in the premise of the story of the daughters of Tzelophechad in Numbers 27. The daughters' successful advocacy for shares of their late father's property is often interpreted as a feminist triumph, which it certainly is. They push back against a system that otherwise disenfranchises them. The daughters of Tzelophechad give us a model for female inheritance within a family.

To get the full picture, one must keep reading and look more deeply. The second part of their story, in Numbers 36, shows that inheritance was not merely a familial issue. A group from the Tzelophechad's daughters' tribe, Menasheh, protest the daughters' new property – not because women shouldn't own property but because when they marry, their property will become associated (or more likely, under the domain of) their husband, his family, and his tribe. In a patrilineal society, this would mean that bequeathal of property to women would not result in perpetuating intergenerational wealth for the long-term sustenance of a tribe; one tribe could end up unduly wealthy by adding the wealth of other tribes' women in with their own. This situation is not acceptable, they point out, because God designated a certain amount and area of land for each tribe; therefore, to allow the women to marry out of their own tribe

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<sup>42</sup> Genesis 38:11, Leviticus 22:13

<sup>43</sup> Deuteronomy 25:5-10, Ruth 2:20, Ruth 3:12

would go against God's will. Thus, at God's behest, Moses issues a *takanah* (rabbinic correction): any Israelite woman who inherits land must marry a man of her own tribe.

We see here three levels of inheritance system at play, two of which have already been discussed: the interpersonal, which sustains peace, justice, and economic stability between individuals within families; and the societal/tribal, which maintains those same values at a communal scale. The third level, of course, is the divine inheritance level.

In addition to its laws on personal inheritance, a legal field it shares with Islam, Judaism also contains a theologized concept of land inheritance regarding the land of Israel. Divine bequeathal of the land of Israel is an essential part of Israel's covenantal relationship with God: it forms the premise of the agreement, defines the terms in which it is enacted, and its recension is framed as a severe punishment. This type of inheritance is distinct from Islamic inheritance traditions in several ways: it is communal, theological, and geographically bound.<sup>44</sup> In most instances, divine inheritance of the land is raised as a theological issue that affects other covenantal behaviors (e.g., living according to Jewish law), but the story of the daughters of Tzelophechad links it to personal inheritance practices. This could set a theological precedent for inheritance within the land of Israel, as well as evidence of the critical importance of inheritance laws, stories, and traditions in Judaism.

The Hebrew Bible contains conflicting precedents on non-familial and inter-tribal land transfer. The story of the daughters of Tzelophechad is, of course, one of them. Leviticus 23 also implies

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<sup>44</sup> *Comparing Religions through Law*, Neusner and Sonn, 7.

that inheritance is the only method of land transfer: "The land shall not be sold in perpetuity, for the land is Mine, for, you are [merely as] foreigners and resident aliens before Me."<sup>45</sup>

However, the term that here is translated as "resident alien," גר ותושב *ger v'toshav*, is also used self-referentially by Abraham when he tries to acquire a piece of property for the Israelites in Genesis 23. Therefore, a גר ותושב can clearly go from being nomadic to propertied.

Howsoever one acquires land or property, it must be passed on after death, and Biblical Hebrew has several linguistic roots for inheritance and bequeathal. The most common, נחל *n-ch-l*, "designates precisely possession held by title of patrimony and is employed almost always of immovables."<sup>46</sup> *N-ch-l* appears 282 times in the Masoretic text. Next most common, with 256 citations, is ירש *y-r-sh*, which "denotes specifically succession in possession, whether by conquest or by inheritance, and it is used almost always of immovables, such as a country, city, or house."<sup>47</sup> Finally, חלק *ch-l-q* "refers to a heritage as a portion of a larger unit."<sup>48</sup> Indeed, formulations of this root can be applied to divisions into segments or parts and does not have to be applied to inheritable property.

### *Inheritance Law in Rabbinic Tradition*

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<sup>45</sup> Leviticus 25:23, *Metsudah Chumash*, Metsudah Publications, 2009. Retrieved from [https://www.sefaria.org/Leviticus.25.23-24?ven=Metsudah\\_Chumash,Metsudah\\_Publications,2009&lang=bi&with=Translations&lang2=en](https://www.sefaria.org/Leviticus.25.23-24?ven=Metsudah_Chumash,Metsudah_Publications,2009&lang=bi&with=Translations&lang2=en) 22 November 2022.

<sup>46</sup> *New Catholic Encyclopedia*, <https://www.encyclopedia.com/religion/encyclopedias-almanacs-transcripts-and-maps/inheritance-bible>

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

The contrast between the biblical and rabbinic inheritance traditions is so sharp, Jonathan S. Milgram called it a radical transformation. He writes,

The biblical model of an extended family in an agrarian economy, residing on its jointly owned ancestral estate and populated by subordinate daughters, invisible wives, and the firstborn at its head, is not manifest in the later, tannaitic law and lore. Rather, tannaitic inheritance law - like other areas of tannaitic law - supposes a situation in which the nuclear family is predominant, land is privatized, and rabbinic society is urbanized.<sup>49</sup>

In biblical inheritance law, firstborn privilege is fundamental; in tannaitic law, firstborn sons receive minimal honored position (with a few notable exceptions, which will be examined below). In biblical law, tribal tracts were jointly owned in perpetuity; in tannaitic law, division of estates is standard. In biblical law, daughters receive inheritance through stories that are notable for their abnormality; in tannaitic law, laws for the welfare of widows and daughters “dominate.”<sup>50</sup>

The obvious question is why the difference between biblical and tannaitic literature on inheritance is so stark. To address this, one must define both genres and examine them in their respective historical contexts.

Biblical literature refers to the contents of the Hebrew Bible, which includes the books of Torah, Prophets, and Writings as according to the Jewish canon. The earliest biblical writings are commonly traced to the tenth century BCE, though it is possible that they may be even older.

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<sup>49</sup> Milgram, Jonathan. *From Mesopotamia to the Mishnah*, 1.

<sup>50</sup> Milgram, 2.

The latest chapters are more clearly of the second century BCE.<sup>51</sup> Biblical material includes personal narrative, history, legal content, prophesy, and wisdom literature. Legal conclusions, as demonstrated in the previous section of this chapter, can be drawn from any of these internal genres, not only the explicitly legal texts.

Tannaitic literature is attributed to rabbis and the cultural discourse of early rabbinic Judaism in approximately the first century of the Common Era, following the destruction of Jerusalem by the Romans. The primary text of tannaitic literature is the Mishnah, though the Tosefta and several other minor texts can also be included in this category.<sup>52</sup> The Mishnah does not fit most conventional modern genres. It presents itself as a code of law but contains unresolved legal disputes and a significant amount of nonlegal material. Holtz defines the Mishnah as “an early attempt to reduce the Oral Torah<sup>53</sup> to an official compilation, to prepare some authoritative statement of the minimal amount of learning a disciple had to acquire for admittance to advanced rank in the rabbinic movement.”<sup>54</sup>

Holtz claims that the rabbis of the tannaitic period created the Mishnah as a rabbinic study guide. Though a modern reader might look back and assume that one ancient text (the Mishnah) would be built upon what preceded it (the Tanakh), they would miss the premise of the rabbinic project and thus their conclusion would be incorrect. If the goal of the tannaitic rabbis was to delineate the important intellectual and methodological material of their time,

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<sup>51</sup> Kugel, James. *How to Read the Bible*, 5.

<sup>52</sup> Goldenberg, Robert, in *Back to the Sources*, ed. Barry W. Holtz, 138.

<sup>53</sup> Goldenberg defines “Oral Torah” in tandem with Scripture: “the revelation granted to Moses had been delivered in two forms, a smaller revelation in writing and the larger one kept oral. This ‘Oral Torah’ had been transmitted faithfully by the leaders of each generation to their successors...finally to the earliest rabbis.” (130)

<sup>54</sup> Goldenberg, *Back to the Sources*, 131.



reinterpreting the Tanakh – which stops before the Second Temple period and, later, the Bar Kokhba Revolt – would be insufficient. Therefore, the Mishnah occasionally references the Tanakh, but primarily contains legal content that appears to be *ex nihilo*, at least to the Jewish confessional eye. More simply: since the Mishnah rarely derives its laws from Tanakh, where did they come from?

Jonathan Milgram sees the Mishnah as a document of its time (second century CE) that drew upon the legal material of its time as well. He writes that the Mishnah incorporates Ancient Near Eastern principles, terminology, and formulae, as well as Second Temple, Greek, Elephantine, Judean desert, and Roman legal ideas.<sup>55</sup> "The rabbis fashion laws that generally correspond to the social and economic contexts prevalent in Roman Palestine."<sup>56</sup> Inheritance law is an excellent example of this.

Recall that biblical inheritance law gave land to men of the same tribe to share, and women could inherit in the absence of men as long as the interaction did not allow the property to be owned outside of the tribe, which would go against God's will and violate the God-Israel covenant. By the Roman period, however, the land that had been ruled by Jews and the Temple had been destroyed twice. Roman culture imported a more urbanized structure into what was now called Palestine, and between the new dominant empire and the divisions and scattered nature of exile, Jewish sense of land ownership seems to have assimilated somewhat toward the more privatized Greek and Roman model. The Mishnah presents the possibility of dividing

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<sup>55</sup> Milgram, 2-4.

<sup>56</sup> Milgram, 17.

one's assets – including the immovable asset, land – without any mention of tribe affiliation or covenant, even when the proof-text is brought from the biblical story of the Daughters of Tzelophechad. Thus begins the central Mishnaic text on inheritance, Chapter 8 (Mishnah 2) of m. Bava Batra:

<p>The <b>order</b> of precedence with regard to <b>inheritances is this</b>: The verse states: <i><b>“If a man dies, and has no son, then you shall pass his inheritance to his daughter”</b></i> (Numbers 27:8). This teaches that <b>a son precedes a daughter</b>. Additionally, <b>all descendants of a son precede a daughter</b>. A <b>daughter precedes the brothers</b> of the deceased. Additionally, the <b>descendants of a daughter precede the brothers</b> of the deceased.<sup>57</sup></p>	<p>סֵדֶר נִחְלוֹת כָּךְ הוּא, (במדבר כז) אִישׁ כִּי יָמוּת וּבֶן אֵין לוֹ, וְהִעֲבַרְתֶּם אֶת נַחֲלָתוֹ לְבָתּוֹ, בֶּן קוֹדֵם לְבַת, וְכָל יוֹצְאֵי יִרְכּוּ שָׁל בֶּן קוֹדֵם לְבַת. בַּת קוֹדֶמֶת לְאֶחָיו. יוֹצְאֵי יִרְכּוּ שָׁל בַּת, קוֹדֵם לְאֶחָיו.</p>
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This mishnah demonstrates several things. First, as already discussed, estates are divisible. Second, it supports Milgram's claim that daughters' bequests command notably more attention

<sup>57</sup> English from The William Davidson digital edition of the Koren Noé Talmud, with commentary by Rabbi Adin Even-Israel Steinsaltz. Retrieved from [www.sefaria.org](http://www.sefaria.org) on February 16, 2023.

in the Mishnah. Milgram believes that both of these changes reflect the social and economic conditions of the tannaitic rabbis.<sup>58</sup>

After expanding upon the portions allotted to Tzelophehad (and later, his daughters), the Mishnah continues (m. Bava Batra 8:4) by articulating what seems to be the basis for intestate succession:<sup>59</sup>

The son and the daughter are alike concerning inheritance, save that the [firstborn] son takes a double portion of the father's property but he does not take a double portion of the mother's property. And the daughters receive maintenance from the father's property but not from the mother's property. <sup>60</sup>	אָחָד הֵבֵן וְאָחָד הֵבֵת בְּנִחְלָה, אֲלֵא שֶׁהֵבֵן נוֹטֵל פִּי שְׁנַיִם בְּנִכְסֵי הָאָב וְאִינוֹ נוֹטֵל פִּי שְׁנַיִם בְּנִכְסֵי הָאֵם. וְהַבָּנוֹת גְּזוּנוֹת מִנְכָּסֵי הָאָב וְאֵינָן גְּזוּנוֹת מִנְכָּסֵי הָאֵם
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The internal logic of this passage seems weak, so much so that it merits comments from four rabbis in BT Bava Batra 122b (Rav Nahman bar Yitzhak, Rav Pappa, Rav Ashi, and Mar bar Rav Ashi). This mishnah begins by saying that sons and daughters inherit similarly, but then it

<sup>58</sup> Milgram, 131.

<sup>59</sup> Intestate succession is a system in which estate divisions are governed; the opposite would be testate succession, in which the deceased determines the division of their estate by issuing a last will and testament.

<sup>60</sup> Kulp, Joshua, trans. *Mishnah Yomit by Dr. Joshua Kulp*, Source: [learn.conservativeyeshiva.org](https://www.learn.conservativeyeshiva.org), retrieved from [www.sefaria.org](https://www.sefaria.org) on February 17, 2023.

contradicts itself and lists the ways in which sons and daughters are quite distinct, linked only by the phrase *אלא ש* (usually “rather that”). Mar bar Rav Ashi resolves the contradiction by saying that the daughter in question only inherits as described when there are no sons.

J. N. Epstein believes that the original passage had two key additional words: “The son and the daughter are the same regarding the inheritance of the mother...” To support his claim, Epstein cites Tosefta Bava Batra 7:10, which says:

רבי שמעון בן יהודה איש כפר איכוס אומר משום רבי שמעון אחד הבן ואחד הבת שוין בנכסי האם.

Rabbi Shimon ben Yehudah, a man of the town of Ikus, says that because of Rabbi Shimon, each son and daughter are equal in regards to [inheriting] the mother’s property.<sup>61</sup>

Though this is certainly possible, Milgram’s response contextualizes this law historically. First, he takes the simplest explanation, which is that these were originally two independent inheritance traditions exactly as they appeared (without any textual additions to the first, more equitable, section). This implies that there was a tannaitic inheritance tradition that allowed sons and daughters to inherit equally! Furthermore, Milgram finds support for this claim in several other texts. First, the Palestinian Talmud, Bava Batra 8:1, says:

חכמי גוים אומרים. בן ובת שוין כאחת.

“The sages of the gentiles say, ‘son and daughter are equal [in matters of inheritance].’” (It is not clear if the gentiles in question were Christians or Romans; both promulgated gender

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<sup>61</sup> Milgram, 115.

equitable inheritance practices.) Babylonian Talmud Shabbat 116b also recounts a story that cites gender equitable inheritance traditions practiced by “the Evangelicals.” The Sadducees also argued (against proto-rabbinic law) that sons and daughters should inherit equally, as recorded in t. Yadayim 2:20, Megillat Ta’anit (a first century non-canonical rabbinic text), PT Bava Batra 8:1, and BT Bava Batra 115b-116a.<sup>62</sup> Philo also wrote that unmarried daughters inherit equally to sons, in place of the dowry that they would have received from their deceased father.<sup>63</sup>

Equitable inheritance between sons and daughters might not have been normative or unrestricted to the early rabbis, but it was clearly known and possible in certain circumstances. Milgram sees this as consistent with “the social and economic contexts in which the rabbis find themselves in tannaitic Palestine: an urbanized setting with private landholdings and predominantly nuclear families.”<sup>64</sup> It stands to reason, then, that similar shifts in bequeathal practices would apply to widows, and indeed, m. Ketubot 4:12 accounts for a widow’s right to receive financial sustenance from her late husband’s estate and live in his house for her full widowhood. She also has the right to receive the money owed to her in her ketubah; in Jerusalem and the Galilee, common practice was to allow her to choose either ketubah compensation or sustenance, and in Judea the heirs would make the choice for her. Judean desert documents also suggest similar practices in that tribal culture.<sup>65</sup> However, one key difference stands out: the widow’s right to reside in her late husband’s home seems shared

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<sup>62</sup> Milgram, 106, footnote 6.

<sup>63</sup> Philo, *The Special Laws* 2:124-125, referenced by Milgram, 119.

<sup>64</sup> Milgram, 135.

<sup>65</sup> Milgram, 137.

only between rabbinic Judaism and the Code of Hammurabi. A study of the sources of the Judean desert, Greeks, Romans, Elephantine, and other Ancient Near Eastern traditions do not produce any parallels.<sup>66</sup>

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<sup>66</sup> Milgram, 144.

## Part 2: Annotated Selection from Sura 4 *An-Nisa'* (The Women)

O mankind, be conscious<sup>67</sup> of your Lord, Who created  
you from one<sup>68</sup> soul<sup>69</sup>

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ  
مِنْ نَفْسٍ وَاحِدَةٍ

<sup>67</sup> Like Hebrew (and other Semitic languages), Arabic grammar and semantics are premised upon the three-letter root system: in its simplest sense, each word contains a set of three consonants which can be put into different constructions for different words along the same basic meaning. For example, in Hebrew, the root ספר S-F-R contains words that have to do with reading, writing, and accounting: *sefer* means book, *sifriya* means library, *sofer* is a scribe or author, *sipur* means story (the p and f are the same letter morphed by a diacritic mark – the difference matters for phonetics and morphology, but is essentially irrelevant to syntax), and *lispor* means to count. Some roots deviate from the three-syllable structure by doubling a letter of the root (geminate), including a vowel or weak consonant in one of the root positions, or by having two or four root letters instead of three (most common with foreign loanwords).

The most important note for this study is that many Hebrew and Arabic roots share semantic meaning, and these points of overlap become even more apparent when one realizes that certain phonemes (i.e., sounds, which are represented by letters) have regular conversions from one language to the other. For example, although ק (Quf) sounds the same as כ (Kaf) in Modern Hebrew, in Arabic, ק is equivalent to ق (Quf, a guttural plosive formed near the glottis) and כ is equivalent to ك (Kaf, a plosive formed at the soft palate). Similarly, the Hebrew ו (Vav), which can form either *u* or *v* sounds, converts to the Arabic و (Waw), which can form either the *u* or *w* sounds.

The fourth word of the fourth sura demonstrates both of these conversions, and recognizing the Hebrew equivalent sheds light on an aspect of Islamic theology. اتَّقُوا *utaqu* comes from the root قوه (Q-W-H), which I have translated above as “be conscious of.” Other translations include “be careful of your duty” (Muhammad Marmaduke Pickthall), “reverence” (Seyyed Hossein Nasr), “fear” (Alan Jones), and “guard against” (A. J. Droge). My translation specifically draws upon the interplay with the verb’s Hebrew equivalent: קוה (Q-V-H) which in the same conjugation (second person masculine plural), would be תקוו (*tikvu*). In Rabbinic Hebrew – which is the most appropriate comparison, as the Qur’an was written/received in the seventh century CE – this verb means to hope or wish. The full range of meanings in both languages implies an acute sense of something powerful beyond one’s control; thus I arrived at “be conscious of your God.”

<sup>68</sup> In several places, the Qur’an traces the origins of humanity and heterosexual partnership back to the creation and bifurcation of one soul (6:98, 7:189, 31:28, 39:6). Several significant classical Muslim commentators (ibn Kathir, al-Qurtubi, al-Tabari, and al-Zamakhshari) understand these allusions as references to the story of Adam and Eve as told in Genesis 2:21-23, but since that story is only referenced in the Hadith (authoritative stories and sayings by and about Muhammad), and never in the Qur’an, modern commentators suspect Genesis was not the true origin of this version of the myth.



divided from it its fellow, and from them spread many men and women. Be conscious of God, from Whom you request <sup>70</sup> rights and family relations. <sup>71</sup> Indeed, God has been watching over you. {1} <sup>72</sup>	وَخَلَقَ مِنْهَا رَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً ۚ وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ ۚ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا { 1 }
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Versions of this myth appear beyond Islam and Judaism’s respective scriptural canons. Most famously, Plato’s *Symposium* includes a passage titled “Aristophanes’ Speech,” which tells an origin myth that all human beings began as double creatures, each with two heads, eight limbs. Humans took their current form because Zeus commanded that they be split, and each person seeks their original other half. (Dover, K.T., “Aristophanes’ Speech in Plato’s *Symposium*” 1966). Similarly, Genesis Rabbah 8:1 says, “R. Yirmiyah ben Elazar said: In the hour when the Holy One created the first human, God created him [as] an androgyne [androgynos], as it is said, ‘male and female He created them.’ Said Rabbi Shmuel bar Nachman: In the hour when the Holy One created the first human, God created him double-faced [du-par’tsufin], and sawed him and made him backs, a back here and a back [t]here, as it is said, “Before/achor and behind/kedem You formed me” [Ps. 139:5].”

<sup>69</sup> The Arabic word for soul, *nafs* نَفْس, shares a root with the Hebrew word for soul, *nefesh* נֶפֶשׁ. In both languages, the word in other forms means breath and to breathe, as well as oneself/himself/herself/etc. The breath, the self, and the soul are all inherently intertwined, and are connected back to the first moment of creation.

<sup>70</sup> *tasa'aluna bihi* تَسَاءَلُونَ بِهِ is translated here as “from Whom you request.” Though the Hebrew cognate would be *sho'alim bo* שואלים בו, the Islamic idea of asking something of God has a petitionary frame rather than simple inquisitiveness. Therefore, Uri Rubin’s Hebrew translation of the Qur’an translates this phrase as *b'shmo tevakshu zeh mizeh* בשמו תבקשו זה מזה, “in His name you request this and that.” (*HaQur'an* הקוראן, Uri Rubin, University of Tel Aviv Press, 2005)

<sup>71</sup> *al-arham* الْأَرْحَام is translated as “family relations” by many translators but literally means “the wombs” (note the shared linguistic root with *rachamim* רחמים, which in Hebrew means both “wombs” and “compassion”). There are many instances in Qur’an and the Sunna (collected stories by and about Muhammad) in which wombs and kin are the same word. In this case, since it follows a myth of the origins of heterosexual partnership, many commentators (including Nasr, p.189) assume that the text implies that people seek and receive their rights in marriage through God.

<sup>72</sup> Traditional Qur’anic annotation lists the verse number at the end of the verse, instead of at the beginning as a Jewish or Western reader might expect.

<p>Give orphans<sup>73</sup> their property and do not exchange the bad [possessions] for the good.<sup>74</sup> And do not consume their wealth into your own, For that would be a great sin. {2}</p> <p>If you fear that you will not act fairly with the orphans,<sup>75</sup> marry<sup>76</sup> such of the women as are good to you: two, three or four.<sup>77</sup> But if you fear that you will</p>	<p>وَأَتُوا الْيَتَامَىٰ أَمْوَالَهُمْ<sup>ط</sup> وَلَا تَبَدِّلُوا الْخَبِيثَ بِالطَّيِّبِ<sup>ط</sup> وَلَا تَأْكُلُوا أَمْوَالَهُمْ إِلَىٰ أَمْوَالِكُمْ<sup>ج</sup> إِنَّهُ كَانَ حُوبًا كَبِيرًا {2}</p> <p>وَأِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ</p>
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<sup>73</sup> The Arabic word for “orphans” يَتَامَى *yataama* shares a root with the Hebrew word of the same meaning יתומים *yetomim* (familiar to many Jews from the Mourner’s/Orphan’s Kaddish, *Kaddish Yatom* קדיש יתום). In both Tanakh and Qur’an, an orphan is someone who has lost either both parents or their father alone.

<sup>74</sup> According to Islamic scholars, this verse was given by God through Muhammad in response to a petition by an orphan who had been under his uncle’s care until the age of maturity, at which point the uncle refused to give him his rightful inheritance. This also explains the instruction, “do not exchange the bad for the good,” i.e., do not change the contents and lessen the value of orphans’ inheritance while it is under your charge. One alternative reading, by al-Zamakhshari, also suggests that it means do not exchange bad practices with good.

<sup>75</sup> The juxtaposition of marital law with orphan protection law appears to be linked through an interest in treating vulnerable members of society justly (note the multiple references to justice and fairness), as noted by ninth century Muslim scholar al-Tabari. Al-Tabari also noted that “a man who takes more wives than he can provide for from his own wealth may be tempted to pilfer the property of orphans in his care to maintain his family” (Nasr, 190). There is also a common interpretation attributed to Muhammad’s wife Aisha that this verse seeks to protect orphan girls whose male guardians might force into marriage without consent or dowry, and she asserts that v. 127, which speaks to this issue more explicitly, was given as a clarification for v. 3.

<sup>76</sup> اَنْكِحُوا *ankihu*, translated universally as “marry,” shares a root with לקח L-K-CH, to take. Both the Qur’an and Tanakh use “taking a woman” to mean marrying a woman. (For one Tanakhic example, see Genesis 28:6.)

<sup>77</sup> Polygamy in Islamic societies is a topic of much discussion and this verse plays a part in that discourse, as it clearly permits polygamy. Muslim commentators note that the verse clearly limits polygamy: women must be treated justly. Elsewhere in Qur’an and its interpretation history, just treatment is defined as providing wives equitable financial support, love, companionship, and conjugal relations (al-Qurtubi in Nasr, 190). However, v. 129 of this Sura (chapter) also addresses this issue: it is impossible to treat all wives equally, but that is a forgivable sin and not a reason for monogamy.

not be just, then [only] one, or those whom your right hand possesses. Thus it is more likely you will be just. <sup>78</sup> {3}	وَتِلْكَ أَرْبَعٌ ۖ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةٌ أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ۚ ذَلِكَ أَدْنَىٰ أَلَّا تَعُولُوا {3}
And give the women their dowries <sup>79</sup> as a gift.	وَأَتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً ۚ

According to Nasr, “all commentators are explicit that this verse did not establish a new license for polygamy or encourage it, but rather limited the more excessive practices of polygamy common in pre-Islamic Arabia by setting four as the maximum number of wives a man can have at one time.” (190) Jewish readers might note that polygamy similarly exists extensively in Tanakh with a mix of examples, guidelines, and cautions. In biblical narrative, the most significant examples are Abraham, who has both a wife (Sarah) and a *pilegish* (Hagar); Jacob, who has two wives and two *pilegshim*; and King David, who has 700 wives and 300 concubines (I Kings 11:3). Biblical law also addresses this subject: the laws of levirate marriage allow a man to take a second wife to fulfill his levirate obligation to his late brother; “too many wives” (לא ירבה-לו נשים) are prohibited (Deuteronomy 17:17); a man is prohibited from allotting his last will and testament according to the amount he loves his respective wives (Deuteronomy 21:15-17); and if a man takes a second wife, he must provide her rightful food, clothing, and conjugal rights or else their marriage is nullified (Exodus 10:21).

There are differing opinions regarding when monogamy became standard in the Jewish world and predominant in the Muslim world. An oft-cited starting point in Jewish history was the *takkanah* of Rabbeinu Gershom, a rabbinic decree issued by a synod he convened in Metz (in modern day France) around 1000 CE that banned polygamy. It is possible that this decree was influenced by the importance of monogamy to Christian Europe; no such decree was issued by any Sephardic rabbi, and polygamy continued to be a minority but extant practice in some Sephardic communities into the twentieth century.

<sup>78</sup> Fairness and justice are mentioned multiple times in these verses on treatment of orphans and women. In addition to reading Qur’an in its historical and comparative religion context, we should read it in its own context. In the case of these verses, that means that the wives under discussion are orphans themselves. Neither pre-Islamic nor Islamic Arabia had government or civic organizations to provide a safety net; the most basic unit of economic security was the family unit, so expanding the family unit was a sensible way to ensure safety and security for the most vulnerable in society (as long as certain rules were instituted to make sure vulnerable people were not abused within the family unit).

<sup>79</sup> The word for dowries, *ṣadūqāt*, will be familiar to many Jewish readers because it shares a root with *tzedakah*. Tzedakah is thought of as righteous giving (“charity” is the common English parlance but omits the root meaning of justice); this root shares the same meaning in Islam, which shows that dowries are a rightful expectation of a bride and giving them is a matter of justice.

<p>If they remit any part of it to you on their own, consume it with satisfaction and pleasure. {4}</p> <p>Do not give the foolish<sup>80</sup> your property, which God has made for you to manage, but provide for them and clothe them with it, and speak to them kindly.<sup>81</sup> {5}</p> <p>Test the orphans<sup>82</sup> until they reach the age of maturity.<sup>83</sup></p> <p>If you find them to be of good judgment, give them their property</p> <p>Do not consume it wantonly or hastily before they come of age.</p> <p>Whoever is wealthy should refrain [from using it], and whoever is poor should use it honorably<sup>84</sup></p>	<p>فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَرِيئًا {4}</p> <p>وَلَا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَامًا وَارْزُقُوهُمْ فِيهَا وَاكْسُوهُمْ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا {5}</p> <p>وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ ۖ وَلَا تَأْكُلُوهَا إِسْرَافًا وَبِدَارًا أَنْ يَكْبَرُوا ۚ وَمَنْ كَانَ غَنِيًّا فَلْيَسْتَعْفِفْ ۚ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ ۚ</p>
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<sup>80</sup> Continuing the theme of property management for vulnerable parties, this verse speaks to those who do not have the intellectual ability or wherewithal to manage their own property. *sufaha'a* is translated here as “foolish” but a common alternative is “feeble-minded.” There is a minority opinion that it refers to non-Muslims who would not be familiar with Islamic financial laws, such as those listed here or the prohibition of usury.

<sup>81</sup> The word *ma'aruufan* comes from the root related to knowledge. It is translated here as “kindly,” elsewhere as “honorably” or “rightfully.” All of these relate to speaking to vulnerable people in ways that everyone would know and acknowledge to be respectful and appropriate.

<sup>82</sup> The nature of testing is not clear, and unfortunately not widely discussed in *tafsir* (interpretive tradition). Given its immediate context, such tests would probably be aimed towards discerning whether children are growing into adults of either foolishness or good judgment.

<sup>83</sup> The age of maturity in Islamic law varies by source and local custom, ranging from 12 to 18. Islam does not have a lifecycle ritual for reaching adulthood as Judaism does in becoming bat or bar mitzvah at age 12 or 13.

<sup>84</sup> The interpretive tradition defines honorable usage as benefiting from property without diminishing its value. For example, if the orphan has an inheritance of land and livestock, using the animal milk, animal hair, produce that grows on the land, etc., which is naturally produced when one responsibly maintains such property. However, thirteenth century Spanish

<p>When you give them their property, bring witnesses for them.</p> <p>And God<sup>85</sup> suffices as a reckoner.<sup>86</sup> {6}</p> <p>To the men [belongs] a portion of what parents and close relatives leave,<sup>87</sup></p>	<p>فَإِذَا دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ فَأَشْهَدُوا عَلَيْهِمْ ۚ وَكَفَىٰ بِاللَّهِ حَسِيبًا {6}</p> <p>لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ</p>
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commentator Al-Qurtubi believes that even such usage is abrogated by v. 10, which strongly proscribes usage and consumption of property being maintained for orphans' future inheritance.

<sup>85</sup> When translated as God, the Arabic text says *Allah*. *Allah* is one name for God, just as Judaism has God's name *YHVH* among other appellations. I have chosen to translate *Allah* as God to follow common practice (as evidenced by Nasr, Droge, and Jones, though not Pickthall), as well as to maintain consistency with Jewish practice to translate *YHVH* as God; both religions are speaking about a singular, omnipotent god, and therefore accurate translate emphasizes the appropriate similitude.

<sup>86</sup> Notice the parallel pattern with the end of v. 1. Often the Qur'an will end a verse with an emphatic reminder of God's supremacy in the topic or role that is the focus of that verse. In v. 1, God's omniscience was emphasized following a passage on God as creator and granter of personal rights. In v. 6, in the context of instruction on ethical property management, God is named as the supreme reckoner, which could also be translated as accountant; the word *حَسِيبًا* *hasiban* comes from the same root as the Hebrew word *חשבון* *cheshbon*, and the usage here is similar to the Jewish practice of *cheshbon hanefesh*, literally "accounting of the soul," i.e. taking stock of one's good and bad deeds.

<sup>87</sup> This verse starts the set of verses known as "the inheritance verses," 4:7-12 and 4:176. For a fuller discourse, see Chapter 3: Islamic Inheritance Traditions. In short, the Qur'an contains both intestate and testate inheritance systems, which means that it has both instructions on inheritance which render a last will and testament unnecessary (intestate succession) as well as instructions for a last will and testament (testate succession). The inheritance verses, 4:7-12, provide the intestate succession system; theoretically, these verses build a sufficient foundation for a system in which personal preference, relationships, or circumstances have no influence on how property is divided when someone passes away, because it dictates what each person around the deceased receives. As we will see, the system is complex enough to be confusing to many people, while also being insufficient for the infinitely changing circumstances that any canonical scripture encounters.

One of the key questions in *'ilm al-fara'id*, the science of shares (as the field of inheritance studies is called in Islamic thought), is whether the inheritance verses seen here abrogate the bequest verses (2:180-182). See Chapter 3 for more detail, but note here that there is no

<p>And to the women [belongs] a portion of what parents and close relatives leave<sup>88</sup> -  Whether it be little or much,<sup>89</sup>  A required portion.<sup>90</sup> {7}</p> <p>When relatives, orphans, and the poor are present at the division [of an estate], provide livelihoods for them from it, and speak kindly<sup>91</sup> to them. {8}<sup>92</sup></p> <p>They should fear if they left behind them weak<sup>93</sup> progeny; let them fear God and speak justly. {9}</p>	<p>وَاللِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ  وَالْأَقْرَبُونَ  مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۚ  نَصِيبًا مَّفْرُوضًا {7}</p> <p>وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَىٰ  وَالْيَتَامَىٰ وَالْمَسَاكِينُ فَارْزُقُوهُمْ مِنْهُ  وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا {8}</p> <p>وَلْيَخْشَ الَّذِينَ لَوْ تَرَكَوا مِنْ خَلْفِهِمْ  ذُرِّيَّةً ضِعَافًا خَافُوا عَلَيْهِمْ فَلْيَتَّقُوا اللَّهَ  وَلْيُقُولُوا قَوْلًا سَدِيدًا {9}</p>
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consensus on this issue. Therefore, a new reader should not assume that the inheritance rules laid out here are how bequeathal is conducted in the modern Islamic world.

<sup>88</sup> This makes inheritance law equal to men and women; there is no difference at all in how it is framed or what they would inherit. Indeed, Shi'a inheritance law does not advantage one gender over another, in part because of this verse.

<sup>89</sup> Already in this chapter, we have seen how the amount of wealth can change how it is managed (e.g., if one is poor, one can partake of an orphans' material wealth). Therefore, the Qur'an makes a point that the portion is equal and mandatory, regardless of how large the wealth might be.

<sup>90</sup> Many Islamic scholars agree that sharing inheritance with women and minor children was not a practice in pre-Islamic Arabia. This might explain the added emphasis that this is a requirement.

<sup>91</sup> See Footnote 15; here we see the same word again.

<sup>92</sup> This verse causes a significant amount of confusion because it seems to contradict several other verses. Relatives have specific portions of the estate allotted to them, and they add up to the full amount of the estate, so no amount is left over in case other relatives, orphans, or poor community members appear at the division of the estate. Some interpreters read this passage to mean that donating a portion of the estate is left to the heirs' discretion, and that it is a recommended but not required practice. (Nasr 192)

<sup>93</sup> "Weak" is a literal translation, but more specifically is understood to be speaking of the deceased's children. Therefore, this verse instructs Muslims to be especially careful to allot enough to minor children to sustain them, since, of course, they cannot sustain themselves.

<p>Indeed, those who consume the property of orphans<sup>94</sup> sinfully, they assuredly consume fire into their very stomachs, and they will burn in a blazing fire.<sup>95</sup> {10}</p> <p>God will make you bequeath the following to your children: For boys, the equivalent of two girls,<sup>96</sup> but if there were only two women, then they receive two</p>	<p>إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا وَيَصْلُونَ سَعِيرًا { 10 }</p> <p>يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ ۚ فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِنْ كَانَتْ وَاحِدَةً</p>
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<sup>94</sup> By now it might be clear: misusing the property of orphans is one of the most grievous sins, because it combines selfishness with damaging those who are most vulnerable in society. Recall the discussion in chapter 2: both the Islamic and Jewish legal systems were constructed to create order and justice in society because they emerged in historical and geographic times when civil government did not exist. In other words, religious systems had to institute law because no other social system could. Inheritance law and protection of the weakest members of society are both critically important to maintaining order; inheritance law (ideally) prevents fights over money and financial security, and social safety nets help make sure that people do not end up in such dire straits that they take destructive action.

<sup>95</sup> If this sounds like a reference to hellfire, you would be correct in suspecting so. The concept of Hell is highly important in Islamic theology, which draws much of its apocalyptic imagery from Christianity, Judaism, Zoroastrianism, and Egyptian folklore. (Britannica, “Hell: Islam”) Hell, called *Jahannam* in Arabic (a cognate of the Hebrew term גיהנום *Gihennom*), is the place or plane of existence that God created for people who made unethical choices during their lives. *Jahannam* is full of fire; according to one hadith (prophetic saying), Muhammad described a vision of Hell in which those who had wrongly consumed orphans’ property had flames coming out of their bodies (al-Qurtubi and al-Tabari, cited in Nasr, 192). Hell in Islam has seven gates, and Muslims who go to Hell will only suffer for a limited period of time, whereas non-believers will suffer physically and spiritually as long as God sees fit. (Britannica)

<sup>96</sup> Eighth century scholar Ibn Kathir states that men are given more than women in almost every scenario for several reasons. First, these rules improved upon what came before them; in pre-Islamic Arabia (known as the *jahiliyyah*, the age of ignorance), women inherited nothing. Second, men were the primary providers for their families, and in order to fulfill their obligations, they needed to have greater means. Third, women did not fight and were not entitled to shares of booty from battle.

As Islamic jurisprudence developed, the interpretation of these verses – both how they should be implemented, and whether they even have authority over the system of testate succession described in the bequest verses – was subject to the Sunni-Shi’a schism, which started with disputes over who rightfully inherited the authority bequeathed by Muhammad, but later extended into substantial differences in Qur’anic interpretation and practice (inheritance law being one of many examples). For more details, see Chapter 3.

<p>thirds of the inheritance. And if there is only one, then she gets half. And to his parents, to each of them,<sup>97</sup> a sixth of what he leaves if he has a child. If he did not have a child, and his parents are his heirs, then to his mother [goes] a third; if he had brothers, then to his mother [goes] a sixth, after any bequest he needed to bequeath<sup>98</sup> or any debt.<sup>99</sup> Your parents and your children – you do not know which of them is closer to you in benefit.<sup>100</sup> [This is] an obligation from God.<sup>101</sup> Indeed, God is knowing, wise. {11}</p> <p>And to you, half of what your wives leave, if they did not have children. If they did have a child, then you</p>	<p>فَلَهَا التَّصْنِفُ ۚ وَلَا بَوَيْهَ لِكُلِّ وَاحِدٍ مِنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ ۚ فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلِلْمِثْلِ الثُّلُثُ ۚ فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِلْمِثْلِ السُّدُسُ ۚ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ ۚ آبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفْعًا ۚ فَرِيضَةٌ مِنَ اللَّهِ ۚ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا { 11 }</p> <p>وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ ۚ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمْ الرُّبْعُ مِمَّا تَرَكَنَّ ۚ مِنْ بَعْدِ وَصِيَّةٍ</p>
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<sup>97</sup> Two scenarios are presented in which women receive equal or more inheritance than men: 1) if a man only has one daughter, she receives half of his property and the other half is divided among other family members, and 2) if two parents survive their son, they split his property equally between them.

<sup>98</sup> Early authorities (such as ibn Kathir and al-Zamakhshari) understand that of all potential bequeathals that this phrase may reference, principal among them would be the portion of the spouse(s). (Nasr 193-194) Judaism similarly requires that widows be maintained by the estate of their late husband (though in Judaism it is specified that this lasts until the widow remarries or returns to her family of origin).

<sup>99</sup> There are two patterns here which could be perceived as being at odds with one another: first, women are consistently designated less of the inheritance than their male counterparts; second, all divisions of property are given in terms of what the women receive.

<sup>100</sup> “You do not know which is closer to you in benefit” is an oddly constructed phrase, but it makes more sense when one remembers the context: the intestate succession system. Its driving purpose is to obviate the role of personal preference in bequests. Read this phrase and the subsequent one as, “You do not have true knowledge of who most needs and deserves your property, though you might wish to or think that you do. God knows better, and you should let God instruct you in this way.”

<sup>101</sup> Both Islam and Judaism theologize inheritance, but in drastically different ways. Islam’s inheritance laws are stated to be divine instruction and thus maximally authoritative, but that is extent of theology’s role. In Judaism, inheritance law is both a divine instruction, and any land inheritance law within ancestral Israel is considered part of the communal covenant with God, as well as part of God’s instructions for the apportionment of the land by tribe.



<p>[receive] a fourth from what they leave, after any bequest they might have made or any debt [has been paid].<sup>102</sup> And they shall receive a fourth of what you leave if you do not have a child, but if you have a child, then they receive an eighth of what you leave, after any bequest you might have made or any debt [has been paid]. If a man or a woman dies without a direct heir,<sup>103</sup> and they have a brother or a sister, then each of them [receives] a sixth. But if they have more [than two siblings], then they share<sup>104</sup> a third, after any bequest he might have made or any debt [has been paid], without prejudice – this is a bequest<sup>105</sup> from God. God is knowing, forbearing. {12}</p>	<p>يُوصِيَنَّ بِهَا أَوْ دَيْنٍ ۚ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكْتُمْ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ ۚ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثَّمَنُ مِمَّا تَرَكْتُمْ ۚ مِنْ بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ ۚ وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَالَةً أَوْ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتُ فَلِكُلِّ وَاحِدٍ مِنْهُمَا السُّدُسُ ۚ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثَّلَاثِ ۚ مِنْ بَعْدِ وَصِيَّةٍ يُوصَىٰ بِهَا أَوْ دَيْنٍ غَيْرَ مُضَارٍّ ۚ وَصِيَّةً مِنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ {12}</p>
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<sup>102</sup> The mention of bequests being made might seem at odds with this intestate system, but Muslim scholars understand this to mean distributing the legal shares outlined here (rather than making voluntary, additional bequests).

<sup>103</sup> The case of someone dying without heirs is cause for extensive discourse in Sunni tradition. Even the definition of what it means to die as a *kalala* is in question – “dying without heirs” is the most common interpretation but weak enough to allow room for doubt. (The heirs in question would be children or parents.) The greatest authority on this topic is David Powers, much of whose work I used as a reference in Chapter 3.

<sup>104</sup> شُرَكَاءُ *shurakaa’u* “sharing,” comes from the root Sh-R-K, which contains a range of meanings around sharing and interconnectedness. The modern Arabic word for “company,” شركة *sharika*, comes from the sense of a business conglomeration. Interestingly, the word for idol worship, شرك *shirk*, also comes from this root, because it implies associating profane things with God – an unholy, forced sharing of God’s unique divinity.

<sup>105</sup> One can and should understand this to mean that the entirety of this verse is an instruction and requirement from God, but the word choice is not coincidental. By using the language of bequest, the Qur’an implies that by following God’s instructions, Muslims will be following in God’s model and acting in a holy way.

## Conclusion

The close connections between Islam and Judaism are not going anywhere anytime soon, and yet mutual understanding between these communities seems generally to be low. This capstone project serves the greater project of expanding mutual understanding, and with that in mind, I hope to continue this work. In the spirit of dialogue and continuous improvement, I welcome feedback on the utility of form and content. Through future development and iterations, I hope that someday Jews will have a gateway into understanding Islam from its foundational text, the Qur'an.

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