TWO LEGAL PROBLEMS BEARING ON THE EARLY HISTORY OF THE QUR'AN

Patricia Crone

The Qur'ān is generally supposed to have originated in a social, cultural and linguistic environment familiar to the early commentators, whose activities began shortly after Muḥammad's death and many of whom were natives of the two cities in which he had been active; yet they not infrequently seem to have forgotten the original meaning of the text. It is clear, for example, that they did not remember what Muḥammad had meant by the expressions jizya 'an yad, al-ṣamad, kalāla or ḫāf; indeed, the whole of Sūra

1 I should like to thank David Powers, Frank Stewart and Fritz Zimmermann, as well as Etan Kohlberg, Sarah Stroumsa and other participants in the fourth Jāhiyiyya colloquium, for commenting on earlier drafts of this paper; I am particularly indebted to Frank Stewart, whose reaction to the first draft accounts for most of such clarity as the present version possesses.

2 Rippin would like Islamicists to forget about the original meaning of the Qur'ān (A. Rippin ed., Approaches to the History and Interpretation of the Qur'ān, Oxford 1988, pp. 2ff.). But though the study of tafsīr certainly should not focus on it alone, a historian of the rise of Islam cannot do without it. Rippin objects that "the scholar will never become a seventh-century Arabian townsman but will remain forever a twentieth-century historian or philologist"; but we will never become tenth-century Iraqis, nineteenth-century Egyptians or anyone else in our own or other people's past either, nor will we ever become anything other than ourselves in the present. Should we then abandon altogether the attempt to understand what other people are trying to say?

106 (Quraysh), in which the word ilāf occurs, was as opaque to them as it is to us; and the same is true of the so-called 'mysterious letters'. Kalāla is a rather unusual case in that several traditions (attributed to 'Umar) openly admit that the meaning of this word was unknown; more commonly, the exegetes hide their ignorance behind a profusion of interpretations so contradictory that they can only be guesswork. "It might", as Rosenthal observes, "seem all too obvious and unconvincing argument to point to the constant differences of the interpreters and conclude from their disagreement that none of them is right. However, there is something to such an argument." There is indeed. Given that the entire exegetical tradition is characterized by a proliferation of diverse interpretations, it is legitimate to wonder whether guesswork did not play as great a role in its creation as did recollection; but the tradition is not necessarily right even when it is unanimous. In this paper I shall first adduce an example of a Qur'ānic passage misunderstood by the exegetes without there being any disagreement whatsoever about the interpretation, and next discuss the exegetical memory loss with reference to the discontinuity between Qur'ānic legislation and Islamic law, of which I shall adduce another example.

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1. Kitāb in 24:33

The first thirty-four verses of Sūra 24 (al-Nūr) are concerned with sexual morality. The Sūra starts by laying down the penalty for fornicators and proceeds to accusations of unchastity, laying down the penalty for qadhī, specifying the procedure of li‘ān, and engaging in a long diatribe against ift; next it regulates entry into other people's houses, sets out rules regarding modest demeanour, encourages marriage, and concludes with a statement that "now we have sent down to you signs making all clear..." Thereafter the subject matter changes; verse 35 starts the celebrated 'mystic' passage of the Qur'ān after which the Sūra is named.

Sūrat al-Nūr 1-34 is thus a treatise on chastity (with the exception of verse 22, which has no apparent bearing on the subject). Verses 32-33 go as follows:

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a. "Marry off the spouseless among you, and your slaves and slavegirls that are righteous;
b. if they are poor, God will enrich them of His bounty;
c. God is all-embracing, all-knowing.

33. a. And let those who do not find a match be abstinent till God enriches them of His bounty.
b. And for those in your possession who desire a kitāb, write them a kitāb if you know some good in them.
c. And give them of the wealth of God that He has given you.
d. And do not compel your slavegirls to prostitution, if they desire to live in chastity, in order that you may pursue the goods of the present life.
e. If anyone compels them, then after the compulsion laid upon them, God will be all-forgiving, all-compassionate".
It should be clear that verse 33b-c is a loose paraphrase of verses 32a-33a.

32a: “Marry off the spouseless among you, and your slaves and slavegirls that are righteous” = 33b: “And for those in your possession who desire a ⟨kitāb⟩, write them a ⟨kitāb⟩ if you know some good in them”.

32b: “if they are poor, God will enrich them” = 33c: “and give them of the wealth of God that He has given you”.

33a: “And let those who do not find a match be abstinent till God enriches them of His bounty” = 33d: “And do not compel your slavegirls to prostitution, if they desires to live in chastity, in order that you may pursue the goods of the present life”.

32c: “God is all-embracing, all-knowing” = 33e: “If anyone compels them, then after the compulsion laid upon them, God will be all-forgiving, all-compassionate”.

It should also be clear that 32c has been misplaced (it ought to have followed rather than preceded 33a), and that this is why the verse division has gone wrong. Our concern is not with verse division, however, but rather with the meaning of ⟨kitāb⟩. There can be no doubt that the word means a marriage contract here (cf. Hebrew ⟨ketubah⟩).11 The passage is about marrying off the spouseless in general and slaves and slavegirls in particular: if they are too poor to afford the dower, God will provide/you should provide out of the money God gives you; if they must wait, let them be abstinent/do not force them into prostitution. This is in keeping with the fact that, as mentioned already, the general subject is sexual morality.

Yet all Muslim commentators understand ⟨kitāb⟩ as a manumission document, more precisely as a contract of manumission in return for payment of a specified sum in instalments over a specified period (usually known as ⟨kitāba⟩ or ⟨mukātaba⟩). This understanding is faithfully reflected in both Bell’s and Arberry’s translations: Bell: “And for those in your possession who desire the writing (of manumission) write it if you know any good in them”.

Arberry: “Those your right hands own who seek emancipation, contract with them accordingly, if you know some good in them”.

Though manumission is plainly out of context here, there seems to be no trace of disagreement over the meaning of the word, be it in Sunni,12 Shi’i,13 Khârîjî,14 or for that matter Islamicist literature.15 The commentators argued about the phrase “if you know some good in them”, the issue being whether it was a reference to moral probity or to financial ability. They also disagreed on whether the Qur’ânic verse made it obligatory or merely recommended for the owner of a slave to contract a slave in ⟨kitāba⟩ if

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11 Marriage contract is also one of the meanings of ⟨kitāb⟩ in modern Arabic (cf. H. Wehr, A Dictionary of Modern Written Arabic, ed. J.M. Cowan, Wiesbaden 1966; M. Hinds and S. Badawi, A Dictionary of Egyptian Arabic, Beirut 1986, s.v.), and it is attested in medieval Arabic too (R. Dozy, Supplément aux dictionnaires arabes, Leiden 1881, s.v.; drawn to my attention by E. Kohlberg; but the dictionaries of classical Arabic fail to record it (cf. E.W. Lane, An Arabic English Lexicon, London 1863-78; Wörterbuch der klassischen arabischen Sprache, Wiesbaden 1970—, s.v.). Though it does of course mean a written contract in general, a foreign usage may be reflected here.


the slave so desired. And they took the injunction “give them of the wealth of God that He has given you” to mean that the manumitter ought charitably to forgo the last instalments. The one thing they never considered was the possibility that kitāb here meant marriage contract rather than manumission document. The institution of kitāba has its roots in provincial law, and it does not owe a single feature to the Qur′ān, not even the practice of charitably forgoing the last instalments: the charitable practice was read into the book rather than derived from it.16 The Qur′ān does not in fact refer to the institution at all. Why then did the Muslims come to see kitāba here? Even if the exegetes had forgotten the original meaning of kitāb in this verse, they could easily have deduced it from the context, yet they never tried.17 But why did they forget the original meaning? It seems unlikely that they should have displaced or suppressed it because they needed to find a Qur′ānic sanction for kitāba, for numerous institutions of Islamic law are validated by Ḥadith alone, and kitāba was not an especially controversial procedure in need of a Qur′ānic peg. Given the continuous nature of the tradition, moreover, the original meaning ought to have been difficult to displace.

Rosenthal suggests that the gaps in the exegetical recollection should be explained with reference to the disparity between Muhammad’s personal knowledge and that of his followers on the one hand, and the discontinuity between Muḥammad’s environment and that of the exegetes on the other: Muḥammad may have been familiar with foreign words and topics that were unknown to his audience; and since a number of traditions assert that he disliked being questioned about religious matters, he may have refused to explain himself when he was not understood; at the same time the pagan environment was shrinking and idioms were changing.18 In short, though the early commentators were familiar with the environment in which the Qur′ān originated, the continuity should not be envisaged as total.

This is a reasonable explanation which copes well enough with examples such as al-ṣanad and al-rajdīm in the expression al-shaytān al-rajdīm (an Ethiopian loan-word which the commentators wrongly took to be an Arabic word meaning ‘stoned’; it is however an uncertain example of exegetical failure to remember, in that Muḥammad may have understood it the same way).19 It could perhaps account for the fate of the mysterious letters, too (on the assumption, for example, that Muḥammad refused to divulge their meaning so as to heighten their impact). But it hardly suffices to explain how the meaning of an entire (if short and fragmentary) sūra could be lost, and it cannot cope at all with the fact that the meaning of legal terms was forgotten. It may well be that kalāla was a foreign word known to Muḥammad and not to his audience, but we can hardly suppose that he kept his knowledge to himself in this case; for without knowledge of the meaning of kalāla, one is left without a key to Qur′ānic rules of succession. If Muḥammad intended these rules to be applied, he must have explained what kalāla meant; and once the rules were applied, his understanding of the term must have been embedded in practice, where it ought to have survived even though the pagan environment receded and other terminology changed, and where indeed it ought to have been retrievable even if Muḥammad’s explanations were forgotten. Jizya ‘an yad and the kitāb of 24:33 are likewise legal terms which Muḥammad must have been at pains to ensure that his followers understood correctly and which thus ought to have remained unproblematic whether he used them in an idiosyncratic sense or not. But in all three cases the terms owe their classical meaning to exegetical reasoning rather than to simple recollection; in all three cases, then, we must assume that Muḥammad’s explanations were forgotten and that practice based thereon came to an end. There seems to have been discontinuity of a more drastic kind than Rosenthal’s argument allows for.

17. They were not even worried by the use of kitāb for kitāba, though the only other attestations of kitāb in that sense seem to reflect the usage of the Qur′ān itself (ʿAbd al-Razzāq, Muṣannaf, vol. 8, no. 15578; Muḥammad Ibn Saʿd, al-Taqābāl al-kubrā, Beirut 1957-60, vol. 5, pp. 85, 86; ʿĀḥmad b. ʿAbī Ṭayfār, Kitāb Baghdād, vol. 6, ed. H. Keller, Leipzig 1908, p. 164). It did however worry Schacht (Origins, p. 279 and the note thereto).
Powers, to whom Islamicists owe their awareness of the kalāla problem, rightly offers a theory of a more radical nature: in his view, the original meaning of Qur'ānic kalāla was suppressed for political reasons in the decades after Muḥammad's death, along with the original import of the Qur'ānic rules of succession. But this theory does not seem to work. For one thing, Powers can scarcely be said to have proved that Muḥammad's followers were once familiar with what he takes to be the original meaning of kalāla (female in-law) or the original meaning of Qur'ānic inheritance law in general; nor is the reader persuaded that there were political reasons to suppress them. What one does infer from his work is rather that the meaning of kalāla and attendant inheritance law had never been known: there was nothing to remember, nothing to suppress; all one sees are frantic attempts to make sense of a recalcitrant text. For another thing, kalāla is only one among several examples of exegetical memory loss and Powers' conspiracy theory cannot easily be extended to cover the parallel cases. It seems unlikely that the original meaning of terms as diverse as al-ṣamad, jīza 'an yad, ilāf, kalāla and kilāb, not to mention Sūrat Quraysh and the mysterious letters, should have been suppressed for political reasons, though suppression (for theological rather than political reasons) is also postulated by Rubin in his discussion of al-ṣamad: early Islamic history is getting more and more Machiavellian. It might reasonably be objected that there could be a number of factors behind the exegetical failure to remember, deliberate suppression being involved in the case of kalāla (and, if one accepts Rubin's argument, al-ṣamad), other factors being at work in other cases. But the number of cases is now sufficiently large for separate explanations to have a makeshift appearance; a single theory accounting for all the known examples, and indeed for all those likely to turn up in future, would be more convincing. At the very least, we need a single theory for all the

20 Powers, Studies, ch. 4.

21 He argues that the traditions in which 'Umar agonizes about the meaning of kalāla are carefully coded anecdotes put into circulation by people who knew the real meaning of the kalāla verses, but who were debarred from saying so directly because the issue was too controversial (Studies, pp. 32ff.). But one needs more sensitivity to innuendo than I possess to be persuaded of a secret message in these traditions.

22 No exegete ever read yārīth for yārath in Qur. 4:12b/15, or discerned a distinction between testamentary and intestate succession in the book (with the exception of al-Qurṭubī, cf. Powers, Studies, p. 180), or between primary and secondary heirs; everyone in Powers' opinion wrongly took the Qur'ān to rule that males are entitled to twice the shares of females, and so on.

23 According to Powers, Qur. 4:12b/15 originally referred to the possibility of designating a testamentary heir, which was embarrassing to those who claimed that Muḥammad had died without designating a successor (Studies, pp. 113ff.). But a verse enabling a man to bequeath his property to a female in-law or wife (as it does in Powers' reconstruction) has no obvious bearing on political succession; and if it did have political implications, its meaning ought to have been preserved by those who claimed that Muḥammad had designated a successor; but there is no trace of it among the Shi'ites. By what mechanisms, moreover, could the early caliphs suppress the original meaning of a verse which (ex hypothesi) many other Companions had heard and understood correctly while the Prophet was still alive? "Islamic society...was not the sort of monolithic totalitarian culture in which a few ideologues could impose their views...on a community which knew them to be untrue", as Kennedy points out with reference to Crone and Cook in the mistaken belief that the authors of Hagarian proposed a conspiracy theory (H. Kennedy, The Prophet and the Age of the Caliphates, London and New York 1986, p. 357).

24 The fact that the Muslims seem never to have known the original meaning does not of course imply that Powers has failed to discover it. Whether he has or not is a separate question without bearing on the problem at hand.

25 Powers' suppression theory does at least have the merit of acknowledging that something has been genuinely lost. By contrast, what Rubin takes to be the original meaning of al-ṣamad (al-mazmūd tlaqī) is an interpretation common in the exegetical tradition from Abū 'Ubayda to modern times: in what sense was it suppressed? Al-Tahārī may not cite any traditions in its favour, but he knew the interpretation nonetheless (and in fact opted for it himself); and the actual traditions reappear in works composed after his death (Rubin, Al-Ṣamad, pp. 203, 211). Presumably, then, Rubin simply means that the (in his view) original interpretation of the word went out of favour and thus came to coexist with alternative explanations, though it remained perfectly well known until today. But nothing suggests that it started as the only interpretation: alternative explanations are present in the earliest material (e.g., Muqātil in Rubin, ibid., p. 214n). The meaning of al-ṣamad was thus controversial as far back as the tradition will take us. Sound philological scholarship may have enabled the exegetes to discover the original meaning of this word (cf. ibid., p. 211), but they did not remember what it was supposed to mean.
examples involving law. For law is the most exoteric of subjects, and the oblivion affecting the legal terminology of the Qur'an poses the same intractable problem whatever the specific terms involved; how could the meaning of such terminology be forgotten if the rules it formulated were explained and applied from the moment of their revelation?

This takes us to another well-known problem, namely that there is less continuity between Qur'anic and Islamic law than one would expect. Schacht, to whom most Islamicists owe their awareness of this problem, held that certain rules were based on the Qur'an from the start, "particularly in family law and law of inheritance, not to mention cult and ritual"; but even so, he argued, "anything which goes beyond the most perfunctory attention given to the Koranic norms and the most elementary conclusions drawn from them belongs almost invariably to a secondary stage in the development of doctrine"; and he noted that "there are several cases in which the early doctrine of Islamic law diverged from the clear and explicit wording of the Koran", giving the rejection of the validity of written documents (contrary to 2:282) as his main example. Burton's work on the stoning penalty for zina and other conflicts between Qur'an and Shari'a, Powers' work on inheritance, and Hawting's work on the rights of the divorced woman during her waiting period all suggest that Schacht underestimated the discontinuity to which he drew attention; of rules based on the Qur'an from the start we no longer possess a single clear-cut example. But how is it to be explained? Schacht argued that "Muhammadan law did not derive directly from the Koran but developed... out of popular and administrative practice under the Umayyads, and this practice often diverged from the intentions and even the explicit wording of the Koran". But this merely restates the question: why did the popular and administrative practice of the Umayyad period diverge from the explicit wording of the Qur'an? Some might invoke the supposed secular-mindedness of the Umayyads, but this is a stereotype which Schacht rightly rejected and which moreover fails to help in that it contrasts the popular (pious) and official (impious) practice of the Umayyad period instead of linking them. Others might argue that Qur'anic legislation is likely to have been swamped by Jāhili practice when the mass of Arab tribesmen joined the umma, and by non-Arab practice when they conquered the Middle East; but there does not seem to be any resurgence of either Jāhili or Middle Eastern practice behind the adoption of the stoning penalty or the rejection of written evidence, nor does the discontinuity between Qur'anic and Islamic inheritance law discovered by Powers seem to be explicable in such terms. One would in any case have expected Qur'anic law to survive the inundation. There is nothing problematic about the proposition that a mass of extra-Qur'anic law, sometimes un-Qur'anic in spirit, was added to the Qur'anic core, but how did Qur'anic law come to be undone? If

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31 Powers' contribution is the most significant in that it postulates drastic discontinuity in the very core of Islamic law, yet it is meant as a refutation of Schacht's thesis. Powers takes Schacht to claim that the development of Islamic law only began about a hundred years after the Prophet's death and tries to prove that it began before (see Studies, pp. 1-8, 209); but what Schacht actually claimed is that the evidence only takes us back to about 100 A.H. not that nothing happened in the preceding century (Schacht, Origins, p. 5). Schacht did claim that the law as we know it from the second century onwards is surprisingly un-Qur'anic, but that is precisely what Powers himself concludes.
32 Schacht, Origins, p. 224.
34 The stoning penalty reflects Pentateuchal doctrine, not Middle Eastern practice. The rejection of written evidence went against both Qur'anic law and Jāhili practice according to Schacht, who notes that 'nothing definite is known about the origin of this feature' (Origins, p. 188; cf. Introduction, pp. 18f., but without documentation of the alleged Jāhili practice).
flogging had been the official penalty for zina since the revelation of the flogging verses, and if the Muslims had regularly recited these verses thereafter, how did the discontinuity set in?

Coulson’s key objection to Schacht’s work was precisely that it postulates an impossible discontinuity, and his argument is relevant even though it is focused on Hadith rather than the Qur’ān. He points out that Qur’ānic legislation was revealed in response to practical problems (this being how the tradition presents it), but that it cannot have been implemented without further clarification; for it tends to leave fundamental questions unanswered, and its precise implications are often unclear. It follows that Qur’ānic legislation must have been supplemented with rulings of other kinds from the start, first by the Prophet, later by his Companions, and thereafter by the lawyers: why then does Schacht systematically deny the authenticity of rulings if they are credited to the Prophet and his Companions rather than to lawyers? In Coulson’s opinion, Schacht postulates a void where there must have been continuous development: the community cannot have left its legal problems unsolved, and the lawyers cannot totally have forgotten how the law was applied before their own time.35

This is an eminently reasonable argument. If Qur’ānic legislation was implemented, the development of Qur’ānic into Islamic law ought indeed to have been continuous, and the Prophet’s understanding of the law ought indeed to have been preserved, be it in words or practice or both (unless deliberate suppression was involved, which I shall henceforth assume was not the case). But the void postulated by Schacht is real: how would Coulson account for the adoption of the stoning penalty, the rejection of written evidence, the uncertainty regarding the meaning of kalāla, or the misunderstanding of the word kitāb? The Prophet must, ex hypothesi, have explained and implemented the law in each of these cases, and he is indeed said to have done so in Hadith; but what Hadith presents him as implementing is Islamic law, complete with its divergence from Qur’ānic legislation: Hadith does not refute the void, but on the contrary illustrates it. If Qur’ānic law was implemented, there cannot have been a void; but if there is a void, it would follow that Qur’ānic law cannot have been implemented.

That Qur’ānic law should have remained a dead letter until a secondary stage of legal development is a fairly startling proposition, but Burton seems to take it for granted. According to him, the discontinuity between the two arises from the fact that Qur’ānic legislation did not reach the lawyers directly: what they took up was not the book itself, let alone practice based on it, but rather exegetical versions of its contents. Taṣrij generated sunna for the lawyers: thus 5:42-49 generated stories about Muhammad applying the stoning penalty in cases of adultery, and this sunna won legal recognition, its incompatibility with 24:2 (which specifies flogging) notwithstanding.36 The lawyers did not in Burton’s view pay any serious attention to the text itself until about 800, when they were confronted with Qur’ānic fundamentalists.37

Now this theory could certainly account for the misunderstanding of kitāb in 24:33, provided that we take Burton’s exegetes to have been story-tellers (which is in fact how he seems to envisage them himself).38 The quṣṣās, whose contribution to the exegetical tradition is well attested, were not fussy about the accuracy of their interpretations, and the stories they told in explanation of 24:33 are typical of their approach. Although the verse forms part of a larger unit which must have been composed or, as they saw it, revealed, together they happily assigned different occasions of revelation to the component parts of the verse (not to mention the unit). Thus 33b (“and for those in your possession who desire a kitāb”) was allegedly revealed about a slave of Huwayjī b. ‘Abd al-Uzzā or Ḥāṣib b. Abī Balṭa’ā who wanted a kitāba but

35 N.J. Coulson, A History of Islamic Law, Edinburgh 1964, part 1, esp. chs. 1 and 5.
37 Burton, Collection, pp. 19ff., 161, 177, et passim. Al-Shāfi‘ī (d. 822) is presented as the leading opponent of the ‘Qurʾān party’ and the person to whom the sunna owed its rescue (pp. 24ff., 92).
38 Ibid., pp. 70, 185. The qaṣṣ is explicitly mentioned in his ‘Law and Exegesis’, p. 270.
whose owner refused to give him one;" but 33d ("and constrain not your slavegirls to prostitution ") was supposedly triggered by a slavegirl or slavegirls of 'Abdallāh b. Ubayy, who had one, two or six, whose names were such-and-such and whom he prostituted, though she/they were unwilling; so she/they went to the Prophet, whereupon this statement was revealed. Both claims must be pure fiction. But given this approach, it is not particularly strange that kitāb should have been understood as kitāba: the sheer fact that the word was mentioned in the context of slaves probably sufficed to suggest a manumission document to the qasasās, generating instant stories based on this understanding of the word. The stories they told, or some of them, survive in exegetical works of the most reputable kind, and the lawyers never doubted that 24:33 was concerned with manumission: they misunderstood kitāb just as they ignored the flogging penalty (which is prescribed in the same 'treatise on chastity'), and it could well be that they took their cue from story-telling exegetes in both cases.

But why should the interpretation of Qur'ānic law have been left to qasasās? Burton's answer that the lawyers did not regard the scripture as a source of law until about 800 begs the question how they could have had a scripture containing legislation without regarding it as a source of law? Are we to take it that even the Prophet did not see it as such (implying that he made no attempt to put its legislation into practice), or that his concept of the Qur'ān as a source of law was forgotten by later generations (who forgot his contribution to practice, too)? Neither hypothesis is very persuasive. If the Prophet enacted legislation that was rapidly incorporated into a scripture recited by everyone thereafter, it is hard to see how anyone could have failed to endow it with supreme authority over and above all other forms of law, that of the Pentateuch included. Even if the conquests disrupted practice and the story-tellers muddled things with their stories thereafter, the flogging verse is quite unambiguous; and the caliphs would have been in a position to ensure that practice was restored to what they took to be its original form. The scholars might in due course have disputed the validity of the caliphal understanding of right practice and quarreled among themselves over the reconciliation of Qur. 4:15, which prescribes lifelong incarceration for women guilty of gross moral turpitude, and Qur. 24:2, which prescribes flogging for both men and women guilty of unlawful intercourse; but why should they have quarreled over stoning?

Burton compounds the problem by arguing that Muḥammad collected his own revelations. A prophet who fixes his own message in writing is presumably motivated by a desire to be correctly understood long after he has died, meaning that he will do his best to endow his contemporaries, too, with a correct understanding of his message, which in this particular case must have meant explaining (if not implementing) its legal passages on a par with the rest. Yet the lawyers suffered from amnesia after his death and took their clues from the story-tellers. It does not make sense.

What is more, the amnesia was not confined to the lawyers. The significance of non-legal terms and passages such as al-ʿādāb, illā, Sūrat Quraysh in general and the mysterious letters was also forgotten, while at the same time the story-tellers took it upon themselves to supply not just suwarna to the lawyers but also tasfir in general and Prophetic biography in particular to scholarly exegetes and historians. This goes well enough with Burton's view of exegesis as a universal bottleneck through which every verse of the Qur'ān, and indeed every item of historical recollection, had to pass in order to reach the believers; but a universal bottleneck

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41 Burton, Collection, pp. 239ff.
42 Cf. H. Birkeland, The Legend of the Opening of Muhammad's Breast, Oslo 1955; and/or id., The Lord Guideth, Oslo 1956, pp. 38-55 (on Sūrah 94); Crone, Meccan Trade, ch. 9 (on Sūrah 106).
cannot be explained with reference to the attitude of lawyers. What Burton conjures up is not a situation in which the lawyers paid scant attention to the scripture, but rather in which the story-tellers had sole access to it: according to him, the Qur’ān existed for purposes of generating wild tafsīr but not for purposes of sober checking, with the paradoxical result that it generated divergence from itself. But if the scripture had been available since the time of the Prophet, how can the story-tellers have had a monopoly on it? Everyone would have been in a position to check their stories against the text, and the existence of a canonical scripture must rapidly have engendered scholarly exegesis, who were rivals of the qasīds rather than their allies. How then could the story-tellers reign supreme for long enough actually to shape the classical understanding of the book? Burton’s theory cries out for some sort of modification.

We are thus left with Wansbrough. Wansbrough would reject all the arguments reviewed so far as based on a faulty premise inasmuch as they all assume the Qur’ān to be a collection of Muḥammad’s revelations collected in Medina before the centre of the Muslim community had been transferred to the non-Arab Middle East. According to Wansbrough, the Qur’ān did not originate in Arabia, nor indeed did Islam: the Arabs had not established a new religious community of their own by the time they left Arabia; rather, they chanced upon a new sectarian development in the Middle East (Iraq?) after the conquests and proceeded to adopt it as their own, rewriting its history and giving it an Arab imprint in the process. The Qur’ān emerged out of a diversity of sources as part of this process, in which the story-tellers played a crucial role: the popular sermon was the instrument of both transmission and explication of the Prophetic logia, which had originated in a sectarian environment and from which the Qur’ānic canon was eventually separated; but its text crystallized so slowly that one cannot speak of a ne variatur version until about 800 A.D. (that is about the time that Burton would have his lawyers begin to pay attention to its text).

As it stands, this theory can only be saved on the assumption that all evidence purporting to date from before 800, be it Muslim or non-Muslim, literary or documentary, is by definition inauthentic, or in other words that evidence incompatible with the theory is ipso facto wrong. The contention that the ne variatur Qur’ān only emerged about 800 could moreover be said to fall between two stools: on the one hand, a scripture undoubtedly existed before 800, so the date proposed is too late; but on the other hand, it was only in the tenth century that seven ne variatur versions of


46 Both authors would seem to imply that ‘Uthmān only came to be credited with the creation of the textus receptus about 800 A.D.; for Wansbrough would hardly go so far as to argue that there were stories about the canonization of the Qur’ān before it had actually been canonized, while Burton holds all the stories of the collection and canonization of the Qur’ān to be engendered by theories of naskh, which were evolved when Qur’ānic fundamentalists forced the jurists to confront the discrepancies between the Qur’ān and fiqh (Collection, pp. 161f.), that is, not long before al-Shāfi‘ī. Yet the story of ‘Uthmān’s canonization of the Qur’ān is deeply entrenched in the tradition when it emerges into full light about 800.

47 Leaving aside the early non-Muslim sources, whose testimony Wansbrough naturally rejects (cf. Doctrina Iacobii, pseudo-Sebecus, and other accounts in P. Crone and M. Cook, Hagarism: The Making of the Islamic World, Cambridge 1977; Wansbrough, Sectarian Milieu, pp. 117f.), there are monotheistic coins and inscriptions from the time of Mu‘awiya onwards which can hardly be dismissed as so many literary stereotypes (and which are not discussed), while the first coin to identify Muhammad as rasūl Allāh dates from 66/685/6 (Crone and Hinds, God’s Caliph, pp. 24f.). Where should one fit in “the establishment of a modus vivendi between the new authority and the indigenous communities, and the distillation of a doctrinal precipitate (a common denominator) acceptable initially to an academic élite, eventually an emblem of submission (islām) to political authority” (Wansbrough, Sectarian Milieu, p. 127f.?

48 Specimens of Qur’ānic material such as the Dome of the Rock inscription or the legend on the reformed coinage do not prove that the materials had stabilized as a scripture, partly because they are snippets and partly because they mix up what are now verses in different sūras. But the sheer fact that the sixteen mangled lines of the Khirbet el-Mird fragment are recognizable as
this scripture were canonized,\(^{49}\) so the date proposed is also too early. More precisely, the contention is unclear: Wansbrough does not explain what he means by *ne varietur* in a context in which uniformity was never achieved.

His suggestion that we should abandon the premise of all existing arguments is nonetheless very helpful in the present context; for if the Qurʾān was only put together some time after the conquests, we have the ‘void’ we need in order for things to get out of kilter. For a start, we could accommodate the evidence that the Muslims once accepted the Pentateuch as their scripture, or as

\[\text{Qur. 3:102f does suggest that there was a stable text by the late Umayyad period (cf. M.J. Kister, ‘On an Early Fragment of the Qurʾān’, Studies... Presented to L. Nemoy, Ramat-Gan 1982; see A. Grohmann, *Arabic Papyri from Birbiṭ el-Mird*, Louvain 1963, p. xi, on the date of the site); and a Nubian papyrus datable to 741/758 contains two Qurʾānic quotations preceding *wa-līhah laba raka wa-līhah yaqūlu fi līhah* (M. Hinds and H. Sakkout, ‘A Letter from the Governor of Egypt to the King of Nubia Concerning Egyptian-Nubian Relations in 141758’, in W. al-Qāḍī (ed.), *Studia Arabica et Islamica, Festschrift für Iskandar Abbas*, Beirut 1981, p. 218, lines 7-11), so it can no longer be claimed that those sources which may with some assurance be dated before the end of the second/eighth century (and thus before Ibn Isḥāq) contain no reference to Muslim scripture’ (Wansbrough, *Sectarian Milieu*, p. 58). Moreover, one would expect a scripture, in the sense of a stable text regarded as supremely authoritative, to announce its presence by deeply colouring all diction and thought; and the supposedly mid-Umayyad, possibly late Umayyad, possibly even early ’Abbāsid, but by any rate not ninth-century theological epistles are indeed permeated by the Qurʾān in this way (cf. M. Cook, *Early Muslim Dogma*, Cambridge 1981, p. 16 *et passim*). To Wansbrough this simply means that they must be too late to count (cf. *Qurʾānic Studies*, pp. 169-93, on the letter ascribed to al-Ḥasan al-Ṣa’dī). The letter of the late Umayyad caliph al-Walīd II regarding his successors is similarly replete with Qurʾānic citations and allusions, but to a follower of Wansbrough there can be no question of accepting it as authentic (cf. N. Calder’s reaction in his review of Crone and Hinds, *God’s Caliph*, in *Journal of Semitic Studies* 32, 1987, p. 376f.). Followers of Wansbrough will now have to explain away the letters of ‘Abd al-Ḥamīd b. Yaḥyā too (cf. W. al-Qāḍī, *The Impact of the Qurʾān on Arabic Literature during the Late Umayyad Period: The Case of ‘Abd al-Ḥamīd’s Epistolography*, in G.R. Hawting and A.-K.A. Shareef (eds.), *Approaches to the Qurʾān*, London and New York 1993).

\(^{50}\) Cf. Burton, *Collection*, pp. 70, 185. The question is raised in his ‘Law and Exegesis’, pp. 273f., but I cannot see that it is answered.

\(^{51}\) Cf. P. Crone, *Jāḥif and Jewish Law: The Qasāma*, *Jerusalem Studies in Arabic and Islamic 4*, 1984, pp. 166-82. N. Calder, *Studies in Early Muslim Jurisprudence*, Oxford 1993, p. 212, charges me with creating “an ingenious link between Deut. 21:1-9 and the Hanafi law of qasāma”. But since the Muslims themselves assert that the *qasāma* is a Biblical institution and offer a loose translation of Deut. 21:1-9 in support of this claim, it takes more ingenuity to deny the link than to affirm it.

\(^{52}\) Cf. *Encyclopaedia of Islam*, s.v. ‘Iṣṭa’ilāyāt’.

\(^{49}\) Cf. Welch in *Encyclopaedia of Islam*, s.v. ‘al-Ṣurā’, cols. 408f.
moreover, there cannot have been a tradition of scholarly excesses rooted in the Hijaz. The scholars must have arrived at a later stage, breaking the monopoly of the story-tellers, but taking rather than rejecting their interpretations: they had no independent recollection of their own. There must of course have been people who remembered what Muhammad said and did in historical fact, but such people will have been few and far between once the vast majority of Arabs had joined the umma and settled in the conquered lands; and one would assume them to have put their knowledge to story-telling use so as not to be outdone by those who drew crowds even though their credentials were inferior, meaning that genuine recollection will soon have entered the general pool of story-telling material, where it will have been lost. In short, we would have a situation in which story-telling exegetes did indeed enjoy a monopoly on revelation, be it that of the prophets or that of the Prophet, and in which all revelation and historical knowledge passed through Burton’s exegetical bottleneck, to be denuded of original meaning in the process.

So far, so good. But if we envisage the story-tellers as both transmitters and explicators of the materials from which the Qur’an was to emerge, how do we explain the fact that they were utterly uninhibited when it came to interpretation, yet remarkably disciplined when it came to the text? They did not substitute kilâba for kilâb, replace ilaf with a more familiar word or otherwise improve on what they did not understand, as one would have expected them to do. Pace Wansbrough, the text seems to have been endowed with immutability, or something close to it, from an early date.53 This is something of a problem. It goes well enough with Burton’s view that the Qur’an existed as a document long before it existed as a source, but the objection to this view remains

53 According to Burton, “the very unhelpfulness of the Qur’an document when called upon to behave as the Qur’an source, and the frequent embarrassment it caused the Muslim scholars, speak very strongly for its authenticity as a document, in the sense that it does not have any of the appearance of having been concocted after the evolution of the legal doctrine with the aim of supplying its documentation.” (Collection, p. 187). This is certainly true, but then nobody suspects the lawyers of having concocted it. The fact that it was not really intelligible to the story-tellers either does however point to a loose end in Wansbrough’s theory.

as before: how can the Muslims have possessed a book which they regarded as supremely authoritative for purposes of recitation, but not for purposes of law? Pace Burton, the assumption of non-scriptural form does seem to be indispensable when we turn to the fate of Qur’anic legislation. It is thanks to their diametrically opposed views on the stability of the text in the dark centuries before c. 800 that Wansbrough and Burton offer contrasting theories rather than identical ones, their views being highly compatible in other respects; and since neither theory is acceptable as it stands, the solution must be somewhere in between. But how it should be envisaged I do not know. I must accordingly confine myself to the observation that a theory of belated codification and canonization works very well in the present context, not only in that it would allow us to explain all the examples so far known of exegetical ignorance of, and juristic lack of attention to, the import of Qur’anic passages, but also in that it could be assumed to work for future examples as well. It certainly works for the three examples that have turned up since Wansbrough wrote, the first being Powers’ inheritance laws and the second the kitâb that I have already discussed; the third is the rule to which I shall now proceed.

II. The DAEP Rule

The DAEP rule relates to succession, more precisely to the devolution of the property of freedmen and freedwomen. The example is more complex than that of kilâb, so the reader will have to put up with a few preliminary remarks.

For purposes of presentation we may divide an individual’s relatives into two broad categories, male agnates (males related to the individual through male links) and all the rest, whom we may call cognates. The first of these categories is actually found in classical Sunni law (male agnates being known as ‘asba), but the second is not: classical Sunni law divides the relatives here called cognates into two distinct classes, with quite different rules of inheritance applying to each class. The first comprises all the cognates who have been awarded a fixed share of the estate in the Qur’ân; they are known as ashab or dhawâ’i l-fara‘id/ashâm and are generally referred to in English as Qur’ânic heirs. The second class is made up of all the remaining cognates, who are known as dhawâ’i l-arîhâm and
referred to in English as uterine or distant heirs, or outer family; I shall call them non-Qur'anic cognates in this article.

Classical Sunni law regulates the relationship between the three classes of heirs as follows. Qur'anic heirs cannot be excluded by representatives of the other classes, but nor do they exclude male agnates: if the de cujus leaves Qur'anic heirs and male agnate relatives, one allots the former their Qur'anic share and awards the residue (if any) to the latter. But male agnates and Qur'anic heirs alike exclude non-Qur'anic cognates, who are only called to succession in the absence of heirs of other types (with the exception of the spouse relict) and who are not recognized as heirs at all by the Mâlikis.44

The manumitter (whether male or female) counts as a male agnate for purposes of succession to his or her freedman or freedwoman. If the latter leaves genuine male agnate relatives (e.g. a son), the manumitter is excluded by the rules governing priority within the agnatic class (the nearer in degree excludes the more remote); but if no genuine male agnate relatives are present, the manumitter will inherit together with Qur'anic heirs and exclude non-Qur'anic cognates.45

Now in pre-classical law, the manumitter was treated quite differently. He was excluded by Qur'anic heirs instead of inheriting along with them; and he was excluded by non-Qur'anic cognates, too, instead of excluding them. In other words, all cognates excluded the manumitter. I have discussed this rule elsewhere from the point of view of wâlî,46 but in the present context its significance is this: most of the traditions which support this rule show no awareness of the fact that cognates comprise two wholly different classes of heirs; the traditions do not divide them into a Qur'anic and a non-Qur'anic variety, but rather treat them all as members of a single category, which they call dhawâ'ī 'arâhâm.

For lack of a more graceful term, I have dubbed the pre-classical doctrine the DAEP rule (dhawâ'ī 'arâhâm exclude patrons). The acronym refers to patrons rather than manumitters because the latter were only one out of two types of patron acknowledged in early law, which treated them almost identically, and the traditions do not always specify which type of patron they have in mind. It is invariably the manumitter rather than the contractual patron who is mentioned in the traditions that do specify, and this is as might be expected: freedmen are far more prominent than contractual patrons in the early sources (legal or non-legal), and most schools eventually rejected the contractual patronate altogether.47 But the DAEP rule must be presumed to have applied to patrons of both kinds.

We may now turn to the material, which can be divided into three groups.

1. Numerous early authorities, especially Khāṭāfones, are said to have awarded the entire estate to a dhâhî râhîm at the expense of a patron. This was the correct solution according to 'Umar,48 'Ali,49 and 'Umar II50 among the caliphs. It was also the correct solution in the eyes of

45 Crone, *Roman, Provincial and Islamic law*, pp. 36f.
46 Ibid., pp. 73f.
material gives us the pre-classical rule, or rather half of it, and establishes that it was widely accepted. It only gives us half of the rule because nothing indicates that dhū rahnī means other than non-Qur'ānic cognate here. But what types of heirs did the above-mentioned authorities have in mind?

2. Some traditions answer this question by adducing case law.
   (a) A freedwoman of 'Alqama’s died leaving a maternal half-sister’s son or daughter, or a maternal half-brother’s daughter, plus 'Alqama, her patron. 'Alqama awarded the entire estate to the surviving relative with the comment that it was hers by right. All awarded the entire estate to a maternal aunt and a paternal grandmother in competition with patrons.

The heirs in question are non-Qur’ānic cognates, that is dhawnī ʿi-rahnī in the classical sense of the word.

(b) Ibn Mas‘ūd’s grandson similarly awarded the entire estate of a freedwoman to her mother rather than to her patrons. All gave the entire estate to a sister at the expense of the patrons, and both Ibn Mas‘ūd and his son used to do the same. All also gave the entire estate to a daughter, and when

63 Cf. above, note 58; also ‘Abī al-Razzāq, Muṣannaf, vol. 9, nos. 16196, 16203; Ibn Abī Shayba, Muṣannaf, vol. 11, no. 11218 (fails to specify that the competitor was a patron); appears in the chapter on ruḍī; Bayhaqī, Sunan, pp. 241ff.; Ibn Qudūmā, Muğtār, vol. 6, p. 323, no. 4830; Ḥafṣīyūs, Ni, vol. 8, p. 394.

He is counted as a Medinese by some (Ibn Ḥajar, Taḥāthīf al-taḥāthīf, Hyderabad 1325-27, vol. 5, p. 311).
68 Ibn Qudūmā, Muğtār, vol. 6, p. 323, no. 4830.
71 Ḥafṣīyūs, Ni, vol. 8, p. 394.
72 Ibid.; cf. Ibn Abī Shayba, Muṣannaf, vol. 11, no. 11207, on Abū ‘I-Dardā‘i (he awards the entire estate to a maternal half-brother in the absence of other heirs, no mention being made of a patron).
73 Ibn Qudūmā, Muğtār, vol. 6, p. 323, no. 4830.
74 Ḥafṣīyūs, Ni, vol. 8, p. 394.
78 Ḥafṣīyūs, Ni, vol. 8, p. 394.
In this material the cognates are Qur'ānic heirs, not dhawā ḫarḥām in the classical sense; yet they are adduced in illustration of the same rule as their non-Qur'ānic counterparts.

3. Finally, 'Abd al-Karīm b. Abī ʿl-Mukhāriq (d. 126/743) sets out the doctrine as follows:88

When a man died leaving patrons who had freed him, but no dhū ṭabīḥīna, other than [for instance] a mother or maternal aunt, they would award the estate to her and not call the patron to succession together with her; for they did not call patrons to succession together with a dhū ṭabīḥīna.

Here a Qur'ānic cognate (mother) and a non-Qur'ānic one (maternal aunt) are explicitly enumerated as heirs of the same type, covered by the same rule.

There is no doubt that the terminology at least is odd in these traditions, but the fact that the propounders of the DAEP rule speak of both types of cognates as dhawā ṭarḥām does not necessarily mean that they were ignorant of the distinction between them. It is possible that the pre-Islamic Arabs operated with the two broad categories of relatives outlined above, that is male agnates and cognates in the sense of the rest (who may or may not have been heirs); if this is correct, and if the cognates were known as dhawā ṭarḥām, one would expect the term occasionally to have been used in its undifferentiated sense even after the Qur'ān had divided the cognatic category into two. But is it correct? The hypothetical Jāhili usage is not reflected in the Qur'ān, in which no terms for

87 Raddāt, 'Erbrecht', p. 39 (where innahā should be emended to innānā). Abī al-Razzāq, Muṣannaf, vol. 9, no. 16212; Ibn Abī Shayba, Muṣannaf, vol. 11, no. 11209; al-Bayhaqī, Sunan, vol. 6, pp. 224: innānā (not innahā) asād Allāh šabīn ṭuʾmatam (to which the response in 'Abd al-Razzāq is that if he did so, then we will too).

88 'Abd al-Razzāq, Muṣannaf, vol. 9, no. 16203: innā 'l-rujāj ḫidā mātā wa-sarīṭa maṣāliyyatūna 'l-adhīna aʿaqibā wa-lam yada' dhā ṭabīḥīn biṯa wa-man wa-dhī ṭabīḥīn. dhī ṭabīḥīna wa-lam yuwaاصرīn maṣāliyyahūna mā-a'dhā ṭabīḥīn.
transmitters, fully aware that adherents of the DAEP rule figure in traditions on *radd* and *tanzil* as well,\(^4\) undoubtedly subscribed to the assumption with respect to the entirety of the material.\(^5\) They would hardly have transmitted it if they did not.

But if we disregard the exceptional traditions,\(^6\) the assumption becomes gratuitous. In what is both the earliest and the fullest account of the DAEP rule, that of ‘Abd al-Razzāq b. Ḥannān, the traditions give no indication of a differentiation between the heirs of 2(a) and 2(b); indeed, ‘Abd al-Karīm’s account of the rule explicitly conflates them. The *prima facie* reading of ‘Abd al-Razzāq’s material is that all the heirs involved are treated identically: all are awarded the entire estate, not through a combination of Qur’ānic shares, *qarābā*, *tanzil* or *radd*, but simply because awarding the entire estate to the only heir is the obvious solution for anyone who is not constrained to think in terms of fixed shares. When Ibrāhīm al-Nakhā’ī tried to explain away the case of Ibnat Ḥamza, in which the Prophet gives the daughter her Qur’ānic maximum of half the estate, and hands the rest to the manumitter, al-Shā‘bī is supposed to have objected that “you do not know whether this took place before

\(^{94}\) ‘Abd al-Razzāq’s *bāḥi mīrāṭ al-qarābā* includes material on *radd*, and one of his traditions on non-Qur’ānic cognates versus patrons recurs in his chapter on *radd* (cf. above, note 85). Ibn Abī Shaybah’s chapter on *man hāna yuwarah dhu‘ al-barrā‘ min mawālid* is followed by one on *radd*, again with some overlap between the two (cf. above notes 63, 92).


\(^{96}\) The first (above, note 92) is exceptional also in that it involves two heirs on the client’s side, i.e. it does not confine its attention to the relative priority of two classes of heirs, but seeks to pinpoint rights within these classes too. The second (note 93) formulates the DAEP rule in the language of a tenth-century author.

or after [the revelation of] the *fāra‘ā‘id*”, meaning that Ibrāhīm’s supposition that the daughter had a right to the entire estate only made sense on the assumption that the Qur’ānic laws of inheritance had not been revealed at the time.\(^7\) This is my understanding too.

To clinch the case is difficult. If there was a pre-Qur’ānic stage of Islamic law, the chances are that most of the evidence relating thereto will have disappeared, not because there was a Machiavellian conspiracy to suppress it, but rather because the Muslims devoted immense energy to ironing out inconsistencies within the tradition and none at all to transmitting material that had become unintelligible or plain wrong to them. Only ambiguous evidence (such as the DAEP rule itself) is likely to have slipped through the net. One tradition does come close to clinching the case, but as might be expected, the cost of its survival was corruption. It goes as follows.\(^8\)

\(^{97}\) Raddat, ‘Erbiḥī’, pp. 39f. This was presumably meant as a crushing reply to Ḥābib (compare the response in ‘Abd al-Razzāq, above, note 87). But al-Shā‘bī elsewhere figures as a supporter of the DAEP rule (above, note 66), and the Imāms and Nafi’i Zaydiṣ took al-Shā‘bī to be coming to Ibrāhīm’s rescue: he was suggesting that the case of Ibnat Ḥamza was enacted before the revelation of the inheritance laws, and thus abrogated by it (cf. below, note 110). Sulaymān al-Thawri also seems to have read it in this vein (below, note 119).

\(^{98}\) ‘Abd al-Razzāq, *Ma‘ṣūma*, vol. 9, no. 16206. As regards the *insāf*, Ibn Jurayj and Sulaymān al-Ḥāwal are well-known Meccans, but who was Abī Ḥābib al-‘Irāqī? Ibn Ḥajar lists one man of that name (Tahdhib, vol. 12, p. 68), and al-Dīlahī lists seven (Kūtub al-kānā‘ wa‘l-‘asma‘, Hyderabad 1322, vol. 1, p. 143); but none of them seems to fit.
However we emend it, he is saying that somebody is to be given nothing; so who is the somebody? The tradition should be read in conjunction with another in which al-Qasim b. 'Abd al-Rahmân, the grandson of Ibn Mas'îd, excludes a patron from succession in the presence of a mother, awarding the entire estate to the latter on the grounds that it was she who had borne and bred the deceased, that is, on moral grounds. In Abû 'I-Sha'îthâ’s tradition, too, the mother has a better right in moral terms than the patrons, for we are told that the latter were distant, meaning that their legal connection with the client was remote; some benefactor (mawâlî mu'nîn) in the past had freed his slave or guided an infidel to Islam, but these people had merely inherited the patronate. Unlike the mother, then, they had no claim to gratitude from the deceased. Now information of this kind is never irrelevant, so the question is whether the tradition endorses the mother’s moral right or mentions it in order to demonstrate its irrelevance. If we take it to endorse her right, it is saying that the patrons had no right to succession because they were distant, thereby implying that they would or might have been called to succession if they had been closer. This is an implausible and otherwise unattested legal doctrine. On the other hand, if the tradition is saying that patrons take the estate even though they are distant, it establishes that the moral considerations invoked by al-Qasim are irrelevant: the law is the law however unjust it may seem at times. This too would yield an otherwise unattested doctrine (patrons exclude mothers), but there is nothing implausible about it: the client owes his legal personality to his munim/munâna to his mother, and the patron is the person “closest to him in life and death”, as a tradition puts it. One frequently feels


100 See the reference given above, note 70.

101 Jâbir b. Zayd and Sulaym b. al-Aswad al-Muhâribî are the only two men with the kunya Abû ‘I-Sha’îthâ’ listed by Ibn Hajîr (Tadhkîr, vol. 12, p. 197). Al-Dûlabî adds others, but none is relevant (Kitâb al-kunâ, vol. 2, pp. 51).
that this expression must once have been rather more seriously meant than the rights of the patron in recorded law would suggest.

106 If the mother was excluded, we have clinched the case: Qur'anic shares were unknown, or at any rate ignored. But what if this reading is wrong? Yet another mother excluding yet another patron does not clinch anything unless the tradition is polemical against those who would do the reverse. But it could of course simply be polemical against those who would have her share with the patron. In al-Qāsim's tradition the mother is awarded al-mal kullah, suggesting that the alternative was to restrict her to her Qur'anic share, not to exclude her: the issue was her right to radd. Abū ʿI-SHAʿTHAʿ's tradition could be similarly understood, since we are explicitly told that somebody (the mother?) takes all the property and gives the other party nothing. This would make good classical sense of the tradition as far as the mother is concerned, but it gets us into trouble with the patrons again, for the tradition would now be implying that they did not get the residue because they were distant whereas they would or might have got it if they had been close, which still does not make any sense at all. The assumption that the issue was all or nothing to either patron or mother works much better. But the text is too ambivalent for this reading to be proved.

107 All is not lost, however, for the case can still be corroborated by indirect means. As mentioned already, classical Sunni law does not accept the DAEP rule: the patron inherits along with Qur'anic cognates and excludes non-Qur'anic ones, instead of being excluded by both. But the rule did not disappear without a trace: all schools of Kūfan origin preserve it to a greater or lesser extent. Thus


108 The Imāmīs are usually classified as a Medinese school, rather than a Kūfan one, but cf. Crone, Roman, Provincial and Islamic Law, p. 21 (and note the alignment between Ḥanafīs, Ṣalāḥīs and Imāmīs on contractual clientage on p. 38; between Ṣalāḥīs and Imāmīs on kitāba on p. 76; and between Ḥanafīs, Ṣalāḥīs, Imāmīs and Ishāri, i.e. all the Iraqis, on p. 95, section iii, on bequests). It should be obvious from what follows that the Imāmī position on respective rights of patron and dhuwaʿ l-ʿerḥām is anything but Medinese even though it is ascribed to imams who resided in Medina and occasionally to other Medinese authorities too (such as Ḥābir b. Ṭānūs, above, note 75).

109 The Ḥanafīs and Qāsimīs Ṣalāḥīs continued to apply the DAEP rule to the contractual patron: whereas the manumitter counts as an agnate, the contractual patron only inherits in the absence of all relatives; be they male agnates or cognates of the Qur'anic or non-Qur'anic variety. 106 The contractual patron is absent from the Kūfan work ascribed to Ṣalāḥ b. Ṭālḥa: ʿAllī, and here the manumitter excludes non-Qur'anic cognates precisely as he does in Sunni law; but the DAEP rule still applies when the manumitter is in competition with Qur'anic cognates: they exclude him instead of sharing with him. 107 The Nāṣirīs Ṣalāḥīs also dropped the contractual patron, but they preserved the DAEP rule unchanged in respect of the manumitter: both Qur'anic and non-Qur'anic cognates exclude him. 108 And the Imāmīs preserved the rule intact: the manumitter and the contractual patron inherit only in the absence of all relatives, be they agnates, Qur'anic cognates or non-Qur'anic cognates. 109 The Nāṣirīs and Imāmīs disliked the case of Ibn al-Ḥamdān as heartily as did Ṣalāḥ b. al-Nakhaʾī. 110

What the Kūfan schools show us is clearly fractured parts of what must once have been a single doctrine, as in fact it still is in the case of the Imāmīs. The fracture has occurred along the divide between manumitter and contractual patron and has split the applicability of the doctrine in half; but the result is wonderfully symmetrical in that they have preserved the rule for different halves of the whole: the Nāṣirīs and pseudo-Ṣalāḥīs...

106 Crone, Roman, Provincial and Islamic Law, p. 386 and note 49 thereto.
108 Crone, Roman, Provincial and Islamic Law, p. 37.
109 ibid., p. 37, 38f.
110 The Imāmīs dismiss it as a tradition related by the muḥāfizān which is muwaqqaf li-mudhthih al-ʾimāna, due to taqāyya, contradicted by another version, munqil, enacted before the revelation of the fardʿ idf and abrogated by it, disliked by Ṣalāḥ b. al-Nakhaʾī, and at all events superfluous as the truth is clear from the Qurʾān regardless of Hadīth (Ibn Ḥāšíya, Man la yaḥḍurahu al-ʾṣafāhī, vol. 4, pp. 228f., no. 711; al-Ṭāṣī, Tahdīh, vol. 9, nos. 1199-1202, 92). The Nāṣirī Zaydīs likewise regarded it as contrary to the book of God, weak and disapproved of by Ṣalāḥ b. and other traditionsists (Muhammad b. Yaʿqūb al-Ḥawwāṣ, Kitāb sharh al-ʾibnāʾ, MS Ambrosiana, D. 224, fol. 101a, 123a). Compare above, note 97.
retain it when the cognates are in competition with a manumitter, the Hanafis and Qasimis when they are in competition with a contractual patron. In pseudo-Zayd there is an additional fracture along the divide between Qur'anic and non-Qur'anic cognates, the old rule being preserved only for Qur'anic cognates in competition with a manumitter; and the result is asymmetrical in that no school retains it only for non-Qur'anic cognates in competition with him. But then nobody would, for the obvious reason that non-Qur'anic cognates could not be placed in a better position than their Qur'anic counterparts (by continuing to exclude manumitters even when Qur'anic heirs had come to share with them); and it is in any case its preservation in connection with the Qur'anic half of the former dhawā 'l-arḥām that is significant. Besides, the Imāmis make up for the missing piece by preserving the rule intact. The DAEP rule must indeed have been to the effect that all cognates were heirs of the same type; all excluded manumitters and contractual patrons, who were heirs of the same type too.

Presumably the adherents of the DAEP rule held cognates of any kind to exclude patrons for the simple reason that they were blood relations whereas patrons were not; heirs by nasab exclude heirs by sabab (the spouse relit excepted), as the Imāmis were later to put it. The distinction between Qur'anic and non-Qur'anic blood relations is intrusive to this line of thought; indeed, it must have been this very distinction (in combination with a new stress on agnatic ties) that caused the fracture. The Imāmis managed to accommodate the distinction, but their laws of inheritance can hardly be said to be based on it: “[Iman] Shi'i jurisprudence majestically sweeps aside all those troublesome distinctions and divisions, between Qur'anic and other heirs, and between agnatic and non-agnatic relatives, in which the generality of Muslim jurists were enmeshed,” as Coulson

puts it. The Imāmis swept them aside, it would appear, because they were committed to an archaic doctrine formulated before the distinctions in question had made their appearance. Their inheritance laws may thus be a counterpart to their conception of the imamate, both being elaborations of doctrines once common to the Muslim world at large. Archaisms are also well attested in other types of Imāmi law.

When then did the fracture of the DAEP rule outside Imāmi circles occur? The unfractured rule is ascribed to Companions, Successors and later authorities, but not to the Prophet; apparently, it did not live to be defended in terms of the classical rules of the game. It was however widely adhered to, we are told, by authorities who died in the 730s, such as ‘Aṭā’ (d. 114/732), Muḥammad al-Bāqir (d. 114 or 119/733 or 737), al-Qāsim b. ‘Abd al-Rahmān (d. 120/738) and Maḥmūd b. Miḥrān (d. 118 or 126/736 or 743f), so it must have been current in the 730s and, given that some of these ascriptions are likely to be spurious, presumably in the generation thereafter too. But in that generation it was on the way out. Though still supported by Ja‘far al-Ṣādiq (d. 148/765) and, apparently, Ibn Abī Laylā (d. 148/765) and Sufyān al-Thawrī (d. 116/778),

113 Coulson, Succession, p. 110.
114 Cf. Crone and Hinds, God’s Caliph.
115 Crone, Roman, Provincial and Islamic Law, index, s.v. ‘Imāmi law’, for six examples relating to the law of slavery and waqt.
116 Cf. above, notes 64, 73, 74, 76.
118 S. al-Mahmāṣī, al-Awādī wa-ta’dī mutḥa ‘l-insānūyya wa-l-qānūnīyya, Beirut 1978, p. 229, claims that he disinherited all non-Qur’anic cognates. This is not implausible, given his Medinese inclination; but no references are given, and the claim is contradicted by al-Hussayn b. Aḥmad al-Siyāḥī, Kīthāt al-raṣūl al-nadīr, completed by Aḥbāb b. Aḥmad al-Ḥasanī, Cairo 1347-49, vol. 5, p. 64; cf. also Ibn Qudāma, Muḥjam, vol. 6, p. 319, no. 4826. (The question is not broached in Abū Yūsuf, Iḥlālāt Abī Hantafī wa-bn Abī Laylā, ed. A.-W. al-Afghānī, Hyderabad 1580, or Wāḥi‘, Qudā‘, vol. 3, pp. 128ff.)
119 Sufyān al-Thawrī starts his bāb fi ‘l-muwādā, with the Ibn Jā’ma tradition, complete with Ibnāfīn al-Nakha’ī’s attempt to explain it away and al-Sha’bī’s reply; but he proceeds to cite another tradition in which a dāhā rāṣīm excludes a patron, suggesting that he too construed al-Sha’bī’s reply as a dismissal of Ibnat.
appears in its fractured form in the doctrine attributed to Abū Ḥanīfa (d. 150/767)\textsuperscript{26} and the Kūfī work ascribed to Zayd b. ‘Ali,\textsuperscript{121} and it was wholly abandoned by al-Awāzī (d. 157/774),\textsuperscript{122} Mālik (d. 179/795),\textsuperscript{123} and later school founders.\textsuperscript{124} The DAEP rule thus seems to have lost out at the hands of men who flourished about 120-50/740-70. But these men can hardly have been the first to be confronted with the problem that made the rule inviable. Assuming that the problem made its appearance at least a generation before it was solved, the jurists’ discovery of the Qur’ānic cognates must be dated to 90-120/710-40 at the latest. An earlier date would be preferable, but there are limits to how much earlier we can make it.

If the DAEP rule was still commonly accepted in the 730s. Simplistic calculations based on a single example have their limits too, of course; but for what it is worth, the evidence of the DAEP rule suggests an al-‘Umayyad date for the arrival of the canonical scripture.\textsuperscript{125}

We may now summarize. Three legal terms of the Qur’ān (kalāla, jiya ‘an yad, kitāb in 24:33) were unintelligible to the early commentators, as were several non-legal phrases and passages (al-‘amād, possibly al-rafi‘im, the mysterious letters and Sūrat Quraysh). At the same time Qur’ānic legislation seems to have been partly ignored and partly misunderstood by the lawyers, two of whose rules (stoning penalty, rejection of written evidence) contradict the book, while a third (DAEP rule) fails to take account of it; and a whole cluster of rules (Powers’ inheritance laws) seems to misrepresent its intentions. This is a fairly impressive score, and it cries out for a unitary explanation; but it is not easy to see how such an explanation can be provided without abandoning the conventional account of how the Qur’ān was born.

\textsuperscript{125} Compare the conjectural date in Crone and Cook, 

\textit{Hagarism}, p. 18.