



The Arab Families Working Group

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## Islamic Law and the Family: Property relations in Legal Discourse and Practice

Contemporary attempts to reform Islamic inheritance law so that women can become equal heirs tend to describe the law as antiquated, as linked to an extinct or dying form of family, namely an extended, fiercely patrilineal, family. But is this the actual history of law, family and property? Was the extended patrilineal family the dominant family form up to recent times and was it being buttressed by Islamic legal doctrines and practices on property transfers? How can the study of inheritance in history help us think about legal reform today?

To explore inheritance laws and practices, in the broad sense of both *mortis causa* and *inter vivos* transfers of property, this paper outlines the major contours of Islamic legal discourse on these transfers, including laws of succession, dower, endowment (*waqf*) and gift, and then turns to some of the ways in which inheritance has been practiced, drawing on material from the Ottoman period. Islamic jurisprudence (*fiqh*) and the records of the Islamic courts of the early modern period are the primary sources.

The findings include that fact that the patrilineal extended family of the Islamic laws of succession was not the only family of doctrine and history. Various rules and practices privileged the conjugal tie, diluted the claims of the patriline, and afforded individuals the freedom to manage their property and modify the laws of succession. There was no fixed practice of inheritance under Islamic law that dictated a unitary form of family relations, but rather it is flexibility that has characterized the practices of inheritance, and transfers of property have been used through history to symbolize and perpetuate a variety of family forms and ties.