



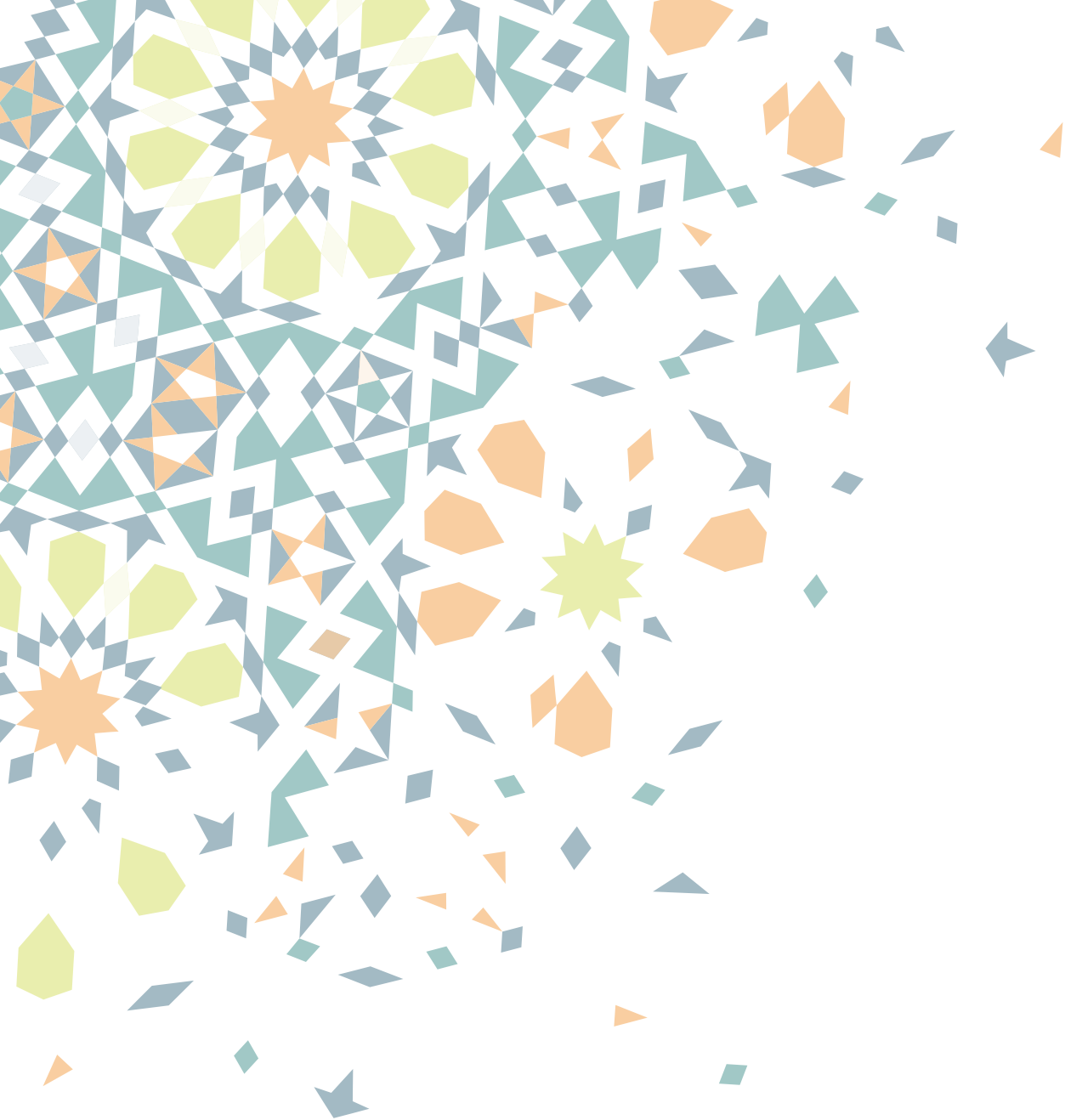
MAX PLANCK INSTITUTE
for comparative and international
PRIVATE LAW HAMBURG



INTERNATIONAL CONFERENCE
30 – 31 MARCH 2023

SUCCESSION IN ISLAMIC LAW





Welcome Message

The Research Group “*Changes in God’s Law – An Inner-Islamic Comparison of Family and Succession Laws*” is delighted to present to you this booklet detailing the conference program, information on our esteemed speakers, including descriptions of their scholarship, and abstracts of the papers to be discussed.

In this conference we want to engage with the role succession law has played in Muslim communities in the past, how it unfolds today and what it implies for future generations. We are in particular eager to unpack the relationship and interactions between family structures, property rights and the intergenerational transfer of property. Our interest in these topics emerged organically from the Research Group’s studies on family law. Marriage, parenthood and kinship relations have undergone major social changes in recent decades, as has been partly reflected in legislation and case law in many Muslim jurisdictions. New social practices and legal reforms have come to question the foundations of established concepts of family and have increased the potentialities to conceive of „family” differently. While developments in family law have received extensive attention in Islamic law scholarship, succession law, often dubbed the last bastion of the supposed immutability of Islamic law, has not been subject to similar scrutiny. This is surprising, given that rules and practices regarding succession are strongly intertwined with family structures and the economy.

We are therefore greatly pleased to offer this forum and to bring together scholars and researchers from various fields of social sciences, the humanities and law to share and exchange their experiences and research on the intergenerational transfer of property in Muslim jurisdictions.

In order to accommodate the various scholarship of the speakers and at the same time foster lively discussion, the conference will not follow the common set-up of academic gatherings where each presentation is followed by a Q&A session. Rather, the conference has been organized into five thematic panels, with each panel connecting the scholarship, discipline, methodological approach and theoretical perspective of the invited speakers by means of overarching topics addressed by all of them. Further, each panel will be chaired by a moderator who will guide the conversation and facilitate the exchange amongst the panelists and between the panelists and the audience. In this way – we hope – a focused and meaningful exchange will unfold amongst all participants.

Thus, we invite you to actively participate in the conference and its discussions and are very much looking forward to a shared presentation of ideas, arguments and concepts.

Enjoy the event!

Nadjma Yassari



Thursday, 30 March 2023

10:00 Registration

10:30 Welcome and introduction

Nadjma Yassari, MPI

11:00 Panel I: Islamic succession law in practice: sources and methods

Chaired by *Dörthe Engelcke, MPI / Lena-Maria Möller, University of Münster*

Panelists

Ahmed Fouad, Mennatullah Hendawy, Monika Lindbekk, Idris Nassery, Hüseyin Sağlam

Themes

The panel investigates the motivations triggering reform and its actors as well as the methods and sources used to study these issues. Focusing on Egypt, *Mennatullah Hendawy* and *Monika Lindbekk* show the entanglement of law and social practice regarding women's land inheritance, while *Ahmed Fouad* lays out the socio-legal background of the legalization of bequests for heirs in Egypt. *Idris Nassery* shares his field research data on the adjudication of succession law under the Taliban after August 2021, and *Hüseyin Sağlam* analyzes the contributions to succession law by 16th century Chief Muftis in the Ottoman Empire.

13:30 Lunch

14:30 Panel II: Pluralities of normative systems: between hierarchy and autonomy

Chaired by *Nadjma Yassari, MPI*

Panelists

Muhammad Zubair Abbasi, Yitshak Cohen, Béligh Elbalti, Najma Moosa

Themes

This panel contextualizes the multiplicity of normative systems within a jurisdiction competing for application and forging hierarchies. *Yitshak Cohen* discusses the interplay of Islamic, Jewish and Israeli civil law with regard to the succession rights of the surviving wife. In the same vein, *Muhammad Zubair Abbasi* sheds light on the reform process giving a childless Shiite widow the right to inherit landed property. *Najma Moosa* reacts to the impact of transactions inter vivos, such as the Islamic *mahr* or the *lobola* (*mahadi*) of African customary law, on the right of Muslim women to inherit. Finally, *Béligh Elbalti* gives examples of the pluralities of laws within the greater context of private international law in Arab jurisdictions.

17:00 Coffee break

17:30 Keynote speech: Inheritance and political succession in early Islam

David Powers, Cornell University, USA

19:00 End of first day

Friday, 31 March 2023

9:00 Panel III: Succession by other means

Chaired by *Khashayar Biria*, MPI

Panelists

Karim El Chazli, *Maryam Ghanizade Bafghi*, *Magomed Gizbulaev*, *Gürer Karagedikli*

Themes

The panelists analyze various tools of estate planning and examine how property is transferred between generations via wills, gifts and contracts in accordance with, in defiance of, or in addition to succession law. While *Maryam Ghanizade Bafghi* explores the *solh-e omra*, a contractual construction applied in Iran to exit property from the estate, *Karim El Chazli* explains the nature and function of gifts in modern Arab laws. *Gürer Karagedikli* presents the results of his study of almost one thousand deeds of wills and donations recorded in Ottoman courts between 1700-1820, while *Magomed Gizbulaev* – focusing on the writings of Dagestani judge Muhammad ‘Ali al-Chukhi († 1888) – adds the *nazr* to the many means of transferring property between generations.

11:30 Coffee break

12:00 Panel IV: The role of *waqf* in succession law (Part 1)

Chaired by *Dominik Krell*, MPI

Panelists

Muhammad al-Marakeby, *Abdulla Niruvan Chalil*, *Eirik Hovden*, *Necmettin Kızılkaya*

Themes

The panel explores the impact of family endowments within different family structures and regional contexts. *Abdulla Niruvan Chalil* argues that endowments are used in matrilineal families in South India to perpetuate the existing kinship system and to resist colonial-sanctioned private property rights. *Necmettin Kızılkaya* and *Muhammad al-Marakeby* provide contrasting perspectives on Muslim jurists’ debates on the family *waqf*: while *Necmettin Kızılkaya* shows how Ottoman scholars of the late 19th and early 20th century instrumentalized the *waqf* to disinherit women, *Muhammad al-Marakeby* depicts how Maliki scholars invalidated family endowments dedicated exclusively to males to safeguard women’s inheritance rights. Finally, *Eirik Hovden* analyzes how the family *waqf* was discussed in Zaydi *fiqh* texts with reference to the permissibility of a bequest to heirs.

13:30 Lunch

14:30 Continuation of Panel IV (Part 2)

15:30 Coffee break

16:00 Panel V: The encounter of various normative systems: a historical perspective

Chaired by *Shéhérazade Elyazidi* / *Arash Guitoo*, MPI

Panelists

Dilyara Agisheva, *Samy A. Ayoub*, *Ari Schriber*

Themes

The panel explores how colonial rule shaped Islamic succession in court practice. With a focus on women’s inheritance rights, *Dilyara Agisheva* contrasts the practice of the courts in 18/19th century Crimea before and after Russian imperial rule. *Ari Schriber* discusses how colonial conceptions of religious law impacted the adjudication of Muslim inheritance in colonial Morocco of the early 20th century. Finally, *Samy Ayoub* sheds light on how Islamic judicial systems addressed the issue of inheritance and transfer of wealth in relation to manumitted slaves in 19th – 20th century Egypt.

18:00 End of conference

PANEL

1

Islamic succession law in practice: sources and methods

This panel investigates the motivations triggering reform and its actors. We will particularly address the following questions:

- Does social practice shape the application and reform of Islamic succession law in your jurisdiction?
- How does social practice impact the transfer of property among generations: who benefits and who is at a disadvantage?
- How do legal practitioners frame the need of reform?
- What sources is your research based on? What methods did you use to interpret your data?

CHAIRS



Dörthe Engelcke / Lena-Maria Möller

Dörthe Engelcke is a senior research fellow at the Max Planck Institute for Comparative and International Private Law. She received her PhD from the University of Oxford in 2015. She has held fellowships at Harvard Law School and the Lichtenberg-Kolleg. Her work has appeared in *Law & Social Inquiry*, the *Journal of Law and Religion*, and *Islamic Law and Society*. She is the author of "Reforming Family Law: Social and Political Change in Jordan and Morocco", published by Cambridge University Press in 2019.



Lena-Maria Möller is a visiting professor of Islamic law at the University of Münster and an affiliated research fellow at the Max Planck Institute for Comparative and International Private Law in Hamburg. Holding an MA in Middle East Studies and a PhD in Law, both from the University of Hamburg, her research and teaching interests concern contemporary Middle Eastern and Islamic law, with a particular focus on Muslim family law, as well as comparative and private international law, and law and popular culture in the Middle East.

PANELISTS



Ahmed Fouad

Ahmed Fouad is a researcher in law and religion and a lecturer of Islamic Law and Jurisprudence at the British University in Egypt. Ahmed holds an LLB in Islamic Sharia and Law from Al-Azhar University, an LLM in Public Law from Mansoura University, and an LLM in Law and Religion from Emory University in the USA. His research and teaching interests include jurisprudence, sociology of law, comparative religious law, law and religion, and Islamic legal theory.

Socio-Legal Analysis of Legalizing Bequests for Heirs in Egypt “An Originalist Approach into Article 37 of Law 71/1946”

This research tackles one example of interaction between state laws and social norms. It investigates the rationale behind the unprecedented legalization of bequeathing for heirs in Egypt that happened by the virtue of article 37 of law 71/1946 on bequests. This article represents a legal rule that renegotiates a well-settled matter in the Sunni jurisprudence based on an undefined common need that was alleged in the explanatory note of this law. The paper proposes an understanding of that common need using an originalist approach into the mentioned article and validates that understanding by a judicial review. As part of this

approach, the paper engages with the available data pertaining to the drafting process of law 71/1946. It provides an account to the drafting committee members and discusses the intellectual school of thought that influenced their judicial practice and scholarly works. Moreover, the paper conveys and reflects on the parliamentary discussions on the article 37 of law 71/1946 in light of the rest of the articles of the same law and other relevant laws. After all, the research introduces the specific legal rationality of article 37 and suggests a test to be applied by courts for maintaining that rationality while enforcing the article.



Idris Nassery

Idris Nassery is a scholar of law and a qualified lawyer, having studied law at the University of Bielefeld. He completed his master's in Islamic Law at the School of Oriental and African Studies in London. From 2012, he worked as a research assistant at the Graduate College of Islamic Theology at the University of Paderborn until successfully completing his doctorate in 2017 with his dissertation on al-Ghazali. Since 2021, he has held the professorship for the Chair of Islamic Law at the Paderborn Institute for Islamic Theology.

Inheritance and Succession under Taliban Law: Between Aspiration and Reality

The Taliban took control of Afghanistan in August 2021. In the first press conference, the spokesman for the Taliban, Zabihullah Mujahid, told the world that the Taliban would keep their promise: introducing Sharia law in Afghanistan. Although the Taliban have not yet been able to give substance to their understanding of Sharia law, legal practice in the courts shows what understanding of Sharia law is to be expected. In my contribution, I will first provide a brief overview of legal developments in Afghanistan since the

Taliban takeover in August 2021. I will then present some examples of inheritance and succession cases and show how the Taliban justify their judgments in the selected legal cases. Here I will go into the specific elements of the legal sources used by the Taliban and show to what extent this is compatible with classic Hanafi law and to what extent other elements and the complexity of the legal cases pose new challenges for the Taliban judgments.



Mennatullah Hendawy

Mennatullah Hendawy is an interdisciplinary urban planner working on the intersection of cities, ethics, communication, and technology toward equitable and sustainable urbanism. She is an assistant professor at Ain Shams University in Cairo, Egypt, and affiliated with Impact Circles e.V. in Berlin. She received her Ph.D. with summa cum laude in Planning Building Environment from TU Berlin in Germany. Hendawy holds an MSc. in Integrated Urbanism and Sustainable Design from Stuttgart University and a Bachelor of Science in Architectural Engineering from Ain Shams University in Cairo.



Monika Lindbekk

Monika Lindbekk works as a postdoctoral research fellow at the University of Southern Denmark and is an affiliated researcher at the University of Bergen. Her research focuses on religion, gender and law in Muslim minority and majority contexts, particularly in Egypt. In addition to several scholarly articles, she has co-edited a volume on Women Judges in the Muslim World together with Nadia Sonneveld (Brill 2017) and a double special issue on Gender and Judging in Muslim Courts for the Journal of Women of the Middle East and the Islamic World (Brill 2020).

Women's Land Inheritance in Egypt under Islamic Succession Law: Between Social Customs and State Law

The paper addresses Islamic succession law in the contemporary Egyptian nation-state. Egypt is chosen as a case study due to the high societal value attached to land compared to the low percentage of women owning land (5%), which is among the lowest in the world. Egyptian inheritance legislation is a codified translation of the provisions of one of the many Islamic doctrinal schools, which reflected the importance of the extended family where women were

dependents. Recently, in 2017, a legislative amendment was promulgated, which prescribes a penalty of imprisonment and/or a fine on anyone who intentionally refuses to hand over one of the heir's legal shares of the inheritance. The paper uses inheritance law as a vantage point to address the entanglement of law and social mores that entrench and challenge gender hierarchy after the 2017 legal amendment.



Hüseyin Sağlam

Hüseyin Sağlam is a researcher at the ISAR Foundation and a PhD candidate in the field of Islamic law at Istanbul University. He holds a MA degree in Theology from Istanbul University, where he graduated in 2016. His academic interests include Islamic and Ottoman family law, digital humanities, early modern Ottoman law and society. Between 2019-2022, he took part in the project titled „Formative Century of Classical Ottoman Law: 16th Century“.

Contributions of Ottoman Fatwa Collections to Succession Law: An Analysis of Legal Opinions by 16th-Century Chief Muftis

The main sources of Islamic and Ottoman succession law have always been substantive law books which contain doctrinal narratives and probate inventories of deceased people. Although these sources provide significant information about succession law, they have their own limitations. To my knowledge, there are no devoted works on succession law that incorporated the collections of Ottoman fatwas. The most important feature that distinguishes this neglected source from substantive law and probate inventories is that it presents the narratives of real events. Since the fatwas are related to actual problems encountered in social life, the collections have the potential to provide

important information related to legal history. The main purpose of this study is to reveal how the “*kitab al-faraiz*” sections of the fatwa collections contribute to the studies of succession law. This study will analyze the content of the fatwa collections of 16th-century Ottoman chief muftis (*şeyhülislam*). The analysis reveals that most of the questions asked about succession law to the Ottoman chief muftis revolved around the division of inheritance. The findings reveal that second or third marriages caused inheritance problems in Ottoman society, which were not only brought before *qassams* (inheritance divider), but also in front of the chief muftis.

PANEL

2

Pluralities of normative systems: between hierarchy and autonomy

This panel contextualizes succession law within several normative systems competing for application. The following topics and questions will be addressed in particular:

- What is the background of the plurality of normative systems operating in your jurisdiction?
- What is the place of party autonomy to choose the applicable law and/or the jurisdiction of the court in matters of succession? How does one impact the other?
- What hierarchies have emerged from these pluralities?
- How do these pluralities impact the right to inherit?

CHAIR

**Nadjma Yassari**

Nadjma Yassari, Prof. Dr., LL.M. (SOAS) was born in Tehran and studied law in Vienna, Paris, Innsbruck and London, and Arabic in Damascus. She is the leader of the research group “Changes in God’s Law: An Inner-Islamic Comparison of Family and Succession Laws” at the Max Planck Institute in Hamburg. Her current project investigates the inter-generational transfer of property under Islamic law.

PANELISTS



Muhammad Zubair Abbasi

Dr. Muhammad Zubair Abbasi completed his DPhil in Law at Oxford University. He has worked as a research fellow at Oxford University and as a senior research fellow at the Max Planck Foundation for International Peace and Rule of Law, Heidelberg. He is associate editor of the Yearbook of Islamic and Middle Eastern Law and editor for the Harvard Law School's SHARIAsource. His teaching and research focuses on comparative law, jurisprudence, family law, commercial law, trusts law, and Islamic law and human rights in the contemporary world.

Inheritance Rights of Childless Widows under Shia Law in Pakistan: Reconstruction of Sharia through Judicial *ijtihad*

In South Asia (India, Pakistan, and Bangladesh), a childless widow of a Shia husband is at a great disadvantage. She does not get her Qur'anicly prescribed share of one-fourth in the immovable estate of her deceased husband under the Twelver Shia school (*Ithna Asharia fiqh*). During the British colonial period (circa 1757 to 1947), the courts endorsed this rule in their judgments. After independence, Pakistani courts continued to follow this rule until 2016 when the Lahore High Court questioned the validity of this rule because of its manifest contradiction of the relevant

Qur'anic verses. In 2021, the parliament amended the law to provide childless widows the right of inheritance in the immovable property under Twelver Shia school. While the new law recognises the inheritance right of a childless widow of a Shia husband in immovable property, it limits this right to "the fixed price or value of the property". This contribution evaluates the new law in the historical context of the transplantation of common law in South Asia and engages with the debates about the interpretative authority over the sources of Islamic law (*fiqh*).



Yitshak Cohen

Rabbi Prof. Yitshak Cohen is an associate professor of law, a senior faculty member and the academic director of the Ono Academic College Faculty of Law. He is chairman of the Public Committee for Prenuptial Agreements as appointed by the Minister of Religious Affairs. Previously, he was a visiting scholar at Columbia University Law School in New York and a visiting professor at McGill University. He was ordained as a rabbi by the Chief Rabbinate of Israel. His primary fields for teaching and research are family law and civil procedure.

A Comparative Legal Perspective on the Wife's Succession under Islamic Law, Jewish Law and Israeli Civil Law

The contribution will provide a comparative, historical and critical legal perspective on the succession law that applies to a Muslim wife in Israel, comparing this to the law that applies to her counterpart, a Jewish wife in Israel. Civil law favours the wife as compared to religious law (Islamic and Jewish) in that it gives her a larger share of the inheritance than the one granted to her under religious law in the event of her husband's death. Under civil law, the wife inherits half of the husband's estate. However, under Islamic law, the wife inherits an eighth of his estate (where the couple had children), and

a quarter of the estate (where the couple did not have children); under Jewish law, by contrast, the wife does not inherit from the husband at all. In fact, succession law creates for the wife two normative legal regimes. This raises fascinating legal questions, such as the following that will be examined amongst others: Is a married woman allowed to freely choose one of the two arrangements (civil or religious)? What are the legal consequences of choosing one of them? What are the interrelationships between civil and religious law as far as the wife's inheritance is concerned?



Béligh Elbalti

Dr. Béligh Elbalti is an associate professor at the Graduate School of Law and Politics – Osaka University, where he teaches, inter alia, Japanese law, comparative law, Islamic family law, and private international law. He is the author of a number of articles and case notes, mainly in the field of private international law. His research focuses on the development of private international law at the national and international levels, especially in Asia and the Middle East.

Inter-Religious Successions in MENA Arab Countries – Private International Law Perspective

Under classical sharia rules, inter-religious successions are, in principle, not allowed. Family law codifications of most MENA countries explicitly reproduce the classical religious impediment to succession. From a private international law perspective, the question to be examined concerns the implication of such an impediment on the treatment of interfaith successions. The present paper proposes to analyse the way various courts in the MENA region have addressed this issue. It aims to highlight the

different situations in which the question has been raised (or is likely to be raised) and the approach followed by the courts. It shows that, although a liberal attitude can be detected, the courts in the MENA region have generally shown themselves to be quite conservative and have found that, irrespective of the applicable law, interfaith successions involving Muslims (as heirs or decedents) are necessarily subject to Islamic sharia rules and principles.



Najma Moosa

Najma Moosa is a senior professor in the Faculty of Law at the University of the Western Cape (UWC), South Africa. She specialises in Muslim personal or family law and is a National Research Foundation rated researcher. Her research milestones include drafting contributions to two South African Law Reform Commission Projects on Muslim children and on Muslim marriages. She has authored over 60 academic publications, including 4 books.

Implications of Dower, Gift (*hiba*), Dowry and *lobola* (*mahadi*) on Religious and Customary Marriages and the Rights of Muslim Women to Inherit in South Africa

The outcome of a recent (June 2022) Constitutional Court judgment will finally result in Muslim polygynous marriages (*nikahs*) being formally recognized and regulated by the State by 2024. Since this recognition does not include the Islamic law of succession (which will not pass constitutional muster because of its inherent half-share to women), when Muslims die intestate the secular law is expected to apply. The Islamic law of gift (*hiba*), dower, and customary practices of dowry are therefore important alternative tools for augmenting the inheritance of Muslim women during their lifetime (*inter vivos*). A novel fatwa recently (August 2022) issued by local

indigenous *ulama* brought to light several challenges faced by African Muslims regarding the relation of *nikahs* to African traditional (polygynous) marriage practices like the payment of *lobola* (*mahadi*) (“bride price” or “marriage settlement”) by the groom to the bride’s father. Although *lobola* and dower can be prompt or deferred, one is based on religion and the other on custom. Dowry and *lobola*, although both based on custom, are also different. This paper examines the implications of these tools on the rights of local Muslim women to inherit in terms of religion and custom.

Keynote Speech

Inheritance and Political Succession in Early Islam



David S. Powers

David S. Powers received his Ph.D. from Princeton in 1979 and began teaching at Cornell in the same year. He currently holds positions as a professor in the Department of Near Eastern Studies, an adjunct professor at the Cornell Law School. His courses deal with Islamic civilization, Islamic history and law, and classical Arabic texts, and his research focuses on the emergence of Islam and Islamic legal history. He is founding editor of the journal *Islamic Law and Society*.

PANEL

3

Succession by other means

This panel examines how property is transferred between generations via wills, donations and contracts in accordance with, in defiance of, or in addition to succession law. The following questions will be addressed in particular:

- What sources and methods is your research based on?
- What is the legal nature of the tools you studied?
- What were the contexts and motivations for resorting to these instruments?
- Do these instruments impact intestate succession law and if so how?

CHAIR

**Khashayar Biria**

Khashayar Biria studies law with a specialization in European and International Law at the University of Hamburg, for which he received the university's merit scholarship. Graduated in 2020 by completing the First State Exam, he started to work in an international law firm on competition matters while developing his dissertation thesis. In 2021 he joined the research group "Changes in God's Law: An Inner-Islamic Comparison of Family and Succession Laws", while working on his doctoral thesis as a member of the Albrecht Mendelssohn Bartholdy Graduate School of Law at the University of Hamburg.

PANELISTS



Karim El Chazli

Karim El Chazli has, since 2013, been a legal advisor at the Swiss Institute of Comparative Law (SICL), on whose behalf he has drafted legal opinions on the laws of nearly 20 Arab and Islamic jurisdictions. Karim studied law in Egypt (Cairo University), France (Sorbonne University) and England (Oxford University). He is a guest lecturer at French and Swiss universities. He has authored several publications on private international law, comparative law and family law.

Gifts in Modern Arab Laws: A Means for Estate Planning or a Tool to Circumvent Succession Law?

Despite the close connection between succession and gifts, Western scholars have shown relatively little interest in understanding how gifts are regulated in Islamic and modern Arab laws. This is regrettable because an examination of gift law is fundamental to a proper understanding of intergenerational transfer of property in any given legal system. For example, the traditional liberal stance of Islamic law regarding gifts, which permits donating all assets, questions the common assertion that Islamic law adheres to a system of forced heirship (an assertion based on the

fact that Islamic law restricts the right to bequeath to just one-third of the estate's assets). On a more practical level, while gifts could be used – by the decedent – as a means for estate planning, they can also be viewed – by heirs – as a tool to circumvent succession law. How do modern Arab laws perceive gift-giving and how do they regulate it? My research endeavours to answer this question through the study of legal provisions and judicial rulings in several Arab jurisdictions.



Maryam Ghanizade Bafghi

Maryam Ghanizade Bafghi was born in Tehran and graduated in Islamic Teaching from Shahid Motahari College and Private Law from Shahid Beheshti University in Tehran. She was a visiting researcher at Humboldt and Goethe University, and at the Max Planck Institute for Comparative and International Private Law in Germany. She is an assistant professor of family law at Kharazmi University focusing on Comparative Family and Child Law and a member of the Association of Notaries in Tehran.

Legal Capacities of the Succession Rules' Adjustments in Iran: a Practical Study

Succession rules in Iran are classified as normative and imperative which have a Quranic basis. However, in practice, there are always people who want to divide their properties based on their circumstances and not to be included in the succession rules. For this purpose, the Iranian Civil Code presents various capacities such as *Solh* of the ownership of the property with saving the right to enjoy its benefits until death with the right of dissolution (*Solh-e Omra*), donation (*Hibe*), selling the property with the equal portion to the heirs, willing up to the third of the property,

and *Waqf* on behalf of one of the heirs or for public affairs. Among all these approaches, *Solh* in the mentioned form is preferable as the assigner can use the property, especially house, land or car, during his life and be sure that the ownership will transfer to the selected ones after his death. In addition, considering the right of dissolution for the unpredictable nature of death is an efficient way to return the property. This paper will be a study of the above-mentioned approaches and explain all their advantages and disadvantages.



Magomed Gizbulaev

Magomed Gizbulaev is an independent researcher. He holds a Ph.D. (2005) in History from the Institute of History, Archaeology and Ethnography of the Dagestan Scientific Center of the Russian Academy of Science. His main research interests are related to issues of the medieval history of Caucasus through early Arabic geographical and historical works (9th-13th cc.) and Islamic intellectual and Arabic literary tradition of Dagestan in the modern period.

Succession Law among the Imperial Russian Muslim Minority Communities: A Case Study of the Dagestani *qadi* Muhammad 'Ali al-Chukhi's *Fatawa al-Chukhi* on the Issue of "*nazr*"

In this paper, I hope to contribute to our knowledge of the development of legal discourse on the concept of *nazr* (vow/solemn pledge) in Islamic succession law among the Imperial Russian Muslim minority communities by undertaking an analysis, as well as a comparative and textual study of the hitherto unstudied legal statement on the issue of *nazr* from *Fatawa al-Chukhi* by the Dagestani *qadi* Muhammad 'Ali al-Chukhi (d. 1888). In it the Dagestani

jurist classifies the types of *nazr*, lists the opinions of sharia/*shafi'i* authorities on this issue, and also defines rules regarding *nazr*. Among those Dagestani jurists who also discussed the subject in the given period is Muhammad Tahir al-Qarakhi (d. 1880) who provides his legal argument against application of *nazr* that causes an infringement of the succession rights of heirs, thus I will offer a new comparative investigation of legal discourse on *nazr*.



Gürer Karagedikli

Gürer Karagedikli teaches in the History Department of Middle East Technical University in Ankara where he received his PhD in 2017. He was granted a postdoctoral research fellowship by the Hebrew University of Jerusalem for the 2018-19 academic year. His research interests in Ottoman socio-economic history in the early modern and modern periods include urban wealth and inequality, urban identities, religious foundations, Jewish communities, inter-communal relations, land use and peasant indebtedness, and legal practices. His research appeared in the Journal of the Economic and Social History of the Orient, The Economic History Review, and the Mediterranean Historical Review.

Wills, Donations, and Transfer of Property in the Ottoman Empire: Evidence from the Muslim Courts of Istanbul, 1700–1820

Based on deeds of wills (*wasiyyah*) and donations (*hiba*) recorded in the registers of various Muslim courts of Istanbul between 1700 and 1820, this paper investigates the transfer of property in the early modern Ottoman Empire. It contributes to the literature by providing an empirical analysis of the motives behind giving to others aims to find answers to the following questions: Who did leave property or different forms of fortune to whom? Did the two forms of transfer methods make a difference? Finally, did the two practices of giving change over time? In answering these questions, the

paper uses a quantitative method to see the impact of different variables on the will-owner's or the donor's decision. Data suggests that intra-family property transfer was extremely high, meaning people left property to certain people within their family. More specifically, those who willed or donated chose family members like daughters to leave wealth. Through this, the paper argues, donations were used to walk around Islamic law that strictly determined how one's bequest would be divided.

PANEL

4

The role of *waqf* in succession law

This panel explores the use and impact of family endowments in the context of different family structures, looking at gender dynamics and economic interests. It asks the following main questions:

- How did the family *waqf* influence the position of women in Islamic (inheritance) law?
- Was the prohibition of the family *waqf* a reaction to modernity?
- How did other non-Islamic normative systems affect the debate surrounding the family *waqf*?
- How did family *waqfs* impact local economies and how did economic conditions shape the understanding of the family *waqf*?

CHAIR

**Dominik Krell**

Dominik Krell is a senior research fellow at the Max Planck Institute for Comparative and International Private Law in Hamburg, Germany. His doctoral work, entitled "Islamic Law in Saudi Arabia: Concepts, Practices and Developments" (Hamburg 2021), explored how Saudi jurists relate to the Islamic legal tradition and how their understanding of Islamic law is reflected in Saudi legal institutions and practice.

PANELISTS



Muhammad al-Marakeby

Muhammad al-Marakeby is an assistant professor of Islamic studies at the Indonesian International Islamic University (IIU). Additionally, he is the director of the Center of Islam and Global Challenges (CIG) at the same university. He was awarded his Ph.D. in Islamic studies from the University of Edinburgh, UK. His areas of expertise include Islamic law and modernity, modern Islamic thought, Islamic history, and Muslim-Christian relations. Al-Marakeby's forthcoming monograph is titled, "Non-reformists' reform: decolonizing the history of Islamic law in nineteenth-century Egypt".

You May Endow Your Fortune to Daughters but not to Sons: the Malikis' Fatwas against Depriving Daughters of Their Inheritance

It has been contended that some Muslims would endow their wealth to their sons during their lifetime in order to deprive their daughters of the legal share they would acquire if the estate were transferred to the next generation by way of inheritance. In this paper, I address the measures that were taken by Islamic law experts to redress the practice of disinheriting women through endowment. The Malikis declared that an endowment that was dedicated exclusively to males should be invalid. What is interesting about this de-

termination is that the Malikis did not invalidate an endowment that was made to females alone. This example of a rule preferential to women is based on Islamic law scholars' consideration of the unique position of women in a social structure – in some tribes – whereby there was a systematic attempt to disinherit them. This case study suggests a "critical Islamic law" approach in which Muslim scholars instrumentalized their fatwas to redress certain forms of "structural injustice" embedded in the society.



Abdulla Niruvan Chalil

Abdulla Niruvan Chalil is currently working as a PhD scholar at India Arab Cultural Centre, Jamia Millia Islamia University, New Delhi. His thesis attempts to understand changing patterns of *waqf* practices among Mappilas of Malabar. He has written and presented many papers on *waqfs* and other Islamic legal aspects.

Rise of *waqf ahli* in Colonial Malabar

The provision to dedicate *waqf* for family is currently completely abolished or restricted to a few generations in most countries. The South Asian experience of the *waqf* has been distinct, when compared to that of the other parts of the world. In the last quarter of the nineteenth century, for instance, there was an attempt by the privy council to invalidate the practice. However, following strong opposition from the Muslim community, the institution was validated by the Mussalman Wakf Validating Act of 1913. The practice of *waqf ahli* has become popular among the matrilineal families of Colonial Malabar after the validation act. The

paper examines the reasons behind the popularity of the *waqf ahli* among matrilineal Muslims of Malabar, particularly in the context of colonial interventions in traditional customary practices. To understand this largely understudied phenomenon, the study uses *waqf* deeds written in Malayalam language by matrilineal families, after the passage of the Waqf Validating Act of 1913. The paper argues that the practice of dedicating their customary common property as *waqf* for family, assisted matrilineal families to further perpetuate their kinship system and to resist colonial-sanctioned private property rights.



Eirik Hovden

Eirik Hovden is a scholar of Islamic law and Yemeni history at the University of Bergen, Norway. He is currently the project leader of the TMS starting grant project „Canonization and Codification of Islamic law“ 2020-2024 (uib.no/cancode). In 2016-2018, he worked in the HE-RRA-project „Uses of the past in Islamic law“. His dissertation (2012) was about the development of Yemeni Zaydi *waqf* law, later developed into the monograph „*Waqf in Zaydi Yemen: Legal theory, codification and local practice*“ (SILS, Brill 2018).

Pre-Modern Zaydi Critique of Family *waqf* and *wasiya*, Shifting Argumentation, and Instability in Printed Editions of *fiqh*

The hadith „*la wasiya li-warith*“ is a central piece in the puzzle in the Zaydi debate on the validity of several forms of family *waqf* and *wasiya*. Originally not found in the Zaydi *hadith* canon, this *hadith* was over time increasingly ascribed with validity until its rather strong position, as reflected in imamic decrees in the 20th century and in the Yemeni laws of *waqf* and *wasiya* today. This general development goes contrary to the canon of Zaydi *fiqh* of older origin which does allow for a *wasiya* to a potential heir, as expressed by the *fiqh* rule „*wa-law li-warith*“ found in the canonical *matn* of the Zaydi

madhhab, the *Kitab al-Azhar*. Whereas I have previously published on this general development in chapter five in my book, this contribution will, based on new research, present how the critique of the Zaydi family *waqf* is older than previously thought, and how the argumentation by later Zaydi imams abruptly shifts to using Sunni *hadiths* and *madhhab* critique as early as 1600 CE. I will also show how the above mentioned *fiqh* rule is unstable in the newest printed editions of the *Sharh al-Azhar*, reflecting the controversy and changing political context in recent years.



Necmettin Kizilkaya

Necmettin Kizilkaya, PhD, is currently working as a professor of Islamic Law and Economics at Istanbul University. He earned his B.A in Islamic Studies, and his M.A and PhD in Islamic Law. His research interests related to Islamic studies, especially Islamic law and economics. Kizilkaya has published several books. His research has appeared in many leading academic journals. He serves on the editorial boards of many academic journals and as editor in chief of the *Darulfunun Ilahiyat*.

The Debates of Muslim Jurists on the Legitimacy of Family *awqaf*: Are Family Foundations a Trick to Disinherit Women?

Family foundations played an important role in the Ottoman legal and economic system. However, it has also been noted that family foundations, as institutions subject to the laws and boundaries of the *waqf* (endowments, plural: *awqaf*), were a trick for the transfer of property within the family. This transfer of property through family *waqfs* brought their legal legitimacy and relationship with inheritance law to the agenda. Especially after the colonial activities of the 19th century, the debates in North Africa and India became noteworthy. In these debates, it was claimed that family foundations were an Arab reaction to the Islamic law that gave women a share in inheritance. This claim, which was mostly voiced

by French orientalists, was responded to from within the Islamic world and led to debates on the abolition of family foundations. In this paper, I will focus specifically on the debates of Muslim jurists in the late 19th and early 20th centuries on the legitimacy of the family *waqf*, especially as these debates refer to the disinheritance of women. Therefore, I will look at the arguments and counterarguments put forward in the debates on the one hand and compare them with classical Islamic law and Ottoman practice on the other. Thus, I will discuss whether family *waqfs* are nothing more than a trick to disinherit women.

PANEL

5 The encounter of various normative systems: a historical perspective

This panel looks at how colonial rule shaped Islamic succession in court practice. The following questions will be looked at in particular:

- How does inheritance relate to property and personal status law?
- Within the entanglement of pre- and postcolonial rule, how did procedural law affect the right to inherit landed property?
- What was the impact of the encounter of various normative orders on the social construction of the family?
- What concepts of gender emerge from the present research and how does this impact the right to inherit?

CHAIRS



Shéhérazade Elyazidi / Arash Guitoo

Shéhérazade Elyazidi is a research fellow at the Max Planck Institute for Comparative and International Private Law in Hamburg. She holds a Master's degree in Political Science and Sociology and a Bachelor's degree in Political Science and Middle Eastern Studies from the University of Heidelberg. The focus of her work is on Kurdish-Iraqi family law. Using structuralist and post-structuralist theories as well as social science methods, she analyses the function of Kurdish family law in the reinterpretation of a Kurdish-Iraqi national identity in her doctoral thesis.



Arash Guitoo studied Law (Free University Tehran) and Political Science (Tehran University) in Iran and Cultural Anthropology and Islamic Studies at the CAU in Kiel/Germany. He received his PhD in Islamic Studies in 2019 from CAU/Kiel. Currently he is responsible for the Afghanistan Desk at the Max Planck Institute for Comparative and International Private Law.

PANELISTS



Dilyara Agisheva

Dilyara Agisheva is a research fellow in the Program in Islamic Law at Harvard Law School. She received a B.A. in Middle Eastern Studies and Political Science at UCLA, an MA in Middle Eastern, South Asian, and African Studies at Columbia University, and a Ph.D. in Arabic and Islamic Studies at Georgetown University. Her dissertation research focuses on legal change in Crimea after its annexation by the Russian Empire in the 18th century.

Succession in Law in the 18th and 19th Century Crimea

Before the eighteenth century, Crimea was part of the Ottoman world and had a well-established Islamic legal tradition. However, after the Russo-Ottoman wars of the eighteenth century, when the peninsula came under Russian control, Russian imperial authorities transformed Crimean Islamic legal institutions but did not completely erase its traditional judicial practices. Among these was the succession law for landed property, which was at the crux of Russia's challenge to rule Crimea. My contribution will describe property transfers between two generations: those who lived under the Crimean Khanate and those who inherited (or hoped to inherit) under Russian colonial

rule. With a focus on Muslim women and their claims over inheritance, the central question of my contribution is the following: what role did gender play in impacting inheritance cases that were adjudicated among the Muslim community living under Russian imperial control in Crimea? Relying on the Crimean Shari'a court records and Russian imperial documents of the late eighteenth and early nineteenth centuries, I argue that because of the colonial transformation of the Islamic legal system, Muslim women faced additional hurdles over the issue of inheritance not only from Russian imperial authority but also from the local Islamic community.



Samy A. Ayoub

Samy A. Ayoub is an assistant professor of law and Middle Eastern Studies at the University of Texas at Austin. He specializes in Islamic law, modern Egyptian legal history, and law and religion in contemporary Muslim societies. He is the author of "Law, Empire, and the Sultan: Ottoman Imperial Authority and Late Hanafi Jurisprudence" (Oxford University Press, 2020).

Succession by Other Means: Inheritance of the Patronate and the Abolition of Slavery in Modern Egypt

Egypt was a center of slave trade and it struggled to bring it to an end by the mid 19th century CE whether by khedival imperial edicts, military campaigns, or enhanced criminal punishments. The litigation in Islamic courts in Egypt on issues of inheritance provides rare glimpses into the social life after manumission. The legal claims established by Islamic law in the context of inheritance of the patronate (*wala' al-'itq*), especially Hanafi jurisprudence, gives us

access to the economic and social conditions after manumission, inaccessible through usual archival materials. I propose that the decisions by the Egyptian Islamic Supreme Court, 1897-1955 (ISC) reveal deep insights into the ways in which Islamic judicial systems addressed the issue of inheritance and transfer of wealth in relation to manumitted slaves in 19th - 20th century Egypt.



Ari Schriber

Ari Schriber is a postdoctoral fellow in the Department for the Study of Religion at the University of Toronto. His research interests lie at the intersection of twentieth-century Islamic legal history and Islamic intellectual history in the Middle East and North Africa. His monograph in-progress “The (Un)Making of Modern Sharia: Judgeship, Proof, and Legislation in Twentieth-Century Morocco (1912-1965)”, centers contested notions of proof as a defining point in the modern history of Islamic law.

Islamic Inheritance by Colonial Courts: Adjudicating Muslim Property Succession in Colonial-Era Morocco

How did colonial conceptions of religious law impact the adjudication of Muslim inheritance? Legal historians have interrogated many of the most urgent effects of colonial reforms on Islamic legal institutions: bureaucratization of personnel, consolidated legal corpuses, and jurisdictional limitations. However, the impact of such jurisdictions on the *process* of determining sharia-based outcomes beyond family law remains relatively unstudied. This impact is particularly important in contexts like colonial-era Morocco (1912-1956), where sharia courts retained jurisdiction for Muslim personal status, yet French colonial courts adjudicated matters concerning registered (*immatriculé*) property. My paper examines a land inheritance dispute

for which both Moroccan sharia courts and French colonial courts claimed jurisdiction. The dispute involved a decedent's alleged grandchild seeking to inherit her land, with each jurisdiction producing contradictory sharia-based rulings. Against the sharia court's ruling, I show how French courts applied legislation that codified Islamic property concepts and allowed them to settle Muslim personal status issues. I argue that the French courts diverged less in understanding substantive Maliki inheritance rules than by isolating evidence and procedure from sharia *per se*. I contend that this case points to the future of codified Islamic succession rules adjudicated in isolation from other domains of Islamic law.

IMPRINT

Publisher

Max Planck Institute for Comparative and
International Private Law
Mittelweg 187, 20148 Hamburg
Phone +49 (0)40/41900-0
www.mpipriv.de

Editors

Research Group "Changes in God's Law –
An Inner-Islamic Comparison of Family and
Succession Laws"

Image sources

Portraits: © private, © MPIPRIV / Johanna Detering
P. 9 Monika Lindbeek © Photograph: Emma Lord

March 2023