

Introduction

In my research on the Islamic law of inheritance, I have utilised manuscripts written by scholars from the various schools of law. One of these is the *Minhāj al-farā'id*, which is attributed to the Ismaili *qāḍī* Abū Ḥanīfa al-Nu'mān. It has proven invaluable in helping me to fathom the various aspects of the inheritance system of the Sunni as well as the Shi'i, Zāhirī and Ibādī schools of law.¹ With regard to the early formation of the Imāmī and Ismaili schools of law, the *Minhāj* has already helped to shed light on several issues which have been examined elsewhere,² but many others remain, including, for example, the relationship between the Ismaili school, the Imāmī school and the remaining law schools; the comparison of the legal works of al-Nu'mān in order to shed light on the development of his thought. Above all, however, it has a bearing on the question of the origin of Islamic law itself. Moreover, it has informed an examination of the meaning of the Qur'anic term *kalāla*³ as well as an

1. Agostino Cilardo, *Diritto ereditario islamico delle scuole giuridiche ismailita e imamita* (Rome and Naples, 1993); Agostino Cilardo, *Diritto ereditario islamico delle scuole giuridiche sunnite (ḥanafita, mālikita, šāfi'ita e ḥanbalita) e delle scuole giuridiche zaydita, zāhirita e ibādita* (Rome and Naples, 1994).

2. Examples include the division of the heirs by kin into classes and the consequent negation of the doctrine of agnation, the privileges extended to the firstborn child, and the exclusion of a wife from the inheritance of some goods included in the estate. See Agostino Cilardo, 'Some Peculiarities of the Law of Inheritance. The Formation of Imāmī and Ismā'īli Law', *Journal of Arabic and Islamic Studies*, 3 (2000), pp. 127–137.

3. Agostino Cilardo, 'Preliminary Notes on the Qur'anic Term *kalāla*', in U. Vermeulen and J.M.F. van Reeth, eds, *Law, Christianity and Modernism in Islamic Society. Proceedings of the Eighteenth Congress of the Union Européenne des Arabisants et Islamisants held at the Katholieke Universiteit Leuven (September 3–September 9, 1996)* (Leuven, 1998), pp. 3–12; Agostino Cilardo, *The Qur'anic Term kalāla. Studies in the Arabic*

assessment of some recent reforms in inheritance law.⁴

Since the history of the rise and the nature of the Fatimid state is well known, and the role of al-Nu'mān as a state jurist has also been widely studied, I wish instead to focus on a doctrinal comparison of al-Nu'mān's juridical works. Starting with an analysis of the *Minhāj* and highlighting the figure and works of al-Qādī Abū Ḥanīfa al-Nu'mān, I shall trace the development of Ismaili jurisprudence (*fiqh*) against the backdrop of the Imāmī as well as the Sunni elaboration. In so doing, I will compare the doctrines expressed in the *Minhāj* with those found in the other extant works of al-Nu'mān. From this examination, I hope to draw some conclusions about when the *Minhāj* was composed, the originality of Ismaili jurisprudence, and the relation between Ismaili jurisprudence and other schools of law.

Al-Nu'mān is generally considered the founder of Ismaili jurisprudence, and its greatest exponent. Most scholars nevertheless assert that Ismaili *fiqh* lacks originality and is closely dependent on other systems of Islamic law. The present study takes this as its cue to provide evidence to the contrary by a detailed examination of the differences between Ismaili and other *fiqh*.

Stimulated by the challenge formulated by Muḥammad Waḥīd Mīrzā,⁵ but limiting myself to the topic of inheritance, I shall thus proceed to conduct a comparative study between the Ismaili system of jurisprudence and the other Islamic systems of law. But such a study ought to start by questioning Mīrzā's general observation that (1) there are no noteworthy differences between the Ismaili form

Language and Poetry, ḥadīṭ, tafsīr and fiqh. Notes on the Origin of the Islamic Law (Edinburgh, 2005).

4. Agostino Cilardo, 'On Some Recent Laws on the Islamic Law of Inheritance', in A. Fodor, ed., *Proceedings of the Arabic and Islamic Sections of the 35th International Congress of Asian and North African Studies (ICANAS) (Budapest, 1-7 July 1997)*, Part II: *The Arabist, Budapest Studies in Arabic*, 21-22 (Budapest, 1999), pp. 193-204.

5. That is, to 'conduct a comparative study between the Ismaili system of jurisprudence and the other Islamic systems of law' ('Il aurait été intéressant de faire une étude comparative entre le système ismaélien et les autres systèmes de jurisprudence musulmane'). See Muḥammad Waḥīd Mīrzā, 'Avant-propos' in his edition of *Kitāb al-iqtisār*, by al-Qādī Abū Ḥanīfa al-Nu'mān (Damascus, 1376/1957), p. xxxviii.

of *‘ibādāt* (religious practices) and other forms of *‘ibādāt*, and (2) Ismaili rules on *mu‘āmalāt* (with respect to marriage, repudiation and inheritance, for example), totally diverge from those of Sunni and Imāmī systems of law. Such comparisons may appear pedantic, but they are necessary in order to definitively fix al-Nu‘mān’s own theological background and thereby explore whether this was Mālikī or Ḥanafī, and to establish the doctrinal position of the *Minhāj* with respect both to his other works and to works by the Imāmīs and the Sunnis.