



BRILL

Introduction

Carlo De Angelo | ORCID: 0000-0002-2919-8538
Ricercatore, Università degli Studi di Napoli “L’Orientale”,
Naples, Italy
cdeangelo@unior.it

Serena Tolino | ORCID: 0000-0001-7740-5805
Associate Professor and Director of the Institute for the Study
of the Middle East and Muslim Societies, University of Bern,
Bern, Switzerland
serena.tolino@islam.unibe.ch

Five years ago, on 15 July 2017, Agostino Cilardo passed away. With his passing, the international scientific community lost one of the most influential scholars on Islamic law, and especially inheritance law. Indeed, despite the fact that the two impressive volumes he devoted to the topic are written in Italian,¹ they are very often cited by non-Italian-speaking scholars, something that clearly underlines the fact that they are essential for any scholar who would like to work on Islamic inheritance law.

But alongside Islamic inheritance law, which has undoubtedly been at the very core of his research, Agostino Cilardo has written on many other institutions of Islamic law, and very often he has done so by producing pioneering, highly original works that have paved the way for many other studies. This is the case, for example, for his article on the intersex person (*ḥuntā*) in Islamic law,² which is probably the first scholarly article on the topic.³ It is precisely this work that inspired us while we were trying to identify a topic for a dossier of *Studi Magrebini*, the journal he edited for many years, dedicated to his memory.⁴

1 Cilardo 1993; Cilardo 1994.

2 Cilardo 1986.

3 Prior to this work we could only identify Freimark 1970, who compared Islamic and Jewish law. After Cilardo’s article, other works appeared, some of which adopted a different perspective from the legal one: Sanders 1991; Rispler-Chaim 2007: 69–74; Scalenghe 2014: 124–162; Haneef - Abd Majid 2015; Zabidi 2019; Almarri 2020; Malim - Padela 2020; April - Saiin 2021.

4 We devoted to him two more contributions, De Angelo - Tolino 2017, that includes Cilardo’s last article, and De Angelo 2021.

In his article Cilaro focused on the solutions that “Sunni and Heterodox” jurists⁵ proposed when reflecting on ambiguous *ḥuntās*, namely those *ḥuntās* for whom the different ways jurists used to understand their sex did not work to “distinguish the sex ... [because they have] ... simultaneously the organs of both the sexes and because [...] [they have] only the urethral meatus but lack[s] both the male organ as well as the female one.” The bodily characteristics of the *ḥuntā* have constituted a challenge for the *fuqahā*, and for the gender binarism that, even though it was not as stable as it is in the modern period, still to a certain extent characterized Islamic law. Indeed, assigning each person to one gender or the other was quite central, for example when looking at worship practices, family law, inheritance law, etc. The difficulty in applying these rules to *ḥuntās*⁶ forced jurists to find creative ways to make them fit into one of the two recognized gender categories.

By shedding light on the Islamic rules relating to the *ḥuntā*, Cilaro’s article has, albeit indirectly, helped to highlight the centrality that the body had in pre-modern Islamic legal thinking, when “Islamic jurisprudence was relatively in tune with scientific discourses” and, we could add, also in modern times, when, instead, the “coherence between Muslim jurisprudence and science is no longer evident”.⁷ The body in Islamic law, therefore, constitutes the theme on which the contributions that make up this dossier are based.

Serena Tolino’s article follows, in some ways, the line of research inaugurated by Cilaro with his work on the *ḥuntā*. If Cilaro analysed the ways in which jurists reflected on how to make the *ḥuntā* fit the gender binary, Tolino investigates the gender identity of men whose gender was not ambiguous by birth but because of the action of other human beings, namely eunuchs, whose castration not only modified their bodies but, to a certain extent, also their gender. In particular, she analyses how Sunnī jurists between the 9th and 14th centuries gendered them.

Castration is prohibited by Islamic law and in fact, as Tolino points out, it was mostly practiced outside the *dār al-islām*. According to Muslim jurists the body, in fact, belongs to God, who temporarily lends it to human beings, and therefore cannot be altered, except in the cases expressly provided for (circumcision, application of the *ḥudūd* punishments, etc.). Modifying the body

5 Cilaro 1986: 129.

6 “God has [...] fixed the norms that are to be applied to males and those for females, whereas He has not fixed any norm which could be applied to an individual who to man may seem, at the same time, male and female.” Ibid.

7 Moosa 2002: 329–330.

is prohibited because it would violate its sacredness. The body of the human being is thus inviolable, and it is so both during life but also after death. And it is on the body after death, on the corpse, that the article of Carlo De Angelo focuses. Starting with the jurisprudence produced by the Saudi Salafis in the second half of the last century, De Angelo reconstructs the rules relating to its ordinary handling and those relating to a specific exception, the autopsy.

Laura Emunds' article focuses instead on 27 purchase deeds for enslaved people from Egypt and Jerusalem dating between the 9th and the 15th centuries. Situating these contracts within Ḥanafī and Šāfi'ī contract law (the legal schools prevalent in the areas of provenance of the analysed contracts) Emunds highlights, among other things, the bodily characteristics that were taken into account in assessing the commodification of enslaved human beings.

Delfina Serrano Ruano's article focuses on the use of Qur'ān LVIII,2 by contemporary Muslim jurists in debates about surrogacy, namely the practice of women carrying out a gestation on behalf of others. Many contemporary jurists believe that this practice is to be considered illicit, and justify their opinions on the basis of the Qur'ān (LVIII,2), that, according to them, attributes the status of mother only to women who become pregnant and bring the pregnancy to childbirth. Analysing several 12th–13th century Andalusī *tafsīrs*, Serrano Ruano shows that previous exegetes understood Qur'ān LVIII,2 differently, and that none of the examined *tafsīrs* can be cited in supporting the idea that Qur'ān LVIII,2 provides the textual basis of the Islamic legal definition of maternity.

The last article in the dossier, that of Omar Anchassi, focuses on Islamic legal views on male masturbation during the pre-modern era, looking at the body as a source of pleasure. Drawing on an extensive body of Sunnī and Šī'ī traditions and jurisprudential texts, Anchassi shows that, in the Sunnī literature, there has been a shift from an initial position of prevalent acceptance, widespread until the early 3rd century, to one that became more prevalent with the consolidation of the legal schools, for which masturbation's permissibility was reduced to the point of prohibition in some cases. Šī'ī scholars, instead, seem to have always prohibited the practice.

The articles included in this dossier build upon one of the many directions of research Agostino Cilaro opened up to any scholar of Islamic law. We could have focused on many other possible topics, given the breadth of Cilaro's interests, but we decided to focus on the body for several reasons. On the one hand, as mentioned, his pioneering article of 1986 has certainly inspired us; on the other, the fact that the body is at the centre of current discussions and attacks not only in Muslim-majority countries but far beyond that made us reflect on our role as scholars and the relevance of making discussions on

Islam unexceptional. In Agostino Cilardo's classes we learnt that the production of knowledge should also constitute a bridge between people and contribute to current debates. As students of Agostino Cilardo who have been privileged enough to sit in his classes and be supervised in our first scientific steps by him, the two editors of this dossier cannot say how much they owe to his scholarship, and how much they miss his guidance and his intellectual and human kindness and generosity.

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