

The Nature of Qiwāmah and the Jurisprudential–Legal Feasibility of Its Transfer, Waiver, and Extinguishment

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1. Round 1

1.1. Reviewer 1

Reviewer:

In Section 1, the statement “Historical developments and transformations within Islamic societies have also affected the meaning of qawwām” is central to the article’s historical thesis but remains insufficiently substantiated. The authors should distinguish between genuine semantic change in the lexical meaning of qawwām, changes in exegetical interpretation, and changes in the legal consequences derived from the verse. These are analytically different phenomena. A term may retain its lexical core while jurists reinterpret its normative implications in response to changing social conditions. The manuscript would be substantially strengthened by specifying which dimension—lexical, exegetical, jurisprudential, or legal—is claimed to have changed over time and by supporting that claim with chronologically arranged primary sources.

In Section 1.1.1, the paragraph stating that “qawwām is an intensive form derived from qiyām and has been described as encompassing three meanings” requires more rigorous linguistic treatment. The authors should explain the Arabic morphological form fa‘‘āl, its intensive or occupational implications, and whether the semantic force of qawwām in Qur’an 4:34 can legitimately be derived solely from morphology. The distinction among “standing in relation to a person,” “standing in relation to a thing,” and “steadfastly maintaining a determination” should also be traced more explicitly to the cited lexicographical sources. At present, several semantic propositions are presented consecutively without clarifying whether they are competing definitions, complementary senses, or contextual applications of the root q-w-m.

The concluding sentence of Section 1.1.1—“the man is considered to possess an elevated position that is regarded as inherent and as constituting a particular merit attributed to him”—appears stronger than what the preceding lexicographical evidence necessarily establishes. Lexical sources discussing maintenance, protection, physical capacity, or undertaking another’s affairs do not automatically establish a normative hierarchy or inherent superiority. The authors should distinguish carefully between

lexical description and normative jurisprudential inference. If “elevated position” is intended as a conclusion drawn from specific classical sources, those sources should be explicitly identified; otherwise, the sentence should be reformulated to avoid attributing a broader normative proposition to lexicographical evidence than that evidence can sustain.

In Section 1.1.2, the sentence “Others have regarded qiwāmah as indicating men’s authority over women for the purpose of directing them toward obedience to God and exercising discipline, guidance, command, and prohibition” brings together several exegetes spanning different historical contexts. The authors should avoid presenting these interpretations as a homogeneous exegetical position. It would be more analytically precise to identify the historical period, interpretive school, and specific conception of authority associated with each exegete. The discussion should also clarify whether ta’dīb, command, and prohibition are treated as independent consequences of qiwāmah or merely as historical exegetical explanations of the verse. Such differentiation is important because the article subsequently relies on historical development to argue for changes in the meaning and scope of qiwāmah.

The paragraph in Section 1.1.2 beginning “Other interpretations understand qiwāmah as referring to the man’s responsibility for the woman’s maintenance, clothing, and similar needs” conflates two analytically distinct bases of qiwāmah: the phrase bimā faḍḍala Allāhu ba’dahum ‘alā ba’d and the phrase wa-bimā anfaqu min amwālihim. The authors should analyze these two textual components separately before combining them. Specifically, the manuscript should determine whether “divine endowment” and “financial expenditure” operate cumulatively, alternatively, or at different normative levels. This distinction later becomes decisive in the discussion of whether faḍl and infāq are operative causes (‘illah) or legislative rationales (ḥikmah), and therefore it needs to be established with greater precision at this earlier stage.

In Section 1.1.3, the statement that juristic interpretations “may be classified into four different semantic categories” is useful but currently underdeveloped as an analytical classification. The four categories—authority, responsibility/protection, guardianship or commitment, and management—should be defined explicitly, and the criteria distinguishing them should be stated. The manuscript should also explain whether these categories are mutually exclusive or historically sequential. A comparative table could be particularly useful, listing each conception of qiwāmah, representative jurists, its jurisprudential basis, and its principal legal consequences. Without such clarification, the classification risks functioning merely as a list of synonymous or overlapping descriptions rather than a substantive typology.

In Section 2.1, the paragraph contrasting the “operative cause” and “legislative rationale” approaches should more precisely define the legal consequences of each characterization. The sentence “if faḍl and infāq constitute causes of qiwāmah, then where the husband deliberately refuses to fulfill them or is incapable of doing so, his qiwāmah ceases” assumes that both elements are individually necessary causes, but the later discussion suggests that some scholars may treat them collectively or regard faḍl as inherently present while infāq is contingent. The authors should systematically examine at least three possibilities: both elements are jointly constitutive; each is independently sufficient; or one is foundational while the other is evidentiary or supplementary. The legal consequences for non-maintenance, incapacity, poverty, or deliberate refusal will differ depending on which model is adopted.

In Section 2.1.1, the paragraph defining ‘illah and ḥikmah needs greater methodological precision from the perspective of Islamic legal theory. The formulation that an operative cause is something “upon which the existence or non-existence of the ruling follows” is useful but somewhat simplified. The authors should distinguish ‘illah, sabab, shart, manāt al-ḥukm, and ḥikmah, because the paper repeatedly uses terms such as “cause,” “condition,” and “rationale” in ways that may not be interchangeable in uṣūl al-fiqh. A technically precise conceptual framework is essential before determining whether faḍl and infāq are causes, conditions, or merely legislative rationales of qiwāmah.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

The paragraph in Section 1.1.4 asserting that Article 1105 of the Iranian Civil Code reflects Qur’an 4:34 requires a more careful doctrinal legal analysis. The manuscript should distinguish between the jurisprudential basis attributed to Article 1105

and the positive-law meaning of “headship of the family” under Iranian civil law. It should not assume that every consequence associated with paternal guardianship, maintenance, residence, or occupational restrictions derives directly from *qiwāmah*. Articles 1105, 1114/1117, 1180, and 1199 regulate legally distinct institutions. The authors should analyze which legal consequences genuinely arise from marital headship and which derive from separate doctrines such as maintenance obligations or paternal guardianship. This distinction is essential if the article later seeks to determine what would happen legally if *qiwāmah* were deemed transferable or extinguishable.

In Section 1.2, the division of semantic development into “the period before the eighteenth century CE and the period thereafter” requires substantially stronger historical justification. The manuscript currently appears to derive this periodization from the original reference to the twelfth century AH, but no explanation is provided for why this point constitutes a meaningful intellectual, jurisprudential, or social turning point. The authors should identify the specific developments that justify this boundary—for example, transformations in education, women’s social participation, codification of family law, or changes in exegetical methodologies—and provide historical evidence. Otherwise, the chronological division may appear arbitrary and risks imposing a modern periodization on a more complex intellectual history.

The sentence in Section 1.2 stating that women before the eighteenth century “generally participated less extensively in public life and were, in some contexts, considered to occupy lower levels of formal knowledge” requires either authoritative historical evidence or significant qualification. This is a broad sociohistorical generalization covering multiple Islamic societies and centuries. The article should avoid treating the history of women’s education and social participation as uniform across geographical regions and historical periods. If this proposition is necessary to the argument, it should be supported by historical scholarship specific to the societies and periods under discussion; otherwise, the argument regarding semantic evolution should be grounded directly in changes observable within the jurisprudential and exegetical texts themselves.

In Section 2, the paragraph beginning “According to the verse, the person possessing *qiwāmah* must satisfy two conditions: merit or divine favor (*faḍl*) and financial expenditure (*infāq*)” contains a crucial doctrinal assumption that requires demonstration rather than assertion. Qur’an 4:34 provides reasons or grounds associated with *qiwāmah*, but whether these constitute legal “conditions” in the technical jurisprudential sense is precisely one of the questions addressed later in the manuscript. Calling them “conditions” before resolving whether they are ‘illah, *ḥikmah*, constituent elements, or explanatory grounds may prejudice the analysis. The authors should adopt neutral terminology at this stage, such as “two grounds mentioned in the verse,” and reserve the designation “conditions” until the jurisprudential analysis establishes that characterization.

The sentence in Section 2 stating that “given the causal function of the preposition *bi* in *bimā*, *qiwāmah* is connected causally with *faḍl* and *infāq*, such that these two factors constitute the grounds of *qiwāmah*” needs closer grammatical and *uṣūl al-fiqh* analysis. The manuscript should explain why the *bā* is necessarily causal rather than explanatory, instrumental, or otherwise functional in this context, and should distinguish grammatical causation from legal causation in the technical sense of ‘illah. Establishing a causal grammatical relationship does not by itself prove that *faḍl* and *infāq* are legal causes such that the ruling necessarily disappears when either is absent. This distinction is central to the paper’s thesis and requires engagement with principles of legal theory rather than only lexical commentary.

Authors revised the manuscript and uploaded the document.

2. Revised

Editor’s decision: Accepted.

Editor in Chief’s decision: Accepted.