
This edited volume is based on the proceedings of a conference devoted to Islamic legal history held at the Hebrew University in 2002 to honor Aharon Layish upon his retirement. Most of the contributions in the volume address Professor Layish’s diverse research interests, such as the interaction of customary practice and Shari’a law, the historical development of the Muslim judiciary, modern reform movements, and Muslim institutions within the state of Israel. Both the preface by the volume editor and the academic autobiography which follows it bring out not only the range of Layish’s academic output in the field of Islamic law, but also his major role in the Israel Oriental Society and his engagement with legal and political matters concerning Israeli Arab citizens.

The papers are organized chronologically, from the pre-modern to the modern. Nimrod Hurvitz challenges the recent revisionist view of the formation of the madhhab[s], arguing that the legal opinions of the schools’ eponyms did play a major role in the formation of legal doctrine. Specifically, Hurvitz envisages two stages in the construction of Ḥanbalī legal doctrine, a first stage in which the legal opinions of Ibn Ḥanbal were collected, most notably by Abū Bakr al-Khallāl (d. 311/923), and a second stage in which the diverse legal opinions were formulated as a legal doctrine by al-Khiraqī (d. 334/945-6). Hurvitz takes as a case-study the chapter on zakāt al-fiṭr in al-Khiraqī’s work, and argues that al-Khiraqī is generally faithful to the legal opinions of the eponym, but transforms the oral and personal character of Ibn Ḥanbal’s opinions into the impersonal instructions of a law book. The process as described here is the opposite of that which took place in the Mālikī school, whereby 3rd/9th century jurists posthumously attributed legal opinions to the personal authority of Mālik. (See Wael Hallaq, The Origins and Evolution of Islamic Law [Cambridge, 2005], 159. Hallaq also credits Abū Bakr al-Khallāl with the construction of authority in the Ḥanbalī school, a statement that should probably be qualified in view of Hurvitz’s contribution). The debate on the formation of the law schools remains open; scholars working on different schools and on different texts seem to reach contradictory conclusions, and it may be that each madhhab had its own unique path of legal formation and authority construction.

David Powers offers a fascinating study of the interaction of law and custom in the pre-modern Maghrib, based on a micro-study of three 15th-century fatwās concerning the disinheriance of women by Berber tribal groups. The issue was brought to the attention of the jurists after a local governor attempted to confiscate tribal land on the pretext that the un-Islamic disinheriance of women invalidated the legal rights of the current owners. The muftis confirmed the rights of the tribal owners over their lands by denying the premise of the question, arguing that no Muslim society consistently disinherits women. Powers, however, cites...
anthropological evidence for the disinheritance of women among modern Berber groups, strongly suggesting that women were indeed disinherit in the past as well. The *muftīs* here seem to accommodate un-Islamic custom by burying their heads in the sand and never acknowledging its actual existence. Powers’ contribution also includes a very handy exposition of inheritance law and praxis in Muslim societies, and can be recommended for undergraduate teaching.

Ron Shaham’s article surveys the legal literature on women, and specifically mid-wives, as expert witnesses. Juristic discourse accepted exclusively female testimony regarding birth and breast-feeding. Moreover, jurists also accepted the medical expertise of professional midwives who had examined women’s bodies for signs of things such as sexual activity, pregnancy or bodily injury. This acceptance of female witnesses was, however, in tension with the general unwillingness to decide cases solely on the basis of women’s testimony. Jurists tried to solve this tension by using the argument of necessity, and by limiting the efficacy of female testimony to the direct legal consequences of the event in question. The article is mostly based on normative law-books, but adds a scattering of enlightening historical examples from *fatwās* and Ottoman court records. The author notes that this article is part of work in progress on expert witnesses in Islamic law, and it would be interesting to see whether the juristic mistrust of female expert witnesses is a result of their gender or a result of their status as interpreters of residual physical evidence rather than as eye-witnesses to an event.

Miriam Hoexter’s contribution is the most ambitious in the volume. Her main argument is that historians of Islamic law have identified the *muftī* (or Hallaq’s author-jurist), as the sole agent of change in the legal tradition, while ignoring the role of the judiciary and rulers in accommodating and legitimating change. This, she argues, is partly because scholars have been searching under the lamp post: *fatwā* collections and legal treatises survived, while medieval court records and rulers’ decrees did not. She sees the contribution of judges and rulers to the process of change in Islamic law as twofold. First, *qāḍī* s brought about change by accepting the praxis of the community and creating an “established custom.” This is exemplified in the case of the Ottoman cash *waqfs*, which were accepted by courts for over a century before their existence was discussed and authorized by Ottoman *muftīs* in the mid-16th century. Second, *qāḍī* s worked together with rulers to solve the problem of legal indeterminacy, i.e., creating a judicial system with predictable legal outcomes. The ruler could issue decrees that required all *qāḍī* s to follow a certain legal opinion, as was frequently done by Ottoman sultans with regard to the legal opinions of their chief *muftīs*.

It may be, however, that the sweeping argument made here should be set in a more concrete historical context. It is probably not a coincidence that Hoexter’s substantive examples mostly come from the early modern context of the Ottoman empire. Compared with the de-centralized administration of most medieval states, the Ottoman Sultan was in a better position to impose his will on the legal system. Nonetheless, this contribution is an important corrective to the current