
With regard to many aspects of Islamic law, broad generalizations still serve in place of detailed knowledge. Our knowledge of court personnel and procedure, for example, has hardly advanced since the days of Tyan and Schacht. In this book, Ron Shaham does much to deepen our understanding of court procedure and its significance within the Islamic legal system.

Straddling pre-modern legal theory and modern court cases (largely from Egypt), Shaham offers an ambitious survey that, in aggregate, provides a complex view of how qāḍīs have used and depended on knowledge from community experts. Because he views law as a “cultural system,” Shaham’s purpose is less to explain the rules and theory of the law than to explore the ways that the qāḍī’s court functioned within various social contexts. For his purposes, then, the expert witness serves as a subject of study that can “demonstrate how law is embedded in the local culture and how law is a social process” (4).

In his introduction Shaham makes clear a second methodological commitment to comparative legal studies. With references to Jewish Halacha and to the European, American and Israeli legal systems (as well as distinct instantiations of Islamic law in history), Shaham seeks to demonstrate that solutions developed by Islamic law are not incomparable with those of other legal systems (10). Shaham exemplifies this point by comparing continental and British common law perceptions of the role of the expert witness to help explain the very different uses to which courts put outside experts (12-22; see also 103-06). Because the modern Egyptian court system is highly dependent on continental European notions of procedure, this section provides valuable background to readers unfamiliar with French legal procedure.

The remainder of the book is divided into two sections devoted to the pre-modern and modern periods. Shaham makes no claim to comprehensiveness, but rather follows cases that involve expert witnesses in both periods, focusing on medical issues (e.g., paternity and the extent of a mortal illness). Significant contrasts also abound, however, as Shaham demonstrates that as early as the 5th/11th century great pains were taken to connect court procedure regarding expert witnesses with Qur’anic and Prophetic precedents (32); in his discussion of the modern period, however, we learn that the influence of these precedents has waned (110-19).
Throughout his discussion of the pre-modern period, Shaham introduces us to a wide cast of characters used as experts in the classical texts, and, presumably, in pre-modern courts: physicians, midwives, assessors, physiognomists, translators and the like. Interestingly, it appears that experts were used in pre-modern courts both as consultants to judges (brought in by the court) and as partisan witnesses for the plaintiff and/or defendant (58-9). Unfortunately, Shaham refers to his primary sources only in the most cursory fashion, mentioning one case after another, but not delving into the details. Although this is reasonable in such an overview, it misses the opportunity to demonstrate Shaham’s initial thesis: that pre-modern Islamic law functioned as a cultural system.

The great number of cases cited from various places and times supports the thesis that expert witnesses were widely used in the courts, which appears to be Shaham’s main goal. He is well aware (7) that this broad-brush approach may be seen as a kind of reductionism, making the pre-modern period seem flat as compared with the highly differentiated modern era. Nonetheless, this combination of pre-modern survey of texts with case studies from the modern Egyptian courts causes a degree of discontinuity within the book, one that could have been reduced with some additional editing.

At times, Shaham seems to undermine the usefulness of his own three-chapter survey by stating that “borrowings from fiqh traditions are almost nonexistent” in the modern Egyptian court and that issues important to pre-modern jurists have “left almost no mark” among modern jurists (119). Even when terms have been retained, such as the category of “mortal sickness,” Shaham tells us that their meanings have changed in the modern period (121). This disjunction is overstated (or perhaps underanalyzed), however, since Shaham’s own evidence demonstrates that some patterns, such as traditional notions of paternity and privacy, seem to have survived the rupture between pre-modern and modern.

It is important, at this point, to insert an explanatory remark about Shaham’s use of the term “modern.” To be sure, modernity is a contested term in Egyptian history, and arguments can be made for 1517, 1798, 1882, or even 1952 as the birth of modern Egypt. In terms of law, these last two dates are quite significant, due to establishment of “mixed courts” by the British and the abolition of Shari’a courts in 1955. For those who do not know this history, Shaham’s discussion can seem to conflate recent or contemporary developments with those dating back as much as a century. At several points, he makes statements such as the following: “The qadis of the Shari’a courts have continued to apply Hanafi law in this respect” (chapter five, 124). The unsuspecting reader may assume that Shaham is speaking about today’s Egypt, when in fact he is referring to a case from 1904-5 (information found only in the critical apparatus at the end of the book).

The University of Chicago Press could have greatly reduced the confusion by using footnotes instead of endnotes, allowing easier reference to Shaham’s sources. As presented, however, the reader must be forewarned that the Egyptian legal system has undergone significant changes in the past century, and that Shaham refers to figures such as Abu Zahra (d. 1974, p. 138) and Rashid Rida (d. 1935, p. 168) as modern.