Ron Shaham


In his meticulously researched study on the role of expert legal court witnessing in Islamic history, Ron Shaham addresses an issue of fundamental importance for the study of Islamic law. He approaches the question of expert witnessing on a theoretical level as well as in connection to issues of legal practice. The book is divided into two parts, "The Premodern Period" and "The Modern Period".

The fundamental theoretical question in classical sources was whether statements of experts had to be considered a testimony or reporting. This question was not mere hairsplitting since it impacted directly on the required number of experts, which was in turn of significant practical relevance. Shaham points out that the prevalent opinion among the classical jurists was that the expert is a witness and therefore two experts were required at the court. However, this was linked to the caveat that one expert would suffice if two were not available. Shaham argues convincingly that this position owed to pragmatic considerations. He then goes on to give a detailed description of the different contexts in which expert opinion would be requested. Shaham divides this depiction into two chapters on male and female experts. It is shown that the male experts were regularly selected from among local craftsmen and artisans. The author argues that historically the role of experts in Islamic courts was close to the common-law model of the contemporary Anglo-American world, since they were recruited from the market rather than being an intrinsic part of the judicial system. For this reason they could keep their independence from the court. The chapter on female expert witnessing gives a very interesting overview of the different roles female experts or midwives could have in procedural practice. These were largely linked to issues of sexuality and procreation.

In the second part of the book, "The Modern Period", Shaham first gives a very detailed and useful comparative analysis of the modern Egyptian expert system. He shows that the classical discussions about the status of the expert as either a witness or a reporter did not play any role anymore in Egyptian legal discussions of the 20th century. In addition Shaham argues convincingly that legal reform in the 19th and 20th centuries constituted a significant shift from a model, which can compared to Anglo-American common law, to the European civil-law model – usually through the adoption of codes based on French law. This was of direct relevance for the legal experts. In the common law system legal experts are appointed by the two parties before court. Therefore the
expert provides a partisan view on the one hand, however, he/she may be
cross-examined which serves as a means to restrict the power of the expert.
Historically, this was largely the position of experts in Islamic courts. Through
the adoption of the European civil-law model this changed significantly, be-
cause there the expert is appointed by the judge. On the one hand this makes
the expert more independent, but on the other hand his/her supervision
through the court might become increasingly inefficient, since the judges are
usually not experts on the consulted issues. For this reason the expert might
exert significant influence on the court's decision.

In the following two chapters five and six Shaham gives an overview of the
role of especially medical experts in 20th century Egyptian legal practice. Espe-
cially in chapter five he draws heavily on archival sources and the cases present
a very differentiated picture and offer most interesting detail information. This
way he is able to show that in the first half of the 20th century the sharīʿa and
the civil courts differed considerably in their practice, the concrete question
being whether a person had been mortally ill at the time when he conducted
certain transactions (usually transferring wealth to one particular heir). To an-
swer this question two evidentiary standards could be applied: the mobility of
the person (did he leave his house in order to conduct business?) or the sever-
ity of the illness as an indicator that it was a mortal illness. The sharīʿa courts
repeatedly applied the criterion of mobility while the civil courts focused on
the graveness of the malady. This gave expert witnesses an entirely different
position in the legal procedures and led to diametrically opposed results. Gen-
erally speaking, the courts relied increasingly on medical expertise over the
20th century.

In chapter six Shaham addresses the issue of DNA-testing. This chapter is
highly revealing through the author's comparative approach. He provides a
very balanced view on DNA-testing in paternity disputes in Europe, the US and
Israel. This way it becomes clear that the approaches differ – even within one
legal system such as the US. He also points to the larger social changes since the
1960s which provide the background for the rapid rise of the evidentiary role of
DNA-testing in order to establish fatherhood. He shows that this rise does not
owe exclusively to the persuasiveness of scientific findings but also to other
aspects such as the state's economic interest not to be obliged to provide suste-
nance for children born out of wedlock. Against this background Shaham's
analysis of the paternity disputes in Egypt becomes most revealing because he
shows their larger implications for public debates on societal models and gen-
der issues.

Ron Shaham’s book is an excellent study and in certain respects an eye-
 opener. The book owes its strength not only Shaham's extensive use of a huge