Ron SHAHAM, *The Expert Witness in Islamic Courts: Medicine and Crafts in the Service of the Law*. Chicago and London: University of Chicago Press, 2010. x + 294 pp. ISBN: 978-0-226-74933-4 (hbk.). $50.00 / £32.50.

This is possibly one of the first full-length monographs in a European language devoted to the role of the expert and expert testimony in Islamic law. Ron Shaham is to be commended for his labor and his excellent contribution to the field. The scope of Shaham's investigation is broad-ranged, examining a variety of practices: pre-modern techniques such as physiognomy, the identification of facial and bodily features, in order to establish identity between kin; modes of evaluating property; the diagnoses of medical conditions ranging from identifying a patient in a state of mortal illness to establishing the virginity of females; commercial practices to knowledgably assess a defect in a slave; and observations as to how modern modes of evidence involving blood-tests and DNA are received in Islamic law.

Divided into two sections, the pre-modern period and the modern period, the book consists of six chapters, a conclusion, and an appendix, which lists an index of modern Egyptian court decisions. In the first section, Shaham explores the various functionaries in and around Islamic courts, from translators, estate dividers, property assessors, physicians, physiognomists, female witnesses, and architects to builders. The author gets into some of the granular details of each functionary and profession with reference to their roles in court-related matters. Classical authorities are frequently cited but in no specific order or choice of law school. It seems that the primary goal is to give the reader a sense of how pre-modern Muslim courts and legal systems inflected the role of experts in decision-making and juridical outcomes familiarizing him/her with a cross-section of opinions from a variety of legal schools on each of the issues mentioned above. However, if one is looking for any development and evolution over time in specific doctrines and secondary issues related to expert witnesses, then one searches in vain. The primary purpose of the book, it appears, is to document the probative role of various functionaries in Islamic law. But a reader will not know how these documented functions and practices evolved over time or whether they plainly remained the same over the centuries. The reason for this lack of chronological sensitivity is that Shaham did not envisage a useful historical frame beyond the perfunctory pre-modern-modern divide in the book. A more nuanced historical method

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and analytical apparatus could have yielded the author and his readers greater dividends.

Muslim jurists, Shaham informs us, used a variety of templates to evaluate reports and testimonies. One model or template was the transmission of prophetic reports, which had an established probative value, based on a checklist of qualities found in the transmitter. That was the reporter model and its primary goal was to establish reliability. Another model or template used to establish probity was the method involved in adjudicating testimony where the goal was to optimize accuracy: to give an account of an event or of a set of facts, in short, to be a good witness. Each model was premised on epistemological presumptions, based on their specific modalities and ends, a thread that Shaham does not explore further. He argues that over time, Muslim jurists used the reporter or testimony models differentially in their bid to standardize the use of expert knowledge in the legal process.

He mentions two scholars with whom he disagrees. Baber Johansen, for instance, has claimed that expert depositions were based on the knowledge-value of experts. Mohammed Fadel, in turn, differentiates between normative reporting, such as the transmission of prophetic reports, and the practice of those who offered expert opinion of a legal, political nature: in other words, factual matters that were to be the equivalent of testimony. In Shaham's view the testimony model was the prevalent one favored by Muslim jurists, confirming the findings of the late French scholar, Robert Brunschvig. However, his disagreements with the Johansen and Fadel are cursorily addressed and the difference is not substantively argued. It is not always clear whether a specific model was applicable when, for instance, a court invited an expert to give testimony to assist a judge, and if another model was used if expert testimony was delivered on behalf of a plaintiff or a defendant.

Interestingly, some Muslim jurists accepted the testimony of non-Muslim experts. In the view of these jurists, the factual accounts of reality were not molested by the faith-commitments of the experts. It would indeed have been extremely helpful if this fascinating nugget had been sufficiently explored by the author so that a reader could get a sense whether non-Muslims expert witnesses in the pre-modern period were employed with increasing or decreasing frequency, and, if so, when, where, and why. And, since the author draws on a variety of law schools (*madhhab*, pl. *madhāhib*), one is not always clear how some law schools differed with others. In fairness, Shaham occasionally does make an effort at comparison.

In part 2 the concerns pivot around modern Egyptian court decisions, interspersed with the opinions of a few traditional jurists. Here the story becomes complicated. During the first half of the twentieth century, Egyptian courts were divided between civil courts and *sharīʿa* courts, with each utilizing different criteria. Shaham very effectively shows how distinct legal cultures developed in each system. While it was assumed that the civil courts would be open to persuasion on the grounds of scientific knowledge, there was occasional resistance to science on the part of the judges in civil courts if matters invaded the domain of religion. *Sharīʿa* courts, on the other hand, were also not closed to the use of scientific criteria, but they were careful not to let scientifically-based empirical criteria undermine and trump the juridical logic and conventions embedded in legal doctrines of pre-modern vintage. In order to establish paternity, modern Muslim jurists still adhered to the *sharīʿa* convention that the child's status was contingent on the status of the mother: if she was legitimately married, the child enjoyed legal paternity (*nasab*), if she was unmarried, the child certainly had an identifiable biological paternity, but it was no substitute for legal paternity as required by the *sharīʿa* that could only be created within a legal marriage. In this instance, the use of DNA evidence to establish paternity would be superfluous, unless the law changed and replaced legal paternity with biological paternity. But such a move would require a major reshuffling of an elaborate logic of Islamic law. Whether the increased use of scientific criteria, such as blood tests and DNA evidence and other scientific practices, will over time result in making Islamic law a hybrid of conventional and empirical narratives of legal logic and, in turn, cumulatively restructure the logic of what was historical *sharīʿa* discourses, remains to be seen.

There were major risks if modern criteria were to be yoked to *sharīʿa* practices, especially those that carried capital punishments. Imagine if DNA evidence were to replace the almost impossible bar in evidence of four witnesses for the prosecution of adultery and fornication charges. Surely, the prosecution rates would soar if the perpetrators' clothes and bed sheets were scoured for DNA evidence. In fact, such a change would result in the forfeiture of the very purposes of the classical law, namely, to deter prosecution of adulterers and offer mitigating circumstances as much as possible. DNA evidence would have the opposite effect.

Shaham shows that some modern Muslim jurists are more willing to consider DNA evidence in forensic and criminal cases than others. In some specific instances, the contemporary Qatar-based Egyptian jurist and scholar,

Yūsuf al-Qaradāwī (b. 1926) has been open to the benefits of DNA testing especially in domains where its use did not contradict established *sharīʿa* criteria. However, many other scholars, Shaham showed, demurred.

Shaham is incorrect in categorically saying that a child born outside wedlock in Islam had no rights (155). A child born outside wedlock was surely deprived of legal paternity, but he or she could inherit from the biological mother and even receive a testamentary bequest from a biological father, if the latter chose to do so. The stigma attached to a child born outside wedlock, however, did create impediments to his upward social mobility according to some of the law schools and he might be disqualified from becoming a prayer leader. But there were countervailing arguments to rebut those canonical positions.

Shaham's book is loaded with interesting details and facts about the place of evidence and testimony in the service of Islamic law in a variety of very relevant professions and crafts. A historical treatment of the underlying doctrines would have aided the synthetic and analytic side of the project. It might have enabled a reader to grasp the larger contours of developments, the big-picture so to speak; but what we have is a great start.

Ebrahim Moosa
Duke University
Email: moosa@duke.edu