

libraries have fared, or how many manuscripts are being smuggled out of Yemen or sold to foreign buyers due to the insecurity of the conflict. The publication of *Traditional Yemeni Scholarship amidst Political Turmoil and War*, which is reasonably priced, and the broader scope of ZMT deserve praise and should serve as a model for preservation and access to other manuscript traditions.

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*A Tale of Two Stories: Customary Marriage and Paternity. A Discourse Analysis of a Scandal in Egypt.*

By BJÖRN BENTLAGE. Islamkundliche Untersuchungen, vol. 333. Berlin: KLAUS SCHWARZ, 2017. Pp. 337. €49.80.

This publication, “an almost unchanged version” of Bentlage’s doctoral thesis (Martin-Luther-Universität Halle-Wittenberg, 2016) (p. 8), focuses on a personal status dispute that caused a public storm in Egypt in the years 2005–2006 because it involved a celebrity and sex. Briefly, the plaintiff, Hind al-Ḥinnāwī, at the time a twenty-seven-year-old designer, the daughter of university professors, demanded a paternity test of the defendant, Aḥmad al-Fishāwī, a twenty-four-year-old popular actor, the son of two famous cinema artists, for her daughter of fifteen months, Lina. Hind argued that Lina was the fruit of an unofficial marriage (*zawāj ʿurfi*) with Aḥmad. Aḥmad counterclaimed that he had never met Hind, who was unable to provide a marriage contract and had only one witness who allegedly attended the marriage ceremony. In February 2005 the al-Khalifa Family Court in Cairo sent the litigants (and Lina) to undergo DNA testing. Public pressure on Aḥmad to recognize Lina as his daughter intensified. In March 2005 Aḥmad acknowledged his affair with Hind but continued to deny a marriage between them; in April he refused to undergo the test. As there was no way under Egyptian law to force him to carry it out, in late January 2006 the court turned down Hind’s lawsuit on the grounds that paternity could not be established without evidence of the existence of wedlock. This decision generated a heated public debate concerning unofficial marriages and legal vs. biological paternity, involving inter alia members of Parliament and medical and legal experts, including the chief mufti of Egypt. Hind appealed the decision to the Family Court of Appeal, which in late May 2006 reversed the decision of the lower court and affirmed Aḥmad’s paternity of Lina, on the grounds that in paternity cases the care for the welfare of the child requires probative leniency. The court stated that the hearsay testimony about cohabitation between Hind and Aḥmad and the one witness to the marriage were sufficient to establish wedlock. Although the verdict was a personal win for Hind, it was a setback for the call for the adoption of biological paternity in Egypt.

The Hind and Aḥmad case has been studied before based mainly on media reports (a summary of prior research appears on pp. 10–15). Unlike those studies, which “sought to interpret the case in terms of innovation and reform, including some overblown statements about the importance of the case” (p. 318), Bentlage came to see the case “as part of a pattern instead of an outstanding event” (p. 15). He therefore attempts “to demonstrate the relevance of journalism for a structural perspective of law and seeks to contextualize the affair about Hind and Aḥmad accordingly” (p. 22). As an analysis of both the legal aspects and the journalistic treatment of the case, the study wants to appeal to students of Arab and Islamic law, sociology, and the Arab media (p. 25).

The first of the two stories referred to in the title of the work is the legal one, as related by the relevant legal texts. It is analyzed as a “special discourse” (following Foucault’s categories of discourse), which Bentlage defines as a mode of producing and reproducing interconnected texts, i.e., “dispersed statements which appear in different places, which have been formed according to the same pattern or rule-system and which can therefore be attributed to one and the same [special] discourse and constitute its objects” (p. 47). The second story relates to the media coverage of the case, analyzed as an “interdiscourse” (following Jürgen Link’s work) connecting “disparate special discourses and bridges between the spheres of elementary and special discourse,” whose role is “to provide the linguistic means by

which highly specialized knowledge can be depicted in a way that is comprehensible for non-experts” (p. 100). This approach has not been used in Islamic law studies to date (p. 27).

The first story occupies chapter one of the book and is based on Egyptian law, textbooks used in Islamic Sharia sections of Egyptian faculties of law, and especially on a close textual analysis of the Court of Appeal’s ruling. Bentlage concludes that the ruling can be read as text that is conditioned and largely determined by the formulating rules of the special discourse of Egyptian statutory law. The text does not indicate a break with judicial practice or declare any form of legal change or novel interpretation. The ruling does not base the establishment of Lina’s lineage on any direct or indirect indicator of biological paternity. Rather, the document conforms to existing procedural and substantive rules and norms. Thus, it is a regular product of the special discursive formations taken into account.

One wonders why Bentlage pays very little attention to the decision of the lower court, which was the innovative one because it called for DNA testing. Until then, such tests had been used in criminal cases, but never in paternity cases. Could it be that certain elements within the Egyptian family courts’ system hoped that the lawsuit would then expose the Egyptian public to the incorporation of DNA tests in paternity cases? This possibility is corroborated by a case from 2015 (Zayna and Aḥmad ‘Izz), similar to that of Hind and Aḥmad, in which the prosecuting attorney obliged Aḥmad ‘Izz to take the test (p. 209). This change in the procedures of the lower level of the Egyptian judicial system may attest to currents of dissatisfaction with the contemporary treatment of paternity suits. It is impossible at this stage to predict whether this dissatisfaction, coming from below, will lead to new legislation.

Bentlage goes on to argue that the largely restrained piece of special discourse (analyzed in chapter one) is the exact opposite of the media’s excited portrayal of the court ruling (which occupies chapter two). The analysis of the publicized story of Hind and Aḥmad in this chapter demonstrates that it is similar to the standard form of a theatrical drama. To shed light on the narrative pattern here, the one with the theatrical storyline, Bentlage uses the concept of “mediated scandal,” developed by Steffen Burkhardt, which is used in media studies in the context of news coverage of scandals. A scandal manifests public outrage over a violation of norms by the very persons deemed responsible for the upholding of said norms; “mediatized” means that journalists reporting on events tend to conform to a blueprint of what a scandal should look, sound, and read like (p. 163). Applying the sequence of the stages portrayed by the model of mediated scandals (latency, cause, ascent, consolidation, and climax) to the public coverage of our affair, Bentlage claims that the true climax of the scandal was the second court ruling in late May 2006 (p. 178).

In the remainder of his volume, Bentlage strives to tie each of the two stories to the theme of legal development or, in his words, to present an “interdiscursive view of legal change” (p. 204). He makes use of the concept “discursive events,” i.e., “incidents that have enough momentum to alter the discourses that deal with the incidents” (p. 211) as a prism through which change can be seen. As for the special discourse of the law, Bentlage’s main argument is that “the case of Hind and Aḥmad must be deemed a special discursive event of minor proportions” (p. 254). This is because until 2016 the case had not led to new legislation on paternity, had not generated debate in legal scholarship, had not led to the publication of an official fatwa by the chief mufti, and had not earned a reference by the Court of Cassation. In addition, the specialists’ discussion of the case, in which one finds evidence of some conceptual development concerning lineage, wedlock, and genetic testing, is limited to individual voices and has no immediate or real effect on the discursive formations it relates to. As stated by Bentlage, “the contextualization of the 2006 ruling within other special discursive sources has shown the case of Hind and Aḥmad to be far less important for the development of Egyptian law than giddy press reports had suggested” (p. 239).

Regarding this part of the book, I wish to focus on one fatwa, issued by the National Fatwa Office in 2015, which Bentlage evaluates, unjustly in my opinion, as conservative. The following text appears, in Bentlage’s translation, toward the end of the fatwa (p. 250):

There is no shariatic impediment to oblige someone who, within the framework of marriage, denies [a child’s lineage to him/her] to undergo an examination of the genetic fingerprint, no matter if [the denier] is the man, the woman, or some other party, such as the guardian (*wali*)...under the condition that there is a marital relation between them...the same is the case

when the intercourse happened in doubt, or if the [marriage] contract between them is defective...all of this to establish the lineage of a child who is born from the two according to the claim of one of them or both of them...in case that the defendant rejects the mentioned examination procedure, the rejection can be regarded as strong evidence for the existence of lineage between him and the child...when the lineage of the newborn child to the defendant is proven to have no validity, the claimant will be subject to the appropriate harsh punishment that the ruler may decide.

This fatwa is indeed conservative in the sense that it reproduces the notions that there is no legal paternity outside the framework of marriage and that DNA tests cannot be used to nullify legal paternity. Consider, however, what might happen if the husband denies paternity of a child born to his legal wife and a DNA test establishes that he is not the biological father of the child. Because the test cannot be used to nullify legal paternity, the husband would probably repudiate his wife by way of *li'ān*, a *shar'ī* procedure that leads to divorce and repudiation of paternity at the same time. The mother might then be punished by the state for adultery. We may conclude therefore that although there is no *formal* change in the concept of legal paternity, permission to use DNA tests to establish paternity, if applied by the family courts following the spirit of this fatwa, can be expected to bring about an *actual* change of legal practice. This is because husbands who have been determined to not be the biological fathers of children born to their wives will tend to terminate their marriages by *li'ān*. If the number of *li'ān* procedures, until recently a rarely used mechanism, becomes a more frequent litigant strategy, it will signify a real change in the perception of paternity.

Moving forward to the interdiscursive meaning of the Hind and Aḥmad affair, Bentlage argues that the scandal changed the way in which the Egyptian public speaks about paternity and DNA testing and that public perception therefore should be seen as a conditioning factor of legal development (p. 32). Prior to the case, these two issues had been a subject of discussion only between experts and by a small number of marginal media reports, but following the affair they have been discussed in every Egyptian household. The religious-conservative and the progressive-liberal viewpoints were presented through consistent use of collective symbols by those involved in the affair (especially the mothers of Hind and Aḥmad), while the hegemonic position, which is more difficult to identify, was a combination of the majority view in addition to the government's position.

All in all, according to Bentlage, the interdiscourse that developed around the Hind and Aḥmad case has not brought Egyptian public opinion closer to adopting biological paternity, but it has turned the biological element into an integral part of establishing paternity and complicated the religious-conservative opinion. In other words, the claim that paternity must streamline with genetics strengthened the progressive-liberal position symbolically. The change of tone following the decision of the lower court may therefore be considered a discursive event of medium size (pp. 301–3). In conclusion, Bentlage thinks that “scandals and other discursive events then seem to be a stabilizing factor in a legal development in Egyptian personal status law...that tends to continue specialized norms and practices while entertaining popular impressions of progress and change” (p. 318).

The merit of this book lies in offering an interdiscursive model that may help students of Islamic law to further their understanding of legal development by providing a grid on which to register, distinguish, and discuss their materials (p. 312), i.e., it provides criteria and a hierarchy of legal sources and mechanisms enabling scholars to analyze legal developments in a disciplined manner rather than impressionistically. However, such exclusive reliance on this model of textual analysis and the strict hierarchy of texts considered in the framework of this analysis fail to consider other important causes for legal development, such as litigant strategies (e.g., a few months subsequent to the final verdict in the case, Aḥmad acknowledged his paternity on his TV show, based on a DNA test of his own, see p. 187) and the decisions of lower courts that formally do not constitute a judicial precedent. Actual cases in which husbands complained about their wives' or ex-wives' deceits brought about the 1929 legislation that fixed the maximal duration of pregnancy to one year for the purposes of monetary (i.e., alimony for the waiting period) and paternity claims (see my *Family and the Courts in Modern Egypt: A Study Based on Decisions by the Sharī'a Courts 1900–1955* [Leiden: Brill, 1997], 142, 156).

The almost complete lack of comparative perspective in the book is also a disadvantage. In one place (p. 228) Bentlage mentions briefly cases in Tunisia and Jordan that went much further. (In Tunisia a 2003 statutory regulation of DNA testing allowed children born out of wedlock to take their biological father's name and receive maintenance payments from him; cf. the legal construct of "civil paternity," developed by the Israeli Supreme Court in 1995 [Y. Reiter, "Qāḍīs and the Implementation of Islamic Law in Present Day Israel," in *Islamic Law: Theory and Practice*, ed. R. Gleave and E. Kermeli (London: I.B. Tauris, 1997), 206].) It would have been interesting to analyze the reasons for the difference between Egypt's conservative stance and the more "Western" orientation of these two states.

As a doctoral thesis this work is impressive because it is comprehensive, thorough, and well reasoned. As a book it tends to be long-winded and cumbersome, which proper editing would have taken care of. The absence of an index in a book that is laden with so many details is a true shortcoming.

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*Controversies in Formative Shi'i Islam: The Ghulat Muslims and Their Beliefs.* By MUSHEGH ASATRYAN. Shi'i Heritage Series, vol. 4. London: I.B. TAURIS, in association with THE INSTITUTE OF ISMAILI STUDIES, LONDON, 2016. Pp. xviii + 206. \$48.50, £29.50.

Mushegh Asatryan's excellent book is a careful dissection of the texts, cosmology, leadership, and ideas of the *ghulāt*, whom he describes as "those Shi'is who lived in Iraq between the 2nd and 3rd/8th and 9th centuries, and for some of their views were branded as 'extremists' (*ghulāt*) by Shi'i as well as Sunni authors" (p. 11). He traces the evolution of their texts to their final form as preserved by communities that inherited their ideas, most notably the Nuṣayrīs.

While Asatryan builds on the work of earlier scholars, especially Heinz Halm, he has benefited from a great infusion of texts into the material available for study, brought about by the anonymous publication of the mysterious series "Silsilat al-turāth al-ʿalawīyya" somewhere in Lebanon in 2006–7. This has given him a hugely increased corpus with which to understand the tortuously complicated relationships between the individuals, doctrines, and texts in this milieu. At the center of his corpus is *Kitāb al-Haft wa-l-aḏilla* (The book of the seven and the shadows), which presents itself as the narration of the second/eighth-century Mufaḏḏal b. ʿUmar al-Juʿfi, from his Imam, Jaʿfar al-Ṣādiq. Halm ascribed the core of the work to Muḥammad b. Sinān (d. 220/835); however, given the nature of this work, the very utility of ascribing "authorship" should be reconsidered. As Asatryan puts it, "what [Halm] calls the 'firm kernel' [of the work] is itself not all that firm" (p. 18), as it contains several layers of composition laid down between the second/eighth to fifth/eleventh centuries. Asatryan shows that it is inextricably linked to a cluster of texts with related combinations of names—in particular to what he calls the "Aḏilla Group." Asatryan has done the great service of dissecting and describing in detail the layers, themes, and interrelations in *Kitāb al-Haft* in chapter one, followed by a detailed analysis of the intertextual relations within the corpus in the following chapters.

On the basis of his careful textual analysis, Asatryan makes some important new arguments regarding the probable doctrinal and historical relationships between texts and groups, which scholars in the field should take note of. In addition to his observations regarding the complex issues of dating and authorship of *Kitāb al-Haft* itself, he offers a useful genealogy and dating of those of the *aḏilla* group (pp. 77–78)—not only the texts themselves, but also the different layers within the texts (pp. 72–78).

Beyond issues of dating and authorship, Asatryan provides insights into the relations between the texts in his corpus and other strands of early Shi'ism. Thus, he convincingly rejects (p. 99) Hossein Modarressi's distinction (in *Crisis and Consolidation*) between those groups that divinized Muḥammad and the Imams (identified as the real *ghulāt*) and those that espoused the more moderate idea of God's having delegated his power to the Imams (the *mufawwiḏa*). Modarressi suggests that these represent two successive stages, with the divinizers being earlier than the delegationists. As Asa-