A paper economy of faith without faith in paper: A reflection on Islamic institutional history

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ABSTRACT

This article contributes to the literature on Islamic institutional history by examining how the discounting of documents in Islamic legal practice constrained the organization of early modern Muslim trade. It is argued that the reliance on literacy, on the one hand, and an Islamic legal framework, on the other, gave early modern Muslim traders a comparative advantage in economic organization, but the lack of faith in paper as documentary evidence in Islamic law posed fundamental constraints to the development of Muslim economies.

The growth of the paper industry and the cheapening in price has had a more profound effect upon the community than the invention of the steam engine (Dykes Spicer, 1907, pp. 1–2).

The Commander of the Faithful, may God protect him, has taken a position...that it is absolutely necessary in the reliance upon writing to have knowledge of its writer and his character and his justness; and of the fact that the writing to be relied upon is his writing; or to have knowledge that the writing in question is well known among the old writings for which there is no suspicion of falsehood and forgery...For the practitioners of forgery are skilled in imitation and cleverness in rendering documents for presentation and copying them in the guise of scripts of individuals who can be trusted. What is required is an examination of the script...This is what accords with the spirit of the shari’a, and what is called for to maintain order and to protect civilization (Imam Yahya Hamid al-Din quoted in Messick, 1993, pp. 214–215).

1. Introduction

One of the most remarkable facts about the history of Muslim societies is the extent to which, since the birth of Islam in the seventh century, Muslims have placed great emphasis on Arabic literacy. At the same time, intellectual traditions of

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Islamic learning led to remarkable advances in science and technology that spread across the Mediterranean to influence the course of early modern history in Europe, Asia and elsewhere. While dispensing literacy was the domain of scholars and theologians, the general public made more mundane uses of the written word in everyday transactions, recording deeds such as wills and marriage contracts and otherwise securing property rights. Early modern commercial entrepreneurs applied their literacy skills in fundamental ways, while relying on Islamic institutions, namely commercial law and legal specialists, to structure and regulate their affairs. By committing contracts to writing, in person or through hired scribes, and in the presence of witnesses, Muslims followed the prescriptions of the Qur’an. They operated in what can best be described as a ‘paper economy of faith,’ keeping records, dispatching correspondence and utilizing Islamic legal codes to coordinate their long-distance trading activities.

Yet it is somewhat of a paradox that in all of the schools of Islamic law, written documents were not considered to be legitimate sources of evidence. Indeed, legal professionals such as Muslim judges generally did not admit documents, including contracts, as evidence in legal proceedings. This is because, in accordance with Islamic legal practice, evidence could only be oral in nature. In other words, evidence was represented by oral testimony derived from witnesses and not from written sources. Contracts, for instance, could not be used in a court of law without the presence of the witnesses attesting to the original agreement. The fact that Muslims did not assign legal personality to written documents surely complicated certain social and economic transactions. The reliance on witnesses for recognition, deliberation or enforcement of contracts would have posed particular problems to those involved in long-distance trade, such as principal investors and traveling associates typically located in geographically dispersed markets. As several scholars have recognized, the restriction placed on written documents contradicts the Qur’an’s explicit endorsement of the recording of contractual agreements (Schacht, 1982 [1964], pp. 18–19; Tyan, 1959 [1945], pp. 8–9). Arguably, the function of documents in Islamic legal practice, which rarely has drawn the attention of historians of Muslim societies, has important implications for understanding the historical performance of Islamic institutions.

Before turning to a discussion of the function of documents in Islamic legal traditions, this article begins with a review of the literature on institutional economic history. The next section examines how the sources of Islamic law, starting with the Qur’an, set guidelines for economic behavior, then I describe the paper economy of early modern trade, focusing both on how literacy enhanced economic organization and on the crucial role of jurists and judges in mediation and enforcement. The practice of invalidating written documentation in Islamic legal proceedings is examined based on a selection of fatwas, or legal opinions, from early modern North and West Africa. In a final section, I discuss a legal case about a nineteenth-century multi-party inheritance that sheds light on the treatment of documents in Islamic legal praxis. I end the article by reflecting on the relevance of this discussion for understanding the development of early modern economies.

2. Institutions and economic performance

Institutions or “the structure that human beings impose on human interaction,” shape economic performance, as asserted in the work of North (2000, p. 37). He was equally concerned with “explaining the evolution of institutional frameworks that induce economic stagnation and decline” (1990, p. vii). Reflecting on the incentives of individuals to engage in cooperative behavior, North underscores how the presence of formal rules and informal constraints leads to more efficient economic outcomes. An efficient institutional framework is one that reduces the cost of transacting, including access to information and enforcement of contractual agreements. Harris (2000, 2003) demonstrated empirically how the dynamic interplay between legal and economic institutions is fundamental to understanding the history of industrializing England. Moreover, Kuran (2001, 2003, 2004, 2005a,b) has shown how an institutional approach is relevant to the economic history of Muslim societies. But as Greif (2006, pp. 8, 14) acknowledges in his contribution to the field, institutions are much more than a set of rules. He argues that while the institutions-as-rules framework allows for an understanding of the structures guiding the behavior of economic actors, it does not explain the question of enforcement or what motivates them to follow “prescriptive rules of behavior.” Greif proposes that institutions and institutional elements (rules, norms and beliefs) become enacted in associational systems, such as trade networks, which in turn generate institutionalized behavior.

When examining how economic actors solved fundamental problems of exchange in early modern trade by relying upon institutions and defining associational systems, it appears that Greif and others have overlooked several important factors. The first is the extent to which the acquirement of literacy by economic actors improved the structures of institutions and shaped behavioral norms. At the same time, literacy supported both information flows and internal or private enforcement of norms and agreements such as contracts. The second factor is the role of religious institutions, in particular those created by Judaism and Islam with their embedded legal frameworks. Because of the precise and often comprehensive nature of Islamic legal traditions and the embeddedness of the law in religious practice, Islam provided an institutional framework upheld by legal specialists who ensured a certain degree of law and order. Surely these religious institutions provided environments motivating compliance to what Greif terms the “regularity of behavior” (2006, pp. 32–33).

Moreover, the theory of institutions arguably has tended to take for granted one of the most basic of all transaction costs: the cost of paper together with the cost of legalizing documentation or investing faith in paper. The extent to which literacy and the use of writing paper for the purposes of accounting (record-keeping) and accountability (enforcement) are

\[1\] Due to typesetting restrictions this article contains only partial diacritics for the transliteration of Arabic words.
endogenous factors favoring institutional efficiency has rarely been appreciated in the institutional economics literature. Scholars further have left unexamined a seemingly critical “stage” in the passage from pre-modern to modern economies, which is the transition from legal systems based on oral testimony to ones reliant on written evidence. This paradigmatic shift, which led to the replacement of *ars dictaminis* with *ars notaria*, was actuated by the institutional innovation of officially licensed notaries who dispensed with the inefficient use of witnesses for validating written documentation such as contracts.

In a series of articles, Kuran (1997, 2001, 2003, 2004, 2005a,b) has sought to understand what caused the ‘great divergence’ in the development of Muslim economies. He argues, against the grain of past interpretations often concerned with either Islam’s supposed egalitarianism or its inherent archaism, that the “underdevelopment” of Muslim economies can be explained by several key institutional factors that hindered economic growth. The Islamic inheritance law, which caused the fragmentation of estates, impeded intergenerational transfers of capital and therefore its long-term accumulation. The laws on commerce further limited the continuity of business organizations by keeping partnerships small and ephemeral. This, and the lack of a concept of legal personhood in Islamic law, prevented the formation of complex enterprise such as corporations. Finally, the *waqf* or Islamic endowment system, which was the only institution that remotely resembled a corporate entity such as a formal bank, allowed for perpetual ownership of mainly non-productive entities such as mosques.

The verse provides guidelines for writing contracts by clarifying terms, dating the deed and making use of at least two male witnesses who should testify in the eventuality of a dispute. Not only are Muslims directed to write contracts, but they also are to abide by their terms. Verses such as “O you who believe, commit to your contracts” (Ya’ayūhā al-ladhīna ʿamanā awāfū bil-ʿuqād) compel Muslims to fulfill their contractual obligations (5:1; see also 2:177). The Qurʾān (2:283) further advises illiterate itinerant traders to hire scribes and rely on oath taking to ensure contractual transparency.

As Kuran has argued, the contemporary literature on Islamic economics has tended to paint an optimistic picture about compliance by Muslims to these prescribed behavioral norms (1989, 1995). To be sure, it is unrealistic to assume that in the past abidance to such prescriptions existed in a vacuum of institutions that ensured regulation and enforcement. The institutions designed by judges and scholars of the law guaranteed some level of compliance, as discussed below. Although it gave instructions on the proper conduct in trade and the need to secure property rights by recording transactions, “the Quran is silent on the procedural aspects of economic cooperation,” as Kuran points out (2005b, p. 596). The vast literature generated by the four Sunni schools of Islamic law, on the other hand, provides more detailed instructions on how to carry out a range of transactions (muʿāmalāt).

Udovitch (1970a) studied the legal reference manuals of the Hanafi law school for information on partnerships in the first five centuries of Islam. Scholars of the Malikī school, practiced in Muslim Spain and North and West Africa, produced similar law books detailing business rules and methods, starting with the Muwatta’ (“The Well-Trodden Path”) by Malik Ibn Anas, the school’s founder. It is worth noting that in his early years, in eighth-century Madina, Malik worked as a salesman in his brother’s textile shop. Two chapters of the Muwatta’ deal specifically with economic organization. Chapter 31 is devoted to business transactions, and it begins with six separate sections pertaining to the slave trade, giving a sense of the economic weight of servile property at that time (Lydon, 2005). Chapter 32 is entitled qirād, which is a form of partnership agreement known in other Sunni schools of law as the mudāraba. This type of agreement is thought to be the origin of the commenda prevalent in Western Europe from the tenth century onwards, which was a limited-liability contract negotiated between a sedentary merchant who extended capital to a traveling trade associate on a profit-sharing basis (Udovitch, 1967). In addition to the foundational texts of the various schools of Islamic law, technical manuals on contractual formularies, discussed below, provided Muslims with explicit models for the drafting of multiple deeds.

While many Islamic principles positively shaped economic outcomes, others constrained economic development in obvious and subtle ways, as Kuran (1997, 2001, 2003, 2004, 2005a,b) has suggested. As previously noted, these include laws on inheritance that caused the fragmentation of capital and laws on partnerships that never evolved to accommodate large and long-term enterprise or corporate business structures. One of Kuran’s articles (2005b) examines the question of Islam’s ban on interest-bearing loans, long considered the main stumbling block to economic growth in Muslim societies. He distinguishes between financial interest and usury, typically confused in the literature. The ban on usury, relating to Islam’s message of social equity (Qur’ān, especially 2:271–285; 3:130), concerned the illicit gain of the haves by their unlawful exploitation of the have-nots. The practice of interest, on the other hand, was more mitigated. As Kuran has argued, Muslims historically have circumvented the ban on interest through either compartmentalization or casuistry to the point that “no Muslim polity has had a genuinely interest-free economy” (2005b, p. 597). The use of partnership agreements such as the abovementioned qirād was one of many common mechanisms for loaning on interest. Moreover, Muslim contractual practitioners devised various stratagems, known as ḥiyāl, to create “legal fictions” masking illicit behavior, including the charging of interest on loans (Schacht, 1982; Udovitch, 1970a; Kuran, 2005b; Lydon, 2009, Chapter 6). These legal stratagems, typically incorporated into contractual forms, required economic agents to possess access to writing paper and literacy.

4. The function of literacy

With its fast conversion rate, Islam was the predominant religion in most of the Middle East, North Africa and Spain by the eleventh century. Its pedagogical message, focused on theology and the Arabic language, was for Muslims to seek knowledge as a matter of duty. The relevance of literacy to both economic organization and institutional order has hardly drawn the attention it deserves. The foundational texts of the various schools of Islamic law, technical manuals on contractual formularies, discussed below, provided Muslims with explicit models for the drafting of multiple deeds.

Among Muslims, elementary schooling tended to be mandatory for boys and girls.4 It was religious in nature, so the Qurʾān, written in classical Arabic, was the basic text used for the teaching of reading and writing. Muslim boys were trained for commercial careers through the teaching of ethics and morals, on the one hand, and literacy, computation and commercial law, on the other. Depending on what Sunni legal school they followed, Muslims further received instruction in specific legal traditions. In Muslim northwest Africa, the abovementioned Muwatta’ was part of the curriculum, as was the memorization of its most popular abridgment, Khalīl ibn Ishāq’s Mukhtasar (Wuld Hāmidun, 1990; Lydon, 2004). Muslims internalized the verses through mnemonic traditions of Islamic learning.

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4 In very poor communities, lack of a school could prevent families from fulfilling this obligation. Moreover, education was socially differentiated, with children of slaves or former slaves having rare or limited access.
Aside from literacy, Islamic schools also taught law, ethics and arithmetic. Because of the commercial culture embedded in the Qur’an, on the one hand, and the teaching of literacy and computation skills, on the other, young Muslim boys acquired what Street (1983, pp. 158–180) has called “commercial literacy.” It follows that Islamic legal prescriptions shaped, to some extent, the business conduct of Muslims. In fact, commerce was probably a driving force in the spread of literacy. Reflecting on the earliest written sources for the greater Muslim world, Hanna (2007, p. 46) posits that the volume of documentation “suggests how literacy and writing were linked to trade and commerce,” yet the ‘learning by doing’ of apprentices and junior trade agents was as important to commercial success as was the ability to make use of the written word. Following Street, Hanna (2007, p. 176) proposes that historians take a more “flexible” approach to Muslim literacy by differentiating between literacy’s functions and purposes and between degrees of literacy from the highly educated to semi-literate traders. Based on these considerations, it may well be the case that in the early modern period functional literacy (in Arabic and the Hebrew script) was more widespread in the Middle East and Africa than in western Europe (Menocal, 2002; Houston, 2002).

In his seminal work on the impact of writing on the organization of society, Goody (1986, p. 46) explains how it contributed broadly to economic development by

- promoting new technologies (and the associated division of labour), in extending the possibilities of management on the one hand and of commerce and production on the other, in transforming methods of capital accumulation, and finally in changing the nature of individual transactions of an economic kind.
- By this logic access to literacy and a regular supply of paper had a significant impact on institutional change and economic administration in enabling increased instrumental complexity in finance and exchange. Writing also meant that transactions were no longer reliant “upon the memory of witnesses who were subject to the constraints of forgetfulness, mortality or partisanship” (Goody, 1986, pp. 70–71). It made it easier to manage multiple accounts with multiple parties in multiple locations, and communicating such dues “not only with others but with oneself” (Goody, 1983, p. 83). The Saharan proverb “what left the head does not leave the paper” (‘illī marra ār-‘a’s mā yumarrq ak-kurās) neatly captures the importance of preserving the written word. Literacy, therefore, promoted information flows while ensuring both transparency and accountability in economic transactions.
- The oversight about literacy in the economic history literature is especially remarkable considering that efficient communication was a major advantage of trade networks. Indians used scripts varying from Devanagari to Persio-Arabic, Chinese recorded in their script. Jews wrote in the Hebrew and Arabic scripts, and Muslims used Arabic and the Arabic alphabet to transcribe local languages. Committing business transactions to writing created mechanisms of enforcement. It represented, therefore, a technological innovation that reduced the cost of transacting. This is especially true for participants in trade networks with added institutional structures to facilitate trade. As Botticini and Eckstein (2005, p. 940) argue for the case of Jews, which goes for Muslims as well, “only a Jewish merchant who could read a fellow merchant’s letter was able to enforce sanctions on Jewish traders who cheated or acted opportunistically.” Working with a team of commercial partners provided further means to ensure contractors’ compliance. Knowledge of trading partners’ handwriting, I would add, was equally important in this context. Traders collaborating within a group gained familiarity with each others’ handwriting so as to authenticate documents easily, such as letters and contracts. The intimate knowledge of and ability to identify handwriting styles made it possible for economic actors to place trust in such documents. Whether individually acquired or dispensed by hired scribes, literacy therefore enabled internal enforcement as well as information flows and financial complexity. In other words, literacy provided an enhanced capability to limit opportunistic behavior among network members operating across long distances.
- Relying on literacy as an institutional tool was directly correlated to the availability of writing paper. In fact, the growth in the demand for paper in world history is attributable more to the spread of literacy than to the tradition of parcel-wrapping. The technology of papermaking spread from China to Iraq, Syria and Iran, before reaching Egypt, the Maghrib and later Andalusia, and from there to western Europe (Braudel, 1979, pp. 397–379; Bloom, 2001; Burns, 1985, Chapters 23 and 24). By the eleventh century, over 100 mills in the Maghribi city of Fez were manufacturing paper from linen and hemp (Bennellou-Laroui, 1990, p. 23). A century later, the best quality paper came from Xàtiva (Shāṭibā) in Muslim Spain, but eventually southern France and Italy took the lead, exporting paper to outlying markets and across the Mediterranean to North Africa (Burns, 1996). From the seventeenth century onwards, Venice, Genoa and Marseille became the most important ports supplying North African markets in writing paper. Paper of Italian and French origin would dominate the paper market across the Mediterranean to Africa (Walz, 1985). It would be at a comparatively much later date that places like England would begin producing paper, “an indispensable ingredient in every industrial and commercial process,” as Dykes Spicer (1907, p. 1) recognized. Only at the turn of the nineteenth century did British manufactured writing paper assume a significant share of the international market (Dykes Spicer, 1907; Coleman, 1954; Hills, 1996).

Muslim societies consumed, produced and imported large quantities of writing paper since Arabic literacy was a quintessential trait of their faith. From the early centuries of Islam, as Bloom (2001, p. 11) explains, “books and book knowledge became the aim of Islamic society.” Because paper tended to be imported at great distances, this literate world was sustained by the entrepreneurial activities of Muslims and their promotion of homegrown industries of manuscript-copying and bookbinding. Ironically, Muslims long resisted the industrialization of manuscript production by failing to adopt the printing press for two centuries after it was in use among most Western and Asian literate societies (Kuran, 1997; Bloom, 2001). The nineteenth-century growth in the European production and global exportation of industrial writing paper provoked a veritable revolution in world literacy and economic organization. In is precisely in this century that trans-Saharan
caravan trade experienced renewed growth, and, not coincidentally, those engaged in this commercial world were Muslims and Jews.

5. The paper economy of faith

Muslims and Jews mitigated the logistical challenges of long-distance trade by relying on literacy and written documents in what I have termed a ‘paper economy of faith,’ combining ideas articulated by S.D. Goitein and Pierre Bourdieu. Goitein (1967, pp. 240, 245) used the expression ‘paper economy’ to describe the volume, variety and financial nature of the Geniza records documenting early modern Jewish commerce based in North Africa. He was referring in particular to how banking was sustained by transactions recorded on sheets of paper, such as promissory notes, traveler’s checks and money orders. I extend his meaning of ‘paper economy’ to the use of paper as an informational support tool for all commercial transactions, including contracts and correspondence. Bourdieu (1977, pp. 173–174, 177–178, 1994, pp. 168–169) discusses an ‘economy of faith and trust’ among the Muslim Kabyles of Algeria to illustrate the interactions prevailing between religious authorities and their followers, while also showing the implicit link between the pursuit of economic gain and symbolic capital.

The concept of a ‘paper economy of faith’ neatly captures how early modern traders, including those outfitting nineteenth-century trans-Saharan caravans, realized the complicated feat of coordinating commerce in dispersed markets. It serves to explain similar environments prevailing in other parts of Africa, the Middle East and Europe during the early modern period, where either Judaic or Islamic legal traditions of learning and literacy prevailed. Just as literacy in the Hebrew script and Jewish law (Halakha) derived from the Torah, the Mishna and the Talmud gave Jews a comparative advantage in economic organizing, so too did similar institutions favor Muslim entrepreneurship (Botticini and Eckstein, 2005). By drawing contractual agreements and dispatching commercial correspondence, they generated commercial efficiencies that reduced the risks and overall cost of transacting in foreign markets. In the process, property rights were secured through the writing of deeds, such as contracts of sales and donations, as well as inheritance records, including wills. Letter writing, shopping lists, waybills and account books facilitated recordkeeping and communication between traders. Legal instruments of all kinds (sakk, plur. sukk, the origin of the word ‘check’) were recorded on paper to facilitate financial transfers. Table 1 summarizes the panoply of literacy uses in commercial organizing characteristic of the paper economies of early modern Muslims and Jews. Long-distance traders drafted a variety of contractual agreements. They used debt and equity contracts and their derivatives, such as lease contracts and entrustments or storage contracts. They also engaged in complicated multiple-party financial operations including forward-purchases (Lydon, 2008). Moreover, through letter writing and the use of messengers, merchants monitored the activities of agents, put pressure on defaulting parties, and otherwise exchanged market information.

For early modern Muslim traders, contracts, properly witnessed and dated, were decisive commercial instruments. As the fourteenth-century Maghribi scholar Ibn Khaldun explains, when discussing the behavior of traders, “there will also be non-acknowledgement or denial of obligations, which may prove destructive to one’s capital unless (the obligation) had been stated in writing and properly witnessed” (1967, p. 342, emphasis added). By writing and producing multiple copies of specific contracts, partners eliminated ambiguity in agreements and avoided potential disagreements by defining the terms, obligations and claims of business partners, as well as due dates. While theoretically they could not be used as legal evidence in court, as discussed below, contracts did carry weight as informational tools, proof of transactions between partners, and a record witnessed by third parties. Contracting parties, and sometimes legal specialists, such as Muslim judges or qadis, relied on their knowledge of individual handwriting to certify written agreements. Whether written in person or by a scribe serving as notary and witness, contracts were so specifically drawn that small slips of the pen, crossings-out or deletions were acknowledged in text to ensure authenticity. A copy would remain in the hands of the principal contractor while the other traveled with the itinerant trade agent. At other times, contracts were embedded in multipurpose commercial letters dispatched via agents to partners in trade.

To draw up standard contracts, early modern Muslims relied on formularies or contractual models described in a specific branch of Islamic legal literature. As Schacht (1982, p. 22) noted, the judicial construction of contracts is “one of the most distinctive technical features of Islamic law.” The earliest such works, which featured prominently among the reference manuals of qadis, date back to the eighth century (Wakin, 1972; Hallaq, 1995). These contractual formulae are known as

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<td>The paper economy of early modern trade.</td>
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<td>Account books and ledgers (accounting and recordkeeping)</td>
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<td>Caravan, ship or other venture lists (participants and their merchandise)</td>
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<td>Contracts (agency contracts, labor contracts, leasing contracts, debt and equity contracts, storage contracts, forward-purchase contracts, commenda-type contracts and other partnership agreements)</td>
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<td>Correspondence (information flows and financial transfers)</td>
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<td>Financial instruments (bills of exchange, money orders, debt-swapping, traveler’s checks)</td>
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<td>Shopping lists (with purchasing instructions)</td>
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<td>Waybills (lists of goods to establish ownership of dispatched parcels and loads)</td>
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wathā′iq (documents, deeds) in the Mālikī tradition or shurūt (provisos, stipulations) in other Islamic schools of law. They contained ‘fill-in the blanks’ boilerplates or standard clauses for drafting various agreements that were legally watertight. Saharan private archives often contain copies of wathā′iq written in Arabic that typically include the vowel signs (tashkīl), pointing to their use as pedagogical devices. As Wael Hallaq has demonstrated, these formularies changed in style and focus across time and space, according to context and need and with slight variations between the law schools (1995, pp. 132–133). Despite measures taken to safeguard property rights through the production of legal paperwork, however, these instruments had no legal standing or value as legal evidence, a point I return to below, but first, a brief discussion of the business of Islamic justice is in order.

6. Islamic law and the business of justice

The law is the central feature of Islam’s institutional framework, and compliance to it is a quintessential trait of being Muslim. Historical and regional variations were determinants of the design and praxis of Islamic legal systems. Depending on political circumstances, Islamic justice was dispensed either by solo judges or in court systems. In the northwest African context legal specialists played fundamental roles in maintaining social and economic order. Judges (qādis) and jurists (muftīs), or what I call ‘legal service providers,’ shaped the rule of law and imposed their rulings through reputation mechanisms and community pressure (Lydon, 2009). By providing mediation services, writing legal opinions, and issuing official rulings, they arbitrated in disputes, set guidelines for social and economic transactions, and enforced property rights.

However, as elsewhere in the Muslim world, Islamic legal practice was defined by a combined interpretation of the ‘divine law’ (sharī’a) and prevailing customs. In other words legal decisions could take into account customary law (urf) and common practice (ʿadda) as determinants of the law alongside the rules defined in the classic sources of Islamic jurisprudence (fiqh). Ordinarily this was the practice when the latter failed to provide answers or simply when ‘the law of the land’ (urf al-balad) held sway, or even ‘the law of merchants’ (urf al-tujjār). Muslim legal service providers and their constituents, therefore, drew upon formal knowledge of Islamic codes, local jurisprudence, prevailing cultural norms, or a combination thereof to resolve disputes. Schacht admits (1982, p. 82) that it was often the case in commercial matters that customary law overshadowed Islamic law, as discussed in the next section.

While Islamic law was not case law, local jurists and their students compiled large collections of fatwas and short responsa that influenced the rulings of judges and shaped legal discourse. Describing the dynamic interplay between legal service providers in fourteenth-century Maghreb, Powers (2002, pp. 207, 226) explains that the qādi assessed the facts of a case while the muftī assessed the legal doctrine. The muftī was a legal scholar or jurisconsult who serviced the community by providing legal opinions. As for qādis, they thoroughly researched their cases through extensive inquiries and interviews with all the available witnesses as well as consultations with other qādis and muftīs in order “to distinguish between competing versions of the ‘truth’ in an effort to reach a judgment” (Powers, 2002, p. 88). The powers of the qādi are neatly summarized in a nineteenth-century fatwa written by a muftī from the western Saharan region asked to evaluate the actions of a qādi in a multiple inheritance case (discussed in Section 9).

The qādi decrees based on [all the available information] . . . because he is in charge of writing judgments on quarrels, disputes and discord between relatives, because he is the ruler (al-hākim) of this location de facto and de jure . . . And the rulers are entrusted only to reprimand the oppressors, to bring to heel the evildoers and the corrupt (Wād Nūn Inheritance Case cited in Lydon, 2009, p. 297).

In the Saharan context, qādis acted as executive legal authorities who “ruled” in their capacity as local representatives of the law. The same was true in other Muslim communities such as Yemen where the term for judge (qādi) and ruler (hākim), as in the one who issues rulings, were used interchangeably (Messick, 1993, pp. 168–169). Johansen (1997, p. 347) likens the qādi to an administrator when discussing the Hanafi legal tradition prevailing in much of the Middle East and Asia.

In their survey of the role of qādis in the Muslim world, Masud et al. (2006) describe the history of Islamic justice from a state-centric perspective that draws heavily on the Ottoman experience. The Ottomans developed a tightly controlled system of tribunals and rotating qādi-ships. Moreover, they reinstated the position of a supreme magistrate, the “qādi of qādis,” that had been practiced in the early centuries of Islam (Masud et al., 2006, pp. 34–36). The Ottoman Empire's centralized system differed markedly from that of nineteenth-century western Sahara where reputation, established through erudition and legal deliberations fought with pen and paper, determined the informal ranking of regional legal specialists. Each Saharan oasis town tended to have an officially appointed qādi who ruled in consultation with other qādis and with muftīs. The legal system was kept in check by the regional community of jurists who scrutinized each others’ rulings, especially on highly contested matters involving notable personalities. The qādi’s authority rested on his scholarly credentials, and frequently the office was passed down from father to son, together with the inherited reference libraries.

In most Muslim societies, qādis assumed non-negligible roles as financial intermediaries in civil and commercial transactions. Because they were legal guardians in matters concerning property rights, including the property of orphans and inheritance estates, they handled significant sums of money (Lydon, 2007, 2009). They also functioned as intermediaries

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5 For examples of agency contract models see Lydon (2009, pp. 287–290).
entrusted with financial transfers between physically distant parties, such as trade partners or husbands and wives. Moreover, qādis often mediated in debt collections by finding or pressuring defaulting parties. In a nineteenth-century letter by a Saharan trader asking for a qādi’s assistance in a debt recovery, he praises God for the services of legal specialists, and especially the qādi,

our witty fellow (zārīfḥā), our helper and the qādi of our debts (qādi duyūninā). . . . and of our conflicts (sharrīnā), of the integrity of our conduct (li-rashādīnā). . . . [from the one] who is in need of your assistance, he informs you that he needs your help to collect his property, of the share of silver. . . . and its removal from the hands of the one whose hands it is in, in order to help us with the legal termination of the debt. . . .

These financial services, which presumably reinforced judges’ symbolic capital and their positions as legal authorities in Muslim societies, have rarely been recognized in the literature on the organization of Islamic justice. In many Muslim communities known figures acted as professional witnesses (shuhūd ‘udūl), including for witnessing contracts (Tyan, 1959, pp. 14–41). For more remote areas, such as Saharan oases that did not sustain large populations with a class of professional or full-time witnesses or scribes, Muslim judges tended to rely on the trusted opinions of notables and members of town councils who typically held established reputations for being just (‘adl) or possessing unquestionably ‘sound morality’ (‘adāda). Describing professional witnesses who often performed as scribes, Ibn Khaldūn (1967, vol. 1, p. 462) noted that “people who have transactions to make can engage them to function as witnesses and register the (testimony) in writing.” He also pointed to the legal value of such documents in declaring “the judiciary is of little use in this connection, since the law requires clear evidence” (Ibn Khaldūn, 1967, I, p. 342).

7. The lack of faith in paper in Islamic law

While verses of the Qur’ān stressed the importance of writing and recording credit transactions, as discussed above, documents such as contracts did not carry legal weight in and of themselves, with some notable exceptions. The practical explanation for this position is captured in the words of Imam Yahya, quoted at the beginning of this essay, that allude to a fundamental distrust of all documents on the grounds that they could be tampered with or forged. Even fatwas were not considered legally binding, although these scholarly opinions influenced the decisions of qādis and shaped substantive law, as Hallaq (1994) has demonstrated.

The function of documents in Islamic law may well be critical for understanding the performance of Islamic legal institutions. Tyan (1959 [1945]) was the first to draw attention to this legal predicament. Other legal scholars have discussed the matter, including Schacht (1982 [1964]), Wakin (1972), Messick (1993), Johansen (1997), Hallaq (1999). Ergene (2004) has examined the use of documents in Ottoman courts, but on the whole historians of Muslim societies have failed to appreciate the implications for institutional history of this Islamic rule of evidence, which generated a lack of faith in paperwork.

Among Muslims, legal evidence is known as al-bayyina, meaning ‘the manifest proof.’ As Brunschvig (2006) explains, it “denotes the proof par excellentiam – that established by oral testimony – although from the classical era the term came to be applied not only to the fact of giving testimony at law but also to the witnesses themselves.” Although it contains a chapter entitled al-‘bayyina, which discusses the failure of non-believers to recognize the proof of the faith, the only section where legal evidence is described in the Qur’ān is the above-quoted verse about recording and witnessing contracts. Scholars tend to see in this practice a continuation of pre-Islamic legal systems that hinged on oral testimony. One may also add that Islamic legal traditions would have developed in the first two centuries of Islam at a time when most Muslims would have been illiterate and when writing paper was neither readily available nor cheap. Yet the practice of invalidating documents persisted, despite the practical inconveniences that it posed.

Legal evidence is exclusively of three kinds: testimony produced by reliable witnesses (shahāda), declarations or acknowledgements (iqrār), and oaths (yamin). The basic rule is that the claimant produces the evidence while the defendant gives the oath (al-bayyina ‘alā al-mudda’t wa al-yamin ‘alā man ankar). As noted above, qādis often relied on reputable or even professional witnesses to-establish testimonial evidence. Sometimes they engaged legal representatives whose task it was to collect witness depositions. In cases involving large numbers of witnesses, they would reproduce their testimonies in a document sometimes known as rasm al-shahāda (also rasm al-istirād). Powers discusses a contested inheritance case in fourteenth-century Maghrib that led to the production of such a legal document containing no less than ninety witnesses (Powers, 2002, p. 32). Another notable practice was the testimony on the testimony (shahāda ‘alā al-shahāda), used in a limited sense for authenticating a primary witness’ testimony (Messick, 1993, pp. 207–208).

Orality, therefore, was central to Islamic legal systems that hinged upon a reliance on the memory of mortals despite the spread of Arabic literacy and the growing popularity of writing. The underlying principle in Islamic legal theory was the belief
that the spoken word was the most "authentic" form of proof (Johansen, 1997, p. 337). Oral testimony and oath taking were superior forms of evidence to written documents that, aside from the possibly of being tampered with or decontextualized, were not necessarily clear representations of the truth or of an author’s intent (Johansen, 1997, p. 361). Both oath taking and witnessing were acts inextricably tied to the first pillar of Islam, the profession of one’s faith in God (shahāda). Therefore, contracts or any written documentation could not be considered as evidence in litigation without the oral testimony of the two witnesses who originally testified to the deed. Thus, documents properly witnessed could have a probative quality in the sense of aiding in the process of discovery, but again only if attested by the original witnesses stated in the document (Tyan, 1959, p. 13; Johansen, 1997, pp. 335–336).

At times, however, Islamic legal practice diverged from the theory. In the thirteenth century, for example, the need to secure the intergenerational transfer of institutional memory arose in the case of waqf contracts to ensure the perpetuity of these endowments long after the completion of the contractual witnesses (Johansen, 1997, p. 356). Moreover, according to Tyan (1959) and more specifically Johansen (1997), there were marked differences across the four Sunni law schools. The Mālikīs came to recognize certain special circumstances under which written documents, after proper authentication by qualified witnesses, could be used as informational devices. As Tyan (1959, pp. 6–7, fn 6, pp. 13–14) explains, many Mālikī scholars, starting with the eleventh-century Ibn Farhūn, while continuing to enforce the superiority of oral evidence, nevertheless expressed the opinion that anything enabling the truth to be known could be a valid source of evidence. Based on works produced by the Hanafī school of law, Tyan (1959, pp. 83–84) further suggests that under Ottoman rule Muslim judges eventually came to admit certain documents as legal proof independent of oral testimony.

Here, Johansen’s critical examination of Hanafī manuals is key to understanding these circumstances. He emphasizes the importance of distinguishing between forms of documents. First, he notes like Tyan, the exceptional case of the official correspondence dispatched by caliphs that, because of its format and presumably its seals, generally was accepted at face value on the same grounds as oral evidence (Johansen, 1997, p. 342). He then distinguishes between two kinds of legal documents, those generated by qādis and those produced by the general public. The first, featured in the personal archives (diwān) of qādis, which included court records, correspondence and other legal paperwork, represented the institutional memory of individual judges. These documents could be used to supersede oral testimonial evidence but only during the life of the qādī, and more specifically, during his time in office, after which point all his paperwork was considered null and void (Johansen, 1997, pp. 344–357). The second form of evidence concerned contractual models. Johansen explains that Hanafī scholars, such as the fifteenth-century Ibn ‘Abīdin, noted the particular case of documents such as contracts that were considered to be “stereotyped” (marsūm). These records were written in accordance with recognized contractual models of the kind described above and, as such, they represented clear (mustabīn) declarations of intentions (Johansen, 1997, pp. 360–361). This type of document, modeled on a contractual formula, still necessitated validation from the witnesses present at its drafting. But according to Johansen (1997, 369–372), starting in the tenth century, Hanafī scholars emanating from central Asia began accepting documents in exceptional cases concerning “merchants, money changers and brokers” on the basis that the legality of their contracts was established by local customary practice. In sum, certain legal scholars were prepared to let local customs overrule Islamic law in commercial matters.

In practice, even Muslim judges took a more flexible approach to documentary evidence for the sake of convenience in cases involving dispersed contracting parties or in inheritance proceedings. A cursory reading of the available fatwa literature for northwest Africa, which spans the period from the eleventh to the nineteenth century, reveals how few were the commercial cases brought to the deliberation of muftis involving the use of documents.9 Given that à priori written documents had no intrinsic legal value, this should come as no surprise. In his study of two Ottoman courts in the seventeenth and eighteenth centuries, Ergene (2004, p. 487) concludes that “document use was limited… and when documents were used in litigations, they did not technically serve evidentiary purposes.” Hallaq (1995; see also 1999), on the other hand, notes that “the mufti, both as a private legal counselor and as a court expert, regularly dealt with disputes and problems involving documents.” Clearly this is a subject that requires further research in order to establish in what times and places documents came to assume legal personality and to compare historical cases from within and outside the Ottoman experience.

The following four singular cases, drawn from northwest African history, illustrate how the onerous witnessing system caused institutional constraints in both civil and commercial transactions.

8. Islamic legal praxis I: evidence from fatwas

The first case, which is detailed in a fourteenth-century fatwa (Wansharīsī, 1982, pp. 25–26), deals with the following legal question. A qādī witnessed the recording of a given contract, together with another morally sound witness (shahīd ‘ādí). Subsequently, the qādī relocated to a distant town and was replaced by another judge. Should the contracting parties have their document witnessed again by the new qādī? The question, in and of itself, illustrates the practical concerns of contracting agents. The answer provided by the mufti is revealing of the inherent problems of the system due to the ephemeral

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9 This conclusion is drawn from my cursory survey of available material. These include two comprehensive fatwa collections: (1) the collection of approximately 6000 fatwas compiled by Wansharīsī [1430–1508], dating to the late fifteenth century, vol. 1–13 (1981–1983) and (2) for the period from the late fifteenth century until the mid-twentieth century, the collection of about 5000 fatwas by Ould El-Bara (forthcoming). I also consulted nawāzīl (or short legal answers) from Mauritania and published works from Morocco.
nature of written contracts. He replied that the contract does not need to be re-witnessed since the qāḍī in question was still alive, as was the other witness mentioned in the document. Even if they migrated, in theory witnesses still could perform their duty to testify in the eventuality of a legal contest. The case shows how the availability of witnesses, because of distance and mobility, posed problems in the application of the Islamic rules of evidence.

The second case, also from Morocco, concerns the will of a man who died in the year 803/1400 (Wanshari, 1982, pp. 377–379). The deceased man had left a will (wasiyya) written on leather parchment (riqāʿa kāḥmat), in which he bequeathed 200 dinars to relatives with whom he resided in the last years of his life. Although the document was witnessed in proper form, its validity was contested by the brother of the deceased, who inherited most of the estate and refused to hand over the willed amount. The jurist ruled that the will could be validated if one of the witnesses to the original contract could certify it, or if a morally sound witness who knew the deceased could authenticate the handwriting. In this particular case neither could be found because the deceased’s generation had expired. As a result, the will was overruled. The reliance on the living makes clear, even if witnesses were available to testify, their capacity to authenticate documents required them to possess infallible memories.

The third example involves a contested contractual agreement in late-seventeenth or early-eighteenth century Fez (Ibn ‘Aly al-Husayn, 1989, pp. 9–12). Two men entered into litigation over the price of an agreed-upon market transaction during the course of which it became known that they had competing versions of the same written contract. The two copies contained divergent statements about the price of the transaction. What is more, they included different sets of witnesses. This case exemplifies the issue raised by Imam Yahya, quoted above, concerning the obvious question of forgery. The mufti’s reply is insightful for he explains that the judge presiding over the case had several options. He could call upon the witnesses mentioned in both versions of the contract to authenticate the documents, but he conceded that this procedure could prove to be inconclusive since “some witnesses may not remember with precision what was agreed upon” in the document. The other option was for both sets of witnesses to read each contract and swear under oath to its validity. This too was problematic, however, since many qāḍīs complained that in those times and places “people’s morals have become lax” and they lacked honesty. This posed an even more serious problem that threatened the very foundation of the Islamic legal system, for such a case revealed the unsettling fact that some witness or other was “abusing the shu‘aha.” Because all parties were bound by oath to tell the truth, and their oath was tied to their faith in God, such lies could never be exposed without questioning a believer’s faith.

Our final case took place in the nineteenth-century western Sahara (present-day Mauritania). It was included in the legal collection of a jurist named Muhammad al-Gasrī who was asked to provide counsel on a question of contractual attestation. In this case the witness was not absolutely certain he could recognize the handwriting of the contracting party who penned the document. Meanwhile the second witness, who apparently was best equipped to do so, was out-of-town and unavailable for this purpose. In his answer, in which he cited Khalīl’s abridgment of Mālikī law in reference to the statutes on declarations or acknowledgements (iqrāirs), the mufti stated that if the witness could not recognize the handwriting with certainty, even if he remembered with certainty the details of the agreement, then he could not authenticate the contract.10 As this case makes clear, even if witnesses were available to testify, their capacity to authenticate documents required them to possess infallible memories.

That contracts were considered first and foremost to be oral agreements is apparent from the cases examined here that seems to confirm the treatment of documents in Islamic legal practice. While literacy enabled Muslims to record property rights and commercial transactions, the legal reliance on orality obviously made for a cumbersome, time-consuming, and difficult procedural system for resolving disputes. The discounting of documents was especially inconvenient for practitioners of long-distance trade. However, as the following example demonstrates, some qāḍīs were willing to overlook legal procedure in cases of long-distance trade for the sake of facilitating transactional resolution.

9. Islamic legal praxis II: evidence from an inheritance case

Within a short period from 1849 to 1850, four caravanning traders met their deaths in the western Saharan region.11 These men and their associates belonged to the Wād Nūn trade network that was actively involved throughout most of the nineteenth century in trans-Saharan caravan trade between Western Africa and Morocco (Lydon, 2009). At least one of the men perished at the hands of caravan raiders, while the others died of unknown causes. Because all four men were transient residents of the town of Tishrit (present-day Mauritania), it befell upon a fellow network partner there to take charge of dealing with their long-distance commercial affairs as executor of their estates. Such matters had to be resolved expeditiously in order to comply with the Mālikī legal rule stipulating that all debts and loans had to be discharged immediately after the death of a liable party.

The task of sorting out a web of multiple transactions by multiple parties in multiple currencies contracted between the four deceased network traders, their wives and relatives, as well as close to thirty other traders located in various markets, proved bewilderingly complex. For assistance, the executor of the estates called on the services of the local qāḍī to help with the computation of the assets and the disbursements of deeds. The judge then drafted a report sent to the families

10 Muhammad al-Gasrī, Nawâzîl (manuscript copy in author’s possession).
11 Wād Nūn Inheritance Case (1853), Arwâlî Family Records, Family Archives of Shaykh Hammuny (former qāḍī of Shinqîti, Mauritania). The quotations that follow are from the same source unless otherwise stated. See also Lydon (2009, Chapter 7).
of the deceased traders residing in the town of Guelmim (present-day Morocco). The executor and the qadi paid dues to lenders in cash and in kind, as well as through debt-swapping or the reallocation of contracts. The qadi witnessed many of the transactions, including property transfers and debt cancellations. With the exception of several oral agreements, most of these matters were settled by relying on the paper economy, namely the bundles of contracts drafted between the deceased traders and their associates. By the time accounts were cleared and all of these transactions were committed to writing by the qadi in his report to the community of Guelmim, three years had gone by since the passing of the first trade network member.

This case informs us about the role of legal service providers and the overall functioning of a trade network system. In particular, it sheds light on the legal praxis in the devolution of the property of network members. The report makes clear that to facilitate the settlement of debts the qadi often used contracts as informational tools, taking them at face value. In other words he acted on the basis of written documents presented by the creditors of the deceased without calling upon the attestation of the recorded witnesses. This was done for matters of expediency and practicality since many of these contracts were not originally drafted in Tishtit and so the witnesses were located elsewhere.

Because of the high profiles of two of the families concerned, on the one hand, and the sums involved, namely a substantial amount of gold, on the other, the qadi’s report became the subject of a long-distance legal dispute. Several muftis were asked to produce fatwas weighing in on how the estates had been divided. Two fatwas in particular speak directly to the treatment of documents and the question of witnesses. The first mufti argued that the report of the qadi of Tishtit was not legally binding because it did not comply with Maliki rules. His discussion centered on the proper legal procedures to be followed by judges with regards to managing inheritances and devolving property. In particular, he pointed to the infraction committed in this case by the qadi who had acted simultaneously as judge and witness. Moreover, he underscored that legal evidence and proper testimony were required by law before funds from a deceased’s estate could be disbursed.

Based on an array of Mamliki references, the second mufti in turn criticized the legal methods of the qadi of Tishtit with arguments echoing those of the first mufti. The crux of his reasoning had to do with the lack of due process in the witnessing of the individual claims of the creditors of the deceased. In particular, by accepting the word, and by extension the written documents, of those who presented their claims without “the guarantee of others,” he was not following proper procedure. As he stated,

He [the qadi] took [the assets] after their release [from debt] to give them to whomever had a legal right among the beneficiaries, the guardians and the envoys, without fulfilling the requirements and obtaining confirmation from anyone who pretends to be a creditor of the deceased by trade, loan or other means among the things that must be repaid. And he must not give him anything big or small from the estate of the deceased unless his claim is supported by impartial proof (bayyina ‘adila), that is either the testimony of two honorable witnesses (shahada ‘adlayn) or an oath (yamin), or the testimony of one honorable witness accompanied by an oath that supports it, and the oath of the qadi. He must guarantee [these conditions] for he has neglected [the proper procedure] and abused [his position].

Further, he cites the above-quoted verse of the Qur’an to criticize the judge for having released the funds of the deceased without the appropriate number of witnesses testifying to the authenticity of their financial claims.

The legal dispute illustrates the predicament of Islamic legal institutions elaborated above. To all of the parties concerned, the judge and those engaged in long-distance trade, it was a challenge to abide by a strict application of Islamic rules of evidence. For how could legal contracts be enforced across long distances when those who authenticated their validity were located in dispersed markets? In order to defend the claims of the competing inheritors of the Wad Nun traders, the two muftis invalidated the qadi’s actions on procedural grounds, conveniently pointing to his reliance on documentary evidence in lieu of oral testimony as an unlawful act. Here the muftis confronted a problem that clearly was almost insurmountable, especially in the treatment of the affairs of those making a living from crossing the Sahara Desert to trade. For obvious reasons, compromises in the application of the rules of evidence had to be made for social and economic order to be achieved.

10. Conclusions

The historical record reveals to what extent many Muslim traders followed the letter of the Qur’an enjoining them to commit their contractual agreements to writing in the presence of witnesses so as to ensure transparency and avoid disputes. Islamic legal literature, and in particular the manuals on contractual models, provided them with detailed templates. Contracts written by parties sharing a belief in God were drafted with precision and in a legally prescribed language that ensured compliance and therefore reduced transaction costs. Obviously such contractual arrangements solved commitment problems, or else they would not have endured with such frequency. At the same time, these early modern literate entrepreneurs relied on legal service providers, such as qadis and muftis, who defined local norms of behavior while deliberating, mediating, adjudicating, enforcing and witnessing contracts. In addition to providing guidelines for the economic behavior of early modern traders, Islamic legal institutions, which varied somewhat across the Sunni law schools, supplied third-party enforcement. The role of formal legal institutions in regulating the activities of long-distance traders recently has been brought to light by Edwards and Ogilvie (2008) in their critical assessment of Greif’s (1994, 2000, 2006) contributions to institutional economic history.

The paper economy of faith was a fundamental feature in the institutional history of early modern Muslims. Literacy and access to writing paper gave them a comparative advantage in long-distance trade, enabling commercial mobility and
transparency in accounting and accountability while offering tangible safeguards for the protection of property rights. However, as Tyan (1959, p. 11) recognized decades ago, “such a system contained serious practical inconveniences.” The fact that documents were not invested with legal personality created significant impediments to economic performance. The non-reliance on documents in Islamic legal practice was constricting, as illustrated by the fatwas discussed above. Abidance to Islamic rules of evidence was especially problematic for the conduct of long-distance trade. For this reason, several jurists, starting with Hanafi scholars, were prepared to grant exceptions to the application of the rules of evidence in the particular case of merchants, brokers and financial operators whose activities hinged on the enforcement of written agreements. In this instance, the customary norms of traders or local merchants’ law superseded Islamic legal rules. That judges were prepared to overlook procedure to facilitate trade is also evident in the Wād Nūn inheritance case.

The use of paper to manage economic transactions and generate institutional efficiency was a significant factor in the development of early modern economies, although historians and economists rarely appreciate this. Like the Maghribi traders documented in the Geniza archives, nineteenth-century trans-Saharan traders, who operated in a pre-modern environment, used their literacy skills to overcome the logistical challenges of coordinating caravans. Since it was not manufactured locally, they exerted considerable effort to acquire regular supplies of writing paper, which became more readily available and affordable in the nineteenth century with the growth of industrial paper manufacturing in Western Europe. The cheapening of paper in world history indeed had revolutionary implications, as Dykes Spicer noted in the early twentieth century. But the place of paper economies in institutional history, and in particular the correlation between the cheapening of paper and institutional development, is a subject that deserves to be studied empirically.

The invalidation of documents in Islamic law stands in paradoxical contrast to Islam’s emphasis on writing, or the faith in paper. This predicament should be considered alongside the legal constraints to economic growth identified by Kuran. It serves to explain why Islamic institutions prevented the growth of ‘paper companies,’ such as joint-stock companies, as well as the development of complex and large-scale enterprise in commerce, industry, and for obvious reasons, in the key sector of banking. It may also explain why Muslim societies, that originally developed sophisticated financial instruments, never adopted paper money except in regions under westernizing influences. Conversely, it may well be that the transition from oral testimony to paper proof marked a turning point in the institutional history of Western Europe. The role of public notaries as legal and financial intermediaries who guaranteed the certification of paperwork, from contracts to deeds, was probably critical to promoting the institutional development of economies based on impersonal exchange. Indeed, the absence of a certain class of legal service providers, such as notaries licensed by state institutions who dispensed with the cumbersome use of witnesses by way of their official power of attorney, may prove to be an important piece of the puzzle when explaining the constraints Islamic institutions posed on economic development.

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