

A Sea of Debt:

Histories of Commerce and Obligation in the Indian Ocean, c. 1850-1940

by

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Dissertation submitted in partial fulfillment of
the requirements for the degree of Doctor of Philosophy in the Department of
History in the Graduate School
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ABSTRACT

This dissertation is a legal history of debt and economic life in the Indian Ocean during the nineteenth and early-twentieth century. It draws on materials from Bahrain, Muscat, Bombay, Zanzibar and London to examine how members of an ocean-wide commercial society constructed relationships of economic mutualism with one another by mobilizing debt and credit. It further explores how they expressed their debt relationships through legal idioms, and how they mobilized commercial and legal instruments to adapt to the emergence of modern capitalism in the region.

At the same time, it looks at the concomitant development of an Indian Ocean-wide empire of law centered at Bombay, and explores how this Indian Ocean contractual culture encountered an Anglo-Indian legal regime that conceived of legal documents in a radically different way. By mobilizing written deeds in imaginative ways, and by strategically accessing British courts, Indian Ocean merchants were able to shape the contours of this growing legal regime.

Most broadly, the dissertation argues that law and courts became increasingly central to economic life in the Indian Ocean, and that economic actors in the region employed a wide range of different legal strategies in adapting to a changing world of commerce. In the Indian Ocean, as elsewhere, the histories of commerce and law were inextricably intertwined.

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INTRODUCTION

In late January 1866, on the island of Zanzibar, a freed slave named Musabbah signed a contract with the Indian merchant Kurji Ramdas, in which he agreed to deliver 750 lbs of ivory tusks from the African interior in two years. He would have been one of scores of individuals that year who had approached an Indian merchant for loans to finance a similar expedition into the interior, hoping to reap windfall profits from the booming ivory trade. While we lack an indication of how much compensation Musabbah received from Kurji, the deed they left behind tells us that within the same transaction, the freedman also sold Kurji a plot of land, redeemable upon his return.

More than 20 years later, in 1887, that plot of land became the subject of a heated dispute in a British Consular Court between the Sultan of Zanzibar and his Indian customs master, Jairam Sewji, for whom Kurji was acting as agent. Musabbah never returned, having perished during his expedition, and although Jairam had not bothered about the plot in the 20 years since Musabbah left for the interior, he claimed that the land was his by virtue of the earlier deed of sale. The Sultan's attorney countered with an argument that Jairam's firm mischaracterized the entire transaction – that every Arab or African who went into the interior for ivory executed a similar contingent deed, which simply helped finance his journey by guaranteeing his eventual return, rather than signifying an actual transfer of land. Moreover, the Sultan claimed that *he* had rightfully purchased the land from a different man, one to whom Msabbah had also sold it, though after the transaction with Kurji.

Far from representing a single, isolated incident, this dispute encapsulated much broader legal tensions on the late nineteenth-century Western Indian Ocean. At stake was not a single plot of land on a small island, but an entire culture of contract and property rights – one that underpinned a credit system that financed the emergence of a regional commercial arena. And at the time the Sultan and his customs master had made their way to the British consular court, the world of commerce and law in the Western Indian Ocean was in the midst of enormous economic and institutional transformations – transformations that nobody in that courtroom could have fully comprehended at the time.

Throughout the nineteenth and early twentieth century, the Western Indian Ocean experienced rapid commercial change. As dates, pearls, cloves and ivory made their way into new markets and fetched increasing prices, local and regional economies experienced unprecedented growth. The resulting booms in plantation agriculture and natural resource extraction were mainly financed by merchants from India like Jairam and Kurji, who moved in droves to different ports in the Indian Ocean and fanned out into the interiors of Arabia and East Africa. In loaning out money and goods to fuel different agricultural and commercial ventures and forwarding the returns onto their associates across the ocean, Indian merchants brokered between the rhythms and demands of local economic life and the more distant horizons of regional and global commerce.

The repeated acts of lending and borrowing, however, were not simply economic: they also had profound legal implications. In the absence of strong states that upheld property rights, members of this commercial society turned to one another, developing a kind of debt-based mutualism. By fashioning enduring bonds of debt and obligation – bonds that dictated the rhythms and vectors of economic life, linked planters to merchants, mariners to captains, and rulers to merchants – they were able to mitigate the risks associated with trade, and in the process tied together the distant shores of this vast oceanic world of commerce. As a technology – a means of doing – law furnished the institutions and instruments necessary to organize migration and settlement between Arabia, East Africa and South Asia, and to facilitate access to the capital necessary to fuel economic activity. As a discourse, jurisprudence furnished the intellectual underpinnings of this world, providing a philosophy to the nature and shape of the obligations that ran through it, and the institutions that governed it. And as modality of rule – a medium for the expression of multiple and overlapping sovereignties – law furnished an essential mechanism by which a range of actors negotiated, established and contested jurisdiction over communities and commerce.

But as Musabbah's case suggests, Indian Ocean actors did not shape this world alone. As this expansive world of Indian Ocean commerce encountered a burgeoning British Indian empire, its participants had to cope with the growing presence of British judges, Parsi lawyers, and Baluchi soldiers – all of whom brought with them their own notions of law and economic order. As Indian moneylenders increasingly turned to

British courts to resolve their disputes, judges and lawyers turned to Indian acts, codes and precedents to help guide them. In doing so, they effectively redefined South Arabia and East Africa as districts of Bombay, setting into motion a long process in which merchants and plantation owners clashed over the legal and epistemological foundations of debt and economic life, both in and outside of the courtroom.

This is not, then, the story of a trading community, nor the story of a merchant network. It is not a history of East Africa, or of South Arabia, the Persian Gulf or India. It is the story of all of those people and places – or, more accurately of the places in between them and the ties that bound them together. It is sometimes a story of credit, sometimes one of debt, and always one of law and obligation – of how economic actors fashioned commercial relationships that transcended the boundaries of ethnic communities and networks, sometimes enduring for just as long, or even longer.

More broadly, this is a legal history of economic life in a commercial arena that spanned three distinct areas: the Middle East, Africa, and South Asia. It explores how commercial actors from around the Indian Ocean adapted a regional economy characterized by credit and debt, obligation and law to the emergence of modern capitalism, and how that economy itself was transformed by broader institutional, legal and economic changes taking place in the region. As the narrative moves across the Indian Ocean, and across the enormous transformations that took place between the 1850s and 1940s, it traces the socio-legal fabric of economic life as trans-regional juridical and commercial actors experienced it, as Muslim jurists reflected on it, and as

imperial officials regulated it. The economic history of the Indian Ocean, I argue, was fundamentally constituted by law, in its many forms.

At the same time, this is the story of a single material object and the changing economic, social, political and legal world which it inhabited. Or, more precisely, it is the story of thousands, or tens of thousands, of the same material object – the written deed, the *waraqqa* (literally, “paper”). What dimensions of this world the *waraqas* reflected, what they meant to the actors who carried them around, how they gave shape to economic transactions and relationships, and how a changing world of commerce, law and institutions shaped and reshaped what they meant are all dimensions of this story. In a sense, then, this is a story about an ocean-wide contractual culture told through the history of a piece of paper that circulated through it.

This work thus advocates a re-conceptualization of the Indian Ocean – to think of the region not simply as a trade basin structured by natural phenomena like monsoon winds, nor as an commercial arena tied together by merchant networks, as many historians have, but as a commercial world indelibly shaped by law and mutual obligation. The pages that follow show how Indian Ocean economic and juridical actors forged together a shared commercio-legal arena during the region’s integration into the emerging modern world economy, and how the intertwined forces of commerce and law shaped the history of this oceanic basin. At the nexus of all of these themes lies the idea of obligation, which bridges together legal and economic history and which is particularly useful for thinking about economic life in the Indian Ocean. Instruments like

the *waraqqa* allow me to explore the multidimensional world of commerce and law in the region, exploring both the emergence of new institutional arrangements for economic activity during the emergence of modern capitalism in the Indian Ocean and how economic actors shaped them.

Imagining the Indian Ocean: Nature and Networks

The notion that law structured economic life in the Indian Ocean has yet to firmly take root in the historiography on the region. The oceanic turn in historiography is a relatively new one, inspired largely by the work of Fernand Braudel on the early-modern Mediterranean.¹ Moving away from the nation-state and continent-centered paradigms that had characterized most historical scholarship before him, Braudel instead chose to focus his work on an economic and political world that cohered around a sea. To bring analytic clarity to his broad geographic sweep, Braudel, true to the *Annales* school of history to which he belonged, chose to focus on the deep structures around which Mediterranean trade coalesced. In his view, historical time consisted of three levels: the very long, practically immobile environmental time (the *longue durée*); the medium time of economies, societies, and cultures; and the short time of discrete events. By moving between the three levels of historical time, he could begin to paint, in broad strokes, a Mediterranean history.

¹ Fernand Braudel, *The Mediterranean and the Mediterranean World in the Age of Philip II* (Berkeley, CA: University of California Press, 1995), especially Volume 1

The multi-level approach that Braudel advocated in his study made a lasting impression on those who pioneered the field of Indian Ocean history. Those whom he inspired looked to geographical structures and their impact on commercial activity to bring together the ocean's far-flung shores into a coherent unit of analysis. K.N. Chaudhuri's pioneering study of Indian Ocean history bears the clear imprint of the Braudelian geographical *longue durée*. Chaudhuri begins with a discussion of the region's monsoon winds and climate zones, layering commercial activities and political changes on top of an established natural structure.² Like Braudel, Chaudhuri saw geographic forces as the primary shapers of commerce, directing the rhythm and direction of trade. The legions of Indian Ocean historians who came after him followed suit.³

Of course, one cannot deny the importance of the seasonal monsoons in shaping commercial exchange in the region. However, the emphasis on monsoons and other geographic phenomena tends to naturalize trade in the Indian Ocean. Indeed, the

² K.N. Chaudhuri, *Trade and Civilization in the Indian Ocean: an Economic History from the Rise of Islam to 1750* (Cambridge, UK: Cambridge University Press, 1985)

³ See also M.N. Pearson, *The Indian Ocean* (London: Routledge, 2003); Kenneth McPherson, *The Indian Ocean: A History of People and the Sea* (New Delhi: Oxford University Press, 1998); Roxani Margariti, *Aden and the Indian Ocean Trade: 150 Years in the Life of a Medieval Arabian Port* (Chapel Hill, NC: University of North Carolina Press, 2005); Erik Gilbert, *Dhows and the Colonial Economy of Zanzibar, 1860-1970* (London: James Currey, 2004). Perhaps the only exception to this trend was Ashin Das Gupta, whose articles on the Indian Ocean trade focused more on commerce and politics, although they did often include discussions of natural phenomena. See also his collected essays in *The World of the Indian Ocean Merchant, 1500-1800: Collected Essays of Ashin Das Gupta* (New Delhi: Oxford University Press, 2001). In a recent review essay, Marcus Vink traces out the influence that the Braudelian turn had on Indian Ocean historiography, listing scholars who had followed Chaudhuri's lead; see "Indian Ocean Studies and the 'New Thalassology'," *Journal of Global History*, Vol. 2 (2007) pp. 41-62

Braudelian paradigm suggests that if security and weather conditions permitted, goods could easily move across the ocean and find their way to distant markets – that goods could move frictionlessly across the Indian Ocean, disrupted only by occasional outbreaks of war or banditry. This view, prevalent (if only implicit) in much of the scholarship on the region, has tended to romanticize the history of trade in the region, or at least ignore many of its institutional underpinnings.

Trade in the Indian Ocean, as elsewhere in the world, was a risky affair. Goods never simply moved from one port city to another; they often had to pass through inhospitable areas or avaricious hands. Merchants in the Indian Ocean, much like merchants all over the world, had to contend with the difficulties they posed to one another as much as they did those posed by different political actors. Even in times of relative political security, merchants would have had to overcome the basic problems of cooperation and coordination attendant with any form of commercial exchange.

These challenges proved particularly significant with regard to debtor-creditor relations, which require a basic framework for economic cooperation. In the Indian Ocean commercial arena of the nineteenth and twentieth century, debt emerged as a core component of everyday commerce. Like merchants in commercial societies around the world, economic actors from around the nineteenth-century Indian Ocean relied heavily on access to credit, in the form of cash or goods, to finance commercial ventures or fuel everyday consumption. The twin pillars of debt and credit, then, fueled almost every

aspect of the Indian Ocean commercial system. The social, economic and legal worlds that made credit relations possible thus demand our close attention.

The most distinguished historians of Indian Ocean societies sounded the call to study the financial underpinnings of economic life in the region decades ago. Chaudhuri admitted in his pioneering work that “inter-regional or long-distance trade cannot by definition function without capital, money or prices,” adding that “the starting-point at such an analysis is an examination of the role of merchants, *commercial and legal institutions*, monetary arrangements, and the method of production itself” (emphasis mine).⁴ In one of the first detailed examinations of slavery in East Africa, Frederick Cooper outlined the basic structure of plantation finance and pointed to the predominance of Indian merchants in that sector. Cooper, however, stops short of a full treatment of the subject, stating that it “must await further study of the Indian Ocean commercial system and the Indian communities.”⁵ Chaudhuri’s treatment of the subject eight years later, while impressive in its temporal and geographical scope, still leaves the reader with an unclear picture of finance in the region and a weak grasp of the specificities of time and place.

Despite its acknowledged importance to the functioning of any commercial arena, remarkably few historians of the Indian Ocean have examined debt or finance, or the institutions that gave them shape. For the field of economic history writ large, finance has

⁴ Chaudhuri, *Trade and Civilization in the Indian Ocean*, p. 203, 207

⁵ Frederick Cooper, *Plantation Slavery on the East Coast of Africa* (New Haven, CT: Yale University Press, 1977) pp. 143

been an area of ongoing concern; histories of trade in the Atlantic, Europe, Africa and in the Americas (which I revisit below) have all examined in exacting detail the mechanisms by which merchants financed economic activity. By contrast, even the most sophisticated histories of commercial society in the Indian Ocean have either completely skirted the question of debt or only nodded in its general direction. They have acknowledged its importance in structuring social and commercial life but have refrained from tackling it in any detail.⁶

During the 1990s and 2000s, however, more focused and analytical studies of finance in the region have emerged. Of these, one must single out Rajat Kanta Ray's study for its breadth and clarity. Drawing on case studies from the Persian Gulf, East Africa and Southeast Asia, Ray makes a convincing case for the emergence of a "bazaar economy" during the high imperialism of the nineteenth century – a locus of trade finance beyond the reach of financial institutions such as banks that Indian and Chinese merchants were willing to service.⁷ Other scholars have since built on Ray's work, either by bringing his insights to areas he had not considered or by extending his timeframe by a

⁶ See also Stephen J. Rockel, *Carriers of Culture: Labor on the Road in Nineteenth-Century East Africa* (London: James Currey, 2006) pp. 211-228; Jonathon Glassman, *Feasts and Riot: Revelry, Rebellion and Popular Consciousness on the Swahili Coast, 1856-1888* (London: James Currey, 1995) pp. 29-78; Hala Fattah, *The Politics of Regional Trade in Iraq, Arabia and the Gulf, 1745-1900* (Albany, NY: SUNY Press, 1997) pp. 76-77; Thabit Abdullah, *Merchants, Mamluks and Murder: the Political Economy of Trade in Eighteenth-Century Basra* (Albany, NY: SUNY Press, 2001) pp. 88-91

⁷ Rajat Kanta Ray, "Asian Capital in the Age of European Domination: The Rise of the Bazaar, 1800-1914," *Modern Asian Studies*, Vol. 29, No. 3 (1995) pp. 449-554

couple of decades.⁸ Together, these studies suggest that a clearer understanding of finance illuminates a much more complex and much richer system of exchange – one characterized by friction, social tensions, competing legal orders and economic and political transformations.

However, for the most part, this scholarship has viewed finance as taking place in a legal vacuum. As with studies that examined the broader economic history of the Indian Ocean, money, like goods, simply moved through financial channels with little concern for the rights and liabilities of the parties to the transaction. In a sense, prevailing scholarship presupposes that people loaned each other money with little regard for whether it would be repaid. Those who acknowledge the problem of cooperation within trading communities often explained it away with vague references to the existence of an inherent trust between members of the same ethnic or religious community.⁹ Thus, Patricia Risso argues that in the Indian Ocean “Muslims did establish fluctuating, often interlinking networks,” which “rested partly on certain widely held Islamic values” and a

⁸ See also Goolam Vahed, “Passengers, Partnerships and Promissory Notes: Gujarati Traders in Colonial Natal, 1870-1920,” *International Journal of African Historical Studies*, Vol. 38, No. 3 (2005) pp. 449-479; Vishnu Padayachee and Robert Morrell, “Indian Merchants and *Dukawallahs* in the Natal Economy, c. 1875–1914,” *Journal of Southern African Studies*, Vol. 17, No. 1 (March, 1991) pp. 71-102; Sugata Bose, *A Hundred Horizons: the Indian Ocean in the Age of Global Empire* (Cambridge, MA: Harvard University Press, 2005) pp. 72-121

⁹ See also Sebouh Aslanian, *From the Indian Ocean to the Mediterranean: the Global Trade Networks of Armenian Merchants from New Julfa* (Berkeley, CA: University of California Press, 2011) pp. 167-168 for a good review of these assumptions among historians of early-modern Armenian networks.

common understanding of Islamic commercial laws.¹⁰ However, she stops short of addressing what these widely-held values were, what commercial laws mattered, and how Muslims might have formed a common understanding of them.

Even Philip Curtin, who suggested that “trade diasporas” might be a useful lens through which one could understand trade in world history, assumed away the existence of trust between members of the same community. While his case studies suggest the necessity of an institutional framework for more complex forms of exchange, he never addresses the issue explicitly, preferring instead to outline a general description of trade diasporas and situate the then-untold history of cross-cultural trade within the narrative framework of more familiar political and economic histories.¹¹ Curtin’s contemporary Abner Cohen, who first coined the term “trade diaspora,” had much more to say on coordination, moral community and judicial organization within trade diasporas. But among historians Curtin’s work, and its attendant omissions, have proved far more influential.¹²

Only in the last decade or so have economic historians of the Indian Ocean have begun to re-examine the social and legal foundations of commercial and financial activity in the region through the prism of the merchant network. Drawing on new trends in

¹⁰ Patricia Risso, *Merchants and Faith: Muslim Commerce and Culture in the Indian Ocean* (Boulder, CO: Westview Press, 1995) pp. 104-106

¹¹ Philip D. Curtin, *Cross-Cultural Trade in World History* (New York: Cambridge University Press, 1984)

¹² Abner Cohen, “Cultural Strategies in the Organization of Trading Diasporas,” in Claude Messiloux, ed., *The Development of Indigenous Trade and Markets in West Africa* (Oxford: Oxford University Press, 1971) p. 267

research in economics and sociology, Indian Ocean historians began moving away from the Braudelian conception of oceanic trade as being structured by natural phenomena and towards the vision of a commercial arena populated by merchant networks whose members and activities bound together the ocean's distant shores. Instead of monsoons and economic complementarities, works in history, anthropology and even geography all have begun to emphasize the human dimensions and mechanisms of trans-regional exchange in the Indian Ocean, giving the concept of cross-cultural exchange more shape and analytic rigor.¹³

This trend was by no means unique to Indian Ocean history. Rather, it reflected changing interests in the field of economic history more broadly over the past two decades or so. Economic historians, tired of the Marxist and/or doggedly-quantitative approaches that characterized the field during the 1970s and 1980s, and equally weary of the cultural turn that had characterized the entire discipline of history during the 1990s, began to rethink their approaches to economic life. Inspired by a growing body of scholarship in New Institutional Economics and economic sociology, historians returned to their subjects with renewed vigor, prompting a renaissance of sorts in economic and

¹³ For recent examples, see also Engseng Ho, *The Graves of Tarim: Genealogy and Mobility Across the Indian Ocean* (Berkeley, CA: University of California Press, 2006); Aslanian, *From the Indian Ocean to the Mediterranean*; Sugata Bose, *A Hundred Horizons*; Himanshu Prabha Ray and Edward Alpers (eds.) *Cross-Currents and Community Networks: the History of the Indian Ocean World* (Oxford: Oxford University Press, 2007); Pier Larson, *Ocean of Letters: Language and Creolization in an Indian Ocean Diaspora* (New York: Cambridge University Press, 2009); Thomas F. McDow, "Arabs and Africans: Commerce and Kinship from Oman to the East African Interior," (Unpublished Ph.D. Dissertation, Yale University, 2008); Julia Verne, "Living Translocality: Culture and Economy in Contemporary Swahili Trading Connections," (Unpublished Ph.D. Dissertation, University of Bayreuth, 2010)

business history in which they began viewing economic activity as being embedded within, and indelibly shaped by, social relationships and the normative frameworks that underpin them.¹⁴

Among historians working on the regions surrounding the Indian Ocean, Claude Markovits's study of global Indian mercantile networks first broached the question of the legal dynamics of the network.¹⁵ Drawing on insights from the work of Douglass North and New Institutional Economics, Markovits coupled an examination of the changing political and economic world that Indian merchants inhabited with a dissection of the internal workings of the network itself. Rather than assuming away the question of coordination within the network, he explored the patterns of business organization and the mutually-dependent circulations of men, money, information and credit among merchants to see how Indian merchants structured exchange with one another, and how their mercantile network reproduced itself across space and time.

Sebouh Aslanian's work on Armenian merchant networks in the Indian Ocean and the Mediterranean pushed the analysis even further, reflecting deeply on questions of

¹⁴ Key works in this movement include (but are by no means limited to): Douglass C. North, *Structure and Change in Economic History* (New York: W.W. Norton, 1982) and *Institutions, Institutional Change and Economic Performance* (New York: Cambridge University Press, 1990); Alfred D. Chandler, *The Visible Hand: the Managerial Revolution in American Business* (Cambridge, MA: Belknap Press, 1979); Naomi R. Lamoreaux, Daniel G. Raff, and Peter Temin, "Beyond Markets and Hierarchies: Towards a New Synthesis of American Business History," *American Historical Review*, Vol. 108, No. 2 (April, 2003) pp. 404-433; Avner Greif, "Contract Enforceability and Economic Institutions in Early Trade: the Maghribi Traders' Coalition," *American Economic Review*, Vol. 83, No. 3 (1993) pp. 525-548; Mark Granovetter, "Economic Action and Social Structure: the Problem of Embeddedness," *American Journal of Sociology*, Vol. 91 (1985) pp. 481-510

¹⁵ Claude Markovits, *The Global World of Indian Merchants, 1750-1947: Traders of Sind from Bukhara to Panama* (New York: Cambridge University Press, 2000)

reputation and trust in commercial activity.¹⁶ Aslanian's work probes how a far-flung merchant network like that of the Armenians managed to endure despite the distances and problems of coordination between its members. The concept of a trade diaspora as Curtin and others have used it, he argues, does not help scholars think through these questions, and has been more as a descriptive term than as anything else.¹⁷ Drawing on Markovits's work, Aslanian offers what he considers to be a more analytically-robust concept: the "circulation society," a network through which not only people and goods move, but also social and economic information and credit. In a circulation society, he claims, information about other members' behavior, and the reputational implications it had, serves an important legal function: it polices members' behavior within the network and weeds out those who merchants deemed untrustworthy.¹⁸

Part of what enables Aslanian to engage more deeply with the internal dynamics of Armenian merchant networks is his rich source base: a treasure-trove of merchant letters and contracts, written in the Julfan Armenian dialect. Through indigenous business correspondence, Aslanian is able to explore more deeply questions of trust and reputation (or, more broadly, private-order mechanisms of contractual enforcement) within a non-European network. For Aslanian as well as others wishing to explore the private, internal workings of merchant networks from around the world, letters have emerged as vital

¹⁶ See especially Sebouh Aslanian, *From the Indian Ocean to the Mediterranean*, which combines many of Aslanian's work published in earlier articles. Aslanian draws heavily from the theoretical insights of Avner Grief and economic historian Francesca Trivellato, referencing both scholars throughout the text.

¹⁷ Aslanian, *From the Indian Ocean to the Mediterranean*, pp. 6-7

¹⁸ *Ibid.*, especially Chapters 5 and 7

sources of information. These devices of communication allow historians to see how merchants transmitted vital commercial information to their trading partners, but also give them a window into how that information was embedded in social ties, normative devices, and cultural commitments, and how merchants drew on affective idioms to reinforce cooperation within their networks.¹⁹

The relationships that merchants crafted with one another intermixed the social and commercial with the legal. In all of the aforementioned works, the institution of the *commenda* partnership emerges as a key organizing principle for transactions *within* the network. An arrangement that combined the capital of a merchant-financier with the labor of a working partner, with mutually-agreed on profit-sharing schemes, the *commenda* (or as it is called in the Islamic world, the *muḍāraba*) has attained an almost-paradigmatic status among economic historians working on merchant networks in the Mediterranean and the Indian Ocean. S.D. Goitien initially pointed out the frequency with which Jewish merchants utilized the institution in the medieval Mediterranean.²⁰

¹⁹ For a discussion of merchants' letters and business cooperation, see Francesca Trivellato, *The Familiarity of Strangers: The Sephardic Diaspora, Livorno, and Cross-Cultural Trade in the Early Modern Period* (New Haven: Yale University Press, 2009) pp. 153-176. Those who make use of merchants' letters and partnership contracts to explore these questions, particularly in the Indian Ocean and Mediterranean, often draw on S.D. Goitien, whose work on Jewish merchant letters in the Cairo Geniza was among the first historical studies to point to issues of trust and reputation in intra-network commerce. S.D. Goitein, *A Mediterranean Society: the Jewish Communities of the World as Portrayed in the Documents of the Cairo Geniza, Volume 1: Economic Foundations* (Berkeley, CA: University of California Press, 1967) pp. 164-186. A number of scholars have recently built upon the insights in Goitein's work. See, most recently, Jessica Goldberg, *Doing Business in the Medieval Mediterranean: the Cairo Geniza Merchants, Economic Institutions, and Geographies of Trade in the Eleventh Century* (New York: Cambridge University Press, 2012)

²⁰ Goitien, *A Mediterranean Society*, pp. 171-180

Aslanian goes so far as to claim that “the *commenda* [in Julfan Armenian, the *muzarba*] was, in fact, the single most important cause of the dramatic expansion of Julfan [Armenian] commerce in the seventeenth and eighteenth centuries.”²¹ Even Markovits, whose work explores merchants operating under an entirely different commercio-legal episteme, describes the *shah-gumastha* arrangement that Sindhi merchants utilized as being “ultimately derived from the system known in Arabic as *mudaraba*... [reaching] Sind most probably through Persia.”²²

But this literature is perhaps too narrowly-focused. As astute as these new Indian Ocean economic histories have been in their analysis of the internal legal dynamics of merchant networks, they have generally ignored the pivotal question of how these internal dynamics intersected with an external institutional world – courts, tribunals and the state. Aslanian and Markovits’s (but also others) paint a vivid picture of internally-regulated networks – ones which were constantly working towards a state of commercio-legal equilibrium, and which only needed to turn to formal legal institutions like courts in the most extreme cases – in Markovits’s case, death. Even as these historians acknowledge the centrality of a legal institution like the *commenda* for structuring transactions within the network, they assume that it functioned smoothly enough that there was little need for merchants to go to court.²³ Only Goitien suggests that merchants

²¹ Aslanian, *From the Indian Ocean*, p. 122

²² Markovits, *The Global World of Indian Merchants*, p. 157

²³ Aslanian suggests that the high costs of going to court kept Armenian merchants from litigating with one another, and that no court could have effectively dealt with the long-distance transactions that they engaged

frequently litigated over *commenda* and debt agreements in a number of different institutional settings – perhaps unsurprising when considering the number of court records he had to contend with.²⁴

When these scholars do address the question of how private-order mechanisms might have fared within a formal legal landscape, they tend to highlight what Aslanian calls “semiformal” institutions – tribunals headed by members of the community that meted out justice according to a blend of social and legal considerations. Aslanian argues that institutions like the church, the Assembly of Merchants and arbitration boards supported the reputation mechanisms that policed behavior within the network by acting as information clearing houses. He suggests that these institutions might have also played a judicial function, but contends that there is too little material to make any concrete claims regarding their juridical work.²⁵ Markovits, when he addresses courts at all, shies away from making claims about how they might have shaped the legal framework of transactions within the network. The only formal institutions he does address are

in. See Aslanian, *From the Indian Ocean to the Mediterranean*, p. 179. These considerations, however, seem to have not kept merchants in other contexts from using courts, as the dense literature on European, American or Chinese legal history amply illustrates.

²⁴ Goitien, *A Mediterranean Society*, pp. 251-252, 259-260

²⁵ Aslanian, *From the Indian Ocean to the Mediterranean*, pp. 175-188

panchayats – merchant tribunals that seem to have functioned in an even more limited capacity than those that Aslanian highlights.²⁶

By emphasizing merchants’ proclivity for self-regulation, even in a formal institutional setting, these authors ultimately do little to move beyond a narrow picture of self-contained mercantile communities in a static institutional world, and risk flattening complex institutional experiences to highlight an internal equilibrium. What, then, of institutions and judicial proceedings that merchants *did not* direct, and what of the complex institutional worlds that these merchants inhabited? How might an examination of the ways that merchants engaged with a wider institutional world help us recover what we lose in an insular, network-based approach to law and commerce? There is plenty to suggest that Indian Ocean merchants did in fact interact with a broad range of legal institutions. Aslanian himself admits that Armenian merchants sometimes appealed to external juridical institutions like the Mayor’s Court (although he devotes less than one page to discussing it) and Markovits, who bases his study on records from British courts, suggests only very briefly that “in the British period written contracts became the rule were often used as evidence in court cases.”²⁷ Merchants thus clearly did make use of state or imperial legal institutions, but we are left with an unclear picture of how those external institutions might have shaped the legal framework of economic activity. How

²⁶ Markovits, *The Global World of Indian Merchants*, pp. 256-257. That Markovits chooses not to address the place of British courts within this commercial world is all the more surprising when considering that he draws most of his observations about Indian commerce from British court records.

²⁷ *Ibid.* p. 158; Aslanian, *From the Indian Ocean to the Mediterranean*, pp. 197-199

did the more informal mechanisms of reputation and social sanction fare in a world that increasingly privileged courts and contracts, and how did merchants adapt to this changing world? These were the questions that I hoped I could eventually find answers to as I set out to research the project here.

Tracing Obligation: a Research Anecdote

When I first set out to research debt, law and commercial networks in the Indian Ocean, I searched for precisely the sort of indigenous material that economic historians have been relying on over the past decade or so in writing their histories. I wanted to use materials like business correspondence to trace out the informal ties that bound together merchants in different Indian Ocean ports, and to combine them with court cases to see how personal relationships intersected with the growing number of British courts around the region during the late-nineteenth and early-twentieth century. Drawing on the work of economic historians of the region, I set out on a year-long journey around the Indian Ocean to look for local materials that would suggest how merchants constructed enduring relationships with one another. I hoped to find letters and partnership contracts similar to those that have animated the most recent economic histories of the Indian Ocean.

My first stop on the itinerary was Bahrain – a place with no public archive to speak of, but that nonetheless sustains a brisk private trade in historical documents. I had struck up a friendship with Ali Akbar Bushihri, a Bahraini historian and avid collector of documents, and expected that his collection would contain the types of letters for which I was looking. After settling into my over-priced apartment in Juffair, a neighborhood in

Manama that is also home to the U.S. Navy, I went on what would be the first of many visits to Ali's house, where he keeps his impressive collection of Arabic, Persian and Gujarati documents. He asked me what I was looking for; I replied that I wanted letters and contracts, but that I would be happy to look at any of the Arabic-language material he had. Ali diligently pulled out the first of what would be many dusty cardboard boxes from behind his desk and carefully removed a pile of yellowed documents, some of which had been placed in a plastic cover while others remained in fragments. As we began going through the documents together, I realized that most were not letters at all – they were acknowledgements of debt (called *waraqas*) some of which were in a beautiful Arabic script while others were little more than hasty scribbles. “Never mind,” I thought to myself. “There are many more boxes, and the letters will soon emerge.”

They never did – well, not *never*, but far less than I had expected. Box after box turned up *waraqas* after *waraqas*, written in Arabic, Persian, Gujarati, and everything in between. Over the course of seven weeks, I went through eight or nine large cardboard boxes and catalogued nearly 500 *waraqas* of varying lengths and purposes. Ali's collection did include letters, but those that he had were relatively recent, dating mostly from the early-twentieth century, and most often offered only friendly salutations or political commentary (which historian James Onley has amply covered) rather than

discussions of business.²⁸ The bulk of the material related to commercial affairs that Ali had in his collection, it seemed, were in the form of *waraqas*.

Over time, I grew frustrated. Here I was in Bahrain during Ramadan, hemorrhaging grant money, and I had nothing on which I could build my dissertation. Although I continued to photograph and catalog as much of the material as I could, I was not able to fight off a growing feeling of despair. I had told my committee and my sponsors that I was going to be using merchants' letters and contracts, and now I had none to use. The weeks went by, and I had amassed a sizeable collection of debt acknowledgments, but no letters to speak of.

As I was getting ready to leave Bahrain for Zanzibar, where I was going to spend time doing research in the archives, an email exchange that I had with a colleague brought up the possibility of going to Muscat to look through materials belonging to the famous Gujarati merchant Ratansi Purshottam. Although my Gujarati was weak at best, I could read enough of it to know what I was looking at in the most general terms, and I felt that I had enough *kem chos*²⁹ in my back pocket to strike up a rapport with Vimal Purecha, Ratansi's great-grandson and caretaker of the collection. As it turns out, none of it was necessary; Vimal and his son Dhruv were among the most pleasant people I met during my research travels, and they eagerly shared their collection. Besides, Vimal said,

²⁸ James Onley, *The Arabian Frontier of the British Raj: Merchants, Rulers and the British in the Nineteenth-Century Gulf* (Oxford, UK: Oxford University Press, 2007)

²⁹ A Gujarati greeting, which translates into "How are you?"

many of the documents were in Arabic and he was eager to have someone take a look at them for him.

A few *idlis* and *dosas* later, I was brought to the Purecha residence, a lovely apartment overlooking the bay in Muttrah. “At last,” I thought; “here I’ll find the documents I’ve been searching for – and belonging to a Gujarati merchant, no less!” I was wrong again. Vimal’s collection included even fewer letters and contracts than Ali’s; the bulk of the Arabic material was comprised of *waraqas* that were similar, if not identical, to those I had spent weeks looking at in Bahrain. This time, however, I was less disappointed. After all, if there were so many of these contracts around, surely there was *something* I could say about them – perhaps not about the *waraqas* themselves, but the commercial worlds they reflected. My conversations with Vimal about Ratansi’s activities, and how these documents fit into them, only confirmed that I might have something to write about after all.

I left Muscat for Zanzibar with a sense of direction. In Muscat and Bahrain, I had amassed a sizeable collection of local documents produced over a century of Indian Ocean trade – ones that traced out the contours of a commercial world characterized by debt – and I was now heading to a research site with a proper archive, where I could be assured that I would find *something* (though I still wasn’t certain precisely what that something might be).

Shortly after reaching Zanzibar, I knew that I was onto something. The Zanzibar National Archives were teeming with precisely the same kinds of *waraqas* that I had seen

in Bahrain and Muscat, and often followed the exact format. The Zanzibar material included, I had now seen thousands of these *waraqas* around the Indian Ocean. More importantly, these *waraqas* appeared in a range of different institutional settings, including local Islamic tribunals and British Consular registries and courts, suggesting the different social and legal lives that these documents might have had. With this in mind, I returned to the material that I had collected in Bahrain and Muscat with a fresh perspective. Rather than seeing them as separate windows into a world of debt and commerce, I began to see them as commercial and legal artifacts in their own right – ones that were embedded within a shifting economic, social, political, and juridical world. Further material from the Maharashtra State Archives in Mumbai and the British Library in London fleshed out the contours of this shifting world, shedding light onto the imperial maneuverings and debates that shaped it during the late-nineteenth and early-twentieth century.

By the end of my twelve months of research, I recognized that my initial conception of the Indian Ocean as a commercial arena tied together by merchant networks and trust had significant conceptual limitations. Beyond the relatively closed merchant networks and partnerships within circles of Armenians, Indians and Cairene Jews that scholars have mapped out over the past few decades, there existed an enduring world of commercial association and law. This was a relatively more open world – one in which Gujaratis transacted with Muscat Arabs, Hadhrami Arabs with Swahili merchants, Persian merchants with Bahraini dhow captains, and much, much more. In this world, a

merchant trusted not only in his contracting partner, but in the legal system as a whole, and in the power of debt and the obligations it generated. And this legal system was not a singular entity: it involved lots of different institutions and legal cultures, and an equal number of contingencies and possibilities.

In a sense, then, the sort of history that I set out to write reflected a return to breadth of vision characteristic of the older, pre-network literature on the economic history of the Indian Ocean, but one informed by the socio-legal inclinations of the literature on networks in the region that emerged during the past decade. The ubiquity of the *waraqqa* around the ocean's littoral confirmed the omnipresence of debt in economic life around the region, but also suggested the existence of a shared system of law – or at least shared idioms of law and obligation that would have existed alongside the more informal pressures that merchants might have mobilized in letters that I could not find. And although my observations were limited to processes taking place in the nineteenth century, its implications were much broader, raising questions about how scholars have approached the economic history of the region more broadly. The Indian Ocean that I begin to see around me was one whose far-flung shores were bound together not only by monsoons and commercial networks, but also by law, in the broadest sense of the term.

Imagining an Ocean of Law

Arriving at the broader historiographical intervention was one thing; crafting a project that would execute the vision I had in mind was an altogether different matter. What would the sort of history I wanted to write look like, and how would I be able to marshal

the materials I had collected towards such a project? It was no simple task. Writing an economic history of the Indian Ocean that took the law seriously required an engagement not only with the historiography on commerce in the Indian Ocean, but also with broader debates in legal history – with specific reference to Islamic legal history.

To write a legal history of economic life in the Indian Ocean, I had to first contend with the subject of “the law” itself, and where conceptions of law might emerge from in a commercial arena that included as many competing polities as it did commercial and juridical actors. To do this, I had to think more broadly about the law, what the different sources of commercial order could be, and how actors might inhabit multiple legal realms at once. Thus, a short conceptual detour is in order so that we can situate this distinctive commercial culture within broader debates surrounding the nature of law and order, in Islamic legal historiography and beyond. In doing so, we can shed light on the multiple forms of law and law-making in Indian Ocean commerce and begin to appreciate the texture of legal and economic life in the region.

The notion that legal order emanates from the state and its machinery has enjoyed a great deal of currency amongst legal studies scholars. Eminent legal thinkers such as Max Weber, Michael Taylor, and Neil Fligstein (not to mention the scores of others who theorized the state and the law for centuries before them) have propounded the idea of legal centralism – that the state is the supreme instrument of social control, and that in the

absence of the enforcement regime of the state there cannot be any economic order.³⁰ In this scheme, formal law and state institutions occupy the center of the narrative, largely because of the state's capacity to enforce the law.

However, the state is not always useful as an analytic category, particularly when it comes to matters of juridical authority – and especially in the Indian Ocean, where regional “states,” insofar as one can speak of their existence at all, often lacked the bureaucratic infrastructure necessary for juridical coordination. For when one looks closely, the category of the state often begins to break down into largely autonomous components. This is just as true of other places and times: studies of early-modern Europe and modern Saudi Arabia alike have amply demonstrated that any state's ability to exercise juridical authority has been dependent on its ability to coordinate with (or, in more extreme cases, simply reach) its local legal agents.³¹ In these cases, law often emerged from these local agents themselves – be they Justices of the Peace, ecclesiastical authorities, provincial governors, or heads of ministries – than from the top of the government downwards.

The historiography on Islamic law, too, has long recognized the decentralized nature of juridical decision-making in the Islamic world. Instead, historians of Islamic

³⁰ See also Max Rheinstein (ed.) *Max Weber on Law in Economy and Society* (Cambridge, MA: Harvard University Press, 1954); Michael Taylor, *Anarchy and Cooperation* (New York: Wiley, 1976) pp. 4-5; Neil Fligstein, “Markets as Politics: a Political-Cultural Approach to Market Institutions,” *American Sociological Review*, Vol. 61 (1996) pp. 656-673

³¹ See also Christopher W. Brooks, *Law, Politics and Society in Early Modern England* (Cambridge: Cambridge University Press, 2008); Steffen Hertog, *Princes, Brokers and Bureaucrats: Oil and the State in Saudi Arabia* (Ithaca, NY: Cornell University Press, 2011)

law and *society* (to be distinguished from the overwhelmingly doctrinal focus of histories of Islamic law) locate juridical authority in the offices of *qāḍī* (the judge in an Islamic court) or the *mufti* (a jurist who issues legal opinions on workaday matters) – officials recognized or directly appointed by the state, but who often acted autonomously.³² While historians of law and society in the Islamic world resist ascribing all legal authority to any overarching state, formal legal institutions nevertheless loom large in their understanding of the workings of the rule of law.³³

Scholars have long recognized, however, that there have existed effective regimes of social order that defined themselves largely outside of the purview of formal legal institutions altogether. Studies abound of how different mercantile groups, ethnic communities, and even neighborhoods establish regimes of social control and enforcement that have little, if anything, to do with courts, laws and state institutions. Some of the best examples of works in this vein have come from the field of economic

³² See also David S. Powers, *Law, Society, and Culture in the Maghrib, 1300-1500* (New York: Cambridge University Press, 2002); Martha Mundy and Richard Sausmarez Smith, *Governing Property, Making the Modern State: Law, Administration and Production in Ottoman Syria* (London: I.B. Tauris, 2007); Najwa al-Qattan, "Litigants and Neighbors: the Communal Topography of Ottoman Damascus," *Comparative Studies in Society and History*, Vol. 44, No. 3 (2002) pp. 511-533; and Zouheir Ghazzal, *The Grammars of Adjudication: the Economics of Judicial Decision-Making in fin-de-siècle Ottoman Beirut and Damascus* (Beirut: IFPO, 2007); Bernard Haykel, *Revival and Reform in Islam: the Legacy of Muhammad al-Shawkani* (New York: Cambridge University Press, 2003). More recently, Kristen Stilt has illustrated the degree to which juridical authority was in the hands of the *muhtasib*, or market inspector – a state-appointed official, but one whose actions reflected his own concerns. See Kristen Stilt, *Islamic Law in Action: Authority, Discretion and Everyday Experiences in Mamluk Egypt* (Oxford, UK: Oxford University Press, 2012)

³³ See Wael Hallaq, *The Origins and Evolution of Islamic Law* (New York: Cambridge University Press, 2005) in which he emphasizes that while Islamic law as a doctrine developed entirely outside of the body politic, its articulation as a system cannot be understood outside of a narrative of the development of the Islamic state bureaucracy.

sociology; studies by Mark Granovetter, Brian Uzzi and others have shown how social and organizational networks, and the ties generated therein, serve the purposes of enforcing order through more private-order reputational mechanisms as effectively as any state institution.³⁴ These ideas gained currency amongst economists, law-and-society scholars and legal anthropologists, all of whom have made important contributions to the study of “informal” or “private-order” regimes of control in a wide range of settings.³⁵

Notions of private order regimes have only just begun to permeate the literature on Islamic legal history. Although Abraham Udovitch raised the question of extra-legal contractual practices more than 25 years ago, only recently have scholars like Timur Kuran, whose work assesses the role of Islamic legal institutions in shaping the economic history of the Middle East, and Ghislaine Lydon, who examines reputation and order in trans-Saharan trade, begun to explore private order regimes more closely.³⁶ Lydon in particular argues that in the absence of a state, “Islamic institutions [such as *qāḍi* courts and *muftis*] provided a semblance of political, social and economic order.” At the same

³⁴ See also Granovetter, “Economic Action and Social Structure”; Brian Uzzi “Social Structure and Competition in Interfirm Networks: The Paradox of Embeddedness,” *Administrative Science Quarterly*, Vol. 42 (March 1997) pp. 35-67

³⁵ See also Avner Grief, *Institutions and the Path to the Modern Economy: Lessons from Medieval Trade* (New York: Cambridge University Press, 2005); Robert C. Ellickson, *Order Without Law: How Neighbors Settle Disputes* (Cambridge, MA: Harvard University Press, 1996); Lawrence Rosen, *Law as Culture: an Invitation* (Princeton, NJ: Princeton University Press, 2008); Lisa Bernstein, “Opting out of the Legal System: Extralegal Contractual Relations in the Diamond Industry,” *Journal of Legal Studies*, Vol. 21, No. 1 (1992) pp. 115-157

³⁶ Abraham Udovitch, “Islamic Law and the Social Context of Exchange in the Medieval Middle East,” *History and Anthropology*, Vol. 1, No. 2 (1985) pp. 445-465; Ghislaine Lydon, *On Trans-Saharan Trails: Islamic Law, Trade Networks and Cross-Cultural Exchange in Nineteenth-Century Western Africa* (New York: Cambridge University Press, 2009), esp. pp. 340-386. Lydon’s work, however, tends to reify the importance of juristic categories in everyday life rather than use the private-order paradigm to interrogate their utility.

time, however, she contends that formal legal restrictions, such as Islamic law's undervaluing of documentary evidence in commercial disputes, *did* matter, as they placed limits on the degree to which written contracts could underpin the burgeoning world of Saharan commerce.³⁷

Studies on private-order exchanges, both in the Islamic world and beyond, share an underlying assumption with their more centralist counterparts in that they all believe that order matters – that social and economic exchange cannot exist without a common understanding of rights and obligations, and some means of enforcing them. They differ, however, in that while the centralists believe that only the state can supply the institutions necessary to establish and enforce order, others have gone to great pains to demonstrate that order can be a more horizontal phenomenon in which actors articulate shared expectations and then generate social sanctions to punish deviant behaviors. Those who apply these insights into the economy argue, in the vein of Karl Polanyi, that the socially-embedded nature of economic life in itself establishes contractual order amongst parties to an economic transaction, and that the idea of the disembedded “market economy” is a relatively recent innovation.³⁸

The debate on law, society and order, however, is far more nuanced than the outlines above suggest. Not all proponents of formal legal institutions would take issue with the notion that regimes of order could exist outside of the purview of the state, and

³⁷ Ghislaine Lydon, *On Trans-Saharan Trails*, pp. 393-394

³⁸ Karl Polanyi, *The Great Transformation* (New York: Reinhardt Press, 1944)

only the most dogmatic of those who emphasize private-order legal arrangements would argue that the state has little or no significance for the regimes they discuss. This debate makes clear, however, that commercial societies sustain a range of models for structuring social and economic relationships – a continuum of combinations that weave in and out of the law, the state and society. In this more textured understanding, courts, laws and the state alternatively compete, cooperate or co-exist with private-order, reputation-based and communal elements of order. Social and economic actors approach this mixture of institutions in a variety of ways, drawing on some dimensions and combining them with others, and usually, though by no means always, recognizing the range of possibilities available to them. In works on Islamic law and society, for example, close studies of the *qāḍi*'s court have illustrated how dependent *qāḍis* were on local notables in both fact-finding and enforcement, to the mutual benefit of both.³⁹

One important but under-researched strand of this debate explores how people structure their relationships with one another “in the shadow of the law,” an anomalous legal space straddling the boundary between formal law and informal bargaining processes – one in which actors draw on legal concepts and mobilize legal terminology and institutions in bargaining with others while preserving for themselves a degree of autonomy from the law’s full institutional grasp. As envisioned by those who originally developed the concept, law typically acts “not as imposing order from above, but rather

³⁹ Erin Stiles, *An Islamic Court in Context: an Ethnographic Study of Judicial Reasoning* (New York: Palgrave Macmillan, 2009) pp. 131-158; Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley, CA: University of California Press, 2003)

as providing a framework within which [parties] can themselves determine their... rights and responsibilities.”⁴⁰ Here, “the law” functions not simply as an arena; instead, it generates a discourse that shapes actors’ ideas about their rights and obligations – a lexicon that they draw upon in articulating their relationships with one another.⁴¹

Scholars have explored “the shadow of the law” in such contexts as divorce, industrial contracting and bankruptcy.⁴² As this list indicates, the concept’s richness lends itself rather well to the study of a range of socio-legal phenomena. Indeed, it seems that there are only a handful of instances of actors negotiating relationships outside of the framework of the law without any references to a vocabulary of rights and obligations supplied by formal legal institutions. Even in work devoted to understanding how communities establish order “not *in* the shadow of the law, but, rather, *beyond* it,” law professor Robert Ellickson admits that members of his case study community of rural cattle ranchers and farmers drew loosely upon legal terminology and statutes when articulating their liabilities.⁴³ In the commercial sphere, phenomena in the shadow of the law can take on a number of forms, from mobilized idioms of law to portable and flexible

⁴⁰ Robert H. Mnookin and Lewish Kornhauser, “Bargaining in the Shadow of the Law: the Case of Divorce” *Yale Law Journal*, Vol. 88 (1979) p. 950

⁴¹ See also Robert W. Gordon, “Critical Legal Histories,” *Stanford Law Review*, Vol. 36, No. 1/2, Critical Legal Studies Symposium (1984), pp. 57-125

⁴² See also Mnookin and Kornhauser, “Bargaining in the Shadow of the Law”; James W. Bowers, “Groping and Coping in the Shadow of Murphy’s Law: Bankruptcy Theory and the Elementary Economics of Failure,” *Michigan Law Review*, Vol. 88, No. 7 (1990) pp. 2097-2150; Edward J. Balleisen, *Navigating Failure: Bankruptcy and Commercial Society in Antebellum America* (Chapel Hill, NC: University of North Carolina Press, 2001) especially pp. 115-119; Surajeet Chakravarty and W. Bentley Macleod, “Contracting in the Shadow of the Law,” *RAND Journal of Economics*, RAND Corporation, Vol. 40, No. 3 (2009) pp. 533-557

⁴³ Ellickson, *Order Without Law*, p. 52, 104-120

conceptions of property, contract and ownership, to the arrangement of compromises that seek to avoid the costs and uncertainties of formal legal process.⁴⁴

The notion of a capacious “shadow of the law” is particularly useful for thinking about how Islamic legal idioms operated in everyday life, in the Indian Ocean and elsewhere. As Brinkley Messick has suggested in his study of Islamic law and society in Yemen, Islamic law does more than simply establish rigid categories and proscriptions: it forms the centerpiece of a societal discourse from which people can appropriate idioms, can flexibly interpret constructs, and can draw on a range of texts for support. Drawing on formal legal manuals but also mediating texts such as juristic opinions (*fatwas*), local documents and histories, Messick advocates an approach that balances colloquial understandings of law with doctrinal discourses.⁴⁵ In their work on Islamic courts in East Africa, Susan Hirsch and Erin Stiles both explore the ways in which Muslim litigants appropriate the language of the law and of rights in articulating their grievances and claims, both in and outside of the courtroom.⁴⁶

⁴⁴ For a good example of the latter, see especially John Philip Reid, *Law for the Elephant: Property and Social Behavior on the Overland Trail* (San Marino, CA: The Huntington Library, 1980); “Binding the Elephant: Contracts and Legal Obligations on the Overland Trail,” *American Journal of Legal History*, Vol. 21 (1977) pp. 285-315

⁴⁵ Brinkley Messick, *The Calligraphic State: Textual Domination in a Muslim Society* (Berkeley, CA: University of California Press, 1993) pp. 1-8; “Textual Properties: Writing and Wealth in a Yemeni Shari’a Case,” *Anthropology Quarterly*, Vol. 68, No. 3 (1995) pp. 157-170; “Property and the Private in a Sharia System,” *Social Research*, Vol. 70, No. 3 (2003) pp. 711-734; “Just Writing: Paradox and Political Economy in Yemeni Legal Documents,” *Cultural Anthropology*, Vol. 4, No. 1 (Feb., 1989), pp. 26-50

⁴⁶ Susan F. Hirsch, *Pronouncing and Persevering: Gender and the Discourses of Disputing in an African Islamic Court* (Chicago: University of Chicago Press, 1998); Stiles, *An Islamic Court in Context*

Understanding Obligation

A rich vein of legal history, however, recognizes that its subject matter does not inhabit one of these loci alone, but most likely inhabits a number of them – or perhaps even all of them – at once. Thus, a phenomenon like “obligation” – that matrix of credit and debt, and of mutual rights and duties that bound together actors in the Indian Ocean – was not only an economic or social phenomenon, it was also a legal one. It also inhabited a changing formal legal sphere of *qāḍi* courts, British consular courts and mercantile tribunals, formed the subject of prolific output by Muslim jurists, and existed as an idiom and category that economic and juridical actors from around the Indian Ocean had a role in shaping.

This dissertation explores how economic actors – Muslim and otherwise – drew on the idioms of obligation and law in structuring enduring commercial associations with one another. By illustrating the dynamic contours of obligation and its role in structuring economic life, I point to the malleability of Islamic commercial institutions in the Indian Ocean and reinsert merchants and mid-level actors as active agents in the shaping of these institutions. At the same time, I detail the interpretive dynamism of Islamic commercial jurisprudence in the face of enormous economic change in the region, always taking care to assess the tensions between these different sources of legal authority, and the accommodations they made with one another.

My use of “obligation” as a concept to bring together a more textured legal history and an economic history draws heavily on Craig Muldrew’s study of debt,

obligation and law in early-modern England.⁴⁷ Muldrew reconstructs a culture of credit based on interpersonal relationships and reputation, moving between macro-level observations about trends in the English economy to micro-level analyses of economic practice. He shows how that particular credit economy mediated such concerns as wages and purchasing power while binding together different actors in relations of mutual obligation. Obligation, then, becomes a useful way to reconcile a metric approach to economic history with a more ground-level cultural perspective on economic life.

Muldrew, however, stops short of explaining how the concept of obligation, as opposed to debt or credit, can be a useful heuristic device to bring together the law and the economy. The legal implications of credit and debt relations are clear in his work, for as the bonds of debt between English economic actors together grew longer and more complex, they became more susceptible to collapse. The growing number of disputes between different actors produced enormous amounts of litigation that eventually reshaped the economic practices themselves. In Muldrew's work, then, the juridical and commercial spheres do not exist separately, they are mutually constitutive.

⁴⁷ Craig Muldrew, *The Economy of Obligation: the Culture of Credit and Social Relations in Early Modern England* (Basingstoke, UK: Macmillan, 1998). There are many other works that I could have chosen, including, Edward J. Balleisen's, *Navigating Failure*, Amalia Kessler's *A Revolution in Commerce: the Parisian Merchant Court and the Rise of Commercial Society in Eighteenth-Century France* (New Haven, CT: Yale University Press, 2011), or even Jeremy Adelman's *Republic of Capital: Buenos Aires and the Legal Transformation of the Atlantic World* (Stanford, CA: Stanford University Press, 1999). I chose to focus on Muldrew's work because of the suggestiveness of the concept of an "economy of obligation" that he so successfully illustrates throughout his work.

And here is where the concept of obligation begins to demonstrate its analytical power. For as Muldrew's work suggests, obligation was more than an economic construct; it was what Marcel Mauss referred to as a total social phenomenon – an activity or institution that gave expression to the social, economic, moral, political, religious, and most importantly for the discussion here, *legal* dimensions of a society, all at once.⁴⁸ As a total phenomenon, obligation – in early modern England as much as in the nineteenth-century Indian Ocean – can tie together a socially-embedded economic history with a multi-layered legal history.

In Muldrew's work, the economy of obligation also served discursive functions. While paying close attention to the lived experience of law and commerce, he interweaves examinations of daily proceedings with economic, philosophical and moral treatises to show how contemporaries interpreted the economic practices around them, and how these interpretations might have changed along with changing practices and institutions. In early-modern England, questions surrounding the sociability of credit relations, the importance of reputation in the world of commerce, and the virtue of a household loomed large. To ascertain what these categories might have meant in early-modern English society, Muldrew draws on a combination of works in philosophy, literature and mercantile manuals and braids them together with more ground-level

⁴⁸ Marcel Mauss, *The Gift: the Form and Reason for Exchange in Archaic Societies* (New York: W.W. Norton, 1990) p. 3

sources like business correspondence to understand how changing institutions and economic practices could produce changing discourses surrounding economic life.⁴⁹

The potential of an approach to history that allows one to weave economic and legal experiences together with intellectual or discursive understandings should be clear to those working on the legal history of any part of the Islamic world, where there is no shortage of philosophical, legal or moral treatises. Muslim jurists around the Indian Ocean did not firmly distinguish between economy and law, and the permeable border between the two was reflected as much in their writings as in the institutions and practices surrounding them – and in the histories in which they participated. Those who gave shape to the Indian Ocean contractual culture I describe throughout this dissertation were not only economic actors, but juridical actors as well – scribes, *qāḍis*, judges, and jurists. If the region’s economic actors produced the goods, gave out the loans and forged the relationships that characterized the Indian Ocean economy of obligation, then Muslim jurists from around the ocean’s rim provided a philosophy to the nature and shape of the obligations that ran through it, and the institutions that governed it, infusing it with ideas of legality and morality.

The *waraqas* I found around the Indian Ocean, then, were of little use on their own. To make sense of them – to use them as a window into a contractual culture – I had to combine them with contemporary (or at least relevant) manuals in Islamic

⁴⁹ Muldrew, *Economy of Obligation*, pp. 123-195

jurisprudence (*fiqh*) and, more importantly, *fatwas* from around the Indian Ocean that addressed changing commercial practices surrounding the *waraqqa* and debt more broadly. In short, I had to see them as lying at the intersection of an expanding Indian Ocean world of commerce and a long genealogy of Islamic jurisprudence. And to understand the later encounter between the commercial and legal culture of the Indian Ocean and a growing Anglo-Indian empire, I had to group *those* materials with British consular court cases and official correspondence, much of which involved questions of credit, debt and trade. Only by bringing those diverse materials together and moving back and forth between the different layers could I then see a changing institutional landscape, evolving commercial practices and the shifting legal discourse that accompanied it, as well as identify the historical actors who nudged, and in some cases, shoved, legal rules in new directions.

The *waraqqa* gave me the vessel that I needed to travel from port to port, and from the lived reality of commercial life up into the ether of Islamic jurisprudence and back again. It formed a gateway into a world of commerce and obligation much like those that other historians had described, but it simultaneously stood out as the written embodiment of Mauss's total social phenomenon. In following the *waraqqa* around the Indian Ocean, I flesh out its place in a changing commercial society, contending legal epistemologies, a shifting institutional landscape, and, ultimately, an imperial regulatory framework. I could see both the commercio-legal world that those who wrote *waraqqa*s created and the

economic booms and busts that continually reshaped its meaning and place within that world.

Commerce, Law and Empire in the Western Indian Ocean

So where did commercial “law”, in its broadest sense, come from in the nineteenth- and early-twentieth century Indian Ocean? The discussion throughout the dissertation paints a broad narrative arc, but also details the different sources of economic order during a regional era of emerging modern capitalism. Here I will walk readers through the dissertation’s chapters, not only to outline the story that these pages tell, but also to describe the structures of commercial life in the region and the primary sources I use to reconstruct them.

The first three chapters explore the emergence and articulation of a region-wide contractual culture in the Western Indian Ocean. I draw on a combination of local instruments (*waraqas*), travel narratives, legal opinions (*fatwas*) and *fiqh* manuals to describe a contractual culture that emerged in the shadow of the law. The first chapter paints, in broad strokes, the changing contours of economic life in the region during the nineteenth century, set against the backdrop of the region’s integration into the world economy. As the scale and scope of commerce increased, the market for credit expanded considerably to fuel economic activity. In borrowing money from one another, Indian Ocean actors forged long chains of debt that bound together planters, laborers, shopkeepers and merchants together across hundreds of miles of land and water. Moving between the Persian Gulf, South Arabia and East Africa on the one hand and a debate

among Muslim jurists on debt and obligation on the other, the chapter explores how debt functioned to connect actors within a growing world of commerce. The extension of credit at once gave both creditors and debtors a degree of certainty, forced particular channels of exchange, and linked economic life in the Indian Ocean to a burgeoning world economy.

In the chapter that follows, I take a close look at the moment at which an economic actor contracted debt to explore the workings of Islamic law in this commercial arena. Through a close reading of the *waraqas*, contextualized with *fiqh* manuals and *fatwas*, I explore how Muslim scribes (called *kātibis*) drew on a long genealogy of Islamic contractual categories to give legal shape to the region's economy of obligation and to render new commercial actors and practices legible within the framework of Islamic jurisprudence. In doing so, I add an extra layer of "law" to the economic order that I describe in the preceding chapter, showing that low- and mid-level juridical actors played just as significant roles in fashioning this intertwined world of commerce and law as did economic actors.

In Chapter Three, I explore the material underpinnings of Indian Ocean commercial contracting. Beginning with the different types of property that economic actors leveraged to gain entry into the commercial arena, I go on to chart the changes in Muslim juristic discourses surrounding commercial practice that, on the whole, facilitated economic growth. Moving between discussions of property and obligation in Islamic jurisprudence and actual practices in the Indian Ocean as detailed by extant *waraqas*, I

illustrate how this contractual culture mapped itself onto, but also reconfigured, terrestrial space. As Indian Ocean commerce continued its expansion during the second half of the nineteenth century, a wide range of economic actors from around its shores used the *waraqqa* to mobilize an equally dizzying variety of properties and shares of property to finance their entry into the commercial arena. Their imaginative usage of the instrument both opened up the commercial arena to a much broader set of actors than before and further confirmed the centrality of the instrument, and of debt and obligation, to Indian Ocean commerce.

The following chapter marks a pivotal turning point in the narrative, exploring the expansion of British extra-territorial jurisdiction in the Western Indian Ocean and the emergence of alternative legal forums throughout the Arabian and East African littoral. As the regional economy witnessed the first of its periodic shocks in the 1870s, Indian merchants began flooding the British Consulate with requests for protection, asserting their rights as British subjects. Their petitions prompted lengthy debates amongst British officials as to the boundaries of British jurisdiction in the Western Indian Ocean. Over time, so many merchants successfully claimed British protection that British courts grew to become, *de facto*, the principal forums for commercial dispute resolution in the region. Drawing on correspondence between British officials in Zanzibar, Muscat, and Bushire and Law Officers in Bombay, Chapter Four traces the outlines of a jurisprudence of extra-territorial jurisdiction in the Indian Ocean – one that emerged not simply from

discussions between political and legal officials around the Indian Ocean, but also out of the legal maneuverings of merchants from around the region.

In Chapter Five, I take the reader inside the newly-established British courts in East Africa, detailing the processes by which newly-arrived British Indian courtroom actors remade the legal foundations of regional commercial practices during the late-nineteenth and early-twentieth century. Through a close examination of a series of court cases and official reports between 1870 and 1930, I explore how Indian lawyers and British judges, drawing on Anglo-Indian statutes, case law and legal concepts, re-clothed the *waraqqa*, that malleable instrument of Indian Ocean commerce, as an English-style mortgage deed, with all of its attendant implications for the transfer of property in case of default. Like the second chapter, in which I assert the role of scribes in creating an Islamicate Indian Ocean legal arena, the discussion highlights subtle processes by which mid-level actors refashioned Islamic contractual categories. In turn-of-the-century East Africa, however, these processes took on much broader imperial dimensions and signaled the emergence of a more professionalized juridical “field” in the region – one in which many commercial actors had effectively lost their interpretive authority over their instruments as soon as they entered the courtroom.

Despite the changes that had taken place inside the courtroom, Indian Ocean economic actors were still able to challenge or even nullify the court’s interpretations of the *waraqas*, especially by moving beyond a tribunal’s effective jurisdiction. In Chapter Six, I highlight the limits of the British Empire’s legal reach in the region by situating the

courtroom within the broader institutional landscape of the Western Indian Ocean.

Following specific litigants from coastal East Africa to the Gulf and from Bahrain to the interior of the Arabian Peninsula, I illustrate how merchants, freed slaves and other actors played on the courts' jurisdictional limits, mobilizing legal instruments and maneuvering through social networks in imaginative ways so as to assert their own understandings of their instruments and obligations in the face of a changing legal system. Even as the law in the books changed, then, actors were able to both articulate and operationalize alternative legal epistemologies and practices.

However, for all of their resilience in the face of imperial legal expansion, the actors who participated in the Indian Ocean's economy of obligation faced dramatic constraints as a result of the forces of the worldwide economic downturn during the 1920s and 1930s. As prices for cloves, coconuts, pearls and dates collapsed, thousands of actors found themselves slowly crushed by ever-rising indebtedness, a situation that eventually produced an extended spate of foreclosures by creditors on their debtors' newly-"mortgaged" properties. The crisis that these foreclosures prompted was as much social and political as it was economic: faced with commercial society consisting of dispossessed subjects of the Sultan and a class of new landowners who were subjects of the Raj, British officials sought to undo the economic and legal mess that their courts had helped create. The final chapter describes the process by which officials, aiming to place the ports' on a surer footing, set in motion a series of reforms that ultimately undid the prevailing Indian Ocean economy of obligation and did away with the *waraqqa* altogether.

The process was from its outset wrought with tensions, both within the British administration and outside it. The downward pressures of the depression, however, proved too strong for even the reforms' staunchest and most powerful opponents. In the mid-1930s Indian Ocean, few could stand in the way of the regulatory tidal wave that had by the time swept across the entire world. Instead of the crisscrossing horizontal and vertical bonds of debt, credit and obligation that had characterized commerce for at least a century, the institutional world of Indian Ocean trade in the 1940s began to resemble the frameworks of many other parts of the world, characterized by formal court systems, state institutions, and regulatory bureaucracies.

It is not my intent here to write about a world that colonialism and the British Empire ultimately overpowered. That story has already been told, and perhaps for far too long. Instead, I wish to place the narrative spotlight on the century-long efforts of merchants, scribes, jurists, and judges from around the Indian Ocean, who collectively produced an intertwined world of commerce and law. These individuals adapted to the coming of European empire in imaginative ways. For merchants in the Indian Ocean, the British Empire and its institutions was a force to be reckoned with, to be sure, but it was also one that they could manipulate or sidestep altogether in pursuit of their own ends. In the end, neither war nor empire unraveled this world, but rather the very same global economic forces that had initially brought it into existence.

But all of that is perhaps too far ahead in the story. For now, let us turn to the Indian Ocean of the mid-nineteenth century – a world of commerce and law that unfurled *because of* rather than *despite* the emergence of modern capitalism.

CHAPTER 1: LIFE AND DEBT

When Kuwaiti filmmaker Khaled Al-Siddiq set out in 1971 to make the country's first film, he chose Kuwait's pearl diving past as his subject. In *Bas Yā Baḥar [Enough, O Sea]* Al-Siddiq focused not on the majestic dhows that sailed out to the pearl banks every season, nor on the dive's arduous labor conditions. Instead, he highlighted the chronic indebtedness that characterized life in the Gulf at the time. The film's protagonist, the young diver Musay'id, is unable to marry his love, Nura, for want of money. He sets out on a pearling dhow, diving season after season, unable to ever dig himself out of debt to his captain. At the film's close, Musay'id meets a cruel fate at sea, drowning while trying to collect a large oyster, and ending his life as an indebted man.

Al-Siddiq was not alone in remembering a past characterized by indebtedness. The Zanzibari novelist Abdulrazzak Gurnah focused his award-winning book *Paradise* on the story of Yusuf, a young boy on the East African coast whose indebted father sold him to his creditor, Uncle Aziz, who then took Yusuf along on his caravan expedition into the interior. Gurnah's story featured a range of different characters, all bound to the caravan leader through debts of their own or those incurred by family members. Other novels set in East Africa also featured themes of debt and moneylenders.¹

Fictional as these works may have been, the themes that underpinned them were very real, both to the writers and to their audiences. Debt was a central feature of life in

¹ See also M.G. Vasssanji, *The In-Between World of Vikram Lall* (New York: Vintage, 2005); *The Gunny Sack* (Portsmouth, NH: Heinemann, 1990); V.S. Naipaul, *A Bend in the River* (New York: Vintage, 1989)

the Indian Ocean. Throughout the nineteenth century, and well into the 1950s, debt underpinned a wide range of relationships; almost all buying, selling, employment, production, distribution and consumption involved debt in one form or another. Virtually every household in every port from Bombay to Zanzibar was to some degree enmeshed in crisscrossing webs of debt. Rulers were chronically indebted to merchants, households were in a constant state of debt with local shopkeepers, husbands frequently borrowed from their wives in order to meet their broader financial obligations, and laborers took on loans from their employers several times a year to feed their families. For the prospective Indian Ocean merchant, simply embarking on a business enterprise entailed taking on loans from another, better placed merchant. All mercantile dealings, from the large-scale, transnational commercial undertakings to small, local ventures drew merchants, laborers, farmers, shopkeepers and households together into the Indian Ocean's burgeoning webs of credit.

Debt was more than a salient feature of economic life in the Indian Ocean. The obligation that it generated was an organizing principle – a magnetic core around which a range of economic actors clustered. The bonds of obligation that arose out of borrowing money and goods structured all forms of economic activity. Clove farming in Zanzibar and Pemba, the Persian Gulf pearl dive, the ivory and slave expeditions into the East African interior, the date groves of East and Southeast Arabia, coffee production in South Arabia, and the dhow shipping that linked them all together – all of these were financed by credit, and were internally structured by complex and enduring relationships of debt

and obligation. The ties of obligation that underpinned them were crucial components of the infrastructure of the Indian Ocean mercantile enterprise, giving merchants the security and certainty they needed to undertake inherently risky economic ventures.

At the same time, the interlocking chains of credit, debt and obligation that ran through and around the Indian Ocean determined the routes along which goods in the region traveled, forming a distinct geography of obligation. When commodities traveled across deserts, jungles and oceans, from production sites to their final markets, they did not move simply according to the market forces of supply and demand. Their journey was a predetermined one: they moved along the axes of a map that had been drawn long before – a geography in which the ivory hunter in Tabora was linked to the ivory carver in Kutch, the date farmer in Qatif to the wholesaler in Karachi, and the pearl diver off the coast of Bahrain to the jeweler in Bombay. The social, economic, and legal relationships that debt and obligation generated between different actors thus mediated locally the global forces of supply and demand that shaped the Indian Ocean economy.

Thus, at their core, credit and debt generated bonds of obligation between different actors, yoking them together in a shared fate. And while creditors expected that their debtors would fulfill the obligations that debt created, there is little indication that any of those involved in Indian Ocean economic life was ever expected to fully repay a debt. Indeed, it seemed that almost the exact opposite was true – that repaying a debt in full signaled an end to the relationship rather than a fulfillment of an obligation. In this sense, it is almost a misnomer to even call what actors owed to one another debts, for the

term “debt” implies an outstanding financial obligation waiting to be repaid. Rather, what one sees in the Indian Ocean is a world of ongoing social, economic and political obligation generated by the transfer of goods or cash between actors. In this world, reminding one’s debtor of an outstanding obligation could, but did not always, prompt a financial transaction. More often, it spurred the performance of a particular task – sending goods, attending an economic undertaking, or extending political largesse.

Moreover, the term “debt” itself suggests a particular context and perspective – one that did not always obtain in the Western Indian Ocean during the nineteenth century. Indeed, for periods of commercial prosperity and optimism it is more accurate to speak of credit, emphasizing the commercial flows and dynamism that characterized the times. That characterization, however, would do no justice to times of economic downturn (which I will discuss in later chapters) when merchants rushed to call in their outstanding loans; for those harder times, it would be more accurate to speak of debt – of the outstanding obligations that remained unfulfilled, and the specter of commercial failure that hung overhead. And even in times of commercial prosperity, the question of whether to call the act of lending credit or debt rests on a matter of perspective: for actors who occupied the lower rungs of the hierarchy, the loan signaled both the opportunities that credit conjured up and the deep obligations that it would have generated on their behalf.

Whether debt or credit, underpinning this entire discussion is a key point: trade in the Indian Ocean did not take place in a vacuum, and goods did not move frictionlessly from one port to another. Rather, they traveled within a geography constituted by shifting

matrices of rights and obligations – one in which merchants could imagine the distance from Bombay and Zanzibar as a link in a network rather than an entire ocean, as the map below would suggest. Understanding how debt and obligation functioned in the Indian Ocean, then, is fundamental to understanding commercial life in the region. To illustrate this, the discussion here maps out the landscape of economic activity in the region, familiarizing readers with the shifting contours of economic life, as well as the cast of characters that they will encounter in later chapters, and underscores the centrality of debt and obligation in shaping this landscape. After introducing readers to debates surrounding debt, obligation and commerce among Muslim scholars, it moves on to consider the changing world of commerce in the nineteenth century Indian Ocean. It highlights the wide range of lenders and borrowers operating in port cities and their hinterlands, exploring how merchants made use of advances of money and goods to bind pearl divers and ports to dhows and caravans, and how debt relations between merchants directed the flow of goods from hinterlands to ports, and then across the Indian Ocean. In doing so, this chapter seeks to leave readers with an impressionistic understanding of the contours of economic life in the Western Indian Ocean, emphasizing both the pervasiveness of debt and its role in shaping commercial activity in the region.

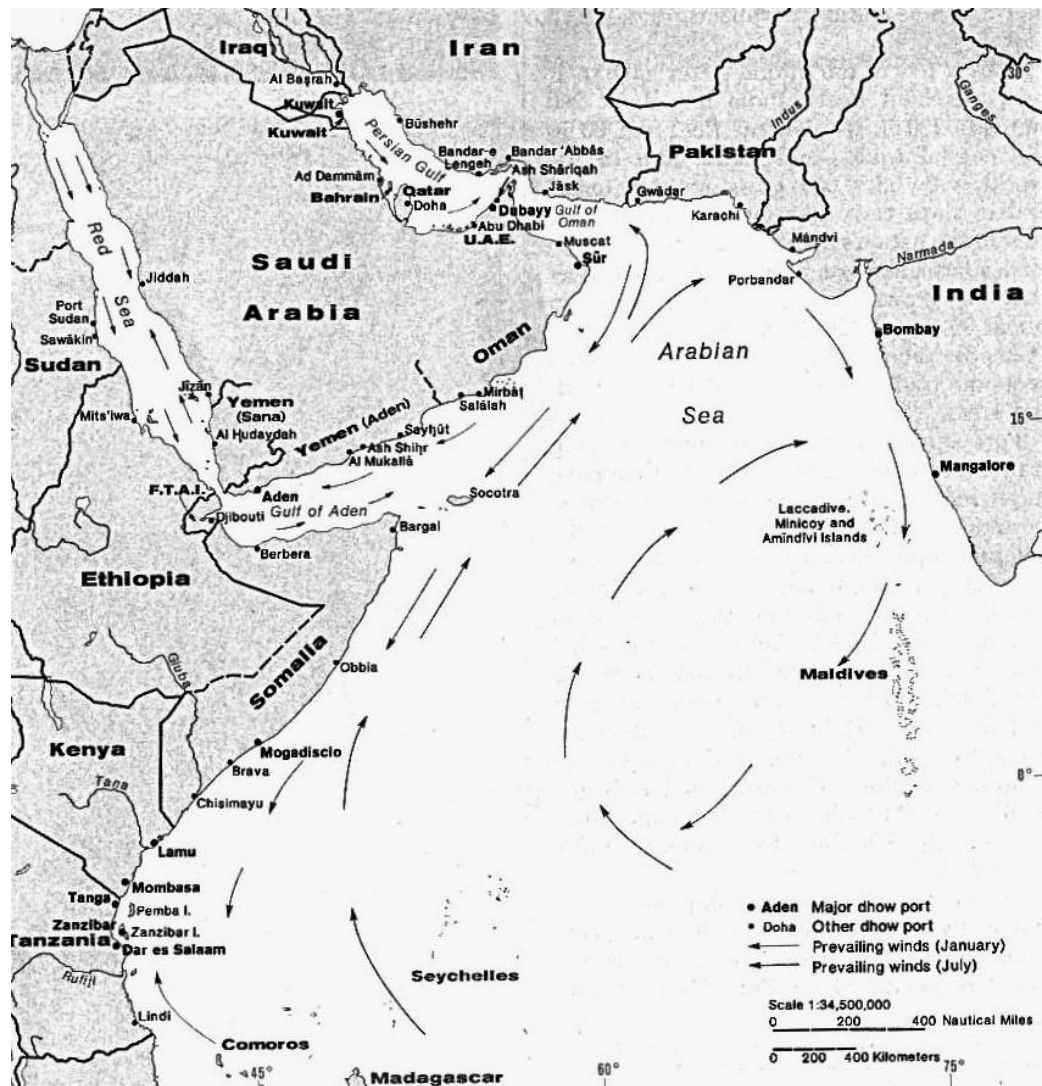


Figure 1: The Western Indian Ocean and its Dhow Ports
 (Perry-Castaneda Library Map Collection, University of Texas, Austin)

Commerce and Obligation in Islamic Jurisprudence

In Islamic jurisprudence, commerce was in many ways a mirror for society. Not only were commercial contracts used as templates for a range of other types of contracts, including marriages, but commerce itself espoused many of the ideals of Muslim

society.² For Muslim jurists, cooperation between men formed the basic building blocks of the economy, and of society more generally. Profit was God's bounty on earth, and jurists imagined that by pooling capital, skills and resources in ways that fostered cooperation, merchants and other economic actors would be able to capture an ever-expanding range of commercial opportunities.³ The pursuit of profit was thus far from reprehensible, and was even celebrated— as long as it adhered to the basic principles of economic justice. By the medieval period, jurists had already articulated a range of different types of contracts aimed at engendering equitable commercial cooperation. On opening a standard *fiqh* manual, what one sees is a systematic treatment of commercial associations: a chapter devoted to *muḍārabā* (the *commenda*-style partnership), one to the *sharika* (a more generic term for commercial associations), another to sharecropping, etc. Jurists examined each of these in exacting detail, outlining the rights and responsibilities that arose out of every commercial association.

Debt figured centrally in jurists' determination of the matrices of rights and liabilities that underpinned commercial associations. A party to a commercial venture could only receive profits in proportion to the amount of capital he contributed to the venture. Moreover, while all partners to an Islamic association were unlimitedly liable in the sense that all of their eligible assets were fair game for their creditors, the extent of

² On the relationship between sales and marriage contracts, see also Judith Tucker, *Women, Family and Gender in Islamic Law* (New York: Cambridge University Press, 2008) p. 125

³ Mohammed Nejatullah Siddiqi, *Muslim Economic Thinking: A Survey of Contemporary Literature* (London: The Islamic Foundation, 1988) pp. 5, 10

their liability had to be proportional to their investment, which varied from one type of association to another. In a *muḍāraba*, which involved an investor who supplied the capital and a working partner who supplied the labor, the investor was liable for all losses in the partnership capital. Except for cases of extreme negligence or outright insubordination, the working partner only stood to lose his efforts.⁴ On the opposite end of the spectrum, in the *sharikat al-mufāwāḍah*, a general or unlimited investment partnership, each partner, having committed an equal amount of the investment capital, was equally liable to the other partner and to third parties for all debts or losses.⁵

Muslim jurists, however, imagined commercial associations as being intimately bound up in the actors that comprised them. Indeed, they had a hard time imagining that an association could be anything but a matrix of rights and obligations that bound natural persons together. This conception was not without its implications. In his work on the nature of the Islamic business enterprise in the Middle East, Timur Kuran underscores the ephemeral nature of Islamic commercial associations. “Whatever its exact form,” he writes, “an Islamic partnership could be terminated at will by any partner, acting unilaterally. [...] The death of a partner, whether or not the surviving members learned of it, rendered the partnership null and void. [...] The heirs of the deceased did not automatically replace him. If the enterprise was to continue, a new partnership had to be

⁴ Udovitch, *Partnership and Profit in Medieval Islam* (Princeton, NJ: Princeton University Press, 1970) pp. 238-242

⁵ Ibid. pp. 40-42

negotiated.”⁶ Kuran is right to point out that Muslim jurists never conceived of partnerships as enduring associations. Their discussions of the rights and obligations embedded in partnerships often revolve around single commercial ventures rather than the disembodied commercial organization.

Although partnerships might have been ephemeral in nature, debt was not. Of all of the liabilities that characterized Islamic commercial associations, debt was the most enduring and the least disputed. Debt created a bond of obligation between the lender and the borrower that the latter was liable to meet no matter what the circumstances.

According to Joseph Schacht, whose works on Islamic law laid the foundations for scholarship for generations after him, an acknowledgment of a debt “is in practice the most conclusive and uncontrovertible [sic] means of creating an obligation on the part of the person who makes it.”⁷ Indeed, the very word that Muslim jurists used to describe debt, *dayn*, was synonymous with an outstanding obligation, and the temporal endurance of the bonds of obligation that debt created outstripped all others in Islamic commercial jurisprudence. Unlike the partnership, which any partner could end unilaterally at any time, an obligation generated by debt persisted until the debt was repaid.

Not even death offered the debtor any reprieve. Muslim jurists overwhelmingly agreed that a debt endured well after the debtor died, and that the debtor’s obligations passed on to the nearest kin. In his discussion of a debtor who had passed away, the

⁶ Kuran, *The Long Divergence*, p. 64

⁷ Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964) p. 151

medieval jurist Ibn Rushd asserted that if the debtor had a debt of 1,000 dinars and died leaving his children 600 dinars, then the entire amount should go towards the repayment of his debt.⁸ A debtor's obligation to repay his loans took precedence even over his burial: Ibn Rushd wrote that if the shroud was worth any money and was pledged as security against the loan, then it was to be given to his creditor as compensation.⁹ The 16th-century Shafi'i jurist Ibn Hajar echoed Ibn Rushd's attitude towards debt: in his chapter on obligations, he wrote that even a man who was on his death bed could contract a debt, and that in the event of his death his heirs would be held liable to repay it.¹⁰ Three centuries later, the question seemed to have grown in importance: the nineteenth-century Ibadhi jurist Atfiyish devoted eleven pages of his discussion of obligations to the passing of a debt from a deceased man to his heirs.¹¹ For him, even the bonds of family were not enough to override the obligation generated by debt: he wrote that a person who loaned his father money had, after his father's death, rights to his father's estate as both a creditor *and* an heir, cautioning him to approach it with a view to justice ('*adl*) rather than compassion ('*atf*).¹²

⁸ Ibn Rushd, *Al-Bayān wal-Taḥsīl wal-Sharḥ wal-Tawjīh wal-Ta'īl fī Masā'il al-Mustakhrāja*), Vol. 13 (Beirut: Dār al-Gharb al-Islāmī, 1988), pp. 362-363

⁹ Ibid. p. 386

¹⁰ Ibn Hajar, *Tuhfat al-Muhtāj bi-Sharḥ al-Minhāj* (Beirut: Dār al-Kutub al-'Ilmiyya, 1971) Vol. 2, pp. 346-347

¹¹ Mohammed bin Yusuf Atfiyish, *Sharḥ Kitāb al-Nīl wal-Shifā' al-'Alīl*, 3rd ed. (Jeddah: Al-Irshad Press, 1985) Vol. 13, pp. 584-595

¹² Ibid. p. 390

As the ultimate form of obligation, debt could be mobilized strategically within a commercial association to build the enduring bonds of obligation that an enterprise required. By loaning one another money, parties to an association could reshape the liability structure that bound them together. In his discussion of the *muḍāraba*, Abraham Udovitch notes that “by conferring the status of a loan on part of the sum [invested in the *muḍāraba*], the investor enjoys greater security with respect to his capital. The agent is liable under all circumstances for the return of that portion” – a liability that he would have otherwise not shouldered.¹³ Debt could also be used to control market prices: jurists admitted that when a merchant advanced money or goods to a farmer or artisan for future delivery he was justified in asking for a more favorable price.¹⁴ Debt, then, offered merchants an effective tool for binding one another into more enduring commercial associations – ones in which they could exert greater control over their contracting partners’ obligations towards them.

The acknowledgment of debt – the *iqrār*, which I explore in greater detail in the following chapter – proved to be a useful building block in the construction of durable yet flexible commercial associations. Schacht hinted at this in his writing: “an acknowledgment of debt without regard to its cause of origin,” he wrote “can be used to ensure a valuable consideration for any kind of performance, even though it be not

¹³ Udovitch, *Partnership and Profit*, p. 189

¹⁴ *Ibid.* pp. 79-81

envisaged by the types of contracts [and associations] provided.”¹⁵ By simply establishing the baseline of an obligation, merchants could then mobilize debt in ways that allowed them to meet new challenges and adapt to changing circumstances – and also to construct commercial associations whose ethical underpinnings Muslim jurists might have considered to be questionable at best.

Whether or not they were cognizant of the legal status of debt, merchants in the Indian Ocean mobilized loans in ways Muslim jurists would have found both familiar and appropriate. In Indian Ocean firms, debt bound laborers to captains and caravan leaders who, occupying a position comparable to that of mid-level managers in Western corporations, were in turn bound to merchant-financiers in major ports. These financiers were themselves bound to their own creditors or partners in Western Indian commercial centers such as Karachi, Gujarat, or Bombay. In this dense geography of obligation, debt drew actors together into thick and enduring economic relationships that effectively organized production and distribution across deserts, jungles and oceans. It allowed merchants greater control over the prices and quality of the goods they traded in, and left little doubt as to which direction a good, once produced, would head in. The entire route, from Tabora to Kutch, Qatif to Karachi, or Bahrain to Bombay, was already mapped out, complete with stops along the way.

¹⁵ Schacht, *Introduction*, p. 144

To speak of “markets” in the Indian Ocean, then, is a slight misnomer, for commercial transactions hardly ever took place between isolated economic actors and according to the disembodied pressures of supply and demand. If supply and demand shaped the broader fortunes of these commodities, within the region goods moved between actors who bound themselves together in defined sets of rights and obligations – actors who knew who the goods would be coming from, who they would be going to, and how much they would cost. Thus, the thick bonds of debt and obligation that characterized the transnational Indian Ocean mercantile firm effectively mitigated the risks and uncertainties inherent in commerce. These bonds brought together actors into a governance structure that was both supple in its ability to adapt to new opportunities and changing circumstances and effective in its ability to generate predictable flows of goods. By reimagining the commercial landscape of the Indian Ocean in this way – as a commercial arena constituted by bonds of obligation – one can begin to retell the economic history of the region in a way that privileges economic actors and commercial firms rather than abstract, disembodied political and economic forces. In doing so, however, I do not deny that those forces were important in shaping economic life in the region during the nineteenth century. Indeed, much of what one sees in the mid-nineteenth century Indian Ocean emerged as a result of its integration into the world economy during that time.

The Indian Ocean and the World Economy in the Nineteenth Century

During the nineteenth century, the Indian Ocean economy was undergoing important structural changes – changes that left an indelible impression on the nature of commerce in the region. It is during this time that the region began its integration into the world economy, as a number of commodities from around the Indian Ocean began to make their way to markets in South Asia, Europe and the United States in an unprecedented way. And as old goods began to find their way to new markets, the structures of finance that propelled goods around the Indian Ocean shifted in response to the changing opportunities and constraints that the new commercial order established. What emerged during the nineteenth century was a new economic world – one characterized by an greatly increased scale and scope of commercial activity, and, more importantly, of credit.

Perhaps the first Indian Ocean commodity to experience these tremendous shifts was East African ivory. Abdul Sheriff has already outlined the expansions in the ivory market during the early- to mid-nineteenth century, due in large part to the rise in English demand for ivory. Although East African merchants had been exporting ivory to India and China for centuries, the emergence of England as a market for ivory, in Sheriff's words, "rejuvenated East Africa's trade with India and broadened the arteries without altering the direction of trade as far as East Africa was concerned."¹⁶ By the middle of the

¹⁶ Abdul Sheriff, *Slaves, Spices and Ivory in Zanzibar* (Oxford: James Currey, 1987) p. 90

nineteenth century, merchants witnessed the development of an international commodity chain between the interior of East Africa, the productive hinterland, Zanzibar, the regional ivory entrepot, Bombay, the processing station, and London, the main market. Sheriff also points to the advent of an American mercantile presence in Zanzibar, and the infusion of American cloth into the market, as having stimulated mercantile expansion into the interior of East Africa.¹⁷

Sheriff and Frederick Cooper detail similar expansions in the clove market at the time. Their figures show that while clove exports were low during the early 1800s, they enjoyed an enormous boom during the middle of the century. Early-nineteenth century European travelers to Zanzibar found that large portions of the island were uncultivated, and that merchants only considered land in the immediate vicinity of the port to be of value. Indeed, before 1820, cloves were mostly grown in Southeast Asia, in the Moluccas islands. Even two decades after the first clove trees were introduced to the Zanzibar sometime around 1819 (and accounts of their introduction vary), most clove plantations belonged to the Sultan, who was reputed to be an imaginative businessman who experimented with sugar and indigo as well.¹⁸ It was only during the 1840s that many Indian merchants began to invest capital in clove plantations, giving rise to what Sheriff termed the “clove mania” of Zanzibar.¹⁹ By 1860, cloves rivaled ivory as East Africa’s

¹⁷ Ibid. p. 106

¹⁸ Cooper, *Plantation Slavery*, pp. 47-51

¹⁹ Sheriff, *Slaves, Spices*, p. 108

main export to India; their export soared from 9,000 *fraselas* in 1839-1840 to 142,857 in 1856.²⁰

While it is easy to imagine cloves and ivory as forming discreet commodities, in reality the two were inextricably linked, as merchants often invested wealth generated from the ivory trade into clove plantations. An excellent illustration of this comes from the career of the famous ivory and slave trader Hamed bin Mohammed al-Marjebi – better known as Tippu Tip, the uncrowned king of East Africa in the nineteenth century, whose story we will return to later. Tippu Tip left Zanzibar for the interior of East Africa as a landless trader; both his biography and the loan contracts he entered into in 1869 indicate that he had nothing to offer as collateral against the loans he took to finance his expedition.²¹ His gamble paid off, and by 1895, after more than 25 years of trade and diplomacy in the interior, he had amassed a fortune from his trade in ivory and slaves, and reportedly owned seven plantations (*shambas*). While his career might have been exceptional, his trajectory from landless trader to landed planter was one that many others also experienced. The French Captain Loarer noted in the 1840s that many caravan traders, after three or four journeys, acquired enough capital to invest in plantations in Zanzibar.²² The boom in East African cloves, then, rested in part on the ivory boom.

²⁰ Ibid. pp. 249-252; Cooper, *Plantation Slavery*, p. 52. A Zanzibar *frasele* was equivalent to roughly 35 lbs.

²¹ See also AM 1/1 p. 72; Heinrich Brode, *Tippoo Tib, the Story of his Career in Central Africa* (London: The India Office, 1907)

²² Captain Loarer, “L’Ile de Zanzibar,” *Revue de l’Orient*, Vol. 9 (1851) pp. 240-299, quoted in Sheriff, *Slaves, Spices*, p. 108

Alongside developments in the clove and ivory markets were enormous transformations in the region's infrastructure. By the 1860s, the first steamers began to ply the Ocean's waters, defying the monsoon winds and shifting the seasonal rhythms of trade towards a more regular pulse.²³ Soon afterwards, British-sponsored companies laid down the foundations of a trans-Oceanic telegraph infrastructure, and by the 1890s, merchants in Aden or London could easily access market information from as far away as Bombay, Zanzibar or Bahrain.²⁴ More importantly, the concomitant advent of a British banking system transformed the nature of large-scale trade finance, moving it from the realm of the Indian merchants and moneylenders to that of formal banks with links to metropolitan European capital. By the second half of the nineteenth century, the Indian Ocean financial sector witnessed the arrival of a number of large financial institutions, including: the Chartered Banks of India, Australia and China; the National Bank of India; Lloyds Bank; and a number of other Dutch, French and American institutions.

In the Persian Gulf, booms in the pearl and date markets depended on the advent of these infrastructural changes. The historian Matthew Hopper outlines how the markets for dates expanded in important ways during the 1880s, reaching consumers in Europe and America. Drawing his figures from British intelligence reports, Hopper argues that

²³ M.N. Pearson, *The Indian Ocean* (London: Routledge, 2003) pp. 201-206 ; Stephanie Jones, "The Management of British India Steamers in the Gulf 1862-1945: Gray Mackenzie and the Mesopotamia Persia Corporation," in Richard Lawless (ed.) *The Gulf in the Early 20th Century: Foreign Institutions and Local Responses* (Durham, UK: University of Durham, 1986) pp. 25-63

²⁴ See also Daniel Headrick, *The Tentacles of Progress: Technology Transfer in the Age of Imperialism, 1850-1940* (New York: Oxford University Press, 1988) pp. 97-144; J.C. Parkinson, *The Ocean Telegraph to India: A Narrative and a Diary* (Edinburgh: William Blackwood, 1870)

the Gulf began to export dates in much greater quantities following the establishment of markets abroad – markets whose supply depended largely on the sinews forged by steamships and telegraph.²⁵ Between 1899 and 1906, the earliest years for which there are published figures, Muscat’s date exports nearly doubled, from over £52,000 to £92,500 (in today’s British pounds, from over £5 million to nearly £9 million) peaking at over £103,000 in 1902-3. Bahrain’s comparatively small exports also grew exponentially, from over £10,500 in 1899-1900 to almost £26,000 six years later.²⁶

Both Hopper and historian Calvin Allen assert that the boom in dates from Oman was prompted by a rise in demand for Omani *fard* dates among American consumers. This trade, Allen states, would not have been possible had it not been for the introduction of steamships to the Indian Ocean. “Steam navigation,” Allen writes, “cut down on the importance of this characteristic [i.e. the Omani date’s ability to survive long sailing voyages to the United States] and the *fard* [sic.] might have disappeared from the American market to be replaced by North African varieties had not the cheaper freight rates kept it competitive.”²⁷ While the North American date trade never supplanted the privileged position of the Indian market (on which there is no detailed records) it is clear

²⁵ Matthew S. Hopper, “The African Presence in Arabia: Slavery, the World Economy, and the African Diaspora in Eastern Arabia, 1840-1940” (Ph.D. Dissertation, University of California, Los Angeles, 2006) pp. 112-114

²⁶ J.G. Lorimer, “Date Production and the Date Trade in the Persian Gulf Region,” in *The Gazetteer of the Persian Gulf, Oman and Central Arabia* (Slough, UK: Archive Editions, 1905/1987), Vol. 1 (Historical) Part II (Appendices) p. 2307

²⁷ Calvin Allen, “Sayyids, Shets and Sultans: Politics and Trade in Muscat Under the Al Bu Said, 1785-1914,” (Ph.D. Dissertation, University of Washington, 1978) p. 168

that the export of dates to the United States formed an important part of Muscat's commerce, and that it relied heavily on steamship transportation.

As the date trade with the United States began to solidify, new markets for Gulf pearls also developed and the value of pearl exports skyrocketed. These changes owed a great deal to a boom in the demand for pearls in Europe and North America during the late-nineteenth century. The boom prompted vigorous entry by European pearl merchants into the industry – either indirectly via Bombay, an established market for pearls and home to a large number of Gulf pearl merchants, or directly through Bahrain, considered the largest market for pearls in the Gulf. External demand for pearls had existed since at least the 16th century; although it waned following the mid-17th century upheavals in Europe, it persisted “in muted form” until it was revived in the mid-nineteenth century by European royalty and aristocrats. This demand was only bolstered by the post-Industrial Revolution emergence of the European and American *nouveau riche* – commercial magnates, agricultural landowners, and professionals – who “joined the ranks of high society and eventually overtook it in dictating fashion trends in both Europe and North America.”²⁸

Although the boom in demand for pearls encouraged the direct participation of European merchants in this market, any attempt at involvement in the pearl trade would have been extremely difficult without the regularization of steamship traffic in the Gulf

²⁸ Hopper, “The African Presence in Arabia,” pp. 180-82

and Indian Ocean and the laying of sub-marine telegraph cables, which allowed European merchants to contact their home markets and make better-informed local purchases. This strategy would have been unavailable if they had to rely on sailing ships and the Monsoon winds to bring news of the European markets. As the British Political Agent in Bahrain noted at the beginning of the twentieth century, the representative for the largest European buyers of Gulf pearls, the Parisian firm Rosenthal and Brothers, was “able to get the best available direct information by weekly telegraph from the Paris market, which enables him to effect his transactions on a much more substantial ground than his rivals.” Indeed, this strategy was so effective that as his transactions became known, Rosenthal’s representative was “used by the other merchants as a weather-cock of the market.”²⁹ The boom in the market for pearls and the appearance of European competitors to the Indian market had a predictable effect on the price that Gulf pearls commanded. One 1877 observer noted that the price of pearls was said to have since the middle of the century.³⁰ During the decade between the early 1890s and early 1900s, for which we have solid figures, the total value of pearls exported from the Gulf tripled from almost £500,000 in 1893-4 to nearly £1.5 million in 1903-4. This growth was particularly

²⁹ Political Agent, Bahrain, *Report of the Trade of the Bahrain Islands for the Year 1909-10*, p. 2 as quoted in *Ibid.* p. 208

³⁰ E.L. Dorand, “Notes on the Pearl Fisheries of the Persian Gulf,” *The Persian Gulf Administration Report, 1877-1878*, p. 39

remarkable in Bahrain, where the value of pearl exports rose by nearly 600 percent between 1873 and 1906.³¹

To capture the emerging commercial opportunities, merchants required capital in amounts that were simply unavailable, or perhaps inconvenient when considering the scale of commercial activity. As an alternative to cash, merchants relied on credit arrangements supported by goods (and sometimes cash), which spurred on economic activity and facilitated the flow of goods around and across the Indian Ocean. Merchants from India, Arabia and Persia who enjoyed access to a ready supply of goods established themselves as important financiers. Rajat Kanta Ray argues that the economic changes taking place in the Indian Ocean prompted the rise but also marginalization of “the bazaar” – a term he uses to describe an indigenous credit market fueled by Indian and Chinese (and to this one could add Arab and Persian) merchants and moneylenders. Ray argues that native financiers were able to penetrate into important credit markets that European financial institutions could not reach because of the risks involved. These markets were not insubstantial, and in the Western Indian Ocean merchants from India managed to carve for themselves an important position as financiers of Arab, Persian and African commercial and agricultural undertakings.³²

³¹ J.G. Lorimer, “The Pearl and Mother of Pearl Fisheries of the Persian Gulf,” *Gazetter*, Vol. 1 (Historical) Part 2 (Appendices) pp. 2252-3. It is not clear whether these increases hold when adjusted for the quantity of pearls being exported. That said, even a rise in the number of exported pearls would indicate a boom in production.

³² Rajat Kanta Ray, “Asian Capital in the Age of European Domination”; Sugata Bose, *A Hundred Horizons*, pp. 72-191

By the mid-to-late nineteenth century, the world of commerce and finance that Indian Ocean merchants had known decades earlier was a distant memory. Although there is a great deal to suggest that the same groups of merchants who dominated finance at the beginning of the century held onto their position following the commercial boom, it is clear the geographical contours of the region's credit networks began to shift in response to newly-emerging opportunities. The sheer numbers of financiers had grown considerably, and the scope of their activities had penetrated distant markets. By the 1870s – although perhaps even earlier on – virtually everybody in the Western Indian Ocean, from the ivory depots of the interior of East Africa to the commercial centers of the coasts and the interiors of the Arabian Peninsula, had become enmeshed in a burgeoning economy of obligation.

Seths and Shopkeepers: the Moneylenders of the Indian Ocean

Financial markets in the nineteenth-century Western Indian Ocean were not the disembodied institutions and forces that we imagine them to be today. Indeed, the forces that dictate financial markets today emerged as a result of many processes – industrial capitalism, marketing strategies, and technological breakthroughs – that had not yet taken place in the Indian Ocean (nor in the United States) by the mid-nineteenth century.³³ In the Indian Ocean commercial arena, finance was undertaken by merchants who, out of a range of motivations and through the practices of commerce inserted themselves into

³³ See also Chandler, *The Visible Hand*; Lendol Calder, *Financing the American Dream* (Princeton, NJ: Princeton University Press, 1999)

dense webs of social, economic and legal relationships. These relationships cut across a range of geographies, bridging together local, regional and international commodity circuits to form a coherent system.

No matter where one was in the Indian Ocean, an integral part of the credit networks that ran throughout the commercial arena was the Indian merchant, the ubiquitous “*Bania*”. While British officials used the term to describe Indian merchants in foreign ports in general, Arabs made a distinction between the “Hindi” trader, a term used to designate Indian merchants in general (and more specifically Khoja Muslims) and the “*Banyān*”, a term they used to describe Hindu Indian wholesalers and financiers renowned for their wealth. From the shores of Gujarat, they fanned outwards into all of the region’s major ports – Muscat, Aden, Zanzibar, Mombasa, Bahrain and Bushire. By the mid-nineteenth century, these merchants had already developed a reputation as the principal financiers in the Western Indian Ocean. On his visit to Zanzibar in 1857, Richard Burton wrote that they were “the merchants par excellence of Zanzibar” adding that “they command the inland trade, sending, where they themselves do not care to travel, Arabs and Waswahili [Swahili people] to conduct their caravans.”³⁴

Banias were also the preferred creditors of the ruling families of the Western Indian Ocean, who frequently turned to them as sources for public revenue. Indeed, it seemed that everywhere the Sultan of Muscat and Zanzibar went, he took his Indian

³⁴ Richard F. Burton, *Zanzibar: City, Island, and Coast* (London: Tinsley Brothers, 1872) Vol. 1, pp. 327-328

creditors with him. In almost all of the region's ports, *Banias* held prominent positions as Customs Masters, having farmed the customs revenues from the rulers for several years at a time. This tendency towards customs farming, as I argue later, was not an isolated commercial enterprise, but an integral part of a much broader mercantile firm.³⁵ *Banias*, however, were much more than bankers to the Sultan. They were the commercial lifeline that linked the ports of the Indian Ocean together into a coherent system through which commodities and credit flowed. So powerful was their hold on the region's finances that one firm, that of the wealthy Jairam Sewji, was willing to bankroll entire military campaigns on its own. Jairam's firm was able to mobilize enough credit to finance the Sultan of Zanzibar's proposed invasion of Muscat, which his brother had inherited in 1856, and of Bahrain. He only agreed to withhold his purse-strings after an obsequiously polite request on the part of officials from the Government of Bombay, who chose not to send out the first draft of their letter because its wording might have given "unnecessary offence" to a firm which "occupies an influential position" in the region.³⁶

In addition to linking the ports and hinterlands of the Indian Ocean together into a coherent system of trade and finance, *Bania* merchants occupied the frontier between the Indian Ocean and the burgeoning world economy. Even before the expansion of world

³⁵ I use the term "firm" here intentionally. *Bania* enterprises, as firms, enjoyed a legal personality that outlived their founder – a personality that in many ways subsumed that of its founder. People often continued to identify *Bania* firms as the founder well after the latter's passing. Jairam Sewji's name, for example, appeared in court records more than 30 years after he passed away. In those cases, it was not Jairam himself who appeared in court, but a representative of his firm.

³⁶ Bombay Castle to the Secretary to the Government of India (7 September 1870), MSA PD 1870 Vol. 144, Comp. 1198

commerce in the nineteenth century, *Banias* brokered between the markets of India, the Persian Gulf and South Arabia on the one hand and the European trading companies that visited the Indian Ocean. As the principal merchant-financiers in the region's ports, they were quickly identified by Europeans as valuable trading partners. From as early on as the 16th century, when the Portuguese first established a presence in the Indian Ocean, their commerce went principally through *Bania* hands.³⁷ In 17th and eighteenth century Mocha, all Dutch trade with the Yemeni coffee growers further inland was brokered by a community of *Bania* merchants, who were also the port's main creditors.³⁸ Even when the English East India Company was expanding its commercial and political ambitions in India during the eighteenth century, it did so with the help of *Bania* financiers in Surat and Bombay.³⁹

The numbers of *Banias* around the Indian Ocean during the mid-nineteenth century varied from port to port. When English Captain G. B. Brucks traveled through Bahrain in the 1830s, he noted the presence of nearly 100 *Banias*, mostly merchants and shopkeepers, in Manama – although it is unclear how many of those were permanent

³⁷ See also Michael N. Pearson, *Merchants and Rulers in Gujarat: The Response to the Portuguese in the Sixteenth Century* (Berkeley, CA: University of California Press, 1976); idem, *Port Cities and Intruders: The Swahili Coast, India and Portugal in the Early Modern Era* (Baltimore, MD: Johns Hopkins University Press, 1998)

³⁸ Nancy Um, *The Merchant Houses of Mocha: Trade and Architecture in an Indian Ocean Port* (Seattle, WA: University of Washington Press, 2009) pp. 40-42, 163-166

³⁹ See also Lakshmi Subramanian, *Indigenous Capital and Imperial Expansion: Bombay, Surat and the West Coast* (New York: Oxford University Press, 1998)

residents of that port.⁴⁰ In Muscat and coastal Oman, the *Bania* community was much larger: one historian notes that by 1840, some 2,000 Indians were settled in Muscat and its environs.⁴¹ By 1867, there was also a *Bania* community of an unknown size further up the coast in Sohar.⁴² A sizeable *Bania* community was also established in the ports of Yemen and the Red Sea. The famous coffee port of Mocha was home to between 200 and 700 *Banias* as early as the eighteenth century, and many more operated out of Aden.⁴³ Indian merchants also established a presence on the Persian coast of the Gulf: by 1864, there were 20 Indian merchants in Lingah, and roughly 100 in Bandar ‘Abbas. All were engaged in financing agriculture, and virtually all of them represented firms in Bombay and Sind.⁴⁴ In Zanzibar, the Indian population grew from 219 in 1819 to roughly 500 in the mid-nineteenth century.⁴⁵

Some *Banias* were itinerant traders, coming only during recognized trading seasons. Most of the *Bania* merchants of Bahrain, for example, only came at the end of the summer, after the dhows had already returned from the banks with the pearls, to settle

⁴⁰ George Barnes Brucks, “Bahrein: extract from Memoir descriptive of the navigation of the Gulf of Persia; with brief notices. of the manners, customs, religion, commerce and resources of the people inhabiting its shores and islands,” from *Selections from the Records of the Bombay Government*, No. XXIV (New Series, 1856) pp. 531-533, 564-571

⁴¹ Robert G. Landen, *Oman Since 1856: Disruptive Modernization in a Traditional Arab Society* (Princeton, NJ: Princeton University Press, 1967) p. 132

⁴² MSA PD 1867, Vol. 47, Comp. 1292

⁴³ Um, *The Merchant Houses of Mocha*, p.164; Charles Schaefer, “Selling at a Wash: Competition and the Indian Merchant Community in Aden Crown Colony,” *Comparative Studies of South Asia, Africa and the Middle East*, Vol. 19, No. 2 (1999) pp. 16-23

⁴⁴ MSA PD 1864, Vol. 38, Comp. 511

⁴⁵ Sheriff, *Slaves, Spices*, p.148. Sheriff gleans his figures from a range of reports, including travel narratives and administrative reports by British consuls.

their accounts with local merchants and take back their valuable cargo. In his conversations with the Gulf Resident in 1843, one merchant stated that he and others “are not inhabitants of Bahrein, but...only visit Bahrein for 3 or 4 months for Traffic.”⁴⁶ Burton described the Kutchi Bhattias of Zanzibar as being only slightly less itinerant: “he begins life [in Zanzibar] before his teens,” he wrote, “and, after an expatriation of 9 to 12 years, he goes home to become a householder,” returning to Zanzibar for only short intervals.⁴⁷ While these were seasonal traders, they were also important financiers: they loaned money and provisions to local Arab and Persian merchants, providing crucial financing to the pearl trades, caravan trades and other such ventures.

Other *Banias* had more or less permanently settled in the ports of Arabia and East Africa, and by the nineteenth century had formed an integral part of commercial society there. Some temporal qualifications, however, are necessary. While the *Banias* of Muscat had by the nineteenth century been there for generations, with a sustained *Bania* presence going at least as far back as the mid-1600s, this is hardly true for the Indian mercantile communities farther up the Persian Gulf.⁴⁸ Calvin Allen has written that the Sindi Bhattias of Bahrain only arrived there after stiff competition from their Kutchi counterparts during the early nineteenth century pushed them out of Muscat and into the

⁴⁶ Petition by Tiruthdas Hiranand, Jethanand Chetunmul and Luxmidas Pitamburdas (22 March 1846) MSA PD 1843 Vol. 79/1961 Comp. 151

⁴⁷ Burton, Zanzibar, Vol. 1, p.329

⁴⁸ M. Reda Bhacker cites a Dutch source that points to the existence of a *Bania* trading community in Muscat from 1673. *Trade and Empire in Muscat and Zanzibar: Roots of British Domination* (London: Routledge, 1994) p. 14

Bahraini pearl trade.⁴⁹ This is also true for East Africa: while there are accounts of Indian merchants in East Africa dating back hundreds of years, there is little evidence of a sustained presence in those areas. Indeed, it seems that Indian merchants only arrived in significant numbers when the Al-Busa'idi rulers of Muscat conquered the Swahili coast, bringing their merchant-financiers along with them. Allen even suggests that Muscat's *Banias* might have encouraged Sultan Sa'id bin Sultan to conquer Zanzibar.⁵⁰ Whatever the case may be, it is clear that the degree to which we can speak of an integrated Indian Ocean financial "world" before the nineteenth century is limited by the breadth of the financial networks that tied Western India to the Persian Gulf, South Arabia and East Africa.

Whether they were permanent residents or seasonal traders, all the *Banias* shared one common attribute: access to regional networks of credit. Their unmatched ability to channel capital between India, Arabia and Africa, and the mercantile and familial ties they enjoyed with merchant houses in India and the rest of the Indian Ocean, rendered them uniquely positioned to control all finance, commercial or otherwise, in the region.⁵¹

Burton wrote that the East African *Banias* were able to monopolize the trade in ivory because they could "cash drafts upon Zanzibar, Mandavi [Mandvi, a port in Gujarat], and

⁴⁹ Calvin Allen, "Sayyids, Shets and Sultans," p. 109. It is important to note here that it was only at the end of the nineteenth century that Arab tribes from Coastal Arabia conquered Bahrain and established the Al-Khalifa as rulers of the island. The changed political environment might have had a great deal to do with *Bania* movement to Bahrain.

⁵⁰ *Ibid.* p. 110

⁵¹ For more on the merchant house, see Ketaki Pant, "Homes of Capital: Merchants and Mobility in the Indian Ocean," (Unpublished Ph.D. Dissertation, Duke University, forthcoming).

Bombay; provide outfits, supply guards and procure the Pagazi, or porters, who are mostly their employees.”⁵² The *Banias* of Muscat, too, were able to channel credit from India to the resource-poor port, and stimulated the production of dates and textiles there.⁵³ In Bahrain, British officials noted from as early as the mid-nineteenth century that *Banias* were active in providing credit to pearling dhows, and that they linked the Bahraini pearl market to that of Bombay.⁵⁴ Even in the ports of the Persian coast, in Bushire, Lingah and Bandar ‘Abbas, *Banias* played an important role in financing the upcountry caravan trade in cotton and textiles.⁵⁵

Anyone looking to finance a large-scale commercial or agricultural venture, then, could do no better than to look to the *Bania*. *Banias* were wealthy, enjoyed connections around the Indian Ocean, and were generally liberal when it came to lending: if they potentially stood to gain money in the end, they loaned it out. Thus, *Banias* lent to the Arab landowning elite and prosperous merchants, but also to poorer people who willing to mortgage what little property they had to potentially make it big in the East African interior. Extant deeds from the mid-nineteenth century show that *Banias* gave loans to recently-manumitted slaves and poor Arabs looking to outfit an ivory caravan.⁵⁶ As the frontiers of the ivory trade moved further inland, so too did the networks of *Bania* financiers. From Zanzibar, they moved to the coastal East African towns of Bagamoyo,

⁵² Bhacker, *Trade and Empire*, p. 328

⁵³ *Ibid.* pp.132-133

⁵⁴ MSA PD 1864 Vol. 38, Comp. 110

⁵⁵ MSA PD 1864 Vol. 38, Comp. 511

⁵⁶ See also ZNA AM 1/1 p. 8, 23, 27, 33-35

Pangani, Tanga and Saadani, where many of the caravan routes from the interior terminated. Over the course of the nineteenth century, they fanned out into the interior of East Africa, and *Bania* merchants and storehouses could be found as far inland as Isanga, at the border between what is now Tanzania and Zambia.⁵⁷

Those looking to finance a smaller venture, or simply looking for a loan to maintain themselves until the date or clove harvest, usually turned not to the *Banias*, but to Khoja Indians or, in the case of Bahrain, Persians. While it might seem odd to group these two ethnic communities together there is ample reason for doing so, for if the *Banias* were the principal merchants in these ports, the Khojas and Persians were the principal shopkeepers – no less prosperous than the *Banias*, but often lending and trading on a comparatively smaller scale. Of course, not all of the Persians were small-scale merchants; some members of the Persian mercantile community in Bahrain wielded tremendous influence. The partners Abdul-Nabi Bushihri and Ali Kazem Bushihri, for example, were wealthy landowners who frequently bought and sold properties in Bahrain and Bushire. They also established credit lines with many of the Persian immigrants who flocked to the town during the later-nineteenth century, to take part in the burgeoning pearl dive.⁵⁸ Many Khojas were also enormously prosperous: the famous Khoja of Zanzibar, Tharia Topan, for example, was a preferred banker to the Sultan Barghash, and

⁵⁷ Sheriff, *Slaves, Spices*, p. 176

⁵⁸ Nelida Fuccaro, *Histories of City and State in the Persian Gulf: Manama since 1800* (New York: Cambridge University Press, 2009) p. 102. This information is also from the deeds available in the library of Ali Akbar Bushihri, Ali Kazem's great grandson. All references to his collection will be referred to as "BA" for Bushihri Archive

financed a number of major ivory hunting expeditions, including those of the famous trader Tippu Tip.⁵⁹

The majority of the Khojas and Persians, however, were small shopkeepers who lent out provisions to agriculturalists or small dhow crews. And while Khojas often moved out and set up shop in agricultural areas, Persians tended to stay in the towns themselves, lending to merchants, *nakhodas* and Bahrain's rural farmers, the Baharna. The ostensibly small scale of their lending activities, however, belies the true significance of Khoja and Persian shopkeepers; as will be shown later, their activities were crucial in linking rural areas to the broader Indian Ocean trade system.

Those looking to take on even smaller loans – people like slaves, mariners, and small farmers – were not left out of these circuits of credit and commodity exchange. Their access to credit may have been more limited, but channels were still available to them. Members of this class usually borrowed from Arabs who had themselves borrowed money from richer merchants, Arab or otherwise. In Zanzibar, some Arab merchants loaned money directly to poor farmers against future deliveries of cloves. Shaikh Rashid bin Salim Al-Ghaithi, for example, frequently appears in the registry as having lent various amounts to African and Arab small landowners in Zanzibar during the 1860s and 1870s. His son Hamad also appears to have joined him as a creditor to communities of a

⁵⁹ Sheriff, *Slaves, Spices*, p. 109; ZNA AM 1/1 pp. 72-73

lower socio-economic status.⁶⁰ In East Africa, Yemeni merchants from Hadramaut also sold goods on credit in their shops, but generally on a very small scale.

The above distinctions between “Indian,” “Persian,” and “Arab,” should not suggest that these categories existed exclusively of one another. While many did unambiguously fall into one category or another, a considerable number of these actors straddled the fence between two categories or moved between one and the other. There lived many Arab-Indians, Afro-Arabs, Persian-Arabs and Afro-Persians, and even Indo-Africans – all of whom occupied different levels of the social hierarchy. Even slaves, whom historians have traditionally considered to be black and of the lowest of social classes, defy these categories: many were highly mobile, and certainly not all of them were black.⁶¹ If anything, what this should signal is that while ethnic and racial differences did abound, they formed weak indicators of one’s socio-economic status. Not even occupational categories were altogether too stable: the number of *nakhoda*-merchants was not inconsiderable – indeed, in the eighteenth century, the word *nakhoda* identified a ship-owning merchant.⁶²

⁶⁰ See also ZNA AM 1/9 and AM 1/10, in which both parties frequently appear as creditors

⁶¹ See also McDow, “Arabs and Africans”; Gwynn Campbell, “Slavery and Other Forms of Unfree Labour in the Indian Ocean World,” introduction to Gwyn Campbell (ed.), *The Structure of Slavery in Indian Ocean Africa and Asia* (London: Routledge, 2004) pp. vii-xxxii

⁶² Um, *The Merchant Houses of Mocha*, p. 81. It was only in the Arabic literature of the mid-20th century that the two occupations came to be considered separately in the 20th century – and even then, historians acknowledged that there were individuals who acted as both merchants and *nakhodas*. See also Yacoub Y. Al-Hijji, *Nawākhithat al-Safar al-Shirā‘ī fi al-Kuwayt [The Deep-Sea Sailing Nakhodas of Kuwait]* (Kuwait: Al-Rubay‘ān Publishing, 1993) pp. 19-21, 381-395

The blurred boundaries between these groups notwithstanding, the bazaars of the Western Indian Ocean would seem, at least at first glance, to be populated by atomized merchants and shopkeepers, each lending and borrowing, buying and selling on their own – economies, as J.C. van Leur and Niels Steensgaard wrote of the seventeenth-century Asian trade, of peddlers, stunted by unforeseeable fluctuations of prices and of supply.⁶³ As enticing as it may be to consider the Indian Ocean as a commercial arena populated by individual actors, this could not be further from the reality of commerce in the region. As we shall see in the discussion that follows, mercantile activities in the Indian Ocean were highly organized affairs.

Through the relationships of credit, debt and obligation that they forged, merchants were able to establish a commercial structure which reduced uncertainties associated with price, supply and a range of other trade-related risks. In both production and distribution, webs of debt and credit, and the bonds of obligation that arose from them, structured the flows of goods and regulated the behavior of laborers, merchants and middlemen. At its core, then, credit and the bonds it generated supplied Indian Ocean mercantile activity with a governance structure that rendered it both highly predictable and enduring.

⁶³ J.C. van Leur, *Indonesian Trade and Society: Essays in Asian Social and Economic History* (The Hague: W. van Hoeve, 1955); Niels Steensgaard, *Carracks, Caravans and Companies: the Structural Crisis in the European-Asian Trade in the Early Seventeenth Century* (Lund: Studentlitteratur, 1973)

Pearls and Porters: Obligation and Production in the Indian Ocean

It has become somewhat of a trope for those who write on economic activity in the Indian Ocean to highlight the situation of bonded laborers. Economic historians of the region, who are in part duty-bound to tackle the question of slavery and indentured labor, and contemporary observers alike focused heavily on the visible plight of laborers – particularly the financial bondage that characterized their employment. Observers of the Persian Gulf pearl dive, for example, very rarely failed to include accounts of emaciated divers forced onto dhows by their unscrupulous *nakhodas*-cum-creditors, working themselves to the bone while the *nakhodas* and merchants each manipulated their account books to keep the divers in perpetual debt.⁶⁴ In East African caravan portage, often carried out by the free *waungwana* porters, the racial attributes of the laborers (many, although not all, of whom were phenotypically black) and the harsh conditions of their work made it easy for European observers, and even later historians, to conflate labor and slavery.⁶⁵ Regardless of what they wrote on or even what position they took on the cruelty of bonded labor, observers around the Indian Ocean generally tended towards one viewpoint: that the pervasive indebtedness among laborers was oppressive, unjust and generally undesirable – that it was an issue on which one had to take a moral stance.

While there is undoubtedly a great deal of truth in their assertions of the brutal conditions of laborers and of predatory moneylenders, this kind of approach to the labor

⁶⁴ For an excellent example of this sort of writing, see Alan Villiers, *Sons of Sinbad* (New York: Charles Scribner and Sons, 1969) pp. 349-374

⁶⁵ Rockel, *Carriers of Culture*, pp. 8-23

history of the Indian Ocean ignores the crucial question of what indebtedness meant within the mercantile enterprise. For indebtedness was not a flat, undifferentiated mass of economic injustice, it was a lived experience – an ongoing, textured relationship between a number of different parties, all of whom played a part in shaping its contours. Even those who ultimately bore the brunt of the violence that economic activity demanded were able exercise some power when it came to determining pay and work conditions. Indebtedness was not simply imposed, it was negotiated; it was not an exercise in mercantile muscle flexing, but was a response to the demands of commerce in a wildly unpredictable environment. In the production arena, credit, debt and the obligations they entailed structured almost every undertaking, creating the sets of vertical ties that gave Indian Ocean firms their shape. It bound mariners to dhows, porters to caravans, and sea captains and caravan leaders to merchants. In economic activities characterized by risk and uncertainty, the bonds of obligation that credit created gave Indian Ocean economic actors the certainty and flexibility they needed to continue to produce the commodities they depended on while adapting to changing circumstances.

Credit debt and economic organization in the Persian Gulf pearl dive

To get at the complex webs of obligation and how they structured economic activity in the mid-nineteenth century Persian Gulf, one can do no better than look at it through the eyes of the middleman – the *nakhoda*. When a *nakhoda* outfitted his dhow for an upcoming pearl season, he would have had a great deal on his mind. How many pearls his crew would fish, how much he could sell them for, and how much he would be

left with at the end of the season were all questions that burdened him. For all of these uncertainties, however, there was a lot that he could know with near-certainty. Who was going to accompany him on his boat, how much he would have to pay them, and who he would sell his catch to – all of these were issues that had been worked out at least a year beforehand, if not longer. For as much autonomy as he had on board his dhow, the *nakhoda* was far from a free agent. His debts to his merchant-financier, and the debt his divers owed him from seasons past, meant that what he could do with the season's catch was no longer up to him. Indeed, of all of the activities discussed here, nowhere is the relationship between credit, debt and economic organization in production clearer than in the annual Persian Gulf dive for pearls. Everything surrounding the pearling season, from the months of preparation leading up to it to the weeks of account settlement that followed it, was prompted, spurred on, and structured by obligation.

Months before the summer pearling season began *nakhodas* approached their merchant-financiers for a loan of money or goods, which they then parceled out among their mariners – divers, haulers and *raḍeefs* (apprentices). Of course, not everyone could be a *nakhoda*, an occupation which required a great deal of technical skill, passed down only within families of *nakhodas*, and a reputation for creditworthiness. A merchant who advanced a *nakhoda* money or goods had to exercise extreme scrutiny, as these usually did not come from his personal wealth. Although some merchants were able to finance the pearl dive on their own, many took on loans from one of the island's *Bania* pearl merchants or moneylenders and re-lent them out to a group of *nakhodas*. From as early as

1857, British officials in the Persian Gulf reported that Indian *Bania* merchants and local Arab and Persian merchants “monopolize the pearl fisheries in their own hands.”⁶⁶ Less than a decade later another official reported that the entire profits of the Gulf pearl trade were “in the hands of agents of Pearl merchants, whether Hindoo or other,” adding that “the great bulk of the best pearls is sent to the Bombay market.”⁶⁷

Outsiders’ accounts of the *Bania* moneylenders were frequently unfavorable. They often viewed *Bania* merchants as economic parasites – unscrupulous lenders who did little to earn the money they made from a pearling voyage. In an 1877 report on the Gulf pearl trade, one British observer noted with candor the presence of “our ubiquitous friend the Indian Bunneah [sic], whom we find equally at home here as in the wilds of the northern ranges beyond the Indus,” adding that “truly he is in good circumstances, regaled on the famed Arab sweetmeats of Muscat, he makes hay ‘whilst the sun shines’, and robs his dependents most amicably.”⁶⁸ It is not clear that the Arabs and Africans who borrowed from Indian moneylenders saw them in the same light, for there are no existing records pointing to similar attitudes among them.

Despite the frequency with which they portrayed *Banias* as avaricious predators, British officials and others also admitted their importance. The advances that the *Banias* supplied tied Bahrain and the Gulf’s pearling trade into a larger Indian Ocean economy,

⁶⁶ Gulf Resident to the Secretary to the Government of Bombay (16 June 1857), MSA PD 1857 Vol. 165, Comp. 580

⁶⁷ Gulf Resident to the Secretary to the Government of Bombay (15 December 1865), MSA PD 1867 Vol. 87, Comp. 33

⁶⁸ E.L. Dorand, “Notes on the Pearl Fisheries of the Persian Gulf,” p. 31

while infusing the Gulf with the credit that it so desperately needed. Aside from pearls and dates, the Gulf ports produced nothing of any importance, and certainly not in exportable quantities. The only other activity that one can point to as being significant in any way was the re-export business that a number of Gulf merchants participated in, bringing in goods from India and re-selling them to the smaller ports of the Gulf and the tribes of the interior of the Arabian Peninsula.⁶⁹ However lucrative it was, the re-export business depended just as heavily on goods and money advanced from Indian merchants as the pearling industry. Commenting on the economic situation of the Gulf inhabitants, one British official wrote that “if these have not money, and if to dive for Pearls requires capital, one of two things must result; either the Pearl Diving must cease or the Divers must find a Capitalist who, if he be not a British subject, must still be a foreigner.”⁷⁰

On a nineteenth century pearling dhow one would see a mixed group, including slaves and indentured divers from around the Persian Gulf and the Arabian Sea, and even Bedouins from the interior – “Arabs of the poorer classes, or sedee [Sidi] domestic slaves,” as one observer wrote.⁷¹ Although their social status might have varied, there was little to distinguish the economic situation of a slave diver from that of an indentured poor Arab; while the latter was free to dispose of his earning in any way he wished, both had to contend with an equally dismal economic lot. Aside from pearling, there were very

⁶⁹ See also Fattah, *The Politics of Regional Trade*

⁷⁰ Gulf Resident to the Chief Secretary to the Government of Bombay (21 November 1863) MSA PD 1864 Vol. 38, Comp. 110

⁷¹ Dorand, “Notes on the Pearl Fisheries of the Persian Gulf,” p. 32

few – if any – opportunities for employment among the male populations of most Gulf ports. Most divers and pullers were unemployed for the vast majority of the year, finding work on long-distance trading dhows only when the opportunity presented itself. Indeed, this was in many ways a one-industry economy – and a seasonal one at that.

It is in this capital-poor environment that credit took center stage, financing production by the *nakhoda* and his crew in the pearling industry but also – and perhaps more importantly – enabling year-round consumption among divers and their families. While merchant-financiers sometimes advanced merchants and mariners cash, they more often advanced them basic foodstuffs – rice, wheat, sugar, dates and tea – which the *nakhoda* had to purchase from the merchant’s store. Even in other, more productive economies such as date plantations (which we will discuss in detail later) farmers had to approach *Banias* for loans of rice or other merchandise – store credit, which the financier would then balance out against pearls or other goods received.⁷²

While financing production and consumption comprised a major function of the credit system, its most important work was in the obligations it generated. As one official astutely observed in 1863, “the man who holds the purse in such matters holds all. He equips or renders possible the equipment of the divers Boats, and buys his proceeds.”⁷³

⁷² Some merchants, like the two Persian partners Ali Kazem and ‘Abdul-Nabi Bushihri, asked divers to bring back oyster shells as well as pearls, which they then sold to German and British firms in Bahrain that were involved in the mother-of-pearl trade. Many of the deeds they drew up with divers can be found in the Bushihri Archive, Bahrain.

⁷³ Gulf Resident to the Chief Secretary to the Government of Bombay (14 October 1863) MSA PD 1862 Vol. 27, Comp. 54

Although the remark was an off-hand one, it reveals the degree to which everyone – even outside observers – understood how credit functioned in the Persian Gulf pearl dive. For the credit system bound the actors together in a matrix of rights and obligations that lay at the very core of the pearling industry’s structure – a structure that was in large part constructed to mitigate the risks associated with the pearl dive, mostly for the *nakhodas* and merchants, but to a lesser degree for the divers, too.

A small degree of certainty went a long way in the dive for pearls. Seasonal profit margins were often uncertain at best, contingent as they were upon a number of variables beyond both the *nakhodas*’ and merchants’ control. Bad weather and other environmental factors could affect the number of oysters divers were able to collect, and there was nothing to ensure that enough of the oysters that were collected would bear pearls and help the merchants and *nakhodas* cover their costs. Even when one did find pearls, the prices they commanded varied greatly, determined by such factors as size, shape, color and texture.⁷⁴ If this were not enough, the profit margins of those involved were dangerously exposed to fluctuations in price. As one British official noted in the 1920s, “if the season is a bad one or if there is a slump in the pearl markets the lenders may have to wait for years for their money or at all events to get complete repayments.”⁷⁵ The truth behind this statement was borne out less than a decade later, when a combination of the

⁷⁴ Dorand, “Notes on the Pearl Fisheries of the Persian Gulf,” p. 38; Al-Zayyani, *Al-Ghaws*, pp. 83-84, 181-187

⁷⁵ “Pearling Customs” Gulf Resident, Bushire to Political Agent, Bahrain (April 10, 1924) IOR R/15/2/132

introduction of the Japanese cultured pearl into the world market and a worldwide economic depression devastated the Gulf pearling industry.

In addition to the natural hazards that merchants and *nakhodas* faced, there was also another type of risk: divers could easily abscond with the money advanced to them – and, as I illustrate in Chapter 6, they often did – or die from the rigors of work during a pearling voyage, or even prior to the season.⁷⁶ That divers bore the brunt of the hazards of life on board the dhow is of course clear. However, it is important to emphasize that these also exposed the *nakhoda* to a considerable income risk that could leave him unable to fulfill his obligations to his pearl merchant-cum-creditor. The likelihood of sickness or death among the crew was not small: one pearl merchant’s memoir listed no less than ten common health risks that divers were exposed to while at the pearling banks; another author listed thirteen.⁷⁷ For the *nakhoda*, these formed a sword of Damocles that constantly hung over his head: if he was not protected against this income risk, there would be little incentive for him to participate in the system and share his specialized knowledge of navigation and the pearl banks.

A diver’s debts to the *nakhoda* supplied the latter with a degree of insurance in case the diver died or absconded. By advancing the diver money, the *nakhoda* created a

⁷⁶ The strategies that Indian Ocean merchants mobilized to deal with absconders will be discussed in much greater detail in Chapter 6.

⁷⁷ Saif Marzouq Al-Shamlan, *Tarikh al-Ghaws ‘ala al-lu’lu’ fi al-Kuwayt wal-Khaleej al-‘Arabi* [The History of Pearl Diving in Kuwait and the Arabian Gulf] (Kuwait: That es-Salasil, 1975/1986) Vol.1 pp. 423-432; Mustafa ‘Izzat Hibra, *Mawsū‘at al-Ghaws wa al-Lu’lu’ fi Mujtama‘ al-Imārāt wa al-Khaleej al-‘Arabi Qabl al-Naft* [Compendium of Diving and Pearls in the Communities of the Emirates and the Arabian Gulf Before Oil] (Abu Dhabi: Center for Documentation and Research, 2004) Vol. 2 pp. 89-141

legal obligation on the diver's part. He became a creditor, and thus enjoyed a number of rights under both pearling custom and Islamic law that he was able to exercise if necessary. Most importantly, these included the right to demand repayment or performance from the brothers or children of his debtors if they passed away.⁷⁸ Moreover, if he was pressed to, a *nakhoda* could rely on his crews' outstanding obligations as a form of collateral against his own debts to his creditor, "so that when it suits the latter to sell up a Nakhoda rather than await payment of the debt... he does so to the extent of the boat and the crew."⁷⁹

For the pearl merchant, the credit system was nothing less than a blessing. It gave him control over the quality of the pearls he received – an important incentive to participate in a market as volatile as that for pearls – and allowed him the room to negotiate an advantageous price. In the same way that Muslim jurists imagined in the case of advances against agricultural produce, a merchant who financed a pearling dhow enjoyed first refusal of their *nakhodas'* catch, and at a price that was usually 20 percent below market value. It was only after the financier selected the pearls he liked – if any at all – that the *nakhoda* was able to sell them to other merchants at the market rate.⁸⁰ This

⁷⁸ Ibn Rushd, *The Distinguished Jurist's Primer* (Reading, UK: Garnet Publishing, 1995) Vol. 2, pp. 344-351. In his description of the Gulf pearl dive in the 1930s, Allan Villiers narrated the story of a mariner who was bound to a pearling *nakhoda* not through debts of his own, but by those incurred by his deceased brother. Alan Villiers, *Sons of Sinbad*, pp. 328-329

⁷⁹ Dorand, "Notes on the Pearl Fisheries of the Persian Gulf," p. 31

⁸⁰ *Nakhodas* who did not borrow money from a pearl merchant could sell the pearls to whomever they wanted, but were obligated to repay their creditor the principal plus 20 percent interest. Dorand, "Notes on the Pearl Fisheries of the Persian Gulf," pp. 30-31

empowered the merchant with control over quality: he was able to select the pearls he considered saleable and leave the rest with the *nakhoda*, who could then either sell them elsewhere and repay the debt or choose to keep the proceeds from the sales and remain indebted to the merchant. The *nakhoda*'s obligation to the merchant, however, trumped all other concerns. As one observer wrote, "should a stranger buy pearls privately from a Nakhoda, without the permission of the Musaygum [merchant], he becomes responsible for all the Nakhoda's debts even if these are far in excess of the value of the pearls which have changed hands."⁸¹

The credit system also gave *nakhodas* a degree of quality control – over their divers rather than over the goods. In theory, a *nakhoda* who was known to advance high sums to his divers would attract large numbers of them and have the option of selecting from among the best. In practice, the ports' rulers committed *nakhodas* to advance the same amount to their mariners, the advance only varying with the mariner's occupation and the season.⁸² Those who wanted to attract the best divers, however, only had to offer them bonuses, which sometimes came in the form of gifts of money, but often in the form of additional advances. The bonuses attracted the best divers, but also bound them to the *nakhoda* who mobilized advances as bait in competing with others for the cream of the labor supply.

⁸¹ Ibid. p. 31

⁸² Jeffrey Nugent and Samar K. Datta, "Bahrain's Pearling Industry: How it Was, Why it Was that Way and its Implications," in Jeffrey Nugent and Theodore H. Thomas, eds., *Bahrain and the Gulf: Past Perspectives and Alternative Futures* (London: Croom Helm, 1985) p. 29

It is compelling to view the money or goods advanced to the divers as a debt that they would eventually have to repay – as, indeed, many observers of the pearl dive did. There is too little, however, to indicate that this was ever the case. Indeed, not one mention exists of a diver being forced to repay his debts with money. Rather, there is far more to suggest that the goods advanced to divers functioned as advance wages that carried with them obligations. The obligation that a diver incurred by taking on the advance was not to repay it, but rather to perform when expected to and follow the commands of his *nakhoda*, both on and off the dhow. The advances paid out at the beginning of the season, during the dive and during the off-season, were in no way tied to the divers' contribution to the net income of the pearling crew. The arrangement was such that it was impossible to ascertain how many oysters any individual diver brought up and which of them were pearl-bearing. Divers came up to the surface with their baskets, dumped the oysters into a common pile in the middle of the boat, and opened all oysters together. A diver's individual net profit was not a function of how many oysters he brought up or how many pearls he found in them, but was a share of the net earnings of the entire crew – captains, divers, pullers, cooks, and others.⁸³

⁸³ This is a fascinating aspect of the maritime industries of the Gulf which deserve closer examination but which I cannot take up here because of spatial constraints. For more on these, see Al-Hijji, *Al-Nashātāt*, pp. 74-85; 'Isa Al-Qatami, *Dalīl al-Muhtār fī 'Ilm al-Bihār [The Perplexed's Guide to the Marine Sciences]*, 3rd ed. (Kuwait: Government Printers, 1963) pp. 213-214, 222-227. In his report on the pearl dive in 1865, the Gulf Resident noted a similar profit-sharing system, with a comparable share structure. See MSA PD 1866 Vol. 54, Comp. 14.

In this scheme, it was difficult for anyone to directly link the advances a diver received to his contributions during the prior season. Only a diver who flat-out refused to dive or never brought up any oysters could be identified and sanctioned, and this was hardly ever the case. Indeed, there is little to suggest that even the aggregate performance of the crew had anything to do with what they were advanced during the next season. Because merchants and *nakhodas* set advances by common agreement, crews on different dhows received similar advances. Indeed, aside from a reputation for good work, the only factor that could influence the amount a mariner received was a fluctuation in prices, which affected advances across the board – particularly the amount a merchant advanced to a *nakhoda*, which served as the basis from which all other advances were parceled out. The *nakhoda* who tried to collect on what he was owed through confiscation of the diver's property was a rare one. There is little to suggest that *nakhodas* ever exercised their rights as creditors unless the mariners either absconded or refused to go out to the banks. To be sure, most instances of cruelty by a *nakhoda* towards his mariners involved the former physically forcing the latter to accompany him to the dhow – forcing him to perform his obligations as a bound laborer.

To the protections provided to the income of a diver one could also add another crucial dimension: the obligation of the *nakhoda* to pay his divers wages that were high enough for them to enjoy a reasonable standard of living. Those who could not afford them had to allow their mariners to offer their services to *nakhodas* who could. Indeed, it was this obligation that effectively balanced out the power of the *nakhoda*, which was a

function of the degree to which the divers were dependent on him. This was clearest during the 1930s, when the slump in the market for pearls and the credit crunch that resulted from it meant that many financiers, merchants and *nakhodas* alike, were unable to meet their obligations. Commenting on the situation, one British official brought up the obligations of the *nakhoda* in this regard, noting that “if the [*nakhoda*] cannot find sufficient money to grant an advance that makes it possible for a diver to exist, he will have to release him.”⁸⁴ The obligations that credit generated, then, ran two ways, and *nakhodas*, merchants and mariners alike were furnished with ample incentives to continue participating in the pearl dive, season after season.

In the credit system that underpinned the pearl dive, the *nakhoda* found himself caught in the middle – pressed by his duties towards his merchant-financier on the one hand, and caught between the forces of nature and the market on the other. As one official wrote in 1877, as soon as the *nakhoda* finds himself in the merchant’s debt, “he is emphatically no longer free... once in that gentleman’s books, it is not easy to make hauls large enough to get out of them again, or do more than gain a bare subsistence.”⁸⁵ As a creditor to his poor mariners, as the sole guarantor of their obligations, and as a debtor to his merchant-financier, the *nakhoda*’s lot truly encapsulated the world of debt and obligation in the Gulf. His, however, was not the only one. Across the ocean and in

⁸⁴ Political Agent, Bahrain, to Gulf Resident, Bushire (May 30, 1932) IOR R/15/2/848

⁸⁵ Dorand, “Notes on the Pearl Fisheries of the Persian Gulf,” p. 32

the jungles of East Africa existed another actor whose situation resembled his own: the caravan leader.

Ships of the jungle: labor on the move in East Africa

For the young ivory and slave hunter Hamed bin Mohammed Al-Marjebi, who later earned the sobriquet Tippu Tip, the journey from the deck of a Persian Gulf dhow to the front of a caravan in the East African interior was one that his father, and his fathers before him, had made several times during the 1840s and 1850s. East Africa might have been where they spent most of their days, but Muscat was their home. Tippu Tip's great-grandfather Rajab bin Mohammed had first come to the Swahili Coast in the company of his friend, Mohammed bin Jum'a Al-Nabhani, whose father had gone off to the interior of East Africa and returned to Muscat a rich man. After arriving in East Africa, Rajab married his friend's sister and fathered a boy, whom he named Jum'a, after his friend. The young Jum'a went on to lead daring caravan expeditions as far into the interior as Lake Tanganyika. He later married the daughter of the then-Sultan of Tabora, and his son, Mohammed, proved to be as adept as his father at leading caravans. Mohammed, however, often moved back and forth between the East African coast and Muscat, where he married the daughter of a prosperous and well-respected Arab family, Binti Habib bin Bushir Al-Wardi – Tippu Tip's mother.⁸⁶

⁸⁶ Heinrich Brode, *Tippoo Tib*, pp. 13-14

By the time Tippu Tip had grown into adulthood, then, he would have made the trip back and forth between Muscat and Zanzibar several times, and would have easily placed the dhow and the caravan along a single continuum. For in East Africa, caravans were the ships of the jungle, setting out from the coast and moving through the *nyika*, or wilderness, much like a dhow would sail out into the Indian Ocean. Caravans bought and sold goods as they moved between the towns and settlements of the interior in a way that resembled dhow movements between Indian Ocean ports. The analogy, however, goes one level deeper – for as credit and debt structured labor on board the pearling dhows, so too did it structure labor on the caravan trails. The striking parallel would not have been lost on the enterprising young Tippu Tip, who became increasingly concerned with organizing his own ventures into the interior.

To finance his caravan journeys into the interior, Tippu Tip needed access to credit. Historians Jonathon Glassman and Abdul Sheriff both emphasize how crucial credit was to the caravan trade of East Africa. Sheriff points to the accumulation of merchant capital on the coast as a necessary precondition for coastal penetration into the East African interior. As the nineteenth century wore on, merchants on the coast were able to outfit bigger and better-equipped caravans for trading into the interior.⁸⁷ Glassman's analysis of the caravan trade generally concurs with Sheriff's assertion but qualifies it, emphasizing that access to credit determined who could and could not

⁸⁷ Sheriff, *Slaves, Spices*, p. 181

participate in the increasingly lucrative ivory trade during the mid-nineteenth century.⁸⁸

Tippu Tip, who came from a long line of successful caravan leaders, could fall back on his family's reputation, but it was not enough to generate the amount of credit he needed. At first, he could only raise enough to finance small undertakings, growing bolder only as his accumulated experience and reputation – and corresponding access to credit – allowed.⁸⁹

In many ways, caravan finance resembled the structures of credit in the Persian Gulf pearl dive – a “pyramid” with merchant-financiers at the top, caravan leaders in the middle, and the porters and other people of the far interior – those who actually hunted and carried the ivory – near the bottom. While European and American merchants were deeply involved in the ivory trade, caravan finance was the near-exclusive preserve of *Bania* and Khoja Indian merchants – the same groups that dominated credit markets in the Gulf pearl trade. Occupying the rung below the Indian financiers were the Arab and Swahili caravan leaders, who often had to borrow from the Indians in order to outfit a caravan for the interior. In his mid-nineteenth century description of the trade, Burton wrote that “Respectable men, by promising usurious interest to the *Banias*, can always borrow capital enough to muster a few loads, and then they combine to form one large caravan.”⁹⁰ Certainly, this was the case with Tippu Tip, who combined his own credit

⁸⁸ Glassman, *Feasts and Riot*, p. 57

⁸⁹ Brode, *Tippoo Tib*, p. 24

⁹⁰ Richard Burton, *The Lake Regions of Central Africa*, Vol. 2 (London: Longman, Green, Longman and Roberts, 1860) p. 57

with the burgeoning reputation of his half-brother, Mohammed bin Masud Al-Wardi, to finance his largest expedition yet. Together, the two of them were able to borrow MTD 5,000 – at the time, enough to purchase a large plantation, slaves and all – and promised to bring back 320 *fraselas*, nearly 11,200 pounds of ivory, an amount that he went on to surpass by a wide margin.⁹¹

Tippu Tip's successes in the interior have to be qualified against the backdrop of the reality of the East African ivory trade. For while the mid-nineteenth century was characterized by a growing market for ivory and increasing investment by Indian merchants in the ivory trade, not everyone was nearly as successful as he was. Caravan leaders often went deeply into debt, and increasingly so as the century progressed, in large part because of the high rate of failure associated with the trade.⁹² The caravan trade was a risky one: caravans often encountered violent tribes in the interior, and faced the very real prospect of death by disease or starvation. In a late-nineteenth century compendium of Swahili customs, the author, an African from Bagamoyo, began his discussion of men's work by asserting that "some people are unwilling to travel inland,"

⁹¹ Brode, *Tippoo Tib*, p. 25; ZNA AM 1/1 p. 72. Brode writes that Hamad contributed nearly MTD 30,000 in credit from nearly 20 creditors; there is no record, however, of such a transaction. It is difficult to determine how much money MTD 5,000 was against a normal family's income, as there are no indicators as to what the cost of living in nineteenth-century East Africa might have been. Frederick Cooper, however, notes that in 1860 MTD 5,000 could buy a large estate. This was a considerable sum of money when considering that the total government revenue was only MTD 200,000, and that the annual subsidy that Zanzibar paid to Muscat following the Omani Empire's partition in 1856 came to MTD 40,000. Land prices, however, fluctuated according to size and productivity. Also, between 1860 and 1873 a male slave would have cost anywhere between MTD 10 and 30. See Cooper, *Plantation Slavery*, p. 59, 118, 249

⁹² Glassman, *Feasts and Riot*, p. 73

in large part because of “the trouble in the bush” and the risks that accompanied it.⁹³ Even an experienced leader could find himself deserted by members of his own caravan. As Tippu Tip’s biographer wrote, “it was no light matter, in view of the uncertain conditions, to stake much money on a caravan for the interior. How many of them never came back! Either the whole was wiped out by savages or the leader died, and all the property was made away with by his unskilful [sic] or faithless followers.”⁹⁴ Even taking into account the biographer’s flourishes, it is clear that the journey into the interior was wrought with risk.

In the face of the prospect of loss or desertion, for the Indian merchant in East Africa, as for his counterpart in the Gulf, the virtues of debt in binding caravan leaders to their mercantile firms were clear. In a description that evokes comparisons with the *nakhodas* of the pearling and trading dhows, Sheriff describes how Indian merchants lent goods to Arab caravan leaders at prices which were usually 50 percent above market value, and bought interior goods from at a discounted rate. The result, he states, was that Arab and Swahili caravan traders became mere factors for their Indian financiers.⁹⁵ As in the case of the *nakhodas* of the Gulf, by binding caravan leaders Indian merchants at the coast could depend on their ready labor from season to season and enjoyed privileged access to the goods that they brought with them.

⁹³ Mtoro bin Mwinyi Bakari, *The Customs of the Swahili People*, trans. J.W.T. Allen (Berkeley, CA: University of California Press, 1981) p. 120

⁹⁴ Brode, *Tippoo Tib*, p. 25

⁹⁵ Sheriff, *Slaves, Spices*, p. 108

More importantly, however, the debts provided powerful incentives for the caravan leader to return. It was not uncommon for a caravan leader who found himself in the interior with goods and capital borrowed from his Indian financier to decide to stay rather than return to the coast. Tippu Tip's biographer wrote that many caravan leaders who went into the interior on borrowed money "preferred, instead of abiding by [their] obligations in Zanzibar, to lead a showy life in the interior with other people's money." He noted that the German explorer Hermann von Wissmann encountered such an absconding debtor in the interior in 1884.⁹⁶ Burton, too, suspected that many of the Arabs in the interior who had been robbed of their merchandise chose to stay there rather than face their creditors on the coast.⁹⁷

Still, the ivory trade was a lucrative one, and merchants stopped at nothing to bind the best caravan leaders to their businesses. After Tippu Tip returned to Zanzibar from his first major expedition into the interior and paid off his creditors with handsome amounts of ivory, the richest Indians in the port competed with one another for his services. Although the Sultan pushed him to take on loans from his own creditor, the customs master Ladha Damji, the prosperous Khoja merchant Tharia Topan also wanted to enter into business with him. After a series of offers, delays and counter-offers, Tippu Tip managed to get Ladha to advance his cousin the princely sum of MTD 50,000 – nearly the entire amount that Zanzibar paid to Muscat in annual subsidies, and an amount

⁹⁶ Brode, *Tippoo Tib*, pp. 25-26

⁹⁷ Burton, *The Lake Regions of Central Africa*, Vol. 2, pp. 151-2, cited in Sheriff, *Slaves, Spices*, p. 186

that Tippu Tip agreed to stand as a guarantor for – while agreeing with Topan that he would have access to all of the Khoja’s credit in town.⁹⁸ The amount was unprecedented, even for a famous trader like Tippu Tip. Most caravan leaders only got enough to finance a single venture into the interior, and usually offered to bring back 1,000 pounds of ivory at most. Those who managed to develop reputations as successful caravan leaders, however, were able to contract on more favorable terms, tapping into more and more credit to finance their journeys – and, of course, burying themselves ever deeper into their creditors’ ledgers.

Within the caravan itself, a close look at the relationship between caravan leaders and porters reveals further parallels with the pearling dhows of the Gulf. Like dhow mariners, East African caravan crews were motley groups made up of slaves, free laborers and, as a labor market around the ivory trade emerged during the second half of the nineteenth century, professional porters.⁹⁹ The credit and debt arrangements that bound them to the caravan, then, were equally varied. Many caravan leaders brought along their own slaves as porters, just as *nakhodas* employed their slaves on board their dhows. On the Pangani caravan routes, porters were exclusively slaves, and the majority belonged to the caravan leaders.¹⁰⁰ Slaves made attractive laborers: in addition to working for free, a slave porter could also be sold or pawned in lieu of cash, as many

⁹⁸ Brode, *Tipoo Tib*, pp. 48-50

⁹⁹ Rockel, *Carriers of Culture*, p. 55; Rockel argues that as economic, social and political change occurred in the interior and on the coast, caravan work became increasingly commoditized.

¹⁰⁰ Glassman, *Feasts and Riot*, p. 74

were on the coast. As the caravan leader's property, their labor was bound to the caravan by default. Slaves belonging to masters who were not part of the caravan were similarly bound to return by their obligation to their masters, who often sent them on caravans to trade goods they themselves had loaned the slaves. In such an arrangement, slaves effectively acted as their master's agents, trading with their masters' capital and sharing the profits with them upon their return.¹⁰¹

Porters who were not slaves, however, had to be bound to the caravan. Unlike pearl divers or dhow sailors, this was perhaps less out of a desire on the parts of caravan leaders to retain the same porters every year than it was out of a concern for desertion. For unlike the pearling dhows, caravans were not bounded spaces: porters who no longer wished to continue the journey could simply leave. As Rockel states, the caravan that arrived at its destination with the same porters that it left with was a very rare one; porters frequently abandoned their caravans, and tales of desertion abound in virtually all accounts of East African travel.¹⁰² To partially mitigate this risk, porters were paid in two installments – one prior to their journey, and one upon their return. In his visit to Pangani in 1857, Burton wrote that porters “are paid 10 dollars for the trip, half in ready money,

¹⁰¹ Ibid. p. 75

¹⁰² Rockel, *Carriers of Culture*, pp. 179-191. While Rockel presents desertion as a form of protest by porters against caravan leaders who violated customs surrounding workloads, James Brennan disagrees, arguing that “thorny issues of contested normative work discipline and restricted entry into the porter profession remain, and cannot be examined by a default strategy of positive representation.” James R. Brennan, “Review of *Carriers of Culture: Labor on the Road in Nineteenth-Century East Africa*, by Stephen J. Rockel,” *Journal of African History* Vol. 50, No. 3 (2009) p. 452

the remainder upon return,” adding that “the merchant congratulates himself if, after payment, only 15 per cent abscond.”¹⁰³

Payment, as elsewhere, was not always in cash. In fact, it was more frequently in cloth or beads, which functioned as valuable exchange items in the interior. While tastes fluctuated from season to season, cloth and beads, as well as cowry shells, were almost universally accepted in the interior as payment for ivory or slaves.¹⁰⁴ On his journeys, Tippu Tip frequently obtained his ivory by bartering cloth; his biographer noted that a *frasela* of ivory could be had for 12 to 15 garments, and Tippu Tip often gave beads and cloth away as gifts to win over local chiefs in the interior.¹⁰⁵ For some porters, cloth and beads formed the capital necessary for them to trade on their own account during the caravan journey. For others, they could be converted into more symbolic capital, for consumption. One traveler into the interior wrote that “when a young man [of the Wanyamwezi, a community of porters] possesses a few iron hoe-blades, some beads, or one or two “doti” of cotton-stuff, he is in a position to marry.”¹⁰⁶

For the Indian merchant-financier and the caravan leader, control over the advances they parceled out amongst the porters was of utmost importance. If they gave

¹⁰³ Richard F. Burton and J.H. Speke, “A Coasting Voyage from Mombasa to the Pangani River; Visit to Sultan Kimwere; And Progress of the Expedition into the Interior,” *Journal of the Royal Geographical Society of London*, Vol. 28 (1858) p. 203

¹⁰⁴ On shifting tastes in the interior, see Jeremy Prestholdt, “On the Global Repercussions of East African Consumerism,” *American Historical Review*, Vol. 109, No. 3 (2004) pp. 755-81

¹⁰⁵ Brode, *Tippoo Tib*, p. 29

¹⁰⁶ Philippe Broyon-Mirambo, “Description of the Unyamwesi, the Territory of King Mirambo, and the Best Route Thither from the East Coast,” *Proceedings of the Royal Geographical Society of London*, Vol. 22, No. 1 (1877-1878) p. 34

the porters too much at the beginning of the journey, they risked losing their capital to desertion. If they gave too little, they could upset the arrangement they had with their porters and faced the possibility of resistance from among the laborers. It was only by striking a balance between advances and post-expedition wages that they were able to manipulate the incentive structure to their favor. This was especially true for the Indian financier, who had to contend with the possibility of losing capital from a number of fronts – from the porters, the caravan leaders, and from price fluctuations. And only the most astute merchants were able to manage all three risks.

The example of the Khoja Sewa Haji Paroo is instructive. Sewa established himself as a powerful caravan financier in the 1870s, more than a decade after starting at his father's store in Zanzibar. By the time of his death in 1897, he had developed a reputation as the principal caravan financier and labor recruiter in Bagamoyo. As such, he had to keep a ready supply of porters and caravan leaders on hand. To do so, Sewa manipulated his advances to both in a manner strikingly similar to what one sees amongst merchants and *nakhodas* in the Gulf. As one German traveler wrote in the early 1890s, "Through small sums which Sewa advances to the Blacks in their leisure time, and then extortionately charges interest on, he knows there will always be people on hand. He wins influential caravan leaders by high payments, for which the others' hard earned wages are so much reduced. In addition to the advances, which increase with interest and compound interest to infinity, still more 'charges' are subtracted from them, particularly

if it is a question of dealing with naïve interior people.”¹⁰⁷ By using his advances to bind laborers and caravan leaders to his firm – much like a pearl merchant used advances to bind *nakhodas* and pearl divers to his firm – Sewa was able to secure a constant supply of ready skilled laborers and thus mitigate one of the most common uncertainties plaguing the caravan trade. Moreover, by financing a number of caravans, Sewa and others like him were able to spread their risks; if one caravan suffered losses due to desertion, another more successful caravan could help absorb them.

Whether in the pearl fisheries of the Persian Gulf or the caravan trails in the interior of East Africa, credit supplied the certainty necessary for highly risky productive enterprises to take place. Through bonds of credit, debt and obligation, merchants were able to tie different economic actors to their firms. In doing so, they were able to exercise some control over behavior within the firm itself while simultaneously asserting greater control over the quality and price of the commodities and laborers that their commercial success so crucially depended on. To the outside observer, the vertical debt relationships that characterized production seemed exploitative, and reminiscent of slavery. For Indian Ocean merchants, however, it was a necessary mechanism which they developed to cope with the uncertainties of economic life.

¹⁰⁷ Oscar Baumann, *Durch Massailand zur Nilquelle: Reisen und Forschungen der Massa-Expedition des deutschen anti-sklaverei Komites in den Jahren 1891-1893* (Berlin, 1894) pp. 3-4, quoted in Rockel, *Carriers of Culture*, p. 91

Banias and Brokers: Commerce and the Geography of Obligation

There are good reasons why the overwhelming majority of accounts surrounding credit and debt in Indian Ocean communities have focused on the linkages between labor, debt and slavery. The strong emphasis on labor and peasant indebtedness in the historiography of South Asia informed approaches to the study of labor in the Indian Ocean, and with fruitful results.¹⁰⁸ This emphasis, however, obscures a simple, yet less visible fact. Most credit in the Indian Ocean was not labor-related at all – it was commercial. As credit bound merchants, laborers and overseers together in vertical relationships in production, so too did it establish broad, horizontal ties between producers, middlemen, merchant-financiers, and retailers, binding them together in long chains of obligation that stretched across deserts, jungles and the ocean itself. The geography of obligation that resulted from these chains established the marketing channels that determined the path a good would follow, from the producer all the way down (or, more appropriately, across) to the consumer.

Whether one looks at the date trade of South Arabia and the Persian Gulf or the clove trade of East Africa, credit emerges as an organizing feature of agriculture and commerce. Merchant-moneylenders, the overwhelming majority of whom came from Western India, financed all aspects of production and, as a result of their own obligations to their own creditors, forged the human channels through which commodities were

¹⁰⁸ See also Sugata Bose, *Credit, Markets and the Agrarian Economy of Colonial India* (New York: Oxford University Press, 1994). In *A Hundred Horizons* (2006) Bose extends his observations on Indian agrarian indebtedness to the Indian Ocean, generating important insights.

marketed. These long lines of credit, stretching from the major commercial and industrial centers of Western India into the ports and hinterlands of Arabia and East Africa, helped determine the structures of agricultural production and marketing in the Indian Ocean. By following the chains of credit and debt, one can quite literally map out the route that a good would follow from the interior of Oman to the coast and then to India, or from the interior East African town of Tabora to Bagamoyo and then on to Zanzibar and Kutch. By placing themselves at key nodes in these routes, Indian merchants – *Banias*, Khojas and others – established themselves as important catalysts in Indian Ocean commerce.

In the clove and coconut *shambas* of Zanzibar and Pemba, the Khoja shopkeeper-cum-moneylender was a common part of the commercial landscape. He often moved to the *shambas* after having secured a creditor of his own, usually a *Bania* or major Khoja merchant in the town, from whom he would receive cash and goods on credit. He then parceled the goods and cash out amongst the farmers and landowners in his area and collected his debts in cloves at harvest time.¹⁰⁹ The same was also true of the date plantations in Eastern Arabia, where a small group of Indian merchants set up shop, lending out money and goods to local date farmers via local intermediaries in exchange for their produce. Although comparatively little material is available on the Indian traders of East Arabia and their activities, what little we do know allows us to insert them within the broader picture painted here. British official reports point to the existence of “a small

¹⁰⁹ Bankruptcy proceedings from the Zanzibar National Archives clearly illustrate this chain of agricultural credit. See the ZNA HC2 series.

trading colony consisting of Hindu subjects of the British government” at Qatif, the principle agricultural center of Eastern Arabia, dating back to 1864. The colony consisted of three Indian firms, all of which were Kutchi, “engaged chiefly in the importation of general merchandise and in the exportation of boiled dates to India.”¹¹⁰ The dates of Qatif, and of the Hasa region more broadly, were of the most esteemed variety, the *khlāṣ*.¹¹¹ In Hasa, Indian merchants financed date production through Arab middlemen, who supplied date farmers locally and farther inland with the necessary agricultural implements and what they needed to consume in exchange for payments of dates, which they then forwarded to their creditors on the coast.¹¹²

In other, smaller Arabian towns close to the coast, Indian merchants set up shops from which they supplied the townsfolk with their daily needs in exchange for the pearls the latter fished from nearby banks or the dates that the inhabitants farmed. Small groups of *Bania* traders established themselves in towns like Sharjah and Doha, where they advanced goods on credit to merchants as the towns’ principal shopkeepers. Far from the port cities and cosmopolitan towns that the Indians usually operated from, British observers and officials considered these towns to be lawless frontiers in which the Hindu

¹¹⁰ Lorimer, *Gazetteer*, Vol. 3, p. 965

¹¹¹ *Ibid*, Vol. 5, p. 2297

¹¹² See also Soraya Altorki and Donald P. Cole, *Arabian Oasis City: the Transformation of ‘Unayzah* (Austin, TX: University of Texas Press, 1989) pp. 49-5. While Altorki and Cole do not mention Indian traders in their study, the patterns of indebtedness and agriculture they observe in ‘Unayzah are identical to those mentioned elsewhere, and one can easily imagine the creditors of ‘Unayzah as part of this broader geography of obligation.

Banias were subjected to raids and other depredations by the townsfolk and the surrounding nomadic tribes.

Although the profits one could make in trade and finance in coastal Arabian towns was great, so too were the risks the merchants invariably confronted. Shortly after establishing themselves as pearl financiers in Al-Bidaa, Qatar in the early 1870s, two *Banias* named Rama and Chela were forced by the town's Sheikh, Qasim bin Mohammed Al-Thani, to make an early payment for pearls he had sold to them. When they replied that they were unable to, Al-Thani told them to take their belongings and remove themselves to Hasa, in Eastern Arabia.¹¹³ At other times, the *Banias* fared much worse. In 1871, Bahman Dhurmoo, a *Bania* who set up shop in the small village of Hamriyah in Sharjah, was found stabbed to death in his hut, his belongings plundered. After an extended investigation into the matter, British native agents, in conjunction with the local ruler, determined that the *Bania*, who "appear[ed] to have neglected even the ordinary precautions for the safety of himself and goods while residing among a wild and lawless people," had been murdered by wandering Bedouins, as none of the townsfolk admitted to having killed him.¹¹⁴

Despite the dangers these frontiers posed, they formed a lucrative and important component of Indian mercantile activity in the region. Indian merchants in the oases and interior towns of Southern and Eastern Arabia did not operated independently. They

¹¹³ MSA PD 1876, Vol. 197, Comp. 358

¹¹⁴ MSA PD 1871, Vol. 96, Comp. 706

marketed their goods to bigger wholesalers in the ports, to whom many of them owed debts for the goods they imported. While there is little information on the date exporters of Bahrain, reports from around 1900 outline the broad contours of the Hasa-Bahrain-India date connection, suggesting that while most of the dates imported from Hasa into Bahrain made their way to Karachi and Kathiawar, a considerable proportion of those dates were consumed locally. During the seven years from 1899 and 1906, for example, the average annual value of dates imported into Bahrain from Hasa was about £35,185; only about £19,000 of that was exported to India.

In Muscat, the value of date exports for those same years was much higher: roughly £81,000, the bulk of which went to India.¹¹⁵ There, the mercantile firms of Ratansi Purshottam, a native of Kutch, and W.J. Towell, an American firm with a local Khoja partner, Mohammed Fadl, featured prominently in the trade in dates from the villages surrounding Muscat to India and America.¹¹⁶ Purshottam's papers suggest long-standing credit relationships between the *Bania* merchant and Omani merchants, who would go into the surrounding villages and pay date-growers deposits for their orders after negotiating the price, quantity and quality of the dates.¹¹⁷

In Zanzibar, from which merchants exported the overwhelming majority of East African cloves and copra to India, one sees an identical structure: Indian shopkeepers-cum-financiers operating in the *shambas* forwarded their collected produce to their

¹¹⁵ Lorimer, *Gazetteer*, Vol. 5 pp. 2296-2297

¹¹⁶ Allen, "Sayyids, Shets and Sultans," pp. 140-157

¹¹⁷ Bhacker, *Trade and Empire*, pp. 136-137

creditors – wholesalers operating out of the town of Zanzibar who in turn forwarded them to their own creditors or partners in Bombay or Kutch. Early bankruptcy records from Zanzibar illuminate the structures of the clove trade rather well; the overwhelming majority of the Zanzibar- and Pemba-based *shamba* shopkeepers' debts were to creditors based in Zanzibar's Stone Town. Cooper notes that the prominent Khoja merchant Tharia Topan, whom we encountered earlier as Tippu Tip's creditor, started his career as a clove middleman working in the *shambas*, and eventually generated enough contacts in India that he was able to sell cloves there directly without the assistance of a Zanzibar broker.¹¹⁸

Ivory tusks from the interior of East Africa also followed a route similarly pre-mapped by bonds of obligation. A group of merchants described to a British official in 1875 how any Indian merchant on the coast who collects ivory coming in from the interior must, if he had taken on loans from a Zanzibar merchant, forward the goods on to his creditor in satisfaction of the latter's right to them. As one merchant explicitly stated, "he who gives advances to constituents on the coast is entitled to lien over all the goods of the constituent sent by him for sale at Zanzibar, and is the only person to whom the goods can be consigned."¹¹⁹ After arriving at a Zanzibar merchant-financier's storehouse from the interior, the goods were invariably forwarded along to the merchant's creditors

¹¹⁸ Cooper, *Plantation Slavery*, pp. 139-140. He further writes that some of the *shamba*-based merchants bought directly from slaves rather than masters, much to the annoyance of the Sultan, who tried to keep Indians out of the *shambas* but could not.

¹¹⁹ ZNA HC 7/45

or partners in India, usually in Kutch or Bombay, in performance of his obligations there. When in 1874 the Indian merchant Mahdi Dayal waited anxiously for the caravan he had financed to arrive from the interior, he did not wait alone. Pressing him for the ivory were several creditors in Kutch, who wrote to the British Political Agent there that they were keeping a close eye on his property in Kutch in case the ivory never arrived.¹²⁰

One sees a striking resemblance between the structures of finance and commerce in the Persian Gulf, South Arabia and East Africa and those of Western India. The chronic indebtedness of the planters, the networks of merchants and shopkeepers that supplied the goods necessary to maintain farmers and peasants – and, as we shall discuss in detail in a later chapter, the prevalence of mortgages in Africa and Arabia – were all common features of agrarian finance in Western India. Indeed, if there is one point that all economic historians of India agree upon, it is that agrarian life throughout the Subcontinent was heavily inundated with indebtedness – that debt underpinned almost every aspect of agricultural society in India.¹²¹ There, moneylenders formed a crucial part of the production process, supplying cultivators with seed and food, and taking in return a portion – sometimes considerable – of the harvest. As one historian of Western India writes, “he [the moneylender] is thus a small-scale trader, a source of loans in kind,

¹²⁰ ZNA HC 7/20

¹²¹ See also I.J. Catanach, *Rural Credit in Western India: Rural Credit and the Cooperative Movement in the Bombay Presidency, 1875-1930* (Berkeley, CA: University of California Press, 1970); Bose, *Credit, Markets*; Dipesh Chakrabarty, *Rethinking Working-Class History: Bengal 1890-1940* (Princeton, NJ: Princeton University Press, 1989); Ghulam Ahmed Nadri, *Eighteenth-Century Gujarat: The Dynamics of Its Political Economy* (Leiden: Brill, 2009)

and a disposal agent for the peasant's "surplus".¹²² The historian Neeladri Bhattacharya describes in detail how moneylenders in Western India used loans to assert control over the production and marketing processes, asserting that "the object of the merchant-moneylender was not to earn interest as such, but to control prices of purchase and sale, and to ensure regular channels for the supply and disposal of commodities."¹²³

Like the Indian merchant-financiers that operated in the interior of East Africa and the Arabian Peninsula, the rural moneylenders of Western India operated within a South Asian geography of obligation that stretched to the coast. In his masterful overview of the structures of India's trade with the Indian Ocean, Ashin Das Gupta described how "the hinterland of ports like Surat... stretched over the entire north and west of the subcontinent, and the men of the ports were obliged to fall back on a host of others who produced, processed and transported their goods," adding that "in this complicated network, each man had his post and was indispensable in it." Many of the intermediaries in these chains vocally asserted their independence; not one of them, however, was able to break the chains and centralize control over all aspects of the production and distribution process.¹²⁴

¹²² Catanach, *Rural Credit*, p. 14

¹²³ Neeladri Bhattacharya, "Lenders and Debtors: Punjab Countryside, 1880-1940," in Bose, *Credit, Markets*, p. 200

¹²⁴ Ashin Das Gupta, "Indian Merchants and Trade in the Indian Ocean, c. 1500-1750," in Das Gupta, *The World of the Indian Ocean Merchant*, pp. 71-72. The resemblance between finance and commercial organization in India, Africa and Arabia might seem to suggest that the Indian Ocean model of the firm detailed here might have originated in India and spread outwards from there through migrating *Banias*. However, there is little aside from inference to support the idea of institutional migration from India to the

As with labor, credit underpinned every link of the chains of commerce that ran throughout the Indian Ocean, delineating the rights and obligations that merchants bound themselves to. The enduring obligations that credit and debt created gave a sense of structure to Indian Ocean commerce, bringing producers, brokers, exporters, importers and other economic actors together into a concerted mercantile firm that was able to channel the credit and goods necessary to capture emerging commercial opportunities. As commerce in the Indian Ocean expanded, a geography of obligation emerged in which a range of economic actors in Africa, Arabia and India bound themselves to transact with one another on a regular and systematic basis. In this commercial “map” of the Indian Ocean, goods did not move about freely in response to the forces of supply and demand. Instead, they moved along pre-carved routes founded on obligation, shifting from one link in the mercantile firm to the next.

Credit, Debt and Public Revenue

When goods made their way from the *shambas* or the dhows to the port, ready to be exported to India, London, the United States or elsewhere, they passed again through another vital link in the Indian Ocean firm: the customs house. Here too, credit and debt formed a crucial component of commercial regularity, for it was only by keeping the port’s ruler in debt that Indian merchants were able to secure their hold on the custom’s

Persian Gulf, South Arabia and East Africa. The question, however, is an interesting one that would be worth taking up in greater detail.

revenues and, more importantly, the regular flow of goods into and out of the ports and hinterlands. The firm of Jairam Sewji, to take but one example, had farmed the customs from the Sultan of Zanzibar for at least 30 years, holding onto it well after Jairam's death. Even when the Sultan leased the port of Bandar 'Abbas from the Shah of Persia, he farmed out its customs revenues to an Indian merchant.¹²⁵ In Bahrain, a consortium of *Bania* merchants farmed the customs, usually for two years at a time. The 1897 agreement named four *Banias* – Kunsu Tika, Laki Kisu, and Ako and Rana Jiwa. British reports from 1899, however, assert that the ruler usually farmed out the customs to the *Bania* firm of Gangaram Tikamdass.¹²⁶

The extent to which one commercial firm could take over the customs houses of the entire region was sometimes dazzling. In his listing of customs masters in East Africa, Burton wrote that “Ladha Damha [Damji, Jairam Sewji's agent] farms the customs at Zanzibar, at Pemba Island his nephew Pisu has the same charge; Mombasa is in the hands of Lakhmidas [Ladha's son], and some 40 of his co-religionists; Pangani is directed by Trikandas and contains 20 Bhattias, including those of Mbweni; even the pauper Sa'adani has its Bania; Ramji, an active and intelligent trader, presides at Bagamoyo, and the customs of Kilwa are collected by Kishindas.” He wrapped up his list by adding that “I need hardly say that almost all of them are connected by blood as well as by trade.”¹²⁷ By

¹²⁵ MSA PD 1864 Vol. 38, Comp. 511

¹²⁶ W.F. Prideaux, Assistant Gulf Resident, to Lt. Col. Meade, Gulf Resident (28 May 1899) IOR R/15/1/315 pp. 201-203

¹²⁷ Burton, *Zanzibar*, Vol. 1, pp. 328-329

the middle of the century, Jairam's firm controlled all of the customs houses in East Africa, from Cape Delgado to Mogadishu.¹²⁸ Members of the same firm also controlled the customs house in Muscat in the 1880s; there, they were succeeded by another *Bania* – Ratansi Purshottam, the date merchant whom we encountered earlier.¹²⁹

Control of the customs house did not come cheap. In Bahrain, between 1895 and 1899 – during the pearl boom's peak – control of the customs house for one year cost the *Banias* between Rs 71,600 and half of the arms revenues, and Rs 107,100. In 1897, a consortium of the port's *Banias* paid Rs 4800 per month, in addition to Rs 36,000 to be paid in various installments over the course of each year, for the right to farm customs for two years – a total of Rs 93,600 per year.¹³⁰ In Zanzibar, the firm of Jairam Sewji paid MTD 142,500 for the right to farm the customs in 1847; twelve years later, they paid MTD 190,000 for the same right.¹³¹ In the Persian port of Bandar 'Abbas, the Khojahs who farmed the customs revenues paid the Sultan 25,000 tomans per year for the post. And when Ratansi Purshottam was able to wrench the customs farm from Jairam's firm in Muscat in 1891, it cost him MTD 150,000.¹³²

¹²⁸ Sheriff, *Slaves, Spices*, p. 126

¹²⁹ Bhacker, *Trade and Empire*, p. 74; Landen, *Oman Since 1856*, p. 140

¹³⁰ A copy of the original agreement was found in the Bushiri Archive in which Shaikh 'Isa bin 'Ali al-Khalifa stipulated that the *Banias* pay Rs 2,400 every two weeks, and that his goods be exempted from customs duties. The details of the arrangement were very precise: duties were set at 4 percent on imports and exports, and 2 percent on re-exports, and the agreement states that excessive duties levied by the farmers would result in punishment. See "Customs Agreement between Shaikh 'Isa bin 'Ali and Banias" (3 October 1897) Bushihri Archive

¹³¹ *Administration Report for Zanzibar (1859)*, MSA PD 1859 Vol. 188, Comp. 1123

¹³² *Records of Oman*, Vol. 2, p. 221

For the rulers, customs farming offered a convenient solution for their public finance needs in ports where most money was in trade. By assigning over the rights to tax goods, they assured themselves a steady stream of income, both personal and public – and in most Indian Ocean ports there was usually no distinction between the two. Moreover, the rulers could press their creditors for more money if they needed it. When the Sultan of Zanzibar had to buy his many siblings' shares of their father's estate, which also included the former Sultan's warships, he looked to his customs master, who ended up loaning him more than a half a million Maria Teresa Dollars between 1856 and 1870.¹³³ The Ruler of Bahrain was also able to draw ready cash from his *Bania* customs farmers when he needed to; when British officials pushed him to reform his customs administration in the late 1890s, he refused, saying that any changes would hinder his access to money.¹³⁴ In Muscat, too, the Sultan Faisal bin Turki continued to secure large loans from members of the Indian merchant community against customs revenues well after he promised British officials that he would move towards the direct administration of his customs house.¹³⁵

When a customs lease expired, incumbent customs farmers spared no expense in trying to hold onto their posts. When Sultan Barghash acceded to the throne in Zanzibar in 1870 and considered farming out his customs to the Khoja Tharia Topan instead of the *Bania* firm of Jairam Sewji, the latter went so far as to waive MTD 340,000 of the

¹³³ Sheriff, *Slaves, Spices*, p. 108

¹³⁴ *Records of Bahrain*, Vol. 2, pp. 171-173

¹³⁵ Landen, *Oman Since 1856*, pp. 390-391

Sultan's debts – nearly three-quarters of the total – in return for a renewal of contract for another five years at MTD 300,000 per annum. The British Agent in Zanzibar noted that Jairam's firm would have gladly paid more than a half million per annum if the Sultan held out.¹³⁶ In Bahrain, when the ruler Shaikh 'Isa bin 'Ali decided in 1898 to raise customs duties by one percent, a number of *Bania* firms lobbied him for the right to farm it. The firm who had already farmed the first 4 percent eventually won the right to the extra one percent, after agreeing to pay Rs 33,000 for it – one-third of what they had paid for the previous 4 percent.¹³⁷

Why were Indian merchants so eager to maintain control over the customs house? For one, customs revenues during in good years were not inconsiderable. Sheriff notes that in the year 1819, the total annual revenue for the East African dominions amounted to MTD 40,000, a figure which doubled by the 1840s; in the early 1860s, annual revenue was MTD 310,000, roughly 50 percent more than what the farmers paid for it.¹³⁸ The Sultan of Muscat farmed out the customs revenues in 1898 for MTD 140,000 to a concessionaire who netted MTD 214,000 from it.¹³⁹ In Bahrain, British officials advised the Ruler that he was farming out his customs for far less than they were worth. One

¹³⁶ MSA PD 1871 Vol. 143, Comp. 1659

¹³⁷ Mohammed Rahim Saffar, Native Agent, to 1st Assistant Resident in the Persian Gulf (18 August 1898) BA Native Agent Folder 1 Document 19

¹³⁸ Sheriff, *Slaves, Spices*, p. 127

¹³⁹ Landen, *Oman Since 1856*, p. 378

estimate totaled Bahrain's revenues at roughly Rs 300,000 per year at the turn of the century – nearly three times the amount the *Banias* paid for it.¹⁴⁰

More important, however, was that control of the customs house furnished the customs masters with key commercial contacts for their personal businesses. Cooper notes that in Zanzibar, Jairam Sewji and his agent Ladha Damji realized a fortune of between £1 and £2 million and invested £434,000 in loans and mortgages to Arabs, Indians and Europeans – including the ivory trader Tippu Tip, whose obligation he managed to obtain because of his influence with the Sultan.¹⁴¹ To this one can add Jairam's lucrative trade with visiting American merchants in the 1830s and 1840s.¹⁴² In Muscat, Ratansi Purshottam, the customs master in the 1890s, used his position to establish contacts with the Hills Brothers Company, a New York-based American firm with whom he traded in Omani dates.¹⁴³ For the Indian-headed firms in the Indian Ocean, then, control of the customs house was a vital step towards bridging their regional business enterprises with the circuits of international trade.

When goods from the Persian Gulf, South Arabia and East Africa reached the ports of India, they were not sold on an open market to the highest bidder, but sent

¹⁴⁰ Talal Toufic Farah, *Protection and Politics in Bahrain, 1869-1915* (Beirut, Lebanon: American University of Beirut, 1985) p. 94

¹⁴¹ Cooper, *Plantation Slavery*, p. 140

¹⁴² Sheriff, *Slaves, Spices*, pp. 105-107. While the history of American traders in Zanzibar has yet to be written, their correspondence with Salem has been published, and is very suggestive. See Norman Robert Bennett and George E. Brooks, *New England Merchants in Africa: A History through Documents, 1802-1856* (Boston: Boston University Press, 1965)

¹⁴³ Allen, "Sayyids, Shets and Sultans," pp. 146-148

directly to members of the transnational mercantile firm based in such major port cities as Bombay, Mandvi (in Kutch) and Karachi. There, the India-based members of the firm credited the value of the goods against the sender's account, on which he drew the cash and goods necessary to finance trade and production in places like Bahrain or Zanzibar.

Conclusion

The world of trade in the Indian Ocean during the nineteenth century was not the same world that merchants knew a hundred years before. By the 1870s, chains of debt and credit had fastened together ports and hinterlands across the Indian Ocean in an unprecedented fashion. As they moved to capture new commercial opportunities, merchants and financiers – primarily Indians, but also Arabs, Africans and Persians – linked together the markets of Arabia, Africa and India in new ways, pushing beyond the port cities and roping interior towns and villages into a burgeoning Indian Ocean regional economy.

In the Indian Ocean debt was, above all, an obligation. When any economic actor, from a Sultan all the way down to a pearl diver, took on a loan, what he incurred was not a debt in the strictest sense of the term – that is, a monetary obligation that had to be repaid. Rather, by taking on a loan, he entered into a commercial relationship – or better yet, signaled his or her entry into a broader regional economy which at its very core was structured by horizontal and vertical ties of debt and obligation. For all of the stratification that it generated, indebtedness was a normal state of affairs in the Indian Ocean. Far from the stigma of improvidence to which it is attached today, indebtedness in

the Indian Ocean meant inclusion – inclusion into a marketplace of commercial relationships, into the circuits through which goods and money traveled, and into the dense webs of economic, social and political obligation that characterized life all around the Indian Ocean.

A debt, then, was not something to be repaid in full, only serviced through the performance of an obligation. An open account between two actors signaled their ongoing relationship – commercial, labor or otherwise. The debts that they owed to one another, of course, were not completely ignored; they sometimes required occasional servicing through symbolic payments. However, more than anything, an open account represented a continued obligation on the part of the debtor to meet his obligations to his creditor – to dive for pearls, to join the caravan into the interior, or to send him dates, cloves or ivory. For his part, the creditor had to commit to continue supplying his debtor with what he needed for consumption or trade: rice, sundries, cloth, or, if the occasion called for it, ready cash. The relationship between a debtor and his creditor, then, was an exercise of balancing obligations with rights. Indeed, the very structure of Indian Ocean commerce depended largely on the mutual interdependence of different economic actors – some of whom were undoubtedly more dependent than others. Market relations and commerce were constructed in ways that stressed mutuality and the maintenance of human obligation in a world where the risks of production and the vagaries of price could potentially render trade too uncertain an enterprise to engage in.

For these bonds of obligation to endure the hazards of commerce, they had to be based on a solid foundation of trust. For if credit and debt, and the obligations that resulted from them, were integral parts of economic life, their durability depended on a legal framework that could sustain them. When a merchant gave out a loan, he did so with an eye towards the obligations it generated – economic, social, but also legal. How Indian Ocean economic actors situated their economic relationships within the framework of the law? How did they bridge a complex and cosmopolitan world of commerce with an equally complex legal landscape while retaining for themselves a sphere within which they could determine their own rights and obligations towards one another? To explore the legal foundations of commercial obligation, one must closely examine the moment in which a debt was contracted, for it is at that critical juncture that the abstract realm of law and the lived reality of the economy came face to face.

CHAPTER 2: INSCRIBING OBLIGATION

When nineteenth century Indian Ocean merchants contracted a loan, they had it written down on paper. This ostensibly simple practice had broad and complex implications: on its own, it questions the widespread presumption that merchants of that time and region trusted one another simply on the basis of a shared culture, religion, or locality, and that they were content enough with oral agreements.¹ In fact, commercial dealings in the mid-nineteenth century Western Indian Ocean frequently involved documentation. While there might have been a number of transactions that went unrecorded, the survival of thousands of written contracts of various sorts around the Indian Ocean rim is undeniable proof that merchants frequently expressed their commercial obligations in writing. But what did this genre of writing mean to Indian Ocean merchants? How did the legal instruments they created frame their relationship with the law?

The instruments Indian Ocean merchants left behind offer us a window into the culture of debt and finance prevailing in the region, giving us insights into how written instruments fit in world of commerce and law. These documents rendered a cosmopolitan commercial society and a complex economic and legal landscape into writing. They are the social artifacts *par excellence* of Indian Ocean commerce – material objects that a society produces to meet the needs that it confronts in its daily transactions, but which also reflect various dimensions of the societies that produced them. These instruments,

¹ See also Patricia Risso, *Merchants and Faith*, pp. 104-106

however, were not simply straight-forward legal documents: they were canvases onto which merchants inscribed narratives of their commercial relationships.

This chapter explores the boundaries between legal doctrine and mercantile practice in the Western Indian Ocean through a close reading of written instruments. It examines the contractual foundations of the economy of obligation described in the last chapter, detailing how Indian Ocean merchant communities articulated their contractual relationships with one another on paper, and how they narrated them in such a way as to draw on elements of Islamic jurisprudence but situate the transactions outside of it. I argue that central to this process was the mobilization of Islamic contractual terminology to cloak arrangements and actors that Muslim jurists would have considered irregular. Through a series of key semantic maneuvers, Indian Ocean merchants made irregular legal subjects legible in Islamic law, and clothed irregular commercial practices – practices that amounted to interest-bearing mortgages, which were forbidden in Islamic jurisprudence – in the technical garb of licit sales. Drawing on the lexicon of Islamic commercial contracting, they narrated a licit contractual relationship involving legible legal actors.

My analysis of this rich process centers on the *waraqa* – literally “the paper” – a malleable legal instrument situated at the nexus of commercial life, Islamic legal practice, and doctrine. It was through the medium of the *waraqa* that Indian Ocean merchants articulated their contractual relationships with one another, and it was around the document itself that a range of different mercantile practices developed. In this world, the

waraqas often functioned as something of a mercantile canvas onto which a narrative – one replete with recognizable genealogies and personhoods, and licit transactions – could be inscribed. To explore the legal culture of credit and obligation, I move the analysis between a reading of the *waraqas* themselves, commercial practices and broader doctrinal discourses in Islamic jurisprudence (*fiqh*), using legal opinions (*fatwas*) by a contemporaneous Omani jurist, Nur al-Din Al-Salimi, as the connecting tissue between them all. In placing doctrine and practice in conversation with one another, I aim to approximate a thick description of the deeds themselves, situating them at the intersection between an expansive Indian Ocean world of commercial contracting and a long genealogy of Islamic jurisprudence on commerce and writing.

By mobilizing legal language and formulas in imaginative ways, merchants and *waraqas* writers (called *kātibs*, literally “writers”) intentionally mobilized the lexicon of Islamic legal writing so as to obfuscate the ostensibly illicit nature of their transactions. While jurists and Muslim judges (*qādis*) were aware of this contractual sleight of hand, they were conflicted as to whether they should admit them as legal, their validity in form chafing against their invalidity in substance. By artfully manipulating the lexicon of contracting, merchants and *kātibs* refashioned established legal categories to meet the exigencies of everyday economic life. They stretched the boundaries of what Islamic jurisprudence and its contractual categories permitted, reshaping the frontier between the licit and the illicit while at the same time openly declaring their adherence to established contractual forms.

Indian Ocean *waraqas* thus supply a rich material base to explore the frontier between commerce and the *shari‘a*, for *waraqas* reflect the ways in which merchants used language to represent contractual relationships and tie them into “the law.” Brinkley Messick, who has pioneered the analysis of Islamic legal writings in Yemen, describes the *waraqas* as occupying the intersection of two realms: “behind a given document,” he writes, “is the law, in front of it is the world: a document represents a bringing together of socially constituted and enduring legal principles with individually constituted and ad hoc negotiated terms.”² However, far from simply translating between the world and the text, merchants and *kātibs* actively inscribed a narrative of the transactions onto the documents so as to re-clothe a commercial reality in the garb of the law rather than directly represent it.

At their broadest, then, practices surrounding *waraqas* illuminate the workings of an Islamicate juridical field in the Indian Ocean – an arena of juridical activity that included merchants and *kātibs*, but also *qāḍis* and jurists. While *waraqas* may have operated on the periphery of the field in their extension of accepted contractual categories, the practices surrounding them worked to re-inscribe the primacy of the field to commercial life in the Indian Ocean. Using *waraqas* as their mediums, merchants and *kātibs* played with established legal forms and manipulated language to stretch the boundaries of what Islamic nominate contracts might accomplish in a dynamic

² Brinkley Messick, *The Calligraphic State*, p. 227

commercial environment. These practices were neither irregular nor tangential to the functioning of Islamic legal doctrine in the commercial sphere. Rather, they formed the bedrock of Islamic legal praxis in a changing world.

Reading and Writing the Waraqa

The documentary nature of Indian Ocean commercial society suggests a high rate of literacy among economic actors – the ability to read and write in Arabic, the language of the law, but also a familiarity with established legal categories and concepts. At the very least, the centrality of a written document like the *waraqqa* to Indian Ocean commerce should suggest that merchants were able to read and understand its contents. It is a curious irony, however, that despite the fact that Indian Ocean merchants increasingly relied on *waraqas*, relatively few people could actually read or even write them. That most mariners, slaves and agricultural laborers were illiterate is abundantly clear.³ It is not altogether certain, however, that even the more affluent members of this commercial society – planters and merchants – were able to read or write.

Perhaps the most curious dimension to this all is that most of the Indian merchant-financiers in the Indian Ocean, if they were literate at all, lacked the knowledge of how to read in Arabic. The *waraqas* themselves repeatedly declare this as a fact. Among those originals that survive in private collections, or that turned up in later court cases, one sees a vivid picture of the literacy gap, with Indian merchants actively attempting to translate

³ See also Pier M. Larson, *Ocean of Letters*, pp. 46, 85-99

these documents. Whenever Ratansi Purshottam, a major Kutchi merchant-financier in Muscat during the mid-to-late nineteenth century, entered into a contractual arrangement that was put into writing, he was sure to affix to the *waraqqa* writing of his own: a Gujarati annotation of the deed's contents, ranging from short, one-line summaries of the transaction to longer, three-line annotations, usually bearing the borrower's name, the amount loaned and the date of the contract. Other original *waraqas* narrating transactions between Indian merchants and other parties bear similar translations.⁴

This gap between the parties' dependence on written instruments on the one hand and their inability to comprehend their contents on the other calls out for explanation. Part of the answer might simply be that the question of literacy was often moot: because the debtor and creditor both knew what they had agreed to, the *waraqqa*, being a written representation of that transaction, would not have to be read in order to carry meaning. A common understanding of what a *waraqqa meant* as opposed to what it actually *said* might have sufficed to preserve its place among members of the commercial society – for while an ability to read the *waraqqa* was useful, more important was an awareness of how it functioned within the realm of commercial transactions. For this more functional sort of knowledge, the ability to read was a second-order concern, especially when both parties suffered from a similar handicap and entrusted the task of writing to a reputable third party. Another, more compelling explanation, however – and one that I will return to later

⁴ Not all *waraqas* that one sees are the original documents. Many had been copied down into larger registers, or transcribed onto other sheets of paper. That said, court cases and private collections usually contain the original deeds on which we are able to see the layers of writing, seals and translations.

– is that *kātib*s never intended to draft their *waraqas* for the parties themselves. Rather, the intended audience was the *qāḍī* – the actor primarily responsible for determining the legalities of the transaction. In either case, in the act of writing – of actually creating the written record – the *kātib* emerges as a central figure.

The *kātib* was more than a scribe, but perhaps less than a notary. Like notaries in early-modern Europe or Latin America, *kātib*s were expected to have a familiarity with the menu of nominate contracts and the formulas necessary to give them legal effect – an issue I will take up in greater detail below.⁵ Unlike notaries, however, *kātib*s were not expected to guarantee the authenticity of a previously-written contract (although they were sometimes called upon to do so) nor were they expected to preserve copies of contracts that they drafted. They were tasked with bridging between the contracting parties and the law, not with furnishing the information necessary to enforce the law.

That said, the importance of literate intermediaries in the contracting process cannot be emphasized enough. As pseudo-notaries, *kātib*s bridged the all of the necessary literacy gaps, linguistic and legal. And as writers, they took on the task of rendering an oral agreement that might have taken place in Arabic, Persian, Swahili or Gujarati, into Arabic.⁶ While the parties most likely still could not have read the resulting instrument,

⁵ On Latin American notaries, see Kathryn Burns, *Into the Archive: Writing and Power in Colonial Peru* (Durham, NC: Duke University Press, 2010); on notaries in early-modern Europe, see also Laurie Nussdorfer, *Brokers of Public Trust: Notaries in Early Modern Rome* (Baltimore, MD: Johns Hopkins University Press, 2009)

⁶ Of course, not all *waraqas* were in Arabic; those from the Persian ports of Bushire or Bandar ‘Abbas were in Persian.

what it said would have been eminently clear to both of them, and there was little room for doubt. Indeed, of all of the hundreds of instances in which parties mention *waraqas* in a courtroom, not once did anyone express any doubt as to whether or not the *kātib* had deliberately misrepresented the agreement. For all of the parties concerned the *waraqas*, whether legible or not, constituted a valid legal instrument, the terms of which everyone clearly grasped.

*Kātib*s helped bridge the literacy gap that lay between the contracting parties, the *waraqas* and the long genealogy of Islamic commercial jurisprudence on which it drew. As literate intermediaries, they were crucial to the smooth functioning of commerce in the Indian Ocean, and vital actors in a dynamic juridical arena. The process of creating a legally valid written instrument hinged upon the *kātib*'s ability to mediate between the transaction and the law, or the actual commercial landscape and imagined realm of commercial contracting in Islamic jurisprudence. He actively translated between the two, forging the links necessary to give an oral agreement the force of writing, and a written document the force of law, by infusing it with pivotal legal elements. In this regard, the *kātib* was, like the Latin American notary, “a kind of ventriloquist – someone who could give other people an official “voice”.”⁷ Even if the parties to a transaction knew how to read and write, they could not produce legal documents on their own. Here, the *kātib* served as an indispensable broker, turning the intentions of the contracting parties into

⁷ Kathryn Burns, *Into the Archive*. p. 2

legally binding documents. As Messick puts it, “the document emerges as he [the *kātib*] considers both the dictates of the law and the facts of an undertaking; he must be both a specialist in this area of *shari‘a* drafting and intimately conversant with the affairs of his society. The notary is a figure in between, and each contract is an interpretation.”⁸

Historians, then have good reason to piece together the social backgrounds of *kātibs*, exploring their education, professional training, social status and other economic functions. Unfortunately, the records that Indian Ocean merchants left behind limit what we can say about *kātibs*. They were, as Messick, observes, frustratingly “absent writers” – absent in every sense. Unlike notaries in other parts of the world, *kātibs* attracted very little commentary from their contemporaries: there are no works of fiction featuring a *kātib*, nor are there any travelers’ accounts that mention them in any light, positive or negative. Indeed, the only mention of *kātibs* comes from the *waraqas* themselves, many of which conclude with the sentence “and this was written by ... by his own hand” (*wa katabahu... bi-yadih*), followed by the seals or thumbprints of the contracting parties. The fact that *kātibs* played such an integral role in commercial and legal dealings yet left no trace of themselves aside from the *waraqas* they wrote is in itself telling. Unlike Latin American notaries, they attracted no blistering critiques, indicating that merchants and others might have viewed them as reliable intermediaries in the contracting process. More importantly, the fact that they attracted essentially no attention points to their very

⁸ Messick, *The Calligraphic State*, p. 227

banality and ubiquity – that they constituted an unremarkable feature of commercial society in the Western Indian Ocean.

Collectively, extant *waraqas* indicate that there were a number of *kātibs* operating in each port city. Although all of them bore Arabic names, they were local actors – a point well-evidenced by Zanzibari *kātibs*' usage of local idioms such as Arabized Kiswahili in describing boundaries: using *kūs* for South instead of the standard Arabic *junūb*, or using the Kiswahili *shamba* to describe a plantation instead of the Arabic *mazra'a*. Their local status is in other instances affirmed by what sometimes appears to be a weak command of the rules of Arabic grammar – improper conjugation, misspellings, etc. In a few cases, the writers doubled as *qādis*: a number of Bahraini deeds, for example, were penned by the *qādi* Shaikh Qasim bin Mihza', and at least some Zanzibari *waraqas* were written by the *qādi* Shaikh Ahmad bin Sumait.⁹ In Kuwait, too, *waraqas* writing was the province of *qādis* from the Al-'Adsani family. So closely associated was this family with writing legal instruments that the family name became synonymous with the instruments themselves; a variety of written instruments, particularly *waqf* (Islamic charitable trust) deeds, took on the name '*Adsāniyyāt*

⁹ For examples, see deeds in the register IOR R/15/2/2017, the majority of which are by Mihza'. Other *waraqas* indicate that Mihza' had been writing *waraqas* since at least the 1890s. See, for example, the sales deed in which 'Abdul-Rahman bin Ahmad Al-Wazzan sold Mohammed Rahim b. 'Abdul-Nabi Safar his dhow for Rs 1000, in 8 Rabi' Al-Akhar, 1314 (September 16, 1896) Bushihri Archive. For a discussion of Bin Sumait and *waraqas*, see ZNA HC 5/14 A and B

(*‘Adsanis*).¹⁰ In most cases, however, *waraqas* only very briefly identify their authors, and other records greatly circumscribe what the historian can say about these important actors.

Most of what *waraqas* suggest about *kātibs*, however, emerges not from how they identified their authors, but rather in their careful choice of words. Here, the *kātibs* come across as creative narrators, inscribing social discourse and turning it into a written account, but at the same time manipulating language to obfuscate the nature of the transaction. In the process of distilling commercial relationships into writing, *kātibs* rendered their surroundings so as to make them intelligible in contractual terms and, as I will discuss in greater detail later, palatable to an audience of *qāḍis* and jurists.

Inscribing Genealogies

When parties to an agreement sat down with a *kātib*, they first identified themselves. This was not as straight-forward a step as it seems. Considering the range of different actors on the Indian Ocean commercial stage, the process of translating a cosmopolitan commercial society into an Islamicate social and legal lexicon required a degree of imagination on the part of the writer. Not only did he have to find a way to identify the parties, but he had to render them in such a manner that, under Islamic law, they would clearly be considered legal persons capable of contracting and of bearing rights and

¹⁰ Faisal Abdullah Al-Kandiri, “*Wathā’iq al-Waqf al-Kuwaitiyya: Ahammiyatuhā, al-Kitāba, al-Usus wal-Qawā’id*” [“Kuwaiti Waqf Deeds: their Importance, Writing, and their Bases and Principles”], *Al-Qabas* (May 14, 2010); see also the response by Aisha Mohammad Saleh Abdulwahhab Al-‘Adsani in *Al-Qabas* (June 8, 2010) in which she disputes some of Al-Kandiri’s remarks on her family history and his approach to reading *waqf* deeds.

liabilities. In other words, he had to construct them as legible legal persons. This basic task of demonstrating legal competency was especially important in a commercial arena like the Indian Ocean, where the range of different economic actors would have chafed against the strict bounds imposed by Islamic jurisprudence. The conventions of the *waraqā*, though, made room for this sort of legal maneuvering, enabling merchants and *kātibs* to cleverly render their personhood.

What immediately strikes the reader of a *waraqā* is its translation of a range of names – Arabic, Persian, Swahili, and Indian – into Arabic. At first glance, this translation seems to reflect a natural product of the act of writing itself: because the merchants had the deed drawn up in Arabic, then it was only natural that the names of the contracting parties, whatever their nationalities might have been, would appear in Arabized form. But there was another layer to this process of rendering: the act of translating non-Arabic people into a distinctly Arabian social imaginary. This transformation is most striking when it comes to Sanskrit Indian names, which *kātibs* not only phonetically written out in Arabic letters but also gave a fictional tribal *nasab*, or genealogy. Thus, to use but one example from hundreds, when the Gujarati Bania merchant Ladha Damji appeared in a *waraqā*, he became “Ladha bin Damah Al-Banyāni.”¹¹ The honorific suffix “ji” disappeared from Ladha’s father’s name, so that the son became “Ladha bin Damah” or “Ladha, son of Damah.” By adding the *nasab* “Al-

¹¹ ZNA AM 1/1 p. 146

Banyāni”, the *kātib* mapped Ladha onto an inscribed social world made up of tribes and clans in which Banias became an identifiable social group, like the Al-Harthis of Oman or the Al-Dosaris of Bahrain. This form of naming also distinguished Banias from other Indians like the Khojas – many of whom went by the simple moniker “Al-Hindi.”¹²

Even in East Africa, *waraqas* mapped a range of nominally African groups onto an Arab-Islamic social vocabulary. For the many Afro-Arabs who still saw themselves as fitting within a South Arabian milieu, this was a straight-forward process: they received honorifics as Arabs, with recognized Arabian *nasabs*. Other African groups, however, had to be rendered just like the Indians. The African Kombo Mwalimu from the island of Tumbatu, for example, appears in *waraqas* as “Kombo bin Mu‘allim Al-Tumbatu”; similarly, the Swahili Idi Mwalimu becomes “Eid bin Mu‘allim Al-Sawahili.”¹³

Ahmad bin Mohammed Al-Tahawi, the author of a 9th century notarial handbook, explained that identifying parties by their *nasab* formed a crucial part of writing a *waraqā*. While his 9th century Egyptian milieu might be far removed from the nineteenth century Indian Ocean, his reasoning for identifying parties by their *nasab* can help explain what one sees in Indian Ocean *waraqas*. For Al-Tahawi, the central issue was *ta‘rīf*, or identification. He writes that “we genealogized (*nasabnā*) each of them, the seller and buyer, to his father and to his grandfather and to his tribe, and so we said

¹² See also Ibid p. 33-35, 37-40, 45-49

¹³ ZNA AM 1/1 p. 38; ZNA AM 1/3 p. 56

“fulān¹⁴ son of fulān son of fulān al-fulāni” so that he [fulān] is identified (*yu ‘raf*) as present, absent, or dead.” If the person had no genealogy, then some other identifier, such as his occupation, was acceptable. Al-Tahawi instructs the *kātib* that if the name of a contracting party “is genealogized (*nusiba*) to his profession, and it is said “fulān the caliph” or “fulān the qāḍi” or “fulān the emir” it is an [accepted] identification.” Identification via *nasab*, real or constructed, explained Al-Tahawi, sufficiently distinguished the party to the contract from someone else who might share his name or his tribe.¹⁵ Mohammed Reda Bhacker, a historian of the Omani empire in Muscat and Zanzibar, takes a similar approach to *nasab* as Al-Tahawi, noting that a number of different groups, including immigrants from Baluchistan “adopted their own *nisba* [i.e. *nasab*] of al-Bulushi to distinguish them from other groups in the tribal mélange of Oman.”¹⁶ This interpretation accords with a similar phenomenon that Richard Bulliet observes amongst early Persian converts to Islam, where the adoption of Arabized genealogies often signaled one’s conversion to Islam. Within those milieus, a genealogy shored up one’s socio-legal position within an intensely religious society.¹⁷

By blurring the boundaries between genealogy and tribal society, however, scholars risk flattening the texture of what genealogy accomplished beyond

¹⁴ The Arabic word *fulān* is simply a placeholder, equivalent to the English “so-and-so”

¹⁵ Al-Tahāwī, *Kitāb al-Shurūt al-Kabīr* in Jeanette Wakin, ed. *The Function of Documents in Islamic Law: The Chapter of Sales in Al-Tahawi’s Kitāb al-Shurūt al-Kabīr* (Albany, NY: SUNY Albany, 1972), Arabic section, pp. 7-8

¹⁶ Bhacker, *Trade and Empire*, p. 19

¹⁷ Richard Bulliet, *Conversion to Islam in the Early Period: an Essay in Quantitative History* (Cambridge, MA: Harvard University Press, 1979) pp. 18-19

identification. As one study of genealogies in Muslim societies points out, *nasab* did not have a fixed function; rather, its importance and what it signified varied across time and space. Most broadly, however, it symbolized both power and rights, and was “adjusted to demonstrate and symbolize, in an easily comprehensible way, social relationships that [were] already there.”¹⁸ In the realm of the law, the rendering of Indian names into Islamic legal instruments did more than simply distinguish one group from another. At a more fundamental level, it inserted a range of different actors into an Arab-Islamic landscape, endowing the parties with the socio-legal capacity necessary to transact in property. Bhacker states that in “the early traditions of Omani Ibadi/tribal laws” which survived until the early nineteenth century “Banyans [sic] were not allowed to have rights of exclusive ownership.”¹⁹ It is not clear which traditions Bhacker refers to, but what is clear is that when Banias and other non-Arabs *did* enter into a property transaction, they did so under a thinly-veiled genealogy – one that located them squarely within an Arabic or Islamic community. In broad terms, they underwent a process of *ta’rīf*, or identification, which tagged them as known parties capable of bearing the rights and liabilities that the contract placed upon them.

For Muslim jurists, legal personhood and the capacity to incur obligations were inseparable elements of any contract. Indeed, one’s legal personhood was the very seat of the obligation; without it, there was nothing for the obligation to be anchored in.

¹⁸ Zoltán Szombathy, “Genealogy in Medieval Muslim Societies,” *Studia Islamica*, No. 95 (2002) p. 35

¹⁹ *Ibid.* p. 139

According to one jurist, Al-Sarakhsi, “the source of the capacity [to incur obligations] exists only once a legal personality (*dhimma*) exists that is suitable to serve as a seat of obligations. This seat is the legal personality... [and] therefore, the obligation is attached to it and to nothing else.” Islamic legal historian Baber Johansen writes that in articulating this link between personhood and obligation, Al-Sarakhsi marks out the starting point for the legal construction of credit.²⁰ For non-Arabs and non-Muslims living in an Islamicate society, genealogy furnished the legal personhood necessary to incur obligations, economic and otherwise.

Moreover, to give an otherwise unidentifiable economic actor a genealogy that would help others identify him, his male ancestors and his social group rendered that actor capable of entering into long-term relationships of commercial obligation. As I outlined in the previous chapter, the obligations that debt created in the Indian Ocean bound different actors together into relationships that transcended the limitations of life itself. *Dayn* – the debt, or obligation – was an institution that forged bonds that passed from father to son or brother to brother. In giving an actor a genealogy – however constructed it may have been – the *kātib* not only endowed him with legal personhood but also made it possible for others to hold his kin accountable for obligations he incurred.

²⁰ Baber Johansen, “The Legal Personality (*Dhimma*) in Islamic Law: How to Separate Personal Obligations from Goods and Secure Credit for the Insolvent.” Paper presented at the workshop “Before and Beyond Europe: Economic Change in Historical Perspective,” hosted by the Economic Growth Center, Yale University, February 25-26, 2011, esp. pp. 5-6

Of equal or even greater importance was the process of rendering non-human entities into legal persons. Islamic law did not recognize the existence of corporations or companies as legal persons. Timur Kuran convincingly argues that Muslim jurists did not conceive of a company as being a legal entity separate from the people who comprised it; only natural persons – human beings, not abstract entities – enjoyed legal personhood, and only they could bear the rights and duties associated with contracting.²¹ In an Arab-Islamic commercial environment, where the majority of large-scale commercial undertakings took the form of extended partnerships between merchants, restrictions on personhood did not pose an issue. Documents from commercial undertakings there identified a party to a contract on his own, or as an agent for his principal, and the pertaining rights and liabilities were implicit within that form of personhood.

Such contracting practices also prevailed in the nineteenth century Indian Ocean. A number of *waraqas* refer to a party as being “the *wakīl* [agent] of so-and-so.” What distinguished nineteenth-century Indian Ocean commercial society, however, was the bewildering variety of legal persons operating within the commercial arena. There was, of course, the usual cast of actors – merchants contracting on their own behalf or on behalf of larger partnerships, and quasi-governmental entities such as customs masters, who also traded on their own account – that any historian of the Islamic world would have seen. However, in the Indian Ocean there also existed other, less recognizable

²¹ Timur Kuran, “The Absence of the Corporation in Islamic Law: Origins and Persistence,” *American Journal of Comparative Law*, Vol. 53 (2005) pp. 785-834

actors: Hindu family firms recognized by Indian law as legal persons, sea captains contracting as representatives of their crew, and other commercial organizations. Thus, in addition to having to render a cosmopolitan commercial society into Arabic, *kātib*s had to make a similar organizational variety intelligible within an Islamic framework.

The *kātib*'s response to this legal challenge was to personify the legal non-person – to construct legal persons out of entities that lacked the capacity to contract, at least according to long-standing precepts of Islamic jurisprudence. Toward this end, the customs master's agent became "*wakīl al-furḍa*", or "the customs house's agent" – as though the customs house were a legal person capable of appointing an agent, which, strictly speaking, it was not.²² Hindu family firms, which consisted of the pooled and undivided assets of a conglomeration of relatives (which I will discuss in greater detail in Chapter 4) took on the persona of their individual agents. The *waraqā*, however, also sometimes hinted at the existence of a broader firm. Thus, the Bahraini agent of the Bhattia firm of Gangaram Tikamdas received the formal name "Al-Set [i.e. the Seth] Gangaram Tikamdas, Al-Company Al-Baniai [i.e. the Bania Company]."²³ At other times, the personification went even further, conflating the proper noun and the company. The firm of Ghordandas Dharmodas, for example, was simply referred to in one *waraqā* as the contracting party "Al-Set Kordundas Darmidas Company."²⁴

²² See also ZNA AM 1/1 p. 12

²³ IOR R/15/2/2017 p. 123, 124

²⁴ Ibid. p. 35

In personifying the various Indian firms as natural legal persons, *kātibs* actively engaged in a process of constructing a legal personhood for the parties to the contract so as to give them the legal capacity necessary to act within an Islamic legal framework. This maneuver, it should be noted, was not unique to *kātibs* in the Indian Ocean, or even to Islamic legal culture. Even in the Western common law tradition, where only natural persons, beings with will, could sue or be sued, the advent of the corporation depended on a legal fiction surrounding its personhood. In order to give the corporation the ability to contract and to engage with the legal system, legal representatives characterized them as a “unit” comprising a group of natural persons and embodying their legal rights and duties. Lawyers and judges thus had to transmute the corporation into a legal “person” – a category which itself broadened as a result of the fiction – in order for it to sue and be sued, or for it to contract.²⁵

The *waraqas* conjured legal personhood through a process similar to that of a legal fiction. These documents omitted the reasoning process by which a firm became a legal person; the result, however, was the same. By flattening out the variegated organizational landscape, *kātibs* allowed for a range of contracting parties to come together as equal, legal “natural” persons. By rendering firms as natural persons and by constructing genealogies for non-Arabs and non-Muslims, they twisted the facts of the transaction to fit the rules of contracting. Of course, merchants would have remained

²⁵ See also Lon Fuller, *Legal Fictions* (Stanford, CA: Stanford University Press, 1967) pp. 12-13

keenly aware of the fundamental differences between a freed slave trading on his own account, a merchant contracting on behalf of a partnership, and an Indian moneylender issuing credit on behalf of a wider family firm. The *waraqas*, however, mediated between the diversity of organizational forms and persons and the demands of the law. In the process of writing, the *kātibs* crafted a narrative of natural persons possessing the full legal capacity necessary to contract with one another. By inscribing genealogies onto the *waraqas*, *kātibs* placed the actors on an equal contractual playing field, allowing them to structure economic relationships with one another however they saw fit.

Inscribing Transactions

After establishing who they were, the parties to the contract then had to articulate the outlines of their agreement onto paper: the offer and acceptance, the object of the contract, the consideration, and a range of other elements that went into the written expression of the agreement. For the *kātib*, these elements required even more imagination than did constructing the parties as legal subjects, for if the personhood of the contracting parties raised certain legal issues, there were many more that the nature of the transaction itself might raise. However, as in the case of legal personhood, merchants and *kātibs* proved themselves adept at mobilizing elements of the law to render irregular transactions legally valid.

Whatever their length, all *waraqas* shared one common element: the acknowledgment – the *iqrār*. Indeed, of the hundreds of words that populated the physical space of the *waraqas*, none were more important than the three-letter word *a-q-r*

– *aqarra*, “[he] acknowledged.” It was the *iqrār* alone that generated the obligation on the part of the debtor, and which gave the document the bulk of its legal force. As Islamic legal scholar Joseph Schacht asserted, “it is in practice the most conclusive and uncontrovertible [sic] means of creating an obligation on the part of the person who makes it.”²⁶

For Indian Ocean merchants, the simple *iqrār* – a basic acknowledgment of debt without reference to its origin – forged concrete links in the long chains of obligation that bound them together in the commercial arena. And, to be sure, they made ample use of basic acknowledgments. Of existing *waraqas*, the overwhelming majority involved an *iqrār* without any regard for its cause or its origin: they simply declared that one party agreed that he owed the other a stated sum of money. The ambiguity, however, was intentional: Schacht noted that people could make use of vague acknowledgments “to ensure a ensure a valuable consideration for any kind of performance, even though it be not envisaged by the types of contract provided” – that it essentially gave the parties a functional liberty of contract within a legal framework that emphasized the ethical control of commercial and legal transactions.²⁷ It thus allowed for a range of different types of commercial associations grounded in debt and obligation – the very types of associations that, as we saw in the previous chapter, structured commercial life in the Indian Ocean.

²⁶ Schacht, *Introduction to Islamic Law*, p. 151

²⁷ *Ibid.* p. 144

While the majority of Indian Ocean *waraqas* involved an *igrār* without any reference to its origins, a bulk of them also included reference to a piece of property that one party transferred to the other – a sales transaction that accompanied the debt acknowledgment. Whether in Bahrain, Muscat, Barawa, or Zanzibar, most of the deeds began with a combination of any of the following elements: an acknowledgment of the binding nature of the document through the phrase “*bi-mawjib hādha al-kitāb*” (“in accordance with this writing”); a further acknowledgment by Party A (articulated as “*aqarra*” or “[he] agreed”) that he owes Party B a certain sum of money (“*anna ‘alayh li-[Party B] [specified sum]*”); and a sale by Party A of a piece of property to Party B (“*wa qad bā’a ‘alayh [specified property]*”). Depending on the port, *waraqas* included different elements of the above; almost all of them, however, amounted to the same transaction – the sale of a piece of property in lieu of an acknowledged debt.²⁸ Even when the contract explicitly specified the future delivery of a particular good, there was often a sale appended to it. In this strain of *waraqas*, Party A agrees that he owes Party B a certain amount of goods – 15 *fraselas*²⁹ of cloves, or 20 of ivory – and that he sold Party B a piece of property. Thus, when in 1868, at Zanzibar, Mas‘ud bin ‘Ubaid Al-Tal‘i

²⁸ In Muscat and Zanzibar, deeds followed exactly the same formulas; in Bahrain and other ports, the formula varied slightly.

²⁹ The *frasela* was a common unit of measurement in South Arabia and East Africa, and its precise equivalent fluctuated from region to region and across time. In late nineteenth century East Africa, it equaled roughly 36 lbs. Writing in the 1860s, Richard Burton noted that “this weight, as is usual in the East, varies at every port. At Aden the Farasilah is 27 lbs., at Zayla 20 lbs., and at Berberah 35 lbs.” Richard Burton, *First Footsteps in East Africa* (London: Tyson and Edwards, 1894) Vol. 2, p. 26, note 1

agreed to deliver 45 *fraselas* of ivory to the Khoja Baloo Walji in 18 months, he also sold Walji his plantation (*shamba*) for an unspecified price.³⁰

Taken at face value, the *waraqas* would lead one to believe that transactions between Indian Ocean merchants consisted almost entirely of agricultural or urban real estate sales. The historiography, however, suggests otherwise; as outlined in the preceding chapter, Indian Ocean merchants transacted with one another on the basis of credit, debt being a central and organizing feature of economic life in the region. How, then, does one make sense of the enormous volume of sales deeds? To get at the *waraqas*' real functions, one has to read between the lines, combining them with other *waraqas* and contextualizing them with legal opinions, works of jurisprudence and the actions of the *waraqas*-holders themselves. By establishing this sort of a context, one can begin to tease out the ways in which merchants made use of sales – and of legal instruments more broadly.

What emerges clearly is that the property sale itself constituted another elaborate ruse – a narrative which drew on the lexicon of commercial jurisprudence to cloak the intentions of the contracting parties and reflect a completely different transaction altogether. There is little indication that “buyers” ever actually took possession of the properties they bought, and even less to signal that they were ever able to exert any form of ownership over it. Rather, merchants used an Islamic nominate sale contract to engage

³⁰ ZNA AM 1/1 p. 49

in a transaction that ostensibly amounted to an interest-bearing mortgage – a transaction forbidden by all Muslim jurists, who only recognized the pledge (*rahn*) and did not allow for any sort of interest on a loan.³¹ In the Islamic legal tradition, as in many other early-modern legal traditions, jurists overwhelmingly forbade usury (called *ribā*; literally, “excess” or “addition”) on the basis of its perceived exploitative nature. While scholars have recently begun to question the conflation of usury with interest, most Muslim jurists throughout history made no distinction between the two.³² The ban on interest, of course, did not deter most Muslim merchants from taking on or giving out interest-bearing loans; as some historians have illustrated, interest was a common part of Islamicate mercantile societies.³³ In order for the transaction to have any legal foundation, however, merchants had to clothe it in the garb of a licit sale contract.

In the most common form of the sale, a merchant in need of money to finance an economic venture sold property that he owned to his creditor and received the cash or credit that he needed. When he was ready to repay his creditor, he simply purchased back the property that he had previously sold. In the interim, the creditor would have derived rents from the property, which amounted to interest on the loan. Thus, in this sort of transaction, what the debtor often sold to the creditor was not an absolute title over the

³¹ Ibn Rushd, *The Distinguished Jurist's Primer*, Vol. 2, p. 330

³² See also Mahmoud El-Gamal, *Islamic Finance: Law, Economics and Practice* (New York: Cambridge University Press, 2006) pp. 49-52

³³ See also Maxime Rodinson, *Islam and Capitalism* (London: Al-Saqi, 2007/Penguin, 1974) pp. 155-157; Ronald C. Jennings, “Loans and Credit in Early 17th Century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri,” *Journal of the Economic and Social History of the Orient*, Vol. 16 (1973) pp. 168-216

property, but a usufructuary right to it coupled with the security of the property itself – a form of custodianship which included a right to the rents produced by the property. In the case of an urban property, this translated into actual rent from the building itself, which creditors often rented back to their debtors.³⁴

In the case of agricultural property, buyers gained the right to collect and sell the produce – dates, cloves, coconuts, etc. The buyer, usually a merchant in his own right, would then sell the produce and retain the proceeds. This is eminently clear from the *waraqas* themselves: in many of them, the debtors sold their creditors entire plantations, listing precisely how many clove or coconut trees he sold along with it. For example, when Faraj, a freed slave, borrowed Rs 30 from his creditor Hamad bin Sa‘id Al-Ghilaji in 1893, he sold 15 *qōras* of a clove plantation in Pemba.³⁵ These sorts of transactions in agricultural produce formed the backbone of the Indian Ocean economy of obligation that I explored in the previous chapter in which a planter, after borrowing money, pledged to supply his creditor with his plantation’s yield from the next harvest.

At other times, the precise components of the objects of sale were less clear. Debtors sold an agricultural estate and almost everything that went along with it. As the *waraqas* formulas often stated, the seller sold “all of the rights, appurtenances, appendages, supplements, and fixtures from the land, sky, vegetation, stalks, iron, wood...” (*ma‘a al-huqūq wal-tawābi‘ wal-lawāḥiq wal-ḍamā‘im wal-‘alā‘iq min al-ard*

³⁴ I discuss this sort of transaction in much greater detail in Chapter 5

³⁵ Records do not make clear what the *qōra* was equivalent to.

wal-samā' wal-khuḍār wal-sa'f wal-hadīd wal-khashab...).³⁶ Interestingly, Al-Tahawi described an almost identical formula in his handbook, arguing that it avoided any confusion about the rights at issue. In practical terms, however, this formulation created a great deal of ambiguity, and sometimes intentionally so; for in its broad nature, the formula transferred to the buyer everything that was necessary to reap the rents from the agricultural property – especially the labor necessary to pick the produce. By implicitly including labor and produce in the sale, the debtor effectively transferred over control of every economic resource necessary to exercise usufructuary rights.

The conclusion that the overwhelming majority of these sales were of usufruct and not of title is amply borne out by the fact that debtors often sold the same piece of property several times over, sometimes to the same creditor and sometimes to different creditors. Deeds from Zanzibar, Muscat and Bahrain illustrate this well; all of them include examples of multiple sales deeds executed between the same creditor and debtor over the course of a relationship. For example, when Jum‘a bin Sulaiman bin Nasser needed money on two separate occasions in the same year, 1867, he borrowed it from the Khoja merchant Lakha Kanji; every time he borrowed money, he sold Kanji the same house in Zanzibar – once for MTD 560, and another time for MTD 1005.³⁷ Similarly, when ‘Ali bin ‘Abdul-Meer Al-Basri borrowed money in 1906 from the two Persian merchant partners Ali Kazem Bushiri and ‘Abdul-Nabi bin Ahmad Bushiri, he sold them

³⁶ This formula is used in all Bahraini *waraqas*; variations on the formula can be seen in *waraqas* from Muscat and East Africa.

³⁷ ZNA AM 1/1 pp. 30-31

the same row of shops in the Manama marketplace twice: once for Rs 6000, and the second time for Rs 6,600.³⁸

None of this is to say that the title to a property was wholly absent from these transactions. Indeed, the notion of title was central to the transaction itself, for while the property generated value, there was also value stored in the property itself. The buyer, or creditor, held the title, but only as a guarantee against the loan; only when it became eminently clear that the debtor was not going to repay the loan might the creditor attempt to claim absolute title over the property. The fact that many merchants held onto their *waraqas* for as long as 30 years before even registering them with the nascent British consulate indicates that most were less interested in actual possession of the property than they were in collecting rents from the property and having nominal title to it. Indeed, when *waraqas* registration first began in Zanzibar in the 1860s (a subject I take up in Chapter 4) merchants brought in many of their old deeds for certification by the Consul. To take but one illustrative example of this, on a winter day in 1867 the Khoja Khalfan Lalji walked into the Consulate and registered five different *waraqas*, the oldest of which was a 13-year old sale deed for a *shamba*, initially contracted for 2 months; the most recent was a similar deed, executed one and a half years before.³⁹

The transactions that merchants and *kātibs* supported through *waraqas* served multiple purposes. Most broadly, they allowed merchants and other entrepreneurs to

³⁸ Sale by ‘Abbas b. Jassim Al-Baghdadi Al-Tamtanji, Wakeel of Ali b. Abdul-Meer Al-Basri to’ Ali Kazem and ‘Abdul-Nabi Bushihri (27 Rajab 1326); Sale by ditto to ditto (29 Rajab 1326)

³⁹ ZNA AM 1/1 pp. 37-38

utilize property to access the capital necessary to finance commercial ventures or agricultural activities while simultaneously meeting the needs of their creditors and the requirements of Islamic law. By mobilizing the form of the sale with an option to repurchase, merchants borrowed money against their property while circumventing Islamic prohibitions on usury. The need mobilize these instruments in imaginative ways so as to finance economic activity, however, was not because of any poverty of contractual forms in the Islamic legal tradition itself. Muslim jurists furnished prospective economic actors with a variety of nominate contracts and institutions with which they could raise capital for a commercial venture. Indeed, throughout Islamic history merchants made use of the range of partnership forms, from *muḍāraba* (a *commenda*-style partnership) to *mufāwada* (an unlimited liability partnership), so that they could raise capital for commercial purposes.⁴⁰ Moreover, jurists furnished merchants with different contractual forms through which they could mobilize their property for the purposes of trade without completely transferring their title. These included pledges (*rahn*) and conditional sales of property (*bay' khiyār*) in which the seller reserved the right of redemption for a specified period of time. Merchants made frequent use of both: they often framed *waraqas* as conditional sales, and other contracting parties pledged houses, boats and plantations.

⁴⁰ See also Abraham Udovitch, *Partnership and Profit*; S.D. Goitien, *A Mediterranean Society, Vol. 1*; Ghislaine Lydon, "Contracting Caravans: Partnership and Profit in Nineteenth and Early-Twentieth Century Trans-Saharan Trade," *Journal of Global History*, Vol. 3, Issue 1 (2008) pp. 89-113

As far as form is concerned, the *waraqas* discussed here fit squarely within these categories, following the necessary formulas to the letter. *Kātibs* took care to closely follow contractual templates in spelling out the attributes of the arrangements, using the precise terminology that written instruments required in order to enjoy a degree of force in the eyes of the *shari'a*. What they wrote was not what they saw: they engaged in a process of rendering the transaction before them and rearticulating it using recognized phrases, terms and sentence orders that placed the documents within the realm of licit contracts. By narrating what effectively amounted to a usurious loan as a sale, *kātibs* bent the facts of the transaction so as to meet the standards of Islamic nominate contracts while preserving for the merchants a space within which they could transact with some autonomy. That they did so with such skill had enormous implications for economic life in the Indian Ocean, but also for the working of Islamic law in the region.

Commerce at the Periphery of the Law

Having lived in Oman for most of the second half of the nineteenth century, the Ibadhi jurist Nur al-Din Al-Salimi was well-aware of the commercial and legal practices that his countrymen had grown accustomed to. Omanis from all walks of life – merchants, farmers, *qāḍis*, and rulers – frequently came to him for legal advice on how to conduct or regulate a range of commercial transactions. The questions they left behind and the answers Al-Salimi gave them, which he recorded in the format of a dialogue, are remarkable in their illustration of the moral and legal anxieties and tensions – but also accommodations – that an expanding commercial arena produced.

Of the different commercial practices Al-Salimi found himself confronted with, there was nothing he spilled more ink on than the widespread misuse of the *khiyār* sale contract to disguise interest-bearing transactions. In Oman and East Africa, the sorts of exchanges discussed in the previous section typically took the form of the optional sale (*bay' al-khiyār*). Muslim jurists originally conceived of the *khiyār* as a regular sale contract with the option for either party to rescind the contract within a specified period of time. In the nineteenth-century Indian Ocean, however, economic and juridical actors understood the *khiyār* as an option for the seller to *redeem* the property within a specified timeframe. However, as the *waraqas* themselves make clear, however – and as the questions posed to Al-Salimi further illuminate – merchants and other commercial actors frequently mobilized the *khiyār* sale as an instrument to facilitate a range of new commercial practices, few of which had any basis in the *khiyār*'s original purpose.

Al-Salimi voiced few objections to the general practice of *khiyār* sales around the Indian Ocean, even when they amounted to interest-bearing transactions. Indeed, he openly declared that usage of the *khiyār* sale as a means of selling a plantation's yield (*ghilla*) for a specified period of time was valid. In response to a question on whether a tree's yield was included in a *khiyār* sale, Al-Salimi, in an especially lengthy opinion in which he drew on a range of different legal texts, contended that the issue was one grounded in the nature of the sale object itself. If the tree in question was sold before its fruit ripened, he wrote, then the fruit formed an inseparable part of the tree; because the fruit was not yet ripe, it could not be considered independent and thus remained in its

original state. Only by ripening could the fruit be considered as an independent object of sale. For Al-Salimi, this was largely an issue of value: unripe fruit had no use-value in itself (*lā naf‘un lahā min ḥaythu dhātihā*), its use-value derived from its attachment to its mother, the tree (*min ḥaythu al-tabī‘a li-ummahātihā*). Like a camel still in its mother’s womb, fruit could have no existence of its own until it ripened.⁴¹ Thus, if a plantation was sold before the time of harvest, its yield comprised an inseparable part of the sale. As elegantly-argued as it was, his response reads as an all too-convenient ex-post rationalization of a prevailing commercial practice.

Nor did Al-Salimi object to the growing practice of passing down the *khiyār* arrangement from one generation to another. He understood that the *khiyār* formed the contractual basis of an enduring relationship of commercial obligation – indeed, this was the *modus operandi* of the very commercial society in which he lived – and saw no harm in extending it when it was about to elapse. The right of redemption in a *khiyār*, he wrote, “is a right that is inherited, and thus does not end with the death of the sellers, and undoubtedly transfers to their heirs until its period elapses.”⁴² While he was unsure as to whether the *khiyār* buyer (i.e. the creditor) could pass down his rights, he effectively validated the practice by presenting two competing opinions and leaving the question

⁴¹ Nur al-Din Al-Salimi, *Jawābāt Al-Imām Al-Sālimi [Imam Al-Sālimi’s Responses]*, electronic edition (Muscat, Oman: Ministry of Awqaf and Religious Affairs, 2005), Vol. 4, pp. 267-269. The pregnant camel is a favorite example among Muslim jurists who discuss uncertainty in sales contracts.

⁴² Ibid. p. 244

open.⁴³ Here, Al-Salimi displayed one of his many signs of a willingness to accommodate the needs of an expanding commercial society.

It was clear, however, that he was only willing to support changing commercial practices to a certain extent. Any variations on standard commercial obligations had to maintain their grounding in established rights and liabilities. Halfway through dealing with a seemingly endless list of queries about the permissibility of various configurations of *khiyār* transactions, Al-Salimi wrote that he no longer knew how to respond for the want of respect that people had for the rules surrounding the *khiyār*.⁴⁴ The questions, of course, kept coming in, and in an unusually candid moment an exasperated Al-Salimi wrote that he had “broken [his] pen in issuing *fatwas* on the *khiyār* due to people’s misuse of it (*li-sū’ mu ‘āmalat al-nās fīh*).” He then swore to his questioner that were he not coming to earnestly seek knowledge he would not have addressed his concerns with so much as one letter of the alphabet.⁴⁵

What bothered Al-Salimi was that people were using the *khiyār* with no understanding of the contractual rights that underpinned it – that the contract had been reduced to a mere vehicle for flippantly usurious transactions. While he was willing to accommodate the sale of a plantation with its yield with a clearly-defined timeframe for its redemption, and was even willing to support the extension of that transaction over generations, he could not countenance transactions that clearly aimed to use the yield to

⁴³ Ibid. p. 275

⁴⁴ Ibid. p. 300

⁴⁵ Ibid. p. 326

service a debt over an indefinite period of time – transactions which effectively abrogated the seller’s contractual rights. Here, he wrote, “people used it [the *khiyār*] without regard for justice, and turned it into a path to usury⁴⁶ (*wa ja ‘alūh dharī‘a ilā al-ribā*).” Al-Salimi ended his opinion by beseeching *kātib*s to join him in breaking their pens in the face of requests to engage in this sort of chicanery, if they had any respect for the integrity of their religion at all.⁴⁷

Muslim jurists like Al-Salimi had long been aware of the dangerous link between sale contracts and usury. In his nineteenth century legal treatise, Al-Salimi’s friend and intellectual companion the Ibadhi jurist Mohammed Atfiyish began his volume on the sale contract with a 22-page preamble on usury. Although the treatise mainly supplied a technical discussion of different rules on interest in sales, underpinning it was a more general concern about the porous frontier between licit and illicit sales transactions. Atfiyish’s work displayed great concern over the ways in which combinations of sales transactions might be used to cloak interest-bearing loans – such as how swapping a spot sale of dates for a deferred sale of dates of a greater quantity create discrepancies in value that could amount to interest.⁴⁸ Situated uneasily on the border between sales and usury, ruses like the *khiyār* exemplified the sorts of legal maneuverings that concerned Atfiyish.

⁴⁶ I translate *ribā* here as “usury” to reflect the moral connotations of the practice as Al-Salimi would have seen them, rather than using the less loaded term “interest.”

⁴⁷ Ibid. p. 304-5

⁴⁸ Atfiyish, *Sharh Kitāb al-Nīl*, Vol. 8, pp. 32-54

Jurists like Al-Salimi and Atfiyish evinced further suspicions about written instruments and how people could use writing to obfuscate the nature of a contractual relationship and confuse the rights and obligations within it. Their concern regarding the malleability of the document was not altogether unfounded: instead of making use of nominate contracts and legal terminology to place themselves within the purview of the *shari‘a*, merchants and *kātibs* from around the Indian Ocean – and, one can argue, around the Islamic world – made imaginative use of its conventions so as to redefine the nominate contracts and reconfigure the legal landscape. Through their efforts, merchants and *kātibs* subtly reshaped the boundaries of what the juridical field would allow, while on the surface declaring their strict adherence to the formalities of Islamic commercial contracting.

Nowhere was this concern surrounding documentary practice more clearly pronounced in discussions surrounding *hiyal* (sing. *hīla*) – legal stratagems designed specifically to circumvent the more troublesome legal restrictions. One of the more popular *hiyal* involved the double sale. In this particular stratagem, the creditor and debtor would execute two separate sales deeds: one in which the creditor purchased from the debtor an item for cash – say, 100 dinars – and another in which he sold back the item for a deferred, increased price – say, 120 dinars due back in one year. Individually, the sales deeds were valid; together, however, they amounted to a one-year loan at 20 percent interest. For some jurists, including the famous Hanafī *qāḍi*-cum-jurist Abu Yusuf, adherence to the nominate forms of sales contracts made these kinds of transactions

permissible, irrespective of the practical outcome. Many agreed with him on the basis of *istihsān*, or juristic preference based on necessity. Even as early as the medieval period, the double sale had become so widespread that jurists admitted it as an inescapable fact of commercial life. Other jurists vehemently disagreed, insisting that whenever the substance of the contract aimed to reach an illicit goal, such as the concealment of a usurious loan, the very purpose of the contract had not been met. Despite all of its clever chicanery, the double sale failed to meet most jurists' standards of permissibility.⁴⁹

Whether or not one could use legal means to reach clearly illegal ends was, then, a subject of great debate amongst Muslim jurists. Generally, however, early juristic treatises on *hiyal* seem to acknowledge a widespread acceptance of the elasticity of nominate contracts. This genre of *fiqh* literature offered extensive commentary on how people might mobilize contractual categories to circumvent the dense matrices of rights and obligations embedded within them, or combine different contracts to create altogether new types of associations. Indeed, the very *raison d'être* of this genre of legal literature, it seems, was to present a supple legal framework that was responsive to

⁴⁹ See also Satoe Horii, "Reconsideration of Legal Devices (*Hiyal*) in Islamic Jurisprudence: the Hanafis and their Exits (*Makhārij*)" *Islamic Law and Society*, Vol. 9, No. 3 (2002) pp. 346-348; Schacht, *Introduction to Islamic Law*, pp. 81-84, 205-210. Interestingly, the juristic debate surrounding *hiyal* broadly mirrors that amongst English jurists surrounding legal fictions. For proponents, like Sir Henry Maine and William Blackstone, legal fictions were necessary stratagems aimed at preserving the dynamism of the law. Opponents of legal fictions, however, argued that they were more dangerous than they were useful. Jeremy Bentham, one of the most vociferous opponents of legal fictions, stated that they were "exactly as swindling is to trade," further arguing that their "object [is] the stealing of legislative power, by and for hands, which could not, or durst not, openly claim it – and but for the delusion thus produced, could not exercise it." Jeremy Bentham, *A Comment on the Commentaries and a Fragment on Government*, ed. J.H. Burns and H.L.A. Hart (London: The Athlone Press, 1977) p. 509

people's needs – one that the contracting parties themselves could actively shape. In one of the earliest analyses of *ḥiyal*, Joseph Schacht acknowledged this much, stating that “they functioned as a *modus vivendi* between theory and practice: the maximum that custom could concede, and the minimum ... that theory had to demand.”⁵⁰

In his discussion of Ibadhi rulings on the *khiyār* sale contract, Atfiyish did not seem to think that it could be used in any way other than that which it had originally been designed for, suggesting that the *khiyār* practice that permeated the Western Indian Ocean had not yet reached the town of Mzab in the northern Sahara, where he penned his work from. However, his discussion of double sales – and of *ḥiyal* more broadly – betrays his ambivalence about legal maneuverings as a whole. While he was careful to outline a long history of juristic conflict over the permissibility of *ḥiyal*, he also detailed a range of situations in which a double sale amounting to a loan at interest passed legal muster. More importantly, he saw a contract's form as overriding its substance, quoting with approval the Shafi'i jurist 'Ali Al-Sabki's assertion that “all that is meant to be reached, [which is] by its essence [*dhātih*] but not by its form [*kownih*] forbidden, is permitted with no repugnance (*kurh*).” He immediately went on to read the celebrated 16th century Shafi'i jurist Ibn Hajar al-Haythami as strengthening that position. “Ibn Hajar replied to those who said the *ḥiyal* towards *ribā* were void,” Atfiyish noted, “that its [the *ḥīla*'s] intention is in the agreement, and it [the intention] precedes the contract

⁵⁰ Schacht, *Introduction*, p. 80

and thus does not impact it, for intention only has an impact if it is associated with action.”⁵¹ Thus, in his assessment of the debate Atfiyish erred on the side of caution. Although jurists might suspect that legal protagonists drafted a document with the intent to deceive the legal system, in lieu of a clear signal to that effect they could only decide on the basis of what they had in front of them: a document that reflected an unmistakably valid transaction.

Although Atfiyish remained silent on the *khiyār* sale as it was practiced in the Indian Ocean, jurists from around the region displayed a sharp awareness of its prevalence. The practice took a number of different names: in South Arabia, it was called the *bay‘ al-‘uhda* (“the custodianship sale”) while in other parts of the Middle East it often went by the name of *bay‘ al-wafā‘* (“the redemptive sale”). In describing the controversy surrounding the transaction in Hadramawt, Linda Boxberger notes how Ibn Hajar disapproved of the practice and asserted that “any condition (*shart*) which negated the essential requirement (*muqtadan*) of the contract invalidated that contract.” However, she also describes how a number of Hadrami jurists in the nineteenth and early-20th century disagreed with Ibn Hajar’s assessment of the *‘uhda* sale, “stating that it did not contradict the correct conditions for a sale and was valid (*sahīh*) and permitted (*jā‘iz*) and that it benefitted society.”⁵² The juristic tension that Boxberger describes was an extension of that which characterized Muslim jurists’ debates surrounding the *hiyal*: a

⁵¹Atfiyish, *Sharh Kitāb al-Nīl*, Vol. 8 p. 74

⁵²Linda Boxberger, “Avoiding *Ribā*: Credit and Custodianship in Nineteenth- and Early-Twentieth Century Hadramawt,” *Islamic Law and Society*, Vol. 5, No. 2 (1998) pp. 199-200

tension between form and substance, framed by broader notions of necessity. While some jurists were willing to overlook the substance of the fictional sales contracts, focusing instead on society's need for them and their adherence to accepted form, other jurists rejected them on the basis of their substance, which negated the essential requirement of the sales contract – i.e. the *bona fide* transfer of property.

The substance versus form debate reflected more than a preoccupation with contractual templates and arcane rules. Underpinning the entire debate was an anxiety about documentary practices and the malleability of the written instrument. Indeed, this formed the core of Al-Salimi's grievances in Oman: people were using standard legal instruments to reach ends that they had not been designed for, and in doing so they upset the delicate balance of rights and liabilities that underpinned each contractual form. His concern moved beyond a suspicion regarding writing in itself – a question that has preoccupied historians of Islamic law, yielding rich but ultimately inconclusive debates – and toward the workaday manifestations of meticulously-designed and centuries-old legal vehicles.⁵³ While Al-Salimi was prepared to allow some flexibility in how people used the *khiyār* sale, he was loath to allow manifestations of the practice that would obfuscate the contracting parties' ability to pursue their doctrinally-enshrined claims.

⁵³ On the debate surrounding Muslim jurists' suspicion of writing, see also Messick, *The Calligraphic State*, pp. 203-230; Emile Tyan, "Le notariat et le régime de la preuve par écrit dans la pratique du droit musulman," *Annales de la Faculté de Droit de Beyrouth*, No. 2 (1945) pp. 3-99; Wakin, *The Function of Documents in Islamic Law*, pp.4-10; Ghislaine Lydon, "A Paper Economy of Faith Without Faith in Paper: A Reflection on Islamic Institutional History," *Journal of Economic Behavior and Organization*, Vol. 71 (2009), pp. 647-59; Brinkley Messick, "Indexing the Self: Intent and Expression in Islamic Legal Acts," *Islamic Law and Society*, Vol. 8, No. 2 (2001) pp. 151-178

Concerns similar to Al-Salimi's were well-reflected in the juristic literature on *hiyal*, which often very explicitly discussed the malleability of the written document. In his 9th century work on *hiyal*, the Hanafi jurist Mohammed Al-Shaybani pointed to the different strategies by which contracting parties could use writing to distort the boundaries of nominate sales contracts, especially by writing up only part of the transaction and making public and private oral statements that confused the aims of the contract.⁵⁴ In his commentary on Al-Shaybani's work, the 11th century jurist Mohammed Al-Sarakhsi displayed a similar attitude towards the malleability of the written document, describing to his readers how someone who bought a property on behalf of someone else could draft a deed in such a way as to hide the identity of his principal and thus thwart the seller's recourse in case of non-payment.⁵⁵ Seen in light of this attitude towards written instruments, Al-Tahawi's insistence in his notarial manual that *kātibs* use standard formulas and established syntaxes when drafting legal documents makes sense: his aim was to strip the written word of its ambiguity and thus leave no doubt as to the intentions, rights and liabilities of the contracting parties.

It is difficult, of course, to read too much instrumentality into the process of mobilizing language, for merchants' and *kātibs*' usage of Islamic nominate contractual forms was also a function of the environment in which they lived. While the merchant's

⁵⁴ Mohammed bin Hassan Al-Shaybani, *Al-Makhārij fī al-Hiyal* (Cairo: Maktabat al-Thaqāfa al-Dīniyya, 1999) pp. 40-42

⁵⁵ Selections from Al-Sarakhsi's *Kitāb al-Mabsūt* were published in the same volume as Al-Shaybani's treatise on *hiyal*. Ibid. p. 137

menu of contractual forms extended beyond those supplied by Muslim jurists, Islamic commercial jurisprudence furnished the primary vocabulary with which they could express their contractual arrangements, at least in writing. Moreover, centuries of Islamic notarial practice supplied merchants and *kātibs* with contractual templates that they could draw on in articulating their arrangements with one another. Of course, these templates and the formulas contained therein were not exact replicas of those that existed centuries before; they had since undergone several transformations of their own. Still, they included broadly the same elements: opening formulas, formulas identifying the parties, formulas defining the property, formulas describing the transaction, and quittance clauses. These were necessary elements to the contract, and a long genealogy of doctrine and practice guided merchants and *waraqā* writers in articulating their contractual relationships through them.⁵⁶

When added to the other elements that made up the contract – dates, witnesses, and seals – the formulas made up all the criteria necessary for a legitimate transaction. This in itself suggests a strong motivation behind the merchants’ usage of Islamic contractual templates in their *waraqas*. By having *kātibs* write down and notarize their contractual relationships, and by framing them in terms recognized as having legal force in Islamic jurisprudence, merchants sought to infuse their contracts with the trappings of legally-valid instruments. Although the *substance* of their relationships might not have

⁵⁶ Wakin, *Function of Documents*, pp. 49-70

enjoyed legitimacy in the eyes of Muslim jurists and *qādis*, they would at least be legitimate in *form* and thus evade the scrutiny of the law. Keenly aware of the need to meet specified criteria for legal legitimacy, *kātibs* served as accomplices, mobilizing the formulas and legal language necessary to render the *waraqas* as valid legal documents; whether or not they amounted to an evasion of the law was a different consideration altogether. As one historian of Muslim notarial manuals writes, while formularies “were not meant in themselves to evade the formal prescriptions of the law... the [*kātib*’s] purpose was to carry out the intentions of the client – regardless of whether these were legal or illegal – and to avoid the transaction being upset in any way.”⁵⁷

Adherence to form, however, did more than simply infuse the contract with legal legitimacy – it furnished the *waraqas* with the elements necessary to project a compelling narrative of licit contracting. As with the writers of sixteenth-century French letters of remissions, *kātibs*, by adhering to the language, detail and order of contractual forms, were able to “present an account of the transaction that seem[ed] to both writer and reader true, meaningful and/or explanatory.”⁵⁸ The *khiyār* sales *waraqas*, and *ḥiyal* more broadly, drew on the language and form of the law but manipulated legal definitions. They displayed forms that jurists and *qādis* could instantly recognize and classify, but which meant something different altogether to the merchants and *kātibs*. By drawing on centuries of established practice and formulae, *kātibs* were able to effect what Kathryn

⁵⁷ Ibid. p. 11

⁵⁸ Davis, *Fiction in the Archives*, p. 3

Burns refers to as “truth by template – a truth recognizable not by its singularity, but by its very regularity.”⁵⁹ That is, they were able to create documents that in outward appearance had the sheen of “truth” by virtue of their adherence to forms and templates that had for centuries been established as legitimate means for conveying the truth. When seen from this angle, one can begin to understand why Bahraini merchants and *kātibs* insisted on beginning all of their sales deeds with the phrase “Praise Allah, who permitted sales and forbade usury” (“*al-ḥamdu-lillāh allathī aḥall al-bay‘i wa ḥarrām al-ribā*”).

Most broadly, then, the *kātib*’s strict adherence to standard contractual templates, and his insistence on drafting instruments in Arabic even when it was not the *lingua franca* of the merchant community, suggests that the instruments were less intended for an audience of merchants than they were for *qāḍis* and jurists – and perhaps for themselves, too. For although *kātibs*, jurists, and *qāḍis* were distinct (although sometimes overlapping) actors, they all operated within a singular Islamic juridical field – an area of patterned legal practice structured by shared internal conventions.⁶⁰ By allowing merchants to push at the boundaries of what was permissible while insisting that they use established contractual formulas, *kātibs*, jurists and *qāḍis* actively re-inscribed the primacy of the juridical field in the commercial sphere. In other words, these actors, through their mediation of changing commercial practices, effectively reinforced their own position within a burgeoning commercial arena.

⁵⁹ Burns, *Into the Archive*, p. 37

⁶⁰ On the idea of a juridical field, see Pierre Bourdieu, “The Force of Law: Towards a Sociology of the Juridical Field,” translated by Richard Terdimen, *The Hastings Law Journal*, Vol. 38, (2005) pp. 805-853

Merchants, of course, were not passive pawns in a juridical agenda. In mobilizing established legal concepts and categories to meet extra-legal aims, they actively engaged in a process of re-imagining nominate contracts altogether. That is, by using the category of *khiyār* sale as they did – by using these categories to clothe more illicit economic relationships – merchants expanded the frontiers of the categories while at the same time declaring them to be legitimate. And while their usage of nominate conditional sales or pledge contracts departed from what the instruments were originally designed for, the frequency with which merchants used them established new functions for those instruments and thus reshaped, *de facto*, the category itself. That jurists acknowledged the ways in which merchants reshaped the sales contract only underscores the point that nominate contractual categories were malleable and adaptable to new settings. Although merchants did not have the license to reinvent the categories altogether, they were allowed to stretch their boundaries. And as long as merchants and *kātibs* continued to draw on the lexicon of commercial jurisprudence in articulating their relationships with one another, they acknowledged the primacy of an established juridical field while remaking it at its periphery.

Through their usage of Islamic contractual forms, merchants and *kātibs* engaged in a process of extending law through maneuverings of the same sort that Henry Maine described in early modern British legal fictions: by using language to “conceal...the fact that a rule of law has undergone alteration, its letter remaining unchanged, its operation

being modified.”⁶¹ And indeed, it is in this sense that historians should understand the *khiyār* sale and other *hiyal* – as devices used to extend legal categories into uncharted waters. Seen from this perspective, the *khiyār* sale was not a peripheral practice designed to circumvent a solid body of Islamic law, but was the very manifestation of Islamic law in action – one of many examples of how Islamic legal categories lived and breathed on the ground while perpetuating the existence of the broader juridical field.⁶²

Conclusion

The medium of the *waraqā* allowed merchants and *kātibs* to distill a complex commercial landscape into written – and legal – forms. Through an imaginative mobilization of the lexicon of Islamic jurisprudence, merchants and their *kātibs* rendered a cosmopolitan and dynamic commercial culture legible in an Islamic framework and inserted it within a long genealogy of Islamic nominate contracts. By maneuvering to bend the facts of the transaction to meet the standards of nominate contracts, and by mobilizing legal terminology so as to meet all of the formal requirements of legally valid sales instruments, merchants and *kātibs* re-inscribed the realm of licit commercial contracting while simultaneously stretching the boundaries of what was permissible in Islamic commercial jurisprudence. In doing so, they effectively reinvented Islamic nominate contracts to meet new purposes.

⁶¹ Henry Maine, *Ancient Law: Its Connection with the Early History of Society and its Relation to Modern Ideas* (New York: Dorset Press, 1861/1986) p. 22

⁶² Here I draw a great deal on Satoe Horii’s analysis of *hiyal* in Islamic law. Departing from Schacht’s understanding of *hiyal* as legal ruses, Horii writes that “*hiyal* were an integral part of Islamic law rather than devices designed to circumvent it.” See Horii, “Reconsideration of Legal Devices,” p. 315

That jurists and *qādis* were all too willing to accommodate this practice points to its efficacy in subtly reshaping the boundaries of contracts in an acceptable manner. More importantly, it serves as an important indicator of a vibrant Indian Ocean legal culture that was all too willing to meet the challenges of modern capitalism in the region. These fictions, and the *waraqas* themselves, had very real implications for the structure of commerce in the Western Indian Ocean, creating opportunities for merchants to stretch contractual boundaries – and with them, the very frontiers of commercial contracting.

At their broadest, then, the malleability of the *waraqas* underscores the flexibility of the Islamic legal system in the Western Indian Ocean. By acknowledging the validity of fictional sales transactions, jurists, *qādis* and rulers created the room necessary for merchants to mobilize reinvented Islamic nominate contracts in novel ways to meet the new challenges and opportunities that a burgeoning economy posed. For as the tempo of trans-oceanic exchange increased, so too did the scale and scope of trade finance: credit networks expanded into new territories, and faced new challenges in trying to link new markets to old ones. Within this new commercial environment and the legal transformations that accompanied it, the *khiyār* sales *waraqas* and the other instruments with which it intersected took on new meanings.

CHAPTER 3: THE GEOGRAPHY OF OBLIGATION

In late May of 1879, towards the end of the long rainy season in Zanzibar, the Arab merchant ‘Abdullah bin Mohammed bin Sulaiman Al-Bakri approached the Khoja moneylender Baloo Walji for a loan. A well-known moneylender on the island, Walji had previously financed ivory expeditions into the interior of East Africa.¹ It was not the first time Al-Bakri had approached Walji. Thirteen years earlier, he and his sister both borrowed money from the Khoja – MTD 1,140 and MTD 350 respectively – and had mortgaged fractions of their *shambas* to him for 10 months.² This time, however, he needed more than twice that amount – MTD 2,350, to be exact, and for a year.³ To secure his obligation to the moneylender, Al-Bakri drew on a much broader swath of property: seven different plantations (*shambas*) of various sizes and in different parts of Zanzibar. As a written articulation of their agreement, Walji and Al-Bakri had a *waraqqa* drawn up.⁴ Why Al-Bakri would have needed so much money on this occasion is not clear from the *waraqqa*. What is clear, however, is that he was hardly the only economic actor in the Indian Ocean basin who pledged property against a loan: as the nineteenth century wore on, thousands like him drew on the resources they had in order to access credit in a

¹ ZNA AM 1/1 p. 49

² ZNA AM 1/1 p. 21

³ As I noted in Chapter 1, Frederick Cooper states that in 1860 MTD 5,000 could buy a large estate, and between 1860 and 1873 a male slave would have cost anywhere between MTD 10 and 30. See Cooper, *Plantation Slavery*, p. 59, 118, 249

⁴ ZNA AM 3/2 p. 57

burgeoning commercial arena. In this world, the *waraqā* became the centerpiece of commercial life.

The first chapter of this dissertation mapped out the changing contours of economic life in the Western Indian Ocean during the mid-nineteenth century, detailing the growing centrality of obligation as an organizing principle of economic life in the region. Chapter 2 took a close look at the obligation as articulated in the *waraqā* – the written expression of the bond of obligation that tied one economic actor to another. Here, we bring the two discussions together and move one level deeper to consider how, in response to the shifting contours of commercial life in the Indian Ocean, actors mapped their commercial obligations in terrestrial space. For underpinning the Indian Ocean commercial arena was a robust market in property, and in their attempts to capture emerging commercial opportunities, a wide range of economic actors capitalized their property through devices both real and fictive. Merchants, planters, sea captains, freed slaves and even women mobilized whatever property they could get their hands on – corporeal, incorporeal, partial, near, far, encumbered or unencumbered – to generate the capital necessary for themselves, their friends or family members to toss their hats into a commercial arena that seemed to only get more lucrative as the years went by.

As the relationship between property, credit and commerce became more intricately linked, the *waraqā* took on new dimensions. Although merchants might have issued *waraqas* to one another prior to this period, the changing relationship between property and trade finance highlighted the *waraqā*'s centrality in commercial dealings.

That shifting set of linkages also yoked obligation within a particular spatial imaginary. For the *waraqas* was not simply a legal document which bore the details of a transaction; it was strikingly geographical in nature, underscoring the relationship between property, credit and trade. Most *waraqas* articulated this relationship in a very explicit manner, while simultaneously giving its parties considerable flexibility to fashion this relationship in ways that suited their means. In a sense, the *waraqas* formed the site in which credit, property and commerce met – both where they met one another and, as we saw in the preceding chapter, where they met the law.

For actors seeking to mobilize different types of property towards a broad spectrum of ends, the *waraqas* offered a uniquely-suited vehicle – a malleable piece of writing that merchants could shape to meet the exigencies of a changing commercial world. On the one hand, it rendered property and its rents portable in a world characterized by increasing spatial and socio-economic mobility. In this regard, it converted a merchant's assets into a written document that could move across oceans and change hands whenever commercial necessity demanded it. At the same time, however, the medium of the *waraqas* allowed for a merchant to convert into capital something that was not physically divisible – an absurd fraction of a house, boat or date garden. The most striking aspect of this changing commercial culture during late-nineteenth century is not that merchants were able to mobilize these different properties, but *how* they were able to do so: by transforming what was otherwise a legal document into a commercial instrument – an entry ticket into a regional commercial bonanza.

The changing practices in the commercial arena, particularly the booming trade in property shares and obligations, caught the attention of contemporary Muslim jurists, many of whom went to great lengths to accommodate them. Although the practices took on particular dimensions in the Indian Ocean, the broader shifts in Islamicate commercial contracting and jurisprudence that they signaled were by no means unique to the region. Around the Ottoman Empire, too – and also presumably other Muslim societies – as economic actors adapted to the emergence of modern capitalism during the mid to late-nineteenth century, Muslim jurists faced pressures from below to respond to changing practices. And although they were willing to accommodate these practices, they continued to insist on upholding the delicate balance of rights and duties that characterized Islamic contracts.

The multiple dimensions of the world of property, commerce and obligation of the late-nineteenth century Indian Ocean reflected itself clearly in the *waraqqa*. The document was the product of a particular spatial imagination in which its creators constructed its terms out of material spaces – urban homes, agricultural lands, etc. – while using social relations as its building blocks. At the same time, however, *waraqqa* writers projected their own unique geographies – ones that reflected the vectors of commerce and obligation, emphasizing flows over discrete spaces and blurring local, national and continental boundaries beyond recognition. In a sense, *waraqas* reflected a re-imagined map of the Indian Ocean that was perhaps less stable, but true to the nature of commercial activity in the region.

Of course, *waraqas* did not magically craft this landscape on their own. Merchants and other actors did this work of creative transmutation: through imaginative *waraqas* usage, Indian Ocean economic actors forged a complex regional landscape, integrating properties and rent flows in such far-flung areas as Muscat, Zanzibar, Bushire, Bahrain and Kutch into a common commercial arena. In doing so, they created a complex geography of obligation – a phrase I use to give analytic coherence to the transnational and cross-cutting ties of obligation that characterized economic life in the nineteenth-century Indian Ocean littoral. These increasingly dense webs of obligation were not composed of abstract ties suspended in commercio-legal ether; they were inextricably grounded in a physical landscape. Although the physical landscape itself remained unaltered, in the new geography of obligation that characterized Indian Ocean trade, titles cut across jurisdictions and properties became fragmented, often signed over to creditors both near and far, creating a variegated patchwork of crisscrossing titles and flows of income. This geography of obligation was in many ways only contingent, resting as it did on a liberal interpretation of the *waraqas*. And yet that geography remained very real, channeling the commerce of an entire region.

Property and Obligation in Islamic Jurisprudence

The robust property market in the Indian Ocean rested on a body of jurisprudence willing to accommodate it. And Muslim jurists were all too eager to facilitate a healthy exchange in property, having developed, over the course of centuries, a tight contractual framework within which a person could own or transact in property. For property held a central place

in Islamic jurisprudence: the bulk of *fiqh al-mu'āmalāt*, the jurisprudence of transactions – which in itself takes up most of any *fiqh* text – involved property. Within this body of jurisprudence, the relationship between property, broadly defined, and credit had been clear for centuries: jurists had since the 9th century elaborated a handful of mechanisms by which one could use property to access credit.

How Muslim jurists conceived of property, and the categories and guidelines they used to describe and regulate its negotiability, depended on the context within which they discussed it. Property belonging to the state, or obtained through the state, was subjected to a variety of regulations, based on whether it was individually- or communally-held, taxable, moveable, immoveable, and more.⁵ For private property – the sort that individuals could own, pawn and sell – jurists developed an entirely different set of categories and guidelines.

Among jurists, there was absolutely no question about a Muslim's right to private ownership. Jurists all held that a person's right to buy, sell, or lease a plot of land was absolute and inviolable. Nonetheless, they rarely discussed property in general or absolute terms, preferring instead to consider it within the framework of the transaction. In the conceptual framework of American legal historian James Willard Hurst, the transactional practices of Muslim merchants and landowners reflected dynamic, rather than static, conceptions of property. They viewed capital for what it might accomplish,

⁵ For more on these categories of property, see also Mundy and Saumarez-Smith, *Governing Property, Making the Modern State*, pp. 9-39

not simply for the value that it already possessed. This is, of course, not to say that they did not recognize absolute rights to ownership – which, in fact, they held in very high esteem – but rather that they imagined one’s rights to ownership as coming into the sharpest relief in relation to his or her right to transfer the title. Within this framework, property extended well beyond real estate, generating a wide variety of terms and conditions reflecting the various uses to which Muslim economic actors applied it.

The most inclusive among these terms was the word *māl*, which referred broadly to one’s wealth or capital – an object of commercial exchange. Muslim jurists made frequent use of this term when describing the resources that one could contribute to a partnership, or assets from which individuals could deduct the obligatory *zakāt* or charitable tithe. The term signaled ownership, in that it referred to something its owner possessed. One’s *māl* or wealth could include a range of assets: real estate, moveable property, and cash. A more common term among both jurists and laypeople, however, was *mulk* (pl. *amlāk*) which referred specifically to private real property.⁶

The category of *māl* broke down into three conceptually distinct yet inter-related forms: *‘ayn*, *dayn*, and *manfa‘a*. Of the three, *‘ayn* constituted what most would consider to be property in the conventional sense – tangible property, like merchandise, real estate, produce, etc. The *‘ayn*’s measurability formed one of its key characteristics, for when dealing in it both the buyer and the seller had to have complete information on its

⁶ Richard S. Debs, *Islamic Law and Civil Code: the Law of Property in Egypt* (New York: Columbia University Press, 2010) pp. 18-20

attributes: its size or quantity, its whereabouts, its appurtenances, and more. Al-Tahawi takes up the bulk of his notarial manual with instructions on how to describe a property's characteristics in exacting detail so as to mitigate any confusion between the transacting parties over it.

Arising from the *'ayn* was the *manfa'a*, the usufruct – the rents of a property that one could buy, sell, or lease. By transferring rights to *manfa'a*, a person conveyed the right to use a property, rather than the property itself. *Manfa'a* could thus only exist in exchange. As a form of property, it only took shape in the ether of the transaction. In a sense, *manfa'a* was intimately bound up in the *'ayn*, arising as it did from the essence of the *'ayn* itself. However, it was conceptually distinct from the *'ayn* in that it constituted a title over the flow of rents from the *'ayn* rather than over the *'ayn* itself.

Jurists strongly defended the right to transact in *manfa'a*, viewing it as a labor product that embodied both use-value and exchange-value to which the owner of the *'ayn*, as reaper of the fruits of the earth, had a natural and unimpeachable entitlement. The Quran and Sunna unequivocally asserted that human beings had a duty to cultivate the earth, and jurists supplemented the directive with a range of incentives, the most commonly-asserted of which was the ruling that whomever revived uncultivated (*mawat*, lit. dead) land deserved title over it.⁷ The logic underpinning their position was one that scholars today would identify as strikingly Lockean – that in reviving “dead” land – that

⁷ Debs, *Islamic Law and Civil Code*, pp. 14-15; Rodinson, *Islam and Capitalism*, pp. 43, 48-49

is, in exerting his labor – the cultivator created use- and exchange-value, from which he then had every right to benefit personally.⁸ In practice, the state often mediated the cultivator's right to title; however, the rhetorical support the idea articulated in favor of private property rights amongst Muslims is unquestionable.⁹

The *dayn* constituted a different type of property altogether. It rested on any outstanding obligation, distinct from *'ayn* in that it was neither present nor tangible, and separate from *manfa'a* in its origin.¹⁰ What the parties transacted in, then, was not actual property, but a claim – in most cases, an outstanding monetary debt. While the *dayn* embodied value, no one could measure it, nor could anyone describe it as concretely as they might real property. Still, the fact that such intangible property assumed a large place within commercial practice forced jurists to count it among the different forms of property-in-exchange. Although jurists retained a suspicion that merchants might transact in debts in ways that approximated usury, so much so that most jurists refused to allow

⁸ This conception of value makes its way into Ibn Khaldun's *Muqaddimah*, in which he argues that labor is the source of all value in crafts and in other productive enterprises. Ibn Khaldun notes that the laborer consumes the value of his labor, it is called sustenance; otherwise, it is called profit. See Ibn Khaldun, *Al-Muqaddimah*, edited by Ahmed Al-Zo'by (Beirut: Dār al-Arqum, 2001) pp. 417-419

⁹ In East Africa, landowners invoked the principle of reviving uncultivated land to buttress their claims to plantation areas at the outset of the clove boom. Sir John Gray, historian and Chief Justice of Zanzibar, wrote that many Arabs acquired their land on the island through disafforestation, and that amongst Arabs land was "something akin to individual and alienable freehold such as was recognized by the law of his country of origin." John Gray, *History of Zanzibar from the Middle Ages to 1856* (London: Oxford University Press, 1962) pp. 167-168

¹⁰ Ibn Rushd, *The Distinguished Jurist's Primer*, Vol. 2, p. 577

intangible property to could as part of a partnership's capital, they did allow for a partner to contribute his credit.¹¹

The distinctions among *'ayn*, *manfa'a* and *dayn*, however, were never neat. While jurists distinguished between the three for analytic and casuistic purposes, their writings indicate that they saw considerable overlap between them. *Dayn* and *manfa'a* both resulted from a pre-existing obligation of some sort. And although the *dayn* constituted a property in its own right, a person could use it to purchase *'ayn* property. In essence, either *manfa'a* or *dayn* could serve as collateral for advances or loans, or as the consideration for a purchase. Al-Tahawi's discussion of *dayn* payments in his chapter "On Buying with Debt" (*bāb al-shirā' bil-dayn*) makes no distinction between buying with money in hand and buying with an outstanding debt. He instructs the notary to mention that the purchase was made with an outstanding debt, but says that the resulting document should take the form of "what we wrote for the purchase without debt (*fil-shirā' bi-ghayr al-dayn*), as we described in the beginning of this book."¹² Writing in the nineteenth century, Atfiyish thought the issue important enough to dedicate a lengthy discussion to it, in which he drew heavily on other schools of jurisprudence in an attempt to create a facilitative and flexible framework for the range of obligations that had become increasingly common at the time.¹³

¹¹ Udovitch, *Partnership and Profit*, pp. 187-188

¹² Al-Tahawi, *Kitāb Al-Shurūt*, p. 170

¹³ Atfiyish, *Sharh Kitāb al-Nīl*, Vol. 9, pp. 43-99

Whether or not they were aware of the different categories of transactional property, Indian Ocean merchants did mobilize the varieties of “properties” that jurists imagined, and in all of their overlapping forms. There are, of course, analytical hazards in making a leap from Islamic theoretical constructs of the property-credit nexus to the realities of nineteenth-century Indian Ocean commerce. Nonetheless, in that time and place, property clearly *did* matter to credit, and in a very important way. The overwhelming majority of existing *waraqas* detail transactions which involved real property, or *‘ayn* – usually in the form of agricultural or urban real estate, but also moveable property, such as boats or animals. As the nineteenth century wore on, the range of properties on which Indian Ocean economic actors drew continued to expand; by the second half of the century, there emerged a healthy market in obligations, or *duyūn*, many of which were themselves grounded in real property. And underpinning this entire regime of property titles in motion lay the *manfa‘a* – the usufruct that formed the value in a commercial exchange between different actors.

In this exchange, *waraqas* constituted important vehicles, offering different economic actors in the Indian Ocean a straight-forward medium through which they could transact in real property, usufruct and obligations. By inscribing these different assets onto a physical document, *waraqas* writers rendered the entire spectrum of properties more liquid and highly mobile, expanding the capacity of commercial actors to leverage their resources and take advantage of a burgeoning regional economy.

Where the Land Met the Sea

For Indian Ocean merchants and moneylenders, property formed the material bedrock of their business enterprise, constituting the assets from which they derived rent, and from which they could drum up the capital necessary for commercial ventures. For although numbers in account books might not have been worth much more than the paper they were written on, real property generated real wealth – rents that a creditor could continue collecting until the debtor paid up. In this world, then, merchant-financiers were almost invariably powerful landlords as well. In Bahrain, the partners ‘Ali Kazem Bushihri and ‘Abdul-Nabi Bushihri purchased such a dizzying variety of properties in and around Manama that by the beginning of the twentieth century they were among the biggest landowners on the island. Another Persian merchant-financier, ‘Abdul-Nabi Kazeruni, owned nearly 100 shops in the Bahrain marketplace (*sūq*) – and there were many others like him.¹⁴ In Muscat, the Banyan Ratansi Purshottam, through loans and mortgages, ended up owning “a considerable part of the city,” though only by *khiyār*.¹⁵ The same could easily be said of the merchant-financiers operating in Zanzibar and East Africa.

It is difficult to pin down any precise moment when property, credit and commerce became as thoroughly entangled as they did in the nineteenth-century Indian

¹⁴ Fuccaro, *Histories of City and State*, pp. 102-104. Fuccaro writes that “by the 1920s the role of entrepreneur and patron had become synonymous with that of landowner.”

¹⁵ Landen, *Oman Since 1856*, p. 140

Ocean.¹⁶ If archival holdings are any measure, with the passage of time, contractual parties certainly created more and more *waraqas*. One leaves the archives with an overall impression that demand for agricultural land grew substantially between 1850 and 1900, as hundreds of firms chased after commodity booms. Extant records, however, defy any precise quantification of this trend. Frederick Cooper's study of nineteenth-century Zanzibar draws on anecdotal evidence to suggest that by the 1870s land in the plantation areas had become more expensive, as a great deal of it had already been bought up for clove- and coconut-growing purposes.¹⁷ His findings, however, cut against those of Sheriff, who points to a noticeable depreciation in land values following British attempts to eradicate slave labor on plantations.¹⁸ Nelida Fuccaro's work on Bahrain suggests that much like Zanzibar, the value of urban and agricultural real estate rose markedly during the last decades of the nineteenth century.¹⁹ However, she faces the same problems as both Cooper and Sheriff: because comprehensive figures simply do not exist, she has to infer the trend from a range of different indicators. Similarly, Boxberger's work on

¹⁶ Works on pre-nineteenth century Indian Ocean commerce do not address the property nexus in commerce or credit. In his compelling description of the world of a seventeenth-century Indian Ocean merchant, R.J. Barendse argues that a merchant's creditworthiness depended largely on personal attributes, such as status, caste, reputation, and to a lesser degree on how much capital he had at hand to insure against possible losses. R.J. Barendse, *The Arabian Seas, 1640-1700* (Leiden: Research School CNWS, 1998) pp. 162-170. Whether the preeminence of land as collateral in the nineteenth century Indian Ocean suggests the emergence of an increasingly impersonal exchange market or simply a rise in the value of land is difficult to determine.

¹⁷ Cooper, *Plantation Slavery*, p. 59

¹⁸ Sheriff, *Slaves, Spices*, p. 206

¹⁹ Fuccaro, *Histories of City and State*, pp. 73-111, esp. 94

Hadramaut suggests that there was a growing market for land during the late-nineteenth century, but stops short of demonstrating the precise contours of heightened demand.²⁰

Archival records and the historical scholarship *do* make clear that by the second half of the nineteenth century, Indian Ocean actors mortgaged their properties in numbers greater than ever before. This much is evident from the growing number of *waraqas*, all of which, as the rest of this chapter will demonstrate, vividly illustrate a robust market in moveable and immoveable property throughout Arabia and Africa. Not only did the demand for property and its rents rise over the course of the nineteenth century, but the scope of properties that actors drew on also expanded. By the 1870s, a wide range of different actors sought to mobilize whatever property they had to participate in the commercial boom. Women, minors, captains and mariners all drew on property in one form or another in accessing loans from their creditors. Even newly-manumitted slaves mortgaged properties – usually mud huts or plots of clove trees that they received from their former masters, but sometimes also slaves that they themselves owned.²¹

The property-credit-commerce nexus became so pronounced in the second half of the nineteenth century in large part because of the changed commercial environment, which in turn generated pervasive perceptions that windfall profits awaited those who dived in the growing commodity trades in the region. Indian merchants, swept up in the commercial bonanza of the later-1800s, were only too happy to keep fueling this

²⁰ Boxberger, “Avoiding *Ribā* in Hadramawt,” pp. 210-212

²¹ McDow, “Arabs and Africans,” pp. 152-164; ZNA AM 1/3 p. 36

commercial exuberance with increasing advances of cash and goods. Sugata Bose notes that Indians operating in Qatif and Qatar were similarly “anxious to share in the growing trade of [those areas].”²² And one British official writing in 1865 hinted that Indian financiers’ zealous commercial activity in the Persian Gulf was in part due to rising commercial optimism in Bombay, “where, during the late share mania, fancy prices were given for good pearls.”²³ There is little direct evidence of this “share mania” from any other source, but the caches of *waraqas* remaining from the period indicate that Indian merchants were eager to finance a range of different activities, and that they did so in increasing numbers during the second half of the nineteenth century.

Inscribing Landscapes

For a sense of the extent to which late nineteenth-century Indian Ocean merchants and other commercial actors viewed property as capital, one need only pay close attention to the textual construction of *waraqas* from the era that involved property. *Kātibs* devoted at least half of the writing in these documents to describing boundaries in exacting detail. The properties that the *waraqas* described, however, were not fixed according to any standard units of measurement. We do not see *waraqas* that describe the specific lengths or widths of property – a glaring omission for an historian seeking to correlate loan figures to land sizes. Instead, they consistently defined properties by the social

²² Bose, *A Hundred Horizons*, p. 79

²³ Gulf Resident to the Secretary to the Government of Bombay (15 December 1865) MSA PD 1867, Vol. 54, Comp. 14

geographies within which they were embedded. In this world, landscapes were as much social as they were physical. *Kātibs* described properties in distinctly relational terms, invariably demarcating boundaries by listing the names of those who owned the surrounding properties. To take but one example of thousands, when the Arab Hamdan bin ‘Abdul-Qadir Al-Qahtani hypothecated his *shamba* to Moosa Tharia, Tharia Topan’s son, in 1888, the *kātib* described it as being located “in the Kunini area in the island of Zanzibar, adjacent to (*mujāwira*) the *shamba* of Salim Korma and the *shamba* of Saleh bin ‘Ali to the south (*muṭla‘an*)²⁴ and the house of Jairam in the direction of the *qibla* (the direction of Mecca, presumably the North).”²⁵ Deeds in Bahrain and Muscat followed the same formula, with little to no variation, when describing property boundaries.²⁶

In his manual, Al-Tahawi described a similar formula for *kātibs* to use in writing property sales deeds, going into specific instructions on how to detail the precise boundaries of a property. In describing property boundaries in terms of the people who owned adjacent properties, however, *kātibs* did not blindly follow the conventions of their profession. Rather, by describing the boundaries in relational terms, *kātibs* wished to help parties more clearly locate the property by identifying others who could help determine its precise boundaries. In essence, they sought to link written legal

²⁴ Here, the *waraqā* writer uses the Kiswahili word “Kus” for “South” instead of the standard Arabic “Al-Junūb.”

²⁵ Registered deed 1771 of 1888, ZNA AM 2/3

²⁶ See also IOR R/15/2/2017 p. 35; Sale deed by Khalifa b. ‘Abdulla Al-Baqbashi to ‘Abdul-Nabi b. Kal’awad Kazerouni (26 Rabi al-Akhar 1315 A.H., or 24 September 1897), Bushihri Archive. I have not seen any surviving deeds from mid-nineteenth century Bahrain.

documentation to systems of local, and oral, legal knowledge. Al-Tahawi saw this strategy as a particularly useful means to resolve disputes over a property's precise boundaries. He noted that “when they have this sort of disagreement (*lamma ikhtalafū hādha al-ikhtilāf*) we looked to the people's talk (*kalām al-nās*) who know between them what this is, and we found them saying ‘the house of so-and-so comes after the house of so-and-so’.”²⁷

Al-Tahawi's discussion implies that in his 9th century Egyptian milieu, people conceived of space in relational rather than absolute terms, and that his formulas reflected this spatial imagination. The fact that *kātib*s made use of identical formulas a full millennium later, in the mid-nineteenth century Western Indian Ocean, partly signals the endurance of a professional convention amongst them – a subject I delved into in the previous chapter – but also points more broadly to similar understandings of space. For both Al-Tahawi and *kātib*s in the nineteenth century Indian Ocean, geographic knowledge was deeply embedded in social knowledge; space did not occupy an abstract concept or a material plane, but was rather constituted by social relationships. In this view, the social dimensions of space subordinated its material dimensions, conjuring up a geography that was as much communal as it was physical.

The *kātib*'s vision of space had important legal ramifications. For in imagining a property's boundaries as being determined by those who surrounded it, jurists like Al-

²⁷ Al-Tahawi, *Kitāb Al-Shurūt*, p. 12

Tahawi and the notaries who emulated his formularies also established a neighbor's rights *vis-à-vis* the property. In the first instance, a property's exact boundaries remained subject to consent on the part of the neighbors. In addition, those neighbors could powerfully influence the owner's right to dispose of it. All jurists, irrespective of *madhhab*, established an adjoining property owner's right to pre-emption (*shuf'a*) in the disposal of real estate. Thus, a person looking to sell his property had to allow his immediate neighbors the right of first refusal.²⁸ From this viewpoint, a property owner could exercise property rights only to an extent determined by his neighbors. By listing the names of those who owned adjacent properties, *kātibs* also listed those who had the right to contest the sale on the basis of *shuf'a*. Imagining a transacted property as socially constituted thus also implicitly established the claims that others could potentially raise against the validity of that transaction.

As *kātibs* thought about the relationship between real estate and geographic reality, then, they assumed that one could not separate a property transaction from the social relationships that quite literally constituted the property in question. Even as the world of commerce grew increasingly impersonal, those involved with inscribing law into the commercial sphere framed it as an inherently personal exchange. Although a *waraqā* might ostensibly describe an exchange of *'ayn* property – a transaction that might

²⁸ Ibn Rushd provides a good overview of the positions taken by different jurists on the question of *shuf'a*. His writings indicate that while jurists might have disagreed on whether moveable property was subject to *shuf'a*, there was little to no disagreement on a neighbor's right to *shuf'a* in real estate. Ibn Rushd, *The Distinguished Jurist's Primer*, Vol. 2, pp. 307-316

actively involve the *manfa‘a* or usufruct – *kātibs* described the transaction in such a way that emphasized the sets of obligations that surrounded the property in question. In the same manner that social relationships formed the boundaries of presumably discrete spaces, so too did they form the basic building blocks of the burgeoning geography of obligation that emerged in the nineteenth-century Indian Ocean.

In the increasingly dense webs of obligation that characterized economic life, communally-bounded property took on added significance. Indeed, the notion that spaces were constituted by social relations fit nicely within a commercial terrain populated by people and obligations, as both underscored the centrality of the social relationship in the realm of the commercial transaction. By giving a human face to the property-credit nexus, *kātibs* anchored increasingly-complicated transactions in human relationships – relationships that carried with them obligations of a multidimensional (but ultimately legal) character. And in a world in which these transactions grew in scope, transcending communal and even continental boundaries, grounding an increasingly messy geography in human relationships helped establish some semblance of order, sorting out those who had rights to a property from those who did not. For those involved with administering or inscribing the law, even the most distant of exchanges had to be thought of as have local, and personal, dimensions.

Land Across the Water

For merchants on the move, as so many were in the Western Indian Ocean during the latter half of the nineteenth century, property ownership hardly ever had only local

implications. A merchant conducting business between the Persian Gulf, India and East Africa was likely to own property in each. Hajji Mirza Mohammed ‘Ali Safar, a Persian merchant who conducted business around the Persian Gulf and Western Indian Ocean at the outset of the nineteenth century, illustrates this well. By the time Safar passed away in 1845, he owned substantial properties in Bushire, Basra, Hilla, Bahrain, Muscat, Bombay and Mocha – a large and far-flung estate that he left to his sons, who continued to conduct business in the family’s name.²⁹ Merchants like Safar did not invest in different properties around the Indian Ocean out of simple ostentation. They did it because the exigencies of commercial life in the region required it, for the merchant who owned property in a foreign port was more likely to access credit there.

The broadening of the scale and scope of commercial obligation in the Indian Ocean during the nineteenth century brought with it equal breadth in the market for collateral property. As the range of actors who giddily sought entry into the commercial arena expanded, so too did the scope of resources they brought with them. Merchants like Safar, who decades before would have made use of local properties to finance local ventures now shared the commercial stage with actors who drew on collateral from around the Indian Ocean – property that they mobilized to secure a foothold for themselves within a burgeoning economy of obligation that tied far-flung location and actors together into a shared economic fate.

²⁹ James Onley, “Transnational Merchants in the Nineteenth-Century Gulf: the Case of the Safar Family,” in Madawi Al-Rasheed, ed., *Transnational Connections and the Arab Gulf* (London: Routledge, 2005) pp. 66-68

Waraqas vividly illustrate the expanding breadth of the Indian Ocean property arena during this period. While only a minority of them involve long-distance property transactions, those that do give historians a good sense of the ease with which Indian Ocean actors contracted in properties abroad. When in 1874 the Zanzibari Arab merchant Sa‘id bin ‘Umar Al-Kharusi borrowed the princely sum of MTD 5,200 from the Banyan Wala Banji for one year, he sold by *khiyār* his date plantation in his ancestral homeland of Wadi Bani Kharus in Oman, just outside Muscat.³⁰ Three years later, in the fall of 1877, another Zanzibari Arab merchant Salim bin ‘Ali Al-Sughri borrowed MTD 3,300 from the customs master Lakmidas Ladha, offering as collateral his properties in Al-Sharqiyya, the Eastern province of Oman.³¹

That Al-Kharusi and Al-Sughri would have mortgaged property in their homeland while in Zanzibar was in large part a product of the history of migration between the two places: as the clove and coconut trade in Zanzibar took off, many Omanis left their comparatively poor towns and villages to try out their luck in East Africa. Arriving in Zanzibar with nothing to pledge against a loan, an Omani entrepreneur would most likely have drawn on his resources at home. Interestingly, we see no Oman-based actor dealing in property situated in East Africa; whether this is because of the smaller rate of return migration or the comparative dearth of surviving *waraqas* from Muscat rather than the absence of the practice is not clear.

³⁰ ZNA AM 3/1 p. 80

³¹ ZNA AM 3/1 p. 77

When looking to finance a commercial venture, merchants in Zanzibar hypothecated their properties on the mainland much more regularly than they did those in Oman. *Waraqas* illustrate how frequently Zanzibari merchants drew on properties from towns along the East African coast, all of which were growing in prosperity as commercial centers during the second half of the nineteenth century. From as early as 1859, there is record of a Ruzaiq bin ‘Ali hypothecating his Mombasa home to the Zanzibari customs master Jairam Sewji.³² The rate at which these appear in the record increases over time: by the late 1870s, as towns on the East African coast continued to expand, merchants mortgaged their mainland holdings with much greater frequency.³³

Nor was this phenomenon limited to men. Women, too, hypothecated properties they owned in different areas against money they borrowed from Indian merchants. In the summer of 1877, the Swahili woman Mwana Oba bint Jum‘a bin ‘Ali, who had inherited several properties from her father, hypothecated two *shambas* in Mombasa for five months to Lalji Anandji the *Bania* agent of the firm of Wala Kanji for the small sum of MTD 145. When the due date elapsed, she mortgaged another property in Mombasa, this time a house, for another three months – this time for the even smaller sum of MTD 50.³⁴ For women like Mwana Oba, small loans of that nature were likely to have been used to either finance household consumption or buttress a family member’s business. Indeed, it

³² ZNA AM 3/1 p. 28

³³ See, for example, ZNA AA 12/19, which includes at least 10 different mainland hypothecations contracted in Zanzibar from the year 1877.

³⁴ ZNA AM 3/1 pp. 105-106

was not unusual for a man to borrow from his wife, or even to ask (or perhaps even force) his wife to hypothecate her properties to finance a commercial venture. This example suggests, however, that women were both willing and able to mobilize distant properties to access a burgeoning market for loans – a point that has been lost on historians of commerce in the region.

If Oman, Zanzibar and the East African mainland constituted mutual hinterlands, the same was true for Bahrain, Bushire (on the Persian Coast) and Hasa (in East Arabia). For merchants in Bahrain, where there was only limited agricultural land, the oasis town of Qatif, in Hasa, often served as a productive hinterland on which they could draw when accessing a loan. When the pearl merchant Shaikh Jassim bin Mohammed al-Fayhani turned to his creditor, Mohammed ‘Ali bin Ibrahim Al-Zayyani, to finance a pearling voyage, he hypothecate to him five different plots in plantations that his family owned in Qatif, for the whopping price of nearly Rs 65,000 – roughly two thirds what *Banias* had paid for a customs lease for an entire year.³⁵ That same year, another family mortgaged plantations in both Bahrain and Qatif, for the much smaller sum of Rs 2,050.³⁶

Women formed as integral a part of the Persian Gulf property axis as they were in East Africa. When Safar’s (whom I introduced at the beginning of the section) grandson Muhammad Rahim, who traded between Bahrain and Persia, died at the turn of the 20th century, he left his properties in Bushire to his two daughters, Bibi Khadija and Bibi

³⁵ R/15/2/2017 p. 50A

³⁶ R/15/2/2017 p. 69

Khair-al-Nissa, both of whom resided with him in Bahrain. Six years after Rahim's death, Khair-al-Nissa transferred her title to the Bushire properties to her husband and paternal cousin, the Bahrain-based merchant Muhammad Khalil Bushiri, who carried on an extensive trade between Persia, Bahrain and Iraq.³⁷ Around the same time, another Bahraini woman, Maryam bint Mohammed 'Ali Yaseen, sold her title to half of her inherited properties in the Arab quarter of Bushire to the Bahrain-based Persian merchant Mohammed bin Fadhli Al-Gorki.³⁸

That both women were Shi'a is important, as Shi'i inheritance rules allow the testator more discretion in dividing his property amongst his heirs than would the more rigid Sunni inheritance system, in which women could only receive half as much as their male co-heirs. Moreover, it is important to emphasize, as the *waraqas* themselves do, that the inherited property was the woman's and not her husband's. In all schools of Islamic jurisprudence a woman's property remained strictly separated from that of her husband. A man could make use of his wife's property only with her explicit permission; when *kātibs* drew up the above *waraqas*, Khair-al-Nissa and Maryam both would have had to be physically present and verbalized their consent. Whether Khair-al-Nissa volunteered to transfer her property to her husband or whether he might have coerced her into using her inheritance to buoy his business is unfortunately a question that the records do not admit an answer to.

³⁷ Will and Property Division of 'Abdul-Nabi Safar (Ramadan 1324 A.H.), Bushihri Archive

³⁸ Sale from Maryam bint Mohammed 'Ali Yaseen Mohammed bin Fadhli Al-Gorki (n.d.), Bushihri Archive

As testators in their own right, women could also pass on their property to their children to use as commercial capital in other ports. When the African wife of a Khoja merchant of Mukalla died at that port in 1874, she bequeathed to her son Haji Moorji a farm and some money. Shortly after her death, Moorji proceeded to Zanzibar, where he opened up a shop on borrowed goods; as collateral, he offered his creditors title to the Mukalla property, which they readily accepted.³⁹

Whether the India-East Africa or India-Arabia property axis was as strong for the Banyans and Khojas as others were is much more difficult to determine. Some Indians clearly did pledge property at home against loans that they then re-parceled out in foreign ports. In the early 1870s, for example, when the Indian merchant Nan Dayal financed a coastal caravan setting off into the East African interior, he did so on the basis of money that he borrowed from merchants in his home port of Mandvi, in Kutch. When, by 1875, the caravan had failed to return, forcing Dayal to declare bankruptcy, his creditors in Kutch wrote to the British Political Resident there with their claims to his property.⁴⁰ The Zanzibar archives abound with mortgage deeds written in Gujarati; whether they involve hypothecations of property in Kutch awaits the dedicated Gujarati specialist. One must also keep in mind that commercial associations between Indian merchants in the Indian Ocean often followed different rules altogether, using various forms of partnership and profit-sharing institutions like the Joint Family (an institution through which Hindu

³⁹ *Haji Moorji vs Alarakhia & Ghela Moorji* (1881) ZNA HC 7/170

⁴⁰ *Mahomed Laljee vs (1) Pragjee Jadiwjee (2) Cowejee Chapsee (2) Megjee Lila (4) Anundjee Moolchund (5) Mumla Morjee* (1875) ZNA HC 7/20

families partook in accumulated capital) rather than vertical relationships of credit and debt like those between Indians and other groups.⁴¹

None of this should suggest a property market as wide as the Indian Ocean itself. As flexible as it may have been, the property regime that emerged during the nineteenth century can hardly be called unbounded. *Waraqas* reveal a clear “home bias” in the credit market. Although commercial operations might have grown increasingly regional in scope, the market for credit remained a markedly local one: Zanzibari *waraqas* overwhelmingly involved properties in Zanzibar and its environs, and the same goes for *waraqas* from Hadramaut, Oman and Bahrain. Even long-distance *khiyār* transactions only took on the regional scope of the networks they traveled through: merchants only drew on properties in places where they enjoyed kinship or commercial ties. One does not see a Zanzibari hypothecate property in Bahrain or Qatif, or a Muscat Arab property in Kutch or Barawa, and for good reason: it was unlikely that either would own property in those areas, located as they were beyond the frontiers in which they traded. The Indian Ocean property market, then, closely tracked the geographic channels of the region’s commercial networks.

For all of the limitations on Indian Ocean property markets, economic actors *did* mobilize properties from a range of different areas to meet the demands of an expanding

⁴¹ For an excellent example of this sort of partnership institution at work between Kutch, Bombay, Zanzibar and Bagamoyo, see *Alidina Visram vs Abdoola Megji & Rehem Lilani* (1888) HC 7/285. When the partners dissolved their association in 1888 (which was not typical for a Joint Family) they parceled out partnerships assets as well as outstanding debts between themselves.

world of obligation. For those who were looking to pawn a distant property, the *waraqah* offered a straight-forward vehicle. Not only did it unequivocally communicate the debtor's acknowledgment of his obligation and his transfer of the property to his creditor, but the documentation of the transaction also allowed the creditor to physically carry it with him when collecting his dues. It thus took the information surrounding the rights and obligations and rendered it into a portable form, facilitating the transfer of titles across long distances.

Early Muslim jurists had exhibited significant discomfort with transactions involving properties far away from the locus of the contract. In his survey of the state of medieval Islamic jurisprudence, Ibn Rushd noted that adherents of Shafi'i school opposed the sale of anything that was not immediately present at the time of the transaction on the basis that it involved an excessive want of knowledge (*jahl*) surrounding its attributes.⁴² For early Shafi'is, most notably Imam Nawawi, a buyer's inability to inspect the object he was purchasing rendered the sale invalid, for it impinged on his ability to make an informed decision surrounding his purchase.⁴³ In the language of modern economics, these jurists worried about the injustices that might result from information asymmetries. Later Shafi'is, however, seem to have taken a more accommodative stance. Faced with emerging regional trade networks in the 16th century, the jurist Ibn Hajar conceded that a person could sell or lease a property that was not immediately present (*ghā'ib*, lit.

⁴² Ibn Rushd, *The Distinguished Jurist's Primer*, Vol. 2, pp. 187-188

⁴³ Nabil A. Saleh, *Unlawful Gain and Legitimate Profit in Islamic Law: Riba, Gharar and Islamic Banking* (New York: Cambridge University Press, 1986) pp. 67-68

absent). In his commentary on Nawawi's work, he wrote that although the seller's inability to hand over the property to the buyer might raise suspicion as to the execution of the sale, the obligation itself remained good.⁴⁴

Fatwas by the late nineteenth-century Omani mufti and Ibadhi jurist Nur al-Din Al-Salimi reflected growing concerns on the part of Omanis regarding an increasingly transnational property market. At several points, Al-Salimi had to respond to legal questions arising from the increasing number of mortgages by East Africa-based Omanis of their home properties. In his response to a question surrounding the sale of distant property, Al-Salimi wrote that ignorance surrounding a property's precise attributes did not invalidate a sale if it was conducted legally (*idhā waqa 'a 'alā al-wajh al-shar'ī*) – a stance he affirmed several times over.⁴⁵ In many of his other *fatwas* he further grappled with the increasing mobility of people and property between Oman and East Africa.

Although Al-Salimi and his Shafi'i counterparts never explicitly state it, they all seemed to tacitly acknowledge that the growth of a transoceanic market for goods required a legal framework that would facilitate long-distance commerce. The fact that Al-Salimi issued his opinion in response to questions posed to him suggests that the contours of the market for goods and property had already expanded well before he had to contend with it. Indeed, the questions Omanis posed to him vividly illustrate a property market in East Africa that extended as far into the interior of the Oman as Nizwa and

⁴⁴ Ibn Hajar, *Tuhfat Al-Muhtāj*, Vol. 2, p. 353

⁴⁵ Al-Salimi, *Jawābāt Al-Sālimī*, Vol. 4 pp. 253-255

Rustaq – a trend further detailed by the number of transnational property sale *waraqas* from the mid-nineteenth century onwards.⁴⁶ Al-Salimi’s stance on the changing contours of the property market is evident throughout his *fatwas* on the issue, all of which directly aimed at facilitating transactions between Oman, the Arabian Peninsula and East Africa.

Jurists’ accommodation of a trans-regional market for property formed a key component of the increasingly dense geography of obligation that characterized the Indian Ocean during the second half of the nineteenth century. By opening the door to long-distance transactions of property and their usufruct, they articulated a legal framework that was supple enough to account for what had already become a reality on the ground. The growing need for credit meant that flows of rent had to be redirected towards ends that would accommodate the ultimate goal of commercial activity, whether it be in a neighboring port or an ocean away. And by the end of the nineteenth century, the webs of obligation that spanned the Indian Ocean commercial arena had long since transcended national and even continental boundaries, blurring the distinctions between spaces that we now imagine as discrete, like Africa, the Arabian Peninsula and India.

Fractional Property

Just as, Indian Ocean merchants, aided by Muslim jurists, managed to reconfigure the external boundaries of the property market in response to the exigencies of commercial life, so too did they remake their internal dimensions. As more economic actors sought

⁴⁶ Ibid., Vol. 4, p. 110, 312

participation in the commercial bonanza, there developed a brisk market in property shares, creating a more divided social landscape of property. Houses, agricultural estates, and even moveable properties like boats were all subjected to processes of division and distribution by merchants and other actors in the face of a rising tide of commercial optimism.

For many of the individuals who sought to participate in the burgeoning commercial arena, sole ownership of a property that they could hypothecate against a loan was a distant objective, not a starting point. As more proprietors and firms populated the commercial neighborhoods of port cities and undertook the creation of plantations outside of the towns, urban and agricultural land became increasingly scarce. Although ancestral properties abounded, there is little to indicate any rise in private property ownership at the time – save among financiers. Indeed, many of the properties that eventually made their way into the commercial arena had been passed down from previous generations – familial properties to which, because of Islamic inheritance law and practice, merchants and other actors enjoyed only partial and sometimes uncertain rights.

Although Islamic inheritance rules did not directly stipulate how someone was to divide up his or her estate – whether into discreet parcels, monetary amounts or others – around the Western Indian Ocean one's inheritance usually consisted of shares in an undivided property. Thus heirs usually ended up not with a smaller plot in a larger agricultural estate, but rather an assigned share of its value, ranging anywhere from a

clean half to absurd fractions like 3/79. However, for individuals eager to ride the rising wave of commercial success, absence of full title to a property hardly presented an insuperable deterrent. In fact, if anything, the splintering of estates enabled a broader range of actors to enter the commercial arena than before. Those who did not possess full titles simply hypothecated their shares in their family estates, effectively signing over a proportion of the net profits every year.

Waraqas from Bahrain amply illustrate this phenomenon: debtors frequently mortgaged their inherited shares of property on the island and elsewhere. In 1857, Mohammed Salman Al-Marzouqi sold the Persian ‘Ali ‘Abdul-‘Abbas his one-quarter share in a dhow – a *baghla* called Fayd al-Rahman – for MTD 300.⁴⁷ Another Persian merchant, Mirza ‘Abdul-Rasul bin Ahmed Safar – one of Muhammad ‘Ali Safar’s great-grandchildren – mortgaged his share of the family estate, 5/27 of one house and ¼ of another, to another merchant for Rs 300.⁴⁸ At other times, merchants drew on properties even farther away. In 1892, Muhammad Rahim, mortgaged his one-third stake in three date plantations in the Shatt al-‘Arab waterway near Basra to the Parsi merchant Rowaji Fracis, for Rs 80,000.⁴⁹

Extant *waraqas* from Zanzibar point to an equally brisk market in shares of both urban housing and agricultural estates in East Africa. When, in the spring of 1851, Sayyid

⁴⁷ Sale by Mohammed Salman Al-Marzouqi to ‘Ali ‘Abdul-‘Abbas (27 Safar 1274), Bushihri Archive

⁴⁸ IOR R/15/2/2017 p. 95

⁴⁹ Sale from Mohammed Rahim bin ‘Abdul-Nabi Safar to Rowanji Rosabhai Fracis (9 Muharram 1310), Bushihri Archive

Abu Bakr al-Shatiri sought a loan of MTD 870 from the Indian merchant Sulaiman Saleh, he hypothecated his share in a house he owned jointly with his brother. Three years later, he did the same another share in a house – most likely the same property – to the same creditor, this time for MTD 914.⁵⁰ As the commercial climate grew more frenzied along the coasts of Arabia and East Africa, the market for real estate of all kinds similarly heated up, prompting commercial entry by a range of different actors. One deed from the summer of 1877 describes a three-year loan of MTD 1750 taken on by Tarek bin Julait, a slave (*khādim*), from the Khoja merchant Kassim Dosa. As security, Tarek hypothecated four plots of agricultural land around Zanzibar as well as a one-third share in a house in Malindi, the island’s dhow port.⁵¹

For women, the emerging market in property shares offered the opportunity to participate in the growing economy, if only through their husbands. Although women always represented a minority among *khiyār* sellers in the Indian Ocean arena, they still participated in the property market in surprising numbers – surprising, at least, for those who had not previously considered the economic roles women played in the region. In some cases, women embraced the commercial boom taking place around the Indian Ocean alongside their brothers, cousins and husbands. Indeed, for the aspiring Indian Ocean merchant, marriage to a woman who had inherited shares of property could spell

⁵⁰ ZNA AM 3/1 pp. 218-219. The first *waraqā* provides only vague details as to the whereabouts of the house. While it is difficult to ascertain whether Al-Shatiri hypothecated his shares in the same house, three years apart, or in two different properties, the fact that both houses are described as being located in Hurumzi suggests that the two *waraqas* might refer to the same property.

⁵¹ ZNA AM 3/1 p. 113

the difference between success and failure. When the Bahraini pearl merchant Sayyid Nasser bin ‘Ali bin Khalaf found himself in economic straits, he hypothecated to the Indian firm of Gangaram Tikamdas and Co. his wife’s shares in her family’s date plantations: 3 of 164, 5 of 72, and 25 of 140 shares in three different Bahraini plantations, and 1 of 26 shares in a date plantation in Qaseem, on the Saudi Arabian coast, as well as shares in family properties around Manama.⁵² Indian merchants in East Africa, particularly Khojas, similarly drew from their wives’ properties to boost their commercial standing.⁵³ Even the famous ivory trader Tippu Tip’s father caught his biggest break when he married the daughter of Habib bin Bashir El-Wardi, a member of a wealthy, landed Omani family, and gained access to her inheritance.⁵⁴

That people could take only a share of a property and mobilize it according to the exigencies of commercial life was in itself nothing new. Muslim jurists had for many centuries contemplated a range of scenarios in which people could buy, sell, lease or pledge only part of a property. To them, the sale of a room in house was just as valid as the sale of the entire house, and a lease of a number of trees as good as the lease of an entire garden. From as early as the twelfth century, the jurist Ibn Rushd thought the practice so prevalent that he devoted an entire chapter of his work on *qisma*, or

⁵² IOR R/15/2/2017 p. 123

⁵³ Court cases from the later nineteenth century involve a number of disputes between husbands and wives surrounding the latter’s right to profits from their husbands’ commercial dealings. For two rich examples, both from 1891, see also *Bhagbai, wife of Moosa Tharia vs Kurumbai, widow of Tharia Korji* (1891) HC 7/360, *Sonbai vs Baloo Dosa* (1891) HC 7/380

⁵⁴ Brode, *Tippoo Tib*, pp. 13-14

partitioned property, in which he noted that all *madhhabs* agreed that a property could be divided as long as each of the coparceners received a share of the original, however small.⁵⁵ For Ibn Rushd, division represented a natural consequence of inheritance; indeed, he anchored his entire discussion in the division of inherited wealth. However, he and other jurists imagined the division of property as requiring a physical segmentation. This was not simply a theoretical construct: even as late as nineteenth-century Hadhramaut, people frequently hypothecated only parts of their properties – rooftop terraces, bedrooms, or single palm trees – under the guise of a sale in order to raise capital, commercial or otherwise.⁵⁶

Jurists, however, had far less to say on the division of usufructuary rights, though most agreed that such fragmentation was permissible.⁵⁷ Drawing on a range of sources, the Islamic legal historian Joseph Schacht has shown that such transactions could take place, though only with the consent of the coparceners, for each individually owned a fraction of the component parts of an object which could not be separated from the fraction owned by the other.⁵⁸ The issue Schacht raises points to early juristic conceptions of joint property holders, even heirs, as partners in property-holding; here, the usufruct,

⁵⁵ Ibn Rushd, *The Distinguished Jurist's Primer*, Vol. 2, pp. 318-319

⁵⁶ Boxberger, "Avoiding Riba in Hadramaut," p. 203, esp. fn. 15

⁵⁷ *Ibid.* pp. 322-323

⁵⁸ Schacht, *Introduction to Islamic Law*, pp. 138-139

or *manfa‘a* was comparable to capital in a partnership, which neither partner could alienate on his own for fear of exposing the partnership to unapproved risks.⁵⁹

Although much had changed since the twelfth-century juristic milieu from which Schacht drew his ideas, property owners in the interior of Oman during the nineteenth century still seemed unsure when it came to contracting in shares of their title to *manfa‘a*. Many of them went to Al-Salimi expressing their concerns surrounding the legality of the practice, especially when it came to their date gardens. Al-Salimi, however, showed little concern over the engagement of bona fide sales – time-contingent or otherwise – of shares of usufruct, arguing that if the price was fair then counterparties had little to worry about.⁶⁰ And while he expressed a great deal of anxiety over the ways in which people enmeshed themselves in multiple and overlapping fictional sales transactions, he recognized that economic actors could – and indeed often had to – engage in commercial transactions independently. Indeed, the overwhelming majority of his rulings on multiple transactions and share sales focus on sorting out competing obligations in a manner consistent with equitable, and legal, requirements.⁶¹

In accommodating the share market, Al-Salimi most likely drew from his intellectual companion and personal friend, the Ibadhi jurist Atfiyish, who was no stranger to this type of scenario. In his legal treatise, Atfiyish began his analysis of divided properties and overlapping obligations by denying a property owner the right to

⁵⁹ Udovitch, *Partnership and Profit*, pp. 29-39

⁶⁰ Al-Salimi, *Jawābāt*, Vol. 4, p. 344

⁶¹ See for example, his discussion of multiple *khiyār* sales in *Ibid*, pp. 325-326

dispose of it to more than one person. The person “who acknowledges [the right to] an abode [*dār*] belonging to him to a man,” he argued, “and then acknowledges it to another man, then it is for the first.” However, he continued, “if it [the abode] belonged to two men and one of them acknowledged it to a man, and the other denied [*ankar*] it, then half of it [i.e. the abode] is for the man [whom it was acknowledged to] and the other half is for he who denied it [*al-munkir*].” The holder of a share, he thus argued, could sell that share independently, to one person. But the seller could also choose to sell only half his share, or even less, and subdivide the rights to the property even further.⁶² From that platform, Atfiyish launched into an extended consideration of a dizzying variety of scenarios – all of which yielded their own complex mathematics of obligation. To aid the perplexed, he even included a series of short, rhyming verses which encapsulated the general principles a *qāḍi* could follow in sorting out the competing rights and obligations.⁶³

When Atfiyish penned his guidelines, he did so with an eye to the massive commercial transformations taking place around him in North Africa. And while his correspondence with his disciple Al-Salimi might have clued him in to the prevailing practice in the Indian Ocean of hypothecating partial rights to a property’s *manfa‘a*, it is more likely that he was responding to practices that he himself was witnessing in the Mediterranean. Whatever the case may be, what is clear is that both jurists sought to

⁶² Atfiyish, *Sharh Al-Nil*, Vol. 13, p. 580

⁶³ Ibid. pp. 580-593

establish a sound legal framework for sorting out the increasingly complex obligations that characterized commercial life in their respective milieus – obligations that rendered even the most basic geographic unit unstable, its rents parceled out as a means of servicing loans that one of its owners had contracted an ocean away.

Paper Trails

Despite their willingness to accommodate multiple obligations, jurists still had to contend with dense credit networks that spanned across expansive areas and demanded a fluid system for settling obligations. That Indian Ocean economic actors utilized commercial instruments to meet the broadening range of obligations highlights the importance of the written instrument in a changing world of commerce. The very act of writing down an obligation, however, gave it a new, physical dimension. By inscribing obligations onto documents, merchants opened the door to the world of negotiability. A creditor in need of cash, or who had outstanding obligations of his own could, in lieu of cash or physical property, transfer his *waraqqa* and the rights that it entailed over to his creditor, simply by signing over the document. The *waraqqa* thus became an asset in itself – one that merchants could circulate amongst themselves with little hassle. In this regard, they functioned in a manner similar to bills of exchange, with one important exception: unless the original debtor managed to find someone to stand as surety for him, his obligations remained fixed. As a *waraqqa* moved from one merchant to another, so too did the

original debtor's obligations; whatever payments he had initially agreed to make would be to his new creditor.⁶⁴

As new markets emerged in East Africa and the Arabian Peninsula, and as credit chains extended further into the interior from the coastline, merchants desired a system of settling debts and securing loans over long distances and across several links in the credit network. A financier in Zanzibar who loaned out money to a merchant in Pangani, on the East African coast, who in turned advanced money or goods to debtors trading into the interior would have found it difficult to secure or collect on outstanding debts so far down the credit chain. A system of negotiable *waraqas*, however, made it easier to settle accounts; the Pangani merchant would have only had to transfer over the *waraqas* he executed with his own debtors to his creditor in Zanzibar. And indeed, many did; by the 1880s, a flourishing trade in these types of instruments developed in Pangani, and many *waraqas* ended up in the hands of rich Indian or European financiers in Zanzibar.⁶⁵

A *waraqas*'s negotiability allowed creditors to transfer outstanding debts and secure obligations between one another in a fluid manner, facilitating the extension of credit chains farther and deeper into new and distant markets. *Waraqas* negotiability meant that real estate, an immovable asset, and the rents that accompanied it were endowed with the fluidity necessary for them to travel through the dynamic and

⁶⁴ The key difference between the negotiable *waraqas* and a bill of exchange was that in the latter, the person in whose hands the bill of exchange ended up would have recourse to the original debtor and everyone else who may have endorsed it. See Kessler, *A Revolution in Commerce*, pp. 191-193 for a clear discussion of bills of exchange and negotiability in early-modern France.

⁶⁵ Glassman, *Feasts and Riot*, p. 73

increasingly mobile credit networks that channeled money and goods throughout the Indian Ocean. More importantly, however, *waraqas* negotiability facilitated the emergence of a world of increasingly impersonal exchange by allowing merchants to bundle obligations and hand them over to his own creditor – a creditor who in all likelihood had never seen the original debtor or the property itself.

By the last quarter of the 19th century, East African creditors frequently used *waraqas* in settling claims against one another. In one case from 1874, a Pangani-based Indian merchant transferred to his Zanzibar creditor *waraqas* worth a whopping MTD 13,000 – the value of nearly three large plantations, slaves and all – to settle his accounts.⁶⁶ In 1877, another Khoja merchant, Salehmahomed Ebrahim, hypothecated his title deeds to four houses in Saadani, on the East African coast, to the Zanzibar merchant Ebrahim Passyani, for MTD 190.⁶⁷ In another 1880 claim against the Tanga-based debtor Noorbhai Ebrahimji, the Zanzibar merchant Esmailji Jivanji collected 10 *waraqas* that Ebrahimji had in his possession – *waraqas* signed by Ebrahimji's debtors in the interior.⁶⁸ Merchants even hypothecated *waraqas* to their creditors as collateral against loans. When, in the summer of 1896, the Khoja Hirji Ramji sought to borrow MTD 300 from another Khoja, Rashid Nanji, he hypothecated seven *waraqas*, five of which involved titles to *shambas*; the other two were personal guarantees for MTD 96.5. He also

⁶⁶ *Ramdas Jethani vs Dowarka Liladhur and Kanjee Liladhur* (1875) ZNA HC 7/5

⁶⁷ ZNA AA 12/19, Deed No. 94

⁶⁸ *Esmailji Jeevunji vs Noorbhai Ebrahimji (Tanga)* (1880) ZNA HC 7/155

hypothecated two mud huts, which he had presumably collected from his debtors.⁶⁹ The *waraqā* thus evolved into more than a transferable obligation; in its negotiability, it took on many of the characteristics associated with cash.

The commercial communities of the Persian Gulf seem to have taken to transferring obligations among one another in a manner similar to their East African counterparts, particularly in the obligation-heavy pearling industry. When merchants transacted with one another, they regularly transferred their *nakhodas'* debts among themselves in partial fulfillment of their obligations, or as collateral against loans. As security against his Rs 39,000 debt to his Banyan creditor Gangaram Tikamdas, for example, the Bahraini pearl merchant Nasser bin Ali bin Khalaf mortgaged two houses belonging to him and two belonging to his wife, but also outstanding debts from several *nakhodas*.⁷⁰

As creditors to the diving masses, *nakhodas* were hardly left out of the industry's circulation of deeds and debts. Whenever a *nakhoda* advanced a loan to a diver, he also issued him with a deed of his own, alternatively called a *barwa* or a *waraqā*.⁷¹ Much like the simple *iqrār* discussed in the previous chapter, the *waraqā* was an attestation of debt on the part of the diver, who acknowledged that he owed his *nakhoda* a sum of money. The *waraqā* differed from the *iqrār*, however, with regard to the intended audience: while the *iqrār* simply recorded an obligation between the parties, the diving *waraqā*

⁶⁹ ZNA AM 1/4 p. 38

⁷⁰ IOR R/15/2/2017 p. 38

⁷¹ For reasons of conceptual consistency here, I will refer to it as a diving *waraqā* rather than a *barwa*.

announced it – to other *nakhodas*. Rather than beginning with the acknowledgement, the diving *waraqa* began with the phrase “to [he] who sees it from among the *nakhodas*, we have [owing to us from] X son of Y” (*ilā man yarāhu min al-nawākhitha lanā ‘alā X bin Y*). The *waraqa* then went on to announce that whoever wanted to take the diver on had to repay the first *nakhoda* the outstanding debt – sometimes in full, and other times a stated fraction of the diver’s earnings (one-third, one-quarter, or sometimes one-eighth). Indeed, it seemed that very *raison d’être* for the diving *waraqa* was local negotiability – the transfer of divers’ debts between *nakhodas* when they could not sail out to the pearl banks, either for want of money or other reasons.⁷²

With the pearling boom of the late nineteenth century, however, the diving *waraqa* took on new significance. As the value commanded by Gulf pearls rose along with the sheer number of pearls fished, the demand for labor – for divers, haulers, apprentices and the like – expanded as well. According to the historian Matthew Hopper, this dramatic, even insatiable search for divers led to substantial increases in the importation of slaves into the Gulf from East Africa and the Makran Coast of Persia and Baluchistan.⁷³ The pearling boom also attracted numerous free laborers, mostly from Persia, but also from the interior of the Arabian Peninsula, Oman, Yemen and as far as Somalia, who also joined the ranks of the mariners on board Gulf pearling dhows.⁷⁴

⁷² Rashid Al-Zayyani, *Al-Ghaws wal-Tawāshah [Pearl Diving and Selling]* (Manama, Bahrain: Al-Ayyam Publishing, 2000) p. 58

⁷³ Hopper, “The African Presence in Arabia,” p. 194

⁷⁴ Fuccaro, *Histories of City and State*, pp. 54-55

Although some of these divers took up residence in the Gulf, most maintained only a seasonal presence, coming in to dive during the summer months before returning to their home port or, in the case of Bedouin mariners, to the oases and towns in which they lived for most of the year.⁷⁵

In this transformed and much larger labor market, the *waraqqa* emerged as an important vehicle for negotiating debts between a motley population of divers and their *nakhodas* on the one hand, and between a growing community of *nakhodas* on the other. As divers from around the Indian Ocean flocked to the Gulf's port towns, *nakhodas* utilized instruments that originally served as little more than attestations of debt to monitor and coordinate a seasonal economic activity marked by a broadening scope of obligations on the part of an increasingly mobile group of laborers. Precisely how different actors and practices shaped this instrument in a continually changing commercial and legal environment is an issue that I will take up in much greater detail in Chapter 6. What is critical here is that participants in the Persian Gulf pearl dive were able to take pre-existing commercial instruments and infuse them with new meaning in order to meet the challenges that the changing commercial environment posed to an increasingly dense web of credit, debt and obligation.

In the case of either the diving *waraqas* in Bahrain or the *waraqqa* trade amongst merchant-financiers in South Arabia and East Africa, reliance on outstanding debts to

⁷⁵ Ibid. pp. 93, 160-161

settle one's own obligations was in itself nothing new to the nineteenth-century Indian Ocean. Muslim jurists had for centuries grappled with the negotiability of debts, developing rules surrounding the institution of *hawāla* (transfer). *Hawāla* explicitly allowed a person to transfer an obligation owed to him over to his creditor so as to meet his own obligations. To illustrate with a hypothetical example, if A owed B sum X, and B owed C an equal sum – and obligations were almost always discussed in terms of monetary debts – B could transfer A's debt to C as a form of repayment; C would then become A's new creditor. B's liability for the obligation after the transfer, however, was a subject of some debate amongst jurists. While most agreed that he would no longer be held liable as long as debtor A was solvent, some argued that he could be liable if debtor A did not meet the obligation.⁷⁶ These, however, were minor differences; on the whole, jurists embraced the negotiability of obligations.

Writing from a town which by the nineteenth century had long been swept up in the whirlwind of Indian Ocean commerce, Al-Salimi was more than familiar with the practice of transferring obligations and the different legal issues it raised. Not only did he pen his legal opinions within a commercial milieu engaged in the transfer of obligations, but in many instances he confronted detailed legal questions concerning the complexities of financial transfers. In one such instance, a questioner approached him with a concern of his: he had loaned a man money against his date garden for MTD 200, and later found

⁷⁶ Nabil A. Saleh, *Unlawful Gain and Legitimate Profit in Islamic Law: Riba, Gharar and Islamic Banking* (New York: Cambridge University Press, 1986) pp. 81-84

out that his debtor owed another creditor MTD 160 for forwarded goods. He asked Al-Salimi whether he could take the goods in partial fulfillment of the debt, and whether there would be any objection to the difference in the types of obligations being transferred. To this, Al-Salimi responded that the difference in no way made the transaction objectionable, adding that there was nothing in any of the scriptures or *fiqh* that would call it into question.⁷⁷

The difference between the *hawāla* and the nineteenth century Indian Ocean negotiable *waraqā* lay in the translation of the concept into actual commercial practice. This distinction lay partly in the instrument's physical nature. In its distillation of an obligation into a written document, the *waraqā* established the material basis for the practice of *hawāla*, which was, after all, but an abstract concept. In their physical transfer from one creditor to another, they left little doubt as to which actor ultimately held the property rights and what the precise terms of repayment were. Through physical possession of a deed with an endorsement, a creditor could prove beyond the pale of doubt that he, and not anyone else, enjoyed those rights.

The enduring nature of the obligation further separated the juristic conception of the *hawala* from its practice in an Indian Ocean setting. When Muslim jurists penned their thoughts on the *hawala*, they envisioned the transfer of a temporally-circumscribed obligation – one that ceased upon fulfillment. That said, they also did not explicitly rule

⁷⁷ Al-Salimi, *Jawābāt*, Vol. 4, p. 502

out the transfer of a continuous obligation. Indeed, their very conception of *dayn*, or obligation, could not rule it out. Jurists, as we have seen, imagined *dayn* as an obligation that transcended the boundaries of human existence itself. Until a debtor fulfilled his obligations toward his creditor his liabilities persisted, passing on to his heirs even after he died. Because *hawāla* entailed the transfer of an obligation from one person to another, it had to account for the practice of transferring a continuous obligation. In transferring his title to a property – or, more accurately, to a property’s rents – an Indian Ocean merchant signed over not only his right to continue collecting from that property, but also his duty to continue advancing the original debtor money and goods until the relationship ended. The rights and duties associated with possession of *waraqā* remained central to the process of negotiability until the very last moment. Only after a debtor completely repaid his debt would his creditor physically destroy the *waraqā*, thus removing it from circulation.⁷⁸

The written articulation of the obligation as an acknowledgement of debt or as a sale was critical to the transferability of the *waraqā*. Without it, the transfer of rights by the *waraqā* would not have been possible. Muslim jurists consistently and emphatically held that one could not transfer that which he did not own – especially an obligation. Had the *waraqā* described a simple pledge or *rahn*, then it would have ruled out any form of

⁷⁸ The majority of the *waraqas* I use in this chapter and in Chapter 2 are copies of the originals, many of which were likely destroyed; it is impossible to gauge how many of them represent unpaid debt. Extant *waraqas* in private collections and evidence from later court cases, however, suggest that not every creditor destroyed his *waraqas* after repayment.

negotiability, for jurists saw the creditor as holding the debtor's property in trust, simply as security against the debt. The creditor thus enjoyed no right to transfer what he held in trust to his own creditor in lieu of a debt.⁷⁹ However, by framing the transaction as a sale, merchants circumvented the issue altogether; because the creditor ostensibly owned the property, he could transfer it to whomever he wanted in lieu of a debt

The same reasoning governed understandings of the acknowledgements of debt in diving *waraqas*. While the operations of the Persian Gulf pearl dive largely took place beyond the pale of Islamic law, merchants and *nakhodas*' structuring of obligations – both towards one another and with respect to their divers – reflects an internalization of some of the basic principles of *hawāla* in Islamic jurisprudence. For in a broad sense, a *waraqā* documented the transfer of a diver's obligations from one *nakhoda* to another; the counterparties shifted the diver's debts from the first *nakhoda*'s books to those of the second *nakhoda*, who in effect mediated between the diver's new debts to him and the money he owed to his old *nakhoda*. While the *waraqā* regime did not reflect the linear A-B-C transfer that most jurists imagined, *nakhodas* took the basic principles underpinning the *hawāla* and constructed an edifice that was better able to contend with the challenges they faced.

In transferring *waraqas* between one another, Indian Ocean merchants added a further layer of motion to an already-dynamic landscape of obligation. Of course, in

⁷⁹ Al-Salimi, *Jawābāt*, Vol. 2 pp. 331-332

many ways *waraqas* traveled through commercial relationships that had already been established, and thus only served to lubricate pre-existing bonds of obligation. At the same time, however, they allowed for the vectors of commerce and credit to reconfigure themselves in response to changing opportunities, giving the geography of obligation the elasticity it needed to adjust to a changing economic environment. From the flurry of changing titles – transnational, fractional and otherwise – emerged a trade economy very much in flux.

Conclusion

Even from his residence in Rustaq, nearly 100 miles into the interior of Oman from the capital, Muscat, Al-Salimi grasped how quickly the economic world around him was changing, and what implications it might have in the realm of politics. Responding to a questioner who asked him about the legality of leasing property to Christians (*naṣāra*), he wrote that if the Christian enjoyed an inordinate amount of power (*quwwa*) in the area, then it was not permissible. This response was not simply a legal one; it reflected his assessment of the changing political dynamics in the Indian Ocean following the death of Sultan Sa‘id and the partition of the Omani Empire by the British. “The lease [of land] was the first instance of the Christians’ entry into Zanzibar,” he wrote, “and it assisted them in their mastery (*tamakkunihim*) in that land.” He then immediately asked himself, “This was all seen, but where were the overseers (*al-nāẓirūn*)?”⁸⁰

⁸⁰ Al-Salimi, *Jawābāt*, pp. 305-306

Al-Salimi's response would have undoubtedly taken his questioner by surprise. Leasing land, especially to non-Muslims, had become a common practice. For Al-Salimi, however, with control of land, whatever the means, loomed the threat of political power – and he had the example of Zanzibar to prove it. His response reflected his concerns about the changing nature of commercial contracting, and its connection to the physical landscape. He knew, perhaps better than anyone else, that if the economic relationships that emerged out of the growth of nineteenth-century Indian Ocean capitalism were highly in flux and temporally-contingent in nature, then the *waraqas* maneuverings and the title exchanges that underpinned them were no less contingent. For these spaces were legal constructions, resting as they did on liberal interpretations of legal and financial instruments in the face of a commercial boom. Whether or not the title transfers that the *waraqas* signaled were real and legally binding depended solely upon how those charged with enforcing commercial obligations read them.

The emerging geography of commercial obligation thus sat uneasily on the border between legal fiction and commercial reality, raising potential ambiguities about legal meaning. So long as conflicts arising from Indian Ocean transactions landed only in Islamic courts, which grasped the nature of the legal maneuverings surrounding land transactions and understood both social and economic realities, those ambiguities remained contained. But the interpretive tensions residing within *waraqas* raised the possibility of alternative legal conclusions should these documents become subject to a more pluralistic juridical terrain.

During the second half of the nineteenth century, a slow but steady encroachment of an Anglo-Indian empire in the Indian Ocean, brought with it precisely that sort of terrain. The latent ambiguities surrounding the *waraqqa* – and surrounding commercial writing in general – collapsed the precarious border between flexible legal interpretation and a stark political reality. In this changing world, competing notions of obligation and its legal relevance emerged to open up multiple arenas for the exercise of political authority, and the reconfiguration of commercial relationships and institutions. And if the *waraqqa* had allowed merchants in the Indian Ocean to reconfigure legal categories and mobilize property in order to capture opportunities in a burgeoning economy, it also opened the gates to an altogether different phenomenon: empire.

CHAPTER 4: SLIPPERY SUBJECTHOOD

During the cool spring of 1860 that the British Political Agent at Muscat, a Lieutenant Chester, wrote to his superior, the Political Resident in the Persian Gulf, Captain Felix Jones, describing a recurring difficulty that he confronted while performing his consular duties. Members of Muscat's large and influential Indian trading communities had recently approached him and, claiming to be British subjects, asked him to extend his protection to them and their property. The kind of protection they were calling for was easy enough to comprehend: most wanted the Agent's help in calling in the debts owed to them, or wanted various exemptions from customs duties, which the Sultan had granted to British subjects by treaty many years ago. Far more vexing for the official at Muscat and his superior in Bushire was the question of whom precisely was entitled to consular protection. Who, in this *mélange* of ethnicities and legal persons, could be considered a British subject?

“Of all classes of natives,” the Gulf Resident wrote, “the true nationality of Banians, or Lootyans [a group of Shi'i Indian merchants in Muscat] is perhaps the most difficult to be distinguished owing to their having had settlements on the Arab shores from a long period, where they or their progeny have resided without returning to India for a series of years.” More vexing than their origin, however, were the boundaries of what constituted this community, which by the second half of the nineteenth century had enmeshed themselves in webs of obligation so dense and complex that it was difficult to draw clear lines around them and their property. The Resident acknowledged as much,

writing that these Indians “possess houses, temples, mosques, and lands in common, in some parts, and indeed so engrafted are all their business transactions with those of the aborigines of the soil, that to define or disentangle them, when controversy arises, is out of the question by a single British Authority.”

The issue was further complicated by the claims to British subjecthood that the merchants themselves advanced. From the British Agent’s point of view, it was not clear whether the people who claimed to be British subjects did so out of any sense of allegiance to the British Crown or out of sheer self-interest. The Muscat Agent commented to his superior that his intervention was being sought out daily “by these Lootyans of uncertain nationality, in matters civil, criminal, commercial, and even social, and who are never backward, as it suits their purpose, to play fast and loose with the Agent and the native authorities to the serious annoyance of both.”¹ Indian merchants, it seemed, eagerly claimed the privileges of British protection when their debts matured, but were less interested in the restrictions that went along with being a British subject – specifically, those on slave ownership.

This was not the first time that British officials in the region faced petitioners claiming British protection. Fifteen years before Chester sat down to write his letter, Samuel Hennell, then the Political Resident at Bushire, found himself confronted with a similar claim – then by a Persian merchant by the name of Mir Mohammed Hashem, who

¹ Political Resident, Persian Gulf, to Political Agent, Muscat (Bushire, 23 March 1860) MSA PD Vol 35, Comp. 181

claimed British subjecthood based on the fact that he was born in Calcutta, to an Indian mother. His motivation in claiming to be British was clear to Hennell: “I am tolerably well assured,” he wrote to his superior in Tehran, “that the claim now advanced by him to be acknowledged as a British subject, is merely to forward the purposes of his relations, who wish to purchase horses in Shiraz and up the country in his name, and embark them for India as British property” – a classification which would exempt them from paying customs duties.² Alternatively, goods that Persian merchants exported under more favorable terms, Hennell wrote, would likely be sent under the name of his father, a subject of the Persian Shah.

Claims to British subjecthood were not limited to merchants in the Persian Gulf. From the middle of the nineteenth century onwards, increasing numbers of Persian, Arab, and Indian merchants around the Western Indian Ocean approached British officers and asserted the right to British protection of their property, exemption from local duties, and a host of other trade-related privileges reserved for British subjects. Although the exact magnitude of these petitions is unknown, their numbers clearly grew, from single, isolated petitions in the mid-1840s to deluges of requests, many of them *en masse*, in the 1870s. And while early petitioners’ efforts at convincing officials of their right to British privileges almost always landed on deaf official ears, later claimants to British protection successfully prompted heated debates amongst British officials about precisely whom

² Political Resident, Persian Gulf, to Minister Plenipotentiary and Envoy Extraordinary to the Court of Persia (16 November, 1846), MSA PD Vol. 79/1961, Comp. 385

they should treat as a British subject.

In this chapter, I explore a major transformation in the juridical landscape of the Western Indian Ocean during the second half of the nineteenth century – a shift, I contend, largely prompted by the maneuverings of Indian Ocean merchants and entrepreneurs. As I described in the preceding chapters, the commercial expansion of the Western Indian Ocean and the growing financialization that accompanied it created increasingly dense and broad webs of obligation. Caught in the middle of these interlocking webs, *Banias*, Khojas and other merchant-financiers became vulnerable to shifts in the commercial environment. And as the broader world economy (in which the Indian Ocean was firmly embedded by this time) began to show signs of instability, the region's Indian merchant-financiers were drawn ever closer to the brink of commercial failure.

At the same time, however, an alternative option began to emerge: British Consular protection. Drawn to Consular protection because of the regularity with which British officials pursued debts owed to them, an increasing number of merchants – mostly Indian, but also Arab and Persian – sought to include themselves within the pale of British jurisdiction. However, in this liminal phase of empire-making in the Indian Ocean, the process of declaring who would and would not gain legal standing as a British subject hardly proceeded in a straight-forward fashion. Instead, the process involved competing notions of subjecthood, deep tensions between British officials and local rulers surrounding jurisdiction, and persistent attempts by merchants to play off the tensions

and competing definitions in order to reap the fruits of British protection while evading the duties it entailed. And while Indian merchants may have generally fared better in their attempts to declare themselves subjects of the Government of India than did Arab and Persian merchants, members of a range of ethnic groups from around the Indian Ocean were able to successfully claim British protection.

British policy surrounding extra-territorial jurisdiction in the Indian Ocean, it must be emphasized, was neither coherent nor pro-active. Rather, it emerged as an ad-hoc jurisprudence spurred on by a cacophonous dialogue between principles of international law and the actions of claimants and Political Agents in particular cases. The debate surrounding the precise contours of the emerging British jurisdictional domain in the Western Indian Ocean, played out over several decades, driven more by strategic actions amongst Indian Ocean merchants than any thought-out policy. British India's expanding imperial presence in the region thus emerged as a result, intended or not, of jurisdictional maneuvering by merchants rather than a thought-out imperial strategy – a jurisdictional maneuvering that by the 1870s made British courts the *de facto* principal legal institutions in the Indian Ocean.

The willingness of Indian Ocean merchants to shift from one overlord to another in the mid-nineteenth century reflected a long-standing regional political culture of malleable allegiances as much as it did the commercial-legal savvy of the merchants themselves. Prior to the establishment of a firm British presence in the Indian Ocean, the prevailing model of sovereignty bound people more to the figure of the ruler – Shaikh,

Sultan, or otherwise – than to any discretely-defined territory. In other words, the ruler's ability to exercise jurisdiction arose from his subjects' allegiance to him rather than their residence within the territory he controlled; a port's inhabitants quickly rejected a ruler who could not meet his obligations to his subjects for one who could. As new entrants into the Indian Ocean political arena, British Political Agents and their ideas surrounding extra-territorial jurisdiction fit seamlessly into the region's political culture.

While the discussion here draws on debates from around the Indian Ocean, the conversations surrounding jurisdiction and subjecthood mostly took place between officials from the Government of India and the Sultanates of Muscat and Zanzibar. The reason for this geographic concentration is fairly straight-forward: definitions surrounding subjecthood, and attempts by British officials to pin down the exact boundaries of their jurisdiction, were worked out in much greater detail in Muscat and Zanzibar, where there was an established Indian mercantile presence, than in Bushire and Bahrain, where the Indian presence was smaller and more fleeting. That being said, the discussion here will make reference to similar trends in the Persian Gulf whenever possible.

Politics and Jurisdiction in the Nineteenth-Century Western Indian Ocean

For the historian, reconstructing a map of the nineteenth century Western Indian Ocean's political geography is no easy task. As one moves beyond towns and port cities, and into deserts, jungles and other hinterlands, borders seem to simply disappear – if they ever existed at all. Even on such bounded spaces as islands, mapping out the polity becomes

an increasingly vexing task the further away one moves from the major ports; the state, if one existed at all, seems to completely recede. Indeed, any attempt to impose a modern understanding of the territorial state onto the polities of the Western Indian Ocean during the nineteenth century will soon bog down, ensnared by practices and beliefs that do not fit within modern categories.

Nor was this task any easier for imperial officials, rulers and statesmen in the nineteenth century – or even the early twentieth century, for that matter.³ Conversations between the Sultan of Zanzibar and British officials during the nineteenth century point to a clear gap in what the Sultan imagined he controlled and where his jurisdiction actually extended. When one official investigated the Sultan’s alleged holdings on the East African coast in 1848, he found that at Barawa, on the Benadir Coast of Somalia, “the Chiefs are not very well-disposed towards His Highness,” and that at Lamu “the chiefs and people have lately become unimicable [sic] to [him],” and that they had sided with chiefs from the interior, resisting the Sultan’s authority.⁴ According to British officials, the ruler claimed to exercise jurisdiction over much larger swathes of territory than he did in practice.

Where did this gap between the rulers’ perceptions and the reality on the ground arise from? How was it that the Sultan was able to claim jurisdiction over territories

³ For debates surrounding the extent of the Sultan of Muscat’s territorial jurisdiction in the early twentieth century, see “Correspondence by the Political Agent, Muscat, regarding the Sultan’s Boundaries and Limits of Jurisdiction in Northern Oman,” IOR R/15/6/22

⁴ ZNA AM 3/8 pp. 70-72

where he did not even have a government representative? Instead of attributing this pattern to a desire on the part of local rulers to dupe British officials, I argue that the gap in understanding arose primarily from a profound difference in political cultures. With few exceptions, the situation of polities around the Western Indian Ocean militated heavily against any strict territorial control, necessitating instead a much more malleable and porous model based on allegiance by an ever-shifting base of subjects. For most rulers, the jurisdictional status quo was by its very nature extra-territorial – or, to be more accurate, *aterritorial*, loosely-knit and constantly being remade. Unless one grasps this central reality of a world filled with potential armies, but lacking police forces and extensive bureaucracies, one cannot make sense of how British jurisdiction spread during the second half of the nineteenth century.

In the coastal towns that dotted the Persian Gulf's Arabian littoral, no ruler could ever claim to have any real control over the interior. Despite enjoying a tribal pedigree of their own, the rulers of Kuwait, Bahrain, Sharjah and other nineteenth-century coastal towns all had to contend with a turbulent hinterland from which a number of threats emanated, the most prominent of which were marauding tribes and the constant specter of invasion by the Wahhabi *Ikhwan* soldiers.⁵ The presence of these military competitors posed serious challenges to the coastal trade with interior towns; caravans had to

⁵ James Onley and Sulayman Khalaf, "Shaikhly Authority in the Pre-Oil Gulf: an Historical-Anthropological Study," *History and Anthropology*, Vol. 17, No. 3 (September, 2006) pp. 189-208; Frauke Heard-Bey, *From Trucial States to United Arab Emirates* (London: Longman, 1996) pp. 273-279; Khaldoun Al-Naqeeb, *Society and State in the Gulf and Arab Peninsula: a Different Perspective* (London: Routledge, 1991), especially Chapter 2.

constantly contend with the specter of raids, and a ruler who could not negotiate alliances with the groups of the interior faced the likelihood that traders would move to another, more stable area.⁶ This same dynamic held for the port cities and entrepôts of East Africa, where the Sultan faced analogous challenges from the *nyika*, or wilderness, which runs just behind the narrow coastal belt. According to one leading historian of the region describes, “the *nyika* imposed not so much an absolute barrier as a premium on the costs of communication between the coast and the interior, a price that could be paid only at certain times and places in the history of East Africa.”⁷ Throughout the history of the region, the *nyika* was a source of constant uncertainty for coastal rulers. Groups from the interior harassed the caravan trade, formed polities that challenged the hegemony of the coastal rulers, and sometimes erupted in outright rebellion.⁸

Although the interior beckoned as a font of economic prosperity, it also represented an arena of political mobility – a back-stage in which political aspirants could drum up support for their agendas and mount attacks on the town, or a space into which fugitives could retreat. Nowhere does this character of the interior emerge more dramatically than in the rocky political history of Muscat. Historians of Oman have frequently pointed to the Sultan’s endemic inability to exercise authority over Muscat’s neighboring coastal towns – to say nothing of the mountainous interior, where a series of

⁶ Fattah, *The Politics of Regional Trade*, pp. 25-28; Abdullah, *Merchants, Mamluks and Murder*, pp. 117-120

⁷ Abdul Sheriff, *Slaves, Spices*, p. 10

⁸ Glassman, *Feasts, Riot*

Ibadhi Imams effectively established a separate sovereign polity.⁹ Members of the Sultan's family who wanted to establish themselves as legitimate claimants to the Sultanate only had to establish their authority in towns like Sur or Sohar – towns in which they already held some degree of Sultan-backed authority. Nor was the capital at Muscat insulated from this competition: it too came under the occupation of the self-styled Imam 'Azzan bin Qais, the Sultan's relative, between 1868 and 1871.¹⁰

The Sultan's confronted precisely the same pressures on the East African coast. There, Arabs who proclaimed their loyalty to the Ibadhi Imamate of the Omani interior, or simply refused to acknowledge the authority of the Sultan, frequently – and sometimes successfully – challenged the Sultan in coastal towns such as Lamu, Pate and Mombasa.¹¹ The latter port's residents in particular consistently snubbed the Sultan, for the governors there were members of the Al-Mazru'i family and had been appointed by the Ya'rubī dynasty whom the Al-Busa'idis had overthrown. Throughout the first half of the nineteenth century, the relationship between the Sultan and the Al-Mazru'i governors at Mombasa remained tenuous at best. As early as 1822, the Mazru'is even sought to independently place the port under British protection.¹² Even in Zanzibar and Pemba,

⁹ See also John C. Wilkinson, *The Imamate Tradition of Oman* (New York: Cambridge University Press, 1987); Patricia Risso, *Oman and Muscat: An Early Modern History* (New York: St. Martin's Press, 1986), esp. pp. 22-38

¹⁰ 'Azzan's reign was brought to an abrupt end when his relative, Turki bin Sa'id, one of Sultan Sa'id bin Ahmed's sons, assassinated him.

¹¹ Bhacker, *Trade and Empire*, pp. 76-85

¹² John Gray, *The British in Mombasa, 1824-1826: Being a History of Captain Owen's Protectorate* (London: Macmillan, 1957)

where the Sultan's authority supposedly enjoyed a firmer foundation, he had to contend with the unwillingness of such Arab families as the Al-Shaqsis and Al-Harthis to submit to his rule.¹³

Constraints on the ability to effectively govern were not limited to the Sultan of Muscat and Zanzibar, who aspired to govern a sizeable and far-flung empire. Rulers of small port cities in the Gulf also confronted challengers, both from within their family and the populations over which they governed. The histories of the Arab Gulf port cities read much like those of Muscat, filled with intra-familial disputes over the right to rule and pressures from neighboring potentates.¹⁴ Moreover, rulers had to constantly strive to maintain cordial relations with the merchants who resided in their towns, for the latter could – and often did – simply pack up and leave to places with a more favorable political environment. Armed with mobile capital and massive clienteles, these merchants repeatedly, in the words of one historian, “voted with their feet” – a phenomenon that could spell disastrous economic consequences for a ruler.¹⁵

Rather than let the political terrain in the Western Indian Ocean defeat them, rulers adapted to it in perhaps the only way that they really could – by keeping the boundaries of the polity flexible. In this model of government, territorial control became

¹³ Gray, *History of Zanzibar*, pp. 109-155

¹⁴ See also Peter Lienhardt, “The Authority of Shaykhs in the Gulf: An Essay in Nineteenth-Century History,” *Arabian Studies*, Vol. 2 (1975) pp. 61-75

¹⁵ Onley and Khalaf, “Shaikhly Authority in the Pre-Oil Gulf”; for examples of this sort of secession, see also Fattah, *The Politics of Regional Trade*, pp. 185-206; Saif Al-Shamlan, *Min Tārīkh Al-Kuwayt [From the History of Kuwait]*, 2nd ed. (Kuwait: Dhāt es-Salāsil, 1986) pp. 151-157

a secondary, or even tertiary, consideration: a fluid regional political culture precluded any pretensions that any coastal ruler would have to full dominion over any stretch of territory beyond the town. Instead, the larger coastal polities developed a model of the State based firmly on allegiance to the ruler, in which jurisdiction and authority rested in the person of the Sultan or Shaikh, not any set of state institutions.

Within such a framework, territorial acquisition became incidental to political authority: a ruler only controlled territory insofar as those who claimed to be his subjects did. *Waraqas* illustrate this relationship rather well. The ways in which *kātib*s described properties as bounded by people rather than discreet spaces – a subject I discussed in Chapter 3 – fits neatly within a broader political imaginary in which a ruler’s jurisdiction extended over people rather than territory, and in which land was inextricably bound up in the people who owned it. The absence of any material space – any measure of length, width or area – in most property deeds indicates the absence of spatial dimensions from the equation of political authority. Moreover, Arab rulers in the Western Indian Ocean rarely collected state revenues from land taxes; as discussed in the preceding chapters, administration revenue came from customs – from a claim to the flows of goods out of the ports, rather than a more tenuous hold over territory.

From the perspective of Gulf and East African rulers, what mattered most was not control over a swath of territory, but allegiance from the groups that populated it. This fact made the political histories of these Shaikhdoms and Sultanates, and the dynasties that ruled them, exceedingly turbulent. To mount a successful coup, a political aspirant

from within the ruling family only needed to ensure that he had enough of the population on his side; control of the state's flimsy military or bureaucratic institutions amounted to comparatively little. The converse was equally true: a ruler's best (and sometimes only) bulwark against a potential coup lay in a wide base of political support.

The political histories of Sultanates and Shaikhdoms all over the Western Indian Ocean illustrate the argument. In his narrative of the rise and fall of the first two Saudi-Wahhabi states on the Arabian Peninsula, the mid-nineteenth-century historian 'Uthman bin Bishr Al-Najdi (known as Ibn Bishr) described the expanding polities not in terms of the land they acquired, but the tribes they managed to win over or pacify.¹⁶ The history of Bahrain during the nineteenth century, too, was one marked by competition for tribal loyalty and outside assistance between rival factions of the Al-Khalifa family.¹⁷ At least two historians of East Africa have suggested that the model of government that the Sultans implemented there drew heavily from concepts of the state as practiced in the Gulf, from whence the political elites in coastal East Africa came. In Muscat, Zanzibar and elsewhere, this amounted to a highly-personal form of government which functioned much like a royal magistracy.¹⁸

¹⁶ 'Uthman ibn Bishr Al-Najdi Al-Hanbali, *'Unwān al-Majd fī Tārīkh Najd* [The Epitome of Victory in the History of Najd] (Riyadh: Maktabat Al-Riyādh al-Hadītha, n.d.), first published in 1871.

¹⁷ James Onley, "The Politics of Protection in the Gulf: The Arab Rulers and the British Resident in the Nineteenth Century," *New Arabian Studies*, Vol. 6 (2004) pp. 30-92

¹⁸ Marek Pawelczak, *The State and the Stateless: the Sultanate of Zanzibar and the East African Mainland: Politics, Economy and Society, 1837-1888* (Warsaw, Poland: Instytut Historyczny Uniwersytetu Warszawskiego, 2010) p. 326-327; Randall L. Pouwels, *Horn and Crescent: Cultural Change and Traditional Islam on the East African Coast, 800-1900* (New York: Cambridge University Press, 2002) p. 102

As difficult as it was for the ruler of a port town to secure a sufficiently robust popular allegiance base to repel political challengers, the ruler of an empire confronted even more daunting obstacles. Exercising this sort of jurisdiction necessitated the physical presence of the sovereign, lest his absence create a political void that another aspirant could potentially fill. Indeed, this was the Achilles Heel of the Omani Empire: Sultan Sa' id, the man who was responsible for bringing Coastal Oman, the East Coast of Africa, and the Makran Coast under his authority, could not physically be in all places at once., and accordingly often shuttled back and forth between his different possessions. It is thus telling that when he died in 1856, he was at sea, en route from Muscat to Zanzibar.¹⁹

The Sultan's ability to exercise jurisdiction over places where he could not be physically present depended heavily on the personal cooperation of kinsmen or other representatives. Whenever he left Muscat or Zanzibar, he appointed one of his sons or relatives to temporarily take the helm. In the interior, however, he had to rely on his *wālīs* (or, in East Africa, *liwalis*) – appointed governors, often from other clans, whose actions he could know little about, let alone oversee. In East Africa, the *liwalis* comprised a loosely-knit administrative infrastructure that spanned the length of the coast from at least Kilwa to Mombasa. The degree to which they themselves exercised effective jurisdiction varied between time and place, but everywhere they acted with a considerable degree of

¹⁹ Bhacker, *Trade and Empire*, p. 170

autonomy.²⁰ Many of them enjoyed established sources of income from landholding and commerce independent of the salaries they received from the Sultans; some even took to money-lending activities on their own. Moreover, the frequency with which they married into local families allowed them to entrench themselves as resolutely local sovereigns.²¹ In some cases, they denied flat out that they owed any allegiance to the Sultan: one *liwali* at Lamu told a European missionary that he owed his appointment not to the Sultan, but to the Chief at Usambara, an interior town.²²

In Oman, too, the administrative infrastructure was weak at best. Although members of the Al-Busa'idi families theoretically governed as the Sultan's *wālīs*, they often ended up administering their towns more as autonomous, hereditary fiefdoms than a part of a central state. The degree to which a *wālī* responded to imperatives from Muscat fluctuated according to his whims. Moreover, the *wālī*'s authority, like the Sultan's, rarely extended outside the town itself; beyond the town walls control effectively remained in the hands of tribal *shaiikhs*.²³ Seen in light of the slim infrastructure in East Africa, the Omani empire consisted more of loosely-knit group of governors and traders than anything resembling a modern state.

There were also a number of *qādis* posted throughout the Sultans' holdings in Oman and East Africa, but the degree to which the rulers oversaw, let alone dictated, the

²⁰ Pawelczak, *The State and the Stateless*, pp. 334-338; Glassman, *Feasts and Riot*, pp. 147-150

²¹ Pouwels, *Horn and Crescent*, pp. 109-111

²² Hamerton to the Chief Secretary to the Government of Bombay (3 June 1853), MSA PD 1853, Vol. 2, Comp. 70

²³ Landen, *Oman Since 1856*, pp. 346-347

decisions of their agents was limited. The absence of *qāḍi* court records from the pre-British era makes it difficult to assess their commitment to preserving a strong property rights regime, but we do have fragmented evidence that *qāḍis* stressed other legal values. Theoretically appointed by the Sultan, *qāḍis* had nonetheless to be approved by the town elders, who, in customary affairs, often bypassed the *qāḍis* altogether. Moreover, candidates for the *qāḍiship* often came from families with long-standing claims to the position, and often manifested biases towards clans with whom they enjoyed cordial relations. Few *qāḍis* – especially those appointed to posts outside of Zanzibar – felt any responsibility to their nominal suzerain.²⁴ In the town itself, the Sultan remedied this problem by insisting that *qāḍis* adjudicate important cases in his presence, and by retaining the right to overturn their decisions.²⁵ But the Sultan’s writ did not often effectively run elsewhere.

In their encounter with the Omani empire in the Western Indian Ocean, British officials very quickly sized up the precarious position of their ally Sultan Sa‘id. So much is evident from the dispatches of Atkins Hamerton, a British envoy to the Sultan of Muscat and Zanzibar. Writing from Zanzibar in 1841, Hamerton recalled to his superiors in Bombay how, upon his arrival, the inhabitants of the island asked him if he had come to emancipate the slaves and suppress the slave trade. “I turned the subject,” Hamerton wrote, “by replying that I was astonished to observe how little the people here regarded

²⁴ Pouwels, *Horn and Crescent*, p. 122, 151

²⁵ Gray, *History of Zanzibar*, pp. 144-146

His Highness's authority.” To this comment, the Sultan replied that Hamerton “knew how he was situated... and [that] his authority over the people here was very trifling indeed.”²⁶

British officials soon determined to prop up the Sultan's authority however they could, in part to achieve their objective of suppressing the slave trade in the Indian Ocean, but also to contain the expansion of non-friendly powers like the Wahhabis in the Arabian Peninsula. The officials' very presence in Muscat and East Africa resulted from treaties they had signed with the Omani Sultan – and for those treaties to be effective at all, the Sultan needed to be as powerful in person as he was on paper. A Sultan who could not effectively exercise jurisdiction over any of his alleged territories would constitute a far weaker ally in the battle against the slave trade than one whose decrees could (at least in principle) be backed by the threat of force. Indeed, immediately following the partition of the Omani Empire, British officials had to defend the politically frail Sultan of Zanzibar against a threatened attack by his brother, the Sultan of Muscat. The situation harked back to the days of the brothers' father, Sultan Sa'id, who relied on British support to ward off his own challengers. More importantly, British diplomacy in the Western Indian Ocean basin reflected practices that had long shaped the approach to diplomacy in India, where the expanding British government propped up otherwise weak

²⁶ Hamerton to the Secretary to the Political Department, Government of Bombay (13 July 1841), MSA, PD Vol. 41/1261 Comp 316

rulers against challengers from within and without, as part of a much broader strategy of indirect rule.²⁷

With the necessary diplomatic and military support in place, the Sultans of Muscat and Zanzibar effectively became equivalents to the Native Princes of India – rulers in name alone who remained almost completely dependent on Britain for their political survival. The added flourish of ritual soon confirmed the two Sultans’ status as dependants: by 1867, both the Sultans of Muscat and Zanzibar were included in the official Table of Salutes to Native Princes and Chiefs in India. Henceforth, each received a 21-gun salute, the highest a Native Prince could receive – an honor they shared with the Gaekwar of Baroda, the Amir of Kabul, the Maharaja of Duleep King, the Nizam of the Deccan and the Maharaja of Nepal. The “Native Chiefs” at Aden, by contrast, only received 9- to 12-gun salutes.²⁸ Although there is no evidence that either Sultan directly participated in a durbar as did the rulers of Yemen, the Sultan of Muscat did send a deputation to an “Assemblage of the Chiefs and Nobles of India” held by the Viceroy in Delhi in 1877, thereby affirming his place within the hierarchy of subservience.²⁹

²⁷ Michael Fisher, *Indirect Rule in India: Residents and the Residency System, 1764-1858* (New York: Oxford University Press, 1993). Fisher himself suggested that the strategy of indirect rule that the British employed in India was later extended to ports around the Indian Ocean.

²⁸ Under-Secretary to the Government of India to the Political Agent, Zanzibar (22 May, 1875), ZNA AA4/2

²⁹ Foreign Department, Government of India, to Secretary of State for India (2 February 1877), ZNA AA4/7. On durbars in Yemen, see also John M. Willis, “Making Yemen Indian: Rewriting the Boundaries of Imperial Arabia,” *International Journal of Middle East Studies*, Vol. 41, No. 1 (2009) pp. 23-38

For all of its trappings, however, the reinvention of the Sultans as Native Princes had little or no impact on the jurisdictional realities of East Africa or the Gulf. British officials still found themselves faced with Sultans who could do little to exercise their authority beyond the confines of Muscat and Zanzibar – let alone in such outposts as Kilwa, the Benadir Coast or Sur. The Acting Consul William Francis Prideaux expressed astonishment at the weakness of the Sultan’s *liwali* at Barawa in 1874: “I was under the impression,” Prideaux wrote to his superiors that this person had reported to the Sultan that he had sufficient force to keep the Somalis in check.” However, he added:

I was amazed at the utter want of self-respect he exhibited before his soldiers and the Somalis of the place, the latter insulted him openly and ignored his presence at his own Durbar, and it was not until I made them understand that I should require the Baraza [a place where public meetings are held] to be cleared, both of Somalis and soldiers, unless he were treated with proper respect in my presence, that even the semblance of authority was accorded to him.³⁰

Even in a port as close as Mombasa, the Sultan’s jurisdiction was circumscribed by competing authorities. Prideaux described a dispute between the commanders of the Sultan’s Baluchi soldiers and a Yemeni former *akida* (or civil governor) of Mombasa who had become head of the Sultan’s Yemeni soldiers, in which the latter “attempted to seize the fort, which is the strongest in the Sultan’s territories, and, having great superiority in numbers, succeeded in doing so.” It was only after a month-long standoff between the Sultan and the former *akida* that the Sultan agreed to confirm the latter as the

³⁰ W.F. Prideaux to Secretary to Government of India (n.d., 1874) ZNA AA2/14

head of the garrison. For Prideaux, such events spoke powerfully to the absence of centralized authority: “The retention of the Sheheri [from Shihir, in Southern Yemen] *akida* in power,” he wrote, “is so evident a confession of the Sultan's weakness that it is impossible to predict what turn affairs may eventually take at Mombasa.”³¹

For officials on the East Coast of Africa, the unwillingness of populations outside of Zanzibar to recognize the authority of the Sultan greatly complicated their anti-slavery efforts. In his visit in 1874 to Barawa, where British officials suspected that dhows loaded slaves for smuggling across the Indian Ocean to Arabia, Prideaux lamented that “the Sultan's authority does not extend beyond the walls of Brava, and the *ascaries* [*askaris*, or soldiers] belong to a tribe of Somalis who reside at a considerable distance from that town and who so far from acknowledging His Highness's jurisdiction, are continually engaged in hostilities with him.”³² Moreover, Arabs and Indians on the mainland continued to hold and deal in slaves despite decrees by the Sultan which forbade the practice. Even in the town of Zanzibar itself, the authority of the Sultan was openly flaunted by the seasonal dhow crews arriving from the Persian Gulf and South Arabia, many of whom – including the Ruler of Ajman in the Persian Gulf – busily went about smuggling slaves back to their home ports.³³

³¹ W.F. Prideaux to Secretary to Government of India (28 August 1874, and 21 September 1874), *Ibid.*

³² W.F. Prideaux to Secretary to Government of India (27 August 1874), *Ibid.*

³³ Dr. Seward, Acting Political Agent, Zanzibar, to Secretary to the Government of Bombay (August 4, 1866, and May 4, 1867) ZNA AA3/26

Thus the initial discussions on British extra-territorial jurisdiction in the Western Indian Ocean first took shape in the context of weak Sultans who, despite enjoying British political backing, exercised very little tangible authority throughout the region. Although concerns regarding the ability of the Sultans of Muscat and Zanzibar to suppress the slave trade underpinned the conversation on the need for an alternate jurisdiction, the debate among British authorities was at every stage framed by the petitions and actions of the communities of Indian merchants residing in Zanzibar, Muscat and the Persian Gulf. Throughout the second half of the nineteenth century, these merchants continually tugged at the loose corners of British jurisdiction in the region, until they were able to unravel its tightly-knit surface, stretch its effective reach, and position themselves within its ambit.

Law and Order in a World of Commercial and Political Turmoil

Barely a year after the death of Sultan Sa'id and the partition of his empire, British officials in Muscat and Zanzibar began to seriously consider the possibility of claiming jurisdiction over Indian merchants for the purposes of suppressing the slave trade, which they had been combating in the region from at least the early 1820s. George Badger, the head of a commission tasked with investigating disputes between the two heir Sultans, noted the troublesome existence of a large slave-owning class of Indians in both ports. "One fertile source of complaint of [the British Agents]," he wrote, "arises from the slaves owned by the Lootyans, who are constantly appealing against their masters and demanding their freedom." For Badger, the issue brought up much broader, and much

more vexing, questions of jurisdiction. “The British Agent is puzzled how to act in such cases,” he wrote, “for as British subjects these slave proprietors would be amenable to punishment, whereas as subjects of the Sultan they may hold slaves with impunity.”³⁴

It is difficult to assess the sincerity of British claims that their jurisdictional jockeying was motivated by a desire to suppress the slave trade in the Indian Ocean. Mid-nineteenth century consular reports certainly teem with accounts of British officials freeing captured slaves from the hands of Indian slave-owners, whom the officials then summarily arrested and imprisoned. Spurred on by an increasingly influential abolitionist movement throughout the British Empire, British officials in the Indian Ocean had been actively trying to suppress the slave trade out of East Africa from early on, and had concluded treaties with different potentates in the region to that effect.³⁵ But at the same time, these actions proved quite politically convenient. By asserting jurisdiction over the most powerful merchants and financiers in the region, the lone British officer in Muscat or Zanzibar demonstrated an ability to intervene on behalf of his protégés, thereby extending his capacity to shape local politics.

It was true that many Indian merchants did directly hold slaves and might have financed the slave trade; most, however, were not interested in slave ownership as an end. To them, owning slaves resulted as a by-product of their money-lending operations: when

³⁴ Rev George Percy Badger, to A K Forbes, Esq, Acting Sec to the Government of Bombay (Aden, 5 June 1861) MSA PD Vol. 35, Comp. 181

³⁵ See also Gwynn Campbell (ed.), *Abolition and its Aftermath in Indian Ocean Africa and Asia* (London: Routledge, 2005), pp. 8-10

they loaned money against the security of a property, slaves formed a key (yet implicit) dimension of the transaction. Without slaves, there would have been no-one to collect the harvest – to extract the very rents that formed the core of the merchant’s export business.³⁶ Significantly, *waraqas* – the written attestations to the region’s commercial transactions – never explicitly mentioned enslaved workers. Rather, the agreement would refer to the land “and all of its appurtenances.” For although there was never any doubt that slaves constituted an integral part of the operation, they did not represent the core subject of the transaction – an honor reserved for the land and its rents. The boundary between the land and the slaves who worked it was thus blurry: depending on where one stood, the differences between holding land and holding slaves might hold up or completely collapse in the face of increasing restrictions. It was at this boundary between land and labor in the Western Indian Ocean littoral that the tensions surrounding jurisdiction emerged most explicitly.

In Zanzibar, questions surrounding the liability of British Indians involved in the slave trade had been on the minds of consular officials even before the erstwhile Sultan’s death.³⁷ Afterwards, however, the issue took on new urgency. Reflecting on the situation, the Political Agent in Zanzibar wrote that if given the choice to be subjects of Great Britain or the Sultan “many Hindoos and Khojahs would elect to be subjects of

³⁶ Frederick Cooper’s research suggests that there were some instances of wage labor in East African plantations, but that these constituted the minority until after abolition. Cooper, *From Slaves to Squatters: Plantation Labor and Agriculture in Zanzibar and Coastal Kenya, 1890-1925* (Portsmouth, NH: Heinemann, 1997) pp. 1-23

³⁷ Sheriff, *Slaves, Spices*, pp. 202-204

Zanzibar.” He further argued that “this not because they would prefer Zanzibar Government per se, but because they would immediately argue that if now subjects of Zanzibar, they had always been subjects of Zanzibar... and consequently that in holding slaves they held these lawfully, and were not lawfully subject to their compulsory emancipation by order of British Authority.”³⁸

Intriguingly, this interpretation of situational political loyalties by Indian merchants who put slaveholding above all else misread the situation. An 1869 register of the Sultan’s Indian subjects and their property showed that the majority – 274 of 350 registered subjects – held no slaves at all.³⁹ Moreover, officials had to contend with the reality that most Indians *did* want to be considered British subjects, and had wanted to for some time, because of the protections it afforded their trade and their property in a commercial world characterized by increasingly dense and unwieldy obligations.

British protection became increasingly appealing to Indian merchants during the 1870s, during which time officials received an accelerating number of petitions requesting access to British protection. This pattern resulted partly from the economic shifts that took place during that decade. Within the broader world economy, the year 1873 marked the beginning of a long period of depressed commerce that many historians have dubbed the Long Depression. During the last quarter of the nineteenth century, cut-throat competition and reduced profits, punctuated by the failure of key financial

³⁸ Pelly, Political Agent, Zanzibar, to Shaw Stuart, Esq. (28 June 1862) MSA PD 1862 Vol. 26, Comp. 847

³⁹ Political Agent, Zanzibar, to the Secretary to the Government of India, Calcutta (12 September 1874) ZNA AA 2/14

institutions in Europe and the United States, knocked back the sense of commercial optimism and gave way to trepidation.⁴⁰ In the United States and across Europe, the failure of scores of mercantile firms sent reverberations throughout the rest of the world.⁴¹ In places as far away from one another as England, India, Egypt and Brazil, prices for basic commodities like cotton shifted dramatically from year to year, with shifts of between 20 and 40 percent being the norm. In India, the amount of cotton that a peasant had to produce to buy a given quantity of grain quadrupled in the 1870s alone.⁴² By the late 1870s, a new wave of uncertainty had set into the world economy. We lack unambiguous evidence linking Indian merchants' calls for British protection to the pressures brought about by onset of the Long Depression, such as mercantile correspondence. However, the correlation between those calls and a period of inter-related political and economic crises is striking.

In Muscat, worldwide ripples from the 1873 Panic in America accentuated a general downwards trend in commercial activity that had afflicted the port from the late 1860s onward, following the division of the Omani empire into two Sultanates and the migration of many of Oman's merchants to the more commercially-prosperous East

⁴⁰ Giovanni Arrighi, *The Long Twentieth Century: Money, Power and the Origin of Our Times*, 2nd ed. (London: Verso, 2010) p. 176

⁴¹ See also Forrest Capie and Geoffrey Wood, "Great Depression of 1873–1896," in David Glasner and Thomas F. Cooley (eds.) *Business Cycles and Depressions: an Encyclopedia* (New York: Garland Publishing, 1997) pp. 148–49

⁴² Sverre Beckert, "Emancipation and Empire: Reconstructing the Worldwide Web of Cotton Production in the Age of the American Civil War," *The American Historical Review*, Vol. 109, No. 5 (December, 2004) p. 1434

African territories.⁴³ The port's role in the entrepôt trade had been crippled by the advent of the steamship, while the constant political intrigues of challengers from the interior injected geopolitical uncertainties into the commercial environment.⁴⁴ Although merchants who stayed behind eventually benefitted from later stability and the boom in the date trade discussed in Chapter 1, the outlook during the 1860s looked bleak at best. Moreover, the decades that followed were marked by a series of political and commercial crises brought about by challenges from the Sultan's political rivals. Muscat and the neighboring ports of Muttrah and Sohar experienced successive political upheavals and raids throughout the third quarter of the nineteenth century, brought on by relatives of the Sultan who aspired to rule Muscat and other key towns, unruly tribes in the port cities, and external challengers like the Wahhabis. During all of these crises, Indian merchants frequently became targets of attack.⁴⁵

Economic conditions in East Africa worsened even more dramatically than in Muscat. In the decade following the booming 1860s, the cloves and ivory trade went through painful downturn. In Zanzibar, the general depression in agricultural prices after 1873 was delayed by another disaster: in 1872, a hurricane swept across the island and severely damaged its clove plantations, prompting a shift to clove and coconut production

⁴³ Landen, *Oman Since 1856*, pp. 134-135

⁴⁴ *Ibid.* pp. 113-127

⁴⁵ For more details on this, see Lorimer, *Gazetteer of the Persian Gulf, Oman and Central Arabia, Vol. 1 (Historical)*, pp. 472-525

on the nearby island of Pemba.⁴⁶ The hurricane and subsequent drop in clove supply, however, generated a brief spike in prices. During the 1870s the average price per *frasela* was around MTD 9, but once the depression reared its ugly head, clove prices cratered, with the price stabilizing at just over MTD 3 in the 1880s.⁴⁷ Although the downward trend in clove prices can be mostly attributed to overproduction in Zanzibar and Pemba, one cannot dismiss the likelihood that a drop in demand would have only further undermined prices. The trade in ivory – a luxury good that would have been of marginal use in a depressed economy – faced a similar collapse in global demand. In Mombasa, the total volume of exports dropped from 2,500-3,000 *fraselas* in 1849 to 720 in 1873-4, and only 500 in 1887.⁴⁸ It should come as no surprise to historians of East Africa, then, that the Bushiri Rebellion – an uprising by hundreds of freed slaves and porters in which they aired their grievances related to shifting structures of patronage in the plantations and on the caravan trails – would have taken place in the mid-1880s, occurred precisely when prices reached their nadir.

In the midst of political crises and prolonged economic slumps, creditors in all commercial economies invariably confront challenges in collecting their debts. The Indian merchants of the Western Indian Ocean were no different, and voiced increasing complaints about the inadequacy of the Sultan's legal institutions. During the 1880s, Indian merchants in East Africa frequently grumbled to British consuls about the Sultan's

⁴⁶ Sheriff, *Slaves, Spices*, p. 54, 234

⁴⁷ Cooper, *Plantation Slavery*, p. 131

⁴⁸ Sheriff, *Slaves, Spices*, p. 171

inability to extend protection to their commercial activities in the interior.⁴⁹ In Oman, too, British consuls faced regular petitions from Indian merchants for help in recovering property and debts owed to them from outside Muscat. At other times the Indians alleged that, far from upholding their property rights, the governing authorities in Muscat took to extorting money from them, threatening them with imprisonment if they did not comply.⁵⁰ In these ports, the ascension of a new governor frequently meant that merchants could face extortion, and general political unrest often posed a real threat to a merchant's property and ability to collect on outstanding obligations. During the period of 'Azzan bin Qais's reign, for example, Indian merchants frequently condemned the authorities' lack of commitment to "the enforcement of the Muhammadan law of creditor and debtor."⁵¹

Even in their own seats of power Sultans enjoyed no guarantee of absolute authority in settling commercial disputes. The experience of Turki bin Sa'id, the Sultan of Muscat from 1871 to 1888, nicely illustrates this institutional frailty. Even after he agreed to compensate Indian traders for their losses following his erstwhile rival 'Azzan bin Qais's reign, his ability to exact any fines from his governors and the tribes involved was hamstrung "in consequence of the extreme weakness about this time of [his] government."⁵² The Sultan of Zanzibar's ability to exercise his authority outside of the

⁴⁹ Pawelczak, *The State and the Stateless*, p. 330

⁵⁰ See, for example, MSA PD 1854, Vol. 78, Comp. 553; MSA PD 1870, Vol. 93, Comp. 816

⁵¹ Lorimer, *Gazetteer of the Persian Gulf, Oman and Central Arabia, Vol. 1 (Historical)*, p. 488

⁵² *Ibid.* pp. 513-516

town itself was as limited as his counterpart in Muscat. As Sir John Gray, later the Chief Justice of Zanzibar, wrote, “the enforcement of law and order beyond the limits of the town itself was left mainly to the Mwenyi Mkuu, the hereditary ruler of the Hadimu [a local African tribe] and his subordinates or to Arab settlers and their bands of armed retainers. As most of these persons were not prepared to enforce any measure or process of which they did not approve, it cannot be said that [the Sultan’s] writ consistently ran throughout the island.”⁵³

The merchants’ appeals to British consuls for protection may have reflected unhappiness with the prevailing property rights regime, or it may have mostly emerged from a desire on the part of Indian merchants to place themselves under an authority that they perceived as have a greater ability to enforce debt collection. One must be wary of imputing a resolutely rational calculus or far-sighted assessment of eventual institutional developments to Indian merchants. Doing so risks flattening a complex set of motivations into a crude cost-benefit analysis. There is no question that hard-headed commercial calculations factored into the merchants political strategies – after all, these were businessmen who confronted powerful economic pressures – but we must recognize that an economically-motivated rationality might have co-existed in many cases with a broader political cosmology that allowed for, and even encouraged, movement between juridical spheres. In a political culture in which shifting allegiances and movement to new

⁵³ Gray, *History of Zanzibar*, p. 147

protectors was a normal state of affairs, British consuls emerged as simply one of many alternatives from which Indian merchants could choose, often on the basis of limited information, and in the midst of difficult circumstances and frustrations with the institutional weaknesses that plagued commercial life in the region.

Merchants who could access British protection enjoyed many advantages in navigating the economic and political upheavals that marked the third quarter of the nineteenth century. During the successive hostilities that marked the 1860s and 1870s in Oman, for example, British officials in Muscat and Bushire dispatched warships to assist Indian merchants there, loading them and their goods onto the vessels and transporting them to safer ports.⁵⁴ Merchants who suffered losses during the various raids and counter-raids often lodged their claims with the British Consul, who dutifully pressed the prevailing authority in Oman to compensate the merchants for their pecuniary losses.⁵⁵

A British policy in favor of extending protection to Indian merchants in the Western Indian Ocean had existed in muted form from at least the 1840s onward. In Muscat, officials had signed a treaty with the Sultan in 1839 which stipulated that British subjects were to be assisted in recovering their debts – an agreement that naturally extended to Zanzibar as well. As early as 1848, the Agent at Muscat actively intervened in the division of a merchant's property amongst his *Bania* creditors. The creditors argued that the first arrangement was inequitable and appealed to the Agent, who

⁵⁴ Lorimer, *Gazetteer of the Persian Gulf, Oman and Central Arabia, Vol. 1 (Historical)*, pp. 477-478

⁵⁵ *Ibid.* pp. 501-516

succeeded in convincing the Sultan to intervene in the matter.⁵⁶ By 1856 British intervention had become a clear policy: the Gulf Resident instructed the Agent in Muscat to “interpose in behalf of those legally entitled to protection – viz – British subjects – without reference to the particular state or part of British territory they may be born in.”⁵⁷ Five years later, Bahraini authorities at least formally extended the same privilege to British subjects and protected people there, though it appears that the individuals who benefited from such arrangements included only employees at the British consulates and select Indian merchants – mostly itinerant *Banias* who came to the ports to trade annually.⁵⁸ And in Zanzibar, the British Agent intervened in the bankruptcy proceedings of one *Bania* from as early as 1847.⁵⁹

Over time, however, greater numbers of Indian merchants grew cognizant of the effectiveness with which British officials upheld their property rights. Those individuals who convinced the British consul to treat them as subjects of the Raj registered their *waraqas* at the consulate in droves. On a given day, an Indian merchant might walk into the consulate and register a number of *waraqas*, all from different dates. In September of 1867, for example, the Khoja merchant Khalfan Lalji entered the Consulate and

⁵⁶ MSA PD 1848 Vol. 90/2096, Comp. 1733; MSA PD 1851 Vol. 34, Comp. 1042

⁵⁷ Political Resident, Persian Gulf, to Native Agent, Muscat (22 June 1856) MSA PD 1856 Vol. 93, Comp. 155

⁵⁸ James Onley, *The Arabian Frontier of the British Raj*, p. 121

⁵⁹ See the letters from the Charles Ward, the American Consul in Zanzibar, from March of that year in Norman R. Bennett and George R. Brooks, Jr. (eds.) *New England Merchants in Africa: a History Through Documents, 1802-1865* (Boston: Boston University Press, 1965) pp. 374-381

registered seven different *waraqas* covering a 12-year span, beginning in 1855.⁶⁰ Six years later, another Khoja, Ramdas Jeta, registered six different *waraqas*: the oldest dated 1863 and the most recent was only two weeks old.⁶¹ Scores of others employed similar tactics, some with *waraqas* that were nearly 25 years old, testifying to the merchants' legal savvy. Recognizing the advantages that registering their transactions with the British consulate could yield, they moved quickly to do so.

By registering their *waraqas*, Indian merchants hedged against the possibility of defaults in an increasingly risky commercial arena. The burgeoning commerce of the Indian Ocean region and the increasing number of entrants, coupled with the desire among Indian merchants to capitalize upon shifting commercial opportunities, placed them in the sensitive position of having perhaps too many outstanding debts in their books. A default by one debtor might not cripple an Indian merchant's business, especially when many other debtors met their obligations, and merchants took care to set their credit prices on the basis of a percentage of defaults. But defaults by many debtors, and pressure from his creditors to pay up, could push a firm to the brink of bankruptcy. Even if times were good and debtors met their obligations, the risk-averse Indian merchant would have seen a clear benefit in registering his *waraqas* at the British consulate – for if his commercial fortunes were ever to sour, he could then call in his debts, both local and abroad, with the backing of the most powerful debt collector in the

⁶⁰ ZNA AM 1/1 pp. 36-39

⁶¹ Ibid. pp. 189-192

region. In trying to claim British protection and registering *waraqas* in the consular registry, Indian merchants, did not so much substitute one overlord for another as insure themselves against the potential risks that accompanied commerce – just as their predecessors had done for decades, if not centuries. And in the commercial and political downturns that marked the 1870s, this became all the more imperative.

One must take care in attributing this sort of foresight to so many merchants. In an age when news still traveled slowly, and in which modern statistical bureaus were still a ways into the future, even in London, Berlin, New York, or Tokyo, merchants in Muscat or Mombasa could not “see” a global depression, and almost certainly could not have predicted how long it would take before commerce picked up again. Here, the boundaries between the global dimensions of the economic crisis and the local manifestations – the countless political upheavals in Muscat, and the disasters at Zanzibar – become blurred. Still, Indian merchants grasped the onset of weak markets and hard times, and they would have heard of how some of their fellow financiers had registered their *waraqas*. Others might have followed suit out of social mimicry, or perhaps because they had seen or heard of the effectiveness of British protection to British-protected merchants in Muscat and elsewhere. Nowhere in the extant consular records does one find the Indian rationale for *waraqas* registration. What we can say with certainty, however, is that Indian merchants did register their *waraqas* at the British consulate, and that they did so in increasing numbers throughout the 1870s and 1880s. And there are some evidentiary glimmers suggesting that merchants understood the value of registering a *waraqas* in order

to invoke British protections in the possibility of default or failure. Thus, the preamble to an 1881 Order in Council announced that British Consular offices would not consider any instrument relating to property as evidence of a transaction relating to that property unless a party to the transaction had registered it at the Consulate.⁶²

Constructing British Extraterritoriality in the Western Indian Ocean, c. 1850-1870

Like the motivations for Indian merchants to seek out the pale of British jurisdiction in such large numbers are unclear, the rationale for British officials to grant their requests remains somewhat murky. In considering the issue, British officialdom was beset by various tensions and moments of institutional amnesia, resulting in several policy u-turns. Whenever there was one opinion on the question of the day, it seemed, there was a counter-opinion, and even when officials could settle an issue there was little guarantee that the next generation of regional agents would know about the prior discussions and resolutions, or feel themselves bound by them. At the same time, however, British discussions surrounding jurisdiction and British Indian personhood had to cope with ongoing petitions from merchants around the Indian Ocean, who had over time accumulated a much clearer understanding of British jurisdictional policy than the officials themselves did.

As early as the late 1850s, British officials had come to realize the potential advantages that access to British jurisdiction and military force afforded to Indian

⁶² “Rules respecting the Registration of Non-Testamentary Instruments under The Zanzibar Order in Council, 1881 [Approved by the Secretary of State for Foreign Affairs, November 28, 1893]”

merchants. The deluge of petitions and requests for protection from Indian traders made the point rather clear. In response to a typical 1858 petition for assistance in debt collection from an Indian trader based on the Persian coast, the British Gulf Resident commented that “owing to the insecurity attending trade in all Arab localities, I have more than once promulgated to those engaged the warning that they are pursuing it at their own risk. The profits are however so great that they are heedless of temporary losses and continue in the prosecution of gain, content with the assurance of our general protection against open insult, or oppression.”⁶³ A decade later, another official echoed the Resident’s sentiments, noting that one of the main reasons behind Indian success in financing economic activity in the Western Indian Ocean was that “the security [that Indians enjoyed], in truth, is very good – it could not be better. It is that of the British Government.”⁶⁴

For British agents based in Muscat and Zanzibar who wished to broaden the scope of their jurisdiction, the overwhelming number of petitioners seeking recognition as British subjects offered a clear-cut opportunity. When they later registered financial documents or brought legal cases to consular offices, British officials received both fees and an extension of legal authority. In 1881, the Political Agent in Zanzibar remarked to his superiors in India that “There can be no doubt the real source of our paramount

⁶³ Political Resident, Persian Gulf, to Secretary to the Government of Bombay (25 November 1858) MSA PD 1858 Vol. 163 Comp. 954

⁶⁴ Assistant Resident, Persian Gulf, to Political Resident, Persian Gulf (20 October 1870) MSA PD 1871 Vol. 91, Comp. 1481

influence here is the hold we have kept over immigrants from India in whose hands the trade of the mainland rests, and to whom half the property in this island is hypothecated.”⁶⁵ For a British agent looking to extend his influence, indiscriminately declaring jurisdiction over the entire Indian community did the job rather nicely, especially compared to the far more vexing alternative of trying to parse out the precise jurisdictional boundaries that separated a subject of the Sultan from a subject of the Raj.

Despite the eagerness of local British agents to accommodate the legal preferences of Indian creditors, officials in charge in Bombay, the British administrative hub in the mid-nineteenth century Indian Ocean, evinced greater reluctance to allow every claimant the right to British protection. Those higher-level officials frequently chastised the Agent at Zanzibar for “exercising a jurisdiction in this matter which the law had not conferred upon him.”⁶⁶ British officials in India worried that indiscriminate declarations of jurisdiction over Indian merchants would open the floodgates to frivolous petitions and encourage an over-dependence on British good offices, unnecessarily burdening the chronically under-staffed British Agencies in the region. Indeed, the image of the overly-litigious Indian who quickly fell back on British protection loomed large in the imagination of officials. One official expressed this anxiety in very explicit terms when he was asked to comment on the extension of British jurisdiction to the Persian Gulf. Prefacing his long response by letting his superiors know that “on the Arab Coast

⁶⁵ Political Agent, Zanzibar to the Secretary to the Government of India, Foreign Department (6 March 1881) MSA Political Department, Vol. 217, Comp. 61

⁶⁶ Opinion by H.C. Rothery (29 September 1874), MSA PD 1875 Vol. 5, Comp. 1075

much [of the Agency's] work is created by the very numerous petitions filed by Banyans [sic.] for the recovery of sums they have lent out," he then launched into his tirade, which is worth quoting at length:

"This is the "modus operandi":- so soon as a Banyan has sucked his man dry, and still can show a balance in the books against him, he writes a petition to the Assistant Resident at Bassidore [Basidu, a British naval base off the coast of Persia], claiming so much against so and so, usually with a large margin in his favor, to allow of the claim being taxed without much damage to himself. This done, the petitioner feels he has nothing to do but wait, say two months, before he sends in another to say he awaits a reply to Petition No 1. No 1, when received, is as usual duly filed in the Assistant's office to be attended to in due rotation. But meanwhile, disturbances – it matters not at what point of the Gulf – have required the Assistant's presence for some weeks. When he returns to his post, No. 2 petition has come in, on which, if the Assistant has worked up to this number on the file, he usually writes to the Petitioner to attend with his evidence &c. at some named port, and the case is regularly gone into. But, in very many cases, it is at this point that the Assistant's difficulties begin. The Banyan, having already twice petitioned, takes no further thought of his case, and fails to attend when called, saying to himself: "I have written twice to the Asst; next time I shall write to the Resident: the (Sirkar) Government's duty is to see I get my rights."

This scenario, he emphasized, was often the least vexing situation that agents confronted.

"There is another class of petition that may be classed as the 'frivolous and vexatious' where, after careful enquiry and expenditure of temper and patience the Petitioner is found to be absolutely without an atom of proof to adduce in support of his claim."⁶⁷

Their views on legal strategies employed by Indians in the ports of the Western Indian Ocean at least in part reflected their experiences with the legal administration of British

⁶⁷ Assistant Resident, Persian Gulf, to Political Resident, Persian Gulf (20 October 1870) MSA PD 1871 Vol. 91, Comp. 1481

India, where the stereotype of the litigious Indian had by the mid-nineteenth century become firmly entrenched in officials' imaginary.⁶⁸

Of even greater immediacy to those wanting to restrict the scope of British jurisdiction in the Indian Ocean were concerns about the impact jurisdictional expansion would have on relations with the region's rulers. In the instructions that the Gulf Resident sent to the Agent at Muscat to protect property owned by British subjects, the former carefully added an important caveat. "You must first satisfy yourself," he cautioned, "that parties seeking protection are really what they represent themselves to be, and that they are not seeking to impose on you for the purpose of defrauding the local authorities at Muscat."⁶⁹ The Resident further pursued this theme in a dispatch to the Agent's successor, telling him that he "cannot indeed be too cautious in the exercise of protection, as we are not authorized to abrogate the rights of a Sovereign Prince over subjects who are *bona fide* his by law," adding that that "the more you can narrow the circle of British protection, the less likely you will be to come into vexatious collision."⁷⁰

The fear that a too-liberal approach to granting British protection would complicate diplomatic relations with the Sultan and his authorities was on more than one occasion realized. Upon the death of Sultan Sa'id and the recognition of his son Thuwaini

⁶⁸ On this issue, see also Arthur Mitchell Fraas, "'They Have Travailed into a Wrong Latitude': the Laws of England, Indian Settlements, and the British Imperial Constitution, 1726-1773" (Unpublished Ph.D. Dissertation, Duke University, 2011), especially pp. 182-290

⁶⁹ Political Resident, Persian Gulf, to Native Agent, Muscat (22 June 1856) MSA PD 1856 Vol. 93, Comp. 155

⁷⁰ Political Resident, Persian Gulf, to Political Agent, Muscat (23 March 1860) MSA PD 1861 Vol. 33, Comp. 181

as his heir to the Muscat portion of the empire, a large number of Indian merchants, fearing that the new Sultan would extort money from them, sought the protection of the British Agent. When the local Agent afforded them temporary sanctuary at the Agency House, the Sultan immediately complained to the authorities at Bushire and Bombay, arguing that the move dishonored him and infringed upon his sovereign prerogatives. One official recalled that because of the Agent's actions, "bitterness, nay animosity, of course followed... [and] His Highness the Imam complained that his dignity and interests suffered under the disregard shewn to him by the British Agent."⁷¹

These two concerns – that opening the door to a flood of claims to British protection would bring an unnecessary burden on Agency resources and could potentially sour relations with local rulers – underpinned the tensions between Political Agents in Indian Ocean ports and their superiors in Bombay. Whereas the former wanted the freedom to expand their jurisdiction so as to more effectively combat the slave trade and entrench British influence, the latter felt that any extra-territorial jurisdiction in the Indian Ocean had to be built upon an unassailable legal foundation – one that accorded with the treaties they had signed with local rulers and that reflected established principles of international law. To do so, they had to develop a set of guidelines by which they could reasonably establish that the claimant in question was, by law, a subject of the Raj.

⁷¹ Political Resident, Persian Gulf, to A Kinloch Forbes, esq, Acting Secretary to the Government of Bombay (16 Sept 1861), Ibid.

Articulating a set of legal principles by which British officials could confidently claim jurisdiction over Indian merchants in the Persian Gulf, South Arabia and East Africa was no easy task. The variegated character of the Indian communities in the Western Indian Ocean, the activities they engaged in, and the degree to which they were enmeshed in dense, cross-cutting webs of obligation posed unique problems for the Law Officers of Bombay, who could only rely on established principles of jurisprudence and experiences of British officials in other parts of the Empire. For the most part, these offered little guidance, formulated as they were in settings that did not fit the circumstances at hand. Their attempts to tailor the jurisprudence to the facts required some legal gymnastics – especially the construction of a legal fiction of Indian domicile predicated on a presumed permanent residence in India itself. However, this fiction, once established, allowed for a much larger number of claimants to manipulate the rules than officials could have ever imagined.

Although not altogether new to them, the position in which British officials found themselves in the Gulf and East Africa did not allow them the luxury of simply claiming jurisdiction by virtue of a sovereign right. Unlike in India, they could not make the claim that they exercised jurisdiction by virtue of conquest. Save for the port of Aden, they had not conquered any territory in Arabia, the Gulf, or East Africa, and in most cases had a political representative on the ground only because the local rulers allowed them there. Nor could they make the claim that they made elsewhere, that their jurisdiction arose

from settlement.⁷² Some British merchant communities had slowly emerged around the Western Indian Ocean, but they were too small to constitute a settler presence, and their members readily admitted that they lived within the dominions of recognized sovereigns.

Rather, in the Western Indian Ocean, British officials found themselves faced with a Indian commercial population that generally embraced British jurisdiction, but which had long established itself as an integral part of Arab and African society.

Describing the issues that the situation of the Indian community in Muscat brought to the fore, one official observed that “they have had land and tenements on the soil of Oman for various periods.” These Indians were “so mixed up with the populations of the country, in trade, in municipal concerns, in fiscal matters and in the general banking business of all parties,” he concluded, “that it would be impossible to discriminate or interfere in respect to them without taking the administration generally in our hands.”⁷³

The Indians of Zanzibar, many of whom had come there from Muscat, occupied a similar social status and privileged economic position. As one historian writes, in the mid-nineteenth century “the Indian merchant class was indigenized to such an extent that all business disputes and bankruptcy cases were handled by the Omani governor of Zanzibar.”⁷⁴ The fears from Muscat further applied to East Africa: because the Indian community in Zanzibar constituted an extension of that in Muscat, whatever decisions

⁷² On this, see Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788-1836* (Cambridge, MA: Harvard University Press, 2010)

⁷³ Political Resident, Persian Gulf, Acting Secretary to the Government of Bombay (16 Sept 1861), and to Political Agent, Muscat (23 March 1860), MSA PD 1861 Vol. 33, Comp. 181

⁷⁴ Abdul Sheriff, *Slaves, Spices*, p. 203

they took with regard to the former applied to the latter.⁷⁵ British officials, both on in Zanzibar and in Bombay, feared that by generally accepting applications for British protection by the Indian merchant community they would eventually overextend themselves in a region where they possessed limited geopolitical interests – interests which they could safely pursue through local rulers, without too much direct involvement.

For all of their confusion, however, British officials conceded that not all of the Indians in Arabia and Africa were so deeply embedded in their host societies as to bar treatment as British subjects. Amongst the long-standing communities of Banians, Khojas and Lawatis in Muscat, the Resident wrote, “are others of the same caste, faith and blood who resort to Muskat [sic] and the Gulf ports annually for temporary trading purposes. Their residence in Oman is for periods more or less in duration, for their return to their natural, or original, abodes in Sind or elsewhere in British India.” These traders, he argued, could be safely classified as British subjects because of their established domicile in British India.⁷⁶

It was on the basis of this idea, of domicile, that the policy of British extra-territorial jurisdiction in the Indian Ocean would be formulated over the next two decades. As a guiding principle, however, domicile was perhaps a little too vague to be of

⁷⁵ Political Agent, Zanzibar, to Secretary to the Government of India, Calcutta (12 September 1874) ZNA AA 2/14

⁷⁶ Political Resident, Persian Gulf, Acting Secretary to the Government of Bombay (16 Sept 1861) MSA PD 1861 Vol. 33, Comp. 181

immediate use to British officials on the ground in Muscat and Zanzibar. In an attempt to pin down a useable definition, Sir Michael Roberts Westropp, the Acting Advocate General of the Government of Bombay drew on a long list of jurists and philosophers of international law and placed them in conversation with one another to construct a definition that would best suit the situation at hand. After weighing different definitions against one another, Westropp decided that domicile was best defined as the place in which a person's "habitation is fixed, without any intention of removing therefrom," clarifying that "two things must come to constitute domicil [sic]: first, residence, and secondly, the intention of making it the home of the party."

To more directly address the situation of the Indians of Muscat, the Westropp discussed at length the question of changing one's domicile, and the concomitant status change that it would imply. At the core of his discussion rested the notion of allegiance – specifically, the degree of allegiance one owed his sovereign, and whether emigration from one's country at a time of danger meant that one had effectively cast off allegiance to that sovereign. Although the jurists Westropp relied upon failed to give him a clear answer, he drew on a number of comparable cases from Great Britain to argue that "when, by the conquest of his country by a foreign power, a man becomes released from his allegiance to his former Prince, if he be unwilling to become the subject of the conqueror, and if he be willing totally to abandon his native country and to settle elsewhere, he is at liberty so to do, and to enter afresh into the social compact in the

country to which he emigrates.”⁷⁷ However, neither a temporary absence nor a mere change of domicile constituted the act of abandonment necessary to have removed oneself from one jurisdiction to another.

For Westropp and others, the question of abandonment stood out as the most germane issue. The Indians at Muscat were thought to have come from Sind – a notion that was most likely only true for some of them, but which had important implications. Because British India only annexed Sind in 1843, Indians who had migrated to Muscat following the conquest would have, following Westropp’s logic, signified an unwillingness to be British subjects and so were subjects of the Sultan. Investigating into when an Indian petitioner had actually left India for Muscat and whether they intended to do so permanently, however, would have been an administrative nightmare. Instead of dealing with these complications, Westropp sidestepped them altogether by stating unequivocally that if claimants “had not by their words or acts clearly signified at or about the time of the subjugation of Sind an intention then to abandon their Native Country finally in consequence of its subjugation... they ought to be regarded as British Subjects.” In legal terms, he proclaimed that the legal default, the presumed status of Indian traders from Muscat absent evidence to the contrary, was that they were British subjects. He finished off his lengthy opinion on the subject by adding, almost as an afterthought – but one, we shall see, that carried tremendous consequences – that “the

⁷⁷ The parallels between the fluidity of political allegiance and jurisdiction in the region’s political culture on the one hand, and the implications of abandonment for jurisdiction in the British legal episteme on the other hand, are striking.

immediate families of such men (wives, children, and grandchildren) should also... be so regarded [as British subjects].”⁷⁸

Put simply, Westropp’s opinion, which served as the basis for British policy on extraterritorial jurisdiction for the next two decades, was that any Indian who wanted to claim British protection only had to assure the Consul that they, their husband, their father or their grandfather had never intended to leave Sind, or any other part of British India, and permanently settle in Muscat, or establish domicile there, and that they maintained a residence in British India. Effectively, the policy aimed to take Indian merchants living in ports where British officials had only limited jurisdiction and anchor them in parts of India where British jurisdiction was uncontested, thereby establishing unassailable grounds for its exercise in places like Muscat and Zanzibar.

The idea that “domicile” could act as a guiding principle in parsing out claims to British subjecthood, however, soon ran into contradictions, since it rested on flawed assumptions regarding the nature of the Indian mercantile presence in the Indian Ocean. Theoretically, British consular agents could distinguish between permanently-settled Indians in Muscat and mere mercantile sojourners. But the issue of whether a merchant kept a residence in British India did not really furnish a clear indicator of one’s political status or identity. Mercantile families in the Indian Ocean were rarely, if ever, isolated units. In fact, individual merchants typically belonged to a much broader familial firm

⁷⁸ Opinion of M R Westropp, Acting Advocate General (Forwarded on 17 Oct 1861), *Ibid.*

with relatives and assets spread over a wide geographic area. These arrangements especially characterized the Indians whom British officials deemed to have established a more permanent presence in Muscat – those whom the Resident characterized as “mixed up with the populations of the country, in trade, in municipal concerns, in fiscal matters and in the general banking business of all parties” and whom “His Highness the Imam too is jealous of his prerogatives in respect to... and justly so considering their situation and the influence they command.”⁷⁹

The most influential Indian mercantile families, then, rather than the small shopkeepers, would have been more likely to have family and property in India – or, to be more precise, access to a network of people and property from which they could draw the resources necessary to finance economic activity in the resource-poor Omani port. As I illustrated in the first chapter, a single Indian merchant family in Muscat usually represented one link in a large regional combination of branch firms in Zanzibar, Bahrain, Bandar ‘Abbas, Aden, and Bombay. And as I demonstrated in Chapter 3, an increasingly important aspect of commerce between the different branches of the Indian firm was the transfer of capital in the form of obligations and property – a commerce that effectively meant that any branch of an Indian firm would have held titles to properties in a range of different places, not least of all in India itself. This reliance on personal networks, of course, was not unique to the Indian firm alone, but fit within the general

⁷⁹ Political Resident, Persian Gulf, to the Acting Secretary to the Government of Bombay (16 September 1861) MSA PD 1861 Vol. 33, Comp. 181

patterns of property and credit circulation that characterized Indian Ocean economic life during this time period. Indian firms, however, were more likely to own property in India, the principal reservoir from which they drew credit and distributed it across the Indian Ocean.

Westropp's assumptions regarding the nature of Indian mercantile families were all the more flawed in view of his assertion that a petitioner did not necessarily have to show that he himself kept a residence in British India – just that his father or grandfather did. For this position completely overlooked the inter-generational dynamic of property accumulation within Indian families as expressed in the institution of the Hindu Joint Family – an umbrella term for a range of different joint-property relations that existed in the Subcontinent and beyond.⁸⁰ Broadly speaking, the institution allowed for the preservation of a common pool of properties and resources for use by members of the family over the course of generations – and here, the “family” extended beyond the household and encompassed a variety of patriarchal relations.⁸¹ The Joint Family was hardly a local institution: as one historian writes, “the members of a particular Joint Family could be scattered all over the region and be as mobile as commercial necessity

⁸⁰ Of course, Westropp cannot be completely faulted for having ignored an institution that would have complicated his ostensibly clear principles, for the Hindu Joint Family did not become an object of public discourse in India for another two decades. See Ritu Birla, *Stages of Capital: Law, Culture and Market Governance in Late Colonial India* (Durham, NC: Duke University Press, 2009)

⁸¹ See also *Ibid.* pp. 15-17; Günther-Dietz Sontheimer, *The Joint Hindu Family: Its Evolution as a Legal Institution* (New Delhi: Munshiram Manoharlal Publishers, 1977) pp. xvii-xxi. In India, only Hindus and a subset of non-Hindus (Khojas and Memons) utilized the Joint Family, and Indian merchants operating in the Indian Ocean were largely from those groups.

dictated.” Indian firms in the Western Indian Ocean frequently operated as satellites of a core kin group in India, and had ready access to jointly-held property there.⁸²

However, the most fundamental problem with Westropp’s principle of domicile involved the epistemological milieu that structured European concepts of international law, which did not fit the circumstances prevailing in the Western Indian Ocean. Westropp, and all of the authorities he cited, imagined an international system bound up in territorial states. The jurists that appeared in Westropp’s opinion – Emerich de Vattel, Joseph Story, Eugene Pottier, Hugo Grotius and Samuel von Puffendorf – all operated within a particular legal episteme that emphasized the sovereign, territorial state as the primary actor in the international arena – a state that not only displayed all of the trappings of a positive legal order, but that also regularly and effectively exercised its authority within a delineated territory.⁸³

Indeed, the very idea of domicile pre-supposed fixity in one’s locale. As the British jurist Francis Piggott reflected nearly 30 years after Westropp issued his opinion, the European jurists’ conception of domicile presupposed relatively fixed notions of locality – a conception, he argued, that revealed its age in the era of extra-territoriality. Instead, he argued for a notion of domicile based on community – a far more portable

⁸² Bhacker, *Trade and Empire*, p. 70

⁸³ Turan Kayaoglu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire and China* (New York: Cambridge University Press, 2010) pp. 23-28

legal framework.⁸⁴ The law of domicile, he argued, should not struggle to ground a person in a particular locality; rather, “it is the law of the community which any member carries with him into other lands... the law of the community among which he has elected to live” – a law which formed an integral part of the law of the land.⁸⁵ Piggott, however, had the benefit of history – the ability to draw on decades of experience and synthesize them all into a more compelling framework. From his desk in Bombay in the 1860s, Westropp had neither the historical experience nor the dense literature that Piggott did in articulating his ideas.

It did not take long for the Indian mercantile communities of Muscat and Zanzibar to identify the holes in the emerging British policy on jurisdiction and take advantage of them. Almost immediately after Westropp issued his opinion, the Resident wrote to the Government of Bombay that in Muscat:

“...the domiciled [Indians], when in difficulties, having a general knowledge only of international law, deem themselves to have the same privileges in respect to protection as the undomiciled of their race. They have heard of the government Resolution in favor of Hydrabadees and Sindians [sic] in general and at their convenience interpret it as they please, unmindful of the allegiance they owe to the ruler of the place of their domiciliation; unmindful in short of everything save their own individual interests.”⁸⁶

⁸⁴ F. T. Piggott, *Exterritoriality: The Law Relating to Consular Jurisdiction and to Residence in Oriental Countries* (London: William Clowes and Sons, 1892) pp. 148-149.

⁸⁵ *Ibid.* p. 149

⁸⁶ Political Resident, Persian Gulf, to the Acting Secretary to the Government of Bombay (16 September 1861) MSA PD 1861 Vol. 33, Comp. 181

Indeed, over the next decade, officials in Muscat and other ports in the Indian Ocean had to contend with countless claims to British protection, many of which were put forward by applicants of nebulous origins claimed that they met any combination of the different criteria for British nationality.

The persisting confusion surrounding the status of British Indians in the Indian Ocean prompted a further clarification of the principle of domicile by officials higher up in the administration. In response to a claim to British nationality by the Persia-born grandson of a British Indian subject, the Secretary of State for Foreign Affairs tried in 1867 to more clearly define the legal determinants of British subjecthood. Specifically, he referred to “persons resident in Persia and claiming British protection who are *in fact* natural born subjects of Persia, but are at the same time by *construction of British Law* natural born subjects of Great Britain” (emphasis in the original). The Secretary noted that when such a person had established domicile in Persia and was residing permanently in Persia, “under such circumstances the National Character of such person under the Law of Nations would be exclusively Persian.” That person’s rights, however, were more limited; according to the Secretary, “he may be entitled to the *good offices* of the British Government by reason of the relation in which he stands under British Law toward the British Crown” but would still fall under the jurisdiction of Persian tribunals.⁸⁷ To clarify

⁸⁷ The difference between “good offices” and “jurisdiction” is an important one. The former implies that the British Agent would offer his mediation in disputes, whereas the latter implies a much more concrete legal responsibility.

this not-so-intuitive formulation, he put it in more concrete terms. The son of a Natural born British subject, he explained,

“although he may have been in fact born within the allegiance of the Crown of Persia, may still have, under the Law of Nations, a British National Character, by reason of his father’s domicile being British. But, if after the death of his father he should continue to reside in Persia and have a son born to him there, and should be domiciled *de facto* in the Persia, the grandson born in Persia will have a Persian Domicile of Origin. Under such circumstances as these, the Grandson would be in fact a Native of Persia, and would have at the same time a Persian Domicile which would be conclusive criteria of a Persian National Character under the Law of Nations.”⁸⁸

The memorandum effectively amounted to a retraction of the earlier policy. Here, the Secretary argued that if the claimant’s father was a British subject, then the claimant was as well. However, if only the grandfather was a British subject, and the father could show no residence in British India, then the claimant could not be considered a British subject.

Despite the instructions, British officials found themselves continually confounded by Indian claims to British subjecthood of doubtful veracity – and often, the time they needed to sort out good claims from bad was circumscribed by the pressing nature of the situation they faced. One example from 1871 is particularly illustrative: that year, the Sultan, ‘Azzan bin Qais imprisoned six Khoja Indians for refusing to advance him money. The Khojas had put in their claims to British protection some time before the incident, but a decision on their status was still pending. The British Political Agent tried to intercede on their behalf, but the Sultan refused on the grounds that “they and their

⁸⁸ Memo from Secretary of State for Foreign Affairs (November 1867) MSA PD 1871 Vol. 91, Comp. 1481

ancestors ha[d] settled in Muscat territory for years,” making them his subjects. All six prisoners apparently had somewhat reasonable claims to British protection, as they, their fathers or their grandfathers were born in and owned property in British India or a British-protected state. Moreover, although all of them owned homes in Muscat, they claimed that they frequently moved between India and the Gulf. The Agent, however, expressed some doubts, as “their residence from its character and length of time has been such as constitutes domicile” – a principle which he suspected himself of applying incorrectly.⁸⁹ Although the prisoners eventually obtained their release, the incident created a great deal of confusion over how to apply the principle of domicile, for both the Agent and his superior. In his letter to the Agent, the Gulf Resident could only fall back on general instructions and the injunction to dispense a general kind of justice: “every case of claim for national protection,” he relented, “would require to be decided on its merits, after enquiry.”⁹⁰

British policy on how to define a British subject and how to correctly apply the principle of domicile, it seemed, never achieved a rigorous clarity. There was no legal bright line separating British Indians from Indians owing allegiance to the Sultan. Indeed, the question of domicile and subjecthood was not resolved by Piggott until decades later – and even then his observations on the matter were tentative at best.⁹¹ In the 1870s Indian Ocean, even after a series of petitions and decisions, the principle remained

⁸⁹ Acting Political Agent, Muscat, to Political Resident, Persian Gulf (16 January 1871) Ibid.

⁹⁰ Political Resident, Persian Gulf, to Acting Political Agent, Muscat (28 January 1871) Ibid.

⁹¹ Piggott, *Exterritoriality*, pp. 139-155

ambiguous. As time went on, claims to British protection only multiplied, growing to include Arabs and Persians as well as Indians. That members of all of these communities could claim some sort of residence in India, either personally or by proxy through their fathers or grandfathers, created a jurisdictional nightmare for British officials, who had increasingly viewed themselves as having little choice but to admit their claims as meeting the ill-defined requirements for protection. Although individual claims to British protection by Arabs or Persians exist in consular records from as early as the late-1840s, these first assertions were summarily dismissed by the British Agent on the grounds that they had no legal basis.⁹² It was only during the 1870s, after the Pandora's Box had been opened at Muscat and Zanzibar – and, perhaps unsurprisingly, during a time of general economic downturn – that claims to British protection among Arabs and Persians in different parts of the Western Indian Ocean grew exponentially.

Among the first of such claims was by one Ali Akbar Kajarani, who showed himself particularly adept at playing on the territorially-based legal episteme that underpinned British policy on protection. Kajarani, who wanted British help in recovering various debts, initially sent in his petition from Bushire, where he conducted his business. He based his petition on the claim that he was born in Bombay. After receiving a reply from Pelly, the Gulf Resident there, that he could not receive British protection as long as he was domiciled in Bushire, Kajarani moved to Bombay and re-

⁹² MSA PD 1847 Vol. 79/1961, Comp. 385

petitioned. Out of a now-familiar fear that granting protection to Kajarani would open the door to similar maneuvers by other Persians and would prompt objections by Persian authorities, Pelly decided to turn down Kajarani's request.⁹³

Kajarani's petition, along with those put forth by other Persians, concerned Pelly, who sought to restrict the number of claims to British protection out of a concern that opening the door too wide might cause friction with the Shah. Another concern involved the basis of his jurisdiction in Persian ports; Bombay officials desired, as in the past, that it rest on a more secure legal footing. In his attempt to narrow the scope of British jurisdiction Pelly argued that "the mere accident of a person of Foreign parentage having been born within British India or other British territory, or the fact of a person of Foreign parentage having received letters of Consular Protection should not entitle that person to the jurisdiction of the court." Only those whose British Indian credentials were unassailable would be entitled to place themselves under the court's jurisdiction.

Pelly's desire to restrict the scope of British jurisdiction had to be tempered, however, by an understanding of the importance of contractual enforcement in a burgeoning commercial environment, especially to those who ultimately represented British Indian commercial interests. "Some arrangement under which British subjects and Protégés may be enabled with confidence to prosecute their claims against Persian subjects," he also maintained, "is in my opinion *essential* to the development of trade and

⁹³ MSA PD 1870 Vol. 105, Comp. 928

to the interests of our subjects” (emphasis in original). Here lay two conflicting imperatives conflicting imperatives – limit access to British courts generally, but ensure access to the courts for significant creditors closely connected to the Raj. In an effort to reconcile these impulses, Pelly suggested that “persons born of wholly British parentage (strictly so understood) and also persons *bona fide* born of British Indian parentage should, I think, be included in the jurisdiction of the court,” adding that “those persons who although foreigners by Parentage received British protection prior to our Treaty with Persia of 1857 should also be included in the Jurisdiction of the court.”⁹⁴

Pelly’s suggestions received various responses from Bombay. On the one hand, the Governor-General insisted that to open the door to those who could claim some form of British parentage could only cause confusion. “There are obvious reasons,” his secretary wrote, “for refraining from seeking to... adjudicate on the civil claims preferred by, or against, all, without exception, of that heterogeneous body of men, who from their parentage, or residence in one or other of the many British possessions scattered over the world, can claim the rights of British subjects under circumstances which may render it extremely difficult to ascertain how far the claim is well founded.” By allowing those who could establish domicile in a British possession to access British courts, he argued, they would be opening the door to an avalanche of claims. To keep the matter

⁹⁴ Gulf Resident to the Secretary to the Government of Bombay (4 September 1872), MSA PD 1872 Vol 135 Comp 1302

manageable, he suggested that “the jurisdiction of the courts... should be confined to persons born of wholly British parentage.”⁹⁵

At the same time, some Bombay officers worried that too restrictive an approach to claims to British protection might deprive *bona fide* British subjects of their rights. One official argued that because Britain had dominions in so many parts of the world, and because its subjects intermarried with others so frequently, the scope of its jurisdiction was bound to expand, adding that adducing claims to subjecthood should not be as difficult as it had been. “I can see no good reason for depriving the Son of a British Father and German or other Foreign mother of the protection of the Government,” he wrote, adding that he was “inclined to believe that the extension of the powers of the court to all British subjects would not in practice be found so inconvenient as seems to be apprehended.” The numbers of those taking up residence in Persian or Arabian ports was so limited, he pointed out, that “it would not be difficult for those authorities to determine generally the nature of the proofs of British origin which they would require in support of a claim to its privileges, and to devise means for making the nature of those proofs generally known to all concerned.”⁹⁶

The debate about the bounds of imperial British personhood that took place over the course of the 1870s generated no more conclusive outcomes than the one in the decade that preceded it, even as discussions surrounding the *rights* of British protected

⁹⁵ Secretary to the Government of India to Secretary to the Government of Bombay (25 August 1872), *Ibid.*

⁹⁶ Memorandum (28 September 1872), *Ibid.*

people in the Persian Gulf eventually culminated in the extension of the Foreign Jurisdiction Act to the area, and the penning of a Gulf-wide Order in Council. British officials there and in Bombay even articulated an entire appellate structure in which litigants could appeal from the Persian Gulf courts directly to the High Court in Bombay. The question of precisely who was entitled to access British courts and the extent of their jurisdiction, however, remained ambiguous. As late as 1879, one of the Justices in Bombay pleaded that “Her Majesty’s Government ought really to make up their mind as to the locality over which they intend the proposed jurisdiction to be exercised, not leave it to be determined in what from the statesman’s point of view would be a haphazard way, by judges who in their ignorance of disregard of political considerations might place the Government in a position of much embarrassment.”⁹⁷ Deep into the late nineteenth-century, then, local considerations rather than imperial precedent shaped legal determinations of mercantile subjecthood.

Throughout this period, traders continued to play on the ambiguity surrounding British jurisdiction in the region. For some, inclusion within the pale of British India’s growing extraterritorial empire had by the late 1870s become *fait accompli*. In East Africa, the Sultan gradually ceded jurisdiction over those who were subjects of different British-protected Native Princes in India to British officials by 1870; in Muscat, this

⁹⁷ Minutes of the opinion of the Chief Justice and Judges re the proposed Order in Council applying the Foreign Jurisdiction Act to the Persian Coasts and Islands (26 April 1879) MSA PD Vol. 192, Comp. 189

happened six year later.⁹⁸ For other communities, such as Arabs and Persians, the question remained open, and the strategies looked familiar. Petitioners from Persia continued to approach British officials for commercial protection, alternatively claiming domicile, naturalization or birth in British India.⁹⁹ Even those who ostensibly had no British Indian domicile – Arabs from the Yemeni port of Aden – found a legal basis to assert a right to British protection. Drawing on a series of treaties, officials in Bombay eventually upheld Adeni Arabs’ right to protection on the grounds that Aden had been included under the Bombay Presidency and thus formed a part of British India. Native-born Adenis thus became, through a kind of legal transmutation, Native Indians, as though they had been born on Bombay soil, and were therefore “entitled to Consular protection and other privileges of British subjects.”¹⁰⁰ It is not clear whether this ruling opened the door to similar claims by other Arabs and Africans born in Aden – records on the port are notoriously elusive – but one can imagine, based solely on British experiences elsewhere, the flurry of petitions that a proclamation like this would have prompted.

Conclusion

Having moved from his first station in Muscat to a temporary position as Political Agent in Zanzibar in the early 1880s, Col. Samuel Miles was keenly aware of the changes

⁹⁸ Sheriff, *Slaves, Spices*, pp. 202-208; Landen, *Oman Since 1856*, p. 230

⁹⁹ MSA PD 1884 Vol. 161, Comp. 1205

¹⁰⁰ MSA Judicial Department, Vol. 91, Comp. 1092

taking place both on the island and in the wider Indian Ocean. “The continued progress of the commerce of Zanzibar,” he commented, “has been naturally followed by a corresponding increase of the Indian population who hold the trade of this part of the East African Coast in their hands.” To Miles, this development carried with it legal implications. “British interests assume more importance daily in consequence,” he noted, “and more responsibility and work are thrown on this Consulate.”¹⁰¹

Miles took occasion to describe not the product of a particular moment, but rather one moment in a much broader and longer regional transformation. In Zanzibar, by the 1880s enough merchants had successfully placed themselves under British protection that the British Consular court had become the *de facto* principal dispute resolution forum on the island. In Zanzibar alone, the population of Indians under the jurisdiction of the British consulate by 1883 numbered around 6,000; twelve years earlier, it was just over half that. Miles accordingly chronicled the growing number of civil cases that the Consular court had to deal with over the past three years: 446 in 1880, 443 in 1881, and a staggering 571 in 1882, many of which took days or weeks to resolve. These statistics marked a major shift: twelve years earlier, the total number of cases, both civil and criminal, involving British subjects numbered only 279 – only 67 of which were heard at the Consular court.¹⁰²

¹⁰¹ Miles, Acting Political Agent, Zanzibar, to the Secretary to the Government of India (March 3 1883), MSA PD 1883 Vol. 225, Comp. 157

¹⁰² *Ibid.*; MA PD 1871 Vol. 142, Comp. 179

The correlation between growing Indian mercantile influence and the increased scope of British jurisdiction was not lost on British officials. As the Agent in Zanzibar affirmed in 1881, “There can be no doubt the real source of our paramount influence here is the hold we have kept over immigrants from India in whose hands the trade of the mainland rests, and to whom half the property in this island is hypothecated.”¹⁰³ Officials in other Indian Ocean ports could hardly have felt otherwise. For Miles, as for others, the appeal of the British courts became a matter of comment, and then a simple social fact. “There are no local courts of justice except those of the Kazees [sic.],” Miles observed in 1883, “and as the Kazees are unable to decide their cases without reference to the Sultan, it follows that the administration of justice is dependent on His Highness’s will and caprice.” He seemed less concerned with what this state of affairs portended for the administration of justice in general, however, than with what it meant for consular work. “As very few business transactions take place in which Indians are not in some way concerned,” he noted, “it is generally arranged by the parties for their dispute to be determined in this court.”¹⁰⁴

Although the ambit of British jurisdiction expanded across the region at this time, Zanzibar stood at the center of the process. An Agency court had operated in Bahrain by the early 1870s, but only on a limited basis. The court did not have a working staff until

¹⁰³ Political Agent, Zanzibar, to the Secretary to the Government of India, Foreign Department (6 March 1881), MSA PD 1881 Vol. 217, Comp. 61

¹⁰⁴ Miles, Acting Political Agent, Zanzibar, to the Secretary to the Government of India (March 3 1883), MSA PD 1883 Vol. 225, Comp. 157

the beginning of the twentieth century, and only in 1909, after British officials declared jurisdiction over all of the foreigners on the island, did it emerge as a central legal institution (a subject I will explore in greater detail in Chapter 6).¹⁰⁵ In Muscat, the Consular court had also been operating since at least the 1860s, and while it seems that by the 1870s it had become a recognized part of the juridical landscape, the extent to which it became the port's main forum for dispute resolution is unclear due to a lack of records.¹⁰⁶ In Zanzibar, the trade boom there unfolded earlier and with much greater force than it did elsewhere, encouraging Indian creditors to turn to British justice in especially large numbers.

If by the end of the 1870s a sound legal basis for British extra-territorial jurisdiction in the Western Indian Ocean had not yet been worked out in theory, it had worked itself out in practice. Indian, Persian, and a range of different Arab merchants took their disputes to the British Consul as a matter of course, and Political Agents no longer voiced any concern over the scope of their jurisdiction. Even the Sultan of Zanzibar began sending his own subjects to British courts to have their bankruptcies adjudicated.¹⁰⁷ None of this implies that other legal forums vanished in the face of an expanding British court system; as later chapters will illustrate, local tribunals continued to play an important role in the regulation of commercial affairs, particularly those relating to obligation. But even if local and customary tribunals maintained a place in the

¹⁰⁵ Onley, *The Arabian Frontier of the British Raj*, pp. 121-123

¹⁰⁶ MSA PD 1884 Vol. 106, Comp. 1475; Landen, *Oman Since 1856*, pp. 203-204

¹⁰⁷ ZNA HC 2/47

new juridical landscape, by the beginning of the 1880s, British courts had become, *de facto*, the principal legal institutions in the Indian Ocean commercial arena.

As the number of cases heard at the Consular court grew, so too did the need for a better understanding of how to run a court. To enjoy jurisdiction was one thing; to effectively execute that jurisdiction was an entirely different matter – one that most British officials lacked preparation to consider. Continuing his assessment of the changed situation of the British court in Zanzibar, Samuel Miles emphasized the court’s need for people capable of staffing the growing bureaucracy, including a Gujarati interpreter, a clerk, and a qualified accountant. None of these positions was as necessary to the court, however, as someone with a sharp understanding of the law itself. “The importance of an English barrister to preside over the court,” Miles reflected, “has for a long time been recognized.”¹⁰⁸ Although one of the earlier British officials, Erskine Foster, had the legal training necessary to hear cases, he passed away in 1881, leaving the court with no one skilled enough to correctly apply the law.

In stressing the need for a judge trained in the law, however, Miles was not only musing about the court’s own deficiencies – he was also reacting to another pressure. At precisely the same time he wrote his letter to his superiors in Bombay – just as the numbers of merchant-litigants approaching British courts in Zanzibar began to swell to

¹⁰⁸ Miles, Acting Political Agent, Zanzibar, to the Secretary to the Government of India (March 3 1883), MSA PD 1883 Vol. 225, Comp. 157

unprecedented heights – the Indian Ocean port witnessed the arrival of an altogether different set of actors: Indian lawyers.

CHAPTER 5: MAKING MUSLIM MORTGAGES

With all of this background in mind, I can now return to that morning of March 24, 1887, when Frederick Holmwood, the British Consul at Zanzibar, walked into the courtroom to find before him the case of Musabbah's *waraqā*, introduced at the beginning of this dissertation. To recapitulate, the Sultan of Zanzibar, Barghash bin Sa'id, had sent his *qādi* 'Abdullah bin 'Ali to the Consular Court to litigate a case against the firm of Jairam Sewji, the customs master, over an empty lot (called a *kiwanja* in Kiswahili) to which they both had competing claims arising from transactions that Musabbah had entered into.¹ Representing the customs master's firm was Camruddin Amiruddin, a recently-arrived lawyer from India, whose services the firm retained for a series of court disputes.² Why Musabbah's *kiwanja* was important, or why anybody wanted it, is not clear; all we know for certain is that both the Sultan and the customs master were willing to go to court for it.

Sewji's firm's based its claim to the *kiwanja* on a 21-year old *waraqā* between them and Musabbah, the freed slave who had agreed to outfit a caravan for the interior of East Africa and deliver 20 *fraselas* of high-quality (*naqāwa*) ivory to Sewji's agent at the time. The *waraqā*, registered at the consulate less than three months earlier, established his claim in ostensibly unambiguous terms: Musabbah had sold Sewji the *kiwanja*,

¹ Whoever wrote down the court proceedings listed the case as one between the Sultan and the Indian customs master Jairam Sewji. Sewji, however, had died 21 years earlier; it was his firm that found itself at the receiving end of a summons from the court.

² See also *Shiwji Haji of Zanzibar vs Jairam Shiwji of Zanzibar* (1883) 1 ZLR 19

reserving for himself the right to reclaim it if he returned with the ivory within two years. For Sewji and his firm, the land sale constituted security against Musabbah's promise to deliver ivory, and because Musabbah had never returned, the land was rightfully theirs.

The *qāḍi* representing the Sultan, however, offered a different interpretation of what the *waraqas* meant. When it was written 21 years ago, he stated, "there were many *waraqas*, thousands such as this, and no doubt many exist up to this time." *Waraqas* were issued to "every Arab who traveled upcountry (*sāfara ilā fawq*) and received an advance before his journey, and the *waraqas* were written as guarantees (*'alā wāṣīṭat dāmin*) should they not return or if they died or became bankrupt and the said deeds were several times allowed to stand over without annulling for many journeys." The Sultan, the *qāḍi* argued, also had his own sale deed – one which stated that he bought the land from Rajab bin Abdulrazzaq, an Afghan who in turn had purchased it from Musabbah at around the time he had executed the deed with Sewji.³

Their dispute was but one of many. In the changing political and juridical landscape of the late-nineteenth and early-twentieth century, Indian Ocean *waraqas* and the practices surrounding them became the subject of a protracted debate. As the contractual culture that emerged in the nineteenth century continued unabated into the twentieth century, and as greater numbers of Indian Ocean merchants took their disputes

³ *His Highness the Sultan of Zanzibar vs Jairam Sivji* (1887) ZNA HC 7/265

to British courts, an altogether new conversation surrounding the nature and form of commercial obligation in the region began to emerge.

The discussion primarily took place in Zanzibar and coastal East Africa, where *khiyār* sales of houses and rooms to finance agricultural production or commerce, or simply to support consumption, became increasingly common at the end of the nineteenth century. In the region's British courts, commercial and legal actors engaged in extensive debates surrounding the *waraqā* and financial practices – and, more broadly, the place of Islamic law in a changed commercial society. At the center of courtroom discussions surrounding nineteenth-century financial practices in the Western Indian Ocean was the *waraqā* and the artful maneuverings of Indian Ocean economic actors around it. In many ways, the conversation mirrored those which had taken place decades, or even centuries, before: issues of substance versus form, commercial necessity versus religious imperative, and doctrine versus practice all surfaced again.

This time, however, the parties to the conversation and the lexicon they drew on were different. Instead of the jurists, *qāḍis*, *kātibis* and merchants who mediated between established legal categories and economic practice in the mid-nineteenth century (see Chapter 2) the juridical field at the turn of the century was populated by British judges and India-trained lawyers. Drawing on an empire-wide body of law and court decisions, but remaining grounded in India, these actors gave substance to the jurisdictional spaces that British officials had carved around the Indian Ocean in the decades before. By

invoking Indian statutory and case law to in one case after another, they played an active role in extending the legal frontiers of British India's empire into East Africa.

In the early years of the East African courtroom, the newly-arrived lawyers' legal training allowed them to shape courtroom discussions surrounding law. Early consuls lacked the expertise necessary to engage with them, but as the Anglo-Indian legal bureaucracy developed and more professionalized judges arrived to East Africa's shores, a conversation emerged between the bench and bar on law and commerce in East Africa – one that took had enormous ramifications. In a forum that privileged their voices and reinforced their authority, these new juridical actors now spoke for the role of Islamic legal doctrine in a modern capitalist economy, much like they had done in India nearly a century before. When *qādis*, jurists and *kātibs* did join the conversation, they did so only as supporting actors – as occasional reference guides in what was effectively becoming an Anglo-Indian script.

Inside the turn-of-the-century British courtroom, lawyers and judges plucked disputes out from all of their contingencies and contexts and placed them against the backdrop of a trans-regional, increasingly autonomous world of legal reasoning, juridical decision-making and procedural guidelines. When *waraqas* and *khiyār* transactions reached a court, they were no longer the merchants' to claim. They became property of the bench and the bar, and were brought into conversation with a long history of practices, cases, Acts and regulations from India, England and elsewhere.

Over the course of a series of courtroom decisions during the late-nineteenth and early-twentieth centuries, judges and lawyers remade *waraqas* and *khiyār* sales into English commercial instruments and practices—ones that fit within a growing Anglo-Indian tradition of law that included in its ambit a flattened body of Islamic jurisprudence that British judges reserved the right to interpret as they saw fit. As these manifestations of commercial obligation moved through an increasingly professionalized juridical field, judges and lawyers recast them into a new mold and rendered them into terms with which they were more familiar. They effectively stripped *waraqas* and *khiyār* sales of their long genealogy in Islamic jurisprudence, and re-clothed them in a garb that they deemed more fitting for the world in which they operated.

If the changing juridical field framed the terms of the debate, underpinning the long arc of the discourses surrounding financial practices in Zanzibar and East Africa was a desire among British officials to develop a property rights regime that would support the continued activity of a growing number of Indian merchant-financiers in the region. As the British presence in East Africa expanded during the late-nineteenth and early-twentieth centuries, the region witnessed the emergence of a finance-friendly property rights regime – one that would encourage British Indian subjects to continue investing in a growing imperial regional economy. Their desire to protect British Indian merchants’ economic position in the region, one that had its roots in the mid-nineteenth century, only strengthened in its resolve by the turn of the century, as tens of thousands of Indian immigrants funneled into the East African interior and took part in ongoing economic,

infrastructural and political projects. Such sentiments reverberated in the courtroom, where judges frequently upheld British-protected creditors' property rights, often by giving readings of the *waraqas* that privileged the creditor's claims to the hypothecated property as they slowly remade them into Anglo-Indian financial instruments.

The discussion here draws its material primarily from court cases and law reports from growing commercial centers in Zanzibar and East Africa, utilizing them to explore the changing contours of the discourse on Islamic law and commercial practice in the region. As such, it deals little with *actual* commercial or documentary practices in the Indian Ocean – a subject that I reserve for the next chapter. To highlight changing discourses at the expense of actual practices is not to claim that one is more important than the other; in fact, it would be impossible to try to understand the relevance of courtroom discussions (and, indeed, their limits) without placing them in the framework of commercial practices, and *vice versa*. By mapping out the transformations in the juridical field and the shifting discourse surrounding commercial practice in Zanzibar and East Africa, I try to highlight the expanding boundaries of the British courtroom while also exploring the changing place of the *waraqqa* in an imperial legal episteme.

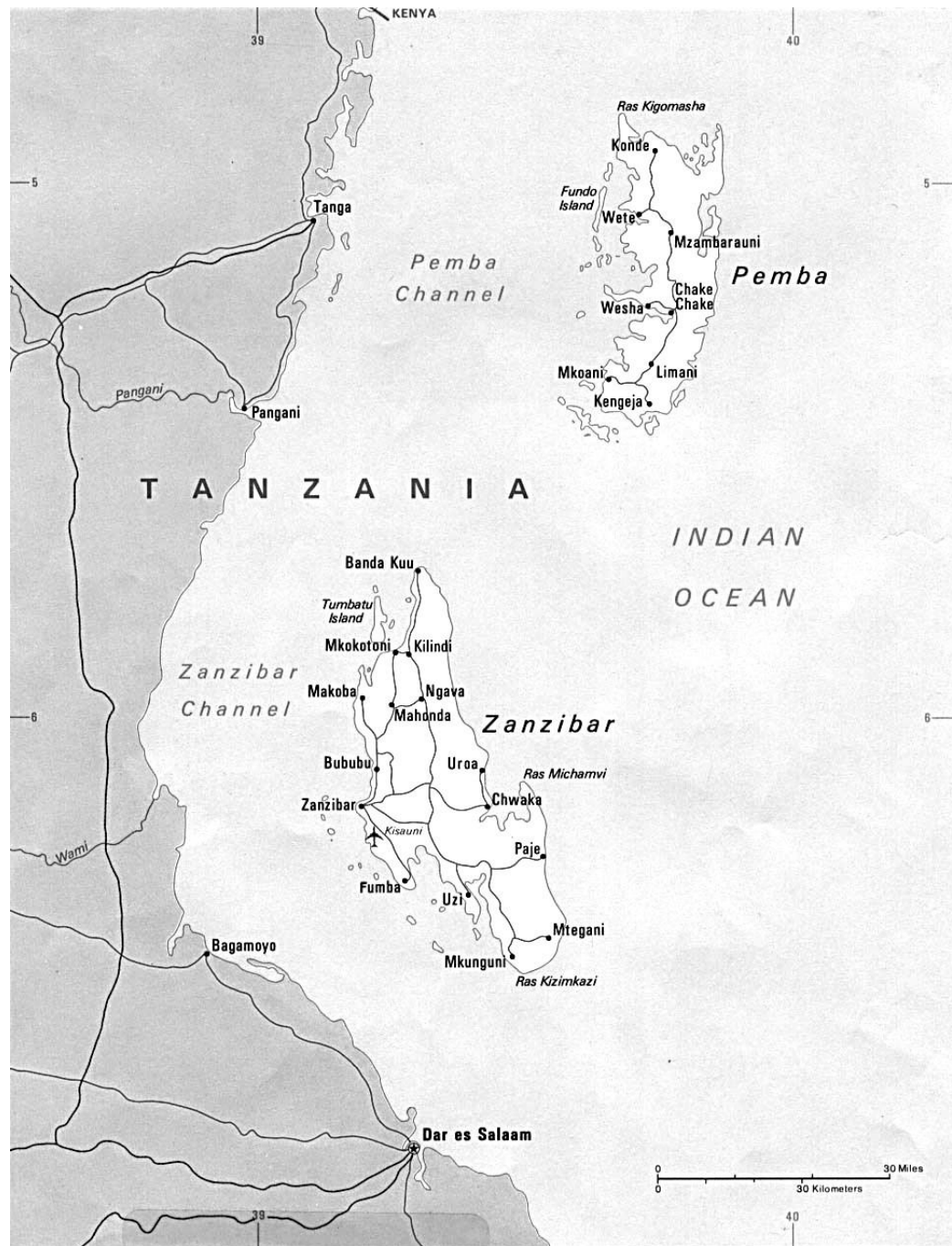


Figure 2: Zanzibar, Pemba and the East African Coast
 (Perry-Castaneda Library Map Collection, University of Texas, Austin)

Reading Commercial Writing

From early on, British Consuls in Zanzibar evinced a clear discomfort with the flexibility that merchants, rulers and *qādis* showed towards commercial practices on the island – particularly those that confounded their understanding of the mutual rights and liabilities that shaped property transfers. When the Acting Consul William Francis Prideaux wrote to his superiors in England in 1874 to inform them of a property dispute between a Mr. West, the head of the Central African Mission, and Zanzibari authorities, he bemoaned the difficulties he faced in trying to ascertain exactly what West’s rights were. Although West asserted that his rights were enshrined in local custom and stated that he had polled local *qādis* on the matter, Prideaux did not feel that these sufficed to prove his claim. “I can scarcely assure Your Lordship,” he wrote, “that in a place like Zanzibar the opinion of one Kazi [sic] can always be counterbalanced by that of another.” However, unlike Muslim jurists and *qādis*, whose frustrations with the property regime revolved around the documentary practices that merchants engaged in (as detailed in Chapter 2), Prideaux directed his resentment towards what he deemed to be a juridical world that relied too heavily on context; the documents themselves were comparatively unproblematic. “The only trustworthy testimony in [property-related matters],” he contended, “is that contained in ancient deeds and leases.”⁴

⁴ William Francis Prideaux to the Secretary of State for Foreign Affairs, London (24 August 1874), ZNA AA 2/14

Prideaux's assertion that Consuls could only rely on the deeds and leases points to their biases but also their limitations as actors in a relatively new juridical situation. Throughout the end of the nineteenth century and until the 1930s, British judges in Zanzibar and East Africa frequently upheld documentary evidence as proof to a litigant's claims, commercial or otherwise. The tendency pointed to a much longer-standing legal episteme that privileged writing in general. In England, as elsewhere in Europe, an emphasis on capturing commercial agreements in writing accompanied the rise of a more impersonal system of exchange in which the actors could no longer count on repeated and multidimensional transactions with one another. There, the move towards documentation for legal purposes had started as early as the beginning of the eighteenth century, if not earlier, and by the mid-nineteenth century the notion that written contracts were indispensable to commerce was already deeply entrenched among both commercial and legal actors.⁵

Moreover, a Utilitarian approach to legislation, with an aim to promote private rights in property based on a systematized, hierarchical legal structure, had taken shape in England at the beginning of the nineteenth century, in part through the advocacy of John Stuart Mill and Jeremy Bentham. In England, Utilitarianism competed with many other approaches to law-making; however, in the East India Company dominions in India it became dominant. Utility-minded reformers there were able to formalize codes of law

⁵ See also Mary Poovey, *Genres of the Credit Economy: Mediating Value in Eighteenth and Nineteenth-Century England* (Chicago: University of Chicago Press, 2008)

and codify Muslim jurisprudence in a manner that suited their tastes.⁶ By the time British officials had reached Zanzibar, the codification project in India was well underway, and the importance of fixed texts could hardly have been lost on civil servants of the Government of India operating in a frontier juridical arena.

At the same time, however, the Consuls' proclivity towards written instruments was at least in part a product of practical considerations – namely their inability to comprehend most court proceedings. During the 1870s, Frederic Holmwood, one of the first judges of the Consular Court, frequently wrote to his superiors with requests that he be granted leave to go to India and learn Hindustani and Gujarati so that he could better run the court.⁷ Even as late as 1882, the Political Agent bemoaned his judicial assistant's lack of proficiency in understanding what went on inside the courtroom. The assistant, W.M. Cracknall, had spent some time in India before coming to Zanzibar, but had only acquired a basic knowledge of Hindustani, and had to rely on two Parsi interpreters to translate most of the court proceedings for him.⁸ Faced with a constituency of litigants whose testimonies they often could not understand, Consuls looked to evidence that was more easily decipherable and ostensibly more stable.

Even though Prideaux and others were certain that they could only rely on deeds and leases in property-related disputes, they were still on shaky ground when it came to

⁶ Scott Alan Kugle, "Framed, Blamed and Renamed: the Recasting of Islamic Jurisprudence in Colonial South Asia" *Modern Asian Studies*, Vol. 35, No. 2 (2001) pp. 276-278

⁷ See also Frederic Holmwood to John Kirk, forwarded to C.M. Aitchison (22 September 1875), ZNA AA 4/4

⁸ Political Agent, Zanzibar, to Secretary [?], Calcutta (12 January 1882), ZNA AA 4/16

interpreting the materials they were faced with. British officials in mid-to-late nineteenth century Zanzibar and East Africa generally lacked legal training: they were civil servants of the Government of India, with some political and linguistic knowledge. Faced with an increasing number of legal disputes, most Political Agents found themselves ill-equipped to comment on the applicable laws. One voiced this concern to his superiors in Calcutta as early as 1876: “There are in this office almost no works of reference,” he complained, “and none whatever of an elementary nature, and the want of such was so seriously felt by [the Assistant Political Agent] while acting for me that he wrote and pointed out the difficulty met with by an officer called upon, as he was, to fill a post the duties of which he was not familiar with, without books to which he could readily refer.”⁹ The Political Agent ended his dispatch to his superiors by requesting copies of John William Smith’s *Compendium of Mercantile Law* and Archbold’s *Criminal Pleading, Evidence, and Practice* – texts that would offer them at least some guidance by way of abstract principles.

The Consuls’ inability to comment on legal matters reflected itself in early court proceedings surrounding property rights, in which they issued judgments based less on an understanding of the applicable principles than on vague notions of proof and a general inclination towards upholding creditors’ rights. In an 1875 case, the *Bania* Ramdas Jethani brought an action against his agents of nearly six years, the brothers Dwarka and

⁹ HM’s Political Agent and Consul, Zanzibar, to the Officiating Secretary to the Government of India, Calcutta (13 March 1876), MSA Political Department, 1880, Vol. 23, Comp. 87

Kanji Liladhur, asserting that they owed him over MTD 8,500 in unpaid debts for goods advanced to them. Although the brothers claimed that they had forwarded him Arabic *waraqas* worth nearly MTD 13,000 to satisfy their debt, they had nothing to prove it. Jethani, however, was able to produce a settlement deed in which they agreed to pay him the amount he claimed. With little on which to base his judgment but the “conclusive documentary proof brought forward by the plaintiff in support of the debt,” the Consul issued a decree in Jethani’s favor.¹⁰

Even when documentary proof was more problematic the Consul often chose to privilege it over oral testimonials. In another dispute in 1877 between 25 Indian merchants of Dar-es-Salaam who agreed to form an ivory cooperative, the agreement deed itself was the subject of dispute: some members of the cooperative claimed that they were due a larger share of the profits than they had received. Despite having listened to many of the merchants testify as to what the substance of the agreement was, and in spite of his acknowledgment that the contract was “very badly drawn out and ... ambiguous,” in his judgment the Consul simply read out the text of the agreement and upheld its terms as he understood them.¹¹ The written document, it seemed, could speak for itself even when it was admittedly nebulous.

Merchants who claimed that customary practices, rather than a strict reading of a written deed, dictated commercial obligations often failed to convince the Consul. In one

¹⁰ *Ramdas Jethani vs Dowarka Liladhur and Kanjee Liladhur* (1875) ZNA HC 7/5

¹¹ *Wulubdass Jaithani, Agent for Ali Moorji vs Bhinji Hirji & Others* (1877) ZNA HC 7/85

of many such cases, the Indian merchant Premji Khimji argued in front of the Legal Vice-Consul Erskine Foster that according to the customary obligations existing between a merchant-financier (*seth*, or sometimes *tajiri* in the Swahili context) and his agent (*brahmania*), the agent, “so long as he was trading with the *seth*’s money and owed money to the *seth*,” had no right to forward his goods to any third party – an obligation whose existence the agent flat out denied. Foster, who came to Zanzibar to assist the Consul in his increasing judicial work, was comfortable discussing legal matters, having earned a law degree from Inner Temple in London. Perhaps because of his training, he was suspicious of claims to local custom, which he asserted had to be proven to be both long-standing and universally-practiced in order to have legal force.¹² His poll of the leading merchants in Zanzibar turned up inconclusive: while some agreed that the custom existed as described, many instead detailed a variation of the practice. For Foster, this was not enough. “The custom as produced by any one witness has not that universality of application to give it the force of law,” he argued; “though suitable to the wants of a primitive society, it is unsuited to the complications of modern commerce.”¹³ He upheld the plaintiff’s claim, but only insofar as written evidence – which his legal training left him much more familiar with – supported it.

By the 1880s, the admission of documentary evidence in the Consular Court had become a routine matter. In an 1881 Order in Council, the Consul described in exacting

¹² Foster to Political Agent, Zanzibar (18 October 1880) MSA Political Department 1880 Vol. 203, Comp. 87

¹³ *Premji Khimji vs Tyabji Mamooji* (1878) 1 ZLR 8

detail the procedures by which a prospective litigant had to register *waraqas* with the Consulate. The rules specified that only a party to the transaction could register it in the Consulate, and that if the deed was not in any one of the known languages in Zanzibar – English, French, Arabic, Gujarati, or Swahili – it would have to be accompanied by a notarized English translation. The Order’s preamble made the aims guiding the registration procedure clear: it declared that any non-testamentary commercial or legal instrument would be “received as evidence of any transaction affecting that property, unless it has been registered at such time and place and in such manner as may be prescribed by [the] Rules made” in the Order.¹⁴ By requiring the registration of the deeds and leases that they had grown accustomed to upholding, the court had all but confirmed the privileged evidentiary status of the written instrument in legal proceedings.

That a judge could easily reduce merchant’s obligations to his peers to a written deed flew in the face of decades of changing financial practices in Zanzibar and around the Indian Ocean. For most of the nineteenth century, the written obligation was but one piece of a much more complex framework of commercial practice. Its importance was in its malleability rather than its fixity, and its adaptability to a changing world of commerce. And it was this important context that determined the place of the *waraqas* in a contractual dispute. Al-Salimi’s legal opinions, discussed at length in Chapters 2 and 3, illustrate this clearly. In his view, the *waraqas* was subservient to its context; the judicial

¹⁴ “Rules respecting the Registration of Non-Testamentary Instruments under the Zanzibar Order in Council, 1881”

process primarily aimed at balancing the contextualized rights and obligations of the parties to the contract and restoring the commercial relationship.

To British officials on the East Coast of Africa, however, the text's very fixity allowed the document to meet the standards of evidence with which they were most familiar. Even as their insistence on the clarity of the written document gave way to a closer understanding of how members of East Africa's commercial society actually used it, their emphasis on the authority of written texts, and their suspicion of living legal traditions, continued unabated well into the twentieth century. During the mid-1880s, however, the most pronounced changes in the juridical field in East Africa took place – changes that, over time, indelibly altered the court's approach to the administering law and, by extension, to reading commercial instruments.

Lawyers, Law and Procedure in the East African Courts

To any litigant in Zanzibar during the third quarter of the nineteenth century, the changing nature of court proceedings would have been noticeable. In the 1870s a visitor to a courtroom would have likely seen largely informal, ad-hoc proceeding involving a judge, the parties to the dispute, and perhaps a group of merchants. However, by the second half of the 1880s – and certainly by the 1890s – they would have witnessed a far more formalized process, replete with references to procedural codes and legal concepts foreign to East African commercial society. More importantly, they would have seen an altogether new actor in the British courtroom mediating between the litigants and the judge: the lawyer. Servicing the needs of a growing body of litigants, and faced with

Consuls that knew little about substantive legal issues, lawyers were also primarily responsible for the extension of a distinctly Anglo-Indian body of legislation and case law from India to Zanzibar, and from there to East Africa's ports and hinterland. Their arrival in Zanzibar during the 1880s signaled the beginning of a sea change in the juridical field – one which by the turn of the century had completely transformed the East African legal landscape.¹⁵

Who were these newly-emerged legal professionals? What becomes immediately clear is that the overwhelming majority of them were Indians. The earliest court records in which they appear recount surnames such as Amiruddin, Lascari, Horshanji, Dorabji, Rabadina, and Balsara – most of which indicate a distinctly Parsi background.¹⁶ As the legal bureaucracies matured, however, lawyers of different nationalities began to appear. Court records also mention clearly Anglo-Saxon names like Francis H. Wilson, Gerald H. Mead, and Bernard Wiggins. These, however, constituted a minority. The overwhelming

¹⁵ Here, I draw directly from Pierre Bourdieu's impressive analysis of the juridical field, which I discuss at length in my introduction. To recap briefly, I argued in both the introduction and Chapter 2 that the workings of Islamic law in Western Indian Ocean commerce is best described as a juridical "field" populated by different actors – jurists, *qādis*, *kātibs* and merchants, all of whom worked together to extend Islamic legal categories to meet the exigencies of nineteenth-century capitalism. The work of extending these categories, however, fell to actors on the field's periphery, namely *kātibs* and merchants; in articulating explanations for changing commercio-legal practices, those who populated the center of the field were simply responding to pressures from the periphery. See Pierre Bourdieu, "The Force of Law: Towards a Sociology of the Juridical Field," translated by Richard Terdimen, *The Hastings Law Journal*, Vol. 38 (2005), pp. 833-836

¹⁶ This is in line with what MitraSharafi observes with regard to Bombay, where members of the Parsi flooded the legal community – and as demonstrated here, the epistemological voyage from Bombay to Zanzibar would have been a short one. Mitra Sharafi, "Bella's Case: Parsi Identity and the Law in Colonial Rangoon, Bombay and London, 1887-1925" (Unpublished Ph.D. dissertation, Princeton University, 2006)

majority of the lawyers practicing in Western Indian Ocean courts were, if not Indian, certainly not European.

Despite their Indian background, many of them received their legal training in London rather than India. For example, Hornius Lascari – who newspaper reports referred to as “the head of the bar” at Zanzibar – completed his studies at Middle Temple in London in 1889, after earning a B.A. from Bombay University.¹⁷ Lascari was the son of a Bombay merchant, Farduaji Laskari, and had apparently changed his first name to the more Latin-sounding Hornius from the original, Hormasji.¹⁸ Although a number of other Parsi barristers studied law at the London Inns, how many of them ended up practicing in Zanzibar is difficult to determine. However, judging by the fanfare which accompanied his arrival in Zanzibar in 1894, and by the fact that the *Zanzibar Gazette* did not mention any other Indian lawyer’s arrival, it is possible that Lascari’s case is an exceptional one.¹⁹ Later lists, however, note that some barristers came to the island after practicing in England or Northern Ireland; others were once *wakīls* in Allahabad and Bombay.²⁰

¹⁷ *The Gazette for Zanzibar and East Africa*, Vol. 12, No. 624 (1904) p. 5; “Personal Intelligence” *Indian Magazine and Review*, Vol. 13, No. 264 (December, 1892) p. 661

¹⁸ H. A. C. Sturgess, eds. *Register of Admissions to the Honourable Society of the Middle Temple. From the Fifteenth Century to the Year 1944* (London: Butterworth & Co., 1949), Vol. 2, p. 674

¹⁹ *The Gazette for Zanzibar and East Africa*, Vol. 2, No. 105 (1894) p. 6. By contrast, the Gazette frequently mentioned European or South African lawyers’ arrivals as being “notable additions” to the Bar at Zanzibar. See also Vol. 2 No. 72, p. 4

²⁰ “List of Advocates Licensed to Practice in Zanzibar Protectorate , 1940” ZNA AB 62/133

Although we lack a clear explanation for the lawyer's presence in East African court proceedings, the question lends itself to informed speculation. In India, lawyers, or professional pleaders, became a common part of the legal process from early on in the nineteenth century.²¹ In Zanzibar, however, the first lawyers arrived roughly around the mid-1880s. And by the beginning of the twentieth century, lawyers had become an integral part of the legal culture of commercial contracting in East Africa. Hardly one step in the litigating process took place without the direct presence, or at least indirect consent, of lawyers. From this perspective, it is useful to view the emergence of this body of professional legal representatives within the framework of the institutional developments taking place in the region – to see them as integral players in the entrenchment of the new institutions as much as they were products of it.

It is tempting to make the claim that lawyers emerged *in response to* the institutional the importation of various Acts and Codes, particularly in the realm of legal procedure, and the growing complexities of the legal process. As the legal landscape increasingly departed from the recognized indexes, norms and practices of commercial society – that is, as it became more disembedded from the locus of the marketplace, and moved toward a more autonomous realm of legal principles and procedures – merchants no longer possessed the expertise necessary to litigate in court directly. As members of a profession trained in law and legal process, only lawyers held the expertise necessary to

²¹ Samuel Schmitthener, "A Sketch of the Development of the Legal Profession in India," *Law & Society Review*, Vol. 3, No. 2/3 (Nov., 1968 - Feb., 1969), pp. 337-382

help bridge the ever-widening gap between their clients and an increasingly detached realm of legal procedure, by translating abstract principles into concrete pleas and forms of action.

At the same time, however, one must consider the role lawyers played in *initiating* and *perpetuating* the institutionalization of legal procedure, by creating a need for their services as legal intermediaries where it might not have previously existed. By making reference to Anglo-Indian legislation, procedure and case law, lawyers redefined problems that might have been expressed in ordinary language as uniquely legal problems. They translated them into the language of the law, rendering them into terms that their clients would have likely found incomprehensible. In doing so, they created for themselves roles as gatekeepers to the legal process by professing a mastery of the situation that, to their clients, was confirmed in the courtroom.

The legal training that lawyers had received in England and India placed them in a unique position to dictate the substance and form of British jurisdiction in the wider Indian Ocean. These advocates intuitively imagined the courts of the Western Indian Ocean as extensions of those in British India. In the Zanzibar courts, lawyers routinely cited Anglo-Indian case law, as though the court at Zanzibar was only down the street from a Bombay district court. Although Anglo-Indian rulings did not establish any strict precedent outside of India, lawyers looked to them as establishing guiding legal principles – and in some cases deciding on the main questions. In court proceedings, lawyers made frequent references to opinions published in Law Reports – particularly the

Bombay Law Reporter, which they cited more frequently than others.²² To them, the ports of the Indian Ocean formed a shared arena of common law centered on India and fanning out into the Middle East and East Africa; Bombay was the metropole from which legal guidelines flowed.²³

Moreover, lawyers routinely cited relevant Acts and Codes – sometimes to block claims by the other party to the dispute on procedural grounds, but often to establish substantive points of law – points that neither their clients nor the judge were able to contest. In theory, the various Orders in Council that had been decreed in Zanzibar had already extended Anglo-Indian Acts and procedures like the Indian Code of Civil Procedure and Indian Code of Criminal Procedure to the various ports of the Indian Ocean. The actual execution of these Codes and Acts, however, was left to be fought out in the courtroom. In this theater, Indian lawyers – who by virtue of their training were already familiar with the substance of the statutes – helped determine not only what disputes deserved entry into the courtroom but also the specific form they had to take to be constituted as proper legal arguments.

The execution of the Codes effectively separated the judge from the litigants with layers of formal pleading – technical requirements perhaps necessary in an Indian setting, in which the volume of cases and litigants was too overwhelming for any one judge to

²² It is not clear why Bombay law reports were cited more frequently than others, although one can speculate that because decisions from British courts in the Western Indian Ocean could be appealed to the Bombay High Court, Bombay court decisions were held to be more relevant than others.

²³ See also Mary Sarah Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge, MA: Harvard University Press, 2004)

handle, but less so in smaller societies like Muscat or Zanzibar. One Dar-es-Salaam judge later recalled that he “always thought that the very elaborateness of the Indian codes tended to direct attention too much to the technicalities of the law.”²⁴ Lawyers had the ability to navigate the perplexities of the Civil and Criminal Procedure Codes – both of which amounted to hundreds of articles on procedural minutia that only the most legally-savvy of litigants could comprehend on their own. By making constant references to the Codes in court, lawyers not only perpetuated the Codes’ importance to legal procedure, they also underscored their own centrality to the process of litigation.

Legal Bureaucracy in East Africa, 1890-1930

When the conversation about the legal substance of British jurisdiction in East Africa entered the courtroom, it was hardly one-sided. Although early Consuls did not have had the legal training necessary to speak to questions of statutory or case law, their eagerness to develop their legal knowledge is evident from their early correspondence, in which they beseeched their superiors in India for permission to purchase law textbooks. Faced with a deluge of claims and counter-claims, and with no-one to turn to for assistance, officials looked to textbooks as necessary guides in understanding the form and substance of the justice they sought to dispense. One judicial officer in Zanzibar, Erskine Foster, went so far as to bring his entire library with him – no less than 60 books on a range of subjects, from Thomas Baylis’s *The Rights, Duties and Relations of Domestic Servants* to

²⁴ Gilchrist C. Alexander, *Tanganyika Memories: A Judge in the Red Kanzu* (London: Blackie and Sons, 1936) p. 24

Christopher Langdell's *Summary of the Law of Contracts*. These books were not simply decorative; Foster's judgments in the Law Reports and extant court records demonstrate his growing familiarity with legal principles. When he died in 1881, however, the other officials in Zanzibar found themselves in a desperate situation, as few others knew anything about the law. In their letters to officials in India, they pleaded for help – if not for a replacement official, then for money to purchase the books Foster had left behind, before his widow left with them. The books, they wrote, were “much needed for the use of the Judge, who has cases frequently before him of legal difficulty and involving large interests.”²⁵

A bench with a firmer grip on law in the books did not emerge until the construction of the Uganda Railroad in the 1890s, an event that marked a watershed moment in the political, economic and legal history of East Africa.²⁶ Prior to the railroad's development, the Imperial British East Africa Company, operating under a royal charter, had leased from the Sultan of Zanzibar a coastal strip in East Africa, roughly from Lamu to Tanga, and extending 150 miles inland.²⁷ In addition to overseeing

²⁵ MSA Political Department 1881 Vol. 217, Comp. 61

²⁶ Unfortunately, historians have yet to explore the history of the Uganda Railway project in any detail, let alone chart out the economic, political and juridical changes it would have prompted.

²⁷ This was a territory that, as described in Chapter 4, had been under the nominal jurisdiction of the Sultan of Zanzibar. The Sultan had gradually handed over the Tanganyika territory to Germans since 1885. See John Iliffe, *A Modern History of Tanganyika* (Cambridge, UK: Cambridge University Press, 1979) pp. 88-97. Unfortunately, secondary sources do not go into much detail on the nature of German legal administration in Tanganyika. The only article on the subject argues that Germans institutionalized existing native tribunals, giving themselves the ultimate power to overturn decisions. While the article is very suggestive in its implications, the dearth of additional scholarship on the subject makes it difficult to integrate with the discussion here. See Jan-Georg Deutsch, “Celebrating Power in Everyday Life: the

agriculture and trade within its territory, the Company was to begin constructing a railway that connected Mombasa, on the coast, to Lake Victoria – nearly 600 miles inland. When the company began to show signs of financial troubles in the mid-1890s – troubles aggravated by armed conflicts that it had become embroiled in – the British Government took over the territory and the management of the railway construction project. By July 1895, the Government proclaimed the territory the East Africa Protectorate, extending from the Indian Ocean coast inland to Uganda and the Great Rift Valley.

The establishment of the East Africa Protectorate and the continuation of the railroad project brought about a tremendous change in the region's demographics, in no small part due to the rapid expansion of the Indian community that the railroad project prompted. From 1890 onwards, shiploads of indentured workers from India arrived in Mombasa to provide the labor necessary for the construction of the Uganda Railway. According to one estimate, between 1895 and 1914 British administrators imported 37,747 laborers, mainly from Punjab, on three-year contracts. Along with these workers came a number of free Indian immigrants, many of whom saw growing opportunities for upward mobility in the burgeoning markets of East Africa. All told, the Indian population

Administration of Law in Colonial Tanzania, 1890 – 1914," *Journal of African Cultural Studies*. Vol. 15 (2002) pp. 93-104

of Zanzibar and the East African protectorate rose from just over 6,300 in 1887, on the eve of the Protectorate's establishment, to a staggering 54,434 by 1921.²⁸

The growth of Indian migration to East Africa was a boon to the local Indian mercantile community. Established *Bania* merchants in the region were happy to finance the growing number of newly-arrived Indian shopkeepers who fanned into the interior of East Africa in staggering numbers. Alidina Visram, whom I introduced in Chapter 1 as major financier of caravans trading into the interior, quickly established himself as a supplier of goods to the shopkeepers who followed the railway as it moved further inland. By 1910, he had extended his operations to include some 30 branches throughout East Africa, and had begun to diversify his investments, which by then included oil mills, a soap factory and a cotton ginnery in Uganda.²⁹

At the same time, British officials were keen on encouraging further Indian immigration into and economic development of their newly-acquired East African territories – so much so that many took to calling the region the “America of the Hindu.”³⁰ Indians, some imagined, could act as teachers to the Africans and Arabs, initiating a salutary process of racial improvement. Others thought of Indians as potential cultivators in the East African interior: officials floated a range of proposals aimed at giving Indian agriculturalists free parcels of land upcountry – although not as far up as

²⁸ Robert C. Gregory, *South Asians in East Africa: an Economic and Social History, 1890-1980* (Boulder, CO: Westview Press, 1993) pp. 11-2

²⁹ Thomas Metcalf, *Imperial Connections: India in the Indian Ocean Arena, 1860-1920* (Berkeley, CA: University of California Press, 2008) p. 171, 182

³⁰ *Ibid.* p. 185

the Kenya Highlands, which were reserved for White settlers.³¹ However, even officials who were not as keen on encouraging Indian agricultural settlement had to acknowledge that they owed much of their position in Zanzibar and East Africa to Indian merchants, and continued to encourage them to expand their trade further inland.³² British officials frankly admitted the importance of Indians to their position in East Africa even before the Uganda Railway project.

Perhaps unsurprisingly, these processes – the growth of the Indian community in East Africa, and the undertaking of a massive infrastructural project – prompted rapid juridical developments along the coast. The first step was the establishment of a court at Mombasa in 1890 – one whose decisions were, at least for the time being, subject to revision only by the High Court at Bombay.³³ The establishment of the Mombasa court marked such an important move for the British legal administration of East Africa that one of the judges appointed to its bench declared that it would one day likely become a court of appeal for other courts planned for the Imperial British East Africa Company's territories.³⁴ Shortly after the establishment of the East Africa Protectorate, officials

³¹ Ibid. pp. 173-176

³² *The Gazette for Zanzibar and East Africa*, Vol. 2, No. 92 (1 November 1893) pp. 3-5

³³ Like the Zanzibar court, the basic laws of the East Africa Protectorate also came from India; the same legislation applied. Anthony Allott, "The Development of the East African Legal Systems during the Colonial Period," D.A. Low and A. Smith, eds., *History of East Africa*, Vol. 3 (Oxford: Clarendon Press, 1976) p. 361

³⁴ *The Gazette for Zanzibar and East Africa*, No. 20 (15 June 1892) p. 2; by October 1897, one commentator was already contemplating a legal administration in East Africa that was separate from Bombay. Although it was desirable, at least for now, that "decisions of the... judge should be subject to revisions in Bombay," he contended that "the judicial administration of the British territories in tropical Africa will have to be confined to that continent, for the connection of India with Africa, both in Zanzibar

upgraded the court and renamed it the High Court of East Africa at Mombasa. It became the regional appellate court, the East Africa Court of Appeals, in 1909.³⁵ The juridical separation of East Africa from India, however, was purely bureaucratic: Indian statutory and case law maintained their privileged place in the courtroom even after the administrative ties between East Africa's courts and India were severed.

At the same time, political developments were taking place in Zanzibar that had profound implications for the position of British Consular Courts there. Negotiations between Britain and other European powers who had representatives on the island led to the gradual cession of jurisdiction over the island's European population to the British court.³⁶ In 1890, the British Government established a Protectorate at Zanzibar, and over the course of the next decade a series of decrees and acts reordered the island's court system and set in place a dual system of law that made provisions for British and Islamic law – a point that I explore more closely in a later section.³⁷ By the end of the nineteenth century, a developed legal bureaucracy, headed by British judges, had more or less taken shape along the coast of East Africa.

and Somaliland, must ultimately be severed.” *The Gazette for Zanzibar and East Africa*, Vol. 6, No. 298 (13 October 1897) pp. 4-5

³⁵ Allott, “The Development of the East African Legal Systems,” p. 379

³⁶ “Treaties between Zanzibar and Foreign Powers” ZNA AB 27/40

³⁷ Stiles, *An Islamic Court in Context*, pp. 16-17; J.H. Vaughn, *The Dual Jurisdiction in Zanzibar* (Zanzibar: Zanzibar Government Printers, 1935)

As the British legal bureaucracy in East Africa emerged, Anglo-Indian legislation began arriving to the coast, by way of Zanzibar. Officials made explicit their opinion that the legislation was appropriate for the legal administration in East Africa as early as 1880, when an official in the Government of India wrote to the Political Agent that “the expediency of extending the whole body of English law, Civil and Criminal, to a community like that under British protection in Zanzibar seems very questionable.” He recommended that the Consular Court in Zanzibar apply “the codified law of India, which is the law to which many, and perhaps most, of the persons to whom the Order in Council will apply are subject as natives of India.”³⁸ Anglo-Indian legislation arrived piecemeal over the course of the next two decades; the 1897 Order alone introduced some twenty Indian Acts to the island.³⁹

As the British juridical presence in Zanzibar and the rest of East Africa expanded, the civil servants who had once headed the British Consulates could no longer serve the multiple roles of Political Agent, Consul and judge – nor did they need to. During the 1890s, the region witnessed a steady influx of appointed judges, virtually all of whom had legal training, if not experience in the courtroom. The stream of professional lawyers into the region also continued unabated.⁴⁰ With the arrival of better-trained members of

³⁸ Under-Secretary to the Government of India to the Political Agent, Zanzibar (23 September 1880) ZNA AA 4/14 A

³⁹ Metcalf, *Imperial Connections*, p. 25

⁴⁰ One of the first appointees was Arthur Charles William Jenner, appointed to the Mombasa court in 1892, who had studied law at Lincoln’s Inn in London; *The Gazette for Zanzibar and East Africa*, No. 16 (18 May 1892) p. 5; *The Solicitor’s Journal and Reporter*, Vol. 34 (23 November 1889) p. 65. In December of

the bench and bar, and the increasing division of labor within the courtroom, the tone of the conversation on the laws that applied in the British courts of Zanzibar and East Africa changed dramatically.

Of course, none of these changes occurred overnight. The transformation of the courtroom was a process that unfolded, sometimes haphazardly, over the course of decades. Nor did any of this take place in a vacuum: the story of juridical change in Zanzibar and East Africa was firmly embedded within a changing world of commerce. The relationship between the legal and commercial spheres was dialogic: questions brought up by commercial practices prompted broader legal debates, which in turn spoke back to the legal bases of commercial practice. In a sense, then, the law and the economy in East Africa – and indeed, the broader Indian Ocean – were mutually constitutive.

The long arc of juridical transformation reflects itself well in the legal debates surrounding *waraqas*, Islamic law and financial practice in Zanzibar and East Africa. Throughout the last quarter of the nineteenth century, and well into the 1930s, British officials and judges and Indian lawyers attempted to bring a complex set of financial practices into legal focus. However, what initially began as an earnest conversation between Muslim jurists, *qāḍis*, and merchants on the one hand and British judges on the

the same year, Havilland Walter de Sausmarez, who had studied at Inner Temple eight years earlier and had legal experience in Lagos, was appointed as Assistant Judge in Zanzibar; *The Gazette for Zanzibar and East Africa*, No. 48 (28 December 1892) p. 6. The following year saw the arrival of Horshanji Lascari from India, Francis Henry Owen Wilson from London, and J. Collinson from the Cape Colony.

other regarding these practices and their legal implications gradually turned into a courtroom conversation between judges and lawyers alone. Over the course of a few decades, living Muslim juridical actors were sidelined in a conversation that increasingly privileged case law from around the British Empire, local Acts and disembodied Islamic textual references. And more often than not, what court actors saw in East Africa was framed by what they were more familiar with – practices in India and England.

The *Waraqā* in a Shifting Sea of *Qāḍis*, c. 1880-1897

The arrival of lawyers in Zanzibar during the 1880s may have signaled the beginning of the transformation of the juridical field in the region, but it took time to clearly manifest itself. Even after lawyers arrived at the island, courtroom conversations regarding the rules that applied to *waraqas* – and to land-related transactions more broadly – had not taken any solid shape. This was especially true of disputes between Indian moneylenders and Arab borrowers – the latter being subject to the jurisdiction of the Sultan of Zanzibar rather than the Consular Court. As late as 1889, cases between Arab subjects and British Indians illustrated a remarkable interdependence of legal actors on the island. The Consul continued to be simply one judge among many – a single actor in a juridical field that included *qāḍis*, Sultans, and tribunals of leading merchants. That the Consuls might have even imagined themselves in that capacity is evident from an 1885 Arabic letter from the

Consular Court judge William Cracknall to a Zanzibari official, in which he referred to himself as “the English State’s *qāḍī*” (*qāḍī al-dawlah al-ingilīziyya*).⁴¹

The 1887 case of Musabbah’s *waraqā*, recounted at the beginning of this chapter, marked one of the first instances in which British judges and Indian lawyers would discuss the place of the written instrument in a changing legal and commercial world. However, the case offered few guidelines on how to deal with the *waraqā* itself – only competing interpretations. Ali bin ‘Abdullah, the *qāḍī* who appeared in court on behalf of the Sultan, argued that because the *waraqā* amounted to a *khiyār* sale, the decision “must by the *shari‘a* and by law be in the hands of His Highness the Sayyid [i.e. the Sultan] although in those days [i.e. 21 years earlier, when the *waraqā* was executed] it might be possible to be passed by the *qāḍī*.” Because neither the Sultan nor any *qāḍī* confirmed the sale, the *waraqā* simply amounted to an acknowledgment of debt rather than an actual transfer of title. Moreover, he asserted, if the court were to look into then-customs master Ladha Dhamji’s accounts, it would likely find that the debt had been settled and that the firm was merely attempting to establish fraudulent claims (*da ‘āwī kādhiba*) to the land in question.

After hearing owners of neighboring plots give testimony as to who owned the land, the Consul ruled in favor of the Sultan – not on the strength of the Sultan’s *waraqā* vis-à-vis Sewji’s, but because of the circumstances following the *waraqā*’s issue. The

⁴¹ *Suleman b. Musa vs Musa Abdool Rasool* (1885) ZNA HC 7/230

consul contended that during the nearly 25 years that had passed between the time the *waraqā* was drawn up and the court case filed, Jairam's firm "could show no single act of ownership, while on the other side by [the Sultan] or his predecessors in title there seems to have been a continual act of possession for more than 20 and continuing for more than 12 years."⁴² The *qāḍi*'s claims regarding the supposed *shari'a* requirement that the Sultan or a *qāḍi* confirm a land sale, together with vague notions about what constituted a proper act of ownership or possession – notions, as I show later, that were under constant revision – made the Sultan's case.

In another case, two years later, Salim bin Khamis, an Arab resident of Pemba known to be suffering from a mental handicap, complained to the *liwali* there that a *Bania* by the name of Govundhurdas Lakmidas (whom the Arabic plaint refers simply to as "*Jenderdās*") was pressing him for the repayment of a debt of MTD 1,628 – a debt which Salim claimed he did not owe. Because Lakmidas was a British subject, the *liwali* referred the matter to the Consul. On the day of the hearing, the Consul called in the *qāḍi* at Pemba who wrote the *waraqā* on which Lakmidas based his claim. When the *qāḍi* testified that a third party, Salim's nephew Muhanna bin Ahmed, received the money on his uncle's behalf, the Consul awarded Lakmidas the amount, but sent the decision to the Sultan to carry out.⁴³ The examples above are but two of many in which Consuls, while

⁴² *His Highness the Sultan of Zanzibar vs Jairam Sivji* (1887) ZNA HC 7/265

⁴³ *His Highness the Sultan vs Govurdhundas Lukmidas* (1889) ZNA HC 7/290

upholding the contractual rights of their subjects as articulated in the *waraqas*, continued to rely on the assistance of other actors in a pluralistic juridical arena.

Of course, *qādis* and Sultans did not always appear in Consular court proceedings. While mixed cases reflected the jurisdictional *mélange* that characterized much of the 1870s and 1880s, court proceedings in cases involving only British Indian subjects took on decidedly different dimensions. Here, lawyers showed their prowess in shaping the contours of the courtroom conversation – not only in their ability to cite Anglo-Indian case law, but also to invoke procedural codes. In 1891, when one *Bania* sued the two executors of the estate of his debtor for *waraqas* that the latter had deposited with Ladha as security for money he owed, lawyers for both parties relentlessly pursued their claims. Lawyers for the executors argued that the suit was void according to the Indian Limitations Act, while the plaintiff's lawyer drew on a range of Anglo-Indian law reports to make the case for his client. The latter found a receptive ear in the judge who, citing reports of his own, ruled in the plaintiff's favor.⁴⁴

When a Consul decided against them, merchants whose lawyers were particularly savvy were sometimes able to sidestep his authority altogether by taking their cases across the ocean to Bombay. Litigants who once confronted the combined and overlapping authorities of the Consul, the *qādi* and the Sultan could now appeal to a new overlord, the High Court of Judicature at Bombay. Because the Orders in Council

⁴⁴ *Luxmidas Ladha vs (1) Dayal Gopal and (2) Shivji Haji, Executors of Maula Naranji* (1891) ZNA HC 7/367

designated it as the ultimate court of appeals in the Western Indian Ocean, officials at the High Court of Bombay had the authority to overturn the decisions of all Political Agents in the region. Litigants who were unhappy with a ruling handed out to them in a Political Agent's court simply had to file a motion to appeal; those with a good lawyer could have their cases decided at Bombay with relative ease.⁴⁵

Only in a handful of any of these early cases, however, was there any discussion of the substantive law that applied to *waraqas*- or land-related disputes in Zanzibar and East Africa. Indeed, until well into the 1890s, it was unclear even to the judges whether they were to decide disputes surrounding *waraqas* according to Islamic law, Anglo-Indian statutory and case law, or general notions of equity. The judge, it seemed, issued judgments in favor of whoever could produce the most convincing argument – the lawyer, a *qāḍī*, or even a merchant. Despite the court's common-law heritage – which, one would have imagined, meant that it operated according to the principle of *stare decisis* – in practice, judgments during most of the last quarter of the nineteenth century were largely ad-hoc and highly contingent in nature.

⁴⁵ When a case reached Bombay, the rulings handed down by the judges there theoretically enjoyed the force of precedent: they articulated broader principles and rules of decision for later cases, which received wide dissemination through publication in Law Reports and, later, in Gazettes. In practice, however, this was rarely the case: legal decision-making remained a local phenomenon informed by broader legal structures. Moreover, because I have not examined all of the cases in the ZNA, I cannot state precisely how many appeals were lodged during the nineteenth century. What is clear, however, is that the process of filing an appeal with the High Court of Bombay had become so simple that British officials had to institute safeguards, including a security deposit of the sum claimed, to ensure that it was not simply being used as a threat. See, for example, *Allarakhia Wulli, Insolvent* (1889), ZNA HC 7/307

The Shari'a and Commercial Society in East African Courts

In the shifting economic and juridical landscape of the 1890s, the need to determine which laws governed commercial disputes became more pressing than ever before. As the Uganda Railway project began expanding inland from the coast, issues surrounding title to the land it ran through began to surface, much as they did with English railways decades before.⁴⁶ One case in particular stood out in the breadth of the implications to the questions it raised surrounding the place of Islamic law in a commercializing East African setting.

Around 1895, Charlesworth Pilling, a British merchant, had purchased land in Mombasa just before the Uganda Railway Company began its work there. By the time he filed his suit, the company's work had already begun: at issue was whether or not the plaintiff had the right to demand compensation for buildings erected on his land. Drawing on William Hall's *Treatise on International Law*, lawyers for the plaintiff argued that land acquired by their client, a British subject, must, by virtue of the principle of extra-territorial jurisdiction, be subjected to British Indian law, which would have awarded compensation, rather than Islamic law, under which he would have most likely not received anything.⁴⁷ The stakes associated with this case were high: the Uganda Railway Company would have to compensate everyone affected by the railroad if the plaintiff

⁴⁶ For more on law the English railway experience, see also R.W. Kostal, *Law and English Railway Capitalism, 1825-1875* (New York: Oxford University Press, 1998)

⁴⁷ *The Gazette for Zanzibar and East Africa*, Vol. 6 No. 289 (August 11, 1897) pp. 2-10; *Charlesworth Pilling & Co. vs Secretary of State for Foreign Affairs and Others* (1898) ZNA HC 5/3A-H

won the case, and the ruling would have unequivocally established a new legal framework for disputes surrounding property, which formed the material underpinning of the Indian Ocean commercial arena.⁴⁸ Moreover, it would have ushered in a new phase of British India's growing legal empire in East Africa.

The judges hearing the case, however, were unwilling to apply British Indian law to the dispute at hand – at least not in 1897. Challenging the lawyers' interpretation of Hall's principles, Judge Cracknall, who had been deciding cases in Zanzibar and East Africa for nearly 15 years, wrote that “the universal rule that questions relating to land must be governed by the *lex loci rei sitae* has reason on its side, and I do not think that the privileges conferred by exterritoriality could ever be intended to infringe it.” For the time being, Islamic law and not Anglo-Indian law still governed disputes surrounding land. Nonetheless, even within an Islamic legal landscape, British judges saw an interpretive role for themselves: “Besides my duties as a Consular Judge,” one of the *Pilling* judges wrote, “I sit here as one of the Sultan's judges, and in that capacity I have to administer, with the help of native judges, the Sheria or Mahomedan Law, which is the local law here.”⁴⁹ By rendering their position in East Africa as one that straddled both juridical realms, judges reserved for themselves the right to weigh in on questions of Islamic law as well as British law. The nature of the dispute, rather than the forum, determined which would apply.

⁴⁸ See Chapter 3 for more on this.

⁴⁹ *Charlesworth Pilling & Co. vs Secretary of State for Foreign Affairs and Others* (1898) ZNA HC5/3H p. 12

By deciding that Islamic law would govern all disputes relating to land, the judges in the *Pilling* case set the stage for what would become a decades-long discussion on the frontier between Islamic doctrine and economic practice in coastal East Africa. For in its answers, the *Pilling* case only posed the much larger issue of what Islamic law was, and how British magistrates ought to interpret it. The question had plagued British officials in the region for decades, and they were ill-equipped to grapple with it. Shortly after beginning his work in the court in Zanzibar in the mid-1870s, the British Consul John Kirk pointed to his lack of familiarity with Islamic law, stating that “a knowledge of the principles of Mussulman law are constantly demanded in the Consular Court and still more in obtaining justice for British subjects before the Arab judges or the Sultan.” Kirk tried to partially overcome his handicap by reading the French translation of Khalil Ibn Ishaq Al-Jundi’s *Mukhtaṣar*, a Maliki legal manual.⁵⁰ Unfortunately for Kirk, Al-Jundi’s manual would have offered little relevant guidance, as Zanzibar’s Sunni Muslims were adherents of either the Ibadhi or Shafi‘i schools of jurisprudence.

That from as early as 1876 the Consul resorted to legal manuals to recover the appropriate Islamic law is worth emphasizing, as it points to a proclivity that would persist in the decades that followed and would frame the relationship of the British courts to Islamic jurisprudence. Rather than consult one of the many *qādis* or scholars on the island regarding questions of Islamic law as they had in years past, British officials in

⁵⁰ Political Agent, Zanzibar, to the Officiating Secretary to the Government of India, Calcutta (13 March 1876), MSA Political Department, 1880, Vol. 23, Comp. 87

Zanzibar and East Africa during the early twentieth century chose to consult Islamic legal manuals directly – much as they had done nearly a century before in British India.⁵¹ In doing so, they effectively wrested interpretive authority away from *muftis* and *qādis*, who (as I discuss in Chapter 2) formed an integral part of a living tradition of Islamic legal interpretation. In this changing juridical field, if the texts could not speak for themselves then British judges could certainly speak for them.

Their understanding of Islamic doctrine and legal categories, however, was from the outset informed by the British legal experience in India. Although British judges were always quick to assert that Indians in East Africa constituted a community distinct from Indians in British India, they could do little to keep out Anglo-Indian legal influences. The statutory laws that they brought to bear on *waraqqa*-related cases – namely the Transfer of Property Act, which, along with others, was applied to Zanzibar via the Order in Council issued during the same year as the *Pilling* decision – was legislation that officials had imported verbatim from India. Moreover, the lawyers with whom they debated in the courtroom were Indians who had received training in either London or India, and whose experience to Islamic law was limited to an Anglo-Indian context.⁵² Even the personnel that staffed the courts – translators, clerks, and court reporters – were Indians. In taking on the responsibility of applying Islamic law to land-related disputes,

⁵¹ Scott Alan Kugle, “Framed, Blamed and Renamed”

⁵² There are some examples of cases in which Indian lawyers in Zanzibar attempted to draw on Anglo-Mohammedan law digests. More often than not, however, their arguments were thrown out on the grounds that the Islamic law of Zanzibar was substantively different from that of India. See *Ali bin Nassor bin Khalaf & 25 Others (Original Defendants) vs Zwena bint Hamoo* (1909) ZNA HC 5/21

the court could not escape the fact that it was, substantively if not formally, an Anglo-Indian court in East Africa.

Semantics and Sales

The Court's Anglo-Indian heritage was apparent from its earliest attempts to square financial practices in Zanzibar with Islamic legal doctrine. In June 1903, an Arab by the name of Mahfuz bin Ahmed executed a *khiyār* sale *waraqā* in which he sold his house to another Arab named Sa'id bin 'Awad for Rs 1,700 redeemable in one year. On the same *waraqā*, he stated that he agreed to rent back the house for Rs 300 per year. Their arrangement continued uninterrupted until February 1905, when Sa'id came to the Consular Court and filed a case against Mahfuz for Rs 150, unpaid rent for six months, and claimed a title to the house on the grounds that that redemption period had expired. When the judge looked into the deed registry, he found that it was not the first time Mahfuz had entered into a *khiyār* sale with the house. He had previously executed a similar deed in favor of two *Banias* for debts that he owed them, and had approached Sa'id for a loan to pay them off.

The issue before the court was how to interpret the *waraqā*. Was the court to consider it as a sale, in which case they would transfer title to the house to Sa'id, or a mortgage, in which case Mahfuz would only be liable for the unpaid rent and would retain possession of the house? To help resolve the question, the judge asked three Zanzibari *qādis* whether the *waraqā* "is...to be treated as an out and out sale or as a mortgage so that although the period of one year has gone past the mortgagor is still

allowed to redeem [the house].” The first *qāḍi* to respond wrote that because the *waraqā* clearly described a *khiyār* sale, and because the redemption period had expired, the sale had to stand; how to construe the document was besides the point. The other two *qāḍis*, one of whom had actually written the *waraqā*, agreed.

The Parsi barrister Framji Dorabji Rabadina, representing Sa‘id, concurred with the *qāḍis*’ assessment of the *waraqā*, but sought to buttress his case with evidence that he was more familiar with. Having graduated from St. Xavier’s College at Bombay University only seven years before, Rabadina was far more familiar with Anglo-Indian case law and legislation than he was questions of Islamic law.⁵³ In the *Mahfuz* case, however, Rabadina argued that whether or not Islamic law was applicable to the case was inconsequential, for even if one asserted (as Mahfuz’s lawyer did) that the Transfer of Property Act governed the case, the court could only construe the *waraqā* as a sale. “There is a regular mortgage deed,” he declared – one that adhered to a standard form; “this is not it.” Citing three court decisions from Allahabad, Madras and Bombay, he contended that the document could only be construed as a sale; the *qāḍis*’ opinions only supplemented what was already a solid case.⁵⁴

James William Murison, the British Judge who heard the case, gave a slightly different opinion of the matter. Murison was also no stranger to law: he was a Cambridge graduate, and had been called to the bar at Middle Temple just seven years before, in

⁵³ *University of Bombay: the Calendar for the Year 1906-1907, Volume 1* (Bombay: 1906) p. 217

⁵⁴ *Said bin Avad vs Mahfuz bin Ahmed of Munguni* (1905) ZNA HC 7/775

1896.⁵⁵ He noted that while the *Pilling* case established that Islamic law governed all land-related disputes, the Transfer of Property Act over-ruled *pro tanto* Islamic law on the matter. Even though he polled the *qādis* on the matter, he wrote, “I cannot feel myself bound by their opinions in so far as they conflict with the law contained in the Transfer of Property Act.” The Act, he noted, clearly stated that when a mortgager ostensibly sells the mortgage property on condition that the sale shall be void on repayment of the purchase money, the transaction is to be called a mortgage by conditional sale. “It seems to me that in the absence of some explanation to the contrary, this document is just one of the kind that the section aimed at,” he argued. “It is the common form of what is known as a Baikhiyar mortgage [sic]. It is never referred to in common parlance as a sale. It is always called a mortgage.” Moreover, the cases that Rabadina cited did not apply, as the circumstances in each were different than those that prevailed in the case before the court.⁵⁶

Murison’s assertion that the *khiyār* was never referred to as a sale and was always called a mortgage is striking, and poses an important question regarding the semantics of commercial practice. On the face of it, it was only partially true: nothing suggests that anyone *but* those who worked for the court called the *khiyār* a mortgage. The court records themselves are deceiving, for while they make it seem as though witnesses only used the term “mortgage” or “mortgagee,” one has to keep in mind their mediated nature.

⁵⁵ Douglas Brooke and Wheelton Sladen (eds.) *Who’s Who, 1907: An Annual Autobiographical Dictionary*, Vol. 58, Part 2 (London: Adam and Charles Black, 1907) p. 1229

⁵⁶ *Said bin Awad v. Mahfuz bin Ahmed (1906)* 1 ZLR 189

By the time it made its way onto the documentary record, any utterance in the courtroom, no matter what the original language, had already been translated into English by the Court Reporter – a Parsi whose vocabulary, and perhaps basic familiarity with Anglo-Indian legal terminology, framed the recorded proceedings. This fact alone makes it difficult to ascertain whether the *qāḍi*s in the case referred to the *khiyār* as a mortgage. When, for example, the *qāḍi* wrote that “the mortgagor has no right of redemption after the expiration of the year mentioned in the document” it is uncertain that he ever used the term “mortgager” rather than the more likely term “seller.” The mistranslation is clear in Musabbah’s case, referred to earlier, which included the *qāḍi*’s original Arabic opinion; when he referred to Jairam (vis-à-vis Musabbah) as “the holder of the obligation” (*ṣāhib al-ḥaqq*), the Reporter translated the term as “the mortgagee.”⁵⁷

The proceedings in these cases highlight the process by which, subtly or otherwise, Islamicate categories became re-clothed in the garb of English contractual terminology. As I noted in Chapter 2, while the *khiyār* sale may have effectively *amounted to* a mortgage, in the eyes of Muslim jurists it was not. Even those who condoned the *khiyār* as it was practiced around the Indian Ocean were quick to affirm the buyer’s right to the property after the redemption period expired. By insisting on calling it a mortgage rather than a sale – and, indeed, by asserting that *everyone* called it a

⁵⁷ *His Highness the Sultan of Zanzibar vs Jairam Sivji* (1887) ZNA HC 7/265. Here I rely on Lawrence Rosen’s translation of *ḥaqq* as “obligation” – a translation more appropriate for the setting I describe here than the more general “claim.” Rosen, *Anthropology of Justice*, pp. 13, 16-17

mortgage and not a sale – Murison was commenting on a transformation that had slowly been taking place over the course of years.

The judge’s opinion that the *khiyār* was nothing more than a mortgage echoed in many cases in the decades that followed it, further confirming the changed legal status of the *waraqā* within the new regional juridical landscape. In a series of decisions following the *Mahfuz* case, judges and lawyers hotly debated the rights and obligations that framed the *khiyār* sale. Invariably, the practice of using English terminology and Anglo-Indian case law to understand the practice continued unabated. At least one lawyer understood how much was at stake, warning his peers in court that it was “most dangerous to upset [the] *Bei Khiyar* [sic] law, [as] many titles are founded on it.”⁵⁸

The courtroom battles over the *khiyār* sale and the *waraqā* are difficult to streamline into a coherent narrative, as they involved countless competing interpretations on a range of issues, both procedural and substantive. Emerging from the cacophony of opinions, however, is one clear trend – the court’s tendency to maintain the terms of the *khiyār* well after the redemption period expired and thus allow the debt to accumulate. Without a court decree, a debtor was not able to transfer his property over to his creditor in satisfaction of his debt. *Qādis* were conflicted as to the legality of the practice: while many decried it as being in direct contravention of the *khiyār*’s terms, which required that a creditor take control of the property after the period expired, some actively supported it.

⁵⁸ Court proceedings (6 September 1911), *Saleh bin Sulleman vs Admin of the estate of Abdulla bin Sallam* (1910) ZNA HC 5/14 A

Asked to comment on the practice, one sympathetic Ibadhi *qāḍi*, Shaikh Taher bin Abibaker Al-Amawi, wrote that “these days the Court has judged (as [in the] interest of the parties) that no purchaser on Bei Khiair [sic] can be put in possession of the property after the time is expired, if the vendor does not agree to it.” The practice was not in contravention to Islamic doctrine, he argued, because the *shari‘a* allowed for the parties to the transaction to reserve the right to annul it. Shaikh Taher even went so far as to consult Atfiyish’s *Sharḥ al-Nīl* (explored in Chapters 2 and 3) to find textual support for his opinion.⁵⁹

Shaikh Taher’s reference to Atfiyish’s work found a receptive audience among British judges, who subsequently looked directly to Atfiyish and other jurists to find the textual authority they needed to buttress their position. In a 1914 dispute between the son of a deceased Zanzibari Arab and the Government’s First Minister over *khiyār*-hypothecated properties, the judges no longer felt even the slightest need, as they did before, to consult the *qāḍis* on the matter. The properties in question had belonged to one of the former Sultan’s ministers, Mohammed bin Hamad Al-Busa‘idi, who was indebted to a *Bania* to the tune of MTD 31,766 – a small fortune in the late nineteenth century, when Mohammed first contracted the debt.⁶⁰ As security for the debt, the *Bania* held

⁵⁹ Translated opinion of Shaikh Taher bin Abibaker Al-Amawi (n.d., 1911), *Ibid*. While Shaikh Taher cites the volume and page number for his reference, I was not able to locate the passage in Atfiyish’s volume; he was most likely using a much earlier edition

⁶⁰ In 1860, MTD 5,000 was enough to purchase a large estate, complete with clove and coconut trees. See Cooper, *Plantation Slavery*, p. 59. There is little to suggest any significant inflation between 1860 and 1894, when the parties contracted the debt.

khiyār waraqas for one of Mohammed's houses and a large *shamba*. Prior to Mohammed's death, the Sultan, who was also his relative, agreed to settle the debt with the *Bania* for the compromised sum of MTD 23,500, and when Mohammed died, the Sultan took over the properties in satisfaction of the sum he paid to the *Bania* on the deceased's behalf. Twenty years later, Mohammed's son Hafiz lodged a petition in court asserting that the Sultan had acquired the property in contravention of the *khiyār* rules. Arguing that he alone had the right to annul the sale, he demanded compensation. The lower court dismissed the claim on the grounds that it was too old and also without basis in the law. Undeterred, Hafiz lodged an appeal at the Sultan's court.

His strategy could not have been any better planned. At the time the debt was first contracted, neither his father nor their relatives would have enjoyed much success in claiming back the properties; no court at the time would have been likely to entertain the notion that a *khiyār* sale could persist beyond the lapse of the redemption period. The lower court held as much: a *qāḍi* opined that the *khiyār* between Mohammed and the *Bania* had expired before the Sultan paid off the debt, and that the Sultan's payment thus constituted a valid purchase. The judge presiding over the session agreed: "the procedure of allowing something in the nature of equitable relief in these *bei-kiyar* [sic] transactions which has become the practice of the British Court did not obtain in those days, and

certainly not in the Sultan’s Court,” he wrote, arguing that because the court would not have granted relief for that type of transaction in the past, it would not now.⁶¹

In the years since the transaction had taken place, however, the framework of commercial contracting had undergone important changes – and Hafiz’s lawyer, the now-seasoned veteran of *khiyār*-related disputes Framji Rabadina, was well aware of it. Drawing on cases from Calcutta and Madras, Rabadina argued that the law of limitations did not prevent his client from pressing his claim – especially in Zanzibar, where the Indian Limitations Act had been in force for nearly 18 years. That Rabadina was able to appeal the case to a high-ranking British judge further paid off. The judge presiding over the appellate court – Judge Murison, who decided on the *Mahfuz* case discussed earlier – was inclined to take a different position on the *khiyār* from the *qāḍi*, whose opinion, he suggested, was “not quite an exhaustive pronouncement of the Mahommedan [sic] law.” Looking to what he perceived to be the authoritative texts himself – at least one of which the *qāḍi* had pointed him to – he declared that “it is stated in the Sherhu-Nīl [Atfiyish’s *Sharḥ al-Nīl*] (p. 553 of Vol. 4) that if the time named in a *bei-kiyar waraka* [sic] expires and the parties neither cancel nor confirm the *bei-kiyar* transaction, the transaction stands good.” To clear up any confusion, he elaborated on the point:

“The expression “stands good,” like a very great part of the Sheria of Islam, is liable to misinterpretation. It does not mean that the transaction is good as a sale. It means, at most, that it stands good

⁶¹ Judgment in His Highness’s Court for Zanzibar and Pemba, Case 2 of 1914 (22 February 1915) ZNA HC 8/142

as a mortgage. Thus it is stated in the book *Khazaini el Athar* (Ch. VII., Vol. VI.) that “the Kathi bin Abadan said that if the conditional or complete sale is cancelled by the mortgagor the money due to the mortgagee will have to be recovered from the mortgaged property as against the unsecured creditors, and if the cancellation is made by the mortgagee there are different views; but bin Abadan says that the mortgagee’s right comes first.” This latter view is in accordance with equity as understood in England and in my opinion is correct.”

Murison’s understanding of equity in England (and, by extension, India) played a key role in how he understood the rights that framed *khiyār* transactions in Zanzibar. Even when he purported to glean his understanding directly from the sources, notions of equity that he had brought along with him from abroad guided his choice. There were, after all, countless legal texts and opinions that he could have drawn his material from, even in Atfiyish’s work alone. The additional material that he marshaled in support of his reading of the text, and his approach in placing it in conversation with the facts of the case, further drew on Anglo-Indian case law. He cited a Calcutta case and a Bombay case, asserting that his understanding of the *khiyār* question was “quite familiar in the English law.”⁶² He dispensed of other aspects of the case in very much the same fashion: a blending of Islamicate and Anglo-Indian legal categories that was at times perhaps too comfortable.⁶³

⁶² *The British Resident vs. Hafiz bin Mohammed* (1916), 1 ZLR 526

⁶³ On a related point in the case, the judge had to decide whether the Sultan’s actions vis-à-vis the property rendered him a *ghasib* (usurper). After going through several *fiqh* texts, Hafiz’s lawyer concluded that “as a *ghasib* he [the Sultan] is liable to account for his use of the property on a basis which is... identical with the liability of an English trustee.” Ibid.

In his approach to the *khiyār* transaction, Murison was not breaking new epistemological ground. Rather, he was simply elaborating on a position that he and other judges had been developing for a few decades: that as a mortgage rather than a sale, the *khiyār* stood over even after the redemption period expired. In the *Hafiz* case, however, Murison grew even bolder in his resolve to speak for Islamic law: whereas he had previously thought to consult the *qāḍi* for the appropriate textual support for his position, by the time the *Hafiz* case came before him he had become confident in his ability to look to *fiqh* texts himself, without the interpretive mediation of the *qāḍi*. The move set the tone for judges to follow: in their approach to the *khiyār* sale *waraqā* in the years after the *Hafiz* case, British judges and lawyers looked directly to what they imagined to be authoritative manuals of Islamic law. Whatever interpretive authority over the transaction that the *qāḍi* might have preserved in the previous decades had all but completely eroded.

Instrumental Fictions

To simply call the *khiyār* sale a mortgage was not enough. If lawyers and judges frequently asserted that the practice of *khiyār* sales in East Africa and elsewhere effectively amounted to mortgaging, it became necessary to substantiate the claim with evidence – not from the circumstances of the transaction, but from a direct reading of *waraqas* and Islamic *fiqh* manuals. To the bench and bar, the terminology that *kātib*s employed in the *waraqā* offered ample room for interpretation within the Anglo-Indian legal episteme that they were the most familiar with. And in the artful manipulation of

contractual categories that the *kātibs* engaged in on the *waraqā*, the judges saw a maneuver that they were familiar with: the legal fiction.

In the Anglo-American legal tradition, the legal fiction often serves as a pivotal means of redefining legal categories during the contracting process, through conscious manipulations of legal language. Sir Henry Maine defined the legal fiction as “any assumption which conceals, or affects to conceal, the fact that a rule of law has undergone alteration, its letter remaining unchanged, its operation being modified.”⁶⁴ In his classic work on the subject, Lon Fuller argued that Maine’s definition seemed to leave room for the intent to deceive. Fuller offered another definition: “A fiction,” he wrote, “is either (1) a statement propounded with a complete or partial consciousness of its falsity, or (2) a false statement recognized as having utility.”⁶⁵ Whatever differences they might have on the precise definition of legal fictions, Maine, Fuller and others all agree on one core (but never explicitly stated) notion: that legal fictions are a function of language – that they do their work when parties make use of metaphors, analogies and other linguistic devices in order to stretch the definitional boundaries of certain legal categories. By mobilizing language to bend the facts of the case to fit a rule, or by broadening accepted definitions of certain concepts, legal actors – mostly judges, but

⁶⁴ Maine, *Ancient Law*, pp. 21-22

⁶⁵ Fuller, *Legal Fictions*, p. 6, 9. While a number of other authors have offered other, similar definitions of the concept of legal fiction, a recent review of the subject affirmed that Fuller’s definition had greater analytic force than anything that had been offered since. See Nancy J. Knauer, “Legal Fictions and Juristic Truth,” *St. Thomas Law Review*, Vol. 23 (2010) pp. 70-120

potentially also litigants and lawyers – assert control over the very epistemology of the legal system and shape the contours of what it can accomplish.

The concept of the legal fiction approximates how *khiyār* sales fit into the pre-British Indian Ocean juridical world (as described in Chapter 2). In both, juridical actors extended legal concepts and nominate categories at the field's periphery rather than its center: they did not invent new categories *de novo*, but instead they fashioned through a subtle broadening of pre-existing categories so as to meet new practical exigencies. The main difference between the two lay in the status of the *waraqā* itself. In the mid-nineteenth century Indian Ocean, *qādis* and jurists were more concerned with the practice of *khiyār* sales than they were with the document itself. They acknowledged the *waraqā* to be little more than a vehicle for a changing set of practices – albeit one that grounded those practices in an enshrined set of obligations. In the British courtroom, however, lawyers and judges transposed the relationship between the practice and the paper: *waraqas* became the main objects of analysis, and were construed as instruments that legitimated the practices. Through the vehicle of the legal fiction, judges and lawyers in Zanzibar and East Africa during the first half of the twentieth century mixed discourses in Anglo-Indian and Islamic jurisprudence to reconcile the observed discrepancies between what the *waraqā said* and what it *did*. In doing so, they completed the process of reconstructing the *waraqā* as a mortgage deed and reformulating the rights and liabilities that underpinned it.

Reconstructing Possession

For British judges and lawyers, one of the more confounding aspects of *khiyār* practices was the difficulty in determining precisely who was in possession of the sale object. In their understanding of both their own legal tradition and of the *shari‘a*, actual possession of the sale object – or, more precisely, the ability to transfer possession of the object – constituted a vital element of any valid sale contract.⁶⁶ However, in the Indian Ocean world of the nineteenth and early-twentieth century, it was often unreasonable to require that someone selling a property enjoy actual possession – physical control – of a plot or share of land that was sometimes thousands of miles away. As detailed in Chapter 3, Muslim jurists took an accommodative stance toward the practice of long-distance *khiyār* sales, as long as the transactions did not distort the buyer’s rights. In the British courtrooms there were few debates as to the legality of the practice of transacting in real estate abroad. Judges frequently decided on cases involving properties in Oman or elsewhere without comment. Only when the practice chafed against their notions of what constituted legal possession were they forced to articulate their views.

One such moment was in the summer of 1923, when the Omani Saif bin Hamoud brought a claim against the heirs of Abdullah bin Salaam. Five years earlier, Saif had entered into an agreement with Abdullah’s children to purchase their inherited property in Muscat for Rs 6,000 – what ten clove pickers could expect to earn together in an entire

⁶⁶ The judge’s decision in *His Highness the Sultan of Zanzibar vs Jairam Sivji* (1887), recounted earlier, suggests this.

year.⁶⁷ The agreement, however, came with an important caveat: Saif was to obtain, at his own cost, possession of the property from one Saleh bin Sulaiman, whom they alleged to be holding the property illegally. If Saif proved unsuccessful in obtaining the property's title from Saleh, the parties would consider the sale null and void. After meeting a series of difficulties, he was finally able to convince the authorities in Muscat of the authenticity of his claims but was told that he had to pay Saleh MTD 1,400 as compensation for the latter's claim to the title, based on *waraqas* from Abdullah bin Salaam himself.⁶⁸ Frustrated, Saif returned to Zanzibar and filed a case at the Sultan's court for the return of the purchase money, hiring Framji Rabadina as his counsel.

When the case came in front of the judge, lawyers raised questions regarding the validity of the *waraqas* between Saif and Abdullah's heirs. Having accumulated experience with property-related disputes, Rabadina argued that the document was invalid on two grounds: first, the property was not sufficiently described and was unknown to both the parties; and secondly (and perhaps more importantly) that Abdullah's heirs' were wanting in their capacity to give possession – an essential element of the sale. The judge very quickly agreed; the attempted sale, he argued, was ineffective on the grounds that the sellers did not enjoy possession of the property at all. "According to the Mohamedan [sic] Law of all schools," he stated, "it is an essential condition of any

⁶⁷ Cooper, *From Slaves to Squatters: Plantation Labor and Agriculture in Zanzibar and Coastal Kenya, 1890-1925* (Portsmouth, NH: Heinemann, 1997) p. 102

⁶⁸ I will explore the complex transactions between Saleh bin Sulaiman, Abdullah bin Salaam, Abdullah's heirs and Saif bin Hamoud in much greater detail in the next chapter.

valid sale that the vendor should be able to give to the purchaser actual or constructive possession of the subject matter.”⁶⁹

The judge’s assertion that a sale could be valid if it simply involved “constructive possession” is worth commenting on. The concept was a distinctly English one – a legal fiction used to describe a situation in which a person enjoyed control over a property, moveable or otherwise, without necessarily being in physical possession of it.⁷⁰ By asserting that a seller only needed to transfer constructive possession of a property for the transaction to be valid, the judge understood possession in the *waraqā* to be a fiction. The notion had been floating around British courts in Zanzibar for some time. From as early as 1865, the British Consul noted the widespread phenomenon of British subjects entering into sales transactions “where the property sold is not actually taken possession of by the purchaser.”⁷¹ Their ability to attach legal meaning to the practice, however, took much longer. Only in 1908 did a Mombasa judge note that in the mortgage transactions on the East African coast “under the fiction of possession given and returned” the mortgager often remained in physical possession of a property even if the deed described a complete transfer of possession.⁷²

⁶⁹ *Seif bin Hamoud vs Mohamed bin Abdulla and Others* (1923) 3 ZLR 21

⁷⁰ One can enjoy both physical and constructive possession at the same time. A person whose car is in his driveway and whose car keys are in his pocket, for example, has both physical and constructive possession of his car. If he left his car at his friend’s house, he would no longer have physical possession of his car, but would retain constructive possession. See also Mark Wonnacott, *Possession of Land* (New York: Cambridge University Press, 2006) pp. 8-12

⁷¹ Notification by R.L. Playfair (10 July 1864) ZNA AA 3/22

⁷² *Abdulla Hashim & Co. vs Mahomed Abdulla Boke* (1908), 2 EALR 137

To call the nature of possession in a *khiyār* contract fictional, or even simply constructive, was an important semantic move. For although the practice of *khiyār* around the Indian Ocean might have seemed like a fiction to a judge steeped in a common-law tradition, it was not. The notion of a fiction – particularly with regard to possession in a sale contract – had no basis whatsoever in Islamic jurisprudence. While Muslim jurists might have allowed some flexibility in how people maneuvered around nominal contracts to one another, they were generally opposed to practices that obfuscated the complex bundle of rights and liabilities that constituted a sale contract. The notion of constructive possession, which shielded the purchaser from liability for damage to the object, would have been rejected outright on the grounds that the seller, having taken possession of the object, was responsible for its integrity. The *khiyār* contract, however, was no longer theirs to claim: having been rendered into a mortgage, it had become a financial instrument whose rights and liabilities were determined by English and Anglo-Indian statutory and case law, and whose very epistemological foundation was shaped by English legal concepts.

Fictionalizing Rent

The construction of fictive possession marked an important step towards the remaking of the *waraqā* in the East African courtroom, but it was not the only one – nor was it even the most important. Lurking in the *waraqā* was another fiction that, in the court's view, had much broader implications than fictive possession: the fiction of rent. In construing the *khiyār* a loan rather than a sale contract, judges had to contend with the role that rent

played in the transaction. In the eyes of judges eager to see the *khiyār* sale as a thinly-veiled mortgage, rent was simply another fiction – one that cleverly disguised the interest on the loan.

Even before the first dispute surrounding *waraqas* and commercial obligations came before a British judge, officials in the British Consulate were well-acquainted with the practices surrounding mortgages of urban property in the town of Zanzibar. The Registrar at the British Consulate had left himself and his successors a clear reminder of the types of disguised transactions that they would encounter. On the inside cover of the first register, which began in the year 1863, he wrote a brief description of the documentary maneuverings that Zanzibaris engaged in. In the first, he wrote “AB has sold the house to CD for \$1,000 for the period of one year bai khiyar [*bay‘ khiyār*] to him and his heirs; CD then executes another deed, renting the same house to AB for \$100 per year.”⁷³

The practice that the Registrar described in his notes had long been employed around the Indian Ocean by those looking to leverage their real estate to finance economic activities or to support their consumption needs. As noted in Chapters 2 and 3, rent formed a central part of the *khiyār* transaction, whether it was implicit (i.e. the right to a plantation’s produce during the sale period) or an explicit clause in which the debtor agreed to rent back the property for an agreed-upon sum per month or year. In the Arabic

⁷³ See the inside cover of ZNA AM 1/1

waraqas of Zanzibar and East Africa, *kātib*s referred to the act of renting as *al-qu‘d* – literally, the act of seating oneself. The Swahili equivalent was the related word *kod* or *kodi*, which simply meant “rent.” When the rental clause appeared on a *waraqa*, it was always brief, and easy to overlook: the *kātib* simply appended a line near the bottom of the document in which he noted that, after agreeing to sell the house or *shamba* via a *khiyār* sale, the seller rented the property back (*istaq‘ada* or *iqta‘ada*, depending on the *kātib*) from the buyer for a set amount per month. Here, the rent effectively acted as interest on the principal (the sale price), the main difference being that – at least insofar as prescribed rules dictated – the buyer could invoke his right to keep the property if the seller did not exercise his right to redeem it when the debt matured.

The brief description of the *khiyār*-rental transaction that the Registrar at the British Consulate in Zanzibar left for his successors may have marked the first moment that we know of in which a British official tried to render the practice into terms he thought were more legible, but it was certainly not the last. The reconstruction of the *khiyār* as a mortgage contract was, as described above, a gradual process that unfolded in British-headed courtrooms over the course of decades. The question of rent, however, had passed through the courtroom without comment for most of the period under examination. British judges and lawyers readily acknowledged that rent effectively stood in for interest in most *khiyār* transactions and hardly ever debated it. Since construing the

khiyār as a “mortgage by conditional sale” under the Transfer of Property Act, judges continually upheld creditors’ right to rent or *kod* as a matter of course.⁷⁴

The question of how much interest someone could charge also frequently passed by unnoticed. When a transaction explicitly involved interest – as in the interest-bearing promissory note transactions between Indian merchants – courts set the nominal interest rate at between 6 and 9 percent.⁷⁵ However, they did not subject rent on *khiyār* transactions to the same limits. *Khiyār*-rental contracts from the years 1909 and 1910 show wide variations in the amount a creditor could demand as rent – variations, it seemed, that depended on the type of property mortgaged, the sale price (i.e. the principal amount loaned) and perhaps other considerations as well. Those mortgaging mud huts for one year, for example, often paid a rent equivalent to around 10 percent per month; those mortgaging larger *shambas* for 7 years paid between 15 and 25 percent of the sale price in rent per year.⁷⁶

As British courts increasingly allowed for the *khiyār* transactions to stand over even after their maturity date, the rent due to creditors grew to occupy an ever-larger space in mercantile account books. By the 1920s, British officials and lawyers on the island began expressing deep concerns over the amount of interest moneylenders charged

⁷⁴ For a review of these, see the court opinion in *Sheikh Burhan bin Abdulaziz El-Amawi vs Khalfan bin Salim El-Barwani and Another* (1929) 4 ZLR 90

⁷⁵ See also *Kesavji Damodar Jeram vs Lalji Mulji and Company* (1898) 1 ZLR 93, in which the judge noted that he had to “follow the usual practice in mercantile transactions in this Court and allow interest on the sum found due at 9 per cent.”

⁷⁶ See rental contracts from ZNA AM 1/10

their debtors as the world economy took a turn for the worse growing numbers of Arab landowners grumbled about their inability to pay off even the interest on the loans they took (a subject I take on in much greater detail in Chapter 7). Although some proposed possible solutions to the problem, most recognized that the financial practices that prevailed in Zanzibar tended to obscure the amount of interest that a debtor owed and paid.⁷⁷

One case forced them to clearly articulate their views on the role that interest played in the changing regional economy. In the summer of 1929, after several years of debates surrounding interest on loans, the children of a recently-deceased Arab planter filed a suit against the *qāḍi* Shaikh Burhan bin Abdulaziz Al-Amawi for a Rs 13,000 debt due to their father's estate – Rs 3,000 of which, they claimed, was rent (or *kod*) for three years (at the rate of Rs 1,000 per year). As a *qāḍi* familiar with *khiyār* sales, Al-Amawi was able to counter the claim well: he retorted that because *kod* constituted interest on the loan, and because the law that governed the transaction was that of Islam, the claim was for *ribā* and was thus void. Having already paid Rs 5,000 in *kod*, he only owed what remained of the amount loaned – Rs 5,000.⁷⁸

At the time he made it, the court could have hardly taken Al-Amawi's claim seriously. By 1929, courts in the region had for decades allowed their Indian subjects as

⁷⁷ "Limiting by Law the Rate of Interest on Loans," ZNA AB 14/2

⁷⁸ *Sheikh Burhan bin Abdulaziz El-Amawi vs Khalfan bin Salim El-Barwani and Another* (1929) 4 ZLR 90. The amount, Rs 13,000 came to roughly £1,300. When considering that a clove-picker in Pemba in 1920 could expect to earn around Rs 2 a day, Rs 13,000 constitutes a large loan.

well as subjects of the Sultan to claim the rent due on *khiyār* transactions. And indeed, to the judge presiding over the Al-Amawi case, the *qāḍi* had no leg to stand on in making his claim that his *kod* payments were towards paying off the amount borrowed rather than the interest on the loan. “The Mohammedan subjects of His Highness,” he wrote, “were in the habit of entering into these *Beikhiar* [sic] transactions knowing full well their nature and being prepared to pay *kod* for the use of another man’s money.” The whole system of the *khiyār* sale with a stipulation for *kod*, he contended “was a polite fiction to enable persons needing money to obtain credit without incurring the possible guilt of dealing in transactions by way of interest.” As such, the plaintiffs’ claims for *kod* had to be admitted – but as *interest*, rather than rent, and thus subject to the now-customary 6 percent cap.

As obvious as it may have seemed in the bigger picture of scores of years and thousands of transactions involving payments that amounted to interest, the judge’s claim that courts were to treat *kod* as yet another fiction operating in the *waraqā* marked an important step towards confirming the status of the *khiyār* sale as an interest-bearing mortgage. For the judge, however, the step signaled a much more important move. In his view, the time had come for Muslim jurists to abandon altogether the prohibition against interest in commercial transactions. “Credit,” he declared in a long opinion following his judgment, “is the life’s breath of modern commerce, and there can be no credit without interest. If, therefore, the modern Moslem is to take part in the commercial life of the community, it is necessary that he should be freed from the alleged prohibition against

the taking of interest.” Although he was careful to note that he was not advocating usury, he expressed doubt “as to whether an ordinary fair trade interest is really the *riba* which was disapproved by the Prophet.”⁷⁹

The judge advocated an altogether different conception as to what practices Muslim jurists might have directed the prohibition of *ribā* against. He began his exposition by drawing on Thomas Patrick Hughes’s *A Dictionary of Islam*, published in London thirty years earlier, in which the author defined *ribā* as “an excess according to a legal standard of *measurement*, or *weight*, in one of two *homogenous articles* opposed to each other in a contract of exchange and in which such excess is stipulated as an obligatory condition on one of the parties *without any return*.”⁸⁰ Hughes’s definition, the judge argued, would not have included fair interest on a loan of money. His own understanding of interest was that it was money paid for the use of someone else’s money, and he contended that “a man who borrows money for a term, and stipulates to pay interest thereon, does not seem to me to be stipulating to re-pay a larger sum without any return, because he has the use of the lender’s money during the term.” In fact, he argued, the man who refused to pay for the use of such money “might himself be considered guilty of an act in the nature of *riba*.”

The judge was aware that his opinion regarding *ribā* went against centuries of Islamic jurisprudence on the matter, but was quick to declare that he was not alone in his

⁷⁹ *Sheikh Burhan bin Abdulaziz El-Amawi vs Khalfan bin Salim El-Barwani and Another* (1929) 4 ZLR 90

⁸⁰ Thomas Patrick Hughes, *A Dictionary of Islam* (London: W.H. Allen & Co, 1895) pp. 656-657

position. As with those before him, he turned to India for answers and found an ally in the figure of Sir Syed Ahmed Khan, a nineteenth-century Indian jurist and prominent Muslim reformer. The judge had recently read a translation of portions of Khan's exegesis of the Quran, in which the author mulled over the question of whether the prohibition of *ribā* included all interest-bearing transactions. "The conclusion that one gathers from the words of the learned commentator is that usury (in the sense of extortionate interest), and loans which are in the nature of "grinding the faces" of the poor, are contrary to the law of God," the judge asserted, adding that "ordinary trade loans at reasonable interest are not prohibited by the Holy *Quran*." In Khan's commentary, he declared, one found what he considered to be "one very hopeful augury for the future of Islam."⁸¹

The judge's long opinion on the place of interest in Islamic doctrine was, to him, a necessary justification of a practice that courts in the region had all but enshrined in commercial law for decades. To deny that rent in a *khiyār* transaction was anything but interest would fly in the face of all common sense and, more importantly, would leave the practice of the *khiyār* completely unregulated. By admitting that *kod* or rent constituted a legal fiction designed to mimic the functions of interest in a standard mortgage, he thought, judges could then limit the amount of interest a creditor was allowed to charge,

⁸¹ *Sheikh Burhan bin Abdulaziz El-Amawi vs Khalfan bin Salim El-Barwani and Another* (1929) 4 ZLR 90

thus moving closer to the true spirit of the prohibition against *ribā* as modernizing Muslim jurists understood it.

Not everyone, however, expressed the same enthusiasm about tampering with a commercial instrument that had by the late 1920s become deeply entrenched in East African commercial society. A number of judges were uninterested in limiting the rate of interest on the loan, or even regarding *kod* as simply another fiction. Faced with a similar issue less than a year after Al-Amawi's case, one judge held that *kod* had to be interpreted as precisely what the parties represented it to be – rent for a property leased. Another judge contended that the judge in Al-Amawi's case “treated *kod* as a fiction for interest throughout, the judgment even going to the extent of awarding 6 per cent *kod* on the decree, a concession hardly warranted... by Section 29 of the Civil Procedure Decree.” More importantly, it unnecessarily complicated the court's ability to deal with disputes surrounding the *khiyār*, in which rent took on too many different forms to group under the uniform heading of interest. After reflecting on the many decades of court decisions surrounding the *khiyār* sale, the judge wrote that “to call *kod* interest involves two fictions in the document: the fictitious giving of possession and a fictitious name for interest. One, I think, is enough.” *Kod*, he asserted, was to be treated as rent and awarded as such, irrespective of the rate of interest it effectively amounted to.⁸²

⁸²*Mahomed bin Mahfuth El-Fided by his attorney Oman bin Abdulla Gurnah vs Abdulla bin Salim bin Mbarak Ba-Saleh of Chwake (1930) 4 ZLR 9*

Up to and through 1930, then, there appeared to be little consensus among judges on the *kod* issue – and on regulating interest more broadly, as we shall see in Chapter 7. However, irrespective of their position on the matter, all of them awarded returns on loans, upholding creditors’ claims. Whether the courts labeled the returns interest or rent, and whether or not rent constituted a legal fiction for interest, was inconsequential to the bigger picture: to keep the economy running smoothly, a creditor had to have some guarantee that he could effectively pursue his claims in court. Anything short of that – and certainly anything that amounted to economic justice on behalf of the debtor – would have been detrimental to the smooth functioning of commerce. And the decades of decisions on *khiyār* sales amounted to precisely that: a guarantee that the holder of a *khiyār* claim could come to a British court and expect that the judge before him would award the principal plus whatever interest had accumulated over the course of his relationship to his debtor.

Conclusion

In recollecting his appointment to the High Court in the East African port town of Dar-es-Salaam in 1920, the British judge Gilchrist Alexander marveled at the type of law he administered in court. “Our law,” he wrote, “was based on the law and procedure of India,” adding that “it struck me as somewhat amusing that for so many years, I should have been administering justice according to English law to Indians in Fiji... and that now I should be called upon to administer justice to Africans according to Indian law.” Its introduction to East Africa, he noted, had a traceable path. “The Indian form of law in

Tanganyika, as in other parts of East Africa,” he wrote, “is explained by Zanzibar’s former connections with the High Court of Bombay. From Zanzibar legal influences spread to the adjoining mainland of Africa.”⁸³

The phenomenon that Alexander referred to had much broader dimensions than perhaps even he could have fathomed. By the time he sat down to write his memoir, the juridical field in both Zanzibar and East Africa had become thoroughly Indianized. The growing presence of Indian lawyers and court personnel, and entrenchment of statutes imported to the region from India, and indeed the very lexicon of Anglo-Indian jurisprudence reshaped the legal underpinnings of East African commerce and their very perceptions of Islamic law. This institutional framework, and the broader Anglo-Indian legal experience that hovered over the developing East African legal bureaucracy, weighed heavily in lawyers’ and judges’ understanding of Islamicate legal and commercial practices and categories on the coast. By 1930, at the precipice of the arrival of the worldwide economic depression to the shores of East Africa, British judges and lawyers had effectively remade the *waraqā* – the single most important and dynamic commercial instrument in the region – into an English mortgage deed, an instrument that they were far more familiar with and more comfortable regulating in their courtrooms.

In remaking the *khiyār*, judges and lawyers were doing much more than simply re-clothing old practices in a new garb; they reshaped the very obligations that

⁸³ Gilchrist G. Alexander, *Tanganyika Memories*, p. 24

underpinned commercial practice in the region. Through a direct reading of Islamic commercial *fiqh* within the framework of Anglo-Indian case law, statutes and jurisprudence, British judges and lawyers re-interpreted the practices surrounding the *khiyār* sale in a light that they felt gave it the fixity necessary for modern commercial life. With the broader objective of creating an environment that favored increased commercial activity in a burgeoning imperial regional economy, judges and lawyers (many of whom were litigating on behalf of creditors) built a property rights regime that moved away from the preservation of the commercial relationship to one that established clearly-defined and court-enforced rights and liabilities.

More broadly, in redefining the *waraqā* and the practice, they effectively wrested interpretive control over it from merchants, *qāḍīs*, jurists and *kātibīs*. As soon as the *waraqā* and the narratives of practice that surrounding it entered the courtroom, it became an altogether different document – one subjected to a much more rigid legal framework than had ever been the case before. If the *waraqā* had for most of the nineteenth century been a dynamic, malleable instrument that commercial and legal actors could shape and reshape according to the exigencies of economic life, by 1930 its place in law had become more precisely defined, and the room for its adaptability circumscribed.

All told, the changes brought about in the British courtroom over the course of the late-nineteenth and early-twentieth century effectively remade the place of the *waraqā* in the legal arena. They took practices that had been taking place on the periphery of the juridical field and reformulated them in such a way that it made them palatable to and

more easily enforceable in what had effectively become the field's new center. There were, however, clear limits to these changes. If judges and lawyers had appropriated interpretive authority over the *waraqqa* in the courtroom, they had less control over what the *waraqqa* meant *beyond* the court's jurisdiction. The farther commercial actors moved away from the courtroom, the more interpretation over the *waraqqa* they were able to maintain in a juridical world that, if changing, remained uneven.

CHAPTER 6: THE SHORT ARM OF THE LAW

In March 1903, the Zanzibar Arab Saleh bin Sulaimain took a *waraqa* from his debtor Abdullah bin Salaam. Abdullah had been indebted to a *Bania* moneylender for several years, and had been servicing his debt with the yield from his clove plantation on the island ever since. His reason for approaching Saleh for a loan of Rs 6,000, however, remains unclear. When Saleh recounted the story in front of a British judge 11 years later, he claimed that he did not know what Abdullah, who had died years before, needed the money for. All he knew, he said, was that Abdullah had property in Rustaq, in Oman, worth that amount, that he was willing to put it up as security for the loan, and that he promised him an annual rent of Rs 600.

The judge, however, did not believe Saleh. The *waraqa* that Saleh brought to court to prove his claim against the administrator of Abdullah's estate had been damaged, and court officials doubted whether it truly established the claims to the Oman property that Saleh made. Moreover, dates in the copy that he held had been altered from the original. Even if the judge took the *waraqa* to be genuine, moreover, it was not certain that it actually transferred the property over to Saleh. Although Saleh claimed it did, the estate's administrator insisted that Saleh drew up the *waraqa* up to deceive people in Oman into giving him the property to so that he could collect the rent and hand it over to Abdullah, purportedly as his agent. The judge felt inclined to believe the estate administrator: there were too many holes in Saleh's story. He ruled that the *waraqa* could not have been what Saleh claimed it was, and in 1911, a year after Saleh brought the case,

decided it against him. Saleh might have been able to deceive local authorities in Oman, but he could not fool the court at Zanzibar.¹

The judge's decision, however, by no means foreclosed additional legal maneuvers based on Saleh's claim. Seven years later, Abdullah's children were brought to court by Saif bin Hamud, a Zanzibari Arab to whom they had ostensibly sold their father's property in Oman. The sale came with a condition: that Saif wrest control of the property from the very same Saleh bin Sulaiman, whom they claimed had been occupying the property illegally in Oman. The court's decision against Saleh seven years earlier, it seemed, did not change his claim's status in Oman. Hundreds of miles across the ocean, legal authorities recognized the validity of the *waraqah* that he held, and he was able to retain control of the property for the better part of a decade. Moreover, authorities in Oman rebuffed Saif's attempts at gaining control of the property, telling him that he could have the property if he paid Saleh the MTD 1,400 (equivalent to Rs 6,000) that Abdullah had originally owed him.² Although the court in Zanzibar decreed that Saleh had never gained legal ownership of the property, it could do little to enforce its decree in a place as far away as the interior of Oman, and Saleh knew it.

Saleh bin Sulaiman was hardly the first person to take advantage of the limits to the jurisdiction of British courts in the Indian Ocean, nor would he be the last.

Throughout the late-nineteenth and early-twentieth century, actors from around the

¹ *Saleh bin Sulleiman vs the Administrator of the Estate of Abdulla bin Sallam (1910)* ZNA HC 5/14 A and B

² *Seif b. Hamoud vs. Mohamed b. Abdulla and Others (1923)* 3 ZLR 21

Indian Ocean recognized that there were places that court decrees could simply not reach, and played on those limitations to assert different understandings of economic justice and contractual order. Despite the dense social and economic networks that linked the coasts and hinterlands of the Indian Ocean together, and despite the many changes to the juridical arena during the last quarter of the nineteenth century, the writs of Indian Ocean courts could only run so far. As Saleh's story shows, the Gulf remained in many ways far away from East Africa, highlighting the uneven nature of the nascent Anglo-Indian legal regime in the Indian Ocean. In this fragmented legal arena, actors who were unhappy with decrees handed down to them by a British judge in East Africa, India or elsewhere could simply leave for another port, where they could remake themselves as economic actors and re-position themselves within a changing commercial economy.

This chapter moves the focus of the analysis away from the internal dynamics of the courtroom itself – the subject of the previous chapter – to the juridical terrain within which the courts were situated. More broadly, it moves from reading courtroom decisions as authoritative decisions of legal meaning to imagining the law as an arena within which participants contended and bargained for multiple visions of justice.³ In doing so, it highlights not how the courts reshaped the legal framework of commercial activity, but rather how a range of economic actors shaped the workings of the court by strategically drawing on it but also by artfully maneuvering around it. Even as British courts were able

³ In imagining the law as an arena of conflict, I draw heavily from Hendrik Hertog's seminal article "Pigs and Positivism," *Wisconsin Law Review* (1985) pp. 899-935

to consolidate their writ in East Africa and the Persian Gulf, actors still managed to exploit jurisdictional ambiguities and lacunae in pursuit of their own interests.

A key aspect of Indian Ocean actors' ability to navigate around the region's juridical landscape was their spatial mobility, especially among those who occupied the lower rungs of the socio-economic hierarchy in the Indian Ocean – namely mariners and ex-slaves. Members of these groups frequently interacted with the changing juridical arena, sometimes by engaging the courts directly and other times by sidestepping them altogether. By moving across jurisdictions to evade particular legal obligations or to escape the clutches of their creditors, this economic underclass retained a considerable degree of economic autonomy. In short, they utilized their spatial mobility to renegotiate their position within a economic system that tried to circumscribe their social mobility. British courts and officials thus only enjoyed a limited capacity to transform the commercial world around them – a constraint placed upon them by mobile Indian Ocean actors.

At the same time, the chapter shifts the narrative's geographic focus from East Africa to the Gulf – particularly, Muscat, the Trucial States (port cities north of Muscat that today make up the United Arab Emirates) and Bahrain. As I make clear throughout, each of these ports had its own distinct legal history, shaped by variables peculiar to it. However, when one steps back from the discreet controversies in one port or another, broader trends and narratives emerge that blur these distinctions. If the juridical arena in East Africa during the late-nineteenth and early-twentieth centuries increasingly reflected

the perspectives of Anglo-Indian courts, judges, and lawyers, as well as their distinctive legal concepts, that of the Gulf remained grounded in local institutions run by local actors, many of whom dispensed their own understandings of procedural and substantive justice.

Unlike East Africa, where commercial obligations overwhelmingly (and increasingly, during the period under examination) emerged out of an agrarian economy, the Gulf economy rested on maritime industries – the pearl dive and the dhow trade. Agriculture formed a relatively minor part of economic life in the region. Thus, where commercial obligations in East Africa might have involved a farmer and his financier, those in the Gulf revolved around the maritime laborer and his dhow captain (*nakhoda*). Underpinning these obligations were not the land and access to the rents it provided, but the financial investments made in a surprisingly mobile labor force.

Actors in the Gulf also made minor distinctions in the nomenclature used to describe the physical manifestation of the commercial obligation, the *waraqā*. Whereas actors in East Africa increasingly used the term *waraqā* to refer to the document that reflected an acknowledgement of debt coupled with a *khiyār* sale transaction, in the Persian Gulf the term referred to a simpler obligation, from a mariner to his *nakhoda*. Alternatively called a *barwa*, *waraqat barā'a* (literally, discharge paper) or simply *waraqā*, the document declared the amount which a mariner owed his *nakhoda* and

spelled out the terms of repayment (see Chapter 3 for more details).⁴ Unlike East African or Omani *waraqas*, their most important intended audience was not the *qādis* and religious establishment, but rather other *nakhodas*, whom the declaration explicitly addressed. In their functions, however, diving *waraqas* had the same basic force as the simple *iqrār waraqas* we saw in Chapter 2: they constituted a written manifestation of a mariner's obligation to his *nakhoda*. And in the doggedly-fragmented juridical landscape of the Gulf, the diving *waraqas*'s legal significance was not for the nascent British courts to decide. Even when those documents came before a British judge, obligations were for commercial actors, not British courts, to determine.

⁴ As in Chapter 3, I will refer to these documents as diving *waraqas*, both for the purposes of continuity and to highlight the similar obligations that underpin both *barwas* and *khiyār waraqas*.



Figure 3: The Persian Gulf
 (Perry-Castaneda Library Map Collection, University of Texas, Austin)

Mapping Law in the Nineteenth-Century Gulf

The juridical landscape of the Gulf during the nineteenth century was hardly as clean as a modern map, pictured above, would suggest. Instead of clearly-demarcated boundaries, the Gulf in the nineteenth century was riddled with complicated, overlapping jurisdictions, as multiple actors managed to carve out their own positions of authority. Legal institutions had an intensely decentralized, local character. Despite some complementarities, most tribunals enjoyed separate spheres, and so decided legal matters independently of one another. One incident illustrates this well: In November 1878, Nasir

Pasha Al-Sa‘doon, the Turkish Governor of Basra, wrote to the Bahraini ruler Shaikh ‘Isa bin ‘Ali, forwarding the claims of two merchants from Qatar against their debtors, who had fled to Bahrain.⁵ The Ottoman government had annexed Eastern Arabia less than six years before, and authorities quickly became embroiled in the complexities of economic and juridical life in the region. Having learned of the claims, the British Resident in the Gulf reproached Shaikh ‘Isa for allowing in the debtors, and extracted from him vague assurances that he would endeavor to do justice when possible.⁶ The Resident knew the futility of the concession: the ruler of Bahrain, he noted, was unwilling to press claims on behalf of the inhabitants of Qatar, whom he suspected would never reciprocate the gesture.

The core of the problem, however, went much deeper. Even if the Bahraini ruler was willing to act, “it would by no means be a simple matter for the Chief to settle the cases which relate to the pearl fisheries in a manner to satisfy the Turkish authorities,” wrote the Resident. The rules of the pearl fishery, he contended, were “administered by persons experienced in the Trade whose decision is considered binding”; the government or courts simply enforced their decisions.⁷ Even if a tribunal ruled that the debtors had absconded to Bahrain, the fragmented nature of jurisdiction on that island (and, indeed,

⁵ Nasser Pasha to ‘Isa bin ‘Ali (6 November 1875) MSA Political Department, 1876, Vol. 197, Comp. 358

⁶ ‘Isa bin ‘Ali to Gulf Resident (27 December 1875) MSA Political Department, 1876, Vol. 197, Comp. 358

⁷ Gulf Resident to the Secretary to the Government of India, Calcutta (17 December 1875) MSA Political Department, 1876, Vol. 197, Comp. 358

everywhere else in the region) greatly complicated any effective action on the ruler's part.

In the Bahrain-Qatar dispute, at least five different juridical actors had a stake in the matter: the Bahraini ruler, the Ottoman Turkish authorities, the British Resident in the Gulf, "regular courts" (i.e. the *qāḍi* courts) and the pearl trade tribunals, each working along its own axis. This fragmented juridical landscape resulted less from administrative inefficiencies or communication difficulties than from efforts by local actors to preserve a localized regime of law – a regime more deeply contextual and variable in its articulation than that which emerged in East Africa during the same period. In these localized legal systems, a range of different actors with varying economic and political interests sought to maintain sometimes-conflicting (but often complementary) visions of order – in part because of the specialized demands that different dimensions of life in the region placed on juridical actors, but also as a means towards reinforcing entrenched social hierarchies.⁸ From the perspective of the prospective litigant, these were less alternative forums among which one could "shop" for the most favorable judgment than they were different authorities for entirely different legal realms.

By calling the legal regime in the Gulf "localized" I want to draw attention to the multiple sources from which conceptions of order emerged: the rulers, the *qāḍis*, the

⁸ In my discussion here, I draw liberally from Laura Edwards' discussion of localized law in the nineteenth-century U.S. South. See Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill, NC: University of North Carolina Press, 2009) pp. 58-63

merchants and *nakhodas*, the British consular court – and, of course, the mariners themselves, who, as this discussion later illustrates, were able to preserve some autonomy for themselves within this world. In taking this view of the law, I emphasize the juridical dimensions of a range of different spheres of activity in the Gulf, but also map the terrain that gave mobile economic actors room to maneuver. Juridical authority in the Gulf thus did not flow downward from the ruler as they would in an Austinian model, but rather upward from a range of different authorities.⁹

In this regard, one must keep in mind that the domains of ruler and *qāḍi* were often distinct, and the types of conflicts they ruled on were different.¹⁰ Indeed, they even drew their authority from distinct sources: whereas the ruler’s legitimacy swelled from a recognition amongst local tribal heads of his position as *primus inter pares*, the *qāḍi* drew his from his recognition as an authority on Islamic law. The degree to which they operated completely autonomously, however, is hard to determine: one 1882 report noted that the *qāḍi* Shaikh Qasim bin Mihza‘ “adjudicated minor cases without confirmation by

⁹ The Austinian model of sovereignty is also the prevailing paradigm for understanding the classical Islamic polity. See also Aziz Al-Azmeh, *Muslim Kingship: Power and the Sacred in Muslim, Christian and Pagan Polities* (London: IB Tauris, 2001)

¹⁰ Among his areas of exclusive jurisdiction was the adjudication of inter-tribal affairs, for which he held a daily *majlis* or council attended by tribal heads and local notables. Although he also exercised ultimate authority over the other juridical spheres on the island – commercial and religious, the ruler’s exclusive authority was confined to a select number of affairs. In many ways, he functioned as the final court of appeal – although, as I will demonstrate later, his dependence on the support of notables, merchants, *qāḍis* and other juridical figures on the island constrained his ability to completely overturn other tribunals’ decisions. *Qāḍis* held their own, separate councils, either at home or in public spaces. From there, they issued judgments on matters similar to those adjudicated by the rulers, although their training in Islamic jurisprudence rendered them more qualified to discuss questions of marriage, divorce, inheritance, and the like. *Qāḍis* were sometimes also important actors in the commercial sphere: they frequently drafted or notarized commercial contracts between merchants, and sometimes issued opinions on commercial matters – although, as I demonstrate below, to little effect.

the Ruler of Bahrain and decided major cases by order, with the confirmation of the Ruler.”¹¹ Whereas the ruler often adjudicated high-profile cases, or cases that impinged on the realm of local politics, the *qāḍi*'s juridical realm, it seemed, was more limited to dispensing everyday justice.

The pearling industry constituted an altogether different arena – one structured not by Islamic legal precepts or by the dynamics of domestic governance, but by the logics of economic life: the delicate balance of risks and returns, shaped as much by natural hazards as by those of the more human variety. These considerations gave rise to a particular form of commercial and juridical organization – one that collapsed the distinction between commercial and legal actors. In Bahrain, the pearling industry, which formed the foundation of the economy, necessitated a stricter regulation of commerce, and the documentary record it generated was more voluminous. There, the adjudication of pearling disputes fell to under the jurisdiction of the *ahl al-sālifa* (literally, people of the matter – which I will refer to as the *sālifa* tribunal), established and headed by merchants and *nakhodas*, operating along an axis entirely separate from rulers and *qāḍis*. The separate domains of authority mapped themselves onto terrestrial space. Whereas the ruler held his *majlis* on the island of Muharraq, mercantile tribunals sat in Manama, the commercial center.¹²

¹¹ Report by Colonel E.L. Ross (1882) in Hassan Ali Radhi, *Judiciary and Arbitration in Bahrain* (London: Kluwer Law International, 2003) pp. 16-17

¹² Although there is very little on *sālifa* tribunals elsewhere in the Gulf, we know they existed in one form or another. There are mentions in secondary sources of a Kuwaiti *sālifa*, for example, although it seems

Merchants and *nakhodas* serving on the *sālifa* meted out decisions on the basis of mercantile custom (*urf*) – a malleable, unwritten body of rules deeply embedded within the socio-economic hierarchies prevailing in the maritime economy. To try and map out the precise substance of what constituted mercantile custom, especially as it related to the pearl diving industry, would be futile; no one person took the trouble to articulate it fully, precisely because of its changing nature.¹³ These men of trade, however, considered *urf* to be their *own* law: many of the rules governed debt relationships and obligations among merchants, between merchants and *nakhodas*, and between *nakhodas* and their mariners. While these arrangements embodied some of the principles of Islamic commercial jurisprudence (as noted in Chapter 1 regarding *dayn*), they generally worked to reinforce the rigid social hierarchies that governed economic activity.

The few descriptions that remain of the *sālifa* tribunal during the nineteenth century highlight its ad-hoc nature and local dimensions. One observer in the mid-1870s wrote that the *sālifa* in Bahrain consisted of “one or more old men, well versed in the

much looser in its constitution than even the Bahraini one. See Al-Hijji, *Kuwait and the Sea: a Brief Economic and Social History* (London: Arabian Publishing, 2010) pp. 18-19

¹³ One official noted at a later date that in the pearling industry “The matters of custom have never been coded and one gradually picks up bits of information about them as one goes along.” See Political Agent, Bahrain, to Gulf Resident (1 January 1927) IOR R/15/2/132. While some Gulf merchants have penned memoirs which detail the customs that underpinned the pearling industry, most of these were authored in the last few decades, and any claims they make regarding the rules surrounding the pearl dive must be seen as contingent. See also Al-Shamlan, *Tārīkh al-Ghaws*; Al-Zayyani, *Al-Ghaws wal-Tawāshah*, pp. 55-67; Al-Qitami, *Dalīl al-Mihtār*, pp. 213-214. These texts, although coming later than the period I examine here, still give an idea as to what the broader issues were that the pearl trade’s customary laws took on, and some of the concerns, particularly surrounding profit- and risk-sharing, are reflected in early reports on the pearl trade.

trade, who go by the name of ‘Salifah-ul-ghous’ [*sālifat al-ghawṣ*, or the pearl dive’s *sālifa*],” adding that it was “not a permanent appointment, the Court being convened when required and the Salifeh nominated by the Chief [i.e. the ruler].”¹⁴ That the ruler nominated merchants and *nakhodas* to serve on the *sālifa* tribunal should not be misconstrued as a significant form of oversight. One historian has noted that although “the ruler appointed the members of the diving tribunals... neither he nor the *qāḍi* could interfere in their judgment.”¹⁵ The notion is borne out by later accounts of the *sālifa*, which emphasized the stubborn autonomy displayed by those who served on the tribunal. The ad-hoc nature of court sessions and appointments only underscores the contextual nature of decision-making and dispute resolution in the tribunals. Operating without a standing body of merchants and *nakhodas*, tribunals dealt with issues only as they arose, and using whatever information was available at the time.

It is easy to write the *sālifa* off as corrupt or self-serving— and indeed, many outside observers did, seeing it as little more than an ad-hoc tribunal of merchants and captains meting out judgments based on floating conceptions of justice, or worse, cronyism. It is important, however, to appreciate what the structure of the *sālifa* tribunal accomplished and how it fit into the wider juridical landscape in Bahrain and elsewhere. If the *sālifa* tribunal generally privileged the *nakhoda*’s claims over those of the diver, it

¹⁴ Captain A.L. Durand, “Notes on the Pearl Fisheries of the Gulf,” issued as an appendix to the *Persian Gulf Administration Report, 1877-1878*, reproduced in *The Persian Gulf Administration Reports* (Slough, UK: Archive Editions, 1986) p. 30

¹⁵ Heard-Bey, *From Trucial States*, p. 217. Heard-Bey notes that it was only in matters of oath-taking that the parties were sent to the *qāḍi*.

did so with a view to reinforcing a hierarchical order that merchants and *nakhodas* equally perceived to be vital to the industry's longevity. As a laborer, the diver was, to those at the higher ranks of the credit chain, more expendable. That being said, the hierarchies that structured economic activity in the Gulf did not simply serve the interests of a few: as I discussed in Chapter 1, these hierarchies were crucial to reducing the uncertainty that went along with complex undertakings like the dive for pearls, and thus set in place incentives for merchants and *nakhodas* to hire hundreds of laborers with at least some assurances of protection.

That participants in the industry would vest judicial oversight in the hands of those directly responsible for financing and maintaining order within it was at least in part a concession to them based on their specialized knowledge of the rules of the pearling and dhow trades. In addition to complex chains of obligation that bound diver to captain and captain to merchant, the *sālifa* tribunal had to contend with complex and always-shifting cost- and profit-sharing schemes that underpinned both the pearling and dhow trades.¹⁶ The methods by which merchants weighed and valued pearls formed another realm of specialized knowledge – one that not every merchant or *nakhoda* could entirely grasp. The author of one mid-1870s report noted with frustration his inability to

¹⁶ In 1865, one observer described the pearling profit-sharing system as follows: “Each boat is a partnership, the profits being divided into ten shares, of which: the Owner and Captain get 2/10; the divers 3/10; the rope-holders 2/10 and the rest (3/10) is laid out for provisions. A few of these boat-men may reap independently the fruits of their own labors.” Gulf Resident to Secretary to the Government of Bombay (15 December 1865) MSA Political Department, 1866 Vol. 54, Comp. 14; descriptions of the system from later years show considerable change. See note 10.

ascertain the pricing system: “After a vain attempt of several days I have had to give up all attempts to understand these fluctuations of every sort, both of weights, coins, and value of pearls,” he wrote, adding that “the Arab merchants cannot explain them themselves, nor are the data they tender on all these subjects in accordance.”¹⁷ That merchants could not give standard prices for pearls indicated the deeply contextual nature of the market, and the shifting constellation of variables that determined a pearl’s sale price. For merchants, *nakhodas*, and mariners alike, then, adjudication in commercial disputes required the assistance of a body of men deeply entrenched in the industry and sensitive to the confluence of factors that shaped the mutual obligations which underpinned it.

At the same time, the appointment of merchants and *nakhodas* to adjudicate disputes surrounding commercial obligations points to an active commitment by those actors to preserving the rigid hierarchy that permeated the pearl trade. The *sālifa* effectively replicated the structures of authority that governed the two major loci of economic activity: the dhow and the marketplace. Those whom economic actors would have recognized as exercising authority over the commercial arena in their capacity as overseers and financiers were the same individuals who meted out decisions in the tribunals. The juridical and commercial fields thus mutually reinforced one another:

¹⁷ The same report described in general terms the pearl weighing and valuation system; see Durand, “Notes on the Pearl Fisheries of the Gulf,” pp. 39-40. The description matches those from later years. Broadly speaking, a merchant made use of a series of sieves to sift through his pearls and sort them according to size. He then weighed each pearl, the standard measurement being a *chō*, a unit which varied from port to port. Al-Zayyani, *Al-Ghaws wal-Tawāshah*, pp. 181-187

commercial authority buttressed judicial authority and *vice versa*, encouraging the idea that the pearl dive constituted an entirely separate sphere of legal administration.

Faced with such a densely-populated and fiercely-segmented juridical landscape, early British consular courts could only take an accommodative stance. In the first decades following their entry into this well-populated juridical arena, the British in the Gulf fared similarly to their early counterparts in East Africa: the court was simply one of many tribunals, dependent on others to effectively adjudicate the cases before it. In both Muscat and Bahrain, the Government of India delegated responsibility for the settlement of British subjects' commercial disputes to its "Native Agents" – prominent local merchants who represented the British Indian government in local affairs. In Muscat, the Government of India appointed a Jewish merchant named Khoja Hezkiel bin Yousef to see after the affairs of British-protected Indians during the mid-nineteenth century. Until his dismissal in the 1860s, Hezkiel performed a number of judicial duties: he arbitrated in disputes between local merchants and British subjects, oversaw bankruptcy proceedings, and represented the British Indian community in discussions with the Sultan.¹⁸ In Bahrain, the Native Agent lasted for much longer: throughout most of the second half of the nineteenth century, the post was taken up by a prominent Persian merchant, usually from the Safar family.¹⁹

¹⁸ "Complaint Against the Conduct of the Native Agent" MSA Political Department, 1848, Vol. 90/2096, Comp. 666. No mention of Hezkial exists in the secondary literature on Muscat.

¹⁹ On Native Agencies in the Gulf, see Onley, *The Arabian Frontier of the British Raj*, esp. pp. 122-127

The fact that the nascent Government of India depended on a local merchant to see to the commercial affairs of British subjects, most of whom were British Indians amounted to a concession on the part of British officials that disputes were best left to local actors to adjudicate. The judicial process illustrated as much. In Muscat, the Native Agent depended heavily on the cooperation of the Sultan, local *qāḍis*, and other prominent merchants when it came to commercial disputes.²⁰ In Bahrain, the Native Agent similarly tended to act only as an arbitrator, and frequently referred disputes to the *majlis* or *sālifa* – tribunals which themselves often included one or two *Bania* merchants.²¹ The Native Agent’s position as a local notable, however, gave him privileged access to others: in both Bahrain and Muscat, Native Agents often turned to the ruler or another high-ranking official to enforce their decisions.²² The Native Agent’s position as an influential merchant was often a key strength, allowing him – and, by extension, the British Government – to tap into this dense juridical landscape.

At the same time, however, the embedded nature of the Native Agent greatly weakened his effectiveness as a British representative. In both ports, Indian traders frequently accused Native Agents of favoring their own personal interests over those of their constituents. Banyans in Muscat frequently wrote to officials in Bombay complaining that Hezkial either misrepresented their interests to the Sultan and other

²⁰ See, for example, “Complaint Against the Conduct of the Native Agent” MSA PD 1848 Vol. 90/2096, Comp. 666

²¹ Onley, *The Arabian Frontier of the British Raj*, pp. 124-125

²² Fuccaro, *Histories of City and State*, p. 80; Onley, *The Arabian Frontier of the British Raj*, p. 126

merchants or ignored their claims altogether when it suited him to do so.²³ In Bahrain, the Native Agent faced similar charges, all of which stemmed from the perceived conflict of interest between his political duties and his commercial affairs.²⁴ The complaints did not only come from the Agent's constituents: local authorities also contended that the Native Agents blindly upheld the rights of British subjects, and that they frequently issued orders without having consulted the British Government.²⁵ Over time, in both Muscat and Bahrain, so many complaints piled up against the Native Agents that the British Government decided to replace them with salaried British officers: in Muscat, a British officer replaced Hezkial bin Yousef in 1862; in Bahrain, the last Native Agent was replaced in 1899.

British juridical actors also had to contend with the presence of other imperial jurisdictions over which they had little or no influence – and there were certainly many to choose from. In most cases, British Indian merchants' absconding debtors chose to seek refuge in Hasa or Qatar, both of which were on the East Coast of Arabia, an area that had nominally been under Ottoman jurisdiction since the early 1870s.²⁶ British officials in

²³ See also Petition from Bahman Ludda Anandass to the Secretary of the Government of Bombay (23 February 1848) MSA Political Department 1848 Vol. 90/2096, Comp. 666

²⁴ Onley, *The Arabian Frontier of the British Raj*, pp. 192-200

²⁵ See also Letter from Captain Hamerton to Khoja Hizkiel (30 March 1852) MSA Political Department, 1853, Vol. 91, Comp. 274

²⁶ For more on Ottoman expansion into the Persian Gulf, see Frederick Anscombe, *The Ottoman Gulf: the Creation of Kuwait, Saudi Arabia and Qatar* (New York: Columbia University Press, 1997). The extent of Turkish authority in the area was unclear: local rulers and *qādis* still exercised a considerable degree of authority, but often declared their subservience to the Ottoman governor of Basra when pressed by British authorities for action. In many instances, British officials were hamstrung by their diplomatic relations with Istanbul, and were unwilling to encroach on what they had to respect as Turkish sovereignty. At the same

Bahrain could do little to enforce their decrees in East Arabia. For example, in 1882, when the ruler of Qatar (a pearl merchant in his own right) shut down the shops of Indian traders in the Doha bazaar and kicked them out of the town, the Gulf Resident at Bushire had the wherewithal to force him to apologize and pay up to Rs 8,000 in indemnity – almost one month’s public revenue for Bahrain, one of the Gulf’s richer ports.²⁷

However, when the traders returned to Qatar, they found that the authorities had given away their houses and that the ruler refused to help them recover their outstanding claims against others. He referred them to the Turkish *qāḍi*, who offered them some protection but admitted that he did not exercise any real authority over the matter. Five years later, when British officials decided to retaliate against the ruler’s persistent harassment of the *Banias* in his territory by attaching his pearls and specie in Bahrain, the ruler was able to get the Turkish Governor of Hasa to intervene on his behalf.²⁸

The problem of enforcement in Eastern Arabia proved so vexing that even the Government of India would not intervene in protracted disputes. In 1886, a Bombay merchant lodged a claim against a Gulf pearl trader for almost Rs 40,000 – a claim, he

time, however, they had to contend with the fact that Turkish officials in the region were either unable or unwilling to recover British subjects’ claims and properties. In those instances, where “vague claims of jurisdiction which have no practical enforcement, and serve merely as a protection for lawlessness and aggression on the part of the inhabitants of the territories so claimed,” British officials claimed that they would either contest Turkish jurisdiction or ignore it altogether. *Records of Qatar*, Vol. 3, p. 136

²⁷ I calculate this from the amount the ruler received from his *Bania* customs masters. In Qatar, it would have likely been worth more.

²⁸ *Records of Qatar*, Vol. 3, pp. 215-218

noted, that the pearl trader admitted to him in writing. Upon being notified of the claim, the Gulf Resident wrote to his superiors in India that “the person against whom [the Bombay merchant] prefers a claim is an inhabitant of El-Katr [sic] and not within the jurisdiction of Bahrain.” Although the Resident could pursue Indian claims against those in Bahrain, he was constrained in his ability to do the same outside of it.²⁹

Rulers, *qādis*, imperial officials, merchant tribunals, and consular courts, then, all operated shoulder-to-shoulder in the Gulf. For inhabitants of the region, law thus came from many sources, and served multiple purposes. In a word, it was localized. At the same time, however, law remained widely variable in its nature, shifting from one context, one moment, and indeed one jurisdiction, to another. Despite the ability of local economic actors to rely on one another to flesh out the substance of a case and mete out local understandings of justice, they possessed few good options when disputes, or even actors, crossed jurisdictional boundaries. As a result, actors who crossed those boundaries could increase their leverage as they sought to renegotiate their position within the hierarchies of economic life in the region. However, if the system functioned well for actors who occupied lower rungs of the socioeconomic hierarchy, it was less efficient in capturing the windfall profits that characterized the pearl dive during the third quarter of the nineteenth century.

²⁹ Petition by Ebrahim Hassum to the Chief Secretary to the Government, Bombay (Bombay, 18 August 1886); Assistant Secretary to Government of India to Chief Secretary to the Government, Bombay (2 December 1886), MSA Political Department, 1886, Vol. 152, Comp. 1434

Obligations on the Run in the Southern Gulf, c. 1868-1880

In the pearling towns that dotted the Southern Gulf, the gaps in the juridical landscape were immediately clear to visiting British officials. In a visit to the town of Abu Dhabi in 1868, just at the close of the summer pearling season, Lewis Pelly, the Gulf Resident, made note of a complaint voiced by Zayed bin Khalifa, the town's ruler. Zayed, the Resident wrote to his superiors in Bombay, grumbled about the common practice among pearl divers to "receive an advance from the Chiefs or Merchants of one Port and then at the conclusion of the season, to levant [i.e. abscond] with their gains to some other port."³⁰ The ruler's complaint was not his alone, nor was it unique to his port. The disappearance of indebted pearl divers became increasingly common throughout the Gulf during the nineteenth century. The basic story recurred again and again: a diver, after receiving his advances for the season from a *nakhoda*, absconded to a nearby town, where, claiming to be free of all obligations, he could take on loans from *nakhodas* there; his obligations to his previous *nakhoda* remained outstanding.

This pattern of absconding divers demands close attention because it so clearly reveals both the jurisdictional gaps that bedeviled the Gulf's localized legal regimes and the dexterity with which local actors navigated their legal and commercial world. Increasingly throughout the second half of the nineteenth century, divers and other mariners identified these jurisdictional lacunae and took advantage of them – not simply

³⁰ Gulf Resident to the Secretary to the Government, Bombay (25 September 1868) MSA Political Department, 1868, Vol. 97, Comp. 64

to rob their *nakhodas*, but as a strategy aimed at opening up further economic possibilities. Perpetually indebted to their *nakhodas* (as described in Chapter 1), divers had few, if any, opportunities to ever start from a clean slate. By leaving to another port, a diver would enjoy some respite from his burdensome debt, however brief it might be.

To the *nakhodas* and rulers who complained to British officials at the time, absconders were little more than criminals – scoundrels who took money with no intention of performing the obligations they incurred in doing so. By accepting their representation of the issue, however, we would be ignoring the stake these creditors had in portraying the actions of absconding divers as a crime. Those who complained about unscrupulous debtors occupied much higher rungs on the socio-economic ladder than the divers, and had a direct interest in keeping their laborers bound to them. Divers, moreover, had plenty of company in using geographic mobility as a legal ally. Faced with burdensome obligations, actors from around the Indian Ocean frequently chose to flee to areas where their creditors could not reach them and where they could rebuild their economic career, *tabula rasa*. Merchants, moneylenders, peasants, slaves and a range of other actors from around the Persian Gulf, East Africa and India intentionally skirted jurisdictional boundaries to retain control over their status as economic actors and over their obligations to others.

In East Africa, the strategy was common among those who led caravans into the interior. In his travels into Central Africa, Richard Burton noted as much (see Chapter 1), and illustrated how the strategy could sometimes pay off handsomely. He relayed the

story of a Baluchi named ‘Isa bin Hussain, who absconded from his creditors on the coast and wandered all the way to Uganda, where the favor of the sovereign there landed him wealth in ivory and even a harem.³¹ Even those who arrived in Zanzibar from abroad sometimes had an absconding past: the Sultan of Zanzibar’s affluent customs master Jairam Sewji, for example, had allegedly absconded from his hometown of Mandvi in Kutch with the accounts of his family’s firm there. Only after he had already established himself as the wealthiest *Bania* in East Africa and South Arabia did he negotiate a settlement with his relatives.³²

The turn to mobility as a means of evading legal process, moreover, remained a key strategy long after British law gained footholds around the Indian Ocean littoral. Indeed, well after the emergence of the Anglo-Indian legal regime outlined in Chapter 5, merchants and other economic actors continued to play on the regime’s jurisdictional boundaries to maintain interpretive control over their obligations to others. If and when a court decree did not suit them, they simply packed up their belongings and moved to a more favorable jurisdiction. In the early days of the British Consular Court in Zanzibar, those who wanted to evade a court decree against them frequently took to fleeing the court’s jurisdiction to places where it did not reach. In an 1879 case, one Khoja decided to surreptitiously leave Zanzibar by dhow and sail to Kutch rather than face an inevitable

³¹ Burton, *The Lake Regions of Central Africa*, pp. 402-403

³² Political Agent, Zanzibar, to Secretary of the Government of Bombay (22 December 1842) MSA Political Department, 1843, Vol. 55/1476, Comp. 416

court decree against him for MTD 990.³³ The phenomenon of absconding debtors was sufficiently widespread to alarm creditors, some of whom took to petitioning the court to attach their debtors' property in Zanzibar, arguing that once debtors moved "out of the jurisdiction of the court the plaintiff will have no hold on him and can exercise no pressure for the satisfaction of his decree." Those who absconded to Kutch – which, while in India, was technically beyond the scope of British jurisdiction – especially attracted the ire of creditors, who felt that "it [was] questionable whether the courts of Cutch [sic] will record a decree of this court [in Zanzibar] and execute it without further proceedings."³⁴ Creditors also expressed their frustration with debtors who fled into the interior of Tanganyika – a German territory where decrees by the British court in Zanzibar had no effect.³⁵

Creditors' concerns that recalcitrant debtors could simply leave the jurisdiction were not always borne out. Although early East African courts were hamstrung by absconding debtors, officials there were sometimes able to coordinate with counterparts in different jurisdictions to give teeth to their decrees – especially when the dispute involved property. From as early as 1874, British officials in East Africa had the capacity to sequester a debtor's property in Kutch with the assistance of the British Political Agent

³³ *Aloo Cussorji v. Bhimji Sanji* (1879) ZNA HC 7/110

³⁴ *Samji Hirji vs Samji Likmidas and Goculdhundas Nansi* (1884) ZNA HC 7/205

³⁵ *Lalbai and Fatmabai, Administratrix of Ja'far Khaki vs Hasum Noormahomed* (1893) ZNA HC 7/425

there.³⁶ Even in Tanga, which fell under German jurisdiction, one British judge managed to persuade an Arabic agent to attach a debtor's money and *waraqas* and forward them to the court in Zanzibar.³⁷ The court's ability to execute its decrees only improved with the expansion of its jurisdiction: after the establishment of the East Africa Protectorate, the completion of the Uganda Railway, and the German transfer of Tanganyika to Great Britain following its defeat in the First World War, the ability of British courts to execute their decrees inland improved dramatically.³⁸ In the nineteenth-century Gulf, however, the institutional framework necessary to prevent absconding was virtually non-existent.

Placed against the backdrop of mobility in the Indian Ocean, a Gulf mariner's ability to move from one port to another emerges as a key strategy for the renegotiation of his position within the rigid socio-economic hierarchy that characterized the pearl dive. By moving to a new port, taking on new loans, and abandoning his previous obligations, a mariner had the chance to rid himself of the burden that his previous debts had placed upon him and effectively reinvent himself as an economic actor. Free of burdensome obligations to others, he could determine the extent to which he was going to enmesh himself once again.

Perhaps unsurprisingly, the mariners' strategy fit neatly into the culture of mobility that characterized political life in the Indian Ocean (described in Chapter 4) in

³⁶ *Tawa Mula vs Mahdee Dyar* (1874) ZNA HC 7/20. The process was not always a smooth one; litigants sometimes had to apply for permission to go to Kutch and pursue their claims directly. See *Cooverji Chapsi vs Mussonji Mavji* (1881) ZNA HC 7/221

³⁷ *Esmailji Jeevunji vs Noorbhai Ebrahimji, Tanga* (1880) ZNA HC 7/155

³⁸ See also "Execution of Decrees of Zanzibar Courts in the Tanganyika Territory" ZNA AB 62/8

which subjects of a ruler cast off their allegiance to him and moved elsewhere when the port's economic or political security seemed uncertain, or when a ruler's policies became unconscionably harsh. The region's inhabitants extended this logic to the commercial sphere: whenever their economic circumstances became too harsh to bear, or whenever the opportunities elsewhere seemed better, they simply packed up their belongings and left. Mobility thus constituted a "weapon of the weak" among political and economic actors in the region.³⁹

Of course, not everyone was equally able to employ this strategy. Those with family, children, or other deep ties to a particular locale would have likely found it difficult to move. Increasingly throughout the last quarter of the nineteenth century, however, this was not the case: as we saw in Chapter 3 (and as I will detail later) the pearling boom also brought with it a rise in the number of seasonal divers, many of whom took on the same loans as their more local counterparts. For an itinerant laborer whose position in the commercial hierarchy afforded few chances for improvement, the most effective sort of mobility was not upwards, but outwards.

Absconding, however, was not always without its consequences. In an environment already charged with tensions between different economic and social groups, the discovery of an absconding debtor could have disastrous consequences for everyone involved. In the mid-nineteenth century Gulf, the act of harboring an

³⁹ See also James C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven, CT: Yale University Press, 1987)

absconding pearl diver could often be interpreted by one's counterparties as an act of political aggression. An encounter on the pearl banks between a *nakhoda* from one town and his debtors on a dhow from another town could erupt into affray. Such skirmishes reflected, at one level, eruptions in the tensions that already existed between the different tribes of the Southern Gulf. Acts of violence by land and sea between tribes became a regular part of political life in the region as different groups jostled for viable positions in an increasingly lucrative pearling economy. At the same time, skirmishes between dhows illustrate the ways in which actors subsumed debt enforcement measures that today might be considered extra-legal into a broader system of social and economic governance, particularly when local legal institutions proved ill-equipped to deal with disputes.

An 1858 dispute nicely illustrates this phenomenon. That year, a *nakhoda* from Dammam (on the East Coast of Arabia) named Saif bin Shaheen loaned 20 Persian krans to a diver who had agreed to accompany him to the pearl banks that season. After the season, the diver (whose name we do not know) left Saif and returned to his former *nakhoda*, a Bahraini named Mohammed bin Farhan, to whom he owed 6 krans. When Saif found this out, he approached Mohammed, who told him that either he would pay the 20 krans Saif was owed and keep the diver, or would have to be repaid the 6 krans that he had given the diver. Perturbed by Mohammed's flippancy, Saif replied "Very good. The diver is at present in your hands but I will bear down upon you at sea and take him away from you." At the beginning of the next pearling season, Saif "bore down upon [Mohammed] with four of the boats of his people" and forcefully took the diver back.

After Mohammed reported the incident to the Shaikh of Bahrain, they notified the British Native Agent of the incident, emphasizing that “they had it in their power to obtain for him [Mohammed] redress” – a sinister way of suggesting that they might resort to the use of force.⁴⁰ On the pearl banks, and on the Gulf shores, it seemed, the boundary between violence and legally-sanctioned policing was blurry at best: forceful modes of self-help remained, in many contexts, and to many actors an acceptable form of enforcing one’s contractual claims.

For British officials with eyes on the Gulf, however, the violence that made such self-help effective increasingly became an unacceptable way to punish groups who harbored absconding debtors. Theirs was primarily a security concern: since the beginning of the nineteenth century, British officials had been trying to construct a delicate maritime truce between the warring groups in the region, largely to protect British shipping between Bombay and Basra. In the first two decades of the nineteenth century, officials in Bombay sent gunships to the ports of Sharjah and Ras al-Khaimah, suspected to be home to the Al-Qasimis – allegedly a tribe of pirates.⁴¹ After they leveled forts in both towns and destroyed the Al-Qasimi fleet, British officials began a series of negotiations with the Arab coast’s tribes in which they bound groups in the area to refrain

⁴⁰ Native Agent, Bahrain, to Gulf Resident (23 July 1857) MSA Political Department, 1868, Vol. 161, Comp. 1444

⁴¹ There has been some debate amongst historians as to whether the Qasimis were guilty of the maritime depredations that the British accused them of. See also Sultan bin Mohammed Al-Qasimi, *The Myth of Arab Piracy in the Gulf* (London: Routledge, 1986); Charles E. Davies, *The Blood Red Arab Flag: an Investigation into Qasimi Piracy, 1797-1820* (Exeter, UK: University of Exeter Press, 1997). These, however, lie beyond the scope of the discussion here.

from attacking one another by sea.⁴² Maritime violence, even between Arab tribes, ran the risk of threatening the safety of British shipping.

Another, more muted worry involved the impact that violence by land or sea – even on the part of the British themselves – might have on the interests of British Indian traders, who (as described in Chapter 1) invested heavily in the pearl trade. The British Resident hinted as much in his discussion of the possible effects that British punishment of the Shaikh of Abu Dhabi could have. “It appeared to me undesirable at the present moment to resort to force if our object could any way be otherwise obtained,” he wrote to his superiors in Bombay, “and this because our merchants at Aboothabee [sic] have many lacs of Rupees invested in the Pearl season now closing, and which would probably be lost to them were the Aboothabee Fort to be destroyed and the Pearl divers to desert it in favor of some other Port.”⁴³

The Resident’s concerns were not altogether unfounded. If the Gulf’s various groups were allowed to attack one another with impunity, even in the name of economic order, Indian merchants would be exposed to a range of different financial risks. Mariners’ debts, it will be remembered, formed the basis of a *nakhoda*’s assets vis-à-vis his financier. Although the diver ostensibly enjoyed freedom (though in many cases he was not free at all) his labor belonged to the *nakhoda*. And as I described in Chapter 3, the diver’s obligation to continue diving for his *nakhoda* – manifested in the diving

⁴² See also J.B. Kelly, *Britain and the Persian Gulf, 1795-1880* (Oxford, UK: Clarendon Press, 1968)

⁴³ Gulf Resident to the Secretary to the Government, Bombay (25 September 1868) MSA Political Department, 1868, Vol. 97, Comp. 64

waraqā – was a tradable asset among *nakhodas* and between *nakhodas* and merchants. Divers thus constituted a form of property in their own right – but the kind endowed with the vexing attributes of mobility and mortality. If an absconding diver exposed his *nakhoda* and merchant to the risk of financial loss, then violence on the pearl banks exposed at least two *nakhodas* and merchants, if not more, to a range of financial risks, which might trigger a cascade of debt-related conflicts. For British officials, these circumstances posed unacceptable threats to commercial stability.

The Resident at Bushire, Lewis Pelly, accordingly attempted to foreclose such conflict. In a circular issued to the rulers of the Southern Gulf ports just after he heard Zayed bin Khalifa's complaint, just at the close of the 1868 pearling season, Pelly noted the prevalence of absconding debtors in the region. "Certain Arabs engaged in the Pearl Fisheries," he observed, "receive advances from the Chief of one place, proceed to sea, and afterward, instead of returning to the place where they receive their advance, fly to some other Chieftainship in view to escaping repayment, [and] this is contrary to justice." His solution to the problem seemed simple enough: "on a Chief proving to the Resident that any borrower has thus levanted, the Resident will require the Chief to whose territory the thief may have escaped to give him up and use his utmost endeavors to secure

repayment.” Should a local ruler not comply with this request, “the Resident will consider the Chief harbouring the thief as responsible for the loss so occurring.”⁴⁴

The Resident’s proposal that he play the role of watchdog over the pearl banks turned out to be premature. In 1868, the Persian Gulf was still at the cusp of the pearling boom that characterized the last quarter of the nineteenth century, and although the pearl trade appeared increasingly lucrative, the region’s political landscape remained in a state of flux. With only a handful of exceptions, polities would split and new leaders would emerge several times a decade. Describing his frustrations in pursuing claims and counter-claims arising from absconding debtors barely two years after the Resident’s missive, one British official complained that “just as arrangements have been satisfactorily arrived at with a certain chief he is either murdered, or expelled from his territory; and all must be gone over again with the successor.”⁴⁵

Within this ever-shifting world, a proposal like Pelly’s had limited impact on the many groups that continued to vie for strategic positions within a changing political economy. And indeed, there is little to suggest that anyone took the Resident up on his offer to enforce different rulers’ claims to absconding debtors. Barely eight months after Pelly announced his proposal, at the beginning of the following pearling season, the ruler of the port of Sharjah attacked the nearby port of Ras al-Khaimah, occupying one of its

⁴⁴ Circular from Gulf Resident (16 September 1868) IOR R/15/5/185. The Arabic version of the letter sent out refers to levanters as *shāridūn* – literally, runaways or fugitives.

⁴⁵ Assistant Resident, Persian Gulf to Political Resident, Persian Gulf (20 Oct 1870) MSA Political Department, 1871, Vol. 91, Comp. 1481

islands. Upon hearing of the incident, the ruler of Umm al-Qaiwain sent 400 men to repel the Sharjah forces, on the weak pretense that “he had subjects there who possessed property, and who asked assistance and protection.” The Resident eventually sent gunboats to break up the fracas, but only received vague assurances from the rulers that they would not engage in violent acts by sea again.⁴⁶

That the Resident’s proposal did not completely deter the groups from maritime violence is clearly evident in the fact that nearly a full decade later, in 1878, the problem of absconding debtors and the resulting maritime violence announced itself again – only this time with more urgency. By the mid-1870s, increasing returns from the pearl trade had gained the attention of a number of outside observers. In 1865, the value of total export of pearls from the region was estimated at £400,000; nine years later, it had roughly doubled.⁴⁷ Even after accounting for inaccuracies in these estimates, one still remains with a general sense of an upwards trend.

As the price of pearls increased through the last quarter of the nineteenth century and well into the 1920s (see Chapter 1), so too did the temptation for a pearl diver to take on a loan and abscond. Within the profit-sharing structure of a pearling voyage, an increase in the market price for pearls would have been reflected in the amount a diver received as an advance in the beginning of the season. In bad years, the loans a *nakhoda* gave out to his divers would be small, largely because whatever the latter received from

⁴⁶ Gulf Resident to Political Secretary to the Government of Bombay (21 May 1869) MSA Political Department. 1869, Vol. 108, Comp. 980

⁴⁷ Captain A.L. Durand, “Notes on the Pearl Fisheries of the Gulf,” pp. 40-41

the captain would have been determined by the what the latter expected the market to look like during the following season. In good years, however, the amounts the *nakhoda* would advance might increase, as would the number of people he would hire. As the population of pearl divers expanded to include a range of mariners from around the Gulf (see Chapter 3) the opportunities for an itinerant diver to come to a port, collect an advance and not appear for the season's work became clear. And in an increasingly lucrative pearling economy, an eager *nakhoda* might be willing to overlook a diver's absconding past.

The rulers of the Gulf ports increasingly recognized the potential losses caused by absconding mariners, and petitioned the Gulf Resident to help them settle their claims against those who harbored debtors of their subjects or themselves. In December 1878, the Resident received a list of claims from the ruler of Ajman against the ruler of Umm al-Qaiwain regarding absconding debtors that merchants in the latter port had allegedly employed.⁴⁸ At the same time, debtors – not only divers, but also *nakhodas*, were absconding the other way as well: at the beginning of the following pearl season, the ruler of Umm al-Qaiwain claimed that he personally lost MTD 2,000 to an absconder named Abdul-Aziz.⁴⁹ However, rulers who were quick to ask the Resident to recover their losses proved far less eager to hold up their end of the bargain: the Native Agent reported that

⁴⁸ Gulf Resident to Hamaid bin Abdullah, Umm al-Qaiwain ruler (31 December 1878), IOR R/15/5/185

⁴⁹ Umm al-Qaiwain ruler to Native Agent, Sharjah (15 May 1879), IOR R/15/1/185, from Victoria Penziner Hightower, "The Political and Social Ramifications of Debt and Debt Absconding in the Emirates Along the Southern Gulf," conference paper presented at the University of Exeter, Gulf Studies Conference, 29 June – 2 July, 2011, p. 9

some rulers charged absconding divers a protection tax of anywhere between MTD 5 and 50.⁵⁰ Amid strong global demand for pearls, many local chiefs had no compunction about profiting from the divers' temptation to abscond. They not only reaped gains from the protection tax the diver paid, but also the services he rendered to the port's merchants.

Faced with a renewed set of political and legal tensions created by the pearling boom, the Resident proposed a new arrangement – one that placed more of the burden of dispute resolution on the rulers themselves. In the new system, the rulers bound themselves to turn over any runaway debtor to the port from which he absconded. Those who did not incur a fine of MTD 50 in addition to the amount the debtor owed, and those merchants or *nakhodas* who consciously employed a runaway diver and still refused to deliver him up would be liable for fines of MTD 100 in addition to all claims against the diver. Whoever had claims against another ruler could bring them to the Native Agent, who would hold a Court of Arbitration to which the disputing parties and rulers or their delegates would attend. Whatever the Agent decided, if not agreed to on the spot, would ultimately be enforced by the Gulf Resident himself, presumably with the help of British gunboats.⁵¹

The rulers quickly assented to the Resident's arrangement: within two weeks of the proposal, the Resident's assistant persuaded the six Trucial States' rulers to affix their

⁵⁰ Native Agent, Sharjah, to Gulf Resident (20 and 25 May 1879), IOR R/15/1/185, from Hightower, *Ibid.* p. 10

⁵¹ "Mutual Agreement between the Trucial Chiefs to Prevent Subjects Absconding for Fraud" (24 June 1879), IOR R/15/1/185

seals to the resolution.⁵² Although it is difficult to ascertain their precise motivations in agreeing to the proposal, their consent hardly seems surprising when considering the changed circumstances in the region. Since the 1860s, the costs of maritime violence had increased significantly as the pearl trade had become more lucrative. At the same time, the threat of intervention by British gunboats loomed ever-larger on the horizon. During the third quarter of the nineteenth century, British officials in the region made it increasingly clear to local rulers that they would no longer tolerate any more armed conflict at sea, and had the naval firepower to back up their positions.

The rulers' assent, however, did not resolve the problem. The proposal may have provided rulers with a formal legal framework by which they could resolve disputes among themselves, but did little to address the motivations of the divers themselves and the confluence of juridical and political cultures that encouraged them to abscond. Barely three weeks after the rulers agreed to the proposal, the ruler of Sharjah reported that two divers belonging to a merchant residing in his port had absconded to Umm al-Qaiwain. They were not the only ones: that season, divers moved between the ports of Dubai, Sharjah, Himriyyah, and Umm al-Qaiwain with increasing frequency.⁵³ The inability of the new framework to eliminate the core of the problem soon became clear to all involved.

⁵² Draft letter to all Trucial Chiefs (25 June – 10 July 1879) IOR R/15/5/185

⁵³ Native Agent, Sharjah, to Gulf Resident (25 May 1879) IOR R/15/1/185

Even officials in India took notice of the arrangement's shortcomings. Drawing on an astute understanding of political culture in the region, the Governor-General in Council expressed concern that the new arrangement might potentially rob inhabitants of the Gulf of one of the only weapons they had against oppressive rulers. "Former reports," the Governor-General observed in 1879, had made it clear that it was "not unusual for one of the branches of a tribe to the number sometimes of several hundred individuals, in order to escape excessive taxation and oppression, or with a view to secure to themselves greater immunities and advantages, to secede from the authority and territory of their lawful and acknowledged Chief into that of another," he wrote. In India, he stressed, there existed no policy of extraditing runaway debtors between States. Even if while the Persian Gulf's circumstances might be peculiar, the Governor-General voiced concerns that the measures might remove the divers' only effective form of redress against poor treatment.⁵⁴

The Resident brushed off his far-away superiors' concerns, but could not so easily escape the local realities of economic and legal power. In a political and economic culture characterized by mobility, and with juridical institutions whose efficacy lay in their localized nature rather than their regional outlook, few practical constraints prevented mariners from exercising their ability to move from one port to another in search of more favorable conditions. In an economic world characterized by rigid

⁵⁴ Secretary to the Government of India to the Gulf Resident (15 November 1879) IOR R/15/1/185

hierarchies, mariners retained some capacity to maneuver by partaking in the very sort of action that shaped the political geography of the Persian Gulf and Indian Ocean.

The Short Arm of the Law in Twentieth-Century Bahrain

Even as the British legal bureaucracy in the Western Indian Ocean matured, officials' ability to impose their notions of order onto a mobile population remained limited at best. Unlike its East African counterparts, the Consular Court in the Gulf never developed into an autonomous juridical institution staffed by Indian personnel and shaped by Anglo-Indian legal precepts. Even after bureaucratic reforms during the 1920s and 1930s in Bahrain, the British consular court continued to serve as just one of many tribunals in a fragmented juridical arena. Until the mid-twentieth century, and even beyond, the region remained a jurisdictional patchwork: decrees that British courts could execute locally fell flat when they moved to another town, or even several miles inland. Even as the British court in Bahrain was able to subsume other local tribunals within a state-centered pluralistic legal order, it never fully disciplined the multiple and overlapping local legal regimes that dominated the juridical landscape around the Gulf.

The case of Saleh bin Sulaiman, introduced at the beginning of this chapter, vividly illustrates the limitations that the court at Muscat faced. When Saleh took Abdullah bin Salaam's *waraqqa* to the Omani interior town of Rustaq, he stood reasonably assured that authorities there would uphold Abdullah's obligation to him. The *qāḍi* there had seen him take possession of the property, and he had a number of witnesses who saw him pay

money to his debtor. As far as they were concerned, the property transfer was good.⁵⁵ The Zanzibar court's decree, Saleh knew, might reach Muscat (although even that was hardly guaranteed) but would never go as far into the interior as Rustaq. Although it might have only been 75 miles or so inland, for the Muscat Consul, the town of Rustaq was worlds away, separated by mountains, valleys, and altogether different juridical and political authorities.

Many other similar cases illustrate the limited reach of the Muscat court. Even as the British legal bureaucracy in East Africa expanded, creditors repeatedly expressed their frustration at their inability to pursue debtors who left for Oman. At the same time as Saleh's case, the court had to contend with another Oman-related problem. After an Arab had just declared bankruptcy in Zanzibar, his *Bania* creditors discovered that he owned a great deal of property in Muscat and Rustaq. Although they pressed the court to sell off the Omani properties to satisfy the debts he owed them, court officials had no way of collecting accurate information on the whereabouts of and rights to the properties, much less a means of selling them.⁵⁶ The court faced similar problems in a bankruptcy case nearly 14 years later, in which its decrees simply could not reach the debtor's *shamba* just outside of Muscat.⁵⁷ As late as 1931, the Court Clerk in Pemba complained

⁵⁵ Lower Court proceedings in *Saleh bin Sulleman vs Administrator of the Estate of Abdulla bin Sallam* (1910) ZNA HC 5/14 A, pp. 4-6

⁵⁶ *Mansoor bin Mohamed, Bankrupt* (1911) ZNA HC 2/215

⁵⁷ *Nasser b. Khalfan Al-Rumehy, Bankrupt* (1924) ZNA HC 2/795

that many of one bankrupt *Bania*'s debtors had fled to Muscat – and presumably from there to other towns – and that the court could do little but wait for them to return.⁵⁸

In Bahrain, the replacement of the Native Agents with British officials at the outset of the twentieth century – prompted largely by the accusations of self-interest that rulers and Indian merchants leveled at them – did little to change the position of the Consular Court vis-à-vis other legal institutions.⁵⁹ Now headed by British officers, the Consular courts of Muscat and Bahrain still depended heavily on the cooperation of other tribunals to effectively function, as a 1905 case involving the estate of Sayyid Khalaf, a British-protected Persian merchant, nicely illustrates. Khalaf, a pearl merchant, had died owing debts to a number of Persian and Indian merchants on the island. Shortly following his death, his estate, which included a number of moveable and immoveable properties, was parceled out among his creditors – not through the Consular court, as his British-protected status would have demanded, but through a merchant tribunal. Khalaf's daughter's appeals to the British Agent went unanswered; the Agent could only confirm the decisions taken by the tribunal despite his suspicion that the proceedings were less than equitable.⁶⁰ Even after the establishment of a British-headed court, the local regime continued to shape the legal dimensions of economic life in the region.

⁵⁸ *Suleman Ibrahim of Weti, Pemba, Bankrupt (1931)* ZNA HC 2/1215

⁵⁹ For more on the replacement of the Native Agent, see Onley, *The Arabian Frontier of the British Raj*, pp. 192-213

⁶⁰ *Records of Bahrain*, Vol. 3, pp. 257-259

One reason why the legal process in Gulf consular courts retained a persistently local tone, rather than the broader Anglo-Indian imperial dimensions displayed by the East African courts, lies in the absence of Indian lawyers. In East Africa, it will be remembered from Chapter 5, increasing numbers of Indian lawyers and court personnel prompted major changes in the administration of law. In Muscat and Bahrain, by contrast, there was no such process. The courts were theoretically tethered to a broader Anglo-Indian regional juridical infrastructure, and thus potentially subjected to the same laws and legislation coming out of India as the East African courts.⁶¹ Persian Gulf courtrooms, however, lacked advocates who had the capacity and the desire to articulate the substance of that jurisdiction. The judges who headed the courts were overwhelmingly civil servants, and mediation between the court and its constituents was left to a body of local *wakīls* – untrained legal representatives whose understandings of the law rarely exceeded a vague familiarity with procedural matters.

The absence of lawyers in the Gulf reflected conscious British policy rather than a lack of interest on the part of the broader Anglo-Indian bar. In Bahrain, British officials deliberately excluded lawyers out of a concern that “foreigners or rich men might import skilled lawyers from Iraq and India, and so impose an unfair burden on the ordinary populace, smaller merchants and others.” The British Resident refused applications by Indian barristers to practice on the island, often on the grounds that mercantile disputes

⁶¹ The courts at Bahrain and Muscat were (at least during one long interval) subordinate to the High Court at Bombay, and the various Orders-in-Council passed in the ports stated that the Indian Criminal and Civil Procedural Codes were to apply there. MSA PD 1879 Vol. 192, Comp 189

on the island were of a customary nature, and that *wakīls* more than adequately met the merchants' needs.⁶² At Muscat, too, the Consul deemed that “the encouragement of litigation and the attendant ‘pleaders’ in the Consul Court of this Agency is a wholly undesirable contingency.”⁶³ Their attitude towards lawyers reflected the often-tense relationship between the bench and the bar, both in India and the early East African experience. Lawyers, they thought, would have complicated what they imagined to be a relatively straight-forward process of legal administration in the Gulf.

The link between Gulf courts and a broader Anglo-Indian legal empire thus existed only in theory, with the former continuing to mete out distinctly local understandings of justice. The British consular court at no point carved out for itself a distinct juridical identity like that of the *qāḍī* or the *sālifa* court, and its judges and clerks never became as professionalized as their East African counterparts. As a result, the tribunal simply constituted one of many institutions in the region – and one that depended heavily on others for its functions. As court proceedings in the British courtrooms of East Africa grew progressively more autonomous and distinct, those in the British courts of the Gulf remained woven into the local juridical landscape.

As a local juridical institution, the British court in Bahrain had no more capacity to deal with the issue of absconders than any other tribunal. As I described in Chapter 3, during the final decades of the nineteenth century the island's diver population – which

⁶² Notice on Wakils (5 May 1936) India Office Records (IOR) R/15/2/1963

⁶³ Memo by Political Agent, Muscat (30 July 1900), IOR R/15/6/67

formed the main body of debtors – had grown increasingly itinerant in nature. The pearling boom of the late-nineteenth century brought with it prospective mariners both free-born and recently-manumitted from around the Gulf, Arabian Peninsula and as far away as East Africa to supplement the growing labor force.⁶⁴ During the pearling season, towns comprised of make-shift huts emerged around the Bahraini capital of Manama; in 1923, the British Political Agent there reported that the town’s population increased by 20,000-30,000 during the summer pearling season.⁶⁵ Overwhelmingly of foreign origin, most of these itinerant divers had by 1913 become subject to the jurisdiction of the British court – much to the chagrin of the British Agent, who noted in 1922 that the “extremely large floating population of the Islands, attracted by the diving industry... frequently leave the Islands after a suit has been filed against them, by means of country dhows, thus evading service of summons.”⁶⁶

Jurisdictional issues did not only arise when debtors fled *from* Bahrain. As a bustling, cosmopolitan regional commercial center, Bahrain also beckoned as a place to which debtors fled. Why they would choose Bahrain is not altogether clear. It may be that the heterogeneity of the island’s population and the itinerant nature of most of the groups who settled there over the summer months offered absconders precisely the type of anonymity they desired. It could also be that the amount of maritime traffic moving through Bahrain made it the perfect place to dispose of goods, or an attractive stopping

⁶⁴ Fuccaro, *Histories of City and State*, pp. 54, 93-95

⁶⁵ “Annual Report on the Workings of the Bahrain Order-in-Council, 1913” (1923) IOR R/15/1/305

⁶⁶ “Annual Report on the Workings of the Bahrain Order-in-Council, 1913” (1922) IOR R/15/1/305

point from which to consider one's options. Whatever the case may have been, the phenomenon of debtors absconding to Bahrain further revealed the tensions that the fragmented juridical landscape in the Gulf generated.

As more people moved to the island, either permanently or temporarily, the British Agent had to parse out precisely who belonged within his jurisdiction, and what the implications would be. Only part of the problem of who constituted a British subject had been resolved in the 1870s (see Chapter 4), and the question presented itself again on two different occasions: first, with a series of conflicts between Arabs and Persians in Manama in 1904 and 1905; and second, with the collapse of Ottoman authority in Eastern Arabia in 1914.

Certain Persians had long been recognized as British subjects, or at least entitled to British protection, but events in 1904 and 1905 broadened the scope of that jurisdiction to include the entire Persian population of Bahrain. During that year, Shaikh 'Ali, one of the ruler's nephews and an aspirant to the helm, became embroiled in a number of altercations with the island's foreign residents. In May 1904, his servant fought with a native clerk of Wonckhaus & Co., a German firm operating on the island; and in November of that year, another one of his servants brushed up against a Persian in the Manama bazaar, setting off a brawl. When the Political Agent pressed the ruler to act, the latter sent the case to his Sunni *qāḍī*, Qasim bin Mihza'. The response did not placate the Agent, who objected that a Sunni court was not qualified to do justice to Persians, especially in view of Shaikh 'Ali's status. He requested not only Shaikh 'Ali's

banishment from the island but also public floggings for his servants – all of which the Agent himself would oversee. The ruler would not assent. “If Government wish to seize Bahrain even, their arm is long and they can do it,” he explained to the Agent, “but I will under no circumstances consent to the trial of these Persians by any tribunal but my own.”⁶⁷

To the Political Agent, the suggestion that Persians would be tried in the ruler’s tribunal was beyond consideration. The *qāḍi* courts were unacceptable because of their perceived anti-Shi‘a bias, and because the Persian government had specifically requested that the British Agent see that justice was done to the Persians on the island. The island’s other tribunals were also unsuitable, in part because they were not formal courts, but also because the Resident thought that no suitable body of men could be found to try the case – partly a reflection of his own ideas about the inherent biases in the system.⁶⁸ In order to prevent “the perpetration of injustice,” the British official saw no option other than to establish jurisdiction over Persians and other foreigners on the island *en masse*. He did worry that the Government of India might, as it had in the past, not approve of indiscriminately declaring jurisdiction over an entire population. However, British officials had long been pushing for the Persian government to properly pursue British

⁶⁷ Farah, *Protection and Politics in Bahrain*, pp. 131-140; *Records of Bahrain*, Vol. 3, pp. 198-199

⁶⁸ *Records of Bahrain*, Vol. 3, p. 198

subjects' claims in Persia, and the jurisdictional move in Bahrain could potentially act as leverage in those negotiations.⁶⁹

Despite the vocal opposition of local authorities over the bazaar incident, British officials were able to establish jurisdiction over Persians with relatively little substantive protest on the part of the ruler, who could do little to act against the wishes of his British protectors. A similar outcome occurred with regard to the Hasawis of Eastern Arabia. The Saudi ruler of Najd, Ibn Sa'ud had occupied Hasa upon the departure of the Ottomans from the region and claimed a right to delegate jurisdiction over Hasawis in Bahrain to the Bahraini ruler. However, an Order in Council issued in 1913 consolidated British jurisdiction over all foreigners on the island – Hasawis included. The ruler's claimed jurisdiction over the Hasawis, but the British suspected that in doing so he was only pursuing the fee he charged for resolving disputes, the *khidmah*.⁷⁰ Unlike the controversy surrounding the Persians, the move was a relatively quiet one: the ruler conceded jurisdiction over the Hasawis with little resistance.

The proceedings regarding jurisdiction over Persians and Hasawis may seem uncomplicated, but the reality of this jurisdictional flux was anything but that. Much like other actors, Persians and Hasawis proved themselves adept at moving between jurisdictions. In 1918, a Hasawi named Khalid bin Khamis, a diver from Al-Qatif who was arrested for a pearling debt at the instigation of his *nakhoda*, pleaded for the Political

⁶⁹ *Records of Bahrain*, Vol. 3. pp. 199-200

⁷⁰ See "Jurisdiction over Hasawis, 1914-1917" IOR R/15/2/11; Fuccaro, "Between *Imara*, Empire and Oil" p. 49

Agent to rescue him from his creditor. “I have run away from the cruelty and the abuse of Sa‘id Suwaidi [the *nakhoda*],” he wrote in a petition, “and I have come here to inform you, as I am one of your subjects, that the *fidawis* [the ruler’s armed retainers, who had arrested him] have no longer any right to molest me.”⁷¹ Despite his discovery on the island, his situation illustrates a much broader trend. Throughout the 1920s, and into the 1930s, Persians and Hasawis – who, along with recently-manumitted slaves, made up many of the island’s itinerant maritime labor force – intentionally played on the jurisdictional boundaries between the Bahraini consular court and local institutions to remake their status within the regional socio-economic hierarchy. Rather than sidestep the jurisdiction of the consular court, they directly engaged with it so as to remake themselves and their obligations to others, and to maintain a degree of autonomy in a rapidly-changing commercial world.

Mobile Manumittedes and the British Court in Bahrain, c. 1925-1935

On the morning of March 21, 1928, an African by the name of Sa‘id bin ‘Ali walked into a Bahraini governmental office and presented Charles Belgrave, the government’s recently-appointed British Adviser, with a written petition. In it, Ali – or rather, his petition writer – asserted that he had received a manumission certificate from the Agency but that after searching for employment on one of the many pearling dhows on the island he found that “none of the *nakhodas* agreed to employ [him].” He then proceeded to ask

⁷¹ Statement of Khalid bin Khamis (20 May 1918) IOR R/15/2/949

Belgrave to give him a diving *waraqā* “so that [he] could work with one of the *nakhodas*, for if there was not one in [his] hands they would not accept [him].” Before forwarding the petition to the Bahrain Political Agent for review, Belgrave recommended that the Agent should “call the petitioner to inquire whether he is really a slave seeking manumission or merely a diver seeking a *barwa khaliya*” – a diving *waraqā* stating that the holder was free of any obligation to dive for others. The Political Agent responded that Ali was “a manumitted slave... [and] says that nobody cares to engage him as a diver except when he in possession of a *Barwa Khilawi* [a *barwa khāliya*]. May such a *barwa* be issued to him?” Responding nearly one week later, Belgrave responded that he knew of “no precedent for the grant of such *barwas*.”⁷²

Sa‘id bin ‘Ali’s case was not exceptional. In the years before he entered the Adviser’s office, and over the course of the next decade, scores of recently manumitted slaves who had trouble finding employment in the Bahraini pearling industry entered the office and the British Agency with similar requests. They all faced the same problem: no *nakhoda* would employ them without first ascertaining whether or not they were indebted to another *nakhoda*. To ascertain their economic status, *nakhodas* needed to see the mariner’s diving *waraqā*, which clearly spelled out to who the mariner owed debts, if anyone at all, the specific amounts of any outstanding debts, and the terms of repayment – all signed and certified by the holder’s former captain. Without first seeing the *barwa*,

⁷² C.D. Belgrave to Political Agent (March 28, 1928) R/15/2/1905

no *nakhoda* could legally hire any maritime laborer, former slave or otherwise. How long the rule had been in place, and whether it bore any connection to the developments in the Trucial States decades before is difficult to determine. All the record allows us to say for certain is that the rule had been in place in Bahrain for at least a few decades. Writing on the pearling industry at the turn of the century, one British intelligence-gatherer in the area noted that “no diver may leave the service of a *Nakhuda* [sic] to whom he owes anything, and if a diver violates this rule, the new *Nakhuda* by whom he is entertained is held responsible to the old *Nakhuda* for the whole amount of the debts due to the latter by the diver.”⁷³

The arrival onto the labor market of recently-manumitted slaves placed a new set of pressures onto the rule’s operation. Of course, slaves in the Persian Gulf were no strangers to the pearling industry. Prior to their manumission, most slaves worked on board pearling dhows on terms similar to those of the free laborers, the key difference being that a slave’s earnings went directly to his master. Considerations of a slave’s debt status were thus minimal, limited primarily to determining the difference between a slave’s share of the pearling trip’s earnings and his share of the cost of the dhow’s provisions.⁷⁴ Until the late 1920s, slaves comprised a considerable proportion of the region’s pearling crews. One estimate in 1929 placed the figure at 20,000, roughly a quarter of the total number of divers at the time; other more descriptive reports abound of

⁷³ J.G. Lorimer, *Gazetteer of the Persian Gulf, Oman and Central Arabia* (Slough, UK: Archive Editions, 1905/1986) p. 2234

⁷⁴ Hopper, “The African Presence in Arabia,” pp. 174-175

slave labor on board pearling dhows.⁷⁵ Their manumission during the 1920s and early-1930s meant that former slaves now entered the pearling industry as free laborers, on the same terms as other divers. Their entrance into this market, however, involved more than a simple move from a slave status to that of a free laborer. Questions surrounding their debt status and work eligibility emerged as key features of the process.

The issue of recently-manumitted slaves and their debt status highlights the persistently local nature of the Gulf juridical landscape even after the expansion of British jurisdiction in the area, as well as the limits of British juridical authority in Bahrain. As the scope of British jurisdiction on the island broadened to include a range of people, from Persians to Hasawis and newly-manumitted slaves, a range of cases and petitions made their way to the British Agency and Court from around the region. Many of these involved indebted pearl divers and their obligations to *nakhodas* outside of Bahrain. For British officials, these cases raised difficult questions: while *nakhodas* in Bahrain, Kuwait and Eastern Arabia often issued divers *waraqas* declaring their debt status, the same practice did not take hold in Oman and the Trucial States.⁷⁶ Moreover, it seemed, *nakhodas* in Bahrain frequently employed runaway divers without even trying to ascertain their status.⁷⁷ For a diver or manumitted slave looking to run away, then,

⁷⁵ Ibid. pp. 196-197

⁷⁶ Charles Belgrave to Political Agent, Bahrain (n.d.), IOR R/15/2/1902

⁷⁷ Letter from Shaikh Qasim bin Thani, Ruler of Qatar, to Political Agent, Bahrain (2 October 1929) IOR R/15/2/1902

Bahrain – which held on to its privileged place as the center of the pearling industry – was an attractive destination.

Thus by the 1920s the old story of absconding divers had taken on new social and legal dimensions. Half a century earlier, British officials stood as referees in a regional jostle between different groups over absconding debtors; now, they had become full-fledged regulators of the pearl dive. Their declaration of jurisdiction over Hasawis and Persians, who made up many of the region’s pearl divers, had pulled British officials into a number of pearling-related disputes, and forced them to contend with what they saw as an inherently oppressive commercial and juridical arena. Beginning in the mid- to late-1920s, British officials in Bahrain enacted a series of legal and administrative reforms on the island, including the standardization of accounting and book-keeping practices, registration of all pearling dhows, and changes in the rules that governed the amount divers could receive as loans. These reforms, which I will return to in the following chapter, broadly aimed for a rationalization of the pearl trade, but also further coordination between different administrative and legal institutions on the island.

One of the most important measures for the purposes of the discussion here was the reform of the *sālifa* tribunal, which proponents portrayed as necessitated by a perceived anti-diver bias. “The ‘Court’ had consisted of one very venal old man, who received no salary for his duties and depended for his livelihood on subsidies paid him by the Nakhudas [sic] themselves,” wrote the Political Agent in 1926, adding that between 1921 and 1924 he could not recollect a single case in which a diver obtained redress in

that tribunal. The Agent further noted that accounts kept by *nakhodas* were so unintelligible “that even had the Salifah Court been reasonably just – which was notoriously not the case – it would have been incapable of arriving at any decision.”

Despite the Agent’s contention that the *sālifa* tribunal “died a natural death a long time before the reforms started,” changes in British jurisdiction helped to trigger the tribunal’s demise. The Agent admitted that at the beginning of the 1920s “divers who were protected persons and who appealed to the Agency for redress, when informed that the only machinery for dealing with their cases was the ‘Salifah’ invariably dropped their cases,” adding that by the time the reforms started “there virtually existed no tribunal for the settlement of diving disputes.”⁷⁸ All the while, however, the British Agency slowly positioned itself as the ultimate arbiter of pearling-related disputes, many of which fell to it by virtue of the litigants’ legal status. In 1927, only a year after the Agent wrote his opinions, British officials reconstituted a *sālifa* tribunal in which the ruler, in tandem with the British Agent, appointed the members, who answered to the British court.⁷⁹ By the end of the year, British officials had effectively subsumed the *sālifa* into its growing bureaucracy. Their redrawing of the court’s jurisdiction, however, unwittingly placed it right in the middle of the changes taking place in the pearling industry – namely the arrival of mobile, newly-manumitted slaves onto the labor market.

⁷⁸ Political Agent to Gulf Resident (20 February 1926) IOR R/15/2/132

⁷⁹ Gulf Resident to Political Agent, Bahrain (n.d., 1927) IOR R/15/2/1902

The manumitted slaves' relationship to the court comes across as surprisingly familiar. Former slaves, it seemed, had few qualms about approaching the court, and had accumulated an understanding of how they could make use of it to further their own agenda. Indeed, this is where the late-1920s Bahraini case distinguishes itself from the experiences of the courts and of absconding debtors before it. Rather than side-step the authority of the British court by fleeing its jurisdiction, as many had done in the decades before, slaves engaged with the courts directly to facilitate their own spatial and socio-economic mobility as they moved away from their former masters and into a more autonomous economic existence. Part of their success rested on the court's limited ability to gather information about the slave's past, but most of it came from the slaves' ability to effectively access the court and weave it into a local juridical fabric with local understandings of justice – a justice inherently linked to their ability to move to where conditions were ostensibly better.

The question of economic justice presented itself most forcefully during the manumission process, which aimed to turn former slaves into more autonomous economic actors. In a series of petitions to the British Political Agent in Bahrain between 1928 and 1934, hundreds of recently-manumitted slaves asked the Agent to issue them diving *waraqas* so that they would be eligible to work. All of them complained that none of the Bahraini *nakhodas* would hire them because they were not local and did not carry *waraqas*. *Nakhodas* refused to hire slaves who did not carry them out of a fear that they might be free divers who had absconded from their former masters. However, because

slaves never contracted debts in the same manner as free divers, *nakhodas* never issued them *waraqas* to begin with. This created a paradox that threatened both the labor markets of the industry and the livelihoods of manumitted slaves themselves. The former slaves now possessed the freedom to work, but because of restrictions in the system they were by default barred from one of the few sectors in which they had prior experience.

Former slaves proved adept at presenting their situation to British officials on the island in a manner that evoked sympathy. By the late 1920s, there were a handful of juridical actors on the island who could facilitate a person's access to the courts – namely *wakīls* and petition-writers – and manumitted slaves did not shy away from using either to make their case to the British court. The petitions, while uniformly silent as to who wrote them, offer a window into how former slaves viewed the legal authority of the consular court. In all cases, the petition took on the same form: after a series of compliments, the petitioner identified himself as a manumitted slave hailing from a foreign port. Invariably, the petitioner described how he came to Bahrain looking for work, and how the *nakhodas* on the island refused to hire him because he was a stranger and had no diving *waraqas*. He then went on to ask for a *waraqas* from the British Agency (*bayt al-dawlah*) so that he could dive that season. The gist of most petitions was the same – that the petitioner, having been manumitted by British authorities, felt that the same British authorities ought to facilitate his transition into the labor market. Indeed, by 1934 these petitions had become so commonplace the British Agent received three petitions from 17 different manumitted slaves from Eastern Arabia – one jointly-

submitted by three slaves, another by six, and the last by eight – all of which were identically-worded and emphasized the exact same needs.⁸⁰

The capacity of manumitted slaves to access the British court in such an effective manner forces us to give pause, as it suggests an accumulation of institutional knowledge on the part of actors whom one might presume to lack much legal savvy. The identical wording in last three petitions in particular begs explanation. How were former slaves able to mobilize the language necessary to present their cases to British officials? Whether they wrote the petitions themselves or whether they enjoyed the services of an intermediary is unclear; the three identical petitions display the same handwriting, but others look slightly different. And unlike the *waraqas*, none of the petitions reveal their author's name; they attribute the petition to the petitioner himself (which is unlikely in the case of the three identical petitions). It is clear that *someone* mediated the process for the manumitted slaves, but the record is silent on whether the intermediary was a manumitted slave himself, a *kātib*, a *wakīl*, or simply a petition-writer.

Whomever the intermediary, the strategy itself generally proved effective. Faced with an unemployed population whom they brought to the gates of the labor market, the British court officials in Bahrain began to issue *barwa khāliyas* of their own to former slaves who expressed a desire to work in the pearling industry – and they issued them in scores. For manumitted slaves looking to enter into the pearling industry, the officials'

⁸⁰ See petitions from 25 Shawwal 1352 (10 February 1934), IOR R/15/2/1905

policy represented an unqualified triumph. By facilitating their movement into a new labor market, British officials upheld the very sort of justice that mariners in the region embraced – a form of justice inherently linked to the mariners’ ability to move from one *nakhoda* to another and begin an unencumbered existence. Like absconding divers in the Southern Gulf five decades earlier, and like economic actors around the Indian Ocean, manumitted slaves sought economic autonomy through mobility as they moved across jurisdictions from one creditor to another. And in 1920s Bahrain, the British court seemed both willing and able to help them realize their vision of justice.

At the same time, manumitted slaves’ use of the court to transition into the labor market says a good deal about their institutional outlook – that the court was but one institution among many, yet one to which they could effectively communicate their notions of justice. By responding to the petitions as they did, British officials did little to challenge the notion. Their issuing of diving *waraqas* of their own, effectively acting as *nakhodas* in their own right, did not seem to provoke much of a response from *nakhodas* or anyone else. The fact that they acted without precedent was clear to at least some officials, but did not deter them from involvement in the obligations market.⁸¹ According to one such official early on in the process, it had become “customary practice” that “the Agency helps the newly-manumitted slaves by granting a sort of [diving *waraqqa*] to them

⁸¹ In 1928, Belgrave voiced his concern that there was no precedent to the Agency court issuing *barwas* to manumitted slaves, nor was there a clear ruling on the subject. The question generated some correspondence, but little resolution; it seems to have subsided in the face of an increasing number of petitioners. IOR R/15/2/1905

saying therein that the slave in question can be engaged as a diver by any *nakhoda*.⁸² By issuing documentation of its own, the Agency took on the functions of a local juridical institution, and established itself as one of many paths through which actors could maneuver into and around the webs of obligations that underpinned the pearling industry.

However, British officials' engagement with the pearling obligations market pointed to the limits in the Agency's ability to function as an autonomous institution. In issuing its own *waraqas*, the Agency ran into the same problems that *nakhodas* did in identifying the debt status of the former slaves. Their main cause for concern was the time lag between the granting of the manumission certificate and the (former) slave's application for a diving *waraqa*. British officials worried that former slaves would exploit the time lag, by taking on debts from *nakhodas* and then applying to the Agency for a *barwa khāliya*, claiming that they were debt-free and unable to find employment. When Agency officials questioned the applicants regarding their debt status, it refused *waraqas* to manumitted slaves who admitted that they were indebted to a *nakhoda*. In one such case, the petitioner, a former slave named Sultan bin 'Ali, admitted that he owed a sum to a *nakhoda* in Dubai; the Agent rejected his request, saying that he was clearly a runaway diver, and that "under such circumstances the diving laws do not permit to issue any *barwa* for him."⁸³ Another slave's petition for a *waraqa* was also refused on the grounds that the man owed debts to his *nakhoda* in Dubai. The Agent told him that his only option

⁸² "Grant of Permission papers for diving or barwa "khalawi" to manumitted slaves" Memo by Political Agent, Bahrain (May 10, 1928) IOR R/15/2/1905

⁸³ Petition from Sultan bin 'Ali, 3 Sha'ban 1349 (23 December 1930), IOR R/15/2/1905

was to return to Dubai and receive a *waraqā* from his *nakhoda* there.⁸⁴ Petitioners coming from beyond Bahrain – even a place as close as Dubai – highlighted the court’s inability to extend its geographic reach.

Locally-manumitted slaves who applied for diving *waraqas* but whose debt status was unclear went through a different process. Recognizing that they might tap strong social networks to find information regarding the status of the slave, British officials decided that it would be easier to utilize them than to try to determine the slave’s status on their own. The case of Mohammad Saleh bin Jassim is instructive in this regard: claiming to be free of debt, he applied to the British Agency for a *barwa khāliya* “in order that the pearl merchants...in Bahrain might accept [him] as one of their workers.” Fearing that Mohammad might have incurred debts from a *nakhoda* or that he was a “runaway diver,” the Agent asked him to “bring a certificate from some respectable persons showing that he is not indebted to anybody.”⁸⁵ The outcome of the case is unclear, but through their actions, British officials tacitly acknowledged that one’s debt status, captured by the *waraqā*, could only be fully ascertained by local networks, and that a person of esteemed local status played as much a role in juridical fact-finding as the court itself.

⁸⁴ Petition by Ahmad Bin Saleh at the Bahrain Political Agency and reply (April 12, 1930) IOR R/15/2/1905

⁸⁵ Petition by Mohammad Salih Bin Jassim at the Bahrain Political Agency and reply (January 19, 1931) IOR R/15/2/1905

Most cases, however, involved more complicated circumstances than those described above. Indeed, the petitions that aroused the most heated debates came from foreign manumittedes who claimed that they were debt free but had never received a *barwa khāliya* from their former masters, or that they had misplaced it. When information on their status was not available, the Agency responded in much the same fashion as did *nakhodas* when unable to set out for a pearling voyage. Rather than turn the petitioner away, it became a policy of the Agency to issue such divers with a one-third earnings *waraqā*, the idea being that the one-third would “be kept in the Agency’s depot till the petitioner’s position as to debts is determined. The *thulth* [one-third] would be returned to the diver if he is found not to be indebted to any Nakhuda [sic].”⁸⁶

The decision to take on this function created some tension, especially when considering the adverse effects that their lack of local knowledge regarding divers could have on the market for free divers. In a number of cases British officials expressed the concern that free foreign laborers, over whom they had jurisdiction, might also try to take advantage of the system, claiming to be debt-free even when they were actually absconders. One official worried that giving one-third earnings *waraqas* already-indebted divers “will encourage them to run away from their native place and come [to Bahrain] for one.”⁸⁷ The Agent found that the most effective way to ascertain a diver’s status was to rely on the *sālifa* tribunal, whose wide social networks and intricate knowledge of

⁸⁶ Petition by ‘Obeid Bin Suweidi at the Bahrain Political Agency and reply (May 24, 1928) IOR R/15/2/1905

⁸⁷ Indian Agent to Political Agent (December 2, 1930) IOR R/15/2/1905

pearling customs could help decide the case. This resort to the *sālifa* soon became standard procedure. Replying to an inquiry from a British official regarding the rules surrounding issuing *waraqas* to free divers, Charles Belgrave, the British adviser to the Bahraini ruler explained that imperial officials took care to only grant *waraqas* to debt-free former slaves; any case involving a free diver was usually referred to the *sālifa* and decided on their recommendation.⁸⁸

British reliance on the *sālifa* to verify information extended far beyond cases involving free foreign divers, growing to include almost any situation in which there existed some uncertainty over informational accuracy. When, for example, a man arrived at the Political Agency in January 1934 claiming to be the agent of a *nakhoda* who laid claim to the one-quarter of the earnings of a diver, deposited with the Agent, the latter referred the *nakhoda* to the *sālifa* tribunal to verify both his power of attorney and his claim. Only after the Agent received word from the *sālifa* members that the *nakhoda*'s claims were valid did he release the earnings, which amounted to a little over Rs 13.⁸⁹ Such juridical interdependence, moreover, extended beyond the diving *waraqas* system alone; in his memoirs, Belgrave, who presided over the Agency Court in Bahrain, notes that in matters involving local custom, which made up the vast majority of their cases, he

⁸⁸ Petition by 'Abdullah Bin 'Abdulrahman to Bahrain Political Agency, inquiry from Political Agent, and reply from C.D. Belgrave (May 10, 1928) IOR R/15/2/1905

⁸⁹ Petition from Ibrahim Bin Mohammad Hasan to Bahrain Political Agency and replies (January 24, 1934) IOR R/15/2/1905. The advances for the four-month diving season two years earlier was Rs 30, and so Rs 13 most likely amounted to 2 to 3 months' consumption for one household.

often consulted local tribunals.⁹⁰ The remaining Agency Court records, many of which include correspondence between the Agent and the *sālifa* (and some of which I will explore in the next chapter), clearly illustrate this pattern.

In addition to underscoring the post-World War I British court's continued dependence on other local institutions, the legal treatment of manumitted slaves and their obligations demonstrates the ability of a burgeoning economic underclass to recognize opportunities presented by a changing institutional landscape and to manipulate that landscape in pursuit of a degree of economic autonomy. Those who were unable to access the courts, and there were perhaps many, found both their physical and their socio-economic mobility circumscribed. In many ways, the phenomenon was a continuation of a strategy employed by mariners in the past: to quit one jurisdiction for another, where they could remake themselves as economic actors. However, in the newly-bureaucratized institutional landscape in Bahrain, the successful absconder did not simply move from one area to another, but also successfully engaged with British legal institutions. And here, manumitted slaves proved themselves adept at maneuvering through different juridical worlds.

Conclusion

The history of the British court in Bahrain suggests that even in the age of high imperialism in the Indian Ocean, and after the emergence of a more thorough British

⁹⁰ Charles D. Belgrave, *Personal Column* (London: Hutchinson, 1960) p. 33

bureaucracy, state-centered legal institutions were unable to subordinate non-state understandings of economic and legal order. The movement of actors between different jurisdictions, and their ability to draw British officials into local economic and juridical regimes shaped the nature of British legal rule on the island, keeping it tethered to a local juridical landscape. Even as British officials issued their own diving *waraqas*, they affirmed the existence of an altogether different juridical sphere in the pearling industry – one that they could hope to regulate, but whose dimensions they could never completely subsume.

In contrast to the previous chapter, which emphasized law and legal decisions as authoritative texts that reveal unfolding legal doctrines over time, this one considers law as an arena in which different visions of social and economic order contended and bargained with one another. The move is an important one, especially in a changing juridical world like that of the Indian Ocean, for it resists the urge to approach imperial legal institutions and discourses as hegemonic, repressing the existence and the relative autonomy of competing and sometimes conflicting visions of political and socio-economic order. Here, I contend that law in the age of empire in the Indian Ocean was less a domain shaped exclusively by imperial agents and economic elites than it was an arena that multiple actors – rulers, *qādis*, merchants, laborers, freed slaves, imperial officials and jurists – all participated in shaping to their own ends.

The shifting institutional landscape of the Gulf invariably created legal and economic winners and losers, of course, but those outcomes proved eminently

contestable and contingent. At any one juncture, one group succeeded in imposing its own vision of order onto others within the same arena. During the period of economic boom, merchants and *nakhodas* preserved some autonomy in a pluralistic but shifting juridical terrain, but the divers on whom they relied also managed to assert their own autonomy, sometimes by playing on the fissures in the juridical landscape and other times by engaging head-on with juridical institutions. Whoever “succeeded” in imposing their vision was constantly changing and never entirely certain, and one’s economic and legal status was constantly being renegotiated.

None of this, of course, suggests that there was no logic to the negotiation of different visions of economic order, for there was. “The law” may have been an arena in which multiple visions of economic order or justice jostled with one another, but the outcomes of this juridical jostling always reflected the broader economic framework within which they were situated. In other words, if the legal arena incorporated cacophony of voices, perspectives and interests, the economy nonetheless served to mute some voices in favor of others. As we have seen throughout this dissertation, in a period of relative economic prosperity, merchants, captains and laborers were able to assert their visions economic order onto other juridical actors. And as we will see in the next chapter, a complementary logic extended to periods of economic downturn. As the prosperity in the Indian Ocean gave way in the 1920s and 1930s to economic and political uncertainty, an altogether different group of authorities stepped in to take the reins.

CHAPTER 7: OBLIGATION UNRAVELED

In November 1922, members of Pemba's Arab planter community, led by Shaikh Sulaiman bin Mubarak Al-Ma'uli, the former *liwali* of Chake Chake, presented a petition to the British High Commissioner for Zanzibar in 1922. In it, the planters complained that they had become "heavily indebted to Indians," adding that because clove trees only bore fruit every other year, they were frequently obliged to borrow money at high interest in the hopes of being able to pay it back after the clove harvest. The seasonal indebtedness that Al-Ma'uli pointed to was in many respects a normal state of affairs for Zanzibari planters, many of whom frequently borrowed against promises of future clove deliveries. This time, however, things were different. Al-Ma'uli noted that recently, "when the season comes [Arabs] find [themselves] short because the crop which [they] collect always proves short of the interest which has accumulated, and thus by degrees, year after year, [they] find [themselves] losing one portion after another of [their] *shambas* and reduced to poverty." His complaint was not about the state of indebtedness, but the planters' inability to generate enough from their clove sales to service their loans, and the recent spate of foreclosures against the properties they mortgaged.¹

Al-Ma'uli and the Pemba planters' concerns were not theirs alone. The 1920s were a difficult decade for agriculturalists all around the world. After farmers returned to

¹ Address from Shaikh Sulaiman bin Mubarak Al-Ma'uli and other Arabs of Chake Chake to the High Commissioner for Zanzibar (24 November 1922). He sent in a similar petition six months later, in June 1923. ZNA AB 14/2

cultivation following World War I, agricultural overproduction led to a glut in the market, and prices for agricultural goods plummeted everywhere. By the middle of the decade, farmers from East Africa, South Arabia, India, the United States, Latin America, West Africa and elsewhere all grumbled about the same problem: their inability to pay off their debts to their creditors, and the threat of foreclosure on their property that they all faced. In the Western Indian Ocean, the agricultural crisis of the 1920s, followed by the worldwide economic depression of the 1930s, set in motion processes that ultimately spelled the end of the region's contractual culture.

This chapter details the process by which British officials, in their attempts to cope with the global economic downturn, enacted a new wave of economic and legal reforms that effectively dismantled the Indian Ocean economy of obligation during the 1920s and 1930s. Focusing primarily on Zanzibar and East Africa, it explores how British administrators and court officials sought to reorganize the logics of economic life in the Western Indian Ocean along lines that they imagined as more stable and effective in extracting rents over the long run. Faced with widespread indebtedness in East Africa and the Persian Gulf, British administrators in the 1920s set into motion a series of bureaucratic and regulatory reforms aimed at "rationalizing" the economy. They hoped to create a new economic framework organized not around the twin pillars of personal debt and obligation, but rather around wages, government institutions, and documentary transparency.

The reform attempts were from their outset marked by tensions within the British administration over the precise goals of imperial governance, and the best way to achieve them. In Zanzibar and East Africa, attempts by British administrators during the 1920s to limit the rate of interest on loans and then to squeeze out Indian participation in agricultural finance met with stiff resistance on the part of lawyers and imperial judges. Although these juridical actors recognized their role in creating a framework that privileged Indian finance in the region (and thus facilitated the widespread agricultural indebtedness that the island faced) they vigorously opposed legislation that regulated transactions between Indian creditors and their Arab and African debtors. Any government interference in the market for credit, lawyers and judges insisted, would not only violate sacrosanct principles of freedom of contract, but also risked destabilizing access to credit altogether.² Further resistance came from lawyers and merchants in the Indian community itself, who mobilized allies in India against what they perceived to be racially-motivated legislation.

Opponents of the reform program in Zanzibar managed to stave off British administrators in the 1920s, but the onset of the worldwide economic depression of the 1930s deflated effective resistance to economic regulation. In Zanzibar, the depression

² One sees similar arguments made across space and time – for example, in the regulations that followed a spate of bankruptcies in nineteenth-century America, or in current payday loan regulations. See also Balleisen, *Navigating Failure*, pp. 101-133; John P. Caskey, *Fringe Banking: Check-Cashing Outlets, Pawnshops and the Poor* (New York: Russell Sage Foundation, 1996) pp. 111-127; Howard Jacob Karger, *Short-Changed: Life and Debt in the Fringe Economy* (Berkeley, CA: Berrett-Koehler Publishers, 2005) pp. 198-214

accentuated a trend of agricultural indebtedness that had already been the subject of debate among British officials for at least a decade. However, the continual drop in prices that Zanzibari cloves suffered on the world market and the consequential inability of planters to effectively service – let alone repay – their debts to Indian moneylenders brought the problem to the fore.

Stereotypes surrounding the economic proclivities of local actors underpinned the economic reform program. A heavily racialized British official discourse emerged in Zanzibar on the necessity of regulation to protect vulnerable Arabs and Africans from rapacious Indian moneylenders, but more importantly from themselves. To officials, Indian moneylenders were avaricious maximizers who manifested little concern for the welfare of their debtors. More importantly, colonial officials consistently depicted Indian businessmen as foreigners, despite their long-term presence in East Africa and their claim to British imperial subjecthood. Their outsider status, coupled with the general distaste among British officials for moneylenders, made them easy targets of the reform process.

By contrast, colonial administrators saw Arab and African debtors as sympathetic natives of the soil, but also as thriftless, foolhardy – perfect dupes in the shrewd Indian moneylender's economic designs. Amid the agricultural deflation of the 1920s, and then with even more urgency during the Depression of the following decade, British officials sought to create a more stable framework for economic activity that broke the chains of debt and obligation, and so the power of Indian business. At the same time, they embarked on a more subtle (yet no less explicitly articulated) goal: to rehabilitate the

economic actors themselves along the lines that British reformers had long imagined for the shiftless classes, whether at home or abroad, and instill in them an appreciation for economy, thrift, and industry. In a sense, colonial administrators saw an opportunity to remake the Zanzibari economy in the image of England's.

In both their understanding of Indian Ocean commercial society and in designing their reform program, British officials drew heavily on their experiences in India. The stereotypes that they used in describing economic actors in the Gulf and East Africa reflected tropes that they had articulated in India decades before. And perhaps unsurprisingly, the solutions they brought to deal with the problems of indebtedness in East Africa similarly appropriated imperial policies from across the Indian Ocean: they copied almost verbatim Indian legislation aimed at tackling similar problems in the Punjab region.

Although my narrative focuses heavily on Zanzibar and East Africa, which has produced rich historical documentation, I also touch on analogous developments in Bahrain, which highlighting the emergence of a consistent program of colonial policy, with some regional variations. Despite less robust documentation of the Bahraini reform program, enough evidence survives to illuminate many aspects of the process that the more substantial evidentiary material about Zanzibar does not – namely, the visceral reactions of *nakhodas* and mariners to the reform process.

To highlight the impact that the changing economic environment had on debates surrounding debt and economic life in the region, the discussion here moves

chronologically from the 1920s to the 1930s. At the same time, it shifts its lens back and forth between the micro and the macro – from outlines of broader economic shifts to detailed discussions of individual British officials, reports and cases. In both Zanzibar and Bahrain, British experts, administrators and court officials served as the primary shapers of economic reform, a process driven less by antagonism to the entrenched contractual culture and more by the profound challenges to regional economic stability that global economic forces posed.

Economic Crisis in the Indian Ocean and the World, c. 1920-1934

By the second decade of the twentieth century, important economic shifts were already well underway in East Africa, South Arabia and the Persian Gulf – shifts that would ultimately reshape the contours of regional economic life. One pivotal transformation in East Africa involved a general move away from the ivory trade and towards the production of agricultural commodities, such as cloves and coconuts. In the second half of 1907, Zanzibar exported a total of more than Rs 450,000 worth of ivory, but by the first half of 1912, that number had dropped by more than half, to just over Rs 210,000. The following year, it stood at just over Rs 140,000 – less than one third what it had been

six years earlier.³ By contrast, clove exports were on the rise: between 1907 and 1923, the value of clove exports almost trebled from around Rs 4 million to nearly Rs 12 million.⁴

The move towards more widespread clove and coconut cultivation, however, brought some new perils. As economies that were increasingly dependent on the export of these two crops – of which cloves were the more valuable – Zanzibar and the neighboring island of Pemba developed new vulnerabilities to a constantly-changing market. Once the premier exporter of cloves on the world market, Zanzibar now faced competition from abroad: from Madagascar, where the clove export had been steadily growing from the mid-nineteenth century on, and from the United States, where the invention of synthetic clove oil threatened to dampen demand for Zanzibar cloves.⁵

The damage done to Zanzibar clove exports by competition from abroad was only exacerbated by another 1920s trend – the emergence of a worldwide agricultural crisis. During the First World War, prices for agricultural commodities experienced an unprecedented boom as European nations' demand for food crops grew. In the United States, Latin America, Southeast Asia and elsewhere, the surge in demand prompted farmers to expand agricultural acreage. Zanzibar was no different: its plantation owners joined in the boom, responding to steadily increasing prices. A *frasela* of cloves from the

³ All figures are from *The Zanzibar Gazette* (also called *The Gazette for Zanzibar and East Africa*). I am grateful to Jonas Kranzer for supplying me with the figures he collected on ivory exports during his time at the Zanzibar National Archives.

⁴ Frederick Cooper, *From Slaves to Squatters*, p. 130

⁵ Gwynn Campbell, *An Economic History of Imperial Madagascar, 1750-1895: the Rise and Fall of an Island Empire* (New York: Cambridge University Press, 2005) pp. 100, 188-189. In the United States, dentists made use of clove oil as an analgesic and antiseptic,

island that had fetched between Rs 5 and Rs 9 at the turn of the century could command a price of at least Rs 10, and as much as Rs 30, in the 1910s, even as producers extended their groves.⁶ Between 1900 and 1920, clove exports on the island grew from roughly 75,000 *fraselas* to nearly 200,000 *fraselas*; Pemba's production during that time period also rose, but only from just over 300,000 *fraselas* to about 400,000.⁷

However, when the war ended and its chief antagonists demobilized, agricultural prices worldwide experienced a dramatic collapse as farmers collectively produced far more than demand could sustain. Even though the core problem of global overproduction involved grains, the crisis reverberated in the agrarian economies of East Africa and Oman, which by the twentieth century had long been firmly integrated into the world economy. In Zanzibar, clove prices dropped from highs of Rs 30 to an average price of roughly Rs 15 during the second half of the 1920s.⁸ In Oman, date exports by the 1920s already faced stiff competition from larger-scale farms in Basra, and by the emergence of domestic date production in the United States (which earlier in the century had accounted for a sizeable portion of Oman's date exports).⁹ The total value of Omani date exports

⁶ Report by K.P. Menon (1934), p. 16, ZNA AB 3/48. While the overall trend is one towards depressed prices in cloves, there were years in which cloves commanded relatively good prices. The real cause for concern during the time was price fluctuation, which rendered uncertain one's ability to service outstanding debts.

⁷ Cooper, *From Slaves to Squatters*, p. 132

⁸ Report by K.P. Menon (1934), p. 16, ZNA AB 3/48

⁹ Hopper, "The African Presence in Arabia," pp. 137-160. Although there was a clear decline in exports to the United States, how Omani dates fared in the regional market is more difficult to determine because of limitations in the documentary record.

dropped by more than 40 percent, from almost £650,000 in 1925-1926 to around £365,000 in 1933-1934.¹⁰

The onset of the worldwide depression of the 1930s pulled the rug out from underneath the region's economies altogether. As markets worldwide nosedived, demand for East African goods plummeted. In Zanzibar and Pemba, the Depression effectively killed what little demand there was for ivory, while bringing the price of cloves to the lowest they had been in decades. In 1931-32, a *frasela* of cloves sold for just over Rs 9; the following year, the price hovered at around Rs 7, reaching an all-time low of Rs 6 in 1933-34.¹¹ Even Bahrain, which depended far less on agricultural exports than did Zanzibar and Oman, felt the Depression's hurricane-like effects. The decline of the island's pearling industry turned out to be precipitous, in part because of the introduction of the Japanese cultured pearl on the world market in 1929 – an event that local historians often identify as the death blow to the industry.¹² The truth was perhaps a little more banal: the cultured pearl's share of the world market only grew during the 1930s, when falling household incomes rendered such luxuries as natural pearls superfluous. Between 1929 and 1931, Bahrain's merchants lost two-thirds of their capital as a result of the market collapse.¹³ When the reputable pearl dealer Victor Rosenthal – a man whose purchases once set the tone for the demand for Bahraini pearls (see Chapter 1) – visited

¹⁰ Landen, *Oman Since 1856*, p. 405

¹¹ Report by K.P. Menon (1934), p. 17, ZNA AB 3/48

¹² Yacoub Y. Al-Hijji, *Kuwait and the Sea*, pp. 49-50; Al-Zayyani, *Al-Ghaws wal-Tawashah*, pp. 287-305

¹³ Fuccaro, *Histories of City and State*, p. 127

the island in September 1930, along with other Paris dealers, he left having purchased nothing.¹⁴ By 1935, Yusuf bin Ahmed Kanoo, one of Bahrain's richest merchants, had no choice but to declare bankruptcy.¹⁵

Indebtedness, Land Transfers and Crisis

The economic transformations taking place during the 1920s and 1930s may have been global in their dimensions, but they had profound local impacts. In Zanzibar, the massive drop in clove prices at the time led to heightened tensions between planters and their merchant-financiers. Falling prices made it more difficult for a planter to service his obligations to his financier, and the problem of agricultural indebtedness reached new heights. Although debt had been a common feature of economic life in the Indian Ocean during the nineteenth century, by the 1920s it became widespread enough to attract the attention of both British officials and the planters themselves. The issue of agricultural indebtedness was on the tip of nearly every official's tongue, generating hundreds of pages of reports and correspondence. One Zanzibari official noted as early as 1921 that "the whole country, from the highest to the lowest, seems to be rotten with debt."¹⁶ For both local residents and colonial officials, the trigger for greater focus on indebtedness as a problem emerged from the courts, as worsening post-World War I agricultural indebtedness generated a steady stream of foreclosure on mortgaged properties.

¹⁴ Bose, *A Hundred Horizons*, p. 86

¹⁵ Fuccaro, *Histories of City and State*, p. 128

¹⁶ Note by Director of Agriculture, ZNA AB 47/10 p. 147

Throughout the dissertation (but particularly in Chapters 2 and 3), I have examined the process by which debtors in the Western Indian Ocean put up their properties as security against loans, but those arrangements merit a brief recapitulation here. Broadly speaking, both creditor and debtor operated with the understanding that although the debtor pawned the title to his property to his creditor, the latter would never take actual possession of the property; it would always remain with the debtor, even if he no longer enjoyed the right to its produce. And as long as times were good and both parties stood reasonably assured that the produce would fetch enough to service the debt, the relationship of mutual obligation –the duty of the debtor to hand over his produce, and the expectation that the creditor would loan out cash and goods with every season – went on as usual.

However, when the post-World War I financier could no longer fetch anything close to the same prices for the cloves he marketed, his relationship with his planter-debtor necessarily changed. In many instances, he had no choice but to foreclose on his debtor's property. This was not a phenomenon limited to Zanzibar alone; around the Indian Ocean – and, indeed, around the world – the growing problem of agricultural indebtedness often resulted in foreclosures.¹⁷ In 1920s Zanzibar, however, the reality of

¹⁷ It is interesting to note that the phenomenon of widespread foreclosures also characterized agrarian relations in the 1920s and 1930s United States. Lee Alston, "Farm foreclosures in the United States during the Interwar Period," *Journal of Economic History*, Vol. 43, No. 4 (1983) pp.885-903. Others have also hinted at a similar process in Oman, although historians have yet to examine it in any detail. See also Marc Valeri, "High Visibility, Low Profile: the Shi'a in Oman Under Sultan Qaboos," *International Journal of*

foreclosure and especially the scale at which it took place were both relatively new. Creditors had rarely foreclosed on properties before, in part because of the mutually-understood rights and obligations underpinning the *khiyār* sale, but also because economic conditions sustained a general commercial optimism. However, with the remaking of the *khiyār* sales *waraqā* as an English-style mortgage over the course of decades leading up to the 1920s (see Chapter 5) and the economic downturn that followed, creditors found themselves armed with the ability to march into court and declare their title over a debtor's property in partial fulfillment of outstanding debts.

In Zanzibar, the first agriculturalists to experience the pain of foreclosure were small (and predominantly African) landholders, whose solvency might be compromised by even the slightest changes in prices. As early as 1921, British officials expressed concern that African farmers were losing their small plots to their Indian moneylenders, to whom they owed debts that they could no longer service, let alone repay. Officials noted that between May 1920 and November 1922, African debtors sold 70 huts and 181 small *shambas* to their Indian moneylenders as settlement for outstanding debts.¹⁸

Larger Arab landholders were no more protected from the specter of indebtedness and dispossession than their African counterparts were. Writing to his colleagues in

Middle East Studies, Vol. 42, No. 2 (2010) p. 255. Considering the inability of Omani government officials to enforce most debt relationships (see Chapter 6) this seems unlikely.

¹⁸ ZNA AB 47/10 pp. 91-92. It is hard to tell how many of these transactions were *bona fide* foreclosures, as the changed legal framework for mortgage transactions would have undoubtedly created room for forced sales beyond the courtroom.

Zanzibar, one British official in Pemba noted that in the district of Mkoani alone there were 420 Arab *shamba* owners indebted to the tune of Rs 180,000 in total; in the neighboring district of Chake Chake, Arab debts to Indians amounted to nearly Rs 100,000. Not all debts were equal: although the average amount owed in Mkoani came to Rs 1,250 and in Chake Chake Rs 440, the official noted that some individuals owed as much Rs 8,000.¹⁹ Thus, when Al-Ma'uli and the Pemba planters petitioned the British Resident in 1922, it was out of a genuine concern that they were losing their means of livelihood.

Table 1: Number of Land Transfers in Zanzibar, 1925-1933

	1925	1927	1928	1930	1931	1932	1933
Arab to Arab	207	178	217	205	142	137	142
Arab to Swahili	209	90	91	153	60	83	52
Arab to Indian	29	78	126	117	40	87	92
Swahili to Swahili	726	494	432	645	290	337	261
Swahili to Arab	130	113	147	130	82	101	75
Swahili to Indian	103	132	189	134	84	100	99
Indian to Indian	29	45	53	48	39	53	82
Indian to Arab	23	22	26	56	24	38	40
Indian to Swahili	42	29	40	92	29	29	29

¹⁹ Report by Assistant District Commissioner, Mkoani (n.d.), ZNA AB 47/11 pp. 30-32. When considering that the a clove picker or dock worker in 1920 could expect to earn between Rs 2 and Rs 3 a day, these numbers are not insignificant. Cooper, *From Slaves to Squatters*, pp. 101-102, 242-244.

Table 2: Number of Land Transfers in Pemba, 1926-1933

	1926	1927	1928	1929	1930	1931	1932	1933
Arab to Arab	508	438	628	364	531	365	608	269
Arab to Swahili	169	128	229	139	201	184	216	75
Arab to Indian	289	211	290	236	249	219	374	186
Swahili to Swahili	712	630	690	480	755	598	593	343
Swahili to Arab	488	431	603	270	317	309	461	167
Swahili to Indian	759	577	711	529	145	410	587	294
Indian to Indian	60	65	72	65	74	106	113	75
Indian to Arab	40	39	43	53	101	44	63	87
Indian to Swahili	59	34	63	80	129	80	67	23

Statistics that officials collected on land transfers in Zanzibar and Pemba between Arabs, Indians and Africans (categorized as Swahilis) between 1925 and 1933 generally seemed to confirm their concerns regarding the threat of foreclosure (see Tables 1 and 2). In Zanzibar, Arabs transferred 29 parcels of land to Indians in 1925 worth just over Rs 80,000; only three years later, they transferred 126 parcels of land worth almost Rs. 650,000 – nearly six times the amount in 1925. By 1933, that number had dropped, but only to 92 parcels of land worth around 160,000 Rupees. Swahili debtors in Zanzibar generally fared worse than their Arab counterparts did: in 1925, they handed over 103 parcels of land worth nearly Rs 49,000 – figures that spiked in 1928 to 189 and just over Rs 114,000 respectively. Although African-owned foreclosures were clearly worth far less than those of Arabs (the average value per plot ranged anywhere between 10 percent and 50 percent of the presumably larger Arab plots), higher numbers of Swahilis lost

their lands to their Indian creditors than Arabs did – to say nothing of the lands they lost to their Arab creditors.²⁰

Circumstances in Pemba proved even more dire. There, transfers from Arabs to Indians numbered 289 in 1926 (nearly ten times that of Zanzibar during the previous year), peaking at 374 in 1932 – four times the rate in Zanzibar for the same year, although in total value the Zanzibar plots were worth nearly double those in Pemba. Transfers from Pemba Swahilis to Indian creditors reflected the same trend: in 1926, they handed over nearly eight times the number of plots their Zanzibar counterparts did, and nearly six times the number in 1932. On average, however, the Pemba sales in 1932 netted only about half those in Zanzibar.²¹

For British officials concerned about changing socio-economic conditions on the islands, the statistics furnished overwhelming evidence that foreclosure represented more than a specter – it had quickly becoming a socially-destabilizing reality, and one with enormous political implications. For although there were at least as many foreclosures by Arab moneylenders on Swahili properties as there were Indian, officials did not feel that it caused as much of a crisis as Indian foreclosure did. “Zanzibar,” wrote the Attorney-General, “is an Arab State. It is the duty of the protecting government to assist the

²⁰ The high representation of Swahilis among the dispossessed is likely due to the vulnerability of their smaller harvests to downturns in prices as compared to the larger Arab *shamba* owners. At the same time, however, one has to consider how large the group “Swahili” might be, as it could potentially incorporate a much broader swath of the Zanzibari population than the smaller category of “Arab.” While what these categories might have distorted is relevant to the discussion here, it would require too lengthy a digression.

²¹ “Statistics Relating to the Transfers of Property as between Races,” ZNA AB 47/25

protected people, [and] it is impossible for us to stand by and take the risk of expropriation of His Highness's people."²² In the minds of British officials, Zanzibar had the political character of a protectorate, and an Arab one at that; Indians who fell under the jurisdiction of the British Raj fell strictly outside of the body politic, despite the fact that many had been there for generations. These categories, and the motivations officials ascribed to each group, were important (if subtle) variables that shaped later attempts to tackle the foreclosure problem.

Profligate Arabs, Parasitic Indians

Although British officials recognized that changes in the world economy and plummeting demand for goods produced around the Indian Ocean littoral had clearly contributed to the deteriorating socio-economic situation in the region, they also saw the problem as having more deeply-rooted local dimensions, driven in large part by characteristics inherent to the actors themselves. The inability of the commercial communities of the Persian Gulf and East Africa to respond effectively to stimuli in the world economy, they thought, was largely due to structural inefficiencies in the system of agricultural finance and marketing – inefficiencies that had their roots in the behaviors of Arabs, Africans and Indians themselves.

According to colonial administrators, the problem was, at its core, one of Arab, African and Indian economic sensibilities – or, more accurately, the perceived lack

²² Extracts from article written by C.F. Andrews in *The Statesman*, a Calcutta daily (1934), ZNA AB 3/48, p. 60

thereof. In a 1923 proposal to restrict credit access to Arabs and Africans (which I will take up in the next section), Banner Johnstone, a District Commissioner in Zanzibar, best summed up the opinions of British administrators. He noted that after receiving an advance following the harvest, the Arab and Swahili *shamba* owner:

...has now cash in hand. He is hungry and must live well, he wants to entertain, he has some important friends for whom he wishes to make a show, perhaps he will take another wife, or one of his children will get married – any of these will soon swallow up sums that should be put away for the lean years. But these lean years are the future and he will have no consideration for them, for he is thoughtless and thriftless.... What can be done to help a people like this? It is looked on as a disgrace to work themselves. They depend entirely on their cloves and coconuts for the wherewithal to live. They don't bother to plant cash crops or make their land support them... [and] they will not superintend the work themselves and make their children and womenfolk work in the field.... They look on it as beneath their dignity to do such things.²³

For Johnstone, and for the many others whose assessments fill the pages of the archival record, the problem was not simply a product of the times. It lay in the essential characteristics of the Arab and African *homo economicus*: extravagance, thriftlessness, arrogance – and above all, a lack of economic foresight.

A similar portrayal of Arab economic sensibilities emerged surrounding pearl divers in Bahrain, who British officials unanimously viewed as being unable to see beyond their next loan. In a description in 1924 of the state of indebtedness in Bahrain's pearling industry, the Political Agent suggested that divers might be able to go without advances if they chose to, but continued to take on debts because they were "ignorant and

²³ Report by B.C. Johnstone (February 1923) ZNA AB 47/26

improvident people.”²⁴ Another wrote that the divers were “very improvident and absolutely illiterate... [and] do not know what they owe,” remarking that “as long as they receive advances and are young, they do not bother about the debts.”²⁵

In the British indictment of Indian Ocean commercial society, Indians came in for their own contemptuous drubbing. With few exceptions, British officials looked upon their Indian protégés as economic parasites, eager to exploit their unwitting Arab and African debtors. This discourse had deep roots, first emerging in the mid-nineteenth century. As Chapters 1 and 4 note, there are scattered accounts from the Persian Gulf and Zanzibar of the rapacious *Bania* and his extortionate hold on his debtors (see Chapters 1 and 4). At the time, it seemed that British officials mostly set aside their contempt for the *Banias* in the interest of preserving a degree of influence in local affairs and, later, facilitating the commercialization of the East African interior (see Chapter 5). As local moneylenders and pawnbrokers, Indians catered to classes of debtors that larger financial institutions ignored – a service that proved particularly useful in contexts such as the construction of the Uganda Railroad, which depended on masses of indentured laborers, to whom the more formal banking institutions would not have lent money.

However, by the 1920s, British accommodation of the *Bania* moneylender had reached its limits. After several decades of investment and economic development, British officials no long viewed Indian financiers as necessary to keep the colonial East

²⁴ Political Agent, Bahrain, to Gulf Resident (31 March 1924) IOR R/15/2/132

²⁵ “The Pearl Industry of Bahrain,” C.D. Belgrave (December 19, 1928) IOR R/15/2/132 p. 13

African economy functioning, and the emergence of Indian nationalism elsewhere in the British Empire called into question their reliability as partners in the imperial project. Increased suspicion surrounding the role of Indian capital took on particularly acute dimensions when it came to agricultural finance, and in the Kenyan highlands, increasing numbers of White settlers effectively formed a barrier to Indian agricultural settlement and activity.²⁶ The Anglo-*Bania* order that had characterized most of the nineteenth century was slowly beginning to show its seams.

In Zanzibar and Pemba, where Indian involvement in agricultural finance gradually led to the establishment of a class of Indian landholders, the discourse surrounding the parasitic nature of the Indian merchant became particularly pronounced, especially as the problem of indebtedness wore on. Officials increasingly argued that Indian finance had outlived its usefulness. “However anxious former Sultans may have been to induce Indian agriculturalists... to settle in Zanzibar,” wrote one official in 1934, when the problem had reached its apex, “the position today is that with very few exceptions there is not resident on, or employed as tiller of, the soil any Indian agriculturalist at all.” Most Indians, he argued, were “traders and shopkeepers,” leaving most of the actual agricultural work to Arabs and Swahili tenants. His views are worth quoting at length:

To the Zanzibar Indian a plantation is primarily a milch-cow and a source of income. He is not by instinct or by habit an agriculturalist, and though I

²⁶ Metcalf, *Imperial Connections*, pp. 185-187

have traced one example of a prosperous Indian family which lives on a plantation and has no other visible means of support, the general Indian custom is to remain in the towns and to rent out the plantations to agriculturalist tenants. A society constructed in this way will not be a healthy society. The transfer of land into Indian hands is proceeding steadily, and with the growing embarrassment of the agriculturalists is likely to become more rapid. It is clear that neither the agriculturalist communities nor the Government can view with equanimity the prospect of an urban Indian oligarchy monopolizing the plantations and managing them through a dependent, indebted and spiritless tenantry of Arabs and Swahilis.²⁷

In the roles that British officials had constructed to describe Zanzibar's agricultural economy, the Indian businessman was primarily a rent-seeking parasite – a profit-motivated miser whose interest in the upkeep of a plantation only stretched as far as his balance books. The Indian shift from agricultural finance to landholding, they thought, would thus create a warped incentive structure and the degradation of Zanzibari agriculture.

The racially-polarized official discourse on Zanzibari commercial society was neither wholly local nor original. Instead, it had their roots in a more ethnically-homogenous milieu: the Indian countryside. In Western India, British wariness of the dependence of the rural peasant on the *Bania* moneylender had been growing for decades, reaching a crescendo in the 1920s when falling crop prices and growing indebtedness on the part of the peasant resulted in similar foreclosures as was the case in Zanzibar. There, the tropes of the improvident peasant and avaricious *Bania* moneylender had long

²⁷ Government comments on the Menon Report (12 December 1934) ZNA AB 3/48

structured British policy. The situation in Punjab provided a particularly strong analogy for British officials in East Africa concerned with agricultural indebtedness. When British legislators looked at *Bania* moneylenders in East Africa, what they saw was an image of the *Bania* of the Punjabi countryside, whose avarice had made him the target of violence by tenant farmers for decades, and eventually the focus of much colonial policy. In Arabs and Africans, British officials caught glimpses of the chronically-indebted Punjabi peasant, their sympathy for whom was significantly offset by what they saw as opulent spending on lavish weddings and other forms of conspicuous consumption.²⁸

Underpinning all of these discourses, moreover, was a view of what rational economic actors – and, more broadly, a rationalized economy – ought to look like. Indeed, wherever British officials looked, they saw the antithesis of what they had come to accept as the markers of proper economic behavior in England: thrift and industry, motivated by a steady, predictable stream of profits – or, in the case of laborers, by wages.²⁹ The idea of “rational” economic actor, then, remained no less racialized than the depictions of Arabs, Africans and Indians. For British officials steeped in a world-developmental scheme that championed Europe as the pinnacle of modernity, European-

²⁸ David Hardiman, *Feeding the Baniya: Peasants and Usurers in Western India* (New Delhi: Oxford University Press, 1996); David Hall-Matthews, *Peasants, Famine and the State in Colonial Western India* (London: Palgrave-Macmillan, 2005) pp. 92-100; Catanach, *Rural Credit in Western India*, pp. 11-13

²⁹ These “virtues” were largely products of a middle-class Victorian English culture, which became institutionalized in 19th-century Britain through laws regulating the personal indebtedness of the working class. For a good overview of these, see also Paul Johnson, “Class Law in Victorian England,” *Past and Present*, Vol. 141, No. 1 (1993) pp. 147-169

style economic arrangements and sensibilities constituted the baseline of rational behavior.

Colonial officials, then, could all agree on a similar vision for Indian Ocean commercial society: at the top, *Bania* merchant-moneylenders had to lose their preeminence; in the middle, African and Arab landowners had to think more like European capitalists; and at the bottom, African and Arab workers had to learn the discipline furnished by wages. But there was less agreement on how to make it an economic reality. Throughout the 1920s, and until the mid-1930s, competing economic ideologies, coupled with acts of outright defiance by Indian Ocean creditors and debtors alike, hamstrung official endeavors at reforming the region's economy of obligation.

Legislating Economic Sensibility, c. 1920-1932

If the root problem plaguing the economies of East Africa and the Persian Gulf rested with economic priorities and ways of thinking among local actors, it was not an insurmountable one. Many British officials around the Western Indian Ocean firmly believed that thrift and industry were economic sensibilities that actors could learn – even those with ostensibly such deep-seated contrary habits as Arabs and Africans. Natives, they believed, could be instilled with the twin sensibilities of thrift and industry if policies created the proper incentives for them to do so. By enacting legislation that targeted debt relationships – the very core of economic life in the Western Indian Ocean – officials confidently believed that they could develop within natives a sense of self-reliance and thereby eliminate the problems that plagued Indian Ocean commercial

society. The racialized discourses surrounding economic behavior thus framed the reform program's overarching goals; its specific measures, however, were more reflective of the times than of anything else.

British officials were in a position to give their ideas some teeth. By the 1920s, the British presence in East Africa had grown considerably. Until the 1890s, British officials restricted their activities to judicial and diplomatic work. With the assumption of the protectorate in Zanzibar and East Africa, the British juridical presence in the region expanded considerably, as courts multiplied and personnel from India and England began arriving in larger numbers (see Chapter 5). During the first two decades of the twentieth century, the region witnessed the gradual encroachment of British officials into other areas of administration, including *inter alia* agriculture, public works, and *waqf* administration. By the 1920s, then, there were many more British official boots on the ground, and Zanzibar and East Africa were effectively tied into a much broader circulation of British officials, administrators and experts.

Before going into the details of the reform program, it is useful to consider for a moment why British officials would have troubled themselves at all with the situation in Zanzibar. Although no official ever clearly articulated an overarching strategic vision for the region, one can surmise a few different motivations behind the attempt to rescue the Zanzibari economy from what they perceived to be the brink of collapse. First, Zanzibar and East Africa had comprised important markets for Indian goods for well over a

century (see Chapter 1) – food and cloth, but also imported manufactured goods.³⁰ An economically-ravaged Zanzibari consumer population could thus have adverse effects on the economy of British India, which itself was suffering from the impact of the agricultural crisis.³¹ Another possible explanation is that British reformers might have felt compelled by a “civilizing mission” in which they had a moral responsibility to pull Arabs and Africans up the civilizational ladder. They had, after all, expressed similar sentiments elsewhere in the Empire.³²

More broadly, however, one has to consider the time period in which these reforms occurred. Faced with agricultural crises in Argentina, the United States, Canada, Iraq, Palestine and elsewhere, government (and imperial) officials in the 1920s and 1930s often turned to economic legislation as a solution to unstable markets and their impact on public revenue generation.³³ What one sees in Zanzibar (and, as I will discuss later, in Bahrain, too) is thus reflective of a worldwide regulatory *zeitgeist* – one which had its intellectual roots in transformations in economic thought in England itself, as reflected in the developing writings of Arthur C. Pigou and other welfare and macroeconomists, but

³⁰ See also Prestholdt, *Domesticating the World*, especially pp. 59-118

³¹ Tirthankar Roy, “Roots of Agrarian Crisis in Interwar India: Retrieving a Narrative,” *Economic and Political Weekly*, Vol. 41, No. 52 (2006) pp. 5389-5400

³² See also Harald Fischer-Tine and Michael Mann (eds.) *Colonialism as Civilizing Mission: Cultural Ideology in British India* (London: Anthem Books, 2004)

³³ Toby Dodge, *Inventing Iraq: The Failure of Nation-Building and a History Denied* (New York: Columbia University Press, 2003) pp. 83-130; Carl E. Solberg, *The Prairies and the Pampas: Agrarian Policy in Canada and Argentina, 1880-1930* (Stanford, CA: Stanford University Press, 1987) pp. 63-67; Alston, “Farm Foreclosures”; Barbara J. Smith, *The Roots of Separatism in Palestine: British Economic Policy, 1920-1929* (Syracuse, NY: Syracuse University Press, 1983) pp. 86-115

also changes in economic thought and policy within the United States leading up to the New Deal.³⁴

The regulatory trend was particularly acute in colonial Africa. During the 1920s and 1930s, agricultural reform programs similar to that being advocated in Zanzibar were underway throughout the continent. In Nigeria and Ghana, colonial officials had begun regulating the production and marketing of cocoa from the early 1920s onwards.³⁵ In the southern part of the continent, in Rhodesia and Zambia, the colonial state instituted a range of different regulations and created a series of institutions aimed at restructuring maize marketing during the same period.³⁶ Even as close to the East African coast as the interior of Tanganyika and Malawi, colonial officials set in place a regulatory framework that aimed to place peasant commodities such as cotton, tobacco and sisal on a surer footing during the economic fluctuations that characterized the inter-war period.³⁷ What

³⁴ For a good overview of these changes, see also Alan Booth, "A Survey of Progressive Economic Thought in Interwar Britain: Strengths and Gaps," *The History of Economic Thought*, Vol. 50, No. 2 (2009) pp. 74-88; Henry W. Spiegel, *The Growth of Economic Thought*, 3rd ed. (Durham, NC: Duke University Press, 1991) pp. 563-613. For a contemporary survey of changing U.S. economic thought, see John R. Commons, *Institutional Economics: its Place in Political Economy* (New York: Macmillan, 1934)

³⁵ Olfumi A. Akinola, "Reorganising the Farmers, c. 1930-1992: Structural Adjustment and Agricultural Politics in Ondo State, Southwestern Nigeria," *The Journal of Modern African Studies*, Vol. 36, No. 2 (Jun., 1998), pp. 239-240; David Meredith, "State Controlled Marketing and Economic "Development": The Case of West African Produce during the Second World War," *The Economic History Review*, New Series, Vol. 39, No. 1 (Feb., 1986), pp. 77-91 Rod Alence, "Colonial Government, Social Conflict and State Involvement in Africa's Open Economies: the Origins of the Ghana Cocoa Marketing Board, 1939-46," *The Journal of African History*, Vol. 42, No. 3 (2001), pp. 397-416

³⁶ Kenneth P. Vickery, "Saving Settlers: Maize Control in Northern Rhodesia," *Journal of Southern African Studies*, Vol. 11, No. 2 (Apr., 1985), pp. 212-234

³⁷ Clement Ng'ong'ola, "Malawi's Agricultural Economy and the Evolution of Legislation on the Production and Marketing of Peasant Economic Crops," *Journal of Southern African Studies*, Vol. 12, No. 2 (Apr., 1986), pp. 240-262

one saw in Zanzibar, then, was not at all unique to the island, although it did take on some uniquely local dimensions there.

Among the main advocates of the idea of economic rehabilitation through legislation in Zanzibar was B.C. Johnstone, whose racialized stereotypes of Arab economic behavior we have already encountered. Despite his opinion that Arabs in Zanzibar were thriftless and lazy, Johnstone argued that they had not always been that way. “These people when they first came to these Islands must have been hard-working to have been able to do what they have done,” he wrote, “but it seems the far too easy way that money has been able to be made from the valuable products of the clove tree has had this degenerating effect on a once-industrious people.” Affluence in times of plenty may have given rise to laziness and improvidence, but belt-tightening in times of need would force *shamba* owners to behave otherwise.

In Johnstone’s view, the first step towards legislating rational economic behavior was to restrict access to credit so as to allow the planter to realize the foolishness of his indebtedness. “I cannot help feeling for the benefit of the large *shamba* owner himself, for the benefit of his descendants, for the benefit of the community and the State, it is better that a start should be made now to make the large *shamba* owner realize his position in regard to his debt,” he argued. Johnstone contended that even if the measure meant that the *shamba* owners would lose portions of their property to their creditors, such an outcome would be preferable to living under the encumbrance of debt – and would allow agriculturalists to move one step closer towards the ultimate goal of genuine

economic independence. “If his credit is restricted, he will suffer,” argued Johnstone, “... but if he can get over this period ([and] there seems to be no reason why he should not) it is possible that he may be turned into a really useful citizen again.” The creditor would have to change too: “if the law can be made strong enough to prevent credit,” he contended, “he [i.e. the creditor] will not always be able to keep up the price of necessities of life, for competition must bring them down again.”³⁸ His scheme was in many ways beautifully simple: if legislation could somehow bring economic actors into the marketplace on sensible terms, then the market would squeeze the inefficiencies plaguing the system and would reward those who offered the fairest terms – and the economy as a whole would ultimately benefit.

In the 1920s, however, neither Indian Ocean economic actors nor government officials were ready to support the idea of restricting credit through legislation, even if they agreed with the ultimate goal of rationalizing economic relationships. In Zanzibar, the staunchest opposition to the legislation came from within British circles – from judges and lawyers, who saw the move as an infringement on enshrined principles of freedom of contract. From as early as 1921, when administrators first floated the first idea of restricting credit to Africans, a judge declared to the Resident that “prima facie any restraint on the right of a person to deal with his property as he thinks best is wrong in principle,” and that it could only be justified if it could be shown that some positive good

³⁸ Report by B.C. Johnstone (February 1923) ZNA AB 47/26

would accrue to the individual or community targeted.³⁹ No such good could come of restricting access to credit among natives, the judge argued, adding that he had “great faith in the capacity of the native African to adapt himself to circumstances and to work out his own salvation without the aid of protective and restrictive measures of this sort, which tend to deprive him of his independence of action.”⁴⁰

Johnstone’s suggestion on how restricting credit to natives would ultimately instill in them an appreciation for thrift and industry did not win his critics over. Their rebuttal took two tacks: first, they argued, restricting credit could just as easily achieve the opposite effect, of stifling industry and enterprise by making access to capital more difficult. “Trade and production in Zanzibar depends largely if not entirely on the facility for obtaining credit at a reasonable rate,” argued one lawyer. “Any restriction on the market value of capital will tend to raise the price rather than cheapen it.” Drawing on passages from John Stuart Mill’s *Principles of Political Economy*, the lawyer argued that government intervention in the loans market would make it more difficult for planters to access credit and would thus discourage, rather than facilitate, economic activity.⁴¹

Moreover, lawyers and judges argued, the colonial state had no business interfering in a contract executed for a lawful purpose and for good consideration, especially when the parties were of full mental capacity. “Is it fair to limit the profits of any trade which is not actually unlawful without going into the circumstances of any

³⁹ ZNA AB 47/10 p. 100

⁴⁰ Ibid. p. 151

⁴¹ A.A. Stephens to the Chief Judge (20 June 1924) ZNA AB 14/2

bargain made in that trade?” asked one lawyer. This stance would require the courts to declare a bargain “harsh and unconscionable if it appears that one of the parties was in a position to dominate the other.” A blanket policy regarding usury had no more of a place in Zanzibar than it did in England, he argued, adding that “as an English-trained lawyer, I cannot alter my views unless it can be shown that they have no local application.”⁴² The lawyers’ unwillingness to think beyond a particular legal episteme, it seems, stood in their way of accepting the rationale behind the move to limit interest. To sum up his views, the lawyer quoted Thomas Hobbes, anticipating the position of later libertarians: “The value of all things contracted for is measured by the appetite of the contractor,” he wrote, “and therefore the just value is that which they be contented to give.”⁴³

Opponents of East African credit reform further argued that limiting the rate of interest on loans, or limiting loans altogether, would do nothing to rehabilitate native borrowers. One magistrate wrote that a native borrower would learn no more from attempts to restrict his ability to borrow than would a school boy “whom a vigilant prefect restrains from mortgaging his umbrella in order that he might stuff himself with chocolates or pork pies.”⁴⁴ Another official contended that the very idea that one could legislate economic morality was misinformed, as the Government “shall not educate the native by too much spoon-feeding to take his proper place in the community.”⁴⁵ Even

⁴² Letter from [name illegible] to Wallis (12 June 1924) ZNA AB 14/2

⁴³ Ibid.

⁴⁴ ZNA AB 47/10 p. 104

⁴⁵ ZNA AB 47/11 p. 36

those who advocated systematic efforts to change native habits often expressed doubts about whether the adoption of paternalistic measures offered the best route to take. One judge finished his long rebuttal to the anti-usury legislation by arguing that those who borrowed with a view to simply living on their capital and handing out their produce would have to pay more interest, because the money they borrowed did not go into the improvement of the *shambas*. Legislation could not magically create efficient economic actors, but the market might: “the sooner the *shambas* are sold to industrious agriculturalists, the better,” he wrote.⁴⁶

Part of what drove the Zanzibar judiciary’s staunch opposition to any attempt to place legal limits on interest was their conviction that any such move would prove to be futile, especially in view of Indian merchants’ strenuous opposition to it. Judges and lawyers who had experience dealing with Indian merchants in the courtroom knew too well that if faced with a restriction on their ability to charge interest, Indian merchants would simply resort to the *waraqah* practices that they had relied on for decades to circumvent similar Islamic prohibitions. Indeed, immediately following the first suggestion to restrict interest, a Pemba magistrate wrote that any such legislation would be “defeated by the conclusion of clandestine arrangements between the Indians and the natives.”⁴⁷ Five lawyers claiming to represent the Zanzibar legal fraternity expounded on this argument in a memorandum they sent to the Zanzibar Attorney-General. In addition

⁴⁶ Memo by Judge Tomlinson (2 July 1924) ZNA AB 14/2

⁴⁷ ZNA AB 47/10 p. 104

to arguing that limits on the rate of interest were inherently unfair in an economy highly dependent on access to loans, they insisted that prevalent commercial practices would nullify enforcement efforts. “Even if a decree were passed fixing the maximum rate of interest at 15%,” they pointed out:

...an unscrupulous moneylender would find a means of evading it and whatever the law in force it seems desirable that all moneylenders should be compelled to keep a proper set of books. Some of them do not keep any books at all and a person may borrow Rs 400 and pass a promissory note for Rs 500 and there may be no provision for interest at all and it is difficult for the borrower to prove the amount actually lent unless the moneylender can produce proper books of account.⁴⁸

To this, one lawyer added that “this is [only] a known difficulty: heaven help us from exploring the unknown in moneylending transactions.”⁴⁹ Any legislation that targeted the moneylender, then, was doomed to a lifeless existence in the books alone, largely because the Indian moneylender was thought to be too slippery to be pinned down by legislation. Faced with such stiff resistance from among the judiciary and on the ground, official arguments for restricting interest on loans failed to pass muster.

Depression and the Triumph of Regulation in East Africa, c. 1932-1940

Whatever the barriers to British financial reforms in Zanzibar, they were overwhelmed by the pressures of the Great Depression. The continuing drop in clove prices through the 1930s, coupled with increasing agricultural indebtedness, weakened opposition to limiting the rate of interest on loans; the rising number of foreclosures overwhelmed it.

⁴⁸ Memo from Members of the Bar to the Attorney-General (20 June 1924) ZNA AB 14/2

⁴⁹ Ibid.

Even when taking into account Arab repurchases of previously-foreclosed land, officials estimates that between 1926 and 1933, Indian creditors came into possession of almost 2.3 million clove and coconut trees in Zanzibar and Pemba.⁵⁰ Amid such dislocation, even those who disavowed the racialized stereotypes surrounding local economic actors conceded that something had to be done about the foreclosures. “The trouble is that in most cases... the native enters into these transactions with open eyes,” wrote one British official in 1931, in the midst of massive land transfers. “The only way to prevent a native from executing a deed of sale in favor of an Indian,” he argued, “is to prohibit such a transaction by law.”⁵¹

The first (and arguable most important) move came only three years later. In 1934, after having collected statistics that clearly illustrated the enormous scale of foreclosures in Zanzibar and Pemba, the British officials, in tandem with the Sultan, issued an Alienation of Land Decree, which explicitly stated that Arabs and Africans were not to permanently alienate their land or lease it for more than two years to Indians without the consent of the British Resident. Perhaps unsurprisingly, given the role of the Indian experience in framing the problem of agricultural indebtedness, officials modeled the Zanzibar decree on similar legislation in the Punjab in 1900. The Zanzibar decree took many of its provisions verbatim from the Punjab Act, which was enacted within a

⁵⁰ ZNA AB 47/25. It is impossible to tell how many the total number of clove and coconut trees were, but the urgency with which British officials raised the issue suggests that the figure of 2.3 million was not inconsiderable.

⁵¹ Letter to Chief Secretary, (24 March 1931) ZNA AB 14/68

strikingly similar context. In the Punjabi countryside, rising crop output led to an increase in indebtedness on the part of peasant farmers, who took advantage of easy credit to finance growing consumption costs. When the farmers were unable to repay their debts, their moneylenders took to British courts and foreclosed on mortgaged farmland. The passing of the Alienation of Land Act in Zanzibar was also accompanied by many of the same tensions that characterized the Punjab legislation: an ideological confrontation between a more regulatory outlook and a strictly *laissez-faire* approach. And as in the case of Zanzibar, the latter collapsed under the weight of growing economic pressures.⁵² Punjab thus furnished British officials in East Africa with both racial tropes of economic sensibility and a regulatory template for tackling the problem.

Although officials within the British administration offered little resistance to the Decree, the Indian business community and Indian lawyers did not readily accede to the legislation. Rather, they immediately mobilized their connections in India in an effort to quash it. The summer after the government passed the Decree, the British Resident received a telegram from the Secretary of State for the Government of India that Sir Maharaj Singh, a collector in the United Provinces, and K.P.S. Menon, his deputy, would be visiting Zanzibar to report on the local effects of the Decree on Indian interests.⁵³

Although Singh fell ill upon arriving in Zanzibar, Menon took his place. The Indian

⁵²See also Ian Talbot, "Punjab Under Colonialism: Order and Transformation in British India" *Journal of Punjab Studies*, Vol. 14, No. 1 (Spring 2007) pp. 5-7. The Punjab Act also formed the basis for similar legislation in Bombay; see Catanach, *Rural Credit in Western India*, pp. 40-41, 92-93

⁵³ Telegram from Secretary of State, Government of India, to British Resident, Zanzibar (31 July 1934) ZNA AB 3/48

community had high hopes: Menon, one Indian-owned newspaper boasted, “belongs to the Political and Foreign department of the Government of India, which is more or less a preserve for high-class Europeans. He is the only Indian in the Department.”⁵⁴ Through him, they could hope to exert pressure on the Resident to repeal the Decree, or at least alter it.⁵⁵

Over the course of the next three weeks, Menon met Indian merchants, moneylenders, lawyers, and administrative officials. What he saw was an Indian mercantile community in a state of disarray. Not only had clove prices dropped even further, from around Rs. 15 per *frasela* in 1929-1930 to around Rs 6 during the year he visited, but the Decree also appeared to have prompted a number of trespasses by Africans on Indian-owned *shambas*, under the impression “that the millennium has arrived, that debts have been wiped out, and that their properties which had been sold years ago would be restored to them.”⁵⁶ To balance out his itinerary, Menon also briefly met with an Arab delegation, who complained that the low price of cloves had resulted from collusion among Indian merchants and middlemen, and described to him in detail the process by which an Indian foreclosed on his debtor’s *shamba*. The delegation’s head ended his speech by declaring that “if the *shambas* of this island belonging to Arabs and

⁵⁴ Excerpt from *The Zanzibar Voice* (20 August 1934), ZNA AB 3/48. The newspaper was founded by Biharlal N. Anantani in 1922. See Robert C. Gregory, *Quest for Equality: Asian Politics in East Africa, 1900-1967* (New Delhi: Orient Longman Ltd., 1993) p. 166

⁵⁵ Articles critical of the Land Alienation Decree and the CGA were published in *The Statesman*, a Calcutta-based newspaper on the 28th, 29th and 30th of August, 1934. ZNA AB 3/48

⁵⁶ Bose, *A Hundred Horizons*, p. 104; Speech by Menon in Wete, Pemba (29 August 1934) ZNA AB 3/48

natives are possessed by foreign tribes, the industry of cloves will undoubtedly be diminished.”⁵⁷

Menon disagreed. In his assessment of the situation in Zanzibar following his visit, he could not help but criticize the racialized nature of the Decree, which he claimed imported “the racial virus into this island, from which it has been happily free.” The Government’s claim that foreclosures had been transferred from Arabs and Africans to Indians at an alarming rate, he contended, was simply not borne out by the facts. Drawing on figures from 1922, he argued that Indians made up only 323 of 18,320 landowners (or 1.72%), owning 1,300 of 32,479 plantations (or 4%) – completely ignoring the transformations that had taken place in land ownership during the past decade, during which the proportion of plantations under Indian ownership grew to roughly 17.5%.⁵⁸ He further lent his support to Indian complaints that the Decree allowed an Arab coming from Muscat or elsewhere, “however recent may be his arrival in the Protectorate and however ignorant he may be of agriculture,” to buy and sell land while depriving Indians “settled in the country for generations and thoroughly well conversant with the art of agriculture” the right to do so.⁵⁹

Menon reserved his most scathing criticism, however, for the Clove Growers’ Association (CGA), a quasi-official board headed by Omani Arab planters which sought closer control over the marketing of cloves by providing loans to planters in need and

⁵⁷ Shaikh Sa‘id bin Ali bin Juma Al-Mughairi to Menon (29 August 1934), ZNA AB 3/48

⁵⁸ Bose, *A Hundred Horizons*, pp. 105-106

⁵⁹ K.P.S. Menon Report (10 September 1934), ZNA AB 3/48, pp. 2-6

controlling the costs of production, especially through labor rates. Officials had invited the planters to create the board, or some other cooperative, in 1927, bringing the Association into existence. Aimed at rationalizing the marketing structure of Zanzibar's clove industry, the CGA's creation reflected regulatory aspirations that British officials had throughout colonial Africa, from Nigeria all the way down to Rhodesia, and throughout the East African coast and interior.⁶⁰ Throughout the Depression, and even afterward, the CGA played an important role for Arab planters: it bought cloves for guaranteed prices, resolved labor disputes and supplied them with loans for whatever plantation maintenance was required.⁶¹

However, not everyone was as happy with the CGA as Arab planters were. Amongst Indians, the general sentiment was that officials created the CGA to completely exclude Indian participation in the clove trade – particularly middlemen, whose speculation in cloves officials frequently blamed for the enormous fluctuations in clove prices. Defending Indian trade interests, Menon depicted “these so-called “middlemen” [as] petty shopkeepers to whom the neighboring Arab or Swahili producers find it convenient to take their produce in the first instance.” The commission these shopkeepers levied, he argued, was moderate, in most cases barely enabling them to eke out a living. Menon contended that the legislation establishing the CGA “will reduce them not from

⁶⁰ For examples of these, see note 34

⁶¹ The Clove Growers' Association, however, has yet to receive any serious treatment; most scholarship has only mentioned it in passing, despite the existence of a large cache of files at the Zanzibar National Archives. See ZNA AP series, and the Michael Lofchie collection at the University of California, Los Angeles.

opulence to poverty, but from poverty to starvation.”⁶² Echoing earlier arguments surrounding economic regulation, he claimed that the CGA “strikes Indian traders as a Leviathan, brushing them aside, casting them adrift and trampling upon that freedom of trade which they have enjoyed for generations.” Indians “whose forefathers opened up markets for and practically built up the clove trade, and who as financiers and exporters are primarily responsible for the growth of the industry from the parochial into world dimensions,” he claimed, now felt the bitter humiliation of having to depend on the government for handouts.⁶³

Menon ended his long report with three recommendations. First, he advised that the Alienation of Land Decree be altered to regulate relations between agriculturalists and non-agriculturalists rather than racial groups, as was the case with the Punjab Decree on which it was modeled; and second, that it not be retroactive, affecting rights arising from land transactions prior to its enactment. As for the CGA, he proposed that the administration eliminate it so as to avoid “irretrievable damage” to Indian interests.⁶⁴ He concluded by quoting John Kirk, the late-nineteenth century Political Agent: “But for the Indians we would not be there now,” Kirk had written in 1910; “It was entirely through the gaining possession of these Indian merchants that we were enabled to build up the influence that eventually resulted in our position.”⁶⁵

⁶² K.P.S. Menon Report (10 September 1934), ZNA AB 3/48, p. 11

⁶³ Ibid. p. 9, 12

⁶⁴ Ibid. p. 13

⁶⁵ Ibid. p. 12

Despite its passion and detail, Menon's report failed to make an impression on the British administration in Zanzibar. A government official offered a point-by-point rebuttal of Menon's arguments, attacking his evidence base and calling into question his recommendations. Responding to Menon's central claim, that the legislation favored newly-arrived immigrants from Arabia over long-established Indians, the official wrote that:

The Manga, or immigrant Arab, whom I was at first disposed to regard with suspicion, proves after examination to be a good settler. On first arrival he is a shopkeeper, dealer in produce, and moneylender, and no more merciful than moneylenders of other races in Zanzibar. When he acquires one or two small estates, he settles on them and manages them, while continuing his commercial business. As his property grows, he gives it more and more of his attention, and in many instances I am informed that he becomes, in the evening of his life, an agriculturalist in temper and in practice, and either he himself remains in this country to die or if he returns to Arabia, his son is a good Zanzibari, and joins the ranks of the active and managing plantation owners.

The inconvenience which resulted from a plantation passing from a resident to an immigrant, he argued, was only temporary, and in many ways preferable, as the new agriculturalist family proved "businesslike, energetic, and free from debt." Legislation that targeted presumed non-agriculturalists instead of Indians would stymie the flow of new blood into Zanzibar's plantations. That blood, however, had to be Arab, not Indian. While both were technically outsiders, the Arab was a good outsider – one with a less rapacious agenda than the Indian. Moreover, the policy would protect the island's Arabs and Africans from their own demonstrated irresponsibility in financial affairs. In the official's view, the legislation did not target Indians as such, but merely safeguarded

Arabs and Africans – protection necessitated by their inherent deficiencies as economic actors.

Turning to Menon's assessment of the CGA, the official insisted that because Zanzibar produced 82% of the world's cloves, the island required collective means of spreading sales to meet demands while keeping prices stable. The shopkeeper who operated as a middleman in the *shambas*, he argued, was impossible to control, as "it would be impossible to extricate from the medley of transactions conducted by [him] the amount of middleman's profit on the sale and purchase of cloves." In taking over the middleman function and exercising it in a more "rationalized" manner, the CGA would ensure that clove producers received ready money and better prices for their crops. And because "the legitimate business of the shopkeepers is to sell goods," they would benefit equally from an increase in their customers' purchasing power. The benefit to Indian traders, the official claimed, was already becoming apparent.⁶⁶

To give their reform program a sharper focus, British officials in Zanzibar called in Sir Ernest Dowson, an eminent land expert who had a distinguished career in the British Empire. By the time Dowson arrived in Zanzibar in 1934, he had already served as Director-General of the Survey Department of Egypt under the former Consul-General Lord Cromer, had been a major figure in debates surrounding land reforms during the British Mandate in Iraq, and had proposed a system of land reforms for Palestine in

⁶⁶ Comments of the Government of Zanzibar on Menon's Report (12 December 1934) ZNA AB 3/48

1926.⁶⁷ His ideological inclinations, apparent from the stances he took in past debates, lined up with the Zanzibar Government's position: Dowson firmly believed in an approach to land tenure in which the state, not any communal leader, served as the arbiter of land rights. Its role was to administer agricultural land efficiently, and it could only do so through direct links with individuals.⁶⁸

In his assessment of the agricultural situation in Zanzibar, Dowson drew on his experiences around the Middle East, but prefaced his 62-page report, published in 1936, by stressing the relevance of comparison with India. Throughout the report he referenced Malcolm Lyall Darling's work, *The Punjab Peasant in Prosperity and Debt*, which he applauded as "the most instructive book that I know on the subject of indebtedness among small-holders in conditions such as those of which he treats." Although Darling's views and conclusions were not always applicable to other countries, "they always test[ed] facile belief and stimulate[d] thought most healthily," and he found it to be useful in his studies of agricultural indebtedness in Egypt, Palestine and Iraq.⁶⁹ In Zanzibar, where the Punjabi experience underpinned both official views and legislation, Darling's approach fit well.

Dowson's report integrated legislation attempts and the stereotypes that framed them into a single, coherent vision of a rationalized Zanzibari agricultural economy, and articulated concrete steps towards its realization. Past attempts to diagnose the problem,

⁶⁷ See also Dodge, *Inventing Iraq*, pp. 101-130

⁶⁸ Ibid. pp. 109-110

⁶⁹ Sir Ernest Dowson's Report (1936), p. 2, ZNA AB 47/23

Dowson noted, were “limited to the academic encouragement of thrift and the provision of cheap credit facilities,” predicated on the idea of a “peculiar mentality” among landowners in the Protectorate, including “innate improvidence, lack of thrift and love of ostentatious hospitality... and the disinclination of money lenders to foreclose and dispossess debtors.” This mentality, he wrote, was hardly particular to Zanzibar, and in fact was “quite natural and usual, if not sublime.” Prior officials’ opinions, he wrote, seemed “to hesitate between the view that legislation cannot cure improvidence” and the view that the Punjab legislation sufficed to prevent land transfers in Zanzibar.⁷⁰

Dowson suggested an altogether different framework for understanding the problem – one that focused instead on the historical processes that brought it about, and the structural forces that allowed it to persist. Dowson argued that agriculturalists in Zanzibar had been indebted since at least 1860, and while the conditions of indebtedness had changed “the evil must primarily be sought in conditions that have persisted throughout the last three-quarters of a century, and only secondarily, if at all, in the great political and economic changes mentioned,” like the abolition of slavery and the economic transformations of the past decade.⁷¹ His approach thus combined a synchronic and diachronic assessment of the Zanzibari economy. Although such static factors as “lack of business capacity in debtors” and “lack of an authoritative and accurate record on land rights” were features that persisted throughout the past century or so, more recent

⁷⁰ Ibid.

⁷¹ Ibid. p. 10

developments such as abolition, the movement of people into towns, and overproduction also figured into his analysis.

In his discussion of more recent developments that shaped the situation before him, Dowson stressed the role of the law, both as an instrument of the creditor and an arena for resistance by their debtors. “The provisions and processes of the law have probably been utilized more astutely by creditors than by the general mass of smaller debtors at least,” he wrote; “but the powers of obstruction and passive resistance of the latter to law can readily be under-rated.” The legal system imposed onto Zanzibar by British courts, he argued, was unsuitable to the conditions there, and was riddled with opportunities for the savvy debtor to evade its grasp. However, he stopped short of blaming British officials for the mess, noting that it was “doubtful if the best conceived law would have operated to reduce rural indebtedness under the general conditions which have existed.”⁷²

Dowson’s program chiefly sought the gradual elimination of agricultural indebtedness and the creation of self-sufficient economic actors. Rather than focus on the exclusion of certain actors and not others, “insistence should be laid in Government policy upon the constructive necessity of preserving the existing rural population on the land and of developing their economic self-dependence.” The government, Dowson thought, ought to make provisions to allow Indians who were genuinely interested in

⁷² Ibid. p. 15

farming land to do so. The Alienation Decree was misdirected, since “it is surely a sign of stagnation and weakness to exclude new blood, new ideas, and new capital from agriculture as from other industries.”⁷³ The agricultural economy of Zanzibar was already one based on cooperation between townsmen and countrymen. With the proper safeguards in place, he thought, one could preserve the place of the land-holders on the land, promote the composition of existing debts, and, more generally, introduce healthier relations between urban creditors and rural debtors.

For Dowson, however, not everyone deserved to maintain his position. Dowson’s diagnosis referred to Zanzibar’s economy as a human body that had become bloated and unproductive, riddled with sick elements that needed to be removed from the body economic in order for it to be healthy again. “From the point of view of the public interest and the maintenance of a healthy agricultural industry,” he wrote, “the continuous elimination of landholders who fail (whether through debt or otherwise) is generally regarded elsewhere as a salutary operation economically, which prevents the accumulation of unproductive debt and keeps the industry purged of its weaker and less capable elements.” In Zanzibar, such a Darwinian purging process had been avoided for too long, and the island now lacked a reserve of equipped successors to the landholders. “It is feared,” Dowson wrote, “that many of the sick cannot be saved.” For the rest, he had a plan:

⁷³ Ibid. p. 28

For a period, provisionally envisaged as ten to twenty years, concurrent efforts of two sorts will be required: (i) to nurse slowly back to health all the sick whose extremity is not too great and who have enough vitality and intelligence to respond to assistance, and (ii) to develop in every way possible a riper and more alert sense of the economic and business aspects of agriculture among all members of the industry.⁷⁴

The courtroom furnished a key location for the rehabilitation process. As the locus of debt settlement, and the point at which the growing regulatory state and commercial society most vividly intersected, courts were ideally suited to carry out Dowson's vision. "No body other than a regular Court of Justice," he wrote, "can command the unquestioning confidence in its judicial integrity and competence that must constitute the foundation of any settlement of existing debts."⁷⁵ As the primary adjudicating body, the court should, in Dowson's view, develop a settlement on a case-by-case basis that would result in the rehabilitation of the earning capacity of the mass of agricultural holdings encumbered by debt, and the gradual amortization of debt through periodic payments to the creditor while always preserving the land's earning power.⁷⁶ For Dowson, the ultimate goal of the legal process was not to clearly decide in favor of one party or another, but to arrive at a sustainable arrangement wherein the creditor gets his due as the debtor continues to participate in agriculture – a strategy that the island's *qādis*

⁷⁴ Ibid. p. 26. It is tempting to place Dowson's writings within the framework of the economic thought of the eighteenth-century Physiocrats, who used the metaphor of the body to describe economic processes and who placed a heavy emphasis on the place of agriculture in the economy. However, although it draws on similar language, there is little to suggest that Dowson saw the economy in similar terms. Not only was he 200 years removed from the Physiocrats, but physiological metaphors only made up a small part of his writings. For recent work on the Physiocrats, see also Liana Vardi, *The Physiocrats and the World of the Enlightenment* (New York: Cambridge University Press, 2012)

⁷⁵ Sir Ernest Dowson's Report (1936), p. 2, ZNA AB 47/23 p. 37

⁷⁶ Ibid. p. 33

had employed for scores of years in adjudicating debt-related disputes (see Chapter 4). The courts, Dowson imagined, would serve as the handmaidens of the reform process.

In their execution of Dowson's vision for debt settlement, courts effectively coordinated between the different actors who had a stake in the matter: the debtors, the creditors, the agricultural department and the Clove Growers' Association. By enforcing the new institutional structure of the clove industry, courts effectively dissolved the bonds of obligation that had once tied Indian Ocean actors together, replacing them instead with institutions that the now-developed state bureaucracy could both monitor and regulate.

As the 1930s wore on, planters who found themselves inundated with debt appeared before the court to plead bankruptcy and ask for a degree of relief. The proceedings which resulted from those moments highlight the degree to which the court coordinated between different institutions in the burgeoning East African bureaucracy. Much like Dowson had imagined, courts spurred on the processes of determining the actual amount and nature of the debt, assessing the earning capacity of a debtor's *shamba* (with the help of officials from the Agricultural Department) and fashioned a plan between the debtor, the creditor and the CGA so that the debtor could service his debts while maintaining enough of an income to live off of.⁷⁷ Thus, to take one example of many, when in 1938 when one Omani Arab filed for bankruptcy after being unable to

⁷⁷ The CGA also ran its own court proceedings, which I unfortunately did not have time to access. See ZNA AP 50 and ZNA AP 51 series.

service his debts to his Indian financier, the court sent an employee of the recently-formed Agricultural Department to survey the *shamba*. After assessing the *shamba*'s potential yield, court officials drew up a settlement whereby the debtor would retain Rs 50 per month for household expenses while paying the rest towards his debt.⁷⁸

The New *Waraqqa*

As court proceedings unfolded over the 1930s and 1940s, officials devoted at least some of their regulatory energies to the *waraqqa* and its place in the new commercial economy. In his report, Dowson called attention to the need to change the *waraqqa* so as to strip it of the ambiguity which had vexed officials for so long. For Dowson, documents embodying loan transactions needed to be “written in a language, and if possible a script, comprehensible to both parties,” both to facilitate the intelligibility of these transactions to inexperienced court officials, but also to help eventually establish a land registry.⁷⁹

His recommendations reflected themselves in court proceedings from the late 1930s onwards, in which the *waraqqa* that had dominated the commercial landscape of the Indian Ocean for at least a century had all but disappeared. In its place emerged a standardized English-language mortgage deed – one typed up by a court clerk in the presence of an advocate. In the new deed, the clerk clarified all of the details of the transaction: the amount loaned, the rate of interest, the precise terms of repayment and the rules surrounding default. When describing the properties being mortgaged, the clerk

⁷⁸ *Said bin Mohammed El-Kuweti, Insolvent* (1938) ZNA HC 2/1445 A and B

⁷⁹ Sir Ernest Dowson's Report (1936), p. 25, ZNA AB 47/23

was careful to note the number of clove and coconut trees, their size (“large” or “small”), and, if possible, the registration number of the deed drawn up at the time the borrower originally bought the property.⁸⁰

In Muscat and Bahrain, too, *waraqas* registration procedures had by the 1930s changed considerably. Whereas economic actors in those ports were once able to freely call a scribe to draw up an agreement between them, the process was now one that had to pass through government supervision. The only valid legal instruments were those printed on government-issued paper, drawn up and notarized by a government official. The changes were visible on the *waraqas* themselves: emblazoned across the top of both Bahrain and Muscat *waraqas* was a government logo, along with the stern declaration that “it is not acceptable that a legal contract be written [*lā yubāḥ an yuktab al-sanad al-shar‘ī*] for a sale, a pledge, an agency [*tawkīl*], a guarantee, a verification, or any type of obligation [*ayy naw‘ min al-iqrārāt*] except on these *waraqas*.”⁸¹ The wording of the documents themselves hadn’t changed as drastically as those in Zanzibar, but the government’s oversight of the contracting process could not have been missed by anyone involved. Moreover, the new *waraqas* came with a fee: in Bahrain, a single sheet cost 2 Annas, equivalent to one half of a Rupee. The contracting process that had once occurred

⁸⁰ For one example of many, see ZNA HC 3/3824, which includes a 1933 mortgage deed.

⁸¹ Debt Acknowledgment from ‘Ali bin Yusuf Al-Hijali to Saleh bin Salem Al-Dallal (1335 A.H.), Ratansi Purshottam Collection; Gift deed (*heba*) between ‘Ali Kazem Bushihri and Hussin bin ‘Ali Kazem Bushihri (2 Shawwal 1350), Bushihri Archive

completely outside of the framework of the state had by the 1930s become one of the sources of government revenue.

In Zanzibar, in addition to the courts' regulation of the deed's form, they enforced provisions that regulated the very act of lending money by requiring that moneylenders take out licenses for their practice. When a dispute ended up in court, the judges would determine whether the creditor in question was a moneylender, and if so, whether he had registered himself as such. Those who could not prove registration could not recover debts in court, and further faced possible fines.⁸² As the 1930s drew to a close, the British administration in Zanzibar enacted additional legislation mandating that those who wanted to borrow money on the security of land could do so only with explicit consent – not from the Resident, as had been the case before, but from a Land Alienation Board. Prior to approving the loan, the latter thoroughly scrutinized the details of the transaction for any irregularities and to ensure that the debtor applied the loan to approved (i.e. agricultural) purposes. The legislation further set established proportions of the value of the land to the loan (the former was not to be worth less than 60% of the latter), and required that debtors taking on loans have at least one piece of land left unencumbered.⁸³

By the 1940s, then, a creditor and debtor who wanted to enter into a contract with one another could no longer simply call a scribe to give a legal gloss to an open-ended and flexible economic relationship, as they had in the past. Those who wanted to leave an

⁸² Bose, *A Hundred Horizons*, p. 104

⁸³ "Legal Report on Land Alienation Decree" (16 June 1939) ZNA AB 40/1

official record of their transaction for the state to enforce had to prepare a lot of paperwork and had to clear it through several stages of the bureaucracy before they could legally lend or borrow. As one scholar doing fieldwork in Zanzibar in 1950 observed, “such mortgages as are now created are almost invariably in the usual English form, and Islamic forms of mortgage may be said to no longer exist in Zanzibar.”⁸⁴ This assessment overstated transformations in social practice: reports from as late as 1952 point to persistent maneuverings on the part of debtors and creditors to sidestep the cumbersome restrictions that had been placed on the credit market.⁸⁵ Those, however, were exceptions to the broader trend. Over the 1930s and 1940s economic life in Zanzibar had undergone a fundamental restructuring.

Reform, Opposition and Regulation in Bahrain, c. 1920-1940

A similar process of reform and regulation to the one that unmade the East African economy of obligation also took place in Bahrain, especially with regard to its impetus, rationale and, to a lesser degree, its execution. However, from the perspective of British officers, there was no comparison between the two in terms of importance: Zanzibar’s cloves represented a significant world commodity, and there were few other economic prospects for those living on the island. A plan that could place the clove trade on a firmer footing was therefore imperative. The same did not apply to Bahrain’s pearls, which were, after all, luxury goods which had lost out to Japanese competition and

⁸⁴ J. N. D. Anderson, *Islamic Law in Africa* (London: Frank Cass, 1970) p. 66

⁸⁵ Senior Commissioner of Agriculture to Chief Secretary (8 October 1952) ZNA AB 40/1

depressed demand. Officials accordingly harbored fewer hopes for the Bahraini pearling industry, and the discussions that the reform process generated had a less urgent and frequent cast. Moreover, there is little evidence to suggest that the two programs were at all linked to or inspired by one another. Still, the parallels between the two reform programs deserve some consideration in order to place the Zanzibar measures within the context of broader regional economic and legal transformations.

Although the nature of the reform process in Bahrain differed from that of Zanzibar for obvious reasons (one dealt with an entirely different industry than the other) it reached similar policy outcomes. Both programs targeted a debt-based economy of obligation, which had by the 1920s characterized economic life around the Indian Ocean. As in Zanzibar, the British goal in Bahrain was to create a more “rationalized” economy – one in which divers worked for wages, *nakhodas* developed more uniform bookkeeping practices, and the government could more easily generate revenue from the pearling industry.

The first step of the Bahraini pearling reform program involved the registration and licensing of pearl boats, for the purposes of generating revenue. Prior to the reform program, the region lacked any public revenue system to speak of: the ruler farmed out the customs house to a consortium of *Banias*, who then collected duties on goods going into and out of the island (see Chapter 1). In the new system, state officials retained control over the customs house, while the direct licensing of pearling boats, in which

smaller boats paid slightly less than larger ones added a new form of revenue.⁸⁶

Administrators quickly pronounced the licensing system a success: in the first season alone, it raised almost Rs 76,000 – just over three-quarters of what the *Banias* had paid for the entire customs farm.⁸⁷

The licensing system, however, formed only a small component of the reform program. The program's main target were the *nakhodas*' account books, which officials criticized for obscuring far more in terms of the amount divers owed than they revealed. The largely-illiterate divers, British officials in Bahrain claimed, had no way of knowing what the debt amounts a *nakhoda* entered into his book were, nor any way of ascertaining precisely how much a pearl sold for. The amount a diver owed in the books, officials claimed, hardly ever corresponded to how much he might have taken on in advances and what he might have earned in a season. *Nakhodas* further obscured those amounts when they sold their divers' obligations to one another; officials claimed that what they actually paid to one another hardly ever matched what they acknowledged in writing to have received, and that the system only continued to function because "the Nakhudas [sic] are all aware of the nature of the accounts kept by them and accommodate each other." The net effect, they claimed, was to enable *nakhodas* to "practically enslave the diver."⁸⁸

⁸⁶ Officials deemed this easier than the more vexing task of taxing the sale of pearls. Boats, they reasoned, were more visible and easier to measure.

⁸⁷ Director of Customs to Political Agent, Bahrain (12 June 1924) IOR R/15/2/132

⁸⁸ Political Agent, Bahrain, to Political Agent, Kuwait (27 February 1923) IOR R/15/2/122; British attempts to bring the divers out of debt were built on the assumption that in the prevailing system, the divers could never be solvent and were thus in a position comparable to slaves. Over the course of the

To dismantle the system of debt, officials put in place legislation that brought greater transparency to the industry, initially by instituting a regularized accounting system – one in which the government would issue divers with account books that officials could then check against the *nakhoda*'s accounts when a dispute arose. *Nakhodas* who lacked the ability to keep accounts had the obligation to hire a personal clerk, or a share of a clerk, to do the work for them. “Ignorance of letters or figures on the part of the *nakhudas*,” wrote one official, “will not be accepted as an excuse for incorrect or improperly made out accounts.”⁸⁹ *Nakhodas* accepted the proposal with little objection.

A second, more contentious proposal concerned limits on the rate of interest that *nakhodas* could legitimately charge on their loans to divers, with a cap of no more than 20% for pre-season *tisqam* loans and 10% for off-season *salaf* loans. Officials conceded that *nakhodas* had to charge some interest on the loans, since they themselves had to borrow from their merchant-financiers and had to make enough to keep their heads above the water, as well as to cover any debt defaults. Some *nakhodas*, however, had come to abuse the system, using this form of money-lending to “practically enslave the diver and make it impossible for him to cease diving for them year after year, however badly he

several years in which the program was set into motion, the trope of slavery was ever-present in official discourse. What the discourse missed, however, was the obligation on the *nakhoda*'s part to keep loaning money, which would have called into question the utility of the slavery analogy.

⁸⁹ Gulf Resident to Political Agent, Bahrain (15 February 1924) IOR R/15/2/132

may be treated.”⁹⁰ By allowing what they deemed to be a fair rate of interest on loans, officials gave *nakhodas* enough room to raise the capital they needed to finance a pearling voyage while preserving for divers the possibility of eventually pulling themselves out from their *nakhodas*’ ledgers.

At the same time, officials wanted to ensure that divers would be assured fair returns on pearls that their *nakhoda* sold, even if he only sold them to his merchant-financier. Those who pushed the issue argued that to allow the *nakhoda* complete and total control over the sale of pearls would undermine the entire reform program, as it would allow too much room for collusion between *nakhodas* and merchants over the sale price. To ensure greater transparency, officials mandated that two-thirds of the crew be present to witness the sale transaction; disagreements over prices would be settled either by arbitration or in court.⁹¹

Nakhodas and merchants immediately responded unfavorably to the measures. A number chose to leave Bahrain altogether: instead of stowing away their dhows after returning from the summer dive, some *nakhodas* outfitted them for a move to Qatar, as a protest against the diving reforms (much like mariners did to evade institutional changes, described in Chapter 6).⁹² Those who did not leave flooded the Ruler and Political Agent with dissenting views: between September and November 1925, no less than fifty different *nakhodas* submitted petitions complaining of the injustices of the new system,

⁹⁰ Political Agent, Bahrain, to Gulf Resident (31 March 1924) IOR R/15/2/132

⁹¹ Proclamation by Shaikh Hamad bin ‘Isa Al-Khalifa (1343 A.H. / 1924) IOR R/15/2/132

⁹² Political Agent, Bahrain, to Gulf Resident (17 September 1925) IOR R/15/12/132

and the strain it placed on their precarious position. In one such petition, thirty *nakhodas* wrote that due to the reforms there were “no more merchants giving out money and no *nakhodas* readying dhows [*al-bilād lā lahā tājir yamudd wa lā nōkhithā yasta‘id*] and that work has stopped and the bounty has lessened [*qallal al-khayr*].”⁹³ *Nakhodas* further groused about the rule requiring the divers’ consent to the sale of pearls, as it interfered with an already-established arrangement in which *nakhodas* acted as the divers’ representatives at the bargaining table.

The *nakhodas*’ protests largely fell on deaf ears. Although some officials voiced at least tepid sympathies for their cause, most instead chose to demonize those who protested against the new system. To colonial officials, the dissenters were motivated by little more than self-interest and a desire to preserve the authority that the old system had vested in them. The merchants and *nakhodas* “whose opinions are worth considering,” officials argued, embraced all of the changes – even the limits to the rate of interest on loans.⁹⁴

Nakhodas eventually demurred on the question of interest rates and diver representation, but drew the line when the government attempted to limit the loans altogether. When the ruler and Political Agent announced at the end of 1926 that they would limit the pre-season advance (the *tisqām*) to Rs 80 for divers and Rs 60 for pullers as a move towards further bringing the divers out of debt, participants in the industry had

⁹³ Petition by 30 *nakhodas* to (8 Rabi‘ al-Awwal, 1344 A.H. / 27 September 1925) IOR R/15/12/132

⁹⁴ Political Agent, Bahrain, to Secretary to the Gulf Resident (1 January 1927) IOR R/15/2/132

enough. Egged on by their *nakhodas*, roughly 200 divers, many of whom were foreigners with no ties to the island's families, went into the Manama market and began looting some of the stores there. After, they set sail for the neighboring island of Muharraq (also part of Bahrain) and "went to the house of an usurer, helped themselves to his rice and destroyed his records." The divers were heading to the Muharraq bazaar when the Political Agent turned up with his Baluchi guards and dispersed the crowd.⁹⁵

The 1926 riot, however, proved but a small precursor of things to come on the island. *Nakhodas* had only quietly protested government attempts to limit their moneylending activities, and took care to disclaim involvement with the diver's actions. However, as the pearling economy worsened and regulations grew even tighter, even they could no longer stay quiet. In May 1932, after the government announced that advances had been set at Rs 30 for divers and Rs 25 for pullers, they erupted. That month, almost 1,500 angry pearl divers and other mariners waving sticks and crowbars advanced towards the marketplace of Manama, as both local and foreign merchants scrambled to close the light wooden shutters that protected their shops. When a British official arrived at the scene accompanied by a number of Indian policemen, the crowd was quickly dispersed "into the sea," but violent displays of diver anger erupted throughout the day. On his way to apprehending the perceived ringleaders, the Ruler's brother encountered "two boatloads of divers" who responded to his orders to return to their homes by jeering

⁹⁵ Political Agent, Bahrain, to Gulf Resident (1 January 1927) IOR R/15/2/132; Fuccaro, *Histories of City and State*, pp. 160-163

at him and “lifting up their clothes and [shaking] their *membra virile* at him.”⁹⁶ Although the authorities managed to arrest some of the rioters, their peers soon broke them out of jail by, as “policemen were unable to prevent the divers from smashing open the outer door of the lock up and releasing... the prisoners and from breaking windows and destroying the railings.”⁹⁷ The frenzy died out over the course of the night, but not before leaving two divers dead and five wounded as a result of clashes with policemen.

The divers’ reactions to British attempts to limit loans perplexed the Political Agent, who lamented to his superiors that “the greatest difficulty in attempting to improve conditions are the divers themselves.”⁹⁸ While British officials gave a number of possible explanations for the divers’ obstinacy, most of them revolved around their sheer inability to comprehend the benefits that the reforms were to bestow upon them. Writing in 1930, two years after the first attempts to place limits on the advances, the Agent opined that “the divers never realized that it is in their interests and to get them out of debt that these advances are controlled,” adding that they “only wanted their *salafs* to spend on new *bishts* [cloaks] and a final orgy of whoring.”⁹⁹ The divers, however, saw things very differently. Government officials had essentially removed their most immediate means of livelihood – the advance. Because they had never been asked to repay the debts they owed in the books (see Chapter 1), the prospect of having to

⁹⁶ Political Agent, Bahrain to Gulf Resident, Bushire (May 30, 1932), IOR R/15/2/848

⁹⁷ C. D. Belgrave to Political Agent, Bahrain (June 28, 1932), IOR R/15/2/848

⁹⁸ “The Pearl Industry of Bahrain,” C.D. Belgrave (December 19, 1928) IOR R/15/2/132 p. 13

⁹⁹ Political Agency, Bahrain, to Political Resident (May 24, 1930), IOR R/15/1/349

sacrifice income now for the possibility of a debt-free life in the future would hardly have been appealing.

As noted earlier, the onset of the worldwide depression effectively decimated the pearling industry, which had already been dealt a major blow by the advent of the Japanese cultured pearl in 1929. By the time the divers rioted in 1932, the industry already teetered on its last legs, and would collapse over the next few years. And by the mid-1930s, there was too little money to be made on pearls, and equally little opposition among merchant-financiers to limits on the amount they (and by extension the *nakhodas*) could loan out.

At the same time, the emergence of a new resource frontier dramatically severed whatever bonds of obligation remained in the Bahraini pearling industry. In late 1931, a team of surveyors discovered oil in Jebel Dukhan, a hill in the southern part of the island. Within a year, the newly-founded Bahrain Petroleum Company began exporting oil in commercial quantities, at an initial rate of 9,000 barrels per day.¹⁰⁰ Although the discovery of oil did not instantaneously kill the pearling industry – indeed, people continued to participate in the dive for pearls throughout the 1940s – the emergence of well-paid wage work in the oil fields, coupled with the steady decline in the market value of pearls during the 1930s, made the option of diving for pearls seem far less attractive than it had been a decade earlier.

¹⁰⁰ Rosemary Said Zahlan, *The Making of the Modern Gulf States: Kuwait, Bahrain, Qatar, the United Arab Emirates and Oman* (Reading, UK: Garnet, 1998) p. 64

As those who had previously found employment on pearling dhows steadily began hiring themselves out to the oil company, the obligation that had once bound them to their *nakhodas* came under strain. Their movement to the oil companies did not strike their names from the ledger books, and *nakhodas* quickly asserted their rights to the fruits of their debtors' labor. From the mid-1930s to the 1940s, *nakhodas* looking to collect on what was owed to them turned up in court in growing numbers – sometimes several times a day – to demand that either their former divers continue to fulfill their previous obligations to them or repay the amount they owed and end the relationship altogether.¹⁰¹

British court officials, much like their counterparts in Zanzibar, played a role in coordinating effective settlements between creditors, debtors, and other claimants to smooth the transition to a new economic order. In the Bahraini case, courts mediated among the *nakhodas*, the former divers, local tribunals and the nascent oil companies to assist the shift from the pearling economy to the new, wage-based oil economy. At stake here was the debt the diver owed to his former *nakhoda* and the amount that it would take to effectively void the obligation between them – a monthly payment that the parties took to calling the *faṣl* (literally, the separation or sunderance). Completion of repayment effectively dissolved the bonds that had once tied divers to their captains, freeing the former to hire themselves out to whomever they pleased. For the onetime divers who worked for the oil companies, the *faṣl* usually meant monthly installments of Rs 5

¹⁰¹ The agent of the *nakhoda* Salman bin Motar, for example, appeared in court over 50 times in 1941 alone to claim debts from former divers.

garnished from their wage –a process that bears striking similarity to the system described in Chapter 6 in which *nakhodas* hired divers out to one another.¹⁰²

Hammering out the details surrounding the *faṣl*, such as its precise origins and the specific terms of its repayment, sometimes led to contentious disputes. In cases where parties could not agree on the specifics of the obligation, the court turned to local institutions like the *salifa* or the merchants’ tribunal (*majlis al-tujjār*) to find a settlement to which both sides could agree. This process occurred most frequently in matters that the court deemed “customary” – which included almost all of the obligations that underpinned the pearl dive. When the court sent a case to the merchants’ tribunal, the latter would determine the facts of the dispute and issue a recommendation, which the court invariably upheld.¹⁰³

One example (of hundreds) nicely illustrates the Agency Court’s relationship to the tribunals during this transition. When in 1941 the Bahraini *nakhoda* ‘Abdullah Al-Bin ‘Ali came to the Agency Court claim his *faṣl* from his diver Yusuf bin ‘Abdullah, Yusuf denied that he owed anything, asserting instead that ‘Abdullah owed *him* money from past pearl dives. The Agent set the case to the merchants’ tribunal, which looked into the *nakhoda*’s accounts and the diver’s past *waraqas* to untangle the mutual rights and obligations. It found that the diver had at one point owed the *nakhoda* over Rs 350, an

¹⁰² Many such cases are to be found in the R/15/3 series – particularly those from 1940 onward involving diving debts.

¹⁰³ I have not yet seen a case where the court disagreed with the *salifa* or *majlis* on a fact-finding issue. The court sometimes sent cases back to these tribunals for a clearer ruling, but in every single case I’ve looked at, it upheld the tribunal’s recommendation.

amount only slightly offset by his earnings from dives with other *nakhodas*. The tribunal ruled that the *nakhoda* was entitled to an annual *faṣl* – this time of Rs 25 per year, in view of the outstanding debt’s size. Yusuf objected, insisting that the *nakhoda* take an oath in court to prove the veracity of his claims, but members of the tribunal were of the opinion that according to diving custom, the *nakhoda* did not have to take an oath. Upon receiving the tribunal’s recommendation, the Agent issued a decree confirming its decision.¹⁰⁴

By the late 1940s, cases between former divers and *nakhodas* had all but completely disappeared from the dockets. Those who continued to dive did so on their own, often without a *nakhoda*, and certainly without the debts that had once bound them to a dhow.¹⁰⁵ The overwhelming majority of Bahrain’s male workforce, however, had by 1950 taken up employment by the oil company. The bonds of obligation that had once shaped every aspect of economic and social life on the island increasingly existed only in ever more distant memories.

Conclusion

For British officials in Zanzibar and Bahrain, the Indian Ocean economy of obligation had by the 1930s run its course. External pressures on the chains of obligation that linked the region’s different ports and actors together – the worldwide agricultural crisis, the

¹⁰⁴ ‘*Abdullah bin Subah Al-Bin ‘Ali vs Yusuf bin ‘Abdullah* (1941) IOR R/15/3/801

¹⁰⁵ This style of organizing the dive, called the *khammās*, involved a group of divers pooling their resources and setting out together on a small dhow that they would rent out on their own. They would split up the net profits of the journey equally. Zayyani, *Al-Ghaws wal-Tawāshah*, p. 57

collapse of the pearling industry in Bahrain, and the worldwide economic depression – called for a rethinking of the legal and institutional bases of economic life. They focused not so much on obliterating the bonds of debt and obligation that had long characterized economic life in the region as on establishing a new legal framework that they thought would improve economic output while maintaining a stable socio-political infrastructure. In doing so, they forged a recognizable path: governments around the world implemented similar programs to stymie agricultural indebtedness. The policy shifts that British officials fashioned in Zanzibar and Bahrain, then, were as much a reflection of global regulatory trends as they were a response to local concerns.

It is difficult to pin down a precise end-point to the transformations prompted by the economic fallout of the 1920s and 1930s. The case of Bahrain ostensibly offers a clear denouement in the advent of the oil industry and the massive socio-economic changes that it fostered. When looked at more closely, however, one sees that the ties of obligation that bound divers to *nakhodas* persisted well into the oil era, coming apart only after they were able to pay off what they owed entirely. Moreover, in their transition to work in the oil fields the divers followed the same patterns as they had for scores of years; the oil company, in a sense, simply served as another *nakhoda*, albeit one that employed hundreds of divers.

The end point of the Zanzibar and East Africa narrative is even less clear. Despite the obvious changes that had taken place over the 1930s and 1940s, the socio-economic structures that had shaped life in the region for over a century continued to endure until

well into the 1950s, or even later. Even as advocates of economic reform tried to break down the bonds of debt and obligation and transform them into more rationalized economic relationships, debtors and creditors continued to find ways around the restrictions, albeit in fewer numbers, and more episodically. Beyond the metropolitan commercial centers on the coast, however – in the interior, in places beyond the easy reach of the growing British administration, the culture of debt and contract persisted well after Dowson’s plan was seen through by the courts and government. My choice to end the story where I have, then, marks off only one of many possible points in a longer arc of economic, legal and political transformation. Another possible end point would have been the 1964 revolution, in which followers of new African nationalist political parties in Zanzibar violently expelled thousands of Arabs from the island and took over their properties both in the towns and countryside.¹⁰⁶

No matter where one chooses to end the story, whether in 1940, 1950 or 1964, by the mid-twentieth century, the Indian Ocean economy would have been virtually unrecognizable to economic actors from the mid- or even late-nineteenth century. Instead of an economy in which long chains of obligation – chains that determined the direction in which goods would travel even before they materialized – bound actors together, what they would have seen in the mid-twentieth century was an economy heavily regulated by the State and its organs. Gone were the days in which *Banias*, brokers, shopkeepers and

¹⁰⁶ For more on the revolution, see also Jonathon Glassman, *War of Words, War of Stones: Racial Thought and Violence in Colonial Zanzibar* (Bloomington, IN: Indiana University Press, 2011); Michael F. Lofchie, *Zanzibar: Background to the Revolution* (London: Oxford University Press, 1965)

nakhodas shaped the flow of credit and goods in the region; these were the days of banks, cooperative societies, marketing boards and state institutions.

Moreover, a key element of the region's commercial past was conspicuously absent from the Indian Ocean world of the mid-twentieth century: the *waraqqa*. Once the region's commercial instrument *par excellence*, the *waraqqa* had all but disappeared from Indian Ocean commercial society by the 1940s. For as the bonds of obligation that tied actors to one another in the face of a booming economy began to break under the pressures of the Great Depression and modern techniques of regulation, the written manifestation of these bonds gave way to mortgage forms and registered loans.

Thus, the histories of Indian Ocean commerce and obligation ended not with the eventual violent upheavals that destroyed the long-standing socio-political structures in Zanzibar, nor with the equally-dramatic socio-economic transformations that oil brought about in the Persian Gulf and South Arabia. Rather, they gave way before an altogether different logic of economic life – one brought about by economic upheavals, and set into motion by actors who drew their ideas from a different world. Although British officials did have clear designs on the Indian Ocean culture of debt and obligation, these were more reflective of their attempts to negotiate global changes on a local level than they were malicious attempts at dismantling local economic systems. Ironically, then, the same set of economic forces that brought about the Indian Ocean contractual culture – the region's integration into the world economy – also brought about that culture's quiet demise.

CONCLUSION

The questions that prompted this dissertation were in many ways simple ones. How did an internally-regulated world of commerce fare in a changing juridical world? How did Indian Ocean merchants draw on a growing menu of legal institutions and forums to negotiate (and sometimes renegotiate) their social and commercial relationships with one another? By now, it should be clear that economic actors from around the Indian Ocean *did* resort to different legal forums, and that they did so with increasing frequency over the course of the nineteenth and early-twentieth century. Merchants, planters, mariners and freedmen quickly recognized the opportunities and challenges that the changing institutional world around them posed, and displayed remarkable dexterity in navigating them.

The move from an understanding of the Indian Ocean world of trade as being structured solely by informal mechanisms of trust and reputation to one that emphasizes law and courts alongside reputational mechanisms has important implications for how we approach the economic history of the region. In a sense, this dissertation represents a return to the breadth of vision that characterized the older literature on the economic history of the Indian Ocean – a move away from the study of insular networks and diasporas to a more inclusive picture of cross-cultural trade and economic life. If we define cross-cultural trade in its strictest sense, to mean exchange between distinct communities, studies of networks can only ever provide us with half the picture. By reorienting our vision away from ethnically-based networks but still retaining the

assertion that law mattered to commerce in the Indian Ocean – that is, by shifting our focus to the institutional bases of economic life – scholars can begin to paint a more inclusive picture of trade in the region. Moreover such an overarching approach allows historians to parse out more general sub-themes at the intersection of law and economic life – to see *when* law mattered, and *how* it mattered.

In the realm of formal law, the history of the Indian Ocean bears witness to the legal accommodations that Muslim jurists were willing to make in order to accommodate changing commercial practices around the region. Muslim jurists like Nur al-Din Al-Salimi, whose writings I explored in Chapters 2 and 3, drew on works in jurisprudence from around the Islamic world to make room for the variants of commercial contracting that had come to pervade the Indian Ocean. Faced with a trans-regional commercial society in the throes of emerging modern capitalism, those jurists allowed for more capacious contractual categories, while keeping practices grounded in the basic framework of rights and obligations that initially gave those categories legal shape.

The tendency of jurists to bend to the demands of commercial custom and the prospects for economic growth is hardly unique to the Indian Ocean. In the United States, those tasked with interpreting the law frequently chose to do so in a manner that accommodated a growing economy, even as they tried to tether practices to a

longstanding framework of property rights and regulatory authority.¹ In the industrializing United Kingdom, too courts frequently interpreted laws in such a way that allowed for the release of creative energy in the economy while remaining cognizant of the dangers that unbridled capitalism could pose.² And in commercializing Argentina, lawyers, merchants and jurists alike all championed the cause of judicial modernization and codification.³ Even in Indian Ocean jurists' accommodation of negotiable instruments one sees remarkably similar parallels with the experiences of the nineteenth-century US and eighteenth-century France.⁴ In a sense, then, the measured accommodations fashioned by Muslim jurists around the Indian Ocean littoral reflects patterns in the history of capitalism around the world. The point, however, has often been missed by legal historians of Muslim societies, many of whom tend to reinforce the notion of a static body of Islamic jurisprudence even in the context of dynamic, commercializing economies.⁵

But jurists were not the only actors who determined the nature of the relationship of economic to legal change. The narrative here suggests that mid-level juridical actors

¹ James Willard Hurst, *Law and the Conditions of Freedom in the Nineteenth-Century United States* (Madison, WI: University of Wisconsin Press, 1956) pp. 3-70 ; Lawrence M. Friedman, *A History of American Law* (New York: Simon and Schuster, 1973) pp. 157-178, 202-247

² See also Kostal, *Law and English Railway Capitalism*, especially pp. 144-221

³ Adelman, *Republic of Capital*, pp. 224-250

⁴ Tony Freyer, "Negotiable Instruments and the Federal Courts in Antebellum American Business," *Business History Review*, Vol. 50, No. 4 (1976) pp. 435-455; Amalia Kessler, *A Revolution in Commerce*, pp. 188-237

⁵ There are, of course, important exceptions, including Haykel, *Revival and Reform in Islam*; Mundy and Saumarez Smith, *Governing Property, Making the Modern State*; and Baber Johansen, *The Islamic Law of Land Tax and Rent: the Peasants' Loss of Property Rights as Interpreted in the Hanafite Literature of the Mamluk and Ottoman Period* (London: Croom Helm, 1988)

like *kātibs* also played a major role in giving legal shape to changing economic practices. As they traveled around the Indian Ocean, Muslim *kātibs* carried with them the contractual formularies necessary to give commercial contracts the force of law – or, more accurately, to clothe changing commercial practices in the garb of the law. In so doing, they brokered between an abstract world of Islamic commercial jurisprudence and the realities of everyday commerce in the Indian Ocean, giving law a practical meaning and shape that economic actors could readily comprehend. They thus played as much a role – or an even greater role – in shaping what the law meant in the commercial sphere as jurists did.

In shaping what law meant in everyday governance, *kātibs* in the Indian Ocean fall within the spectrum of mid-level actors throughout history who helped shape both legal doctrine and practice. Like scribes in colonial Madras, they turned quotidian desires and actions into legally-binding documents and shaped the relationship between written records and spoken declarations.⁶ And much like notaries in colonial Peru, they brokered people’s access to the law, determining both the form and legal imprint that a particular action might have.⁷ More broadly, *kātibs*, scribes and notaries exhibit some of the key characteristics of what some sociologists have termed “street-level bureaucrats” – employees of human service agencies “who directly interact with the public and have

⁶ Bhavani Raman, “Document Raj: Scribes and Writing Under Early Colonial Rule in Madras, 1771-1860” (Unpublished Ph.D. Dissertation, University of Michigan, 2007)

⁷ Burns, *Into the Archive*

substantial discretion in the execution of their work.”⁸ Like the welfare workers whom the concept was coined to describe, the decisions that Peruvian notaries, Indian Ocean *kātibs*, and Indian scribes make, “the routines they establish, and the devices they invent to cope with pressure effectively become the public policy they carry out” – or, in this case, the “law” they administer.⁹ One anthropologist has made similar claims surrounding what she terms “secondary agents” – legal technicians, retail investors, and financiers – in the Japanese derivatives market; another scholar has made a similar case for the role of lawyers and purchasing/supply agents in the automotive industry.¹⁰ By highlighting the agency that mid-level actors exhibit in determining the law, historians can begin to paint a more textured picture of juridical life and the socio-legal fabric that bound actors to one another and to the law.

However, unlike their Indian or Peruvian counterparts, who formed part of an imperial bureaucracy, *kātibs* had little to do with the legal expansion of the British Empire into the Indian Ocean. That fell to an altogether different set of mid-level juridical actors: the Indian lawyers who arrived in East Africa in ever-growing numbers during the last quarter of the nineteenth century. In their invocation of Anglo-Indian legislation, procedure and court decisions, they helped extend an imperial body of law

⁸ Michael Lipsky, *Street Level Bureaucracies: Dilemmas of the Individual in Public Services* (New York: Russell Sage Foundation, 1983) p. 3

⁹ *Ibid.* p. xii

¹⁰ Annelise Riles, *Collateral Knowledge: Legal Reasoning in the Global Financial Markets* (Chicago: University of Chicago Press, 2011); Steward Macaulay, “Changing a Continuing Relationship Between a Large Corporation and Those Who Deal With It: Automobile Manufacturers, Their Dealers, and the Legal System,” *Wisconsin Law Review* (1965) pp. 3-212

across the ocean and into the East African hinterland, and also into Southeast Asia.¹¹ And by guiding their clients through the legal process, they brokered between the realm of commerce and that of the law much like *kātib*s did before them, but also worked to reinforce the notion of a body of law that required specialized knowledge to navigate.

The comparisons one can make between the history of lawyers in commercializing East Africa and those in other parts of the world are instructive. The most obvious comparison is with their counterparts in India, who played a role as “cultural translators and ethnographic intermediaries... who reconfigured colonized cultures for common-law use.”¹² By mobilizing the lexicon of Anglo-Indian jurisprudence and through key maneuvers in court, lawyers (in tandem with judges) remade *waraqas* in East Africa into English financial instruments. By doing so, these attorneys opened up new possibilities in the matrix of rights and liabilities embedded within them, yoked the region’s commerce more firmly to Indian legal frameworks, and tilted the legal terrain toward the interests of Indian creditors, and away from their Arab and African debtors. They, like Arab lawyers in mandatory Palestine, shaped how a growing British bureaucracy understood and regulated the populations it governed.¹³ At

¹¹ See also Metcalf, *Imperial Connections*, pp. 16-45; Sharafi, “Bella’s Case”; Nurfadzilah Yahaya, “Courting Jurisdictions: Colonial Administration of Islamic Law Pertaining to Arabs in the Straits Settlements and the Netherlands East Indies, 1860-1941” (Unpublished Ph.D. dissertation, Princeton University, 2012)

¹² Mitra Sharafi, “A New History of Colonial Lawyering: Likhovski and Legal Identities in the British Empire,” *Law and Social Inquiry*, Vol. 32, Issue 4 (Fall 2007) pp. 1061

¹³ Assaf Likhovski, *Law and Identity in Mandate Palestine* (Chapel Hill, NC: University of North Carolina Press, 2006) especially pp. 211-217

the same time, like English lawyers in colonial America, Indian lawyers in East Africa were cognizant of the broader British imperial legal infrastructure that they inhabited and effectively helped their clients navigate it. In doing so, they played as much of a role in determining the legal contours of the British Empire in the Indian Ocean region as their North American counterparts did for the Atlantic.¹⁴

What these juridical developments meant to the members of Indian Ocean commercial society, however, deserves separate consideration. As British legal institutions began to offer themselves up as an alternative forum for dispute resolution and contractual enforcement, another theme that emerges is the increasing legal pluralism of commercial life, and the ability of actors to strategically navigate it. In this world of courts and contracts, the legally-savvy individuals who most effectively surveyed the changing institutional landscape around them invariably fared better in the commercial arena. Historians of the Indian Ocean have advanced a number of theses about the commercial success of Indian merchants in the region, particularly of the *Banias*. Some have attributed that success to an innate commercial sensibility among *Banias*, who enjoyed early training in accounting and finance; others have suggested alternative reasons, like their proclivity toward penny-pinching.¹⁵

¹⁴ See also Mary Sarah Bilder, *The Transatlantic Constitution*; Daniel Hulsebosch, *Constituting Empire: New York and the Transformation of Constitutionalism in the Atlantic World, 1664-1830* (University of North Carolina Press, 2005)

¹⁵ Rajat Kanta Ray, for example, asserts that Indian merchants' "hereditary skills in banking and brokerage ensured them a place in the international capitalist system," adding that "the bigger Arab merchants did note transactions in books, but their business books were 'of the most primitive order,' with no idea of a

My suggestion is perhaps more mundane, but certainly has as much explanatory power: Indian merchants owed much of their commercial success to their ability to effectively access the legal institutions around them and to situate themselves strategically during key moments of economic and institutional change. By appealing to British courts during economic downturns, Indian merchants were able to turn on the enforcement capacities of the British just as the abilities of their former overlord, the Sultans, began to show limitations. The option of accessing British courts, moreover, extended far beyond the ranks of elite commercial actors. As I demonstrated in Chapter 6, former slaves and poor mariners frequently proved capable of utilizing British courts for their own purposes.

By successfully demanding access to British justice, economic actors from around the Indian Ocean exhibited two tactics of the savvy user of law that have tended to manifest themselves across space and time: situational standing and forum shopping. Like Jewish merchants in the medieval Mediterranean who used their *dhimmi* status to shop between Muslim and Jewish courts, or like the European consular protégés in early-

balance sheet or making up books at year end. They remitted their money to home in hard cash through friends, relations or fellow tribesmen. They would make no use of the houses of business or European banks to make remittances through bills.” Ray, “Asian Capital,” pp. 482-483. Lakshi Subramanian has argued that that “with their impressive trading lineage, [the *Banias*] exploited the situation with consummate skill and very soon monopolized the lucrative business of brokerage and banking.” Subramanian, *Indigenous Capital*, p. 124. Rather than explain the success of Indians in terms of an inherent racial characteristic, Sheriff prefers to attribute their success to their business culture of *karkasar*, a “strict economy” or lack of ostentation that he says “permitted Indian merchants to build up their initial capital fairly rapidly.” Sheriff, *Slaves, Spices*, p. 105.

modern Turkey, merchants in the Indian Ocean chose between their multiple legal personas to take their disputes to whichever forum best suited their immediate economic or social interests.¹⁶ Through their legal posturing and maneuvering, these actors engaged in a form of law-making of their own – the sort that legal historians have understood as critical to the emergence of an international legal order in the early-modern and modern world.¹⁷

As in other such contexts of overlapping juridical authorities and strategic litigants, the capacity of economically significant groups around the Indian Ocean to move between legal categories and who effectively playing on the still-murky definitions of imperial legal jurisdiction, spurred discussions among policymakers and scholars regarding precisely who was entitled to access British courts, and under what circumstances. And as Chapter 4 and 6 demonstrated, those who skillfully navigated the ad-hoc and contingent nature of these discussions managed to draw the British consul into their economic transactions, but also unwittingly opened the door to a much more pronounced British imperial legal presence in the region. Among them, those who enjoyed greater mobility and, consequently, awareness of the nature of British jurisdiction around the Indian Ocean – merchants, but also former slaves and mariners –

¹⁶ See also Kuran, *The Long Divergence*, pp. 169-253

¹⁷ Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (New York: Cambridge University Press, 2009) pp. 23-30; *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (New York: Cambridge University Press, 2002) pp. 7-15 ; Kayaoglu, *Legal Imperialism*

proved to be more adept at navigating the changing institutional landscape and nudging the courts in new legal directions.

Of course, not everyone was always keen on having their day in court. Those who wished to challenge the courts' interpretations or to sidestep a growing institutional framework altogether, took an alternative, but similarly common strategy: flight. Even in the age of high imperialism, the writ of the British court only ran so far, and actors who wished to evade its grasp frequently did so without opposition. This was hardly limited to the era of British courts. Chapter 6 nicely illustrates that Indian Ocean actors frequently employed their capacity to move across land and sea to evade their legal obligations well before the British ever showed up on the scene. The phenomenon was also not specific to the Indian Ocean, as the tendency of mobile persons and capital to slip the bounds of authority has recurred throughout centuries, and remains as relevant to the study of law and governance in the present as it does to the study of the history of law and society.¹⁸

Savvy litigants, of course, did not always have the upper hand. During times of acute economic distress, or as in the case of the Great Depression, widespread economic fallout, the state could step in and effectively wrest the reins away from the courts to tether the economic into a stricter regulatory framework. And as Chapter 7 amply demonstrated, the turn towards more comprehensive regulation during the Depression reflected a

¹⁸ See also Jefferson R. Cowie, *Capital Moves: RCA's 70-year Quest for Cheap Labor* (New York: The New Press, 2001); Steven Lubet, *Fugitive Justice: Runaways, Rescuers, and Slavery on Trial* (Cambridge, MA: Belknap Press of Harvard University Press, 2010); Bruce H. Mann, *Republic of Debtors: Bankruptcy in the Age of American Independence* (Cambridge, MA: Harvard University Press, 2002) pp. 26, 127-130; Balleisen, *Navigating Failure*, pp. 170-173

worldwide phenomenon, even as it took on unique local dimensions. In the Indian Ocean as in other contexts, the growing regulatory bureaucracy that economic actors had to contend with preserved the central place of the courts in regulation, but left comparatively little room for the sort of legal posturing and maneuvering that had characterized the juridical past.

Most broadly, however, the history of law and commerce in the Indian Ocean forces us to give pause and reconsider the boundaries scholars have erected between private-order institutions of commercial governance like norms, customs and reputational sanctions, and more “formal” institutions like state law and courts. Indeed, if anything, this dissertation suggests that efforts to insist upon two distinct spheres of governance fall into an unfortunate historical fallacy. In the Indian Ocean, as elsewhere, the membrane that separated private-order institutions and public ones was always permeable. Actors drew on the lexicon of the law in fashioning commercial relationships with one another, and they articulated their relationships with one another in a way that gave the mutual rights and obligations legal force. They might shy away from turning to formal law in many instances, either because of the desire to maintain cordial ongoing relations, or because of concerns about trouble and expense. But the possibility of the turn to formal legal process always lurked about the background – and sometimes, especially in the midst of individual or broader financial crises, became a reality.

Similar linkages between private reputational mechanisms and legal institutions characterize many other historical contexts. One historian of Jewish merchant networks

in the early-modern world has suggested that merchants utilized certain formulas in their business correspondence because of the legal force they enjoyed.¹⁹ Another historian of nineteenth-century America has similarly highlighted the frequency with which participants in the overland traffic to California drew on conceptions of property and ownership from home when interacting with one another on the trail.²⁰

Moreover, as the discussion here has amply illustrated, the individuals who inhabited the formal legal sphere often gave legal gloss to relationships that would not have otherwise enjoyed legal recognition, and those who were enmeshed in relationships of economic mutualism did not hesitate to draw the courts in when they thought it prudent to do so. The strategy of using courts to give legal force to, reinforce, or completely undermine relationships that historians would think of as extra-legal is typical of legal protagonists throughout history. Medieval Jewish merchants, for example, frequently made use of courts to establish the veracity of their trading partners' accounts, and to certify correspondence concerning accounts.²¹ Actors in early-modern Rome and colonial Peru used notaries for precisely the same purposes.²² And in eighteenth-century Paris, members of an emerging commercial society frequently appealed to courts to either

¹⁹ Trivellato, *The Familiarity of Strangers*, pp. 167-169. For a suggestive comparative analysis of early-modern European, Arabic and Persian correspondence, see Gagan Sood, "'Correspondence is Equal to Half a Meeting': the Composition and Comprehension of Letters in Eighteenth-Century Islamic Eurasia," *Journal of the Economic and Social History of the Orient*, Vol. 50, No. 2-3 (2007) pp. 172-214

²⁰ Reid, *Law for the Elephant*

²¹ Moshe Gil, "The Jewish Merchants in the Light of Eleventh-Century Geniza Documents," *Journal of the Economic and Social History of the Orient*, Vol. 46, No. 3 (2003) pp. 280-289

²² Burns, *Into the Archive*; Nussdorfer, *Brokers of Public Trust*

reinforce or dismantle the manifold relational contracts in which they had enmeshed themselves.²³

Formal law, and formal legal institutions, then, did matter, at least as much as informal or private-order systems did. As one historian has argued, “Rarely are networks and institutions mutually exclusive. Networks...were built on legal conventions and rhetorical traditions that offered merchants shared norms and expectations” – expectations that courts often proved willing to back up.²⁴ Gossip, reputation, and other social considerations *do* shape trade, even beyond the insular networks or small communities that have populated studies of private-order mechanisms in trade. But at the same time, courts, legal intermediaries, and popular understandings of legal concepts and of justice also shape, and have shaped, economic life, and in profound and lasting ways.

The challenge that remains for those contemplating histories of internally-regulated merchant networks, then, is to consider what formal law might have meant to members of those networks, and how they might have drawn on different legal institutions at different junctures to renegotiate their relationships with one another. Moreover, historians must pay attention to the regularity with which members of trading communities drew on legal concepts and idioms in structuring relationships with one another. And rather than assert a mutualism based on common (but vaguely-defined) cultural system or understanding of the law, the task of the historian is to demonstrate,

²³ Kessler, *A Revolution in Commerce*

²⁴ Trivellato, *The Familiarity of Strangers*, p. 163

insofar as the material allows, how members of a commercial society anywhere and at any historical juncture understood, articulated and shaped those concepts. Those questions have produced the most sophisticated analysis of legal and economic histories in Europe, the United States, China and Latin America; this dissertation has only suggested the potential fruit they might bear when brought to the Indian Ocean.

What I have presented here hopefully constitutes only a particular chapter of a much longer and more complex narrative. The materials I gathered together here and the narrative I constructed from them only scratch the surface of a much deeper, richer history – and one that stretches much further back and ahead than I suggest here. By showing that law, courts and debt mattered to commerce in the nineteenth-century Indian Ocean I do not mean to suggest that they did not matter before. They did. My choice to begin the story in the middle of the nineteenth century partly reflected the materials that I found during the course of my research, and partly my recognition that the region was undergoing tremendous changes through the following centuries. But changes from what? What role did law, courts, and contracts – or even other legal institutions like debtors prisons and merchant tribunals – play in the Indian Ocean of the eighteenth century, the seventeenth century, or even the medieval period? If, as I demonstrate here, these institutions mattered to economic life in the nineteenth century, would they not have mattered during other eras? How, for example, did Indian Ocean merchants approach Islamic courts during the medieval period, or Portuguese justice during the early-modern era? And, looking forward, how did the major legal and institutional

transformations that characterized the late-nineteenth and early-twentieth century shape the legal process in East Africa and the Gulf after the era of decolonization? That the court systems in East Africa bear the indelible imprint of the Indian imperial past is clear enough, but we still know little about the transitions into independence meant for court actors like colonial-era lawyers and judges, how litigants used the system to navigate the political and economic changes that accompanied independence, and how these dynamics fit into broader global experiences.²⁵ Such questions will hopefully beckon to a growing number of historians in the years to come.

²⁵ For suggestive research in this direction, see H.F. Morris and James S. Read, *Indirect Rule and the Search for Justice: Essays in East African Legal History* (Oxford: Clarendon Press, 1972)

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Fahad Ahmad Bishara was born in Kuwait on January 23, 1980. After graduating from the American International School of Kuwait, he attended the University of Southern California, where he earned bachelors' degrees in Print Journalism and International Relations in 2004. After a brief working stint as an editor for the Gulf Research Center in Dubai, he pursued an MA in Arab Gulf Studies at the University of Exeter in 2005-2006, where he was awarded the Tom Fattorini Prize for best performance in an MA program and the Prince Alwaleed bin Talal Prize for the best MA dissertation. During his dissertation research and writing, Fahad enjoyed the support of grants from the Social Science Research Council, the American Council of Learned Societies and the Duke Graduate School. He has published chapters in a number of edited volumes, and has also published a translation of Yacoub Y. Al-Hijji's *Al-Nashātāt Al-Baḥriyya Al-Qadīma Fī Al-Kuwayt* [The Old Maritime Activities of Kuwait, published as *Kuwait and the Sea: A Brief Economic and Social History*]. Fahad was also a fellow at the 2011 Hurst Summer Institute for Legal History.