

Paper Routes: Inscribing Islamic Law across the Nineteenth-Century Western Indian Ocean

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Sometime during the middle of the nineteenth century, a correspondent from the interior of Oman wrote to the jurist Sa‘id bin Khalfan Al-Khalili (c. 1811–70) with an observation: “The Mazru‘is have wealth on the Swahili coast [*al-Sawāḥil*] and wealth in Oman.” This in itself was no surprise: the Mazru‘is, along with scores of other Arab clans, included a branch that had long since established its political authority in Mombasa, on the coast of what is now Kenya,¹ but lately, the correspondent suggested, things had been changing. Members of the Mombasa Mazru‘is were now coming to Oman armed with *wakalas* (powers of attorney) from unknown scribes, for the sale of their familial properties in their ancestral homeland. “He [the Mazru‘i] sold what God likes from these properties and took the value. . . and the yield was separated from the property owners.” The people’s acquiescence to the state of affairs was of particular surprise to the questioner. Days, months, and years went by, he noted, and the property owners (*arbāb al-amwāl*) did not seem the least bit interested in changing the system, “and the people, as you well

1. Sa‘id ibn ‘Ali Al-Mughairi, *Juḥaynat Al-Akhbār fī Tārīkh Zanjibār [News from the History of Zanzibar]* (Muscat, Oman: Ministry of Culture and Heritage, 1979), 207–25.

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know, come and go via this sea, from Oman to the Swahili coast, with confidence that they know [*bi-ḥukm al-iṭma'ināna annahum 'alamū*].”²

But confidence that they knew *what*? In his suggestion that the Mazru‘is transacted in property with *iṭma'ināna*—“with confidence that they know”—the Al-Khalili’s correspondent pointed to a key dimension of a burgeoning Indian Ocean commercial arena: the ability of merchants, planters, scribes, and commercial agents to move back and forth between the ocean’s far-flung shores and transact within a common framework. In short, he pointed to the Indian Ocean’s legibility, and at a critical moment. By the time the correspondent wrote down his question, the Western Indian Ocean was undergoing a profound commercial transformation: regional commodities, personal property, and credit circulated around the coasts and hinterlands of South Asia, South Arabia, and East Africa at new magnitudes, and the region became more ensconced in global circuits of production, consumption, and finance than it had ever been before. As the frontiers of commercial contracting expanded with the arrival of modern capitalism into the region, and as the Indian Ocean commercial arena found itself further integrated into a world market, merchants and planters who transacted between different port cities depended crucially upon *iṭma'ināna*, or confidence; a confidence, I argue, that they placed in the a common legal framework of commercial activity.

Reflecting on what constituted confidence in this framework gives way to a much broader question: what makes the Indian Ocean an arena, as so many scholars have claimed it to be?³ Or, put differently, what constituted the Indian Ocean world, beyond the monsoon winds that historians have asserted structured the pace of maritime commerce and the transregional merchant communities that populated its different port cities? A central component of what structured commerce in the region, I argue, was law. Law furnished the institutions and instruments necessary to organize commerce and settlement around the Indian Ocean, and to facilitate access to the capital necessary to fuel economic activity. At the level of discourse, jurisprudence furnished the intellectual underpinnings of this world, providing a philosophy to the nature and shape of the commercial obligations and practices that ran through it, and the institutions that governed it.

But to travel around the shores of the Western Indian Ocean, law needed a vehicle, and the concerns presented to Al-Khalili suggested what it might

2. Sa‘id bin Khalfan Al-Khalili, *Ajwibat Al-Muḥaqqiq Al-Khalilī [The Inspector Al-Khalili’s Responses]*, Vol. 4 (Muscat, Oman: Maktabat Al-Jīl Al-Wā‘id, 2010), 290.

3. Sugata Bose, *A Hundred Horizons: The Indian Ocean in the Age of Global Empire* (Cambridge, MA: Harvard University Press, 2006), 5–7; and Thomas Metcalf, *Imperial Connections: India in the Indian Ocean Arena, 1860–1920* (Berkeley: University of California Press, 2007), 9–12.

have been. The Mombasa Mazru'is that came to Oman were armed with deeds (called *waraqas*): powers of attorney from their relatives in East Africa and deeds of sale through which they could transact in property. But the *waraqas* were much more than just instruments: they were vehicles through which vernacular understandings of law—of jurisprudence, of obligations, and of the measures and standards necessary to coordinate action—traveled around the Indian Ocean. In a sense, the *waraqas* carried by the Mombasa Mazru'is—and tens of thousands of others like them—delineated the boundaries of an expanding Indian Ocean commercial and legal world: they made property in Oman and East Africa, separated by an entire ocean, commensurable, saleable, and, above all, legible.

The discussion here examines the *waraqas* and the constellation of commercial and juridical actors (and actions) that coalesced around them, to better understand the legal constitution of economic life in Oman and East Africa during a period of emerging modern capitalism in the region. Drawing on Al-Khalili's fatwas and the *waraqas* that Omani and Swahili merchants, planters, and scribes produced, I chart the emergence, articulation, and circulation of a particular contractual form, the *khiyār* sale, in the nineteenth century Western Indian Ocean, a time of expanding commercial and financial activity. Through Al-Khalili's writings, I examine the ontologies that underpinned the *khiyār* sale; I then detail the condominium of merchants, scribes, and jurists that gave it shape, and the standards, grammars, and forms that it transported around the Indian Ocean. In their circulation, documents such as *khiyār* sales *waraqas* help us understand how vernacular understandings of Islamic law traveled around the Indian Ocean, forging a shared commercial, financial, and bureaucratic arena. Through a close examination of how merchants, planters, scribes, and jurists produced and circulated the *khiyār* sale, I illuminate the construction of a dynamic, and, more importantly, portable, property rights regime in a time of profound economic transformation.

In examining the *khiyār* sale and *waraqas*, the discussion here necessarily confronts the question of Islamic law's place in Indian Ocean economic life more broadly. The notion that Islamic law gave shape to Indian Ocean commerce has for many years enjoyed a great deal of currency amongst historians of the region. K.N. Chaudhuri's pioneering history of the Indian Ocean begins with the rise of Islam, whose spread he considered to have subsumed "the exchange of ideas, economic systems, social usage, political institutions, and artistic traditions."⁴ His discussion further suggests the importance of "the laws of commercial contracts and

4. K.N. Chaudhuri, *Trade and Civilization in the Indian Ocean: An Economic History from the Rise of Islam to 1750* (New York: Cambridge University Press, 1985), 34.

principles of juridical rights” to Islam’s spread in the region, but gives few details as to what these might have been.⁵ More recent surveys of Indian Ocean history have repeated the assertion that Islamic law or Muslim commercial networks that rested on an understanding of Islamic law structured Indian Ocean commerce, but have not been able to demonstrate what this process might have looked like.⁶ The question therefore remains as to what historians mean when they refer to Islamic law, and how it might have lent any form of coherence to an Indian Ocean world of trade.

Only in the last decade or thereabouts have economic historians of the Indian Ocean begun to re-examine the social and legal foundations of commercial and financial activity more generally. Drawing on new trends in research in economics and sociology, Indian Ocean historians began moving toward a vision of a commercial arena populated by merchant networks whose members and activities bound together the ocean’s distant shores. Works in history, anthropology and even geography all have begun to emphasize the human dimensions and mechanisms of transregional exchange in the Indian Ocean, giving the concept of cross-cultural exchange greater shape and analytic rigor.⁷ More recent studies by Lauren Benton, Bhavani Raman, and others highlight the efforts of ground- and midlevel actors in shaping transregional and imperial legal regimes.⁸ These studies provide a useful entry point into examining how Islamic law gave shape to commerce and finance in the region, suggesting fruitful approaches to understanding the sociolegal construction of an Indian Ocean arena.

5. Chaudhuri, *Trade and Civilization in the Indian Ocean*, 36.

6. See also Michael Pearson, *The Indian Ocean* (London: Routledge, 2003), 62, 82; and Patricia Risso, *Merchants and Faith: Muslim Commerce and Culture in the Indian Ocean* (Boulder, CO: Westview Press, 1995), 104–6.

7. For recent examples, see also Claude Markovits, *The Global World of Indian Merchants, 1750–1947: Traders of Sind from Bukhara to Panama* (New York: Cambridge University Press, 2000); 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); 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” (PhD diss., Yale University, 2008).

8. See also Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (New York: Cambridge University Press, 2010); Bhavani Raman, *Document Raj: Writing and Scribes in Early Colonial South India* (Chicago: University of Chicago Press, 2013); and Kathryn Burns, *Into the Archive: Writing and Power in Colonial Peru* (Durham, NC: Duke University Press, 2010).

I argue here that Muslim jurisprudence furnished Indian Ocean merchants, planters, and other commercial actors with a lexicon for economic life, allowing them to make the best use of the different factors of production that they had at their disposal and the value that it generated, all while grounding them in a known universe of rights, obligations, and ontologies. In a sense, it provided a legal grammar for a world of commercial contracting that moved along an axis that was largely independent of broader processes of imperial or political expansion. This was a world of shared standards and practices that existed to further the aims of traders and producers, not those of sultans and imperial officials. The commercial instruments that different commercial actors and their juridical counterparts produced lent these standards a portability that allowed them to circulate around a commercial arena, while making room for a set of financial practices to converge around them.⁹ And underpinning the entire process was a carefully scripted transoceanic conversation between merchants, planters, and their scribes on the one hand, and Muslim jurists on the other, on the permissibility of changing forms of contracting in a rapidly expanding world of commerce.

Credit, Debt and Modern Capitalism in Oman and the Western Indian Ocean, circa 1790–1850

Before delving into the legal architecture of economic life in the Western Indian Ocean, it is useful to consider the changes taking place in the region during the nineteenth century. The fact that Al-Khalili's correspondents, who asked him for advice on changing commercial trends in their plantations, hailed from the interior of Oman might be surprising to those who consider the Arabian interior's physical distance from the Indian Ocean as forming a barrier to the currents of maritime trade in the region. The truth, however, could not be more different: through the port cities of Qalhat, Sur, and Sohar, the Omani interior bore witness to movements of goods and people to and from Africa, India, and as far away as China, from at least the medieval period onwards. At different periods, but particularly following their defeat of the Portuguese around the Western Indian Ocean, Omanis from the interior also established small chiefdoms along the South Arabian and East African coasts.¹⁰

9. The differences between “lexicon” and “grammar” notwithstanding, what I hope to convey is how Muslim legal discourse gave terms, categories, and ontologies to a commercial world, while resisting the need to clearly define the shorthand terminology I use.

10. John C. Wilkinson, *The Imamate Tradition of Oman* (New York: Cambridge University Press, 1987), 41–71.

The arrival of the nineteenth century, however, marked a sea change in Oman's place in the commercial circuits of the Western Indian Ocean. During this time, the region became firmly integrated into the world economy, as commodities from Omani holdings 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 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. Historians have already outlined the expansions in the ivory market during the early to mid-nineteenth century, partly because of 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 one historian'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."¹¹ By the middle of the nineteenth century, Omani and Swahili merchants witnessed the development of an international commodity chain between the interior of East Africa, the productive hinterland, Zanzibar, the regional ivory entrepôt, Bombay, the processing station, and London, the main market.¹²

Historians detail similar expansions in the clove market at the time, demonstrating that although clove exports were low during the early 1800s, they enjoyed an enormous boom during the middle of the century. During the 1840s, many Omani Arab merchants began to invest in clove plantations, giving rise to what one historian has termed the "clove mania" of Zanzibar.¹³ By 1860, cloves rivaled ivory as East Africa's main export to India; their export soared from 9,000 *frasilas* (almost 143,000 kg) in 1839–40 to nearly sixteen times that amount in 1856.¹⁴

In Oman itself, the market for dates expanded in important ways during the 1880s, reaching consumers in Europe and America. Drawing his figures from British intelligence reports, one historian argues that the

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

12. Sheriff, *Slaves, Spices*, 106.

13. *Ibid.*, 108.

14. *Ibid.*, 249–52; and Frederick C. Cooper, *Plantation Slavery on the East Coast of Africa* (New Haven: Yale University Press, 1977), 52.

Gulf began to export dates in much greater quantities than before, following the establishment of markets abroad: markets whose supply depended largely upon the sinews forged by the advent of steamships and telegraph.¹⁵ Between 1899 and 1906, the earliest years for which there are published figures, Muscat's date exports nearly doubled, from more than £52,000–92,500 (in today's British pounds, from more than £5,000,000 to nearly £9,000,000) peaking at more than £103,000 in 1902–3.¹⁶

Financing these waves of commercial expansion were Indian merchants. 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."¹⁷ In the clove and plantations of East Africa, the Indian shopkeeper-cum-moneylender was a common part of the commercial landscape. He often moved to the countryside after having secured a creditor of his own, usually a larger merchant in the town, from whom he would receive cash and goods on credit. He then parceled the goods and cash out among the farmers and landowners in his area and collected his debts in produce at harvest time.¹⁸

The same was true in Oman. Although a marked increase in agricultural exports took place there later than in East Africa, by the end of the nineteenth century the mercantile firms of Ratansi Purshottam, a native of Kutch, and W.J. Towell, an American firm with a local Khoja Indian partner, Mohammed Fadl, featured prominently in the trade in dates from the villages surrounding Muscat to India and America.¹⁹ Purshottam's papers suggest long-standing credit relationships with Omani middlemen, who would go into the surrounding villages and pay date growers deposits

15. Matthew S. Hopper, "The African Presence in Arabia: Slavery, the World Economy, and the African Diaspora in Eastern Arabia, 1840–1940" (PhD diss., University of California, Los Angeles, 2006), 112–14.

16. John 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, 1987), Vol. 1 (Historical) Part II (Appendices), 2307.

17. Richard F. Burton, *Zanzibar: City, Island, and Coast*, Vol. 1 (London: Tinsley Brothers, 1872), 327–28.

18. Bankruptcy proceedings from the Zanzibar National Archives (hereafter ZNA) clearly illustrate this chain of agricultural credit. See the ZNA HC2 series.

19. Calvin Allen, "Sayyids, Shets and Sultans: Politics and Trade in Muscat Under the Al Bu Said, 1785–1914." (PhD diss., University of Washington, 1978), 140–57.

for their orders after negotiating the price, quantity, and quality of the dates.²⁰

What distinguished Indian merchants from others was their access to regional credit networks. Their unmatched ability to channel capital among 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. Burton wrote that many Indians of East Africa were able to monopolize the trade in ivory because they could “cash drafts upon Zanzibar, Mandavi [Mandvi, a port in Gujarat], and Bombay; provide outfits, supply guards and procure the Pagazi, or porters, who are mostly their employees.”²¹ The Indians of Muscat, also, were able to channel credit from India to the resource-poor port, stimulating the production of dates and textiles there.²² Even in the ports of the Persian coast, in Bushire, Lingah, and Bandar ‘Abbas (which the Omani Sultan leased between 1780 and 1868) Indians played an important role in financing the upcountry caravan trade in cotton and textiles.²³

In addition to linking the ports and hinterlands of the Indian Ocean together into a coherent system of trade and finance, Indian merchants occupied the frontier between an Indian Ocean regional market and the burgeoning world economy, channeling goods from Zanzibari and Omani plantations to Western Indian storefronts. Moreover, they ensured that the finished products of Manchester, Bombay, and other industrial centers made their way to consumers in those regional (and sometimes very rural) markets. From the perspectives of most debtors, Indian finance often translated into access to cloth, foods, beads, and other trinkets from the Subcontinent and wider world: goods that increasingly formed necessary elements of social life in the Western Indian Ocean. By the late nineteenth century, observers described how Omanis in East Africa had developed a taste for luxuries and imported goods, and described how “their homes were decorated with expensive Persian carpets, gilded mirrors, chandeliers, fine china, and glassware.”²⁴ These goods were not simply for conspicuous consumption; along the caravan routes of the

20. M. Reda Bhacker, *Trade and Empire in Muscat and Zanzibar: The Roots of British Domination* (London: Routledge, 1994), 136–37.

21. Bhacker, *Trade and Empire*, 328.

22. Chhaya Goswami, *The Call of the Sea: Kachchhi Traders in Muscat and Zanzibar, c. 1800–1800* (New Delhi: Orient BlackSwan, 2011): 79–121.

23. Maharashtra State Archives (hereafter MSA), Political Department, 1864 Vol. 38, Comp. 511.

24. William Cunningham Bissell, *Urban Design, Chaos, and Colonial Power in Zanzibar* (Bloomington, IN: Indiana University Press, 2011), 31.

East African interior, Arab traders bartered printed Indian calicos and beads produced in New England for ivory, and observers noted the shifting tastes of African consumers.²⁵

Concerns surrounding credit, debt, and consumption featured regularly among questions posed to Al-Khalili for his guidance. In a commentary on debt in Omani society, the jurist distinguished between two broad classes of debtors and their practices of conspicuous consumption: those who were wealthy enough to fulfill their obligations to their creditors, and those who were not. A debtor of the first category, he argued, could take on as much debt as he wanted to “with no comment or embarrassment.” Being in a situation of power and privilege, “no harm follows his transactions [*lā ḍarar yalḥaq fī mu‘āmalātih*], for he takes and provides [*bal ya’khudh wa yaqḍī*], and deals and gives [*wa yataṣarraf wa-ya’tī*], and he is bound by his obligations and moves quickly to fulfill them [*wa-sā’an fil-khilās*].”

More surprising, however, was his assertion that the second class—“the weak—not in health, but in ability to fulfill their obligations to their creditors”—also had the right to borrow, for even the poor had to entertain guests and sometimes live slightly beyond their means. Although members of that class needed to economize (*yaqṭasid*) when it came to such expenditures, there was no reason to cut them off completely from the world of consumer goods and conspicuous consumption.²⁶ Consumer debt, it seemed, had by the nineteenth century formed an indispensable part of sociability in Oman.

Rethinking Property in an Age of Capitalism

Underpinning the Indian Ocean markets for agricultural, commercial, and consumer credit was a robust market in property. In their attempts to capture emerging commercial opportunities, a wide range of debtors capitalized their property. Merchants and planters in South Arabia and East Africa mobilized whatever property they could get their hands on, to pawn against the loans they needed to participate in a commercial arena that seemed to only grow as the years went by. 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

25. Jeremy Prestholdt, “On the Global Repercussions of East African Consumerism,” *American Historical Review* 109 (2004), 755–81.

26. Al-Khalili, *Ajwibat Al-Muḥaqqiq Al-Khalili*, 4: 261–65.

that they themselves owned.²⁷ For growing numbers of commercial aspirants, property, and the credit it allowed access to, held the key to socio-economic mobility.

For many Indian financiers, the property they received against the loans was more than just collateral: it contained the very commercial object their firms dealt, be it dates, cloves, or copra, and, therefore, had value that they could continually extract, year after year. Seen from the perspective of the Indian firm, then, loans were not meant to be repaid as such, but were mobilized to secure access to the plantation's crop, which the firm would then forward to their trading partners in India; hence Al-Khalili's correspondent's observation that "the yield was separated from the property owners." Omani planters could stay on their plantations and could enjoy the luxuries that Indian merchants would bring to them, but the plantation's crop (as I will explain in greater detail) was no longer theirs to consume or sell.

For inhabitants in the Omani interior, then, the nineteenth century would have brought with it noticeable economic, social, and political changes, all of which reshaped their relationship to land and their property. Like the Mazru'is mentioned at the beginning of this article, many Omanis who had migrated to East Africa in search of commercial fortune drew on properties at home to finance their new lives abroad. For example, when, in 1874, the Zanzibari Arab merchant Sa'id bin 'Umar Al-Kharusi borrowed the princely sum of MTD 5,200 from the Indian Wala Banji for 1 year, he hypothecated his date plantation in his ancestral homeland of Wadi Bani Kharus in Oman, just outside of Muscat.²⁸ 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.²⁹

The effects of the expanding Omani commercial and political presence in East Africa during the nineteenth century were thus made clear at home. The date trade would have already seen some expansion into growing markets in East Africa, but, more importantly, the changing fortunes of Omanis on the East African coast and interior would have allowed them to expand their urban and agricultural holdings at home.³⁰ By the middle of the nineteenth century, then, Omanis living in the country's interior would have already begun to mobilize vehicles through which they could extract and

27. McDow, "Arabs and Africans," 152–64; ZNA AM 1/3: 36

28. ZNA AM 3/1: 80.

29. ZNA AM 3/1: 77.

30. Wilkinson, *The Imamate Tradition*, 30, 56, 333 n. 20.

circulate value from the land around them. These changes reflected themselves in the sense of urgency surrounding changing Omani commercial and legal practices that jurists such as Al-Khalili confronted on a daily basis.

Having lived in Oman throughout the expansions that characterized the nineteenth century, the Ibadhi jurist Sa'īd bin Khalfan Al-Khalili was well aware of the commercial and legal practices that his countrymen had grown accustomed to. Al-Khalili was Oman's leading jurist during the mid-nineteenth century, and although his zeal for Ibadhism cast him as a controversial figure in the annals of history—he supported the establishment of a short-lived imamate on the coast, which briefly overthrew the government of the sultan of Muscat, an intrigue for which he was later executed—nobody could question his impeccable juristic credentials.³¹ Omanis from all walks of life—merchants, farmers, *qadis*, and rulers—frequently came to him for legal advice on how to conduct or regulate a range of commercial transactions. Unsurprisingly, the majority revolved around questions of land, value, and rent, and, perhaps most importantly, the emerging contractual forms and legal instruments used to facilitate their circulation within a burgeoning economic arena. Throughout, Al-Khalili (but also other jurists like him) acted as the Omanis' moral compass: although he was eager to facilitate the changing forms of contracting that modern capitalism demanded, he carefully grounded them in a universe of rights, obligations, and ontologies that he saw as both familiar and equitable—and, more fundamentally, natural.

Of all of the contractual forms utilized in nineteenth century Oman and East Africa, none attracted his attention more than the *khiyār* sale. Broadly speaking, the *khiyār* functioned as a form of pawnship: a planter or commercial aspirant would “sell” their property to a lender for an agreed-upon price (i.e., the loan amount), which they would have to repay within a specified time frame in order to reclaim the property, thus rendering the initial sale void. By the mid-nineteenth century, the *khiyār* sale had emerged as the preferred vehicle among the Arabs of South Arabia and East Africa to raise capital for commercial ventures or money for consumption.³² Public and private archives and *qadi* registers from both regions house thousands of *khiyār* sale *waraqas* (deeds), and questions to jurists such as Al-Khalili (and those that came after him) often involved concerns

31. Hussain Ghubash, *Oman: The Islamic Democratic Tradition* (London: Routledge, 2006), 122–25, 132–33.

32. For a useful discussion of a similar contract in southern Yemen, see Linda Boxberger, “Avoiding *Ribā*: Credit and Custodianship in Nineteenth- and Early-Twentieth Century Hadramawt,” *Islamic Law and Society* 5 (1998): 196–213.

surrounding the *khiyār* sale and the *waraqā*, either separately or together. *Waraqas* and the practices surrounding them even the attention of Europeans in the region: British consuls frequently commented on their usage in finance, and decades later, the British court in Zanzibar would hear hundreds of *khiyār*-related disputes.³³

The *khiyār* sale was by no means a new invention. Muslim jurists originally conceived of it as a regular sale contract with the option (*khiyār*) for either party to rescind the contract within a specified period of time, usually no more than 3 days; in a sale contract, this usually afforded the buyer protections against defective merchandise.³⁴ By the seventeenth century, however, some jurists began showing some flexibility toward the time period allowed. Oman's leading jurist during the mid-seventeenth century argued that different objects should be allowed a different *khiyār* period: although sales in animals were subject to the standard 3 day rule, sales of clothes should be allowed only 1 or 2 days, and the purchaser of a room or house should be given at least a month.³⁵

However, by the time Al-Khalili sat down to pen his opinions in the mid-nineteenth century, economic and juridical actors understood the *khiyār* very differently—as an option for a seller (or, more accurately, a debtor) to *redeem* the property within a specified time frame—usually whatever length of time the operation itself required. In the interim, the buyer (i.e., the lender) retained the right to the produce, harvesting and selling it until the redemption date. *Khiyār* sales of clove plantations in Zanzibar, for example, would not exceed 6 months (the time between two harvests), whereas sales of land as security against ivory might involve a period of 1 or 2 years. Moreover, commercial actors frequently extended the timeframe of *khiyār* contracts beyond what even they had originally agreed to if both the buyer and seller deemed it exigent. The demands of emerging modern capitalism, it seemed, expanded the contractual time that undergirded the *khiyār* option toward horizons more appropriate

33. Fahad Ahmad Bishara, "A Sea of Debt: Histories of Commerce and Obligation in the Indian Ocean, c. 1850–1940" (PhD diss., Duke University, 2012).

34. Ibn Rushd, *The Distinguished Jurist's Primer: A Translation of Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid*, Vol. 2 (Reading, UK: Garnet Publishing, 1995), 250–55. Ibn Rushd's work is a twelfth century treatise on comparative Islamic jurisprudence.

35. Khamis bin Sa'īd Al-Shaqṣī Al-Ruṣṭāqī, *Manhaj Al-Talibin wa Balāgh Al-Rāghibin*, Vol. 7 (Muscat, Oman: Maktabat Masqaṭ 2006), 301. The timing of Al-Shaqṣī's work is suggestive, as it roughly coincides with the Omani Ya'rubi dynasty's expulsion of the Portuguese from South Arabia and East Africa and the establishment of their holdings there. However, more work is necessary to establish a link between the historical context and Al-Shaqṣī's thoughts on land and value.

to prevailing commercial and agricultural cycles, thereby reformulating the purpose of the *khiyār* altogether.

In his answers to questions surrounding the *khiyār*'s timeframe, Al-Khalili seemed both sympathetic to the needs of his audience but also all too willing to give them the leeway necessary to perform whatever temporal sleight of hand they required. "The [*khiyār*] timeframe expansion and its contraction is all permissible," he wrote, though he added that "the shorter the timeframe the better."³⁶ He did not even grumble about the growing practice of passing down the *khiyār* arrangement from one generation to another. For Al-Khalili, *khiyār*-based relationships between creditors and debtors that spanned multiple generations, lasting for as long as 50 years (a time frame unimaginable in its original conception), were legally valid.³⁷ Here, the jurist displayed one of his many signs of willingness to accommodate the needs and changing practices of an expanding commercial society.

Al-Khalili voiced few objections to general practices surrounding *khiyār* sales around the Indian Ocean by the mid-nineteenth century, even when his questioners claimed that they amounted to interest-bearing loans, as a number did. One correspondent noted that "the *khiyār* sale has spread these days, and has appeared in all regions," expressing concern that "it has become ladder to usury [*sullaman ilā akl al-ribā*], and the general public [*al-‘amma*] have taken to it without a proper contract or permissible direction [*bilā ‘aqd ṣaḥīḥ wa lā wajh mubīḥ*]."³⁸ Critics of the *khiyār* sale frequently likened it to a usurious loan, pointing to the moneylender's right to the harvest in the interim period as a thinly disguised form of interest, though they sometimes admitted that it was less of a sin to borrow than lend under those circumstances.³⁹ Al-Khalili, however, was not so quick to dismiss the *khiyār*: the practice of lending and borrowing via *khiyār*, he wrote, was unimpeachable, noting that reputable Omani jurists made use of the *khiyār* to make short-term purchases if it helped the seller (i.e., the debtor).⁴⁰ The usage of the *khiyār* as a vehicle for loans, then, was perfectly acceptable for those who needed them.

Faced with a series of questions surrounding the *khiyār* buyer's right to the plantation's harvest—a right that would have amounted to interest on the loan disguised as the sale amount—Al-Khalili reframed the question

36. Al-Khalili, *Ajwibat Al-Muḥaqqiq Al-Khalīlī*, 4:139.

37. *Ibid.*, 4:131–32, 149, 167–68.

38. *Ibid.*, 4:136.

39. ‘Abdullah bin Humayyid Al-Salimi, *Jawābāt Al-Imām Al-Sālimī [Imam Al-Sālimī's Responses]* Vol. 4, electronic edition (Muscat, Oman: Ministry of Awqaf and Religious Affairs, 2005), 404, 513,

40. Al-Khalili, *Ajwibat Al-Muḥaqqiq Al-Khalīlī*, 4:136–37.

as one of agricultural ontology. He asserted that if a buyer purchased a property through the vehicle of the *khiyār* with the intention of owning the property, rather than simply to access its yield, then he was permitted to harvest the yield during the *khiyār* period. In so doing, Khalili drew an ontological distinction between the land and its yield; the latter could not form a separate object of sale, but the former could, as a sale of land necessarily included a sale of its produce.⁴¹

His creative reformulation of the issues of saleability and contract owed much to the work of an earlier thinker: the seventeenth century jurist Khamis bin Sa'īd Al-Shaqṣi Al-Rustāqī, whose reflections on the question of value in an agrarian economy formed the ontological basis for Al-Khalili's jurisprudential gymnastics. In his discussion of the legal dimensions of the sale of palms, seedlings and trees, Al-Shaqṣi began with the outright declaration that "whoever bought from another a palm whose fruit has matured [*qad balaghat thamratuhā*]. . . then that is permissible [*fa lā ba'sa bi-dhālik*] if he intended to buy the palm itself along with its fruit [*aṣl al-nakhl bi-thamratihā*]," even for a delayed payment.⁴² Al-Shaqṣi was able to clear the way for this sort of transaction by drawing an ontological distinction between the tree and its produce as objects of a sale contract. In a sale of a date-palm with a seedling (*ṣarm*), he argued, the seedling had to be treated as though it were fruit: if it had matured it belonged to the seller, but if it was too young to be uprooted then it belong to the buyer.⁴³ For Al-Shaqṣi, it was as much a question of use-value as of nature itself: just as one could not sell a palm without the ground on which it stood, through which it accessed the water, one could not sell unripe produce separately from the tree it depended on to survive. The palm formed part of its essence (*dhāt*), just as the ground formed part of the palm's essence; only when something could naturally exist on its own could it form a separate sale object.⁴⁴

By combining Al-Shaqṣi's ontological schema of agricultural life with the temporal demands of nineteenth century agrarian capitalism, Al-Khalili was able to ground the novel practice of *khiyār* sales in a discursive universe of natural time and being, leaving ample room for the robust extraction and circulation of rents around the burgeoning world of Omani commerce. If the *khiyār* sale had already become a *fait accompli* in Omani Indian Ocean commerce, Al-Khalili's work gave the documentary practice the philosophical and ontological underpinning necessary for it to enjoy

41. *Ibid.*, 4:127–28, 132–33, 137–38, 141, 144–45, 150–51.

42. Al-Rustāqī, *Manhaj Al-Ṭālibīn*, 7:151, 154.

43. *Ibid.*, 7:152.

44. *Ibid.*, 7:152–54.

widespread recognition as a legitimate contract, while keeping it grounded in a framework of rights and obligations.

Assembling the *Khiyār*

The emphasis here on the intellectual work necessary to give the *khiyār* shape should not, however, mislead us into associating the *khiyār* sale with Al-Khalili and his fatwas. Al-Khalili's voice may dominate the *khiyār* discourse, with its elaborate temporal and agricultural ontologies and the rights and obligations therein, but he certainly did not conjure up the *khiyār*, nor did he lay the groundwork for its spread around the region. That work fell to the merchants, planters, and scribes, who, together with Al-Khalili, managed to transmute the *khiyār* from a set of utterances in different plantations around South Arabia and East Africa to a collective decision: a contractual form that economic actors everywhere could mobilize, but also continually reshape. Assembling the *khiyār* sale, then, required coordinated action between those who theorized law, those who inscribed it into documents, and those who experienced it on a daily basis.

A central component of the world of commerce that the *khiyār* sale facilitated was the deed itself, called the *waraqā*. If the *waraqā* did not operate within a bureaucracy in the more formal organizational sense of the term, it certainly did conjure up something that resembled it, because around the *waraqā* coalesced a variety of different actors, all of whom contributed to shaping its form and content. Their work in creating the *khiyār* sale, and their mobilization of the graphic artifact of the *waraqā* itself, helped forge the philosophical, commercial, and bureaucratic world that the *waraqā* inhabited.

The *waraqā*, however, attributes authorship to one singular actor: the *kātib*, or scribe, whose name appears at its bottom. The *kātib*'s role was an ambiguous one: he 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.⁴⁵ 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

45. On Latin American notaries, see Burns, *Into the Archive*; on notaries in early-modern Europe, see also Laurie Nussdorfer, *Brokers of Public Trust: Notaries in Early Modern Rome* (Baltimore: Johns Hopkins University Press, 2009).

drafted. They were tasked with bridging between the contracting parties and the law, not with furnishing the information necessary to enforce the law.

As intermediaries literate in the law, *kātib*s 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.

Historians, then, seem to have good reason to piece together the backgrounds of *kātib*s. Unfortunately, the records that Indian Ocean merchants left behind limit what we can say about *kātib*s. Unlike notaries in other parts of the world, *kātib*s 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. Even the most detailed *waraqas* only very briefly identify their authors through the formulaic conclusion "and this was written by . . . by his own hand" (*wa katabahu. . . bi-yadih*). Other records greatly circumscribe what the historian can say about these important actors. They were, as one historian observes, frustratingly "absent writers"; absent in every sense.⁴⁶

Perhaps, however, the *kātib*'s absence in the *waraqa* is appropriate. The *kātib* may have penned the *waraqa* and may have done much of the work in mediating between the worlds of commerce and law, but, like Al-Khalili, he could not claim sole authorship, either of the *waraqa* itself or of the *khiyār* sale contract. To transmute something such as the *khiyār* sale (and, by extension, its written articulation, the *waraqa*) from a set of utterances and isolated practices to a collective decision required more than one actor. It required coordinated action: a carefully constructed exchange between merchant, *kātib*, and jurist, and a complex interplay between *waraqa* and fatwa.

This multiparty exchange, and frustrations it could sometimes produce, reveals itself clearly in Al-Khalili's writing. In one fatwa, the jurist acknowledged the sometimes problematic role that the *kātib* had in the process of drafting a *khiyār* sales agreement. Replying to a query as to whether the *kātib* was punishable for drafting a *waraqa* that assigned a creditor a plantation's yield rather than the plantation itself (the latter forming a

46. Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley: University of California Press, 1993): 226–30.

necessary component of the sale's validity) Al-Khalili contended that although the *kātib* shouldered no liability for something a financier (*rabb al-māl*) asked him to do, financiers should not ask *kātib*s to engage in that sort of deception.⁴⁷ Decrying the abuse of the *khiyār* during his times, a late-nineteenth century jurist, Nur Al-Din Al-Salimi, asked Oman's *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.⁴⁸

Read one way, the jurists' writing might suggest that by the time word of the experiments reached the jurist they were already a *fait accompli*. None of the questioners were asking the jurists for *permission* to engage in the *khiyār*; they simply wanted clarification as to what their rights and liabilities were for transactions *that had already taken place*. Some questioners went as far as to ask the jurists to furnish them with competing opinions, signaling that they were less interested in the opinions themselves than they were in finding a legal carapace for their contractual maneuverings, and the art of crafting a fatwa question would have been an instrumental part of the process. Because the jurist could only answer according to what he was asked—there was no room for him to ask for factual clarification—his field of response was largely determined by the formulation of the question. Through a cleverly crafted question, a merchant would be able to elicit from the jurist a favorable response to his actions: a moral and legal justification for his contractual experimentation. And in responding to the carefully crafted questions posed by his correspondents, the jurist furnished a supple legal framework within which they could place their transactions, allowing them to place their contractual experimentations within a known universe of contractual forms, rights, and liabilities, and, as I discussed earlier, grounding a changing world of commercial practice in a moral economy.

Even after the jurist commented on it, the *khiyār* form continued to circulate between him and the *kātib*/merchant/planter pairings that characterized on-the-ground contracting, precipitating a multiparty interaction through which authorship of the new contract was distributed over a broad network of agents.⁴⁹ The *khiyār* thus signaled the interdependency of economic and juridical actors in shaping the realm of commercial contracting, that this, it was a process that required these actors to work *together* in a carefully

47. Al-Khalili, *Ajwibat Al-Muḥaqqiq Al-Khalīlī*, 4: 131.

48. *Ibid.*, 4: 304–5.

49. For this idea, I draw on the brilliant work of Matthew Hull, whose reflections on files and bureaucracy in modern Pakistan inspire many of my thoughts here. Matthew Hull, *Government of Paper: The Materiality of Bureaucracy in Urban Pakistan* (Berkeley: University of California Press, 2012), 138.

sequenced process of experiment, question, and answer. Creating contractual forms that addressed the needs of modern capitalism required a condominium of merchants, planters, *kātib*s, and jurists: agents who occupied either the field or the textbook, but could reach out across the divide.

***Waraqas*, Grammar, and the Construction of an Indian Ocean Arena**

If the *khiyār* sale *waraqā* itself was the product of a complex interaction between different commercial and juridical actors, it was also no less of an agent in its own right. If the Indian Ocean arena was the product of commerce and migration, then historians must give the paper technologies that facilitated coordination their due attention. Although the *waraqā* itself could not act, as a mobile artifact it was able to coordinate actions among jurists, scribes, merchants, and planters, and bridge distant shores together under a common grammar.⁵⁰ In a world in which people transacted in land, dates, cloves, ivory, slaves, and countless other commodities and rights in commercial centers separated by mountains, valleys, jungles, and an entire ocean, the *waraqā* formed the common denominator and supplied a unified grammar, and in its movement between the shores of Oman and East Africa and its passing among the hands of different Arab and Indian merchants, the material artifact of the *waraqā* facilitated convergence around a set of standards, forms, and practices. The *waraqā* provided a space in which actors between the two coasts could employ the same measures for date and clove trees, mobilize identical contractual forms to facilitate the extraction and circulation of rent and value, and contract within a common ontology of agricultural life, be it in Muscat or Mombasa.

As brief as it was, the question posed to Al-Khalili recounted at the beginning of this article spoke volumes on the world that the *waraqā* and its multiple authors created. In describing the Mazru‘i land sales Oman through different *waraqas* as taking place “with confidence that they know [*bi-ḥukm al-iṭma’ināna annahum ‘alamū*],” the questioner pointed to the framework necessary for a regional property market to emerge: one based on *iṭma’ināna*, or confidence. Even though the *kātib*s who penned the *waraqas* in question were unknown locally (*majhūlūn*), the correspondent noted, the transactions went on without incident or comment. Al-Khalili’s

50. After decades of Weberian and Foucauldian analyses of how documents serve as vehicles for state or organizational power, the idea that documents can shape associations—that they are actors in their own right—has become increasingly popular amongst social scientists. See also Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network-Theory* (Oxford, UK: Oxford University Press, 2005); Hull, *Government of Paper*; and Messick, *The Calligraphic State*.

equally short reply only confirmed the validity of the Mazru‘i’s transactions: in cases such as this, he noted, people were able to expand the regime of *ḥima’ināna* (*al-tawassu‘ bi-aḥkām al-ḥima’ināna*), to the extent that it did not conflict with doubt (*tu‘ārīḍ fīh al-istirāba*).⁵¹

But what might *ḥima’ināna* have meant in a world in which people transacted in property, harvest, and credit, from the interior of Oman to the East African coast and beyond? I wish to suggest that *ḥima’ināna* might be best understood here as a confidence in the stability of forms, standards, and practices between Oman and East Africa. More broadly, it suggests a confidence that the structures and grammars of the Omani and East African worlds of commercial contracting would be mutually legible. As *waraqas* circulated between the coasts and hinterlands of Oman and East Africa, so too did the standards, measures, and forms they contained: grammars of economic life that formed the sinews of a shared commercial arena and allowed the plantation economies of Oman and East Africa to become comparable units. In a sense, they achieved the incredible feat of transporting one site into another (which came first is of relatively little importance) without deformation or dislocation,⁵² articulating a regional grammar that allowed for transoceanic commensurability, and animating the emergence of modern agrarian capitalism in the region.

Among the main standards that the *waraqas* circulated between Oman and East Africa was the *frasila*, a regional measure of weight that equaled roughly almost 16 kg, used to describe a wide variety of goods, from dates and cloves to ivory and frankincense—even meat.⁵³ Other measures, such as the *qora*, also appear in *waraqas* from time to time, but these seem to be far less widespread than the *frasila*, which one encountered throughout the coasts and hinterlands of South Arabia and East Africa, including Hadramaut (where it is still used).⁵⁴ The stability of forms that the *frasila* provided around the coasts formed a critical dimension of the shared

51. Al-Khalili, *Ajwibat Al-Muḥaqqiq Al-Khalili*, 4:290

52. Here, I am drawing from the ideas and eloquent phrasings in Latour, *Reassembling the Social*, 222–23.

53. Depending on where one was, a *frasila* could range between around 16 kg. See also William Walter Augustine Fitzgerald, *Travels in the Coastlands of British East Africa and the Islands of Zanzibar and Pemba* (London: Chapman and Hall, 1898), 263–64, 524, 535; and “*Waṣīyyat Al-Shaikh Humayd bin Rashid bin Humayd Al-Yazīdī* [Shaikh Humayd bin Rashid bin Humayd Al-Yazīdī’s Will],” July 2008 <http://www.s-ijj.com/vb/showthread.php?t=87> (January 26, 2013). A mid-nineteenth century Somali report, however, identifies a *frasila* of frankincense as comprising only 9 kg; see C. J. Cruttendren, “Notes on the Mijjertheyh Somalees,” *Journal of the Asiatic Society of Bengal* 13 (1844): 332.

54. Na‘ā‘im Khalid, “*Al-qabḍ ‘alā ghashshāsh al-bahārāt fī Ta‘īz* [The Capture of a Spice Fraud in Ta‘īz]” *Al-Jumhūriyya*, September 9, 2008, <http://www.algomhoriyah.net/newsweek-print.php?sid=69047> (January 26, 2013).

lexicon of commerce in the region. The fact that one does not encounter the *frasila* in non-Omani plantation societies—for example, in Basra or Hasa—is equally significant.

Moving alongside measures such as the *frasila* were the similar agricultural ontologies that allowed for the extraction and circulation of rent between the two regions. The distinctions that Al-Khalili and Al-Shaqṣi (and after them, Al-Salimi) drew between the land, tree, and yield may have been articulated in an Omani milieu, but they were just as applicable to the East African context. The circulation of the *khiyār* form brought with it distinctions grounded in a more universalist natural law, and adapted them to a local setting and subject matter. Depending upon where one traded in the Western Indian Ocean, a *frasila* may have been used to measure a quantity of cloves, dates, or orchilla. However, no matter where one stood, *when* an object formed a separate subject of a commercial contract remained constant.

On the space of the *waraqqa* itself, the complex juristic distinctions among land, tree, and yield, and all of the rules surrounding when something formed an independent object of sale, were compressed into the pithy statement that the plot was sold “with its boundaries, rights, land, and trees, [including] whatever it might contain” (*bi-ḥudūdihā wa-ḥuqūqihā wa-arḍihā wa-ashjārihā kāyinan mā kān*). This shorthand, appearing on *waraqas* throughout South Arabia and East Africa, captured the *khiyār* buyer’s (i.e., the creditor’s) contractual rights, signaling a legally valid purchase of land, while suggesting an intention to collect its yield. As *waraqas* were conjured up by *kātib*s around the Indian Ocean, or as they moved from planter to merchant, the practices that surrounded them enacted those very rights to land and yield, grounding them in a robust commercial reality.

Through the compression of these rights and distinctions onto the space of the *waraqqa*, 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, simply by signing over the document. The *waraqqa* thus became an asset in itself: one that actors could circulate among 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.⁵⁵ As a *waraqqa* moved from one creditor to another, so too

55. Not all *waraqas* would have been equally valuable. The aesthetic qualities of each—whether it bore a seal, the clarity of the writing, or whether it involved a pledge of property—would have shaped its value during the process of negotiability.

did the original debtor's obligations; whatever payments he had initially agreed to make would be to his new creditor.⁵⁶ *Waraqas* negotiability meant that real estate—a quintessentially immovable asset—and the rents that accompanied it were endowed with the fluidity necessary for them to travel through the dynamic and increasingly mobile credit networks that spanned the Indian Ocean.

As new markets emerged in East Africa and the Arabian Peninsula, and as credit chains extended further into the interior from the coastline, the *waraqas*' 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. By the last quarter of the nineteenth century, East African creditors frequently used *waraqas* in settling claims against one another.⁵⁷ Merchants even hypothecated *waraqas* to their creditors as collateral against loans.⁵⁸ The *waraqas* thus evolved into more than a transferable obligation; in its negotiability, it took on many of the characteristics associated with cash.

More broadly, in keeping standards alive and creating mutual legibility between the plantation economies of Oman and East Africa, the *waraqas* reinforced the position of those responsible for its production and circulation. Its usage called forth the juridical assemblage that brought it into being, constantly reinscribing the primacy of a juridical field composed of merchants, planters, *kātibs*, and jurists to the smooth functioning of commerce. Even those who were not able to read the *waraqas* would have entertained conceptions about them: the material qualities of the *waraqas* that were to count as signs, what sorts of agents were involved in them,

56. In a bill of exchange, 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, for satisfaction of the debt.

57. 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, including slaves—to settle his accounts. *Ramdas Jethani v. Dowarka Liladhur and Kanjee Liladhur* (1875) ZNA HC 7/5. 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. ZNA AA 12/19: 94. 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. *Esmailji Jeevunji v. Noorbhai Ebrahimji (Tanga)* (1880) ZNA HC 7/155.

58. 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 hypothecated two mud huts, which he had presumably collected from his debtors. ZNA AM 1/4:38.

how they were (and ought to be) produced and used, and how they fit into a universe of commercial and legal instruments.⁵⁹ This more general understanding of “law” would have facilitated coordination between Arab and Indian merchants irrespective of whether one of the counterparties would have imagined themselves as falling under the ambit of Muslim jurisprudence. In the late 1860s, amid the violent upheavals in Muscat that ultimately resulted in Al-Khalili’s execution, Indian merchants complained to British imperial officials that the authorities displayed lack of commitment to “the enforcement of the Muhammadan law of creditor and debtor”: a notion that itself suggested that they saw their transactions as fitting within a Muslim contractual framework even though they were neither Muslims nor subjects of the Sultan of Muscat.⁶⁰ Therefore, if the quasi-bureaucracy described in the previous section manufactured the *waraqas*, its production and circulation between different merchants in an Indian Ocean arena reinforced that very bureaucracy, day in and day out.

It should then come as no surprise that a Mazru’i agent, a merchant or planter from any other Omani clan, or any other commercial actor, carrying *waraqas* penned by *kātibs* in East Africa, would be able to transact in the Omani interior “with confidence.” Doing business in Oman, he would have encountered a world that was immediately legible to him: common measures for the goods he was transacting in, a common understanding of what land rights he was trading in, and a familiar group of actors drawing up the paperwork in a form that he would have instantly recognized as bearing all the of necessary marks of legitimacy. His ability to instantly comprehend the legal grammars of economic life around him, coupled with the ability of those around him to place his transactions within a known universe of contracting, formed critical dimensions of the confidence he—and tens of thousands of others like him—would have felt in doing business, and constituted fundamental elements of the commercio-legal stability of the world around him.

Conclusion

Commercial worlds are not conjured up, they are constructed. If the history of the *khiyār* sale tells us anything, it is that the process of forging a commercial arena within which actors could move about and transact business with any degree of confidence required a tremendous amount of coordination. To produce the *khiyār* sale, and to fashion a world in which it

59. Hull, *Government of Paper*, 14.

60. Lorimer, *Gazetteer of the Persian Gulf*, Vol. 1 (Historical), 488.

functioned, took the coordinated efforts of merchants, *kātib*s, jurists, and others. For the historian to appreciate the efforts it took to create this world, it is not enough to impose prefabricated categories upon it. “Islamic law,” then, does not explain Indian Ocean legibility, but is a phenomenon that historians must explain. How jurists articulated an ontological foundation for agricultural and commercial contracting in the region; how merchants and scribes were able to connect far-flung sites through the circulation of a lexicon and of standards, forms, and quasi-bureaucracies; and how careful coordination between the two sides allowed all of this come to life formed critical steps toward the reconstitution of an Islamicate Indian Ocean arena in an age of emerging modern capitalism.

More broadly, the history of the *khiyār* sale *waraqā* suggests an alternative lens through which historians can conceive of the coherence of the Indian Ocean as a commercial arena. Thus far, historians have imagined the region’s shores as being bound together by two phenomena: the monsoon winds, which evoke the sense that Indian Ocean commerce is a natural phenomenon; and commercial networks, which ground the region’s coherence in the movement of people within the monsoon system. The discussion here adds another layer to our Indian Ocean picture: by thinking about how forms such as the *khiyār* sale and commercial instruments such as the *waraqā* circulated between the shores of Oman and East Africa, we can begin to see how the merchants, scribes, and jurists who traveled around the ocean’s shores forged a world of commercial contracting; how they *created* an Indian Ocean commercial arena. The Indian Ocean, then, might be conceived of as a space bound together not only by nature and human beings, but also by law, and by the agents who articulated and enacted that law.

None of this, however, should presuppose that the *waraqā* and the arena that it helped forge remained stable throughout the nineteenth and twentieth century. As the decades wore on, the *khiyār* sale and *waraqā* faced a series of new actors, institutional settings and circumstances—empire, Anglo-Indian jurisprudence, Indian lawyers, and economic downturns, to name just a few—all of which shaped their meaning in a changing world. If the form of the *khiyār* sale *waraqā* managed to remain stable throughout this time period, the actors and ideologies that could speak for its content—and, more broadly, for its place in a changing Indian Ocean economy—did not. However, discussions of these sorts of dislocations under the aegis of global empire—of the transformation of slavery, regional economies, or notions of authority—should not eclipse the efforts of the region’s inhabitants to forge the stability and coherence (or, as Al-Khalili would have it, *iṭma’ināna*) that long-distance commercial contracting would have demanded. By looking beyond the framework of

empire or the state, historians might begin to catch glimpses of a world that developed according to its own impulses: one in which a transoceanic dialogue of merchants, planters, *kātibs*, and jurists resulted in a creative reimagining of the work that centuries-old legal forms might have been capable of in an age of emerging modern capitalism.