

To the participants in the Vanderbilt legal history workshop:

Thank you all for taking the time to read through this piece. Let me preface this reading by saying that this is not the project I'm currently working on. These days, I've been writing an Indian Ocean microhistory – a voyage around the Indian Ocean world on the deck of a dhow in the early 1920s, from which I narrate a broader history of markets, empires, and circulations around the Indian Ocean world. The piece that you're reading is a chapter I'm preparing for the Cambridge History of Islamic Law, on trade and communications in the premodern Islamic world (I didn't choose the designation, though I did choose to work out a topic within it).

I chose to share this with you all for two reasons. First, the book project I'm currently working on is not a legal history as such; it is a narrative driven Indian Ocean history. Questions of law naturally emerge because of my interest in legal history, but there are no chapters that lend themselves easily to workshop-style discussion (I'd have had to share a precis of the book itself for it to make any sense). Second, and more importantly: this is a project I am hoping to write after I wrap up my Indian Ocean microhistory. I've long felt that there was a need for a large-scale "history of capitalism" told from the Islamic world (I am ambivalent about calling it capitalism, for reasons you'll see toward the end of this piece) – one that weaves the history of ideas into the histories of economic life in the region. There are many pitfalls to that kind of project, but the challenge is an exciting one, and I would like to try my hand at a large-scale history.

The piece here, then, is an attempt at mapping out some of the ideas that will hopefully animate that project ("Markets and the Making of the Muslim World"). Your feedback – whether positive, negative, excited, ambivalent, or anything else – is deeply appreciated.

MARKETS AND THE MAKING OF THE ISLAMIC WORLD

Fahad Ahmad Bishara
University of Virginia

Economic historians of the Islamic world are a long way from a synthesis of the history of the region. Though there have been some attempts at a grand narrative in recent years (to which I will return later in this essay) there is, on the whole, very little by way of consensus as to what the broad periodizations, themes, and animating questions might be. This may seem odd, too, given that the literature on law and economic life in the Islamic world is a long-standing one. Historians have been writing about questions of commerce, production, agriculture, taxation, and more since at least the 1960s; in the United States, these efforts were led by historians such as S.D. Goitein, Charles Issawi, Maxime Rodinson, and Abraham Udovitch, to say nothing of the capacious work of Marshall Hodgson.

If there has not been much by way of grand synthesis, there have been at least core set of assumptions that have underpinned writing on the economic history of the region: principally, that Islamic law played some sort of a role in economic life, and that, for at least some intervals of Islamic history, it may have actually served as a handmaiden to the economic transformations the Muslim world experienced over the *longue durée*. In the most widely accepted version of this narrative, Islamic law formed something of a *lex mercatoria* for the medieval and early modern world: a common legal framework within which people in the Africa, the Middle East, and Asia could do business, with the assistance of a body of legal service providers, including jurists, *qadis*, and scribes.¹

Alongside the literature on Islamic law and commerce emerged a parallel discussion on Islamic economic thought, which sought to unpack the economic concepts that Muslim scholars grappled with, particularly in the medieval period.² The principal strength of this literature has been in its willingness to engage with the content of juristic writing, often moving across genres to get a wider read on the concepts that animated scholars' work – something that is often missing in the grand narrative approach to questions of Islamic law and economic history. Its utility, though, is often constrained by its framing: those writing in this debate have overwhelmingly tended to situate Muslim reflections on economic matters as antecedent to the writings of the classical political economists in the eighteenth and nineteenth centuries. Aside from the question of whether these are comparable bodies of thought (classical political economy was, after all, a coherent discipline with its own agenda and institutional underpinnings), by tethering the literature to a linear narrative of the development of economic ideas, it misses the opportunity to engage with the questions, and specific contexts, that the scholars were actually trying to address.

The discussion here will try to interweave two tracks: the histories of Muslim commerce, and the discussions surrounding law that emerged out of them. The material dimension of the history I chart out here explores the economic transformations that took place in the Islamic world roughly between the emergence of Islam and around 1450, the eve of the Ottoman

¹ On Islamic law as *lex mercatoria*, see Jeremy Kingsley, "Reimagining *Lex Mercatoria*," *Comparative Studies of South Asia, Africa and the Middle East*, Vol. 40, No. 2, (2020): 257-265.

² See, for example, Shaikh M. Ghazanfar (ed.), *Medieval Islamic Economic Thought: Filling the Great Gap in European Economics* (Taylor and Francis, 2003)

conquest of Constantinople. I map out, in broad strokes, the changes in the political economy of the region: the rise of different empires, the development of different systems of land tenure and revenue, and the infrastructural changes that accompanied them. I also look at the concomitant emergence of transregional marketplaces and the commercial networks that animated them, connecting the Arabian Peninsula to marketplaces in the Mediterranean and Indian Ocean.

Alongside this material history, I map a growing (and changing) body of thought among Muslims on questions of political economy and on mundane matters of marketplace exchange. Part of this involves revisiting well-trodden territory – particularly treatises on jurisprudence – and asking slightly different questions about it, to bring out the issues of wealth, exchange, and personhood that drove those conversations. Another, equally important component of this history of ideas involves exploring other legal treatises on economic matters: treatises on taxation, for example, but also marketplace inspector (*muhtasib*) manuals. Through these different genres of writing, Muslim scholars grappled with broad questions of political economy – of wealth, labor, exchange, and its administration within the framework of empire – all while trying to anchor them in different sources of law. Through the framework of law, Muslim jurists thought deeply about questions of commerce, labor, circulation, wealth, revenue, and fiscal policy that animated political economists elsewhere in the world much later on.

By interweaving these material and ideational analytic threads, I am taking the stance that the two cannot be understood as separate from one another – that one cannot conceive of an economic history of the Islamic world that exists separately from the discussions of law and political economy, and vice versa. The relationship between the two is dialogic: that is, rather than posit a simple move from the material to the ideational, in the fashion of a crass historical materialism, we might understand the material and ideational as always being in conversation with one another. Practices in the realm of commerce and political economy were reflected on and developed within a legal-theoretical framework, and those in the books were worked out and contested on the ground. The challenge is to see that these were issues that jurists grappled with – to see this as a process of thinking through different commercial practices – rather than a body of thought that already came prepackaged and worked out.

Law is a particularly useful vehicle for moving between the two realms, of practice and thought, in economic history. The economy does not exist separately from law: wealth, in all of its forms, is anchored in notions of personhood, property, and contract. As an historical phenomenon and as a mode of production, capitalism is mediated by law; as Katharina Pistor has argued, capital is *coded* in law.³ One might not do much better than to quote Christopher Tomlins who, writing about colonial America, asserted that “as a technology, a means of doing and making do, law could furnish the institutional capacities to establish migration and settlement overseas as legitimate, organized processes. As a discourse, a means of knowing and making known, law would supply the arguments that enabled colonizers to justify – to themselves, to their rivals, to those they displaced – taking what they could keep and keeping what they had taken. And as a modality of rule, the expression of sovereignty, law was integral to the creation and implementation of governance – the concrete realization of jurisdiction.”⁴ Taking Tomlins’ provocation as a starting point, I see law as a framework through which one can see both a history of commercial practice and one of ideas and trade and political economy; it is on the platform of law that both trains of thought meet.

³ Katharina Pistor, *The Code of Capital: How Law Creates Wealth and Inequality* (Princeton University Press, 2019)

⁴ Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865* (Cambridge University Press, 2010): 6.

I am not making claims in this chapter that are grounded in chronology; this is not a potted history of law and trade in the Islamic world from the rise of Islam to the advent of the Ottoman Empire (though I include that, too, by way of orienting the reader). Rather, I want to use this opportunity to lay out a schema for thinking about questions that lie at the intersection of the legal and economic history of the Islamic world. And so, this piece might be thought of as in part a survey – however partial and incomplete – of the intertwined economic and legal histories of the Islamic world; and in part an aspiration, for a different kind of history of capitalism, grounded in the Islamic world and its intellectual traditions – and for the study of law in economic life more generally.

Law and Trade in the Islamic World: A Brief Overview

The geography I take on here broadly falls within what historians call “the Islamic world” – a far-flung space that spans the western reaches of the Mediterranean to as far eastward as Southeast Asia. My goal is to try to connect these spaces and histories as much as possible, partly in an attempt to cover the breadth of the Islamic world and to highlight the transregional nature of the marketplaces I am trying to anchor the story in here. At the same time, my goal in spanning the breadth of the Islamic world is to decenter the Arab heartland from the story of Islamic law and commerce – not in an attempt to do away with it altogether, but to instead plot cities like Baghdad, Cairo, and Damascus as nodes in a broader commercial geography that included Aden, Calicut, Java, and other port cities. The history of trade and law in the Islamic world, I argue, plays out as much in the Indian Ocean as it does in the “Middle East.”

If we take c. 630-1450 or so to be rough bookends to our narrative, we are left with quite a bit of history on the table. In the realm of politics, this period witnesses rise and transformation of the Umayyad and ‘Abbasid caliphates around the Mediterranean, and the host of different political formations – dynasties, sultanates, and emirates, some of them quite considerable – that emerged at their interstices and beyond their borders. The continued vitality of land-based trade routes linking Anatolia and China facilitated the expansion of terrestrial authorities like the Seljuks, whose jurisdiction spanned much of Central Asia, the Caucasus, and Anatolia. And the expansion of the Indian Ocean trade during the medieval period fed into the emergence of the more maritime-oriented Fatimid caliphate, which straddled both the Indian Ocean and Mediterranean, and other regional states – the Rasulids, the Delhi Sultanate, and Muslim city-states in Southeast Asia. By taking an expansive spatial view, I hope to do away with the enduring myths of decline following the Mongol invasions in the mid-thirteenth century, and highlight instead the dynamism of oceanic trade during this period and the intellectual currents that ran through it.

One might begin not with the rise of Islam itself, but with the worlds into which Islam came into being. As cities on the western coast of the Arabian Peninsula, neither Mecca nor Yathrib (Medina) were insulated from the currents of law and trade that ran through the Red Sea and into the Indian Ocean world. The frankincense trade of the Himyarites, the imperial political economies of the nearby Byzantine and Sassanid empires, and the maritime trade of the various kingdoms along the coasts – all of these shaped the commercial and legal cultures of the Arabian Peninsula.⁵ And under the first Muslim polities – those headed by the Prophet Muhammad and his Companions, the Rashidun Caliphs – developments that began in Late Antiquity would see increasing commercialization and specialization. These include the monetization of the economy,

⁵ Patricia Crone, *Meccan Trade and the Rise of Islam* (Princeton, NJ: Princeton University Press, 1987)

the development and spread of large-scale agriculture, merchant diasporas, and maritime trade – particularly in the Indian Ocean.⁶

The development of Muslim trade witnessed an enormous expansion under the carapace of the Umayyad Caliphate (661-750). Under the Umayyads the Muslim empire reached its greatest extent, stretching from the Maghrib and the Iberian Peninsula in the West to Sindh and Transoxiana in the East. And as the empire expanded, so too did the infrastructure that it developed to hold its possessions together. The Umayyads fostered the development of an extensive postal routes and a fiscal regime, anchoring these in an administrative bureaucracy that monitored and coordinated the movement of information and revenues between the capital at Damascus and its far-flung provinces.⁷ Within a couple of centuries, the post had developed into well-coordinated network of routes, stations, postal chiefs, and a postmaster-general, all paid for out of the royal purse. Though these were designed to ensure a reliable system of communication for the purposes of administration, merchants would frequently use this infrastructure, along with their regular shipping routes, to communicate prices and coordinate transactions with one another.⁸

For all of the gains under the Umayyads, it is with the rise of the ‘Abbasid Caliphate (750-1258) and the neighboring Fatimid Caliphate (909-1171) that the economic history of the Islamic world come into clearest view. This is in part because under the ‘Abbasids the region witnessed development of a polity with more long-term stability; moreover, the ‘Abbasids, shifted the capital of the caliphate from Damascus to Baghdad, which was just upriver from Basra. With a clear connection to the capital, maritime trade in the Persian Gulf became energized, as ports sprung up to feed good into Basra – and ultimately, to the growing political capital at Baghdad. This process was further animated by the settlement of Muslim traders in on the coast of China, which was then under the stable rule of the Tang Dynasty, and the emergence of a maritime route linking China and Baghdad, via Basra. The ‘Abbasids also brought in slaves from East Africa, putting them to work as soldiers and agricultural laborers; the pressure of work in the marshes proved particularly harsh, leading to a series of slave revolts, the largest taking place in the mid-ninth century. The Indian Ocean world – or at least its Western half – thus formed a key arena of ‘Abbasid political economy.⁹

During the ‘Abbasid era, the study of Muslim jurisprudence enjoyed an efflorescence of its own right. Students from around the Islamic world flocked to centers like Baghdad and Cairo, where they sought to study with established Muslim scholars. With the sponsorship of members of the caliphal dynasties, they took up juridical posts around the caliphate, but also expended tremendous amounts of energy carving out new frontiers in Islamic law: they challenged older assumptions, incorporated new methods of legal reasoning into their repertoires, and produced

⁶ Michael Morony, “Economic Boundaries? Late Antiquity and Early Islam,” *Journal of the Economic and Social History of the Orient*, Vol. 47, No. 2 (2004):166-194

⁷ Abd al-Aziz Duri, *Early Islamic Institutions: Administration and Taxation from the Caliphate to the Umayyads and ‘Abbasids* (London: I.B. Tauris, 2011) 168-170

⁸ Adam Silverstein, *Postal Systems in the Pre-Modern Islamic World* (Cambridge University Press, 2007)

⁹ See also Gwyn Campbell, “East Africa in the Early Indian Ocean World Slave Trade: The Zanj Revolt Reconsidered,” in Gwyn Campbell, ed., *Early Exchange between Africa and the Wider Indian Ocean World* (London: Palgrave Macmillan Abdul Sheriff, 2016); Abdul Sheriff, “The Zanj Rebellion and the Transition from Plantation to Military Slavery,” *Comparative Studies of South Asia, Africa and the Middle East*, Vol. 38, No. 2 (2018): 246–260. It should be noted that between roughly 950 and 1050, real authority in Iraq and the Gulf lay in the hands of the Buyids, who were, at least nominally, ‘Abbasid governors.

countless volumes of legal commentaries.¹⁰ Some, like Muhammad ibn Idris Al-Shafi‘i, would go on to establish schools of jurisprudence that would later become enormously popular around the Indian Ocean.

Whereas the ‘Abbasids relied on the Persian Gulf as the principal pathway to the Indian Ocean, the neighboring Fatimid Caliphate of the Eastern Mediterranean forged its Indian connections through the Red Sea. The Fatimid rulers sponsored large groups of wholesale merchants, collectively known as the Karimis, who engaged in direct trade with India, importing spices and textiles.¹¹ Moreover, they relied heavily on the port of Aden, which was ruled by dynasties that were friendly to, if not confederates of, the Fatimids in Cairo. As a port city situated where the Red Sea met the Arabian Sea, Aden was world-famous as a commercial emporium, and attracted merchants from all over the Indian Ocean – not least among which was a network of Jewish traders that were highly active in the Mediterranean as well.¹² The amount of archival material they left behind, coupled with the availability of manuscript sources from the ‘Abbasid and Fatimid Caliphates, renders that period of history more visible than those preceding it.

In the Muslim West, things were no less vibrant. In the Iberian Peninsula, there remained vestiges of Umayyad authority: faced with the ‘Abbasid takeover in 750, the Umayyad prince ‘Abdulahman I fled to Cordoba and declared an independent Emirate; and in 929, his descendent ‘Abdulahman III, declared himself Caliph. The Cordoba Caliphs were well-positioned to take advantage of their close proximity to Christian Kingdoms: they could sell the goods of the East to European markets. Traders from Muslim Spain would travel to marketplaces in coastal Egypt, Tunisia, and the Levant, buying up wares and transporting them to port cities in Iberia and France; the East-West trunk route along the Mediterranean coasts, working within networks of partners, brokers, and investors.¹³

The good times would eventually come to an end, though. In the Iberian Peninsula, the Umayyad Caliphate of Cordoba fell to infighting in the 1030s, and left in its wake a number of independent principalities, called *taifas*. At different times over the next two centuries, these would find themselves absorbed by the Almoravid dynasty (c. 1040-1147), the Almohad Caliphate (c. 1147-1269), and then finally to the expanding Christian kingdoms during the Reconquista. The Fatimid Caliphate, too, gradually disintegrated between the mid-eleventh and -twelfth centuries: governors of provincial cities declared their autonomy, territories in the Eastern Mediterranean fell to Crusaders, and the Caliphate’s Red Sea holdings were lost in military campaigns launched by the ‘Abbasids and an expanding Ayyubid dynasty. The Mongol invasions of the mid-1200s decimated the ‘Abbasid Caliphate, and laid to waste any aspirations that others might have had for political dominance in the Eastern Mediterranean.

The implications for regional trade were enormous. With no state to back them, and with their holdings lost to polities that were either indifferent or actively hostile to them, Muslim traders lost their footing in the Mediterranean trade. Christian Iberian traders gradually took over

¹⁰ Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th–10th Centuries c.e.* (Leiden, Netherlands: E. J. Brill, 1997)

¹¹ E. Ashtor, “The Karimi Merchants,” *Journal of the Royal Asiatic Society*, No. 1-2 (1956): 45-56; S.D. Goitein, “New Light on the Beginnings of the Kārim Merchants,” *Journal of the Economic and Social History of the Orient* Vol. 1, No. 2 (1958):175-184.

¹² Roxani Margariti, *Aden and the Indian Ocean Trade: 150 Years in the Life of a Medieval Port City* (Chapel Hill, NC: University of North Carolina Press, 2007)

¹³ Olivia Remie Constable, *Trade and Traders in Muslim Spain: The Commercial Realignment of the Iberian Peninsula, 900-1500* (Cambridge University Press, 1995): 16-51

the routes that Muslim and Jewish traders had once plied, connecting them to increasing demand among Northern Europeans for Mediterranean goods.¹⁴ In the Eastern Mediterranean, Muslims had to contend with the growing commercial ascendancy of Italian city-states, the most prominent among which was Venice. By the 1200s, Venetian traders dominated much of the trade between Constantinople and the Levant, adapting old commercial institutions like the *mudaraba/commenda* and developing altogether new practices, like double-entry bookkeeping and banking, along the way. From their position in the Eastern Mediterranean, they were able to control the flow of goods coming from India and China into Europe, thus ensuring steady profits and political influence.¹⁵ By contrast, Muslim traders found themselves largely pushed out of the Mediterranean trade, and diverted their energies eastward, into the Red Sea and the Persian Gulf.

The breakdown of caliphal empires around the Mediterranean during the twelfth and thirteenth centuries shifted the political centers of gravity eastward, too, to the Indian Ocean world. In their place, and in the areas surrounding them, emerged a number of other Muslim polities, some of which – like the Delhi Sultanate – rivaled them in their size and aspirations. Others were smaller in size, and still others were limited to singular port cities, but were no less consequential for regional trade than their predecessors. Although trade across the Indian Ocean, from Basra to China, was far less common than it had been under the ‘Abbasids, movement within the Arabian Sea and the Bay of Bengal arguably intensified even further.¹⁶ Port cities and islands like Aden, Hormuz, Malacca, Muscat, and Mombasa all jockeyed for a share of the changing Indian Ocean trade, competing with one another to host the diasporic merchant communities from whom they could generate tax revenue.¹⁷

Perhaps counterintuitively, it was during this period of political and economic reconfiguration in the Middle East and Mediterranean that the eastwards spread of Islamic law, around the Indian Ocean, reached its zenith. As the maritime economy of the region crossed this watershed, the region witnessed a phenomenon by which Muslim scholars and other juridical actors circulated around the ocean’s littoral. Just as they jockeyed for traders, the rulers of the emerging commercial centers around the Indian Ocean competed for an increasingly mobile group of scholars and juridical actors who could supply the legal services that traders demanded. It was during this period that Ibn Battuta, himself a *qadi*, embarked on his now-famous journey around the Indian Ocean, offering his juridical services to rulers around the region; during his travels, he noted the presence of many others like him as well. Scholars from Hadramawt, on the Yemeni coast, were particularly active in this regard: they made their way to the coasts of East Africa, India, and Southeast Asia, where they served as *qadis*, jurists, preachers, and advisers to rulers.¹⁸ The reconfiguration of economic life around the Indian Ocean between the thirteenth and fifteenth centuries thus brought with it a veritable renaissance in the field of law, conjuring up a world of Islamic law with much wider contours than had previously been the case.

¹⁴ Constable, *Trade and Traders*, 240-258

¹⁵ Frederic Lane, *Venice: A Maritime Republic* (Johns Hopkins University Press, 1975): 66-85, 136-153

¹⁶ Michael Pearson, “Islamic trade, Shipping, Port States and Merchant Communities in the Indian Ocean, Seventh to Sixteenth centuries,” in David O. Morgan and Anthony Reid, eds., *The New Cambridge History of Islam, Vol. 3* (New York: Cambridge University Press, 2010): 317-365

¹⁷ Sanjay Subrahmanyam, “Of *Imārat* and *Tijārat*: Asian Merchants and State Power in the Western Indian Ocean, 1400 to 1750,” *Comparative Studies in Society and History*, Vol. 37, No. 4 (1995): 750-780.

¹⁸ Engseng Ho, *The Graves of Tarim: Genealogy and Mobility Across the Indian Ocean* (Berkeley, CA: University of California Press, 2006); Joel Blecher, *Said the Prophet of God: Hadith Commentary Across a Millennium* (Berkeley, CA: University of California Press, 2017): 143-163.

Islamic Law and the Political Economy of Muslim Empires

It did not take long for the early Muslim empires – the Umayyads, and then the ‘Abbasids – to come up against the questions of political economy that empires before them had to grapple with: questions of fiscal policy – specifically, taxation, revenue, and currency, all which were linked to much broader questions surrounding infrastructure, land tenure, and labor. These, one might argue, were grounded in much more fundamental questions surrounding legal personhood and property rights, twin pillars of political economy, that Muslim jurists found themselves amply prepared to address. This is not the place to recount the histories of those empires in fine detail, which have been amply covered elsewhere. Instead, I’ll cover the period in broad brush strokes before focusing in on the more specific political and economic transformations that prompted questions surrounding fiscal policy.

In the century following the death of the Prophet Muhammad, the Muslim polity saw a period of enormous expansion from its base in the western Arabian Peninsula. Under the Rashidun Caliphs and then the Umayyad dynasty, Muslim rule stretched from the western reaches of the Mediterranean to Sindh in the East. The expansion of Muslim empires allowed for the possibility of increased mobility of people and goods across West Asia and North Africa. With an expansive jurisdiction came a need for infrastructure – for secure roads and river routes, to allow for the movement of troops and communications between different administrative centers and provincial authorities. Under the Umayyads, and later the ‘Abbasids, the region saw the emergence of a postal system, first funded by way of corvee labor and irregular taxes and requisitions, and later under a regular postal administration.¹⁹ This burgeoning imperial communications infrastructure was not limited to state officials; merchants made extensive use of it as well, tapping into these channels as they shuttled their wares around different towns and cities in the Islamic world, and funneling their goods into imperial capitals in Damascus, Baghdad and, later, Cairo. Merchants also supplemented the movement of information through their own channels: ships, captains, and business partners around the Islamic world all expanded the arena of circulation.

It is in this context that the region witnessed what Andrew Watson coined “the Arab agricultural revolution,” a period marked by the diffusion of crops and farming techniques throughout the lands of the Islamic world. Rice, wheat, sorghum, and other grains circulated around the region with renewed facility, alongside luxuries like silk and novelty crops like sour oranges. With these crops moved farmers and laborers, who brought with them their own techniques and skills; and as scholars from urban centers roamed the countryside, they learned about these crops and techniques, and penned treatises on them.²⁰ Although whether this constituted a revolution as such is a matter of debate – some scholars have argued that this was more of an evolution of longer-standing Roman and Sassanid practices – there is little doubt that the early Islamic period was marked by a diffusion of crops and an increase in agrarian activity.²¹

The agrarian changes that the region witnessed during the early period raised critical questions of political economy – specifically, of land tenure and taxation. As a practice, agriculture rests on systems of land tenure: on who gets the right to hold property, and under

¹⁹ Adam J. Silverstein, *Postal Systems in the Pre-Modern Islamic World* (Cambridge University Press, 2007): 53-140.

²⁰ Andrew Watson, *Agricultural Innovation in the Early Islamic World : the diffusion of crops and farming techniques 700-1100* (Cambridge University Press, 1983)

²¹ Michael Decker “Plants and Progress: Rethinking the Islamic Agricultural Revolution,” *Journal of World History*, Vol. 20, No. 2 (2009): 187–206

what conditions – and, more critically, what their obligations to the state might be. Historians have long recognized how important land tenure regimes were to incentivizing the development of agrarian economies – that by striking a balance between the mutual obligations of landowners and laborers, and by setting the rate of taxation, state officials could either encourage or discourage the work of clearing, planting, and improving the land.²² The circulation of crops, too, depended on an infrastructure that needed to be maintained by state officials; doing so required regular expenditures, which necessitated state coffers that could manage, or at the very least delegate, the costs of upkeep.

It is within this context that we might understand the production of early treatises on revenue, the most famous of which might be the *Kitāb Al-Kharāj* of Abu Yusuf (d. 798), which he penned near the onset of this period of growth. Abu Yusuf notes that the *Kitāb Al-Kharāj* was written at the behest of the Caliph Harun Al-Rashid, who asked the *qāḍī* to pen a treatise on the collection of different taxes, alms, and tithes within his dominions. A central question that runs through the text is how to categorize the lands that came under Muslim rule: at the most basic level, whether the landowners were Muslim, members of Abrahamic faiths, or polytheists, and then, whether they voluntarily submitted to Muslim rule or were conquered after war. This determined their obligation to pay the *kharāj* tax – and at times, shaped whether or not they had the right to hold land at all. More generally, though, Abu Yusuf thinks through the taxes that applied to different forms of agrarian property, both immovable and moveable (honey, nuts, bottled water), and the tax regimes they ought to fall under.

The treatise itself reflects this impulse: Abu Yusuf organizes chapters by the type of land under consideration, classifying them according to the above schema. However, the questions Abu Yusuf seeks to answer in the *Kitāb Al-Kharāj* might be thought of as matter of political economy, mediated through law. At the heart of the treatise lie questions of land and labor, and there are at least a few ways one might read them. One might see in Abu Yusuf's writing a question of how to incentivize agrarian work. Throughout the treatise, he grappled with how to appropriately reward people's labor with title to land: he established that those who revived barren (*mawat*) land and rendered it productive established for themselves a property right, thus incentivizing work at the agrarian frontier. The obverse was also true: those who allowed their land to lay fallow for a period exceeding three years, he states, relinquished their right to that property – a ruling that one might read as protecting against overaccumulation of land.²³ Indeed, broad swaths of the treatise might be read as an attempt at mobilizing differential tax rates so as to incentivize particular forms of agricultural activity.

At a more fundamental level, though, Abu Yusuf seemed to be grappling with questions of legal personhood and property rights – twin pillars of law and political economy – and how to bring the two together within a fiscal regime that was beginning to take shape under a slowly bureaucratizing empire. As the empire grew, the question of how to categorize the wealth and subjects that came under its purview became of pressing importance to matters of fiscal administration. Whether a subject was Muslim or not – and, under those two broad headings, a number of other distinctions (free, enslaved, belligerent, polytheist, and many more) – shaped what rights one had to property, and what their tax obligations were. Throughout it all, Abu Yusuf went to great lengths in order to ground his thinking in the Quran and the Sunna of the Prophet Muhammad – in part to establish the legal framework within which he could anchor his

²² See, for example, Douglass North and Robert Thomas, *The Rise of the Western World: A New Economic History* (Cambridge University Press, 1973)

²³ Abu Yusuf, *Kitāb Al-Kharāj*, FULL REFERENCE

opinions, but also to assert that this was an arena of legal administration that was, at least in theory, not subject to the whims of the sovereign.

If Abu Yusuf was one of the first (and most prominent) writers to take on questions of law and political economy, he was certainly not the only one to do so. Shortly after Abu Yusuf's death, the jurist Abu 'Ubayd Ibn Sallam (d. 838) took up similar questions in the *Kitāb Al-Amwāl*, as did later jurists.²⁴ Of course, the appearance of continuity in the questions that jurists asked surrounding law and revenue, and their rootedness in the Quran and Hadith, should not suggest that there was no change. As Baber Johansen pointed out long ago, different circumstances called for a rethinking of the relationship between people, property, and the state. He identified a shift in juristic discourses between the tenth and sixteenth centuries from a stance that protected the rights of peasants and cultivators to one that sought to protect the interest of landholders. Newer jurists set aside the opinions of older ones in order to make room for new interpretations, reflecting the demands of a new imperial political economy in which peasant small holdings were being absorbed by the estates of an emerging class of rentiers.²⁵ Historians of early Ottoman Syria identified similar shifts in that region between the sixteenth and eighteenth centuries.²⁶

Questions of land, labor, and taxation may have taken up the lion's share of works by Muslim scholars on matters of political economy, but there were other matters that attracted their attention as well. Another pressing issue, though more episodic than land tenure, was that of money – specifically, the relationship between the supply of precious metals and prices in the marketplace, questions that medieval rulers and jurists alike grappled with.²⁷ The most widely-read scholar on this issue has been the jurist Ahmad ibn 'Ali Al-Maqrizi (d. 1442) who authored (among other works) two treatises on what might be called monetary policy in Mamluk Egypt.²⁸ In his writings, Al-Maqrizi criticized the proliferation of copper coins, which he identified as a principal cause of inflation in the Cairene economy. Looking back to 'Abbasid precedents as well as discussions in Hadith and *fiqh*, he argued for a return to gold and silver, whose values were more stable than copper – though he also cautioned against excessive minting of coins, and suggested a monetary policy that was grounded in the sunnah of the Prophet.²⁹

Concerns surrounding money supply were not just theoretical; they had real-life implications for consumers and for the stability of the government. The shifting value of copper vis-à-vis gold and silver occasionally caused a rise in prices for essential foods, which in turn would lead to popular dissatisfaction with the administration. From the standpoint of tax collection, too, fluctuations in the value of precious metals because of the proliferation of copper coins in the marketplace could have an impact on the treasury. Managing an imperial political

²⁴ Abu 'Ubayd Ibn Sallām, *Kitāb Al-Amwāl* – FULL REFERENCE

²⁵ Baber Johansen, *The Islamic Law on Land Tax and Rent: The Peasants' Loss of Property Rights as Interpreted in the Hanafite Legal Literature of the Mamluk and Ottoman Periods* (Croom Helm, 1988)

²⁶ Martha Mundy and Richard Saumarez Smith, *Governing Property, Making the Modern State: Law, Administration, and Production in Ottoman Syria* (I.B. Tauris, 2007)

²⁷ See also Claude Cahen, "Monetary Circulation in Egypt at the Time of the Crusades and the Reform of Al-Kāmil," in Udovitch, ed., *The Islamic Middle East*, 315-333

²⁸ REFERENCES FOR THESE

²⁹ John Meloy, "The Merits of Economic History: Re-Reading Al-Maqrīzī's *Ighāthah* and *Shudhūr*," *Mamluk Studies Review*, Vol.7, No. 2 (2003): 183-203. https://mamluk.uchicago.edu/MSR_VII-2_2003-Meloy_pp183-203.pdf

economy, then, also meant grappling with questions surrounding metals, coins, and marketplace exchange.³⁰

The questions that early jurists asked of the fiscal systems around them – how to classify land and its holders, what the implications were of different tax rates for the balance between production and revenue, and how to regulate the money supply – were surprisingly durable. One sees variations on similar questions around different premodern empires around the globe. Even jurists of the Muslim “Gunpowder Empires” grappled with issues of taxation and land tenure – of fiscal policy more generally – that were not altogether dissimilar from their medieval predecessors.³¹ These were arguably broader questions of imperial political economy that were not specific to one empire or another; empires around the world had to find solutions to similar problems. And yet, the dynamics of the field of Islamic jurisprudence, in which later jurists often look to earlier ones for guidance on matters, does lend render the literature more of a corpus than it might otherwise be.

This concern with balancing property rights with the demands of imperial political economy manifested itself in a philosophy of kingship that historians have come to term the “circle of justice.” There were many minor variations on the idea, but the core of it asserts that power was contingent on military might, which in turn was contingent on revenue, and that revenue emerged out of prosperity, which rested on a foundation of justice and good administration; the relationship between administration and wealth – the essential features of any idea of political economy – are made plain. This philosophy found expression in a range of premodern Muslim empires, and carried over into the Ottoman, Safavid, and Mughal eras as well; it also emerged much of the *nasihat* (mirror for princes) literature.³² No less a scholar than Ibn Khaldun pointed out the relationship between taxation and economic activity in the marketplace; though he attributed excessive taxation to a dynasty’s proclivity for luxuries, one might also read his work to suggest that tax revenues went to prop up the burgeoning bureaucracies that dynasties relied on to take place of the more organic bonds of *‘asabiyya* that had once brought them to power.³³

Given these concerns, it is perhaps unsurprising that historians have recently come to a conclusion that, far from being either too light on the ground or excessively extractive, the premodern Islamic state was deeply invested in maintaining a bureaucratic artifice aimed at keeping track of decrees, petitions, and sources of revenue. “The humming machinery of the state,” Marina Rustow declares (and amply demonstrates), “was built on a scribal code and a repertoire of material technologies”; to this, one might add that it sought to anchor itself in an understanding of political economy that was deeply mediated (if not altogether constituted) by law.³⁴

³⁰ A good discussion of this is in Kristen Stilt, *Islamic Law in Action: Authority, Discretion, and Everyday Experiences in Mamluk Egypt* (Oxford University Press, 2011): 175-193.

³¹ See also Farhat Hasan, *State and Locality in Mughal India: Power Relations in Western India, c. 1572-1730* (Cambridge University Press, 2004); Halil Inalcik, *An Economic and Social History of the Ottoman Empire, 1300–1914*, 2 vols. (Cambridge University Press, 1994); Ann Lambton, *Landlord and Peasant in Persia: A Study of Land Tenure and Land Revenue Administration* (Oxford University Press, 1969); Mundy and Smith, *Governing Property*.

³² Linda Darling, *A History of Social Justice and Political Power in the Middle East: The Circle of Justice from Mesopotamia to Globalization* (Routledge, 2013)

³³ Ibn Khaldun, *The Muqaddimah*, trans. Franz Rosenthal (Princeton University Press, 2005): 189-221

³⁴ Marina Rustow, *The Lost Archive: Traces of a Caliphate in a Cairo Synagogue* (Princeton University Press, 2020): 443

Commerce and Jurisprudence

If the realm of imperial administration is where one sees broad and far-reaching questions of Islamic law and political economy, it is certainly not the only arena – nor is it necessarily the most fruitful. The bulk of Islamic legal thinking on economic matters were not grounded in empire at all; they were anchored in the marketplace. As scholars recognized long ago, Muslim jurists spilled much of their ink on transactional matters, or *mu‘amalāt*: on sales, loans, pledges, partnerships, and other matters that one can group under the broad heading of exchange. Read together with the material histories of commerce in the Islamic world, a platform emerges for writing a more textured history of market economies and capitalism in the region – one that can broaden the geographies of our subject of inquiry, but also challenge the grand narrative of economic divergence that historians have for so long hewed so closely to.

By suggesting that Islamic law in the marketplace addressed different concerns and practices than it did when it came to matters of political economy – that, indeed, it took a different shape altogether – I don’t mean to suggest that the two are somehow exclusive of one another. The jurists who wrote on matters of political economy were the same ones writing on questions of commerce and marketplace exchange; they would have seen more similarities than they would have seen distinctions. Indeed, there is much to suggest that jurists would have understood them as nested arenas of economic life. The *qādi*-cum-historian Ibn Khaldun, for example, recognized how important marketplace exchange was to the economic vitality of the polity: his *Muqaddimah* lays out a schema of political economy in which the state depended on revenue derived from marketplace activity, and thus had a duty to uphold property rights within the marketplace; excessive taxation and the attendant feelings of insecurity would lead merchants and artisans to abandon the marketplace, and ultimately would cripple the state itself.

The world stage onto which Islam emerged was already brimming with different institutions of marketplace exchange. Perhaps the most famous among these was the *muḍārabah*, a form of commercial association that joined together an investor and working partner, allowing each of them a share of the profits based their own contributions to the venture (for one, his capital; for the other, his labor). As a commercial institution, the *muḍārabah*, most historians agree facilitated the kinds of long-distance trading ventures that characterized much of the overland and maritime trade in pre-Islamic Mecca. Together with different treaty forms that Meccans mobilized – the *ilāf*, an agreement for the safe passage of caravans through other tribal territories, and the *hilf*, a more general alliance between tribes – it helped set the stage for a tremendous accumulation of wealth in the hands of Meccan traders.³⁵

As an ethos, Islam was hardly inimical to commerce. Verses from the Quran indicate a similar attitude towards commerce – that it was beneficial if it was well-regulated and grounded in what was lawful. The Prophet Muhammad himself, many point out, had worked as a caravan trader, and extolled the benefits of commercial activity. During his lifetime, he established two marketplaces (the first was in a tent whose ropes were reportedly cut down by a Jewish leader in Mecca).³⁶ Hadiths attributed to Muhammad also suggest that he disliked price controls, and had a generally sanguine view of market exchange. And yet, his was not an unqualified endorsement of commerce: he made clear his suspicions of the unethical practices that he observed in the marketplace. He spoke at length about the importance of fair dealings and of directing profits

³⁵ Mahmoud Ibrahim, “Social and Economics Conditions in Pre-Islamic Mecca,” *International Journal of Middle East Studies*, Vol. 14, No. 3 (1982): 343-358.

³⁶ M.J. Kister, “The Market of the Prophet,” *Journal of the Economic and Social History of the Orient*, Vol. 8, No. 3 (1965): 272-276.

towards charitable causes; he also made it clear that he had no tolerance for egregiously usurious transactions. More generally, he frowned upon the accumulation of wealth for wealth's sake, echoing an Aristotelian ethic that saw wealth as a means towards the attainment of social well-being, rather than an end in itself. Engaged in correctly, marketplace activity could be virtuous; left to its own devices, though, it could very easily lose its moral bearings.

Given the preponderance of commercial institutions in the Arabian Peninsula, it is unsurprising that Muslims would find themselves confronted with questions surrounding how to reconcile commercial practices with an emerging Islamic ethic. The amount of intellectual labor that went into the project of regulating commerce was staggering. Jurists covered a dizzying range of legal issues in massive, often multi-volume, expositions. They were obsessive in their attention to the details of a particular legal subject, and were often careful to note the other opinions and texts they drew on in formulating their respective positions on different matters. The world of transactions (called *mu'āmalāt*) attracted a great deal of their attention: they devoted enormous amounts of space to discussions of sales, partnerships, obligations, debts, and other forms of contracting. For intellectual historians, this corpus of texts forms an archive spanning at least three continents and more than a thousand years of deep legal contemplation of the most mundane of commercial affairs.

Although it has received an inordinate amount of attention in the literature because of its ability to pool together labor and capital for long-distance trade, the *muḍārabah* was hardly the only commercial institution in the early Islamic world. Treatises by Muslim jurists penned within the first few centuries of Islamic pointed to a range of different contracts and arrangements that shaped market life in the Islamic world, including forward sales (*salam*) and partnership forms aimed at a variety of enterprises, from commerce to artisanal production, and even raising credit.³⁷ Jurists, too, devoted an enormous amount of energy to thinking through sales contracts, which emerged as something of a template for a range of different transactions, including marriage. There were also partnership forms that were more specifically directed at agrarian enterprises: leases between landowners and laborers (*kirā'*), partnerships for irrigation (*musāqāt*), and arrangements that resemble sharecropping (*muzāra'a*).³⁸ The manuals make it clear that these were practices and institutions that already prevailed in the Muslim community; the question was how to bring them into a framework that could accommodate them while situating them within a matrix of rights and obligations grounded in a set of theoretical postulates derived from the Quran and Sunna of the Prophet.

Marketplace exchange, these works make clear, was not simply a matter of morality; Muslim jurists were as eager to permit as they were to regulate, and many participated in trade as well.³⁹ But if the consensus was that commerce was beneficial, then the goal was to ensure parity between parties to a transaction – buyer and seller, investor and working partner, laborer and employer – particularly when it came to matters of risk and uncertainty, the questions of information that plagued all but the most iron-clad transactions. In their writings on jurisprudence, Muslim scholars constructed a theoretical edifice that could support a range of different institutions and generate a wide variety of outcomes. The goal, it ought to be

³⁷ The best survey of these remains Abraham Udovitch, *Partnership and Profit in Medieval Islam* (Princeton University Press, 1970). See also 'Abdullah 'Alwi Haji Hassan, *Sales and Contract in Early Islamic Law* (Kitab Bhavan, 1997).

³⁸ See, for example, Malik Ibn Anas, *Al-Muwatta'*, *The Recension of Yahya b. Yahya Al-Laythi*, ed. Mohammed Fadel and Connell Monette (Harvard University Press, 2019): 537-676.

³⁹ Joel Blecher, "Scholars, Spice Traders, and Sultans: Arguing over the Alms-Tax in the Mamluk Era," *Islamic Law and Society*, Vol. 27 (2020): 53-82.

emphasized, was not to limit transactions to a known menu of nominate contracts, but instead to anchor the world of contracting in a matrix of rights and obligations that coordinated action, minimized informational asymmetries whenever possible, and ensured equity in profits and losses.

But not all of this involved a simple transmission from “the world” to “the books” and then back out. Nor is it clear that the long treatises of jurisprudence reflected the world around them in any way: with few exceptions, *fiqh* texts are dry and repetitive, and offer little by way of a window into the lived world of law, or even of legal administration. As one scholar has noted, even though *fiqh* discourses “do normally operate within a notion of time and space, they do not historicize their practices in such a way as to perceive their discursive units as the outcome of a particular historical epoch.” In a sense, they “act *against* time.”⁴⁰ Historians using these texts often have to grapple with best-practice discussions riddled with rational constructions and logical proofs that bear little relation to how legal categories operate “in action.” Jurists’ claims about timeless, self-legitimizing values and their singularity of meaning and rightness informs the discourse whether or not one believes they were applied; they quickly slip through the historian’s fingers.

Different genres of writing, though, suggest that the relationship between Islamic law and economic life was more dialogic. From early on, jurists penned tracts that offered contracting parties a range of legal stratagems (*hiyal*) that would allow them to cling to the letter of the law while circumventing its spirit.⁴¹ Nowhere is this clearer, though, than the *fatwa* literature, which is structured as a series of questions and answers; the questioner, seeking an answer to a legal problem, poses a question to the jurist, who in turn issues his non-binding legal opinion. Historians have long mined the *fatwa* literature to see how muftis set legal theory in motion – how they connected real-world problems with theoretical issues.⁴² However, as some scholars have demonstrated, the questions people asked were just as revealing as the answers they received: they shed light on the concerns of everyday actors, and, when it comes to economic matters, reflect the proximity that those actors maintained to Islamic law.⁴³ The world of wealth and exchange, the *fatwas* make clear, was not a world apart from the law: merchants, moneylenders, laborers, and others expressed moral qualms about the transactions they entered into, and sought guidance on their mutual rights and obligations and their apportionment. And it was in this back-and-forth iterative question and answer – sometimes involving *qadis*, scribes, and other juridical actors – that the contractual category itself might be thought to take shape.

The manuals written for marketplace inspectors (*muhtasibs*) in the medieval Islamic world make abundantly clear that marketplaces were themselves sites of legality. Sellers of goods and services in the *souks* and bazaars of the Islamic world mobilized their own forms of self-regulation and standard-setting, often via guilds and other associations.⁴⁴ Much of the work

⁴⁰ Zouhair Ghazzal, *The Grammars of Adjudication* (IFPO, 2009): 6

⁴¹ See also Satoe Horii, “Reconsideration of Legal Devices (*Hiyal*) in Islamic Jurisprudence: The Ḥanafīs and Their “Exits” (*Makhārij*),” *Islamic Law and Society*, Vol. 9, No. 3 (2002): 312-357.

⁴² See also Muhammad Khalid Masud, Brinkley Messick, and David S. Powers (eds.) *Islamic Legal Interpretation: Muftis and their Fatwas* (Harvard University Press, 1996); Omer Awass, *Fatwa: The Evolution of a Legal Practice and its Influence on Muslim Society* (Ph.D. Dissertation, Temple University, 2014)

⁴³ An excellent example is David S. Powers, *Law, Culture, and Society in the Maghreb, 1300-1500* (Cambridge University Press, 2002)

⁴⁴ See also Nelly Hanna, *Artisan Entrepreneurs in Cairo and Early-Modern Capitalism (1600-1800)* (Syracuse University Press, 2011); Bernard Lewis, “The Islamic Guilds,” *Economic History Review*, Vol. 8, No. 1 (1937): 20-37.

of the *muhtasib* was to ensure transparency and reduce informational asymmetries between buyers and sellers, rather than to bring seller practices more strictly in line with Islamic law. If the mandate of the *muhtasib* was to command right and forbid wrong, translating that into marketplace activity often illustrated its limits; he could remind marketplace denizens of their moral responsibilities, could check weights and measures, and could engage in feeble attempts at policing adulteration of goods, but could do little else in a marketplace that was already teeming with notions of legality.

Writings on matters of commerce in law were as far-flung, dynamic, and durable as the world of commerce itself. As Muslim traders expanded their networks into Africa, Asia, and Southern Europe, writings on Islamic law followed in their wake. Shafi'i legal texts, the most popular of which was the *Minhāj Al-Ṭālibīn*, a thirteenth-century manual by the jurist Yahya ibn Sharif Al-Nawawi, and the commentary upon it (*Tuḥfat Al-Muḥtāj bi-Sharḥ Al-Minhāj*) by the sixteenth-century jurist Ibn Hajar Al-Haytami, found ready consumers around the Indian Ocean littoral, from East Africa to Southeast Asia, and were eagerly translated into Malay, Javanese, and Tamil.⁴⁵ And as Muslim traders fanned out across North and West Africa, texts on Islamic law traveled along trade routes that cut across the Sahara; centers like Timbuktu formed nodes of Muslim commerce, but also centers of Islamic legal scholarship.⁴⁶ Commercial activity called up the need for law; law, in turn, gave this transregional world of trade its shape.

Law(s) in the Marketplace

The arena of law in Muslim commerce was hardly limited to jurisprudence, though, however capacious that scholarship may have been. Indeed, this may be one of the principal limits of the literature on Islamic law. With few exceptions, what emerges in the bulk of the literature on the histories of Muslim commercial law and practice – and on the history of Islamic law more broadly – is a rigid hierarchy of sources in which discussions of the commercial world as found in manuals of jurisprudence (seen as the “law in the books”) end up framing what scholars see in the court records and other legal materials (“the law in practice”). When it is not strictly textualist it is text-heavy, reinforcing a legal-cultural essentialism and drawing impermeable boundaries around the texts themselves and the societies within which they circulated.

Around the Islamic world, though, there existed legal orders that lived beyond the books – or, more accurately, in their shadow. Muslim jurists recognized that mercantile custom constituted a source of lawmaking with which they had to contend. Many chose to delegate authority in commercial affairs to the realm of custom (*urf*) or mercantile practice (*ādāt al-tujjār*), especially when it came to determining the more specific aspects of a range of different contracts, including sales, loans, and partnerships.⁴⁷ Abraham Udovitch notes how Muslim jurists referred “to custom, to proximate people and proximate information as criteria for the validity of economic behavior combin[ing] to form a thick, crowded web of ‘local knowledge’ surrounding the operations of exchange in the medieval Islamic Near East.”⁴⁸ Here, he is not describing two separate realms of theory and practice between which there existed a gap; rather, he was highlighting a liminal legal realm in which jurisprudence left matters to a domain of

⁴⁵ Ronit Ricci, *Islam Translated: Literature, Conversion, and the Arabic Cosmopolis of South and Southeast Asia* (Chicago: University of Chicago Press, 2011); Mahmood Kooria, “Languages of Law: Islamic Legal Cosmopolis and its Arabic and Malay Microcosmoi,” *Journal of the Royal Asiatic Society*, Vol. 29, No. 4 (2019)

⁴⁶ See also Graziano Kratli and Ghislaine Lydon (eds.), *The Trans-Saharan Book Trade: Manuscript Culture, Arabic Literacy and Intellectual History in Muslim Africa* (Brill, 2010)

⁴⁷ Udovitch, “Islamic Law and the Social Context of Exchange,” esp. 455-458

⁴⁸ Udovitch, “Islamic Law and the Social Context of Exchange,” 462

custom, which in turn relied on its place within jurisprudence for legitimacy and which frequently drew on the rich lexicon of rights and obligations articulated in Islamic jurisprudence. Custom/practice and *fiqh* existed in dialogue with one another.

In practice, the gradient between purely normative orders and law “in the books” was thick. Scholarship on commerce in the Islamic world largely confirms the notion that commercial actors – particularly merchants – operated within multiple legalities. The scholarship that has emerged from the Cairo Geniza in particular has called attention to the ways in which merchants regulated their business transactions with one another. Although the bulk of the medieval archival record involves Jewish rather than Muslim merchants, it is no less revealing as a window onto commercial life in the Islamic world – in part because, as Udovitch noted so long ago, “when entering into associations even with their co-religionists, they [Jewish merchants] preferred contracts according to Islamic law.”⁴⁹ Rather than follow the standard equal division of profits in partnership contracts, merchants would often engage in “complex patterns of distribution of investment, work, risks, and profits,” which reflected the unevenness of their contributions to the enterprise in terms of capital, reputation, and social status.⁵⁰ Indeed, many of the associations that Jewish merchants entered into with one another had no formal standing in Islamic jurisprudence at all. Rather, they were what historians have referred to as *ṣuḥba* arrangements: forms of reciprocal agency in which merchants designated one another as agents for particulate goods, and for specific tasks; and although it had specific obligations and limits, it functioned more as a form of “balanced reciprocity,” in which merchants were expected to help their associates, had the flexibility to refuse.⁵¹ Reputation, too, was a highly valued attribute in a merchant, and business partners were attentive to it in their dealings with one another; one would comply with his partner’s requests not just because of legal considerations, but because of reputational ones as well. The sheer number of letters they wrote to one another ensured that information about one’s commercial dealings and behaviors would circulate to the network as a whole.⁵²

The distinction between formal legal institutions (courts, contracts, etc.) and more informal business dealings – as well as that between different formal institutions – was often blurry at best, too. As legal scholars have long recognized, courts were not necessarily forums people went to for judgments on their disputes with one another; parties to a dispute also went to for mediation, or approached them as a way station in a process aimed at ultimately reaching an out of court settlement.⁵³ And historians of commerce in the Islamic world have recognized that merchants often approached courts in this way – that courts “played a key role in mediating conflict and managing relationships,” but also educating merchants about trading norms.⁵⁴ The dynamic moved in the opposite direction as well: courts would often draw on leading merchants

⁴⁹ Udovitch, *Partnership and Profit*, 258

⁵⁰ Udovitch, *Partnership and Profit*, 257

⁵¹ Jessica Goldberg, *Trade and Institutions in the Medieval Mediterranean: The Business World of the Geniza* (Cambridge University Press, 2012): 137-143.

⁵² Avner Greif, “Reputation and Coalitions in Medieval Trade: Evidence on the Maghribi Traders,” *Journal of Economic History*, Vol. 49, No. 4 (1989): 857-882

⁵³ Marc Galanter refers to this as “litigotiation,” in idem, “...A Settlement Judge, Not a Trial Judge’: Judicial Mediation in the United States,” *Journal of Law and Society* Vol. 12, No. 1 (1985): 1-18.

⁵⁴ Philip Ackerman-Lieberman, *The Business of Identity: Jews, Muslims, and Economic Life in Medieval Egypt* (Stanford University Press, 2014), 189.

to assist with the enforcement of judgments, particularly when they involved dealings with foreign merchants.⁵⁵

If historians once considered Islamic law to constitute something of a *lex mercatoria* for the medieval world, the consensus in the literature now perhaps ought to be that things were much more variegated. Muslim, Jewish, Christian, and other traders in the Islamic world drew on a variety of legal institutions and arrangements, both private and public, and operated according to a more supple notion of legality than we might have given them credit for in the past. This is not to say that the notion of a *lex mercatoria* is itself not useful; we might instead take Emily Kadens' cue and think of it as "as a layer of laws and practices that included legislative mandates, broad-reaching customs, and narrow trade usages," and to imagine mercantile work as being embedded in a broader legal landscape that included a range of different legal intermediaries and brokers.⁵⁶ Put differently, what I am arguing for here is a sense of pluralism in Islamic legal history, particularly when it comes to economic life: its implicit acceptance on customs founded on multiple visions of legal authority, and its plasticity in the face of new contractual forms. Rather than limit the scope of Islamic law to a known set of institutions, we ought to read it against the broader commercial and juridical fabric in which it was embedded, and to see the ways in which Muslim officials tried to nest these jurisdictions within one another.⁵⁷ As one historian has suggested, "Islamic law does not exist on its own as a set of rules set forth by God. Even after doctrine has been articulated by jurists, that law is not itself an actor: humans, such as the judge, *muhtasib*, mufti, sultan, and Muslims generally give it meaning at the social level."⁵⁸

Conclusion: Islam and Capitalism Redux

So where does this leave us with the questions surrounding grand narrative that I began this piece with? It is one thing to suggest that Muslim jurists took on a variety of questions of political economy, and that merchants and other economic actors drew on a range of discourses, texts, and institutions in shaping their exchanges with one another in the marketplace; aggregating these into something approaching a grand narrative is an entirely different matter. This is not to say that historians haven't tried to do this; they of course have. And among those who have, perhaps the most enduring question has been whether (and to what degree) Islamic law shaped Muslim commercial society, and what the implications were for the long-term economic development of the Islamic world. Put differently, the question becomes: was there capitalism in the Islamic world, and did Islamic law have anything to do with it?

Before Islamic law became the subject of serious study in the academy, the prevailing view was that it was inimical to the demands of modern capitalism. This largely grew out of the Weberian notion that the emergence of modern capitalism fundamentally required rationality and calculability in legal processes – something that he thought the Islamic legal system lacked because the allegedly inflexibility of the sharia and the subjective instability of the qadis' legal

⁵⁵ See, for example, Roxani Margariti, *Aden and the Indian Ocean Trade: 150 Years in the Life of a Medieval Port City* (University of North Carolina Press, 2006): 177-205.

⁵⁶ Emily Kadens, "Order within Law, Variety within Custom: The Character of the Medieval Merchant Law," *Chicago Journal of International Law*, Vol. 5, No. 1 (2004): 63. See also idem, "The Medieval Law Merchant: The Tyranny of a Construct," *Journal of Legal Analysis*, Vol. 7, No. 2 (2015): 251-289.

⁵⁷ Mathieu Tillier did something like this for the early centuries of Islam, and though it does not deal much with commerce, it is highly instructive. See idem, *L'invention du Cadi: La Justice des Musulmans, des Juifs et des Chrétiens aux Premiers Siècles de l'Islam* (Publications de la Sorbonne, 2017)

⁵⁸ Stilt, *Islamic Law in Action*, 10

decisions.⁵⁹ The upsurge of research on Islamic law and Islamic legal history that marked the 1950s and 1960s, however, did away with Weber's assumptions and cleared the ground for a new way of thinking about the relationship of Islamic law to the historical phenomenon of capitalism. The literature emerged out of a number of ideological camps, and produced a variety of answers.

Among the first to broach the subject was the Marxist historian Maxime Rodinson, whose *Islam and Capitalism* sought to understand where the Muslim world belonged "in the general typology of systems of production and distribution of goods" and whether the answer would help social scientists better understand "the relations between the economic facts and the other aspects of the total culture of a given society, in particular the ideological aspects, and most particularly religion."⁶⁰ Though he identified the medieval Islamic world with a commercial capitalism in which wholesale merchants used money to finance production for a market, his search for an economic world that was shaped by Islam turned up "largely inconclusive, at least on the plane of fundamental structures." Islam's commitment to commerce had little to do with ideology and more to do with the conditions prevailing in Arabia at the time, and Islamic precepts did not create radically new social or economic structures. Overall, he argued, "the precepts of Islam have not seriously hindered the capitalist orientation taken by the Muslim world during the last hundred years."⁶¹

The debate that Rodinson inaugurated yielded a range of different positions. Among Marxist-oriented historians, there was a clear consensus that during the medieval period, the Islamic world was at the forefront of commercial capitalism," which linked together trade, financial transactions, and consumer credit into a broader political economy. Around the time of Rodinson's book, Subhi Labib suggested that the Islamic world had, by the medieval period, outstripped Europe in its development of institutions of financial accounting and commerce – particularly in the Indian Ocean trade – and that Muslim rulers were, for the most part, eager partners in the process.⁶² More recently, the historian Jairus Banaji has amplified many of Labib's points; however, rather than restricting commercial capitalism to the medieval Islamic world, Banaji draws its history to the present: "the gradient of the traditional form of capitalism that survived into the twentieth century was one that ran from merchant capital's entrenched economic position in Iran and the Gulf to its enforced colonial marginalization in Egypt and its non-existence or near-extinction in French-controlled Algeria," he writes.⁶³

If the Marxist historians broadly agree that commerce constituted the active ingredient of Islamic capitalism over the last millennium or so, there is less agreement on the place of law as such. Law, for most of these writers, is epiphenomenal to capitalism: it is the expression of relationships of production and exchange that are already there. Labib makes few references to the place of law in medieval Islamic capitalism, and Rodinson was willing to bracket the question of law altogether. Even Banaji, who pays close attention to the categories by which Muslim scholars described wealth, labor, and property, sidesteps the question of the relationship between Islamic law and capitalism, preferring instead to signal what other authors had written about it.⁶⁴

⁵⁹ Bryan Turner, *Weber and Islam: A Critical Study* (Routledge, 1974): 108-111

⁶⁰ Rodinson, *Islam and Capitalism* (Saqi Books, 1970/2005): viii-ix.

⁶¹ Rodinson, *Islam and Capitalism*, 186

⁶² Subhi Labib, "Capitalism in Medieval Islam," *Journal of Economic History*, Vol. 29, No. 1 (1969): 79-96.

⁶³ Jairus Banaji, *A Brief History of Commercial Capitalism* (Haymarket Books, 2020): 135.

⁶⁴ Banaji, *A Brief History*, 125-129

Other writers on Muslim economic history have been more eager to take on the question of law. Although economic historians of the Islamic world have mostly retreated from questions of grand narrative, preferring instead to produce more focused studies on more narrowly-defined topics, that terrain has come to be occupied by a growing number of social scientists – mostly political scientists and economists – who have sought to take up the questions of when and why the Islamic world could no longer maintain its lead in the world economy. Many of these have identified themselves with the New Institutional Economics, a subfield of economics and political science that lavished attention on the formal and informal legal frameworks within which economic activity takes place (referred to within the field as ‘institutions’), and the implications those institutional arrangements had for questions of economic development.⁶⁵ Among the institutionalists, law was the primary engine of economic history, not an afterthought.

Perhaps the leading voice among the NIE-inspired economic historians has been Timur Kuran, whose book *The Long Divergence* explored Islamic legal institutions – not only the specific “laws, regulations, and organizational forms that enable economic activities,” but also regularities that they produce – and asks how they might have worked in the commercial sphere.⁶⁶ The assessment is, as the book’s subtitle (“How Islamic Law Held Back the Middle East”) suggests, not favorable. Kuran’s analysis highlights the long-term drawbacks (which he terms “dynamic inefficiencies”) of Islamic legal institutions – particularly the trifecta of the Muslim partnership, Muslim inheritance law, and the Islamic trust (*waqf*). He argues that while these might have favored equitable forms of growth in during the medieval era, the inability of Muslims to alter these institutions constrained the commercial development of the Islamic world, and limited its ability to meet the rising challenge of – and ultimately, produce something akin to – European merchant capitalism. Others, drawing on Kuran’s insights, have made similar claims about Muslim commercial communities at different times and places; they differ slightly on whether stasis was baked into the institutions themselves or whether it was the result of deliberate choices made by Muslim scholars, but virtually all agree that it is, at its core, a question of law.⁶⁷

Those who have staked out positions in the debate on Islamic law and capitalism have disagreed on a wide range of different issues – namely, on when, whether, and why the Islamic world fell behind, and whether it is even a useful question to ask. On the whole, however, there is a consensus on at least two matters: first, that there existed a body of Islamic law on commercial matters that was distinct from the broader legal terrain in which it played out; and second, that it manifests itself in a range of institutions and practices that can broadly be coded as Islamic. But it may be that those are the very assumptions we need to unpack in order to move the debate forward; a growing body of scholarship suggests that the lines between what we consider to be “Muslim” legal institutions and what we might think of as non-Islamic legal

⁶⁵ The NIE framework is most closely identified with the work of Douglass North. For an overview of his method, see also idem, *Institutions, Institutional Change, and Economic Performance* (Cambridge University Press, 1990). For an overview of the method in Middle Eastern history, see Şevket Pamuk, “Economic History, Institutions, and Institutional Change,” *International Journal of Middle East Studies*, Vol. 44, No. 3 (2012): 532-535.

⁶⁶ Timur Kuran, *The Long Divergence: How Islamic Law Held Back the Middle East* (Princeton University Press, 2010): 3-4.

⁶⁷ 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): 647-659; Jared Rubin, *Rulers, Religion, and Riches: Why the West Got Rich and the Middle East Did Not* (Cambridge University Press, 2017). A variation on this argument can be found in Ahmet T. Kuru, *Islam, Authoritarianism, and Underdevelopment: A Global and Historical Comparison* (Cambridge University Press, 2019)

institutions were less clear than we might have otherwise thought. Scholars recognized this from early on, too, often attributing it to a distinction between Islamic law “in theory” and Islamic law “in practice” or “in action.”⁶⁸ As useful as that distinction may be, it reinforces the appearance of a container of Islamic law that exists separately from the world around it; it suggests that Islamic law and Muslim commercial practice played out on different terrains, and that they only came together when the latter needed to be regulated.

But rather than think of Islamic law as constituting a separate juridical sphere, we might profitably conceive of it as being constitutive of and by economic life in the region. If Islamic law is a discourse that is universalist in its ambitions, it cannot exist in the ether of jurisprudence alone; it has to instantiate itself in the vernaculars of production and exchange. That is, the categories that structured marketplace activity and those that animated the discussions in texts of jurisprudence might be thought of as being mutually constitutive. And this may be where the grand narratives of global capitalism in the Islamic world meet the calls for more time- and place-specific research. Islamic law, as an historical phenomenon, does not – and cannot – mean the same thing across space and time. When it came to matters of commerce in particular, Muslim legal specialists were perceptive and willing to adapt to the needs of merchants. The latter, too, took their transactions and disputes to a range of different legal forums, each of which left its imprint on the contract. Seen this way, the narrative of law and the economic history of the Islamic world reads more like one of convergence – of contractual entanglements, and of more open-ended legal landscapes – than one of divergences, of capitalisms that, for various reasons, never were.

Whether this ultimately amounts to a story of capitalism in the Islamic world is a thornier question, one that rests on how historians define capitalism as an historical phenomenon – and on this, there nothing close to a consensus. If one follows at least some – perhaps the predominant – approaches to the study of capitalism, looking for that particular mode of production in the premodern world is a fool’s errand. By way of shirking the responsibility to address the matter, I want to suggest that the question might not be a particularly generative one. Whatever we call it, what we cannot ignore is the fact that in the Islamic world, one finds the elements of what might at least be called a large-scale market economy, one that raised enormous questions surrounding trade, contract, wealth, labor – surrounding property rights and personhood more broadly. And whether law acted as a hindrance or handmaiden to economic development distracts us from the fact that law, in its many different forms, constituted the lexicon through which Muslim thinkers spoke about these matters.

⁶⁸ Udovitch, *Partnership and Profit*, 249-261; Stilt, *Islamic Law in Action*, 10