MARTINUS NIJHOFF PUBLISHERS Journal of the History of International Law 10 (2008) 83–118 JHIL www.brill.nl/jhil

An Introduction to the Concept and Origins of *Hawala*

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Background

"Hawala" is an ancient form of money dealing and funds transfer that spans the globe and has re-emerged broadly in competition with state-governed finance across fragile regions.[1] In the wake of 9/11, it received much attention as an "underground", "shadow", or "black" channel for terrorist funds across the Muslim world. Surprisingly little remains known, however, about the true origins of *hawala* and why it continues to persist into the present day despite efforts to regulate, disrupt, or replace the system.

Although not publicised widely, humanitarian relief workers are among the first to recognise the indispensable service of local money dealers, or

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1) The classical Arabic term *hawala* is used in Afghanistan and the Middle East, while *hawi-laad* is commonly employed by Somalis to denote the same practice in the African continent. While originating in the Middle East and Indian subcontinent, *hawala* networks now link up to most of the world's major trading and financial centres due to the steady reduction of regulatory and other obstacles to cross-border flows of goods, capital, and people in the global economy.

 DOI: 10.1163/157180508X308509

hawaladars, for the delivery of funds in both war-torn areas and states-in-crisis. Indeed, over the past six years in Afghanistan alone, *hawaladars* have facilitated the movement of hundreds of millions of dollars of "humanitarian money" to ensure the smooth running of the first national democratic elections in more than three decades, the construction of hundreds of kilometres of road that had fallen into disrepair, the implementation of agricultural assistance programmes, and the building of educational facilities in a country suffering from some of the lowest literacy rates in the world, and where less than half the children aged 7-12 years are enrolled in school.[2] Financial analysts speculate that between 500 and 2000 unregistered *hawaladars* exist within Afghanistan today.[3]

In Iraq as well as refugee or IDP (internally displaced person) settlements across Africa and South Asia,[4] variations of *hawala* are employed widely due to the collapse or weakening of formal institutions.[5] In early 2005 after the tsunami wave hit Aceh, for example, money dealers reportedly established an emergency communications system using the *flexsi* local mobile phone network to help migrants locate their families and arrange for the delivery of funds either to functioning bank accounts or directly to the IDP camps themselves.[6]

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2) UNICEF & Central Statistics Office of Afghanistan, *Afghanistan. Progress of Provinces: Multiple Indicator Cluster Survey 2003*, May 2004, 64-66. Despite this, it is important to note that Afghanistan is experiencing the highest primary net enrolment rates in its history, with more than 4.3 million children attending primary and secondary school in 2003. See Government of Afghanistan, "Education: Technical Annexe", in: *Securing Afghanistan's Future. Accomplishments and the Strategic Path Forward*, January 2004, 4.

3) S.M. Maimbo, "The Money Exchange Dealers of Kabul: A Study of the *Hawala* System in Afghanistan", Finance and Private Sector Unit South Asia Region, *World Bank*, 2003, 8.

4) Information gleaned from private security companies in Iraq, and the United Nations World Food Programme's Regional Public Information Officer for West Africa, who has observed the system operating in Chad and Sudan (November – December 2006).

5) Importantly, *hawala* is also the value transfer system of *choice* in some developed countries not experiencing crisis, particularly among migrant workers who either lack access to formal banks in the host country or require low rates and convenience in transferring small tranches of money abroad.

6) T. Wu, "The Role of Remittances in Crisis: An Aceh Research Study", *Humanitarian Policy Group*, Overseas Development Institute (August) (2006), 21.

Under these conditions, however, the money dealer's continued provision of services in the face of disorder ensures not only the delivery of material aid to displaced and vulnerable persons who have few alternative means of survival, but also the availability of a mechanism by which traffickers in illegal goods, terrorists, and corrupt politicians can move and launder their money under the radar of state regulation. This ambiguous dual function explains in part the alternative image that persists in policy and media accounts of *hawaladars* – or "money dealers" located in fragile, and more specifically Islamic, regions of the world – as belonging almost exclusively to underground or criminal finance.

The invisible nature of *hawala* transactions to the officially regulated world of finance, coupled with the prevalence of *hawala* networks in Afghanistan and Somalia, are factors that have contributed to the growing suspicion among Western policymakers to the potential role of *hawaladars* in providing terrorists with a ready-made funds transfer apparatus. Within this spirit, President Bush asserted in the wake of 9/11[7] that the "foreign scourge" of money dealers in the United States collectively present themselves as "legitimate businesses" on the surface, while enabling "the proceeds of crime in one country to be transferred to pay for terrorist acts in another ... all at the service of mass murderers".[8]

With its popular rise in debates on terrorist finance and concomitant negative stereotyping, *hawala* has therefore come to be invoked more frequently than it is defined. A major problem is that almost no attention has been directed to the historical circumstances surrounding its early development. This has spawned a perceptible measure of confusion over the practice as we now understand it and has perhaps lent disproportionate weight to its Islamic heritage.[9] Some remedial work is therefore required to clarify the

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7) The terrorist attacks on US soil in September 2001 were certainly a catalyst for further suspicion and alarm regarding these financial networks. See S.R. Muller, *Hawala. An Informal Payment System and Its Use to Finance Terrorism*, 2006, for an exploration of *hawala* in relation to terrorist financing.

8) G. Bush, "Bush Announces *Al-Qaeda* Crackdown: Transcript of an Address to the White House", *The Washington Post*, 7 November, 2001.

9) There have been attempts to disassociate *hawala* from its popular linkages with terrorism and Islamic fundamentalism and universalise the practice because of its occurrence in contexts outside the Arab or Muslim world by labelling it an "Informal Value Transfer System"

current usage of the term in policy and academic discourse and to test the significance of religion in the early development of *hawala*. Before this is possible, it is necessary to devote some attention first to developments in the "peace-building" literature, which pose a challenge to the "top-down" and functionalist approach currently guiding state-building agendas, and then to some background on the conventional wisdom and conditions surrounding the emergence of *hawala*.

Economic Order in Crisis

The prevailing view of policymakers tends to be that disorder reigns where the core functions of the state are fatally weakened; hence it is the responsibility of international organisations and institutions to create order out of the chaos. Critics within the "peace-building" literature argue that this approach precludes any serious examination of whatever order might exist in "failed" states. With at least two thirds of the world's poorest countries either experiencing active conflict or an insecure peace, and having a major part of their economies unregulated by the state,[10] it appears especially timely to investigate the impetus behind local economic governance systems where the rule of public institutions remains fragile.

Frustrations in the humanitarian field and criticisms of aid practice over recent years have prompted a debate within the literature that represents at least the first step in redressing impoverished conceptions of local level agency. The community is broadly divided between those who stress the need for more "local participation" – which involves "engaging" host populations – and those who argue for a return to the original beliefs and doctrine of humanitarianism – the primary imperative being that of "saving" lives through the principles of neutrality and impartiality. The promise of "engaging" local populations is that their unique systems of governance will

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(IVTS). While this is a helpful advance in terms of policy and destigmatisation, this paper prefers to use the term *hawala* because it is widely recognised by that label in the local and global contexts under investigation in this study.

10) B. Harriss-White, "Globalization, Insecurities and Responses: An Introductory Essay", in: B. Harriss-White, *Globalization and Insecurity: Political, Economic and Physical Challenges*, 2002, 1.

no longer be dismissed, but rather incorporated into the overall development strategy.

Further benefits accrue from such an approach in the development-relief context. In the specific case of unravelling *hawala* – just one part of economic order in "failed" states – it is possible to locate several layers of inquiry and insight into the local context, such as what fragile state rule reveals about a local population's capacity for adaptation and survival, and how local perceptions of legitimacy and legality are altered through the reordering of political and economic relations. At the national level, it crystallises the realities of relief and development in transition to peace; for example, what constitutes acceptable economic practice in a war zone. In light of the "reputational risks" associated with involvement in informal economy networks, and the many grey areas surrounding them, those seeking to build a functioning state and market are presented with the awkward dilemma of whether they should rely on the resources available in the local economy when they run the risk of involving themselves in "shady" practices.[11]

Further questions arise in the process, such as whether it is possible to treat local institutions and practices as *tabula rasa* awaiting the imprimatur of the liberal democratic core, while at the same time relying on them for the smooth functioning of external assistance missions; whether the regulator's aim to disrupt informal economic networks can be reconciled with the aid community's willingness to work with them; and at what point different logics of action in the development-relief context become hypocrisy.[12] Against the background of debates calling for a more nuanced examination of "transition" than the short-term rationality of replacing one set of economic institutions with another set of institutions of proven efficiency elsewhere,[13] this article provides the foundation for exploring questions such

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11) J. Daudelin & L.J.M. Seymour, "Peace Operations Finance and the Political Economy of a Way Out: Living Off the Land", *International Peacekeeping* 9(2) (Summer) (2002), 99 *et seq.*

12) See A. Van Rooy, *The Global Legitimacy Game: Civil Society, Globalisation, and Protest*, 2004. These questions are explored in detail in: E. Thompson, "Economic Governance in Failed States: A Study of the Money Men in Afghanistan", Unpublished PhD Thesis, 2007.

13) Grabher and Stark argue from an "evolutionary" perspective that although such institutional homogenisation might foster *adaptation* in the short run, the consequent loss of

as these. As mentioned above, it attempts to achieve this by demystifying the conventional wisdom that shrouds current understandings of the true origins and concept of *hawala*.

Conventional Wisdom on *Hawala*

Hawala exponentially entered the lexicon of world leaders and media at a time when policymakers were scrambling to lay blame for the brutal attacks on America in September 2001. In its fast-developing "war on terror", the Bush administration conducted a search not only for the guilty terrorists but for a suitable accomplice in the world of finance. As a result, it executed a military campaign in Afghanistan in parallel with a war against terrorist finance that incorporated a focus on informal economic networks in the Muslim world more broadly.[14]

The approval of Executive Order 13224 and launch of Operation Green Quest, a multi-agency terrorist financing task force, marked the first major step in the expansion of the US Treasury's authority in these matters. While financial sanctions were nothing new as a strategy to counter terrorism, the broadened scope of the sanctions' coverage from terrorists and terrorist organisations to individuals and organisations *associated with* terrorists was a new and somewhat worrying development, especially because evidence to support an order to block transactions and freeze assets may come from classified sources that do not have to be revealed to anyone other than a reviewing court.[15]

These new powers were accompanied by America's Counter-Terrorist Financing Public Awareness and Rewards Campaign in which individual rewards of up to five million dollars have been made available for any

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institutional diversity will impede *adaptability* in the long run. G. Grabher & D. Stark, "Organizing Diversity: Evolutionary Theory, Network Analysis and Postsocialism", *Regional Studies* 31(5) (1997), 533 *et seq.*

14) K. Medani, "Financing Terrorism or Survival? Informal Finance and State Collapse in Somalia and the US War on Terrorism", *Middle East Report* 223 (2002), 2 *et seq.*

15) B. Zagaris, "US Court of Appeals Upholds Freeze of Global Relief Foundation", *International Enforcement Law Reporter* 19(3) (2003), 90 *et seq.*; see also P. D. Buckley & M. J. Meese "The Financial Front in the Global War on Terrorism", Paper delivered to the US Military Academy, West Point, New York, 2005.

information leading to the dismantling of funding mechanisms that support terrorist activities. The US Treasury Department Undersecretary for Enforcement announced during the campaign that:

> We are calling on the front lines of this war on terrorist financing to unite against the common scourge of blood money. As President Bush has said, we're making progress in this different kind of war. The enemy we seek hides in caves and operates in the dark alleys of the world ... With the public's help, this program will help us protect the homeland by hunting these killers down, one at a time, and bringing them to justice.[16]

Statements such as these, of which there is no shortage, have arguably reduced the issue to a popular slogan for sound-bite consumption. By locating the "enemy" in hidden caves and dark alleys, and associating him with the "unknown" or less familiar banking practices emanating from non-Western states, any real understanding of systems such as *hawala* remain shrouded in mystery, while Western banking is implicitly constructed as "the normal and legitimate space of international finance".[17]

On the day of one *hawala* company's closure, President Bush proclaimed a certain victory for America's "fight against evil".[18] Media accounts in the years immediately following 9/11 have been equally condemning of the *hawala* system as a whole; one investigative reporter was so bold as to broadcast in a headline that it is quite simply "A Banking System Built for Terrorism".[19] In a study commissioned by the Dutch Ministry of Justice even before 9/11, the author commented on the extent to which erroneous statements about informal value transfer systems (IVTS) had begun to be reproduced uncritically in articles, government reports, academic

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16) US Treasury Department, "Press Statement by Treasury Department Undersecretary for Enforcement Jimmy Gurulé", available at: <www.ustreas.gov/rewards/gurule.shtml>.

17) M. de Goede "Hawala Discourse and the War on Terrorist Finance", *Environment and Planning D: Society and Space* 21(5) (2003), 513 *et seq.*

18) Bush, see note 8.

19) M. Ganguly, "A Banking System Built for Terrorism", *Time Magazine*, 5 October 2001.

publications, and United Nations documents, leading to the creation of "facts by repetition".[20]

An important one of these "facts", or received wisdom, assigned *hawala* a distinctly Islamic disposition. The citation below provides an example of where *hawala* is depicted as not only based on Islamic law, but entrenched in Muslim society and practiced exclusively, or predominantly, by Muslims:

> Known for centuries in the Islamic world, fundamental Islamic groups [have] chosen the ancient system to become the backbone of their financial structure. But this usage of hawala is only one step in the evolution of hawala banking as a worldwide financial system based on the principles of Islamic banking laws and deeply embedded in the religious and social thinking of the Islamic community.[21]

The sheer repetition of the reference to Islam in Western accounts such as these, and the present popular association of Islam with fundamentalism and terrorism, has further entrenched the stigmatism surrounding *hawala*. It has also served to position *hawala* as an *external* threat[22] and deflected calls for more diligent regulation of the Western financial system which, in a profound irony, was found to provide the actual vehicles – i.e. international banks – for *al-Qaeda* to move its money across some of the world's largest financial trading centres.[23]

The current regulatory context of global finance reinforces this tendency to marginalise further "informal" economies. Law enforcement agencies and multilateral regulation bodies, such as the Financial Action Task Force

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20) N. Passas, *Informal Value Transfer Systems and Criminal Organizations: A Study into So-Called Underground Banking Networks*, 1999, 20.

21) M. Schramm & M. Taube, "Evolution and Institutional Foundation of the Hawala Financial System", *International Review of Financial Analysis* 12 (2003), 405-406; see also C. Burger, "Religion, Ethnicity and Trust – Institutional Foundations of the Hawala Informal Funds Transfer System", Unpublished Thesis, Institut für Islamwissenschaft, Freien Universität Berlin, 2003.

22) M. Berdal & M. Serrano, *Transnational Organized Crime and International Security: Business as Usual?*, 2002, 202. According to US policy, the authors note that criminal organisations must not be seen to exist within or interact with US institutions and practices.

23) See the official findings of *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, Washington D.C., 2005, 237.

(FATF) of the G7, Interpol, and the United Nations, are attempting, with varied success, to coordinate mechanisms to interdict criminal and terrorist finance. Thirty-three countries and territories have now pledged support for the FATF's basic framework of an anti-money laundering regime, which aims to "safeguard the global financial system against money laundering and terrorist financing" and "ensure global compliance" with its standards, of which there are 49 recommendations.[24]

While it is virtually impossible to measure either the actual compliance of FATF members or the overall success in combating the problem of money laundering, the taskforce has expressed a certain level of confidence that "the formal financial system [is becoming] increasingly closed to terrorists and criminals".[25] Its aim since this perceived progress has been to "enhance its focus on informal and non-traditional methods of financing terrorism and money laundering, including through cash couriers, alternative remittance systems, and the abuse of non-profit organisations".[26] This has placed the previously under-researched role of weaker, non-state activities in the global political economy, such as *hawala*, under increased scrutiny. But due to their "unofficial" and sometimes clandestine nature, the available information on these activities remains limited, vague, and contradictory, causing emergent policy to be based upon an inadequate understanding of the processes at work.

It follows that, for all the attention and relentless stereotyping, little remains known about the true origins of *hawala*, how it has survived and adapted throughout the centuries, and why it continues to persist into the present day despite state collapse and subsequent efforts to regulate, disrupt, or replace the system. This article addresses the concept and origins of *hawala* – where, for example, the term originates, what it was originally intended to describe, and how this relates to the financial practices of those to whom such a label is attached today. Only once these basic questions

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24) Financial Action Task Force, "FATF Mandate Renewed for Eight Years", 14 May 2003, available at: <www.fatf-gafi.org/dataoecd/46/33/35065565.pdf>. Money laundering is the act of converting money gained from illegal activity into assets that cannot be traced to the underlying crime.

25) *Id.*

26) *Id.*

are resolved can we judge the relevance of examining the case of *hawala* in a country such as Afghanistan from the perspective of criminality, religion or other cultural forms.

The following analysis departs from existing work on the subject by looking for answers on the origins of *hawala* in both pre-Islamic and medieval Islamic times. Before presenting the evidence, however, a note on the available historical records is required. Some suggest, with good reason, that it remains virtually impossible to establish when credit instruments were first used as a lubricant of business and commerce, or indeed to provide a continuous uninterrupted account of their evolution.[27] Here it is instructive to draw from Muhammad Akbar's general comments on the bias in historical accounts:

> Although we hear a great deal about the valiant deeds of the kings and the remarkable feats of the veteran soldiers, the amorphous mass of mankind is enwrapped in mystery and our notions about it are quite dim and hazy. The explanation of all this is to be sought in the fact that to the historians of the time man as man was quite insignificant; it was only when he rose much above the common level that he came to have some meaning. So it was a king, a warrior, a savant, or a saint that attracted their notice and not men in the street.[28]

Such an insight helps to explain the more specific problem of finding sufficient data on the expansive area within which non-elite trade and financial networks have been connected throughout history. In a similar sense, classical international relations scholars today are as guilty of generating myopia or at least haze around non-elites as the grand historians throughout history. One noteworthy exception in the latter camp was Sima Qian, or Ssuma Ch'ien (司馬遷), who succeeded his father as China's Grand Historian in 110 B.C. at the Han court. He departed from the conventional listing of court appointments and events of the imperial family by presenting history in a series of biographies divided into particular subjects, rather than historical sequence. The aim was to reveal the values of the societies being remembered from over two thousand years of history between the reign of

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27) R. Orsingher, *Banks of the World*, (trans.) D.S. Ault, 1967, 1.

28) M.J. Akbar, *The Punjab under the Mughals*, 1948, 235.

the Yellow Emperor and Emperor Han Wudi. One such biographical sketch was of the "huozhi" (literally "wealth increasing"), or "Money-makers".[29] Sima Qian explains:

> Though only commoners with no special ranks or titles, they were able, without interfering with the government or hindering the activities of the people, to increase their wealth by making the right moves at the right time. Wise men will find something to learn from them. Thus I made "The Biographies of the Money-makers".[30]

Elevated to the worthy status of "great men" in China's history, Sima Qian not only admired the "special aptness in the way [the money-makers] adapted to the times", but saw them as integral to the way society worked, especially in light of human nature's apparently natural desire for wealth:

> Jostling and joyous,
> The whole world comes after profit;
> Racing and rioting,
> After profit the whole world goes![31]

Because this type and style of historical recording is very rare, the present article should be viewed within these limitations. It nevertheless offers an unprecedented overview of *hawala* and related trade pratices within the broader historical context of world commerce, in addition to an analysis of its emergence in the Islamic legal texts.

Etymology of *Hawala*

Scholars attempting to search for the origins of *hawala* tend to begin with Islam. Etymologically this indeed makes sense. "Hawala" is an Arabic term[32]

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29) Taken from Confucius' remark about his disciple Zigong. See Confucius, *The Analects* (trans.) W. E. Soothill, 1937, XI, 17.

30) Sima Qian [Ssuma Chi'en], *Records of the Grand Historian of China*, Vol. II (trans.) Burton Watson, 1961, *Shi ji* 129 (史記, "history record"), 436.

31) *Id.*, 453, 436.

32) *H-w-l* root, meaning "transform", or "change". The French term *aval*, which refers in one of its meanings to the endorsement or guarantee on a bill of exchange, derives from the

that denotes a "transfer", and in commercial terms the practice of transferring money and value from one place to another through service providers, known as "hawaladars". Hawala is understood in Arabic legal commentaries as the "exchange of debt", particularly in its historical context of long distance trade. When adopted into Hindi and Urdu – the national languages of India and Pakistan – the term retained this sense but gained the additional meanings of "trust" and "reference", which reflect the code by which the system functions. Afghans involved in the trade tend to call themselves "sarafi", or the singular, "saraf" , which means "money changer".[33]

In recent times, a number of scholars have attempted to redress the lack of clarity surrounding the origins of *hawala*. Divya Sharma makes the latest attempt in an article that compares *hawala* with the *hundī* – a longstanding Indian credit instrument.[34] She asserts that:

> The origins of Hawala could be traced back to the past seven or eight decades or so, although it is virtually impossible to trace the origins of Hundi. Hawala is more recent and could be seen as an offshoot of Hundi. The Hundi, a bill of exchange, was an integral part of indigenous banking in the Indian subcontinent, but Hawala came into being with a formal banking system already in place and therefore carried an illegal connotation since its inception.[35]

This statement is representative of the tendency in current Indian literature on *hawala* to disassociate local financial practices there from those that are tainted with the brush of terrorism in neighbouring Pakistan and Afghanistan. As will become clear, this ahistorical perspective on the connections between India and Afghanistan's financial systems shrouds the origins of *hawala* in further mystery.

Arabic term.

33) I refer to bankers in Afghanistan who conduct *hawala* as *hawaladars* rather than *sarafi* in order to avoid confusing them with the ordinary currency exchange dealers.

34) Reserve Bank of India, "Chapter 2: Evolution of Payment Systems in India", 1995, available at: <www.rbi.org.in/scripts/ PublicationsView.aspx?id=155>.

35) D. Sharma, "Historical Traces of Hundi, Sociocultural Understanding, and Criminal Abuses of Hawala", *International Criminal Justice Review* 16(2) (September) (2006), 99 *et seq*.

Matthias Schramm and Markus Taube were among the first academics to investigate exclusively the historical origins of the concept and etymology of *hawala*. They took a different approach by examining the classical Islamic sources, and conclude that the earliest reference to *hawala* as a legal concept appears in 1327 in a text written by legal scholar Abu Bakr b. Maseud al-Kasani.[36] A review of some of the original literature in the *hadīth* reveals, however, that Schramm and Taube stopped their search prematurely. It transpires that, in the early part of the 7th century A.D., Abu Huraira recalls the following instruction given by his companion, the Prophet Mohammed: *Sahīh al-Buhārī, kitāb al-hawālāt*,[37] which can be translated thus:

> Procrastination by the wealthy [in paying debts] is unjust, and when one of you is transferred [the claim for his debt] to a wealthy person, he should accept [the transfer].[38]

Soon after Mohammed's death, the Islamic jurists prescribed this concept of delegation of debt, identifying the practice as *al-hawāla*. While it appears likely that the practice existed well before its codification in Islamic law, it should now be clear from his prophetic sayings that Mohammed himself was familiar with the technique.

But what was *hawala* originally intended to describe, and how does this relate to the financial practices of those to whom such a label is attached today? According to the classical definition, *hawala* as a financial term refers to the payment of a debt through the transfer of a claim. For example, if A is indebted to B, but has a claim against C, he can settle his debt by transferring his claim against C to the benefit of B. A 10th century merchant from Alexandria provides an illustration of such an exchange among a group of traders:

> The purchasers of the pearls transferred the payment to those to whom they had sold aromatic balls …

36) Schramm/ Taube, see note 21, 407.

37) Sahih Bukhari [810-870 A.D.] Vol. 3, Book 41, No. 585. Abu Huraira is literally named "father of cats" because of his fondness for them.

38) Ibn Rushd [1126-1198 A.D.] "The Book of Hawala", XLII, in *The Distinguished Jurist's Primer: Bidayat Al-Mujtahid*, 2001, 360-363.

He proceeds to complain that one of his business friends had only partially collected debts from the latter, while on his side he was slow in paying his debt of 40 *dinars*.[39] In seeking to settle the payment for an assignment of pearls, this merchant delegated his debt to the man to whom he had previously sold aromatic balls on credit. Hence, mirroring the description above, the purchasers of the pearls (A) settle their debt to the vendor (B) by transferring their claim to a third (C) against whom they have a prior claim. In such a transaction, no physical transfer of money takes place; only a delegation of debt.[40]

Today's understanding of the mechanics behind a *hawala* transaction is quite different. Virtually every current user of the system and commentator on it provides the following explanation of how *hawala* operates: a customer (C) wishes to send money to a person at another destination (D), so pays a small fee to a remittance agent (A), who in turn contacts a local agent in the destination (B) with instructions detailing the amount and the identity of the intended recipient. Within 24 hours, this person (D) can collect the money from the agent (B), within the local currency if required. Simplified to the most basic level, the perspective of the customer can thus be demonstrated in a linear frame of C – A – B – D, whereby value is transferred between distant locations while avoiding the inconvenience and risk of transporting money.[41]

The Islamic legal and religious texts reveal this kind of value transfer mechanism to be more analogous to a financial instrument called *suftaja*.[42] In the *Da'a'im al-Islam*, composed by al-Qadi al Nu'man in roughly 960 A.D., one of Mohammed's companions is reported to have said:

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39) S.D. Goitein, *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed by the Documents of the Cairo Geniza*, 1967-1993, 242.

40) See also J. Schacht, *An Introduction to Islamic Law*, 1964, 148-149 for a rather clear and concise description of the basic method of *hawala*.

41) This is the service that Afghan, Pakistani, and Somali hawaladars have been accused of providing to members of *al-Qaeda* and other fundamental Islamist groups in support of terrorism.

42) *Saftaja* or *suftaja*, pl. *safātij*, is an Arabicized form of Persian *sufta* meaning promissory note, letter of credit, or bill of exchange. See F.J. Steingass, *A Comprehensive Persian-English Dictionary*, 1963.

> He gave a certain sum of money in a particular town (*min madīnat*) and received it back in another place (*bi-ard ukhrā*).
>
> ... He permitted the use of bills of credit (*safātij*), and this means that a man obtains a loan at one place, and receives it at another place.[43]

The bills enabled the safe transfer of money without carrying actual specie from one place to another and made it possible to raise short term credit repayable at another place. Although the pronoun in the first part of the passage actually refers to the *sarrāf* (money dealer), archival evidence of the period suggests that in practice the *sarrāf* could be substituted for the customer. There were thus two modes of transfer: the first was for the customer to draw money from a *sarrāf* against a promise to pay him in another town when the written note was produced there; the alternative was to pay money down with a promise from the *sarrāf* that the money would be recovered in the other town once the note was produced, resembling the function of the *hundī* to which Divya Sharma refers above.

The classical Islamic legal view of the *suftaja* was nevertheless a delegation of credit between three parties, whereby "one party extends a loan to another, whose agent repays the loan to the first party or his agent in a different country".[44] There are relatively few mentions of this mechanism in the legal texts, which is curious in light of its apparently widespread use. In the 10th century A.D., for example, the 'Abbāsid financial administration made full use of the *suftaja* in transferring its funds between the provincial treasuries of Baghdad.[45]

Arab historian Ibn Miskawaihi records that the central treasury received bills of exchange from the provinces to the amount of 900,000 *dirhams*

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[43] "Book of Business Transactions and Rules Concerning Them", in *The Pillars of Islam: Da 'A' Im Al-Islam* of Al-Qadi Al-Nu'Man Vol. II (trans.) A.A.A. Fyzee. Revised and annotated by I.K.H. Poonawala, 2004, 47.

[44] M. El-Gamal, "Translation of Dr. Wahba Al-Zuhayli"s: *Al-Fiqh Al-Islamic wa Adillatuh*, Vol. 5, *Financial Transactions in Islamic Jurisprudence* 1, (in press).

[45] A.E. Lieber, "Eastern Business Practices and Medieval European Commerce", *The Economic History Review* 21(2) (August) (1968), 233. The Abbasids were the second of the two great Sunni dynasties of the Islamic empire that overthrew the Umayyad caliphs and held loose control over Afghan territory by the ninth century.

in 928 A.D.,[46] while others remarked on the relative imperviousness of merchants to the boundaries of the 'Abbasid Caliphate:

> Moreover, what glory is there in a bill drawn on a commercial house being accepted in enemies' country? If this is to be considered a source of pride, then the merchants are more powerful than the *viziers* in East and West; as they draw bills for vast sums on their correspondents and they are taken more readily than tribute and land-tax.[47]

In a similar vein, British Lieutenant-Colonel Sir Alexander Burnes expresses the ease with which the *hundī* operated during the British colonial period. He recalls in particular the time he possessed a letter of credit for the sum of five thousand rupees, payable from the public treasuries of Lodiana or Delhi:

> ... the Cabool merchants did not hesitate to accept it. They expressed their readiness either to discharge it on the spot with gold, or give bills on Russia at St. Macaire (Nijnei Novogorod), Astracan, or Bokhara, which I had no reason to question: I took orders on the latter city. The merchants enjoined the strictest secrecy; and their anxiety was not surpassed by that of our own to appear poor; for the possession of so much gold would have ill tallied with the coarse and tattered garments which we now wore. But what a gratifying proof have we here of the high character of our nation, to find the bills of those who almost appeared as beggars cashed, without hesitation, in a foreign and far distant capital! *Above all, how much is our wonder excited to find the ramifications of commerce extending uninterruptedly over such vast and remote regions, differing as they do from each other in language, religion, manners, and laws!*[48]

Other first-hand accounts of *hundīs* from this period consistently reveal the preference among travellers for the letter of credit to the alternative of sewing

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46) Recorded in *The Eclipse of the 'Abbāsid Caliphate: Original Chronicles of the Fourth Islamic Century* (ed., trans., and elucidated) H.F. Amedroz & D.S. Margoliouth, 1920-1, 186.

47) Miskawayh, in Amedroz/Margoliouth, see note 45, 138.

48) A. Burnes, *Travels into Bokhara; Containing the Narrative of a Voyage on the Indus from the Sea to Lahore, with Presents from the King of Great Britain: and an Account of a Journey from India to Cabool, Tartary, and Persia, 1831, 32 and 33,* Volumes I, II, and III, 1835, 145-146 (italics added).

golden ducats in one's belt, turban, or even slippers, which were vulnerable to theft as they were routinely left at the door of every house.[49]

The fact that evidence of such transactions left barely a trace in the official local records could be partly explained by the strict repudiation of the practice by the Islamic jurists. Three of the four major *madāhib* (schools of law) ruled that the *suftaja* is reprehensible to the point of prohibition (*karāha tahrīmiyyah*) if the benefit of avoidance of risk in transportation to another country was a stipulated condition:

> Al-Mirghīnānī said in this regard: "Letters of credit are reprehensible since they are loans that give the lender the benefit of avoiding the dangers of the road, thus rendering it as one of the types of loans that result in a benefit to the lender forbidden by the Messenger of Allāh".[50]

Because of the classical jurists' hostile attitude towards the *suftaja*, current legal scholars maintain that the practice became obsolete before it could develop into a more sophisticated credit instrument. Richard Grasshoff argues otherwise in an invaluable but unfortunately neglected doctoral study.[51] He puts forward a convincing case based on etymological studies that the bill of exchange was invented by the Arabs, subsequently adopted

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49) A notable exception is the experience of East India Company official George Forster, who was unfortunate in his encounter with *hundīs*. On arrival in Kabul from Kashmire, he endeavoured in vain to procure payment on an "injured bill". Having been lodged in a canvas belt that served him as a girdle, he found the writing on the note "so much obliterated by perspiration" from the almost "flammable" heat of Peshawar, "that no one could read, or even conjecture its subject; from beginning to end, it had literally a black appearance". Unsurprisingly, "not a merchant of the city, and all were applied to, would even attempt to decipher the paper, when he understood it contained an order of payment". G. Forster, *A Journey From Bengal to England, through the Northern Part of India, Kashmire, Afghanistan, and Persia, ...*, 1798, Vol. II, 91, 51, 64.

50) "Chapter 12: The Loan Contract (*Aqd al-Qard*)", in El-Gamal's translation of Dr. Wahba Al-Zuhayli"s *Al-Fiqh Al-Islamic wa Adillatuh*.

51) R. Grasshoff, *Das Wechselrecht der Araber: Eine rechtsvergleichende Studie über die Herkunft des Wechsels*, 1899. I am grateful to Christofer Burger for his help on clarifying these concepts in the original German text.

by Italian and Aragonian traders, and then re-imported to the Orient in a Europeanized version.[52]

Regardless of whether one subscribes to Grasshoff's conclusion on this point, his overall conceptual clarification of *hawala* and *suftaja* is important for an account of the origins of these commercial instruments. Grasshoff demonstrates that *hawala* refers to the legal concept of delegation of debt, rather than to a concrete application, while the term *suftaja*, by contrast, refers to a bill of exchange as one of the possible commercial instruments based on *hawala*.[53] This, according to Grasshoff, is why the *suftaja* is rarely mentioned in legal texts and the term *hawala* is inconsistently used in commercial language to describe a variety of functions.

Modern-day *hawala* departs somewhat from the earlier practice in that the debt settlement occurs only among banking agents, while the liquidity is supplied by other groups, such as labour migrants and refugees, foreign traders and humanitarian agencies. Technically speaking, it could therefore be argued that customers operate at the level of the *suftaja*, while dealers more accurately operate a *hawala*-based system. In back office terms, the *suftaja* thus becomes far more complex than a straightforward transfer of funds through bills of exchange. Its execution entails a long-standing relationship of debt between the *sarrāf* who honours the payment instruction and his distant partner who issued the instrument in the first place, in addition to linkages with additional *sarrāfi* with whom it is propitious to do business. Roger Ballard describes this as "a multi-nodal network of value transmission", whereby each participant stands in a "constantly shifting position of debit and credit with respect to each of the other members of the network".[54]

The interconnected grid of credit relations is perhaps more visible within the *hundī* market because of its official exchange of credit notes. Sanjay Subrahmanyam explains that a "resale market" used to exist in *hundī*,

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52) While the *suftaja* is closest to the modern bill of exchange in function, the earliest examples found in the Geniza records were distinct in that the value transferred kept its identity and payment was made in the same currency as the original imbursement.

53) Goitein also suggests that payment through a third party in another city fell under the general category of transfer of debt. Goitein, see note 39, 242.

54) R. Ballard, "System Security in Hawala Networks: An Analysis of the Operational Dynamics of Contemporary Developments", 2005, 8.

which meant that the bills did not have to be cashed by those initially partaking in their issue.[55] He argues that, from the mid-16th century, the patterns involved in the use of these grew more and more complex as the socio-economic networks proliferated. Major transfers became possible not only within a region (such as western India), or between the port and inland administrative city, but between more distant regions. This situation was described in the mid-18th century by Muhammad 'Ali Khan, in his Persian chronicle *Mirāt-I Ahmadī*, as one where the possessor of the *hundī* could give it to one of his own debtors and "so free himself from that obligation".[56] Not only this: "Similarly, he may transfer it to another, until it reaches a person against whom the drawee of the *hundī* has claims, and who therefore, surrendering to the latter, relieves himself of his debt. But cash is not used throughout".[57]

Hawala operates in essentially the same spirit as the *hundī* transactions which 'Ali Khan describes. Nevertheless, without the use of credit notes, the lack of physical evidence has encouraged its reputation as an "invisible" banking system, "structured like a financial archipelago with connections hidden beneath the surface".[58] Oversimplified accounts of both the various sets of relations that feed into the system and the religious disposition of the dealers have followed which have in turn been used to support the idea that all *hawala*dars exist to cater for the needs of Islamist terrorists. Despite this, the similarities between *hawala* and *hundī* raise important questions surrounding the Islamic or Arab origins of the practice. The next section will therefore turn to the available historical records for evidence of the origins of *hawala* and related trade practices within the broader context of world commerce.

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55) S. Subrahmanyam, *Money and the Market in India 1100-1700*, 1994, 34.

56) 'Ali Muhammad Khan, *Mirāt-I Ahmadī (A Persian History of Gujarat)* (ed.) S. Nawab Ali, 1965, 411.

57) *Id.*

58) M. Freedman, "The Invisible Bankers", *Forbes*, 17 October 2005; K. Eichenwald, "Terror Money Hard to Block, Officials Find", *The New York Times*, 10 December 2001.

World Commerce

A survey of the fragmentary historical evidence available reveals that assorted efforts to develop credit mechanisms in support of commercial exchange were made by the world's earliest civilisations across major trade routes. The various peoples of Mesopotamia, in around 3000 B.C., are the first for which there is obtainable archaeological evidence of commercial operations. Sophisticated credit transactions can be deciphered from thousands of tablets unearthed in ancient Sumerian and Babylonian temple compounds, proving that the bureaucrats of Sumer had developed a complex commercial system, including contracts, grants of credit, loans with interest, and business partnerships.[59]

While there is not the same level of archaeological evidence for the "Indus Valley Civilization" (also known as "Harappan Civilization") that covered the area of modern-day Pakistan, India, and Afghanistan, historians believe that it similarly reached its most prosperous phase in 2600 B.C. by way of commerce and agricultural trade, and that local commercial practices reflected coincident developments in neighbouring foreign lands such as Mesopotamia.[60] Artefacts excavated during this period certainly reveal an extensive international trade between the Indus Valley and the greater region. One example is the appearance in the royal Sumerian tombs of Ur, located near the Euphrates River in lower Iraq, of the ultramarine lapis lazuli, an opaque gemstone found in the rugged Kokcha Valley of northern Afghanistan.[61] The tombs contained more than 6,000 intricately executed

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[59] Robert Guisepi and Roy Willis explain that a commercial transaction was recorded, in an artistic fashion, by using small cylinder seals to roll one"s signature into the wet clay of a tablet. These instruments suggest that the bureaucrats of Sumer had developed a complex commercial system, including contracts, grants of credit, loans with interest, and business partnerships. R.A. Guisepi with F. Roy Willis, "The History of Ancient Sumeria including its Cities, Kings and Religions", 2005, available at: <history-world.org/sumeria.htm>.

[60] Abdelkader Chachi suggests that an obstacle to discovering more about the banking practices of the Indus Civilization is the lack of progress made in deciphering the Harappan scripts. A. Chachi, "Origin and Development of Commercial and Islamic Banking Operations", *Journal of Research in Islamic Economics* 18(2) (2005), 6.

[61] Peter Bancroft notes that Pliny the Elder described the stone as "a fragment of the starry firmament". Furthermore, powdered lapis was favoured by Egyptian ladies as a cosmetic eye

lapis lazuli statuettes of birds, deer, and rodents as well as dishes, beads, and cylinder seals.[62]

After the decline of the Indus Civilization between the 9th and 17th century B.C., the next available evidence of the region's economic activity seems to appear between 200 B.C. and 200 A.D. Economic historian Shyamsunder Nigam finds that commercial partnerships and credit were considered an important economic phenomenon in support of the trade, urban markets, fairs, and exhibitions that were organised on a systematic basis at the time.[63] The earliest recorded evidence available from India regarding its credit instruments supports this finding. Kautilya's *Arthashastra* (also spelt *Arthasastra*) is an ancient treatise on economics and politics written some time between the 4th century B.C. and 150 A.D. and explores the demands of statecraft in the prosperous but unsettled territory controlled by Chandragupta Maurya, the founder of the Mauryan Empire (r. 322–298 B.C.). An entire chapter within Book III is devoted to financial matters, including a section on *adēsa* which was an "order" on a banker desiring him to pay money to a third person.[64] This corresponds to the aforementioned *hundī* or bill of exchange. The Reserve Bank of India confirms that during the Buddhist period there was considerable use of this instrument with merchants in large towns routinely exchanging letters of credit with one another.[65]

Several hundred years later in the early Roman Empire, scripts found on Arabic papyri reveal that a variety of credit techniques were used to meet the needs of senators and equestrians who wished to repatriate earnings

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shadow and in later years it was used as a pigment for ultramarine paints. P. Bancroft, *Gem and Crystal Treasures*, 1984.

62) *Id.*

63) S. Nigam, *Economic Organisation in Ancient India (200 B.C. – 200 A.D.)*, 1975, 305-11.

64) Kautalya, *The Arthashastra* (ed., trans. [from Sanskrit]) L.N. Rangarajan, 1992.

65) Reserve Bank of India, "Chapter 2: Evolution of Payment Systems in India". Brijkishore Bhargava suggests that Indian merchants and bankers employed bills of exchange as early as the Vedic period (c.1500-500 B.C.), even prior to the seventh century B.C., however his evidence is flimsy. B. Bhargava, *Indigenous Banking in Ancient and Medieval India*, 1934, 131-132.

made on investments in Asia. The following is a translation of one of the scripts in 155 A.D.:

> Paid into the bank of Titus Flavius Eutychides by Eudaemon, son of Sarapion, and partners, overseers ... for the rent of the 17th year, one talent and four thousand drachmae, on condition that an equivalent amount should be paid at Alexandria to the official in charge of the stemmata, total of 1 tal., 400 dr.[66]

Evidence from Cicero in *Pro lege Manilia* lends weight to the view that the world's financial markets were interconnected during this early period. Describing conditions in 66 B.C. by reference to events twenty years earlier, Cicero comments that, "coinciding with the loss by many people of large fortunes in Asia, we know that there was a collapse of credit at Rome owing to suspension of payment".[67] And again, "this system of credit and finance which operates at Rome, in the Forum, is bound up in, and depends on capital invested in Asia; the loss of the one inevitably undermines the other and causes its collapse".[68]

It appears that when Roman dominance in the Mediterranean region was replaced by that of the Arabs, the scale and interpenetration of trade networks across the Indian Ocean expanded further along the coast of East Africa, in Malaysia and Indonesia, as well as in numerous Chinese ports, which allowed for intensified mutual development of trade and commercial techniques across distant regions. Although we learn almost nothing from the historical records on the prolific private commercial intercourse that existed between the Chinese and Indians at least as early as the Han dynasty,[69] it would be by no means impossible to surmise from these interactions that the long-standing Indian practice of *adēsa* or *hundī* may have influenced the decision of the Chinese merchants to develop a parallel practice, aptly named

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66) B.P. Grenfell, A.S. Hunt, & D.G. Hogarth, *Fayûm Towns and Their Papyri*, 1900, 220-222.

67) From Cicero"s *Pro lege Manilia*, cited in P. Temin, "Financial Intermediation in the Early Roman Empire", *Journal of Economic History* 64(3) (September) (2004), 705 *et seq.*

68) *Id.*

69) Y. Yü, *Trade and Expansion in Han China: A Study in the Structure of Sino-barbarian Economic Relations*, 1967, 153.

fei-ch'ien ("flying money") or *pien-huan* ("credit exchange").[70] Furthermore, the Silk Road connected China commercially with what is now recognised as North Eastern Afghanistan through the province of Xinjiang.

The earliest evidence of China's credit system nevertheless appears during T'ang China (618-907 A.D.) when there was reportedly a great increase in trade and an accompanying need to remit large sums of currency between the northern and southern parts of China.[71] The trade generated profits from the sale of tea in northern China that needed to be remitted back to the tea-producing south, but the shipment of cash was both cumbersome and perilous. The same problem of transfer faced the provincial authorities who were obliged to send monetary tribute and gifts to the imperial court. A solution was found in supplying the merchants with a place to deposit their cash in return for vouchers guaranteeing reimbursement in designated provinces.[72] Thereby a double transfer was realised between the two regions without the physical movement of funds.

Because the first mention of this practice in China appears only when the government attempted to prohibit its use by private citizens in 811 A.D., the literature assumes that *fei-ch'ien* was created purely as a response to the needs of the tea merchants and officials in the 9th century. However, as Walter Scheidel conveys, we cannot rule out the possibility that the merchants of earlier dynasties operated similar private credit systems that have left no trace in the aristocratic, and often anti-mercantilist, sources.[73]

The medieval period presents a greater wealth of material, at least since the discovery of the Cairo Geniza in which over 250,000 fragments of commercial documents from between 1000 and 1250 A.D. have now been

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70) It is common for recent commentators on hawala to attribute its origins to these Chinese financial practices, despite often being referred to inaccurately. I argue that this is a somewhat lazy interpretation of the available evidence.

71) For two of the rare descriptions of the practice, see D.C. Twitchett, *Financial Administration under the T"ang Dynasty*, 1970, 72; L-S. Yang, *Money and Credit in China: A Short History*, 1971, 51.

72) This was done with a "memorial-presenting court", or liaison office. Yang, see note 70, 52.

73) W. Scheidel, "The Monetary Systems of the Han and Roman Empires", Version 1.0, *Princeton/Stanford Working Papers in Classics* (November) (2004), 39.

recovered. With "its unmediated descriptions from real life"[74], the Geniza records reflect the commercial life of the Mediterranean in the eleventh to thirteenth centuries from the perspective of Jewish Arab merchants, whom S.D. Goitein fondly refers to as "those most Jewish and most Arab of all Jews".[75] It is thus an exceptionally rare example of historical material that records day-to-day details about ordinary people's lives, rather than those of momentous events or nations. Written evidence of actual business activity uncovers the widespread use and function of credit and debt transfer instruments in local and international trade.[76]

Joseph and Frances Gies offer a rich description of neighbouring Europe's newly developed paper economy, which is most visible from the six-week Champagne Fairs in medieval France, where native and foreign merchants met to exchange their wares with those travelling in opposite directions. Among the "noisy, lively, many-languaged Babel" of the bazaar, with "gawking peasants and knights as audience for the show", they explain how the final week of the Fair was reserved for the *pagamentum*, or settling of accounts:

> ... not only to the jingle of silver Provins pennies, but to the scratch of quills and styluses, for credit transactions grew steadily in volume, helping shape a significant element of the commercial future.[77]

While some point to evidence that suggests every merchant kept an account with a banker or money-changer on which he issued payment-orders for his purchases in the bazaar,[78] others argue that "Banking activities went hand in hand with regular commercial operations, and they were invari-

74) M.R. Cohen, "Goitein, the Geniza, and Muslim History", 2006, available at: <www.dayan.org/ mel/cohen.htm>.

75) In D. Ashkenazi, "A Window into Jewish Medieval Life", *Tel Aviv University News* (Spring 1997), available at: <www.tau.ac.il/taunews/97spring/medieval.html>.

76) The term *hawala* is not, however, to be found in the Geniza records.

77) J. Gies & F. Gies, *Merchants and Moneymen: The Commercial Revolution, 1000-1500*, 1972, 78.

78) A. Mez, *Die Renaissance des Islam*, 1922, 448. There is, however, no evidence from the medieval records of an individual whose exclusive operation was banking.

ably subsidiary to the merchant's endeavours in the more traditional aspects of trade such as buying, selling, exporting, importing".[79] In this respect, Udovitch asserts that:

> ... banking activities of [medieval] merchants were qualitatively but an extension of his commercial operations and were but one more service and skill, among many others, which any enterprising merchant would be expected to possess.[80]

Strategically, this made sense because of the need to cooperate for capital and the complex nature of banking operations.[81] An additional point to draw from the observation that transactions tended to be confined to merchants is that debt settlement occurred in tight-knit socio-economic circles. This fostered strong trust relations between merchants, particularly in an environment where formal enforcement mechanisms were often absent.

The above survey of trade across distant regions suggests that merchants have long been confronted with these types of enforcement problems. It also suggests that relatively sophisticated commercial instruments were in practice well before the European trade fairs and the even earlier arrival of Islam. The need for capital in an environment where both bullion was sparse and the long distances between trading destinations required cross-cultural exchanges, meant that close mutual acquaintance and cooperation among merchants was absolutely fundamental. Hence, in spite of etymology and the epistemological packing around labels, shared commercial techniques and instruments among various merchant communities reveal an intensely interactive social economic and cultural base that overrides the delimited space of political boundaries.

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79) A.L. Udotvich, "Reflections on the Institutions of Credits and Banking in the Medieval Islamic Near East", *Studia Islamica* 41 (1975), 18-19.

80) *Id.* See also Goitein, note 39, 248.

81) Some scholars capture the rationale behind cooperation between groups in game-theoretic terms, such as the role of reputation and the logic of exchange. B. Uzzi, "The Sources and Consequences of Embeddedness for the Economic Performance of Organisations: The Network Effect", *American Sociological Review* 61 (1996), 674 *et seq.*; W. Raub & J. Weesie, "Reputation and Efficiency in Social Interactions: An Example of Network Effects", *American Sociological Review* 96 (1990), 626 *et seq.*

The influence of both Islam and Europe on the increased uniformity of world commerce has, however, led some scholars to argue that a "commercial revolution"[82] took place in the 13th century with the introduction of credit institutions. From the above evidence it conversely appears that commerce was being widely conducted on systems that are variations of a single principle – that of debt transfer – well before this period.[83] The next section investigates why, if this is indeed the case, there is such a heavy emphasis in the literature on religion in the normative development of *hawala*.

Role of Islam in *Hawala*

Subhi Labib asserts that, "[e]verywhere that Islam entered, it activated business life, fostered an increasing exchange of goods and played an important part in the development of credit".[84] Islam, it appears, made true socio-economic cooperation and integration possible because it brought with it an unprecedented potential to flatten out previous cultural and logistical barriers to trade.[85] Some argue, therefore, that the moment one of the key cities in a trading cluster converted it was in the best interest of traders to follow suit in order to enhance personal ties and provide a common basis in Muslim law to regulate business deals.

Conversion to Islam linked trading centres culturally as well as economically to the merchants and ports of India, the Middle East, and the Mediterranean, which made it an appealing opportunity for Arabs, Jews, Armenians, and Hindus to exploit when operating in the wider trade circuits.[86] The rise in importance of religious pilgrimages to the holy places

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82) Raymond de Roover, a proponent of the view that European institutions provided the foundation for modern credit relations, defines a commercial revolution as "a complete or drastic change in the methods of doing business", cited in: N.J.G. Pounds, *An Economic History of Medieval Europe*, 1974, 403.

83) See also evidence provided by Nāsir-i-Chosrau, an intrepid Persian traveller, who acquaints us with the merchants of eleventh century Basra and their commerce that he discovered was no longer ruled by specie (in Charles Schefer"s French translation of *Sefer Nameh*, 86).

84) S. Labib, "Capitalism in Medieval Islam", *Journal of Economic History* 29(1) (March) (1969), 80.

85) Lieber, see note 44, 230.

86) Guisepi, see note 58, 7.

in Arabia, on which a great body of men converged each year from all over the world, offered ideal occasions for these merchants from far-distant lands to exchange information and market local products along the route.[87] In commercial terms, it could therefore be argued that Islam consolidated a framework of institutionalised behaviour that allowed trust to develop among spatially dislocated traders who had no recourse to formal enforcement. Banking historian Rodney Wilson supports this view:

> The sudden eruption of the Arab (Muslim) people in the seventh century is something unique in history. In three generations a collection of scattered tribes, some settled, some nomadic, living by trade and subsistence farming, had transformed itself into a rich and powerful empire dominating the whole of southern Mediterranean and the Near-East from Afghanistan to Spain ... They had succeeded in welding together peoples of diverse beliefs and languages into a unified society based on a common religion, a common language and common institutions.[88]

Alfred Lieber maintains that the ability of Arab merchants to read and write also played an important part in the unification of trade patterns among previously disconnected groups.[89] From an analysis of 10th century Arabic papyri and papers, Lieber concludes that the comparative literacy of Muslim merchants meant that large-scale commercial operations could be conducted from the counting house for the first time, easing the merchant's duty to move constantly with his wares. The double entry accounting method, which allowed the merchant to monitor not only the flow of single values but also the circulation of capital, was particularly important for the management of business in the early medieval period.[90] Somewhat ironically, the common perception is that the transfer of debt among Muslims is paperless.[91] It is clear, however, that the practice has conversely grown out of a long tradi-

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87) *Id.*

88) R. Wilson, *Banking and Finance in the Arab Middle East*, 1983, 40-53.

89) Lieber, see note 44, 232.

90) Labib, see note 83, 92. This does not include the use of credit notes such as the *hundī* mentioned above.

91) See R. Huang, "The Financial War Against Terrorism", CDI Terrorism Project, 2002, available at: <www.cdi.org/terrorism/finanical-pr.cfm>; C. Reich, *The Devil"s Banker*, 2003; Bariek Testimony, "Prepared Statement of Mr. Rahim Bariek, Bariek Money Transfer, A

tion of careful recording. While Islamic law stipulates that all transactions with future financial obligations ought to be recorded in writing, there is nevertheless no available evidence to suggest that the motivation behind the use of written records for transferring funds can be attributed to religious adherence.[92]

It seems worthwhile at this stage to recall a question posed by David Landes in *Wealth and Poverty of Nations*:

> Does an early society choose its religion to justify institutions already selected, or does it select its institutions according to pre-received religious values, or is the causation mutual?[93]

An important place to turn for answers to this question in the case of *hawala* and Islam is the social setting of medieval Arab economic life – how, for example, the early society organised itself, and what role it perceived commercial institutions to play in framing socio-economic affairs.

By the 6th century A.D., Mecca was controlled by the Koraysh tribe, to which Mohammed belonged, and whose rulers organised themselves into syndicates of merchants and wealthy businessmen. The Koraysh held lucrative trading agreements with Byzantine and Persian contacts, as well as with the southern Arabian tribes and the Abyssinians (Ethiopians) across the Red Sea. In addition, a number of neighbouring merchant fairs, such as one usually held at Ukaz, were overtaken by the Koraysh to extend the economic influence of Mecca. Guisepi suggests that the Koraysh were also concerned with protecting the shrine of the Kaaba, a holy place of annual pilgrimage for the Arabic tribes and a focal point of Arabic cultural and linguistic unity, to ensure that the pilgrimage would continue as a source of

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Hawala Broker", US Senate Committee Hearing on Banking, Housing, & Urban Affairs, 14 November 2001.

92) Burger, see note 21, 65. Grasshoff argues that the consensus among Shi'a jurists is that the validity of *hawala* transactions depended on its written form. Grasshoff, see note 50, 59.

93) D.S. Landes, *The Wealth and Poverty of Nations: Why Some are so Rich and Some so Poor*, 1999.

revenue for the merchants of the city.[94] A commercial, or at least mercantile, mentality and profit motive thus permeated all elements of Arab society in the pre-Islamic period.

It was into the merchant republic of Mecca that Mohammed (c.570-632 A.D.) was born, and which was to become the cradle of Islam. The Prophet himself was a practising merchant, after having spent his early years helping a mercantile uncle, Abu Talib, in the caravan trade.[95] The number of words borrowed from contemporaneous commercial usage that appear in the Qur'ān,[96] along with the various *hadīth* devoted to economic principles, reflect the ubiquitous role of commerce in the earliest stages of Islam's development, leaving "no doubt that the believers were engaged in, indeed preoccupied with, trade".[97] Qur'ānic approval of buying and selling afforded the merchant an unusually highly honoured place in society, which is amplified in a large number of sayings attributed to Mohammed and to the leading figures of early Islam.[98] In *Kitāb al-Kasb* ("On Earning"), for example, the earliest known Muslim work on economic ethics written by a Syrian of Iraqi *mawlā* ancestry (d.804 A.D.), it is argued that money earned by commerce or crafts is more pleasing in God's eyes than money received from the government.[99] Several years later, in an essay entitled, "In praise of merchants and in condemnation of officials," al-Jāhiz (d.869 A.D.) stresses "the security, dignity and independence of merchants" in contrast with "the uncertainty, humiliation and sycophancy of those who serve the ruler".[100] Hence, Islam grew out of a highly conducive trading environment, where economic concerns were central in the minds of the first converts.

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94) Guisepi, see note 58, 1.

95) *Id.*, 2

96) See C.C. Torrey, *The Commercial-Theological Technical Terms in the Koran*, 1892, for explorations of the way in which the Prophet's language is suffused with commercial metaphors, especially in connection with spiritual reward and punishment.

97) P. Crone, "How Did the Quranic Pagans Make a Living?" *Bulletin of the School of Oriental and African Studies* 68 (2005), 398.

98) M.A. Cook (ed.) *Studies in the Economic History of the Middle East from the Rise of Islam to the Present Day*, 1970, 87.

99) Shaybānī, Muhammad ibn al-Hasan [ca.750-804] *Kitāb al-Kasb*, 1997.

100) Cook, see note 97, 88.

This reality is often overlooked by analysts who cite the prohibition against interest as a key instance where Islamic thinking did challenge and depart from the ancient Arabian standards of mercantile behaviour. Interest was seen to concentrate more and more money in the hands of those who lend, while decreasing the prosperity of those who take loans: "[t]he result is that a people who accept interest as the basis of their economic system come to have two classes: enormously rich who lend and enormously poor who cannot afford even the immediate necessities of life – of course with every grade of middle class in between".[101] Accordingly, the *hadīth* literature warns:

> One dirham of *ribā* [interest] that a man devours, while knowing it is *ribā*, is more severe [in crime] than thirty-six acts of fornication [or adultery].[102]

Kjetil Bjorvatn explains that terms of credit in the Arabian Peninsula during Mohammed's time could be very harsh, with the commercial elite taking advantage of their market power by doubling the debt if loans were not repaid on time, and suggests that this is why usury is made the focus of attention several times in Islamic writings.[103] In much the same way that the medieval Christian Church placed restrictions on interest-bearing activity among its followers, Islamic law clearly attempted to set limits on commercial behaviour and create frameworks around existing institutions in the Muslim world.[104] Shaikh Mahmud Ahmad confidently proclaims that Islam,

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101) M. Ahmad, *Economies of Islam (A Comparative Study)*, 1947, 42.

102) Ahmad with a Sahih chain of narration in Shaykh Abû Bakr Jâbir al-Jaza'iry, 'Ar-Riba', "Usury and Interest", available at: <www.islaam.net/main/display.php?id=1231&category=7>.

103) K. Bjorvatn, "Islamic Economics and Economic Development", *Forum for Development Studies* 2 (1998), 231.

104) Similarly coarse language to that in the Qur'ān was used centuries later by those who lamented the presence of the usurious Lombard bankers at the European trade fairs: "The Lombard monster not only devours man and beast, but also mills, castles, woods and forests, he drinks the marshes and dries up the rivers. ... They never bring a ducat with them, nothing but a sheet of paper in one hand and a pen in the other; with that, they fleece the townsmen and then lend them their own money", cited in R-H. Bautier *The Economic Development of Medieval Europe* (trans. [from French]) H. Karolyi, 1971, 153.

however, has been the more successful of the two in excluding the possibility of money becoming a measure of success among its followers because of its consistent "abolition of interest".[105] This may well reflect the legal and religious theory of Islam, but I would argue that it is far removed from any real understanding of commercial practices of the time and even now.

The task of finding information in the Islamic sources on the extent to which the anti-usury laws were observed in actual practice is difficult. Nonetheless, as Udovitch wryly points out, the "frequent, copious, and vehement reiteration of the prohibition against usury in medieval Islamic religious writing" could be interpreted "as indirect testimony to its equally frequent violation in practice".[106] In search of practical evidence to support this, Ronald Jennings has devoted considerable energy to mining the 1,400 entries registered in Ottoman judicial records in central and eastern Anatolia between 1600 and 1625 A.D. He discovered that, contrary to the popular opinion that Jewish merchants dominated the credit business, approximately 80 per cent of credit was both given and received by Muslims.[107] In addition, throughout the 20-year period under investigation, Jennings found no examples of large money-lenders. In fact, very few creditors appeared more than once.[108] Instead, Jennings uncovered a widespread profusion of partnerships among the traders and the highly developed legal institutions that supported them.[109]

Scholars such as Joseph Le Goff suggest that the distorted picture has emerged due to the tendency of historians studying medieval commerce to devote excessive attention to the abstraction "usury" – "the merchant's satanic alter ego", without taking sufficient account of the historical reality, the "usurer".[110] This also obscures the positive stress on the profit motive

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105) Ahmad, see note 100, 42.

106) A.L. Udovitch, "Bankers without Banks: The Islamic World", in: *The Dawn of Modern Banking*, 1979, 257.

107) R. C. Jennings, "Loans and Credit in early 17th Century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri", *Journal of Economic and Social History of the Orient* 16 (1973) (Parts II-III), 182.

108) *Id.*, 177.

109) *Id.*, 180.

110) J. Le Goff, "The Usurer and Purgatory", in: *The Dawn of Modern Banking*, 1979, 26-7.

that can be found at the core of Islam. While the Prophet Mohammed emphasised that believers should always remember that nothing could be more important than God and His Messenger – true believers are men for "whom neither commerce nor buying and selling can divert from the remembrance of God, the performance of prayer, and the giving of alms" (Qur'ān 24:37) – he was supportive of competitive trade as long as it did not further disadvantage the poor. Within this field, he and his contemporaries understood firsthand the need for generating profit in a business; hence, flexibility was built into the Islamic systems of commerce through the *hiyal* (literally "devices") to circumvent the problem of interest.[111] The jurists endorsed these legal deviations from the law as long as they were debated and resolved in one of the legal traditions.

Commercial associations or partnerships based primarily on debts and credit purchases rather than cash or goods are a prominent example of the *hiyal*. Eleventh century legal scholar Sarakhsī explains the Hanafi interpretation of these forms of commercial arrangement:

> As for credit partnership, it is also called the partnership of the penniless (*sharikat al-mafālīs*). It comes about when people form a partnership without any capital in order to buy on credit and then sell. It is designated by the name partnership of good reputations[112] (lit. "faces") because the capital of the partners consists of their status and good reputations; for credit is extended only to him who has a good reputation.[113]

Abraham Udovitch points out that the above designations for the credit partnership – the "partnership of the penniless" and the "partnership of those with status and good reputations" – reflect two of the major functions of credit in trade.[114] In the first instance, traders seek finance due to insufficient resources of their own. In the second instance, capital seeks an investment outlet, and thus hires the trader. In some of the earliest Islamic

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111) Bernard Lewis explains that these allowed merchants to organise credit, investment, partnerships, and banking, while formally respecting the law. B. Lewis, *The Middle East*, 1995, 173.

112) The Arabic term for "partnership of those with good reputations" is *sharikat at-wujūh*.

113) M.A. Sarakhsī, *Kitab al-Mabsūt* Vol.II, 2001, 152.

114) A.L. Udovitch, "Reflections on the Institutions of Credits and Banking in the Medieval Islamic Near East", *Studia Islamica* No.41 (1975), 12.

legal works, such as the "Book of Partnership" of Shaybānī's *Kitāb al-asl* (late 8th or early 9th century A.D.), provisions entitling each of the parties to a partnership to buy and sell on credit are constantly asserted as though they were "self-evident".[115] Sarakhsī was among the early jurists who recognised that credit sales were the surest way of securing a good profit: "An object is sold on credit for a larger sum than it would be sold for cash", he explains, in that it entails a return to the creditor for the risks involved in the transaction, and as compensation for the absence of his capital. Thus, while the difference in the price for which one sells on credit and the price for which one sells on cash does not formally or legally constitute interest, it does fulfil the same role and provides one way of "licitly" fulfilling the economic function of an interest-bearing loan while remaining within the confines of Islamic law.[116] "No doubt", suggests Robert Lopez:

> ... it was an open secret that in long-distance exchange, entailing a delay for transportation, a premium would be worked in by doctoring up the rate of conversion; it was equally obvious that the changer's stock in trade would be largely borrowed and lent at interest rates not openly declared.[117]

The use of these various forms of commercial association goes some way to explaining why the prohibition against interest did little to shackle the development of capitalism in the Arab world, and also explains the large number of small partnerships that Jennings located in his research. Some might argue that the *hiyal* also provided merchants with a "legitimate" method to lighten their guilt.

It is worth noting that the credit partnerships were justified not only on legal grounds or by virtue of the general economic function of partnership (which Kāsānī epitomises as "a method for augmenting or creating capital"[118]), but also on grounds of precedent and thus usage. Kāsānī (d.1191) argues that people have been engaging in these two forms of partnership

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115) *Id.*, 8.

116) *Id.*

117) R.S. Lopez, "The Dawn of Medieval Banking", in: *The Dawn of Modern Banking*, 1979, 7.

118) Cited in Udovitch, see note 113, 13.

for centuries without rebuke, and so surely, as the Prophet himself said, his community would not unanimously agree upon an error. German Orientalist Joseph Schacht attributes this general tendency in Islam to submit to pre-ordained custom to the reassertion of the ancient Arab idea of *sunna* – precedent or normative custom – in Islam's early period. "Whatever was customary was right and proper, whatever their forefathers had done deserved to be imitated".[119] Goitein's view of the position of the *wakil*, or economic agent, which is generally considered a religiously prescribed office, concurs with Schacht's premise. He explains:

> ... the office of Wakil was a position acquired first *de facto* and confirmed afterwards by secular and religious authorities *de jure*, rather than a post to which a man was elected by some formal procedure.[120]

It seems fair to suggest from both the above survey of Islam's medieval economic history (as far as it can be reconstructed from the sporadic historical sources) and the context out of which Islam emerged that Muslim teachings had a dual effect: in general, they reflected the spirit of the commercial world of their time, rather than set radically new foundations for economic conduct, and yet they also created a unique institutional environment out of which various commercial partnerships and techniques were consolidated to provide traders with the necessary framework to cooperate more efficiently across different cultures.

A possible answer to Landes' question then is that pre-Islamic and early Islamic society in the Arab world chose religion to suit its existing institutions, using it either strategically or morally to delimit rules around commercial conduct (including the means by which those rules could be bypassed). The causation could thus be interpreted to some degree as "mutual". Schacht's comment is helpful here:

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119) J. Schacht, "Law and Justice", *Cambridge Encyclopaedia of Islam*, 1970, Vol.II, Pt.VIII, Chapter 8, 543.

120) S. D. Goitein, "From the Mediterranean to India: Documents on the Trade to India, South Arabia, and East Africa from the Eleventh and Twelfth Centuries", *Speculum* 29(2), Part 1 (April) (1954), 191. The *wakil* remains an important figure in the resolution of financial disputes among *hawaladars* in Afghanistan today.

> Islamic law was created by Islam, but the raw material out of which it was formed was to a great extent non-Islamic. This raw material, itself of varied provenance, was tested by religious and ethical standards, and gained a uniform character in the process.[121]

It appears only natural, as Schacht's comment suggests, for the commercial practices of the Islamic period to embody borrowings from elsewhere for its "raw material" was of non-Islamic provenance. In addition, commercial communities were perhaps by necessity the most pragmatic and eclectic of all segments of a medieval society because of their need for international linkages and travel.

Concluding Remarks

This article has clarified the usage and origin of the term *hawala* and established that, while it has strong connections with the Islamic legal tradition, its practice was widespread among the non-Muslim merchant communities throughout the ancient and medieval periods. This challenges the current conventional wisdom that the system is exclusively Islamic and, as such, discredits the current tendency within the literature to undermine *hawala*'s capacity to act as a tool for state reconstruction and fostering international stability because of its apparently heavy association with Islam. In the current regulatory context of "post-conflict" economic reconstruction and "failed" states, findings such as these help move analyses away from the seemingly blind acceptance of international institutions' modernising or civilising power to a more rigorous assessment of local institutions that uncovers the often flimsy evidence on which conventional wisdom is based.

The article advocates that reconstruction efforts in states-in-crisis would certainly improve if more time were invested in analysing how locally generated economic order paradoxically exists under the rubble of collapsed or weak formal institutions. The example of the *hawaladar*, represented widely in media and policy accounts as a "one-sided coin" with a decidedly criminal face but who in reality exerts rather extreme effects that are necessarily at

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121) J. Schacht, "Pre-Islamic Background and Early Development of Jurisprudence", in: M. Khadduri & H. J. Liebesny (eds) *Law in the Middle East I: Origin and Development of Islamic Law*, 1955, 28.

least two different sides of the same coin, demonstrates how policymakers cannot afford to view the security impact of unregulated financial networks and their links with terrorism in isolation from their development potential and specific historical or political context.