

Misplaced Blame: Islam, Terrorism and the Origins of *Hawala*

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I. Introduction

Hawala is an ancient form of money dealing and funds transfer that spans the globe and operates outside the reach of state control.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 state collapse and efforts to regulate, disrupt, or replace the system.

* This article is dedicated to the memory of Michael MacAvoy, David O’Neill, and Craig Linacre.

¹ The classical Arabic term *hawala* is used in Afghanistan and the Middle East, while *hawilaad* 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.

Although not publicised widely, humanitarian relief workers are among the first to recognise the indispensable service of local money dealers, or *hawaladars*, for the delivery of funds in both war-torn areas and states in crisis. Indeed, over the past five 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 2,000 unregistered *hawaladars* exist within Afghanistan today.³

In Iraq as well as refugee or IDP (internally displaced person) camps 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 to help mi-

² UNICEF and 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. On the restructuring and management of the post conflict situation in Afghanistan see the article by E. Afsah/ A.H. Guhr, “Afghanistan: Building a State to Keep the Peace”, in: A. von Bogdandy/ R. Wolfrum (eds), *Max Planck UNYB* 9 (2005), 373 et seq.

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, Somalia, 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.

grants locate their families and arrange for the delivery of funds either to functioning bank accounts or directly to the camps themselves.⁶

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 money dealers – or *hawaladars* located in fragile, and more specifically Islamic, regions of the world – as belonging almost exclusively to the murky world of 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 9/11⁷ 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

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

⁷ The terrorist attacks on US soil in September 2001 were certainly a catalyst for further suspicion and alarm regarding these financial networks.

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

therefore required to clarify the 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*.

II. 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

because of its occurrence in contexts outside the Arab or Muslim world by labelling it an “Informal Value Transfer System” (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: id., *Globalization and Insecurity: Political, Economic and Physical Challenges*, 2002, 1.

unique systems of governance will 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 paper tries to pro-

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 (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 Order in Failed States: A Case Study of the Money Dealer 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 institutional diversity will impede *adaptability* in the long run. G. Grabher/ D. Stark, “Organizing Diversity: Evolutionary The-

vide the foundation for exploring questions such as these. As mentioned above, it will try to achieve this by demystifying the conventional wisdom that shrouds current understandings of the true origins and concept of *hawala*.

III. 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 terrorism”, 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.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 fairly 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 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

ory, Network Analysis and Postsocialism,” *Regional Studies* 31 (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 (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.

any 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 have been equally condemning the system in the years immediately following 9/11; one investigative reporter was so bold as to broadcast in a headline that *hawala* 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 uncritically reproduced in articles, government reports,

¹⁶ US Treasury Department, “Press Statement by Treasury Department Undersecretary for Enforcement Jimmy Gurulé,” available at: <<http://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 (2003), 513 et seq.

¹⁸ Bush, see note 8.

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

academic 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* threat²² 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

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 der 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.

Task Force (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 victory 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 paper 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 are resolved can we judge the relevance of examining the case of *hawala* in Afghanistan and elsewhere from the perspective of criminality, religion or other cultural forms.

²⁴ Financial Action Task Force, "FATF Mandate Renewed for Eight Years," 14 May 2003, available at: <<http://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 Ibid.

²⁶ Ibid.

Before presenting the evidence 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.²⁸

The present paper should be viewed within these limitations. It nevertheless offers an unprecedented overview of *hawala* and related trade practices within the broader historical context of world commerce, in addition to an analysis of its emergence in the Islamic legal texts.²⁹

IV. 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 term³⁰ 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

²⁷ R. Orsingher, *Banks of the World*, translated by D.S. Ault, 1967, 1.

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

²⁹ I am grateful to *Sheikh Afifi al-Akiti* at the Oxford Centre for Islamic Studies for his help in navigating the classical Islamic texts cited in this paper.

³⁰ *H-w-l* root, meaning “transform”, or “change”.

which the *hawala* system functions.³¹ Afghans involved in the trade tend to call themselves *sarafi*, or the singular, *saraf*, which means “money changer”.³²

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 *hundi*, a longstanding Indian credit instrument.³³ 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.”³⁴

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.

Matthias Schramm and *Markus Taube* were among the first academics to investigate exclusively the true 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 Baker b. Maseud al-Kasani*.³⁵ A review of some of the original literature in the *hadith* reveals, however, that *Schramm* and *Taube* stopped their search prematurely. It transpires that, in the early part of

³¹ P.M. Jost/ H.S. Sandhu, “The Hawala Alternative Remittance System and its Role in Money Laundering”, Interpol General Secretariat, January 2000.

³² 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.

³³ Reserve Bank of India, “Chapter 2: Evolution of Payment Systems in India”, 1995, available at: <<http://www.rbi.org.in/scripts/PublicationsView.aspx?id=155>>.

³⁴ D. Sharma, “Historical Traces of Hundi, Sociocultural Understanding, and Criminal Abuses of Hawala,” *International Criminal Justice Review* 16 (2006), 99 et seq.

³⁵ Schramm/ Taube, see note 21, 407.

the 7th century A.D., *Abu Huraira* recalls the following instruction given by his companion, the Prophet Mohammed, “Sahîh al-Buhârî, kitâb al-hawâlât”³⁶ 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]”.³⁷

Soon after Mohammed’s death, the Islamic jurists prescribed this concept of delegation of debt, identifying the practice as *al-hawâla*. 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.³⁸ In such a transaction, no physical transfer of money takes place; only a delegation of debt.

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 Figure below demonstrates this perspective of the customer, from

³⁶ *Sahih Bukhari* [810-870 A.D.] Vol. 3, Book 41, No. 585.

³⁷ *Ibn Rushd* [1126-1198 A.D.] “The Book of Hawala,” XLII, in: *The Distinguished Jurist’s Primer: Bidayat Al-Mujtabid*, 2001, 360-363.

³⁸ 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.

which value can be transferred between distant locations, while avoiding the inconvenience and risk of transporting money.³⁹

Figure: Customer view of a *hawala* transaction



The Islamic legal and religious texts reveal this kind of value transfer mechanism to be more analogous to a financial instrument called *suftaja*.⁴⁰ 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,

“He gave a certain sum of money in a particular town (*min madînat*) and received it back in another place (*bi-ard ukhrâ*). He permitted the use of bills of credit (*safâtij*), and this means that a man obtains a loan at one place, and receives it at another place.”⁴¹

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 passage actually refers to the *sarrâf* (money dealer), archival evidence of the period suggests that in practice the *sarrâf* could be substituted for the customer.

There were thus two modes of transfer: the first was for the customer to draw money from a *sarrâf* 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 *sarrâf* that the money would be recovered in the other town once the note was produced, re-

³⁹ 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.

⁴⁰ *Saftaja* or *suftaja*, pl. *safâtij*, is an Arabic form of Persian *sufta* meaning promissory note, letter of credit, or bill of exchange. See F.J. Steingass, *A Comprehensive Persian-English Dictionary*, 1963.

⁴¹ “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, translated by A.A.A. Fyzee, revised and annotated by I.K.H. Poonawala, 2004, 47.

sembling the function of the *hundi* 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”.⁴²

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 *Abbâsîd* financial administration made full use of the *suftaja* in transferring its funds between the provincial treasuries of Baghdad.⁴³ According to an Arab historian the central treasury received bills of exchange from the provinces to the amount of 900,000 dirhams in 928 A.D.⁴⁴ In a similar vein, a British Lieutenant-Colonel expressed the ease with which the *hundi* 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.⁴⁵

⁴² M. El-Gamal, “Translation of *Dr. Wabba Al-Zuhayli’s: Al-Fiqh Al-Islamic wa Adillatuh*”, Vol. 5, *Financial Transactions in Islamic Jurisprudence* 1, (in press).

⁴³ A.E. Lieber, “Eastern Business Practices and Medieval European Commerce,” *The Economic History Review* 21 (1968), 233 et seq. 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.

⁴⁴ Recorded in *The Eclipse of the Abbâsîd Caliphate: Original Chronicles of the Fourth Islamic Century*, edited, translated and elucidated by H.F. Amedroz/ D.S. Margoliouth, 1920-1921, 186.

⁴⁵ “... 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!*” (italics added), A. Burnes, *Travels*

Other first-hand accounts of *hundis* from this period consistently reveal the preference among travellers for the letter of credit to the alternative of sewing 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.⁴⁶

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 *madâhib* (schools of law) ruled that the *suftaja* is reprehensible to the point of prohibition (*karâha tahrîmiyyah*) if the benefit of avoidance of risk in transportation to another country was a stipulated condition,

“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 Allâh”.⁴⁷

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

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, Vols I, II, and III, 1835, 145-146.

⁴⁶ A notable exception is the experience of East India Company official George Forster, who was unfortunate in his encounter with *hundis*. On arrival in Kabul from Kashmir, 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.

⁴⁷ Al-Mirghînânî, “Chapter 12: The Loan Contract (*Aqd al-Qard*),” in: El-Gamal's translation of *Dr. Wabba Al-Zuhayli's: Al-Fiqh Al-Islamic wa Adillatuh*.

doctoral study.⁴⁸ He puts forward a convincing case based on etymological studies that the bill of exchange was invented by the Arabs, subsequently adopted by Italian and Aragonian traders, and then re-imported to the Orient in a Europeanised version.⁴⁹

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*.⁵⁰ 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 *sarrâf* who honours the payment instruction and his distant partner who issued the instrument in the first place, in addition to linkages with additional *sarrâfi* with whom it is propitious to do business. *Roger Ballard* describes this as “a multi-nodal network of value transmission”, whereby each

⁴⁸ 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 explaining these concepts in the original German text.

⁴⁹ 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.

⁵⁰ Goitein also suggests that payment through a third party in another city fell under the general category of transfer of debt; 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.

participant stands in a “constantly shifting position of debit and credit with respect to each of the other members of the network.”⁵¹

The interconnected grid of credit relations is perhaps more visible within the *hundî* market because of its official exchange of credit notes. Sanjay Subrahmanyam explains that a “resale market” used to exist in *hundî*, which meant that the bills did not have to be cashed by those initially partaking in their issue.⁵² 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, as one where the possessor of the *hundî* could give it to one of his own debtors and “so free himself from that obligation.”⁵³ Not only this, “Similarly, he may transfer it to another, until it reaches a person against whom the drawee of the *hundî* has claims, and who therefore, surrendering to the latter, relieves himself of his debt. But cash is not used throughout.”⁵⁴

Hawala operates in essentially the same spirit as the *hundî* transactions. 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.”⁵⁵ 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 *hawaladars* exist to cater for the needs of Islamist terrorists.

Despite this, the similarities between *hawala* and *hundî* raise important questions surrounding the Islamic or Arab origins of the practice. Evidence in the literature suggests that these commercial instruments – which are variations of the single principle of debt transfer – were in practice well before the European trade fairs and the even earlier arrival

⁵¹ R. Ballard, *System Security in Hawala Networks: An Analysis of the Operational Dynamics of Contemporary Developments*, 2005, 8.

⁵² S. Subrahmanyam, *Money and the Market in India 1100-1700*, 1994, 34.

⁵³ Ali Muhammad Khan, *Mirât-I Ahmadi (A Persian History of Gujarat)*, edited by S. Nawab Ali, 1965, 411.

⁵⁴ Ibid.

⁵⁵ 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.

of Islam.⁵⁶ The next section of this paper 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*.

V. 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.”⁵⁷

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.⁵⁸ Some argue, therefore, that the moment one of the key cities in a trading cluster converted it was in the best interest of others 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.⁵⁹ The rise in importance of religious pilgrimages to the holy places 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.⁶⁰ 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,

⁵⁶ Thompson, see note 12.

⁵⁷ S. Labib, “Capitalism in Medieval Islam,” *Journal of Economic History* 29 (1969), 80 et seq.

⁵⁸ Lieber, see note 43, 230.

⁵⁹ R.A. Guiseppi/ F.R. Willis, “The History of Ancient Sumeria including its Cities, Kings and Religions”, 2005, available at: <<http://history-world.org/sumeria.htm>>.

⁶⁰ Ibid.

“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.”⁶¹

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.⁶² 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. Somewhat ironically today, however, the common perception is that the transfer of debt among Muslims is paperless.⁶³ The practice has conversely grown out of a long tradition of careful recording. 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.⁶⁴ Nevertheless, while Islamic law stipulates that all transactions with future financial obligations ought to be recorded in writing (Qur’ân 2: 281), there is no available evidence to suggest that the motivation behind the use of written records for transferring funds can be attributed to religious adherence.⁶⁵

⁶¹ R. Wilson, *Banking and Finance in the Arab Middle East*, 1983, 40-53.

⁶² *Lieber*, see note 43, 232.

⁶³ See R. Huang, “The Financial War Against Terrorism,” CDI Terrorism Project, 2002, available at: <<http://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 Hawala Broker,” US Senate Committee Hearing on Banking, Housing and Urban Affairs, 14 November 2001.

⁶⁴ Labib, see note 57, 92. This does not include the use of credit notes such as the *hundi* mentioned above.

⁶⁵ 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 48, 59.

It seems worthwhile at this stage to recall a question posed by *Landes* in his book: 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?⁶⁶ 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. It has been suggested that the Koraysh were also concerned with protecting the shrine of the Kaaba, to ensure that the pilgrimage would continue as a source of revenue for the merchants of the city.⁶⁷ A commercial, or at least mercantile, mentality and profit motive thus permeated all elements of Arab society in the pre-Islamic period.

The number of words borrowed from contemporaneous commercial usage that appear in the Qur'ân,⁶⁸ along with the various *hadîth* 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".⁶⁹ Qur'anic 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.⁷⁰ In *Kitâb al-Kasb* ("On Earning"), for example, the earliest known Muslim work on economic ethics, it is argued that money

⁶⁶ D.S. Landes, *The Wealth and Poverty of Nations: Why Some are so Rich and Some so Poor*, 1999.

⁶⁷ Guisepi, see note 59, 1.

⁶⁸ 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.

⁶⁹ P. Crone, "How Did the Quranic Pagans Make a Living?" *Bulletin of the School of Oriental and African Studies* 68 (2005), 387 et seq. (398).

⁷⁰ M.A. Cook (ed.), *Studies in the Economic History of the Middle East from the Rise of Islam to the Present Day*, 1970, 87.

earned by commerce or crafts is more pleasing in God's eyes than money received from the government.⁷¹ Hence, Islam grew out of a highly conducive trading environment, where economic concerns were central in the minds of the first converts.

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.”⁷²

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].”⁷³

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.⁷⁴ 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.⁷⁵ *Sheikh Mahmud Ahmad* con-

⁷¹ *Shaybānī, Muhammad ibn al-Hasan* [ca. 750-804] *Kitāb al-Kasb*, 1997.

⁷² M. Ahmad, *Economies of Islam (A Comparative Study)*, 1947, 42.

⁷³ *Ahmad* with a *Sahih* chain of narration in *Shaykh Abū Bakr Jābir al-Jazā'iry, 'Ar-Riba'* (“Usury and Interest”), available at: <<http://www.islaam.net/main/display.php?id=1231&category=7>>.

⁷⁴ K. Bjorvatn, “Islamic Economics and Economic Development,” *Forum for Development Studies* 2 (1998), 231 et seq.

⁷⁵ 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

fidently proclaims that Islam, 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”.⁷⁶ This may well reflect the legal and religious theory of Islam, but it can also be argued 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* 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”.⁷⁷ 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.⁷⁸ 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.⁷⁹ Instead, *Jennings* uncovered a widespread profusion of partnerships among the traders and the highly developed legal institutions that supported them.⁸⁰

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

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*, translated from French by H. Karolyi, 1971, 153.

⁷⁶ Ahmad, see note 72, 42.

⁷⁷ A.L. Udovitch, “Bankers without Banks: The Islamic World,” in: *The Dawn of Modern Banking*, University of California, 1979, 257.

⁷⁸ 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), 168 et seq. (182).

⁷⁹ *Ibid.*, 177.

⁸⁰ *Ibid.*, 180.

historical reality, the “usurer”.⁸¹ This also obscures the positive stress on the profit motive that can be found at the core of Islam. While the Prophet Mohammed certainly 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’ân 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.⁸² 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 *Sarakhsî* 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-mafâlîs*). 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 reputations⁸³ (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.”⁸⁴

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.⁸⁵ In the first instance, traders seek finance

⁸¹ J. Le Goff, “The Usurer and Purgatory”, in: *The Dawn of Modern Banking*, see note 77, 26 et seq.

⁸² 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.

⁸³ The Arabic term for “partnership of those with good reputations” is *sharikat at-wujûh*.

⁸⁴ M.A. Sarakhsî, *Kitab al-Mabsût* Vol. II, 2001, 152.

⁸⁵ A.L. Udovitch, “Reflections on the Institutions of Credits and Banking in the Medieval Islamic Near East,” *Studia Islamica* 41 (1975), 5 et seq. (12).

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 legal works, such as the “Book of Partnership” of *Shaybânî’s Kitâb 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”.⁸⁶ *Sarakhsî* 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.⁸⁷ “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.”⁸⁸

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 *Kâsânî* epitomises as “a method for augmenting or creating capital”⁸⁹), but also on grounds of precedent and thus usage. *Kâsânî* argues that people have been engaging in these two forms of partnership for centuries without rebuke, and so surely, as the Prophet

⁸⁶ Ibid., 8.

⁸⁷ Ibid.

⁸⁸ R.S. Lopez, “The Dawn of Medieval Banking,” in: *The Dawn of Modern Banking*, see note 77, 7.

⁸⁹ Cited in Udovitch, see note 85, 13.

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.⁹⁰ *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.”⁹¹

Goitein’s observation certainly resonates with the current practice of *hawaladars* in Afghanistan who report that they select men, labelled *wakils*, to adjudicate difficult situations within the *hawala* market on an informal and ad hoc basis.⁹²

It seems fair to suggest from 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 both chose religion to suit its existing institutions, and also used it either strategically or morally to delimit rules around commercial conduct (including the means by

⁹⁰ “Whatever was customary was right and proper, whatever their forefathers had done deserved to be imitated”, J. Schacht, “Law and Justice,” *Cambridge Encyclopaedia of Islam*, 1970, Vol. II, Pt. VIII, Chapter 8, 543.

⁹¹ 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 Part 1, 1954, 191. The *wakil* remains an important figure in the resolution of financial disputes among *hawaladars* in Afghanistan today.

⁹² Information gathered from author’s field interviews conducted in Afghanistan, February – December 2005.

which those rules could be bypassed). The causation could thus be interpreted to some degree as “mutual”. *Schacht's* comment is helpful here,

“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.”⁹³

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.

VI. Assessment

This paper 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 opens up the possibility of testing the significance of religion and other cultural factors to the use of *hawala* in a modern setting. 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.

Reflecting on observations made at the start of this paper, it could be argued that the *hawaladar*, who is represented widely in media and policy accounts as a “one-sided coin” with a decidedly criminal face, in reality exerts rather extreme effects that are necessarily at least two different sides of the same coin. Therefore the security impact of unregulated financial networks and their links with terrorism cannot be

⁹³ 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.

viewed in isolation from their development potential and the specific historical or political context.

To date, increased scrutiny of *hawala* has contributed little to deepening our understanding of these areas. Instead, the system is rendered culturally static and dangerous, while international regulatory initiatives are cast as the rationalising and peaceful influence of outside forces. This explains, perhaps, the reticence of humanitarian agencies and international institutions to admit their reliance on local informal institutions such as *hawala*, in spite of the growing consensus that local populations should be better “engaged” and their unique systems of governance no longer dismissed.

In order to improve upon the success of reconstruction efforts in states in crisis, this paper advocates that a more “legitimate” approach to economic recovery must include considerations of the history and political culture of the country concerned. This would enable not only a more fine-grained analysis of how locally generated “economic order” can exist under the rubble of collapsed or weak formal institutions, but also more insight into the implications of overlaying such “order” with economic and socio-political infrastructures that are inconsistent with the needs or wants of the local population.

