THE UNIVERSITY OF CHICAGO

RECORDING JUSTICE IN BYZANTINE AND EARLY ISLAMIC EGYPT (550–800): MATERIAL CULTURE, ORDINARY PEOPLE, AND THE MAKING OF THE ISLAMIC STATE

A DISSERTATION SUBMITTED TO
THE FACULTY OF THE DIVISION OF THE HUMANITIES
IN CANDIDACY FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY

DEPARTMENT OF MIDDLE EASTERN STUDIES

BY

TOBIAS SCHEUNCHEN

CHICAGO, ILLINOIS

JUNE 2025

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ABSTRACT

My dissertation offers the first social and legal history of the transition from Byzantine to Islamic Egypt (550–800), shifting our attention to actors in the Egyptian countryside—monks, bishops, and villagers—and the ways in which disputing, petitioning, and monastic disciplining influenced the texture of Islamic justice and institution-building. By integrating literary sources and material evidence from the underexplored archive of Arabic, Greek, and Coptic papyri, *Recording Justice* posits that Muslim state-building was never exclusively a matter of top-down imposition of political will and reforms by caliphs and governors. Instead, I argue that the social and legal expectations of the Egyptian populace—most of them Coptic Christians—were informed by centuries of Byzantine rule, and their expectations of scribal documentation, legal process, and authority actively shaped how, where, and when officials appointed by the Islamic state could dispense justice. Through the bottom-up use of papyri, *Recording Justice* resists the common periodization into pre-Islamic and Islamic, maintaining that a judicial crisis had been in the making in Egypt long before the Arab conquests in the 640s. The nature of this crisis was that the steady shift of power into the countryside enabled bishops, monks, and local administrators to accumulate substantial judicial and executive functions, resulting in access barriers to and the obsolescence of official courts as disputes were increasingly resolved through the more informal means of arbitration and mediation. *Recording Justice* reveals a new model of the Islamic state, which needed to negotiate with and garner acceptance from a rural populace that was predominantly non-Muslim and had specific ideas about how to be governed.

The dissertation argues that shortly after the Arab Muslim conquests, state officials began issuing legal documents, specifically promissory notes (*adhkār ḥaqq*) and quittances (*barāʾāt*), recording the claims and entitlements of ordinary people in the Arabic language. By doing so,

their legal claims became tied to the sovereignty of the fledgling Islamic state, guaranteed by a web of administrators, scribes, and witnesses, all of whom endowed these documents with their authoritative marks. By the late eighth century, the Islamic judiciary had ascended to the top tier in the administration of justice in Egypt, with political elites even deferring high-level political disputes to the judiciary. This development was undergirded by the judiciary's growing reliance on a new type of legal document, the affidavit (*iqrār*), which operated under heightened standards of evidence and placed a premium on declarants' legal accountability (*taklīf*). The affidavit not only became the hallmark of Islamic justice for centuries to come but also left a decisive mark on Coptic scribal culture. With that, Egypt transformed from an arbitration society into one in which official courts were once again accessible and where the presence of the Islamic judiciary as the top tier of justice functioned as an effective check on the powers of rural arbiters.

لأم الشرائع

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ACKNOWLEDGEMENTS

When opening academic books and dissertations, I often begin by perusing acknowledgments. Perhaps I hope to derive a sense of the person behind the scholarly work I am about to encounter, the ways in which the author's personal experiences and worldview shaped their research questions, methodology, and the stakes of their project. My own journey as a historian (a label I now confidently embrace) began more than a decade ago when I enrolled in the Bachelor of Islamic Studies at the University of Freiburg in Germany. Little did I know back then about the many adventures, books, places, people, and emotional ups and downs I would encounter on this journey. For myself, this dissertation stands as a testament to the many mentors, colleagues, and friends who have shaped me over the years and to whom I remain deeply grateful for answering my many questions and helping me resolve many confusions, for pushing me to go further, and for cheering me up with words, laughter, and hope.

My gratitude goes to my advisor, Ahmed El Shamsy. I vividly remember the morning of February 9, 2017, when I woke up in my sparsely furnished Beirut apartment, drowsy and debating whether to go back to sleep. When I grabbed my phone to check my emails (clearly, a habit of so many moderns), I saw a message from Ahmed that began with the line "Es ist mir eine Freude Dir die Gute Nachricht überbringen zu können …" As I always do in situations of extraordinary joy, anger, or sadness—studies show that most men can readily identify these three emotions in contrast to women, who tend to have a much greater and more refined vocabulary when it comes to describing emotional states—I called my mother. She burst out in tears, and that morning, I remember, I splurged on an overpriced omelet at Café Younes, smiling away as my friends flocked in and the news began to sink in. Without that email, there would have been

no omelet that day, and perhaps you would not be reading this dissertation. I want to thank Ahmed for his great patience and encouragement, but mostly for his intellectual flexibility and tolerance in letting me explore. When I came to UChicago, he did not object to my plans to enroll in gender, anthropology, and law classes, and when I felt lost, he allowed me to dig deeper instead of reigning in my thirst for the unknown. I have learned a great deal from him, and I will always be grateful for his kindness and support, even if he did not respond to all my emails.

My committee members, Fred Donner, Richard Payne, and Erin Walsh, have been a constant source of inspiration, encouragement, and learning throughout my years at UChicago. Fred first introduced me to the idea of working with papyri, initiating me into a world that appeared both full of possibilities and impossible to master. Richard always made me think about the big questions, challenge existing arguments, and explore uncharted territories. Through Erin, I encountered a role model teaching me how to reconcile thick theory with the study of primary sources. They all have discussed various ideas and points of argument with me, and their critical feedback has helped me turn this dissertation into something very different than what I initially thought I would write.

My dissertation work has been generously supported not only by people but also by institutions and funding bodies that have allowed me to travel to faraway places to conduct research. I am grateful for the generous financial support I received in the form of fellowships and awards granted by the Department of Middle Eastern Studies, the University of Chicago Law School, the Nicholson Center for British Studies, the Mellon Foundation, the Gerda Henkel Foundation, the Princeton Firestone Library, the University of Michigan, and the Abdallah Kamel Center at Yale University. In addition, the Arnaldo Momigliano/Humanities Dissertation Research Travel Grant and the Jonathan Brown Islamic Studies Research Award have provided

generous support for research trips to papyri collections. Several smaller grants have allowed me to present my research at the meetings of the American Oriental Society, the American Society for Legal History, the Deutscher Orientalistentag, the International Society for Arabic Papyrology, the Medieval Academy of America, and the Middle East Studies Association. Many of my applications for fellowships immensely profited from the keen eyes of Beth Powers and Anne Janusch at the UChicago Fellowship Office.

At the University of Chicago, I had the privilege of studying with many formidable scholars. Mareike Winchell opened up an entirely new world of argumentation and research, watching me take baby steps in anthropological modes of thinking. Tahera Qutbuddin reminded me of the importance of philology and a deep knowledge of Arabic. Clifford Ando helped me build essential bridges between Islamic and Roman law. Saeed Ghahremani taught me Persian in the most fun and accessible way. At the Law School, Tom Ginsburg and Aziz Huq patiently introduced me to the world of lawyering and American legal thought. Their year-long seminar on Canonical Ideas in American Legal Thought was both terrifying and foundational, sharpening my analytical acumen and helping me think like a lawyer.

In Hyde Park, I found many friends and companions who contributed to my formation as a scholar and made life in Hyde Park more fun: Mohammad Abbasi, Shehzad Arifeen, Aamir Bashir, Hamza Dudgeon, Ömer Eren, Suay Erkusoz, Austin Green, Elon Harvey, Yanxiao He, Reza Hemyari, Joseph Hermiz, Letty Ho, Alexandra Hoffmann, Maha Agha Kalsoum, Allison Kanner-Botan, Betül Kaya, Alexandra Kaul, Tynan Kelly, Bahadin Kerborani, Stephanie Kraver, Kyle Longworth, Kimia Maleki, Mohsin Noor, Rachel Schine, Adi Shiran, Marie Umbach, Arlen Wiesenthal, and Ameena Yovan. Some people deserve special mention and exceptional gratitude: Jack Burden, for his intellectual passion and our many conversations about law. Mariel

Colbert, for her warmth, laughter, unrelenting sense of justice, and the hot tea we spilled. Shaahin Pishbin, for becoming my close friend and confidant despite his initial reservations about me. I will forever remember our drive from Princeton to Chicago, our deeply emotional conversations, and the chants of Britney blasting in our U-Haul. Samin Rashidbeigi, for the many years of companionship and love, even as we decided to continue on separate paths. Sarah Shaer, for her brilliance in every way and her refusal to accept any argument I make. I have learned so much from her, and she held me tight when my world came crashing down. Kyle Wynter-Stoner, for listening to many of my complaints about life in the US and our philosophizing about life. I could not have been more ecstatic when my friends Cecilia Palombo, Murat Bozluolcay, and Pamela Klasova joined the Department of Middle Eastern Studies towards the end of my PhD. I always like to think back to our summer nights in Beirut. I could not have completed this dissertation without Pamela's help with Arabic poetry, especially in its final stages. Tasha Vorderstrasse kindly helped with references to Arabic papyri.

When I moved to Princeton in 2021, I had the great privilege of learning from many great minds, especially Marina Rustow, who made Arabic manuscripts and documents seem so much more exciting and manageable. It is there that I truly learned about the power of academic collaboration. Amel Bensalim, Marcel Camprubí, and Noah Kravitz—our weekly meetings with the Arabic Manuscript Reading Group have demystified Arabic documents for me and made researching them such a pleasure. The discussions in the weekly Religions of Late Antiquity Workshop were an excellent stimulus for my work and have helped me situate it better in the field of Late Antiquity studies. I am thankful to AnneMarie Luijendijk, Elaine Pagels, Moulie Vidas, and all the participants for offering helpful feedback. The staff at the Princeton Library, especially Adrienne Rusinko, need to be thanked for giving me almost unlimited access to and

providing images of Arabic manuscripts. Duygu Coşkuntuna spent many evenings with me, talking about life, the academy, and what it all means at the Ivy Inn. Ali Javadi, Lindsey Stephenson, and their children Layli and Yasser always welcomed me into their home with love, warmth, and exceptional Middle Eastern food. Many others at Princeton have listened to ideas, shared meals with me, and helped in innumerable ways, including Abrar Alshammari, Nancy Coffin, Bilal Khadim, Ayşe İlgezdi, Ömer Faruk İlgezdi, Meron Piotrkowski, Mathilde Sauquet, Fatih Tarhan, Lucia Waldschütz, Xinyi Wei, and Fatima Zaraket.

When I embarked on archival research in the UK, I was warmly welcomed in Cambridge by Geoffrey Khan, Andrew Marsham, and Lorenzo Bondioli. My readings of documents with Geoffrey made me understand the formulaic nature of documents. I am grateful to him for responding to many queries and questions up to the very end of this dissertation. The office space at FAMES made available for me was a blessing when I needed to establish a more rigorous writing routine. Johan Lundberg was a wonderful office companion. In Cambridge, I also met two of my very dear friends, Lale Yurtsever and Ana Castro. Our friendship came at a moment when I was heartbroken and disillusioned, needing comfort and hope. Our travels to Istanbul, Paris, and London have been a great source of joy and adventure. In Manchester, Martin and Klaudyna Jacoby adopted me like a family member, allowing me to introduce them to the American tradition of Thanksgiving. At the John Rylands Library, Jeremy Penner made almost every papyrus I asked for available to me.

To my own surprise, my research took me to Vienna, a place that—despite its proximity to Germany—I had never been to and that I fell in love with so much so that I ended up spending much longer than I had initially planned. At the Papyrussammlung of the Austrian National Library, I was generously welcomed by Sven Tost, Bernhard Palme, and Claudia Kreuzsaler,

who set up a desk for me and introduced me to the tools of papyrological research. Andrea Donau, Lavinia Ferretti, Sophie Kovarik, Csaba La'da, Mario Paganini, and Markus Resel patiently answered many questions about papyri. Two people have my heartfelt gratitude and admiration: Sven Tost, for our daily hours-long conversations just about everything and for his compassion and warmth despite the fact that we almost always disagree, especially on the topic of marriage. Every morning, I looked forward to chatting with him, and I know I have, more than once, distracted him from completing his many projects. Guus van Loon, for his friendship, kindness, and advice on translations, material aspects, and just about everything papyri-related. This dissertation would have turned out very different and with many more errors if I had not had the privilege of having a direct communication line with him on WhatsApp. In Vienna, many people and friends made life in the city a delight. Among others, Amina Belkhojayeva, Cornelia Römer, Stefan Schwarzgruber, and Leoni Sowa need to be mentioned in particular. Through Leonie, I keep learning about feminist theory, psychoanalysis, and the world of musicology. Our friendship and (now digital) conversations always inspire me and lead me on new paths of thinking and being.

During a month-long stay at the Monastery of St. Catherine's in Egypt in 2023, I unexpectedly developed my next research project. Fathers Justin and Hesyhios were kind enough to show me the many exciting documents that lie in the vaults of the Monastery, waiting to be researched. The staff members of the Monastery Guesthouse filled evenings there with many exciting stories and laughter.

When I arrived at Yale in the late summer of 2024, I found myself in a stimulating intellectual community. Aslı Ü. Bâli, Owen Fiss, Anthony (Tony) Kronman, and Bradley Hayes kindly welcomed me to the Abdallah Kamel Center at Yale Law School, where I had the chance

to receive detailed feedback on many of my dissertation ideas. Kevin van Bladel has been supportive right from the beginning, listening to my arguments and showing me new directions. Noel Lenski pushed me to think about pre-modern law beyond artificial time periods and disciplinary boundaries. When I suggested the idea of the Arabic Scribal Cultures Working Group, Roberta (Robin) Dougherty immediately expressed her support, and I could not have organized the group's year-long activities at the Beinecke without her continued enthusiasm. By allowing me to participate in their seminar, Robert Nelson and Vasileios Marinis rekindled my excitement about the Monastery of St. Catherine's and to go forward with this research project. Meanwhile, I learned much from my co-fellows at the Kamel Center, Yaara Perlman, Rami Koujah, and Ibrahim El Houdaiby. Sharing an office with Yaara has been wonderful, and our Pizza outings with Brian and Ben have always lifted my spirits. I also want to thank Aseel Alfataftah, Michelle Al-Ferzly, Nicholas Aubin, Adam DeSchriver, Estelle Guéville, John Habib, Ashher Masood, Ramona Teepe, Arielle Winnik, and Rafail Zoulis for the conversations we had. I am incredibly grateful to Estelle. She was the first person I met at Yale, and her friendship and knowledge of the Digital Humanities have been a source of inspiration. I also want to thank Sarah Skolnick and Grant Nippler for our meetings with the "post-doc group" and for taking my mind off academic things during a tumultuous year.

Others who have exchanged ideas with me or provided support in other ways need to be mentioned. The SSRC group at the American Society for Legal History gave important feedback on chapter four (initially the first chapter). Bhavani Raman, Daniel Sharfstein, John Wertheimer, and the SSRC participants pushed me to think about Islamic law in global and more accessible terms. I am grateful to all of them, especially Thirumalai Achintya, Haris Durrani, Zoë Jackson, and E.T. Stone. At the ISAP conference in the Fayyoum, I presented parts of chapter two and

met many scholars working in the burgeoning field of Arabic papyrology. I am thankful to Theresa Grabmaier and Andreas Kaplony for inviting me. At the year-long East of Byzantium Workshop, I received helpful comments on chapter one. Thanks to Brandie Ratliff, Christina Maranci, Michael Pifer, Salam Rassi, and all the participants for their critical questions. At the Medieval Studies Graduate Conference at Princeton, organized by Lucia Waldschütz and Alice Morandy, I presented parts of chapter three and got drawn into material history approaches. During the summer of 2024, Brendan Haug and Monica Tsuneishi generously welcomed me to Ann Arbor, a stay that was supported by a Youtie Family grant. Others whom I met in various venues over the years and with whom I exchanged ideas about this dissertation must be mentioned: Francisco Cintrón Mattei, Raashid Goyal, Olmo Gölz, Daniel Kolland, Radka Pallová, Athina Pfeiffer, Rachel Richman, and Yusuf Umrethwala.

Many of my earlier mentors have shaped my academic journey in profound ways, and without their support, I would not have ended up writing this dissertation. My gratitude goes to Ulrich Rebstock for his sustained faith in me and encouragement from very early on. It is due to him that I began to study Islamic law. In Ankara and Beirut, I had the best mentors I could have hoped for, many of whom made me rethink how I approach the study of the Middle East. Derya Göçer Akder, Meliha Altunışık, Nader El-Bizri, Mario Kozah, John Meloy, and Gülriz Şen need to be singled out. Dahlia Gubara forever changed my view of history. Her class may have been the single most mind-orienting class I have been to, and it is on her that I started reading poststructuralist theory and psychoanalysis when I started my PhD.

My close friends from previous life stages, who continue to spend time with me and open their doors whenever we meet in person, need to be especially thanked. Kathleen (Kitkat) Fichtner, for always offering me a home, laughter, and great conversation and allowing me to

take over her Berlin apartment on various occasions. Magnus Zimmermann, for his generosity and our deep discussions about life. Bri Schröder, for introducing me to clowns and always warming my heart. Felix Beckmann, for our very long friendship and for letting me drag him to Mauretania and several other places around the world. Janina Santer, for pushing me to consider a PhD and for our shared academic journey in Beirut and now the US. Jan Altaner, for always impressing me with his Arabic and for being there during various personal crises. Michael Repnack, my longest childhood friend, for making sure we reminisce together about days now long gone. I also want to thank Oğuz Cabar, Nazlı Gül Deniz, Camilla Garder, Josefa Glass, Eiko Hager, Suna İçöz, Rabeeh Abou Ismail, Ali Khansa, Helge Lilleorg, Saleh Moheidly, Bouchra Mossmann, and Wissam Nuwayhid for the many fun hours and experiences we shared. With Wissam, I always feel like entering a different reality—when with him, I never doubt that I can ascend the divine ladder.

Ziad Eldanaf is a category of his own. He is my first virtual friend, and he has had to listen to so many poorly constructed Arabic sentences that I sometimes feel sorry for his ears. Interestingly, he is the person I met most often and continuously over the last three years, and I always enjoy our conversations about politics, history, and just about everything going down in the world.

The final paragraphs of acknowledgments are typically reserved for people most dear to the author, and so it is here. My family has always been a source of support, even when they could not understand the decisions I took. My parents, Silke and Ulrich, have come to terms with my wanting to be a historian of Islam, and they have, on more than one occasion, offered their emotional and physical support. I love and thank them both. My mother may be the only person in the world traveling thousands of miles to drive a U-Haul from Chicago to New Haven. It is

through her intuition, far-sightedness, and support-no-matter-what that I have come to be the person I am today. My sister Anni is a constant source of inspiration, strength, wonder, and intellectual curiosity for me. I have learned so much from her over the years, and I always cherish the ease, warmth, and respect with which we talk and let each other be. My grandmother Gerda always listens to my adventures with compassion, and on her first visit to the United States last year, she became a great fan of Chicago. My grandfather Karl-Heinz did not see the completion of this dissertation, but I have always had him dearly in my heart.

During my master's at the American University of Beirut, I was always impressed by the university motto, inscribed in marble, which I looked at every day as I exited through the Main Gate. It rings in my ears these days more than it has ever before:

لتكون لهم حياة وليكون لهم أفضل

That they may have life and have it more abundantly.

NOTE ON CONVENTIONS AND TRANSLITERATIONS

This dissertation draws on a wide array of evidence from historical subfields adhering to different conventions and best scholarly practices. A certain degree of inconsistency is thus inevitable. When referencing papyri, I have prioritized the ease with which readers may want to locate and check original sources, which is why I always list all the available editions in footnotes. Following the appendix, readers can find a concordance that provides the papyri editions along with their inventory numbers. I hope this list is helpful for novices to the world of documents, since locating papyri editions and inventory numbers normally requires specialized knowledge of navigating document databases. For dates after the early Muslim community's emigration to Medina (1/622), I use the double format of the Hijrī calendar (AH) followed by the common era (CE) date to give readers a sense of temporality germane to the periodizations and historical frameworks used in their respective fields.

Transliterations in the dissertation follow the "IJMES Transliteration System for Arabic, Persian, and Turkish" and the Romanization tables of the Library of Congress. For place and personal names, I often prioritize the Arabic transliterated version. When quoting passages from Arabic, especially in the papyri, I provide the original script rather than transliterations. I have made this editorial choice mainly because Arabic papyri are often fragmentary and typically written without diacritics, thus lending themselves to an array of possible readings and interpretations that transliterations cannot adequately represent. By providing the original script, I hope readers may more easily join in filling in paleographic gaps and help improve readings. Translations in the dissertation are my own unless otherwise indicated.

INTRODUCTION

One day in Fusṭāṭ during the 760s, a member of the Banū Miskīn—whose identity remains unknown—appealed to the newly appointed Muslim judge (*qāḍī*), Abū Khuzayma. Not so long before, the family had been involved in a dispute about some endowed property (*ḥubs*), and they had obtained a judgment by bringing the case before a judge. It was likely one of the previous judges holding office in Fusṭāt—perhaps Ghawth b. Sulaymān or Khayr b. Nuʿaym al-Khadramī—who had heard the case and issued the verdict. When asked to enforce the judgment, Abū Khuzayma hesitated. Should he uphold it, annul it, or reevaluate the case for its merits? Could he be sure the judgment presented was issued by a judge? The petitioners objected: "If the words of judges before you are of no use in front of you, then your words will not be of use in front of judges after you." With that, Abū Khuzayma enforced the judgment.[1]

A little less than a century earlier, in the Thebaid of Upper Egypt, a Christian woman and her troublesome son found themselves ensnared in arbitration. Although the substance of their dispute remains unclear, it must have involved some form of relocation, either a temporary visit or a permanent move, some 48 miles (μίλια) away. The two had already undergone the lengthy arbitration process once before. Papas, the Pagarch of Edfu, had presided over the tribunal.[2] In a

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[1] Ibn ʿAbd al-Ḥakam, *The History of the Conquests of Egypt, North Africa and Spain Known as Futūḥ Miṣr*, ed. Charles C. Torrey (Yale Oriental Series, 3, New Haven: Yale University Press, 1922), 242; Wakīʿ, *Akhbār al-quḍāh*, ed. ʿAbd al-ʿAzīz Muṣṭafā al-Marāghī, 3 vols. (Cairo: al-Maktabat al-Tijārīya al-Kubrā, 1947–1950), 3:234. Unlike some of his colleagues from a century earlier, who had experience in various branches of the Islamic government—whether in the police (*shurṭa*), treasury (*bayt al-māl*), or as public storytellers (*quṣṣāṣ*)—Abū Khuzayma had a different background. His expertise lay not in governmental affairs but in horses. He had been a merchant of halters and, even as a judge, continued to sell them occasionally, even if it meant briefly interrupting an ongoing court hearing (*majlis al-ḥukm*). Apart from his occasional side hustle, Abū Khuzayma appears to have had high moral standards. Offered a generous monthly salary of 10 Dinars, he refused to accept pay for Fridays, stating, "I'm an employee of the Muslims. When I don't work for them, I shouldn't take their property." Ibn ʿAbd al-Ḥakam, *Conquests of Egypt*, 241–242.

[2] For the special political status of pagarchs and their wide-ranging authorities in late antique Egypt, see, for example, Harold I. Bell, "The Aphrodito Papyri," *Journal of Hellenic Studies* 28 (1908), 97–147, at 101–107;

Greek papyrus written by Papas's father and former pagarch, Liberios, the latter gives instructions to Papas to resolve the matter once and for all and "force them to submit entirely" to the next round of arbitration. As evidence of the son's character, Liberios mentions a testimony he had received from the "most reputed Andreas," who swore on the Holy Scriptures informing the arbiter (δικαστής) of all the details he knew. As if the testimony weren't enough, Liberios adds, "Don't we all know the nature of that woman's son?" He ends his letter to Papas with an admonition, enclosing the testimony, "so that in the future you will not allow anyone to wrong their opponent unjustly."[3]

By the eighth century, the legal landscape in Egypt was rapidly changing, and the cases above highlight contrasting extremes within this shifting environment. When the Christian woman and her son were headed into another round of arbitration, the resolution of disputes by pagarchs, bishops, and monks in the countryside had become an all-too-common procedure—one that most ordinary Egyptians were (painfully) familiar with. As most people knew, the arbitration system was defunct. It was a system that had become overly reliant on maintaining hierarchical loyalties with rural clergy and lay officials and dissuading litigants from taking their disputes into higher venues of law. Excessive fiscal penalties for defying arbitration settlements

Matthias Gelzer, *Studien zur byzantinischen Verwaltung Ägyptens* (Leipzig: Quelle & Meyer, 1909), 90–99; Jairus Banaji, *Agrarian Change in Late Antiquity: Gold, Labour, and Aristocratic Dominance* (Oxford: Oxford University Press, 2001), 100; Matthias Stern, "Der Pagarch und die Organisation des öffentlichen Sicherheitswesens im byzantinischen Ägypten," *Tyche: Beiträge zur Alten Geschichte, Papyrologie und Epigraphik* 30 (2015), 119–144, at 127–133; and Anna C. Kelley, "Building Women's Social Capital in Late Antique Egypt: Business Owners and Civic Administrators," *Byzantine and Modern Greek Studies* 48, no. 1 (2024) 1–21, at 16.

[3] P.Apoll. 61. For the redating of this and other papyri from the Edfu jar into the late seventh century, see Jean Gascou and Klaas A. Worp, "Problèmes de documentation Apollinopolite," *Zeitschrift für Papyrologie und Epigraphik* 49 (1982), 83–95. For the social network of Papas and other documents from the Edfu find, see Anne Boud'hors, "Situating the Figure of Papas, Pagarch of Edfu at the End of the 7th Century: The Contribution of the Coptic Documents," in *Living the End of Antiquity: Individual Histories from Byzantine to Islamic Egypt*, ed. Sabine R. Huebner et al. (Berlin and Boston: De Gruyter, 2020), 63–72.

constituted the norm, not the exception. Even excommunication loomed as a threat—not only for ordinary believers but also for lower-level clergy who failed to adhere to episcopal directives. Things had not always been this way. Since the mid-sixth century, however, courts were largely off-limits, inaccessible to the ordinary populace. In their absence, there were few judicial restraints on the actions of local powerbrokers. To be clear, the arbitration system had very little to do with the Arab Muslim newcomers who had conquered Egypt in the 640s and continued to settle in the Nile Delta in successive waves of migration. It was much older than that. Its origins lay in the Byzantine world, where political, social, and religious factors coincided, gradually turning into the backbone of the judicial system. Perhaps the Christian woman felt a sense of nostalgia for the olden times—assuming she had heard of them—when justice moved to a different rhythm and when the voice of simple Egyptians still echoed in the halls of Roman courts. But that era was now long gone.

The literary anecdote about Abū Khuzayma and the point about the finality and enforceability of judgments (*res judicata*) across the judicial spectrum that it seeks to drive home reflects a moment of renewed expansion of the state judiciary. Over the seventh and eighth centuries, the Islamic administration began issuing binding legal documents to the populace. These documents promised to ensure the enforcement of their legal claims, not by reference to the much-hated pagarchs or the local bishop, but via an expanding body of judicial personnel working in the service of the Islamic state. Abū Khuzayma was one of the representatives of this new system. For ordinary people like the anonymous Christian woman, the real import of this shift lay not in the fact that they began to frequent Muslim courts—to the contrary, local arbitration continued, as evidenced by the many Greek and Coptic arbitration-related documents—but in the *possibility* of circumventing and challenging the entrenched authority of

local clerics and lay officials. In short, the rise of an Islamic state-run jurisdiction functioned as a check on and gradually curbed the power of local judicial authorities. The result was not the eradication of Christian forms of dispute resolution but the emergence of limitations on the previously unchecked judicial and executive authority held by clerics and pagarchs. In this dissertation, I examine the social and legal developments that determined Egypt's judicial landscape over two and a half centuries, following in the footsteps of figures like the anonymous Muslim petitioner of the Banū Miskīn and the Christian woman and her son to understand how they navigated its evolving complexities.

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This dissertation tells the story of how the legal and social fabric of late antique Egypt changed from the mid-sixth to the late eighth century, during which the Egyptian populace witnessed large-scale political changes, from the sixth-century recession of the Byzantine state to the short-lived Sasanid invasion of the 610s to the Arab Muslim conquests and Egypt's permanent incorporation into the Islamic empire. As a social and material history, the dissertation traces these changes from the vantage point of ordinary people and objects. Among the *ordinary*, we find peasants, simple believers, and illiterates. The dissertation excavates how they navigated Egypt's changing legal landscape, what legal strategies and calculations they adopted in the face of abuses by local administrators due to a steadily decentralizing state system, how they kept, preserved, and related themselves to legal and official documents issued by the Islamic state, and how they gradually became absorbed into the project of Islamic governance. The dissertation employs documentary, literary, archeological, diplomatic,

sigillographic, and numismatic evidence drawn from sources in Arabic, Greek, and Coptic, building on recent advances in the fields of Arabic papyrology, Islamic historiography, legal history, and late antiquity studies.

The dissertation argues that long before the political turnover of Egypt in the seventh century, ordinary people in the Byzantine province witnessed a judicial crisis. This judicial crisis had its roots in the gradual waning of Byzantine state institutions and a shift of power towards local administrators in the Egyptian countryside, specifically pagarchs, bishops, and monks. It marked a decisive rupture with previous centuries under Roman and Byzantine governance, during which Egyptians were highly litigious and determined to bring their disputes before official courts. As this crisis unfolded in the mid-sixth century, Byzantine courts became largely inaccessible to the ordinary populace as judicial disputes were now—a development enforced locally and by the imperial administration—exclusively to be resolved by means of arbitration and mediation. This led to severe frustrations among the ordinary populace, who found themselves locked in lengthy arbitration procedures, unable to access impartial justice and to appeal arbitration verdicts. The consolidation of the Islamic state, operating in Fusṭāṭ and through its intermediaries in the Egyptian countryside, provided a remedy to this situation as administrators began to issue binding legal documents in Arabic that secured the property claims of the ordinary populace via reference to Islamic state power and coercion. As the fledgling Islamic state consolidated and expanded its legal personnel, stepping into the shoes of its Byzantine predecessor by upholding the value and social function of legal documents, new legal avenues opened for ordinary people, allowing them to bypass local administrators and appeal directly to state authority. This development, I argue, constituted the birth of an Arabicized system of justice that would become the foundation of Islamic law, especially in the domains of

administrative law, legal procedure and documentation, standards of evidence, and witnessing practices.

In the remainder of the introduction, I sketch the fields to which the dissertation contributes, the methodological choices I make, and the stakes of the project.

0.1 Periodization and the Paradigm of Late Antiquity

Since the pioneering publication of Peter Brown's *The World of Late Antiquity* in 1971, "late antiquity" (in German "Spätantike" and French "antiquité tardive") has turned into a critical framework or perspective for the study of Mediterranean societies and religions that has more recently extended to territories much further eastward including Central Asia.[4] Definitions regarding the exact time period encapsulated by this framework vary, with most studies envisioning the years 200–750 CE—often demarcating its end with the Abbasid Revolution.[5] There is no denying that the expansion of the limits of antiquity beyond the Arab Muslim conquests has shaped the study of Mediterranean societies in three important ways: First, it has shifted the scholarly focus away from Western Europe towards the Eastern parts of the Roman

[4] See Peter Brown, *The World of Late Antiquity: From Marcus Aurelius to Muhammad* (London: Thames and Hudson, 1971). Brown did not introduce the term. Alois Riegl first employed it in a monograph on the art history of late Rome; Alois Riegl, *Stilfragen: Grundlegungen zu einer Geschichte der Ornamentik* (Berlin: Verlag von Georg Siemens, 1893). Arguing for the need of a global perspective on late antiquity, Mark Humphries notes that various historical processes and phenomena typically associated with the Roman empire can be observed across a wide range of cultural settings across Eurasia between the third and the eighth century; Mark Humphries, "Late Antiquity and World History: Challenging Conventional Narratives and Analyses," *Studies in Late Antiquity* 1, no. 1 (2017), 8–37, at 28.

[5] Proponents of the "first millennium" push the boundaries further. Garth Fowden contends that the first millennium, as a distinct periodization and intellectual framework, became an integral part of the "mental toolkit" of Christian, Muslim, and Jewish scholars. He sees the cultural and literary achievements of this era in full swing in the cosmopolitan environment of Abbasid Baghdad, as evidenced by the translation movement and widespread engagement with classical texts. Garth Fowden, "Late Antiquity, Islam, and the First Millennium: A Eurasian Perspective," *Millennium* 13, no. 1 (2017), 5–28.

Empire—Anatolia, the Levant, Iran, and even North Africa.[6] The picture unfolding in the deserts of Egypt and in the Anatolian hinterland was much different from the massive urban decline and the large-scale migrations that scholars had observed in the Roman West: From sprawling ascetic movements to cultural and artistic innovations and the massive translation of the Greek and Sanskrit cultural heritage into Eastern languages, the fifth and sixth centuries east of Constantinople hardly seemed to fit the notorious decline that Edward Gibbon had attested for the Western Roman empire almost two centuries earlier.[7] Second, with this geographical reorientation came a historiographical shift toward society and religion. Brown was influenced, among others, by the work of his friend Michel Foucault, whose third volume of the *History of Sexuality* was published just four years before *The Body and Society*. Brown's acute observations regarding the place of the body in the late antique world—its status as a juncture of power relations, resistance, and the divine—underscored a shift away from the grand narratives of political and economic histories and spawned an analytical commitment to understanding social life.[8] One need look no further than the bloody martyrdoms of the likes of Perpetua, the lustful sins of Mary of Egypt or Pelagia, or the self-imposed deprivations of Anthony to realize how the body occupies center stage in nearly every textual genre from this period.[9] Lastly, by extending

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6 See Edward James, "The Rise and Function of the Concept 'Late Antiquity,'" *Journal of Late Antiquity* 1, no. 1 (2008), 20–30, at 24–25.

7 Edward Gibbon, *The History of the Decline and Fall of the Roman Empire*, 6 vols. (London, 1776–1788).

8 "Christians were as appalled as Jews had been by the indeterminacy of the body. […] The body was a 'sacrosanct temple,' intended by God to be joined, if at all, only to members of the opposite sex, and then, ideally, only so as to produce children. Indeterminacy of any kind was disturbing to late antique persons;" Peter Brown, *The Body and Society: Men, Women and Sexual Renunciation in Early Christianity* (London and Boston: Faber and Faber, 1988), 438. Glen W. Bowersock argues that the spectacle of Christian martyrdom was a function of "the *mores* and structure of the Roman empire," deeply embedded in the traditions and language of the Graeco-Roman world and the power relations it produced; Glen W. Bowersock, *Martyrdom and Rome* (Cambridge: Cambridge University Press, 1995), 28.

9 See Thomas J. Heffernan, tr., *The Passion of Saints Perpetua and Felicity* (Oxford: Oxford University Press, 2012), 125–235; Sebastian P. Brock and Susan A. Harvey, tr., "Mary, the Niece of Abraham of Qidun" and

antiquity into the Islamic period, Brown went against the all-too-common periodization that viewed the Arab Muslim conquests as a decisive rupture in the Middle East. Historians and scholars of religion have since focused on tracing "continuities" and expanded their analytical toolkits to reflect the continued cultural cache of Roman, Sasanid, and other pre-Islamic ideas, concepts, and institutions past the artificially imposed boundary of the rise of Islam. These continuities have become ever more pertinent, especially against the backdrop of the academic realization of the slow pace of conversion to Islam and the continuation of administrative structures and practices in the first two centuries of Islamic rule.[10]

This dissertation grows out of this body of scholarship on late antiquity. Building on the edited volume *Denkraum Spätantike*, I approach late antiquity as a shared space of epistemic, semiotic, and embodied practices that transcended political, religious, and social divisions, where a common body of knowledge circulated freely among diverse people and communities.[11] The implication of this approach is that I assume literary and documentary texts, as well as material artifacts from this period, to have been in constant communication and interaction with each other and that to make sense of them, we must read them back and forth across time and cultural spaces. Whenever referring to "Christians," "Muslims," "Jews," or other religious denominations, I am never referring to homogenous or hermetically sealed groups. Indeed, the

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"Pelagia," in *Holy Women of the Syrian Orient* (The Transformation of the Classical Heritage, 13, Berkeley: University of California Press, 1998 [1987]), 27–62; and Athanasius of Alexandria, "Life of Anthony by Athanasius," in *Early Christian Lives*, tr. Carolinne White (London: Penguin Books, 1998), 7–70.

[10] See the important findings and graphs on the topic of conversion by Richard Bulliet. Bulliet shows that in Egypt and Syria conversions to Islam did not pick up before the ninth century. The situation was different in Iran, where large-scale conversions already began in the mid-eighth century; Richard W. Bulliet, *Conversion to Islam in the Medieval Period: An Essay in Quantitative History* (Cambridge: Harvard University Press, 1979).

[11] Nora K. Schmid, Nora Schmidt, and Angelika Neuwirth, "Spätantike: Von einer Epoche zu einem Denkraum," in *Denkraum Spätantike: Reflexionen von Antiken im Umfeld des Koran*, ed. Nora K. Schmid, Nora Schmidt, and Angelika Neuwirth (Episteme in Bewegung: Beiträge zu einer transdisziplinären Wissensgeschichte, 5, Wiesbaden: Harrassowitz, 2016), 1–35, at 14–17.

Christological and early Islamic theological debates in this period illustrate the wide range of religious, social, and political beliefs these groups held, even if, as Jack Tannous argues, they may not have as thoroughly impacted "simple believers" as much as previously thought.[12]

Despite the predominance of the late antiquity paradigm and the increased focus on continuity, it has arguably had little influence on the overall periodization embraced in studies of early Islam, which continue to be structured along the main strokes of a well-known political grand narrative shaped by successive political dynasties. For example, in his recent monograph *A History of the Muslim World*, Michael Cook divides the early Islamic period into "Muḥammad's message," "Muḥammad's state," "the early Caliphate," "the Umayyad dynasty," and "the ʿAbbāsid dynasty."[13] Patricia Crone once tartly remarked that much Western scholarship on the first two centuries of Islam "has an alarming tendency to generate into mere rearrangements of the same old canon—Muslim chronicles in modern languages and graced with modern titles."[14] While the field of Islamic historiography has evolved significantly since Crone's assessment (a point I will return to), when it comes to periodization, most of us still seem to be faithful followers of the dynastic model. In the seventies, Shelomo Goitein suggested a much different periodization informed by the dominance of Arab leadership and growing Arabization. His division into "Arabism and Arabic Islam" (500–850 CE) and the "Intermediate Civilization"

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[12] Tannous argues that the Christological distinctions (e.g., Chalcedonian, Miaphysite, etc.) were of little significance to ordinary believers, who regularly interacted with people of different creeds; Jack Tannous, *The Making of the Medieval Middle East: Religion, Society, and Simple Believers* (Princeton: Princeton University Press, 2018), 105. See also Jack Tannous, "You Are What You Read: Qenneshre and the Miaphysite Church in the Seventh Century," in *History and Identity in the Late Antique Near East*, ed. Philip Wood (Oxford: Oxford University Press, 2013), 83–102.

[13] See Michael Cook, *A History of the Muslim World: From Its Origins to the Dawn of Modernity* (Princeton and Oxford: Princeton University Press, 2024).

[14] Patricia Crone, *Slaves on Horses: The Evolution of the Islamic Polity* (Cambridge: Cambridge University Press, 1980), 13.

(850–1250 CE) not only shifted the beginnings of Arab dominance further back into antiquity but also pushed the watershed moment of its end from the Abbasid Revolution to the mid-ninth century, specifically to the foundation of Samarra in 838. That moment, so Goitein, symbolized "the end of Arabic supremacy and the beginning of the domination of the Middle East by persons and peoples of Turkish extraction."[15] The intriguing thing about periodization in early Islamic historiography is the widespread acknowledgment among scholars of the need to integrate the field within the framework of the late antique world. Yet, there has been a noticeable lack of alternative periodizations that align with this methodological commitment and effectively explain social, economic, and religious phenomena across the seemingly rigid historical boundary marked by the Arab Muslim conquests (or, if you will, the Prophet's lifetime). As Fred Donner notes, periodizations are a fundamental and useful component of the historian's toolkit.[16] For historians (as opposed to politicians), they primarily serve to subsume a set of historical developments and phenomena they wish to explain. Nevertheless, each periodization (including the one suggested here) comes with its own analytical limitations, and no periodization is "comprehensive" and useful for all aspects of history, but avoiding any and all periodization is neither feasible nor useful.

The periodization I propose in this dissertation differs from those previously mentioned. It emerges not from theoretical considerations but from the bottom-up examination of hundreds of Greek, Coptic, and Arabic documents and long-form (i.e., often referred to as narrative or literary) sources, arguing that a decisive rupture occurred in the mid-sixth century when the

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[15] Shelomo D. Goitein, "A Plea for the Periodization of Islamic History," *Journal of the American Oriental Society* 88, no. 2 (1968), 224–228, at 226.

[16] See Fred M. Donner, "Periodization as a Tool of the Historian with Special Reference to Islamic History," *Der Islam* 91, no.1 (2014), 20–36.

process of shifting power from Byzantine official courts to rural powerbrokers had been largely completed. It is not this shift in power itself but rather the effects it had on the ordinary populace that determine this periodization. For the next two centuries or so, Egypt was an arbitration society in which courts were, by and large, inaccessible to the commoner—a social reality that structured the legal and social calculations of the rural populace, as well as those in charge of resolving disputes as arbiters and mediators. Concerns over impartiality, fairness, and the ambition to move upward in the judicial system regularly feature in the documents from this period. While it may be too early to demarcate the end of this period, things began to rapidly change by the mid-eighth century, which is when we see the consolidation of Islamic legality in the form of official courts and the emergence of a growing body of jurisprudential literature at the hands of Muslim intellectuals. Again, it is the effects of that development that delimit this periodization. Already in the late seventh century, the Islamic state began to issue legally binding documents to Muslims and non-Muslims (e.g., quittances, promissory notes, etc.), and these documents were increasingly important to ordinary people because they secured their legal claims towards fellow citizens via reference to the expanding Islamic state personnel and its institutions. There is no denying that arbitration continued to be the predominant vehicle for the resolution of social disputes. But the expanding body of documents issued by the representatives of this new polity meant that—at least in theory—ordinary people could now circumvent the constraints of local arbitration and appeal to a third, external party that secured their legal rights. By the end of this process, monks and bishops still functioned as arbiters, but their power was now constrained by a new level of jurisdiction that had gradually solidified above them and could reverse judgments. Like any periodization, this one has limitations: It may be of little use for describing theological and religious phenomena like conversion and is even less suitable for

tracing linguistic changes across the Middle East. That said, I believe it effectively captures and explains several interrelated social processes in Egypt during this period, including, but not limited to, the consolidation of judicial powers by rural middlemen, the disappearance of court documentation, the notable rise in arbitration records, the frequent frustrations about the judicial process voiced by commoners, the increasing emphasis placed by arbiters on their judicial reputation, and the Islamic state's investment in written legal documentation.

0.2 A World of Documents

Arabic papyrology constitutes a relatively young subfield within Islamic history. Despite its origins in the late nineteenth century, when European Orientalists and traders began to take note of the extensive cultural heritage written on papyrus and paper, the field has until the early 2000s been relatively isolated from the heated debates characterizing early Islamic historiography.[17]

[17] Foundational studies are, among others, those by Josef von Karabacek, Carl H. Becker, Adolf Grohmann, Nabia Abbott, Werner Diem, Geoffrey Khan, and Yūsuf Rāġib. See, for example, Josef von Karabacek, *Der Papyrusfund von El-Faijûm: Mit 4 Tafeln* (Vienna 1882); Josef von Karabacek, *Das arabische Papier: Eine historisch-antiquarische Untersuchung: Mit 1 Lichtdrucktafel und 2 Textabbildungen* (Vienna: Verlag der kaiserlich-königlichen Hof- und Staatsdruckerei, 1887); Josef von Karabacek, *Papyrus Erzherzog Rainer: Führer durch die Ausstellung: Mit 20 Tafeln und 90 Textbildern* (Vienna: Alfred Hölder, 1894); Carl H. Becker, *Papyri Schott-Reinhardt I: Mit Unterstützung des Grossherzoglich Badischen Ministeriums der Justiz, des Kultus und Unterrichts: Mit 12 Tafeln in Lichtdruck* (Heidelberg: Carl Winter's Universitätsbuchhandlung, 1906); Adolf Grohmann, *Allgemeine Einführung in die arabischen Papyri nebst Grundzügen der arabischen Diplomatik: Mit Fünf Abbildungen im Texte* (Vienna: Burgverlag, 1924); Adolf Grohmann, *Arabic Papyri in the Egyptian Library*, 6 vols. (Cairo: Egyptian Library Press, 1934–1962); Nabia Abbott, *The Ḳurrah Papyri from Aphrodito in the Oriental Institute* (Studies in Ancient Oriental Civilization, 15, Chicago: University of Chicago Press, 1938); Adolf Grohmann, *Arabic Papyri from Ḫirbet El-Mird: With 10 Figures in the Text and Thirty-Three Plates* (Louvain: Institut Orientaliste, 1963); Werner Diem, *Arabische Briefe auf Papyrus und Papier aus der Heidelberger Papyrus-Sammlung*, 2 vols. (Wiesbaden: Harrassowitz, 1991); Werner Diem, *Arabische Briefe aus dem 7.–10. Jahrhundert*, 2 vols. (CPR, 16, Vienna: Verlag Brüder Hollinek 1993); Werner Diem, *Arabische Briefe des 7. bis 13. Jahrhunderts aus den Staatlichen Museen Berlin*, 2 vols. (Wiesbaden: Harrassowitz, 1991); Geoffrey Khan, *Arabic Papyri: Selected Material from the Khalili Collection* (Studies in the Khalili Collection, 1, Nour Foundation, 1992); and Yūsuf Rāġib, *Actes de vente d'esclaves et d'animaux d'Égypte médiévale*, 2 vols. (Cahier des Annales islamologiques, 23, Institut Français d'Archéologie Orientale, 2002). The study of the Cairo Genizah, most of which date to the Fatimid and later periods, has developed into a subfield within the study of Arabic documents. See the foundational studies by Shelomo D. Goitein, *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza*, 5 vols. (Berkeley: University of California Press, 1999 [1967–1983]); and Geoffrey Khan, *Arabic Legal and Administrative*

The reasons for this are complex, and I discuss them in chapter three. Nowadays, Arabic documents can be found in the libraries of Europe and North America much more than in those of the Middle East.[18] The incipience of papyri collections in the West is closely entwined with the colonial history of European political domination in the Middle East and the sweeping extraction of material and human resources.[19] In response to the German *Papyruskartell*, which by World War I had made significant acquisitions of papyri in Egypt, Francis W. Kelsey, Professor of Latin language and literature at the University of Michigan, proposed the establishment of a consortium of North American universities to pool money, send out a representative to Egypt for the acquisition of papyri, and then divide the spoils between these institutions.[20] Other papyri and ostraca (potsherds) were originally intended as loans—a practice

Documents in the Cambridge Genizah Collections (Cambridge University Library Genizah Series, 10, Cambridge: Cambridge University Press, 1993).

[18] The Egyptian National Library now holds only a little more than 3,000 Arabic papyri. For comparison, the Austrian National Library holds about 50,000 (in addition to 37,000 Arabic paper documents), the Oxyrhynchus Papyri Collection at the University of Oxford more than 5,000, the Institut für Papyrologie at Heidelberg University about 3,200, the Michaelides Collection at the University of Cambridge 1,218, the Département des Arts de l'Islam at the Louvre more than 1,000, the John Rylands Library in Manchester about 800, the Marriott Library at the University of Utah 770, the Beinecke Library at Yale University 636, the University of Michigan Papyrology Collection 500–600, the Institute for the Study of Ancient Cultures at the University of Chicago more than 300. These numbers stem from private correspondences with Sven Tost, Fred Donner, Geoffrey Khan, and Monica Tsuneishi, as well as data from the collections' websites.

[19] A historical-critical study of this historical process is yet to be written. Articles focusing on the origins of papyrological collections in the West often uncritically frame papyri and manuscript acquisitions in Egypt as initiatives led in the name of historical knowledge and preservation. See, for instance, Helene Loebenstein, "Vom ‚Papyrus Erzherzog Rainer' zur Papyrussammlung der Österreichischen Nationalbibliothek: 100 Jahre Sammeln, Bewahren, Edieren," in *Festschrift zum 100-jährigen Bestehen der Papyrussammlung der Österreichischen Nationalbibliothek: Papyrus Erzherzog Rainer (P. Rainer Cent.): Textband* (Vienna: Brüder Hollinek, 1983), 3–39.

[20] The consortium operated in partnership with the British Museum, which received the papyri for basic conversation purposes from Egypt before forwarding them to the US. The consortium consisted of several rotating members that included the University of Wisconsin, Cornell University, Princeton University, and Columbia University. See Arthur Verhoogt, *Discarded, Discovered, Collected: The University of Michigan Papyrus Collection* (Ann Arbor: University of Michigan Press, 2017), esp. 1–17. For the history of the German Papyruskartell, see Oliver Primavesi, "Zur Geschichte des deutschen Papyruskartells," *Zeitschrift für Papyrologie und Epigraphik* 114 (1996), 173–187.

that came under increasing criticism by the Egyptian government in the 1930s. Some of these objects were returned, but many were not.[21] The history of papyri acquisitions is not simply an interesting historical sidenote but crucial to understanding the current state of papyri collections in the West. As Arthur Verhoogt notes, purchases through the consortium were not divided according to the provenance of the papyri but rather based on the shares each institution held in the consortium, with complete pieces generally being considered most attractive. As a result, papyri of shared provenance and related fragments were regularly divided among various institutions, where they remain separated to this day.[22]

As a field, Arabic papyrology has generally evolved as an extension of Greek papyrology. During acquisitions, purchases heavily favored Greek documents, reflected in the much higher number of Greek papyri throughout collections in the world. Moreover, Classics and Byzantine studies extended their periodization into the field of Arabic papyrology. The label "early Islamic" as used in papyrological studies is usually reserved for documents until the late eighth century, which is when Greek documents gradually begin to disappear from the record.[23] In contrast to Greek papyrology, Arabic papyrology lags far behind, and estimates suggest that only about 1% of the total Arabic documents available have been edited and translated.[24] The field's intellectual dependency on Greek papyrology also expresses itself in the fact that scholars

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[21] Brendan Haug, "Politics, Partage, and Papyri: Excavated Texts Between Cairo and Ann Arbor (1924–1953)," *American Journal of Archaeology* 125, no. 1 (2021), 143–163, at 145.

[22] Arthur Verhoogt, *Discarded, Discovered, Collected*, 8.

[23] Lajos Berkes, "Introduction: A Papyrological Perspective on Christians and Muslims in Early Islamic Egypt," in *Christians and Muslims in Early Islamic Egypt*, ed. Lajos Berkes (American Studies in Papyrology, 56, Durham: American Society of Papyrologists, 2022), 1–9, at 1.

[24] In 2015, Johannes Thomann noted that out of 150,000 Arabic papyrus and paper documents only about 2,500 have been edited (=1.67%); Johannes Thomann, "The Arabic Papyrology Database," *Digital Scholarship in the Humanities* 30, supplement 1 (2015), i185–i186, at i185.

of Arabic papyrology have, by and large, adopted similar conventions of publication and developed research tools that closely resemble those used by Greek papyrologists.[25]

Anyone familiar with Islamic historiography knows that the study of long-form sources has shaped the major debates regarding the origins of Islam. Documents—by which I mean texts not written for posterity (i.e., with the goal that future generations will read them) but due to the immediate social value they presented to those issuing or receiving them—have only recently entered these discussions.[26] Compared to long-form sources, the study of documents raises very different methodological problems. More often than not, these texts are fragmentary, difficult to decipher, and embedded in social and scribal logics that are critical to understanding them. Working with these documents is as if you found a handwritten shopping list from the 1960s from a deceased relative and now tried to reconstruct the social world surrounding that document. Does the list feature items to be purchased for a special occasion? What do the items tell us about what people consumed at the time? Was it common to write such lists? Why was the document not discarded after it had fulfilled its purpose? And what does the paper it is written on tell us about the production of writing supports in the 1960s? It is true that compared to long-

[25] The Arabic Papyrology Database (APD), created by Andreas Kaplony and Johannes Thomann in 2004, has had a major influence on the development of the field and, until this day, serves as an important digital resource that brings together the editions and translations of Arabic documents dispersed throughout libraries and archives, while also offering a variety of search and research tools. Other important research tools, such as the "Checklist of Arabic Documents," have only recently led to the streamlining of papyrological research by introducing a standardized system of abbreviations and citation conventions. See, Petra M. Sijpesteijn, John F. Oates, Andreas Kaplony, Eva M. Youssef-Grob, and Daniel Potthast, "The Checklist of Arabic Documents," LMU Institut für den Nahen und Mittleren Osten, https://www.naher-osten.uni-muenchen.de/isap/isap_checklist/index.html, accessed January 23, 2025.

[26] Even when documents were kept in state and private archives—including in storage jars in the homes of ordinary people—their preservation was primarily related to the fact that they may become useful again for purposes of taxation, litigation, and other interactions individuals had with the state rather than future generations using them as sources of knowledge and education. As I discuss in chapter one, in the case of state archives, surveillance and control played a critical role, too.

form sources, the study of documents offers a more "down-to-earth perspective" by offering insights into the everyday affairs and administrative practices of late antique Egypt.[27]

But this characterization errs too much on the side of conceiving documents as gap-fillers for research problems not strictly raised by them. My point is that Islamic historiography still continues to operate on the terms defined by long-form sources, but obviously we should not restrict ourselves to employing documents *only* as convenient vehicles to finding answers to questions shaped by these sources. In contrast to long-form sources, the study of documents enables an unprecedented intimacy with the Islamic state and society: They bring into focus the scribal cultures and material practices that supported its functions, the manufacturing of writing supports, the circulation of documents within various power networks, archival practices, and the challenges to imperial communication posed by widespread illiteracy. If we take a step back from the long-form sources—we will keep them in sight—we can approach state-building and legality in this period from a much different angle, even if it means that we must leave behind some of the convenient periodizations and concepts the long-form sources offer.

Although documents hold significant potential to illuminate justice and legal practice, Islamic legal studies—with a few exceptions—has yet to fully incorporate these sources as a matter of routine scholarly practice. The recent studies by Lucian Reinfandt, Jelle Bruning, Mathieu Tillier, Petra Sijpesteijn, and Christian Müller signal the conversation that has started to form around the possibilities of employing the papyrological record for sketching judicial structures in the earliest period of Islam, even if much of these discussions have focused on the role of *qāḍī*s and provincial governors in the administration of justice.[28] The relative neglect of

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[27] Lajos Berkes, "Introduction," in *Christians and Muslims*, 2.

[28] See Lucian Reinfandt, "Crime and Punishment in Early Islamic Egypt (AD 642–969): The Arabic Papyrological Evidence," in *Proceedings of the Twenty-Fifth International Congress of Papyrology: Ann Arbor: Juli 29–*

documents in Islamic legal studies is surprising on at least one count. For decades, scholars have discussed the chasm between Islamic legal theory and practice (the "gap problem"), at times coming up with creative strategies to analytically parse "law in action" and work around the representational problems posed by long-form sources.[29] Examining documents, of which we have thousands from all periods of Islamic civilization (even if most come from Egypt rather than anywhere else), would seem to be a sensible approach to addressing the longstanding theory-practice debate.

There are, to my mind, two significant hurdles that prevent most Islamicists from studying Islamic law in this period via documents. The first relates to the relatively high entry barriers for studying Arabic documents, which typically require, in addition to excellent knowledge of Arabic, a set of specialized skills in paleography, diplomatics, and other technical fields. The second is that papyrological typologies—of which we have many—divide documents

August 4, 2007, ed. Traianos Gagos (Ann Arbor 2010), 633–640; Lucian Reinfandt, "Local Judicial Authorities in Umayyad Egypt (41–132/661–750)," *Bulletin d'études orientales* 63 (2015), 127–146, at 129; Jelle Bruning, "A Legal 'Sunna' in 'Dhikr Ḥaqqs' from Sufyanid Egypt," *Islamic Law and Society* 22, no. 4 (2015), 352–374; Mathieu Tillier, *L'invention du cadi: La justice des musulmans, des juifs et des chrétiens aux premiers siècles de l'Islam* (Paris: Publications de la Sorbonne, 2017); Petra M. Sijpesteijn, "The Continuum Approach: Multiple Legal Solutions to Run a Diverse Empire," Islamic Law Blog (February 18, 2021), https://islamiclaw.blog/2021/02/18/the-continuum-approach-multiple-legal-solutions-to-run-a-diverse-empire/, accessed January 23, 2025; and Christian Müller, *Recht und historische Entwicklung der Scharia im Islam* (Studies in the History and Culture of the Middle East, Berlin: De Gruyter, 2022).

[29] Focusing on punishment, Christian Lange deals with the theory-practice problem by expanding his sources to include "mirrors for princes, administrative handbooks, diplomas of investiture, dictionaries, literary prose, and poetry" in addition to normative legal texts; Christian Lange, *Justice, Punishment and the Medieval Muslim Imagination* (Cambridge: Cambridge University Press, 2008), 14. Kristen Stilt circumvents the gap problem by focusing on the market inspector (*muḥtasib*), whose decisions, while informed by Islamic law in theory, had to cater to the pragmatic needs of the social situation he or she encountered; Kristen A. Stilt, *Islamic Law in Action: Authority, Discretion and Everyday Experiences in Mamluk Egypt* (Oxford: Oxford University Press, 2011). Focusing on ninth and tenth-century al-Andalus, Janina Safran interprets casuistry in Mālikī legal texts as a form of testing the boundaries of theoretical legal discussions—a phenomenon that, she argues, was peculiar to the sociopolitical situation of Muslims in the Iberian Peninsula; Janina Safran, *Defining Boundaries in al-Andalus: Muslims, Christians, and Jews in Islamic Iberia* (Ithaca: Cornell University Press, 2013). On the gap problem, see also Baber Johansen, "Casuistry: Between Legal Concept and Social Praxis," *Islamic Law and Society* 2, no. 2 (1995), 135–156.

according to type, with the first word after the invocation (i.e., *basmala*) determining what type a document is (e.g., dafaʿa, ḥadara, barāʾa, etc.). Although useful for reasons I will mention below, these typologies at times obscure what exactly constitutes a legal document and what does not. For example, among papyrologists, tax receipts, promissory notes, and quittances are typically considered fiscal documents—which they no doubt are. But they also constitute legal documents, at least insofar as they specify a past or future transaction between parties that is considered legally binding. The broader issue here is that the intellectual functionalism imposed by papyrological classifications has severe analytical limitations and sometimes prevents us from seeing the bigger picture. To the best of my knowledge, for the first Islamic century, we have no *fatwā*s or court rulings in Arabic—documents that could be considered "proper" legal documents. But that must not deter us from examining other types of documents regarding their legal implications and relevance to the administration of justice. Even a private letter, written by an angry husband to his father-in-law—as I discuss in chapter two—can shed light on an institution as historically complex and scarcely understood for this period as the Muslim arbiter (*ḥakam*).

Two additional methodological considerations merit attention: the dating of documents and their fragmented nature. The dating of Arabic documents presents specific challenges since only a few documents can be dated securely based on an explicitly mentioned date in the text. Thus, in most cases, I rely on a combination of paleographic, formulaic, and contextual features to date documents. Certain paleographic features, such as the open *ʿayn*, the straight *alif*, the extended upward stroke of the *tāʾ marbūṭa*, and the final *yāʾ* stroke to the right, mostly appear in first/seventh-century documents (see Fig. 1–3). Building on Geoffrey Khan's observations about the increasing cursiveness of the Arabic script, Eva M. Grob demonstrates that by the third/ninth

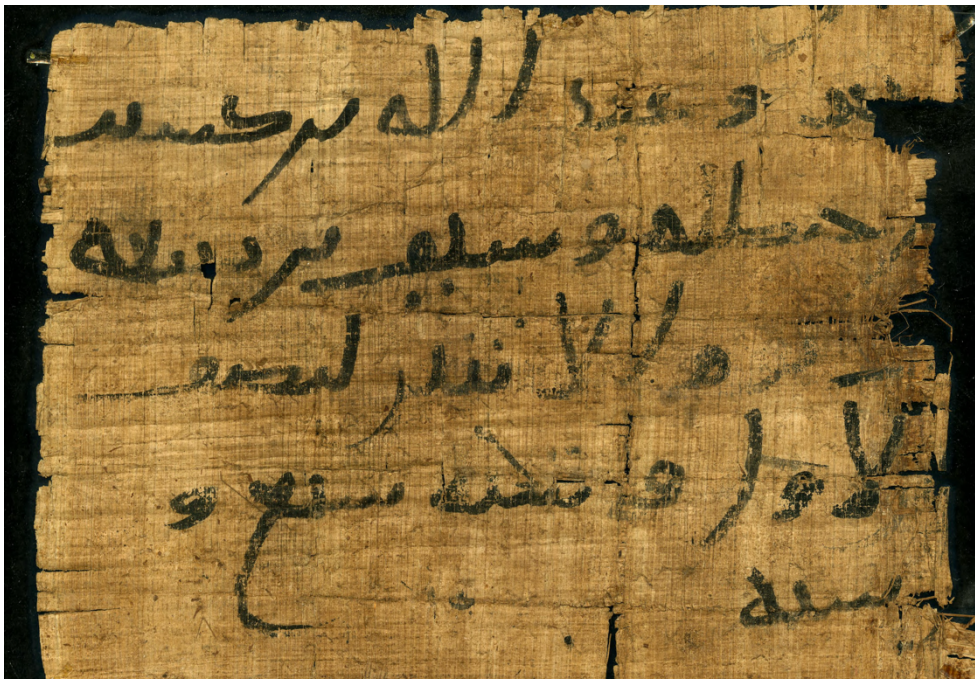


Fig. 1. First-century papyrus. P.TillierDebts 4 recto, dated to 57/677. Note especially the open *ʿayn*s and the extended upward stroke of the *tāʾ marbūṭa*. © University of Utah. Reproduced by kind permission of the University of Utah, Marriott Library (P.Utah 520 recto).

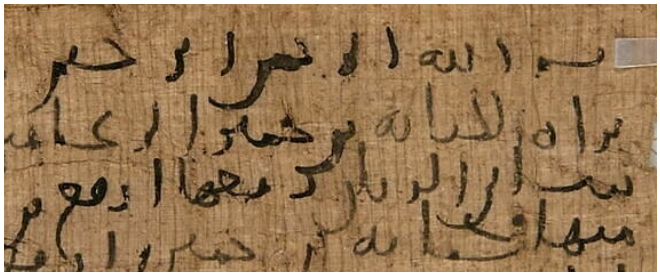


Fig. 2. Second-century papyrus. P.David-WeillLouvre 24, dated to 123/741. Note especially the disappearance of the open *ʿayn*. © Musée du Louvre. Reproduced by kind permission of the Musée du Louvre (P.Louvre JDW 19 recto). Photo credits: Claire Tabbagh.

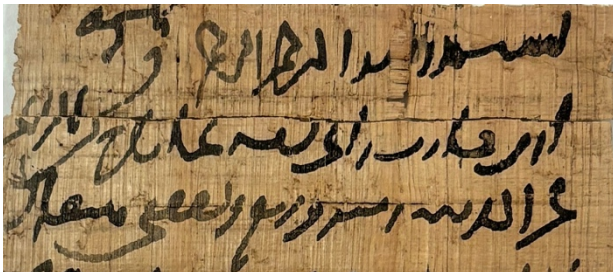


Fig. 3. Third-century papyrus. P.Mich. 4191 recto, dated to 252/866. Note the cursiveness of the script, the hanging baselines, and the overall tendency of the scribe to lift the pen less frequently. © University of Michigan Library. Reproduced by kind permission of the University of Michigan Library, Special Collections Research Center.

century, scribes increasingly wrote on hanging baselines at an angle of more than 5° and up to 10° to the overall writing line, creating the visual impression of Arabic writing being stacked on top of each other. In addition, she observes a tendency away from orthogonal Arabic script, with script angles now typically between 105° and 115°, but sometimes even more.[30] Other features,

[30] Geoffrey Khan, "The Khurasan Corpus of Arabic Documents," in *Late Antiquity: Eastern Perspectives*, ed. Teresa Bernheimer and Adam Silverstein (Exeter: Gibb Memorial Trust, 2012), 71–86, at 83–84; and Eva M.

such as the increasing stylization of the *basmala* by the third/ninth century and changes in the textual formulae, aid us in dating Arabic documents. I should note that this method of dating by no means constitutes an exact science, and unless the date can be determined through internal textual evidence, it often results in an estimate or a range of dates.[31]

Documents are fragments—frequently torn, split, and difficult to read. This circumstance is often as frustrating as it is generative of creative approaches for analyzing them. Early in this project, I began examining documents in clusters or groups of documents rather than treating them in isolation. (As I mention later, I do consider individual documents, particularly in relation to their material aspects, but that is distinct from their textual study.) For instance, when analyzing Arabic promissory notes (*adhkār ḥaqq*) and quittances (*barāʾāt*), I systematically focus on all documents of the same type available from the first/seventh and second/eighth centuries (chapter three). Documents of the same type typically follow similar or identical scribal and formulaic conventions. By understanding how the genre functions, we can more easily address paleographic and other gaps. Additionally, whenever a document is part of a dossier of related documents, I draw on the entire dossier to fill in gaps. For example, in the case of the Christian peasant couple discussed in chapter two, we have four separate documents that collectively facilitate restoring their social and economic background and the details of the lawsuit they faced. By approaching documents in groups, I avoid generalizing conclusions based on single documents while observing historical changes within genres of documents.

Grob, *Documentary Arabic Private and Business Letters on Papyrus: Form and Function, Content and Context* (Berlin: De Gruyter, 2009), 166–168.

[31] Since this dissertation focuses on broader patterns of institutional and social changes across two centuries, these date ranges are generally sufficient for the arguments presented.

0.3 History from Below, Ordinary People, and the Question of Authority in Early Islam

Despite the "documentary turn" in early Islamic historiography and the growing interest in documents written on papyrus and paper, histories of Islamic empire have been heavily skewed towards political and intellectual history approaches. It would be too simple to explain this circumstance only with the scholarly reliance on Arabic long-form sources, most of which, as is well known, were written in the late eighth and ninth centuries and thus offer a politically colored, if not distorted, view of the first centuries of Islam through the lens of the Abbasid political program as conveyed in Arabic chronicles, administrative handbooks, taxation manuals, exegetical and legal literature. The field-shifting impact of *Hagarism* was not its widely discredited argument that Islam emerged as a Jewish messianic movement intent on restoring the Temple in Jerusalem, nor that "the Koran was put together out of a plurality of earlier Hagarene religious works."[32] Its primary intervention, rather, lay in the historical criticism and methodological rigor that Crone and Cook demanded from historians of early Islam who had, by and large, been faithful followers of the Islamic traditional narrative—a historical methodology that Fred Donner refers to as the descriptive approach.[33] In the decades following *Hagarism*, the incorporation of sources in Syriac, Armenian, Middle Persian, Greek, Coptic or Ge'ez increasingly turned into a critical requirement for the serious historian of early Islam. This development marked an attempt to fill in the gaps caused by the long-held (yet erroneous)

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[32] Patricia Crone and Michael Cook, *Hagarism: The Making of the Islamic World* (London and New York: Cambridge University Press, 1977), 8–9 and 17.

[33] Fred M. Donner, *Narratives of Origins: The Beginnings of Islamic Historical Writing* (Princeton: Darwin Press, 1998), 5–9. Donner differentiates between descriptive, source-critical, tradition-critical, and skeptical approaches in Western scholarship on early Islam. Ibid., 5–25. He refers to *Hagarism* as "a milestone in the history of Islamic studies;" Fred M. Donner, "Retrospective Review of Patricia Crone and Michael Cook, *Hagarism: The Making of the Islamic World*," *Middle East Studies Association Bulletin* 40, no. 2 (2006), 197–199, at 197. On the impact of *Hagarism*, see also the comments by Jack Tannous in "Review of Fred M. Donner, *Muhammad and the Believers: At the Origins of Islam*," *Expositions* 5, no. 2 (2011), 126–141, at 126.

assumption that—apart from the Qurʾān—we possess no Arabic sources contemporary with the beginnings and earliest centuries of Islam.

One might expect that the historiographic shift towards non-Arabic sources and the subalterns of early Islam—Christians, Jews, Zoroastrians, Samaritans, and others—would inevitably propel historians towards social history or "history from below."[34] If, by that, we mean historical studies focused on the lower classes—which in Islamic historiography is frequently synonymous with the conquered and non-Muslim stratum of society—there is ample evidence to argue for a turn towards social historical studies. Specifically, from the 2000s onwards, we can observe a dramatic increase in communal histories (the history of Christians, Jews, Zoroastrians, etc.) in the field and a growing interest in the configuration of communal boundaries between conquerors and conquered, themes of communal violence and conversion, and the general status of non-Muslims under Islamic governance.[35] Simultaneously, the field of Syriac Christianity has more recently developed into an academic subfield, with a growing interest in the intellectual, social, and political encounters of Syriac Christians and Muslims.[36]

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[34] The phrase "history from below" was coined by the English social historian Edward P. Thompson, who described the 1960s developments in the historiography of English Labour—specifically, its increasing focus on factory discipline, food riots, and popular culture, among others—as a "liberation" that had long been "an alter ego of English History Proper;" Edward P. Thompson, "History from Below," *Times Literary Supplement* (7 April 1966), 279–280, at 280.

[35] See, for example, David Thomas, ed., *Syrian Christians under Islam: The First Thousand Years* (Leiden: Brill, 2001); Sidney H. Griffith, *The Church in the Shadow of the Mosque: Christians and Muslims in the World of Islam* (Princeton and Oxford: Princeton University Press, 2008); Thomas Sizgorich, *Violence and Belief in Late Antiquity: Militant Devotion in Christianity and Islam* (Philadelphia: University of Pennsylvania Press, 2009); Uriel Simonsohn, *A Common Justice: The Legal Allegiances of Christians and Jews under Early Islam* (Philadelphia: University of Pennsylvania Press, 2011); Lev E. Weitz, *Between Christ and Caliph: Law, Marriage, and Christian Community in Early Islam* (Philadelphia: University of Pennsylvania Press, 2018); Christian Sahner, *Christian Martyrs under Islam: Religious Violence and the Making of the Muslim World* (Princeton: Princeton University Press, 2018); Philip Wood, *The Imam of the Christians: The World of Dionysius of Tel-Mahre, c. 750–850* (Princeton and Oxford: Princeton University Press, 2021).

[36] See, for example, Michael P. Penn, *When Christians First Met Muslims: A Sourcebook of the Earliest Syriac Writings on Islam* (Oakland: University of California Press, 2015); Michael P. Penn, *Envisioning Islam: Syriac*

That said, communal history approaches have, in some ways, stepped into the shoes of and extended the lines of inquiry shaped by the grand narratives of Islamic political history: caliphs and governors, traditionally charged with being the agents of history, are replaced with bishops, monks, rabbis, *mowbed*s, and others, who are analytically entrusted with the "supervision" and "leadership" of religious communities. Cecilia Palombo has discussed some of the fault lines of this approach.[37] The communal history approach, then, can be considered social history insofar as it shifts focus to subaltern religious groups and the ways they were governed, but it is not inherently "social" in the sense of attributing agency to ordinary people. If, by social history, we imply a theoretical inversion of the classical model of imperial agency—where ordinary people take center stage in the historical narrative, not as passive recipients and processors of administrative orders, decrees, and reforms, but as active agents with concrete expectations who contributed to and challenged the social order through the everyday acts of petitioning and complaining—then such histories remain scarce. The rapid developments in Arabic papyrology as a subfield of Islamic history naturally lend themselves to studying the ways in which peasants, women, and ordinary believers interacted with the state and local administrators. But here, too, the role of ordinary people is sometimes reduced to that of "taxed subjects," their relationship with the Islamic state and its agents conjured as one predominantly shaped by the levy of taxes. This is, in part, due to the uneven proportions of tax receipts, payment orders (*entagia*), and account lists preserved in the papyrological record, a circumstance that has privileged inquiries

Christians in the Early Muslim World (Philadelphia: University of Pennsylvania Press, 2015); and Jack Tannous, *Medieval Middle East*.

[37] Palombo argues that with the "explosion" of late antiquity, the field has seen an influx of the Ottoman millet paradigm, whereby early Islamic society is conjured as multi-confessional and multi-lingual yet divided into juridical communities that operated along sectarian lines; Cecilia Palombo, "The Christian Clergy's Islamic Local Government in late Marwanid and Abbasid Egypt" (PhD diss., Princeton University, 2020), xx.

into the Islamic fiscal administration as evidenced by several past and ongoing research initiatives.[38] Advances in archeology and material history, too, have induced a sense that the material record of documents, epigraphs, physical structures, and everyday objects gives us access to the subjectivity and affective worlds of ordinary people.[39]

This dissertation is a social history in two interrelated ways. First, it adopts a "view from below" by focusing on the ordinary segment of late antique Egyptian society (peasants, wage laborers, women, and ordinary believers), reconstructing their economic and social conditions, interactions with state agents, and the ways that political and legal changes affected them. Although I draw on cases from monastic and spiritual settings, I am not primarily concerned here with studying the communal history of Christians in this period. In part, this relates to my earlier point about the roles of monks and bishops—figures I primarily examine in relation to the state rather than as communal leaders. Second, the dissertation narratively and theoretically centers on these segments of society as agents to understand the personal strategies and calculations that

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[38] See, for instance, the current ERC project at the University of Edinburgh entitled "Caliphal Finances – The Finances of the Caliphate: Abbasid Fiscal Practice in Islamic Late Antiquity" and various articles published on fiscality and the levying of taxes in the early Islamic period. Petra Sijpesteijn rightly notes that "land-holding patterns and fiscal policies are important indicators for the economic, social and sovereignty ambitions—and limitations—of political powers." Petra M. Sijpesteijn, "Locating Arabic Papyrology: Fiscal Politics in Medieval Egypt as a Test-Case for Setting Disciplinary Boundaries and Standards," *Bulletin of the American Society of Papyrologists* 51 (2014), 217–228, at 220. However, some much less-studied themes would equally aid us in understanding these ambitions, especially as they relate to the domains of law and justice, family life, and emotions. Note the important works done on these topics by Mathieu Tillier, Naïm Vanthieghem, Jennifer Cromwell, and Khaled Younes—all cited in this dissertation.

[39] Based on her ethnographic study of affect conducted at the border fringes of Northern Cyprus, Yael Navaro-Yashin concludes that "affect is neither produced by materialities nor by the inner world alone; it is produced through their interaction;" Yael Navaro-Yashin, *The Make-Believe Space: Affective Geography in a Postwar Polity* (Durham and London: Duke University Press, 2012), 159. Also, note the work by the art historian William J.T. Mitchell, who conceptualizes everyday images as "pseudo-living-forms," emphasizing their productive and affective capacities as forms that "produce new arrangements and perceptions of the world;" William J.T. Mitchell, *What Do Pictures Want? The Lives and Loves of Images* (Chicago and London: University of Chicago Press, 2005), 93. For a study laying open and synthesizing much of the available epigraphic, documentary, and numismatic evidence from the first two centuries of Arab Muslim rule, see Eugenio Garosi, *Projecting a New Empire: Formats, Social Meaning, and Mediality of Arabic in the Umayyad and Early Abbasid Periods* (Studies in the History and Culture of the Middle East, 42, Berlin and Boston: De Gruyter, 2022).

ordinary Egyptians adopted when all social and political odds seemed to be stacked against them. Reading the sources through this theoretical inversion of the problem of power leads me, as I will explain momentarily, to challenge existing notions of how state agents and imperial institutions secured their authority and legitimacy. Those who have followed in the path of Carlo Ginzburg know well that social history is not a self-contained universe confining itself to the nostalgic examination of ordinary people's lives but that it operates from the conviction that the state and its institutions take on much sharper contours as we recover how commoners navigated changing fields of power.[40] Therefore, social history, as laid out here, functions as a dual methodological approach: a substantive turn towards ordinary people while simultaneously providing a more nuanced and intimate portrayal of late antique states.

0.4 Legal Expectations and Judicial Reputation

I reconsider the above-stated assumption that fiscal relations were the primary factor structuring ordinary people's interactions with agents of the Islamic state by shifting focus to justice and legality as crucial determinants in the consolidation of empire and its garnering of political legitimacy. Three separate but intersecting historical considerations warrant this analytical centering of law.

The first concerns the role of law and litigiousness in Byzantium. With the Antonine Constitution of 212 CE and its formal granting of citizenship to all male subjects in the Roman Empire, Roman magistrates and lawyers confronted a rapidly growing body of case law that

[40] The fate of the sixteenth-century miller Menocchio from Montereale and the inquisition trial that led to his execution by the Church has turned into the classic model of microhistory; Carlo Ginzburg, *The Cheese and the Worms: The Cosmos of a Sixteenth-Century Miller*, tr. John and Anne C. Tedeschi (Baltimore: Johns Hopkins University Press, 1980 [1976]).

sprang from uncertainty about which provincial legal practices would survive into the future. The massive undertaking of the Justinian Code of the sixth century sought to formally resolve this ambiguity by using the tools of legal philosophy to cement the rules and principles deemed authoritative and by being silent about those no longer applicable.[41] This Roman preoccupation with law was by no means confined to the concerns of its metropolitan elites. The papyrological record from Egypt strongly indicates that the provincial newcomers to Rome took litigation in Roman courts seriously, traveling far, often persistently and eagerly, to receive legal redress. The reproduction of Roman imperial ideology through the court system, the societal agreement to channel social disputes into legal proceedings, and the social importance of written documents in preserving legal claims all shaped the daily lives and future expectations of ordinary Egyptians.

Building on this, the second historical issue relates to the question of the role and status of the law in the Islamic empire, particularly during the century and a half following the Arab Muslim conquests. Islamicists from Joseph Schacht to Marshall Hodgson to Wael Hallaq have—sometimes with great confidence—asserted the centrality of law to Islamic civilization. Schacht went so far as to refer to Islamic law as "the epitome of Islamic thought, the most typical manifestation of the Islamic way of life, the core and kernel of Islam itself."[42] Hodgson's distinction between "Islamic" and "Islamicate" ostensibly shifts away from law-centric definitions by placing personal piety and religion at the core of Islam. But Hodgson almost immediately reintroduces law through the backdoor of religion, noting that personal piety expresses itself in "cult requirements," which constitute "a wider range of social practices

[41] Clifford Ando, *Law, Language, and Empire in the Roman Tradition* (Philadelphia: University of Pennsylvania Press, 2011), 27–31

[42] Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 1.

associated more or less closely with Islamic religion, sometimes set forth in a uniform Sharîʿah law."[43] Expanding on Schacht's view, Wael Hallaq asserts "that law defined not only the Muslim way of life, but also the entire culture and psyche of Muslims throughout fourteen centuries" and that "there has never been a culture in human society so legally oriented as Islam."[44] The monolithic portrayal of Islamic law as the perennial and definitive core of Islamic society mirrors the self-proclaimed professional and social status of Muslim jurists as vital intermediaries between divine scripture and the interpretation of social norms. Furthermore, this perception is reinforced by the abundance of legal texts in early Islamic literature.[45]

The dependency of Islamic legal studies on the long-form accounts of Muslim jurists is perhaps no more obvious than in the fact that for a civilization claimed to be intensely legal-minded, surprisingly little is known about its legal system in the first Islamic century. This is not to suggest that the "origins question" plays no significant role in the field—on the contrary, it plays a critical role[46]—but to draw attention to the historiographical lack of clarity about what

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[43] Marshall G.S. Hodgson, *The Venture of Islam: Conscience and History in a World Civilization*, 3 vols. (Chicago and London: University of Chicago Press, 1974–1977), 1:74. For Hodgson, Islamic means "'of or pertaining to' Islam in the proper, the religious sense" and Islamicate "the social and cultural complex historically associated with Islam and the Muslims, both among Muslims themselves and even when found among non-Muslims." For his discussion of these terms, see ibid., 56–60. For a critique of Hodgson's sliding-scale model, see Shahab Ahmed, *What Is Islam? The Importance of Being Islamic* (Princeton and Oxford: Princeton University Press, 2016), 157–175.

[44] Wael Hallaq, "'Muslim Rage' and Islamic Law," *Hastings Law Journal: Matthew O. Tobriner Memorial Lectures* 54 (2002), 1705–1720, at 1707.

[45] In the *Fihrist*, the tenth-century stationer (*warrāq*) and bookseller Ibn al-Nadīm (d. 385/995) lists all the books that were available to him in Baghdad. The section (*maqāla*) on jurisprudence (*fiqh*) is by no means the longest, but it is detailed and comprehensive, indicating the wide circulation of books related to Islamic law among the learned elite at the time. Ibn al-Nadīm, *Kitâb al-Fihrist*, ed. Gustav Flügel, 2 vols. (Leipzig: Verlag von F.C.W. Vogel, 1872). On structural aspects of the *Fihrist* and its historical implications, see Devin Stewart, "The Structure of the *Fihrist*: Ibn al-Nadim as Historian of Islamic Legal and Theological Schools," *International Journal of Middle East Studies* 39 (2007), 369–387.

[46] Various approaches and theories have shaped the study of the origins of Islamic law, and much ink has been spilled on determining foreign influences in Islamic law. For its relationship with Roman and Byzantine law, see Joseph Schacht, "Foreign Elements in Ancient Islamic Law," *Journal of Comparative Legislation and International Law* 32, no. 3–4 (1950), 9–17; and Benjamin Jokisch, *Islamic Imperial Law: Harun-Al-Rashid's*

constituted Islamic law—if we can even call it that—in the first Islamic century. Law before the *madhhab*s, that is. With the exception of the papyrological studies mentioned above, historical treatments of Islamic law's emergence typically begin in the late second/eighth century, focusing on the sociological process of its intellectual maturation at the hands of jurists and its consolidation into private legal schools or interpretative communities.[47] While the first Islamic century is, by no means, considered a law-free zone, the prevailing historiographic narrative depicts it as a period of "law by executive order," sometimes termed "caliphal law." Patricia Crone and Martin Hinds assert that "the Umayyads," by which they mean the caliphs, "concerned themselves with all aspects of the Sharīʿa, not merely with the law of war, fiscality and other public matters […] they regularly lay down rules regarding marriage, succession, manumission and the like."[48] The academic view that Islamic law in the first century evolved as

Codification Project (Berlin and New York: De Gruyter, 2007). For its relationship with Syriac and Jewish law, see Judith R. Wegner, "Islamic and Talmudic Jurisprudence: The Four Roots of Islamic Law and Their Talmudic Counterparts," *American Journal of Legal History* 26, no. 1 (1982), 25–71 and Uriel Simonsohn, *A Common Justice*. For its relationship with Sasanid law, see Jany János, "The Four Sources of Law in Zoroastrian and Islamic Jurisprudence," *Islamic Law and Society* 12, no. 3 (2005), 291–332 and *Judging in the Islamic, Jewish and Zoroastrian Legal Traditions: A Comparison of Theory and Practice* (Farnham: Ashgate, 2012). In a study on the formulae contained in Arabic legal documents written on papyrus, Geoffrey Khan examined their relationship with Nabataean inscriptions and Southern Arabian documents written on wooden sticks; Geoffrey Khan, "The Opening Formula and Witness Clauses in Arabic Legal Documents from the Early Islamic Period," *Journal of the American Oriental Society* 139, no. 1 (January–March 2019), 23–40. On the problem of influences, see also Tobias Scheunchen, *Cosmology, Law, and Elites in Late Antiquity: Marriage and Slavery in Zoroastrianism, Eastern Christianity, and Islam* (Baden-Baden: Ergon, 2019).

[47] This literature is now vast. See, especially, Ahmed El Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (New York: Cambridge University Press, 2013. El Shamsy argues that by copying, expanding, abridging, and commenting on the works of their teacher, the students of Muḥammad b. Idrīs al-Shāfiʿī began to conceive of themselves as an interpretive community with a shared body of foundational texts. See also Christopher Melchert, *The Formation of the Sunni Schools of Law: 9th–10th Centuries C.E.* (Leiden, New York and Köln: Brill, 1997); Yasin Dutton, *The Origins of Islamic Law: The Qurʾan, the Muwaṭṭaʾ and Madinan ʿAmal* (New Delhi: Lawman (India) Private Limited, 1999); Jonathan E. Brockopp, *Early Mālikī Law: Ibn ʿAbd al-Ḥakam and His Major Compendium of Jurisprudence* (Leiden, Boston and Köln: Brill, 2000); Harald Motzki, *The Origins of Islamic Jurisprudence: Meccan Fiqh before the Classical Schools* (Leiden, Boston, and Köln: Brill, 2002); and Wael Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005).

[48] Patricia Crone and Martin Hinds, *God's Caliph: Religious Authority in the First Centuries of Islam* (Cambridge: Cambridge University Press, 2003 [1986]), 53. Building on Schacht, they argue that caliphal law was constituted by the executive orders of the caliphs, who, they claim, were also involved in resolving local disputes as a result

an extension of caliphal authority is unsurprising, given that it is largely based on later classical sources narrativizing Islam's formative period rather than ordinary people's encounters with law. Added to this, over the last decades, legal pluralism has firmly established itself as a framework in the field, but it has, more or less, turned into an academic truism that seems to add little to the academic conversation unless we begin to examine its extents and limits and whether these were a function of pragmatic, real world limitations or the result of conscious theorization.[49]

To sum up, then, there are compelling reasons and opportunities presenting themselves by approaching ordinary life in late antique Egypt through the lens of the law and judicial institutions.

That said, there is a third, rather pressing issue that permeates the study of law across the artificially imposed academic division into Byzantine and Islamic Egypt. It is as if Byzantine and Islamic law stand on isolated mountains, separated by a deep historiographical and methodological chasm. To venture from one to the other, you must descend the mountain of Byzantine law and climb a steep and treacherous terrain to ascend the peak of Islamic law. Once you reach the second summit, the first mountain vanishes out of sight, with its contours blurred, shrouded in a thick mist of concepts and political structures that appear strangely unfamiliar. As you watch the climbers ascend the peak, you realize they are equipped with unlike tools,

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of their political subsidiaries writing to them to give opinions on cases. The view that Islamic law was initially tantamount to caliphal law and then developed into jurists' law was recently restated by Christian Müller, *Recht und historische Entwicklung*. For the shortcomings of this narrative, see my review of Müller's monograph, Tobias Scheunchen, "Review of Christian Müller, *Recht und historische Entwicklung der Scharia im Islam*," *Bulletin of the School of Oriental and African Studies* 87, no. 2 (2024), 378–380.

[49] The notion of legal pluralism posits the coexistence of multiple jurisdictions and the ways in which people navigated a plurality of legal systems. See, for example, Uriel Simonsohn, *A Common Justice*; Anver M. Emon, *Religious Pluralism and Islamic Law: Dhimmīs and Others in the Empire of Law* (Oxford: Oxford University Press, 2012); and Lena Salaymeh, *The Beginnings of Islamic Law: Late Antique Islamicate Legal Traditions* (Cambridge: Cambridge University Press, 2016). See also the reflections on legal pluralism as a "research perspective," rather than a "theory," by Ido Shahar and Karin C. Yefet, "Rethinking the Rethinking of Legal Pluralism: Toward a Manifesto for a Pluri-Legal Perspective," *Law and History Review* (2023), 1–13.

chanting melodies unknown to each other. Some have been courageous enough to build bridges between the peaks but have often failed—their bridges collapsing halfway or remaining so fragile that not the lightest traveler dares to cross. Perhaps we have spent too much time studying the peaks. After all, sturdy bridges are not built from summits, but by studying the conditions of and establishing firm foundations in the valley below.

To study the conditions of the valley—as suggested by my metaphorical description of the chasm between Byzantine and Islamic historiography—and to rethink authority and the kinds of relations the Egyptian populace maintained with the Byzantine and Islamic states, we need fresh concepts. To that end, I learned a great deal from histories and historical theorizations outside these specialized historical subfields. Reinhart Koselleck introduces experience (*Erfahrung*) and expectation (*Erwartung*) as a conceptual pair that shapes and determines the unfolding of historical time. For Koselleck, "experience is present past, whose events have been incorporated and can be remembered."[50] As humans interact with the world surrounding them, they experience a wide range of behaviors, emotions, and affects. Registered by the human sensory and cognition, experience becomes internalized through memory and is transmitted to future generations through speech, behavior, and—as current studies suggest—genetics. The experience that individuals and groups accumulate in their navigating the political, economic, social, and legal domains all structure their expectations regarding the future. Accordingly, expectation is

> at once person-specific and interpersonal, [it] also takes place in the today; it is the future made present; it directs itself to the not-yet, to the nonexperienced, to that which is to be

[50] Reinhart Koselleck, *Futures Past: On the Semantics of Historical Time*, tr. Keith Tribe (New York: Cornell University Press, 2004 [1979]), 259.

> revealed. Hope and fear, wishes and desires, cares and rational analysis, receptive display and curiosity: all enter into expectation and constitute it.[51]

Expectations are always prognoses about the future based on past experiences. They project into the future—and, as I contend, onto political and social structures—desires and concrete wishes about how the future is to be shaped. I do not employ these analytical categories quite in the metaphysical sense that Koselleck suggests.[52] Historically, there is little doubt that people's expectational horizon can radically change within just a few or even one generation, as perhaps indicated by the striking examples of the Crusades or the Mongol invasions. But in the case of the political changes that occurred in Egypt with the Arab Muslim conquests, historical proxies such as the lack of conversion to Islam, the heavy and continued reliance on local non-Muslim administrators, and the linguistic impact of substrates on the Arabic language all point to the reality that ordinary people's expectations about the state of affairs were neither thoroughly disappointed, nor rapidly changing. The crucial point about legal expectations is not that people have them—which is obvious—but that the state and institutional actors must consider and adapt to them when shaping policies, communicating with the public, and building legitimacy. I argue that, shaped by centuries of Byzantine rule, Egyptians had specific expectations about legal process and legal documentation, specifically, regarding the function of and social value attributed to documents (chapter three) and the performance of modesty by those vested with judicial authority (chapter four).

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[51] Ibid., 259.

[52] Koselleck observes a drifting apart of experience and the horizon of expectation in the early modern period (*Neuzeit*), arguing that utopian conceptions of life entered human experience and ideals of progress and continuous perfection became inscribed in the horizon of expectation. Ibid., 263–275.

My analytical focus on the legal and social expectations of the Egyptian populace dovetails with what economists, political sociologists, and, more recently, scholars of the law have termed path dependence.[53] This concept does not simply state that "history matters" but that the sequencing of earlier legal developments and outcomes shapes the future of a legal system, with the costs of switching to alternative forms of political, social, or legal organization being high. Paul Pierson, who developed the concept in political sociology, emphasizes that path dependence does not imply the inevitability of historical processes. Instead, it highlights that as political agents receive positive feedback, "the relative benefits of the current activity compared with once-possible options increases over time."[54] By integrating the legal expectations of ordinary people with the framework of path dependence, we can analytically address the problem of social and legal continuity in late antique Egypt from the ground up, avoiding reliance on categories and concepts (e.g., caliphal law, consolidation, canonization) already embedded in specific periodizations of the early Islamic era. The resilience of social and political norms, as

[53] The concept originated in economics, where it has been used to understand the adoption of new technologies ("market outcome") for which adopter preferences and technological possibilities alone do not suffice as explanatory factors. The argument is that over time established technologies operate under conditions of increasing returns, even if they are not as effective as new ones. The costs of switching to alternatives are high enough to prevent investment in new technologies. Paul David's point about the persistence of the QWERTY keyboard layout is especially illuminating; Paul A. David, "Clio and the Economics of QWERTY," *American Economic Review* 75, no. 2 (1985), 332–337. See also W. Brian Arthur, "Competing Technologies, Increasing Returns, and Lock-In by Historical Events," *Economic Journal* 99, no. 394 (1989), 116–131. Margaret Levi defines path dependence as follows: "Path dependence has to mean, if it is to mean anything, that once a country or region has started down a track, the costs of reversal are very high. There will be other choice points, but the entrenchments of certain institutional arrangements obstruct an easy reversal of the initial choice. Perhaps the better metaphor is a tree, rather than a path. From the same trunk, there are many different branches and smaller branches. Although it is possible to turn around or to clamber from one to the other—and essential if the chosen branch dies—the branch on which a climber begins is the one she tends to follow." Margaret Levi, "A Model, a Method, and a Map: Rational Choice in Comparative and Historical Analysis," in *Comparative Politics: Rationality, Culture, and Structure*, ed. Mark I. Lichbach and Alan S. Zuckerman (Cambridge: Cambridge University Press, 1997), 19–41, at 28. For the concept's application concerning the common law, see Oona A. Hathaway, "Path Dependence in the Law: The Course and Pattern of Legal Change in a Common Law System," *Iowa Law Review* 86 (2001), 101–165.

[54] Paul Pierson, *Politics in Time: History, Institutions, and Social Analysis* (Princeton: Princeton University Press, 2004), 21.

captured by my conceptual suggestion of expectations, resonates with recent studies in the field of late antiquity, which explore the long political persistence of the Roman empire in the face of repeated occupations and political crises between the fourth and sixth centuries.[55]

A brief discussion of the stakes of legal expectations is in order. Why should judges, arbiters, mediators, and others in charge of dispensing justice care about ordinary people's expectations regarding legal process and adjudication? While authority surely matters, we need to add two further conceptual pieces to link expectation and authority analytically. Influenced by the political and legal developments in the United States of the last decade, legal scholars have started paying close attention to the judiciary's reputation and the ways the public monitors judicial activity. As Nuno Garoupa and Tom Ginsburg note, the notion of judicial reputation internalizes the agency model, according to which judges, courts, and other representatives serve as agents selected by the populace for the fulfillment of specific tasks. Their communication with different audiences that monitor them (e.g., political stakeholders, the public, judicial figures of lower rank, and other jurisdictions) and accountability towards the populace (the "principal") leads judicial institutions to invest in their reputation.[56] This model of judicial reputation, I argue, is not unique to contemporary political settings. Indeed, the radical shift in the sixth century

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[55] Tracing five consecutive crises from the Battle of the Milvian Bridge in 312 to the fall of Ostrogothic Rome and its Justinianic reconstruction, Michele R. Salzman argues for the pervasiveness of Roman "institutions, values, and social networks" and the resilience of the senatorial class who significantly slowed the fall of Rome. Michele R. Salzman, *The Falls of Rome: Crises, Resilience, and Resurgence in Late Antiquity* (Cambridge: Cambridge University Press, 2021), esp. 21–17. See also Dimitri Van Limbergen, Sadi Maréchal, and Wim De Clercq, ed., *The Resilience of the Roman Empire: Regional Case Studies on the Relationship between Population and Food Resources* (Oxford: BAR Publishing, 2020).

[56] Nuno Garoupa and Tom Ginsburg, *Judicial Reputation: A Comparative Theory* (Chicago and London: University of Chicago Press, 2015), 14–49. As Garoupa and Ginsburg note, monitoring the outcomes of something as abstract as law, as opposed to certain material goods, generates agency problems for the principal, who may struggle to evaluate their quality and effectiveness. The authors further break down the concept of judicial reputation into the individual and collective reputation of judges, both of which are in a feedback loop with each other.

towards arbitration as the primary means for the resolution of social disputes required those vested with judicial authority to devise strategies to endow their judicial activity with the veneer of authoritativeness. From monks who issued legal documents that adhered to official conventions to arbiters following established protocols for the arbitration process to *qāḍī*s staging public displays of modesty, the late antique judiciary was acutely aware that their actions were under scrutiny and had the potential to sway public opinion against them. For the Islamic state, this reality posed a particular problem: To establish itself as a lasting political entity, its representatives needed to take stock of existing expectations regarding the judiciary and invest in a judicial decorum that established and maintained the populace's confidence in its institutions. Legal expectations and judicial reputation, as approached here, complement each other, allowing us to observe the administration of justice in this turbulent political period from below and above.

0.5 Egyptian Exceptionalism and Imperial Dynamics

It is well-known that most documents—in Greek, Coptic, Arabic, and many other languages—come from Egypt. Favorable climatic conditions, especially in Upper Egypt, characterized by dryness, heat, and little humidity, have been a blessing for historians, preserving papyri and other written artifacts from the ravages of time over millennia. We know that papyrus was employed in places as far away as Britain, but the rainy and humid conditions of the British countryside are less than ideal for keeping these documents intact over centuries—even if, ironically, that is where many are now conserved. Outside of Egypt, Arabic papyri were discovered during

excavations in the Levant and Iraq.[57] More recently, the corpora of Arabic documents from Khurāsān, held in a private family archive, have received some attention. In the Berkeley collection of Middle Persian documents, scholars have identified a few fragments in Arabic.[58] For the Islamic period, the most significant documentary caches outside Egypt were found in Dunhuang and Afghanistan. The former is a massive repository of documents discovered by Taoist monk Wang Yuanlu in the Mogao caves on the edge of the Gobi Desert, featuring hundreds of documents in Sogdian, Pahlavi, Bactrian, and Syriac, among many other languages.[59] The relatively uneven geographic distribution of documents for the Byzantine and Islamic periods raises the historiographical problem of how representative we can deem conclusions drawn from these documents for the Byzantine and Islamic empires at large. Marina Rustow notes that the human geography of Egypt, where habitation and agriculture are largely confined to the shores of the Nile, may be considered expectational in that the papyrological footprint of other regions (think Syria or Lebanon), where inhabitants settled in much more diffuse patterns, might—if it had been preserved—be much more extensive, given the challenges

[57] Finds were made in Damascus, Nessana, Be'er-Sheva, Khirbet el-Mird, and Samarra. For references, see Geoffrey Khan, "Khurasan Corpus," 71.

[58] See Guitty Azarpay, Kathleen Martin, Martin Schwartz, and Dieter Weber, "New Information on the Date and Function of the Berkeley MP Archive," *Bulletin of the Asia Institute* 17 (2003), 17–29; and Geoffrey Khan, "The Arabic Paper Fragments from Berkeley," *Bulletin of the Asia Institute* 17 (2003), 31–34.

[59] The documents at Dunhuang were found in a cave that was likely sealed in the eleventh century, but much speculation persists about the precise reasons for its sealing. See, for example, Xinjiang Rong and Valerie Hansen, "The Nature of the Dunhuang Library Cave and the Reasons for Its Sealing," *Cahiers d'Extrême-Asie*, 11 (1999–2000), 247–275. See also the website of the International Dunhuang Programme, a platform that contains thousands of digitized documents; International Dunhuang Programme, https://idp.bl.uk/, accessed January 26, 2025. For the fraught history of the Afghan Genizah, see Cecilia Palombo and Donna Yates, "Digital Transit Ports for the Illicit Trade in Antiquities: The Case of the 'Afghan Genizah,'" *Digital Scholarship in the Humanities* 38, no. 1 (2023), 257–276.

such settlement patterns pose to imperial communication.[60] Even within Egypt, the distribution of the papyrological record is highly skewed: most documents come from the countryside in Upper Egypt, often found in ancient trash heaps, and only a few survive from the moist Nile Delta, where the Byzantine and Islamic governments maintained provincial administrations in Alexandria and Fusṭāṭ, respectively.

I address this distribution dilemma in two ways. First, I examine the Egyptian documentary evidence alongside documentary and long-form sources originating in other parts of the late antique world (e.g., Constantinople, Khurāsān, Arabia). For example, in chapter three, the sizable corpus of Arabic quittances (*barāʾāt*) from Khurāsān—which exhibit only minor formulaic differences from their Egyptian counterparts—serves as a control group, highlighting the remarkable consistency of scribal norms across two distant regions of the Islamic empire. Similarly, the societal shift towards arbitration explored in chapters one and two is substantiated by a careful reading of the Justinian Codex and the handbook of a Constantinopolitan administrator, which ultimately explains what the papyrological record suggested all along. While this approach does not entirely resolve the distribution dilemma, it partially mitigates the effects of the skewed papyrological record.

Building on this point, the narrative presented in this dissertation about the legal and social changes in Byzantine Egypt and the unfolding of Islamic legality oscillates between the local, regional, and imperial. It is not, to be clear, a comprehensive history of Islamic law across the empire but a study of its evolution and cementation within the Egyptian province. That said, this localized history considers the broader imperial developments that shaped the social,

[60] Marina Rustow, *The Lost Archive: Traces of a Caliphate in a Cairo Synagogue* (Princeton and Oxford: Princeton University Press, 2020), 28–29. See also Roger S. Bagnall, *Reading Papyri, Writing Ancient History* (London and New York: Routledge, 2020), 7–13.

political, and legal context of Egypt. At times, evidence from the metropole or other regions is indispensable to solidify the arguments presented. For example, the judicial crisis that swept mid-sixth-century Egypt is understood much better when considered in light of the Justinianic reforms and broader patterns of outsourcing justice in Byzantium; the formulae and relative consistency of scribal conventions across Arabic documentary culture by as early as the mid-seventh century become clearer when placed against the backdrop of scribal and epigraphic developments in the pre-Islamic Arabian Peninsula; and the nature of scribal developments in Egypt comes into sharper relief in the context of Khurāsān as a hub of innovation in writing support technologies and scripts. This conception of historical writing dovetails with the approach of some global historians, who aim not for limitless coverage of the entire planet but for "writing a history of demarcated (i.e., non-"global") spaces, […] with an awareness of global connections and structural conditions."[61] In analogy, the history presented here is centered on the Egyptian province—stretching from the Mediterranean southward to Syene/Aswān—with analytical consideration of its regional connections and broader structural conditions.

0.6 Objects That Speak and the Ancillary Sciences

In this dissertation, I draw on insights from various technical fields that have sat uncomfortably alongside the discipline of history and have only recently shed their subordinate status as *Historische Hilfswissenschaften* (ancillary or auxiliary sciences): papyrology (i.e., the reading and interpretation of ancient documents), philology (i.e., the study of texts), paleography (i.e., the decipherment of documents and manuscripts), diplomatics (i.e., the study of official documents and their authenticity), sigillography (i.e., the study of seals), numismatics (i.e., the

[61] Sebastian Conrad, *What Is Global History?* (Princeton and Oxford: Princeton University Press, 2016), 12.

study of coins), and archeology (i.e., the study of human activity through buildings and material culture).[62] Born in the eighteenth-century intellectual climate of the University of Göttingen at the hands of Johann C. Gatterer, Karl T.G. Schönemann, and Johann G. Fessmaier, among others, these technical fields were originally devised to serve historians as a secondary toolkit to gather historical evidence.[63] As Marina Rustow notes, the aspects of scribal culture, however, revealed through a serious engagement with these technical fields afford an intimate perspective of the institutional logics and mechanics in which documents were produced that hardly justify the dismissal of these fields as "secondary."[64] In addition to scribal practices, the ancillary sciences aid us in piecing together the materiality of documents, shedding important light on their validation by state agents, circulation within different networks of power, and preservation in libraries and the homes of ordinary people. Throughout this dissertation, the technical aspects of Greek, Coptic, and Arabic documentary culture will, therefore, occupy center stage in the analysis and interpretation of documents.

My commitment to these technical fields should by no means be mistaken for an endorsement of the Rankean positivism embraced by the generations of German historians following Gatterer—a development facilitated by the "fathers" of the ancillary sciences and the post-enlightenment German academy through their relentless systemization and classification of

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[62] I thank Marina Rustow for introducing me to the genealogy of these technical fields. Various other technical fields belong to this rubric, including epigraphy, chronology, heraldry, and geography. The much younger field of codicology, tracing its origins to the mid-twentieth century, belongs to these technical fields, too.

[63] See Johann G. Fessmaier, *Grundriss der historischen Hilfswissenschaften vorzüglich nach Gatterers Schriften zum akademischen Gebrauche bearbeitet* (Landshut: Anton Weber, 1802). For the history of the ancillary sciences, see Peter N. Miller, *History and Its Objects: Antiquarianism and Material Culture since 1500* (Ithaca and London: Cornell University Press, 2017), 76–96.

[64] Marina Rustow, *The Lost Archive*, 8–11.

knowledge.[65] Much to the contrary, I view the ancillary sciences as a gateway to the evolving historical engagement with material culture and its historicization of power, acknowledging that "history begins with bodies and artifacts: living brains, fossils, texts, buildings" and that "the materiality of the sociohistorical process […] sets the stage for future historical narratives."[66] The focus on "stuff" this dissertation adopts grows out of the increasing attention cultural and art historians, as well as anthropologists, have paid to the relationship between people and objects (the "material turn") and the contention that objects not only serve as portals into subjective worlds and emotions but that they generate specific types of behavior, ideas, and historical memory.[67] It also stems from the conviction that a focus on objects allows for a much-needed, different type of historical narrativization, especially in early Islamic historiography, a field that has been heavily dominated by the study of texts. My focus on material culture should by no means be interpreted as a dismissal of the significance of texts to the formation and spirit of

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[65] For Leopold von Ranke's well-known and much debated historiographical plea for writing history "wie es eigentlich gewesen" (how it really was), see Leopold von Ranke, *Geschichten der romanischen und germanischen Völker von 1494 bis 1535* (Leipzig and Berlin: Reimer, 1824), VII–VIII.

[66] Michel-Rolph Trouillot, *Silencing the Past: Power and Production of History* (Boston: Beacon Press, 2015 [1995]), 29.

[67] Anne E. Lester and Katherine C. Little, "Introduction: Medieval Materiality," *Medieval Materiality* 53, no. 2 (2015), 1–8, at 3. Among late antique and medieval historians—much less so among Islamicists—the "material turn" has produced a rapidly growing body of scholarship. For late antiquity, see, for example, Maia Kotrosits's *The Lives of Objects*, in which the author merges insights from critical literary theory, psychoanalysis, feminist, and queer theories to analyze the place of artifacts—conceived by her much beyond physical objects—in historical and contemporary Christian fantasies. Maia Kotrosits, *The Lives of Objects: Material Culture, Experience, and the Real in the History of Early Christianity* (Chicago: University of Chicago Press, 2020). For recent approaches to material culture involving Islamicate objects, see Finbarr B. Flood, *Objects of Translation: Material Culture and Medieval "Hindu-Muslim" Encounter* (Princeton and Oxford: Princeton University Press, 2009) and Anna Bigelow, ed., *Islam Through Objects* (London: Bloomsbury, 2021). In anthropology, the division between people and objects was never as fixated as it was in history, as evidenced even by the foundational work of Marcel Mauss, *The Gift: Expanded Edition* (Chicago: Hau Books, 2016 [1925]). For the "new materialism" and its critical lashes against Marxist materialism, see especially the works of Alfred Gell and Bruno Latour. Alfred Gell, *Art and Agency: An Anthropological Theory* (Oxford: Clarendon Press, 1998), and Bruno Latour, "Can We Get Our Materialism Back, Please?," *Isis* 98 (2007), 138–142. In art history, the reconsideration of images/objects has generated distinct research questions, such as to what extent the human body functions as a medium for the perception of images. See, for example, Hans Belting, *An Anthropology of Images: Picture, Medium, Body* (Princeton and Oxford: Princeton University Press, 2011 [2001]).

Islamic civilization—indeed, this dissertation draws on hundreds of documentary and literary "texts" and their philological analysis to advance its arguments. As Colleen McDannell notes, objects themselves have no intrinsic meaning, and they only gain significance when we decode their relation to humans.[68] A sustained engagement with the material aspects of documents and other late antique "stuff" does, I argue, provide us with a more nuanced picture of late antique society and its people while raising historical questions that philology alone does not generate.

Considering papyri as objects, as opposed to just texts, opens up new avenues for thinking about questions of the production and circulation of these administrative documents, their symbolic meaning, and the ways illiterate people engaged with them, bringing into focus their material aspects, including seals, script, visual arrangement, and aesthetics. All objects—from the clay pot to textiles to late antique books to legal documents—are commodities, and their status as such is dependent on the social (rather than merely economic) value that individuals and societies associate with them. I join Arjun Appadurai in his observation that politics constitute the crucial link between social regimes of value and the circulation of objects. Political practices, discourses, and the materialist conditions they generate regulate value systems by cultivating tastes about which objects are deemed desirable and which are not.[69] In premodern Egypt, the possession of a promissory note (*dhikr ḥaqq*) meant the difference

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[68] Colleen McDannell, *Material Christianity: Religion and Popular Culture in America* (New Haven: Yale University Press, 1995), 3–4.

[69] Arjun Appadurai, "Introduction: Commodities and the Politics of Value," in *The Social Life of Things: Commodities in Cultural Perspective*, ed. Arjun Appadurai (Cambridge: Cambridge University Press, 2013 [1986]), 3–63, at 57. Appadurai argues that political systems shape the social life of things because things are of value. Accordingly, commodities move along specified paths, with any deviation signaling either a social crisis or an act of creativity. While individual objects may follow distinct trajectories—what Appadurai terms "cultural biography"—a macroscopic view of items within the same class reveals shared patterns in their "social life." Ibid., 26 and 34. See also the closely related essay by Igor Kopytoff, "The Cultural Biography of Things: Commoditization as Process," in *The Social Life of Things: Commodities in Cultural Perspective*, ed. Arjun Appadurai (Cambridge: Cambridge University Press, 2013 [1986]), 64–91.

between owing or being owed; the keeping of an arbitration settlement (*dialysis*) served as a protection against future litigation and a historical memory of the embodied hassles of a social dispute one had experienced; the seal affixed to a quittance (*barāʾa*) validated it and reminded its viewer of the presence and immediacy of state power. However, the written promise contained in a legal document was not merely the symbolic manifestation of the existence of a claim backed by imperial power but a reminder of the cultural hybridity of an object that had traversed multiple networks of power and touched the hands and minds of state agents who had endowed it with legal clout and legitimacy.[70]

Analyzing late antique and Islamic documents as vestiges of material culture presents unique challenges, some of which stem from contemporary archival, editorial, and classification practices. To the dismay of the material historian, papyrologists often treat documents as texts rather than material objects. This approach becomes painfully obvious in the chapter of a recently published edited volume, where the authors divided the text written on the recto of an Arabic papyrus into four distinct units, while assigning a distinct edition number (P.Chris.Musl. 11–14) to each (see Fig. 4).[71] The practice is highly problematic because it disrupts and fragments the material cohesion of a papyrus as a unified medium of written communication, reducing it to artificial textual units aligned with papyrological typologies. All the more troubling

[70] In her work on material culture from early modern France, Leora Auslander observes that individuals maintain rather different relations to things than they do to language. She notes that even literate people in highly logocentric societies express themselves emotionally, sensually, representationally, and communicatively through objects, which significantly differ from texts in their informative value. Leora Auslander, "Beyond Words," *The American Historical Review* 110, no. 4 (2005), 1015–1045, at 1017.

[71] Esther Garel and Naïm Vanthieghem, "Nouveaux textes sur les pagarques du Fayoum au viiie siècle," in *Christians and Muslims in Early Islamic Egypt*, ed. Lajos Berkes (American Studies in Papyrology, 56, Durham: American Society of Papyrologists, 2022). 87–125, at 99–104. While the separation into four distinct texts is partially warranted by the fact that the papyrus in question was reused, containing several layers of barely legible written text on top of each other, I believe the disadvantages of this editorial decision outweigh its benefits.

is the fact that the editions of this document now exist independently in the digital realm, with each entered as a separate item in the Arabic Papyrology Database (APD) (see Fig. 5). This documentary fragmentation makes it cumbersome, if not impossible, for researchers, especially those with little training in papyrological methods, to recognize their cohesion as a unified document. Until recently, it has sometimes been common for papyrologists to provide editions and translations for only one side of a papyrus with disregard for what is written on the verso (or recto) either due to the impression that both sides are typologically unrelated or for reasons of illegibility. This approach—now considered bad practice—dovetails with cataloging and digital archiving practices of classifying (Arabic) papyri according to document type and entering them

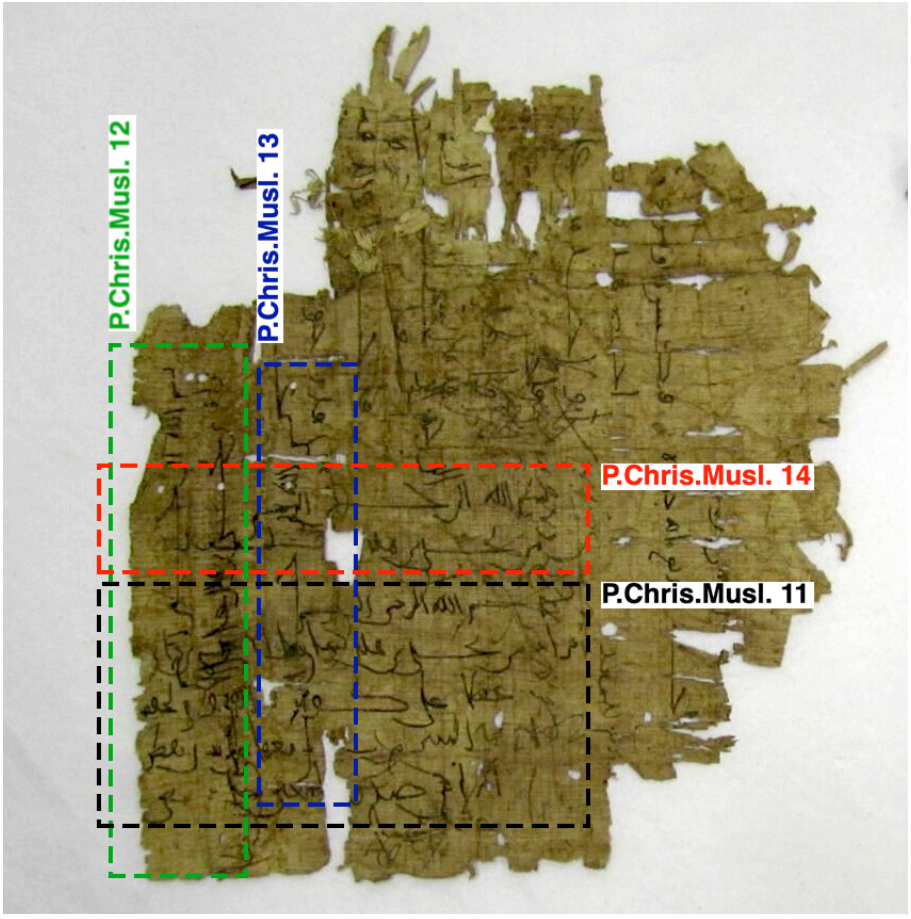


Fig. 4. P.Chris.Musl. 11–14, with the four textual units marked up. © Musée du Louvre. Reproduced by kind permission of the Musée du Louvre (P.Louvre E 7065).

in digital databases based on these artificial typological divisions.[72] Although highly effective for deciphering and analyzing new papyri, which typically adhere to the scribal conventions of similar texts, the epistemic violence inherent in this approach obfuscates the perception and analysis of a papyrus as a complete material entity—one that late antique readers, viewers, and couriers would have experienced in its entirety, even if always at a particular stage during its life cycle. While I have benefited significantly from papyrological editions (including the ones mentioned) and digital databases of papyri (Trismegistos, Papy.info, APD), especially for identifying common features and historical changes within the same type of document, I consider each document as a unified material entity, irrespective of whether it contains multiple types of documents.

The conceptual gap between documents and material objects is bridged best by debates about the concept of "documentality" introduced by the Italian philosopher Maurizio Ferraris. The concept recently entered discussions of the Roman Empire and late antiquity, where it has raised questions about the status of documents in Roman society, their coherence as an imperial genre, and their relationship with literature.[73] For Ferraris, a document is a social object that

+	P.Christ.Musl. 14	743 CE	TEXT | IMAGE	Writing exercise	Début d'une lettre
+	P.Christ.Musl. 11	743 – 749 CE	TEXT	Receipt for payment or delivery	Copie presque complète d'une quittance pour la ṣadaqa
+	P.Christ.Musl. 12	743 – 749 CE	TEXT | IMAGE	Writing exercise	Copie partielle d'une quittance pour la ṣadaqa (?)
+	P.Christ.Musl. 13	743 – 749 CE	TEXT | IMAGE	Writing exercise	Copie partielle d'une quittance pour la ṣadaqa (?)

Fig. 5. P.Chris.Musl. 11–14 as entered in the Arabic Papyrology Database (APD).

[72] For example, in the John Rylands's printed catalogue of Arabic papyri in the collection, the rectos and versos of papyri are consistently separated and listed under different thematic rubrics. David S. Margoliouth, *Catalogue of Arabic Papyri in the John Rylands Library Manchester* (Manchester: Manchester University Press, 1933).

[73] Jacqueline Arthur-Montagne, Scott J. DiGiulio, and Inger N.I. Kuin, ed., *Documentality: New Approaches to Written Documents in Imperial Life and Literature* (Berlin: De Gruyter, 2022).

contains "any inscription with institutional value," where inscription refers to the recording of "anything that appears socially important, from the economy to religion."[74] The conscious and repeated documentation of social acts (i.e., the state of "documentality"), he notes, generates individual responsibility while functioning as an instrument of control in the service of power.[75] Central to his thought is the idea that documents constitute conscious representations of state power and that they transform the world we live in (think, for example, the Balfour Declaration).[76] The notion of documentality has great analytical value for this project because it urges us to historicize the relationship between governmentality and the written documentation of social acts. Although it might seem a truism to moderns that states exercise their power through the physical (and now increasingly digital) medium of the written or printed word, we need to go only as far as Bronislaw Malinowski's Trobriand Islanders to discern that the recording of social and legal acts in written form by no means constitutes a natural predisposition of human societies.[77] My point here is not to draw a historically flawed analogy between Trobriand Islanders and late antique societies but rather to ask why, in as much as narrativization and emplotment have turned into the primary tools of the historian, documentation, registration, and archival recordkeeping ascended to the place of becoming the main vehicles of Byzantine and Islamic political authority.[78] Put differently, why and how did late antique societies develop

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[74] Maurizio Ferraris, *Documentality: Why It Is Necessary to Leave Traces*, tr. Richard Davies (New York: Fordham University Press, 2013), 249–250.

[75] Ibid., 288–289.

[76] Ibid., 262–263.

[77] Bronsilaw Malinowski, *Argonauts of the Western Pacific: An Account of Native Enterprise and Adventure in the Archipelagoes of Melanesian New Guinea* (London: Routledge, 2005 [1922]), esp. 9–10.

[78] The grand history of the relation of governmentality and documentality and its changing historical configurations is yet to be written. It has long been claimed that pre-Islamic and Islamic societies were oral societies in which knowledge was transferred from person to person and by word of mouth, with writing and written documentation playing a minor role. Specifically, regarding Islamic legal documents, the field has insisted that such documents

their fetish with documentality as a mode for representing and manifesting political power? How did the constant presence and use of documents structure relations between institutions and ordinary people? And what can documentary silences tell us about changes in these relations?

0.7 Arabicization and Islamization

The societal changes and developments examined in this dissertation take place against the backdrop of two parallel processes that have received much scholarly attention: Arabicization and Islamization. Kevin van Bladel notes that Arabicization (i.e., the spread of the Arabic language in the territories conquered by the Arab Muslims) is often taken for granted by scholars, understood as a natural side-effect of the rule of Arabic speakers, whose language is assumed to have gradually trickled down into society. As van Bladel plausibly argues, the adoption of the imperial language by conquered subjects does, by no means, constitute the rule.[79] Van Bladel rejects several theories regarding how the Arabic language spread amongst the conquered populace: from Arabic being a language of empire (*Reichssprache*) that filtered down due to the power and prestige associated with it, to its spreading being a matter of the asserted self-confidence (identity) of its speakers, to the idea that its use as a language of high culture (*Kultursprache*) swayed commoners to adopt it.[80] Instead, based on sociolinguistics, van Bladel suggests that close contact between populations speaking different languages is a prerequisite for

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were secondary to the functioning of courts. I will discuss the intellectual origins of this nostalgic and historically inaccurate claim in more detail in chapter three. For the now well-known argument that narrativization, emplotment, and moralizing constitute intrinsic features of the historical enterprise, see Hayden White, "The Value of Narrativity in the Representation of Reality," *Critical Inquiry* 7, no. 1 (1980), 5–27.

[79] Kevin van Bladel, "Arabicization, Islamization, and the Colonies of the Conquerors," in *Late Antique Responses to the Arab Conquests*, ed. Josephine van den Bent, Floris van den Eijnde, and Johan Weststeijn (Cultural Interactions in the Mediterranean, 5, Leiden and Boston: Brill, 2022), 89–119, at 93–95.

[80] Ibid., 94–97.

language change, with the prestige of a new language being a negligible factor—at least initially.[81] In Egypt, where the Arabs settled in the garrison (*miṣr*) of Fusṭāṭ and, at least initially, lived in separation from the non-Muslim populace, establishing direct linguistic contact between the Arabic and non-Arabic speaking populace presents historical challenges.[82] By no means do I attempt to solve this decades-old historiographic puzzle. That said, the dissertation offers indirect evidence as to how Arabic may have spread. The state's issuing of quittances and promissory notes to non-Muslims (who, in many cases, we would assume to have been non-Arabic speakers) and their regular enlistment in them as creditors, debtors, witnesses, and scribes tied the validity and legal status of these documents to the senses and attestation powers of ordinary non-Arabic speakers. The fact that official Arabic documents were kept in the houses of non-Arabic speakers, of course, does not imply that these people saw the need to use the Arabic language in their everyday affairs. But the bureaucratic dealings that were required of literate and illiterate Arabic and non-Arabic speakers alike to manage the documentary outgrowths of the Islamic state raises the question of to what extent pragmatic literacy—by which I mean a basic grasp of essential administrative concepts, much like Europeans struggling to decode the esoteric

[81] Ibid., 97–105. Petra M. Sijpesteijn notes that Muslim settlements in the Egyptian countryside were rare in the first fifty years after the conquests, the Muslim presence "confined to small groups of soldiers and other government representatives and limited periods." Petra M. Sijpesteijn, *Shaping a Muslim State: The World of a Mid-Eighth-Century Egyptian Official* (Oxford: Oxford University Press, 2013), 82.

[82] Al-Fusṭāṭ grew quickly. Following the initial settlement of soldiers from the Arab Muslim army (*jund*) into dedicated allotments (*khiṭaṭ*), successive waves of Arab migrants from the Arabian Peninsula continued to settle in the city. By the reign of the caliph Muʿāwiya (r. 661–680), the city counted as many as 40,000 people in the public register (*dīwān*)—three times the population at the time of its founding, as noted by Wladyslaw B. Kubiak; Ibn ʿAbd al-Ḥakam, *Conquests of Egypt*, 102. On the demographic evolution of al-Fusṭāṭ, see Wladyslaw B. Kubiak, *Al-Fustat: Its Foundation and Early Urban Development* (Cairo: American University in Cairo Press, 2016 [1987]), 76–84. It should be noted that the large-scale migrations to the city would have required extensive human resources and personnel—from tradesmen to clerks to cobblers, butchers, and hairdressers—for the provision of the Arab populace. In other words, the massive increase in Arabic speakers in Fusṭāṭ most likely had a direct influence on the growing presence of non-Arabic speakers in the city, leading to increased language contact between the populations. Kubiak notes that the initial restrictions imposed on the non-Muslim populace with regard to entering the town were abandoned rather quickly and at the latest during the reign of the Egyptian governor Maslama b. Mukhallad (r. 47/667–62/682); ibid., 79.

language of American baseball—in Arabic would have developed as an everyday necessity.[83] My point is that Arabic documents, especially those that were worth preserving for commoners due to the social value and future possibilities associated with them, may hold important clues for understanding the gradual adoption of Arabic by non-Arabic speakers.[84]

The second process shaping the social landscape of post-conquest Egypt was Islamization. The increased cultural contact between Arabic and non-Arabic speakers also raises questions about conversion to Islam, the religion of the conquerors. During the conquests, conversions sometimes occurred through the use of force or threat, for example, in captivity or when faced with the alternative of death. However, as mentioned earlier, the field has now moved away from the paradigmatic assumption that most conquered populations in Egypt and elsewhere converted to Islam, if not during the conquests, within a few generations thereafter. The studies by Richard Bulliet, Ira Lapidus, and others indicate slow conversion patterns, with large-scale conversions to Islam not significantly picking up before the ninth century, with the notable exception of Iran.[85] Thus, to view Islamization during the seventh and eighth centuries through the primary lens of conversion is inadequate for most parts of the conquered territories. Added to that, the notion of Islamization poses challenges because the religion of the conquerors was young, so young that its foundational religious texts, including the Qurʾān, were still socially

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[83] That administrators continued to issue documents in Greek and Coptic alongside Arabic in the first Islamic century and beyond does not undermine this point.

[84] On the spread and the adoption of Arabic in Egypt, see also Maged S.A. Mikhail, *From Byzantine to Islamic Egypt: Religion, Identity and Politics after the Arab Conquest* (London and New York: I.B. Tauris, 2014), 79–105.

[85] Richard W. Bulliet, *Conversion to Islam*. Ira M. Lapidus notes that even by the tenth century, the countryside, parts of Upper Egypt, and certain desert areas in the south and west were still inhabited largely by Christians; Ira M. Lapidus, "The Conversion of Egypt to Islam," *Israel Oriental Studies* 2 (1972), 248–262, at 262. On how changes in demography, including conversion, could be spawned by natural disasters such as famines in the Eastern Mediterranean, see Ronnie Ellenblum, "Demography, Geography and the Accelerated Islamisation of the Eastern Mediterranean," in *Religious Conversion: History, Experience and Meaning*, ed. Ira Katznelson and Miri Rubin (Farnham: Ashgate, 2014), 61–80.

and politically negotiated and that a substantial literature on ethics, theology, and piety was yet to emerge. As Fred Donner observes, members of the movement in the Arabian Peninsula that we now associate with Islam did not initially refer to themselves as "Muslims" but rather as "Believers" (*muʾminūn*). It was only at the end of the seventh century, during the reign of ʿAbd al-Malik, that this ecumenical movement adopted more distinctly Islamic overtones by beginning to refer to themselves as "Muslims" and recasting their origins through an increasingly Qurʾānicized vocabulary.[86] I understand Islamization in this period as a multifaceted process that shaped state institutions, policies, literary and documentary culture, and social life. Throughout this process, both elites and ordinary people negotiated, consolidated, challenged, and rejected values and ideas related to "Islam," ultimately contributing to the formulation of a new cultural synthesis—one that was at once late antique and distinctly Islamic.

This approach to Islamization has two key implications for this dissertation. First, whenever I refer to the "Islamic" state, it should be understood as a state still in formation and one in which many non-Muslims served in the administration and the military[87]—an evolving ambition laid out by the political elite that had conquered Egypt and successive generations of migrants from the Arabian Peninsula. This process of state formation was largely completed by the late eighth century, with the consolidation of a mature Islamic judiciary and the widespread presence of normed standards of evidence and Islamic legal procedure. Second, in contrast to some scholars working on this period and for reasons elaborated in chapter three, I do not consider the Qurʾān to have been a determining factor in the development of legal culture at this

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[86] Fred M. Donner, "Qur'ânicization of Religio-Political Discourse in the Umayyad Period," *Revue des mondes musulmans et de la Méditerranée* 129 (2011), 79–92, at 80–81.

[87] See Antoine Borrut and Fred M. Donner, ed., *Christians and Others in the Umayyad State* (Chicago: The Oriental Institute, 2016).

time. While I am convinced that the Islamic scripture was widely known by the end of the seventh century, I see no evidence in the documentary sources that it had been translated into a normative legal framework by then.

0.8 Dissertation Structure

Chapter one argues that in mid-sixth-century Egypt, ordinary people faced a judicial crisis marked by limited access to official courts and the resolution of social disputes by rural middlemen. The chapter traces the origins of that crisis by focusing on the growing shift of power from Byzantine official courts to pagarchs, bishops, and monks. It examines these changes against the backdrop of the Justinianic reforms and Christian religious polemics that greatly favored informal arbitration as opposed to adjudication in courts. The chapter presents quantitative evidence through a systematic analysis of all available arbitration documents in Greek and Coptic from 300–750.

Chapter two lays out three case studies of ordinary people navigating the precarious world of arbitration and mediation in the first Islamic century. The first case examines the lengthy arbitration dispute of a peasant couple from Edfu regarding a house they had purchased from the deceased Thekla. Contesting a much more powerful deacon, the couple endured various forms of legal deception, from forged documents and unreliable witnesses to spurious arguments. The second case from the early 700s covers the troubled marital life of a Muslim couple. After frequent verbal abuses and threats by her husband, the wife al-ʿAllāna filed for divorce with the local arbiter (*ḥakam*), much to the dismay of her enraged husband, who then set all wheels in motion to salvage the marriage. The third and final case from the late 730s takes us inside the guarded walls and well-kept secrets of the Monastery of Apa Paul in the Thebaid. The story of

what appears to have been a homosexual encounter between a monk novice and another man resulted in a grand spectacle of monastic dispute resolution. Summoning important representatives from close and far-away villages, the head monks at Apa Paul knew well how to transform the incident into an occasion for undergirding their judicial power. The chapter closes with an observation of the commonalities between these cases: the upward judicial struggle of parties, their concerns about impartiality, and the intentional investments of arbiters into their judicial reputation.

Chapter three focuses on the emergence of Arabic legal documents—promissory notes (*adhkār ḥaqq*) and quittances (*barāʾāt*)—in the first and second Islamic centuries. The chapter begins by historicizing and refuting the common myth that Islamic legal documents were insignificant and secondary to the functioning of the judiciary, arguing that this scholarly view reflects and reproduces a methodological and substantive bias towards Arabic long-form sources. Through a systematic analysis of all available promissory notes and quittances from first and second-century Egypt, the chapter argues that by issuing Arabic legal documents to the populace, the Islamic state and its representatives effectively tied ordinary Egyptians from across the confessional spectrum to the sovereignty of the Islamic polity. As part of this process, the state tied legal claims to the symbolic power of the Arabic language and made their validity dependent on a network of ordinary people listed in these documents as creditors, debtors, witnesses, and scribes, all of whom could verify their accuracy and legal standing. The material form of these documents was decisive, too, for literates and illiterates alike.

In chapter four, I challenge the notion that Islamic law has its origins in the intellectual milieu of private jurists (*fuqahāʾ*) by historicizing what I refer to as the "Islamic-law-as-private-law-paradigm." The chapter employs Arabic long-form sources to offer an intimate portrait of

the profession of the Muslim judge (*qāḍī*) in the first Islamic century and a half. It concludes that many judges circulated between various branches of the government, often holding multiple posts at the same time, from the police to the treasury to the military to public storytelling to serving as vice governor. I argue that with the professionalization of the judiciary, double and triple appointments decreased as judges increasingly lacked the skills to serve in other government branches. Additionally, the chapter explores how Muslim judges utilized familiar late antique idioms of modesty and the public renunciation of office to reinforce their positions of authority in the eyes of the public.

In the final chapter, I address the intersection of justice and the consolidation of the Islamic state in the late eighth century, adopting a macroscopic view of how Islamic Egypt, its expanding body of judicial personnel, institutions, and scribal practices gradually shifted away from being an arbitration society where courts were off-limits. While multi-confessional arbitration practices continued to characterize everyday judicial practice on the ground and were presented as favorable forms of dispute resolution in public discourse, the presence of official courts began to directly influence the outcomes of arbitration and mediation. The long process that had led to this historical juncture, I argue, was the prelude to the birth of Islamic law as we know it and its rationalization at the hands of Muslim jurists.

PART I:

RESOLVING LEGAL DISPUTES IN SEVENTH-CENTURY EGYPT

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CHAPTER ONE

"The Courts Are No More?" Towards an Arbitration Society

1.1 Introduction

In the mid-sixth century, the administrator Lydus ("John the Lydian;" d. c560) observed that the court archivist (*instrumentarius*) for the praetorian prefecture in Constantinople, whose role was to oversee "the archives of the court of justice" located at the south side of the Hippodrome, was out of business. Lydus laments that he simply was no longer needed:

> Since a judicial inquiry or any other business to be transacted, as would be expected, does not exist, nor is even set in motion in the court of justice, how could he [the court archivist] himself be considered necessary for its business?[1]

If we believe Lydus, the central archive of court records in Constantinople (see Fig.6) contained every judicial record since the time of the emperor Valens. But because judicial inquiry ceased to exist "as would be expected," the court repository was no longer filled with new documents penned at the hands of scribes, clerks, and judges. What had happened? Had judicial activity been suspended, and if so, why? How can we make sense of Lydus's comment in the context of the broader social and legal patterns in the east of the Byzantine Empire? And what were the

[1] Ioannes Lydus, *On Powers or the Magistracies of the Roman State: Introduction, Critical Text, Translation, Commentary, and Indices*, ed. and tr. Anastasius C. Bandy (Philadelphia: The American Philosophical Society, 1983), 163 [slightly altered translation].



Fig. 6. The underground remains of the Hippodrome in Istanbul, where the court archives described by Lydus probably extended over 25 to 30 storage rooms. © Izabela Miszczak. Reproduced by her kind permission (https://turkisharchaeonews.net/sites/tan/files/pictures/objects/underground-remains-hippodrome-constantinople/hippodrome_islamic_10.jpg, accessed January 29, 2025). Photo credits: Izabela Miszczak.

implications of his observation about the state of court archives for how people resolved their legal conflicts in late antique Egypt?

This chapter tells the story of these transformations in the Byzantine Empire, arguing that judicial activity indeed continued to exist but that disputes were predominantly resolved locally without the intervention of official courts. Our story takes us far away from Constantinople, into the dust of the Egyptian countryside, into the depths of city councils, families, and monasteries, where villagers were increasingly struggling to access the legal infrastructure put in place by the Byzantine state. It is a story of radical changes in the ways Byzantine subjects related to the state, of the permanent severing of Egypt from Byzantium, and her becoming an Arab province. In this chapter, I tell this story by focusing on the legal and social disputes encountered by simple Egyptians and by analyzing the nexus of the state, authority, and archival and documentary practices.

1.2 A Judicial Crisis on the Eve of the Arab Conquests

In mid-sixth-century Egypt, a *crisis* was in full swing. The origins of this crisis stemmed from the Byzantine Empire's growing reliance on rural powerbrokers for the administration of justice, giving them exceptional leeway in resolving judicial disputes. Over the previous two centuries, the urban hubs of Hellenistic culture, especially across the Roman West, had steadily lost significance, facing depopulation due to military incursions and economic instability. In places east and south of the Mediterranean, including Egypt, villages expanded rapidly, new churches and monasteries were built, and the countryside steadily gained political and economic momentum.[2] Scholars have attributed these socioeconomic changes across the Roman and Byzantine world to factors such as foreign invasions, institutional decline, plagues, climate change, and the growing role of the church.[3] But unlike the Roman West, rural expansion in Egypt was not a sign of "decline" or the "failure" of state institutions—at least not in the customary sense of these terms. Instead, it indicated the reallocation of power to rural middlemen, a change that had been underway since the fourth century, spurred by various

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[2] Jairus Banaji, *Agrarian Change in Late Antiquity*, 16–17. For the Eastern Mediterranean, archeologists have observed the flourishing and expansion of village communities, high agricultural production, and increased cultivation of marginal land from the fourth to the sixth centuries. See, for example, Tamara Lewit, "A Viewpoint on Eastern Mediterranean Villages in Late Antiquity: Applying the Lens of Community Resilience Theory," *Studies in Late Antiquity* 4, no. 1 (2020), 44–75; and Mark Whittow, "Decline and Fall? Studying Long-Term Change in the East," in *Theory and Practice in Late Antique Archaeology*, ed. Luke Lavan and William Bowden (Leiden and Boston: Brill, 2003), 404–423.

[3] For the argument of the "resilience" of the Roman senate in the face of a series of invasions and sacks, see Michele R. Salzman, *The Falls of Rome*. For the thesis of institutional decline, largely building on Gibbons, see Adrian Goldsworthy, *How Rome Fell: Death of a Superpower* (New Haven: Yale University Press, 2009). For the effects of climate change, plagues, and volcanic eruptions on Rome, see Kyle Harper, *The Fate of Rome: Climate, Disease, and the End of an Empire* (Princeton and Oxford: Princeton University Press, 2017); and Michael McCormick et al., "Climate Change during and after the Roman Empire: Reconstructing the Past from Scientific and Historical Evidence," *Journal of Interdisciplinary History* 18, no. 2 (2012), 169–220. For the large-scale transfer of wealth from west to east and from cities to monasteries and the resulting stratification of church structures in late antiquity, see Peter Brown, *Through the Eye of a Needle: Wealth, the Fall of Rome, and the Making of Christianity in the West, 350–550 AD* (Princeton and Oxford: Princeton University Press, 2012).

"ascetic experiments" and underscored by state policies.[4] The curious nature of Egypt's crisis is that it was primarily a judicial crisis, one that profoundly altered the lives of ordinary people.

The lives of most bishops, presbyters, deacons, and monks were now entrenched in these rural economies as a tight network of churches and monasteries was ensuring food supplies, wine, spiritual nourishment, and welfare of the populace. Under the banner of "helping the poor," monks like the famous fifth-century Shenoute of Atripe had positioned themselves as intermediaries between landowners and rural laborers.[5] In their positions, clerics increasingly wielded administrative, fiscal, and even judicial powers. However, to view this growth in status and wealth by clerics as the inevitable consequence of the retraction of Byzantine state institutions and the decline of the state elite is only partially supported by the archeological and papyrological evidence. Indeed, we have evidence of the continued, albeit diminished, activities of state officials in the Egyptian countryside and their ownership of large estates and land in rural

[4] Susanna Elm argues that during the fourth century, "ascetic experiments" in Anatolia and Egypt led by ascetics such as Basil of Caesarea, Macrina, and Naucratius emerged in predominantly urban settings and often through the involvement of wealthy women; Susanna Elm, *'Virgins of God': The Making of Asceticism in Late Antiquity* (Oxford: Clarendon Paperbacks, 1996 [1994]). See also Marilyn Dunn, *The Emergence of Monasticism: From the Desert Fathers to the Early Middle Ages* (Oxford and Malden: Blackwell, 2000), 42–58. Louise Blanke argues that the myth of the desert—especially as conveyed in Athanasius of Alexandria's *Life of St. Anthony*—fueled the *topos* of the solitary hermit, who was to live a life away from urban centers; Louise Blanke, *An Archaeology of Egyptian Monasticism: Settlement, Economy and Daily Life at the White Monastery Federation* (Yale Egyptology Publication, 2, New Haven: Yale Egyptology, 2019), 11–12. See also James E. Goehring, *Ascetics, Society, and the Desert: Studies in Early Egyptian Monasticism* (Harrisburg: Trinity Press International, 1999), 75–78. Archeological evidence from rural Egypt illustrates that by the sixth century, monasteries had spread all over Upper Egypt and were often located in proximity to village settlements.

[5] Ariel López, *Shenoute of Atripe and the Uses of Poverty: Rural Patronage, Religious Conflict, and Monasticism in Late Antique Egypt* (Berkeley and Los Angeles: University of California Press, 2013), 99–100. See also Wolfgang Liebeschuetz on the rise of bishops and the ascetic movement and their effects on rural society vis-à-vis the city; Wolfgang Liebeschuetz, "Administration and Politics in the Cities of the Fifth to the Mid Seventh Century: 425–640," in *The Cambridge Ancient History*, ed. Averil Cameron, Bryan Ward-Perkins, and Michael Whitby (Cambridge: Cambridge University Press, 2001), 207–237, at 216–219.

areas.[6] Moreover, the shift of power towards local dispensers of justice was not solely a bottom-up venture spearheaded by opportunistic careerists seeking to expand the real-time authority they assumed. Rather, this process was accelerated by Byzantine imperial policies, which had granted churches and clerics a wide array of privileges, such as tax exemptions and pensions from the state treasury.[7]

The societal shift towards the countryside, alongside the wide-ranging expansion of authority by monks, bishops, and local officials, had dramatic consequences for ordinary Egyptians. And it is to them, specifically, the ways in which they navigated the changing social and legal landscape, that we must turn to recognize how Byzantine state institutions receded without entirely disappearing. The growing patchwork of local justice providers, I argue, thoroughly interfered with more formal ways of resolving legal disputes that had been established at least since the Roman conquests of Egypt. Thus, despite the observations of Lydus mentioned at the beginning of this chapter, the crisis this chapter deals with is not primarily a state crisis but *a judicial crisis faced by ordinary Egyptians*. As rural officials expanded their authority to wield power in city councils, villages, and monasteries, access to higher levels of jurisdiction became curbed, and ordinary persons faced major obstacles in securing *appealable* and *impartial* justice. While a precise definition of these terms is in order, suffice it for now that by appealable, I mean the option of contesting a judgment or settlement by taking it to a higher

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[6] See, for instance, the discussion by Peter Sarris on the Apion estates and the social influence magnate landowners hailed in mid-sixth-century Egypt; Peter Sarris, *Economy and Society in the Age of Justinian* (Cambridge: Cambridge University Press, 2006), 131–148.

[7] *The Codex of Justinian: A New Annotated Translation, with Parallel Latin and Greek Text: Based on a Translation by Justice Fred H. Blume*, ed. Serena Connolly, Simon Corcoran, and Michael Crawford et al., 3 vols. (Cambridge: Cambridge University Press, 2016), 1:2–3. The codex served as the vehicle by which the emperor Justinian I (d. 565) had well-established imperial and individual laws codified to eliminate conflicting legal norms.

judicial forum such as a court for review; and by impartial, I mean the subjective impression by litigants that they received a fair procedure.

None of this is to say that state courts disappeared, even though the papyrological documentation for their operation is extremely modest and even though Lydus's passing remark on the state of the court archives in the chambers of the Sphendone of the Hippodrome could be construed along those lines. The problem in early-seventh-century Egypt was not at all that justice was unavailable. Indeed, the situation was much to the contrary: Over the last century, judicial power had constantly flowed and expanded downwards, so much so that a staggering number of local officials now held judicial authority and could provide legal redress on the spot. Peter Brown famously argued for the urgency of objective mediators in late Roman society, which resulted in the rise of the holy man, an outsider to village society positioned at enough distance to offer impartial justice.[8] However, by the sixth century, this model had gradually given way to a patchwork of charismatic officials operating locally, most of whom had intimate ties with the populace and were integrated into the cycles and networks of rural society.[9]

Nor is it to say that late antique Egypt was governed by despotic officials, cruel monks, and bishops who took arbitrary decisions and judgments that the populace had no chance of

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[8] Peter Brown, "The Rise and Function of the Holy Man in Late Antiquity," *The Journal of Roman Studies* 61 (1971), 80–101, at 91–92. For a study of the holy man's relations with secular and church authorities based on hagiographical sources, see Rafal Kosinski, *Holiness and Power: Constantinopolitan Holy Men and Authority in the 5th Century* (Berlin: De Gruyter, 2016), esp. 235–244. For Max Weber's theory of charismatic authority, see Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, ed. Guenther Roth and Claus Wittich, 2 vols. (Berkeley: University of California Press, 1978 [1968]), 2:1111–1157. Weber defines charismatic authority as "a certain quality of an individual personality by virtue of which he is considered extraordinary and treated as endowed with supernatural, superhuman, or at least specifically exceptional powers or qualities. These are such as are not accessible to the ordinary person, but are regarded as of divine origin or as exemplary, and on the basis of them the individual concerned is treated as a 'leader.'" He later adds that "charismatic rulership in the typical sense described above always results from unusual, especially political or economic situations, or from extraordinary psychic, particularly religious states, or from both together. It arises from collective excitement produced by extraordinary events and from surrender to heroism of any kind." Ibid., 1:241 and 2:1121.

[9] See the discussion in Maged S.A. Mikhail, *From Byzantine to Islamic Egypt*, 154–157.

circumventing. As Marina Rustow recently argued in the context of the Fatimid state, the notions that medieval Middle Eastern polities were either *laissez-faire* or despotic both assume states that sustained weak bureaucratic structures and did not depend on documents for asserting their grip over the populace.[10] This chapter shows that the nexus of the state, the populace, and documentary culture was anything but a black box: Local dispensers of justice could accumulate judicial powers precisely because they invested in judicial reputation and decorum, and the production, circulation, and storing of documents was critical to this endeavor. By imitating and reproducing high-level scribal norms and judicial procedures, these figures endowed the documents and judgments they issued with official charisma, ensuring their legal validity and recognition by state representatives and the populace.

The flip side of the coin is that the populace—this vague and, in historical accounts, sometimes faceless group of individuals primarily affected by state policies—was neither passive nor insignificant to the processes of Byzantine state retraction and Islamic state consolidation after the conquests (let us, for the moment, pass over the Sasanid conquests, which have their own historiographic intricacies). Too often, and certainly, in political history accounts, ordinary people end up serving the historian's need for an imagined receptacle capable of absorbing and carrying the implications of the big-picture changes and reforms instigated by institutions, elites, and great men. However, as evidenced by the case studies in this chapter, these people were anything but a negligible constituent to maintaining state power. At times, they challenged and defied; at other times, they supported; again, at different times, they demanded more clarity from upholders and representatives of the law. I believe that by putting the concerns and calculations of these people at the center of historical inquiry, we can organically understand the retraction

[10] Marina Rustow, *The Lost Archive*, 3.

and expansion of the state and better parse the institutions and mechanisms through which it operated.

Due to the nature of the documents they work with, papyrologists have been much more attuned to the ground-level workings of the state and its dealings with the populace. However, the overwhelming presence of tax receipts (because in late antique and early Islamic Egypt, tax receipts were the sort of thing you needed) and fiscal documents in the papyrological record has led to a privileging of the study of the Islamic state's fiscal administration. The academic focus on taxation, at times, creates the impression that the conquered were primarily "taxed subjects." This view is extended to non-Muslims especially, whose payment of the poll tax (*jizya*)—a *topos* reinforced by Arabic literary sources—is frequently parsed as the principal condition for their existence as subjects inside the Islamic state. Taxes were, of course, important and the documents indicate the great lengths officials and state institutions—Byzantine and Islamic—went to track down and hold tax delinquents accountable. That said, reducing the touchpoints between the state and the populace to the levy of taxes is problematic on two counts. First, the notion privileges the state's economic relations with the populace over other areas in which state officials need to invest to wield authority. Clifford Ando plausibly argues that after the Roman conquests of Egypt, courts assumed a crucial role in the dispersion of Roman imperial power, and Egyptian subjects were extremely litigious, a point I shall return to.[11] Thus, we are well advised to expand our view beyond the financial arm of the state and focus on the complicated social and legal landscape and public discourses the Islamic state administration set in motion to ensure its recognition by the predominantly non-Christian populace.

[11] Clifford Ando, *Imperial Ideology and Provincial Loyalty in the Roman Empire* (Berkeley: University of California Press, 2000).

Moreover, the paradigm of "taxed subjects" operates from an assumption of "explicit hierarchy," positing that the state relied on raw fiscal power to control subjects, turning a blind eye to the processes of hierarchical reciprocity at work in its making, maintenance, and undoing. Unlike David Graeber, I do not think "that hierarchy operates by a principle that is the very opposite of reciprocity" and that formal equality is required between agents of the state and its subjects for the latter to be able to subvert state infrastructure.[12] Such a view of hierarchy neglects and underestimates the ways states, modern and pre-modern, depend on acceptance and acknowledgment from below. Hierarchical relationships do not preclude reciprocity; they indeed require it to be maintained. The case studies in this chapter evince that even in the context of dispute resolution before officials and arbiters bestowed with the authority to issue a judgment or settlement for disputants, ordinary people exerted means to challenge procedural norms, and arbiters followed established legal conventions and scribal practices to endow the arbitration process and their documents with legitimacy.

A corollary of the "taxed subjects" paradigm is that it emphasizes subjects' communal and confessional belonging to categories such as "Christians" and "Muslims" and too easily seals off and understands their actions and thoughts through the lens of "communities" rather than placing them in the broader context of interactions with the state. By reading the extant documentary evidence through a social history lens, this chapter argues that "confession" and "communal belonging" constitute insufficient categories to understand how ordinary people navigated the complex legal infrastructure of post-conquest Egypt. Instead, I argue that the papyri present a much different picture: the anticipated legal outcome, finality of judgment, legal

[12] David Graeber, *Debt: The First 5,000 Years* (New York: Melvillehouse, 2011), 110.

procedure, personal wealth, and individual status were often much more critical factors when picking legal forums.

I shall defer the question of the nature of the Islamic state and its consolidation to the second part of the dissertation. Therefore, with the exception of discussing the structural features that led to the rise of local dispensers of justice, I will, for the moment, pass silently over the dramatic political reforms and changes occurring in Egypt with and after the Arab conquests. I have made this methodological choice not due to historical ignorance on my part but rather because I believe that historiographic accounts of the workings of the state on the ground are too often structured by the periodization into pre-Islamic and Islamic and the assumption that political reforms (e.g., Byzantine imperial, caliphal, and gubernatorial) inevitably engendered societal change. The hope is that by momentarily suspending the focus on these macroscopic changes, we can—paradoxically—understand the state, its documentary culture, and the social matrix it enabled much better.

This and the following chapter explore dispute resolution from distinct vantage points. In this chapter, I focus on the transition of late antique Egypt towards an arbitration society and explore the political, social, and religious factors favoring this shift. I pay special attention to the proportions in the documentary record to establish how dramatically different and much higher the quantity of arbitration documents from the sixth century is. In the following chapter, I explore three cases drawn from Coptic, Greek, and Arabic documents in which the disputes between parties were resolved through arbitration and mediation: (1) *Iohannes and Tsoker v. Philemon and his wife*, (2) *al-ʿAllāna v. ʿAmr b. Zubayd*, and (3) the disciplining of John at the Monastery of Apa Paul. The first case is from the 640s, and the second and third are from the early 700s. By analyzing these disputes and the paper trail they produced, I assess how

Christians and Muslims, after the Arab conquests, navigated lower levels of jurisdiction and the changing social and legal landscape. By reconstructing litigants' personal and social circumstances, we can rationalize their individual calculations and stakes in the legal disputes in which they were entangled. Why did Deacon Iohannes bring a lawsuit against Philemon and his wife for the estate of a deceased family member before arbiters? What propelled al-ʿAllāna, a Muslim woman from the Fayyūm, to initiate divorce proceedings against her husband with the local arbiter (*ḥakam*), rejecting her husband's pleas for family conciliation? And why did the monks of a monastery in the Thebaid, after one of their brothers illicitly brought a stranger into his cell, have him draft a formal legal document declaring that he would submit to the laws of the monastery?

These micro-historical snippets serve as inlets for situating Egypt's administration of justice against the broader social and political dynamics that legal forums and low-level dispensers of justice had to reckon with. And they foreground the frustrations and complications experienced not just by administrators like Lydus but by ordinary people in a judicial world, where access to formal courts was limited and alternative forms of dispute resolution buttressed through political, social, and religious discourses.

1.3 The View from the Documents

1.3.1 Pagarchs

In sixth-century Egypt, the political and societal shift towards rural areas and the sway of clerics came to thoroughly affect how state officials managed fiscal, legal, and social affairs. Below the Egyptian governor, the duxes headed the eparchies, typically five, into which Egypt had traditionally been divided. Below the dux and reporting to him, the pagarch functioned as the

most important representative of the imperial administration at the local level.[13] Duxes and pagarchs felt the fragmentation and dislocation of imperial power in particular ways. Originally a military commander but now holding civic responsibilities, the dux increasingly received complaints about pagarchs from villagers and presbyters. In contrast to bureaucrats that Constantinople sent off to Egypt as "foreigners," the pagarch was typically a local Egyptian with direct links to the populace. He would be appointed by the praetorian prefect and confirmed by the imperial government. As owners of large estates, pagarchs were powerful figures, and their extended and sometimes lifelong appointments made it difficult even for their superiors, whose positions rotated much more often, to rein them in.[14] The structural changes that had begun to unfold in Egypt resulted in coercive maneuverings by pagarchs to bolster their authority positions against the growing influence of Greek and Coptic-speaking church officials. The frustrations this caused among the populace are well-documented in the Greek papyri from the late sixth century, especially in the Aphrodito dossier. Here, we encounter a staggering number of petitions to the dux—as well as the empress, magistrate, and ecclesial authorities—by villagers complaining about repeated abuses by pagarchs. The content of these documents ranges from claims about illicit taxation to threats of violence.[15] "The pagarchs [strove] to enslave us,

[13] Clive Foss, "Egypt under Muʿāwiya Part I: Flavius Papas and Upper Egypt," *Bulletin of the School of Oriental and African Studies* 72, no. 1 (2009), 1–24, at 2–3.

[14] Wolfgang Liebeschuetz, "The Origin of the Office of the Pagarch," *Byzantinische Zeitschrift* 66 (1973), 38–46. Wolfgang Liebeschuetz, "The 'Pagarch': City and Imperial Administration in Byzantine Egypt," *Journal of Juristic Papyrology* 18 (1974), 163–168.

[15] For instance, P.Cair.Masp. I 67002 (complaint to the dux by villagers from Aphrodito about Pagarch Menas violating the village's right to *autopragia*), P.Lond. V 1674 (complaint to the dux by villagers about the pagarch having illicitly raised the village's tax rate), P.Cair.Masp. III 67354 (complaint to Empress Theodora by Aphrodito villagers about a pagarch named Julian described as πονηρὸς τύραννος ["evil tyrant"]), P.Cair.Masp. I 67021 (complaint to an ecclesial authority about Menas, the pagarch of Antaiopolis, who occupied Aphrodito and confiscated wheat), P.Lond. V 1677 (complaint to a magistrate by Dioscorus about Pagarch Menas), P.Cair.Masp. III 67283 (complaint to Empress Theodora by Aphrodito inhabitants about the misdeeds by Pagarch Julian), and SB VI 9102=P.Constantinople, 99–101 (response from Constantinople to the dux of the

and they did," wrote villagers to the dux in one of the documents from the Aphrodito find, no doubt with an element of rhetorical dramatization.[16]

In late antique Egypt, taxation had always been a highly charged issue, and arrests of tax defaulters who had run off to the countryside or hid themselves in monasteries were common. In recent years, studies have shown that pagarchs held extensive executive powers that went far beyond mere fiscal authority. As illustrated by Matthias Stern, pagarchs at least occasionally cooperated with military personnel and armed civilians, and they were also in charge of the penal system.[17] Thus, they not only possessed means to penalize tax defaulters and other delinquents but had far-reaching executive powers that would have strained already tense relations with the rural population.

However, the notorious pagarch is but a symptom of a much broader development taking place in sixth-century Egypt that formed the backbone of the judicial crisis explored in this chapter. The shift of power towards the countryside and Constantinople's slipping grip on the Egyptian province fueled the reorganizing of state relations with the populace and ushered in the conditions for local officials to expand their political and legal authority. Thus, relations between villagers and the state became increasingly brokered and absorbed by pagarchs, as well as deacons, presbyters, and bishops. The short-lived Sasanid rule over Egypt beginning in 619 would have undoubtedly reinforced this trend. However, this development was at least partially

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Thebaid regarding a complaint about the pagarch's double-charging of imperial taxes). Cf. Matthias Stern, "Der Pagarch," 121–122.

[16] P.Lond. V 1674, ll. 17–19. Because most of the complaints about pagarchs come from Aphrodito and Antinoopolis, a document-based assessment of to what extent the situation in these localities was peculiar is still to be written.

[17] Matthias Stern, "Der Pagarch," 119–144; and Matthias Stern, "Welche Gefängnisse kontrolliert der Pagarch?," in *Proceedings of the 27th International Congress of Papyrology: Warsaw, 29 July–3 August 2013*, ed. Tomasz Derda, Adam Łajtar, and Jakub Urbanik (Warsaw, 2016), 1843–1870.

the result of imperial design. The edict of Justinian I, published in the early sixth-century *Novels*, was mainly concerned with ensuring that legal disputes were resolved in the provinces rather than through imperial rescript or the intervention of higher levels of jurisdiction. The principle of subsidiarity—that disputes should be resolved locally whenever possible—is underscored in the *Novels* by an admonition for litigants who, without the governor or bishop's permission, bring their litigation before higher levels of jurisdiction:

> Should someone who thinks he has an action against anyone, of whatsoever kind, have neither brought it to court before the Most Distinguished provincial governor nor appealed to the most holy bishop of his city, but have just come here without a letter from the most holy bishop, he is to know that he himself will be subject to such penalties as those to which the governor would have been subject, had he been petitioned by him but not taken the trouble to uphold justice for him. *It is for the benefit of the population of our cities and villages that we have decided to make all the provisions of this decree, to avoid their leaving their homelands and enduring hardship abroad, to the detriment of their affairs.* That is also our purpose in appointing governors without fee, and putting them under oath: so that for everyone who brings suit before them they should uphold his rights, in accordance with our laws.[18]

Accordingly, it was "for the benefit of the population" that the provincial governor or the bishop should resolve disputes, and the refrain of diverting hardship from the populace by binding them to access the law and its upholders in local venues is repeated in the edict several times.

[18] David J. D. Miller and Peter Sarris, ed., *The Novels of Justinian: A Complete Annotated English Translation* (Cambridge: Cambridge University Press, 2018), 86.3 (1:588–589).

1.3.2 Numbers and Proportions

In two important ways, the documentary record from Egypt illustrates the efficacy of the imperial push toward resolving disputes on lower levels of jurisdiction. First, for the sixth century, Jean Gascou notes a decline in the overall number of petitions, a specific decline in petitions sent to the emperor, magistrates, and civil officials, as well as a sharp increase in arbitration and conciliation documents.[19] The rising number of documents from low-level jurisdictions corresponds with the expansion of clerical authority for clerics to regularly serve as legal mediators, arbiters, and even judges. Second, legal papyrologists have speculated about the reasons for the near-complete disappearance of state trial documents ever since Arthur Schiller's pioneering article, in which he argued for the "factual disappearance of the courts in Egypt" in this period.[20] Bernhard Palme, who disagrees with Schiller's claim of a total collapse of Byzantine state jurisdiction in the sixth century, concedes "that not a single record of legal proceedings is verifiably dated later than about 530 A.D."[21] Palme adds that while the military courts had gradually disappeared, by the mid-sixth century Egypt still had seven gubernatorial courts for civil matters.[22] Palme's estimate for the disappearance of state trial

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[19] Jean Gascou, "Les pétitions privées," in *La petition à Byzance*, ed. Denis Feissel and Jean Gascou (Centre de Recherche d'Histoire et Civilisation Byzance, 14, Paris: Association des Amis du Centre d'Histoire et Civilisation de Byzance, 2004), 93–103.

[20] In 1971, Schiller argued that the complete lack of documentation of state trials in the sixth and seventh centuries indicates the absence of state adjudication during this period; Arthur Schiller, "The Courts Are No More," in *Studi in onore di Edoardo Volterra*, ed. Edoardo Volterra, 6 vols. (Milan: A. Giuffrè, 1971), 1:469–502, at 469–470.

[21] Bernhard Palme, "Law and Courts in Late Antique Egypt," in *Aspects of Law in Late Antiquity: Dedicated to A.M. Honoré on the Occasion of the Sixtieth Year of His Teaching in Oxford*, ed. Boudewijn Sirks (Oxford: Souls College, 2008), 55–76, at 68. For this period, Rogner Bagnall observes "the gradual decline of the imperial judicial system and of official tribunals, and the concomitant rise of independent notaries with the necessary legal knowledge and authority;" Roger S. Bagnall, *Roman Egypt: A History* (Cambridge: Cambridge University Press, 2021), 273.

[22] Bernhard Palme, "Law and Courts," 64.

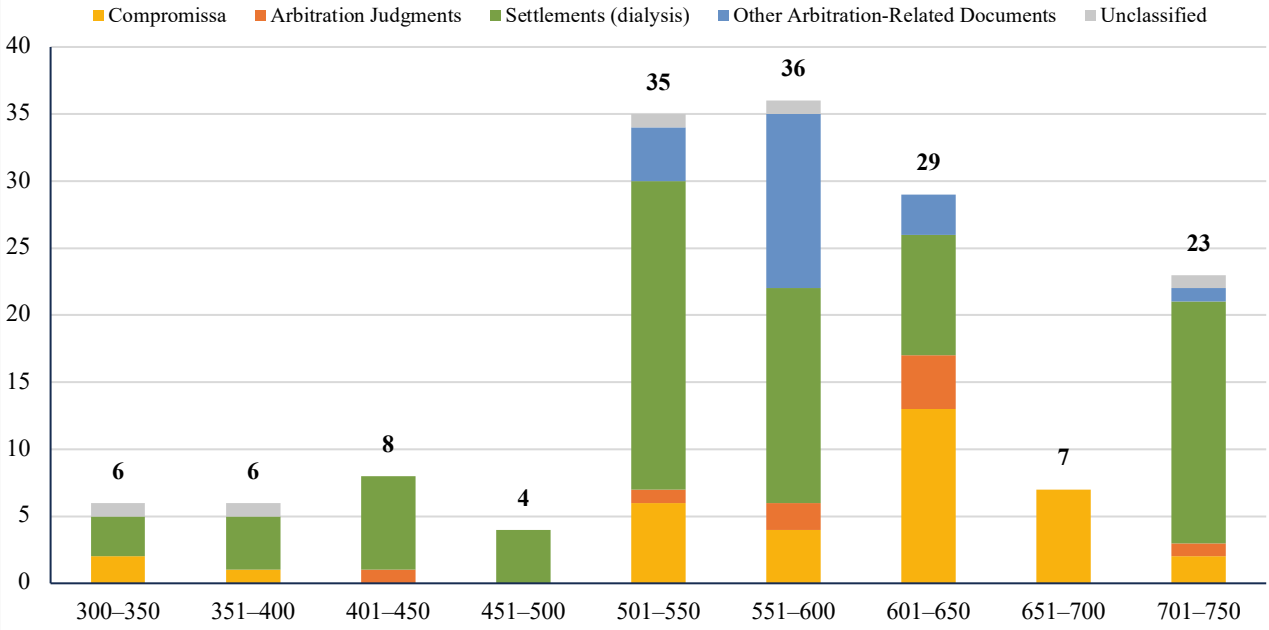
documents roughly corresponds with the time of Justinian's Herculean project of codifying imperial laws and publishing his edicts in the form of the *Codex* and the *Novels*. Moreover, the lack of legal proceedings in the documentary record is sensible in the context of a legal infrastructure in which legal disputes were primarily being addressed on lower levels of jurisdiction—including by city councils, episcopal courts, and private arbiters and mediators.

A legal machinery mainly functioning through low-level dispute resolution leaves a much different footprint in the documentary record compared to one in which disputes are more often escalated to courts. It is important that we get the proportions right to illustrate how widespread a phenomenon arbitration had become in sixth-century Egypt compared to previous centuries and as opposed to adjudication.

Between 300 and 750, we have at least 154 arbitration-related documents from Egypt (see Fig. 7 and Appendix, Table 4).[23] We have no more than 12 such documents from the fourth century, and the same applies to the fifth. A notable increase in the quantity of these documents occurs in the sixth century, where we possess 35 from 501–550 and 36 from 551–600. This high volume continues into the seventh and eighth centuries, with the exception of the period 651–700, from which we only have 7.

[23] My appended list of arbitration and arbitration-related documents is not comprehensive, and we can expect many more such documents to be identified over the next decades. I have compiled this list in two stages. In the first, I used the Trismegistos platform to identify as many documents as possible by running a search using the string "arbitration OR compromissum OR Kompromiß OR Kompromiss OR mediation OR resolution OR dialysis OR dialyse OR settlement OR Schlichtung OR Streitschlichtung OR Vergleich OR compromesso OR arbitrage OR Vergleichsurkunde OR διάλυσις OR Schiedsgericht OR Schiedsrichter" and filtering out irrelevant results. In the second, I added to these arbitration documents mentioned in publications not yet cataloged in Trismegistos. For unedited Greek documents, I especially relied on the rich footnotes in Sophie Kovarik, "Der herakleopolitische Notar Paulos: Ein Kompromiss aus dem umayyadischen Ägypten—der bisher späteste griechische Vertrag," *Tyche* 35 (2020), 55–70. Many of the Coptic documents I have added are based on the dissertation by Martin Krause, "Apa Abraham von Hermonthis: Ein oberägytischer Bischof um 600," 2 vols. (PhD diss., Humboldt-Universität zu Berlin, 1956), esp. 2:1–100, and Georg Schmelz, *Kirchliche Amtsträger im spätantiken Ägypten: Nach den Aussagen der griechischen und koptischen Papyri und Ostraka* (München: K.G. Saur, 2002), esp. 274–279. Note that I do not strictly distinguish between arbitration and mediation when discussing these documents.

Fig. 7. Arbitration evidence in late antique Egypt illustrated by type of document (papyri and ostraca in Greek and Coptic from 300–750).



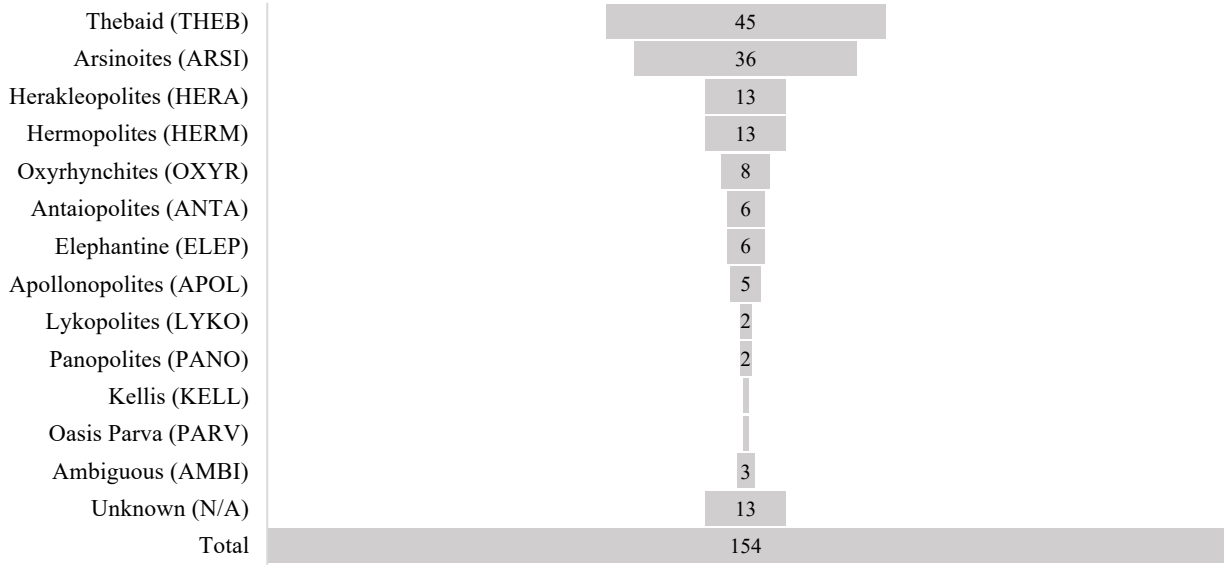
The documents issued in arbitration cases can be divided into three major types: the *compromissum*, the arbitration judgment, and the settlement (*dialysis*). The *compromissum* is the agreement between the disputing parties that their conflict will be resolved by means of arbitration, and in this document, they agree on the arbiter or arbiters entrusted with the resolution of the dispute. The arbitration judgment document, which is less consistent in terms of its structure and formulae, is a document issued by the jointly chosen arbiter or arbiters noting the decision that was taken. The settlement or *dialysis* marks the end of the dispute. It constitutes an agreement between the disputing parties that typically begins with recounting the dispute and restating their mutual assent to resolving it before arbiters. This is followed by the *transactio*, which notes what precisely the parties have agreed on—often the financial transaction that took place between them as a result of the agreement—and contains oaths by the parties not to contest the agreement or sue each other regarding the disputed matters in a higher judicial forum. All this is typically affirmed by a penalty clause specifying a monetary penalty—often twelve

solidi—should any of the parties, despite their agreement not to, decide to sue the other.[24] Apart from these three types of documents, we have arbitration-related documents, letters in which a matter of arbitration between parties is mentioned, but more often orders sent by a higher to a lower official demanding from the latter to resolve the conflict through arbitration.

By far, the most common type of document we have is the *dialysis*, with a total of 84 in 300–750, followed by *compromissa*, 35, and other arbitration-related documents, 21. At this point, I have identified only 9 actual arbitration judgments. The predominance of the *dialysis*-type document among the papyri and ostraca can be explained by the fact that it constitutes the authoritative record for the parties that their dispute was resolved, and its preservation would have been of utmost importance to prevent future litigation. In other words, whereas the *compromissum*—even if notarized—is of limited legal value insofar as it only establishes the parties' intent to have their dispute resolved through arbiters, the *dialysis* serves as a legally binding proof that can be brought before the authorities to initiate legal actions should one of the disputants violate the arbitration agreement. It is conceivable that the small number of arbitration judgments is due to judgments mostly being pronounced orally, especially since the settlement document would often likely be written up right after such judgments were pronounced. The quantitative disparity between *compromissa* and *dialyseis* in the documentary record may be explained similarly. However, there may be other reasons why we have many more *dialysis*-type documents than *compromissa*, including deaccessioning or discarding of *compromissa* once a case was concluded.

[24] Claudia Kreuzsaler, "Die Beurkundung außergerichtlicher Streitbeilegung in den ägyptischen Papyri" in *Quellen zur byzantinischen Rechtspraxis: Aspekte der Textüberlieferung, Paläographie und Diplomatik: Akten des internationalen Symposiums, Wien, 5.–7.11. 2007*, ed. Christian Gastgeber (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 2010), 17–26.

Fig. 8. Arbitration evidence in late antique Egypt illustrated by provenance (papyri and ostraca in Greek and Coptic from 300–750).



A note on the explanatory power of these quantitative musings: The findings concerning the increase in the quantity of arbitration-related documents and their implications must be approached cautiously. Not only is the classification of documents—and more often fragments of documents—into categories such as "compromissum," "dialysis," "arbitration judgment," or "arbitration-related" based on conjecturing non-existent parts of these documents, relying on incomplete entries in digital databases, and the accuracy of previous scholarship, but this classification also levels the differences between documents of the same "type" by suggesting homogeneity where there is great diversity. For example, documents of the same type often employ different terms for "arbitration" or "arbiter," a point I will momentarily return to, implying heterogeneous social practices and procedures for resolving disputes. In addition, many Greek and especially Coptic papyri and ostraca remain unedited and the edition of more documents is likely to shift these quantitative results. Another bias of quantitative approaches results from the unevenness of archeological excavations, which have been conducted in the Egyptian countryside much more than in urban areas, where, of course, we would expect many

more official court documents (see Fig. 8). And yet, despite these shortcomings inherent in quantitative measurements, the record does indicate a *notable* increase in arbitration documents in the early sixth century, one that does overlap with the disappearance of Byzantine court proceedings documents.

1.3.3 The Disappearance of Court Proceedings Documents

But despite the dramatic increase in arbitration documents, we need to consider other factors that may have contributed to the disappearance of court documents, especially in the seventh century. Scholars have observed the deliberate destruction of documentary archives and records in times of political and social unrest,[25] and it stands to reason that the elimination of state and administrative documents inevitably affects the operation of the state bureaucracy, the workings of which depend on its paper trail. As Christopher M. Kelly notes

> Taken together, all these forms, claims, reports, orders, proclamations, files and archives convey something of the extent to which central government in Roman Empire was dependent on paperwork—both for its knowledge of events and as a means of influencing their course. In major administrative headquarters (such as the Great Palace at Constantinople) an image of empire was compiled, collated and controlled through the written word. A continual flow of the documents provided important information about the concerns pressing on those in the Empire, about the actions of government officials

[25] Peter Sarris, "Lay Archives in the Late Antique and Byzantine East: The Implications of the Documentary Papyri," in *Documentary Culture and the Laity in the Early Middle Ages*, ed. Warren Brown, Marios Costambeys, Matthew Innes, and Adam Kosto (Cambridge: Cambridge University Press, 2012), 17–35, at 19.

> and about the aims, intentions and instructions of emperors. The exchange of written documents was an essential process linking rulers and ruled.[26]

For states, the utility of archives thus lies not merely in their symbolic value of serving as emblems of the state machinery's power, but it resides in the fact that they are vital to their functions and day-to-day operations of taxation, financial transactions, legal matters, and social control. In other words, the destruction of state archives must not be confused, as it sometimes is, with being a crude act of counter-culturalism or an expression of outright ignorance and disrespect for written culture; rather, these state-run archives function as a collective social memory, keeping alive the claims and entitlements of certain groups and people, and the maintenance of these archives after political and social upheavals poses a threat to the new political order. It is possible that because of the severe damages caused to the Hippodrome in the course of the Nika riots in 532, Byzantine state archives containing legal proceedings were destroyed, and I shall return to this point in a moment.[27] Albeit not the most reliable source for gathering historical facts, *The History of the Patriarchs* mentions the burning down of dozens of Egyptian monasteries by the Sasanids.[28] We know that monasteries typically maintained libraries and document repositories, and granted their heavy destructions at the hands of the Sasanids, it may have affected the number of legal proceedings we have. We also have reports that the Arab conquerors destroyed books and archives during their invasions of Iran, and they may or may not

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[26] Christopher M. Kelly, "Later Roman Bureaucracy: Going through the Files," in *Literacy and Power in the Ancient World*, ed. Alan K. Bowman and Greg Woolf (Cambridge: Cambridge University Press, 1994), 161–176, at 164.

[27] Engin Akyürek, *The Hippodrome of Constantinople* (Cambridge: Cambridge University Press, 2021), 8–9. For a detailed description of these events and a critique of Justinian and Theodora, see Procopius, *The Secret History*, tr. Geoffrey A. Williamson and Peter Sarris (London: Penguin Books, 2007 [1966]).

[28] Sawīrus b. al-Muqaffaʿ, *History of the Patriarchs of the Coptic Church of Alexandria II*, ed. and tr. Basil Evetts (Patrologia Orientalis, 1:2, Paris, 1906), 381/117–518/254, at 487/223.

have done so in Egypt.[29] The point is that the obliteration of archives, including legal documents, is typically a concern during social and political unrest, and despite the obvious losses it causes to historians, obliteration can be a generative act facilitating collective "forgetting" and changes to the social order.[30]

However, there are reasons for the disappearance of documents other than deliberate destruction in the context of unrest. The research on the Geniza cache by Marina Rustow illustrates the regular deaccessioning of state documents by Fatimid officials.[31] That documents, and even sacred scripts, were deaccessioned and disposed of in garbage heaps is obvious, and the very reason many documents on papyrus have been preserved in the first place. Garbage heaps of papyri have been found within and outside city walls, usually in proximity to settlements, although trash removal does not seem to have been state-organized.[32] But the deaccessioning of

[29] Ibn Khaldūn, *The Muqaddimah: An Introduction to History*, tr. Franz Rosenthal, 3 vols. (Princeton: Princeton University Press, 1958), 3:114: "However, when the Muslims conquered Persia and came upon an indescribably large number of books and scientific papers, Saʿd b. Abi Waqqâs wrote to ʿUmar b. al-Khattâb, asking him for permission to take them and distribute them as booty among the Muslims. On that occasion, ʿUmar wrote him: 'Throw them into the water. If what they contain is right guidance, God has given us better guidance. If it is error, God has protected us against it.' Thus, the (Muslims) threw them into the water or into the fire, and the sciences of the Persians were lost and did not reach us." There has been vigorous debate on the alleged burning of the Library of Alexandria at the hands of ʿAmr b. al-ʿĀṣ following a supposed order by the Caliph ʿUmar. See, for instance, Bernard Lewis, "The Arab Destruction of the Library of Alexandria: Anatomy of a Myth," in *What Happened to the Ancient Library of Alexandria?*, ed. Mostafa El-Abbadi and Omnia Mounir Fathallah (Leiden and Boston: Brill, 2008), 213–217. The discussion goes back to a reference that first appeared in ʿAbd al-Laṭīf al-Baghdādī's travelogue of Egypt, where he describes the Library of Alexandria, noting "it was a 'House of Knowledge' (*dār al-ʿilm*) that Alexander built when he built the city of Alexandria and it contained a treasury of books (*khizānat al-kutub*), which ʿAmr b. al-ʿĀṣ burned with the permission of ʿUmar, may God be satisfied with him;" ʿAbd al-Laṭīf al-Baghdādī, *al-Ifāda wa-l-iʿtibār fī al-umūr al-mushāhada wa-l-ḥawādith al-muʿāyana bi-arḍ Miṣr* (Maṭbaʿat Wādī al-Nīl, 1869), 28. For a skeptical account of the historicity of the Library of Alexandria, see Roger S. Bagnall, "Alexandria: Library of Dreams," *Proceedings of the American Philosophical Society* 146, no. 4 (2002), 348–362.

[30] On the practice of forgetting, see Yosef H. Yerushalmi, Nicole Loraux, Hans Mommsen, Jean-Claude Milner, and Gianni Vattimo, *Usages de l'oubli* (Paris: Éditions du Seuil, 1988).

[31] Marina Rustow, *The Lost Archive*, 395.

[32] AnneMarie Luijendijk, "On Discarding Papyri in Roman and Late Antique Egypt Archaeology and Ancient Perspectives," in *Proceedings of the 28th Congress of Papyrology: Barcelone 1–6 August 2016*, ed. Alberto

legal proceedings in garbage heaps and repurposing of writing surfaces do not explain why we have so few of them from the sixth century.

Rudolf Haensch suggests that changes to chancery and archival practices in the fifth and sixth-century Egyptian province may have caused their disappearance, and this dovetails with Lydus's sixth-century assessment of the state of the Hippodrome court archive.[33] In archival studies, scholars have focused on the crucial role that archivists play in the creation and maintenance of archives, observing that "archivists are active agents in constructing social and historical memory."[34] The passage contained in Lydus's *De magistratibus* is one of those rare occasions, where we receive first-hand information about the court archivist in Constantinople, and it goes as follows:

> Also closely attached to the *scrinium* of the *commenta* was the so-called *instrumentarius* namely, "document-guardian of the archives of the court of justice" (τοῦ χαρτοφύλαξ τῶν ἀρχείων τοῦ δικαστηρίου), for signing and filling in the decision-records. And an area has been set aside for him from olden times in the Hippodrome to the South below the Emperor's balcony down to the so-called "Sling"; and all the matters that have been transacted since the reign of Valens in the greatest courts of justice at that time are preserved there and are available to those who ask for them in such a way as if they had

Nodar and Sofía Torallas Tovar (Barcelona: Publicacions de l'Abadia de Montserrat, Universitat Pompeu Fabra, 2019), 725–736, at 728–729.

[33] Rudolf Haensch, "Die Statthalterarchive der Spätantike," in *Archives and Archival Documents in Ancient Societies: Trieste: 30 September–1 October 2011*, ed. Michele Faraguna (Trieste: Edizioni Università di Trieste, 2013), 333–349, at 341.

[34] Terry Cook, "Remembering the Future: Appraisal of Records and the Role of Archives in Constructing Social Memory," in *Archives, Documentation and Institutions of Social Memory: Essays from the Sawyer Seminar*, ed. Francis X. Blouin Jr. and William G. Rosenberg (Ann Arbor: University of Michigan Press, 2007), 169–181, at 170.

been transacted yesterday perchance. The *instrumentarius* himself, too, however, has been done away with (ἀπώλετο), and his seat remains deserted, having been given up to mere domestics (οἰκέταις) awaiting their masters. For, since a judicial inquiry or any other business to be transacted, as would be expected, does not exist, nor is even set in motion in the court of justice, how could he himself be considered to be necessary for its business?[35]

Following Lydus, the court archivist or "instrumentarius" was the official responsible for judicial records, and these records were stored on the south side of the Hippodrome. Kelly notes that these archives would have been easily and securely accessible from the Great Palace.[36] The 1927 British expedition discovered 25 chambers in the subterranean structure of the Sphendone, and chambers 8 to 25 were at some point converted into a cistern. The archaeologists found further chambers "beyond the semicircular curve" of the Hippodrome, and these chambers were thicker-walled and had a narrower corridor than the previous ones. They suppose that most of the Sphendone chambers were used for "house personnel, tackle, and perhaps animals."[37] Granted that some of these chambers were used as court archives and that the *instrumentarius* used to work there, according to Lydus, by the mid-sixth century he was no longer in charge and his seat deserted due to a lack of judicial activity. The reference to the household slaves (οἰκέται), who

[35] Ioannes Lydus, *On Powers or the Magistracies of the Roman State*, 161–163, translation by Anastasius C. Bandy.

[36] Christopher M. Kelly, "Later Roman Bureaucracy," 162.

[37] Stanley Casson, David T. Rice, Geoffrey F. Hudson, and Arnold H.M. Jones, *Preliminary Report upon the Excavations Carried out in the Hippodrome of Constantinople in 1927 on Behalf of the British Academy* (London: Oxford University Press, 1928), 16–17. See also Christopher M. Kelly, "Later Roman Bureaucracy," 161–163.

apparently replaced him is obscure to me, but it speaks to the de-professionalization of the archivist's position and the maintenance of these archives by less costly labor.[38]

Lydus was of an affluent background, and he had risen to the top rank of senior clerk (*cornicularius*) in Constantinople. The *De magistratibus* is a detailed, though not impartial, account of the Byzantine administration, its institutions, and practices. Lydus traces the historical and etymological continuities of the prefecture to Rome's early days, and in his eyewitness account of the administrative apparatus, he sorely laments the erosion of the prefecture.[39] And yet, the information he offers on the court archives and the archivist appears not only plausible because the Byzantine administration certainly did maintain many such archives, as evidenced by the references to them in the *Codex Justinianus* and other places, but also due to its incidental mentioning.

While the above factors may have contributed to the disappearance of court records in sixth-century Egypt, they would have most likely resulted in the systematic destruction or absence of other types of official documents, too, none of which we are currently aware of. In other words, the shift toward arbitration was a cultural phenomenon anchored in the structural and substantive transformation of Egypt's legal landscape rather than being a historical fantasy conjured due to the absence of court documents. The stunning increase in arbitration documents,

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[38] The terms οἰκέτης and δοῦλος are among the most commonly employed terms for slaves in late antique Greek documentary culture. Kyle Harper notes that the term οἰκέτης is synonymous with δοῦλος. Specifically, he argues that the term implies unfree legal status, indicating not a servant, but a chattel slave. He further notes that οἰκέτης is not equivalent to "domestic slave;" Kyle Harper, *Slavery in the Late Roman World, AD 274–425* (Cambridge: Cambridge University Press, 2011), 513–518. On the etymology and development of the term οἰκέτης in Greek, see Fritz Gschnitzer, *Studien zur griechischen Terminologie der Sklaverei*, 2 vols. (Wiesbaden: Franz Steiner, 1963–1976), 2:20–21. See also the discussion in Marja Vierros, "Slaves in Sixth-Century Palestine in the Light of Papyrological Evidence," in *Slavery in the Late Antique World, 150–700 CE*, ed. Chris L. de Wet, Maijastina Kahlos, and Ville Vuolanto (Cambridge: Cambridge University Press, 2022), 191–209, at 209.

[39] Michael Maas, "John Lydus [Review]," *The Classical Review* 36, no. 2 (1986), 221–223. See also, James Caimi, *Burocrazia e diritto nel De magistratibus di Giovanni Lido* (Milan: Dott. S. Giuffrè Editore, 1984), 201–286.

combined with a decline in court proceedings documents in the sixth century, the shift of power towards local officials and clerics, and circumstantial evidence attesting the "lack" of high-level judicial activity in Constantinople puts us on more solid ground for the thesis that sixth-century Egypt had gradually transformed into an arbitration society. Granted this shift, why did it happen in the sixth century? To answer, we need to leave the imperial center, focus on the nature of arbitration, and once again turn to the Egyptian countryside.

1.4 Why Arbitration, and Why Now?

It is well-known among legal historians and anthropologists that mediation and arbitration typically entail few access barriers compared with adjudication by formal courts: They are affordable, little formalized, and time-saving for litigants.[40] Yet these means of dispute resolution have disadvantages: They require the parties to consent to a jointly selected mediator/arbiter, trust his or her legal acumen (a 531 law forbade women to serve as arbiters though), and promise to honor the settlement verdict. As mentioned before, in Egypt and elsewhere, to prevent litigants from appealing arbitration settlements (*dialyseis*) to higher levels of jurisdiction and ensure compliance with verdicts, the parties would be forced to swear an oath, and written settlements often included elaborate penalty clauses that became effective in the case of appeal.[41] From a sociolegal perspective, harsh penalty clauses in arbitration forums are somewhat unusual because they contravene the lack of information that litigants have about the

[40] Cf. Martin Shapiro, *Courts: A Comparative and Political Analysis* (Chicago: University of Chicago Press, 1981), 1–64.

[41] *CodJ*, 2:55.4; Caroline Humfress, "Law and Legal Practice in the Age of Justinian," in *The Cambridge Companion to the Age of Justinian*, ed. Michael Maas (Cambridge Companions to the Ancient World, New York: Cambridge University Press, 2005), 161–184, at 180–181. For examples of penalty clauses, see Marzena Wojtczak, "Legal Aspects of Dispute Resolution in Late Antiquity: The Case of P. Mich. XIII 659," *Journal of Juristic Papyrology* 46 (2016), 275–308, at 303, footnote 62.

legal skills and acumen of the arbiter. In such a system, a litigant dissatisfied with the settlement verdict and also doubtful of the arbiter's judicial acumen would have an especially high perception of injustice in the absence of the option to seek appeal.

Mediation and arbitration are often considered efficient means for resolving conflicts in low-stakes cases involving small monetary sums or family-internal matters. Both these modes of dispute resolution are less harmful to the social relations between the litigants compared to adjudication. However, in high-stakes issues, an official court will better serve litigants' needs. Entry barriers into the legal profession ensure high skill and legal acumen. For the Eastern Mediterranean, we have firm evidence that law schools operated in Beirut and Constantinople, where students were taught Roman law and the legal treatises of Gaius, Ulpian, and others in a four-year curriculum.[42] In the ancient, as in the modern world, courts typically adhered to a high level of legal decorum and formality, increasing their perception by litigants as impartial and just forums. In the *Code of Justinian* of 534, their impartial decorum was, among other things, granted by placing a premium on litigants' right to appeal. Accordingly, litigants could appeal the verdict of a judge whom they suspected to be biased or object to a judge presiding over a case before the trial began, in which case their litigation was to be resolved by a jointly chosen arbiter.[43]

The common wisdom of arbitration being "less formalized" is only partially true for our documents. As Claudia Kreuzsaler and others observe, specific scribal practices and formulaic requirements governed the writing of *compromissa* and *dialyseis*, and these documents generally

[42] Paul Collinet, *Histoire de l'école de droit de Beyrouth* (Paris: Société Anonyme du Recueil Sirey, 1925), 223–229.

[43] *CodJ*, 7:62.30 and 3:1.16.

follow a predictable structure that makes them easily recognizable for late antique subjects, as well as papyrologists and historians.[44] The formality of these documents is, I argue, by no means accidental because scribes and notaries' adherence to established and well-known conventions is what endowed them, and by implication the process of arbitration, with legal authority and clout.

Scribal conventions and the use of formulae are inextricably connected to the issue of impartiality, which has received little attention in the study of late antique legality. I understand *impartiality* as an aggregate of predictability (because of existing norms and rules, subjects know what to expect), legal access (subjects have access to different levels of justice depending on their needs), and a good judicial reputation (based on past performances subjects can be reasonably confident about receiving a certain level of justice).[45] The aim here is not to measure impartiality as a subjective perception. Instead, I seek to understand how arbiters, scribes, and notaries—as representatives of the law do in every legal system—invested in impartiality as a judicial decorum. By using signs, symbols, and procedures known to the populace, these figures increased public trust in the legal infrastructure they managed and ensured that people complied with judgments.

But why did legal disputes begin to be predominantly resolved through arbitration and mediation (rather than adjudication) in the *sixth* century? Why not earlier or later? After all, the social and financial benefits associated with alternative forms of dispute resolution insufficiently explain why arbitration became more widespread at this moment in time. The increase in judicial powers by pagarchs and clerics was undoubtedly a factor. And so was the receding grip of Constantinople on the Egyptian province. And yet, we must resist reading Egypt's judicial crisis

[44] Claudia Kreuzsaler, "Die Beurkundung," 18.

[45] For the concept of judicial reputation, see Nuno Garoupa and Tom Ginsburg, *Judicial Reputation*, 14–49.

as merely the outcome of a process during which Byzantine administrators gradually lost power and clerics expanded their authority.

We must first put to rest the assumption that imperial law and episcopal justice functioned in isolation from each other. The Coptic ostraca and papyri from the fifth and sixth centuries analyzed by Georg Schmelz suggest that bishops, too, utilized well-established procedural norms known from official courts.[46] Meanwhile, arbitration was never the prerogative of clerics and low-level administrators alone but was practiced by state officials as well. In other words, the functions of state and ecclesial legal forums overlapped and complemented each other. As Maria E. Doerfler notes, "arbitration proceeded in a sense in the shadow of the courtroom."[47] Only by taking a holistic approach to Egypt's legal infrastructure can we understand the dwindling of adjudication in the sixth century.

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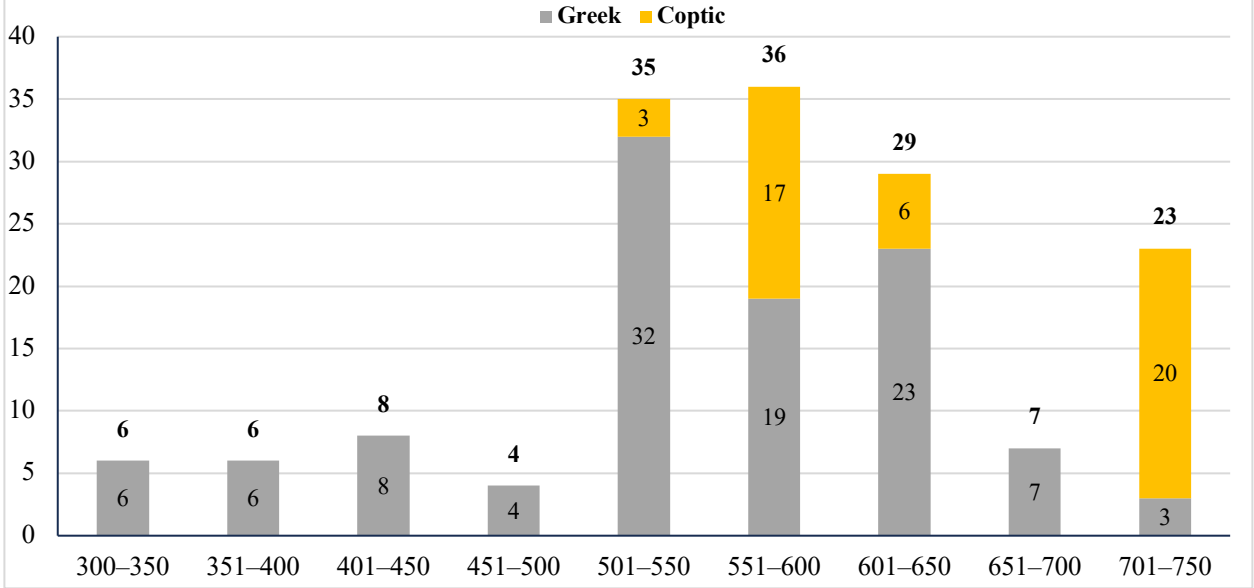
[46] Georg Schmelz, *Kirchliche Amtsträger*, 274–279. See Caroline Humfress, "Bishops and Law Courts in Late Antiquity: How (Not) to Make Sense of the Legal Evidence," *Journal of Early Christian Studies* 19, no. 3 (2011), 375–400. Against the scholarly tendency of reading the Roman imperial constitutions of the third and fourth centuries as general articulations of Roman policy concerning church jurisdiction, Caroline Humfress rereads them as responses to specific legal problems, arguing that while Roman state legislation did not make bishops equals to magistrates, it did establish that where parties mutually agreed to have their civil law case adjudicated by ecclesiastical authorities, the judgments thus pronounced by those authorities were binding and valid. She also critiques the predominant scholarly concern with the relationship of the *episcopalis audientia* to the Roman state judiciary, arguing that from the Roman imperial perspective, bishops, like any other private person, could mediate, arbitrate, and adjudicate cases if delegated by litigants to do so. Wolfgang Waldstein had much earlier argued that the *Sirmondian Constitutions*, rather than being concerned with arbitration, explicitly imposed on the praetorian prefect and all judges the obligation to enforce episcopal sentences (*sententia*); Wolfgang Waldstein, "Zur Stellung der *episcoalis audientia* im spätrömischen Prozeß," in *Festschrift für Max Kaser zum 70. Geburtstag*, ed. Dieter Medicus and Hans H. Seiler (Munich: C.H. Beck'sche Verlagsbuchhandlung, 1976), 533–556, at 544–545. In contrast, Adriaan J.B. Sirks upholds the view that "the *episcopalis audientia* had in ecclesiastical matters exclusive jurisdiction [...], it was as regards non-ecclesiastical matters merely a court of arbitration;" Adriaan J.B. Sirks, "The *episcopalis audientia* in Late Antiquity," in *Droit et cultures* 65 (2013), 79–88. See also Constantine's 318 edict regarding the *episcopalis audientia*; *The Theodosian Code and Novels and the Sirmondian Constitutions*, tr. Clyde Pharr (Princeton: Princeton University Press, 1952), 31 (1,27,1).

[47] Maria E. Doerfler, "Law and Order: Monastic Formation, Episcopal Authority, and Conceptions of Justice in Late Antiquity" (PhD diss., Duke University, 2013), 79.

A crucial factor encouraging the shift towards arbitration in Egyptian society was the growing significance of Coptic as a language used in official documents. Coptic was the native language of most Egyptians, whereas Greek always had the status of officialdom and learning. The growing popularity of Coptic favored more informal forums of dispute resolution, in which adversaries could use their native tongue rather than having to revert to a court operating in Greek. However, it remains up to debate to what extent the rise of Coptic was the cause or the effect of society's increasing reliance on arbitration.[48]

The increasing significance of Coptic in arbitration documents began in the early sixth century (see Fig. 9), and we have some notable dossiers containing Coptic legal documents, including those of Dioscorus of Aphrodito and Apa Abraham. Jean-Luc Fournet's analysis of 114 ostraca in the Abraham dossier shows that 51 of them constitute legal documents dated

Fig. 9. Arbitration evidence in late antique Egypt illustrated by language (papyri and ostraca in Greek and Coptic from 300–750).



[48] Jean-Luc Fournet, *The Rise of Coptic: Egyptian versus Greek in Late Antiquity* (Princeton: Princeton University Press, 2020), 104.

between 595 and 621.[49] However, despite the notable increase in Coptic official documents, there is no denying that even in the seventh century, Greek still ranked as the official language that could guarantee the universal validity of legal deeds and other documents.[50]

The shift towards Coptic further accelerated with the two foreign invasions that followed the turn of the seventh century.[51] Historians have long assumed the Sasanid invasion to have had a thorough impact on the use of Coptic for legal matters, and a corollary might have been the weakening of the Greek court system. For sure, the sudden severing of relations with Constantinople would have obliterated the need to uphold the Byzantine official requirements governing the Greek *libellus* procedure.[52] However, we are still at the beginning of understanding the impact of the Sasanid invasion on Egypt's political and social structures. Literary accounts, many of them written in the vein of Christian hagiography, greatly exaggerate the havoc the Sasanid military wreaked on the local populace.[53] While destructions are

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[49] Ibid., 134.

[50] Cf. ibid., 126–128.

[51] Leslie S.B. MacCoull, *Dioscorus of Aphrodito: His Work and His World* (Berkeley: University of California Press, 1988).

[52] Bernhard Palme, "Libellprozess und Subskriptionsverfahren," in *Symposion 2017: Vorträge zur griechischen und hellenistischen Rechtsgeschichte (Tel Aviv, 20.–23. August 2017)*, ed. Gerhard Thür, Uri Yiftach, and Rachel Zelnick-Abramovitz (Vienna: Österreichische Akademie der Wissenschaften, 2018), 257–275, at 257.

[53] In the much later *History of the Patriarchs*, Sawīrus b. al-Muqaffaʿ describes the Sasanid conquests as a big butchering feast driven by godlessness and mundane greed. Near Alexandria, he claims, 600 monasteries used to flourish, and the Sasanid armies surrounded them, slaying all the monks with the sword. After that, the Persian commander (*salār*) supposedly went to Alexandria and committed a ruse. He ordered all men between 18 and 50 to the city, declaring they would receive 20 Dinars each. Once they had arrived, his soldiers slew them all, leading to a total of 80,000 murdered men. He then apparently continued to Upper Egypt, where his troops continued slaughtering monks. Sawīrus b. al-Muqaffaʿ, *History of the Patriarchs II*, 484/220–486/222. Al-Maqrīzī relates that when the Sasanids entered Egypt, "they killed a very great quantity of Christians" with the help of the Jews and demolished many of their churches. Al-Maqrīzī, *A Short History of the Copts and of Their Church*, tr. Solomon C. Malan (London: D. Nutt, 1873), 67–68. These reports about Sasanid destruction also conflict with the policies the Sasanid kings had adopted towards Christians in the imperial center. Cf. Richard E. Payne, *A State of Mixture: Christians, Zoroastrians, and Iranian Political Culture in Late Antiquity* (Transformation of the Classical Heritage, 56, Oakland: University of California Press, 2015); Tobias Scheunchen, *Cosmology, Law, and Elites*.

conceivable, we cannot take these literary accounts at face value because they contradict the overall state of the Egyptian churches as represented by the documents and the flourishing and even expansion of monasteries and church structures in the early seventh century. A systematic study of the Pahlavi documents from Egypt—580 of which were initially housed in Vienna but are now mainly in St. Petersburg—would be needed to draw more general conclusions about the impact of the Sasanid turmoil on the functioning of the courts.[54] After the Arab conquests of Egypt, the importance of Coptic was further cemented. Alongside Greek, Coptic was used for communicating official matters since the Islamic bureaucracy significantly relied on Greek- and Coptic-speaking bureaucrats, administrators, and tax collectors. Things took a turn only with the administrative reforms of ʿAbd al-Malik (r. 65/685 until 86/705) and the Arabicization of the bureaucracy in the last decades of the seventh century.

Another factor that has received little attention for understanding the shift towards arbitration has to do with the Christological schisms. Although Jack Tannous persuasively argues that we should be careful not to give too much credit to the ways that confessional discourses shaped the lives of ordinary people,[55] the fifth-century controversies at Ephesus and Chalcedon had important structural implications for the administration of justice in Egypt. These were felt on the ground. Following Justin I's anti-Chalcedonian policies, Severus of Antioch and other high-caliber clerics from Syria and Asia Minor came to Egypt after being exiled. It is here that

[54] Helene Loebenstein notes that in 1936, the Papyrussammlung in Vienna held about 577 Pahlavi papyri, all but one of which were sent to Berlin to be studied by the Iranian Studies scholar Olaf Hansen. During WWII, most of them went missing. After negotiations with the GDR authorities, when a few had reappeared in East Berlin in the sixties, 31 papyri and 2 parchment documents were returned to Vienna in 1981. Helene Loebenstein, "Papyrussammlung der Österreichischen Nationalbibliothek," 31–32. I was kindly informed at the Vienna Collection that most of the missing Pahlavi papyri are now in St. Petersburg.

[55] Jack Tannous, *Medieval Middle East*, 105.

Severus assumed the role as head of the anti-Chalcedonian opposition.[56] The *History of the Patriarchs* mentions that with the 538 ordination of Paul the Tabennesiote to the patriarchy, it became customary for Constantinople to appoint a counter-patriarch for the city of Alexandria.[57] Thus from Paul onwards, Alexandria effectively had two patriarchs, one following the imperial dyophysite dogma (Melkites), the other representing the Coptic miaphysite theological creed. The Coptic patriarchs did not permanently reside in Alexandria, apparently out of fear of their Chalcedonian counterparts. Peter IV (r. 575–577) and his successor Damian (r. 577–c606) had sought refuge westwards of Alexandria at the Monastery of Mt. Tabor (Dayr Tābūr).[58] Phil Booth interprets the consolidation of the Coptic miaphysite church under Severus as a moment of radical bifurcation of the Egyptian ecclesial landscape, which had significant institutional implications. He argues that after Justinian's edict, members of the Coptic church had been expelled from their sees, and Chalcedonian bishops were being ordained even in cities further up the Nile. Consequently, monasteries in the countryside would have likely become hubs of a localized, Coptic form of Christianity.[59] The hagiographical literature mentions recurring persecutions—depositions and exiles—of anti-Chalcedonian bishops and monks beginning with Paul the Tabennesiote. Even though we cannot take the hagiographical evidence at face value,

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[56] Stephen J. Davis, *The Early Coptic Papacy: The Egyptian Church and Its Leadership in Late Antiquity* (Cairo and New York: American University in Cairo Press, 2004), 99. See the Justinian edict confirming the anathema of Severus, *NovJ*, 42.1 (1:381–382). See also Lucas Van Rompay, "Severus, Patriarch of Antioch (512–538), in the Greek, Syriac, and Coptic Traditions," *Journal of the Canadian Society for Syriac Studies* 8 (2008), 3–22.

[57] Sawīrus b. al-Muqaffaʿ, *History of the Patriarchs II*, 469/205.

[58] Ibid., 474/210.

[59] Phil Booth, "Towards the Coptic Church: The Making of the Severan Episcopate," *Millennium* 14, no. 1 (2018), 151–189.

the imperial schisms likely instigated structural changes in the organization of the Egyptian church that would have affected local access to justice.

The church fathers had always had an uneasy relationship with the idea of adjudication in formal courts. Already in the letter to the Corinthians, Paul instructs them to refrain from suing each other in civil courts. Rather, he suggests, conflicts between Christians should be resolved by those with "standing in the church."[60] The *Didascalia Apostolorum*, too, envisions the bishop as most suitable to serve in the capacity of judge for God's congregation.[61] In the fourth century, John Chrysostom warned his audience against the many dangers of going to court:

> Many men, when they have a dispute with one another, save themselves loss, and alarm, and many risks if they come to a friendly understanding together outside the law court, the issue of the case turning out in accordance with the sentiment of each party; but if they severally entrust the affair to the judge the only result to them will be loss of money, and in many cases a penalty, and the permanent endurance of their hatred.[62]

The Christian concern with litigation was its disruptive and unsettling potential for social relations and the resolution of disputes by the "unrighteous." However, while scriptural ideas and ecclesial attitudes about litigation must have influenced the public image of adjudication, they certainly did not stop the populace from going to court.

Indeed, the documentary record illustrates that despite the suspicion ecclesial leaders had toward courts, second and third-century Christians in Egypt heavily litigated in Roman

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[60] Michael D. Coogan, Marc Z. Brettler, Carol A. Newsom, and Pheme Perkins, ed., *The New Oxford Annotated Bible: New Revised Standard Version with the Apocrypha: An Ecumenical Study Bible* (Oxford: Oxford University Press, 2010), 1 Cor 6:1–6.

[61] Maria E. Doerfler, "Law and Order," 211.

[62] John Chrysostom, cited in Caroline Humfress, *Orthodoxy and the Courts in Late Antiquity* (Oxford: Oxford University Press, 2007), 35, translation by Caroline Humfress.

provincial courts. The massive workload of governors and emperors demonstrates this: P.Yale 61 conveys that in 209 CE, the Egyptian governor heard a staggering 1,804 petitions over just three days.[63] Clifford Ando and Ari Bryen plausibly explain the litigiousness of provincials after the Roman conquests of Egypt as tied to the critical role that courts assumed for the reproduction of "truth claims generated by imperial discourse."[64] Why then did litigants three centuries later resolve most of their disputes through arbitration and mediation? Had courts become a negligible constituent in the reproduction of Byzantine imperial ideology by the sixth century? Was the Byzantine imperial push for arbitration, as manifested by Justinian's edicts and law compilations, as well as the mushrooming of low-level justice providers in Egypt, a response to a court system that had for centuries been overloaded? To answer, we need to understand how Egyptian imperial subjects, who by the 640s were living under Arab Muslim rule, resolved legal disputes and navigated a legal infrastructure that was increasingly averse to adjudication. The three cases that constitute the next chapter pursue this line of thinking *from the bottom up*.

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[63] Ari Z. Bryen, "Judging Empire: Courts and Culture in Rome's Eastern Provinces," *Law and History Review* 30, no. 3 (August 2012), 771–811, at 773.

[64] Ibid., 781. For the great efforts that third-century subjects in the Eastern provinces of Rome undertook to benefit from formal adjudication, see, for instance, the 245 case of a group of men from Beth Phouraia (East Syria) who traveled all the way to Antioch to have their village conflict resolved by the governor; Clifford Ando, *Imperial Ideology*, 73–80.

CHAPTER TWO

Arbitration and Mediation in the First Islamic Century

2.1 Dispute Resolution at the City Council: Litigating in the Shadow of Byzantine Law

2.1.1 The Case: Iohannes and Tsoker v. Philemon and His Wife (the "Thekla Dispute")

In 647, Philemon and his wife received justice.[1] For the peasant couple, the year marked the successful end to an enduring legal battle over their house in Apollonopolis Magna (Edfu) up the Nile River. The lawsuit against them had been filed several years earlier by Iohannes, a respectable cleric of good public standing. Iohannes had contested their rightful possession and ownership of the house, threatening to strip them of their belongings by laying claim to their house. Prior to the lawsuit, which would have resulted in legal and scribal fees for Philemon and his wife as both of them were illiterate,[2] they had already spent a good deal of money on traveling up to Oxyrhynchus (al-Bahnasa) to secure the deed for their house. That was expensive: a rest sum of three gold solidi—at least half the couple's annual income[3]—was

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[1] Four documents are part of this case: (1) the arbitration court proceedings in Coptic: SB Kopt. I 36=P.Scribes, 221–252=P.Budge, 80–111, (2) the legal deed confirming the estate transfer in Greek: SB VI 8987=P.Zilliacus, 84–93, (3) the arbitration settlement (*dialysis*) in Greek: SB VI 8988=P.Zilliacus, 95–107=SB I 5763, and (4) an unrelated marriage document of the defendants' daughter in Greek: SB VI 8986=P.Zilliacus, 81–84=SB III 6271.

[2] Philemon and his wife's illiteracy can be inferred from two places: (1) In the witness statements at the end of the Coptic court records in the Budge Papyrus, a certain Iohanne signs for Philemon noting that he asked him to do so because Philemon does not know how to write. (2) In the contested Greek deed confirming the transfer of the house to Philemon and his wife, the scribe Georgios notes that none of the parties to the deed transfer were literate. SB Kopt. I 36=P.Scribes, 221–252=P.Budge, 80–111, at 111; SB VI 8987=P.Zilliacus, 84–93, at 90.

[3] Jairus Banaji notes that unskilled laborers earned about one solidus every four months; Jairus Banaji, *Agrarian Change in Late Antiquity*, 67. It is likely that Philemon's wife also contributed to the household income, which is common among lower social classes. In that case the couple's annual income would be higher than 3 solidi. On public discourses about women in late antiquity, cf. Joëlle Beaucamp, *Le statut de la femme à Byzance (4e–7e siècle)*, 2 vols. (Paris: De Boccard, 1990–1992), 1:11–27.

demanded to pay off the house, and on top of that, they incurred fees for the notary and witnesses to the transaction. To be sure, Iohannes wasn't exactly on a mission to promote voluntary poverty. In an ironic twist of fate, the death of Iohannes's paternal aunt Thekla, the previous owner of the house in question, had created legal opportunities of sorts for him. Judging from the Coptic and Greek legal documents from this case, the demeanor of this deacon was ferocious, and he would use every available loophole to strike against his opponents. When the parties finally reached a settlement, Iohannes had exhausted all means at his disposal to discredit Philemon's legal claims: He had presented spurious arguments, introduced shady witnesses, and come up with what we must assume to have been forged legal documents.

During the trial, Philemon and his wife were worried—very worried. They were aware of Iohannes's public standing as an esteemed and charismatic Christian figure in Edfu and his concomitant social and political capital. On several occasions when presenting written arguments to the court, Philemon expressed concern over the social gap between him and his adversary, believing that Iohannes "thinks that as I am a peasant and he is an urbanite (πολίτης) and a deacon (διάκων), any word is good enough to relate against me or to do to me."[4] We know from Byzantine petitions that identifying oneself as the "poor" and less powerful party was a common rhetorical strategy among litigants.[5] However, the couple's urgently felt sense that the social disparity between Iohannes and themselves could stack the odds in the arbitration trial against them was very real. Over the previous two centuries, clerics had steadily accumulated wealth, climbed to the top of the social order by positioning themselves as local power brokers, and

[4] SB Kopt. I 36=P.Scribes, 221–252=P.Budge, 80–111, at 89, translation altered.

[5] Nicholas B. Venable, "Legal Authority and Monastic Institutions in Late Antique Egypt" (PhD diss., University of Chicago, 2018), 151.

started serving in legal capacities for the local populace.[6] Not only were they typically literate,[7] but their social capital granted them access to professional networks and expertise that a peasant couple from Edfu could hardly match. In a Greek-Coptic document (P.Apoll. 74) from a few years after the legal battle against Philemon found in the Edfu jar, we witness the same Iohannes together with his daughter Anna giving depositions as witnesses in another estate conflict.[8] We can assume that as deacon of Edfu, Iohannes was well-acquainted with the city's legal infrastructure, as he would have frequently been called on to offer testimony and advice in ongoing lawsuits because of the moral standing of deacons and their authority within the community.

Philemon and his wife probably lived most of their lives in Edfu. From a fourth document unrelated to the lawsuit (SB VI 8986), we know that they had at least one daughter—her name is unfortunately lost—who got married to a certain Herakleides in 640 or 641.[9] Apart from clerics and state officials, in the 640s, the city of Edfu was home to shepherds (sg. ποιμήν), salaried farmers (sg. μίσθιος γεωργός), fishermen (sg. ἁλιεύς) and sailors (sg. ναύτης), as well as several artisan guilds, including potters (sg. λεπτοκεραμεύς), oil-manufacturers (sg. ἐλαιουργός), tailors

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[6] A 547/548 petition from Aphrodito (P.Cair.Masp. III 67283) to Empress Theodora in Constantinople to change the city's tax status lists the signatures of fifty-one male elite inhabitants of the city. The list is spearheaded by numerous notable clergy members of Aphrodito—all of them priests and except for one, literate—followed by landowners, notaries, the village chief, and others. The order of signatures to the document has been interpreted to reflect the social hierarchy in Aphrodito. Traianos Gagos and Peter van Minnen, *Settling a Dispute: Toward a Legal Anthropology of Late Antique Egypt* (Ann Arbor: University of Michigan Press, 1994), 10–13.

[7] Ewa Wipszycka identified no more than eight illiterate clerics in sixth and seventh-century documents from Egypt; see Ewa Wipszycka, "Le degré d'alphabétisation en Égypte byzantine," *Revue d'Études Augustiniennes et Patristiques* 30, no. 3–4 (1984), 279–296, at 288–289. Cf. Norman R. Underwood, "The Professionalization of the Clergy in Late Antiquity" (PhD diss., University of California, Berkeley, 2018), 18–19.

[8] P.Apoll. 74=P.JarreEdfou, 7–14, at 10.

[9] SB VI 8986=P.Zilliacus, 81–84, at 82=SB III 6271. For the dating of the papyrus, see Harold I. Bell, "A Dating Clause under Heraclius," *Byzantinische Zeitschrift* 22 (1913), 395–405.

(sg. σπορεύς), and carpenters (sg. τέκτων).[10] Even though Philemon repeatedly speaks of himself as a peasant during the trial, we do not know the kind of agricultural labor he performed. Did he own the livestock or land he cultivated? Did he lease a parcel of land from one of the great estates surrounding Edfu? By the seventh century, much of the agricultural land in the Thebaid was owned by monasteries, and monks were frequently involved in hiring farmers for the cultivation of ecclesial land.[11] Therefore, it is not unlikely that Philemon had been employed as an agricultural laborer by one of the many monasteries, which would have heightened his sense of terror when sued by Iohannes, who, as the head of the Edfu church, was well immersed in these local networks and wielded power over him. It is more difficult to conjecture if Philemon's wife contributed to the household income: Documents from Jeme suggest that some women were trained in weaving and even engaged in trading despite the projected ideals of womanhood found in Greek and Coptic literary sources from this period, according to which they should run the household, rear the family, and obey the orders of their husbands.[12]

The disputed house had originally been the property of the late Thekla, whom Iohannes alleges to be his paternal aunt and who passed away several years earlier. The house was in the Karaune district of Edfu and contained a dining room, bedroom, and basement.[13] At some point,

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[10] P.Apoll. 75. Cf. Chris Wickham, *Framing the Early Middle Ages: Europe and the Mediterranean, 400–800* (Oxford: Oxford University Press, 2005), 612; and Walter E. Crum, "Koptische Zünfte und das Pfeffermonopol," *Zeitschrift für Ägyptische Sprache und Altertumskunde* 60 (1925), 103–111.

[11] Terry G. Wilfong, "Agriculture among the Christian Population of Early Islamic Egypt: Practice and Theory," *Proceedings of the British Academy* 96 (1999), 217–235, at 219. See P.Mon.Phoib.Test., 279–286, Annexe 1=P.KRU 105=SB I 5608=O.Cair.Monuments 8739=P.RevilloutCopt. 4 on the transfer of land by a village to the collective ownership of a monastic complex. See also Leslie S.B. MacCoull, *Coptic Legal Documents: Law as Vernacular Text and Experience in Late Antique Egypt* (Arizona Studies in the Middle Ages and the Renaissance, 32, Tempe: ACMRS and BREPOLS, 2009).

[12] Terry G. Wilfong, *Women of Jeme: Lives in a Coptic Town in Late Antique Egypt* (Ann Arbor: University of Michigan Press, 2002), 76–77.

[13] SB VI 8988=P.Zilliacus, 95–107, at 100=SB I 5763.

Thekla ran into financial troubles, asking Philemon and his wife for a loan of 1 Holokottinos (=1 gold solidus/nomisma). As a security on the loan, Thekla took out a mortgage (ἐνέχυρον) on her house. In the court proceedings, Philemon mentions that the hypothec was drawn up in the eleventh indiction, thus either in 622 or 607.[14] Since the final settlement between the parties dates the initial loan to "before the arrival of the Persians," which we know began in 619 (=eighth indiction), we can reasonably infer that Thekla took out the loan in 607.[15] It certainly seems curious that Thekla approached Philemon and his wife of all people for a loan, especially in light of the clerical connections, and thus wealth, her family must have had. The court proceedings suggest that Thekla continued paying interest on her loan until she left the city, moving up to Great Beshin, a bit northeast of Oxyrhynchus.[16] That is when things took a turn for the worse. In their arguments to the court, Philemon and his wife allege that Thekla had allowed them to live in the house rent-free in return for the Holokottinos she owed them and that the loan agreement stipulated a term by which, if Thekla had not paid off the remaining debt, they would become house owners. We are to assume, then, that after her move up north, Thekla stopped making interest payments, and Philemon and his wife continued living in the house as they had before. When the contractually agreed-on term had passed, the couple took this to mean that they were now the legal owners of the house for the portion of the Holokottinos they loaned Thekla.[17]

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[14] SB Kopt. I 36=P.Scribes, 221–252=P.Budge, 80–111, at 85. For the conversion of indictions to Julian years, cf. Roger S. Bagnall and Klaas A. Worp, *Chronological Systems of Byzantine Egypt* (Leiden and Boston: Brill, 2014).

[15] SB VI 8988=P.Zilliacus, 95–107, at 100=SB I 5763.

[16] SB Kopt. I 36=P.Scribes, 221–252=P.Budge, 80–111, at 97. Great Beshin is most likely to be identified with modern-day ⲡⲃⲏϣⲛ=al-Fashn.

[17] Ibid., 87.

But there were two issues: First, the couple did not hold an official deed (πρᾶσις) confirming the transfer of the house's ownership and rights to them. Second, the house was worth more than the Holokottinos Thekla had mortgaged her house with. In the meantime, Thekla had passed away. To secure their house ownership legally, they traveled up to Oxyrhynchus in 645 to meet the legal heirs of the property and finalize the transfer. Thekla had one daughter, Elizabeth, and two sons, Mena and Hierakionos. Mena had also died, and his share of the house had passed on to his wife, Iustina. In the preserved Greek deed (SB VI 8987), the heirs transfer the deed to Philemon and his wife and confirm having received the purchasing price of 3 gold solidi. Written up by a notary, the document contains four witness signatures, ratified with the notarial *completio*.[18] This document, to which we will return, became a key piece of evidence at trial, and its formal compliance with notarial and scribal standards ultimately convinced the arbitration court of its genuineness and validity.

2.1.2 Forged Evidence? The Thekla Letters

At trial, Iohannes initially alleged that Thekla had intended to give him the house and that Mena appointed Tsoker, his father and Thekla's ex-husband, to represent him legally (πρόσωπον) to go to court against Philemon. These claims were based on two letters that Thekla and Mena supposedly wrote, the contents of which are rendered verbatim in the court protocol:

- In the first letter, we are told that Philemon and his wife traveled up to Great Beshin to find Thekla, presumably to finalize the deed transfer. However, the letter claims that she told them off, letting them know she would give the house to Iohannes. In the same letter, Mena urges Tsoker to pursue the matter in court as

[18] SB VI 8987=P.Zilliacus, 84–93, at 90.

his legal representative. If the loan Thekla took out has not been fully paid back to Philemon, Mena says, he would be glad to pay it off.[19]

- Also written by Thekla and Mena, the second letter is addressed to Iohannes, Tsoker, and their respective wives, but its content is somewhat obscure. It mentions how a certain Pkalkake—this could be an erroneous rendering of Philemon or a representative of him—came to Thekla to have her draw up the deed and receive the rest of the sum for the house, which she refused. In the same letter, Tsoker again tries to convince his father to take the matter to court. Thekla reiterates that the house is to be given to Iohannes and that she is willing to cover any cost he might incur, by which she probably meant notary costs and taxes related to the deed transfer. The letter also mentions that Thekla talked about this legal affair to Lo, Hampous, and Pannoui, which is important because Iohannes would introduce one of these figures as a witness at trial.[20]

When Iohannes introduced these letters as evidence, he was expectedly strategic. First, we should note that despite Iohannes being the main plaintiff, he filed the lawsuit jointly with Tsoker. The calculation must have been that Tsoker, being Thekla's ex-husband and Mena's father, could make a stronger claim to the house based on his lineage, whereas Iohannes, only being her nephew, had weak genealogical grounds to stand on. Iohannes had to persuade the court that he had legal standing to sue. By making Tsoker serve as co-plaintiff, his prospects of a favorable judgment drastically improved. Second, the second letter's mentioning of witnesses to whom Thekla purportedly related her legal affairs conveniently bolstered the credibility of the

[19] SB Kopt. I 36=P.Scribes, 221–252=P.Budge, 80–111, at 83.

[20] Ibid., 83–85.

witnesses introduced by Iohannes. Not only did one of the people mentioned in the letter, Pannoui, indeed testify to the court, but Thekla's admission that she had told other people about her legal affairs would have established the legal presumption that additional people can reasonably be assumed to have known of the trouble. Either way, if accepted and found to be trustworthy by the court, these letters would have played out in Iohannes's favor.

In their response to the Thekla letters, Philemon and his wife challenged their validity, declaring them to be forged. Neither do they contain Thekla's signature, they argued, nor "beginning or end," and therefore cannot be used to infer that Thekla authorized (ἐντολικόν) either Iohannes or Tsoker to sue them.[21] Indeed, throughout the trial, the couple consistently argued that (1) there is no substantive legal justification (δικαίωμα) for the lawsuit, and that (2) Iohannes and Tsoker have no legal authorization (ἐπιτροπή) to initiate a suit against them. Iohannes's presenting these "scraps of written evidence" to the court was clearly meant to establish said authorization, and choosing to file the suit jointly with Tsoker, who otherwise doesn't appear throughout the trial, constituted a strategic choice.

2.1.3 The Choice of Legal Forum and the Bindingness of the Arbitration Court's Judgment

An attentive reading of the Philemon case conveys important clues regarding the forum of the lawsuit, an arbitration court, which constitutes a peculiar choice for several reasons. In his petition that the court examine the Thekla letters submitted by Iohannes, Philemon notes that if it weren't for his explicit request, the court would not go to the lengths of independently examining these letters as would a judge (*kritēs*: κριτής).[22] In other words, what Philemon demands from

[21] Ibid., 87.

[22] Ibid., 91–93.

the arbiters is to apply a higher-than-customary standard of scrutiny regarding the evidence. We find the term *kritēs* in contemporary Coptic documents, and a systematic study of the term's usage would be needed to assess whether it refers to an individual presiding over a formal legal forum that generally operated under higher standards of scrutiny.[23] In contrast, Philemon addresses the arbiters as *dikastai* (δικασταί, sg. *dikastēs*: δικαστής). This term is consistently used for them throughout the court proceedings and the case settlement. In a Greek papyrus from the so-called Apa Apollo dossier dating to the mid-seventh century (P.Apoll. 61), a mother and her slanderous son, who had previously been before an arbitration tribunal, are urged to have their dispute resolved before the *dikastai* a second time.[24] Several other documents also employ *dikastēs* to denote arbiters.[25] However, due to the widespread phenomenon of arbitration in late antique Egypt and different types of people assuming the position of arbiter, it is not surprising that this is not the only technical term employed in the context of arbitration tribunals. In a mid-seventh-century case from the Fayyūm, the litigants brought their case before the *horistai* (sg. ὁριστής, lit. "somebody who marks boundaries") of their village.[26] In P.Mich. XIII 659 and P.Lond. V 1709, a Greek and Coptic settlement, respectively, dating to the sixth century, the term for arbitration is *mesiteia* (μεσιτεία), and we possess more sixth and seventh-century

[23] For the use of the term κριτής, see, for instance, P.KRU 75=P.CopticLegal, 29–35=P.Mon.Epiph., 343–348 App. 3=O.Cair.Monuments 8730=P.RevilloutCopt. 3 (will of two monks), P.KRU 106=SB I 5609=P.CopticLegal, 166–173=O.Cair.Monuments 8728 (donation of a house), and P.KRU 67=O.Cair.Monuments 8729=P.RevilloutCopt. 2 (will of a monk).

[24] P.Apoll. 61.

[25] For instance, in P.Lond. V 1732, the arbiter Mark is referred to as "the most famous judge" (Μάρκῳ τῷ λογιωτάτῳ δικ̣αστην [read: δικαστῇ]).

[26] SB XIV 12194=P.Wein, 127–130=SB I 5258+5261+5263=P.Prolegomena, 33 E 10+35 D 78+35 E 25. Cf. Lajos Berkes, *Dorfverwaltung und Dorfgemeinschaft in Ägypten von Diokletian zu den Abbasiden* (Wiesbaden: Harrassowitz, 2017), 226–227. See also P.Prag. I 49, where the arbiters Aurelii Aiouk and Pherma are described as "blood brothers of the Belou hamlet, the *horistai* of the same *nomos*" (ὁμογνησ[ίους] ἀδελφοὺς ἀπὸ ἐποικίου Βήλου ἐ[π]ὶ ὁριστ̣οῦ τοῦ αὐτ[οῦ] νομοῦ).

documents from Antinoopolis (El-Sheikh Ibada), Syene (Aswan), and Herakleopolites in which similar usages occur.[27]

But who were the *dikastai* hearing the Thekla dispute? In the final settlement, the notary identifies the arbitration judges as Marinos and Markianos, emphasizing their status as "the noble councilors of this city" (τοῖς περιβλέπτοις πολιτευομένοις ταύτης τῆς πόλεως). In other words, these were *civil* servants working for the provincial administration.[28] In Byzantine times, the *politeuomenoi* were of the curial class, the urban, landed elite who often used their wealth for the city's benefit. However, during the sixth century, Anastasius and Justinian's reforms had limited the powers of the *curiales*, responding to the shift towards the new village-based aristocracy.[29] Specifically, they lost their tax-raising responsibilities.[30] Arietta Papaconstantinou argues that after the Arab conquests, the title no longer represented an official institution but mainly served as an honorific.[31] That said, some figures like Papas, who became pagarch of Edfu in the 660s, still carried the title *politeuomenos.* We do not know about the precise responsibilities of the city councilors. They were probably accountable to the pagarch, who was up next in the hierarchy.

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[27] P.Mich. XIII 659=P.Vat.Aphrod. 17. For an analysis of the case, see Marzena Wojtczak, "Legal Aspects of Dispute Resolution," 275–308. P.Lond. V 1709. See Leslie S.B. MacCoull, *Dioscorus of Aphrodito*, 45–47.

[28] Papyrologists have debated the usage of πολιτευόμενος and whether the term is synonymous with βουλευτής. Hanna Geremek, "Les πολιτευομενοι égyptiens sont-ils identiques aux βουλευται," *Anagennesis: A Papyrological Journal* 1, no. 2 (1981), 231–247; Klaas A. Worp, "῎Αρξαντες and πολιτευόμενοι in Papyri from Graeco-Roman Egypt," *Zeitschrift für Papyrologie und Epigraphik* 115 (1997), 201–220; and Klaas A. Worp, "Bouleutai and Politeuomenoi in Later Byzantine Egypt Again," *Chronique* 74 (1999), 124–132.

[29] Fiona Haarer, "Developments in the Governance of Late Antique Cities," in *Governare e riformare l'impero al momento della sua divisione: Oriente, Occidente, Illirico*, ed. Umberto Roberto and Laura Mecella (Rome: Publications de l'École Française de Rome, 2015), 125–162.

[30] Chris Wickham, *Framing the Early Middle Ages*, 69.

[31] Arietta Papaconstantinou, "Les propriétaires ruraux en Palestine du sud et en Égypte entre la conquête Perse et l'arrivée des Abbassides," *Mélanges de l'École française de Rome – Moyen Âge* 124, no. 2 (2012), 405–416, at 410.

By 649—and perhaps already in 647, when the Thekla trial concluded—the pagarchy of Edfu was governed by Liberios, the father of Papas, who is known to us from papyri in the Apa Apollo dossier.[32] Even if the *politeuomenoi* had only representative functions by the mid-seventh centuries, their class background and association with executive and judicial competencies would have endowed them with official charisma suited for the role of arbiters.

We cannot rule out that the covetous deacon Iohannes attempted to bring the case before a church forum. Philemon and his wife would have undoubtedly been opposed to this due to Iohannes's ecclesial rank. And their opposition would have mattered. It mattered because the consensual agreement of litigants on one, but typically at least two arbiters in a *compromissum* was considered a prerequisite for arbitration.[33] In the settlement document (*dialysis*), the notary states that Marinos and Markianos were selected by the litigants mutually, and in the arbitration protocol, Philemon and Iohannes emphasize their willingness to comply with whatever judgment they will grant.

Contemporary arbitration documents illustrate that penalty clauses may not merely have served to prevent litigants from appealing judgments but also to undergird the authority position of the chosen arbiters. In a Greek judgment from the Fayyūm dating to the mid-seventh century, the litigants agreed on three arbiters and a punishment of two gold solidi if their judgment is not complied with.[34] An eighth-century judgment for an arbitration between two villagers of Pehsamun in the south of the Fayyūm states the appointment of "two men from the same village" as arbiters while noting that litigants shall be liable for penalty payment if they disregard the

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[32] For instance, P.Apoll. 61.

[33] *CodJ*, 2:55. See, for instance, CPR VI 7.

[34] SB XXII 15764=P.Collegium, 256–260=SB I 4868+4862+4672=P.ContratsGrecs, 2 no. 37=P.ParisерPapyri, 33 no. 37.

judgment without specifying a sum.[35] The reality of the arbitration society that Egypt had become was that the abstract promise to abide by the arbiters' judgment was insufficient to guarantee compliance.[36] Thus, it was common in settlements and judgments to include a penalty clause, and in our case, a rather elaborate one. Iohannes abjures any current or future claims to Philemon and his wife's property. Neither he nor any of his heirs must take legal action against the couple or their prospective heirs concerning the house. The wieldy phrasing in our settlement goes on to stipulate that Iohannes "will fully submit to the legal validity of the Aquilian settlement" (στέρξαι τῇ δυνάμει τῆς παρούσης Ἀκυλιανῆς διαλύσεως) and states that his acceptance of its terms was confirmed by his taking an oath. Any attempt at transgressing these terms or initiating legal action against Philemon and his wife concerning the house is stipulated with a fine of 12 gold nomismata.[37] The Justinian Codex mentions explicitly that the *raison d'être* of penalty clauses was to generate mutual fear so agreements would not be violated.[38] While penalty clauses are regular features of settlements, the extensive focus on potential transgressions by Iohannes aligns with his social position as a powerful deacon, whose renewed contestation of the matter in or outside court was conceivable, at least for the arbiters.

In late antiquity, arbitration courts were not bound to apply Roman law or any other law, for that matter.[39] Consequently, the judicial process was not sanctioned by the court's adherence

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[35] CPR IV 50=CPR II 164.

[36] In Roman law, arbitration agreements without penalty clauses were not binding. Legal efficacy was only achieved through penal stipulations; see Adolf Berger, *Die Strafklauseln in den Papyrusurkunden: Ein Beitrag zum Gräko-Ägyptischen Obligationenrecht* (Leipzig and Berlin: B.G. Teubner, 1911), 212–217.

[37] SB VI 8988=P.Zilliacus, 95–107, at 102=SB I 5763.

[38] *CodJ*, 2:55.1.

[39] Jill D. Harries, "Resolving Disputes: The Frontiers of Law in Late Antiquity," in *Law, Society, and Authority in Late Antiquity*, ed. Ralph W. Mathisen (Oxford: Oxford University Press, 2001), 68–82, at 69.

to formal law but rather by the litigants putting their trust in the arbitration procedure, hoping for the application of law (νόμος) and justice (δίκαιον) in line with judicial norms. That the procedure followed by these tribunals was not set in stone and somewhat unpredictable is evident from a passage in the court protocol, where Philemon and his wife request the examination of the Thekla letters: They first stress their confidence in the personal piety of the arbiters and then urge them to judge impartially and in observance of justice so that Christ may preserve them.[40] I am less concerned here with the religious overtones, which we find abundantly throughout the court proceedings and even more on the opponent side. Indeed, religious rhetoric and expressions of piety were commonplace in the hearing and documentation of arbitration cases, as evidenced by the many arbitration-related documents analyzed by Leslie MacCoull.[41] What is more striking is Philemon's demand for impartial justice. As discussed before, Iohannes's public standing was undoubtedly a concern for Philemon and his wife. But so was the question of the legal procedure followed by the court, the uncertainty of which gave rise to their doubts over its impartiality.

On at least two occasions during the trial, the litigants explicitly convey their judicial expectations, and it is these instances that reveal the court's legal procedure as a secondary site of contestation between Iohannes and Philemon. We already heard that Philemon pushed the court for higher standards of scrutiny regarding the Thekla letters. The point emerges again when Iohannes comments on the deed Philemon and his wife presented. Urging the court to hear him out patiently, Iohannes recounts the Biblical story of the innocent Susanna and her savior Daniel. Certain men had brought adultery claims against Susanna, and she had been unjustly convicted to death by the elders when Daniel demanded that they reexamine the witnesses. Iohannes

[40] SB Kopt. I 36=P.Scribes, 221–252=P.Budge, 80–111, at 93.

[41] Leslie MacCoull, *Coptic Legal Documents*. See also Traianos Gagos and Peter van Minnen, *Settling a Dispute*.

employs this vignette to stress the importance of verifying his opponent's truth claims. Not only does he claim not to be aware of Thekla's heirs who transferred the deed to Philemon and his wife, but he goes on to demand a specific procedure to verify their identity: He insists that the arbiters send three unbiased men (ελεύθεροι) up north to prove their existence.[42] Again, as with Philemon, we have here an attempt by one of the litigating parties to intervene in the judicial process by making specific demands as to *how* the arbitration tribunal should verify the legal claims brought forth by the opposing party.

2.1.4 Legal Procedure as a Site of Contestation

These attempts to intervene in the legal procedure are perhaps little surprising. The low-level rank of the arbitration tribunal and few constraints regarding formal procedural norms created structural incentives for both litigants to try to sway its outcome by making specific procedural requests. The accessibility and flexibility offered by arbitration hearings were also their greatest disadvantage: Litigants could assume that such venues *oriented* themselves towards the legal standards and procedures of formal law. But there was no accountability, let alone any guarantee that they would. This made formal arbitration less predictable than adjudication in courts, and we hear this concern repeatedly in the arguments presented at trial.

This does not mean that arbitration procedures were entirely capricious. On the contrary, sixth and seventh-century Greek and Coptic arbitration documents reveal a remarkable uniformity regarding their structure and adherence to formulae. Arbitration tribunals invested in their judicial reputation by following established scribal norms, validating legal documents through the notarial *completio*, calling on witnesses, and employing the language of formal law.

[42] SB Kopt. I 36=P.Scribes, 221–252=P.Budge, 80–111, at 103.

These symbolic investments aimed to increase litigants' trust in the lower-level justice that these venues dispensed. Because they lacked adequate means of coercion to discipline litigants and ensure compliance with judgments, such trust was paramount. Ironically, the absence of means of coercion—physical and psychological—on the part of the city councilors (but also village officials and others) distinguished them not only from higher but also lower levels of jurisdiction: On the one hand, Byzantine courts were more tightly intertwined with the imperial administration and had access to its enforcement mechanisms, on the other, the embedded communal lifestyle of, for example, a monastery, offered itself to a range of psychological pressures and corporal punishments. To be sure, judgments resulting from arbitration *were* considered binding. But as the Justinian Code concedes, the authority of arbitration courts—and thus the bindingness of their judgment—ultimately depended on the penalties defined by the parties themselves. Social status and reputation, too, mattered. As we saw with Iohannes, his powerful position as a deacon does not seem to have deterred him from producing the most incredulous arguments, even if his public reputation was at risk.

In an age where courts were more readily accessible, the Thekla dispute is the kind that one would expect to be reviewed by an official court. If Thekla took out her loan in 607 (or 622 if we want to be generous), the entire dispute would have gone on for a stunning forty years (or at least 25!). For an arbitration court, that is a very long time. Most arbitration disputes would have been resolved within a matter of weeks or months. Of course, the dispute was complicated by Thekla's moving away from Edfu to the north of Egypt, her passing away, the couple's difficulty in procuring the deed for the house, and the tribunal's examination of various types of evidence. For Iohannes, the arbitration court was the obvious choice to sue Philemon and his wife before the city councilors. In that venue, his incredulous claims, forged evidence, and social

status resonated much better than in an official court where levels of scrutiny were higher. At the same time, deferring the case to a bishop's court was not feasible because both parties had to agree on the arbiters mutually, and Philemon and his wife would have likely refrained from ecclesial arbitration at all costs. Having their dispute heard in an ecclesial forum would have put them at a significant disadvantage against their opponent, which signals that "confessional" legal forums did not necessarily present the best option for litigants. For them, an official court would have better served their needs due to higher review standards. Throughout the trial, they repeatedly appealed to such standards. In addition, they feared that Iohannes's public standing as a deacon might sway the city councilors. At the same time, escalating the conflict to a court would have been much more expensive for them. We know that they had already lost their loan, invested in the house deed, and paid notarial and further fees. For a peasant couple from Edfu, it was not worth the risk of spending even more monetary resources on formal adjudication against a powerful opponent against whom they stood little chance of winning.

On a final note, the ongoing arbitration does not appear to have been influenced by the major political changes in Egypt during that period. Both the Sasanid and the Arab invasions coincided with the trial. However, the litigants continued moving up and down the Nile, and the city councilors and their status as arbiters were seemingly unaffected by those changes.

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2.2 Arbitration between Muslims: Early Traces of the *ḥakam*

2.2.1 The Case: Al-ʿAllāna v. ʿAmr b. Zubayd

About sixty years later, probably in the early 700s, a Muslim couple was in a state of marital crisis. In P.JoySorrow 2, a letter on papyrus first edited and translated by Khaled Younes, we

hear the husband's version of how the marriage had gone sour. Its sender ʿAmr b. Zubayd complains to his father-in-law about the putatively mischievous deeds of his wife al-ʿAllāna and her audacity to seek legal redress by taking the matter to the local arbiter (*ḥakam*, pl. *ḥukkām*). Things got heated between the couple when ʿAmr had prohibited his wife from leaving the house and roaming around the city. Fed up with these demands, al-ʿAllāna not only sought legal recourse with the arbiter but cited beatings (*al-ḍarb*), suffering (*al-buʾs*), and oppression (*al-ḥaram*) at the hands of her husband as reasons for initiating divorce proceedings.[43]

We know little about the workings of arbitration between Muslims and the role of arbiters during this time, and most of what we do know comes from much later literary sources rather than documents.[44] It is probable that, similar to arbitration in Coptic and Greek documents, the *ḥakam* settling disputes between Muslims did not serve in this capacity permanently but was selected by litigants for dispute resolution in specific cases. In a land dispute settlement between Copts from the early eighth century, the Arab pagarch Rāshid b. Khālid appears as arbiter.[45] The already mentioned accumulation of judicial and executive powers by pagarchs before the Arab conquests makes it likely that these figures continued to function regularly as arbiters in dispute settlements. We have no information identifying the arbiter al-ʿAllāna brought her case before, but we cannot exclude the possibility that he may have served in some administrative capacity or even as pagarch.

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[43] P.JoySorrow 2, ll. 9–11.

[44] See Mathieu Tillier, ed., *Arbitrage et conciliation dans l'Islam médiéval et moderne* (Revue des mondes musulmans et de la Méditerranée, 140, Aix-en-Provence: Presses Universitaires de Provence, 2016). That we know so little about arbitration is partially a result of scholarship's skewed focus on adjudication and official courts as opposed to low-level conflict resolution.

[45] CPR IV 51. Rāshid b. Khālid served in the capacity of pagarch in Ihnas (Heracleopolite) 718–723 and Ashmun (Hermopolite) 724–731; see Nikolaos Gonis, "Another Look at Some Officials in Early ʿAbbāsid Egypt," *Zeitschrift für Papyrologie und Epigraphik* 149 (2004), 189–195, at 195.

2.2.2 The Origins of the ḥakam

Arabic documents from the seventh, eighth, and even ninth centuries with references to iterations of the root *ḥ-k-m* are scarce, which may be explained, among other factors, by the multiple roles dispensers of justice assumed, a point mentioned for the *quḍāh* in chapter four. A poorly preserved ninth-century fragment of what appears to be a legal document (P.Ryl.Arab. II 157) seems to mention a judgment (*ḥukm*).[46] In other documents from this early period, we cannot always be sure whether *ḥakam* denotes an arbiter or the name of a person, since the word was commonly used as a name.[47] According to Adolf Grohmann, P.Vindob. A.Ch. 6750 constitutes a ninth-century court summons ordering one of the litigants to appear before the *majlis al-ḥukm* ("judicial assembly") to face his adversary. Even though the line containing said reference is poorly preserved, this reading is probable because the *majlis al-ḥukm* is well-known from later Arabic documents and classical Islamic literary sources as the often mobile venue of the *qāḍī* and his staff, in which cases were heard and judgments issued.[48] Already in al-Kindī's *al-Wulāt wa-l-Quḍāh*, we find several references to the *majlis al-ḥukm*. In his section on the Egyptian judge al-Mufaḍḍal b. Faḍāla (in office 168–69/784–85), al-Kindī notes that "nobody used to follow the *qāḍī* in his business except his scribe and whoever stood before him in the *majlis al-*

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[46] P.Ryl.Arab. II 157. Cf. the comments on this document, G. Rex Smith and Moshalleh al-Moraekhi, "The Arabic Papyri of the John Rylands University Library of Manchester," *Bulletin of the John Rylands University Library of Manchester* 78, no. 2 (1996), 5–232, at 87.

[47] For instance, P.Alqab 54=P.Prag.Arab. III 20 is a ninth-century list recording the amounts of land tax paid. After its mention of Muḥammad b. Yaḥyā, the document notes "wa-huwa ḥakam" which could mean arbiter. However, Adolf Grohmann has taken this to mean his residence at the house of Ḥakam. A much earlier, seventh or eighth-century document (Pap.Lugd.Bat. XXXIII 65) lists companions from Fusṭāṭ with descriptions of the locations of their houses. In line 12, the document lists Saʿīd b. ʿAṭāʾ al-Balī, whose residence is described as being "ʿinda rukn iṣṭabl al-ḥakam," which again could refer to the stable of a person named al-Ḥakam or express its belonging to the arbiter.

[48] P.GrohmannUrkunden 7=PERF 1141. Also, Chrest.Khoury I 78 and Chrest.Khoury I 82 and 83. Also, Wael Hallaq, "The '*qāḍī*'s *dīwān* (*sijill*)' before the Ottomans," *Bulletin of the School of Oriental and African Studies* 61, no. 3 (1998), 415–436, at 418–419.

ḥukm until the second reign of al-Mufaḍḍal who appointed people to serve as [professional] witnesses: 10 men."[49]

The widespread attestation of the *majlis al-ḥukm* in documents and literary sources and its later synonymity with *qāḍī* raises the question of whether its usage was the result of a late antique society in which arbitration had since the early sixth century been more common than adjudication. It is conceivable, though I have not found evidence to support this theory, that the *rasm* (the undotted and unvocalized form) of the Arabic phrase مجلس الحكم initially referred to the activities of the Muslim arbiter, the *ḥakam*, and that only with the professionalization of the Muslim judiciary in the eighth and ninth centuries and the more widespread availability of forms of formal adjudication (*ḥukm*, indistinguishable in the *rasm* from *ḥakam*), it became associated with the *qāḍī*. This interpretation, which, let me be clear, is not one I argue for here, is prudent for different reasons. The reading *majlis al-ḥakam* (at least in the first Islamic century or so)—or even the reading *majlis al-ḥukm*—and the phrase's association with arbiters as opposed to judges are sensible given the much older and probably Arabian origins of the *ḥakam* compared to the *qāḍī*. Émile Tyan and others have noted the pre-Islamic Arabian origins of the *ḥukkām*, which is the narrative generally followed by classical Muslim authors.[50] Meir Kister argues that the *ḥakam* emerged due to the ongoing struggles for power between Arab tribes and the necessity to secure a stable social order in Mecca.[51] While it is tempting to explain the relatively few references to *ḥukkām* preserved in the Egyptian papyri with the *Arabian* origins of the institution,

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[49] Al-Kindī, *Kitāb al-wulāh wa-kitāb al-quḍāh* (Beirut: Dār al-Kutub al-ʿIlmīya, 2003), 278.

[50] Émile Tyan, *Histoire de l'organisation judiciaire en pays d'Islam* (Leiden: Brill, 1960), 35. See also the discussion by Mathieu Tillier, *L'invention du cadi*, 444–451.

[51] Meir J. Kister, "Mecca and the Tribes of Arabia: Some Notes on Their Relations," in *Studies in Islamic History and Civilization in Honour of Professor David Ayalon*, ed. M. Sharon (Jerusalem: Cana and Leiden: Brill, 1986), 33–57, at 52.

that explanation fails to take into account the fact that most of the Muslim Egyptian elite was of Arabian, and in many cases, Yemeni origins and thus came from within the cultural orbits in which they would have been well familiar with the concept of arbitration by *ḥukkām*.

Perhaps a more decisive factor for the few attestations of the *ḥakam* is that most documents preserved in Egypt do not originate from the administrative hub in Fusṭāṭ, which, due to its humidity and annual overflooding of the Nile, was little conducive to the preservation of papyri. Instead, most Arabic papyri come from the Egyptian countryside and thus naturally offer little insight into the judicial disputes between Muslims, most of whom, at least in the first decades after the conquests, resided in Fusṭāṭ. This tentatively explains why the current letter on papyrus was preserved: Its addressee ʿAbdallāh, ʿAmr's father-in-law, did not live in Fusṭāṭ but rather the Fayyūm—at least temporarily. In the letter, ʿAmr mentions that the last time he and ʿAbdallāh met was before his departure to the Fayyūm. It is reasonable to assume that it is here that the papyrus was sent.[52] The sparse record of dispute resolutions between Muslims brought before Muslim arbiters (*ḥukkām*) and judges (*quḍāh*) at least partially resonates with the uneven distribution of the papyrological record, which is significantly better for the Egyptian countryside into which Muslim judicial institutions only gradually expanded. The yet unstudied documents from Fusṭāṭ mentioned by Mathieu Tillier may bring up more references to *ḥakam*s, as well as *qāḍī*s. Another point to be noted is that the absence of attestations to these offices in the documents does not imply that (Muslim) institutional forums for arbitration did not exist in the countryside since it is conceivable that analogous to the Islamic imperial bureaucracy's reliance on Greek and Coptic-speaking officials for the assessment of taxes and communication with the populace, existing forums of dispute resolution continued to function under the umbrella

[52] P.JoySorrow 2, ll. 6 and 26.

of a Fusṭāṭ-based central judiciary to which appeals from lower levels of jurisdiction could be brought.

2.2.3 A Point on Methodology: The Place of Arbitration in Islamic Jurisprudence

Apart from our lack of knowledge of the legal practices of institutions such as Muslim arbiters and judges in the early eighth century, there are some general problems overshadowing inquiries into the "Arab" and later "Islamic" parts of the legal infrastructure of Egypt (and other geographical regions) in the first Islamic century. These points deserve elaboration:

1. We do not know the place of arbitration in Egypt's legal infrastructure in the early eighth century with respect to Islamic legal norms. A compounding fact is that we only have speculations about the historical trajectory of Islamic law in the first two Islamic centuries. This confronts us with a methodological conundrum where we need to either (a) retroject much later Islamic legal norms and thus implicitly subscribe to a developmentalist line of thought where our historiographic narrative unfolds as one where the current case anticipates, or at the very least contains some procedural or substantive elements of the "matured" Islamic law of later times; (b) assume the continuity of previous legal practices concerning arbitration from late Roman, Coptic, or Arabian customary laws and then employ these earlier norms as a filter for understanding the current case; or (c) engage in some combination of both.
2. By the early eighth century, the Qurʾān and *ḥadīth* had no doubt spread widely throughout the Islamic empire. That said, to assume that they functioned as the normative framework that controlled legal thinking and practice at the time is to project backward much later ninth and tenth-century concerns and hermeneutic standards that only

gradually solidified with Islamic law's "canonization" beginning with the students of Muḥammad b. Idrīs al-Shāfiʿī (d. 204/820).[53] Succinctly put, that the Qurʾān and Prophetic reports (*aḥādīth*) have probative value for dispute resolution constitutes a later notion and was the result of a much longer social process during which the "norm"—what counts as a legal source and hermeneutic tool—was being negotiated.

Mathieu Tillier illustrates that later jurists such as al-Ṭaḥāwī (d. 321/933) conceived of arbitration (*taḥkīm*) as an integral part of the Islamic system of justice and came up with precise regulations to govern its procedure.[54] However, it is unlikely that such a theoretically comprehensive and normative notion of the place of arbitration in Egypt's still expanding legal infrastructure would have been available in the early eighth century, long before the onset of what scholars have referred to as the "canonization" of Islamic law.

In support of the significance and social value attached to arbitration among Muslims, we may also point to the well-known historical episode of the Battle of Ṣiffīn (37/657), which marked a watershed during the first civil war (*fitna*) of the early Muslim community, resulting in a military and political standoff between the Iraq and Ḥijāz-based supporters of the Prophet Muḥammad's cousin and son-in-law, ʿAlī b. Abī Ṭālib (d. 40/661), and his brother-in-law Muʿāwiya b. Abī Sufyān (d. 83/680), who was supported largely by Syrian tribes. After intense

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[53] As a result of this process which spanned generations, Muslim private scholars and students of the law associated themselves with particular schools (*madhhab*, pl. *madhāhib*)—not necessarily physical places but social networks of law-minded individuals engaging with the writings of a scholar "with the aim of abridging, popularizing, extending, and defending the works and ideas of the founder(s)." Ahmed El Shamsy, *The Canonization of Islamic Law*, 173. For a critical appraisal of the concepts of "canonization" and "codification" and an overview of their application in Islamic legal studies, see Eirik Hovden, "Understanding and Framing Change in Islamic Law: Potentials and Possible Pitfalls of the Concepts of Canonization and Codification," *Oxford Journal of Law and Religion* 12, no. 3 (2023), 289–313.

[54] Mathieu Tillier, "Arbitrage et conciliation aux premiers siècles de l'Islam: théories, pratiques et usages sociaux," in *Arbitrage et conciliation dans l'Islam médiéval et modern*, ed. Mathieu Tillier (Revue des mondes musulmans et de la Méditerranée, 140, Aix-en-Provence: Presses Universitaires de Provence, 2016), 27–51, at 35.

fighting, both sides agreed to appoint arbiters to resolve the conflict and accept the arbitration court's ruling. This decision proved fateful for ʿAlī since a faction of his supporters, often referred to as the Khārijites, walked out on him due to his acknowledgment of the arbitration court—an act that, in their eyes, put him on equal footing with Muʿāwiya and defied the judgment of God.[55]

Apart from that, in the centuries before al-Ṭaḥāwī, we do not find the kind of macroscopic conception of how arbitration fits into the grand scheme of Islamic justice. This does not mean that a tiered legal system consisting of multiple levels of jurisdiction did not *de facto* operate on the Egyptian ground. Instead, my argument's implication is a methodological one: The procedural norms of arbitration at this early stage cannot be explained simply by retrojecting later Islamic legal norms, including those based directly on the Qurʾān or the Prophetic traditions. Rather, we must carefully listen to the documents and cautiously examine them against earlier and later legal standards originating from Byzantine, Coptic, Arabian customary, and Islamic law.

2.2.4 Transforming Personal Conflicts into Matters of Law

ʿAmr's letter reveals that the source of his frustration was that al-ʿAllāna had taken their marital conflict to an arbiter instead of resolving it through family mediation. He complains that she had said unspeakable things about him—things he claims he cannot mention and which he never heard a wife utter against her husband. Presumably, to minimize the publicity of the marital

[55] The complexity of events during the Battle of Ṣiffīn and the arbitration agreement have been studied extensively. See, for example, Ibrahim Zein and Ahmed El-Wakil, "The Ṣiffīn Arbitration Agreement and Statecraft in Early Islamic Political Documents," *Journal of Islamic Studies* 33, no. 2 (2022), 153–202; and Martin Hinds, "The Siffin Arbitration Agreement', *Journal of Semitic Studies* 17 (1972), 93–129.

dispute, ʿAmr sent "righteous" men from his clan (*rijāl ṣāliḥīn min ʿashīratī*) to al-ʿAllāna, demanding that she restrain her tongue and live in fear of God. Whether these people were threatening her verbally or with physical violence is unclear, but we can be sure that ʿAmr's frustration about this conjugal fiasco was because she had gotten a higher official involved.[56]

By involving the arbiter, al-ʿAllāna had effectively transformed their personal conflict into a matter of legal import. Her calculation may have been different: She may have regarded family mediation as futile, wanted to avoid it altogether, or anticipated that mediation would not bring about the intended result. It is noteworthy that their marital dispute fully erupted after ʿAbdallāh's departure, and if we believe ʿAmr, al-ʿAllāna had told him that she would not submit even to the authority of her father (*wa-zaʿamat annahā lā tarūʿ bi-amrika raʾs wa-lā amra laka fī amrihā*). The arbiter had granted her a divorce, and for this reason, ʿAmr writes to his father-in-law, who appears to be unaware of the happenings between the couple. Specifically, ʿAmr urges him to come to intervene and help restore his marital relations with al-ʿAllāna.

The calculations of each spouse for resolving their crisis were thus bifurcated along the spectrum of dispute resolution available to them: Whereas ʿAmr advocated for family-internal mediation by his father-in-law and other relatives, al-ʿAllāna sought assistance outside the realm of their families by bringing the case to a public official. We can tentatively argue that the structural distribution of power relations inside the family context would have likely worked to the detriment of al-ʿAllāna and in favor of her husband's conciliatory approach. By seeking recourse in an external legal forum, she ran the risk of upsetting these precarious socially crafted ties, but would have been able to attain a judgment that was much more aligned with her decision to terminate the marriage.

[56] P.JoySorrow 2.

2.2.5 Under Which Law?

The previous considerations beg the question of which body of laws—Byzantine, Coptic, Arabian customary, or Islamic—governed the divorce of ʿAmr and al-ʿAllāna. From a legal viewpoint, our picture of the dispute resolution between the couple is extremely partial. However, the letter indicates that it was al-ʿAllāna who called on the arbiter, as it seems, without ʿAmr's consent. This circumstance requires explanation. First, the Qurʾān specifically demands the appointment of two arbiters in the case of conjugal disputes (Q 4:35):

> If you fear dissension between a married couple, send forth an arbiter from his family and an arbiter from her family. If they desire reconciliation, God will bring them together. God is All-Knowing, All-Discerning. And worship God, and associate none with Him.[57]

The lack of evidence suggesting ʿAmr and al-ʿAllāna's joint appointment of one or two arbiters and their mutual agreement on the arbitration procedure as such contravenes the Qurʾānic injunction and Islamic legal norms as known from the much later *fiqh* manuals.[58] According to the Qurʾān, successful arbitration between spouses—even if they decide to part ways—requires their mutual agreement. This idea is further supported by Q 4:128, which notes that "If a wife fears antipathy or aversion from her husband, no blame attaches to them both if they arrive at an amicable settlement between them; such settlement is best."[59] However, we should not be too surprised that our case does not tally with the procedures outlined by the Qurʾān. In the early

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[57] *The Qur'an*, tr. Tarif Khalidi (London: Penguin Classics, 2008), 67.

[58] Saḥnūn b. Saʿīd al-Tanūkhī, *al-Mudawwana al-kubrā*, ed. Aḥmad ʿAbd al-Salām, 4 vols. (Beirut: Dār al-Kutub al-ʿIlmīya, 1994), 2:266–267.

[59] *The Qur'an*, tr. Tarif Khalidi (London: Penguin Classics, 2008), 77.

eighth century, we are still far removed from the definitive fixation of Islamic legal procedures, which were being shaped by various legal customs and new legal situations as they emerged.

A second possible reading of the papyrus presents itself, one that more closely brings it in line with Qurʾānic procedures: ʿAmr informs his father-in-law that he sent to his wife upright men from his clan, as well as a certain Abū al-Gharrāʾ, who is mentioned separately. The papyrus does not indicate whether Abū al-Gharrāʾ is a member of ʿAmr's clan or if he is a representative from al-ʿAllāna's family—a possibility that Khaled Younes envisions as likely.[60] If the latter, we would have more solid grounds to believe that ʿAmr's suggestion for reconciliation aligned with the Qurʾānic injunction to appoint representatives from each family for the amicable resolution of the marital dispute. A noteworthy implication of this would be that the Qurʾān's legal injunctions regarding marital conciliation already determined Muslim legal practice in Egypt around the 700s. But for now, this remains speculation at most.

Perhaps most likely, the case between ʿAmr and al-ʿAllāna was resolved according to pre-Islamic Arabian customary law. Aida Othman notes that in the tribal milieu of the Arabian Peninsula, arbiters were frequently chosen based on qualities such as wisdom, intelligence, and eloquence, and this position was, at times, hereditary.[61] These arbiters held a crucial role, functioning as an important institution for the resolution of disputes between different tribes that ensured the political and social order of pre-Islamic society. The caliph ʿUmar b. al-Khaṭṭāb is said to have been affected by the pre-Islamic poet Zuhayr b. Abī Sulmā's (d. 609) formidable knowledge of the law, according to whom "a claim is established by one of three ways: either by

[60] Khaled Younes, "Joy and Sorrow in Early Muslim Egypt: Arabic Papyrus Letters, Text and Content" (PhD diss., Universiteit Leiden, 2013), 39.

[61] Aida Othman, "And *Ṣulḥ* Is Best: Amicable Settlement and Dispute Resolution in Islamic Law" (PhD diss., Harvard University, 2005), 64.

oath (*yamīn*), arbitration (*muḥākama*), or definitive proof (*ḥujja*)."[62] While the important status of arbitration in pre-Islamic Arabia as a means of dispute resolution is well-known, we have significantly less information about common divorce practices in that cultural milieu. Julius Wellhausen notes that triple divorce (*ṭalāq*) was already common in pre-Islamic Arabic.[63] The presence of *ṭalāq* divorce is echoed in a poem by al-Aʿshā (d. 7/629), in which the poet praises the benefits of terminating marital relations that no longer function: "Oh my wife, you are divorced—so are the things among the people, they go, and they come."[64] Furthermore, al-Aʿshā's poem suggests a liberal understanding of divorce, which he frames as a natural and recommended practice for conjugal relations that no longer fulfill their purpose. It is very likely that these cultural norms governed the divorce of our couple. However, without further evidence regarding the specific procedures and implications of women-initiated divorce (*khulʿ*) in pre-Islamic Arabia, it remains but one possibility.

We must also consider the possibility that the couple's divorce was governed by Byzantine legal practice. There is modest evidence to suggest that. To begin with, the unilateral initiation of divorce proceedings by al-ʿAllāna does not square well with the practice of issuing a *compromissum*—the written agreement between the litigants—that, as we saw, constituted the necessary condition for arbitration settlements.[65] However, according to Roman law, the

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[62] Zuhayr b. Abī Sulmā, cited in Ibn Quṭayba, *ʿUyūn al-akhbār*, 4 vols. (Beirut: Dār al-Kutub al-ʿIlmīya, 1997), 1:134. See also, Aida Othman, "And *Ṣulḥ* Is Best," 65–66.

[63] Julius Wellhausen, "Die Ehe bei den Arabern," *Nachrichten von der Königlichen Gesellschaft der Wissenschaften und der Georg-Augusts-Universität zu Göttingen* 11 (1893), 431–481, at 452–453.

[64] Al-Aʿshā, cited in ʿAbdallāh b. ʿAbbās, *Gharīb al-Qurʾān fī shiʿr al-ʿarab*, ed. Muḥammad ʿAbd al-Raḥīm and Aḥmad Naṣr Allāh (Beirut: Muʾassasat al-Kutub al-Thaqāfiyya, 1993), 66.

[65] *The Digest of Justinian*, ed. Theodor Mommsen and Paul Krueger, tr. Alan Watson, 4 vols. (Philadelphia: University of Pennsylvania Press, 1985), 1:150 (4.8.11). See also Jill D. Harries, *Law and Empire in Late Antiquity* (Cambridge: Cambridge University Press, 2004 [1999]), 177.

termination of marital relations did not necessarily require a *compromissum*. In other words, it may not trigger the customary arbitration procedure as a matter of law. We know that in matters of divorce, Roman law allowed for the termination of marriage by mutual consent or if one of the parties gave notice, with relatively few restrictions.[66] These liberal norms for terminating marriages became gradually restricted, specifically for women, with the Constantinian and later legislations encouraging spouses to reconcile. The 439 Theodosian Novels mandated that one of the spouses submit a written letter (*repudium*) declaring the intent of divorce.[67] The problem with this theory is that it is questionable to what extent Muslims—if both ʿAmr and al-ʿAllāna are indeed Muslims—would have been governed by Byzantine legal norms. In other words, while we can readily assume that the majority of the Egyptian populace continued abiding by established Byzantine legal practices long into the second Islamic century, this assumption is more difficult to sustain when it comes to Muslim subjects—specifically those hailing from the Arabian Peninsula—and such matters as marriage and divorce, which are more likely to have been resolved in accordance with pre-Islamic Arabian customs.

It is often argued that, according to Christian jurisprudence, marital relations can only be terminated under the strictest of conditions, a phenomenon that is well-attested in normative compilations of law from the Eastern Mediterranean, such as the *Synodicon Orientale*.[68] However, this raises the double problem of (1) the extent to which Christian normative conceptions of divorce influenced substantive law in Egypt and (2) whether there are any

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[66] Fritz Schulz, *Classical Roman Law* (Oxford: Clarendon Press, 1951), 132–137.

[67] Jakub Urbanik, "Marriage and Divorce in the Late Antique Legal Practice and Legislation," in *Derecho, Cultura y Sociedad en la Antigüedad Tardía*, ed. Esperanza G. Osaba (Bilbao: Universidad del País Vasco, 2015), 259–274, at 264–265.

[68] See Tobias Scheunchen, *Cosmology, Law, and Elites in Late Antiquity*, 56–69.

grounds to assume that ʿAmr and al-ʿAllāna's case would have been governed by them. I will return to the second point momentarily. As for the first, Roger Bagnall sees "no indication that in practice it [Christianity] tried to enforce its view of marriage by widespread ecclesiastical discipline of the sort which it had developed earlier when Christians were a small, cohesive minority."[69] Despite that, Bagnall does observe a growing emphasis on reconciliation and a rhetoric of family affection in the papyrological record from Egypt.[70]

An important piece to the puzzle is al-ʿAllāna's name: Not only is her name, with a few exceptions, almost entirely unattested in Arabic literary sources, but if read correctly, it has the unusual meaning of "so-and-so."[71] An Arabic legal document from the John Rylands Library, which is an eighth-century sales contract template, uses *fulān* and *fulāna* (so-and-so and so-and-so), where one would expect the names of people.[72] But our document is neither a template nor a scribal draft, as evidenced by its completeness and the fact that it constitutes a private letter written by ʿAmr to al-ʿAllāna's father.[73] Another theory that might partially resolve the interpretive problem of the absence of a mutual agreement between the spouses concerning the arbitration procedure is that al-ʿAllāna was non-Muslim. Her name could be the Arabized version of a Greek or Coptic name such as Helena. However, it is unlikely that al-ʿAllāna was

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[69] Roger S. Bagnall, "Church, State and Divorce in Late Roman Egypt," in *Florilegium Columbianum: Essays in Honor of Paul Oskar Kristeller*, ed. Karl-Ludwig Selig and Robert Somerville (New York: Ithaca Press, 1987), 41–61, at 60.

[70] Ibid., 61.

[71] In his geographical compendium, Yaqūt al-Ḥamawī lists al-ʿAllāna as a district (*nāḥiya*) in Dhamār, a city in the southwest of Yemen close to Ṣanʿāʾ; Yaqūt al-Ḥamawī, *Muʿjam al-buldān*, 7 vols. (Beirut: Dār Ṣādir, 1995), 4:135. Because many of the early Arab conquerors of Egypt came from this region, it is possible that al-ʿAllāna received her name due to her parents' cultural memory of this place.

[72] P.Ryl.Arab. I IX 1.

[73] Like Zayd, ʿAmr is, of course, the Arabic version of John Doe, but for the reasons mentioned, we are not dealing here with a template or hypothetical scenario of divorce.

non-Muslim because her father, whom ʿAmr addresses, is named ʿAbdallāh. In addition, in the unlikely case that she was a Coptic Christian, she may have faced additional restrictions regarding the initiation of divorce proceedings, not unlike the concomitant obstacles regarding women's initiation of divorce (*khulʿ*) under classical Islamic law.

Generally, the legal procedure for Islamic divorce in arbitration courts is not known to us, at least not from this early and without relying on normative ideas about divorce proceedings from later Islamic legal manuals. The fragment of a divorce certificate from the mid-ninth century attests to the presence of at least two witnesses to a husband-initiated divorce.[74] A document from the Fayyūm that can be dated to the early eighth century based on paleography features an agreement between Abū Sulaymān and his wife Sukayna regarding their division of marital assets.[75] Notably, it does not adhere to the typical formulae employed in other Arabic divorce documents, where we expect the customary phrasing "*annahu ṭallaqa imraʾatahu*" (he divorced his wife) used by witnesses to confirm the legal separation of the couple.[76] Here, the scribe employs the rather unusual "*hādhā mā iṣṭalaḥa ʿalayhi … iṣṭalaḥā ʿalā anna …*" (this is what … mutually agreed on … the two mutually agreed that …). There are two possible explanations for this. First, the preserved document is probably not the divorce certificate itself (read: the judgment) but rather a document issued secondarily to confirm any remaining obligations between the spouses. In other words, it is akin to the Greek and Coptic *dialysis*-type documents (settlement) we encountered, in which the litigating parties complete the arbitration process by resolving any outstanding obligations they may have towards each other. Second, the

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[74] P.Ryl.Arab. I X 15.

[75] Chrest.Khoury I 19=PERF 569.

[76] For instance, P.Ryl.Arab. I X 15 (from 864): "… li-zawāj annahu ṭallaqa imraʾatahu" and P.Philad.Arab. 28 (from 861): "ashhadanī ʿalā nafsihi annahu ṭallaqa imraʾatahu."

divorce may have been initiated by Sukayna, explaining why the term *iṣṭalaḥa* rather than *ṭallaqa* is being used.[77] Apart from its unusual beginning, in this document, the scribe also does not employ the typical phrase *shahida ʿalā dhālika* or *shahida* for the witness statements. Instead, their testimonies are introduced by "*al-ḥamīl bi-dhālika*" (lit. "the guarantor of this") followed by the names of two slaves (*mawālī*) and a third person.[78]

To conclude: despite the gaps remaining, it is evident that al-ʿAllāna and ʿAmr had different ideas about resolving their marital dispute. However, they also disagreed about the legal forum in which that dispute should be resolved. We know that ʿAmr was strongly opposed to involving anyone from outside the family and much of his frustration resulted from al-ʿAllāna's escalation of the conflict to a higher authority, whatever precise legal powers that authority may have been equipped with. At a closer look, on al-ʿAllāna's part, we can fathom a calculation akin to that of Philemon and his wife: the yearning to move upwards within Egypt's legal infrastructure to escape what was for her more partial and thus less favorable standards of dispute resolution. For al-ʿAllāna, escalating her conflict to the *ḥakam* meant permanently jeopardizing and potentially severing relationships with her and ʿAmr's family. The question of which substantive law governed their divorce remains to be answered definitively. It is most likely that their divorce was influenced by pre-Islamic Arabian conceptions of divorce, but more evidence regarding the practice and implications of women-initiated divorces in that cultural milieu will need to be adduced.

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[77] In the *Mudawwana*, the practice of wife-initiated divorce (*khulʿ*) is categorized as a practice of reconciliation (*ṣulḥ*), whereby the wife typically gives up part of her dower to purchase her divorce; Saḥnūn b. Saʿīd al-Tanūkhī, *al-Mudawwana al-kubrā*, 2:241.

[78] Chrest.Khoury I 19=PERF 569.

2.3 Intra-Monastic Dispute Resolution

2.3.1 The Monastery as Legal Corporation



Fig. 10. The Monastery of Apa Paul at Dhirāʿ Abū al-Najā. © DAI Cairo. Reproduced by kind permission of DAI Cairo. Photo credits: Johanna Sigl.

West of the Nile in the Thebaid (close to Luxor), on the hilltop of Dhirāʿ Abū al-Najā, lie the remains of the Monastery of Apa Paul (Dayr al-Bakhīt; see Fig. 10).[79] Life at the monastery followed specific rhythms. As was the case in many other monasteries in Upper Egypt (e.g., the nearby Monastery of St. Phoibammon), the monks at Apa Paul followed a form of communal asceticism (cenobiticism). This distinguished them from other complexes where ascetics followed greater degrees of individual isolation.[80] From the archeological remains at Dayr al-Bakhīt, especially the loom pits for weaving found at the complex, we know that the monks spent a great deal of monastic life weaving.[81] Apart from textiles, they also made ropes.[82]

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[79] The identification of the archeological site with Dayr al-Bakhīt was only recently accomplished by a project of the Deutsches Archäologisches Institut; see Thomas Beckh, Ina Eichner and Suzana Hodak, "Briefe aus der koptischen Vergangenheit: Zur Identifikation der Klosteranlage Deir el-Bachît in Theben-West," *Mitteilungen des Deutschen Archäologischen Instituts, Abteilung Kairo* 67 (2011), 15–30.

[80] At Kellia, we observe a middle ground between strict eremitism and communal monasticism, with ascetics required to engage in communal labor; see Yvette Mottier and Nathalie Bosson, ed., *Les Kellia: ermitages coptes en Basse-Egypte: Musée d'art et d'histoire, Genève, 12 octobre 1989–7 janvier 1990* (Geneva: Éditions du Tricorne, 1989), 19.

[81] Ina Eichner, "Aspekte des Alltagslebens im Pauloskloster (Deir el-Bachît) von Theben-West/Oberägypten anhand archäologischer Belege," in *Hinter den Mauern und auf dem offenen Land: Leben im Byzantinischen Reich*, ed. Falko Daim and Jörg Drauschke (Mainz, 2016), 159–170, at 167. For the craftsmanship of monks, including weaving, see Ewa Wipszycka, "Resources and Economic Activities of the Egyptian Monastic Communities (4th–8th Century)," *Journal of Juristic Papyrology* 41 (2011), 159–263, at 172–196.

[82] Ina Eichner, "Aspekte des Alltagslebens," 168.

On average, a monk consumed about two loaves of bread per day, leading to a consumption of about 10 kg of bread per person per month. As Ewa Wipszycka notes, the need for bread by monastic communities was considerable, even by small ones. Due to the isolation of some of these complexes (e.g., Kellia), bread could not always be supplied from outside, and many monasteries had grain mills and bread ovens.[83]

Twentieth-century scholarship has sometimes understood monastic complexes as mere spiritual sanctuaries that gathered individuals driven by ascetic piety and the goal of renouncing the world. However, in recent decades, studies have turned to focusing on the material conditions of monastic communities, indicating their significant economic and agricultural involvement in the surrounding environment, as well as the critical role they assumed with regard to feeding and caring for the poor.[84] A recent survey of the available archeological and documentary evidence from the Monastery of Apa Paul confirms its economic and social relationships with the nearby village of Jeme. In short, the monastery was dependent on the more populated rural areas. There, it could sell its products such as bowls, textiles, and ropes.[85] In exchange, villagers and city-dwellers found at the monastery a cheap supplier for obtaining commodities, a spiritual refuge, and a destination to visit prominent saints and ascetics. In addition, villagers often made generous gifts and donations to the monastery.

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[83] Ewa Wipszycka, "Resources and Economic Activities," 187–196.

[84] The literature on monasteries' social and economic activities has now grown considerably. For an overview of monastic economies, see Michel Kaplan, "The Economy of the Byzantine Monasteries," tr. Michael Webb, in *The Cambridge History of Medieval Monasticism in the Latin West*, ed. Alison I. Beach and Isabelle Cochelin, 2 vols. (Cambridge: Cambridge University Press, 2020), 340–362; and Ewa Wipszycka, *The Second Gift of the Nile: Monks and Monasteries in Late Antique Egypt*, tr. Damina Jasiński (Supplements to the Journal of Juristic Papyrology, 33, Warsaw: University of Warsaw, 2018), 457–486. For a social history that pays attention to the various roles that individual monks needed to navigate in late antique Egypt in a quasi-managerial fashion, see Ariel López, *Shenoute of Atripe*. See also Joanna Wegner, *Monastic Communities in Context: Monasteries, Economy, and Society in Late Antique Egypt* (Leuven, Paris, and Bristol: Peeters, 2021).

[85] Thomas Beckh, Ina Eichner and Suzana Hodak, "Briefe aus der koptischen Vergangenheit," 19.

Despite the strong social and economic ties between the Monastery of Apa Paul and Jeme, the monastic complex understood itself as an autonomous social and *legal* entity. Ewa Wipszycka notes that "Egyptian monastic communities constituted a dispersed milieu that was never bound by organizational ties and in which distinct groups enjoyed full autonomy and adhered to their own local traditions."[86] Indeed, judging from the documentary trace of monasteries, monastic communities functioned and understood themselves as autonomous legal corporations that internally replicated legal mechanisms and procedures of the outside world by interacting with their subjects on quasi-legal terms. Monastic admission documents, records of punishment, wills, and gift deeds evince that the monastery, as a sovereign entity over its subjects, did not operate in a juristic vacuum but constantly defined and reified its legal boundaries and relations with the monks and the outside world. This was, I argue, a defining feature of these institutions, which, despite their economic and social dependencies, engaged a public rhetoric of representing the communal claim to operate as politically and legally self-sufficient units that boldly escaped state supervision and control. This discursive claim to autonomy was at once sanctioned by Justinian, who had promised monastic communities great levels of autonomy (while also binding them to state power in particular ways). On the other hand, it was translated and implemented concretely through the monastery's documentary and disciplinary practices. With the more exacting fiscal policies adopted towards Egyptian monasteries towards the end of the seventh century under the Islamic administration, monasteries were further incentivized to practice diligent recordkeeping and adhere to established legal procedures. As a legal corporation, the monastery fully absorbed its members into its internal dispute resolution mechanisms.

[86] Ewa Wipszycka, "Resources and Economic Activities," 162.

In the late antique world, Byzantine and Islamic, taxation and compliance with the law played major roles in the order of things. And monasteries, too, were not immune to the ways in which the state asserted its power. They, too, had to pay taxes for the land they owned while being exempted from other levies and transportation duties.[87] But behind the massive walls enclosing monastic complexes, often between 20–46 ft (6–14 m) high, the visitor encountered a world governed by different rules.[88] These walls were not merely for military purposes. They rearticulated the monastery's claim that life on the inside constituted a microcosm that followed its own social and legal rhythms. The demons the monk was combating were present inside the monastery, too.[89] And they were mapped metaphorically onto its physical infrastructure and the communal laws and norms governing everyday life. The *Rules of Saint Pachomius*, on which many a monastery in Egypt was modeled, illustrate the extent to which these institutions regulated and disciplined the minds and bodies of their members. "At work no one shall sit without the superior's order." "No one may go out into the fields, walk around in the monastery or go outside the monastery wall, without requesting and receiving the housemaster's permission."[90]

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[87] Ewa Wipszycka, "Resources and Economic Activities," 166. Based on tax receipts and literary sources, the tax burden on monasteries massively increased starting in the early eighth century. A 753 letter by the executive of ʿAbd al-Malik b. Yazdīd mentions a sum of "two dīnārs in coin" to be paid by the Monastery of Apa Apollo at Bāwīṭ; P.Clackson 45. In a conversation between a Christian official and the Governor Qurra b. Sharīk (r. 709–715), the official reported to Qurra that "you should know that the land tax (*kharāj*) weighs heavily on the monks and bishops in all places;" Sawīrus b. al-Muqaffaʿ, *History of the Patriarchs of the Coptic Church of Alexandria III*, ed. and tr. Basil Evetts (Patrologia Orientalis, 5:1, Paris, 1910), 1/255–216/470, at 62/316. Cf. Bradley Bowman, *Christian Monastic Life in Early Islam* (Edinburgh: Edinburgh University Press, 2021), 115–120.

[88] Clifford C. Walters, *Monastic Archaeology in Egypt* (Warminster: Aris and Phillips, 1974), 79–80.

[89] See David Brakke, *Demons and the Making of the Monk: Spiritual Combat in Early Christianity* (Cambridge and London: Harvard University Press, 2006).

[90] *Pachomian Koinonia: The Life of Saint Pachomius and His Disciples*, tr. Armand Veilleux, 3 vols. (Kalamazoo: Cistercian Publications, 1980–1989), 2:157, 160. See also Philip Rousseau, *Pachomius: The Making of a*

The monastery's status as a legal corporation was not entirely novel. Its beginnings can be traced back to as early as the emperor Constantine, who granted monasteries the right to inherit property and receive gifts.[91] However, state interference in monastic organization reached an unprecedented level in the Justinian era. On the one hand, the *Novels* formally put monasteries under the control of bishops. Their consecration by bishops was no longer merely a moral requirement but was now sanctioned by imperial law. The aim was to contain the mushrooming of monastic structures and bring them under state supervision. Conversely, the Justinian edicts closely regulated the monastery's internal life. Monks were ordered to practice cenobitic (communal) asceticism, with only a few exceptions for anchorites and hesychasts. Newcomers to the monastery were not to be admitted immediately but should wait patiently and be examined for the purity of their intentions. At least formally, the possessions a monk conferred to the monastery upon his admission were not to be returned to him if he decided to leave.[92] Noteworthy, the law prescribes a specific procedure for the appointment of the head of the monastery (hegumen, Gr.: ἡγούμενος), who was given broad powers with few restrictions on his authority.[93] Instead of being elected from among the monks themselves, "the most God-beloved bishop of the area is to go through them all in turn [...] and is to choose the one who is first found to be the best among the monks, and to deserve the position of hegumen over them."[94]

Community in Fourth-Century Egypt (Transformation of the Classical Heritage, 6, Berkeley: University of California Press, 1985).

[91] Charles Frazee, "Late Roman and Byzantine Legislation on the Monastic Life from the Fourth to the Eighth Centuries," *Church History* 51, no. 3 (September 1982), 263–279, at 267.

[92] *NovJ*, 5:1–8.

[93] Charles Frazee, "Late Roman and Byzantine Legislation," 273.

[94] *NovJ*, 5:9.

We know that this was not always the case, though. At the Monasteries of Phoibammon and Epiphanius, for a matter of years, head monks appointed successors in their wills.[95] Nevertheless, the perplexing paradox of the late antique monastery was that its political claim to legal and social autonomy rested on its acceptance of the state's interference in its organizational structures and the quasi-submission to ecclesial power. In return, monastic leaders were granted exceptionally broad authority over their subjects, who were not merely under their moralistic but also legal sway.

2.3.2 The Case: A Novice Entering the Monastery of Apa Paul

In the late 730s, Johannes—together with a certain Shenoute—sought to be initiated to the Monastery of Apa Paul. On the recto of P.Hoogendijk 54, a Coptic papyrus written for that purpose, Johannes petitioned the heads of the monastery and all the brothers for formal admission. This carefully crafted document conforms to a specific structural pattern: Johannes (1) invokes the Trinity, (2) writes down the name of the petitioners (he and Shenoute), (3) names the addressees of the petition, (4) adds a free will clause, (5) promises to abide by the monastery's rules, (6) has three witnesses sign the document, (7) and ultimately signs it.

The clause in which Johannes expresses his voluntary state of mind, that he wishes to enter the monastery "not through necessity but through my own consent," is of particular interest due to its legal implications.[96] We typically encounter these formulae in private contracts, such as sales documents. In these admission documents, the petitioner's state of mind—his or her pure

[95] Martin Krause, "Die Testamente der Äbte des Phoibammon-Klosters in Theben," *Mitteilungen des Deutschen Archäologischen Instituts, Abteilung Kairo* 25 (1969), 57–67, at 57.

[96] P.Hoogendijk 54=O.CrumVC 6.

intentions—mattered for two reasons. First, people frequently sought refuge in monasteries under the pretext of committing to the ascetic life to escape taxation. There was enormous political and social pressure on individuals and villages to deliver taxes to the state. This phenomenon worsened in the seventh and eighth centuries, as evidenced by Coptic revolts against oppressive tax policies, especially under the Abbasids. We have at our disposal a significant number of documents dealing with tax fugitives, as well as such documenting the administration's concerted efforts to track down tax delinquents.[97] Second, for individuals, the act of entering a monastery meant that they formally became part of the monastery's "jurisdiction." They were to abide by its laws and submit to its internal dispute resolution mechanisms instead of seeking legal redress outside. The Justinian Code specified that novices were not to be formally admitted before a three-year period had passed during which the hegumens should thoroughly inspect their intentions.[98] The precise reason for the inclusion of free will clauses in such documents cannot be decisively determined, mainly because few admission documents are preserved. In a recent article, Esther Garel shows that the idea of entering the ascetic life on one's own volition was widespread in Christian literary accounts and documentary sources.[99] However, the existence of a broader cultural discourse about the significance of voluntarily becoming an ascetic does not negate the possibility that these clauses served specific legal reasons, as they did in the case of wills and contracts to ensure their

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[97] P.Hoogendijk 51 (a Greek list of fugitives from the village of Tanais mentioning their current whereabouts); P.Heid.Arab. I 12+P.BeckerNPAF 5+P.BeckerPAF 14+P.Cair.Arab. 151 (Qurra b. Sharīk giving orders to his addressee to return refugees residing in the latter's jurisdiction to Hishām b. ʿUmar). For a list of papyri mentioning cases of tax evasion, see Lucian Reinfandt, "Crime and Punishment," 637, footnote 21.

[98] *CodJ*, 4:5.2.

[99] Cf. Esther Garel, "Vouloir ou ne pas vouloir: devenir moine à Thèbes aux Viie–Viiie siècles d'après les textes documentaires," in *Études coptes XV: Dix-septième journée d'études (Lisbonne, 18–20 juin 2015)*, ed. Anne Boud'hors and C. Louis (Cahiers de la Bibliothèque copte, 22, Paris 2018), 245–254.

validity. Once we identify more admission documents, comparisons between their formal structure will help determine the exact purpose of these clauses.

In practice, initiations to the monastery were less formalized and motivated by a range of personal, social, and economic reasons. In O.Vind.Copt. 287, the writer Eusebius petitions the head of the monastery, Apa Johannes, offering him the handsome incentive of canceling his debt of one Holokottinos should he agree to initiate Apa Dios.[100] Was this a bribe? We do not know. Meanwhile, O Brit.Mus.Copt II 8 informs us about two monks reiterating their previous petition to join the monastery.[101] Accepting a monastery's rules was accompanied by the social expectation that novices make formal arrangements for renouncing their worldly property by donating it to the monastery or somebody else. The *Novels* stipulate that childless novices should give their property to the monastery. However, those with children may assign their lawful share to them.[102] According to Roger Bagnall, monks probably often continued to own and transmit property even after entering monasteries.[103] That said, monastic admission had profound consequences for novices and their families. And it certainly did for Johannes and Shenoute. The wills of ascetics eager to bequeath their entire wealth to monasteries were often the subject of lawsuits by family members deprived of their inheritance. The seventh and eighth-century wills of monks from the Thebaid illustrate a proprietary notion adopted in these legal contracts, where

[100] O.Vind.Copt. 287=O.CrumST 310.

[101] Cf. Ewa Wipszycka, *The Second Gift of the Nile*, 347–348 and Frederic Krueger, *Andreas von Hermonthis und das Kloster des Apa Hesekiel: Mikrohistorische Untersuchungen zu Kirchengeschichte und Klosterwesen im Gebiet von Armant (Oberägypten) in byzantinischer Zeit anhand der koptischen Ostraka der Universitätsbibliothek Leipzig (O.Lips.Copt. II)*, 2 vols. (Archiv für Papyrusforschung und verwandte Gebiete, 43, Berlin: De Gruyter, 2020), 1:91.

[102] *NovJ*, 123:38.

[103] Roger S. Bagnall, *Egypt in Late Antiquity* (Princeton: Princeton University Press, 1993), 298.

the deceased bequeathed his cell as property to his spiritual family.[104] In other words, renouncing the world was not just a spiritually articulated claim but had profound social, legal, and economic implications for the logics of biological kinship.

2.3.3 The Admission's Document as a Legal Document

2.3.3.1 The Purpose of the Document

We must ask why Johannes wrote a formal document to be admitted to the monastery in the first place. It has been argued that such admission documents resulted from ascetic performance, whereby the initiate declared his commitment to serve the monastery by ceremonially writing down a pledge to abide by its rules. And this is no doubt what Johannes did. To some degree, that is. Textual and diplomatic evidence strongly suggests that the papyrus was not written to be kept by Johannes but rather for the monastery. As such, it appears to be a legal document—a document that was stored at the monastery's library and that fulfilled the purpose of shielding the monastery from liability should Johannes decide to bring legal action against it.

Johannes had addressed his document to three monks, at least two of which served in the role of the monastery's heads: Apa Zacharias, Apa Jacob, and Apa Theodoros. We know that the Monastery of Apa Paul was typically, though not always, headed by a triumvirate, and it is possible that all three served in this capacity at the time of Johannes's initiation.[105] As heads,

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[104] Elisabeth O'Connell, "Transforming Monumental Landscapes in Late Antique Egypt: Monastic Dwellings in Legal Documents from Western Thebes," *Journal of Early Christian Studies* 15, no. 2 (Summer 2007), 239–273, at 264–265. For instance, P.KRU 75=P.CopticLegal, 29–35=P.Mon.Epiph., 343–348 App. 3=O.Cair.Monuments 8730=P.RevilloutCopt. 3 (a seventh-century will of the monks Jacob and Elias).

[105] Thomas Beckh, Ina Eichner and Suzana Hodak, "Briefe aus der koptischen Vergangenheit," 22. Based on the new finds at the monastery, Suzana Hodak offers a tentative list of its heads adding to and improving the much older one by Walter Till; see Suzana Hodak, "'Wir grüßen kniefällig' versus 'Wegen unserer Schwäche haben wir euch nicht kniefällig gegrüßt,'" in *Das Pauloskloster (Deir el-Bachît) in den Bergen von Djeme/Oberägypten: Eine Mönchsgemeinschaft am Rande der Wüste: Internationaler Workshop an der*

they were its representatives and responsible for sorting out legal affairs, disciplining the monks, administering punishment, and overseeing the monastery's economic and social well-being. Johannes recounts that before he wrote up the document, he had confronted Apa Zacharias and Apa Jacob, asking to be initiated:

> [...] I came and requested our Father Apa Zacharias and Apa Jacob, so that their mercy may reach me and my brother so that we may be worthy to join them in this prayer. However, they wanted to ask for a declaration from us, namely that we will proceed in the ordinance, as all the brethren who proceed in obedience, that we shall never go anywhere without asking, nor (do) anything that upsets you, more so than all the brethren. If I defile (myself) or do anything that upsets you, you are the ones who command and expel (me). Furthermore, I shall never allow any *sachô* [ⲥⲁϧⲟ: probably somebody of rank] (to have authority) over me, lest it upsets you.'[106]

If we believe Johannes, Apa Zacharias and Apa Jacob had rejected the idea of oral testimony. It was they who suggested that a more formal declaration be drawn up. The Fathers would have had good reasons to demand a formal document. If Johannes were to die, his biological relatives might initiate legal action against them to claim parts of his property. One could argue that the broad fiscal exemptions that the Byzantine state had historically granted created the need for accountability for who was in and about the monastery and, therefore, on the receiving end of

Österreichischen Akademie der Wissenschaften, Wien, 20.–21. Mai 2019, ed. Ina Eichner and Daniel Polz (Wiesbaden: Harrassowitz, 2022), 89–102, at 99.

[106] P.Hoogendijk 54=O.CrumVC 6, translated by Jennifer Cromwell. For a discussion of the possible meanings of the Coptic term ⲥⲁϧⲟ, see Anne Boud'hors, "À la recherche de normes monastiques en Égypte: l'apport des sources coptes documentaires." In *La vie quotidienne des moines en Orient et en Occident (IVe-Xe siècle)*, ed. Olivier Delouis and Maria Mossakowska-Gaubert, 2 vols. (Cairo and Athens: Institut français d'archéologie orientale and École française d'Athènes, 2019), 2:415–432, at 2:419.

privileges. But the opposite is also true: The more exacting tax policies adopted towards monasteries under the late Umayyad and early Abbasid administration—as seen in P.Clackson 45—increased the incentive to minutely keep track of monks to contribute to the tax burden.

Indeed, the fiscal policies for monasteries introduced by the Arab administration at the end of the seventh century, especially under the governor al-Aṣbagh (r. 694–696), marked a departure from the fiscal status that Egyptian monasteries had enjoyed. Even in the Byzantine era, monasteries needed to pay the land tax, and this practice continued into the Islamic period. But from the documents, we can glean that the land tax was now much higher. Al-Aṣbagh was frequently deputized by his father ʿAbd al-ʿAzīz b. Marwān, when the latter was absent.[107] His fiscal policies included a census of all monks in Egypt, the introduction of a poll tax (*jizya*) of one Dinar for each monk, and the prohibition of admitting novices to monasteries.[108] The policy of controlling monastic admissions seems to have targeted tax fugitives specifically. The individual taxation of monks, later expanded to include all Christians and Jews, coincided with ʿAbd al-Malik's (r. 685–705) broader campaign to restructure the empire's finances and revenues.[109] The governor Usāma continued the fiscal policy line of al-Aṣbagh and additionally introduced the "passport system" (*sijill*). The papyri record indicates that the passport system was widespread and constituted an effective means for the state to control the movement of its

[107] Al-Kindī, *Kitāb al-wulāh wa-kitāb al-quḍāh*, 51.

[108] Ibid., 51. See Petra Sijpesteijn, *Shaping a Muslim State*, 99, 102–103 and Daniel C. Dennett, *Conversion and the Poll Tax in Early Islam* (Cambridge: Harvard University Press, 1950), 73–74. His fiscal policies secured him the reputation of "shedder of blood, a wicked man, like a fierce lion" among Christians; Sawīrus b. al-Muqaffaʿ, *History of the Patriarchs III*, 50/304.

[109] Wadad Kadi, "Population Census and Land Surveys under the Umayyads (41–132/661–750)," *Der Islam* 83 (2008), 341–416, at 382.

subjects and prevent tax evasion.[110] We know the halt on new entrances to monasteries was soon again vacated. However, the harsher tax policies likely increased the need for monastic accountability. One such way of doing that inside the monastery was through recordkeeping and maintaining a legal bureaucracy.

The admission's document has structural similarities with the ordination petitions from the Apa Abraham dossier of the late sixth century.[111] When clerics petitioned Apa Abraham to be ordained deacon, they typically began by (1) mentioning their name, (2) followed by addressing the bishop, (3) a statement that they are willing to follow and sustain the laws, canons, and professional knowledge of deacons, (4) a statement that they will learn by heart parts of the Gospel, (5) their affirmation, and occasionally (5) a surety by two other clerics functioning as guarantors. The main difference is that in the case of the monastic admission document, we do not have guarantors becoming liable for transgressions of the monk, nor does there seem to have been a formal exam to verify monks' knowledge of the Gospels. I agree with Martin Krause that the surety system in the case of ordaining deacons mainly served to maintain an effective communication network for the bishop.[112] Because guarantors became personally liable—that is, subject to disciplining—for transgressions of the deacon for whom they had given surety if they failed to report his trespasses to the bishop, they always had an incentive to report on him. That explains how a bishop living as remotely as Apa Abraham was nevertheless extremely well-

[110] Sawīrus b. al-Muqaffaʿ, *History of the Patriarchs III*, 68/322–70/324. For these passports see, for instance, P.Heid.Arab. II 1 verso; P.DiemFrueheUrkunden 8=PERF 602; and P.DiemFrueheUrkunden 9=PERF 598. In some papyri, we even find the tax receipt and passport on the same document: P.DiemFrueheUrkunden 7=P.Alqab 21.

[111] Many of them ("Verpflichtungserklärungen" and "Amtseinsetzungsurkunden") were edited and translated in Martin Krause's dissertation, "Apa Abraham von Hermonthis," esp. 2:1–100.

[112] Martin Krause, "Apa Abraham von Hermonthis," 1:44.

informed about the goings-on in his diocese. In other words, the sureties created a network of mutual liabilities where clerics could monitor and report on each other. The absence of guarantors for monastic admissions is because monitoring and policing in monasteries was not something up for debate, but simply a social reality.

2.3.3.2 The Witness Signatures

The three witness signatures at the bottom of the recto of our document exemplify its official character and legal standing. Theodore, Onophrios, and Charis sign it, and lastly, our petitioner Johannes himself. Only Theodore and Johannes sign with the epithet "the most humble," which could indicate that only they, but not Onophrios and Charis, were clerics. In addition, a small cross precedes Theodore's witness testimony, and there appears to be another one after Johannes's. Although this line of inquiry cannot be further pursued here, I noticed a decisive increase in the presence of *lashane*—Coptic village officials—in the witness signatures of Coptic documents from ecclesial contexts beginning in the seventh century.[113] Their presence indicates not only their frequent involvement in monastic matters but possibly their growing importance in issuing and validating legal documents. Thus, my theory is that Onophrios and Charis were *lashane* or some other lay authorities, probably from Jeme, and that the testimony of lay witnesses in ecclesial documents, for one or another reason, became more important in the seventh century.

[113] On the *lashane*, see Lajos Berkes, *Dorfverwaltung*, 83–84.

2.3.3.3 The Storage Note

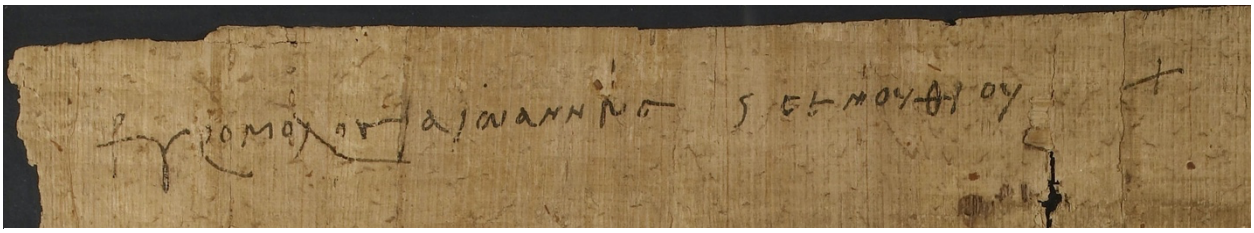


Fig. 11. Storage note on verso of P.Hoogendijk 54=O.CrumVC 6. © British Library. Reproduced by kind permission of the British Library Collection (BL Or 9536 recto).

Most monasteries seem to have had a library or storage room where documents and manuscripts were kept and a *scriptorium* dedicated to the production of texts.[114] While the copying, preserving, and lending of manuscripts served the purposes of education at the monastery, the keeping of documents, fiscal, legal, and others, was necessitated by the fact that they were legally valid. In some places, like the nearby Monastery of St. Phoibammon, the existence of a central library inside the monastic complex is evident from its mention in several documents, despite the absence of direct archeological evidence.[115] On the verso of our admission's document (see Fig. 11), in the top left corner, we find a storage note (also "docket hand" or "registration note") which summarizes the content of the recto: "The declaration (of) Johannes and Shenoute." Tonio S. Richter notes that these dockets usually present a small summary of the text and, because of their position at the top of the document, would have been visible even when it was rolled up and sealed.[116] The storage note supports the idea that our document was not

[114] Leslie MacCoull, *Coptic Legal Documents*, xxvi–xxvii. Also, see the discussion in Cecilia Palombo, "The Christian Clergy's Islamic Local Government," 91–95.

[115] Anne Boud'hors and Esther Garel, "Que reste-t-il de la bibliothèque du monastère de Saint-Phoibammon à Deir el-Bahari?," in *Aegyptus et Nubia Christiana: The Włodzimierz Godlewski Jubilee Volume on the Occasion of His 70th Birthday*, ed. Adam Łajtar, Artur Obłuski, and Iwona Zych (Warsaw: Polish Centre of Mediterranean Archaeology, 2016), 47–60, at 54–55.

[116] Tonio S. Richter, "Greek and Coptic in the Byzantine Era," in *Law and Legal Practice in Egypt from Alexander to the Arab Conquest: A Selection of Papyrological Sources in Translation, with Introductions and Commentary*, ed. James G. Keenan, Joseph G. Manning, and Uri Yiftach-Firanko (Cambridge: Cambridge University Press, 2014), 134–144, at 141.

issued for Johannes but was preserved in the monastery library, likely with other such documents. The note served as a visual marker for those handling documents and manuscripts in the library allowing them to identify its content easily.

2.3.3.4 Why Are There So Few Monastic Admission Documents?

This leads us to why monastic admission documents—especially if legally significant—are so exceedingly scarce. Ewa Wipszycka notes that she is only aware of four such documents, excluding the one mentioned here.[117] But we do have a few more.[118] First, one reason for the existence of few such documents is that with a monk's death, the legal value of these admission documents for the monastery ceased, at least after a period where claims regarding the deceased's inheritance might surface. Consequently, such documents may have been repurposed, reused, or discarded entirely. Another reason is methodological and has to do with the fact that these admission documents, in comparison to, let's say, petitions by clerics to be ordained, were for long not thought of as a genre. The absence of a centralized database for Coptic documents as we have them for Greek and Arabic (Trismegistos, Papy.info, APD) further exacerbates the problem. Archeological excavations have not always successfully uncovered and identified libraries and document repositories in monasteries. For instance, at the Monastery of Bawīṭ, one would expect the discovery of a library or similar storage facility, mainly due to the sheer size of

[117] Ewa Wipszycka, *The Second Gift*, 346.

[118] See, for instance, O.Lips.Copt. II 100 and O.Lips.Copt. II 7. A different way of entering the monastery was to donate oneself, and we have at least one such case where a man gifts himself to the Phoibammon Monastery; see P.KRU 104=P.Lond.Copt. I 379. See Arthur Steinwenter, "Kinderschenkungen an koptische Klöster," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung* (1921), 175–207, at 177–178.

the monastic complex, which, from literary and documentary sources, we know to have accommodated around 1000 people at times.[119]

2.3.4 The Case Continued: Troubles with Johannes

A few years after Johannes entered the monastery, some drama was about to unfold at Apa Paul. Whatever spiritual demon or homoerotic phantasy had taken hold of Johannes, he was close to being expelled from the monastery. Things had taken a turn when he had brought a man into his cell without asking for permission—a clear violation of the monastery's canons.[120] We do not know exactly what happened or why Johannes received his visitor. Homoeroticism in these monasteries was certainly not unheard of, as the surviving discourse of Shenoute on female homoeroticism illustrates. Here, we also learn about the punishments monastic leaders sometimes ordered for those under their supervision. "Fifteen blows of the stick" for a woman called Taêse, who ran after "Tsansnô in friendship and physical desire."[121] Another potential source of homoerotic relationships in monastic contexts was the presence of minors. Carrie Schroeder's research has shown the extensive presence of children in monasteries who were part of the Egyptian monastic movement from its early stages.[122] Likely meant to discourage homoerotic relationships, a seventh-century testament of two monks at the Monastery of

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[119] Tea Ghigo and María J.A. Martínez, "The Practice of Writing inside an Egyptian Monastic Settlement: Preliminary Material Characterisation of the Inks Used on Coptic Manuscripts from the Monastery of Apa Apollo at Bawit," *Heritage Science* 9, no. 62 (2021), 1–15, at 2–3.

[120] P.Hoogendijk 54=O.CrumVC 6 verso.

[121] Terry G. Wilfong, "'Friendship and Physical Desire:' The Discourse of Female Homoeroticism in Fifth-Century Egypt," in *Among Women: From the Homosocial to the Homoerotic in the Ancient World*, ed. Nancy Sorkin Rabinowitz and Lisa Auanger (Austin: University of Texas Press, 2002), 304–329, at 310.

[122] Carrie Schroeder, "Children and Egyptian Monasticism," in *Children in Late Ancient Christianity*, ed. Cornelia Horn and Robert R. Phenix (Studien und Texte zu Antike und Christentum, 58, Tübingen: Mohr Siebeck, 2009), 317–338.

Epiphanius specifies that "you are not to […] take to yourselves any men of below twenty years, as our holy fathers before us gave us commandment […]."[123] It is likely that minors, including young boys and male adolescents, were also present at the Monastery of Apa Paul.

On the verso of Johannes's admission document, we again find his handwriting (written upside down under the storage note). This time, he addressed Fathers Apa Kyre and Apa Theodoros, who were probably the monastery's leaders by then. Johannes notes that the two fathers had wanted to inflict punishment on him by casting him out. Only through his begging and the urging of some seniors could they be convinced to exonerate him.[124] On Johannes's part, being expelled from the monastery would have had severe economic consequences. Ascetics typically cut off their ties to blood relatives before entering the monastery, thus losing an important source of subsistence. Expulsion meant poverty. At least at times. It could lead to a social conundrum that Johannes would have wanted to resist at all costs. To redeem himself, he renewed his commitment to abide by the monastery's rules:

> Therefore, I now declare and write by my own hand that, from today the 18 Mesore of year 6 [=739 CE], if the canon of our Fathers seizes me, or I keep any strange man, who is neither in fellowship with me nor under your authority, if I do this, you will expel me, without any repentance or forgiveness. As a surety, then, (for) your holiness, I have drawn up this declaration by my own hand and consent to it.[125]

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[123] P.KRU 75=P.CopticLegal, 29–35=P.Mon.Epiph., 343–348 App. 3=O.Cair.Monuments 8730=P.RevilloutCopt. 3, translation by Leslie S.B. MacCoull in *Coptic Legal Documents*, 29–35, at 33.

[124] To what extent the orders of monastic leaders could be defied is a point we know little about. Wipszycka claims that the assignment of labor considered inferior, such as harvesting the fields, "often led to protests." But the only evidence she offers to support this is the Pachomian *Apocalypse of Čarour* and the Canons by Shenoute. Ewa Wipszycka, "Resources and Economic Activities," 184.

[125] P.Hoogendijk 54=O.CrumVC 6, translated by Jennifer Cromwell. We can be relatively sure that the verso was written in 739 CE. From other documents, we know that Apa Zacharias was head of the monastery in the late 730s. 739 corresponds with the sixth indiction. Because Apa Zacharias is not mentioned on the verso, we may

So, the document was written up as a "surety" for the head monks, with Johannes reconfirming his submission to their rules. The written nature of the declaration gave it a quasi-legal character by which they could hold him accountable.

Again, we can safely assume the document was issued *for* the monastery. It is plausible that after Johannes's admission, the document was preserved at the monastery's library, so somebody had to reaccess it to allow him to write on the verso and renew his pledge. It is very unlikely that the fact that both sides of the document relate to the same person is the result of a mere accident.

The witness signatures further attest that the writing on the verso was not an informal affair but rather an orchestrated occasion instigated by the monastic heads. This time, we have four signatures: Epiphanius, David, Petros, and Samuel. All but Petros, for whom David wrote, signed by themselves. There are crosses before and after the signatures of each of them, with the exception of Samuel, who only added a cross at the end. However, we should not be misled into thinking these people were monastic representatives. Instead, all of them seem to have been official representatives of the administration from the nearby villages. We are most well-informed about David, son of Psate, a scribe from Jeme, who drafted several other contemporary documents, especially legal ones.[126] Jennifer Cromwell notes that Samuel, son of Enoch, is mentioned in P.KRU 71 as a senior official (*dioiketes*). He appears as a witness in several other documents. We know little about Petros and Epiphanius. The former may be identical to the

have to assume that he was already dead when Johannes wrote it. It could be that the verso dates to 754, also a sixth indiction. But this is unlikely because the verso mentions Apa Theodoros, who is probably the same figure mentioned on the recto as one of the monastery's *hegumen*.

[126] Tonio S. Richter, "Zwei Urkunden des koptischen Notars David, des Sohnes des Psate," *Archiv für Papyrusforschung* 44 (1998), 69–85; and Walter Till, *Datierung und Prosopographie der koptischen Urkunden aus Theben* (Vienna: Kommissionsverlag der Österreichischen Akademie der Wissenschaften, 1962), 74.

witness on whose behalf somebody else signed in P.CLT 1. The latter, Cromwell maintains, may have worked as a professional village scribe based on paleography.[127] Thus, at least two of the witnesses, and possibly more, were not monastery members. They were officials or scribes from the nearby villages. To facilitate the presence of these people as witnesses to the ongoing troubles with Johannes, the monastic leaders needed to leverage their extensive connections to the outside world. Perhaps surprisingly, the mere "internal" matter of a single monk's transgression of the monastery's laws was apparently considered grave enough to involve officials from the Jeme administration to draw up a formal legal document with their support. Even if the monastery had limited options for enforcing its laws—the threat of expulsion, physical punishment, food deprivation, and social and psychological pressure—its adherence to practices of legal recordkeeping publicly, as well as internally, created the impression that it was a powerful institution of legal standing. And as mentioned before, admission documents and records of punishment are by far not the only evidence in support of this argument: wills by monks, legal disputes with relatives, and sales documents all evince that monasteries did conceive of themselves and functioned as legal corporations with their own mechanisms of dispute resolution. Their internal reproduction of practices of legal recordkeeping originating from the world of "formal" law (through formulae, witness signatures, etc.) not only sanctioned higher levels of jurisdiction with legal authority (even if they barely operated) but also endowed the monastery itself with legal clout and judicial status.

[127] Jennifer Cromwell, "On Erring Monks, Literacy, and Materiality: A Re-edition of O. Crum VC 6," in *Text Editions of (Abnormal) Hieratic, Demotic, Greek, Latin and Coptic Papyri and Ostraca: Some People Love Their Friends Even When They Are Far Away: Festschrift in Honour of Francisca A.J. Hoogendijk (P.L.Bat. 37)*, ed. Joanne V. Stolk and Guus A.J.C. van Loon (Leiden and Boston: Brill, 2021), 238–248, at 244.

2.3.5 Authority and the Legal Bureaucracy of the Monastery

In the second half of the ninth century, a group of monks, probably from Asyūṭ or al-Ashmūnayn, petitioned the governor (*amīr*) of Egypt. In their petition, they complained about the injustices and maltreatment by the local governor (*wālī*), who had seized parts of their property and obliged them to pay a monthly sum they considered outrageous. The situation grew so bad that the monks were forced to sell their donkey to secure their water supply. The monks appealed to the governor, pleading for his impartiality (*inṣāf*) and justice (*ʿadl*). Throughout the petition, the monks repeatedly refer to themselves as "poor and miserable" (*naḥnu ḍuʿafā masākīn*). "We engage neither in commerce, nor … monks night and day who have neither …, nor salary, nor pay [...]," they explain, and "we neither cultivate plants nor breed animals and have only what the people of our confession donate to us because we are poor and miserable."[128]

We certainly must not dismiss the unfortunate troubles these monks were going through. Indeed, we know that monasteries suffered a great deal from the effects of high taxation in the Abbasid period, and many ultimately dissolved. However, the rhetoric employed by these monks constituted an all too familiar *topos* that had circulated for centuries in the late antique world. It was the public image of the poor, feeble, secluded, and propertyless monk. It was the image of the ascetic whose everyday business was detached from the social and legal worlds surrounding him.

However, the analysis of Johannes's admission to the Monastery of Apa Paul and his near expulsion a few years later, combined with marshaling textual and diplomatic evidence, showed that monasteries not only wielded economic and social but also *judicial* power. This was the case even in the face of drastically changing fiscal policies and the poll tax for monks that

[128] P.Ryl.Arab. II 354=P.VanthieghemViolences, ll. 7–8 and 19–20.

probably only came into effect about twenty years before our document was written. The bureaucratic machinery of the Monastery of Apa Paul oriented itself towards the practices of legal recordkeeping available in the domain of formal law. By imitating these, monastic leaders were able to reproduce procedural norms within the monastery's microcosm and sanction their authority, which relied on this bureaucratic performance of power. The paradox of intra-monastic disciplining, as experienced by Johannes, was that for him, there was no option to avoid it. Yet counter-intuitively, the internal resolution of the conflict was predicated on bringing his transgression into the public domain of documents: External scribes, officials, and administrators who functioned as witnesses all had to become observers to the grand spectacle of intra-monastic dispute resolution.

2.4 Conclusion

Egypt's transformation into an arbitration society was largely completed by the sixth century. Power had shifted from Byzantine officials in the cities to rural officeholders, bishops, pagarchs, and monks. The great judicial and executive authorities these individuals had accumulated resulted in legal disputes predominantly being resolved locally through arbitration. Long gone were the days in which rural Egyptians traveled to far-away cities to the noble courts of Rome, which had for centuries served as the long arm of the empire and a place for the reproduction of its imperial ideology. This was the sociolegal environment in which Islamic law emerged. It was a society not bereft of but largely unaffected by the activities of formal courts. That is, insofar as people rarely had access to them. Whether this was the case in Egypt alone or across the Eastern parts of the Mediterranean remains to be seen, although the evidence suggests that we are likely dealing with a cultural phenomenon that extended over large areas previously controlled by the

Byzantine Empire. The proliferation of means of dispute resolution on the ground—in city councils, monasteries, and other venues—required these local justice providers to invest in legal decorum and impartiality. As the documentary record illustrates, councilors, bishops, and monks reproduced official legal norms and scribal practices, leaving a notable trail of documents. Their positions of authority gradually solidified by imitating formal legal standards and norms. The reproduction of these norms to achieve public recognition and acceptance was not an act of insidiousness or malice but rather part of the ordinary and natural expansion of the Byzantine, and later Islamic, empire downwards. From the view of the Egyptian populace, the expansion of judicial powers by actors in the countryside caused particular frustrations: not only did it curb their ability to access formal jurisdiction by making judicial appeals nearly impossible (*dialyseis*; monastic admission documents), but it also forced them to accept lower standards of judicial review—standards far below those typically upheld in formal courts, as seen in the cases of Philemon and his wife, Johannes the monk, and even al-ʿAllāna. In the next chapters, I focus on the nature of the state that came into existence after the Arab conquests in the 640s, its Arabicization and Islamization policies, and the ways in which it positioned itself towards Egypt's existing legal infrastructure.

PART II:

DOCUMENTS, LEGAL PROFESSIONALS, AND THE ISLAMIC STATE

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CHAPTER THREE

Arabic Legal Documents on Papyrus from the First and Second Century Hijra

3.1 Introduction: Documenting the Law

Bureaucratic and judicial institutions, not to mention the individuals working for them, leave paper trails. The first and second-century Islamic administration in Egypt—not only that relatively tiny group of Arabs who had hailed from the Arabian Peninsula with the conquests of Egypt in the 640s but also non-Arab and non-Muslim subsidiaries of the new rulers outside Fusṭāṭ—left particular types of trails: on paper, parchment, potsherds, textile, and, most importantly, papyrus. For the state machinery, keeping and preserving records of claims, entitlements, and violations by individuals, among other things, are essential to fixating and proliferating scribal and judicial norms. The previous chapters have shown that premodern Islamic societies were highly bureaucratized and that we have a wealth of documents (as opposed to long-form sources) preserved even for its very beginnings (most of them from Egypt). State bureaucracies' reliance on written documents ("papereality"), argues David Dery, functions as a control mechanism by which "organizations engage in the construction and privileging of views of the world that become the world."[1] Most importantly, the presence of judicial norms in any society constitutes the legal and social expectations of the populace by

[1] David Dery, "'Papereality' and Learning in Bureaucratic Organizations," *Administration and Society* 29, no. 6 (January 1998), 677–689, at 678.

determining if, how, when, and where individuals and groups of people can access and interact with state representatives. Of course, no legal norm is ever fixed, and norms change over time as we will see in the examples below. That said, legal infrastructures, with which I am mainly concerned here, require norms because they help institutions and representatives gain judicial reputation. Without norms, there is no legality. And without legality, there is no political stability. Every political system, even the most decrepit one, must follow certain norms to keep existing.

On the part of ordinary people, adherence to judicial norms over long periods of time increases their confidence—and ideally, trust—in these institutions by generating procedural and substantive predictability about what the law is. Documents function as attestations of their rights, claims, obligations, and debts and, therefore, structure current and future social relationships they have with other people.

Although convenient, the model suggested above has weaknesses and only partially captures the complexities of post-conquest Egypt. First, unlike the British invasion of Egypt in the late nineteenth century, the Arab ruling elite were novices in the art of imperial administration. Not only had they just recently converted to Islam, but they also could not mobilize a centuries-old imperial tradition of laws and legal norms to be imposed on the subject population. Tribal norms originating in pre-Islamic Arabia, of course, must have influenced the ways in which officials of the expanding Islamic state machinery approached legal and social matters. And yet, large-scale reliance on and cooperation with non-Muslim administrators for implementing orders and managing communication with the rural populace suggests that establishing legal norms was at least as much a bottom-up as it was a top-down process. Added to this is the complication that Islamic legal norms were not expressed in writing before the late

eighth century with the burgeoning of a substantive Islamic legal literature, including legal manuals (*kutub al-fiqh*), disagreements (*ikhtilāfāt*), disputations (*munāẓarāt* and *jidāl*), treatises on the principles of jurisprudence (*uṣūl al-fiqh*), and others written at the hands of jurisprudentially minded individuals.[2]

In this chapter, I argue that the development of an Arabicized legality in Egypt was closely entwined with the production of written documents and adherence to scribal conventions. At a time of judicial crisis, when Egypt's populace had, over a long period of time, witnessed the decentralization of the Byzantine state, political upheaval, and legal uncertainty due to a lack of access to formal courts, Arabic documents became crucial to the formal recording and securing of ordinary people's legal claims and their transactions in a world still dominated by arbitration and mediation practices. I argue that the earliest legal records in Arabic evince a shift in the Egyptian legal landscape that reflects the Islamic state administration's growing attempts to absorb, document, control, bureaucratize, and enforce legal responsibilities.

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[2] For a discussion of the possibility of reconstructing Islamic legal norms in the first two Islamic centuries through analyzing and evaluating *aḥādīth*, see the exchange between Irene Schneider and Harald Motzki; Irene Schneider, *Kinderverkauf und Schuldknechtschaft: Untersuchungen zur frühen Phase des islamischen Rechts* (Stuttgart: Franz Steiner, 1999); Harald Motzki, "Der Prophet und die Schuldner: Eine *ḥadīṯ*-Untersuchung auf dem Prüfstand," *Der Islam* 77, no. 1 (2000), 1–83; Irene Schneider, "Narrativität und Authentizität: Die Geschichte vom weisen Propheten, dem dreisten Dieb und dem koranfesten Gläubiger," *Der Islam* 77, no. 1 (2000), 84–115; and Harald Motzki, "*Al-Raddʿalā l-radd*: Concerning the Method of *Ḥadīth* Analysis," in *Analysing Muslim Traditions: Studies in Legal, Exegetical and Maghāzī Ḥadīth*, ed. Harald Motzki, Nicolet Boekhoff-van der Voort, and Sean W. Anthony (Leiden: Brill, 2012), 209–229. Their debate especially focused on the so-called Surrāq-*aḥādīth*, a cluster of *ḥadīth* according to which Zayd b. Aslam (d. 136/753–754) traveled to Egypt, where he met one of the Prophet's Companions named Surrāq. When inquiring about Surrāq's strange name, the latter informs him that the Prophet gave him this name after he had embezzled property (camels or cloth, depending on the *ḥadīth*). Due to the embezzlement, the Prophet allegedly ordered the creditor to sell Surrāq in the market. The creditor initially complied with the Prophet's request but then decided to release Surrāq after learning the buyers were planning to release him. Irene Schneider, "Narrativität und Authentizität," 85–86. The discussion concerning these *ḥadīth* centers on the question of whether debt bondage—an institution well-attested in Roman, Sasanid, and other Near Eastern legal cultures—was considered permissible and practiced during the early Islamic period. Classical Muslim jurists—except for Ibn Rāhwayh (d. 238/853), the Ẓāhirīs, and possibly Aḥmad b. Ḥanbal (d. 241/855)—reject the notion that bankruptcy could result in enslavement; Irene Schneider, *Kinderverkauf und Schuldknechtschaft*, 38–49.

This chapter demonstrates that the earliest evidence of an Arabicized legality in the seventh and eighth centuries pertains to legal claims (*adhkār ḥaqq*) and quittances (*barāʾāt*). By analyzing the structure, social purpose, and historical development of these documents in the first two Islamic centuries, the chapter aims to illuminate the process by which an Arabicized legality emerged and consolidated into a cohesive system that administrators and ordinary people increasingly understood as Islamic. It posits that Arabic documents, especially legal documents, were momentous to the transformation of late antique Egypt from a legal economy in which Byzantine legal norms, Greek, and, to a lesser extent, Coptic documents were central to one in which the Arabic language became the primary idiom of the law with Greek and Coptic being of second-rank importance. To trace this process, we must discard the myth that Islamic law denies the validity of legal documents and systematically analyze Arabic legal documents from the first two Islamic centuries.[3] That said, the chapter seeks to shift perspective by incorporating the philological structure, visual layout, and social purposes of Arabic documents into a big-picture narrative of how a legality rooted in the Arabic language came to offer the social and political capital of security and legal predictability that would come to form the basis of a system gradually developing into Islamic law.

Arabic legal documents were the great equalizer in the seventh and eighth centuries. They were the bridge between an Islamic legality in the making and already existing Byzantine and Christian legal norms. Arabic legal documents are indispensable to comprehending the origins of Islamic law and Arabicization because they forged and embodied the Islamic imperial ambition

[3] Some of these have been studied extensively, and this chapter relies on the invaluable groundwork accomplished by Adolf Grohmann, Werner Diem, Geoffrey Khan, Mathieu Tillier, and Naïm Vanthieghem, among others. See especially Geoffrey Khan, *Arabic Legal and Administrative Documents*; and Mathieu Tillier, *L'invention du cadi*. References to these works follow in due course.

for sovereignty. By that, I mean that these documents traveled all social and administrative ranks instantiated by empire: from Arab governors and officials who instigated their existence to non-Muslim administrators and scribes who wrote and executed them to ordinary people who used and preserved them. These documents constitute the hallmark of a proto-Islamic legality because their validity and status as legal documents were undergirded by the symbolic association of the Arabic language with power.[4] This is not to say that Greek and Coptic documents lost their legal standing entirely. Instead, the implication of my point is that as time progressed, Arabic legal documents gained traction and became more critical because they functioned as secure, binding, and authoritative validations of social claims. Greek and even Coptic documents continued to serve that purpose for centuries, albeit not as a function of power but as a matter of continuity with established late antique legal norms and practices. From the center to the margin and back, Arabic documents wove individuals into a web of obligations, demands, and claims connected by the force of the written word.

The glue of these documents is that they validated social claims, structuring and organizing social relations under an umbrella framework increasingly conceived as Islamic. That the fixation of ownership claims and the organization of property relations represent the foundations and earliest manifestations of an Arabic language-based legality is evident not just in

[4] See Andreas Kaplony on the development of what he calls "Umayyad Documentary Arabic." He argues "that the inhabitants of the Umayyad Empire experienced Arabic first and foremost as the public language of Muslim state authority, whereas, in everyday private and business correspondence, Arabic was just one language among many and possibly not the most prominent one." Andreas Kaplony, "Scribal Traditions in Documentary Arabic: From the One Imperial Standard Language to the One (Jewish) Language for Transnational Communication (from the Seventh to the Twelfth Centuries)," *Jewish History* 32 (2019) 311–333, at 315. Although the populace would have certainly associated Arabic with the Umayyad state administration, especially non-Muslims outside the capital did not necessarily "experience" Arabic as the language the state corresponded with them. For instance, the Qurra b. Sharīk dossier evinces that even though the Islamic administration communicated with officials in Arabic (probably because most Arabs would not have known Greek), officials would often pass down these orders in Greek or Coptic.

seventh and eighth-century documentary sources but also in the well-known and well-studied much later origin accounts of Islamic law in the long-form sources by Ibn ʿAbd al-Ḥakam (d. 214/829), Wakīʿ (d. 306/918), al-Kindī (d. 350/961), and Ibn Ḥajar al-ʿAsqalānī (d. 852/1449).[5] That said, the long-form sources are not to be mistaken here as merely an extraneous reference point against which to weigh evidence from the documents. Instead, their, at times, highly technical discussions help us understand the use and function of the earliest Islamic legal documents.

3.2 The Legal Status of the Qurʾān in Seventh and Eighth-Century Egypt

Inbuilt in this chapter is the assumption that a critical function of law in human societies is that it structures relations between people by vesting individuals with entitlements and claims to material objects and labor. I will eschew here a discussion of the extensive body of literature on legal normativity.[6] For many scholars, the starting point for thinking about norms in Islamic law

[5] Some of the earliest legal cases reported in the long-form sources concern property disputes. During the judgeship of Ibn Ḥujayra "the little one" (90/709–93/712 and 97/716–98/717), a group of Jews approached ʿUmar b. ʿAbd al-ʿAzīz claiming that Ibn Ḥujayra had seized property from them. Ibn Ḥujayra swore to ʿUmar that he took the property in question and returned it to the Jews. After asking if he has proof (*bayyina*), Ibn Ḥujayra said "no" and was fined by ʿUmar; al-Kindī, *Kitāb al-wulāh wa-kitāb al-quḍāh*, 241. In another case, ʿUmar corresponded with Judge ʿIyād b. ʿUbayd Allāh al-Azdī about the right of preemption in sales' transactions (*shufʿa*). ʿUmar notes that although ʿIyād's judges have ruled in favor of the right of preemption in matters of land acquisition with the neighbors, it is, indeed, first of all with the shareholders (*sharīk*); ibid., 242–243. Significantly noteworthy, both property cases (and several others mentioned in the long form sources) are resolved through the joint efforts of the Muslim caliph and the Fusṭāṭ-based Muslim judge (*qāḍī*), an observation that, to the best of my knowledge, has not solicited scholarly attention. Early Arabic narrations suggest that even by the late 710s, judicial competencies and chains of authority were not clearly delineated. For instance, in a different report concerning ʿIyād b. ʿUbayd Allāh al-Azdī, ʿIyād writes to ʿUmar about a boy who deflowered a girl with his fingers. ʿUmar responds by saying that he should not be contacted regarding such matters and judge by his own opinion (*bi-raʾyik*); ibid., 242.

[6] For an overview, see Richard H. McAdams and Eric B. Rasmusen, "Norms and the Law," in *Handbook of Law and Economics*, ed. A. Mitchell Polinsky and Steven Shavell, 2 vols. (Amsterdam: North-Holland, 2007), 2:1573–1618; and Eric Posner, *Law and Social Norms* (Cambridge: Harvard University Press, 2000). For Islamic law and norms, see Wael Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī* uṣūl al-fiqh (Cambridge: Cambridge University Press, 1997); Aron Zysow, *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory* (Atlanta: Lockwood Press, 2013); and David Vishanoff, *The Formation of*

is the Qurʾān. While no doubt an important reference point for Muslims past and present, I should express my reservations regarding the Qurʾān's legal authority and the assumption that it already determined legal practice in Egypt *as early as the seventh and eighth centuries*. My point here is not to deny that the Qurʾān ultimately came to function as a source of law—it certainly did have that function by the ninth century, with the emergence of a substantive Islamic legal literature and the consolidation of the Islamic legal schools—but about the exact timing of when it assumed this role. This begs the question of whether the widespread circulation of the Qurʾān by the late seventh century constitutes sufficient evidence to infer that substantive law became inflected by Qurʾānic norms. Already John Burton called attention to the distinction between the Qurʾān as a *document* and the Qurʾān as a *source of law*, arguing that it acquired its rank as a formal source of law around the 800s with the birth of the *uṣūl* tradition (i.e., "principles of jurisprudence").[7] Burton's view has been met with opposition by scholars like Patricia Crone, Daniel Madigan, and others, who seek to ascribe legislative force to the Qurʾān from as early as the first century.[8] Their view echoes the classical Sunni theory, according to which both the Qurʾān and the *sunna* (i.e., the words and actions of the Prophet and the early community of Believers) were accepted as authoritative sources of law as soon as they appeared.[9]

Islamic Hermeneutics: How Sunni Legal Theorists Imagined a Revealed Law (New Haven: American Oriental Society, 2011).

7 John Burton, *The Collection of the Qurʾān* (Cambridge: Cambridge University Press, 1977), 19–20, 161, 203.

8 Patricia Crone claims that the notion "that Qurʾānic law should have remained a dead letter until a secondary stage of legal development is a fairly startling proposition;" Patricia Crone, "Two Legal Problems Bearing on the Early History of the Qurʾān," *Jerusalem Studies in Arabic and Islam* 18 (1994), 1–37, at 13. Similarly, see Daniel A. Madigan, *The Qurʾân's Self-Image: Writing and Authority in Islam's Scripture* (Princeton and Oxford: Princeton University Press, 2001), 32–33.

9 Amr Osman, "The Qurʾan and the Hadith as Sources of Islamic Law," in *Routledge Handbook of Islamic Law*, ed. Khaled Abou El Fadl, Ahmad A. Ahmad, and Said F. Hassan (London and New York: Routledge, 2019), 127–140, at 129.

Even if both the Qurʾān and *sunna* were held to have authoritative legal status right from the beginning, we need to explain the process by which abstract legal rules came to structure substantive law and how this could have been done almost without any time lag. The problem is amplified by the reality that Islam largely expanded into non-Muslim territories, whose populations already had functioning legal systems—irrespective of how well they served the needs of the populace. The fact that the Muslim conquerors largely relied on non-Muslim bureaucrats for the administration of justice also does not square well with the argument that Qurʾānic norms immediately came to structure legal practice in places like Egypt. Scholars like Tillier and Vanthieghem seem to take for granted that the Qurʾān constituted a normative reference point by as early as the late seventh century, without offering convincing explanations of the social and legal processes by which a sacred text that was revealed to the community of Believers in Mecca and Medina, within less than seventy years, came to structure substantive law in Egypt.[10] It took several centuries for a Christian ethic and worldview—derived from Biblical literature writ large—to inflect Roman law, and while this historical analogy is not without its problems, even if we assume that the Qurʾān or at least portions of it were widely known by the Muslim elite at that point, there is an argumentative slippage to posit that it structured legal consciousness and practice from the beginning.[11] It is well-known that the Qurʾān not only

[10] In their study on the seventh century "debt registers," they argue that "the importance assigned to recording debts in writing seems to echo the Qurʾānic injunctions calling upon believers to write down their debts to avoid any misunderstandings (2:282);" Mathieu Tillier and Naïm Vanthieghem, "Recording Debts in Sufyānid Fusṭāṭ: A Reexamination of the Procedures and Calendar in Use in the First/Seventh Century," in *Geneses: A Comparative Study of the Historiographies of the Rise of Christianity, Rabbinic Judaism and Islam*, ed. John Tolan (London and New York: Routledge, 2019), 148–188, at 179–180.

[11] For the complex relationship between "Roman law and biblical faith," especially the import of the fifth-century Theodosian Code, see Maria E. Doerfler, "Christianity and Roman Law," in *The Oxford Handbook of Christianity and Law*, ed. John Witte and Rafael Domingo (Oxford: Oxford University Press, 2024), 18–30. Recent scholarship illustrates that the Christianization of Roman law did not constitute a one-time event that was completed either with Constantine's early-fourth-century conversion to Christianity or the Edict of Thessaloniki (380 CE) but a gradual process. Mark Letteney observes the adoption of a Christianized vocabulary and conceptual frameworks in the Roman juristic sphere as reaching a turning point with the Theodosian Code; Mark

contains legal content but also affirms its own role as an authoritative source of law.[12] However, the Qurʾān's claim to authority is, first and foremost, an ambition to be reckoned with as the norm. For this ambition to be translated into legal practice, what was needed was a complex sociolegal process of scholarly theorization and negotiations with the non-Muslim populations conquered by Islam. The evidence presented in chapter five indicates that by the second half of the eighth century, specifically with the rise of affidavits and the maturation of the Islamic judiciary, we can observe a shift towards incorporating Qurʾānic ideas in the domain of legal practice. However, based on the Egyptian papyri, there is very modest historical evidence to suggest that the body of Qurʾānic injunctions decisively shaped legal norms and practices during the first Islamic century.

Several historical problems pertain to the assumption that the Qurʾān informed legal norms and practices right from the beginning. First, Qurʾānic legal injunctions are exceedingly sparse, and even if we count generously, we can barely account for more than 500.[13] That said, most of these constitute abstract moral imperatives rather than concrete substantive laws. There are, however, a few exceptions to this, notably, the fairly specific instruction concerning the

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Letteney, *The Christianization of Knowledge in Late Antiquity: Intellectual and Material Transformations* (Cambridge: Cambridge University Press, 2023), esp. 231–262. The shifting ethics in Roman law can be observed in particular domains of law that became subject to greater restrictions as a result of the Theodosian and Justinian Codes. See Melodie H. Eichbauer, "The Shaping and Reshaping of the Relationship between Church and State from Late Antiquity to the Present: A Historical Perspective through the Lens of Canon Law," *Religions* 13 (2022), 1–23.

[12] For example, Q 5:48: "To you We revealed the Book with the Truth, confirming previous Scripture and witnessing to their veracity. So judge between them as God revealed and do not follow their whims, to turn you away from the truth revealed to you. For every community We decreed a law and a way of life. Had God willed, He could have made you a single community—but in order to test you in what He revealed to you. So vie with one another in virtue. To God is your homecoming, all of you, and He will then acquaint you with that over which you differed;" *The Qur'an*, tr. Tarif Khalidi (London: Penguin Classics, 2008), 89.

[13] See, for example, Irshad Abdel-Haqq's compilation of relevant Qurʾān verses; Irshad Abdel-Haqq, "Legal Injunctions of the Qur'an," *Journal of Islamic Law* 2, no. 1 (1997), 53–92.

manner of recording debts (Q 2:284).[14] Given the relatively abstract nature of legal injunctions in the Qurʾān, they do not lend themselves easily to being turned into applied law, begging the question of how they could be transformed into substantive law almost immediately. At least initially, the growing sway of the Qurʾān appears to have had little to do with matters of law, being more intricately connected to Umayyad statecraft and political maneuverings. Fred Donner observes that around 700, a "Qur'ânicization" policy aimed at sanctioning the political legitimacy of the Umayyads began to be embraced by the administration and continued until after the Abbasid revolution. This process profoundly affected the origins' narrative of the monotheistic community of Believers, which came to define itself in more exclusionary terms, explicitly linking the legitimacy of political and legal institutions "to the Qur'ân and the career of the prophet Muḥammad."[15] Arguably, then, the notion that the Qurʾān constitutes an authoritative source of law, and a primary one at that, is itself the product of a much longer historical process, whereby private, jurisprudentially-minded individuals came to devise the law as a discursive and moralistic touchstone intended to serve as a counterweight to state power and legal practice and a yardstick to appraise their legitimacy.

I want to be very clear: I am not adopting here a revisionist approach, seeking to refute the narrative that the Qurʾān was compiled and redacted under the third caliph ʿUthmān b. ʿAffān and that copies of the ʿUthmānic codex were sent to the provincial capitals.[16] Based on evidence

[14] See Reimund Leicht, "The Qurʾanic Commandment of Writing Down Loan Agreements (Q 2:282)—Perspectives of a Comparison with Rabbinical Law," in *The Qurʾān in Context: Historical and Literary Investigations into the Qurʾānic Milieu*, ed. Angelika Neuwirth, Nicolai Sinai, and Michael Marx (Leiden and Boston: Brill, 2010), 593–614.

[15] Fred M. Donner, "Qur'ânicization, 72–92.

[16] For the details of this narrative, see Theodor Nöldeke, Friedrich Schwally, Gotthelf Bergsträßer, and Otto Pretzl, "The Genesis of the Authorized Redaction of the Koran under the Caliph ʿUthmān," in *The History of the Qurʾān*, ed. and tr. Wolfgang H. Behn (Leiden and Boston: Brill, 2013), 251–275. See also, Gregor Schoeler, "The Codification of the Qurʾan: A Comment on the Hypotheses of Burton and Wansbrough," in *The Qurʾān in*

from the earliest Qurʾān manuscripts, François Déroche illustrates that in the first century, the Umayyads had no strict control over the circulation of a canonical Qurʾānic text, as non-canonical copies were still produced around 700 and much later.[17] I have no doubts that because of and despite the Qurʾān's "plural written transmission," the Arab ruling elite in Fusṭāṭ would have been well familiar with some of its stories, commands, and concepts. That said, I do not think the presumption of textual acquaintance can be used to infer that the Qurʾān's concepts were already translated into a concrete legal framework. Evidence to support this comes, once again, from the Arabic documents. The studies by Leonora Sonego, Daniel Potthast, and Ursula Bsees plausibly demonstrate that Qurʾānic phrases and quotations are rare in seventh and eighth-century documentary and literary papyri. In her systematic analysis of legal documents, Sonego observes that "the language of legal documents has next to no affinity to the Qurʾān."[18] She notes that Qurʾānic phrases (that is, very short excerpts rather than full quotations) appear in marriage and emancipation contracts from 755 onward.[19] Potthast notes that from the ca. 780 letters he analyzed, only nine intentionally quote the Qurʾān and around fifty contain short quotations.[20] Bsees observes Qurʾān quotations in some Arabic amulets ("magical texts"), but the value of this

Context: Historical and Literary Investigations into the Qurʾānic Milieu, ed. Angelika Neuwirth, Nicolai Sinai, and Michael Marx (Leiden and Boston: Brill, 2010), 779–794, at 788.

[17] François Déroche, *Qurʾans of the Umayyads: A First Overview* (Leiden and Boston: Brill, 2014), 137. For a revisionist account, see Stephen Shoemaker, *Creating the Qurʾan: A Historical-Critical Study* (Oakland: University of California Press, 2022).

[18] Leonora Sonego, "Qurʾān Quotations in Papyrus Legal Documents," in *Qurʾān Quotations Preserved on Papyrus Documents, 7th–10th Centuries: And the Problem of Carbon Dating Early Qurʾāns*, ed. Andreas Kaplony and Michael Marx (Documenta Coranica, 2, Leiden and Boston: Brill, 2019), 86–111, at 95.

[19] Ibid., 88.

[20] Daniel Potthast, "Qurʾān Quotations in Arabic Papyrus Letters from the 7th to the 10th Centuries," in *Qurʾān Quotations Preserved on Papyrus Documents, 7th–10th Centuries: And the Problem of Carbon Dating Early Qurʾāns*, ed. Andreas Kaplony and Michael Marx (Documenta Coranica, 2, Leiden and Boston: Brill, 2019), 42–85, at 65.

finding remains unclear as she does not discuss the issue of dating these documents.[21] While I do not agree with Sonego and Potthast's conclusions that the lack of Qurʾānic phrases and quotations in legal documents and letters implies that the Qurʾān did not play an important role in matters of daily life, what we can infer from these findings is that the Qurʾān most certainly cannot be *assumed* to have had a bearing on the conceptual and procedural domains of Egypt's seventh and eighth-century legal infrastructure. I do not think that the current state of the field allows for a decisive verdict on the legal status of the Qurʾān in the first two Islamic centuries. Therefore, I suggest adopting a position of *tawaqquf* (i.e., suspending judgment), bracketing the Qurʾān to allow the papyrological evidence to speak on its own terms.

This begs the methodological question of how—if not through the Qurʾān—we can identify legal norms in documents issued by officials and scribes. When Christian monks drew up Coptic legal documents on potsherds and repeatedly apologized for not using papyrus, can we deduce that the use of papyrus for legal documents was considered superior to other writing supports and constituted the social norm?[22] The answer is yes. Jennifer Cromwell has pointed out the social connotations of using different materials for writing.[23] Papyrus was far superior to potsherds, limestone, and textiles, and drawing up important documents, especially when addressed to somebody of superior rank, mandated the use of papyrus.[24] In other words, a social

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[21] Ursula Bsees, "Qurʾānic Quotations in Arabic Papyrus Amulets," in *Qurʾān Quotations Preserved on Papyrus Documents, 7th–10th Centuries: And the Problem of Carbon Dating Early Qurʾāns*, ed. Andreas Kaplony and Michael Marx (Documenta Coranica, 2, Leiden and Boston: Brill, 2019), 112–138.

[22] For instance, O.Crum 129, O.Crum 212, O.Crum 332, O.Crum 374, O.Crum 388, and O.Crum Ad. 65.

[23] Jennifer Cromwell, "'Forgive Me, Because I Could Not Find Papyrus': The Use and Distribution of Ostraca in Late Antique Western Thebes," in *Using Ostraca in the Ancient World: New Discoveries and Methodologies*, ed. Clementina Caputo and Julia Lougovaya (Berlin and Boston: De Gruyter, 2020), 209–233, at 209.

[24] The Byzantine and Islamic states retained a monopoly on the production of papyrus rolls, and each papyrus roll had attached to it a protocol written in stenographic-type script, presumably to prevent forgery. Scholars have pondered over the decipherment of these protocols for at least a century now. See Josef von Karabacek, "Arabic Palaeography," *Wiener Zeitschrift für die Kunde des Morgenlandes* 20 (1906), 131–148, at 139–148; Carl H.

or legal norm is a norm because different documents, scribes, and agents of the state will typically reiterate it. Papyrologists know that formularies and repetition are the meat and potatoes of late antique documentary culture. However, while historians may identify norms, our fragmentary understanding of the legal culture of which they are part often makes it difficult to identify their purpose and procedural implications. An example comes from the Qurra b. Sharīk (d. 715) dossier. In his letter to Pagarch Basil, Qurra reports having received news from a certain Marcus that an unnamed peasant (*nabaṭiyy*) owes him 10 ½ Dinars. Marcus claims that the peasant denied him his claim (*annahu ghalabahu ḥaqqahu*). Qurra then gives instructions: "If he establishes proof (*bayyina*) of what he told me, secure his claim (*istakhrij lahu ḥaqqahu*) and do not oppress your slave. But if his matter is not as he says, write to me about it."[25] As attested by variations of this formula in several Arabic papyri, its use was widespread by the early eighth century.[26] It is clear that Qurra's instruction "to secure his claim" implies the expectation to adhere to a specific legal norm. However, what exactly does adherence to this norm entail? Is Basil required to (1) issue a legal judgment, (2) issue a legal judgment and ensure the money is returned to its rightful owner by executive means, or (3) issue a legal judgment and document that judgment in writing? Each of these possibilities seems equally plausible. In this chapter, I

Becker, "Das Lateinische in den arabischen Papyrusprotokollen," *Zeitschrift für Assyriologie und verwandte Gebiete* 22 (1909), 166–193; and Adolf Grohmann, *Protokolle* (Vienna: Burgverlag, 1924).

[25] P.BeckerPAF 1.

[26] P.Mird 31 (seventh or eighth century; fa-'stakhrij lahu ḥaqqahu); P.DiemGouverneur=P.Ryl.Arab. I XV 59 (684–695; isthakhrij lahā … ḥaqqahā); P.Qurra 3 (709/710; wa-aqāma 'l-bayyina ʿalā mā akhbaranī fa-'stakhrij lahu wa-lā taẓlimanna ʿabdaka illā anna bayyinātihi ghayr dhālika); P.BeckerNPAF 9=P.Cair.Arab. 155 (709–710; fa-in aqāma 'l-bayyina ʿalā mā akhbaranī fa-'stakhrij lahu ḥaqqahu wa-lā yaẓlimanna ʿabdaka illā anna lahu shaʾn ghayr dhālika); P.VanthieghemCorrespondance II=P.BeckerPAF 3 (709; fa-'stakhrij mā baqiya min tilka 'l-gharāma); P.BeckerPAF 2 (fa-'jmaʿ baynahumā fa-in kāna mā akhbaranī ḥaqqan fa-'stakhrij lahu ḥaqqahu wa-lā taẓlimanna ʿabdaka); P.MuslimState 30 (730–750; fa-'stakhrij lahum …); and P.DiemAmtlicheSchreiben 1=P.BerkesCareers 1 (750–754; fa-'nẓur fīmā dhakara … fa-in … fa-'stakhrij lahu ḥaqqahu minhu … wa-lā tuqarrir maẓlimatan wa-lā taʾkhudh …).

illustrate that these interpretive problems related to norms cannot be fully solved, but that they can be mitigated by systematically analyzing a large number of documents of the same type and by mobilizing a wide array of evidence from documentary and long-form sources.

3.3 The Myth of Islamic Legal Documents

> [In Islamic law,] the document (*ṣakk*, contractual document) plays no role at all; there is no transaction that requires writing. When a written document is drafted, it always only serves as a mnemonic aid and only gains its evidentiary value when the authenticity of the content is attested. At most, the document can replace a declaration of intent.[27]

The above statement, written by Gotthelf Bergsträsser at some point before his mysterious death in 1933, reflects the prevailing view that in Islamic legal proceedings, documents have no evidentiary value unless confirmed by the oral testimony of witnesses. A specialist in Semitics and the history of the Qurʾānic text, Bergsträsser held the view that Islamic law is, by definition, a scientific venture practiced by jurisprudentially minded individuals ("Juristenrecht") who operate beyond and without the authorization of the state. Although Roman law has some similar traits, Bergsträsser argues that Roman jurists were thoroughly involved in devising civil legislation and rules. Contrary to Islamic law, Roman jurisprudence fulfilled the critical function of legitimating social transactions for which laws had not yet been created. According to this view, Muslim jurists operated in a self-contained universe that understood itself as a manifestation of divine will and generated hermeneutic tools to ensure legal unity and

[27] Gotthelf Bergsträsser, *G. Bergsträssers Grundzüge des islamischen Rechts*, ed. Joseph Schacht (Berlin and Leipzig: De Gruyter, 1935), 113, translated from German.

continuity.[28] The superfluous function that Bergsträsser assigns to Islamic legal documents directly derives from the normative status he projects on long-form sources and from which he infers the prohibition of written contracts.

For long stretches of the twentieth century, Arabic papyrology and Islamic legal studies co-existed in distinct hemispheres. If Bergsträsser had looked at the Arabic documentary evidence readily available to him at the time, he might have reached different conclusions. Already in 1886, in a speech delivered to the Kaiserliche Akademie der Wissenschaften, Wilhelm von Hartel, Professor of Classical Philology at the University of Vienna, noted that the Vienna Papyrus Collection counts more than 40,000 papyri, of which more than 4,000 are in Arabic.[29] While several more papyrus purchases were made in the early 1900s, during Bergsträsser's lifetime, there would have been thousands of Arabic papyri, including many legal documents, available to him in Vienna, Berlin, Heidelberg, and elsewhere.[30] It is not clear to me if Bergsträsser ever corresponded with Josef von Karabacek and Adolf Grohmann, both Arabists and directors (1899–1917 and 1918–1923) of the Vienna Papyrus Collection ("Hofbibliothek" back then). As evidenced by citations, Grohmann was undoubtedly familiar with Bergsträsser's work. However, Grohmann's well-known Nazi sympathies and direct collaboration with the NS regime during his later years in Prague make me doubt that the two would have corresponded

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[28] Ibid., 129–131.

[29] Wilhelm von Hartel, "Über die griechischen Papyri Erzherzog Rainer: Vortrag gehalten in der feierlichen Sitzung der Kaiserlichen Akademie der Wissenschaften am 10. März 1886," in *Feierliche Sitzung der Kaiserlichen Akademie der Wissenschaften anlässlich des fünfundzwanzigjährigen Jubiläums des Hohen Curatoriums: Am 10. März 1886* (Vienna: Carl Gerolds Sohn, 1886), 15–94, at 63–64. See also, Helene Loebenstein, "Papyrussammlung der Österreichischen Nationalbibliothek," 6.

[30] In Berlin, a major part of the papyrus collection was acquired during diggings in El Ashmunein (Hermopolis magna), Darb Gerze (Philadelphia), Dime (Soknopaiou Nesos) und Medinet Madi (Narmuthis) between 1904 and 1910. Wolfgang Müller, "Die Berliner Papyrussammlung in Vergangenheit und Gegenwart," *Das Altertum* 29 (1983), 133–141.

even as early as the 1920s since Bergsträsser was outspokenly anti-Nazi, and rumor has it that his death in the Bavarian mountains was related to his political views.[31]

Bergsträsser's student, Joseph Schacht, was no expert on Arabic legal *documents* either. However, Schacht was keenly interested in Islamic legal practice and the sociology of law, an inclination that at least partially tried to come to grips with the contemporary reality of Islamic law, which had constantly moved away from the ideal world of law prescribed by medieval Muslim jurists under the pressures of modern society.[32] Thus, already in his early career, when still based in Freiburg, Schacht dabbled in the formulary genre (*shurūṭ*), resulting in his editions of the *Kitāb adhkār al-ḥuqūq wa-l-ruhūn* (1927) and the *Kitāb al-shufʿa* (1929) by al-Ṭaḥāwī (d. 321/933). I believe it is then, in the presence of a substantive Arabic literature on the mechanics of drawing up legal documents, that Schacht most clearly perceived the significance of written legal documents in Islamic law. Throughout his life, he visited many Arabic manuscript collections in the Middle East and North Africa, and we know that during his time as a professor at the Egyptian University (now the University of Cairo)—a position he held until 1939—he came across Arabic legal documents on paper and papyrus too.[33] It is worth emphasizing that Schacht believed that Islamic legal theory deviated from the norm of written documents, as opposed to vice versa. He argues that the practice of written contracts existed as early as the first

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[31] Lucian Reinfandt, "The Political Papyrologist: Adolf Grohmann (1887–1977)," in *Sources and Approaches across Disciplines in Near Eastern Studies: Proceedings of the 24th Congress, Union Européenne des Arabisants et Islamisants, Leipzig 2008*, ed. Verena Klemm and Nuha al-Shaʿar et al. (Leuven, Paris, and Walpole: Uitgeverij Peeters, 2013), 251–269.

[32] Jeanette A. Wakin, "Remembering Joseph Schacht (1902-1969)," in *Occasional Publications 4, January 2003: Islamic Legal Studies Program Harvard Law School* (Boston: Harvard, 2003), 1–41, at 17.

[33] Joseph Schacht, "Review of Émile Tyan*, Le Notariat et le régime de la preuve par écrit dans la pratique du droit musulman*," *Orientalia: Nova Series* 17, no. 4 (1948), 519–522, at 522. Jeanette A. Wakin, "Remembering Joseph Schacht," 5.

Islamic century, and as it endured in later centuries, legal theory had to come to terms with it.[34] During his final years at Columbia University, Schacht articulated what he saw as a diversion of normative law from the Qurʾān and legal practice in his now-famous *Introduction to Islamic Law*:

> We have seen that Islamic law [read: *fiqh*], at a very early period, diverged both from an explicit ruling of the Koran and from current practice by denying the validity of documentary evidence and restricting legal proof to the oral evidence of witnesses. Written documents, however, proved so indispensable in practice that, notwithstanding their persistent neglect in theory, they remained in constant use, became a normal accompaniment of every transaction of importance, and gave rise to a highly developed branch of practical law with a voluminous literature of its own, the beginnings of which go back to the second century of the hijra (eighth century A.D.). Theory continued to reason as if there were no documents but only the oral testimony of witnesses, possibly helped by private records of their own; practice continued to act as if the documents were almost essential and the 'witnessing' only a formality to make them fully valid; and the professional witnesses came, in fact, to exercise the functions of notaries public.[35]

This "branch of practical law with a voluminous literature of its own," by which Schacht means the *shurūṭ* ("formulary science") and *ḥiyal* ("legal trickery"), was for him the critical puzzle that connected theory and practice. By allowing jurists to bend and translate rules from the normative heaven of legal forms into practical tools, these legal devices "represented a *modus vivendi*

[34] Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950), 188.

[35] Joseph Schacht, *An Introduction to Islamic Law*, 82.

between theory and practice: the maximum that custom could concede, and the minimum (that is to say, formal acknowledgment) that the theory had to demand."[36]

Jeanette Wakin, who was a doctoral student of Schacht's, continued in the spirit of editing formulary works (*shurūṭ*), notably the chapters on sale in al-Ṭaḥāwī's *Kitāb al-shurūṭ al-kabīr*. But in contrast to Bergsträsser and Schacht, Wakin added more texture to the problem of the legal practice and the literature on formulae by turning to published editions of Arabic papyri. As others have pointed out, the Arabic legal documents serve Wakin as a "reality check" against which she measures the application of the *shurūṭ* formulae.[37] Overall, she paints a dynamic picture of the relationship between legal documents and jurists, who compiled ever more minute rules for drafting formulae, capturing a constant back and forth between them. Wakin contends that documents occupy an "ambiguous status" in Islam, and she offers solid grounds to dismiss the *a priori* assumption of the ascendancy of normative legal discourse. In her analysis of the *Kitāb al-buyūʿ*, she notes that despite his rigidity and imposition of Islamic legal norms, al-Ṭaḥāwī often "offers rationalizations to conform to Islamic legal practice."[38] Wakin never appears to have edited Arabic papyri herself. However, there is an important way in which she critically contributed to parsing Arabic documentary practice: By situating it against other systems of pre-Islamic Near Eastern law, she adds a crucial variable to account for the overwhelming presence of Islamic legal documents. Wakin argues that in Egypt, the Arab

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[36] Ibid., 83–84.

[37] Marina Rustow, "New Approaches to Islamic Law and the Documentary Record before 1500," *Harvard Journal of Islamic Law* (Spring 2021), 179–203, at 189–190.

[38] Jeanette A. Wakin, *The Function of Documents in Islamic Law: The Chapters from Ṭaḥāwī's* Kitāb al-Shurūṭ al-Kabīr (Albany: State University of New York Press, 1972), 40.

conquerors most likely took over the Byzantine notarial practices. Echoing Émile Tyan, she notes that

> it is difficult to believe that the populations of the former Byzantine provinces would relinquish such a convenient, legally necessary and thoroughly established custom simply because they had changed their religion and custom.[39]

It was not widely established when Wakin wrote that most subjects conquered by the Arabs, especially in Egypt, did not convert until many centuries later. Granted that, her point hints at the notion that the populace had concrete expectations of how business was to be transacted and about the role that documents played in such transactions. The debate of foreign influences in Islamic law, of course, began much earlier and need not be repeated here, but as far as I can tell, Wakin is the first to approach this matter from a ground-up document-based perspective.[40] It is most likely not accidental that only a year before the publication of Wakin's *The Function of Documents in Islamic Law*, Peter Brown had published what would turn into a field-shifting endeavor to integrate Islam into the study of the late antique world.[41] Wakin does not come up with an enticing overall narrative of how Islamic legality emerged in the Near East, but her philological-historical vision is sufficiently broad to consider documents in Akkadian, Coptic, Demotic, and Greek as natural precursors of the Arabic formulae.

This type of fine-grained philological analysis of Arabic documents merged with sociolinguistic lines of inquiry into the origins of the Arabic formulae was taken up by scholars after Wakin, most notably Geoffrey Khan. Based on comparing the Arabic with the Greek and

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[39] Ibid., 5.

[40] See especially, Joseph Schacht, "Foreign Elements," 9–17, and Patricia Crone, *Roman, Provincial and Islamic Law: The Origins of the Islamic Patronate* (Cambridge: Cambridge University Press, 1987).

[41] See Peter Brown, *The World of Late Antiquity.*

Coptic documents, Khan observes that the Arabic formulae are typically much shorter and simpler than the Greek and Coptic, making them less legally watertight and giving rise to his belief that the Arab conquerors brought these formulae with them. For obligations (legal claims), Khan sees parallels most closely with the Southern Arabian legal documents on wooden sticks based on formal resemblances between the formulae.[42] Even so, Khan shows that Nabatean inscriptions exhibit noteworthy structural parallels to the earliest Arabic legal documents, particularly the combination of *hādhā mā* + verb ("this is what …"), which we find in dozens of early papyri.[43] Khan plausibly argues that the exophoric reference of the demonstrative pronoun is clear in the case of inscriptions placed on a monument or physical site, as in "this is what so-and-so built" (*hādhā mā banā fulān*). However, the use of the same grammatical structure and its exophoric reference in Arabic documents recording, let's say, the sale of objects is less obvious. In other words, the demonstrative (*hādhā*) could refer to either the document itself or an exogenous object. Khan argues that the range of potential meanings endowed by a document ultimately facilitated a process of semantic abstraction where the demonstrative could refer to either the physical document itself or the object of the transaction described in it. Overall, Khan's argument is that the formulae of Arabic legal documents were not coined in Egypt, but in Arabia, specifically the Ḥijāz, and Khan explains the juristic reluctance towards accepting written documents as evidence with the fact that there were no legal deposits/archives in pre-Islamic Arabia.[44] It is possible that the writtenness of early Arabic legal claims and legal

[42] Geoffrey Khan, "The Opening Formula," 27. See also Peter Stein, *Die altsüdarabischen Minuskelinschriften auf Holzstäbchen aus der Bayerischen Staatsbibliothek in München*, 2 vols. (Epigraphische Forschungen auf der Arabischen Halbinsel, 5, Tübingen: Wasmuth, 2010).

[43] Geoffrey Khan, "The Opening Formula," 28. For instance: *hādhā mā ishtarā*/*aṣdaqa*/*qaḍā*/*akhadha*/*ḥamala*/*amara*/*dafaʿa*/*aʿṭaqa*/*iṣṭalaḥa ʿalayhi*, etc.

[44] Ibid., 29.

documents, more broadly speaking, reflects the tendency of the Arab conquerors to yield to the documentary and legal expectations of the populace. As was shown in the previous chapters, the Egyptian populace was highly accustomed to being issued legal documents, and it appears extremely unlikely that the Arab political takeover of Egypt would have in any way interfered with these expectations. Put differently, even if normative *fiqh* developed the position of the non-acceptance of written evidence and even if, as Khan says, the conquerors brought the formulae with them, the presence of a substantial number of legal documents from the very beginnings of Arab rule in Egypt still needs to be explained. The Arab reliance on local bureaucratic structures, non-Arab expertise, and established ways of dealing with the local populace would have reinforced the urgency to continue with long-established practices of drawing up documents, especially for such delicate matters as affirming ownership claims.

In recent decades, the study of Arabic legal documents, their usage and circulation, has been enriched by ethnographic approaches. In his monograph on the relationship between writing and legal authority among Yemeni legal practitioners, Brinkley Messick shows that the notion that Islamic legal documents are valid only when affirmed by witness testimony relates to the conception that "witnessing is an activity grounded in the immediacy and authenticity of the senses."[45] Messick argues that in analogy to the formal acquisition and vertical transmission of knowledge and *ḥadīth* over generations, the act of witnessing functions as a social glue that creates horizontal bonds between contemporary members of society.[46]

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[45] Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley and Los Angeles: University of California Press, 1993), 206.

[46] Ibid., 207.

I will demonstrate in this chapter that witness attestations constitute a typical feature of Arabic documents, even the earliest ones. However, prior to the late eighth century—when notaries and Islamic courts began relying on a body of professional witnesses—administrators placed greater emphasis on other forms of validating official documents, particularly seal impressions. In those witness attestations that we do have from this period, the act of witnessing was not consistently outsourced to third parties. Indeed, we have some documents from the first Islamic century, in which the debtor or creditor himself attests to the contents of the document without any additional witnesses present.[47] In other cases, declarants invoke God as their witness. While witness testimonies at the end of legal documents constitute a typical feature of the earliest Arabic documents, their presence is not unique to Arabic documents, but rather a common feature of late antique legal documents such as Coptic and Greek ones, as already shown in the previous chapters.

Somewhat surprisingly, a document genre that has received little attention, even though it most directly sheds light on the relationship between Arabic legal documents and normative legal discourse, is templates. We have templates for sales and marriage contracts,[48] charitable donations,[49] and private letters.[50] The use of "so-and-so" (*fulān bin fulān*) and "such-and-such thing" (*kadhā wa-kadhā*) makes these documents recognizable as templates, emphasizing their function as drafts for drawing up contracts. In an eighth or ninth-century sales contract template

[47] For instance, see P.TillierDebts 3 (legal claim); P.KhanLegalDocument (quittance); and P.Khalili I 9 a+b=P.Khalili II 97 (quittance).

[48] Chrest.Khoury I 87.

[49] Chrest.Khoury I 89.

[50] P.YounesCondolence 1 a (template for letters of condolence). For a selection of documentary templates, see Raif G. Khoury, *Papyrologische Studien: Zum privaten und gesellschaftlichen Leben in den ersten islamischen Jahrhunderten* (Wiesbaden: Harrassowitz, 1995), 114–124.

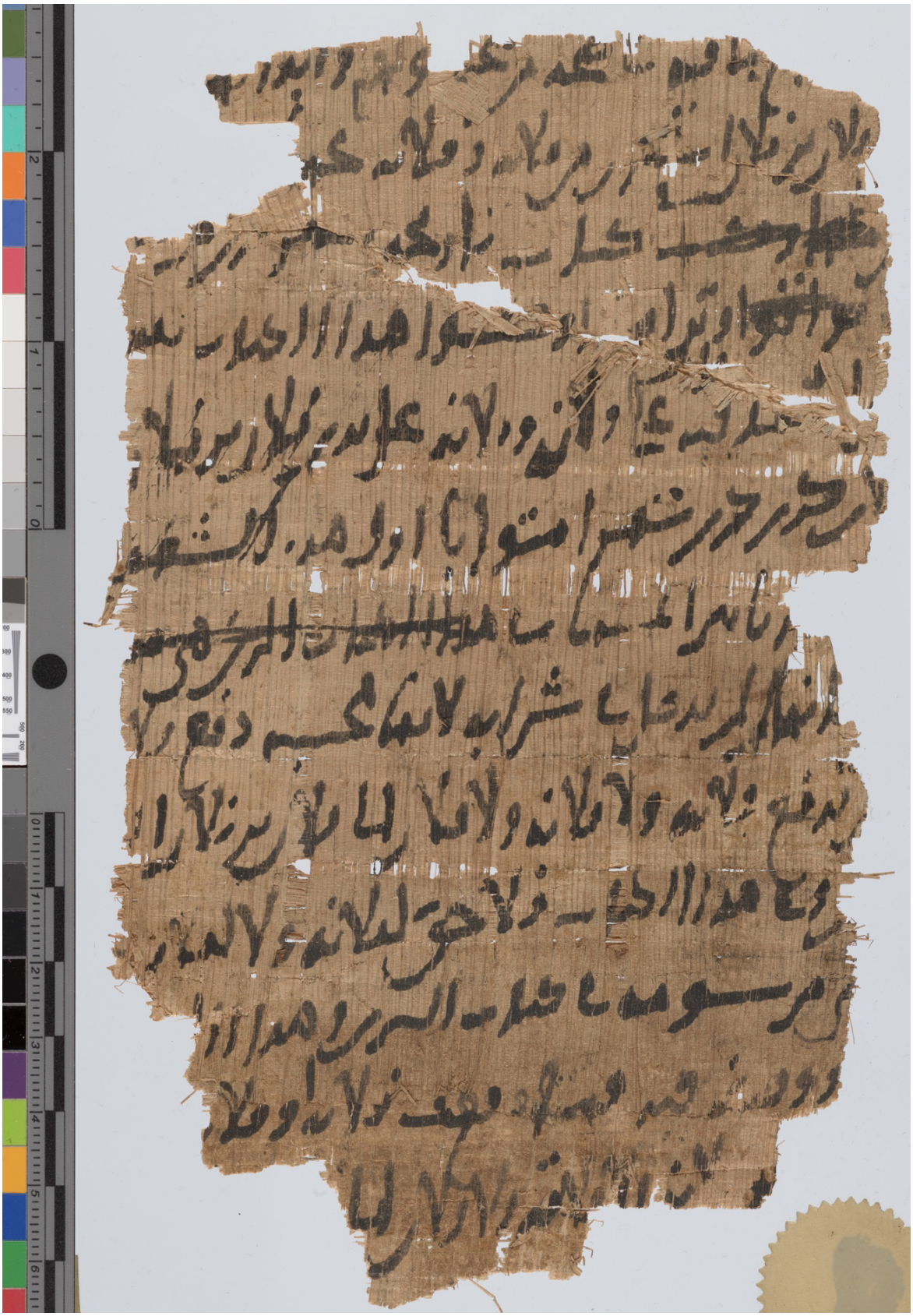


Fig. 12. A template of a sales contract, probably from the eighth or ninth century (P.Ryl.Arab. I IX 1). © University of Manchester. Image provided by the John Rylands Research Institute and Library, University of Manchester (P.Ryl. F IV 6 verso).

from the John Rylands Library (see Fig. 12), we find repeated strikethroughs in the text,

indicating that the scribe or notary carefully revised and changed the body text as he was drawing up the template. That said, the social and functional mechanics of these templates are yet to be illuminated. Did scribes and notaries draw up these templates using formulae they found in *shurūṭ* works? Or was drafting a template a more introspective process, during which scribes perused previously issued documents and combined formulae they found most suitable for the case at hand? And what was the practical usage of these templates? Did scribes and notaries keep a stack of templates for different types of documents they might be expected to draw up, or does each template reflect a rough draft (*musawwada*) of the final, clean copy (*mubayyaḍa*) of a specific document?

The presence of templates suggests that the Egyptian populace expected to receive written legal documents for legal matters from taxation to contracts to personal relationships and that scribes and notaries were prepared to draw them up by keeping different types of templates in store. To come full circle, the drafting of documents was much less of an ad-hoc activity than one might imagine if we rely on Bergsträsser's description of the function of these documents as mere "mnemonic aids." The very presence of an entire formulary science (*ʿilm al-shurūṭ*) and carefully written and meticulously revised templates suggests that issuing legal documents was a craft that not only followed strict rules. The stylistic and structural homogeneity of even the very early legal documents in Arabic is sheerly perplexing, and it speaks to the reality that against the background of a non-Arab and non-Arabic culture that had highly advanced legal formulae and rules for drafting legal documents, Arabic-writing notaries and scribes needed to strategically yield to existing expectations. In other words, our model of how Arab Muslim authority was established over Egyptian subjects can be complicated: It was not, as is sometimes claimed, secured merely or even predominantly through the force of the sword or wielding power from

above but rather through ensuring the repetitiveness, singularity, and recognizability of documents and abiding by established documentary customs—not necessarily in terms of reproducing Byzantine formulae or style, but with regard to upholding the social value and function that documents had for centuries embodied in late antique Egyptian society. By implication, the process of Arabicization was less the result of a sociolinguistic shift that had taken firm roots among ordinary Egyptians, nor was it the consequence of a premium the Fusṭāṭ-based Muslim elite had placed on the Arabic language—at least not directly. Instead, it was the outgrowth of a transitional yet document-reliant society, in which the property relations and social claims of ordinary Egyptians became gradually tied to the cycles of Arabic documents and the security and predictability these documents embodied as material artifacts.

3.4 Legal Claims (*adhkār ḥaqq*)

3.4.1 Structure

This type of legal document is among the earliest Arabic documents we possess, with the first known exemplar from 22/642–3 (P.DiemAphrodito, 272=P.RagibAn22). In a *dhikr ḥaqq*, the scribe records a debt or an obligation owed to a creditor, mentioning the names of both creditor and debtor, the amount owed, the payment due date (*maḥill*), and witness testimonies.[51] In the first Islamic century, these debt registers—as Tillier and Vanthieghem refer to them—typically adhere to the following structure (Fig. 13):

[ذكر] حقّ يحنّس ابن ثيدر على [قرّة ابن ...]

[51] For a discussion of *dhikr ḥaqq*s from the second and later centuries, see Michael H. Thung, "Written Obligations from the 2nd/8th to the 4th/10th Century," *Islamic Law and Society* 3, no. 1 (1996), 1–12; and Ahmed K. Mamdouh, "A Written Obligation from al-Ušmūnayn from the Year 339 AH/950 CE," *Bulletin of the American Society of Papyrologists* 58 (2021), 215–221.

... إلى ملء ثمن وأربعين سنة قضاء المؤمنين

شهد قرّة ابن ... على نفسه وجميل ابن الحرث وكتب

The claim of Yuḥannis b. Thiyudur upon Qurra b. …

… by the end of the year 48 according to the custom of the jurisdiction of the Believers

Qurra b. … testified against himself, as well as Jamīl b. al-Ḥārith. Written.[52]

The creditor holding the claim (*ḥaqq*) over the debtor is mentioned at the beginning of this document type. After that, the debtor's name, the amount owed, and the specified due date for repayment follow. Often, the scribe will close with the mention of one or several witnesses who testified to the validity of the claim. Sometimes, as in the example above, the debtor himself will



Fig. 13. P.TillierDebts 3 recto. © Cambridge University Library. Reproduced by kind permission of the Syndics of Cambridge University Library (P.Michael. Misc. 893 recto).

[52] P.TillierDebts 3 (47–48/667–8 or 686–7). See the complete translation in Mathieu Tillier and Naïm Vanthieghem, "Recording Debts," 26–27.

serve as a witness. The scribal "kutiba" ("it is written") signals the end of the written claim. Occasionally, the *dhikr ḥaqq* document will only contain some of these elements. For example, P.BruningSunna does not include the words *dhikr ḥaqq* and also does not mention the creditor at the beginning but otherwise follows the same scribal formulae and structure:

بسم الله على تريس

ابنت مقير من لعسن

ثمّ الحرثة عليه ثلث

دينر إلى ملء الغيل من سنة

أربع وأربعين سنّة

شهد وهب بن عليّ

ونفع وكتب

In the name of God. Due from Tarīs

bt. Muqayr from Liʿsān

then al-Ḥāritha. Due from her is a third

of a Dinar until the flooding of the basins of the year

forty-four—in accordance with normative practice.

Wahb b. ʿAlī and Nāfiʿ witnessed.

It has been written.[53]

But despite the close linguistic resemblance to P.TillierDebts 3, the two documents differ in their *documentary function*.

Tillier and Vanthieghem cluster debt acknowledgments from this period into three groups, of which I am bracketing the third because it records that a debt payment has been made

[53] P.BruningSunna, translated by Jelle Bruning with slight alterations.

and is thus rather unlike the first two, both of which record a debt obligation. The first group (which I will refer to as "promissory notes"), to which P.BruningSunna belongs, consists of individual debt acknowledgments. They record a single legal claim that one person has over another. The second group (which I will refer to as "debt registers"), to which P.TillierDebts 3 belongs, comprises registers that list several debt acknowledgments. The individual claims in these registers follow the same linguistic structure as the promissory notes, the difference being that several of them were consecutively written on the same document, sometimes by different scribes. Tillier and Vanthieghem plausibly argue that these debt registers were kept and preserved by an official institution like the Muslim judge (*qāḍī*), the military register (*dīwān al-jund*), or an administrative head of tribal units (*ʿirāfa*).[54] In other words, they served as a public record of debt obligations.

Regrettably for paleographers and historians, it is common for *dhikr ḥaqq*s to have the names of creditors, debtors, or witnesses, as well as the amount of debt, erased with a sponge or wet cloth.[55] Indeed, in P.RagibJurisdiction 1 (42/662–3 or 681–2), we can observe a pattern of repeated erasure (see Fig. 14). By physically erasing parts of a debt acknowledgment to the point of oblivion, officials overseeing the debt registers would know that a legal obligation had been fulfilled and all debts settled. In the case of promissory notes, the latter would have lost their validity as legal documents and cease functioning as material objects of economic and social value.

Tillier and Vanthieghem remain silent on the exact function of the first group of documents (the promissory notes), probably because we only have three of them from the first

[54] Mathieu Tillier and Naïm Vanthieghem, "Recording Debts," 5–6.

[55] Ibid., 4–5.



Fig. 14. Multiple erasures (*ḍarb* or *kashṭ*) in an Arabic debt register (P.RagibJurisdiction 1). © Musée du Louvre. Reproduced by kind permission of the Musée du Louvre (P.Louvre JDW 20).

Islamic century (although many more from the second). In this section, I argue that these were given to creditors as physical written proof of their legal claim over debtors. Evidence that these documents were kept and used by creditors rather than by an institution or somebody else comes from the second-century documents, which typically state that these receipts could be exchanged with other parties (the German word "Schein" captures this meaning) and, therefore, used analogously to paper currency, which was introduced in the Middle East and Europe in the Middle Ages but began to circulate in T'ang China around the same century.[56] It is also from the

[56] Dan Du notes that paper money (飛 錢, lit. "flying cash") and other paper-based credit instruments developed in T'ang China under the reign of Emperor Xianzong (d. 820) to facilitate mercantile transactions. Merchants could deposit coins with the Capital Liaison Office (進奏院) in a local circuit and were issued a paper receipt as proof. The office would send the receipt's other half to the local government of the circuit in which the merchant resided. Upon return to the home circuit, merchants could cash the receipt if both parts of the receipt added up; Dan Du, "'Flying Cash:' Credit Instruments on the Silk Roads," in *Silk Roads: From Local Realities to Global*

vantage point of the second-century promissory notes, I argue, that we can solve the puzzle of the meaning of the phrase of *s-n-t qaḍāʾ al-muʾminīn* that is contained in *dhikr ḥaqq*s from the first century and that has been debated since the appearance of Yūsuf Rāġib's influential article.[57] I propose that the debt registers and promissory notes constitute two different ends of the scribal process of registering debts in the first and second Islamic centuries. Officials working in the service of the state kept these debt lists to lend validity and enforceability to people's legal claims. The individual promissory note functioned as proof to creditors that their legal claims did exist without needing to consult the official register. Al-Kindī informs us that the Fusṭāṭ-based Muslim judge Sulaym b. ʿItr (40/660–661 till 60/679–680) introduced the practice of double legal recordkeeping, and based on the evidence presented in this chapter, I see no reason to doubt that by the 660s, but more likely as early as the 650s, the practice of double legal recordkeeping in Arabic had become the norm in Egypt.[58]

3.4.2 The Puzzle of s-n-t qaḍāʾ al-muʾminīn

In the first Islamic century, *dhikr ḥaqq*s frequently included the phrase *sunnat qaḍāʾ al-muʾminīn* (or, depending on interpretation, *sanat qaḍāʾ al-muʾminīn*) in the due date section. By the second century, this phrase disappeared entirely and, as I will argue, was replaced with a different formula. Because the due date on the *dhikr ḥaqq*s (often part of the formula *ilā milʾ* ...)

Narratives, ed. Jeffrey D. Lerner and Yaohua Shi (Oxford and Philadelphia: Oxbow, 2020), 237–264, at 240–241.

[57] Yūsuf Rāġib, "Une ère inconnue d'Égypte musulmane: l'ère de la juridiction des croyants," *Annales Islamologiques* 41 (2007), 187–207.

[58] Al-Kindī, *Kitāb al-wulāh wa-kitāb al-quḍāh*, 224; and Ibn Ḥajar al-ʿAsqalānī, *Rafʿ al-iṣr ʿan quḍāt Miṣr*, 167. I discuss the relevant passage in the next chapter.

designates a future point in time, the writing of these documents must have logically preceded the date they mention, even if only by one or a few years.

Two main theories have prevailed in scholarship regarding the interpretation of the phrase *s-n-t qaḍāʾ al-muʾminīn*, with controversy over the meaning of the terms *s-n-t* and *qaḍāʾ* (although, admittedly, *muʾminīn* is not without its problems either, but I will spare you the details of that debate here). On the one hand, Rāġib, Tillier, Vanthieghem, and Mehdy Shaddel propose temporal—albeit different—interpretations of the phrase (***sanat*** *qaḍāʾ al-muʾminīn*), suggesting that it refers to a calendar by which the Believers reckoned historical time.[59] On the other, Jelle Bruning—whose arguments have mostly been dismissed—suggests a procedural reading (***sunnat*** *qaḍāʾ al-muʾminīn*).

Rāġib argues that the expression indicates the "year of the jurisdiction of the Believers," by which he means "the year used by the Muslims for judicial acts."[60] He suggests that for a short time and mostly for judicial purposes, the Believers were using a lunar-solar calendar that began with the emigration from Mecca to Medina but corresponded to the Coptic solar months. Rāġib justifies the Arab rulers' need to maintain some sort of solar calendar by pointing out that the annual flooding of the Nile—which consistently occurs in the same months only in the solar calendar and is at its highest on the eighth of Paopi (October 18)—marked the due date for the repayment of debts, similar to the way that the payment of tax installments began shortly thereafter.[61] Rāġib's suggestion of a lunar-solar calendar is based on his reading of the word *milʾ*,

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[59] To Fred M. Donner, both the temporal and procedural understanding of the phrase seem to appear plausible; Fred M. Donner, *Muhammad and the Believers* (Cambridge: Belknap Press, 2010), 176–177.

[60] In the original French: "année de la juridiction des musulmans" and "année employée par les musulmans pour les actes juridiques;" Yūsuf Rāġib, "Une ère inconnue," 193.

[61] Yūsuf Rāġib, "Une ère inconnue," 194. A general outline of the centuries-old tax collection system and its connection to the seasons of the Nile River can be found in Ibn Ḥawqal and other classical writers. After the Nile flood receded, the new fiscal year (*iftitāḥ*) began in Tobi (January/February), and the first payment of 1/8 of the

which appears in several *dhikr ḥaqq*s to specify the due date for debt repayment. For P.BruningSunna, where the term appears twice in close succession (l. 2–3: *ilā milʾ al-ghayl ilā milʾ ithnān wa-arbaʿīn qaḍāʾ al-muʾminīn*), Rāġib renders the relevant passage "until the **flooding** of the basins and the **end** of (the year) 42 of the jurisdiction of the Believers."[62] Note that Rāġib renders *milʾ* variously, once as "flooding" and once as "end." As Bruning notes on linguistic grounds, it is unlikely that the same term should have profoundly different meanings when used in such close proximity.[63] If the due date corresponds with (the completion) of the filling of the basins, as Rāġib suggests, payments would have been made during the harvest (Pashons until Mesori/early May until early September), just before the flooding of the Nile, which was also the time when people had the means to repay debts. However, because the filling of the basins—which, according to Rāġib, occurred in August but is more likely to happen in September—does not coincide with the end of the year 42 H (which ended on April 14), Rāġib is forced to suggest the presence of an alternative system of reckoning used by the Believers. It appears to me a major violation of Occam's Razor and an administrative nightmare, to say the least, that the Arab conquerors should have used a calendar that started from the Hijrī era, was tied to Coptic solar months, but was used for judicial purposes only, and that they, therefore, introduced in Egypt not one but two calendars alongside the already existing (and very

amount listed in the certificate of registration (*sijillāt*) became due. In Meshir (February/March), 1/4 of the amount of land tax was due, and in Paremhat (March/April), a second fourth. In Parmouti (April/May), officials carried out land surveys in the districts and at least half of the amount of taxes specified in the certificate of registration were expected to have been completed. In Pashons (May–June), officials finalized the tax rates based on the land survey, and the harvest was brought in. All tax rates specified by the officials were now to be paid, including fees such as cashier's commission (*ṣarf*) and cash handling charges (*jahbadha*); Kosei Morimoto, *The Fiscal Administration of Egypt in the Early Islamic Period* (Dohosha, 1981), 211–212. See also Petra Sijpesteijn, *Shaping a Muslim State*, 178–179.

62 In the original French: "jusqu'au **plein des** bassins et **la fin** de (l'année) quarante-deux de la juridiction des croyants."

63 Jelle Bruning, "A Legal 'Sunna,'" 368.

complicated) indiction cycle and the Coptic calendar. I do not mean to say that the simplest explanation is always the closest to the truth, but I do not think that the need to tie the repayment of debts to a specific seasonal occurrence, such as the flooding of the Nile, warrants the argument that an entirely new calendar was invented. And even if such a "judicial" calendar were used, one still needs to explain the judicial consciousness that precedes it: The earliest *dhikr ḥaqq* we have is from 22/642–3, when the state and its judicial institutions were very much in the making.

After Rāġib, Bruning proposed a procedural reading of the clause, arguing that the phrase is a validity clause and should be read as *sunnat qaḍāʾ al-muʾminīn* ("the normative procedure of the believers"). Bruning, like his critics, notes the well-known fact that the root *q-ḍ-y* did not convey the meaning of "jurisdiction" in the earliest period of Islam.[64] As evidenced in the Qurʾān, the root above all refers to the fulfillment of the divine decree, as well as "the completion" of something. If I read Bruning correctly, by translating *qaḍāʾ* with "legal procedure," he attempts to capture the procedural aspects underlying debt settlements and disputes without falling into the anachronistic trap of suggesting that the term had a judicial specificity and precision it hardly could have had by the mid-seventh century.[65] Bruning observes that in two documents, P.RagibJurisdiction 1 (l. 3 and l. 8) and P.Vindob. A.P. 1119 (l. 6), the puzzling phrase appears without *s-n-t*, and this, he suggests, indicates that we are dealing with a reference to a practice rather than an era.[66] In addition, some documents feature the term

[64] Jelle Bruning, "A Legal 'Sunna,'" 367; Mathieu Tillier and Naïm Vanthieghem, "Recording Debts," 12; and Mehdy Shaddel, "'The Year According to the Reckoning of the Believers': Papyrus Louvre inv. J. David-Weill 20 and the Origins of the *hijrī* Era," *Der Islam* 95, no. 2 (2018), 291–311, at 298–299.

[65] Jelle Bruning, "A Legal 'Sunna,'" 367.

[66] See his discussion in ibid., 369–370.

sunna only (e.g., P.BruningSunna, ll. 4–5: إلى ملء الغيل من سنة أربع وأربعين **سنة**), and Bruning construes it as an abbreviation, arguing that even without the mention of *qaḍāʾ al-muʾminīn*, the phrase was understood to refer to normative procedure.[67] To support his procedural reading, Bruning points out syntactic similarities regarding the appositional accusative usage of *sunna* in the Qurʾān, and draws on later Arabic narrative sources to illustrate that by the seventh century, the term already meant "normative precedent" or "practice." He finds evidence in the famous letter by the caliph ʿUmar b. al-Khaṭṭāb to Abū Mūsā al-Ashʿarī (d. 62–63/665), the authenticity of which has been suspect to Western scholars.[68] Mehdy Shaddel, who has engaged with Bruning's arguments in most detail, challenges his interpretation on several counts. Shaddel argues that semantically *sunna* denoted the *precedent* set by an individual or a group of individuals rather than a particular *procedure*.[69] Based on the study of the semiticist Max Bravmann, he argues that *sunna* only later came to be understood as the "procedure practiced by

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[67] This type of abbreviation may also have been used in P.TillierDebts 3 (l. 4: إلى ملء سبع وأربعين **سنه**). However, because the papyrus is torn after *s-n-h*, the *qaḍāʾ al-muʾminīn* may simply have been cut off.

[68] Jelle Bruning, "A Legal 'Sunna,'" 371–372. The relevant passage in said letter comes right after the address, where ʿUmar says: "pronouncing judgment (*al-qaḍāʾ*) is a prescribed religious duty, a custom (*sunna*) followed;" al-Mubarrad, *al-Kāmil fī l-lugha wa-l-adab wa-l-naḥw wa-l-taṣrīf*, ed. Zakī Mubārak, 4 vols. (Cairo: Maṭbaʿat Muṣṭafā al-Bābī al-Ḥalabī, 1936–1956), 1:14–15, at 14. The letter's authenticity and attribution to ʿUmar were contested based on the historiographic argument that the letter's contents only appear with al-Jāḥiẓ (d. 860), Ibn Qutayba (d. 889), al-Mubarrad (d. 898), and Ibn ʿAbd Rabbihi (d. 940) but not in the much earlier narrative accounts from the second century. Émile Tyan notes that we would expect a letter of such import to be included, or at least referenced starting much earlier, especially in the legal manuals by Mālik b. Anas and the other *madhhab* founders. However, an early reference to the letter does exist—which Tyan concedes—in Abū Yusūf's (d. 798) *Kitāb al-kharāj*. His reference accurately reflects the section of the letter that instructs judges to treat subjects with fairness in court as it has come down to us from the later sources; see Émile Tyan, *L'organisation judiciare*, 77–82; Robert B. Serjeant, "The Caliph ʿUmar's Letters to Abū Mūsā al-Ashʿarī and Muʿāwiya," *Journal of Semitic Studies* 29, no. 1 (Spring 1984), 65–79; and David S. Margoliouth, "Omar's Instructions to the Kadi," *Journal of the Royal Asiatic Society* (April 1910), 307–326. For the ʿUmar letter, see al-Jāḥiẓ, *al-Bayān wa-l-tabyīn*, ed. ʿAbd al-Salām Muḥammad Hārūn, 4 vols. (Cairo: Maktabat al-Khānjī, 1998), 2:48–50; Ibn Quṭayba, *ʿUyūn al-akhbār*, 1:64–65; and al-Mubarrad, *al-Kāmil,* 14–15. Another argument against the letter's authenticity is that it supposedly reflects the technical vocabulary and much later canonical view of the hierarchy of legal sources (Qurʾān, *sunna*, consensus, and analogy).

[69] Mehdy Shaddel, "'Reckoning of the Believers,'" 294–295.

a certain community," and even then remained closely tied to the notion of an individual originator of the practice.[70] I disagree. For one, because Bruning's interpretation of *sunna* as denoting collective procedural practice does not rule out the possibility that such practice relied on individual precedent. For another, because adducing evidence from the *Muʿallaqa* of Labīd b. Rabīʿa (d. 40/660–661)—one of the *mukhadramūn* poets (i.e., those who witnessed the pre-Islamic and the Islamic era)—Bravmann concludes that:

> Labid's line […] makes it clear that in pre-Islamic times the basic community for which a *sunnah* has been established by an early personality (by an ancestor) is the individual (restricted) tribal community.[71]

In other words, already in pre-Islamic times (if we follow Labīd and Bravmann's interpretation of him), the concept of *sunna* denoted the procedures that governed a tribal community, even while remaining closely associated with the precedent set by a past individual.[72]

Shaddel suggests a straightforward temporal interpretation of the phrase: According to him, it is to be read as *sanat qaḍāʾ al-muʾminīn*, as a reckoning used by the early Believers, which most likely began with the watershed moment of the foundation of Muḥammad's polity in Medina.[73] Shaddel observes structural similarities of the Arabic phrase in question with dating formulae in Greek and other Near Eastern traditions. Specifically, he proposes that *sanat qaḍāʾ*

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[70] Ibid.

[71] Max Bravmann, *The Spiritual Background of Early Islam: Studies in Ancient Arab Concepts*, with an introduction by Andrew Rippin (Leiden and Boston: Brill, 2009 [1972]), 165–166.

[72] For a discussion on the Qurʾānic use of this term and the phrase *sunnat al-awwalīn* (i.e., *sunna* of the ancients), see Rosalind W. Gwynne, *Logic, Rhetoric, and Legal Reasoning in the Qurʾān: God's Arguments* (London and New York: Routledge, 2004), 41–58. Gwynne notes that one of the ways in which the concept of *sunna* is employed in the Qurʾān is by reference to God himself (*sunnat Allāh*). By adhering to the *sunna*, God binds himself to follow his precedents and obligations, promising to uphold them until Judgment Day; ibid., 43.

[73] Mehdy Shaddel, "'Reckoning of the Believers,'" 305–306.

al-muʾminīn is an Arabic parallel to the Greek κατ᾽ Ἄραβας ἔτους ("according to the year of the Arabs").[74] However, as Shaddel himself notes, in P.Ness. III 60, the Greek portion of the *entagion* employs κατ᾽ Ἄραβας ἔτους, but the Arabic uses "written by Abū Saʿīd in Dhū al-Qaʿda of the year 54" (*kataba Abū Saʿīd fī dhī al-qaʿda min sanat arbaʿ wa-khamsīn*).[75] There is no mention of *sanat qaḍāʾ al-muʾminīn*, and the same pattern persists in P.Ness. III 61, 62, 63, 64, 65, and 66 (see Fig. 15). In other words, there is no direct evidence to support the proposition of a Greek parallel for what Shaddel—like Rāġib—takes to be a temporal expression. The absence of such a direct parallel in the papyri, especially Arabic-Greek bilingual ones, is itself striking and may indicate that the interpretation of *s-n-t qaḍāʾ al-muʾminīn* in temporal terms is flawed. Indeed, instances of the phrase only ever occur in Arabic documents, never bilingual ones. If the temporal rendering is correct, then would we not expect at least a few bilingual documents in which the phrase *sanat qaḍāʾ al-muʾminīn* occurs?

Like Rāġib and Shaddel, Tillier and Vanthieghem recently proposed that the obscure phrase denotes a calendar—though not the conventional Hijrī calendar, which is commonly thought to begin with the Believers' emigration (*hijra*) from Mecca to Medina in 622. They argue that the idealizing connotations of the *hijra* were the product of a dogmatic vision that only took hold towards the late seventh century and that the event is unlikely to have initially been viewed as a historical rupture sufficiently significant to tie a calendar to it. Alternatively, they suggest the Treaty of al-Ḥudaybiyya (628)—when Muḥammad secured a truce with the Quraysh in Mecca and garnered political recognition and approval as the new community's negotiator and

[74] Ibid., 298.

[75] Ibid., 297.

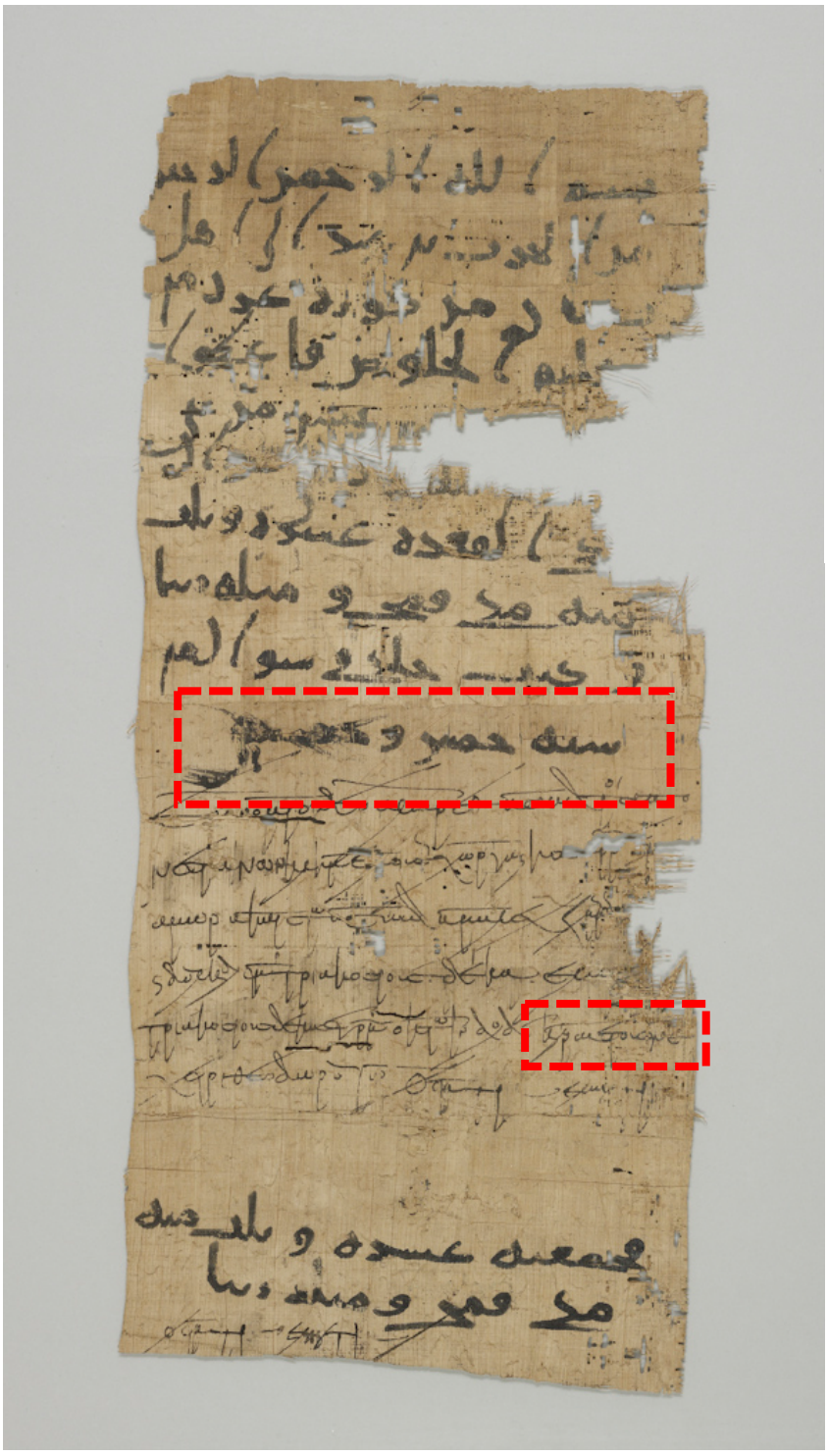


Fig. 15. P.Ness. III 62: Requisition of wheat and oil (55 H/675). I have highlighted the corresponding sections in Arabic (*sanat khams wa-khamsīn*; at the top) and Greek (κ[α]τ' Ἄραβ[ας] ἔτους νε; at the bottom). © The Morgan Library & Museum, New York. Reproduced by kind permission of the Morgan Library & Museum (P.Colt 60).

leader—as a starting point.[76] Needless to say, their suggestion implies that a complete revision of the chronology of the foundational events of the community of Believers would be required. Despite favoring a temporal reading, Tillier and Vanthieghem do move closer into procedural

territory. They observe that medieval lexicographers often associated *qaḍāʾ* with *ḥukm* (lit. "judgment," "rule") and discern that seventh-century Syriac writers used the parallel dating formula *d-shūlṭōnō d-Ṭayōyē* ("the rule/power of the Arabs/Muslims").[77] Therefore, they argue, *qaḍāʾ* designates "decree" or "power," conveying the notion of the implementation of the divinely mandated order on earth according to the Qurʾān. For reasons I need not repeat here, the argument about the legal normativity of the Qurʾān in the period under consideration, which Tillier and Vanthieghem clearly take for granted, requires further evidence. That said, their proposition that *qaḍāʾ* refers to the sovereignty of the Believers is plausible for reasons I will discuss momentarily.

Despite the now near-to twenty-year-old controversy over the meaning of *s-n-t qaḍāʾ al-muʾminīn* and several arguments that both sides have advanced, some approaches have remained untried. So far, nobody has examined the *dhikr ḥaqq* documents over a longer *durée* and assessed whether the formulae they employ and the structure they adhere to changed over time. A lack of interest in such a systematic historical analysis can be explained by the fact that the first-century *dhikr ḥaqq*s have understandably garnered much more attention than the later ones. However, as I demonstrate in this chapter, the second-century *dhikr ḥaqq*s hold important clues for understanding the earlier ones, particularly regarding the usage of the enigmatic *s-n-t qaḍāʾ al-muʾminīn*. Before offering this kind of historical analysis, let me discuss a few points of evidence from the first-century documents that I believe support Bruning's procedural reading.

[77] Ibid., 26–27.

Table 1. Occurrences of double usage of the word *sana* in *dhikr ḥaqq*s from the seventh century.

No	Identifier	Formula
2	P.RagibJurisdiction 1, ll. 5–6 (**A**) l. 13 (**B**)	إلى ملء الغيل من سنة اثنين وأربعون قضاء المؤمنين من سنة اثنان وأربعين سنة قضاء المؤمنين
3	P.BruningSunna, l. 5 (**C**)	إلى ملء الغيل من سنة أربع وأربعين سنة
8	P.TillierDebts 4, ll. 4–6 (**D**)	وكتب يوم الاثنين لنصف ربيع الأول في سنة سبع وخمسين سنة

One of the strongest arguments in favor of his interpretation is that in several first-century *dhikr ḥaqq*s, the word *sana* ("year") already appears independently of *s-n-t qaḍāʾ al-muʾminīn* before the year mentioned in the due formula (see Table 1). In B, C, and D, it is unlikely that the second *s-n-h* should be rendered "year" because, in each case, the scribe, before writing out the number for the year, already records the word *sana*. What would be the purpose of mentioning the same word again, especially in C and D, where the word loosely dangles at the end of the line? At any rate, to readers of these documents, the number alone, even without any mention of *sana* before it, already implies that we are dealing with a year. A second mention of it after writing out the year is semantically unnecessary, and it is more likely that the dangling *s-n-h* reads as *sunna*.

Another reason to favor a procedural reading is the function of these documents as valid claims to the fulfillment of a legal obligation by the contracting party. As I showed in the previous chapters, in the legally pluralistic landscape of early Islamic Egypt, people could bring their legal affairs before various individuals with judicial competencies, including monks, pagarchs, and other administrative officials. With the conquests of Egypt and the settling of the Arabs in Fusṭāṭ, ecclesial and secular officials continued to dispense justice and record legal documents as they had done over the last centuries. The Arab elite was not only aware of that, but they coopted these officials into the service of the state and relied on their judicial and scribal

expertise. The problem was that as the administration began to fixate and record legal claims by issuing documents in the Arabic language, somebody charged with the execution of these documents would need to know under which "jurisdiction" they fall. I do not mean to use this term in its mature sense, implying that there existed in 650 a precisely defined body of Islamic legal rules and norms, nor do I mean to say that judicial competencies between actors and institutions in the judicial landscape of early Islamic Egypt were clearly demarcated. But we must concede that as legal claims and property relations came to be fixed in the Arabic language, the question of what authority or sovereignty backed these claims inevitably arose. I am Austinian enough to believe that the issuance of a legal document, no matter on which administrative level, presupposes the existence of some means of coercion to ensure that whatever claim is stipulated can be enforced in the real world.[78] I, therefore, suggest that the phrase *sunnat qaḍāʾ al-muʾminīn* indeed denotes "the normative procedure of the Believers," not gesturing to specific rules but pointing to the political guarantor and sovereign authority that secured the recognition and implementation of legal claims. Just because *dhikr ḥaqq*s were written in the Arabic language, we cannot infer that they were *nolens volens* associated with the Believers' sovereignty. As we know, the Arab elite relied on the partnership with and cooptation of large numbers of non-Muslims into the administration, and some would have held positions of

[78] For John Austin's theory of law as "orders backed by threat," most famously refuted by Herbert L.A. Hart, see John Austin, *The Province of Jurisprudence Determined* (Cambridge: Cambridge University Press, 1995). For Austin, all laws ultimately derive from the sovereign, a view that no doubt echoes modern nation-states' understanding of their sovereignty but falls short of explaining the existence of secondary (or auxiliary) rules conferring on institutions the power to make laws. For the critique, see Herbert L.A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1994 [1961]). The Hartian positivist tradition of law has been the subject of critics such as Lon L. Fuller, whose natural law philosophy argues against the Hartian claim that laws can exist without morality, contending that for a legal system to be considered a legal system, its internal morality needs to be reflected by procedural norms, including the generality of laws, their publicity, non-retroactivity, clarity, internal coherence, the possibility to comply with them, their stability, and congruence between declared rules and enforcement; Jon L. Fuller, *The Morality of Law* (New Haven and London: Yale University Press, 1964).

judicial authority independent of their administrative roles. At least in the immediate stages after the Arab conquests, their judicial positions were a matter of tradition and custom, not the backing of the Arab elite. The phrase *sunnat qaḍāʾ al-muʾminīn*, I shall argue, differentiates the *dhikr ḥaqq*s as officially sanctioned legal claims backed by the Arab elite from alternative legal claims safeguarded by the still widespread charismatic authority of non-Muslim officials. Put differently, the insertion of the phrase (or its abbreviation) on documents functioned to unambiguously relate the legal claims these documents enshrined to the sovereign power of the Believers.

3.4.3 From sunnat qaḍāʾ al-muʾminīn *to* wa-man qāma bi-dhikr al-ḥaqq iqtaḍā bihi

*Dhikr ḥaqq*s from the second century—of which currently eight are known to us—adhere to the same linguistic structure as those from the first. That said, they are more mature legal documents, and their complexity and predictable arrangement indicate the increasingly institutionalized setting in which they were written up: Compared to first-century documents, they are typically longer, offering more detailed information about creditors and debtors—where they live, their social status, and genealogical relationships, among others. Whereas most (or possibly all) first-century *dhikr ḥaqq*s fixate an obligation in cash, those from the second often stipulate the repayment of debt in kind, using agricultural measures and specific instructions as to the quality of the goods to be delivered such as "high-quality Joseph-wheat free of straw and earth" or "flax, Laythī-standard—not Falyūmer or Qālūber—free of straw, destruction, shortness, and dirt."[79] Witness statements often abound in these documents: P.Terminkauf 1 features seven witness attestations and CPR XXVI 19 even ten. This increase in the number of witnesses summoned to

[79] P.ThungWrittenObligations 2=CPR XXVI 17, ll. 4–5, and P.Terminkauf 1, ll. 4–6.

ratify legal deeds may be explained by different factors. On the one hand, the second-century documents appear to stipulate larger sums of money and agricultural produce, and this tendency would have likely mandated the presence of more witnesses to ensure the validity and accuracy of transactions. On the other, by the late eighth century, the state began to employ a cadre of witnesses who provided attestations as a matter of professional habitus.

All of the second-century *dhikr ḥaqq*s fall into the category of the promissory note. Indeed, I have not come across any debt registers. One explanation could be that the practice of legal recordkeeping was abandoned (although that strikes me as very unlikely), and this hypothesis dovetails with the previous point about an increase in the number of witnesses providing attestations. If we assume that the promissory note now stood on its own (that is, without a matching record in a public debt register), the stakes regarding its accuracy and validity would have been significantly higher, justifying the presence of several witnesses instead of just a few. I do not think that the promissory note became a self-contained document (by which I mean that it could exist without a matching entry in a public register). However, the abovementioned features of second-century *dhikr ḥaqq*s support the idea that the relationship between promissory notes and debt registers had changed, at least insofar as their legitimacy and function as a social and economic currency of value no longer depended on the entry in the public registers. Be that as it may, it is unlikely that a practice as socially useful and conducive to the state's judicial decorum as double legal recordkeeping would have become moribund, especially at a stage when the state and its judicial institutions needed to constantly legitimize themselves against the backdrop of political turmoil and unrest.[80] A more likely reason for the

[80] Apart from the well-known inner political fragmentations between Zubayrīs, the *shīʾat ʿ*Alī, supporters of Muʿāwiya, and the Khāriiites, see, for example, the eighth and ninth-century Bashmurian revolts by part of the Coptic and Muslim populace in Egypt against Abbasid tax policies. Myriam Wissa, "The Last Revolt of Bashmūr (831 A.D.) in Coptic and Syriac Historiography," in *Migration Histories of the Medieval Afroeurasian*

invisibility of the debt registers in the papyrological record has to do with the provenance of most Arabic papyri from outside Fusṭāṭ, where these debt registers would have been kept. As Sobhi Bouderbala is currently studying the Fusṭāṭ papyri, we will likely see more such registers from the second and later centuries turn up.[81]

So far, nobody has noticed that none of the second-century *dhikr ḥaqq*s (and the third-century ones) contains the controversial phrase *s-n-t qaḍāʾ al-muʾminīn* (see Appendix, Table 5). After mentioning the due date for debt repayment, scribes now consistently use the formula:

ومن قام بذكر الحق اقتضا به

ومن أحال عليها أقرّت له

> Whoever draws up a promissory note can demand payment,
>
> and whoever transfers it (to another person) relinquishes his right to him (lit. "acknowledges the right of the other person").[82]

Instead of the more general procedural clause employed in the first Islamic century, the second-century formula explicitly (1) sanctions the judicial act of drawing up a promissory note and (2) guarantees its validity as a written document and material object that may licitly be transferred to and cashed by third parties. Grohmann notes that clauses stipulating cession rights can already be found in Demotic written obligations from Egypt.[83] That the above clause should have evolved

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Transition Zone: Aspects of Mobility between Africa, Asia and Europe, 300–1500 C.E., ed. Dirk Hoerder (Leiden and Boston: Brill, 2020), 247–260.

[81] Mathieu Tillier, *L'invention du cadi*, 115, footnote 373.

[82] In some *dhikr ḥaqq*s, *aqāma* is used instead of *qāma* (P.Vindob. A.P. 272); some employ *iqtaḍā bimā fīhi* (CPR XXVI 19) or *iqtaḍā mā fīhi* (P.Terminkauf 1) instead of *iqtaḍā bihi*; some use *aqarra lahu bi-ḥaqqihi* (P.Terminkauf 1) instead of *aqarra lahu*. In sum, the formula slightly varies in the papyri, with elements of it at times arranged in different order. However, these variations have no implications for its meaning.

[83] Adolf Grohmann, *Arabic Papyri in the Egyptian Library*, 1:116; Eugène Revillout, *Chrestomathie démotique* (Paris: Vieweg, 1880), XLVI.

from the puzzling first-century clause is made clear from its identical placement after the payment due date and the fact that *iqtaḍā bihi* (lit. to demand and take with it, e.g., a right) is of the same Arabic root as the *qaḍāʾ* that it replaces, and thus semantically related to it. Granted that, the *dhikr ḥaqq*s issued to creditors were of material value, functioning as objects integrated into the social and economic routines of trading and exchanging.

The procedural implications of the second-century formula and its consistent and predictable use in the second and third-century papyri support Bruning's procedural interpretation of the first-century clause. It is unlikely that a phrase that is not only semantically related to the second-century clause but also located in its exact same position should at first have indicated a calendar that—for reasons unknown—was abandoned in the second century only for the clause to develop a clear procedural connotation after that.

As a material object, then, the *dhikr ḥaqq* had a transactional value. Paper money emerged in T'ang China in the late eighth century under Emperor Xianzong. While these developments, in all probability, are not related, there may have been similar causes that facilitated the emergence of a legal and fiscal instrument that was more convenient than exchanging heavy loads of copper, silver, and gold coins, as well as agricultural kind. We know that in T'ang China, paper money facilitated mercantile transactions over long distances, allowing merchants to deposit coins in one jurisdiction and cash them out in a different one. Postponing payment to a future point in time or transferring it to a different jurisdiction would have undoubtedly benefited Egyptian merchants, who traded agricultural produce and commodities with regions like the Ḥijāz and Nubia.[84] However, convenience alone hardly

[84] Under ʿAmr b. al-ʿĀṣ, Egypt's surplus of wheat, which, until the Arab conquests, had supplied Rome and Constantinople, was partially reallocated to the Ḥijāz, where several famines struck during the Umayyad period. Petra Sijpesteijn, *Shaping a Muslim State*, 76–77. After the conclusion of a mutual agreement (referred to as the *baqṭ*) between the Muslim governor ʿAbd Allāh b. Saʿd and the Nubian king of Makouria at Dongola, Egyptian

explains the function of the *dhikr ḥaqq*s within the Islamic political and imperial project, especially since we stand on too little evidence to know how widely used these fiscal instruments were.

When we examine the individuals listed in these documents as either creditors, debtors, or witnesses, it becomes clear that the usage of *dhikr ḥaqq*s went beyond the Arab male elite in Fusṭāṭ and involved Christians, Muslim converts, women, and likely other groups. Names like Yuḥannis b. Thiyudur (creditor) and Shinūda b. Jirja (debtor) suggest Christian identities, and in at least one *dhikr ḥaqq* from the second century, the creditor Bakīsh (or Takīsh?) is said to be of *mawlā* (freedman) status belonging to Ṭulayb b. Abī Ṣāʾim, suggesting that he was initially a Christian who had converted to Islam.[85] That a *mawlā*—considered by later Islamic legal theory to inhabit a legal and social middle status of neither being fully enslaved nor being fully free—was capable of functioning as a creditor in these documents is itself noteworthy. Classical Muslim jurists settled on the opinion that (in theory) full slaves could not own property.[86]

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merchants would for centuries trade Egyptian goods in exchange for Nubian slaves under the auspices of this diplomatic agreement. Stefanie Schmidt, "Economic Conditions for Merchants and Traders at the Border Between Egypt and Nubia in Early Islamic Times," in *Living the End of Antiquity: Individual Histories from Byzantine to Islamic Egypt*, ed. Sabine R. Huebner et al. (Berlin and Boston: De Gruyter, 2020), 207–222, at 210–211. A long letter on papyrus from 141/758 illustrates the diplomatic tensions that arose when the Nubians failed to fulfill part of this agreement; P.HindsNubia=P.Alqab 15=P.AbuSafiyyaRisalatMusa=P.BlauHandbook, 57. See also Geoffrey Khan, *Arabic Documents from Medieval Nubia* (Cambridge: Open Book Publishers, 2024), 19.

[85] P.TillierDebts 3, l. 1; CPR XXVI 19, l. 3; and P.ThungWrittenObligations 1=CPR XXVI 16=PERF 617, l. 2. The *mawlā* status was held by recent converts to Islam and implied the expectation to obey the orders of a Muslim patron. See, for example, Elizabeth Urban, *Conquered Populations in Early Islam: Non-Arabs, Slaves and the Sons of Slave Mothers* (Edinburgh: Edinburgh University Press, 2020).

[86] See, for instance, al-Shāfiʿī, *The Epistle on Legal Theory*, ed. J.E. Lowry (New York and London: New York University Press, 2013), 124: "[...] it is evident from the Practice (*sunna*) of the Messenger of God that the slave does not own property, that what he owns is, in fact, owned by his master, and that the name of the property is with him. However, it is only attributed to him (*huwa iḍāfa ilayhi*) because it is in his (two) hands. But he is not the owner of it (*lā annahu mālik lahu*), will not be the owner of it, and he does not (even) own himself. How can he himself own, when he is (in fact) owned (*wa-kayfa yamlik nafsahu, wa-huwa mamlūk*), may be sold, donated, and inherited [...]."

According to Islamic legal theory, "half-slaves" or "partial" slaves (*mukātab*) could own property to the extent that they had been released from servitude, and from the documentary record, we know that *mawlā*s often conducted business matters for their patrons.[87] We also find women's names among creditors and debtors: Qabīlat bt. Malik (debtor), Tarīs bt. Muqayr (debtor), ʿAqīlah (debtor), and Fāṭima (?) bt. Bukayr (creditor).[88]

I should express my skepticism towards identifying the confessions of individuals in these documents based solely on their names. Not only is this a risky undertaking because many personal names were used across religious fault lines, but because any attempt at determining confessional belonging inevitably retrojects into the earliest period of Islam communal and confession-based assumptions about the delineation of religious "identity." Fred Donner argues that the early Believers "belonged to a strongly monotheistic, intensely pietistic, and ecumenical or confessionally open religious movement."[89] According to Donner, this ecumenical movement's more exclusive identitarian construction and its emphasis on Islam and Muslimness occurred much later, probably in the wake of the centralizing reforms of ʿAbd al-Malik b. Marwān.[90] What I mean to say is that even if we identify the confessional belonging of the individuals mentioned in *dhikr ḥaqq*s as Christians or non-Muslims—especially in the first

[87] It is possible that Bakīsh had an agreement with Ṭulayb (*mukātaba* or *kitāba*), which allowed him to be entrusted with property by his master in order to run a business for him. This institution, variously discussed by medieval Muslim jurists, would have allowed him to keep parts of the profits and pay off his master to purchase his own freedom. On the legal status of the *mukātab*, see especially Saḥnūn b. Saʿīd al-Tanūkhī, *al-Mudawwana al-kubrā*, 2:454–509.

[88] P.RagibJurisdiction 1, l. 9; P.BruningSunna, ll. 1–2; P.ThungWrittenObligations 1=CPR XXVI 16=PERF 617, ll. 2–3; and P.Vindob. A.P. 272, l. 2.

[89] Fred M. Donner, *Muhammad and the Believers*, 75.

[90] Ibid., 222.

Islamic century—this does not necessarily imply that they were relegated to the status of conquered subalterns and excluded from the political project of the Believers' movement.

If, as I argued, these earliest pieces of Arabic written documentation of legal claims functioned as fiscal instruments that could be transferred to third parties and granted that the *dhikr ḥaqq*s were used and circulated beyond the Arab elite in Fusṭāṭ, a different picture begins to take on contours: These documents, however widely they were or were not used, involved and circulated among persons of different confessions and social status, tying them to the sovereignty of the Islamic polity by functioning as creditors, debtors, witnesses, or as scribes charged with issuing these documents. By weaving these individuals from different corners of late antique Egyptian society into a set of social and legal relations that were sanctioned through the power of the Arabic written word, their legal claims came to be safeguarded not by the imagined status of a group of powerful overlords residing in Lower Egypt, but by a network of Muslim and non-Muslim ordinary people, each of whom, by virtue of being listed in these documents, could certify their authenticity and legal validity. The implication for our understanding of Islamic judicial authority in the history of the Umayyad empire is that the first sparks of Islamic justice were not only intrinsically connected to the documentation of legal acts in written form but also to a sociological process by which authority became secured and fixed by grounding it in the presence and immediacy of ordinary people—Muslim and non-Muslim.

3.5 Quittances (*barāʾāt*)

3.5.1 The Khurāsān Link

Whereas *dhikr ḥaqq* documents mark the beginning of fiscal transactions and relationships of legal accountability, the *barāʾa* (lit. "quittance") signals the termination thereof, releasing

debtors from liability by manifesting in written form that a legal obligation has been fulfilled. A variety of subtypes of these documents exists, all with a similar purpose, including such that begin with the formulae *addā* (he delivered), *qabaḍa* (he received the sum), and *dafaʿa* (he paid).[91] However, this section will focus exclusively on those types of documents commencing with the *barāʾa* formula (either *barāʾa min* or *barāʾa li*) to allow for a systematic analysis of all available evidence in Arabic (and to a lesser extent Greek) from the first and second Islamic centuries (see Appendix, Table 6). Lahcen Daaïf usefully separates these documents into two subtypes: official and non-official quittances.[92] The former was typically issued by a representative of the state administration, often by a pagarch (*ʿāmil* or *ṣāḥib*) and sometimes a tax official (*māzūt*), secretary (*kātib*), or treasurer (*khāzin*).[93] Their function was to release a person or a group of people—in at least one case, an entire village—from tax liabilities towards

[91] The *addā*-type document represents a later development. The first securely dated *addā* document from Egypt is from 147/764–765 (P.Steuerquittungen 1). In the Khurāsānī corpus of Arabic papyri, the *addā* formula first appears only a few years later in 151/767 (P.Khurasan 8). Geoffrey Khan argues that this type of document was likely an innovation by the Abbasid administration in Iraq, entering the Arabic language through Syriac, in which the term already appears to have had the specific connotation of the payment of the land tax (ܐܕܳܐ) by the fourth century. Geoffrey Khan, *Arabic Documents from Early Islamic Khurasan* (London: Nour Foundation, 2007), 29. Evidence for the usage of this term comes from a Syriac account about Mar Simeon bar Ṣabbāʿē, a Christian bishop in Seleucia-Ctesiphon, whom the Sasanid King Shapur II beheaded. Simeon, we are told, refused to collect a "double poll tax (ܟܦܠ ܪܝܫܐ ܕܟܠ ܢܦܫ)" and a "double land tax of every Nazarene person in the land of our gods" (ܐܪܥܐ ܕܟܠ ܢܨܪܝܐ ܕܐܠܗܝܗܘܢ ܕܟܠ ܚܕ ܒܗ), which apparently brought him into trouble with the Sasanid authorities; Mihaly Kmosko, Iohannes Parisot and François Nau, *Patrologia Syriaca* (Paris: Instituti Francici Typographi, 1907), pt. 1:2, 791–792. See also Kyle Smith, "Constantine and Judah the Maccabee: History and Memory in the *Acts of the Persian Martyrs*," *Journal of the Canadian Society for Syriac Studies* 12 (2012), 16–33, at 22.

[92] Lahcen Daaïf, "La *barāʾa*: réflexions sur la fonction et l'évolution de la structure de la quittance," *Annales islamologiques* 48, no. 2 (2014), 3–60, at 10–11.

[93] For instance, P.Louvre E7065=P.Chris.Musl. 14+11+12+13 was issued by Yaḥyā b. Hilāl, pagarch of the Fayyūm; P.Cair.Arab. 197 by Muḥammad b. Ismāʿīl and al-Rabīʾ b. Qais, both pagarchs; P.Berol. 15016 by Ayman b. Ibrahīm, pagarch of the Fayyūm; P.GrohmannProbleme III 18=PERF 670=Nilus IV 21=Nilus XV 6 by Pagarch Yūnus b. ʿAbd al-Raḥmān; P.Vindob. A.P. 9602 likely also by a pagarch; and P.David-WeillLouvre 16 by Shanūda, the local official (*māzūt*) in charge of the *kharāj*.

the state, from alms (*ṣadaqa*) to land tax to capital tax (*kharāj* and *jizya*).[94] Because these documents embodied direct manifestations of state power, they typically—with the exception of P.David-WeillLouvre 16—required no witness attestations to serve as probative evidence. The lack of witnesses attesting to the judicial act of releasing debtors distinguishes them from non-official quittances, most of which contain at least three but sometimes up to ten witness signatures.[95] The non-official quittances thus reflect occasions of private property ordering: individuals paying off loans, family members splitting property after someone's death, and men providing annual sustenance payments (*nafaqa*) to women for the rearing of children.

We are in the fortunate situation of having preserved such quittances not only from Islamic Egypt, but also from Khurāsān, specifically from the Khalili Collection, in which we find a total of twenty-six quittances from the second Islamic century. This happenstance—to which I shall return in due course—is significantly noteworthy because it allows for the comparison of the Egyptian quittances to those from Khurāsān, putting us in a position to draw tentative conclusions about the origins and terminology of the Arabic legal formulae and the reasons for their relative homogeneity even in the earliest Arabic documents. Geoffrey Khan has suggested that the growing tendency towards cursiveness in late second-century Arabic legal documents from Egypt, and certainly those from the third, may have entered Egyptian scribal culture through the substrate of the Pahlavi language, with which many Khurāsānī scribes would have been familiar. Khan notes that Khurāsānī documents from the second century exhibit a much

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[94] Examples of early receipts for *ṣadaqa* payment: P.Cair.Arab. 197 (148/765–766); for *kharāj*: P.Louvre 7347/4 (184/800), P.Khalili I 10=P.Khalili II 98 (194/810), and P.Vindob. A.P. 9109 (133/750–236/850); for *jizya*: P.Berol. 15016 (144/762–152/769) and P.GrohmannProbleme III 18=PERF 670=Nilus IV 21=Nilus XV 6 (196/812).

[95] Chrest.Khoury II 14 confirms the payment of sustenance (*nafaqa*) by two male family members, ʿAbd Allāh b. Suhayl and Isḥāq b. Sawwār, to a woman named Sumayya bt. al-Ṣabāḥ. In the receipt attesting to the payment of sustenance for the year 189–190, a total of ten witnesses are summoned.

more cursive script than their contemporary Egyptian counterparts.[96] This not only explains why the Egyptian documents preserve earlier features of the Arabic ductus—its rectangular script, the open *ʿayn*, the straight *alif*, and the final *yāʾ* stroke to the right—for much longer than those from Khurāsān, but it also maps onto a broader pattern of innovation in scribal and writing support technologies in the Khurāsān region, many of which only gradually spread towards other parts of the Umayyad and Abbasid empires. This history includes, of course, the spread of paper, which, as recently demonstrated by Marina Rustow, building on the work of Jonathan Bloom, has little to do with the myth of the captivity of Chinese prisoners during the Battle of Talas in 133/751, as was long thought by historians. As illustrated by documents from the Sanjar Shāh and Abgar Fortress finds, Umayyad officials were using paper by as early as the 720s, long before the Battle of Talas, and the availability of both rag and mulberry paper to Umayyad administrators undergirds the thesis that paper must have entered the Islamicate world via the intermediary of Sogdian rather than the Chinese directly.[97]

Paper entered Egypt much after it became widely used in other parts of the Middle East. Based on a sample of 1121 edited and translated documents written on papyrus, paper, and parchment (669 on papyrus, 382 on paper, 70 on parchment), Eva Mira Grob shows that paper only made its way to Egypt in the late ninth century, when papyrus still dominated

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[96] Geoffrey Khan, "Khurasan Corpus," 83–84.

[97] Marina Rustow, *The Lost Archive*, 116–129; Jonathan Bloom, *Paper before Print: The History and Impact of Paper in the Islamic World* (New Haven and London: Yale University Press, 2001), 42–45. The first Arabic source to conjure the Chinese prisoner story is al-Thaʿālibī: "The author of the *Kitāb al-masālik wa'l-mamālik* 'Book of roads and provinces' relates that amongst the Chinese prisoners-of-war captured by Ziyād b. Ṣāliḥ and brought to Samarqand were some artisans who manufactured paper in Samarqand; then it was manufactured on a wide scale and passed into general use, until it became an important export commodity for the people of Samarqand. Its value was universally recognised and people everywhere used it." Al-Thaʿālibī, *Book of Curious and Entertaining Information: The* Laṭāʾif al-maʿārif *of Thaʿālibī*, tr. Clifford E. Bosworth (Edinburgh: Edinburgh University Press, 1968), 140.

documentation by far. However, this radically changed within just a few decades, and by the mid-tenth century, paper documents almost entirely superseded papyrus.[98] Although her dataset should be approached cautiously given the larger focus that researchers have generally placed on documents from the first Islamic centuries, which results in distribution biases, it indirectly supports the place of Khurāsān as an "innovation chamber" during this period and the east-west directionality of scribal innovation in the early Islamic world. Depending on our interpretation, this was a world in which Egypt either "lagged behind" or was "resilient enough" to resist the absorption of paper-making technologies, script changes, and scribal terminology for much longer than did other regions within the empire.

For historians, the sluggish adoption of these innovations in the Egyptian context should not surprise, nor does it represent an all-too-unfortunate historical circumstance. Egypt had been the center of papyrus production for centuries, with much of its economy and the document-thirsty Byzantine and Islamic states relying on the benefits of the papyrus plant. John Gaudet estimates that during Roman times, when papyrus production in Egypt was at its maximum, the papyrus industry may have produced as many as 1.8 million sheets per year.[99] In the centuries after the Arab Muslim conquests, these patterns only gradually changed. Established patterns of the Egyptian province serving as the papyrus and grain chamber of the empire continued into the Umayyad and Abbasid periods, with annual portions of cereals now diverted to Medina and Mecca.[100] Only with the ascent of the Tulunids and Fatimids do we observe a reorientation of

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98 Eva Mira Grob, *Documentary Arabic Private and Business Letters*, 3–4.

99 John Gaudet, "Papyrus and the Pharaoh's Treasure: An Ecological Perspective," *Near Eastern Archaeology* 82, no. 4 (2019), 248–255, at 253.

100 Philip Mayerson, "The Role of Flax in Roman and Fatimid Egypt," *Journal of Near Eastern Studies* 56, no. 3 (1997), 201–207, at 203–204.

agricultural production towards the cultivation of flax—used for clothing, linen, and, of course, paper—and the Egyptian economy's growing reliance on it as a cash crop.[101] The social status and, indeed, veneration of papyrus as a superior writing support would have most certainly functioned as compounding factors slowing down the introduction of a material that required altogether different agricultural priorities and human skillsets. That said, the relatively late introduction of paper and scribal innovations in Egypt is itself indirect evidence of the "resilience" of Egyptian scribal culture and the need of the Arab Muslim ruling elite to yield to established social expectations among its predominantly Christian populace. This resilience should not be confused with a claim to the blind adaptation of Byzantine legal formulae or substantive law, but rather as a tool and conscious strategy on the part of the Islamic local and imperial administration to garner consensus from the populace by adhering to and upholding long-established cultural values of documentation and procedure.

3.5.2 The Structure of Quittances

Daaïf has closely analyzed the linguistic structure of quittances, isolating three forms—minimal, standard, and maximal—that vary in their degrees of formulaic complexity and attention to detail.[102] P.Michael. B 111, a second/eighth-century private quittance for a Jewish woman named Shaʿyūn, contains many of the components typical of quittances (see Table 2).[103]

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[101] Yaacov Lev, "The Fāṭimid Caliphate (358–567/969–1171) and the Ayyūbids in Egypt (567–648/1171–1250)," in *The New Cambridge History of Islam*, ed. Maribel Fierro (Cambridge: Cambridge University Press, 2010), 201–236, at 201.

[102] Lahcen Daaïf, "La *barāʾa*," 16–20.

[103] The confession of individuals is not consistently mentioned in these documents. Muslims are rarely identified as such, and Christians and Jews only occasionally, as seen in this example.

Table 2. Components of P.Michael. B 111.

l.	English	Arabic
1	In the name of God, the merciful and compassionate	بسم الله الرحمن الرحيم
2	Quittance for Shaʿyūn, the Jew	براة لشعيون اليهودي
3	for 10 Dinars	من عشرة الدنانير
4	which she paid to Yazīd b. Yazīd	دفعها الى يزيد بن يزيد
5	And these are the 10 that	وهي العشرة التي
6	she owed Yazīd. There remains	ليزيد عليه ولا تبقا
7	not less or more to him.	عليه لا قل أو جل به
8	(1) ʿAbd al-ʿAzīz witnessed all of it.	وشهد على ذلك عبد العزيز لكله
9	From ʿAbd al-ʿAzīz who wrote his testimony with the stroke of his hand.	من عبد العزيز كتب شهادته بخط يده
10	(2) And Ḥamād (Jamāl?) b. ʿAwf.	وحماد [جمال؟] بن عوف
11	Yazīd b. Yazīd b. Faḍāla wrote	وكتب يزيد بن يزيد ابن فضالة
12	on his order and in his presence.	بأمره ومحضره
13	(3) Muḥammad b. Sālim was witness to it.	ومحمد بن سالم شهد عليه

Legend:

Invocation | Document type | Debtor | Creditor
Payment delivery | Payment amount | Witness clauses | Restriction clause

After the invocation, the document self-referentially states what type it is, as is common in Arabic documents from this period. The *barāʾa* formula used here continues with the preposition (*ḥarf al-jārr*) *li* followed by the name of the debtor and the amount paid. In our corpus of

documents, the arrangement of this formula varies, at times beginning with the mention of the creditor, especially in official quittances where the issuing authority will be stated before the debtor. In Shaʿyūn's quittance, the name of the creditor Yazīd b. Yazīd only appears after a confirmation that the payment was delivered. As Geoffrey Khan notes, these payment delivery clauses were an integral part of Arabic legal documents, and in Arabic sales documents, they are often followed by extensive conveyance clauses confirming that a buyer received the transacted property (*tasallama* or *qabaḍā*) and to the effect that the seller may not make any claims on the buyer after that.[104] In the above case, a restriction clause follows, limiting any further claims of Yazīd. Because Shaʿyūn's quittance records a private settlement of debt, it is concluded by three witness statements, not all of which are fully legible. It is clear that witnesses typically signed these documents themselves, as indicated by the phrases *kataba shahādatahu bi-khaṭṭ yadihi* or *ʿalā nafsihi*.[105] When a witness was illiterate, another person would write the testimony in their stead, identifying themselves by name, indicating that illiteracy was not a reason to be excluded from testimonies and documentation.[106]

3.5.3 The Lifecycle of Quittances

The ecology and lifecycle of quittances significantly differ from the promissory notes (*dhikr ḥaqq*s), which—as we saw in the previous section—were voided after being cashed, indicated by scribes wiping out and making illegible essential components of these documents. In

[104] Geoffrey Khan, *Arabic Legal and Administrative Documents*, 22–25

[105] See, for example, the quittance from 88/707 issued for the freed slave woman Jamīla, which employs the phrase *ʿalā nafsihi*, indicating the witness wrote the testimony himself; P.KhanLegalDocument.

[106] See, for example, P.David-WeillLouvre 16 (156/773), where the testimony of Yasār b. Wāqid al-ʿAbdī is written by a certain Piheu (note that the name is hardly legible). In CPR XXVI 37=PERF 757 (771–830), the testimonies of the second and third witness are written by the first witness, who identifies himself as writer in their stead.

comparison, a quittance only acquired its probative value and social utility after a financial transaction had been completed, functioning as a written artifact and afterlife to the previous existence of legal relations between people. Thus, we do not find in quittances the visual marks of attempted erasure and unless damaged through the ravages of time, they typically preserve the names of the creditors, debtors, witnesses, and information about the financial transaction that took place. Quittances were, without a doubt, issued for debtors, not creditors. On the one hand, this can be inferred from the utility these documents would have had for debtors as proof of release from a legal obligation, shielding them from malicious creditors (including state officials) intent on demanding payment of debts that had already been settled. On the other, the formulae of these documents and diplomatic evidence support the notion that these documents were destined to linger and dust in the homes of ordinary Egyptians.

The risk of double taxation and the doings of malicious creditors and tax officials was a social reality that did not escape Islamic state administrators, and against this risk they leveraged "documentality" (i.e., the written nature of legal documents) to induce fiscal and judicial certainty for ordinary people. Quittances issued by the state for the payment of taxes were typically preceded by the issuance of an *entagion*, an official note by a state authority demanding the payment of taxes by an individual or a particular group of people, such as a village or a monastery.[107] The *entagion*-quittance procedure constituted the continuation of a well-established practice from Byzantine times. Until the second/eighth century, many of these *entagion*s, as well as the quittances themselves, continued to be issued in Greek or Coptic,

[107] The tax exemption of monks ended under the governor al-Asbagh (r. 74/693–4 until 86/705); Petra M. Sijpesteijn and Sarah Clackson, "P.Clackson 45–46: A Mid-Eighth-Century Trilingual Tax Demand Related to the Monastery of Apa Apollo at Bawit," in *Monastic Estates in Late Antique and Early Islamic Egypt: Ostraca, Papyri, and Essays in Memory of Sarah Clackson (P.Clackson)*, ed. Anne Boud'hors, James Clackson, Catherine Louis, and Petra Sijpesteijn (Cincinnati: American Society of Papyrologists, 2009), 102–119, at 105.

sometimes as bilingual or even trilingual documents.[108] It is significantly noteworthy that in some *entagion*s, the authority issuing the order for the payment of taxes goes to the lengths of reminding taxpayers of the social value of documentality and the paramount importance of receiving an officially sealed quittance. In the fragmentary trilingual document P.Clackson 45 from 136/753, the Arab pagarch Hishām b. Ziyād advises the monks at Apa Apollo not to make any tax payment without being issued a formal quittance:

> He [the governor ʿAbd al-Malik b. Yazīd] has assigned to you as your head-tax (*jizyat raʾsika*) for the year 136 two Dinars in coin. So pay it to the collector (*qubbāl*) of your village in six installments. And let him write [for you a receipt (*barāʾa*)] for this, [sealing it] with his seal (*bi-khātamihi*) and do not pay to him anything except this … And if … you should definitely write that he take … in your village with *jizya*, which you sent or someone else. And if he receives from you what he deserves ... to it. And if he refuses to write it [the quittance] for you, then do not pay him anything but come to me and I, without … for you something else (than what) I claimed from someone who did not come to me from him in a good way.[109]

The significance Hishām attaches to the issuance of a quittance for the monks is grounded in the interwoven relationship between justice and documentality—a legacy that, of course, was much older than the project of Islamic governance but that by then constituted an effective means to enhancing the Islamic state's judicial decorum and averting the frustrations of commoners. For the ordinary person, as for the monks at Apa Apollo, the documentation of tax payments in

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[108] For Greek-Arabic bilingual quittances, see, for example, P.StoetzerSteuerquittungen 2=PERF 573 from 57/677 and P.StoetzerSteuerquittungen 1=PERF 585 from 75/694. Both of these constitute the earliest quittances using Arabic.

[109] P.Clackson 45, ll. 5–11, translated by Sarah Clackson and Petra Sijpesteijn (translation slightly modified).

written form came to constitute a vital instrument for securing their livelihoods against unwarranted claims in a world where state authority and interference rested on a precarious alliance between the state and a largely still unchecked cohort of local officials. As discussed in the previous chapters, these local figures had intimate knowledge of rural society—of tax collection, the provisioning of goods, and mechanisms of control—turning them into ideal partners for the administration of Islamic justice. And yet, the far-ranging judicial and executive powers they had enjoyed in the sixth century (and which they largely continued to enjoy despite now being accountable to a Muslim governor) made them prone to fiscal and judicial abuses of the local populace. That we hear a Muslim pagarch, who was responsible for the collection of taxes through lower officials and directly accountable to the Muslim governor (*amīr*), caution a group of monks to make payment only in return for a written document is symptomatic of this precariously crafted alliance and the fact that the official quittance was more than a receipt. More neatly, the quittance embodied the potentiality of a claim that ordinary Egyptians could now advance to the Muslim governor to intercede on their behalf against local power abuses. In other words, the Fusṭāṭ-based political elite's presence was significant insofar as it restructured rural power relations by furnishing the possibility for rural Egyptians to circumvent the much-despised local officials. The quittance, which became increasingly issued in Arabic, functioned as a useful reminder and physical artifact attesting to this newly crafted set of social and political relations that gradually shifted accountability toward an emerging class of Muslim professionals.

3.5.4 Quittance Registers?

Three of the documents of the corpus of Egyptian quittances from the first two Islamic centuries contain some evidence that there may have existed quittance registers (in analogy to the debt

registers identified by Tillier and Vanthieghem). Of these three documents, I will mostly exclude P.Christ.Musl. 11–14, because it contains several features that give rise to the suspicion that it may have been a writing exercise. P.Khalili I 9 a+b, which constitute two fragments belonging to the same document dating to 104/723, follow the typical linguistic structure of quittances. However, the difference is that this papyrus contains two separate quittances ("text units") that are written one after the other. On paleographic grounds, we can establish that a different scribe wrote them with relative certainty. Both were issued on a Saturday in the year 104, but they may not have been penned on the same day, as the second scribe mentions that the quittance was written when "three days remained of Shawwāl (=Shawwāl 26)." That said, the timely proximity or a shortage of alternative writing supports may have influenced the decision to append the second quittance. However, the more decisive factor appears to be that both quittances were issued to the same debtor, ʿAbdallāh b. Ḥanān. The first issued for his provision of 13 milch-ewes via a courier; the second, for his settlement of a debt of one Half-Dinar to a certain Sulaymān b. Aḥwaz. The witnesses differ in both cases. Similar to the way moderns used to keep tax documents and bank account statements in file organizers (before the widespread use of digital filing systems), it is reasonable to assume that ordinary Egyptians kept registers of debts they had paid off. They did *not* write these documents—at least not that we know. But preserving them was crucial to protect oneself from malicious creditors and double taxation.

Further support for the hypothesis that ordinary people kept such registers comes from P.Vindob. A.P. 916, which is a long vertical scroll (*rotulus*) from the early 800s that consists of five quittances. Like P.Christ.Musl. 11–14 mentioned in the introduction, this papyrus had to succumb to papyrological typologies, being sliced up into five textual units, each of which now lives a separate life in the APD. All five quittances were issued to two men named ʿAbd Allāh b.



Fig. 16. P.Vindob. A.P. 916 recto (left) and verso (right): Rotulus containing five quittances issued to ʿAbd Allāh and Isḥāq. © Österreichische Nationalbibliothek, Papyrussammlung. Reproduced by kind permission of the Österreichische Nationalbibliothek, Papyrussammlung.

Suhayl and Isḥāq b. Sawwār, who engaged in various transactions with a woman named Sumayya bt. al-Ṣabāḥ between the years 185/801 and 190/806. The life of Sumayya had taken an unfortunate turn when her husband passed away. Left with her three children, Yaʿqūb, Isḥāq, and

Baraka, Sumayya was legally entitled to receive support (*nafaqa*) for them from her deceased husband. The document reads like a biography of Sumayya's life: Year after year, it chronicles the income paid to her through the executors of her husbands's will, from regular provisions made for her children to compensations received for nursing her youngest son Isḥāq.[110] The document is sheerly impressive, not just for the social history it conveys, but because the *rotulus* extends to almost half a meter (42 cm=16.5 inches) in length and 19 cm (=7.5 inches) in width. The original document must have been even longer since the text on the recto is cut off. The transactions in this document were recorded by different scribes, with each quittance carefully separated from the next with wide blank spaces (see Fig. 16). While wasteful paper management is usually associated with official decrees and petitions, which typically leverage extravagant line spacing and unwieldy physicality for the impression of majesty, our *rotulus* constitutes a fine example of an everyday and less spectacular—though, not less important—document adhering to such lavish standards.[111] But the purpose of it all was different from the majestic petitions and decrees: For ʿAbd Allāh and Isḥāq, the minute recordkeeping of these transactions functioned as proof that Sumayyas's legal entitlements had been fulfilled. We can imagine how, year after year, the document was recovered from its storage place, only to be inscribed with the next payment they made.

While more such quittance registers will need to be identified in the papyrological record, the examples above dovetail with the culture of recording legal acts and preserving Arabic documents that had become the hallmark of justice in the early Islamic period.

[110] P.Vindob. A.P. 916=Chrest.Khoury II 10+Chrest.Khoury II 11+Chrest.Khoury I 49+Chrest.Khoury II 13+Chrest.Khoury II 14.

[111] For the use of extravagant layout and line spacing in Fatimid decrees, see Marina Rustow, *The Lost Archive*, 143–153.

3.5.5 Seals and Validation Techniques

A diplomatic analysis reveals that techniques for validating and verifying official quittances needed to be found, especially in the absence of witness attestations, which fulfilled that function in private property transactions. The use of seals and clay bullae for the validation of documents was already ubiquitous in the Middle East long before the Arab Muslim conquests, as evidenced by the survival of Sasanid, Bactrian, Sogdian, and South Arabian seal impressions, stamp, and ring seals. Although the material record of South Arabian seals is sparse, some of those preserved contain figurations of gods, humans, and animals.[112] Despite the ubiquitous nature of sealing practices in the pre-Islamic Middle East, the practice was not widespread in Roman and Byzantine Egypt. Clay seals are attested on Greek and Demotic letters well into the Ptolemaic period, but they almost completely disappeared after, being replaced by a saltire pattern or cross (*decussis*) where one would expect the seal.[113] As Petra Sijpesteijn notes, Muslim chancery practice appears to have closely followed Sasanid conventions of issuing seals, specifically the use of single-side lead seal imprints.[114] This raises the question of whether Arab Muslims encountered Sasanid seals in Egypt as a legacy of the short-lived Sasanid conquests of Egypt in the 610s or whether that practice—like scribal and writing support innovations—gradually spread westwards through Iran, Mesopotamia, and the Levant. Regardless of the direction in

[112] For these seals, see the Corpus of South Arabian Inscriptions: https://dasi.cnr.it/index.php?id=42&prjId=1&corId=0&colId=0&navId=0. Specifically, Altounyan 1, AO 2227, and AO 2343.

[113] Katelijn Vandorpe, "Seals in and on the Papyri of Greco-Roman and Byzantine Egypt," in *Archives et sceaux du monde hellénistique: Archivi e sigilli nel mondo ellenistico: Torino, Villa Gualino 13–16 Gennaio 1993*, ed. Marie-Françoise Boussac and Antonio Invernizzi (Athens: École Française d'Athènes, 1996), 231–291, at 241. See also Petra Sijpesteijn, "Expressing New Rule: Seals from Early Islamic Egypt and Syria," *The Medieval Globe* 4, no. 1 (2018), 99–148, at 126.

[114] Petra Sijpesteijn, "Expressing New Rule," 126.

which Sasanid sealing practices spread, seal imprints generally served two functions in Arabic documents: First, they are markers of authority, imbuing documents with official charisma and validity. In official payment orders (*entagia*) and quittances (*barāʾāt*), the seal imprint functioned, on the one hand, as a mechanism to symbolically communicate the authority that stood behind the request for the payment of taxes and, on the other, to protect the populace from double taxation and fraudsters impersonating tax officials. Second, seals were frequently used to conceal the contents of a document from unwanted eyes, allowing correspondents to maintain a level of privacy and discretion in their communications. When rolled up and sealed, the clay or wax seal of a document had to be cracked in order for its contents to become visible, revealing to the addressee that the privacy of the correspondence was breached.[115] It should be noted that the presence of seal imprints on quittances would have been particularly important for illiterates—a point I will touch on shortly—as they visually aided ordinary people in recognizing a document's origins from a place of authority and state power.[116]

It is important to note that the Islamic tradition itself attaches great significance to the *khātam* of the Prophet Muḥammad: his figurative status as the "seal" of prophets signaling the

[115] Note Ibn Khaldūn's detailed description of sealing documents: "Letters are tied either by piercing the paper and tacking (the letter) together (with a string), as is the custom of the secretaries of the Maghrib, or by gluing the top of the sheet to the part of the letter over which the top is folded, as is the custom of the people in the East. Over the place where the letter is pierced and tacked, or where it is glued, a signature is placed. It guarantees that the letter has not been opened and that its contents have not been read. The people of the Maghrib place a piece of wax where the letter is pierced and tacked, and seal it with a seal upon which some signature is engraved for use in sealing, and the engraving is impressed upon the wax. In the old dynasties of the East, the place where the letter was glued was also sealed with an engraved seal that was put into a red paste of clay prepared for that (purpose). The engraving of the seal was impressed upon the clay. Under the ʿAbbâsid dynasty, this clay was called 'sealing clay' (*ṭīn al-khatam*). It was imported from Sîrâf. It seems that this clay was restricted to the purpose of sealing;" Ibn Khaldūn, *The Muqaddimah*, 2:64–65.

[116] In the early and medieval Islamic period, officials did not only use seals for validating and authorizing documents. They were also employed for securing vessels and containers and to determine measurements as evidenced by the preservation of the many translucid glass seals denoting capacity units at the Louvre; Louvre Collections, https://collections.louvre.fr/en/recherche?q=estampille+arabe, accessed December 5, 2024.

finality of prophethood, as well as the actual signet ring worn by him—both indicated by the same Arabic term.[117] The Prophet is said to have originally worn a signet ring made of gold before abandoning it with the passing of his ban on gold rings, silk, and brocade in the year 7/628.[118] The ring made of silver worn by the Prophet after that is described in the tradition variously as having contained an inscription (*naqsh*), either carrying the words "In the name of God, Muḥammad is the Messenger of God" or "Muḥammad is the Messenger of God."[119] The Prophet Muḥammad likely wore the seal on his little left finger (*fī khinṣirihi al-muqaddas fī yasārihi*), and as indicated by the abundance of traditions on the wearing of seals by important individuals, it was common for people of rank to wear them.[120] The legal debate that later

[117] One should note here the debate about the Prophet Muḥammad being "the seal of the prophets (*khātam al-nabīyīn*)" and its potential implications for the understanding of early Islamic sealing practices. Hartmut Bobzin argues that the Qurʾānic portrayal of Muḥammad's prophethood typologically associates him with Moses, whose work of prophecy he is presented as completing. The notion of the "seal of the prophets" gestures towards the finality of prophethood in the person of Muḥammad and his confirmation of the prophecies before him. Hartmut Bobzin, "The 'Seal of the Prophets': Towards an Understanding of Muhammad's Prophethood," in *The Qurʾān in Context: Historical and Literary Investigations into the Qurʾānic Milieu*, ed. Angelika Neuwirth, Nicolai Sinai, and Michael Marx (Leiden and Boston: Brill, 2010), 565–583. By analogy, the seal attached to documents may be interpreted as (1) expressing the final, completed character of a document and (2) serving to validate its contents. Furthermore, in the early Christian tradition, baptism is associated with the notion of "sealing." See, for example, Percy W. Evans, "Sealing as a Term for Baptism," *Baptist Quarterly* 16, no. 4 (1955), 171–175; and Karl O. Sandnes, "Seal and Baptism in Early Christianity," in *Ablution, Initiation, and Baptism: Late Antiquity, Early Judaism, and Early Christianity*, ed. David Hellholm, Tor Vegge, Øyvind Norderval, and Christer Hellholm, 3 vols. (Berlin: De Gruyter, 2011), 2:1441–1481.

[118] Abū Dāwud al-Ṭayālisī, *Musnad*, ed. Muḥammad b. ʿAbd al-Muḥsin al-Turkī, 4 vols. (Dār Hajar, 1999), 1:304; Ibn Saʿd, *al-Ṭabaqāt al-kabīr*, ed. ʿAlī Muḥammad ʿUmar, 11 vols. (Cairo: Maktabat al-Khānjī, 2001), 1:404ff; and James Allan and Dominique Sourdel, "Kẖātam, Kẖātim," in *Encyclopaedia of Islam New Edition Online*, ed. Peri Bearman (Leiden: Brill, 2012). For the dislike of gold rings by the Caliph ʿUmar b. al-Khaṭṭāb, see Abū Muḥammad al-Miṣrī, *al-Jāmiʿ fī al-ḥadīth*, ed. Muṣṭafā Ḥasan Ḥusayn Muḥammad Abū al-Khayr (al-Riyāḍ: Dār Ibn al-Jawzī, 1995), 690; ʿAbd al-Razzāq al-Ṣanʿānī, *al-Muṣannaf*, 10 vols. (Dār al-Taʾṣīl, 2013), 10:19–20; and Ibn Saʿd, *al-Ṭabaqāt al-kabīr*, 5:169.

[119] A tradition going back to the companion Anas b. Mālik describes these words as having been arranged in three lines (*asṭur*): *Muḥammad – rasul – Allāh*; Ibn Saʿd, *Al-Ṭabaqāt al-kabīr*, 1:408. After the Prophet's death, his ring supposedly passed on to Abū Bakr, then ʿUmar b. al-Khaṭṭāb, and then ʿUthmān, who, as the tradition has it, dropped the ring in the Well of Arīs, from which it could not be recovered. See also Hadas Hirsch, "The Prophet Muḥammad's Ring: Raw Materials, Status, and Gender in Early Islam," *Journal of Arabian Studies* 11, no. 2 (2021), 314–328. It is noteworthy that some Umayyad Bronze and Gold coins carry the same inscription.

[120] Ibn Ḥazm, *Jawāmiʿ al-sīra wa-khams rasāʾil ukhrā*, ed. Iḥsān ʿAbbās (Dār al-Maʿārif, 1950), 28.

developed around what types of rings and jewelry are subject to the alms tax (*zakāt*) is particularly instructive for understanding the function of the Prophet's signet ring. Whereas jewelry worn by men was generally considered taxable, the tradition carved out an exception for silver signet rings, ornaments on the sword, Qurʾān copies, and belts.[121] The logic inherent in this conceptual distinction appears to be the function of these items not as decorative attires but as items primarily worn for a practical purpose. Despite the pious connotations of the Prophet's signet ring and its status as an emblem of power, it primarily seems to have served the practical purpose of validating documents. Ibn Khaldūn makes this connection between signet rings and documentary culture explicit:

> (Use of) the seal is one of the government functions and a royal office. The sealing of letters and diplomas was known to rulers before and after Islam. It has been established in the two *Ṣaḥîḥ*s that when the Prophet wanted to write to the Byzantine Emperor, he was told that the non-Arabs accepted only sealed letters. Thus, he took a silver seal (ring) and had the following legend engraved upon it: "Muhammad, the Messenger of God."[122]

This usage of the signet ring to validate documents might also explain the Prophet's preference for wearing it on the little finger. One can imagine the stinging pain of impressing the ring onto hot wax if worn on the index, middle, or ring finger, which would likely result in skin contact with the substance; most human thumbs are too large to wear ordinary rings; and the little finger has the advantage that the hand can be safely pointed away when using it for seal impressions.

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[121] Al-Shāfiʿī, *al-Umm*, 8 vols. (Beirut: Dār al-Fikr, 1983–1990), 2:44; al-Muzanī, *Mukhtaṣar*, ed. Abū ʿĀmir ʿAbdallāh Sharaf al-Dīn al-Dāghistānī, 2 vols. (al-Riyāḍ: Dār Madārij li-l-Nashr, 2019), 1:275; Ibn ʿAbd al-Barr, *al-Istidhkār*, ed. Sālim Muḥammad ʿAṭā and Muḥammad ʿAlī Muʿawwaḍ, 9 vols. (Beirut: Dār al-Kutub al-ʿIlmīya, 2000), 3:152; Ibn Rushd "al-Jadd," *al-Muqaddimāt al-mumahiddāt*, ed. Muḥammad Ḥajjī, 3 vols. (Beirut: Dār al-Gharb al-Islāmī, 2010), 1:288.

[122] Ibn Khaldūn, *The Muqaddimah*, 2:60–61, translated by Franz Rosenthal.

There are gaps in reconstructing the precise development of sealing practices in the Islamic empire. As noted above, various reports suggest that the Prophet himself acknowledged the need for seals on official documents. Ibn Khaldūn credits Muʿāwiya with the establishment of a ministry for seals (*dīwān al-khātim*), which he describes as a physical place of secretaries (*makān julūs hāʾulāʾi al-kuttāb*) charged with writing the ruler's letters and sealing them, either by adding a signature or tying them (*bi-l-ḥazm*).[123]

In our corpus of quittances, we find several seal imprints preserved on both quittances issued by state authorities without witness signatures and those issued privately (see Fig. 17). In P.GrohmannProbleme III 18, the seal imprint mentions the name of the tax collector Yūnus b. ʿAbd al-Raḥmān. In the private quittance, CPR XXVI 37, the seal imprint appears to state the name ʿAbdallah, likely the scribe of the document, as none of the witnesses or parties involved in the transaction carry that name. In P.Utah 1564, the seal imprint does not appear to contain any writing. However, it may have been damaged over time. The Khurāsān quittances analyzed by Geoffrey Khan almost all contain clay bullae at the end of the document as a form of validation.[124] Petra Sijpesteijn notes that the earliest Arabic seal imprints from Egypt consistently mention the name of the individual sealing the document rather than referring to the state or specific institutions. This practice, she argues, ties the power of the seal to the personal authority and social status of its owner.[125] This observation aligns with the earliest material record of Arabic clay and bronze seals from Egypt at the British Museum: These seals feature the name of

[123] Ibid., 2:64.

[124] Geoffrey Khan, *Arabic Documents from Early Islamic Khurasan,* 27.

[125] Petra M. Sijpesteijn, "Seals and Papyri from Early Islamic Egypt," in *Seals and Sealing Practices in the Near East*, ed. Ilona Regulski, Kim Duistermaat, and Peter Verkinderen (Orientalia Lovaniensia Analecta, 219, Leuven 2012), 171–182, at 175.



Fig. 17. Clay seal imprints on CPR XXVI 37=PERF 757 (top), P.GrohmannProbleme III 18=PERF 670=Nilus IV 21=Nilus XV 6 (bottom left), and P.Utah 1564 recto (bottom right). © Österreichische Nationalbibliothek, Papyrussammlung, and the University of Utah. Reproduced by kind permissions of the Österreichische Nationalbibliothek, Papyrussammlung (P.Vindob. A.P. 3346 and 644), and the University of Utah, Marriott Library.

the seal owner in angular script, in at least three cases with the addition of a six-pointed star at the middle of the seal.[126] Sijpesteijn further notes that in contrast to Sasanid and Byzantine seals,

[126] See seals 1–13 in Venetia Porter, *Arabic and Persian Seals and Amulets in the British Museum* (London: British Museum, 2017 [2011]), 27–30.

which typically mention the titles of individuals in addition to their names, Arabic seals feature only personal names and sometimes a pious formula.[127]

That the earliest Arabic seals were issued in the name of individuals should not surprise. The presence of seal imprints on documents, and specifically quittances, embodied the physical extension of the authority figure who issued them, reminding onlookers of the document's connectedness to the personhood and charismatic authority of the sealer. The rationale of sealing practices echoes the fundamental logic of administrative documents and justice in this period: Their validity and authenticity were ensured not by abstract reference to the state or its institutions but by the interpersonal networks through which they had traveled and which their material form came to embody.

The presence and history of seals in Arabic official documents are crucial to understanding how and why later Muslim jurists developed their aversion to documents. Seals had to be legible amongst administrative cadres, officials, judges, and others handling documents, as they were crucial for recognizing that these documents originated from an authoritative source and were thus enforceable. In the absence of witness testimonies in official documents, administrators placed a premium on seal imprints, which served as the primary safeguard against forgery. The burden of authenticity placed on seals was only lifted by the late eighth century, when, according to long-form sources, courts began to rely on professionally accredited witnesses (*ʿudūl*).[128] These witnesses would testify to a document's validity by adding separate witness clauses. The Muslim judge al-Mufaḍḍal b. Faḍāla is credited with the introduction of this professional cadre during his second term (174/790–177/793). Accordingly,

[127] Petra Sijpesteijn, "Expressing New Rule," 131–132.

[128] See Geoffrey Khan, "The Opening Formula," 34; Petra Sijpesteijn, *Shaping a Muslim State*, 111.

he charged his scribe Falīḥ b. al-Qamarī with the role of interviewing (*ṣāḥib al-masāʾil*) appropriate candidates for the job, who examined whether they would defy bribes and the like.[129] The institutional rationale of employing professional witnesses was to counterbalance the effects of a documentary culture that exclusively relied on seals as a form of administrative validation—a problem that became ever more urgent with the administration's expansion and increasing imperial communication between different regions of the Islamic empire. A tradition going back to Mālik b. Anas (d. 179/795) puts the issue in a nutshell:

> Ibn Nāfiʿ reported from Mālik: It was old practice to accept seals (*ijāzat al-khawātim*). The Muslim judge would write a letter for a person to another judge and add nothing but his seal, which would be accepted. But when suspicion arose, a testimony on the judge's seal was introduced to confirm its authenticity.[130]

Several traditions suggest that the increasing demand for additional methods of validating documents was closely tied to the challenges of long-distance communication and that officials balanced the authority of seals against the reliability of witness attestations. Ultimately, the pendulum swung in favor of prioritizing witness testimonies, as evidenced by another tradition going back to Mālik:

> I [Saḥnūn] asked: "Regarding the letter of a Muslim judge to another judge, does Mālik find it permissible to accept a document without the judge's seal but witnesses that testify that it is indeed the judge's document?" Ibn al-Qāsim responded: "I cannot give a definitive position on the issue right now. But if the witnesses testify to the contents of

[129] Al-Kindī, *Kitāb al-wulāh wa-kitāb al-quḍāh*, 278. The same judge also appears in an Arabic papyrus; P.TillierFustat 2. See Mathieu Tillier, "Deux papyrus judiciaires de Fusṭāṭ (IIe/VIIIe siècle)," *Chronique d'Égypte* 89 (2014), 412–445.

[130] Ibn Farḥūn, *Tabṣirat al-ḥukkām fī uṣūl al-aqdīya wa-manāhij al-aḥkām*, 2 vols. (Maktabat al-Kullīyāt al-Azharīya, 1986), 2:26.

> the document, even if the seal (*ṭābiʿ*) is broken or if the judge didn't seal it at all, the document is valid as long as the witnesses testify to its content. This is because, regarding the seal, Mālik said: 'If the witnesses don't testify to what is in the document, the seal itself is not to be relied upon.'"[131]

As stated earlier, witness attestations had been common in Arabic private quittances from the beginning. Seals, of course, never disappeared, as evidenced by their presence in much later Fatimid, Ayyubid, Mamluk, and Ottoman documents. But they did not continue to have the function they did in this early period. In the third/ninth century, the official quittance (*barāʾa*) begins to disappear from the Egyptian documentary record, being replaced by a new type of document that begins with *addā* (lit. "he paid"). This type of document uses a different set of formulae and likely spread from Khurāsān, where it is already attested in the mid-eighth century.[132] The study of this type of document in comparison with the *barāʾa* quittances will shed important light on the development of validation techniques for official documents in the early Islamic empire. It is likely not accidental that at least some of the *addā* documents were issued in the presence of multiple officials or witnesses.[133]

Lastly, it should be noted that in the Khurāsān corpus of documents, most of which have clay bullae attached to the end of the document, the bulla typically features a physical mark of

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[131] Saḥnūn b. Saʿīd al-Tanūkhī, *al-Mudawwana al-kubrā*, 4:522. Unsurprisingly, a plethora of traditions exists across the later Islamic legal schools (*madhāhib*) emphasizing the canonical viewpoint that witness testimonies are to be prioritized over seals. See, for example, Abū Yūsuf, *Ikhtilāf Abī Ḥanīfa wa-Ibn Abī Layla*, ed. Abū al-Wafāʾ al-Afghānī (Maṭbaʿat al-Wafāʾ, 1938), 159; al-Shāfiʿī, *al-Umm*, 7:60, 160; Ibn al-Mundhir, *al-Ishrāf ʿalā madhāhib al-ʿulamāʾ*, ed. Saghīr Aḥmad al-Anṣārī Abū Ḥammād, 10 vols. (Raʾs al-Khayma: Maktabat Makka al-Thaqāfīya, 2013), 4:200; and Ibn Abī Zamanīn, *Muntakhab al-aḥkām*, ed. ʿAbdallāh b. ʿAṭīya al-Raddād al-Ghāmidī, 2 vols. (al-Maktaba al-Makkīya, 1998), 2:219.

[132] Geoffrey Khan, *Arabic Documents from Early Islamic Khurasan,* 29.

[133] See, for example, CPR XXI 41=PERF 726; CPR XXI 42=PERF 737; CPR XXI 46=PERF 746; and P.Steuerquittungen 4.

witnesses in the form of a seal impression or a fingernail imprint.[134] This is significant because it indicates a mixture of both forms of validation, where the witness attestation itself is outsourced from the document and incorporated into the material form of the seal imprint.

By the end of the eighth century, the ancient legacy of the seal, which had been central to validating official documents during the first Islamic century and a half, began to pose several interconnected problems for the Islamic state: The personalized nature of seals, which conceptually linked justice to individual relationships, and the Muslim elites' veneration of the seal—after all, the Prophet himself had been credited with introducing the practice to Arabic documentary culture despite its much older origins—stood in stark contrast to the empire's pressing need for validation methods that could accommodate the realities of geographic mobility, forum-shopping, and an increasingly centralized system of justice. The introduction of the witness system could solve only some of these problems.[135] It certainly kept the impression that justice remained tied to individual networks of people, all of whom now needed to testify to the accuracy of documents. But it also changed the scribal logistics underpinning document validation, and the visual layout of documents.

The emergence of witnessing practices in the Islamic scribal tradition is often presented as a natural outgrowth of the Qurʾān, assumed to have shaped Islamic judicial practices from its beginnings. The story recovered here indicates a rather different historical development by using documents and reading the long-form sources "against the grain:" Despite the presence of

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[134] Geoffrey Khan, *Arabic Documents from Early Islamic Khurasan,*58.

[135] Wael Hallaq observes a relaxation of the witness requirement among fifth/eleventh-century Mālikīs in al-Andalus and the Maghrib. Here again, the authentication of the document by the mere handwriting of the judge (*al-shahāda ʿalā al-khaṭṭ*) and presence of the seal was considered sufficient for its acceptance by other judges. Hallaq incorrectly notes "that this had never been the case before;" Wael Hallaq, *Authority, Continuity and Change in Islamic Law* (Cambridge: Cambridge University Press, 2004 [2001]), 209–213.

witness statements in early documents, sealing practices, at least initially, were considered the primary and more secure form of official document validation. But they were not suitable (at least not exclusively) as the empire consolidated over vast territories. A careful reading of the long-from sources shows that Muslim jurists themselves acknowledged the origins of the professional witness system in response to the challenges of imperial communication and mobility and its replacement of the reliance on seals alone. In short, it's not a chicken-and-egg dilemma: The significance of seals preceded that of witnesses.

3.5.6 Illiteracy

How many quittances did ordinary people possess? And could they read them? The claim that ordinary people were issued documents, and large amounts of documents at that, inevitably raises the question of literacy and preservation. Scholars have noted that literacy rates in the ancient world may have been higher than customarily thought, possibly in the two-digit realm. William Harris's foundational study suggests a literacy level of 5–10% for fifth-century Attica and a more optimistic number for certain cities like Teos in Rhodes, where literacy likely reached 20–30%. On average, though, the Roman empire probably did not have a populace of more than 15% that could read and write.[136] Papyrologists have tried—at times optimistically—to infer literacy rates in Egypt through the systematic analysis of autographs in written contracts.[137] Greg Woolf highlights the shortcomings of the orality/literacy dichotomy in much

[136] William V. Harris, *Ancient Literacy* (Cambridge: Harvard University Press, 1989), 114, 141, 328. See also Henri I. Marrou, *Histoire de l'Éducation dans l'Antiquité* (Paris: Editions du Seuil, 1948).

[137] In the *hypographai* (sg. *hypographē*), the contracting parties to a transaction were expected to write a short or sometimes longer sentence to authenticate the document. Based on his analysis of *hypographai* in *grapheion* documents, Uri Yiftach concludes that 50% of the male parties to these contracts were able to write a short sentence and 25% longer text. These conclusions are unsatisfactory because the study essentially reduces literacy to the ability to complete the authentication sections of these documents. Uri Yiftach, "Quantifying Literacy in the Early Roman Arsinoites: The Case of the *Grapheion* Document," in *When West Met East: The Encounter of*

scholarship on ancient literacy, reframing the problem by focusing on ancient people's capacity "to handle complex graphic systems."[138] Recently, scholars have paid renewed attention to the issue of literacy in the Arabian Peninsula, especially before the rise of Islam. In analogy to the quintessentially oral culture of the contemporary Tuareg in West Africa, Michael Macdonald observes that "before and immediately after the rise of Islam, Arab culture was in all important respects fundamentally oral."[139] For Macdonald, literacy in a society does not necessarily imply that most people can read or write, but rather that certain political, administrative, religious, and commercial functions rely on writing.[140] Similarly, in her study of medieval literacy in the Islamic world, Nelly Hanna notes that "the strict definition of literacy as the ability to read and to write" undermines the reality of "a wide range of literacies" that shaped ancient and medieval societies.[141]

Greece and Rome with the Jews, Egyptians, and Others: Studies Presented to Ranon Katzoff in Honor of His 75th Birthday, ed. David M. Schaps, Uri Yiftach, and Daniela Dueck (Trieste: EUT Edizioni Università di Trieste, 2016), 269–281. Note also the studies by Herbert C. Youtie on the "slow writer" (βραδέως γράφων), a label used for semi-literates in documentary papyri to distinguish these individuals from literates and illiterates; Herbert C. Youtie, "Βραδέως γράφων: Between Literacy and Illiteracy," *Greek, Roman and Byzantine Studies* 12, no. 2 (1971), 239–261.

[138] Greg Woolf, "Ancient Illiteracy?," *Bulletin of the Institute of Classical Studies* 58, no. 2 (2015), 31–42, at 41.

[139] Michael C.A. Macdonald, "Ancient Arabia and the Written Word," in *The Development of Arabic as a Written Language*, ed. Michael C.A. Macdonald (Supplement to the Proceedings of the Seminar for Arabian Studies, 40, Oxford: Archaeopress, 2010), 5–28, at 22. See also Michael C.A. Macdonald, "Literacy in an Oral Environment," in *Writing and Ancient Near Eastern Society: Papers in Honour of Alan R. Millard*, ed. Piotr Bienkowski, Christopher Mee, and Elizabeth Slater (New York and London: T&T Clark, 2005), 45–113. The problem of literacy in pre-Islamic Arabian society has presented a particular concern in scholarship on the Qurʾān, where it has significant implications for understanding the transmission of Biblical stories and other Middle Eastern traditions into early Islam. Building on the conclusions of Macdonald, Stephen Shoemaker argues that "literacy in the early seventh-century Hijaz was in fact extremely rare and almost completely unknown, to such a degree that we must conceive of the formation of Muhammad's new religious movement and its sacred text within a context that was nonliterate and fundamentally oral;" Stephen J. Shoemaker, *Creating the Qurʾan*, 121. See also Marijn van Putten, "The Development of the Hijazi Orthography," *Millennium* 20, no. 1 (2023), 107–128.

[140] Michael C.A. Macdonald, "Ancient Arabia and the Written Word," 7.

[141] Nelly Hanna, "Literacy and the 'Great Divide' in the Islamic World, 1300–1800," *Journal of Global History* 2 (2007), 175–193, at 176–177.

That human societies invented writing as a technology, first and foremost, to record and keep track of accounts, lists, months, menstruation, and other things essential to human life is indicated, for example, by the earliest Sumerian clay tablets, most of which record business transactions.[142] The arguments of Jack Goody, Ian Watt, Walter Ong, and others on the capacity of writing to transform societies are now well known. According to Ong, writing is not a natural extension of speech but transposes speech into a different sensory world, whereby the writer can—through the use of a coded system of visible marks—more directly determine the meanings readers will infer from the text, enabling a different kind of consciousness.[143] For both Ong and Goody, writing is a prerequisite for the deep scrutiny of discourse. As Goody writes, "this scrutiny favored the increase in scope of critical activity, and hence of rationality, scepticism, and logic to resurrect memories of those questionable dichotomies."[144] As noted by Woolf, these cognitive changes that evolution of writing systems supposedly entailed implicitly project a mirror image of modern societies, in which rationality is tied to particular forms of writing.[145]

My concern here is not with the rationality or historicism that writing may have generated but rather with what being "literate" may have looked like in early Islamic Egypt. When the freed slave woman Jamīla, the Copt Bisanda Shanūda, the baker Abqīra, and the Jewish woman Shaʿyūn received their quittances, were they able to read them? I do not think that most of them

[142] Trevor Bryce, *Atlas of the Ancient Near East: From Prehistoric Times to the Roman Imperial Period* (New York and London: Routledge, 2016), 47–48. See also Greg Woolf, "Ancient Illiteracy," 34–35.

[143] Walter J. Ong, *Orality and Literacy: The Technologizing of the Word* (London and New York: Routledge, 2012 [1982]), 83–84. See also Jack R. Goody and Ian Watt, "The Consequences of Literacy," *Comparative Studies in Society and History* 5, no. 3 (1963), 304–345; and Eric A. Havelock, *The Literate Revolution in Greece and Its Cultural Consequences* (Princeton: Princeton University Press, 1982).

[144] Jack R. Goody, *The Domestication of the Savage Mind* (Cambridge: Cambridge University Press, 1977), 37.

[145] Greg Woolf, "Ancient Illiteracy?," 35–36.

would have been able to fully read the documents they were issued, let alone write. Full literacy, by which I mean the ability to read and write comfortably, was likely more common within certain religious groups—the Islamic tradition frequently reports that many Jews were literate.[146] However, the emphasis on full literacy misrepresents the way "reading" functions in most documentary cultures, which typically rely on a combination of features—textual, visual, and aesthetic—to communicate with consumers of documents. The notion that literacy is limited to the cognitive recognition, connection, and translation of letters into words and meaning is largely at odds with the complexity of visual and material aspects that make documents legible.

This is as much true in the premodern as it is in the modern period. When faced with documents of a known type, most people arguably do not "read" but rely on visual and structural clues for decoding them. Think about a store receipt. Unless you are suspicious of being overcharged (or, if you are lucky, undercharged), you will take little time to read or examine the receipt closely. Still, most of us have a common sense of how a receipt is visually structured: At the top, you will find the name and address of the store, perhaps a telephone number and sometimes a barcode; further down, the individual items listed, their quantity, and price; then a subtotal, VAT, and the total charge; down the bottom, it may contain obscure numbers, a date and time stamp, and possibly a note attempting to lure you into the store again soon (see Fig. 18). Most people have internalized the textual and visual structure of receipts to the degree that they can identify this type of document even without looking at it. If you found a receipt in the street,

[146] On the debate, see, for example, Michael Lecker, "'A Jew with Two Sidelocks': Judaism and Literacy in Pre-Islamic Medina (Yathrib)," *Journal of Near Eastern Studies* 56, no. 4 (1997), 259–273.

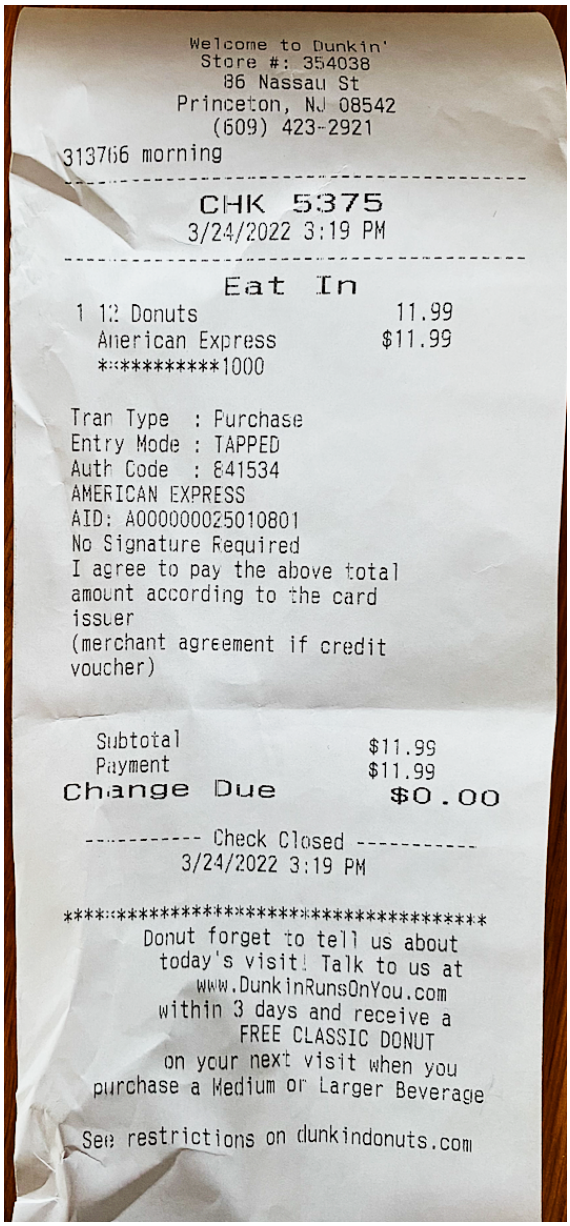


Fig. 18. A store receipt. Photo by author.

its dimensions and the fact that it is written on thermal paper would immediately reveal its type. Throughout the world, receipt paper is incredibly normed, with widths typically adhering to either 80 mm (3.14 inches) or 76 mm (2.99 inches). Other document types, too, including formal letters, bank account statements, and tax documents, follow a set of visual and textual conventions that reveal their type. The problem is that we have internalized these conventions so much that we rarely think about them.

The diplomatic aesthetics of Arabic quittances and other types of documents are complex. We already examined seal imprints, which were attached to official quittances and conveyed their being issued by a person of authority. However, these documents contain additional visual and structural features that facilitate recognition, even by people with no ability to read and write. As mentioned earlier, Arabic documents are extremely formulaic. Their formulaic and predictable structure is not merely useful for papyrologists and historians but especially for ordinary people lacking the ability to read fluently. The vast majority of Arabic documents begins with the invocation of God, the *basmala*, which is usually featured in the top line. Due to its seeming redundancy, the

basmala is often passed over by specialists. However, its presence serves important visual and structural functions. First, it marks the beginning of a document by serving as a visual separator from the body text, usually by leaving a vast amount of blank space after its completion. These blank spaces had meaning. According to Ibn Muqla (d. 328/939)—the Abbasid bureaucrat credited with the introduction of Arabic proportional script—the scribe (*kātib al-khaṭṭ*) needed to balance the use of blank spaces carefully:

> Blank spaces (*faṣl*) should only occur between the completion of a section (*tamām al-kalām*) and the commencement of a different section (*istiʾnāf kalām ghayrihi*). The width and narrowness of blank spaces depend on the extent of agreement between the sections (*miqdār tanāsub al-kalām*). If the following section complicates the first section or relates to it in meaning, the blank space should be small. But if it differs from it entirely, the blank space should be larger. The worst defect to be committed by the scribe and stationer (*warrāq*) is leaving a blank space before the section is finished. But omitting a blank space after the completion of a section is deficient, too, even if not as serious.[147]

Thus, the blank space after the *basmala*. In papyri containing multiple documents (such as the quittance registers mentioned), the appearance of the *basmala* signals the beginning of a new text unit. The *basmala* is almost always indented, in the first century slightly and from the second century onwards considerably. By the second century, scribes began to increasingly stylize the *basmala* with long *kashīda*s—elongated connections between Arabic letters, also referred to as *taṭwīl*. In addition, scribes tended to place the first letter *bāʾ* much above the first writing line, moving the pen downwards at a 135° angle (see Fig. 19). The *basmala* helped to orient readers

[147] Ibn Muqla, cited in Ibn al-Sīd al-Baṭalyawsī, *al-Iqtiḍāb fī sharḥ adab al-kitāb*, ed. Muṣṭafā al-Saqā and Ḥāmid ʿAbd al-Majīd, 3 vols. (Cairo: Dār al-Kutub al-Miṣrīya, 1996), 1:139.

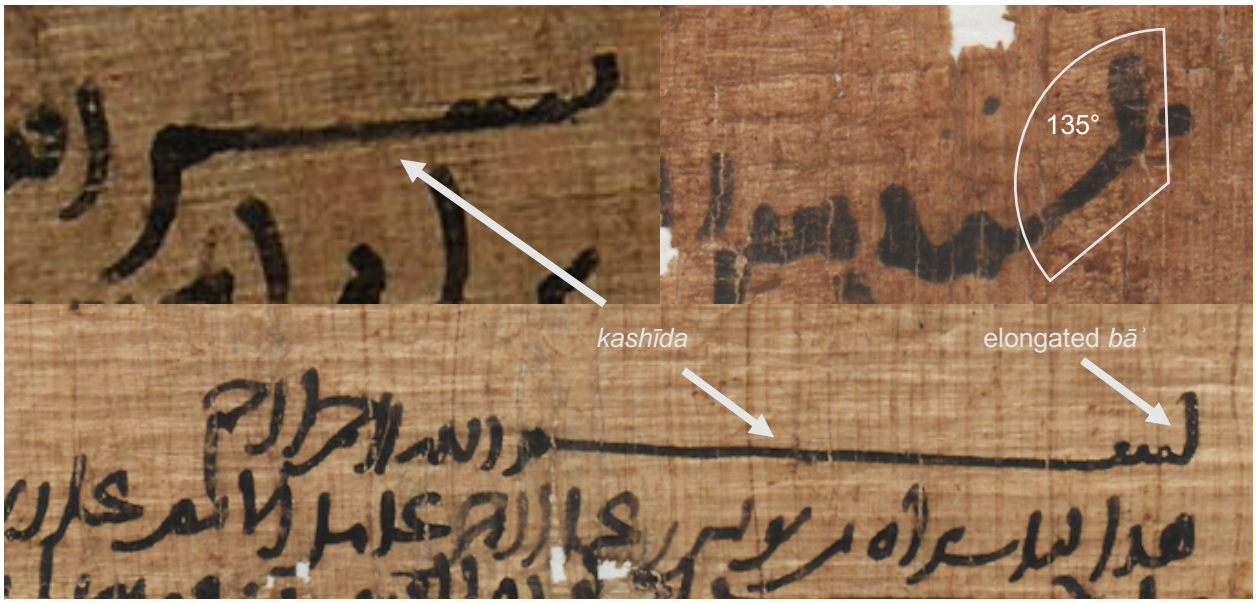


Fig. 19. Stylization of the *basmala*. Top left: P.David-WeillLouvre 16 (156/773). Top right: P.Vindob. A.P. 828 (second or third century). Bottom: P.GrohmannProbleme III 18=PERF 670=Nilus IV 21=Nilus XV 6 (196/812). © Musée du Louvre and Österreichische Nationalbibliothek, Papyrussammlung. Reproduced by kind permissions of the Musée du Louvre (P.Louvre SN 183 verso) and the Österreichische Nationalbibliothek, Papyrussammlung (P.Vindob. A.P. 828 and 644).

and onlookers visually, signaling a documentary norm that indicated the Muslim identity of the writer. In combination with the seal imprint, the *basmala* articulated a visual vocabulary that conveyed the official and authorized status of a document.

Even ordinary people who could not read would have been familiar with the visual program of the *basmala* because it appeared everywhere in the world surrounding them, from public epigraphs to coins to milestones along travel roads (*amyāl*) to the robes worn by Muslim dignitaries (*ṭirāz*) to tombstones.[148] The influence of the *basmala* was so profound that it even began to impact non-Arabic scribal traditions. Eugenio Garosi has identified documents in Greek, Coptic, Sogdian, and Middle Persian that imitate its distinctive structure and use in

[148] For its ubiquitous use in public inscriptions, milestones, and coins, see Eugenio Garosi, *Projecting a New Empire.* See also Markus Ritter, "Umayyad Foundation Inscriptions and the Inscription of al-Walīd from Khirbat al-Minya: Text, Usage, Visual Form," in *Khirbat al-Minya: Der Umayyadenpalast am See Genezareth*, ed. Hans-Peter Kuhnen (Orient-Archäologie, 36, Rahden: Marie Leidorf, 2016), 59–83. For funerary inscriptions, see Jelle Bruning, "Islamic Tombstones for Slaves from Abbasid-Era Egypt," *Slavery & Abolition: A Journal of Slave and Post-Slave Studies* 44, no. 4 (2023), 616–637.



Fig. 20. Silver Dirham minted in Darabgerd (left) and Umayyad Gold Dinar (right) with shortened *basmala*. © Ashmolean Museum, University of Oxford. Reproduced by kind permission of the Ashmolean Museum, Oxford University (HCR10190 obverse and HCR4814 reverse).

Arabic.[149] One of the earliest Silver Dirhams, originally minted by the Sasanids and featuring the portrait of Khusraw II (d. 628) on the obverse, has added to it the shortened *basmala* in the lower right margin. Similarly, the earliest gold Dinars struck in Damascus in 77/697 also contain the shortened version of the *basmala* (Fig. 20).

Apart from the *basmala*, the first word (now referred to as the "identifier") following in the second line of documents had even greater significance: This is where every—and I mean every—Arabic document reveals what type it is. Think of it as the equivalent of announcing "QUITTANCE" or "PROMISSORY NOTE" in all caps. The identifier is a hallmark of the Arabic documentary tradition, and even if you have no knowledge of Arabic, this word will save your life. It immediately clarifies the document's purpose. Arabic scribes were keenly aware of

[149] Eugenio Garosi, *Projecting a New Empire*, 219–233. See also Ahmed Al-Jallad, who observes the addition of the adjective *al-raḥīm* (the "merficul") to the *basmala* in Islamic times; Ahmed Al-Jallad, "A Pre-Islamic *Basmala*: Reflections on Its First Epigraphic Attestation and Its Original Significance," *Jerusalem Studies in Arabic and Islam* 52 (2022), 1–28, at 20.



Fig. 21. Blank space after identifier in P.KhanLegalDocument (88/707). © Cambridge University Library. Reproduced by kind permission of the Syndics of Cambridge University Library (P.Michael. A 744).

this: The identifier is often set apart by a small yet noticeable space from the body text that follows (see Fig. 21). Sometimes, the word itself is emphasized in a grandiose manner, as in the *addā*-type document P.Utah 1564 (see Fig. 22). In the case of quittances, the identifier will often be repeated on the verso of the document along with the name of the recipient and the amount that was settled (see Fig. 23). When the papyrus was rolled up and sealed, this line on the verso would have been visible from the outside, functioning as a way not just of identifying the document type but also the recipient, which was especially important if the document was sent through the Muslim postal service (*barīd*).[150]

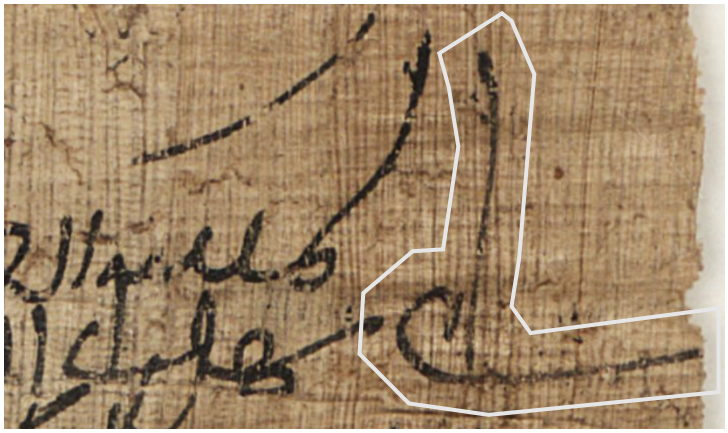


Fig. 22. Extended identifier in P.Utah 1564 recto (third century). © University of Utah. Reproduced by kind permission of the University of Utah, Marriott Library.

[150] The postal system had existed in pre-Islamic times and came under the control of the *sellarios* during the brief Sasanid occupation of Egypt. Muʿāwiya brought the postal system under Muslim control, and in the third quarter of the seventh century, the introduction of the post-horse (*beredos*) and postal chief (*ṣāḥib al-barīd*) in Egypt rapidly centralized its development; Jelle Bruning, "Developments in Egypt's Early Islamic Postal System (with an Edition of P.Khalili II 5)," *Bulletin of the School of Oriental and African Studies* 81, no. 1 (2018), 25–40. See

All this is to say that Arabic documentary papyri adhered to a relatively stable code of visual and physical characteristics. This code served a dual purpose: It structured and standardized official penmanship while rendering documents authentic and legible to the public by using a familiar visual vocabulary. People like Jamīla, Bisanda Shanūda, Abqīra, and Shaʿyūn

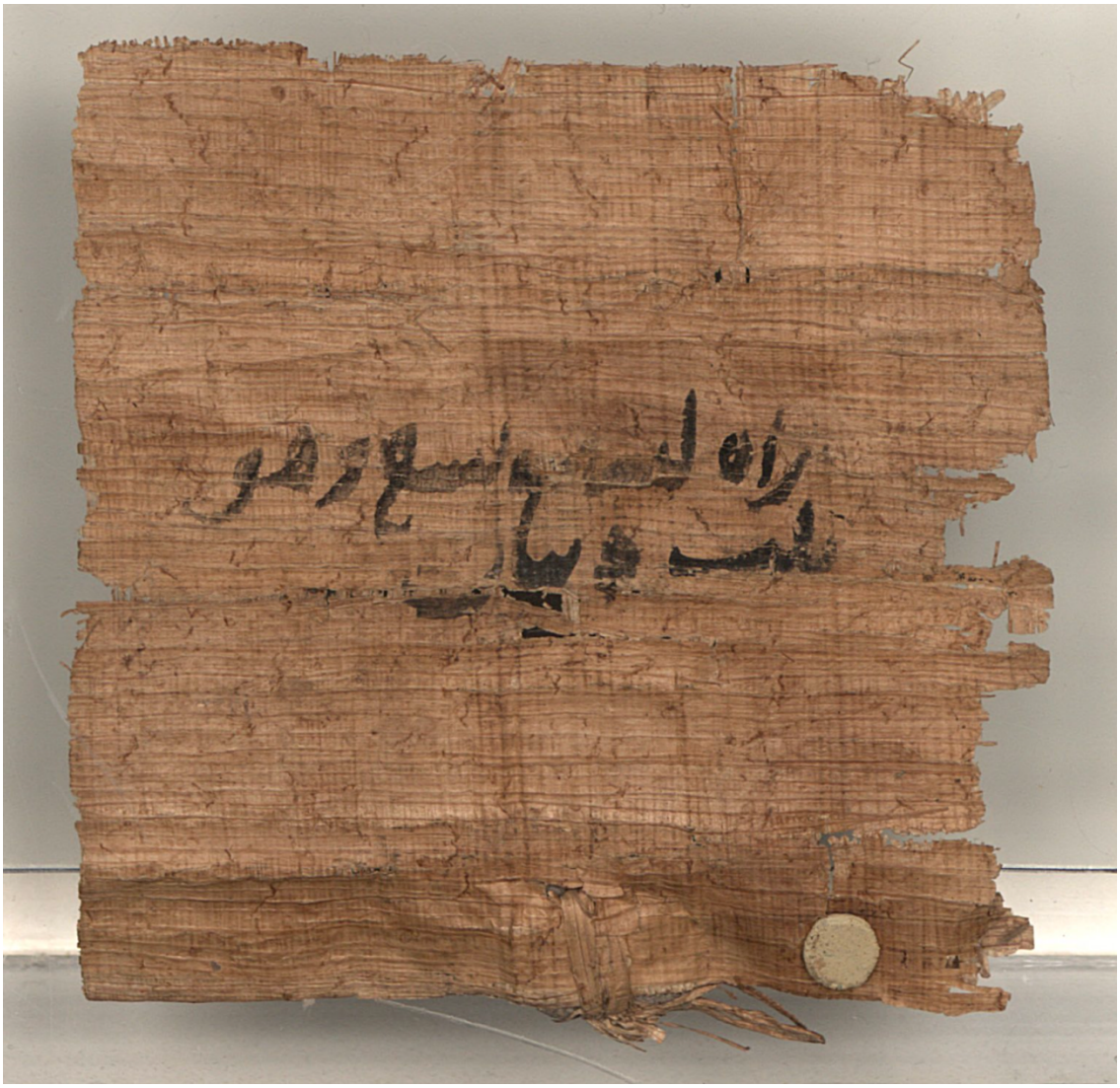


Fig. 23. Document type, recipient, and amount settled on the verso of P.Utah 1564. © University of Utah. Reproduced by kind permission of the University of Utah, Marriott Library.

also Adam J. Silverstein, *Postal Systems in the Pre-Modern Islamic World* (Cambridge: Cambridge University Press, 2009). The office of the postmaster is well attested in the papyri. See, for example, P.MargoliouthSelectPapyri 1=P.Ryl.Arab. I IV 3=P.RagibLettresdeService 1=P.Ryl.Arab. II 6 (745), P.MargoliouthSelectPapyri 2=P.Ryl.Arab. I IV 2=P.RagibLettresdeService 2 (751), P.Ryl.Arab. I IV 1=P.RagibLettresdeService 3 (751), P.DiemRemarkableDocuments 2 (751), and P.MargoliouthSelectPapyri 3=P.Ryl.Arab. I IV 4=P.RagibLettresdeService 4 (752).

may not have been able to "read" these documents in the modern sense, but they would have understood their function, relying on visual clues, social context, and established documentary conventions. Additionally, we must remind ourselves that in the culture of early Islamic Egypt, documents, especially official letters, were often read out loud so that their contents would be disseminated among listeners orally.[151] The extent to which this practice applied to quittances and other everyday documents issued to ordinary people remains to be seen.

The significance and strong influence of the Arabic quittance, as well as Arabic legal concepts, on the subaltern legal cultures of the Egyptian province—particularly Coptic—have also been demonstrated in linguistic studies. These studies identify the Coptic (ⲁⲗ)ⲡⲁⲣⲁ as the equivalent of the Arabic term *barāʾa*—with its meaning of quittance—in documents from as early as the seventh or eighth century.[152] Other Arabic legal terms and phrases, such as "debt" (Arabic: *dayn*; Coptic: ⲇⲩⲛ), "freed person" (Arabic: *mawlā*; Coptic: [ⲁⲗ]ⲙⲁⲩⲗⲉ), "inheritance"

[151] Petra Sijpesteijn, *Shaping a Muslim State*, 252.

[152] P.Bal. 291, ll. 5 and 29 (seventh or eighth century); P.Lond. IV 1513 (eighth century); P.Ryl.Copt. 377, l. 9 (ninth or tenth century); O.CrumVC 49, l. 13 (ninth or tenth century); O.CrumVC 115, l. 9 (ninth or tenth century); BL Or. 6201 A 94; and BL Or. 6201 A 178. See Walter E. Crum, *A Coptic Dictionary* (Oxford: Clarendon Press, 1939), 267; Paul E. Kahle, *Bala'izah: Coptic Texts from Deir El-Bala'izah in Upper Egypt*, 2 vols. (London: Oxford University Press, 1954), 2:720; Tonio S. Richter, "*O.Crum* Ad. 15 and the Emergence of Arabic Words in Coptic Legal Documents," in *Papyrology and the History of Early Islamic Egypt*, ed. Petra M. Sijpesteijn and Lennard Sundelin (Islamic History and Civilization, 55, Leiden: Brill, 2004), 97–114, at 108–109; Tonio S. Richter, "Coptic [Arabic Loanwords in]," in *Encyclopedia of Arabic Language and Linguistics*, ed. Kees Versteegh, 5 vols. (Leiden and Boston: Brill, 2005–2009), 1:495–501, at 1:498. In Coptic, Arabic loanwords that are nouns often retain the article *al-*, as in the case of the word for quittance. On the linguistic influences of Arabic documentary culture on Coptic, see also Marie Legendre, "Perméabilité linguistique et anthroponymique entre copte et arabe: exemple de comptes en caractères coptes du Fayoum fatimide, et répertoire des anthroponymes arabes attestés dans les documents coptes," in *Coptica Argentoratensia: textes et documents de la troisième université d'été de papyrologie copte (Strasbourg, 18–25 juillet 2010): (P.Stras.Copt.)*, ed. Anne Boud'hors, Alain Delattre, Catherine Louis, and Tonio S. Richter (Paris: De Boccard, 2014), 325–440; Tonio S. Richter, "Borrowing into Coptic, the Other Story," in *Greek Influence on Egyptian-Coptic: Contact-Induced Change in an Ancient African Language*, ed. Eitan Grossmann, Peter Dils, Tonio S. Richter, and Wolfgang Schenkel (Lingua Aegyptia: Studia Monographica, 17, Hamburg: Widmaier Verlag, 2017), 513–533; and Samuel P. Cook, "Linguistic and Legal Continuity in 6th to 8th Century Coptic Documents: A Comparative Study of Greek and Coptic Legal Formulae in Byzantine and Early Islamic Egypt" (PhD diss., Macquarie University, 2019).

(Arabic: *mīrāth*; Coptic: ⲁⲗⲙⲓⲣⲉⲧ), and "border" (Arabic: *ḥadd*; Coptic: ⲁⲗϩⲁⲧ), are also attested in Coptic documents.[153] Although indirect evidence, the linguistic penetration of these concepts into Coptic yet again shows that quittances and other Arabic legal documents were by no means confined to the Arab Muslim minority but quickly spread to and were used by Egyptians of all confessions, even in distant regions of Upper Egypt.

While it may be impossible to quantitatively measure the extent of lay literacy in early Islamic Egypt, this should not deter us from qualitatively examining how ordinary people interacted with documents. What the field needs is a more thorough engagement with documents as objects to better understand the various layers of symbolic, aesthetic, and textual meaning they convey in relation to one another. I hope to have demonstrated that the material aspects of these documents can contribute to reframing the problem of literacy not just as the ability to read texts but as the skill to decode a wide variety of graphic symbols—similar to what historians of the Carolingian Empire have referred to as "passive" or pragmatic" literacy.[154]

3.5.7 Preservation

Lastly, where did ordinary people store quittances and other documents they were issued? While the papyri abound with references that imply the significance of preserving documents, we know

[153] Tonio S. Richter, "Arabische Lehnworte und Formeln in koptischen Rechtsurkunden," *Journal of Juristic Papyrology* 31 (2001), 75–89, at 87–89.

[154] Janet J. Nelson observes that in the ninth-century Carolingian world, free persons who depended on the political power of others likely had passive or pragmatic literacy, by which she means that they were familiar with documentary procedures, could find notaries when needed, and often witnessed transactions. These people, she argues, could probably not write but recognize standard formulae. Janet L. Nelson, "Literacy in Carolingian Government," in *The Uses of Literacy in Early Mediaeval Europe*, ed. Rosamond McKitterick (Cambridge: Cambridge University Press, 1990), 258–296, at 269–270. See also Alice Rio, *Legal Practice and the Written Word in the Early Middle Ages: Frankish Formulae, c. 500–1000* (Cambridge: Cambridge University Press, 2009), 13–15.

very little about how people stored them in their private homes during the Byzantine and Islamic periods.[155] As mentioned earlier, archival practices in monasteries and the state bureaucracy can be deduced from a variety of evidence, such as registration marks, the presence of public debt registers, and references in long-form sources. However, the matter is less straightforward concerning document storage by lay people, which can only be understood by synthesizing archeological, papyrological, and literary evidence. Since the physical preservation of documents in private homes is arguably among the least politicized and socially contested issues, we would expect a great deal of continuity with late antique customs.[156]

It has been noted that several Arabic papyri were recovered from ceramic jars at Saqarra, Edfu, and in the Fayyūm.[157] The Banu Bifam documents—a tenth and eleventh-century dossier of 38 Arabic legal documents involving a Coptic family—were discovered in five bundles that were wrapped in textiles, placed in a leather bag, and then deposited in a jar in the corner of a

[155] Kim Ryholt examines a wide array of evidence regarding storage practices in ancient Egypt, including the Roman period; Kim Ryholt, "The Storage of Papyri in Ancient Egypt," in *Collect and Preserve: Institutional Contexts of Epistemic Knowledge in Pre-Modern Societies*, ed. Eva Cancik-Kirschbaum, Jochem Kahl, and Eun-Jeung Lee (Wiesbaden: Harrassowitz, 2021), 23–64.

[156] On the "archivalized storage of written instruments" in late antique Byzantium and the continuity of archival practices beyond the seventh century, see Peter Sarris, "Lay Archives," 17–35. Sarris argues that, in the sixth century, most public records shifted from city archives to the private archives of great estates, such as the Apion family in Egypt. Sarris clearly assumes that private archives were primarily a phenomenon present among the imperial aristocrats, local landowning elites, and the clergy.

[157] Petra Sijpesteijn, "The Archival Mind in Early Islamic Egypt: Two Arabic Papyri," in *From al-Andalus to Khurasan: Documents from the Medieval Muslim World*, ed. Petra M. Sijpesteijn, Lennart Sundelin, Sofía Torallas Tovar, and Amalia Zomeño (Islamic History and Civilization, 66, Leiden and Boston: Brill, 2007), 163–186, at 166, footnote 12. See also Yūsuf Rāġib, "Saufs-conduits d'Égypte omeyyade et abbasside," *Annales Islamologiques* 31 (1997), 143–168, at 155–162, and Sylvie Marchand, "La 'jarre aux papyrus' d'Edfou et autres jarres de stockage d'époque arabe découvertes à Tebtynis, Fayoum," in *Functional Aspects of Egyptian Ceramics in Their Archaeological Context: Proceedings of a Conference Held at the McDonald Institute of Archaeological Research, Cambridge, July 24th–July 25th, 2009*, ed. Bettina Bader and Mary F. Ownby (Orientalia Lovaniensia Analecta, 217, Leuven, Paris, and Walpole: Peeters, 2013), 327–349.

room.[158] At Kellis, Coptic papyri from the fourth century were found next to vessels, in which they were likely stored.[159] At times, directly linking these vessels to the storage of papyri is complicated by the fact that during excavations in the late nineteenth and early twentieth centuries, the exact circumstances in which archeologists found papyri were sometimes left unrecorded. In the 1896/7 archeological report of the Egyptian Exploration Fund, Francis Griffith tells us that in the ancient trash heaps of Oxyrhynchus (al-Bahnasā), "baskets themselves full of papyri" were found.[160] These baskets may have been used to discard papyri in bulk and were likely disposed of together with them in the process.[161] Katelijn Vandorpe and Hélène Cuvigny observe that ancient Egyptians carefully guarded documents in their houses, often wrapping them with cloth and storing them away in jars or boxes hidden under a doorstep or in cellars.[162] During the 1889 excavations at Hawāra in the Fayyūm, archeologists found some isolated sixth-century Greek papyri of the Melitian monks. As noted by Egyptologist William M. Flinders Petrie, they found them carefully stored in jars:

> Three papyri of the Vth or VIth century were found in a curious manner. They are deeds of the sale of monastic property; each was rolled up separately; the rolls were then bound round, along with slips of reed, to prevent their being bent or broken; then tied up in a

[158] Włodzimierz Godlewski, "Naqlun Excavations 1997," *Polish Archaeology in the Mediterranean* 9 (1998), 77–86, at 85.

[159] Iain Gardner, Anthony Alcock, and Wolf-Peter Funk, ed., *Coptic Documentary Texts from Kellis*, 2 vols. (Oxford: Oxbow Books, 1999–2014), 103–105.

[160] Francis L. Griffith, *Archaeological Report: 1896-1897: Comprising the Work of the Egypt Exploration Fund and the Progress of Egyptology during the Year 1896–7* (London: Egypt Exploration Fund), 8.

[161] Hélène Cuvigny, "The Finds of Papyri: The Archaeology of Papyrology," in *The Oxford Handbook of Papyrology*, ed. Roger S. Bagnall (Oxford: Oxford University Press, 2009), 30–58, at 50.

[162] Katelijn Vandorpe, "Archives and Dossiers," in *The Oxford Handbook of Papyrology*, ed. Roger S. Bagnall (Oxford: Oxford University Press, 2009), 216–255, at 219–220; Hélène Cuvigny, "The Finds of Papyri," 48–49.

> linen cloth; next in a large lump of old tattered woollen [*sic!*] embroidery; and the bundle placed in big jar sunk in the ground. They were thus perfectly preserved until we took them out.[163]

Storing documents in jars, boxes, and chests accords with the financial means and the everyday objects that ordinary people in Islamic Egypt would have had at their disposal.[164]

Tasha Vorderstrasse recently evaluated the Greek, Coptic, and Arabic papyrological, literary, and archeological data regarding storage jars and containers from late antique Egypt. She observes that based on the papyrological record, these vessels were used to store a variety of commodities, from wine to oil to dry goods, such as cereals.[165] The Arabic terms used for jars in this period are still little known to us, including *jarra*, *qisṭ*, *qulla*, and *iqnīz*, while many more are known from both Greek and Coptic.[166] In archeological contexts, the association between vessels and document storage is sometimes overlooked since vessels are typically associated with the storage of food and liquids.

We probably should not be surprised that papyri rarely tell us about how and where people hid away their documents. After all, contemporaries rarely tell each other where they keep their bank account statements and divorce documents hidden, let alone in writing. A

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[163] William M. Flinders Petrie, *Kahun, Gurob, and Hawara: With Twenty-Eight Plates* (London: Kegan Paul, Trench, Trübner, and Co., 1890), 21.

[164] During his impoverished childhood, raised as a half-orphan by his mother, al-Shāfiʿī used to write *Ḥadīth* and points of law on bones and store them away in a jar. "We had a large old jar (*jarra qadīma*), and whenever I covered a bone, I put it in the jar;" Ibn Abī Ḥātim al-Rāzī, *Ādāb al-Shāfiʿī wa-manāqibuhu*, ed. ʿAbd al-Ghanī ʿAbd al-Khāliq (Cairo: Maktabat al-Khānjī, 1953), 24. See also Ahmed El Shamsy, *The Canonization of Islamic Law*, 18.

[165] Tasha Vorderstrasse, "Terms for Vessels in Arabic and Coptic Documentary Texts and Their Archaeological and Ethnographic Correlates," in *Documents and the History of the Early Islamic World*, ed. Alexander T. Schubert and Petra M. Sijpesteijn (Islamic History and Civilization, 111, Leiden and Boston: Brill, 2015), 195–234, at 196–197.

[166] Ibid., 208–214.

second-century CE Greek papyrus that is part of a dossier of documents related to the "Drusilla lawsuit" offers rare insights. In this case, Drusilla, a veteran widow, initiated legal proceedings against Agrippianus to reclaim the lands that had been seized from her. Once the lawsuit was officially filed with the judge, Agrippianus's wife wrote to her son, clearly in a state of panic and in need of documents:

> As for us, we have absolutely no document. That's why I ask you to please take a copy [of our petition], place it in a jar, seal it (καὶ βαλὼν εἰς ἀγγῖον σφρᾴγι[σ]ον), and hand it to my brother, to Iulianus, or to Valerius Rufus.[167]

More than a century ago, Adolf Grohmann identified a ninth-century Arabic business letter written by a pharmacist in which papyrus storage jars (*aqzāz qarāṭīs*) are explicitly mentioned. In the relevant passage, the writer Ibrāhīm describes how he carefully selected these jars for his business partner and that they existed in different types of quality:

> I have taken five glass receptacles for papyrus rolls (*aqzāz qarāṭīs*) for you worth 1 Dinar less 1/3 Qirat. They are the best I could procure of those of medium quality (*ajwad mā qadarnā ʿalayhi min al-wasaṭ*). I couldn't find any better ones, save four for the price of 1 1/6 Dinar, whereby the seller extended his goodwill to us. I took the receptacles from him under the condition that you'll be satisfied with them. If you are, take them. If you aren't, return them. I took the best I could get for you at the price I mentioned.[168]

Shopping lists may be the most likely places to look for more references to papyrus storage jars. That said, Grohmann clearly had little doubt that papyri were typically stored in either clay jars

[167] P.Gen. I 74=P.Drusilla, 211–217.

[168] P.GrohmannWirtsch. 2=P.World, 168=PERF 768, ll. 4–7. I thank Tasha Vorderstrasse for directing me to this reference.

or the above-mentioned glass vessels in private contexts.[169]

While it may be too early to offer a definitive answer regarding how ordinary people stored official documents in their homes, circumstantial evidence from the archeological finds and papyri strongly suggests that jars and other everyday vessels were likely used. It is important to emphasize that much scholarship has focused on state and administrative archives, which undeniably provide valuable insights into the mechanisms and scribal cultures of the Byzantine and Islamic state administrations. However, a systematic analysis of document preservation in private homes promises to complicate our understanding by shedding light on which types of documents were preserved, which were not, and how ordinary people interacted with the state machinery.

3.8 Conclusion

In a document from the 730s or 740s, Muslim b. ʿAmr wrote to his business partner concerning the debt of a certain shepherd (*ṣāḥib al-ḍaʾn*). After the customary opening and greeting formulae, Muslim writes:

[...] انظر أمتع الله بك أن تكتب لنا الحقّ

على صحب الضّأن ثمّ إرسل بها مع عفيف مولى أمّ حبيب

ولا تؤخّر ذلك أصلحك الله [...]

> Take care, [m]ay God grant us enjoyment through you, to register to our credit the dues that the shepherd owes. Then send it with ʿAfīf, the freedman of Umm Ḥabīb, and do not delay this, may God make you prosper.[170]

[169] Adolf Grohmann, *Allgemeine Einführung*, 43.

[170] P.MuslimState 25, ll. 5–7, translated by Petra Sijpesteijn.

Muslim's demand for "registering credit" (*an taktub lanā al-ḥaqq*) did not constitute an abstract demand to secure his right over a due from the shepherd. Indeed, we may now read it as the specific demand to be issued a valid legal document—a promissory note (*dhikr ḥaqq*) to be specific—and for that document to be sent through the intermediary of Umm Ḥabīb as soon as possible. In other words, Muslim's demand for this document triggered an established and widely known set of Arabic scribal and judicial practices—double legal recordkeeping, to be precise—that included issuing his copy of the *dhikr ḥaqq* and registering his claim towards the shepherd in a public or private debt register. Once (and if) the shepherd paid off his debt, the latter would have been issued a quittance (*barāʾa*), enshrining the settlement of his dues in the form of a written artifact that would likely linger in his premises with many other receipts from business partners, tax collectors, and state officials that he kept.

There is no evidence to suggest that the Arabic scribal formulae or the substance of these documents were in any way Byzantine (although this will need to be conclusively shown). Most of the formulae seem to have their origins in the Arabian Peninsula, and over the eighth and ninth centuries, the Khurāsān region functioned as a crucible of scribal and writing support-related innovations. And yet, the adherence to written scribal and legal practices was as much a necessity of Arab Muslim imperial communication and the delegation of rule to experienced non-Muslim administrators in rural Egypt as it was in keeping with Byzantine cultural norms and social expectations. The value that ordinary non-Muslims attached to being issued and preserving legal documents structured the ways that the new ruling elite and their subsidiaries could dispense justice, constituting a powerful force to be reckoned with if they wished to garner acceptance from and secure their authority over the predominantly rural populace in Egypt.

Through textual, diplomatic, and material analysis, the chapter offered evidence that the emergence of an Arabicized legality in Egypt in the mid-seventh century was intricately tied to the production and circulation of Arabic legal documents that bound members of the Egyptian post-conquest society—spatially and socially as far apart and distinct as the Arab ruling elite in Fusṭāṭ, non-Muslim administrators, and ordinary people in the countryside—in a web of mutual obligations, promises, and relationships. The discussion of *dhikr ḥaqq*s revealed that the practice of double legal recordkeeping in Arabic was used in Egypt since as early as the 650s and that written obligations concerning debts were not only used as legal instruments to register outstanding debts but also as material objects that had social and financial value because they could be transferred to third parties and used as promissory notes. The ground-up examination of these documents showed that an Arabicized notion of legality spread as a function of the circulation of legal documents and the ways in which they increasingly ordered and guaranteed property and social relations by tying them to the political claim and sovereignty of the Arab Muslim conquerors. As illustrated, the impact of the spread of this novel legality was thus neither restricted to Muslims nor to administrative cadres. Indeed, the ordinary people mentioned in even the earliest documents came from all corners of early Islamic society in Egypt: from freed Muslim slaves to Christian villagers to women.

The chapter sought to illustrate that the notion (or "myth") that Arabic legal documents served merely mnemonic functions and had no standing without the support of witnesses is, by and large, a product of the field's preoccupation with long-form sources (that is, normative legal sources written by jurists) and the very scarce attention that has been paid to the study of documentary sources (e.g., receipts, obligations, petitions, court orders, etc.). It is about time for the field to discard this myth and wrestle with how it has obfuscated our understanding of the

transition from Byzantine to Islamic Egypt and the genesis of Islamic legality. Methodologically, I do not in the slightest mean to suggest that we part ways with long-form sources and the ways they elucidate the consolidation, canonization, and intellectual fruition of Islamic law. But we must begin to examine Arabic documents on their own terms, not as seemingly paradoxical and inconsequential by-products of a later legal norm that was intent on circumscribing their existence. But as snapshots and material objects of an emerging everyday legality in the Arabic language that offer us an unprecedented level of intimacy with the Islamic state machinery, from its official practices of recordkeeping and archiving to its communication and dealings with ordinary people's legal expectations.

In the following chapter, we will move away from rural Egypt to Fusṭāṭ and focus on the emergence of the profession of the Muslim judge (*qāḍī*), the relations this gradually consolidating professional class maintained with the imperial center and the ways they mobilized well-known late antique *topoi* to undergird their authority positions.

CHAPTER FOUR

Judges Who Don't Want to Be Judges:

The *Qāḍī* between Ruler, Convention, and Social Expectations

4.1 Introduction

This chapter aims to uncover the identity, origins, and professional and political commitments of those appointed as Muslim judges in early post-conquest Egypt. I seek to understand how, over the *longue durée* of the seventh and eighth centuries, they increasingly operated and came to understand themselves as a class of professionals. It will be insufficient, though, to focus on the material and economic resources of these individuals and their educational backgrounds alone. The social and political forces that gradually transformed them into a "class"—by which I mean a group that shares forms of political, economic, and social capital—demanded that judges mobilize discursive strategies that were at once acceptable to the local, predominantly non-Muslim populace and could provide a firm basis for their positions of authority and access to power.[1] As part of a ruling minority who depended on the fiscal, logistic, and political support of non-Muslims, Muslim judges (*quḍāt*)—as well as administrators, police forces, tax collectors, and others—had to cater to their social and legal expectations by utilizing familiar late antique idioms and established professional practices. A class concept that focuses merely on judicial labor, ownership of property, and the means of production, as in Marxian social class theory, would, therefore, be much too narrow to capture the professional identity and subjective worlds

[1] Similarly, Fanny Bessard has argued that in the eighth century, merchants (*tujjār*) developed into a social "class" that was politically conscious, capable of promoting its own interests, and collaborated with the Abbasid caliphs in times of crises; Fanny Bessard, *Caliphs and Merchants: Cities and Economies of Power in the Near East (700–950)* (Oxford: Oxford University Press, 2020).

that Muslim judges cultivated.[2] We must additionally turn to understanding their *habitus*—by which I mean the professional attitudes, discourses of self-fashioning, and everyday practices they engaged in.[3]

In textbooks of Islamic law, it is often taken for granted that Islamic law was, for the most part, a legalistic scientific discourse (*fiqh*) developed by private jurists detached from and acting largely independent of state structures. In 1964 Joseph Schacht described Islamic law as "an extreme case of a 'jurists' law'," in which "scholarly handbooks have the force of law."[4] Legal opinions in the Islamic legal tradition generally became *binding*—not *enforceable*—qua a scholar's affiliation with a *madhhab* (i.e., "legal school"), a point convincingly argued by Sherman Jackson who adopts Hannah Arendt's concept of authority to illustrate that Islamic legal authority was held by "those who could prove the closest and truest relationship" to a *madhhab*'s founder, rather than those in positions of power.[5] While we have many studies on the reproduction of intra-*madhhab* authority,[6] the field of Islamic legal studies has largely eschewed

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[2] See, for instance, Ralf Dahrendorf, *Class and Class Conflict in Industrial Society* (Stanford: Stanford University Press, 1959), 20–21.

[3] For Bourdieu's theory on *habitus*, see Pierre Bourdieu, *Outline of a Theory of Practice* (Cambridge: Cambridge University Press, 1977 [1972]), 72–95. Loïc J. D. Wacquant summarizes Pierre Bourdieu's notion of *habitus* as "the ways in which the sociosymbolic structures of society become deposited inside persons in the form of lasting dispositions, or trained capacities and patterned propensities to think, feel and act in determinate ways, which in turn guide them in their creative responses to the constraints and solicitations of their extant milieu." Loïc J. D. Wacquant, "A Concise Genealogy and Anatomy of Habitus," *The Sociological Review* 64, no. 1 (February 2016), 64–72, at 65.

[4] Joseph Schacht, *Introduction to Islamic Law*, 5.

[5] Sherman Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfī* (Leiden: Brill, 1996), 81–82; Hannah Arendt, "What Was Authority?," in *Authority*, ed. Carl J. Friedrich (Cambridge: Harvard University Press, 1958), 81–112, at 98–110. See also Rami Koujah, "Islamic Legal Reform or Re-formation? The Transmutations of Critique in Rumee Ahmed's *Sharia Compliant: A User's Guide to Hacking Islamic Law*," *Islamic Law and Society* 28 (2021), 283–315, at 305–306.

[6] See, especially Ahmed El Shamsy, who argues that the "defining textual manifestation of a school is a secondary literature, consisting of texts written by the students or followers of a scholar with the aim of abridging,

emphasis on the *enforcement* of Islamic laws and the critical role that the state played in the development of legal concepts, terminology, and institutions. To illustrate, more recently, in 2016, Wael Hallaq wrote:

> Although the process of *madhhab*-construction began to manifest itself during the second half of the second/eighth century and took as long as another century and a half to be completed, its embryonic beginnings and the conditions that permitted its emergence can (and should) be traced back to the first decades of Islam when the chief participants in the creation of legal culture were private scholars rather than statesmen acting on behalf a body politic.[7]

Mohammad Fadel highlights the "tragic arc" of Hallaq's narrative of Islamic law, in which political bodies and ruling elites are captured as engaging with the law only to the extent that it serves their own interests, generally being painted as exogenous to its development.[8] The putatively negligible constituent of the Islamic state "in the creation of legal culture," as argued by Hallaq, has—at least for the first and second Islamic centuries—obscured our understanding of how state functionaries were actively involved in negotiating and enforcing legal judgments and how their actions set the stage for developments in the third century when Islamic legal discourse became driven mainly by private jurists.

Based on evidence from Egypt and the earliest extant literary and documentary sources, this chapter argues that after the Arab-Muslim conquests of Egypt in the 640s and throughout the

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popularizing, extending, and defending the works and ideas of the founder(s)." Ahmed El Shamsy, *The Canonization of Islamic Law*, 173.

[7] Wael Hallaq, "Introduction," *The Formation of Islamic Law*, ed. Wael Hallaq (London and New York: Routledge, 2016 [2004]), xxix–xxx.

[8] Mohammad Fadel, "A Tragedy of Politics or an Apolitical Tragedy?," *Journal of the American Oriental Society* 131, no. 1 (2011), 109–127, at 115.

Umayyad period, state-appointed judges were decisive in laying the foundations for an Islamic legal infrastructure. These figures centralized legal records (*sijillāt*) for the state and legitimized their authority by references to legal accountability and impartiality (*inṣāf*). In addition, by holding positions in the government's executive branches, they ensured the enforcement of judgments. The chapter illustrates that Egypt's Muslim judges, who participated in the collective memory of the conquests as combatants (*muqātilūn*) and frequently shared the same social and geographic origins, especially from Yemen, mobilized familiar late antique idioms to sanction and undergird their authority positions against the backdrop of a predominantly Christian populace.

4.2 The Islamic-Law-as-Private-Law-Paradigm

Three reasons can explain the widespread notion that Islamic law is predominantly a private undertaking. First, the paradigm rests on the correct observation that legal actions are generally initiated by private individuals rather than the state, even in criminal cases where the right to retaliation (*qiṣāṣ*) or compensation lies with the family of the injured or deceased party rather than a public prosecutor. In this type of law, legal concepts are expressed as mutual obligations and responsibilities of individuals towards each other instead of duties and claims that can be made towards a body politic.[9] Not unlike late Roman law, which is also often referred to as a "private" law, these procedural formalities of Islamic law have resulted in an underappreciation of the historical role of the state and its sway on the development of Islamic legal substance and procedure. How did state institutions affect contemporary Islamic laws? How did the state's

[9] This does not mean that we do not have legal literature regulating relations between the state and its legal institutions. See, for instance, al-Māwardī, *al-Aḥkām al-sulṭānīya*, ed. Aḥmad Jād (Cairo: Dār al-Ḥadīth, 2006).

executive officials enforce judgments? And how did the spectrum of options for legal redress available to people—from arbitration (*taḥkīm*) to petitioning (*ṭalab*) to grievance courts (*maẓālim*) and adjudication (*qaḍāʾ*)—come to form a holistic system of justice? Despite the increased scholarly interest in the intersection of Islamic law and the state, answers to these questions have been stalled by the analytical sidelining of the state as a determining factor in the development of Islamic law.[10]

Another reason for the bracketing of the state in studies of Islamic law is the emphasis on scientific legal discourse (*fiqh*) and the view that law functioned as the foundation of an Islamic society that constantly found itself in politically turbulent times. As noted earlier, Islamic law gradually matured into a methodologically coherent undertaking with its canonization in the ninth and tenth centuries by jurists. From as early as the seventh century, the Islamic polity faced persistent political fragmentation, and in the thirteenth century, this fragmented mosaic of Islamic territories was ultimately absorbed into the vast Mongol empire. To withstand these traumatic political changes, Islamic society—so the argument goes—needed a stable backbone. And the law, as formulated by the jurists, was that backbone. The widespread rejection by scholars of the idea of civilizational decline following Islam's "Golden Age" has sparked renewed interest in the study of cultural and literary productions that emerged after the Mongol invasions and the political upheaval they caused. Curiously, the shift away from the notion of total civilizational decline—in favor of the assertion that the Islamic sciences not only survived

[10] See, for instance, Ann Lambton, *State and Government in Medieval Islam* (London: Routledge, 2002). Sherman Jackson approaches the intersection of *fiqh* and state by focusing on al-Qarāfī's theory of "corporate madhhabs," situating it against Mamluk political and legal developments. Sherman Jackson, *Islamic Law and the State*. Focusing on the oeuvre of al-Juwaynī, Sohaira Siddiqui combines a reading of his legal, theological, and political works to form a full-fledged argument about al-Juwaynī's epistemological commitments, which she contextualizes in the social and political environment he lived in; Sohaira Siddiqui, *Law and Politics under the Abbasids: An Intellectual Portrait of al-Juwayni* (Cambridge: Cambridge University Press, 2019).

but flourished and even expanded amid enormous political changes—seems to have deepened the analytical chasm between Islamic state and society. These observations seem to strengthen the idea of a self-regulating society that, precisely because of its autonomy from state structures, was able to withstand the turmoil of political upheaval. As a concept, decline has not been discarded, but rather been implicitly minimized and sequestered to a phenomenon that, while not applicable to Islamic civilization as a whole, can still be observed in relation to its body politic. Marshall Hodgson most famously captured this kind of sociopolitical arrangement in his "Sunni synthesis," arguing that post-classical Islamicate society was a place "where the social primacy of Sharîʿah-mindedness was conceded as autonomous basis for a society otherwise ruled by the amîrs."[11] The synthesis suggested by Hodgson internalizes and centers the state-society divide, effectively insulating the development of Islamic law from the historical conditions of the body politic.

Lastly, there is, at least partially, a sense among historians that pre-modern states did not operate with the same thrust as their modern counterparts, the latter of which are often thought of as more insidiously availing themselves of coercion, violence, displacement, and surveillance for state-building and governance. In the case of Islamic law, this pre-modern nostalgia is occasionally wed with the political notion that the Islamic caliphate is divinely ordained and the law immutable. Already Noel Coulson pushed back against the immutability argument, emphasizing its theological thrust by noting that "the elaboration of the law is seen by Islamic orthodoxy as a process of scholastic endeavor completely independent of historical or sociological influences."[12] Coulson's plea for historicizing Islamic law, despite his books'

[11] Marshall G.S. Hodgson, *The Venture of Islam*, 2:315.

[12] Noel Coulson, *A History of Islamic Law* (Edinburgh: University Press, 1964), 85.

regular appearance in bibliographies of Islamic legal studies, has elicited few theoretical responses in Western scholarship. Instead, the field has remained faithful to the dogma of Islamic law's relatively unbroken trajectory before its incorporation into modern states.

My contention to historicize Islamic law by taking heed of its relationship with institutions of governance and political stakeholders should not be understood as an attempt to downplay the decisive role that private jurists played in developing Islamic law. Nor should it be misread as an attempt to import John Austin's view that "every positive law […] is set by a sovereign individual or body, to a member or members of the independent political society wherein its author is supreme."[13] In the case of post-conquest Egypt where the "state" very gradually evolved into a centralized polity with limited powers of coercion and heavily relied on already existing forms of governance and dispute resolution from late antiquity, we would fare miserably to import Austin's presupposition that all laws constitute "orders backed by threats." More importantly, Austin's law-as-coercion paradigm, most famously rejected by Herbert L.A. Hart, embraces a too-limited view of the law as it regards the rules that govern the process of lawmaking—that is, power-conferring rules legitimizing the existence and authority of institutions—as ancillary and meaningful only insofar as they create "the conditions under which duties arise."[14] In Umayyad Egypt, positive laws and the *conditions for* these laws were negotiated and worked out concurrently. For instance, the previous chapters illustrated that arbitration laws in Egypt were much less the outcome of the Islamic state but that they indeed preceded its existence. This chapter argues that the professional and personal lives of *qāḍī*s were deeply connected to the burgeoning Islamic state machinery and that the origins of an Islamic

[13] John Austin, *The Province of Jurisprudence Determined*, 285.

[14] Herbert L.A. Hart, *The Concept of Law*, 41.

legality lie with these state functionaries rather than private jurists.

4.3 Negative Attitudes towards the Judgeship: A Late Antique Legacy?

The Arabic literary and historical traditions abound with numerous negative accounts and connotations regarding the judgeship, spread across a wide array of genres. These highlight the judges' immense responsibilities and the challenging social and political position they occupied.

A famous Prophetic *ḥadīth* equates the appointment to the judgeship with metaphorical death and torturing: "Whoever is made judge between the people is slaughtered without a knife."[15] In another Prophetic report, judges are classified into three groups, two of which are destined to go to hell, and only one to paradise: "As for the first two, one of them judges unjustly and he knows it—he will go to hell; the other judges unjustly and he does not know it—he will go to hell. As for the one who ends up in paradise, he is the one who judges justly—he goes to paradise."[16] Ibn Sīrīn (d. 110/729)—now primarily known for his book on oneiromancy (dream interpretation)—relates how he and others were sitting around a stove with Abū ʿUbayda when somebody came to whisper in the latter's ear. Disgruntled by the man's words, Abū ʿUbayda instructed him to place his finger in the fire. "By God, you're telling me to put my finger in the fire for you?," responds the man. Abū ʿUbayda retorted: "You hesitate to place your finger in the worldly fire for me, yet you ask me to throw my entire body into the hellfire?" From this exchange, Ibn Sīrīn and his companions deduced that Abū ʿUbayda had been called to the

[15] Ibn ʿAbd al-Ḥakam, *Futūḥ Miṣr wa-l-Maghrib*, ed. ʿAlī Muḥammad ʿUmar (Maktabat al-Thaqāfa al-Dīnīya, 1995), 226.

[16] Ibn ʿAsākir, *Tārīkh Dimashq*, ed. Muḥibb al-Dīn Abū Saʿīd ʿUmar b. Gharāma al-ʿUmrawī, 80 vols. (Dār al-Fikr, 1995–2001), 27:137. According to later Islamic legal theory, the intention (*niyya*) to perform justice is considered sufficient to avoid hell.

judgeship.[17]

The association of judging with the dreadful hell fires was a common theme in early Islamic literature, and being appointed to the judgeship carried a heavy weight with implications beyond life on earth. When ʿAbd Allāh b. ʿAbd al-Raḥmān b. Ḥujayra (Ibn Ḥujayra "the little one") followed in his father's footsteps and was appointed judge in Fusṭāṭ in 90/709, Ibn Ḥujayra "the older one" said: "My son is doomed and so am I."[18] While these attitudes betray the presence of an ethico-moral discourse framing the judge profession in the divine order of things, they also point to the cultural ambiguity with which the judgeship was being perceived among legal professionals.

We must consider the possibility, as argued by Wael Hallaq, that the moral adversity towards the judgeship, at least in part, resulted from religious developments towards the end of the first Islamic century or later when ascetic piety came to constitute the hallmark of the newly emerging class of religious elites, which included private jurists (*fuqahāʾ*).[19] Understanding these attitudes in light of the second and third-century redactions of the Arabic literary corpus at the Abbasid court, along with the consolidation of the growing class of private learned jurists, might lead us to dismiss them as mere expressions of the learned's weariness of state power, influenced by Abbasid-era biases and hostilities towards Umayyad rule. However, by reducing these adversities to a literary *topos*, we make two problematic assumptions.[20] First, this view overlooks the realpolitikal dilemma of Muslim judges, who were situated at the precarious intersection of

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[17] Ibn Qutayba, *ʿUyūn al-akhbār*, 1:132.

[18] Ibn ʿAbd al-Ḥakam, *Futūḥ*, 239; ʿAlā al-Dīn Mughulṭāy, *Ikmāl tahdhīb al-kamāl fī asmāʾ al-rijāl*, ed. ʿĀdil b. Muḥammad and Usāma b. Ibrāhīm, 12 vols. (Cairo: Al-Fārūq al-Ḥadītha, 2001), 8:29.

[19] Wael Hallaq, *Origins of Islamic Law*, 179–180.

[20] Christian Lange, *Justice*, 46, footnote 128.

caliphal benevolence, gubernatorial ambitions, and public expectations. Second, the *topos*-argument adopts an inward-looking approach to the Arabic Muslim source material, failing to explain why negative attitudes towards authority positions in general, and judges specifically, were a much more widespread phenomenon in the late antique world that had currency in Roman and Christian circles, too.

Indeed, the negative attitudes towards judging and the hesitancy to assume public offices did not originate with the spread of Islam. In late antiquity, public appointments had a long history of being scrutinized publicly. It was deeply entrenched in the contemporary *mentalité* to observe vigilantly those who acceded to positions of authority. In the predominantly Christian milieu of Egypt, modesty and restraint—whether genuine or performed—were seen as key virtues that those in charge, such as patriarchs, bishops, priests, and monks, were expected to embody. These qualities were intricately linked to the legitimacy of these positions.[21] When amid the Arian controversy of the church, the Coptic Patriarch Peter (d. 311) appointed Achillas and Alexander to follow him on the throne after his death—evidently assuming they would decline the offer as was customary—he admonished them: "Do not say: 'I have no mercy in me, and I am a sinner."[22] In the case of the Coptic Orthodox church, advancing to the patriarchal office meant not simply holding a religiously and politically contested position but also carrying

[21] Claudia Rapp, *Holy Bishops in Late Antiquity: The Nature of Christian Leadership in an Age of Transition* (Berkeley and Los Angeles: University of California Press, 2005), 48. On the performed virtues of bishops, see Rita Lizzi Testa, "The Late Antique Bishop: Image and Reality," in *A Companion to Late Antiquity*, ed. Philip Rousseau and Jutta Raithel (Chichester and Malden: Wiley-Blackwell, 2009), 525–538; Claudia Rapp, "Charity and Piety as Episcopal and Imperial Virtues in Late Antiquity," in *Charity and Giving in Monotheistic Religions*, ed. Miriam Frenkel and Yaacov Lev (Berlin and New York: De Gruyter, 2009), 75–88; and Jaclyn Maxwell, "Education, Humility and Choosing Ideal Bishops in Late Antiquity," in *Episcopal Elections in Late Antiquity*, ed. Johan Leemans, Peter Van Nuffelen, Shawn W.J. Keough, and Carla Nicolaye (Berlin and Boston: De Gruyter, 2011), 449–462.

[22] Sāwīrus b. al-Muqaffaʿ, *History of the Patriarchs II*, 391/127–392/128.

into the future the spiritual legacy of its founder St. Mark in a world of growing fragmentation and politicization of Christians. The burden shouldered by the patriarchs encapsulated the communal anxiety over Coptic Christian identity and their personal responsibility to safeguard its continuity.

Rejecting the patriarchate and refusing to be ordained as bishop were not private, personal matters, but dramas that often unfolded before the eyes of the public. As Claudia Rapp notes, "in a paradoxical inversion, the humility that prompts the rejection of ordination actually demonstrates a candidate's supreme qualification for ecclesiastical office."[23] In one version of the *Life of Saint Pachomius* (d. 348), we learn about how this founder of a large confederation of monasteries in Upper Egypt—often associated with cenobitic monasticism—almost childishly hid himself among the crowd when Archbishop Athanasius visited the monastery in the Thebaid to ordain him as bishop.[24] For Pachomius, the confluence of his vision for an ascetic community-based life and the "temptation to love of power" embodied by clerical dignitaries likely appeared as an unhealthy recipe, bound to result in "strife, envy, jealousy, and then schisms."[25] In the late fourth century, we hear of Basil of Caesarea complaining to his friend John Chrysostom ("the Golden Mouth")—who had cunningly avoided ordination by hiding himself in the mountains near Antioch—about the perils of Christian leadership:

> Well, if you had been personally ambitious to obtain this office, your anxiety would have been reasonable. Anyone who, by his ambition to obtain it, professes that he is suitable to exercise this ministry cannot make inexperience the excuse for his failure after he has

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[23] Claudia Rapp, *Holy Bishops in Late* Antiquity, 144.

[24] *Pachomian Koinonia*, 1:51 (Bohairic Life).

[25] Ibid, 1:314 (First Greek Life). See also William Harmless*, Desert Christians: An Introduction to the Literature of Early Monasticism* (Oxford: Oxford University Press, 2004), 122.

> been entrusted with it. He deprived himself of that excuse in advance, by coming forward and grabbing the ministry eagerly. And once he has voluntarily taken up the work of his own free will, he can no longer say, "I committed such and such an error against my will," or, "I did such and such a mischief against my will." For he who will judge him on that day will say: "Since you were conscious of your great inexperience and had not the ability to undertake this vocation without failure, why were you so ambitious and so presumptuous as to accept work beyond your own powers? Who compelled you to do it? Who dragged you into it forcibly, though you shied off and tried to escape?" But you [Chrysostom], at any rate, will never hear this said to you. Nor will you have to condemn yourself for that kind of thing. It is quite clear to everyone that you never showed the least ambition for this honour, but the success of the scheme would have been due to others. What deprives the ambitious of pardon for their mistakes, provides you with good grounds for excusing yourself.[26]

This tension between living a spiritual life in seclusion and contemplation and the necessity of morally upright Christian leadership is a theme we encounter widely in early Christian literature, East and West, and that signals the bishop's steadily expanding social and political role in late antiquity.[27]

In the wake of the sprawling fifth and sixth-century ascetic culture in the Near East, consecration to the bishopric was increasingly associated with a life at odds with the monastic ideals of humility, modesty, and inward spirituality. In this world, acts of public humility, self-

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[26] John Chrysostom, *Six Books on the Priesthood*, tr. Graham Neville (New York: St Vladimir's Seminary Press, 1996), 104.

[27] Peter Sarris, *Empires of Faith: The Fall of Rome to the Rise of Islam* (Oxford: Oxford University Press, 2011), 217–218.

deprecation, and the soul's public confession of its sins signified the transfiguration of the Christian body from its earthly attachments to a life committed to ascending the divine latter. The growing perception that positions of authority were incompatible with dedicating one's life to personal reflection is incisively summed up by the seventh-century monk John Climacus at Mt. Sinai:

> You cannot look to heaven and to earth at the same time; similarly, if you have not turned your back completely on your relatives and others in thought and in body, you cannot avoid endangering your soul.[28]

In Roman circles, the *cunctatio* (lit. "delay, hesitation") was well-known at least since the establishment of the principate in the first century BC. A nineteenth-century lithograph illustrates the moment Julius Caesar refused the crown offered by Marc Antony (see Fig. 24). This public spectacle of refusing state power aimed to alleviate public fears of imperial power abuse, especially after the civil wars, by creating the official pretense that the power to rule was conferred to the *princeps civitates* ("first among the citizens") by the people. By refusing to accept the imperial office, the candidate demonstrated to the public that he possessed the proper qualifications such as modesty and virtue needed for the position and, in a spectacular act of being forcibly appointed, showcased his loyalty by reluctantly submitting to the will of the *civitas*.[29]

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[28] John Climacus, *The Ladder of Divine Ascent*, tr. Colm Luibheid and Norman Russell (London: SPCK, 1982), 88.

[29] Jean Béranger, "Le refus du pouvoir (Recherches sur l'aspect idéologique du principat)," *Museum Helveticum* 5, no. 3 (1948), 178–196, at 185; Lothar Wickert, "IX E. *Cunctatio* vor der Übernahme des Principats, Versuch der *recusatio*," in *Paulys Realencycopädie der classischen Altertumswissenschaft*, vol. 22, *Praefectura bis Priscianus*, ed. Konrat Ziegler (Stuttgart: Alfred Druckenmüller, 1954), 2257–2263, at 2259–60. Also note the famous example in Roman history of Cincinnatus (d. c430 BC), who supposedly left his plow to become dictator for twenty days to avert a state crisis posed by the threat of the Aequi, only to return to his plow after their successful defeat. The historically controversial account is featured in Livy's *History of Rome*; Livy, *Rome and*



Fig. 24. Julius Caesar refusing the crown offered by Marc Antony in 44 BC. Nineteenth-century lithograph. © Public Domain. Reproduced by kind permission of the New York Public Library Digital Collections (https://digitalcollections.nypl.org/items/510d47e4-5f9f-a3d9-e040-e00a18064a99#).

These attitudes of performed humility towards state power continued into the Islamic period. Not only are Arabic literary sources satiated with an abundance of negative attitudes towards the Muslim judgeship, but we also encounter several recusals—instances where individuals appointed as judges excuse themselves from taking on this dreaded task. Being the first or second individual appointed to the judgeship in Egypt, Kaʿb b. Yasār held supreme qualifications: Not only had he witnessed and participated in the Arab Muslim conquests but—as the sources unanimously agree—he also brought extensive professional experience, having served as a judge in pre-Islamic times. However, this very experience seems to have been the issue with his appointment. While the state had no objections—he was appointed by Caliph ʿUmar himself—the problem lay with Kaʿb himself. The long-form sources depict a self-deprecating refusal, packaged in the familiar late antique idiom of performed modesty and

Italy: Books VI–X of the History of Rome from Its Foundation, tr. Betty Radice (London: Penguin, 1982), 6:28–29.

humility: If he were to assume office, Kaʿb argued, he would persist in the disastrous ignorance (*amr al-jāhilīya*) from which God had saved him by removing him from the judgeship. Thus, he cannot return to it.[30] This, we are told, was Kaʿb's official explanation for recusing himself—a justification that can be understood in the context of second-century tendencies to frame the pre-Islamic era through the now widespread hermeneutic distinction between *jāhilīya* and *islām*. However, it is possible that a more significant obstacle to Kaʿb's appointment as a judge was his father's unsuccessful career as a prophet. Khālid b. Sinān, a member of the Banū ʿAbs, had revealed himself as a prophet to his people, ordering them to bury and later disinter him, claiming they would find him alive. This they did not do, and it gained him the reputation of the Prophet whose people had forsaken him (*nabī ḍayyaʿahu qawmuhu*).[31] Saʿīd b. Rabīʿa b. Ḥubaysh al-Ṣadafī who had been appointed to the judgeship by Governor al-Walīd b. Rifāʿa in 732 also excused himself. He appears to have had an incredibly introverted and reserved personality (*mustawḥish min al-nās*). In his case, his recusal was met with opposition by al-Walīd, who forced him to go on the job only to replace him when he did not utter a word when faced with litigants.[32] That the state's coercion to assume the judgeship could turn into an intensely threatening and violent spectacle was a lesson learned by Ḥaywa b. Shurayḥ and Abū Khuzayma Ibrahīm b. Yazīd al-Ḥimyarī, both of whom were threatened with the sword to pressure them into taking on the burden of the judgeship.[33]

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[30] Ibn ʿAbd al-Ḥakam, *Futūḥ*, 230; Wakīʿ, *Akhbār al-quḍāh*, 3:220–221; Ibn Yūnus, *Tārīkh*, 2 vols. (Beirut: Dār al-Kutub al-ʿIlmīya, 2000), 1:414; al-Kindī, *Kitāb al-wulāh wa-kitāb al-quḍāh*, 218–219.

[31] ʿUmar b. Shabba, *Tārīkh al-madīna al-munawwara*, ed. Fahīm Muḥammad Shaltūt, 4 vols. (Jeddah: Dār al-Iṣfahānī, 1979), 2:420.

[32] Ibn Ḥajar al-ʿAsqalānī, *Rafʿ al-iṣr ʿan quḍāt Miṣr*, ed. ʿAlī Muḥammad ʿUmar (Cairo: Maktabat al-Khānjī, 1998), 162.

[33] Ibn ʿAbd al-Ḥakam, *Futūḥ*, 241; Wakīʿ, *Akhbār al-quḍāh*, 3:232; Ibn Ḥajar al-ʿAsqalānī, *Rafʿ al-iṣr*, 36–37; al-Suyūṭī, *Ḥusn al-muḥāḍara fī tārīkh Miṣr wa-l-Qāhira*, ed. Muḥammad Abū al-Faḍl Ibrāhīm, 2 vols. (Dār Iḥyāʾ

Outside Egypt, complaints about the judgeship and cases of recusals—even if unsuccessful—are similarly widespread. In Syria, where the judge also served as the *vicarius* of the governor in Damascus—a pattern that can also be observed in Egypt at least from the first decade of the eighth century onwards—Abū Dardāʾ (d. 32/652) complained after being appointed as judge: "Are you [the people] congratulating me when I was just made the head of an abyss (*raʾs mahwāh*), a position clearly farther from Eden? If the people truly understood that which the judgeship entails, they would detest it and harbor hatred for it. But if they knew what the call to prayer (*adhān*) entails, they would strive for it eagerly."[34] Unlike the *muʾadhdhin*, who was guaranteed a ticket to Paradise, judges could claim no such job benefits.

When ʿAbd Allāh b. ʿUmar (d. 73/693) was selected by the Caliph ʿUthmān to serve as a judge, ʿAbd Allāh argued that, unlike his father, who could consult the Prophet when in doubt and unlike the Prophet, who could summon the archangel Gabriel, he himself had neither of these options available to him. Eventually, ʿUthmān excused him from the position, instructing him not to tell anyone.[35]

One could argue that some Muslims refused to take on the judgeship simply because they did not wish to serve in such a capacity. Despite the handsome salary, which was likely paid in advance,[36] and other material benefits they received at least from Ibn Ḥujayra (69/688–689 until

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al-Kutub al-ʿArabīya, 1967), 2:139; Ibn Yūnus, *Tārīkh*, 1:31; al-Samʿānī, *Al-Ansāb*, ed. ʿAbd al-Raḥmān b. Yaḥyā al-Muʿallimī al-Yamānī, Abū Bakr Muḥammad al-Hāshimī, and Muḥammad Alṭāf Ḥusayn, 13 vols. (Hyderabad: Majlis Dāʾirat al-Maʿārif al-ʿUthmāniya, 1962–1982), 3:130; Abū Bakr al-Ḥāzimī, *ʿUjālat al-mubtadiʾ wa-fuḍālat al-muntahī*, ed. ʿAbd Allāh Kanūn (Cairo: Al-Hayʾa al-ʿĀmma li-Shuʾūn al-Maṭābiʿ al-Amīrīya, 1973), 34.

[34] Ibn ʿAsākir, *Tārīkh Dimashq*, 47:140; cf. Lyall Armstrong, *The Quṣṣāṣ of Early Islam* (Leiden and Boston: Brill, 2017), 128.

[35] Ibn Saʿd, *al-Ṭabaqāt al-kubrā*, ed. ʿAlī Muḥammad ʿUmar, 11 vols. (Cairo: Maktabat al-Khānjī, 2001), 4:136–137.

[36] Wadad Kadi, "An Umayyad Papyrus in al-Kindī's *Kitāb al-Quḍāt*," *Der Islam* 84 (2008), 200–245, at 205.

83/702) onwards, advancing one's career by joining the ranks of authority in the tightly-knit and expanding web of relations within the Islamic state may not have appealed to everyone.[37] However, rather than a personal lack of interest in the position, evidence suggests that antipathy towards the judgeship was more likely due to the highly politicized nature of judicial appointments and had become part of the professional habitus of judges. Indeed, we have dozens of examples where shifts in the caliphal, regional, or local political landscape had immediate consequences for judges, often leading to their removal from office or reassignment.

That the *qāḍī*s were not political bystanders detached from the world around them is illustrated by several instances that point to their intense involvement in the political affairs of their day. ʿĀbis b. Saʿīd is described in the sources as a supporter of the *shīʿat Marwān*, who actively corresponded with and propagandized in their name.[38] Mālik b. Sharāḥīl, after whom a mosque in Egypt was named, was appointed to the judgeship in 702. He had previously led the army troops to Mecca in support of al-Ḥajjāj during the battle against Ibn al-Zubayr.[39] Their political affiliations, as well as personal differences with the governor, could bring judges into great trouble. When passing by the drunk slave (*mawlā*) of the Egyptian governor, Judge ʿImrān b. ʿAbd al-Raḥmān ordered the slave to be flogged. Despite warnings from the people, ʿImrān insisted on his judicial responsibilities, saying: "Even if it were his [the governor's] son, I'd have

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[37] Ibn Ḥujayra is known to have received 200 Dinars annually for each of his positions as judge, *qāṣṣ*, and head of the treasury (*bayt al-māl*) plus a stipend (*ʿaṭāʾ*) of 200 and an allowance (*jāʾiza*) of 200. He did not need to pay taxes on his income but charity (*zakāt*). Mālik b. Sharāḥīl (83/702–84/703) already received 3,000 Dinars and was also provided with clothing. Abū Khuzayma (140/757 and 144/761–154/771) is reported to have received 10 Dinars a month, al-Mufaḍḍal b. Faḍāla (168/785–169/786 and 174/790–177/793) 30 Dinars during his first term; Ibn ʿAbd al-Ḥakam, *Futūḥ*, 235–236, 270; al-Kindī, *Kitāb al-wulāh wa-kitāb al-quḍāh*, 273. See also Wadad Kadi, "The Salaries of Judges in Early Islam: The Evidence of the Documentary and Literary Sources," *Journal of Near Eastern Studies* 68, no. 1 (January 2009), 9–30.

[38] Al-Kindī, *Kitāb al-wulāh wa-litāb al-quḍāh*, 225.

[39] Ibn Yūnus, *Tārīkh*, 1:424.

him flogged." The Egyptian governor ʿAbd Allāh b. ʿAbd al-Malik (r. 85/704 until 90/708–709) retaliated by dismissing him and turning ʿImrān into a public fool, forcing him to dress up in a piece of clothing cut out of paper on which were written his sins and which he had to wear standing in front of people.[40] Serving as a judge then required personal and political loyalties that could be difficult to sustain in a climate where governorship and caliphate frequently changed hands. Judges constantly ran the risk of becoming involved in partisan politics. To understand the complex web of relationships in which Muslim judges were involved, we need to next focus on the responsibilities and functions that *qāḍī*s assumed and analyze the field of existing power relations they entered.

4.4 Social and Political Functions of the *quḍāh*

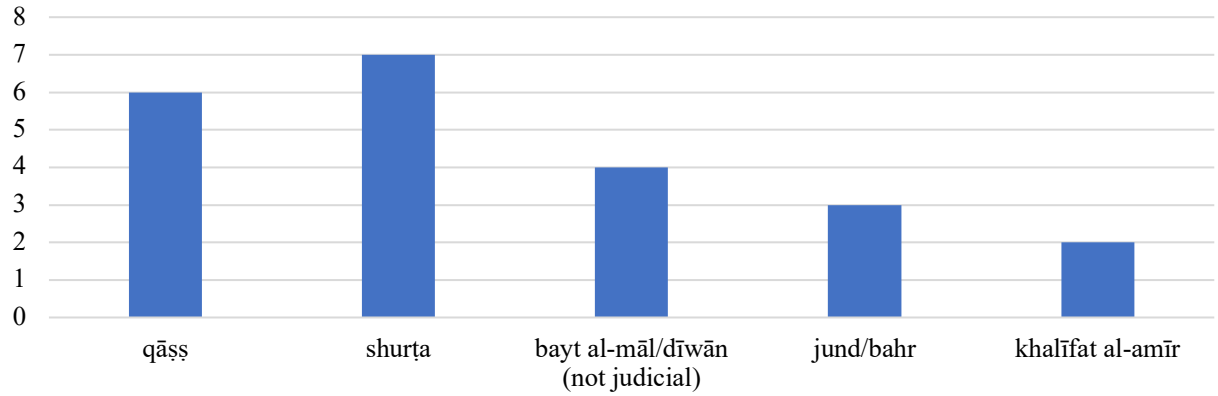
4.4.1 The Muslim Judge as a Product of the Late Antique World?

Even though the sensibilities and attitudes of the *quḍāh* closely resemble Roman and Christian anxieties concerning authority positions, we cannot infer that the Muslim judgeship was simply the continuation and expansion of an already-existing social and political role. Nor should we assume that the logic of negative attitudes necessarily had the same currency it did in other late antique traditions. Despite the evidence being scattered across the long-form sources, these sources offer a relatively lucid picture of the political and social tasks that the seventh and eighth-century *qāḍī*s performed. Nevertheless, the *qāḍī* profession will need to be understood in conjunction with its history in other parts of the Islamic empire and the local and regional legal traditions and customs against which it emerged, and we must avoid premature conclusions based on generalizations of its political and social idiosyncrasies in Egypt.

[40] Ibn ʿAbd al-Ḥakam, *Fuṭūḥ*, 238; Ibn ʿAsākir, *Tārīkh Dimashq*, 29:347–348.

In the first Islamic century, Muslim judges often held additional state positions simultaneously.[41] In other words, the Umayyad *qāḍī*s were far less professionalized than their Fatimid, Ayyubid, or Mamluk counterparts. This can be partially attributed to the position's novelty, but it also reflects the gradual expansion of the Islamic state's infrastructure in Egypt. Many of the Egyptian judges simultaneously headed the police apparatus (*shuraṭ*), the treasury (*bayt al-māl*), financial registers (*dīwān*), the army (*jund*), or the navy (*baḥr*). Some served as representatives of the governor during his absence (*khalīfa*) or as overseers of the mosque (*ṣāḥib al-masjid*), while others worked as storytellers/Qurʾān reciters (*qāṣṣ*). Their accomplishments in one of these roles often shaped and advanced their careers in the others (see Fig. 25).[42]

Fig. 25. Number of Muslim judges in Egypt serving in additional capacities for the state (643–761).



[41] In the oldest preserved Arabic dictionary by al-Khalīl b. Aḥmad, the verb *ḥakama* ("to arbit, to judge") is given as an equivalent to *qaḍā.* When interpreting Q 17:23 (*wa-qaḍā rabbuka an-lā taʿbudū illā iyyāhu*), Mubarrad explains that *qaḍā* is used in the sense of *amara* ("to command, to order"), dovetailing with the repeated Qurʾānic use of *qaḍā amran*/*qaḍā al-amr*; al-Khalīl b. Aḥmad, *Kitāb al-ʿayn*, ed. Mahdī al-Makhzūmī and Ibrāhīm al-Sāmarrāʾī, 8 vols. (Baghdad: Dār wa-Maktabat al-Hilāl, 1980–1985), 5:185; al-Mubarrad, *al-Muqtaḍab*, ed. Muḥammad ʿAbd al-Khāliq ʿAẓīma, 4 vols. (Beirut: ʿĀlam al-Kutub), 2:36.

[42] Cf. Mathieu Tillier, "The Umayyads and the Formation of Islamic Judgeship," in *The Umayyad World*, ed. Andrew Marsham (London: Routledge, 2020), 168–182, at 171.

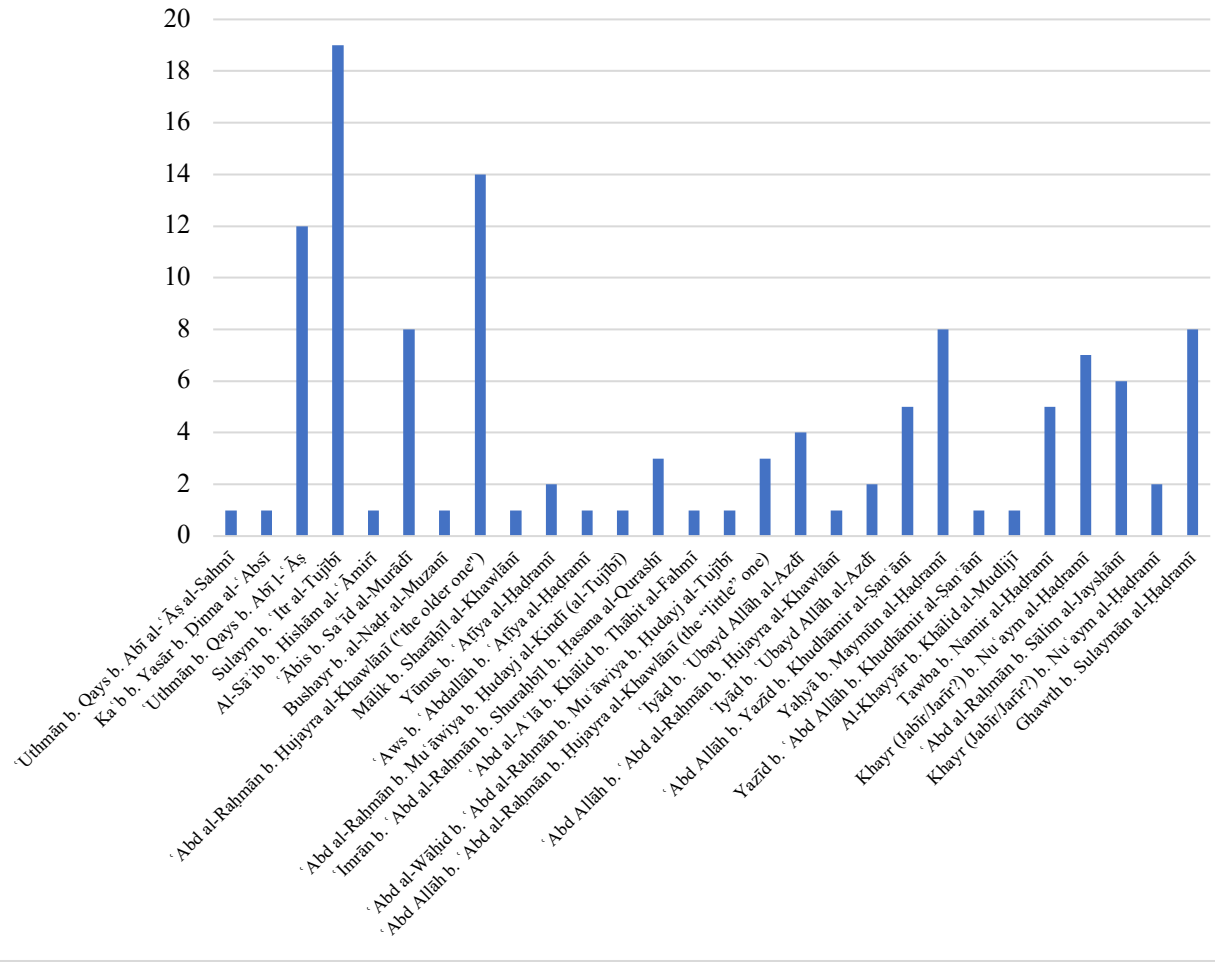
4.4.2 Appointments and Appointment Procedures

After the appointment of the first judge in Egypt in 23/643 until 144/761, a total of twenty-eight judicial appointments were made, either by the Egyptian governor or the Muslim caliph (see Fig. 26). Two individuals outright rejected their appointments, and three—ʿAbd Allāh b. ʿAbd al-Raḥmān b. Ḥujayra al-Khawlānī (709–712 and 716–717), ʿIyād b. ʿUbayd Allāh al-Azdī (712–716 and 717–719), and Khayr b. Nuʿaym al-Khaḍramī (738–745 and 751–753)—were appointed twice during that period. The longest tenure was held by Sulaym b. ʿItr (660/661–679/680), who served as judge for a total of nineteen years. Meanwhile, we come across several short-term appointments that lasted only a year or even less, especially in the first half of the eighth century. The average time judges held their positions was 4.29 years, with those appointed before the turn of the seventh century serving significantly longer periods (on average 7.13 years) than those after (3.15 years).[43] This gap can be explained by the more frequent changes on the caliphal and gubernatorial level of the Islamic administration in the eighth century, with the result that judges were reassigned and replaced more often. For the duration of five years, from 656 till 660/661, the *qāḍī* position was vacant, although it is argued by some that Egypt's governor, appointed by the fourth caliph, ʿAlī b. Abī Ṭālib (r. 656–661), assumed that role himself.[44] During the entire period, only one individual was appointed to the judgeship at a time, generally in Fusṭāṭ, which served as the administrative and political center of Islamic rule in Egypt. This changed during the outbreak of the plague (*ṭāʿūn*) when the governor moved to Ḥulwān further up the Nile, with the

[43] Not counting Kaʿb b. Yasār and Saʿīd b. Rabīʿa, who were appointed but did not assume the judgeship. Because specific data about the months when judges were appointed and removed are often absent or incomplete, the appointments of judges who served less than one year have been counted as one.

[44] Ibn Ḥajar al-ʿAsqalānī, *Rafʿ al-iṣr*, 266.

Fig. 26. Appointment duration (in years) of Egyptian *qāḍī*s (sorted chronologically from 643 until 761).



qāḍī representing him as a viceregent (*khalīfa*) in Fusṭāṭ.[45] We do not yet hear of *qāḍī*s appointed in other parts of the country or at other administrative levels, which certainly does not mean that all judicial matters passed through or were handled through the central judgeship in Fusṭāṭ (an act that would have been impossible at least if we assume that *qāḍī* jurisdiction was not restricted to matters between Muslims) but simply that the efficiency of the Islamic state administration relied on lower levels of jurisdiction, especially arbitration, overseen by bishops, pagarchs, and others.

[45] Ibn ʿAbd al-Ḥakam, *Fuṭūḥ*, 236.

The long-form sources describe a centralized procedure for the appointment of Kaʿb as judge: Accordingly, the Caliph ʿUmar sent an appointment letter with instructions to ʿAmr b. ʿĀṣ, who had led the conquests of Egypt and by then served as its governor based in Fusṭāṭ.[46] However, to the best of my knowledge, this letter has not been preserved in either the long-form sources or the documentary record. A tradition in al-Kindī suggests that Qays b. Abī al-ʿĀṣ al-Sahmī—either the predecessor or successor judge of Kaʿb—was appointed directly by ʿAmr.[47] The third judge, ʿUthmān b. Qays b. Abī al-ʿĀṣ ,was again appointed on the orders of ʿUmar.[48] The intercession of the caliph in judicial appointments may well reflect an idiosyncrasy of ʿUmar's caliphal style or be a result of the lack of established administrative procedures at the time since the Egyptian governor continued to appoint all subsequent judges until 98/717.

4.4.3 The Preacher-Judge

We know of at least six judges in early Islamic Egypt—two of them were appointed twice— who previously or simultaneously served in the capacity of "preachers" or "storytellers" (*qāṣṣ*).[49] Scholars have noted that the orthographical similarity between the verbs *qaṣṣa* (قص) and *qaḍā* (قضى), especially in their active participle forms (*qāṣṣ*^{un}—قاص/*qāḍ*^{in}—قاض), occasionally led to confusions and erroneous transmission reports in the literary sources about the positions that

[46] Ibid., 257.

[47] Ibid.

[48] Ibid., 258.

[49] (1) Sulaym b. ʿItr al-Tujībī, (2) ʿAbīs b. Saʿīd al-Murādī, (3) ʿAbd al-Raḥmān b. Ḥujayra al-Khawlānī, (4) Mālik b. Sharāḥīl al-Khawlānī, (5) ʿAbd Allāh b. ʿAbd al-Raḥmān b. Ḥujayra al-Khawlānī (appointed twice), and (6) Khayr b. Nuʿaym al-Ḥaḍramī (appointed twice).

some individuals held.[50] These—for the lack of a better term in English—"preachers" were engaged in a variety of activities that encompassed storytelling, delivering sermons, and Qurʾān recitations, among other things. In his book on the *quṣṣāṣ* in the Umayyad period, Lyall Armstrong claims that the "preachers" (*qāṣṣ*) have fared poorly regarding their reputation in modern scholarship partly because of the view held by Ignác Goldziher that they fabricated stories for the general populace and were keen on filling their pockets with money.[51] While it is true that the *quṣṣāṣ* have frequently been interpreted as non-orthodox charlatans who acted based on self-serving interests, already Goldziher—as does Armstrong—acknowledges and separates the important role they played in the early period from their reputation in later centuries:

> In so far as the *quṣṣāṣ* served serious religious ends, whether as homiletic exegetes or as tellers of sacred stories, they were left alone and undisturbed in their pious work; official theology gladly tolerated these free preachers and popular theologians, who in street or mosque condescended to the level of the understanding of the people, and spread amongst them ascetic beliefs which were not fostered by official theologians, who were chiefly bound up in the study of law, but which were publicly represented by these circles.[52]

The problem with Goldziher's statement is of a different nature, and it has to do with his situating of the *quṣṣāṣ* in proximity to "the vulgar"—the notion that they had a penchant for

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[50] Gualtherüs (Gautier) H.A. Juynboll, *Encyclopedia of Canonical Ḥadīth* (Leiden and Boston: Brill, 2007), 45. For instances of transmitters being uncertain about individuals being a *qāḍī* or *qāṣṣ*, see, for instance, Abū Dāwud al-Ṭayālisī, *Musnad*, 1:380 or al-Bukhārī, *al-Tārīkh al-kabīr*, ed. Muḥammad b. Ṣāliḥ b. Muḥammad al-Dabbāsī, 12 vols. (Riyadh: al-Nāshir al-Mutamayyiz li-l-Ṭibāʿa wa-l-Nashr wa-l-Tawzīʿ, 2019), 1:564.

[51] Lyall Armstrong, *Quṣṣāṣ*, 4, 127.

[52] Ignác Goldziher, *Muslim Studies (Muhammedanische Studien)*, tr. Christa R. Barber and Samuel M. Stern (Albany: State University of New York Press, 1971), 2:153.

popular views that clashed with the orthodoxy propagated by the elite or, as he calls them, "official theologians" predominantly interested in law. We may recall here Peter Brown's *The Cult of the Saints* and his critique of Hume's "two-tiered model" of religious history that is "marked by a constant tension between theistic and polytheistic ways of thinking," and it is precisely this model that Goldziher succumbs to. Consequently, Goldziher interprets their role and function as the extension of an ongoing conflict between the Muslim elite and "simple people."[53] The early historical sources on Islamic jurisprudence in Egypt, especially the works by Ibn ʿAbd al-Ḥakam, Wakīʿ and al-Kindī, indicate that the Egyptian *quḍāh* regularly pursued careers as "preacher-judges" (and as we will soon see "police-judges," "army-judges," and "treasurer-judges"). The combination of both judging and preaching in a single position does not easily lend itself to the argument that the *quṣṣāṣ* were usually proponents of popular beliefs and unorthodoxy. Although we are undoubtedly dealing with a spectrum of preachers in the early period, some of whose views may have more significantly digressed from official doctrines, it appears that in several instances—at least those of the preacher-judge—the *quṣṣāṣ* were not separate from but part of the class of official elites that Goldziher mentions.[54]

We can extend this line of reasoning by focusing on the subsistence of these preacher-judges. It has been assumed that the *quṣṣāṣ* were mainly acting independently, without holding official positions in the Muslim administration. Again, the Egyptian evidence suggests, at the very least, some centralized appointments of preachers. Before holding the judgeship, Sulaym b. ʿItr worked as the *qāṣṣ* of the army (*jund*) under ʿAmr b. al-ʿĀṣ, suggesting that, like the soldiers

[53] Peter Brown, *The Cult of the Saints: Its Rise and Function in Latin Christianity* (Chicago: University of Chicago Press, 1981), 14.

[54] Apart from those individuals I already mentioned for Egypt, Armstrong lists ten additional ones throughout the Umayyad empire, Lyall Armstrong, *Quṣṣāṣ*, 127.

(*muqātilūn*), he may have been on the *dīwān* list receiving a salary (*ʿaṭāʾ*). We also have evidence of Ibn Ḥujayra being remunerated for his services as a storyteller by the government directly and in addition to his salary for the judgeship.[55] After the seventh-century turn, we have fewer reports about judges who also served as storytellers, which may either indicate that such information was no longer considered significant to be mentioned or, which is more likely, that the increasing professionalization of the judgeship and the "storytelling business" (*qaṣaṣ*) made such double appointments rarer. The same pattern can be observed concerning judges who served in double or triple functions as heads of the police and the army.

4.4.4 The Police-Judge and the Army-Judge

During the period under review, seven Egyptian judges served as heads of the police (*shuraṭ*). In addition, we have several who served in military capacities, such as military judges, commanders of the army, or the navy forces.[56] This should not come as a surprise as many of those selected judges had fought in the Muslim conquests of Egypt and other parts of the Islamic empire as *muqātilūn*. It was their noble service towards spreading the cause of Islam, in addition to their affiliation with the Prophet and his companions (*aṣḥāb*), that secured them rank and class in Egypt's post-conquest society.

Appointments to the police were made centrally, typically by the governor (*amīr*). It is

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[55] On the army payroll in the early Islamic period, see Hugh Kennedy, *The Armies of the Caliphs: Military and Society in the Early Islamic State Warfare and History* (London and New York: Routledge, 2001), 59–95.

[56] The judges appointed to head the police were (those also appointed to the military in bold): (1) al-Sāʾib b. Hishām al-ʿĀmirī, **(2) ʿĀbis b. Saʿīd al-Murādī**, **(3) Mālik b. Sharāḥīl al-Khawlānī**, (4) Yūnus b. ʿAṭīya al-Ḥaḍramī, (5) ʿ**Abd al-Raḥmān b. Muʿāwiya b. Ḥudayj al-Kindī/al-Tujībī**, (6) ʿImrān b. ʿAbd al-Raḥmān b. Shuraḥbīl b. Ḥasana al-Qurashī, (7) ʿAbd al-Aʿlā b. Khālid b. Thābit al-Fahmī. Again, the phenomenon of judges also being appointed to military/navy positions is not specific to Egypt. Rana Mikati observes the same in Syria. Rana Mikati, "The Creation of Early Islamic Beirut: The Sea, Scholars, Jihad and the Sacred" (PhD diss., University of Chicago, 2013), 43.

noteworthy to mention that similar to the preacher-judge, there is no discernable pattern as to which judges were appointed to head the police forces, and double and triple appointments ultimately seem to have depended on the qualifications of the individual and gubernatorial preferences. However, there is a correlation between judges who had served as army leaders (*jund* or *baḥr*) and those eventually appointed to the police, implying that army leadership may have qualified them for managing the day-to-day affairs of the police or vice versa. ʿĀbis b. Saʿīd al-Murādī, who was the first judge also to be appointed to head the police, rotated between several appointments: apparently first serving as head of the police, then reassigned to head the navy, again the police, then viceregent of the governor in Fusṭāṭ, and eventually holding both the judgeship and police leadership.[57]

4.4.5 The Treasurer-Judge

In Ibn Taghrībirdī (d. 874–875/1470), we learn about two conflicting traditions about the state treasury (*bayt al-māl*) in Egypt, the first of which places its construction during the rule of ʿAmr b. al-ʿĀṣ. The second claims that its physical structure was established by the tax official (*mutawallī al-kharāj*) Usāma b. Zayd al-Tanūkhī during the governorship of Sulaymān b. ʿAbd al-Malik in the year 97/715.[58] Unless we assume that the physical construction of the treasury succeeded its institutional foundation, the year mentioned here conflicts with other evidence from the literary sources. Ibn ʿAbd al-Ḥakam and al-Kindī note that already Ibn Ḥujayra, the

[57] Al-Kindī, *Kitāb al-wulāh wa-kitāb al-quḍāh*, 32–33.

[58] Ibn Taghrībirdī, *al-Nujūm al-zāhira fī mulūk Miṣr wa-l-Qāhira* (Wizārat al-Thaqāfa wa-l-Irshād, 1963), 1:71; Petra Sijpesteijn, *Shaping a Muslim State*, 80. Instead of the year the state treasury was founded, 97/715 may refer to when a Nile barometer (*miqyās*) was built, as reported by Yāqūt and al-Qalqashandī. However, Ibn Khallikān notes the establishment of the barometer by Usāma as early as 76/695. Yāqūt al-Ḥamawī, *Muʿjam al-buldān*, 5:178; al-Qalqashandī, *Ṣubḥ al-aʿshā fī ṣināʿat al-inshā*, 14 vols. (Beirut: Dār al-Kutub al-ʿIlmīya, 1987), 3:327; Ibn Khallikān, *Wafayāt al-aʿyān*, ed. Iḥsān ʿAbbās, 8 vols. (Beirut: Dār Ṣādir, 1994), 3:112.

"older" one, who was appointed *qāḍī* from 69/688–89 until 83/702, was remunerated for his services to the treasury, possibly implying the existence of a state-run, centralized Islamic state treasury before 97/715. Even with localized treasuries remaining in place, as indicated by the Greek ostraca, it seems unlikely that the state's fiscal revenues generated by the seizure of booty, collection of taxes, fines, and other sources of income would not be stored and administered in a central place in Fuṣṭāt, especially since the Islamic state bureaucracy only gradually expanded into the countryside.[59]

Mathieu Tillier notes that two Egyptian judges were placed at the head of the *bayt al-māl*: the already mentioned Ibn Ḥujayra "the older one" and his son Ibn Ḥujayra "the younger one."[60] However, Muslim judges' involvement in the state's fiscal affairs was neither restricted to these two individuals nor strictly limited to *supervising* the treasury. There is reasonable evidence that *qāḍī*s fulfilled scribal duties in government branches other than the judiciary, including the state treasury. Khayr b. Nuʿaym al-Ḥaḍramī (120/738–127/745 and 133/751–135/753) is reported to have initiated a change in the management of orphan property by placing it under the auspices of the state treasury after being ordered to do so by the second Abbasid caliph Abū Jaʿfar al-Manṣūr. For every piece of property that entered or exited the state treasury, Khayr would write a *sijill*, presumably a documentary record similar to the 131/748 note that is found in al-Kindī—

[59] In the Arabic papyrological record, the term *bayt al-māl* first appears in P.VanthieghemCorrespondance II=P.BeckerPAF 3 and P.BeckerNPAF 3=P.Cair.Arab. 149, the former dating to 709 and the latter to 709–714. P.BeckerNPAF 3 is an official admonition from the Aphrodito (Ishqawh) dossier, in which the addressee, somebody responsible for the collection of taxes for his district (*kūra*), is threatened with punishment and a heavy fine should he neglect to forward them to the treasury. The *bayt al-māl* is mentioned here twice, at first when the higher official belabors the recipient's failure and excuses to send the taxes he levied from villagers in line with the district's usual annual tax burden (*naḥw alladhī kānū yuʾaddūn fī bayt al-māl kull sana*) and again towards the end of the correspondence where he reminds him to send coins according to treasury weight only (*illā mā kāna ʿalā wazn bayt al-māl*). P.BeckerPAF3 similarly employs the term, urging the officials to deliver the tax burden to the treasury (*wa-yastaʿjil min ʿindak yuʾaddīhā fī bayt al-māl*). I thank Cecilia Palombo for referring me to the latter papyrus.

[60] Mathieu Tillier, "The Umayyads and the Formation of Islamic Judgeship," 171.

deemed by Wadad Kadi to most likely constitute the verbatim copy of an original papyrus al-Kindī had access to.[61] That said, the nature of Khayr's position in the treasury is far from clear, and we do not know whether his writing of *sijillāt* only implies the rank of a scribe (*kātib*) or that of a bursar (*khāzin*).

What we do know is that *qāḍī*s, at least in the first Islamic century, engaged in scribal tasks, which would have qualified them for recordkeeping positions in the state treasury and the maintenance of the *dīwān* lists. The practice of keeping documentary records about lawsuits adjudicated by Muslim judges goes back as early as Sulaym b. ʿItr (40/660–661 till 60/679–680):

> A lawsuit regarding inheritance was brought before Sulaym b. ʿItr and he adjudicated between the heirs, but they then disapproved of his judgment and returned to him. So, he [again] adjudicated between them and wrote a document (*kataba kitāban*) with his judgment to which nobles of the army (*shuyūkh al-jund*) served as witnesses (*ashhada fīhi*). He was the first *qāḍī* in Egypt to record (*sajjala sijillan*) his judgments in a register.[62]

The anecdote on Sulaym's scribal activities suggests that the official recording of legal judgments served to safeguard the finality and integrity of judgments, preventing litigants from returning to relitigate their lawsuits or appealing previous judgments by issuing a *kitāb*. Whether the *kitāb* mentioned here corresponds to the judicial proceedings certificates (*maḥāḍir*) we have from later centuries, and whether the presence of Muslim witnesses implies that they ratified the

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[61] Al-Kindī, *Kitāb al-wulāh wa-kitāb al-quḍāh*, 257. Wadad Kadi has argued that the note most likely stems from a papyrus or treasury register that al-Kindī copied. The note reads (translated by Wadad Kadi): "In the name of God, the Merciful the Compassionate. From ʿĪsa b. Abī ʿAṭāʾ to the bursars of the Treasury. Give ʿAbd al-Raḥmān b. Sālim, the judge, his salary for the month of Rabīʿ I and Rabīʿ II of the year 131 twenty dīnārs. Record the quittance to that effect. Written on Wednesday, 2 Rabīʿ I of the year 131." Wadad Kadi, "An Umayyad Papyrus," 201–202.

[62] Al-Kindī, *Kitāb al-wulāh wa-kitāb al-quḍāh*, 224; Ibn Ḥajar al-ʿAsqalānī, *Rafʿ al-iṣr ʿan quḍāt Miṣr*, 167.

document by placing their signatures at the end, as became customary in the second century, cannot be shown definitively. Curiously though, the note goes further to say that Sulaym was the first judge to record (*sajjalla sijillan*) his judgments in a *sijill*, and I take *sijill* here to mean that he recorded them in some register—which is consistent with the note about recording transactions from and into the *bayt al-māl*—and thus to refer to a separate act of noting down the legal judgment after issuing a document (*kitāb*) that contained said judgment for litigants. In the much later commentary by ʿUmar b. ʿAbd al-ʿAzīz b. Māza (536/1141) on al-Khaṣṣāf's *Adab al-qāḍī*, we are informed that Muslim judges—or their scribes—typically prepared two copies of a judgment, one to stay with the defendant (*al-khaṣm*), and one with the *qāḍī*, known as the *dīwān al-qāḍī*.[63] The evidence presented by Wael Hallaq indicates that until the mid-second century, outgoing *qāḍī*s typically transferred the *dīwān*s to their incoming successors, attesting the significance that such documents held in the eyes of the state administration and undergirding the fact that Islamic legal institutions increasingly came to operate with an institutional consciousness as the result of judicial recordkeeping and its transmission over generations of *qāḍī*s.[64]

The early origins of the practice of double legal record-keeping in the late seventh century—highlighted here by the long-form sources and exemplified by the recovery of debt registers in the previous chapter—underscore the significant role that documents issued by the Islamic state judiciary played in resolving disputes. Lucian Reinfandt has previously emphasized

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[63] ʿUmar b. ʿAbd al-ʿAzīz b. Māza, *Sharḥ adab al-qāḍī*, ed. Muḥyī Hilāl al-Sarhān, 4 vols. (Baghdad: Maṭbaʿat al-Irshād, 1978), 1:259. Among Ottoman studies scholars, the distinction between *maḥḍar* and *sijill*, as well as other legal documents issued by the *qāḍī* such as deeds (*ṣikāk*), is well known; Ahmed Akgündüz, "Sharīʿah Courts and Sharīʿah Records: The Application of Islamic Law in the Ottoman State," *Islamic Law and Society* 16 (2009), 202–230, at 206–208.

[64] Wael Hallaq, "The '*qāḍī*'s *dīwān* (*sijill*),'" 425–426.

the importance of legal documents during this period. However, most Islamic legal specialists continue to retroject the later view that written documents were inadmissible as legal evidence in court, despite their widespread presence.[65] Al-Jaṣṣāṣ represents the paradigmatic later position, arguing that legal documents, including the register of the judge itself (*dīwān al-qāḍī*), were admissible at trial only when litigants could establish proof (*bayyina*)—by which he means testimony—to verify that the legal judgment stated in these documents had been granted by the *qāḍī*. Al-Jaṣṣāṣ offers an interesting argument, suggesting that the need to corroborate written declarations by testimony stems from the fact that just because something is written in the *dīwān al-qāḍī*, it cannot be concluded to have status as a legal judgment. His reasoning is that the *dīwān* served purposes other than to record judgments—presumably notetaking or statements only *intended* to be published as judgments.[66] It is a bit like arguing that a car is not necessarily a vehicle since it can serve purposes other than to take you from A to B, including storage, resting, and other activities you might engage in in a car. Al-Jaṣṣāṣ's is an overly cautious and not always practical approach to legal documents that prioritizes the human component in validating and relying on documents, placing the burden of proof on litigants.

Over time, the *qāḍī*'s court expanded to include additional staff members, such as the court assistant (*ḥājib*), doorman (*bawwāb*), public caller (*munādī*), professional witnesses

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[65] Lucian Reinfandt, "Local Judicial Authorities," 129. Joseph Schacht regards the continued use of written documents "during the first century and later" as evidence of the contradiction between Islamic legal theory and practice; Joseph Schacht, *Introduction to Islamic Law*, 18–19. Christian Müller argues that the normative positions in legal theory (*fiqh*) only gradually came to assert themselves over applied law. Christian Müller, "Written Documents as Legal Proof in Islamic Law," *The Documents of Islamic Law: Studies on Arabic Legal Documents*, 03/05/2021, https://dilih.hypotheses.org/417, accessed February 21, 2025.

[66] Al-Jaṣṣāṣ, *Sharḥ mukhtaṣar al-Ṭaḥāwī*, ed. ʿIṣmatallāh ʿInāyatallāh Muḥammad et al., 8 vols. (Dār al-Bashāʾir al-Islāmīya and Dār al-Sirāj, 2010), 8:40.

(*ʿudūl*), and, most notably, the scribe (*kātib al-ḥukm*).[67] With the outsourcing of scribal duties to staff members, who typically sat in on court proceedings, kept records (*maḥāḍir*), and prepared legal documents, Muslim judges increasingly took on fewer scribal responsibilities. As a result, they became less suited for roles in other branches of the government, such as the chancery. Appointing judges to take on fiscal duties, manage the treasury, or lead the executive branches of the state may seem unusual—but in late antique Egypt, this tendency was common. Well into the Islamic period, bishops and pagarchs continued to assume a multiplicity of these roles, often, as I argued in the previous chapters, leading to frustrations among the populace and concerns about impartiality. But the Muslim judgeship had a different fate, gradually evolving into a specialized profession. In the early tenth century, Ibn Muqla observed that the Muslim treasury and judiciary had developed into entirely separate branches of the government:

> The treasury has many rules that differ from the rules of the judicial system (*aḥkām al-qaḍāʾ*). Because of that, the treasury is separate from the judiciary. The head of the treasury judges based on the records that he finds in the treasury and assigns funds to whoever is entitled to them as long as they can be identified. But judges (*ḥukkām*) do not operate in this way. [The treasurer] may also sign off on guarantees of profit (*ḍamān al-thimār*), deficiencies (*al-ʿillāt*), certain classes of property (*abwab al-māl*), and other aspects regarding taxes (*jibāyāt*). But jurists do not sign off on these things.[68]

The long-form sources credit the judge ʿAbd al-Raḥmān b. Sālim al-Jayshānī (128/745–133/751) with his excellent knowledge of the *dīwān*. When the Egyptian governor Abū ʿAwn ʿAbd al-

[67] Irene Schneider, *Das Bild des Richters in der "Adab al-qāḍī"-Literatur* (Frankfurt: Peter Lang, 1990), 32–49.

[68] Ibn Muqla, cited in Ibn al-Sīd al-Baṭalyawsī, *al-Iqtiḍāb*, 1:157. At the beginning of his section on scribes, Ibn al-Sīd al-Baṭalyawsī attributes the section to Ibn Muqla.

Malik b. Yazīd discovered errors that had been made in the *dīwān*, he removed ʿAbd al-Raḥmān from the judgeship, appointing him to oversee the *dīwān al-jund* full-time.[69] He may have well been one of the few officials of his time to be reassigned to a completely different branch of the government. We do not know if the abandonment of his judicial responsibilities before his appointment to the *dīwān* was motivated only by the fact that the new position required full-time commitment. It is more likely that a conflict of interests would have ensued had he held both positions, which would have been at odds with the Islamic state's aspirations to project an image of impartiality and invest in a judicial decorum that legitimized the judiciary in the eyes of the public. We will examine these processes in the final chapter.

4.5 Conclusion: Muslim Judges' Authority in the First Two Islamic Centuries

The joint appointments judges held in the military and executive branches of the government illustrate the wide range of responsibilities and administrative tasks they were faced with. Moreover, they indicate the very slow and gradual professionalization of judicial, military, and executive personnel in the Umayyad empire. Although the myriad competencies of the early *quḍāh* catered to gubernatorial flexibility, it is precisely the lack of professional specialization that made these judges prone to being removed and reassigned to other branches of the government. Their wide-ranging skills were thus a blessing and curse simultaneously: On the one hand, they allowed for the reshuffling of personnel according to the ad-hoc needs of the administration and an Islamic state struggling to defend itself against incursions from the Byzantine armies and internal fragmentation. On the other, the loosely defined and overlapping roles of *quḍāh* frequently resulted in conflicts of authority and impartiality. Of course, in late

[69] Al-Kindī, *Kitāb al-wulāh wa-kitāb al-quḍāh*, 256.

antique Egypt and the eastern parts of the Roman Empire, these problems were not at all novel; after all, it was precisely this awkward yet powerful social position that was located at the precarious interstices between gubernatorial demands, the urgent need to yield to the religious and legal expectations of the crowds, and brokering relationships with the imperial center that gave birth to the holy men of late antiquity.

*Qāḍī*s established their authority over the Muslim and non-Muslim populace by mobilizing the well-known late antique idiom of negative attitudes and skepticism towards the judgeship to garner public recognition and acceptance. These sometimes-violent spectacles of refusing state power had become part of their professional habitus and particularly aimed at the predominantly Christian populace, which had been attuned to public performances of modesty and humility for generations. The self-fashioning discourse employed by the solidifying professional class of Muslim judges catered to the legal and social expectations of the non-Muslim populace. In the final chapter, we will take a macroscopic view of the Islamic state and the delicate balance it had to strike between yielding to ordinary people's expectations, asserting its idiosyncratic ideals of justice, and projecting impartiality.

CHAPTER FIVE

Justice and the Islamic State

5.1 The Semantic Field of Justice in Arabic Documents

5.1.1 The Old Problem of Impartiality

The changing place of the Islamic judiciary in the legal landscape of Egypt—its centralization and role as the top tier in the system of justice—takes us back to where this dissertation began: Egypt's judicial crisis and the problem of impartiality. As demonstrated in previous chapters, the societal shift towards arbitration in the mid-sixth century, which firmly placed judicial power in the hands of bishops, monks, and pagarchs, resulted in widespread frustrations among the ordinary populace. From lengthy and repeated arbitration trials to the inaccessibility of Byzantine courts to doubts about the fairness of justice received—sixth and seventh-century Egyptians could hardly avoid the impression that late antique justice in the hands of "holy men" had compromised the judicial system's impartiality. This was despite clerics' conscious efforts—as explored in chapter two—to invest in and enhance their judicial reputation. As shown in this chapter, by the late eighth century, the situation had begun to change: Even Coptic legal documents were now written with the possibility in mind that they might be reviewed by Islamic judicial institutions, as indicated by the scribal adoption of witnessing formulae that aligned with the evidentiary standards of Arabic affidavits (*iqrārāt*) and aimed at making these documents watertight.

The problem of impartiality, of course, had a long history already occupying early Christian writers such as Ambrose of Milan (d. 397) and John Chrysostom (d. 407). In the late fourth century, John Chrysostom noted that the bishop's "judicial function involved innumerable

burdens and much expenditure of time, and greater difficulties even than those that face the judges in secular cases." "They [litigants] are merciless critics," John complained, "who recognize only one thing in the judge's favour: deliverance from the troubles which oppress them. If he cannot offer them this, however many good reasons he gives, he will never avoid their condemnation."[1] Because arbitration settlements in pre-Islamic Egypt could not be appealed—remember the significant fine of twelve Gold solidi set in place to prevent litigants from appealing to higher authorities—clerics had to carefully invest in their judicial reputation and impartial decorum to ensure the acceptance of their judgments by litigants. For Ambrose, the theoretical solution was to rely on factual objectivity and to ignore the social origins and public standing of litigants:

> When we are forming a judgement on a particular case, we must not be swayed by the identity (*gratia*) of a third party. There must be no trace of partiality in our deliberations; it must be the specific merits of the case that are decisive.[2]

All systems of justice must invest in their judicial reputation if they seek to ensure longevity. While frustrations about judicial procedures and abuses appear in the papyrological record, it is likely impossible to provide an overall assessment of how "fair," "unbiased," or "impartial" pre-modern jurisdictions operated. Historians might examine proxies such as procedural laws, substantive regulations, and legal costs to assess the extent to which ordinary people faced barriers to accessing legal institutions, appeals processes, and alternative legal venues (as was done in chapters one and two). Or they might examine the ways in which impartiality was

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1 John Chrysostom, *On the Priesthood*, 100–101.

2 Ambrose of Milan, *De Officiis*, ed. and tr. Ivor J. Davidson, 2 vols. (Oxford: Oxford University Press, 2002), 1:336–337 (2.25.125).

constructed at the level of discourse, both by those charged with judicial authority and by consumers of justice.

In the first part of this chapter, I follow the latter approach by examining key terms related to justice in early Arabic documents. Through a systematic analysis of the concepts of *ʿadl*, *inṣāf*, and *ḥaqq* in the Arabic documentary record, I explore their semantic fields drawing on insights from pre-Islamic poetry and the Qurʾān. This discussion aims to illuminate the associations these terms would have evoked for both representatives of the Islamic judiciary and ordinary people. In the second part, I discuss the macroscopic changes the Islamic judiciary underwent in the late eighth century, focusing on the political crisis between the Egyptian governor Mūsā and the Nubians, as well as the rise of affidavits as a more reliable form of legal documentation, to analyze these developments.

5.1.2 ʿAdl

Arabic documentary sources abound with several terms relating to practices of justice—some of them with overlapping meanings. As discussed in previous chapters, except for the *dhikr ḥaqq*s, the term *qaḍāʾ* (often rendered "adjudication" or "justice") is attested sparsely in papyri from the first two Islamic centuries. So, too, is the term *ḥukm* (judgment).[3] A systematic analysis of the Arabic papyri listed in the APD reveals that other terms related to justice, including *ʿadl* (justice)

[3] Apart from the references discussed in chapter two, we have four more attestations (excluding personal names) of the root *ḥ-k-m* in the first two Islamic centuries: P.JoySorrow 25, l. 8 (eighth century): "the verdict (*ḥukm*) regarding this is compulsory on us and on you;" P.World, 132=P.GrohmannApercu, 73 no. 2=P.GrohmannProbleme III, 132 no. 1=PERF 624, ll. 10–14 (793): "The Governor ʿAbdallāh b. al-Musayyab, may God protect him, wrote to me and to you a letter in which he confirms to us (*yaḥkumunā*) what has been settled in the presence of the Commander of the Faithful […] … as far as he has trust in his condition and is able to follow his own judgment (*iḥtakama*) regarding his acting well;" P.Khalili I 21=P.Khalili II 38, ll. 6–7 (eighth century): "if not write to me to let me know your considered view (*bi-raʾyik al-muḥkam*);" and P.Prag.Arab. IV 55, ll. 10–11: "… masterful work (?) (*muḥkam al-ʿamal*)."

and *inṣāf* (impartiality), more frequently feature in documents from the second century onwards (see Appendix, Tables 7 and 8).[4]

In this early period of Arabic documentary culture, the term *ʿadl* held two primary meanings. The first relates to acting with equity, linking justice semantically to the metaphor of balancing scales and carefully weighing evidence. The second relates to a ransom or compensation offered in return for an injustice endured.

In documents from the first three Islamic centuries, *ʿadl* is attested eight times, the first time in P.Heid.Arab I 3 from 91/710, a papyrus in which the Egyptian governor Qurra b. Sharīk (r. 709–715) admonishes the pagarch Basīl, urging him to speed up the wheat delivery for the granaries and to do so in the precise manner in which he was instructed (*wa-fī kaylihi bimā qad balaghaka*).[5] Further into the letter, Qurra specifies that the tax collectors (*qabbālīn*) should measure the people's wheat using the "just" measurement (*bi-l-kayl al-ʿadl*).[6] Qurra notes that he had forbidden tax officials from using the Dīmūs measurement (*kayl al-dīmūs*; Greek: μέτρον δημόσιον), instructing them instead to use the *qanqal*.[7] Normed measurements were crucial to running a complex administration that needed to project an image of fairness and impartiality,

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4 Note that the Arabic term *ʿadāla* ("justice" or "fairness") often used in contemporary contexts only appears much later.

5 P.Heid.Arab. I 3=Chrest.Khoury I 91=P.Alqab 8, ll. 7–9.

6 Ibid., ll. 34–36. On the *qabbāl*, see Carl H. Becker, *Papyri Schott-Reinhardt I*, 31.

7 P.Heid.Arab. I 3=Chrest.Khoury I 91=P.Alqab 8, ll. 40–43. For the Dīmūs measurement, see Adolf Grohmann, "Griechische und lateinische Verwaltungstermini im arabischen Aegypten," *Chronique d'Égypte* 7, no. 13–14 (1932), 275–284, at 276–277. Abū Naṣr al-Jawharī: "The *qanqal*: A large measure (*mikyāl*). The poet said: 'A measure of grain for capacity, as large as a heap, like a swollen mound;'" Abū Naṣr al-Jawharī, *al-Ṣiḥāḥ tāj al-lugha wa-ṣiḥāḥ al-ʿarabiyya*, ed. Aḥmad ʿAbd al-Ghafūr ʿAṭṭār, 6 vols. (Beirut: Dār al-ʿIlm li-l-Malāyīn, 1987), 5:1806. For the pre-Islamic *qanqal*, see Claudia Kreuzsaler, "Einleitung," in *Griechische Papyrusurkunden kleineren Formats: Neuedition: SPP III 449–582: Quittungen für die Getreidesteuer*, ed. Claudia Kreuzsaler (Papyrologica Vindobonensia, 6, Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 2007), xvi–lxiii, at xxxi–xxxiii; and Eugenio Garosi, *Projecting a New Empire*, 278. Kreuzsaler points to the connection between the Arabic *qanqal* and the Greek καγκέλλῳ.

especially to the non-Muslim populace, to garner its support. As evidenced by his letter, Qurra's primary concern was with tax officials exploiting the populace (*iʿtadā ʿalā ahl al-arḍ*), either by tampering with the measurement or by exacting from them more than what they were liable to pay. Such practices—if uncovered—reflected negatively on the Islamic administration, and to prevent them, he instructed Basīl to control the levies of wheat brought to him by the tax officials.[8] The use of *ʿadl* in the context of normed measurements is also attested in the much later P.Cair.Arab. 400 (ninth or tenth century). In this account list, the scribe employs the term to refer to sugar loaves (*abālīj*), specifically 30 of "just weight (*ʿadl*)."[9] Moreover, the semantic connection between the measurement unit of one bale (*ʿidl*)—attested in several papyri—and the concept of *ʿadl* is itself noteworthy.[10] The presence of normed weights, quantities, and measurements formed the foundation of the Islamic state's interactions with the populace, creating a framework for a public morality that was embodied by the notorious market inspector (*ṣāḥib al-sūq*, *ʿāmil al-sūq*, or *muḥtasib*), who held discretionary authority to punish those tampering with weights and measurements or engaging in other forms of trickery.[11] In al-Shayzarī's (d. 589/1193) twelfth-century manual for market inspectors, the author notes:

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8 P.Heid.Arab. I 3=Chrest.Khoury I 91=P.Alqab 8, ll. 48–51.

9 P.Cair.Arab. 400, ll. 5–6.

10 See, for example, P.Khalili I 8=P.Khalili II 20, l. 3 (ninth century); and P.Berl.Arab. II 43, l. 5 (ninth century).

11 See Ronald P. Buckley, "The Muḥtasib," *Arabica* 39, no. 1 (1992), 59–117; Abbas H. Hamdani, "The Muhtasib as Guardian of Public Morality in the Medieval Islamic City," *Digest of Middle East Studies* 17 (2008), 92–104; Kristen A. Stilt, *Islamic Law in Action*; and Kristen A. Stilt and M. Safa Saraçoğlu, "Hisba and Muhtasib," in *The Oxford Handbook of Islamic Law*, ed. Anver M. Emon and Rumee Ahmed (Oxford: Oxford University Press, 2018), 327–355. See also the references to weights and quantities in the Qurʾān: Q11:85–86, Q6:153, Q7:83, Q55:8, and Q83:1. Q11:85 states: "O my people! Give full measure (*al-mikyāl*) and weight (*al-mīzān*) in justice (*bi-l-qisṭ*). Do not defraud people of their property, nor go about spreading corruption in the land." Note that despite the frequent translation of *qisṭ* in this verse with "justice," the same term denotes a measurement unit well attested in the early Arabic papyri.

> When he comes across someone giving short measure, tampering with the scales or adulterating his wares or his trade, as described in the chapters dealing with the different kinds of swindles, the *muḥtasib* should ask him to repent of his sin, admonish and intimidate him and threaten him with punishment and *taʿzīr* [flogging]. Then, if he does it again, he should administer *taʿzīr* to him in a way which befits the crime but not too severely.[12]

Apart from affairs in the market, the accuracy of weights, quantities, and measurements and their precise mentioning became a condition for the validity of contracts and leases under Islamic law.[13]

The term *ʿadl* has its origins in pre-Islamic times, and several references to the root can be found in pre-Islamic Arabic poetry, where it carries a range of meanings. There is no denying that pre-Islamic conceptions of justice in the Arabian Peninsula differ considerably from those of eighth-century Egypt. However, as one of the earliest and richest sources of the Arabic language, pre-Islamic poetry can aid us in tracing the semantic origins and evolution of the concept and its meanings. In an isolated verse (*bayt*) by al-Aʿshā (d. 7/629)—a poet from the Yamāma known for his panegyrics and love poetry—the semantically related form *ʿādil* ("the just one") is explicitly linked to the act of balancing using a *mutaqārib* meter:[14]

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[12] ʿAbd al-Raḥmān b. Naṣr al-Shayzarī, *The Book of the Islamic Market Inspector: Nihāyat al-Rutba fī Ṭalab al-Ḥisba (The Utmost Authority in the Pursuit of Ḥisba)*, tr. Ronald P. Buckley (Oxford: Oxford University Press, 1999), 33–34.

[13] See, for example, al-Shaybānī, *al-Aṣl*, ed. Mehmet Boynukalın, 12 vols. plus introduction (Beirut: Dār Ibn Ḥazm, 2012), 2:392.

[14] On the works of al-Aʿshā, also known as Maymūn b. Qays, and his place in pre-Islamic poetry, see especially Régis Blachère, "Un problème d'histoire littéraire: Aʿšā Maymūn et son œuvre," *Arabica* 10, no. 1 (1963), 24–45; and John D. Hyde, "A Study of the Poetry of Maymūn ibn Qays al-Aʿshā" (PhD diss., Princeton University, 1970).

وَإِنْ يُسْتَضَافُوْا إِلَى حُكْمِهِ يُضَافُوْا إِلَى عَادِلٍ قَدْ وَزَن

When called to his judgment,

They merge with the one who is just and has weighed [all things] in balance.[15]

The verse plays with the image of balancing: Those entrusted with judgment must delicately balance the matter at hand, fully engaging their mind with the task (*waṭṭana nafsahu ʿalayhi*), in order to align themselves with the societal ideal of "the just one." In contrast, the poet al-Aʿlam employs the more sinister metaphor of a violent death devoid of alternatives (*ʿadīl*). The verse highlights the absence of justice for the one condemned to die, powerless to resist his imminent and inevitable death at the hand of the poet's weapon:

مَتٰى مَا تَلْقَنِيْ وَمَعِيْ سِلَاحِي تُلَاقِ المَوْتَ لَيْسَ لَهُ عَدِيْل

Whenever you meet me with my weapon in hand,

Meet death with no equivalent to it.[16]

In a much longer poem attributed to al-Muhalhil b. Rabīʿa ("he who finely weaves poems"), composed as an elegy (*rithāʾ*) for his brother Kulayb, who was lost in the war between the Taghlib and the Bakr, the term *ʿadl* carries the meaning of "substitute" or "ransom" (*fidya*).[17] According to Arabic long-from sources, the forty-year war (494–540 CE) between them started when Kulayb—the head of Taghlib—struck the udder of a she-camel (*nāqa*) belonging to the Bakr tribe, upon which they killed him.[18] The highly repetitive structure of the first hemistich

[15] Al-Aʿshā, quoted in Ibn Manẓūr, *Lisān al-ʿarab*, 15 vols. (Beirut: Dār Ṣādir, 1955), 13:448.

[16] Al-Aʿlam, quoted in Ibn Manẓūr, *Lisān al-ʿarab*, 11:432.

[17] On the life of al-Muhalhil, see Shady H. Nasser, "Al-Muhalhil in the Historical *akhbār* and folkloric *sīrah*," *Journal of Arabic Literature* 40 (2009), 241–272.

[18] Al-Jāhiẓ, *al-Rasāʾil al-adabiyya* (Beirut: Dār wa-Maktabat al-Hilāl, 2002), 361.

throughout the poem underscores al-Muhalhil's praise for his brother and the futility of justice amid the calamities that befell his tribe. The relevant verses of the poem are as follows:

عَلَىْ أَنْ لَيْسَ عَدْلاً مِنْ كُلَيْب إِذَا طُرِدَ اليَتِيْمُ عَنِ الجَزُوْر

عَلَىْ أَنْ لَيْسَ عَدْلاً مِنْ كُلَيْب إِذَا مَا ضِيْمَ جِيْرَانُ المُجِيْر

عَلَىْ أَنْ لَيْسَ عَدْلاً مِنْ كُلَيْب إِذَا عُلِنَتْ نَجِيَّاتُ الأُمُوْر

عَلَىْ أَنْ لَيْسَ عَدْلاً مِنْ كُلَيْب غَدَاةَ تَلَاتُلِ الأَمْرِ الكَبِيْر

عَلَىْ أَنْ لَيْسَ عَدْلاً مِنْ كُلَيْب إِذَا رَجَفَ العِضَاهُ مِنِ الدَّبُوْر

Yet there is no substitute for Kulayb,

When the orphan is driven away from the slaughter-camel.

Yet there is no substitute for Kulayb,

When the refugee of the protector is wronged.

Yet there is no substitute for Kulayb,

When hidden affairs are revealed.

Yet there is no substitute for Kulayb,

On the day when calamities arise.

Yet there is no substitute for Kulayb,

When the thorny bushes tremble from the west wind.[19]

The message conveyed by al-Muhalhil is that no matter the scores of his tribe's assaults on the enemy, there is no substitute for the death of his brother, which can neither be compensated for

[19] Amālī al-Murtaḍā, *Ghurar al-fawāʾid wa-durar al-qalāʾid*, ed. Muḥammad Abū al-Faḍl Ibrāhīm, 2 vols. (Cairo: Dār Iḥyā al-Kutub al-ʿArabiyya, 1954), 1:123–124. Variations of this poem can be found in literary sources. See, for example, al-Muhalhil b. Rabīʿa, *Dīwān Muhalhil bin Rabīʿa: Sharḥ wa-taqdīm*, ed. Ṭalāl Ḥarb (Alexandria: al-Dār al-ʿĀlalamiyya, n.d.), 38–42.

nor avenged. Without Kulayb, there is nobody who can fulfill the tasks of protecting the orphan, aiding the refugee, or fighting on the battlefield like him "on the day when calamities arise." This meaning of *ʿadl* as substitute or ransom dovetails with its use in Q 2:48, Q 2:123, and Q 6:70.[20] All three of these verses have in common that they explicitly evoke the dreadful image of the Day of Judgment (*yawm al-qiyāma*), when God will bring all souls to justice. The passages warn that on that day, no intercession (*lā yuqbal minhā shafāʿa*) will be accepted on behalf of the soul (*nafs*), nor will any ransom or compensation be taken in exchange for it (*wa-lā yuʾkhadh minhā ʿadl*). Q 6:70 most clearly emphasizes the link between the denial of ransom and divine justice:

> وَذَرِ الَّذِينَ اتَّخَذُوا دِينَهُمْ لَعِبًا وَلَهْوًا وَغَرَّتْهُمُ الْحَيَاةُ الدُّنْيَا وَذَكِّرْ بِهِ أَن تُبْسَلَ نَفْسٌ بِمَا كَسَبَتْ لَيْسَ لَهَا مِن دُونِ اللَّهِ وَلِيٌّ وَلَا شَفِيعٌ وَإِن تَعْدِلْ كُلَّ عَدْلٍ لَّا يُؤْخَذْ مِنْهَا أُولَٰئِكَ الَّذِينَ أُبْسِلُوا بِمَا كَسَبُوا لَهُمْ شَرَابٌ مِّنْ حَمِيمٍ وَعَذَابٌ أَلِيمٌ بِمَا كَانُوا يَكْفُرُونَ
>
> Leave those who take their religion as mere play and diversion and whom the worldly life has deluded. But remind them with it [the Qurʾān] that the soul will be ruined for what it earned. It will have no protector and no intercessor but God. Even if it offered every possible ransom (*wa-in taʿdil kull ʿadl*), none will be accepted. Those are the ones who will be ruined for what they have earned. For them will be a drink of boiling water and a painful punishment because they used to disbelieve.[21]

The Qurʾān passage's use of the term *ʿadl* semantically aligns with its usage in al-Muhalhil's lament for his deceased brother Kulayb. In both contexts, *ʿadl* signals a desire for restitution or reparation in the face of perceived injustice. In al-Muhalhil's case, this injustice is the unwarranted murder of Kulayb and the many misfortunes that befell the Taghlib tribe afterward.

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[20] This meaning is emphasized by al-Zamakhsharī in his commentary on Q 2:48; al-Zamakhsharī, *Tafsīr al-kashshāf ʿan ḥaqāʾiq al-tanzīl fī ʿuyūn al-aqāwīl fī wujūh al-taʾwīl*, ed. 4 vols. (Beirut: Dār al-Maʿrifa, 2009), 75.

[21] Q 6:70.

In the Qurʾān, the injustice centers on the soul's rejection of the divine message during its worldly life. In both instances, the attempt to restitute or repair is seen as futile. For al-Muhalhil, even his tribe's retaliatory attacks on the Bakr are useless: They cannot undo the harm done and rebalance the scales of justice. Similarly, the Qurʾān dismisses as ineffective any attempt to intercede on behalf of the soul or pay ransom on the Day of Judgment. Notably, both al-Muhalhil and the Qurʾān deliberate the possibility of atonement but ultimately reject it as the scales of justice have tipped beyond repair. However, unlike al-Muhalhil, the Qurʾān does conceive of a way through which the equilibrium of rights and wrongs can be restored: divine punishment.

It should be noted that my discussion of the meanings of *ʿadl* in Arabic poetry and the Qurʾān is by no means exhaustive, as I have limited myself to those meanings preserved in the early Arabic documents.[22] Be that as it may, the documents portray *ʿadl*, on the one hand, in terms of balancing and weighing, an act structuring relations between people, as evidenced by the term's frequent use in the context of measuring units. On the other, the papyri preserve the transactional meaning of *ʿadl* conveyed by the metaphorical image of intercession and ransom discussed in the context of al-Muhalhil's lament and the Qurʾān.

The latter meaning is attested in an already mentioned papyrus from the late ninth century, in which a group of monks petitioned the Muslim governor to complain about the local governor's seizing of their property and the imposition of a monthly fee of a quarter Dinar they considered outrageous. In their petition, the monks employ the term *ʿadl* together with *inṣāf* (impartiality). "We despaired of our situation," wrote the monks, "seeking refuge with God and

[22] Dusmamat Karimov discusses the variant meanings of *ʿadl* in the Qurʾān, distilling four semantic fields that include (1) ransom and compensation, (2) acting with equity, (3) swerving from the right path, and (4) equalizing and attributing partners to God; Dusmamat Karimov, "The Qur'anic Concept of Justice (al-Adl) from a Nursian Perspective" (PhD diss., Durham University, 2017), especially 33–45.

the Governor—may God prolong his life—after we learned of his impartiality (*inṣāfihi*) and justice (*ʿadlihi*) that he dispenses to his subjects near and far."[23] Throughout the document, the monks restate their plea for the governor's justice (*ʿadl al-amīr*; *wāfir inṣāfihi wa-ʿadlihi*) several times, contrasting it semantically with the tyranny (*jawr*) and transgression (*baghy*) they experienced at the hands of the local governor, whom they refer to as the oppressor (*al-ṭāghiyya*). It would be overly simplistic to assume that the monks thought of the governor as somebody who could intervene on their behalf to secure *ʿadl* only due to his political authority. His political authority certainly mattered, and there is no doubt that he was the right person to appeal to in the face of the severe injustices they faced. However, the end of the petition—which is filled with many invocations and blessings, as one would expect for this type of document—reveals the monks' conception of the place of the governor in the divine order of justice: "God placed the governor under His protection (*aʿādha Allāh al-amīr*) […] guarding him against anyone in his blessed state and fortunate days being wronged (*yuẓlima*)."[24] His role as the safeguard of the people, protecting them from wrongs, extends to "all his subjects (*jamīʿ raʿyatihi*)," and he is bestowed this role by God himself because, as the monks note, the governor functions in the capacity of being "the assistant [of God] for these things (*walī dhālika*)."[25] Surely, the monks' mentioning of the governor's special place in the order of things would have no doubt flattered him, and such elaborate phrasing was certainly very common in petitions and requests to higher authorities. But we can read the monks' appeal as more than just insincere flattery: The *ʿadl* they demanded came from God, with the governor functioning as

[23] P.Ryl.Arab. II 354=P.VanthieghemViolences., ll. 14–16.

[24] Ibid., ll. 24–25.

[25] Ibid., ll. 25–27.

their intercessor with God who could help balance the scales of justice on earth. The beginning of the petition supports this reading, too. The monks sought refuge "with God and the governor," not in some loose metaphorical sense but in the concrete sense that the governor's justice constituted, for them, an extension of divine justice.

5.1.3 Inṣāf

As has been noted, apart from *ʿadl*, the monks also appealed to the governor's impartiality (*inṣāf*). So far, this term has not been attested in Arabic documents from the first Islamic century, but references to it become more common in the second and third (see Appendix, Table 8). Although we only have a total of five attestations of the term from the second and third centuries, it is noteworthy that three of the five documents in which it features —including the monks' letter—are petitions. In P.Ryl.Arab. I XV 1 (second or third century), the woman petitioning asks for the recipient's "… justice (*al-ḥaqq*) and impartiality (*al-inṣāf*)."[26] In P.Chic. A 6968 (second or third century), the male petitioner, referring to himself as "poor and weak," writes to the Muslim judge, requesting that he examine his case with that "which leads to impartiality."[27] In both papyri, the term *inṣāf* either immediately follows or precedes the term *ḥaqq*. In the case of the monks' petition, the combination of *inṣāf* and *ʿadl* is employed instead of *inṣāf* and *ḥaqq*. Generally, it is reasonable to assume that petitioners viewed the Muslim authority figures they petitioned—whether the Muslim governor or *qāḍī*—as embodying these values or, at the very least, *expected* them to do so.

[26] P.Ryl.Arab. I XV 1, ll. 7–8.

[27] P.Chic. A 6968 recto, ll. 4–6.

Due to the petitions' unspecified use of the term *inṣāf*, we must turn to the two additional attestations in the papyri to understand the implications of these requests for impartiality. In a ninth-century lease document, a witness testifies that a certain Sulaymān showed him the physical boundaries of his village, its lands, and sowing fields. The witness goes on to say that "he mentioned its [the village's] equal division (*inṣāfihā*) between him and his brother […] into two equal parts (*niṣfayn*) and that all houses, salaried laborers, and fields in it are shared between them (*baynahumā ʿalā dhālika*)."[28] This use of *inṣāf* suggests that the village was divided equally between the brothers and that its resources were communally shared. Similarly, a ninth-century letter, written on behalf of a woman whose relationship to the writer is unclear, employs the term *inṣāf* in relation to the division of property. The writer states his obligation to the woman (*yalzamunī ḥaqquhā wa-yajib ʿalayya …*), expressing his intention to assist her "until she takes into her possession that which is hers with *inṣāf*."[29] It is unclear if he refers to a share that is *equal* (meaning of the same amount or size as that of others) or *equitable* (meaning one that corresponds to her social position and legitimate claims). In analogy to these instances of property division, we can be confident that the requests for *inṣāf* in petitions to Muslim authorities can be read as demands to receive equal or equitable treatment. This interpretation is further supported by the monks' reminder in their petition to the Muslim governor: God appointed him over *all* his subjects, implying their expectation of equal treatment, regardless of their social and religious background.

Arabic lexicography and pre-Islamic poetry connect this notion of fair judicial treatment to the ways in which the concept structures relationships between people by demanding of them

[28] Chrest.Khoury I 24=PERF 749, ll. 4–6.

[29] P.Marchands II 39, l. 15.

mutual consideration and giving. In the *Kitāb al-ʿAyn*—the first Arabic dictionary composed by al-Khalīl b. Aḥmad (d. 175/791 or 170/786 or 160/776)—the author notes:

> *Al-naṣafa* [lit. "justice"]: the noun (*ism*) of the word impartiality (*al-inṣāf*). Its explanation is that you give him half (*al-niṣf*; or "the middle") of what is due from yourself (*min nafsik*), meaning you give of yourself the right/due to which he is entitled (*mā yastaḥiqqu min al-ḥaqq*) just as you take it. *Intaṣaftu minhu* [lit.: "I obtained or exacted his right or due from him"): I took my right /due (*ḥaqqī*) completely to the point that I became equal to him, each having half (*ḥattā ṣirtu wa-huwa ʿalā al-niṣf sawāʾ*).[30]

This passage frames the problem in terms of reciprocity: One must give that which one's counterpart is due or entitled to. Only then can the giver secure his own right and put himself on par with his counterpart. Suzanne Stetkevych notes that in pre-Islamic poetry, the rhetorical device of *inṣāf* performs the function of praising the enemy to magnify oneself, specifically in poetry associated with blood vengeance (*thaʾr*). This poetic device reflects the Arabian tribal conception of warfare, in which blood vengeance was considered crucial for restoring relations between tribes that had gone sour.[31] If a kinsman was killed, the retaliatory slaying of a member of the hostile tribe was based on the precondition that the target was of equal status to the victim. As Pamela Klasova points out, according to this conception of justice, "it was not enough to kill the killer: the subject of the retribution had to be the victim's equal. If the killer was not such a person, additional people belonging to the killer's kin would be killed."[32] Thus, once again, the

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[30] Al-Khalīl b. Aḥmad, *Kitāb al-ʿayn*, 7:133.

[31] Suzanne P. Stetkevych, *The Mute Immortals Speak: Pre-Islamic Poetry and the Poetics of Ritual* (Ithaca and London: Cornell University Press, 1993), 63–64.

[32] Pamela Klasova, "Reacting to Muḥammad: Three Early Islamic Poets in the *Kitāb al-Aghānī*," *Al-ʿUṣūr al-Wusṭā* (2019), 40–111, at 57–58.

notion of *inṣāf* entails the demand for equality—not in the sense of being treated impartially by a figure of authority, but in the sense of slaying a person of equal status to restore justice.

It should be noted that references to *inṣāf* are absent in the Qurʾān itself. However, some traditions attributed to the early Islamic period exist, most of which highlight the migration of the concept into the moralistic lexicon of early Islamic society. According to a tradition attributed to ʿUmar b. al-Khaṭṭāb:

> Whoever is impartial to people [lit. "gives people the due from himself"] (*man yunṣif al-nās min nafsihi*) will be granted victory in his affairs. Humility in obedience (*al-dhull fī al-ṭāʿa*) is more pious than exalting oneself in disobedience (*al-taʿazzuz fī al-maʿṣiya*).[33]

This presentation of *inṣāf* as a form of piety and an ethical virtue to be followed by individual believers aligns with a tradition claimed to go back to the Prophet Muḥammad, in which *inṣāf* is listed as one of the three most meritorious deeds a person can perform:

> The best deeds are of three types: Impartiality to people (*inṣāf al-nās min nafsik*), the beneficence of brothers (*muwāsāt al-ikhwān*), and remembrance of God (*dhikr Allāh*) at all times.[34]

In other words, the concept was not merely a function embodied by the Islamic judiciary of the second and third centuries, but it was an ethical norm that had deep roots in pre-Islamic Arabic and gradually became part of the moralistic vocabulary of ordinary people to the point that by the ninth century, a group of Christian monks in Upper Egypt could approach the Muslim governor to claim the benefits of *inṣāf*.

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[33] Al-Kharāʾiṭī, *Iʿtidāl al-qulūb*, ed. Ḥamdī al-Dimrdāsh, 2 vols. (Mecca: Maktabat Nizār Muṣṭafā al-Bāz, 2000), 1:32.

[34] Ibn al-Aʿrābī, *Muʿjam*, ed. ʿAbd al-Muḥsin b. Ibrāhīm b. Aḥmad al-Ḥusaynī, 3 vols. (Riyadh: Dār Ibn al-Jawzī, 1997), 2:828.

More evidence will no doubt need to be adduced to resolve the conceptual ambiguities relating to the concept of *inṣāf*—an undertaking for which pre-Islamic poetry, with its many references to the concept, appears ideally suited. That said, the evidence analyzed supports the idea that documentary appeals to *inṣāf* should be read as demands to receive fair and impartial judicial treatment. Whether that implied equal or equitable treatment remains to be seen.

5.1.4 Ḥaqq

By far the most often employed term is *ḥaqq* (pl. *ḥuqūq*; lit. "right, claim; due; truth"), variations of which are attested 53 times in legal documents from the first and second Islamic century (see Appendix, Table 9). Of all terms related to justice, this term appears with the most varied meanings in the documentary record, including (1) the "Truth" of God, (2) the truthfulness of a speaker or information, (3) the claim or right of a person or group, (4) the due of a field, (5) and the more general meaning of justice, law, or a bond between people (see Table 3). Since many of these attestations do not directly relate to the notion of justice, I will mostly focus on the technical meaning of the term *ḥaqq* as conveyed by (3) and (4).

Like the term *ʿadl*, *ḥaqq* is one of the names of God (*asmāʾ Allāh al-ḥusnā*), sometimes used in papyri as a descriptor of God. This meaning dovetails with references in the Qurʾan, where God is frequently referred to as the "Truth."[35] In eight documents, the term is employed to refer to the truthfulness of a person. For example, in P.Heid.Arab. I 10, an order written by the

[35] See, for example, Q 10:32: "Such is God, your Lord, the Truth (*al-ḥaqq*). And what can be beyond truth except error? So how can you be turned away?" or Q 10:108: "Say, o mankind, the truth (*al-ḥaqq*) has come to you from your Lord. So whoever is guided is only guided for his soul, and whoever goes astray only does astray against it. And I am not a manager (*bi-wakīl*) over you."

Table 3. Attested meanings of *ḥaqq* in Arabic legal documents from the first and second Islamic centuries (sorted alphabetically).

Meaning	**Total counts**	**Place of attestation**	
Truth of God	4	P.HaimPaper 1 P.JoySorrow 2	P.Mird 23 P.MuslimState 8
Truthfulness of a speaker or information	8	P.BeckerNPAF 8 P.BeckerNPAF 9 P.BeckerPAF 2 P.Heid.Arab. I 10	P.Heid.Arab. I 11 P.MuslimState 14 P.RogersNotice, 15 bottom P.World, 186
Claim or right of a person or group	49	Chrest.Khoury II 22 CPR XVI 3 (**2x**) CPR XVI 9 CPR XXI 6 P.BeckerNPAF 8 P.BeckerNPAF 9 (**2x**) P.BeckerPAF 1 (**2x**) P.BeckerPAF 2 (**2x**) P.Berl.Arab. II 23 P.Cair.Arab. 120 P.Clackson 45 P.David-WeillLouvre 12–13 (**2x**) P.DiemAmtlicheSchreiben 1 P.GrohmannQorraBrief P.HanafiBusinessLetter (?) P.Heid.Arab. I 10 (**2x**) P.Heid.Arab. I 11 (**2x**) P.HindsNubia **(3x)** P.JoySorrow 13	P.JoySorrow 23 P.JoySorrow 39 P.Khurasan 27 P.LiebrenzQuittung P.Mird 19 P.Mird 31 P.MuslimState 21 (**4x**) P.MuslimState 25 P.MuslimState 28 P.MuslimState 38 (?) P.Qurra 3 P.RagibLettres 8 P.ReinfandtEinflussnahme verso (2x) P.Ryl.Arab. I VI 14 P.Ryl.Arab. I XV 59 P.World, 149–150 (**2x**) P.YounesCondolence 3
Due of a field	2	P.Qurra 2	P.SijpesteijnQurra
Justice/law/bond (general meaning)	10	P.Giss.Arab. 9 P.Heid.Arab. I 1 P.Heid.Arab. I 17 P.HindsNubia **(2x)**	P.JoySorrow 2 P.JoySorrow 25 (**2x**) P.JoySorrow 26 P.Ryl.Arab. I XV 1
Uncertain	2	P.JoySorrow 12	P.Ryl.Arab. I XII 4

governor Qurra b. Sharīk to one of his pagarchs, Zakarīyya, Qurra gives instructions to write down the claim of a certain Yuḥannis, noting that this should be done "if what he reported to me is true (*ḥaqqan*) and if he established proof to that end."[36] Toward the end of another letter by Qurra to his pagarch Basīl, he urges him to "write to me about it [the matter], and write only the truth (*illā bi-ḥaqqin*)." This emphasis by writers, such as Qurra, on the recipients of their letters reporting information truthfully underscores Muslim authority figures' dependency on the

[36] P.Heid.Arab. I 10=P.Alqab 10, ll. 7–8 (91/710).

network of mid- and low-level administrators they oversaw. These instances may thus be interpreted as a form of verbally reinforcing existing authority structures and a subtle reminder of where administrators' loyalties were expected to lie. As Cecilia Palombo points out, communication and governance in the early Islamic administration were shaped by a web of overlapping dependencies, extending down from the governor to the tax collectors through various intermediaries.[37] Thus, ensuring the accuracy of information was paramount, especially since it was usually not conveyed directly, which increased the likelihood of miscommunication and human error as information passed through established circuits of power.

By far the most frequent attestation of *ḥaqq*—with a total of 49 attestations—occurs in the technical sense of "claim," "right," or "due." Based on several documents from the Qurra b. Sharīk dossier, we know that this usage formed part of a formula that initiated a specific legal procedure. In the first part of this formula, the authority conveys to his counterpart—typically an administrator of lower rank—that a plaintiff had approached him complaining about the violation of his rights. This information is almost always conveyed by variations of the expression *fa-azʿama annahu ghalabahu ʿalā ḥaqqihi* (lit. "he claimed that he [a second person] violated him in his right"). The writer then instructs the lower authority charged with the resolution of the dispute to hear out the plaintiff and ask him to provide proof of his claims (*aqāma al-bayinna ʿalā mā akhbaranī*). If the plaintiff provides evidence in support of his claims, the lower authority is told to "restore his right" (*istakhrij lahu ḥaqqahu*). As already noted in chapter three, the demand for restoring the plaintiff's right entailed the expectation to write out his claim and record it in the public registers once it had been established beyond reasonable doubt.

[37] Cecilia Palombo, "The Christian Clergy's Islamic Local Government," 31–32.

We do not know about the origins of the formula *istakhrij lahu ḥaqqahu* (lit. "extract for him his right"). Petra Sijpesteijn notes that the term *istikhrāj* (lit. "extraction") was typically used for the collection of taxes (e.g., the *kharāj*).[38] Two documents provide weak evidence that the expression may have agricultural origins, possibly modeled in analogy to the growth of vegetables and fruits and their harvesting from the fields. In the first, Qurra's pagarch Basīl praises God for His beneficence in making the crops grow:

فإن الأرض إذا زرعت عمرت وأخرج الله الذي عليها من الحق

For when the land is cultivated, it prospers, God bringing forth its due yield.[39]

The use of *akhraja Allāh alladhī ʿalayhā min al-ḥaqq* closely resembles the legal instruction to "secure his claim," using the same combination of a verbal form of *kh-r-j* and *al-ḥaqq*. In this example, God himself is the one "bringing forth" the due from the field. However, one could argue that this expression is only used because the letter deals with the exaction of taxes. It was written just after the flooding of the Nile and shortly before the beginning of the new fiscal year and as indicated by its contents, served as a reminder that the tax levies would begin soon. In other words, the "due yield" expression may be used more figuratively and correspond with "due taxes." P.SijpesteijnQurra supports this theory. Here, Qurra presses Basīl to forward the *jizya* revenues to him, reprimanding him for delaying the deliveries. In an unusually menacing tone, he reminds him that

فإن الأرض ليست لك بميراث ولست ثابت فيها إلا قليلا فاخرج ما عليها من الحق

[38] See her commentary on one of Nājid b. Muslim's letters to ʿAbdallāh b. Asʿad; Petra Sijpesteijn, *Shaping a Muslim State*, 288.

[39] P.Qurra 2=P.Alqab 11, ll. 9–12.

the earth has not been given to you as inheritance, and you only rest on it for a short time. So, extract from it what is due.[40]

Again, the agricultural image is employed, but here the role of bringing forth the yield is no longer attributed to God, but to Basīl, clearly referring to his mandate to ensure the delivery of the tax levy. Whatever the origins of the expression, by as early as the first Islamic century, *ḥaqq* was already used in a highly technical manner, implying specific and seemingly well-known procedures, as illustrated by its use in administrative communications. This significantly distinguished it from other justice-related terms in this period.

Lastly, it should be noted that in classical legal discussions, the term *ḥaqq* is closely linked with the concepts of the "rights of God (*ḥuqūq Allāh*)" and the "rights of individuals (*ḥuqūq al-ʿibāda*)." The former refers to the obligations one owes to God, including acts of ritual worship and those ensuring public welfare, and the latter to those obligations that one owes to fellow human beings.[41] While an analysis of these concepts is outside the scope of this chapter, it is worth highlighting that most occurrences of *ḥaqq* in this early period—despite its varied meanings—reflect a more narrow usage of the term as the specific obligation or due owed by an individual towards another or the state.

5.2 A New Legal Synthesis

In 141/758, Islamic Egypt and Nubia were on the brink of a political meltdown. In a letter to the king of Makuria, the recently appointed Abbasid governor Mūsā b. Kaʿb complained about the

[40] P.SijpesteijnQurra, ll. 15–18.

[41] Anver M. Emon argues that Muslim jurists employed the *ḥuqūq Allāh* and *ḥuqūq al-ʿibāda* heuristic as a tool to justify their legal rules, especially in the context of competing visions of individual and social goods; Anver M. Emon, "*Ḥuqūq Allāh* and *Huqūq al-ʿIbād*: A Legal Heuristic for a Natural Rights Regime," *Islamic Law and Society* 16, no. 3 (2006), 325–391, at 386–387.

Nubians' violation of the *baqṭ* agreement that had governed Egyptian-Nubian relations for more than a century.[42] According to Mūsā, the Nubians breached their liability under the treaty:

> You do not bring to us that for which you are liable under the *baqṭ* on the basis of which you were appeased, you do not return run-away slaves to us, you do not ensure the safety of our merchants, and you do not hasten to release our messengers we sent to you.[43]

Things with the Nubians had gotten tense after the arrest of two Muslim merchants and the Nubian deputy's (*khalīfa*) beating and detainment of a certain Muḥammad. This came on top of the Nubians allegedly violating their contractual obligation for the delivery of slaves to Egypt: "You have sent that in which there is no good—the one-eyed (*aʿwar*), the lame (*aʿraj*), the weak old man or young boy."[44]

As was common for important diplomatic correspondences and imperial decrees, Mūsā's letter is written on a majestic papyrus scroll measuring no less than 2.55 meters (=8.37 feet) in length and 53.5 cm (=1.76 feet) in width.[45] The Arabic script bears many resemblances to papyri from the first Islamic century, generally lacking cursiveness, with straight *aliph*s and some final

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[42] The name of the Makurian king is lost due to a lacuna in the Arabic document. He is most likely King Cyriacus, who we know held the position at least between 747 and 768; Derek Weslby, *Medieval Kingdoms of Nubia: Pagans, Christians and Muslims in the Middle Nile* (London: British Museum Press, 2002), 260. See also Joost L. Hagen, "'A City That is Set on a Hill Cannot Be Hid': Progress Report on the Coptic Manuscripts from Qasr Ibrim," in *Between the Cataracts: Proceedings of the 11th Conference of Nubian Studies: Warsaw University, 27 August–2 September 2006: Part Two, Fascicule 2: Session Papers*, ed. Włodzimierz Godlewski and Adam Łajtar (Warsaw: Warsaw University Press, 2008), 719–726, at 722. I would like to thank Joost L. Hagen for directing me to these references.

[43] P.HindsNubia=P.Alqab 15=P.AbuSafiyyaRisalatMusa=P.BlauHandbook, 57, ll. 18–21.

[44] Ibid., ll. 55–56.

[45] J. Martin Plumley, "An Eighth-Century Arabic Letter to the King of Nubia," *The Journal of Egyptian Archaeology* 61 (1975), 241–245, at 241. See also Martin Hinds and Hamdi Sakkout, "A Letter from the Governor of Egypt Concerning Egyptian-Nubian Relations," in *Studies in Early Islamic History*, ed. Martin Hinds, Jere Bacharach, Lawrence I. Conrad, and Patricia Crone (Studies in Late Antiquity and Early Islam, 4, Princeton: Darwin Press, 2021 [1996]), 160–187.

*yāʾ*s swung to the right. The letter was found tightly rolled, tied with a piece of string, and secured with a small mud seal.[46] It was located together with Coptic scrolls in a cist during excavations at the fortress of Qaṣr Ibrīm, the residence of the king of Nubia.[47]

This was not the first occasion on which the *baqṭ* had—in the eyes of the Muslim governors of Egypt—been violated. The history of the *baqṭ*, which shaped relations with the Nubian kingdom for several centuries, goes back to the Arab-Muslim invasion of Egypt. Al-Maqrīzī reports that after the death of ʿAmr b. al-ʿĀṣ in 43/664—the military commander who had led the Muslim troops into North Africa—the Nubians conducted raids into Upper Egypt and thus broke the peace that had been negotiated just a few decades earlier. Using catapults (*manjanīq*), ʿAbdallāh b. Saʿd laid siege to Dongola, the capital and residence of the Nubian king, Qalidurut, destroying the local church. According to al-Maqrīzī, Qalidurut then went to ʿAbdallāh, expressing his "weakness, poverty, and humility," to renegotiate the peace.[48] Among other conditions, such as upkeeping a mosque in Dongola, the Muslim sources claim that the *baqṭ* between the Nubians and the Arab Muslims specified the annual delivery of 360 slaves from Nubia in return for Egyptian grain. It should be emphasized that the legal implications and precise circumstances of the initiation of the *baqṭ* treaty remain obscure. Al-Maqrīzī's tendentious account of a victorious siege of the Muslims and the humiliating defeat of the Nubians must be approached with great caution. Even earlier Muslim accounts by Ibn ʿAbd al-Ḥakam and others are less straightforward, raising the possibility of a Nubian victory, as

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[46] J. Martin Plumley, "An Eighth-Century Arabic Letter," 241.

[47] J. Martin Plumley and William Y. Adams, "Qaṣr Ibrîm, 1972," *The Journal of Egyptian Archaeology* 60 (1974), 212–238, at 237–238.

[48] Al-Maqrīzī, *al-Mawāʿiẓ wa-l-iʿtibār bi-dhikr al-khiṭaṭ wa-l-āthār*, 4 vols. (Beirut: Dār al-Kutub al-ʿIlmīya, 1997), 1:369.

suggested by Jay Spaulding.[49] Spaulding, Derek Welsby, Giovanni Ruffini, and other historians of North East Africa have argued that the Nubians did not view the *baqṭ* as an annual tribute but rather as a "gift exchange"—a diplomatic practice of reciprocity that has long been attested for agrarian states in the region and that indicates the sovereign nature of the Nubian kingdom.[50] That the Nubians viewed themselves as equals rather than subordinates is sensible given that despite the wide and rapid expansion of the Islamic empire, it was not until the Mamluk sultan Baybars's annexation that it would become part of Islamic territories—and even then, only for a relatively short time.[51]

Be that as it may, in the eyes of successive Muslim governors, the delivery of Nubian slaves—whether conducted through the Islamic state or via private Muslim merchants—was essential to maintaining the *status quo*. Scholars have suggested that the import of slaves from foreign territories to the Islamic empire was a legal gimmick that aimed at circumventing the

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[49] Jay Spaulding, "Medieval Christian Nubia and the Islamic World: A Reconsideration of the Baqt Treaty," *The International Journal of African Historical Studies* 28, no. 3 (1995), 577–594, at 583–584. According to a tradition related by Ibn Ḥabīb, ʿAbdallāh b. Saʿd did not enter a contract (*ʿahd*) or treaty (*mīthāq*) with the Nubians but a ceasefire (*hudnat amān*) because none of the sides successfully conquered the other. In a separate narration, Ibn Lahīʿa notes "there is no doubt that their slaves are being purchased from them and from others," suggesting that the slaves did not constitute a mandatory requirement but an economic exchange. Ibn ʿAbd al-Ḥakam, *Conquests of Egypt*, 188–189. See also various early narrations employing the term peace treaty (*ṣulḥ*), Abū ʿUbayd al-Qāsim b. Sallām, *al-Amwāl*, ed. Khalīl Muḥammad Harrās (Beirut: Dār al-Fikr), 193; Ibn Zanjūya, *al-Amwāl*, ed. Shākir Dhīb Fayyāḍ (Markaz al-Malik Fayṣal li-l-Buḥūth wa-l-Dirāsāt al-Islāmīya, 1986), 373; al-Balādhurī, *Futūḥ al-buldān* (Beirut: Dār wa-Maktabat al-Hilāl, 1988), 235; and Qudāma b. Jaʿfar, *al-Kharāj wa-ṣināʿat al-kitāba* (Baghdad: Dār al-Rashīd li-l-Nashr, 1981), 352. Geoffrey Khan notes that the documents from the Nubian corpus dating to the Fatimid period do not contain references to a slave delivery requirement. Rather, they indicate that the Nubian eparch administered the exchange of goods with individual Muslim merchants, of which slaves were often part; Geoffrey Khan, *Medieval Nubia*, 35.

[50] Jay Spaulding, "Medieval Christian Nubia," 584–585; Derek Welsby, *Medieval Kingdoms of Nubia*, 70; Giovanni R. Ruffini, *Medieval Nubia: A Social and Economic History* (Oxford: Oxford University Press, 2012), 7.

[51] On the representation of Muslim-Nubian relations in Islamic historical sources, see Sylvie Denoix, "Islamic Historiography on Early Muslim Relations with Nubia," in *Egypt and the Eastern Mediterranean World: From Constantinople to Baghdad, 500–1000 CE*, ed. Jelle Bruning, Janneke H.M. de Jong, and Petra M. Sijpesteijn (Cambridge: Cambridge University Press, 2022), 103–130.

Islamic legal obligation not to enslave Christians and Muslim subjects under Islamic patronage.[52] But more likely, slave imports served to quench the thirst of the rapidly growing and buzzing cities and their need for cheap human labor, goods, and services. By the mid-eighth century, Fusṭāṭ's Arab population (not counting non-Arabs) had grown to more than 200,000—a 400% increase from its population during Muʿāwiya's reign and a 2,400% increase since the conquests—resulting not just in growing interactions with the Egyptian countryside but also with regions far apart to satisfy the ever-growing needs of city dwellers. [53]

The vignette about the political crisis between Egypt and Nubia is not simply of interest due to its historical value for understanding Egyptian-Nubian diplomatic relations but because this high-stakes conflict triggered a set of Islamic judicial procedures. Because Mūsā or, more precisely, his scribe Maymūn only mentions these procedures in passing, there is little reason to doubt their evidentiary value. What happened is this: The first merchant that went to Nubia had been detained. The second merchant was also detained and had his wealth confiscated. The second merchant was from Aswān, and he had been sent on the order of Muḥammad b. Zayd. After the second merchant's imprisonment, the Muslim governor of Aswān and the Nubian deputy corresponded with each other, agreeing that Muḥammad b. Zayd, the "master" of the second merchant, should appear before the Nubian deputy. Thus, Muḥammad, along with a Muslim delegation, traveled to Nubia. Once they got there, Muḥammad was reportedly severely beaten by the Nubian deputy, his hand broken, and detained for three nights, fearing that the deputy would have him killed. When Muḥammad was released and returned to Aswān, the governor of Aswān asked him to present evidence (*bayyina*) for the fact that he had sent out his

[52] Geoffrey Khan, *Medieval Nubia*, 11.

[53] See Wladyslaw B. Kubiak, *Al-Fustat*, 82.

merchant to Nubia and for the beatings received at the hands of the deputy. Muḥammad thus procured three witnesses (*ʿudūl*), who could attest to the violence he faced—an issue I will return to. In the meantime, two Muslim messengers and a third merchant had also been detained by the Nubians. Seemingly at a loss for how to handle this political impasse, the Muslim governor of Aswān forwarded the matter to Mūsā, the governor of Egypt, sending the badly beat-up Muḥammad to Fusṭāṭ. At the time of Muḥammad's arrival, a delegation of the Nubian king had also just arrived in Fusṭāṭ, and Mūsā used that circumstance to hear them all out. The Nubian delegation defended itself by arguing that they thought the second merchant (Muḥammad's client) was of the Beja nomads trying to attack them.[54] Instead of taking a decision and resolving the matter once and for all, Mūsā—note that he was the highest political echelon in Islamic Egypt—decided to involve the *qāḍī* of Egypt, Ghawth b. Sulaymān.[55] Mūsā's decision to defer this high-stakes political affair to the Muslim judge is striking.

Mūsā had just recently ascended to the rank of governor in Egypt, being appointed by the Abbasid caliph al-Manṣūr.[56] His life reads like the premodern blend of a cosmopolitan activist and civil servant. He was not only a child of the Abbasid Revolution but reportedly one of its instigators, being one of the twelve missionaries (*nuqabāʾ*) dispatched to Khurāsān to garner support for the Hāshimite cause.[57] Mūsā participated in the Battle of Zāb (132/750) and was later

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[54] The Beja—in Coptic referred to as the Blemmyes—were a desert people in the south of Egypt. They are known from Ptolemaic times and constituted a threat to various imperial entities, as they frequently launched raids into the Roman and Islamic empires, as well as Nubia; J. Martin Plumley, "An Eighth-Century Arabic Letter," 245.

[55] P.HindsNubia=P.Alqab 15=P.AbuSafiyyaRisalatMusa=P.BlauHandbook, 57, ll. 27–46.

[56] Al-Dhahabī, *Tārīkh al-islām wa-wafayāt al-mashāhīr wa-l-aʿlām*, ed. Bashār ʿAwwād Maʿrūf, 17 vols. (Beirut: Dār al-Gharb al-Islāmī, 2003), 3:988.

[57] Ibn Manẓūr, *Mukhtaṣar tārīkh Dimashq*, ed. Rūḥīya al-Naḥḥās, Riyāḍ ʿAbd al-Ḥamīd Murād, and Muḥammad Muṭīʿ, 29 vols. (Damascus: Dār al-Fikr, 1984), 8:26; al-Dhahabī, *al-ʿIbar fī khabar man ghabar*, ed. Abū Hājir Muḥammad al-Saʿīd b. Basyūnī Zaghlūl, 4 vols. (Beirut: Dār al-Kutub al-ʿIlmīya, 1985), 1:148. See also Patricia Crone, *Slaves on Horses*, 186.

sent to India by the first Abbasid caliph Abū al-ʿAbbās al-Saffāḥ to fight against Manṣūr b. Jumhūr, one of the leaders of the south Arabian tribes. The tradition has it that during his formative years in Khurāsān, he became involved with Abū Muslim, upon which the Khurāsānī governor punished him with a bridle that broke his teeth.[58] The toothless Mūsā was one of four successive governors appointed in Egypt, all of whom had had leading roles in the Khurāsānī military.[59] Their appointments were short-lived, and while many took troops of soldiers with them to Egypt, their authority depended heavily on cooperating with the head of police (*sāḥib al-shurṭa*) and local notables (*wujūh*).[60] The fate of these governors marked a pattern that already began to crystallize under the late Umayyads but dramatically accelerated under the reigns of al-Mahdī (r. 158/775–169/785) and Hārūn al-Rashīd (r. 170/786–193/809): These governors were outsiders, appointed to the Egyptian province in rapid turnovers, checked by the local Muslim army and elite, and charged with squeezing more revenues from the populace by imposing new tariffs and taxes on land, riding animals, and markets. This combination proved to be a recipe for disaster. Eventually, a rebellion led by Diḥya b. Muṣʿab (d. 169/785–786) broke out that was based on an unprecedentedly broad alliance between Arabs of the Ḥawf, Qays, and Yamāma tribes, Fusṭāṭ-based soldiers and notables, and other sections of Egyptian society. The rebellion was spectacular insofar as these elements had assured each other their loyalty and collectively plotted against the Muslim governor, who ended up being abandoned and killed by his own

[58] Ibn ʿAsākir, *Tārīkh Dimashq*, 61:198; al-Maqrīzī, *al-Mawāʿiẓ*, 2:105.

[59] Hugh Kennedy, "Egypt as a Province in the Islamic Caliphate, 641–868," in *The Cambridge History of Egypt*, ed. Carl F. Petry, 2 vols. (Cambridge: Cambridge University Press, 1998), 1:62–85, at 77.

[60] Ibid., 1:79.

soldiers on the battlefield.[61] The fate of Mūsa was less tragic: The caliph al-Mahdī dismissed him from the governor position after less than a year "without indignation" (*bi-ghayr sakhṭ*).[62]

By the mid-eighth century, Egypt's political and legal landscape was undergoing significant changes, with the judiciary gaining more power and influence, often at the expense of the governor's authority. Although recusals by Muslim judges had been common before, eighth-century narrations in Arabic long-form sources increasingly focus on political infringements on judicial activity. In the early 750s, Judge Khayr b. Nuʿaym al-Ḥadramī issued a prison sentence to a soldier whom another soldier sued for falsely accusing him (*qadhf*). Despite the witness testimony provided, the governor Abū ʿAwn ʿAbd al-Malik b. Yazīd released the slanderous soldier, upon which Khayr secluded himself, abandoning the judgeship. When the governor sent for him, Khayr insisted that he would not return to the judgeship unless the governor put the soldier back in prison. Abū ʿAwn refused, and Khayr never resumed his judicial activity.[63] Similarly, Mathieu Tillier has identified an episode from the 740s in Wakīʿ, where the *qāḍī* of Basra, ʿĀmir b. ʿUbayda al-Bāhilī imprisoned a litigant due to his inability to pay outstanding debts to his adversary. Because the governor had personal ties to the detained, he released him, which resulted in a political standoff between the governor and the *qāḍī*, who viewed the gubernatorial intervention as an infringement on his judicial authority. The *qāḍī* responded by shutting down his court, and even after attempts by the governor to pressure the *qāḍī* to resume judicial activity, the latter kept refusing.[64] Due to the political shifts I discussed, it is unlikely that

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[61] Wakīʿ, *Akhbār al-quḍāh*, 1:95–99. See also Hugh Kennedy, "Egypt as a Province," 78–79.

[62] Wakīʿ, *Akhbār al-quḍāh*, 1:81.

[63] Ibid., 1:113.

[64] Mathieu Tillier, "Judicial Authority and *Qāḍī*s' Autonomy under the Abbasids," *Al-Masaq* 25, no. 2 (2014), 119–131, at 122–123.

these narratives are mere literary *topoi*. Tillier's observations support this impression. Specifically, he argues that in the early Abbasid period, a new pattern emerged across the empire where Muslim governors yielded to the pressures of judges, with judicial authority becoming more independent.[65] The political reality, where Muslim governors increasingly lacked support from the military and nobility, indirectly benefited the consolidation of the judiciary. The shift in the evolving relation between the Egyptian judiciary and the provincial governor is reflected in the changing appointment procedures of judges under the Abbasid caliphs. As noted in the previous chapter, with a few exceptions, in Umayyad times, it was customary for the Egyptian governor to appoint judges directly. Under Caliph al-Manṣūr (r. 754–775), this pattern changed as the caliph began directly making or ratifying judicial appointments. The judges ʿAbd Allāh b. Lahīʿa al-Ḥadramī (in office 155/771–772 until 164/780) and Ismāʿīl b. Alīsaʿ al-Kindī (164/780–167/783) were both appointed directly by the caliphs; Ghawth b. Sulaymān (167/783–168/785) and al-Mufaḍḍal b. Faḍāla (168/785–169/786) by the governor but ratified by the caliph; ʿAbd al-Malik b. Muḥammad al-Ḥazmī (170/786–174/790) by the caliph; al-Mufaḍḍal b. Faḍāla (his second term; 174/790–177/793) by the governor with the caliph's ratification; and Muḥammad b. Masrūq al-Kindī (177/793–185/801) by the caliph. Tillier argues that the caliphal involvement in judicial appointments reflects a weakening of gubernatorial power and a tendency towards centralization within the caliphate.[66]

But it was not only the judiciary's status in the field of power relations that had evolved in the second half of the eighth century. At the same time, the nature of justice and the law had turned into an intellectual pursuit, as evidenced by a steadily growing body of Islamic legal

[65] Ibid., 123.

[66] Ibid., 123–124.

literature that abstracted and theorized judicial standards and norms. Jonathan E. Brockopp observes that by the late second century, "the literary phase of jurisprudence was well-established."[67] It was a period during which students of the law experimented with new forms of writing in which they summarized, abridged, and abstracted the legal dicta of their teachers. Based on manuscript evidence, Brockopp notes that jurists such as ʿAbd al-ʿAzīz b. al-Mājishūn (d. 164/780–1), ʿAbdallāh b. Lahīʿa (d. 790), and Mālik b. Anas (d. 179/795) all produced texts that their students engaged with by transmitting and expanding them.[68] There was, then, a substantial body of legal literature that was available to jurists, students, and the public. Legal manuscripts were stored in physical libraries, such as the one maintained by the Banū ʿAbd al-Ḥakam, who are often associated with the introduction of Mālikism in Egypt.[69] With the emergence of a legal literature and norms regulating judicial activity, Muslim judges could justify and anchor judgments and procedures via reference to an evolving corpus of Islamic traditions—Prophetic and otherwise.

In Mūsā's letter to the Nubian king, the Egyptian governor conveys to his counterpart that by deferring the case to the judge Ghawth b. Sulaymān, "you were made to bear the likes of rights and justice that the people are made to bear."[70] Mūsā's rhetorical suggestion that the

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67 Jonathan E. Brockopp, *Early Mālikī Law*, 2.

68 Jonathan E. Brockopp, "ʿAbd al-Ḥakam, ʿAbdallāh," in *Encyclopaedia of Islam Three Online*, ed. Kate Fleet, Gudrun Krämer, Denis Matringe, John Nawas, and Devin J. Stewart (Brill, 2018), https://doi.org/10.1163/1573-3912_ei3_COM_30624, accessed February 16, 2025.

69 Abū Muḥammad b. ʿAbd Allāh b. ʿAbd al-Ḥakam had direct contact with Mālik b. Anas and kept many of his books. It is well-known that the ʿAbd al-Ḥakam family also maintained close connections with al-Shāfiʿī, whom they financially supported upon his arrival in Egypt and who reportedly died in their house. According to a narration in Qāḍī ʿIyāḍ, al-Shāfiʿī came to the ʿAbd al-Ḥakam's house every day to read two sections (*juzʾayn*) of the books of Mālik, reading them day and night, only to proceed to two different sections the next day; al-Qāḍī ʿIyāḍ, *Tartīb al-madārik wa-taqrīb al-masālik*, 8 vols. (al-Muḥammadīya: Maṭbaʿa Faḍāla, 1965–1983), 3:189.

70 P.HindsNubia=P.Alqab 15=P.AbuSafiyyaRisalatMusa=P.BlauHandbook, 57, l. 47.

resolution of the conflict adheres to the same judicial standards and norms imposed on all imperial subjects is particularly striking, as we may expect the governor to address such high-stakes political matters personally. So why did he refer the Nubian case to the *qāḍī*?

Three explanations appear most likely. First, the decision may have constituted a matter of political deference to the judiciary in light of the changing political dynamics explained above. The long-form sources inform us about the formidable reputation that Ghawth enjoyed as *qāḍī*. Al-Kindī notes that he was no jurist by training but "the most knowledgeable person in the meanings of the judgeship and its politics (*bi-maʿānī al-qaḍāʾ wa-siyāsatihi*)."[71] By delegating the matter to Ghawth, Mūsā may have strategically yielded to an office that he realized had gained public recognition and increasingly enjoyed the support of the caliphate. A second explanation is that because the matter involved the legal interpretation of the Nubians' rights and responsibilities under the *baqṭ* treaty, Mūsā may have viewed the dispute to fall within the jurisdiction of the *qāḍī*, not as a matter of politically calculated deference to the judiciary but because the legal implications of the relations governing Egyptian-Nubian relations were expected to be parsed out as a matter of law. This interpretation is sensible against the backdrop of a "legal turn" in Islamic governance of the late second century, where political decisions and practices came to be justified by reference to established precedents. In his slightly later book on taxation (*Kitāb al-kharāj*), Mūsā's contemporary Abū Yūsuf (d. 182/798)—the chief judge in Baghdad during the reign of Hārūn al-Rashīd—emphasized rulers' accountability to the law and the necessity to ground their decisions in legal tradition.[72] Addressing the caliph directly, he notes:

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[71] Al-Kindī, *Kitāb al-wulāh wa-kitāb al-quḍāh*, 253.

[72] Muhammad Q. Zaman observes that Abū Yūsuf and other contemporaries called upon the caliphs to act in conformity with the *sunna*, while firmly placing religious authority in the purview of scholars (*ʿulamāʾ*);

> The rulers are responsible to their Creator, as the shepherd is to his master. Dispense justice, and be it only for an hour every day, in all matters entrusted and assigned to you by Allah. […] Strive for a clearly defined aim, a trodden path, a paved road, well established practices and accepted legal sources. Such a source is the dispensation of justice by the supreme authority, which causes hearts to throb and false pleadings to stop, of the power of the ruler, whose prowess overwhelms, in whose hands the people are, to whose judgment they look forward and whose punishment they fear even before it had been carried out.[73]

By involving the Muslim judiciary, Mūsā signaled to his counterpart that the decision taken was not arbitrary but aligned with established judicial practices, thus potentially swaying the Nubian king to respect the verdict as a matter of law. It may even be argued that the referral of the Nubian conflict to the judiciary constituted an attempt to expand the *qāḍī*'s jurisdiction to foreign territories, a calculation that seems sensible considering the repeated Muslim attempts to incorporate Nubia into the empire. A third explanation for the involvement of Ghawth is that Mūsā made the decision on ideological grounds. His early involvement in the Khurāsān opposition against Marwānid rule and as a military commander in pursuit of the Hāshimite cause puts him in a particular ideological light. In its early stages, the Khurāsānī opposition traveled

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Muhammad Q. Zaman, *Religion and Politics under the Early ʿAbbāsids: The Emergence of the Proto-Sunnī Elite* (Leiden: Brill, 1997), 95–106.

[73] Abū Yūsuf, *Abū Yūsuf's Kitāb al-Kharāj*, tr. Aharon B. Shemesh (Leiden and London: Brill and Luzac & Co., 1969), 36. Norman Calder believed that Aḥmad b. ʿAmr al-Khaṣṣāf (d. 261/874) was "the redactor and to a great degree the author" of the *Kitāb al-Kharāj*. He unconvincingly argued that due to the subtlety of Abū Yūsuf's treatise on taxation, there would have existed no reason for the caliphs to have more such works produced after. Calder viewed the existence of other taxation treatises after the supposed publication of the work by Abū Yūsuf as evidence for the fact that he cannot be its author and that, therefore, the treatise must have been written later; Norman Calder, *Studies in Early Muslim Jurisprudence* (Oxford: Clarendon Press, 1993), 147, 156. For a refutation of Calder's thesis, see Muhammad Q. Zaman, *Religion and Politics*, 93–94.

from village to village, recruiting non-Muslim converts (*mawālī*) to garner support for their egalitarian and piety-oriented vision of the caliphate. Their political claim was that the caliphate should not be assumed by anyone except "the chosen one from the family of Muḥammad (*al-riḍā min āl Muḥammad*)."[74] They laid the foundation for what would enter history books as the "Abbasid Revolution." The discontent of these revolutionaries stemmed from the belief that political governance had largely failed to align with the hopes of ordinary Muslims, who sought to ground leadership in the Qurʾān and *sunna* (custom)—a term that was yet to acquire its technical meaning of "authoritative traditions" or "precedents."[75] Mūsā's prominent role in this movement raises the possibility that his decision to involve the judiciary was driven by a desire to hold himself accountable to the revolutionaries' demands for judicial oversight of political power. Each of these explanations seems plausible, and the motivation behind Mūsā's involvement of the *qāḍī* in the Nubian affair is likely a combination of them.

In his letter to the Nubian king, Mūsā spells out the judgment that Ghawth granted. It can be summarized as follows:

1. The Nubians should return merchant 1, 2, and 3, along with the wealth of merchant 2 and 3. If merchants 2 and 3 have been killed, blood money (*diya*) of 1,000 Dinars should be paid for each of them.
2. The Nubians are expected to treat the two detained messengers and any slave who is Muslim or of the people of the covenant (*ahl dhimmatinā*) in accordance with liabilities under the *baqṭ* (*mā ʿalaykum min al-baqṭ*). Although the implications of

[74] Hugh Kennedy, *The Early Abbasid Caliphate: A Political History* (London: Routledge, 1981), 39–41.

[75] Marshall G.S. Hodgson, *The Venture of Islam*, 1:252. Ibn al-Muqaffaʿs (d. 142/759–760) Abbasid government memo *Risālat fī al-ṣaḥāba* also employs the term *sunna*, possibly as the *sunna* of the Prophet. See Ibn al-Muqaffaʿ, *"Conseilleur" du Calife*, ed. and tr. Charles Pellat (Paris: Maisonneuve et Larose, 1976), 29, 43.

the formula are not entirely clear in the absence of the original treaty, we can assume that Mūsā is asking for their release from imprisonment.

3. The Nubians are expected to make up for several years of failed slave deliveries. It is unclear whether no slaves were delivered at all or if only the quality of the slaves was unacceptable. The slaves should be of good quality; otherwise, they won't be accepted as fulfilling the Nubian liability under the contract.

Before ending his letter, Mūsā admonishes the Nubian king to uphold his part of the *baqṭ* between the Muslims and Nubians, threatening that he would reconsider relations with the kingdom if the demands remained unfulfilled.

We have no direct response from the Nubian king preserved. In the 1972 excavation report at Qaṣr Ibrīm, J. Martin Plumley and William Y. Adams mention that in one of the Coptic scrolls that were found with the Mūsā letter, the eparch at Ibrīm reassures his superior, the Nubian King, regarding some of Mūsā's complaints, apparently acknowledging the presence of runaway slaves in Nubian territory and respecting the authority of the governor of Aswān.[76] Joost L. Hagen is currently working on an edition and translation of these scrolls.[77]

The evidence of the Mūsā letter signals that the relationship between the Muslim governor and the judiciary had significantly changed. The letter indicates an almost formalized procedure of deferring the case to the *qāḍī* and projects the superiority and validity of the authority that the latter held to a foreign head of state. This suggests that an institutionalized and matured notion of Islamic justice was no longer an abstract objective for the future but had taken on a concrete form, whereby those involved understood the limitations of their roles and

[76] J. Martin Plumley and William Y. Adams, "Qaṣr Ibrîm, 1972," 238.

[77] Private correspondence with Joost L. Hagen.

functions within an Islamic polity, in which adjudication—rather than arbitration—had (once again) solidified into an authoritative, functioning, and meaningful mechanism for the resolution of disputes. This new legal synthesis does not imply the uprooting of well-established practices of arbitration and low-level dispute resolution. We can be certain that most (but definitely not all) disputes continued to be resolved locally. What this synthesis meant, however, was the existence of accountability towards an institution that clad itself in the mantle of a judicial language that mobilized the authority of the Qurʾān and Prophetic traditions and understood itself as the upholder of earthly justice. In the social and legal fabric of Egypt, this development—fueled significantly by the claim of the Abbasid revolutionaries but not coterminous with it—marked a departure from the late antique legacy of functioning as a society of arbitration, in which the oversight of local judicial affairs remained largely unchecked and without legal recourse.

5.3 The Rise of the Affidavit (*iqrār*)

With the maturing of the Islamic judiciary, a new type of legal document emerged in the late second or early third Islamic century: the affidavit (*iqrār*; often referred to as "acknowledgment"). Scholars have described the *iqrār* as being a formal declaration of the existence of a legal obligation (*al-muqarr bihi*) by one party (*al-muqirr*) for the benefit of another (*al-muqarr lahu*).[78] Michael Thung argues that the *iqrār* replaced the *dhikr ḥaqq* (promissory note). This is true insofar as the promissory note, which had served as a written

[78] Christian Müller, "Acknowledgement," in *Encyclopaedia of Islam Three Online*, ed. Kate Fleet, Gudrun Krämer, Denis Matringe, John Nawas, and Devin J. Stewart (Leiden: Brill, 2018), https://doi.org/10.1163/1573-3912_ei3_COM_0166, accessed February 21, 2025; and Amel Bensalim, "Getting to Know *iqrār*s," Islamic Law Blog (January 24, 2023), https://islamiclaw.blog/2023/01/24/getting-to-know-iqrars/, accessed February 21, 2025.

instrument for recording outstanding debts between parties, disappears from the documentary record by the mid-tenth century, with the *iqrār* largely absorbing this function.[79] However, the *iqrār* documentary genre was more comprehensive and flexible than its predecessor, assuming various other functions. Geoffrey Khan notes that by the Fatimid period, private individuals issued *iqrār*s to confirm that debts they were owed had been repaid, thus effectively eclipsing the quittance (*barāʾa*), which was previously used to that end and which—like the *dhikr ḥaqq*—disappeared by the mid-tenth century. Despite the important similarities between these document types, Khan functionally divorces the *iqrār* from the much older quittance, arguing that the *iqrār*

> recorded the fact that the legal act of acknowledgement had taken place and did not constitute the legal acknowledgement itself, i.e. the document had the function of a declarative instrument. It was far more elaborate and legally secure than the simple quittance.[80]

The difference is striking: While the physical presence and material form of quittances and promissory notes served as direct evidence of a legally valid act, the *iqrār* derives its evidentiary value from the acknowledgment made by one party in the presence of witnesses. This is not to suggest that the documentation of the *iqrār* did not matter—to the contrary, judges were required to consider these documents even when they found the witnesses' testimony lacking under normal circumstances.[81] Rather, the key distinction lies in the underlying logic of the *iqrār*: It binds the declarant because he or she has verbally acknowledged a specific fact, which is then regarded as incontrovertible.

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[79] Michael H. Thung, "Written Obligations," 8.

[80] Geoffrey Khan, *Bills, Letters and Deeds: Arabic Papyri of the 7th to 11th Centuries* (London: Nour Foundation, 1993), 174.

[81] Christian Müller, "Acknowledgement."

The shift in the function of affidavits not only impacted the security and bindingness of these documents. By linking their validity to the solemn declaration of one of the parties saying, "I acknowledge so-and-so," the *iqrār* heightened the individual legal accountability (*taklīf*; sometimes translated as "responsibility," "obligation," or "legal capacity") of ordinary people who were, by the late eighth century, navigating a more mature landscape of legal institutions, in which the careless utterance of words and their subsequent translation into written form could be held against them.[82] Legal historians and sociologists have used the concept of legal consciousness to explore how individuals internalize legal authority and how legal systems and power structures become reproduced at both the individual and social levels.[83] By legal consciousness, I mean the ways in which legal categories constitute a specific kind of legal subjectivity characterized by commonalities in thinking and interacting with institutions that are shaped by the social structures in which people are embedded.[84] The change brought about by

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[82] On the notion of accountability or legal capacity, see Norbert Oberauer, *Religiöse Verpflichtung im Islam: ein ethischer Grundbegriff und seine theologische, rechtliche und sozialgeschichtliche Dimension* (Würzburg: Ergon, 2004); and Joseph Schacht, *An Introduction to Islamic Law*, 124–125. The classical notion of *taklīf* is not restricted to accountability towards others but includes, first and foremost, accountability for one's actions to God.

[83] Legal consciousness studies initially grew out of the law and society scholarship but gradually shifted towards understanding the presence and uses of law *in* society. This steadily expanding body of literature focuses on the subjective experiences of law and the ways in which legal categories and legality structure everyday communicative practices and behavior between individuals. Drawing on Marxist and poststructuralist thought, particularly the works of Antonio Gramsci and Michel Foucault, these studies argue that the law and hegemonic structures are not extraneous reference points in the lives of people but become internalized and reproduced at the individual level, influencing their actions and perceptions. See especially Austin D. Sarat, "'… The Law Is All Over': Power, Resistance and the Legal Consciousness of the Welfare Poor," *Yale Journal of Law and the Humanities* 2 (1990), 343–379; Patricia Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998); David M. Engel, "How Does Law Matter in the Constitution of Legal Consciousness?," in *How Does Law Matter?*, ed. Bryant G. Garth and Austin D. Sarat (Evanston: Northwestern University Press, 1998), 109–144; Dave Cowan, "Legal Consciousness: Some Observations," *Modern Law Review* 67, no. 6 (2004), 928–958; Susan S. Silbey, "After Legal Consciousness," *Annual Review of Law and Social Science* 1 (2005), 323–368; and Simon Halliday, "After Hegemony: The Varieties of Legal Consciousness Research," *Social and Legal Studies* 28, no. 6 (2019), 859–878.

[84] Austin D. Sarat, "The Law Is All Over," 343–345; and David M. Engel, "Constitution of Legal Consciousness," 112.

the *iqrār* was not that legal documents suddenly became important. As I hope to have shown in the previous chapters, the social significance of written legal artifacts (or documentary "consciousness," if you will) has deep roots, going back to at least Roman times and possibly much earlier. Rather, the shift was that ordinary Egyptians became accountable to an increasingly centralized judiciary that not only secured their legal claims but also operated under more rigorous standards of scrutiny and evidence. With local arbiters no longer holding exclusive control over the dispensation of justice, the formalized nature of interacting with the judicial system—signaled by the rise of affidavits—emerged as a product of an Islamic state, in which adjudicating disputes had become a viable option for litigants. For ordinary Muslims, Christians, and Jews alike, I argue, this shift fostered a legal consciousness oriented towards official law, characterized by a heightened sense of individual accountability.

*Iqrār*s were typically written by notaries rather than judges. When writing these documents, notaries would consciously avoid including elements that were subject to debate among the legal schools as the *iqrār* was, in theory, binding in itself (*mūjib bi-nafsihi*). Unlike oral witness testimonies in court, where the judge needed to examine the integrity of the witnesses before admitting their testimony as evidence, the *iqrār* was legally effective on its own, its presence obliging the judge to consider it as evidence.[85] The witness attestations included in these documents served to validate and secure the document against forgery. Based on his analysis of medieval Islamic legal documents, Christian Müller notes that in practice, judges would often summon the declarant (i.e., issuing party) of the *iqrār* if it had been introduced as evidence in court proceedings. If the declarant confirmed its contents, no witnesses

[85] Christian Müller, "Acknowledgement."

were needed. However, if the declarant contested the veracity or validity of the document, a judge could summon the witnesses mentioned in the *iqrār*.[86]

In classical Islamic thought, Muslim jurists explicitly linked the *iqrār* to the notion of accountability, turning the latter into a condition for the validity of affidavits. The eleventh-century Shāfiʿī jurist al-Māwardī (d. 450/1058) observes:

> Regarding the first condition concerning the declarant (*al-muqirr*): He is the one expressing the claim upon him (*al-ḥaqq ʿalayhi*). Declarants are of two types: Accountable (*mukallaf*) and not accountable (*ghayr mukallaf*). As for the one who is not legally accountable, such as the child and the mad person, their acknowledgment is invalid whether it pertains to property or the body. No legal ruling (*ḥukm*) is attached to it, neither immediately nor after reaching maturity or regaining sanity.[87]

Because children and mad people lack aptitude (*ahlīya*), which is required to be considered legally accountable (*mukallaf*), they cannot issue legally valid affidavits. Later Muslim jurists tied aptitude to being mature (*bāligh*), sane (*ʿāqil*), and capable (*qādir*), and the absence of one of these conditions was considered to invalidate legal accountability. Abū Ḥanīfa carved out an exception to this rule for minors, who could issue legally valid *iqrār*s regarding debts with the permission of a guardian (*bi-idhn ahlihi*) or if they had been authorized to do so in a contract (*kāna maʾdhūnan lahu fī ʿaqd*).[88]

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[86] Ibid.

[87] Al-Māwardī, *al-Ḥāwī al-kabīr*, ed. ʿAlī Muḥammad Muʿawwaḍ, 19 vols. (Beirut: Dār al-Kutub al-ʿIlmīya, 1999), 7:4. The opinion is based on Q 2:286 and the notion that God does not burden people with something they are physically or mentally incapable of doing.

[88] Ibid. See also al-Qudūrī, *al-Tajrīd*, ed. Muḥammad Aḥmad Sirāj and ʿAlī Jumʿa Muḥammad, 12 vols. (Cairo: Dār al-Salām, 2006), 8:3898.

Documentary and literary evidence both highlight the growing emphasis official law placed on individual legal accountability by the early third century. In a 272/885 affidavit from the Egyptian National Library, a villager acknowledges a debt he owes to a certain ʿUthmān b. Aḥmad from a different village:

أقرّ دورثة [؟] المرتـ... من سكنة قرية تدعى ببلوه

وأشهد من أثبت شهادته في هذا الكتاب على

نفسه أنّ لعثمن بن أحمد ا... من سكنة شرها [؟] عليهم

عشرة دراهم ... جياد حالة له عليه ...

> Darautha [?], the …, of the inhabitants of the village named Biblauh [?], acknowledged and called to witness upon himself those who set their signature to this document attesting that he owes ʿUthman b. Aḥmad, the …, of the inhabitants of Sharhā, 10 Dirhams … of good quality, which [are to ʿUthmān's credit] and to [Dauratha's debit] …[89]

The formula used in this document illustrates that unlike the promissory note, in which an official typically recorded the debt as a matter of fact, the *iqrār* explicitly links the existence of the debt to Darautha's acknowledgment thereof. The causative meaning of the fourth verbal form of *sh-h-d* (lit. "to call someone as a witness to something") linguistically signals a shift towards the declarant, who both becomes the agent of the document and the originator of the legal act. It is Darautha who made the acknowledgment, who instigated the witnesses to testify, and who bears full responsibility for its legal effects. This subtle yet significant formulaic adjustment was by no means limited to *iqrār*s and can be observed across a range of legal documents from the early third Islamic century. In other words, the linguistic turn through which notaries began

[89] P.Cair.Arab. 99, ll. 2–5, Adolf Grohmann's edition and translation slightly altered.

emphasizing individual legal accountability and positioning declarants as the originators of legal acts reflects a broader development in Arabic scribal and legal norms.

This process likely began in the late second century, coinciding with the centralization of the judiciary. By the early third century, declarant-focused formulae are already widely attested in Arabic documents. P.RagibEdfou 2 (a legal deed from 218/833–222/837), Chrest.Khoury I 24 (a lease contract from 227/841), P.Khalili I 12 (a witness testimony concerning a debt from 230/845), and P.Cair.Arab. 104 (a witness testimony concerning a debt from 241/855) employ variations of the formula: "he called me as a witness (*ashhadanī*)."[90] In a divorce declaration from al-Ushmūnayn dating to 257/861, one of the witnesses notes, "he called me as a witness upon himself (*ashhadanī ʿalā nafsihi*) to testify that he divorced his wife."[91] In P.David-WeillLouvre 14, a document from 256/870, in which a woman named Bannān designates her uncle as her legal representative (*wakīl*) to marry her to a certain Wahb, the scribe employs the *ashhada* form, noting that "he [the uncle] called on two witnesses to testify for her."[92] In CPR XXVI 26 (an affidavit from 252/866) and P.Philad.Arab. 12 (a quittance for the payment of the land tax from 274/888–889), the same form is used in combination with God, with the declarants calling on God as a witness upon themselves (*wa-ashhada Allāh ʿalā nafisihi wa-kafā bi-ʿllāh*

[90] P.RagibEdfou 2, ll. 10, 12, and 17: "he called me as a witness to his testimony, which is contained in this document (*ashhadanī ʿalā shahādatihi allatī fī hādhā ʿl-kitāb*);" Chrest.Khoury I 24=PERF 749, l. 6: "he called me as a witness and I knew neither the village nor its boundaries before that (*ashhadanī wa-lam akun ʿaraftuhā wa-lā ḥudūdihā qabl dhālika*);" P.Khalili I 12=P.Khalili II 100, l. 7: "he called me to witness (*ashhadanī*);" and P.Cair.Arab. 104, l. 3: "he called me to witness concerning his declaration in writing (*ashhadanī ʿalā taqyīdihi qablahu*)."

[91] P.Philad.Arab. 28, l. 4.

[92] P.David-WeillLouvre 14=Chrest.Khoury I 7, l. 4. See also a marriage contract from 252/866–867, in which a woman named Muḥammadīya calls on two witnesses to confirm that the groom was pleased with and acknowledged the marriage (*raḍiyahu wa-ʿarafahu*); P.Marchands I 11, l. 9.

shahīdan).[93] Several legal templates from this time—the role of which I discussed in chapter three—also contain the *ashhada* formula, including a template for debt acknowledgments.[94]

The point of significance is not that witness attestation became a crucial feature of legal documents in this period—a development I discussed in chapter three and which can already be observed, for example, in the second-century quittances—but that affidavits and other legal documents began to center and emphasize the role of declarants in the legal act and drafting of documents. This was not merely a linguistic shift but reflects the way in which representatives of the Islamic legal system came to hold ordinary people accountable for their actions and utterances. The Islamic state was no longer an empire in which local officials issued Arabic legal documents to the populace simply to record their transactions and ensure social cohesion by backing up legal claims. With the professionalization of the Islamic judiciary and the expansion of formal courts, Arabic legal documents needed to be watertight, their implications widely understood, and the legal actions of those featured in these documents as declarants, beneficiaries, and witnesses articulated with precision to delineate legal accountability. Only by doing so could affidavits withstand adversarial litigation in court and function as a reliable and enduring legal instrument that served both the needs of the judiciary and ordinary people.

The importance of the formulaic innovations featured in Arabic affidavits cannot be understated. Coptic legal documents indicate that Arabic witnessing practices significantly influenced Coptic scribal norms. By the eighth century, witnesses in Coptic legal documents

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[93] CPR XXVI 26=PERF 796, ll. 5–6; and P.Philad.Arab. 12, ll. 9–10. In P.Philad.Arab. 49 (a ninth or tenth-century document), the declarant calls on God as a witness, but the document contains at least two more witness attestations after that; P.Philad.Arab. 49.

[94] In a ninth-century template for debt acknowledgments, the scribe notes the final formula as "he called God to witness in the year so-and-so; he called God to witness upon himself to this, and he [God] suffices as a witness;" Chrest.Khoury II 37=PERF 727, ll. 11–14.

often refer to the object of the legal document itself, testifying to "that which is written in this document (ⲡⲣⲟⲥ ⲟⲉ ⲉⲧⲉϥⲥϩ ⲙⲙⲟⲥ)."[95] Tonio S. Richter observes that this formula marks a noteworthy departure from witness attestations in pre-Islamic Coptic documents, which do not contain references to the documents themselves.[96] The document-referential nature of Coptic witness attestations mirrors variations of the Arabic formula, "He wrote his testimony affirming that which is written in this document (*wa-kataba shahādatihi ʿala mā fī hādhā ʻl-kitāb*)."[97] In addition, the practice of calling on God as a witness to legal documents is attested in Coptic documents from the eighth century and gained significant traction in later Coptic legal documents.[98] Leslie MacCoull once interpreted these instances of God witnessing to legal acts as a sign of the Coptic Christian community's "own particularism and self-awareness," suggesting that these documents had an intra-religious purpose with no significance beyond the Coptic community.[99] Similarly, Coptic papyrologist Ludwig Stern suggested that the increasing presence of oaths in Coptic documents of this period signals the lack of official authority these

[95] This is especially the case in Coptic documents from the Thebaid: P.KRU 111=P.Pisentius 73=P.Lond.Copt. I 392 (590–732); P.KRU 2=SB I 5556=P.Lond.Copt. I 406 (749); P.KRU 98=O.Cair.Monuments 8738=P.RevilloutCopt. 11 (738–754); P.KRU 71=SB I 5592=P.Lond.Copt. I 400 (764); P.KRU 107=SB I 5610=P.Lond.Copt. I 388=O.Cair.Monuments 8739=P.RevilloutCopt. 12 (767–768); P.KRU 81=SB I 5594=P.Lond.Copt. I 378 (770); P.KRU 110=O.Cair.Monuments 8738=P.RevilloutCopt. 11 (770); P.KRU 82=P.Lond.Copt. I 380 (771); P.KRU 112=SB I 5611=P.Lond.Copt. I 390 (749–771); P.KRU 79=P.Lond.Copt. I 375 (767–785); and P.KRU 120 (501–800). Many variations of this formula exist, and they are listed in Paul E. Kahle, *Bala'izah*, 1:188–189. See also the witness attestations in a Coptic marriage contract dating to 946, which uses the formula "I bear witness to that which is written in this deed (ϯⲟ ⲙⲙⲉⲧⲣⲉ ⲉⲡⲉⲧⲥϩ ⲉⲡⲓϫⲁⲣⲧⲏⲥ);" Herbert Thompson, "A Coptic Marriage Contract," *Proceedings of the Society of Biblical Archæology* 34 (1912), 173–179; and Tonio S. Richter, "Arabische Lehnworte," 89.

[96] Ibid., 84–85.

[97] See, for example, P.KarabacekPapyrusfund 2=P.Alqab 33=PERF 695 (203/819); P.GrohmannOstraka 2 (ninth century); P.Mil.Vogl. 4 (ninth century); and P.Ryl.Arab. I X 5 (ninth century).

[98] Tonio S. Richter, "Arabische Lehnworte," 83–84.

[99] Leslie S.B. MacCoull, "The Teshlot Papyri and the Survival of Documentary Coptic in the Eleventh Century," *Orientalia Christiana Periodica* 55 (1989), 201–206, at 203.

documents had after the Arab Muslim conquests, suggesting a turn towards moral means of coercion.[100] However, Tonio S. Richter plausibly argues that it is much more likely that the Arabic practice of calling on God as a witness influenced Coptic scribal culture. As he notes, the Arabic-Coptic bilingual document BKU III 436—where the Arabic invocation of God as a witness directly follows the Coptic one—makes this historical link and directionality of influence explicit:[101]

ⲧⲉⲃ ϩⲓⲭⲱⲓ ⲁⲛⲟⲕ ⲁⲡⲗⲱ

ⲉⲓⲥⲧⲏⲭⲉ ⲉⲣⲉⲡⲭⲟⲉⲓⲥ ⲉⲛⲙⲏⲧⲣⲉ

وكتب ابلوا بن برموده كله

وكفا بالله شهيدا

I, Ablo,

signed, with God as my witness.

Ablo, the son of Barmūda, wrote everything

and God sufficed him as a witness.[102]

The heightened standards of evidence under which the Islamic judicial system operated and its regulation of the *iqrār* as a watertight legal document most likely contributed to these linguistic shifts in Coptic. Instead of interpreting them as a result of Coptic communal isolationism, the possibility of Coptic legal documents serving as evidence in Islamic court proceedings constitutes a much more plausible reason why Coptic scribes—just like in Arabic legal

[100] Ludwig Stern, "Zwei koptische Urkunden aus Theben auf einem Papyrus des ägyptischen Museums zu Berlin," *Zeitschrift für ägyptische Sprache* 22 (1884), 140–160, at 140–141.

[101] Tonio S. Richter, "Arabische Lehnworte," 89.

[102] BKU III 436.

documents—began to rely on document-referentiality, God witnessing, and oaths, all of which functioned as assurances to the validity and accuracy of the content of these documents.

It is important that we understand the legal implications of the *iqrār* for declarants and the ways in which this type of document influenced the workings of the Islamic judiciary. This is true not only because the affidavit, as a specific type of legal document, persisted well into the late medieval period but especially because the concept of the *iqrār* became embedded in nearly every other type of document, serving as a formulaic substratum in sales, donation, marriage, lease, and employment contracts, among others.[103] While a comprehensive treatment of affidavits is beyond the scope of this dissertation because they largely fall outside its temporal scope, a few observations are in order. As mentioned, scholars have typically understood the *iqrār* as recording a legal obligation (or the termination thereof) of one party towards another. However, evidence suggests that the *iqrār* constituted a more flexible legal instrument that generally could transform any social action into a legally valid fact that was admissible in court. In Saḥnūn's *Mudawwana*, we find many instances where the provision of an *iqrār* is considered to bind declarants even if they later repudiate their acknowledgment or admit to lying:

> I [Saḥnūn] asked: "What is your opinion on a man who said to his wife, 'If I enter the house of so-and-son, you are divorced,' and who, after that, in the presence of witnesses, acknowledges (*aqarra*) that he entered so-and-so's house, but later claims that he was lying and witnesses attest to it before the judge?" He [Ibn al-Qāsim] responded: "The

[103] The latest *iqrār* type documents I could identify in the APD date to the early sixteenth century, and while they are typically longer and more elaborate, their structure and function is essentially the same as those discussed here. See, for example, P.UmariHuyul 10 (sale of a stallion dating to 911/1505); P.UmariHuyul 6 recto (sale of a stallion and a she-mule dating to 911/1505); and P.UmariHuyul 14 (sale of a mixed breed horse dating to 919/1513).

person in charge (*al-sulṭān*) must divorce her from him." I said: "His denial has no merit after the *iqrār*." He responded: "Yes, his denial has no merit after the *iqrār*."[104]

Obviously, in this hypothetical, we are still dealing with liability arising from the husband's acknowledgment of the fact that he entered so-and-so's house, which entitles the wife to a divorce (irrespective of whether she may wish for that divorce). However, this case demonstrates that the *iqrār* is not necessarily bound to the specific form of declaring a direct legal obligation or entitlement of one party between parties. Rather, the husband's *iqrār* shifts the epistemic status of a given piece of information, transforming it from inadmissible hearsay into admissible evidence in court. With the husband's own testimony, along with the testimony of witnesses, the degree of certainty changes—what was once considered probable is now considered certain. This degree of certainty makes it impossible to repudiate his later claim: He entered the house, and that is now a fact.

The *iqrār* then functioned as a particular type of proof that was backed by the declarant and the witnesses. It established a high degree of documentary normativity and procedural certainty essential for a multi-tiered system of justice spanning vast geographical areas. In this system, long-distance communication between state institutions, local powerbrokers, and ordinary people of different confessions constituted the everyday reality of an empire seeking public recognition of its judicial process and legality. The documentary innovation embodied by the *iqrār* and the inroads it made into Arabic and Coptic legal culture at large were crucial for establishing formal judicial standards, even if they came at the cost of holding ordinary people accountable for their words and the legal relations they entered. Unsurprisingly, the judicial standards concerning *iqrār*s became articulated in a vast technical legal literature (*kutub al-*

[104] Saḥnūn b. Saʿīd al-Tanūkhī, *al-Mudawwana al-kubrā*, 2:95.

shurūṭ). Al-Asyūṭī's (d. 880/1475) well-known *Jawāhir al-ʿuqūd* is only one representative of this literature, as extensive discussions of the nature and legal implications of *iqrār*s are already widespread in the earliest works of Islamic legal literature.[105]

Before closing this discussion, we need to return once more to Mūsā's mid-eighth-century letter to the king of Makuria. The attentive reader will remember that after the return of Muḥammad b. Zayd from Nubia, where he was imprisoned and badly beaten up, the Aswānī governor—his name is Salm b. Sulaymān—asked him for evidence (*bayyina*) confirming the beatings he alleged to have received at the hands of the Nubian deputy and the sending of his merchant to the Nubians. The letter informs us that Muḥammad procured three Aswānī witnesses (*ʿudūl*), who testified to Muḥammad's allegations.[106] We do not know the exact circumstances of the witness testimonies—whether they testified orally or in written form—but it is probable that an affidavit was issued. In the affidavit—if it indeed existed—Muḥammad would have made an acknowledgment of what happened to him before using the *ashhada* formula to call on the three witnesses to testify to his claims. The point was not that the witnesses were required to have first-hand knowledge of the beatings or the merchant's departure, meaning they did not need to have directly observed these events. Instead, their role was to corroborate Muḥammad's statements—confirming that they heard what he said, not verifying the truth of his claims—ensuring that he could be held accountable for his allegations in case he later decided to change his story. The language of the Mūsā letter conveys this role of the witnesses explicitly: "They [the three Aswānī witnesses] were witnesses for him to what he *said* about his matter and the

[105] See al-Asyūṭī, *Jawāhir al-ʿuqūd wa-muʿīn al-quḍāt wa-l-muwaqqiʿīn wa-l-shuhūd*, ed. Masʿad ʿAbd al-Ḥamīd Muḥammad al-Saʿdanī, 2 vols. (Beirut: Dār al-Kutub al-ʿIlmīya, 1996).

[106] P.HindsNubia=P.Alqab 15=P.AbuSafiyyaRisalatMusa=P.BlauHandbook, 57, ll. 38–41.

matter of his merchant (*fa-shahidū lahu bimā dhakara min amrihi wa-amr tājirihi*)."[107] In other words, the act of calling on the witnesses served to transform Muḥammad's allegations into admissible evidence that could be—and, as we know, *was*—employed as Muḥammad's case was escalated first to the governor Mūsā and then to the *qāḍī* of Egypt. Again, while we don't have any such *iqrār* preserved, it strikes me as very likely that a written document would have been issued, especially since Mūsā and the governor of Aswān were communicating over long distances. We must also recall that as the Nubian crisis evolved, Mūsā summoned the beat-up Muḥammad to Fusṭāṭ—a circumstance that can be explained better if we assume that an *iqrār* had been issued and that—as became common at this time—the governor wished to confirm the validity of the written claims he had received. According to Christian Müller, the witnesses to affidavits would only be summoned by representatives of the law if the declarant—in our case, Muḥammad—denied the acknowledgment.[108] In other words, this would explain why Muḥammad alone, but not the witnesses, journeyed to Fusṭāṭ according to Mūsā's letter. Since Muḥammad seems to have upheld his allegations before the governor, there was no need to have them certified by the witnesses orally.

While there are no doubt gaps in reconstructing the precise historical context of Muḥammad's testimony, it is reasonable to interpret the Mūsā letter against the backdrop of an affidavit being issued. The procedural details the letter describes in passing—such as Muḥammad's acknowledgment and the summoning of witnesses—conform with what we know from both documentary and literary sources about the legal practice of issuing affidavits.

[107] P.HindsNubia=P.Alqab 15=P.AbuSafiyyaRisalatMusa=P.BlauHandbook, 57, ll. 40–41.

[108] Christian Müller, "Acknowledgement."

5.4 Conclusion

This chapter began with an analysis of the vocabulary related to justice present in early Arabic documents and the semantic fields the terms *ʿadl*, *inṣāf*, and *ḥaqq* inhabited, examining the associations they evoked for both ordinary Egyptians and representatives of the mature Islamic judiciary. Most of these terms have roots going back to pre-Islamic Arabia, where they already structured the mores and relationships of tribes. In documents from the first three Islamic centuries, the term *ʿadl* is frequently used in the context of measurement units, where it is linked to the image of scaling and balancing to ensure social harmony. In letters directed to Muslim authorities, petitioners often associate the addressee with the virtues of *ʿadl*. As illustrated, their demand for *ʿadl* was linked to their expectation that the authority—thought of as an earthly representative of divine justice—would intercede on their behalf to remedy an ongoing injustice and rebalance the scales. Although similar, the concept of *inṣāf* was more specific. It expressed the claim to approach all subjects equitably, to put them on par with each other, regardless of their background. Notably, the concept became not only associated with the Islamic judiciary but entered the moralistic lexicon of early Islamic society at large. Lastly, the term *ḥaqq*—having various meanings ranging from truth to claim to obligation—is attested earliest and most often, even in documents from the first Islamic century. As illustrated especially by documents in which the governor Qurra b. Sharīk sends instructions to the pagarch Basīl, this term was already used by the first century administration in the procedural sense of restoring people's claims and recording them in the form of writing by issuing promissory notes and entering their legal claims in public registers.

The semantic use of these terms was shaped by important political shifts and documentary innovations in the late eighth century, which led to the centralization and growing

importance of the Islamic judiciary as the top tier of the system of justice. The political crisis between the Egyptian governor and the Nubians shortly after the Abbasid Revolution illustrates the increased deference of the political establishment to the Islamic judiciary and the judicial reputation the latter had gained as an institution that could not only alleviate the frustrations of ordinary people by serving as a check on local arbitrators' authority but also function as a reliable broker in cross-regional and even international conflicts. These developments and shifts in the role of the Islamic judiciary were undergirded by the rise of the affidavit as a new type of legal document, which operated under heightened standards of evidence and placed a premium on the legal accountability of declarants. As a legally secure and reliable tool, the affidavit became the hallmark of the Islamic judiciary. It would be firmly integrated into its repertoire of legal procedures for centuries to come and directly impacted documentary norms in Coptic scribal culture, in which scribes began to compose legal documents with the intention of making them watertight in case they were reviewed in the context of the Islamic judiciary. With that, Egypt had permanently transformed from an arbitration society into one in which the presence of official courts was once again felt all over: in the documents people were issued, in the limited powers of local arbiters, and last but not least, in the moralistic vocabulary associated with the Islamic judiciary that increasingly structured social norms in Egypt.

CONCLUSION

In the introduction to his *History of the Conquest of Egypt, the Maghrib, and al-Andalus*, the ninth-century historian and Muslim jurist Ibn ʿAbd al-Ḥakam recounts an episode from the last days of the Prophet Muḥammad's life:

> The Prophet—may God bless him and grant him peace—fell ill and fainted. When he regained consciousness, he said: "Treat the curly-haired people (*al-udm al-juʿd*) kindly," and he fainted a second time. Upon regaining consciousness, he repeated the same words. After fainting a third time, he said the same thing once again. The people [with him] said: "If only we could ask the Messenger of God—may God bless him and grant him peace—who the curly-haired people are." When he regained consciousness, they asked him, and the Prophet replied: "The Copts of Egypt. They are maternal uncles (*akhwāl*) and kin (*aṣhār*). They will help you against your enemies and assist you in your religion." The group then asked: "Messenger of God, how will they assist us in our religion?" He responded: "They will safeguard you from worldly matters so you can focus on worship. The one who is content with what is given to them is like the one who acts kindly towards them (*ka-l-fāʿil bihim*). And the one who resents what is given to them due to injustice is like the one who looks down upon them (*ka-l-mutanazzih ʿanhum*)."[1]

Historians might interpret these prophetic words about the Muslim treatment of Egyptian Copts as wishful thinking or even consider it a fabricated report skewed by Abbasid sensibilities. However, the core of the description largely corresponds with the role of Egypt's indigenous populace as partners, shareholders, and facilitators to the political and judicial project of the

[1] Ibn ʿAbd al-Ḥakam, *Conquests of Egypt*, 3–4.

Islamic state in the seventh and eighth centuries. This is neither to engage in historical nostalgia about peaceful relations between non-Muslims and Muslims nor is it to suggest that the conquests and the post-conquest era were devoid of violence and tension. Political and social frictions undoubtedly existed, as evidenced by revolts in Egypt during the eighth and ninth centuries, specifically against more exacting taxation policies for the Christian populace, as illustrated by the Bashmurian revolts. However, the historical narrative that frames—and, dare I say, assumes it possible—that the Islamic state of the first century (in Egypt and elsewhere) functioned as an "executive enterprise," where administrative orders from caliphs and governors trickled down to the populace with almost no checks on their authority, not only gravely distorts our understanding of state authority from sociological and anthropological theory, but, more importantly, it simply does not align with what the documentary and even literary sources suggest. The point is not that the Islamic state possessed no means of coercion and would not have made use of them but that for its ambitions to evolve into a permanent political and legal project, its representatives needed to carefully consider, weigh, and often yield to the expectations of the populace to garner legitimacy and secure their authority.

The Arab Muslims arrived in Egypt at a time when Byzantine official courts had largely become negligible to its judicial and social fabric, with pagarchs, bishops, and monks filling the power vacuum that had emerged due to the gradual recession of Byzantine state institutions and the explosion of the Egyptian countryside (chapter one). The shift of judicial power to a mostly rural elite that was well-connected to and immersed in the social and economic cycles of the countryside had severe implications for ordinary Egyptians, who found themselves locked in lengthy arbitration procedures, effectively prohibited from litigating in courts, and *de facto* incapable of appealing arbitration settlements, which specified large penalties for circumventing

local arbiters' jurisdiction (chapter two). This development was most "un-Egyptian" and "un-Roman" in that it marked a rupture with centuries during which Egyptians had flocked to Roman courts, traveling far and widely to litigate and receive justice at the hands of magistrates. Counter to the ways in which arbitration is sometimes discussed in other historical contexts, arbitration in Egypt was incredibly formalized and regulated by specific documentary and procedural norms. These norms were by no means arbitrary or accidental but helped the rural elite invest in their judicial reputation. This phenomenon was most closely observed in the context of the late antique monastery, which operated as a quasi-legal corporation through its documentary practices, internal mechanisms of dispute resolution, and the involvement of important rural elites in disputes. In short, the Egyptian province that the Arab Muslims inherited had transformed into an arbitration society just about a century before their arrival, and it is in this context that their political and judicial administration evolved.

The Arabic documentary record illustrates that within only a few decades, the Islamic administration began to issue legal documents to the Muslim and non-Muslim Egyptian populace at large (chapter three), as seen by the circulation of Arabic promissory notes (*adhkār ḥaqq*) and quittances (*barāʾāt*). These highly normed documents tied ordinary people's legal claims to the Islamic state's authority, securing their property and financial obligations towards each other via reference to the Arabic language and state power. Despite the common myth that legal documents were inconsequential to the workings of the Islamic judiciary, the historical narrative excavated in this dissertation suggested that the Islamic state and its representatives issued legal documents *en masse* from the very beginning. This attention to the documentation of law in the form of writing ("documentality") was very much in keeping with the late antique legacy and ordinary people's expectations related to issuing, receiving, and storing legal documents. The

visual and aesthetic features identified in Arabic documents, from seals to layout choices to script, aided the largely illiterate populace in decoding these documents, most of which, it appears, were stored in jars in their homes.

I do not see any evidence that the formulae being used in Arabic documents from the first two Islamic centuries are in any way related to those of Greek or Coptic documents from the Byzantine period. Their homogeneity and consistency, even and especially in the first Islamic century, suggest that the conquerors brought the knowledge of formulae along with them from the Arabian Peninsula. Be that as it may, later innovations in relation to writing support technologies, formulae, and seals largely spread within the early Islamic empire from east to west, with the Khurāsān region holding an important place as a crucible of these innovations. As illustrated in chapter three, sealing practices were initially accorded a more important function than witness attestations as a technique for validating official documents. However, the demands of an empire in which interregional communication between authorities and geographic mobility were widespread shifted this focus in favor of witness attestations. This development fundamentally altered the logic of legal documents: Whereas the form of the seal materially linked justice to the individual authority of the issuer, witness attestations placed the validity of legal documents in the hands of a network of people. Witnesses did more than verify the accuracy of documents—they became symbolic guarantors of the law dispensed by the Islamic judiciary and its arms.

Along with the documentation of legal acts by the Islamic state, the long-form sources highlight the consolidation of its legal apparatus, specifically the establishment of the office of the Muslim judge (chapter four). These judges initially lacked the professionalization and skills of their later counterparts, as illustrated by the fact that they frequently assumed various political

roles within the empire as public storytellers, heads of the police, army, and navy, or treasurers. For most parts before the Abbasid Revolution, these judges were appointed by the governor of Egypt, and their function as judges was vulnerable to the whims of the governor and the caliph, resulting in a high rate of dismissals and reappointments. Muslim judges needed to support their positions of authority in the eyes of the public, and they did so by drawing on the late antique *topos* of recusal, sometimes in violent spectacles where the Muslim governor would threaten the candidate with the sword to assume the office of the judgeship.

The position of judges became more stable in the late eighth century (chapter five). This development is reflected in changing appointment patterns, with judges then often being appointed by the caliph as a way of counterbalancing the authority of the Egyptian governor. During the crisis with the Makourian king, the Egyptian governor deferred the dispute resolution to the Muslim judge, not only yielding to his evidentiary standards, but effectively granting him judicial authority in an international dispute. The presence of an Islamic judiciary operating under higher standards of judicial review and evidence directly impacted ordinary Egyptians in two ways. First, with the role of the Islamic judiciary as the top tier of the system of justice, the authority of local elites and their capacity to serve as arbiters were checked. Arbitration judgments were no longer final and could be appealed to the Islamic judiciary, giving people the option to circumvent the authority of pagarchs, bishops, and monks. Second, the rise of the affidavit (*iqrār*) as a legal document governed by higher standards of evidence placed a premium on declarants' legal accountability. This shift directly shaped Coptic documentary culture, where scribes increasingly worked under the assumption that their documents might need to stand up in Islamic judicial proceedings.

By the late eighth century, Egypt was no longer the arbitration society it had been for the previous two centuries and a half. There is little doubt that most judicial disputes continued to be resolved by local arbiters, particularly in the countryside. As pointed out, the Islamic tradition itself extolled the virtues of arbitration and its conciliatory effects. However, the place of arbitration in the judicial hierarchy had fundamentally changed: It became relegated to the lowest tier in the order of justice, firmly integrated as part of the Islamic judiciary, but no longer holding the status of being the primary or exclusive venue for dispute resolution.

From the perspective of most Egyptians, the Prophet was right then: The establishment of Islamic rule and justice in Egypt was largely a collaborative project. The Arab Muslim reliance on local non-Muslim administrators for vital state functions was indispensable not just for communication with and oversight of the populace but also—and perhaps more importantly—for the populace to voice its expectations about the nature of justice. The "empire of documents" that the Islamic state turned into almost as soon as the conquerors had settled was largely in keeping with the modality of administering justice in Roman times, not in terms of substantive law, but concerning the social value and significance that legal and documentary practices had embodied in pre-Islamic Egypt. From a bird's-eye view, the consolidation of the Islamic state undoubtedly weakened local landowning classes and ecclesiastical elites in the long run, whose authority had gone largely unchecked during the sixth century. And yet, the Islamic state offered appealing opportunities to advance individual careers within the administration regardless of religious affiliation—even if that meant being held accountable by the new ruling powers.

I hope to have demonstrated that a material and social history approach to Greek, Coptic, and Arabic documents has much to offer. By expanding our analysis beyond the textual dimensions of documentary culture, these documents reveal much more. They raise questions

that not only lead us into the lives and homes of ordinary people but also illuminate the complex internal mechanisms and logics of document production, circulation, and state authority. There are no shortcuts here. We must *slow down*, read carefully, observe, compare, and linger with these documents. We must think about their lifecycles as material objects, their relation to groups of documents, to people, and to the state. We must think about them in relation to archeological sites, coins, public infrastructure, and ecological factors. We must do all this, document by document.

APPENDIX

Table 4. List of arbitration evidence in late antique Egypt (papyri and ostraca in Greek and Coptic from 300–800, sorted chronologically).*

Color coding indicating type of arbitration document:

Compromissum	Arbitration judgment	Settlement (dialysis)	Other arbitration-related documents	Unclassified

Regional abbreviations:

Ambiguous (**AMBI**)
Antaiopolites (**ANTA**)
Apollonopolites (**APOL**)
Arsinoites (**ARSI**)
Elephantine (**ELEP**)
Herakleopolites (**HERA**)
Hermopolites (**HERM**)
Kellis (**KELL**)
Lykopolites (**LYKO**)
Oasis Parva (**PARV**)
Oxyrhynchites (**OXYR**)
Panopolites (**PANO**)
Thebaid (**THEB**)
Unknown (**N/A**)

No.	Identifier	Title	Location	Nome	Date	Lang.	Comments	Arbiter
1	P.Berl.Möller 1=SB IV 7338	Settlement (περίλυσις)	Euergetis/Hermopolis	LYKO	300	Greek	A woman named Aurelia Didyme had sued Aurelia Herakleia, but the lawsuit was referred to the city councilor (πρόεδρος).	City councilor (πρόεδρος)
2	SB I 4847=P.PariserPapyri, 76 Appendix 762	Compromissum (?)	Arsinoites	ARSI	300–699	Greek	See Kovarik (P.NotarPaulos).	?
3	P.Genova I 23=SB X 10733	Fragment of a Compromissum	Unknown	N/A	301–499	Greek	Unknown	Unknown
4	SB I 4765=P.PariserPapyri, 56 Appendix 451	Dialysis	Arsinoites	ARSI	301–700	Greek	?	?
5	P.Princ. II 79	Inheritance Division	Oxyrhynchos	OXYR	326	Greek	Initiated by three brothers Aurelios Horion, Eudaimon, and Eulogios.	?
6	P.Ammon II 40=P.Ammon I 14=P.Ammon I 16 a, b, and d	Petition to the Prefect	Alexandria or Panopolis	ALEX or PANO	348	Greek	Mentions a settlement.	?

No.	Identifier	Title	Location	Nome	Date	Lang.	Comments	Arbiter
7	P.Sijp. 11 b	Release of Claims (διάλυσις)	Kellis	KELL	350–351	Greek	Aurelios had approached Flavius Strategius with a petition complaining about Euprepius who owed him money.	
8	SB XXII 15768=P.Vineyard, 17–25=P.Dispute, 245–252	Dialysis	Oasis Parva	PARV	364	Greek	Varronianus (*centurio* of the *castra* of the small oasis) v. Flavius Lalachios (*centurio* of the same *castra*)	Unknown
9	P.Duke 209	Petition to Prefect	Panopolis	PANO	365–366	Greek	Text/papyrus not found (neither image nor edition).	
10	PSI VIII 951	Copy of a Dialysis	Unknown	N/A	388	Greek	Initiated by freedman.	Unknown
11	P.Lips. I 14	Settlement Regarding Loan	Hermopolis	HERM	391	Greek	Initiated by the creditor of a wool merchant.	
12	P.Giss. I 104	Compromissum	Hermopolis	HERM	399	Greek	Aurelios Kyros and Aurelios Hermes	Unknown
13	P.Oxy. VII 1026	Attestation of Agreement (Mediation?)	Oxyrhynchos	OXYR	401–499	Greek	Gerontius v. John	Andreas and Triadelphus (presbyters) (?)
14	SB XXVI 16564=P.Dionysias, 77–82 no. 12	Fragment of a Dialysis	Unknown	N/A	401–600	Greek	Unknown	Unknown
15	P.Haun. III 57	Settlement	Unknown	N/A	412–415	Greek	Flavius Cyrillus had petitioned the Augustal Prefect of Egypt for legal redress against his adversary. He then agreed to settle outside of court.	Friends intervening to move both parties to find a settlement outside of court

No.	Identifier	Title	Location	Nome	Date	Lang.	Comments	Arbiter
16	SB XXII 15801=P.DialysisUrkunde, 106–112	Dialysis	Arsinoites	ARSI	419	Greek	Flavius Theoninos on behalf of himself and his brother. He proclaims that he has been given the things he was robbed of previously, and he issues this document to confirm that he doesn't have any further claim.	Tribunus
17	SB XIV 11896=PSI III 185	Dialysis	Hermopolis	HERM	425–455	Greek	Unknown	Mediation by a *scholastikos* (?)
18	P.Oxy. XVI 1880=FIRA III 178=Sel.Pap. II 251	Abandonment of Legal Proceedings (as dialysis)	Oxyrhynchos	OXYR	427	Greek	Cyrus, who initiated legal proceedings, addressing the *officium* of the *praeses* to abandon official legal proceedings.	*Officium* (?)
19	CPR VI 6	Dialysis	Hermopolis	HERM	439	Greek	A dispute about land that was inherited by Flavius Serapodorus from his father and then sold to Aurelios Cornelius.	Taurinos, son of the ecclesial *catholicos* in the village of Thrage
20	P.Flor. III 311	Declaration	Hermopolis	HERM	447	Greek	Donkey driver v. his employer, a *scholastikos*	
21	PSI X 1114	Fragment of Dialysis	Oxyrhynchos	OXYR	454	Greek	Unknown	Unknown
22	SB VIII 9763=P.Dialysis, 4–8	Dialysis	Hermopolis	HERM	457–474	Greek	Theonilla v. Achilleus and son (?)	Notary Hermammon?
23	CPR XXV 9	Letter on Arbitration and Tax Payment	Herakleopolites	HERA	475–525	Greek	A complex financial issue regarding a settlement and taxes.	Unknown
24	P.Princ. II 82=SB III 7033	Dialysis	Lykopolis	LYKO	481	Greek	Some intra-church dispute between Kyros (bishop),	Makarios and Sabinos (advocate of

No.	Identifier	Title	Location	Nome	Date	Lang.	Comments	Arbiter
							Danielios, and Areion (both presbyters) v. Theophilos (deacon)	the Theban tax)
25	CPR XXIV 17	Dialysis	Oxyrhynchos/Hermopolis?	OXYR or HERM	501–525	Greek	Unknown	To the *scrinium* of the *princeps*?
26	SB XXVI 16415=P.Petizione, 7–8	Fragment of a Dialysis	Arsinoites (?)	ARSI	501–550	Greek	Unknown	Unknown
27	P.Cair.Masp. II 67232	Acknowledgement of a Debt and Settlement of Security with a Creditor	Aphrodito	ANTA	501–599	Greek	Acknowledgement of a debt and settlement	Dioscorus
28	P.Genova I 34=SB X 10731	Settlement Order	Unknown	N/A	501–599	Greek	Unknown	Unknown
29	P.Herm. 31	Dialysis	Ta Memnoneia (Thebes)	THEB	501–599	Greek	Inheritance settlement between David and his brothers and sisters	Monks (?)
30	SB XXIV 16126=P.DueNoti, 290–291	Fragment of the Hypograph of a Dialysis	Antaiopolites	ANTA	501–600	Coptic/ Greek	Unknown	Unknown
31	P.Lond. I 113 1=P.BritishMuseum, 266–271	Protocol Concerning Monetary Issues	Arsinoiton Polis	ARSI	501–600	Greek	Seller v. soldier	Mediation
32	Stud.Pal. III 402	Compromissum	Herakleopolites	HERA	501–600	Greek	?	?
33	Stud.Pal. III 403	Compromissum (?)	Herakleopolites or Hermopolites	HERA or HERM	501–600	Greek	Unknown	Unknown
34	P.Stras. IV 194	Dialysis (Arbitration)	Hermopolis	HERM	501–600	Greek	Unknown/various people mentioned	Unknown
35	P.Stras. V 494	Fragment of Partition (dialysis)	Hermopolis (?)	HERM	501–600	Greek	Unknown	Unknown
36	CPR IX 11	Dialysis	Hermopolites	HERM	501–600	Greek	Unknown	Unknown
37	SB I 6000=FIRA III 108=P.Urkundenwesen, 4–9	Settlement Concerning Property Rights to a House	?	N/A	501–600	Greek	Daughter v. mother	?
38	P.Mich. 6628	Dialysis (?)	Unknown	N/A	501–600	Greek	Unknown	Unknown

No.	Identifier	Title	Location	Nome	Date	Lang.	Comments	Arbiter
39	P.Wash.Univ. I 27	Settlement of a Dispute	Unknown	N/A	501–600	Greek	John v. Pareas	Pattinos (presbyter)
40	SB XXIV 15957=P.SixByzantine, 92–97 no. 3	End of a Dialysis in an Inheritance Dispute	Oxyrhynchos	OXYR	501–600	Greek	Anoup v. unknown	Notary?
41	BGU I 103=Chrest.Wilck. 134	Letter to Serenus	Pinarachthis? (Oxyrhynchites)	OXYR	501–699	Greek	Letter by Abraham to Serenus, the archimandrite of the monastery to resolve an inheritance dispute.	Archimandrite Serenus (?)
42	SB XXIV 15958=P.SixByzantine, 97–103 no. 4	End of a Dialysis in an Inheritance Dispute	Antaiopolites	ANTA	501–700	Greek	Theodora v. Thekla (?)	?
43	P.Vindob. G 21006+21007	Compromissum	Arsinoites	ARSI	501–700	Greek	See Kovarik (P.NotarPaulos)	?
44	P.Vindob. G 36229	Compromissum	Arsinoites	ARSI	501–700	Greek	See Kovarik (P.NotarPaulos)	?
45	P.Lond. I 113 2	Conveyance of Property	Arsinoites	ARSI	501–700	Greek	?	?
46	SB I 4674=P.ContratsGrecs, 4 no. 39=P.PariserPapyri, 34 no. 38	Arbitration Proceedings	Arsinoites	ARSI	501–700	Greek	Unknown	Unknown
47	Stud.Pal. III 405	Receipt	Herakleopolites	HERA	501–700	Greek	?	?
48	P.Gen. IV 179	Order Concerning an Arbitration	Hermopolites	HERM	501–700	Greek	Thomas ordering Johannes to arrange that Jacob and Danielios resolve their conflict by means of arbitration.	Johannes?
49	SB I 2137=O.Lagercrantz, 52–53	Settlement Ostracon	Thebes	THEB	501–700	Greek	Georgios Elisaios (representing Michael and Rebekka) v. Elisaios (potter)	?
50	O.CopticOstraca, 52–55 no. 13	Request for Arbitration (?)	Ta Memnoneia (Hermonthites)	THEB	501–750	Coptic	Letter from a woman named Koïre to Apa Paulos whom she asks to judge in a	Apa Paulos

No.	Identifier	Title	Location	Nome	Date	Lang.	Comments	Arbiter
							matter between her and a certain David.	
51	P.Lond. III 992=FIRA III 182=Sel.Pap. I 61=Chrest.Mitt. 365	Compromissum	Hermopolis	HERM	507	Greek	Parties agree to arbitration and to appear before the arbiters and accept their ruling.	Unknown
52	CPR VI 8	Compromissum	Arsinoites	ARSI	509?	Greek	Unknown	Unknown
53	SB I 5941=P.Urkundenwesen, 16–17=P.Aphrodite, 150–151	Dispute about Property Rights to a House	?	N/A	510	Greek	Mediation settlement between buyer and seller.	?
54	P.Dubl. 34=P.Melitian, 85–91	Settlement Deed	Arsinoiton Polis	ARSI	511	Greek	Testamentary deed by a Melitian monk.	Apa Hol and Tourbos (Melitian priests) + Elias (deacon of the nome) + Anoup, Pamoutios, and Sambas (orthodox priests in the Monastery of Labla)
55	P.David 10=SB X 10285=Pap.Lugd.Bat. XVII 10	Acknowledgement of a Debt Concerning Replacement of Bad Wine	Oxyrhynchos	OXYR	522–523	Greek	One party declares his agreement with the decision to deliver new wine.	A φροντιστής and a presbyter
56	P.Mich. XIII 659=P.Vat.Aphrod. 17	Settlement	Antinoopolis	THEB	525–546/547	Greek	Apollos, Paulus, and Mary v. Psaios and Talus	Unknown; similar to Thekla dispute in length
57	SB XXII 15477=P.WomenSociety 116=P.Mich.Aphrod.,	Dialysis in Dispute about Property Rights	Antinoopolis	THEB	527–547	Greek	Nikantinoos v. Phoibammon and Anastasia. A notarial deed settlement.	Apollos (πρωτοκωμήτης – chief citizen in the courthouse);

No.	Identifier	Title	Location	Nome	Date	Lang.	Comments	Arbiter
	67–73=P.Vat.Aphrod 10							"good friends" mediated
58	P.Cair.Masp. II 67154 recto	Dialysis (Settlement Deed)	Antinoopolis	THEB	527–565	Greek	A divorce settlement between Aurelios Menas and his wife Aurelia Maria.	?
59	P.DocumentsJuridiques, 130–132	Settlement	Aphrodito	ANTA	534/535 or 549/550	Coptic	Dioscorus v. Iōsēph son of Hermauō (currier)	Kallinikos, son of Biktōr
60	P.Iand. III 41	Compromissum	Oxyrhynchos	OXYR	551–600	Greek	Unknown	Unknown
61	P.Lond. III 1008	Dialysis	?	N/A	561	Greek	Three brothers settling with their sister.	?
62	P.Eirene II 14 recto	Settlement Document	Herakleopolites	HERA	565	Greek	Some monetary issue	Unknown
63	P.Lond. V 1707	Compromissum	Antinoopolis	THEB	566	Greek	Athanasia and adversary	Unknown
64	P.Cair.Masp. II 67167	Loan of Money Dispute	Antinoopolis	THEB	566–573	Greek	The late Callinikos had borrowed money. Now lender claims the restitution of debt from his son Constantine.	?
65	P.Lond. V 1717	Receipt for Repayment of Money	Antinoopolis	THEB	566–573	Greek	?	?
66	P.Cair.Masp III 67353 recto=P.Dioscorus, 41–43	Unknown	Aphrodito	ANTA	567	Coptic/ Greek	?	?
67	P.Lond. V 1708	Arbitration Judgment	Antinoopolis	THEB	567–568	Greek	Arbitration in family context regarding inheritance (entire protocol of the case).	Dioscorus?
68	P.Cair.Masp. III 67351 recto+P.Cair.Masp. II 67275 recto+SB XVIII 13086+BKU III 503+CoptCongr. II, 159–166=P.Cair.Masp. II 67176 recto	Fragment of a Contract + … + Fragment of a Contract in Coptic + … + … + Greek Dating Formula of a Coptic Land Cession	Aphrodites Kome	ANTA	569	Greek, Coptic	Anoup, son of Apollo and Julias, son of Sarapammon v. Papnoute, monk of the Monastery of Apostles of Pharoou	Dioscorus (Coptic administrator of Aphrodito)

No.	Identifier	Title	Location	Nome	Date	Lang.	Comments	Arbiter
69	P.Lond. V 1709	Arbitration (μεσιτεία) of Inheritance	Antinoopolis	THEB	570	Coptic	Victorine and her brother Phoibammon v. Philadelphia, their half–sister, and Amanias, their widowed stepmother	Dioscorus or somebody else
70	P.Münch. I 1=FIRA III 184	Property Rights Settlement	Syene	ELEP	574	Greek	Settlement between Viktor, Paeion, Tsia with Jakobos	Mediation
71	BKU II 318=O.Krau. 46	Arbitration by Apa Abraham	Apa Phoibammonos Topos II	THEB	575–625	Coptic	Apa Abraham sending letter to Apa Viktor	?
72	O.Krau. 47=O.Crum. 49	Arbitration by Apa Abraham and a *lashane*	Apa Phoibammonos Topos II	THEB	575–625	Coptic	A letter to Apa Abraham and the other priests asking for the decision Apa Abraham took together with the *lashane*.	Apa Abraham and a *lashane*
73	O.Lips.Copt. I 15=O.Krau. 65=O. Crum. Ad. 12	Letter Affirming Compliance with a Legal Judgment	Apa Phoibammonos Topos II	THEB	575–625	Coptic	Presbyter Viktor writing to Apa Abraham noting his compliance with the legal judgment to be issued.	Probably Apa Abraham
74	O.Krau. 59=O.Crum. 59	Note Concerning a Legal Dispute	Apa Phoibammonos Topos II	THEB	575–625	Coptic	A letter by Apa Abraham to Jacob and others concerning a legal dispute.	?
75	O.Krau. 60=O.Crum. 293	Note Concerning a Legal Dispute	Apa Phoibammonos Topos II	THEB	575–625	Coptic	Apa Abraham writing to somebody informing him that he will send the peasants to court.	?
76	O.Krau. 58=O.Crum. 65	Note Concerning an Arbitration Request	Apa Phoibammonos Topos II	THEB	575–625	Coptic	Apa Abraham to Bishop Johannes concerning an arbitration request.	?

No.	Identifier	Title	Location	Nome	Date	Lang.	Comments	Arbiter
77	O.Krau. 56=O.Crum. 62	Order to Arbitrate between Two Parties	Apa Phoibammonos Topos II	THEB	575–625	Coptic	Apa Abraham to Isaac and Ananias ordering them to arbitrate in a matter.	Isaac and Ananias
78	O.Krau. 54	Order to Reconcile	Apa Phoibammonos Topos II	THEB	575–625	Coptic	Apa Abraham demanding that the presbyter Isaac resolve his disagreement with another bishop.	Nobody?
79	O.Krau. 48=O.Crum. 313	Settlement	Apa Phoibammonos Topos II	THEB	575–625	Coptic	Settlement document sent to Priest Plein (?).	Apa Abraham
80	O.Krau. 66=O.Crum. 44	Settlement	Apa Phoibammonos Topos II	THEB	575–625	Coptic	Deacon Ezekias agreeing not to have any further disputes with another brother.	Probably Apa Abraham
81	O.Krau. 61=O.Crum. 86	Surety Concerning a Legal Dispute about Property	Apa Phoibammonos Topos II	THEB	575–625	Coptic	Jacob writing to Apa Abraham entering a surety contract for a certain Johannes that he may go to court with Hatre regarding a property dispute.	Probably Apa Abraham
82	O.Krau. 62=O.Crum. 155	Surety Concerning a Legal Dispute about Property	Apa Phoibammonos Topos II	THEB	575–625	Coptic	Unknown person writing to Apa Abraham entering a surety contract for Hatre that he may go to court with Johannes regarding a property dispute.	Probably Apa Abraham
83	O.Krau. 63=O.Crum. 42	Surety Concerning Compliance with a Legal Judgment	Apa Phoibammonos Topos II	THEB	575–625	Coptic	Deacon Abraham writing to Apa Abraham noting his submission to and compliance with the legal judgment to be issued.	Probably Apa Abraham

No.	Identifier	Title	Location	Nome	Date	Lang.	Comments	Arbiter
84	O.Krau. 64=O.Crum. 43	Surety Concerning Compliance with a Legal Judgment	Apa Phoibammonos Topos II	THEB	575–625	Coptic	Mena (?), son of Elias, writing to Apa Abraham noting his submission to and compliance with the legal judgment to be issued.	Probably Apa Abraham
85	SB XXIV 16040=P.EdfouIFAO, 176–177 no. 2	Dialysis Fragment of a Divorce	Apollonopolis	APOL	576–625	Greek	Unknown	Unknown
86	SB I 4673=P.ContratsGrecs, 3 no. 38=P.PariserPapyri, 34 no. 37 bis	Compromissum	Herakleopolites	HERA	578	Greek	Aurelios Theophilos v. Zacharias (?)	Brother Isaac (?)
87	BGU I 317=SB I 5332=P.MuseumBerlin, 102	Dialysis/Divorce (?) Settlement	Arsinoiton Polis	ARSI	580–581	Greek	The woman is represented (?) by the male family member Aurelios Kyros.	Unknown (only scribe mentioned)
88	P.Münch. I 7=P.Lond. V 1860	Settlement	Antinoopolis	THEB	583	Greek	Aurelios Johannes v. Aurelios Patermouthis	"Good friends" (κατὰ μεσιτείαν τινῶν φίλων)
89	P.Lond. V 1731=FIRA III 23	Receipt for Money in Settlement of Dispute	Syene	ELEP	585	Greek	A monetary issue between Aurelia Tsone and her mother Tapia.	Unknown
90	P.Lond. V 1728	Settlement of Dispute	Syene	ELEP	585	Greek	Arbitration between John, son of Jacob, and other members of his family concerning inheritance.	Unknown
91	P.Lond. V 1732	Surety for Appearance at Arbitration	Syene	ELEP	586	Greek	Jacob, a sailor of Syene, undertaking responsibility for the appearance of Psano and Sanmou at an arbitration by Mark.	Mark (λογιώτατος δικαστής)

No.	Identifier	Title	Location	Nome	Date	Lang.	Comments	Arbiter
92	SB VI 9456=P.FestschriftSteinwenter, 128	Dialysis Concerning Theft	Arsinoiton Polis	ARSI	594	Greek	*Dialysis* between two butchers.	Mediation
93	P.Münch. I 14=P.LegalPractice, 525–526	Settlement Concerning Property Rights	Syene	ELEP	594	Greek	Flavius Johannes v. Patermouthis	Seren (presbyter of the church of Omboi)
94	SB XXX 17412=P.Compromissum, 59–67	Compromissum	Arsinoe	ARSI	596	Greek	Flavius Cyrillus (a *stratelates* from Arsinoe) v. Apollos, son of the deceased Phoibammon	Theodoros, deacon and estate manager (διοικητής) of Heraiskos
95	P.Paris 20	Partition	Panopolis	PANO	600	Greek	Two dealers and their sister	Negotiation
96	SB XXIV 16039=P.EdfouIFAO, 171–176 no. 1	End of a Dialysis in an Inheritance Dispute	Apollonopolis	APOL	601–625	Greek	Unknown	Unknown
97	P.Gen. IV 181	Resolution of an Arbitration Procedure Regarding Two Dining Rooms	Arsinoites (?)	ARSI	601–625	Greek	A conflict between the deacon Appolonios and Pseeios.	Apa Jeremiah?
98	P.Lond.Copt. I 446	Deed of Mediation	Syene	ELEP	601–625	Coptic	Sourous (?)	?
99	P.Paramone 17=Stud.Pal. X 234	Arbitration Sentence	Herakleopolites	HERA	601–625	Greek	?	?
100	P.Gen. IV 187	Fragments of an Act of Conciliation Concerning a Division	Hermopolites	HERM	601–650	Greek	Division	Unknown
101	CPR VI 7	Compromissum	Herakleopolites	HERA	601–650 or 676–725	Greek	A dispute about money.	Unknown
102	P.Vindob. G 29005 a	Compromissum	Arsinoites	ARSI	601–700	Greek	See Kovarik (P.NotarPaulos)	?
103	P.Dubl. 24	Assurance Concerning a Dispute	Herakleopolites	HERA	601–700	Greek	?	?
104	T.Varie 1	Party Agreement	Unknown	N/A	601–700	Greek	A dispute between two people or groups?	A village?

No.	Identifier	Title	Location	Nome	Date	Lang.	Comments	Arbiter
105	CPR IV 52=CPR II 104	Receipt after Dispute Settlement	Unknown	N/A	601–700	Coptic	Apa Nile v. Kosma (?)	?
106	CPR IV 49	Statement (ὁμολογία) Waiving Rights	Antinoopolis	THEB	601–700	Coptic	Widow Eulogia; several witnesses mentioned at the end.	
107	P.KRU 122=P.Lond.Copt. I 435	Instructions Concerning an Arbitration Case Regarding Inheritance and Property	Jeme	THEB	601–800	Coptic	Joseph v. Taham	?
108	O.Vind.Copt. 258=O.CrumST 300	Letter by a Woman to a Cleric Stating Compliance with the Forthcoming Judgment	Thebes	THEB	601–800	Coptic	Legal dispute regarding a palm.	A cleric
109	BGU I 309	Compromissum	Arsinoites	ARSI	602	Greek	Beginning of *compromissum*.	Unknown
110	SB XXIV 15899=P.Witwe, 98=SB I 5266=P.Prolegomena, 36 B 12	Beginning of Compromissum	Arsinoiton Polis	ARSI	608	Greek	Aurelios Kosmas v. Aurelios Marous	Unknown (?)
111	P.Prag. I 48	Beginning of Compromissum	Arsinoites	ARSI	615	Greek	Aurelios Viktor et al. v. unknown	Unknown
112	SB I 5271=P.Prolegomena, 57 C 19	Compromissum	Arsinoiton Polis	ARSI	615	Greek	Paulos v. Marous (?)	Unkown
113	P.Paramone 16	Arbitration Judgment (?)	Herakleopolites	HERA	616	Greek	?	?
114	SB XIV 12194=P.Wein, 127–130=SB I 5258+5261+5263=P.Prolegomena, 33 E 10+35 D 78+35 E 25	Compromissum	Arsinoites	ARSI	619–629 or after 641	Greek	Aurelios Makarios v. Aurelios Neilammon (deacon)	*Horistai* of the village
115	SB I 5257=P.Prolegomena, 33 D 59	Compromissum	Arsinoites	ARSI	626–675	Greek	Unknown	Unknown
116	P.Vindob. G 25537	Compromissum	Arsinoites	ARSI	626–675	Greek	See Kovarik (P.NotarPaulos)	?

No.	Identifier	Title	Location	Nome	Date	Lang.	Comments	Arbiter
117	BGU I 315	Compromissum	Arsinoiton Polis	ARSI	627	Greek	Both parties recognize the shopkeeper Apa Ol as arbiter.	Shopkeeper (κάπηλος) Apa Ol
118	P.Prag. I 49	Compromissum	Arsinoiton Polis	ARSI	628	Greek	Aurelios Johannes v. Paulos	Aiouk and Pherma (*horistai*)
119	P.Heid. VII 404	Settlement	Arsinoiton Polis	ARSI	629–630	Greek	A son named Petros having a dispute with his mother Aurelia Anna.	Unknown
120	SB I 4712=P.PariserPapyri, 44–45 Appendix 156e	Arbitration Judgment	Arsinoites	ARSI	630–640	Greek	?	?
121	SB XXII 15764=P.Collegium, 256–260=SB I 4868+4862+4672=P.ContratsGrecs, 2 no. 37=P.PariserPapyri, 33 no. 37.	Arbitration Judgment	Arsinoites	ARSI	630–660	Greek	Phib v. Kiamul	Three village men
122	SB Kopt. I 36=P.Scribes, 221–252=P.Budge, 80–111	Legal Proceedings Concerning a House Dispute	Apollonopolis	APOL	640s	Coptic	Iohannes and Tsoker v. Philemon and his wife	Marinos and Markianos, the city councilors of Edfu
123	SB VI 8988=P.Zilliacus, 95–107=SB I 5763	Dialysis (Thekla Dispute)	Apollonopolis	APOL	647	Greek	Iohannes and Tsoker v. Philemon and his wife	Marinos and Markianos (the noble councellors of the city)
124	SB VIII 9775=P.Vertragsurkunden, 61–62	Beginning of a Compromissum	Arsinoiton Polis	ARSI	649	Greek	Petros v. Menas	Unknown
125	P.Lond. II 456	Compromissum	Arsinoites	ARSI	651–700	Greek	Contract involving payment of money. Deed is described as *compromissum*.	Unknown
126	BGU XXI 2895	Compromissum	Arsinoites	ARSI	651–700	Greek	See Kovarik (P.NotarPaulos).	?

No.	Identifier	Title	Location	Nome	Date	Lang.	Comments	Arbiter
127	P.Vindob. G 25612	Compromissum	Arsinoites	ARSI	651–700	Greek	See Kovarik (P.NotarPaulos).	?
128	P.Vindob. G 25629	Compromissum	Arsinoites	ARSI	651–700	Greek	See Kovarik (P.NotarPaulos).	?
129	SB I 5681	Compromissum	Arsinoiton Polis	ARSI	654–669?	Greek	Presbyter Georgios, the son of Iohannes v. Aurelios Phoibammon, the son of Phibis.	Unknown
130	BGU XXI 2896 recto	Compromissum	Arsinoites	ARSI	659	Greek	See Kovarik (P.NotarPaulos).	?
131	P.Vindob. G 26321	Compromissum	Herakleopolites	HERA	676–725	Greek	See Kovarik (P.NotarPaulos).	?
132	P.NotarPaulos, 60–66 no. B=Stud.Pal. III 415	Compromissum	Herakleopolis	HERA	701–750	Greek	Ananias v. unknown	Synkritios (priest?)
133	CPR IV 53=CPR II 183	Settlement	Arsinoites	ARSI	701–800	Coptic	Zacharias v. Paul (?)	Some authority
134	CPR IV 50=CPR II 164	Arbiter Judgment	Herakleopolites	HERA	701–800	Coptic	Paleu v. Tagathonike	Apa Juli and Apa Ol selected as arbiters
135	P.Heid.Kopt. 22	Partition of Real Estate	Hermopolis	HERM	701–800	Coptic	A *dialysis* between the sister Trashe and her brother Gabriel.	Unknown
136	CPR IV 51	Settlement	Unknown	N/A	701–800	Coptic	?	Pagarch Rāshid b. Khālid
137	P.Apoll. 61	Reconciliation between a Mother and Her Son	Edfu	APOL	703–715	Greek	A mother and a son who have previously been before an arbiter.	Papas
138	P.CLT 5=P.Schutzbriefe 97	Settlement	Jeme	THEB	711	Coptic	Thomas, *lashane* of Heme v. Victor and associates, monks of the St. Paul Monastery	?

No.	Identifier	Title	Location	Nome	Date	Lang.	Comments	Arbiter
139	P.NotarPaulos, 59–60 no. A=P.Rain.Cent. 121	Compromissum	Herakleopolis	HERA	719	Greek	Petros v. Papnuthios	Priest Synkritios and Synkritios
140	P.KRU 47=SB I 5580	Dispute	Thebes	THEB	722–723	Greek/Coptic	?	?
141	P.KRU 50=SB I 5582	Document of Release in Land Dispute	Jeme	THEB	724	Coptic	Anatolius v. Tsherkah and Arsenios	John, the senior official (*dioiketes*)
142	P.KRU 36=P.CopticLegal, 99–102=SB I 5572=P.Lond.Copt. I 420	Dialysis on Inheritance Dispute	Thebes	THEB	724	Greek/Coptic	?	?
143	P.KRU 37=SB I 5573=P.Lond.Copt. 423	Dialysis on Inheritance Dispute	Thebes	THEB	724	Greek/Coptic	?	?
144	P.KRU 51=SB I 5583=P.Lond.Copt. I 441	Dispute Concerning a Wall	Thebes	THEB	724	Coptic/ Greek	Unknown	Unknown
145	P.KRU 45=SB I 5578	Dialysis Concerning a House	Thebes	THEB	725	Greek/Coptic	?	?
146	P.KRU 46=SB I 5579	Dispute	Thebes	THEB	725	Greek/Coptic	?	?
147	P.KRU 38=P.Lond.Copt. I 424	Dialysis on Inheritance Partition	Thebes	THEB	725–728	Greek/Coptic	George v. Isaac (brother), Cyra (sister), and Abraham	"the great men"
148	P.KRU 48=SB I 5581	Inheritance Dispute	Thebes	THEB	725–775	Greek/Coptic	?	?
149	P.KRU 42	Dialysis on Inheritance Dispute	Thebes	THEB	725/726	Coptic	Moses and Pesate, sons of the late Jospeh	ʿAbd al-Homar (ʿUmar ?), the *amīr*
150	P.KRU 44=SB I 5577=P.Lond.Copt. I 425	Settlement of Inherited House Property and Dowry	Thebes	THEB	728	Coptic/ Greek	Mary and her husband Peter v. her sister Sophia and Sophia's husband Phoibammon. Arbitration here referred to as *mesiteia*.	St. Phoibammon Monastery (Apa Victor?), together with the *lashane*

No.	Identifier	Title	Location	Nome	Date	Lang.	Comments	Arbiter
151	P.KRU 43	Dialysis on Inheritance Dispute	Thebes	THEB	748/749	Coptic	?	?
152	P.KRU 41=SB I 5576=P.Lond.Copt. I 1011	Dialysis on Inheritance Dispute	Thebes	THEB	749	Greek/Coptic	?	?
153	P.KRU 39=SB I 5574=P.Lond.Copt. I 422=P.Lond. I 104	Dialysis on Inheritance Dispute	Thebes	THEB	749–750	Greek/Coptic	?	?
154	P.KRU 40=SB I 5575=P.Pisentius 83=P.RevilloutCopt. 1	Dialysis on Inheritance Dispute	Thebes	THEB	749–750	Greek/Coptic	?	?

*Please note that the table is based on insights based on various editions and, in some cases, translations of often extremely fragmentary documents, making a certain amount of error inevitable. It is primarily intended to help readers locate the relevant evidence and to showcase the significant volume of arbitration documents from this period.

Table 5. *Dhikr ḥaqq* documents from the first and second Islamic centuries (sorted chronologically).
ProN = Promissory Note DebR = Debt Register

No.	Type	Identifier	Due Year	Creditor	Debtor	Witnesses to legal claim	Object or sum credited	Year and judicial formula used
				First-Century Documents				
1	ProN	P.DiemAphrodito, 272=P.RagibAn22	22/642–3	1. Unknown	1. Unknown	1. Unknown	1 ½ (?) Dinars counted in … (*ʿadadan fī* ...)	**سنة** اثنين وعشرين
2	DebR	P.RagibJurisdiction 1	42/662–3	1. Unknown	1. Unknown	1. ʿUqayb b. ʿImrān 2. Ḥayy b. Saʿd	Unknown	**... قضاء المؤمنين**
				1. Unknown	1. Unknown	1. ʿArīb b. Yanna 2. … b.Tafaḍḍul	Unknown	إلى ملء الغيل إلى ملء اثنان وأربعين **قضاء المؤمنين**
				1. Unknown	1. Unknown	1. ʿUmar b. Ḥayy 2. Buthayr b. Sayf	Unknown	إلى ملء الغيل **من سنة** اثنين وأربعون **سنة قضاء المؤمنين**
				1. ʿUmar b. ʿAsr	1. ʿUmar b. Malkiyy	1. ʿAmr b. al-Ḥārith 2. Buthayr b. Sayf	Unknown	إلى ملء اثنان وأربعون **قضاء المؤمنين**
					2. Qabīlat bt. Malik	None or same witness as in field below	Unknown	None or same as in field below
					3. Shahr b. Malkiyy	1. ʿUmar b. Malkiyy 2. Buthayr b. Sayf	6 ½ Dinars	إلى ملء اثنان وأربعون **سنة قضاء المؤمنين**
				1. Shahr b. Malkiyy	1. Asʿad b. ʿAmr al-…	1. ʿAmr b. …	Unknown	من **سنة** اثنان وأربعين **سنة قضاء المؤمنين**

No.	Type	Identifier	Due Year	Creditor	Debtor	Witnesses to legal claim	Object or sum credited	Year and judicial formula used
3	ProN	P.BruningSunna	44/664–5	1. Unknown	1. Tarīs bt. Muqayr of the tribe of Liʿsān, subtribe of al-Ḥāritha	1. Wahb b. ʿAlī 2. Nāfiʿ	1/3 Dinar	إلى ملء الغيل **من سنة** أربع وأربعين **سنة**
4	DebR	P.TillierDebts 3	47–48/667–8	1. Yuḥannis b. Thiyudur	1. Qurra b. …	1. Qurra b. … (self-testimony) 2. Jamīl b. al-Ḥārith	Unknown	إلى ملء ثمن وأربعين **سنة قضاء المؤمنين**
				1. Unknown	1. Unknown	1. Debtor (self-testimony)	Unknown	إلى ملء سبع وأربعين **سنه**
				1. Unknown	1. Unknown	1. Debtor (self-testimony)	Unknown	إلى ملء ثمن وأربعين **سنة قضاء المؤمنين**
5	DebR	P.Vindob. A.P. 11153	49/670	1. Unknown (erased)	1. Unknown	1. Unknown	Unknown	Unknown
6	DebR	P.Vindob. A.P. 11012	54/674	1. Unknown	1. Unknown (erased)	1. Unknown	Unknown	... أربع وخمسين
				1. Unknown	1. Unknown (erased)	1. Unknown	Unknown	Unknown
7	DebR	P.Vindob. A.P. 11078	50s/670s (?)	1. Unknown	1. Unknown	1. Sulayman …	Unknown	Unknown
				1. Unknown	1. Unknown 2. Yazīd b. …	1. Unknown	A dirham worth of dates	... وخمسين و...
				1. Unknown	1. Unknown	1. Unknown	Dates?	Unknown
8	ProN	P.TillierDebts 4	57/677	1. …bayr (?) 2. ʿAbd Allāh b. Kusayb (?)	1. … b. Ḥanẓala (?) 2. Sayf b. Rabīʿa (?)	None	Unknown	وكتب يوم الاثنين لنصف ربيع الأول **في سنة** سبع وخمسين **سنة**

No.	Type	Identifier	Due Year	Creditor	Debtor	Witnesses to legal claim	Object or sum credited	Year and judicial formula used
9	DebR	P.Vindob. A.P. 11076	57/676–677	1. Unknown (erased)	1. Unknown	1. Malik b. Sar… (?)	70 Dirhams	[إلى مـ] ـلء سبع وخمسين ... بن حبيب **قضاء المؤمنين** إلى ملك بن سر...
10	DebR	P.RagibJurisdiction 2=P.TillierDebts 2	57/676–7	1. Unknown	1. Unknown and his *ʿarīf*	1. Unknown (erased)	Unknown	[إلى ملء سبع] وخمسين
				1. Unknown	1. Unknown	1. Unknown	Unknown	متين إلى ملء سبع وخمسين وثلثهما الحول ... ـي وكتب
				1. Unknown	1. Unknown and his *ʿarīf*	1. Unknown	… Dinars (?)	دنير[؟] **قضاء المؤمنين** إلى ملء سبع و[خمسين]
11	DebR	P.Vindob. A.P. 11074	57/676–7	1. Unknown	1. Unknown	1. Unknown	Unknown	**... قضاء المـ[ـؤمنين]**
					1. Unknown	1. Unknown	Unknown	
12	DebR	P.Paris BN 7075 (9) verso	30/650–80/700	1. Unknown	1. Yazīd b. Malik	1. Muslim b. … (?)	½ Dinar	Unknown/Absent
					2. ʿAbd Allāh b. al-…	2. Unknown	Unknown	Unknown/Absent
		recto	30/650–80/700 (?)	Probably letter and not part of debt register.				
13	Un-known	P.VanthieghemTransition Annexe 1	30/650–80/700	1. Unknown	1. Unknown	1. Unknown	Unknown	Unknown

*I exclude Chrest.Khoury I 48=P.TillierDebts 1=PERF 575 and P.Ness. III 56, because I do not consider them to be *dhikr haqq*s but receipts of payment.

Second-Century Documents

14	ProN	P.ThungWrittenObligations 1=CPR XXVI 16=PERF 617	173/789	1. Bakīsh, the freedman of Ṭulayb b. Abī Ṣāʾim	1. ʿAqīlah bt. Yūsuf	1. ʿAbd al-Raḥmān 2. Torn off	1 Dinar	ومحلّ الدينر لـ... ليال تمضي من شهر ربيع الآخر من سنة ثلث وسبعين ومائة **ومن قام بذكر**

No.	Type	Identifier	Due Year	Creditor	Debtor	Witnesses to legal claim	Object or sum credited	Year and judicial formula used
								الحقّ اقتضا به ومن أحال عليها أقرّت له إن شاء الله
15	ProN	P.ThungWrittenObligations 2=CPR XXVI 17 recto	179/795	1. Saʿid b. Zakarīyā	1. ʿAbd Allāh b. ʿAbd al-Raḥmān (erased)	1. Erased 2. Erased 3. Erased	177 Irdabbs of high-quality … Joseph-wheat	في سلخ ربيع الآخر سنة تسع وسبعين ومائة **ومن قام [بذكر الحق اقتضا به إن شاء الله]**
		verso	179/795 (?)	1. Saʿid b. Zakarīyā	1. Erased 2. Samūʾil b. … (erased)	1. Unknown 2. Unknown	Unknown	Unknown
16	ProN	P.Terminkauf 1 recto	201/816	1. Muṭahhar b. ʿAbd Allāh 2. … b. ʿAbd Allāh (his agent)	1. ʿUnqūd Kayl	1. Isḥāq b. Yūsuf 2. al-Ḥārith b. ʿAbd Allāh 3. Isḥāq b. ʿAlī 4. Sawār b. ʿAbd Allāh 5. Nawfal b. Yaḥyā al-H…ī 6. ʿAbd Allāh b. Nawfal 7. Bishr b. Ḥassān	3 Qinṭār and 65 Ratl flax (Laythī standard, free from straw, destruction, shortness, and dirt) = 3 1/3 Dinar and 2 Qīrāṭ	ومحل الكتان في بؤونة من شهور العجم سنة إحدى ومائتي **من أحال عليه أقرّ له بحقّه ومن قام بذكر الحقّ اقتضا ما فيه** والقوّة لله
		verso	201/816 (?)	1. Unknown	1. Unknown	1. Isḥāq b. Yūsuf 2. Nawfal b. Yaḥyā 3. ʿAbd Allāh b. Nawfal	Unknown	Unknown
17	ProN	CPR XXVI 19	793–853 ??	1. ʿUthmān b. ʿĪsā 2. al-Khalīl b. ʿĪsā	1. Shinūda b. Jirja	1. … 2. Ḥasan b. al-Ṣabāḥ al-Maʿāfirī	1…. Irdabbs less a wayba of high	... في بشانس من أشهر العجم من سنة ... **[ومن قام] بذكر الحق اقتضا بما فيه ومن أحال عـ[ليه أقرّ له]**

No.	Type	Identifier	Due Year	Creditor	Debtor	Witnesses to legal claim	Object or sum credited	Year and judicial formula used
				3. Rabīʿa b. Sulaymān 4. Ḥannūn b. Isḥāq		3. Zakīr b. Yaḥyā al-Azdī 4. Naṣr b. ʿAbd Allāh al-Maʿāfirī 5. Kahl … (?) 6. al-Walīd b. al-ʿAbbās al-Hamdānī 7. al-Walīd b. al-Qāsim al-Tujībī 8. ʿAbd al-Raḥmān b. Musāfir al-Maʿāfirī 9. Jalaba b . Numayr al-Ḥayḍar (?) 10. Maymūn b. Farīd al-Qurashī	quality Joseph-wheat free of straw and earth 2.… barley 3. 9 Irdabbs of hifh-quality wheat (?) free of mud, straw, and stalks	
18	ProN	P.Vindob. A.P. 1168	133/750–184/800	1. Walīd (?) b. Sansar (?) of the people of the city …	1. Unknown	Unknown	Unknown	Unknown
19	ProN	P.Berol. 6625 recto	133/750–184/800	1. Sidr b. Mud…	1. Unknown from the Fayyūm (?)	Unknown	Unknown	Unknown
20	ProN	P.Vindob. A.P. 272	133/750–236/850	1. Fāṭima (?) bt. Bukayr (erased)	1. Isḥāq b. Sālim (?), her son (erased)	Unknown/None	1 1/6 Dinar	ومن أقام بذكر حق اقتضا به إن شاء الله

No.	Type	Identifier	Due Year	Creditor	Debtor	Witnesses to legal claim	Object or sum credited	Year and judicial formula used
21	ProN	P.Vindob. A.P. 828	133/750–287/900	1. David (?)	1. … from Ashmūn	Unknown	Unknown	Unknown

Table 6. *Barāʾa* documents from Egypt from the first and second Islamic centuries (sorted chronologically).

No.	Lang	Type	Identifier	Year	Quittance Issuer (Creditor)	Quittance Beneficiary (Debtor)	Scribes	Witnesses	Debt settled	Verso
First-Century Documents										
1	Arabic and Greek	Off	P.StoetzerSteuer quittungen 2=PERF 573	57/677	1. ʿAbd al-Raḥmān b. Abī ʿAwf 2. ʿAbd al-Raḥmān b. Shallūm (?)	1. The village of Apion in the Pagarchy of Heracleopolites	Notary Juhaym (Arabic), Notary Daniel (Greek)	None	118 Dinars and 19 Qirat	Στέφ(ανος) Ἡλί(α) (πε)ρ(ὶ) (ἀρταβῶν)
2	Arabic and Greek	Off	P.StoetzerSteuer quittungen 1=PERF 585	75/694	1. Sufyān b. Ghunaym	1. Apa Kyros, Son of Shenoute (from the city of Hermopolis)	Saʿīd (Arabic), Notary Athanasios (Greek)	None	2 Dinars	Blank
3	Arabic	NonOff	P.KhanLegalDocument	88/707	1. Saʿīd b. Qays al-Yaḥṣibī al-Dallālī	1. Jamīla, the freedwoman of Umm Hunayda	Probably the creditor Saʿīd	1. Ḥimyar b. Sharaḥīl al-Kalāʿī al-Sulafī 2. Hishām b. Jābir al-Lakhmī 3. Mikhmar b. ʿUqayb al-Maʿāfirī al-Liḥyānī 4. Saʿīd ibn Qays al-Dallālī (creditor)	7 Dinars (for her portion of a house)	فيها برأة لجميلة مولت أم هنيدة

No.	Lang	Type	Identifier	Year	Quittance Issuer (Creditor)	Quittance Beneficiary (Debtor)	Scribes	Witnesses	Debt settled	Verso
					Second-Century Documents					
4	Arabic	NonOff	P.Khalili I 9 a+b=P.Khalili II 97	104/723	1. Shabr b. … (?)	1. ʿAbdallāh ibn Ḥanān	Shabr b. … (?)	1. Shabr b. … 2. Muslim b. Abī Īlā 3. ʿAbd al-Raḥmān b. Abī Īlā	13 milch-ewes of Sulaymān b. Kalb al-ʿAlawiyy	Blank
				104/723	1. Sulaym b. Aḥwaz al-Ḥaḍramī	1. ʿAbdallāh ibn Ḥanān	Sulaym b. Aḥwaz al-Ḥaḍramī (?)	1. ʿAbd Allāh b. Sulaym 2. Sulaym b. Aḥwaz 3. ʿAbd al-Malik b. Ayyūb	1/2 Dinar	
5	Arabic	NonOff	P.David-WeillLouvre 24	123/741	1. Umm Abān bt. Al-Riyān (?)	1. Kināna b. Ḥimyar al-Riḥānī	Umm Abān bt. Al-Riyān (?)	1. Sawm b. ʿAbd al-Raḥmān al-Tujībī 2. ʿAbdallāh b. Abī Fāṭima 3. Abū Bakr b. Abī al-Mujāhid 4. Salām, the freedman (*mawlā*) of Yazīd b. Muqassam	5 Dinars *ʿaṭā*	براءة لكنانة بن حمير
6	Arabic	Off	**P.Louvre E7065**=P.Chris. Musl. 14 (*void?*)	125/743 – 131/749	Yaḥyā b. Hilāl (Pagarch of the Fayyūm under the Governor ʿĪsā b. Abī ʿAṭāʾ)	ʿAbd …	Yaḥyā b. Hilāl (?)	None	None	Unknown

No.	Lang	Type	Identifier	Year	Quittance Issuer (Creditor)	Quittance Beneficiary (Debtor)	Scribes	Witnesses	Debt settled	Verso
			+P.Chris.Musl. 11 (*void?*)		Yaḥyā b. Hilāl	Ḥafṣ al-…	Yaḥyā b. Hilāl (?)	None	1 sheep (his *ṣadaqa* portion on 40 sheep)	
			+P.Chris.Musl. 12 (*void?*)		Yaḥyā b. Hilāl	None	Yaḥyā b. Hilāl (?)	None	None	
			+P.Chris.Musl. 13 (*void?*)		Yaḥyā b. Hilāl	None	Yaḥyā b. Hilāl (?)	None	None	
7	Arabic	Off	P.Cair.Arab. 197	148/765 –766	1. Muḥammad b. Ismāʿīl 2. al-Rabīʿ b. Qais (both *ʿāmil* of Governor Yazīd b. Ḥātim)	Khaṣīb b. ʿAlī (?)	Muḥammad b. Ismāʿīl (?)	None	1 sheep (?) (*ṣadaqa* portion on 40 sheep)	Blank
8	Arabic	Off	P.Berol. 15016	144/762 – 152/769	Ayman b. Ibrahīm (*ʿāmil* of the Fayyūm of Governor Yazīd b. Ḥātim)	Muḥammad b. Jābir b. Hilāl	Unknown	Probably none	Unknown amount for *jizya*	Unknown (verso destroyed due to papyrus being glued on paper)
9	Arabic	Off	P.David-WeillLouvre 16	156/773	Shanūda, the local official (*māzūt*) in charge of the *kharāj*	Maymūn b. Rāshid (representing Victor, Humaysa, Zikrī, and the two sons of Victor)	Shanūda (?)	1. Saʿīd b. Yaʿqūb al-Tujībī 2. Sālim b. Sulaymān al-Asadī 3. Yasār b. Wāqid al-ʿAbdī	4 Dinars *sūqiyya*	Blank (?)

No.	Lang	Type	Identifier	Year	Quittance Issuer (Creditor)	Quittance Beneficiary (Debtor)	Scribes	Witnesses	Debt settled	Verso
								4. Hāshim b. Ṣulḥ al-Qurashī		
10	Arabic	Off	P.Louvre 7347/4	184 /800 (?)	… … ʿAbd al-Malik b. al-Rabīʾ (?)	ʿAbd Allāh b. ʿAbd al-Raḥmān	… … ʿAbd al-Malik b. al-Rabīʾ (?)	1. Maymūn b. Rāshid … (?) 2. ʿAbd al-… 3. …	110 (?) as *kharāj*	Unknown
11	Arabic	NonOff	P.LiebrenzQuittung=P.VanthieghemReedition	133/750 – 184/800	Shajāra b. Abī Yazīd (represented by Qūmis Kāʾil)	Bisanda Shanūda of Qaṣr Shīma	Qūmis Kāʾil	1. Yuḥannis b. ʿAbd Allāh et 2. Saʿd b. Saʿīd 3. Yuḥannis b. Filuṭūs 4. Qūmis Kāʾil	3 Dinars	Blank (?)
12	Arabic	NonOff	**P.Vindob. A.P. 916**=Chrest.Khoury II 10	185/801 – 190/806	Sumayya bt. al-Ṣabāḥ (the wife of Isḥāq b. Ibrāhīm)	ʿAbd Allāh b. Suhayl and Isḥāq b. Sawwār	Unknown	1. … 2. Sawīrus 3. Maymūn b. Ismāʿīl al-Khawlānī 4. ʿAbd Allāh b. Ṣabāḥ	7 Dinars	Chrest.Khoury II 13+Chrest. Khoury II 14 (see below)
			+Chrest.Khoury II 11		Sumayya bt. al-Ṣabāḥ	ʿAbd Allāh b. Suhayl and Isḥāq b. Sawwār	Unknown	1. Saʿīd b. Ismāʿīl 2. al-Muʿla b. Sulaymān al-Numayrī 3. Maymūn b. Ismāʿīl al-Khawlānī	12 Irdabbs of wheat as one-year *nafaqa* for Sumayya's children for 184–185 + 2 Dinars and 9 qīrāṭ	Chrest.Khoury II 13+Chrest. Khoury II 14 (see below)

No.	Lang	Type	Identifier	Year	Quittance Issuer (Creditor)	Quittance Beneficiary (Debtor)	Scribes	Witnesses	Debt settled	Verso
								4. ʿAbd Allāh b. al-Ṣabāḥ al-Qurashī		
			+Chrest.Khoury I 49 (text crossed out)		Sumayya bt. al-Ṣabāḥ	ʿAbd Allāh b. Suhayl and Isḥāq b. Sawwār	Unknown	No names mentioned in witness formula	8 Dinars as one-year *nafaqa* for Sumayya's three children Yaʿqūb, Isḥāq, and Baraka for 185–186	Chrest.Khoury II 13+Chrest. Khoury II 14 (see below
			+Chrest.Khoury II 13		Sumayya bt. al-Ṣabāḥ	ʿAbd Allāh b. Suhayl and Isḥāq b. Sawwār	Unknown	No names mentioned in witness formula	2 Dinars less 1.5 *qīrāṭ* for nursing her son Isḥāq b. Isḥāq	--
			+Chrest.Khoury II 14		Sumayya bt. al-Ṣabāḥ	ʿAbd Allāh b. Suhayl and Isḥāq b. Sawwār	Unknown	1. Maymūn b. Farqad al-Qurashī 2. ʿAbd al-ʿAzīz b. Ismaʿīl al-Sahmī al-Qurashī 3. Ḥasan b. Yūsuf 4. Zabbān b. ʿAbd Allāh al-Qurashī 5. Isḥāq b. Ayyūb 6. Jāmiʿ b. Ṭayy al-Murādī	6 Dinars as one-year *nafaqa* for Sumayya's three children Yaʿqūb, Isḥāq, and Baraka for 189–190	--

No.	Lang	Type	Identifier	Year	Quittance Issuer (Creditor)	Quittance Beneficiary (Debtor)	Scribes	Witnesses	Debt settled	Verso
								7. Ismaʿīl b. Mahdī al-Maʿāfirī 8. Saʿīd b. Ismaʿīl al-Qurashī 9. al-Faraj b. Sulaymān al-Ḥarasī 10. Yūnus b. Faraj al-Ḥarasī		
13	Arabic	Off	P.Khalili I 10=P.Khalili II 98	194/810	Unknown	Riḍa b. Yazīd	Unknown	None	21 + 1/2 + 1/12 Dinars *mithqālī* as *kharāj*	Blank
14	Arabic	Off	P.GrohmannProb leme III 18=PERF 670=Nilus IV 21=Nilus XV 6	196/812	Yūnus b. ʿAbd al-Raḥmān (*ʿāmil* of Governor ʿAbbād b. Muḥammad)	Abqīra (Abā Qīre?), the baker	Yūnus b. ʿAbd al-Raḥmān	None	1/2 Dinar (*jizya*)	Blank (?)
15	Arabic	NonOff	CPR XXVI 37=PERF 757	771–830 (?)	Abū ʿIlāqa	Biyāq Haliya	ʿAbd Allāh (?)	1. Rawḥ b. Iṭr al-Tujībī 2. Dubayr b. Rāshid al-Khawlānī 3. ʿUbayd b. Jabbār al-ʿAbartī	1/6 Dinar	Blank (?)
16	Arabic	NonOff	P.Michael. B 111	133/750 –	Yazīd b. Yazīd	Shaʿyūn, the Jew	Yazīd b. Yazīd	1. ʿAbd al-ʿAzīz	10 Dinars	Blank

No.	Lang	Type	Identifier	Year	Quittance Issuer (Creditor)	Quittance Beneficiary (Debtor)	Scribes	Witnesses	Debt settled	Verso
				236/850 (?)				2. Ḥamād (Jamāl?) b. ʿAwf 3. Muḥammad b. Sālim (?)		
17	Arabic	Off	P.Vindob. A.P. 9602	133/750 – 236/850	… (*ʿāmil* of the Fayyūm)	Unknown	… (*ʿāmil* of the Fayyūm) (?)	Probably none	Unknown	Blank (?)
18	Arabic	Off	P.Vindob. A.P. 9109	133/750 – 236/850	Muḥammad b. Ḥusayn (?)	ʿAbd al-…	Muḥammad b. Ḥusayn (?)	Unknown	30 Half-Dinars (?) *mithqāl* for *kharāj*	Illegible

Table 7. Occurrences of *ʿadl* in Arabic papyri from the first to third Islamic century (sorted chronologically).*

No.	Identifier	Document Type	Date	Reference
		First-Century Documents		
1	P.Heid.Arab. I 3=Chrest.Khoury I 91=P.Alqab 8	Late notice/order	91/710	**ll. 34–36**: "and the tax collectors (*al-qabbālīn*) should measure [the wheat] of the people using the **just** measurement (*bi-l-kayl al-ʿadl*)" **ll. 45–46**: "deposit at yours a *qanqal* (a measure of capacity) that is **equitable** (*ʿadlan*)"
2	P.Mird 19	Order for investigation of robbery	11/632–100/719	**ll. 6–7**: "then take for him, what … **justice** (*ʿadl*)"
		Second-Century Documents		
3	P.MuslimState 21	Official letter	112/730–132/750	**l. 13**: "… **justice** (*al-ʿadl*)"
4	P.HindsNubia=P.Alqab 15=P.AbuSafiyyaRisalatMusa=P.BlauHandbook, 57	Official letter	141/758	**ll. 26–27**: "and you make manifest to them **justice** (*al-ʿadl*) and that which is right (*wa-l-ʿamal bi-l-ḥaqq*), while what you do in that which is between us and you is contrary to that which you make manifest" **l. 47**: "you were made to bear the likes of rights and **justice** (*min al-ḥaqq wa-l-ʿadl*) that the people are made to bear"
5	P.JoySorrow 3	Letter of complaint	101/719–200/816	**l. 13**: "I ask God the judge (*al-ḥakam*) and the **just** (*al-ʿadl*) to protect me"
		Third-Century Documents		
6	P.Cair.Arab. 124	Contract	271/884	**l. 5**: "and he released him from any **requital** (*ʿadl*), cause of fear, rough speaking, and complaint"
7	P.Ryl.Arab. II 354=P.VanthieghemViolences	Official letter/petition	201/816–300/913	**ll. 14–18**: "we despaired of our situation, seeking refuge with God and the Governor—may God prolong his life—after we learned of his impartiality (*inṣāfihi*) and **justice** (*ʿadlihi*) that he dispenses to his subjects near and far. We seek refuge with God and the **justice** of the governor (*bi-ʿadl al-amīr*), may God prolong his life and extend his might, for him to be kindly disposed towards us with his abundance

No.	Identifier	Document Type	Date	Reference
				of impartiality (*inṣāf*) and **justice** (*ʿadl*) … we implore God and the **justice** of the Governor (*bi-ʿadl al-amīr*) against the agents and their head, the regional governor" **l. 21:** "but we are weak and poor, and we submit ourselves in this monastery, to God and to the **justice** of the governor (*ʿadl al-āmīr*)"
8	P.Cair.Arab. 400	Account list	201/816–400/1010	**ll. 5–7**: "after he had taken the 36 sugar loaves of **correct** weight (*ʿadl*)"

*P.RagibLettres 15 a (ninth century) uses the term *yaʿdil*. Some papyri from these centuries use the term *ʿidl* (a bale), which has the same *rasm* as *ʿadl*. No other forms of the root *ʿ-d-l* are contained in this list.

Table 8. Occurrences of *inṣāf* in Arabic papyri from the first to third Islamic century (sorted chronologically).*

No.	Identifier	Document Type	Date	Reference
		First-Century Documents		

		Second-Century Documents		
1	P.Ryl.Arab. I XV 1	Petition	101/719–300/913	**l. 7**: "make me bear/he made me bear … according to justice (*ḥaqq*) and **impartiality** (*wa-l-inṣāf*)"
2	P.Chic. A 6968 recto	Petition/letter to a judge	101/719–300/913	**ll. 6–7**: "that he [the *qāḍī*] may bring me and them together. May he look into my case with that which leads (*yuʾaddī*?) to … **impartiality** (*ilā inṣāfi*[…]) … of my right (*min ḥaqqī*) or their persons to the *qāḍī* court (*majlis al-qāḍī*)"
		Third-Century Documents		
3	Chrest.Khoury I 24=PERF 749	Lease	227/841	**ll. 3–4**: "Sulaymān b. Dāwud b. Shaddād indicated its [the village's] boundaries, lands (*biqāʿihā*), and sowing fields (*zarʿihā*) and he mentioned its **equal division** (*inṣāfihā*) between him and his brother Muḥammad b. Dāwud b. Shaddād into two equal parts (*niṣfayn*)"
4	P.Ryl.Arab. II 354=P.VanthieghemViolences	Official letter/petition	201/816–300/913	**ll. 14–18**: "we despaired of our situation, seeking refuge with God and the Governor—may God prolong his life—after we learned of his **impartiality** (*inṣāfihi*) and justice (*ʿadlihi*) that he dispenses to his subjects near and far. We seek refuge with God and the justice of the governor (*bi-ʿadl al-amīr*), may God prolong his life and extend his might, for him to be kindly disposed towards us with his abundance of **impartiality** (*inṣāf*) and justice (*ʿadl*) … we implore God and the justice of the Governor (*bi-ʿadl al-amīr*) against the agents and their head, the regional governor"
5	P.Marchands II 39	Letter	201/816–300/913	**ll. 14–15**: "… to protect this woman until she takes possession of what is hers with **equity** (*bi-inṣāf*) …"

*No other forms of the root *n-ṣ-f* are contained in this list.

Table 9. Occurrences of *ḥaqq* in Arabic papyri from the first to second Islamic century (sorted chronologically).*

No.	Identifier	Document Type	Date	Reference
		First-Century Documents		
1	P.DiemGouverneur=P.Ryl.Arab. I XV 59	Governor's order to the pagarch	75/694	**ll. 4–5**: "secure her **right** … for her (*istakhrij lahā … ḥaqqahā*)"
2	P.GrohmannQorraBrief=P.Alqab 5=PERF 592=Nilus XV 3=Nilus XVII 62	Governor's order	90/709	**ll. 6–8**: "and help him secure the **right** (*ʿalā istikhrāji ḥaqqin*) if it is his"
3	P.Qurra 2=P.Alqab 11	Governor's letter	91/709	**ll. 9–12**: "when the land is cultivated, it prospers, God causing it to bring forth its **due** (*alladhī ʿalayhā min al-haqq*)"
4	P.Qurra 3	Governor's letter	91/710	**ll. 8–9**: "and he claims that they violated (*ghalabūhu*) his **right** (*ʿalā ḥaqqihi*)"
5	P.BeckerNPAF 8=P.Cair.Arab. 154=P.Alqab 12	Governor's order	91/710	**ll. 12–13**: "he violated his **right** (*ghalabahu ʿalā ḥaqqihi*)" **ll. 19–20**: "write only the **truth** (*illā bi-ḥaqqin*)"
6	P.BeckerNPAF 9=P.Cair.Arab. 155	Governor's order	91/710	**ll. 9–10**: "and he claims that he violated his **right** (*ghalabahu ʿalā ḥaqqihi*)" **l. 13**: "secure his **right** (*ḥaqqahu*) for him" **ll. 17–18**: "write only the **truth** (*illā bi-ḥaqqin*)"
7	P.BeckerPAF 1	Governor's letter	91/710	**ll. 6–7**: "and he claims that he violated his **right** (*ghalabahu ʿalā ḥaqqihi*)" **l. 10**: "secure his **right** (*ḥaqqahu*) for him"
8	P.Heid.Arab. I 1=P.World, 124=Chrest.Khoury I 90=P.Alqab 6=P.Mudun 8	Late notice/order	91/710	**ll. 18–20**: "God helps them in that which is incumbent upon them of the **claim** of the Commander of the Faithful (*min ḥaqq amīr al-muʾminīn*)"

No.	Identifier	Document Type	Date	Reference
9	P.Heid.Arab. I 10=P.Alqab 10	Governor's order	91/710	**l. 7–10**: "he reported to me […] that he violated his **right** (*ghalabahu ʿalā ḥaqqihi*). If what he reported to me is **true** (*ḥaqqan*) and if he establishes proof to that end, confront him with his [village] head and secure for him that which is his **right** (*mā kāna lahu min ḥaqqin*)"
10	P.SijpesteijnQurra	Governor's letter	91/710	**ll. 17–18**: "so extract [from the field] (*akhrij*) that which she [the earth] is **due** (*min al-ḥaqq*)"
11	P.BeckerPAF 2	Governor's letter	91/710	**ll. 5–11**: "he reported to me that the official (*māzūt*) of his village unjustly (*ẓulman*) entered his house […] without having the **right** to do so (*bi-ghayri ḥaqqin*). When this letter of mine reaches you, confront the two. If what he told me is **true** (*ḥaqqan*), secure his **right** (*ḥaqqahu*)"
12	P.Heid.Arab. I 11	Governor's order	91/710	**ll. 1–6**: "someone came to me reporting that Mīnā, the head of his village, took from him some Dinars unjustly (*ẓulman*) without the **right** to do so (*bi-ghayri ḥaqqin*). If what he told me is **true** (*ḥaqqan*) and if he offers proof to that end, confront him with the village head. If he has a **right** to it (*min ḥaqqin*), secure it for him and do not be unjust (*wa-lā taẓlimanna*)."
13	P.Heid.Arab. I 17	Letter	90/709–95/714	**l. 1**: "the **right** of the Commander of the Faithful (*ḥaqq amīr al-muʾminīn*)"
14	P.HanafiBusinessLetter	Business letter	11/632–100/719	**l. 9**: "and for the garment which is my **entitlement** (*li-ḥaqqī*) for the pilgrimage (*al-ḥajj*)"
15	P.Mird 19	Order for investigation of robbery	11/632–100/719	**l. 8**: "their affair according to his **right** (*ḥaqqihi*) and sincerity, if God wills."
16	P.Berl.Arab. II 23	Petition/letter	11/632–100/719	**l. 9**: "to secure their **right** for them (*an tastakhrija lahum ḥaqqahum*)"
17	CPR XVI 9	Petition	82/701–133/750	**ll. 7–9**: "please write to … your partner regarding the supplies of 100 Faddān in his village as (?) **rights** (*ḥuqūq*)"

No.	Identifier	Document Type	Date	Reference
			Second-Century Documents	
18	P.MuslimState 14 recto	Official letter	112/730–132/750	**ll. 10–12**: “so show him in your books whether what he mentioned of that is **true** (*ḥaqqan*)”
19	P.MuslimState 21	Official letter	112/730–132/750	**ll. 4–6**: “he mentioned to me that the Banū Dāwud violated his **right** (*ʿalā ḥaqqihi*). Look into what he mentioned to me of his **right** (*min al-ḥaqq*) and send the two of them to me so that … and he receives his **right** (*wa-yatasallam min al-ḥaqq*) which the two owe him” **ll. 8–9**: “until what is his **right** (*min al-ḥaqq*) has come to him”
20	P.MuslimState 25	Official letter/request	112/730–132/750	**ll. 5–6**: “Take care, [m]ay God grant us enjoyment through you, to register to our credit the **dues** (*al-ḥaqq*) that the shepherd owes.”
21	P.MuslimState 28	Official letter	112/730–132/750	**ll. 12–13**: “For that is remaining of what we are **owed** (*min al-ḥaqq*) and it is easy for you.”
22	P.MuslimState 38	Official letter	112/730–132/750	**ll. 11–12**: “For no letter came from you to me until they forwarded to us what they are **entitled to** (*ḥaqqahum*)”
23	P.MuslimState 8	Official letter/instructions	112/730–132/750	**ll. 5–6**: “God sent His prophet Muḥammad, may God praise him, with the guidance and the **true** religion (*wa-dīn al-ḥaqq*)”
24	P.Clackson 45	Tax request	136/753	**l. 9**: “and if he receives from you what he **deserves** (*ḥaqqan*) …”
25	P.DiemAmtlicheSchreiben 1=P.BerkesCareers 1	Governor’s letter/instructions	132/750–137/754	**l. 8**: “secure his **right** for him (*istakhrij lahu ḥaqqahu*)”
26	P.RagibLettres II 8=P.SilvestredeSacyDeuxPapyrus, 67	Official letter	140/757	**ll. 8–9**: “they mentioned to you that ʿUbayd denied them their **right** (*ḥaqqahum*)”

No.	Identifier	Document Type	Date	Reference
27	P.HindsNubia=P.Alqab 15=P.AbuSafiyyaRisalatMusa=P.BlauHandbook, 57	Official letter	141/758	**ll. 14–15**: “none of you who is among us is attacked by us, nor is he denied his **right** (*wa-lā yumnaʿ min ḥaqqihi*)” **ll. 26–27**: “and you make manifest to them justice (*al-ʿadl*) and that which is **right** (*wa-l-ʿamal bi-l-ḥaqq*), while what you do in that which is between us and you is contrary to that which you make manifest” **ll. 29–30**: “and you detained him among you, stood between him and the one who **rightly** pursued him (*man yaṭlubuhu bi-ḥaqqin*), and protected him from him. A man of the people of Aswān, named Muḥammad b. Zayd, sent to you a merchant of his on his business and he sought **rights** (*ḥuqūq*) for him” **l. 47**: “you were made to bear the likes of **rights** and justice (*min al-ḥaqq wa-l-ʿadl*) that the people are made to bear”
28	P.Khurasan 27	Quittance	149/766	**ll. 9–10**: “and we have no **right** (*ḥaqq*) or demand against you”
29	P.World, 186=PERF 615=Nilus XVII 25	Petition	170/786–787	**l. 12**: “Ask him so that you may know the **truth** (*al-ḥaqq*) about it”
30	P.HaimPaper 1	Official letter	120/738–174/790	**ll. 8–9**: “God placed … from me negligence, for what … to you the most exalted and noblest pleasures of repose and the great **truth** (*wa-l-ḥaqq al-ʿaẓīm*)”
31	P.LiebrenzQuittung=P.VanthieghemReedition	Quittance	133/750–184/800	**ll. 9–10**: “The share (*naṣīb*)” of Diqasṭas is for Bisanda Shanūda. No other person has a **right** (*ḥaqq*) to her [Shajara’s] share of this house.”
32	P.Giss.Arab. 9	Official letter	133/750–184/800	**ll. 5–6**: “I hope, may God prolong your life, that you will listen to what he and his brother-in-law have to say and to hold them to **justice** (*al-ḥaqq*) and impartiality (*al-naṣafa*)”
33	CPR XXI 6	Lease	806	**l. 8**: “you have no **right** (*lā ḥaqqa laka*) in it”
34	P.World, 149–150=PERF 693	Order for payment	816	**recto, ll. 6–7**: “Pay to Nuṣayr, the servant, 1/6 Dinar to balance his **legal claim** (*fī salāḥi ḥaqqihi*)” **verso, ll. 6–7:** “Pay to Nuṣayr, the servant, 1/6 Dinar to balance his **legal claim** (*fī salāḥi ḥaqqihi*)”

No.	Identifier	Document Type	Date	Reference
35	P.Mird 31	Official letter/instructions	11/632–200/816	**ll. 5–6**: “secure his **right** for him (*istakhrij lahu ḥaqqahu*)”
36	P.JoySorrow 12	Private letter	11/632–200/816	**l. 8**: “and may He [God] **make us capable** of expressing many thanks to Him (*nashkurahu ḥaqqa shukrihi*)”
37	P.JoySorrow 2	Private letter	101/719–200/816	**ll. 21–24**: “I disliked what al-ʿAllāna did and I only have the desire for what God made between me and you through marriage and **law** (*wa-l-ḥaqq*). I desire to be related to you by marriage because of what God has presented to you of honor, **truth** (*al-ḥaqq*), glorification, and praise through religion.”
38	P.Mird 23	Official letter	101/719–200/816	**l. 5**: “and his saying is the **truth** (*al-ḥaqq*)”
39	P.JoySorrow 26	Private letter/complaint	101/719–200/816	**l. 11**: “consider, in **recognition** (*bi-ḥaqqi*) of brotherhood between me and you”
40	CPR XVI 3	Petition	101/719–200/816	**ll. 7–8**: “may the judge (*qāḍī*), may God prolong his life, in … [help] every person entitled to a **right** to his **right** (*kull dhī ḥaqqin ḥaqqahu*) in a successful and reliable manner (*muwaffaqan thabātan*)”
41	P.RogersNotice, 15 bottom=P.RagibLettres 2 a	Official letter	101/719–200/816	**ll. 8–10**: “Look, therefore, at the writings in your possession since it would be painful to me to write to you anything contrary to **the truth** (*bi-ghayri ḥaqqin*).”
42	P.JoySorrow 13	Private letter	101/719–200/816	**l. 17**: “… the **right** I owe you (*laka ʿalayya min al-ḥaqq*)”
43	P.JoySorrow 23	Private letter	101/719–200/816	**l. 27**: “I ask you for that which you **owe** me (*bi-ḥaqqī ʿalayki*)”
44	P.David-WeillLouvre 12–13	Business letter	101/719–200/816	**ll. 5–6**: “an irdabb is **due** to him (*yaḥuqqu ʿalayhi*) and belongs to him” **l. 11 right–11 left**: “it is **due** to you (*ḥaqq ʿalayka*) except … and if ʿAṭāʾ comes to you, take the Dinar from him”

No.	Identifier	Document Type	Date	Reference
45	Chrest.Khoury II 22	Sale's contract	101/719–200/816	**l. 11**: "it [the house] belongs to him, whatever is inside and outside of it, being part of his **rights** (*ḥuqūqihi*) entirely for three Gold Dinars"
46	P.YounesCondolence 3	Condolence letter	101/719–200/816	**ll. 10–11**: "so write to us with your news and the news of those who are with you, for this delights us as it delights you, (in recognition of what) I **owed** you (*limā laka ʿalayya ḥaqqan*) and you [deserve] it"
47	P.JoySorrow 25	Letter	101/719–200/816	**ll. 3–4**: "He [God] made between us and you the **bond** of Islam (*ḥaqq al-islām*), its holiness, the **bond** of kinship (*ḥaqq al-qarāba*), and its acknowledgment"
48	P.JoySorrow 39	Business letter	101/719–200/816	**ll. 10–11**: "I do not make excuses to a person like you … in recognition of what God has made **due** on you to me (*min ḥaqqī ʿalayka*)"
49	P.Cair.Arab. 120	Deed of gifts	185/801–215/830	**l. 5**: "an **obligation** (*ḥaqq*) to the wife of Hāshim"
50	P.Ryl.Arab. I VI 14=P.World, 179	Private letter	11/632–300/913	**ll. 3–4**: "I have written to you more than one letter but cannot find that you have written to your sister about **my claim** (*ḥaqqī*) in reference to the condition on which she left me and to which she swore"
51	P.ReinfandtEinflussnahme verso=PERF 845	Private letter	101/719–300/913	**ll. 10–11**: "so that the matter will be realized for you (*yataḥaqqaqaka*) in its **right** entirely (*kulla ḥaqqihi*)"
52	P.Ryl.Arab. I XV 1	Petition	101/719–300/913	**l. 5**: "make me bear/he made me bear … according to **justice** (*ḥaqq*) and impartiality (*wa-l-inṣāf*)"
53	P.Ryl.Arab. I XII 4	Account	11/632–400/1010	**l. 11**: "*al-ḥaqq* [meaning unclear due to gap]"

*Note that I do not include *dhikr ḥaqq*s and protocols in this table. P.Mird 28=P.KisterQuran excluded due to paleographic gaps. Apart from *ḥaqq* and *ḥuqūq*, the list does not contain other forms of the root *ḥ-q-q*.

CONCORDANCE
LIST OF PAPYRI USED WITH EDITION AND INVENTORY NUMBERS

Abbreviations used for editions can be found in the bibliography.

Edition No. 1	Edition No. 2	Edition No. 3 and others	Inventory Number
BGU I 103	Chrest.Wilck. 134	--	Berlin, Ägyptisches Museum und Papyrussammlung P.Berol. 6876
BGU I 309	--	--	Berlin, Ägyptisches Museum und Papyrussammlung P.Berol. 2577
BGU I 315	--	--	Berlin, Ägyptisches Museum und Papyrussammlung P.Berol. 2576
BGU I 317	SB I 5332	P.MuseumBerlin, 102	Berlin, Ägyptisches Museum und Papyrussammlung P.Berol. 2615
BGU XXI 2895	--	--	Berlin, Ägyptisches Museum und Papyrussammlung P.Berol. 2723
BGU XXI 2896 recto	--	--	Berlin, Ägyptisches Museum und Papyrussammlung P.Berol. 5449 recto
BKU II 318	O.Krau. 46	--	Berlin, Ägyptisches Museum und Papyrussammlung P.Berol. 8727
BKU III 436	--	--	Berlin, Ägyptisches Museum und Papyrussammlung P.Berol. 22178
Chrest.Khoury I 19	PERF 569	--	Vienna, Nationalbibliothek P.Vindob. A.P. 659 recto
Chrest.Khoury I 24	PERF 749	--	Vienna, Nationalbibliothek P.Vindob. A.P. 3619 verso
Chrest.Khoury I 78	--	--	Berlin, Ägyptisches Museum und Papyrussammlung P.Berol. 15213 recto
Chrest.Khoury I 82 and 83	--	--	Cairo, Egyptian Library P.Cair.EgLib. 409 recto and verso
Chrest.Khoury I 87	--	--	Cairo, Egyptian Library P.Cair.EgLib. 980 recto
Chrest.Khoury I 89	--	--	Cairo, Egyptian Library P.Cair.EgLib. 396 recto
Chrest.Khoury II 10+Chrest.Khoury II 11+Chrest.Khoury I 49+Chrest.Khoury II 13+Chrest.Khoury II 14	--	--	Vienna, Nationalbibliothek P.Vindob. A.P. 916
Chrest.Khoury II 22	--	--	Cambridge, Cambridge University P.Michael. 33 recto
Chrest.Khoury II 37	PERF 727	--	Vienna, Nationalbibliothek P.Vindob. A.P. 8718 verso
CPR IV 49	--	--	Vienna, Nationalbibliothek P.Vindob. K 11006
CPR IV 50	CPR II 164	--	Vienna, Nationalbibliothek P.Vindob. K 3005

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CPR IV 51	--	--	Vienna, Nationalbibliothek P.Vindob. K 4925
CPR IV 52	CPR II 104	--	Vienna, Nationalbibliothek P.Vindob. K 1783
CPR IV 53	CPR II 183	--	Vienna, Nationalbibliothek P.Vindob. K 1336
CPR IX 11	--	--	Vienna, Nationalbibliothek P.Vindob. G 40788
CPR VI 6	--	--	Vienna, Nationalbibliothek P.Vindob. G 2120 b
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CPR VI 8	--	--	Vienna, Nationalbibliothek P.Vindob. G 17802
CPR XVI 3	--	--	Vienna, Nationalbibliothek P.Vindob. A.P. 1491 recto
CPR XVI 9	--	--	Vienna, Nationalbibliothek P.Vindob. A.P. 2154 verso
CPR XXI 41	PERF 726	--	Vienna, Nationalbibliothek P.Vindob. A.P. 6350 verso
CPR XXI 42	PERF 737	--	Vienna, Nationalbibliothek P.Vindob. A.P. 4286 verso
CPR XXI 46	PERF 746	--	Vienna, Nationalbibliothek P.Vindob. A.P. 694 verso
CPR XXI 6	--	--	Heidelberg, Institut für Papyrologie P.Heid.Arab. 846 recto
CPR XXIV 17	--	--	Vienna, Nationalbibliothek P.Vindob. G 15132
CPR XXV 9	--	--	Vienna, Nationalbibliothek P.Vindob. G 17020 and 17021
CPR XXVI 19	--	--	Vienna, Nationalbibliothek P.Vindob. A.P. 11046 recto
CPR XXVI 26	PERF 796	--	Vienna, Nationalbibliothek P.Vindob. A.P. 11738 verso
CPR XXVI 37	PERF 757	--	Vienna, Nationalbibliothek P.Vindob. A.P. 3346 recto
O.CopticOstraca, 52–55 no. 13	--	--	Egypt, Thebes, MMA 1152, Polish excavations 2003–2013, 300
O.Crum 129	--	--	London, British Museum EA 33061
O.Crum 212	--	--	London, British Library EEF 71
O.Crum 332	--	--	London, British Museum EA 32849
O.Crum 374	--	--	Cairo, Egyptian Museum CG 8186
O.Crum 388	--	--	London, University College, Petrie Museum UC 62819
O.Crum Ad. 65	--	--	Oxford, Ashmolean Museum Bodl.Copt.Inscr. 69
O.CrumVC 115	--	--	Location unknown
O.CrumVC 49	--	--	Turin, Museo Egizio 8585
O.Krau. 47	O.Crum. 49	--	London, British Museum EA 32784
O.Krau. 48	O.Crum. 313	--	London, British Museum EA 32882
O.Krau. 54	--	--	Berlin, Ägyptisches Museum und Papyrussammlung P.Berol. 12495
O.Krau. 56	O.Crum. 62	--	London, British Museum EA 32908
O.Krau. 58	O.Crum. 65	--	London, British Museum EA 33092
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O.Krau. 61	O.Crum. 86	--	London, British Museum EA 32998
O.Krau. 62	O.Crum. 155	--	London, British Museum EA 32954
O.Krau. 63	O.Crum. 42	--	London, British Museum EA 33103
O.Krau. 64	O.Crum. 43	--	London, British Museum EA 33096
O.Krau. 66	O.Crum. 44	--	Cairo, Egyptian Museum CG 8149
O.Lips.Copt. I 15	O.Krau. 65	O.Crum. Ad. 12	Leipzig, Ägyptisches Museum 501
O.Lips.Copt. II 100	--	--	Leipzig, Universität 3046
O.Lips.Copt. II 7	--	--	Leipzig, Universität 3191
O.Vind.Copt. 258	O.CrumST 300	--	Vienna, Nationalbibliothek P.Vindob. K.O. 693
O.Vind.Copt. 287	O.CrumST 310	--	Vienna, Nationalbibliothek P.Vindob. K.O. 665
P.Alqab 54	P.Prag.Arab. III 20	--	Prague, Oriental Institute P.Prag.Arab. II 68 recto
P.Ammon II 40	P.Ammon I 14	P.Ammon I 16 a, b, and d	Durham, Duke University P.Duke 186 fr. a–b & d recto+188 recto+Florence, Istituto Papirologico ‘G. Vitelli’ PSI 3794 recto
P.Apoll. 61	--	--	Cairo, IFAO A 20
P.Apoll. 74	P.JarreEdfou, 7–14	--	Cairo, IFAO A 111 verso
P.Apoll. 75	--	--	Cairo, IFAO A 116
P.Bal. 291	--	--	Oxford, Bodleian Old Library MS. Copt. d. 131 a+MS. Copt. d. 32 [291]
P.BeckerNPAF 3	P.Cair.Arab. 149	--	Cairo, Egyptian Library P.Cair.EgLib. 342 recto
P.BeckerNPAF 8	P.Cair.Arab. 154	P.Alqab 12	Cairo, Egyptian Library P.Cair.EgLib. 337 recto
P.BeckerNPAF 9	P.Cair.Arab. 155	--	Cairo, Egyptian Library P.Cair.EgLib. 339 recto
P.BeckerPAF 1	--	--	London, British Library P.Lond.Or. 6231 (1)
P.BeckerPAF 2	--	--	London, British Library P.Lond.Or. 6231 (2)
P.Berl.Arab. II 23	--	--	Berlin, Ägyptisches Museum und Papyrussammlung P.Berol. 24135
P.Berl.Arab. II 43	--	--	Berlin, Ägyptisches Museum und Papyrussammlung P.Berol. 24046 verso
P.Berl.Möller 1	SB IV 7338	--	Warsaw, National Museum 237625
P.BruningSunna	--	--	Paris, Louvre P.Louvre E 7106 recto
P.Cair.Arab. 104	--	--	Cairo, Egyptian Library P.Cair.EgLib. 182 verso
P.Cair.Arab. 120	--	--	Cairo, Egyptian Library P.Cair.EgLib. 105 recto
P.Cair.Arab. 124	--	--	Cairo, Egyptian Library P.Cair.EgLib. 271 recto
P.Cair.Arab. 197	--	--	Cairo, Egyptian Library P.Cair.EgLib. 138
P.Cair.Arab. 400	--	--	Cairo, Egyptian Library P.Cair.EgLib. 703 verso
P.Cair.Arab. 99	--	--	Cairo, Egyptian Library P.Cair.EgLib. 273 verso
P.Cair.Masp III 67353 recto	P.Dioscorus, 41–43	--	Cairo, Egyptian Museum JdE 45402 recto
P.Cair.Masp. I 67002	--	--	Cairo, Egyptian Museum JdE 40746

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P.Cair.Masp. I 67021	--	--	Cairo, Egyptian Museum JdE 40763
P.Cair.Masp. II 67154 recto	--	--	Cairo, Egyptian Museum JdE 40898 recto
P.Cair.Masp. II 67167	--	--	Cairo, Egyptian Museum JdE 40912
P.Cair.Masp. II 67232	--	--	Cairo, Egyptian Museum JdE 40960
P.Cair.Masp. III 67283	--	--	Alexandria, Bibliotheca Alexandrina 571
P.Cair.Masp. III 67351 recto+P.Cair.Masp. II 67275 recto+ SB XVIII 13086+BKU III 503+CoptCongr. II, 159–166	P.Cair.Masp. II 67176 recto	--	Alexandria, Graeco-Roman Museum P. 689 recto+Berlin, Ägyptisches Museum und Papyrussammlung P.Berol. 22141 recto+Cairo, Egyptian Museum JdE 40468 c recto+JdE 40906 recto+JdE 41001 recto+Cambridge, Corpus Christi College MS 541 no. 1–8 recto
P.Cair.Masp. III 67354	--	--	Alexandria, Bibliotheca Alexandrina 574
P.Chris.Musl. 14+P.Chris.Musl. 11+P.Chris.Musl. 12+P.Chris.Musl. 13	--	--	Paris, Louvre P.Louvre E 7065
P.Clackson 45	--	--	Cambridge, Cambridge University P.Michael. 807 recto
P.CLT 5	P.Schutzbriefe 97	--	London, British Library Or 9525
P.David 10	SB X 10285	Pap.Lugd.Bat. XVII 10	Leiden, National Museum of Antiquities 177
P.David-WeillLouvre 12–13	--	--	Paris, Louvre P.Louvre 6379 verso+P.Louvre 6382 verso
P.David-WeillLouvre 14	Chrest.Khoury I 7	--	Paris, Louvre P.Louvre MN 6999
P.David-WeillLouvre 16	--	--	Paris, Louvre P.Louvre SN 183 verso
P.David-WeillLouvre 24	--	--	Paris, Louvre P.Louvre JDW 19 recto and verso
P.DiemAmtlicheSchreiben 1	P.BerkesCareers 1	--	Vienna, Nationalbibliothek P.Vindob. A.P. 1944 verso
P.DiemAphrodito, 272	P.RagibAn22	--	Berlin, Ägyptisches Museum und Papyrussammlung P.Berol. 15002
P.DiemFrueheUrkunden 7	P.Alqab 21	--	Vienna, Nationalbibliothek P.Vindob. A.P. 2704
P.DiemFrueheUrkunden 8	PERF 602	--	Vienna, Nationalbibliothek P.Vindob. A.P. 572 recto
P.DiemFrueheUrkunden 9	PERF 598	--	Vienna, Nationalbibliothek P.Vindob. A.P. 359
P.DiemGouverneur	P.Ryl.Arab. I XV 59	--	Manchester, John Rylands Library P.Ryl. F II 5
P.DiemRemarkableDocuments 2	--	--	Heidelberg, Institut für Papyrologie P.Heid.Arab. 550 recto and verso
P.DocumentsJuridiques, 130–132	--	--	Berlin, Ägyptisches Museum und Papyrussammlung P.Berol. 11349
P.Dubl. 24	--	--	Dublin, Trinity College Pap. C 2
P.Dubl. 34	P.Melitian, 85–91	--	Dublin, Trinity College Pap. D 5
P.Eirene II 14 recto	--	--	Vienna, Nationalbibliothek P.Vindob. G 21025 recto

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P.Flor. III 311	--	--	Florence, Biblioteca Medicea Laurenziana P.Flor. 311
P.Gen. I 74	P.Drusilla, 211–217	--	Geneva, Bibliothèque P.Gr. 130 bis
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P.Gen. IV 181	--	--	Geneva, Bibliothèque P.Gr. 151
P.Gen. IV 187	--	--	Geneva, Bibliothèque P.Gr. 135
P.Genova I 23	SB X 10733	--	Genoa, Università 1126
P.Genova I 34	SB X 10731	--	Genoa, Università 1110
P.Giss. I 104	--	--	Giessen, Universitätsbibliothek P.Giss. 57
P.Giss.Arab. 9	--	--	Giessen, Universitätsbibliothek P.Giss. 335 verso
P.GrohmannOstraka 2	--	--	Cairo, Fakhri's Private Collection P.Fakhri 2+3
P.GrohmannProbleme III 18	PERF 670	Nilus IV 21 and Nilus XV 6	Vienna, Nationalbibliothek P.Vindob. A.P. 644
P.GrohmannQorraBrief	P.Alqab 5	PERF 592, Nilus XV 3, and Nilus XVII 62	Vienna, Nationalbibliothek P.Vindob. A.P. 378 recto
P.GrohmannUrkunden 7	PERF 1141	--	Vienna, Nationalbibliothek P.Vindob. A.Ch. 6750
P.GrohmannWirtsch. 2	P.World, 168	PERF 768	Vienna, Nationalbibliothek P.Vindob. A.P. 318
P.HaimPaper 1	--	--	Tajikistan, P.Sanjar. F 1–3 recto
P.HanafiBusinessLetter	--	--	Cairo, Ain Shams University P.Cair.Ragab 113 recto
P.Haun. III 57	--	--	Copenhagen, Carlsberg Papyrus Collection P.Haun. 253
P.Heid. VII 404	--	--	Heidelberg, Institut für Papyrologie P. G 243
P.Heid.Arab. I 1	P.World, 124	Chrest.Khoury I 90, P.Alqab 6, and P.Mudun 8	Heidelberg, Institut für Papyrologie P.Heid.Arab. 1 recto+P.Heid.Arab. 2
P.Heid.Arab. I 10	P.Alqab 10	--	Heidelberg, Institut für Papyrologie P.Heid.Arab. 16
P.Heid.Arab. I 11	--	--	Heidelberg, Institut für Papyrologie P.Heid.Arab. 18
P.Heid.Arab. I 12+P.BeckerNPAF 5+P.BeckerPAF 14+P.Cair.Arab. 151	--	--	Heidelberg, Institut für Papyrologie P.Heid.Arab. 10 a+b recto+Cairo, Egyptian Library P.Cair.EgLib. 330 recto
P.Heid.Arab. I 17	--	--	Heidelberg, Institut für Papyrologie P.Heid.Arab. 19 h recto
P.Heid.Arab. I 3	Chrest.Khoury I 91	P.Alqab 8	Heidelberg, Institut für Papyrologie P.Heid.Arab. 3 recto+4+5+6+7
P.Heid.Arab. II 1 verso	--	--	Heidelberg, Institut für Papyrologie P.Heid.Arab. 22 verso
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P.Herm. 31	--	--	Manchester, John Rylands Library P.Herm. 31
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P.Hoogendijk 51	--	--	London, British Library Egerton Pap 37

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P.Hoogendijk 54	O.CrumVC 6	--	London, British Library Or 9536 recto
P.Iand. III 41	--	--	Giessen, Universitätsbibliothek P.Iand. 50
P.JoySorrow 12	--	--	Cambridge, Cambridge University P.Michael. X 8.13 recto and verso
P.JoySorrow 13	--	--	Cambridge, Cambridge University P.Michael. A 1041 recto
P.JoySorrow 2	--	--	Cambridge, Cambridge University P.Michael. A 1346
P.JoySorrow 23	--	--	Cambridge, Cambridge University P.Michael. A 1041 verso
P.JoySorrow 25	--	--	Cambridge, Cambridge University P.Michael. A 15 recto
P.JoySorrow 26	--	--	New Haven, Yale University P.CtYBR. 2714
P.JoySorrow 3	--	--	Cambridge, Cambridge University P.Michael. A 1354 recto
P.JoySorrow 39	--	--	Cambridge, Cambridge University P.Michael. A 390
P.KarabacekPapyrusfund 2	P.Alqab 33	PERF 695	Vienna, Nationalbibliothek P.Vindob. A.P. 1316 verso
P.Khalili I 10	P.Khalili II 98	--	London, Nasser Khalili Collection P.Khalili 92
P.Khalili I 12	P.Khalili II 100	--	London, Nasser Khalili Collection P.Khalili 186 recto
P.Khalili I 21	P.Khalili II 38	--	London, Nasser Khalili Collection P.Khalili 288 recto
P.Khalili I 8	P.Khalili II 20	--	London, Nasser Khalili Collection P.Khalili 192 recto
P.Khalili I 9 a+b	P.Khalili II 97	--	London, Nasser Khalili Collection P.Khalili 170 recto+P.Khalili 185
P.KhanLegalDocument	--	--	Cambridge, Cambridge University P.Michael. A 744
P.Khurasan 8	--	--	London, Nasser Khalili Collection P.Khalili Khurasan 16 flesh side
P.Khurasan 27	--	--	London, Nasser Khalili Collection P.Khalili Khurasan 20 flesh side
P.KRU 104	P.Lond.Copt. I 379	--	London, British Library Pap 80
P.KRU 106	SB I 5609	P.CopticLegal, 166–173 and O.Cair.Monuments 8728	Cairo, Egyptian Museum CG 8728
P.KRU 107	SB I 5610	P.Lond.Copt. I 388, O.Cair.Monuments 8739, and P.RevilloutCopt. 12	Cairo, Egyptian Museum CG 8739 recto and London, British Library Pap 94 recto
P.KRU 110	O.Cair.Monuments 8738	P.RevilloutCopt. 11	Cairo, Egyptian Museum CG 8738 verso
P.KRU 111	P.Pisentius 73	P.Lond.Copt. I 392	London, British Library Pap 96
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P.KRU 39	SB I 5574	P.Lond.Copt. I 422 and P.Lond. I 104	London, British Library Pap 104
P.KRU 40	SB I 5575	P.Pisentius 83 and P.RevilloutCopt. 1	Paris, Louvre E 5134
P.KRU 41	SB I 5576	P.Lond.Copt. I 1011	London, British Library Or 6462 (1)
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P.KRU 43	--	--	Paris, Louvre E 7986
P.KRU 44	SB I 5577	P.Lond.Copt. I 425	London, British Library Or 4884
P.KRU 45	SB I 5578	--	Berlin, Ägyptisches Museum und Papyrussammlung P.Berol. 10607
P.KRU 46	SB I 5579	--	London, British Library Or 6721 (4)
P.KRU 47	SB I 5580	--	London, British Library Or 6721 (5)
P.KRU 48	SB I 5581	--	London, British Library Or 6721 (1)
P.KRU 50	SB I 5582	--	London, British Library Or 6721 (10)
P.KRU 51	SB I 5583	P.Lond.Copt. I 441	London, British Library Or 4663 + Or 4669 (3)
P.KRU 67	O.Cair.Monuments 8729	P.RevilloutCopt. 2	Cairo, Egyptian Museum CG 8729
P.KRU 71	SB I 5592	P.Lond.Copt. I 400	London, British Library Or 4659
P.KRU 75	P.CopticLegal, 29–35	P.Mon.Epiph., 343–348 App. 3, O.Cair.Monuments 8730, and P.RevilloutCopt. 3	Cairo, Egyptian Museum CG 8730
P.KRU 79	P.Lond.Copt. I 375	--	London, British Library Or 72 recto
P.KRU 81	SB I 5594	P.Lond.Copt. I 378	London, British Library Pap 79 verso
P.KRU 82	P.Lond.Copt. I 380	--	London, British Library Pap 81
P.KRU 98	O.Cair.Monuments 8738	P.RevilloutCopt. 11	Cairo, Egyptian Museum CG 8738 recto
P.LiebrenzQuittung	P.VanthieghemReedition	--	Halle, Deutsche Morgenländische Gesellschaft P.Halle DMG 3 recto
P.Lips. I 14	--	--	Leipzig, Universität 31
P.Lond. I 113 1	P.BritishMuseum, 266–271	--	London, British Library Pap 113 (1)
P.Lond. I 113 2	--	--	London, British Library Pap 113 (2)
P.Lond. II 456	--	--	London, British Library Pap 456
P.Lond. III 1008	--	--	London, British Library Pap 1008

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P.Lond. V 1677	--	--	London, British Library Pap 1646
P.Lond. V 1707	--	--	London, British Library Pap 1548
P.Lond. V 1708	--	--	London, British Library Pap 1756 recto
P.Lond. V 1709	--	--	London, British Library Pap 1728 recto+Pap 1745 recto
P.Lond. V 1717	--	--	London, British Library Pap 1667 recto+Pap 1785 recto
P.Lond. V 1728	--	--	London, British Library Pap 1792
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P.Marchands I 11	--	--	Paris, Louvre P.Louvre E 6909
P.Marchands II 39	--	--	Paris, Louvre P.Louvre E 6927 recto
P.MargoliouthSelectPapyri 1	P.Ryl.Arab. I IV 3	P.RagibLettresdeService 1 and P.Ryl.Arab. II 6	Manchester, John Rylands Library P.Ryl. E III 12
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P.Mich. XIII 659	P.Vat.Aphrod. 17	--	Ann Arbor, Michigan University, Library P. 6899+Rome, Vatican, Biblioteca del Vaticano Gr. 40
P.Mil.Vogl. 4	--	--	Milan, Istituto Papirologico number unknown (?)
P.Mird 19	--	--	Jerusalem, Rockefeller Archaeological Museum P.RockefellerMird 12.1 verso
P.Mird 23	--	--	Jerusalem, Rockefeller Archaeological Museum P.RockefellerMird 11 recto
P.Mird 31	--	--	Jerusalem, Rockefeller Archaeological Museum P.RockefellerMird 10.1
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P.Münch. I 1	FIRA III 184	--	Munich, Bayerische Staatsbibliothek P. gr. 96
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P.Münch. I 7	P.Lond. V 1860	--	London, British Library Pap 1819 a+Munich, Bayerische Staatsbibliothek P. gr. 97
P.MuslimState 14	--	--	Ann Arbor, Michigan University, Library P.Mich. 5578 (6)
P.MuslimState 21	--	--	Vienna, Nationalbibliothek P.Vindob. A.P. 11252
P.MuslimState 25	--	--	Ann Arbor, Michigan University, Library P.Mich. 5622

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P.MuslimState 28	--	--	Ann Arbor, Michigan University, Library P.Mich. 5623
P.MuslimState 30	--	--	Ann Arbor, Michigan University, Library P.Mich. 5626 (B)
P.MuslimState 38	--	--	Vienna, Nationalbibliothek P.Vindob. A.P. 1875
P.MuslimState 8	--	--	Ann Arbor, Michigan University, Library P.Mich. 5558 (2)
P.Ness. III 60	--	--	New York, Pierpont Morgan Library H. Dunscombe Colt Collection P.Colt 60
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P.Ness. III 66	--	--	New York, Pierpont Morgan Library H. Dunscombe Colt Collection P.Colt 66
P.NotarPaulos, 59–60 no. A	P.Rain.Cent. 121	--	Vienna, Nationalbibliothek P.Vindob. G 31502
P.NotarPaulos, 60–66 no. B	Stud.Pal. III 415	--	Vienna, Nationalbibliothek P.Vindob. G 11319+G 40284
P.Oxy. VII 1026	--	--	Cairo, Egyptian Museum JdE 47428
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P.Paramone 16	--	--	Vienna, Nationalbibliothek P.Vindob. G 35606
P.Paramone 17	Stud.Pal. X 234	--	Vienna, Nationalbibliothek P.Vindob. G 12234
P.Paris 20	--	--	Paris, Louvre number unknown
P.Philad.Arab. 12	--	--	Philadelphia, University Museum P.Philad.Univ.Mus. E 16272 recto
P.Philad.Arab. 28	--	--	Philadelphia, University Museum P.Philad.Univ.Mus. E 16418
P.Philad.Arab. 49	--	--	Philadelphia, University Museum P.Philad.Univ.Mus. E 16648 verso
P.Prag. I 48	--	--	Prague, National Library P. Wessely Prag. Gr. II 82
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P.Qurra 3	--	--	Chicago, ISAC P.Chic. 13756
P.RagibEdfou 2	--	--	Paris, Louvre P.Louvre unknown number
P.RagibJurisdiction 1	--	--	Paris, Louvre P.Louvre JDW 20
P.RagibJurisdiction 2	P.TillierDebts 2	--	Vienna, Nationalbibliothek P.Vindob. A.P. 11191
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P.Steuerquittungen 1	--	--	Berlin, Ägyptisches Museum und Papyrussammlung P.Berol. 24048 recto
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P.StoetzerSteuerquittungen 1	PERF 585	--	Vienna, Nationalbibliothek P.Vindob. G 39744
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P.Stras. IV 194	--	--	Strasbourg, Bibliothèque Nationale P. gr. 425
P.Stras. IV 494	--	--	Strasbourg, Bibliothèque Nationale P. gr. 2073
P.Terminkauf 1	--	--	Berlin, Ägyptisches Museum und Papyrussammlung P.Berol. 24135a recto
P.ThungWrittenObligations 1	CPR XXVI 16	PERF 617	Vienna, Nationalbibliothek P.Vindob. A.P. 893 recto
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P.TillierFustat 2	--	--	Cambridge, Cambridge University P.Michael. B 13 Piece 1 recto
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P.UmariHuyul 6 recto	--	--	Cairo, Museum of Islamic Art P.Cair.IslArt 14884/26 recto
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SB I 5681	--	--	Beuron, Erzabtei number unknown
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Unedited	--	--	Vienna, Nationalbibliothek P.Vindob. G 21006+21007
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1.1 Document Editions and Translations with Standardized Abbreviations

The edition numbers correspond with official abbreviations according to the "Checklist of Editions of Greek, Latin, Demotic, and Coptic Papyri, Ostraca, and Tablets" and the Arabic Papyrology Database (APD).

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Austrian National Library	https://www.onb.ac.at/en/
Corpus of South Arabian Inscriptions	https://dasi.cnr.it/index.php?id=42&prjId=1&corId=0&collId=0&navId=0
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