

ORIGINAL ARTICLE

The Sailing Scribes: Circulating Law in the Twentieth-Century Indian Ocean

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There is nothing about the dhow captain ‘Abdulmajid Al-Failakawi’s notebook that looks anything but ordinary. Its marbled cover is worn with age, and the lined paper inside—faded red and blue horizontal and vertical lines to form the sorts of tables that one would expect in an account ledger—was yellowed with age. On the inside cover, the captain had inscribed his name in both Arabic and English—‘Abdulmajid bin Mullah Ahmad Hassan (Al-Failakawi is a name the family took later, to indicate their long-standing presence on the island of Failaka, off the coast of Kuwait)—and the date: 1339 AH, which ran from mid-September 1920 to early September 1921. The contents of his notebook are something of a hodgepodge of different notes and observations: copies of different navigational principles, diagrams on how to measure latitude based on the sun’s position, and the latitudes and longitudes of different port cities around the Western Indian Ocean. It also included a partial log of a voyage he took between January and April 1921, from Porbandar in Gujarat, India, to Kuwait.

None of these are, on their own, very surprising. Al-Failakawi was a dhow captain—a *nakhoda*—and spent many of his years sailing around the Western Indian Ocean, shuttling around different foods. He was one of many other *nakhodas* from the port cities and islands of the Persian Gulf who sailed their dhows to Basra in the fall, loaded them with the dates of Southern Iraq, and then freighted them—often on behalf of merchants—to markets in coastal India, Arabia, and East Africa, picking up and dropping off other goods along the way. That he would keep a notebook on different principles of navigation is thus unsurprising, maybe even expected, given that *nakhodas* like him spent roughly 9 months of every year at sea, if not more. And indeed, Al-Failakawi had two other logbooks as well, for later years; in those, there are also other notes, coordinates, and asides on navigational matters, but they are tacked onto the end of what is otherwise a straightforward log of the different voyages that the captain undertook.

The 1920–21 book, though, was different: if all Al-Failakawi’s log books defied strict genre categorizations, this one tipped the scales in the direction

of something else: a more eclectic genre of writing that included elements of a log book (that is, a log of the voyages), but also much more. So much more, indeed, that I hesitate to call it a log book at all. The log of the 1921 voyage from Porbandar was sandwiched between tables of coordinates, principles of navigation, notes on converting between weights and measures, solar declination tables, and ten pages of poetry, none of which involved anything to do with navigation.¹ For these reasons, I call the 1920–21 book a notebook rather than a log book, with the caveat that even “log books” rarely conformed strictly to the genre conventions that one might associate with them.²

Among the different notes that Al-Failakawi thought to copy into the book were a series of contracts: obligations of various sorts. In the 1920–21 book, there were six of these; each of the two other log books included two of these, making for a total of ten contracts. These captured different aspects of the dhow voyage: there were contracts for debts that bound mariners to the dhow crew, agreements surrounding the loading and transport of dates from Basra to different ports in India, and various money transfers that the *nakhoda* would have entered into during his voyage. Why the *nakhoda* would have felt compelled to record these in his notebook, and what they might tell us about questions of law and circulation around the Western Indian Ocean, form the central puzzle that motivates this article.

But before I dig into Al-Failakawi’s notebook, I must introduce a wrinkle in the fabric: yet another notebook, belonging to Mansur bin Ibrahim Al-Khariji, another dhow captain who was also from Failaka Island. According to the colophon in his notebook, Al-Khariji’s family migrated to Failaka from yet another island: Kharij, just across the Gulf from Failaka. Al-Khariji’s notebook was a similar grab bag, including principles of navigation and their accompanying maxims, but also different rules, observations, poetry, and three different contracts: one for an acknowledgment of debt, and two involving guarantees of safe passage for the dhow.³

And this is where the puzzle begins to take shape. Although they are separate, there is reason to think about Al-Failakawi and Al-Khariji’s notebooks together. The two were linked by marriage: Al-Khariji was Al-Failakawi’s father-in-law, having married off his daughter to the *nakhoda*, whom he trained in the ways of the dhow. But more than that, there is much to suggest that the

¹ Some sections of the poetry include popular verses from the famous collection *Nafhat Al-Yaman* (“The Breeze of Yemen”) whereas others appear to be a hodgepodge of different poems, some of which appeared in popular music at the time. I am grateful to Gabriel Lavin for his help in identifying some of the poetry.

² On the genre of the log book in early modern European sailing, see Margaret Schotte, *Sailing School: Navigation Science and Skill, 1500–1800* (Baltimore: Johns Hopkins University Press, 2019), 27–62. Notebooks like these would have had less legal significance than log books, which at times could be called on as evidence in legal proceedings. Renisa Mawani, *Across Oceans of Law: The Komagata Maru and Jurisdiction in the Time of Empire* (Durham, NC: Duke University Press, 2018), 128.

³ Al-Khariji’s notebook was later published by a Kuwaiti research center as a treatise on navigation, although it is difficult to see how one might include it in that genre. Mansur Al-Khariji, *Al-Qawā'id wa Al-Mayl wa Al-Natija fi 'Ilm Al-Bihār [The Principles and Declinations and Almanac in the Science of the Seas]* (Kuwait: Center for Research and Studies on Kuwait, 2007), 128–29, 148–50.

two notebooks may have been written by the same person. Save for the record of the voyage itself, the handwriting in Al-Failakawi's notebook is remarkably similar to that in Al-Khariji's. Moreover, two of the ten contracts copied into Al-Failakawi's notebook involve a Mansur bin Ibrahim, undoubtedly Al-Khariji himself.

The plot thickens even more, although only in a way that a legal historian might appreciate. Although almost all of the contracts copied into Al-Failakawi's notebooks involve real (and sometimes identifiable) individuals, there is reason to believe that none of them reflect real transactions that the *nakhoda* entered into. A number of them involve generic names, and there are too many recurring dates (September 14, 1922 seems to have been an unusually busy day, with transactions taking place all over the Western Indian Ocean). Al-Khariji's contracts are even more generic: they make no mention of any proper nouns at all. Taken as a whole, then, we might think of the contracts copied into the notebooks not as real transactions (although one or two may have been), but as model documents: guides for the *nakhoda* as he moved among the roles of captain, navigator, supercargo, and scribe.

And so, we have two notebooks (or four, if one counts Al-Failakawi's other two) owned by two different, but related, captains, written in the same hand, each of which contains model contracts. And alongside these, we have a host of notes on navigation, and, in Al-Failakawi's notebook, the log for one of his many voyages around the Indian Ocean, indicating that this was a notebook that traveled. The notebooks alone offer enough for the aspiring detective-historian: the who, when, and where of the notebooks are all shrouded in a fog of mystery, to say nothing of the what and why (leaving aside altogether the "so what" of it all).

In this article, I take the two *nakhodas'* notebooks as a starting point for thinking about questions of mobility, circulation, and legal thought and praxis on the Indian Ocean dhow. Part of this involves reading the contracts in their immediate context: as inscriptions in notebooks that also include navigational principles and logs of actual voyages. But understanding these also involves stepping away from the notebook and onto the deck of the dhow, reading the contractual forms against the backdrop of the sea of paper that dhow captains like Al-Failakawi and Al-Khariji generated over the course of their voyages: debt contracts, contracts for loading and carrying goods, contracts for the sale of goods, money transfers, and more. These formed the documentary infrastructures of circulation in the Western Indian Ocean, furnishing the matrices of rights, obligations, weights, and measures through which commodities moved around the region. What we see in the notebooks, then, is a series of templates for the paper trail that the dhow generated in its wake as it moved from port to port, at the outer edges of the British Empire, something akin to the Alwar manuals that another essay in this issue has taken up, although without the administrative impulses that animated those genres of writing.⁴

⁴ See Elizabeth Thelen, "A New Language of Rule: Alwar's Administrative Experiment, c. 1838-58," in this issue.

But understanding the notebook involves more than situating it against a broad backdrop of maritime contracting: it also involves thinking more deeply about the notebook itself, and the work that the two *nakhodas* intended for it to do. The notebook asks us to read it on its own terms, and invites us to see how the work of contractual anonymization that the *nakhodas* engaged in allowed for the possibility of deactivating and reanimating contracts at various moments in the voyage, for engaging not only in contracting, but also in contract-making across the Indian Ocean. It allows historians to see how contracts passed into and out of the notebook as *nakhodas* plied their routes; how they might use the notebook to capture snapshots of a world of contracting in motion, and stripping it of its social and temporal specificities, move from the particular to the generic and then back again.

But more than that, it opens a window into the process by which legal knowledge—and nautical knowledge more generally—circulated among *nakhodas*, as they read and inscribed a world of texts and forms around them, rendering them portable. What becomes immediately clear is that the *nakhodas* were not simply passive recipients of navigational knowledge. Rather, they were voracious consumers of a world of knowledge: they read books and excerpted from them, translated across different languages and genres of nautical writing, and actively thought about the practices that they engaged in. Moreover, they assembled these fragments into a portable form of knowledge: one that joined a world of concepts to the material reality of life at sea. The notebook bore the multiple palimpsests of knowledge, legal and otherwise, in motion.

The question of how law moves is one that has preoccupied legal historians for some time. And yet for all of its virtues, the impulse to use movement to cover broad spaces has often led to a blurring of the “global” in global legal history with the imperial: historians working on that scale tend to take empire or imperial agents as the principal conduits for what is effectively a diffusionist narrative: one in which legal codes, ideas, and texts spread from metropole to colony or between colonies in a hub-and-spokes or “web” model of empire.⁵ Useful as these are, they offer a somewhat limited view of global connection, in which the only connective tissue is imperial. Another, perhaps even more narrowly conceived, variant of this is one in which the global legal order emerges as a result of debates between and decisions of high-level European officials and scholars, sometimes with little regard for the input of their non-European counterparts, who are often seen as existing outside of that order.⁶ Although there has been a recent turn toward reading these histories

⁵ See also Thomas Duve, “What is Global Legal History?” *Comparative Legal History* 8 (2020): 73–115; Kerry Ward, *Networks of Empire: Forced Migration in the East India Company* (New York: Cambridge University Press, 2009); and Thomas Metcalf, *Imperial Connections: India in the Indian Ocean, 1860–1920* (Berkeley: University of California Press, 2006), 16–45. This is similarly true for non-European empires, like the Mughals, Ottomans, Safavids, and Qing, in which the imperial often stands in for, if not supplants, other channels of legal circulation.

⁶ See also Jennifer Pitts, *Boundaries of the International: Law and Empire* (Cambridge, MA: Harvard University Press, 2018); and Turan Kayaoglu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (New York: Cambridge University Press, 2011).

from the peripheries of empire rather than the center—that is, to approximate a non-Eurocentrist vision of global legal history—it has been much more difficult to conceive of that history outside of the framework of empire.⁷

It is primarily in the field oceanic legal history that one finds attempts to map the movement of law, if not beyond the pale of empires, then at least within the interstices of different political formations. Historians of the Atlantic have been particularly active in this respect, perhaps unsurprisingly, given the field's long-standing engagement with Anglo-American legal tradition. More recently, historians have mapped out worlds of legal circulation in the Indian Ocean and Mediterranean as well, arenas in which juridical personnel, books, constitutions, legal pronouncements, and instruments moved alongside the ships, soldiers, goods, and ideas that carved the pathways of (usually British) political expansion and transformation in these transregional spaces.⁸ If “the travels of law . . . invite provocative and productive ways to reimagine colonial legal history as a history of law's mobility,” it has proven a little more difficult to think of law's itineraries beyond the colonial container.⁹

Al-Failakawi's notebook can help us think through at least some dimensions of the process by which legal forms and ideas about law moved, not strictly within an imperial regime, but within a broader transregional commercial arena that often (though not always) operated beyond the immediate horizons of political authorities. From the vantage point of the notebook, the circulation of law becomes much more visible, more granular. The act of traversing the ocean, and of inscribing it into the notebook, built up what Rebecca Scott and Jean Hebrard called “an archive of movement”; the inscriptions themselves point to documentary infrastructures that enabled these sorts of circulations and mobilities.¹⁰ From the vantage point of Al-Failakawi's notebook, then, we are able to move from the realm of abstract categories—circulation, routes, itineraries—to a place in which we are able to see how they are actively

⁷ See also Duve, “What is Global Legal History?”

⁸ On the Mediterranean, see especially Jessica Marglin, *The Shamama Case: Contesting Citizenship Across the Modern Mediterranean* (Princeton: Princeton University Press, 2022); Joshua White, *Law and Piracy in the Ottoman Mediterranean* (Stanford, CA: Stanford University Press, 2018); and Julia Clancy-Smith, *Mediterraneans: North Africa and Europe in an Age of Migrations* (Oakland: University of California Press, 2010). The literature on the legal history of the Indian Ocean has enjoyed a particular efflorescence in the last several years. See also Fahad Ahmad Bishara, *A Sea of Debt: Law and Economic Life in the Western Indian Ocean, 1780–1950* (Cambridge: Cambridge University Press, 2017); Mawani, *Across Oceans of Law*; Nurfadzilah Yahaya, *Fluid Jurisdictions: Colonial Law and Arabs in Southeast Asia* (Ithaca, NY: Cornell University Press, 2020); Mahmood Kooria, *Islamic Law in Circulation: Shafi'i Texts across the Indian Ocean and the Mediterranean* (Cambridge: Cambridge University Press, 2022); and Kalyani Ramnath, “Intertwined Itineraries: Debt, Decolonization, and International Law in Post-World War II South Asia,” *Law and History Review* 38 (2020): 1–24. There are also special issues devoted to Indian Ocean legal history in *Law and History Review* 32 (2014) and *Itinerario* 42 (2018).

⁹ Renisa Mawani and Iza Hussin, “The Travels of Law: Indian Ocean Itineraries,” *Law and History Review* 32 (2014): 747.

¹⁰ Rebecca Scott and Jean Hebrard, *Freedom Papers: An Atlantic Odyssey in the Age of Emancipation* (Cambridge, MA: Harvard University Press), 5.

thought about and engaged with. Rather than envisioning circulation in the abstract, it allows us to ground it in the forms that enabled it and in the practices and relationships that gave it its particular shape. From the notebook, we can see the pathways and genres of writing through which legal knowledge circulated: at the precipice of, and beyond, empires.

Law along the Littoral

If Al-Failakawi spent much of his time on the open sea, the world he had to navigate was one that was much more crowded. His voyage moved through a seascape littered with different actors. In each of the port cities that his dhow docked at, there were merchants and brokers whom he did business with, who helped arrange the cargoes of dates that he would carry around the Western Indian Ocean, and who helped him dispose of them and secure other cargoes for the return journey. These were the principal protagonists of Al-Failakawi's commercial world: they drew up the instruments that he engaged with the most, and they carved the principal vectors through which his dhow and crew sailed.

But *nakhodas* were not passive cogs in this transoceanic machinery, even if they sailed through a world that was not principally of their own making. As he ferried goods from one port to another, the *nakhoda* acted as both skipper and supercargo. Along with his first mate, he hired the mariners who would serve as the dhow's crew, and he was the ultimate arbiter of legal rights (and wrongs) on board the ship. He also oversaw the loading and unloading of cargoes in different ports around the Indian Ocean, and often had the authority to make decisions on whether to sell the goods or to move on to a different market. And at different points in the voyage, he and his crewmembers could decide to invest the money they earned from freighting goods into their own commercial pursuits; and here, the *nakhoda* would take on the role of a merchant, buying and selling goods along the course of a sailing season, and dividing up the profits among themselves.¹¹

But this circulation of goods around the Western Indian Ocean on the decks of dhows sat uneasily alongside the fragmented juridical landscape that *nakhodas* like Al-Failakawi had to contend with.¹² He was the subject of the ruler of Kuwait, one of a smattering of local sovereigns in the Gulf whose jurisdiction was largely local in its character, limited to the ports they ruled over and their immediate vicinities. Legal institutions in the Gulf, too, had an intensely decentralized, local character. Despite some complementarities, most tribunals enjoyed separate spheres, and so decided legal matters independently of one another. In these localized legal systems, a range of different actors with

¹¹ Yacoub Y. Al-Hijji, *Kuwait and the Sea: An Economic and Social History* (London: Arabian Publishing, 2010); and Alan Villiers, *Sons of Sinbad* (New York: Charles Scribner's Sons, 1969).

¹² Discussions of law and jurisdiction in the Persian Gulf are scattered across different studies; there has yet to be a single study of the matter. For a useful and recent discussion, see Seema Alavi, "The 1852 Centaur Shipwreck: Law, Politics and Society in the Persian Gulf," *Journal of Colonialism and Colonial History* 21 (2020).

varying economic and political interests sought to maintain sometimes-conflicting (but often complementary) visions of order, in part because of the specialized demands that different dimensions of life in the region placed on juridical actors, but also as a means toward reinforcing entrenched social hierarchies.¹³ From the perspective of a prospective claimant, these were less alternative forums among which one could “shop” for the most favorable judgment than they were different authorities for entirely different legal realms.

There were ways to overcome the jurisdictional gaps that plagued life in the Gulf, although they were not always effective. Oftentimes, they relied on their commercial agents in other port cities to broker different transactions, channel flows of money and goods, and pursue their legal claims and those of their subjects; these were akin to their consuls abroad. These agents were often effective because of their standing in the foreign port, but their ability to pursue claims could be limited by the social, political, and economic contexts in which those claims were made. A more reliable tool of legal claim-making came as a result of rulers’ diplomatic relations with one another. By means of diplomatic persuasion—or sometimes, outright threats of violence—they could make legal claims in other ports, pursue runaway criminals or absconding debtors, and ensure that their subjects could enjoy legal protections during their sojourns abroad.¹⁴ The establishment of permanent British agents around the Gulf by the late nineteenth century facilitated this kind of cross-jurisdictional problem solving, but only to a limited extent; these agents could throw diplomatic weight behind a ruler’s requests for juridical assistance, although they often had little incentive to force it, except in times when there was a looming threat of military disorder. The occasional seams and stitches that cut across the jurisdictional patchwork of the Gulf thus proved durable, even in the face of imperial expansion, and proved to be no barrier to the circulation of goods, people, and money around the Gulf and Indian Ocean.

If the commercio-legal world of the Indian Ocean was one that spread itself thinly across a range of different actors scattered along the maritime littoral, the contracts copied in Al-Failakawi’s notebook—and those that made their way into Al-Khariji’s notebook, which may be by the same author—suggest that it also lay at the interstices between them. The inscriptions include contracts for transporting dates from Basra to different ports in India, acknowledgments of debts, money orders, and safe-conduct passes issued by ruling authorities in Kuwait and Persia. Their author inscribed them in no particular order: the earliest log book, which dates from 1331 AH (1912–13), includes the bulk of the contracts: six of the thirteen, covering most of the genres. Four others—all of which are acknowledgments of debt—are scattered across two other log

¹³ I draw from Laura Edwards’s discussion of localized law in the nineteenth-century United States South. See Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2009), 58–63.

¹⁴ See also Alavi, “The 1852 Centaur Shipwreck”; Fahad Ahmad Bishara, “A Sea of Debt: Histories of Commerce and Obligation Across the Indian Ocean, c. 1850–1940” (PhD diss., Duke University, 2012), 348–78.

books. By contrast, Al-Khariji's notebook includes one template for a debt acknowledgment deed and both safe-conduct pass templates.

What is immediately apparent about the contracts in the notebooks is the degree to which they map onto the archive of the regional dhow trade—documents generated over the course of the season's voyage. When comparing Al-Failakawi's inscriptions with documents left behind by other captains, one sees varying degrees of resemblance. In the case of debt acknowledgment deeds, the correspondence is very strong: Al-Failakawi's mirror the terminology and formula of extant deeds very closely. So, too, for the model safe conduct passes that were copied into Al-Khariji's notebook: they reflect, almost verbatim, similar passes that have made their way into the archival record.¹⁵ When it came to freightage contracts, Al-Failakawi was careful to include three different variations on the contract in his notebook: one that was written in the first-person perspective of the *nakhoda*, another that was written from the perspective of the merchant, and a third that was written from a neutral perspective. The bulk of the freightage contracts I've seen broadly map onto the third. With money orders, the resemblance is more familial than direct; they contain virtually all of the same elements, but the phrasing differs from one to the other. The money order in particular, being a transactional request that was sometimes embedded in a longer letter rather than a strictly legal document, could vary from one correspondent to another.¹⁶

That there would be at least some variation in the contractual language used in these instruments is not in itself surprising or revealing. There were many aspects of the dhow's documents that Al-Failakawi's inscriptions do not capture. In their lived form, the documents take different shapes: they might come in printed forms, in multiple hands, on different types of paper, and with signatures, stamps, or seals: palimpsests that Al-Failakawi's inscriptions, by their very nature, could capture. To try and see outwards from Al-Failakawi's notes into a real world of contracting would be akin to reading a notarial manual as evidence of how people mobilized the contractual forms in them. The layers of inscription, engagement, and registration that animate the contract—that allow us to see its social life—are all missing from the generic form. And yet, seeing the content alone, especially in the context of Al-Failakawi's notebook, can help us think through a different, but related, set of questions. Because if they cannot allow us to see the texture of the world of contracting at the dhow's threshold, they do shed light on the legal underpinnings of the voyage: the legal resources that captains drew on as they made their way around the Indian Ocean. Through his inscriptions, we can see the forms necessary to enable the sorts of circulation that *nakhodas*

¹⁵ See also the safe-conduct pass issued to 'Abdullatif bin 'Isa bin Hijji (1911) in India Office Records (IOR) R/15/5/87: 80; pass issued to Hussain Al-'As'ousi (1859), 'As'ousi Collection, Kuwait; Bishara; and "No Country But the Ocean: Reading International Law on the Deck of an Indian Ocean Dhow, ca. 1900," *Comparative Studies in Society and History* 60 (2018): 360–61.

¹⁶ On legal requests in letters, see also Francesca Trivellato, *The Familiarity of Strangers: The Sephardic Diaspora, Livorno, and Cross-Cultural Trade in the Early Modern Period* (New Haven, CT: Yale University Press, 2009), 153–93; and Jessica Goldberg, *Trade and Institutions in the Mediterranean: The Geniza Merchants and their Business World* (New York: Cambridge University Press, 2012), 56–92.

like Al-Failakawi engaged in, season after season: a transoceanic marketplace stitched together via pieces of paper.

This is less a matter of conjecture than of empirical observation. Over the course of his voyage, Al-Failakawi, like all other *nakhodas*, routinely drew up documents that gave contractual shape to the transactions that he engaged in from Kuwait to Basra and around the coasts of India, Arabia, and East Africa. Perhaps the most routine of them all were simple acknowledgements of debt: documents akin to promissory notes. Through the skillful mobilization of credit, *nakhodas* bound sailors to their merchant-financiers, and to the maritime enterprise writ large. Prior to the voyage, *nakhodas* would often advance prospective crew members goods on credit: usually large gunny sacks (*guniyas*) of rice, which they would then use to feed their families. By incurring the debt, the mariner entered into the *nakhoda's* ledger book, binding himself to the maritime firm. One anonymized contract in Al-Failakawi's notebook captures this well: it states that the bearer of the document owed Rs 1,200 to an Ahmad bin Mohammad ("the value of rice"), that the sum was to be repaid in 1 year "without excuse or delay," and that he gave the document "for the purpose of proof (*bayān*) so that *lā yukhī'u jarā?*." Through documents like these, mariners could be added to the ranks of the crew as the maritime firm expanded. Alternatively, they could be compressed into the value of their debts and traded to other dhows—other firms—in leaner times.¹⁷ Through the manipulation of bonds of credit and debt, *nakhodas* like Al-Failakawi were able to make and unmake labor arrangements on board the dhow.

But labor was only part of the enterprise; there were cargoes to move as well. The three longest contracts copied into Al-Failakawi's notebook were contracts for loading and transporting dates. This is maybe unsurprising, as the *nakhodas'* principal business was in ferrying Basra dates to markets around the Indian Ocean. But that is perhaps all the more reason to pay attention to them, because it is at that moment of contracting that the expectations between the itinerant *nakhodas* and their merchant-financiers were established, and the terms of the agreement laid out. The contracts described the cargoes to be transported and the freightage to be paid and laid out the expectation that the *nakhoda* deliver and unload the cargo without delay or negligence; at times the *nakhoda* acknowledges that he alone is responsible for these. From Basra, these contracts looked out to the entire Western Indian Ocean: the agreement to transport the dates to "the port of Karachi, the ports of Kathiawar, and finally to the port of Bombay" anticipated the vagaries of demand in different marketplaces and offered the *nakhoda* the flexibility to move from one to the other.

More importantly, it was also a moment in which the counterparties could leave their imprint on the contract itself, at times even layering own their own contractual terminology. Two extant freightage contracts from Basra suggest as

¹⁷ For more on this, see also Fahad Ahmad Bishara, "The Diver's New Papers: Wealth, People, and Property in a Persian Gulf Bazaar," *Journal of the Economic and Social History of the Orient* 64 (2021): 513–40.

much. The *nakhodas* in these were Gujaratis sailing to Basra for the same reasons that Al-Failakawi did, and in both cases, the captains appended their own Gujarati-language annotations to the Arabic-language contracts.¹⁸ In their annotations, the *nakhodas* noted the weight of the cargo converted into *maunds* (a unit of weight current in British India that varied from one region to another) and the amount that they agreed upon for the freightage. Although they are much briefer than the Arabic contracts, their richness lies in the interface between two contractual lexicons that they point to: the sutures in the transactional tapestry that followed the movement of goods from shore to ship.

Alongside the cargoes of dates moved financial instruments called *hawalas* that sought to circulate money among different markets around the Western Indian Ocean (but also to trading partners beyond the Indian Ocean).¹⁹ One of Al-Failakawi's contracts for loading dates, too, mentions a *hawala* between two merchants, presumably the sender and recipient of the date cargo. The *nakhoda* also included two *hawalas* in his notebook: one for an instant transfer of funds (between the same two individuals he mentions in the date freightage contract), and another deferred for 1 month. Different merchants' archives teem with these, principally different sorts of money orders, directing the recipient to pay a third party (i.e., the bearer) on behalf of the sender. These were usually to pay for goods that the sender had purchased from the bearer: there were ongoing accounts that the sender and recipient kept with one another, and the recipient would then add a debit line to those accounts. It was not always the case, though, that the beneficiary of the money transfer was someone physically present. Oftentimes, the recipient of the money order acted as a banker to a large network of merchants, transferring money to accounts in different banks so that they might meet their financial obligations.²⁰

People, goods, and money all converted into obligations inscribed on scraps of paper that made their way around and through the markets of the Indian Ocean. Together, we might read these as forming the documentary infrastructure of circulation: the "hidden substrate—the binding medium or current between objects of positive consequence, shape, and law."²¹ Through their

¹⁸ On interfaces between Arabic and Gujarati documents in the Indian Ocean, see Fahad Ahmad Bishara and Hollian Wint, "Into the Bazaar: Indian Ocean Vernaculars in the Age of Global Capitalism," *Journal of Global History* 16 (2020): 44–64.

¹⁹ On *hawalas*, see Marina Martin, "Hundi/Hawala: A Problem of Definition," *Modern Asian Studies* 43, no. 4 (2009): 999–1027; Abraham Udovitch, "Bankers Without Banks: Commerce, Banking, and Society in the Islamic World of the Middle Ages," in *The Dawn of Modern Banking* (New Haven, CT: Yale University Press, 1979), 255–273.

²⁰ One such individual was Mohammed Salem Al-Sudairawi, a Bombay-based Arab, hailing from Kuwait, who carried on a regular correspondence with hundreds of merchants around the Western Indian Ocean. Although he was ostensibly in Bombay as the agent to the ruler of Kuwait, Shaikh Mubarak, the bulk of Al-Sudairawi's work involved transferring money between banks in India, the Gulf, and South Arabia, and debiting them from (or crediting them to) the accounts that he kept with the recipients. After making purchases, his correspondents would write to him and ask him to make payments on their behalf to their sellers' accounts or to other local accounts. Political Agent, Kuwait, to Director of Persian Gulf Telegraphs, Karachi (1 July 1909) IOR R/15/5/87: 60.

²¹ Keller Easterling, *Extrastatecraft: The Power of Infrastructure Space* (London: Verso, 2016), 11.

deft use of these documents, *nakhodas* enabled the circulation of labor, commodities, and capital from one port city to another, and allowed themselves the opportunity to move between different registers of commercial activity, at least some of which left their palimpsests on the documents themselves. In short, it was through their mobilization of written contracts that *nakhodas* and merchants were able to create a maritime marketplace. Al-Failakawi's contractual inscriptions were thus more than just notes on different sorts of transactions; they offered windows onto a broader world of motion—of circulation—that he engaged in.

Law in the Sea, Law on the Page

The contracts inscribed into the two *nakhodas'* notebooks drew from the sea of documents that the dhow moved through, but that is only part of the story. Despite the similarities they bore to other contracts, few of the *nakhodas'* contracts seem to be real. We might recall that of the six contracts in one of Al-Failakawi's notebooks, five record the same date: 22 Muharram 1341 AH, or September 14, 1922. Of the other four, only two mention the year, also 1341 AH; the other two make no mention of a date at all. All of the latter four involve different combinations of generic names: Mohammed bin Hassan, Ahmad bin Ali, Hassan bin Ali, and Ahmad bin Mohammed. And of the first six, one contract, an acknowledgment of a debt for rice, identifies one of the counterparties as "Fulan bin Fulan," the Arabic equivalent of "so-and-so son of so-and-so"; the other is Ahmad bin Mohammed. The contracts were abstractions—models, really—of the different sorts of contracts that the *nakhodas* entered into.

But rather than thinking of them only as abstract stand-ins, we might read the inscriptions in Al-Failakawi and Al-Khariji's notebooks as a window into process by which *nakhodas* circulated legal knowledge among one another through workaday forms of writing that they shared with one another. Rather than engaging with genres of writing that reflect a scholarly engagement with a theoretical knowledge of law, or even notarial manuals that sought to offer practical advice, *nakhodas* simultaneously consumed and produced of legal knowledge through forms, grounding them in their material circumstances and exigencies. The process involved, at its core, a truncation and mobilization of those contractual forms.²² Al-Failakawi and Al-Khariji drew from the well of contracts and distilled from them the formal elements of a legal document. And yet, in making the forms abstract for the express purpose of reanimation, they addressed both the form and its intended goal. With every new contract that the *nakhodas* drew up, they reinscribed the legal structures of their world—they justified them and inculcated them—while also transposing them onto new situations, new material realities.²³ The act of drawing up

²² On truncation and fulfillment, see Samuel Moyn, "On the Nonglobalization of Ideas," in *Global Intellectual History*, ed. Samuel Moyn and Andrew Sartori (New York: Columbia University Press, 2013), 187–204.

²³ William Sewell, *Logics of History: Social Theory and Social Transformation* (Chicago: University of Chicago Press, 2005), 143–45.

the document might be read as a process of actively engaging with the elements of the contract, even as it was disembedded from the very contexts that gave it life.

What do generic contracts tell us about a process of legal thinking? Well, potentially a great deal. Rather than copying model contracts from manuals and filling them in with the particulars—a process that is more familiar to legal historians of the Islamic world—they moved in the opposite direction, from the specific to the abstract, from the particular to the general. The models come from actual contracts that the *nakhoda* had either seen or entered into, often (although not always) stripped of the specificities of time, place, and name, and rendered generic and portable. It was thus that these documents were transformed from contracts “pertaining to a particular and highly contextualized situation into an abstract case.”²⁴ By stripping them of the elements that gave them legal validity (i.e., those elements without which no legal claim could be made) but retaining the generic conventions that gave them their form, Al-Failakawi opened up the possibility of reanimating the documents whenever he needed to, and perhaps even applying them to altogether new situations; in other words, he rendered them portable. This was legal practice in circulation, moving from the world of contracts to the page of the notebook and then back out again.

But abstraction and reanimation only get us some of the way toward understanding the circulation of these sorts of forms. To better grasp this, we might do well to read the rest of the notebook, too. The contractual inscriptions, after all, formed but a small selection in a notebook full of other notes. The range of inscriptions are as bewildering as one might expect, although the bulk involve matters of navigation. There were notes on different principles of navigation, copied from different treatises; data points on latitude and longitude, and on the changing declination of the sun; diagrams on how to calculate one’s position based on the position of the sun at noon; and attempts at different way-finding arithmetic. But there were also stanzas of poetry in Arabic and Persian; and, in Al-Khariji’s notebook, descriptions of how to divide the profits of a season’s voyage, and notes on different events that the *nakhoda* observed in Basra and in Zanzibar.

If the rest of the contents of Al-Failakawi’s notebook have little to do with law as such, they do tell us a great deal about the *nakhoda*, his intellectual development, and his relationship to his father-in-law. These *nakhodas* were not simply passive recipients of navigational knowledge, nor did they only rely on learning by doing. Rather, they read different genres of nautical writing in different languages, and they took notes. Moreover, they assembled these fragments into a portable form of knowledge, one that joined a world of concepts to the material reality of life at sea. Put differently, they actively thought about what they were doing, and produced knowledge on it, for themselves and for others.

²⁴ This is akin to what Wael Hallaq describes as the process of *tajrid* in *fatwas*; see “From *Fatwas* to *Furū*: Growth and Change in Islamic Substantive Law,” *Islamic Law and Society* 1 (1994): 44–47.

And here, the artifact of the notebook itself matters—and nested in the puzzle of authorship is its answer. That the notebook ultimately ended up in Al-Failakawi's possession is clear enough: it includes a partial log of his 1920 voyage, detailing his return from Karachi to Kuwait, and an inscription on the inside jacket bears Al-Failakawi's name and the date 1339 AH (1920–21 AD). But the hand in which the contractual inscriptions and many other notes were written bears a much closer resemblance to Al-Khariji's notebook than it does to that of Al-Failakawi's voyage log. The relationship between the two is important: Al-Failakawi learned to captain a dhow from Al-Khariji; he was his apprentice, and later his son-in-law. The most apparent answer to the question of authorship, then, is that the notebook, with all of its inscriptions, passed down from Al-Khariji to Al-Failakawi—from master to apprentice—and that the log of the 1920 voyage was added later on. This is not the only answer, of course; the notebook could just as easily have passed back and forth between the two. In either case, though, we might read it as bearing the palimpsests of its own circulation.

By thinking of the notebook as something that doesn't simply enter into someone's possession and remain there, we develop a better grasp of how legal knowledge moved within the mariner community. Rather than thinking of it as moving vertically, from the library of legal scholarship to the deck of the dhow by way of a notarial manual, we might better see it as moving more horizontally, from one *nakhoda* to another, via repeated contact with different genres of documents through the medium of the notebook.²⁵ By deliberately anonymizing contracts and then inscribing them into the notebook, the *nakhoda* (most likely Al-Khariji) rendered them into a portable form of knowledge, one that he could pass onto his apprentice, but also one that could make its way from shore to ship and back again as the dhow made its way around the Western Indian Ocean.

So then why would Al-Khariji have given his protégé a notebook that included deliberately anonymized legal documents alongside an assembled set of notes on different nautical matters? That he was a highly idiosyncratic character is clear enough from his own notebook, which spanned issues of navigation, law, and poetry, alongside more personal observations and drawings. But rather than lose ourselves in the exceptionality of an individual like Al-Khariji, we might see him as forming a window into a more normal way of seeing the world. Contracts, letters, principles for wayfinding and profit-sharing, and poetry were all genres of writing that forged conduits for what we refer to in the shorthand as "circulation." For a *nakhoda* tasked with shuttling goods from port to port, these were the workaday forms of knowledge that were necessary to a successful voyage. Circulation meant navigating the ocean itself, but also navigating the legal framework that the voyage rested on: to sail the sea of forms. Nautical knowledge was not something that was ever unmediated or raw: it was enchained to mobile assemblages of people, ships, instruments, and texts, and was always rooted in experience, both old

²⁵ On mastery through repeated contact, see Brinkley Messick, *Shari'a Scripts: An Historical Anthropology* (New York: Columbia University Press, 2018), 49.

and new.²⁶ For a *nakhoda* training an apprentice, this was exactly the sort of knowledge he would want to pass down: not abstract knowledge, but the ability to think along multiple scales—micro, regional, oceanic, and planetary—all at once.

Law on Other Boats

It was the middle of March in 1850 when the English midshipman George Sullivan chased a suspected slave dhow. He had been assigned to the thirty-six-gun ship the *Castor* off the coast of Mozambique the previous May and had occasion to board a number of dhows since then, but this was the first he described in detail. The chase was a straightforward one as far as chases went, and the crew was able to quickly catch up to and board the dhow. There, on the deck, Sullivan found “twenty or thirty negroes pretending to be very busy” engaged in various shipboard work, which he suggested was the result of intimidation by the captain. In addition, there were twenty more black men “dressed up in Arab costume,” and “a half a dozen genuine Arab brutes, one of whom appeared to be ‘monarch of all he surveyed.’”²⁷

A drawing printed in *The Illustrated London News* conjures up the moment of encounter between British naval officers and dhow crews. It was published nearly a full 40 years after the moment Sullivan had boarded the dhow, but it could have been depicting the exact same scene. The setting is the deck of the dhow, or more accurately, the space between two decks. A bearded white man in a blazer and pants—presumably an officer—is shown boarding the dhow while brandishing a pistol. On the dhow itself, an African man, also wearing a blazer, studies a small stack of papers that he holds in his hands; he is perhaps an interpreter of sorts. Meanwhile, two other African-looking men, decked out in turbans and robes with swords and daggers, gesticulate at him, while crew members on both ends look on. Under the image lies the caption “The Blockade on the East Coast of Africa: Overhauling the Papers of a Suspicious Dhow.”

The dhow that Sullivan boarded may have seemed suspicious, but what the naval officer expressed came mostly in the form of confusion. When he asked the *nakhoda* to produce his papers, he found himself bewildered by the documents that the captain brought before him. “The papers are produced; they might have been, for all we knew, Bills of Sale for the niggers on board, or warrants for their execution; or, more probably, directions as to where our boat was, how to avoid it, or to cut the throats of every Englishman if they could get the chance.”²⁸ The truth was less colorful than he imagined. Surviving records from the Vice Admiralty Court in Zanzibar from the late 1860s suggest

²⁶ I borrow some of this phrasing from Michael Wintroub, *The Voyage of Thought: Navigating Knowledge Across the Sixteenth-Century World* (Oxford: Oxford University Press, 2017), 23.

²⁷ George L. Sullivan, *Dhow-Chasing in Zanzibar Waters and on the Eastern Coast of Africa: Narrative of Five Years' Experience in the Suppression of the Slave Trade*, 2nd ed. (London: Sampson Low, Marston, Low, and Searle, 1873), 64.

²⁸ Sullivan, *Dhow-Chasing in Zanzibar Waters*, 65–66.

that the bulk was composed of the very mundane forms of paper that one would have found on Al-Failakawi's dhow. Copies of documents confiscated from one captured dhow included several acknowledgments of debts to various Indian merchants in Zanzibar, along with letters that the dhow was carrying on behalf of different correspondents. Alongside these were two safe conduct passes: one issued by the Sultan of Zanzibar, and the other issued by the French consul residing on the island.²⁹

Although Sullivan's fears may have been ill placed, his statement did reflect a broader tension that plagued encounters between British officials and the mobile dhow mariners, and indeed, between imperial officials and itinerant communities more generally: that of legibility. Despite its maritime origins, British imperial officials found it challenging to comprehend, let alone regulate, the movements of dhows around the coasts of the Western Indian Ocean. Much of the frustration stemmed from the perception that dhows rarely moved within the framework of state. With few exceptions, dhows, the obligations that underpinned them, the paperwork that gave those obligations their shape, and the legal knowledge that generated that paperwork all moved laterally, from one *nakhoda* to another, rather than through any state bureaucracy. The only clear indication of any state—imperial or otherwise—appeared on the safe-conduct passes, and even those transferred, rights and all, from one *nakhoda* to another when a dhow was sold.³⁰ That little of this material would move through the administrative apparatus, and none of it would ever end up in the sorts of manuals that colonial officials around the Indian Ocean translated or compiled, ensured that this world of mobile people, goods, and forms would remain beyond the pale of legibility.³¹

But part of the issue came from the fragmented nature of the juridical landscape of the Western Indian Ocean. This was, in large part, a world of small port city-states, in which the enforcement of law beyond the boundaries of a port city required the mobilization of personal and diplomatic connections. There were no supranational legal bodies, and even *qadis* had to rely on the good will of their counterparts abroad (and the diplomatic persuasion of rulers) to ensure that their rulings would be enforced abroad. For a British Empire that had become more terrestrial in its orientation, the day-to-day legal work that took place in these spaces—to say nothing of the coastlines and sea lanes in between—was becoming more difficult to monitor. Even for the British political officials—agents, consuls, and assistants—who fanned out from India along the coasts of the Persian Gulf, South Arabia, and East Africa, a legal world scattered along different shores, unconnected by a clearly

²⁹ Zanzibar National Archives, AA 7/2 and 7/3. On debt instruments in the Indian Ocean, see Thomas F. McDow, *Buying Time: Debt and Mobility in the Western Indian Ocean* (Athens: Ohio University Press, 2019); and Fahad Ahmad Bishara, *A Sea of Debt: Law and Economic Life in the Western Indian Ocean, 1780–1950* (New York: Cambridge University Press, 2017).

³⁰ Bishara, "No Country But the Ocean," 358–62.

³¹ On translations of documents, see Dominic Vendell's contributions to this issue. On translating manuals of Islamic law more generally, see also Scott Kugle, "Framed, Blamed, and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia," *Modern Asian Studies* 35 (2001): 257–313.

recognizable political or juridical authority, was difficult to pin down, let alone render in terms legible to them.

For all of their contracting just beyond the grasp of imperial officials, *nakhodas* could not afford to ignore them altogether. The British Empire had long established itself as the pre-eminent political authority in the Western Indian Ocean by the time the notebook passed into Al-Failakawi's possession. In the late nineteenth century, the government of India signed protectorate agreements with most of the rulers of port cities around the Western Indian Ocean: they could retain control of their domestic affairs, but their foreign relations had to be mediated through British officials. At the same time, British naval cruisers and commercial steamships plied the waters between India, Arabia, and Africa, and British telegraph offices, merchant houses, and more could be found around the ocean's littoral.³² For *nakhodas*, these left a visible imprint on their voyages: the steamships that they passed along the coasts and out on the open seas; the customs houses that they called at before leaving different port cities; the banks that the merchants they did business with relied on; and the growing piles of paperwork that they contended with as they moved goods on and off their vessels. The contractual vernaculars of the trading worlds of the dhow thus frequently came into the view of a growing imperial regime in the Western Indian Ocean.

Encounters between dhows and imperial officials were not always colored by suspicion, though. Out of the notebook and off the dhow, the forms made their way into imperial legal institutions around the Western Indian Ocean. The contracts that *nakhodas* and merchants entered into around the Indian Ocean—the very sort whose templates appeared in Al-Falaikawi's log book—were registered with consuls and in courts in Kuwait, Karachi, Bombay, Aden, Zanzibar, and elsewhere in the Western Indian Ocean. They existed in registered copies and authenticated translations, and they often bore the signatures of European consular officials.³³ *Nakhodas* would often register the safe-conduct passes they received from local rulers, too, asking consular officials to countersign and stamp them.³⁴ These registration marks were not incidental: actors moved their documentation through this juridical machinery with an eye to future conflict, if not with one another over the terms of the documentation, then with the European naval officers who routinely stopped them. Even as the contracts were primarily aimed at structuring exchange between participants in the dhow-based date trade, their authors remained cognizant of, and maneuvered within, a European juridical landscape around the Western Indian Ocean.

Nor were *nakhoda* movements always threatening. As they charted out the contours of their own authority around the Western Indian Ocean, imperial officials often drew on the knowledge of *nakhodas*. In their pursuit of suspected

³² On British expansion in the Indian Ocean, see Thomas Metcalf, *Imperial Connections; Robert J. Blyth, The Empire of the Raj: India, Eastern Africa and the Middle East, 1858–1947* (London: Palgrave, 2003).

³³ See also "Certified Copies of Deeds and Documents from 1 January 1927 to 1932," IOR R/15/5/89.

³⁴ See also IOR/R/15/5/89: 46–47, 52–57.

slave traders and smugglers, they quizzed the captains on routes, and endeavored to find out more about who owned the dhows and what the arrangements were.³⁵ They drew on *nakhodas'* knowledge of the seas and coasts to map out shorelines and pearl banks so as to better surveil them.³⁶ And in their courtrooms, they queried *nakhodas* on the various forms of contracts they entered into with their crew members, so as to more effectively adjudicate in the disputes that arose between different parties.³⁷ The kinds of knowledge that passed from Al-Khariji to Al-Failakawi in the log book, then, was of interest to more than just the two *nakhodas*. They gradually came to constitute part of the fabric of imperial governance in around the Western Indian Ocean. Rather than think of them as separate domains of legality, we might productively imagine the routes of dhows and empires as overlapping with one another, even as they ultimately move toward different horizons.

Conclusion

This article began with a puzzle over the contractual inscriptions in Al-Failakawi's notebook-cum-log book, asking who might have authored them, and why they were there. I've already suggested an answer to the first: that the notebook likely belong to Mansur Al-Khariji, Al-Failakawi's teacher and father-in-law, and that the *nakhoda's* log of his voyage was likely added later on. Thinking through that relationship, and the movement of the notebook from one *nakhoda* to the other, helps us better grasp what the contract copies were doing there. The contracts copied into the log book provide a glimpse into a history of mobile contracting; not only of contracts that the *nakhodas* entered into as they sailed around the Western Indian Ocean, but also of the process by which the contractual forms themselves were made portable. The contractual inscriptions sat on the boundary between model and original, between the realm of practice and the realm of theory; between structure and agency. From the deck of the dhow, the *nakhoda's* inscriptions enacted the dialectical tensions between the two, and through the passage of the notebook from one person to another, this form of learning by thinking and doing circulated.

From the notebook—from the micro scale—we can conceive of a “global” legal history that operates on a scale that is sometimes larger than, sometimes smaller than, and often orthogonal to that of nation-states and empires. And this is precisely what Al-Failakawi's notebook offers us: a vista of at least some of the processes that conjured up a transregional marketplace, one that existed at the interstices of empire and more regional and local political

³⁵ See, for example, Mandana Limbert, “If You Catch Me at It Again, Put Me to Death: Slave Trading, Paper Trails, and British Bureaucracy in the Indian Ocean,” in *Indian Ocean Slavery in the Age of Abolition*, ed. Robert Harms, Bernard Freamon, and David Blight (New Haven: Yale University Press, 2013), 120–41.

³⁶ One 1906 map of the pearl banks that lay roughly between Kuwait and Bahrain was produced “with the assistance of the *nakhoda* Saleh of the Kuwait pearlers.” IOR R/15/5/91: 12.

³⁷ The Bahrain Political Agent's Court records form the best archive for thinking through law in the Persian Gulf, but have not yet received any scholarly attention. Bishara, “A Sea of Debt,” 461–3.

formations. Through the notebook, we can think of a “global” arena that is conjured up through the circulation of forms rather than one that is imposed or even erected by imperial actors. The *nakhodas*’ contracts allow us to see how the circuits of people and goods are made: how different stretches of coast were joined to one another, and how actors directed the flow of goods back and forth, across different political, geographical, and legal boundaries. These did not preclude empire; through broad sweeps of oceanic surveillance and individual acts of registration, the contractual writings of *nakhodas* like Al-Failakawi became deeply imbricated into the project of imperial governance. Empires channeled dhow mobilities, and dhow writings invariably bore the imprint of empire, in Al-Failakawi’s case, the British Empire, whose bureaucratic apparatus the *nakhoda* often maneuvered through and around. And although they always looked across the ships’ bows at one another, the two unfolded along different routes and pathways, and reveal different vistas of law at transregional scales.

By reading this world at a micro scale rather than a macro one—by seeing it from the notebook rather than from the lighthouse—we can also catch a glimpse of at least part of the process by which actors both engaged with it and conjured it up. Read through Al-Failakawi’s inscriptions, the marketplace looks less like a prefigured set of contracts and transactions than it does like a process that actors actively had to engage with: to think through, learn about, and communicate to one another. Circulation did not simply come into being, materializing out of thin air; its pathways were forged through individuals who sought to capture a world in motion and take its impressions so that they, too, might move things. If “the global” rested on the circulation of goods, people, money, and ships, then that circulation was instantiated in—and indeed, produced by—pieces of paper and inscriptions in notebooks that enabled, directed, and regulated it.

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