

**Muslim Entrepreneurs, Uncertainty and Interest Rates
in the Ottoman Empire and Qajar Iran**

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Muslim big merchant-entrepreneurs (*tujjar*) played a central role in the financial activities of Middle Eastern Muslim communities, and were a most important factor among Muslims themselves by providing credit and interest-bearing loans. For prolonged periods, and certainly during the long nineteenth century in most parts of the Middle East, they alone in the Muslim community possessed large amounts of fluid capital which they were able to place at the disposal of borrowers in need of cash. The *tujjar*, however, worked under unique conditions: the dominant normative framework – Muslim law – proscribed the imposition of interest (*riba*) on loans, and in this context a number of questions arise. What was the deeper meaning for most Muslims of the contradiction between the practice of lending money and the Qur’anic prohibition? How did the Islamic religious courts (*mahkamas*) deal with a financial system in which countless transactions (loans) bearing interest at often extremely high rates were in fact conducted? Against the backdrop of a normative prohibition, how were the special circumstances of intensive financial activity likely to affect the *tujjar*'s *modi operandi* in the credit market? Lastly, to what degree did the tension between the proscription and its constraints create conditions of uncertainty¹ for the lenders? These issues are at the center of the discussion in the present article.

¹ The term ‘uncertainty’ in economic theory was coined by Frank. H. Knight, who contended that uncertainty in business relates to developments or events whose probability can be assessed or estimated only subjectively. This contrasts with ‘risk’, which relates to events that recurred in the past and whose incidence can be estimated. In the context of loans, the possibility that a borrower will go bankrupt and not repay the loan is a known risk that the lender can take into account (for instance by obtaining guarantees and even by taking out insurance against this eventuality). By contrast, a new tax retroactively levied on loans that makes many loans unprofitable is a development in the uncertainty category, against which a lender is unable to take measures in advance. Knight notes that from the entrepreneur’s standpoint there is an essential difference between risk and uncertainty. Whereas the entrepreneur can pass risk damage onto others, such as insurance companies, he is forced to deal with a situation of uncertainty and its concomitant outcomes on his own. In Knight’s view, this last distinction is central to understanding the nature

Between Prohibition and Constraint

Beyond the various approaches and differences of opinion on the question of *riba*, most Sunni and Shi'i jurists (*fuqaha*) and all judicial schools, from the earliest generations of Islam to the present day, are of one mind: the Prophet Muhammad totally rejected the imposition of *riba* on loans and, moreover, regarded it as a grave sin.² This abiding concept of the *fuqaha* down through the ages is based on various verses in four different *suras*.³ Some view the wording in these *suras* as reflecting a gradual development in the stance regarding *riba*, from a latent to a limited proscription and finally to a complete and absolute one. Verses 280-281 and 283-284 of *sura* 2, which apparently represent the later conception of *riba*, constitute a response to questions that arose in this regard among the faithful in al-Madina, and it was these verses that determined the orthodox position:

"Those who take usury will not rise up except like those maddened by Satan's touch. For they claim that trading is like usury, whereas Allah has made trading lawful and prohibited usury... those who revert [to interest] – those are the people of the fire in which they shall abide forever (280). Allah prohibits usury and does not bless it...(281).

O believers, fear Allah and forgo what is still due from usury...(283) But if you fail to do that, take note of a war [waged] by Allah and His Apostle (284)."⁴

of economic entrepreneurship. See Frank H. Knight, *Risk, Uncertainty and Profit*, Boston: Houghton Mifflin, [1921] 1933, pp. 197-263; Mark Casson, *The Entrepreneur: An Economic Theory*, Totowa: XX, 1982, pp. 370-372.

² The issue of *riba* has been examined by numerous Muslim and non-Muslim scholars. Scores of studies devoted either wholly or partially to this subject have been published in recent decades. See, inter alia: David Santillana, *Instituzioni di diritto musulmano malichita con riguardo anche al sistema sciafiita*, 2, Rome: Istituto per L'Oriente, 1938, pp. 60-66; Shaikh Draz, "L'usure en droit musulman," in Louis Milliot (ed.), *Travaux de la Semaine internationale de droit musulman (1951)*, Paris: Recueil Sirey, 1953, pp. 143-157; J. Schacht, "Ribā", *EL*², 6 (1995), pp. 491-493; Fazlur Rahman, "Ribā and Interest," *Islamic Studies*, 3 (1964), pp. 1-43; Robert Brunschvig, "Conceptions monétaires chez les jurists musulmans," *Arabica*, 14 (1967), pp. 113-143; Anwar Iqbal Qureshi, *Islam and the Theory of Interest*, Lahore: Muhammad Ashraf, n.d. [1947?], pp. 44-122. M. Abu Zahra, *Buhuth fi al-riba*, Kuwait: Dar al-buhuth al-Islamiyya, 1970, pp. 53-54; Nur al-Din 'Atr, *al-Mu'amala al-masrifiyya wa al-ribawiyya*, Beirut: Risala, 1977, pp.53-80; M. Umer Chapra, *Towards a Just Monetary System*, Leicester: The Islamic Foundation, 1985, pp. 55-66; Nabil A. Saleh, *Unlawful Gain and Legitimate Profit in Islamic Law*, 2nd ed., London: Graham & Trotman, 1992, pp. 11-39.

³ See verse 39, *sura* 30; verse 161, *sura* 4; verse 130, *sura* 3; and verses 280-284, *sura* 2. On the stages in the development of the Prophet Muhammad's position on *riba*, see Schacht (*ibid.*, n. 2), p. 491.

⁴ *The Qur'an: A Modern English Version*, trans. Majid Fakhry, Reading: Garnet Pub., 1998, pp. 32-33.

The Qur'anic concept of *riba* is broader than the prevailing terminology in European languages (e.g., interest, *intéret*, *Zinsen*, *interesse* – the addition of money to the principal given as a loan), although there is a consensus among scholars of Islamic law and economics that this narrower meaning is also part of the concept of *riba*. The total rejection of interest by the Prophet was explained by the *fuqaha* in the following way:

1. There is no justification for profiting from barter. In this regard the jurists cite the noted *hadith* in which the Prophet is quoted as saying: “Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt...”⁵
2. If there is no justification for profiting from barter, then this is all the more applicable with regard to cash transactions. Moreover, time (as an autonomous factor) does not justify any addition whatsoever to the value of any item or product, including money (cash). The value of a given sum of money today is equivalent in all respects to its value at a future date, and a number of *hadiths* served to establish this central point.

It therefore appears that the Prophet did not acknowledge any factors whatsoever that would justify receiving a recompense for the giving of a loan — whether the lender waiving income from an alternative investment; the risk of losing the principal; or a possible decline in the real value of the loan.⁶

According to the majority of the *fuqaha*, these explanations justifying the proscription of interest reflect a central motif in the Prophet's perception: the establishment of justice (*iqamat al-'adil*) in his community. Since interest first and foremost harms the weaker strata of society, exacerbates poverty and intensifies distress, while at the same time benefiting the affluent and powerful, it should not be permitted. In other words, interest heightens socioeconomic inequality in the community and is therefore inappropriate and forbidden.⁷

The Qur'anic commandment proscribing interest, however, placed weighty, often extreme, constraints on raising funds from others, such as in the case of a farmer left

⁵ Abdulkader Thomas, “What is *ribā*?”, in *idem* (ed.), *Interest in Islamic Economics: Understanding ribā*, London: Routledge, 2006, p. 128.

⁶ *Ibid.*, p. 131.

⁷ M. Umer Chapra, “Why has Islam prohibited interest? Rationale behind the prohibition of interest”, in Thomas (*ibid.*, n. 5), pp. 96-98. Nasr Abu Zaid has a similar explanation. See Nasr Abu Zaid with Esther R. Nelson, *Voice of an Exile: Reflections on Islam*, Westport: Praeger, 2004, pp. 110, 168-169.

without seeds before the sowing season; an artisan whose tools and raw materials were lost in a fire; a ruler who had insufficient funds to arm and feed his army in the face of an enemy at the gates of his capital, and so forth. In fact, there were those in the Muslim communities who had fluid resources at their disposal which could be used for the provision of loans. Yet providing a loan embodies elements of relinquishment and risk. The lender relinquishes the alternative uses of the loaned money, whether they be for immediate consumption or for investment, from which he can reap profits. From the standpoint of the lender, a loan has a price, while the borrower can use the sum he has borrowed to increase his own income by investing it. Moreover, providing a loan entails risk and uncertainty, as there is always the possibility that the borrower will be unable or unwilling to repay the loan, and there is also the danger of a decline in the value of the money (inflationary processes). For these as well as other reasons it is both reasonable and understandable that the lender expects a recompense for providing a loan.⁸

It was at the convergence of the borrower's constraints and needs and the lender's demand for an appropriate consideration that interest was born. The logic behind the existence of interest explains the fact that this economic practice was well developed in ancient societies. There is evidence of interest-bearing loans in Mesopotamia of the third century BCE.⁹ Hammurabic law (ca 1800 BCE) contains detailed ordinances that address maximal interest rates, loan repayment arrears, assets that can be expropriated for non-repayment of the principal and interest, etc.¹⁰ Interest-bearing loans were also prevalent in the classical Hellenistic and Roman cultures.¹¹ A radical change in attitude toward interest first became evident in the world view of Judaism and then in early Christianity. In the formative generations of the two monotheistic religions there was no real distinction between interest and usury: any addition to the

⁸ The theoretical literature on the various economic aspects of interest and its effect on economic activity is extensive. See the comprehensive review by Friedrich A. Lutz, *The Theory of Interest*, Dordrecht: D. Reidel, 1968, pp. 3-229.

⁹ Steven J. Garfinkle, "Shepherds, Merchants, and Credit: Some Observations on Lending Practices in Ur III Mesopotamia", *JESHO*, 47 (2004), pp. 9-10.

¹⁰ Marc van de Mierop, "Old Babylonian Interest Rates: Were they Annual?" in K. van Lerberghe and A. Schoors (eds.), *Immigration and Emigration within the Ancient Near East: Festschrift E. Lipinski*, Leuven: Peeters, 1995, pp. 357-358; Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor*, Atlanta: Scholars Press, 1995, pp. 97-99, 103.

¹¹ Sidney Homer, *A History of Interest Rates*, 2nd ed., New Brunswick: Rutgers University Press, 1977, pp. 32-55; Edward E. Cohen, *Athenian Economy and Society: A Banking Perspective*, Princeton: Princeton University Press, 1992, pp. 44-46, 207-216.

principal was considered to be usury and was forbidden.¹² It was only in the twelfth century that the Catholic Church gradually began to accept an approach permitting the selective imposition of interest.¹³

Obviously, the institution of interest was present in Hijaz society in the pre-Islamic period,¹⁴ and its concomitant harsh socioeconomic results explain the Prophet's bitter attack against *riba*. Yet, despite the Qur'anic prohibition, the Islamic communities were unable to manage without interest-bearing loans. From the first centuries of Islam to the present, Muslims of all classes, in rural and urban societies alike, borrowed and loaned at various rates of interest, ranging from a few percent to hundreds of percent per annum. Not surprisingly, the interest-bearing loan market in the Muslim communities flourished particularly in locations and periods of wide-ranging economic and trade activity and with concomitant high rates of economic growth. There is clear evidence that in Muslim societies down through the generations, from the Umayyid state and the 'Abbasid caliphate to the Qajar kingdom and the Ottoman Empire, interest-bearing transactions involving Muslim moneylenders played an important and sometimes dominant role.¹⁵

In the face of the 'interest constraint' the Qur'anic commandment created internal tension in the Muslim communities at varying levels of intensity, from uneasiness to outright contempt, condemnation and humiliation, particularly on the part of the *'ulama* towards Muslims who charged interest on loans. A situation of cognitive dissonance¹⁶ appears to have existed in the Muslim communities, including among the

¹² Jewish law permitted the charging of interest on loans given to non-Jews but prohibited the imposition of interest on loans given by Jews to their coreligionists. In the sixteenth century a standard form of legalization of interest demanded from Jewish borrowers was established. See Siegfried Stein, "The Development of Jewish Law on Interest from the Biblical Period to the Expulsion of the Jews from England", *Historia Judaica*, 17 (1955), pp. 4-5; XX John T. Noonan, Jr., *The Scholastic Analysis of Usury*, Cambridge, Mass.: Harvard University Press, 1957, pp. 1-37; "Usury", *EJ*, vol. 16 (1971), pp. 28-34.

¹³ *Ibid.*, pp. 193-195.

¹⁴ M.J. Kister, "Some Reports concerning Mecca from Jāhiliyya to Islam", *JESHO*, 15 (1972), p. 78; Mahmood Ibrahim, *Merchant Capital and Islam*, Austin: University of Texas Press, 1990, pp. 61-62.

¹⁵ For details on interest-bearing loans among Muslims during the eighth-fifteenth centuries, see Sobhi Labib, "Geld und Kredit: Studien zur wirtschaftsgeschichte Aegyptens im Mittelalter", *JESHO*, 2 (1959), pp. 236-237; J. Schacht, "Hiyal", *EF*, 3 (1971), p. 511; E. Ashtor, *A Social and Economic History of the Near East in the Middle Ages*, London: Collins, 1976, p. 86; *idem*, "Le taux d'intérêt dans l'Orient medieval", in *Fatti e idee di storia economica nei secoli XII-XX: Studi dedicati a Franco Borlandi*, Bologna: n. pbr., 1977, pp. 198-204.

¹⁶ According to cognitive dissonance theory, a person will experience dissonance when he is conscious of doing what he perceives to be a foolish or unethical act. This situation is bound up with emotions of varying intensity, discomfort and distress. He will therefore try to avoid such a

'*ulama* themselves. Muslims who sought to observe the Prophet's commandments and addressed the Qur'anic prohibition of interest with the utmost gravity, but were unable to avoid taking interest-bearing loans, probably lived with a profound sense of sin. In this situation the *fuqaha* attempted to construct a bridge between the proscription and daily needs of the community in order to free it from the tension deriving from unavoidable sinfulness.¹⁷ Of all the 'solutions' proposed and accepted, often by only part of the community, two had the greatest influence: the first was interpretation, the hermeneutic tool generally employed in such situations, and the second was bypassing the issue by employing legal stratagems.

In the first category, the debate focused on the interpretation of the concept of *riba*. Over the generations, two interpretations were most dominant:

- a. The *fuqaha* of the Hanafī school argued that by the term *riba* the Prophet meant usury — exorbitant, unreasonable and unfair rates of interest that were blatantly unjust and would inevitably bring about the impoverishment of the borrower, the loss of his property, and even the loss of his liberty. *Riba* of this kind causes severe damage to the entire community of the faithful and was therefore totally forbidden. In contrast to usury, however, there is interest at a low rate – the addition of a few percent to the principal – known as *ribh*,¹⁸ which according to Hanafi jurists, was permitted. They emphasized that *ribh* was not explicitly mentioned in the Qur'an and it did not cause the same injustice as usury. Moreover, it is unreasonable that the Prophet forbade the use of *ribh*, since he

situation, or, alternatively, activate various defense mechanisms. See: Leon Festinger, *A Theory of Cognitive Dissonance*, London: Tavistock Publications, (1959) 1962, pp. 9-29; Elliot A. Aronson, "The Return of the Repressed: Dissonance Theory Makes a Comeback", *Psychological Inquiry*, 3 (1992), pp. 304-306.

¹⁷ Muhammad Rashid Rida, *Fatawa al-imam Muhammad Rashid Rida*, vol. 2, Beirut: Dar al-kitab al-jadid, 1970, pp. 606, 608-609; 'Abd al-Razzaq Ahmad al-Sanhuri, *Masadir al-haq fi al-fiqh al-Islami*, vol. 3, Cairo: Dar al-ihya al-turath al-'Arabi, 1968, pp.4 ff.; Neş'et Çağatay, "Ribā and Interest Concept and Banking in the Ottoman Empire", *Studia Islamica*, 32 (1970), pp. 63-64.

¹⁸ There were a number of other terms denoting interest in addition to the concept *riba*. In *mahkama* hearings, in *fatwas*, and in the writings of *fuqaha* in the various districts of the Ottoman Empire in Anatolia and the Arab provinces from the sixteenth century onward, the terms *fa'ida*, *murabaha*, *istirbah*, *mu'amala* and *istighlal* are used for *riba* or *ribh*. In Iran the terms *sud*, *bahra* and *tanzil* were prevalent. See James Greenfield, *Das Handelsrecht... von Persien in die Handelsgesetze des Erdballs*, vol. 4, Berlin: R.v. Decker's Verlag, n.d. [1909], p. 54; Ömer Lütfi Barkan and Ekrem Hakkı Ayverdi, *İstanbul Vakıfları Tahrir Defteri, 953 (1546) Tarihli*, Istanbul: İstanbul Fetih Cemiyeti İstanbul Enstitüsü, no. 61, 1970, p. xxxv; Çağatay (*ibid.*, n. 17), p.64; Ronald C. Jennings, "Loans and Credit in Early 17th Century Ottoman Judicial Records: The Sharia Court of Anatolian Kayseri", *JESHO*, 16 (1973), p. 187; Haim Gerber, *Economy and Society in an Ottoman City: Bursa, 1600-1700*, Jerusalem: The Hebrew University, 1988, pp. 128-129.

understood the needs of the faithful and the importance of arrangements that would facilitate the provision of loans to those in need of them. Hence *ribh* is legitimate. According to the Hanafis, the distinction between the concepts of *ribh* and *riba* was of vital importance. This is especially pertinent with regard to the monetary system of the Ottoman Empire, whose rulers adopted the distinction, turning *ribh* into a legitimate practice in the sixteenth century by giving it an official seal of approval as part of Sultan Sulayman Qanuni's code of criminal law.¹⁹

- b. The other dominant interpretation, attributed to 'Abdallah Ibn 'Abbas, the Prophet's cousin, holds that the concept of *riba* bears different meanings over time. Thus, the period preceding Muhammad's appearance and the period following the formulation of his dogma reveal an essential shift in the meaning of the concept. The interest used in the former period was known as *riba al-jahiliyya* and was characterized by very high rates of interest. When a loan was not repaid on time, a fine was imposed on the borrower in the form of incremental rates of interest that reached scores and even hundreds of percent.²⁰ This practice aroused the Prophet's ire, as first and foremost it exploited and impoverished the poor and needy, so that not only did he oppose it vehemently, he forbade it completely. By contrast, according to an early interpretation by Ibn 'Abbas, no fine at all was imposed on the borrower in the form of exorbitant interest rates in the early generations of Islam.²¹

These means of evading the Qur'anic proscription were not universally accepted. They were rejected in particular by Hanbali *fuqaha*, necessitating a resort to other solutions to bridge the gap between proscription and necessity. As noted above, another way was to disguise interest by means of a legal device (*hila*, pl. *hiyal*)²² which enabled the imposition and payment of interest by concealing it, so that neither

¹⁹ Uriel Heyd, *Studies in Old Ottoman Criminal Law*, (ed. V.L. Ménage), Oxford: Oxford University Press, 1973, p. 122; N. Çağatay, "An Outline of Islamic Law and Development of Ottoman Traditional Law", in Abdeljelil Temimi (ed.), *La vie économique des provinces arabes et leurs sources documentaires à l'époque ottomane*, 3, Zaghuan: CERPAO, 1986, p. 257.

²⁰ Saleh (*ibid.*, n. 2), pp. 35-36.

²¹ *Ibid.*, p. 34.

²² Numerous studies have been conducted on *hiyal*. See, e.g., Joseph Schacht, *An Introduction to Islamic Law*, Oxford: Oxford University Press, 1964, pp. 78-82; Schacht (*ibid.*, n. 14), pp. 510-513; and Rafiq Yunis al-Masri, *al-Jami' fi usul al-riba*, Damascus: Dar al-qalam, 1991, pp. 172-179, which details the various types of stratagems.

lender nor borrower were in prima facie breach of the Qur'anic commandment. Two stratagems were most favored:

a. Interest was disguised by a 'double sale' (*'ina*, or *mukhatra*) based on two sequential fictitious sales: first, the lender sold an item (cloth, soap, books, etc.) to the borrower for a sum equivalent to the principal plus the interest. The borrower undertook (either verbally or in writing) to repay the value of the item at the end of a mutually agreed period. At the conclusion of this 'transaction', the second fictitious sale took place: the borrower sold the same item back to the lender for the sum of the principal alone. In effect, the lender gave the borrower the agreed sum up front. At the conclusion of the 'double sale' the lender was left with the borrower's undertaking to repay the principal and the interest, while the borrower had the sum of the loan (the principal) in hand. From a *shar'i* standpoint there is nothing invalid in these two 'transactions'.²³ Delayed payment for the purchase of an item is indisputably permissible. The matter of interest is of course not mentioned in the borrower's agreement or in his undertaking to repay the debt. Due to their simplicity these stratagems were especially common in communities where the Hanafi and Shafi'i schools were dominant.

b. Interest was disguised by a 'sale with the right of repurchase' (*bay' bi'l-wafa*) whereby the borrower sells an asset to the lender and receives its value in cash (the principal). On completion of this transaction the borrower leases or rents the asset from the lender (a payment equivalent to the interest on the sum he received). Subsequently, as agreed between the parties, the borrower exercises his right to reacquire the asset and pays its value to the lender (i.e., he repays the principal).²⁴

The *fuqaha* were divided over the legal and moral propriety of these stratagems. While the Hanafi jurists found no flaw in them, their Shafi'i colleagues found them appropriate from a *shar'i* standpoint but felt some discomfiture with regard to their ethical aspect, while the Malikis and the Hanbalis condemned the use of *hiyal*

²³ For the Hanafi 'ulama's approval of this method, see Muhammad Amin b. 'Abidin, *Hashiyat radd al-mukhtar 'ala al-durr al-mukhtar: Sharh tanwir al-abshar fi fiqh madhhab al-imam Abi Hanifa al-Nu'man*, vol. 5, Cairo: Mustafa Babi al-Halabi, 1966, p. 273; *al-Fatawa al-Hindiyya*, vol. 3, Beirut: Dar al-ihya al-turath al-'Arabi, 1980, p. 208.

²⁴ For an example of approval of the use of *bay' bi'l-wafa*, see *al-Fatawa al-Hindiyya (ibid. n.23)*, vol.3, p.209.

outright.²⁵ This, perhaps, is the reason why the parties to the provision or taking of a loan quite often used several means simultaneously. By way of example, the records of the *shar‘i* courts show that in a loan agreement the interest is called *fa‘ida* or *murabaha* (hermeneutic means), with the lender and borrower also using the ‘double sale’ ploy (*‘ina*) or some other legal stratagem.²⁶

Were these ways and means able to free the faithful from unease regarding the Qur’anic proscription, dissipate the angst of the dissonance, and in short, turn interest into a valid and legitimate measure from the standpoint of Muslim religious law? It would seem that with regard to many ‘*ulama*, they could not.²⁷ Throughout the generations, and no less in recent centuries than in earlier ones, senior Sunni and Shi‘i ‘*ulama* continued to repudiate interest-bearing loans. Thus, for example, the ‘*ulama* of Syria’s main cities, such as Damascus, Aleppo and Hama, banned the taking of *fa‘ida* or *murabaha*, despite the guidelines or instructions of the central government in Istanbul approving it,²⁸ and ‘*ulama* in Iran continued to issue treatises condemning both *riba* and those who accumulated wealth from it.²⁹

A case in point illustrating the depth of disagreement in the ranks of the ‘*ulama* on the question of interest is the controversy over cash endowments (*awqaf al-nuqud*) in Istanbul in the 1540s.³⁰ These endowments effectively functioned as funds that gave loans for public or private purposes, with the borrower required to repay the principal with the addition of a stated sum, which to all intents and purposes was interest. The Ottoman ‘*ulama* approved the validity of these *awqaf* in the framework of the *shar‘i*

²⁵ Y. Linant de Bellefonds, “Volonté interne et volonté déclarée en droit musulman”, *Revue internationale de droit comparé*, 10 (1958), pp. 513-521.

²⁶ On the simultaneous use of both means, see, e.g., Abdul-Karim Rafeq, “Land Tenure Problems and their Social Impact in Syria around the Middle of the Nineteenth Century”, in Tarif Khalidi (ed.), *Land Tenure and Social Transformation in the Middle East*, Beirut: American University of Beirut, 1984, p. 389.

²⁷ Of particular importance, due to their great influence, are the writings of Abu Hamid al-Ghazali, who totally rejected interest. See *Ihya‘ ulum al-din*, vol.2, Beirut: Dar al-kitab al-‘ilmiyya, 1995, pp. 78-79. See also S.M. Ghazanfar (ed.), *Medieval Islamic Economic Thought*, London: RoutledgeCurzon, 2003, pp. 36-37.

²⁸ Abdul-Karim Rafeq, “The Syrian ‘Ulamā, Ottoman Law and Islamic Sharī‘a”, *Turcica*, 26 (1994), pp. 16-22. On the substantial reservations of *qadis* in Syria regarding the charging of interest, see Abdul-Karim Rafeq, “Relations between the Syrian ‘Ulamā’ and the Ottoman State in the Eighteenth Century”, *Oriente Moderno*, n.s. 18 (79) (1999), pp. 82-83; Dick Douwes, *The Ottomans in Syria: A History of Justice and Oppression*, London: I.B. Tauris, 2000, p. 79.

²⁹ See, e.g., the attitude of Muhammad Mahdi Niraqi to gaining wealth through charging interest, in Juan R.I. Cole, “Ideology, Ethics, and Philosophical Discourse in Eighteenth Century Iran”, *Iranian Studies*, 22 (1989), p. 26.

³⁰ For a detailed discussion of this affair, see Jon E. Mandaville, “Usurious Piety: The Cash Waqf Controversy in the Ottoman Empire”, *IJMES*, 10 (1979), pp. 289-308.

courts, and they were common in the sixteenth century. However, against the background of the rapid spread of these cash endowments, a senior Ottoman *'alim* of the time, Muhi al-Din Çivizada, appealed against their validity from a *shar'ī* standpoint. In a *fatwa* (responsum by a jurisconsult) written in 1545 he completely opposed this type of endowment because, inter alia, in the words of a contemporary Ottoman historian, they '...lead to opening the gates of usury' — in other words, to the forbidden use of interest.³¹ Apparently, Çivizada's stance prompted Sultan Sulayman Qanuni to issue a decree forbidding the establishment of new cash *waqfs* and also forbidding the *qadis* to register *awqaf* of this kind.³²

The *fatwa* and the sultanic decree aroused great controversy among the *'ulama*, and although it did not directly revolve around the issue of *riba*, the issue was one of the factors that caused the uproar. In the context of our discussion, the development that ended the affair is salient. Some two years after writing the above-mentioned *fatwa*, Çivizada died. Whether his demise contributed to the decision by the *shaykh al-Islam* of the time, Abu Su'ud Efendi, to issue a *fatwa* of his own on the disputed *awqaf*, or whether this derived from other factors, the *fatwa* by the *shaykh al-Islam* was highly influential: Abu Su'ud ruled that from the *shar'ī* standpoint, *awqaf al-nuqud* were valid.³³ The Ottoman historian al-Kafawi relates that the *'ulama* were unanimous in their support of Abu Su'ud's opinion and their rejection of the position of his opponent, Çivizada. This state of affairs enabled the sultan to issue a new decree stating that *awqaf al-nuqud* were valid, and the *qadis* were instructed to bring this decision to the attention of the public and take all necessary steps to ensure their validity.³⁴ This conclusion to the controversy among the *'ulama* in the heart of the empire at the time reinforced the legitimacy of interest on loans. Nevertheless, even after this affair, some *'ulama*, particularly in the Arab provinces where the imposition of interest on loans aroused opposition, protested.³⁵ A clear reflection of the tension

³¹ The text is cited in Richard C. Repp, "Qānūn and Sharī'a in the Ottoman Context", in Aziz al-Azmeh (ed.), *Islamic Law: Social and Historical Contexts*, London: Routledge, 1988, p. 139.

³² *Ibid.*

³³ *Ibid.*, pp. 140-141.

³⁴ *Ibid.*

³⁵ In 1585, a *qadi* of the Aleppo *mahkama*, after approving an interest rate of 15 percent, made sure that the record showed that the responsibility for charging interest on loans was the sultan's. In other words, the *qadi* believed that the charge is invalid, but he himself was unable, or not entitled, to disobey the ruler's orders. He left no room for doubt that in his opinion the interest is not legitimate. See Abdul-Karim Rafeq, "Making a Living or Making a Fortune in Ottoman Syria", in Nelly Hanna (ed.), *Money, Land and Trade: An Economic History of the Muslim Mediterranean*, London: I.B. Tauris, 2002, p. 115.

existing between the position of the state and that of the clerics is apparent in the conduct of *'ulama* and *qadis* in Syria during the eighteenth and nineteenth centuries: while in their treatises many of them rejected the taking of interest, the *shar'ī* courts repeatedly approved loans bearing interest at a wide range of rates,³⁶ including exorbitant rates of hundreds of percent per annum.³⁷

Interest Rates

A central question in the context of the proscription of interest and the ongoing dissonance that resulted is whether the circumstances of providing loans in Islamic communities actually affected interest rate levels. An answer to this question mandates an examination of what we know of the interest rates actually charged, and the entire gamut of factors that were likely to affect their collection.

Varied sources provide numerous data on interest rates, and although the range of interest rates is found to be wide, even in a given city over a short period, the most notable finding is that in most instances interest rates ranged between 10 and 20 percent. These rates appear at a high incidence both in internal sources — mainly *sijillat* (court registers), and external ones — mainly British and French consular trade reports. A recurring phenomenon is that these rates appear in documents dating from the sixteenth to the early twentieth centuries, and from numerous and wide-ranging provinces in the Ottoman Empire (Anatolia, the Balkans, the Fertile Crescent, the Arabian Peninsula and Egypt) as well as in Safavid and Qajar Iran. It would also appear that these rates were fixed for loans of small and large sums alike.³⁸ With this,

³⁶ See, e.g., the cases cited in the following studies: *Idem*, “Economic Relations between Damascus and the Dependent Countryside, 1743-71”, in A.L. Udovitch (ed.), *The Islamic Middle East, 700-1900: Studies in Economic and Social History*, Princeton: Darwin Press, 1981, pp. 674-675. Cf. *idem*, “The Impact of Europe on a Traditional Economy: The Case of Damascus, 1840-1870”, in Jean-Louis Bacqué-Grammont and Paul Dumont (eds.), *Économie et Sociétés dans l'Empire Ottoman (fin du XVIII^e – début du XX^e siècle)*, Paris: Éditions du CNRS, 1983, p. 431; *idem*, (*ibid.*, n. 26), pp. 388-389.

³⁷ Abraham Marcus, *The Middle East on the Eve of Modernity: Aleppo in the Eighteenth Century*, New York: Columbia University Press, 1989, p. 185.

³⁸ Numerous cases are found in the sources. The following are examples covering various regions in the Ottoman Empire and Iran at different periods. The sources cited are in chronological order of data from the sixteenth to the early twentieth centuries: Ö.L. Barkan, “Edirne Askeri Kasamina Ait Tereke Defterleri (1545-1659)”, *Belgeler* 3 (1966), p. 34 ;cited by Gerber (*ibid.*, n. 18), p. 130; Çağatay (*ibid.*, n. 17), p. 65; Rafeq (*ibid.*, n. 28) p. 17; Jennings (*ibid.*, n. 18) pp. 184, 188-190; Bistra A. Cvetkova, “Le crédit dans les Balkans, XVI^e-XVII^e siècles”, p. 306; Bacqué-Grammont and Dumont (*ibid.*, n. 36); Bruce Masters, *The Origins of Western Economic Dominance in the Middle East*, New York: New York University Press, 1988, p. 161; André Raymond, *Artisans et*

there were instances in which Muslim lenders debited borrowers with higher interest rates, from a few tens of percent to two or three hundred percent per annum.³⁹

Worthy of note are two other phenomena: first, the interest rates that non-Muslim lenders charged Muslim borrowers, and the loans provided by Muslim lenders to non-Muslim borrowers, also ranged along the rates noted above.⁴⁰ Second, in the European countries, too, where traditional banking was the main source of providing loans, the common interest rates in the late Middle Ages and early modern periods

commerçants au Caire au XVIII^e siècle, Damas: Institut Français de Damas, 1974, vol. 1, p. 281; Charles Issawi, *The Economic History of Turkey 1800-1914*, Chicago: University of Chicago Press, 1980, pp. 341, 343; [Thomas S.] Jago, "Report... on the Trade and Commerce of Damascus for the Year 1879", UK, FO, *Consular Reports*, Commercial No. 26 (1880), p. 1007; "Report by Consul [C. Beresford] Lovett on the Trade and Commerce of the Province of Asterbad for the Year 1881", *A&P*, CR 71 (1882), p. 1067; Charles Issawi, *The Fertile Crescent, 1800-1914: A Documentary Economic History*, New York: Oxford University Press, 1988, p. 234; Dr. de Fournoux, "L'Industrie, le commerce et l'agriculture en Perse" (part 2), *Bulletin de la société de géographie commerciale de Bordeaux*, 10 (1887), 17 January 1887, p. 35; Thomas S. Jago, "Report on the Trade and Commerce of Aleppo for the Year 1891", UK, FO, *DCR*, AS 1017 (1892), p. 14; Jamal al-Din al-Qasimi and Khalil al-'Azim, *Qamus al-sina'at al-Sha'imiyya*, vol. 2, Paris: Mutton, 1960, p.429; S.G. Wilson, *Persian Life and Customs*, New York, Fleming H. Revell Co., 1900, p. 283; Greenfield (*ibid.*, n. 18) p. 54. See also the data on interest rates in the Ottoman Empire, particularly Istanbul and Bursa, in the seventeenth - nineteenth centuries, in the following studies: Murat Çizakça, "Cash *Waqfs* of Bursa, 1555-1823", *JESHO*, 38 (1995), p. 347; Araks Şahiner, "The Sarrafs of Istanbul: Financiers of the Empire", M.A. thesis, Boğaziçi University, 1995, p. 45.

³⁹ Loans at an annual interest rate ranging from 20 to 40 percent were less common. The factors explaining this level of interest rates are related to the risk and uncertainty in granting credit. For examples of these rates, see: Cvetkova (*ibid.*, n. 38), p. 306; Şevket Pamuk, *A Monetary History of the Ottoman Empire*, Cambridge: Cambridge University Press, 2000, p. 81; Issawi, *Turkey* (*ibid.*, n. 38), p. 343; Jakob Eduard Polak, *Persien: Das Land und seine Bewohner*, vol. 2, Leipzig: F.A. Brockhaus, 1865, p. 188; "Report by Vice-Consul Jago on the Trade and Commerce, and Agriculture of the Vilayet of Syria and on the Trade and Commerce of Beyrout, Lattakia, Tripoli, and Sidon, during the year 1871", *A&P*, CR 58, 1872, p. 853; Issawi, *Fertile Crescent*, (*ibid.*, n. 38), p. 65; Heinrich Brugsch, *Im Lande der Sonne: Wanderungen in Persien*, Berlin: Allgemeiner Verein für Deutsche Literature, 1886, p. 241; George Lloyd, *Report upon the Conditions and Prospects of British Trade in Mesopotamia*, Board of Trade, Commercial Intelligence Committee, London, 1908, p. 66; M. Nikol'skii, "Torgovlia Giliana v 1908 godu", *SKD* vol. 2, 1909, pp. 120-121; Raymond (*ibid.*, n. 38), vol. 1, p. 282. The sources, including the *sijill* records, also reveal evidence of annual interest rates in excess of 40 percent, some even reaching 100 percent and over. It appears, however, that these cases were rare and apparently stemmed from circumstances in which giving loans entailed particularly high risk. See, e.g., Abraham Marcus, "Real Property and Society in the Premodern Middle East: A Case Study", in Ann Elizabeth Mayer (ed.), *Property, Social Structure, and Law in the Modern Middle East*, Albany: SUNY Press, 1985, p. 118; F. Stolze and F.C. Andreas, *Die Handelsverhältnisse Persiens: mit besondere Berücksichtigung der deutschen Interessen*, Gotha: Justus Perthes, 1885, p. 39; Wilson (*ibid.*, n. 28), p. 283; al-Qasimi and al-'Azam (*ibid.*, n. 38), vol. 2, p. 429.

⁴⁰ See, e.g., Benjamin Braude, "Venture and Faith in the Commercial Life of the Ottoman Balkans, 1500-1650", *International History Review*, 7 (1985), p. 533, and also Barkan and Ayverdi (*ibid.*, n. 18), p. xxx.

were close to those prevalent in the Muslim countries of the Middle East, i.e., between 10 and 15 percent per annum.⁴¹

Clearly, a series of economic factors (the demand for or the supply of loans), together with social, cultural and political factors, determined the actual level of interest rates. With regard to the nineteenth century, the following factors are particularly noteworthy:

1. Growth in economic activity and an increase in foreign trade in Middle Eastern countries during the second half of the nineteenth century⁴² brought about a rise in the demand for loans. This was spurred by an increase in current consumption (both public and private) as well as by extensive investment in local infrastructure and production.
2. The growth in the economic activity of the big Muslim merchants during the second half of the nineteenth century led to an increase in the fluid capital reserves at their disposal,⁴³ enabling them to expand the supply of loans in the local markets.
3. In places where lenders from non-Muslim communities (mainly Greek bankers) were able to raise fluid capital at relatively low interest rates outside the Islamic countries, it is reasonable to assume that this alternative had a moderating influence on interest rate levels.⁴⁴
4. Similarly, the establishment of European banks such as the Anglo-French Imperial Ottoman Bank, the British Imperial Bank of Persia, the Russian Discount Bank of Persia (Uchetno-ssudnyi bank Persii), or branches of British, French, German, Italian and other banks in Middle Eastern countries in the second half of the

⁴¹ Homer (*ibid.*, n. 11), pp. 89-143; Carlo M. Cipolla, *Money, Prices, and Civilization in the Mediterranean World, Fifth to Seventeenth Century*, New York: Gordian Press, 1967, pp. 63-65.

⁴² On the growth in the volume of foreign trade in the Ottoman Empire, Iran and Egypt in the second half of the nineteenth century, see Charles Issawi, *An Economic History of the Middle East and North Africa*, New York: Columbia University Press, 1982, pp. 23-25; Gad G. Gilbar, "The Opening up of Qājār Iran: Some Economic and Social Aspects", *Bulletin of the School of Oriental and African Studies*, 49 (1986), p. 76; Şevket Pamuk, *The Ottoman Empire and European Capitalism, 1820-1913*, Cambridge: Cambridge University Press, 1987, pp. 149, table A1.1.

⁴³ Gad G. Gilbar, "The Muslim Big Merchant-Entrepreneurs of the Middle East, 1860-1914", *Die Welt des Islams*, 43 (2003), pp. 4-12.

⁴⁴ In the 1850s and '60s, Greek bankers in Istanbul, most notably A. Syngros, borrowed money on the European money market at an interest rate of 3 to 4 percent. This money was then loaned to the Ottoman treasury at rates ranging from 12 to 18 percent. On these transactions, see Haris H.A. Exertzoglou, "Greek Banking in Constantinople, 1850-1881", Ph.D. Thesis, King's College – University of London, 1986, p. 133-134; Edhem Eldem, *A History of the Ottoman Bank*, Istanbul: Ottoman Bank Historical Research Center, 1999, p. 73.

nineteenth century, which in numerous cases charged their customers interest rates lower than those charged by local lenders,⁴⁵ also brought about a moderation in interest rate levels, particularly in those locations where foreign banks were accessible to the local population.

5. Obviously, interest rates are influenced by the degree of risk the lender takes when placing funds at the borrower's disposal, and the greater the risk, the higher the interest rate set by the lender. In the Ottoman Empire and Qajar Iran obtaining guarantees, and even more so their realization, was an extremely complex matter. Local lenders quite often provided unguaranteed loans, and in these cases the interest rates were tens of percent higher than the accepted rates on guaranteed loans.⁴⁶ Regarding loans to the powerful, many of whom were deeply in debt to the Muslim *tujjar* in the late nineteenth century, getting them to repay their debts was no small matter.⁴⁷ The lenders had to avoid direct confrontation with these borrowers lest they come to harm.
6. There are indications that some lenders adapted their interest rates to situations in which the local economies were beset by high (double figure) inflation rates. In other words, the lenders acted to obtain real positive interest under conditions of rapid decline in the value of money. To what extent this pattern was prevalent, and how the lenders calculated inflation rates, is unclear.
7. In addition to the above-mentioned factors, which are related to economic developments or processes, a factor linked to the Ottoman political system apparently had a moderating influence on interest rate levels during a certain period. Clause 103 of the Ottoman criminal law of 1539-41 prohibited charging

⁴⁵ For data on interest rates charged by foreign banks active in the Middle East at the end of the nineteenth and the early twentieth centuries, see M.L. Tomar, *Ekonomicheskoe polozhenie Persii*, St. Petersburg: Ministerstvo Finansov, 1895, p. 118; "List of Loans", 31 October 1907, Tehran, 22 November 1907, Letter File 595.3, Imperial Bank of Persia, BBME Records; Ernest Weakley, *Report upon the Conditions and Prospects of British Trade in Syria*, Board of Trade, Commercial Intelligence Committee, London, 1911, pp. 23, 24-25; Arthur Guy, "Situation économique de la région de Caïffa et de Saint-Jean-d'Acre, années 1909-1910", MCI, RC 1058 (1913), p. 53; L.A. Sobotsinskii, *Persia: Statistiko-economiceskii ocherk*, St. Petersburg: Krovitskii, 1913, pp. 176-177; Eldem (*ibid.*, n. 44), p. 278.

⁴⁶ In the 1880s, Muslim merchants (of Hadharmaut origin) in Java charged borrowers who had sufficient guarantees interest rates of 25 to 30 percent, while the charge on small sums without guarantees could reach an annual rate of 200 percent. See L.W.C. van den Berg, *Le Hadramout et les colonies Arabes dans l'Archipel Indien*, Batavia: Imprimerie du Gouvernement, 1886, pp. 136-138.

⁴⁷ Asghar Mahdawi and Iraj Afshar, *Asnad-i tijarat-i Iran dar sal 1287 qamri*, Tehran: 'Ilmi wa-farhangi, 1380/2001, p.134.

interest at a rate in excess of 10 percent.⁴⁸ Although not specifically stated, this clearly refers to an annual rate. Another version of the law from the same period states that maximal interest should not exceed 15 percent. In those cases in which the lender collected interest in excess of this rate, the borrowers were entitled to demand the return of the difference. The clauses of the law also determined that heavy penalties be imposed on anyone charging interest rates higher than those stipulated in the clauses of the *qanun*, including banishing the lender and his family from their hometown.⁴⁹ It seems that as long as the central government succeeded in effectively imposing its authority in the provinces, this criminal law had a certain influence on interest rate levels. An indication of this may be found in the records of several *shar‘i* courts from the late sixteenth and the first half of the seventeenth centuries.⁵⁰ However, once Istanbul’s enforcement capability declined, it is doubtful whether criminal law was an important factor in actually determining interest rate levels.⁵¹ Still, in later periods too the central government continued its attempts to moderate the rise in interest rates.⁵²

8. When assessing the possible effects of the Qur’anic proscription on interest, and the various attempts to resolve the tension between commandment and need, it is instructive to examine the levels of interest rates collected by religious institutions from borrowers, as well as the decisions of *‘ulama* who managed large financial systems, regarding issues connected with interest. Clerics, and certainly senior *‘ulama*, managed many cash *waqfs*. These fluid funds were used, inter alia, to grant loans whose interest rate generally stood between 10 and 15 percent, albeit

⁴⁸ Heyd (*ibid.*, n. 19), p. 122 and notes 2 and 3.

⁴⁹ *Ibid.*, p. 304. Barkan and Ayverdi note that lenders who charged exorbitant interest rates (at the end of the sixteenth and the beginning of the seventeenth centuries) were banished to Cyprus. See *ibid.*, p. xxxviii.

⁵⁰ See, e.g., the interest rates cited by Jennings (*ibid.*, n. 18), pp. 184, 188-190; Gerber (*ibid.*, n. 18), pp. 130-131. However, it seems that during this period there were quite a number of cases in which lenders significantly deviated from the rates permitted by the *qanun*, and the state exerted its authority and imposed heavy penalties on them. See Barkan and Ayverdi (*ibid.*, n. 18), pp. xxxvii-xxxviii.

⁵¹ See the references in note 39 above to interest rates exceeding 15 percent.

⁵² At the end of Muharram 1268 / November 1851, an imperial *firman* was sent to all the provinces which determined a maximal annual interest rate of 8 percent on loans to peasants (against a guarantee of future crops) and 15 percent on loans from the *waqf* funds. See “Translation of a Firman for the reduction and regulation of the rate of interest on money”, Inclosure no. 2 in Richard Wood to Viscount Palmerston, Damascus, 28 January, 1852, FO 78/910, NAUK. Cf. Rafeq (*ibid.*, n. 36), 431; *idem* (*ibid.*, n. 26), p. 389. Another *firman*, of April 1887, fixed the maximal annual interest rate at 9 percent. On both *firman*s, see Zouhair Ghazzal, *The Grammars of Adjudication: The Economics of Judicial Decision Making in fin-de-siecle Ottoman Beirut and Damascus*, Beirut: Institut Francais du Proche-Orient, 2007, pp. 222, 587-591.

there are examples of higher rates of up to 20 percent.⁵³ Murat Çizakça, who conducted a comprehensive study of the *awqaf al-nuqud* in Bursa in the sixteenth to nineteenth centuries, found two phenomena that bore influence on the interest rates charged to borrowers: (i) the *awqaf nazirs* (administrators) charged the borrowers an extra 2 or 3 percent as a kind of commission for facilitating the loan;⁵⁴ (ii) parallel to loans given by *'ulama*, *awqaf* monies were also made available to *sarrafs* (money changers and lenders), who used the money in the credit market, charging interest of 20 percent and over.⁵⁵ It appears, therefore, that the clerics' activity in the capital market did not deviate from standard practice in that they accepted the principle that providing a loan has economic value, and that it justifies an addition to the principal. In the framework of the *awqaf al-nuqud* dedicated to public purposes, the *'ulama* had an opportunity to fulfill the Qur'anic precept of providing interest-free loans. However, by taking such a step they would have lost the potential yield of the *awqaf*.

9. Beyond their direct involvement in the credit market, the positions taken by the *'ulama* as *qadis* in the courts, in cases of loans and interest, had a considerable influence on the level of interest rates. As will be shown below,⁵⁶ at times and in places where *qadis* who opposed the charging of interest from a religio-judicial standpoint heard cases in court, lenders were faced with uncertainty regarding the return on their investment. In dealing with this uncertainty, it is reasonable to assume that the lenders raised interest rates over and above the existing levels.

The *Tujjar* as Lenders

Like their non-Muslim counterparts, big Muslim merchants held cash reserves and ingots of precious metals to facilitate their transactions, and were sought out by potential borrowers.⁵⁷ The demand for loans increased in the second half of the nineteenth century as economic systems in the Middle East underwent a process of

⁵³ Barkan and Ayyerdi (*ibid.*, n. 18), p. xxxi; Masters (*ibid.*, n. 38), p. 162; Çizakça (*ibid.*, n. 38), pp. 332, 347, fig. 10.

⁵⁴ Murat Çizakça, *A History of Philanthropic Foundations: The Islamic World from the Seventh Century to the Present*, Istanbul: Boğaziçi University Press, 2000, p. 54.

⁵⁵ *Ibid.*, (*ibid.*, n. 38), p. 348; *ibid.*, (*ibid.*, n. 54), p. 54.

⁵⁶ See below, pp. 20-28 [notes 68-84].

⁵⁷ Muslim big merchants and *sarrafs* were not the only ones who gave loans. Lenders in Muslim communities in the Middle East also included rulers and senior bureaucrats in the center and the provinces, Janissaries, *'ulama*, big landowners and even artisans. Yet, as a group, the big merchants were by far the dominant factor in this sector.

monetization; legal arrangements for the mortgage of assets became institutionalized; and economic relations between the countries of the Middle East and the global economic system expanded. The demand for loans came mostly from rulers, senior officials, *'ulama*, big landowners and tribal leaders, but also from retail merchants, artisans and *fallahin* from various regions of the Ottoman Empire and Iran.⁵⁸

Aside from providing interest-bearing loans, the big Muslim merchants were also active in futures, known as *salam* or *bay' salam* arrangements. In accordance with these arrangements, the merchant or his agent reached an agreement with the manufacturer or supplier for the purchase of future commodities, which at the time the agreement was drawn up were still nonexistent. The parties agreed on the quantity to be supplied, usually several months after the agreement was drawn up, and on the commodity unit price. On drawing up the agreement (either verbally or in writing), the merchant paid the agreed sum in cash, and the payment accorded the transaction binding validity.⁵⁹

Salam transactions were generally highly profitable for the purchaser, particularly with regard to agricultural produce. Their high incidence derived from the fact that they met the immediate needs both of the sellers – peasants, artisans and tribesmen – and the buyers – merchants and manufacturers. For peasants the *salam* arrangements provided ready cash. The peasants' need for cash increased as the nineteenth century progressed in view of the effect of the monetization processes on their household economy. For merchants the *salam* arrangements ensured the agricultural yields vital for advancing their business. Some sought to ensure raw material for their industries (such as olives for soap production or wool for carpet weaving), while others sought

⁵⁸ The range of loans given by the *tujjar* is extensive. See, e.g., J.G. Lorimer, *Gazetteer of the Persian Gulf, Oman and Central Arabia*, vol. 1, pt. 2, Calcutta: Government Printing, 1915, pp. 2227, 2232-2236; Hanna Batatu, *The Old Social Classes and the Revolutionary Movements of Iraq*, Princeton: Princeton University Press, 1978, pp. 292-293; Ahmad Ashraf, *Mawani 'i tarikh-yi ruzhd-i sarmaya-dari dar Iran: dawrah-yi Qajariyya*, Tehran: Intisharat-i zamina, 1359/1980, p. 59; Stephen R. Grummon, "The Rise and Fall of the Arab Shykhdom of Bushire, 1750-1850," Ph.D. dissertation, John Hopkins University, 1985, p. 245; Marcus (*ibid.*, n. 39), p. 119; Mishary Abdalrahman al-Nuaim, "State Building in a Non-Capitalist Social Formation: The Dialectics of Two Modes of Production and the Role of the Merchant Class, Saudi Arabia, 1902-1932," Ph.D. dissertation, University of California, Los Angeles, 1987, pp. 252, 254, 295-296, 309-310; Anders Bjørkelo *Prelude to the Mahdiyya: Peasants and Traders in the Shendi Region, 1821-1885*, Cambridge: Cambridge University Press, 1989, p. 126; Mahdawi and Afshar (*ibid.*, n. 47), p. 134.

⁵⁹ See al-Masri (*ibid.*, n. 22), pp. 358-359, 364-365, 369-370; J.D. Latham, "Salam," *EF*, vol. 8 (1995), pp. 914-915; Shaykh 'Ali al-Khafif, *Ahkam al-mu'amalat al-shar'iyya*, Cairo: Dar al-fikr al-'Arabi, 1966, pp. 428-430. For arguments on the legitimacy of the *salam* arrangement from a *shar'i* viewpoint, see Saleh (*ibid.*, n. 2), p. 89.

to underwrite wide-ranging export transactions (opium, tobacco, pearls, etc.) A further advantage for both parties was that the *salam* arrangements freed them from the concern with marketing or purchasing produce after the ripening of the harvest.⁶⁰ Another important advantage, in a different context, was that the Sunni and Shi'i *fuqaha* did not consider *salam* transactions to include interest, provided that the rules laid down by each school were observed.⁶¹

Nevertheless, in effect, interest was hidden in *salam* transactions, and the parties involved in them were aware of this. Interest was included in the *salam* transaction when the parties agreed on the price of the future commodity unit, since the price was considerably lower than the estimated market price. While the future price was indeed an estimate, it may be reasonably assumed that the merchants were sufficiently experienced in making decisions that would minimize potential losses. A cautious conclusion to be drawn from the hearings held in the various *shar'i* courts is that the merchants did not usually err, and there was a considerable positive difference — of tens of percent — between the agreed price by the merchant and peasant, and the price actually obtained in the markets after the crop had ripened.⁶²

The interest rate level in *salam* arrangements was therefore a product of the difference between the advance price and the market price. This rate might also be negative, i.e., the merchant might incur a loss from a *salam* transaction, such as when market prices fell sharply as a result of an unexpectedly large supply and/or an unexpectedly sharp drop in demand.

A clear manifestation of the presence of interest in *salam* transactions can be found in agreements drawn up in various Middle Eastern regions. In Iran, for instance, agreements for the purchase of wool from tribesmen explicitly stipulated that in cases in which the seller or supplier was unable to supply the product, or for some reason

⁶⁰ For cases of *salam* arrangements in various agricultural and craft branches, see H.W. Maclean, *Report on the Condition and Prospects of British Trade in Persia*, Board of Trade, Commercial Intelligence Committee, 1904, UK, PP, *Accounts and Papers*, vol. 95 (1904), pp. 45, 63; A. Ias, "Khlopkovodstvo v Khorosane", *SKD* vol. 5, 1905, pp. 349-350; Lloyd (*ibid.*, n. 39), p. 45; Greenfield (*ibid.*, n. 18), pp. 47-48; Ahmad Ahmad al-Hitta, *Ta'rikh al-zira'a fi Misr fi 'ahd Muhammad 'Ali al-kabir*, Cairo: Dar al-ma'arif, 1950, pp. 100-101; (on the matter described by Hitta, see also Kenneth M. Cuno, "Commercial Relations between Town and Village in Eighteenth and Early Nineteenth-Century Egypt", *Annales Islamologiques*, 24 [1988], p. 130); Batatu (*ibid.*, n. 58), p. 293; Issawi, *Turkey* (*ibid.*, n. 38), p. 341; James A. Reilly, *A Small Town in Syria: Ottoman Hama in the Eighteenth and Nineteenth Centuries*, Oxford: Peter Lang, 2002, p. 118, n. 7.

⁶¹ Saleh (*ibid.*, n. 2), pp. 89-96.

⁶² Barkan and Ayverdi (*ibid.*, n. 18), pp. xxxvii-xxxviii; see also below, p. 27 [Nablus, 1862].

did not want to do so, he had the right to cancel the *salam* agreement on the condition that he returned the sum he received (the principal) with a 12 percent addition.⁶³ It is therefore no wonder that some *qadis* thought that the difference between the two prices was synonymous with interest, and expressed this position in their rulings in the *mahkama*.⁶⁴

Salam arrangements could also be challenged from another aspect. Sunni *fuqaha* rejected trade transactions entailing risk (*gharar*). This religio-legal position focuses on the uncertainty regarding a product that does not exist at the time the transaction is executed (*'adam*), or with regard to ignorance or lack of knowledge (*jahala*) of the product. Transactions of this kind are forbidden, as they contain elements of a gamble (*maysir*), on which an absolute Qur'anic proscription is imposed.⁶⁵

Salam arrangements are indeed characterized by the two risks cautioned against by Sunni jurists: first, purchasing produce that does not exist at the time the agreement between seller and buyer is drawn up — for example, wheat purchased and paid for by the merchant that has not yet ripened and which may not ripen due to drought, fire, pests, and so forth. Second, when the agreement between the seller and buyer is drawn up, there is no knowledge regarding the quality of the produce. How, for instance, can the price of wool be determined if its standard of cleanliness is unknown; the price of grapes if their degree of juiciness is unknown; the price of dates if their degree of sweetness is unknown, and so on. Despite these risks, jurists from all the schools of thought permitted *salam* arrangements. It seems that in this regard, too, they bowed to the necessities of day-to-day life in their understanding that the proscription of this arrangement would harm the sellers, most of whom belonged to the lower strata of society. In order to alleviate the situation of the seller, most *fuqaha* agreed that in cases where the seller was unable to supply the buyer with the agreed produce, the buyer had to wait until this became possible. The buyer was not entitled to any compensation for the period elapsing until the produce was delivered. Furthermore, the seller could appeal to the *mahkama* and ask the *qadi* to cancel the agreement based on the *shar'ī* proscription of gambling.

⁶³ Maclean (*ibid.*, n. 60), p. 63.

⁶⁴ See below, pp. 28-29 [al-Salt, 1902].

⁶⁵ Frank E. Vogel and Samuel L. Hayes, III, *Islamic Law and Finance: Religion, Risk and Return*, The Hague: Kluwer Law International, 1998, pp. 91-93.

The *Mahkama* Faces Interest and *Salam*

Loan agreements are prone to misunderstandings and their execution is often bound up with numerous difficulties, since repayment is sometimes akin to drawing blood from a stone. The court played a leading role in upholding the contractual element of the financial system. Borrowers who did not meet their obligations were brought before a *qadi* for a hearing after other means had been tried. The *mahkama* also heard borrowers' claims against lenders pertaining to disputes over interest rate levels or over the amounts that had already paid (or not) to the lender.

Disguised interest was not the only reason for misunderstandings and disputes between the parties, but it undoubtedly was a contributory factor, since it was fertile ground for each party's understanding or interpretation of the agreement as it saw fit. Hence, the *sijillat* include numerous descriptions of litigations and the rulings of the *qadis* on matters of loans and interest.

Details of these rulings have been provided by historians who studied *sijill* documents and other sources. A selection of these rulings, relating to litigations heard mainly in *shar'i* courts throughout the Ottoman Empire from the end of the sixteenth to the early twentieth centuries, is presented below.⁶⁶ Although this selection does not constitute a representative sample of all the litigations heard on interest in the various *mahkamas*, these cases can shed light on issues touching on the conditions of Muslim *tujjar* business activity, as well as on an important facet of their relations with the *'ulama*.⁶⁷

al-Quds, 1599⁶⁸

At the end of March or the beginning of April 1599, Shams al-Din b. Hasan submitted a claim to the *mahkama* in al-Quds (Jerusalem) against three of the city's Jewish residents. He testified that he had loaned them a sum equivalent to 360 gold *sultani*

⁶⁶ The selection of cases cited herein does not contain any hearings from *mahkamas* in Qajar Iran since thus far no nineteenth-century *shar'i* court records have been found. Games Greenfield, who had extensive knowledge of the Iranian legal system at the beginning of the twentieth century, wrote that although judges were expected to record court proceedings, in fact there were no legal archives in the country ("Gerichtsarchive fehlen"). See Greenfield (*ibid.*, n. 18), p. 13.

⁶⁷ Notably, the focus of the works citing these cases is not the issue of interest.

⁶⁸ According to al-Quds *sijill*. See Amnon Cohen and Elisheva Simon-Pikali, *Yehudim be-veit ha-mishpat ha-Muslemi: Hevra, kalkala ve-irgun qehilati bi-Yerushalayim ha-'Othmanit, ha-me'ah ha-shesh-esrei*, Jerusalem: Yad Izhak Ben-Zvi, 1993, p. 32.

coins and demanded that the borrowers repay, on the account of the principal, a sum equivalent to 50 gold *sultani*. The *qadi*'s request that he provide the court with evidence of his claim regarding the sum of the principal (360 gold *sultani*) was not answered by Shams al-Din. The three borrowers (the respondents) told a different story. According to them, four years before the *mahkama* hearing they borrowed a sum equivalent to only 120 gold *sultani* from Shams al-Din. Later in the hearing, according to the court records, they said that 'Each year he would calculate 13 [coins] for 10 [coins that they borrowed from him] and take (this) from them [as] interest'.⁶⁹ Hence, the lender charged the borrowers interest at an annual rate of 30 percent. The borrowers, too, had no evidence on which to base their case. At the *qadi*'s behest, the three 'swore by Allah the magnified'⁷⁰ to the veracity of their statement. Shams al-Din's testimony that he gave a substantial loan to non-Muslims for a protracted period without charging interest did not appear credible to the *qadi*, and therefore he accepted the version of the three borrowers.

Once the question of the size of the principal was clarified, the borrowers attacked the rate of interest, claiming that the lender charged them an annual interest rate of 30 percent. Although they did not specifically state that the lender charged them compound interest on the debt, a calculation using this formula for a four-year period comes to a total of 360 gold *sultani* (a principal of 120 plus 240 interest). Noteworthy from the hearing is the fact that the lender did not contend that he never demanded, not to mention pocketed, monies originating in interest payments. The borrowers, who had properly prepared their appearance before the *qadi*, presented a copy of a *fatwa* written by the *mufiti* Jaralla b. Abu Lutf on the prohibition of charging interest. This '*alim* reiterated the basic approach of the majority of *fuqaha*, i.e., any addition to the principal is expressly forbidden: '... (the *qadi*) will order the man (the lender) to take the sum of his principal [only], since the addition is forbidden; should he (the lender) not do so, then he (the *qadi*) will have him flogged, punished and humiliated...'⁷¹

Despite these unambiguous words, the *qadi* could have approved an interest rate of 10 or even 15 percent, since the Ottoman criminal code promulgated throughout the provinces of the Ottoman Empire over 50 years earlier permitted the collection of

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ The square brackets appear in the Hebrew translation, *ibid.*, p. 33. The parentheses are mine.

such rates.⁷² At the conclusion of the hearing, however, the *qadi* ruled that the borrowers were obliged to repay only the principal. He exempted them from any additional payment and even stipulated that if the lender ‘had taken more than this (the sum of the principal), he must return it to them’.⁷³ From the information imparted by the lender it appears that over the years preceding the *mahkama* hearing he had indeed collected substantial sums as interest. If the borrowers ultimately managed to compel him to implement the verdict, then for him this transaction was not a success. He surely did not expect this ruling of the *qadi* when he decided to take the three borrowers to court.

Trabzon, 1639⁷⁴

In May 1639, a number of peasants from the district (*qaza*) of Maçuka (northeast Anatolia) filed a claim in the Trabzon *mahkama* against Mehmet, also known as Zorbaci. According to the peasants, they borrowed 10 *kurus* from Mehmet but when they came to repay the loan (the elapsed time is unclear) he demanded 24 *kurus*. The borrowers gave him this sum (the principal plus interest), but later approached the *qadi* claiming that the interest demanded and received by Mehmet contravened *shar‘i* law and that the entire affair constituted an act of oppression (*ta‘addi*). In his defense, Mehmet denied the charge and claimed that he had loaned them 24 *kurus* from the outset, i.e., he had received only the principal and that in fact he had not collected any sum whatsoever as interest. Mehmet had no evidence proving that he had loaned them the sum he cited. The *qadi*, for his part, was persuaded that the peasants had spoken the truth and obliged him to give them back 12 *kurus*. In other words, by accepting the borrowers’ version the *qadi* approved the principal and the payment of interest of 2 *kurus* to the lender. The interest rate allowed by the *qadi* is unknown, since the time elapsed until the repayment of the loan is unclear. Assuming that it was repaid after a year, then the interest rate approved amounted to 20 percent, which as far as is known was the prevailing rate in a number of Anatolian provinces at the time. According to

⁷² Heyd, (*ibid.*, n. 19), p. 25.

⁷³ Cohen and Simon-Pikali (*ibid.*, n. 68), p. 33.

⁷⁴ Trabzon *sijill* cited in Ronald Jennings, “The Society and Economy of Maçuka in the Ottoman Judicial Registers of Trabzon, 1560-1640”, in Anthony Bryer and Heath Lowry (eds.), *Continuity and Change in Late Byzantine and Early Ottoman Society*, Birmingham: The University of Birmingham Centre for Byzantine Studies, 1986, p. 146.

the criminal code of 1541, the *qadi* could have imposed a heavy penalty on the lender because of his rapacity. It does not appear that such a penalty was indeed imposed.

Aleppo, 1641 ⁷⁵

In January 1641, before the Aleppo *mahkama*, Safa bint ‘Abdallah filed a suit against Mustafa Çavus b. Darviş Mehmet Effendi for a debt of 120 *kurus* — the balance of the principal of 200 *kurus*. In the course of the hearing before the *qadi*, it transpired that Mustafa had already repaid a sum of 140 *kurus* to Safa. She did not deny this but claimed that of this sum only 80 *kurus* were used for the repayment of the principal, and that the balance paid to her by Mustafa, 60 *kurus*, was interest on the loan. Hence, according to her, the balance of the debt stood at 120 *kurus*. As the time that elapsed from the date of the loan is unknown, the interest rate cannot be determined. The *qadi* totally rejected the charging of interest and obliged the borrower to repay only the balance of the principal – 60 *kurus*, i.e., he recognized the whole sum that had been transferred to the lender as repayment of the principal. Safa bint ‘Abdallah was not awarded any consideration for the loan she provided, and actually incurred a loss, as the suit entailed both direct and indirect expenses.

Aleppo, 1749-1771 ⁷⁶

Between 1749 and 1771 at least five different borrowers approached the Aleppo *mahkama* with complaints of interest payments they had been charged and which had in fact been handed over to the lenders. The annual interest rates ranged from 19.7 percent, through 45 percent, to an incredible 300 percent. In all these cases, including the loan bearing 19.7 percent interest, the court rejected the charging of interest and demanded that the lenders return the entire sum collected as interest payments to the borrowers. It is unclear what caused the borrowers to approach the *mahkama* after they had already paid the interest. Perhaps they knew or assumed that the particular *qadi/s* sitting in judgment at that time systematically rejected claims for payment of interest and could be expected to order the return of the sums collected, especially in cases in which the lenders went too far in their rapacity.

⁷⁵ Aleppo *sijill* cited in Masters (*ibid.*, n. 38), p. 160.

⁷⁶ Aleppo *sijill* cited in Marcus (*ibid.*, n. 37), p. 185.

Lucknow, 1806⁷⁷

In 1806, the *mahkama* in Lucknow (the capital of Awadh, southeast of Delhi) heard a prolonged and wearying suit pertaining to a particularly large loan, its repayment and the accumulated interest. The case went back to the end of the 1780s when one of Iran's biggest merchants of the time, Hajji Karbala'i Muhammad Tihrani,⁷⁸ loaned a sum of 228,438 rupees to Hasan Riza Khan, 'chief minister' of Awadh. This sum was part of a donation totaling 700,000 rupees by the government of Awadh to finance the excavation of a canal between the central Euphrates and the city of Najaf. The canal was indeed excavated and water flowed through it to the benefit of the citizens of Najaf, but the loan, which should have been repaid in 1792, was not redeemed. It was a large sum and the merchant-lender repeatedly entreated the chief minister of Awadh to uphold his undertaking, but to no avail. In time, both the merchant, Hajji Tihrani, and the chief minister, Hasan Riza Khan, passed away, and the huge debt remained. In 1806, fourteen years after the loan should have been repaid, and after an approach was made by the ruler of Iran, Fath 'Ali Shah, to the *nawab* of Awadh, Sa'adat 'Ali Khan, requesting him to act on the repayment of the loan, the affair was brought before the *shar'i* court in Lucknow. In addition to the principal, Mirza Riza, son of the Iranian merchant, claimed 150,010 rupees as interest on the principal accrued over nearly two decades. This sum represents an average nominal interest rate of about 3.0 percent, low by any yardstick. The judge denied the suit out of hand, including the demand for repayment of the principal, for several reasons, one of which was that the taking of interest was prohibited by the *shari'a*.⁷⁹ As far as Mirza Riza was concerned, the *qadi*

⁷⁷ See Juan R.I. Cole, "Indian Money' and the Shi'i Shrine Cities of Iraq, 1786-1850", *Middle Eastern Studies*, 22 (1986), pp. 463-464.

⁷⁸ The 1780s witnessed increased commercial activity by Iranian Muslim merchants in a number of regions of India, and settlements of these merchants were established or grew considerably in Bombay, Madras, Calcutta and other cities. The *tujjar* settlement in Calcutta grew to such an extent that in 1830 they petitioned the ruler of Iran, Fath 'Ali Shah, to appoint a *malik al-tujjar* from among them. See Grummon (*ibid.*, n. 58), pp. 232-234. Prominent *tujjar* continued their commercial activities in Iran through their relatives there.

⁷⁹ Cole's version is based upon documents he found in the archives in New Delhi. A different version of the reasons for denying the demand for repayment of the principal and interest is seen in a dispatch dated December 1806 from the Awadh chief minister to the British Authorities in Fort William, which I found in the India Records Office in London. It states: '...the year before last the cause [*sic*] was brought forward in the Court... the Haujee's Vakeels [representatives of the late Hajji Karbala'i Tihrani] having failed to produce the Documents which are necessary to establish the validity of the Haujee's Claim according to Law, the proceedings of the cause have been suspended'. Apart from this, the missive states that the lender's heirs cannot be compensated since the borrower's debts were several times greater than the value of the assets he left on his death, which had already been divided among other creditors, and no property remained with which to compensate the lender. It is most likely that beyond the *mufiti*'s ruling there were other reasons for

had deprived him of 378,446 rupees (the principal plus interest), to which he believed he was entitled. Whether he or his heirs pursued the struggle to obtain this sum is unclear. There can be no doubt that the judge imposed a heavy penalty on Tihrani's heirs for, among other reasons, the transgression of the father who provided a loan with forbidden interest, even though its rate was very low.

Beirut, 1846⁸⁰

In December 1846 a claim for the payment of the balance of a loan in the sum of 87,029 *kurus* was filed in the Beirut *mahkama* on behalf of Amir Khalil b. Bashir Shihab (the claimant) against the Dumanis family (the respondents). From the *sijill* records it transpires that the claimant provided the respondents with a loan in the sum of 110,000 (or 100,000) *kurus*. When the agreement between them was drawn up, both parties agreed on an addition to the principal of 87,029 *kurus*. Needless to say, this amount was in fact the interest on the loan, and the matter was arranged in the accepted form of a 'dual sale'. Obviously, the term *riba*, or any of its legitimate forms, was not mentioned in the court's records. Unfortunately, because the time span of the loan is not mentioned in the documents, it is impossible to calculate the interest rate

The borrowers — the Dumanis — did not deny their consent to pay the additional sum at the time the agreement was drawn up. In fact, however, while they repaid the principal, they adamantly refused to pay any sum whatsoever on account of the interest. For this reason the lender, Amir Khalil b. Bashir, petitioned the court to compel the borrowers to honor the agreement. The affair did not end with the *qadi*'s ruling. It transpires from the *sijill* records that both parties agreed that the lender would receive, in addition to the principal, the sum of 30,000 *kurus* only (instead of 87,029 *kurus*), i.e., only one third of the claimed amount. The chain of events inside or outside the *mahkama* that led the parties to reach this compromise agreement is unknown. It may be assumed that both lender and borrowers realized that the *qadi* would not approve the full sum claimed by the lender, but also that he would not completely acquit the borrowers. It is conceivable that the *qadi* himself acted, either

the loan not being repaid. See The Nabob Vizier to John Monckton (received 14 November 1806), no. 30 in Fort William, 11 December 1806, P/117/58, IOR.

⁸⁰ Beirut *sijill* cited by Ghazzal (*ibid.*, n. 52), pp. 187-193.

directly or indirectly, to reach the compromise. Whatever the proceeding, in the end the lender did not see the *qadi* compel the borrowers to honor the agreement undertaken by them, and the actual interest rate of the loan was far lower than the rate agreed upon by the parties when the transaction was made.

Nablus, 1862⁸¹

In January 1862 the *mahkama* of Nablus (Palestine) was called upon to resolve the question of whether the difference between the quantity of produce agreed upon in a *salam* agreement and the quantity that the owner of the yield actually transferred to the purchaser after the crop had ripened, constituted interest. On the face of it, the details revealed to the *qadi* were simple: after receiving payment on account for olive oil, a *fallah* from the village of Awarta undertook to supply 68 jars of olive oil, once the crop had ripened, to a buyer who paid the advance. The peasant supplied only 42.5 jars and another three *uqiyyas* and argued in court that the difference between the two quantities, some 25 jars, was in fact interest. Since *salam* arrangements do not openly include interest charges, it is reasonable to assume that the borrower translated the advance into units of olive oil in accordance with market prices at the time the crop ripened, and reached a quantity of 42.5 jars. The difference between the quantities, according to the borrower, exceeded the principal and should therefore be regarded as interest. Since interest is forbidden, he was, in his view, exempted from supplying additional olive oil. The *qadi* denied the *fallah*'s claim and accepted the purchaser's position, despite the significant difference between the agreed price and the price actually obtained on the market. He did not view this difference as interest, and therefore ruled that the buyer was entitled to the full quantity of olive oil as agreed between the parties when the agreement between them was drawn up.

al-Quds, 1887⁸²

⁸¹ Nablus *sijill* cited in Beshara Doumani, *Rediscovering Palestine: Merchants and Peasants in Jabal Nablus, 1700–1900*, Berkeley: University of California Press, 1995, pp. 137-138.

⁸² al-Quds *sijill* cited in Amnon Cohen, Elisheva Ben-Shimon-Pikali and Eyal Ginio, *Yehudim be-veit ha-mishpat ha-Muslemi: Hevra, kalkala ve-irgun qehilati bi-Yerushlayim ha-'Othmanit: ha-me'a ha-tsh'-esrei*, Jerusalem, Yad Izhak Ben-Zvi, 2003, p. 435, n. 2.

In September 1887 a claim was filed before the al-Quds *makhkama* against the heirs of ‘Abd al-Rahman Hadutha, who had died sometime earlier, in the matter of a loan that was given to the deceased in June 1884 by Ya‘aqub b. Malka al-Mughrabi, a subject of France. The heirs were sued for repayment of the loan, in the amount of 25 Ottoman gold *liras* and 126 French gold *liras*. The latter sum included the interest on the loan: 2.5 French gold *liras*. It appears that this last amount represented the balance of interest charges and not the full charge, so it is impossible to accurately calculate the interest rate. Three Muslim witnesses were summoned before the court and confirmed the lender’s version. The *qadi* ruled that the heirs must repay the principal in full. However, although more than three years had elapsed from the time the loan was given, he exempted the heirs from paying the interest (or more precisely, the balance of the interest) claimed by the lender. It is unclear whether the lender was obliged to pass on to the heirs sums paid on account of the interest in previous years.

Yafa, 1900⁸³

In April 1900 a lender filed a claim before the Yafa (Jaffa) *mahkama* for repayment of a loan totaling 10 napoleons. In his defense, the borrower told the *qadi* that he borrowed 8 napoleons for a one-year period, to which 2 napoleons had been added as interest, or in other words, a nominal annual interest of 25 percent. The *qadi* obliged the borrower to repay the loan in full, principal and interest.

al-Salt, 1902⁸⁴

In February 1902, Maryam al-Fakhuri, a widow, petitioned the *mahkama* in al-Salt (Jordan) in the matter of a loan that her late husband had taken from Mafdi al-‘Id, a merchant-*sarraḥ*, four years earlier. The loan totaled 60 *riyal majidi* and was originally given as an advance against a quantity of raisins that al-Fakhuri was to supply to the merchant at a later date.

⁸³ Yafa *sijill* cited in Iris Agmon, “Nashim ve-hevra – ha-isha ha-Muslemit, beit ha-din ha-shar‘i ve-ha-hevra be-Yafo u-ve-Haifa be-shilheyi ha-shilton ha-‘Othmani (1900-1914)”, Ph.D. dissertation, The Hebrew University of Jerusalem, 1994, p. 208, n. 162.

⁸⁴ al-Salt *sijill* cited in Eugene L. Rogan, “Moneylending and Capital Flows from Nablus, Damascus and Jerusalem to Qadā’ al-Salt in the Last Decades of Ottoman Rule”, in Thomas Philipp (ed.), *The Syrian Land in the 18th and 19th Century*, Stuttgart: Franz Steiner Verlag, 1992, pp. 254-255.

Two years after the borrower's death, and after part of the raisins had been supplied to the lender, the parties agreed that the balance of the debt would be paid in cash, and indeed, up to the date of the hearing the widow had repaid 90 percent of the agreed sum. The lender, however, demanded that in addition to repayment of the principal, a further cash payment should be made. As revealed in the widow's testimony, the additional payment was in fact interest at a rate of 40 percent in annual terms (an additional 6 *riyal majidi* on a debt of 30 *riyal majidi* every six months). The lender admitted that the additional sum was a substitute for the raisins he was supposed to receive together with the repayment of the principal.

The *qadi* accepted the argument that the additional sum was interest and was therefore prohibited. He obliged the widow to pay the cash balance to the lender and relieved her of any additional payment, i.e., he did not approve payment of the interest. The *qadi* went even further and obliged the lender to return to the widow, in cash, the value of the produce (raisins and wheat) he had received over the years as interest. In the end, four years after the agreement between the parties had been drawn up, the merchant, Mafdi al-'Id, was left with the value of the advance he had given, partly in kind and partly in cash. It seems that he did not gain any positive return from this transaction, and if the direct and indirect costs connected with the court hearing are included, his return was in fact negative (negative interest).

The *Mahkama*, the *Tujjar* and Uncertainty

The selection of cases above, as noted, is not a representative sample, and the cases themselves are spread over a long period and many regions. However, despite these limitations,⁸⁵ one major conclusion may be drawn: from the lenders' standpoint,

⁸⁵ The question of what a researcher is permitted to conclude from an isolated case, or 'small-N cases', has engaged a number of comparative sociologists. In contrast to conventional wisdom, these researchers showed that there are a considerable number of subjects and fields in which the isolated case can make an important contribution in refuting the validity of prevailing theories, or in laying the foundations for new theories or generalizations. Particularly enlightening in the present context is Dietrich Rueschemeyer's analysis of three well known studies by historians and sociologists (E.P. Thompson, *The Making of the English Working Class* [1978]; Robert Michels, *Political Parties...* [1911/1999]; Seymour M. Lipset, Martin Trow and James Coleman, *Union Democracy...* [1956]), whose focus on a single case or issue changed commonly held perceptions or approaches (each in its own field) among historians and sociologists alike. See Dietrich Rueschemeyer, "Can One or a Few Cases Yield Theoretical Gains?" in James Mahoney and Dietrich Rueschemeyer (eds.), *Comparative Historical Analysis in the Social Sciences*, Cambridge: Cambridge University Press, 2003, pp. 305-336. See also Rebecca Jean Emigh, "The

giving a loan entailed an element of uncertainty originating in the rulings of *qadis* who rejected the charging of interest.

In light of the position adopted by numerous *'ulama* down through the generations in various Islamic communities on the issue of interest, presumably there were a considerable number of instances of the invalidation of interest, wholly or partially. Yet, it is reasonable to assume that the incidence of such cases differed from place to place and period to period. Only further study based on internal sources – *sijillat* and *tujjar*'s private archives – will enable mapping the incidence of rulings against interest and will shed light on additional aspects of this phenomenon. Thus, a discussion of a wide range of questions regarding the relationship between the incidence of rulings invalidating interest and demographic variables (e.g., gender of the borrower), economic variables (e.g., borrowers' level of income), social variables (e.g., borrowers' occupation and place of residence), and religious and cultural variables (e.g., the *madhhab* to which the *qadi* belonged) must wait until a sizeable mass of records of additional cases are found that will enable the study of these and other linkages. As stated above, the cases cited here were not found in studies dealing with the issue of interest in *mahkama* judgments as such. As far as can be ascertained, no *sijill* research has so far focused on rulings by *qadis* regarding interest. Yet, there is sufficient reason to assume that a survey of cases relating to interest in the *sijillat* will reveal numerous episodes that are likely to further illuminate the issues discussed in this study.

An examination of the various aspects of uncertainty in the sphere of Islamic moneylending revealed in the cases discussed above indicates the following points:

1. Of the various possible factors of uncertainty in the moneylending sphere in Muslim communities, a *qadi*'s rejection of interest was a most threatening possibility for the lender, as it was likely to have the far-reaching effect of causing a chain reaction among borrowers. In the wake of a ruling negating interest, borrowers would be likely to stop payment of the interest and perhaps even repayment of the principal. With regard to loans already given, borrowers in the Ottoman Empire had no means of appealing against the ruling, as an appeal instance did not exist. Only in Iran did the lender have the option of taking the

Power of Negative Thinking: The Use of Negative Case Methodology in the Development of Sociological Theory", *Theory and Society* 26 (1997), pp. 649-684.

case to an ‘*urfi* court’⁸⁶ after a decision had been handed down in the *shar‘i mahkama*.⁸⁷

2. Clearly, in some cases the lenders were taken by surprise by the position of the *qadi* before whom they appeared. It is unreasonable to assume that they would have submitted their claim to a judge who was known to view the charging of interest as a grave religious transgression. Surprise is one of the elements characterizing a situation of uncertainty.
3. Lenders realized that in many cases the *qadis* did not deny the charging of interest per se, but only that which was over and above the rates set by the Ottoman authorities, and which were also prevalent in Iran (10-20 percent). It would seem that this position of approving the charging of interest, but not above ‘reasonable’ rates, was widespread among the *qadis*. Its aim was to curb rapacious lenders and protect borrowers, especially those lacking economic or political power. Conceivably, the *qadis* approved these interest rates because they realized they had no other choice but to adopt a compromise on interest, since the public was unable to uphold the *shar‘i* proscription; or, they followed central government regulations, particularly in those periods when the government was able to impose its authority. These two factors surely played a role in the *qadis*’ decision-making process. Moreover, in the Ottoman provinces in Anatolia in which the Hanafi school held sway, these factors were reinforced by the more liberal Hanafi attitude towards the charging of interest.
4. No information is available regarding the lenders’ reaction once they heard they had lost the return on their investment either wholly or partially. We can presume, however, that if they continued providing loans to all comers, then the loan terms would now be different. The way in which the lenders could have compensated themselves for the damages they incurred due to the reduction or cancellation of past interest charges and the possible cancellation of future charges was by raising

⁸⁶ Rulings of the ‘*urfi* court were based on customary laws, and the judge was a high-ranking bureaucrat (e.g., governor of a province or a major town, etc.).

⁸⁷ On the two legal systems in Iran – *shar‘i* and ‘*urfi*, see A. Sepsis, “Quelques mots sur l’état religieux actuel de la Perse”, *Revue de l’Orient, de l’Algérie et des colonies*, 3 (1844) p. 104; James Basset, *Persia: The Land of the Imams*, New York: Charles Scribner's Sons, 1886, p. 281; H. Picot, “Notes on Persian Administration”, Tehran, 31 August 1895, Appendix 1 in “Memorandum by Sir M. Durand on the Situation in Persia”, Confidential, Tehran, 27 September 1895, FO 881/6704, NAUK; Tomar (*ibid.*, n. 45), p. 115; Greenfield (*ibid.*, n. 18), pp. 10-13.

interest rates above the level that existed up to the time of the cancellation.⁸⁸ On the face of it, this might be a self-defeating reaction, for once the interest rates were raised, the borrowers would return to the *mahkama*, and with a vengeance, fully expecting the *qadi* to cancel the high charges.⁸⁹ Yet, recurring cancellations of interest charges would, in the end, cause the diminishment of the supply of loans by Muslim and perhaps even non-Muslim lenders, or arrangements bypassing the *mahkama* ruling between lender and borrower would be put in place, which in turn would protect the lender from the *qadi*'s ruling. Indeed, it would seem that certain lender-borrower arrangements which included devices to disguise interest charges were intended to protect the lender against cancellation. An example is the persistence of some lenders at *mahkama* hearings who claimed the equivalent of the principal from the borrowers, while in fact they included the interest in the sum of the original loan. It is probable, therefore, that the *mahkama*'s struggle against interest that was intended, inter alia, to warn lenders against imposing exorbitant interest rates, resulted in interest rates which were in fact higher than those prior to the rulings against interest. Conceivably, the campaign against interest achieved the opposite result to that which the anti-interest *qadis* sought.

5. The contention between lenders and borrowers at the *mahkama* was not the only struggle in which *riba* played a central role. Though on a different level, another battle was being conducted between *'ulama* and *tujjar*. This struggle was ambivalent and mainly covert, in as much as in many matters not touching upon interest the *'ulama* and *tujjar* were in accord and had considerable interests in common. On the matter of interest, however, the *tujjar* evoked sharp criticism on the part of senior *'ulama* for the sin of robbing the poor. Yet, the *'ulama* could not ignore the reality that the donations made by the *tujjar* and the *sarrafs* to the institutions run by them, and the *khayri waqfs* (blocked properties whose usufruct finances public institutions or services) they established, relied, inter alia, on profits from interest-bearing loans. The conduct of the *qadis* in *riba* hearings,

⁸⁸ For a discussion and examples of exceedingly high interest rates, see note 39 above.

⁸⁹ To simplify the discussion here I have assumed that each population group had similar access to the *shar'i* courts. However, the accessibility of different groups was surely not identical. For instance, the access of urban populations to the *mahkama* was immeasurably easier than that of rural populations. Moreover, it may also be assumed that the level of the interest rates themselves was similarly influenced by the degree of accessibility to the court.

therefore, must be examined in the context of this tension between *'ulama* and *tujjar*. In the arena of a *mahkama* hearing on matters of interest, the *'ulama* held the upper hand. Were the harsh rulings on interest a way to indicate how great the dependence of the *tujjar* on the *'ulama*'s goodwill was? Did the *qadis* exploit these cases to settle accounts with the *tujjar* against a backdrop of disputes on other matters?⁹⁰

To conclude this discussion of uncertainty in financial transactions, a reference to Max Weber's comments on Muslim law is in place. Weber drew a distinction between rational-formal legal systems and those that do not fit these definitions ('substantive' systems, in Weber's terminology). Rational systems are built upon a comprehensive and extensive formal and logical legal corpus, such as that of Roman law. Significantly, they are not open to casual influences of any kind. According to Weber, Muslim law does not meet these criteria: it is characterized by *'Kadijustiz'* (*qadi*'s justice), i.e., rulings that are influenced by the conditions and circumstances in which the hearing is held. Such a system allows considerable space for the judge's discretion, for in making his decision he does not have a clear, comprehensive and binding corpus of law at his disposal.⁹¹

Weber's analysis of the dichotomy between rational-formal legal systems and substantive-irrational systems, and his perception of the Muslim legal world and how *qadis* functioned, are conceptually weak and suffer from a partial familiarity with the corpus of knowledge relevant to Muslim law. These weaknesses have been discussed extensively in a number of studies.⁹² Notably, with regard to *shar'ī* court rulings on

⁹⁰ Along with common interests, on the one hand, and mutual dependency on the other, the relations between senior *'ulama* and the *tujjar* were sometimes tense and even hostile. On an instructive case of bitter confrontation between the two groups, see Gad G. Gilbar, "The Rise and Fall of the *tujjār* Councils of Representatives in Iran, 1884-85", *JESHO*, 51 (2008), forthcoming.

⁹¹ Max Weber, *Wirtschaft und Gesellschaft: grundriss der verstehenden Soziologie*, vol.2, ed. J. Winckelmann, 4th ed., Tübingen: J.C.B. Mohr, 1956, pp. 471, 571-572.

⁹² Criticism of Weber's views, some of it harsh and sweeping, comes from varied points of departure — Marxist, post-colonial and Sa'idist, as well as from a quite different perspective — anthropological. See, inter alia, Maxime Rodinson, *Islam et capitalisme*, Paris: Éditions du Seuil, 1966, pp. 117-119; Bryan S. Turner, *Weber and Islam: A Critical Study*, London: Routledge and Kegan Paul, 1974, pp. 107-121; Ronald C. Jennings, "Kadi, Court and Legal Procedure in 17th C. Ottoman Kayseri", *Studia Islamica*, 48 (1978), pp. 137, n. 1, 139-140, n. 1; A. Udovitch, "Islamic Law and the Social Context of Exchange in the Medieval Middle East", *History and Anthropology*, 1 (1985), pp. 462-464; Lawrence Rosen, *The Anthropology of Justice: Law as Culture in Islamic Society*, Cambridge: Cambridge University Press, 1989, pp. 17-19, 44-45, 55, 66; David S. Powers, "Fatwās as Sources for Legal and Social History: A Dispute over Endowment Revenues from Fourteenth-Century Fez", *al-Qantara*, 11 (1990), pp. 326-330; Irene Schneider, "Die Merkmale der idealtypischen *qādī*-Justiz-Kritische Anmerkungen zu Max Webers Kategorisierung

the charging of interest, it is not the absence of a binding law that can explain the wide range of rulings, but the deep-seated tension created by the existing religious law for a considerable number of *qadis* — tension between a normative ultimate commandment on the one hand, and a non-*shar'i* corpus (the Ottoman *qanun*), along with the constraints of everyday life, on the other. The wide range of rulings by the *qadis* resulted not from the absence of a mandatory precept, but, on the contrary, from its totality and severity. Furthermore, the wide range of rulings ought not be ascribed to arbitrariness on the part of the *qadis*. For many of them, the dilemma they faced from a religious, ethical and practical standpoint was akin to a millstone.

However, on a matter relevant to the present discussion on interest, Weber made an important, if implied, contribution. The heightened element of uncertainty among Muslim lenders in given periods and places may have discouraged local Muslim investors from developing modern credit institutions, a process integral to the growth of capitalism in the modern era. In the context of *qadis'* rulings on interest and their implications for the development of capitalist institutions, there is greater insight in Weber's observation and analysis than his critics acknowledged.⁹³

Summary

The financial activities of the Muslim big merchants were conducted under the heavy shadow of the Qur'anic proscription against imposing interest on loans. Muslims, primarily the *'ulama*, encountered a cognitive dissonance: while charging *riba* is a grave sin, taking interest-bearing loans was frequently an unavoidable necessity, and, moreover, interest was permitted by non-*shar'i* legal systems such as the Ottoman *qanun* and the Iranian *'urfi* courts. *Qadis* had to decide whether their aversion to interest charges would influence their rulings while echoes of the desperate financial

der islamischen Rechtsprechung", *Der Islam*, 70 (1993), pp. 145-159; Haim Gerber, *State, Society and Law in Islam: Ottoman Law in Comparative Perspective*, Albany: SUNY Press, 1994, pp. 25 ff.; David Powers, "Kadjustiz or Qādi-Justice? A Paternity Dispute from Fourteenth-Century Morocco", *Islamic Law and Society*, 1 (1994), pp. 365-366; Patricia Crone, "Weber, Islamic Law, and the Rise of Capitalism", in Toby E. Huff and Wolfgang Schluchter (eds.), *Max Weber and Islam*, New Brunswick: Transaction Publishers, 1999, pp. 247-272; Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab*, Berkeley: University of California Press, 2003, pp. 121-122; Iris Agmon, *Family & Court: Legal Culture and Modernity in Late Ottoman Palestine*, Syracuse: Syracuse University Press, 2006, pp. 169-171.

⁹³ For a detailed discussion of this argument, see my article, "Weber's Kadi and the *sijill's qadi*: Two Different Judicial Personae?" forthcoming.

needs of both commoners and high-ranking officials could be clearly heard in the *mahkama* courtroom.

Along with those *qadis* who approved interest charges and high interest rates in their rulings, there were *qadis* who, when sitting in judgment, adhered to the Qur'anic commandment and exempted borrowers from interest payments, or ordered a reduction in that rate. Even though the number of cases of reduction or cancellation of interest charges found in the sources thus far is relatively small, they reveal that giving loans was connected with a degree of uncertainty that went beyond the common risks that lenders take upon themselves when granting loans.

The uncertainty regarding return on investment (interest) seems to have caused the raising of interest rates. If great uncertainty is added to the familiar risks, the lenders reckoned, it is only proper that they compensate themselves by setting higher interest rates. Thus, it is possible that the outcome of the *'ulama's* struggle against interest was an inevitable rise in the interest rates imposed by the lenders on the borrowers.

While during prolonged periods, including most of the first half of the nineteenth century, the main threat against the property and incomes acquired by the big merchants came from the central government, a certain degree of harm to their assets was imposed by the *'ulama* as well, and although it was limited to fluid investments (loans and credit), it touched on a vital aspect of the business world of the *tujjar*.

Abbreviations

- A & P* *Accounts and Papers*
- AS Annual Series
- CR Commercial Reports
- BBME The British Bank of the Middle East Records (The Imperial Bank of Persia), London
- DCR* *Diplomatic and Consular Reports*
- EI*² *Encyclopaedia of Islam*, 2nd edition, 1960-2004
- EJ* *Encyclopaedia Judaica*, 1971
- IJMES* *International Journal of Middle East Studies*
- IOR India Office Records, London
- JESHO* *Journal of the Economic and Social History of the Orient*
- MCI Ministère du Commerce, de l'Industrie, des Postes et des Télégraphes, France
- NAUK The National Archives, United Kingdom, London
- RC* *Rapports Commerciaux des Agents Diplomatiques et Consulaires de France*
- SKD* *Sbornik Konsul'skikh Donesenii*