

Islamic Legal Documents and the Study of Moroccan Jews

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The historiography of Moroccan Jews has developed enormously in the past three decades, as the articles in this special issue demonstrate. One dimension of this growth that has been particularly influential has to do with the use of Arabic-language sources to write the history of Jews in Morocco. When Germain Ayache called on scholars to make use of the rich Arabic-language archives in Morocco in order to write the history of the country's Jews in 1980, very few scholars had either the skills or the inclination to do so.¹ In the years that followed, both Moroccan and non-Moroccan historians published articles and entire books drawing heavily on Arabic-language sources—notably the work of Daniel Schroeter and Mohammed Kenbib.² This revolution in methodology offered a new understanding of Jews in their Moroccan context, one that shifted the focus away from internal Jewish dynamics towards an understanding of Jews in their broader economic, political, and social contexts.³ Since this historiographical turn, it has become common for scholars interested in the history of Moroccan Jews (and those elsewhere in North Africa) to study Arabic in addition to Hebrew, French, Spanish, and other languages that were previously thought sufficient for the study of the country's Jewish minority.⁴

1. Germain Ayache, "La recherche au Maroc sur l'histoire du judaïsme marocain," in *Identité et dialogue: Juifs du Maroc* (Paris: La pensée sauvage, 1980). A notable exception is the article by Ahmad Tawfiq in that very same volume: Ahmad Tawfiq, "Les Juifs dans la société marocaine au XIX^{ème} siècle: l'exemple des Juifs de Demnate," in *Identité et dialogue: Juifs du Maroc* (Paris: La pensée sauvage, 1980).

2. Daniel J. Schroeter, *Merchants of Essaouira: Urban Society and Imperialism in Southwestern Morocco, 1844-1886* (Cambridge: Cambridge University Press, 1988); Mohammed Kenbib, "Les Juifs de Tétouan entre la chronique et l'histoire," *Hespéris-Tamuda* XXIV (1986): 273-299; idem, *Juifs et musulmans au Maroc, 1859-1948* (Rabat: Faculté des lettres et des sciences humaines, 1994). See also Kenneth Brown, "Mellah and Medina: A Moroccan City and its Jewish Quarter (Salé ca 1880-1930)," in *Studies in Judaism and Islam*, ed. S. Morag and et al (Jerusalem: Magnes Press, 1981).

3. The first (and probably the most famous) doyen of the internalist approach to Moroccan Jewish history was Haim Zafrani; see, for instance, Haim Zafrani, *Pédagogie juive en terre d'Islam: l'enseignement traditionnel de l'hébreu et du judaïsme au Maroc* (Paris: A. Maisonneuve, 1969); idem, *Les juifs du Maroc: vie sociale, économique et religieuse, études de Taqqanot et Responsa* (Paris: Geuthner, 1972).

4. There is too much recent work to cite all of it, but see, for instance: Oren Kosansky, "All Dear unto God: Saints, Pilgrimage, and Textual Practice in Morocco" (Ph.D. Dissertation, University of Michigan, 2003); Emily Gottreich, *The Mellah of Marrakesh: Jewish and Muslim Space in Morocco's Red City* (Bloomington: Indiana University Press, 2007); Joshua Schreier, *Arabs of the Jewish Faith: The Civilizing Mission in Colonial Algeria* (New Brunswick: Rutgers University Press, 2010); Alma Heckman, "Radical Nationalists: Moroccan Jewish Communists 1925-1975" (Ph.D. Dissertation, =

But the full potential of Arabic sources for the study of Moroccan Jewish history—and indeed the history of Maghrebi Jews more broadly—remains under-explored. There are ample studies that demonstrate the extent to which Moroccan state archives provide essential context for the study of almost any aspect of Moroccan Jewish history (at least after the nineteenth century, when Makhzan archival documents become plentiful). But there is an entire category of Arabic sources that has remained essentially untouched by scholars, namely, documents produced by Islamic legal institutions. These documents were written in Arabic by *‘udūl* (s. *‘adl*), who are best understood as Muslim notaries public. They include contracts, releases, guarantees, and records of litigation before a *qāḍī* in a shari‘a court. Islamic legal documents of this sort have until now been almost completely ignored in the study of Moroccan Jews—the exceptions being (not coincidentally) the work of the two editors of this special issue.⁵ It is my aim in this article to convince readers of the untapped potential of these sources to illuminate the historiography of Moroccan Jews, and indeed Maghrebi Jews more broadly.

The reasons for the omission of legal documents from the corpus of Arabic-language sources on which historians of Moroccan Jews rely is closely related to broader trends in Jewish history that have shaped the field. To some degree, these documents have been ignored because they are not as easily located or accessed as the Makhzan archives—an issue I will address at greater length shortly. But some of these sources have been sitting in easily accessible archival collections for years and were simply overlooked. Indeed, it seems that scholars have tended to ignore these sources precisely because of their legal nature. The study of Jews and law has tended to be a very internalist field. It has traditionally been concentrated in the hands of scholars interested in the ways in which Jewish law helped Jews maintain a sense of community and solidarity in the pre-modern period—and Jewish legal autonomy is often held up as a symbol of Jews’ success at self-isolation and, thus, self-preservation.⁶ Indeed, across Jewish history, relatively few studies have used non-Jewish

=University of California, Los Angeles, 2015); Orit Yekutieli, “Corporatism as a Contested Sphere: Trade Organization in Morocco under the Vichy Regime,” *Journal of the Economic and Social History of the Orient* 58, no. 4 (2015): 453-89. Needless to say, there are still many scholars who write about the history of Maghrebi Jews without the use of Arabic sources, especially in Israel. While this body of work should by no means be condemned *a priori*, it is nonetheless becoming increasingly difficult for scholars to ignore sources in Arabic.

5. Aomar Boum, *Memories of Absence: How Muslims Remember Jews in Morocco* (Stanford, CA: Stanford University Press, 2013), Ch. 2; Jessica M. Marglin, *Across Legal Lines: Jews and Muslims in Modern Morocco* (New Haven: Yale University Press, Forthcoming 2016).

6. See, e.g., Simḥa Assaf, *Batei ha-din ve-sidreihem aḥarei ḥatimat ha-Talmud* (Jerusalem: Defus ha-po‘alim, 1924), 11-24; Isidore Epstein, *The Responsa of Rabbi Simon ben Zemah Duran as a source of the history of the Jews in North Africa* (London: Oxford University Press, 1930), 44, 46-7; David Menahem Shohet, *The Jewish Court in the Middle Ages: Studies in Jewish Jurisprudence According to the Talmud, Geonic and Medieval German Responsa* (New York: Hermon Press, 1931), 82-4, 95-104; =

sources to understand the ways in which Jews used gentile legal institutions.⁷ Only recently are scholars beginning to take an interest in the ways in which Jews moved between Jewish and non-Jewish legal institutions.

Yet the potential for Islamic legal documents to illuminate the history of Jews in the Maghreb is vast. There are various directions in which such studies could go: the most obvious is to focus on the legal history of Jews and their use of Islamic legal institutions—a subject I explore in my book *Across Legal Lines: Jews and Muslims in Modern Morocco*. But far more than just the legal history of Maghrebi Jews can be gleaned through a study of Islamic legal documents, including economic history and the study of women (both Jewish and Muslim).

Legal documents tell a new and fascinating story about the ways in which Jews used Islamic legal institutions in Morocco. My research shows that Jews were regular customers both of *'udūl* and of the shari'a courts presided over by a *qāḍī*. Their presence in Islamic legal institutions stemmed from the jurisdictional boundaries assigned by Islamic law on the one hand, and from the place of Jews in the Moroccan economy on the other. The Moroccan state—like most pre-modern Islamic polities—accorded a large degree of judicial autonomy to its non-Muslim subjects (who had the status of *dhimmī*, or protected people). Jews could administer their own courts that

= Morris S. Goodblatt, *Jewish Life in Turkey in the XVIth Century, as Reflected in the Legal Writings of Samuel de Medina* (New York: Jewish Theological Seminary of America, 1952), 87; Jacob Katz, *Exclusiveness and Tolerance: Studies in Jewish-Gentile Relations in Medieval and Modern Times* (Springfield, NJ: Behrman House, Inc., 1961), Ch. 5; Louis Finkelstein, *Jewish Self-Government in the Middle Ages* (New York: P. Feldheim, 1964); Israel M. Goldman, *The Life and Times of Rabbi David Ibn Abi Zimra; A Social, Economic and Cultural Study of Jewish Life in the Ottoman Empire in the XVth and XVIth Centuries as Reflected in the Responsa of the RDBZ* (New York: Jewish Theological Seminary of America, 1970), 92, 153-5; Yom Tov Assis, "Yehudei Sefarad be-'arkka'ot ha-goyyim," in *Tarbut ve-ḥevrah be-toledot Yisrael be-yemei ha-beinayyim: qovetz ma'amarim le-zikhro shel Ḥayyim Hillel Ben Sasson*, ed. Robert Bonfil (Jerusalem: Shazar, 1989). For an exception, see Aryeh Shmuelevitz, *The Jews of the Ottoman Empire in the Late XVth and the XVIth centuries: Administrative, Economic, Legal and Social Relations as Reflected in the Responsa* (Leiden: Brill, 1984), esp. Ch. 2.

7. See, e.g., Joseph Shatzmiller, *Recherches sur la communauté juive de Manosque au moyen age, 1241-1329* (Paris: Mouton & Co., 1973); Verena Kasper-Marienberg, "Jewish Women at the Viennese Imperial Supreme Court: A Case Study from the Eighteenth Century," *Jewish Studies Quarterly* 21, no. 2 (2014): 176-92. The partial exception to this trend lies in the history of Jews in the Ottoman Empire, a field in which scholars have been drawing on Islamic legal sources for some time: Haim Gerber, "Arkhiyon beit-ha-din ha-shara'i shel Bursah ke-meqor histori le-toldot yehudei ha-'ir," *Mi-qedem u-mi-yam* 1 (1981): 31-7; idem, *Crossing Borders: Jews and Muslims in Ottoman Law, Culture, and Society* (Istanbul: The Isis Press, 2008); Amnon Cohen, *A World Within: Jewish Life as Reflected in Muslim Court Documents from the Sijil of Jerusalem (XVth Century)*, 2 vols. (Philadelphia: Center for Judaic Studies, University of Pennsylvania, 1994); Najwa Al-Qattan, "Dhimmis in the Muslim Court: Legal Autonomy and Religious Discrimination," *International Journal of Middle Eastern Studies* 31, no. 3 (1999): 429-444; Richard Wittmann, "Before Qadi and Vizier: Intra-Communal Dispute Resolution and Legal Transactions among Christians and Jews in the Plural Society of Seventeenth Century Istanbul," (Ph.D. Dissertation, Harvard University, 2008).

ruled according to Jewish law; these *batei din* (Jewish courts, s. *beit din*) had jurisdiction over all intra-Jewish civil affairs (and over some criminal matters as well). But only Islamic institutions had jurisdiction over Muslims; thus whenever a Jew was involved in a civil dispute with a Muslim, the case had to be adjudicated in a shari'a court.⁸ And because Jews were frequently engaged in commercial relations with Muslims, numerous disputes arose from these inter-religious business matters.

A sample of nearly two thousand legal documents belonging to the Assarrafs, a Jewish family from Fez, demonstrates just how central Islamic legal institutions were to Jewish merchants in particular.⁹ Shalom Assarraf (1830-1910), the family's patriarch, was a merchant who engaged mainly in the sale of imported textiles to Muslims in Fez and the surrounding areas. He sold most of his goods on credit, incurring risk but also making a profit by charging hidden interest.¹⁰ In order to mitigate the risks of extending credit to his customers, Shalom had 'udūl draw up notarized documents attesting the amounts of money he had loaned and when they were to be paid back. These notarized documents—written in Arabic and according to the requirements of Islamic law—could then be presented in shari'a courts as valid evidence. (Following the Mālikī School's recognition of written documents as commensurate with oral testimony, Moroccan shari'a courts had come to rely principally on notarized documents, rather than oral testimony.)¹¹ Jews like the Assarrafs therefore had a significant interest in acquiring notarized documents attesting their commercial transactions, especially when these involved the extension of credit. Indeed, at the height of his career, Shalom himself appeared either before 'udūl or a *qāḍī* nearly once a week. In other words, Arabic legal documents demonstrate that Islamic legal institutions were central to the legal lives of Moroccan Jews. Nor was this unique to

8. Most criminal matters were adjudicated by Makhzan courts: on the fuzzy jurisdictional boundaries between Makhzan courts and shari'a courts, see Marglin, *Across Legal Lines*, Ch. 1. Moreover, there were instances in which Muslims voluntarily subjected themselves to Jewish courts, even if theoretically they were required to submit only to Islamic law (see *ibid.*, Ch. 3.).

9. The collection consists mainly of documents from the years 1860-1912, and is held in the private collection of Yosef Tobi, Professor Emeritus of Haifa University, in Jerusalem, Israel. I am extremely grateful to Professor Tobi for giving me access to his collection.

10. The general practice was to extend credit for one amount but write out a bill of debt for a much larger sum—sometimes double or more (See, e.g., MAE Courneuve, CP Maroc 53, Féraud to Flourens, 28 September 1887). This seems to be more or less what Ghislaine Lydon describes as *muḍ'āf* in the Saharan trade (Ghislaine Lydon, *On Trans-Saharan Trails: Islamic Law, Trade Networks, and Cross-Cultural Exchange in Nineteenth-Century West Africa* (Cambridge: Cambridge University Press, 2009), 315-17). A similar strategy was also used to hide interest in loans made in the Ottoman Empire: Gerber, *Crossing Borders*, 154-5.

11. See, e.g., Emile Tyan, *Le notariat et le régime de la preuve par écrit dans la pratique du droit musulman* (Harissa: Imprimerie St. Paul, 1945) and Sami Bargaoui, "Les titres fonciers dans la régence de Tunis à l'époque moderne: Interrogations autour d'une mutation documentaire," *Revue de l'Institut des belles-lettres arabes* 74, no. 208, no. 2 (2011): 165-85.

Morocco; this finding echoes those of historians working on documents from the Cairo Geniza and the early modern Ottoman Empire.¹²

But Islamic legal documents are useful not only as windows onto the legal activities of Moroccan Jews; they also offer information about a range of other subjects, and remain an underused treasure trove for further research. By far the vast majority of the legal documents I found concerned commercial transactions or disputes.¹³ These documents contain a wealth of information about prices, the nature of credit, consumption patterns, the geographical range of merchants' activity, and more—all subjects that would be fascinating to historians of Jews and non-Jews alike. A statistical analysis of the data contained in these sources would undoubtedly prove particularly rich for economic historians. Historians interested in women and gender would also find these documents rich in the ways they can upturn our assumptions about Moroccan history. For instance, Jewish women appeared in Moroccan shari'a courts to take advantage of disparities in divorce and marriage law between Judaism and Islam.¹⁴ And Muslim women appeared in court with Jews: Shalom Assarraf, for instance, was enmeshed in a lawsuit that dragged out for months with a Muslim woman named Zaynab b. Muluk al-Qamri.¹⁵ Finally, legal documents contain precious nuggets of information on the daily life of Jews and Muslims during the Protectorate—a period of Moroccan history that

12. Jessica L. Goldberg, *Trade and Institutions in the Medieval Mediterranean: The Geniza Merchants and their Business World* (Cambridge: Cambridge University Press, 2012); Jessica M. Marglin, "Jews in Shari'a Courts: A Family Dispute from the Cairo Geniza," in *Under Crescent and Cross: Essays in Honor of Mark Cohen*, ed. Arnold Franklin, et al. (Leiden: Brill, 2014). On the Ottoman Empire, see the citations in footnote 7 above.

13. 98% of the notarized documents in the Assarraf's private legal archive concerned commerce with Muslims. In a sample of 295 pre-colonial legal documents notarized by 'udul that involved Jews, 82% concerned commercial relations with Muslims (from the private collection of Paul Dahan at the Centre de la Culture Judéo-Marocaine in Brussels, the special collections of the University of Leiden Library (call numbers Or.26.543 (1 and 2) and Or.26.544), and the archives of the Yad Ben Zvi library in Jerusalem).

14. YBZ, 280, 6 Rabī' II 1256. This strategy is well-attested in studies of medieval and early modern Ottoman Jews. On the medieval period, see: Moshe Gil, *A History of Palestine, 634-1099* (Cambridge: Cambridge University Press, 1992), 164; Gideon Libson, "Otonomiyah shippuṭit u-feniyah le-'arkaot mi-tzad bnei he-ḥasut 'al pi meqorot muslimiyim be-teqfat ha-ge'onim," in *Ha-Islam ve-'olamot ha-shezurim bo; qovetz ma'marim le-zekharah shel Ḥavah Lazarus-Yafeh* (Jerusalem: Makhon Ben Zvi, 2002), 336; idem, *Jewish and Islamic Law: A Comparative Study of Custom during the Geonic Period* (Cambridge: Islamic Legal Studies Program, Harvard Law School, 2003), 111; Yehezkel David, "Girushin be-yozmat ha-ishah: 'Al pi te'udot min ha-genizah ha-qahirit u-meqorot aḥerim," *Sinai* 143 (2011): 34-58; Uriel I. Simonsohn, *A Common Justice: The Legal Allegiances of Christians and Jews under Early Islam* (Philadelphia: University of Pennsylvania Press, 2011), 178-80. On the Ottoman period see: Al-Qattan, "Dhimmi in the Muslim Court,"; Sophia Laiou, "Christian Women in an Ottoman World: Interpersonal and Family Cases Brought Before the Shari'a Courts During the Seventeenth and Eighteenth Centuries (Cases Involving the Greek Community)," in *Women in the Ottoman Balkans: Gender, Culture, and History*, ed. Amila Buturovic and Irvin C. Schick (London: I. B. Tauris, 2007), 248-50; Wittmann, "Before Qadi and Vizier," 80-4.

15. Marglin, *Across Legal Lines*, Ch. 2.

remains relatively understudied. Indeed, the legal documents from the years 1912-1956 are, in certain collections, even more prolific than those from the pre-colonial period. These documents offer insights into aspects of Jewish-Muslim relations, gender, economic history, consumption patterns, and the composition of urban space—to name just a few potential directions of inquiry.¹⁶

Perhaps most importantly, the Islamic legal documents involving Jews can offer unparalleled information about the history of Moroccan shari'a courts more broadly. This has to do with the ways in which these sources have been preserved. Moroccan shari'a courts before colonization in 1912 did not keep official archives; any records-keeping was done by the individual judicial officials (*qādī* or *'udūl*)—but these remained in the private hands of the officials themselves and were not deposited with the central government. Individual plaintiffs kept their own private archives of legal documents, however, and these are, for the most part, what have survived (though very few date from earlier than the nineteenth century). But because many of these private archives contain documents that still have legal value for individuals living in Morocco, most Muslim families are unwilling to share their personal collections or donate them to public institutions such as archives or libraries.¹⁷ Jews, however, have for the most part left Morocco and thus no longer consider these documents valuable. Many nonetheless brought these personal archives with them, and later donated them to archival collections in Israel or sold them to collectors (some of whom then sold them to public libraries).¹⁸ In other words, the most easily accessible written records of the functioning of Moroccan shari'a courts are those involving Jews.¹⁹ Legal documents concerning Jews thus constitute an unparalleled source for the history of Islamic law in action in Morocco more broadly, in other words, far beyond the experience of Jews.

One of the significant challenges facing researchers interested in working with these materials is, precisely, the widely disbursed nature of the sources. In conducting research on Jews' use of shari'a courts in pre-colonial Morocco, I consulted nine different archives on four continents. Most collections are fragmentary, making it difficult to piece together patterns of change over time. Very few of these collections include detailed

16. My book offers a preliminary study of Jews' experience in the colonial legal system, but an entire book could easily be devoted to this period alone (see *ibid.*, Ch. 7.).

17. Aomar Boum had somewhat exceptional access to the private legal archives of families in the Sous: see Boum, *Memories of Absence*, 30-3.

18. This is how the collections of YBZ, NLI, CAHJP, JTS, Yale, Paul Dahan, and Yosef Tobi were amassed.

19. The one exception to this is a collection of legal documents held in the library of the Qarawīyīn mosque in Fez; when I visited in 2010, the collection was undergoing cataloging and was not yet available to researchers. I do not have more updated information on this collection.

catalogues—indeed many are almost entirely uncatalogued. Nonetheless, the number of such documents available in public collections is growing: for instance, Yale University recently acquired a significant collection of North African manuscripts pertaining to Jews, including a number of Islamic legal documents.²⁰ We can only hope that the advances of digital technology will eventually allow scholars to digitize these documents and create a searchable database, making them accessible to scholars everywhere.

There is little question that the history of the Jews in the Maghreb remains a field ripe for exploration; the potential contributions of legal documents are, I believe, particularly promising—both within and beyond the field of legal history, and both within and beyond the field of Maghrebi Jewish history. My hope is that young scholars interested in Maghrebi history will continue to work with these sources, and use them to change the way we think about Jews, Muslims, and North Africa more broadly.

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20. North African Jewish Manuscript Collection, Manuscripts and Archives, Yale University Library, New Haven, CT. This is one of the few collections with a detailed inventory of its holdings.

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ملخص: المستندات الشرعية الإسلامية ودراسة أحوال اليهود المغاربة وتاريخهم

يناقش هذا المقال توفير الوثائق القانونية العربية مصدرا غنيا لا زال إلى الآن مهملا في دراسة تاريخ اليهود وماضيهم في المغرب، ويحتمل أن تكون في المغرب العربي على نطاق أوسع. وساعدت الوثائق التي وضعها "العدول" (أي ما يعادل كتاب العدل) ووقعوها على تسجيل العقود والمبيعات، وإجراءات المحاكم الشرعية. ولما كان اليهود منخرطين في علاقات تجارية منتظمة مع المسلمين، تعتبر هذه الوثائق مفيدة للغاية في فهم الحياة اليومية لليهود في المغرب. ويشير المقال أيضا إلى أهمية هذه المصادر لدراسة جوانب أخرى من تاريخ المغرب، بما في ذلك أحوال القضاء والشرع والاقتصاد وأدوار النوع.

الكلمات المفتاحية: الشريعة الإسلامية، المحاكم الشرعية، كتاب العدل، اليهود، المغرب.

Résumé: Documents juridiques islamiques et étude des juifs marocains

Cet article soutient que les documents juridiques arabes offrent une source riche et jusqu'alors négligée pour l'étude des juifs au Maroc, et potentiellement dans le Maghreb plus largement. Les documents rédigés et signés par les 'udūl (l'équivalent des notaires publics) servaient à enregistrer les contrats, les ventes et les actes des tribunaux de la Shari'a. Du fait que les Juifs étaient en relations d'affaires régulières avec les musulmans, ces documents s'avèrent extrêmement riches pour comprendre la vie quotidienne des Juifs au Maroc. L'article souligne également le potentiel de ces sources pour étudier d'autres aspects de l'histoire marocaine, y compris le droit en action, l'économie et les rôles du genre.

Mots clés: loi islamique, tribunaux de la Shari'a, notaires publics, Juifs, Maroc.

Abstract: Islamic Legal Documents and the Study of Moroccan Jews

This article argues that Arabic legal documents offer a rich and heretofore neglected source for the study of Jews in Morocco, and potentially in the Maghreb more broadly. Documents drawn up and signed by *'udūl* (the equivalent of notaries public) served to record contracts, sales, and the proceedings of Shari'a courts. Because Jews were in regular business relations with Muslims, these documents prove extremely rich for understanding the daily life of Jews in Morocco. The article also points out the potential of these sources to study other aspects of Moroccan history, including law in action, the economy, and gender roles.

Key words: Islamic law, Shari'a courts, notaries public, Jews, Morocco

Resumen: Documentos legales islámicos y el estudio de los judíos marroquíes

Este artículo argumenta que los documentos legales árabes ofrecen una fuente rica y hasta ahora descuidada para el estudio de los judíos en Marruecos, y potencialmente en el Magreb más ampliamente. Los documentos redactados y firmados por *'udūl* (el equivalente de los notarios públicos) servían para grabar los contratos, las ventas y los procedimientos de las tribunales de Shari'a. Debido a que los judíos estaban en relaciones de negocios regulares con los musulmanes, estos documentos resultan muy ricos para comprender la vida cotidiana de los judíos en Marruecos. El artículo también destaca la importancia del potencial de estas fuentes para estudiar otros aspectos de la historia de Marruecos.

Palabras clave: ley islámica, tribunales de Shari'a, notarios públicos, Judíos, Marruecos