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Just Writing: Paradox and Political Economy in Yemeni Legal Documents

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One of the most revealing of Muslim doctrines about writing concerns the rather mundane and narrow genre of legal documents. As articulated by early jurists, the doctrine held that such writings as contracts and other private legal documents had no evidential value. According to the classical rules of evidence in Islamic law, written documents could not be brought forward in a legal proceedings as proof of a claim. Evidence, as defined by the jurists, was exclusively oral, anchored in the spoken testimony of present, upright witnesses. This nonrecognition of the evidence value of written documents is remarkable both because it went against the prevailing (and continuing) practice of routine use and reliance upon documents and also because it ran counter to explicit confirmations of this practice found in each of the two authoritative sources of the *shari'a* (Islamic law), the *Quran* and the *Sunna* (the doings and sayings) of the Prophet Muhammad. Lacking a secure doctrinal foundation, yet considered crucial to the conduct of affairs, legal documents in Islam were ambiguous writings.

This tension in the legal domain between text and testimony, resolved in a decisive but unstable privileging of the latter, is but a specific instance of a far more general Muslim concern with the relationship of writing and speech. With this larger perspective in mind, and with reference to the particular context of thought and practice in Yemen, I want to examine both the evolution of the conceptual status of the legal document and the historical relationship obtaining between actual documents and the concrete human undertakings they supposedly represent. I am interested in the political economic circumstances surrounding both the transformation of the local Yemeni doctrine concerning legal documents and the changes in the form and content of the documents themselves.

How does the broader speech/writing attitude structure the relationship of this specific type of legal text to the human relationships of the world? Later in this discussion, I examine the process of entextualization via a reading of a Yemeni contract of sale. That such texts are humanly constituted goes without saying; just how they are constituted poses the general question of the dialectical relationship of law and political economy, of legal forms and concrete human undertakings. Documents are mediations, their writers mediators, between the

enduring text of shari‘a law and the particular events of the world. I consider the problematic way documents fit the law to the world, and the world to law—rendering form historical and giving form to history.

Fallen Writing

From the perspective of such theorists of the move from oral to literate culture as Goody (1968, 1977) and Ong (1982), the Muslim rejection of written documents and favoring of spoken testimony for evidential purposes could be understood as characteristic of a still partly orally oriented culture, typical of a pattern of “restricted” literacy (for a critique, cf. Messick 1983). As opposed to this quasi-evolutionary and Western-modeled approach to writing, I want to consider the Muslim legal document problem in more historically specific terms, as integral to a distinctive culture of writing.

Although marked by fundamental differences in structure and development, the Muslim conception of and attitude toward writing may nevertheless be usefully compared, at least as a point of departure, to a conception and attitude found in the Western tradition from Plato to Rousseau, and down to Saussure. In the reading of Derrida (1976), concrete writing in the West has been consistently denigrated while a “metaphorical” writing, a kind of natural or divine inscription associated with the spirit, the voice, and speech has been extolled. Considered exterior as opposed to interior, human as opposed to “divine,” and artificial as opposed to “natural,” concrete writing has been deemed secondary, representational, and supplemental in relation to the primacy of the spoken word. Consonant with the Western metaphysical orientation toward “presence,” writing was actively condemned as evil or contaminating, while speech was valued as the locus of truth, as a direct voicing of the spirit, and, for Saussure, as the proper focus of scientific linguistics. As such philosophical, theological, and theoretical positions were taken, however, it was, paradoxically, concrete or “fallen writing” that was the consistent medium of intellectual discourse.

In the Muslim intellectual world a similar sort of problematic relationship obtained between the recited word and the written text. As in the West, it was a problematic that was paradoxically located within an overarching literate tradition and within the context of a thoroughgoing reliance on the technology of writing. The Quran and the Sunna of the Prophet are paradigmatic here. The name *Quran* itself means “recitation.” As a sacred “text,” the Quran is quite different in its textual character from the Bible, or at least the Gospels, for example, which were humanly authored and written, and constitute a “book” in a sense closer to the conventional Western understanding. The Quran, by contrast, is a recitation-text, transmitted verbally from the Archangel to the Prophet as the Word of God, according to the Muslim understanding. Further, the Quran is kept alive through memorization (Eickelman 1978) and recitation, in the old pedagogy, in prayer and on other ritual occasions. Known simply as “the book” (*al-kitab*), the character of the Quran as a book in the Western sense is far less pronounced than its identity as a recited “word.” The utilization of the k-t-b Arabic root with reference to the

Quran must unsettle any secure understanding of a whole set of related words, from the imperative verb *uktubu* ("write"), used to phrase the injunction to prepare legal documents, to the verbal noun *kitab* ("writing") and the noun *katib* ("writer"). The collection of revelations that constitute the Quran were established in a definitive recension some years after the Prophet's death, but at about the same time seven alternative recitations also became authoritative.

If the quintessential Muslim "book" denies its writtenness while foregrounding its recitational quality, the status of the Sunna of the Prophet, the second source of law, is even more revealing of a distinctive ambivalence toward writing. The Traditions (*hadiths*) of the Prophet's doings and sayings also eventually took authoritative textual form, but this occurred in spite of several specific orders (also Traditions) from the Prophet to the contrary. The process of "recording" (*tadwin*) Traditions (Juynboll 1969, 1983) in writing had to contend with contradictory Prophetic dictums (e.g., "Abu Sa'id al-Khudri said: 'I asked the Prophet permission to write the Tradition down, but he refused to give it'"; "Do not write down anything from me except the Quran. He who has noted down anything from me apart from the Quran must erase it"; but, on the contrary: "'Abd Allah b. 'Amr asked the Prophet permission to write the Tradition down. It was granted"; and, generally, "Commit knowledge to writing"). The recording went forward, but only after a century during which the Traditions had been transmitted only by oral means. As had happened in the case of the Quran (Buhl 1965), the human interventions to preserve Traditions in writing were fraught with intra-community conflict.

A science of Traditions was also developed, and this focused critical attention on the biographies of the individual links in the "chains" of human transmitters. As was true analogously in the domain of legal evidence, the potential for truthfulness was thought to adhere in, and was therefore sought in, the character of upright, human relayers of verbal statements. Just as the ultimate worth of a written legal document would depend on the justness of the man who wrote it, the scholars who endeavored to distinguish authentic from fabricated Traditions operated on the principle that "accepting Traditions means knowing the men" (quoted in Juynboll 1983:161).

If the Quran and Sunna separately illustrate aspects of the Muslim conception of speech and writing, considering them together in relation to shari'a law as it was later developed opens another dimension of the intellectual problematic. With the death of the Prophet, the Muslim community saw itself cut off from further revelations and from his special example, and had to confront the problems of interpretively elaborating a detailed legal corpus and adjusting to new circumstances by means that entailed the inevitable flaws and disagreements of purely human juristic creativity (see Messick 1986). The opposition that structures the relationship of the two foundational "sources" to the shari'a is one between (divinely constituted) truth versus a (humanly constituted) version of that truth that opens the door to the threat of falsehood or, disparagingly, "innovation" (*bid'a*, cf. MacDonald 1965). The transition from the unity and authenticity of the Word of God to the multiplicity and disputed quality of the words of men is perhaps the

central dynamic problem of Muslim thought. If this transition is problematic it is also necessary: the Truth of Revelation can only be approached through the medium of human understanding. Perfection paradoxically entails the imperfect human interventions of recitation and interpretation. The Quran (12:1) describes itself as self-evident, as “the clear book” (*al-kitab al-mubin*); at the same time, however, the proliferation of Muslim exegetical and interpretive works testifies to the strongly felt need for further human clarification.

Within the specialized domain of legal evidence a related opposition was at work. There, the unity and certainty, Derrida would say the embodiment of “presence,” of the testifying human witness, stood opposed to the dangerously open interpretability, and the human absence and alienation of the written text. This specific transition from speech to writing carries the debilitating stigma of the general move from the divine to the human.

In their lawbook sections on evidence jurists did not explicitly rule out writing by name; this was the effect instead of a powerful silence on the subject, as evidence was simply assumed to be, and was therefore defined as, oral. Writing is not noticed, even negatively. Seemingly definitively buried by a silence of non-recognition, writing nevertheless persisted in the law of evidence as a potent “sub-text.” That the transition from God’s plan for the Muslim community as set down in the Quran and supplemented by the example of his Prophet, to the humanly constructed body of shari’*‘a* jurisprudence was a difficult one is exemplified by the fact that a specific Quranic injunction and at least one authentic and equally specific Prophetic Tradition were countervailed and silenced in the creation of the law of evidence. The relevant Quranic “wording” (*nass*) was softened by exegetes from the status of a firm rule to that of a recommendation. I quote the *Cow Sura*, verses 282–284 (trans. Arberry 1955:70–71), in their entirety, without editing them down to the specific mentions of writing so as to preserve the context concerned with witnessing:

O believers, when you contract a debt
 one upon another for a stated term,
 write it down, and let a writer
 write it down between you justly,
 and let not any writer refuse
 to write it down, as God taught him;
 so let him write, and let the debtor
 dictate, and let him fear God his Lord
 and not diminish aught of it. And if
 the debtor be a fool, or weak, or unable
 to dictate himself, then let his guardian
 dictate justly. And call in to witness
 two witnesses, men; or if the two
 be not men, then one man and two women,
 such witnesses as you approve of,
 that if one of the two women errs
 the other will remind her; and let the witnesses
 not refuse, whenever they are summoned.
 And be not loth to write it down,

whether it be small or great, with its term;
 that is more equitable in God's sight,
 more upright for testimony, and likelier
 that you will not be in doubt. Unless it be
 merchandise present that you give and take
 between you; then it shall be no fault in you
 if you do not write it down. And take witnesses
 when you are trafficking one with another.
 And let not either writer or witness be
 pressed; or if you do, that is ungodliness in you.
 And fear God; God teaches you, and God has knowledge of everything.
 And if you are upon a journey, and
 you do not find a writer, then a pledge
 in hand. But if one of you trusts another,
 let him who is trusted deliver his trust,
 and let him fear God his Lord. And do not
 conceal the testimony; whoso conceals it,
 his heart is sinful; and God has knowledge of the things you do.
 To God belongs all that is in the heavens and
 earth. Whether you publish what is in your hearts
 or hide it, God shall make reckoning with you
 for it. He will forgive whom He will,
 and chastise whom He will; God is powerful over everything.

As the principal source for the approval of written documentation, this Quranic passage was supplemented by other less pointed passages and a series of Traditions indicating that writing was used for a number of purposes by the Prophet. Among the latter is a Tradition in which the Prophet is reported to have used a written document in connection with a sale contract in which he was the buyer. Together with the Quranic passage, this Tradition is among those cited by at-Ta-hawi (Wakin 1972:5 [Arabic text]), an early jurist deeply concerned with the problematic status of documents. After mention of the chain of transmitters, the gist of the Tradition "text" (*matn*) is that a Companion of the Prophet shows a document (*kitab*) that the Prophet either wrote himself or had written to embody his purchase of a slave from the Companion.

Tahawi (d. 933) was one of a number of distinguished jurists who authored works in what became known as the *shurut* (literally, "conditions") literature. Recognizing the impasse that existed between the stricture of the formal evidence doctrine and the ongoing, widespread use of legal documents in practice, scholars such as Tahawi early on began to develop practical guides for notaries, containing model document texts for the various types of contracts (Wakin 1972). Although the *shurut* works amounted to a direct subversion of the formal rules of evidence, the works and their authors were esteemed rather than condemned. Within the compass of their identities as jurists, many such scholars managed to work and make contributions on both sides of the issue, writing at times within the constraints of the shari'a, while at other times addressing the diametrically opposed requirements of necessity.

This double discourse on the question of writing persisted down to the period of modernist legislation in all of the distinct "schools" of Islamic law except one,

the Maliki school of North Africa. There the institution of the precertified “reliable witness” was successfully grafted by jurists onto that of the notarial profession, making possible what Tyan (1959:84) has characterized as the “triumph” of the legal document as formally acceptable evidence. Elsewhere, it was not until the promulgation of the first quasi-code constituted out of the shari‘a, the Ottoman *majalla* of 1877, that legal documents (Article 1736) were given a grudging, still cautious recognition.

This new legal code was not systematically instituted in the distant and rebellious Province of Yemen under the rule of the Ottoman Empire (1872–1919). However, court registration of legal documents, a practice consonant with the new attitude of the *majalla* and completely new to the highlands, was introduced, at least in the main towns. With the return to local rule by Zaidi imams (1919–1962) there was an apparent return to older documentary practices. Court registration, which involves the key innovation of state legitimation for documentation pertaining to private acts, was dropped under Zaidi rule only to be reintroduced by the Yemen Arab Republic following the Revolution of 1962.

Under Zaidi imams, who had ruled the highlands for several centuries prior to the period of turn-of-the-century Ottoman administration, the law of the land was the Islamic shari‘a. Although they were Shi‘i imams, their school of law took pride in its closeness (as the “fifth” school) to the four standard Sunni schools. Guidance on certain selected points of law was exercised by imams through their own authoritative interpretive opinions, known as “choices” (*ikhtiyarat*). Among the 22 published “choices” made by Imam Yahya Hamid ad-Din (ruler 1919–1948), one concerns the old problem of legal documents. Simply articulated by the imam as concrete rules, the collection of imamic “choices” was initially distilled by another scholar into the form of a poem, which had to be accepted as accurate by the imam. At the same time as the imam accepted the formulation of the poem he authorized the preparation of a prose commentary based on it. The relevant section (al-Shamahi A.H. 1356 [1937]:31–33) of this ambiguously authored, intertextual text thus begins with two lines of poetry in which the principle of the imamic position concerning the status of documents is stated. It is this condensed poetic statement that is elaborated upon in the commentary:

The evidence of just writing, we know, is accepted;
It is humanly transmitted, in an unbroken chain.

This acceptance of legal documents as evidence hinges on the key term “just” (*‘adl*), which directly echoes the wording of the Quranic passages, “and let a writer write it down between you justly” and “let his guardian dictate justly.” *‘Adl* also means a just person, and in the formulation *shahid al-‘adl* means a “just witness,” one whose testimony is accepted as evidence. By extension, especially in Maliki North Africa but elsewhere as well, an *‘adl* was a notary. The second part of the poem employs words (*mu‘an‘an* [“orally transmitted”]) and *musalsal* [“linked in a chain”]) that directly invoke the science of Traditions. Through this use of Traditions terminology, the evidence contained in written form is charac-

terized as “handed down” or transmitted via a continuous human “chain” in a manner exactly analogous to an authentic and, therefore, legally binding Tradition. There is an attempt to overcome the alienation of writing, the break it causes in the human transmission of the truth, by grafting on to it the established theory of the chain of just witnesses.

The commentary itself begins with a historical eulogy of *khatt* (“script” or “writing”):

Writing is one of the pillars of human undertakings [*mu'amalat*], a way among ways of human communication. It is one of the two tongues; in fact, it is the more sublime. With it traditions are conserved; with it the circumstances, customs and history of earlier generations are known; with it laws and jurists are learned about. It is the most important medium, the greatest mediator between those who are living and those who have passed away. Prophets utilized it in the dissemination of their messages to the blacks and the whites, to those near and far. With it they raised their protests against the kings, including caesars and khosraus; with its proclamations they called the nations, Arab and foreign, until the Truth became clear and God's order appeared.

Characterized as “one of the two tongues,” writing is assimilated to speech and yet differentiated from it. Writing stands “between”; it is a “medium” and a “mediator” linking, as in an unbroken chain, the past and the present, the dead and the living. The commentator goes on to describe the Muslim appropriation of writing, moving from the pre-Islamic period (*al-jahiliyya*) to the Islamic era:

As they embraced the religion, the pious generation of Companions and Followers took it on, rendering it a Muslim practice. Using it they delivered their legal interpretations; into its texts [*mutun*, pl. of *matn*] went their intellectual disciplines; on its wings their arguments took flight; on its evidential meanings were built their legal principles, while at the same time they used it to settle their cases. It is reported of them that they looked upon writing as a safeguard for what was uttered by the lips, enunciated in the eloquent sessions of legal interpretation, and articulated as assembly addresses on traditions and proofs.

Writing is a “safeguard,” it permits the preservation of life, memory, speech, event; and yet, as becomes apparent later, it harbors within a separation and a threat of falsehood. Writing is a protection against death, but is itself predicated upon a kind of death. It is both a remedy and a poison. The evidence for the role and general importance of writing, according to the commentator, is strong:

The Sunna on this is abundant, and the traditions agree and are numerous; they are without qualification limiting the breadth of support for it, without condition restricting the influence of its evidence—including significantly the science of the writer and his character.

Thus introduced, the writer (*katib*) and his writing (*khatt*, *kitab*, *rasm*) are associated and equated with the witness and the oral activities of giving dictation and testimony:

He is among those of cautious procedure and justness. If we know his writing with certainty, then it is just as we take his dictation or as we value his testimony that we take and value what comes to us as his document and his writing. There is no difference between them.

This formulation of an identity between writer and witness is ideal and yet duplicitous, especially in view of what the commentator knows and is about to say. The text begins here to deconstruct itself as the commentator presents opposing positions that, together, serve to define the problematic of legal writings.

The views of scholars are divergent concerning the reliance upon the judgment and contract documents [literally, “sale documents” (*basa'ir*, sing. *basira*)] of judges and notaries. One group holds that they are absolutely unreliable, for the reason that writing leads to the potentiality of play, and the temptation of pens and geniuses, in the domain of composition and practice. It [writing] is therefore weak with respect to its value, aside from its positive qualities, in establishing legal possession and other matters. Another group holds for the necessity of valuing them, and for the reliance upon them without restriction.

The contradiction is now fully opened: writing that earlier served as a vital “safeguard” here also becomes a writing that is dangerously open to “play” and “temptation.”

The two opposed positions constituted for the sake of the argument are now subjected to joint and then separate criticism.

In both of these two points of view there is immoderation and negligence. And the deleterious effect in the realm of justice is great, resulting in the spoliation and squandering of wealth. The two positions may be refuted. As for he who has said it is absolutely wrong to accept documents, the manifest position of the Sunna, and its clarity and concreteness, already mentioned, refute him and defeat him. As for his mentioned reasoning that assumes the potentiality in writing of play and temptation, etc., the reason is ailing, and the potential is distant. It is nothing but the creating of doubt since a potentiality does not dislodge the manifest and its meaning. As for the falseness of the position of he who holds for the valuation of documents without restraint, this is obvious. Because if the door of unlimited acceptance of them were opened, the wealth of the community would be lost and people’s possessions would be removed from the permanence and security of their hands. In this position there is immoderation and a disdain for principles, because any claimant can make for himself what he wants in the way of documents, proceeding with craft and skill in reproducing the papers he thinks will advance his circumstances.

In good dialectical fashion, the constitution, and then refutation, of opposed positions opens the argument space for a resolution via the synthesis of the imam’s interpretive “choice.”

Therefore the Commander of the Faithful, may God protect him, has taken a position more just than the two positions. It amounts to a middle position, as was indicated in the lines of poetry, and that is that it is absolutely necessary in the reliance upon writing to have knowledge of its writer and his character and his justness, and of the fact that the writing to be relied upon is his writing; or knowledge that the writing in ques-

tion is well known among the old writings for which there is no suspicion of falsehood or forgery. If we were to give up the utilization of such documents it would entail the loss of rights and properties whose (sole) records these old documents are, their writers unknown and unknowable. This ascertainment is entrusted to the jurisdiction of the judge. He is required to undertake a thorough examination to gain knowledge of the locally prominent writings and documents. With detailed inspection and enlightened thought he must distinguish among the writings, and know the valid ones from the false ones. For the practitioners of forgery are skilled in imitation and cleverness in rendering for presentation documents and their copies in the guise of scripts of individuals who can be trusted. What is required is the examination of the script and (the finding) that it pertains to one of those individuals who can be relied on and trusted. This is what accords with the spirit of the shari'a, and what is called for to maintain order and protect civilization. This "choice" finds its greatest legal support in the thrust of the Sunna of Muhammad.

The threat of misrepresentation through documents can hardly be considered alleviated by formulation of this imamic "choice." Writing is addressed with a mix of respect and mistrust; writings remain both indispensable and dangerous. There is just writing and there is false writing, but it is the latter that has prompted this discourse. False writing redoubles the already problematic status of writing: false writing is to just writing as writing in general is to speech. Forgery wears a guise of truth. The solution proposed for the use of documents rests heavily on knowing—of men by men. The two mandated forms of guarantee are, first, that found in the science of traditions where "accepting the tradition means knowing the men" and, second, the critical capacity of the judge to assess the triple link between writing, writer, and legitimate intent. (Such guarantees imply long-term judicial tenures, so that judges could come to know the writers and the distinctive writings of their jurisdictions, and this was the appointment practice of the imams.)

As articulated in this commentary, the problematic of legal documents has a feature that distinguishes it from the problem of writing in most other domains and genres. The documentary transition from speech to writing is twofold, as it involves both the representation of a verbally constituted human contractual undertaking in the form of the document text, and the representation of the legitimizing act of the human notary-witness in the form of his handwriting. There is thus a double process of representation, in both "his document and his writing," with the worth of the former subordinate to that of the latter. Script, it is assumed, conveys (as precisely as a fingerprint) the person, whether just or forger; the mark of the pen transmits the qualities of the human witness. While it may be difficult, it is not impossible to distinguish the mark of the just writer from the mark of the forger. This sort of connection between calligraphy and character is not at issue, for example, in the quasi-anonymous identity of the manuscript copyist. The power and the mystery of the legal document resides in the nature of writing as human signature.

In recent legislation of the Yemen Arab Republic, however, a template is provided for a new world of writing, one in which the weight of authority is shifted from the notary to the state. The legislation (Y.A.R. 1976) embodies a

local version of the “triumph” of the legal document as acceptable evidence. Accordingly, “writing” takes its place (after testimony and oral acknowledgment) as third of eight modes of “shari‘a proof” (Article 33). This resolution, in legislative theory at least, of the old problem of legal documents is part of a thoroughgoing reunderstanding of the shari‘a itself. Two categories of documentary form are identified (Articles 118–143): “official writings” (*muharrarat ras-miyya*) and “customary writings” (*muharrarat ‘urfiyya*).

Both are new conceptions. The first represents the design of a type of secure instrument required by a capitalist society, in which the state, through the authorizing signature of an official (such as a court functionary), backs the text. This type of document is what is really meant by documentary evidence. The second, the “customary” document, is a new incarnation of the old legal document. It issues from “ordinary people” (Article 120), and can be treated as “official” once the judge has satisfied himself (along the lines suggested earlier by Imam Yahya) as to its authenticity. The “customary” document is actually broken down into three separate subtypes (Article 124), only the third of which represents the centuries-old standard. Unlike the first two subtypes, which envision parties to the agreement preparing and signing, or at least signing, their own documents, the third subtype alone is the classic form: a document prepared privately by a notary, and signed by him (and sometimes other witnesses) but not signed by the parties. In the legislative text (Article 127) concerned with this venerable old genre of document, there is a clear echo of a former problem and a former solution:

If the customary document is written in the handwriting of an “other” (*al-qhayr*), and is unsigned by the party, it requires witnesses for its contents to be accepted, except if the writer of the document has a reputation for justness and reliability and good conduct, and if his handwriting is known to the judge due to its (local) renown, or if he acknowledges before the judge that he is the writer of the document and bears witness to the accuracy of its contents, then it is permissible to accept the document’s contents.

Writing Down: Two Movements

To transit now from meta-discourse about documents to an ethnography and political economy of discourse in documents, a few connecting and prefatory remarks are necessary. These concern the process of entextualization, the meaning process of writing and creating texts. In the legal document genre, entextualization rests on a double movement, a double relation. The first is a movement from Text to text, that is, from law on the books to the document; while the second is from the world (as event) to text, from a specific human undertaking, such as a sale, to the document. Behind a given document text is the law, in front of it is the world: a document represents a bringing together of socially constituted and enduring legal forms and individually constituted and *ad hoc* negotiated terms (respectively, Durkheim’s “contract-law” versus his “contract” [1933:211–215]). The writer, the notary, through his document text, mediates both the reproduction of the Text and the incorporative “translation” of the world. The doc-

ument emerges as he considers both the dictates of the law and the facts of an undertaking; he must be both a specialist in the shari'a and intimately conversant with the affairs of his society. Like the *mufti* (Hallaq 1984; Messick 1986), a specialized interpreter-jurist who also mediates between the ideal and the real, the text and the world, the notary is a figure in between.

The progression from Text to text is actually one from the shari'a as divinely constituted, that is, in the Quran (or as an original scripture in heaven, cf. Buhl 1965), to the shari'a as humanly interpreted in Islamic jurisprudence, to the shari'a as actually implemented by notaries in the document texts. This is the familiar divine to human trajectory, the progress of a scriptural word into a fallible human world. Similarly, the world to text movement may be broken down into one that proceeds from the "intention" (*niyya*, cf. Schacht 1964:116) of the parties, through their spoken agreement, to the document in which the agreement is embodied. This is the trajectory of representation, also familiar in the West, from an idea in the mind, to speech as the sign of the mental idea, and then to writing as the "sign of a sign" (Derrida 1976:29). Although the two movements appear distinguished by their separate starting points in the Text and in the world, their trajectories from divine to human and from intention to textual representation are analogous, parallel, the same. The perfection of the divine and the clarity of the idea together come to rest in the fallible form of the document.

Reading Writing: A Contract of Sale

In the Yemeni highland town of Ibb (Messick 1978), people care for and protect their legal documents as the most vital of personal effects. Held in private hands, documents are folded accordion style or rolled as small scrolls, placed in individual protective tubes or tied together in bunches, and then stored in cloth-wrapped bundles or in wooden chests. In times of turmoil in the town, people send their documents out to secure locations in the countryside for safekeeping. Despite the fretting of jurists, including Imam Yahya, documents do carry considerable legal weight in Ibb: they are used to demonstrate ownership rights and are brought forward to that end in transactions and in disputes and court cases (Messick 1989; cf. Frantz-Murphy 1985).

Sale documents, such as the example translated below, represent contracts for the transfer of landed property, especially productive agricultural terraces, which in this traditionally agrarian society are cultivated in sorghum or wheat, if the terrace is rain-fed, or a variety of greens if irrigated. Such documents embody past-oriented, executed contracts (as opposed to future-oriented, executory contracts); they are prepared for the buyer, and at his expense, by a local notary. It was especially such sale documents (*basa'ir*, sing. *basira*) that the Imam (and his commentator) had in mind as the troublesome records of Yemeni "rights and properties," records essential to "maintain order and protect civilization."

In the Name of God, the Merciful, the Compassionate

Al-Hajj 'Ali Qasim al-Sharafi, using his own capital (*mal*), bought from the seller to

him, Muhammad Hasan al-Ba'dani, selling on his own behalf, a sale object of eight and a quarter *qasabas* in the piece of irrigated land named al-A'imma, in the cultivated area of the village of al-Mashraf, district of Maytam, pertaining to the seller by way of inheritance from his wife, the free woman 'Aisha, daughter of Murshid al-Ba'dani, according to an inheritance document. . . . I examined it [the inheritance document] and found in it that the property is bounded on the North by . . . and on the East by . . . and on the South by . . . and on the West by . . . [It is] a sale and purchase, valid and legal (*shar'i*), complete and executed, with an offer and an acceptance, and a specified price whose amount, units, type and form is two thousand four hundred and seventy-five paper riyals in the currency of Yemen, half being one thousand two hundred and thirty-seven and one-half riyals. The seller received the entire purchase price from the hand of the buyer at the session, completely and perfectly. The seller surrendered his sale object, vacating legally (*shar'i*) and guaranteeing any legal (*shar'i*) fault concerning all the rights of the sale object, and its trees and stones. And at that moment the aforementioned sale object became the individual property (*milk*) and right of the aforementioned buyer, among the group of his properties, to be disposed of as he desires. This was written with the witnessing of Sayyid 'Ali 'Abd Allah ibn Ahmad and the craftsman Isma'il Muhammad al-Warafi, both from Ibb, and God is sufficient witness. Written on its date, month of Shawwal, 1394 [A.D. 1974], the year one thousand three hundred and ninety-four. The buyer must enter this document in the register of the court and pay the fee. Written by the servant of God, (signature), 'Abd al-Rahman Shuja' al-Din.

In the Name of God, the Merciful, the Compassionate

Opening the text is an invocation of God and, at the same time, an invocation of the whole of the Muslim textual tradition. This same line, "In the Name of God, the Merciful, the Compassionate," is also the opening line of the paradigmatic Muslim text, the Quran. In the Quran, this invocation is found at the beginning of the first *sura* (chapter), which is itself known as "the opening" (*al-fatiha*). "In the genealogy of texts," Said (1983:46) writes, "there is a first text, a sacred prototype, a scripture, which readers always approach through the text before them." Here the genealogical connection is explicit.

Just as this phrase of invocation initiates the Quranic recitation-text as a whole and all (but one) of its *suras*, so it is always employed to open Muslim writings as diverse as books, personal letters, and amulets. It also is used in lintel inscriptions at building entrances, and to orally bless and commence actions, such as crossing the threshold upon entering a house, taking the first bit of food at a meal, putting the plow into the earth, or engaging in sexual intercourse. The *bas-mala*, as it is known, opens up a textual space for "writing" in the broader Deridian sense, in which literal writing is only one specialized form.

A mundane contract text is thus appropriately opened and, in the process, immediately situated in the legitimacy of a given textual-world. Beyond its role as a textual model, the Quran is also paradigmatic for this contract as one of the principal substantive sources for shari'a law. Throughout the document, the fact that it is intended to be in accord with the shari'a is repeatedly affirmed, as the legitimizing adjective *shar'i* ("legal") appears three times. God is also repeatedly invoked, in the concluding witnessing clause as "sufficient witness," and in the writer's identification of himself as "the servant of God." This contract is im-

PLICITLY understood to be a contract between Muslims, unlike the Prophet's reported sale document, where the contract is explicitly, "Muslim to Muslim."

Bought

After the invocation, the text proper begins with a verb, which is the standard word order in Arabic sentences (as opposed to my English translation). This first word, "bought," one of the distinctive lexemes of alienation, immediately makes apparent the identity of the document as a contract of sale (*bay'*). As a third person, past tense verb, "bought" also embodies the transformative textual mediation of the notary. Having heard the uttering of verbal contracting statements made in the first person by the seller and the buyer, he then records the already existing undertaking in the form of the text, using the third person voice of an observer. This documentation of the contract thus involves a complex person and oral-textual shift: from first person–oral to third person–written.

Like Geertz's "ethnographer," the notary "'inscribes' social discourse; he writes it down. . . . In so doing, he turns it from a passing event, which exists only in its own moment of occurrence, into an account, which exists in its inscriptions and can be reconsulted" (1973:19). However different ethnographic and notarial writing may be as practices of writing, they at least share a transformative, and problematic, relationship to the "said" of the world. In his act of inscription of a contract between two parties, the notary acts as an outsider, a nondirectly participant "other"—the "*al-qhayr*" of the customary document in Yemeni legislation. His voice, not that of a person in direct address, takes instead the third person pronominal form known in Arabic (cf. Benveniste (1968:199–200); applied to anthropological discourse in Fabian (1983:82–85) and Fernandez (1985)) as "the absent" (*al-qha'ib*). The writing intervention of an "other" thus results in a text characterized by an absence.

The single, brief, and parenthetical shift to the first person occurs, significantly, when the notary refers to his relationship to another text, an inheritance document, in reference to which, he says, "I examined it and found in it. . . ." While the notary is an outsider with respect to the private transaction, he is an insider with respect to the law and its texts.

The notary's preparation of the document is informed by his knowledge of the shari'a and the dictates of local usage. In the local mosque school, until its demise in the mid-1950s, jurisprudence was the centerpiece of advanced instruction, as it had been for centuries. Two basic and concise manuals (of the Shafi'i Sunni school) were studied, and committed to memory by some students. One, known locally simply as "the text" (*al-matn*), was authored in the late 11th century by an Iraqi jurist named Abu Shuja' (d. after 1107), and a second, dating from the 13th century, was the work of a Syrian named al-Nawawi (d. 1277). The simple fact that manuals written so long ago, and in contexts so far removed from Yemen, could be considered authoritative up to mid-20th century is indicative of a highly formal character. The general contours of the shari'a, including a developed contract of sale, were set in place by about A.D. 900.

Each of the manuals contains a chapter on the contract of sale, which is the most important of a number of chapters devoted to “transactions” (*mu‘amalat*). Islamic law has no separate theory of contracts, and the sale contract serves as a model for the other types of bilateral contracts (Schacht 1964:151–152), and for this reason it is more fully elaborated. The manual chapters on selling begin with the contract’s fundamental condition: that there be an explicit offer by the seller and an equally explicit acceptance on the part of the buyer. The shari‘a envisions the two parties actually meeting one another and uttering reciprocally binding statements, and this conforms with Yemeni practice. The manual authors provide examples of appropriate (first person, past tense) utterances, that is, “I sold to you,” and “I bought.” A verbal agreement alone, employing such statements and made before the required two witnesses (required on the authority of the quoted Quranic text), constitutes a binding sale contract. As is indicated and assumed by the statement examples, no writing is foreseen in the perspective of the manuals. In the notary’s text, the fact that the necessary binding statements were made is signaled by the formula that the sale was concluded “with the offer and acceptance.”

In Ibb, there are no models for notaries to follow, except for other documents of the same genre. There were no formularies, either of the old *shurut* type or of the more contemporary practical guides (the *tawthiq* literature) widely used in North Africa. The chapter on sale in the manuals contains no example document texts, only a discussion of the several conditions of a valid contract. Also, there was no formal instruction in the preparation of written documents. The reproduction of the local version of the documented contract of sale is based on a notary’s general knowledge of the shari‘a, acquired in the old mosque school, and, as important, knowledge gained through practical experience in handling local transactions. A notary’s expertise thus centers on the authoritative reproduction of an implicit, locally constituted, textual model. It is a model that exists only in its human transmitters, the notaries, and in the concrete examples of their writing—that is, particular, historically contingent documents.

Al-Hajj ‘Ali Qasim al-Sharafi

Handed an instrument such as the one quoted above, a Yemeni reader’s attention gravitates to names and signatures (and, in former times, seals), first of the notary who prepared the instrument (and in relation to this signature the related calligraphy of the text body), and then to any official authentications or countersignatures, none of which are found on the document in question. Official seals, pertaining to a Yemeni state, past or present, would also be noted, but, again, there are none on this recent document. Other proper names, from that of the buyer and seller to the two conventional witnesses and any additional individuals mentioned in the text, are rich with local resonances and histories. In this type of community, at least until very recent years, people were all “known” and names bore the mark of who people were, including their places in the social hierarchy. Once mentioned, these people, through their names, are themselves in-

tegral to the identity of the text. The same is true of the localities and even the agricultural terrace that is transferred: all are named, all are known, all lend their substances to the significance of the text. Read locally, an instrument such as this is not abstract but concrete; names of people and places enter an inexhaustible context into the text, as a specific community and its history are evoked.

Buried in and beyond the names is an individualism that is fundamental to Islamic law. The assumption that it is individuals who can enter into something called a contract is so basic as to render manual discussion unnecessary. In world historical perspective, that is, in comparison to what the gamut of human societies have known, such conceptions are remarkable and distinctive, yet in the specific world of this contract such notions are as unremarkable as they are foundational. Such assumptions reveal a strong family resemblance with the Greco-Roman and Judeo-Christian legal traditions, of which the Islamic shari'a is, at least in part, a descendant. Last of the great legal systems to emerge in the civilizational cradle of the Eastern Mediterranean, the shari'a, despite (or perhaps including) its particular sacred quality, exhibits a distant kinship with the individualistic legal systems of the West.

But in Yemen only a limited segment of the community actually has the capacity or the wherewithal to engage in such transfers of property. Only certain individuals, therefore, have these sale documents. The whole notion of a "transacting individual," assumed in the shari'a to be natural to the way the world is, may be understood as an idea of the type Marx referred to in a classic formulation as "ruling ideas," or an "ideal expression of the dominant material relationships." In the contracts, as in Yemeni historical writing, only an elite actually enters into the text; but this selective imaging is authoritatively presented as the only "world" there is.

This ideological quality of the "individual" as presented in the shari'a is more evident in a closely related type of contract entered into by owner-landlords and tenants for the lease of terraces for cultivation. Structured as bilateral undertakings between two "individuals," the leases in fact establish and presuppose a complex relationship of dependency between landlords and those who farm their land. As Engels (1972:136) wrote of bourgeois labor contracts, powerful and powerless parties are fictionally constituted as equivalent, freely contracting individuals; "the law makes both parties appear equal on paper." Even mundane contracts make their contribution to rendering "normal" a hegemonic image of the world, rendering natural what is historical.

A sale object of . . .

Mention of the "sale object" focuses attention on the property undergoing a transfer of ownership. According to the shari'a manual chapters on the sale contract, which are relatively expansive on the subject, a legal sale object must meet five conditions: it must be "pure," so that neither wine nor dogs may be sold; it must be "useful," so that neither useless insects nor two grains of wheat may be sold; it must be "deliverable," so that neither an escaped animal nor usurped

property, nor parts of things that are nonpartable, such as swords or vases, may be sold; it must be the “individual property” (*milk*) of the seller; and, finally, it must be “known,” a requirement of strict specification that eliminates vaguely characterized things such as “a roomful of wheat” or “one of two pieces of clothing.” Such understandings concerning the legal status of “sale objects”—in this case cultivated land—inform a notary’s writing and reading of sale documents.

Milk, the Islamic category of individually held and alienable property, is central to the definition of a legal “sale object,” yet it is not itself the subject of separate definition. Rather, it appears in the sale chapters of the manuals without fanfare, as an assumption, implicit and embedded, yet crucial. A construct of individually disposable property and a contract of alienation—both considered to be among the “essential legal relations” (Stone 1985:50) of capitalism—imply and reciprocally constitute one another. In its legal vocabulary, the document text is structured by a consistent figure—beginning with the opening word, “bought,” and continuing on with “capital,” “seller,” “sale object,” “sale,” “purchase,” “price,” and “buyer,” and concluding with “individual property” (*milk*). This discourse—its closeness to our own overemphasized in translation—expresses a fundamental act: the transfer, for money, of a category of property right deemed individually appropriable and alienable. The figurative language is familiar: land is treated “as if” it were a commodity.

The moment of the transfer is reenacted in the document text. A parcel of land, originally the *milk* property of the seller, enters the text constituted as a “sale object.” A series of legal steps, including the requisite offer and acceptance, and an affirmation of the completeness of the sale, and then the physical receipt of the price money by the seller from the hand of the buyer, lead up to the dramatic transfer. First the seller lets go, he surrenders his property, guaranteeing (consecrating) it as it leaves his possession. Then, conveyed in textual representation by the pivotal, third person past tense verb *sar* (“became”), the property, once again, this time in the absent form of the document, is alienated—it becomes the *milk* property of another individual, the buyer, and is mingled with his other properties of this type. Need it be observed that the land in question is unaltered by these solemn proceedings, that the exchange of property rights is a relationship between humans?

Sedimented in the use of the term *milk* is a whole history of property relations in Yemen, yet the evolution of property rights is actually veiled by the simple persistence of the old lexeme *milk*. In studying the political economy of the transformation of a precapitalist formation in the course of integration into the world market economy, one typically expects to find important changes in property relations, frequently centering on the advent of capitalist forms of private property to replace older indigenous forms of collective holding. But in the case of Yemen, and in some other regions of the Middle East where the shari‘a (entailing state and court authority) has held sway, this expected marker of change—as the capitalist mode of production “creates a world after its own image” (Marx and Engels 1972:339)—is partially obscured by the prior existence of *milk* rights.

In colonial circumstances, *milk* was recognized as being very close to the then prevalent Western notion of private property. In the late 1830s, for example, the French colonial regime in Algeria understood *milk* rights as follows:

Private property existed and was perpetuated in Algeria on the same basis as among us: it is acquired, transmitted, and held and is recognized by long possession, Moslem testimonials, and regular titles; the laws protect it and the courts assist it. [quoted in Bennoune 1976:205]

In the hybrid legal system that subsequently emerged in French Algeria there occurred a “francisation” of *milk*, whereby the indigenous property category was assimilated to the Roman law conception of private property in French jurisprudence (Henry and Balique 1976:29–32). In neighboring Morocco, where *milk* land rights had originally been concentrated mainly around the state-controlled towns (Abu Lughod 1980:163ff; Seddon 1981:55–57, 154), the colonial period and the penetration of Western capital and settler colonies were associated with a spreading “milkization” (Le Coz 1964:281), facilitated by new procedures for title registration. This resulted in a process of conversion of what had been either collectively held “tribal” land or state domain into individually held property.

Yemen, however, is distinctive (Lebanon being perhaps the only comparable Middle Eastern case) in the overwhelming historical predominance of the *milk* property form, which has been estimated to amount to between 70% and 80% of all cultivated highland land (Dequin 1976:45). The two other significant categories of landed rights, pious foundations (*awqaf*) and state lands (*miri*) also have, in Yemen, a close relation to *milk*. Foundation land legally presupposes the prior existence of *milk* rights, out of which a foundation is constituted. In other former regions of the Ottoman Empire, where state lands predominated, and where *milk* holdings were small, *miri* referred to a type of usufruct holding with ultimate title vested in the state—one of the classic illustrations of the “Asiatic Mode of Production.” But in Yemen, the small amount of *miri* land is mostly the confiscated former private *milk* holdings of the ruling Zaidi imams of this century. Other types of collective holding common in the Middle East, one village and cultivation based (known as *musha'*), and the other associated with the pasturage rights of “tribes,” are also insignificant in Yemen (except in the far northeast, perhaps, in the latter case).

Given the already existing dominance of this type of individual property right in Yemen, evidence of a capitalist transformation of property relations must be sought within the institution of *milk* holdings, in seeing through the simple continuity of the legal lexeme. The contract of sale and *milk*, its property counterpart, illustrate an important general characteristic of Islamic law, namely, that it contained an array of what might be described as commercial-capitalist forms prior to the advent in the region of a generalized capitalist socioeconomic formation, associated with the spread of world system market relations. Despite the secure ideological predominance of the shari'a in the Muslim world, the economic system it imagined was in fact historically subordinate, limited mainly to towns (cf. Rodinson 1973).

This was written with the witnessing of. . .

Three levels of witnessing occur in the “witnessing clauses”: the names of the standard two witnesses required by Islamic law for a valid contract are mentioned—these are the eye and ear witnesses to the oral contract, individuals who could ideally come forward to testify in the event of a contested outcome; God, as “sufficient witness,” suffuses the human undertaking with the ultimate authority of religion; and the notary, who is not explicitly referred to as a witness, but is the witnessing linchpin of the textual representation of the contract.

The chain of witnesses, as the imam and his commentator asserted, constitutes the legitimizing support for the written document. Witnessing supplements writing by situating it in an ideal chain of spoken utterances, in a fictional genealogy of human witnessing links. But as the imam surely knew, witnesses could both die and lie. The buttressing up of writing through the supposedly sound institution of witnessing actually serves to cover up the fact that the burden of potential falsification associated with writing attached to speech as well.

Notaries, even of earlier generations, are local men whose solid reputations are well known in Ibb (Messick 1989). Their reputations had to be solid, that is the community had to produce men of such unquestioned status, for the authority of the documents they wrote depended fundamentally on their knowledge, honor, and personal probity. Although the position of notary is not defined or even discussed in Yemeni jurisprudence, his role is pivotal in the construction and deconstruction of legal documents, and, as a result, in the conduct of the community’s most essential affairs. In a society in which the abilities to write and read have been the attributes of only a few, the notarial signature is an artifact and a reproduction of a culture of the sacred Text, of a pyramidal institution of instruction, and of an important vesting of social honor.

Notarial writing occurred formerly without the licensing or intervention of a state authority (although documents would be enforced in court): notarial practice was originally “private,” involving “neither an authentication furnished by the intervention of public authority, nor the publication of juridic acts” (Tyan 1959:13). A textual evolution is in progress, however, as an old style of document is gradually being transformed into something we would recognize as a title deed. This evolution, associated with the birth of a new notion of the state, has entailed a perceived need for public regulation of the formerly private activities of notaries, and the advent in Yemen of lawyers and legal drafting of the Western type. The possibility of court registration, mentioned at the end of the translated text, is one aspect of a gradual displacement of the notary from a central role in constituting the document.

In older sale documents, the names of the parties to the contract and the two witnesses are essential, but their signatures never appear, simply because these signatures were considered to have no legal effect (cf. Wakin 1972:51n, 68n). The buyer and seller did not sign because it was the notary who translated the undertaking into a permanent text—a text that was his product. The signature of the notary established the link in the chain of truth. Recently, however, sale doc-

uments have appeared bearing, in addition to the signature of the notary, those of not only the witnesses but also buyers and sellers. Together with the requirement of official registration, these newly appearing signatures confirm a decisive epistemological transformation of the nature of the documentary text.

Written Representation

To what extent do legal documents, when viewed over time, reflect the changing political/economic circumstances of Yemeni life? Are such texts and the legal forms they embody responsive to historical transformations? In North Africa, this question could be addressed through a comparative examination of 19th- and 20th-century notarial guides. One of the standard new guides (al-Sinhaji A.H. 1384–1387 [1964–1968]), for example, explicitly endeavors to incorporate an emergent colonial and postcolonial body of “modern law and new methods” (1384 [1964]: *ya*) into older document models.

In the absence of an equivalent literature in Yemen, the notarial documents themselves can be compared historically. Documents of the several contractual genres differ, however, in the ways and in the degree to which they mirror a changing world of human relationships. Consider, for example, changes that have occurred in two related document types: the lease/hire (*ijara*) contract, already briefly mentioned, and, once again, the sale contract.

Lease/Hire Contracts and Cash Cropping

The lease/hire contract is fundamental to an understanding of precapitalist Yemeni production relations in two senses. First, in connection with the lease of agricultural terraces, such contracts structure the relationship between landlords and tenant cultivators. This contractual form is the principal legal mechanism for bringing together land and labor in agrarian production. Second, the same contract form is utilized in the hire of services; what is hired in such cases is human labor power, involving both craftwork, such as tailoring, and the general hire of laborers, such as men paid to assist in cultivation and in harvesting. The lease/hire is thus the general contractual form for engaging each of the two principal means of production, land and labor.

While they mask the inequalitarian relationship between landlords and tenants, local lease documents written over the last 50 years are nevertheless instructive about the advancing commercialization and changing production relations of Yemeni agriculture. The documents differ from sale contracts in that they are composites of shari‘a and purely customary terms, and it is change in the customary aspect that provides clear evidence of a move toward cash cropping. The older type contract was a sharecropping arrangement, whereby the tenant paid the landlord a quarter of the harvest grain yield, in kind. With this delivery of grain, the tenant also agreed in writing to provide a quantity of clarified butter and a certain number of man-days of labor (a kind of private corvee), both of which varied according to the size of the terrace. Similar relationships are well known historically and cross culturally (e.g., Marx 1967:794; Wolf 1966:50–53). Although

technically (according to the shari'a manuals) an illegal feature, these older leases had no terminal dates, but this accurately reflected the fact that relationships between landholding and tenant families stretched over generations.

Changes that have come to lease documents are of several types. First, it is now common to have specified time limits, usually of three years, written into the documents. This change is associated with the breaking of the cycle of reproduction of landlord-tenant relations. Gradually, dating back to the appearance of work possibilities in British Aden in the late 19th century and, more recently, with the massive migration of Yemenis in the 1970s to Saudi Arabia and the Gulf, former tenants have become wage-laborers. Second, there has been a move, also represented in newer leases, toward rent payments made in fixed amounts rather than as a percentage of the harvest, and in money rather than in grain; the payments of butter and the supplying of labor are being dropped. These new leases are thus clear indicators of the spread of cash cropping.

Sale Contracts: Continuities and Capitalist Space

At first glance, sale documents appear to provide an illustration of an opposite sort of situation. In reading a corpus of such documents dating from the last 150 years in Ibb, what is most striking is the rigid formality, the pronounced sameness of the legal formulae over time. Lacking the significant customary component of the lease documents, these purely shari'a-based writings seem to partake of the fixity of the old shari'a manuals themselves. The obvious differences from document to document stem from the specifics of their negotiated terms (the Durkheimian "contract"), and it is possible, to this limited extent, to read off changes in land prices and note occasional changes in currencies marking the succession of Yemeni states. But in their formality these texts seem to poorly represent the changing shape of social relations: "contract-law," in this instance, seems unresponsive to changes in the world.

This is a phenomenon identified by Karl Renner (1949:252), the early Marxist scholar of law, who argued that "fundamental changes in society are possible without accompanying alterations of the legal system." The problem, as the anthropologist Francis Snyder (1981:293) maintains in his study of the relationship of law and capitalist transformation in Senegal, is one of understanding "apparent" continuities in "historical legal forms." The case of *milk* property rights, which are the object of transfer in these sale documents, is an excellent example of such an apparent continuity. As the central property institution of the shari'a, *milk* seems to persist through periods of tumultuous change. As Weber (1949:83) has written, however, the "formal identity of the prevailing legal norms" through times of pervasive socioeconomic change involves an "inevitable change in the *significance* of legal institutions" (emphasis in original). One must read past the formal persistence of *milk* in the sale documents to an interpretive and relational understanding of the changed significance of the institution. *Milk* now is not what it once was in precapitalist Yemen because the whole system of highland property relations, from wage-labor relations and commercialized cash cropping to and including *milk* itself, is in the course of transformation.

If this much can be said of the “internal” features of the sale document, other observations can be made concerning the subtly changing “external” features of such texts. This other reading requires a return to the theme of a shift over time in the epistemological nature of the document. The already cited evidence of this shift includes the process of displacement of the notary from his role as the document linchpin and the legislative emphasis placed on official registration. A further indication, another level of significance, concerns the changing spatial relationship of the written text to the page. Spacing in texts has been viewed as highly significant both in deconstruction (Derrida 1976) and the study of the transition from manuscript to print cultures (Goody 1977; Ong 1982). Like new notions of and concern with time, which, as E. P. Thompson (1967) has shown, so accurately herald the birth of capitalism, new orderings along spatial lines equally distinctively mark a fundamental transformation.

In old-style sale contracts the text begins far down the paper and indented toward the center. Arabic is written right to left, and the lines run across to the left edge of the page. When the bottom is reached before the writing is completed, the text turns the corner and continues on, now upside down, back up the wide space left on the right margin, creating a spiral effect. Spiral texts were not so much the accidental outcomes of running out of space as they were the intention from the outset, and similar spirals are found not only in old sale documents, but also in letters, legal opinions, and so on. Opposed to this type of spiral movement in the old text is the very different spatial organization of the translated document, which is recent. It appears centered, located between equal, straight-ruled margins, constrained as a text in the familiar manner of Western legal instruments. An interesting analogy for this spatial change in Yemeni documents is found in comparing the curving alley plan of labyrinthine old Yemeni towns with the rectilinear, grid-plan of streets in adjoining modern ones. Such spatial changes, in the microcosm of the document as in the macrocosm of the town, are hallmarks of a new mode of representation associated with an ongoing capitalist ordering. A process of abstraction is involved that is characteristic also of law in a capitalist order (Pashukanis 1978).

“Internal” and “external,” of course, are artificial distinctions: the evolution of *milk* behind its lexeme, the decline of the notary in favor of a state official, the appearance of the signatures of the parties, the harnessing of the spiral text by straight margin lines—all are of a piece in the transformation of a document into a title and, at the same time, in the quiet mirroring of changes in Yemeni society.

Conclusion: “Two Tongues” and Transformation

The activities of writing down Revelation and writing down property rights have something in common. Both involve the transcription of an original speech event, considered authentic and “true.” Yet in attempting to capture its essence, they produce instead a version of diminished authority. In relation to the Word of God as the original spoken truth, the written Law was an imperfect human elaboration. In relation to the original binding utterances of the parties to a contract, its written transcription is of problematic authenticity.

The problem of the commentator's "two tongues" is thus the problem of writing as the "other" of speech. In the process of grounding the spoken word in the form of the written text a paradox occurs. The truth of the spoken word, whether on the cosmic level of Revelation or on the mundane one of a verbal contract, is always received, recorded and read by humans, who are by their nature less than perfect, in their moral statuses as in their powers of understanding. At best, they translate, but in so doing the "truth" of the divine Word or the word of the "lips" is inevitably reduced to something less than itself, something humanized, "fallen" and fallible. But the other side of the paradox, as the Imam understood, is that the speech event is evanescent; it passes away, it is perishable. In order to endure rather than perish speech needs the services of writing: "writing," the commentator wrote, "is a safeguard for what is uttered by the lips." Writing rescues the event from perishing, but only at the cost of another kind of death, the death of the original meaning, conveyed in the authenticity of speech. Rescued in written form, speech is "absent," altered, third person. Open to a potentially infinite number of interpretive readings, a written text, unlike speech, is not transparent. In acknowledging the absence of transparent meaning in texts, jurists in Yemen and elsewhere in the Muslim world went further than their European counterparts. European thought cultivated the illusion that meaning could be retrieved from texts, while lamenting the necessary dependency of speech upon its "substitute." The Muslim attitude was more radical: while the truth of the event is lost in writing, the fiction of the chain of reliable witnesses purported to reconstitute the claim of the writing to be a true representation of the original speech event.

A local social history of the transformation of a legal "superstructure" thus entails, as a point of departure, a cultural history of written representation. As texts in between, Yemeni legal documents were further situated with respect to two specific histories: that of the shari'a text as locally understood, and that of the worldly undertakings of highland property relations. Less overtly than legal opinions (Messick 1986) or judgments and settlements from legal proceedings, legal documents embody changing human relations. What they reveal of change depends, however, on how they are read and deconstructed. They can be examined for clear deletions/additions of rules, for ideological masks of unequal relationships, for formal continuities that seem to belie fundamental shifts, and for a range of evident and subtle epistemological changes in the nature of the text itself.

Notes

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