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Hawala in criminal court: the role of law and commercial culture in informal financial exchange

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Abstract
A historically informed understanding of *ḥawāla* and other varieties of informal value transfer systems (IVTS) requires consideration of the normative and cultural elements which structure and facilitate transactions in globalized financial markets. This paper argues that the Sharia-based normative and cultural framework of *ḥawāla* is created in the social relations of Muslim networks and that, in a criminal law context, this normativity can be used as a tool to discern between legitimate and illegitimate transactions. The new institutional economists' (NIE) explanation of *ḥawāla*, which predominates in scholarly work, neglects this common frame of reference built on community, shared belief, and normative rules and expectations. The NIE views economic institutions through the lens of profitmaking and self-interest centred institutional development. Moreover, in a criminal law context, the profit-oriented perspective of law overlooks the normative characteristics that sometimes appear in the transactional characteristics of these transactions. When evidence of these characteristics is presented to the court, they offer a useful tool to differentiate legitimate from illegitimate transfers of value. Legitimate transfers will frequently be facilitated through dense networks in which the normativity and culture of *ḥawāla* frame the rules and expectations of parties to the transaction. Criminal transactions, on the other hand, typically involve fewer participants, sometimes from different ethnic and linguistic backgrounds, are profit-orientated, and involve means of enforcement such as the use of violence which traditional networks do not employ. The NIE perspective does not fully account for non-western legal orders or for commercial practices in which exchange remains culturally, historically, and socially embedded.

Keywords Informal financial exchange · Hawala · Law and culture · Sharia and commercial culture · Law and economics · Money laundering · Informal value transfer systems · Criminal networks

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Introduction

The central identifying feature of informal financial exchange is its embeddedness in social relations.[1] It is the reason for the continued existence of *ḥawāla* like banking systems in countries across the globe and the impossibility of their eradication. Yet scholarly research does not consider the applied significance of this characteristic in a criminal law context. The misunderstanding centres on the way informal, unwritten agreements which comprise *ḥawāla* transactions are controlled. In advanced economies, informal, unregulated financial transactions can be equated with criminality. While *ḥawāla* is vulnerable to money laundering and terrorist financing, its use as a remittance vehicle is well documented. The consequences of this attribution can have severe legal and economic implications. Migrant remittances, crucial to developing country economies, are confiscated and *ḥawāla* agents are frequently indicted for money laundering and other criminal offences regardless of the source of funds.

Ḥawāla is a regional incarnation of age-old banking, pre-Islamic instruments once used to finance trade and commerce in the caravan trade in which the carrying of specie across dangerous terrains was hazardous. Today, *ḥawāla* and other geographic manifestations of informal value transfer systems (IVTS) are used across the globe but are prevalent in the Global South where access to formal credit is limited and where the rule of law and institutions can be weak.[2] In contemporary times, migrant workers have transplanted *ḥawāla* to labour importing countries or advanced economies to remit their wages to their countries of origin. The transnationalization of *ḥawāla* networks is facilitated by advances in information technology and communication in today's globalised informal financial markets.

Law and economics theories of the mechanisms or institutions which control the non-contractual relations of indigenous banks known as *ḥawāla* predominate in scholarly literature and they have also been adopted by law enforcement officials. An example is Greif's theory of a multilateral reputation-based mechanism (MRM) in which 11th century Maghribi traders operating from the Mediterranean basin disseminate reputational information and economic sanctions through dense, identity-based networks to secure informal promises. The MRM is an institution which developed and functioned in response to traders' self-maximising behaviour. According to law and economics theories, the MRM overcomes the problem of trust in one-off transactions in which parties would be better off by cheating (Greif's, 1993).

However, the MRM theory of contractual control does not account for the role of religious law and culture as the regulatory architecture which facilitates trust and governs *ḥawāla's* informal promises. The legal and cultural origins of *ḥawāla* are factors that work in concert with the MRM to control these informal transnational value transfer systems. Yet the characteristics of traditional *ḥawāla* networks are distinguished by their normative and cultural meaning which is created and defined in the continuous and varied production of meaning in the social relations of Muslims

[1] Granovetter (1985) argues that all exchange is embedded in social relations and cannot be viewed in an atomistic manner.

[2] Importantly, *ḥawāla* is a regulated financial instrument in some jurisdictions such as The United Arab Emirates.

(El-Zein, 1977, p. 251). Other geographical varieties of IVTS can similarly be distinguished by their own normative and cultural meaning. The variability of normativity is an important factor that helps to explain the diverse nature of IVTSs which the English courts consider annually. The role of Islamic law and commercial culture in *ḥawāla* transactions provides a basis for drawing distinctions between solely profit-maximizing transactions in which the social bonds of trust and friendship are absent and those embedded in religious law, customary practices, and trust-based relations. These distinctions are important factors that can be used to distinguish *ḥawāla* transactions that deal in criminal proceeds from those which are traditional, culturally embedded modes of value transfer.[3] *Ḥawāla* frequently contravenes states' currency, exchange and payments related law but should not invariably be equated with money laundering or dealing in criminal proceeds.

Previous research primarily explains the mechanisms of *ḥawāla* according to neo-institutional economic theories which argue that self-maximizing behaviour fuels the development of institutional adaptations such as MRMs to secure informal promises. Abdirashid Ismail's analysis of the institutional void in Somalia, where *ḥawāla* plays the role of an informal bank, is an example. Ismail illustrates the way in which MRMs fill the void where state-based institutions no longer exist (Ismail, 2007). Other analyses describe the institutional voids of Afghanistan where *ḥawāla* has replaced the formal banking system or where *ḥawāla* is associated with illicit flows of funds (Thompson, 2006). Schaeffer's analysis of *ḥawāla* describes it as a system of self-enforcing contracts. She considers the ex-ante and ex-post mechanisms for contractual exchange, sometimes spanning extensive geographic distances. Her analysis highlights the reputational mechanisms that act as an extra-legal mode of contractual enforcement (Skarbek, 2008).[4] Uniquely, Schramm and Taube identify the importance of the social embeddedness in their economic analysis of *ḥawāla* in which "cultural" and "social-religious influences" produce "special conditions and limitations" governing Islamic transactions. While their analysis recognizes that "neither the selection nor the organization of formal or informal institutions takes place solely based on economic criteria of efficiency", their economic analysis focuses on the self-interest centred reputational mechanisms of *ḥawāla* networks (Schramm & Taube, 2003, p. 416). Law and economics perspectives neglect and undervalue the role of Islamic law and legal culture as regulatory factors which, alongside profit-maximizing institutions, facilitate the trust that governs these semi-autonomous orders.[5] Moreover, these perspectives do not explain the transnational proliferation of *ḥawāla* which is facilitated in a sharia influenced normative framework involving dense interpersonal relations, trust, and reciprocities. In addition to the profit

[3] Since 2010, the author has been an Expert Witness to the Courts of England and Wales and is regularly called upon to make this legal distinction. The Financial Action Taskforce, the intergovernmental organization which combats money laundering and terrorist financing, distinguishes between traditional and criminal *ḥawāla* but does not explain its reasons for making this distinction. See FATF (2013).

[4] Gräbner et al. (2018) develop a computational model for assessing the institutional matrix involved in *ḥawāla*.

[5] The concept of 'semi-autonomous orders' was developed by Moore (1978). I use the concept here to denote that *ḥawāla* do not function independently of the state. In fact, *ḥawāla* agents often arbitrage or rely on state law to facilitate transnational value transfers.

motive, this paper considers traditional *ḥawāla's* normativity and how understanding the normativity of transactions can be used to distinguish legitimate transactions from illegitimate ones.

The paper is organised in the following manner. Section one sets out the methodology used to conduct this study. Second two considers the contemporary *ḥawāla* transaction, its agency relations and how trust is experienced in Islamic commercial culture. Section three examines the Islamic legal origins of *ḥawāla* and considers the normativity of the transaction on the basis of Islamic rules and commercial practice. Section four addresses the role of the sharia in Muslim life and examines its holistic nature in the minds of Muslim believers. Section five focuses on the norms of Islamic commercial culture and how these norms structure commercial exchange. Section six examines the new institutional economists' focus on self-maximization as an explanation for understanding the enforcement of parties' informal promises. Section seven provides examples of how normativity can be used as a toolkit to distinguish traditional *ḥawāla* from criminal IVTS networks.

Methodology

The primarily qualitative data available for this study required a qualitative methodology capable of fostering analytical insights into the patterns, connections and assumptions of the data. Grounded theory was chosen due to its inductive methodology, which consists of several systematic yet flexible guidelines for collecting and analysing data and for conceptualising a theory that is grounded in the data (Glaser & Strauss, 1967). The law and economics literature provided a theory about the institutional mechanisms of *ḥawāla.* The research question sought to assess the universal validity of this theory. Data gathering was determined by the study's central research question and the limited availability of observational data concerning the participants of informal value transfer systems. This study's data draws on documents including NGO, governmental and intergovernmental reports as well as academic literature, providing a basis for assessing the narratives and discourses concerning the institutional framework of *ḥawāla.* Furthermore, evidence was obtained from 14 English criminal and civil law cases that took place from 2012 until 2024, which the author obtained as an expert witness to the court. These cases involved unlawful informal value transfers which originated in Afghanistan, Azerbaijan, India, Pakistan, Egypt, the United Arab Emirates, Iran, Hong Kong and the United Kingdom. Nine criminal cases were prosecuted in Crown Courts and 5 cases were tried in the Magistrates' Courts. Nearly every case produced evidence consisting of at least two expert witness reports, bank statements, receipts, prosecution statements, defence statements and multimedia including photographs, videos, and electronic messages. In several cases, handwritten ledgers and handwritten notes were produced as evidence whereas only one substantively useful transcribed interview was made available. All documents and multimedia were anonymised for the purposes of this study.

Furthermore, several informal discussions and 4 formal expert reconciliation discussions with National Crime Agency officials as well as other law enforcement officials provided useful insights into the documentary data and clarified law enforcement officials' perspectives of *ḥawāla*. Although documents do not always stand as objective facts, despite what their authors may present, they are created in social, economic, cultural and historical contexts and represent particular views and discourses. Moreover, written texts serve as records, but they also describe, explain, justify, and/or foretell actions (Charmaz, 2014, p. 46).

The data was separated, sorted and synthesised through qualitative coding. Coding is the act of attaching labels to segments of data that depict its meaning. The breadth of the multidisciplinary documentation and literature involved in this study led to the strategic coding of segments that were related to the research question. Coding is particularly helpful when it frames the ideas as actions, which is expressed in the form of gerunds, such as "generating social control" or "defining control." Coding for actions avoids conceptualising the data in pre-existing categories, leading the researcher to focus on individual cases rather than static labels (Charmaz, 2014, p. 116–117). From the outset, coding raised analytical questions about the data and provided a basis for comparing it with other data segments. Coding was thus an interpretive rendering of the data that allowed the researcher to conceptualise, draw inferences, connections and generate ideas. The next step involved cataloguing segments conceptually in so-called concept maps that provided a basis for making these connections. Concept maps were given titles such as "law and economics perspectives", "trusting", "informal finance networks" or "cultural embeddedness" and attributed to particular documents and page numbers for citation purposes.

The iterative process involved keeping a methodology journal in which the author made connections, formed new questions and explored ideas. Ideas and assumptions became visible, allowing for discoveries to be made about the data, categories to be formed and a developing theoretical framework to emerge. The process flagged up areas where more data was required which led to revisiting the process until a theory was conceptualised that was grounded in the data.

Ḥawāla in globalized financial markets

As a linguistic term, modern *ḥawāla* combines a transfer of debt with the payment features of a letter of credit (*suftaja*). The transaction normally involves a customer who wishes to remit money. This part of the transaction involves a sender, two trusted agents (*ḥawāladār*) and a recipient. For example, if one wants to send money to China, he or she would contact a local *ḥawāladār*, who will charge a fee and/or make a profit from the exchange rate he offers the customer. The agent contacts his counterpart *ḥawāladār* in China by telephone, fax, email, or messaging app, who will make the delivery of funds to the recipient in person.

The second part of the transaction involves the settlement of the debt between the two agents (intermediaries). Balances are settled through compensatory payments such as by cheque, wire transfer, physical transfer of cash, bearer instruments or money orders. Settlement can also take place through the legal or illegal trade of goods. Trade in goods is often a preferred form of settling transactions (The World Bank & The International Monetary Fund, 2003, p. 25).[6]

Beyond the formally regulated Islamic finance industry, *ḥawāla* has been disseminated globally due to the reduction of trade barriers, capital controls and obstacles preventing migration. It is also known as an informal value transfer system (IVTS), a term which underscores the transaction's unregulated nature as well as its commonality across many Middle Eastern and Asian cultures. Although *ḥawāla* is associated with many different diaspora communities, it has a strong association with Muslim majority countries. For example, the increased flow of Pakistani migrants to the Arabian Gulf has linked major hubs such as Dubai to *ḥawāla* transactions involving Pakistani diasporas in the United States, the United Kingdom, and the Gulf States (Ballard, 2003, p. 14).[7] As more migrants have made use of informal value transfers, the volume and total value of transactions has surged and the related connections between the Middle East, South Asia and western states have grown enormously (Seddon, 2007, p. 20).

Ḥawāla is an agency contract in which one party, the agent (or intermediary), acts for another party, who is the principal. The agent's acts should be beneficial to the goals of the principal or the representative of the principal in some matter which interests or concerns him (Mitnick, 1976, p. 8). Agents are able to bridge social and physical distances that otherwise limit social exchange, and which facilitate role specialisation and the segmentation of tasks into discrete operations (Shapiro, 1987, p. 623, 626). However, these are complex forms of social organisation which also afford opportunities for abuse and may engender distrust. Agents control property they do not own; they create wealth and have discretion over the distribution of opportunity; they generate and disseminate unverifiable information because recipients lack expertise or access to the data sources (Shapiro, 1987, p. 629). The potential opportunities for abuse affect the relationship with the customer and the agency relationship with counterpart intermediaries.

In the United Kingdom, *ḥawāla* agents act as informal remittance operators, and operate in diaspora communities from a range of businesses such as travel bureaus, exchange houses, accountancy businesses, local grocery services, news kiosks, etc. (Maimbo et al., 2005, p. 12; The World Bank, 2019; World Bank Group & Knomad, 2020, p. viii).[8] Given the fact that most *ḥawāla* agents are engaged in full-time

[6] UK law enforcement authorities frequently intercept the settlement of debts between *ḥawāla* agents. Physical transfers of cash are regularly intercepted and confiscated, and participants are charged with money laundering and dealing in the proceeds of crime. Money laundering is a generic term that describes various methods and processes which criminals use to disguise the origin of funds obtained as the proceeds of crime.

[7] Dubai's communications, financial, and trading linkages with the global economy have led some observers to characterise it as the 'lynchpin of the contemporary global *ḥawāla* system'.

[8] The largest source of IVTS funds almost certainly originates from migrant remittances. The World Bank estimates that remittances to low- and middle-income countries reached a record high in 2018: $529 billion. The top remittance destinations among countries were India ($79 billion), China ($67 billion), Mexico ($36 billion), the Philippines ($34 billion) and Egypt ($29 billion). In 2019, remittances reached a record of $554 billion, overtaking foreign direct investment as a source of external funds. The true volume of total remittances is likely much larger than this estimate since it does not include informal remittances. Research on remittance flows in Asian countries has shown that informal transfers may comprise

employment, and hence receive a reliable stream of income, analysts believe that *ḥawāladars* enjoy their community's trust and provide the *ḥawāla* service not only to make money but rather as a service to their community (Seddon, 2007, p. 32).

Contrary to western conceptions of business, *ḥawāla* networks are grounded in 'networks of absolute trust' which are the very foundation of this business (Ballard, 2003, p. 7). Euro-American perspectives of exchange assume that potential contracting parties are unreliable and potential malfeasant strangers, whereas *ḥawāla* networks have both a social and a financial dimension and are conducted within tightly knit networks with distinctive religious commitments in which long-term reciprocities are involved (Ballard, 2005, p. 328). In the UK, *ḥawāla* is associated with Pakistani diaspora communities in which social bonds and reputation facilitate this trust-based financial system (Seddon, 2007, p. 19).

This understanding of trust can describe a culture or a cultural orientation (Torche & Valenzuela, 2011, p. 181, 191). Trust is the intangible embodiment of people's shared norms or a state of belief in which a particular group has internalised its norms. It is the evolution of a society's implicit agreements as to the way in which others are to be treated (Husted, 1989, p. 23, 30). As a common belief system, Islam acts as a unifier and common framework which facilitates social relations and the networks which can transfer large flows of value. Trust is experienced as the by-product of interpersonal relations and common belief in Islam. It develops from familiarity in the context of personal relations where bonds are maintained by reciprocity (Luhmann, 1988, p. 19). In this context, it is experienced as 'a set of expectations shared by all those involved in an exchange' (Zucker, 1985, p. 3).

In Afghanistan, for example, commerce and trade would ground to a halt in the absence of personalized trust in this largely informal economy. *Ḥawāla* agents provide a number of financial services that augment international value transfer services including deposit keeping; currency exchange; currency speculation/investment; and short-, medium- and long-term financing (Rahimi, 2020, p. 7). *Ḥawāla* is the lifeblood of the Afghan economy and is estimated to comprise as much as 80–90 per cent of value transfer and money exchange. During the recent decades of war, a functioning financial system has not always existed (Thompson, 2006, p. 155).

Consider a case study in which an Afghan merchant owned and directed a carpet importing business based in Kandahar which achieved sales volumes in the range of \$20 million per annum. The business operated informally: there were no formal contracts nor did the merchant appeal to state law to enforce informal contracts. His carpet import business involved close interpersonal relations with a small number of manufacturers, suppliers, customers, and employees. The carpets, which were imported from Iran, were sold to shop owners and other traders throughout Afghanistan, often on credit but lacking any formal documentation. The businessman would frequently travel to Iran to visit carpet manufacturers and suppliers who allowed him to ship many truckloads of carpets to Afghanistan on an informal understanding that the credits would be repaid via *ḥawāla* only when the carpets were sold onward to the

anywhere from 15 to 80 per cent of the true amount of total remittances. In South Asian countries such as Bangladesh, India, Pakistan, and Sri Lanka, informal remittance systems are widespread, and a large proportion of total remittances are thought to flow through informal channels.

businessman's customers in Afghanistan. The onward sale of carpets sometimes took many months for the businessman to recover his expenses so that he could repay the manufacturers. The carpet manufacturers placed their trust in the businessman. Over many years of frequent business relations, he had developed a reputation for honest dealing from this interaction. Indeed, the businessman's entire business, including its supply chains and finance mechanisms, relied on trust and reputation (Witness Statement (Afghanistan).

Ḥawāla's legal origins

Islamic law is the normative origin which shapes the nature of *ḥawāla* transactions and the dynamics which we can observe to this day. In the 7th century C.E., Muslim jurists developed *ḥawāla* as a commercial instrument, likely in response to its widespread practice at the time.[9] Similar commercial instruments were almost certainly in use long before the emergence of the *ḥawāla*. Most historical accounts indicate that the Arabs disseminated their trade and commercial techniques in the trading networks that they developed across the Indian Ocean, along the coast of East Africa, along the Silk Road to Afghanistan, to Malaysia and Indonesia and in numerous Chinese ports. In 19th century India, the term *ḥawāla* may have been adopted because of increasing trade activities with the Persian Gulf or the wider Middle East. Historical accounts of the *hundi*, the Hindi name for a similar banking instrument, and the *ḥawāla* point to the two systems being the same. While linguistic and religious commitments may have differentiated the instruments, their function as a 'bill' or 'draft', 'cheque' or 'assignment' are identical (Martin, 2009, p. 913). Furthermore, Indians' commercial interactions with the Chinese as early as the Han dynasty (202 BC – 220 CE) may have influenced Chinese merchants to develop a parallel practice known as *fei-ch'ien* (flying money) or *pien-huan* (credit exchange) (Thompson, 2008, p. 105).[10] The Chinese *fei ch'ien* system is documented as having been practiced during the Tang Dynasty, from 618 to 907 C.E. *Fei chi'ien* facilitated the tea trade by minimizing the inconvenience and dangers of carrying currency over long distances. Like their Arab and Indian counterparts, Chinese traders are known to have transplanted *fei ch'ien* to other countries (Pathak, 2004).

Muslim jurists' adoption of this pre-Islamic commercial institution transformed it into an Islamic commercial instrument subject to the rules and principles of sharia which distinguish the characteristics of traditional *ḥawāla*.[11] Muslim jurists developed detailed rules for the *ḥawāla* in Islamic legal literature (*fiqh*) or the positive law of Islam. The Arabic word *ḥawāla* is grammatically derived from *ḥāla* which indicates change in a condition in which a person or a thing is located or the transformation from one condition into another. This grammatical definition is a useful starting point for understanding jurists' markedly contrasting interpretation of this

[9] Redín et al. (2014), note that the origin of similar commercial instruments is not well documented.

[10] Markovits (2000, p. 158) confirms the same.

[11] Ercanbrack (2015) records a similar transformation of partnership contracts into distinctive forms of partnership that reflected the school (*madhhab*) preferences in the region it was practiced.

commercial instrument. Namely, they define *ḥawāla* as a contract in which a debtor's obligation to another is transferred to another similarly obligated debtor (Grasshoff, 2010, pp. 37–38).

A prophetic tradition (*ḥadīth*) (the sayings and doings of the Prophet Muhammad) may have been invented to justify the regular use of *ḥawāla* that trade and commerce must have required at this time in history (Grasshoff, 2010, pp. 37–38). The early 7th century tradition is recorded in the authoritative compendium of Prophetic traditions, the Saḥīḥ al-Bukhārī, as follows:

> The Prophet said, Procrastination (delay) in paying debts by a wealthy person is injustice. So, if your debt is transferred from your debtor to a rich debtor, you should agree (Al-Bukhārī, 2023).[12]

The Prophet's *ḥadīth* exempts the *ḥawāla* transaction from Islamic law's prohibition of the sale of a debt for a debt. Classical jurists forbade the *bayʿ al-dayn* (sale of debt) to a third party as they viewed the obligations of the transaction as uncertain (*gharar*) and that it leads to dealing in *ribā* (interest). The fundamental issue is whether a debt (*dayn*) is an asset (*māl*), capable of being owned and traded. Classical jurists typically viewed a debt as a *dayn* or an outstanding obligation, which was not capable of being traded. A debt has no intrinsic value and thus could merely be transferred from creditor to debtor at par value. However, a small minority of jurists, amongst them the famous Ḥanbalī jurist Ibn Taymīyyah (d. 1328) and his disciple, Ibn al-Qayyīm (d. 1350), permitted the sale of a debt at a discount because they interpreted the *ribā* prohibition as relating to an increase whereas a discount was not mentioned in the sacred sources. Contemporary scholars now permit a creditor to discount a debtor's debt but do not permit the trade of a discounted debt to a third party (Ercanbrack, 2019, p. 841).

Abū Ḥanīfa (d. 767), the eponym of one of the four Sunni schools of Islamic jurisprudence (*madhāhib*), is the first Muslim jurist who recognized the enormous importance of *ḥawāla* for Arab economic life. He devoted much attention to the instrument in his jurisprudence (Grasshoff, 2010, pp. 61–62). Abū Ḥanīfa's juristic illustration of the *ḥawāla* comprises three parties: The *muḥīl* (transferor or debtor); the *muḥtāl* (transferred party or creditor); and the *muḥtāl ʿalayhi* (transferee or debtor). The transferor instigates the transaction in which he agrees with the *transferred party* to whom he owes a debt that the *muḥtāl ʿalayhi* (transferee, who owes a debt to the *muḥīl*) will pay a sum to the transferred party (*muḥtāl*). The payment balances the debts between the three parties. While the physical presence of the *muḥīl* and the *muḥtāl* is required for this contract, the absence of the third-party *muḥtāl ʿalayhi* is not required. However, the transferee's acceptance (*kabūl*) is necessary as is his contractual satisfaction (*riḍa*), which renders the transaction binding (*lāzim*) (Grasshoff, 2010, p. 41). Classical jurists agreed that the transferee's debt should equal the transferor's debt, both in amount and description (Rushd, 1996, p. 360).

[12] The Saḥīḥ al-Bukhārī is a collection of *ḥadīth*s (traditions) compiled by Muḥammad al-Bukhārī (d. 870). His collection is recognized as one of the most authentic collections of traditions which together comprise the the *Sunna* (the second sacred source of Islamic law) of the Prophet Muḥammad.

Furthermore, the Ḥanafīs do not require that the third-party transferee is indebted to the transferor prior to the contract.[13] Therefore, valid transfers of debt do not depend on the indebtedness of the transferee, which illustrates that the Ḥanafīs viewed the transaction as one which does not merely balance credits and debits but rather one that facilitates the extension of credit (Al-Zuhayli, 2003, p. 57). The use of the *ḥawāla* to extend credit and to facilitate payment is evident in the rule that other persons, even parties to an existing *ḥawāla* can be joined to the transaction, resulting in a long chain of creditors and debtors (Grasshoff, 2010, pp. 60–61).

The Cairo Geniza records, a trove of documents discovered in a Jewish synagogue in medieval Old Cairo (Fustāt), records transactions including *ḥawāla* from Mediterranean countries during the 11th to the 13th centuries. The Maghribis were the descendants of merchants who lived in Abbasid Caliphate (750–1258 C.E.) until the first half of the 10th century whose metropolis was Baghdad. Thereafter, they immigrated to Tunisia and other trade centres in the Muslim world including Spain, Sicily, Egypt, and Palestine. The Geniza indicate that the *ḥawāla* was used in this period to facilitate retail and wholesale commerce in a largely credit based Mediterranean economy. However, the *ḥawāla* was used as a written order of payment, similar to a modern cheque, to facilitate payment, frequently in another city or country. Legally, however, these orders of payment are a transfer of debt (*ḥawāla*) (Goitein, 1967, p. 242).

A related commercial instrument, the *suftaja*, functions as a letter of credit and exemplifies *ḥawāla's* varied purposes. Grasshoff argues convincingly that the *suftaja* was the most frequently used type of *ḥawāla* in which the third-party transferee (the *muḥtāl ʿalayhi*) is not present at the conclusion of the contract. The term "*suftaja*" derives from the Persian word *suft* or *saft*, meaning strong or solid (in Arabic, *muḥkam*). In the *suftaja* transaction, a person pays another person money, who then directs his agent to pay out the same amount of money at a different location. The payer receives a piece of paper, which he shows to the agent, allowing the payer (now recipient) of funds to avoid the dangers of travel which, historically, were associated with the caravan trade and traders' desire to avoid carrying specie physically. The paper, also named *suftaja*, lists three parties to the transaction: the agent who demands payment (debtor); the agent who makes payment at a distant location; and the recipient. The paper serves as evidence of the contract before a Muslim judge (*qaḍī*) who can use the written evidence in a civil process to strengthen the oral testimony normally required in Islamic procedural law (Goitein, 1967, p. 32).

A properly executed *suftaja*, which was one that used a specific, well-known contractual template, was without exception accepted by the judge for immediate execution. Because the *suftaja* strictly required specific language to express the terms and conditions of the contract, it was accepted like cash and could be transferred from person to person as such. The transaction is said to have ensured the highest economic and moral security with the result that an expression was coined to describe it: "one's signature was as good as a *suftaja*" (Goitein, 1967, p. 34).

[13] The Ḥanafīs belong to the Ḥanafī school, one of the oldest of the four traditional Sunni schools of Islamic law. The school is named after the 8th century scholar, Abū Ḥanīfa (d. 767).

However, classical Muslim jurists forbid the *suftaja* when it provides a benefit to the payer (or creditor) and for this reason they do not develop contractual and commercial rules for this transaction in *fiqh* literature. According to the sharia, loans (*ʿaqd al-qarḍ*) that benefit the lender are forbidden in a prophetic *ḥadīth* in which the Prophet is to have said: "every loan that brings a benefit to the lender is *ribā* (interest)" (Al-Zuhayli, 2003, p. 72).[14] Loans are considered permissible for charitable causes but forbidden if the lender derives some benefit from the loan. The lender may demand repayment of the loan's amount at any time (Al-Zuhayli, 2003, p. 371). The *suftaja* conflicts with the rules for a transfer of debt which requires that a debt already exist between the transferor and the transferred party (Al-Zuhayli, 2003, p. 57). By contrast, in a *suftaja* a transferor initiates the transfer of a debt by paying a fee, rendering this relationship a contract of agency rather than a transfer of debt.[15]

The role of the sharia

In globalised financial markets, the *ḥawāla* remains firmly grounded in its Islamic heritage and normative framework. An example is the Accounting and Auditing Organization for Islamic Financial Institution's (AAOIFI) sharia standard for the *ḥawāla*. AAOIFI is the most authoritative international standard setting organization in the Islamic Finance industry and provides transactional rules for *ḥawāla* and other Islamic transactions which sharia scholars agree are permissible according to Islamic law (AAOIFI, 2015, pp. 171–194). AAOIFI sharia standards represent, to some extent, a codification of customary terms and usages and are available for adoption by states, municipal legal systems, or financial institutions (Ercanbrack, 2019, p. 833).

Although the sharia is no longer the governing legal system in most Muslim majority states (Saudi Arabia is a notable exception), the sharia is the normative framework and legal culture in Muslim majority and minority environments that orients, directs, and enforces common beliefs, goals, purposes, rules, and behaviours.[16] Wael Hallaq, a leading scholar of Islamic law defines the sharia as a legal culture that has defined 'Muslim societies and civilizations throughout the centuries, and in every corner of the Islamic world […] One may even add that law defined not only the Muslim way of life, but also the entire culture and psyche of Muslims throughout fourteen centuries. Islamic law governed the Muslims' way of life in literally every detail' (Hallaq, 2002, p. 1705, 1706). The sharia continues to be practiced as a parallel legal system throughout the Muslim world. The modern man has been described as *homo juridicus* due to his attachment to the law to a historically unprecedented degree. In Muslim contexts the identification of sharia with law has been described as the *leitmotif* of Muslim modernism and underscores the normative supremacy of the sharia (Ahmed, 2016, p. 125).

[14] *Ribā* (interest) is forbidden in Islamic law.

[15] Muslim jurists argue that the prohibited aspect of the *suftaja* can be evaded if the loan is extended without stipulating that money must be paid in another country or location.

[16] The sharia was the governing law of the Ottoman Empire until 1922.

Ḥawāla relies on networks of participants who share and observe norms such as the norm that promises should not be broken.[17] The normativity of traditional *ḥawāla* networks is imbued with the norms and commercial rules of the sharia and its commercial culture. Norms are ideas in the minds of members of a group as to what 'men should do, ought to do, are expected to do, under the circumstances' (Homans, 1951, p. 123). Only when there has been a departure from a norm, which is followed by some punishment, can we be certain that we are dealing with norms. Control is the process in which the individual's departure from a norm is brought back into accord with the norm to some extent. Control is effective only when the degree of obedience results in the greatest satisfaction to the individual under the existing social system. Departures bring dissatisfaction or a net punishment under the existing state of the social system. The mechanisms of control incentivise individuals to alter their behaviour toward the norm, which results in a greater amount of satisfaction to an individual (Homans, 1951, p. 299).

A law and economics interpretation of norms maintains that they are developed to maximise the aggregate welfare of the group in workaday actions (Ellickson's, 1991, pp. 167, 174).[18] However, this self-interest centred understanding of normative development omits the role of religion, religious law and culture as factors which contribute to the development of norms as well as people's adherence to them. Ascribing self-interest as the sole explanatory factor for norms and institutional development is a modern western *Weltanschauung* that 'constrains us to think in certain ways and with certain categories, as well as not to think in certain ways and with certain categories (Ahmed, 2016, p. 178).' It orders and makes:

> sense of the world by assigning objects to their universally *right-ful* semantic places (that is, to where they belong and to what they mean by universal right), thereby reducing or altogether eliminating the possibilities of conceiving of alternative local or universal arrangements of rights and meaning proceeding from paradigms that do not make the binary religious-secular distinction in which "secular" is that space and those discourses in which the epistemology of the "religious" does not apply, and "religious" is that space and those discourses in which the epistemology of the "secular" does not apply (Ahmed, 2016, p. 178).

A stark dichotomy between the realm of the secular and the realm of the religious does not exist in Islamic thought and is not recognized in law and economics circles which ascribe a self-maximizing function to normative and institutional development. The sharia is a religious law which provides guidance and rules in every aspect

[17] In the UAE, *ḥawāla* is regulated by the Regulation on Registered *Ḥawāla* Providers which requires *ḥawāla* providers to register with the UAE Central Bank to obtain a Ḥawāla Provider Certificate. Moreover, *ḥawāla* providers are required to adhere to UAE federal laws on anti-money laundering and counter-terrorism financing. See United Arab Emirates Regulation on Registered Ḥawāla Providers Circular No. 24/2019, Art 2 – 1.

[18] The predictive capacity of Ellickson's theory is limited by the stipulation that it applies only to workaday matters. Therefore, the theory does not apply to the ground rules of exchange; and any purely distributive norms such as charity, etc.

of a Muslim's life, encompassing 'the realm of judicially enforceable rules and the conduct of the state, even while extending to realms of ritual practice and private ethics exceeding the purview of modern Western 'law'' (Katz, 2007, p. 91). The sharia comprises the sacred sources of Islam which are the Qur'ān, the *Sunna* (the traditions of the Prophet Muhammad) and secondary sources of law including juristic consensus (*ijmaʿ*) and analogical reasoning (*qiyās*). In practice, the sharia also includes jurists' understanding of God's law or the positive law of Islam (*fiqh*) that is represented in a large body of jurisprudential literature including manuals, treatises, and commentaries.

The sharia is at once a framework for common religious belief and a legal system that provides a framework for lawful and unlawful conduct, fostering trust, legal certainty, transparency, and predictability in commercial exchange. These characteristics are evident in the ways in which Muslim jurists divide legal actions into five categories including the: obligatory (*wājib*); recommended (*mandūb*); permitted (*mubāḥ*); reprehensible (*makrūh*); and prohibited (*ḥarām*). Actions applied in law are the 'obligatory', 'permitted' and 'prohibited' whereas 'recommended' and 'reprehensible' actions are ethical categorizations for which no penalty is imposed. Ethical categorizations reflect the piety of the Muslim and provide a normative structure that will be assessed in the Hereafter. A Muslim believes that he or she will be held to account in the mundane world and in the Hereafter, illustrating the potential behaviour modifying and framing effects of Islamic rules and principles.

Islamic commercial culture

Reciprocity is an intrinsic social dynamic which is necessary to all exchange but is particularly pronounced in Islamic legal culture. Reciprocity is the social behaviour in which every donation contains the expectation that what has been gifted will be reciprocated (Granovetter, 1983, p. 213).[19] Reciprocity establishes personal relations through the gift, which Mauss referred to as 'the spirit of the person that is embodied in the thing given' (Mauss, 2001, pp. 9–10). If the recipient does not match the giver's favour, the giver is unlikely to do him another favour. He will be accused of ingratitude which serves as a kind of social control as a decrease in exchange between the parties is the likely outcome. When an individual requires another's assistance in carrying out some goal, this economic control maintains an equivalence of favours (Homans, 1951, p. 286). Indeed, people's desire to benefit one another is motivated by the expectation that doing so will bring social rewards (Blau, 1986, p. 17).

Islamic legal culture was developed in an era of largely informal partnerships that existed between merchants of all rank, stature, and size. Informal cooperation was extensive and entirely based on trust and reciprocity. Consider the following business letter preserved in the Geniza in which an experienced Tunisian trader gives advice to a young business partner in Egypt:

[19] It is a social dynamic that is actioned throughout the world in close-knit social contexts.

> So-and-so [also a young Tunisian active in Egypt] sent me a letter suggesting – which I intended to do anyhow – that you two should cooperate [literally: that your hand and his hand should be in your affairs and in his]. When you travel to Būṣīr [to buy flax] you take the trouble to purchase for him what he needs, while he will take care of oil and soap [which were procured in Tunisia]. When you tarry here [in Tunisia], you will look here after his affairs, while he will travel to Egypt and make purchases for you and for himself, for he is an expert in flax and other [Egyptian] goods. I shall be very pleased with this friendship between the two of you […]. (Goitein, 1967, p. 165).

Indeed, business friends rendered an extensive list of services for one another and even for friends of business friends. However, partners had to provide exact accounts of these transactions, which Goitein describes as an even more exacting process than the operations themselves (Goitein, 1967, p. 166). Merchants seem to have resented providing these accounts and interpreted requests to do so as expressions of mistrust. Consider the following merchant's statement to his overseas partner: 'God forbid that I should request exact accounts from you or anyone else. I simply wanted to know how much I still owe and what you have shipped'. Because business cooperation was based on mutual trust and friendship, providing exact accounts of business dealings was awkward but nonetheless a prerequisite of commerce and trade during the Geniza (Goitein, 1967, p. 205).

In business relations, moreover, inter-personal sentiment is always a factor, so that being liked by another is a reward whereas being disliked is a punishment. Such punishment may not result in a complete breakdown in exchange, but it is a punishment for breach of a norm, nonetheless (Homans, 1951, p. 287). Macaulay, in his seminal study of non-contractual relations, described the dynamic of interpersonal relations in a business organisation. These relations induce the performance of commitments:

> *For example, sales personnel must face angry customers when there has been a late or defective performance. The salesmen do not enjoy this and will put pressure on the production personnel responsible for the default. If the production personnel default too often, they will be fired. At all levels of the two business units personal relationships across the boundaries of the two organizations exert pressures for conformity to expectations* (Macaulay, 1963, p. 55, 63).

Consider the case where a person, who is a member of a group, has failed to return a favour. Beyond injuring one's own self-interest, the person is in danger of losing friendship and association with other members as well as his ranking in the group (Homans, 1951, p. 289). There is a mutual dependence between social rank and performance of a certain activity. The mutual dependence constitutes an automatic control of the activity. The sanctioning effect is particularly marked with persons of a high social standing. Any departures from the degree to which they normally reciprocate injures his status and much more so than the person of lower rank who hasn't much to lose (Homans, 1951, p. 288).

Geniza sources are replete with exclamations such as: "he serves there and I serve here" and "you are in my place there", for you know well that `I am your support here," reflecting informal partnerships based on trust and friendship (Homans, 1951, p. 169). Informal business cooperation was commonly referred to as *ṣuḥba* (companionship) and a merchant of lesser stature was described as a *ṣāḥib* (companion) of a merchant or firm with a greater reputation. Other related terms were used to describe these partnerships such as *ṣadāqa* (friendship) or "mutual kindness" or "close relationship". Such "close relationships" could and did last for long periods of time. One letter describes a *ṣuḥba* lasting forty years whereas formal partnerships were of short duration and limited to specific undertakings. Although small commissions could be paid for special services, most were not compensated, leading Goitein to declare that: "The fact remains that the Mediterranean trade, as revealed by the Cairo Geniza, was largely based, not upon cash benefits or legal guarantees, but on the human qualities of mutual trust and friendship (Homans, 1951, p. 169)."

Equivalence of exchange is conducive to positive social relations. Any departure from equivalence between the two persons will result in a decrease in their positive sentiments towards one another. In jurisdictions where *ḥawāla* is commonplace such as the Arab Gulf States, Pakistan, Afghanistan, Sri Lanka, India, Bangladesh, and elsewhere, reciprocity and equivalence in exchange are deeply rooted. Equivalence is a bedrock principle of Islamic commercial exchange: 'the real cause of the buyer's obligation is not the contract of sale, but the fact that ownership of a thing has been transferred to him' (Chehata, 1969, p. 41).[20] The price is the equivalent of the commodity. To refuse to pay the price is to upset the balance that the contract must ensure, the equilibrium in which equivalence or equality is the goal of contracting parties (Chehata, 1969, p. 41; Saleh, 1992). The lack of equivalence is deemed unlawful. The so-called prohibition of *ribā*, which in Arabic is understood as interest or usury, reflects this understanding of exchange. An unjustified return undermines contractual equality and disrupts social ties. For these reasons, dealing in *ribā* is considered one of the most egregious sins.

Islamic partnership principles, such as risk sharing, allow for cooperation based on reciprocity because everyone wins.[21] In contrast to zero sum scenarios, risk sharing allows both parties to gain from the exchange (Al-Suwailem, 2000, p. 61).[22] For example, in the Afghan economy, it is an essential principle for facilitating exchange. *Ḥawāladars* in Afghanistan are in the business of offering short-term working capital loans to help importers offset their financial obligations to foreign suppliers. Risk sharing allows domestic buyers, who buy on credit and are often excused from paying on agreed due dates, to pass the market risk onto importer/creditors, who, in turn, are assisted by *ḥawāladars*' payments to foreign suppliers. A weekly payment system known as *ugraee* allows for the regular monitoring of buyer/debtors who make weekly cash payments to receive further credit. Trade with foreign suppliers,

[20] For further study on the intricate rules of the interest prohibition see Saleh (1992).

[21] Partnership or *sharika* in Islamic legal literature (*fiqh*) is one of the origins of this commercial principle. The Hanafis, whose jurisprudence governs Afghanistan (along with customary law and state law), have perhaps the best developed law of partnerships of all the schools of Islamic jurisprudence. For further study see Foster (2010a, p. 3–34; 2010b, p. 273–307).

[22] For an insightful article on the game theoretical aspects of the prohibition of *gharar* (risk) in Islamic law.

who will only trade on the basis of fixed term payments, is made possible (Rahimi, 2020, p. 4).

Furthermore, informal financial exchange would not function if people did not honour their promises. Macaulay's ground-breaking research underscored Wisconsin businessmen's emphatic belief that 'commitments are to be honoured in almost all situations' (Macaulay, 1963, p. 63). The norm may constitute a kind of *de minimus* natural law of society (Ellickson's, 1991, p. 190) and, indeed, *ḥawāla* transactions originate in a commercial culture in which *pacta sunt servanda* is a commanding principle. The Qurʾān directs believers in this regard: "You who believe, fulfil contracts (*awfū bi-l-ʿuqūd*)" (5:1); and "Fulfil the covenant of God when you have entered into it, and break not your oaths after you have confirmed them." (16:91). Because recourse to the law for the settlement of disputes rarely takes place in informal financial exchange, the shoring up of this norm via the imposition of other social controls becomes essential in informal financial exchange (Choudhury, 2021, p. 1).[23]

Multilateral reputation mechanisms (MRMs)

Law and economics scholars account for *ḥawāla's* extra-legal mechanisms based on transaction cost economics, a branch of the New Institutional Economics (NIE) that focuses on the institutions of governance. In contrast to formal institutions such as those of judicial ordering or formal systems of contract law, transaction cost economics is concerned with private ordering which can help to distinguish between *de jure* and *de facto* governance (Williamson, 1996, p. 328). This mode of analysis is centred on the premise that economising is the central problem of economic organisation. Law and economics scholars make behavioural assumptions that seek to understand human nature as it really is and in relation to moral hazard (Williamson, 1996, p. 55).

A transactions cost analysis of *ḥawāla's* extra-legal mechanisms is a necessary and important contribution to our understanding of *ḥawāla* and other types of informal exchange. However, transactions cost economics is not a sufficient explanation because it does not incorporate in its analysis the legal, normative and cultural embeddedness of transactions in non-western, developing country contexts. The religious, legal and political architecture of exchange cannot be neglected lest we discount the regulatory architecture in which informal exchange is facilitated. The following analysis examines the scholarly contributions of transactions cost analyses of the reputation mechanism associated with *ḥawāla.* I provide an analysis of the role of law and legal culture where the law and economics literature has refrained from doing so.

Law and economics scholars argue that the informal promises which comprise the *ḥawāla* are controlled in the multilateral reputation mechanism (MRM), an informal institutional adaptation that solves the so-called fundamental problem of contractual control (FPCC) in networks. The FPCC describes the necessary condition for exchange: one must be able to commit ex-ante to being able and willing to fulfil contractual obligations ex post. Commitment of this sort reflects the sequential nature

[23] The exception to this rule is Afghanistan where *shuras*, *jirgas* and chambers of commerce sometimes deal with disputes involving *ḥawāladars.*

of exchange or the time lapse between the promise and the detriment or the quid and the quo (Williamson, 1996, pp. 254–255). Sequentiality permits a party to renege on his or her promise. In Greif's analysis of the 11th century Mediterranean traders, who had to rely on overseas agents for the conduct of their business abroad, traders' reliance on agents was efficient because it spared them time and the danger of travelling with their goods and money, allowing diversification. Greif argues that in the absence of supporting institutions in this transnational context an agent may decide to renege on his obligations (Greif, 1993, p. 526). Using the one-sided prisoner's dilemma, new institutionalists argue that a party will not enter a contractual relationship unless the other party has committed to fulfilling his obligation ex post (Williamson, 1996, p. 328). In a commercial exchange between two individuals, one party has the option to renege on an obligation or to fulfil his obligation and continue in the commercial relationship. The argument is that in a one-off exchange, the party who reneges can gain even more than performing his side of the bargain. The game assumes that the other party will anticipate such behaviour (and advantage) and will decide not to initiate exchange. Therefore, in the absence of commitment, exchange will not take place (Greif, 2000, p. 251, 254).

The MRM overcomes the FPCC by 'fostering the ability of decision-makers to ex-ante commit to respect their contractual obligations ex-post and to reveal their ability to do so (Greif, 2000, p. 256).' An example of this type of institutional adaptation is when agency-based relationships are internalised within hierarchically organised firms, allowing these firms to overcome the market processes which threaten contractual performance (Williamson, 1996, p. 80). Larger corporations may acquire the expertise of former agents via merger or acquisition.

Ḥawāla intermediaries make use of the MRM to govern the transfer of value within transnational networks. The MRM governs agency relations by conditioning future employment on past conduct. When agents behave dishonestly, the network can punish the cheater by ostracising them from the network or until they compensate the injured party (Greif, 1993, 530–531). Excommunication is synonymous with social and economic suicide (Ballard, 2005, p. 328). Punishing the cheater allows the network to develop a reputation for how it will deal with such contraventions in future and future opportunistic behaviour is deterred (Dixit, 2007).

However, the asymmetry of network information flows concerning agents' past conduct poses a commitment problem. IVTS agents must be able to observe and respond to other agents' prior conduct. Ongoing relationships, where performance has been tested in the past or where an agent's reputation is known are conducive to generating the trust that agents will carry out their instructions honestly (Blau, 1986, p. 98). In the absence of monitoring capacity, incentives for cooperating disappear and dishonest behaviour ensues (Blau, 1986, p. 182). For example, if an agent is brought into contact with an unfamiliar agent, he or she may not have knowledge of the agent's history and reputational scorecard. In such instances, the MRM analysis forecasts dishonest behaviour or an unwillingness to engage in exchange.

The sharia and Muslim commercial culture are the normative architecture that provides credible evidence of trustworthiness and, in tandem with the MRM, chasten honest behaviour, allowing parties to engage in further exchange. In the absence of parties' shared understanding of *ḥawāla's* normative and cultural code, they would not likely engage in exchange.

Moreover, the NIE model assumes that as networks grow information becomes less available and multilateral sanctions less effective (Dixit, 2007). Greif argues that MRMs are prone to fail due to growing information asymmetry, slow communication and the 'different interpretations of facts' (Greif, 2000, p. 261), which is a nodding reference to the network's otherwise unexplored normative expectations. Moreover, the argument goes that in times of historic change and revolution, such normative expectations are highly changeable, and limit the extent to which economic exchange can be governed by private governance institutions (Martin & Schnitzer, 2002, p. xiii). Recall, however, that the Geniza records indicate that informal partnerships could last a lifetime whereas formally concluded partnerships were of a much shorter duration and for specific purposes. Furthermore, private governance institutions such as *ḥawāla* are more adaptable than this perspective would have us believe. Humanitarian relief workers recognise the adaptability of *ḥawāla*'s private governance networks for the indispensable role they play in the delivery of funds in states in crisis and war affected polities. Thompson explains that:

> Over the past six years in Afghanistan alone, *ḥawāladars* have facilitated the movement of hundreds of millions of dollars of "humanitarian money" to ensure the smooth running of the first national democratic elections in more than three decades, the construction of hundreds of kilometres of road that had fallen into disrepair, the implementation of agricultural assistance programmes, and the building of educational facilities in a country suffering from some of the lowest literacy rates in the world, and where less than half the children aged 7–12 years are enrolled in school (Thompson, 2008, p. 84).

The MRM model assumes that group cohesion is necessary for promoting consensus on normative standards and the effective enforcement of shared norms. Yet the normative standards are unaddressed. The sharia and its commercial culture are the missing context in this analysis. They are the basis of consensus and shared norms that foster transnational kinship and religious solidarity, reinforcing the significance of informal sanctions such as disapproval and ostracism for individual members. Moreover, non-Muslim agents are excluded, reinforcing the norms and commercial culture which foster the network's self-enforcement architecture (Schwartz, 1954, p. 471, 479). Schramm and Taube liken the exclusive nature of *ḥawāla* networks to an asset specific investment which prevents transactions from taking place with other religious or social groups (Schramm & Taube, 2003, p. 412). The sharia fosters tight-knit networks which permit a degree of monitoring and verification that is otherwise absent in most agency relations. Should an agent act contrary to the principal's interests, the same networks allow the agent to exert social control (Granovetter, 1985, p. 490). Muslims' recognition of sharia and their adherence and identification with its common principles and values, sends credible signals of trustworthiness.

Distinguishing the normativity of IVTS networks

When IVTS come before the courts, law enforcement officials and expert witnesses base their assessments on the available evidence which is directly related to the case and the individuals caught up in these transactions. Furthermore, background knowledge and expertise related to IVTS, money laundering and related issues is brought to bear in the assessment of these transactions and their adherence to the law. In a criminal law case, evidence includes key witness statements, exhibits including bank statements, accounting records, photos, WhatsApp messages, transcripts of interviews, forensic reports, and expert witness statements. The indictment, defence statement and case summary frame the context of these transactions, the alleged crime(s), and the possible defence claims. The normativity of transactions is usually discernible from this evidence, but should be viewed in context, taking into consideration all the circumstances and background of the transactions.

The geographic location and religious affiliation of network members provides an immediate indication of the type and cultural background of the IVTS, but each network will evince certain *sui generis* characteristics which frequently come to light in a criminal law context. Some common characteristics such as participants' commitment to the principle of *pacta sunt servanda*, and the functional objective of transferring value, define the relations of every IVTS, but normative practices can be distinguished in both the structure and characteristics of value transfer systems.

The Islamic normativity of traditional *ḥawāla* is distinctive. Islamic normativity can be discerned in accounting and bank records which evidence profit and loss sharing credit practices, the granting of interest free loans (in the form of remittances) and contextual knowledge which associates this mode of value transfer with the direct knowledge of intermediaries (*ḥawāladars*). WhatsApp messages sometimes indicate the nature of relations between *ḥawāladars* and customers. In traditional networks, customers typically interact directly with a *ḥawāladar*, who is well known and a trusted person in the community. If evidence comes to light which belies trust-based relations, there is reason to doubt that this IVTS is a traditional *ḥawāla.* Traditional *ḥawāla* is primarily cash based, which means that customers and intermediaries pay in cash. However, intermediaries are known to use regulated banks to store and settle balances. Accounting records frequently indicate the quoted exchange rates (and currencies), which are customer friendly and *ḥawāladars* may forgo additional fees as an act of charity (*ṣadaqa*) to the community.

Traditional IVTS networks tend to be larger, more diffuse, and ethnically homogenous. They are characterized by numerous, relatively small remittances which are often confused with smurfing (when banks are involved), generating suspicious activity reports (SARs).[24] Further, numerous deposits of checks, money orders, and cash deposited into bank accounts from geographically disparate locations distinguish the breadth of these networks. However, cash is the preferred medium of exchange and can be transported physically. Moreover, in jurisdictions where a thriving informal

[24] Smurfing is a term used to describe a money laundering network in which participants make numerous, small deposits into a bank account that are designed to evade the bank's money laundering controls.

economy exists, these networks can generate currency fluctuations where large payments in hard currencies are being made (Passos 2003, p. 81).

The structural normativity of some varieties of IVTS is not always easily discerned from their functional characteristics. Chinese IVTS networks in the United Kingdom are distinguished by large, geographically diffuse, ethnically homogenous networks in which customers make small payments into bank accounts which are followed by overseas transfers to recipients in China.[25] These networks indicate that this type of IVTS is deeply embedded in Chinese diaspora culture and society but other normative characteristics of this IVTS are not always available as evidence before the court. Communications between participants, which are recorded on online messaging platforms, can provide normative indications but the transactions themselves may be the primary basis of discerning their legality. The structure of IVTS can indicate its embeddedness in culture and society but the transactions may not provide indications of a wider normativity in which these networks operate. For example, in Nigeria, unlicensed *bureaux de change* (BDC) operators have adopted a sui generis type of *ḥawāla* that is profit orientated and transaction specific. BDC operators maintain domestic naira accounts from which they pay and receive naira using a network of overseas agents, while offering to buy hard currencies such as dollars overseas. Once the operators confirm deposits in their local bank accounts from locals wishing to remit funds overseas, they can either wire or use their overseas agents (who are customers who wish to remit value back to Nigeria) to deposit or hand over cash to any nominated person (The National (Money Laundering & Terrorist Financing) Risk Assessment Forum 2022, p. 20). Beyond those highlighted, this type of IVTS does not evince characteristics that help to distinguish the normativity of the transaction. In Azerbaijan, IVTS has flourished in the post-Soviet financial landscape in which the rule of law has been inconsistent and weak. In the bazaars of Baku, IVTS carried out by exchange houses are known to function in connection with offshore financial companies and overseas bank accounts which facilitate capital flight (for several purposes), tax evasion, and the transfer of illegal proceeds (Expert Witness Report (Azerbaijan)). This type of IVTS is not usually culturally embedded and normativity beyond self-interest and/or the profit motive is not always discernible. They frequently involve parties who are unfamiliar with each other, and, in contrast to traditional *ḥawāla*, their normative underpinnings may not be evident.

When evidence is available, normativity can help to differentiate legitimate value transfers from illegitimate ones. The Financial Action Taskforce (FATF), the premier inter-governmental organization that drafts and monitors globally applicable AML/CFT regulatory guidelines, draws a similar conclusion but offers only a generalised explanation as to what distinguishes these modes of value transfer. The FATF defines legitimate IVTS as those which are 'popular because of familial, regional or tribal affiliation and inadequate access to regulated financial services for senders/recipients in origin/receiver countries' (FATF 2013, p. 10). Indeed, empirical observations of hundreds of IVTS cases across multiple jurisdictions led Passos to conclude that the overwhelming majority of traditional IVTS networks deal with legitimate value

[25] Expert Witness Report (United Kingdom).

(Passos 2003, p. 72), suggesting that the normativity of traditional IVTS discourages malfeasance.

Criminal IVTS networks are normally smaller and do not require a widespread network of people. Criminal IVTS can be accomplished by a couple of individuals on a transaction specific basis (Passos 2003, p. 17). Criminal operators do not act as intermediaries to their communities and, in this sense, are not culturally or socially embedded. They frequently involve the use of formal financial institutions but leave no trail for reconstructing a transaction's route as it is intended to remain secret (Passos 2003, p. 17). They have the capacity to deal in much larger sums of money, frequently from a single customer, and their methods for recording transactions differ for some clients. They deal with traders or companies engaged in very different kinds of business or with those known to engage in illegal activities. The activities of Criminal IVTS are always criminal. Beyond illicit transfers, these operators engage in a wide range of offences including fraud, embargo busting, funding of militant groups and smuggling (Passos 2003, p. 17). Furthermore, the collection methods of criminal IVTS for receiving value vary from one transaction to the next and intercepted mobile communications can indicate antagonistic, trust-less relations laden with obscenities and abuse (Expert Witness Statement, United Kingdom). Criminal networks are frequently multi-ethnic, which can indicate that the normative and cultural meaning which structures members' relations is not shared beyond the profit motive. Finally, on occasion, law enforcement authorities become aware that members of these networks plan to use violence to enforce promises, which is unheard of in traditional IVTS.[26] All these characteristics, when considered holistically, provide a toolkit to differentiate an illicit IVTS from a legitimate one.

Concluding remarks

The scholarly law and economics explanation of *ḥawālа* value transfer networks neglects the role of normativity in informal financial exchange. The transnational extension of *ḥawāla* cannot be fully understood without considering the legal system and commercial culture in which this socio-economic institution is embedded. Transaction cost economics offers important insights into economic behaviour and the development of FPCC related institutions like the MRM. However, a complete and historically informed account of the *ḥawāla* requires consideration of the normative and cultural elements which structure and facilitate transactions in globalized financial markets. Economizing behaviour is not a sufficient explanation for these historically and culturally embedded forms of exchange.

In a criminal law context, the profit-oriented perspective overlooks the normative characteristics that sometimes appear in the transactional characteristics of these transactions. If evidence of these characteristics is presented to the court, they offer a useful tool to differentiate legitimate from illegitimate transfers of value. Legitimate transfers will be facilitated through dense networks in which the normativity and culture of *ḥawāla* frame the rules and expectations of parties to the transaction. Criminal

[26] Interview with Senior Detective of the Metropolitan Police, New Scotland Yard.

transactions, on the other hand, involve fewer participants, sometimes who originate from different ethnic and linguistic backgrounds, are profit-orientated, and involve means of enforcement such as the use of violence which traditional networks eschew.

While the assessment of value transfers must take into consideration the full context of available evidence and no single characteristic is decisive, an understanding of the normativity of value transfer networks is necessary to accurately assess the nature of these transactions and the intent of parties who participate in them.

Beyond these important uses, our understanding of the Muslim world's different approach to exchange is vital to our interaction with this important part of the world. Moreover, as the global economy develops and is restructured with greater weight accorded to emerging economy interests, this understanding of institutional development can provide insights into possible economic trajectories that differ from neoliberal economic models.

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