Chapter II

Writers and Keepers: Notes on the Culture of Legal Documents in Morocco

Léon BUSKENS

In memory of Mostapha Naji (1951–2000), *khuya*[1]

"… le contenu de faits ne constitue pas l'intérêt majeur d'un document."
Jacques Berque (1978: 7)

1. Introduction

Legal documents written down by professional witnesses are among the most common material traces of Islamic law in Morocco. Rummaging in souvenir shops or second hand bookstores might lead to the discovery of some discarded deeds. It is more difficult to make people show their own documents, concerning marriage or immovable property, because they might fear getting involved in legal issues beyond their control or understanding. Wandering around the centre of bigger towns will sooner or later lead to the discovery of offices of the professional witnesses, although their signs are often less grand than those of the Latin notaries.

The pervasiveness of legal documents is rather recent, linked to state formation, the spread of a market economy, the growth of urban population and increasing literacy. In the past large segments of Moroccan society could do without doc-

[1] From our first meetings in spring 1988 Mostapha Naji and I shared an interest in professional witnesses and their documents. Over the course of the years to follow, Mostapha provided me generously with numerous references, books, articles, and actual documents. In the summer of 1998 Mostapha and I worked on a short overview of *Kutub al-wathāʾiq*, which we never finished, also due to his untimely death in 2000. In this contribution I draw on many of his discoveries and insights, which he shared with me for the pleasure of being together *fī ṭalab al-ʿilm*. I do not want to impose a posthumous co-authorship upon my dear friend, but my debt to him is considerable. Some elements of the present contribution are taken in a revised version from Buskens 1999 and other publications. As Mostapha had a great interest in Japanese culture and cherished his friendship with many Japanese researchers who visited his bookstore "Maktabat Dār al-Turāth" in Rabat, such as Sato Kentaro and Saito Tsuyoshi, I consider it felicitous that this contribution is published by Toyo Bunko in a collection of rare documents that he constituted himself.

uments. Hence, our knowledge of their lives is rather limited. However, Morocco has a long tradition of certain people using legal documents, of which we find remains in public and private collections. These documents are important sources for history, of family and economic life, of architecture and urban and rural space, of writing culture, and of legal practice. The Toyo Bunko has managed to obtain some very rare specimens of legal documents on parchment, to which Professor Miura and his team have added great value through their research (Miura & Sato 2015; Miura & Sato, the present volume).

Their work is among the few available historical studies on legal documents in Morocco in languages other than Arabic. We have a small body of studies on legal documents in general, first of all the monograph by Tyan (1945) and the annotated edition of part of a Hanafi manual for drawing up sales contracts by Jeanette Wakin (1972). Christian Müller (2013) studied a collection of actual legal documents from Jerusalem from Mamluk times. Miura made a wide ranging comparison on the use of legal documents in five different societies (Miura 2017). In Morocco during the protectorate period (1912–1956) knowledge of documentary evidence was vital to arrange for access to land and other forms of real estate, hence several scholars produced studies useful for legal practice, such as specimens of documents, overviews of legal doctrine, procedure and terminology (e.g. Pesle 1942; Watin 1954). J. Lapanne-Joinville (1957) published an in depth study of the doctrinal aspects of legal documents which was essential for my own understanding of these documents in the context of Islamic family law in Morocco and in the Netherlands (Buskens 1999). Jacques Berque contributed a number of important studies about an Islamic legal practice from both a historical and an ethnographic perspective, which will be discussed *infra*. Jessica Marglin has made extensive use of legal documents written by both Islamic and Jewish witnesses in order to reconstruct the social and legal positions of Jews in Morocco (Marglin 2016). Contemporary legal scholars have published several books on recent regulations and doctrine in Morocco. But a specialised overview of the Moroccan tradition is lacking.

Moroccan scholars often understand the intellectual and cultural history of their nation as an heir to the tradition of al-Andalus. I do not want to go into this debate, which also has colonial dimensions. While being conscious of the questions, I consider it useful to situate the Moroccan tradition in this broader framework to which the authors themselves also relate. For al-Andalus we have two important collections of documents with extensive introductions and annotations by Luis Seco de Lucena (1961) and Wilhelm Hoenerbach (1965). Spanish scholars have edited a number of important model books, which I will discuss in section 3. Since the beginning of this century Amalia Zomeño has continued the venerable tradition of studying the document collections of Granada in a series of important studies, which will hopefully result in a monograph.

This contribution explores the tradition of writing, archiving and reading of

legal documents in Morocco. It discusses some elements of the larger legal, cultural and social contexts of the documents through the presentation of some available historical sources. First, I discuss some terminology related to documents and the people who produce them. Then I turn to the manuals which offer models for the composition of documents. The fourth section discusses the actual documents. Section 5 explores some lines for an anthropology of the writing and keeping of documents, thus making literate legal culture an object of study in itself.

2. *ʿUdūl* and *wathāʾiq*

The term *wathīqa*, pl. *wathāʾiq*, can stand for various types of documents, such as official decrees, official letters, government and private papers. In al-Andalus and the Maghrib the term *wathīqa* refers in particular to a legal document drawn up by *ʿudūl*, professional witnesses. Possible English equivalents would be "document", "deed", or "writ". Other terms in use for this type of legal document are *sharṭ*, pl. *shurūṭ*, literally "condition"; *ʿaqd*, pl. *ʿuqūd*, literally "contract"; *rasm*, pl. *rusūm*; and *ṣakk*, pl. *ṣukūk*. The plural *wathāʾiq* also designates the models for actual legal documents, which are collected in formularies. In al-Andalus and the Maghrib this genre of legal manuals is called *kitāb al-wathāʾiq*. As such the term is the equivalent of what is usually called *shurūṭ* or *kitāb al-shurūṭ* in the Mashriq (cf. Hallaq 1995).

In Morocco the writers of legal documents are called *ʿadl*, plural *ʿudūl*. In the Mashriq the equivalent *shāhid*, pl. *shuhūd* is current. The most complete form is *shāhid ʿadl*, pl. *shuhūd ʿadl*. The term *shāhid* denotes a witness, somebody giving a *shahāda*, a testimony. The adjective *ʿadl* refers to the quality of *ʿadāla* that the witness would possess. Possible translations are "moral integrity" or "righteousness". "Justice" is another meaning of this term. As a noun *ʿadl* indicates a person who has the quality of *ʿadāla*. Hence the terms *shāhid ʿadl* or a *ʿadl* refer to a qualified witness, somebody who in a court case can give a valid testimony in the presence of a *qāḍī*, a judge.

In classical Islamic law the oral testimony of a witness, *shahāda*, is the principal means of legal proof, *bayyina*. The validity of this testimony is dependent on the quality of *ʿadāla* of the witness (cf. Ziadeh 1990; cf. Schacht 1965: 192–196). For legal scholars orality was primal. For complete proof the oral testimony of two male witnesses of moral integrity in the presence of a judge was required. In some cases the one of the male witnesses could be replaced by two female witnesses. Despite the stress on the orality of the testimony a practice, and theory, of written proof developed. Next to it we see the professionalisation of the witnesses. In several law schools we see the coming into being of an institution of professional witnesses, who composed written documents according to the standards of the

school which were acknowledged by judges as valid legal proof (cf. Tyan 1945). The procedure by which the judges established the moral integrity of these witnesses, and in fact acknowledged them as professionals with whom they would collaborate, is known as *tazkiya*. The institution of professional witnesses writing down legal arrangements, such as contracts of sale and lease, marriages and divorce, has a long history in the societies of the Middle East and the Mediterranean, for example in ancient Mesopotamia, Egypt, Persia, Greece, Rome and Byzantine.

The institutionalisation of witnessing and writing documents shows in the coming into being of the genre of "formularies" or "books of models", manuals with models for documents destined at their writers. The oldest formularies date from the second century of the Islamic time reckoning. Muḥammad b. Idrīs al-Shāfiʿī (d. 204/820), the alleged founder of the Shafiʿi law school, is supposed to be the author of a book of models for contracts. In the centuries to follow many prominent legal scholars would compose formularies destined at legal practice, for example in the Hanafi school of law (cf. Wakin 1972). The Maliki school in the Islamic West of al-Andalus and the Maghrib would go farthest in the incorporation of written proof and professional witnesses (cf. Schacht 1965: 82). The tradition of formularies in the Islamic West is the subject of the next section of this contribution.

These developments resulted in a more or less standardised process of the coming into being of a legal document in the Maghrib (cf. Pesle 1942). People who would consider themselves in need of a legal document would approach two *ʿudūl*, or rather *ʿadlān*, the dualis of *ʿadl*, to request them to be present at the intended legal act. Subsequently the *ʿudūl* would write down what they had seen and heard, in such a manner that their declaration would comply with the rules of *fiqh*, Islamic jurisprudence. They would know which elements of the legal act to record, for example the *shurūṭ*, conditions, to which both parties had agreed. Professional witnesses could also record what other people would tell them about an event that they had witnessed in person, which would result in a document called *shahāda ʿalā shahāda* (cf. Schacht 1965: 194). In both cases one *ʿadl* would compose a document, in cooperation with his fellow witness. Both would sign the document with their characteristic *ashkāl* (cf. Carro Martín & Zomeño 2017). Then they would submit the document to a judge who had acknowledged them as qualified witnesses for control. Once the judge would have established that the document complied with the requirements of the legal doctrine concerning a *shahāda*, he would confirm the testimony by putting his signature in turn, after a specific formula, called *khiṭāb*, "homologation" (cf. Sato in this volume). Through the specific phrasing in legalese and the positing of the signatures the written piece would become a valid instrument of legal proof, *bayyina*, which the parties eventually might use in legal practice.

Islamic legal scholars made a fundamental distinction between a document

that came into being because the *ʿudūl* were witnesses in person to the legal act at the request of the parties concerned, called *aṣl*, and other types of documents, called *istirʿā'*. In an *istirʿā'* document the *ʿudūl* put into writing the testimony of other persons. In this case there is no guarantee for the moral integrity of the direct witnesses, only of those who put their testimony in writing. The *istirʿā'* is divided into two kinds: the *istirʿā' ʿadlī* and the *istirʿā' lafīfī* (cf. Lapanne-Joinville 1957: 352–355; Watin 1954: 271 s.v.; Milliot 1924: 132–133 and 351).

An *istirʿā' ʿadlī*, also called *shahāda ʿilmīya* or *shahāda ʿadlīya*, is a document in which the *ʿudūl* themselves declare as private persons, hence without having been requested formally by the parties concerned to be present at a certain occasion in their quality as professional witnesses (this acting as a witness upon a formal request is called *ishhād*), to have knowledge of a certain fact, for example that they know that a certain man is known in the local community as the legal husband of a certain woman. The procedure for homologation, *khiṭāb*, by de judge is different depending on whether the document belongs to the *ʿaṣl* or the *istirʿā'* category.

The *istirʿā' lafīfī, shahāda lafīfīya*, or *shahādat al-lafīf* is a legal document in which the *ʿudūl* according to the rules of their profession write down the testimony of a group of people, *lafīf*. The *ʿudūl* guarantee that their document reflects the testimony as they have heard it; they do not pronounce themselves on the contents of the testimony. A group of witnesses or *lafīf* often consists of a fixed number of people, mostly twelve. In common parlance people refer to such a testimony as *ṭnasheṛ shahed*, "twelve witnesses". The considerable number of witnesses is considered to compensate for the lack of the official establishment of their moral integrity. A *lafīf* of twelve, or sometimes even twenty-four witnesses, may replace two *ʿudūl*. Until recently the *shahādat al-lafīf* played a role in rural areas where the services of professional witnesses were not so readily available, in case people found out that they needed to provide legal proof according to urban norms, sometimes years after the fact (cf. Lapanne-Joinville 1957: 349; Buskens 1992). Article 16 of the new family code *Mudawwanat al-usra* of 2004 offered the possibility to prove a marital bond through a *shahādat al-lafīf* originally for a limited period of five years. However, the government has extended this term several times, up until today.

The *shahāda lafīfīya* is probably an example of the influence of customs on *fiqh*. Legal scholars differ about its origins. Some Islamic scholars try to anchor the institution in *fiqh*. The Moroccan scholar and minister during the protectorate period al-Ḥajwī justified the *lafīf* as a derivation of the Hanafi law school. Western researchers prefer to relate the *lafīf* to institutions from customary law, such as the collective oath and the acting of the *jamāʿa*, the village or tribal council, as witnesses. Jacques Berque tried to trace the genesis and spread of the *shahādat al-lafīf* in his studies on legal history and anthropology. He established that in the High Atlas

Mountains and in the Sous region the institution was already common at the beginning of the sixteenth century, while the legal scholars of Fès only generally accepted it in the seventeenth century (Berque 1950: 103).[2]

Despite the fact the *shahādat al-lafīf* did not comply with the orthodox rules of classical Islamic law, the Moroccan legal scholars nevertheless incorporated the institution in their doctrine through the Maliki principles of *ḍarūra*, "necessity", and *maṣlaḥa*, "public interest". Many *fiqh* texts of considerable authority offer discussions of the *shahādat al-lafīf*, especially the works on *ʿamal*, treatises on local customs of judges incorporated in Islamic legal doctrine.[3] Mostapha Naji published a small treatise on the institution by the scholar al-Fāsī al-Fihrī who died in 1052/1642 (al-Fāsī al-Fihrī 1988). Muḥammad Awzal (d. 1162/1749) is famous for his scholarly texts, especially on theology and jurisprudence, in Tashelhit, the Berber/Tamazight language of Southern Morocco (cf. Van den Boogert 1997). In his manual of Islamic law al-*Ḥawḍ* Awzal identifies the presence of *ʿudūl* as the fifth *rukn*, "essential element", for a marriage. If the *ʿudūl* are lacking, he allows for a *lafīf* to act as witnesses.[4] These, and many other texts, demonstrate how the *shahādat al-lafīf* has become a characteristic Moroccan development inside Maliki fiqh.

Until today *ʿudūl* are an essential institution in legal practice in Morocco. The family law of 2004, *Mudawwanat al-usra*, obliges people to conclude their marriage in the presence of two professional witnesses. For certain forms of divorce, especially the *ṭalāq* or "repudiation", their presence is also mandatory for the production of legal proof. The *ʿudūl* are also involved in the division of inheritances. They may be asked to act as witnesses to the transmission of real estate as well.

The French protectorate administration incorporated the *ʿudūl* and their written proof in the modern legal system that they designed, starting with their *Dahir formant code des obligations et contrats* of 1913, the corner stone of Moroccan civil law until today. The French wrestled with the proper understanding of legal proof produced by *ʿudūl* in terms of French laws, which resulted in several studies that were of great use to me, especially the fundamental article of Lapanne-Joinville (1957). French colonial policy imposed rules for control, uniformisation and standardisation. The *ʿudūl* could no longer only produce an original of a document, they also had to make copies for registers kept both by the *ʿudūl* personally and at the courts. These registers were of a standardised format. Documents would obtain an

[2] Berque repeatedly discusses the spread of the institution in passing, for example in 1949: 91, 1950: 103, 1970: 38. In his ethnography of the Seksawa of the High Atlas he devotes more attention to the question (1978: 334–335).

[3] Toledano discusses the institution in relationship to *ʿamal*, also referring to the views of al-Ḥajwī (Toledano 1981: 16, 21–22). See also Milliot & Blanc 1987: 568–569. El Iraqi 1939 offers ample references to *fiqh* texts, especially treatises on *ʿamal*.

[4] Muḥammad Awzal, *al-Ḥawḍ*, vol. II, verse 187a/b of the unpublished edition by Van den Boogert. I am indebted to Nico van den Boogert for this reference.

official number of registration. Documents had to be written on stamped paper, with the payment of the obligatory taxes. The government exercised control over the appointment and the practice of *ʿudūl*. In 1925 the French also introduced the Latin notary as an alternative and parallel institution for the production of legal proof, related to the French part of the legal system that mainly concerned European settlers and transactions in the "modern" economy.

After independence in 1956 the Moroccan state took over the French legal innovations and further integrated these in a unified legal system, abolishing the official legal pluralism that distinguished between a traditional and a modern system. The pivotal role of the *ʿudūl* in the Islamic family law was further formalised, while their competences concerning the transfer of real estate were enlarged. Until today Islamic professional witnesses, who number about 5000 persons, and Latin notaries, about 300, called *muwaththiq* in modern standard Arabic, confront each other from time to time in their struggle for control over this part of the transactions. The government further regularised the statute of the role in legislation in 1982 and 1983, which was revised in 1995, and replaced by a new law in 2006. The most recent change is the reform of 2018, which allows women to act as professional witnesses. The council of *ʿulamāʾ* has approved this major innovation, as part of a venture to grant equal rights to men and women.

The Muslim West has a tradition of more than a millennium of professional witnesses writing down legal documents according to models and procedures that form an integral part of Maliki jurisprudence, which we will discuss in the next section. Ibn Khaldun offers us a snapshot of the institution at the end of the fourteenth and the beginning of the fifteenth centuries in his famous *Muqaddima*, his introduction to history:

> "(The position of official witness) is a religious position depending on the office of judge and connected with court practice. The men who hold it give testimony —with the judge's permission— for or against people's (claims). They serve as witnesses when testimony is to be taken, testify during a lawsuit, and fill in the registers which record the rights, possessions, and debts of people and other (legal) transactions. […] The prerequisite governing this position is the incumbent's possession of the quality of probity (*ʿadāla*) according to the religious law, his freedom from unreliability. Furthermore, he must be able to fill in the (court) records and make out contracts in the right form and proper order and correctly, (observing) the conditions and stipulations governing them from the point of view of the religious law. Thus, he must have such knowledge of jurisprudence as is necessary for the purpose. […] In every city, they have their own shops and benches where they always sit, so that people who have transactions to make can engage them to function as witnesses and register the (testimony) in writing." Ibn Khaldūn (trans-

lation by Franz Rosenthal; 1967, vol. 1: 461–462).

We should not essentialise this image, the institution was by no means static. The men and the rules were fully part of legal and social history. The practices of producing written documents were anchored in daily life, closely related to the economics and the political organisation. In towns of pre-capitalist Morocco, the *ʿudūl* were often relatively familiar figures, forming part of daily life as witnesses at important family events such as marriages and death, and witnessing transmission of property rights or commercial transactions. The *ʿudūl* were the closest people would often get to the legal institutions, while judges only entered their lives in the more exceptional troublesome cases of lawsuits. With the spread of literacy and new understandings of Islam, the formation of a stronger central state and the spread of a market economy in the countryside, the presence of the witnesses and their practices changed, together with the legal rules governing their work and the models for their documents. The rise of the modern nation state from the second half of the nineteenth century, the related capitalist mode of production, and the accompanying demographic explosion and urbanisation of the country, also promoted a spread of *ʿudūl* over the territory, working under an increasing surveillance of the state.

This discussion of the main concepts and notions gives us an idea of a solution to the question of how to establish valid legal proof, as developed by scholars of the Maliki school within Islamic jurisprudence. Finding equivalents and translations in other languages, referring to other legal systems, such as the continental European civil law tradition as imposed by Napoléon, is not easy. As an anthropologist, I have tried to bring forward the originality and internal logic of this system, which with all its transformations is functioning until today.

3. Formularies

A clear embodiment of this Western Maliki tradition of written proof by professional witnesses is the corpus of model books or formularies, the genre of the *kutub al-wathāʾiq*. In a concise history of the Maliki school of law in al-Andalus and the Maghrib the Moroccan scholar al-Jīdī presents a list of 89 authors of formularies (al-Jīdī 1987: 122–128).[5] This genre developed into a venerable branch of scholarship, with some works at a high level of theory, while others stayed much closer to local practice, sometimes barely transcending notes for everyday use. Prominent scholars such as al-Wansharīsī wrote on the *ʿilm al-wathāʾiq*. In every region and

[5] Al-Sufyānī 2012 offers a history of *wathāʾiq* works in al-Andalus and the Maghrib in the fourth and fifth centuries of the Hijra.

era jurists developed their own models, in close relation with local legal practice and customs.

In the earliest period al-Andalus seems to have been the centre for the study of models. Hoenerbach compiled a list of 35 authors of formularies (Hoenerbach 1965: xxxx–xxxxiv). Aguirre Sádaba (1994: 13) gives an overview of eight Andalusi formularies that have been preserved, and also mentions several others of which we only have the names of the authors or their titles. According to Jeanette Wakin, the oldest known Maliki formulary is by the famous scholar Ibn ʿAbdūs from Tunis (d. circa 260/873) (Wakin 1972: 14 n. 1). But al-Jīdī (1987: 119) defends a different opinion.

Of some of the Andalusi *wathāʾiq* works modern scholarly editions are available, such as of Ibn al-ʿAṭṭār (ed. Chalmeta & Corriente 1983), Ibn Mughīth (ed. Aguirre Sádaba 1994), and al-Jazīrī (ed. Ferreras 1998). The edition of al-Gharnāṭī (ed. Nājī 1988) needs to be emendated by consultation of other available manuscripts, according to the opinion of the editor himself. The Andalusi manuals have been mainly studied by Spanish scholars, such as the editors mentioned. Good overviews of Spanish scholarship are Fierro 2001, Zomeño 2002, and Peláez Rovira 2011.

Al-Jīdī dates the beginning of the study of documents in Morocco to the sixth century of the Islamic era (al-Jīdī 1987: 120). The biographical literature on the well-known Andalusi scholar al-Matīṭī (d. 570/1175) mentions that he learned how to draft legal documents in Fès (cf. Hoenerbach 1965: xxxxiii). This indicates that the institution of *ʿadl* was already of importance at that time in Morocco. According to al-Jīdī the study of documents was fully developed in Morocco by the beginning of the eighth century of the Islamic era (al-Jīdī 1987: 120-121). In the course of time the culture of *wathāʾiq* spreads to the farthest corners of the Moroccan sultanate. Berque dates the spread of the institution of *ʿadl* in the Sous from 1438, the year that Dāwud al-Timlī, the author of *Kitāb ummahāt al-wathāʾiq*, a formulary for Southern Morocco, died. About fifty years later the requirements of the *ʿilm al-wathāʾiq* gradually pushed out other procedures for legal proof in the Western High Atlas Mountains. Berque gathered oral testimonies about literati who had spread the knowledge of legal documents in the Atlas Mountains. For example, in Nfifa people cherished the memory of a certain Abʿaqil, whose signature was to be found on legal documents from the eleventh century of the Islamic era (Berque 1978: 335; cf. Berque 1950: 359–360 n. 3).

In the course of centuries jurists from different regions in Morocco composed their own formularies, which took into account local customs and economic circumstances. We know of compilations of models for documents for the cities of Fès, Marrakech, and Taroudannt, and for rural Southern Morocco, especially thanks to Mostapha Naji who collected many of these texts and published some of them (al-Maṣmūdī 1988; Bannānī 1988). The formulary of Ibn ʿArḍūn (d. 992/1584)

contains many references to the area in which the author lives, the mountains of Northern Morocco (Ibn ʿArḍūn 1936).

Berque studied a glossary *al-Majmūʿ al-lāʾiq ʿalā mushkil al-wathāʾiq*, "The Useful Compendium for the Problems of the Formularies", from 1764 (according to Afā: 1765) destined at *ʿudūl* and other literati from the Western High Atlas Mountains, to help them understand Arabic terminology by offering glosses in the local Tashelhit language and practical advice and admonishment (Berque 1950). Berque discovered the treatise through a local customary judge in Taddert who used the book "to rule and for prestige". The text is intimately connected to the daily life in the mountains, where Arabic was hardly used and writing was a magical act. The author admonishes the literati, witnesses and judges, to be careful in their writing, because of the effect their documents could have on the lives of ordinary people. They should not be tempted to prefer material gain to the rewards of the hereafter, because they would be punished for their injustice.

Many of the terms are of local usage, closely related to specific agricultural techniques and local products. The collective distribution and payment of meat slaughtered at ritual occasions, or in case of illness of an animal, called *uziʿt*, was an important institution in these societies where people lived on a meagre diet of boiled grains, some vegetables and herbs gathered in the wild. The institution had many aspects: social solidarity, insurance against mishaps, and ritual. The author admonishes to be careful in the writing down of the shares that different people obtain, and hence what they would need to pay back at a later moment. The writers should not write down unilaterally what people allegedly had taken as their share, but focus on recording an actual agreement. Again, we encounter the power of writing, of *taqyīd*, registering an obligation unilaterally, and the moral injunction to the *ʿudūl* of being just and precise, also to avoid strife and conflict which might follow later on from their careless writing (Berque 1950: 385–387). In 2008 ʿUmar Afā published at the Royal Institute for Amazigh Studies an edition of this text, partly on the basis of a manuscript copy from the collection of Mostapha Naji, in which he managed to identify the author as ʿUmar b. ʿUbayd Allāh b. ʿAlī al-Nafīsī (al-Nafīsī 2008).

While the study of model documents and the institution of *ʿadl* flourished in Morocco, in the past the use of legal documents was by no means common in all parts of the country and among all layers of the population, as already mentioned in the previous section. Certain factors seem to influence the use of documents. Documents and *ʿudūl* seem to be primarily an urban phenomenon. In some rural areas, such as the High Atlas Mountains and the neighbouring Sous region, legal documents also seemed to be widespread (cf. Berque 1978: 323–336; Jouad 1989). A second factor is social environment: among wealthier people and among literati the use of documents seemed to be more common. A third factor is the specific legal domain concerned. In some places at some time people are more inclined to have

written proof produced for some subjects, rather than for others. For example, I observed during my own fieldwork in the late 1980s in the forest of Mamora and in the more Northern Gharb plains that the recording of marriage and repudiation in legal documents was not common. However, for rights concerning land the interested parties asked *ʿudūl* to produce legal instruments. The influence of the *makhzan*, the central government, is of influence, and the size of the local community of which people form part. In small scale communities, people often did not deem it necessary to have documents produced, since people considered "to know each other." On the other hand, in certain circles, such as among the urban bourgeoisie, people could consider the ordering of a marriage deed as an expression of religiosity and distinction.

The list of al-Jīdī (1987), and the additions gathered by Mostapha Naji and Joseph Schacht through their explorations of manuscript collections, and by others, show a considerable number of formularies compiled in Morocco. Of some texts we only have the title or the author. Others have only been transmitted as manuscripts, still some others have been printed by lithography or movable type. These printed books were intended for legal practice, and demonstrate the continuation of the tradition of *ʿilm al-wathāʾiq* until modern times. The overview of lithograph editions published in Morocco between circa 1860 and 1950 by ʿAbd al-Razzāq (1989) indicates for which of the traditional works the publishers hoped to find customers, hence which they considered to be of practical or scholarly interest.

A good example of continued interest in the scholarly tradition is the edition in movable type of *Tabṣirat al-ḥukkām* ("The Teaching of the Judges") of Ibn Farḥūn (d. 799/1397) printed in Cairo in 1884, one of the two most prominent manuals for judges on court procedures in the Islamic West (the other being the *Tuḥfa* of Ibn ʿĀṣim). Its margins contain the formulary of the Andalusi scholars Ibn Salmūn al-Kinānī (d. 767/1366), *Al-ʿIqd al-munaẓẓam*, "The Well-Strung Necklace". Islamic scholars continued the tradition of formularies well into the twentieth century. Abū al-Shitāʾ al-Ṣanhājī (d. 1365/1946) composed a manual with models and commentaries referring to *fiqh* which was published posthumously by his son in two volumes in Rabat in 1964 and 1968, and reprinted with relevant contemporary legislation and decrees in 1995. The relatively recent reprint indicates that legal practitioners still consider it relevant, especially for the drafting of sale contracts.

The promulgation of the first codification of Islamic family law in the *Mudawwanat al-aḥwāl al-shakhṣīya* in 1957–1958 prompted the scholar and judge Ḥammād al-ʿIrāqī to compose a collection of models for legal documents in accordance with the new law (1961). He had been a member of the committee that prepared the codification of the family law and would later also publish a commentary on the first book of the *Mudawwana*, on marriage. This formulary was published with the approval of the Ministry of Justice, and with the obligation for judges to

hand out copies of the manual to the *ʿudūl* whom they supervised (al-ʿIrāqī 1961: 15 sub 26). According to my knowledge this manual is the last in an impressive series of formularies composed by Andalusi and Maghribi scholars during many centuries. This publication with support from the Ministry of Justice brought an end to the regional diversity that characterised these manuals. In his dedication to the Minister of Justice the author writes that he based himself on *fiqh* in designing the models for documents. Thus he strove to combat abuses and local additions. These strivings refer to the ideals of the neo-Salafīya movement which guided the codification of the family law as well: improving society by returning to the pure Islam of the pious first Muslims. Preface and introduction clearly indicate that the ministry aimed at standardisation and unification of the practice of the *ʿudūl*. They were no longer supposed to draft their documents according to their own preferences and local customs, but should follow a national standard. In my research I found that the *ʿudūl* indeed preferred to create the impression that they were practicing according to the book (cf. Buskens 2008).

The regional diversity of formularies of the past was indicated in their titles, referring to different cities, such as Fès, Marrakech, Sijilmasa or Taroudannt, or regions, such as the Sous. For Fès the temporal diversity is documented through the fact that we have three different versions of *al-Wathāʾiq al-fāsīya*. In specialists' parlance the most recent version is called *al-Wathāʾiq al-firʿawnīya*, after its author Muḥammad b. Aḥmad b. Ḥamdūn Bannānī (d. 1261/1845 or 1281–2/1865), commonly known as Firʿawn. He was a practicing *ʿadl* and *muftī* in Fès. His formulary was printed several times as a lithograph. A version printed with movable type in Fès in 1368/1949 can occasionally be bought in second hand bookstores. The earlier edition of 1348 and the lithographic editions are much rarer. In these editions, ʿAbd al-Salām b. Muḥammad al-Huwwārī (ca. 1258–1328/1842–1910) explains the models of Firʿawn.[6] Mostapha Naji published an edition of just the text of Muḥammad b. Aḥmad Bannānī, *al-Wathāʾiq al-fāsīya*, edited by ʿAbd al-Karīm Masrūr in 1988.

Most of these regional formularies, apart from the works by Firʿawn and the earlier mentioned Northern compilation by Ibn ʿArḍūn, are only known as manuscripts. This might suggest that by the beginning of the twentieth century they had lost their interest, at least for a wider community, which would have justified the investment of a printed edition. Mostapha Naji started to collect these texts in the 1980s and edited some, or had them edited, and published them at his own risk (Bannāni ed. Masrūr 1988; al-Fāsī al-Fihrī 1988; al-Gharnāṭī ed. Nājī 1988; al-Maṣmūdī ed. Nājī 1988).

Most of these regional formularies served primarily a practical purpose, of-

[6] For bibliographical information: al-Idrīsī al-Qayṭūnī al-Ḥasanī 1988: 43; ʿAbd al-Razzāq 1989: no. 433 and no. 262. On the author: Schacht 1960: 1019; Berque 1949: 102.

fering concrete models for specific local transactions and acts. Scholarly elaborations were not often added. As such they represent a rather elementary level of *fiqh*. One of the few exceptions is *al-Manhaj al-fāʾiq*, "The Outstanding Method" of Aḥmad al-Wansharīsī (d. 1508), one of the greatest legal scholars of the Maghrib. The author is famous for his big collection of *fatāwā* from al-Andalus and the Maghrib, which is not only a rich source for social but also for legal history (e.g. Powers 2002; Zomeño 2000). He also wrote a manual for judges (edition and translation Bruno & Gaudefroy-Demombynes 1937), and many other works on legal theory. His manual for legal documents shows its scholarly orientation in that he classified the documents according to formal criteria, not by subject as many of his predecessors in the lower level regional manuals did. His approach can be understood as an attempt at rationalization and methodologisation of the science of documents. Ibn ʿArḍūn followed him later in this formal approach in his formulary. Al-Wansharīsī's formulary is transmitted in several manuscript copies, in a lithograph edition printed in Fès in 1881, and in a modern edition published by the Moroccan Ministry of Religious Affairs in 1997. Its transmission history seems to follow a path similar to his *fatwā*-compilation, which was also printed as a lithograph, and later edited by the Ministry of Religious Affairs. Respect for the Maliki tradition and historical interest seem to motivate these recent editions at least as much as the possible practical use of these medieval sources.

As the example of al-Wansharīsī indicates, the genre of the *kutub al-wathāʾiq* should be understood in the context of other genres of Maliki legal scholarship, especially collections of *fatāwā*, of *ʿamal*, judicial practice, and manuals for judges. For the compilations of *fatāwā* and *ʿamal* we see the similar correlations with space and time: we also have local or regional compilations, such as *Ajwibat al-Jibāl*, *al-ʿAmal al-Sūsī* or *al-ʿAmal al-Fāsī*, sometimes several in the course of time, and some attempts at abstraction or synthesis, such as the big collection of *al-Miʿyār*, or *al-ʿAmal al-muṭlaq*. These genres contributed to a specific Maghribi current of Maliki *fiqh*, surveyed by Berque (1949) for the tradition of Fès, and more recently by scholars such as al-Jīdī (1987). The close connections to local and temporal circumstances make it of utmost importance to understand these texts in their local, social and temporal contexts, as Berque has repeatedly demonstrated in a magisterial way (e.g. Berque 1944; Berque 1950; Berque 1978; Berque 1978b; Berque 1982). We are dealing with a dynamic tradition, which scholars adapt constantly to changing local requirements, not an immutable corpus of fixed rules, continuously understood in an identical manner. As so often, historicising is the key to understanding.

The relation with local practice did not exclude the possibility of theoretical exercises, demonstrating acumen through the riddles of casuistry, a play so dear to the masters and students of *fiqh*. In some rare cases we can directly relate real documents to specific models, sometimes even because the writer explicitly referred to an author in his document. But the study of the dialectic relations between formu-

laries and actual documents, both influencing each other reciprocally over time, has hardly begun.

4. Documents

To investigate the questions asked at the end of the previous section about the relation between the normative models of the formularies and the actual documents we would need publications on actual documents, which are relatively scarce. For al-Andalus we have two volumes with documents, mainly from the Nasrid period and after, edited by Seco de Lucena (1961) and Hoenerbach (1965), and a series smaller studies, for example the important studies by Amalia Zomeño on Nasrid Granada.[7] Christian Müller, author of an important monograph on Andalusi judicial practice, has been working on a database collecting and analysing legal documents from different parts of the Islamic world, to which Amalia Zomeño is adding Andalusi material. His work on Mamluk documents from Jerusalem is of great value for comparison (Müller 2013). These collections date mostly from rather late periods, and are relatively scarce. In fact, the conditions of survival are an interesting topic for research itself. Why do we still have these documents, why did people keep them at all, instead of discarding them?[8]

For Morocco we have very few published legal documents. This scarcity makes the Toyo Bunko project of even greater importance, also because of the meticulous editing and detailed studies. French scholars showed their interest in legal documents even before the establishment of the protectorate in 1912. For proper access to land and other immovable property, central in the project of colonialism, a sound knowledge of legal rules and legal practice, including instruments of proof, was fundamental. They published a facsimile edition of the registers of the *ḥabūs* or *awqāf*, religious foundations, of Tangier (Michaux-Bellaire 1914), later followed by a study on how to bring these properties back into commercial circulation by Milliot (1918), which made documents accessible in facsimile and annotated translations. Similar practical concerns resulted in a corpus of manuals with facsimiles, translations, annotations and legal vocabularies, which helped the French to control the Islamic legal system and to help colonists in accessing the local economy (e.g. Watin 1954). These manuals are also of great use for the scholar who wants to study these sources for more academic concerns.[9]

[7] For an overview see: Vidal Castro 2012.

[8] The journal *al-Qanṭara* 32 (2011) no. 2 dedicated a special issue to the question of archives and the transmission of documents, with among others a study by Zomeño on documents from Granada.

[9] Bousquet 1949 offers a partial translation in French of legal documents originally published by the German scholar Vassel in a study of Moroccan court practices, at a time when

Nowadays Moroccan researchers are mainly interested in legal documents as historical sources. The famous sociologist Paul Pascon discovered a sizeable collection of legal documents during his fieldwork in Ounein in the High Atlas, and immediately realised their importance as a source for local history (Pascon 1986). His interest fitted in his historical-sociological approach to Moroccan countryside, where he was always on the lookout for sources, such as documents and registers of trade, but also measures and weights, which could shed light on long term developments in the economy, polity, technology and property relations. The linguist Jouad (1989) discovered legal documents among the papers belonging to his family, on which he published a study as a contribution to family history. Ali Amahan used property deeds as sources for the history of important houses in Fès (Revault, Golvin, Amahan 1985–1992). Sefrioui (2000) offered a selection of documents from his own family archive as an appendix to his history of notarial practice in al-Andalus and Morocco. Al-ʿUthmānī (2004) wrote a book about the legal documents of southern Morocco, with special interest for the documents on wood (*al-wāḥ*). One of the most substantial publications is the article by Muḥammad Būsalām on legal documents as sources for the economic history of the Tadla region in the nineteenth century (1994). The author also gives attention to the institution of *ʿadl* and the culture of writing. He discusses the different types of documents encountered but unfortunately reproduces only one specimen.[10] The historian Ibn Sūda collected the typical *ashkāl*, signatures, of judges and professional witnesses of Fès by cutting them out from discarded legal documents and gluing these in a scrapbook. Some of the material was later published as a history of the judges of Fès (Ibn Sūda 2009).

These are but a few examples of authors reporting about legal documents that they encountered in their search for historical sources. During recent years I have collected a number of studies on local or regional history which reproduce legal documents that people still held locally (e.g. Amshrā 2014). For the authors of these books the contents are important as sources of history. I am fascinated to see that at least for the more recent periods families in many parts of Morocco keep documents, either individual pieces or more substantial personal or family archives, which demonstrates the spread and importance of written proof. Sometimes people cling to their documents to the extent that they do not even want to show them to a researcher, for fear of bringing important information in the open. Or they cherish the wedding deed of their grandparents as a precious memory of them, and as a demonstration of the respectability of their family. Or they discard them as trash, until they, or their finders, realise that this trash might be turned into treasure by

Germany was still hoping to colonise Morocco (Vassel 1902).

[10] Būtshīsh 1994 discusses the lack of documents for the Middle Ages and the possibility to use formularies as historical sources about ordinary people.

selling documents as souvenirs for tourists, or historical sources for academics. The conditions of survival, or disposal, of legal documents should not be taken for granted, but are in my view important elements of their history as well (Buskens 2017).

If we would have a better access to actual legal documents, either through publications or in repositories of various kinds, virtual and real, we could address a series of important questions about the conventions for writing them down, their material aspects, the culture of archival practices, and their subjects.

Comparison of actual documents immediately shows the conventional elements in writing down testimony. The *ʿudūl* have a specific manner of using the paper, with ample space in the right hand margin, while leaving no space to the left, completely filling out the lines, so as to avoid any later additions or insertions. Their *ductus* is also often quite particular, sometimes being hard to read in comparison with ordinary handwriting. In present-day Morocco saying that somebody "writes like a *ʿadl*", is to imply that his handwriting is illegible. In some documents, for example marriage deeds, we occasionally find very nice calligraphy, combined with the use of gold and colours. These prestigious documents were clearly produced as objects of luxury, as part of a prestigious marriage, intended for display. The *ʿudūl* and judges signed the documents in a typical way, with their *shakl*, plural *ashkāl*, also called *khunfūsa*, "scarabee". The language itself was also highly conventionalised, with fixed expressions for the beginning and the end, and for the *khiṭāb* by the judge. Sato analysed in detail the conventions in lay-out in the first volume of studies on the vellum documents (2015), and for the *khiṭāb* in the present collection. Carro Martín and Zomeño (2017) discussed the *ashkāl* of the professional witnesses of Granada. To what extent did these conventions become incorporated in normative writings, and how did the actual documents and the theory relate to each other? Documents produced by Jewish professional witnesses in Morocco, *sofrīm*, look very similar to the products of their Muslim counterparts, except for the use of Hebrew writing.[11] A systematic comparison of these two traditions would be enlightening about the specificities of what looks to me to be a Maghribi legal writing culture.

In later documents, from the twentieth century, we see all kinds of new conventions emerging: the numbering of documents, the use of stamps, of *papier timbré*, of printed formulae, of inscriptions in French etc. These new conventions indicate an increase in standardisation and in state control, which are part of a process of state formation and a further incorporation of the *ʿudūl* in a system of state law. The use of typewriter, and nowadays of computers, is yet another step in a process of "rationalisation" of the creation of legal documents, entailing new scribal conventions.

[11] On Jewish *sofrim* see Marglin 2016, also for further references.

Materiality is another important aspect in the study of actual documents. The Toyo Bunko has managed to constitute a sizeable collection of quite rare documents on parchment. Although the use of parchment as a writing material continued for a relatively long period, it is quite rare to come across documents on parchment. The use of this precious material is an indication of the age, but also of the importance of the document. People used it for the transfer of important property, of which the legal proof was considered crucial, and hence written on a material meant both to last for a long time and to express the importance of the transaction. A similar reasoning applies to the use of parchment for marriage documents: only well-off families could afford such a luxury in order to demonstrate their social standing, appropriate at the wedding of a *bint al-nās*, "a daughter of decent people".

Paper was by far the most common material for legal documents. It is rare to find old documents written on locally produced paper. People in the Maghrib have been importing paper form the Northern shores of the Mediterranean, for example the *tre lune* watermark paper from Italy, for centuries. In long property deeds we see the paper changing over the course of time. What quality of paper did the witnesses choose? What kind of ink did they use? The anonymous author of the glossary presented by Berque admonishes writers to use good ink, which will not easily fade, in order to protect the interests of the parties concerned by the document (Berque 1950: 390). Together with the quality of ink, the locally produced *smekh* from wool and soot, or rather the industrial ink form Europe, the choice of the writing instrument itself, either the reed pen or *qalam*, a steel nib produced in France, a typewriter or a word processor cum printer, determines the shape the letters take.[12]

For centuries paper was a rare and precious commodity in Morocco, which people treated with great respect, also because there was always the possibility that God's name was written on it. In Southern Morocco people used wooden sticks, branches and tablets to write down their documents, commonly known as *alwāḥ*, singular *lawḥ* (cf. al-ʿUthmānī 2004). They kept these documents in safe places, which often had the status of a sanctuary, such as the tombs of local saints, or in collective storages. During the protectorate colonial controllers put stamps on these tablets to acknowledge their validity as legal proof. Nowadays they turn up in the curio trade in big cities like Marrakech, to be sold mounted on a base as souvenirs for tourists (cf. Buskens 2017: 187–188).

The materiality of the documents offers important information for the culture of keeping and archiving the legal instruments. The folds of paper or parchment documents offer a first indication. People kept their documents tightly plied. It protected the surface of writing from wear and tear, and kept multiple documents closely together as one unit. I encountered collections of old documents from the

[12] The historian and dear mentor of Mostapha, Muḥammad al-Mannūnī (1991) published an important study on the history of *wirāqa*, the material culture of writing in Morocco.

library of a *ʿadl* kept together by rubber bands, and saw on old chest stacked full with documents. In Marrakech curio dealers offered old hollowed out squared wooden logs with a slide to close it, as boxes to keep documents, in use in rural Southern Morocco. Bamboo tubes and hollow reeds were used to protect legal documents on paper rolled up or plied. Locally fabricated tins held larger collections of papers. Photographs show people taking out their *alwāḥ*, documents on wood, from clay jars or baskets kept in collective storages. We should relate these practices of document keeping and archiving to other practise of registering, such as the keeping of records in private or official notebooks by *ʿudūl*, and court records. Elsewhere I have given a brief overview of the changes in the different kinds of material traces of documents over time in Morocco (Buskens 1992).

Maybe we should not leave ourselves out of this study of finding and keeping documents. Collectors and scholars create new ensembles, bringing legal documents together for new purposes in libraries, such as the Sbihi library in Salé or the Toyo Bunko in Tokyo. Is this the last stage in the lives of the documents? They get new meanings through publications such as the present volume, and might have a future in digital form, outliving their writers, their keepers and their students. Until they fall to dust, physical or digital…

A fourth and final domain of questions to the actual documents concerns their contents, the actual subjects they treat. Quantitative data would be welcome to get a better idea of the domains for which people asked *ʿudūl* to draw up documents, or rather, what documents people kept long enough for us to collect them. The two volumes of the Toyo Bunko and the Andalusi collections indicate two areas of special interest: transfer of immovable property, and marriage and divorce. In part of the pre-capitalist economy of the Maghrib private property played an important role, as reflected in the legal category of *milk*. Most of the deeds written on parchment deal with a transfer of titles, which was carefully recorded, and kept, for reasons of material interest and probably also prestige. The documents can be important sources for the history of the economy, of toponymy, agronomy, ecology and the landscape, but also the other way around. We can only properly understand the documents if we situate them in a local economy, in a landscape, in a context of exchange and production, as Berque demonstrates in an erudite way in his presentation of the glossary. Amahan uses urban property deeds as a source for architectural history, to understand the changes in the built environment in Fès (Revault, Golvin, Amahan 1985–1992).

The other domain that is relatively prominent in documents is family life: marriage, divorce, and inheritance. At closer inspection there is again a link with private property. At these status changing events often some transfer of property took place, as marital gifts from parents to children, from husbands to wives, as settlements upon dissolution of marital bonds, or in the form of inheritances. Actual documents may offer important information about family life and the practice of

legal rules, about kinship and affinity (cf. Blili Temime 1999 on Tunis), about local customs sometimes transformed into judicial practice in the form of *ʿamal* (cf. Toledano 1981), but also about aspects of material culture, such as textiles and jewellery (cf. Zomeño 1996). We might understand the use of legal documents in these domains as a confirmation of Joseph Schacht's general observation that people tended to turn to *sharīʿa* rules to safeguard their material rights (Schacht 1965).

5. The *ʿudūl* as an Object of Historical Anthropology

Until now, scholars have been mainly interested in the writing culture of the *ʿudūl*, in the formularies and documents they have left us, as sources for social and economic history, often at a local or regional level. A more systematic exploration of these books and papers would indeed be a very important advance in the history of Muslim societies, comparable to the exploration of *fatwā*-collections which has taken off several decades ago. However, my own concern is more focused on the *ʿudūl* and their texts and practices themselves. As an anthropologist with a keen interest in history I am interested in two related issues: in a historicising anthropology of Islamic law, and of writing.

An anthropological perspective on Islamic law might encourage us to focus on the relations between the documents and the social life of which they are part. A document is a recording, but also a transformation of an act. The writing down of a testimony is selective, like any recording, putting stress on certain aspects of what happened, and neglecting others. The language that the *ʿudūl* use for their recording is distant from daily life, even if they avail themselves of expressions taken from colloquial Arabic or a form of Tamazight. The act of writing in itself might be strange and mysterious, akin to magic, as Berque (1950) also stresses. The written testimony is a different version of the event, meant to serve specific purposes (cf. Buskens 2008). And then, afterwards, what do people do with their documents? How do they keep them, store them, discard them? What happens to the documents before we get them, or not…?

These questions are related to the classical issue of what Joseph Schacht called the relation between theory and practice in Islamic law (1965). His phrasing has been often criticised, and worse, but the issue in itself remains central. How do formularies, and other writings of a normative order, relate to actual practice? To the practices of *ʿudūl*, to their documents, to what ordinary people do, to what they do with their documents? By now, we have learned that there is no "gap" between theory and practice (a term that Schacht did not use either), but that the relation is dialectic, circular. Hallaq (1995) has analysed how documents and formularies mutual influence each other, like *fatāwā* and *furūʿ* do.

Despite its strong ideological stress on oral and personal transmission of

knowledge, and on oral proof, Islamic law is closely intertwined with writing (cf. Messick 1993). This makes it into an ideal object for an anthropological study of writing. During the past decades, anthropologists and historians have increasingly become conscious of the cultural specificity of writing and reading practices: people in different societies, and different times, in different social situations might read in different, culturally specific manners. In Muslim societies the distinction between people who do have access to Islamic scholarly texts, the *khāṣṣa* and the large, illiterate masses, the *ʿāmma*, was part of a historical self-understanding in which literacy played a crucial role. It echoes conceptualisations in anthropology, such as Robert Redfield's dichotomy between great and little tradition, which have completely gone out of fashion. As in the opposition between theory and practice, we have come to understandings stressing dialectics and circularity (cf. Ginzburg 1980).

Clifford Geertz initially raised my curiosity about the *ʿudūl* through his description in the essay "Local Knowledge: Fact and Law in Comparative Perspective" (Geertz 1983). Study of Schacht's impressive oeuvre, also his own writings on formularies, further stimulated my interest. In the beginning I did not find much encouragement to focus on the *ʿudūl*, neither among teachers in Leiden nor among Moroccan colleagues, until I met Mostapha Naji in spring 1988 in his bookstore Dār al-Turāth in Rabat. Soon we were pursuing this interest together, by looking for materials and thinking about questions and approaches. Mostapha was often quite sceptical of some of my more theoretical concerns, preferring to identify authors and texts. But we had a good time sharing our curiosity, working together on reconstructing the Andalusi and Moroccan tradition on the basis of the formularies, documents, and textual sources he discovered, until his untimely death in 2000. In the mean time I also became familiar with the work of Brinkley Messick on Yemen, studying Islamic law and writing culture in a conceptually sophisticated and highly inspiring way.[13] He also shows his debts to Jacques Berque, who did seminal work on law and society in Morocco, combining the study of written sources and ethnographic fieldwork in an erudite way. Berque's lessons about situating texts and practices in time and space in order to reconstruct a context for proper understanding, stressing variety and historical change, are fundamental for the development of a historical anthropology of Islamic law. His knowledge of the Maliki tradition in Morocco and of daily life are major source of guidance.

My specific concern for *ʿudūl* and their writing culture is part of a more general interest in how apparently "outside forces", institutions, discourses, ways of thinking and imagining, such as a centralised state organisation or a religion with

[13] Later on I also became acquainted with the exemplary work of Ghislaine Lydon on Islamic law, contracts and Saharan trade, with ample attention for the culture of writing (e.g. Lydon 2009).

universal pretensions play a role in the daily lives of "ordinary people". Writings and writing are important elements in the processes in many societies, in Europe, in North Africa, and in Southeast Asia, regions in which I have been particularly interested. These issues relate to big questions, such as about elite and popular culture, about peripheral villages and big, culturally dominant cities, about books and conventional practices, university and rural lore. How do we acquire the ways we think, the ways we act? How did the young men from the Atlas Mountains or the Jbala become accomplished *fuqahāʾ*, complete with the habitus that went with it? Concepts such as hegemony, resistance, and dialectics help to understand local interpretations and practices, maybe in a slightly anarchistic and deconstructive manner.

The *ʿudūl* were, unlike high-brow literati like judges or Islamic scholars, familiar figures for many ordinary people in Morocco, at least for the townsmen. As argued earlier, they represented Islamic norms and teachings at the most elementary level, like the teacher in the Qurʾanic school in the neighbourhood or village, *le-fqih*, and the men who had learned the Qurʾan by heart, the *ṭolbāʾ*. The *ʿudūl* officiated at marriage, divorce, inheritance, and at the transfer of property. Many people would obtain one document or another at some point during their lives. They were familiar in social terms, living in local society, speaking the colloquial, which they would translate into legalese by the act of writing. At the same time, they were also translating concepts and acts, transforming the dealings of local people into legally valid transactions and decisions. In an earlier paper (Buskens 2008) I explored the notion of "cultural broker" to analyse their performances. Maybe this is not the most productive term. We need concepts that focus our attention on circularity, on the dialectics between the written and oral practices, between literati and commoners. Analytic oppositions are often misleading, even if they are also present in emic classifications such as *khāṣṣa* versus *ʿāmma*.

This familiarity by no means meant that the *ʿudūl* acted in all settings, at all occasions. From an anthropological perspective we should rather ask the question why we have documents, instead of wondering why we do not have them. Writing and keeping documents are social processes which might vary and change with time, related to social context and class. Whether people consider it important to have documents produced depends on the interests they consider to be at stake, it has to do with the economy, with access to private property, and with the polity, with a state effectively imposing the obligation to produce written proof.

These concerns lead me to a study of the legal documents presented in this volume not only as sources for social and economic history, but also as sources for legal and cultural history. They teach us about the culture of writing and the culture of normativity, and their materiality. We should wonder why people wrote these documents on parchment, rather than on paper, why the parties concerned had the transactions and acts recorded at all, why later generations kept and transmitted

these documents, and why they finally discarded them, and how. All this to end up in the Toyo Bunko in Tokyo, to be studied by scholars in a different tradition, asking new questions, in order to give new lives to the people who were involved in the production and transmission of these documents.

Bibliography

ʿAbd al-Razzāq, Fawzī. 1989. *al-Maṭbūʿāt al-ḥajarīya fī al-Maghrib. Fihris maʿa muqaddima taʾrīkhīya*. Rabat: Dār Nashr al-Maʿrifa.

Aguirre Sádaba, Francisco Javier intr. & ed. 1994. *Aḥmad b. Mugīth al-Ṭulayṭulī (m. 459/1067), al-Muqniʿ fī ʿilm al-shurūṭ (Formulario notarial)*. Madrid: CSIC.

Amshrā, Muḥammad. 2014. *Dhākirat Āyt ʿAbd Allāh: Dirāsa fī taqālīd wa-ʿādāt al-mujtamaʿ bi-janūb al-Maghrib*. [Rabat: Rabat Net Maroc].

Bannānī (Firʿawn), Muḥammad ibn (sic) Aḥmad b. Ḥamdūn. 1368/1949. *Wathāʾiq*; with a commentary (sharḥ) by ʿAbd al-Salām ibn (sic) Sīdī Muḥammad al-Huwwārī. Fès: al-Shirka al-Maghribīya li-Asḥābi-hā al-Qādirīyīn wa-Abū ʿAbd Allāh.

Bannānī, Muḥammad b. Aḥmad. 1988. *al-Wathāʾiq al-fāsīya*. Edited by ʿAbd al-Karīm Masrūr. Rabat: Markaz Iḥyāʾ al-Turāth al-Maghribī.

Berque, Jacques. 1944. *Essai sur la méthode juridique maghrébine*. Rabat: no publisher [Marcel Leforestier].

———. 1949. "Ville et université: Aperçu sur l'histoire de l'École de Fès." *Revue historique de droit français et étranger*, Quatrième série 27: 64–117.

———. 1950. "Un glossaire notarial arabo-chleuh du Deren (XVIIIe s.)." *Revue africaine* 94, no. 3–4/no. 424–425: 357–398.

———. 1970. "En lisant les Nawāzil Mazouna." *Studia islamica* 31: 31–39.

———. 1978. *Structures sociales du Haut-Atlas: Suivi de Retour aux Seksawa par Jacques Berque et Paul Pascon*. 2e édition revue et augmentée (orig. 1955). Paris: Presses Universitaires de France.

———. 1978. *L'intérieur du Maghreb, XVe-XIXe siècle*. Paris: Gallimard.

———. 1982. *Ulémas, fondateurs, insurgés du Maghreb, XVIIe siècle*. Paris: Sindbad.

Blili Temime, Leïla. 1999. *Histoire de familles: Mariages, répudiations et vie quotidienne à Tunis, 1875–1930*. Tunis: Script.

Van den Boogert, Nico. 1997. *The Berber Literary Tradition of the Sous. With an Edition and Translation of "The Ocean of Tears" by Muḥammad Awzal (d. 1749)*. Leiden: Nederlands Instituut voor het Nabije Oosten.

Bousquet, Georges-Henri. 1949. "Le chameau volé, document de procédure marocaine." *Hespéris* 36, no. 3-4: 431–438.

Bruno and Gaudefroy-Demombynes. 1937: see al-Wansharīsī 1937.

Būsalām, Muḥammad b. al-Bashīr. 1994. "Musāhamat al-wathāʾiq al-ʿadlīya fī kitābat baʿḍ al-jawānib min taʾrīkh al-bādiya (namūdhaj Tādlā fī al-qarn 19)." *Hespéris-Tamuda* 32: 7–25.

Buskens, Léon. 1992. "Le droit entre l'écrit et l'oral: quelques pensées à propos d'un projet de recherches sur le droit de la famille au Maroc." In *La recherche scientifique au service du développement. Actes de la troisième rencontre universitaire maroco-néerlandaise*. Rabat: Publications de la Faculté des Lettres et des Sciences Humaines, Université Mohammed V.

———. 1995. "Mālikī Formularies and Legal Documents: Changes in the Manuscript Culture of the *ʿUdūl* (Professional Witnesses) in Morocco." In *The Codicology of Islamic Manuscripts. Proceedings of the Second Conference of Al-Furqān Islamic Heritage Foundation 4–5 December 1993*, edited by Yasin Dutton, 137–145. London: Al-Furqān Islamic Heritage Foundation.

———. 1999. *Islamitisch recht en familiebetrekkingen in Marokko*. Amsterdam: Bulaaq.

———. 2008. "Tales according to the Book: Professional Witnesses (*ʿUdul*) as Cultural Brokers in Morocco." In *Narratives of Truth in Islamic Law*, edited by Baudouin Dupret, Barbara Drieskens, and Annelies Moors, 143–160, 340 (Notes). London & New York: I.B. Tauris & Co.

———. 2017. "From Trash to Treasure: Ethnographic Notes on Collecting Legal Documents in Morocco." In *Legal Documents as Sources for the History of Muslim Societies. Studies in Honour of Rudolph Peters*, edited by Maaike Van Berkel, Léon Buskens, and Petra Sijpesteijn, 180–207. Leiden: Brill.

Būtshīsh, Ibrāhīm al-Qādirī. 1994. "Taʾrīkh al-ʿawāmm fī Maghrib al-ʿaṣr al-wasīṭ bayna faqr al-wathāʾiq wa-imkānīyāt al-tajāwuz (Ṭarḥ wa-munāqasha min khilāl kutub al-ʿuqūd wal-wathāʾiq." In *Mémorial Germain Ayache*, 63–75. Rabat: Faculté des Lettres et des Sciences Humaines, Université Mohammed V.

Carro Martín, Sergio and Amalia Zomeño. 2017. "Identifying the *ʿudūl* in Fifteenth-Century Granada." In *Legal Documents as Sources for the History of Muslim Societies. Studies in Honour of Rudolph Peters*, edited by Maaike Van Berkel, Léon Buskens, and Petra Sijpesteijn, 109–128. Leiden: Brill.

Chalmeta, Pedro and Federico Corriente ed. 1983. *Formulario notarial hispano-árabe por el alfaquí y notario cordobés Ibn al-ʿAṭṭār (s. X)*. Madrid: Academia Matritense del Notariado. Instituto Hispano-Árabe de Cultura.

al-Fāsi al-Fihrī, Abū Ḥāmid Muḥammad al-ʿArabī b. al-shaykh al-humām Abī al-Maḥāsin Yūsuf. 1988. *Shahādat al-lafīf*. Edited by Abū Uwīs al-Ḥasanī.

Rabat: Markaz Iḥyāʾ al-Turāth al-Maghribī.

Ferreras, Asunción estudio & ed. 1998. *ʿAlī b. Yaḥyā al-Jazīrī (m. 585/1189). Al-Maqṣad al-maḥmūd fī talkhīs al-ʿuqūd (Proyecto plausible de compendio de fórmulas notariales)*. Madrid: CSIC.

Fierro, Maribel. 2001. "Documentos legales en fuentes andalusíes." *al-Qanṭara* 22, no. 1: 205–209.

Geertz, Clifford. 1983. "Local Knowledge: Fact and Law in Comparative Perspective." In Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology*, 167–234. New York: Basic Books.

al-Gharnāṭī, Abū Isḥāq. 1988. *al-Wathāʾiq al-mukhtaṣara lil-qāḍī Abī Isḥāq al-Gharnāṭī (t. 579 h.)*. Edited by Muṣṭafā Nājī. Rabat: Markaz Iḥyāʾ al-Turāth al-Maghribī.

Ginzburg, Carlo. 1980. *The Cheese and the Worms: The Cosmos of a Sixteenth-Century Miller*. Translated by John and Anne Tedeschi. London & Henley: Routledge & Kegan Paul.

Hallaq, Wael B. 1995. "Model *Shurūṭ* Works and the Dialectic of Doctrine and Practice." *Islamic Law and Society* 2, no. 2: 109–134.

Hoenerbach, Wilhelm. 1965. *Spanisch-islamische Urkunden aus der Zeit der Naṣriden und Moriscos*. Bonn: Selbstverlag des Orientalischen Seminars der Universität Bonn.

Ibn ʿArḍūn, Abū al-ʿAbbās Sīdī Aḥmad b. Sīdī al-Ḥasan al-Zajalī al-Shafshāwanī al-shahīr bi-Ibn ʿArḍūn. 1355/1936. *al-Kitāb al-lāʾiq li-muʿallim al-wathāʾiq aw al-taqyīd al-lāʾiq fī taʿallum al-wathāʾiq*. 2 vols. Tétouan: Maktabat al-Ahlīya bil-ʿAṭṭārīn.

Ibn al-ʿAṭṭār: see Chalmeta and Corriente 1983.

Ibn Khaldūn. 1967. *The Muqaddimah. An Introduction to History. Translated from the Arabic by Franz Rosenthal*. Princeton, N.J.: Princeton University Press; Second edition, with corrections and augmented bibliography (orig. 1958).

Ibn Mughīth: see Aguirre Sádaba 1994.

Ibn Sūda, ʿAbd al-Salām. 2009. *Quḍāt Fās: Min dawlat al-ashrāf al-Adārisa ilā dawlat al-shurafāʾ al-ʿAlawīyīn (172h/375m (sic.) ilā 1389 h/1969 m.)*. Edited by ʿAbd al-ʿAzīz Tīlānī. Rabat: Manshurāt Mudīrīyat al-Wathāʾiq al-Malakīya.

El Iraqi, Si Mohammed bel Hocéine ben El Oualid. 1939. "La preuve par témoins "lafif" (chahada lafif)." *Revue du Maghreb (Afrique du Nord) (Droit musulman malékite, coutumes berbères, lois israélites). Législation, doctrine, jurisprudence* (Rabat) 3, no. 9, chapitre II: doctrine: 1–5.

al-ʿIrāqī, Ḥammād. 1961. *al-Wathāʾiq al-ʿadlīya wifq mudawwanat al-aḥwāl al-shakhṣīya*. s.l. [Rabat?]: no publisher.

al-Jazīrī: see Ferreras 1998.

al-Jīdī, ʿUmar bin ʿAbd al-Karīm. 1987. *Muḥāḍarāt fī taʾrīkh al-madhhab al-mālikī fī al-gharb al-islāmī*. s.l. [Rabat]: Manshūrāt ʿUkāẓ.

Jouad, Hassan. 1989. "Les chroniques familiales du Haut-Atlas." *Etudes et Documents Berbères* 5: 22–31.

Lapanne-Joinville, J. 1957. "Les actes adoulaires marocains sont-ils authentiques." *Revue marocaine de droit* 9: 337–384.

Lydon, Ghislaine. 2009. *On Trans-Saharan Trails: Islamic Law, Trade Networks, and Cross-Cultural Exchange in Nineteenth-Century Western Africa*. Cambridge: Cambridge University Press.

al-Mannūnī, Muḥammad. 1991. *Taʾrīkh al-wirāqa al-maghribīya: Ṣināʿat al-makhṭūṭ al-maghribī min al-ʿaṣr al-wasīṭ ilā al-fitra al-muʿāṣira*. Rabat: Manshūrāt Kullīyat al-Ādāb wal-ʿUlūm al-Insānīya bil-Ribāṭ.

Marglin, Jessica M. 2016. *Across Legal Lines: Jews and Muslims in Modern Morocco*. New Haven, CT: Yale University Press.

al-Maṣmūdī. 1988. *al-Wathāʾiq al-sijilmāsīya li-Abī ʿAbd Allāh Muhammad al-Maṣmūdī (al-qarn 11 h.)*. Edited by Muṣṭafā Nājī. Rabat: Markaz Iḥyāʾ al-Turāth al-Maghribī.

Messick, Brinkley. 1993. *The Calligraphic State: Textual Domination and History in a Muslim Society*. Berkeley, Los Angeles, Oxford: University of California Press.

———. 2018. *Sharīʿa Scripts: A Historical Anthropology*. New York: Columbia University Press.

Michaux-Bellaire, E. 1914. "Les habous de Tanger: Registre official d'actes et de documents." *Archives marocaines* 22 and 23.

Milliot, Louis. 1918. *Démembrements du habous: Menfaʿā, gzā, guelsā, zīnā, istighrāq*. Paris: Ernest Leroux.

———. 1924. *Recueil de Jurisprudence chérifienne. Tribunal du ministre chérifien de la justice et Conseil Supérieur d'ouléma (Medjlès Al-Istināf). Tome III*. Paris: Éditions Ernest Leroux.

Milliot, Louis and François-Paul Blanc. 1987. *Introduction à l'étude du droit musulman*. Second edition. Paris: Sirey (orig. 1953).

Miura, Toru. 2017. "A Comparative Study of Contract Documents. Ottoman Syria, Qajar Iran, Central Asia, Qing China and Tokugawa Japan." In *Legal Documents as Sources for the History of Muslim Societies. Studies in Honour of Rudolph Peters*, edited by Maaike Van Berkel, Léon Buskens, and Petra Sijpesteijn, 266–291. Leiden: Brill.

Miura, Toru and Sato, Kentaro ed. 2015. *The Vellum Contract Documents in Morocco in the Sixteenth to Nineteenth Centuries*. Part I. Tokyo: Toyo Bunko.

Müller, Christian. 2013. *Der Kadi und seine Zeugen: Studie der mamlukischen Ḥaram-Dokumente in Jerusalem*. Wiesbaden: Harrassowitz.

al-Nafīsi, ʿUmar b. ʿUbayd Allāh b. ʿAlī. 2008. *al-Majmūʿ al-lāʾiq ʿalā mushkil*

al-wathāʾiq: Muʿjam ʿarabī amāzīghī. Edited by ʿUmar Afā. Rabat: IRCAM.

Naji, Mostapha / Nājī, Muṣṭafā: see Bannānī 1988; al-Fāsi al-Fihrī 1988; al-Gharnāṭī 1988.

Pascon, Paul. 1986. "Histoire du peuplement de l'Ounein." *30 Ans de sociologie du Maroc (Textes anciens et inédits): Bulletin économique et social du Maroc* 155–156: 87–96.

Peláez Rovira, Antonio. 2011. "Viajes de los formularios notariales en al-Andalus." In *Tercera primavera del manuscrito andalusí. Viajes y viajeros*, edited by Mostafa Ammadi, 27–47. Casablanca: Facultad de Letras y Ciencias Humanas, Universidad Hassan II.

Pesle, Octave. 1942. *La judicature, la procédure, les preuves dans l'Islam malékite*. Casablanca: Imprimeries Réunies de la «Vigie Marocaine» et du «Petit Marocain».

Powers, David. 2002. *Law, Society, and Culture in the Maghrib, 1300–1500*. Cambridge: Cambridge University Press.

Revault, Jacques, Lucien Golvin, and Ali Amahan. 1985–1992. *Palais et demeures de Fès*. 3 vols. Paris: Éditions du CNRS.

al-Ṣanhājī, Abū al-Shitāʾ b. al-Ḥasan al-Ghāzī al-Ḥusaynī, al-shahīr bil-Ṣanhājī. 1964–1968. *al-Tadrīb ʿalā al-wathāʾiq al-ʿadlīya: Wathīqa wa-sharḥ, Kayfīyat taḥrīri-hā, wa-bayān fiqh-hā*. 2 vols. Fès: Aḥmad al-Ghāzī al-Ḥusaynī.

———. 1415/1995. *al-Tadrīb ʿalā taḥrīr al-wathāʾiq al-ʿadlīya. Wathīqa wa-sharḥ*. Edited by Aḥmad al-Ghāzī al-Ḥusaynī. 2 vols. Rabat: Maṭbaʿat al-Umnīya.

Sato, Kentaro. 2015. "Form and Use of the Vellum Documents." In *The Vellum Contract Documents in Morocco in the Sixteenth to Nineteenth Centuries*, Part I, edited by Miura, Toru and Sato, Kentaro, 8–22. Tokyo: The Toyo Bunko.

Schacht, Joseph. 1960. "Bannānī." In *The Encyclopaedia of Islam*, New Edition, vol. I, 1019–1020.

———. 1965. *An Introduction to Islamic Law*. Second impression (orig. 1964). Oxford: Clarendon Press.

Seco de Lucena, Luis. 1961. *Documentos arábigo-granadinos*. Madrid: Instituto de Estudios Islámicos.

Sefrioui, Houcine. 2000. *Le notariat. Racines / Histoire / Statut et auteurs dans l'Andalousie et au Maghreb*. Casablanca: privately published.

al-Sufyānī, Idrīs. 2012. *al-Wathāʾiq wal-aḥkām bil-Maghrib wal-Andalus fī al-qarnayn al-rābiʿ wal-khāmis al-hijrīyayn*. 2 vols. Rabat: al-Rābiṭa al-Muḥammadīya lil-ʿUlamāʾ.

Toledano, Henry. 1981. *Judicial Practice and Family Law in Morocco: The Chap-*

ter on Marriage from Sijilmāsī's al-ʿAmal al-Muṭlaq. Boulder, Col.: Social Science Monographs.

Tyan, Emile. 1945. *Le notariat et le régime de la preuve par écrit dans la pratique du droit musulman*. Beirut: Université de Lyon. Annales de l'Ecole Française de Droit de Beyrouth.

al-ʿUthmānī, Mḥammad. 2004. *Alwāḥ Jazūla wal-tashrīʿ al-islāmī: Dirasa li-aʿrāf qabāʾil Sūs fī ḍawʾ al-tashrīʿ al-islāmī*. Rabat: Manshūrāt Wizārat al-Awqāf wal-Shuʾūn al-Islāmīya.

Vassel, Philipp. 1902. "Über marokkanische Processpraxis." *Mitteilungen des Seminars für orientalische Sprachen* 5, Abt. 2 (1902): 170–232.

Vidal Castro, Francisco. 2012. "Un tipo de manuscritos 'documentales': Las escrituras árabes notariales en al-Andalus nasrí (s. XIII–XVI)." In *IV Primavera del manuscrito andalusí. Manuscritos: papel, técnicas y dimensión cultural*, edited by Mostafa Ammadi, 23–57. Casablanca: Facultad de Letras y Ciencias Humanas, Universidad Hassan II.

Wakin, Jeanette A. 1972. *The Function of Documents in Islamic Law: The Chapters on Sales from Ṭahāwī's Kitāb al-shurūṭ al-kabīr. Edited and with an Introduction and Notes by Jeanette A. Wakin*. Albany: State University of New York Press.

al-Wansharīsī, Abū al-ʿAbbās Aḥmad b. Yaḥyā b. ʿAbd al-Wāḥid. 1937. *Le livre des magistratures d'El Wancherisi. Texte arabe publié, traduit et annoté par Henri Bruno et Gaudefroy-Demombynes*. Rabat: Éditions Félix Moncho.

———. 1418/1997. *al-Manhaj al-fāʾiq wal-manhal al-rāʾiq wal-maʿnā al-lāʾiq bi-ādāb al-muwaththiq wa-aḥkām al-wathāʾiq*. Edited by Laṭīfa al-Ḥasanī. Rabat: Wizārat al-Awqāf wal-Shuʾūn al-Islāmīya.

Watin, Louis. 1954. *Recueil de textes marocains: Style administratif*. Paris: Librairie d'Amérique et d'Orient Adrien-Maisonneuve.

Ziadeh, Farhat J. 1990. "Integrity (*ʿAdālah*) in Classical Islamic Law." In *Islamic Law and Jurisprudence. Studies in Honor of Farhat J. Ziadeh*, edited by Nicholas Heer, 73–93. Seattle & London: University of Washington Press.

Zomeño, Amalia. 1996. "Transferencias matrimoniales en el Occidente islámico medieval: Las joyas como regalo de boda." *Revista de Dialectología y Tradiciones Populares* 51, no. 2: 79–96.

———. 2000. *Dote y matrimonio en al-Andalus y el Norte de África: Estudio sobre la jurisprudencia islámica medieval*. Madrid: CSIC.

———. 2000b. "Donaciones matrimoniales y transmisión de propiedades inmuebles: Estudio del contenido de la *siyāqa* y la *niḥla* en al-Andalus." In *L'urbanisme dans l'Occident musulman au Moyen Âge: Aspects juridiques*, edited by Patrice Cressier, Maribel Fierro, and Jean-Pierre Van Staëvel, 75–99. Madrid: Casa de Velázquez / CSIC.

———. 2002. “Abandoned Wives and their Possibilities for Divorce in al-Andalus: The Evidence of the *Wathāʾiq* Works.” In *Writing the Feminine: Women in Arab Sources*, edited by Manuela Marín and Randi Deguilhem, 111–126. London & New York: I.B. Tauris.

———. 2006. “Notaries and Their Formulas: The Legacies from the University Library of Granada.” In *From al-Andalus to Khorasan: Documents from the Medieval Muslim World*, edited by Petra M. Sijpesteijn, Lennart Sundelin, Sofia T. Tovar, and Amalia Zomeño, 59–77. Leiden: Brill.

———. 2008. “The Islamic Marriage Contract in al-Andalus (10th–16th Centuries).” In *The Islamic Marriage Contract: Case Studies in Islamic Family Law*, edited by Asifa Quraishi and Frank E. Vogel, 136–155. Cambridge, Mass.: Harvard University Press.

———. 2011. “From Private Collections to Archives: How Christians Kept Arabic Legal Documents in Granada.” *al-Qanṭara* 32, no. 2: 461–479.