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MEDITERRANEAN RELATIONS, DOCUMENTARY PRACTICES AND THE PRESENCE OF VENICE: ECONOMIC AND CULTURAL NETWORKS (14-16TH CENT.)

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Francisco APELLÁNIZ, Université de Paris 1 - Panthéon-Sorbonne
Preserving the Word in Latin and Islamic Notarial cultures

Abstract

Heirs of the legal system inherited from the code Napoléon, for us a notary makes part of a state-backed legal institution whose product, the notarial deed, has probative value and constitutes firsthand, primary evidence. Opponents must show that a notarial deed is a fake in order to invalidate its power. Yet this was not the case in late antiquity, nor has it been for many centuries among Islamic peoples. To put it in very rough terms, for Byzantine and later Islamic legal systems it was the claimant who advanced a notarial deed who had to prove its credibility to the judge, by means of presenting the word of the notary and the other actors of notarization, the witnesses. To be sure, Mediterranean Islamic societies were highly sophisticated commercial and legal cultures that made an extensive use of written documents. Yet although in most practical instances of daily life the use of written documents was very similar, ultimately the Islamic legal system exhibited some biases towards its validity, and regarded the written word with suspicion.

In this paper I wish to highlight the differences between the two main notarial institutions of the Medieval and Early modern Mediterranean, the striking divergences concerning the probatory status of the written deed and the very different logics of its preservation. First, I will sketch the way two different Islamic powers, the Mamluks and the Ottomans dealt with legal biases on written artifacts and handled their own notarial traditions in ways compatible with the necessities of trade and exchanges with unbelievers, minorities and foreigners. I will then turn to the Latin notaries sent by the Venetians to the Islamic cities of commerce such as Alexandria and Damascus throughout the late Medieval times and up to the sixteenth century. These clerks, some of whose casebooks have survived, operated at the intersection of both legal systems.