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ARABS UNDER ENGLISH LAW IN COLONIAL SINGAPORE, 1880-1941

In 1918, a 58-page report was produced by four different judges who debated whether English law of perpetuities extended to the Colony of Singapore. The impetus for this debate was the will of Arab merchant, Syed Ahmed bin Abdul-Rahaman Alsagoff who died in Singapore on 27th March 1875 after making a will on 30th December 1868.² In his will, he declared that “his freehold and leasehold estate shall be managed and descend to future generations according to the rule of Mohamedan law.”³ But at the same time, he displayed a keen awareness of the English law of perpetuities in the Straits Settlements for he clearly stated that:

“(W)hereas I am advised that is uncertain whether or not the rule of the English law of perpetuities extends to the Colony of the Straits Settlements, and that therefore if it should be found to extend that the hereinbefore mentioned trusts in regard to my freehold and leasehold property may be held to be void and ineffectual.”⁴

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² *Syed Ali bin Mohamed Alsagoff and others v. Syed Omar bin Mohamed Alsagoff*, (1918) 15 SSLR 102 (CA).

³ *Ibid.*, 105.

⁴ *Ibid.*, 110.

Law reports generally indicate that Arabs involved in property disputes strained not to break the law and consistently strove to participate in the colonial legal system instituted by the British.⁵ Consequently, Arabs indicate a high a degree of attentiveness to English law.

In general, Arabs appeared to be a litigious society, as they utilized the English courts rather frequently, in disproportion to their numbers. Their litigiousness strongly suggests that family members often could not settle their disputes privately and had to resort to other means. Their legal savvy indicates a high level of confidence in the legal process in Singapore. Arabs were not just involved in property lawsuits but also in mercantile lawsuits as plaintiffs and defendants.⁶ These were mainly lawsuits involving landed property, usually with the local boards of authority during the 1930s.⁷

Arabs based in Singapore seemed to be willing to work within the colonial framework by engaging in English Law in English courts although in Hadhramaut, their land of origin in Arabia, they had been consistently subjected to Islamic law.⁸ Arabs on the whole occupied an ambivalent space, as a foreign diaspora.⁹ They formed a peculiar society within the Straits Settlement in that they, or their recent ancestors, came from a place where Islamic

⁵ Law reports of principal began to be published consistently from 1869 onwards. Bashir A. Mallal, "Law and Law Reporting in Malaya", *Malaya Law Review*, 1 (1959), 75.

⁶ See *Syed Mahomed Alsagoff v. Max Bebr*, (1893) 1 Ky 638 (SC); *Syed Mohamed bin Ahmed Alsagoff v. Oostersche Hypothek Bank*, [1896] 3 SSLR 8 (SC); *Leonard Rosenthal and Frères (sic) v. Syed Mohamed Alsagoff*, [1929] SSLR 113 (SC).

⁷ *The Singapore Improvement Trust v. Syed Ahmed bin Mohamed bin Ali Aljunied and Another*, [1935] SSLR 184 (SC); *Alkaff & Co. v. Singapore Improvement Trust*, [1935] SSLR 205 (SC); *Alkaff and Company v. Sir Shenton Thomas and Others*, [1936] SSLR 219 (SC); *Municipal Commissioner v. Syed Abdulrahman bin Shaikh Alkaff and Another*, [1937] SSLR 150 (SC); *Alkaff and Co. v. the Governor in Council and Others*, [1937] SSLR 201 (SC); *Syed Abdulrahman bin Shaikh Alkaff and Another v. Municipal Commissioners of Singapore*, [1937] SSLR 62 (SC).

⁸ Most of the Arabs in the Netherlands East Indies, Malaya and the Straits Settlements originated from Hadhramaut. Hadhramis also migrated to India, East Africa and the Red Sea region.

⁹ Arabs were part of a migrant multiethnic merchant community in the Malay Archipelago comprising Armenians, Jews (Baghdadi), Hindus, Indian Muslims, Parsees, Chinese and Persians.

legal authority was in place.¹⁰ Thus the laws of the native Malays, referred to as ‘adat’, defined loosely as a set of customary laws based on an amalgam of Malay and Islamic traditions, did not, understandably, apply to the Arabs.

As Muslims, Arab migrants from Hadhramaut shared a common faith with most of the inhabitants of the Malay Archipelago that enabled them to marry into Malay families easily.¹¹ In association with their assimilation into Malay communities in the region, their strong participation in English courts in the Straits Settlements suggest a high degree of social integration in the British colony. Despite striving to transport Islamic law from Arabia across the Indian Ocean to the British colony, they were ready to make compromises and accommodate English Law in their daily lives. Rather than leave the British colony, they attempted to maximize their advantage within an environment of constraint. Their choice to incorporate English Law suggests that their interests were well served by the British colony.

This paper will examine how legal practitioners in English courts of Singapore engaged with Islamic law in their encounter with members of the Arab diaspora who were based in that city. Although they resided in a British colony, Arabs in Singapore attempted to utilize Islamic law as much as possible in matters of divorce, inheritance and in the establishment of perpetual trusts or charitable trusts otherwise known as ‘waqfs.’¹² Nonetheless, Arab litigants constantly couched Islamic legal terms in terms of English legal discourse that was understandably more accessible to the English courts. The

¹⁰ In this case, it was the Shafi’i school of law which was predominant.

¹¹ For an excellent overview of the Hadhrami diaspora in the Indian Ocean as a whole, see Ulrike Freitag, “Reflections on the Longevity of the Hadhrami Diaspora in the Indian Ocean”, Ahmed Ibrahim Abushouk & Hassan Ahmed Ibrahim, eds. *The Hadhrami Diaspora in Southeast Asia: Identity Maintenance or Assimilation?* (Leiden: Brill, 2009), 16-32.

¹² A waqf is the act of founding a charitable trust. *Encyclopedia of Islam* <http://www.brillonline.nl/subscriber/uid=3189/entry?entry=islam_COM-1333> Last accessed February 14 2009.

contentiousness between English law and Islamic law placed the issue of language, entitlement and foreign rights at the heart of colonial history.

With the exception of M.B. Hooker's study,¹³ no work has examined the application of English law in British Straits Settlements (Penang, Malacca and Singapore) during the colonial period. Hooker's assessment of law in the Straits Settlements as "English Law with a Muslim flavour" is too simplistic for he implies that English law was clearly dominant and Islamic law was in turn, subordinate in most cases.¹⁴ Legal practice in the Straits Settlements was more complicated than a radical bifurcation of worlds of English law and Islamic law. In fact, English law and Islamic law were not constantly at odds with each other, and a certain form of 'hybrid law' came into being at times. Often, English judges and lawyers displayed an openness to consider certain aspects of Islamic law in their rulings whenever appropriate. This undercuts the assumption that the colonial state mainly served to severely suppress subject populations. This phenomenon was actually not surprising, considering that the establishment of legitimacy was a negotiation; not a one-way process, but rather, a reciprocal process in which both the colonized and colonizer participated in order to implement rightful claims over the other. A British author of a digest of Islamic law, Roland Knyvet Wilson, defined Anglo-Muhammadan law precisely as the endeavor by British magistrates to ascertain and administer Islamic law to Indian subjects.¹⁵ Company officers administered Islamic law early on, as a way to establish legitimacy and disguise their presence, and later as

¹³ M.B. Hooker, *Islamic Law in Southeast Asia* (Singapore: Oxford University Press, 1984).

¹⁴ *Ibid.*, 94.

¹⁵ Scott A. Kugle, "Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia", *Modern Asian Studies* 35,2 (2001), 259, 263. Anglo-Muhammadan Law was however based on the Quran, thus reducing the practice of Islamic law to a rigid formalism based on written texts, underscoring the unchangeability of Islamic law. For more on the development of Islamic law under the aegis of British imperialism, see Iza R. Hussin, *The Politics of Islamic Law: Elites and Authority in Colonial Malaya, India and Egypt*, Ph.D dissertation, University of Washington, 2008.

a way to secure the co-operation of the ruled and exercise their power more forcefully.¹⁶

Thus M.B. Hooker's conclusion is certainly problematic for it means that whenever an Arab made a concession to English law, he would perceive it to be an outright adherence to the dictates of English law.¹⁷ I seek to complicate this view by examining more closely the negotiations that occur between litigants and the courts.

English courts saw no need to completely administer the lives of Arabs and allowed them to incorporate Islamic law to regulate their lives. As a result, what actually came into practice was Islamic law circumscribed by English law. But in terms of legal content, it was not so much Islamic law, but rather English assumptions and legal concepts that framed the technical vocabulary of Islamic law, and guided how rules were applied, thereby reshaping Islamic law itself in the process.¹⁸

This hybrid aspect of legal rulings challenges historians' view that the pre-colonial period was clearly distinguished from the colonial period. Colonial historians often highlight the transition from fuzzy to fixed boundaries that occurred during the colonial period. But even as late as on the eve of the Second World War in 1941 in Singapore, legal rulings did not indicate that the Arabs were wholly subject to English law or Islamic law exclusively. Hybrid legal systems blurred distinctions between supposed discrete bodies of laws.

Hooker highlights the relative novelty of the merger of Islamic law and English law in the Straits Settlements compared to India, where Islamic law had been taken into consideration in colonial courts far earlier in the eighteenth century.¹⁹ Compared to the application of the Islamic and Hindu laws to Muslim and Hindu subjects in British India

¹⁶ Kugle, "Framed, Blamed and Renamed", 259.

¹⁷ Hooker, *Islamic Law in Southeast Asia*, 91.

¹⁸ Kugle, "Framed, Blamed and Renamed", 266.

¹⁹ Bernard S. Cohn, *Colonialism and Its Forms of Knowledge: The British in India* (Princeton: Princeton University Press, 1996), 57-75.

respectively, the application of English law on Muslim subjects in the Straits Settlements seemed to have been more haphazard. Often, this was blamed on the general lack of coherence in the application Islamic law in the Malay world.²⁰ In addition, even the wisdom of the implementation of English Law in the Straits Settlement was questioned. During a discussion of the pros and cons of the establishment of British courts in the Straits Settlement of Penang in 1807, British chronicler T.J. Newbold criticized the application of English Law for being:

“loaded with costly bulwarks of forms, and clogged with tedious processes...prematurely introduced, tending rather to embarrass than to advance the ends proposed by natural justice, good government and common sense...(I)ts inefficacy to reach the guilty...its absolute tendency to oppress the poor and...further the criminal views of the wealthy litigant, are glaringly obvious to every unbiased observer. Many natives, particularly Malays, will suffer much injury and loss, rather than apply to this court; nor is it...much admired by the European community itself.”²¹

It should be noted however that English law was never meant to be imported in its entirety in the first place anyway. The founder of Singapore, Thomas Stamford Raffles, emphasized in 1823 - “Let native institutions, as far as regard religious observances, marriage, and inheritance, be respected, when the same may not be as inconsistent with justice and inhumanity, or injurious to the peace and morals of society.”²²

²⁰ Emily Sadka pertinently points out that the scanty, uniformly disparaging differences by contemporary British observers are suspect, since they are the observations of administrators committed to the introduction of a rival system, and are prejudiced in any case in favour of written codes and procedures. Emily Sadka, *The Protected Malay States, 1874-1895* (Kuala Lumpur: University of Malaya Press, 1968).

²¹ T.J. Newbold, *Political and Statistical Account of the British Straits Settlements on the Straits of Malacca, Volume 1* (London: John Murray, 1839), 29-30.

²² Singapore was founded in 1819. Thomas Stamford Raffles, “Raffles’ Singapore Regulations -1823” *Malaya Law Review*, 10,2 (December 1968), 283.

In theory, Straits Settlement Law was modeled on the Indian Penal Code.²³ Despite attempts to implement a coherent system of law, especially in the early years, legal practitioners administered law according to their own ideas of equity, modified by what they knew of Malay and Chinese custom and the Indian or the Straits Penal Code.²⁴ The Charter of Justice of 1807 in Penang stipulated that the religion and custom of all inhabitants irrespective of nationality, race or creed are to be respected, and that common law must fill the legal vacuum if found applicable to the circumstances of the case with such variations as may be necessary in the interests of justice.²⁵ The Second Charter of Justice created in 1826, indicated that Malay law and custom were to be enforced in matters of inheritance and marriage as stated by Raffles above.²⁶ In practice however, this became more complicated and English law increasingly encroached upon laws of local inhabitants. Confusion and chaos in land system in the Straits Settlements evidently persisted till 1886.²⁷ Not surprisingly, legal rulings that took into account Islamic law seemed to have been devised as and when the cases appeared before the judges in courts.

But one should not take for granted that British authorities should automatically even consider Islamic law in legal rulings. The British Straits Settlements were markedly

²³ Legal practitioners however more commonly referred to the Code as English law.

²⁴ In fact, an English traveler, Isabella Bird noted in 1879, that it was the other way round, i.e., non-English law tempered by the application of English law. She calls it “a queerly muddled system of law...Muhammadian law existing alongside of fragments of English criminal law.” Isabella Bird, cited in Michael G. Peletz, *Islamic Modern: Religious Courts and Cultural Politics in Malaysia* (Princeton: Princeton University Press, 2002), 48.

²⁵ Bashir A. Mallal, “Law and Law Reporting in Malaya”, *Malaya Law Review*, 1 (1959), 73.

²⁶ From the founding of Singapore in 1819 to 1826, there was evidently “legal chaos” in Singapore which subsided with the Charter of Justice in 1826. Mallal, “Law and Law Reporting in Malaya”, 74. For more on history of the judiciary in the Straits Settlements, refer to J.W. Norton Kyshe, “A Judicial History of the Straits Settlements, 1786-1890, Chapters I-V”, *Malaya Law Review*, 11,1 (July 1969), 1-150.

²⁷ B.L. Chua, “Land Registration in Singapore and the Federation of Malaya” *Malaya Law Review*, 1 (1959), 318.

different from the rest of British Malaya during the nineteenth century.²⁸ Unlike in the neighbouring Malay states on the Peninsula, the Muslim population was always the minority in the Straits Settlements. Most of the inhabitants in the Straits Settlements were Chinese. Therefore, it was never clear to the British that Muslim residents had inherent rights superior to other persons.²⁹ The Straits Settlements were not governed by a Malay ruler. Nor were they associated with Malay territory. In other words, in terms of law, the Straits Settlements as a geographical territory formed a legal blank slate, due to the perceived absence of legal authority before the arrival of the British. This prompted Raffles to point out that –

“(U)nder the peculiar circumstances of the establishment of the Settlement, the manner in which nearly the whole of the population has accumulated under the protection of our flag, and the real character and interests of the people who are likely to resort to it, we cannot do better than to apply the general principles of British law to all, equally and alike, without distinction of tribe and nation, under such modifications only as local circumstances and peculiarities, and a due consideration for the weakness and prejudices of the native part of the population, may from time to time suggest.”³⁰

Of course, practical considerations formed a top priority in the implementation of English law. First of all, it was impossible for any judicial authority to become acquainted with all the laws and customs of the various ethnic populations in Singapore. Secondly, what law was to be applied in cases involving individuals of different ethnicities? The application of English law throughout the Straits Settlement would certainly make legal administration less complicated from the British colonial perspective.

Henceforth, even when Islamic law was applied within the Straits Settlements on these matters, it was subject to a European-style administration and embodied selected

²⁸ For more on colonial law in British Malaya, see Iza R. Hussin, *The Politics of Islamic Law: Elites and Authority in Colonial Malaya, India and Egypt*, Ph.D dissertation, University of Washington, 2008.

²⁹ Hooker, *Islamic Law in South-East Asia*, 85.

³⁰ Thomas Stamford Raffles, “Raffles’ Singapore Regulations -1823” *Malaya Law Review*, 10,2 (December 1968), 282.

religious principles in the form of English law. The combination of Islamic content and English form became ‘Muslim personal law’ that “took a life of its own, developing special features within the common law doctrine of precedent.”³¹ This was vastly different from the legal system in the Federated Malay States and Unfederated Malay States on the Malay Peninsula, where the law was a mix of Malay ‘adat’ and Islamic law.³²

Although, British colonial officials stationed in the Straits Settlements benefitted from knowledge of Islamic law in British India, there was a general reluctance to refer to legal cases in India. This could be due to British awareness that the majority of Muslims in British India was from a different madhhab. Most of the Muslims in India were Hanafis while most of the Muslims residing in the Straits Settlements were Shafi’i.³³ It could also be due to British desire to create an administrative tabula rasa in the Straits Settlements which had a different status from British India within the British Empire.

Due to their heavy dependence on wealthy kin in Southeast Asia for income and revenue, residents of Hadhramaut effectively became subject to English law.³⁴ In other words, Hadhramis were brought under effective British control long before official British annexation in 1937. Since at least the end of the nineteenth century, financial remittances from Hadhramis who had emigrated to Southeast Asia contributed significantly to the infrastructure of Hadhramaut. The affluent elite accumulated immense wealth especially in Singapore. The 80 Arab commercial firms in Singapore formed 29 percent of Arab firms in

³¹ Ibid., 288.

³² Clifford Geertz defines ‘adat’ as something halfway between social consensus and moral style. Clifford Geertz, cited in Michael G. Peletz, *Islamic Modern: Religious Courts and Cultural Politics in Malaysia* (Princeton: Princeton University Press, 2002), 6.

³³ This includes Malays, Arabs of Hadhrami descent and Muslims from South India.

³⁴ C. Mary Turnbull, *A History of Singapore, 1819-1975* (Kuala Lumpur: Oxford University Press, 1977), 8-9.

the Malay Archipelago with a capital of over 10,000 guilders in 1885.³⁵ The money that these merchants earned from their various enterprises in the Archipelago was mainly poured into the acquisition of real estate.³⁶ The estimated value of Arab investment in real estate in Singapore was 4 million guilders in 1885, a quarter of the estimated total value of Arab-owned real estate in Malaya, the Straits Settlements of Penang and Malacca, as well as the Dutch East Indies.³⁷ By 1931, Arab landowners were the largest group of owners of house property in Singapore together with the Jews, despite constituting only 0.34 percent of the population.³⁸ In 1936, they were the richest group in terms of ownership of assets per head.³⁹ Hadhramis based in Singapore made extensive contributions to the construction of roads, schools, medical dispensaries, the introduction of a local coinage system and a postal service in Hadhramaut.⁴⁰

³⁵ L.W.C. Van den Berg, *Le Hadbramout et Les Colonies Arabes*, (Batavia: Imprimerie du Gouvernement, 1886), 146-147.

³⁶ Charles B. Buckley, *An Anecdotal History of Old Times in Singapore*, (Singapore: Fraser and Neave Limited, 1902), 562-567; William G. Clarence-Smith, "Hadhrami Entrepreneurs in the Malay World, c. 1750 to c. 1940", in Ulrike Freitag and William G. Clarence-Smith, eds. *Hadhrami Traders, Scholars, and Statesmen in the Indian Ocean, 1750s-1960s* (Leiden: Brill, 1997), 303; Joseph Kostiner, "The Impact of the Hadhrami Emigrants in the East Indies on Islamic Modernism and Social Change in the Hadhramawt during the 20th century", in Raphael Israeli and Anthony H. Johns, eds. *Islam in Asia, Volume II Southeast and East Asia* (Boulder: Westview Press, 1984), 210; W.H. Ingrams, *A Report on the Social, Economic and Political Conditions of the Hadbramaut* (London: HMSO, 1937), 150; Yasser Mattar, "Arab Ethnic Enterprises in Colonial Singapore: Market Entry and Exit Mechanisms 1819-1965", in *Asia Pacific Viewpoint* 45, 2 (August 2004), 74; Arnold Wright & H.W. Cartwright, eds. *Twentieth Century Impressions of British Malaya: Its History, People, Commerce, Industries, and Resources*, (London: Lloyd's Greater Britain Pub.1908), 705-707, 710-712.

³⁷ Van den Berg, *Le Hadbramout et Les Colonies Arabes*, 146-147.

³⁸ Ulrike Freitag, "Arab Merchants in Singapore: Attempt of a Collective Biography", in Huub de Jonge and Nico Kaptein, eds. *Transcending Borders: Arabs, Politics, Trade, Islam in Southeast Asia* (Leiden: KITLV Press, 2002), 119.

³⁹ William G. Clarence-Smith, "Hadhrami Arab Entrepreneurs in Indonesia and Malaysia: Facing the Challenge of the 1930s Recessions", in Peter Boomgard and Ian Brown, eds. *Weathering the Storm: The Economies of Southeast Asia in the 1930s Depression* (Singapore: Institute of Southeast Asian Studies, 2000), 229.

⁴⁰ Robert B. Serjeant, "The Hadrami Network" in Denys Lombard and Jean Aubin, eds.

Most of the telegraph cables and shipping ports across the Indian Ocean utilized by the Hadhramis were in the hands of the British. Consequently, Hadhramis were able to dexterously maneuver the management of property across huge geographical expanses by transmitting legal directions mainly along British lines.

However, the Arabs' high mobility posed a limitation on the application of English law, especially when Arab litigants left the Straits Settlement Court's jurisdiction. In one case, the defendants, Syed Ali bin Omar Al Junied and Syed Abdulla were said to have "absconded" - a term which connotes guilt for having deliberately fled beyond the reach of the colonial law of the Straits Settlement.⁴¹ However, subsequently, the very same Arabs were subjected to English law again through the Power of Attorney, when Syed Ali bin Omar Aljunied later granted Power of Attorney to an Arab in Singapore to execute the will of Syed Abdulla in Singapore.⁴²

British colonial law, based on English law, had been applied to the Straits Settlements since 1826.⁴³ In the early history of the Straits Settlement of Singapore, prior to 1870s, English law definitely took precedence over Islamic law, and "Mohamedan Ordinances" that were introduced later could not be applied retrospectively.⁴⁴ In fact, English Law continued to take precedence in the matter of wills for quite some time, at least in theory. As late as July 1928, a legal report stated that "we have never allowed our Wills Ordinance to be subordinated to Islamic law and never recognized any limitation upon the

Asian Merchants and Businessmen in the Indian Ocean and the China Sea (Delhi: Oxford University Press, 2000), 151.

⁴¹ *Syed Anal bin Omar Shatrie v. Syed Ali Bin Omar Al Junied and Others*, (1878). 1 Ky 439.

⁴² *Ibid.*

⁴³ A separate legal system existed in Scotland. English law was transported to overseas colonies. Cases referred to by legal practitioners tended to come from England and Wales. It is uncertain when the law was introduced in its entirety including statutes as well as general principles of common law and equity. Hooker, *Islamic Law in South-East Asia*, 86.

⁴⁴ *In the goods of Sheriffa Essab*, (1885) 4 Ky 99 (SC)

testamentary power completely to dispose.”⁴⁵ Islamic law was only allowed to come to play when it did not contradict English law. When an Arab woman based in Arabia named Fatimah Binte Mohamed bin Ali Al Tway inserted a ‘nahr’ (defined as “an irrevocable gift inter vivos made in fulfillment of a vow”) in her will, the judge emphasized that the will was thereafter allowed to pass only because “it appears sufficiently to conform to Wills Ordinance according to English law.”⁴⁶ This suggests that there was a tacit willingness to incorporate particular aspects of Islamic law foreign to English law as long as these aspects did not infringe upon existing English law in the Singapore.

In the Straits Settlements, there arose a system of plural jurisdictions, not officially put in place, as evident in law reports that often highlighted contingencies in individual legal cases. It was not a rigid system based on oft-repeated well-established precedents. During the late nineteenth century, legal practitioners were still learning how to accommodate the laws and customs of non-European residents in Singapore. English law was applied to Arabs in matters of the establishment of trusts involving landed property, while in the issue of inheritance and trusts judges’ rulings hovered between English law and Islamic law.

The hybrid systems of law, that the Arabs were subjected to, bore testimony to their complicated diasporic existence. The challenge of managing trusts and landed property was compounded by the huge geographical expanse occupied and traversed by the Arab diaspora. Being a mercantile diaspora, the Arabs involved in lawsuits displayed remarkably high mobility in the Malay Archipelago and beyond, across the Indian Ocean to the Hijaz

⁴⁵ In addition, English courts have also held that the Will of a Mohamedan testator is revoked by his subsequent marriage, through the application of “Section 13” of English law. *Re Fatimah Binte Mohamed bin Ali Al Tway*, [1933] SSLR 524 (SC)

⁴⁶ *Ibid.*

and Hadhramaut.⁴⁷ One case in 1877 examined the possible extradition of an Arab man, Sech Syed bin Omar bin Ahdad Al Katiri, by the Dutch government in Batavia from a British colony.⁴⁸ In one case, the Arab defendant Syed Mohamed Alsagoff was said to be residing in Europe and therefore could not be contacted easily.⁴⁹ In yet another case, possibly the same Syed Mohamed Alsagoff was said to have gone on a visit to Europe from which he never returned, having died in London on the 1st of January 1931.⁵⁰

Often Arabs would be domiciled in one place while continuing to hold property in another. For example, on December 24 1883, a document in Dutch concerning land in Malacca was executed before a Dutch notary at “Grissie near Sourabaya” in Java which implied that the property owner resided far from land actually owned.⁵¹ In a case in 1889, it was revealed that the owner of landed property in Singapore, the wife of one Syed-Abdullah al Jaffree, “a well-known person,” in Singapore lived in Palembang.⁵² Syed Mohammed Alsagoff was in Mecca for some time though he owned a considerable amount of property in Singapore.⁵³

Arab identity was usually not emphasized in legal reports, especially if the Arab was a resident of the Straits Settlements. Instead, the Arabs were often referred to as

⁴⁷ It seems that the Arabs involved in the various legal cases were mostly merchants. *Syed Mohamed Yasin and Sherrifa Rogayah v. Syed Abdulrahman and Others* (1921), 15 SSLR 205 (CA).

⁴⁸ *In re Sech Syed bin Omar bin Ahdad Al Katiri*, (1877) 2 Ky 3 (SC).

⁴⁹ *Lyon v. Syed Mahomed Al Sagoff*, [1901] 6 SSLR 1 (SC).

⁵⁰ What followed was a case of a breach of trust, as his co-trustee did not carry out his own obligations. *Syed Mohamed Bin Ali Alsagoff and Others v. Roland* [1934] SSLR 347 (SC).

⁵¹ Though written in Dutch, the deed was explained in Malay to the signatories. The testator was probably based in Shibam since her will was made there. *Sherifa Fatima v. Fleury Re Sherifa Ayesah*, [1892] SSLR 50 (SC).

⁵² The judge wrote that Sherifa Shaika was domicile in Palembang in Java (sic). *Sherifa Shaika v. Haughton*, (1889) 4 Ky 534 (SC).

⁵³ *Syed Mohamed Yasin and Sherrifa Rogayah v. Syed Abdulrahman and Others* (1921) 15 SSLR 201.

“Mohamedans,”⁵⁴ by way of indicating that “Mohamedan” law was henceforth relevant to these court cases. Arab identity was highlighted only when the Arabs involved in court cases were domiciled in Arabia usually in Hadhramaut or the Hijaz. For example, in December 1883, the law report referred to an Arab merchant domiciled in Arabia who had made a will in accordance with English law.⁵⁵ The will of Fatimah binte Mohamed bin Ali Al Tway an “Arab Mohamedan widow” was declared and written by the Qadi of Shibam in Hadhramaut.⁵⁶

Undoubtedly, the English court was the enforcer of law in Singapore. There was no separate jurisdiction for the various ethnic and religious communities residing in Singapore.⁵⁷ Legal reports played a huge role in building archives of legal precedents made in court in written form. There is a stark absence of self-representative remarks inscribed in these report, with the exception of wills.

Nonetheless, English colonial law was certainly not a blanket imposition that produced a homogenous legal system across the British Empire. As mentioned above, court judges tended to decide what was the best ruling on a case-by-case basis. This could explain why numerous personal family grievances were often readily brought to court, sometimes even requesting the court to take over the duties of an irresponsible individual. For example, in June 1878, the plaintiffs in a case involving misappropriating of property explicitly

⁵⁴ *Re Alkaff's Settlements – Syed Abdulrahman bin Shaikh Alkaff and Others v. Syed Mohamed bin Ahmad bin Shaikh Alkaff and Others*, [1928] SSLR 188 (SC).

⁵⁵ *Sheriffa Fatimah Binte Aboobakar bin Mahomed Al Mashoor v. Syed Allowee*, (1883) 2 Ky_31.

⁵⁶ The court understands ‘nahr’ to be an irrevocable gift inter vivos made in the fulfillment of a vow *Re Fatimah Binte Mohamed bin Ali Al Tway* [1933] SSLR 521 (SC),

⁵⁷ The various communities were classified according to ethnicity, and not religious affiliation in colonial censuses.

requested the Court to step in and administer the real and personal estate of Syed Omar bin Ali Aljunied.⁵⁸

It was clear nonetheless that the British was less likely to consider Islamic law when it came to the setting up perpetual trusts i.e. “waqfs.”⁵⁹ The Arabic word ‘waqf’ was not even mentioned. Instead its nearest equivalent in English was used. The waqf was interchangeably referred to as ‘perpetual charitable trust’, “a trust consisting of his freehold and leasehold property,” or more commonly, simply as ‘trust.’ The ‘waqf’ was almost exclusively clearly couched in legal terms of English and decontextualized from Islamic law.

By the 1920s, it is improbable that the British were unaware of the workings of the waqfs and family endowments,⁶⁰ for they had come into contact with the waqfs in Transjordan and Palestine. In Transjordan, the British took pains to ascertain the status of landownership to determine whether certain landed estates were ‘waqfs’ or not. Islamic courts were pitted against civil courts by families who claimed that their landholdings were indeed waqfs, and therefore not subject to British jurisdiction per se.⁶¹ It was likely that this phenomenon would have made the British suspicious of waqf claims, even elsewhere in the Empire. Law reports indicated that waqfs specifically established only for the families, though lawful in Islam, were often held under suspicion by British officials who questioned their validity in court. Family waqfs were considered problematic by English courts in

⁵⁸ *Syed Anwar bin Omar Sbatric v. Syed Ali Bin Omar Al Junied and Others*, (1878) 1 Ky 439 (SC),

⁵⁹ For a comparative study of charitable trusts in Malaya (including the ‘waqf’) and English trusts, see Then Bee Lian, “Meaning of Charity in Malaya - A Comparative Study” *Malaya Law Review*, 11,1 (December 1969): 220-249.

⁶⁰ For a study on the influence of the Islamic institution of ‘waqf’ on English law see, Monica M. Gaudiosi, “The Influence of the Islamic Law of Waqf on the Development of the Trust in England: The Case of Merton College” *University of Pennsylvania Law Review*, 136, 4 (April 1988): 1231-1261.

⁶¹ Michael R. Fischbach examines the cases put forward by the Jarrah family in Transjordan during the 1920s. Michael R. Fischbach, “Britain and the Ghawr Abi ‘Ubayda Waqf Controversy in Transjordan”, *International Journal of Middle East Studies* 33 (2001), 525-544.

Singapore for they had the potential to isolate property for the benefit of a small group of people.

Thus, while the judges readily accepted Islamic rulings on the matter of divorce, they were less keen to sanction the institution of ‘family waqfs.’ Not only was the family waqf advantageous to just one family or clan, it also required property to be perpetually tied up. Although Arab testators were invoking their right as Muslims to set up waqfs, English judges’ reluctance to implement the waqfs in the Straits Settlement of Singapore was expressed in English legal terms.⁶² Disagreement about the relevance of the English law of perpetuities allowed the judges to prevent the establishment of waqfs through purely English channels without directly debating Islamic precepts concerning the establishment of the trusts.

There was very little precision in British colonial law regarding property in the first place. It seems that legal practitioners in Singapore had to navigate through a complex maze of legal sources and principles. They had rudimentary knowledge of the institutional workings of the ‘waqf’ for example. It is possible British officials acquired some knowledge about Islamic law, including the waqf, from administering law in India.⁶³ During the 1920s, the Jarrah family in Jordan for example revived the waqf question in order to conserve rights

⁶² To trace the exact locations of these waqfs from the colonial period till the postcolonial period, refer to Rajeswary A. Brown, “Islamic endowments and the land economy in Singapore - The genesis of an ethical capitalism, 1830–2007” *South East Asia Research*, 16,3 (November 2008), 343-403.

⁶³ Mitra Sharafi astutely points out that textbooks could provide great insight into legal history. Mitra Sharafi, A New History of Colonial Lawyering,” *Law and Social Inquiry* 32,4 (2007), 1065; Iza R. Hussin, *The Politics of Islamic Law: Elites and Authority in Colonial Malaya, India and Egypt*, Ph.D dissertation, University of Washington, 2008, 11.

over their land by pitting Islamic courts against civil rights.⁶⁴ Thus the British must have been aware of the institution of the waqf and its uses, and possibly abuses.

Arab litigants were able to manipulate British gaps of knowledge as long as they indicated a willingness to work within the English legal framework. As mentioned earlier at the start of this paper Syed Ahmed Alsagoff attached a caveat to the execution of his will to take into consideration possible limitations of English law—

“Now therefore I hereby declare and direct that, in the event of its being found that the said rule against perpetuities extends to the Colony and that the trusts hereinbefore declared in regard to the said freehold and leasehold property are in consequence inoperative and may be set aside, the trustee or trustees of this my will for the time being shall stand possessed of and entitled to the said freehold and leasehold property upon trust from time to time for and during the lives of all such of the children and more remote issue of me the said Testator...”⁶⁵

Despite the testator’s recognition that English law may supersede Islamic law, he made it clear in his will that the latter is to be the default, unless the law of the Colony, i.e. English Law, explicitly challenged the concept of perpetuities in property.⁶⁶

According to the law report, Syed Ahmed Alsagoff prepared two wills, one in Arabic on 21st December 1868, the other in English nine days later.⁶⁷ The two wills were considered two separate instruments admitted on probate.⁶⁸ The fact that he prepared his will in English already seems to suggest that he had to conform to English law requirements to be understood within the Straits Settlements. On the other hand, the part in Arabic implies that the language he was comfortable in communicating was still Arabic. His instructions for his

⁶⁴ Fischbach, “Britain and the Ghawr Abi ‘Ubayda Waqf Controversy in Transjordan”, 531, 533.

⁶⁵ *Syed Ali bin Mohamed Alsagoff and others v. Syed Omar bin Mohamed Alsagoff*, (1918) 15 SSLR 105 (CA).

⁶⁶ *Ibid.*, 109-110.

⁶⁷ *Ibid.*, 139.

⁶⁸ *Ibid.*

executor and trustee, in this case, his son Syed Mohammed bin Ahmad Alsagoff, for the distribution of \$5000, implied that some things, such as personal instructions, were better said in Arabic.⁶⁹

This raises another question – was the content of the will in Arabic different from the English version? Although this doubt was raised during the trial, it was not investigated in detail perhaps due to lack of Arabic translators in the Court. But it could also be due to the fact that the English will was considered just as authentic and therefore an adequate testimony of the testator’s wishes.

Subsequently, the English Court ruled that the alternative trusts of the will were to be implemented. The alternative trusts:

“created a period of lives-in-being and 20 years after, during which the trustees were directed to apply the income and produce thereof in the manner hereinbefore directed that is to distribute the sum of a thousand dollars annually at the discretion of my trustee or trustees for charitable purposes ‘sedekah’ according to Mohammedan custom and usages and to divide the clear residue of such rents and profits annually amongst my children above-named, and their descendants according to the shares prescribed by Mohammedan law.”⁷⁰

At the end of 20 years, the corpus was to be sold and the proceeds finally distributed among the persons then entitled to income and in the same proportions. The testator was, in other words, forced to forego perpetuity and confine his trusts to a limited period of lives-in-being and 20 years after, with sale and distribution to follow.

In April 1918, three granddaughters of the testator sued the executors of the will of Syed Ahmad Alsagoff. The plaintiffs contested the alternative trusts of the will that granted

⁶⁹ Ibid., 109.

⁷⁰ Ibid. 140.

life estates to two successive unborn generations.⁷¹ They claimed that a declaration of the trusts of the will, both as to corpus and income, were void for remoteness.⁷² A genealogical tree that was “agreed upon” by unknown parties was produced.⁷³ The debate centered around the outdatedness of English Law in general, and especially so in a colony. It did not address the issue of Islamic law at all, although the testator’s demands were constantly referred to. Based on legal reports it seems that the plaintiffs’ lawyers did not consider it necessary to present Islamic rulings to bolster their claims.

The debate was two-pronged. Firstly, the judges discussed whether it was just to extend English law to the colony. Secondly, they were concerned about the implications of tying up property in perpetuity. The first judge, Bucknill, argued that the rule against perpetuities should be regarded as locally applicable, although not all of his colleagues agreed that English law should not be transplanted to the Straits Settlements.⁷⁴ Nonetheless, despite the references to “Mohammedan Law” made by Arabs, precedents of law cases referred to during legal proceedings came exclusively from Ireland and England.⁷⁵ This debate which occurred in 1918 is all the more curious because the English Accumulation Act of 1826, which was opposed to perpetuity and the increasing accumulation of land, was amended in the 1905 legislation through the creation of the Mohamedan and Hindu Endowment Board, according to which the waqf was exempted from this anti-perpetuity principle.⁷⁶ Perhaps, this is due to the 1911 Waqf Prohibition Enactment (followed by a later Amendment in

⁷¹ The plaintiffs did not say that the alternative trusts are wholly bad. They merely condemn the right of members of two unborn generations to take income.

⁷² *Ibid.*, 106.

⁷³ It was not known how the genealogical tree came to be “agreed upon.”

⁷⁴ *Ibid.*, 116.

⁷⁵ “Mohammedan law” refers to a hybrid system of English law and Islamic law. *Ibid.*, 118.

⁷⁶ Rajeswary A. Brown, “Islamic endowments and the land economy in Singapore - The genesis of an ethical capitalism, 1830–2007” *South East Asia Research*, 16,3 (November 2008), 351.

1935) that continued to preserve the inalienability of waqf lands, but introduced restrictions on the creation of new waqf.⁷⁷

Bucknill's colleague, Sproule, dissented.⁷⁸ The latter argued against the law of perpetuities which he referred to as the "old rule."

"We have divorced ourselves from many complexities of the English law of real property. Again, elaborate wills and settlements are rare here. Marriage settlements are much rarer, our native races being for the most part polygamous. Englishmen rarely acquire land in the Colony for purposes of family settlement. Those of them who can, retire from the tropics...On the other hand, wealthy Asiatics who attempt to tie up land often defeat their object by introducing superstitious uses, and in any case are easily checked by the modern rule of perpetuities. We really have no use at all in this Colony for the old rule (of perpetuities)."⁷⁹

From the perspective of English law, Sproule insisted that the English law of perpetuities was outdated and irrelevant. He did not cite Islamic law as a legitimate alternative legal system as hoped by the testator. He was intent on proving that the "old rule" which was not part of "our law" to begin with, ought not to be introduced into or applied in the Straits Settlements.⁸⁰ Consequently, the Court Appeal was dismissed.

Like his colleagues, when speaking of the case at hand, he did not refer to the plaintiffs and defendants as "Mohammedans" but grouped them together with the Chinese, as "natives" or "Asiatics." The question was whether to accommodate the interests of "natives" in light of maintaining law and order within the colony.

⁷⁷ Brown, "Islamic endowments and the land economy in Singapore", 352.

⁷⁸ Woodward agreed with Bucknill.

⁷⁹ Ibid., 143.

⁸⁰ Ibid., 145.

References to Islamic law were largely absent in law reports in court cases pertaining to property owned by Arabs.⁸¹ As a result, Islamic or Mohamedan law was rarely criticized in law reports. There was no talk of the application of Islamic law being too arbitrary in the Straits Settlements. There was also no colonial insistence of peculiarities of Islamic culture per se. When cultural differences were invoked, and they were often mentioned, lawyers and judges referred to the Arabs as a whole or coupled them together with the Chinese and/or Indians, alluding to the peculiar customs of Asiatic peoples rather than the demands of particular religious corpus of laws. One of the judges in the Court of Appeal noted that “We see here a very typical instance of that desire so common amongst men of Chinese and Arab, and indeed of most races, to try and tie up for ever, at any rate as far as possible, the riches which they have amassed on earth.”⁸² Islamic law itself was not chastised for being vague or unclear, as if to suggest that it was never taken into consideration as a legitimate basis of law in the first place.⁸³ Yet, the Arabs’ claims which were in fact often based on Islamic jurisprudence were taken seriously and debated in court.

The hybrid legal system that combined British compilation of Islamic legal codes, and English law was usually referred to as “Mohammedan law”. But in one particular case, it was also referred to as “local law,” implying that the application of Islamic law was entrenched amongst Muslims in the Straits Settlement of Singapore (or Malaya as a whole) and not something peculiar to Arabs.⁸⁴ At least in the case of guardianship of a child in October 1910, the judge seemed to have considered the defendant’s lawyer’s argument that

⁸¹ Hooker, *Islamic Law in South-East Asia*, 122.

⁸² *Syed Ali bin Mohamed Alsagoff and others v. Syed Omar bin Mohamed Alsagoff*, (1918) 15 SSLR 110 (CA)

⁸³ Hooker, *Islamic Law in South-East Asia*, 111.

⁸⁴ *In re Haji Abdullah bin Haji Moosab, deceased, Syed Omar bin Mohamed Alsagoff v. Rosina Binti Haji Mohamed Tabir and Others*, (1910) 11 SSLR 46 (SC)

'local law' extended rather than restricted English law.⁸⁵ In this case, the lawyer utilized another legal authority, i.e. Islamic law, expressed as local law, apart from English law to support his case. Henceforth, the judge planned to deal with the two systems of law separately in his report, but ended up only referring to English law in his decision. Thus, the openness of the English court system to changes was rather limited.

Indeed we see this limitation most clearly in the case of Syed Ahmed Alsagoff's will. Although perpetuity was denied to Syed Ahmed Alsagoff, the two unborn generations were allowed to benefit from the trust as specified in his will. What are the repercussions of this particular ruling? The outcome of this case implies that the Court was inclined to impose the law of perpetuities but recognize that "the period of lives in being and 20 years after" as stated in Syed Ahmed Alsagoff's will was to be upheld for it was apparently consistent with English law in Singapore.

It is highly possible that if Syed Ahmed Alsagoff had not inserted that caveat in his will recognizing English law if Islamic law could not be admitted in Singapore, his trust might not have been established at all, or at least not in the manner that was acceptable to him. By providing very specific details in the alternative trusts, he made it possible for his wishes to be carried out in a very precise manner. In other words, although his ideal situation – a trust in perpetuity according to Islamic law – did not come to be realized after his death, his thoughtful attempt to pre-empt restrictions imposed by English law enabled his instructions to be carried out in practice in Singapore.

Although Hadhramis undoubtedly actively participated in the legal process, they did not pose a threat as intermediaries in the legal system that could have potentially undermined colonial state authority due to their ambiguous position within colonial hierarchy. As legal

⁸⁵ Ibid., 47.

texts were translated, the colonial officials were assumed more control over the actions of qadis. In other words, translations of works on Islamic law and the proliferation Islamic law digests had managed to shift power from the local legal experts to English experts.⁸⁶ None of the legal practitioners (lawyers, litigants, judges) mentioned in the law reports were Hadhramis.⁸⁷ Thus they did not possess immediate power as legal practitioners to alter colonial law in a significant way.

In general, judges who produced the bulk of reports did not refer specifically to any Islamic law textbooks when it came to property law. Hooker points out that in the Straits Settlements, the British were dealing with local, non-intellectual, non-literary form of Islam in places where most of the inhabitants were not Muslims.⁸⁸ Islamic law textbooks were cited copiously in Indian caselaw, but precedents in Islamic law as applied to India had very little relevance to the Straits Settlements due to what Hooker calls the “essentially local character of Islam”, except in matters concerning marriage and divorce.⁸⁹ R.J Wilkinson, a British scholar-official, pointed out that laws in the Malay world did not harmonize with Islamic doctrine, and were particularly baffling because they had never been committed to writing, varied from state to state, and were constantly overridden by autocratic chiefs and unjust judges.⁹⁰ However in one particular case in May 1921 that tried to determine the status of the legitimacy of two children as rightful heirs of an estate, the four judges involved in the case meticulously referred to a number of established Islamic law textbooks to investigate the

⁸⁶ Kugle, “Framed, Blamed and Renamed”, 270-1.

⁸⁷ For more on colonial intermediaries as lawyers, see Mitra Sharafi, “A New History of Colonial Lawyering: Likhovski and Legal Identities in the British Empire”, *Law & Social Inquiry* 32,4 (December 2007), 1059-1094.

⁸⁸ Hooker, *Islamic Law in South-East Asia*, 85.

⁸⁹ *Ibid.*, 87.

⁹⁰ R. J. Wilkinson, “Malay Law”, *Readings in Malay Adat and Laws*, M.B. Hooker, ed. (Singapore: Singapore University Press, 1970), 6-47.

concept of marital divorce in Islam. The case revolved around an Arab testator's two children Syed Mohammad Yassin and Sheriffa Rogayah, the plaintiffs in the suit, who claimed to be rightful heirs to the estate of their father Syed Mohamed Alsagoff who was married to their mother Asiah binte Haji Arshad.

The first trial judge, Woodward, meticulously cited four textbooks that were evidently cited by counsel during the trial.⁹¹ Legal proceedings revolved around the question of whether Syed Mohamed Alsagoff had legally divorced his wife Asiah binte Haji Arshad at the time of conception of Syed Mohammed Yassin and his sister, Sheriffa Rogayah.⁹² If they were conceived after Syed Mohammed Alsagoff divorced Asiah binte Haji Arshad, their children were illegitimate and therefore could not claim a portion of their inheritance from the estate of their father. According to Islamic law, as understood by the Court, only “the true and lawful issue” of the late Syed Mohamed bin Ahmad Alsagoff were entitled to a share of his estate.⁹³ The judges involved in the trial and the appeal focused on the unambiguous concept of ‘iddat’, a period which was definitely over.⁹⁴ The four textbooks

⁹¹ In fact Woodward credited Cobbett, the lawyer for the defendants for referring to Tyabji's *Principles of Muhammadan Law* on the issue of divorce. *Syed Mohamed Yasin and Sherrifa Rogayah v. Syed Abdulrahman and Others* (1921), 15 SSLR 207 (CA)

⁹² The judges did not doubt that the two plaintiffs were biological children of Syed Mohamed Alsagoff. *Ibid.*, 199.

⁹³ *Syed Mohamed Yasin and Another v. Syed Abdul Rahman and Others*, [1930] SSLR 75 (SC).

⁹⁴ *Syed Mohamed Yasin and Sherrifa Rogayah v. Syed Abdulrahman and Others*, (1921) 15 SSLR 206 (CA). At this point in the report, the definition of ‘iddat’ in the Quran by way of Roland K. Wilson's *Muhammadan Law: a digest* was cited by Acting Chief Justice Woodward but not written out in full. In Surah Al-Baqarah, the following lines touch upon the matter of divorce – “Divorced women shall wait concerning themselves for three monthly periods. Nor is it lawful for them to hide what Allah Hath created in their wombs, if they have faith in Allah and the Last Day. And their husbands have the better right to take them back in that period, if they wish for reconciliation. And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree (of advantage) over them. And Allah is Exalted in Power, Wise.” (2: 228). “When ye divorce women, and they fulfill the term of their (‘Iddat), either take them back on equitable terms or set them free on equitable terms; but do not take them back to injure them, (or) to take undue advantage; if any one

cited were Syed Ameer Ali's work *Mohamedan Law*, R. K. Wilson's *Digest of Anglo Mohamedan Law*, Faiz Badruddin Tyabji's *Principles of Mohamedan Law* and Neil Baillie's *A Digest of Moohummudan law* in great detail.⁹⁵ These digests are presented in the guise of translations but Scott Alan Kugle argues that the British in fact mistook a limited portion of the juridical resources of the Muslim community to be the entire, immutable legal code, thus transforming the practice of Islamic law in the process of codification.⁹⁶

The plaintiffs appealed the decision of Judge Woodward. Subsequently, the second judge involved in the case, Chief Justice Shaw, offered his own view on divorce in Islam by referring not only to Ameer Ali, Tyabji, Wilson and Baille but also to Charles Hamilton's translation of *Al-biddaya al-Marghinani*, also known *The Hedaya: Commentary on Islamic Laws*.⁹⁷ Charles Hamilton published the 4-volume work, the earliest Islamic law text in English 1791, thus transforming it into "a positivist instrument of colonial rule," as "a tool through which

does that; He wrongs his own soul. Do not treat Allah's Signs as a jest, but solemnly rehearse Allah's favours on you, and the fact that He sent down to you the Book and Wisdom, for your instruction. And fear Allah, and know that Allah is well acquainted with all things. (2:231).

⁹⁵ Syed Ameer Ali, *Mohammedan Law* (Calcutta: Spink, 1929); Roland Knyvet Wilson, *Mubammadan Law: A Digest ; preceded by a historical and descriptive introduction of the special rules now applicable to Mubammadans as such by the civil courts of British India, with full references to modern and ancient authorities* (Delhi : Akashdeep Publishing House, 1988); Faiz Badruddin Tyabji, *Principles of Mohammedan Law* (D. B. Taraporevala & Sons, Bombay, 1913); Neil B.E. Baiillie, *A digest of Moohummudan law : compiled and translated from authorities in the original Arabic with an introduction and explanatory notes, rev., with some additions to the text, and a supplement on sale, loan, and mortgage etc.* (Lahore: Premier Book House, 1957-1958).

⁹⁶ The British did not understand the policy of philosophy of Islamic legal practice. The Mughal policy of mutl-levelled applications of textual precedents was not recorded in the texts which the British chose as authoritative. They collapsed all the dimensions of Islamic juridical thought into one monolithic, textual shari'ah which was both apparent to their cognition and useful to their needs. Kugle, "Framed, Blamed and Renamed", 273, 282.

⁹⁷ Charles Hamilton actually translated a Persian edition of the original work in Arabic. Burhan al-Din 'Alī Ibn Abi Bakr al-Marghinani, *The bedāya, or guide; a commentary on the Mussulman laws*, Translated by Charles Hamilton (London: T. Bensley, 1791).

British judges supervise Islamic law.”⁹⁸ The work was considered a seminal text on Islamic law such that the second judge Shaw took Woodward to task for not referring to it especially since it was often referred to in the Courts of India.⁹⁹ Shaw was also not averse to referring to divorce cases in India amongst Muslims under Hanafi law although he displayed an awareness that the Muslims in question in Singapore belonged to the Shafi’i school.

The third judge to weigh in on the issue, Branch, delved into the concept of ‘talak’¹⁰⁰ in great detail by citing various Indian cases, and, like Shaw, he indicated an awareness that the Indians tended to follow the Hanafi school rather than the Shafi’i school. Branch even went one step further by adopting a moralistic tone in expounding upon the issue of divorce. He began by addressing the pre-Islamic period and went to cite a line from the Quran that condemns divorce as the most abominable lawful act in Islam. He also explained the three different kinds of divorce according to the number of Talak (one, two and three), explain while noting the difference between Shi’i law and Sunni law.¹⁰¹

Why were the judges in the English Court so enthusiastic about quoting Islamic law in this case of divorce, legitimacy of children and inheritance? A clue was provided by Judge Branch who stated that –

“When a question of foreign law arises for decision in an English Court the Court comes to a conclusion by finding as a fact, from the evidence before it, what that foreign law is. Section 38 of the Evidence Ordinance, 1893, of the Colony gives wide powers to a Court when it has to form an opinion on

⁹⁸ John Strawson, “Islamic Law and English Texts”, *Law and Critique*, 6,1 (1995), 28, 31.

⁹⁹ *Syed Mohamed Yasin and Sherrifa Rogayah v. Syed Abdulrahman and Others*, (1921) 15 SSLR 213 (CA)

¹⁰⁰ ‘Talak’ refers repudiation of a wife by a husband, a form of divorce, effected by the husband’s verbal pronouncement of ‘talak.’ J. Schacht, A. Layish, “Ṭalāk (a).” *Encyclopaedia of Islam*, (2nd ed.) P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel and W.P. Heinrichs, eds. (Brill, 2009),

<http://www.brillonline.nl/subscriber/entry?entry=islam_COM-1159>Last accessed, 27 April 2009.

¹⁰¹ *Ibid.*, 214.

foreign law, but in the present case the Court is left to ascertain chiefly from text-books the principles to be applied.”¹⁰²

This is extremely crucial for it reveals how the English Court was keen on applying foreign law wherever possible. In this particular case of divorce and inheritance, however, the judges were more sure-footed in exploring foreign law, in this case Islamic law, because legal textbooks which had already been cited in Indian caselaw could be referred to.¹⁰³ Likewise, court cases in India could also be cited because law regarding divorce was not perceived as markedly different between Hanafi and the Shafi'i schools. The legal report reveals that English judges were tending towards a state of standard body of laws where the different legal situations are clearly distinguished.

On the other hand, this lack of precision during this period in turn allowed property-holding Arabs to hold on tenaciously to Islamic jurisdiction ('Muhammadan law') over property. As late as the 1930s, law reports indicated a high level of ambiguity regarding the dissemination of property. This strongly suggests that colonial authorities desired to insert themselves to a certain extent within local structures despite continuing to couch these local structures within an English legal framework.

In December 1883, an Arab merchant had written up a will that was in accordance with English law in the Straits Settlement of Singapore but contrary to the law of Arabia which was Islamic law. In their report, the two judges stated that the only form of will by which a foreigner could pass lands in the England and British colonies is to ensure that the will was duly executed according to English law.¹⁰⁴ According to the report, the will devised

¹⁰² *Syed Mohamed Yasin and Sherrifa Rogayah v. Syed Abdulrahman and Others*, (1921) 15 SSLR 215 (CA).

¹⁰³ For more, see Gregory C. Kozlowski, *Muslim Endowments in British India* (Cambridge: Cambridge University Press, 1985).

¹⁰⁴ *Sheriffa Fatimah Binte Aboobakar bin Mahomed Al Masboor v. Syed Allowee*, (1883) 2 Ky_32 (SC)

leaseholds in Singapore in a manner “repugnant to the law of Arabia.” The judges concluded their report by emphasizing that the plaintiff, Sheriffa Fatimah Bintee Aboobakar bin Mahomed Al Mashoor based in Arabia “cannot invoke her rights under the Mahomedan law of a foreign state, to limit the devolution of land in these Settlements made within the limits allowed, and under the forms required by its laws, which in this particular are identical with those of England.”¹⁰⁵ The Court accepted the will as such, and the plaintiff was forced to accept the ruling. In this way, the Arab domiciled in Arabia was compelled to recognize English law as an authority. Obedience to foreign law was unacceptable in the British colony. The Islamic legal systems in Arabia were not the only potential legal authorities that could have rivalled English law in Singapore. In May 1882, Syed Abdullah bin Yahayah who was based in Singapore appointed the sovereign ruler of the Malay state of Johore on the Malay Peninsula, Sultan AbuBakar, to be the executor of his will.¹⁰⁶

In fact, what took hold of the Hadhrami diaspora profoundly was the concept of Power of Attorney. The transfer of Power of Attorney was signed in the presence of a qadi (spelt as ‘Kadee’).¹⁰⁷ Due to the wide dispersal of members of the Arab diaspora across the Indian Ocean and the Malay world, Power of Attorney proved to be a useful device for them to appoint executors of their affairs in places far from their place of domicile. Not all Powers of Attorney were granted by Hadhramis in Yemen to Hadhramis based in Singapore. Some transactions were closer to home. A Syed Mahomed bin Abdulrahman Bilfakki based in Singapore had transmitted a Power of Attorney to Hajee Omar in Penang sometime in or

¹⁰⁵ Ibid., 33.

¹⁰⁶ The law on the Peninsular was a mixture of Malay ‘adat’ and Islamic law. *In the goods of Syed Abdullah bin Syed Yahayah known as Nong Besar*, 1883? John Koh Collection, National Museum of Singapore, 2000-05661, (SC)

¹⁰⁷ *In the goods of Syed Abdullah bin Yahayah - The Petition of Mohamed Ibrahim bin Abdullah, Datu Bintara of Johore*, John Koh Collection, National Museum of Singapore, 30th November 1916, 2000-05707 (SC).

after 1865.¹⁰⁸ The nature of power actually wielded by the holder of the Power of Attorney often remain unspecified because perhaps it was already understood. But the Court in Penang did know however that Hajee Omar was supposed to stand up for the grantor's rights in 1885.¹⁰⁹

Although the Quran lays down clear and specific rules for the distribution of inheritance, it is thought to be ethically incumbent upon a man to make moral exhortations and spiritual directions to his close relatives in a will. Economic historian Rajaswari Brown states that fundamental motive for the creation of a waqf by a wealthy patriarch was to avoid fragmentation of his assets through taxation or family feuds.¹¹⁰

But family strife was not so easily avoided. The family waqf specifically excluded some heirs, especially women from partaking in part of the inheritance.¹¹¹ It seems that married women who have rights to their inheritance were sometimes deliberately left out of family inheritances.¹¹² Establishment of waqfs allow testators to circumvent the compulsory

¹⁰⁸ *In the goods of Sheriffa Essah*, (1885) 4 Ky, 99 (SC)

¹⁰⁹ *Ibid.*

¹¹⁰ Brown, "Islamic endowments and the land economy in Singapore", 346.

¹¹¹ Randi Deguilhem, "Consciousness of self: the Muslim woman as creator and manager of Waqf foundations in late Ottoman Damascus", Amira El-Azhary Sonbol, ed. *Beyond the Exotic: Women's Histories in Islamic Societies* (Syracuse: Syracuse University Press 2005), 91. For more on possible scenarios in which a testator might want to establish a waqf, refer to David S. Power, "Islamic Family Endowment (Waqf)" *Vanderbilt Journal of Transnational Law* 32,3 (1999), 1167-1190.

¹¹² Rajeswari Brown claims that this was a preservation of patrimony, a far cry from the 'egalitarian' Islamic inheritance system, but women's share had always been half that of men's according to precepts clearly stated in the Quran. Rajeswari A. Brown, "Islamic endowments and the land economy in Singapore The genesis of an ethical capitalism, 1830–2007" *South East Asia Research*, 16,3 (November 2008), 347. For another example of the exclusion of women from waqfs, see Aharon Layish, "The Muslim Waqf in Jerusalem after 1967: Beneficiaries and Management", *Le waqf dans le monde musulman contemporain (XIXe-XXe siècles): fonctions sociales, économiques et politiques : actes de la Table ronde d'Istanbul, 13-14 novembre 1992*, (Istanbul : Institut français d'études anatoliennes, 1994), 145-167.

rules of Islamic inheritance.¹¹³ For example, the case of the Alkaff family trust presented to the Privy Council in 1941, revealed that the trust was specifically meant for “male descendants in the male line of the settlor or his deceased brother.”¹¹⁴ Male issue were definitely favoured but evidently, the status of male issue living born of a daughter or remoter female issue of the settlor or his brother was less certain and a lawsuit had to deal with this question in June 1928.¹¹⁵ The Alkaff family trust is clearly meant for male issue only and in the event only of total failure of the male line, females would be let in as entitled under Islamic law.¹¹⁶

If we focus on law as process rather than on law as normative prescription or administrative structure, women participate actively in the legal process,¹¹⁷ although they tended to be forced to take action and reclaim their authority only after seizure by other parties. Landed property was closely tied to land deeds that required signatories to be literate in order to participate within legal framework where transactions were consistently recorded on paper.¹¹⁸ Sherifa Ayesah for example could not sign her name on a land deed after declaring she did not know how to write.¹¹⁹ The document was not sealed and not signed by Sherifa Ayesah, said to be “one of the property owners of some land.” Yet the document was notarized. This led to a number of complications less than a decade later when she

¹¹³ Muhammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Text Society, 1991), 21.

¹¹⁴ *Syed Omar bin Shaikh Alkaff v. Syed Abdulrahman bin Shaikh Alkaff and Others*, April 3 1941, [1941-1942] SSLR 59 (SC).

¹¹⁵ *Re Alkaff's Settlements – Syed Abdulrahman bin Shaikh Alkaff and Others v. Syed Mohamed bin Ahmad bin Shaikh Alkaff and Others*, [1928] SSLR 191 (SC).

¹¹⁶ *Ibid.*,

¹¹⁷ Leslie Pierce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003), 7.

¹¹⁸ While wills made orally are acceptable in Islam, English law did not recognize them.

¹¹⁹ It is not known if Sherifa Ayesah was able to read (she claimed only to not know how to write) but Chief Justice E. Bovill was under the impression that she was unable to. *Sherifa Fatima v. Fleury Re Sherifa Ayesah*, [1892] SSLR 52 (SC).

claimed that she did not authorize any transfer of property in 1883.¹²⁰ The judge ruled that indeed, the Notary should not have ratified the document.

In 1889, a woman named Sherifa Shaika did not realize in time that her own property had been sold in the mid-1840s. Hand-bills and advertisements of the intended sales were not published in native languages as was the case usually in land sales by auction.¹²¹ The judge presiding over the lawsuit noted that Syed Abdullah Al Jaffree her husband did not keep her up to date on the state of the affairs of her own landed property,¹²² which suggest the Court was under the impression that the husband was the one managing the affairs of the wife when it came to the management of landed property.

The status of Hadhrami women is bound up with the issue of property, especially widows who inherit property. Widows often appointed member of their own kin as Powers of Attorney in Singapore, implying that these women were either reluctant to or perhaps unable to administer property once their husbands passed away because of limited access to places faraway or lack of knowledge in matters pertaining to land ownership.¹²³ A woman based in Singapore whose husband died at Shibam in Hadhramaut transferred Power of Attorney to another man from the same clan as her in 1916.¹²⁴ The power was also granted

¹²⁰ Ibid., 50.

¹²¹ *Sherifa Shaika v. Haughton*, (1889) 4 Ky 537 (SC).

¹²² Ibid., 538.

¹²³ Usually they granted Powers of Attorney to someone who shared their family name or their husband's family name.

¹²⁴ Transfer of Power of Attorney, 30 November 1916, John Koh Collection, National Museum of Singapore, 2000-05843.

by a woman from Mecca to an Arab man based in Singapore in 1914.¹²⁵ Power of Attorney was granted by another woman to her uncle in May 1918 to sell her house in Singapore.¹²⁶

The frequent transfers of Power of Attorney led to the production of numerous legal documents. Documents were prepared in various languages. Wills were prepared in English, Dutch, Malay and Arabic, sometimes in more than one version. This proved to be problematic because translators were not always at hand. Research on the transfer of 'Power of Attorney' and wills is highly complicated because translations of documents were often done from the original Arabic to Malay.¹²⁷ The situation was so dire that the court considered the lack of translations "unavoidable."¹²⁸ Subsequently, the document in Malay was then translated to English. Certain things may be lost in this double translation, especially since two separate translators were employed at each stage of translation.¹²⁹

The courts in Singapore were not adequately provided with interpreters, a complaint that was repeatedly voiced.¹³⁰ It seems that the Supreme Court did not possess a translator that could translate Arabic documents into English directly much to the chagrin of legal practitioners. Judges complain about the lack of proper translations, if any.¹³¹ Untranslated documents were sometimes even presented before the court. Judge Shaw confessed that he

¹²⁵ Translation no. 9 of original document (dated 1st January 1918), John Koh Collection, National Museum of Singapore, 11th March 1919, 2000-05837, 1.

¹²⁶ Translation no. 89, Supreme Court Singapore, 3rd September 1918, John Koh Collection, National Museum of Singapore, 2000-05832; Shaik Awad Saidan, Translator's note, 29th September 1919, John Koh Collection, National Museum of Singapore, 2000-05833,

¹²⁷ Shaik Awad Saidan, Translator's note, John Koh Collection, National Museum of Singapore, 7th July 1919, 2000-05711.

¹²⁸ *Syed Mohamed Yasin and Sherrifa Rogayah v. Syed Abdulrahman and Others* (1921), 15 SSLR 236 (CA).

¹²⁹ Translation no. 9 of original document (dated 1st January 1918), John Koh Collection, National Museum of Singapore, 2000-05711, 11th March 1919, 2000-05837, 8.

¹³⁰ *Syed Mohamed Yasin and Sherrifa Rogayah v. Syed Abdulrahman and Others* (1921), 15 SSLR 236 (CA)

¹³¹ Due to the fact that Malay was also written in Arabic script, the Court often could not even ascertain whether the document was written in Arabic or Malay. *Ibid.*, 213.

could not understand Malay written in Arabic characters “unlike the learned Judge in Court below who could.”¹³² That did not stop him however from correcting as many mistakes he could spot in the documents submitted to him for the case. He complained about the erroneous translations of the Islamic calendar into the Gregorian calendar.¹³³ He corrected the translation of ‘mas kawin’ “marriage gold” (literal translation) or “dower” and not “maintenance” as previously accepted by judge Woodward.¹³⁴ Finally he warns that the Malay vocabulary is a limited one and great care in translation is necessary.

Assistant Chief Justice Woodward states that one of the difficulties of the case of proving the status of Syed Mohamed Yassin and Sheriffa Rogayah as the lawful issue of Syed Mohamed Alsagoff was that “the documents are in Arabic, and it is difficult to get reliable or even any translations.”¹³⁵ The granting of Powers of Attorney from a Hadhrami residing in Arabia was understandably done in Arabic. Sharifah Noor bin Yahya of Mecca granting Power of Attorney to Syed Omar Alsagoff in Singapore in January 1918 was first translated from Arabic to Malay by Shaik Awad Saidan on 16th February 1918, then from Malay to English by H.M Hashim on 11th March 1918. Even when the testator resided in Singapore, wills and codicils are sometimes prepared in Arabic instead of Malay or English, and therefore required a double translation. In January 1929, an alleged codicil (later revealed to be a forgery) dated 15th June 1906, was translated from Arabic to Malay by one translator in one location (Jalan Besar), and then from Malay to English by a Malay interpreter in the Supreme Court.¹³⁶

¹³² Ibid., 212.

¹³³ Ibid., 222.

¹³⁴ Ibid., 224.

¹³⁵ Ibid., 201.

¹³⁶ *Re Syed Mohamed bin Ahmad Alsagoff deceased, Syed Yasin v. Mayson and Others*, [1929] SSLR 100 (SC).

Even when the transfer was restricted to the Malay Archipelago such as from the Netherlands East Indies to the Straits Settlements, translations were still hard to come by. British legal practitioners sometimes could not translate Dutch documents into English and had to trust the word of the Dutch notary who certified the will.¹³⁷ One judge made it a point to state that for the future the practice of having a properly sworn translations of both of the document sought to be proved here as a will and of the decree of the Courts of domicil establishing validity should be followed.”¹³⁸

The detailed description of a codicil later revealed to be a forgery presents a rare opportunity to discover what exactly made a document appear authentic. The codicil was supposedly signed by the settlor, Syed Mohammad bin Ahmad Alsagoff, an Arab witness, Abdulkadir bin Abdulrahman Alsagoff, and the settlor’s medical doctor British medical doctor over 70 years of age called Dr. David Galloway who had practiced medicine in Singapore for 43 years.¹³⁹ It was possible that the Arabs deemed it crucial that a European of British origin ought to be included as one of the witnesses. It was highly possible that Dr. Galloway’s European identity could help to bolster the authenticity and reliability of the document in the English Court.¹⁴⁰ If so, this indicates a high level of legal awareness of one’s position. Knowing where one stood is important within one’s society was important since one’s identity might every well affect certain aspects of legal process directly - for example one’s ethnic classification. Indeed, the court clearly separated the European from the

¹³⁷ *In Re Syed Hussain bin Omar bin Shahab*, [1939] SSLR 204 (SC).

¹³⁸ *Ibid.*

¹³⁹ *Re Syed Mohamed bin Ahmad Alsagoff deceased, Syed Yasin v. Mayson and Others*, [1929] SSLR 102-103 (SC).

¹⁴⁰ The individual choice of language and rhetoric, or ‘voice,’ was an intrinsic part of legal strategy, according to historian Leslie Peirce. Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003), 176.

“Asiatics” at one point.¹⁴¹ Syed Mohamed Alsagoff’s relationship with Dr. Galloway was presented as different from his relationship with his Arab friends and relatives for “it is quite possible Syed Mohamed would, in the circumstances of the case use the word “wife” in speaking to a European friend of the mother of his illegitimate child.”¹⁴² The European identity of Dr. Galloway was highlighted in a later lawsuit launched by both of Syed Mohamed’s children in 1921 when lawyers focused on the authenticity of Dr. Galloway’s signature which was the most suspicious.¹⁴³ The difference between the European and the Arab was reduced to handwriting styles in this instance. Chief Justice Murison referred to the way the letter ‘o’ was signed –

“It was made by starting at...10 o’clock and drawing the pen to the right at 6 o’clock with a slight deviation there to the right...it seems to me the most extraordinary way for a European to make an ‘o’ that one could conceive...Anyhow, I cannot imagine an European making an ‘O’ in any circumstances in that strange fashion.”¹⁴⁴

By dragging their disputes to English courts, the English lawyers and judges were forced to explore certain intricacies of Arab culture. In the disputed codicil the testator signed off his name as “Syed Mohamed bin Ahmad Alsagoff” instead of “Al Hagir Mohamed bin Ahmad Alsagoff” as he always did in will and genuine codicils.¹⁴⁵ Chief Justice Murison discovered that the testator would use “Syed” in addressing inferiors and “Al Hagir” in addressing superiors. Thus the codicil was denounced as a forgery.

¹⁴¹ *Syed Mohamed Yasin and Sherrifa Rogayah v. Syed Abdulrahman and Others* (1921) 15 SSLR 227 (SC)

¹⁴² *Ibid.*, 224.

¹⁴³ Galloway could not convince the court he signed it for certain, as memory had failed him.

¹⁴⁴ Galloway explained the strangeness of drawing the “o” by stating that he was writing with a ‘fuzzy’ Arab stylo but the judge remained unconvinced for he thought that two down-strokes-one concave, the other convex like two closed brackets would be the natural way to make an “O”. *Re Syed Mohamed bin Ahmad Alsagoff deceased, Syed Yasin v. Mayson and Others*, [1929] SSLR 108-109 (SC).

¹⁴⁵ *Ibid.*

Law records demonstrate the conflicted legacy of property-owning Hadhramis. Law records shed insight into the social dynamics of a diaspora and its encounter with the identity categories of colonial courts. Their wills might have been couched in Islamic terms in Arabic or Malay, but their lives remained bounded by English law. Their lives in the Straits Settlements led to their acceptance of British individuals as witnesses in their wills for example. Available evidence strongly suggests that a hybrid legal system emerged with Islamic law, being the law that the Arabs automatically aspired to. But ultimately, provisions were made to take into account the imposition of English law that rendered Islamic law, in its entirety, void.

Evidently, law is not a level playing field, least of all, colonial law. The normative codes that framed the operations of the colonial courts assigned diminished social stature to the Arabs. The system may be hybrid but the balance between Anglo and Islamic steadily tilted in an Anglo direction from 1880s till the Second World War.¹⁴⁶ British judges' discussions may seem to be sensitive to the needs of subject populations, but reality was far less egalitarian in the colony. After all, the judges' rulings constitute the foundation stone of an edifice which transforms an encounter which is conducted on the colonial terrain itself.¹⁴⁷

Without downplaying the economic motivation, I suggest that the Arabs were simultaneously intent on upholding Islamic principles as much as possible in the British Straits Settlement within the purview of English law. How was this possible? In 1877, some Arab merchants in Aden who dealt with European traders asked the Shafi'i mufti of Singapore 'Alawi bin Ahmad al-Saqqaf about the validity of 'insurance' in Islam.¹⁴⁸ Being

¹⁴⁶ Kugle, "Framed, Blamed and Renamed", 259.

¹⁴⁷ John Strawson, "Islamic Law and English Texts", *Law and Critique*, 6,1 (1995), 29.

¹⁴⁸ The query revolves around the problem of 'something for nothing' ie. the improper exchange of property without the required receipt of a counter-value. Brinkley Messick,

primarily merchants, the Arabs were very attentive to their business conducted in British colonies that necessitated accommodation of British business conduct and possibly colonial law as well. Thus it appears that at least some Arab merchants in Aden and Singapore were concerned with the practical matters of doing business in the British colonies which led them to work within a colonial framework while apparently still trying to adhere to Islamic principles.

Historian Lauren Benton argues that transformations in the law of property were sometimes perceived by social actors as primarily about changes in the ordering of legal authorities than about property rights per se.¹⁴⁹ Indeed, the change in the law of property in this case could very signify that Islamic law was subordinated to English legal rulings in the Straits Settlement. However, one should not take too literal a stand on the subordination of Islamic law to English law. To do so would be to occlude the interpretive process of the troublesome zone where English legal practitioners sought to accommodate Arab litigants, albeit more readily in matters of marital divorce than in the setting up of perpetual trusts involving real estate.

Arabs' frequent usage of English courts made them more visible within the colony. In many cases, the courts required Arab litigants to reveal their financial assets, including real estate during legal proceedings. By utilizing British law to conduct matters of inheritance, the Arabs opened up channels of surveillance for the British to keep tabs on their financial assets and money flow, which in turn enabled the British to locate the centers of power tied to the control of material resources within the Hadhrami diaspora and Hadhramis in

“Madhhabs and Modernities”, Peri Bearman, Rudolph Peters, Frank E. Vogel, eds. *The Islamic School of Law – Evolution, Devolution and Progress* (Cambridge: Harvard University Press, 2005), 159-174.

¹⁴⁹ Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge: Cambridge University Press, 2002), 11.

Hadhramaut.¹⁵⁰ Due to the latter's heavy dependence on wealthy Hadhramis in Southeast Asia for revenue, Hadhramis in Hadhramaut were in turn subject to English law themselves.¹⁵¹

Perhaps, then, it should not come as a surprise that a formidable British ally in British surveillance of Arab communities at the height of pan-Islamism during the early twentieth century was a member of the Bin Shahab family who owned a huge amount of property in Singapore.¹⁵² In addition, it is also not surprising that when W.H. Ingrams, First Political Officer for the Aden Protectorate, wanted to annex Hadhramaut to the British Empire in the 1930s, he allied with Syed Abu Bakr Alkaf, a man who amassed his fortune in Singapore, then proceeded to build the first road in Hadhramaut. Lauren Benton emphasizes that colonial legal regimes privileged members of colonial society who were seen to be more supportive of the state's interests.¹⁵³ Commitment to colonial law in the colony could be perceived as loyalty to the British Empire. Having proven that they were indeed responsible, trustworthy residents of a British colony in Southeast Asia, these Arabs gained political

¹⁵⁰ Richard van Leeuwen writes that the key word for the function of waqfs is 'control' since the system of waqfs offered a structure which penetrated deeply into various dimensions of life and could relatively easily be surveyed and manipulated. He means that the waqf created the facilities for the transmission of knowledge and generated the revenues to support a body of ulama which were gradually incorporated into the administrative apparatus more amenable to channels of surveillance. Richard van Leeuwen, *Waqfs and Urban structures: The Case of Ottoman Damascus* (Leiden: Brill, 1999), 202.

¹⁵¹ C. Mary Turnbull, *A History of Singapore, 1819-1975* (Kuala Lumpur: Oxford University Press, 1977), 8-9.

¹⁵² Syed Hussein bin Omar bin Shahab owned property worth \$1000 in Singapore when he died in 1909. *In Re Syed Hussain bin Omar bin Shahab*, [1939] SSLR 203-205 (SC). British officials were also aware that wealthy Arabs in Southeast Asia sent 200,000 Indian Rupees per month to the Hadhramaut in the 1920s. Rajeswary A. Brown, "The Decline of Arab Capitalism in Southeast Asia", Ahmed Ibrahim Abushouk & Hassan Ahmed Ibrahim, eds. *The Hadhrami Diaspora in Southeast Asia: Identity Maintenance or Assimilation* (Leiden: Brill, 2009), 123.

¹⁵³ Benton, *Law and Colonial Cultures: Legal Regimes in World History*, 29.

leverage that allowed them to influence British policies of colonial expansion on the other side of the Indian Ocean in the 1930s.

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